

HAMPSHIRE COUNTY COUNCIL**Decision Report**

Decision Maker:	Regulatory Committee
Date of Decision:	29 June 2011
Decision Title:	Application for registration of land known as Longbridge Play Area in the parish of Bramley as town or village green (Application No. VG 243)
Decision Reference:	2213
Report From:	Director of Culture, Communities and Business Services

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EXECUTIVE SUMMARY**1) Summary of decision area:**

Hampshire County Council is the Commons Registration Authority (CRA) for the purpose of exercising functions under the Commons Act 2006. One such function is the determination of applications made to register land as town or village green. The Regulatory Committee, in its capacity as Commons Registration Authority, is asked to consider an application for registration of land known as 'Longbridge Play Area', in Bramley, as town or village green. A non-statutory public inquiry has been held in respect of the application and Mr. Alexander Booth, barrister, was appointed to act as Inspector at the inquiry. A report prepared by Mr. Booth following the inquiry recommends that the application be accepted. A further opinion was obtained from Ms Morag Ellis QC. This opinion advises that the application be refused. Officers do not consider that, in this particular case, faced with two conflicting opinions Members can properly make a decision. It is therefore recommended that authority be given to hold a second public Inquiry.

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(2) 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 continue to do so at the time of the application

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.

3) Applicant: Mrs. Catherine Baker ('the Applicant') of 32 Longbridge Road, Bramley, RG26 5AN.

4) Landowners: Radiotropic Limited and Mr. John Bell MRICS ('the Objectors'), both represented by Larcomes LLP, 168 London Road, North End, Portsmouth, PO2 9DN.

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 red on the plan annexed to this report (Appendix 1). It consists of approximately 0.3 acres (0.13 hectares) of land at the southern end of Longbridge Road. The land is part of the land comprised in the registered title number HP 604615.

6) Background to the application:

6.1 On the 4th November 2008 an application was made to register approximately 0.3 acres (0.13 hectares) of land known as 'Longbridge Road Play Area', Bramley as town or village green, on the grounds that it had been used by the inhabitants of the locality for lawful sports and pastimes for 20 years prior to 2008. The application was advertised according to the statutory requirements and an objection to the registration was received from the landowner.

6.2 In September 2008 this Committee approved the holding of a non-statutory public inquiry into the matter. The inquiry was held by an Inspector, Mr. Alexander Booth, barrister, over 5 days on 26th – 28th April and 21st and 28th June 2010, in order that the evidence of witnesses could be tested, and advice given as to whether or not the application should be accepted.

6.3 This table outlines the relevant chronology:

Date	Event	Appendix number
14 th September 2010	Inspector's 1st Report – version 1	Not appended – largely the same as Appendix 3 save for the omission of 4 witnesses
20 th September 2010	HCC/Mr Booth Telephone Conversation	n/a
21 st September 2010	Inspector's 1st Report – version 1 forwarded to parties	n/a
27 th September 2010	Mrs Baker Comments on Inspector's Report	2
28 th September 2010	Inspector's 1st Report – version 2	3

8 th October 2010	Objectors' comments on Inspector's version 1 report	4
11 th October 2010	Inspector's 1st Report – version 2 forwarded to parties	n/a
13 th October 2010	Inspector's supplementary report 1	5
15 th October 2010	Objectors' comments on Inspector's version 2 report	6
10 th December 2010	Inspector's supplementary report 2	7
22 nd February 2011	Instructions sent to Morag Ellis QC	n/a
3 rd March 2011	Morag Ellis QC written advice	8
27 th April 2011	Mrs Baker comments on Ms Ellis' advice	9
6 th May 2011	Morag Ellis QC teleconference in light of Mrs Baker's comments and other concerns.	
11 th May 2011	Morag Ellis QC note of teleconference	10
	Further correspondence has been received from the interested parties. However, this is either directed at procedural issues or is reflected in sections 9 and 10 of this report.	

7) The issue to be decided:

- 7.1 Whether or not to register 'Longbridge Road Play Area', Bramley as a town or village green, in accordance with section 15(2) of the Commons Act 2006.

8) Discussion

- 8.1 Mr Alexander Booth ('the Inspector') was instructed to manage the public Inquiry, hear evidence both for and against the application and prepare a report to Hampshire County Council advising on whether or not the land should be registered as a Town or Village Green. This report (*The Inspector's first report, version 1*) was provided to Hampshire County Council on the 14th September 2010. The report summarised the evidence heard at the Inquiry and, broadly speaking, found that:
- 8.1.1 Locality – the civil parish of Bramley satisfied the statutory definition of locality
- 8.1.2 Lawful sports and pastimes (LSP) – the nature of activities which had taken place on the land during the relevant period qualified as LSP
- 8.1.3 The relevant 20 year period – that qualifying use of the land took place over a full twenty year period
- 8.1.4 Significant number – that use of the land throughout the 20 year period was of such a degree and intensity that it would have been evident to any reasonable landowner that local people had been making use of the land for lawful sports and pastimes and, therefore, the land had been used by a significant number of people for the requisite period.

- 8.1.5 Use by right/as of right – although the landowner had undertaken some activities to prevent access to the land, as a matter of fact and degree these steps were insufficient to render use of the land contentious. Further, although Basingstoke and Deane Borough Council had, for some years, maintained the land, such maintenance did not qualify the land as public open space, and therefore, use of the land was “as of right” and not “by right”.
- 8.2 Having appointed an external Inspector, County Council officers are to some extent removed from active involvement in the Inquiry – their role in the Inquiry being to assist in procedural and administrative matters and not to hear evidence. However, that said, County Council officers are generally present throughout the whole of any Inquiry and have a responsibility to ensure that they are satisfied with the Inspector’s report and that any decision subsequently made on the basis of that report is robust and accurate. With this in mind, on the 20th September, officers of Hampshire County Council telephoned the Inspector to discuss his report, and ask for clarification on certain points. No record of this conversation exists, but should there be any doubt as to what was discussed, passages of the Inspector’s report which officers had concerns about, or which were felt to need more explanation, were highlighted.
- 8.2.1 The issues which officers sought clarification on were:
- Paragraph 195. Officers requested further amplification on the paragraph on locality. Particularly, officers wished for the Inspector to address the ‘spread of user’ in relation to the claimed locality as this had not been addressed in the report.
 - Paragraph 215. Officers considered that the final two sentences in that paragraph “Having listened to them and observed their demeanour....I found their evidence to be credible and persuasive” was a rather ‘broad brush’ approach to dealing with witness evidence; more normally the credibility of witnesses, and the weight to be attached to their evidence, is discussed in terms of each individual witness. During the telephone conversation, the Inspector restated that on the whole, he did find the applicant’s witnesses to be credible and persuasive.
 - Paragraph 228. Officers discussed with the Inspector his findings on the nature of use of the land.
 - Paragraph 262. Officers discussed with the Inspector his findings on whether use was forcible or contentious.
 - Paragraph 264 onwards. Officers discussed with the Inspector his approach to the as of right/by right issue.
- 8.2.2 It was agreed that, as comments were likely to be received in the near future from the interested parties, the Inspector would not be instructed to write a supplementary report addressing the issues raised by officers, but rather would address these issues in any supplementary report he prepared.
- 8.3 The Inspector’s first report was forwarded to the interested parties on the 21st September.
- 8.3.1 The Applicant responded on the 27th September (Appendix 2) stating that she was concerned to note that four of her witnesses had been omitted from the report. The Inspector was immediately asked to revise his report to include the omitted evidence. His revised report (*The Inspector’s first report, version 2*)

was received by the County Council on the 28th September (Appendix 3). This report was then distributed to all parties on the 11th October 2008.

8.3.2 On the 8th October the Objectors submitted their comments on *version 1* of the report (Appendix 4) . Amongst other things, they commented that the report was incorrect in its consideration of:

- Whether use had been of the whole of the application land
- The application of the ‘significant number’ test
- Whether or not use was contentious
- The implications of the status of the land with regards to the by right/as of right test

8.3.3 These comments were forwarded to the Inspector for consideration and, on the 13th October 2010 he produced his first supplementary report (Appendix 5). The Inspector addressed each of the Objector’s concerns and came to the conclusion that his recommendation that the land should be registered still stood.

8.3.4 On the 14th October the Applicant responded to *Version 2* of the first report stating:

“I am pleased that the Inspector has reached the conclusion that the Longbridge Road Play Area should be registered as a village green. I hope that the commons registration authority will agree.”

8.3.5 On the 15th October, the County Council received additional comments from the Objectors, this time on *Version 2* of the first report (Appendix 6). It should be noted that at this point neither party had had sight of the supplementary report, produced on the 13th October, and that the Applicant’s comments of 14th October and Objectors’ comments of 15th October addressed themselves to the *Version 2* report.

8.3.6 The 15th October comments of the Objectors focused on the evidence of the four witnesses who had been omitted from the original report, highlighting areas where the Objector believed that the evidence as told at the Inquiry differed from that as recorded in the Inspectors report. The Objectors requested that the matter be reconvened to a second Inquiry or, in the alternative, that the paperwork be submitted to an alternative barrister for a second opinion.

8.3.7 These additional comments were submitted to the Inspector who, in response, submitted his second supplementary report, dated 10th December 2011 (Appendix 7). He stated that the sections of his report highlighted by the objectors were not intended to record the totality of the evidence, rather a summary of the evidence. The Inspector rejected the Objectors’ record of the evidence, and the assertion that witnesses were pressurised into giving testimony and confirmed that he was content that the conclusions he reached in his report were justified.

8.3.8 Copies of the Objectors’ submissions were posted to Mrs Baker on the 15th December 2010. Copies of the Inspector’s two supplementary reports were not submitted to either party (until 27th April 2011) as each party had by then had the opportunity to consider the Inspector’s report and the County Council now wished for an opportunity to review the case and the submissions received.

8.4 Officers considered taking a report to Regulatory Committee recommending that

the land should be registered as a Town or Village Green, but felt that it would be unsafe to recommend to Members that such a decision should be made on the basis of the evidence they had before them, without seeking further advice.

8.4.1 Officers were concerned to ensure that:

- a) the as of right/by right issue had been properly assessed in light of the developing case law on the matter;

and

- b) the relationship between the spread of user and the locality identified by the applicant had been considered as fully as it needed to be, and that the correct legal test had been applied.

8.4.2 When seeking a second opinion, it is always imperative to ensure that the questions asked can properly be answered as part of a paper based exercise (for example, advising Counsel cannot be asked to comment on the witness evidence if they did not hear that evidence as it was presented at the Inquiry). It was considered that the concerns highlighted above were matters of law which could properly be addressed by seeking a second opinion from experienced Counsel and, therefore, Ms Morag Ellis QC was so instructed.

8.4.3 In addition to the matters considered above, it is also relevant to note that officers had a degree of concern about the discussion of the witness evidence in the Inspector's report. When they were able (for example, when they were not involved in photocopying or other procedural matters), Officers took comprehensive notes of the testimony provided at the Inquiry. Having reviewed these notes, although officers did not necessarily agree with the Objectors that the way that the Inspector recorded the evidence was inaccurate, it was noted that the report was not as comprehensive in its consideration of witness evidence as it could be. The Inspector had stated in his supplementary report that he did and did not take into account certain aspects of particular witnesses' evidence when coming to his recommendation. However, the fact that the report did not record more of the substance of what was said at the Inquiry and what aspects of this evidence was, or was not, considered relevant *for each particular witness* made any decision based on the report potentially unsafe (as there was little written record of the evidence relied on to support a decision). As stated, this was not something on which a second opinion could be sought as it was not a matter of law, but of the interpretation of the witness evidence. The implications of this are discussed in the *Options* section below.

8.4.4 Ms Ellis' advice, dated 3rd March 2011 (Appendix 8), agreed with the Inspector's assessment of the as of right/by right issue. However, on the issue of 'spread and fit', she disagreed with the Inspector's findings. Ms Ellis highlighted the need for the applicant to prove a link between the users of the land and the locality or neighbourhood identified for the purposes of section 15 of the Commons Act 2006. Ms Ellis considered that the Inspector did not reach his conclusion on the correct legal principles. She further stated that whilst it was not for her to comment on factual matters (ie the witness evidence), she could not see, from the evidence before her, how registration could be justified and therefore, she would recommend the refusal of the application.

8.4.5 Ms Ellis' advice was forwarded to the interested parties on the 13th April 2011. In response, on the 20th April the Objectors wrote asking for the County Council to follow the advice of Ms Ellis. On the 27th April the Applicant e-mailed the County

Council (Appendix 9) outlining her concerns with Ms Ellis' advice, namely:

- that figures relating to the population of Bramley, recited in Ms Ellis' advice, were figures provided by the objector and were incorrect and misleading and, thus, the advice of Ms Ellis was based on incorrect information. The Applicant provided a link to an alternative source of information for population statistics in Bramley;
- that, due to the length of the Inquiry and advice given by the County Council, the Applicant had not been given sufficient advice or opportunity to provide enough witnesses to illustrate a 'significant number'.

The Applicant asked that the Inspector be asked for a supplemental report in light of Ms Ellis' advice.

8.4.6 On the 6th May 2011 Officers held a telephone conference with Ms Ellis to discuss the Applicant's e-mail and procedural concerns as to how a case where there were conflicting legal opinions should be treated.

8.4.7 On the 11th May 2011 Ms Ellis produced a note (Appendix 10) confirming that the Applicant's e-mail did not change Ms Ellis' advice. Ms Ellis confirmed that whilst she had cited the objector's population statistics in her advice, in that same advice she had gone on to reject a 'mathematical approach' and concluded that it was incumbent on the applicant to "*demonstrate a genuine relationship between user and the claimed locality...*". Ms Ellis concludes that:

"Not having heard the evidence, I was rightly not asked to comment on the Inspector's factual findings, nor to reach a final conclusion as to the merits of the application, and I did not purport to do so".

8.5 Upon notification of the intention of officers to present a report to this committee, further correspondence has been received from both parties. Members are very welcome to visit the officers of the Countryside Access Team to view this correspondence, but it has not been appended to this report as either it is related to procedural matters or it has been covered by the comments provided in sections 9 and 10 of this report.

9) Options

9.1 It is evident that, in light of the above, there is no easy solution. However, there are three options which members may wish to consider:

- i) Follow the Inspector's recommendation and register the land as a Town or Village Green
- ii) Refuse the application on the basis of Ms Ellis' advice
- iii) Reconvene the matter to a second public Inquiry

Each of these options will be considered below, in detail.

9.2 Follow the Inspector's recommendation and register the land as a Town or Village Green

9.2.1 Members may consider that reliance should be placed on the report of the Inspector who heard the evidence. He has had the opportunity to hear the witnesses first hand, hear the cross examination and ask questions of clarification where necessary. He has stated that, although he has not included certain parts of the evidence within his report, he is nonetheless satisfied that in

coming to his recommendation he has taken into account only what is relevant and disregarded what is not. Members may be mindful that, in instructing an Inspector, they have contracted out the consideration of the evidence to a third party, and whilst they have by no means absolved themselves of the responsibility for decision making, there will be an expectation that they will abide by this advice unless there is good reason not to.

- 9.2.2 In this case a second opinion has been sought. It was sought because officers had specific concerns about the Inspector's application of the law to the facts. The second opinion confirms the concerns that the officers had on one of the issues; Ms Ellis states very clearly that in her opinion she feels that the Inspector, on this occasion, has misdirected himself in his assessment of the relevant law and, therefore, his recommendation is materially flawed. Further, officers' concerns about the treatment of the witness evidence remain – although the Inspector has satisfied himself that he has only taken into account relevant evidence in coming to his decision, very little is documented as to what was and was not considered relevant and why. This lack of clarity as to how the Inspector's recommendation has been arrived at places serious doubt on the defensibility of any decision arrived at as a result of this recommendation.

9.3 Refuse the application on the basis of Ms Ellis' advice

- 9.3.1 Officers agree with Ms Ellis' interpretation of the relationship between user and locality in law. Ms Ellis is an extremely experienced QC who has been personally involved in a number of complex Town or Village Green cases recently, and much weight is placed on her opinion. In any matter relating to an application to record land as a Town or Village Green the onus is on the applicant to prove their case, and, in light of Ms Ellis' advice, on paper Members may consider that the Applicant has not demonstrated a genuine link between the users of the land and the claimed locality.

- 9.3.2 Notwithstanding the assessment above, the fact remains that Ms Ellis did not hear the evidence herself, and officers, whilst in attendance at the Inquiry were not specifically there with the purpose of hearing or recording the evidence given. Ms Ellis is satisfied that the Inspector has misdirected himself in his assessment of the relevant law. In this specific case, Members will need to consider to what extent a decision based solely on Ms Ellis advice can safely be made, especially where the Inspector's report does not include a comprehensive précis of the evidence given. This is because whilst Ms Ellis' advice is restricted to the Inspector's interpretation of law, it is the application of this law to the facts of the case which, in this instance, is critical to the ultimate success or failure of the application. If Members make a decision which is not supported by evidence, or, if there is an argument that evidence which may be relevant has not been heard, such a decision may be vulnerable to legal challenge.

9.4 Reconvene the matter to a second public Inquiry

- 9.4.1 If Members consider that no decision can properly be made on the basis of the evidence and arguments they have before them, the only reasonable alternative would be to reconvene the public Inquiry (with an Inspector who has not so far been involved with the case) to hear the evidence and make a recommendation as to whether or not the application to record the land should be accepted or rejected. This would be the most transparent way of determining the application. It may be possible to hold a pre-Inquiry meeting to reach an

agreement between the parties of what matters the Inquiry should address and what, if any, are not contested.

9.4.2 As Members are well aware, any decision to return a matter for a second Inquiry must be made with the utmost gravity, and only where there is no reasonable alternative. Although, if there is to be a second Inquiry, the County Council will make every effort to ensure such an Inquiry is held promptly, there will inevitably be a delay in the determination to the resolution of this application which, for obvious reasons, will be extremely unsatisfactory to every party involved. Public Inquiries also carry with them significant cost (both in terms of financial cost and the time and resources required), not just to the County Council, but to each of the parties involved. Therefore, in this situation where the Applicant and Objector both believe that a decision can properly be made (although each would support a different decision), the option of returning the matter to Inquiry is likely to be highly unwelcome and unpopular.

9.5 Officers are well aware of the gravity of the situation and the strength of feeling held by each party involved. However, it is our considered view that not only would it be improper for the County Council to reach a decision based on the evidence and arguments it has before it, but that any decision made at this stage may be unsafe and vulnerable to legal challenge and, for the reasons outlined above, such a challenge would be difficult to defend against. Therefore, option iii) (to return the matter to a second public Inquiry) is recommended.

10) Objectors' comments:

These are included at Appendix 11.

11) Applicant's comments:

These are included at Appendix 12. In addition to these comments, Mrs Baker has asked for the following statements to be taken into account, with regards to paragraphs in this report:

8.2.1 Paragraph 195 - 'The Applicant asserts that there was no requirement for the Inspector to address the issue of 'spread of user' as the Objectors did not raise this point at the Inquiry or in their summing up.'

8.3.6 'It should however be noted that the applicant and the witnesses for the applicant do not agree that the evidence as told at the Inquiry differs from that recorded by the Inspector.'

12) Discussion of comments:

12.1 It is clear that both parties object strongly to the recommendation that a second Inquiry be held; both request that the Regulatory Committee make a decision at this meeting, and both provide their reasons why they feel that Members have all the information they need with which to determine the case. In previous correspondence both parties have also indicated that they will consider a judicial review of the Council's decision should the County Council make the 'wrong' choice.

12.2 Whilst officers do not propose to respond to every point made in the comments, they make the following observations:

- 12.3 At paragraph 5 of Appendix 11 the objectors draw parallels between this and another TVG case that this Committee has recently considered. Although the objectors feel that there would be an “inexplicable discrepancy” between that case and this, officers believe that the two cases are quite different and must be considered on their own merits. In the current case, although a second opinion has indicated an error of law on the part of the Inspector, we cannot be sure as to the consequences of this error because of the difficulty of assessing the user evidence and how it relates to the locality in light of the alternative stance adopted by Ms Ellis.
- 12.4 At paragraph 6 the objectors highlight their concerns about the cost and burden of a second Inquiry. Whilst the County Council accepts that the onus is on the applicant to prove his or her case, the County Council must ensure that any decision it makes is robust and defensible.
- 12.5 At paragraph 7 the objectors outline their view that the County Council has all the evidence it needs with which to make a decision. This is a view shared by the applicant (although each takes a different view of what the evidence shows, and is discussed more fully at section 11.9 below).
- 12.6 At paragraph 8 the objectors suggest that whatever the decision of the County Council, it is likely that there will be a challenge. They further suggest that if the case looks like it is going to court anyway, then there is “no point” holding a second Inquiry. However, Members will be well aware that the only lawful basis for their decision is whether or not evidence has been provided to show that the land should be registered.
- 12.7 The applicant has asked for comments to be added to paragraphs 7.2.1 and 7.3.6. With regards to paragraph 7.2.1, although the issue of spread was not mentioned in the Inquiry, Officers are entitled to ask any advice from the Inspector as they see fit, to ensure that there are no weaknesses in the report. With regards to 7.3.6, it is accepted that the applicant does not agree.
- 12.8 In terms of the applicant’s substantive comments, at paragraph 4 of Appendix 12 four issues are identified. Officers would respond to each of the issues as follows:
- i. Mr Booth has fulfilled the terms of his instruction, Hampshire County Council are under no obligation to seek further advice from him and there is no reason why not referring back to him should make any decision unlawful.
 - ii. Ms Ellis was asked to advise impartially on matters of law. Her advice was given on this basis and was well founded in current law.
 - iii. Whilst it is not considered that the advice of Ms Ellis is unsafe, officers do recognise that she has not had the opportunity to hear all of the evidence as it was presented at the Inquiry and, for this reason, officers’ recommendation is that no decision should be made and a second public Inquiry be convened.
 - iv. Ms Ellis has provided advice in accordance with the County Council’s instructions and, in her advice, whilst recognising that it was not for her to comment on factual matters, recommends that, judging by the material she has before her, the application should be refused.
- 12.9 Between paragraphs 10 and 16 the applicant provides her views on Ms Ellis’ advice. For the purposes of this report it may be helpful for officers to comment in detail on this matter:

12.9.1 Section 15(2) of the Commons Act 2006 requires that use by “a significant number of inhabitants of any locality, or of any neighbourhood within a locality...” be demonstrated. ‘Locality’ and ‘neighbourhood’ are distinct terms. An applicant must, when making their application, choose whether they wish to rely on a locality **or** a neighbourhood within a locality, and the connection between user and locality/neighbourhood is often crucial to the ultimate success or failure of an application.

12.9.2 Much legal debate has gone into defining exactly what is meant by the terms ‘locality’ and ‘neighbourhood’. Defra guidance on section 15 of the Commons Act¹ states:

“There is a body of authority to the effect that ‘locality’ in the 1965 Act meant a legally recognised administrative area, such as a civil parish or an ecclesiastical parish.... There would seem to be no reason for ‘locality’ to be interpreted any differently in the 2006 Act.”

“The concept of a ‘neighbourhood’ is more flexible than that of a ‘locality’, and has no connotation of legally recognised boundaries” but that “the registration authority had to be satisfied that an alleged neighbourhood had a sufficient degree of cohesiveness” and that “It is a question of fact, taking all the circumstances into account, whether a particular area possesses the necessary attribute of cohesiveness”

12.9.3 In the current case, although the applicant initially relied on a ‘neighbourhood’ she has since amended her application so that it relies not on a neighbourhood, but on a ‘locality’, the civil parish of Bramley. As far as officers are aware, there is not, nor ever has been, any argument from any party or legal advisor that the Parish of Bramley fails to meet the necessary criteria of ‘locality’ as defined by the Courts. What officers are concerned about, and what Ms Ellis’ advice focuses on, is whether or not the applicant has demonstrated a genuine relationship between those people who have used the land and the locality she relies on for the purposes of the application. This is generally known as the ‘spread and fit’ argument. It should be noted that this is not just about the number of people who have used the land, but their geographical location.

12.9.4 For the assistance of Members, officers have produced a map at Appendix 13, showing the geographical distribution of users of the claimed land, based on the evidence provided by Mrs Baker in her Inquiry bundle (shown in red dots) and the outline of the locality relied on by Mrs Baker, the Civil Parish of Bramley, shown in a blue line. In addition to those locations shown on the map, evidence was provided to the Inquiry of use by people in Campbell Road, Campbell Court, Ringshall Gardens, Strawberry Fields although what level and degree of use is not mentioned. In addition, in paragraph 14 (vi) of her comments, the Applicant states that other individuals used the land with people who came from “all over Bramley”.

12.9.5 The key question which Members are asked to consider is whether or not, in all of the documents they have before them, they are able to determine whether or not the Applicant has provided sufficient evidence to demonstrate a genuine link between the locality which she has chosen to rely on, and the geographical distribution of those people who have used the land. Whilst Ms Ellis advises that, from the evidence she has seen, the main body of user appears to be

¹ Defra’s Part 1 of the Commons Act 2006 “Guidance to commons registration authorities and the Planning Inspectorate for the pioneer implementation” February 2011

concentrated in a particular area which more befits a 'neighbourhood' style classification, the Applicant asserts that evidence was provided to the Inquiry that use was from a broader area than that indicated by the written material that the County Council holds on file, and reflects significant use by the parishioners of Bramley.

12.9.6 Herein lies the crux of the matter. Whilst it may well be the case that, as the Applicant states, verbal evidence was provided to the Inquiry of use by residents of a wider area than just demonstrated by the written evidence, this evidence is either not reflected in the Inspector's report, or not recorded in any particular detail. Thus, Members have three choices. They could:

- v. Take the view that the onus is on the applicant to provide the evidence required to make their case, and consider that, on this occasion, the evidence before them does not demonstrate a sufficient link between the location of users of the claimed land and the spread of residents across the Parish of Bramley.
- vi. Take the view that, on the contrary, the evidence before them does indeed demonstrate a genuine link between the geographical spread of users and the geographical distribution of population in parish relied on, taking into account what has been said about other usage.
- vii. Take the view that, in light of the conflicting evidence and the well documented fact that this matter was not considered at the Inquiry, more evidence is required before a proper decision can be made.

13) Conclusions:

13.1 That no decision can properly be made on whether or not to register land at Longbridge Road as a Town or Village Green on the material currently in the Council's possession and, for this reason, a second Public Inquiry be held to re-investigate the merits of the case.

14) Recommendation:

14.1 That authority be given to hold a second public Inquiry to consider the matters raised in the application and subsequent representations.

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 243	Rights of Way Office, Room 200, Mottisfont Court, High Street, Winchester, SO23 8ZF.