

**COMMONS ACT 2006 – SECTION 15**

**APPLICATION TO REGISTER LAND AT MIDDLE HERRINGTON, SUNDERLAND,  
KNOWN AS “WEST PARK” AS A TOWN OR VILLAGE GREEN**

**REPORT OF HEAD OF LAW AND GOVERNANCE**

**1.0 Purport of the Report**

- 1.1 The purpose of this report is to enable Members to consider an application to register land at Middle Herrington, Sunderland known as West Park as a town or village green. The map, land registry Certificate and application submitted by 4 local residents calling themselves the friends of West Park, together with a copy of the press notice advertising the application are appended to the report as Appendices 1, 2,3, 4,5,6 and 7.
- 1.2 The procedure set out in the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 has been followed. Notice in the required form (see Appendix 3) has been given to the owner of the areas of land subject to the application. In this case all of the land in question is owned by the Council, therefore the relevant Notice was sent to the Council’s Head of Property and Head of Planning and Regeneration as well as being displayed at several locations on the application site. Additionally, Notice was published in the Sunderland Echo on the 3<sup>rd</sup> May 2018 and copies were placed on deposit for inspection at the Customer Service Centre between the 3<sup>rd</sup> May and 14<sup>th</sup> June 2018, inviting representations or objections to the application.
- 1.3 There have been no objections received at all against the proposed registration of the land as a town or village Green, including no objection from the Council in its capacity as land owner. In the absence of any objection from the Council as landowner, there is limited potential for a conflict of interest to arise that would necessitate the holding of a non-statutory public inquiry and the appointment of an independent inspector.

**2.0 Background and Criteria for Registration**

- 2.1 The requirements for registration of land as a town or village green are now found under Section 15 of the Commons Act 2006. Section 15(1) allows any person to apply to the registration authority to register land as a town or village green in specified circumstances. The application here is made under Section 15(2) which applies where:-
  - (a) a significant number of the inhabitants of any locality, or 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.

- 2.2 The applicant must prove, on the balance of probabilities, that the criteria for registration of the land are satisfied and a number of documents have been submitted as evidence in support of the application. The application was submitted on form 44 (Appendix 3) together with a map (Appendix 1) which identified the specific land subject to the application outlined in Blue, the location of most of the Evidence sheets marked with a red dot and what the applicant perceived to be the locality outlined in pink. The application has been refined and identified this as the 'neighbourhood' and the locality of the land as being the Council ward of St Chad's". (Appendix 5). The required statutory declaration was completed by Mr Leon Robert Cowley. Also accompanying the application were various other documents, Photographs relating to the use of the land. (Appendix 6), A report from the Sunderland echo about Sunderland Boxer Tony Jeffries and media release from the England Football captain Jordan Henderson confirming his use of the land and his support of the application are found in (Appendix 7).

Finally the 127 evidence sheets and statements which are not appended to the report due to the Personal Information they contain will be available to Members at the Committee for inspection or prior to the Committee hearing by contacting Law and Governance.

- 2.3 The first requirement is that a "***significant number of the inhabitants of any locality or any neighbourhood within a locality***" have used the land in the required manner. Case law has established that the term 'significant number' does not have to mean a large number of people (McAlpine Homes case). The question is whether the number of local inhabitants who use the land, relative to the number who live in the relevant locality or neighbourhood, is enough to mean that the land is generally used by the local community (rather than being used occasionally by a few people).

It is not necessary for the majority of the users to live in the locality or neighbourhood of the proposed town or village green. As long as a significant number of local inhabitants have used the land, it does not matter that many or even most users come from elsewhere (Warneford Meadow case).

In the case of the current application, this is supported by the evidence sheets signed by 127 individuals. The Map at (Appendix 1) has the locations of those submitting evidence marked on it. The evidence sheets identify specific periods of usage and the activities undertaken on the land by those living within the locality or neighbourhood.

The vast majority of those submitting evidence live within the locality or neighbourhood. Members may therefore reasonably take the view that this first part of the criteria is satisfied.

- 2.4 The next consideration is whether the relevant inhabitants, have indulged "***as of right***" in lawful sports and pastimes on the land'. The guidance on interpreting 'as of right' states that use of the land must be 'as of right' throughout the relevant period. 'As of right' is described as being nec vi (not by force), nec clam (openly), and nec precario

(without the owner's permission). It is irrelevant whether the users believe that they are entitled to do what they are doing, or know that they are not so entitled.

The use relied on must be 'of such a character, degree and frequency as to indicate an assertion by the claimant of a continuous right, and of a right of the measure of the right claimed'. Use that is 'trivial and sporadic' will not be enough.

Landowners must be able to see that the land is being used and be able to resist that use if they wish to. For example, the following types of use do not qualify:

- in darkness
- in dense vegetation
- use that only takes place when the users know that the owner is away (but use that happens when the owner is away would qualify if it is merely a part of the continuing pattern of use).

Users must not break or cut through any barriers such as fences, walls, gates or hedges to get on to the land.

Landowners can end a period of use through continuous and unmistakeable verbal challenges. They can also bring an end to use as of right by putting up suitably worded notices in obvious places. By way of example, in a series of decided cases the following notices were considered to have been inadequate because they did not clearly forbid the use of the land:

- 'Warning. It's dangerous to trespass on the golf course.'
- 'No public right of way.'

Whereas, in contrast, the following notices are clear:

- 'Private property. Keep out.'
- 'Do not trespass.'
- 'Private property. Access prohibited except with the express consent of [the landowner].'

In the case of West Park, the applicants have submitted evidence that shows the land to have been openly used by a large number of people. It is likely that many members themselves will be aware of the use of the land by the public as a result of their own local knowledge and there is no evidence that the Council, as landowner, has taken any steps to prevent this use.

Before moving on, however, it is important to clarify that the land must be used 'as of right' and not 'by right'. Use 'as of right' is the use of land as if a right to use it in that way had been granted, when in fact no such grant had been made. In contrast, use 'by right' is the use of land in exercise of a right actually granted. In the Supreme Court case of Barkas, land owned by a local authority and held by that authority for the very purpose of being used by the public for

that recreational use such as land acquired under the Public Health Acts and Open Spaces Act or land which was laid out and maintained as public recreational land was used 'by right' rather than 'as of right'. The land at West Park was not acquired under the statutory provisions referred to and is not laid out and maintained as formal land which the public have a statutory entitlement to use. The application originally included the area marked with the blue dot 15 on the map (Appendix 1) which had been made into a playground and would have failed to be able to be registered following the judgement. The revised application does not include this area. It would therefore be reasonable for members to find that the land that is now the subject of this application is all used 'as of right' (i.e. as a trespasser, albeit a tolerated one) and not 'by right'.

Next, the use of the land for '**lawful sports and pastimes**' should be interpreted in a common-sense way. The sports and pastimes do not have to be organised sports or communal activities. Solitary and informal activities such as dog walking and children playing will qualify. There is also no requirement for local inhabitants to have taken part in a range of different sports and pastimes although the use should be continuous and use for an activity such as an annual bonfire would be too sporadic to be considered as such.

'Lawful' means that the sports and pastimes must not cause injury or damage to the owner's property (and excludes activities that are criminal offences, whether or not damage is caused).

'Lawful' also excludes breaches of the civil law, even though use 'as of right' is a form of trespass. Trespass that is intended to intimidate, obstruct or disrupt a lawful activity on the land is the criminal offence of aggravated trespass, and therefore might fail to qualify as lawful use.

The evidence questionnaires submitted demonstrate that the land has been used without permission for a wide variety of sports and pastimes, including walking, cycling, ball games and picnics, there is no evidence to suggest that such use has resulted in damage to the Council's property or the commission of any criminal offence or breach of civil law. It would therefore appear that this limb of the registration criteria is also satisfied.

2.5 The final requirement is that the use of land in question must have subsisted **for a period of at least 20 years** and that it has **continued up until the time of the application**.

It is enough that the local inhabitants, rather than particular individuals, have used the land for the full 20 years. The documents accompanying the application seems to show that West Park has been used for recreational purposes as of right for over the 20years required. The more recent usage supports the applicant's claim that the land subject to the application has been used for an unbroken period well in excess of the 20 years required and that it continues to be so used. Members may therefore reasonably consider that on a balance of probabilities, this final aspect of the requirements for registration is also satisfied.

### **3.0 Recommendation**

#### **3.1 Subject to consideration of the above, members are recommended to:-**

Agree to register as a town or village green the land which is the subject of application VG/2/2018 made under Section 15 of the Commons Act 2006 on the basis that the application site at West Park has been used by a significant number of the inhabitants of the locality of the ward of St Chad's (and the neighbourhood of East and Middle Herrington, who have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years and have continued to do so up until the time of the application.

### **4.0 Alternative Option**

#### **4.1 None submitted.**

### **5.0 List of Appendices**

1. - Map of application site
2. – Land Registry Certificate and map
3. - Application Form 44
4. – Notice in Form 45 (Press)
5. - Maps of application site and Council Ward Map
6. – Photographs of use of the site
7. – Article in Press and media release

### **6.0 Background Papers** in the form of the evidence sheets and statements contains the names and addresses of those supporting the registration and the evidence of the use of the land by them is extensive and contains personal information of the individuals and as such is not appended but is available for inspection and will be brought to the hearing.