

**Application for Village Green
Registration**

**'The Green',
Elm Crescent, Kimblesworth,
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 and 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 as town or village green under the provisions of the Commons Registration Act 1965 (the predecessor legislation to the Commons Act 2006)
3. An application dated 2nd January 2007 ("the Application") was submitted to Chester-le-Street District Council by Pamela Shanks and Julie Burnham ("the Applicants") to register an area of land known as the Green, Elm Crescent, Kimblesworth ("the Land") as a town or village green. The Application was allotted reference NL 26. The Application states that the Land became a town or village green on 1st September 2006.
4. The extent of the Land is shown edged and hatched red on the plan attached at appendix 1. A copy of the Application (without the supporting user evidence) is attached at appendix 2.
5. In support of the Application 30 witness letters 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.
6. As required by the Regulations a notice of the Application was published in the local press. No formal objections to the Application have been received. However one of the witnesses, Mr Hind questioned the extent of the Land as it included an area within his ownership and raised an issue regarding access. The Applicant has advised that the application plan should be reconfigured to exclude the area within Mr Hind's ownership; the area was included as an oversight and did not reflect the position on the ground. The Applicant has

requested that the area coloured blue on the plan attached at appendix 6 be excluded from the registration.

The Law

The Commons Registration Act 1965

7. 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 statutory provisions. Registration brings about general recreational rights and other statutory protection which, effectively, precludes further development of the land.
8. The Application was submitted prior to the implementation of the Commons Act 2006. The relevant statutory regime is contained in the Commons Registration Act 1965 ('the Act'). Section 22 of the Act sets out the requirements that must be satisfied. The Council, as the commons registration authority, must determine the Application and the process of the determination are focused on whether a village green has come into existence as a matter of law.
9. Section 22 can be interpreted so as to provide for registration if it is and on which the inhabitants of any locality have indulged in such sports and pastimes as of right for not less than 20 years.
10. The definition can be broken down into the following elements:-
 - a. '...of the inhabitants of any locality.....' This is not defined by any arbitrary margins but there must be a recognized county division such as a borough, parish or manor.
 - b. '...have indulged as of right...' Use 'as of right' is without permission, secrecy or force. The key issue is how the use of the land would appear, objectively, to the landowner.
 - c. '...in sports and pastimes ...' This is very broadly interpreted so that general recreational use including walking with or without dogs, children playing etc are included.
 - d. '...for a period of at least 20 years..' The 20 years continuous use must immediately precede the date of the Application.

Burden and standard of proof

11. The Applicant must demonstrate that all of the elements contained within section 22 of the Act have been satisfied on 'the balance of probabilities'. The burden of proof is with the Applicant.

Application Land

12. To assist in identifying the Land aerial photographs from 2010 and 2001 are attached at appendix 7.

13. The Land is grassed and unenclosed. There are adopted highways on the north, south and east sides and residential properties. On the west side there are allotments and open land. A copy plan showing the adopted highways is attached at appendix 5.

Ownership

14. The majority of the Land is in the ownership of the Council. Part is unknown, part is owned by Mr W R Reed and the final portion is owned by Mr J Hind (the latter is the area the Applicant wants to remove from the Application). A plan is attached at appendix 6 showing (with a legend) the land ownership position.

Assessment of Applicant's evidence

15. 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.
16. This Committee must be satisfied, based on the evidence, that each element on the test has been proven on the balance of probabilities; it must be more likely than not that each element of the test has been satisfied. By reference to the facts provided:

Inhabitants of the locality

- a. A number of the witness statements/letters are from individuals who have properties that adjoin or are within close proximity to the Land. There is a consistent spread of users from other parts of the area such Oak Crescent and Briar Close. Officer's view is that this element of the test has been satisfied. A plan is attached at appendix 8 showing the locality from which the majority of the user evidence has been provided.

Use as of right

- b. There is no evidence that any notice(s) seeking to control use have ever been erected on the Land for or on behalf of the landowner nor any evidence that any of the users have sought or obtained permission to use the Land from the landowner. This element of the test appears to have been satisfied.

Lawful sports and pastimes

- c. The range of activities that have been undertaken on the Land include dog walking, children playing, blackberry picking, bonfires and sledging. This element of the test appears to have been satisfied.
- d. One of the witnesses (Mr Hind) has advised that there is a long standing lane on the western side of the Land, which has been used on foot and, occasionally, in vehicles to access the adjoining allotments. It is possible for village green rights to co-exist with other rights i.e. for access. The question of access is not one being put before the Committee; no application to register a route as a public right of way has been submitted.

The Applicant has also confirmed the irregular vehicular access to the allotments (see appendix 9).

For at least 20 years and continuing

- e. Twenty two (over 70%) of the witness statements provide evidence of usage for the entire of the period between September 1986 and September 2006. This element of the test appears to have been satisfied.
17. 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 within section 22 of the Commons Registration Act 1965 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 i.e. where the landowner opposes 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 within section 22 of the Commons Registration Act 1965 has not been satisfied, on the balance of probabilities.
18. 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 Land as a town or village green has been satisfied by the Applicant. Accordingly, the recommendation is that the Land (excluding the area within Mr Hind's ownership) be registered as a town or village green.

Representations from Interested Parties

19. None

Recommendation:

20. That the Land is registered as a town or village green.

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Appendix 1: Application plan

Appendix 2: Application form

Appendix 3: Witness letters

Appendix 4: A spreadsheet summary of the supporting evidence

Appendix 5: Adopted highway plan

Appendix 6: Land ownership plan

Appendix 7: Aerial photographs

Appendix 8: Locality plan

Appendix 9: Correspondence re: access rights

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 22 of the Commons Registration Act 1965.