

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Regulatory Committee
Date of Decision:	11 February 2010
Decision Title:	Application for registration of land lying to the south east of Tichborne Way and between the former railway spur accessing the armaments depot and the disused Bedenham railway line in Gosport as town or village green (Application No. TVG 248)
Decision Reference:	1315
Report From:	Director of Culture, Communities and Rural Affairs

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EXECUTIVE SUMMARY

1) Summary of decision area:

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 Janet Lidgey of 6 The Chine, Holbrook, Gosport for the registration of land lying to the south east of Tichborne Way and between the former railway spur accessing the armaments depot and the disused Bedenham railway line in Gosport as a 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:

s.15(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.

s.15(3) This subsection applies where –

(a) a significant number of the inhabitants of any locality, or of any neighbourhood in 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 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).

s.15(6) In determining the period of 20 years referred to in subsection[...] (3)(a).., there is to be disregarded any period during which access to the land was prohibited to members of the public by reason of any enactment.

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

Consideration of objections

6(1) Where an application is made under section 15(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) Recommendation:

3.1. That a non-statutory public inquiry be held and the inspector appointed to conduct the inquiry be asked to hear the 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.

MAIN REPORT

1) Purpose of report:

- 1.1. The purpose of this report is to seek approval to the holding of a non-statutory public inquiry into an application to register land lying to the south east of Tichborne Way and between the former railway spur accessing the armaments depot and the disused Bedenham railway line in Gosport known as town or village green.

2) Applicant:

Mrs Janet Lidgey of 6 The Chine, Holbrook, Gosport, PO13 0YX

3) Landowners:

Hampshire County Council

4) Description of the land (please refer to the map attached to this report):

- 4.1. The land which is the subject of the application ('the Land') is shown edged red on the plan annexed to this report (Appendix 1). It consists of approximately 0.41 hectares of land which forms a triangle of land lying to the south east of Tichborne Way and between the former railway spur accessing the armaments depot and the disused Bedenham railway line in Gosport. The land is comprised in the registered title number HP 718865.

5) The application:

- 5.1 The application was received on 30 October 2009. 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 for lawful sports and pastimes for at least 20 years and that they continued to do so until January 2009 when fences were put into place. The application is "duly made" for the purposes of the Commons Act 2006. The application identifies the relevant locality by reference to a map, a copy of which is appended as Appendix 2 to this Report, and is described by the Applicant as *"the locality or the neighbourhood within the locality to which the claimed green relates is shown on the attached plan coloured blue"*.
- 5.2 The application was accompanied by a statement in support of the application, a map illustrating the 'locality' and 12 letters in support detailing use of the land. Typical uses described are 'dog walking'; 'blackberry picking'; 'bird watching'; 'family activities'; 'play area'; and 'walking', all of which are lawful sports and pastime and activities capable of supporting registration of land as a town or village green. However, some of the use by walkers appears to be as part of a longer walk and might be said to be use of the land as a highway rather than as a village green.
- 5.3 Twelve further letters were received, many supporting the application.

Again, these letters describe the uses referred to in paragraph 5.2 above.

- 5.4 Additionally, users point to the fact that whilst the land was in the ownership of Gosport Borough Council, the land (which is some letters is referred to as a “meadow”) was regularly mown and dog waste bins were provided by the Borough Council. Other users have referred to a grass cutting regime to accommodate wild flowers, thus supporting (in the Applicant’s view) the facilitation of the land by the Borough Council for public use and recreation.

6) The law

- 6.1. Under section 15 of the Commons Act 2006 applications can be made to amend the Register of Town or Village Greens when land becomes a town or village green. The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England and Wales) Regulations 2007 sets out the procedures to be followed in respect of such applications. In accordance with those regulations, advertisements on site and in the local press invited objections to the application within the period specified in the regulations: in this case the objection period expired on 24 October 2008. One objection was received (from the landowner) and the Applicant has been invited to address the issues raised in that objection.
- 6.2. The law relating to town and village greens is complex and in some areas it is still being developed through the courts. Several of the elements of section 15 (e.g. meaning of use ‘as of right’ and ‘significant number’) were addressed by the House of Lords in 2006 in the case of Oxfordshire County Council v Oxford City Council. The House of Lords in 2004 in the case of R (Beresford) v Sunderland City Council commented on whether use by the public of land held by a local authority for the purposes of public recreation should be considered use “by right” or “as of right”.
- 6.3. In its capacity as Registration Authority, the County Council is required to adjudicate on the application and to register the application land if there are sound reasons for doing so, or if not, to reject the application. It is for the applicant to prove his or her case and there is no requirement for the Registration Authority to instigate its own research into the application. Nonetheless, there may be disputes of fact and/or issues of law to be resolved or considered before a decision can properly be made. Unlike decisions made on applications for rights of way (which are in many ways governed by similar principles of law), decisions made by this Committee on town or village green applications are not subject to review by the Secretary of State through a prescribed statutory and public process: the decision to accede to or reject an application can only be challenged through the Courts by way of judicial review. It is therefore particularly important that the Registration Authority’s scrutiny of the application and any objections is thorough and that this Committee is well informed and advised before the application is finally determined.

7) The objections and the issues:

- 7.1. The landowner has raised four matters in its objection to the application and has referred to the land throughout its objection as “the Triangle” –
- i) *“insufficient evidence of ‘recreational activity’* – in essence, at face value, the evidence submitted in support of the application reveals *“trivial and sporadic activities on some (largely unidentified) parts of the Triangle on some (largely unidentified) occasions by a very small number of people”*;
 - ii) *“use for passage only”* – the landowner refers to the fact that the evidence supports the use of land for passage. Persons using the land were crossing it rather than using it to indulge in sports and pastimes.
 - iii) the user of the land was *“by right”* as opposed to *“as of right”* – the landowner submits that use of the land has to be without right, in other words those using the land must be trespassers. This is not, the landowner submits, the case here – any use would have been either with the implied permission of the Borough Council or use pursuant to the holding of the land for the purposes of public recreation;
 - iv) *“no ‘locality’; ‘neighbourhood’; ‘significant number of inhabitants’*”.
- 7.2. Officers consider that there are matters of fact and law which need to be considered in more detail, namely
- i) the extent to which walkers were using the land as a highway, rather than as an area over which they were indulging in lawful sports and pastimes;
 - ii) the question of whether any use was without permission or permissive appears to strike at the heart of this application and it essential that the differing views (not only as to the evidence of whether use was permissive but also as to the legal interpretation of such use) are fully rehearsed;
 - iii) there is a need to have the evidence tested at an inquiry where witnesses will attend to give evidence and will be available for cross-examination. This will ensure that any future decision is made in the knowledge that the evidence has been fully tested and both the applicant and objector have had the opportunity of exploring the application in public. In particular, there are issues over the extent of the land used by the users; the purposes for which they enjoyed that use. These are some, but by no means all the evidential questions that need to be considered;
 - iv) there are also legal issues that will need examining. This report has already indicated (see point ii) above the question of the nature of the use needs examination and there is case law from the House of Lords that requires examination. Additionally, there is legal argument surrounding s15(3) of the Commons Act 2006, the issues being whether the applicant has satisfied the statutory test of showing any user was “by a significant number of the inhabitants of any locality, or of any neighbourhood within a locality”.
- 7.3. 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.

- 7.4. Of note is the fact that Hampshire County Council is the landowner, objector and Commons Registration Authority for the purposes of this application. It is therefore considered appropriate that a non-statutory public inquiry be held to enable the evidence to be tested and the report of an independent inspector obtained.
- 7.5. If the recommendation of this Report is accepted, then a nine day period commencing 22 March 2010 has provisionally been fixed for the holding of the non-statutory public inquiry.

8) Recommendation

That, in connection with the application to register land lying to the south east of Tichborne Way and between the former railway spur accessing the armaments depot and the disused Bedenham railway line in Gosport 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 the 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.

**Agenda Item:
Integral Appendix 3:**

CORPORATE AND LEGAL INFORMATION ABOUT THIS DECISION:

Links to the Corporate Strategy

	Yes	No
Hampshire safer and more secure for all	<input type="checkbox"/>	<input type="checkbox"/>
Maximising well-being	<input type="checkbox"/>	<input type="checkbox"/>
Enhancing our quality of place	<input type="checkbox"/>	<input type="checkbox"/>

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 amend the register of towns and village greens in the circumstances described in this report.

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.)

(Quote list of documents here: e.g. list the relevant letters, memos, etc. and their location)

<u>Document</u>	<u>Location</u>
Files: VG 248	Chief Executive's Department (Legal Services) Room 157 E II South The Castle Winchester