

TELFORD & WREKIN COUNCIL

LICENSING COMMITTEE – 23rd JANUARY 2013

**DETERMINATION OF APPLICATION FOR LAND AT STATION ROAD,
NEWPORT TO BE REGISTERED AS A VILLAGE GREEN**

**REPORT OF ASSISTANT DIRECTOR OF LAW, DEMOCRACY AND PUBLIC
PROTECTION**

1. PURPOSE

To request that members consider and determine the application made by Mr John Rudd to register land at Station Road, Newport as a Village Green.

2. RECOMMENDATIONS

2.1 That the Inspector's report and recommendations dated 18th January 2013 are accepted

2.2 That the land at Station Road, Newport as shown edged red on the plan attached to the application for registration as a village green received on 15th December 2011 should not be registered as a village green for the reasons set out in the Inspector's report dated 18th January 2013

3. SUMMARY

An application has been received from Mr John Rudd ("the Applicant") to have an area of land at Station Road, Newport ("the Site") registered as a Village Green under the Commons Act 2006.

Evidence was submitted which formed part of the application and, in accordance with the relevant legislation, consultation was carried out and the application was publicised.

Telford and Wrekin Council is the freehold owner of the Site and shall be referred to in this report as the "Owner". It is important for members to distinguish the separate functions of the Council as Registration Authority under the Commons Act 2006 and its functions as the Owner of the Site. The Licensing Committee is exercising the Council's functions as Registration Authority with reference only to the relevant considerations set out later in this report.

An objection was received from the Owner.

A significant number of representations in support of the application were received from local residents.

A non-statutory Public Inquiry into this application to register the Site as a Village Green took place over five days (including two evening sessions) between 22nd and 25th and on 29th October 2012. The Public Inquiry was conducted by Ross Crail (Barrister) (the “Inspector”) who was appointed by the Council as Registration Authority to receive and consider evidence and submissions regarding the application and prepare a report and recommendation for the Council. Further to the Public Inquiry, the Inspector’s report and recommendation have now been received.

The Inspector’s report and recommendation are now attached to this Committee report and Members are now asked to 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 Village Green.

Pursuant to Section 15(2) of the Commons Act 2006, the authority may register land as a Village Green if it is satisfied, on the balance of probabilities, that 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 they continue to do so at the time of the application

An application was received from the Applicant on 2nd December 2011 to have an area of land at Station Road, Newport registered as a Village Green under Section 15(2) of the Commons Act 2006. This first application was rejected by letter dated 8th December 2011 because it failed to meet statutory requirements in that it did not describe the “locality or neighbourhood within a locality to which the claimed green relates” and did not attach an adequate plan of the application site. With a letter from the Applicant dated 14th December 2011 (received on 15th December 2011), the “locality or neighbourhood etc” was clarified and a plan of the required scale provided. This plan identified the application site (“the Site”) and is attached to this report. Because the previous application had been formally rejected, the revised second application, received on 15th December 2011 (the “Application”), is the one which members are being asked to determine.

Evidence was submitted which formed part of the application and, in accordance with the relevant legislation, consultation was carried out and the application was publicised.

A copy of the completed Application, including the application site plan, a list of evidence and statements and an aerial photograph, and letters submitted by the Applicant are attached as Appendix 1. Supporting evidence was also submitted with the Application which sought to demonstrate use of the Site in accordance with the Section 15(2) criteria. (The various emailed statements from supporters which were sent with the Application are not included in Appendix 1 but are available for members to inspect – see inspection arrangements below)

The relevant period of 20 years use for the purposes of this application is the 20 years immediately preceding the application date i.e. the period between 15th December 1991 and 15th December 2011.

During the non-statutory Public Inquiry referred to above, the Inspector was presented with a significant amount of written and verbal evidence and submissions from those representing the Owner and the supporters of the application. The Application (with all accompanying documentation), written submissions, written evidence, authorities and other documentation presented to the Inquiry are deposited and available to members for inspection during office hours in the Member Services Office at Addenbrooke House, Ironmaster Way, Telford (Tel. No. 01952 80110). This information will also be available for inspection at the meeting on 23rd January 2013.

The Closing Submissions made at the Inquiry on behalf of the Owner and the Applicant are attached to this report as Appendices 2 and 3 respectively.

Further to the Public Inquiry, the Inspector's report and recommendations have now been received and this document is attached as Appendix 4.

With the benefit of the Inspector's report, Members are now asked to determine, on the balance of probabilities, whether the case has been proven for registration of the Site as a Village Green.

5.2 The Process

When an application is received by the authority it must carry out the following steps:-

- Allot a number to it – this application has been allotted number 2011/2
- Send a notice to every person whom the authority has reason to believe to be an owner, lessee, tenant or occupier of any part of the land affected by the application or to be likely to wish to object to it. This has been done.
- Publish a notice – the notice was advertised in the Shropshire Star
- Affix the notice to a conspicuous object on any part of the land – a copy of the notice was affixed to posts on the Site.

- A period of 6 weeks is allowed for objections or representations to be made about the application.
- Letters were sent to interested parties, including the owners of the Site.

An objection was received from the Owner (This letter is summarised at paragraph 22 of the Inspector's report)

A large number of individual emails and evidence cards were sent to the Council by supporters of the Application.

With there being a conflict of evidence, the Inspector was appointed to hold a non-statutory Public Inquiry.

Interested parties were notified of the Inquiry which took place between 22nd and 29th October 2012. At the Inquiry, written and verbal submissions were made, witnesses gave written and verbal evidence and cross examination and questioning of witnesses took place. The Inspector also undertook an accompanied site visit. Both the Applicant and the Owner were represented by barristers at the Inquiry.

With the Inspector's report and recommendation having now been received, the Council as Registration Authority needs to determine the Application.

The Law

The Application has been made and has to be determined under Section 15(2) Commons Act 2006. The law and the criteria for registerability are referred to in this committee report and set out at paragraphs 3 and 196 of the Inspector's Report

For the Application to be successful, Members need to be satisfied that:

1. The relevant use was by a significant number of the inhabitants of the locality or of any neighbourhood in a locality. (The Inspector sets out the law on this element at paragraphs 197 to 206)
2. Those users indulged in lawful sports and pastimes as of right. (The Inspector sets out the law on this element at paragraphs 207 to 225)
3. The Site has been so used by those users for a continuous period of 20 years ending on the date of the Application i.e. between 15th December 1991 and 15th December 2011. The Inspector sets out the law on this element at paragraphs 226 to 238)

5.3 The Inspector's Report

Paragraph 2 of the Inspector's report ("the Report") helpfully explains that the Report is divided into eleven parts, as follows:

Part I. Introduction (paragraphs 1-2);

Part II. The legislative framework (paragraphs 3-15);

Part III. The Application (paragraphs 16-24);

Part IV. The Application Land (paragraphs 25-34);

Part V. The Applicant's evidence (paragraphs 35-161);

Part VI. The Objector's evidence (paragraphs 162-195);

Part VII. The law (paragraphs 196-238);

Part VIII. The case for the Objector (paragraphs 239-260);

Part IX. The case for the Applicant (paragraphs 261-286);

Part X. Findings and conclusions (paragraphs 287-336);

Part XI. Recommendation (paragraphs 337-339).

Members must read the Report before reaching their determination. After setting out the legal position, the Inspector summarises the Objector's (the Owner's) case (paragraphs 239 to 260) and the case for the Applicant (paragraphs 261 to 286).

At paragraph 287 of her Report, the Inspector comments that "...in respect of certain matters there was not (and on the evidence could not have been) any, or any significant, conflict." The Inspector addresses these particular matters at paragraphs 288 to 297 under headings which reflect a number of the elements of the Section 15(2) criteria which have to be established before the land could be registered i.e. "Land", "Lawful sports and pastimes" and "as of right". Then, the Inspector turns to "the real issues between the parties".

At paragraphs 298 to 309 the Inspector sets out her conclusions as to whether it has been proved that use was by "a significant number of the inhabitants of a locality or a neighbourhood within a locality". The Inspector first addresses whether the Applicant succeeded in showing, on the balance of probabilities, that the Claimed Neighbourhood is a "neighbourhood within a locality". She concludes that it is not

and gives her reasons at paragraphs 299 to 308 of the Report. The Inspector further sets out her conclusions on “significant number” at paragraph 309 of the Report.

At paragraphs 310 to 336 under the heading “Character and amount of the user”, the Inspector sets out the test as to whether user of the land was referable to use as a village green and makes findings of fact regarding each area of the Application Site. In respect of the Round Field area, with reference to this element of the criteria, the Inspector advises that it is not registerable as a village green (para 329). In respect of the Horse Field area, the Inspector is “...not satisfied on the balance of probability that there was sufficient user of the whole field for lawful sports and pastimes throughout the 20 year period 15 December 1991 – 15 December 2011 to justify registration” (para 332). In respect of the Wooded Area, the Inspector does not conclude that it is registerable with reference to this element of the criteria (Para 333).

The Inspector’s Recommendation at paragraphs 337 to 339 of the Report is as follows:

“XI. Recommendation

My overall conclusion on the totality of the evidence presented at the inquiry is that the Applicant has failed to prove his case and that none of the Application Land qualifies for registration as a town or village green under section 15(2) of the Commons Act 2006. It has not been shown that a significant number of the inhabitants of any locality or any neighbourhood within a locality indulged in lawful sports and pastimes as of right on the Application Land or any part of it for a period of at least twenty years, and continued to do so at the time of the Application.

In particular:

- (a) I have found that the Claimed Neighbourhood is not a ‘neighbourhood’ within the meaning of the statute;
- (b) I advise that the Registration Authority has no power to substitute a different neighbourhood or neighbourhoods for the Claimed Neighbourhood, alternatively that to do so would be unfair to the Objector, and in any event the evidence does not establish any alternative neighbourhood or neighbourhoods;
- (c) I have found that the predominant recreational user of the Application Land during the material period was user of paths such as to have appeared to a reasonable landowner to be referable to the exercise of existing, or the potential acquisition of new, public rights of way, and

that user did not qualify as lawful sports and pastimes for the purposes of the Application;

(d)I have found that there was insufficient use of the Application Land for lawful sports and pastimes.

My recommendation is that the Registration Authority should reject the Application for the reasons set out in this Report.”

5.4 The Determination

This Application has been made with reference to Section 15(2) of the Commons Act 2006. Therefore, as stated above, Members should consider whether they are satisfied, on the balance of probabilities, that 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 they continued to do so at the time of the application..

The Committee is authorised to determine Village Green applications. The Inspector’s report and recommendations have been received. The Inspector recommends that the Application should be rejected for the reasons set out in the Report. However, the final decision in respect of this application is for the Committee to make and, in making that decision members should have regard to the report and recommendations of the Inspector.

The Council as Registration Authority must act fairly in its determination of this Application. The appointment of the Inspector and the holding of the non-statutory Public Inquiry has provided the Owner, the Applicant and the supporters with opportunity to present their cases and ask questions of witnesses. During the Inquiry oral evidence was heard which was tested in cross examination and by questions from the Inspector.

The Inspector has considered the evidence and has been able to give appropriate weight to it with the benefit of the Public Inquiry process and her own significant experience in Village Green matters. Members should note that conflicts and quality of evidence would have been addressed at the Inquiry which is the appropriate forum to resolve evidential issues rather than consideration of written evidence/submissions alone. (Members to note paragraph 9 of the Inspector’s report which comments upon the practice of holding non-statutory inquiries in these circumstances)

5.5 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.

5.6 Legal Comment

The application must be determined by Members on its own merits by applying the law in relation to the registration of village greens. Members must only consider whether it has been shown, on the balance of probability, that all of the qualifying elements of Section 15(2) have been met. No other matters should be taken into account by Members. (Members to note paragraph 14 of the Inspector's report in this respect)

As stated above, in making their decision, Members should have regard to the report and recommendations of the Inspector. Members must act reasonably and, in view of the fact that the Inspector has assessed the evidence, submissions and argument and the Council has pursued this Public Inquiry stage to achieve fairness in its determination of the Application, Members would need to have clear and relevant reasons to reach a decision which conflicts with the recommendations of the Inspector.

5.7 Links with Corporate Priorities

The following are considered to be the corporate priorities which indirectly relate 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.

However, as mentioned above, this is a report which seeks a determination based on evidence submitted and the remit of Members' considerations is thus defined.

5.8 Opportunities and Risks

This report deals with the processes to be followed to fulfil the Council's statutory duty. The opportunities and risks associated with this decision have been identified and assessed during the statutory process and will be appropriately managed

5.9 Financial Implications

The Council is the relevant landowner. However, no details regarding any financial impact on the Council have been included in this report because, under legal advice, financial implications to the Owner must not be taken into consideration by Members when making their determination. JAC 160113

6. WARD IMPLICATIONS

This report has implications for Newport South Ward and Church Aston & Lilleshall Ward

7. **BACKGROUND PAPERS**

The Application by Mr John Rudd ref: 2011/2 received 15th December 2011
Exchanges of correspondence and other documentation relating to this application held on Legal Services file reference 005379.

Submissions of objection and support received in advance of the non-statutory Public Inquiry

Inspector's pre-Inquiry Directions – held on Legal Services file reference 005379.

All evidence and other papers and written representations submitted at the non-statutory Public Inquiry

The Inspector's Report dated 18th January 2013

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