

REPORT OF SERVICE DIRECTOR, HIGHWAYS**NEW RESPONSIBILITIES – COMMON LAND AND TOWN OR VILLAGE GREENS****Purpose of the Report**

1. To provide the Culture Committee an overview on its new area of responsibility – Common Land and Town or Village Greens, in advance of the training session for members at the conclusion of the meeting.

Information and Advice

2. Following the County Council's decision at its meeting on 15th May 2014 to disband the Rights of Way Committee and transfer the responsibilities of Common Land and Town or Village Greens registration to the Culture Committee, the Committee will now receive reports on these matters.
3. Decisions on these reports have to be taken on the facts of each case, not on any individual's judgement on the merits of the proposal, or the benefits or disbenefits that might arise. The legislation, the Commons Registration Act 1965 and the Commons Act 2006, dictates that decisions must be taken with reference to very strict criteria, these will be set out in reports and given the quasi-judicial nature of this, Committee Members will be given appropriate guidance and training.

Common Land

4. The County Council is a Registration Authority for the purposes of the Commons Act 2006 and the Commons Registration Act 1965. The 1965 Act established, for the first time, registers to conclusively record the existence of common land. The Council is responsible for keeping and maintaining this statutory register and, in limited circumstances under the 1965 Act, to take action to protect the registered land. (Action is normally taken by those whose rights are being infringed, i.e. the common rights owners.)
5. Common land is land, usually in private ownership, which has registered rights of common over it. These rights of common are held by persons other than the owner of the land and are rights to either do something on the land or to take something from it. Such rights do not have a recreational aspect.

6. Generally, the main features of common land are that it is open, unfenced and often remote.
7. Those persons who are able to exercise the registered rights are generally known as "commoners". Common land and commoners' rights constitute a very ancient institution. They arose as part of the fabric of life in England and Wales and have their origins in the manorial system. Most common land and commoners' rights have fallen into disuse and, being forgotten, were lost over the centuries. It is generally in the more remote areas that common rights have survived in their use. The rights are held in common with the land owner. This means that a land owner cannot do anything which would restrict the exercise of a common land right.
8. Rights of common can include the following:
 - Estovers – Taking wood, gorse or furze
 - Herbage – Grazing sheep or cattle
 - Pannage – Eating of acorns or beechmast by pigs
 - Piscary – Taking of fish
 - Turbary – Taking peat or turf
9. The Countryside and Rights of Way Act 2000 (CROW Act) provides for the public to have access to open countryside and this includes access to common land. The Countryside Agency have published maps for all areas indicating the land (including common land) to where the public now have open access rights.
10. It was popularly believed that every person had a right to go onto any common land. Before the Countryside and Rights of Way Act 2000 came into effect, the public in general did not have rights to go onto common land unless that land was in the area of an Urban District, or was crossed by public rights of way (in which case, people had to stay on the route of the right of way).
11. Registration was first carried out in the late 1960s. Some areas are quite small: such as an ancient pinfold, being a circular piece of land with a diameter of six feet (where one or two animals could be kept, perhaps overnight for safety). Larger areas run into several acres and can support the grazing of substantial numbers of animals of various kinds. These areas might also have been waste land of the manor. Some were allotted under inclosure awards in the 18th or 19th centuries for digging sand or gravel for road maintenance.
12. There are also a number of green lanes which are quite properly registered as common land.
13. Where a right of common has been registered, the commoner has the legal entitlement to the peaceful enjoyment of that right, and action which impedes the exercise of that right, for example the erection of fencing, will be unlawful. Registered common land is protected from development by statutory controls, with the Secretary of State's consent being required for certain types of work to be carried out on the land.

Town or Village Greens

14. As with its duty to register common land, the County Council has duties to register new town greens or village greens and, in limited circumstances, to act to protect the registered land. Town or village greens have a not dissimilar history to common land. They are, however, defined fundamentally separately for the purposes of registration.

15. Town or Village Greens are typically areas of land found in identifiable settlements or geographical areas where local people go to undertake lawful sports and pastimes. These sports and pastimes can include a wide variety of organised or ad hoc games, picnics, dog walking, observing wildlife and other similar activities. Although town or village greens may be owned by individuals, many of them are owned and maintained by local Parish Councils.
16. Town or Village Greens have statutory protections under two 19th century Acts: the Inclosure Act 1857 (section 12) and the Commons Act 1876 (section 29). The main protection has the effect of preventing works, including building works, taking place on the land.
17. It is possible for any person to apply to register another person's land as a town or a village green, provided that the legal tests are met – the most crucial of which is that for a period of at least 20 years a significant number of local inhabitants have used the land 'as of right' to indulge in lawful sports and pastimes. This right to apply may, however, be excluded if any one of a number of Planning-related "trigger events" has occurred on the land, although the right may become exercisable again if a corresponding "terminating event" has occurred since the "trigger event".
18. When an application is received, it may then be given publicity which will invite objections. Depending on the complexity and the volume of evidence for and against, it may be necessary to appoint an independent inspector to hold a public inquiry to establish the facts. The inspector does not make a decision but makes a report with a recommendation to the Council as Registration Authority.
19. The decision as to whether or not to register the land can only be determined on the facts established and the law as applied to those facts. There is no scope allowed for consideration of matters such as desirability or community interests. The Registration Authority's decision can only be made by examining the evidence to see if the facts show that all of the criteria are met.
20. Failure to meet even one of the criteria means that an application must be rejected on the facts.
21. A provision introduced in the Commons Act 2006 makes it possible for a land owner to register their own land voluntarily as either Common Land or a Town or Village Green. This does not involve objection or public inquiry.
22. A training session about these new responsibilities will take place after this meeting has closed.

Other Options Considered

23. Consideration was given to allocating the responsibilities of the Rights of Way Committee in a different manner but it was felt that the approved reallocation of responsibilities was the most efficient.

Reason/s for Recommendation/s

24. This report is for noting only.

Statutory and Policy Implications

25. This report has been compiled after consideration of implications in respect of crime and disorder, finance, human resources, human rights, the NHS Constitution (Public Health only), the public sector equality duty, safeguarding of children and vulnerable adults, service users, sustainability and the environment and ways of working and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

RECOMMENDATION/S

- 1) It is recommended that Culture Committee members note the contents of the report and note that a training session on Common Land and Village Green registrations will be held at the conclusion of the meeting.

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For any enquiries about this report please contact:

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Constitutional Comments

26. As this report is for noting only no comments are required.

Financial Comments (SEM 25/6/14)

27. There are no specific financial implications arising directly from this report.

Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

- None

Electoral Division(s) and Member(s) Affected

- All