



Report to Buckinghamshire Council – Strategic Sites Committee

Application Number:	138 (VG33)
Proposal:	To register land as Town or Village Green
Site location:	Land to the southeast of the junction of Shootacre Lane with Picts Lane, Princes Risborough, Buckinghamshire
Applicant:	Mr Stephen Bailey-Kennedy replaced by Mr Philip Hayes
Case Officer:	Claire Hudson
Ward affected:	The Risboroughs and Ridgeway West
Parish-Town Council:	Princes Risborough Town Council, Bledlow-cum-Saunderton Parish Council and Lacey Green Parish Council
Determination date:	8 th June 2023
Recommendation:	The recommendation is that the application should be REJECTED and the land southeast of the junction of Shootacre Lane with Picts Lane, Princes Risborough will not be registered as Town or Village Green

1. Summary and purpose of this report

- 1.1 The purpose of the report is to determine an application for land southeast of the junction of Shootacre Lane and Picts Lane in Princes Risborough (“the land”) [Appendix 1] to be registered as a Town or Village Green under Section 15 of the Commons Act 2006 (“the 2006 Act”).
- 1.2 The constitution only requires the application to be determined by the Strategic Sites Committee where the Service Director elects not to exercise delegated authority and refers the application to committee. In this instance, the Service Director will not be exercising his delegated powers under the constitution to determine the application. This is due to the local interest in the application, the Council’s interest in the land and to provide an opportunity for the application to be heard publicly.

1.3 On 16 August 2019, Mr Stephen Bailey-Kennedy of Shootacre Lane submitted an application to the former Buckinghamshire County Council “the registration authority”, to register the land as a Town or Village Green [Background Papers; pages 2 - 20]. The application is supported by 13 evidence questionnaires (completed by 15 witnesses). On 27 January 2022 Mr Philip Hayes was nominated as contact to deal with this application, because Mr Bailey-Kennedy moved away from the area [Background Papers; pages 126 – 127].

2. Description of the land

2.1 The land, is referred to by the applicant and witnesses as “The Green” and is situated southeast of the junction off Shootacre Lane and Picts Lane, to the southwest of Princes Risborough town [Appendix 1].

2.2 It is a grassed area of 3,262 sq/m with a footway crossing through joining Picts Lane with Shootacre Lane, separated by a hedge from an adjacent field. Street furniture such as a telegraph pole, road signs, street name sign and electric cabinets are placed on the land [Background Papers; pages 104 - 107].

3. The Law

3.1 Under Section 15 (1) of the 2006 Act, anyone may apply to a Commons Registration Authority to register land as Town or Village Green. In order for the land to be so registered a significant number of the inhabitants of a locality, or of any neighbourhood within a locality, must have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years and:

- i. they continue to do so at the time of the application; or
- ii. they ceased to do so before the time of the application but the application has been made within a year of the cessation.

3.2 Thus, the applicant must establish the following:

- i. that there is a locality or neighbourhood within a locality;
- ii. from which a significant number of inhabitants have used the land for lawful sports or pastimes;
- iii. that the use is as of right;
- iv. that the use has been for a period of not less than twenty years ending on the date of application or ending no more than one year before that date.

Right to Apply – Trigger and Terminating Events

3.3 Prior to making an application to register a Town or Village Green, the applicant should consider whether there is an exclusion to their right to apply for that area of land. The Growth and Infrastructure Act 2013 (“the 2013 Act”) introduced a number of changes to the

law surrounding registering new greens under the Commons Act 2006. Section 16 of the 2013 Act introduced section 15C and Schedule 1A into the 2006 Act. The effect of this introduced an exclusion to the right to apply if a “trigger event” had occurred. This remains excluded until a “terminating event” occurs. These events are set out in Schedule 1A to the 2006 Act but in summary they relate to whether the land in question has been identified for potential development in the planning system. Other changes included:

- i. The period of grace where recreational use of the land “as of right” has ceased before an application was made, has been reduced to one year;
- ii. Sections 15A and 15B of the 2006 Act introduced ‘landowner statements’ and the registers for recording them; the effect of such statements can prevent the land from being registered;
- iii. Minor amendment to section 31(6) of the Highways Act 1980 which aligns the landowner prevention of highway dedication with the landowner statements with the period for declarations being extended to 20 years.

Publicly Maintained Highway

- 3.4 In *Somerford PC v Cheshire East BC* [2016] EWHC 619 (Admin) the authority’s refusal to register the land, following the opinion of an independent legal expert, was vitiated by procedural error. The issue was whether the land in question was highway land. However, it is of note that the parties agreed that if it was a highway the authority was entitled to reject the application. Paragraph 6 of the Judgment states: “*A central issue is whether the TVG application land is part of the highway. If it is, as found by Mr Marwick, then in the circumstances of this case he was entitled to find that it cannot be registerable as a TVG. This is because the use could properly then be found as a use by right, not a use as of right. The one ground upon which Judge Pelling QC refused permission was that the Claimant in due course would ask the Supreme Court to reconsider the decision in DPP v Jones.*” The last reference is to *DPP v Jones* [1999] 2 A.C. 240 on the basis of which such claimed recreational use would be considered incidental to the right to use a highway and therefore not “as of right” for the purpose of section 15.
- 3.5 Section 15 of the 2006 Act does not apply to land which was acquired and is being held for statutory purposes which are incompatible with the land’s registration as a Town or Village Green (see *R (Lancashire CC) v SSEFRA* [2020] 2 WLR 1; [2021] AC 194.
- 3.6 If the application land is and was at all material times highway land, the user evidence relied upon in support of the application was “by right” (walking, cycling, dog walking, horse riding, etc) and is not qualifying user for Town or Village Green purposes because it was not “as of right”. Significant user evidence for recreational purposes would amount to an interference with the highway and therefore be unlawful and would not be “lawful sports and pastimes”.

3.7 The 1965 Commons Registration Act interpretation sets out that whilst a highway was excluded from the definition of common land, it was not so excluded from the definition of a town or village green.

Locality or neighbourhood

3.8 Although the term 'locality' is not defined in the 2006 Act, it is considered that "at common law a customary right to indulge in lawful sports and pastimes could exist only for the benefit of some legally recognised administrative division of the county." (Cheltenham Builders Ltd., R (on the application of) v South Gloucestershire District Council [2003] EWHC 2803 (Admin) (10 November 2003)). Thus a locality should be a legally recognised administrative area, such as civil parish or an electoral division.

3.9 A neighbourhood does not have to be a legally recognised area. It may be defined by an area drawn on a map but the area must have a "sufficient degree of cohesiveness, otherwise the word 'neighbourhood' would be stripped of any real meaning." (Cheltenham Builders Ltd., R (on the application of) v South Gloucestershire District Council (2003) EWHC 2803 (Admin) 10 November 2003)).

Significant Number of Inhabitants

3.10 'Significant' does not mean considerable or substantial, but the land must be "in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers." (R v Staffordshire County Council, ex parte Alfred McAlpine Home, LTL 17/01/02).

3.11 Further, there is no need to show exclusivity of use: "it is sufficient that the use is predominantly by inhabitants of the [locality or neighbourhood]." (P v Oxfordshire County Council, ex parte Sunningwell Parish Council [2000] 1 AC 335).

Lawful Sports and Pastimes

3.12 Dog walking and playing with children are examples of lawful sports and pastimes. There is no need to show both sports and pastimes and no need for communality. (P v Oxfordshire County Council, ex parte Sunningwell Parish Council (2000) IAG 335).

3.13 The online Oxford English Dictionary describes pastime as an activity that someone does regularly for enjoyment rather than work i.e. a hobby.

As of Right

3.14 'As of right' reflects the common law concept *nec vi, nec clam, nec precario*, that is without force, secrecy or permission. There is no requirement that the users believed that they had a right to use the land but that the land is used by the inhabitants of the locality in such a way as to "suggest to a reasonable landowner that they believed they were exercising a

public right." The user must be more than trivial or sporadic (R v Oxfordshire County Council, ex parte Sunningwell Parish Council [2000] 1 AC 335).

- 3.15 Likewise, toleration by a landowner is not fatal to a claim 'as of right'. (See R v Oxfordshire County Council, ex parte Sunningwell Parish Council [2000] 1 AC 335). The law draws a distinction between an owner's acquiescence in or toleration of the use of his land by others for lawful sports and pastimes and giving his licence or permission for its use. The giving of permission must involve some overt and contemporaneous act by the landowner, such as the erection of signs or notices, whereas toleration may be merely passive (see R (on the application of Beresford) v The City of Sunderland (2004] 1 AC 889).
- 3.16 In any event, the user must have taken place openly and in the manner that a person rightfully entitled would have used it (P v Oxfordshire County Council, ex parte Sunningwell Parish Council [2000] 1 AC 335).

For Twenty Years

- 3.17 For applications made under section 15(2) CA 2006, the 20-year period is the 20-year period immediately before the application.
- 3.18 The authority for this is the case of Oxfordshire County Council v Oxford City Council and Robinson [2006] 2 WLR 1235 ("The Oxford Traps") where it was concluded that the 20-year period must continue to the date of the application.

Procedure

- 3.19 The 2007 Regulations provide that the Registration Authority (Buckinghamshire Council) must consider every written statement in objection to an application which it receives before the advertised deadline for objections; and may consider any such statement which it receives on or after that date and before the authority finally disposes of the application. It must send the applicant a copy of every statement which it will consider. Members must consider the evidence supplied by the applicant and the objections to determine whether the application meets the criteria set out in Section 15 (1) of the 2006 Act.
- 3.20 The burden of proof lies on the applicant, who must prove that all the requirements are satisfied. The standard of proof is the civil one, that is, on the balance of probabilities.
- 3.21 All the relevant statutory provisions and competing rights and interests have been considered in making this report. The recommendation is in accordance with the law and proportionate, having regard to individuals' rights and public interest.

Effect of registration

- 3.22 Once land has been registered as a Town or Village Green by the commons registration authority it is subject to the same statutory protections as all other registered greens. Local residents will have a guaranteed legal right to indulge in sports and pastimes over it on a permanent basis. Registration as a Town or Village Green is irrevocable and so land must be

kept free from development and other encroachments. Any subsequent disposal by the registered freeholder does not alter the right of recreational use.

Human Rights Act 1998 implications

3.23 Article I of the First Protocol concerns the non-interference of the peaceful enjoyment of private property. This right is subject to conditions and interference with this right may be permitted if the need to do so is proportionate. While registration of privately owned property could potentially breach Article 1, the Council is required under primary legislation to determine village green applications.

4. The Application and Evidence

Right to Apply – Trigger and Terminating Events

- 4.1 On 24 September 2019 the registration authority sent letters to The Planning Inspectorate, legacy Wycombe District Council “WDC”, the Planning Department and the Strategic Planning and Infrastructure team at legacy Buckinghamshire County Council “BCC”. The letters requested details regarding any trigger and terminating events which would remove the applicant’s right to apply.
- 4.2 The Planning Inspectorate responded in October 2019 and confirmed there were no trigger or terminating events on the land [Background Papers; pages 79 - 80].
- 4.3 Ms C. Kelham from the Planning Development Management team (legacy BCC) responded on the 7 October 2019 and confirmed no trigger or terminating events occurred on the land [Background Papers; pages 81 - 82]. Ms Kelham noted that the land was included within policy PR3 of the adopted Wycombe District Local Plan and confirmation should be sought from the District Planning Policy team about trigger and terminating events.
- 4.4 Ms P. Tollitt, the Head of Planning and Sustainability (legacy WDC) responded on 17 October 2019 [Background Papers; page 83]. Ms Tollitt said if the realignment of Shootacre Lane had been taken into account then there were no trigger or terminating events on the land.
- 4.5 Ms Tollitt stated that if the registration is successful, it could prevent an improvement to the Picts Lane / Shootacre Lane junction as set out within the delivery plan for the expansion of Princes Risborough.
- 4.6 Mr C. Power, responded on behalf of Planning and Sustainability (legacy WDC) further on 28 October 2019 and stated there had been no trigger or terminating events on the land [Background Papers; pages 85 - 89]. Mr Power also included a report regarding the different issues and policies that he thought should be considered.
- 4.7 Miss A. Nyamande from the Strategic Planning and Infrastructure team (legacy BCC) responded on the 21 October 2019 [Background Papers; page 84]. Miss Nyamande was unable to comment on any trigger or terminating event.

- 4.8 Mr R Beeks from the Planning Department (legacy BCC) confirmed on 22 November 2019 that no trigger or terminating events had occurred on the land [Background Papers; pages 90 - 92]. Mr Beeks also stated that BCC aligns with WDC's objection.
- 4.9 Once responses were received from the different departments an officer confirmed on behalf of the registration authority to Mr Bailey-Kennedy that his right to apply had not been excluded [Background Papers; page 93].
- 4.10 In an email dated 11 December 2019 Ms P Evans (Planning Lawyer for legacy WDC) stated that the land was highway and not capable of establishing a claim "as of right" [Background Papers; pages 94 - 95]. Ms Evans also stated that it was evident that there had been a "trigger event".
- 4.11 Counsel opinion was sought regarding Ms Evans' letter and the applicant's response. It was ultimately advised that a trigger event had not occurred – the publication of the consultation draft Local Plan on 27th June 2016 was in itself a trigger event but there was a subsequent terminating event when the prescribed two year consultation period expired (Commons Act 2006 Schedule 1A paragraph 1 Table 3(c)). There was a short window of opportunity for the applicant to apply (14th August 2019) and the plan being adopted (19th August 2019). Therefore, there was no trigger event and the original confirmation to the applicant dated 4 December 2019 was still correct.
- 4.12 The application was accepted as duly made and subsequently publicised in accordance with the Commons (Registration of Town and Village Green) (Interim) Regulations 2007. The requisite statutory notice was placed in the Bucks Herald on 15 September 2021 [Background Papers; pages 96 - 98], displayed in the offices of Buckinghamshire Council and Princes Risborough Town Council, and displayed on the land itself. The Buckinghamshire Council received objections from Highway and Planning Services at Buckinghamshire Council.

Publicly Maintained Highway

- 4.13 On the 18 March 1947, Albert Goodearl vested 3763.29m² of land equal to or including the application land to BCC as statutory highway authority for road improvement purposes [Background Papers; pages 99 – 102]. In return Mr Goodearl was paid by BCC £93 on the same day in full discharge and satisfaction of compensation. Planning and Transport was the holding committee. There is a Terrier reference card [Background Papers; pages 144 – 145] plus a Receipt and Undertaking document detailing these events of 18 March 1947. The 3763.29m² referred to in the Terrier reference card equates to 4500.86 square yards, this is effectively identical to the 4501 square yards referred to in the Receipt and Undertaking. The whole of the application land is highway maintainable at public expense and is shown as such on the authority's map of highways maintainable at the public expense [Background Papers; pages 103].

4.14 The application land remains appropriated for highway purposes in the exercise of the authority's statutory powers as highway authority. It contains street furniture such as signposts, telegraph post, electricity/telecommunication boxes. There is a narrow pedestrian footway crossing the land joining the footway on Picts Lane with Shootacre Lane.

Officer Comment

4.15 *There is good evidence to support the conclusion that the application land is highway land and was highway throughout the period relied upon by the applicant. On the balance of probabilities, it was and is highway land. The land was acquired and is being held for a statutory purpose which is incompatible with the land's registration as Town or Village Green. There is a fundamental incompatibility between land being both highway and a green. The status of the land will be taken into account when considering the user evidence below.*

Locality or Neighbourhood

4.16 The applicant defines the neighbourhood as Shootacre Lane, south-western part of Picts Lane (from Pyrtle stream to the junction with Shootacre Lane) and Chairmakers Close within the localities of Princes Risborough, Bledlow-cum-Saunderton and Lacey Green civil parishes. The neighbourhood is outlined on a plan which accompanied the application at page 17 in the Background Papers. The locality which is relied upon was clarified in an email by Mr Hayes dated 13 January 2023 [Background Pages; pages 142 - 143].

4.17 All of the witnesses claiming use are inhabitants of the neighbourhood defined by the applicant. However, there are no witness statements from residents of Chairmakers Close, which is included in the neighbourhood.

Officer Comment

4.18 *We consider this to be sufficiently cohesive as a neighbourhood within the localities of Princes Risborough, Bledlow-cum-Saunderton and Lacey Green and believe that this test is satisfied.*

Significant Number of Inhabitants

4.19 There were 13 evidence questionnaires (submitted by 15 residents) [Appendix 2]. The majority of the evidence questionnaires claim use of the land frequently. Six of the questionnaires indicate the use of the land was 'by right' or non-qualifying use under section 15(1) of the Commons Act 2006. Details of the 'by right' use are set out in paragraphs 4.25 to 4.27 below.

Officer Comment

4.20 *We consider that the number of questionnaires does not represent a significant number of inhabitants of the neighbourhood (approximately 68 properties located in the area the applicant described as a neighbourhood). Therefore, this test is not satisfied.*

Lawful Sports and Pastimes

- 4.21 The activities cited on the evidence questionnaires include walking, dog walking, cycling, children playing, blackberry picking, picnics, observing nature, playing ball games, meeting area, and snowball fight. Other activities were also included like protesting against the Local Plan, lunging a horse or car parking.
- 4.22 Activities which included the use of the land for walking and cycling are considered to be `by right`, given that the land forms part of the publicly maintained highway.
- 4.23 The remaining activities for recreational purposes could amount to an interference with the highway and therefore be unlawful; as such they would not be “lawful sports and pastimes”

Officer Comment

- 4.24 *When considering the user evidence and removing any evidence which is “by right” there remains only a small amount of use which could be considered as part of this application for lawful sports and pastimes. However, even this use could be considered unlawful as it interferes with the highway. Therefore, this test is not satisfied.*

As of Right

- 4.25 The evidence questionnaires indicate that the land is open [Background Papers; pages 21 - 75]. Users accessed it on foot or bicycle and had not sought anyone's permission to use it nor did they believe it necessary to do so.
- 4.26 However, as a result of all the land being at all material times highway land, a great deal of the user relied upon in support of the application was “by right” (walking, running, cycling, dog walking, pushchairs, horse riding, horse exercising, collecting berries, leaves and flowers) and is not qualifying user for Town and Village Green purposes because it is not “as of right”.

Officer Comment

- 4.27 *Taking into account the land’s statutory status we consider the land to have been used by the public for the majority of activities “by right” and not “as of right”, therefore this test is not satisfied for the vast majority of activities claimed.*

For Twenty Years

- 4.28 The relevant 20-year period for claiming use is the 20 years immediately before the application. As the application was made on 16 August 2019, the qualifying period is 16 August 1999 to 16 August 2019. Ten questionnaires confirm the use of the land from 1999, and all of them confirm the use continued up to the date of the application.

5. Objections

- 5.1 In response to the notice advertising the application, a combined submission was made on behalf of the Planning Authority and Highways Authority [Background Papers; page 108] requesting that previous submissions would be taken into account as though they are in response to the notice. Previous submissions were dated 11 December 2019, 16 April 2020 and 13 May 2021 [Background Papers; pages 94 – 95, 109 - 125].
- 5.2 The submissions received on behalf of the Planning and Highway Authority can be summarised as follows:
- i. The land is highway, and the applicant would be unable to establish evidence which is “as of right”.
 - ii. TVG use would be incompatible with the statutory purpose for which the land is held.
 - iii. The existence of a trigger event excludes the applicant’s right to apply; namely the Regulation 19 Publication Version of the High Wycombe Local Plan dated October 2017 which was submitted to the Secretary of State for examination in March 2018. The adoption of the plan on 19 August 2019, was within 2 years of the publication of that draft development plan document which was a trigger event under paragraph 3 of Schedule 1A applicable at the time of the TVG application. The Regulation 19 Plan is a different draft development plan document to that published in June 2016. It was consulted on from Monday 16th October 2017 to Monday 27 November 2017. The earlier draft was not withdrawn as it was followed by the October 2017 submission.
 - iv. Princes Risborough Expansion Area is defined by Local Plan Policy PR3, outside of which the application land falls, plan also identifies the land within the settlement boundary of Princes Risborough for potential development. The land is required for highway improvements.
 - v. Works in relation to Picks Lane and Shootacre Lane are not limited to being within the settlement boundary.
 - vi. If the land is registered, it could prevent an improvement to the Picks Lane Shootacre Lane junction as set out in the delivery plan for the expansion of Princes Risborough and for which funds have been agreed by Homes England.
- 5.3 In response to the objection received, Mr Hayes provided comments in a letter dated 28 January 2022 [Background Papers; pages 128 - 141]. In summary, Mr Hayes comments are:
- i. Trigger event - this objection is irrelevant as it has been determined that the right to apply “is not excluded” by reason of a trigger event.
 - ii. Junction improvement – this objection is irrelevant; objections should only cover issues which are relevant to the initial registration of the land.

- iii. Statutory incompatibility – no evidence that the application land is owned by the Council; nor has any specific statutory provision been identified which is incompatible with registration as village green.
- iv. Highway status so use would be “by right” – several reasons provided as to why the application land is not highway [Background Papers; page 138]; even if the land is highway, the objection should still not succeed because the use would only be “by right” if the land had been deliberately made available for public recreation (Barkas case); the application land was not made available for public recreation but was dedicated as highway; highway rights and public recreation rights are fundamentally different.

Officer Comment

5.4 *Council Officers have the following comments to make regarding the objections:*

- i. *Following Counsel advice it was advised that a trigger event had not occurred.*
- ii. *The land is recorded as public highway in its entirety as per the Highway Extents dataset record [page 103] and as such is maintainable at public expense.*
- iii. *The claimed use of the land has been analysed as per paragraphs 4.16 – 4.28.*
- iv. *Future aspirations of the land cannot be taken into account when analysing the evidence, however considering statutory incompatibility of the land if it was registered as a village green is a relevant objection.*

5.5 Correspondence supporting the village green application was also received from Bledlow Parish Council [Background Papers; page 146] and Mr E Nelson [Background Papers; page 147].

6. Conclusion and recommendation

6.1 The Council considers that evidence supporting the application does not represent a significant number of the inhabitants of the neighbourhood within the locality. There are approximately 68 properties within the neighbourhood and the witness statements came from only 13 households.

6.2 The Council has discounted the right to pass and repass, with or without dogs, as it is considered to be an activity conducted ‘by right’ because of the highway status of the land. The remaining activities for recreational purposes could amount to an interference with the highway and therefore be unlawful; as such they would not be “lawful sports and pastimes”

6.3 For an application to succeed it must satisfy all of the legislative criteria for registration as a town or village green.

- i. that there is a locality or neighbourhood within a locality; **Test satisfied**

- ii. from which a significant number of inhabitants have used the land for lawful sports or pastimes; **Test not satisfied**
- iii. that the use is as of right; **Test not satisfied**
- iv. that the use has been for a period of not less than twenty years ending on the date of application or ending no more than two years before that date. **Test satisfied**

6.4 Members are recommended to reject the application and resolve that the land south east of the junction of Shootacre Lane and Picts Lane in Princes Risborough should not be registered as Town and Village Green given the reasons set out in this report.

Appendix 1: Plan of proposed Village Green.

Appendix 2: Graph showing relevant 20 years period.

Appendix 3: Graph showing relevant use

Background Papers

PAGES

1 - 20	Application with appendices
21 - 75	Evidence questionnaires
76 - 78	Trigger letter (24 September 2019)
79 - 80	Response from The Planning Inspectorate
81 - 82	Response from C Kelham; Planning Officer
83	Response from P Tollitt; Head of Planning and Sustainability WDC
84	Response from A Nyamande; BCC
85 - 89	Response from C Power; Development Management Team Leader WDC
90 - 92	Response from R Beeks; BCC
93	Letter to Mr S Bailey-Kennedy (4 December 2019)
94 - 95	Email from P Evans; Planning Lawyer WDC (11 December 2019)
96 - 98	Advertising notices
99 - 102	Public Highway dedication agreement, receipt and terrier card
103	Highway Extents Plan
104 - 107	Photos of the site
108	Email from P Evans; Planning Lawyer BC (14 September 2021)
109 - 112	Letter from P Evans; Planning Lawyer BC (13 May 2021)
113 - 125	Letter from P Evans on behalf of J Caprio; Planning Lawyer BC (16 April 2020)
126 - 127	Authorisation for Mr Hayes to continue application (27 January 2022)
128 - 141	Applicant's response to objections (28 January 2022)
142 - 143	Confirmation email of localities (13 January 2023)

144 – 145 Terrier Reference card
146 Letter from Bledlow Parish Council (21 October 2021)
147 Email from Mr E Nelson (25 May 2023)

For further information please contact Claire Hudson

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