

CHESHIRE EAST COUNCIL

RIGHTS OF WAY COMMITTEE

Date of Meeting:	15 th September 2014
Report of:	Head of Legal Services
Subject/Title:	Village Green Application: Land Adjacent To Chelford Road And Black Firs Lane, Somerford

1.0 Purpose of Report

- 1.1 This report seeks a decision on how to proceed with a village green application in respect of land along the verge of Black Firs Lane and Chelford Road, Somerford ("the Application Land").

2.0 Recommendations

- 2.1 That the Head of Legal Services offer the applicant and the objectors fourteen days to make representations on the potential trigger event which may affect part of the land subject to the village green application.
- 2.2 Following expiration of the fourteen day period referred to in Recommendation 2.1 the Head of Legal Services be authorised to appoint an independent expert to consider the application on the basis of written representations and provide a report.
- 2.3 That the Head of Legal Services be given delegated authority to determine if a non-statutory public inquiry should take place upon the recommendation of the independent expert, after consulting the Chairman of this Committee.

3.0 Reasons for Recommendations

- 3.1 An application has been received in respect of land along the verge of Black Firs Lane and Chelford Road, Somerford ("the Application Land") and given the issues involved in this particular application it would assist the Committee in deciding upon the application to receive the report of an independent expert. Although the ownership of the Application Land is unknown, the land is within the Council's adopted highway boundary. The Council, as highway authority, have objected to the application. It should also be noted that the area of land enclosed by the Application Land is subject to a recently granted planning permission and the developer of that land has submitted an objection to the application to register the Application Land as a village green.

- 3.2 Furthermore, part of the Application land may be subject to a trigger event which, if applicable, would mean that those areas affected by the trigger event cannot be registered as a village green.

4.0 Wards Affected

- 4.1 Congleton West

5.0 Local Ward Members

- 5.1 Councillor Gordon Baxendale, Councillor Roland Domleo and Councillor David Topping.

6.0 Financial Implications

- 6.1 There will be costs incurred by the Council in appointing an independent person to consider written representations. It is envisaged that any such costs will be charged to Legal Services initially with a corresponding recharge to the relevant service during 2014/15.

7.0 Legal Implications

- 7.1 The Council is the registration authority for the purposes of village green applications and the keeping of the register of village greens.
- 7.2 In recent years there has been much case law and legislation surrounding village greens and both case law and legislation continue to evolve. New legislation was introduced by the Growth and Infrastructure Act 2013 which changed the criteria for registration of new village greens and applies to applications received after 25th April 2013. The new legislation excludes the right to apply for village green status where a prescribed event, known as a “trigger event”, has occurred within the planning system in relation to that land. The right to apply remains excluded until and if a corresponding “terminating event” occurs in respect of the land. Where a trigger event relates to only part of the land, the application in respect of the portion of land not subject to the exclusion should proceed as usual. This application was received on 3rd May 2013 and will therefore be subject to the new legislation.
- 7.3 Village greens can be registered either as a result of an application by a third person or by a voluntary registration by the landowner.
- 7.4 It is commonly understood that the Council may hold a public inquiry as a result of an application being received and it is often referred to as ‘non-statutory’ because the legislation in respect of village greens does not specifically provide for inquiries to be held. The Local Government Act 1972, however, does enable local authorities to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of its functions. In appropriate cases, consideration of written

representations only by an independent person would facilitate the determining of the village green application. The holding of an inquiry is at the discretion of the Committee.

- 7.5 The burden of proof that the application meets the statutory tests is upon the applicant, on the balance of probabilities.
- 7.6 In deciding upon applications, the Committee should consider the advice given to it by its officers and by any independent person appointed and decide the application in the light of all of evidence submitted and the advice received, and acting in accordance with the principles of natural justice and good administration.
- 7.7 If registered as a village green, land will be subject to the statutory protection of section 12 of the Inclosure Act 1857 and section 29 of the Commons Act 2006. Section 12 protects greens from injury or damage and interruption to their use or enjoyment as a place for exercise and recreation. Section 29 makes encroachment or inclosure of a green, and interference with or occupation of the soil, unlawful unless it is with the aim of improving the enjoyment of the green.
- 7.8 There is no right of appeal within the Council against the Committee's decision. The route for any challenges would be via judicial review.

8.0 Risk Assessment

- 8.1 If the Council chose to determine the application without independent input, as it is also the highway authority, it may increase the risk of challenge.

9.0 Background and Options

- 9.1 The Council is the registration authority for village greens and responsibility for this function was delegated to the Rights of Way Committee under Part 3 of the Council's Constitution. The terms of reference allow the Committee "to discharge the authority's functions in respect of Commons and Village Greens".
- 9.2 The application was submitted on 3rd May 2013 by Mr Nicholas Bell and the land is shown on Appendix A attached. The evidence in support of the application contains several witness statements stating various uses and several photographs.
- 9.3 The Council, as highway authority, has written in objecting to the application making certain legal arguments.
- 9.4 Richborough Estates Limited have recently obtained planning permission for the residential development of the land bound by the Application Land and have written in objecting to the application. The planning application was submitted after the date of the village green

application. They have also obtained a counsel opinion which recommends that the application should be dealt with by an independent person on the basis of written representation.

- 9.5 The applicant has been given the opportunity to comment on the objection and a response is due by the close of business on Friday 5th September 2014.
- 9.6 It has recently been brought to officers' attention that part of the Application Land may be affected by a trigger event as a result of the Council's consultation on the Development Strategy and Emerging Policy Principles document in January and February 2013. The corresponding terminating event has not yet occurred on the land.
- 9.7 The Council, as registration authority, will enable the applicant and the objectors an opportunity to make representations on this potential trigger event before the application is considered by an independent person. Fourteen days is considered a reasonable length of time for any such representations to be made. If any part of the Application Land is affected by a trigger event then that land cannot be considered for registration as a new village green.
- 9.8 Richborough Estates have requested that the application be considered by an independent person on the basis that the Council is also the highway authority and as such will have an interest in the land. It is not automatically necessary for the Committee to appoint an independent person to consider the matter whenever the land is in the ownership of the Council. Members should be aware that in any such application where the Council is also the owner or highway authority, separate roles are maintained within the Council between the legal and administrative departments. However, it is considered appropriate in this case to appoint an independent person and for the matter to be considered on written representations.
- 9.9 A non-statutory public inquiry is not being recommended in this report because it is considered that given the nature of the objections from both the Council (as highway authority) and Richborough Estates, which are of a legal nature rather than fact, this application could be considered on written evidence. It may be possible that the independent person, having received the documentation, recommends an inquiry is held instead. In the event of such a request, delegated authority is sought so that the Head of Legal Services can determine whether this is appropriate, after consulting the Chairman of this Committee.

10.0 Access to Information

- 10.1 The background papers relating to this report are listed below and can be inspected by contacting the report writer:

Village green application and supporting evidence

Objections to the application

For further information:

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