



Highways Committee

Date Friday 16 March 2018
Time 9.30 am
Venue Committee Room 2, County Hall, Durham

Business

Part A

1. Apologies for Absence
2. Substitute Members
3. Minutes of the Meeting held on 12 April and 20 November 2017
(Pages 3 - 14)
4. Declarations of Interest, if any
5. Application NL44 for Village Green Registration - Bede Kirk, Barnard Castle - Report of Head of Legal and Democratic Services (Pages 15 - 52)
6. Such other business, as in the opinion of the Chairman of the meeting, is of sufficient urgency to warrant consideration

Helen Lynch

Head of Legal and Democratic Services

County Hall
Durham
8 March 2018

To: **The Members of the Highways Committee**

Councillor C Kay (Chairman)
Councillor S Morrison (Vice-Chairman)

Councillors D Bell, H Bennett, G Bleasdale, J Chaplow, S Dunn,
A Gardner, K Hopper, S Hugill, K Liddell, O Milburn, P Oliver,
R Ormerod, J Robinson, J Rowlandson, P Sexton, J Shuttleworth,
A Simpson, J Turnbull and M Wilson

Contact: Michael Turnbull

Tel: 03000 269 714

DURHAM COUNTY COUNCIL

At a Meeting of **Highways Committee** held in Crook Council Offices, Crook, Co Durham, DL15 9ES on **Wednesday 12 April 2017 at 10.00 a.m.**

Present:

Councillor C Kay in the Chair.

Members of the Committee:

Councillors B Armstrong, D Bell, O Gunn, B Kellett, O Milburn, F Tinsley, J Turnbull and M Wilkes.

1 Apologies for Absence

Apologies for absence were received from Councillors G Bleasdale, D Hicks, K Hopper, S Morrison, R Ormerod, J Robinson, J Rowlandson, P Stradling and R Young.

2 Substitute Members

There were no substitute Members present.

3 Minutes

The minutes of the meeting held on 8 March 2017 were agreed as a correct record and signed by the Chair.

4 Declarations of interest

There were no declarations of interest in relation to any items of business on the agenda.

5 Status of track at Victoria, Howden le Wear to Wear Valley Junction – Wildlife and Countryside Act 1981 - Definitive Map Modification Order Proposal

The Committee considered a report of the Corporate Director of Regeneration and Local Services sought consideration of evidence discovered regarding the status of the track through Victoria and so determine whether a Modification Order should be made to add a public right of way to the Definitive Map and Statement (for copy see file of Minutes).

The Legal Adviser then outlined the legal framework to the Committee. The Committee were informed that one of the first key statutory legal considerations in dealing with the issue was contained in Section 31 of the Highways Act 1980. This described the criteria that had to be met for deemed dedication of a highway that in order for a public right of way to be in existence, the route must be enjoyed by the public as of right and without interruption for a full period of 20 years. The qualifying period had to be calculated retrospectively from the date when the right of public use was brought into question. In this case the challenging of the public, first recorded by the Council in late 2014 was considered to be an action to bring

the right of public use into question. This was the period when users reported various signage being placed along the route and erection of gates. The 20 year period had to be calculated retrospectively from this date.

The report made reference that some objections referred to 'permissions being granted to use the road' and that regular closures of the road meant use had been interrupted and/or obstructed use.

The Legal Adviser concluded that there were some issues that officers and the Committee could not find an explanation for or get to the bottom of at this stage. The only way to probe these points further would be through a public inquiry where evidence would be cross-examined by a government inspector.

The Senior Rights of Way Officer guided the Committee through the evidence of usage detailed in paragraph 4 of the report and the summary of user evidence in Document B which detailed the standard questionnaire. The owner evidence detailed in Document C of the report was also summarised. A presentation also accompanied the summary of usage.

The Committee were informed that in terms of assessing the evidence the first judgement that needed to be made was to the credibility of the user evidence and whether it was of sufficient amount and quality to trigger the statutory presumption contained in Section 31 of the Highways Act 1980, detailed in paragraph 3.3.

The amount of pedestrian use demonstrated was deemed to be substantial and had occurred over a long period of time. Equestrian and cycle use was lesser but was still of sufficient quantity to suggest that public rights for users were reasonably alleged to subsist. It was considered that the evidence submitted by witnesses was credible.

Information relating to notices, permissions and challenges to use and the history relating to the maintenance of the road were all outlined to the Committee and detailed in full in the report.

Prior to hearing from those wishing to make representations on the issue, the Legal Adviser informed the Committee that any objections had to be considered in the context of the Human Rights Act 1998. Although articles 1 and 8 are engaged they are qualified rights, not absolute, meaning that interference by the making of a Modification Order is both in accordance with domestic law and in the public interest.

The Committee then heard from the first objector. The objector explained that the whole issue had been an intrusion on her privacy and had caused a large amount of upset. She had lived in the property, not long after it had been built. In 1931 a petition was submitted from 60 dwellings in Victoria was lodged requesting that the Council make a satisfactory road to their houses. No action was taken. The issue was raised again with Crook and Willington Urban District Council's in 1957. All indications from 1931 and 1957 to date, by all local authorities, was that Victoria was classed as a private street. There had been no mention of the proposed multi user footpath and dedicated public rights of way.

Signage had been in place prior to 2014 and the objector was of the view that some people may simply not have seen it. The signage had been put in place to deter abusive people walking through the area. Some people had recalled some form of toll road and gates in the

evidence. Despite what had been said, there had been no attempts made to block the road and she was perfectly happy for people to use the road and use Victoria.

The objector felt that there was not sufficient information available to members of the local authority to make a determination on the issue.

The Legal Adviser informed the Committee that the issues referred to road maintenance in the 1930's and 1950's was not a public right of way matter and felt that the representations made at these times were a mechanism to put a measure in place to allow the Highways Authority to have the road maintained.

There was no definite conclusion as to whether the signs at no 10 were erected in 2014 or prior to then.. The issue was that the Council did not have sufficient evidence regarding the exact date of when any such signage was placed in the area. It was a possibility that this date may change through cross examination of evidence at a public inquiry.

The Committee then heard from another objector who explained that they were relatively new to the area. They had bought their house in 2004. There was no information contained in any of the searches to indicate that there was a public right of way. The resident was informed that the road was an 'access road' that could not be blocked off.

Since that time some gates had been installed following the recommendation of the local neighbourhood policing team. This action was to safeguard property and family. The objector's property had been broken into three times and there had been numerous confrontations with members of the public, with over 40 recorded incidents lodged with the local police. The gates were closed on an evening to prevent the area being used as a rat-run from the lower end of Howden-le-Wear.

In terms of signage, when the objector moved into the area there was a sign on the boundary fence 'keep out – private property'. This had been placed on the fence by the previous owner and had been in place all of his lifetime. No-one had recalled noticing the sign in question and it had been removed before Google Street View photos had emerged.

The resident had CCTV installed at their property which had recorded footage of people letting their dogs loose in the area. They also had video footage of their hens being killed. A rabbit had also been beheaded.

Challenges were made by residents due to dogs barking in 2004 which lead to an incident where the objector's partner had been threatened by way of a rifle being pointed at his face.

When large tractors use the road, any pedestrian, cyclists or horse riders move to stand in the resident's garden to stand aside. All of these types of incidents severely affected their family life.

The Legal Adviser offered his sympathies to the objector about the instances of anti-social behaviour and criminal activities but stressed that the desirability of the route was not a matter for determination by the Committee. It was explained that the Committee could afford weight to Human Rights Act of 1998, for example, peaceful enjoyment of property and article 8, the right to respect for family, private life and home. Whilst these issues were engaged, it was important to note that these rights were qualified, not absolute, which meant that they

could be interfered with, in so far, as such interference was in accordance with domestic law and was necessary in a democratic society for the protection of the rights and freedoms of others. It was considered that any interference occasioned by the making of a Modification Order was both in accordance with domestic law (the Wildlife and Countryside Act 1981) and was in the public interest as it was necessary in a democratic society for the protection of the rights and freedoms of others, namely the public who wish to use the way.

The Committee then heard from a supporter who raised a number of points. The gate referred to was installed at the end of July/August 2015. He explained that the previous objector had verbally abused him. Page 131 of the report referred to a 'road closed' sign, however, there was no evidence to show where the sign was located. The objector had held a number of meetings with the County Council's public rights of way team and had passed all necessary evidence onto them.

The Senior Rights of Way Officer provided some clarity for the Committee with regard to gates being closed on Christmas Day. It was explained that there were no gates involved and that it was simply the 'road closed' sign in place. Issues that had been mentioned in relation to a footpath at the front of the houses was irrelevant.

The Committee then heard from a user of the route. He had used the route for the previous 20 years for leisure and exercise. He recalled that in all that time, until recent years, that there had been no restriction or permission. In terms of signage, he explained that there was a sign on the property of one resident stating 'small children playing'. The track had been used both ways by local tradespeople and home delivery vehicles. The track was used to walk to the school and local church. At no time was anyone ever challenged for permission. People used to fix pot holes in the route themselves. There was also a memorial tree garden accessed by the local school who used the route. The Council installed a multi user path because it was a safer route to Low Barnes Nature Reserve. The alternative route was considered to be dangerous. The track was popular with horse riders, schools, scouts, cyclists and running clubs.

In terms of the intervention by local police, the supporter explained that he had queried the installation of the gates at a Police and Communities Together (PACT) meeting and this was categorically denied by the Police. Incidents regarding dogs were on police records. If larger vehicles such as bin lorries and tractors were using the track it was not unusual to see any cyclists or pedestrians simply standing on the grass verge to allow them to pass. The route provided a free and safe leisure route and it was important to retain safe footpaths and bridleways. The user felt that people should be allowed to use the route in the same way.

Councillor Tinsley referred to the issue in the 1930s regarding Crook and Willington Urban District Council and maintenance works and queried if anything had been done to determine whether the road was actually a private road – would this have had an impact on the 20 year period and was the desirability of the route a material consideration.

In response, the Legal Adviser informed the Committee that evidence in the 1930's was minimal and it was simply a case that officers could not come to a conclusion of what was in the mind of the Highways Authority at that time. It was presumed that it related solely to maintenance of the track. If the work had been done it would have become a public right of way and maintainable by the Council. It was simply not clear from history.

The Senior Rights of Way further added that the desirability of the route was not a material consideration and that the key consideration was usage.

Councillor Tinsley felt that there was evidence of significant usage and that issues regarding notices, challenges and closures were not proven. He was content with the answers to the queries that had been raised by all parties and was content that the Committee couldn't consider the desirability of the route. The test on the balance of probabilities was that it was reasonably alleged that the route existed and formally moved the recommendation in the report.

Councillor B Armstrong seconded the proposal.

An objection was made by a member of the public who had made it clear that they wished to speak, prior to the meeting, however, she had not been afforded the opportunity. Following confirmation that this was correct, the Chairman allowed the member of the public to make their point known.

The member of the public explained that they lived at Engineman's Terrace and no one had been challenged there, and that their main concern was the traffic that accessed the through road. They referred to an incident when the lower lane had flooded. This had directed people towards Engineman's Terrace. The member of the public did not want more traffic in the area.

Councillor O Gunn sought clarification regarding the proposal put forward and queried if the recommendation was carried, would the road remain private, even though it would be classed as a public right of way. Councillor Gunn queried where the responsibility would be in terms of maintenance of the track and any public liability involving public use.

The Legal Adviser informed the Committee that it was difficult to provide an answer to the issue of maintenance. If the modification order was made it would not make the County Council responsible for maintenance, so whoever maintained the route at present would maintain it in the future. In terms of liability the Legal Adviser felt that this was not an issue that the Committee could consider at this time.

Resolved

That a Modification Order be made under the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement a public bridleway along the full 1125 metre long route from Railway St Howden le Wear to the adopted highway, unclassified county road 41.27, at the Weardale Railway level crossing.

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DURHAM COUNTY COUNCIL

At a Meeting of **Highways Committee** held in Council Chamber, County Hall, Durham on **Monday 20 November 2017 at 11.00 a.m.**

Present:

Councillor C Kay in the Chair

Members of the Committee:

Councillors H Bennett, G Bleasdale, S Dunn, A Gardner, S Hugill, O Milburn, S Morrison (Vice-Chairman), P Oliver, R Ormerod, J Rowlandson, P Sexton, J Shuttleworth, A Simpson, J Turnbull and M Wilson

1 Apologies for Absence

Apologies for absence were received from Councillors D Bell, J Chaplow, K Hopper, K Liddell and J Robinson

2 Substitute Members

There were no substitute Members.

3 Minutes

The minutes of the meeting held on 24 July 2017 were agreed as a correct record and signed by the Chair.

4 Declarations of interest

There were no declarations of interest in relation to any items of business on the agenda.

5 C10a Leadgate Road, Leadgate - 40mph Speed Limit

The Committee considered a report of the Corporate Director of Regeneration and Local Services regarding a proposed Traffic Regulation Order to increase the speed limit from 30mp to 40mph on a new section of road on the C10a western approach to Leadgate (for copy see file of Minutes).

The Committee were informed that the road in question used to be fairly narrow and been subject to a recent road realignment. A railway bridge had also been removed as it was in poor condition. Historically, the road had been subject to a 30 mph speed limit by virtue of it having a system of street lights. The limit had also been self-enforcing due to the overall layout. Traffic signals were also operation over the bridge deck when it was in situ.

The Police had reported that a significant number of complaints had been received about speeding in the area which had resulted in periods of targeted enforcement.

The Committee were provided with a presentation which detailed the following:-

- Location plan;
- current and proposed speed limits;
- a selection of photos from the area.

(for copy see file of Minutes).

The Traffic Assets Manager explained that the 30mph was not considered to be 'self-evident' to drivers on the new road layout due to the wide carriageway, the removal of the traffic signals and the lack of property frontage development meaning that drivers were confused with the open aspect of the road layout and used the road as if it were subject to a higher speed limit. The Committee were advised of Department for Transport guidance regarding credible speed limits and best practice for achieving lower speed limits.

A number of representations had been received which were detailed in the report. These were summarised for the Committee.

Councillor Temple accepted the issue as presented by officers but could not agree with the reasoning behind the proposed increase in speed limit. Councillor Temple explained that he had expressed his concerns throughout the consultation process and residents from Villa Real Bungalows and Newbell Court had also expressed concerns. Councillor Temple felt that a decision to increase the speed limit would legitimise people that drove faster. Furthermore, an increased speed limit would create a safety issue for those crossing the Coast 2 Coast (C2C) cycle route and believed that speeds would be faster in areas where motorists would be exiting from estate roads, including Villa Real Bungalows and Sherburn Terrace.

The Committee discussed the use of 30 mph repeater signs as an alternative to increasing the speed limit. It was explained that the DoT would not allow for the use of repeater signs on 30mph stretches of road where street lights were present. However, repeater signs could be used on 40mph stretches of roads. Councillor A Gardner informed the Committee that the C2C was one of the most used cycle routes in the country. He felt that the measures proposed in the report would present an increased danger to cyclists. Councillor Gardner also asked if the 20mph zone around the Primary School should be re-examined.

Councillor P Sexton commented that the C2C crossing point was difficult to cross at the present time, therefore he could not support any increase in the speed limit.

In response, the Traffic Assets Manager informed the Committee that speed surveys had shown that 20% of vehicles were travelling in excess of 30mph at the C2C crossing point, with 5% at a speed where the police would potentially prosecute.

Councillor J Turnbull informed the Committee that a similar speed increase had taken place in his area a number of years ago. At the time he had echoed similar concerns expressed by Councillor Temple and was very doubtful that the scheme would have been successful. However, this had been in place for a number of years to date and it had been a success,

despite the initial doubts. Councillor Turnbull moved the recommendation and proposed that the proposed scheme should be introduced on an initial nine month basis.

Councillor Ormerod felt that the scheme should be rejected on the basis of the unanimity amongst the local members their local knowledge, together with the depth of feeling amongst local residents.

Councillor Milburn seconded the motion moved by Councillor Turnbull.

Resolved

That a Traffic Regulation Order be made to introduce a 40mph speed limit on the C10a commencing prior to the A691/A692 roundabouts, and to introduce a 30mph speed limit to encompass the C2C and zebra crossing facilities at the western end of Leadgate and the operation of the scheme be reviewed after nine months of operation.

6 Wolsingham Byway 157 (Hexham Lane) - Objection to Experimental Traffic Regulation Order to prohibit 4WD vehicles

The Committee considered a report of the Corporate Director of Regeneration and Local Services regarding an objection to an experimental traffic regulation order to prohibit 4WD vehicles on Wolsingham Byway 157 (Hexham Lane) (for copy see file of Minutes).

The Senior Rights of Way Officer explained the background to the report and provided the Committee with a detailed presentation to assist with the detail provided in the report, as follows:-

- location plan(s)
- explanation of the experimental order
- by-way inspections
- photos of pinch points/4 wheel vehicle damage/wet areas/sand areas
- key comments from the inspections; and
- summary of objection

(for copy see file of Minutes).

In terms of objections, the Committee were informed that landowner one had requested that all motor vehicles are prohibited from using the Byway to ensure it remained in a useable condition for pedestrians, cyclists and horse riders. He provided photos in February 2017 which showed significant damage caused by 2W vehicles. He also described 2Ws accessing other areas and causing distress to his livestock and that 4WDs had ignored the ban and accessed the byway from other estate tracks. He also considered that the damage to the byway created safety issues for his employees and impacted on those who were using the byway on foot or horseback.

Landowner two had made three separate reports between November 2016 and March 2017 about motor bikes ridden off the route of the byway and causing upset to pregnant cows and sheep, leaving gates open and driving too fast. Responses to the objections were summarised to the Committee and were detailed in the report.

The Senior Public Rights of Way Officer explained to the Committee that monitoring of the condition of the byway throughout the period of the experimental order had indicated that the surface had been able to withstand use by 2WD vehicles. Although, there had been some changes in the condition of the byway and the weather/seasonal conditions did impact the robustness of the surface, it had withstood usage.

Usage by 4WD vehicles was still evident, however owner/occupiers of the land were not excluded by the prohibition and banning of these users would not be considered lawful. The impact of 4WDs during the experimental order period had further compounded the view that (apart from the excepted 4WDs described) these vehicles should continue to be prohibited due to the poor structure of the sub soil.

Officers were recommending that the experimental order be made permanent.

The Committee then heard from a representative from the Green Lane Association. The representative felt that motorists had been represented very unfairly in the presentation provided to the Committee. Whilst it was fair to suggest that the lane did lapse in condition during the winter months, the Association felt that a lot of the damage came about as a result of a lack of maintenance and explained that the route tended to be neglected at times. The Association felt that tractors were the biggest single cause of damage to the lane and felt that some basic maintenance and user restraint at the right time would help alleviate some of the problems that were being encountered. There were many lanes throughout the country in similar conditions to Hexham Lane which remained open.

The Association also explained that they had funds to help with maintenance of the route and always promoted restraint to all its members during bad weather. The Association were disappointed that the photos shown to the Committee had been taken at the worst time of year.

In summing up, the Association felt that it was unfair and unreasonable to blame groups such as the GLASS and the TRF for the actions of a small minority. They felt that a ban would simply serve to punish those who used the byway responsibly and suggested a seasonal ban would be a fairer and better solution. They felt that this would also resolve any issues regarding 'spooked' cattle and usage over winter. The Association spoke of their good relations working with local authorities and cited partnership working with both Essex and Surrey County Councils and suggested that there was no reason why they could not work with Durham in the same way.

The Public Rights of Way Officer explained that the decision required by the Committee was to decide whether or not to make the experimental order permanent. No representations had been made by motor vehicle users in the six month period where objections were invited. Prior to the experimental order, the lane was in a terrible state and all vehicles were banned. In terms of four wheel drive vehicles, it was explained that these were heavier in nature and carried more load on the day.

The Highway Development Manager explained that the Council did consider a seasonal order, referred to by GLASS, however, the area generally suffered from significantly wet ground throughout the year, therefore the idea was dismissed, as it was felt that the surface would be damaged throughout the year. The Highway Development Manager also explained that at present the lane didn't appear in too bad a condition, however, this was due to the

current ban on four wheel drive vehicles. In terms of voluntary restraint it was considered admirable that some did exercise restraint, however there was video evidence of completely unacceptable behaviour that had been viewed.

Councillor Shuttleworth felt that there should be a total prohibition to all vehicles and didn't believe that such areas should be used as 'adventure playgrounds'. Councillor J Shuttleworth would preferred to have seen the experimental order extended for a further year.

Councillor A Gardner thanked the Rights of Way Team for their comprehensive report and fully understood the concerns of the landowners. In light of this Councillor Gardner expressed his support and moved the recommendation detailed in the report.

Councillor Ormerod felt that the recommendation struck the right balance and that the route should be available and reassuring for walkers and horses to use. Councillor Ormerod was in no doubt that four wheel drive vehicles were causing the damage.

Councillor O Milburn asked if landowners used four wheel drive vehicles on the route and if the County Council was responsible for the upkeep. She also queried whether the landowner should contribute towards maintenance and repairs.

The Public Rights of Way Officer informed the Committee that the landowner at the southern end of the route had carried out a considerable amount of work. She was not aware of any maintenance undertaken at the northern section of the route but explained that the landowner was not under any obligation to do so.

Councillor S Dunn explained that he was horrified after seeing the photos contained in the officer's presentation at the damage caused by vehicle use. He felt that people should be allowed to freely walk the route and was happy to second the recommendation. Following on from the point made by Councillor Milburn, Councillor Dunn requested that officers ask the landowner to consider maintenance to the problematic areas and seek some form of contribution.

Councillor P Oliver informed the Committee that he had listened to the comments made and the observations made from the PowerPoint presentation but felt that the route should be open for everyone to use and that by closing the route would lead to other similar routes being closed too. Councillor Oliver also felt that four wheel drive vehicles were being singled out unnecessarily in this case.

One of the landowners had nothing further to add and informed the Committee that his property had suffered as result of use as the surface was rutting up in places. More so, there were also issues of cattle being spooked. The landowner clarified that the only vehicles used by the landowner was those used to service livestock.

Councillor Turnbull informed the Committee that he tended to agree with the comments made by the representative of the GLASS and felt that if the Association had been in dialogue with the Council regarding volunteer labour prior to the issue being considered, why had the information had not been provided to the Committee beforehand.

The Public Rights of Way Officer explained that the issue was greater than any sort of volunteer labour would resolve.

Upon a vote being taken it was

Resolved

That the Committee note the objections made and that the Committee recommend to the Corporate Director of Regeneration and Economic Development that the Experimental Traffic Management Order is made permanent.

Highways Committee**16 March 2018****Application NL44 for Village Green
Registration
Bede Kirk, Barnard Castle**

Report of Helen Lynch, Head of Legal and Democratic Services

Introduction

1. The Council is the registration authority for Town and Village Greens under the Commons Registration Act 1965 and the Commons Act 2006 and the function of determining TVG applications falls to the Highways Committee under the Council's Constitution. The Council must act impartially in its determination.

Purpose of the Report & Background

2. To advise the Committee in determining an application to register land at Bede Kirk, Barnard Castle, as Town or Village Green, under the provisions of the Commons Act 2006.
3. The application was made by the Barnard Castle Town Council, acting through its clerk, Michael King (the Applicant). A copy of the application, excluding the supporting user evidence, is attached at Appendix 1 (the Application). The Application was received on 6 July 2017 by the Council and was accompanied by a plan showing the area claimed as town or village green (the Application Land) as well as 6 letters in support from users of the claimed TVG. The Application was given the reference number NL44 by the Council.
4. A copy of all of the user evidence submitted in support of the application is attached at Appendix 2. A map of the Town Council area prepared by Officers showing where the users are drawn from is also included.
5. As required by the Commons Registration (England) Regulations 2008, Notice of the application was published on the Council's website and in the Teesdale Mercury newspaper and a site notice was also erected.
6. Notice of the application was also given to the owner of the land subject of the application and a copy of the Application was also placed on deposit with the Barnard Castle Town Council, for public access.
7. The land subject of the application is a former Police Station and grounds, owned by the Office of the Police and Crime Commissioner for Durham (the Owner).
8. Following publication of the notice of the application, two objection letters were received, one from the Estates Department of Durham Constabulary as

agents of the Owner dated 8 November 2017 and the other from Railway Housing Association dated 2 November 2017 to whom it is understood that the Owner is proposing to sell the land.

9. The Applicant was given an opportunity to comment upon the two objections received and they did so by letter dated 28 November 2017. A further representation in support of the Application from a resident of Bede Kirk was received by the Council on 15 January 2018.
10. The objection letters, letter in response from the Applicant and the further representation from the resident of Bede Kirk are all attached at Appendix 3.
11. Although the Owner opposes the application, they have not directly challenged the Applicant's user evidence and have not put forward any evidence which is contrary to the user evidence provided by the Applicant. Accordingly, it was felt that there would be no need to hold a Non-Statutory Public Inquiry before Members determined the application. A Non-Statutory Public Inquiry is usually only necessary where the evidence needs to be tested by cross examination or where there are significant legal issues in dispute.
12. The decision on this application is a matter for this Committee. An assessment of the evidence submitted by the Applicant has been undertaken by Officers and for the reasons set out in the remainder of this report, Officers are of the view that the statutory test for registration of the Application Land as a Town or village Green has not been met by the Applicant. Accordingly, the recommendation is that Members should refuse the Application and decline to register the Application Land as a Town or Village Green.

The Law

The Commons Act 2006

13. Village greens which were not registered as such by 31 July 1970 ceased to be village greens and can only now gain that status through registration under the current statutory provisions. Registration brings about general recreational rights and other statutory protection which effectively precludes further development of the site.
14. The Commons Act 2006 is the statutory regime governing village greens and Section 15 of the Act sets out the requirements which must be met if the Application Land is to be registered. Registration of village greens is determined by the Council who are the Commons Registration Authority and the process of determination of any application is focused on whether a village green has come into existence as a matter of law.
15. The Application was made under section 15(1) of the Commons Act 2006 which states that:

"A person may apply to the Commons Registration Authority to register land as a town or village green if subsection 2 applies."

Subsection 2 states that:

“a Village Green has come into existence where:

- (a) A significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports or pastimes on the land for a period of at least 20 years; and*
- (b) They continue to do so at the time of the application.”*

16. The definition in Section 15 can therefore be broken down into the following six elements:
- 16.1 “...a significant number...” – Significant does not necessarily mean substantial or considerable in number. It is necessary to show a general use by the local community as opposed to mere occasional use by trespassers. That is not assessed by a simple headcount of users. There is no need for an applicant to demonstrate a geographical spread of users within the locality.
 - 16.2 “...of the inhabitants of any locality...” – This is not defined by any arbitrary margins but must be a recognised county division such as a borough, parish or manor, therefore an ecclesiastical parish can be a locality as required by section 15(2). It is acceptable for the users to come “predominantly” from the locality.
 - 16.3 “...or any neighbourhood within a locality...” – A neighbourhood must be clearly defined and have a sufficient cohesiveness. It must also be within a locality.
 - 16.4 “...have indulged as of right...” – Use “as of right” is use without permission, secrecy or by force. The key issue in user ‘as of right’ is not the subjective intentions of the users but how the use of the land would appear, objectively, to the land owner. Use is “as of right” if it would appear to the reasonable landowner to be an assertion of a right. Permission by the land owner, perhaps in the form of a notice on the land, would mean that the use is not as of right. Equally, use by force, such as where the user climbs over a fence or other enclosure to gain access to the land would not be use as of right. An example of a secret use could be where the use takes place exclusively under the cover of darkness such that it would not be reasonable to expect a landowner to become aware of it.
 - 16.5 “...in lawful sports and pastimes on the land...” – This is very broadly interpreted so that general recreational use including walking with or without dogs, children’s play, playing games, picknicking, camping etc would all be included. However, it is important to distinguish mere use or assertion of a public right of way from use for lawful sports and pastimes. The Courts have said that if use could give rise to a public right of way, then whether it should be regarded as mere use/assertion of a public right of way or a qualifying lawful sport/pastime will depend upon how such use would have appeared to a reasonable landowner. Where the position is ambiguous then it should count as a public right of way use as the less onerous right.
 - 16.6 “...for a period of at least 20 years...” – The fulfilment of the 20 years continuous use must immediately precede the date of the application.

17. The Growth and Infrastructure Act 2013 introduced the concept of trigger and terminating events. The purpose of these is to prevent a TVG application where land has been identified for potential development in the planning system. A trigger event would therefore operate to prevent a TVG application from being made where certain events in connection with development of land have occurred unless and until there is a corresponding terminating event, thereby restoring the ability to make an application. These trigger and terminating events are set out in Schedule 1A to the Commons Act 2006. For example, trigger events include publication of an application for planning permission and draft allocation of land in a local plan or neighbourhood plan as well as adoption of that plan. Terminating events include withdrawal of the planning application/plan, refusal and expiry of the planning permission.

Burden and Standard of Proof

18. In order for an application to be successful each aspect of the requirements of section 15(2) must be strictly proven and the burden of proof in this regard is firmly upon the Applicant. The standard of proof to be applied is 'on the balance of probabilities.' Therefore the Applicant must demonstrate that all the elements contained in the definition of a Village Green in section 15(2) of the Act have been satisfied.
19. It is instructive when deciding if an applicant has discharged the burden of proof to have regard to the words of Lord Bingham in **R v Sunderland City Council ex parte Beresford [2004]** as follows :

'It is no trivial matter for a landowner to have land , whether in public or private ownership registered as a town green....It is accordingly necessary that all ingredients of the definition should be met before land is registered and decision makers must consider carefully whether the land in question has been used by inhabitants of the locality for indulgence in what are properly to be regarded as lawful sports and pastimes and whether the temporal limit of 20 years' indulgence or more is met.'

Application Land

20. The plan attached to the Application at Appendix 1 shows the Application Land edged in red. It is part of the former Police Station at Bede Kirk, being the grassed/landscaped grounds upon which there are a number of mature trees but not the Police Station building itself. The steps/footpath from Harmire Road to the Police Station building are also included.
21. Other than a stone wall on the Western elevation of the Application Land, it is unenclosed and bounded to the West by a vehicular highway known as Harmire Road (beyond which there are residential dwellings) and to the North, East and South by residential dwellings. There are no recorded public rights of way over the Application Land.
22. It is understood that the Police Station closed in 2017.

Ownership

23. The Application Land is in the ownership of the Office of the Police and Crime Commissioner for Durham and is registered at the Land Registry, together with the Police Station building, under title number DU287321.

Assessment of Applicant's Evidence

24. The Council is not in receipt of any evidence which would undermine or contradict the user evidence at Appendix 2 and accordingly, it must be taken on face value and afforded significant weight in the assessment of the Application. An Officer assessment of the user Evidence is attached at Appendix 4. In summary, it is clear that a very small number of members of the public have used the Application Land for lawful sports and pastimes as of right over a 20 year period immediately preceding the application in July 2017. It can also be said that the majority of the users are from Barnard Castle Town Council area itself. However, of the 7 users who have provided evidence, only 2 have provided evidence of use over the whole qualifying period. Applying each of the elements of the Section 15 definition to the facts of the application as follows:

A Significant number

- 24.1 Although significant in this context does not necessarily mean substantial or considerable, it is not considered that 7 users, only 2 of whom have either used the Application Land or observed others doing so over the whole of the qualifying period (discussed further below) is sufficient to show general use by the community as opposed to occasional use by trespassers. It is also considered that the number of users is insufficient to alert a reasonable landowner that rights were being asserted over the Application Land.

Inhabitants of the locality or neighbourhood within the locality

- 24.2 Barnard Castle Parish is clearly a Locality, as required by the Act. The users who have provided evidence all live, or have lived, within this Locality. Although it is uncertain whether the users who have merely been observed by others (children playing and dog walkers) have all come from this Locality, the requirement is only for the users to be predominantly from the Locality.

Use as of Right

- 24.3 The Application Land is largely unenclosed and there is no evidence that any notices seeking to control use have ever been erected on it by or on behalf of the landowner, nor is there any evidence that the landowner has sought to challenge the use. There can therefore be no question of use of the land by force. Equally, there is no question of the use being by stealth/secretcy. Turning to the issue of permission, there is no evidence that any of the users have ever sought or obtained permission to use the Application Land from the landowner and no evidence that the landowner has ever sought to control or permit the use. Although the landowner asserts that permission can be implied due to the operational nature of the Police Station between 1977 and 2017 with a public counter and out of ours telephone facility at the front of the building, it is of note that the building is not included within the Application Land. Whilst permission therefore may be implied for the public to access the police station building and out of hours telephone service, it cannot relate

to the Application Land itself with the exception of the steps/footpath leading to the front of the building. It is considered that members of the public must have used the steps/footpath to access the building and out of hours telephone facility by way of permission as it was the access to a public building providing a public service. Accordingly, it is considered that the use of the Application Land (excluding the steps/footpath) has been 'as of right.'

Lawful sports and pastimes

24.4 The range of activities undertaken on the Application Land include dog walking, children's play/games and socialising as well as wildlife watching. With the possible exception of dog walking, these activities amount to either informal recreation or the playing of games and as such are lawful sports and pastimes. Although one user mentions playing ball with a dog which is clearly a leisure activity, it is unclear whether the majority of dog walkers who have used the Application Land have done so by walking a defined route or by walking anywhere on the Application Land. If a defined route has been walked only, it may amount to no more than the assertion of a public footpath rather than referable to a leisure activity (lawful pastime). It is of note that the landowner has asserted that dog walkers have followed a particular route over the Application Land in order to access the former police houses, rather than undertaking any form of leisure use and whilst the Applicant points out that there is no footway on the Application Land, he does not appear to directly challenge that assertion. Given the ambiguity over this issue, it is considered that such use ought to be regarded as the assertion of public footpath rights only rather than a lawful pastime in connection with a village green use. However, it is important to note that even if the dog walking use were to be regarded as a leisure activity entirely referable to village green use, this would not alter the recommendation. It is not considered therefore that this is a determinative issue in the assessment of the Application.

For at least 20 years and continuing

24.5 Although one user gives evidence of use as far back as 1958, the qualifying period for the purposes of the application is the 20 years immediately preceding the application i.e. July 1997 – July 2017. Of the 7 users who have provided evidence of use, 1 predates the qualifying period, 1 is from the early 2000s onwards, 2 relate to the whole of the qualifying period and it is unclear what period is being referred to by the other 3. There is no information given as to frequency of the claimed use. It is considered that there is insufficient evidence of use of the Application Land for the whole of the qualifying period and continuing up to the date of the application. The level of use borne out by the evidence is insufficient to bring it home to a reasonable landowner that village green rights were being asserted.

Trigger/Terminating events

24.6 There are no trigger events relevant to the Application Land.

Other issues – the proposed sale and redevelopment of the Application Land

24.7 It is apparent that following the closure of the Police Station, the Owner intends to sell the Application Land for residential development to a Housing

Association. Indeed, this is referred to in the objection letter from Railway Housing Association and in many of the user evidence letters and representation in support of the Application. The intentions of the Owner in this regard are not material to the determination of the Application or the status of the Application Land as Town or Village Green or otherwise. Members must not therefore place any weight on the desirability or otherwise of the loss of the green space to housing and must determine the application strictly on the basis of an assessment of the evidence and whether the above statutory test is met.

Overall Conclusions

25. The Applicant has failed to discharge the burden placed upon him of proving on the balance of probabilities that:
- (a) The users are significant in number;
 - (b) There has been continuous use of the land for at least 20 years immediately preceding the date of the application.

Recommendation:

26. It is recommended that Members resolve to:

Refuse the Application and decline to register the Application Land as a Town or Village Green.

Contact: Neil Carter Tel: 03000 269722

Implications of decision

Finance - none

Staffing - none

Risk – there is a potential risk of legal challenge by an Applicant, should the Application be refused in accordance with the Officer recommendation.

Equality and Diversity / Public Sector Equality Duty - none

Accommodation - none

Crime and Disorder - none

Human Rights – the recommended decision is in line with domestic legislation and is Human Rights Act compliant. The parties have been afforded an opportunity to make representations and to speak at the Committee Meeting.

Consultation – the application has been publicised in accordance with the legislation

Procurement – none

Disability Issues - none

Legal Implications – determination of the Application is a quasi-judicial function and therefore there is a potential for challenge by an aggrieved party by way of Judicial Review.

Commons Act 2006: Section 15

Application for the registration of land as a Town or Village Green

Official stamp of registration authority
indicating valid date of receipt:

Commons Act 2006

Durham County Council
Commons Registration Authority

06 JUL 2017

Application number:

NL44

Register unit No(s):

VG number allocated at registration:

(CRA to complete only if application is successful)

Applicants are advised to read the 'Guidance Notes for the completion of an Application for the Registration of land as a Town or Village Green' and to note the following:

- All applicants should complete questions 1–6 and 10–11.
- Applicants applying for registration under section 15(1) of the 2006 Act should, in addition, complete questions 7–8. Section 15(1) enables any person to apply to register land as a green where the criteria for registration in section 15(2), (3) or (4) apply.
- Applicants applying for voluntary registration under section 15(8) should, in addition, complete question 9.

1. Registration Authority

To the

County Council of Durham

Note 1

Insert name of
registration
authority.

Note 2

If there is more than one applicant, list all names. Please use a separate sheet if necessary. State the full title of the organisation if a body corporate or unincorporate.

If question 3 is not completed all correspondence and notices will be sent to the first named applicant.

2. Name and address of the applicant

Name:

Full postal address:

Telephone number:
(incl. national dialling code)

Fax number:
(incl. national dialling code)

E-mail address:

3. Name and address of solicitor, if any

Name:

Firm:

Full postal address:

Post code

Telephone number:
(incl. national dialling code)

Fax number:
(incl. national dialling code)

E-mail address:

Note 3

This question should be completed if a solicitor is instructed for the purposes of the application. If so all correspondence and notices will be sent to the person or firm named here.

Note 4

For further advice on the criteria and qualifying dates for registration please see section 4 of the Guidance Notes.

** Section 15(6) enables any period of statutory closure where access to the land is denied to be disregarded in determining the 20 year period.*

4. Basis of application for registration and qualifying criteria

If you are the landowner and are seeking voluntarily to register your land please tick this box and move to question 5.

Application made under **section 15(8)**:

If the application is made under **section 15(1)** of the Act, please **tick one** of the following boxes to indicate which particular subsection and qualifying criterion applies to the case.

Section 15(2) applies:

Section 15(3) applies:

Section 15(4) applies:

If **section 15(3) or (4)** applies please indicate the date on which you consider that use as of right ended.

If **section 15(6)*** applies please indicate the period of statutory closure (if any) which needs to be disregarded.

5. Description and particulars of the area of land in respect of which application for registration is made

Name by which usually known:

Bede Kirk

Location:

54°32'57.1"N 1°55'01.1"W

As indicated on map attached (Appendix A)

Shown in colour on the map which is marked and attached to the statutory declaration.

Common land register unit number (if relevant) *

Note 5

The accompanying map must be at a scale of at least 1:2,500 and show the land by distinctive colouring to enable it to be clearly identified.

** Only complete if the land is already registered as common land.*

Note 6

It may be possible to indicate the locality of the green by reference to an administrative area, such as a parish or electoral ward, or other area sufficiently defined by name (such as a village or street). If this is not possible a map should be provided on which a locality or neighbourhood is marked clearly.

6. Locality or neighbourhood within a locality in respect of which the application is made

Please show the locality or neighbourhood within the locality to which the claimed green relates, either by writing the administrative area or geographical area by name below, or by attaching a map on which the area is clearly marked:

Parish of Barnard Castle

Tick here if map attached:

7. Justification for application to register the land as a town or village green

Note 7

Applicants should provide a summary of the case for registration here and enclose a separate full statement and all other evidence including any witness statements in support of the application.

This information is not needed if a landowner is applying to register the land as a green under section 15(8).

The green area adjacent to, and part of the curtilage of, the former police station at Bede Kirk, bordered by Harmire Road, to the West and Bede Kirk to the South and East, has been used for a period of, at least 50 years, for recreation by local people. Documented uses include children's play, leisure pursuits, including walking and sitting and for exercising dogs.

The area is also covered by trees, which are also subject to a Tree Preservation Order and which add to the recreational enjoyment of the area by local people, particularly of those in the directly adjoining housing.

Use of the land for recreation has been 'as of right' with no restriction or visible permissive limitation on access applied.

The Town Council of Barnard Castle is resolved to seek to preserve this green, open space for the continued, recreational enjoyment of local residents and visitors to the town.

Note 8

Please use a separate sheet if necessary.

Where relevant include reference to title numbers in the register of title held by the Land Registry.

If no one has been identified in this section you should write "none"

This information is not needed if a landowner is applying to register the land as a green under section 15(8).

8. Name and address of every person whom the applicant believes to be an owner, lessee, tenant or occupier of any part of the land claimed to be a town or village green

Durham Constabulary
Police Headquarters
Aykley Heads
Durham
DH1 5TT

Note 9

List all such declarations that accompany the application. If none is required, write "none".

This information is not needed if an application is being made to register the land as a green under section 15(1).

9. Voluntary registration – declarations of consent from 'relevant leaseholder', and of the proprietor of any 'relevant charge' over the land

Note 10

List all supporting documents and maps accompanying the application. If none, write "none"

Please use a separate sheet if necessary.

10. Supporting documentation

Site map (1:2,500) – Appendix A (marked as an Exhibit)

11. Any other information relating to the application

Note 11

If there are any other matters which should be brought to the attention of the registration authority (in particular if a person interested in the land is expected to challenge the application for registration). Full details should be given here or on a separate sheet if necessary.

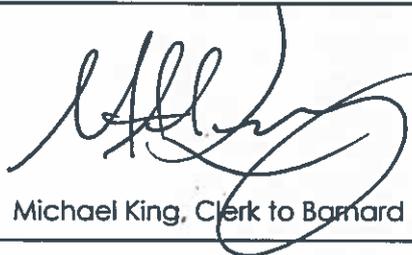
Note 12

The application must be signed by each individual applicant, or by the authorised officer of an applicant which is a body corporate or unincorporate.

Date:

5 July 2017

Signatures:



Michael King, Clerk to Barnard Castle Town Council

REMINDER TO APPLICANT

You are advised to keep a copy of the application and all associated documentation. Applicants should be aware that signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence. The making of a false statement for the purposes of this application may render the maker liable to prosecution.

Data Protection Act 1998

The application and any representations made cannot be treated as confidential. To determine the application it will be necessary for the registration authority to disclose information received from you to others, which may include other local authorities, Government Departments, public bodies, other organisations and members of the public.

Statutory Declaration In Support

To be made by the applicant, or by one of the applicants, or by his or their solicitor, or, if the applicant is a body corporate or unincorporate, by its solicitor, or by the person who signed the application.

¹ Insert full name (and address if not given in the application form).

I..Michael King.....,¹ solemnly and sincerely declare as follows:—
(Clerk to Barnard Castle Town Council)

² Delete and adapt as necessary.

1.² I am ((the person ~~(one of the persons)~~ who (has) ~~(have)~~ signed the foregoing application)) ~~((the solicitor to (the applicant) (³ one of the applicants))~~.)

³ Insert name if Applicable

2. The facts set out in the application form are to the best of my knowledge and belief fully and truly stated and I am not aware of any other fact which should be brought to the attention of the registration authority as likely to affect its decision on this application, nor of any document relating to the matter other than those (if any) mentioned in parts 10 and 11 of the application.

3. The map now produced as part of this declaration is the map referred to in part 5 of the application.

⁴ Complete only in the case of voluntary registration (strike through if this is not relevant)

4.⁴ I hereby apply under section 15(8) of the Commons Act 2006 to register as a green the land indicated on the map and that is in my ownership. I have provided the following necessary declarations of consent: _____

(i) a declaration of ownership of the land; _____
(ii) a declaration that all necessary consents from the relevant leaseholder or proprietor of any relevant charge over the land have _____

Cont/

⁴ Continued

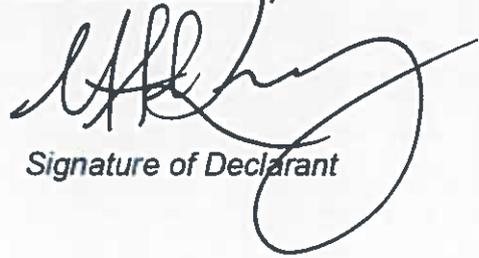
HP ~~been received and are exhibited with this declaration; or~~
~~(iii) where no such consents are required, a declaration to that effect.~~

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act 1835.

Declared by the said Michael King (Clerk to Barnard Castle Town Council)

at *Barnard Castle in the*
County of Durham

this Fifth day of July, 2017


Signature of Declarant

Before me 

Helen Clare Dexter
Solicitor
8 Newgate
Barnard Castle
DL12 8NG

Signature:

Address:

Qualification:

* The statutory declaration must be made before a justice of the peace, practising solicitor, commissioner for oaths or notary public.

Signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence.

REMINDER TO OFFICER TAKING DECLARATION:

Please initial all alterations and mark any map as an exhibit

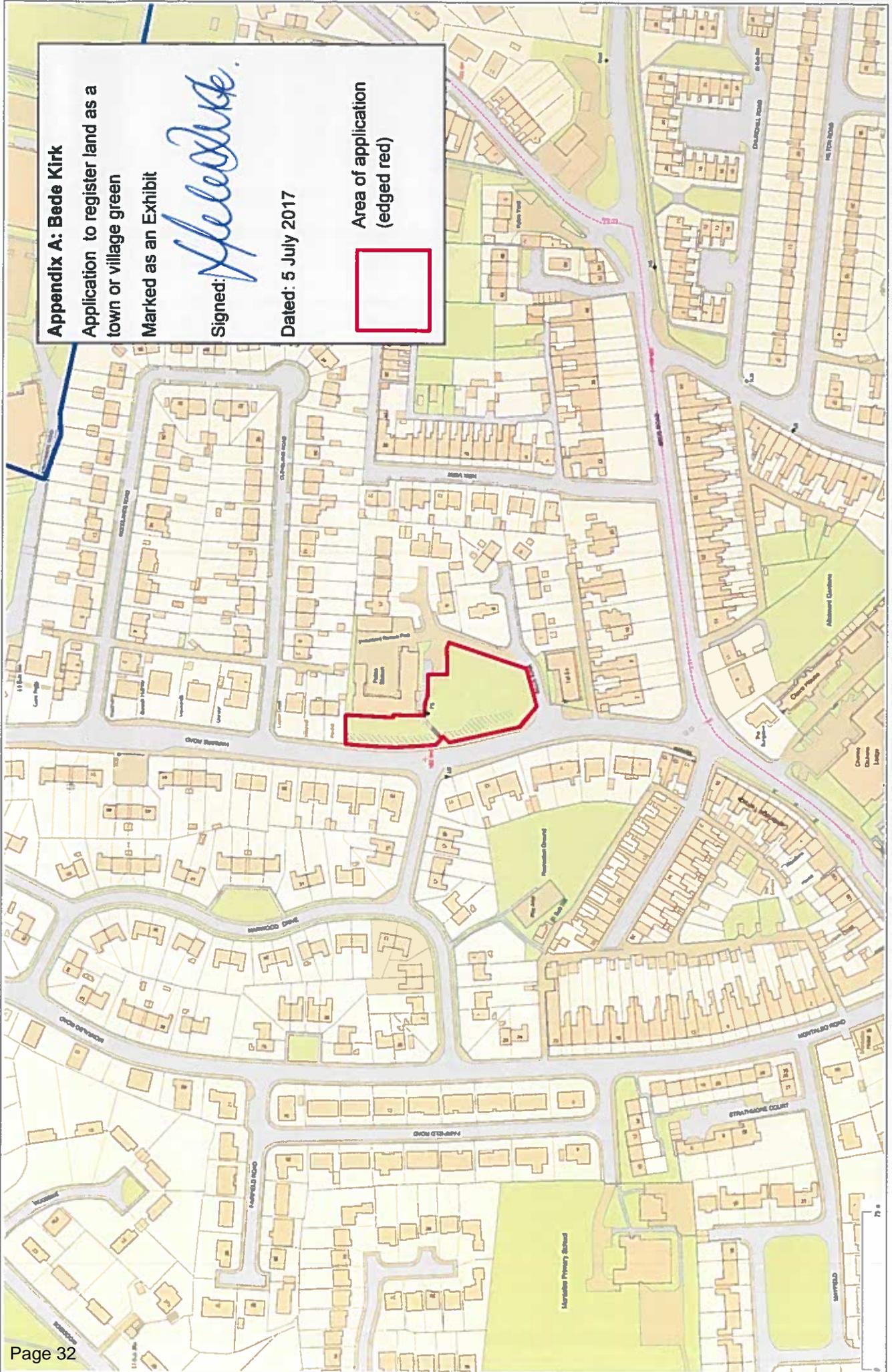
Appendix A: Bede Kirk

Application to register land as a town or village green
Marked as an Exhibit

Signed: 

Dated: 5 July 2017

Area of application
(edged red)



05/07/17
17 JUL 2017

RECEIVED
17 JUL 2017

2, Bode Kirk,
Barnack Castle
Co-Durham
DH 12 8DT.

Dear Sir,

In 1980 my family and I moved to the above address, there were two 'green areas' in the road on which not only my children but other children, including other children in the Kirk, played on. Residents also exercised their dogs there. One area was sold but the area with the trees at the front of the Police Office are still used by children/grandchildren in the area and dog walking still takes place. I think it would be detrimental to the beauty of this area if this 'green area' was sold and leave children in the area nowhere to play which would be disgraceful yours

G. A. CRYSTAL

Jane Woodward

From: Anne Bowron
Sent: 27 July 2017 20:53
To: clerk@barnardcastletowncouncil.gov.uk
Subject: Bede Kirk

Hello

I was born at 2 Bede Kirk in 1958 , and later moved into No. 4 , where I lived until approx May 1970 when my father retired from the Police Force. We then moved a little further away on Harmire Road . I moved to Darlington in 1976 but returned to Barney in 2002.

Part of the area that has already had houses built on was fenced off and had two horses kept there. I think they were owned by a gentleman who lived in Cleveland Road and was , I believe , the chemist at Timothy Whites in the town. The horses were called Daisy and Smokey.

The rest of the area was open and provided a wonderful playground for myself , my older sister and other children from Bede Kirk , Kirk View and other nearby streets.

We played football , Hide and Seek and all sorts of other games. We built dens and had all kinds of adventures

I once found an old iron candlestick , reminiscent of Wee Willie Winkie style , in the ground. I have no idea what happened to it.

There used to be an annual bonfire in the open field , in November. It was exciting , as the fire seemed very large to us small children . We had jacket potatoes cooked in the embers . It seemed to take days for the embers to cool.

As I am writing this , all sorts of memories are flooding back , so I apologise if it seems a bit disjointed and rambling.

Thanks for prompting these memories,

Anne Bowron nee Porteous

35 Harmire Road
Barnard Castle
DL12 8DL

Jane Woodward

From: [REDACTED]
Sent: 26 July 2017 19:35
To: clerk@barnardcastletowncouncil.gov.uk
Subject: Past Use of Bede Kirk

Dear Michael ,

I am writing in correspondent to your letter Past Use of Bede Kirk..... Dated – July 2017.

As a family we have lived in the New Houses, which were added to Bede Kirk in 2004.

I am afraid we don't have photographic evidence of our family using this land.

I can assure you both my girls and several other from the new estate have used this land on many occasions.

When the children were small it was very convenient for sledging, without going too far with wet toddlers.

Many of summer nights the girls used this land for games (soft ball, gymnastics etc) without been far from parents watchful eyes.

As the girls have now become teenagers, they congregated on the land with friends from this side of town , without having to be in the main town.

Not only do the children use this land , but many aspect of wild life too. Very often rabbits , birds ,owls and hedgehogs can be seen.

I personally think this land with the trees should be saved, as far too many houses are been built in the town on open scenic grassland.

This market town is slowly loosing the picturesque value, to new housing.

Harmire road is the start to Teesdale, used by many tourists and the trees/green grass are a perfect view as they head up the dale.

My other main concern.....

I am particularly worried about the extra traffic leading from the new houses and existing houses onto Harmire Road.

Kirkland's Day Nursery use this road for parking when dropping/collecting children from nursery. I have had many incidences where by children have ran between parked cars and I think this will potentially be worse for mothers/children when attending the nursery.

I am sorry for not having evidence from 1997 or photographic pictures to help your enquiry.

Kind Regards

Angela Bainbridge.



22 Cleveland Road,
Barnard Castle,
Co Durham

01833 631074

Dear Mr King,

writing in reply to your letter about

the use of Bede Kirk, I am unable to produce any pre 1997 photographs. I can state that for the past six years I have used this area to play ball with my dog and find it an important green space in Harmire road.

I have lived in the area for 34 years and during that time worked at GSK. I have found Bede Kirk not only an important visual amenity, but a welcome spot of shade as I cycled to work and have used it for many years.

This area is very important to Barnard Castle not only for the green space, but for the mature trees. The large trees in Galgate outside Maxwells were removed when the current parking spaces were constructed and the large trees in the area are being removed one by one. This area is

an important wildlife area especially for birds in a town that is systematically removing trees. (Cleveland road is another area of tree loss).

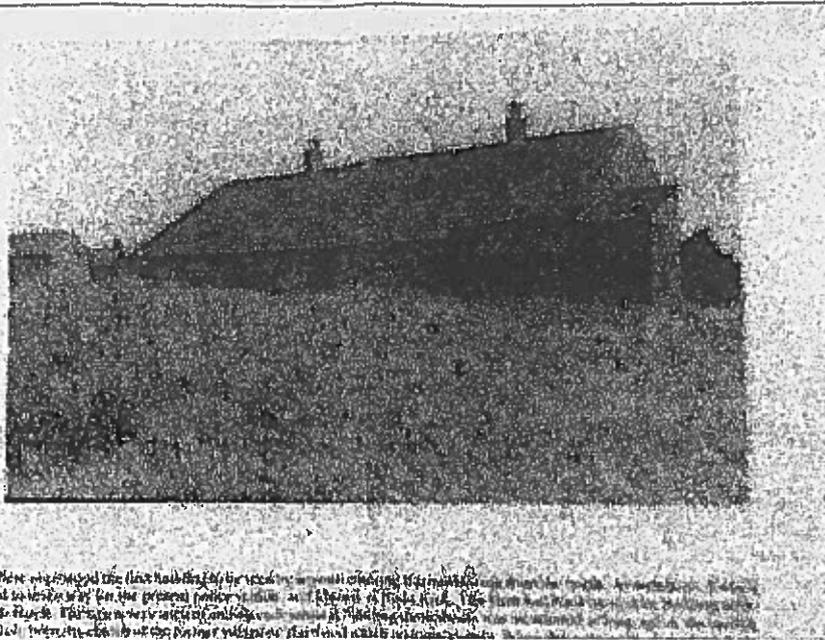
If there is anything I can do to prevent the loss of this area, please let me know.

Yours sincerely

David Stacey.

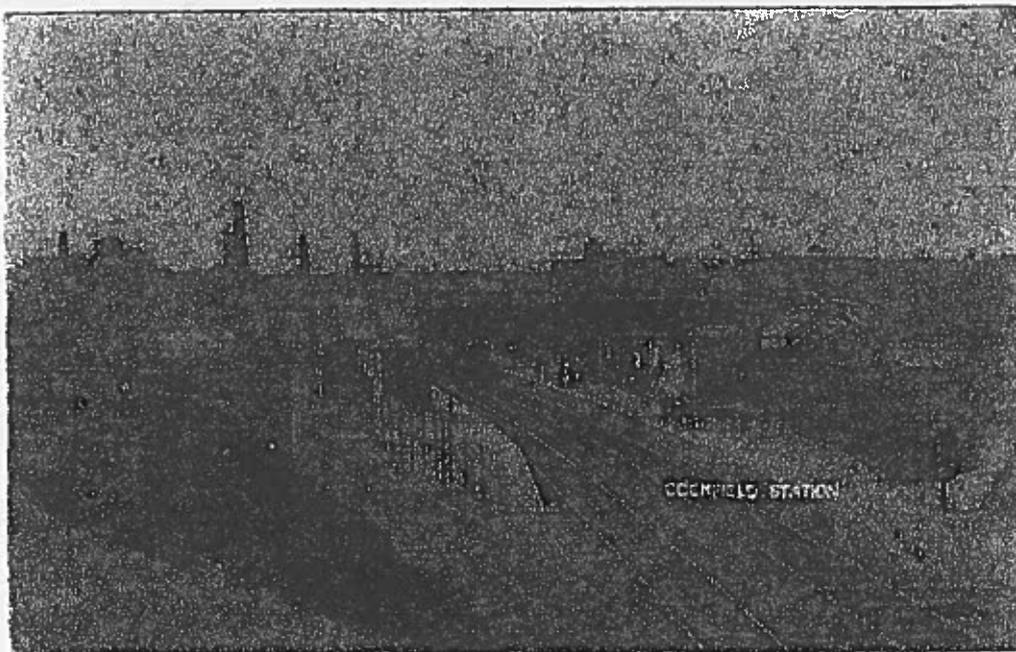
P.S. Bede road & Harwine road are the busiest roads in Barnard Castle and we need as many trees as possible close to this area to help trap traffic particulates and decrease pollution.

21 July



This building was the first building on the site. It was built in 1850 and was the first building on the site. It was built by the first owner of the site and was the first building on the site. It was built by the first owner of the site and was the first building on the site.

Caption Reads On this site there once stood the first building to be seen by anyone entering B/C. from the North. As seen here it was a farm, demolished to make way for the present police station. And known as Bede Kirk. The farm had been created by building extensions onto an old church. The site is very ancient and an ecclesiastical building thereabouts was mentioned as long ago as the twelfth century. It may have been the church of the former village of Marwood which no longer exists.



Cockfield Station.

15 Harnire Road. }
Frank Allinson.

In last 20 years has seen children playing and walking dogs etc.

Mr and Mrs G. Raine
4 Bede Kirk
Barnard Castle
Co. Durham
DL12 8DJ



Email: 

Dear Sir / Madam,

With respect to the sale and potential redevelopment of the Bede Kirk Police Station and adjoining land, we strongly feel that it is only right that we express our deep concerns that both the green and the trees may potentially be at risk depending on development plans.

Having lived in Bede Kirk for several years now, this area has been a central feature to the residents, and has been integral to us as a safe area to play for our children. It would be a travesty not only to the residents of Bede Kirk, but also the town to lose such a feature. Landmarks like this are few and far between now in increasingly developed central residential areas.

Therefore, within the scope of any potential redevelopment of the former police station, we would like to urge that common sense prevail, and this area be retained for future generations of Bede Kirk and the town. Residents of any property that may be built on the police station site would also benefit from the green, and to lose this land, especially the trees, would be a harsh injustice and detrimental to the town.

Again, we urge you to please consider any such development plans carefully based on the above.

Kind Regards

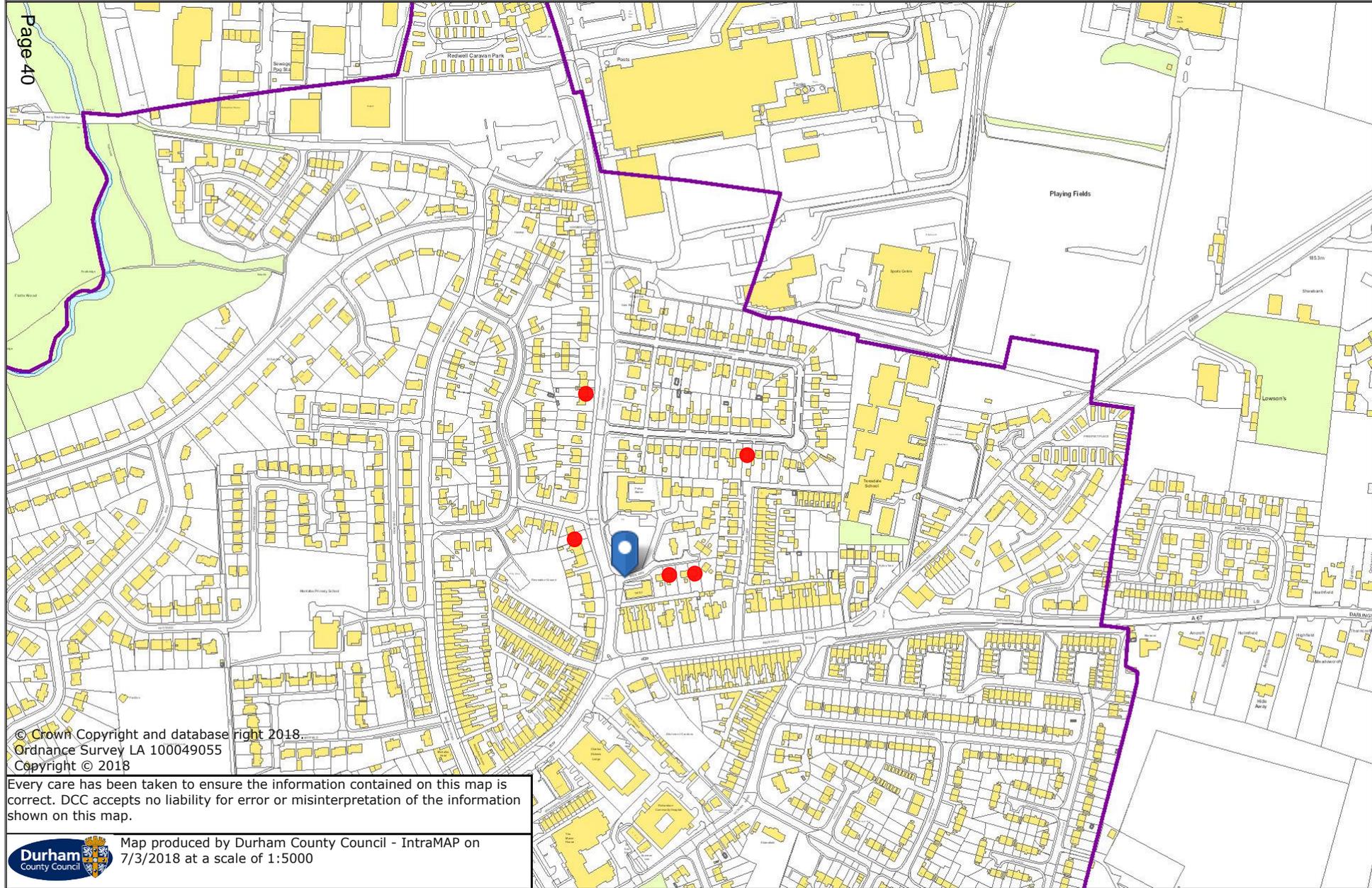
Gary and Gillian Raine



16 JUL 2017.

Durham County Council - IntraMAP

Page 40



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Ordnance Survey LA 100049055
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Every care has been taken to ensure the information contained on this map is correct. DCC accepts no liability for error or misinterpretation of the information shown on this map.



Map produced by Durham County Council - IntraMAP on 7/3/2018 at a scale of 1:5000

02 November 2017

Head of Legal and Democratic Services
Durham County Council
County Hall
Durham
DH1 5UL

6 NOV 2017

Dear Sir or Madam

Ref: Application for Village Green Status, Former Police Station Site, Bede Kirk, Barnard Castle

We are a local Housing Association based in Darlington and have recently submitted a pre-planning application to build 17No. 2 bedroom apartments with communal facilities and 5No 2 bedroom bungalows on the site. Our Architects are in close contact with the planning authority to ensure that the proposed development will enhance the area bringing much needed social housing for persons over the age of 55 to the area. The land is presently owned by Durham Police Authority and they have agreed the land sale for social housing purposes. The Homes and Communities Agency have also agreed to support our grant submission to help finance this project.

We intend that the new dwellings will be built to a high standard using materials that sympathetically match with the surroundings and will maintain the ecological values of the site. We have to date carried out ecological surveys of the trees and buildings, there were no protected species present and any trees identified for removal will help the remaining trees to survive. We have also commissioned ground investigations and an archaeological survey to ensure any historical remains that may be present will be recorded and saved. The apartments will be built over the footprint of the existing buildings on the site with new bungalows adjacent for minimum impact maintaining as many of the trees and green space as possible, any trees removed will be replaced with new.

We must register our objection to the Village Green Application and would hope that you could support this development as much needed housing for Barnard Castle and bring the site and the local area back to life as a place where people will be proud to live.

Thank you in anticipation and cooperation in this matter.

Yours sincerely



Andrea Abbott
Director of Customer Services

calls welcome
via text relay



Information can be made available in other languages, or other formats such as Braille or Audio Tape, on request. Please ask a member of our staff for more information, or if you need any other help or advice. (They can arrange to speak to you in your own language if you need them to.)

L'information peut être rendue disponible dans d'autres langues, ou en d'autres formats tels que braille ou bande magnétique audio, sur demande. Veuillez demander à un membre de notre personnel pour plus d'information, ou si vous avez besoin de tout autre aide ou conseil. (ils peuvent organiser de vous parler en votre propre langue si vous avez besoin qu'ils le fassent.)

Bilgiler istenildi_inde di_er dillerde de temin edilebilir ayrıca görme özürülülerin kullanabilece_i kabartma alfabesiyle veya Teyp kaseti _eklinde de hazırlanabilir. Daha fazla bilgi için veya herhangi bir konuda yardım ve tavsiye ye ihtiyacınız varsa lütfen görevli personelden birisiyle konu_unuz. (E_er ihtiyacınız varsa personelimiz sizinle kendi dilinizde konu_abilmek için bir tercüman ayarlayabilir).

نستطيع توفير المعلومات بلغات اخرى وصيغ اخرى مثل البريل (لفاقدي البصر) والشرائط الصوتية، حسب الطلب. يرجى الاستفسار من احد موظفينا للحصول على المزيد من المعلومات او للحصول على المساعدة او الارشاد. (يستطيع موظفونا توفير وسائل اخرى للتحدث معكم بلغتكم اذا احتجتم الى ذلك.)

该资料已被翻译为其它的语言，也有诸如盲文或录音磁带的其它形式供选。请问我们的职员以便获得进一步的资料、其它帮助或建议。(如果你有需要，他们可以安排用你自己的语言来和你交谈。)

در صورت درخواست ، اطلاعات به زبانهای دیگر در دسترس قرار خواهد گرفت و یا به هر شکل دیگر از قبیل خط برجسته و یا صدا. جهت دریافت اطلاعات بیشتر و یا دریافت راهنمایی و کمک، لطفاً از یک کارمند سؤال کنید. (آنها میتوانند ترتیبی بدهند که در صورت لزوم با زبان خودتان با شما صحبت کنند.)

زانیاریانہ بہ زمانی خوتان دہ ست دہ کہ ویت، و یا بہ شیوہ کانی دیکہ، لہ وانہ بہ خہ تی گہ ورہ و یا بہ دہ نگ. نہ گہ ر پیویستت بہ زانیاری زورتر، یارمہ تی و یا ناموزگاری ہہ یہ، تکایہ پرسیار بکہ لہ یہ کیک لہ کارمہ ندہ کان. (نہ وان کاریکی وادہ کہ ن کہ بہ زمانی خوت لہ گہ لتا قسہ بکہ ن.)

ਬੇਨਤੀ ਕਰਨ ਤੇ, ਜਾਣਕਾਰੀ ਦੂਸਰੀਆਂ ਬੋਲੀਆਂ, ਜਾਂ ਹੋਰ ਰੂਪਾਂ ਜਿਵੇਂ ਕਿ ਬਰੇਲ ਜਾਂ ਆਡੀਓ ਟੇਪ ਤੇ ਵੀ ਦਿੱਤੀ ਜਾ ਸਕਦੀ ਹੈ। ਹੋਰ ਜਾਣਕਾਰੀ ਵਾਸਤੇ, ਜਾਂ ਜੇਕਰ ਤੁਹਾਨੂੰ ਹੋਰ ਸਹਾਇਤਾ ਜਾਂ ਸਲਾਹ ਦੀ ਲੋੜ ਹੈ ਤਾਂ ਕ੍ਰਿਪਾ ਕਰਕੇ ਸਾਡੇ ਸਟਾਫ਼ ਦੇ ਕਿਸੇ ਮੈਂਬਰ ਨੂੰ ਪੁੱਛੋ। (ਜੇਕਰ ਤੁਸੀਂ ਚਾਹੁੰਦੇ ਹੋ ਤਾਂ ਉਹ ਤੁਹਾਡੇ ਨਾਲ ਤੁਹਾਡੀ ਆਪਣੀ ਬੋਲੀ ਵਿਚ ਗੱਲਬਾਤ ਕਰਨ ਦਾ ਪ੍ਰਬੰਧ ਕਰ ਸਕਦੇ ਹਨ।)

یہ معلومات گذارش کرنے پر دیگر زبانوں یا دیگر صورتوں، جیسا کہ، بریل (بھری ہوئی لکھائی)، یا پینا اشخاص کے پڑھنے کی لکھائی (یا سی ڈی اور ٹیپ پر بھی فراہم کی جاسکتی ہیں۔ مزید معلومات یا اگر آپ کو کسی مدد یا مشورے کی ضرورت ہو، تو براہ مہربانی ہمارے عملے کے ممبر سے بات کریں۔) (اگر آپ کو ضرورت ہو تو وہ آپ سے اپنی زبان میں بات کرانے کا انتظام کر سکتے ہیں)۔

Durham Constabulary

Helen Lynch
Head of Legal and Democratic Services
Durham County Council
County Hall
Durham
DH1 5UL

9 NOV 2017



Altogether Better Policing
8th November 2017

Dear Ms Lynch,

Objection to registration of land as a town/village green
Land known as Bede Kirk, Barnard Castle
Application reference NL44
Applicant: Michael King, Clerk to Barnard Castle Town Council

I am writing in response to the application detailed above in relation to land owned by the Police and Crime Commissioner for Durham. I act as agent on behalf of the Police and Crime Commissioner and would advise that this application is not supported.

I object to the application made by Mr King and provide the following statement of facts in relation to the site:

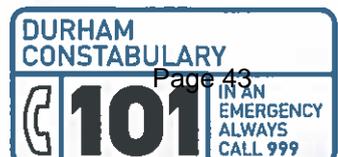
1. The freehold of the claimed land is owned by the Police and Crime Commissioner (PCC) and previously by the Police Authority and County Council as predecessors in title. The land is held for the purposes of providing a police station. Ownership originally included the former police houses adjoining the site which have now been sold.
2. The police station was in operation and open to the public between 1977 and 2017.
3. The land has been held and the police station use has operated as part of the statutory duty of the PCC and his predecessors to provide a policing service to the public of County Durham and Darlington.
4. The building had a public front counter open during the day and has in its time had an operational custody facility within. Contact with policing services out of hours has been provided to the public via telephone facility placed to the front of the building.
5. As such, the public have been able to openly access the site on a 24 hour basis for over 30 years.
6. During this time, the public have therefore had a right to use the land with the implied consent and licence of the PCC and his predecessors. This implied permission has been open to all members of the public within County Durham, Darlington and beyond.
7. The public are welcome to enter the site by the nature of the public service provided. However, operational staff have no knowledge of the public holding any local events on the land, using the site for pastimes or for sport over the last 20 years. Police co-ordinated public events have been held on site over the last 20 years for public engagement purposes and as part of policing statutory duties. There have been known dog walkers on the site over the last 20 years but where they have not been visiting the station, they have crossed



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the land to access the former police houses behind the station rather than use the land as any form of pleasure ground.

The definition of a town or village green (TVG) is set out in Section 15 of the Commons Act 2006 as "*land ... where (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports or pastimes on the land for a period of at least 20 years; and (b) they continue to do so at the time of the application.*"

Considering the definition of TVG specifically in view of the above site facts;

8. While a '*significant number*' of members of the public have accessed the site as an operational police station since 1977, there is no knowledge of a significant number of people accessing the site for other purposes over the last 20 years.
9. The building has operated not just to serve a particular '*neighbourhood or locality*' but has been a key strategic asset in delivery of the police service to the whole of County Durham and Darlington. The site has not only been accessed by local residents but by the wider public including visitors to the town from outside of the region.
10. The site has been used an operational police station for over 30 years so public access and use of the land has not been '*as of right*' but '*by right*' with consent of the PCC and his predecessors in order to fulfil their statutory duties in relation to policing
11. The operational staff who have been based at the site over the last 20 years have no knowledge of any '*lawful sport or pastimes*' indulged by the public on the land. This in turn suggests that any use for such purposes has not been overt but has been secretive. To be '*as of right*', these uses should be without force, secrecy or permission.

Finally, with regard to the evidence submitted to support the TVG application, I have examined this and do not feel that there is a demonstration that 'a significant number of the inhabitants of any locality, or of any neighbourhood in a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years'.

I therefore request that you acknowledge this letter as a formal objection to the application.

If you require more information, please contact me on the details provided below.

Yours sincerely,



Michelle March
Head of Estate
Durham Constabulary

Tel 0191 375 2222

Email michelle.mafrch@durham.pnn.police.uk



Barnard Castle Town Council

Town Clerk: Michael King
Woodleigh, Flatts Road
Barnard Castle
DL12 8AA

01833 690970
clerk@barnardcastletowncouncil.gov.uk

Jill Errington
Senior Committee Services Officer
Resources
Durham County Council
County Hall
Durham DH1 5UQ

28 November 2017

COMMENTS ON OBJECTIONS RECEIVED

Application to Register Land as Village Green – Land Known as Bede Kirk, Barnard Castle

Dear Jill,

The town council acknowledges receipt of the two objections raised to its application to register land at Bede Kirk as a village green, which were attachments to your letter to me dated 21 November.

The town council has resolved, through its Planning Committee, under delegated powers, at its meeting on 27 November, to respond with the following comments.

In respect to the objection lodged by Andrea Abbott on behalf of Railway Housing Association, the town council notes that the objection does not address the substance of the application and does not challenge the basis on which the application is made. The statement is speculative in respect of the housing association's prospective, and as yet, unplanned, development of the site. The housing associations interests in the land do not amount to a formal 'trigger event' under the *Commons Act 2006*. The purpose of the town council's application is in response to public sentiment seeking to prevent development of the green space, which has long been part of the site. Consequently, the town council does not recognise the grounds for the housing associations objection, which is irrelevant to the established and historic use of the green space.

The objection raised by Michelle March, on behalf of Durham Constabulary, raises seven points of fact and four material points in objection. The town council's comments with reference to these eleven points are:

1-7. - The ownership of the land is not disputed. However, there has been no indication over the past 20 years (and there is none now) that the land is or was used operationally or as an obvious part of the curtilage of the police station to the north of the application boundary. There was throughout the period of the twenty years

leading up to the application being made no notice or physical restriction either preventing or granting consent or licence to use the open space. The space is not traversed by any footway by which access might only be transitory. The town council notes that the use of the site for dog walkers is acknowledged in paragraph 7 'over the last 20 years'.

The town council also notes that Ms March characterises these dog walkers as local to Bede Kirk. Using the *Sunningwell* case definitions, provided there is sufficient evidence to show the use is predominantly by local inhabitants, the fact that the land is also used by some members of the wider public will not defeat the claim. Similarly, activities do not need to be either organised or have a communal element. Modern activities such as dog walking, kite flying, solitary or family activities are sufficient to justify registration. In terms of the land being used 'as of right', evidence that the land has been used without force, without secrecy and without permission will suffice.

The use of the site for children's play, recreational dog walking and family activities is asserted by local residents in the evidence submitted. This is not addressed in the Durham Constabulary objections.

8 & 9. - Considering the precedent of the *Staffordshire* case, in terms of local inhabitants, 'significant' does not have to be a considerable number it only has to be shown that the use is sufficient to indicate that it is in general used by the local community. The relevant use of the green space over which the application is made is disassociated from the operational use of the police station site itself, which does not form part of the area for which the application is made.

Section 98 of the 2000 Act amended the definition of a village green. The existing definition, as amended, includes land on which "a significant number of the inhabitants of any locality, or of any neighbourhood within a locality" have used the land for recreation. This amendment gives a more flexible definition so that now, as long as a sufficient number of the people using the land come from in or around the residential area in which the land is situated, it is capable of registration.

10. - In objecting to the assumed use 'as of right' Ms March offers no evidence that the use 'by right', with consent is documented at any time covering the twenty years relevant to the application. To the disinterested observer, the green area is not fenced off or directly associated with the adjacent former police station and there is no signage either preventing or expressly consenting to public access. The town council accepts that permission does not have to be in writing, or spoken, it can be implied, but only if the use is subsequently interrupted, thus giving a clear indication

of permission. However, if the owner merely does nothing to prevent the use of the land for recreational activities, even if he knows about the activities, his toleration would not be sufficient to imply he had given permission for such use. In this case, there is no evidence that use has been expressly granted or prevented over the relevant period, merely that it has, to the extent it has been recognised, been tolerated. In particular the town council notes that at no time has Durham Constabulary, Durham Police Authority or, latterly the Police and Crime Commissioner made a *Landowner Statement* under the provision of the Act with respect to the land at Bede Kirk.

11. -This statement contradicts the statement made by Ms March in paragraph 7 in relation to dog walkers. Dog walking, irrespective of any other use, constitutes a 'lawful pastime' under the legislation. That it is acknowledged in the objection refutes any assertion that it is 'secretive'. The lack of knowledge of operational staff of other activity, evidenced by local residents, does not, in the town council's opinion, define that use as 'secretive'.

The town council notes the internal contradiction of Ms March's points in paragraphs 10 and 11. For access to be granted 'by right', then that access must be known. For access to be 'secretive', then it must be unknown to the land owner. It cannot be both. The town council asserts that it is neither.

Overall, the town council sees no substance in either letter of objection to refute its application for Bede Kirk to be registered as a village green on behalf of the residents of Barnard Castle. Indeed Ms March has helpfully provided additional evidence of qualifying use by dog walkers over the relevant period.

The town council looks forward to the determination of this application by Durham County Council as the registration authority.

Yours sincerely,



Michael King
Clerk

¹ R v Oxfordshire County Council and others, ex parte Sunningwell Parish Council - House of Lords [1999]

² R v Staffordshire County Council, ex parte Alfred McAlpine Homes Ltd [2002]

Jill Errington

From: Jill Errington
Sent: 16 January 2018 11:27
To: 'Peter Ashman'
Subject: RE: Save Bede Kirk Green Barnard Castle

Categories: Egress Switch: Unprotected

Dear Mr Ashman

I acknowledge safe receipt of your e-mail in connection with the application for village green registration at Bede Kirk, Barnard Castle.

Yours sincerely
Jill Errington

Senior Committee Services Officer
Legal and Democratic Services
Tel: 03000 269703

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From: Peter Ashman
Sent: 15 January 2018 11:02
To: Jill Errington <Jill.Errington@durham.gov.uk>
Cc: Cllr Richard Bell <Richard.Bell@durham.gov.uk>
Subject: Save Bede Kirk Green Barnard Castle

I wish to submit the following information to support the retention of the existing Bede Kirk Green and wooded area, which although has diminished in area has existed for all time.

It not only provides a visual and recreational attraction to Bede Kirk but also to the immediate area I.e Bede Road, Kirk View, Harmire Road, Cleveland and Woodland Roads and no doubt to many more Barnard Castle residents.

It is special, it is like a "mini Scar Top, also special to Barnard Castle.

This green and wooded area also serves as a barrier and calm oasis for the existing residents of Bede Kirk, from the exceedingly busy Harmire Road which provides the major access to GSK factory. As it happens, this tranquil and pleasant area, is exemplified by the recent photograph taken by the Teesdale Mercury and published in their Wednesday, 13/12/2017 edition page 6. Would you build houses on this beautiful setting?.

The existing area of Bede Kirk comprises 2 cul - de - sac developments, each of 8 houses, the Green and existing Police Station, associated buildings and hard standing.

The latter area, now abandoned, would benefit from new development which, when completed, would provide a third cul-de-sac of houses, completing the enclosure of the green, i.e a village like area with its own village green

A major additional and positive outcome from such a development I.e. for "older people's social housing", is that the Green would be more suitable and amenable to the incumbents than just houses.

Therefore the retention of this "Green" can only enhance the attraction to any proposed development and at the same time continue to provide an asset, a pearl to the community. It's loss would surely be a horrific price to pay for an extra few houses.

Yours faithfully

Peter S. Ashman
Moira Ashman

15 Bede Kirk
Barnard Castle
DL12 8DJ

Sent from my iPad
Sent from my iPad

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Assessment of user evidence

6 letters submitted detailing use (7 persons in total as 2 from same household) as follows:

1) *Anne Bowron of 35 Harmire Road*

Provides evidence of childhood use from 1958 up to 1976 when she left Barnard Castle.

Although she moved back to Harmire Road in 2002 she does not provide any further details of use.

Her evidence of use therefore relates to a period which is outside of the relevant Qualifying Period of 1997-2017

2) *Angela Bainbridge of New Houses, Bede Kirk*

She says that from 2004 her children, and others, played on the Application Land and now that her children are teenagers they use it for socialising with friends.

Her evidence of use therefore relates to 2004 to 2017 only and not to the whole of the Qualifying Period

3) *David Stacey of 22 Cleveland Road*

He has used the Application Land for the last 6 years (2011-2017) for exercising and playing with his dog. Has lived in the area for 34 years and has used the Application Land 'for many years' as a spot of shade when cycling to work at the nearby GSK plant.

The dog exercising use is relatively recent and does not extend over the whole of the Qualifying Period. It is not clear over what period he has used the Application Land for shade when cycling to work as he simply says it was many years, nor are any details given of how frequently he cycled to work and stopped for shade on the Application Land.

4) *Fank Allinson of 15 Harmire Road*

He has seen children playing on the Application Land and people walking dogs over the last 20 years.

Mr Allinson does not give evidence of use of Application Land himself. He has merely observed others using it. Accordingly, no details of who he has seen using the Application Land, how frequently or where the users come from is provided. It is also unclear whether dog walkers he observed were walking a defined route or anywhere on the Application Land.

5) & 6) – *Gary & Gillian Raine of 4 Bede Kirk*

Their children have played on the Application Land and they have lived in Bede Kirk for several years.

However, the exact period over which their children have used the Application Land is not provided so it is unclear whether it is within or without the Qualifying Period. Equally, no details of frequency of the use are provided.

7) *GA Chrystal of 2 Bede Kirk*

Provides evidence of use by own children/grandchildren and other children as well as dog walking since 1980.

On the face of it, this covers the whole of the Qualifying Period but in respect of childrens' play, there are no details as to frequency, where the other children came from, where the dog walkers came from (although he does say they were residents) or whether the dog walkers followed a particular route or walked anywhere on the Application Land.