



**Name of meeting: Licensing and Safety Committee**

**Date: 26<sup>th</sup> March 2013**

**Title of report: Determination of an application to register as a Town or Village Green, land off Churchfield Denby Dale**

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

**Electoral wards affected: Denby Dale**  
**Ward councillors consulted: Not applicable**  
**Public or private: Public**

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**1. Purpose of report:**

To determine the application to register land off Churchfield Denby Dale (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**

- On the 10<sup>th</sup> April 2011 the Council received an application under S15 Commons Act 2006 ("the Act") to register the Claimed Land as a town

or village green. The Council is the Registration Authority for the purposes of the Act

- Since the Council is also the owner of the Claimed Land an independent expert (“the inspector”) was instructed to hold a non-statutory public inquiry. The inquiry was held on 15<sup>th</sup> and 19<sup>th</sup> October and 12<sup>th</sup> November 2012 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.
- 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 Regulatory Panel (Section 17) of 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 (page 68 of his report)....

*In the period after cessation of grazing and thus for the last five to six years of the relevant 20 year period, use of the application land has been insufficient in amount and manner to enable the application to succeed. There has, therefore not been sufficient use for the full relevant 20 year period.*

*Accordingly I recommend that the application should be rejected.*

- The Panel/Committee are now asked to formally determine this application acting as Registration Authority

### **3. Implications for the Council**

- A. The inspector has considered all the information available from both sides and considered all facts in line with current case law and the legal requirements that need to be met for an application to succeed.
- B. If the recommendation of the Inspector is not followed then the Council may face a claim of judicial review 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.
- C. If the recommendation is followed and the Claimed Land is not registered, (i.e. the application is rejected) the Claimed Land will retain its current status.
- D. Any proposed use for other purposes i.e. allotments would need to be subject to an application for planning purposes and the normal

public consultation process would be undertaken in deciding the merits or otherwise of any application.

#### **4. Consultees and their opinions**

None relevant to this decision

#### **5. Next steps**

The Claimed Land will/will not be registered as a Town or Village Green and the register held by the Registration Authority amended accordingly

#### **6. Officer recommendations and reasons**

The **Acting Assistant Director – Legal, Governance & monitoring** advises that the recommendation of the Inspector is followed i.e. that 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 subsequent Inspector's recommendation. The consequences of not adopting the recommendation are that any such action could be considered subject to judicial review.

#### **7. Cabinet portfolio holder recommendation**

None relevant to this decision

#### **8. Contact officer and relevant background papers/information**

Paolo Colagiovanni

#### **Background documents (available for public inspection):**

The following documents disclose important facts on which the report is based and have been relied upon in preparing the report. Copies of the background documents are available. If you would like to inspect any of these please contact the contact officer above.

1. Application from Mrs Barbara Priest on behalf of the Friends of Churchfield,( 'the Applicant') to register land off Churchfield, Denby Dale as a village green with supporting documentation under application reference KV/VG7

2. Objection on behalf of Kirklees Council as landowner with supporting documentation

## **1. Introduction/Background Information**

### **1.1 The Claimed Land**

Kirklees Council is the freehold owner of land in Churchfield, Denby Dale shown at Appendix 1.

In April 2011 Mrs Barbara Priest acting on behalf of the Friends of Churchfield submitted an application to register the Claimed Land (shown at Appendix 1) as a 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 both 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

### **1.2 The Role of Kirklees Council**

The Council is appointed by law as the authority responsible for the registration of 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 village green. The law on this is explained fully in the Inspectors Report at Appendix 2 and briefly below at clause 1.3. If the Claimed Land is found to be a 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.

### **1.3 The Law of Village Greens**

The current definition of a village green is set out by the Commons Act 2006 at section 15: "**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 village green: it does not have to be "green", nor does it need 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 village green and must be registered. If any one or more of the conditions is not met, the land is not a village green and the application must be refused.

#### **1.4 The Application**

The application submitted by the Friends of Churchfield asserts that all of the conditions for the establishment of a 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.

#### **1.5 The Objection**

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

#### **1.6 "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.

#### **1.7 The Process**

In order to preserve impartiality, the Council 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. 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 village green. Now the application is referred to this Committee for a decision to either register the claimed land as a village green 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 village green and the Application land cannot therefore be registered and the application should be rejected

## 2. 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.

## 3. Conclusion:

The recommendation of the **Acting Assistant Director – Legal, Governance & Monitoring** is that Members should follow the advice given by the Inspector and should for the reasons set out above, reject the Application.

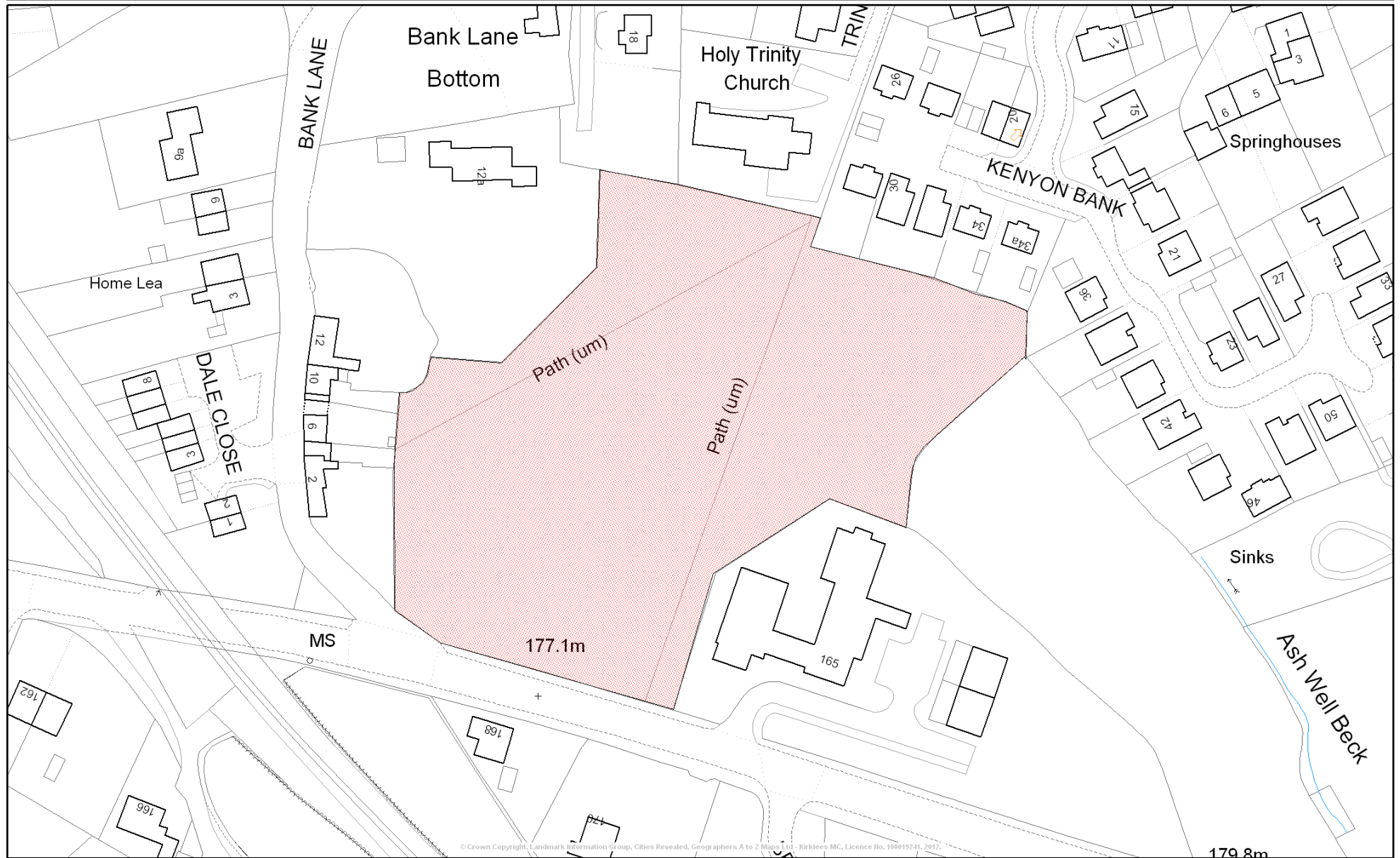
Appendix 1: Map showing the Claimed Land.

Appendix 2: Inspectors report and recommendation

APPENDIX 1

APPENDIX 2: INSPECTOR'S REPORT

# Churchfield, Denby Dale



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Date 12/9/2012

