Committee: **Commons & Village Green Registration Panel**

Date: **15 November 2017**

By: **Assistant Director, Transport and Operations**

Title: **Application for land at the Hollycroft Field, Chapel Lane, East Chiltington, East Sussex to be registered as a town or village green**

Applicant: **East Chiltington Parish Council**

Application No: **1359**

Contact Officer: **Natalie Mclean, Legal Order Officer 01273 482628**

Local Member: **Councillor Jim Sheppard**

Recommendation

To accept the application of East Chiltington Parish Council, pursuant to section 15 of the Commons Act 2006, to register land at Hollycroft Field, Chapel Lane, East Chiltington, East Sussex as a town or village green.

This report contains three parts as follows:

Part A: Details of the Application

Part B: Summary of the Relevant Law

Part C: Application of the Relevant Law to the Evidence

PART A – DETAILS OF THE APPLICATION

Receipt of a completed Application

1. The County Council received the completed Application on 17 March 2014. The Application seeks to register land as a town or village green by virtue of the operation of Section 15 (2) of the Commons Act 2006. Under that provision, land is to be registered as a town or village green where:-

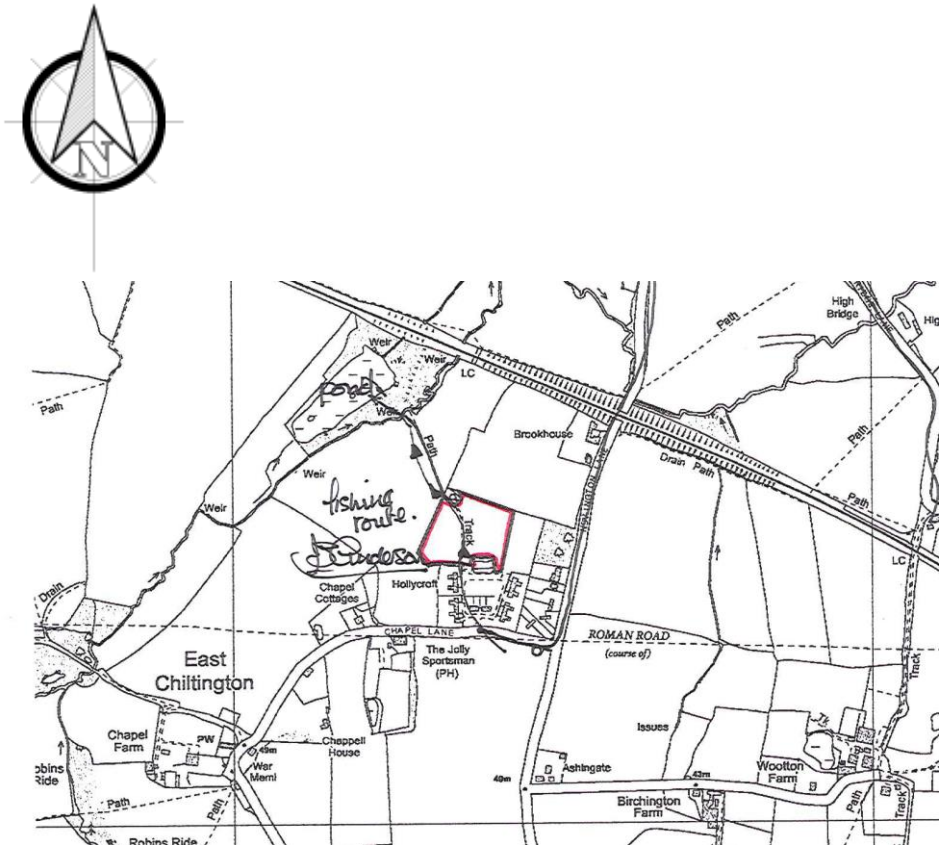
    a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and

    b) they continue to do so at the time of the application.

The Site

2. The Application land ("the Land") is roughly rectangular in shape and is located at the area known as Hollycroft Field, Chapel Lane, East Chiltington. The Land constitutes 3.1 acres. It is a flat open area bordered on two side by hedges, one side bordered by a football pitch (which is

not part of the application) next to a wood and open to Hollycroft (a residential development) on the south side. It is bisected by a Grasscrete path to a small sewage works in the north-west corner. The land includes a basket ball court, all weather table tennis table and a 'rotunda' (community built open sided shelter.)



3. The Land is shown red on the map accompanying the Application. Members are referred to the plan and Application at Appendix 1.

Land Ownership

4. The Land has one owner, Lewes District Council (LDC). LDC have supplied a statutory declaration with copies of various conveyances relating to the Land in support of their objection.

5. The evidence produced by LDC shows that the Estate and Recreation Ground were acquired by the Rural District Council of Chailey (LDC's predecessor authority) for the purposes of Part V of the Housing Act 1936. Part V of the Housing Act 1936 enabled a local authority to provide housing accommodation.

6. Hollycroft Field was lawfully held by LDC under the Housing Act 1957 and is now held by LDC under section 12 of the Housing Act 1985.

Conveyances held that affect part of the land

Date of conveyance	Parties	Area of land
22 January 1946	Alfred Carlisle Sayer, Arthur Gerald Miller, Lt Colonel Charles Harold Noel Adams (first part) and Herbert Ivor	Part of Chapel Farm, north side of Chapel Lane having an area of 3.400 acres, field

	Powell Edwards, Nora Theodora Imogen Powell Edwards (second part) and The Rural District Council of Chailey (third part)	number 211 on OS map 1910 edition. (this includes part of Land)
23 April 1947	Alfred Carlisle Sayer, Arthur Gerald Miller, Lt Colonel Charles Harold Noel Adams (first part) and Herbert Ivor Powell Edwards, Nora Theodora Imogen Powell Edwards (second part) and The Rural District Council of Chailey (third part)	All that part of Stantons Farm, north side of Chapel Lane having an area of 4.124 acres, being part of field number 211 on OS ma0 1910 edition. (this includes the remaining part of the Land)

Consultations and representations:

7. The Application was advertised on site and in the Sussex Express on 25 April 2014 (please see Tab 1 of the file of evidence (FOE)).

8. All interested parties, including Lewes District Council as the relevant District Council, were sent copies of the notice, and copies were made available to view by members of the public at County Hall, Lewes, and Lewes District Council offices. These documents were held on deposit between 25 April and 6 June 2014 (copies of the correspondence sent out can be found at Tab 2 FOE).

9. The Local Member, Councillor Jim Sheppard, was informed of the Application by way of letter dated 24 April 2014.

10. This Application has received one objection, (Tab 3 FOE) from the landowner Lewes District Council. This will be explored in depth in Part C of this report.

11. Copies of all submissions and evidence can be found in the background papers in the Members' Room.

PART B – SUMMARY OF THE RELEVANT LAW

Statutory Criteria - the Commons Act 2006

12. The Application was made pursuant to the Commons Act 2006. That Act requires each registration authority to maintain a register of town and village greens within its area. Section 15 provides for the registration of land as a town or village green where the relevant statutory criteria are established in relation to such land.

13. The Application seeks to register the Land by virtue of the operation of Section 15 (2) of the 2006 Act. Under that provision, land is to be registered as a town or village green where:-

    (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, 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.

14. The application is subject to subsection (6) which provides that in the determination of the relevant 20 year period, any period during which access to the land was prohibited to members of the public by reason of any enactment must be disregarded.

15. Therefore, for the Application to succeed, it must be established that:-

(i) the Application Land comprises "land" within the meaning of the 2006 Act;
(ii) the Land has been used for lawful sports and pastimes;
(iii) such use has been for a period of not less than 20 years;
(iv) such use has been by a significant number of the inhabitants of a locality or of a neighbourhood within a locality;
(v) such use has been as of right, i.e. without force, without secrecy, and without permission (*nec vi, nec clam, nec precario*).

16. There is no distinction in law between a 'town' or 'village' green. The term 'town' green simply tends to be used where the green is physically situated in a town or other urban area.

The Burden and Standard of Proof

17. The burden of proving that the Land has become a town or village green rests with the Applicant for registration. The standard of proof is the balance of probabilities.

18. Further, when considering whether or not the Applicant has discharged the evidential burden of proving that the Land has become a town or village green, it is important to have regard to the guidance given by Lord Bingham in ***R. v Sunderland City Council ex parte Beresford***[1] where, at paragraph 2, he noted as follows:-

> As Pill LJ. rightly pointed out in R v Suffolk County Council ex parte Steed (1996) 75 P&CR 102, 111 "it is no trivial matter for a landowner to have land, whether in public or private ownership, registered as a town green …". It is accordingly necessary that all ingredients of this definition should be met before land is registered, and decision makers must consider carefully whether the land in question has been used by inhabitants of a locality for indulgence in what are properly to be regarded as lawful sports and pastimes and whether the temporal limit of 20 years' indulgence or more is met.

19. Hence, all the elements required to establish that land has become a town or village green must be properly and strictly proved by the Applicant on the balance of probabilities.

Relevant Case law on the Statutory Criteria

20. Case law has provided helpful rulings and guidance on the various elements of the statutory criteria required to be established for land to be registered as a town or village green, which are referred to in turn below.

<u>i) Land:</u>

21. Any land that is registered as a village green must be clearly defined so that it is clear what area of land is subject to the rights that flow from village green registration.

22. It was stated by way of *obiter dictum* by the majority of the House of Lords in ***Oxfordshire County Council v Oxford City Council***[2] that there is no requirement that a piece of land must have any particular characteristics consistent with the concept of a village green in order to be registered. In that case, the Trap Grounds application site did not fit the traditional image of a village green. Part of it comprised reed beds and a significant part of the remainder consisted of scrubland. It was thus "*not idyllic*" in the words of Lord Hoffmann. The majority view given by Lord Hoffmann was that the physical characteristics of land could not in themselves preclude it from being a village green. In justifying that view, he noted in particular that there was no

[1] [2004] 1 AC 889.
[2] [2006] 2 AC 674 per Lord Hoffmann at paragraphs 37 to 39.

authority, either at common law or in statute, which supported the proposition that the definition of a village green should be so restricted, and further, that any test to that effect would be inherently uncertain and too vague.[3] It is also relevant to note that the Commons Act 2006, which was subsequently passed, did not seek to further restrict the definition of a village green in that regard.

23. An alternative minority view was expressed in ***Oxfordshire County Council v Oxfordshire City Council*** by Lord Scott who noted that some new village greens registered did appear to be stretching the concept of a village green beyond the limits which Parliament intended. He noted the ordinary dictionary meaning of a "*green*" as being "*a piece of public or common grassy land*" which ought to be applied in constructing section 22(1) of the Commons Registration Act 1965, the predecessor to Section 15 of the 2006 Act, rather than land being registered that no one would recognise as a town or village green.[4]

24. In the recent Court of Appeal case of **R (Newhaven Port and Properties Ltd) *v* East Sussex County Council**[5] it was established that the ordinary words used by Parliament to define a town or village green were broad enough not to preclude a tidal beach as constituting land for the purposes of the Commons Act 2006. In addition, it was established that use did not have to be continuous, or the main use of the land, providing that the level and nature of use had to be that which, judged objectively, would make a landowner aware that the public were asserting a right.

ii) Lawful Sports and Pastimes:

25. It was made clear in ***R. v Oxfordshire County Council ex parte Sunningwell Parish Council***[6] that "*lawful sports and pastimes*" is a composite expression and so it is sufficient for a use to be either a lawful sport or a lawful pastime. Moreover, it includes present day sports and pastimes and the activities can be informal in nature. Hence, it includes recreational walking, with or without dogs, and children's play. These activities can vary depending on the time of year or 'according to changing tastes or wishes [of the user]'.[7]

26. However, this element does not include walking of such a character as would give rise to a presumption of dedication as a public right of way.[8]

iii) Continuity and Sufficiency of Use over 20 Year Period:

27. The qualifying use for lawful sports and pastimes must be continuous throughout the relevant 20 year period: ***Hollins v Verney***[9].

28. It is required that the user evidence illustrates that the land subject to the application has been enjoyed for a period of at least twenty years. This period is calculated retrospectively from the date of first challenge. In the absence of a challenge the submission of the application is sufficient to bring use of the land into question. From the Applicant's further submission it is contended that the Applicant is not considering use prior to 1993. Thus the qualifying period is 1993-2013

29. It is not vital for every user to have used the land for a period of twenty years rather it is 'necessary… that all the evidence taken cumulatively shows that there has been use by the local inhabitants for twenty years.'[10]

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[3] *Ibid* at paragraph 39.
[4] *Ibid* at paragraphs 71 to 83.
[5] [2013] EWCA Civ 276
[6] [2000] 1 AC 335 at 356F to 357E.
[7] J. Riddall, 'Getting Greens Registered: A guide to law and procedure for town and village greens' (2007), paragraph 43
[8] See Sullivan J. in *R. (Laing Homes Limited) v. Buckinghamshire County Council* [2004] 1 P & CR 573 at 598.
[9] (1884) 13 QBD 304.
[10] J. Riddall, paragraph 51

30. Further, the use has to be of such a nature and frequency as to show the landowner that a right is being asserted and it must be more than sporadic intrusion onto the land. It must give the landowner the appearance that rights of a continuous nature are being asserted. The fundamental issue is to assess how the matters would have appeared to the landowner: ***R. (on the application of Lewis) v Redcar and Cleveland Borough Council***.[11]

iv) Locality or Neighbourhood within a Locality:

31. A "*locality*" must be a division of the County known to the law, such as a borough, parish or manor: ***MoD v Wiltshire CC***;[12] ***R. (on the application of Cheltenham Builders Limited) v South Gloucestershire DC***;[13] and ***R. (Laing Homes Limited) v Buckinghamshire CC***.[14] A locality cannot be created simply by drawing a line on a plan: ***Cheltenham Builders*** case.[15]

32. In contrast, a "*neighbourhood*" need not be a recognised administrative unit. A housing estate can be a neighbourhood: ***R. (McAlpine) v Staffordshire County Council***.[16] However, a neighbourhood cannot be any area drawn on a map. Instead, it must have a sufficient degree of cohesiveness: ***Cheltenham Builders*** case.[17]

33. Neighbourhood may include one or more neighbourhoods, provided that they are neighbourhoods within a locality.[18]

v) Significant Number:

34. "*Significant*" does not mean considerable or substantial. The number of people using the land in question has to be sufficient to indicate that their use is in general by the local community for lawful sports and pastimes, rather than occasional use by individuals as trespassers: ***R. (McAlpine) v Staffordshire County Council***.[19]

vi) As of Right **or** By Right

35. Use of land "*as of right*" is a use without force, without secrecy and without permission. It was made clear in ***R. v Oxfordshire County Council ex parte Sunningwell Parish Council***[20] that the issue does not turn on the subjective intention, knowledge or belief of users of the land.

36. "Force" may mean physical force to gain access to land, for example by breaking a padlock or cutting down a fence. In ***Cheltenham Builders*** it was also confirmed that force may not just mean violent acts, but also use of the land subsequent to the landowner signifying his objection to use of it.[21]

37. There has been no judicial comment on the meaning of use "without secrecy" and accordingly it should be interpreted in its ordinary meaning: open use which is capable of being noticed by the landowner.[22]

38. "Permission" can be expressly given or be implied from the landowner's conduct, but it cannot be implied from the mere inaction or acts of encouragement of the landowner: ***R. v Sunderland City Council ex parte Beresford***.[23] Tolerance does not imply consent.

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[11] [2010] UKSC 11 at paragraph 36.
[12] [1995] 4 All ER 931 at page 937b-e.
[13] [2003] EWHC 2803 (Admin) at paragraphs 72 to 84.
[14] [2004] 1 P & CR 573 at paragraph 133.
[15] [2003] EWHC 2803 (Admin) at paragraphs 41 to 48.
[16] [2002] EWHC 76 (Admin).
[17] [2003] EWHC 2803 (Admin) at paragraph 85.
[18] *Leeds Group Plc v Leeds City Council* [2010] EWCA Civ 1438
[19] [2002] EWHC 76 (Admin) at 77.
[20] [2000] 1 AC 335.
[21] [2003] EWHC 2803 (Admin) at paragraph 91.
[22] J. Riddall, paragraph 29

39. In ***R(on the application of Barkas) v North Yorkshire County Council and Another*** the Supreme Court held that a playing field which had been maintained by the local authority under the Housing Act 1985, s 12(1) and used by the local inhabitants as a recreational ground for more than 50 years could not be registered as a town or village green under the Commons Act 2006, s 15 as the inhabitants use had not been 'as of right'.

40. The issue was the meaning of the words 'as of right' and 'by right' and more particularly where a local authority has owned and maintained the land during the relevant 20 year period under statutory provisions, when it can be said that the use of such land has been 'by right' and not 'as of right'.

41. The Barkas case legal arguments centred around the meaning 'as of right' in that the statutory purchase and maintenance of the land meant that the land in question was used permissively, therefore 'by right' rather than 'as of right'.

42. In the Supreme Court's leading judgement Lord Neuberger stated:-

    "So long as land is held under a provision such as section 12(1) of the 1985 Act, it appears to me that members of the public have a statutory right to use the land for recreational purposes, and therefore they use the land "by right" and not as trespassers, so that no question of user "as of right" can arise" (para 21).

PART C – APPLICATION OF THE RELEVANT LAW TO THE EVIDENCE:

Application of the Commons Act 2006 and Case law

a) Land

43. The Application has identified a sufficiently defined area of land for registration, as can be seen by the plan at paragraph 2 of this report.

b) Local inhabitants of any locality or neighbourhood within a locality

44. The user evidence questionnaires (Tab 1 FOE) contained a question which attempts to illustrate the cohesiveness of the local community by asking the user to tick boxes as to what recognisable facilities are available to the inhabitants of the locality. A list of twelve facilities is stated including school, community hall, church and shops. There is also a box inviting the addition of information on any other facilities that are available. The vast majority of users completed this section and the findings are in the below table 1.

Table 1 Recognisable facilities available to inhabitants in the local community

Features	**School catchment area**	**Church**	**Shops**	**Public House**	**Sports Facility**	**Community Hall**
No. of Users	15	37	1	9	27	1
Features	**Police**	**Neighbour**	**Central**	**Other**	**Residents**	**Community**

[23] [2004] 1 AC 889.

		-hood watch	feature		Association	activities
No. of users	12	10	10	7	3	30

45. The area is in a rural hamlet within the parish of East Chiltington and is identified as the claimed locality. 44 out of 45 users are resident in the Parish (the 45th now living in Brighton), and it is considered that, on the balance of probabilities, the Land is enjoyed by the inhabitants of a locality (included in the Application Papers at Appendix 1).

46. Furthermore, the applicant cites the housing estate Hollycroft as the specific neighbourhood within a locality. Whilst the area depicted between the arbitrary red lines drawn by the applicant would perhaps have too high a population to consider 45 users as a 'significant number,' examination of the user evidence shows that 44 users live within 1km of the Land, with the vast majority living within 10 metres of the proposed village green. Table 1 supports that the area surrounding the Land is sufficiently cohesive, coupled with the proximity of the users submitting evidence forms, so as to make a local community within the Ward and therefore satisfy this limb of the section 15(2) test.

47. It is also of note that it is not necessary for the land to only be enjoyed by local residents, rather 'it is sufficient that the land is used predominantly by inhabitants of the [locality].'[24]

c) Lawful sports and pastimes on the land

48. There is a question on the user evidence questionnaires which asks the user to list all the activities they have seen taking place on the land. There are approximately nineteen listed activities including dog walking, children playing and football. Table 2 outlines the specific findings:

Table 2 Activities participated in on the Land

Activity	No. of Users	Activity	No. of Users
Football	39	Cricket	30
Picnicking	35	Community celebrations	37
Children Playing	42	Cycling	36
People Walking	42	Rounders	29
Kite Flying	26	Snowballing	3
Bird watching	11	Ball games	0
Other (golf practice)	2	Drawing and painting	8
Team games	31	Carol singing	5
Dog Walking	42	Bonfire parties	12
Fetes	40	Fishing (casting)	3
Blackberry picking	38		

49. The three most frequent activities witnessed are children playing (42 users) people walking (42 users) and dog walking (42 users). Other common activities participated in, or witnessed, included fetes, footballing and blackberry picking.

50. In light of the **Sunningwell** case, the activities referred to in paragraphs 48 and 49 are suitable to be considered as lawful sports and pastimes. On the balance of probabilities there is

[24] *R v Oxfordshire County Council and Another, Ex parte Sunningwell Parish Council* [2000] 1 A.C. 335

sufficient evidence to illustrate that lawful sports and pastimes have been enjoyed on the Land. Accordingly, this element of the test has been satisfied.

d) For a period of at least 20 years

51. 15 of the submitted user evidence forms submitted recorded use of the Land for a period in excess of 20 years. Whilst a considerable amount of user evidence states the Land to be enjoyed frequently (21 of the users state daily use), there is not a requirement to show use occurred at such a rate, rather the land 'must have been used and available… when needed.'[25] The relevant 20 year period is 1993-2013, with this Application bringing the status of the land into question. Table 3 illustrates the specific findings regarding length of use, and Table 4 regarding frequency.

Table 3 Length of use by users submitting evidence

No. of Years	Under 20	20 years or more	30 years or more	40 years or more	50 years or more
No. of Users	21	12	8	2	2

Table 4 Frequency of Use

Frequency	Daily	Weekly	Monthly	Yearly	unspecified
No. of Users	21	11	8	4	1

52. Upon examination of the user evidence forms, it is submitted that, on the balance of probabilities, use of the claimed land has been enjoyed for a period of at least 20 years.

e) Have indulged 'as of right'

53. Once it has been established that those who have used the land are of a locality it must be established that they have enjoyed the Land as of right. The meaning of 'as of right' has received legal clarification from Lord Hoffmann, who was of the opinion that it should be construed to mean, 'not by force, nor stealth, nor the licence of the owner.'[26] It has taken this meaning because it is not reasonable for the owner to resist actions of user because;

> "rights should not be acquired by the use of force, in the second, because the owner would not have known of the user and in the third, because he had consented to the user[27]"

54. The decision of the Supreme Court in ***Redcar***[28] further clarified the law with Lord Brown being of the opinion that there is 'no good reason to superimpose upon the conventional tripartite test'[29] for the registration of land as a town or village green. Accordingly, each arm of the test shall be identified and analysed individually. For use to be as of right each part must be satisfied.

(i) Not by force

55. The parcel of land in question does not have any fences or obstructions preventing access to it from members of the public and is in effect open land - thus it would be impossible to gain

[25] *Ibid* at paragraph 52
[26] *R v Oxfordshire County Council and Another, Ex parte Sunningwell Parish Council* [2000] 1 A.C. 335
[27] *Ibid*
[28] *R (on the application of Lewis) (Appellant) v Redcar and Cleveland Borough Council and Another* [2010] 2 A.C. 70
[29] *Ibid* at para. 107

access via physical force. In addition, there is no evidence of the landowner signifying their objection to use of the land. Accordingly, use has not been by force and this part of the test has been satisfied.

(ii) Not in secrecy

56. The land has been used frequently and openly by members of the public and we have no reason to believe this has been performed in secrecy. Therefore this part of the test has also been satisfied.

(iii) Not with permission

57. The user evidence questionnaire specifically asks if permission was ever sought for activities on the Land. The users consistently responded that no permission was ever sought or indeed obtained. However, it is submitted that there are issues surrounding permission which need to be addressed for this application.

58. There is no dispute that the Land has, as a matter of fact, been used by local inhabitants as a recreation ground for many years. Instead, the fundamental issue arising is whether the Land has been used by those local inhabitants 'as of right' (so as to establish that particular element of the statutory criteria to justify the Land's registration as a town or village green) or, rather, whether it has been so used by the inhabitants 'by right' (so that such statutory requirement has not been established and the Land could not be registered as a town or village green.)

59. LDC submitted the only objection (Tab 3 FOE) citing that the public use was 'by right' and not 'as of right' and relies on the following;

- Hollycroft Field and the housing estate was acquired by the Rural District Council of Chailey, LDC's predecessor authority for the purposes of Part V of the Housing Act 1936, which enabled a local authority to provide housing accommodation for the 'working classes.'
- From the laying out of the Field as a recreation ground until the present day, it has been made available to the occupiers of the housing estate and the public under a statutory power, originally section 80 of the Housing Act 1936 then latterly section 12 of the Housing Act 1985.
- Hollycroft Field was lawfully held by Lewes District Council under the Housing Act 1957 and is now lawfully held under section 12 of the Housing Act 1985.

In the Barkas case the Supreme Court ruled that, so long as land is held under a provision, such as section 12(1) of the 1985 Act, members of the public have a statutory right to use the land for recreational purposes, and therefore use the land 'by right' rather than 'as of right.'

60. The evidence that the Land was acquired and was held by LDC under the various Housing Acts as listed above for the local inhabitants of East Chiltington has been considered by Counsel for the County Council, Counsel's Report is attached (Appendix 2) and should be read in full in conjunction with this report.

61. The main points are summarised here;-
    - The only issue is whether the use by the public was 'as of right' or 'by right' and this burden of proof is upon the Applicant to show that, on the balance of probabilities use was 'as of right'.
    - There is no dispute between parties that the use was without force or secrecy however it is disputed whether the use was with permission.
    - LDC claim use was with permission and therefore 'by right' for 2 reasons;
        - i) LDC and its predecessor authority exercised discretionary powers under section 80 Housing Act 1936 and section 12 1985 Act. Whilst there is no

evidence of the Ministerial consent, LDC rely on the presumption of regularity. LDC claim the use of the land for recreational purposes after exercising those statutory powers was by right as the use was with permission; and
    - ii) LDC and its predecessors had carried out positive acts to facilitate the permissive use and therefore use is by right.
- LDC have not produced other evidence of acts of maintenance or management of the land for recreational purposes.
- The Applicant has put forward evidence and submissions to argue that the statutory powers under section 80 of the 1936 Act or section 12 of the 1985 Act were not exercised by LDC and, therefore, use was not with permission.

62. Having considered all of the evidence and submissions of both parties Counsel has concluded that:-
    - the evidence and submissions of the Applicant (Tab 4 FOE) are sufficient to rebut any LDC evidence and establish that on the balance of probabilities it is more probable than not that the statutory powers as mentioned above had not been exercised. Accordingly there is no statutory permission for public use of the Land for recreational purposes and, therefore, such use of the Land after 1993 was "as of right";
    - LDC's alternative submission, that the public recreational user of the Land was by implied permission, also fails. The limited evidence LDC have produced to support this submission is not sufficient to show that either LDC, or its predecessor authority, set the land out as recreation ground or took any positive steps of maintenance or management for the purpose of allowing the public to use it for recreational purposes.
63. Based on the evidence and submissions of both the Applicant and LDC (considered in detail in Counsel's report) the conclusion is that the use of the Land for the relevant 20 year period was, on the balance of probabilities, "as of right" not "by right" i.e. without permission.

64. The statutory criteria for registration of the Land as a town or village green under s15(2) have, therefore, been satisfied.

Considerations into the feasibility of holding a Public Inquiry

65. The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 require that the Local Authority consults on the Application before making a determination. This process has been duly undertaken.

66. The Authority retains discretion as to whether to hold an Inquiry, and must give consideration as to whether or not one should be held. An Inquiry would be conducted by an independent Inspector or expert and would enable members of the public to put their view across in adversarial proceedings. The Inspector or expert would make recommendations and it would then be for the Authority to decide whether or not to accept any or all of those recommendations.

67. Those in favour or against the application have had the opportunity to submit their representations and these have been made available to the Panel, in full, for Members to read in the usual way and have been analysed in this report.

68. The 2015 October report, (attached as Tab 6 FOE) was due to be submitted to the Commons & Village Green Panel on 14 October 2015. However on the 12 October 2015, the Applicant informed the County Council that they wished to submit further new evidence. Therefore, the report was deferred until such time as the relevant parties could consider the new evidence.

69. The County Council carried out further lengthy consultations and received additional submissions from each party. Following which, the County Council offered the Applicant and

LDC a non-statutory public inquiry, which both parties declined. Both parties did, however, accept that the application could be decided by way of written representations. The County Council instructed Counsel to consider all evidence and representations.

70. The Panel is permitted to use its discretion when determining what course of action to follow; it can accept the officer recommendation put forward, it can adjourn the matter and seek further information, or as set out above, the Panel can request that a public inquiry be held.

Conclusion

71. After careful consideration of all the evidence provided to the County Council, it is submitted that the Applicant has, on the balance of probabilities, satisfied all elements of the statutory criteria for registration. The use of land for the relevant period, which is accepted, was on the balance of probabilities 'as of right'**.**

72. The objection received from Lewes District Council does not counter the evidence to support the Application.

Recommendation

73. It is recommended that the Application to register the land at Hollycroft Field as a town or village green be accepted and the register of town and village greens held at East Sussex County Council be amended.

Karl Taylor
Assistant Director – Transport and Operations

Contact Officer: Natalie McLean (01273 482628)

Appendix 1 Application and accompanying plans
Appendix 2 Counsel Opinion 12 March 2017

Background Documents

File of Evidence (FOE)

Tab	1	Notice of Application and newspaper proof
Tab	2	Consultations and responses
Tab	3	Objection and landowner further submissions
Tab	4	Applicant further submissions
Tab	5	Photographs of the proposed TVG
Tab	6	October 2015 Report