Open Spaces Society

Appendix 2

RESPONSE FOR MEMBERS

DEFRA'SCONSULTATION ON THE REGISTRATION OF NEW VILLAGE GREENS

The Open Spaces Society (formally the Commons, Open Spaces and Footpaths Preservation Society) was founded in 1865 and is Britain's oldest national conservation body. It campaigns to protect common land, village greens, open spaces and public paths, and people's right to enjoy them.

Introduction

The society, over the past two years, has held discussions with ministers including the former Environment Minister, Huw Irranca-Davies, about the process of registering land as a village green under section 15 of the Commons Act 2006. We are disappointed that our proposals for straightforward changes in regulation, such as time limits, have been ignored. It is accepted that the system could be improved to benefit all those involved; however, we would question the objectives and aims of the reforms, which appear to be predicated on reducing costs to local authorities, who have a duty to determine applications, and to landowners.

The planning system is not undermined by greens' claims, in particular because a process requiring 20 years use to mature cannot be used in an attempt to frustrate a planning application which is determined in a small fraction of that time.The Countryside and Community Research Institute (CCRI) study in 2009 found a majority (52%) of applications were not triggered by a planning application to develop a site and 61% of cases were not triggered by a proposal for development of the site in the Local Plans. There is no evidence base for such a radical reform.

The Government's commitment to introduce a Local Green Space Designation is cited as a reason for reforming the village green registration system. However, the 'commitment' has already been weakened as the designation will not be statutory.

This consultation proposes measures which will severelyrestrict village green applications and trumpets the new green space designation as a 'suite' of measures in mitigation. The designation is not yet in force and given the criteria, proposed mechanism, the lack of public access and the impact of the presumption in favour of development, it should not be regarded as either an additional or substitute tool to protect land for local communities to use.

Q1 Taking account of the Government's plan for the new Local Green Spaces designation, do you agree that the problems identified with the present greens registration system are sufficient to justify reform –so that the no change option should be rejected?

We believe it is not appropriate to link the proposed new green space designation with the review of the village green registration system.

The designation is an entirely new process and there is no evidence to suggest that new areas will be designated. The new designation will not give access to the land for the public to use.

The National Planning Policy Framework (NPPF) states (paragraph131) that the new designation will not be appropriate for most green areas or open space and can only be instigated when a plan is prepared and reviewed. This would appear to limit the opportunity for land to be designated. It is not clear how local communities are to engage in the process or how the local authority will decide which areas of land will be designated. The criteria appear extremely subjective, i.e. land seen as 'special' (paragraph131). Also, the Impact Assessment of the NPPF (page 81) states 'the presumption in favour of sustainable development will ensure that the new designation does not restrict development'.

In view of the above, it is misleading to use the proposed new designation as justification for reviewing the village green process; they are entirely separate issues.

Q2 Do you support the proposal to streamline the initial sifting of applications?

The initial sifting of applications could be improved provided the necessary safeguards as to impartiality, fairness and transparency could be guaranteed.

We support a basic evidence test by which applications are rejected on grounds of insufficient evidence as long as an applicant could submit a better substantiated claim within a specified period. However, there must be detailed guidance for all parties involved.

Once an application has been accepted as duly made, there should be early consultations between the registration authority, applicant and landowner to see if agreement can be reached.

Clear standards need to be established otherwise there is a risk that applications will be rejected in error or without due consideration. Any process resulting in permanent removal of cases without a proper hearing needs to be very carefully thought through.

Q3 Do you agree that an initial determination should be made by the registration authority after inviting initial comments from the owner of the land affected by the application?

We do not agree with this proposal as it stands. Applicants should be allowed to respond to the owner's comments. Applications must be considered on merit and there should be a full investigation of each case.

Any new process must be seen to be fair and reasonable and formal guidance should be introduced to ensure national consistency across all registration authorities.Safeguarding of the applicants' interest must be paramount.

How objective will a landowner's 'initial' comments be in the light of constraints on his future use of the land? Also, what influence will resource and budget factors have on the weight given to landowners' comments?

Q4 Do you support this proposal to enable landowners to make a deposit of a map and a declaration to secure protection against future proposals to register land as a green?

We agree that there should be a mechanism closely based on, or even linked with, section 31(6) of the Highways Act 1980, but only if the process is clear and there are safeguards to make the public aware of land which is subject to a declaration.

The declaration should not take effect until two years after it has been made and it should only be deemed to have been made on the date the declaration is publicised.

The declaration must be made public together with clear details of how to challenge it. Declarations should not be capable of being made in respect of land registered as common land.

Q5 Should landowners or registration authorities be required to take additional steps to publicise a declaration, to ensure that potential users know that they have limited time to make an application to register the land as a green? If so, what steps do you propose?

Additional steps should be taken to publicise any declaration, sending information to a parish council is not sufficient to protect the public interest. A site notice should be erected and either a dedicated website set up or information published on the council's website. Local groups, such as scouts and guides, should be informed as well as the Local Access Forums.

Q6 Do you support a proposal to introduce a character test to ensure that greens accord with the popularly held traditional character of such areas?

We oppose the introduction of a 'character test' to ensure that greens accord with the popularly held traditional character of such areas. The concept misses the point of registration of land as a green and is contrary to the law. Local people have to show that they have established a right to use the land over a 20 year period, in accordance with the section 15 criteria.

The test is subjective and ambiguous. Many areas have fenced or partially fenced boundaries but there are open access points. Many sites include woodland and scrub. It is unreasonable to exclude post-industrial sites which, in some cases, are the only spaces available to local communities.

The tests would be disastrous for the registration of land as greens as many areas that could currently satisfy the section 15 criteria would fail the 'character test' and not be able to be registered, with the local community losing land that they have established a right to use.

Q7 Do you agree with the character test in para 5.5.9 above, i.e. that land must be open and unenclosed in character? Do you support the adoption of additional criteria such as those in para 5.5.11 above?

We object to this proposal and believe it would be contrary to the public interest. The present criteria are stringent and complex and the introduction of additional tests would make the system unworkable, and would lose rather than maintain public support in the system.

Q8 Do you support the proposal which would rule out making a greens registration application where a site was designated for development in a proposed or adopted local or neighbourhood plan?

We do not support the proposal and believe there is no justification for introducing it given the CCRI findings. 61% of cases were not triggered by a proposal for development in a plan. It appears that development will be allowed at the expense of protection as a village green.

Q9 Do you support the proposal that a greens register application could not be made after application for planning permission has been submitted in respect of a site, or on which there was statutory pre-application consultation, until planning permission had itself been refused or implemented, or had expired?

We object to this proposal. More than half of applications in the CCRI report were not triggered by a planning application. Better links should be established between commons registration officers and planning departments.

One of the major problems in the planning system is that planning officers frequently do not allow consideration of village green issues (ie use by local people under section 15, or an on-going village green application) to be given as a material issue for planning purposes.

Section 38 of the Planning and Compulsory Purchase Act 2004 states that decisions on planning applications 'must be made in accordance with the development plan unless other material considerations indicate otherwise'. A greens registration claim is entirely consistent with this statutory directive.

All material considerations must be related to the purpose of planning legislation which is to regulate the development and use of land in the public interest. The very nature of qualifying use in the case of greens claim demonstrates the public interest.

If this proposal is given effect, no planning application should be permitted to be made where land is designated as an open space or has been awarded the proposed new green space designation in a local or neighbourhood plan, and an application for a village green should be allowed within a prescribed time limit of a planning application being submitted.

Q10 Do you support the proposal to charge a fee for applications?

We do not support the charging of a fee because applications are made for public benefit and there should not be a charge for registering a right that has already been established.

Q13 Do you support the adoption of all the proposals set out in chapter 5.3 to 5.7 above?

No, we do not support the adoption of all the proposals set out in chapters 5.3 to 5.7.

We believe that the introduction of the proposals as above would be sufficient to address the perceived problems raised in the consultation.

Q14 Do you support the adoption of the character test in relation to the voluntary registration of land as a green, under section 15(8) of the 2006 Act?

There is no justification for subjecting landowners to passing a character test for land they wish to register voluntarily as a village green.

Views invited 15 Do you have any other proposals for reform to the greens system which would help deliver the objectives set out in paragraph 1.3.5 above?

We believe the introduction of time scales for every stage of the process would be the most effective method of dealing with concerns about delay. At present the only time limit is the six week objection period.

There should be a basic evidence test subject to the provisos raised in response to questions 2 and 3.

The authority should have the power to dismiss irrelevant objections.

There should be consultation between the registration authority, applicant and landowner at an early stage.

There should be much greater liaison between planning authorities and registration authorities and village green user of land should be a material consideration in planning applications.

We support the recommendations in the CCRI paper

- Duly made greens applications to be logged with planning departments and planning departments to inform registration authorities of any planning applications affecting a potential green (para 77.7.1 and 2).
- Successful greens applications logged with planning department (7.7.3).
- Local planning authority to consult commons registration officers in preparing local development framework/plan (7.7.4).

A panel of experts should be set up to avoid the employment of costly barristers to determine applications.

Consideration should be given to informal hearings and greater consideration of written representations.

Once an application has been determined, to avoid judicial review, applications could be considered by the Lands Tribunal or other relevant body.

Views invited 16/17 Do you wish to see any of the reforms set out in paragraph 5.11.1 above addressed in new legislation on greens?
If so, which of these reforms are a priority for action, and what outcome do you seek to achieve?

We do not believe there is any need to deal with reassigning title to greens vested in local authorities.

We believe section 29 Commons Act 1876 and section 12 Inclosure Act 1857 allow the provision of certain facilities on land registered as a green where it is 'with a view to the better enjoyment of the green'. There is therefore no need to consider this issue.

Parking issues do cause problems on village greens. In principle, we would be opposed to granting consent for temporary parking as it may interfere with the rights of local people to use the land. However, it may be considered with very strict conditions.

We would ask that consideration be given to the following:

- Section 14 of the Commons Registration Act 1965 should be properly repealed nationally by national rollout of Part 1 of the Commons Act 2006. It

is prejudicial to people who have registered land as greens and are outside the current seven pioneer areas where section 14 has been repealed. Prejudice is also being caused where the registration authority has an interest in the outcome of a decision. At present it is only the seven pioneer areas where an application can be referred to the Planning Inspectorate for determination,

- Introduction of new powers for local planning authorities to issue enforcement notices in respect of breaches of section 29 Commons Act 1876 and section 12 Inclosure Act 1857. This would be a pre-court option which could then be pursued through the courts or any other prescribed action if the notices are not complied with. This was proposed in the Common Land Policy Statement 2002 (Defra).
- Where land is provided as open space as part of a development (possibly under Community Infrastructure Levy) it should be required to be registered as a village green
- Express power for local authorities to accept withdrawal of applications
- Express power for local authorities to register part of an application area where the criteria have not been satisfied for the whole of the area.