

Report to: **Peter Marsh
Environment Service Director
for Approval of recommendation**

Date: **23 July 2018**

Title: **The Commons Act 2006
Section 15 – New Town ort Village Green**

**The Commons Registration (England)
Regulations 2014**

**Application 2946
0.932 hectares of land at Treloggan Green,
off Treloggan Road, Newquay in the parish of
Colan.**

Divisions Affected **St. Mawgan and Colan**

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

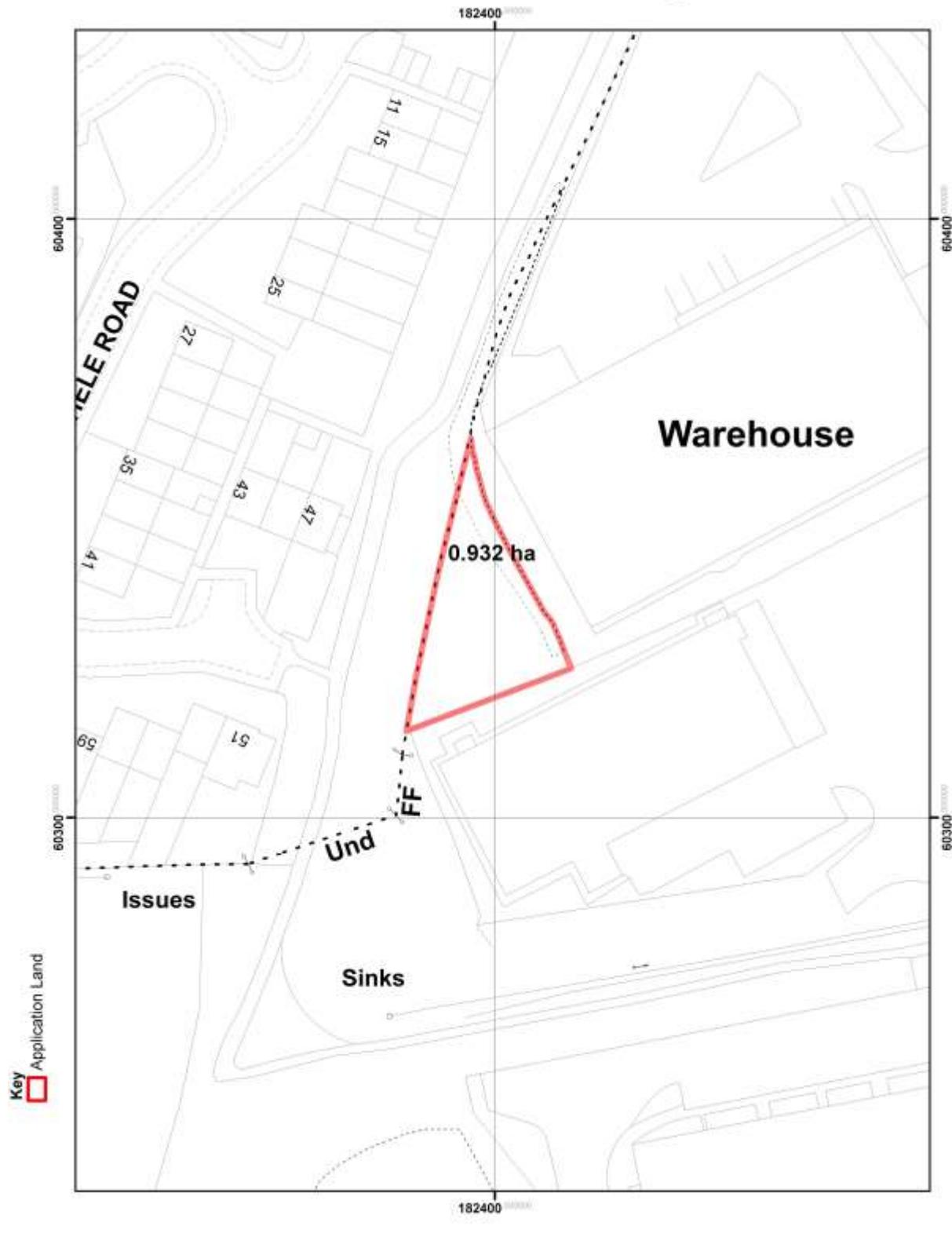
Contact: **Tel: 01872 224773 E-mail: mwright@cornwall.gov.uk**

Recommendation:

The application is granted.

Application Map

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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.

Commons Registration Application No. 2946 was made by the Treloggan Residents Association seeking to register 0.932 hectares of land at Treloggan Green, 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 statutory tests set out in Section 15 of the Commons Act 2006.

The report has been prepared to be presented to a delegated officer. The delegated decision is to consider whether to accept, refuse or refer the matter to an independent inspector to make a recommendation to accept 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 20 years and they continue to do so at the time of application.

The registration authority is to comply with section 27 of the Commons Registration (England) Regulations 2014 – Method of determining applications and proposals.

3. Decision and Supporting Information (Including Options):

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 an objector an opportunity to make oral representations.

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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.

If granted, the management of the green will continue to be the responsibility of the owner or lessee of the land.

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.

The Council's Scheme of Delegation, states at paragraph:

1.1: "Each Strategic Director has delegated to them power to act on behalf of the Council in relation to any matters within the service areas for which they are responsible ... subject to the following overriding provision: Any action by a Strategic Director under delegated powers shall be in accordance with ... (g) the requirements of the relevant legislation."

1.5: "Any power conferred upon a Strategic Director may be exercised by an officer authorised, generally or specifically for that purpose, either orally or in writing."

3.7: "The registration of common land or town and village greens and the registration of the variation of rights of common as set out in Schedule 1 to the Functions Regulations and the determination of applications for registration of village greens is delegated to the Strategic Director with responsibility for the Environment function, following consultation with the Divisional Member(s)."

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.

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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, though this should not allow this information to influence the decision about whether the application should be accepted or refused, as such decision should be based on the evidence before it.

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:

Councillor John Fitter has been consulted and is pleased to support the contents of this decision.

Appendices:

None

Background Papers:

All papers relating to this application [No. 2946].

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11. BACKGROUND

- 11.1 An Application was received on the 22nd November 2017 from the Treloggan Residents Association for the registration of land as a town or village green under Section 15 of the Commons Act 2006, for 0.932 hectares of land at Treloggan Green, off Treloggan Road, Newquay in the parish of Colan. The application form and map is shown as an appendix to this report.
- 11.2 The land is triangular in shape and adjoins an existing open space, owned and managed by Cornwall Council. There is no physical boundary between the Council owned land and the application site.
- 11.3 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 of the Act, complying with paragraphs 15(2), 15(3) or 15(4) of the 2006 Act.
- 11.4 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 may well result in the whole of the application being refused.

LEGISLATIVE REQUIREMENTS

12 A significant number

- 12.1 The application is accompanied by fourteen evidence questionnaires in support of registration of the land as a new green.
- 12.2 Defra guidance quotes from the McAlpine Homes case in the High Court where a significant number does not have to mean a large number. The guidance also suggests that a significant number refers to general use by the local community as opposed to occasional use by a few people.
- 12.3 The Registration Authority is of the opinion that evidence questionnaires have been completed by a significant number of local residents to indicate general use by the local community as opposed to occasional use by a few people, and therefore this legislative requirement is deemed to be met.

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

- 13.1 The applicant has identified the Newquay Treloggan electoral ward, east of Trevemper Road as the neighbourhood within the locality of the Newquay Treloggan electoral ward.
- 13.2 Defra guidance states that in the light of the Laing Homes case in the High Court, the determining authority should decide on the relevant locality or neighbourhood within a locality after looking at all the evidence. Neighbourhoods don't need to have legally recognised boundaries, but must have a meaningful description and pre-existing connectedness.
- 13.3 The Newquay Treloggan electoral ward is considered to meet the requirements of being a suitable locality, a legally recognised administrative area. The northern boundary of the claimed neighbourhood is the Newquay to Par branch line, the eastern boundary is the parish boundary between Newquay Town and Colan parish. The southern boundary is the river Gannel and the western boundary of the claimed neighbourhood is Trevemper Road, classified as an A road. The registration authority is of the opinion that the claimed neighbourhood is a cohesive neighbourhood of Newquay, following clearly identifiable natural and man-made boundaries and therefore this legislative requirement is deemed to be met.

14 have indulged as of right

- 14.1 The fourteen individuals completing evidence questionnaires have all stated that access to the land has been as of right, without the express permission of the land owner and in the absence of any signs indicating otherwise.
- 14.2 Defra guidance describes 'as of right' as being nec vi (not by force), nec clam (openly) and nec precario (without the owner's permission).

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- 14.3 The registration authority is of the opinion that use of the land has been without force, open, and without the owner's permission, and therefore this legislative requirement is deemed to be met.

15 in lawful sports and pastimes

- 15.1 The evidence questionnaires suggest the land is used most days of the week for a variety of sports and pastimes including basketball, cricket, football, litter picking, picnicking, playing with children, recreation, tennis, walking and dog walking.
- 15.2 Defra guidance suggests that lawful sports and pastimes don't have to be organised sports or communal activities. Solitary and informal activities such as dog walking and children playing will qualify. There's also no need for local inhabitants to have taken part in a range of sports and pastimes.
- 15.3 For reasons given above, the registration authority is of the opinion that this legislative requirement has been met.

16 on the land

- 16.1 A plan showing the land the subject of this application is attached to each of the evidence questionnaires.
- 16.2 Defra guidance suggests that there is no requirement for the land to consist of grass or conform to the traditional image of a town or village green.
- 16.3 For reasons given above and evidence seen from a site visit on 20th February 2018 the registration authority is of the opinion that this legislative requirement has been met.

17 for a period of at least 20 years

- 17.1 The relevant 20 year period is 10th October 1997 to 10th October 2017. Five of the evidence questionnaires cover the full twenty year period. Nine cover sixteen years, and all fourteen cover the past nine years.
- 17.2 Defra guidance suggests that it is enough that the local inhabitants, rather than particular individuals, have used the land for the full twenty years.
- 17.3 For reasons given above, the registration authority is of the opinion that this legislative requirement has been met.

18 Representations

The registration authority has received no representations.

19 Method of Determining Application

The Commons Registration (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.

As there are no objections to the application, or the draft decision published 18th June 2018 containing the provisional recommendation to grant the application, there is no need to hear oral representations.

20 Conclusion

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

21 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 is granted.

Name: *Peter Marsh*

Title: Environment Service Director

Date: 14th August 2018

22 Supporting Information

Application 2946

23 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 to process new event applications (November 2015) (Defra)

<https://www.gov.uk/common-land-management-protection-and-registering-to-use>

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