

PLANNING APPLICATION REPORT



Application Number	21127	Item	03
Date Valid	N/A	Ward	St Budeaux

Site Address	LAND KNOWN AS NEWTON PLAYING FIELD, KINGS TAMERTON, PLYMOUTH		
Proposal	An application to register the land as a town or village green		
Applicant	Mrs Carole Cook		
Application Type	Village Green		
Target Date	N/A	Committee Date	Planning Committee: 30 May 2019
Decision Category	N/A		
Case Officer	Julie Parkin		
Recommendation	The application site should not be added to the register of Town and Village Greens		

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1. Description of site

1.1 Land known as Newton Playing Field in the St Budeaux Ward, Plymouth. Specifically the land is to the north of Newton Avenue which separates the field from Marine Academy, Plymouth.

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(3) 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 ceased to do so before the time of the application but after the commencement of this section;

and

(c) the application is made within the relevant period.”

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.

3.6 As mentioned in Paragraph 2.4 above, land registered as a town or village green is, at present, protected in perpetuity against development. Unless a future landowner is successful in an application to have the land removed from the register, it will be preserved as open land available for recreation. In order to have land removed however the landowner would need to show that it was 'just' to do so based upon whether any prejudice would occur to parties involved in the village green application.

3.7 Members are also advised that a village green application is not a material planning consideration. A planning application can be submitted on land which is registered as a village green, as the village green status of the site is protected by separate legislation and is not in itself a ground for the refusal of planning permission. However the grant of planning permission cannot override legislation protecting the village green status of land.

3.8 It is also important for Member's to note that in considering an application of this kind as a Registration Authority, and not as a Planning Committee, it is acting in a 'quasi-judicial' capacity, which means that it must be neutral in terms of any preconceived views towards the sides either of an applicant, or of any actual or potential objectors.

4. The Application

4.1 The Application for Newton Playing Field was submitted by Mrs Carole Cook (the Applicant) of 267 Kings Tamerton Road on the 26 August 2014. The application was submitted due to the land being closed suddenly on the 17 April 2014. 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 objections were received by the Registration Authority from the landowner who in this case is Plymouth City Council, the Marine Academy Plymouth and multiple written objections (approx. 383) from parents with children at Marine Academy.

4.3 The only objectors who participated in the Inquiry were the Council and the Marine Academy. They were jointly represented and so they were referred to during the Inquiry process as "the Principal Objectors."

4.4 The Applicant was provided with an opportunity to respond to the objections made to the Registration Authority.

4.5 Due to the Council being the landowner of the land in question and the need to clarify certain important points and to afford all parties a fair and equal opportunity it was decided by the Registration Authority that it would be more effective, open and transparent to hold a public inquiry.

5. The Inquiry

5.1 The Inquiry was held on the 28, 29 and 30 November and 1 December 2017 and Mr Alun Alesbury 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 Principal Objectors. The Applicant and Principal Objectors called various witnesses who gave oral evidence and who were subjected to cross examination from the other party and also questions from the Inspector.

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

5.3 At the Inquiry some legal points were raised in connection with statutory incompatibility. At the time of the Inquiry there were awaited decisions on two Court of Appeal cases dealing with this very issue. Due to this it was agreed at the Inquiry by all parties that the Inspector would not complete his report, conclusions or recommendation until after a judgement had been handed down from the Court of Appeal in relation to these cases.

5.4 There was an exchange of submissions by the parties in relation to the Court of Appeal judgements in May and June 2018.

6. The Inspector's Report

6.1 The Inspectors report was completed on the 17 August 2018 and sets out in detail the evidence submitted by both the Applicant and Principal Objectors and all the witnesses who gave oral evidence. Further it shows how the Inspector considered the Court of Appeal decisions and the specific issue of statutory incompatibility along with the relevant criteria in the Act. The report then sets out in detail how the Inspector assessed all of these in light of the evidence. His detailed discussion and his recommendation are all included in section 11.

6.2 In brief the Inspector is of the opinion that based on the all of the evidence provided by the parties before and at the Inquiry the application has shown it complies with some of the criteria in Subsection 3 of Section 15 of the Commons Act 2006 but not all of them.

6.3 The evidence supports the following criteria:

- (i) Kings Tamerton does exist as a neighbourhood and complies with this definition;
- (ii) That a significant number of local inhabitants used the land at certain times;
- (iii) The uses were those set by the statute so "lawful sports and pastimes". This does not include walking across a piece of land along more or less a fixed route to access for example a bus stop or shops. This is more like an issue to establish a public right of way.
- (iv) That the use occurred over a period of more than 20 years, from the early 1990's through to April 2014. (The 20 year period for this application runs from April 2014 back until April 1994).
- (v) The application was received within the relevant period and the made at the appropriate time so complying with sub section 3 (b) and (c) of section 15 of the Commons Act.

6.4 However, there is one other element of the statutory criteria “as of right” which the evidence does not support. To comply with this the right must be without force, without secrecy and without permission. According to the Inspector the evidence finds to the contrary and in fact the access is “by right” not “as of right”. The Inspector states at paragraph 11.67 of his report that: “In my judgement therefore, there was here, at all material times, permission express and/or implied, from the owning local authority for (at least) out of school hour’s recreational use by the community. The evidence also strongly supported a conclusion that the local community in general had understood that permission had been given to it for that type of use.”

6.5 There was another legal issue which was considered in detail at the Inquiry and is in the Inspectors Report. This relates to statutory incompatibility. The Inspectors report was delayed whilst waiting for the judgement to be handed down on two cases in the Court of Appeal. Again in brief the outcome of the Inspectors opinion was that the land had mainly be held for “education purpose” and that this did not exempt the land from being found to be a village green. The two uses were not incompatible.

6.5 Following on from this the report then 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 no part of the land of the application site should be added to the statutory Register of Town or Village Greens, pursuant to the Applicant’s application under the **Commons Act 2006**, for the reasons given in my Report.”

7.2 It should be noted that if the committee were minded to accept the application then there would need to be an assessment of the evidence which supports a different opinion from the current Inspectors recommendation and evidence already submitted. Detailed reasons would also have to be given for this contrary decision. So this would mean Members must have considered in detail the legal arguments and assessed the evidence provided and come to a view that the applicant has proved the access has been “as of right”.

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

8. Recommendation

In respect of the application dated 26 August 2014 it is recommended that the Registration Authority should not add to the Register of Town or Village Greens the application site subject to the Applicant’s application under the Commons Act 2006 for the reasons as set out in the Inspectors Report.

9. Reasons

The Inspector has considered all the evidence in detail and is making a clear recommendation that the application does not comply with all the relevant statutory criteria which must be met in order for land to be registered as a town or village green.

