

Hampshire County Council

Decision Report:

Decision Maker:	Regulatory Committee
Date of Decision:	21 March 2012
Title:	Application for the registration of land known as 'Victory Park' in the Borough of Basingstoke and Deane, as town or village green
Reference:	3770
Report from:	Director of Culture, Communities and Business Services

Contact name: Sylvia Seeliger

Tel: 01962 846349

Email: sylvia.seeliger@hants.gov.uk

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. Cathy Williams of Highfield Chase, Basingstoke for the registration of land known as 'Victory Park' as town or village green. The County Council, as the registration authority, has allowed Mrs. Williams the opportunity to put her application in order, but this has not been achieved. The recommendation is that this application be rejected, on the grounds that it is not duly made.

2. Legal framework for the decision:

2.1 Section 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 continue to do so at the time of the application.

- (3) This subsection applies where –
- (a) a significant number of the inhabitants of any 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;
 - (b) they ceased to do so before the time of the application but after the commencement of this section: and
 - (c) the application is made within the period of two years beginning with the cessation referred to in paragraph (b).
- (4) This subsection applies (subject to subsection (5)) where –
- (a) a significant number of the inhabitants of any 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;
 - (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

Procedure on receipt of applications

- 4(1) On receiving an application, the registration authority must –
- (a) allot a distinguishing number to the application and mark it with that number, and
 - (b) stamp the application form indicating the date when it was received.
- (2) The registration authority must send the applicant a receipt for his application containing a statement of the number allotted to it, and Form 6, if used for that purpose, shall be sufficient.
- (3) In this regulation, “Form 6” means the form so numbered in the General Regulations.

Procedure in relation to applications to which section 15(1) of the 2006 Act applies

- 5(1) Where an application is made under section 15(1) of the 2006 Act to register land as a town or village green, the registration authority must, subject to paragraph (4), on receipt of an application –
- (a) send by post a notice in form 45 to every person (other than the applicant) whom the registration authority has reason to believe (whether from information supplied by the applicant or otherwise) to be an owner, lessee, tenant or occupier of any part of the land affected by the application, or likely to wish to object to the application;
 - (b) publish in the concerned area, and display, the notice described in sub-paragraph (a), and send the notice and a copy of the application to every concerned authority; and
 - (c) affix the notice to some conspicuous object on any part of the land which is open, unenclosed and unoccupied, unless it

appears to the registration authority that such a course would not be reasonably practicable...

(4) Where an application appears to the registration authority after preliminary consideration not to be duly made, the authority may reject it without complying with paragraph (1), but where it appears to the authority that any action by the applicant might put the application in order, the authority must not reject the application under this paragraph without first giving the applicant a reasonable opportunity of taking that action.

3. Applicant: Mrs. Cathy Williams,
Brookvale Community Association,
25 Highfield Chase,
Basingstoke,
RG21 7SA.

4. Landowners: Basingstoke and Deane Borough Council,
Civic Offices,
London Road,
Basingstoke,
RG21 4AH.

Affinity Sutton Homes Limited,
Level 6,
More London Place,
London,
SE1 2DA.

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 2.72 acres (1.1 hectares) of land lying to the west of the centre of Basingstoke. The Land is comprised in the registered title numbers HP 448977, 480552, 527363 and 732389.

6. The application:

6.1 The application was received on 26 August 2010. 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 a neighbourhood in a locality) for lawful sports and pastimes for at least 20 years, and they continue so to use it. The application itself did not identify any locality or neighbourhood within the locality, in respect of which the application is made.

6.2 The application was accompanied by a map of the land being claimed as village green and three photographs. There were no accompanying documents illustrating evidence of use by those claiming the right.

7. Processing the application:

7.1 When a registration authority receives an application to register land as town or village green, it must dispose of it either by rejecting it, or registering the land as town or village green.

7.2 Hampshire County Council, as the registration authority in this case, **must** [emphasis added] allot a distinguishing number to each application received to register land as town or village green, and stamp that application with the date of receipt. These are the requirements of Regulation 4 of the 2007 Regulations set out at the start of this report. These actions are carried out as soon as the application is received. The applicant receives an acknowledgement of receipt, and is informed of the number of the application. Further actions require the application to be advertised to those directly affected by it and by an advertisement, which is published in the press and on site.

7.3 The obligation to advertise is, however, subject to Regulation 5(4) of the 2007 Regulations. Where, after '*preliminary consideration*' it appears to the registration authority that the application is not '*duly made*', the authority can reject the application without having advertised it. However, if it appears that **any** action [emphasis added] by the applicant might serve to put the application in order, then '*the authority must not reject the application...without first giving the applicant a reasonable opportunity of taking that action*'.

7.4 Preliminary consideration of this application by officers, took place in September 2010, when the applicant was sent a letter on the 20 September setting out the deficiencies in her application. These were:

- That the name and address of the person given in the postal address box and that of the person signing the application and swearing the statutory declaration were not the same, as they should have been.
- The application did not contain a suitable map of the land being claimed at the right scale, sworn as an exhibit to the application.
- The application did not contain, either in writing or in a map, the locality or neighbourhood within a locality, being relied upon.
- Some sections of the form had not been struck out.
- The 2007 Regulations require that applications should be accompanied by any documents relating to it in the control of the applicant, for example user forms demonstrating details of use of the land, to show that the legal tests have been met. No such documents accompanied this application.

On 20 September 2010 the application was returned to the applicant (a copy of the application having been taken), suggesting that the applicant consider these points, and address them. If nothing was heard within 6 weeks of the date of the letter, then the registration authority would assume that the applicant did not want to go ahead with the application and would return all the material on file.

- 7.5 The applicant, Mrs. Williams, replied on 23 September, asking for clarification on some points, and stating that user evidence was being collected. However, this would not be completed before November 2010. Further letter and email correspondence followed, with the user forms received by the registration authority on 10 July 2011.
- 7.6 Though supporting evidence had been provided, there remained problems with specifying the locality or neighbourhood. Mrs. Williams had amended the application to describe the locality or neighbourhood as '*located in Brookvale & Kingsfurlong Ward West Brookvale. Land bounded by Deep Lane to the East, Millenium [sic] Court to the north, Morrisons store to the south*'. The accompanying map to show the exact boundaries of this locality or neighbourhood consisted of an extract from an Ordnance Survey map of part of the centre of Basingstoke, with a rectangle outlined in red drawn round it. It was felt that this map was diagrammatic in nature, in that it did not correspond with the boundaries of the ward known as Brookvale. Further, the rectangle outline has the effect of cutting a number of roads in half, and it was not made clear from the map and supporting evidence whether or not the applicant intended to include the sections of road cut off by the rectangle in the description of the locality or neighbourhood relied on.
- 7.7. No clarification of this issue has been received, and it is considered that this application is not 'duly made' and should therefore be rejected, in accordance with the 2007 Regulations.

8. Issues to be decided:

- 8.1 Officers consider that there are aspects of this application that could properly have been corrected or clarified by the applicant, and have afforded Mrs. Williams the opportunity over an extended period to put her application in order. However, the question of locality or neighbourhood in a locality has not been able to be satisfactorily resolved.
- 8.2 Members are reminded that the legal test that is required to be met to register a town or village green is that '*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*'. The locality/neighbourhood-issue lies at the heart of the relationship between the land which is the subject of the application and the people who are stated to have indulged in lawful sports and pastimes on it. In considering an application the registration

authority must be neutral in its role, but does require that an application contains sufficient relevant information to go forward to determination.

- 8.3 As it appears not to be possible for the applicant to put the application into a state where it can be considered to be 'duly made', the authority must therefore reject it.

9. Recommendation

- 9.1 That, in connection with the application to register land known as Victory Park, Lower Brook Street, Basingstoke, as a town or village green, officers of the registration authority consider it is not 'duly made', and therefore recommend that Members reject the application.

CORPORATE OR LEGAL INFORMATION:

Links to the Corporate Strategy

Hampshire safer and more secure for all:	yes/no
Corporate Improvement plan link number (if appropriate):	
Maximising well-being:	yes/no
Corporate Improvement plan link number (if appropriate):	
Enhancing our quality of place:	yes/no
Corporate Improvement plan link number (if appropriate):	
OR	
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 decided whether or not the register of towns and village greens should be amended.	

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: VG256

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.