

Date: 27th October 2011
Title of report: the determination of an application to register as a town or village green land off Chickenley Lane Chickenley Dewsbury

Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	No
Is it in the Council's Forward Plan?	not applicable
Is it eligible for "call in" by Scrutiny?	No
Date signed off by Director & name Is it signed off by the Director of Resources? Is it signed off by the Acting Assistant Director - Legal & Governance?	Jacqui Gedman- Acting Director of Place 17th October 2011 No financial implications Yes 17th October 2011
Cabinet member portfolio	Councillor McBride

Electoral wards affected: Dewsbury East
Ward councillors consulted: Not applicable
Public or private: Public

1. Purpose of report:

To determine the application to register land off Chickenley Lane Chickenley (shown on the map at Appendix 1 to this report and known henceforth in this report as "the Claimed Land") as a town or village green

2. Key points

- The Council has received an application under s15 Commons Act 2006 ("the Act") to register the Claimed Land as a town or village green on 15th December 2010. The Council is the Registration Authority for the purposes of the Act
- Since the Council is also the owner of the Claimed Land a non-statutory public inquiry was held 29th June 2011 to 1st July 2011 to consider the application, to hear the evidence and submissions both for

and against the application and after the inquiry to prepare a written report to the Registration Authority containing a recommendation for the determination of the application.

- In order to preserve impartiality, the Registration Authority instructed a barrister in private practice who is an expert on the law of village greens who has acted as Inspector at the non-statutory inquiry.
- The Inspector's recommendation is in the report annexed to this report at Appendix 2
- Under the Terms of Reference of the Delegation Scheme of the Council's Constitution the Licensing and Safety Committee has power to register common land or Town or Village Greens
- The Inspector has recommended that the application is rejected with his overall conclusion thus (see page 63 of his report in Appendix 2)

My overall conclusions are as follows:

- (a) there has been insufficient use of the Main Area in amount and manner to justify its registration (116);
 - (b) the Mown Area has not been used by a significant number of the inhabitants of the neighbourhood (117);
 - (c) there has in any event been an insufficient spread of users over the neighbourhood to establish the case for registration on a limb (ii) basis (133) and an insufficient spread of users over the locality to establish the case for registration on a limb (i) basis (134).
- The Committee are now asked to formally determine this application acting as Registration Authority

Background documents (available for public inspection):

The documents disclose important facts on which the report is based which, together with witness evidence in person, have been relied upon in preparing the Inspectors report. If you would like to inspect any of these please contact the contact officer above or can be viewed on line at http://www.kirklees.gov.uk/business/land_charges/townVillageGreenApplication.shtml

Introduction/Background Information

The Claimed Land

Kirklees Council is the freehold owner of land in Chickenley Dewsbury shown at Appendix 1.

In December 2010 Mrs Sally Mastronardi acting for RAGE submitted an application to register the Claimed Land (shown at Appendix 1) as a town or village green. Due to the need to avoid bias or the appearance of bias in the determination of the application (caused by the Council acting as Registration Authority and as objecting landowner) a non-statutory inquiry was held to consider and test the evidence presented.

The Claimed Land is described fully in the Inspector's report at Appendix 2 attached hereto.

The Role of Kirklees Council

The Council is appointed by law as the authority responsible for the registration of town or village greens. The Constitution of the Council delegates this responsibility to the Licensing and Safety Committee. The Council must determine whether the Claimed Land is, in fact, a town or village green. The law on this is explained fully in the Inspector's Report at Appendix 2 and briefly below at paragraph 1.3 of this report. If the Claimed Land is found to be a town or village green, then the Council must register it.

In this case, the Council is also the freehold owner of the land. In determining this application, the Council must separate its duty as Registration Authority from its function as landowner. This separation has been observed by officers of the Council since the Application was received. Members must not permit the fact that the Council owns the land to influence their decision.

The Law of Village Greens

The current definition of a town or village green is set out by the Commons Act 2006 at section 15 thus: "**land ...where**

(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 or 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. "

Any land can be a town or village green: it does not have to be "green", nor does it have to be in a village. Members should note that the Act gives the Registration Authority no discretion. If all of the conditions set out in section 15 are met, then the land is a town or village green and must be registered. If any one or more of the conditions is not met, the land is not a town or village green and the application must be refused.

The Application

The application submitted by RAGE asserts that all of the conditions for the establishment of a town or village green have been met. The application includes a bundle of signed witness statements and photographs from members of the public, relating to their use of the land.

The Objection

The Council (as landowner) has submitted an objection. This objection challenges the facts asserted in the application.

“As of Right”

The term “as of right” is a technical legal one. It does not mean “by right.” It means that the person using the land has neither right nor permission to do so but he acts openly as if he did have such a right, and the landowner does nothing to prevent him. The result, over time, is that the landowner, by his inaction, consents to the creation of a new right.

The Process

In order to preserve impartiality, the Council has instructed a barrister in private practice who is an expert on the law of town or village greens and who has acted as Inspector at the non-statutory inquiry. He has heard the evidence presented over three days of the inquiry to assess and examine the evidence produced by the Applicant and the Objector and to consider whether this evidence supports the application for registration as a town or village green. Now the application is referred back to this Committee for a final decision to register or reject the application. The Inspector has produced a report and recommendation attached at Appendix 2.

His advice is the Claimed Land is not a town or village green and the Application should be rejected

3. Implications for the Council

- A. If the recommendation of the Inspector is not followed then the Council may face a claim of judicial review (by an individual Member) of the decision and such a claim, given the robust and independent process adopted in the consideration of the application, is likely to be successful.
- B. If the recommendation is followed and the Claimed Land is not registered, ie the application is rejected the Claimed Land will retain its current status. Disappointed applicants may seek to bring a claim of judicial review of the decision but, given the robust and independent process adopted in the consideration of the application, it is unlikely that leave will be granted.

4. Consultees and their opinions

The Acting Assistant Director - Legal & Governance advises that the recommendation of the Inspector is followed and the application is rejected and the Claimed Land is not registered as a town or village green

Reason: best practice has been adopted in conducting a non- statutory inquiry to evaluate and test the evidence impartially and rigorously. Consequently it is a safe and satisfactory course of action to follow such a robust legal procedure and the subsequent Inspector's recommendation. The consequences of not adopting the recommendation are that any such action could be subject to judicial review

5. Next steps

If the recommendation is followed, none. The Claimed Land will not be registered as a Town or Village Green and the register held by the Registration Authority will remain unamended.

6. Officer recommendations and reasons

That the Committee determines the application in accordance with the Inspector's recommendation as set out in Appendix 2 for the reasons set out in this report

7. Cabinet portfolio holder recommendation

None relevant to this decision

8. Contact officer and relevant background papers/information

Paolo Colagiovanni
Riverbank Court, Wakefield Road, Aspley Huddersfield HD5 9AA
Telephone:- 01484 416658

9. Legal Issues

In addition to the matters of law discussed above, there is a risk that a decision of the Council may be subject to judicial review. The decision must therefore be taken strictly in accordance with the law. As indicated, the Inspector's report is impartial and in accordance with best practice and therefore any decision by this Committee which is not in accordance with it

must be justified in very robust terms, failing which the Council is at significant risk of a successful judicial review claim.

10. Conclusion:

The Acting Assistant Director - Legal & Governance has been consulted and advises that the Inspector's recommendation should be followed and should, for the reasons set out above, reject the Application.

12. Director responsible

Jacqui Gedman - Acting Director of Place

Appendix 1: Map showing the Claimed Land.

Appendix 2: Inspectors report and recommendation