

**BRISTOL CITY COUNCIL**

**PUBLIC RIGHTS OF WAYS AND GREENS COMMITTEE**

**Date 2 April 2012**

**Report of:** Commons Registration Authority

**Title:** Application to register land known as Elderberry Walk, Southmead Bristol as a town or village green pursuant to Section 15(1) of the Commons Act 2006

**Ward:** Southmead

**Officer Presenting Report:** Anne Nugent, Senior Solicitor, Legal Services

**Contact Telephone Number:** 0117 922 3424

**RECOMMENDATION**

Before arriving at a final determination of the application to register the land known as Elderberry Walk, Southmead Bristol as a town and village green it is recommended that as the land is owned by the Council an independent inspector be appointed to consider representations on the preliminary issue, the issue as to whether or not any user of the land has been 'as of right'.

**Summary**

This report relates to an application to register land known as Elderberry Walk, Southmead Bristol as a town or village green pursuant to Section 15(1) of the Commons Act 2006

**The significant issues in the report are:**

Whether or not the land, the subject of the application, has been used 'by right' or 'as of right'

**Policy**

1. There are no specific policy implications arising from this report.

**Consultation**

- Internal

2. Not applicable

## External

3. Not applicable

## Context

4. The Council as registration authority has received an application to register land known as Elderberry Walk, Southmead Bristol as a town or village green pursuant to Section 15(1) of the Commons Act 2006 (the Act) from Mrs Alison Edith Devonshire dated 10 January 2011.
5. A plan of the site which shows the application land is shown at **Appendix A** to this report.
6. The application shows an area of parkland on the southeast side of Charlton Road Southmead, Bristol
7. The application was in the prescribed form, Form 44, verified by a statutory declaration of Mrs Devonshire, photographs and 27 questionnaires and other supporting evidence including a questionnaire of 127 signatures. The questionnaires are in a form using the questions broadly similar to the form, which is produced by the Open Space Society. A copy of the application form 44 is attached at **Appendix B** (redacted to online publication purposes).
8. The basis of the application and qualifying criteria were specified in Section 4 of the application were on the grounds that the application site has become a town or village green by virtue of the actual use of the land. In Section 7 of the application the Applicant summarized the justification for the application as follows:

*"Elderberry Walk is our community centre without a roof. This park is about the people. It is a focal point for our community and many cultural activities. Our park has a significant resource for children and schools with life long learning (children learning outside the classroom). Our trees provide shade and protection from the elements, remove pollutants from the air, reduce noise and provide shelter for wildlife.*

*Elderberry Walk has a friends' group and their overriding philosophy is to protect and enhance this site for the residents of Southmead and neighbouring areas.*

*Elderberry Walk is a community facility for all age groups. It is often used and viewed as natural focus point for the community and is regularly used for numerous activities, leisure and relaxation. This site has a historical value to the community and is a hugely important local amenity for the people of Southmead.*

*This is a largely natural area. It is used daily by walkers, families and of course responsible dog walkers. It is an absolute delight to walk through or just sit in. It is our oasis in the middle of sprawling estates.*

*A significant number of local inhabitants have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years and continue to do so at the time of the application. This park is a focal point for our community and many cultural activities. We need to secure the right of local people to enjoy the land for recreation and protect the land from development for our community to be valued and enjoyed forever. This is "As of Right", it has been used without force, without secrecy and without permission."*

A full statement is contained in Exhibit 2 to the application.

9. An objection to the registration of the application land has been received from the landowner, Bristol City Council (the Objector). The Objector has contended that the land was originally acquired for housing purposes and was later appropriated for use as Public Open Space and therefore should not be registered as a town or village green.
10. The Objector has additionally submitted that it has throughout the period in question exerted and demonstrated control over the site and that consequently the applicants have failed in their attempt to show permitted usage. The Objector has summarised its case as:
  - (1) The application land was acquired by the Council through four separate acquisitions for housing purposes and later appropriated for the purpose of holding it as a public open space, or specifically land for the use of public walks or pleasure grounds within s.164 Public Health Act 1965 or the Open Spaces Act 1906.
  - (2) Use by the public whether as inhabitants of a locality or a neighbourhood, or otherwise has not been on the basis of the exercise the right pursuant to the existence of a town or village green.
11. The Objector has asked that the Registration Authority considers, as a preliminary issue, the issue as to whether or not any user of the land has been 'as of right', and in particular as to whether the user has been pursuant to statutory authority. It has asked the Registration Authority to consider dealing with the application in such a manner for reasons of speed and cost.
12. The Open Spaces Act 1906 is an act designed to facilitate the provision of public open spaces by local authorities. "Open space" is defined by s. 20 of the 1906 Act. So far as material for present purposes it means land which is not built on and is used for recreation. Section 7 gives power to any landowner to sell any land (whether already an open space or not) to a local authority for use as a public open space. Section 9 gives power to a local authority to acquire any existing open space.

Section 10 provides that a local authority that has acquired open space under the 1906 Act should:

*“...hold and administer the open space...in trust to allow, and with a view to, the enjoyment thereof by the public as an open space within the meaning of this Act...and for no other purpose...”*

13. If the application land was held at any point during the relevant 20 year period under s. 10 of the Open Spaces Act 1906, use for recreation by members of the public (local or not) would be “by right” and not “as of right” for the purposes of the legislation relating to the registration of new greens.
14. On the other hand Section 164 of the PHA 1875 provides that:  
“Any urban authority may purchase or take on lease lay out plant improve and maintain lands for the purpose of being used as public walks or pleasure grounds, and may support or contribute to the support of public walks or pleasure grounds provided by any person whomsoever.”
15. The section goes on to authorise the local authority to make byelaws for the regulation of any such public walk or pleasure ground. The power conferred by s. 164 was extended to all local authorities by Local Government Act (LGA) 1972. The 1875 Act does not contain an express statutory trust such as section 10 of the Open Spaces Act 1906 but the courts have construed section 164 as conferring on the public a statutory right of access for recreation to land held under s. 164. It would appear from the case law that section 122 of the LGA (in both its original and amended forms) assumes that land held for the purposes of section 164 of the PHA 1875 is held on a statutory trust equivalent to that under section 10 of the Open Spaces Act 1906.

## **Proposal**

16. PROWG Committee on behalf of the Council (as statutory Commons Registration Authority) has a statutory duty under the Commons Act 2006 and the regulations made thereunder to determine objectively whether or not the land in question should be registered as a Town or Village Green within the meaning of the Act.
17. The documentary evidence submitted by the Objector has been assessed. The assessment shows that the Council holds the land for public open space purposes. The report of CRA officer is attached as Appendix C. The Applicant has not disputed the authenticity of the documentary evidence. To that extent it is undisputed evidence. The case turns on the interpretation and legal effect of that evidence. It

would appear therefore that use of the application land cannot have been use “as of right” but rather would have been use which was “by right” and that the application should be rejected.

18. Before arriving at a final determination of the application to register the land known as Elderberry Walk, Southmead Bristol as a town and village green it is recommended that as the land is owned by the Council an independent inspector be appointed to consider representations on the preliminary issue, the issue as to whether or not any user of the land has been ‘as of right’. The inspector will then report back to the CRA with recommendations. CRA will then bring the matter back to PROWG.

### **Other Options Considered**

19. The other options considered are:
  - 19.1 Refer the application to an independent inspector for a public inquiry on all the issues;
  - 19.2 Reject the application on the papers.
20. The referral for a full inquiry will put the Council to additional unnecessary expense if the land is held for public open space or recreation.
21. Rejecting the application on the papers without allowing the applicant an opportunity to first make representations to an independent inspector could be considered to be unfair as the Council owns the land and puts the Council at risk of legal challenge.

### **Risk Assessment**

22. The options leave the Council open to legal challenge. In spite of the fact that legal challenge in cases of this nature is the exception rather than the norm, it must be pointed out to members that there are, nonetheless, legal risks associated with this decision. There could be questions of the fairness of the proceedings.
23. These risks are mitigated against by the Council’s demonstration of a fair and transparent process in its determination of the application and a decision based on detailed consideration of the evidence.

### **Public Sector Equality Duties**

24. Before making a decision, section 149 Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following “protected characteristics”: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due

regard to the need to:

- i) Eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.
- ii) Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to --
  - remove or minimise disadvantage suffered by persons who share a relevant protected characteristic;
  - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons' disabilities);
  - encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- iii) Foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to –
  - tackle prejudice; and
  - promote understanding.

## **Legal and Resources Implications**

### **Legal**

25. The City Council in its capacity as Commons Registration Authority has responsibility under the Commons Act 2006 to determine whether the land or a part thereof should be registered as a green.

### **The Law**

26. Section 15 of the Commons Act 2006 enables any person to apply to a Commons Registration Authority (CRA) to register land as a town or village where it can be shown that:  
*"A significant number of inhabitants of any locality, or any neighbour within the locality, having indulged as of right in law sports and past times on the land for a period of at least 20 years"*
27. In addition to the above, the application must meet the test under Section 15(2) of the Act in particular that use of land has continued "as of right" until at least the date of the application.

28. The applicant must establish that the land in question comes entirely within the definition of a town or village green, in Section 15(2) of the Act. The Registration Authority must consider on the balance of probabilities whether or not the applicants have shown that:  
a significant number of inhabitants of the locality or neighbourhood indulged in lawful sports and pastimes as of right on the land for a period of at least twenty years; and they continue to do so at the time of the application.
29. In its capacity as Registration Authority the City Council has to consider objectively and impartially all applications to register greens on their merits taking account of any objections and of any other relevant considerations. Wholly irrelevant considerations such as the potential use of the land in the future must be left out.

**“As of right”**

30. User “as of right” means user without force, secrecy or permission (*nec vi nec clam nec precario*). User as of right is sometimes referred to “as if by right” and must be contrasted with use “by right”.

**“By right”**

31. User “by right” means that users already have a statutory or other legal right to use the land for those purposes. Such users are not trespassers. Land is not used “as if right” for lawful sports and pastimes if user is by right. If land is held on trust for the purpose of recreational use and enjoyment by the general public or a section of the public including the users of the land it has been suggested (although not definitively decided) that the beneficiaries of the trust are entitled to use the land for sports and pastimes and cannot be regarded as trespassers. It has also been suggested but not yet decided by the courts that a trust may be implied.

**“Appropriation”**

32. Local authorities are creatures of statute. They can only lawfully act for the purposes and in the ways that statute permits them to act.
33. Local authorities have been given powers to appropriate, or re-allocate, land from one statutory purpose to another – see section 163 Local Government Act 1933.
34. The current provisions are those found in section 122 Local Government Act 1972, as amended by the Local Government, Planning and Land Act 1980<sup>1</sup>. The Act gives a local authority power to appropriate land that is

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<sup>1</sup> See section 122(1) of the Local Government Act 1972 as amended by section 122(1) of the Local Government, Planning and Land Act 1980.

no longer required for the purpose for which it was held immediately before the appropriation.

### Procedure

35. The application has been made under Section 15(2) of the Act 2006. The regulations that govern the procedure are the (Commons Registration of Town or Village Greens) Interim Arrangements (England) Regulations 2007. The Committee has recently approved a written procedure which provides that where the Council is the landowner an independent inspector will automatically be appointed to conduct the inquiry. Appointing an independent inspector to consider the representations before determination on the papers in cases where the Council is the landowner will address any suggestion of bias in the decision-making process.

**Legal advice provided by:** Anne Nugent, Senior Solicitor, Legal Services.

## **36. Financial**

### **(a) Revenue**

In the event of any subsequent legal challenge any costs over and above those normally met from existing revenue budgets can be met from the central contingency.

### **(b) Capital**

If the Land is registered as Town and Village Green, this will prevent a development opportunity and therefore a potential loss of a Capital Receipt.

Financial advice (Revenue) from Tony Whitlock, Corporate Finance  
Financial advice (Capital) from Jon Clayton, Corporate Finance.

## **Land**

There are no policy implications arising from this report

## **Personnel**

Nil

## **Appendices**

Appendix A – Map of Application Land

Appendix B- Application Form 44

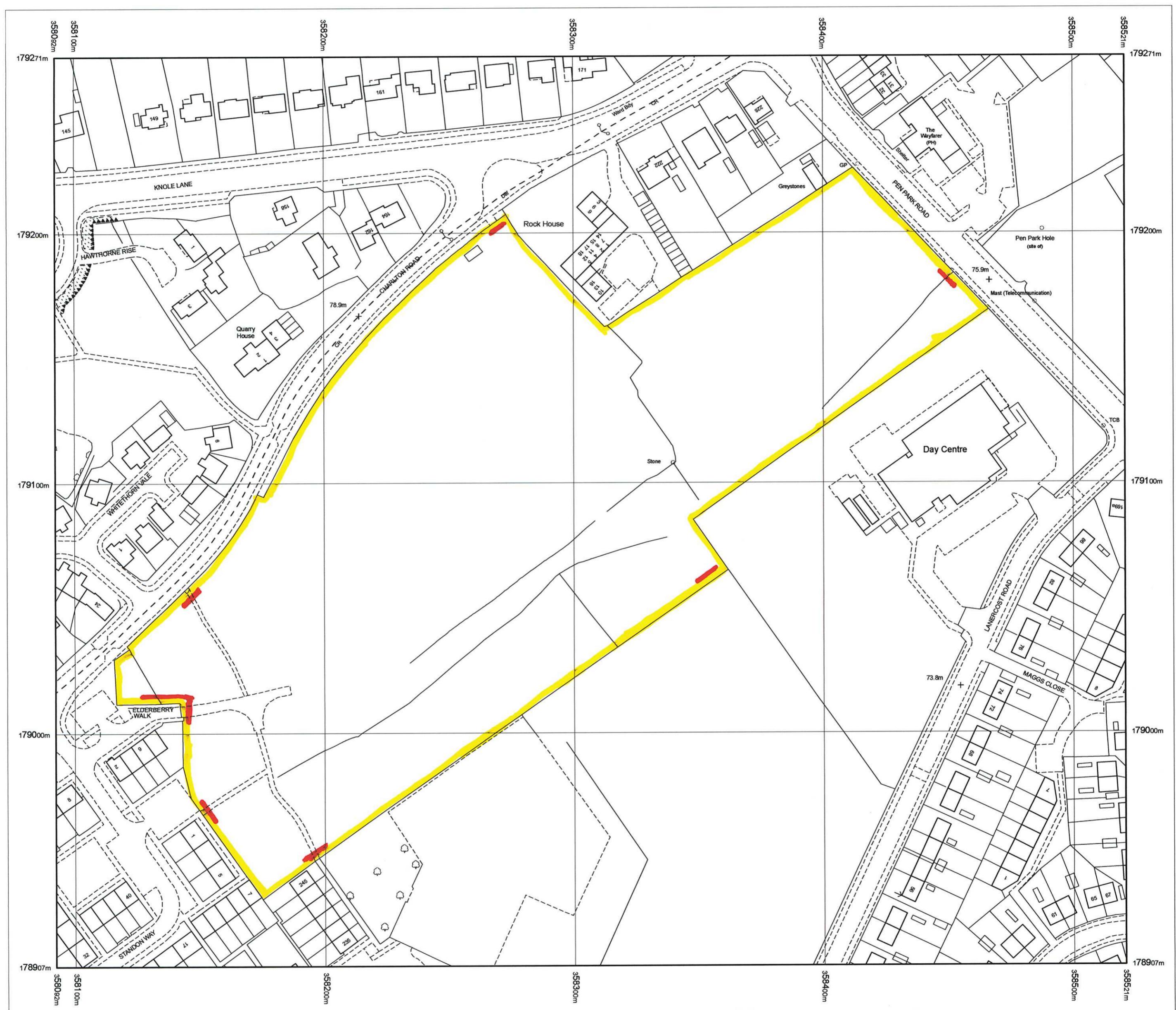
Appendix C- Officer Assessment of evidence

**Local Government (Access to Information ) Act 1985**  
**Background Papers:**

Application papers/ statement of objections/ response available at the Council House, College Green.

Section 15 Commons Act 2006

Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007



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The representation of a road, track or path is no evidence of a right of way.

The representation of features as lines is no evidence of a property boundary.

Metres  
0 20 40  
Scale 1:1250

Supplied by: Stanfords  
Serial number: 00390100  
Centre coordinates: 358306.5 179088.75

Further information can be found on the OS Sitemap Information leaflet or the Ordnance Survey web site:  
[www.ordnancesurvey.co.uk](http://www.ordnancesurvey.co.uk)

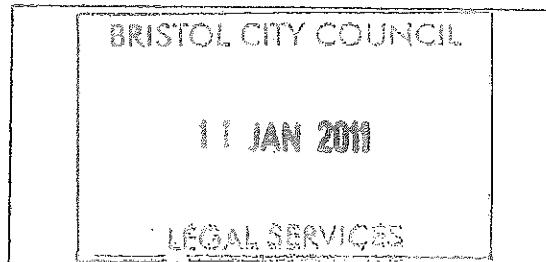
*Exhibit 1  
MAP A.*

*Elderberry*

Commons Act 2006: Section 15

## Application for the registration of land as a Town or Village Green

Official stamp of registration authority indicating valid date of receipt:



Application number:

21

Register unit No(s):

VG number allocated at registration:

(CRA to complete only if application is successful)

Applicants are advised to read the 'Guidance Notes for the completion of an Application for the Registration of land as a Town or Village Green' and to note the following:

- All applicants should complete questions 1–6 and 10–11.
- Applicants applying for registration under section 15(1) of the 2006 Act should, in addition, complete questions 7–8. Section 15(1) enables any person to apply to register land as a green where the criteria for registration in section 15(2), (3) or (4) apply.
- Applicants applying for voluntary registration under section 15(8) should, in addition, complete question 9.

### 1. Registration Authority

To the

Bristol City Council

**Note 1**

Insert name of registration authority.

**Note 2**

If there is more than one applicant, list all names. Please use a separate sheet if necessary. State the full title of the organisation if a body corporate or unincorporate.

If question 3 is not completed all correspondence and notices will be sent to the first named applicant.

**2. Name and address of the applicant**

Name: Alison E Devonshire

Full postal address:

Postcode

Telephone number:

(incl. national dialling code)

Fax number:

(incl. national dialling code)

E-mail address:

**3. Name and address of solicitor, if any****Note 3**

This question should be completed if a solicitor is instructed for the purposes of the application. If so all correspondence and notices will be sent to the person or firm named here.

Name:

Robert Davies Barnster

Firm:

Post code

Telephone number:

(incl. national dialling code)

Fax number:

(incl. national dialling code)

E-mail address:

**Note 4**

For further advice on the criteria and qualifying dates for registration please see section 4 of the Guidance Notes.

**4. Basis of application for registration and qualifying criteria**

If you are the landowner and are seeking voluntarily to register your land please tick this box and move to question 5.

Application made under section 15(8):

If the application is made under section 15(1) of the Act, please tick one of the following boxes to indicate which particular subsection and qualifying criterion applies to the case.

Section 15(2) applies:

Section 15(3) applies:

Section 15(4) applies:

If section 15(3) or (4) applies please indicate the date on which you consider that use as of right ended.

If section 15(6)\* applies please indicate the period of statutory closure (if any) which needs to be disregarded.

**5. Description and particulars of the area of land in respect of which application for registration is made**

**Note 5**

*The accompanying map must be at a scale of at least 1:2,500 and show the land by distinctive colouring to enable to it to be clearly identified.*

Name by which usually known:

Elderberry Walk Open Space  
Charlton Road Park, The Rec

Location:

Charlton Road  
Southmead, BRISTOL BS10

\* Only complete if the land is already registered as common land.

Shown in colour on the map which is marked and attached to the statutory declaration.

Common land register unit number (if relevant) \*

**Note 6**

*It may be possible to indicate the locality of the green by reference to an administrative area, such as a parish or electoral ward, or other area sufficiently defined by name (such as a village or street). If this is not possible a map should be provided on which a locality or neighbourhood is marked clearly.*

**6. Locality or neighbourhood within a locality in respect of which the application is made**

Please show the locality or neighbourhood within the locality to which the claimed green relates, either by writing the administrative area or geographical area by name below, or by attaching a map on which the area is clearly marked:

Tick here if map attached:

7. Justification for application to register the land as a town or village green

Note 7

Applicants should provide a summary of the case for registration here and enclose a separate full statement and all other evidence including any witness statements in support of the application.

This information is not needed if a landowner is applying to register the land as a green under section 15(8).

Elderberry Walk is our community Green without a roof. This park is about the people it is a focal point for our community and many cultural activities. Our park has a significant resource for children & schools with long learning (children learning outside the classroom). Our trees provide shade and protection from the elements, remove pollutants from the air, reduce noise and provide shelter for wildlife. Elderberry Walk has a Friends group and their overriding philosophy is to protect and enhance this site for the residents of Southmead & neighbouring areas. Elderberry Walk is a community facility for all age groups. It is often used and viewed as a natural focus point for the community and is regularly used for numerous activities, leisure and relaxation. The site has historical value to the community and is a hugely important local amenity for the people of Southmead. This is a fabulous, largely natural area. It is used daily by walkers, families and of course responsible dog walkers. It is an absolute delight to walk through or just sit in. It is our green oasis in the middle of sprawling estates.

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**Note 8**

Please use a separate sheet if necessary.

Where relevant include reference to title numbers in the register of title held by the Land Registry.

If no one has been identified in this section you should write "none"

This information is not needed if a landowner is applying to register the land as a green under section 15(8).

**8. Name and address of every person whom the applicant believes to be an owner, lessee, tenant or occupier of any part of the land claimed to be a town or village green**

Bristol City Council

**Note 9**

List all such declarations that accompany the application. If none is required, write "none".

This information is not needed if an application is being made to register the land as a green under section 15(1).

**9. Voluntary registration – declarations of consent from 'relevant leaseholder', and of the proprietor of any 'relevant charge' over the land**

N/A

**10. Supporting documentation****Note 10**

List all supporting documents and maps accompanying the application. If none, write "none".

Please use a separate sheet if necessary.

Full Statement  
maps  
photographs  
evidence questionaries for support  
petition

**Note 11**

If there are any other matters which should be brought to the attention of the registration authority (in particular if a person interested in the land is expected to challenge the application for registration). Full details should be given here or on a separate sheet if necessary.

**11. Any other information relating to the application**

Friends of Elderberry were officially formed in 2010. Local residents have indulged ad of right in lawful sports and pastimes on the land for over 20 years and continue to do so at the time of application.

**Note 12**

The application must be signed by each individual applicant, or by the authorised officer of an applicant which is a body corporate or unincorporate.

Date:

10-01-2011 (0.1.2011)

Signatures:

A. E. Smith

**REMINDER TO APPLICANT**

You are advised to keep a copy of the application and all associated documentation. Applicants should be aware that signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence. The making of a false statement for the purposes of this application may render the maker liable to prosecution.

**Data Protection Act 1998**

The application and any representations made cannot be treated as confidential. To determine the application it will be necessary for the registration authority to disclose information received from you to others, which may include other local authorities, Government Departments, public bodies, other organisations and members of the public.

## Statutory Declaration In Support

To be made by the applicant, or by one of the applicants, or by his or their solicitor, or, if the applicant is a body corporate or unincorporate, by its solicitor, or by the person who signed the application.

ALISON EDITH

<sup>1</sup> Insert full name  
(and address if not given in the application form).

<sup>2</sup> Delete and adapt as necessary.

<sup>3</sup> Insert name if Applicable

I, A. Devonshire, solemnly and sincerely declare as follows:—

1.<sup>2</sup> I am ((the person (one of the persons) who (has) (have) signed the foregoing application)) ((the solicitor to (the applicant) (<sup>3</sup> one of the applicants)).

2. The facts set out in the application form are to the best of my knowledge and belief fully and truly stated and I am not aware of any other fact which should be brought to the attention of the registration authority as likely to affect its decision on this application, nor of any document relating to the matter other than those (if any) mentioned in parts 10 and 11 of the application.

3. The map now produced as part of this declaration is the map referred to in part 5 of the application.

<sup>4</sup> Complete only in the case of voluntary registration (strike through if this is not relevant)

4.<sup>4</sup> I hereby apply under section 15(8) of the Commons Act 2006 to register as a green the land indicated on the map and that is in my ownership. I have provided the following necessary declarations of consent:

- (i) a declaration of ownership of the land;
- (ii) a declaration that all necessary consents from the relevant leaseholder or proprietor of any relevant charge over the land have

Cont/

\* Continued

been received and are exhibited with this declaration; or  
(iii) where no such consents are required, a declaration to that effect.

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act 1835,

Declared by the said

at

this Eleventh day of

January  
2011

Signature of Declarant

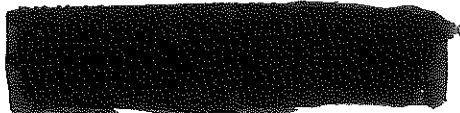


Before me \*

Signature:



Address:



Qualification:

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\* The statutory declaration must be made before a justice of the peace, practising solicitor, commissioner for oaths or notary public.

Signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence.

**REMINDER TO OFFICER TAKING DECLARATION:**

Please initial all alterations and mark any map as an exhibit

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## **Assessment of Evidence – Elderberry Walk**

### **Applicant's evidence**

1. Full statement referred to as Exhibit 2 in the application.
2. The full statement asserts that the Application is made on the basis that a significant number of local residents have used the application land for lawful sports and pastimes over a significant period of time. In total 25 evidence statements and 127 signatures of continued use were submitted with the application. The Applicants believe that they need to secure the right of local people and neighbouring communities to enjoy the land for recreation and to protect the land from development.

### **The Objectors evidence on Appropriation**

3. The Objector has asserted that there have been four appropriations of the land. The documentary evidence in support is contained in a ring binder with numerous enclosures. For ease of reference the various plans of the particular area of land will be referred to as "objector enclosure" followed by the number of that enclosure.

#### **Appropriation 1 - ( Objector Enclosure 22)**

4. At a meeting of the Housing Committee on 21<sup>st</sup> January 1946 – resolved that 2.85 acres of which 1.46 acres was within the TVG application land area was appropriated from Public Works and Maintenance Committee to the Housing Committee for £1,350. Detailed on Housing Committee minute resolution No. 40 Temporary Housing – Land adjoining Pen Park Quarry.
5. The land was appropriated for temporary housing, constructed on the appropriated land, part within the TVG application land area. That the land was controlled by Public Works and Maintenance Committee and appropriated to Housing Committee. That after this appropriation took place, the part of the TVG application area under the Public Works and Maintenance Committee, amounting to 4.67 acres, and the remaining 6.11 acres came under control of the Housing Committee.

#### **Appropriation 2 - (Objectors Enclosure 26)**

6. At a meeting of the **Works and General Purposes Sub-Committee meeting on 27<sup>th</sup> November 1963** ( Minute No 22.) it was resolved that 1.44 acres, within the TVG application area, was appropriated from the Housing Committee, as part of a larger appropriation of land throughout the city, totalling approximately 663 acres, reserved for public open space, and held by the Housing Committee.
7. The objection statement says that at a meeting of the **Housing Committee on 20<sup>th</sup> January 1964** (Minute 058) an appropriation, of which Pen Park Road – 1.44 acres is part, was approved for Land Reserved for Public Open Spaces .
8. At a meeting of the **Council of the City and County of Bristol on 11<sup>th</sup> February 1964**, there was larger appropriation, of which the land at Pen Park Road 1.44

acres - £1195 is part, was agreed of other land zoned for Public Open Space purposes, but vested in the Housing, and Transport and Cleansing Committees. That the land was appropriated by Planning and Public Works Committee and this appropriation took effect on 1<sup>st</sup> April 1963.

9. The objection statement says the digitised measurement of the land appropriated totalled 1.45 acres. After this appropriation took place, the land was controlled by the Planning and Public Works Committee was 6.12 acres, and the Housing Committee had 4.66 acres.
10. At a **meeting of the Planning and Traffic Committee 5<sup>th</sup> June 1985** the Planning and Traffic Committee approved a programme of environmental improvements to be carried out during 1985/6 over identified sites throughout the city, contained in a report of the Inner City Working Group. One of the sites identified was the TVG application land area, known as Charlton Road/Elderberry Walk .
11. At a **meeting of the Housing Committee 22<sup>nd</sup> July 1985**, it was agreed to declare all land under Housing Committee control within the sites identified by the Environmental Improvement Programme 1985/86 surplus to requirements. This amounted to 123 acres in total, for an appropriation figure of £245,620 – (Minute No. 215) This included Land at Charlton Road/Elderberry Walk.
12. At the **meeting of the Land and Administration Committee on 20<sup>th</sup> March 1986**, the recommendations of a report from the City Valuer titled Environment Improvement Programme 1985/86 were approved (Minute resolution No. 301.3/86)' and that this appropriated land included Elderberry Walk from '*Housing Purposes to Open Space Purposes*'.

#### Appropriation 3 - (Objector Enclosure 36)

13. At a **meeting of the Housing Committee on 17<sup>th</sup> March 1986**, the committee considered a report concerning 84 sites throughout the city which had a non-housing use, and approved the appropriation of these sites for '*Open Spaces purposes.*' ((Minute No 997). It included land within the TVG application land area.
14. At a **meeting of the Open Spaces and Amenities Committee on the 4<sup>th</sup> April 1986**, it was agreed to accept responsibility for the 84 sites of non housing land listed in the report and advised the Land and Administration Committee there is no objection to the sites being appropriated from Housing purposes to either '*Open space purposes or to be held for the Benefit, Improvement and Development of the City Council's area as necessary*'.
15. The total digitised area for the land appropriated in this appropriation amounted to 4.56 acres.
16. After this appropriation took place, the Open Spaces and Amenities Committee had 10.68 acres under it's control, with the remaining 0.10 acre being controlled by the Housing Committee.

#### Appropriation 4 - (Objector Enclosure 43)

17. The objection statement says on 16<sup>th</sup> April 2010, delegated authority was requested for 61.12 hectares of housing land controlled by Service Director for Landlord Services which was used for housing purposes, including open space, now surplus to requirements, be appropriated to Service Director for Environmental and Leisure Services for open space. One of the sites affects the TVG application land area, amounted to 0.02 acre, or approximately 102 square metres once digitised.
18. **Delegated authority was approved on 30<sup>th</sup> April 2010** under Part II of the Housing Act 1985 '*for the purposes of providing public open space in accordance with the Open Spaces Act 1906 Section 10*'. The appropriation took place with effect from 30<sup>th</sup> April 2010.
19. After this appropriation took place, Neighbourhoods - Parks Landscape and Heritage Estates had 10.70 acres under it's control, and the remaining 0.08 acre or approximately 323 square metres is controlled by Neighbourhoods - Housing HRA Land.
20. The Objector has listed the relevant committees who had responsibility for dealing with TVG application land as follows:
  - From 11<sup>th</sup>. July 1933 – Planning and Public Works Committee
  - From 8<sup>th</sup>. December 1942 – Public Works and Maintenance Committee
  - From 19<sup>th</sup>. May 1953 - Planning and Public Works Committee
  - From 21 May 1968 – Public Works Committee
  - From 9<sup>th</sup>. April 1974 – Open Space and Amenities Committee
  - From 20<sup>th</sup>. May 1986 – Leisure Services Committee
  - From 9<sup>th</sup>. May 2000 – Responsibility devolved to the Department of Environment Transport and Leisure headed by the executive
  - From 27 July 2004 – Department of Cultural and Leisure Services
  - From 1 May 2008 – Department of Neighbourhoods and Parks
21. The Objector has stated that by the time of the second appropriation in 1963, the terms of reference for the Planning and Public Works Committee included open spaces, planning, highways etc. In January 1968 the Planning and Public Works Committee was split into two separate committees and became the Planning and Traffic Committee and the Public Works committee respectively. The Public Works committee retained those functions relating to parks and open spaces. The Public Works Committee later became the Open Space and Amenities Committee by the time of the third appropriation in 1986. From 2000/2001 the previous committee system was replaced by executive departments. By the time fourth appropriation took place in April 2010, the department responsible was Neighbourhoods and Parks.

#### **Applicant's response to Council's objection**

22. The Applicants were invited to comment upon the Council's objection. The Applicants further submissions are that given the matter's complexity, legally, factually and evidentially, it should not be dealt with on paper even as a preliminary issue. The Applicant's further submissions are summarized as follows
  - (i) the matter should be resolved by far more appropriate procedure which

it considers is a hearing where both parties can set out their position and test and challenge evidence, make submissions of law and deal with the questions and concerns of the Authority.

- (ii) that there seems to be no suggestion that, save for the difficult preliminary issue, the area would not come within the criteria for TVG qualification.
  - (iii) that unlike some applications where it is contested whether the nature of the use of the area in question is within that required by TVG status, no issue arises on that factual point in this case.
  - (iv) that "speed and cost" and not good or sufficient factors to justify the matter being resolved on paper,
  - (v) they suggest that the decision on itself should be the subject of argument before the relevant decision makers before any final view is taken.
23. I consider that the land was appropriated as public open space for the purposes of the Open Spaces Act 1906. In my view this is established by the documentary evidence which the Objector has produced as part of its objection and in particular enclosure 43.

13 March 2012  
JD5.446