

## **BROMYARD DOWNS**

### **REPORT BY ASSISTANT DIRECTOR (LAW AND GOVERNANCE)**

**REPORT TO CABINET MEMBER: ECONOMIC DEVELOPMENT AND COMMUNITY SERVICES**

**DATE REPORT CONSIDERED AND DECIDED BY CABINET MEMBER: 13 JANUARY 2011**

**DATE DECISION CAN BE IMPLEMENTED: 19 JANUARY 2011**

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#### **Wards Affected**

County-wide

#### **Purpose**

To present proposals for a review of the Council's Commons Management activities and for the future management of Bromyard Downs Common.

#### **Key Decision**

This is not a key decision.

#### **Recommendation(s)**

**That consideration be given as to whether to undertake a review of its discharge of its commons management policies and functions, and in particular in relation to Bromyard Downs Common:**

- a) Explore options for the future management of the Common with DEFRA and Natural England including the availability of agri-environmental stewardship funding;**
- b) Seek advice and review best practice elsewhere for the development of a community based approach to the management of Bromyard Downs Common;**
- c) Work closely with the members of the current Commons Management Committee and other representatives of the parishes that are located within the former Bromyard Rural District Council area (by whom the Common was acquired in 1951) in developing future proposals;**
- d) Terminate the current Commons Management agreement dated 22<sup>nd</sup> May 1991 with a view to establishing future commons management arrangements by no later than 30 November 2011 and assume direct responsibility for the management of the common in the interim;**
- e) Adopt an action plan to address any current identified management issues within the same period subject to identifying appropriate funding;**

- f) **Develop (in consultation with the community and all appropriate groups) a future management plan for the management of Bromyard Downs Common; and**
- g) **Review the funding requirements for the effective management of the common and consider and identify the alternative sources of future funding including opportunities for income generation, grants, parish precepts and Council funding.**

## **Key Points Summary**

To consider whether to undertake a review of the Council's commons management policies and functions.

## **Alternative Options**

1. Do nothing
2. Provide more support to Brockhampton Group Parish Council to enable them to manage the Common.

## **Reasons for Recommendations**

3. As Commons Registration authority Herefordshire Council must maintain a register of all common land and village greens, must identify the owner, a record of commoner's and other's rights and open the maps and registers to inspection.
4. Herefordshire is a pilot for the Commons Registration Act 2006 which provides the mechanism for a review of the registers and for previously unregistered rights to be considered for and if appropriate registered.

## **Introduction and Background**

### Background

5. The Council has no duty to actively manage any common land other than as landowner or in relation to commons under the Commons Act 1899. It has a power to manage s.45 commons. However it does have a number of other duties and responsibilities. As Commons Registration authority it must maintain a register of all common land and village greens, must identify the owner, a record of commoner's and other's rights and open the maps and registers to inspection.
6. Herefordshire is a pilot for the Commons Registration Act 2006 which provides the mechanism for a review of the registers and for previously unregistered rights to be considered for and if appropriate registered. This pilot process is ongoing and the Act has yet to come fully into force for the non pilot areas.
7. The Council has duties as landowner in relation to those commons in its ownership (although it may delegate some of those responsibilities). It may be deemed to have certain responsibilities and may be open to potential liabilities or risks in relation to those commons which have no identifiable owner.
8. The management of commons and open spaces in Herefordshire is a huge undertaking and is dependent on the support of landowners, commoners, community organisations

and volunteers. The Council's land agent and other officers provide support and guidance in a range of ways when requests are made.

9. With one or two exceptions, it would seem that the commons and open spaces across Herefordshire are adequately (and in some cases very effectively) managed. There have been particular problems over recent years with Bromyard Downs; which are identified below.

#### Facts and figures

10. There are 215 commons in Herefordshire, a total area of 5,000 hectares.
11. 198 of these commons are registered in Herefordshire with a further 17 which straddle the border and are registered in neighbouring counties.
12. Only 13 of these 215 are owned by Herefordshire Council.
13. 60 have no known owner and are known as s.45 Commons (under the Commons Act 2006).
14. The remaining 155 are owned by private individuals and Parish Councils.
15. There are 42 Village Greens, of which Herefordshire Council owns 7, the majority of the rest are owned by Parish Councils.
16. 27 Commons and 3 Village Greens fall under Management Byelaws and the provisions of the Commons Act 1899. Bromyard Downs (285 acres) is in this category.
17. These distinctions are important because the powers and duties of the Council and the rights and responsibilities relating to access, management etc differ according to the status.
18. In relation to the 1899 Commons Act Herefordshire Council has the power to enforce the Byelaws as a successor Authority to the former Rural District Councils of Herefordshire.
19. The Commons and Village Greens registers include:
  - A description of the land, (OS number and area)
  - A list of rights and land against which rights are held
  - The ownership of the land
  - Held separately a plan of all the Commons and Village Greens.
20. Currently, the Council is a key partner with Natural England and Herefordshire Nature Trust in a 7 year (2004-2011) Community Commons Project to involve local communities in the management of 12 Herefordshire commons, selected for their conservation interest, one of which belongs to Herefordshire Council. This £500k project is grant aided by the Heritage Lottery Fund.

#### County-wide commons management

21. It was agreed in a Cabinet Member decision of 27<sup>th</sup> January 2006 that as a general policy guide, resources will not be allocated to the management of Commons not in the Council's direct ownership and for which they are responsible under the 1899 Act. However, subject to legal advice, the Council would reserve the right to exercise its discretionary powers to intervene in the management of Section 45 Commons (those with no identifiable owner) on a case by case basis to provide the flexibility to undertake emergency works. Any such work will need the Cabinet Member's authorisation.

Council legal advice suggested that such action would not set any precedent in creating an ongoing liability to the Council.

22. Commons Management duties consist of:
- Undertaking Commons land searches
  - Updating the register including the registration of new commons interests pursuant to our pilot status under the 2006 Act.
  - Giving advice on common land issues, which includes commenting on planning applications
  - Managing access issues
  - Attending Wales and The Marches County Land Forum meetings.
  - Attending the DEFRA Agricultural Advisory Panel for the Common Land Bill
  - Attending quarterly Commons Registration Officer Meetings (organised by DEFRA)
  - The management of the Council's commons and advising on others.
23. As well as mitigating risks arising from legal duties, the Council may wish to consider to what extent it could better facilitate the proper management of commons within the County to contribute to its social, environmental and economic wellbeing. It may wish to consider any or all of the following aspects of commons management:
- Community involvement and cohesion – “the Big Society”
  - Tourism and leisure
  - Education and training
  - Promoting healthy lifestyles
  - Bio-diversity
  - Environmental protection
  - Income generation
  - Environmental stewardship – including funding opportunities
  - Other grant funding
  - Supporting rural business e.g. woodland activities
  - Monitoring/policing
  - Encroachments and enforcement
  - Access agreements (generating income for commons management)
  - Management Committees, Scrutiny
  - Project Management with outside Agencies, funding parts etc
  - Landlord's consent
  - 1899 Act Schemes of Management – updating and Council responsibilities
  - Grounds maintenance

#### Bromyard Downs Common

24. Bromyard Downs Common is owned by Herefordshire Council as successor to both Malvern Hills District Council and Bromyard Rural District Council who acquired the common in 1951. It's use is governed by a Scheme of Management made under the 1899 Commons Act and has been managed until November 2010 by Brockhampton Group Parish Commons Management Committee (the CMC) under a Management agreement between Malvern Hills District Council and Brockhampton Group Parish Council. The Parish Council had delegated responsibility to the CMC. The CMC was chaired by Cllr Tom Hunt and comprised members of Brockhampton Group Parish

Council and Commoners representatives elected annually at a commoners meeting. The CMC membership changes from time to time but there had been a core of dedicated members who had taken responsibility for managing the common over many years.

25. The Commons Management Committee recently decided to resign its duties and to relinquish management responsibilities to the Brockhampton Group Parish Council.
26. There is a history of complaints from a small but vocal group of local representatives. Those complaints concern (1) the standard and execution of the commons management function by the CMC and (2) a lack of openness transparency and engagement with the community. In order to allay (2) the former Cabinet member instructed the CMC to appoint an independent observer to attend its meetings. The CMC appointed Cllr B Hunt. As a result, the fears about engagement with the Community and lack of independent scrutiny were not allayed and this has led to further complaints.
27. Some of the issues have escalated and as a result a poor relationship exists between some local residents (some of whom are commoners) and the CMC. The residents are frustrated by their view that the CMC is unwilling to engage and address the issues and Herefordshire Council's failure to enforce the obligations in the Scheme of Management.
28. This has led to complaints to Herefordshire Council Standards Committee which have been upheld.
29. In 2006 the local residents put forward a proposal for a more representative committee to reflect the interests of the wider (former Bromyard Rural District) communities and some terms of reference and operating principles. Herefordshire Council was asked to consider these proposals. It has taken no further action as a result.
30. In 2008 the Council carried out a local consultation exercise to identify preferred future management options. A number of local community and special interest groups responded. The response to the consultation and summary of comments are attached at Appendix 3.
31. A series of questions have been raised at full Council by a number of interested local residents and others. The issues surrounding the Bromyard Downs Common have also been the subject of local media coverage.
32. Bromyard and Winslow Town Council have also raised concerns with Herefordshire Council.
33. The CMC is frustrated by the complaints of what they see as a minority. The CMC resolved that "in the face of adversity and criticism and lack of support by Herefordshire Council" to hand back its powers and duties to its parent Group Parish Council.
34. Herefordshire Council has not been very active in the management of the Common. The Land Agent has intervened to attempt to resolve specific issues and has dealt with encroachments and rights of access requests. Herefordshire Council has retained some income generated by Bromyard Downs Common that Malvern Hills District Council previously passed to the CMC. This reduction in income may have contributed to the management issues. The CMC are firmly of the view that Herefordshire Council should be more directly involved and provide more support to the Management of the Downs.

35. The Cabinet member at Council in July 2010 stated that a review was being conducted and that he was expecting a report on the matter in September 2010.
36. A site visit and meetings with CMC/BGPC members and 8 local concerned residents (some of whom were commoners) took place on 24<sup>th</sup> August 2010. The CMC want more Herefordshire Council support and are willing to have more observers appointed to participate in their meetings. The CMC pointed out that the public can attend and observe in any event. The local residents, including a former member of both Herefordshire Council and the CMC, felt that the issues would not be resolved so long as the current Committee operated as it did and the membership and Chairmanship remained the same. The proposals for a membership that represents the wider community served by Bromyard Downs and the operating principles previously put forward remain the preferred way forward for those residents. Bromyard and Winslow Town Council's current views are the same as those expressed in the 2008 consultation.
37. The CMC have made enquiries about the Higher Level Stewardship scheme for Bromyard Downs and Natural England have visited the site (also on 24<sup>th</sup> August 2010).

*Higher Level Stewardship (HLS) aims to deliver significant environmental benefits in high priority situations and areas. It involves more complex environmental management, so you will get advice and support from our advisers.*

*There is a wide range of management options, and these are designed to support key features of the different areas of the English countryside. HLS can contribute to a wide range of capital works such as restoration of hedgerows or traditional farm buildings.*

*Natural England*

38. By way of background and to provide more detail the following documents are attached:
- Appendix 1 - A chronology
  - Appendix 2 - A summary of management agreement terms
  - Appendix 3 - A report on the outcomes of the 2008 consultation together with summary of comments from local and special interest groups
39. Given the ongoing complaints, the growing number of complainants, the strength of feeling of all parties, the immediate management issues that need addressing and the potential of the Common and the potential for consensus about the future of the Common, the issues are unlikely to be resolved without Herefordshire Council taking a greater involvement in the management of the common.

## **Key Considerations**

40. The Cabinet Member is asked to consider whether the Council should undertake a review of its commons management activities and its arrangements for the discharge of its commons management functions within the Council.
41. In relation to Bromyard Downs, it is proposed that the Council facilitates a new approach to the management of the Common in the future and explores with local residents, commoners and the local Parish and Town council's the options. The Council should explore available funding and look to maximise the social environmental

and economic impact it has on the local communities and the County. It should look at income generation as part of any proposals. One aim should be to bring the communities closer together and to ensure greater involvement and representation in the Downs management. To do this, it is felt that the Council will need to accept direct management responsibility for the Downs in the short term.

42. The recommendations reflect these proposals.

## **Community Impact**

43. Commons have traditionally played a key role in the rural economy and are an important leisure resource. The report recommends that these aspects should be maximised in any future proposals.

## **Financial Implications**

44. There is no revenue budget for Common land. There is a small amount of capital money which is raised from the sale of an access rights and similar arrangements. The income from wayleaves and easements and the rental from the Caravan Site on Bromyard Downs and income from other Council owned commons is not ring fenced for the management of the Downs. There may be income generated by management committees and other bodies.
45. The Council has had to meet one off costs on an ad hoc basis eg. the cost of the emergency tree work for Bromyard Downs in 2006/7 which amounted to over £10k. This was undertaken to prevent danger to users of the public highway as nearby trees were uprooted and made unstable by storm damage, as well as old age, disease etc.
46. There is no dedicated officer resource available to support the management of commons.
47. A senior manager has been allocated responsibility for undertaking the work with Bromyard Downs Common and a small amount of funding has been identified to support this work.

## **Legal Implications**

48. The Council's legal rights and obligations are explained in the report. The Commons Management Agreement dated 22nd May 1991 would be terminated on three months' notice unless previously terminated by mutual agreement.

## **Risk Management**

49. The risks are potentially high if we do not manage our Commons in accordance with our legal liability as land owners. Mitigation would be afforded by proper risk assessment and remedial action as part of the discharge of the commons management function. This can be delegated to commons management committees or other bodies but the Council needs to assure itself that the risk management function is being properly discharged and that it has no residual liabilities.

## **Consultees**

- Local residents
- Commoners
- Brockhampton Group Parish Council
- Landowners
- Community Organisation
- The Council's Land Agent
- Bromyard Downs Commons Management Committee
- Natural England and Herefordshire Nature Trust
- Bromyard and Winslow Town Council
- Local Parish and Town Councils

## **Appendices**

- Appendix 1 - A chronology
- Appendix 2 - A summary of management agreement terms
- Appendix 3 - A report on the outcomes of the 2008 consultation together with summary of comments from local and special interest groups

## **Background Papers**

- The above appendices are available as background papers to the report.
- Miscellaneous correspondence