

# North Somerset Council

## Report to the Planning & Regulatory Committee

**Date of Meeting:** 11 October 2023

**Subject of Report:** Application for a Town/Village Green on land at the Perrings, Nailsea (NSC/TGV/09)

**Town or Parish:** Nailsea

**Officer/Member Presenting:** Assistant Director Legal & Governance and Monitoring Officer

**Key Decision:** No

**Reason:** This is not an Executive Decision

### Recommendations

The application be rejected and refused because:

- a) A trigger event has occurred under Schedule 1A to the Commons Registration Act 2006 so that section 15C of the Commons Registration Act 2006 applies meaning that the Applicant is not entitled to make the application and it should, therefore, be rejected.
- b) If not rejected, the application should be refused because use of the land by local inhabitants has been “by right” and is, therefore, incapable of meeting the statutory requirement under section 15(2) of the Commons Registration Act 2006 that the use must be “as of right”.

### 1. Summary of Report

Counsel, Rowena Meager was appointed as an Inspector to prepare an open report with a limited remit confined to two questions of law and has supplied a report dated 30 August 2023 which concludes that:

- (1) A trigger event has occurred under Schedule 1A to the Commons Registration Act 2006 so that section 15C of the Commons Act 2006 applies.
- (2) The use of the land by local inhabitants has been “by right” and, therefore, the requirements of s15(2) of the Commons Act 2006 have not been met.

Full reasons for the conclusions are set out in the attached report – Appendix 1.

## **2. Policy**

None.

## **3. Details**

### **3.1 Background**

An application for registration of land at the Perrings, Nailsea as a town or village green (“TGV”) under the Commons Act 2006 was made by Nailsea Town Council on 29 April 2020, checked as duly made and then put through the statutory consultation process. There is a single objection from the landowner, Persimmon.

The land has at all times been in private ownership. An agreement under section 52 of the Town & Country Planning Act 1971 dated 28 July 1976 was made by the then owner with the Council which required a landscape planning scheme in relation to this land. There was no provision for transfer of the land to the Council. The agreement related to planning permission 2583/75 for the construction of 121 dwellings and garages on land south of Old Church Road, Nailsea (the area now known as The Perrings).

The Council has maintained the land for many years with some interruption in the 1980s. The land included a play area with play equipment. There is no evidence to show whether it was the original developer or the Council which installed the play equipment. The Council inspected and maintained the play equipment, including making minor repairs to make sure it is in a safe condition to use. The play equipment was removed approximately 2 years ago as it had come to end of its useful life.

The North Somerset Site Allocations Plan 2018 for the period 2020-2026 identifies the site as “Local Green Space” in accordance with paragraphs 76 and 77 of the National Planning Policy Framework.

The Applicant supplied 194 completed questionnaires showing the use that the person completing the questionnaire says they have made of the land.

### **3.2 Requirements for Registration as a TGV**

Section 15C of the Commons Act 2006 says that the right to apply to register land as a TGV ceases to apply if an event in Schedule 1A (“a trigger event”) has occurred.

Land is registerable as a TGV if “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”. Use “as of right” means without force, stealth or permission.

The objection by Persimmon raised the legal issue as to whether the involvement of the Council with this land meant that the use by the public has been “by right” as contended by Persimmon or ‘as of right’ as contended by Nailsea Town Council.

### **3.3. Procedural Developments**

Officers followed normal procedure and sent the standard question as to whether there had been a trigger event to Planning Policy and PINS using the letter template provided by the Government in its Guidance on the Commons Registration Act 2006 – this refers the recipients to Schedule 1A to the CRA 2006. Schedule 1A does not contain any reference to applications made under legislation earlier than the TCPA 1990, nor does it refer to the effect of the Planning (Consequential Provisions) Act 1990.

No trigger events were notified so the application was registered, consulted on and the objection received from Persimmon regarding the “by right” question.

Counsel, Rowena Meager advised in confidence and gave procedural directions. Historic evidence was obtained from the Council’s records and commented on by the parties. Decision No 22/23 DP 407 dated 2 February 2023 agreed to appoint counsel as Inspector with a remit to provide an open report dealing with the legal question of whether the user was “by right” or not.

A Statement of Facts was agreed with Nailsea Town Council and Persimmon. Each was also given the opportunity to make legal submissions on the question of whether the use of the land by local inhabitants was “by right” or not before the report was prepared.

The Inspector identified an additional legal question to be answered which was whether planning permission 2583/75 which provided for the development of the Perrings estate and led to the land which is the site of the TGV application being laid out as open space constituted a trigger event.

Decision 23/24 DP105 dated 20 July 2023 extended the remit of the Inspector to include producing a report addressing the additional question of whether planning permission 2583/75 constitutes a “trigger event”.

Nailsea Town Council and Persimmon were each informed that a question had arisen as to whether the 1975 planning permission could constitute a trigger event and given an opportunity to comment before the Inspector was further instructed.

Nailsea Town Council commented that they did not believe the 1975 planning permission constitutes a trigger event as no development as outlined in the planning application took place on the TGV application land.

Persimmon commented that their view was that the 1975 application (reference 2583/75), with permission granted in 1976, does act as a trigger event in relation of the TVG application. The land subject to the TVG application is within the application boundary (marked as public open space), and a landscape planning scheme was required for this land as part of a Section 52 agreement, and there have subsequently been no terminating events to negate this trigger event.

These comments were duly forwarded to the Inspector before the report was prepared.

### **3.4 The Inspector’s Report dated 30 August 2023**

The Inspector’s report is attached, and Members are asked to read this. It sets out fully the law which underpins the Inspector’s recommendations.

### 3.4.1 Trigger Event

The Inspector has concluded that the 1975 application for planning permission constitutes a trigger event under Schedule 1A to the Commons Registration Act 2006 so that section 15C of the Commons Registration Act 2006 applies so that the right of Nailsea Town Council to apply for this land to be registered as a Town and Village Green ceases to apply. Her reasoning is set out in full.

### 3.4.2 “By Right” or not

Members are referred to paragraph 28 of the Inspector’s report. User that is ‘by right’ is necessarily use by permission (whether express or implied) and cannot, therefore, constitute user ‘as of right’ as required by s15(2) of the Commons Act 2006.

The Inspector concludes that there was an implied permission to local inhabitants to use the land and that (see paragraph 40):

- The Planning Permission expressly recognised the application land as “*Public Open Space*” and the Council had regularly maintained and indeed on occasion improved the application; and (by the provision of play equipment and picnic tables),
- That state of affairs conveyed a very clear message to the local inhabitants that those using the application land for recreation were doing so pursuant to an implied permission.
- It is inconceivable that the objector (Persimmon) ought to have objected to the public’s use in order to prevent a right being established against it.

Further reasoning for coming to this conclusion is set out in the Inspector’s report.

## 4. Consultation

The application was subject to statutory requirements for consultation including advertisement in the press and a notice at site. The landowner was consulted.

## 5. Financial Implications

The council is statutory registration authority and is required to determine applications received. Officer time will be required to conclude the administration of the application.

### Costs

None.

### Funding

Not applicable.

## **6. Legal Powers and Implications**

The Council is acting in its capacity as the Commons Registration Authority under the Commons Act 2006. The Council's Constitution assigns the responsibility for deciding on TGV applications to P & R Committee. TGV applications have to be determined in accordance with the requirements of the Commons Act 2006.

The Commons Act 2006 is clear that where a trigger event has occurred the ability to make a TGV application ceases so that it would be unlawful to allow the application to continue if the 1975 planning permission constitutes a trigger event.

Equally, if the use has been "by right" then the application must be refused as the requirements of s15(2) of the Commons Act 2006 will not have been met.

If Members accept the recommendation on the basis of one or both of the conclusions reached by the Inspector, the application for TGV status will end. There will be no requirement for a full-scale non-statutory inquiry to consider oral evidence.

## **7. Climate Change and Environmental Implications**

None. The land will retain its status as "Local Green Space" for the purposes of planning decisions, irrespective of what decision is made as regards the TGV application.

## **8. Risk Management**

The council has a statutory duty to determine the application in accordance with the statutory scheme. To ensure transparency and independence, external legal advice has been sought on whether the land satisfies the legal test to be registered as a town village green. An open procedure has been adopted so the applicant, objector and wider public will know what was taken into consideration when reaching the decision.

## **9. Equality Implications**

No equality impact assessment has been carried out. The application has to be assessed against the statutory test for registration.

## **10. Corporate Implications**

None. The land will retain its status as "Local Green Space" for the purposes of planning decisions.

## **11. Options Considered**

The council is required to determine the application. Specialist independent legal advice has been sought to assist the committee in this task.

### **Author:**

**Sally Andrews, Solicitor and Sue Buck, Solicitor**

### **Appendices:**

1. Inspector's Report dated 30 August 2023
2. Map of application land

**Background Papers:**

Application and supporting documentation, submissions of parties including agreed summary of facts and advice as considered by counsel in the written opinion.