



Application Decision

Hearing held on 17 May 2023

Site visit made on 17 May 2023

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 24 May 2023

Application Ref: COM/3287816

Land at Lizard Green, The Lizard, Helston, Cornwall

Register Unit No: CL220

Commons Registration Authority: Cornwall Council

- The application (reference 3016), dated 18 December 2020, is made under paragraph 5(3)(a) of Schedule 2 to the Commons Act 2006.
 - The application is made by Debra Kaatz.
 - The application is to remove land from the register of common land and register it in the register of town or village greens.
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Decision

1. The application is refused.

Preliminary Matters

2. A hearing was held on 17 May 2023 in order to hear oral representations. The application has been determined on the basis of the evidence presented at the hearing, the written evidence and representations submitted and my observations of the site.
3. The Commons Registration (England) Regulations 2014 (the Regulations) set out the procedures to be followed for applications made under Schedule 2 of the Commons Act 2006 (the 2006 Act). Furthermore, I have had regard to the relevant guidance contained in 'Part 1 of the Commons Act 2006: Guidance to commons registration authorities and the Planning Inspectorate' issued by the Department for Environment, Food and Rural Affairs dated December 2014 (the 2014 guidance).
4. The task of proving the case in support of the correction of the register rests with the person making the application, and the burden of proof is the normal civil standard, namely, the balance of probabilities.

The Application Land

5. The application land comprises three parcels of land that when taken together are broadly chevron shaped and measure approximately 0.3 hectares. They form part of the western area of land referred to as Lizard Green that occupies a roughly central position within The Lizard village. Excluded from the application land are the buildings accommodating public toilets and a doctor's surgery as well as areas of the highway. The land comprises mostly of short

grass and vegetation but also includes some areas of stony ground and trackway.

The Statutory Requirements

6. Paragraph 5(3)(a) of Schedule 2 to the 2006 Act provides that any person may apply to the common registration authority to remove land from the register of common land and register it in the register of town or village greens before the specified date. In this case the application form is stamped 21 December 2020, and so was made on or before the specified date of 31 December 2020.
7. Paragraph 5 of Schedule 2 of the 2006 Act enables certain land registered as common land to be transferred to the register of town or village greens. This paragraph applies where:
 - (a) The land was provisionally registered as common land under section 4 of the Commons Registration Act 1965 (the 1965 Act);
 - (b) The provisional registration became final; but
 - (c) Immediately before its provisional registration, the land was a town or village green within the meaning of the 1965 Act as originally enacted.
8. The 1965 Act stipulates that 'town or village green' means land which has been allotted by or under any Act for the exercise or recreation of the inhabitants of any locality or on which the inhabitants of any locality have a customary right to indulge in lawful sports and pastimes.

Main Issues

9. It follows that the main issues in this case are framed by the statutory requirements under consideration. They are:
 - Whether the application land was provisionally registered as common land under the 1965 Act, and whether the provisional registration became final.
 - Whether immediately before its provisional registration, the application land was a town or village green within the meaning of the 1965 Act as originally enacted.

Representations

10. Written representations were made in response to the advertisement of the proposal. 17 objected to the proposal, one comment was broadly neutral, and one was in support. The comments were made in relation to a plan that has subsequently been amended but originally included areas of the highway, the public toilets and doctor's surgery buildings.
11. Representations made in objection include those from Landewednack Parish Council (LPC), the Highway Authority and the Cornish Stannary Parliament.
12. LPC were the body who made the application for the registration of Lizard Green as common land under the 1965 Act. They consider that immediately before its provisional registration it was not a village green. Evidence is provided in the form of photographs, personal recollections and historic extracts from the LPC minute books. Reference is also made to car parking and the herding of cattle. They also point out that there is a separate registered

- village green in The Lizard, known as The Lizard Recreation Ground. Although originally registered as common land, in 2017 LPC successfully applied under paragraph 5 of Schedule 2 of the 2006 Act to transfer this land to the register of town and village greens. No such amendment was considered necessary by LPC as part of the wider review process in respect of the application land.
13. In response to the original application land plan, the Highway Authority objected in relation to the inclusion of areas that constituted highway maintainable at public expense. They contend such areas should not be registered as village green.
 14. The Cornish Stannary Parliament consider that the villagers are the ultimate owners of the land and object to any form of change of use to the land, or changes that would generate traffic problems or impact on the social life of the village and wider area. Their representative confirmed at the hearing that they object to the application.
 15. The remainder of the comments in objection do not consider that Lizard Green was wrongly registered as common land and consider the current situation should remain. Some representations contain references to the history of how Lizard Green came to be gifted to LPC in the 1920s. Many contain personal memories of events and activities that have taken place at Lizard Green over the years. These were augmented by some of the verbal contributions made at the hearing. In addition to car parking and cattle being walked across the land, these include bands, The Lizard feast, bonfire night, Armada Day, Midsummer night, carnivals, fairs, May pole dancing, vintage car rallies, RNLI fund raising as well as picnics and walks. It is stated that ample opportunities have been provided to hold such events upon application to LPC.
 16. In addition, references are made to the existence of the Recreation Ground for sport and events. The importance of Lizard Green as a means of generating revenue via car parking, and its role in supporting tourism are highlighted as underpinning the economy of the village. It is asserted that the present use of Lizard Green is conducive habitat for rare plants. Finally, concerns are expressed regarding the potential interference with access to properties, particularly given the initial inclusion of a section of Pentreath Lane in the application.
 17. The Open Spaces Society provide general support for the application. They state that their records indicate that parking on Lizard Green was being promoted by the parish council as long ago as 1932 and suggest that this may have been in breach of covenants on the land. They also refer to earlier newspaper reports of protests in 1925 against attempts to prevent parking on Lizard Green. Whilst they do not conclude as to whether parking would be able to continue or not if the land were registered as a village green, they consider that the use of Lizard Green for parking has little to do with enjoyment of the green itself.

Reasons

Whether the application land was provisionally registered as common land under the 1965 Act, and whether the provisional registration became final.

18. The extracts from the register of common land and register map show that the application land, together with the remainder of Lizard Green was provisionally

registered as unit CL220 on 28 June 1968, with that registration becoming final on 1 October 1970.

19. These events are not disputed, and there is no evidence whereby I could reach any other conclusion that criteria (a) and (b) of paragraph 5(2) of the 2006 Act have been met.

Whether immediately before its provisional registration, the application land was a town or village green within the meaning of the 1965 Act as originally enacted.

20. There was a consensus at the hearing that there is no evidence to indicate that the application land has been allotted by or under any Act for the exercise or recreation of the inhabitants of The Lizard. Hence, in order to satisfy criterion (c) of paragraph 5(2) of the 2006 Act, it must be shown on the balance of probabilities, that the inhabitants of The Lizard had a customary right to indulge in lawful sports and pastimes on the application land immediately before its provisional registration on 28th June 1968.
21. Paragraphs 7.4.3-4 of the 2014 guidance refers to applications made under paragraph 5 of Schedule 2 of the 2006 Act. They indicate that it will be more straightforward if it can be shown that the land was allotted as a town or village green under an inclosure award, or any other enactment. However, where that is not the case, it may be possible to show that the land was immediately before its provisional registration, a green by virtue of 20 years' use of right, or because of customary use as a green. It acknowledges that these latter tests will generally be much harder to satisfy because of the inherent difficulties of presenting sufficient evidence of use for a period of at least twenty years ending in the late 1960s. Nevertheless, it indicates that where there is no objection and some evidence of use as a green during the relevant period, it may be possible to grant the application notwithstanding the paucity of evidence.
22. In this case there is limited evidence provided by the applicant as to the use of the application site as a green in the twenty years preceding its provisional registration. She asserts that village activities have taken place on Lizard Green for many years including events on St John's Day, drama performances, maypole dancing, fairs, feast days, lifeboat fund raising events as well as people having picnics and walking their dogs. It is stated that this has been ascertained from researching web-sites (unspecified), old photographs, old newspapers and from talking to the elderly.
23. However, no primary sources of evidence are supplied. Few specific dates are given in relation to when these activities took place other than in vague terms, nor how frequently. Mention is made of the 1970s, which falls outside of the period that is under scrutiny for the purposes of this application. Neither is there certain evidence to establish the physical location where the activities listed took place. Accordingly, it is not specifically related to the application land, as opposed to the wider area of Lizard Green.
24. The questionnaire to local residents instigated by the applicant primarily seeks the opinions and wishes of householders in The Lizard village as to the future use of Lizard Green. Hence, responses on these points have little bearing as to the question of historical fact that is central to this main issue.

25. For these reasons, the supporting evidence put forward both in writing and at the hearing lacks precision and certainty and falls considerably short of the necessary standard of evidence whereby it is shown that criterion (c) of paragraph 5(2) of the 2006 Act is satisfied.
26. In general terms, the evidence points to some activities consistent with those that might take place on a village green having occurred both before and after the provisional registration of Lizard Green under the 1965 Act. However, it is not established that such activities are incompatible with the status of common land. Therefore, evidence of such activities might equally be seen as reinforcing the present status of the land as common land.
27. This latter view acquires greater credence given that, notwithstanding their acknowledgement that village events have occurred at Lizard Green, a considerable number of objections maintain that the application land was not wrongly registered as common land. Of those, I find the LPC submission to be particularly persuasive in relation to this main issue. This is for the following reasons.
28. Paragraph 7.4.2 of the 2014 guidance states that many town or village greens were registered as common land under the 1965 Act. It goes on to advise that registration authorities should review the registers during the transitional period (ie up until 31 December 2020) to see whether there is evidence to support an application under paragraph 5 of Schedule 2 of the 2006 Act. Moreover, parish councils should be encouraged to bring forward proposals for the same purpose. In this case, the evidence points to LPC having undertaken such a review exercise. This led to such an application being made by them in 2017 in relation to The Lizard Recreation Ground, which was originally registered as common land. It is now registered as village green, unit VG702. The recreation ground lies a short distance to the east of the application land, and I observed it as part of my site visit.
29. This amounts to convincing evidence that the LPA were well aware of the legislation and procedure open to them under the 2006 Act to address town or village green wrongly registered as common land. Had the LPC considered that the application land was wrongly registered as common land in 1968, then it would have been likely that they would have submitted a similar application at that juncture. They did not do so and at the hearing the LPC representatives indicated that this was intentional.
30. In addition, the original application made by LPC to register Lizard Green under the 1965 Act contained a statutory declaration dated 13 April 1968 to the effect that they believed the land described in the application to be common land. LPC remain steadfast in that view and confirmed at the hearing that they were certain that the application land was common land.
31. Moreover, the applicant does not dispute the common land status of the remainder of Lizard Green that lies adjacent to the application land. There is little evidence to suggest that different parts of registered unit CL220 were physically distinguishable and consistently put to different uses prior to the proposed application land boundary at the 1968 date.
32. Drawing these factors together, I find that the evidence on the balance of probabilities, does not point to the application land having constituted a village green within the meaning of the 1965 Act as originally enacted immediately

before its provisional registration. As such, it does not satisfy criterion (c) of paragraph 5(2) of the 2006 Act. On that basis, it follows that the application must ultimately fail.

Other matters

33. Many of the representations refer to car parking. From the evidence presented at the hearing and in writing, it is clear that car parking has taken place at Lizard Green for a considerable period of time, and this is likely to have included parts of the application land. It is not within the scope of my determination to pronounce on the legalities of whether this practice ought or ought not to have taken place. Rather, my determination turns upon the specific criteria of paragraph 5(2) to Schedule 2 of the 2006 Act outlined in the main issues. As the merits or otherwise of car parking are not directly determinative in this case it is unnecessary for me to consider the matter further.
34. My attention was drawn to the presence of some rare plant species on the application land. However, given my finding that the application does not satisfy the requisite criteria of paragraph 5(2) of the 2006 Act, this is not a matter that would lead me to a different conclusion.

Conclusion

35. Having regard to the matters outlined above and all other relevant matters raised at the hearing and in the written representations, I conclude that on the balance of probabilities, all the requisite criteria for the deregistration of the application land as common land and its registration as a town or village green are not satisfied. In effect, the application land should remain as common land as part of registered unit CL220.

Formal Decision

36. The application is refused.

Helen O'Connor

Inspector

APPEARANCES

Debra Kaatz	Applicant
Bernadette Kessell	Chair, Landewednack Parish Council
Heather Singleton	Clerk, Landewednack Parish Council
Andrew Singleton	Vice-chair, Landewednack Parish Council
William Rowe	Cornish Stannary Parliament
Martin Wright	Commons Registration Authority, Cornwall Council
Mrs Z Browning	Local resident
Mr K Luckhurst	Local resident
Mrs V E Burt	Local resident
Mrs T Hill	Local resident
Mr C Johns	Former local resident