

Taunton Deane Borough Council

Executive – 14 September 2011

Consultation on the Registration of new Town or Village greens

Report of the Community Development Lead

(This matter is the responsibility of Executive Councillor Edwards)

1. Executive Summary

The consultation seeks views on proposals to reform the system for registering new town or village greens under section 15 of the Commons Act 2006. The Government seeks an improved balance between protecting high quality green space valued by local communities and enabling the right development to occur in the right place at the right time.

2. Background

- 2.1 Town and village greens developed under customary law as areas of land where local people indulged in lawful sports and pastimes. These might include organized or ad-hoc games, picnics, fetes and similar activities. Most greens were registered in the late 1960s under the Commons Registration Act 1965. Today, anyone can apply under section 15 of the Commons Act 2006 to register land as a green if it has been used by local people for lawful sports and pastimes 'as of right' (ie without permission, force or secrecy) for at least 20 years.
- 2.2 The Government is seeking an improved balance between protecting high quality green space valued by local communities and enabling the right development in the right place at the right time. It also seeks to reduce the burden local authorities which are responsible for implementing it (in this case Somerset County Council) and on landowners who are affected by applications.
- 2.3 The consultation runs to the same timescale as the Department for Communities and Local Government publishes for consultation a draft of the National Planning Policy Framework which gives more detail of the Government's commitment to introduce a Local Green Spaces Designation through the Planning system, outlined in the Natural

Environment White Paper. The closing date for the consultation is 17 October 2011. A summary of responses is expected to be available from DEFRA within three months of the end of consultation with changes taking effect from April 2012.

3. Full details of the Consultation

- 3.1 The consultation is on the reform of the arrangements for registering new town or village greens.
- 3.2 The aim of the consultation is to seek the views of consultees on a proposed package of reforms to the new greens registration system, most of which would require primary legislation.
- 3.3 Alongside this, the Government will introduce a new Local Green Spaces Designation in the planning system to protect green spaces of particular importance to local communities. This designation would be used in local and neighbourhood planning and would be backed by strong planning policy in the new National Planning Policy Framework. The Local Green Space Designation will be introduced by April 2012.
- 3.4 The review is taking place because of the volume of applications to register new greens, the character of these sites and the controversy accompanying some such applications.
- 3.5 The process for determining applications is less than satisfactory and undermines credibility in the registration system because:-
 - Applications may lack substance or merit but not be rejected easily;
 - Applications can act as a last ditch attempt to stop development;
 - Applications stand outside of the planning system and must be determined on legal criteria without consideration of need, impact or hardship affecting any party;
 - The volume is raising costs and leading to delays in determination (although locally the number is low);
 - Applications are free to the applicant and so vexatious or frivolous applications are not discouraged; and
 - Application sites may bear little resemblance to a traditional green so that physical setting is generally immaterial to the application's success.
- 3.6 The objectives of the proposed reforms are to:-
 - Strike a better balance between protecting high quality green space, valued by local communities and enabling legitimate development to occur where it is most appropriate; and

- Ensure that when land is registered as a green, because of the exceptional protection afforded to new greens, the land concerned really does deserve the level of protection it will get.

4. Summary of proposals

- 4.1 Each of the proposals identified is briefly summarised below.
- 4.2 No Change – the existing registration system would remain unchanged.
- 4.3 Streamline sifting of applications – this proposal would enable registration authorities to reject applications at an early stage where insufficient evidence has been submitted or where there was strong evidence that that the application could not meet the criteria for registration.
- 4.4 Declarations by landowners – landowners would be given the chance to make a statutory declaration to negate any evidence of use of a claimed green during the period when the declaration remained in effect.
- 4.5 Character – new legislation would add a character test to the existing criteria for a green. Only land which is unenclosed, open and uncultivated would be eligible for registration.
- 4.6 Integration with local and neighbourhood planning – this proposal would take decisions on the future of sites into the planning system. It would prevent registration of land which was subject to a planning application or permission for development of the site, or which was designated for development or as a green space in a local or neighbourhood plan.
- 4.7 Charging fees – an applicant would be required to pay a fee when making an application. Legislation would allow each registration authority to set its own fee to a prescribed ceiling. It is not intended that the fee would allow for full cost recovery. Fees could be refundable if the application was granted.

5. Questions

- 5.1 Taking account of the Government's plans for the new Local Green Spaces designation, do you agree that the problems identified with the present greens registration system are sufficient to justify reform – so that the 'no change' option should be rejected?
- 5.2 Do you support the proposal to streamline the initial sifting of applications?
- 5.3 Do you agree that an initial determination should be made by the registration authority *after* inviting initial comments from the owner of the land affected by the application?

- 5.4 Do you support the proposal to enable landowners to make a deposit of a map and a declaration to secure protection against future applications to register land as a green?
- 5.5 Should landowners or registration authorities be required to take additional steps to publicise a declaration, to ensure that potential users know that they have limited time to make an application to register the land as a green? If so, what steps do you propose?
- 5.6 Do you support the proposal to introduce a character test to ensure that greens accord with the popularly held traditional character of such areas?
- 5.7 Do you agree that the character test that land must be open and unenclosed in character? Do you support the adoption of additional criteria eg location, structure (war memorial), shape, historic characteristics?
- 5.8 Do you support the proposal which would rule out making a greens registration application where a site was designated for redevelopment in a proposed or adopted local or neighbourhood plan?
- 5.9 Do you support the proposal that a greens registration application could not be made after an application for planning permission had been submitted in respect of a site, or on which there was statutory pre-application consultation until planning permission had itself been refused or implemented, or had expired?
- 5.10 Do you support the proposal to charge a fee for applications?
- 5.11 If so, do you support the proposal for refunding the fee where an application is granted?
- 5.12 Do you agree that the fee should be determined by the registration authority and that a ceiling should be set at £1,000?

6. Community Scrutiny Committee Comments

The Community Scrutiny Committee is due to consider this consultation paper on 6 September 2011. Its views on both the consultation and how the questions outlined in section 5 above should be answered will be forwarded to the Executive before the meeting on 14 September 2011.

7. Finance Comments

- 7.1 This is a consultation regarding applications and fees that would ultimately be made to the County Council, as such this should have no financial effect. Finance have therefore not been asked to comment.

8. Legal Comments

8.1 Legal have not been asked to comment upon this consultation. Legislative impacts would come with primary legislation which is not, as yet, proposed.

9. Links to Corporate Aims

9.1 There are no direct links to corporate aims, although the intention of the effects of any changes would impact upon affordable housing.

10. Environmental Implications

10.1 Environmental implications come from the protection of green space, but the proposed changes will need to be assessed when they are more fully known.

11. Community Safety Implications

11.1 There are no community safety implications arising from these proposals as they stand.

12. Equalities Impact

12.1 There has been no equalities impact assessment carried out on this for the authority. However, an overall impact assessment forms part of the consultation documentation and this highlights the main issues for consideration.

13. Risk Management

13.1 The risks to the Council are unknown and unidentified at this stage.

14. Partnership Implications (if any)

14.1 There are no partnership implications at this stage.

15. Recommendations

15.1 The Executive is recommended to at least answer question one set out in section 5.1 following consideration of the views of the Community Scrutiny Committee which will be reported separately to Members. This is the minimum requirement set out by DEFRA in asking for a response to this consultation.

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