

Public Rights of Way and Greens Committee 27th September 2022



Report of: Commons Registration Authority (CRA)
Title: Town or Village Green (TVG) Applications
Ward: Citywide
Presenting Report: Legal Officer

Recommendation

To note the present position with regards Town or Village Green (TVG) Applications.

Summary

This report sets out the present position with regards current TVG applications duly made under the Commons Act 2006.

The significant issues in the report are:

To update the position with regards to TVG applications



Policy

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

Consultation

2. **Internal**
Not applicable
3. **External**
Not applicable

Context

This report is to update the Committee on the current position of TVG Applications.

The CRA has one current application. On 20th July 2022, the Inspector issued Directions for the progress of the application that the parties are actioning . On 2nd August 2022 the Inspector agreed to vary the Directions timetable with a view to all evidence having been sent to the Inspector by 21st December 2022. Thereafter the Inspector will prepare his Report to the Committee (please note that the timescales may change).

Proposal

4. To note with regards TVG Applications

Other Options Considered

5. None

Risk Assessment

6. None undertaken as no decision is being taken at this stage

Summary of Equalities Impact of the Proposed Decision

7. 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 as CRA has responsibility under the Commons Act 2006 to determine whether the land or a part thereof should be registered as a green.

The criteria to be applied for successful registration are provided by the Commons Act 2006. The applicant must establish that the land in question comes entirely within the definition of a town or village green, to be found in Section 15(2) of the Commons 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.

“As of right”

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 of right” and must be contrasted with use “by right” (see below).

“By right”

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 of right” for lawful sports and pastimes if user is “by right”. If land is used “by right” then the statutory test cannot be satisfied.

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. The Committee must leave out of account wholly irrelevant considerations. In cases where an inspector gathers the evidence and provide recommendations on the registration or otherwise of the land as a town or village green, the Committee must always give reasons for departing from such recommendations

The outline procedure for how the City Council as CRA deals with TVG applications is at **Appendix 1**

(Legal advice provided by Tom Dunsdon Solicitor, Litigation, Regulatory, & Community Team, Legal Services)

Land

There are no specific policy implications arising from this report

Personnel

Not applicable

Appendices:

Appendix 1: TVG Procedure Approved by PROWG 25 June 2012

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

Background Papers:

Section 15 Commons Act 2006

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