

Report of the City Solicitor

Report to Scrutiny Board (Regeneration)

Date: 31 October 2011

Subject: Proposals to reform the process for the registration of land as town and village greens and to introduce Local Green Space designations

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

The government has put forward proposals to reform the registration process relating to towns and village greens. The most significant of these include a proposal to add a character test to the existing criteria for the registration of village greens and a bar on applications for village green status on land which is either subject to a planning application or planning permission or which is designated for development or as Local Green Space in a local or neighbourhood plan.

Complementary proposals are also included in the draft National Planning Policy Framework which were trail blazed in the recent Natural Environment White Paper. These propose that a new designation of land as Local Green Space should be introduced into the plan making process through both local and neighbourhood plans. The effect of designation would be to rule out new development except in very special circumstances.

Recommendations

Members are asked to note the contents of this report.

1.0 Purpose of this report

1.1 This report outlines proposals contained within recent government consultation documents to make changes to the current system for the registration of land as

town or village greens together with proposals to create a new designation of land as Local Green Space.

2.0 Background information

2.1 The government has produced three consultation documents over recent months which propose both reforms to the current statutory system for registering new village greens and also propose the creation of a new designation to protect green areas of particular importance to the community. These consultations are:-

- The Natural Environment White Paper
- Defra consultation on the registration of new town and village greens
- The draft National Planning Policy Framework (NPPF)

2.2 The aim of these reforms is to establish whether a better balance can be struck between ‘protecting high quality green space valued by local communities and enabling the right development to occur in the right place at the right time’¹. It is important to note that as all three consultations have only very recently closed it is too early to say to what extent the proposals will be taken forward in their current form.

3.0 Main Issues

3.1 Registration of land as Town or Village Greens – the present position

3.1.1 The statutory provisions - Section 15 of the Commons Act 2006:

Section 15 provides that anyone can apply to register land as 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 and pastimes on the land for a period of at least 20 years”

Other conditions also apply, but for simplicity, are not included here.

3.1.2 The process –

The Council is the registration authority for the purposes of the Commons Act and is required to fulfil a quasi-judicial function in determining whether the criteria set out in the legislation has been met and whether the application for registration can be granted. Although the initial steps which the Council is obliged to take are set out in regulations, (for example serving notices on landowners and advertising in the press) there is no prescribed statutory procedure for resolving the complex questions of fact and law that often arise in such cases.

It has become the accepted practice amongst registration authorities that where an application is contentious in nature and the evidence requires testing, an oral hearing will be necessary as part of the process. Best practice is to hold non-

¹ Richard Benyon, Minister for the Natural Environment and Fisheries in the foreword to the Defra Consultation on village greens

statutory hearings before an appointed 'Inspector' (usually counsel instructed for that purpose) where the evidence can be independently tested, with the Inspector producing a comprehensive report with recommendations for the Council. The substantive decision on such applications is taken by the Plans Panels in this authority.

3.2 Defra consultation on the registration of new town or village greens.

3.2.1 The consultation document identifies the following objectives of the proposed reforms:

- To strike a better balance between protecting high quality green space, valued by local communities, and enabling legitimate development to occur where it is most appropriate, and
- To ensure that when land is registered as a green, because of the exceptional protection afforded to new greens, the land concerned really does deserve the level of protection it will get.
- To improve the operation of the registration system where applications to register land as a green are made so as to reduce the burden on local authorities which are responsible for implementing the registration system, and on landowners.

3.2.2 The key proposals are:

- **Streamline sifting of applications:** This proposal would enable registration authorities to reject applications at an early stage where insufficient evidence had been submitted or where there was strong evidence that the application could not meet the criteria for registration.
- **Declarations by landowners:** Landowners would be given the opportunity to make a statutory declaration to negate any evidence of use of a claimed green during the period while the declaration remained in effect.
- **Character:** New legislation would add a 'character' test to the existing criteria for the registration as a green. Only land which is unenclosed, open and uncultivated would be eligible for registration.
- **Integration with local and neighbourhood planning:** This proposal would take decisions on the future of sites into the planning system. It would prevent registration of land which was subject to a planning application or permission for development of the site, or which was designated for development or as a green space in a local or neighbourhood plan.
- **Charging fees:** An applicant would be required to pay a fee when making an application. Legislation would allow each registration authority to set its own fee subject to a prescribed ceiling. It is not intended that the fee would allow for full cost recovery. Fees could be refundable if the application were granted.

3.2.3 The consultation document explains that it does not consider any proposals to relax the criteria for registration of new greens, or any proposals to diminish the level of protection afforded to greens. It further emphasises that the measures proposed are each intended to contribute to the achievement of the objectives for the review, but that only reform containing a comprehensive package of measures, together with the Government's proposals for a new Local Green Spaces designation, and

for neighbourhood planning set out in the Localism Bill, will fully deliver the objectives sought.

3.2.4 Defra expect to announce their conclusions following the consultation, early in 2012.

3.3 The Natural Environment White Paper, 'The Natural Choice'

3.3.1 On 7 June 2011 the government published the Natural Environment White Paper which included proposals to give communities new powers to designate protected green areas as part of local neighbourhood plans.

3.3.2 Little detail on this was contained in the White Paper which explained that consultation would take place later in the year through publication of the draft NPPF.

3.4 Draft National Planning Policy Framework – open space, sports and recreational facilities

3.4.1 Consultation on the draft NPPF took place between July and October this year, and the draft document has received a great deal of media coverage during this time. It is a wide ranging document seeking to replace over a thousand pages of national planning policy with around fifty pages. A consultation response to the document was considered by the Council's Executive Board on 12 October.

3.4.2 The document makes reference to the designation of land as Local Green Space within the Section of the NPPF headed 'Planning for People/Sustainable Communities' at paragraphs 130 - 132. This state:

"130. Local communities through local and neighbourhood plans should be able to identify for special protection green areas of particular importance to them. By designating land as Local Green Space local communities will be able to rule out new development other than in very special circumstances. Identifying land as Local Green Space should therefore be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services. Local Green Spaces should only be designated when a plan is prepared or reviewed, and planned so that they are capable of enduring beyond the end of the plan period.

131. The Local Green Space designation will not be appropriate for most green areas or open space. The designation should only be used:

- Where the green space is in reasonably close proximity to a centre of population or urban area
- Where the green area is demonstrably special to a local community and holds a particular local significance because of its beauty, historic importance, recreational value, tranquillity or richness of its wildlife
- Where the green area concerned is local in character and is not an extensive tract of land; and
- If the designation does not overlap with Green Belt.

132. Local policy for managing development within a Local Green Space should be consistent with policy for Green Belts.”

4.0 Observations

- 4.1** The Defra consultation makes it clear that in order to meet their objectives, the measures proposed in their review and the government’s proposal to create a new designation of Local Green Space must be viewed as a package. They conclude that the collective impact of these proposals will be to:
- Focus applications on sites which are more likely to be successful
 - Increase landowners’ powers to safeguard their land from registration (particularly where development is already in train)
 - Ensure that sites that remain eligible for registration are likely to conform to popular perception of a green
 - Increase the efficiency of the registration process by both discouraging speculative applications and swiftly rejecting those which persist
 - Ensure that communities can continue to protect valued green spaces through the planning system, even where registration as a green is no longer possible
- 4.2** The Council’s position – As a registration authority the Council is legally obliged to determine town and village green applications. Experience has demonstrated that such applications are often controversial and in the majority of cases landowners will oppose the applications. In many cases the applications lead to a public inquiry and we have also had experience of legal challenge to the eventual decision in the courts. The cost to the Council in dealing with a town or village green application can therefore be substantial. Additional costs may be incurred by the Council in cases where the Council is also the landowner of the application site.
- 4.3** The proposed changes to town and village green procedures relating to the introduction of streamline sifting, fees and landowner declarations are considered as welcome changes but minor ones, the impact of which are not expected to be significant.
- 4.4** However, it is anticipated that if a ‘character test’ is introduced, this would have a greater impact. The effect of the proposed character test would be to place a further restriction on the eligibility of applications for village green status by limiting these to land which is ‘unenclosed, open and uncultivated’, the aim being to limit village green status to those parcels of land which are popularly perceived as ‘village greens’ in character. The difficulty with this is that by prescribing further particular criteria, a potential application may fall foul of one or more of the limitations (possibly on a technicality) and would automatically be ruled as ineligible. For example, a number of application sites are enclosed with access points such as stiles and unlocked gates, so would these be considered as ‘enclosed’?. A change to primary legislation will be required to bring this into force, and it will be of

particular interest to note whether any new legislation seeks to further define these terms.

- 4.5** The second substantive change put forward is the proposal to integrate the registration process with local and neighbourhood planning. What this would mean is that an application to register a green could not be made in respect of land which had the benefit of planning permission or was subject to a planning application or even statutory pre-application consultation. This measure is aimed at preventing village green applications being submitted for the purpose of blocking proposed development. Similar restrictions are also proposed in respect of land designated for development or protected by a Local Green Space Designation in a local or neighbourhood plan. By introducing a proposal in these terms, there is a risk that this may encourage a race between residents and developers to submit speculative village green and planning applications respectively. This proposal is linked very closely however with the NPPF proposal to designate Local Green Space which is considered to be a better route to ensure that the consideration of a site's future is placed in the hands of local people and the Council.
- 4.6** The proposals for the designation of Local Green Space do however raise a number of questions which go unanswered in the current draft of the NPPF. Firstly, it is not clear what areas of green space it would apply to and the terminology is open to differing interpretation. It is also not clear who, if anyone would be responsible to maintain the land in its current form once designated or whether for example the local authority would hold any powers of enforcement. Importantly, no rights of access are created or protected through the designation; this is not an alternative route to establish village greens. It is also unclear how it would be ensured that identifying land as Local Green Space 'would be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services' (Para 131).
- 4.7** The process of designation however would be through the plan making process for local and neighbourhood plans. Proposals for neighbourhood plans themselves are new and untested, and are contained within the Localism Bill currently being debated in the House of Lords as part of its parliamentary process.

5.0 Conclusions

- 5.1** It is too early to say whether all of these proposals will be brought in in their current form, and at present it is a case of maintaining a watching brief. It is apparent however that the proposed changes to village green legislation and the planning process are comprehensively interlinked in respect of their relationship with and impact on proposed development. As such the consequences will be different if these are only partly implemented, or even if there is a significant delay between introducing different parts which could be the case due to the need for primary legislation.

6.0 Recommendations

- 6.1** Members are asked to note the contents of this report.

7.0 Background documents

Commons Act 2006

Defra consultation on the registration of new town or village greens

Draft National Planning Policy Framework