

APPLICATION TO REGISTER LAND KNOWN AS GREENFIELDS RECREATION GROUND, FALSTAFF STREET, SHREWSBURY, AS A NEW TOWN OR VILLAGE GREEN

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Summary

This report relates to an application, VG(a)86 to register as a village green land known as The Greenfields Recreation Ground, Falstaff Street, Shrewsbury, and considers the options for determining that application.

Recommendations

It is recommended:

That the Application should be rejected on the ground that it does not satisfy the requirement that the land has been used as of right as set out in section 15(2) of the Commons Act 2006 ('the 2006 Act').

REPORT

The Application

- 1.1 On 3rd May 2018 the Council as registration authority received an application for an area of land in Shrewsbury known as the Greenfields Recreation Ground to be registered as a village green ("the Application"). The Application was submitted by Dr Peter Day and Mr Matthew Banner ("the Applicants") and claimed that the land has been used for at least 20 years as of right by the inhabitants of Greenfields for lawful sports and pastimes and that they continued to do so at the date of the Application. A copy of the Application is attached at Appendix 1.
- 1.2 The Application is submitted under the provisions of the Commons Act 2006 and it is claimed that the Greenfields Recreation Ground satisfies the qualifying criteria as set out in section 15(2) of the 2006 Act and as such should be registered as a town or village green. The land subject to the application ('the Application Land') is shown edged blue on the plan attached at Appendix 2.

- 1.3 The Application Land is owned by Shrewsbury Town Council (“the Town Council”).
- 1.4 Under section 15(2) of the 2006 Act applicants need to prove:
 - (a) that 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) that they continued to do so at the date of the application.
- 1.5 The Council accepted the Application as duly made as set out in the Decision Report dated 23rd November 2018.
- 1.6 The area of land shown hatched red on the plan was included in the Application. In relation to that area of land, two trigger events (“the Trigger Events”) have occurred within the meaning of section 15C of the 2006 Act, which were confirmed following relevant enquiries being made of the Local Planning Authority. These were:
 - (a) A planning application (planning ref: 17/05234/OUT) had been submitted and was awaiting determination.
 - (b) A planning application (planning ref 12/00620/OUT) had been granted and the period for the commencement of development had not passed.
- 1.6.1 The Local Planning Authority have confirmed that there have been no terminating events in relation to the Trigger Events.
- 1.6.2 As there has been no corresponding terminating event in either instance, by virtue of section 15C(1) of the 2006 Act, the right to apply to register that area of land as a village green has ceased to apply and the Council is therefore required to exclude that land from the Application.
- 1.7 The Applicants have made representations in respect of whether this area of land has been correctly excluded from the Application. However, no evidence has been provided to indicate that the Trigger Events have not occurred or that relevant terminating events had occurred at the date of the Application.
- 1.8 The Council is satisfied that such area of land has been correctly excluded and is not a matter to be considered as part of the determination of the Application.
- 1.9 Members should be aware that a planning decision taken by the Council in respect of land adjoining the Application Land, shown hatched black on the attached plan, is currently being judicially reviewed by the Applicants. Reference has been made in representations of the Applicants in respect of the judicial review proceedings. However, this is a separate matter and should not be considered when determining this Application.

- 1.10 In compliance with the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 (“the Regulations”), the Council notified the Town Council of the Application, notice was placed in the Shropshire Star and affixed to the Application Land.
- 1.11 An objection was received from the Town Council by way of a letter dated 25th February 2019. The Town Council have accepted that the Application satisfies the requirements of section 15(2) of the 2006 Act save for the Application Land being used ‘as of right’. A copy of the letter is attached at Appendix 3.
- 1.12 On 12th April 2019, submissions were made by the Applicants in response to the Town Council’s objection. The submissions made by Dr Day stated that the Application Land had been purchased by the Town Council’s predecessor for the purpose of providing a recreation ground for the residents of the Greenfield District and has provided references to various Council minutes. The remainder of Dr Day’s submission deals with the land subject to the separate judicial review proceedings. Mr Banner’s submission appears to be somewhat confused and states in its opening paragraph “use of the recreation ground for recreational purposes has been “by right” and not “as of right”. At no time has Shrewsbury Town Council or any other Council before it not granted permission to use the recreation ground”. Mr Banner refers to the land which has been excluded from the Application due to the occurrence of the Trigger Events and should therefore not be considered. A copy of the Applicants’ submissions are attached at Appendix 4.
- 1.13 On 25th October 2019, the Council wrote to both the Applicants and Town Council setting out that the only apparent issue in dispute related to whether the Application Land has satisfied the statutory criteria and has been used “as of right”. The Council invited both parties to submit any further evidence they wished to be considered in relation to this issue only.
- 1.14 Responses were received from both the Town Council and the Applicants.
- 1.15 The Town Council have provided evidence to support their claim that the Application Land has not been used “as of right”, including an extract from the Shrewsbury Borough Council’s Estate Committee dated 28th September 1925 which makes reference to the Application Land being acquired for the purpose of providing a recreation ground for the Greenfields district and a copy of the Byelaws with respect to Pleasure Grounds and Open Spaces which makes reference to the Greenfields Recreation Ground. A copy of the Town Council’s submissions are attached at Appendix 5.
- 1.16 The response received by the Applicants includes reference to the land adjoining the Application Land which should not be considered by members. The evidence submitted by the Applicants repeatedly refers to the Application Land as being acquired and held for recreation purposes. The Applicants appear to have failed to appreciate the concept of the Application Land being used “as of right”. A copy of the Applicants’ submissions are attached at Appendix 6.
- 1.17 The Applicants were given a right of response to the Town Council’s submissions. Emailed submissions were made by the Applicants on 18th

November 2019. These submissions have been reviewed and considered where applicable. There was no new evidence provided by the Applicants.

The Committee's Remit

- 1.18 Under the Council's Scheme of Delegations, this Committee is the body responsible for determining applications for registration of town or village greens. The final decision with regard to the Application is therefore a matter for this Committee.
- 1.19 As the Application has been accepted as duly made, regulation 6 of the Regulations obliges the Council as Registration Authority, once the Application has been advertised, to consider the contents of the Application and any objections and representations received.
- 1.20 The Application must be determined on its own merits by applying the law in relation to the registration of village greens. The only relevant matter for Members to consider is whether it has been shown on the balance of probabilities that **all** of the qualifying elements set out in s15(2) of the 2006 Act have been met.

Consideration of Application

- 1.21 The issue that the Application raises is:

Whether the Applicants have shown that on the balance of probabilities the criteria set out in section 15(2) of the 2006 Act have been met.

- 1.21.1 Members should note that in order to decide whether or not to register the Application Land as a village green, they should consider only whether, on the balance of probabilities, the Applicants have satisfied the requirements of s15(2) of the 2006 Act. If the Applicants have satisfied those criteria, the village green must be registered; if not, then the Application must fail. No other matters can be taken into account by members: to do so would open the Council to the risk of judicial review of the decision.

Neighbourhood/ locality

- 1.22 Taking each of the elements of s15(2) in turn, the neighbourhood/locality relied upon in the Application is the list of residents set out at Appendix 4 of the Application which identifies the area covered by the Greenfields Community Group. However, it is not necessary for the applicant to define the locality or neighbourhood within a locality on the application form.
- 1.23 A 'locality' must be some division of the county 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.

- 1.24 In the current case, Greenfields is an established community within the borough of Shrewsbury & Atcham and so could be relied upon by the Applicants as the relevant neighbourhood.

Significant number of inhabitants

- 1.25 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.
- 1.26 It is not disputed that the Application Land has been used by a significant number of inhabitants.

Lawful sports and pastimes

- 1.27 It is necessary for the Applicants to prove that the Application Land has been used for lawful sports and pastimes. The activities need not be formal in nature and can include informal activities such as dog-walking and playing with children. The use must however be recreational. Therefore, walking over the Application Land merely to reach a particular destination, such as to walk to and from the bus stop via the Application Land, is not in itself a lawful sport or pastime.
- 1.28 Whilst the Applicants have not made specific reference in either their Application or subsequent submissions to what lawful sport and pastimes have taken place on the Application Land, it is clear from the Town Council’s submissions that such activities have taken place. Reference is made in the Town Council’s letter dated 1st November 2019 to the Application Land being used “extensively and openly by local habitants for informal recreation, largely but not exclusively for children playing and dog walking”. The Town Council also state that the Application Land was until recently used for local football leagues.
- 1.29 It is not disputed that the Application Land has been used for lawful sports and pastimes.

As of right

- 1.30 The ‘lawful sports and pastimes’ must have been enjoyed “as of right”. This is a requirement that 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. Permission includes carrying out the lawful sports and pastimes pursuant to a legal right, for example a right of way. A use “as of right” is a use as a trespasser without a right to use the land.

1.31 The Application fails to meet this statutory criteria.

1.31.1 In the case of *R (on the application of Barkas) v North Yorkshire County Council* [2014] UKSC 31, the Supreme Court held that publicly owned land laid out and maintained by a local authority as a recreational ground pursuant to a statutory power is used by the public “by right”, namely pursuant to a statutory right to do so, and not “as of right”, namely as a trespasser.

1.31.2 The submissions made by both the Applicants and the Town Council state that the Application Land has been laid out as a recreation ground from the time of its purchase in 1925. Further, reference is made in the Estates Committee minutes dated 28th September 1925 to the Application Land being purchased for the possibility of providing a recreation ground for the Greenfields district.

1.31.3 The Town Council has provided a copy of the Byelaws relating to Pleasure Grounds and Open Spaces within the borough of Shrewsbury in which the Greenfields Recreation Ground is referred demonstrating the control the Town Council has over the use of the Application Land.

1.31.4 The Application Land has been laid out and maintained as a public recreation ground pursuant to statutory powers and has been used as such by local inhabitants pursuant to their statutory right to do so. The local inhabitants have accordingly used the Application Land “by right”, and not ‘as of right’ as trespassers.

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

1.32 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.

1.33 It is not disputed that the land has been used for 20 years and is continuing to be used.

Conclusion and Recommendation

1.34 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 the use has been continuous by a significant number of local inhabitants for the 20 year period ending on the date of the Application. However, the Applicants have not shown on the balance of probabilities that the Application Land has been used “as of right”.

1.35 Members are recommended to reject the Application 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)

Decision Report dated 23rd November 2018

Human Rights Act Appraisal

The Application process is governed by Regulations that require consultation with landowners or their tenants.

Environmental Appraisal

There are no direct environmental implications that arise from the report's recommendations

Risk Management Appraisal

This report deals with the processes involved in fulfilling the Council's statutory duty. Risk management has been appraised as part of the consideration of this report.

Community / Consultations Appraisal

The Regulations governing the application process requires consultation both with the Applicants and the Objectors throughout the application process.

Cabinet Member**Local Member****Appendices**

Appendix 1 - Application VG(a)86 to register land as a village green dated 25th April 2018 and supporting evidence.

Appendix 2 – Plan

Appendix 3 - Shrewsbury Town Council Objection dated 25th February 2019

Appendix 4 – Applicants' response received 12th April 2019

Appendix 5 – Shrewsbury Town Council Submissions dated 1st November 2019

Appendix 6 – Applicants' submissions received