

**Application for Village Green
Registration
'The Field', West Lane, High
Westwood**

**Report of Colette Longbottom, Head of Legal and Democratic
Services**

Introduction

1. The Council is the registration authority for town and village greens under the Commons Act 2006. The Council must act impartially in its determination.

Purpose of the Report and Background

2. The purpose of this report is to provide the Committee with advice in order to assist in the determination of an application to register an area of land at West Lane, High Westwood as town or village green under the provisions of the Commons Act 2006.
3. An application dated 17th May 2010 ("the Application") was submitted to the Council by Mrs Lisa Buxton on behalf of High Westwood Residents Association ('the Applicant') to register an area of land known as the Field, West Lane, High Westwood ("the Land") as a town or village green. The Application was allotted reference NL 34.
4. A copy of the Application (without the supporting user evidence) is attached at appendix 2. Thirteen evidence questionnaires (attached at appendix 3) have been submitted together with a letter from the occupants of Astley House. A spreadsheet summary of the supporting evidence prepared by Officers is attached at appendix 4.
5. As required by the Commons Registration (England) Regulations 2008 notice of the Application was published on the Council's website and in the local press.
6. The Council's Access and Rights of Way section has advised that there are no recorded public rights of way over or across the Land. There is a public right of way (footpath no. 7 Consett) that borders the south east corner of the Land.
7. The local Member, Councillor Alan Shield, has expressed his support for the Application. His recollection is that the Land has only been used by the children living in and around the hamlet.

The Law

8. Village greens which were not registered as such by 31st July 1970 ceased to be village greens and can now only 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 land.
9. The Commons Act 2006 ('the Act') is the statutory regime governing town and village greens, replacing the registration system enacted by the Commons Registration Act 1965. Section 15 of the Act sets out the requirements that must be satisfied if land is to be registered as a new green. The Council, as the commons registration authority, must determine whether a village green has come into existence as a matter of law.
10. Section 15(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 and 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.
11. The upon review of the elements of the test:-
 - '...a significant number...'
 - a. It is necessary to show a general use by the local community as opposed to mere occasional use by trespassers. It is not assessed by a simple head count of users.
 - '...of the inhabitants of any locality...'
 - b. This is not defined by any arbitrary margins but there must be a recognized county division such as a borough, parish or manor. An ecclesiastical parish can be a locality. It is acceptable for users to come 'predominately' from the locality.
 - '...or of any neighbourhood within a locality...'
 - c. A neighbourhood must be clearly defined and have sufficient cohesiveness. It must also be within a locality.
 - '...have indulged as of right...'
 - d. Use 'as of right' is without permission, secrecy or 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 landowner.
 - '...in lawful sports and pastimes on the land...'

- e. This is very broadly interpreted so that general recreational use including walking with or without dogs, children playing etc would be included.

‘..for a period of at least 20 years..’

- f. The fulfilment of the 20 years continuous use must immediately precede the date of the application.

Burden and standard of proof

- 12. For an application to be successful all of the elements of section 15 of the Act have to be strictly proven.
- 13. The Applicant must demonstrate that all of the elements contained within section 15 have been satisfied on ‘the balance of probabilities’. The burden of proof is with the Applicant.

Application Land

- 14. By way of background High Westwood was once a thriving village, due to the local coal mining but is now a collection of a few private houses. The former Westwood County Junior Mixed and Infant School was built in 1879 and a huge centenary celebration was held in 1979. The school was closed in approximately 2003 and is now a housing complex. There is still a popular and regularly used cricket pitch although the football pitch is now relatively unused. The village is surrounded by countryside; the railway line is now part of a country walkway.
- 15. The extent of the Land is as shown edged red on the plan attached at appendix 1. That plan also shows, with a marked ‘x’, the approximate location of the dwellings of a number of the residents that have provided the user evidence.
- 16. To the north of the Land is Lonsdale Court, a residential development of 5 dwellings in a courtyard style. On the west side is an adopted highway then open land consisting of a cricket ground and football ground. The east side consists of open land, with a public footpath and on the south side is an open field.
- 17. The Land is predominately enclosed, with a double metal gate giving access from West Lane and a gate from Lonsdale Court.

Ownership

- 18. The Land (0.64 hectares) is owned by the Council. It was used as a playing field in connection with Westwood County Junior Mixed and Infant School. The school closed in 2003.

Assessment of Applicant’s evidence

- 19. The Council is not in receipt of any evidence that would undermine or contradict the user evidence at appendix 3. It must, unless tested at Inquiry, be taken on face value and afforded significant weight in the assessment of the Application.

20. This Committee must be satisfied, based on the evidence, that each element on the test has been proven on the balance of probabilities. In other words, it must be more likely than not that each element of the test has been satisfied. Upon review of the elements of the Section 15 definition by reference to the facts provided:-

Inhabitants of the locality/neighbourhood within the locality

21. As shown on the plan included in appendix 1 the users are from the locality of High Westwood. This element of the test appears to have been satisfied.

Use as of right (without force, stealth or permission)

22. There is no evidence that any of the users ever sought permission to use the Land from the landowner. In this case there was no question of force or stealth. So the only question is whether the residents' user was by the licence of the landowner.

23. It is clear from R (Beresford) v Sunderland City Council [2004] that a landowner may so conduct himself as to make clear, even in the absence of any express statement, notice or record that the residents use of the land is pursuant to his permission. This may be done, for example, by excluding the residents when the landowner wishes to use the land for his own purposes, or by excluding the inhabitants on occasional days. The landowner in this way asserts his right to exclude and so makes plain that the residents' use on other occasions occurs because he does not choose on those occasions to exercise his right to exclude and so permits such use.

24. In relation to the Application it is not clear whether, during the period the Land formed part of the school playing fields, the general public were excluded from using the Land. The school use ended around 2003. However common sense would dictate that the school would not want people, say, walking their dogs on the Land when it was in use by school children playing. One witness states that the Land was known as 'the playing field' and another as the 'school field'. There is also reference to use for school fairs and school activities until the school closed. This appears to indicate that the Land was used regularly for school activities.

25. The Land is enclosed with two access gates. That seems consistent with the need to keep children safe from traffic when they were using the Land for school activities.

Lawful sports and pastimes

26. The range of activities that have been undertaken on the Land include dog walking, children playing, summer picnics and bonfires. This element of the test appears to have been satisfied.

For at least 20 years and continuing

27. The relevant period for the Application is 1990 to 2010. Out of the 13 witness statements there are 5 statements confirming usage for that period referring,

predominately, to children playing. No distinction has been made between children using the Land as part of the school use and the children using the Land unconnected to the school. After 2003 when the school closed there is no need to make the distinction; it is the period between 1990 and 2003 that is relevant.

28. It now falls to the Council as registration authority to determine the Application. The options are:-
- a. To accept the Application for registration of the Land as a village green on the basis that the test contained within section 15 of the Commons Act 2006 has been satisfied on the balance of probabilities; or
 - b. To refer the matter to a non-statutory public inquiry before Members or before Counsel to determine the Application. A non- statutory public inquiry is usually only necessary where the evidence needs to be tested by cross examination such as where the landowner is opposing the registration or there are inconsistencies with the evidence; or
 - c. To reject the Application for registration of the Land as a village green on the basis that the test contained within section 15 of the Commons Act 2006 has not been satisfied on the balance of probabilities.
29. By way of summary Officers are of the view that the legal test has not been satisfied as:-
- a. The Land appears to have been used regularly for school activities and the school use would have been with permission; and
 - b. Out of the 13 statements 5 relate to the 20 year period and predominately refer to children playing.
30. 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 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 the Land not be registered as a town or village green

Representations from Interested Parties

31. None

Recommendation:

It is **RECOMMENDED** that the Land is not registered as a town or village green and the application be rejected.

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Implications

Finance

The cost of arranging an Inquiry is part of the Council's statutory responsibilities.

Staffing

There are no staffing implications.

Risk

There are no specific risk issues.

Equality and Diversity

The Inquiry process is intended to give all interested parties the opportunity to participate.

Accommodation

Not applicable.

Crime and disorder

Not applicable.

Human rights

The Inquiry will be the fairest way of permitting interested parties to exercise their rights.

Consultation

The application has been publicised by way of Notice in the locality, the local press and posted on the Council's website.

Procurement

Not applicable.

Disability Issues

Not applicable.

Legal Implications

The application must fulfil the requirements of Section 15 of the Commons Act 2006.