



Report to: **Mike Eastwood**  
**Countryside Access Team Leader, for**  
**Determination of commons application**

Date: **5 October 2020**

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

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

**Application 2964**  
**0.029 hectares of land at Penpoll Creek,**  
**Penpoll, Lerryn in the parish of St. Veep.**

Divisions Affected **Lostwithiel**

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

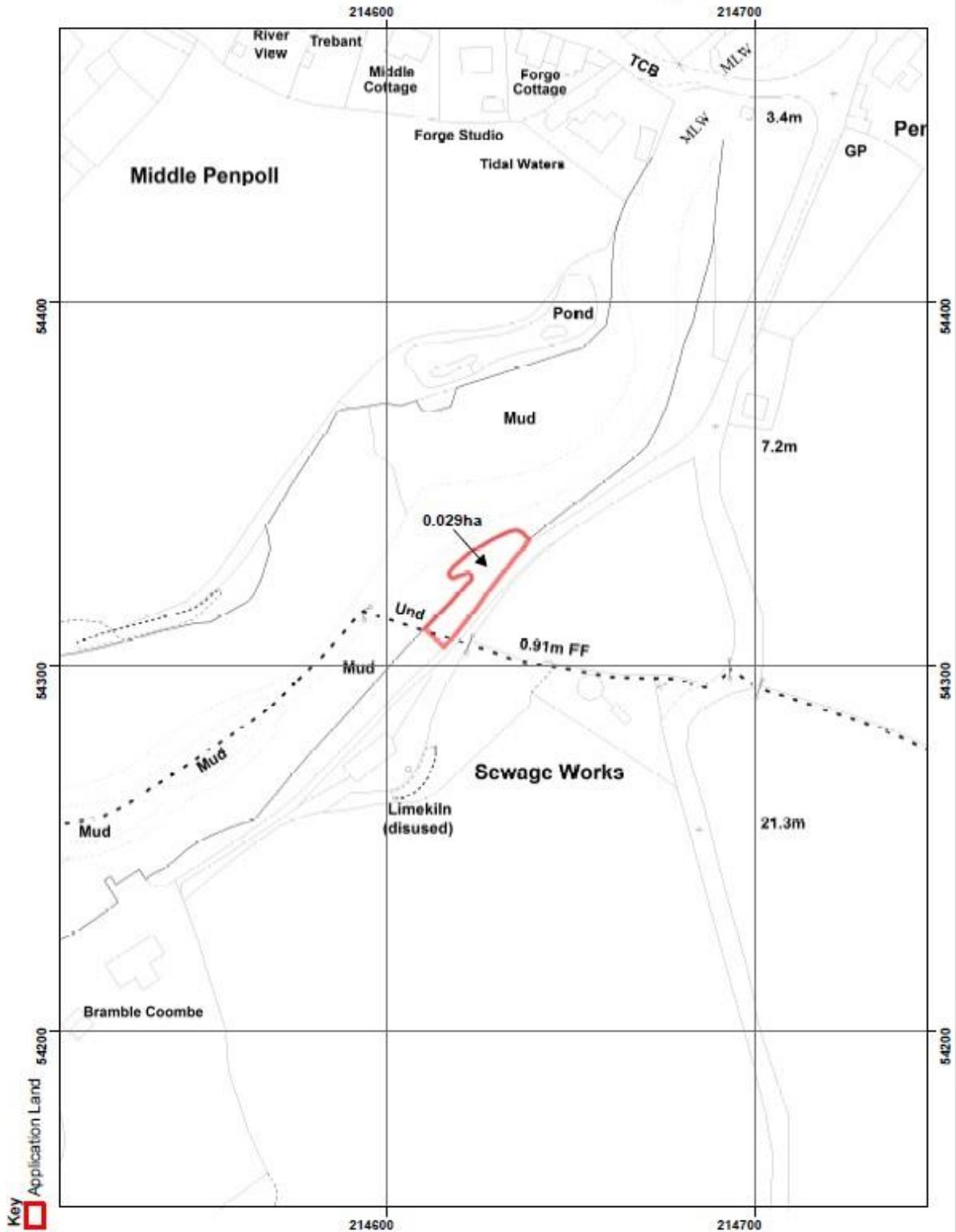
Contact: **Tel: 01872 224773**    E-mail: [mwright@cornwall.gov.uk](mailto:mwright@cornwall.gov.uk)

**Decision:**

The application is granted.

# Application Map

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## **1. Introduction:**

The 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. 2964 was made by Mrs. Fedden seeking to register 0.029 hectares of land at Penpoll Creek, 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 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.

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 considered sufficient for the Council to grant the application.

#### **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:**

The 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.

**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 Colin Martin has been consulted, but has made no comment on the Council being minded to approve the application.

**Appendices:**

Plan of Households claiming use of the application land as a village green.

**Background Papers:**

All papers relating to this application No. 2964.

## **11. BACKGROUND**

- 11.1 An Application was received on 3rd August 2018 from Mrs. Rachel Fedden for the registration of land as a town or village green under Section 15 of the Commons Act 2006, for 0.029 hectares of land at Penpoll Creek, Penpoll, Lerryn, Lostwithiel in the parish of St. Veep. The application form and map are 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 of the Act, complying with paragraphs 15(2), 15(3) or 15(4) of the 2006 Act.
- 11.3 A search of Land Registry has confirmed that no person is registered as owner of the application site and we have not received any contact from persons purporting to own the application site.
- 11.4 One objection to the application was received, however was subsequently withdrawn.
- 11.5 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 eighteen letters in support of registration of the land as a new green. Of these four have witnessed the land being used. The applicant states that ten households have actively used the application site, which represents 42% of the current twenty four households in the neighbourhood. In 1998, the beginning of the twenty year period, the number of households was sixteen, of which eight households claim to have used the application site, which represents 50% of the neighbourhood.
- 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 the number of households in the neighbourhood giving evidence as to the use of the land is considered sufficient to signify the land is in 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 neighbourhood within a locality as being Higher, Middle and Lower Penpol.
- 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 Taking into account the addresses of those writing in support of the application, the Registration Authority would agree that the neighbourhood of Higher, Middle and Lower Penpol, addresses of which share the post code PL22 0NG is an acceptable neighbourhood in respect of this application.

### **14 have indulged as of right**

- 14.1 All those writing in support of the application have 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 (without force), nec clam (without secrecy) and nec precario (without the owner's permission).
- 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 letters in support of the application suggest the land is used most days of the week for a variety of sports and pastimes including bird watching, dog walking, picnicking, photography, relaxation, storage and launching of boats/canoes and walking.
- 15.2 Defra guidance suggests that lawful sports and pastimes do not have to be organised sports or communal activities. Solitary and informal activities such as dog walking and children playing will qualify. There is also no need for local inhabitants to have taken part in a range of sports and pastimes.
- 15.3 For reasons given in paragraph 15.1 above, but discounting activities such as boating and swimming for reasons given in paragraph 16 below, 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 Discounting water-based activities which took place in the adjacent river creek, it appears that there remains a number of varied sports and pastimes which have taken place on the application land, and therefore it is deemed that this legislative requirement has been met.

## **17 for a period of at least 20 years**

- 17.1 The relevant twenty-year period is 3<sup>rd</sup> August 1998 to 3<sup>rd</sup> August 2018. Five individuals have claimed to have used the land for at least twenty years, with a further two individuals claiming to have seen the land being used as a village green for at least twenty years, one going back as far as the 1950's. A further three people have given witness to an additional five local residents having used the land twenty years ago.
- 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 The Registration Authority is of the opinion that some of the evidence given by those claiming to have used the land for at least twenty years refers to sports and pastimes which have taken place in or on the river rather than on the application land. These pastimes are therefore discounted. However these residents have also stated that they have used the application land for access, bird watching, playing, picnics and photography. This, together with the statements from other residents would signify that the land has been in general use by the local community for at least twenty years.

## **18 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.*

The Registration Authority has shared the contents of a preliminary decision with the interested parties and local member. One objection was received, but subsequently withdrawn. As the authority is minded to approve the application, it is confirmed that the application can be determined without the need to hear oral representations.

## **19 Conclusion**

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

### **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: *Mike Eastwood*  
Title: Countryside Access Team Leader  
Date: 13<sup>th</sup> October 2020

## **20 Supporting Information**

Application 2964

## **21 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)

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