

Cornwall Council

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

Date: **2nd December 2019**

Title: **The Commons Act 2006
Section 15(1) – registration of new town or
village green**

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

**Application 2970
0.190 hectares of land at Higher Truscott, in
the parish of St. Stephens by Launceston**

Divisions Affected **Launceston North and North Petherwin**

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

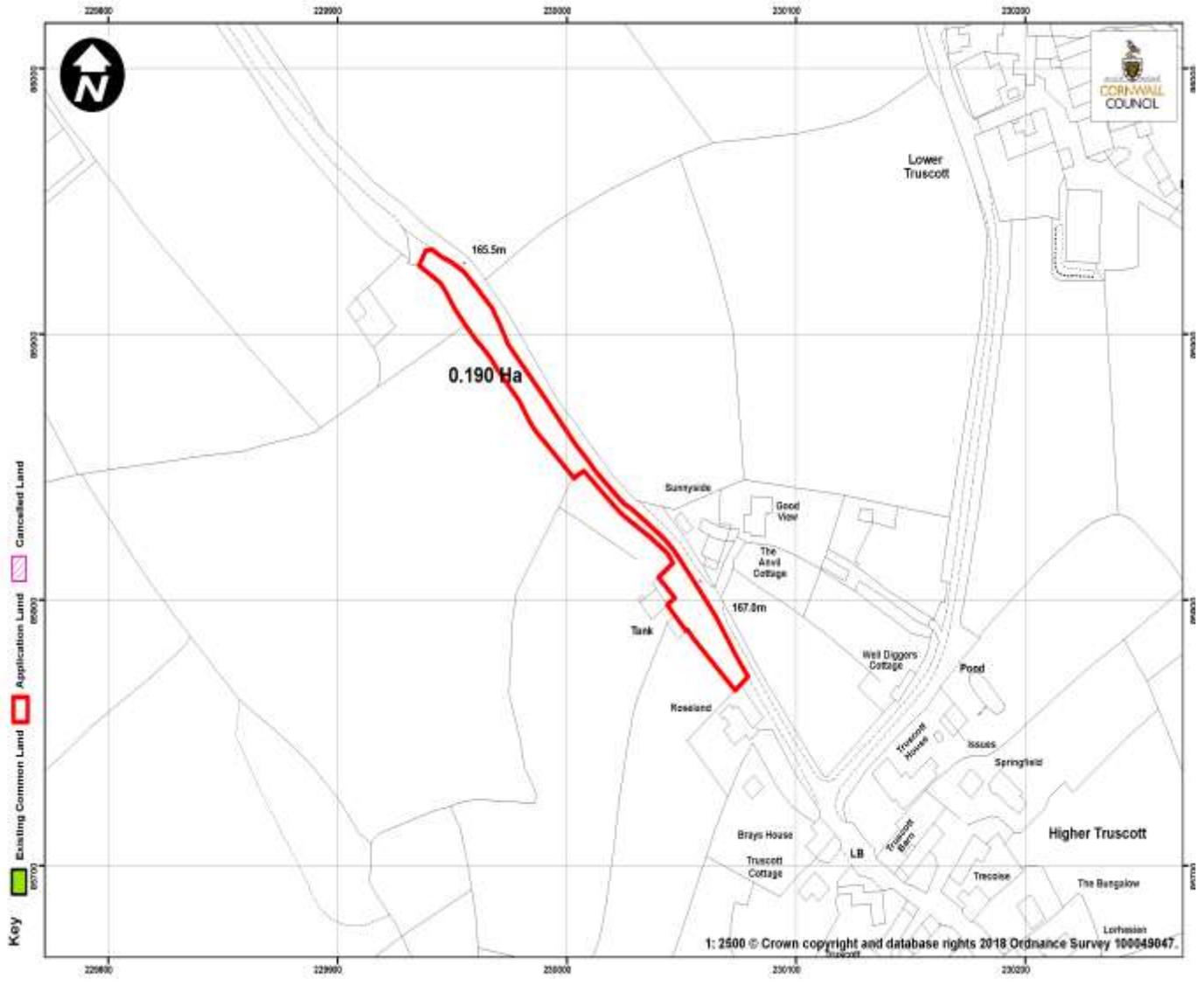
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Decision:

The application is granted.

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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 register of town and village greens.

Commons Registration Application No. 2970 was made by James Evans of Evans Planning seeking to register 0.190 hectares of land at Higher Truscott, as a village green under section 15(2) 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 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 20 years; and
- they continue to do so at the time of application; and
- for the registration authority 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 ownership of the land that is the subject of the application is not recorded at Land Registry, however the highways authority claim ownership of the surface of the land as highway verge.

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.

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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.

The management of the land 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.

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.

Cornwall Council**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 granted 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:

Mr Adam Paynter CC has been consulted and is 'happy to approve this application'.

Appendices:

None

Background Papers:

All papers relating to this application [No. 2970].

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11. Background

- 11.1 An Application was received on the 3rd August 2018 from Evans Planning for the registration of land as a village green under Section 15 of the Commons Act 2006, for 0.190 hectares of land at Higher Truscott, in the parish of St. Stephen by Launceston in the County of Cornwall. 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), complying with paragraphs (2), (3) or (4) if applicable 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 may result in the whole of the application being refused.

12 Representations

Two representations were received, one from the Highways Authority and one from neighbouring land owners.

- 12.1 The Highways Authority have confirmed that the whole of the application land is considered to be highway verge, and the Parish Council have a licence to plant and maintain this area, such licence was granted earlier in 2018. As the highway verge is on a minor road, we have no objection to the application.

A copy of the licence shows that the works were proposed to commence from 1st October 2018, therefore before the application was made.

- 12.2 The second representation is from neighbouring farmers, Mr & Mrs Toms, who object to the application mainly on grounds of preserving their traditional activity of maintaining the hedge, and claiming pastimes on the green are 'by right' rather than 'as of right'. The issues are discussed in greater length below.

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LEGISLATIVE REQUIREMENTS

The Commons Act 2006

Section 15(C) Exclusions and trigger events

13 '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 no part of the application land is subject to a trigger event, which would have caused the registration authority not to be able to accept the application.

Section 15(2)

14 'A significant number'

- 14.1 The application is supported by fifteen evidence questionnaires.
- 14.2 Mr & Mrs Toms claim that questionnaires were completed from 7 households out of 16 in the locality, 24 households within walking distance and 166 households within the parish.
- 14.3 Defra's Guidance: Significant number doesn't have to mean a large number of people (McAlpine Homes case, High Court). The question is whether the number of local inhabitants who use the land relative to the number who live in the relevant locality or neighbourhood, is enough to mean that it's generally used by the local community (rather than being used occasionally by a few people).
- 14.4 The Registration Authority's view is that whilst there does not appear to be a significant number of the residents of the locality of St. Stephen by Launceston Rural Parish, there is a significant number of residents from the neighbourhood of Higher Truscott who have completed questionnaires in support of the application.

Section 15(2)

15 'of the inhabitants of any locality, or of any neighbourhood within a locality'

- 15.1 The applicant claims the locality to be the St. Stephen by Launceston Rural Parish. The evidence questionnaires have been completed by those living in the hamlet of Higher Truscott and not from any other part of the Parish.
- 15.2 Mr and Mrs Toms claim that that there are 16 homes within the (immediate) locality, 24 within walking distance and 166 within the parish. It would appear a greater number of people appear not to be interested if the verge has village green status.

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- 15.3 Defra's Guidance: A locality is a legally recognised administrative area, such as a civil parish, an ecclesiastical parish, an electoral ward or conservation area. The concept of a Neighbourhood is more flexible than that of a locality. Neighbourhoods don't need to have legally recognised boundaries, but you must be satisfied that an alleged neighbourhood is connected enough. The registration authority must decide the relevant locality, or neighbourhood within a locality, after looking at all the evidence (Laing Homes case, High Court). If an application is amended to introduce a new locality or neighbourhood, the applicant and any objectors should have an opportunity to comment on it and gather more evidence to respond to it.
- 15.4 The Registration Authority is of the opinion, having looked at all the evidence, that the evidence supporting the application comes from the inhabitants of the neighbourhood of Higher Truscott, within the locality of St. Stephen by Launceston Rural Parish.

Section 15(2)

16 'in lawful sports and pastimes on the land'

- 16.1 The evidence questionnaires show a variety of pastimes including botany, conservation, dog walking, foraging, grazing, ornithology, photography, pond clearing, pond dipping, pond watching, walking and wildlife surveys.
- 16.2 Mr and Mrs Toms claim that the pastime of picking blackberries cannot be practised over all the application land, as some parts are not covered by brambles.
- 16.3 Defra's Guidance: You should interpret the expression 'lawful sports and pastimes' in a common sense way (Sunningwell case). 'Lawful sports and pastimes' don't have to be organised sports or communal activities. There's also no need for local inhabitants to have taken part in a range of sports and pastimes.
- 16.4 The Registration Authority's view, is that taken together, it appears that various pastimes have taken place on the land.

Section 15(2)

17 'have indulged as of right'

- 17.1 The evidence questionnaires claim that all activities have taken place 'as of right'.
- 17.2 Mr and Mrs Toms claim that as the land is part of the highway, the residents have a right to use the land 'by right' rather than 'as of right'. They quote from 'Town and Village Greens, a practical handbook, 2nd edition 2014, published by 9 Stone Buildings: "It has been held by the Supreme Court in the Barkas case (May 2014) that where land has been lawfully allocated to the purpose of public recreation the public can be fairly said to have a right to go onto such land. It will not be available for registration as a green."

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- 17.3 Defra's Guidance: Use of the land must be 'as of right' throughout the relevant period. 'As of right' is described as being nec vi (not by force), nec clam (openly) and nec precario (without the owner's permission). It's irrelevant whether the users believe that they're entitled to do what they're doing, or know that they're not.
- 17.4 The Registration Authority's view is that the objectors quote from the Barkas case is not relevant in this case. The land has not been lawfully allocated to the purpose of public recreation, it is a highway verge. As a highway verge the public have a right to 'pass and repass without let or hindrance'. Thus certain activities such as walking with or without a dog can be said to be 'by right' and such activities should be discounted. Discounting walking and dog-walking from the list of pastimes, there remains a number of other pastimes which it is considered meets the legislative requirement of being 'as of right'.

Section 15(2)

18 'for a period of at least 20 years, and they continue to do so at the time of the application.'

- 18.1 Of the fifteen evidence questionnaires, six people have confirmed that they have used the land for a period of at least twenty years.
- 18.3 Defra's Guidance: It's enough that the local inhabitants, rather than particular individuals have used the land for the full 20 years.
- 18.4 The Registration Authority's view is that there is sufficient evidence to support the use of the land for a period of at least 20 years.

Paragraph 9(a) of Schedule 4 to the 2014 Regulations

19 'An application under section 15(1) of the 2006 Act must include evidence that sections 15(2), (3) or (4) of that Act applies to the land in respect of which registration is sought.'

It is confirmed section 15(2) of the 2006 Act applies in that the application includes evidence 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 the application.'

Please see paragraphs 13 to 18 above.

Paragraph 9(b) of Schedule 4 to the 2014 Regulations

20 'An application under section 15(1) of the 2006 Act must contain a description of that land.'

It is confirmed that in part 5 of the application the land is described as Truscott Green and Pond, and is shown coloured green on the plan accompanying the application.

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Paragraph 9(c) of Schedule 4 to the 2014 Regulations

- 21** 'An application under section 15(1) of the 2006 Act must contain a description of the locality or the neighbourhood within a locality relied upon for the purposes of section 15(2)...'

This matter has been dealt with at paragraph 15 above, however as the Registration Authority has formed its own view of the relevant locality or neighbourhood within a locality, we seek to allow opportunity for comments on this matter.

22 Other Considerations

Mr and Mrs Toms, in their objection, claim that if the highway verge were to be registered as a village green, this would stop them from driving over the verge to carry out their maintenance obligations.

The Registration Authority in determining the application cannot take maintenance issues into account. Having said that Defra offer the following advice: 'If the land is used by the landowner and the local inhabitants but neither use interferes with the other, then the land can be registered as a green. For example, in one court case it was decided that the taking of a single hay crop from a meadow was a low-level agricultural activity that was compatible with recreational use for the late summer until the following spring. Similar considerations would apply to other types of use by the landowner.'

24 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.

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The Registration Authority has shared the contents of a draft decision, along similar lines to this decision, with interested parties and the local member, and invited comments upon the neighbourhood of Higher Truscott within the locality of St. Stephen by Launceston Rural Parish, as discussed in paragraph 15 above, and whether any person objecting to the draft decision wishes to make oral representations before a final determination of the application is made.

The applicant has agreed with the registration authority's conclusion concerning the neighbourhood of Higher Truscott. The objector, having been given a reasonable period in which to make a reply, has not responded to the draft decision. The local member, Cllr Adam Paynter, agreed with the draft decision.

25 Conclusion

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

26 DECISION

On the balance of probabilities all of the criteria for the registration of the application land as a village green have been satisfied and

the application is granted

Name: *Mike Eastwood*
Title: Countryside Access Team Leader
Date: 3rd December 2019

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27 Supporting Information

Application 2970

28 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)