

Report to:	Strategic Director for Neighbourhoods	
Date:	16 March 2020	
Title:	Land at Forder Saltash – application to register land as a town or village green	
Portfolio Area:	Neighbourhoods	
Divisions Affected:	Saltash West	
Local Member(s) briefed:	Yes	
Relevant Scrutiny Committee: Neighbourhoods		
Authors, Roles and Contact Details:	Peter Marsh, Service Director – Environment pmarsh@cornwall.gov.uk / 01872 326949	
Approval and clearance obtained:	Y	
For Cabinet and delegated executive decisions only		
Key decision? (≥£500k in value or significant effect on communities in two or more electoral divisions)	N/A	
Published in advance on Cabinet Work Programme?	N/A	
Urgency Procedure(s) used if 'N' to Work Programme?	N/A	
Date next steps can be taken	Upon publication of the decision	

Recommendation:

That application reference 2714 made by Colin Brown under section 15 of the Commons Act 2006 to register land at Forder, Saltash, Cornwall as a town or village green be rejected for the reasons set out in the report of the Inspector, Mr Douglas Edwards, QC as appended to this report.

1 Executive Summary

- 1.1 This report presents the report of the Inspector, Mr Douglas Edwards QC, issued following the inquiry held relating to the application for the registration of land at Forder as a town or village green (Appendix 1).
- 1.2 The Inspector's report has recommended the rejection of the application for the reasons set out in his report. The recommendation above accords with the Inspector's recommendation.

2 Purpose of Report and Key Information

- 2.1 The purpose of this report is to secure the determination of application reference 2714 made by Colin Brown under section 15 of the Commons Act 2006 to register land at Forder, Saltash, Cornwall as a town or village green. The Strategic Director will be familiar with this application having previously determined that a public inquiry would be held.
- 2.2 The Strategic Director is referred to the public and exempt reports relating to that decision and the legal advice provided with the exempt report, which remains exempt for being legally privileged. The history of the matter is recited in the earlier public report and so need not be repeated here.
- 2.3 The public inquiry was held between 10 and 12 December 2019 and the Inspector heard from a number of witnesses, including the applicant. The objectors, who are the owners of the land the subject of the application, were represented by Mr Pinwell of Ashfords Solicitors. Rather than repeat here the evidence heard and the Inspector's consideration of the evidence and facts, reference should be made to Appendix 1 to this report.
- 2.4 The Inspector's recommendation and rationale are clear and officers are aware of no reasonable or rational reason why the application should be determined other than in accordance with that recommendation.
- 2.5 For that reason, the recommendation above is that the application is rejected.

3 Benefits for Customers/Residents

The decision sought will bring to a conclusion a long outstanding matter. If the recommendation is approved the decision should meet with the approval of the objectors but is unlikely to be satisfactory to the applicant and others supporting the application. However, the application will have been determined in accordance with the Commons Registration (England) Regulations 2014, bringing certainty to all parties.

4 Relevant Previous Decisions

Strategic Director – Neighbourhoods decision of 6 February 2019:

<https://democracy.cornwall.gov.uk/mgIssueHistoryHome.aspx?IIId=84239&Opt=0>

5 Consultation and Engagement

- 5.1 The divisional Member has been consulted as per the scheme of delegation and been kept apprised of the progress of the matter.
- 5.2 Throughout the process the applicant and successive land owners have made representations relating to the application and the inquiry afforded an opportunity for representations to be heard.

6 Financial Implications of the proposed course of action/decision

- 6.1 Costs going forward should be minimal in relation to the procedural steps related to the determination of the application.
- 6.2 However, it is important to recognise the possibility of there being a challenge to the determination of the application and that there will be costs associated with that.

7 Legal/Governance Implications of the proposed course of action/decision

- 7.1 The legal issues associated with this application were rehearsed in the previous reports, the exempt report still benefitting from the exemption applied at the time.
- 7.2 In addition, the Council has to be careful to ensure that the legal professional privilege attaching to the legal advice received is observed. The application of an exemption from publication was and remains entirely appropriate and the public interest in maintaining that exemption is still considered to outweigh any public interest in waiving the exemption.
- 7.3 The procedures relating to the determination of the application and post-determination steps need to be carefully followed.
- 7.4 As indicated above, there is a risk of legal challenge to the decision now sought. That such risk exists must not prevent the Council from determining the application, having regard to the relevant considerations and in accordance with the usual decision making principles.

8 Risk Implications of the proposed course of action/decision

- 8.1 There is a risk of challenge by way of judicial review. That has already been covered.
- 8.2 The approach the Council has taken to the application, albeit later than should really have been the case and making a decision in accordance with the recommendation of the Inspector should negate other risks.

9 Comprehensive Impact Assessment Implication

- 9.1 Not required for this report as the decision sought is effectively a procedural decision the Council is obliged to make, whether in accordance with the application or not.

10 Options available

- 10.1 The options available are to reject the application or approve it. The former is the recommended and appropriate course of action. If the

decision is to approve the application the Strategic Director will need to articulate the reasons for doing so.

11 Supporting Information (Appendices)

Appendix 1 – Inspector’s report dated 5 March 2020

12 Background Papers

None.

13 Approval and clearance

All reports:

Final report sign offs	This report has been cleared by (or mark not required if appropriate)	Date
Governance/Legal (Required for all reports)	Matt Stokes, Head of Legal	16/3/20
Finance (Required for all reports)	Tracy Stepney	17/03/2020
Equality and Diversity (If required)		
Service Director (Required for all reports)	Peter Marsh	17/03/2020
Strategic Director (If required)	Paul Masters	17/03/2020