

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Executive Member for Culture, Recreation and Countryside
Date:	16 July 2015
Title:	Policy for Prioritising of Village Green Applications
Reference:	6723
Report From:	Director of Culture, Communities and Business Support

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1. Executive Summary

- 1.1. The purpose of this paper is to seek approval of a policy for the prioritisation of applications to register land as town or village greens, made under section 15 of the Commons Act 2006.
- 1.2. It is proposed that priority be given to applications for village green status on land that is also subject to a planning matter, such as a proposed new development.
- 1.3. The draft policy is appended to this report at Appendix 1, and the relevant legislation is appended at Appendix 2.

2. Contextual information

- 2.1. Hampshire County Council is the Commons Registration Authority for this county and, as such has a duty to process applications to record land as town or village greens.
- 2.2. The regulations governing these applications do not include any set timescale and they make no provision for the management of unprocessed applications, or the sequence in which they should be processed.
- 2.3. Applications often require the detailed consideration of large volumes of evidence and complex legal arguments, sometimes requiring a non-statutory Public Inquiry to resolve (which can be costly and time-consuming). The average time taken to process an application is therefore between 18 and 24 months. However, an unresolved town or village green application can introduce delays into the planning process.
- 2.4. It is therefore considered desirable to introduce a formal policy that enables early consideration of applications for village green status on land that is

also subject to a planning matter, such as a proposed new development. The policy will also inform applicants, landowners and the public how to request prioritisation of an application.

3. Necessity for a policy to enable prioritisation of applications

- 3.1. Prior to the passing of the Growth and Infrastructure Act in 2013, the rate of applications to the County Council was relatively low (between one a five a year) and, consequently, the waiting list was short (usually two or three applications). Applications were processed in chronological order of receipt; there was, and is, no formally prescribed or agreed policy that governs the order in which applications are processed. Crucially, it was, at that time, possible to lodge an application for village green status after an application for planning permission had been made.
- 3.2. Throughout the country, a significant number of applications for village greens were made following the submission of a planning application on the same land. A proportion of these were considered to be vexatious¹, in that they were lodged solely in an attempt to prevent the proposed development, since land subject to village green rights is effectively 'sterilised' for development, and only buildings that enhance the enjoyment of the green, such as football nets, tennis courts and sports pavilions, may be erected.
- 3.3. Consequently, new legislation in the form of the Growth and Infrastructure Act 2013 was established, with the intention of regulating the relationship between town and village green applications and proposals for development. This was achieved through the introduction of 'trigger' events (mostly related to planning applications and neighbourhood plans) and corresponding 'terminating' events (for example the withdrawal or refusal of planning applications), which effectively nullify the trigger event. It is now no longer possible for a Registration Authority to process a valid village green application for land on which a trigger event is extant, unless or until there is a corresponding terminating event.
- 3.4. The change in legislation prompted a number of village green application to be lodged with the County Council, both immediately before commencement, and afterwards, with six applications made in the period March 2013 to November 2013. As of the date of this report, there are ten outstanding applications, of which work has started on three.
- 3.5. Since the Act has come into force, it has become apparent that, in some instances, land that is subject to a validly-made village green application that has not yet been determined, subsequently also becomes subject to a trigger event. Consequently, any planning application, or other trigger event,

¹ See the discussion at paragraph 1.1.3., in Chapter 1 of Defra's '*Consultation on the registration of new town or village greens*', published in July 2011.

cannot be processed until the outcome of the village green application has been determined.

- 3.6. It is considered that, in order to avoid unnecessary delays to the planning process, priority should be given to town or village green applications that affect land that is subsequently subject to a trigger event. This would mean that some applications are effectively 'moved up' the waiting list, and taken out of chronological order. The draft policy at Appendix 1 sets out how this process would work.
- 3.7. The draft policy requires that, in order for a village green application to be given priority, a formal request must be made in writing, including the full reason why that application should be taken out of turn. These reasons must relate to the 'trigger' events listed in Schedule 1A to the Commons Act 2006, and reproduced in Appendix 2.
- 3.8. Other applications, which do not meet the criteria for added priority, may be affected by a delay in resolution, but this effect will not be of any great consequence, provided that the land is not at risk of development.
- 3.9. Should this policy be approved, it will be published on the County Council's website. All parties associated with existing town or village green applications will be notified of the policy, and all new applicants will be informed about the policy.

4. Legal Implications

- 4.1. The County Council is under a duty to respond to applications under section 15(1) of the Commons Act 2006, to determine whether to register land as town or village green, or to reject the application to register such rights. The County Council has discretion in how to address these applications, but it should not do so in any way that prejudices any party affected by the application. The basis of prioritisation must be transparent and must be adhered to. Failure to have a clear policy regarding prioritisation of the village green application waiting list where the County Council is urged by parties to give particular applications added priority because of planning considerations may be seen as causing prejudice, and therefore may put the County Council at risk of judicial review.

5. Financial Implications

- 5.1 There are no cost implications in the adoption of a policy for prioritisation for village green applications under section 15(1). Existing resources will be utilised in processing the claims according to these prioritisation guidelines.

6. Views of Local Councillors

- 6.1 The policy will apply county-wide, and so no individual consultation of Members has taken place.

7. Conclusions

- 7.1 The recent legal changes to the way that village green applications are processed has led to the formation of a waiting list where the need to prioritise some applications over others has arisen.
- 7.2 A formally approved policy for the prioritisation of village green application will minimise the risk of causing prejudice to any affected party, provide transparency, and will allow the County Council as Registration Authority to provide an effective service in the determination of village green rights, especially when such a determination is linked to a planning matter.

8. Recommendation(s)

- 8.1 That the Executive Member for Culture, Recreation and Countryside:
- Approves the policy for the prioritisation of applications to register land as town or village green.

CORPORATE OR LEGAL INFORMATION:**Links to the Corporate Strategy**

Hampshire safer and more secure for all:	no
Maximising well-being:	yes
Enhancing our quality of place:	no

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.)

DocumentLocation

Village Greens – management – Policy for prioritising Village Green Applications	Hantsfile
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IMPACT ASSESSMENTS:

1. Equality Duty

1.1. The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- a) The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;
- b) Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;
- c) Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionately low.

1.2. Equalities Impact Assessment:

The proposed policy should not raise any equality or diversity issues. The decision to prioritise an application is based on the need for a determination of rights, rather than any characteristics of the applicant. Inevitably, those applications that are not expedited because other claims are given added priority will be dealt with less quickly than might otherwise be the case.

2. Impact on Crime and Disorder:

2.1 The policy has no impact on the prevention of crime.

3. Climate Change:

3.1 How does what is being proposed impact on our carbon footprint / energy consumption?

No significant impact.

3.2 How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

No significant impact.