

 Nottinghamshire County Council	Report to Culture Committee
	21st July 2015
	Agenda Item: 4
REPORT OF SERVICE DIRECTOR (HIGHWAYS)	
APPLICATION TO REGISTER A TOWN OR VILLAGE GREEN – THE LORDS GROUND, MANSFIELD WOODHOUSE	

PROPOSAL: APPLICATION TO REGISTER LAND AS A TOWN OR VILLAGE GREEN

LOCATION: THE LORDS GROUND, MANSFIELD WOODHOUSE

APPLICANT: MR C. A. BARTON

Purpose of the Report

1. To consider an Application to register land as a Town or Village Green (“TVG”) under section 13 of the Commons Act 1965, made to Nottinghamshire County Council as Registration Authority. The Registration Authority’s responsibility to determine the application is a quasi-judicial function and is separate from all other functions carried out by the Authority. The decision as to whether or not the application satisfies the criteria for registration must be based entirely on the evidence submitted. The land subject to the application is outlined on the plan attached at Appendix 1.

The Site and Surroundings

2. The application land is comprised of three distinct areas namely; 1) a grassed recreation/sport field, 2) an earthen/unsurfaced area to the rear of the Park Road Business Centre (currently used as a car park) and 3) land comprising the Park Road Business Centre building and its frontage to Park Road. Photographs showing the application land are attached at Appendix 2.

Background Information and Advice

3. The application was submitted in November 2006 by Clive Anthony Barton, a resident of Pleasley, Mansfield, and was made to register land described by him as the “The Lords Ground”, Mansfield Woodhouse as a TVG (hereafter referred to as “the application land”).
4. Where land is registered as a Town or Village Green the right of the public to use the land for recreational activities is protected from then on. Land can only have the legal status of a TVG upon registration.

5. The application land was purchased by Mansfield Woodhouse Urban District Council from the Duke of Portland and his Trustees by means of a conveyance dated 4th May 1923. The land is currently owned by Mansfield District Council being successors to the Urban District Council. A copy of the 1923 conveyance plan is shown at Appendix 3.
6. The applicant states the land was purchased by the Urban District Council 'to expressly preserve the area for open air leisure use'. No evidence has been submitted to corroborate this point and there is no such reference in the conveyance itself. The applicant also states that the land has been used for lawful sports and pastimes from approximately 1880. Accordingly, it is noted that Ordnance Survey maps published in 1899 clearly depict the land as a Cricket Ground incorporating a pavilion. An extract taken from the 1899 Ordnance Survey plan is shown at Appendix 4.
7. Byelaws in respect of the application land were made by Mansfield Woodhouse Urban District Council on the 25th April 1923. Unfortunately, no copies of these byelaws have been found. The 1923 byelaws were repealed by the 1975 byelaw described below.
8. The 1975 Byelaws in relation to 'The Lords Ground' were made pursuant to section 164 of the Public Health Act 1875. The 1875 Act empowered local authorities to provide land for public recreation. Mansfield District Council has confirmed that the **whole** application land is subject to the 'Open Space and Pleasure Ground byelaws'. MDC also state that since 1974 the land has been laid out and maintained by the District Council as a pleasure ground. It is noted that the 1975 byelaws provide for the regulation of vehicles, bicycles, dog control, use of space for games, damage and nuisance etc.
9. Five user evidence forms were submitted with the TVG application in 2006. Another 16 forms were submitted in 2009 following a formal objection by Mansfield District Council. Therefore the claim comprises of 21 evidence forms in total. The forms refer to actual use on the application land for various sports and pastimes with the earliest use commencing in 1930. Users refer to having taken part in various activities which include; walking, playing as children, socialising, team games, cricket, football, rounders, riding bikes, running, exercise, flying kites, watching wildlife, picnicking, viewing the landscape and attending fetes/bonfire parties.
10. Although the TVG application was made under the provisions of the Commons Registration Act 1965, at the time the application was made (November 2006), certain provisions of the Commons Act 2006 had already come into force. In June 2008 advice was sought from Mr Jonathan Mitchell, Barrister at Ropewalk Chambers as to the procedure for dealing with the application during this 'transitional' period. Counsel duly advised that the appropriate tests to be applied were those set by the Commons Act 2006.
11. The applicant contends that the land became a TVG on the 26th November 2006. Accordingly, the test in subsection (2) of section 15 of the 2006 Act will apply whereby;
 - A significant number of the inhabitants of any locality, or 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
 - They continue to do so at the time of the application

12. Careful consideration has been given in respect of whether use of two parts of the application land actually ceased prior the application being made.
13. Firstly, Mansfield District Council has stated that 'temporary business units' were erected in 2006 on the application land under a lease agreement with Bullock Construction Ltd. The business units occupied an area which is accessed from Slant Lane on the eastern side of the application land and are clearly visible by comparing aerial photographs taken in 2004 and 2007 as shown at Appendix 5. MDC was unable to produce any further information in respect of this lease agreement. However, it is noted that some user evidence forms refer to the temporary business units having been in place throughout 2005. This earlier date is supported by evidence from a local newsletter (the Mansfield Warbler) which reports the business units as already being in place in December 2005. MDC have stated that no planning permission was required for the business units as these were subject to provisions of the Town and Country Planning (General Permitted Development) Order 1995 and that 'the provision of land for temporary buildings for carrying out works is classed as permitted development and does not require planning approval. Accordingly, use of the application land on the 'Bullock Construction land' did not continue up until the time of the application as claimed by the applicant.
14. Secondly, after the TVG application was made (November 2006), part of the land was developed and is now occupied by a business facility owned by MDC i.e. 'The Park Road Business Place'. The building was constructed on a similar 'footprint' to an air raid shelter which had previously been situated on the site and which had been used as changing rooms until around 1990. The shelter is visible on the 2004 aerial photograph shown at Appendix 5. According to MDC the shelter was demolished in 2006 to make way for construction of The Business Place. Although MDC has been unable to say when construction began on the development, it is noted that planning permission was granted on 21st December 2006, and that work appears to be underway in 2007 according to the aerial photograph at Appendix 5.

Consultation

15. Following the advertising of the application and formal notification to interested parties (October 2008), three objections were received from;
- Mr D Lisgo, Manager of the Park Road Business Place
Park Road, Mansfield Woodhouse
 - The Mansfield Woodhouse Community Development Group
Park Road Resource Centre
53 Park Road, Mansfield Woodhouse
 - Mansfield District Council
16. The objection by Mr Lisgo (Park Road Business Place) is summarised below (County Council officers comments are shown in italics);
- The area bordering Park Road and next to the Park Road Resource Centre was previously not 'green space'. It had a derelict building which attracted vandalism and was an eyesore.

The appearance of the land does not prevent the land being registered as a TVG. Furthermore, the land in question is still held as a pleasure ground under the 1975 byelaw.

- The area bordering Park Road is now occupied by a building... 'The Business Place'.
Again, the land on which the building stands is held by MDC as a pleasure ground. It is noted that although various powers permit a local authority to appropriate land from one purpose to another, MDC state 'there was no formal appropriation between committee and the land was held in a manner that did not require the same'. It is noted that the TVG application was made before 'The Business Place' was granted planning permission. The existence of this building is not therefore a relevant factor that can be considered in determining whether the land should be registered as a TVG.
- Granting the application could result in the Business Place not being able to function effectively. This would have a detrimental effect on the local business community and potential loss in employment.
At law, this point is not something that can be taken into account when determining whether the land should be registered as a TVG.
- Land which is currently used as a car park is essential to the business place. The parking area also provides a useful amenity for visitors to the British Legion Club and the Park Lane Resource Centre.
This point relates to the earthen/unsurfaced area to the rear of The Business Place, but which is still held by MDC as a pleasure ground. Although vehicular access may be regulated under the provisions of the 1975 byelaw, this point is not something that can be taken into account when determining whether the land should be registered as a TVG.
- Access should be maintained from Slant Lane to the Car Park at the rear of the British Legion Club and business incubation units as this is the only access for heavy vehicles.
Again, vehicular access appears to be regulated under the provisions of the 1975 byelaw, but this point is not something that can be taken into account when determining whether the land should be registered as a TVG.

17. The Mansfield Woodhouse Community Development Group objection repeats all the points made by Mr Lisgo, but does give support to the registration of a smaller area as a TVG i.e. the area which is laid to grass (Appendix 2.1).

18. The MDC objection is summarised as follows;

- The evidence discloses use by 5 individuals who have seen others using the land. This does not evidence that a significant number of inhabitants of a locality use the land. The applicant is put to strict proof as to the locality being relied upon and the numbers using the land from that locality.
A further 16 evidence forms were submitted at a later date making 21 forms in total. These do enough to make out a prima facie case, but it remains to be seen whether or not they establish evidence of use by a significant number of the inhabitants. Such evidence would usually require further investigation by holding a public inquiry to establish the facts in greater detail.
- Use has not been 'as of right' which is without permission, without stealth and without force. The applicant, the individuals who have completed user evidence forms, and others use the land with permission of the District Council which holds the land under Section 164 of the 1875 Public Health Act as a Pleasure Ground by virtue of the District Council's Open Space and Pleasure Ground byelaws confirmed on the 5th of August 1975 and coming into force on the 1st of September 1975.

*MDC is correct on this point. A relevant legal ruling is The Supreme Court judgment (R. (on the application of Barkas) -v- North Yorkshire County Council (2014)) which considered the meaning of the phrase 'as of right' in respect of TVG applications. The Court held that people taking part in recreational activities on land held by a local authority as a recreation ground and under statutory powers (in that case under S.12(1), Housing Act 1985) did so **'by right' rather than 'as of right'** and therefore any application to register a TVG on such land would fail on that basis. In 2015 The Supreme Court endorsed this interpretation in R.(oao Newhaven Port and Properties Ltd) –v- East Sussex County Council, stating that land to which the public has access, but where the activities which may be undertaken are regulated by byelaws, such use was by permission i.e. being 'by right' and not 'as of right' (the latter being required for registration as a TVG). Accordingly, in the case here, where the application land is owned by Mansfield District Council, who allocated the land as a 'Pleasure Ground' for public recreation under the Public Health Act 1875, use of that land, from 1st September 1975, is 'by right' and is not 'as of right'. N.B. Although the byelaw does not contain any plan to show the extent of the regulated land, MDC has stated that the byelaw covers the whole of the Lords Recreation Ground as conveyed in 1923 but minus a portion which was sold in 1967 and which is now occupied by the Mansfield Woodhouse Ex-Servicemen's Club. A plan which shows the land which was sold in 1967 is shown at Appendix 6.*

- Byelaws in respect of the land were made by Mansfield Woodhouse Urban District Council on the 25th of September 1923. These were later revoked by Mansfield District Council's 1975 byelaws. This confirms that the Urban District Council maintained the land as a pleasure ground from purchase [1923] until transfer in 1974.

Noted, but as no copy of the 1923 byelaw has been located, this point is given little weight.

- The sports and pastimes listed in the user evidence forms are no more than would be expected on a pleasure ground open to the public. The use is consistent with how the land is held by the District Council and the byelaws that regulate its use.

Apart from use by bicycles, which is barred under the provisions of the 1975 byelaw, the sports and pastimes referred to in the evidence forms are consistent with the types of activities which one would expect to see on land held as a pleasure ground.

19. As is legally required, copies of the objections were forwarded to the applicant for comment. Relevant points from the applicant's response are summarised as follows;

- Prior to 1940, the whole of the Lords Ground was open green space used as of right by the people of Mansfield Woodhouse for lawful sports and pastimes. Circa 1940 a brick air raid shelter was built on the Park Road frontage. The area surrounding the shelter was fully grassed and was usable for community activities. After the war the air raid shelter gradually deteriorated, it was however used as a changing facility for footballers and athletes up until circa 1990. Over the years there were calls to demolish the shelter to allow that small part of the ground to go back to its original state however the small 'concrete footprint' has allowed a much larger footprint to be put there [i.e. the Park Road Business Place]. The Mansfield Woodhouse Society objected to the planning application for the building of private business units on the site. This development is illegal due to the byelaw. The Council has derelicted its duties by not applying its own byelaws.

MDC have commented that the applicant is wrong on this last point as MDC only has 'powers' to enforce byelaws rather than it being a statutory 'duty'. MDC has said that it will not take action against the alleged breaches in the byelaw as it is not in the public interest

to do so and that the construction of 'The Business Place' was sanctioned by the granting of planning permission. MDC also state that concerns regarding the granting of planning permission are not matters to be considered in determining a TVG application. Any dissatisfied parties had the opportunity to challenge that decision by appeal or by judicial review.

- The so called car park area and vehicle access to the Lords Ground is barred under the byelaws. The number of vehicles on the land has increased over the last 2-3 years to over 40%. An increasing area is being lost and churned into sludge and mud. *The alleged byelaw breach is a matter for MDC and is not something that can be taken into account when determining whether the land should be registered as a TVG.*
- The statement by MDC that people's use was not as of right is 'nonsense'. The fact that MDC owns the land puts them in no different status to any other type of ownership. The ownership/byelaw issue is no 'blockage' to the land being used by the public under the 1965 Commons Registration Act. *Due to the above recent Supreme Court cases on this point, the applicant's view is no longer supported by the law which provides that, while ownership is indeed relevant (as stated by the applicant), the existence of the byelaws which provide that lawful sports and pastimes may be undertaken on the land is, in fact, a 'knock-out blow' to the application.*
- The information passed down from previous generations is that the Lords Ground (previously known as Holme Close) was the traditional area for village fairs and fetes as well as the general purpose use for a range of sports and leisure activities. Continuous use can be traced back to 1850.
- Prior to the 1965 Act, public use of the land goes back to circa 1100. *Any land subject to TVG status but not registered by 1970 ceased to be capable of registration until a subsequent period of twenty years use had accrued, and it is that subsequent period which is the subject of this report.*

The Legal Test

20. Committee 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 means the land will be registered. Rejecting the application would mean that no registration would take place. Committee must decide whether the application fully meets **all** the elements of qualifying use for land to have become capable of registration as a TVG. The applicant must establish on the balance of probabilities (the civil standard of proof) that use had been;

- i) by a significant number of the inhabitants,
- ii) of any locality or of a neighbourhood within a locality,
- iii) having indulged "as of right" (i.e. without force, secrecy or permission),
- iv) in lawful sports and pastimes,
- v) on the land,
- vi) for a period of at least twenty years,
- vii) and that such use continued up until the time of the application.

(i) by a significant number of the inhabitants

21. Twenty one evidence forms were submitted in total. This is sufficient to make out a prima facie case. However, such evidence would usually require further examination i.e. at a public inquiry to see if it comes up to proof.

(ii) of any locality or of a neighbourhood within a locality

22. For the purposes of the TVG legislation a 'locality' means an administrative district or an area within legally significant boundaries. The plan submitted with the application "Plan B" does not correspond with any recognised '**locality**' either at ward level or otherwise. However, Section 98 of the Countryside and Rights of Way Act 2000 amended Section 22 of Commons Registration Act 1965 by inserting 'or of any neighbourhood within a locality' as an alternate category; a 'neighbourhood' being a non-administrative area which exhibits cohesiveness by virtue of its physical location and/or shared services/facilities. However, it is also noted that no evidence has been submitted to show why the claimed area is believed to be a '**neighbourhood**'. Consequently, the applicant has failed to identify either a 'locality' or a 'neighbourhood within a locality' as required by the legislation. A copy of the locality/neighbourhood plan as per the original application documents is attached at Appendix 7.

(iii) have indulged as of right

23. As set out in paragraph 18, the Courts have shown that people taking part in recreational activities on land held by a local authority as a recreation ground under statutory powers do so "by right" rather than "as of right" and therefore any application to register a TVG on such a basis must fail. Accordingly, in this particular case where the application land is owned by Mansfield District Council, who allocated the land as a "Pleasure Ground" for public recreation under the Public Health Act 1875 (at least from 1st September 1975), use of that land is "by right" and is not "as of right".

(iv) in lawful sports and pastimes

24. The activities undertaken by those who completed evidence forms are lawful sports and pastimes for the purposes of the legislation.

(v) on the land

25. The user evidence forms do indicate use generally of the land which is subject to the application. However, such evidence would usually require further examination i.e. at a public inquiry, to verify the extent of the land actually used.

(vi) for a period of at least twenty years

26. Sixteen evidence forms indicate use for the requisite period (1986-2006). This is sufficient to make out a prima facie case. However, such evidence would usually require further examination i.e. at a public inquiry to ensure there was in fact, sufficient and continuous use.

(vii) and that use continued up until the time of the application

27. Apart from the land occupied by Bullock Construction, use is claimed to have continued up until the time of application. Again, evidence of claimed use would usually require further examination i.e. at a public inquiry to ensure use did in fact continue as claimed.

Other Options Considered

28. Due to the nature of user evidence and the complexity of the law relating to TVG applications a public inquiry could be held to further test and clarify the evidence. The use of a public inquiry for such applications has been approved of by the courts as being in the interests of openness and fairness. However, given that case law indicates that use of the land was ‘by right’ rather than ‘as of right’ there is no prospect that the application could succeed even if the evidence were tested at a public inquiry. The provisions of the Human Rights Act regarding the right to a fair hearing have been considered in reaching this conclusion.

Reason for the Recommendation

29. The applicant has failed to demonstrate that the area being relied upon is either a locality or a neighbourhood within a locality. This omission is important as the burden of proof for establishing that this criterion is met lies squarely on the applicant.
30. Use of the application land has been “by right” and not “as of right” by virtue of the Mansfield District Council Byelaw (1975).
31. Notwithstanding the above, in respect of the Bullock Construction land, as use did not continue up until the time of the application, the application also fails for this part of the application land.

Statutory and Policy Implications

32. This report has been compiled after consideration of implications in respect of finance, equal opportunities, human resources, crime and disorder, human rights, the safeguarding of children, sustainability and the environment and those using the service 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 Committee rejects the application for the reasons set out above.

Neil Hodgson
Interim Service Director Highways

For any enquiries about this report please contact:
Eddie Brennan (0115 9774709)
Definitive Map Officer

Constitutional Comments (SJE – 28/05/2015)

This decision falls within the Terms of Reference of the Culture Committee to whom, by virtue of Full Council Resolution 2014/027, responsibility for the exercise of the Authority's functions relating to common land and town or village greens has been delegated.

Financial Comments (SES 01/06/15)

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

Background Papers

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.

The Lords Ground Town or Village Green Application (Ref. NVG351) case file

Electoral Division(s) and Member(s) Affected

North Mansfield	Cllr J Bosnjak
North Mansfield	Cllr P Tsimbiridis