



## Application Decision

Hearing held on 18 June 2025

**by Claire Tregembo BA (Hons) MIPROW**

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

**Decision date: 10 July 2025**

---

### **Application Ref: COM/3336782 Greta Wood**

Register Unit: CL238 (original provisional registration number)

Registration Authority: North Yorkshire Council

The application, dated 26 April 2023, is made under Schedule 2 paragraph 4 of the Commons Act 2006.

The application is made by The Open Spaces Society.

The application is to register waste land of a manor as common land in the register of common land.

---

### **Decision**

1. The application for the registration of CL238 is approved for the land leased to the Woodland Trust (WT) shown outlined green and hatched purple on the provisional registration map appended to this decision. The application land between Greta Mount Farm/ Barn and Greta Mount shown outlined and cross hatched red on the plan shall not be added to the commons register.

### **Procedural Matters**

2. I carried out an unaccompanied site visit on 17 June 2025 where I was able to view the application site and surrounding area. The parties were satisfied that an accompanied site visit was not necessary.
3. At the hearing I requested an unmarked copy of the current Ordnance Survey (OS) map so that I could see the boundaries underneath the red lines used to show the extent of the application land on the Notice Plan. The Commons Registration Officer was unable to confirm the date of the OS map at the hearing but emailed the case officer later that day to confirm it was dated 27 February 2025. The other parties were also informed.

### **Preliminary Matters**

4. The application, made on 26 April 2023, is for the land provisionally registered as CL238 on 28 June 1968. The applicant, the Open Spaces Society (OSS), included a copy of the provisional registration map in their supporting documents. The Commons Registration Authority (CRA) produced a Notice Plan on the modern OS base map to indicate the extent of the application land. Concerns were raised that the Notice Plan may not accurately reflect the land provisionally registered in 1968 and included additional land. If the Notice Plan is incorrect, I do not consider anyone would have been prejudiced by the inclusion of additional land as they had an opportunity to object and did so.

5. Objections were raised to the inclusion of the land between Greta Mount Farm/ Barn and Greta Mount which included access to properties and garages. The OSS stated this land was mistakenly included in the application, and it was only their intention to include the land leased to the WT. The OSS asked the CRA to withdraw this land from their application. However, there is nothing before me to indicate that the land has been removed and a revised Notice Plan removing this land has not been produced. However, I am able to amend the extent of the application land if I consider land does not meet the criteria to be registered.

### **The Application Land**

6. The application land is known as Greta Wood and consists of predominantly woodland, part of the River Greta, and grass, surfaced tracks, and buildings between Greta Mount Farm/ Barn and Greta Mount.

### **Main Issues**

7. The main issue is whether the land was waste land of manorial origin at the date of the application on 26 April 2023, and whether before 1 October 2008:
  - (a) the land was provisionally registered as common land under section 4 of the Commons Act 1965 (the 1965 Act);
  - (b) an objection was made in relation to the provisional registration; and
  - (c) the provisional registration was cancelled in the circumstances specified in sub-paragraphs (3), (4), or (5) of paragraph 4 to Schedule 2 of the Commons Act 2006 (the 2006 Act).
8. Sub-paragraph (5), on which the applicant relies, requires the person who made the application for the provisional registration to request or agree to its cancellation (whether before or after its referral to a Commons Commissioner).

### **Reasons**

#### ***The requirements of paragraph 4 of Schedule 2***

9. The application land was provisionally registered as common land unit CL238 on 28 June following an application from *'The Inhabitants of Burton-in-Lonsdale acting by the Parish Council'* dated 27 May 1968.
10. Objections were raised to the provisional registration of CL238, on 10 March 1970 by Bentham Parish Council.
11. Entry 2 in the Register of Common Land (RCL) dated 26 August 1971, records that *'the registration at entry No. 1 above is cancelled under section 5 of the Act.'* In the notes section the objection is recorded as entry No. 1 and entry No. 2 states *'the objection No. 60 having been agreed and entry No. 1 having been cancelled, Note. No. 1 above is also cancelled.'*
12. This fulfils the criteria set out in paragraph 4 of Schedule 2 of the 2006 Act.

***Whether the land is waste land of manorial origin***

13. It is seldom possible to prove definitively that a particular parcel of land is of a manor. But it is 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 there is no convincing evidence to the contrary.
14. The definition of waste land of a manor arising from the case of *Attorney General v Hanmer [1858] 2 LJ Ch 837 (Hanmer)* is 'the open, uncultivated and unoccupied lands parcel of the manor other than the demesne lands of the manor'. Demesne land is land within a manor owned and occupied by the lord of the manor for his own purposes. For land to be occupied it is considered that there must be some exclusivity of physical use by a tenant or owner alone.
15. In support of the registration the applicant stated that the application site is situated in the Manor of Ingleton. A perambulation of the manor made in 1754 refers to the northern boundary of the manor running along the River Greta from Ingleton to 'Greeta Gill' then south past Ravens Close (southwest of CL238) to the River Wenning and east along it to Mill Air and Meer Gill then to Bentham Moor (east of CL238).
16. The Inclosure Award 1768 for commons and waste grounds called Bentham Moor in the Manor of Ingleton refers to the application land. It states, '*the said pieces of parcels of ground to be used by the owners and proprietors of lands and hereditaments within the Township of Burton aforesaid for the getting of clay for the making of pots and other purposes in manner as accustomed before the passing of the said Act*'. This indicates that the application land was used as waste land to extract clay before 1768. This use was to continue, and the owners were '*inhabitants*' rather than named persons. A stone quarry was also allotted on the western side of this land. The owners and proprietors of land within the township of Burton were required to make fences between the application land and two allotments to the south and east of the application land which are now Greta Mount and the field alongside it, but not around the rest of the land.
17. The Tithe Survey for the Parish of Bentham 1839 shows the application land as Apportionment No. 738 which is described as '*waste*' that was not subject to tithes.
18. The objection made to the provisional registration of the land in 1970 states '*the land was not common land at the date of the registration by being Parish Waste by virtue of an Inclosure Award*'. Parish Council records state the objection was made due to a letter from the Charity Commission which '*made clear... land allotted under an Enclosure Award... to Trustees on a charitable trust for the benefit of a fluctuating class did not give rise to rights of common*'. Some of the parties considered this objection was still relevant and meant the application land was not waste land of a manor.
19. If the application land had been formally enclosed by the 1768 Inclosure Award, it would have ceased to have been waste. However, it was to continue to be used as '*Parish Waste*' by the inhabitants of Burton for getting clay and stone as was custom prior to the Inclosure Award and allotted to a fluctuating class. The 1839 Tithe

Survey also described the land as waste. Therefore, I consider that the Inclosure Award did not cause the application land to cease to be waste land.

20. Most of the application land is owned by the Trustees as a result of the Inclosure Award. This means the application land does not have any rights of common and could not be registered under section 22(1)(a) of the 1965 Act, as stated by the 1970 objection. However, it could be registered under section 22(1)(b) as '*waste land of a manor not subject to rights of common*'.
21. Having regard to the above, I consider the evidence is sufficient, on the balance of probabilities, to show that the application land is waste land of a manor.

***Whether the land fulfils the character of waste land of a manor***

22. The question as to whether land is waste land of a manor is one which must be satisfied at the date of the application on 26 April 2023. Having regard to the definition of waste land of a manor in paragraph 14, I must now consider the character of the application land.

***Open***

23. Generally, 'open' in this context means unenclosed. During my site visit I saw no fences, walls, or hedges between the application land and the public footpath to the north between Mill Hill and the entrance of Greeta House. The public footpath continued through the application land to Clifford Gill. There were no boundary features alongside Clifford Gill or Mill Lane.
24. There were boundary walls, fences, and hedges to the south of Greeta House, around Greta Mount Farm and Greta Mount Barn, to the north of Greta Mount, and along the boundary of the field to the south and east of the application land. The field and Greta Mount boundary were where the owners and proprietors of land within the township of Burton were required to make fences by the 1768 Inclosure Award.
25. Where hedges, walls, and fences existed, their purpose appeared to be to enclose the adjacent land rather than the application land.
26. The WT stated historical records appeared to show the entirety of the land has always been enclosed and since 1996 they have maintained the boundary fences and walls. The current boundaries appeared to be the same as those shown on the historical documents.
27. There was also a fence, field gate, and pedestrian gate within the application land between the garage at the southwestern corner of Greta Mount Barn and the Greta Mount boundary. At the hearing I was advised that this fence was originally erected to stop hens from getting onto the road. This fence gives the impression that the land between Greta Mount Farm/ Barn and Greta Mount is different to rest of the application land. However, this area was not fenced off from the road at Mill Lane and access to the woodland was available through the pedestrian gate.

28. There were two garages on the application land between Greta Barn/ Farm and Greta Mount with locked doors. These were present when the application was made and cannot be considered to be open.
29. Overall, it is my view that most of the application land was open at the date of the application. I have seen no evidence to suggest that the situation was any different at the date of the application. However, the garages are not open and should be excluded from the application land.

#### *Uncultivated*

30. Most of the application land is woodland leased to the WT by the Trustees. It was suggested that clauses in the lease to maintain the woodland in accordance with good woodland management and to replace and replant any dead or dying trees would amount to cultivation. The OSS stated this was no different to the management undertaken on registered woodland commons to maintain them.
31. I was advised that during World War II part of the woodland was farmed. The OSS considered that, if this were the case, it was because during the War there was a requirement for 10% of common land to be turned over to crops.
32. I do not consider that maintaining the woodland amounts to cultivation. There was no evidence before me of cultivation of the woodland and the WT also considered this area to be uncultivated when the Application was made.
33. The OSS described uncultivated land as land where *'there is no engagement with farming or activity with the soil which causes the soil to be broken for productive purposes'*. The objectors referred to use of the land between Greta Mount Farm/ Barn and Greta Mount as a farmyard for sheep farming from 1945 until the 1980s when it was part of the farm. It was also stated that the surface has been broken to provide a tarmac and gravel roadway and the installation of drains, watermains, electricity cables, and telephone lines and this area has also been mown regularly.
34. Although the surface may have been broken for the laying of cables and for surfacing, I do not consider this to be cultivation as it was not done to produce crops. For the same reason, I also do not consider that cultivation would include sheep farming or grass mowing for amenity purposes.
35. On my site visit I saw no obvious signs of cultivation and it is my view that it is reasonable to describe the application land as uncultivated for the purposes of the 2006 Act.

#### *Unoccupied*

36. The WT lease the woodland to improve woodland diversity and increase people's understanding and enjoyment of woodland. When I visited the site there were *'Welcome to Greta Wood'* signs at either end of the public footpath through the application land and another the entrance to Greeta House. I was also provided with a photograph of the same notice by the garage at Greta Mount Barn, but this area was overgrown, so I did not see it.

37. The WT accepted that a lease does not necessarily prevent other parties from using the land. However, they stated they actively managed the site, maintained footpaths and boundary fences and managed the spread of tree species. Therefore, they considered this could mean the land is occupied. Other parties referred to Commons Commissioner's decisions where land that has been let or leased cannot be waste land.
38. The OSS referred to Defra Guidance that occupation requires some physical use of the land to the exclusion of others for their own exclusive use and benefit. The WT encourage the public to visit and there was nothing to exclude them. One of the parties living by the application land stated the WT only trimmed the site once or twice a year. Another party thought they were there more frequently and had seen them taking trees out.
39. Based on the evidence before me, I do not consider the land leased to the WT to be occupied. The public are encouraged to enter the land, there is nothing to prevent access, and the WT appear to have a limited presence on the land.
40. The land between Greta Farm/ Barn and Greta Mount included two garages, two surfaced driveways, parked cars, wheelie bins, drains, and closely mown grass. It also provided parking and access to adjoining homes and buildings which were stated to be used on a daily basis. Photographs from 2002 showed the same situation and some of the older maps, including one from 1909, showed additional outbuildings in the past. It was also stated that this area was used as a farmyard with sheep enclosed here from at least 1945 until the farm was converted into residential dwellings in the 1980s. Maintenance in this area included the laying of drains and services, surfacing works, demolition, mowing, and building works.
41. This land was a different character to the rest of the application land. It appeared to be in regular use by the adjoining properties for their benefit. The garages, bins and cars excluded others and the whole of the area was within the curtilage of residential properties. It was accepted that the public had walked through this area to access the woodland. However, I consider most people would view this area as occupied. Therefore, I consider this area does not meet the *Hanmer* definition and should be excluded from the application land.
42. Taking into account the evidence as a whole, at the time of the application, the application land leased to the WT can be described as open, uncultivated and unoccupied. Therefore, this area fulfils the character of waste of the manor.
43. However, the land between Greta Farm/ Barn and Greta Mount, is occupied by the adjoining residential properties and garages enclose part of this land. Therefore, this area does not fulfil the character of waste of the manor.

### Other Matters

44. There were concerns raised about the accuracy of the Notice Plan used to advertise the application specifically in relation to the strip at the northern end of the application land between Greta House and Greta Farm/ Barn and at the bend in Mill Lane by Greta Mount.



45. The physical boundaries of Greta Farm, Greta Barn, Greta Mount and Greeta House shown on the 2025 OS map appear unchanged from the provisional registration map, although I note the maps are at different scales. These boundaries are the same on the 1909 OS map, various Land Registry plans and the 2015 WT plan provided. The boundaries around Greta Farm/ Barn, to the north and west of Greta Mount, and the field alongside appear largely unchanged from the Inclosure Award and Tithe Survey maps.
46. Any differences between the provisional registration map and Notice Plan are very minor. However, for the avoidance of any doubt, the original provisional registration plan should be used to show the extent of the land to be registered. I will use this plan to mark up the extent of the land to be excluded from the Commons Register.

### **Conclusion**

47. Having regard to these and all other matters raised at the hearing and in the written representations, I conclude that the application land leased to the WT fulfils the necessary criteria for registration. The rest of the application land does not fulfil the necessary criteria for registration. Consequently, I approve the application for the land leased to the WT shown outlined green and hatched purple on the provisional registration map appended to this decision, but the rest of the application land shown outlined and crosshatched in red should not be registered.

*Claire Tregembo*

INSPECTOR

## **APPEARANCES**

### **The Applicant**

Frances Kerner                                      Open Spaces Society

### **For the Commons Registration Authority**

Jayne Applegarth                                  Commons Registration Officer, North Yorkshire Council

### **Interested Parties**

Helen Mallaband                                      Landowner

Kate Mallaband                                      Landowners Daughter

Catherine Birtwistle                                  Landowner

## **DOCUMENTS (submitted at the Hearing)**

1. Woodland Trust map dated 27 November 2015
2. Land Registry Title Number NYK207520 Augst 1999
3. Modern Ordnance Survey map dated 27 February 2025



