

## **APPLICATION TO REGISTER LAND KNOWN AS PATSHULL GREEN, ALBRIGHTON AS A VILLAGE GREEN**

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### **1. Summary**

This report relates to an application made under section 15(2) of the Commons Act 2006, to register land known as Patshull Green, Albrighton as a village green ("the Application").

### **2. Recommendations**

That the Application for the land shown edged red on the plan attached to the Application to be a village green should be rejected 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 the junction of Patshull Road and Cross Road, Albrighton as a village green under section 15(2) of the Commons Act 2006 ("the 2006 Act") which was deferred by members at the meeting on 4 February for officers to determine ownership of the land and to obtain further evidence of the use of the land.

## The Application

- 3.2 The Council, as Commons Registration Authority, received an application on 18 February 2011, (reference number VG(A)90), from Albrighton Parish Council for an area of land in Albrighton, known as Patshull Green, to be registered as a village green under section 15(2) of the 2006 Act

## The Law

- 3.3 The relevant parts of section 15 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

- 3.4 Under regulation 5(4) of the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 (“the 2007 Regulations”) an application may be deemed to be ‘not duly made’ if it is evident from a preliminary consideration of the application that it is inherently flawed due to procedural requirements not being met or due to it ‘being bound to fail on the basis of the application itself, irrespective of any evidence objectors or other persons may subsequently adduce’.
- 3.5 With regard to the current Application the procedural requirements have been complied with. Whilst the current application included insufficient evidence of the nature or period of this use by inhabitants of Albrighton it could not be said that it was ‘bound to fail’.
- 3.6 In accordance with regulation 5(4) and DEFRA guidance the applicant was asked to provide further evidence in support of the Application. However from the further evidence received it could not be said that the Application was bound to fail and it was therefore deemed to be duly made.

- 3.7 The Application was advertised in accordance with the 2007 Regulations and no objections were received.

### **Consideration of Application**

- 3.8 The main issue that the Application raises is whether it should be rejected on the ground that insufficient evidence has been received to show that the criteria set out in section 15(2) of the 2006 Act have been met.
- 3.9 Members should note that in order to decide whether or not to reject the Application they should consider only whether, on the balance of probabilities, the applicant has satisfied the requirements of s15(2) of the 2006 Act. No other matters, including ownership of the land, can be taken into account by members; to do so would open the Council up to the risk of judicial review of the decision.

### **Neighbourhood/ locality**

- 3.10 The neighbourhood/locality relied upon in the Application is shown coloured yellow on OS Sitemap at Appendix 1.
- 3.11 The current application meets the requirement that a “locality” must be some administrative division known to law, e.g. a borough, parish or manor and also” has the required degree of cohesiveness for a “neighbourhood” by virtue of it being a housing estate.

### **Significant number of inhabitants**

- 3.12 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. However the number of people using the land must be sufficient to indicate that it and is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers.
- 3.13 The evidence supplied shows use for pond dipping and feeding ducks by one Albrighton resident and her family over a period of ten years. Two further responses to the local advert placed by the applicant for evidence of use refer to use of the pond area by children and adults from in and around Cross Road as a gathering and play area. All three respondents live close to Patshull Green and it has been argued in other cases that users should come from the neighbourhood/locality as a whole. There would appear to be insufficient evidence to demonstrate use by a significant number of the inhabitants of the locality or neighbourhood within a locality.

### **Lawful sports and pastimes**

3.14 The activities specifically mentioned in the Application and the witness statements of pond dipping, duck feeding and general use for children's play and gathering are considered to be lawful pastimes.

### **As of right**

3.15 'Lawful sports and pastimes' must have been enjoyed "as of right", i.e.

- (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, e.g. a right of way; and
- (c) the use must have the appearance to the landowner of the exercise of a legal right.

As previously reported this requirement appears to have been met.

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

3.16 The evidence of one person's use "over past twenty years"; another claiming 10 years user and a third which refers to his "early days" at his address but does not give any specific dates is considered insufficient to demonstrate that a significant number of inhabitants of the relevant neighbourhood or locality have used the land for the relevant 20 year period.

3.17 The Applicant has been unable to produce any further evidence of the activities claimed to have been carried out on the Land.

## **4. Conclusion and Recommendation**

4.1 Having considered each of the criteria in section 15(2) of the 2006 Act, there is a relevant locality or neighbourhood within the locality and lawful sports or pastimes have taken place on the application land. Despite further inquiries the Applicant has not been able to produce any further evidence to show on the balance of probabilities that 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.

4.2 Members are therefore 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)**

Application for registration by Albrighton Parish Council.

Communications from Albrighton Parish Council

Report to South Planning Committee 4 February 2014

Albrighton Parish Council email confirming no further evidence 16 April 2014

**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.

**Cabinet Member**

Councillor Keith Barrow

**Local Member**

Councillor Malcolm Pate

**Appendices**

Appendix 1 – Plan of the Application Land