

**HAMPSHIRE COUNTY COUNCIL****Decision Report**

<b>Decision Maker:</b>	Regulatory Committee
<b>Date of Decision:</b>	24 November 2010
<b>Title:</b>	Application for registration of land at the Triangle, Curdridge, as Town or Village Green
<b>Reference:</b>	2333
<b>Report From:</b>	Director of Culture, Communities and Rural Affairs

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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. An application has been made by Mr Rory Kemp of Kitnocks Hill, Curdridge, for the registration of land lying at Kitnocks Hill 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. Section 15 Commons Act 2006

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 within a locality, have 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.

**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) Applicant:** Mr Alexander Rory C Kemp  
Thatchers Wood  
Kitnocks Hill  
Curdrige  
Southampton  
SO32 2HJ

**4) Landowner/objectors:**

**Landowner:** Mr Christopher Collins  
Ivy Cottage  
Wickham Road  
Curdrige  
Southampton  
SO32 2HG

Mr Collins is represented by Mr Jeremy Gardiner of WYG Planning and Design

Mr Collins is the principle objector in this case. In addition, 8 other objections have been received.

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

5.1 The application land forms a triangle surrounded by three roads: Chapel Lane, Kitnocks Hill and Lockhams Road and is comprised within title number HP550640.

**6) The application:**

6.1 The application was received by Hampshire County Council on 10<sup>th</sup> June 2008. On the 20<sup>th</sup> June 2008 it was returned to the applicant because officers took the view that it was not duly made (because, for example, the application

was not signed or dated). On the 12<sup>th</sup> August 2008 the County Council received a revised application.

- 6.2 The application, and subsequent evidence received, states that the land has been used for lawful sports and pastimes for a full period of twenty years (between 1988 and 2008) and that use continued to the date of the application, by a significant number of residents of the locality of the parish of Curdridge.
- 6.3 145 people have provided evidence (in different formats, of varying evidential value) in support of the application, although, of these 145, 24 have asked for their personal details to be removed. Officers take the view that, to consider the evidence of these 24 individuals (which is not available in full to the objectors) would be counter to the interests of natural justice, and therefore this evidence is discounted. This leaves the evidence of 121 witnesses which may be considered.

## **7) The objections:**

- 7.1 Nine letters of objection have been received by the County Council. Whilst some of these letters contained evidence which may be of help in determining the objection, the primary objection is that submitted by Mr Gardiner on behalf of Mr Collins.
- 7.2 The objections contend that the land has not been used in the way that has been asserted by the application and have provided evidence to dispute the applicant's case. Although a number of submissions have been submitted which outline why, they feel, the application should be rejected, the objector considers that there are two points which "make the rejection of the application inevitable", namely:
  - "Lack of evidence of a significant number of users throughout, or at any stage of, the 20 year period, particularly when deduction is made for a) footpath use and b) use after December 2005 which is forceful because it involved climbing or penetrating the new fencing...;
  - Lack of spread of user over the claimed locality."
- 7.3 The objectors contend that the application can and should be rejected without holding a public inquiry.

## **8) Issues to be decided:**

- 8.1 Officers consider that there are matters of fact and law which need to be considered in more detail, the following is a list of some, but by no means all, of the issues which will need further consideration:
  - 8.1.1 The degree and level of use of the land, and whether use took place over a full 20 year period.
  - 8.1.2 The nature and dates of the fencing and closure of the land and the effect this had on use.
  - 8.1.3 The extent to which walkers using the land were, or were not, using the land as a highway or for passage, rather than as an area over which they

were indulging in lawful sports and pastimes.

- 8.1.4 Whether or not user represents a significant number of the residents of Curdrige and whether or not the spread of user over the locality is relevant to the significance test.
- 8.2 There appear to be clear conflicts in evidence submitted; conflicts which would directly affect the determination of the application. There is, therefore, a need to have this evidence tested at an Inquiry where witnesses will have the opportunity to attend, give evidence and be available for cross-examination. This will ensure that any future decision is made with the knowledge that the evidence has been fully tested and both the applicant and objectors have had the opportunity of exploring the application fully in public.
- 8.3 The date that the application was properly made for the purposes of section 15(2) of the 2006 Act may, or may not, also be relevant. This is a legal point over which the County Council has sought Counsel's advice – parties may wish to consider this advice at an Inquiry.
- 8.4 In light of the above, Officers consider that it would be unsafe to determine the application on the basis of the paper application, evidence and representations 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 and hear the legal arguments both for and against the application.
- 8.5 In considering the matters raised in this report, Members are welcome to inspect the representations and evidence submitted by each party. This material is available for Member's inspection in the Access Team office.
- 8.6 Members may, of course, take the alternative view that, in light of the nature of the arguments described, they do consider it appropriate to determine this matter without recourse to a public-Inquiry. If this is the case then they can reject the recommendation and officers will bring a full report, describing the evidence both for, and against, the application, to a later committee meeting.
- 8.7 If the recommendation in this report is accepted, then the week of the 21<sup>st</sup> February 2011 has provisionally been fixed for the holding of the non-Statutory Public Inquiry.

## **9) Recommendation**

- 9.1 That, in connection with the application to register land at Kitnocks Hill, Curdrige, 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.

**CORPORATE AND LEGAL INFORMATION ABOUT THIS DECISION:****Links to the Corporate Strategy**

<b>Hampshire safer and more secure for all:</b>	no
Corporate Improvement plan link number (if appropriate):	
<b>Maximising well-being:</b>	no
Corporate Improvement plan link number (if appropriate):	
<b>Enhancing our quality of place:</b>	no
Corporate Improvement plan link number (if appropriate):	
<b>OR</b>	
<p><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 amend the register of towns and village greens in the circumstances described in this report.</b></p>	

**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)*

Document

File: VG240 (4/108)

Location

Countryside Access Team  
Room 200  
Mottisfont Court  
High Street  
Winchester  
SO23 8ZF