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# Application Decision

Site visit made on 4 February 2013

**By Sue Arnott FIPROW**

An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 11 April 2013

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## Application Ref: COM 404

**Land at Chûn Downs, Parishes of Morvah, Madron, Sancreed and St Just, Cornwall**

Register Unit: CL 519

Registration Authority: Cornwall Council

- The application, dated 5 January 2012, is made under paragraph 4(6)(a) of Schedule 2 to the Commons Act 2006 ('the 2006 Act').
- The application is made by Mr I McNeil-Cooke of 'Save Penwith Moors'.
- The application is to register waste land of a manor as common land in the register of common land.

**Summary of Decision:** The application is granted.

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## Preliminary Matters

1. A public notice of the application appeared in the 7 June 2012 edition of *The Cornishman* newspaper, on Cornwall Council's website and was displayed on the application land for the appropriate statutory period. Notice was also served on interested parties as required. As a result, sixteen representations were submitted in support of the application. In addition, letters from two other parties were forwarded by the applicant, one of which opposed registration of the land as common.
2. To assist me in determining the application I visited the site on 4 February 2013. No party expressed a wish to be present and I therefore inspected the land unaccompanied.

## The Application Land

3. The application land forms the northern and western part of the area known as 'Chûn Downs'<sup>1</sup>. Whilst the majority lies in the south west corner of Madron parish, smaller portions lie with the parishes of Morvah, Sancreed and St Just. The area is predominantly open heathland, bounded in part along sections of its northern and southern edges mostly by traditional hedges. It is owned by the Cornwall Wildlife Trust and grazed by a tenant. The whole of the site is designated as a Scheduled Ancient Monument, noted for its field systems, round house sites and barrows as well as Chûn Castle and Chûn Quoit. In addition it is recorded as open access land under the Countryside and Rights of Way Act 2000 and lies within the Cornwall Area of Outstanding Natural Beauty.

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<sup>1</sup> Chûn Downs also includes adjacent land to the south east. This is the subject of a separate application for registration as CL 206 (Planning Inspectorate Ref: COM 406).

## The Statutory Requirements

4. Paragraph 4(6)(a) of Schedule 2 to the 2006 Act provides that any person may apply to the commons registration authority to register waste land of a manor as common land in the register of common land. The Commons Registration (England) Regulations 2008 (the 2008 Regulations) set out the procedures to be followed.
5. The application was made on 5 January 2012<sup>2</sup>. The application form indicates that it has been made in accordance with the provisions of paragraph 4 of Schedule 2 to the 2006 Act which provides that an application can be made where the land at issue is waste land of a manor and where before 1 October 2008:
  - (a) the land had been provisionally registered as common land under section 4 of the Commons Registration Act 1965;
  - (b) an objection was made in relation to the provisional registration; and
  - (c) the provisional registration was cancelled in any of the following circumstances:
    - (i) the provisional registration was referred to a Commons Commissioner under section 5 of the 1965 Act and the Commissioner had determined that although the land had been waste of the manor at some earlier time, it was not such land at the time of the determination because it had ceased to be connected with the manor and for that reason only the Commissioner refused to confirm the provisional registration;
    - (ii) the provisional registration was referred to a Commons Commissioner under section 5 of the 1965 Act and the Commissioner had determined that the land was not subject to rights of common and for that reason refused to confirm the provisional registration and the Commissioner did not consider whether the land was waste of a manor;
    - (iii) the person on whose application the provisional registration had been made requested or agreed to its cancellation (whether before or after its referral to a Commons Commissioner).
6. An application must be made in accordance with the 2008 Regulations. Paragraph 16 of the 2008 regulations requires that an application must –
  - (a) be made in writing on a form provided by the registration authority to which the application is made; and
  - (b) be signed by, or by a representative of, every applicant who is an individual, and by the secretary or some other duly authorised officer of every applicant which is a body corporate or an unincorporated association.
7. In addition, paragraph 14 of Schedule 4 to the 2008 regulations requires that an application under paragraph 4 to Schedule 2 to the 2006 Act must include –

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<sup>2</sup> For the purpose of remedying non-registration or mistaken registration under the 1965 Act, the application must have been made on or before 31 December 2020.

- (a) a description of the land to which the application applies; and
- (b) evidence of the application of paragraph 4(2) of Schedule 2 to the 2006 Act to the land to which the application relates.

## Reasons

### ***The Application***

- 8. The Registration Authority (Cornwall Council) confirms that the application was properly made and the required statutory procedures followed; none of the representations dispute this. From my examination of the papers submitted I am satisfied the application is sufficient to meet the procedural requirements of sub-paragraph 4(6) of Schedule 2 to the 2006 Act.
- 9. Cornwall Council further considers that the evidence in this case meets the relevant statutory criteria such that the application should be granted.

### ***Whether the land at issue is waste land of a manor***

- 10. Waste land of a manor is regarded as being "the open, uncultivated and unoccupied lands parcel of the manor other than the demesne lands of the manor", a definition established in the case of *Attorney General v Hanmer*<sup>3</sup>.
- 11. The applicant submits that it is reasonable to consider the application land as waste land of a manor, despite conflicting evidence as to manorial ownership for most parts of West Cornwall.
- 12. His research reveals that Chûn (also noted as Chyoone, Chyowne and Chywoone) was part of Lanyon Manor. It came into the possession of the Lanyon family in 1215; part was sold to the Rashleigh family in 1632. A lease in 1704 from John Rashleigh to John Maddern mentions Chywoone, and another in 1789 from Philip Rashleigh to Elizabeth Mathews mentions Chyoone; both refer to Lanyon Manor.
- 13. The Tithe Map and Apportionment for the Parish of Morvah in 1841 recorded the application land "Chyowne Downs" (parcel 178) being used for furze and turf, listing the owner as William Rashleigh with three lessees<sup>4</sup> and three tenants. The applicant highlights the lack of cultivation and release from rent charge, submitting this is indicative of common land.
- 14. The applicant also notes a letter from Charles Rashleigh dated 4 September 1807 referring to a dispute over grazing and fencing of a common in the area but the exact location cannot be confirmed as including Chûn Downs.
- 15. Published guidance acknowledges that "*it is seldom possible to definitively prove that a particular parcel of land is of a manor. But it should be sufficient to show that, on the balance of probabilities, the land lies in an area which is recognised to have been, or still be, manorial, and that there is no convincing evidence to the contrary.*"<sup>5</sup> In this case there is no evidence to counter the reasonable conclusion that at one time the application land probably formed part of the waste land of the Manor of Lanyon.

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<sup>3</sup> *Attorney General v Hanmer* [1858] 2 LJ Ch 837

<sup>4</sup> Amongst those listed are John and Elizabeth Matthew; John Matthew is also listed as a tenant.

<sup>5</sup> At paragraph 9.2.14: Guidance to applicants in the pilot implementation areas Version 1.22 September 2011; repeated at paragraph 9.3.16: Guidance to commons registration authorities and PINS for the pioneer implementation Version 1.43 September 2011

16. The description of the application land as open, uncultivated and unoccupied is not disputed. Whilst grazing may take place periodically, the land does not cease to qualify as “unoccupied” in this context unless there is some physical use which requires the exclusion of others.
17. Consequently I find that the application land is of manorial origin and that it has the character of waste land in that it is open, uncultivated and unoccupied.

***Whether the land at issue was provisionally registered as common land under section 4 of the 1965 Act***

18. The land was provisionally registered as common land (CL 519) on 26 November 1969 following an application (ref. 1691) by the West Cornwall Footpaths Preservation Society made on 3 November 1969. The Register also notes a second application made (ref. 1999) by the St Just and Pendeen Old Cornwall Society on 30 December 1969.

***Whether an objection was made to the provisional registration***

19. An objection to the registration of the land dated 30 September 1970 by Matthew Thomas (reference X576) was recorded in the Register on 15 February 1972; the grounds for the objection were that the land was not common land at the date of registration or at all.

***Whether the provisional registration was cancelled in the circumstances specified in paragraph 4(3)–(5)***

20. The provisional registration was recorded as being cancelled on 26 January 1973 under Regulation 8 of the Commons Registration (Objections and Maps) Regulations 1968 on the basis of applications (in the form of letters dated 17 February 1972 and 27 March 1972 respectively) from the West Cornwall Footpaths Preservation Society (the first applicants) and the St Just and Pendeen Old Cornwall Society in which both parties stated that they wished to withdraw their applications for the registration of the land.
21. These are circumstances provided for by sub-paragraph 4(5) of Schedule 2 to the 2006 Act (as set out in my paragraph 5(c)(iii) above).

**Conclusion**

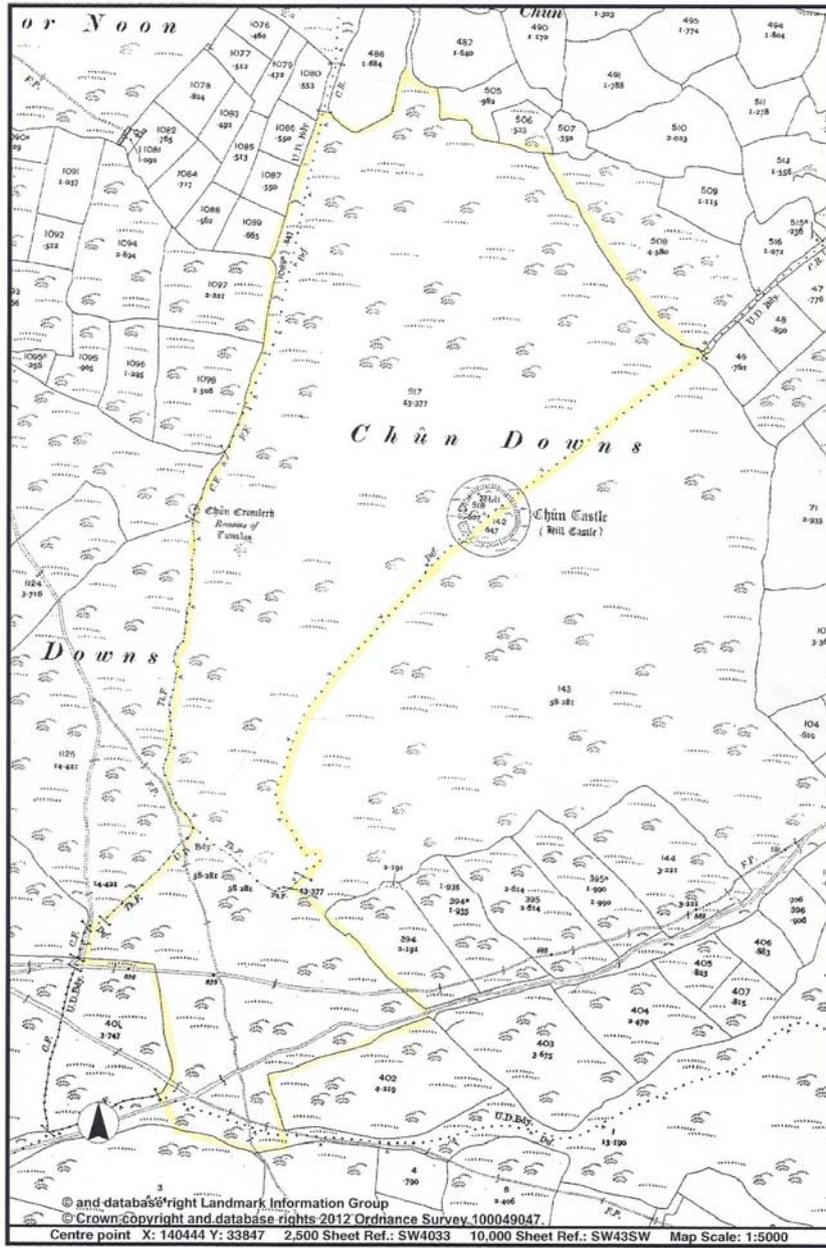
22. Having regard to these and all other matters raised in the written representations I conclude that, on a balance of probability, all the relevant criteria for registration of the application land as common land are satisfied.

**Formal Decision**

23. The application dated 5 January 2012 is granted and the land edged in yellow on the plan attached to the application shall be added to the register of common land.

*Sue Arnott*

**INSPECTOR**



<http://mapping.cornwall.gov.uk/servlet/com.esri.esrimap.Esrimap?ServiceName=hist...> 13/04/2012

Reference COM 404  
Not to original scale