

**DERBYSHIRE COUNTY COUNCIL**  
**REGULATORY- LICENSING AND APPEALS COMMITTEE**

**24 July 2017**

**Report of the Director of Legal Services**

**Proposed amendment of application to register land at Green Lane,  
Buxton, as a town or village green (VG102)**

**1. Purpose of the Report**

To ask the Committee to approve the amendment of the application, at the applicant's request.

**2. Information and Analysis**

2.1 The Committee has previously approved the appointment of an independent Inspector to advise the Council and, if necessary, to hold a public inquiry to hear evidence in relation to the application.

2.2 The application, made by Roger Floyd ("the Applicant"), was accepted as validly made on 11 June 2007. The application was made pursuant to section 15(2) of the Commons Act 2006 and will be determined in accordance with that provision and regulations made under the 2006 Act. In order for land to have become a new town or village green ("TVG") under the Act it has to have been used:

- "as of right" (being without force, without permission and not in secret)
- by a significant number of the local inhabitants of a locality, or neighbourhood within a locality
- for lawful sports and pastimes
- for twenty years, prior to the date of the application

2.3 A large number of objections were received to the application, including objections from Derbyshire County Council, High Peak Borough Council, Buxton Hockey Club and Miss D Bennett and Mrs M Oldfield, all landowners of part of the land. A plan of the land affected by the application is at Appendix 1.

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- 2.4 The Regulatory Licensing and Appeals Committee has previously approved the prioritisation of applications. There being no grounds on which to give this application a higher priority, it was initially accorded Priority 5. On 31 October 2013 the Council received information that the land affected by application VG102 had been included in the draft High Peak Local Plan. As the outcome of the town or village green application may impact on the designation of the land officers considered whether the TVG application should be re-prioritised.
- 2.5 The inclusion of land in a draft Local Plan need not result in the re-prioritisation of the application in every case. Where the proposed designation of the land in the Local Plan does not conflict with TVG status there would seem to be no need to re-prioritise, ie. where the land is to be designated as green or open space. In this case the land was proposed for secondary school improvements, potentially for relocation of some current outdoor sports pitches on the Buxton Community School site on the northern side of Green Lane. Such use could conflict with TVG status and was considered appropriate to re-prioritise the TVG application for that reason.
- 2.6 It is usual to seek initial advice from an inspector as to whether it is appropriate to determine an application on the basis of the application, statements in objection and further written comments received from the parties. Where there are disputes of fact it is usually recommended that an inquiry be held to test the conflicting evidence. Following approval of the referral of this matter, by the Committee, the Council instructed Mr Philip Petchey, of Counsel. Following initial consideration of the papers Mr Petchey concluded that the application raised disputed issues of fact which could not be fairly resolved without a public inquiry. Due to the nature of the site, being large and under multiple ownerships and uses, the Inspector decided that prior to issuing directions for a public inquiry he would visit the site to understand more clearly the cases put forward by the parties.
- 2.7 In the process of referring the matter to the Inspector additional landowners were identified. The application land included an access track to several properties and was included within the title of some of the adjacent properties. The relevant landowners were consulted but no additional objections to the application were received.
- 2.8 Mr Petchey conducted a site visit, accompanied by an officer of the Council, the applicant, landowners and objectors on 21 October 2016. The applicant, both prior to and again at the site visit, indicated that he wished to amend the application to exclude certain land which he had initially sought to register.
- 2.9 Following the site visit Mr Petchey advised that this was an appropriate case where the application might be amended by the deletion of

discrete parts of the application site. He suggested that having clarified the precise boundaries of the amended application site the Council should advertise the proposal to ensure that there were no objections to the amendment.

- 2.10 With regard to the land remaining subject to the application Mr Petchey advised that it would be sensible to defer taking the matter to public inquiry until the courts had decided certain cases being appealed on grounds of 'statutory incompatibility'. These cases are being brought before the courts on the basis that the registration as a town or village green of land held for statutory purpose by a public body would be incompatible with the purpose for which it is held, and that in such cases registration should be refused.
- 2.11 The boundaries of the amended application site were subsequently agreed with the applicant and a notice of the proposed amendment was published in the local press and posted on site on 16 March 2017. The notice required any person wishing to object to the amendment of the application to write to the Council by no later than 14 April 2017.
- 2.12 The Council received two responses to the notice. Neither of the two representations received raise an objection to the removal of land from the application. A representation received from the Children's Services Department of the Council related to the registration of the land unaffected by the proposed amendment. This was subsequently withdrawn, once it had been confirmed that the Council's objection to the application as originally made was maintained. A representation by High Peak Borough Council also related to the land unaffected by the proposed amendment. The Borough Council had objected to the application as originally made, as the owner of land then proposed to be registered. The new representation relates to the land in respect of which the applicant still wishes to seek registration, in respect of which the Borough Council is the local planning authority.
- 2.13 If the proposed amendment is accepted the land in respect of which the applicant wishes to seek registration will be limited to land in the ownership of Derbyshire County Council (see Appendix 2). As commons registration authority the Council is required to determine the application and has appointed Mr Petchey as Inspector to make recommendations in that regard.
- 2.14 The principle of statutory incompatibility has been noted by the Inspector as a relevant issue to the determination of this application. In the case of *R (Newhaven Port and Properties Limited) v East Sussex County Council [2015]* the appellant argued that it was reasonably foreseeable that registration of a beach as a town or village green would conflict with the port authority's future exercise of its statutory powers, and that on that basis the land (land including land covered

with water in the statutory definition) was not registrable as a town or village green.

- 2.15 Although the Supreme Court agreed that the appeal would be successful on another ground it did go on to consider the principle of statutory incompatibility and on the facts before it concluded (with one judge dissenting) that the use of the beach as a harbour was incompatible with registration as a town or village green. However the Court commented that “(t)he ownership of land by a public body, such as a local authority, which has statutory powers that it can apply in future to develop land, is not of itself sufficient to create a statutory incompatibility”.
- 2.16 The Inspector has indicated that the principle of statutory compatibility arises in two cases to be considered by the Court of Appeal in October 2017. There may then be a further appeal to the Supreme Court. The Inspector has suggested awaiting the determination of those cases, and a clarification of the issue, before proceeding with a public inquiry in respect of this application.

### **3. Legal Considerations**

- 3.1 The application will be dealt with in accordance with the provisions of the Commons Act 2006 and regulations made under that Act.
- 3.2 The relevant legal test is found in section 15(2) of the Commons Act 2006, which provides that any person may apply to register land as a town or village green 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.”
- 3.3 Whilst there is no statutory requirement to appoint an independent inspector to make recommendations as to the determination of an application this is the practice of many registration authorities and has been found by the courts to be an appropriate way to deal with a potential conflict for the commons registration authority as landowner. Where there is a dispute as to facts relating to such an application it is usually necessary to hold a public inquiry in order that the evidence may be tested.
- 3.4 Neither the Commons Act 2006 nor regulations made under that Act make provision for the withdrawal or amendment of applications. The registration of land as a town or village green serves a public interest rather than the interests of the applicant alone. The use of land by local inhabitants for lawful sports and pastimes is protected by registration.

The advertising of the proposed amendment of the application has provided those local inhabitants, who might have applied for the registration of the land in the absence of an application by Dr Floyd, an opportunity to object to the removal of certain land from the application.

**4. Financial Considerations**

The costs of determining this application will be met from the existing budget.

**5. Other Considerations**

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human rights, personnel, environmental, health, property and transport considerations.

**6. Background Papers**

Application for registration of land as a town or village green (VG102).

**7. OFFICER'S RECOMMENDATION**

That the Committee authorises the Director of Legal Services to amend the application as requested by the applicant and in accordance with the plan attached to this report.

**JOHN MCELVANEY  
DIRECTOR OF LEGAL SERVICES**