

**TELFORD & WREKIN COUNCIL**

**LICENSING COMMITTEE – MONDAY 22<sup>ND</sup> SEPTEMBER 2008**

**DETERMINATION OF APPLICATION FOR LAND KNOWN AS THE FIELD,  
OFF PEREGRINE WAY, APLEY TO BE REGISTERED AS A VILLAGE  
GREEN**

**REPORT OF INTERIM HEAD OF LEGAL SERVICES**

**1. PURPOSE**

- 1.1 To consider an application by Apley Preservation Association (“the Applicant”) to register a plot of land described as “The Field, off Peregrine Way, Apley” as a town or village green pursuant to section 15 of the Commons act 2006.
- 1.2 To consider the report of Douglas Edwards, Barrister, the independent inspector appointed by the Council in its capacity as registration authority, following the three day non-statutory public inquiry into the application in April 2008.
- 1.3 To decide, having regard to the application, the objection to the application and the Inspector’s Report and his findings of fact and law and his conclusion and recommendation whether to accept or reject the application.

**2. RECOMMENDATIONS**

That Members refuse the application for town or village green status for the land described as The Field, off Peregrine Way, Apley for the reasons set out in the Inspector’s report.

**3. SUMMARY**

3.1 An application was received from Apley Preservation Association on 15 June 2007 to have the area of land known as The Field, off Peregrine Way, Apley registered as a Town or Village Green under the Commons Act 2006. The application was accompanied by evidence which the Applicant contended proved use in accordance with the requirements for registration. The application site is shown in yellow on the plan attached to this report.

3.2 The evidence was considered by officers and, in accordance with the relevant legislation, consultation was carried out with various parties and a notice was placed in the Shropshire Star. The landowner, English

Partnerships, was also consulted and they submitted an objection.

3.3 Members are asked to consider the evidence that has been submitted, the objection and the Inspectors report, taking particular account of his findings of fact and law and determine, on the balance of probabilities, whether the case has been proven for registration of the Site as a Village Green.

#### **4. PREVIOUS MINUTES**

None

#### **5. INFORMATION**

##### **5.1 Background**

Any person may make an application to the local authority for an area of land to be registered as a Town or Village Green. The terms Town and Village are interchangeable in this context.

The authority should register land as a Town or Village Green if it is satisfied, on the balance of probabilities, that the area of land in question has been used for not less than 20 years by a significant number of the inhabitants of the locality, or of any neighbourhood within a locality, who have indulged in lawful sports and pastimes as of right.

A copy of the letter and application form submitted by the Applicant is attached as Appendix 1. This was received on 15 June 2007 and was allotted number 2/2007 in accordance with the regulations governing the procedure. Further supporting evidence was submitted subsequently in advance of the inquiry.

This application was made on the basis that the prescribed use was continuing up to the date the application was made. This means that the period of use to be considered is 14 June 1987 to 14 June 2007.

A copy of the evidence submitted by both the applicants and objectors is available in the Members Room, Civic Offices.

##### **5.2 The Process**

When an application is received by the authority it must carry out a number of steps including, allotting a number to it and various consultation and notification procedures. Notices were sent to English Partnerships as landowner, various properties in the vicinity of the application site and the Parish Council. A notice was also placed in the Shropshire Star and a number of notices were put up on site.

A period of 6 weeks is allowed for objections or representations to be made about the application.

An objection was received from English Partnerships. The basis of the objection was that the criteria for registration had not been made out and therefore the land should not be registered as a green.

As an objection had been received the Council decided to hold a non-statutory public inquiry.

### **5.3 The Public Inquiry**

The Council appointed Douglas Edwards, Barrister to sit as an Inspector at the inquiry. He is very experienced in this field and was appointed to consider all evidence from the applicants, the objectors and any members of the public that wished to speak.

The inquiry was held at Leegomery Community Centre on 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> April 2008. The Inspector also offered to hold an evening session should either party request it.

During the course of the inquiry the applicants called 12 witnesses to give oral evidence in support of the application, which was open to cross-examination by the objectors. The applicants also submitted 68 evidence questionnaires in support of their application.

The Objector called 4 witnesses in support of their objection and also submitted written evidence in advance of the public inquiry.

The Inspector carried out an unaccompanied site visit prior to the commencement of the inquiry and an accompanied site visit during the inquiry.

Following the conclusion of the inquiry, the Inspector produced his Report of the inquiry, dated 8 August 2008 which is attached as Appendix 2.

### **5.4 The Report**

The Inspector submitted a Report to the Council which includes a summary of the oral and documentary evidence considered at the inquiry.

In his report the Inspector refers to the land which is the subject of the application as "the application site". This is the land coloured yellow on the plan attached at appendix 1.

The Inspector based his findings of fact on the written submissions and the evidence he heard. He concentrated on the relevant period required for the application to succeed i.e. 14 June 1987 to 14 June 2007.

Members need to carefully consider the Inspector's findings, particularly those contained at paragraphs 83 to 114 in the Report. In particular, Members need

to be aware that the Application must satisfy each element of the statutory definition (as detailed at paragraph 18 of the Report) for it to be successful.

The Inspector, having considered all of the evidence has recommended that the Application should fail as it does not satisfy all of the elements of the definition.

#### **5.4 The Determination**

The Board should consider the following when making their determination:-

##### **20 Years**

The Board should be satisfied that this area has been used for a continuous period of 20 years ending on the date of the Application i.e. between 14 June 1987 and 14 June 2007.

##### **Local Inhabitants**

There is no clear definition of this; however, case law suggests that inhabitants of a Parish should be considered as “local inhabitants”, as well as other people who live in the locality, for example where the land lies close to the Parish boundary.

##### **Lawful Sports and Pastimes**

Again, there is no clear definition, however, sports and pastimes has traditionally included flying kites, playing football, picnicking, walking a dog, kicking a ball and bird watching. Events such as Village Fetes and carnivals would also fall under the definition of sports and pastimes.

The Board should consider the Appendices and form a view as to whether the case for registering this land as a Village Green has been proved on a balance of probabilities.

#### **5.4 Environmental Impact and Equal Opportunities**

As this is a report which seeks a determination based on evidence submitted there are no environmental or equal opportunities considerations.

#### **5.5 Legal Comment**

The Committee is acting as Registration Authority for town/village greens and must make any determination on the basis of the evidence before it. This must be made in the context of the non-statutory inquiry having been held with all parties having had the opportunity to put forward any matters which they wished the Inspector to consider.

Any determinations must be based on the principle of reasonableness. Should a determination which is not substantiated by the evidence be made the Council would be vulnerable to a challenge by way of Judicial Review. Should such a challenge be successful the substantial costs of such action would fall upon the Council.

#### **5.6 Links with Community Priorities**

The following are considered to be the corporate priorities applicable to this report:-

Maintaining a high quality, attractive and sustainable environment

Promoting healthy communities and improving the quality of life for vulnerable and older people

#### **5.7 Opportunities and Risks**

The opportunities and risks associated with this decision have been identified and assessed. Arrangements will be put in place to manage the risks and maximise the opportunities that have been identified

#### **5.8 Financial Implications**

Besides the potential for an adverse costs award in the event of the Committee making an unreasonable decision in this matter, there are no financial implications arising from this report.

Although it has no bearing on the decision being made the cost of appointing the Inspector to preside over the inquiry was £13,792 (including VAT).

### **6. WARD IMPLICATIONS**

This report has implications for the Apley Ward.

### **7. BACKGROUND PAPERS**

All relevant background papers are included as Appendices.

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