

**REGULATORY COMMITTEE**

**02 DECEMBER 2015**

**APPLICATION TO REGISTER LAND AT THE PADDOCKS, WOUGHTON ON THE GREEN, MILTON KEYNES, UNDER THE PROVISIONS OF SECTION 15 OF THE COMMONS ACT 2006.**

Contact Officer: - Andrew Burton, Rights of Way, 01908 252406.

**1. Purpose**

- 1.1 To inform Members of an application submitted to the Council by Cllr McDonald ("the Applicant") under the provisions of Section 15 of the Commons Act 2006 to register land known as 'the Paddocks' in Woughton on the Green as a village green ("the Paddocks" application).

**2. Recommendation**

- 2.2 That a non-statutory public inquiry be convened to determine the application to register land at the Paddocks, Woughton on the Green as a village green.
- 2.3 That an Inspector be appointed to chair the inquiry and to produce a written report for consideration by the Regulatory Committee to inform its determination of the application.

**3. The Registration of Village Greens**

- 3.1 Under the Commons Act 2006 ("the 2006 Act") Milton Keynes Council is the Commons Registration Authority for Milton Keynes. By virtue of the Council's Constitution, this function is delegated to the Regulatory Committee.
- 3.2 Section 15 of the 2006 Act provides that any person may apply to the Commons Registration Authority to register land as a village green. Land can become a town or village green where a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged, as of right, in lawful sports or pastimes on the land for a period of at least 20 years and, they continue to do so at the time of the application (s15(2)).
- 3.3 It is necessary for all of these criteria to have been met before a registration authority can register land as a town or village green and the onus of proof is on the applicant to do so.

#### **4. Application of registration**

- 4.1 The Paddocks application was submitted to the Council on 14<sup>th</sup> June 2014 by the Applicant, and validated on 18<sup>th</sup> November 2014. The application is to register a plot of land approximately 8.75ha bounded by the Grand Union Canal to the West, Chaffron Way (H7) to the North, Newport Road to the East and Adams Court to the South.
- 4.2 The Council is not only the registration authority for the area in which the land is situated (“the registration authority”) but is also the landowner of the particular land in question (“the Council as landowner”).
- 4.3 The application area was farmland bought under the control of the Milton Keynes Development Corporation (MKDC) and from there onto the Milton Keynes Parks Trust in 1992 (“the Parks Trust”).

#### **5. Determination of the Application**

- 5.1 Thus far, the Council has complied with the procedural requirements of the Commons (Registration of Town and Village Greens) (Interim Arrangements) (England) Regulations 2007 (“the 2007 Regulations”) including notification of the application and timescale for submission of objections.
- 5.2 The Registration Authority is under a “duty to adopt a fair procedure and to take reasonable steps to establish the facts to enable it to answer the statutory question” (*R v Cheltenham Builders Ltd v South Gloucestershire District Council* [2003] EWHC 2803).
- 5.3 In *Oxford City Council v Oxfordshire County Council* [2006] 2 AC 674, Lord Hoffman said that “in some cases fairness would make an oral hearing not merely an option but a necessity”. Such cases may be where there is a significant conflict of evidence of difficult legal points.
- 5.4 On the 23<sup>rd</sup> September 2015 the Regulatory Committee validated the Guide for the Registration of Town or Village Green Applications. The guide states that should an application be received whereby the land-owner is Milton Keynes Council then to ensure there is no bias it shall seek external independent advice on the application and receive a report and recommendation for Committee to review
- 5.5 The objector’s case goes directly to the question on whether or not the statutory tests have been met including primarily whether there has been 20 years usage, significant usage and whether the land has been enjoyed ‘as of right’ or not.
- 5.6 In such a case, written representations are not considered suitable because they do not allow the registration authority or an Inspector the ability to test the evidence orally and law that is needed in cases such as these where there is a serious dispute of facts and where there are complex issues of law.

5.7 First, there are serious issues of law and fact which should be tested by cross examination. In a case such as this where both parties are making factual assertions that contradict each other in relation to the use of the land, it is fair that the opportunity to test the evidence is afforded. This allows the Registration Authority to come to an informed decision on the evidence.

5.8 These difficult legal issues can be dealt with ably by a legal expert in the field of village greens who has the benefit of experience in this area and would be familiar with the legal intricacies. While the decision always remains that of the Regulatory Committee, the Inspector's report will distil the legal and factual issues in making its recommendation to the Committee.

## **6. Summary of Evidence and Objection**

6.1 The Council as landowner objected to the application on 12<sup>th</sup> August 2015 on the basis that:

- "The application comprehensively fails to satisfy the statutory tests for the registration of land as a Town & Village Green".

6.2 In addition the Parks Trust, on the 15<sup>th</sup> July 2015, objected on the following basis:

- "That the registration of areas of land as a town or village green only applies in circumstances where people have used the land for recreational purposes "as of right", which means without the landowner's permission for the past 20+ years. This isn't the case for this area of land, where its recreational use by the public has only ever been "by right", i.e. with the landowner's permission".

6.3 The nature of the councils objection is that the user evidence put forward by the Applicant is insufficient in degree to meet all of the aspects of the statutory tests (the requirement for user by a "significant number" of local inhabitants) and is also too trivial and sporadic to constitute the assertion of a public right.

6.4 The following points were made in the objection to assert that the statutory tests have not been met:

- Activities were trivial and sporadic;
- that use has been 'by right' rather than 'as of right';
- that 61 users does not represent a 'significant number'; and
- that there is insufficient evidence to support the claim.

6.5 The Applicant submitted a letter in rebuttal on 24<sup>th</sup> August 2015, in which he stated that, the principal of each of the tests are indeed passed and the objection fails to prove the point.

- 6.6 The Council as landowner responded on 16<sup>th</sup> September 2015 and stated that their comments are duly made in the objection bundle and that the comments are a matter of evidence that will be tested in due course.
- 6.7 On the 18<sup>th</sup> of September the applicant responded by stating he doesn't think any of the other points can be resolved without an inquiry.

## **7. Resource Implications**

- 7.1 If members accept the recommendation to determine the village green application by a non-statutory public inquiry, it is considered appropriate to appoint Counsel with experience in Village Green applications as an independent inspector. Given the amount and the nature of the evidence it is estimated will take 1 to 2 days including a site visit. The cost of Counsel will depend on the level of experience of the person appointed.
- 7.2 Additional resources will include administrative assistance to the Inspector and attendance by a legal officer and the Countryside Manager to assist with issues that may arise.
- 7.3 A suitable venue accessible to members of the public will need to be located and members of the public informed accordingly.