

# Application Decision

Site visit made on 12 August 2014

by **Heidi Cruickshank BSc MSc MIPROW**

Appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 10 October 2014

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**Application Ref: COM 393****Covered Reservoir, Trewint Village Green, Altarnun, Cornwall**

Register Unit No: CL 230

Commons Registration Authority: Cornwall Council

- The application, received by Cornwall Council on 26 January 2011<sup>1</sup>, is made under paragraph 6 of Schedule 2 of the Commons Act 2006.
- The application is made by Pennon Group Plc, on behalf of South West Water Limited.
- The application seeks to remove land from the register of common land on the grounds specified in paragraph 6 of Schedule 2 to the Commons Act 2006, relating to buildings and curtilage wrongly registered as common land.

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**Decision**

1. The application is approved in part. The land outlined in red, with the exception of that cross-hatched red, on the plan attached to this decision shall be removed from the register of common land ("the register").

**Preliminary Matters**

2. The application was made under paragraph 6 of Schedule 2 to the Commons Act 2006 ("the 2006 Act"). Schedule 2 relates to non-registration or mistaken registration under the Commons Act 1965 ("the 1965 Act"), with paragraph 6 relating to "*Buildings registered as common land*".
3. For unknown reasons, the Cornwall Council consultation also referred to paragraph 7 of Schedule 2, which relates to "*Other land wrongly registered as common land*". Paragraph 7 can only apply where "*the provisional registration of the land as common land was not referred to a Commons Commissioner under section 5 of the 1965 Act*". It seems that the provisional registration was referred as, although the relevant Commons Commissioners decision<sup>2</sup> is not before me, the registration only became final following that decision.
4. Furthermore, even if the matter had not been referred, I consider that as the application was not made by reference to paragraph 7, it would fail to meet the requirements of sub-paragraph 7(3)(b).
5. I am satisfied that the application was properly made under paragraph 6. I am also satisfied that, despite the inclusion of paragraph 7 in consultation on the application, no prejudice arises in my consideration of the matter in relation to paragraph 6 only.

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<sup>1</sup> Cornwall Council reference: Application No. 2775

<sup>2</sup> Reference 206/D/454

## **Procedural Matters**

### ***Inquiry***

6. An Inquiry into the application was arranged for 19 February 2013. However, on 13 February the applicant indicated that, as certain information was not available, they did not wish to proceed with the application at that time. The Inquiry was cancelled and the application held in abeyance.
7. In September 2013 further evidence was submitted by the applicants and consideration given as to the procedure to deal with the application. It was determined that a site visit would be appropriate.

### ***Site visit***

8. An accompanied site visit was arranged for 12 August 2014, however, on arriving at the appointed time only objectors were present. As I understood the applicant's representative to be attending I waited for a short while and contacted the office to see if he had indicated he would not be attending but no information was available.
9. As there were statutory parties present, and I needed to access adjacent land in order to view parts of the relevant site, I decided to make an access required site visit. I set out to the parties that I was unable to take any evidence or enter into any discussion, only to view features already mentioned in the submitted documents.
10. I did not enter the locked and fenced area enclosing the reservoir. However, given that it is a relatively small site, with clear views through and over the relatively low wooden fence from all sides, I am satisfied that I have seen everything that I need to in order to make an informed decision.
11. I requested some clarification in relation to part of the land following the site visit. I have made my decision on the basis of all the written representations and my observations on site.

## **The Application Land**

12. The land is situated on the eastern edge of an area of common land referred to as Trewint Village Green, register unit No. CL 230. The register records the unit with common land rights, not as a village green. Cornwall Council, the Commons Registration Authority, confirm that no application has been made to re-register the land as a village green.
13. The application relates to land of which South West Water Limited ("SWW") is the registered proprietor, as set out in the Land Registry Official Copy of Register of Title for Title number CL258681. The land is partly enclosed by wooden post and rail fencing, within which is situated a redundant water reservoir and another small building.
14. The remaining area is that registered to SWW but lying outside the existing fencing. To the north and west this comprises verges to the roads, or tracks, running across the common land. The area to the south-east has no obvious boundary to the remaining grassed area. There is a narrow waste area between the fence and a retaining wall to the east, against the garden of the property identified as The Anchorage.

## **Main Issues**

15. The application was made under paragraph 6 of Schedule 2 to the 2006 Act. By reference to sub-paragraph 2, the main issues are whether:
- (a) the land was provisionally registered as common land under section 4 of the 1965 Act;
  - (b) on the date of the provisional registration the land was covered by a building or was within the curtilage of a building;
  - (c) the provisional registration became final; and
  - (d) since the date of the provisional registration the land has at all times been, and still is, covered by a building or within the curtilage of a building.
16. Ten objections were received to the notice of the application. Matters were raised as to whether the evidence demonstrated that the reservoir and associated building had been in place at the time of registration under the 1965 Act. One objector claimed grazing rights over the land in question.
17. The task of proving the case in support of the correction of the register rests with the person making the proposal, and the burden of proof is the normal, civil standard, the balance of probabilities.

## **Reasons**

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

18. An application to register the land forming CL 230 was made by Mr W Jasper of Trewint Farm in February 1968, claiming grazing rights on the land for 12 head of cattle, 1 pig and 12 geese. The application seems to have been properly made under section 4 of the 1965 Act and the land was provisionally registered on 5 August 1968.
19. I am satisfied that the requirements of paragraph 6(2)(a) are met.

### ***Whether on the date of the provisional registration the land was covered by a building or was within the curtilage of a building***

#### *The building*

20. The reason that the application was held in abeyance related to the applicants being unable to produce documentation relating to the date of construction of the reservoir. The Ordnance Survey ("OS") mapping provided did not show a feature on the site prior to 1983, although the shape of the common land area is visible on earlier maps.
21. The applicants subsequently produced further information showing that the original application for a "*Reservoir...half in and half out of the ground [and] water tower...*" was made on 21 December 1951. The application was made to the Ministry of Housing and Local Government by Launceston Rural District Council ("the RDC"), whom I understand to have been the statutory water undertaker until the function was transferred to the East Cornwall Water Board in 1959 and presumably subsequently to SWW.

22. Minutes from the early 1950s, which appear to be those of the RDC, refer to matters relating to the *'Five Lanes & Altarnun Water Scheme'*, noting on 5 January 1954 that "...all plans etc. had been forwarded to the Ministry." The minutes record that Cornwall Commoners Association indicated that Trewint Green was not included in the Commons dealt with by them. It was said that some people had a right to stack turf on the green and the RDC were to ask for agreement for the siting of the reservoir from the residents of Trewint; this may explain the recollection of one party of a 'gentleman's agreement' on the matter.
23. On 27 January 1954 Cornwall County Council gave notice of unconditional permission<sup>3</sup> for "...the construction of a reservoir and erection of a water tower...". This referred to an application of 9 December 1953, of which the approved plan was submitted, demonstrating that this relates to the relevant land and development.
24. It appears that the water tower was removed from the scheme, due to issues arising. The RDC minute of 26 April 1955 states that "...the reservoir had been fenced and...house holders should be pressed to connect up." Final accounts for this and other water schemes were recorded in the minutes of 2 April 1957.
25. The planning documentation and minutes of the RDC demonstrate that the reservoir was built, operational and fenced by April 1955, some thirteen years prior to the provisional registration of the land. I am satisfied that the reservoir, partly above and partly below ground, constitutes a building and is still present on the site. I consider this convincing evidence that the building must, therefore, have been in place on 5 August 1968, the date of the provisional registration.

#### *The curtilage of a building*

26. The word curtilage is not defined in the 2006 Act, but has been considered by the courts, in particular in the context of planning and development legislation. The question of whether land is considered to be within the curtilage of a building is a question of fact and degree, considering the use and function of the land; ownership does not in itself demonstrate that specific land is part of the curtilage.
27. I consider that to fall within the curtilage of a building, land should serve the purpose of the building in some reasonably necessary or useful manner. It is likely to be a small area forming part and parcel with the building which it contained or to which it was attached, intimately associated with the building. Note 5 of the application refers to "*The building comprising a covered reservoir and its curtilage has been fenced off from the remainder of the land currently in Unit CL.230 for many years.*"
28. I agree with the applicant that the area within the fencing can be said to be the curtilage as I am satisfied that the current wooden fencing forms a boundary to the reservoir and associated area. The planning documents of 21 December 1951 state the "*Area to be fenced with concrete posts and wire fencing*" and minutes show fencing occurred in 1955. There are remnants of wire fencing and concrete posts on the north-eastern side, running between

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<sup>3</sup> Decision Notice 3415/E

the wooden fencing and the retaining wall and a concrete post on the verge in the south-western corner. It seems likely that this was an earlier fence around the whole site, within which the wooden fencing now sits.

29. Whilst the enclosed area may have been greater at the time of the provisional registration, I am satisfied that the currently enclosed area would have been within that curtilage.

### *Conclusions*

30. I am satisfied, on the balance of probabilities, that the land within the current wooden fencing was covered by a building or was within the curtilage of a building on the date of the provisional registration, 5 August 1968.

### ***Whether the provisional registration became final***

31. As noted, the register refers to the Commons Commissioners Decision which led to the provisional registration becoming final on 18 May 1977.

### ***Since the date of provisional registration, the land has at all times been, and still is, covered by a building or within the curtilage of a building***

32. It is clear that the reservoir has been in place since the early - mid 1950s. It appears likely that the fenced area has been made a little smaller more recently as the 2001 statutory declaration<sup>4</sup> seems to show a larger area. There has been no suggestion that the area has been left unfenced at any time. On the balance of probabilities I am satisfied that since the date of provisional registration, the area within the wooden fencing has at all times been, and still is, covered by a building or within the curtilage of a building.
33. The areas outside the fence are registered to SWW but it appears that they have not been maintained by SWW but by Altarnun Parish Council ("the Parish Council") and residents.
34. I am not satisfied that the area of verge on the north-western boundary has been shown to now be part of the curtilage of the building. It is not contained within the fenced area and is planted with shrubs and trees giving the appearance of managed garden area on the edge of the track leading to properties on that side.
35. In relation to the area to the south-east a pecked line is shown on the OS mapping, suggesting that a feature at this location, such as a change in levels or surfacing, as can be seen in relation to the access tracks across other areas of the common land unit. There are concrete corner posts and parts of the old fencing visible, however, it is not a complete barrier to access. Whilst it seems that some of this area may have been within the curtilage of the building in the past, I am not satisfied that it still is.
36. The remains of the concrete post and wire fence are also visible to the north-east of the wooden fence. It has not been maintained recently and does not form a barrier to access. The areas between the wire and wooden fences, and the wire fence and the retaining wall, are very overgrown with brambles and discarded garden waste. Neither area appears at this time to be intimately associated with the building, such that it could be considered to be within the curtilage, even if this was previously the case.

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<sup>4</sup> The statutory declarations appear to relate to a claim of ownership

37. It was in relation to the area to the south-west, effectively forming a verge to the adjacent access track, that I requested further information. I was told that the concrete markers situated on part of this area related to meter valves and a hydrant, located outside the fence so that they could be accessed without unlocking the gate.
38. I am not satisfied that underground pipework could be reasonably claimed to be within the curtilage of a building, although obviously intimately associated with it. However, in relation to the meter valves and hydrant I consider that these structures are visibly and obviously associated with the reservoir and can be fairly said to be within the curtilage. It appears that they were sited within the original fencing. As a result I consider that the affected part of this area was wrongly recorded in the register and should be removed.

***Summary in relation to the proposal under paragraph 6 of Schedule 2 to the 2006 Act***

39. I am satisfied that the land was provisionally registered as common land under section 4 of the 1965 Act and became final in 1977. I consider, on the balance of probabilities, that at the date of the provisional registration the land within the current fenced area was covered by, or within the curtilage of, a building. I also consider that the small area to the south-west on which the valves and hydrants are situated was, and still is, within the curtilage of the building. I am satisfied that these areas of land have at all times been, and still are, covered by, or within the curtilage of, a building.
40. In relation to the other areas outside the wooden fencing, I am not satisfied that the applicant has discharged the burden of proof to show this land was covered by, or within the curtilage of, a building at the time of the provisional registration. I am also not satisfied that it has been shown that they are currently, and therefore still, within the curtilage. As a result, I do not consider that it has been demonstrated that these areas outside the current fencing were wrongly registered and I do not propose that they should be removed from the register.

***Claimed rights of common***

41. The register shows that rights of common were recorded across the register unit as a whole. Whilst the current beneficiary of part of these rights (11 head of cattle, 1 pig and 11 geese) claims that the grassed-over reservoir was grazable by stock, I note that the applicant states that it would not be the practice of SWW to allow unrestricted access, for security reasons.
42. I agree with the applicant that it would be a danger to allow animals on the roof of a building such as this and so such use seems unlikely. I note that the RDC minutes refer to the need for maintenance as the area was overgrown, and so apparently not being grazed.
43. As I consider that the registration of the land was mistaken, it follows that the registration of the rights over this area was also mistaken. The removal of the land from the register also removes the recording of the rights on this area. This does not affect the rights remaining over the remaining register unit.

## **Other matters**

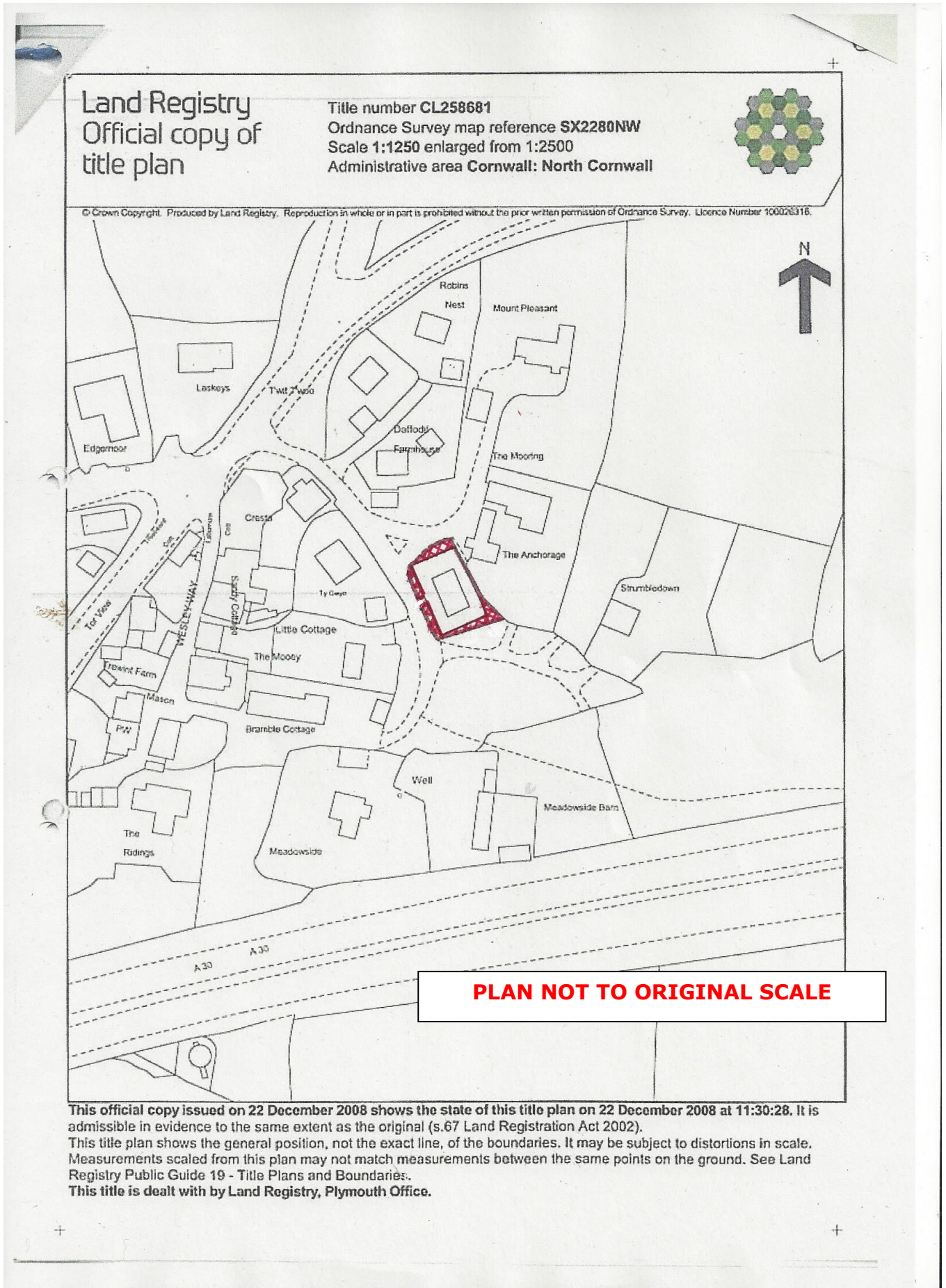
44. Issues surrounding the ownership of the land are not relevant to my decision. People often consider that common land is public land, however, common land is owned by someone, with rights limited to particular people, the 'commoners'. Common land is not community land in the way that has been suggested here.
45. Concerns regarding the possibility of the land being used as a Parish Council resource; possible commercial or residential development of the site; access; health and safety matters; environmental matters; public rights of way; the possibility that a precedent would be set; and the possibility of exchanging the land, are not matters relevant to my decision. Whilst I understand the importance of these matters to people living in the local area, I am unable to take them into account.
46. It was suggested that the land may have been waste land of a manor and so certain procedures should have been followed in the development of the site in the 1950s. The planning permission and development went through due process some sixty years ago and the site has been used in that way over a considerable period. The opportunity to challenge the procedures has long passed and the presumption of regularity, that all was done that should have been done, must apply.

## **Conclusions**

47. Having regard to these and all other matters raised in the written representations, I conclude, on the balance of probabilities, that the criteria for deregistration set out in paragraph 6 of Schedule 2 to the 2006 Act have been satisfied in relation to that part of the land within the current fenced area and a small area to the south-west, which should be removed from the register. The land outside the fencing, cross-hatched red on the attached plan, should not be removed from the register.
48. Having regard to these and all other matters raised in the written representations I conclude that, with the exception of the land cross-hatched red on the attached plan, the land edged red should be removed from the registered unit CL 230.

*Heidi Cruickshank*

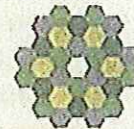
**Inspector**



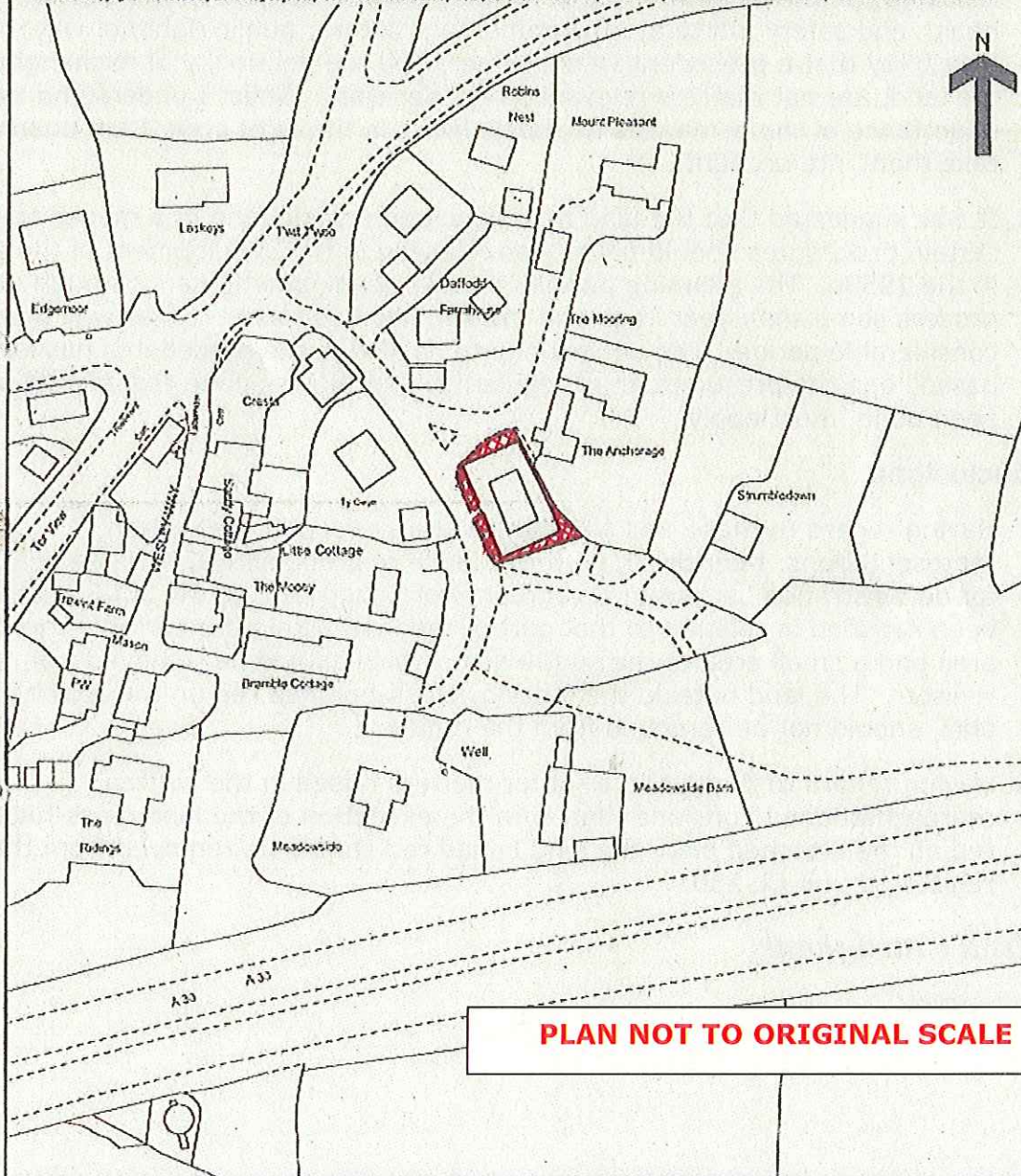


Land Registry  
Official copy of  
title plan

Title number CL256681  
Ordnance Survey map reference SX2280NW  
Scale 1:1250 enlarged from 1:2500  
Administrative area Cornwall: North Cornwall



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**PLAN NOT TO ORIGINAL SCALE**

This official copy issued on 22 December 2008 shows the state of this title plan on 22 December 2008 at 11:30:28. It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002). This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. See Land Registry Public Guide 19 - Title Plans and Boundaries. This title is dealt with by Land Registry, Plymouth Office.