

PLANNING & REGULATION COMMITTEE – 5 MARCH 2012

COMMONS ACT 2006: DELEGATION OF DECISION-MAKING POWERS TO OFFICERS

Report by the County Solicitor & Director for Environment & Economy

Introduction

1. The County Council is the commons registration authority for the County of Oxfordshire and is responsible for determining, amongst other matters, applications for registrations of new town or village greens under section 15 of the Commons Act 2006. Planning & Regulation Committee have delegated powers to determine such applications, provided they are 'duly made'.
2. There are currently no delegations to officers to determine any applications. In light of experience gained since the coming into force of s15 of the Commons Act 2006 it is considered that a delegation to the Director for Environment & Economy to determine applications under s15(8) of the 2006 Act (voluntary applications by a landowner to register its own land) should be made.

The Legal Background

3. Section 15 of the Commons Act 2006 was brought into force on 6 April 2007 and included a new statutory power in subsection 8 for the owner of land to apply voluntarily to the commons registration authority for the registration of its own land as a new town or village green.
4. Section 15(9) of the 2006 Act further provides that if such an application is made, the landowner must obtain the written consent of any relevant leaseholder or the proprietor of any relevant charge. These terms are subsequently defined by s15(10).
5. The commons registration authority's duties in respect of such applications are set out in Regulation 7 of the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 as follows:-

“Where an application is made under section 15(8) of the 2006 Act to register land as a town or village green, the registration authority must grant it provided it is satisfied that—

- (a) the applicant is the owner of the land; and
- (b) any consents which are required by section 15(9) of the 2006 Act have been obtained.”

6. The wording of Regulation 7 therefore makes it clear that the commons registration authority must register such an application if it is satisfied that the two criteria are met. On registration, the newly-registered town or village green would be subject to statutory protection under s12 Enclosure Act 1857 and s29 Commons Act 2006 in the same way as other greens.
7. A copy of DEFRA non-statutory guidance on the voluntary registration of greens is annexed to this Report.

Section 15(8) In Practice

8. There has been some uptake of this new statutory power by landowners in Oxfordshire. This has been primarily from Parish Councils who hold land for public recreational purposes and wish to give it greater security for such use in the future.
9. In such cases at present, the application is assessed by Rights of Way & Commons and Legal Services. The ownership of the land is checked along with any necessary consents from leaseholders or charge holders.
10. In addition to this, the boundaries of the application area are checked to identify whether any buildings, public rights of way or vehicular accesses are affected. If so, this is brought to the applicant's attention so that consideration can be given as to whether to exclude these areas from the application.
11. Legal Services also investigate title to the property to establish ownership. If the title discloses any third party rights that may be affected by the application (for example rights of pre-emption or overage) the applicant is recommended to notify that third party of the application and to obtain consents where necessary.
12. Legal Services also checks that the person making the application (if different from the landowner) has the landowner's authority to make the application. This is particularly important in cases where e.g. a Parish Clerk is making an application on behalf of a Parish Council.
13. As there are at present no officer delegations in respect of matters under the Commons Act 2006, an application which meets the statutory test must in all cases be reported to the Planning & Regulation Committee even though the Committee must register the application and therefore has no discretion in the matter.
14. There is a cost to the Council in officer time (both Environment & Economy and Legal Services) in preparing the application and the subsequent attendance at Committee. It is considered that these costs are better expended on contentious applications where Members have wider factual and legal issues to consider and can exercise discretion in making their decision.

The Proposed Officer Delegation

15. It is considered that decisions as to registration of voluntary applications by landowners under s15(8) of the 2006 Act should be delegated to the Director for Environment & Economy as set out in the recommendation following.
16. This delegation should be reviewed and amended as necessary if the legislation is amended in the future.

RECOMMENDATION

17. **The Committee is RECOMMENDED to delegate to the Director for Environment & Economy the power to determine applications for registration of new town or village greens under section 15(8) of the Commons Act 2006, provided always that:-**
 - (a) **satisfactory evidence is obtained that the criteria set out in Regulation 7 of the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 are met;**
 - (b) **all statutory provisions are complied with and departmental guidance is taken into account where necessary;**
 - (c) **legal advice from the County Solicitor is obtained and taken into account where necessary.**

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