



1 November 2022

Agenda Item: 5

REPORT OF SERVICE DIRECTOR (PLACE & COMMUNITIES)

APPLICATION REF: 366NVG

PROPOSAL: TO REGISTER A TOWN OR VILLAGE GREEN

**LOCATION: LAND AT THE CORNER OF MAIN STREET AND SWINDERBY ROAD,
SOUTH SCARLE**

APPLICANT: THE SOUTH SCARLE PARISH MEETING

Purpose of Report

1. To consider an application made under Section 15, Commons Act 2006 seeking to register land as a town or village green. The Nottinghamshire County Council is the Registration Authority for Common Land and Town or Village Greens, and in order to come to a decision on this matter, the Authority must consider:
 - The contents of the application and any material accompanying it
 - Any objections
 - The applicant's representations in light of any objections
 - The findings made at any site Inspection (if one occurs)
2. Accordingly, the recommendation is to reject the application for the reasons set out in the report below.
3. The Registration Authority is required to either accept or reject the application solely on the facts. Any other issues, including those of desirability or community needs are not legally relevant and cannot be taken into consideration. Acceptance of the application means that the land will be formally registered as a Town or Village Green; such registration giving it the legal status of a Town or Village Green with the corresponding restrictions and protections.

The Site and Surroundings

4. The land which is the subject of the application is located at the junction of Main Street and Swinderby Road, South Scarle. It consists of an elongated grass verge which abuts Greenfield Cottage and Willow Tree Paddock to the West, and alongside an access track/public footpath to the East. A plan showing the application land and other points of interest is shown at Appendix A.

Site Visits

5. Officers undertook ad hoc site visits on 12th August 2021 and 4th November 2021. On each occasion walkers were observed using the adjacent public footpath. On the second visit, cars were observed accessing properties using the adjacent access track. While these are only two brief snapshots, no sporting activities or pastimes were witnessed being undertaken on the application land during either of the visits.

The Law

6. Section 15, Commons Act 2006, provides, insofar as is relevant, that:
 - (1) Any person may apply to the commons registration authority to register land ... as a town or village green in a case where subsection (2) ... applies
 - (2) This subsection applies where:
 - (a) A significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and
 - (b) they continue to do so at the time of the application
7. The above provisions have been the subject of much judicial comment. Accordingly, the key principles are as follows:
8. “Significant Number”

This requirement is closely linked to the “locality” or “neighbourhood” criterion. A “significant number” does not necessarily mean a large number and is a subjective matter for the decision maker i.e. a bigger locality or neighbourhood might lead one to expect a greater number of users, while a smaller locality or neighbourhood, could satisfy the criterion with fewer users. In any event, something more than occasional trespass is required.
9. “The inhabitants of any locality, or of any neighbourhood within a locality”

It is settled law that “locality” means a legally recognised administrative area (such as a ward, parish, or district). “Neighbourhood” is a less precise concept but in general terms means a self-contained area having some cohesive characteristics. The application shows that it is the locality of the parish of South Scarle that is being relied on.
10. “...have indulged as of right”

This means that use must not be by force, by stealth or by permission. ‘Force’ is not confined to physical force but could also include circumstances where use is contentious i.e. use in breach of prohibitive signage or repeated verbal requests to desist. Use must not be by stealth but must be ‘in the open’ and without any form of secrecy. Use cannot be by permission (either when expressly given or implied from the landowner’s conduct).

11. "...in lawful sports and pastimes"

It is settled law that there is no specific requirement for organised games to have taken place, but lawful informal recreational activities such as general roaming, fruit picking, children playing, will suffice. Use that is strictly confined to defined routes will not satisfy the criteria, and in such circumstances the correct course of action would be to seek to register a right of way rather than a town or village green.

12. "...on the land"

It is not necessary for the land to look like a traditional village green or for all of the land to be in actual use. The Trap Grounds case, heard in the Court of Appeal, related to land which was approximately 25% accessible by the public (the remainder being covered by trees and scrub). The case was upheld on the basis that the whole of the land had been used for recreation.

13. "...for a period of at least 20 years"

The application must demonstrate use to have taken place, without interruption, for a full continuous period of twenty years.

14. "...and they continue to do so at the time of the application".

The application must demonstrate use up to the 2nd of November 2021 (this being the date the application was received by the Registration Authority).

The Application

15. A copy of the application is shown at Appendix B. The grounds stated for the application are set out in parts 7 and 11 of the application and may be summarised as follows:

- (a) The land has no registered owner (i.e. title has not been registered with the Land Registry).
- (b) It has been referred to locally as 'common land' although it is not.
- (c) Unrestricted access to properties and fields exists on the land.
- (d) The Smithy [being adjacent] used the land for raising pigs up to 1956.
- (e) Footpath No.9 runs adjacent to and is used in conjunction with the land.
- (f) Sections of the land have previously been tended by the "South Scarle Nature Group" to plant indigenous flora. This has temporarily ceased.
- (g) The justification for the application is to maintain free access all over this area of land for recreation, environmental improvement, and unrestricted access to property.

- (h) The owner of the Blacksmith's Forge/Willow Tree Paddock asserts that the application land is in his ownership. He has objected to the nature group tending a small patch of this land (consisting of trees/bramble/wildflowers).
 - (i) The owner of the Blacksmith's Forge/Willow Tree Paddock has improved the application land including drainage works for his own benefit and without consultation with the Parish Meeting.
- 16. Nine letters from 12 local residents were submitted in support of the application. Aside from matters relating to private rights of access (which purely relate to private matters under other legislation), the following points were made:
 - (a) The land has been used by walkers and horse riders.
 - (b) The South Scarle Nature Group used the land to plant flora (also referred to as a 'patch'), and to naturalise un-walked edges to provide a nature corridor.
 - (c) Private registration of title to the land at the Land Registry is opposed.
 - (d) Voicing a desire to implement future environmental initiatives on the land.
 - (e) Until 17 years ago (approximately) the land was 'rough' but has since been improved by a local resident.
 - (f) The need to protect the "pathway" by registering it as a village green.

Objections and Representations

- 17. The application was publicised by means of notices on site, on the village notice board, in a press notice, and by notifications sent to the nearest occupiers and other interested parties. In total, three objections were received, all coming from the abutting properties.
- 18. The objection from the occupiers of The Blacksmith's Forge/Willow Tree Paddock is summarised below:
 - (a) They have been resident at the property since May 2002. At that time, the land fronting Willow Tree Paddock was subject to flooding. Enquiries (including with the Parish Meeting) led them to believe that any works would be a private matter. Drainage works (including the construction of holding chambers/laying of pipes) duly commenced in 2002 and were completed in 2006. The works were prolonged due to difficulties in locating/tracing old land drains.
 - (b) During building works between 2003 and 2007, a large amount of fly-tipped material including rubble, scalpings and garden debris was removed from the application land. All rough vegetation was removed at that time. One local farmer is reported to have said that the rubble etc had been deposited to prevent travellers from camping on the lane.

- (c) In 2009 several loads of topsoil were laid and seeded with grass. Prior to renovating the area, it was impossible to use the land for lawful sports or pastimes.
- (d) It can be seen that the land has not had uninterrupted access for twenty years as stated in the application. The village nature group is a recent activity.
- (e) The letters in support of the application mainly refer to use of the public footpath for walking dogs. One letter refers to the area being 'rough' until it was mown.
- (f) When purchasing the old blacksmith's shop/forge in 2016 the vendors were unable to locate the title deeds for the property but stated that the application land formed part of the property when they purchased it in the 1960s. In April 2021 an application was submitted to H.M. Land Registry for the registration of the application land. That application is pending.
- (g) Two supporting statements were also attached to the objection being from workers associated with above-mentioned works, attesting to the nature of the works and timescales.

19. The objection from the occupier of Greenfield Cottage is summarised below:

- (a) They have been resident at Greenfield Cottage since November 1979 and therefore have observed the land over a significant period of time.
- (b) The application land comprises part of their paved driveway and the access to an agricultural field.
- (c) The land has not been used for 20 years by a significant number of inhabitants of the locality for lawful sports and pastimes (including dog walking).
- (d) The far [northern] end of the land was not accessible to anyone prior to 2009 other than by using the marked public footpath when my neighbour at Willow Tree Paddock, finished clearing the rubbish and overgrowth, and sowed grass to establish the current setting, which he maintains by regular mowing.
- (e) Drainage works were carried out on the land by the neighbour who also fills in craters in the track. All of this work has had a positive impact.
- (f) No confidence that South Scarle Village Meeting has the resources to carry out the level of maintenance as is currently maintained by my neighbour.
- (g) This maintenance has benefitted not only myself and the owners of Corner Field Cottage in terms of access to properties, but all the inhabitants of South Scarle who have had free access to it.

20. The objection from the occupiers of Corner Field Cottage is summarised below:

- (a) First resident in the village between 2000-2006, we recall the application land being blocked off with piles of rubble, overgrown and totally impassable. The nearby footpath petered out into nettles and brambles and was obviously not in regular use.
 - (b) On moving to Corner Field Cottage in 2011 a transformation had taken place. The lane had been made good and resurfaced, rubbish and piles of bricks removed, and garden waste disposed of. The footpath was open, and all were using the footpath for dog walking.
 - (c) During our time in the village no sporting activities have been played on the land as it was all blocked off in 2006.
 - (d) For the last four years we have assisted the neighbour at Willow Tree Paddock to maintain the lane, sharing the costs of the work to benefit all who use the lane and footpath. Our neighbour mows the grassed area every week since he cleared the rubbish. He also top-soiled and rotovated the area.
 - (e) The so-called wildflower experiment is a blot on the environment and may encourage fly-tipping.
 - (f) Dog walkers stick to Footpath No.9 as marked by the yellow arrow sign-post.
21. Two residents, having already submitted a letter of support, emailed the Authority stating "We would like to support the application made by South Scarle Parish Meeting regarding the piece of land at Blacksmith Lane, South Scarle. We feel strongly that it should be a village asset with free access for all and would envisage it being part of the existing South Scarle Village Nature Project".

Applicant's Response to the objections

22. As is required, the applicant was given the opportunity to respond to the points raised in the above objections. The applicant's response is summarised below:
- (a) The owner of The Old Smithy verbally claimed to the Parish Clerk that he owned the land attached to it and a dispute arose over the use of part of the land by the village nature group.
 - (b) The Land Registry plan shows that no land is attached to the Old Smithy.
 - (c) Improvements made to the land are acknowledged but this was not done in consultation with the Parish Meeting.
 - (d) Given that the land is not registered, it was felt that the land should be protected for the public. There is no intention to impinge on the rights of adjacent property.
 - (e) It was never claimed that the land was used for sports, but it is used for recreational activities/pastimes.

- (f) Overall, the justification for the application is to maintain free access to this area of land for recreation, environmental improvement, and unrestricted property access.
- (g) The village has a playground/sports field at the edge of the village and a grassed village green in the village centre for social gatherings etc. There is no desire or need to use the new application area for purposes other than stated [free access for recreation, environmental improvement, and unrestricted property access].

Further Submission from the Applicant

- 23. South Scarle Parish Meeting produced in support of its application a document which was delivered just before the start of the Committee Meeting on 5th July 2022. To allow all parties to properly consider the document the matter was then deferred until the next available Committee. The document is attached as Appendix C.
- 24. The supporting document from the Parish Meeting contains responses to the issues considered in the deferred report, site photos from 2019 and 2022, and a statement from a long-term resident and farmer of the parish. It sums up and gives background and historical perspective to the case made for a village green in the application and response to objections. The submission is summarised below
 - (a) Regarding the Significant Number of Inhabitants, approximately 20 people per day use the space, and 6% (12 people) of inhabitants provided written support.
 - (b) Regarding the Locality, the criteria has been met.
 - (c) Regarding use As of Right, agricultural use of the land ceased in 1956 and since then no permission has been sought or given for use of the land, and no prohibitive notices have been seen
 - (d) Regarding Sports pastimes and recreational activities, the land acts as an informal village meeting space for dog walkers. It is also used for nature watching and blackberry picking. In the past when there were more children in the parish it was used for games such as hide and seek and den building.
 - (e) Regarding On the Land, most of the land is and has been accessible notwithstanding the vegetation.
 - (f) Regarding the period of at least 20 years, use has been for longer than this.
 - (g) Regarding continuing at the time of application, use continues except for the Nature Group.
 - (h) In summary the applicant believes that the criteria has been met, and that community needs should be taken into account.

- (i) Site photos show the site including the Nature Group and their work in 2019, and as it is in 2022.
 - (j) A written statement from Mr Clement of Beeches Farm (born in 1935 in South Scarle) details agricultural use and maintenance of the land for access and for taking hay, clipping sheep, keeping pigs, shoeing horses, and also for camping excursions by the Scouts.
25. South Scarle Parish Meeting have also subsequently submitted a collection of 88 signatures from South Scarle residents in support of the application.

Conclusion

26. In order to satisfy the grounds for registration, the application must meet each one of the tests as set out in paragraphs 8 to 14 in this report.
27. Accordingly, consideration is given to whether use has been by a significant number of inhabitants. It is noted that South Scarle is rural in nature and is remote to some degree. Although the current population of the parish amounts to approximately 195, only twelve residents submitted letters in support of the application. This amounts to approximately 6% of the locality. If the land in question were used by residents of the locality i.e. the parish, it would be reasonable to expect a greater number of witnesses to have come forward. It is also worth noting that the testimony in the letters, while supportive of the application, provides little evidence of direct first-hand use. The Parish Meeting suggest that 20 people per day use the site, and it acts as a natural village meeting place. In addition, 88 residents have signed in support of the application, but this does not add to the evidence of use. In summary, use has only been demonstrated on an occasional basis by a limited number of persons and therefore does not meet the “significant number” criterion.
28. The locality from which the claimed users are drawn is identified as being the South Scarle Parish and as such meets the requirement of “any locality” for the purposes of the legislation.
29. Although the evidence submitted is limited (i.e. use by the Nature Group), there is nothing in the application, nor in any objection to suggest that this was not ‘as of right’ i.e. there is no evidence of any signs or notices prohibiting use, no evidence that use was undertaken in secret, and no evidence of any pre-existing right or permission to use the land. The application does contain reference to a possible verbal challenge stating that the owner of Willow Tree Paddock had previously objected to the nature group from tending a “small patch” on the application land. Further clarification on this point i.e. to establish whether use has been “as of right” would be necessary if Committee were minded to not reject the application.
30. The applicant readily states that no sporting activities have been carried out on the land, but instead is relying on lawful ‘pastimes’ having taken place. This is stated to be evidenced through the Nature Group’s planting of indigenous flora within a small thicket. A photo of the Nature Group has been supplied by the Parish Meeting as part of Appendix C. This appears to be the primary activity alleged to have taken place on the land. It is unclear whether this amounts to a

‘recreational activity’ within any meaning established by case law or instead relates to essentially private work only undertaken through membership of a voluntary group. Other activities which might usually be expected, such as picking berries, children playing, picnics etc are not described in the statements provided by users but, in the case of berry-picking and ‘children’s adventurous play’, referred to as having occurred other than ‘recently’. Accordingly, it is considered by officers, that on balance, the “lawful sports and pastimes” criterion is not met.

31. Whilst the applicant refers to part of the land being tended by the “South Scarle Nature Group”, the only visible evidence of this during the site visits was the small thicket which amounts to approximately 4% of the application land. While, per paragraph 12 above, use of a quarter of the land may be considered to fulfil this criterion, such a very limited area would not appear sufficient to satisfy the criterion for use “on the land” (as defined in the application plan).
32. It is noted that the applicant does not dispute the objector’s account of certain works on the land which appears to have been partly covered with brambles and piles of rubble during the early 2000’s; indeed, one of the statements submitted with the application corroborates this. Furthermore, the objector’s references to works between 2002 and 2009 suggests that the land has only subsisted in its present state for about 11 years prior to the application and that use by the Nature Group only commenced once the land had been cleared by the resident. According to the South Scarle Parish Meeting web site, the Nature Project was formally set up in 2017 (a point which is also made by one of the objectors). Accordingly, use on the land does not appear to have taken place “for a period of at least 20 years” and therefore the criterion is not met.
33. The application states that the work of the Nature Group had temporarily ceased prior to the lodging of the application. Given that no other evidence of continuing qualifying activities have been identified, it appears that use did not continue “at the time of the application” and therefore the relevant criterion is not met.

Other Options Considered

34. Should Committee consider that the matters raised in the application require further investigation before a decision can be made, it may call for a local public inquiry to be held (chaired by an independent inspector). Following the Inquiry, the inspector would prepare a report for consideration by Committee. The costs of the inspector/inquiry would be borne by the Registration Authority.

Reason/s for Recommendation

35. While limited reference is made to the kind of evidence that could be relevant to support registration of the land as a Town or Village, detailed analysis by Officers of all of the information presented in support of the Application does not present sufficient evidence to enable the land to be registered; nor does it, in Officers’ view, indicate a likelihood that sufficient evidence to warrant registration would be obtained following further investigation.

Statutory and Policy Implications

36. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance, finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty, the safeguarding of children and adults at risk, service users, smarter working, and sustainability and the environment, and where such implications are material, they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

Human Rights Implications

37. Implementation of proposals within this report might be considered to have a minimal impact on human rights (such as the right to respect for private and family life, and the right to peaceful enjoyment of property, for example). The Authority is, however, entitled to affect these rights where it is in accordance with the law and is both necessary and proportionate to do so, including in order to protect the rights and freedoms of others. The proposals within this report are considered to be within the scope of such legitimate aims.

RECOMMENDATIONS

38. It is RECOMMENDED that, as the application has not met all of the required criteria for registration of the land as a Town or Village Green, it is rejected for the reasons set out in the report.

DEREK HIGTON

SERVICE DIRECTOR (PLACE & COMMUNITIES)

For any enquiries about this report please contact:

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Constitutional & Legal Comments (SJE – 07/10/2022)

39. This decision is a quasi-judicial decision falling within the Terms of Reference of the Planning & Rights of Way Committee to whom responsibility for the exercise of the Authority's functions relating to common land and town or village greens has been delegated.

The law requires that Committee consider all relevant evidence to form a view as to the balance and strength of the evidence for and against registration of the land as a Town or Village Green, per the legal tests set out at paragraphs 6-14 above. As a quasi-judicial decision, the decision must be made based solely on the facts and the law applied to those facts. For the avoidance of doubt, other matters such as policy, social or other considerations are not legally relevant and must be disregarded.

Should Committee be minded not to accept the Officer's recommendation / wish for additional information before determining the application, they may resolve a) to defer consideration of the matter, requiring the bringing back of a further report; or b) the appointment of an independent inspector to report back to the Authority, per paragraph 34 above.

Financial Comments (DJK 6/10/2022)

40. There are no specific financial implications arising directly from the report.

Background Papers Available for Inspection

41. The application file is available for public inspection by virtue of the Local Government (Access to Information) Act 1985.

Electoral Division(s) and Member(s) Affected

Collingham Division Councillor Debbie Darby