

Public Rights of Way and Greens Committee



Report of: Commons Registration Authority (CRA)

Title: Report to PROWG Committee

Ward: Henleaze

Presenting Report: Tom Dunsdon , Solicitor, Legal Services

Recommendation

In a report to the PROWG Committee for the meeting of 22nd January 2024, in the application to register land at Ridgehill, Henleaze Bristol as a Town or Village Green (the Ridgehill TVG Application) under the Commons Act 2006 (CA 2006), in accordance with its Outline Procedure for Applications for Registration of Town or Village Greens (the Outline Procedure), the CRA recommended to the Committee that it appoint an independent inspector to make recommendations to PROWG on how to determine the application.

At the meeting on 22nd January 2024 the Committee resolved that a decision on the Ridgehill TVG Application be deferred pending further information to enable an informed consideration of all the facts pertaining to the application.

Summary

This report sets out the options available to the Committee in making its decision.

The significant issues in the report are:

To consider the further information provided by the CRA and processes under the Outline Procedure and the options available to the Committee to allow the Committee to make an informed decision



Policy

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

Consultation

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

Context

4. A plan/map of the application land is at **Appendix 1**
5. The Outline Procedure at **Appendix 2** outlines - how the Council as the Commons Registration Authority (CRA) deals with Town and Village Green applications. It sets out the steps that the CRA takes on receipt of an application and the options available to the CRA and to PROWG Committee in the disposal of that application.
6. In accordance with paragraph 6 of the he Outline Procedure

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.

6. The options available to the Committee are to (i) Dismiss the application (ii) where there is no significant conflict of evidence, or no significant objection accept the application on the paperwork and register the application as a Town or Village Green (iii) In other cases, if the Committee requires there to be a hearing and for the submission of oral evidence to give Directions for the form of that that hearing and the submission of the evidence .

Other Options Considered

- (i) appoint an independent inspector to report on the application,

Risk Assessment

- 7. If a decision is made to determine the application without obtaining recommendations from an inspector there is a risk that the decision could be challenged by way of judicial review proceeding as one objection states that the application is not supported by a significant number of the inhabitants of the locality, or neighbourhood within the locality. It is more cost effective to resolve that objection before determining the application.

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:

8.1 Eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.

8.2 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.

8.3 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. The Ridgehill TVG Application – Further information with Appendices

9.1 On 16th September 2022 the CRA received an application dated 13 September 2022 to register land at Ridgehill as a Town or Village Green under Section 15(2) of the Commons Act 2006 is at **Appendix 3**.

9.2 The application land is not owned or managed by Bristol City Council.

9.3 The CRA acknowledged receipt of the application. It is important to note that the CRA has no investigative duty in relation to applications which require it to find evidence or reformulate the Applicant's case. The CRA is entitled to deal with the application and evidence as presented by the parties.

9.4 The CRA did make enquiries with the local Planning authority, and the Planning Inspectorate (PINS) to ascertain whether there had been any trigger events under section 15C of the 2006 Act for the application to proceed any further.

9.5 On 6th December 2022 the Local Planning Authority confirmed that, from their records no trigger event had occurred. On 7th March 2023, PINS also confirmed that no trigger event had occurred.

9.6 On 3rd March 2023 the CRA wrote to the applicants informing them that, subject confirmation from PINS, as above, the application had been duly made under Regulation 5 (1) of The Commons (Registration of Town or Village Greens) (Interim Arrangement (England) Regulations 2007 (the Regulations) i.e. it had passed the preliminary requirements, and was to be proceeded with.

9.7 On 19th July 2023 Interested parties, including the landowner, were contacted to give them the opportunity to make objections.

9.8 On or about 19th July 2023, a Notice of application under Section 15 (1) was posted on the Council's website and on to the application land. An amended notice was posted on the land on or about 18th August 2023.

9.9 On 11th September 2023 the CRA received an objection from the landowner, The grounds of the Objection were that the landowner had made a landowner statement under Section 15A & B. A Copy of the objection is at **Appendix 4** and CA16 landowner statement dated 18th August 2023 is at **Appendix 5**

9.10 On 13 September 2023 the CRA received an objection (1) from a member of the public challenging the application at **Appendix 6** on that basis that the Applicants had *... not sought the opinion of all immediate residents in the vicinity or wider area, this is a minority group, if you were not a member of the neighbourhood watch, I doubt you would know what the plans were/are for this space....*

9.11 A Further Objection (2) at **Appendix 7** was received on 15th October 2023

9.12 On 14th September 2023 the landowner sent an addendum to his objection is at **Appendix 8.**, that the grounds of objection were that a planning application relating to the land had been made on 18th August and the application was a trigger event under section 15C.

9.13 A copy of the planning application- (proposed site plan) is at **Appendix 9**

9.14 On 15th September 2023 the CRA wrote to the landowner informing him that as the application post- dated the Ridgehill TVG application, a trigger event had not occurred, and the right to make such an application under section 15 (1) has not been excluded. A copy of the CRA's email is at **Appendix 10**

9.15 On 22nd September 2023 the CRA sent a copy of the objections received to the Applicants under Regulation 6(3) of the Regulations giving them to opportunity to respond to it.

9.16 On 26th September 2023 the Applicants responded, a copy of the responses are at **Appendix 11** and **Appendix 12.**

10. The objections to the application.

10.1 The Landowners objection is under Section 15A & 15B of the CA 2006.

10.2. It is the CRA 's view that the landowner's objections on the grounds of Section 15A and 15B and/or Section 15C are baseless because both the landowner statement and the planning application post-date the TVG application by approximately 11 months.

10.3 The Objection from the member of the public is on the ground that it does not meet the legal test under Section 15(2)(a) ie that it is not supported by a significant number of the inhabitants of the locality, or neighbourhood within the locality.

Legal and Resource Implications

11. Legal

i) The Commons Act 2006

The City Council in its capacity as CRA has responsibility under the Commons Act 2006 to determine whether 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

Section 15 (2) says

- (a) *significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and*
- (b) *they continue to do so at the time of the application.*

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. ‘Significant’ does not mean considerable or substantial. What is required is that the number of people using the land in question has to be sufficient use to allow a conclusion that there has been use by the community for informal recreation rather than use by isolated trespassers.

It is not necessary that the users come predominantly from the claimed locality or neighbourhood; provided that a significant number of the inhabitants of the claimed locality or neighbourhood are among the users, it does not matter that many or even most come from elsewhere. The requirement is that the users includes a significant number of of inhabitants of the claimed locality or neighbourhood, so as to establish a clear link between the locality or neighbourhood and the proposed TVG even if such people do not comprise most of the user.

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).

Sections 15A, 15B and Section 15C & Schedule 1A of the Commons Act 2006

- a) Sections 15A and 15B of the 2006 Act introduced ‘landowner statements’ and the registers for recording them. Landowner statements can prevent land being registered as a town or village green.
- b) Section 15C (as amended) states ‘*The right under section 15(1) to apply to register land as a town or village green ceases to apply if an event specified in the first column of the Table set out in Schedule 1A has occurred in relation to the land (“a trigger event”)*’.
- c) Section 15C excludes the right to apply for the registration of land as a town or village green where a trigger event has occurred in relation to the land. The right to apply for registration of the land as a green remains excluded unless and until a terminating event occurs in relation to the land. Trigger and terminating events are set out in Schedule 1A ‘*Exclusion of right under section 15: England*’ to the 2006 Act (and broadly relate to whether the land is identified for potential development in the planning system.

(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:	Map of Ridgehill TVG Site
Appendix 2:	Outline Procedure for Applications for Registration of Town or Village Greens approved by PROWG 25 th June 2012
Appendix 3:	Form 44 – application
Appendix 4:	Objection from the landowner
Appendix 5:	CA16 landowner statement dated 18th August 2023
Appendix 6:	Objection 1 from Member of the Public
Appendix 7:	Objection 2 From Member of the Public
Appendix 8:	Addendum to Objection from Landowner
Appendix 9:	Planning Application
Appendix 10:	CRA email to Landowner
Appendix 11:	Response from Applicant to Objection (1)
Appendix 12:	Response from Applicant to Objection (2)

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

Schedule 1A to the Commons 2006 Ac 2006