



Northumberland County Council

Rights of Way Committee

Wednesday, 25 October 2023

Village Green on the east side of Church Street, Rothbury

Report of Councillor(s) Councillor John Riddle, Cabinet Member for Improving Roads and Highways

Responsible Officer(s): Stephen Gerrard, Director of Corporate Governance and Monitoring Officer

1. **Link to Key Priorities of the Corporate Plan**

This report relates to the withdrawal of a Village Green application.

2. **Purpose of report**

To consider the withdrawal of the Village Green application submitted by Rothbury Parish Council in relation to land on the east side of Church Street, Rothbury.

3. **Recommendations**

- 3.1 To approve the withdrawal of the application in respect of the land lying to the east side of Church Street, Rothbury (“the application site”).

4. **Forward plan date and reason for urgency if applicable**

A key decision is not required as it does not fall within the criteria set out in the Northumberland County Council Constitution.

5. **Background**

- 5.1 Several areas of land at Rothbury are already registered as Town or Village Green under reference VG28. In 2001, Northumberland County Council as the Commons Registration Authority (“CRA”) received a Form 30 application from Claire Miller, Clerk to Rothbury Parish Council for the registration of a further area of land under section 13 of the Commons Registration Act 1965 (the “1965 Act”) as a Town or Village Green. The application was accompanied by the required statutory declaration.

The application was processed under the 1965 Act and regulations made under that Act. The application is for one piece of land shown on the plan. A copy of the application and plan are provided alongside this report.

- 5.2 The application was marked as received and therefore formally validated by the CRA on 12 March 2001.

The application was advertised in the press and on site and notified to relevant parties. No substantive responses or evidence opposing the application were received.

- 5.3 The officer dealing with the application on behalf of the CRA at the time was concerned there was insufficient evidence to support the registration as a town or village green. Only the application and its accompanying statutory declaration had been submitted with no direct evidence in the form of photographs or witness statements produced by the applicant.

The applicant was asked to provide further evidence to support the application at various times between 2002 and 2008 in connection with identifying the locality or neighbourhood, the type of sports and pastimes relied upon, evidence of whether the land had been used “as of right” and the date on which such use began. The applicant was informed that without further evidence, a recommendation would be made by the CRA to the appropriate decision making body for the application to be formally rejected.

- 5.4 The matter then remained dormant until 19 May 2023, when the CRA emailed Claire Miller, Clerk to Rothbury Parish Council informing her that following a review of the file, it had been established that the original application remained ‘live’. Given the passage of time since the original application was received and since the last contact with the applicant, the Parish Council was asked to confirm whether it was agreeable to the application being withdrawn.
- 5.5 On 19 May 2023, an email was received from Claire Miller confirming the Parish Council was considering submitting an application to the Land Registry for adverse possession of the application site. If successful, the Parish Council could then consider making an application to voluntarily dedicate the site as Town or Village Green under powers available under Section 15(8) Commons Act 2006. Under this procedure, the applicant does not need to prove that it has satisfied the test for registration.

A further email dated 25 May 2023 was received from Claire Miller confirming the Parish Council would agree to the withdrawal of the original application. A copy of the exchange of email correspondence is attached to this report.

5.6 The Legislation

The 1965 Act was intended to provide a comprehensive system for the registration of all common land and village greens in England and Wales. The burden of proof

is on the applicant to provide sufficient evidence to justify the registration of the land as a village green as defined in the 1965 Act namely:

“land on which for not less than twenty years a significant number of the inhabitants of any locality or of any neighbourhood within a locality have indulged in lawful sports and pastimes as of right and either (a) continue to do so or (b) have ceased to do so for not more than such period as may be prescribed, or determined in accordance with prescribed provisions”

The standard of proof is the civil standard i.e on the balance of probabilities.

Although the application was unopposed it is for the applicant to demonstrate that there are sufficient grounds for the application to be successful.

The legislation does not explicitly make provision for the withdrawal of applications for the registration of land as a town or village green. The applicant does not have the statutory power to withdraw an application unilaterally and therefore the CRA can insist that the application proceed to determination if it wishes.

The Department of Environment, Food and Rural Affairs (DEFRA) guidance notes for the completion of an application for the registration of land as a town or village green outside the pioneer implementation areas dated October 2013 for applicants sets out at paragraph 61:

“If you decide at any stage not to proceed with your application, the registration authority has discretion either to take no further action on your application, or to go ahead and determine the application you made, based on the evidence available”.

- 5.7 The House of Lords in *Oxfordshire County Council v Oxford City Council and Robinson* (2006) UKHL 2 (the Trap Grounds Case) held that the applicant had no absolute right to withdraw his application unless the registration authority considers it reasonable to allow withdrawal. Despite the applicant’s wish to withdraw, the registration authority may consider that it is in the public interest to determine the status of the land.

6. Options open to the Council and reasons for the recommendations

As the village green application had been accepted by the CRA it can only be withdrawn with the agreement of the appropriate decision making body.

The Rights of Way Committee is therefore asked to consider the applicant’s request to withdraw the application and either:

- (a) agree to the withdrawal of the application or
- (b) decide whether there is an overriding public interest which would require the Committee to proceed to determine the status of the land regardless of the fact that the original applicant no longer wishes the issue to be decided.

Given that insufficient evidence has been presented to justify the registration of the land as village green pursuant to the 1965 Act together with the applicant’s

agreement to withdraw the application, it is considered both reasonable and expedient that the application be withdrawn.

If the Committee did not agree to the withdrawal it would need to set a new date for a hearing and determine the case on its merits based on the documentation presented to it.

7. Implications

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| Policy | The report relates to the Council's role as the Commons Registration Authority so there are no policy implications. |
| Finance and value for money | N/a |
| Legal | The applicant has requested that their Village Green application be withdrawn. |
| Procurement | None identified |
| Human resources | None identified |
| Property | The land in question is not in the ownership of Northumberland County Council and therefore has no effect on County Council property. |
| The Equalities Act: is a full impact assessment required and attached? | No - no equalities issues identified The withdrawal of the application will have no impact on the opportunity for recreation. |
| Risk assessment | None identified |
| Crime and disorder | The implications of Section 17 of the Crime and Disorder Act 1998 have been considered and there are no direct or indirect impacts on Crime and Disorder |
| Customer considerations | None identified |
| Carbon reduction | None identified |
| Health and wellbeing | None identified |
| Wards | Rothbury; |

8. Background papers

Form 30 application and plan

9. Links to other key reports already published

Not applicable

10. Author and Contact Details

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