

Application for Village Green Registration

**‘Church Green’
Opposite St Mary’s Church,
Blackhills Terrace, Horden,
County Durham**

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 land known as the ‘Church Green’ lying opposite St Mary’s Church, Blackhills Terrace, Horden (“the Land”) as town or village green under the provisions of the Commons Act 2006. The extent of the Land is shown edged red on the plan attached at appendix 1.
3. An application dated 10th October 2012 (“the Application”) was submitted to Durham County Council by Horden Parish Council (“the Applicant”) to register the Land as a town or village green. The Application was allotted reference NL 40. A copy of the Application (without the supporting user evidence) is attached at appendix 2.
4. In support of the Application 20 evidence questionnaires were submitted, copies of which are attached at appendix 3. A spreadsheet summary of the supporting evidence prepared by Officers is attached at appendix 4.
5. As required by the Regulations a notice of the Application was published in the local press. No objections to the Application have been received.

The Law

6. 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 site.

7. 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.

Burden and standard of proof

8. For the Application to be successful the Applicant must demonstrate that all of the elements contained within section 15(2) have been satisfied. The burden of proof is with the Applicant and the standard of proof is 'the balance of probabilities'.

Application Land

9. For ease of reference plans and photographs showing the extent of the Land are attached at appendix 5:-
 - a. an aerial photograph of the Horden area from around 2010 ('plan 1');
 - b. an aerial photograph of the Horden area from around 2001 ('plan 2');
 - c. the adopted highways plan ('plan 3');
 - d. a map showing the Land circa 1980 – 1994 ('plan 4'); and
 - e. a map showing the Land circa 1970 – 1979 ('plan 5').
10. The Land is bounded by walls which have gaps for access, leading onto paths over and across the site. On the northern side is St Mary's Church, on the south and east sides residential premises and on the western side open land.
11. There are various footpaths over and across the Land. The Rights of Way Team have advised that there are no recorded rights of way across the Land.
12. The land ownership is unknown.

Assessment of Applicant's evidence

13. The Council is not in receipt of any evidence that would undermine or contradict the user evidence included at appendix 3. It must, unless tested at inquiry, be taken on face value and afforded significant weight in the assessment of the Application.
14. 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(2) definition by reference to the facts provided:

A significant number and locality/neighbourhood

- a. There must be a significant number of the users who originate from the whole of the relevant neighbourhood. By reference to the plan attached at appendix 1 the users live or lived within the Horden area. There is a consistent spread of users from other parts of the area.

Use as of Right

- b. The Land is enclosed, with gaps in the wall to permit access onto the footpaths. There is no evidence that any notices seeking to control use have ever been erected on the Land by or on behalf of the landowner. The use detailed in the user evidence is sufficient to bring to the attention of the landowner that rights are being asserted.
- c. There is no evidence that any of the users have ever sought or obtained permission to use the Land from the landowner.

Lawful sports and pastimes

- d. The user evidence states that the range of activities undertaken on the Land includes walking, winter sledging, ball games, family days out, picnics, roller skating and bike riding.
- e. By reference to the user evidence (appendix 3) nineteen (95%) of the statements indicate walking on the Land or using it in order to access other locations as the main use. Other uses, such as watching weddings at the nearby church, appear to be ancillary to that main access use. The references to playing as a child appear, for the majority of the witnesses, to be some time ago. The relevant time period is the previous 20 years.
- f. Where footpaths are used it is important to distinguish between use which would suggest to a reasonable landowner that the users were exercising a public right of way and use which would suggest to such a landowner that the users were exercising a right to indulge in lawful sports and pastimes across the whole of the application site.
- g. The footpaths across the Land are well established and covered in tarmac. Looking at the users it appears that the Land has been used for access along defined paths, in the majority, rather than being use as a whole for general recreational purposes.
- h. Based on the evidence the Committee should assess whether this element of the test has been satisfied.

For at least 20 years and continuing

- i. Although the user evidence is that the Land has been used from as far back as the 1940s the qualifying period for the purposes of the Application is the 20 years immediately preceding the application i.e. October 1992 – October 2012.

Overall Conclusions

15. 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.
16. 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.

Recommendation:

17. That the Land is not registered as a town or village green.

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Background Papers

Appendix 1: 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.