

**Hampshire County Council**

**Decision Report:**

<b>Decision Maker:</b>	Regulatory Committee
<b>Date of Decision:</b>	23 November 2011
<b>Title:</b>	Application for the registration of land known as 'Bushfield', in the Parish of Compton and Shawford and in Winchester City, as town or village green
<b>Reference:</b>	3438
<b>Report from:</b>	Director of Culture, Communities and Business Services

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**1. Executive Summary:**

1.1 Hampshire County Council is the Commons Registration Authority for the purpose of exercising functions under the Commons Act 2006. An application has been made by Mrs. Barbara Guthrie of Stanmore Lane, Winchester for the registration of land known as 'Bushfield' as town or village green. The landowner objects to the application. The recommendation is that a non-statutory public inquiry be held.

**2. Legal framework for the decision:**

2.1 S.15 Commons Act 2006

Registration of greens:

(1) Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies.

(2) This subsection applies where -

(a) a significant number of the inhabitants of the locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years: and

(b) they ceased to do so before the commencement of this section; and

(c) the application is made within the period of five years beginning with the cessation referred to in paragraph (b).

2.2 THE COMMONS (REGISTRATION OF TOWN OR VILLAGE GREENS) (INTERIM ARRANGEMENTS) (ENGLAND AND WALES) REGULATIONS 2007

Consideration of objections

6(1) Where an objection is made under section 159(1) of the 2006 Act to register land as a town or village green, as soon as possible after the date by which statements in objection to an application have been required to be submitted, the registration authority must proceed to the further consideration of the application, and the consideration of statements (if any) in objection to that application, in accordance with the following provisions of this regulation.

(2) The registration authority –

(a) must consider every written statement in objection to an application which it receives before the date on which it proceeds to the further consideration of the application under paragraph (1); and

(b) may consider any such statement which it receives on or after that date and before the authority finally disposes of the application.

3. **Applicant:** Mrs. Barbara Guthrie,  
44 Stanmore Lane,  
Winchester,  
SO22 4AJ.

4. **Landowner/objector:**  
**Landowner:** The Church Commissioners,  
1 Millbank,  
London,  
SW1P 3JZ.

The Church Commissioners are represented by Strutt and Parker and by Farrer and Co.

The Church Commissioners are the principal objectors in this case. In addition, an objection has been received from Mr. D. Buckett, a tenant of the Church Commissioners.

5. **Description of the land (please refer to the map attached to this report)**

5.1 The land which is the subject of the application ('the Land') is shown edged blue on the plan annexed to this report. It consists of

approximately 74 acres (30 hectares) of land lying to the south west of the city of Winchester. The land is comprised in the registered title number HP 475802.

## **6. The application:**

- 6.1 The application was received on 30<sup>th</sup> June 2008, but took some time to perfect to the point that it was considered to be 'duly made'. It states that the Land should be registered as town or village green because it has been used by a significant number of the inhabitants of a locality (or localities) for lawful sports and pastimes for at least 20 years, and they had ceased using the Land for this purpose on a day during the week of 7<sup>th</sup> to 13<sup>th</sup> July 2003. The application identifies Stanmore, Badger Farm, Oliver's Battery and St. Cross as the relevant localities.
- 6.2 The application was accompanied by a statement in support of the application, some photographs, maps illustrating the 'localities', documents, letters and a petition. In addition, 90 signed statements attest to the use of the land, either by the signatories themselves, and/or members of their families. Typical uses described are 'walking the dog', 'recreational walking', 'bike riding', 'bird watching', 'picking fruit' and 'sledging', all of which are lawful sports and pastimes, and activities capable of supporting registration of land as a town or village green.
- 6.3 A previous application was made to Hampshire County Council in 2003 for a number of public rights of way over Bushfield. In due course this was determined, and the application was refused on the grounds that much of the user was in the nature of 'wandering', rather than highway use, and more typical of the type of use that would qualify for registration as town or village green.

## **7. The objections:**

- 7.1 The landowner and tenant have raised a number of matters in their objections to the application. The main issues set out in the objection statements are:
  - that the application for the Land to become a new green pursuant to s.15(4) of the Commons Act 2006 fails because the requirements of s.15(4) have not been met.
  - inter alia, the landowner contends that no validly made application has been made within the 5 years beginning with 'any day in the week before 13<sup>th</sup> July 2003'.
  - it is also submitted that the inhabitants of any locality, or neighbourhood in the locality, have not used the land for 20 years ending on 7<sup>th</sup> to 13<sup>th</sup> July 2003.
  - the tenant of the landowner maintains that there cannot have been 20 years' of lawful sports and pastimes on the Land he occupied, and provides details of his management of it to support his objection.

**8. Issues to be decided:**

8.1 Officers consider that there are matters of fact and law which need to be considered in more detail, namely

- when an application is 'made' for the purposes of s.15(4), in relation to the 5-year provision contained in that section, in order to determine whether the application is validly made;
- the exact circumstances of the erection of fencing and notices on the Land, and the effect that this had on both the timing of the application, and the nature of the user.

8.2 The date that the application was properly made for the purposes of section 15(4) of the 2006 Act is relevant. This is a legal point over which the County Council has sought Counsel's advice.

8.3 There appear to be clear conflicts in the evidence submitted, conflicts which would directly affect the determination of the application. There is, therefore, a need to have this evidence tested at an Inquiry, where witnesses will have the opportunity to attend, give evidence and be available for cross-examination. This will ensure that any future decision is made with the knowledge that the evidence has been fully tested and both the applicant and objectors have had the opportunity of exploring the application fully in public.

8.4 In these circumstances, officers consider that it would be unsafe to determine the application on the basis of the paper application only and that, in the interests of fairness to both parties, it is appropriate to arrange a non-statutory public inquiry, to test the evidence both for and against the application.

8.5 In considering the matters raised in this report, Members are welcome to inspect the representations and evidence submitted by each party. This material is available for Members' inspection in the Access Team office.

8.6 Members may, of course, take the alternative view that, in light of the nature of the arguments described, they do consider it appropriate to determine this matter without recourse to a public inquiry. If this is the case, then they can reject the recommendation and officers will bring a full report, describing the evidence both for, and against, the application, to a later Committee meeting.

8.7 If the recommendation in this report is accepted, then it is anticipated that the non-statutory public inquiry will be held during February 2012.

**9. Recommendation**

9.1 That, in connection with the application to register land known as 'Bushfield', Compton and Shawford and the City of Winchester, as a

town or village green, a non-statutory public inquiry be held, and the inspector appointed to conduct the inquiry be asked to hear evidence for and against the application, and then to prepare a written report advising the Registration Authority whether to accede to, or to reject, the application.

**CORPORATE OR LEGAL INFORMATION:**

**Links to the Corporate Strategy**

<b>Hampshire safer and more secure for all:</b>	yes/no
Corporate Improvement plan link number (if appropriate):	
<b>Maximising well-being:</b>	yes/no
Corporate Improvement plan link number (if appropriate):	
<b>Enhancing our quality of place:</b>	yes/no
Corporate Improvement plan link number (if appropriate):	
<b>OR</b>	
<b>This proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because the County Council, in its capacity as Commons Registration Authority, has a legal duty to amend the register of towns and village greens in the circumstances described in this report.</b>	

**Section 100 D - Local Government Act 1972 - background documents**

**The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)**

Document

File: VG241

Location

Countryside Access Team  
 Room 200  
 Mottisfont Court  
 High Street  
 Winchester, SO23 8ZF

## **IMPACT ASSESSMENTS:**

### **1. Equalities Impact Assessment:**

1.1

### **2. Impact on Crime and Disorder:**

2.1

### **3. Climate Change:**

- a) How does what is being proposed impact on our carbon footprint / energy consumption?
  
- b) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

**This report does not require impact assessments but, nevertheless, requires a decision because the County Council, in its capacity as Commons Registration Authority, has a legal duty to amend the register of town and village greens in the circumstances described in this report.**