

Public Rights of Way and Greens Committee

28th June 2023



Report of: Commons Registration Authority (CRA)

Title: Applications to Register Land at Stoke Lodge as a Town and Village Green under the Commons Act 2006

Ward: Citywide

Presenting Report: Nancy Rollason , Head of Service, Legal Services

Recommendation

To consider and accept the recommendations of the Independent Inspector set out in his report dated 14th March 2023.

Summary

This report concerns the applications by Ms Emma Burgess and Ms Katherine Welham to register a site known as Stoke Lodge Playing Fields, Stoke Bishop, Bristol as a Town or Village Green.

The significant issues in the report are:

As set out in the Report



Policy

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

Consultation

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

Mr Philip Petchey was appointed by the Council as Commons Registrations Authority (CRA) as an independent Inspector (the Inspector) to report upon and to make recommendations about the determination of two applications made to the CRA by Ms Emma Burgess and by Ms Katherine Welham (the Applicants). The applications were made pursuant to section 15 of the Commons Act 2006 and sought the registration of land as a town/village green, The Inspector has written a Report dated 14th March 2023 (the Inspector's Report). The Report includes his recommendations.

4. Context

The CRA received two applications under Section 15 of the Commons Act 2006 for registration of land at Stoke Lodge, Stoke Bishop, Bristol (the application land) as a Town/Village Green. The first, dated 13th September 2018 received from Ms Burgess made under Section 15(2) of the Commons Act 2006. The second dated 22nd July 2019 received from Ms Welham made under Section 15(3) of the Commons Act 2006 .

The CRA received objections from Bristol City Council, as landowner, and Cotham School as the leaseholder. Cotham Parent and Carer Group has been joined as a party.

The CRA has responsibility under the Commons Act 2006 to determine the applications and to decide whether the application land should be registered as a Town/Village Green. The decision will be taken by the Council's Public Rights of Way and greens Committee

In his Report (**Appendix 1**) the Inspector has recommended that the applications should be rejected and the land be not registered as a town or village green because in the relevant twenty-year period use by local people has not been *as of right* .

Following its receipt, the CRA circulated the Inspector's Report to the parties. The parties were asked to provide submissions on the Report. The CRA received the following submissions

Letter from Harrison Grant Ring to CRA dated 5th April 2023 (on behalf of Cotham School) -

Appendix 2

Submissions from the Applicants dated 11th April 2023 – **Appendix 3**

Documents for consideration by the PROWG Committee (from Andrew Sharland KC on behalf of the Applicants) **Appendix 4**

Email from Bristol City Council (as landowner) dated 11th April 2023 **Appendix 5**

In response to these further submissions the Inspector provided a supplemental note. The Inspector's Note dated 18th May 2023 is at **Appendix 6**

The Parties were then given the opportunity to make final submissions in respect of the Inspector's note. The CRA received the following Submissions:-

Bristol City Council (as Landowner) dated 9th June 2023 **Appendix 7**

Cotham School **dated 9th June Appendix 8**

The Applicants dated 9th June 2023 **Appendix 9**

In March 2021, the Inspector prepared a Report on the basis of submissions from the parties on issue of statutory incompatibility. A copy of that Report dated 2nd March 2021 is at **Appendix 10.**

Communications between the CRA and the parties have not been included with the papers as this was not considered necessary for the determination of the applications. Communications (by email) can be provided in redacted form to the Committee if it considers that this would assist in the decision-making process.

5. Proposal

This Committee on behalf of the CRA 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 Commons Act 2006 by reference to whether the relevant statutory requirements are met.

It is the CRA Officer's view that the Inspector has fully and thoroughly examined the applications and the process under the Commons Act 2006, and that his advice and recommendations are correct in fact and law. Therefore , the recommendation is that the Committee adopt the recommendations of the Inspector and that the land not be registered as a Town or Village Green.

For the avoidance of doubt, Bristol City Council's interest as landowner and as an objector in these applications is wholly separate and independent from its role as CRA . The separation of interests and of functions has been carefully and assiduously maintained throughout the process of consideration of these applications. The CRA is satisfied that a clear separation of functions and interests has at all times been maintained and procedure properly followed.

6. Other Options Considered

The Committee should give its reasons for the decision which it makes on the applications.

If the Committee accepts the Inspector's recommendation for the reasons he has given in his Reports and note then the Committee must make this clear.

If the Committee chooses to reject the Inspector's recommendations they must provide reasons for doing so.

7. Risk Assessment

None

8. Summary of Equalities Impact of the Proposed Decision

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.

9. 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 Town or Village Green.

The criteria to be applied for successful registration are provided by the Commons Act 2006. For land to be registered as a town or village green, the statutory qualifying requirements set out in section 15 of the Commons Act 2006 must be met.

The qualifying requirements are:

- a) that the land has been used for lawful sports and pastimes;
- b) by a significant number of the inhabitants of a locality or of a neighbourhood within a locality;
- c) that that use has been carried out *as of right*; and
- d) that qualifying use which conforms to the above, has been carried out for the requisite period for the purposes of the particular application under consideration.

With regard to the requisite period, s.15, to the extent relevant to the applications for the Committee provides for two different periods. The first is a period of at least twenty years ending on the date of a town/village green application (see s.15(2) Commons Act 2006). The second is a period of at least twenty years ending on a date not earlier than one year before the date of a town/village green application (s.15(3) Commons Act 2006).

As is recorded in the Inspector's report, Ms. Burgess' application was made under s.15(2) and thus the requisite period is a period of at least twenty years down to 13 September 2018. Ms. Welham's application is made under s.15(3) and was made on the basis that qualifying use ceased on 24 July 2018. The relevant qualifying period for the purposes of Ms. Welham's application is a period of not less than 20 years down to 24 July 2018. The Committee is referred in this respect to the Inspector's report at paragraphs 6 to 8.

The qualifying requirements raise matter of fact and of law. In respect of matters of fact, the burden of proving that the qualifying requirements are met, rests with the Applicants. The standard of proof is the balance of probabilities. Thus, it is for the Applicants to provide on the balance of probabilities that the qualifying requirements are all met. The Inspector has addressed the burden of proof in his report at paras.29-30. The Committee is referred to those paragraphs of the report.

The Inspector, in his report, has set out in some detail the law concerning the qualifying requirements which are most relevant to the applications. The Committee is referred to the Inspector's report in this respect. However, and to assist the Committee a high level summary of the relevant requirements is set out below.

Use of the land for lawful sports and pastimes

Lawful sports and pastimes include normal recreational activities such as walking, dog walking, children's play and formal and informal ball and other games. The Courts have held that the scope of lawful sports and pastimes is wide. In substance, any type of lawful recreational activity which is indulged in on land may, in principle, fall within the scope of lawful sports and pastimes.

Use by a significant number of the inhabitants of a locality or of a neighbourhood within a locality

Use must be shown to be by a significant number of the inhabitants of a locality or of a neighbourhood within a locality.

A locality is required to be a legally recognised administrative area, such as a parish.

A neighbourhood is a flexible concept but must be an area with sufficient identity and cohesiveness to be recognised as such. A housing estate can and often is regarded as a neighbourhood.

Whether there has been use by a significance number of inhabitants of a neighbourhood is a matter of impression for the decision maker. What is required is a sufficient use to allow a conclusion that there has been use by the community rather than use by isolated trespassers.

Use as of Right

Use *as of right* means use without force, stealth or permission.

An issue which arises in respect of the applications before the Committee concerns whether use of the application land for lawful sports and pastime was by force. Use may, in principle, be made forcible and not as of right by the erection on the land by or on behalf of a landowner of an appropriately worded notice which makes clear that this the use of the land is resisted and is thus contentious.

The Inspector has set out in detail in his report the law concerning how use of land may become forcible and not as of right, particularly as a result of the erection of notices. The Committee is referred to those parts of the Inspector's report. The Applicants in particular have made submissions on the law in this (and other) respects, to which the Committee is referred.

Use for the requisite period

The relevant requisite periods are set out above.

Statutory Incompatibility

Where land is held by a body exercising statutory duties and powers, then it has been held by the Courts that such land may not, depending on the circumstances, be capable of being registered as town/village green.

Statutory incompatibility is addressed in the Inspector's Report and also in representations by the parties, to which the Committee is referred.

The outline procedure for how the City Council as CRA deals with TVG applications is at **Appendix 11**

(Legal advice provided by Nancy Rollason, Head of Service, Legal Services)

Land

There are no specific policy implications arising from this report

Personnel

Not applicable

Appendices:

- Appendix 1:** The Inspector's Report dated 14th March 2023
- Appendix 2 :** Letter from Harrison Grant Ring to CRA dated 5th April 2023
- Appendix 3 :** Submissions from the Applicants dated 11th April 2023
- Appendix 4 :** From the Applicants *Documents for consideration by the PROWG Committee*
- Appendix 5:** Email from Bristol City Council (as landowner) dated 11th April 2023
- Appendix 6:** Inspector's Supplemental Note
- Appendix 7:** Submissions From Bristol City Council (as Landowner) dated 9th June 2023
- Appendix 8:** Response to Inspector's Note of Counsel for Cotham School dated 9th June 2023
- Appendix 9:** Submissions from the Applicants dated 9th June 2023
- Appendix 10 :** The Inspector's Report dated 2nd March 2021
- Appendix 11 :** 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