



Northumberland County Council

**RIGHTS OF WAY COMMITTEE
14th NOVEMBER 2017**

Request for withdrawal of Corrective Application and for the County Council to commence the consultation with regard to the making of a Scheme of Management under the Commons Act - Corbridge Market Place

Cabinet Member: Glen Sanderson, Cabinet Member for Environment and Local Services

Purpose of Report

The purpose of this report is for the Rights of Way Committee to consider:

1. a request by Corbridge Parish Council to withdraw their application to the Council (in its capacity as Commons Registration Authority) for deregistration from the register of Village Greens of The Market Place, Corbridge.
2. should agreement to withdraw the application be received, to then consider a request to commence the statutory consultation process with regard to the County Council making a Scheme of Management under the Commons Act 1899 with regard to the Market Place.

Recommendations

It is recommended that:

1. **The request from Corbridge Parish Council to withdraw their application made under Schedule 2 paragraph 9 of the Commons Act 2006 for deregistration of The Market Place, Corbridge be approved.**
2. **If the application to withdraw is approved that authority be given to commence the statutory consultation process with regard to the County Council making a Scheme of Management with regard to the Market Place under the Commons Act 1899.**

Key Issues

1. On 29th September 2016 the County Council, in its capacity of Commons Registration Authority (CRA) formally accepted an application from Corbridge Parish Council to deregister land which they state was wrongly registered as town or village green.
2. The application was advertised in accordance with the relevant Regulations and representations were received by the CRA, copies of which were forwarded to the Parish Council.
3. As a result of the representations received, the Parish Council now wishes to withdraw their application and progress what they believe to be an alternative method to better manage the Market Place and its associated traffic problems, namely by way of the County Council making a Scheme under the Commons Act 1899. Should the County Council agree to make a Scheme under the Commons Act 1899 the Parish Council has resolved that it would enter into an agency agreement under s101 Local Government Act 1972 to then effectively take on any powers and duties of the County Council under the Scheme.

Background

1. Corbridge Market Place acquired village green status on 10th June 1971 pursuant to an application dated 28th June 1968 by the then Clerk of Corbridge Parish Council.
2. The CRA under Schedule 2, paragraph 9 of the Commons Act 2006 now has the power to deregister land which was wrongly registered as town or village green. Paragraph 9 provides:

“9 (1) If a commons registration authority is satisfied that any land registered as a town or village green is land to which this paragraph applies, the authority shall, subject to this paragraph, remove the land from its register of town or village greens.

(2) This paragraph applies to land where—

(a) the land was provisionally registered as a town or village green under section 4 of the 1965 Act;

(b) the provisional registration of the land as a town or village green was not referred to a Commons Commissioner under section 5 of the 1965 Act;

(c) the provisional registration became final; and

(d) immediately before its provisional registration the land was not — (i) common land within the meaning of that Act; or (ii) a town or village green.

(3) For the purposes of sub-paragraph (2)(d)(ii), land is to be taken not to have been a town or village green immediately before its provisional registration if (and only if)—

(a) throughout the period of 20 years preceding the date of its provisional registration the land was, by reason of its physical nature, unusable by

*members of the public for the purposes of lawful sports and pastimes;
and*

(b) immediately before its provisional registration the land was not, and at the time of the application under this paragraph still is not, allotted by or under any Act for the exercise or recreation of the inhabitants of any locality. "

3. Corbridge Parish Council have outlined that they do not know the reasons why the application for Village Green status was ever submitted. They state that there are ongoing and historic issues with parking and management of Corbridge Market Place which they say is unsightly and uncontrolled and does no justice to Corbridge as a historic village. They indicated during the application process that they believe the problems had been contributed to by the Market Square's village green status.
4. DEFRA's 2010 Guidance entitled 'The Commons Registration Act 1965 – How the commons registers were prepared' states that '*On receipt of a duly made application, CRAs were required to provisionally register the land, right or claimed ownership that was the subject of that application in the relevant section of the register, irrespective of existence of any supporting evidence*' It was not the function of the authority at that time to question what was sought to be registered, but only to give effect to the application, and to give notice of the provisional registration, so that other parties could lodge an objection. While from the Register it appears that the County Surveyor objected at the time to the application for registration it appears that that objection was withdrawn and the land in question was then registered as Village Green.
5. On 29th September 2016 the CRA formally accepted an application from Corbridge Parish Council to deregister the Market Square which they state was wrongly registered as town or village green. The Parish Council stated within their application that their research has shown no evidence of the market square ever being used as a village green for sports and similar pastimes, that a scholarly work, 'The History of Corbridge' by Robert Foster contains no reference to the Market Square being used as a village green and that in modern times the area has been used as public highway long before the registration and they provided photographs in support. A copy of the application is annexed as Appendix A.
6. The application was advertised in accordance with the Commons Registration (England) Regulations 2014 and two representations were received.
7. The first representation was from Corbridge Village Trust (copy annexed at Appendix B) which supported the application, stating that the removal of the 15 spaces for free public parking on the west side of the square would improve the general ambience of the area in question and that sympathetic landscaping to provide seating and year round planting, and to improve the amenity value of the Market Square would in turn

encourage the use by pedestrians but that consideration would need to be given to resident parking and the needs of traders to load and unload goods and materials. They indicated that with greater control of the designated area they believe that these requirements could be accommodated.

8. The other representation was from the Open Spaces Society (Appendix C). In summary, they have indicated that Paragraph 9 of the Commons Act requires that the application show that "throughout the period of 20 years preceding the date of its provisional registration the land was, by reason of its physical nature, unusable by members of the public for the purposes of lawful sports and pastimes", nor allotted as a green. They state that that is intended to be a demanding test: it is not a matter of whether the land was used as a green, but was there something which physically made the land unusable for sports and pastimes. The explanatory notes to the 2006 Act explain that: "This provision seeks to avoid an application under paragraph 9 seeking to adduce witness testimony as to the actual use made of the green prior to the date of provisional registration, which may be unhelpful so long after the period of use." It therefore provides that a town or village green (or part of it) is to be deregistered only if it was unusable during the 20 year period. They state that it is mistaken, therefore, to revisit the question of whether the land was rightly or wrongly registered under the Commons Registration Act 1965. Instead, one must look for some physical impediment to the use of the land for sports and pastimes. They state that the raised area within the land is dedicated to modest recreational use and it does not satisfy the test for de-registration. They state that while cars have habitually been parked in the remainder of the land, it was perfectly possible for the land to have been used for sports and pastimes, such as kicking a ball around, or taking a sketch of the market square. The Society recognises the desire of Corbridge Parish Council to review the use of the market square in Corbridge, and that it feels constrained in its options by the designation of much of the land as a town or village green. However, they think that this application is mistaken in two respects: firstly, it does not meet the statutory criteria, and is founded in an assumption that, if the land was mistakenly registered, then Schedule 2 to the 2006 Act must provide a remedy — but it does not. And secondly, that the key to any redesign of the market square is deregistration of the green. On the contrary, they believe that the designation gives valuable protection to the square from inappropriate development, and any redesign should respect and build on the designation.
9. In accordance with the Regulations, copies of the representations were sent to the applicant Parish Council on 14th December 2016.
10. On 14th January the Parish Council contacted the CRA to confirm that they had had a meeting with their legal advisors as to how best to respond to the Open Spaces Society letter of objection and as a result of that meeting the advice received was that in the light of the comments

made by the Open Spaces Society it seemed that they may struggle to provide evidence to satisfy the statutory test for deregistration. It had become apparent that removing the statutory designation as a Village Green would raise issues about public rights over those parts of the Market Place which are registered. As it is registered, the effective rights of the landowner are dormant. Once land ceases to be registered, there is a potentially complex interaction of potential public highway rights and/or private rights of access for properties surrounding the Market Place and that in those circumstances, they asked the CRA to take no further action on the deregistration application at the present time but they asked that the Parish Council opens discussions with NCC over the potential for NCC to make a scheme of management under the Commons Act 1899 which they believed would provide clearer powers for works to be carried out which would reduce the amount of car parking and free up more space for recreational use. They asked that the CRA take no further action with this application at the present time and they would like to open up discussions with NCC in order to make a scheme of management under the Commons Act 1899 and at the same time enter into an Agency Agreement under Section 101 Local Government Act 1972 in order to make better use of Corbridge's Historic Market Place. A copy of the correspondence is attached at Appendix C (1)

11. Upon enquiry the Parish Council subsequently confirmed that they did in fact wish to withdraw their application and they forwarded minutes of their Parish meeting of 22nd February which confirmed this.
12. On 9th October 2017 e-mails were sent to the Open Spaces Society and Corbridge Village Trust confirming the request from the Parish Council to withdraw the application and to request the commencement of the statutory process with regard to a Commons Act Scheme and requesting whether each had any further comments.
13. On 16th October a response was received from Corbridge Village Trust confirming that their support for deregistration was withdrawn and that they had concluded that the better course was to maintain the status quo with a view to NCC making a scheme of management under the Commons Act 1899. A copy of that representation is annexed at Appendix D.
14. On 23rd October the OSS confirmed that they had no objection to the withdrawal of the application. A copy of their response is annexed at Appendix E.
15. In terms of withdrawal of applications under the Commons Act DEFRA condensed guidance of 17th November 2015 on this issue states:

“Applicants don’t have an automatic right to withdraw applications. If an applicant asks to do so, you must decide whether or not it’s reasonable. You should usually allow the withdrawal of applications that need to be made by a specific person (eg the landowner) if they don’t want to

proceed with it. But be cautious about allowing an application made in the public interest to be withdrawn. Guidance states no automatic right to withdraw once made, factors to be taken into account, if reps made then re-consult if appropriate”.

More detailed, now superseded Guidance from December 2014 states:

“In the Trap Grounds case the House of Lords concluded that in considering a proposed amendment to an application to register a town green made under Section 13 of the 1965 Act [which similarly made no provision for amendment or withdrawal], the "registration authority should be guided by the general principle of being fair to those whose interests may be affected by its decision". There is room for some uncertainty about the correct approach, and registration authorities should seek to act reasonably in all the circumstances. Given the absence of provision for withdrawal in the legislation, it may be said that an applicant is required only for the purpose of making an application in the first place. The application, once it is (properly) made, thereafter takes on a life of its own, and is capable of being assessed on its content, irrespective of the interest — or lack of it — that the applicant subsequently takes in it. If the applicant wants to withdraw it, the registration authority can still press ahead and grant or refuse it. In the Court of Appeal judgment on the Trap Grounds case, the court quoted Vivian Chapman’s report on the original registration application: “My view is that an applicant under s13 has no absolute right to amend or withdraw an application. It is not unknown for campaigners to make and then purport to withdraw and resubmit s13 applications as a tactic to inhibit the development of land. I should make it clear that there is no question of such a tactic in this case but I consider that the registration authority must have a power to insist on determining a duly made application so that the status of the land is clarified in the public interest. However I consider that it is, as a matter of common sense, implicit in the 1969 Regulations that a registration authority does not have to proceed with an application that the applicant does not wish to pursue (whether wholly or in part) where it is reasonable that it should not be pursued. It would be a pointless waste of resources for a registration authority fully to process an application that the applicant did not wish to pursue whether wholly or in part unless there was some good reason to do so.” Carnwarth LJ commented: “That approach, with respect, seems to me sensible, and unobjectionable as a matter of law, although the final decision remains a matter for the discretion of the local authority”.....It may be reasonable to permit the withdrawal of applications, where this is considered to be the most reasonable course of action in the particular circumstance. There might be cases where a registration authority’s persisting with an application in which all interest had fallen away, or perhaps been replaced by hostility to it, might be depicted as more reasonable than allowing its withdrawal but the exercise of such reasonableness is a non-statutory concession.” The cases in question related to applications for village green status but the Guidance implies that the commentary could equally apply to other applications under Part 1 of the Commons Act 2006.”

16. On balance, having considered the representation from the Open Spaces Society, paragraph 9 of Schedule 2 of the Act and taking into account account the fact that on re-consultation the OSS and Corbridge Village Trust were supportive of the withdrawal of the application it is recommended that approval be given to the Parish Council's request for withdrawal (although strictly in law this will have no effect).
17. Provided that that approval is given, the Parish Council have then requested that the County Council commence the process of making a Scheme under the Commons Act 1899 with a view to, if a decision is made to make a Scheme under the Act, the Parish Council entering into an agreement under s101 of the Local Government Act to manage the Scheme upon the Council's behalf. This has happened with regard to other Village Greens in the County.
18. Attached at Appendix F is a report to the Rights of Way Committee in 2009 which sets out some background in relation to such schemes together with a draft Scheme as taken from the relevant Regulations. A scheme may be made for the regulation and management of any common within their district with a view to the expenditure of money on the drainage, levelling, and improvement of the common and to the making of byelaws and regulations for the prevention of nuisances on the Green. A scheme, once made, and where accompanied by a management agreement with a Parish Council enables more proactive management of Village Greens than is the case without a Scheme in place. It also enables certain works to be undertaken which would otherwise be restricted such as the erection of fencing and the construction of buildings and other structures to be undertaken to Village Greens with consent of the Secretary of State. A Commons Act Scheme therefore potentially enables more to be undertaken upon and with regard to a Green than would otherwise be the case. Further details of the benefits and any potential risks to the County Council as the authority undertaking the statutory process of making a scheme can be outlined in a further report after the consultation process.
19. If authority is given then the statutory process would commence but the final decision as to whether the County Council should make a Scheme would be made after a subsequent report detailing the results of the consultation process.

Implications Arising out of the Report

Policy	The proposals, if approved, would have implications in relation to the Corporate Priority of Places and Environment
Finance and value for money	The Parish Council have agreed to meet the costs of placing the statutory notice in the press
Legal	As set out within the report
Procurement	N/A
Human Resources	N/A
Property	N/A
Equalities (Impact Assessment attached) Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input checked="" type="checkbox"/>	
Risk Assessment	N/A
Crime & Disorder	N/A
Customer Consideration	The Parish Council has indicated that the proposals are designed to enhance access to the Green
Carbon reduction	N/A
Wards	Corbridge

Background papers:

Appendix A – Application for deregistration from Corbridge Parish Council accepted 29th September 2016

Appendix B – Representation received from Corbridge Village Trust received 14th November 2016

Appendix C – Representation received from the Open Spaces Society dated 24th November 2017

