

BRISTOL CITY COUNCIL

PUBLIC RIGHTS OF WAYS AND GREENS COMMITTEE

25TH JUNE 2012

Report of: Commons Registration Authority

Title: Report on revised Procedure for determination of applications for registration of new Town and Village Greens in pursuance of the Commons Act 2006, Section 15

Ward: Citywide

Officer Presenting Report: Anne Nugent

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RECOMMENDATION

To approve the revised outline procedure.

Summary

This report seeks approval by the Committee of the changes to clause 6 of the written procedure for determination of applications for registration of Town and Village Greens in pursuance of the Commons Act 2006, Section 15 made pursuant to the PROWG resolution of 20 February 2012.

The significant issues in the report are:

See Context and Proposals sections

Policy

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

Consultation

- **Internal**

None

3. External

The Council has previously consulted with the wider community on the proposed new procedures (as set out more fully in the report to PROWG on 20 February 2012).

Context

4. In February 2012 PROWG approved the revised written procedure to be followed for determination of applications for registration of Town and Village Greens in pursuance of section 15 of the Commons Act 2006.
5. The procedure approved by PROWG incorporated the changes to clause 3 proposed by Bristol Parks Forum but required that PROWG decide whether an Inspector should be appointed for all inquiries except where the Council is the landowner. Where the inquiry relates to council owned land an independent inspector will be appointed to conduct the inquiry. Officers were asked to re-write clause 6 and circulate the revised wording to Members for approval. Officers have made changes to clause 6 to incorporate the requirements of PROWG and these are marked in red on appendix A.

Proposal

6. That the Committee approve the revised outline procedure.

Other Options Considered

7. No other options have been considered.

Risk Assessment

8. The Council is at risk of legal challenge if it does not follow the regulations and if it does not follow a fair procedure.

Public Sector Equality Duties.

- 9 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

10 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 Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 sets out the procedure for the processing of applications for the registration of town and village greens. There is limited statutory instruction on the determination of applications made under section 15(1) of the Commons Act 2006. There is no provision for an inquiry to be held but the courts have indicated that where there is a dispute on the evidence an inquiry should be held. The Council has a discretion as to the procedure to be followed if it decides to hold an inquiry. That discretion must be exercised in a manner which is fair to both applicant and objector. What fairness requires by way of procedure will depend on the circumstances. The Council has consulted on the procedure.

(Legal advice provided by Anne Nugent, Senior Solicitor)

11 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.

(Financial advice provided by Tony Whitlock, Corporate Finance)

(b) Capital

There are no specific policy implications arising from this report

(Financial advice provided by Jon Clayton, Corporate Finance)

Land

There are no specific policy implications arising from this report

Personnel

None

Appendices:

Appendix 1 – Procedure for applying to register a Town and Village green with proposed changes in red

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985 Background Papers:

None

APPLICATIONS FOR REGISTRATION OF TOWN OR VILLAGE GREENS

THE COMMONS ACT 2006 THE COMMONS (REGISTRATION OF TOWN OR VILLAGE GREENS) (INTERIM ARRANGEMENTS) (ENGLAND) REGULATIONS 2007

(TIMESCALE – the entire process can take about a year)

OUTLINE PROCEDURE

An application to register land as a town or village green (TVG) can be made by anybody on any land. The effect of registration is that the land can only ever be used as a town or village green.

1. If anyone enquires about how to make an application to register a TVG they are sent a letter referring them to DEFRA, and to the Open Spaces Society as all the information they need is available on these websites.

2. Receipt of application:

On receipt of application Form 44, the Commons Registration Authority (CRA) allocates an application number, stamps the application using the CRA stamp and sends a letter acknowledging receipt together with the notice giving the reference number.

3. The CRA checks the application documents:

Ensures the form complies with the Regulations and is procedurally correct, relevant sections are completed, all supporting documents referred to are present, and that the plan complies with Regulation 10. It then gives preliminary consideration (Regulation 5(4)) to the application and to the evidence and reaches a decision as to whether to:

- (a) reject the application at this stage due to it being incomplete or not in compliance with the regulations;
- (b) reject the application at this stage based on the evidence;
- (c) call for additional information;
- (d) proceed with the application.

Before any application is rejected under clause 3(a) the applicant will be given a reasonable opportunity of taking action to put the application in order. Before any application is rejected under clause (3)(b) the applicant will be given a reasonable opportunity to put forward further evidence or arguments which the CRA will then consider. The CRA will give reasons for the rejection under clause 3(b) to the applicant. If the applicant does not accept the CRA rejection the application will be referred to PROWG by the CRA. Having considered the report of the CRA and any representations from the applicant PROWG may decide to allow the application to proceed to the full process or confirm the rejection.

4. Publicity:

- (a) any known owner, potential objector or other interested party to be served with notice;
- (b) notice posted at site, if reasonably practicable;
- (c) notice published in newspaper;
- (d) relevant ward Councillors notified;
- (e) copy of application papers on deposit at the Council House

(f) notice published on Council's website.

5. Any objections are referred to the applicant (Regulation 6(3)) for comment. If necessary, the CRA will ask for any further information or documents to enable the application to be determined.

6. All applications will be determined in accordance with the legal test set out in the Commons Act 2006 and as soon as possible after the date by which statements of objection to an application have been required to be submitted (regulation 6(1)).

- a) Straight-forward cases where there is no significant conflict of evidence, or no significant objection will be dealt with on the paperwork. The decision will be taken by the delegated officer (strategic director of corporate services) or PROWG as appropriate. **Whether or not an independent inspector needs to be appointed prior to determination, particularly where the Council is the landowner, is a matter for PROWG.**
- b) In other cases there will be a public inquiry, ie. a hearing, open to the public, where both sides are able to present their evidence and make representations. Depending on the circumstances and the nature of the case, the inquiry will be heard by either a council legal officer, PROWG (or a sub-committee of PROWG) with advice from a council legal officer, or an independent legally-qualified inspector. Where the Council is landowner the inquiry will be conducted by an independent legally-qualified inspector **otherwise PROWG will decide who is to conduct the inquiry.**
- c) Whoever is holding the inquiry may carry out a site visit during the inquiry process. The parties are normally invited to attend the site visit but are not permitted to make any further representations.
- d) Following an inquiry hearing, there will be a report to PROWG summarising the evidence and facts with a recommendation as to whether or not the application should be accepted. This report will be prepared as follows:
 - o Where the inquiry is held by a council legal officer, by that officer;
 - o Where the inquiry is held by a committee (either PROWG or its sub-committee), by the council legal officer who advised the committee;
 - o Where the inquiry is held by an inspector, by that inspector.
- e) Following an inquiry, the application will be determined by PROWG on the basis of the report prepared at stage d) above.

When conducting an inquiry, which is a quasi judicial process, the CRA will ensure that the rules of natural justice are met.

8. Applicants and objectors are informed of the decision.

9. Application papers are returned to unsuccessful applicants, or land is registered in the case of successful applications.