



Shropshire
Council

Northern Planning
Committee

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2026 14.00

Public

Application to Register The Glebelands, Bayston Hill as a Village Green

Cabinet Member:	Councillor David Walker – Portfolio Holder for Planning
Lead Director:	Richard Phillips – Service Director Legal & Governance
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Electoral Divisions Affected	Bayston Hill
Key Decision?	N/A
Cabinet Forward Plan	N/A
Report considered by	Northern Planning Committee – 21 July 2026

1. Purpose of Report

- 1.1. This report relates to an application, VG (a) 97, to register as a village green, land known as The Glebelands, Bayston Hill and considers the options for determining that application

2. Recommendations

The Committee is asked to approve

- a. That an independent barrister be appointed to act as an Inspector to undertake, if necessary, a non-statutory public inquiry into the Application and to report back to this Committee with recommendations

3. Background

- 3.1. On 30 May 2023, Shropshire Council, as Commons Registration Authority, received an application from Mr Mark Underwood of 32 Eric Lock Road West, Bayston Hill, Shrewsbury ("the Applicant") to register The Glebelands, Bayston Hill as a Village Green. The application was allocated the application number VG (A) 97.
- 3.2. The Application is submitted under the provisions of the Commons Act 2006 ("the 2006 Act") and it is claimed that The Glebelands 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.
- 3.3. This Council is the registration authority for the purposes of the 2006 Act.
- 3.4. Under section 15(2) of the 2006 Act, in order for the application to be granted and the land registered as a village green 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. they continued to do so at the date of the application

Preliminary Consideration of Application

- 3.5. Under regulation 5(4) of the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 ("the 2007 Regulations") the registration authority may, where after preliminary consideration of an application the application appears not to be duly made, reject the application
- 3.6. A registration authority may deem an application 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.
- 3.7. With regard to the current Application, the procedural requirements have been complied with, and the application form has been appropriately completed. The issues relating to the application are ones of fact so it cannot be said, whilst those facts remain to be determined, that the application is 'bound to fail'
- 3.8. The Application was therefore duly advertised in accordance with the 2007 Regulations. Responses objecting to the Application were received from the owners of the land, Lichfield Diocese Board of Finance via their Agent Alex Bruce

The Committee's remit

- 3.9. Under the Council's Scheme of Delegations, this Committee is the body responsible for determining applications for town or village greens. The final decision with regard to the Application is therefore a matter for this Committee
- 3.10. As the application cannot be rejected as not duly made under Regulation 6 of the 2007 Regulations, the Council as Registration Authority must, once the application has been advertised, consider the contents of the application and any objections and representations received.
- 3.11. It is within the Council's discretion as to how to determine the Application and whether or not to hold a non-statutory public Inquiry. It will generally be necessary to have an oral hearing where there are disputed issues of fact which need to be fully aired and to be subject to challenge by way of cross-examination to resolve them. Such an oral hearing could be in front of this Committee but it is usual, due to the amount of time involved, to appoint an independent barrister to act as an Inspector and to hold a non-statutory public inquiry.
- 3.12. There is a dispute on the facts between the applicant and objectors as to whether or not the requirements of s15(2) of the 2006 Act have been met and therefore whether The Glebelands should be registered. As the procedural requirements appear to have been met it would be inappropriate for the Council to determine the application without a full consideration of the evidence produced by the applicant and the objectors.

Requirement for Oral Hearing

- 3.13. The recommendation to Committee is that an independent barrister be appointed to act as Inspector to undertake, if necessary, a non statutory public inquiry into the application and to report back to the Committee. In making this recommendation consideration has been given to the cost and time implications for the Council, any delay caused to the determination of the application and the need to ensure that any decision made is procedurally fair in order to minimise the risk, and consequent costs, of an application for judicial review of the decision.
- 3.14. Any decision made by this Committee must be procedurally fair. The reasons why it is recommended that an oral hearing is necessary are as follows:
- 3.15. There is a fundamental conflict of evidence between the Applicant and objectors as to whether the use of the land has been by right" or "as of right" and there is an important legal distinction between the two.
- 3.16. The Application states that the land has been used for lawful sports and pastimes over the relevant 20 year period by a significant number of local people. The Application is required to be supported by a statutory declaration by the Applicant that the facts set out in the application form are to the best of his knowledge and belief fully and truly stated. This statutory declaration has been made. There are also a number of evidence forms supporting the Application.
- 3.17. The Objectors state that the land has not been used "as of right" as the land has been leased to the Parish Council.

- 3.18. A conflict of evidence cannot be fairly resolved by considering the written evidence in isolation. The Applicant has to be given an opportunity to produce witnesses to give oral evidence in support of his case and to cross examine the Objectors' witnesses and vice versa.
- 3.19. The Objectors allege that those giving evidence in support of the Application do not have evidence of the field being used as a Town or Village Green freely "as of right" for lawful sports and recreational purposes. Clearly there is a significant conflict between the Applicant and supporting evidence, on the one hand, and the Objectors on the other. However, it would not be fair for Members to seek to resolve this conflict and determine the application merely by regard to the documents.
- 3.20. If a decision to reject the application was made without an oral hearing this would be open to challenge by way of judicial review on the ground of a lack of procedural fairness. The costs to the Council of an application for judicial review would be substantial; both in terms of officer time and legal representation to deal with the judicial review and also liability for the Claimant's costs should such an application be successful.
- 3.21. It should be stressed that as this matter cannot be fairly resolved without an oral hearing, members should not consider the merits of either the application or the objections until such a hearing has taken place.

Delay

- 3.22. It is acknowledged that holding an oral hearing will inevitably involve an element of delay but a hearing is unavoidable and necessary if the application is to be dealt with fairly.
- 3.23. Members should also note that whichever method is chosen for the hearing, it is not possible to proceed straight away to a hearing. There will be a period of one to two months from the date of the decision to hold the hearing until the date of the hearing itself. This is because in the interests of a fair hearing it is usual for the Inspector, if an Inquiry is held, to make 'directions' as to the conduct of that Inquiry. These would include for example setting a date by which any further evidence must be submitted and provisions as to the content of bundles of documents for the hearing. Sufficient time must also be given between the decision to hold a hearing and the hearing itself for the parties to arrange for their witnesses to attend and to obtain legal advice if they wish. The same provisions would need to apply to a hearing before the committee if that hearing is to be fair.

Mode of Hearing

- 3.24. As a matter of law there is no reason why the hearing should not be before the committee itself but there are difficulties in the way of an oral hearing before a committee which require careful consideration, in particular:
- The oral hearing potentially raises issues of law and procedure on which all participating Members would need to be fully trained.

- The oral hearing would have to be attended by a legally qualified officer who is sufficiently familiar with what is a very complex area of law to be able to give confident legal advice to the committee on law and procedure before, throughout and after the hearing.
 - A 2-4 day oral hearing is quite a heavy undertaking and will be very onerous for an inexperienced tribunal.
- 3.25 Dealing with the matters raised above, the training necessary before the Committee could proceed to hold a hearing would take several full days. In addition officer time would be incurred in arranging the training. Due to the complexity of the issues of law and procedure involved it would be necessary to instruct a specialist barrister experienced in this area of law to provide the training as officers do not have the necessary depth of expertise.
- 3.26 The Committee will require advice and guidance upon matters of law and procedure before, during and after any hearing. Due to the complexity of the issues involved it would be necessary to instruct a specialist barrister experienced in this area of law to advise the committee. The costs involved in doing so would be significant, as not only would there be the cost of the time involved in advising the committee for 2 to 4 full days but also the cost of advice necessary both before and after the hearing.
- 3.27. It is necessary to ensure that any hearing is procedurally fair and that no mistakes as to the law are made in order to minimise the risk of an application for judicial review of the resultant decision. Dealing with a judicial review would be costly for the Council. Appointing an experienced specialist barrister as an Inspector to hold an Inquiry significantly reduces the chances of an error being made in law or procedure which might lead to a judicial review application.
- 3.28. The practice of appointing a barrister as Inspector has been approved by the Courts. In the case of *R (on the application of Whitmey) v The Commons Commissioners*, heard in the Court of Appeal, Lady Justice Arden stated:

“If the dispute is serious in nature, I agree with Waller LJ that if the registration authority has itself to make a decision on the application... it should proceed only after receiving the report of an independent expert (by which I mean a legal expert) who has at the registration authority’s request held a non-statutory public inquiry.

Cost

- 3.29. Turning to the issue of cost, the registration authority has a statutory duty to determine applications for the registration of new village greens. It is inevitable that costs will be incurred in performing this duty.
- 3.30. Dealing with the relative costs of the two methods of holding an oral hearing, the cost common to both would be officer time in administering the hearing and the cost of hiring a local venue for the hearing.
- 3.31. The average cost to the Council of appointing a barrister to act as an Inspector and to hold an Inquiry, including the cost of hiring premises near to the application land for the duration of the Inquiry, is in the region of £12,000 - £15,000. The estimated

cost of the Inquiry in this case, for 2 days is around £12,500. This will increase if the inquiry lasts for more than 2 days.

- 3.32. If the hearing was to take place before the committee, for the reasons set out above an experienced specialist barrister would need to be appointed to advise the committee during the hearing of 2 to 4 days and also before and after the hearing. Due to the additional time involved the barrister's fees would considerably exceed the figure of £7,500 to £10,000 quoted above. In addition the cost of several days' training of members by a barrister would be incurred: the estimated cost of the barrister's fees for this training is in the region of £5,000 to £6,000, plus officer time in arranging it.
- 3.33. In considering the issue of costs members should also be mindful of the risk of an application for Judicial Review should the hearing not be dealt with fairly, or if a mistake of law is made. As set out above the costs of dealing with such an application would be substantial

4. Summary of Main Proposals

- 4.1. In summary, it is recommended that the Application should be dealt with by way of an oral hearing in order to ensure procedural fairness. Whilst the Committee has a choice as to the method of that hearing, if the Committee decides to hold the hearing itself this will incur significant additional costs and significantly increase the risk of any decision being subject to an application for judicial review. The most cost effective method is to appoint a barrister to act as Inspector and provide a recommendation to the Committee as to whether or not to register the land as a village green. This method will also reduce the risk of the Committee's decision being procedurally unfair and therefore subject to a costly judicial review.
- 4.2. Members are therefore recommended to appoint an independent barrister to act as Inspector and to undertake, if necessary, a non statutory public Inquiry.

5. Alternative Options

- 5.1. Declining to appoint an inspector significantly increases the risks to the Council in terms of the potential to challenge and may result in the cost to the Council increasing significantly.
- 5.2. The Committee could determine to consider the application itself. That would require consideration of the matter by the committee holding a public inquiry expected to last up to 4 days, extensive training for the Committee members and the appointment of a specialist Barrister to assist thee and guide the committee through the process and provide legal advice.
- 5.3. If the Council were to decline to make a determination it would be failing in its duty to do so.

6. Key risks and Opportunities

- 6.1. The decision may be challenged by way of a Judicial Review by a third party. The Courts become involved when there is a misinterpretation or misapplication of policy or some breach of the rules of procedure or the principles of natural justice.
- 6.2. However the role of the Court is to review the way the authorities reach decisions, rather than to make a decision on the issues themselves, although they will intervene where the decision is so unreasonable as to be irrational or perverse. Therefore they are concerned with the legality of the decision, not its merits. A challenge by way of Judicial Review must be made a) promptly and b) in any event not later than three months after the grounds to make the claim first arose.

7. Council Priorities

- 7.1. The Council has a duty to consider applications for the registration of village greens and doing so effectively contributes to good ethical governance supporting the delivery of the Corporate Plan.

8. Financial Implications

- 8.1. The costs of appointing Counsel as an independent Chair will be met from existing budgets and Officers will provide support as and when required.
- 8.2. Costs will involve the fee of the appointed Barrister and officer time.

9. Legal and HR implications

- 9.1. The Council is obliged to determine applications for the registration of Village Greens pursuant to section 15 of the Commons Act 2006. The legal implications are set out within the body of the report.

10. Electoral Division Implications

- 10.1. The application site is in the Bayston Hill division and if approved the Village Green would secure the existing use of the site into the future.

11. Health, Social (including “Child Friendly Shropshire”) and Economic Implications

- 11.1. There are no Health, Social or Economic implications arising from this report.

12. Equality and Diversity Implications

- 12.1. There are no equality and diversity implications associated with this report

13. Climate Change, Biodiversity and Environmental Implications

- 13.1. There are no direct climate change implications as a result of this report. While subsequent use of the land by the landowner may have climate change impacts, this report is only concerned with the method by which the application is determined

14. Background Papers

1. Application Form for registration VG(a)97 and accompanying supporting evidence
2. Objection from Lichfield Diocesan Board of Finance and accompanying evidence

15. Appendices

Appendix A Plan of Application Land