

# **APPENDIX**

# **1**

Commons Act 2006: Section 15

# Application for the registration of land as a Town or Village Green

Official stamp of registration authority indicating valid date of receipt:

**COMMONS REGISTRATION ACT 1965**

**BOROUGH OF TELFORD & WREKIN  
REGISTRATION AUTHORITY**

DATE: **RECEIVED**  
**15 JUN 2007**

Application number:

Register unit No(s):

VG number allocated at registration:

(CRA to complete only if application is successful)

Applicants are advised to read the 'Guidance Notes for the completion of an Application for the Registration of land as a Town or Village Green' and to note the following:

- All applicants should complete questions 1-6 and 10-11.
- Applicants applying for registration under section 15(1) of the 2006 Act should, in addition, complete questions 7-8. Section 15(1) enables any person to apply to register land as a green where the criteria for registration in section 15(2), (3) or (4) apply.
- Applicants applying for voluntary registration under section 15(8) should, in addition, complete question 9.

**Note 1**  
Insert name of registration authority.

**1. Registration Authority**

To the

**TELFORD AND WREKIN COUNCIL.**

**Note 2**

If there is more than one applicant, list all names. Please use a separate sheet if necessary. State the full title of the organisation if a body corporate or unincorporate.

If question 3 is not completed all correspondence and notices will be sent to the first named applicant.

**Note 3**

This question should be completed if a solicitor is instructed for the purposes of the application. If so all correspondence and notices will be sent to the person or firm named here.

**2. Name and address of the applicant**

Name:

Full postal address:

Postcode

Telephone number: (incl. national dialling code)

Fax number: (incl. national dialling code)

E-mail address:

**3. Name and address of solicitor, if any**

Name:

Firm:

Full postal address:

Post code

Telephone number: (incl. national dialling code)

Fax number: (incl. national dialling code)

E-mail address:

**Note 4**

*For further advice on the criteria and qualifying dates for registration please see section 4 of the Guidance Notes.*

*\* Section 15(6) enables any period of statutory closure where access to the land is denied to be disregarded in determining the 20 year period.*

**4. Basis of application for registration and qualifying criteria**

If you are the landowner and are seeking voluntarily to register your land please tick this box and move to question 5.

Application made under **section 15(8)**:

If the application is made under **section 15(1)** of the Act, please **tick one** of the following boxes to indicate which particular subsection and qualifying criterion applies to the case.

**Section 15(2)** applies:

**Section 15(3)** applies:

**Section 15(4)** applies:

If **section 15(3)** or **(4)** applies please indicate the date on which you consider that use as of right ended.

If **section 15(6)\*** applies please indicate the period of statutory closure (if any) which needs to be disregarded.

**5. Description and particulars of the area of land in respect of which application for registration is made**

Name by which usually known:

THE FIELD

Location:

LAND OFF PEREGRINE WAY, BORDERED BY THE SILKIN WAY, APLEY WOOD, BRIDLE PATH AND PEREGRINE WAY.

Shown in colour on the map which is marked and attached to the statutory declaration.

Common land register unit number (if relevant) \*

**Note 5**

The accompanying map must be at a scale of at least 1:2,500 and show the land by distinctive colouring to enable it to be clearly identified.

\* Only complete if the land is already registered as common land.

**6. Locality or neighbourhood within a locality in respect of which the application is made**

Please show the locality or neighbourhood within the locality to which the claimed green relates, either by writing the administrative area or geographical area by name below, or by attaching a map on which the area is clearly marked:

PARISH OF HADLEY AND LEGGOMERY

**Note 6**

It may be possible to indicate the locality of the green by reference to an administrative area, such as a parish or electoral ward, or other area sufficiently defined by name (such as a village or street). If this is not possible a map should be provided on which a locality or neighbourhood is marked clearly.

Tick here if map attached:



7. Justification for application to register the land as a town or village green

**Note 7**

Applicants should provide a summary of the case for registration here and enclose a separate full statement and all other evidence including any witness statements in support of the application.

This information is not needed if a landowner is applying to register the land as a green under section 15(8).

A SIGNIFICANT NUMBER OF LOCAL RESIDENTS HAVE USED THIS LAND FOR RECREATIONAL ACTIVITIES FOR 20 YEARS AS OF RIGHT.

THIS IS SUPPORTED BY 27 EVIDENCE QUESTIONNAIRES.

**Note 8**

Please use a separate sheet if necessary.

Where relevant include reference to title numbers in the register of title held by the Land Registry.

If no one has been identified in this section you should write "none"

This information is not needed if a landowner is applying to register the land as a green under section 15(8).

**Note 9**

List all such declarations that accompany the application. If none is required, write "none".

This information is not needed if an application is being made to register the land as a green under section 15(1).

**Note 10**

List all supporting documents and maps accompanying the application. If none, write "none"

Please use a separate sheet if necessary.

8. Name and address of every person whom the applicant believes to be an owner, lessee, tenant or occupier of any part of the land claimed to be a town or village green

ENGLISH PARTNERSHIPS

9. Voluntary registration – declarations of consent from 'relevant leaseholder', and of the proprietor of any 'relevant charge' over the land

10. Supporting documentation

1. MAP OF AREA SHOWING LOCATION OF LAND TO BE REGISTERED.
2. AERIAL PHOTOGRAPH OF AREA DATED SUMMER 1991
3. TWENTY SEVEN (27) EVIDENCE QUESTIONNAIRES IN SUPPORT OF REGISTRATION AS A NEW GREEN

**11. Any other information relating to the application**

**Note 11**

*If there are any other matters which should be brought to the attention of the registration authority (in particular if a person interested in the land is expected to challenge the application for registration). Full details should be given here or on a separate sheet if necessary.*

**Note 12**

*The application must be signed by each individual applicant, or by the authorised officer of an applicant which is a body corporate or unincorporate.*

Date:

14.06.07

Signatures:

 14.06.07  
JOHN A. DAVIS, CHAIRMAN A.P.A.

**REMINDER TO APPLICANT**

**You are advised to keep a copy of the application and all associated documentation. Applicants should be aware that signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence. The making of a false statement for the purposes of this application may render the maker liable to prosecution.**

**Data Protection Act 1998**

*The application and any representations made cannot be treated as confidential. To determine the application it will be necessary for the registration authority to disclose information received from you to others, which may include other local authorities, Government Departments, public bodies, other organisations and members of the public.*

## Statutory Declaration In Support

To be made by the applicant, or by one of the applicants, or by his or their solicitor, or, if the applicant is a body corporate or unincorporate, by its solicitor, or by the person who signed the application.

<sup>1</sup> Insert full name  
(and address if not  
given in the  
application form).

JOHN ALAN DAVIS solemnly and sincerely declare as follows:—

<sup>2</sup> Delete and adapt  
as necessary.

1.<sup>2</sup> I am ((the person (~~one of the persons~~) who (has) (~~made~~) signed the foregoing application)) ((~~the solicitor to~~ (the applicant) (<sup>3</sup> ~~one of the applicants~~)).

<sup>3</sup> Insert name if  
Applicable

2. The facts set out in the application form are to the best of my knowledge and belief fully and truly stated and I am not aware of any other fact which should be brought to the attention of the registration authority as likely to affect its decision on this application, nor of any document relating to the matter other than those (if any) mentioned in parts 10 and 11 of the application.

3. The map now produced as part of this declaration is the map referred to in part 5 of the application.

<sup>4</sup> Complete only in  
the case of  
voluntary  
registration (strike  
through if this is not  
relevant)

4.<sup>4</sup> I hereby apply under section 15(8) of the Commons Act 2006 to register as a green the land indicated on the map and that is in my ownership. I have provided the following necessary declarations of consent:

- (i) a declaration of ownership of the land;
- (ii) a declaration that all necessary consents from the relevant leaseholder or proprietor of any relevant charge over the land have

Cont/

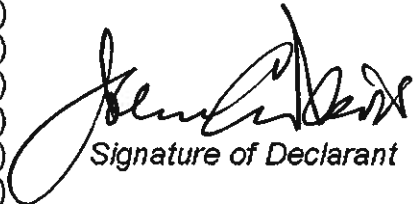
4 Continued

been received and are exhibited with this declaration; or  
(iii) where no such consents are required, a declaration to that effect.

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act 1835.

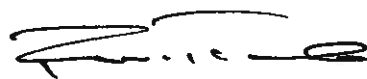
Declared by the said

at Wragge & Co Solicitors

 (JOHN A. DAVIS)  
Signature of Declarant

this 14th day of June 2007

Before me \* FLASSER WILLIAM TART

Signature: 

Address: 55 Colmore Row  
Birmingham

Qualification: Solicitor

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\* The statutory declaration must be made before a justice of the peace, practising solicitor, commissioner for oaths or notary public.

Signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence.

**REMINDER TO OFFICER TAKING DECLARATION:**

*Please initial all alterations and mark any map as an exhibit*

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# **APPENDIX**

# **2**

**APPLICATION BY APLEY PRESERVATION  
ASSOCIATION TO REGSITER AS A TOWN  
GREEN LAND OFF PEREGRINE WAY,  
LEEGOMERY, TELFORD.**

**APPLICATION NUMBER 2/2007**



**REPORT AND RECOMMENDATION  
FOLLOWING A PUBLIC INQUIRY**

## Introduction

1. On 14 June 2007, an application was made to Telford and Wrekin Council by the Apley Preservation Association (“the Applicant”) to register as a town green an area of land described as follows in section 5 of the application form:

“Land off Peregrine Way, bordered by the Silkin Way, Apley Wood, bridle path and Peregrine Way”

2. The application site is located in Leegomery.
3. The application was stated to be made under section 15(2) of the Commons Act 2006.
4. An objection to the application was made by English Partnerships (“the Objector”), who is the owner of the application site.
5. Telford and Wrekin Council, in its capacity as registration authority for the purposes of section 15 of the Commons Act 2006, resolved to convene a public inquiry before determining the application. I was instructed by the Council to hold that public inquiry and thereafter to produce a report on the inquiry and a recommendation to the Council as to whether the application should be accepted and rejected.
6. The public inquiry was held on 8 to 10 April 2008.
7. At the inquiry the Applicant was represented by Mr. John Davis, the Chairman of the Apley Preservation Association. Mr. Davis was assisted

in the presentation of the Applicant's case by Ms.Helen Hampton, the Secretary of the Association and Ms.Angela Twyford. English Partnerships was represented by Mr.Patrick Walker, a barrister.

### The Application Site

8. The application site comprises approximately 2.56 hectares of largely open land. It is of an irregular shape and is bounded by Peregrine Way, Pintail Drive and Eider Drive on its east side, by a bridleway on its south-east side, by a recreational route known as the Silkin Way on its south-west side and by the established woodland surrounding Apley Castle to the northwest.
9. The application site was, at the time of my site inspection, laid to grass with some established trees.
10. The boundary of the application site with Peregrine Way, Pintail Drive and Eider Drive comprises estate fencing. There are two gaps in this length of fencing – one approximately at the point where Pintail Drive meets Eider Drive and a second approximately at the northernmost point of the application site, between the boundary with an ornamental garden (which is outside the application site) and the boundary with the Apley Castle wood. These gaps are sufficiently wide to allow a pedestrian and, in my view, a bicycle to pass through. Close to each of these gaps in the estate fencing there is a notice, which it was agreed had been erected by

English Partnerships and which bears English Partnerships' logo and a telephone number, which state as follows

“Highways Act 1980, section 31(3)

PRIVATE LAND

NO PUBLIC RIGHT OF WAY – RIGHT OF WAY (ON FOOT ONLY)  
WITH THE PERMISSION OF ENGLISH PARTNERSHIPS”

11. There is a field gate within the estate fencing, located approximately at the mid-point along Peregrine Way, between the junction with Pintail Drive and the ornamental gardens. This was locked at the time of my site visit.
12. The south-eastern boundary of the application site adjoining the bridleway comprises a hedge, which has gaps in places, and a post and wire fence within it.
13. Along the south western boundary of the application site with the Silkin Way there is a post and wire fence. There are two gates in this fence, one close to the junction of Silkin Way with the bridleway and a second gate approximately at the mid-point along the Silkin Way boundary. These gates were in various states of dilapidation at the time of my site visit and did not obstruct, or have the appearance of having for some time obstructed, access onto the application site. There is a further opening towards the northernmost point of this boundary. The southernmost gate has well-established openings either side of the gate posts. There are

notices in largely the same terms as the notices which I have describe in paragraph 10 above at various locations along this boundary. Some of these notices had been removed from their footings.

14.The boundary of the application site with Apley Castle wood comprises a fence which has collapsed in many places and some sections of hedge. There is an access without any gate into the Apley Castle Woods towards where the northern boundary of the application site turns through a right-angle towards Peregrine Way. There is no notice at this point.

15.There was evidence at the time of my site inspection of clear wear marks on the application site which plainly represented well-used routes. The most prominent of these is between the two gaps in the estate fencing which I have described. A further route lies between the between the gap in the estate fencing near the junction at Pintail Drive and Eider Drive and the opening in the post and wire fence at the southern end of the boundary of the application site with the Silkin Way. There is a further worn route (albeit somewhat less pronounced than the others which I have described) which extends easterly form the northernmost opening in the Silkin Way boundary towards the route which extends between the two gaps in the estate fencing.

16.The Objector stated in evidence that these routes correspond to what it considers to be the “permissive routes” through the application site,

which it has permitted and which are referred to on the notices. The Objector produced a plan to the inquiry showing the location of the routes that it is said have permitted. The routes shown on this plan correspond to what I have described in paragraph 15 above. I have no reason to doubt the Objector's evidence of fact in this in this respect nor that it has in fact permitted use of these routes through the application site.

### The Application

17. The application is made under section 15(2) of the Commons Act 2006.

At the inquiry, I asked to Applicant to confirm whether it was in fact its intention to proceed with the application on the basis of s.15(2) of the 2006 Act. Mr. Walker, for English Partnerships, at the inquiry explained to the Applicant, objectively and, in my view, accurately, the effect in law of an application made under s.15(2) of the 2006 Act as opposed to an application made under s.15(4). I also explained how the various provisions operated in law. The Applicant's representatives took time to consider these explanations and, having done so, confirmed that they wished their application to be considered under s.15(2). The inquiry proceeded accordingly.

### The Legal Requirements

18. Under section 15(2) of the Commons Act 2006, an applicant must establish that the following elements of the statutory definition of a town green are met before the land may be registered as a green:

- a. the land has been used for lawful sports and pastimes;
- b. by a significant number of the inhabitants of a locality or of a neighbourhood within a locality;
- c. the use has to have been as of right; and
- d. that the use must have continued for a period of no less than twenty years and thereafter has continued to the date of the application.

19. At the inquiry, it was agreed that the relevant period for consideration of qualifying use should be the twenty years immediately preceding the application, namely between 14 June 1987 and 14 June 2007.

### The Burden and Standard of Proof

20. The burden of proving that land has become a green rests with the Applicant. The standard of proof is the balance of probabilities. These matters were common ground, as they had to be.

21. However, when considering whether or not the Applicant has discharged the evidential burden of proving that land has become a green, it is

important, I consider, to have regard to the guidance given by Lord Bingham of Cornhill in *R v Sunderland City Council ex parte Beresford* [2004] 1 AC 889 where, at paragraph 2, Lord Bingham advised as follows:

“As Pill LJ. rightly pointed out in *R v Suffolk County Council ex parte Steed* (1996) 75 P&CR 102, 111 “it is no trivial matter for a landowner to have land, whether in public or private ownership, registered as a town green ...”. It is accordingly necessary that all ingredients of this definition should be met before land is registered, and decision makers must consider carefully whether the land in question has been used by inhabitants of a locality for indulgence in what are properly to be regarded as lawful sports and pastimes and whether the temporal limit of 20 years’ indulgence or more is met.”

### The Case for the Applicant

22. The Applicant submitted a very substantial number of completed user forms in support of its application, 68 in all<sup>1</sup>. 12 witnesses were called for the Applicant at the inquiry. I have given substantially more weight to the evidence of those who appeared as witnesses at the public inquiry in support of the application and were thereby available for cross examination to those who have completed user forms only. The fact that the evidence set out in user forms is not sworn nor is it possible for the evidence to be tested in cross examination in my view means that it should only attract limited weight. I set out below the main points raised

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<sup>1</sup> Excluding those who gave evidence as witnesses at the public inquiry.

by each witness who gave evidence for the Applicant at the public inquiry.

23. Paul Robertson lives at 14, Curie Croft, Leegomery. Mr. Robertson's home is a half to three-quarters of a mile from the application site. Mr. Robertson's home is located on the south-east side of Silkin Way, to the southwest of the Princess Royal Hospital. He purchased his home in Leegomery in 1988 and at the same time acquired a dog. Mr. Robertson, since moving to the area, has walked on the application site with his dogs as part of a circuit. He confirmed that he has used land for 19 years since 1988. He has owned three dogs since moving to Leegomery. When using the application site, Mr. Robertson confirmed that he walked "across the site". He sometimes used the well-worn paths but it depended on where his dog left its ball and he would deviate from a path to retrieve the ball or to pick up litter. He has accessed the site usually from Silkin Way but also from what is now the boundary with Eider Drive and Peregrine Way. He uses the application site every day usually between 7 and 8:30 am and between 3 and 4 pm. Mr. Robertson usually walks his dogs for one to one and a half hours a day. He recalls seeing children playing on the application site particularly with bicycles. He has also seen the application site used for kite flying, by dog walkers (particularly people throwing balls for dogs to retrieve) and for flying model planes. He has

never been prevented from using the site nor has he ever asked permission. He recalls the grass being cut. He recalls that in the past the field was not fenced. He recalls a fence along Silkin Way but that there were gaps, including a style. He recalls the new fencing put up recently but thought that it was an ornamental fence particularly since gaps were left in it. He first noticed signage in 2002 or 2003. He recalled that these notices said that the site was "private land" but that people could "enter with permission".

24. Mr. Robertson confirmed in cross-examination that the area appeared very different in 1988 when he moved in. His home at that stage was surrounded by fields. Mr. Robertson was asked whether he recalled there being an arable crop in the field. He confirmed that there was never an arable crop in the field since he has used it. He recalls grass and the grass being cut but never an arable crop. Mr. Robertson confirmed that in the early years he would walk through or around other fields (as shown on a 1997 aerial photograph) to access the field from his house.

25. Mrs. Janice James moved to 38, Royal Oak Drive, Leegomery in 1985 and knows the application site as "the field". Mrs. James kept two dogs when her family moved to Royal Oak Drive and has had a succession of dogs since. At one time, the family had five dogs. Mrs. James has used the site to train her dogs, although has done less training in the last five years.

She visits the application site six times per days, often with her husband. Mrs.James accessed the site from Silkin Way. She uses the field since it was the only one which has remained laid to grass. Mrs.James recalls the site being used for kite flying, bicycle riding and, in the past, for falconry.

26.Mrs.James confirmed that the area surrounding her home has changed significantly since 1985. In 1985 it was “largely a rural environment”. In 1985, Mrs.James confirmed that a lot of the fields not built on were in arable cultivation. She would not cross fields with crops in them but walk around them. Mrs.James confirmed that use had grown significantly since 1985 as more houses were built and more people moved to the area. Mrs.James confirmed that the site was “little used” in 1985 but use increased after 1989 when the hospital was built. Mrs.James recalls the grass on the site having been cut but does not recall actually seeing the grass cut.

27.Mrs.James recalls fencing and signs being erected in 2002 along the road boundaries. She also recalls the gaps in this fence.

28.John Moore lives at 8, Theresa Way, Leegomery. Mr.Moore has lived in the Hadley area for the whole of his life. Mr.Moore considers that the application site had not been planted with arable crops since 1985. He recalls sugar beet being planted between 1981 and 1983. He confirmed

that the application site could have been ploughed up to 1983. He used the application site to exercise his dogs and said that he has done so for 26 years. He would use all parts of the application site with his dogs, as would others. Some dog walkers would walk straight across the site, however. He recalls others using the application site for mountain biking and playing football, as well as for dog walking. He has never asked or been given permission to use the land.

29. Mr. Moore recalls a construction compound within the application site in 2001 and that it remained for a year to eighteen months. Mr. Moore recalls that although there was some use of the land in 1985, use increased materially after 1989. Unlike Mrs. James, he did not consider that the opening of the hospital was a particular “turning point” but that the increase in use was more gradual – there was a “progression”, he said – use increased as more houses were built. He confirmed that the use had “trebled” since 1985<sup>2</sup>. He recalls that some people came to field by car. He did not know where from.

30. He recalls the farmer cutting hay in the field in July or August. The silage would be left for a couple of weeks and turned before being put into silage bags or into a trailer. He would stay off the field when it was being

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<sup>2</sup> There was an issue at the inquiry as to whether Mr. Moore referred to 1981 or 1985 in this context. I recorded his evidence as being that use had trebled since 1985. However, I do not consider that ultimately anything material turns on this matter.

cut. He suggested that no responsible user would go onto the field when the grass was being cut. However, he would not be deterred from using field when the silage was being loaded. However, he would only walk across field when farmer was present. He confirmed that “he would not use the field when the farmer was working on field except to cross it”. Mr.Moore stated that he did not use the field in a way which would have come to the attention of the farmer.

31.Mr.Moore was asked about the aerial photograph at p.87 of the Objector’s bundle. He considered that it would have been taken between 1991 and 1998. He confirmed that the application site and the field immediately to the south of it appeared the same in the photograph.

32.Mrs.Pamela Steele lives at 1, Chichester Drive, Leegomery and has known the application site since 1988. She has used the application site for 19 years, but less recently after 2004 due to infirmity. Mrs.Steele began to use the application site shortly after she moved to the area as a means of accessing Apley Castle wood. She would cross the application site to enter the Woods and to use the bridle paths which are located in the Woods. She would enter the application site form various directions – at the weekends from the east side near the A442 but at other times, from different directions. She recalls seeing others using the land for bike riding and for walking dogs.

33. Mrs. Steele does not recall seeing notices to indicate land is private. She does however recall signs offering the land for sale. Mrs. Steele confirmed that the environment had changed significantly since 1988. She confirmed that since 1988 what was a largely rural landscape had been become built up.

34. Mrs. Steele does not recall crops in the application site but recalls hay being cut and left to dry then collected some days later. She confirmed that if mechanical equipment was being used on the field, that she would not enter it.

35. Mrs. Caroline Bentley has lives at 1, Sunderland Drive, Leegomery and has lived in the area for 27 years. She has used the land since 1981, mainly at first for walking either around or across the field and then to play with her children. From around 1993, when her youngest daughter had reached the age of 10, Mrs. Bentley would allow them play on the application site unsupervised, especially with their BMX bikes. As children grew older, Mrs. Bentley used the land less and it could be many months between visits. Mrs. Bentley would often see others using the application site, mainly for exercising dogs. It was used by children, but more during the school holidays and on summer evenings. Mrs. Bentley never recalls the land being ploughed. She recalls grass having been cut.