



SHEFFIELD CITY COUNCIL Committee Report

Report of: Chief Licensing Officer, Head of Licensing

Date: 28th and 29th November 2017 at 10am

Subject: Commons Act 2006
Application to register land known as '**Lower Walkley Green**',
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 'Lower Walkley Green', Sheffield to be registered as a Town or Village Green.

Recommendations: Members are asked to have regard to the relevant legislation detailed in the report as well as the application and evidence submitted by the applicant and witnesses in writing and orally.

Background Papers: Attached to this report
[Preliminary Issues Meeting Report 04.07.2017](#)
(Any further background papers relating to this report can be inspected by contacting the report writer).

Category of Report: OPEN

COMMONS ACT 2006

Application to register land known as 'Lower Walkley Green', 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 'Lower Walkley Green', Sheffield to be registered as a Town or Village Green.

2.0 The Legislation

2.1 Sheffield City Council is the Commons Registration Authority ("CRA") for any land in its area by virtue of section 4(1) of the Act.

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, in this instance, that section 15(2) of the Act applies because:

- 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.

2.3 For the application to succeed, it must be established that:

- i. A significant number of inhabitants of a locality or of a neighbourhood within a locality;
- ii. have indulged as of right;
- iii. in lawful sports and pastimes;
- iv. on the land;
- v. for a period of at least 20 years; and
- vi. they continue to do so at the time of the application

3.0 Background

3.1 The Council received an application to register land known as 'Lower Walkley Green', Sheffield on 6th August 2008.

3.2 The application includes the submission of 52 evidence questionnaires.

3.3 The application site comprises of a parcel of land that sits between Walkley Bank Road, Elliotville Street, Stony Walk and Woodview Road in Walkley, Sheffield, S6.

3.4 Title checks had been carried out on the application site which has indicated that the land is not registered; therefore it is unknown who the owner is.

- 3.5 There have been no objections/comments to the application.
- 3.6 A preliminary meeting was held on the 4th July 2017 to determine how to progress the next stage of the application. A copy of the report can be found at <http://democracy.sheffield.gov.uk/ieListDocuments.aspx?CId=155&MId=6768&Ver=4>.
- 3.7 Members decided that the application would be heard in full by the Commons Registration Board instead of a non-statutory public inquiry and therefore issued formal Directions to the Applicant and any other interested parties.
- 3.8 The applicant requested a two month extension of time on the submissions required by the Directions which was granted by the Board Members. A copy of the amended Directions can be found at Appendix 'A'

4.0 Formal Directions Compliance

- 4.1 The Clerk to the Commons Registration Authority can confirm that the Directions were publicised as detailed in the formal Directions.
- 4.2 Clarification documents were submitted by the Applicant on the 3rd October 2017. Members have received a copy of this documentation prior to this meeting. Copies of these are attached at Appendix 'B'.
- 4.3 The 'Bundle' which includes the legal argument was submitted by the applicant at the service address prior to the 14th November 2017. Members again have been served a copy of this prior to the meeting.
- 4.4 An informal site visit was also arranged on the 20th November 2017 attended by Members of the Commons Registration Board sitting on this meeting and the Applicant with their representatives.
- 4.5 All submission requirements of the Directions have been fulfilled.

5.0 Decision Making

- 5.1 Determination of the application rests with Sheffield City Council in its role as CRA.
- 5.2 Members are to note that the Council must determine the application in accordance with the statutory criteria and in accordance with the legislation as set out in paragraph 2.0 of this report. The CRA 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.

6.0 Risk Management

- 6.1 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.

6.2 There is no right of appeal against the Council's decision but interested parties could challenge the decision by applying for Judicial Review on limited grounds.

7.0 Financial Implications

7.1 There is no power to require a fee or payment from an applicant. Any decision to move to a non-statutory inquiry or seek Counsel advice means that the Council will carry the costs.

7.2 Members should note that if an interested party does challenge the decision when determined, significant legal costs are likely to be incurred by the Council in defending the challenge.

8.0 Recommendation

8.1 Members are asked to have regard to the relevant legislation detailed in the report as well as the application and evidence submitted by the applicant and witnesses in writing and orally.

9.0 Options Open to the Commons Registration Board

9.1 Register the land as a town or village green if all the statutory criteria have been met.

9.2 Refuse to register the land as a town or village green if one or more of the statutory criteria have not been met.

9.3 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 public inquiry.

Stephen Lonnia,
Chief Licensing Officer
Head of Licensing
Registration Authority
Business Strategy and Regulation
Place Portfolio
Block C, Staniforth Road Depot
Sheffield, S9 3HD.

14th November 2017

Appendix A

Amended Directions

**Application to Register Land known as Lower Walkley Green
as a Town or Village Green**

**AMENDED DIRECTIONS ISSUED BY SHEFFIELD CITY COUNCIL'S COMMONS
REGISTRATION BOARD ON THE SUBMISSION OF EVIDENCE AND DOCUMENTS**

15th August 2017

PARTICULARS

Within these Directions, the Registration Authority will be referred to as Sheffield City Council (the Council).

The Application Land	Lower Walkley Green
The Applicant	Kate Jeeves
The Applicants Service Address	Farmhouse 102 Woodview Road Sheffield S6 5AB
The Objector	No Objectors
The Objector's Service Address	Not applicable
The Registration Authority	Sheffield City Council (the Council)
Clerk to the Registration Authority	Mrs Shimla Finch Tel: 0114 2734264
The Council's Service Address	Ref: SF / TVG / 2010 / 1 / 6234 Shimla Finch Licensing Service Business Strategy & Regulation Block C Staniforth Road Depot Sheffield S9 3HD
The Commons Registration Board Service Address	2010 / 1 / 6234 Licensing Service Business Strategy & Regulation Block C Staniforth Road Depot Sheffield S9 3HD
The Venue	Town Hall Pinstone Street Sheffield S1 2HH
The Clarification Date	3 October 2017
The Bundle Service Date	14 November 2017
Legal Arguments and Case Law	14 November 2017
Site Visit	20 November 2017
Hearing	Day 1 – 28 November 2017 Day 2 – 29 November 2017

DETAILS OF MEETING AND VENUE

- 1.1 The meeting of the Commons Registration Board (Licensing Sub-Committee) will commence at **10.00am on 28 November 2017** at the Town Hall, Pinstone Street, Sheffield S1 2HH and will continue if necessary on the following day.
- 1.2 The Commons Registration Board will meet between 10.00am and 5.00pm.
- 1.3 There will be an hour break for lunch at approximately 1.00pm and (if convenient) short breaks in the morning and afternoon.

PUBLICITY

- 2.1 These Directions are to be published on the Sheffield City Council's website, (in its capacity as the Registration Authority) as soon as practicably possible.
- 2.2 Copies of these Directions are to be circulated by the Council to:
 - i) the Applicant
- 2.3 The Council will publicise the meeting of the Commons Registration Board:
 - i) by publishing a notice of the meeting and a copy of these Directions on its website;
 - ii) by an advertisement in one of the local newspapers circulating in the area of the Application Land at any time during the 14 day period prior to the commencement of the meeting ;
 - iii) by displaying a notice or notices on or near the Application Land, 14 days prior to the commencement of the Commons Registration Board meeting.
 - iv) By displaying a notice at the Venue during the days that the meeting is held.
- 2.4 Each notice of the meeting should state that these Directions contain detailed instructions for the preparation of the meeting and; information as to the conduct of the meeting are available on the Council's website.

CLARIFICATION

- 3.1 There are a number of issues requiring clarification. It would be useful to have clarification of these issues before the Applicant prepares their evidence.
- 3.2 By **3.00pm on 3 October 2017** the Applicant will clarify the matters detailed in paragraph 3.3 of these Directions in writing, serving copies on each of the following:
 - i) 4 copies to the Commons Registration Board at the Commons Registration Board service address;
 - ii) 2 copies to the Council at the Registration Authority's service address.

3.3 The matters the Applicant should clarify are:

- i) the exact application site with a suitably scaled plan (on a scale of not less than 1:2,500);
- ii) the locality or neighbourhood(s) that the Applicant relies upon on (a) suitably scaled plan(s) (on a scale of not less than 1:10,560). Plan(s) should also indicate where those using the land 'as of right' and on whose evidence the applicant will seek to rely upon live.

Where the site is more likely to be a neighbourhood than a locality, the locality needs to be specified and an accurate description of the locality should be provided in addition to the scale plan(s).

BUNDLES AND SERVICE

4.1 Every bundle referred to in these Directions will:

- i) contain an index at the front;
- ii) contain numbered dividers for each separate category of document;
- iii) be paginated on each page, consecutively, throughout the bundle;
- iv) be split between more than one lever arch file if necessary.

4.2 Bundles are to be served by **3.00pm on 14 November 2017** to the following:

- i) 4 full copies to the Commons Registration Board at the Commons Registration Boards Service Address;
- ii) 2 full copies to the Council at the Council's Service Address.

4.3 Colour copies of any photographs included in a bundle must be provided to all parties on whom the bundle is directed to be served. If the copies provided are colour photocopies, the original prints shall be brought to the Commons Registration Board meeting. All photographs shall be accompanied by a caption stating by whom they were taken and what the photographs are said to show.

4.4 By **3.00pm on 14 November 2017** the Applicant will e-mail (licensing@sheffield.gov.uk) to the Council a provisional timetable for the Commons Registration Board meeting, showing the proposed order of witnesses and the time estimated for Applicant's witnesses, and opening and closing submissions.

4.5 By **3.00pm on 14 November 2017** the Applicant will provide a written copy of any legal arguments to be relied upon at the hearing, serving copies on each of the following:

- i) 4 copies to the Commons Registration Board at the Commons Registration Board service address;
 - ii) 2 copies to the Council at the Registration Authority's service address.
- 4.6 The Applicant will, in relation to the legal authorities, produce a bundle of authorities by **3.00pm on 14 November 2017**.

APPLICANT REQUIREMENTS

5.1 The Applicant's bundle will consist of a lever arch file or files containing legible copies of:

- i) the application and any supporting documents supplemental to the application;
- ii) a large scale OS map (at a scale of not less than 1:2,500) marked to show the boundaries of the Application Land;
- iii) one or (as appropriate) two large scale OS maps (at a scale of not less than 1:10,560) in the case of the first map marked to show the boundaries of the "locality" relied upon, and in the case of the second map, the boundaries of any "neighbourhood" relied upon;
- iv) in respect of every witness whom the Applicant intends to call at the Commons Registration Board meeting: a signed and dated statement setting out the substance of the witness's evidence. The statement should be in the witness's own words. All statements to be arranged in alphabetical order (based on surname).

Any evidence questionnaires completed by the witness or letter signed by the witness should be filed immediately after the witness's statement in each case. Any photographs taken by the witness should be filed immediately after the witness's written evidence in each case;

- v) in respect of every witness whom the Applicant does not intend to call at the Commons Registration Board meeting: a signed and dated statement setting out the substance of the witness's evidence. All such statements to be arranged in alphabetical order. Any evidence questionnaire completed by the witness or letter signed by the witness should be filed immediately after the witness's statement in each case. Any photographs taken by the witness should be filed immediately after the witness's written evidence in each case;
- vi) any other evidence questionnaires in support of the application;
- vii) every other document relied upon in support of the application, arranged in chronological order with the earliest at the front;
- viii) a written summary of any legal arguments that the Applicant intends to submit to the Commons Registration Board;

- ix) photocopies of any legal authorities on which the Applicant intends to rely at the Commons Registration Board meeting.

MEETING PROCEDURE

Registration Authority

- 6.1 The Council will bring one copy of the bundle to the Commons Registration Board meeting for use by witnesses at the Committee.

Site Visit

- 6.2 There will be an informal site visit on **20 November 2017 at 10.30am**. One or two representatives of the Applicant should be present. The meeting point will be at the junction of Walkley Bank Road and Elliotville Street. No evidence should be given but physical things can be pointed out. There may well be need for a formal site visit which will be arranged during the course of the Commons Registration Board meeting.

Meeting Procedure

- 6.3 The procedure for this meeting will generally follow the format as laid out in Appendix 1 of these Directions. Any variations of the procedure will be in the discretion of the Chair.
- 6.4 Evidence will be given unsworn.
- 6.5 Witnesses or submissions may be taken out of order if convenient and only if permitted by the Commons Registration Board.
- 6.6 Opening statements and closing submissions, where possible, should also be submitted in writing.

**Appendix 1
(Meeting Procedure)**

**TOWN OR VILLAGE GREEN APPLICATIONS HEARING PROCEDURE
LICENSING COMMITTEE (COMMONS REGISTRATION)**

This procedure has been drawn up to assist those parties attending Town or Village Green applications at a Licensing Committee (Commons Registration).

There is no statutory right of appeal against decisions by the Commons Registration Authority but the High Court can order the amendment of the Commons Register in some circumstances. Decisions can be subject to legal challenge and therefore it is important that Members clearly articulate their reasons for any decision.

1. The Chair of the Licensing Committee (Commons Registration) will introduce the Committee and ask Officers to introduce themselves.
2. The Chair will ask the applicant(s) and interested parties to formally introduce themselves.
3. The Chair will receive any declarations of interest from members of the Committee relating to the application.
4. The Officer (Clerk to the Registration Authority) will introduce the report.
5. The Applicant shall be invited to make a short opening statement of no more than 10 minutes if he/she so wishes.
6. The Objector(s) shall be invited to make a short opening statement of no more than 10 minutes if he/she so wishes.
7. It shall be a matter for the Chair's discretion whether he/she is prepared to hear any additional statement from any other interested party.
8. The Chair and members of the Committee may ask questions of the Applicant, the Objector and any other interested party at any point during the Hearing.
9. The Applicant shall call each of his/her witnesses in turn, who will be subject to cross-examination by the Objector, re-examination as appropriate and be asked any questions the Committee may have.
10. The Objector(s) shall call each of his/her witnesses in turn, who will be subject to cross-examination by the Applicant, re-examination as appropriate and be asked any questions the Committee may have.
11. The Objector(s) shall be invited to make any closing statement he/she wishes to make of not more than 10 minutes duration.
12. The Applicant shall be invited to make any closing statement he/she wishes to make of not more than 10 minutes duration.

13. The Licensing Officer (Clerk to the Registration Authority) will then detail the options.

14. If deemed appropriate, the Chair may decide to make an accompanied site visit at a time to be arranged at the Hearing. The Chair and Committee members may make an unaccompanied visit to the site prior to the date of the Hearing. (Note: such are visits not meetings).

15. The Chair will formally close the Hearing when, if time allows, the Committee shall retire to deliberate upon the application. Such deliberations may include seeking specialist legal opinion on the matter.

16. The Committee shall reconvene at the earliest opportunity and within 8 weeks, in an agreed location to further consider and determine the application.

17. All parties will be invited to return. The Committee's decision and full reasons will be announced by the Chair.

18. The Committee's decision will be confirmed in writing to the applicant and objectors.

There is no right of appeal against the Council's decision but interested parties could challenge the decision by applying for Judicial Review.

Appendix B

Clarification Documents

Statement - The Lower Walkley Green Residents' Association application for village green status

The attached plans are provided to meet Sheffield City Council planning requirements. Plan 1 clearly shows where the green is located and its boundaries. Plan 2 is a larger scale and shows Lower Walkley Green in the context of a wider area and demonstrates the size of the catchment where the most regular users of Lower Walkley Green live.

Plan 1 – 1:2500

The exact application site

The Lower Walkley Green Residents' Association would like to apply for Village Green status for an area of open land within our local neighbourhood. The area has clear boundaries marked in red on the plan.

The site is bordered between Woodview Road to the North East, Elliottville Street to the South East, Walkley Bank Road to the South and Stony Walk to the North West.

At the top of Lower Walkley Green is a small corner of trees in a triangle between Stony Walk and Walkley Bank Road, owned and maintained by Sheffield City Council. This is not part of our application and is not included in the plan.

Pedestrians walking down Stony Walk towards Hillsborough pass Lower Walkley Green on their right. There is a registered right of way across the width of Lower Walkley Green from Elliottville Street to Stony Walk. People also regularly walk across Lower Walkley Green diagonally from the top corner of Elliottville Street where it meets Walkley Bank Road to the bottom of Stony Walk.

SITE LOCATION PLAN
AREA 5 HA
SCALE 1:2500 on A4
CENTRE COORDINATES: 433268, 388923



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The wider neighbourhood

The homes of residents who have made witness statements are marked with a red dot on this map.

Lower Walkley Green is within the area of Sheffield 6 known as Walkley. Like many parts of Sheffield, Walkley has a 'village' quality, with shops, schools, cafes, chemists, doctors, pubs, an allotment and churches. Walkley Bank Allotments have their society hut nearby and Walkley Bank Road and Lonsdale Road link the green and the allotment. The immediate neighbourhood of Lower Walkley Green consists of residential housing and these residents use and enjoy the green space here and have done, as of right, for over 100 years. There is a clearly defined and recognised right of way across Lower Walkley Green which has been used as a route to local facilities for generations.

Children from Rivelin Primary school play on Lower Walkley Green most evenings and many local residents have fond memories of playing on Lower Walkley Green as children themselves and still enjoy the space for: November 5th bonfires, sledging, walking, as a meeting place, dog walking, go carting, birdwatching, picnicking and ball throwing games.

Our 'witnesses' are people of all ages drawn mostly from the immediate vicinity of Lower Walkley Green, Elliottville Street, Ibbottson Road, Gresham Road, Woodview Road, Lister Road, Parsonage Street, Providence Road, Walkley Bank Road, Walkley Crescent Road, Lonsdale Road, Bowness and Walkley Lane. When gathering witness statements, we only leafleted streets directly adjacent to the green and those within direct reach of the green as listed above. This was due to the difficulty in meeting and interviewing such a wide range of people. The people that use the green also come from streets considerable further away.

Lower Walkley Green has been recognised as part of the Sheffield Green corridor from Rivelin Valley into the city centre and attracts a great deal of wild life into the area enriching neighbourhood life with a range of birds and bats.

