

Report of: Director of City Development

Report to: Executive Board

Date: 7 March 2012

Subject: A response to a request from Scrutiny Board (Regeneration) for a late submission to Defra on its Consultation to Reform the Process of Registration of Land as Town and Village Greens and to Introduce Local Green Space Developments

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 checked="" type="checkbox"/> Yes	<input 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

1. During July to October 2011, Defra undertook consultation on the reform of the registration of town and village greens. Following discussions with officers from City Development, the City Solicitor submitted responses to the consultation both as Commons Registration Authority and as landowner,.
2. Subsequently on 31 October 2011, and at the request of Scrutiny Board (Regeneration), the City Solicitor prepared a report which summarised the key changes proposed by Defra in its consultation document on the reform of the registration process together with the proposal in the draft National Planning Policy Framework (NPPF) to introduce Local Green Space Designations. Although the report itself was not intended as a response to the consultation, it was confirmed to the Board that an officer response had previously been submitted. The Board took the view that the Council should prefer and therefore support representations to the consultation made by the Open Spaces Society (OSS) who generally oppose the reform proposals put forward by Defra, and determined to seek Executive Board support to a late submission to Defra based on that of the Open Space Society (OSS),
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. The reforms are aimed at ensuring that more applications submitted are legitimate applications for the nature of the land being

applied for and will reduce the burden on local authorities responsible for implementing the registration system.

4. If land is registered as a town and village green, there are several potential areas of conflict between the local inhabitants' use of the land and the Council's role as land manager. The Council's role is to manage greenspace to the equal benefit of all citizens yet Defra's guidance makes a distinction between 'local inhabitants' and the public at large. The right to enjoy lawful sports and pastimes on a green is only afforded to local inhabitants. Therefore the rights of the local inhabitants are greater than the rights granted to the public at large.

Recommendations

5. Executive Board is requested to note:

- the Council's response to consultation undertaken by Defra regarding the reforms to the registration of town and village greens;
- the issues identified for the Council in relation to the registration and future management of land designated as a town and village green;

and seek approval to:

- decline the request of the Scrutiny Board (Regeneration) for the Council to make a late submission to Defra following its consultation on proposals to reform the process of registration of land as Town and Village Greens and to introduce local Green Space Developments based on the submission made by the Open Space Society.

1.0 Purpose of this report

1.1 The purpose of the report is to inform Executive Board of:

- the Council's response to consultation undertaken by Defra regarding the reforms to the registration of town and village greens;
- the issues identified for the Council in relation to the registration and future management of land designated as a town and village green.

and seek approval to:

- decline the request of the Scrutiny Board (Regeneration) for the Council to make a late submission to Defra following its consultation on proposals to reform the process of registration of land as Town and Village Greens and to introduce local Green Space Developments based on the submission made by the Open Space Society.

2.0 Background information

2.1 This report outlines for Members some of the background to Town and Village Green registration and comments specifically on the appropriateness of using the Open Spaces Society's response on behalf of the Council. The report considers the definition of a Town and Village green, their protection, the Council's role as a landowner, the Open Spaces Society's response to Defra and some of the generic and specific issues that this gives rise to for the Council.

2.2 Definition and Registration

2.2.1 Town and village greens have developed under customary law as areas of land where local people indulged in lawful sports and pastimes. These might include organised or ad-hoc games, dog walking, picnics, fetes and similar activities.

2.2.2 Section 15 (1) of the Commons Act 2006 provides that:-

Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2) (3) or (4) applies.

2.2.3 Applications will ordinarily be made under the provisions of Section 15 (2) of the Act. This subsection applies:-

(a) 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

2.2.4 It is also possible for applications to be made under either:-

- (i) Section 15 (3) where a minimum 20 year period of use ceased before the time of the application but after the 6th April 2007 and the application is made within 2 years of the date that the use coming to an end, or

- (ii) Section 15 (4) where a minimum 20 year period of use ceased before 6th April 2007 and the application is made within 5 years of the date that the use came to an end.

2.2.5 Each of the criteria set out in Section 15 (2) must be satisfied in order for a village green application to be satisfied.

2.2.6 Any application for the registration of a village green will:

- need to show on a map the area to register and the locality or neighbourhood in which those using the green 'as of right' live;
- need to show that a significant number of those people who live in the locality or neighbourhood have used the land for lawful sports and pastimes;
- need to show that those people living in the locality or neighbourhood using the green have done so without permission, without being stopped or seeing notices which stop them, and without being secretive about it, and that between them they have done this for a continuous period of 20 years.

2.3 Protection of Town and Village Greens

2.3.1 Town and Village greens once registered, are protected by Section 12 of the Inclosure Act 1857 against injury or damage and interruption to their use or enjoyment as a place for exercise and recreation. It is a criminal offence to cause injury or damage to village greens i.e.

- Wilfully cause injury or damage to any fence on a green;
- Wilfully take any cattle or other animals onto a green without lawful authority;
- Wilfully lay manure, soil, ashes, rubbish or other material on a green;
- Undertake any act which causes injury to the green (e.g. digging turf);
- Undertake any act which interrupts the use or enjoyment of a green as a place of exercise and recreation (e.g. fencing a green so as to prevent access).

2.3.2 Under section 29 of the Commons Act 1876, together with section 12 of the Inclosure Act 1857, a person who:

1. encroaches on, or encloses a town or village green or a recreation ground allotted by an inclosure award, or
2. erects anything on, disturbs or interferes with that green or ground otherwise than for its better enjoyment for its proper purpose may, on the information of any inhabitant of the parish in which the green is situated, be summarily convicted by the magistrates' court and fined at level 1 on the standard scale.

2.3.3 Where an offence has occurred, a prosecution in respect of section 12 of the 1857 Act can be brought by a churchwarden, the owner of the green, or by a parish, town or district council. Any inhabitant of the parish can bring a prosecution under section 29 of the 1876 Act.

2.3.4 In addition, the owner of a green cannot do anything that interferes with the lawful recreational activities of the local inhabitants. Village greens in local authority ownership are often managed under the Open Spaces Act 1906 by the imposition of bylaws or with a scheme of regulation under the Commons Act 1899.

2.4 The Council's Role in Land Management

2.4.1 City Development through the Parks and Countryside service is responsible for managing all of the city's public open space, almost 4,000 hectares of land. This includes 7 major parks, 62 community parks and 95 recreation grounds, and 155 hectares of local green space, which include 144 playgrounds and 500 sports facilities ranging from skateboard parks to golf courses, and which play host to 600 events annually. There are also 96 allotment sites, 812km of public rights of way and 156 nature conservation sites, as well as 22 cemeteries and 3 crematoria managed by the service.

2.4.2 The Parks and Greenspace Strategy for Leeds sets out the key priorities to 2020 to achieve a vision where 'quality, accessible parks and greenspaces are at the heart of the community, designed to meet the needs of everyone who lives, works, visits or invests in Leeds, both now and in the future'. The Strategy is centred on the following key aims:-

- Places for People: to engage communities in promoting parks and greenspaces as accessible spaces for everyone to enjoy;
- Quality Places: to provide good quality parks and greenspaces that are well managed and provide a range of attractive facilities;
- Sustaining the Green Realm: to plan for, develop new and protect existing parks and greenspaces that will offer lasting social, cultural and environmental benefits for the people of Leeds;
- Creating a Healthier City: to promote parks and greenspaces as places to improve health and well-being and prevent disease through physical activity, play, relaxation and contemplation;
- Supporting Regeneration: to promote liveability and the economic benefits of quality parks and greenspace provision as an integral part of major regeneration projects;

2.5 The Open Spaces Society (OSS)

2.5.1 The Open Spaces Society (OSS) campaigns to protect common land, village greens, open spaces and public paths and people's right to enjoy them. Generally, the OSS do not support the proposals for reforming the registration process for town and village greens.

3.0 Main issues

3.1 Defra Consultation on Reforms for the Registration of Town and Village Greens

3.1.1 In July 2011 Defra undertook consultation on the registration of new town of village greens. The scope of the consultation was to seek views on reforming the arrangements for the registering of new town or village greens. The Defra

consultation on the registration of new town and village greens ended on the 17th October 2011.

3.1.2 The Defra consultation document sets out measures which Defra propose to adopt, to reform the registration system of Town and Village Greens. The consultation is to test whether the proposed reforms are appropriate and proportionate. The objectives of the reforms, as stated in the consultation document are:

- 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;
- 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.

3.1.3 The key reform proposals from Defra, consist of:

- **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 Test:** 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.

3.1.4 In considering the issue of Town and Village Greens, it is important to note the position of the Council as a landowner and in particular as the main provider of public open space in the city. Paragraph 2.2.3 highlights that any application needs to show that those people living in the locality or neighbourhood using the green have done so without permission, without being stopped or seeing notices which stop them, and without being secretive about it, and that between them they have done this for a continuous period of 20 years. With respect to public open space provided by the Council, officers would promote that its use is usually with the consent of the Council as landowner on the basis that the land has been managed and provided expressly for the purpose of public open space and lawful sports and pastimes.

- 3.1.5 It is the case that there may be specific circumstances where it is appropriate for the Council to support the conversion of its land to Town and Village Green status. However, given the importance placed on public open space in the city, officers feel that care needs to be taken in considering the potential impact of converting land to Town and Village Greens.
- 3.1.6 Accordingly, to help exemplify some of the issues that Members are advised to consider, outlined below are some of the generic issues that arise when considering Town and Village Green status and also the specific issues that relate to the OSS consultation response.

3.2 Generic Issues

- 3.2.1 In considering the generic issues that arise when looking at Town and Village Green issues Members are asked to consider the Defra publication, “the Management and Protection of Registered Town and Village Greens, published in January 2010 (Appendix 1).
- 3.2.2 Defra’s publication highlights some of the frequently asked questions that arise when considering Town and Village Greens and consequently a number of issues for Members to consider:
- Firstly it is clear that the rights afforded through Town and Village Green status apply only to those people who live in the community defined in the application for registration. Defra highlight that “the right to enjoy lawful sports and pastimes on a green does not extend to the public at large, but is only exercisable by inhabitants of the locality in which the green is situated.” Currently, the Council provides public open space on an equal basis for all the people of Leeds. Officers would therefore recommend that care is taken when considering Town and Village Green proposals for the Council’s public open space, given that it will change the rights upon which people use the space and the impact of this change over the long term is difficult to predict with certainty.
 - Registration of Council land could impact on the way that it is managed by the Council and the way in which the Council sometimes charges for use, particularly for organised team sports and events. Defra indicate that “Inhabitants of the locality within which a green is situated have the right to use that green for lawful sports and pastimes. By definition any right can be exercised free of charge.” Given that the Council charges for pitch hire and sometimes the use of land for events, any such change may alter the way in which the Council charges in the future and its freedom to do so.
 - The Council may not be able to undertake works to land that is registered as a Town or Village Green with the freedom that it does now. Members will be aware that the Council has placed fences around public open space on an increasingly frequent basis to prevent unauthorised vehicular access. In addition, sports team also often need spectator rails to be erected to ensure that they comply with the relevant sporting governing body standard. However, should Council land be registered as a Town and Village Green then any such proposals will need to be considered in the context of the rights of the defined locality to use the space for lawful sports and pastimes and as such the Council may not have the same freedoms to undertake works in the way that it does now.

- Members will also need to consider the relative permanency of Town and Village Green status. Defra indicate that “Under section 16 of the Commons Act 2006 an owner of a green may apply to the Secretary of State for land to be released from registration. If successful, such an application would result in the land no longer being subject to protection as a green.”
Defra also indicate that, “if the ‘release land’ is more than 200 square metres in area, an application must be made to register ‘replacement land’ as a green in its place. If the release land is smaller than 200 square metres, a proposal for replacement land may be included, but there is no absolute requirement.”

3.2.3 In view of the above Members are advised to consider the long term impact of changing Council land to Town and Village Green status. Consideration should not only be given to any current issues that arise with respect to the management and provision of public open space, but also to how they may develop in the future and the level of uncertainty that this brings.

3.3 Specific differences between the OSS consultation response and the response submitted by officers on behalf of the Council as landowner and Commons Registration Authority

3.3.1 In the context of the generic issues highlighted above, there are a number of specific issues on which the previous response by officers differs from that of the OSS. These are highlighted below.

The Proposal to streamline the initial sifting of Applications

The OSS recognises that this could be improved, but only supports a basic evidence test by which applications are rejected on grounds of insufficient evidence, as long as an applicant can submit a better substantiated claim within a specified period. As landowner and Commons Registration Authority, officers recommend that the Council supports a basic evidence test without conditions. If an application is defective, it should be rejected – the applicant always has the ability to make another application.

The Proposal to Introduce a Character Test

The OSS opposes the introduction of a ‘Character Test’ and also the proposed wording of the test, namely whether the land is ‘unenclosed, open and uncultivated’. Officers recommend that as landowner, the Council supports the principle of the introduction of a ‘Character Test’ which would allow applications for greens which are perceived to be traditional in character – i.e. those that are the focal point of the community and easily accessible. Officers consider that the introduction of a character test would ensure that the village green application process remains available to communities in appropriate cases, whilst allowing the Council, as guardian of a significant amount of green space, managed and maintained for the wider public, to carry out that role without the potential for that broader use to be diminished as a result of registration as village green.

The Proposal to rule out making a greens registration application where a site was designated for development in a proposed or adopted local or neighbourhood plan.

The OSS opposes this proposal. Officers recommend that as landowner, the Council supports this proposal, provided that the designation of the land is

consulted on and publicised during which time an application to register that land could be made.

The proposal that an application to register land could not be made after an application for planning permission has been submitted until either planning permission has been refused or implemented or had expired.

The OSS opposes this proposal. Officers recommend that as landowner, the Council supports this proposal as it gives clarity to the status of the land and enables development proposals to proceed to a natural determination.

The proposal to charge a fee for applications (suggested ceiling £1000)

The OSS opposes the principle of a fee but without prejudice, if a fee were to be imposed then a ceiling of £200 should be set. As landowner and Commons Registration Authority, officers recommend the Council supports this proposal as it would discourage spurious or vexatious applications.

- 3.3.2 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 (now the Localism Act 2011), will fully deliver the objectives sought.

4.0 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 This report outlines the Council's response to date on a consultation undertaken by Defra with regards to proposed reforms to its registration of town and village greens, in its role as Commons Registration Authority and landowner. As such it is not a Council proposal and therefore not something that can be consulted on at this point in time.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 As this report is seeking a decision on whether to submit a late response to a consultation undertaken by DEFRA regarding the process of registration of land as Town and Village Greens it is not relevant for an EIA or screening form to be undertaken at this time.
- 4.2.2 Equality Impact screening and/or EIA will be required however, for the assessment of individual applications for Town and Village Green status, on receipt of an application for a specific site.

4.3 Council policies and City Priorities

- 4.3.1 As yet this issue does not have any direct links to Council Policies or City Priorities. However there could be implications for the Draft National Planning Policy Framework and Local Development Framework if the recommendation proceeds.

4.4 Resources and value for money

4.4.1 From recent experience, the cost to the Council of dealing with a contested application, including the holding of a non statutory inquiry, has been in the region of £30,000. Officers request that the cost and administrative burden of processing such applications is a relevant consideration which Members should have regard to.

4.5 Legal Implications, Access to Information and Call In

4.5.1 There may be legal implications in the future if the recommendation proceeds, however these are as yet unknown.

4.6 Risk Management

4.6.1 The risks associated with the response to the reforms proposed by the Defra consultation at this stage are unknown. These will be better understood once the outcome of the consultation is known.

5.0 Conclusions

5.1 The importance of greenspace within the city should not be underestimated, particularly the premise that greenspace is provided for all residents on an equal basis. In certain circumstances, Council land may be appropriate for designation as a town or village green. However, this needs careful consideration and the needs of all people in the city need to be taken into account in addition to the relative permanent nature of any change and any long-term issues that this may give rise to.

6.0 Recommendations

6.1 Executive Board is requested to note:

- the Council's response to consultation undertaken by Defra regarding the reforms to the registration of town and village greens;
- the issues for the Council in relation to the registration and future management of land designated as a town and village green;

and seek approval to:

- decline the request of the Scrutiny Board (Regeneration) for the Council to make a late submission to Defra following its consultation on proposals to reform the process of registration of land as Town and Village Greens and to introduce local Green Space Developments based on the submission made by the Open Space Society.

7.0 Appendices

7.1 Defra – Management and Protection of registered town and village greens

8.0 Background documents¹

8.1 None

¹ The background documents listed in this section are available for inspection on request for a period of four years following the date of the relevant meeting. Accordingly this list does not include documents containing exempt or confidential information, or any published works. Requests to inspect any background documents should be submitted to the report author.