

# PLANNING APPLICATION REPORT



<b>Application Number</b>	17205	<b>Item</b>	06
<b>Date Valid</b>		<b>Ward</b>	Radford

<b>Site Address</b>	LAND KNOWN AS THE BOTTOM FIELD, RADFORD, PLYMOUTH		
<b>Proposal</b>	An application to register the land as a town or village green		
<b>Applicant</b>	Mr Jonathan Parlour		
<b>Application Type</b>	Village Green		
<b>Target Date</b>		<b>Committee Date</b>	<b>Planning Committee: 15 December 2016</b>
<b>Decision Category</b>			
<b>Case Officer</b>	Julie Parkin		
<b>Recommendation</b>	The amended application site should be added to the register of Town and Village Greens		

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## **1. Description of site**

1.1 Land known as the Bottom Field in the Radford Ward, Plymouth. Specifically the land is to the rear of 4, 6 and 8 Westcombe Crescent and rear of 25 – 39 (odd) Broom Park. It is bounded by Hooe Road in Plymstock.

## **2. Introduction**

2.1 A town or village green is land that is subject to the right of local inhabitants to enjoy general recreational activities on it. Registered greens are protected under statute from encroachment and development.

2.2 Plymouth City Council is the Registration Authority for town or village greens and this means it must maintain a register of all those registered within its registration area. It must be made clear that this application is therefore before the Committee not in its capacity as the Local Planning Authority but as the Town or Village Green Registration Authority.

2.3 The relevant legislation for this particular application is the Commons Act 2006 (the Act) and its associated Regulations.

2.4 The benefits of registering land as a village green are to:

- Secure permanent recording of the land as a town or village green,
- Protect the land from development and other forms of detrimental activity
- Secure the right of local people to enjoy the land for recreation in perpetuity.
- Give the registered land a new status as land for the community, to be valued and enjoyed
- Ensure that existing and prospective owners are aware of the established recreational function of the land.

2.5 However, certain criteria must be met under section 15 of the Act to enable land to successfully be registered as a green.

2.6 Careful consideration must be given to all applications as if successful they can and will place restrictions on the land owner's use of the land.

2.7 Certain checks need to be undertaken by any applicant prior to submitting an application to ensure that there is nothing preventing the registration of the land as a green, such as there is a current planning application for the land which has yet to be determined.

2.8 Once it has been established that there is nothing preventing the possible registration consideration must be given by the applicant to the essential criteria and the tests needed for a green. The ones relevant for this particular application are those in Section 15(2) of the Commons Act 2006. These are as follows:

“(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.”

2.9 Therefore, it is incumbent upon any applicant to submit with their application for registration evidence to support all the essential criteria. The application is then submitted to the relevant Registration Authority for detailed consideration and determination.

### 3. Process for Determination

3.1 The process for consideration and determination by Plymouth City Council as the Registration Authority is that the application will be allocated to a case officer who will process and progress the application. The authority to make a final decision of any town or village green application is with the Planning Committee as set out in its Terms of Reference. However:

- a) if there are objections which raise issues worthy of being tested orally; or/and
- b) where the evidence is finely balanced; or/and
- c) where the Registration Authority have an interest in the land; or/and
- d) where points of law arise

3.2 The Registration Authority has the discretion to appoint an independent person to advise it as to whether the application should be accepted or refused. This is usually undertaken by way of a public inquiry.

3.3 An inquiry for this purpose, set up at the discretion of the registration authority and not as a requirement of law is, therefore, a ‘non-statutory inquiry’.

3.4 If an inquiry is held the independent inspector will consider in detail the evidence and then prepare a report with his recommendation. The Council as Registration authority will then determine the application on the basis of the advice provided from the inspector and the evidence submitted.

3.5 With regard to the final decision there is no right of appeal, however, a landowner can under Section 14(b) of the Commons Registration Act 1965 apply to the high court to rectify the register of town or village greens to delete the registration of a new green. Further both parties do have the right to apply for permission to challenge any decision by way of a judicial review in the high court.

## **4. The Application**

4.1 The Application for The Bottom Field was submitted by Mr John Parlour (the Applicant) of 10 Broom Park, Plymstock on the 18 February 2013. The Applicant provided justification for the application, along with other evidence. This included photographic evidence, various correspondence, site plans and numerous completed evidence questionnaires. Further evidence was provided before the Inquiry.

4.2 The Application was advertised and one objection was received on the 24 April 2014 by the Registration Authority from the landowner, Lancrest Properties Limited (the Objector).

4.3 The Applicant was provided with an opportunity to respond to the objections made to the Registration Authority. These were received on the 28 August 2014.

4.4 Advice was obtained from an independent legal advisor as to whether the issues between the parties could be dealt with in correspondence. It was considered that due to the need to clarify certain important points and to afford all parties a fair and equal opportunity it would be more effective to hold a public inquiry.

## **5. The Inquiry**

5.1 The Inquiry was held on the 19 and 20 July and Mr Alun Alyesbury M.A., Barrister at Law was appointed as the independent inspector. At the Inquiry submissions were made by the Applicant and the legal representative for the Objector. The Applicant called various witnesses who gave oral evidence and who were subjected to cross examination and also questions from the Inspector.

5.2 The Inspector had visited the site the day before the Inquiry and undertaken an unaccompanied site visit. However, an accompanied formal site visit, with the Applicant and the Objectors representative was carried out on the second day of the Inquiry.

5.3 It should be noted that during the course of the Inquiry it was agreed with all parties by the Inspector to amend the site plan to exclude certain areas from the application.

## **6. The Inspector's Report**

6.1 The Inspectors report was received by the Registration Authority on the 1 September 2016 and sets out in detail the evidence submitted by both the Applicant and Objector and all the witnesses who gave oral evidence. Further it shows how the Inspector considered the specific criteria in the Act and assessed these in light of the evidence.

6.2 Finally the report contains the Inspectors conclusions and recommendation based upon the legal issues and evidence.

## 7. Conclusion

7.1 In this particular case the Planning Committee have the benefit of a detailed Inspectors report which sets out a clear recommendation. The recommendation is:

“Accordingly my recommendation to the Council as Registration Authority is that the land of the amended application site **should** be added to the Register of Town or Village Greens, pursuant to the Applicant’s application under **Section 15(2)** of the **Commons Act 2006**, for the reasons given in my Report.”

7.2 It should be noted that if the committee were minded to refuse the application then there would need to be evidence provided to support this which supports a different assessment from the current Inspectors recommendation and evidence already submitted. Detailed reasons would also have to be given for this contrary decision.

7.3 It is the officer’s view that there are no reasons to refuse this application and on the basis of the Inspectors report and recommendation the Registration Authority should proceed to register the amended application site as a green.

## 8. Recommendation

In respect of the application dated 18 February 2013 it is recommended that the Registration Authority should add to the Register of Town or Village Greens the amended application site subject to the Applicant’s application under Section 15(2) of the Commons Act 2006 for the reasons as set out in the Inspectors Report.

## 9. Reasons

See Inspectors Report