

## Regulatory and Other Committee

### Open Report on behalf of Richard Wills, Executive Director for Environment and Economy

Report to:	<b>Planning and Regulatory Committee</b>
Date:	<b>15 February 2016</b>
Subject:	<b>Application for land to the rear of the Royal Oak Public House, Main Street, Long Bennington to be registered as a town or village green</b>

#### Summary:

The Committee are asked to consider an application submitted to the County Council under the provisions of section 15(1) of the Commons Act 2006 to register land as a town or village green in Long Bennington: to consider the relevant legal issues that should be taken into account when considering such an application and to make a decision on the application

#### Recommendation(s):

That the application to register land to the rear of the Royal Oak Public House Main Street Long Bennington as a town or village green is rejected as the applicant has failed to provide sufficient evidence to meet the required statutory tests

#### Background

1. **The Application**
  - 1.1 **Preliminary procedure**

Lincolnshire County Council are the commons registration authority under the provisions of the Commons Act 2006 ("the Act") and are obliged to amend the statutory register where unregistered land in the County of Lincoln becomes a town or village green within the meaning of the Act.
  - 1.2 There are two main tests within the Act against which the Council must assess an application. Under both tests the main requirement is as follows

*A significant number of inhabitants of any locality or of any neighbourhood within the locality indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years.*

- 1.3 However under the requirements set out in subsection 15(2) of the Act, the use must be continuing at the time of the application. Under the requirements set out in subsection 15(3) of the Act, the use does not have to be continuing at the time of the application as long as the application is made within the relevant period of the use ceasing.
- 1.4 On 9 December 2014, the County Council received an application on behalf of Long Bennington Parish Council for the registration of land to the rear of the Royal Oak Public House as a town or village green. The application stated that the inhabitants of the locality had indulged in lawful sports and pastimes for at least the last 20 years and that the use of the land ceased approximately 18 months before the application (i.e the application was made under subsection 15(3) of the Act). The application was not supported with any additional evidence.
- 1.5 The County Council are entitled under regulation 5(4) of the Commons (Regulation of Town and Village Green) (Interim Arrangements)(England) Regulations 2007 to inform the applicant of any action that they may take to put the application in order by giving them a reasonable opportunity to do so.
- 1.6 On 2 March 2015, the applicants were informed that the County Council considered that the original application to be defective as they had stated that the use had ceased some 18 months before and had not submitted any evidence to support this. They were given an opportunity to rectify the mistake.
- 1.7 On 11 March 2015, the applicants submitted an amended application form with one statutory declaration from a local resident stating that the use of the land was still continuing (i.e evidence supporting an application under subsection 15(2) of the Act, a different section to that which had been applied for). They were also informed that they needed to submit additional evidence to substantiate their claim. A further 4 additional user evidence questionnaires were submitted together with photographs and documentary evidence.
- 1.8 When the applicants re-submitted the amended application form in March, the County Council had to consider this as a fresh application, and the application form should therefore have been accompanied with a new statutory declaration from the applicants and the plans produced as part of the application should have been marked and exhibited as part of the statutory declaration as per the requirements under the Commons (Regulation of Town and Village Green) (Interim Arrangements)(England) Regulations 2007. On 30 April 2015, the County Council noted that these procedural requirements had not been met and the applicants were requested to rectify this.
- 1.9 On 15 May 2015 the applicants submitted the required documentation but had appended to it the original application form dated 9 December 2014 and not the amended one dated 11 March 2015. The County Council

sought clarification from the applicant who indicated that the application was being made under section 15(3) of the Act, that the use of the land had ceased 18 months previously and that no additional evidence would be submitted.

1.10 The application site is within the freehold ownership of NewRiver Trustee 7 Limited and NewRiver Trustee 8 Limited. On 16 December 2014 a planning application was submitted to South Kesteven District Council to develop the land with the erection of 8 detached and semi-detached houses, this application has been held in abeyance until the determination of this village green application.

1.11 Notice of the application has been displayed and advertised in the local newspapers circulating in the area, one objection has been received from the landowners.

## 2.0 **Consideration of the application and objections**

### 2.1 **Landownership and its use**

The land subject to this application forms part of the beer garden to the rear of the Royal Oak Public House and was sold by Marstons Plc to the current owners in 2013. The landowners are NewRiver Trustee 7 Limited and NewRiver Trustee 8 Limited who act as trustees on behalf of NewRiver Retail (Portfolio no 4) Ltd.

2.2 Town and village green applications are in the main contentious issues and there are many recent examples of appeals being lodged as a consequence of decisions made by registration authorities. It is therefore considered prudent to ensure that all of the facts pertaining to the application and the objections are carefully and thoroughly examined. This is particularly relevant where there is disputable evidence or where there is no clear and concise written evidence to be certain that either party is correct in its submissions.

## 3.0 **Onus of proof**

3.1 The person making the application for the registration of the land as a town or village green, must if they wish to succeed prove his case, if he fails to provide sufficient evidence and persuasive evidence in respect of any requirement then his claim should fail.

3.2 The application was supported by user evidence questionnaires and one statutory declaration, photographic evidence and documentary evidence. However three of the forms have not been dated and one form is not signed or dated by the individual. Therefore the content of that one form cannot be verified as being that individual's evidence.

4.0 **Outline of relevant issues.**

4.1 The application is made under subsection 15(3) of the Act (as amended) which, as stated above, is applicable where;-

*"A significant number of inhabitants of any locality or of any neighbourhood within the locality indulge as of right in lawful sports and pastimes on the land for a period of at least 20 years and that the use has continued up to 12 months before the date of the application."*

Prior to the 1 October 2014, an applicant had to show that the use of the land ceased within 2 years prior to the application, however, this was reduced to 12 months by the Growth and Infrastructure Act 2013. Therefore as the application is dated 9 December 2014, the County Council must apply the legislation relevant at that date.

The issues that need to be considered in respect of this application are therefore;-

4.2 **(a) Has the use been by a significant number of inhabitants?**

4.2.1 The applicant has to show that the land has been well used by the local community and not occasional use by the individuals. To support the application the applicant forwarded one statutory declaration and four user questionnaires. However, one of the individuals does not live in the area and claims to be a "regular visitor to the village", her evidence in relation to her use of the land has therefore been discounted.

4.2.2 The evidence submitted is lacking in detail, none of the users state to have actually used the land, apart from attending organised activities, the evidence does not provide information as to how long the stated use has continued nor how often or when the use has been. As it appears that the use of the land has been occasional use by individuals and not general use by the community as a whole.

4.2.3 Based upon the evidence submitted it is considered insufficient for it to constitute "significant" use, despite the fact that the applicant has suggested on the application form that it was well used by the local residents; this assertion has not been supported by any further evidence despite repeated requests. This criterion has not been satisfied.

4.3 **(b) Is the land situated in any locality or any neighbourhood within a locality?**

4.3.1 Locality has been suggested to mean an administrative area for example a manor or parish, neighbourhood within a locality means an area of sufficient degree of cohesiveness. The applicant has stated that the locality is that of the parish of Long Bennington, this criterion has been satisfied.

4.4 **(c) Are the activities claimed to have taken place lawful sports and pastimes?**

4.4.1 The courts have held that lawful sports and pastimes can include a variety of uses including "such outdoor pursuits as walking their dogs, playing family and children's games, flying kites, picking blackberries, fishing in streams and tobogganing down slopes".

4.4.2 In order to satisfy the requirement the lawful sports and pastimes should be (1) lawful (2) definite (3) engaged in by more than a few isolated individuals.

4.4.3 From the evidence provided some of the uses claimed to have taken place on the land may fall under this category of being lawful sports and pastimes. However, some will not, these are discussed in more detail below.

4.4.4 The applicant has failed to provide any evidence from any user that they have actually participated in these activities; users claim to have witnessed individuals but have failed to provide additional information and evidence to support this. In addition, they have failed to show how long they have used the land, how often and when they used the land.

4.5. **(d) Has the use been "as of right"?**

4.5.1 The activities undertaken on the land must have taken place "as of right", this means :-  
(1) without resort to force  
(2) without secrecy  
(3) without express or implied licence or permission from the landowner.

4.5.2 No evidence has been submitted to show that the use of the land required force or that the use was carried out in secret.

4.5.3 However, some of the uses claimed may have been with the owner's permission. For example, the programme for the Coronation states that the use was with kind permission of Mr W B Bingham. Activities such as the steam fayre, car club events, circus, camping, live music, summer fetes, firework displays all indicate that permission of the owner was needed.

4.5.4 The applicant also submitted a photograph showing a sign placed at the entrance to the land stating "*customers must keep their dogs on a lead at all times children play in this garden please clean up*" which affirms this view.

4.5.5 The objector landowners, have confirmed this with the evidence of the current landlord that all organised activities have taken place on the land with his consent. And they have submitted a photograph of a sign indicating that the land is considered "*private property and is for patrons*

*only*". But none of the users have referred to seeing any signage that restricted their usage.

4.5.6 Therefore not all of the activities claimed to have taken place on the land can be deemed to have taken place "as of right" as they have been carried out with the owner's permission.

4.5.7 The applicant has also failed to provide information as to who has used the land, what activities they participated in, when, how long for and how often.

**4.6 (e) Has this been for a period of at least 20 years?**

4.6.1 The applicant claims that the land became a town or village green on 9 December 2014. Therefore the applicant has to show the use of the land for lawful sports and a pastime covering the period December 1993-December 2013, the use has to be continuous.

4.6.2 The evidence provided often refers to periods of time before the relevant 20 year period for example the Coronation booklet. One user has stated most of the activities that they are aware of took place between 1970-1993, this is outside of the relevant 20 year period.

4.6.3 Three of the users state to have only known the land in the later part of the relevant period, being from 2005, summer 2012 and from 2010. Therefore the applicant has failed to show that a significant number of people have used the land during the relevant period, nor that the use of the land has occurred during the periods claimed. This criterion has not been satisfied.

**4.7 (f) That the use ceased 12 months before the date of the application?**

4.7.1 The applicant claims that the use of the land ceased 18 months prior to the application. Therefore they were required to provide evidence that the claimed use ceased in June 2013. As previously stated the Growth and Infrastructure Act 2013 reduced the time period that the claimed use had to cease within, to 12 months from the date of the application.

4.7.2 This creates a fundamental difficulty as it contradicts the basis for registration under section 15(3) of the Act i.e. that the use had ceased within the previous 12 months; the application does not therefore comply with these requirements.

**5.0 Summary of objections**

5.1 The objectors are challenging the application on the grounds that it has not met the statutory tests. They contend that the land should not be registered as a town or village green for the following reasons;-

(a) that the landowner has given permission to use the land for recreational purposes and has supported this with a statutory

declaration from the current landlord of the Royal Oak .He confirms that he gave permission for various organised activities to take place on the land for example, the last bonfire night on the land was 10- 11 years ago and people were charged for entry, the steam fayre and classic car events are with prior arrangement where the organisers seek his permission, therefore usage is not "as of right".

- (b) that the applicant has failed to provide sufficient information to show that a significant number of inhabitants of a locality or neighbourhood within the locality have used the land for recreational purposes, that they have failed to demonstrate 20 year use with sufficient intensity and duration of use that would justify the registration as a town and village green.
- (c) That the application contains reference to a building i.e. a listed barn, whereas the Act only applies to land and not to buildings, therefore the barn should be excluded and any evidence relating to its use should be disregarded.

## **Conclusion**

- 6.0 In assessing the application the officers have disregarded any references to any use of the listed barn as the claimed use is that of a bowling alley and any use associated with this use would be by invitation of the landowner i.e. the use could be regarded as by right and not as of right.
- 6.1 The onus has been upon the applicant to properly and strictly prove the application; they have failed to provide sufficient evidence to satisfy the statutory tests under section 15(3) of the Act. Therefore the application should be rejected.
- 6.2 The County Council have sought independent legal advice on this application from a barrister. The barrister advised that the application should be allowed to continue to publication, but upon reviewing the evidence submitted by the applicant that they considered that the applicant had failed to satisfy the statutory tests and that the application should be rejected.
- 6.3 If the committee are not in agreement with this approach, they are reminded that if the application is not rejected it will have to be considered by an independent adjudicator who will hold a non- statutory public inquiry to determine the application.

## **Consultation**

## a) Policy Proofing Actions Required

n/a

## Appendices

These are listed below and attached at the back of the report	
Appendix A	Assessment of Evidence

## Background Papers

The following background papers as defined in the Local Government Act 1972 were relied upon in the writing of this report.

Document title	Where the document can be viewed
Application and supporting evidence submitted by the Applicant	Legal Services
Evidence submitted in response by the Objectors	Legal Services
right of reply by applicants	Legal Services

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