

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**

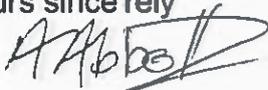
We are a local Housing Association based in Darlington and have recently submitted a pre-planning application to build 17No. 2 bedroom apartments with communal facilities and 5No 2 bedroom bungalows on the site. Our Architects are in close contact with the planning authority to ensure that the proposed 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 since rely



**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 (لفاقدى 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。请询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 ਦੁਸਰੀਆਂ 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 گزارش کرنے پر دیگر زبانوں یا دیگر صورتوں، جیسا کہ، بریل (بھری ہوئی لکھائی، ہینڈا اشخاص کے پڑھنے کی لکھائی) یا آڈیو 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 کرنے کا انتظام کر سکتے ہیں۔)

# Durham Constabulary

Helen Lynch  
Head of Legal and Democratic Services  
Durham County Council  
County Hall  
Durham  
DH15UL

9 NOV 2017



*Altogether Better Policing*  
8<sup>th</sup> 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:

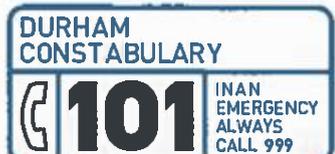
1. The freehold of the claimed land is owned by the Police and Crime Commissioner (PCC) and previously by the Police Authority and County Council as predecessors in title. The land is held for the purposes of providing a police station. Ownership originally included the former police houses adjoining 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](mailto: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 association's 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 association's 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*<sup>ii</sup> 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 sign of 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.

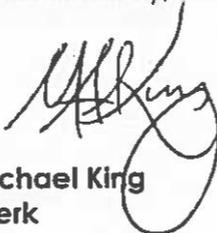
11. -This statement contradicts the statement made by Ms March in paragraph 7 in relation to dog walkers. Dog walking, irrespective of any other use, constitutes a 'lawful pastime' under the legislation. That it is acknowledged in the objection refutes any assertion that it is 'secretive'. The lack of knowledge of operational staff at 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

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

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

## Jill Errington

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**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

**Private and Confidential**

Neil Carter  
Legal and Democratic Services  
Durham County Council  
County Hall  
Durham  
DH1 5UL  
By Email

Your Ref:  
Our Ref: (P)RPA\_MKF\_AXR\_DUR082\_22  
Document No: wh20284966v2  
Date: 22 March 2018  
Direct Line: +44 (0) 1912044190  
Direct Fax: +44 (0) 191204 4001  
Email Address: melissa.flynn@wardhadaway.com

Dear Sirs

**Re: Objection to the Registration of land known as Bede Kirk, Barnard Castle ("the Application Land") as a Town/Village Green**  
**Application Reference: NL44**  
**Applicant: Barnard Castle Town Council**  
**Our Client: Durham Constabulary**

We are instructed on behalf of Durham Constabulary to object against the Village Green Application in respect of the land known as Bede Kirk, Barnard Castle ("the Application"). We confirm that this letter is intended to supplement the letter of objection dated 8 November 2017 already submitted by our Client.

We have reviewed the very limited evidence provided in support of the Application and we do not consider that the Applicant has discharged the burden of proving (on the balance of probabilities) that the statutory test has been met. The statutory test is as follows:

*"(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."*

It is necessary for all elements of the statutory test to be satisfied in order for land to be registered as a village green. We consider that the Application fails for the following reasons:-

1. There has not been use of the Application Land by a significant number of inhabitants of the Parish of Barnard Castle ("the Locality"). Whilst we acknowledge that significance is not assessed solely on a numbers basis, it is relevant that the Application is supported by only 17 claimed users (7 submitted as part of the initial Application and 10 as part of additional evidence submitted prior to the planned Committee meeting). In the context of Barnard Castle Parish, we do not consider that

**Ward Hadaway Solicitors**

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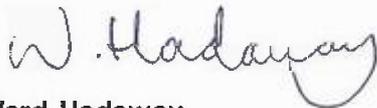
this could constitute a significant number. Whilst we were unable to obtain specific data to confirm the population of Barnard Castle Parish, we note that the boundary extends to a large area and would submit that 17 users in the context of this area is insignificant. The Application makes no reference to a specific neighbourhood being claimed and therefore the Application must be assessed on the basis of the Locality.

In the case of Leeds Group v Leeds City Council [2011] EWCA Civ 1447 the term "significance" was considered and it was concluded that the use must be of such an amount and in such a manner as it would be reasonably regarded as the assertion of a public right. Our Clients, as landowner, have for the entire relevant period been located in close proximity to the Application Land and therefore would have been able to observe any use of the Application Land. However, our Clients did not conclude from their observations that a public right was being asserted over the Application Land.

2. The Applicant has not demonstrated that there has been sufficient use for a period of at least 20 years (with the relevant period being 6 July 1997 to 6 July 2017). The majority of the Applicant's evidence focuses on only parts of the relevant period and therefore there is very limited evidence of use over the entire relevant period. Many of the photographs submitted in support of the Application are either undated or outside the relevant period.
3. The use of the Application Land has not generally been for lawful sports or pastimes. Our Clients consider that there has been limited use of the Application Land to gain access to the operational Police Station. Such use of the Application Land is tolerated and, in any event, is more akin to informal access from "A" to "B". The evidence in support of the Application fails to identify which parts of the Application Land have been used over which periods of time and for what specific activities.
4. As identified in the Committee Report, it is an established part of village green law that the use must be without force, without secrecy and without permission. Our Clients consider that there is implied permission for those people accessing the police station to cross over the Application Land and gain access to a public building.

In summary, we have concluded that a number of elements of the statutory test have not been met and therefore we maintain our Client's objection against the Application and respectfully request that the Council's Committee reject the Application.

Yours faithfully



**Ward Hadaway**