

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

**Date:** 14 October 2015

**By:** Assistant Director, Economy, Transport and Environment

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

**Applicant:** East Chiltoningon Parish Council

**Application No:** 1359

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

**Local Member:** Councillor Sheppard

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### **Recommendation**

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

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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**

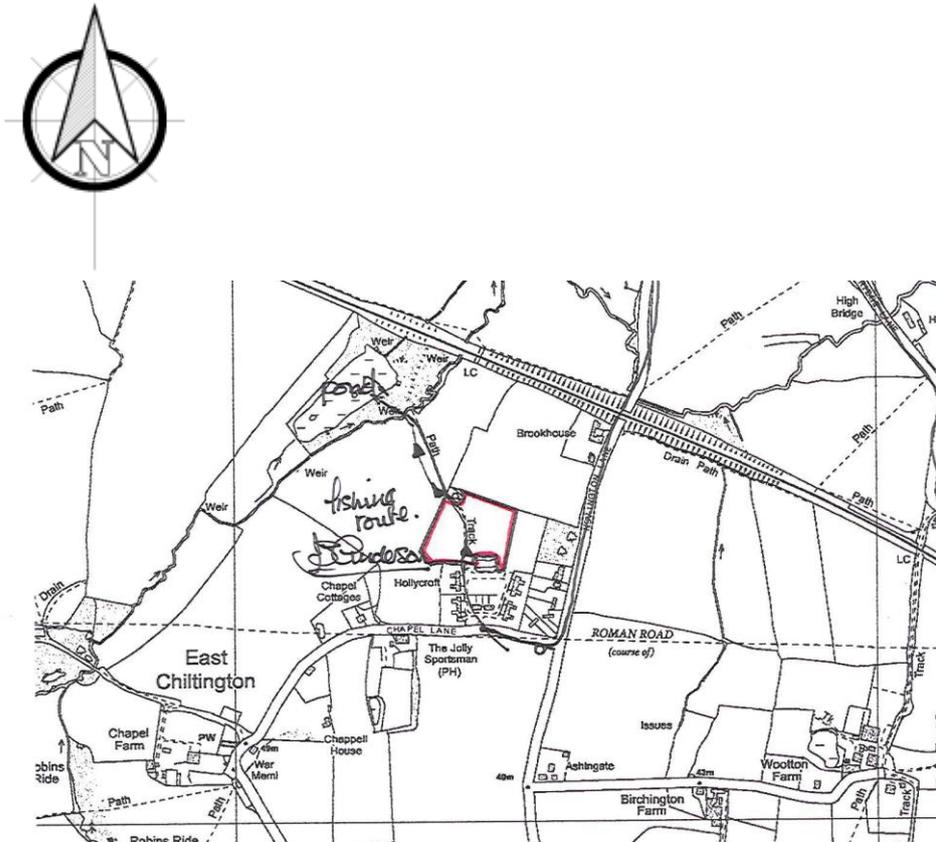
#### **Receipt of a completed Application**

1. The County Council received the completed Application on 17 March 2014. The Application seeks to register the 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 Chiltoningon. The land constitutes 3.1 acres. It is flat open land 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 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 Application at appendix 1 to this report.

### 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. 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. The Objection is at Appendix 2 of this report.
5. Hollycroft Field was lawfully held by Lewes District Council under the Housing Act 1957 and is now held by LDC under section 12 of the Housing Act 1985.

### Conveyances

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 Powell Edwards, Nora Theodora Imogen Powell Edwards (second part) and The Rural District Council of Chailey (third	Part of Chapel Farm, north side of Chapel Lane having an area of 3.400 acres, field number 211 on OS map 1910 edition. ( this includes part of Land)

	part)	
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:**

6. The Application was advertised on site and in the Sussex Express on 25 April 2014 (copies at appendix 2 of the background document file of evidence)
7. 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 appendix 3 of the background document file of evidence).
8. The Local Member, Councillor Sheppard, was informed of the Application by way of letter dated 24 April 2014 (appendix 3 of the background document file of evidence).
9. This Application has received one objection, (appendix 4) from the landowner Lewes District Council. This will be explored in depth in Part C of this report. The objection is contained at Appendix 2 of this report.
10. 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**

11. 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.
12. 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.
13. 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.
14. 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*).

15. 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

16. 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.

17. 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***<sup>1</sup> 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.

18. 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

19. 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 I shall refer to in turn below.

#### i) Land:

20. 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.

21. It was stated by way of *obiter dictum* by the majority of the House of Lords in ***Oxfordshire County Council v Oxford City Council***<sup>2</sup> 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 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

<sup>1</sup> [2004] 1 AC 889.

<sup>2</sup> [2006] 2 AC 674 per Lord Hoffmann at paragraphs 37 to 39.

inherently uncertain and too vague.<sup>3</sup> It is also relevant to note that the Commons Act 2006 passed subsequently did not seek to further restrict the definition of a village green in that regard.

22. 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.<sup>4</sup>
23. In the recent Court of Appeal case of ***R (Newhaven Port and Properties Ltd) v East Sussex County Council***<sup>5</sup> 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:

24. It was made clear in ***R. v Oxfordshire County Council ex parte Sunningwell Parish Council***<sup>6</sup> 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]’.<sup>7</sup>
25. 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.<sup>8</sup>

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

26. The qualifying use for lawful sports and pastimes must be continuous throughout the relevant 20 year period: ***Hollins v Verney***<sup>9</sup>.
27. 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. Therefore, in this case initially it will be necessary to show use from 1994-2014. If there is any challenge to use within this period then the relevant twenty year period shall be altered to reflect the challenge.
28. 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.’<sup>10</sup>

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<sup>3</sup> *Ibid* at paragraph 39.

<sup>4</sup> *Ibid* at paragraphs 71 to 83.

<sup>5</sup> [2013] EWCA Civ 276

<sup>6</sup> [2000] 1 AC 335 at 356F to 357E.

<sup>7</sup> J. Riddall, ‘Getting Greens Registered: A guide to law and procedure for town and village greens’ (2007), paragraph 43

<sup>8</sup> See Sullivan J. in *R. (Laing Homes Limited) v. Buckinghamshire County Council* [2004] 1 P & CR 573 at 598.

<sup>9</sup> (1884) 13 QBD 304.

<sup>10</sup> J. Riddall, paragraph 51

29. 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**.<sup>11</sup>

iv) Locality or Neighbourhood within a Locality:

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

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

32. Neighbourhood may include one or more neighbourhoods, provided that they are neighbourhoods within a locality.<sup>18</sup>

v) Significant Number:

33. “Significant” does not mean considerable or substantial. What matters is that the number of people using the land in question has to be sufficient to indicate that their use of the land signifies that it is in general used by the local community for lawful sports and pastimes, rather than occasional use by individuals as trespassers: **R. (McAlpine) v Staffordshire County Council**.<sup>19</sup>

vi) As of Right or By Right

34. 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**<sup>20</sup> that the issue does not turn on the subjective intention, knowledge or belief of users of the land.

35. “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.<sup>21</sup>

36. 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.<sup>22</sup>

37. “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**.<sup>23</sup> Tolerance does not imply consent.

<sup>11</sup> [2010] UKSC 11 at paragraph 36.

<sup>12</sup> [1995] 4 All ER 931 at page 937b-e.

<sup>13</sup> [2003] EWHC 2803 (Admin) at paragraphs 72 to 84.

<sup>14</sup> [2004] 1 P & CR 573 at paragraph 133.

<sup>15</sup> [2003] EWHC 2803 (Admin) at paragraphs 41 to 48.

<sup>16</sup> [2002] EWHC 76 (Admin).

<sup>17</sup> [2003] EWHC 2803 (Admin) at paragraph 85.

<sup>18</sup> *Leeds Group Plc v Leeds City Council* [2010] EWCA Civ 1438

<sup>19</sup> [2002] EWHC 76 (Admin) at 77.

<sup>20</sup> [2000] 1 AC 335.

<sup>21</sup> [2003] EWHC 2803 (Admin) at paragraph 91.

<sup>22</sup> J. Riddall, paragraph 29

38. 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’.

39. The issue was the meaning of the words ‘as of right’ and ‘by right’ and more particularly where a local authority has owned 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’.

40. 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’.

41. In the Supreme Court’s leading judgement by Lord Neuberger which agreed with North Yorkshire County Council;

“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 Caselaw**

**a) Land**

42. 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**

43. The user evidence questionnaires (appendix 5 of the background document file of evidence) 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

<b>Features</b>	<b>School catchment area</b>	<b>Church</b>	<b>Shops</b>	<b>Public House</b>	<b>Sports Facility</b>	<b>Community Hall</b>
No. of Users	15	37	1	9	27	1
<b>Features</b>	<b>Police</b>	<b>Neighbourhood watch</b>	<b>Central feature</b>	<b>Other</b>	<b>Residents Association</b>	<b>Community activities</b>

<sup>23</sup> [2004] 1 AC 889.

No. of users	12	10	10	7	3	30
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44. The area is in a rural hamlet within the parish of East Chilton 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.

45. 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.

46. 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].'<sup>24</sup>

c) Lawful sports and pastimes on the land

47. 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		

48. 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.

49. In light of the **Sunningwell** case, the activities referred to in paragraphs 47 and 48 are suitable to be considered as lawful sports and pastimes. On the balance of probabilities there is 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

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

50. 15 of the user evidence forms submitted record use of the Land for a period in excess of twenty 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.'<sup>25</sup> The relevant twenty year period is 1994-2014, 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

51. 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 twenty years.

e) Have indulged as of right

52. 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.'<sup>26</sup> 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<sup>27</sup>

53. The decision of the Supreme Court in **Redcar**<sup>28</sup> further clarified the law with Lord Brown being of the opinion that there is 'no good reason to superimpose upon the conventional tripartite test'<sup>29</sup> 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

54. 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 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

55. 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.

<sup>25</sup> *Ibid* at paragraph 52

<sup>26</sup> *R v Oxfordshire County Council and Another, Ex parte Sunningwell Parish Council* [2000] 1 A.C. 335

<sup>27</sup> *Ibid*

<sup>28</sup> *R (on the application of Lewis) (Appellant) v Redcar and Cleveland Borough Council and Another* [2010] 2 A.C. 70

<sup>29</sup> *Ibid* at para. 107

(iii) Not with permission

56. 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 affect the outcome of this application.
57. 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.)
58. Lewes District Council submitted their objection (appendix 2 to this report) 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.
59. 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." 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).
60. There is evidence that the Land was acquired and was held by Lewes District Council under the various Housing Acts as listed above for the local inhabitants of East Chilmington. Following the ruling in Barkas, the local inhabitants had a right to use the Land, so have used it 'by right' rather than 'as of right'. The statutory criteria for registration of the Land as a town or village green under s15(2) have, therefore, not been satisfied.

**Considerations into the feasibility of holding a Public Inquiry**

61. The Commons (Registration of Town or Village Greens) (Interim Arrangements)(England) Regulations 2007 require that the Local Authority consults on the proposed Green before making a determination. This process has been duly undertaken.
62. 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.

63. 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.
64. The cost implications and further delay which would be introduced into the process in holding a public inquiry would also be considerable. Furthermore, as the land involved is not owned by ESCC, and the issues are purely legal in nature, rather than factual, there would be little benefit to be obtained from holding a public inquiry.
65. The Committee 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**

66. After careful consideration of all the evidence provided to East Sussex County Council, it is submitted that the Applicant has not, on the balance of probabilities, satisfied all elements of the statutory criteria for registration.
67. The Land was acquired and held by Lewes District Council under the Housing Acts and consequently, the local inhabitants had a right to use the Land during the requisite 20 year period. Accordingly, section 15(2) of the Commons Act 2006 has not been satisfied and the Application ought to be rejected on that ground.
68. The objection received from Lewes District Council does counter the evidence to support the Application.

## **Recommendation**

69. It is recommended that the application to register the land at Hollycroft Field as a town or village green be rejected and the register of town and village greens held at East Sussex County Council not be amended.

Karl Taylor  
Assistant Director  
Economy, Transport and Environment

Contact Officer: Natalie McLean (01273 482628)

Local Member: Councillor Sheppard

## **Appendix 1 – Application**

## **Appendix 2 – Objection**

## **Background Documents**

### **File of Evidence**

- Appendix 1- Application and accompanying plans
- Appendix 2- Notice of Application and newspaper proof
- Appendix 3- Consultation and responses
- Appendix 4- Objection
- Appendix 5- User Evidence Forms
- Appendix 6- Photographs of the proposed village green