

## **Application to register land known as ‘The Glen’ at Minster-on-Sea as a new Village Green**

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A report by the Director of Environment and Waste to Kent County Council’s Regulation Committee Member Panel on Tuesday 14<sup>th</sup> September 2010.

Recommendation: I recommend that the County Council informs the applicant that the application to register the land at The Glen at Minster-on-Sea as a new Village Green has been accepted, and that the land subject to the application be formally registered as a Village Green.

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Local Members: Mr. A. Crowther

Unrestricted item

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### **Introduction**

1. The County Council has received an application to register land known as ‘The Glen’ at Minster-on-Sea on the Isle of Sheppey as a new Village Green from the Minster-on-Sea Parish Council (“the Applicant”). The application, dated 5<sup>th</sup> March 2009, was allocated the application number VGA610. A plan of the site is shown at **Appendix A** to this report and a copy of the application form is attached at **Appendix B**.

### **Procedure**

2. The application has been made under section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2008.
3. Section 15 of the Commons Act 2006 enables any person to apply to a Commons Registration Authority to register land as a Village Green where it can be shown that:  
*‘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;*
4. In addition to the above, the application must meet one of the following tests:
  - **Use of the land has continued** ‘as of right’ until at least the date of application (section 15(2) of the Act); or
  - **Use of the land ‘as of right’ ended no more than two years prior to the date of application**, e.g. by way of the erection of fencing or a notice (section 15(3) of the Act); or
  - **Use of the land ‘as of right’ ended before 6<sup>th</sup> April 2007** and the application has been made within five years of the date the use ‘as of right’ ended (section 15(4) of the Act).
5. As a standard procedure set out in the regulations, the Applicant must notify the landowner of the application and the County Council must notify every local authority. The County Council must also publicise the application in a newspaper circulating in the local area and place a copy of the notice on the County Council’s website. In addition, as a matter of best practice rather than legal requirement, the

County Council also places copies of the notice on site to provide local people with the opportunity to comment on the application. The publicity must state a period of at least six weeks during which objections and representations can be made.

### **The application site**

6. The area of land subject to this application (“the application site”) is known locally as ‘The Glen’ and consists of a large area of open space, approximately 9 hectares (22 acres) in size, situated at the centre of the village of Minster-on-Sea. It is bounded on its northern edge by the rear of properties in Wards Hill Road, on its eastern edge by Whybournes Chase, on its southern edge by the rear of properties on Queenborough Drive and on its western edge by properties in Hillside Road, Woodland Drive and The Glen. Access to the application site is via several entrances around the site.
7. The application site is shown in more detail on the plan at **Appendix A** and in the photographs at **Appendix C**.

### **The case**

8. The application has been made on the grounds that the application site has become a Town or Village Green by virtue of the actual use of the land by the local inhabitants for a range of recreational activities ‘as of right’ for more than 20 years.
9. Included in the application were 137 standard-form witness statements from local residents asserting that the application site has been available for free and uninhibited use for lawful sports and pastimes for at least 20 years. A summary of the evidence in support of the application is attached at **Appendix D**.
10. Also received in support of the application were a number of photographs showing the use of the application site (taken during the period 1980 to 2007), various press articles (dating from the period 1983 – 2008) reporting a regular Good Friday open air service taking place on the application site, as well as copies of insurance certificates (dated 1991, 1992 and 2000) verifying the existence of play equipment on the application site.

### **Consultations**

11. Consultations have been carried out as required. No responses have been received.

### **Landowner**

12. The application site is registered with the HM Land Registry under title numbers K948541, K948343, K198002, K278131 and K252033. All of these title numbers state the registered owner as being the Swale Borough Council.
13. Swale Borough Council has been contacted and has confirmed that it has no objection to the application.

## Legal tests

14. In dealing with an application to register a new Town or Village Green the County Council must consider the following criteria:
- (a) *Whether use of the land has been 'as of right'?*
  - (b) *Whether use of the land has been for the purposes of lawful sports and pastimes?*
  - (c) *Whether use has been by a significant number of inhabitants of a particular locality, or a neighbourhood within a locality?*
  - (d) *Whether use has taken place over period of twenty years or more?*
  - (e) *Whether use of the land 'as of right' by the inhabitants has continued up until the date of application or meets one of the criteria set out in sections 15(3) or (4)?*

I shall now take each of these points and elaborate on them individually:

### **(a) *Whether use of the land has been 'as of right'?***

15. The definition of the phrase 'as of right' has been considered by the House of Lords. Following the judgement in the *Sunningwell*<sup>1</sup> case, it is considered that if a person uses the land for a required period of time without force, secrecy or permission (*nec vi, nec clam, nec precario*), and the landowner does not stop him or advertise the fact that he has no right to be there, then rights are acquired and further use becomes 'as of right'.

16. In this case, there is no evidence to suggest that the use of the land by local residents has not been 'as of right'. The user evidence statements specifically ask witnesses to confirm that their use has been "without permission, without force or seeing notices to stop me and without being secretive". There is not mention of any challenges or restriction to use.

17. The evidence statements are supported by the physical state of the application site. Due to its vast size and open nature, it would be very difficult to secure the site in its entirety and as such there can be no suggestion that use has ever been with force. Although there are formal notices erected by Swale Borough Council on the site, these refer only to the existence of CCTV on the site and byelaws which prohibit the playing of golf, camping, entry to the site by motor vehicles and dog-fouling. The signs do not in any way attempt to discourage or prohibit use, nor do they confer any general permission for local people to use the application site.

18. In the absence of any evidence to the contrary, it can be concluded that use of the application site has been 'as of right'.

### **(b) *Whether use of the land has been for the purposes of lawful sports and pastimes?***

19. Lawful sports and pastimes can be commonplace activities including dog walking, children playing, picnicking and kite-flying. It is not necessary to demonstrate that

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<sup>1</sup> *R v. Oxfordshire County Council and another, ex parte Sunningwell Parish Council* [1999] 3 All ER 385

both sporting activities *and* pastimes have taken place since the phrase 'lawful sports and pastimes' has been interpreted by the Courts as being a single composite group rather than two separate classes of activities<sup>2</sup>.

20. Legal principle does not require that rights of this nature be limited to certain ancient pastimes (such as maypole dancing) or for organised sports or communal activities to have taken place. The Courts have held that '*dog walking and playing with children [are], in modern life, the kind of informal recreation which may be the main function of a village green*'<sup>3</sup>.
21. In this case, the user evidence statements refer to the use of the land for 'lawful sports and pastimes' as a generic category. In signing the statements, many people have elaborated on their use of the application site, and a selection of comments have been summarised at **Appendix D**. The activities cited include dog-walking, picnics, kite-flying, blackberrying, playing with children, recreational walking and ball games. It is clear that the situation of the site at the centre of a residential area and the nature of the site means that it both lends itself to, and actually has been used, for a range of recreational activities.

***(c) Whether use has been by a significant number of inhabitants of a particular locality, or a neighbourhood within a locality?***

22. The right to use a Village Green is restricted to the inhabitants of a locality or of a neighbourhood within a locality and it is therefore important to be able to define this area with a degree of accuracy so that the group of people to whom the recreational rights are attached can be identified.
23. The definition of locality for the purposes of a Village Green application has been the subject of much debate in the courts and there is still no definite rule to be applied. In the *Cheltenham Builders*<sup>4</sup> case, it was considered that '*...at the very least, Parliament required the users of the land to be the inhabitants of somewhere that could sensibly be described as a locality... there has to be, in my judgement, a sufficiently cohesive entity which is capable of definition*'. The judge later went on to suggest that this might mean that locality should normally constitute '*some legally recognised administrative division of the county*'.
24. At part 6 of the application form, the Applicant specifies the locality by reference to the location of the site and surrounding roads. This is not a legally recognised administrative boundary and thus would not satisfy the requisite legal test. However, the application site does fall within the administrative parish of Minster-on-Sea which is recognised at law and would be capable of constituting a locality for the purposes of the tests in section 15 of the Commons Act 2006.
25. Having established a relevant locality, it is also necessary to consider whether the use of the application site has been by a significant number of the residents of

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<sup>2</sup> *R v. Oxfordshire County Council and another, ex parte Sunningwell Parish Council* [1999] 3 All ER 385

<sup>3</sup> *R v Suffolk County Council, ex parte Steed* [1995] 70 P&CR 487 at 508 and approved by Lord Hoffman in *R v. Oxfordshire County Council and another, ex parte Sunningwell Parish Council* [1999] 3 All ER 385

<sup>4</sup> *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at page 90

that locality. The word “significant” in this context does not mean considerable or substantial: ‘a neighbourhood may have a very limited population and a significant number of the inhabitants of such a neighbourhood might not be so great as to properly be described as a considerable or a substantial number... what matters is that the number of people using the land in question has to be sufficient to indicate that the land is in general use by the community for informal recreation rather than occasional use by individuals as trespassers’<sup>5</sup>. Thus, what is a ‘significant number’ will depend upon the local environment and will vary in each case depending upon the location of the application site.

26. In this case, the application is supported by witness statements from 137 people living across the parish of Minster-on-Sea. This is shown on the plan at **Appendix E**. The evidence refers to regular usage of the site by local residents and as such it is possible to conclude that it has been in general use by the community.

***(d) Whether use has taken place over a period of twenty years or more?***

27. In order to qualify for registration, it must be shown that the land in question has been used for a full period of twenty years. Where there has been no challenge to the use of the land and use ‘as of right’ is continuing, the twenty-year period is to be calculated retrospectively from the date that the application was made.

28. In this case, the application was made in March 2009. Therefore, the relevant twenty-year period (“the material period”) is 1989 to 2009.

29. The fact that the user evidence submitted in support of the application consists of standard-form statements means that it is difficult to pinpoint exactly when each of the witnesses began using the applications site. In some cases, witnesses have helpfully elaborated on the exact period of use, but in nearly all cases witnesses attest to at least 20 years’ use.

***(e) Whether use of the land by the inhabitants is continuing up until the date of application or meets one of the criteria set out in sections 15(3) or (4)?***

30. The Commons Act 2006 requires use of the land to have taken place ‘as of right’ up until the date of application or, if such use has ceased prior to the making of the application, to fulfil one of the alternative criterion set out in sections 15(3) and 15(4) of the 2006 Act (as set out at paragraph 4 above).

31. In this case, there is no suggestion from the evidence submitted both in support of and in objection to the application that the use of the land by the local residents for the purposes of informal recreation has ceased prior to the making of the application.

32. Therefore, it appears that use of the land has continued up until the date of application and as such it is not necessary to consider the other tests set out in sections 15(3) and 15(4) of the Act.

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<sup>5</sup> *R (Alfred McAlpine Homes Ltd.) v Staffordshire County Council* [2002] EWHC 76 at paragraph 71

## **Conclusion**

33. From close consideration of the evidence submitted, it has been concluded that the legal tests concerning the registration of the land as a Town Green (as set out above) has been met.

## **Recommendation**

34. I recommend that the County Council informs the applicant that the application to register the land at The Glen at Minster-on-Sea as a new Village Green has been accepted, and that the land subject to the application be formally registered as a Village Green.

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The main file is available for viewing on request at the Environment and Waste Division, Environment and Regeneration Directorate, Invicta House, County Hall, Maidstone. Please contact the case officer for further details.

## **Background documents**

APPENDIX A – Plan showing application site

APPENDIX B – Copy of application form

APPENDIX C – Photographs showing application site

APPENDIX D – Summary of user evidence in support of the application

APPENDIX E – Plan showing the area within which users reside