

**COMMONS ACT 2006: SECTION 15 - APPLICATION TO REGISTER LAND AS A VILLAGE GREEN "THE FIELD" AT HONITON BOTTOM ROAD NEAR THE GISSAGE, APPLICATION BY MR ALLEN AND MRS KIMBELL**

**Report of the County Solicitor**

*Please note that the following recommendation is subject to consideration and determination by the Committee before taking effect.*

**Recommendation: It is recommended that The Field" at Honiton Bottom Road be granted Village Green status**

**1. Summary**

Devon County Council is the Commons Registration Authority (CRA) for the County of Devon (excluding Torbay and Plymouth) and receives applications under the Commons Act 2006 to register land as a town or village green.

The Council received an application under Section 15 (4) of the Act to register land known as the "The Field" at Honiton Bottom Road near the Gissage which is shown edged red on the plan attached to this report.

Under Section 15(4) of the Act any person may apply to the CRA to register land as a town or village green if:

- (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 cease to do so before the commencement of this section; and
- (c) the application is made within a period of five years beginning with the cessation referred to in paragraph (b)

The applicants in this case appeared to have met these criteria so notice of the application was published in accordance with the statutory requirements. One objection was received. No objection was made by the Land Owner.

**2. Background**

It is understood that this land was in private ownership until 3 July 2006 when it was transferred to East Devon District Council. The transfer included a covenant to maintain the land as a publicly adopted open space with statutory allotments. It is further understood that the District Council intends to grant an interest in the land to Honiton Town Council. There have in the past been planning applications in respect of this land, of relevance was the planning application in respect of part of this land submitted on the 14 June 2010 (10/1175/COU) which was consistent with the covenant of the land. This use has not yet commenced.

The Applicant states that a significant number of residents have used the land continuously "as of right" for over 20 years and continue to do so. The land has been

used for variety of recreational uses ranging from small fetes to ball games and walking. They state the use was without secrecy or force.

It is further stated by the Applicant that the land has been continuously open to residents without fencing or "keep out" signs around the field. Although there is what is described in the Application as "protected fencing on Honiton Bottom Road with two access fences and no restriction on use, and the field was open for access at any point along the bank of the Gissage with borders the field to the west". The objector states the access fences were provided as a result of a road being widened and another road being constructed.

The Applicant submitted with the Application 56 (63) user evidence forms from 65 (72) local residents from 48 (54) householders of which more than half (41) have used the field for more than 20 years as of right. The reason for two sets of figures is that both sets have been used in the Application and/or the Objection.

The objector claims that the Applicant has failed to demonstrate that the land has been used by a significant number of inhabitants for 20 years. Nor is the use of land "as of right" since spring 2007 when East Devon District Council began to mow paths and installed a dog bin. It is claimed that this shows the use to be permissive because East Devon District Council was aware of the use.

The Applicant has responded to this comment by stating "correspondence between officers and staff of both the Town Council and East Devon District Council show that both authorities were aware of and did not in anyway dispute the longstanding and ongoing recreational use of the land".

The Applicant cites a letter in the local press from Magnus which states that they did not attempt to stop local people using the land from their acquisition of the land in 1989. It is also stated that the courts have ruled that mowing grass does not constitute permission but reinforces use as of right.

It is further stated by the Objector that the Applicants evidence in support cannot be relied upon due to discrepancies. An example given being that a proportion of the responses in support of the Application stated that they did not know who owned the land yet expected the Council would "attempt by notice or fencing or by any other means to prevent or discourage local inhabitants making general use of (the) land".

The Objector has no recollection of any small fetes being held on this land.

### **3. Conclusion**

Both the Applicant and Objector have provided lengthy and full evidence in support of their positions. There can be seen some variations as to dates and length of use recorded in both accounts. However, on examination of both sides this Application turns on the following points: -

1. Are there a significant number of inhabitants in the locality having indulged as of right in lawful sports and pastimes on the land for a period of 20 years?

There are 65 (or 72) inhabitants' statements in support which have indulged in activities on this land for in excess of 20 years.

The term "as of right" means the use must be without force, without secrecy and without permission.

The Objector states the use ceased to 'as of right' in spring 2007. This implies they believe the right to have ceased during March – May 2007. The alternative view would be that the 'as of right' ceased on EDDC's ownership of the Land in July 2006 when the Land became Public Open Space.

2. They cease to undertake the activity as stated in 1 above before commencement of Section 15(4) of the Act.

The section came into force on 6 April 2007. Either of the two contentious as to cease of use 'as of right' would be before the commencement of the section.

The Application is made within 5 years of the cessation on point 2.

Therefore the recommendation is that the application for Village Green status be accepted.

#### **4. Financial Considerations**

There are no implications.

#### **5. Sustainability Considerations**

There are no implications

#### **6. Carbon Impact Considerations**

There are no implications

#### **7. Equality Considerations**

There are no implications

#### **8. Legal Considerations**

The implications/consequences of the recommendation have been taken into account in the preparing of the report.

#### **9. Risk Management Considerations**

There are no implications.

#### **10. Reasons for Recommendation**

See conclusion

**Jan Shadbolt**

ELECTORAL DIVISION: HONITON ST MICHAELS

Local Government Act 1972: List of Background Papers

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Background Paper \_\_\_\_\_ Date \_\_\_\_\_ File \_\_\_\_\_  
Sept 2008 to date Ref. Newland 23  
Form CA9