Village Green Applications – getting it right

Town and village green law can be complex and challenging to anyone wanting to apply for the registration of village green rights, or defending themselves against applications affecting their land. These guidance notes are designed to help to get applications right first time and provide information for all interested parties.

Hampshire County Council is the commons registration authority ('CRA') for this county and must be neutral when handling village green applications. The CRA cannot give legal advice to any of the parties involved in applications.

When the CRA receives an application, it must follow a process laid down by the 2007 Regulations [LINK] of the Commons Registration Act 2006 [LINK] to determine the application. When an application is submitted, the CRA must stamp it with the date it is received and give it a unique number. An acknowledgement of receipt and confirmation of the unique number are sent to the applicant. Before the application can be processed any further, it must receive, in the words of the Regulations, 'preliminary consideration' to see if it is a correct, or 'duly made', application. Once it is considered duly made, the CRA must determine ('dispose of') it by rejection or registration. Each application is dealt with on its own merits.

The CRA is not allowed to reject the application if it appears that any action taken by the applicant would put right any problems. If it there are defects that the applicant could remedy, the CRA will send back the application with a letter setting out the issues that need attention.

Typical examples of such details are (this list is not exhaustive):

- The application is not made on Form 44
- Signatures that are missing, or that do not match the name of the applicant
- No statutory declaration included, or made, by the applicant
- Sections of the statutory declaration not being struck out (for example, the part of section 15(1) under which the application is made, sections 1 and 4 of the declaration)
- Map of the land being claimed is not of the right scale
- Maps where the boundaries are off the edge of the paper, i.e. some of the land is missing from the plan
- The boundary of the land claimed not clearly shown on the map
- Failure to specify a clear locality or neighbourhood in a locality
- Failure to attach a map showing the clear boundary where the locality or neighbourhood is not clearly specified in words
- Ownership of land is not stated
- No evidence of use has been supplied with application

The Regulations say that the CRA should give the applicant a 'reasonable opportunity' to put the application in order, but do not specify how long.

When making an application to Hampshire County Council, the time-scale for rectifying problems will be:

- All applications will be examined to see if they are duly made, once date-stamped and given a unique number
- Applicants will be sent a letter setting out any defects with their application and given 6 weeks to respond
- If we do not hear from the applicant within that time, we will assume that they do not want to go ahead with the application and return all your documents and consider the matter closed, rejecting the application for the avoidance of doubt
- If the returned amended documents still contain problems, the CRA will give the applicant a total of 3 months from the date of the first submission to put the application in order
- After this 3-month limit, the application will be rejected as not being 'duly made'

When an application is duly made, it will be advertised in due course on Form 45, in the press and on-site, and all interested parties (such as landowners, their lessees and tenants, local councils, local elected representative) will be informed directly. There will be a period of 6 weeks in which any member of the public can object to the application. Objections should be sent directly to the office of the Countryside Access Team, at Hampshire County Council, Castle Avenue, Winchester SO23 8UL.

The CRA ***must*** consider all objections received in this 6-week period, and ***may*** consider any others received outside that time. In practice, we consider all objections, with the aim of securing as much relevant information and evidence as possible to aid the determination of the application.

Objectors will be asked for detailed submissions of their arguments against the application, and these should address the legal test that is required to be met by the applicant. This test is found in section 15 of the Commons Act 2006 [see LINK above].

If objections are received, the CRA cannot reject the application without allowing the applicant an opportunity to answer them. Any submissions made by objectors will be sent to the applicant, who will be given 6 weeks to address them. All cases are dependant on their facts and, while we do not encourage prolonged exchanges between the applicant and objectors at this stage, time will be given to obtain the relevant information.

At the end of this process it should become clear whether the application is bound to fail because it does not meet all the requirements of the legal test for registration, or that there is conflicting evidence that may need to be tested in a non-statutory public inquiry, where it can be gone into in detail. If an inquiry is held, it will be conducted by a suitably qualified member of the legal profession, who will provide the CRA with an opinion as to whether the legal tests have been, or have not been, met.

The decision whether to reject the application or register the land as a town or village green will be taken by the elected members (County Councillors) of the Regulatory Committee, advised by the inspector who has held the inquiry, at a public meeting where all interested parties are able to attend and make deputations.

Any party involved in a town or village green application may wish to obtain their own independent legal advice, as the CRA is unable to provide such advice.