

## APPLICATION TO REGISTER LAND KNOWN AS THE GREEN, DUNVAL ROAD, BRIDGNORTH AS A TOWN GREEN

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### 1. Summary

This report relates to an application made under section 15(2) of the Commons Act 2006, ("the Application") to register land known as The Green, Dunval Road, Bridgnorth as a town green.

### 2. Recommendation

That the Application land as shown edged red on the plan, (Appendix 1), attached to the Application should be registered as a town green for the reasons set out in this report.

## Report

### 3. Background

#### Introduction

- 3.1 This report concerns an application for the registration of land adjacent to Dunval Road, Bridgnorth as a town green under section 15(2) of the Commons Act 2006 ("the 2006 Act").
- 3.2 As the Commons Registration Authority it falls to the Council and this committee, under the scheme of delegations, to determine the Application.

## The Application

- 3.3 On 10 April 2013 the Council, as Commons Registration Authority, received an application for an area of land in Bridgnorth, known as The Green, Dunval Road to be registered as a town green under section 15(2) of the 2006 Act. The Application, which claims that the land has been used as of right by local people for lawful sports and pastimes for at least 20 years, was submitted by Mrs Karen Wardle and Miss Ina J Roberts both of whom live in Dunval Road. The Application was given reference number VG(A)93.

## The Law

- 3.4 The relevant parts of section 15 of the 2006 Act state:
- (1) *Any person may apply to the commons registration authority to register land to which this part applies as a town or village green in a case where subsection (2), (3) or (4) applies.*
  - (2) *This subsection applies where-*
    - (a) *a significant number of inhabitants of any locality, or 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.*

## Preliminary Consideration of the Application

- 3.5 The Application was deemed to have been duly made in accordance with The Commons (Registration of Town or Village Greens)(Interim Arrangements) (England) Regulations 2007, (“the 2007 Regulations”).
- 3.6 The Application was advertised in accordance with the 2007 Regulations and no objections were received.
- 3.7 The Landowner, Bridgnorth Town Council, has been given notice of the Application in accordance with the 2007 Regulations and has raised no objections.

### **Consideration of Application**

- 3.8 The main issue that the Application raises is whether sufficient evidence has been received to show that the criteria set out in section 15(2) of the 2006 Act have been met.
- 3.9 The Application must be determined on its own merits by applying the law in relation to the registration of town and village greens. Members must consider only whether on the balance of probabilities, the applicant has satisfied the requirements of section 15(2) of the 2006 Act.

### **Neighbourhood/ locality**

- 3.10 Taking each of the elements of section 15(2) in turn, the neighbourhood/locality relied upon in the Application is shown edged red and coloured yellow on OS Sitemap attached to the Application. The neighbourhood within the locality to which the claimed green relates is stated to Queensway Estate which is edged in thick red on Map A attached to the Application.
- 3.11 A “locality” must be some administrative division known to law, for example a borough, parish or manor. A “neighbourhood” need not be a recognised administrative unit, for example a housing estate can be a neighbourhood. However, a neighbourhood cannot be any area drawn on a map; it must have some degree of cohesiveness.
- 3.12 In the current case Queensway Estate is the name given by the original builders of the estate and is a neighbourhood within the electoral ward of Bridgnorth West. As such it can be relied upon by the applicant as the relevant locality.

### **Significant number of inhabitants**

- 3.13 Once the relevant locality or neighbourhood has been identified the applicant must show that a significant number of its inhabitants have used the land for the required purpose. It has been held in the case of *R (McAlpine) v Staffordshire CC* [2002] EWHC 76 (Admin) that “significant” does not mean a considerable or substantial number of people, what is important is whether the number of people using the land in question is sufficient to indicate that the land is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers.
- 3.14 45 signed statements from residents of the locality evidence use by 54 people and their families of the green over the period 1965 to 8 April 2013.

There would appear to be sufficient evidence to demonstrate use by a significant number of the inhabitants of the locality or neighbourhood within a locality.

### **Lawful sports and pastimes**

- 3.15 It is necessary for the applicant to prove that the Application land has been used for lawful sports and pastimes. The activities specifically mentioned in the Application and the witness statements in support include children's games, running, kite flying, football, cricket, rounders, sledging, snow men building, bonfire parties, jubilee street parties, jogging, cycling, go-karting, model aircraft flying, bird of prey flying, nature study, leisure and dog walking.

### **As of right**

- 3.16 The 'lawful sports and pastimes' must have been enjoyed "as of right". This is a requirement that
- (a) the activities claimed must have been carried on without force, without secrecy and without permission. 'Force' would involve, for example, accessing the land by climbing over a locked gate or cutting barbed wire.
  - (b) the activities claimed must not have been done in exercise of any other legal right, for example a right of way
  - (c) the use must have the appearance to the landowner of the exercise of a legal right

There has been no claim by any person or any indication in the evidence lodged with the Application or contained within the letters of support that the activities were done by force, secretly or with either express or implied permission and therefore this requirement appears to have been met.

### **Use for 20 years, continuing as at the date of the Application**

- 3.17 The final requirement is that the activities claimed have been carried on for at least 20 years and that the use is continuing as at the date of the application.
- 3.18 From the evidence supplied at least 54 persons have used the land over the past twenty years and there is no evidence to suggest that this use is not ongoing.
- 3.19 There is sufficient evidence that a significant number of inhabitants of the relevant neighbourhood have used the land for the relevant 20 year period.

## **4. Conclusion and Recommendation**

- 4.1 Having considered each of the criteria in s15(2) of the 2006 Act, there is a relevant locality or neighbourhood within the locality; lawful sports or pastimes have taken place on the application land; and on the balance of probabilities a significant proportion of local inhabitants have used the land for the whole of

the 20 year period ending on the date of the Application and continue to do so.

- 4.2 Members are recommended to accept the application to register The Green, Dunval Road, Bridgnorth as a town green for the reasons set out in this report.

**List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)**

Application for registration by Mrs Karen Wardle and Miss Ina J Roberts.

Communications from Bridgnorth Town Council

**Human Rights Act Appraisal**

The recommendations contained in this report are compatible with the provisions of the Human Rights Act 1998. The landowner in this case has been consulted and the Application has been publicised in accordance with the relevant legislation.

**Environmental Appraisal**

The procedure for considering this application will have no environmental implications.

**Risk Management Appraisal**

This Report deals with the processes to be followed to fulfil the Council's statutory duty. Risk management has been appraised as part of the consideration of this Report.

**Community / Consultations Appraisal**

Statutory advertisement is required. The Applicant and respondents to the advertisement have been consulted throughout the application process.

**Equalities Appraisal**

The contents of this report do not raise any equalities issues.

**Financial Implications**

The matters contained in this report do not give rise to any financial implications for the Council.

**Cabinet Member**

Councillor Keith Barrow

**Local Members**

Councillor Les Winwood and Councillor John Hurst-Knight

**Appendices**

Appendix 1 – Plan of the Application Land and neighbourhood.