

REPORT OF SERVICE DIRECTOR (HIGHWAYS)**APPLICATION TO REGISTER A TOWN OR VILLAGE GREEN – LAND
KNOWN AS SANDHURST AVENUE CRICKET GROUND, MANSFIELD****Purpose of the Report**

1. To consider an Application to register land as a Town or Village Green (“TVG”) under section 15 of the Commons Act 2006, 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 currently in the ownership of Mansfield District Council (hereafter referred to as “MDC”) and comprises a playing field and a tract of land giving access to it from the north side via the adjacent Forest Road Recreation Ground. The application land also includes some steeply faced quarry walls on the eastern and southern sides of the playing field which remain following historic sand extraction on the land. The gardens of the properties on Berry Hill Lane, Berry Hill Road and Delamere Drive back onto the application land as do the premises of the Mansfield Sand Group at the south western boundary. Photographs showing aspects of the application land are attached at Appendix 2.

Background Information and Advice

3. The application was submitted on the 10th of January 2013 by Mrs J Saunders, a local resident and member of the Friends of Forest Park Group, and was made to register land described as the “Sandhurst Avenue Cricket Ground” as a TVG.
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. MDC acquired the application land by virtue of an agreement made on the 3rd of April 1967 between Mansfield Standard Gravel Company Ltd and the Mayor Aldermen and Burgesses of the Borough of Mansfield of whom the District Council is the successor in title.

6. In 1975 Byelaws were made by Mansfield District Council in relation to the application land. The byelaws were made pursuant to section 164 of the Public Health Act 1875 which empowered local authorities to provide land for public recreation. Accordingly, from 1975 the land was held and maintained by the District Council as a public walk and pleasure ground.
7. At some unspecified point(s) in time two notices were erected on the land which read;
Notice 1: "Mansfield District Council – Golf driving is not allowed"

Notice 2 "These facilities are leased to a private cricket club. The facilities should not be used without obtaining permission first from the club"
"If you require to hire a pitch or wish to make a comment on these facilities please phone 01623 463436 or email parksandopenspaces@mansfield.gov.uk"
8. In respect of Notice 2, MDC has not supplied any information to clarify when the Cricket Club lease was in place, or whether any formal disposal was required of land held as a public walk and pleasure ground under the 1875 Act.
9. According to the applicant, entry to the land was blocked on the 22nd of June 2012 by the erection of a palisade security fence and a locked gate which prevented access to the recreation field. In the absence of any information to the contrary, it is presumed that this was done with the consent of MDC.
10. On the 25th of July 2012 MDC advertised (by virtue of notices in the Mansfield Chad newspaper and by the placing of notices on site) their intention to dispose of the field as public open space under Section 123(1)(2a) of the Local Government Act 1972. The notice read thus "*The proposed disposal is a lease of the land for a term of 1 year for the following use: Use of land as a training ground for Mansfield Town Football Club*". According to MDC the lease (dated 19th March 2013) commenced on 25th of December 2012 and expired on 23rd of June 2013.
11. The TVG application was made as a result of the public being excluded in June 2012 by the fence and locked gate. Following the expiry of the lease, the fence and gate were removed.
12. In total, 31 user evidence forms from 37 individuals were submitted (some forms were submitted by couples) in support of the TVG application. 31 users claim to have used the land for more than twenty years with the earliest claimed use commencing in 1950. Users refer to having taken part in various activities on the land including; walking, dog walking, playing with children, playing and watching cricket, playing football and enjoying the flora and fauna. Frequency of use ranges from a daily to a weekly basis.
13. The applicant contends that the land became a TVG on the 22nd June 2012. Accordingly, the test in subsection (3) 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, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and
 - the application is made within the period of two years from the cessation of use

Consultation

14. Following the advertising of the application and formal notification to interested parties, one objection was received from the landowner, Mansfield District Council. The objection is summarised below;
- The land is known locally as Sandhurst Avenue Cricket Ground and forms part of a larger grassed area which is laid out as a formal park and known as Forest Road Recreation Ground or Spider Park.
 - The Forest Road Recreation Ground including the application land is open to the public and is maintained at the expense of MDC.
 - The application land was proposed as a 'SHLAA' (Strategic Housing Land Availability Assessment) in October 2010. The SHLAA report concludes that the site *"forms part of a wider area of open space in an area which is well provided for in terms of open space provision. This particular part of the site has very limited natural surveillance, and there is a history of anti-social behaviour including the burning of the former cricket pavilion. This part of the open space suffers severely restricted access making it less than ideal for public use"*.
 - Prior to the grant of the lease to Mansfield Town Football Club, the requirements of the Local Government Act 1972 Section 123(1)(2A) were fully complied with and the Council caused notice of its intention to dispose of the land to be advertised in two consecutive weeks in a local newspaper.
 - The fact that MDC advertised the intended disposal is evidence that the Council regarded the application site as being held for the purpose of Section 164 of the Public Health Act 1875. Section 2(B) of the Local Government Act 1972 further states "where by virtue of subsection 2A a council dispose of land which is held for the purpose of section 164 of the public health act 1875, the land shall by virtue of the disposal be freed from being held on trust for enjoyment by the public in accordance with section 164".
 - The locality to which the claim relates is stated to be the Sandhurst Ward. The Ward comprises 47 streets, 1360 residential properties with approximately 2088 inhabitants who are eligible to vote. The evidence questionnaires demonstrate personal use of the inhabitants from 5 streets only. This represents only 2% of the residential properties within the ward. 5 of the questionnaires verify less than 20 years personal use of the land [N.B. the actual figure is 6]. MDC contends that for the number of inhabitants to qualify as "significant", the evidence should be relative to the size of the population of the defined locality or neighbourhood and should be sufficient to show that the application land is in general use by the community. MDC considers that the application does not provide sufficient evidence of use by a significant number of inhabitants to support a claim throughout the relevant period. The number of users purporting to use the land from the given neighbourhood is small.
 - The application land is subject to MDC's Open Space and Pleasure Ground Byelaws which came into operation on the 1st of September 1975. MDC contends that throughout the relevant period, the application land has been held by the Council as a recreational facility and has been maintained and laid out for the purpose of being used as public walks or a pleasure ground in accordance with the Public Health Act

1875. The imposition of the byelaw is evidence that the land was held for recreational purposes which renders use of it “by right” rather than “as of right”. The application land has been provided by the Council in exercise of its statutory powers and consequently the general public have a right to use the land for recreational purposes.

- The sports and pastimes listed in the user evidence questionnaires are no more than would be expected on a pleasure ground open to the public.
- MDC urges the Registration Authority to reject the application on the basis that the use of the application land for lawful sports and pastimes during the relevant period was not carried out “as of right” but was “by right”.

Applicant’s Response

15. In response to the objection by MDC the applicant refers to the following case law;

- R v Oxfordshire County Council ex parte Sunningwell Parish Council [1999] The House of Lords determined the proper test for user “as of right” is an objective test based on evaluation of the actual user: i.e. was it without force, without secrecy and without permission. Lord Hoffman rejected any necessity for a subjective examination of the belief in the mind of the user.
- R (McAlpine Homes) v Staffordshire County Council [2002] where the High Court held that “significant” (in respect of the test “use by a significant number of the inhabitants”) did not mean a considerable or substantial number. What matters is that the number of people using the land has to be sufficient to show that the land is in general use by the local community for informal recreation rather than just occasional use by individuals.
- R v City of Sunderland ex parte Beresford (FC) [2003]
Land claimed as a TVG and in the ownership of a local authority had been laid out as a sports ground and had been used by local people land for a considerable number of years. The House of Lords decided that the actions of the authority by “encouraging” public use of the land i.e. by providing park benches and mowing the grass, had not meant that use had been permissive or “by right”, and therefore use was “as of right” and thus fulfilling the requirements for a TVG.

16. The applicant also asserts that the evidence questionnaires submitted in support of the application are “extensive documents” designed to show that the land has been used for at least 20 years by local inhabitants for lawful sports and pastimes and “are not a mass petition by the people of Mansfield” adding “the fact that 31 people from different addresses submitted evidence is considered more than sufficient to prove the 20 year criteria”.

17. The applicant states that the evidence in the questionnaires refers to the many activities local residents participate in on Sandhurst Avenue Cricket Ground adding “the concept of lawful sports in English law is very wide, based on centuries of experience. Lawful sports and pastimes are certain, reasonable and continuous recreational activities”.

18. The Friends of Forest Road Park Village Green Sub Group are “confident that the application is lawful and accurate and has been made by local inhabitants who wish to see Sandhurst Avenue Cricket Ground registered as a green and remain open and not built on”.

The Legal Test

19. 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 the application was made within the period of two years from the cessation of use on 22nd June 2012.

(i) by a significant number of the inhabitants

20. 31 evidence forms were submitted referring to use by 37 individuals. Given that there are 2088 eligible voters within the specified locality (according to MDC), 37 users is only 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

21. For the purposes of the TVG legislation a ‘locality’ means an administrative district or an area within legally significant boundaries. Accordingly the applicant has identified the MDC Sandhurst Ward as the relevant locality.

(iii) have indulged as of right

22. 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, from 1st September 1975 allocated the land as a “Pleasure Ground” for public recreation under the Public Health Act 1875, use of that land for lawful sports and pastimes is “by right” and is not “as of right”.

(iv) in lawful sports and pastimes

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

(v) on the land

24. 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

25. According to the information submitted in the evidence forms, 31 individuals indicate use for the requisite twenty year period (1992-2012). 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) that the application is made within the period of two years from the cessation of use on 22nd June 2012.

26. The application was received by the authority on the 10th of January 2013 and is therefore within the statutory two year period.

Other Options Considered

27. 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

28. Use of the application land has been "by right" and not "as of right" by virtue of the Mansfield District Council Byelaw (1975).

Statutory and Policy Implications

29. 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:

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Definitive Map Officer

Constitutional Comments (LM 01/12/15)

The recommendations in the report fall within the Terms of Reference of the Culture Committee.

Financial Comments (SES 01/12/15)

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 Sandhurst Avenue Cricket Ground Town or Village Green Application (Ref. NVG361) case file.

Electoral Division(s) and Member(s) Affected

South Mansfield Cllr A Sissons

South Mansfield Cllr S Garner