PLANNING & REGULATION COMMITTEE – 22 JULY 2013

COMMONS ACT 2006:
IN THE MATTER OF AN APPLICATION TO REGISTER
THE MEADOWS, STADHAMPTON, OXFORDSHIRE
AS A TOWN OR VILLAGE GREEN

Report by the County Solicitor & Head of Legal & Democratic Services

Introduction

1. On 9 November 2010, Mr Mark Duffy of 9 The Laurels, Stadhampton, Oxfordshire applied to the County Council as Commons Registration Authority under Section 15 of the Commons Act 2006 to register land known as the Meadow, Stadhampton, Oxfordshire (“the Application Land”) as a Town or Village Green. This application, a copy of which is attached at Annex 1, was submitted formally in pursuance of the Act and has now to be determined by the County Council.

2. The Planning & Regulation Committee have delegated powers to determine such applications, provided they are ‘duly made’.

3. The application was considered objectively by Definitive Map & Commons and Legal Services as to whether the application was ‘duly made’. The applicant was contacted in order to clarify or rectify certain technical points in the application. The application was accepted as ‘duly made’ on 3 May 2011 and was subsequently publicised in accordance with the statutory requirements.

4. Objections were received during the statutory 6-week objection period from Mr Alistair Campbell (the owner of the land and ‘the Objector’), Natural England and the Cuddesdon Mill Anglers Association. The objection from Mr Campbell was supported by many statements from local people.

5. The Commons Registration Authority subsequently considered the application and objections further and sent them to an independent barrister for an Opinion. Counsel gave an Advice dated 15 February 2013 in which he advised that the Applicant had not demonstrated that part of the legal test set out in the Commons Act 2006 had been met. He therefore recommended that the Applicant be invited to provide written responses in light of his Advice. A copy of the Advice is appended at Annex 2.

6. The Applicant subsequently wrote to the Commons Registration Authority on 5 April 2013, stating that he was not pursuing the application any further. A copy of the Applicant’s letter is appended at Annex 3.

The Legislative Background
7. The relevant provision of the Commons Act 2006 is as follows:

Section 15:

(3) This subsection applies where–

(a) a significant number of the inhabitants of any locality, or of any
neighbourhood within a locality, indulged as of right in lawful sports and
pastimes on the land for a period of at least 20 years;

(b) they ceased to do so before the time of the application but after the
commencement of this section; and

(c) the application is made within the period of two years beginning with the
cessation referred to in paragraph (b).

8. This is a legal test for registration with multiple parts. Subsection (3) is
designed to give a ‘grace period’ of two years for applications to be made
where access to the land has been prevented e.g. by fencing.

9. The expression ‘as of right’ means that the land must have been used by local
people without force, stealth or permission.

The Application Site: Land at the Meadows, Stadhampton, Oxfordshire

10. The application form describes the Application Land as being ‘[at the] end of
School Lane in Stadhampton stretching to the River Thame and flanked by the
B480’. The Application Land is shown edged red on the ‘Application Map’
included as part of Annex 1.

11. In subsequent correspondence, the Applicant clarified that the relevant
‘locality’ for the application is the parish of Stadhampton. He also confirmed
that fencing, which effectively brought use of the land ‘as of right’ to an end,
was erected in October 2011.

12. The whole of the Application Land is registered at HM Land Registry under
title number ON227014.

13. The Application Land has a public footpath on it and also a permissive
footpath. The public footpath includes the length of footpath which stretches
from Copson Lane to the western boundary fence of Maplewood. As the
footpath is understood to extend from boundary to boundary along this stretch
of the land, the Commons Registration Authority considers that this part of the
Application Land must be excluded in any event as the use of that land will be
for highway purposes and not lawful sports and pastimes.

The Village Green Application

14. The application form was duly signed by the Applicant and supported by the
prescribed Statutory Declaration. The Applicant submitted several additional
pieces of information in support of his application, including a supporting statement and several statements from users of the application land.

The Determination of the Application

15. Having been received by the Commons Registration Authority and accepted as ‘duly made’, the application was duly published in accordance with Regulation 5 of the Commons Registration (Registration of Town and Village Greens) (Interim Arrangements) (England) Regulations 2007 by publication in a local newspaper, posting notices on site, and placing copies on public deposit.

16. The statutory objection period expired on 11 July 2011. Several objections were received from the Objector and others including Natural England, the Cuddesdon Mill Anglers Association and several local people.

17. The principal grounds for objection were as follows:

   a. The use of the Application Land by local people had been difficult or impossible prior to 2001 (when the Objector acquired the land) or later. This is due to the use of the land for the keeping of livestock and other agricultural purposes;

   b. Use of the land has been restricted to the footpaths and there has not been widespread use of the land in general;

   c. Much of the evidence given in the application is argued to be inaccurate;

   d. Much of the use of the land by local people has been with the permission of the landowner.

18. The Commons Registration Authority considered the application and objections further and came to an initial view that the objections raised significant issues. In particular, from the numbers of people giving evidence on either side, serious doubts had been raised as to whether the land had been used by a ‘significant number’ of residents of the locality. Also, since much of the use was alleged to be with permission, it was arguably not ‘as of right’ as required by section 15 Commons Act 2006.

19. The papers were subsequently sent to a barrister experienced in this area of law for advice on whether the application could be determined on the basis of the one or more of the matters raised by the Objector. Counsel provided an Advice dated 15 February 2013 (Annex 2) in which he advised that, on the information available, the Applicant had failed to show that the land had been used by a ‘significant number’ of local people. He recommended that the Applicant be invited to provide his written response to the Advice, in the absence of which, he advised that the application be rejected.

20. The Applicant subsequently wrote to the Commons Registration Authority stating that he did not wish to take the application any further (Annex 3).
21. There are no officer delegations in respect of applications which are ‘duly made’ and therefore the Committee needs to make a formal decision in respect of this application.

RECOMMENDATION

22. Having received the Advice of Counsel set out in Annex 2 to this report, the Committee is RECOMMENDED to REJECT the application for registration as a new Town or Village Green that plot of land known as The Meadows, Stadhampton, Oxfordshire that site being indicated clearly on the Application Map of the application submitted by Mr Mark Duffy and dated 9 November 2010.

PETER CLARK
County Solicitor & Head of Legal Services

Background papers:

a) Appendices to Form 44
b) Objection from Mr Robert Campbell dated 8 July 2011 plus enclosures
c) Objection from Mr Robert Cambell dated 11 July 2011
d) Objection from Natural England dated 8 June 2011
e) Objection from Mr Anthony King – undated
f) Objection from Cuddesdon Mill Village Anglers Association dated 4 July 2011
g) Objection from Julia King dated 13 June 2011
h) Objection from Mr G Ring dated 20 June 2011
i) Objection from Mr Richard Cantwell dated 6 June 2011
j) Letters received in response to objections

Contact Officer: Richard Goodlad, Solicitor (Tel: 01865 323917)

July 2013
Commons Act 2006: Section 15
Application for the registration of land as a Town or Village Green

Application number: N.REF.27

Register unit No(s):  

VG number allocated at registration:  

(CRA to complete only if application is successful)

Applicants are advised to read the 'Guidance Notes for the completion of an Application for the Registration of land as a Town or Village Green' and to note the following:

• All applicants should complete questions 1–6 and 10–11.

• Applicants applying for registration under section 16(1) of the 2006 Act should, in addition, complete questions 7–8. Section 15(1) enables any person to apply to register land as a green where the criteria for registration in section 15(2), (3) or (4) apply.

• Applicants applying for voluntary registration under section 15(6) should, in addition, complete question 9.

1. Registration Authority

To the

Oxfordshire County Council
Commons Registration and Rights of Way
Countyside Services
Signal Farm, Old Station Way, Enslow, Oxfordshire OX29-4TL
2. Name and address of the applicant

Name: MARK DUBY

Full postal address:

9. THE LAURELS
STROUD
GLOUCESTERSHIRE

Postcode: 0X44 7XP

Telephone number:
(Daytime) 01865 400321

Fax number:
01865 400736

E-mail address:
md@medlinescientific.com

3. Name and address of solicitor, if any

Name: R. KEALY

Firm: KEALY SOLICITORS

Full postal address:

73 NELL STREET
HANLEY ON TUNNES
OXFORDSHIRE

Postcode: RG9 2 8D

Telephone number:
01491 410393

Fax number:
01491 410431

E-mail address: rkealy@btconnect.com
4. Basis of application for registration and qualifying criteria

If you are the landowner and are seeking voluntarility to register your land please tick this box and move to question 5.

Application made under section 15(8): 

If the application is made under section 15(1) of the Act, please tick one of the following boxes to indicate which particular subsection and qualifying criterion applies to the case.

Section 15(2) applies: 

Section 15(3) applies: 

Section 15(4) applies: 

If section 15(3) or (4) applies please indicate the date on which you consider that use as of right ended.

Ocrasers 10th 2010

If section 15(6)* applies please indicate the period of statutory closure (if any) which needs to be disregarded.

* Section 15(6) erases any period of statutory closure where access to the land is denied to be disregarded in determining the 20 year period.
**5. Description and particulars of the area of land in respect of which application for registration is made**

Name by which usually known:

*The Meadows*

Location:

_Ende of School Lane in Yattendon streamimg to the river Thames and flanked by the B4040. A right of way also exists through the property._

Shown in colour on the map which is marked and attached to the statutory declaration.

Common land register unit number (if relevant) *ON 227041*

**6. Locality or neighbourhood within a locality in respect of which the application is made**

Please show the locality or neighbourhood within the locality to which the claimed green relates, either by writing the administrative area or geographical area by name below, or by attaching a map on which the area is clearly marked:

_MAP AND AERIAL IMAGE ATTACHED_

Tick here if map attached: ✅
7. Justification for application to register the land as a town or village green

The village green area referred to in map ONZ27041 has been openly used by many of the local residents for many years for recreational purposes.

Some three years ago the land owner Mr Campbell was awarded a grant to fence around the meadows with a view to keep livestock. This in itself was not an issue as residents continued to have access to the area as there is a right of way running part the way through the land.

The livestock were not affected by any of the activities and continued to thrive in the area.

In October 2010 further unnecessary fencing has been erected forcibly restricting the green area and turning it into a path through the centre of the green area. As a result villagers are no longer able to benefit from the open area. It is now impossible for children to play on the field, climb trees or local residents to ride their horses or walk freely.

The attached testimonies are adequate proof that this area has been openly accessible and enjoyed by many, for a period in excess of 20 years which warrants the continued access as a village green area. Should further testimonies be required then these can be provided.

Witness testimonies are provided on separate sheets with this application.

Note 7
Applicants should provide a summary of the case for registration here and enclose a separate full statement and all other evidence including any witness statements in support of the application.

This information is not needed if a landowner is applying to register the land as a green under section 16(9).
Note 8
Please use a separate sheet if necessary.

Where relevant include reference to title numbers in the register of titles held by the Land Registry.
If no one has been identified in this section you should write "none"
This information is not needed if a landowner is applying to register the land as a green under section 15(8).

8. Name and address of every person whom the applicant believes to be an owner, lessee, tenant or occupier of any part of the land claimed to be a town or village green

Mr Alistair Robert Malcolm Campbell and Mrs Frances Rosemary Campbell, of The Old School, Stonhamasoe, Suffolk, IP7 9TR.

Note 9
List all such declarations that accompany the application. If none is required, write "none".
This information is not needed if an application is being made to register the land as a green under section 15(1).

9. Voluntary registration – declarations of consent from 'relevant leaseholder', and of the proprietor of any 'relevant charge' over the land

Note 10
List all supporting documents and maps accompanying the application. If none, write "none"
Please use a separate sheet if necessary.

10. Supporting documentation

- Map OR227041
- Aerial Image MultiMap
- Testimonies of Local Inhabitants
- Historical Review. An extract from "The Park of Stonhamasoe" by Colin Boase & published by the Stonhamasoe History Society. © 2001
11. Any other information relating to the application

Further historical evidence is attached in the form of extracts from a book published by the Stathampton History Society titled "The Parish of Stathampton Oxfordshire" by Colin Judge.

The extracts make a number of references to village sporting events held on the land with one picture depicting the Brook race in 1953. This brook runs directly through the meadows in question.

Further images depict villagers making use of the land with tug of war competitions going back to the 19th century through to 1978. Finally there is also evidence of swimming in the Thame along the edge of the green in question.

Date: 05. 11. 2010
Signatures:

REMEMBER TO APPLICANT

You are advised to keep a copy of the application and all associated documentation. Applicants should be aware that signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence. The making of a false statement for the purposes of this application may render the maker liable to prosecution.

Data Protection Act 1998

The application and any representations made cannot be treated as confidential. To determine the application it will be necessary for the registration authority to disclose information received from you to others, which may include other local authorities, Government Departments, public bodies, other organisations and members of the public.
Statutory Declaration In Support

To be made by the applicant, or by one of the applicants, or by his or their solicitor, or, if the applicant is a body corporate or unincorporate, by its solicitor, or by the person who signed the application.

1 Insert full name (and address if not given in the application form).

MARGA DUFFY

1 solemnly and sincerely declare as follows:—

2 Delete and adapt as necessary.

1. I am ((the person (one of the persons) who (has) (have) signed the foregoing application)) ((the solicitor to the applicant)) (one of the applicants))

2. The facts set out in the application form are to the best of my knowledge and belief fully and truly stated and I am not aware of any other fact which should be brought to the attention of the registration authority as likely to affect its decision on this application, nor of any document relating to the matter other than those (if any) mentioned in parts 10 and 11 of the application.

3. The map now produced as part of this declaration is the map referred to in part 5 of the application.

4 Complete only in the case of voluntary registration (strike through if this is not relevant)

4. I hereby apply under section 15(8) of the Commons Act 2006 to register as a green the land indicated on the map and that is in my ownership. I have provided the following necessary declarations of consent:

(i) a declaration of ownership of the land;
(ii) a declaration that all necessary consents from the relevant lesseeholder or proprietor of any relevant charge over the land have
been received and are exhibited with this declaration; or
(iii) where no such consents are required, a declaration to that effect.

And I make this solemn declaration, conscientiously believing the
same to be true, and by virtue of the Statutory Declarations Act 1835.

Declared by the said

MARK STEPHEN DUFFY
(known as MARK DUFFY)
at
50 New Street,
Henley-on-Thames,
Oxfordshire

this fifth day of November 2010

Signature of Declarant

Before me *

Signature: Sarah E. Revell

Address: 50a Bell Street,
Henley-on-Thames
Oxfordshire RG9 2BG

Solicitor
Mercers Solicitors
50 New Street
Henley-on-Thames
Oxon RG9 2BX

* The statutory declaration must be made before a justice of the peace, practising
solicitor, commissioner for oaths or notary public.

Signature of the statutory declaration is a sworn statement of truth in presenting the
application and accompanying evidence.

REMEMBER TO OFFICER TAKING DECLARATION:

Please initial all alterations and mark any map as an exhibit
9 The Laurels,
Stadhampton,
Oxfordshire,
OX44 7XP.

5th April 2013

Petr G Clark
County Solicitor and Monitoring Officer
Oxfordshire County Council
Law and Governance
Chief Executive’s office
County Hall, new Road
Oxford, OX1 1 ND

YOUR REF RDG/041128/062894

Dear Mr Goodlad,

Land at the Meadow, Stadhampton – Application for Registration of a new Town or village green.

I refer to your letter of the 11th March and the enclosed comments from William Webster.

I can confirm that I will not be taking the application any further.

I would however like to ensure a point is recorded regarding the fencing. One of the arguments of the land owner is that the fence separates the livestock from the right of way and the public. As mentioned in my letter of the 14th November 2012 the layout of the fences means that for around 8 weeks of the year the livestock are grazing in the area nearest to School Lane and are not separated from the public footpath.

In my view this causes a real danger to the general public and this issue should be addressed before further livestock are permitted to graze in this section of the land.

Yours sincerely

Mark Duffy.