

Division(s): All

PLANNING & REGULATION COMMITTEE – 27 JULY 2015

**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. On 5 March 2012, the Committee granted a delegation to officers to determine voluntary applications by landowners to register their own land as a town or village green under s15(8) Commons Act 2006. Since then the Government has brought into force certain additional provisions of the Commons Act 2006 and more may be brought into force in the future. Generally, officers are of the view that all routine or uncontroversial decisions under the Act can be made at officer level, with those that are controversial, of strong local or County interest or which require an exercise of judgment still being reported to the Committee.
3. It is therefore considered that a delegation to the Director for Environment & Economy to determine various types of applications under the 2006 Act should be made, subject to the conditions and procedures set out in this Report.

The Legal Background

4. The Commons Act 2006 was brought into force on 6 April 2007 although the Government decided to implement the Act in full only for certain 'pioneer' authorities. As Oxfordshire is not a pioneer authority, the Act was only implemented in part. From that date, the only material provision of the Act in force for Oxfordshire was s15, which provides for the registration of new town or village greens. As Members will be aware, these applications are often of great local interest and a public inquiry is commonly held before the matter is reported to the Committee for a decision.
5. Since then, a limited number of additional provisions were brought into force on 15 December 2014. These are:-

Section 19(2)(a) – to correct mistakes made by the registration authority when it made or amended an entry in the register;

Schedule 2 paragraph 6 – to remove ‘buildings’ wrongly registered as common land;

Schedule 2 Paragraph 7 – to remove ‘other land’ wrongly registered as common land;

Schedule 2 paragraph 8 – to remove ‘buildings’ wrongly registered as town or village green; and

Schedule 2 paragraph 9 – to remove ‘other land’ wrongly registered as town or village green.

6. The Commons Act 2006 together with the relevant Regulations (currently the Commons Registration (England) Regulations 2014) contains a much fuller set of powers and procedures however the Government has currently set no timetable for these to be implemented in full in Oxfordshire.
7. It is anticipated that the powers referred to in paragraph 5 above will result in an increase in applications to the registration authority and therefore an increase in the number of decisions. Many of those decisions are expected to be routine in nature and could therefore be made at officer level rather than being reported to the Committee.

The Commons Act 2006 in Practice

8. In relation to an application under s15(2)-(4) of the Act, it has been the registration authority’s practice to refer all applications for registration of a new town or village green where there is material dispute of law and/or fact to a public inquiry. Such an inquiry is chaired by a specialist barrister experienced in the relevant law who prepares a report with recommendation. Such report then forms part of the papers presented to the Committee for a decision. This procedure is not proposed to change, although if the 2006 Act is fully implemented in Oxfordshire, certain matters will be referred to the Planning Inspectorate instead.
9. There have however been certain instances where, due to the lack of delegated officer powers, applications under s15 have been reported to the Committee for a decision even though the parties are in agreement or there is effectively no dispute about the determination of the application. A recent example is the Queensway in Didcot decision on 12 January 2015, in which the land in question apparently met all the legal requirements for registration and no objection from the landowner was received. That is an example of a case that could be dealt with by officers under the proposals in this Report.

10. In respect of voluntary applications by landowners under 15(8) of the Act, there has not been a large uptake of this power so far by landowners and so to date 3 have been granted and 2 are being processed.
11. Applications for new greens under s15 Commons Act 2006 generally are expected to fall due to the combined effects of the amendments to the 2006 Act introduced by the Growth And Infrastructure Act 2013 in respect of 'trigger events' and landowner statements.
12. The registration authority expects some interest in, and applications under, the newly implemented powers, since there have historically been queries from members of the public about certain aspects of commons and village green registrations which may be suitable for correction under these new powers. It should however be noted that the Government has not implemented a power or duty for the registration authority in Oxfordshire to review and amend its registers, so applications will need to be made by interested persons on their own initiative for the time being.

The Proposed New Delegations

13. The registration authority therefore proposes that the Committee grant to the Director for Environment & Economy the delegated authority to determine the following matters under the Commons Act 2006, subject to the stated conditions:-
 - a) The power to grant any application or proposal;
 - b) The power to refuse any application or proposal;
 - c) The power to accept or reject any purported withdrawal of application, proposal or objection;
 - d) The power to accept or reject an amendment to any application or proposal;
 - e) The power to implement any decision of a Court or the Planning Inspectorate without need for further reference to the Committee;
 - f) The power to accept or reject any repeated or materially identical application or proposal; and
 - g) The power to grant or refuse in part any application or proposal.
14. In all cases, the exercise of these delegated powers by officers will be subject to such of the following conditions that apply to the determination in question:-

- a) There have been no objections to the application or proposal or all such objections have been withdrawn by the objector;
 - b) Officers are satisfied that all relevant legal requirements are met (to the standard of the balance of probabilities);
 - c) Legal advice is taken from the County Solicitor where necessary;
 - d) The Chair of the Committee on his/her own initiative or if requested by any Member may 'call in' any application or proposal to be determined by the Committee;
 - e) Officers may refer any application or proposal to the Committee where, although they are empowered to determine it under delegated powers, they consider that the decision is controversial or there is otherwise good reason for the Committee to consider and determine it; and
 - f) There is no other relevant decision-making body (e.g the Planning Inspectorate) to whom the decision must (or may where officers consider it necessary or appropriate) be referred for determination.
15. These powers are deliberately drafted widely. Along with the current determinations under s15 Commons Act 2006 and the newly implemented powers set out in paragraph 5 above, the intention is that these delegations are 'future-proofed' so that any new powers implemented in the future under the Commons Act 2006 can be dealt with under the same procedure.
16. This delegation should be reviewed and amended as necessary if the legislation is amended in the future.

Examples In Practice

17. The following are some examples of how the Registration Authority envisages that these delegated powers would be exercised:
- a) An application is made for registration of a new town or village green under s15 Commons Act 2006. The application is publicised and no objections are received. Following consultation with the County Solicitor, officers are of the view that the relevant legal test is met for most of the land but not all as part is covered by buildings. The Chair of the Committee does not request that the application be called in. Officers therefore determine the application by approving the application in part and rejecting it as to the buildings;
 - b) An application is made to correct the register of a common under Schedule 2 paragraph 6 as the registration includes land which was at all material times part of a building and its curtilage. The

application is publicised and one objection is received from a person with a right of common. The objection is subsequently withdrawn. Following consultation with the County Solicitor, officers are of the view that the relevant legal test is met for the application in full. Officers propose to determine the application but the local Member asks for the matter to be dealt with by the Committee and the Chair agrees. Officers therefore report the matter to the Committee which proceeds to determine it;

RECOMMENDATION

18. The Committee is RECOMMENDED to delegate to the Director for Environment & Economy the power to determine applications under the Commons Act 2006 as follows and subject to the stated conditions:-

- a) the power to grant any application or proposal;**
- b) the power to refuse any application or proposal;**
- c) the power to accept or reject any purported withdrawal of application, proposal or objection;**
- d) the power to accept or reject an amendment to any application or proposal;**
- e) the power to implement any decision of a Court or the Planning Inspectorate without need for further reference to the Committee;**
- f) the power to accept or reject any repeated or materially identical application or proposal; and**
- g) the power to grant or refuse in part any application or proposal.**

In all cases, the exercise of these delegated powers by officers will be subject to such of the following conditions that apply to the determination in question:-

- a) there have been no objections to the application or proposal or all such objections have been withdrawn by the objector;**
- b) officers are satisfied that all relevant legal requirements are met (to the standard of the balance of probabilities);**
- c) legal advice is taken from the County Solicitor where necessary;**

- d) **the Chairman of the Committee on his/her own initiative or if requested by any Member may 'call in' any application or proposal to be determined by the Committee;**
- e) **officers may refer any application or proposal to the Committee where, although they are empowered to determine it under delegated powers, they consider that the decision is controversial or there is otherwise good reason for the Committee to consider and determine it; and**
- f) **there is no other relevant decision-making body (e.g the Planning Inspectorate) to whom the decision must (or may where officers consider it necessary or appropriate) be referred for determination.**

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