

Report to: **Mike Eastwood
Countryside Access Team Leader, for
Approval of recommendation**

Date: **6th November 2017**

Title: **The Commons Act 2006
Section 15 – new town and village greens

The Commons Registration (England)
Regulations 2014

Application 2931
0.008 hectares of land at Henwood, in the
parish of Linkinhorne**

Divisions Affected **Lynher**

Author: **Martin Wright** Role: **Commons and Greens
Registration Officer**

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Provisional Recommendation:

To grant the application, in whole.

Cornwall Council

1. Introduction:

Cornwall Council has a duty under Section 4 of the Commons Act 2006 to keep a register of common land and a register of town and village greens. Cornwall Council also has a duty under paragraph 26 of the Commons Registration (England) Regulations 2014 to determine applications to amend the registers of common land and town and village greens, unless the registration authority has an interest in the outcome of the application such that there is unlikely to be confidence in the authority's ability impartially to determine it.

Commons Registration Application No. 2931 was made by Mr Thomas Pawley on behalf of the Henwood Village Residents Association seeking to register 0.008 hectares of land at Henwood, as a town or village green under Section 15 of the Commons Act 2006.

This report examines the evidence for and against whether the application meets the legislative requirement for registration as a town or village green.

The report has been prepared to be presented to a delegated officer. The delegated decision is to consider whether to grant, refuse or refer the matter to an independent inspector to make a recommendation to grant or refuse the application.

2. Background and Corporate Objectives:

The legislative background is for the applicant to show that a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least twenty years, and have continued to do so at the time of the application, or have ceased to do so before the time of the application but the application is made within one year of the cessation.

3. Decision and Supporting Information (Including Options):

The land is owned by Cornwall Council, but as there are no plans to change the current use of the land all parties can be confident that the registration authority can impartially determine the application, and there is no need to refer the application to the Planning Inspectorate for determination, as would otherwise be the case.

The options available to the registration authority are to:

- i grant the application;
- ii refuse the application; or
- iii refer the application to an independent inspector to recommend granting or refusing the application.

It is recommended that the available evidence is sufficient for the Council to grant the application. Regulation 27(7)(a) requires that an application cannot be granted without first offering any objector an opportunity to make oral representations.

4. Contributions to Corporate Priorities:

In determining the application the Council is performing its statutory duty set out in sections 6 to 17, 19 and 22 of the Commons Act 2006 to determine applications seeking to amend the registers of common land and of town and village greens.

5. Financial Implications and Budget:

The process of determining whether the application is granted or refused is met from existing budgets.

The management of the green will continue to be the responsibility of the owner.

6. Other Resourcing Implications:

None.

7. Legal Implications:

Cornwall Council has a statutory duty set out in paragraph 26 of the Commons Registration (England) Regulations 2014 to determine applications to amend the registers of common land and town and village greens.

8. Equality Impact Assessment:

It is not considered that an Equality Impact Assessment is required or that there is likely to be any equality impact as a consequence of this decision.

9. Significant risks:

Should the Council make a decision which is opposed there may be a risk of judicial review. These costs can be significant and can represent a financial risk to the Council. This information must not influence the decision about whether the application is granted or refused; as such decision can only be based on the evidence before the Council.

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10. Consultation including Overview and Scrutiny Committee and Local Member Representation:

10.1 Overview and Scrutiny Consultation/Comments:

As this is a regulatory matter and not a matter of strategic importance the Environment Overview and Scrutiny Committee has not been consulted.

10.2 Local Division Member Comments:

Cllr Sharon Daw has been consulted and shown support for the registration of this land as a town or village green.

Appendices:

None

Background Papers:

All papers relating to this application [No. 2931].

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11. BACKGROUND

- 11.1 An Application was received on the 9th May 2016 from Mr Thomas Pawley on behalf of the Henwood Village Residents Association for the registration of land as a town or village green under section 15 of the Commons Act 2006, for 0.008 hectares of land at Henwood in the parish of Linkinhorne. The application form and map is shown as an appendix to this report.
- 11.2 Paragraph 16 of the Commons Registration Regulations 2014 requires an application to be made in accordance with, amongst other things, Schedule 4 of the Regulations. Section 9 of Schedule 4 of the Regulations refers to applications made under Section 15(1) of the 2006 Act.
- 11.3 The following describes where the application meets and does not meet the legislative requirements for registration as a town or village green. For an application to be successful it must meet all of the legislative requirements. Failure to meet one of the legislative requirements will result in the whole of the application being refused.

LEGISLATIVE REQUIREMENTS

Section 15C of the Commons Act 2006

12 Registration of greens - Exclusion

The right under section 15(1) to apply to register land as a town or village green ceases to apply if an event specified in the first column of the Table set out in Schedule 1A has occurred in relation to the land ("a trigger event").

It is confirmed that both the Cornwall Council Planning Authority and the Planning Inspectorate were not aware of any such "trigger event" in place at the time the application was submitted, and therefore the application has not been rejected on these grounds.

Section 15(2) of the Commons Act 2006

13 The inhabitants of any locality, or of any neighbourhood within a locality

The locality or neighbourhood within a locality claimed is the village of Henwood. This is supported by a plan of Henwood Conservation Area.

14 A significant number

Evidence questionnaires were received from 20 residents. Three of the questionnaires have been discounted for reasons of using the land 'by right', as considered in paragraph 15 below. It is considered the remaining 17 questionnaires represent a significant number of the inhabitants of a neighbourhood rather than from a few individuals.

15 Have indulged as of right

All but one person completing the evidence questionnaires claimed to use the land as of right. The land is part of the publicly maintainable highway. As such some pastimes such as walking with or without dogs may be considered to be 'by right' because of the status of the land as part of the highway. These pastimes have therefore been discounted.

16 In lawful sports and pastimes

Residents have claimed to have used the land for a variety of pastimes, including grass cutting, litter picking, picnics, photography, relaxing, sitting, waiting, socialising, tea party, and walking with or without dogs.

The online Oxford English Dictionary describes pastime as an activity that someone does regularly for enjoyment rather than work; a hobby. It is considered the activities mentioned above would fall within the definition of pastime, in its ordinary sense of the word.

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17 On the land

The above-mentioned sports and pastimes are confirmed to have taken place on the land the subject of the town and village green application.

18 For a period of at least twenty years; and continue to do so at the time of the application, or they ceased to do so before the time of the application but the application is made within one year of the cessation.

Eleven questionnaires confirm the use of the land from 1996, and all of them confirm the use continued up to the date of the application.

19 REPRESENTATIONS

Cormac Contracting Ltd

Cormac Contracting Ltd, Cornwall Council's chosen provider of highways authority services has made a representation in respect of the application. "The area has already been established as Highway and subject to Highway Rights, over the entire area. Locals have been enjoying these rights with the activities they listed. I believe highway rights supersede others, i.e. even in a position of co-existence approval from the highway authority must be sought before obstructing the highway. The legality of any unauthorised obstructions and individual liabilities/insurance etc would become unnecessarily complicated. As there appears to be no benefit in the Green status and the land can still be used as Highway for most activities and community events, I think it is best left as Highway only."

20 Transport & Infrastructure Service - Cornwall Council

The Head of Highways and Infrastructure, Andy Stevenson, has confirmed that the highways authority has no objection to the application seeking to register this small piece of highway as a town or village green.

21 Commons Registration Authority's View

Highway Status: It is confirmed that the land forms part of the publicly maintainable highway as highway verge.

1965 Commons Registration Act interpretation: Whilst a highway was excluded from the definition of common land, it was not so excluded from the definition of a town or village green. Therefore it appears land can be both highway and a town or village green simultaneously.

Site Visit: It is noted the land is kerbed and contains street furniture such as a granite seat, a signpost, a telegraph pole, a telephone call box and four paving slabs leading to the telephone call box.

Case law: In *Clerk & Lindsell, The Law of Torts*, 17th ed. (1995), para. 1741 the current state of the law as to the question of use is summarised in these terms:

"The right of the public in respect of a highway is limited to the use of it for the purpose of passing and repassing and for such other reasonable purposes as it is usual to use the highway; if a member of the public uses it for any other purpose than that of passing and repassing he will be a trespasser."

The commons registration authority has addressed this issue at paragraph 15 above.

22 Method of Determining Application

The Commons Regulations (England) Regulations 2014 states that:

27(1) The determining authority must, in determining any application or proposal, take into account:

(d) any oral representations made by any person in accordance with paragraph (7)

27(6) Paragraph (7) applies in relation to any application which the determining authority decides to determine without holding a public inquiry or hearing in accordance with regulation 32.

27(7) the determining authority:

(a) May not refuse an application without first offering the applicant an opportunity to make oral representations; and

(b) May not grant or refuse an application without first offering any person (other than the applicant) for whom the grant or refusal would represent a determination of that person's civil rights an opportunity to make oral representations.

The Registration Authority has shared the contents of a draft decision, along similar lines to this decision, with the interested parties and local member. Cllr Daw has raised no concern in the registering of this land as a town or village green.

23 CONCLUSION

For an application to succeed it must satisfy all of the legislative criteria for registration as a town or village green.

Discounting the right to pass and repass, with or without dogs which is considered to be a right 'by right' because of the highway status of the land, the remaining activities are considered to be pastimes which are exercised by a significant number of the neighbourhood of Henwood 'as of right' and are sufficient for the application to be granted.

24 Decision

On the balance of probabilities the criteria for the registration of the application land as a town or village green have been satisfied and the application should be granted.

Name: *Mike Eastwood*
Title: Countryside Access Team Leader
Date: 6th November 2017

25 Supporting Information

Application 2931

26 Background Papers:

The Commons Act 2006:
<http://www.legislation.gov.uk/ukpga/2006/26/contents>

The Commons Registration (England) Regulations 2014:
<http://www.legislation.gov.uk/uksi/2014/3038/contents/made>

Guidance to commons registration authorities and the Planning Inspectorate for the pioneer implementation (version 2.0, December 2014) (Defra)
<https://www.gov.uk/common-land-management-protection-and-registering-to-use>

(Scroll down to heading: Pioneer documents including guidance and statutory instruments)