

Cornwall Council

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

Date: **2 December 2019**

Title: **The Commons Act 2006**
Section 22 – mistaken registration of land
under the 1965 Commons Registration Act

The Commons Registration (England)
Regulations 2014

Application 2973
0.136 hectares of land at Lerryn, in the
parish of St. Veep

Divisions Affected **Lostwithiel**

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

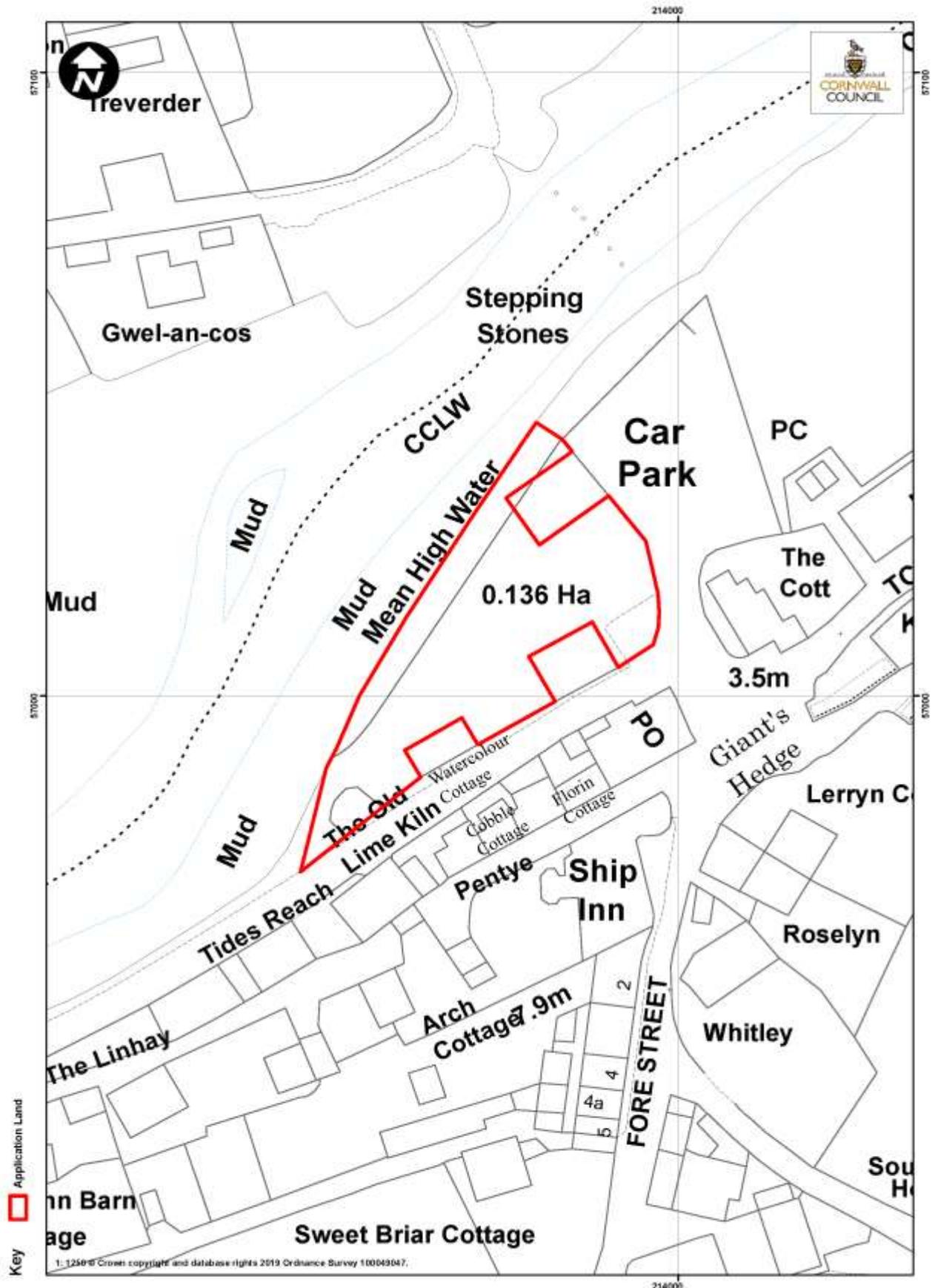
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Decision:

0.123 hectares of the application be granted and registered as village green for the reasons given at the end of this report, as edged red on the plan also at the end of this report.

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Original Application Plan



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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, 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. 2973 was made by the St. Veep Parish Council seeking to change the status of 0.136 hectares of common land at Lerryn to a village green, under Schedule 2.5 of the Commons Act 2006.

This report examines the evidence for and against whether the application meets the statutory tests set out in Schedule 2.5 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:

- The land was provisionally registered as common land under section 4 of the 1965 Act;
- The provisional registration became final; but
- Immediately before its provisional registration, the land was a town or village green within the meaning of that Act as originally enacted.

3. Decision and Supporting Information (Including Options):

The ownership of the land that is the subject of the application is registered to four owners. As no one with a legal interest in the land has an outstanding objection to the application, and Cornwall Council has no interest in the outcome of the application, 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.

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It is recommended that the available evidence is sufficient for the Council to grant the application, except for the subsequently withdrawn areas.

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 owners.

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)."

Cornwall Council**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, 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:

Colin Martin CC has been consulted.

Appendices:

None

Background Papers:

All papers relating to this application [No. 2973].

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11. BACKGROUND

- 11.1 An Application was received on the 6th December 2018 from the St. Veep Parish Council for the change of status of land currently registered as common land, to be registered as a town or village green under Schedule 2.5 of the Commons Act 2006, for 0.136 hectares of land at Lerryn, Lostwithiel 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 14 of Schedule 4 of the Regulations refers to applications made under Schedule 2, complying with paragraphs (2) and (3) if applicable of the 2006 Act.
- 11.3 The following describes where the application meets or 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.

Cornwall Council**LEGISLATIVE REQUIREMENTS****Paragraph 5(2)(a) of Schedule 2 of the 2006 Act**

12 'The land was provisionally registered as common land under section 4 of the 1965 Act.'

It is confirmed that the land was provisionally registered as common land under section 4 of the 1965 Act, as unit No. CL 301 on 24th September 1968, as evidenced by entry No. 1 on the Land section sheet for CL 301.

Paragraph 5(2)(b) of Schedule 2 of the 2006 Act

13 'The provisional registration became final.'

It is confirmed the provisional registration became final on 7th May 1981, by direction of the Commons Commissioner, reference 206/D/739, as evidenced by entry No. 3 on the Land section sheet for CL 301.

Paragraph 5(2)(c) of Schedule 2 of the 2006 Act

14 'Immediately before its provisional registration, the land was a town or village green within the meaning of that Act as originally enacted.'

The applicant has supplied a number of letters from local residents saying how the land has historically been used for sports and pastimes of the local parishioners, including holding national celebrations, regatta's, village fetes, village nights, maypole dancing, playing as children with other children, barbeques, carnivals, firework displays and generally used as the village recreation area.

The applicant has supplemented the letters from local residents with press cuttings from the early 1980's, following the Commons Commissioners hearing, where the South East Cornwall Prospective Candidate for Parliament called upon the Department of the Environment to introduce legislation to enable land registered as common land to be more accurately recorded as a town or village green, prompted by concerns raised at that time by the St. Veep Parish Council.

The applicant also included photographs of recent use on the green, however as these are after the date of provisional registration, the photographic evidence has not been taken into account.

Paragraph 14(1) of the 2008 Regulations

15 'An application made under Schedule 2 to the 2006 Act, for the purpose of remedying non-registration or mistaken registration under the 1965 Act must be made on or before 31st December 2020, where the application is to an original registration authority.'

Cornwall Council is an original registration authority, and the application was made on 29th November 2018.

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Paragraph 14(2) of the 2008 Regulations

- 16** 'An application made under paragraph 2 or 3 of Schedule 2 to the 2006 Act must include a description of the land to which the application relates.'

The land is described as Lerryn Village Green, located in the village of Lerryn, and accompanied by an Ordnance Survey map on which the application land is identified.

Paragraph 14(6) of the 2008 Regulations

- 17** 'An application made under paragraph 4, 5, 6, 7, 8 or 9 of Schedule 2 to the 2006 Act must include evidence of the application of the appropriate paragraph, as described in paragraph 4(2), 5(2), 6(2), 7(2), 8(2) or 9(2) of that Schedule, to the land to which the application relates.'

Please see paragraphs 12 to 14 above.

18 Representations

An objection was received by a joint owner of part of the application land, Mr J R Needs, in his capacity as Executor of his parent's wills.

- 19** Following correspondence between Mr Needs and the applicant, the applicant withdraws two parts of the application land from their application, and in so doing the objection by Mr. Needs is also withdrawn.

20 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 report, along similar lines to this decision, with the interested parties and local member. As there is no person with a legal interest in the land objecting to the amended application, there is no requirement to hear oral representations.

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21 Conclusion

For an application to succeed it must satisfy all of the legislative criteria for registration as a town or village green. The registration authority, as determining authority, believes the applicant has met the legislative criteria for the change of status of the land from common land to village green, as described above.

22 Decision

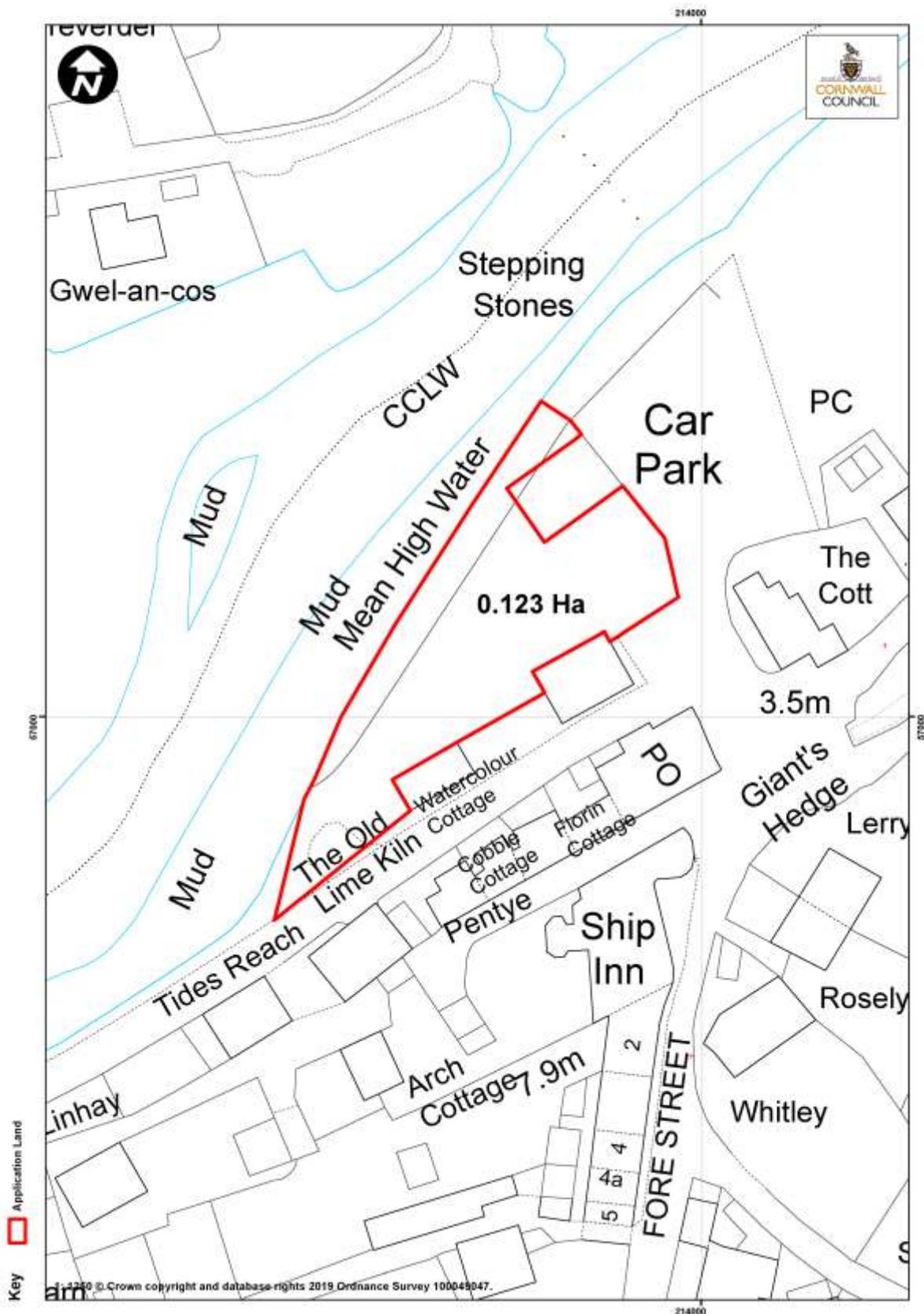
On the balance of probabilities the criteria for the change of status of the application land as a village green has been satisfied and

the application is granted in respect of the land edged red on the decision plan.

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

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23 Decision Plan



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24 Supporting Information

Application 2973

25 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)