

BRISTOL CITY COUNCIL

PUBLIC RIGHTS OF WAYS AND GREENS COMMITTEE

3 OCTOBER 2011

Report of: Strategic Director of Corporate Services

Title: DEFRA consultation on the registration of new town or village greens

Ward: Citywide

Officer Presenting Report: Anne Nugent

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RECOMMENDATION

To note the consultation document published on the DEFRA website.

Summary

This report concerns the DEFRA consultation on the registration of new town or village greens. The aim of the consultation is to seek the views of consultees on a proposed package of reforms to the new greens registration system, most of which would require primary legislation.

The significant issues in the report are:

See Context and Summary of Proposals sections

Policy

1. The Government's plans for neighbourhood planning are set out in the Localism Bill. There is a commitment to introduce a new Local Green Spaces designation through the planning system, to give communities new tools to shape their future development, and to ensure the continuing protection of valued green spaces. As part of this process, the Government has decided to review the new greens registration system, to see if a better balance can be struck between protecting the green space valued by local communities while still allowing for development opportunities, under the right circumstances.

Consultation

2. Internal

This report has been prepared in consultation with the Registration Authority Responsible Delegated Officer, Strategic Director, Corporate Services, the Head of Legal Services and the Head of Executive Office.

3. External

DEFRA's consultation period runs for 12 weeks. It began on 25 July and ends on 17 October 2011. The Council is in the process of formulating a response to this consultation.

Context

4. While applications for registration of new greens have greatly increased over the last 20 years, the consultation document argues that the process for determining greens applications is less than satisfactory and undermines credibility in the registration system because:
 - applications may lack substance or merit, but registration authorities cannot easily reject them without disproportionate effort;
 - applications may be submitted at any time up to, or even after, development has begun and so can act as a 'last ditch' attempt to stop authorised development;
 - applications stand outside the planning system, and must be determined on legal criteria without consideration of need, impact or hardship affecting any of the parties;
 - the increasing number of applications is raising costs to registration authorities, and leading to delays in applications being determined;
 - making an application is free to the applicant and so there is no mechanism for discouraging vexatious or speculative applications, notwithstanding the costs imposed on landowners, developers and registration authorities; and
 - application sites may bear little relationship to traditional concepts of a green, so that the physical setting of a green (e.g. whether it is open to the road, whether it is grassland or woodland) is generally immaterial to the application's success.
5. It is argued that many of these impacts occur irrespective of whether an application is granted: although a successful application is likely to impose greater costs, particularly on the landowner, any application is capable of incurring substantial expenditure by the landowner, the registration authority, the applicant, and other supporters and objectors.

Summary of Proposals

6. The proposals in the consultation document can be summarised as follows:

a) Do Nothing

No change to the existing registration system.

b) Refine the registration system

Streamline sifting of applications: This proposal would enable registration authorities to reject applications at an early stage where insufficient evidence has been submitted or where there was strong evidence that the application could not meet the criteria for registration.

Declaration by landowners: Landowners would be given the opportunity to make a statutory declaration to negate any evidence of use of a claimed green during the period while the declaration remained in effect.

Character: New legislation would add a 'character' test to the existing criteria for the registration as a green. Only land which is unenclosed, open and uncultivated would be eligible for registration.

c) Taking account of the planning system in shaping local places

Integration with local and neighbourhood planning: This proposal would take decisions on the future of sites into the planning system. It would prevent registration of land which was subject to a planning application or permission for development of the site, or which was designated for development or as a green space in a local or neighbourhood plan.

d) Contributing to costs

Charging fees: An applicant would be required to pay a fee when making an application. Legislation would allow each registration authority to set its own fee subject to a prescribed ceiling. It is not intended that the fee would allow for full cost recovery. Fees could be refundable if the application were granted.

The consultation is also seeking views on alternative options and on other greens issues.

7. DEFRA is not proposing to diminish the level of protection afforded to land that has already been registered as a TVG.

8. The consultation will be of interest to landowners, developers, local authorities, planners, and recreation and conservation bodies.

Proposal

9. That the Committee note the consultation.

Other Options Considered

10. This report has been provided for information only, and no other options have been considered.

Risk Assessment

11. Responding to government consultation is purely voluntary, however, this is an issue of particular interest to the local authority. The authority risks missing the opportunity to input and influence the debate on this issue if it fails to respond to the consultation.

Public Sector Equality Duties

12a) 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 Resource Implications

Legal

The City Council in its capacity of Commons Registration Authority has responsibility, under the Commons Act 2006 to determine applications for registration of a new Town or Village Green.

The consultation invites interested parties to submit their views on the proposals by 17 October 2011.

The consultation document can be viewed at :-

www.defra.gov.uk/consult/2011/07/25/town-village-greens/

(Legal advice provided by Anne Nugent, Senior Solicitor)

Financial

None sought at this stage.

Land

Not applicable

Personnel

Not applicable

Appendices:

Appendix 1 – Annex A to consultation document with list of questions

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

Background Papers:

None

Annexe A: List of questions

Question 1. Taking account of the Government's plans for the new Local Green Spaces designation, do you agree that the problems identified with the present greens registration system are sufficient to justify reform — so that the 'no change' option should be rejected?

Question 2. Do you support this proposal to streamline the initial sifting of applications?

Question 3. Do you agree that an initial determination should be made by the registration authority after inviting initial comments from the owner of the land affected by the application?

Question 4. Do you support this proposal to enable landowners to make a deposit of a map and a declaration to secure protection against future applications to register land as a green?

Question 5. Should landowners or registration authorities be required to take additional steps to publicise a declaration, to ensure that potential users know that they have limited time to make an application to register the land as a green? If so, what steps do you propose?

Question 6. Do you support a proposal to introduce a character test to ensure that greens accord with the popularly held traditional character of such areas?

Question 7. Do you agree with the character test in paragraph 5.5.9 above *i.e.* that land must be open and unenclosed in character? Do you support the adoption of additional criteria such as those in paragraph 5.5.11 above?

Question 8. Do you support the proposal which would rule out making a greens registration application where a site was designated for development in a proposed or adopted local or neighbourhood plan?

Question 9. Do you support the proposal that a greens registration application could not be made after an application for planning permission had been submitted in respect of a site, or on which there was statutory pre-application consultation, until planning permission had itself been refused or implemented, or had expired?

Question 10. Do you support this proposal to charge a fee for applications?

Question 11. If so, do you support the proposal for refunding the fee where an application is granted?

Question 12. Do you agree that the fee should be determined by the registration authority and that a ceiling should be set at £1,000?

Question 13. Do you support the adoption of all of the proposals set out in chapter 5.3 to 5.7 above?

Question 14. Do you support the adoption of the Character test in relation to the voluntary registration of land as a green, under section 15(8) of the 2006 Act?

Views invited 15. Do you have other proposals for reform to the greens system which would help deliver the objectives set out in paragraph 1.3.5 above?

Annexe A

It would be helpful if your response sets out how the proposal would work, your assessment of the impact on all parties to an affected application (including the applicant, landowner and registration authority), and so far as is possible, the costs and benefits. Please note that the Government has no plans to relax the criteria for registration of new greens (see paragraph 1.4.4 above).

Views invited 16. Do you wish to see any of the reforms set out in paragraph 5.11.1 above addressed in new legislation on greens?

Views invited 17. If so, which of these reforms are a priority for action, and what outcome do you seek to achieve?



Photo 9: The Fields, Patchway, Glos. (application rejected)