

Hampshire County Council

Decision Report:

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| Decision Maker: | Regulatory Committee |
| Date of Decision: | 27 April 2011 |
| Title: | Application for the registration of land known as 'The Triangle', Curdridge as town or village green |
| Reference: | 2890 |
| Report from: | Director of Culture, Communities and Business Services |

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1. Executive Summary

1.1 Hampshire County Council is the Commons Registration Authority with functions under the Commons Act 2006. One such function is the determination of applications made to register land as town or village green. The Committee, in its capacity as Commons Registration Authority, is asked to determine an application for registration of land known as 'The Triangle', in Curdridge, as town or village green. A non-statutory public inquiry has been held in respect of the application and Mr. Nigel Farthing, solicitor, was appointed to act as Inspector at the inquiry. A report prepared by Mr. Farthing, following the inquiry, recommends that the application be rejected. This Committee is asked to determine the application by rejecting it in accordance with that recommendation.

2. Legal framework for the decision

2.1 S.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.

(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).

3. **Applicant:** Mr. Alexander Rory C. Kemp of Thatchers Wood, Kitnocks Hill, Curdridge, Hampshire SO32 2HJ.

4. **Landowners:** Mr. Christopher Collins, of Ivy Cottage, Wickham Road, Curdridge, Hampshire SO32 2HG.

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 the title HP550640. Its area is 0.22 acres (0.09 hectares).

6. **The application**

6.1 In June 2008, an application was made to register 0.22 acres (0.09 hectares) of land known as 'The Triangle', Curdridge 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 in the usual way and objections to the registration were received, including an objection from the owner of the land.

6.2 In November 2010 this Committee approved the holding of a non-statutory public inquiry into the matter. The inquiry was held by an Inspector, Mr. Nigel Farthing, solicitor, commencing on 21 February 2011 over 4 days in order that the evidence of witnesses could be tested, and advice given as to the proper outcome of the application. The Inspector issued his report on 23 March 2011. A copy of this report is annexed as Appendix 1. Full appendices are available from the Rights of Way office, Mottisfont Court, on request.

- 6.3 The recommendation in the report was that the application be refused on the ground that the applicant has failed to show that the application land has been used for lawful sports and pastimes throughout the relevant period during the period 1988 to 2008.
- 6.4 During the non-statutory public inquiry, the applicant requested that the grounds of the application be changed from section 15(2) to section 15(4). The applicant making a section 15(2) application is required to show that qualifying use continued up to the date on which the application was made. An application can be made under section 15(4) if the use ceased before the commencement of the Section (that is April 2007), and the application was made within five years of the date of cessation. The Registration Authority has a discretion to make such an amendment provided that it would not be unfair to any objector. The Inspector in his report took the view the objector had prepared to meet a case based on use continuing up to May 2008. The basis on an amended application is that use ceased in 2005. Since more than five years have elapsed since this date, it is not now open to the applicant to bring a fresh application, and allowing the amendment would have the effect of enabling the applicant to make an application on a basis which would otherwise be out of time. The change proposed to the application would be substantive and would, in the opinion of the Inspector, occasion unfairness to the objector. He is also not persuaded that power for such a change exists, and therefore recommends that the request to amend the application be refused.

7. Issues to be decided

- 7.1 Whether or not to register 'The Triangle', Curdridge as a town or village green, in accordance with the Commons Act 2006.

8. Comments by the Applicant and Landowners

- 8.1 The representative of the landowner has no comments to make on the decision letter.
- 8.2 The applicant, Mr. Kemp, has submitted comments on the Inspector's decision letter, and these are attached as Appendix 2.
- 8.3 Mr. Kemp makes points on the following:
- The Inquiry process itself
 - The chronology of events
 - The date on which use as of right ceased
 - The decision to disallow the request to amend the application
 - The meaning of 'significant' use of the land
 - Other general points

9. Comments on Mr. Kemp's submission at Appendix 2

- 9.1 The Inquiry Process

There are no statutory guidelines governing whether, or how, an authority should conduct a non-statutory Inquiry such as this, and it is for the authority to determine who to appoint as an Inspector. Officers are entirely satisfied with the job that Mr. Farthing has done and, although not a barrister, feel that he is well qualified to conduct Inquiries such as this. Indeed, no complaints about Mr. Farthing's qualification, nor his conduct of the Inquiry, were raised during the Inquiry.

9.2 The Chronology of Events

Mr. Farthing, in his decision letter, is recounting the evidence presented to him by the witnesses, and specific references to a date for the deposit of the soil are associated with that testimony. Where dates are conflated, this is because the witnesses themselves have referred to the two events as one.

9.3 The date on which use 'as of right' ceased

Mr. Farthing has accurately reflected the *perception* of witnesses for the applicant who, in a large part, seemed to agree that the erection of the fencing was an indication by the landowner that he did not wish for people to use the land. Officers agree with Mr. Farthing in this respect.

9.4.1 The decision to disallow the request to amend the application

Officers note that the delay in holding the Inquiry was, in part, due to repeated requests by the applicant for extensions to deadlines – extensions which were, in large part, accepted and granted by Hampshire County Council. It is further noted that the applicant himself requested that the Inquiry be postponed, the date having been fixed with agreement from all parties, on more than one occasion.

9.4.2 Notwithstanding the date that use, as of right, ceased, officers are of the firm opinion that an amendment to the very basis on which the application was made would be inadmissible, because it would represent an entirely new application. If any member of the public wishes to make a new application, this is for them to submit, and it will be determined in its own merits.

9.5 The meaning of 'significant' use of the land

Officers heard the witness evidence and are satisfied that the use in the period between 1988 and 2005 was trivial and sporadic at best, and not significant. In any case, the applicant must show such use for a full period of 20 years – there is little or no evidence that the land was used after 2005. This fact appears to be acknowledged by Mr. Kemp, hence his desire to alter the basis on which the application was made (and thus the relevant 20-year period).

9.6 Other general points

Officers, having heard the cross-examination of Mr. Westcott, agree that his use from 2005 was permissive. In relation to Mrs. Maddison's evidence, it is considered that it would be counter to natural justice to

take into account that part of Mrs. Maddison's evidence that she was able to give, given that she was not able to be fully cross-examined. It was made clear that Mr. Kemp was responsible for enabling his witness to provide her evidence, including any necessary equipment which would be required to communicate her evidence to those in the Inquiry room. The fact is that the batteries on Mr. Kemp's audio equipment failed twice, and Mrs. Maddison was not able to complete her evidence. Where the Parish Council is concerned, Mr. Farthing's assessment of the case is based on his analysis of the evidence provided to him against the statutory criteria of the law. Whether or not the application is 'supported' by the Parish Council is not relevant, and was not material to his findings. The remaining points put by Mr. Kemp are not considered material to the findings of Mr. Farthing as to the statutory tests.

- 9.7 In summary, in his further submission, Mr. Kemp has not been able to demonstrate that the tests contained within section 15(2) of the 2006 Act, particularly as regards the 20-year period, have been met, and officers fully concur with the findings of Mr. Farthing.

10. Recommendation

- 10.1 That the request by the applicant to change the section on which the application is based be rejected, for the reasons set out in the Inspector's report of 23 March 2011 (see paragraphs 7.2 to 7.5 and 8.1.1 of the Inspector's report).
- 10.2 That the application to register 'The Triangle', Curdridge be rejected for the reasons set out in the Inspector's report of 23 March 2011(see paragraphs 8.1.2 to 8.2 of the Inspector's report).

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

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| Hampshire safer and more secure for all: | yes/no |
| Corporate Improvement plan link number (if appropriate): | |
| Maximising well-being: | yes/no |
| Corporate Improvement plan link number (if appropriate): | |
| Enhancing our quality of place: | yes/no |
| Corporate Improvement plan link number (if appropriate): | |
| 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.)

Document

File: VG240

Location

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

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.