

## Hampshire County Council

### Decision Report:

<b>Decision Maker:</b>	Regulatory Committee
<b>Date of Decision:</b>	23 May 2012
<b>Title:</b>	Information on village green applications for the Hampshire County Council web-site and request for delegated powers for officers to reject applications not 'duly made' under section 15 of the Commons Act 2006
<b>Reference:</b>	3930
<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. This item provides information about guidance notes on village green applications for the general public that is to be put on the County Council's village green web-site, and requests delegated powers for officers in the Commons Registration Team, when processing applications made under section 15 of the Commons Act 2006, to decide whether applications are 'duly made', and reject those that are not. It is considered that such powers can be properly delegated to those officers responsible for the processing of such applications.

#### 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. Background:**

- 3.1 Applications for the registration of land as town or village green must be made on Form 44, which consists of a form and a supporting statutory declaration. The form contains explanatory notes, and requires factual information about ownership and the land, maps, evidence relating to use of the land and a statement of justification for the application. It has 12 sections and is 7 pages long. The statutory declaration consists of 2 pages and contains sections that need to be struck out. Given the complexity of the law, which is reflected in the forms, there is some potential for incomplete or incorrect forms.
- 3.2 On receipt, officers of the Commons Registration Team must examine each application to see if it is 'duly made', once it has been date stamped, given a unique number and acknowledged. An incomplete or incorrect application is returned to the applicant, indicating which aspects of the application require attention and asking that corrected or completed documents are returned within 6 weeks. After this time, it will be assumed that the applicant does not wish to proceed with the application. The Regulations governing this part of the process do not suggest a time-frame, but speak only of giving the applicant a 'reasonable opportunity' to put the application in order.
- 3.3 There have been instances where this process of returning the application for corrections has become protracted, sometimes involving a period of a year or more before the application has reached a stage where it is deemed duly made. Where there are time limits for making applications, as in those sections where use has ceased and they must be made within either 2 or 5 years of cessation, a drawn-out exchange process can affect the validity of the application in relation to the time limit. It may also attract criticism by objectors, who feel that applicants are given too much time to put applications into order.
- 3.4 Officers have taken the view that the County should provide clear information to the public relating to its own processing schedule for

village green applications, via its web-site. Because the County Council, as the registration authority for Hampshire, must remain neutral and not 'coach' any party or provide legal advice, it is usual to refer members of the public to the web-sites of the Open Spaces Society and Defra for information on making applications. However, these sites do not cater for the detail of any particular registration authority's processing of applications, particularly in relation to what constitutes a 'reasonable opportunity' to put right an application that contains defects.

- 3.5 It is for these reasons that officers have devised notes - (text attached at Appendix 1). These provide an indication of the working of the application process, examples of common problems and omissions, and give objectors information about the handling of the application once it is advertised. The guidance also sets out what officers consider is a reasonable time-frame in which administrative errors on Form 44 and the accompanying statutory declaration can be remedied. This allows for the application to be returned initially, and a response to be received. If the amended material is still deficient, particularly in matters of evidence of use, which may take many months to collect, it may be a better solution to reject the application and await a fresh one when the necessary evidence is available. If a would-be applicant consults the County's web-site before making an application, it contain information to make it more likely that a complete and correct application is submitted first time.
- 3.6 This material is couched in neutral terms, and suggests that any interested party involved in a village green application may wish to obtain their own independent legal advice.

#### **4. Reasons for requesting delegated powers:**

- 4.1 At present, under Part 2 of the Hampshire County Council Constitution, the duty to determine applications to register land as town or village green made under section 15 of the Commons Act 2006 is a function of Regulatory Committee A.
- 4.2 Part of this duty is to decide whether an application is 'duly made', that is has been submitted on a set form that is complete and accurate in all its particulars. An application that is not duly made is likely to fail, generally because of a legal technicality.
- 4.3 The decision whether or not an application is duly made needs to be made shortly after the application is received by the County Council. If it is considered to be not duly made, and not able to be made good by further efforts on the applicant's behalf, then it must be rejected. Under the present scheme of delegation, this decision would appear to fall within the remit of the Regulatory Committee, but officers consider that

it would be unnecessarily bureaucratic to bring such decisions to Committee.

- 4.4 It is therefore requested that those officers responsible for the processing of applications made under section 15 of the Commons Act 2006 are given the delegated power to decide whether or not an application is duly made and, if it is not, that the application should be rejected on the grounds that it is bound to fail.
- 4.5 Should this Committee accept the recommendation of this report, it is considered that the majority of decisions to reject an application as not duly made will be made by officers in the Commons Registration Team. The granting of delegated powers to officers will not remove the Regulatory Committee's powers to make such decisions and it is possible that, from time to time, officers may choose not to exercise their delegated powers, and instead ask this Committee to decide whether or not an application can be rejected on the grounds that it is not duly made.

**5. Recommendation:**

- 5.1 That it should be noted that guidance information on making village green applications is to be posted on the County Council's web-site, and that officers responsible for processing applications made under section 15 of the Commons Act 2006 be given delegated powers to decide whether or not applications are 'duly made', and to reject those that are not so made.

**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 decided whether or not the register of towns and village greens should be amended.</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

There are no files which relate to this report.

Location

Countryside Access Team  
Room 0.01  
Castle Avenue,  
Winchester, SO23 8UL.

**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.**