

Public Rights of Way and Greens Committee

11 September 2023



Report of: Commons Registration Authority (CRA)
Title: Report to PROWG Committee
Ward: Citywide
Presenting Report: Anne Nugent Team Manager Legal Services

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

4. Context

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

The Commons Registration Authority (CRA) has two current applications:

4.1 Stoke Lodge Playing Fields Shirehampton Road

This application is to be registered on the CRA register and the entry to be placed on the land register has been sent to His Majesty's Land Registry.

4.2 Land at Ridgehill Henleaze

The application has been advertised on the application land and on the Council's website. Interested parties have been given until 13th September 2023 to respond. A map of the site is at Appendix 1. Thereafter the CRA will send any responses received to the Applicants and make a decision on how the Application should be dealt with in accordance with the outline procedure at Appendix 2.

5. To note with regards TVG Applications

Other Options Considered

6. None

Risk Assessment

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

Summary of Equalities Impact of the Proposed Decision

8. 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).

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.

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 (*nec vi nec clam nec precario*)

Use for the requisite period

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).

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.

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

Appendix 2

(Legal advice provided by Anne Nugent Solicitor/ Team Manager Litigation, Regulatory, & Community Team, Legal Services)

10. Land

There are no specific policy implications arising from this report

11. Personnel

Not applicable

Appendices:

Appendix 1: Map of Ridgehill TVG Site

Appendix 2: 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