



SHEFFIELD CITY COUNCIL

Committee Report

Report of:	Chief Licensing Officer, Head of Licensing
Date:	Thursday 25 th September to Friday 26th September 2014 at 10:00 am
Subject:	Commons Act 2006 Application to register land known as 'Smithy Wood', as a Town or Village Green
Author of Report:	Shimla Finch - 2734264
Summary:	To consider an application made under the Commons Act 2006 for land known as 'Smithy Wood', Sheffield to be registered as a Town or Village Green.
Recommendations:	Members are requested to consider all relevant evidence and apply the statutory criteria to that evidence in determining the application.
Background Papers:	Attached to this report (Any further background papers relating to this report can be inspected by contacting the report writer).
Category of Report:	OPEN

REPORT OF THE CHIEF LICENSING OFFICER, HEAD OF LICENSING TO THE LICENSING COMMITTEE (COMMONS REGISTRATION)

Ref: 92/14

COMMONS ACT 2006

Application to register land known as 'Smithy Wood adjacent to M1 at Junction 35 with Cowley Hill', Sheffield as a Town or Village Green

1.0 Purpose of the report

- 1.1 To consider an application made under the Commons Act 2006 for land known as 'Smithy Wood', Sheffield to be registered as a Town or Village Green.

2.0 The Legislation

- 2.1 Section 4(1) of the Act provides that applications for registering land as "town or village greens" must be made to Sheffield City Council, who is the Commons Registration Authority (CRA) for any land in their area.

- 2.2 Section 15(1) of the Act states that 'any person may apply to the CRA to register land as a "town or village green" provided they can establish one of the following tests, namely:

- that Section 15(2) applies if the land has been used 'as of right' for lawful sports and pastimes for 20 years or more before the date the application is made, and this use continues at the date of the application; or
- that Section 15(3) applies where the land has been used for recreational use 'as of right' for 20 years or more, where the use ended no more than two years before the date of the application, or
- that Section 15(4) applies which makes a special transitional provision where recreational use 'as of right' for 20 years or more ended before 6 April 2007. In such a case, the application must be made within five years of the date the use 'as of right' ended.

- 2.3 Whether the application is made under Sections 15(2), 15(3) or 15(4) the application must show that a significant number of local people have indulged in lawful sports or pastimes 'as of right' (i.e. without permission, force or secrecy) on the land for at least 20 years, rather than 'by right' (i.e. in exercise of a legal right to do so). These requirements reflect the ancient law of custom, where long use 'as of right' created a presumption that the local inhabitants had established recreational rights over the land in question.

- 2.4 Section 15(6) of the Act makes it clear that in determining the 20 year period, there is to be disregarded any period during which access to the land was prohibited to members of the public by reason of any enactment.

- 2.5 Furthermore, Section 15(7) of the Act states that –

- (a) where persons indulged as of right in lawful sports and pastimes immediately before access to the land is prohibited (as specified in subsection 6 above), those persons are to be regarded as continuing so to indulge; and
 - (b) where permission is granted in respect of use of the land for the purposes of lawful sports and pastimes, the permission is to be disregarded in determining whether persons continue to indulge in lawful sports and pastimes on the land “as of right”.
- 2.6 The application seeks the registration of the Land by virtue of the operation of section 15(2) of the 2006 Act. Under that provision, land is to be registered as a town or village green 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.”

Therefore, for the application to succeed, it must be established that:-

- (i) the Application Land comprises “land” within the meaning of the 2006 Act;
 - (ii) the Land has been used for lawful sports and pastimes;
 - (iii) such use has been for a period of not less than 20 years;
 - (iv) such use has been as of right;
 - (v) such use has been by a significant number of the inhabitants of a locality or of a neighbourhood within a locality; and
 - (vi) such use continued at the time of the Application.
- 2.7 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 Commons Act 2006 have been satisfied.

3.0 Background - Application and Submissions

- 3.1 The Council received an application to register land known as ‘Smithy Wood’, Sheffield as a town/village green on the 14th November 2013. A copy of the application and supporting documentation is attached to this report as Appendix ‘A’.
- 3.2 Further supporting documentation with a revised locality map was submitted on the 9th December 2013 which is attached at Appendix ‘A 1’.
- 3.3 A plan showing the Land is attached as Appendix ‘B’ with the application Land outlined in red; the revised locality plan is also attached within this appendix for ease.
- 3.4 The application was submitted by Cowley Residents Action Group, Chair, Mrs Jean M Howe who is a local resident of 31, Glenwood Crescent, Chapelton, Sheffield. The application relies on the criteria contained in section 15(2) as stated above.
- 3.5 The application initially included the submission of 15 evidence questionnaire (and 11 letters or emails of support), further questionnaires were submitted (Appendix A 1). A snap shot of the evidence has been displayed on a table devised by the Clerk of the

Registration Authority at Appendix 'C'. Members are advised to read the questionnaires fully before determining the application.

3.6 The application site comprises of an irregular parcel of land located adjacent to the M1 at Junction 35 with Cowley Hill.

3.7 The site extends to approximately 8 hectares.

4.0 Ownership

4.1 Title checks have been carried out on the application site which has indicated registered Titles:

- Secretary of State for Transport SYK560448
- Axis 1 Limited SYK568153
St Pauls Development PLC

5.0 Public Notices

5.1 As required by the regulations, public notice of the application was given in the Sheffield Telegraph and a copy was placed on deposit. Formal notice of the application was also given to those believed to have an interest in the land and notices placed on the application land.

6.0 Objections

6.1 Objection(s) to the town/village green application has been lodged by Axis 1 Limited and St Paul's Development PLC dated 26 March 2014. The objection(s) is attached at Appendix 'D'.

6.2 A further objection was lodged by Mr John Black and is attached at Appendix 'D'.

6.3 In accordance with due process the objections were forwarded to the Applicant for comment, a response is attached at Appendix 'E'.

7.0 Statutory Criteria – The Legal Framework

7.1 The Land

7.1.1 Any land that is registered as a village green must be clearly defined so that it is clear what area of land is subject to the rights that flow from village green registration.

7.1.2 However, it was stated by way of obiter dictum by the majority of the House of Lords in Oxfordshire County Council v. Oxford City Council¹ that there is no requirement that a piece of land must have any particular characteristics consistent with the concept of a village green in order to be registered.

7.1.3 The land is a parcel including a wooded area, with some undulating terrain and varying gradients.

7.2 Relevant 20 Year Period

¹ [2006] 2 AC 674 per Lord Hoffmann at paragraphs 17-19

- 7.2.1 The qualifying use for lawful sports and pastimes must be continuous throughout the relevant 20 year period: *Hollins v. Verney*.²
- 7.2.2 The relevant 20 year period for the purposes of section 15(2) of the 2006 Act, the qualifying use must continue up until “the time of the Application”. Hence, the relevant 20 year period is the period of 20 years which ends at the date of the Application. The use must be continuous in the sense that it has not been interrupted for any significant period of time.
- 7.2.3 For this application, the relevant 20 year period is 14th November 1993 to 14th November 2013 of use by the inhabitants of the locality. The application was signed and dated on the 14th November 2013 and received by the Registration Authority on the 14 November 2013.
- 7.2.4 The continuous use is disputed by the Landowner(s)/objector(s).

7.3 Use of Land for Lawful Sports and Pastimes

- 7.3.1 “Lawful sports and pastimes” is a composite expression and so it is sufficient for a use to be either a lawful sport or a lawful pastime. Moreover, it includes present day sports and pastimes and the activities can be informal in nature. Hence, it includes recreational walking, with or without dogs, and children’s play.
- 7.3.2 However, that element does not include walking of such a character as would give rise to a presumption of dedication as a public right of way.
- 7.3.3 Further, the use has to be of such a nature and frequency as to show the landowner that a right is being asserted and it must be more than sporadic intrusion onto the land. It must give the landowner the appearance that rights of a continuous nature are being asserted. The fundamental issue is to assess how the matters would have appeared to the landowner: *R. (on the application of Lewis) v. Redcar and Cleveland Borough Council*.³
- 7.3.4 The various recreational activities identified in the application have been reproduced in tabular format for ease of reference and is attached at Appendix ‘C’.

7.4 Locality or Neighbourhood within a Locality

- 7.4.1 The applicant must prove that the application land has been used for lawful sports and pastimes by a “significant number of inhabitants of any locality, or of any neighbourhood within a locality”.
- 7.4.2 A “neighbourhood” need not be a recognised administrative unit but an area chosen such as a housing estate.
- 7.4.3 A “locality” must be a division of the County known to the law, such as a borough, parish or manor. An ecclesiastical parish can be a “locality” but a locality cannot be created simply by drawing a line on a plan
- 7.4.4 In considering what constitutes ‘a neighbourhood’ for the purposes of section 15(2) the courts have ruled that:

² (1884) 13 QBD 304.

³ [2010] UKSC 11 at paragraph 36.

“a Registration Authority has to be satisfied that the area alleged to be a neighbourhood has a sufficient degree of cohesiveness”

7.4.5 Therefore a neighbourhood should be recognisable as a community in its own right. It is not required to be formally designated an administrative area.

7.4.6 The claimed locality is disputed by the Landowner(s)/objector(s).

7.5 Use “As of Right”

7.5.1 The expression "as of right" means without force, stealth (secrecy) or permission.

7.5.2 Use is not “as of right” if users have a statutory right or other legal right to use the land.

7.5.3 Where the claimants have been permitted to be on the claimed land then their use will have been ‘by right’ instead of ‘as of right’.

7.5.4 In order to satisfy this criteria, Members must find that the evidence on the balance of probabilities that the use has been demonstrated to have been ‘as of right’ throughout the relevant 20 year period.

7.5.5 The Landowner(s)/objector(s) contest the use “as of right”.

7.6 Sufficiency of Use

7.6.1 “*Significant*” does not mean considerable or substantial. What matters is that the number of people using the land in question has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers: *R. (McAlpine) v. Staffordshire County Council*.⁴

7.6.2 The requirement is that the users include a significant number of inhabitants of the claimed locality or neighbourhood, so as to establish a clear link between the locality or neighbourhood and the proposed town or village green.

7.6.3 In reviewing the evidence, Members are to exclude the recreational uses of the Land referred to in the evidence prior to 14th November 1993 and post 14th November 2013 and look at the relevant 20 year period as referred to above in section 7.2.3.

7.6.4 Members are also minded to discount the use of land that was more akin to the exercise of a public right of way than to the exercise of recreational rights over a village green.

7.6.5 The Registration Authority has looked into whether the land has any claimed footpath across the land, and has been advised that there is not.

7.6.6 The use of any of those routes to walk along, whether with or without a dog, and to carry out other activities on that are ancillary to the exercise of the rights of way are uses that are more akin to the exercise of a public right of way. Such use including using the land as a shortcut to get from point A to point B is a use that is more akin to the exercise of a right of way rather than the exercise of a recreational right and

⁴ [2002] EWHC 76 (Admin) at paragraph 71.

cannot itself be relied upon in support of the registration of a town or village green and must accordingly be discounted from the qualifying use.

7.7 Use by a Significant Number of the Inhabitants of the Neighbourhood

7.7.1 The relevant use must be used by a significant number of the inhabitants of the neighbourhood. The evidence of use where it has not been established that the user was an inhabitant of the neighbourhood relied upon in the application at the time of his or her use of the Land should be discounted.

7.8 Continuation of Use

7.8.1 The final element of the statutory criteria is whether the qualifying use continued up until the date of the application, 14 November 2013.

8.0 Decision Making

8.1 Determination of the application rests with Sheffield City Council in its role as Registration Authority.

8.2 The Registration Authority is required to either accept or reject the application for the land to be registered solely on the facts. Any other issues, including those of desirability or community needs, are not legally relevant and cannot be taken into consideration. Under the current law, land can only have the legal status of a Town or Village Green upon registration.

8.3 The Council must determine the application in accordance with the statutory criteria and in accordance with the legislation.

9.0 The Statutory Requirements:

9.1 The provisions of Section 15 (2) apply in circumstances 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 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.

9.2 The burden of proof is the normal, civil standard, namely, the balance of probabilities.

9.3 This is a quasi-judicial process and consequently Members must consider whether they have an interest which would prevent them from taking part in the decision making process.

9.4 Registration of the village green does not place the Council under any duty to maintain it.

9.5 In the event that Members are unable or unwilling to reach a decision based solely on the information included in this report, the application will need to be considered by an independent person (usually a barrister specialising in village green legislation). A public inquiry would then be arranged and a formal site visit conducted. The independent person would then report back to the authority and make

recommendations. Members would then need to consider whether or not to follow the recommendations made and make a final decision.

10.0 Risk Management

10.1 The law does not lay down a statutory process for determining these applications. This means it is up to the city council to decide what process to follow. It is essential that this process is fair to both applicants and objectors. Any appeal against the Council's decision by interested parties could be by way of public law challenge by applying for Judicial Review on limited grounds. A failure to determine the application in accordance with the law or at all will leave the Council exposed to Judicial Review or a claim of maladministration by the Local Government Ombudsman.

11.0 Financial Implications

11.1 There is no power to require a fee or payment from an applicant. Any decision to hold a non-statutory inquiry means that the Council will carry the costs of that inquiry.

11.2 Members should note that if an interested party does challenge the decision significant legal costs are likely to be incurred by the Council

12.0 Recommendation

12.1 Members are requested to consider all relevant evidence, apply the statutory criteria to that evidence and either

- Decide that there is sufficient evidence to satisfy **ALL** the statutory criteria and register the land as a town or village green or
- Decide that there is insufficient evidence to satisfy the statutory criteria and reject the application.

13.0 Options Open to the Commons Registration Board

13.1 Following the meeting and having had the opportunity to examine the written evidence provided and to hear oral evidence presented, you are required to reach one of the following 3 options:

1. Register the land as a town or village green if all the statutory criteria has been met.
2. Refuse to register the land as a town or village green if one or more of the statutory criteria have not been met.
3. If there is a significant dispute and the Council is of a view that the evidence is unclear, Members can request the application be heard at a non-statutory public inquiry.

Stephen Lonnia,
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Appendix 'A'

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