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# Application Decision

by Alan Beckett BA, MSC, MIPROW

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

Decision date: 6 June 2014

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**Application Ref: COM 564**

**Land at Traboe Common, Goonhilly Downs, St. Keverne, Cornwall**

Registration Authority: Cornwall Council

- The application, dated 10 April 2013, is made under paragraph 4 (6) (a) of Schedule 2 to the Commons Act 2006 (the 2006 Act).
  - The application is made by Mr T D J S Hill.
  - The application is to register waste land of a manor as common land.
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## Decision

1. The application is granted and the parcel of land coloured yellow on the plan attached to the application<sup>1</sup> shall be added to the register of common land.

## Preliminary Matters

2. The application has been determined on the basis of written evidence only.
3. The application land is owned by Natural England; Mr Paul Tylor has a leasehold interest in part of the land. Natural England has not objected to the registration of its land in the commons register and the objections made on behalf of Mr Tylor and on behalf of St Keverne Parish Council have been withdrawn.

## The Application Land

4. The application land comprises 109.175 hectares of land at Traboe Common which forms part of Goonhilly Downs. The whole of the application land is part of The Lizard National Nature Reserve. In addition the land is recorded as open access land under the Countryside and Rights of Way Act 2000 and forms part of the Goonhilly Downs Site of Special Scientific Interest where the main habitat interest is lowland dwarf shrub heath.

## The Main Issues

5. 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 set out the procedures to be followed.
6. The application was made on 10 April 2013<sup>2</sup>. The application form indicates that it has been made in accordance with the provisions of paragraph 4 of

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<sup>1</sup> The application plan is appended to this decision

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

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 (the 1965 Act);
- (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).

## Reasons

### ***The Application***

7. The Registration Authority (Cornwall Council) confirms that the application was properly made and that the required statutory procedures had been followed; that this is so has not been disputed by any party. From my examination of the papers submitted I am satisfied that the application is sufficient to meet the procedural requirements of paragraph 4 (6) (a) of the 2006 Act.
8. The applicant, Mr Hill, is an employee of Cornwall Council; consequently, the Registration Authority has adopted a neutral stance with regard to the merits of the application.

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

9. 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>.
10. It is the applicant's case that the application land can be reasonably considered to be the waste land of the Manor of Traboe. In support of this contention the applicant cites evidence from a number of sources. First, the *Magna Britannia Volume 3 Cornwall 1814* records how the manor had passed from the prior of

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

St Michael's to Robert, Earl of Salisbury and then to Francis Gregor of Trevarthenick. Secondly, 18<sup>th</sup> century plans of Traboe Manor denote several features in the landscape by which the application land can be identified as being part of the manor of Traboe. Thirdly, a 1734 survey of the bounds of Goonhilly Common notes that the commons belonged to Francis Gregor Esq. "*in right of his Manor of Traboe*".

11. On the St Keverne Tithe Map the large area of land marked as Goonhilly Downs is unnumbered. The Apportionment records that "*two thousand and two acres three roods and seven perches are Commons and Wastes*" within the parish. Although not conclusive, the tithe documents are not inconsistent with the application land being regarded as waste.
12. 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 a 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>4</sup>". In this case, the applicant has adduced sufficient evidence from which it can be reasonably concluded, on a balance of probabilities that the application land was once part of the Manor of Traboe. No evidence has been submitted to counter that reasonable conclusion.
13. The description of the application land as being open, uncultivated and unoccupied is not disputed. Natural England submit that part of the land to the north-west of the road is fenced and grazed by cattle and ponies year round and that the southern section of the land is grazed every three years with the stock being managed by temporary electric fencing. Mr Tylor is the lessee of the sporting rights over the application land.
14. Whilst grazing may take place periodically and whilst Mr Tylor may shoot over the land in accordance with the terms of his lease, such use does not render the land 'occupied' in the context of the 2006 Act unless there is some physical use which requires the permanent exclusion of others. The designation of the application as access land under the 2000 Act is supportive of the applicant's contention that the land is open. Furthermore, the designation of the application land as part of the Goonhilly Downs SSSI for its dwarf shrub heath habitat demonstrates that the application land has been and is uncultivated as such habitats are not compatible with 'improved' grasslands.
15. I conclude on the basis of the evidence before me that the application land is manorial in origin and that it has the character of waste land of the manor in that it is open, uncultivated and unoccupied.

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

16. The application land was provisionally registered as common land (as part of CL 442) on 6 December 1968 following an application (reference No. 1228) made on 30 May 1968 by St Keverne Parish Council. A separate application in relation to the application land was made on 30 December 1969 by the Cornwall Naturalists' Trust.

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<sup>4</sup> Paragraph 9.3.16 Guidance to commons registration authorities and PINS for the pioneer implementation (version 1.46) January 2014

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

17. An objection to the application (reference X1255) was received by Cornwall County Council on 14 August 1972. A further objection (reference X1070) related to another part of CL 422 which does not form part of the application land. The ground of the relevant objection (X1255) was that the land was not common land at the date of the provisional registration.

***Whether the provisional registration was cancelled in the circumstances specified in paragraph 4 (3 - 5) of Schedule 2***

18. A hearing was held on 13 June 1979 into the objections to the provisional registration. In his written decision, the Commons Commissioner noted that in regard of objection X1255 neither St. Keverne Parish Council nor the Cornwall Naturalists' Trust were interested in upholding their applications to register the land as common.
19. The Commissioner therefore dealt with the provisional registration by addressing the question of whether rights of common existed over CL422 as claimed by the occupier of New Inn, Traboe. The Commissioner determined that grazing rights did not exist over the application land and accordingly modified the extent of CL 422 to exclude the application land. The Commissioner's decision indicates that no evidence had been adduced that the land was waste land of the manor; it appears that the question of manorial waste was not considered by the Commissioner.
20. The direction of the Commissioner to omit the application land from CL 422 is dated 22 August 1979 and the registration of CL 422 without the application land became final on 7 February 1980.
21. I am satisfied that the circumstances of the cancellation of the provisional registration of the application land are those which are provided for by paragraph 4 (4) of Schedule 2 to the 2006 Act (as set out in paragraph 6 (c) (ii) above).

**Conclusion**

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

*Alan Beckett*

Inspector

APPENDIX: The application land (shaded yellow)

