

<b>MEETING:</b>	<b>REGULATORY COMMITTEE</b>
<b>DATE:</b>	<b>11 DECEMBER 2012</b>
<b>TITLE OF REPORT:</b>	<b>APPLICATION TO REGISTER LAND AT THE END OF THE GRESLEYS, ROSS-ON-WYE, HR9 5JN, AS A TOWN GREEN</b>
<b>REPORT BY:</b>	<b>CHRIS CHAPMAN</b>

## **1. Classification**

Open

## **2. Key Decision**

This is not a key decision

## **3. Wards Affected**

Ross-on-Wye

## **4. Purpose**

To determine whether land at the eastern end of The Gresleys, Ross-On-Wye, Herefordshire (“the Land”) should be registered as a town green.

## **5. Recommendation(s)**

**THAT:**

- (a) That the Land is registered as a town green

## **6. Key Points Summary**

- The Council is the registration authority for determining applications to register land as a town or village green and has a responsibility to decide whether or not the Land qualifies to be registered as a town green.

## **7. Alternative Option**

- 7.1 Decide that the Land does not qualify as a town green.

## **8. Reasons for Recommendations**

- 8.1 The evidence submitted regarding recreational use of the Land is sufficient to satisfy the legal tests for registration of the Land as a town green.

## **9. Introduction and Background**

- 9.1 The Land is a triangular, grassed area of 0.07 hectares at the junction of The Gresleys and Penyard Lane in Ross-on-Wye and is shown coloured red on the plan to this Report.
- 9.2 Officers have been unable to establish ownership of the Land. Title to it is not registered at the Land Registry. A notice of the Application was placed on the Land and also published in the Ross Gazette on the 20th July 2011 inviting any owner or anyone else with an interest in the Land to contact the Council regarding the Application but no responses were received. A company which owns the adjacent building says it does not own the Land. Another company which a local resident thought was the owner was written to at its last known address but the letter was returned "addressee gone away".
- 9.3 Local residents have provided evidence going back to 1975 of the Land being used for recreational activities, so it seems that whoever owns it considers it of no importance to them. In any event, except in very limited circumstances where the landowner is a statutory body, of which there is no evidence here, it does not matter who owns land subject to a town or village green application.

## **10. Key Considerations**

- 10.1 The test for registration is contained in section 15 of the Commons Act 2006. Under section 15 any person may apply to register land as a town or village green where "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 they continue to do so at the time of the application".
- 10.2 The number of people using the land will count as significant if it indicates that the Land is used for recreation by the local community and not just by the odd individual. The applicants have provided statements from 35 residents of The Gresleys saying that they have used the Land for a range of recreational activities. It is considered that this is a significant number and indicates that the Land was used by the general local community.
- 10.3 The significant number must come from a locality or a neighbourhood within a locality. A locality means an administrative area such as a parish, and The Gresleys is within Ross-On-Wye East Parish. Unlike a locality, a neighbourhood does not have to be a legally recognised administrative unit and can include an area with a sufficient degree of cohesiveness as to be recognisable by name. Although the Gresleys is just one street (edged red on the plan to this report), from evidence submitted with the application and web search results showing charitable fund raising events arranged by its residents, The Gresleys does appear to have such a community cohesiveness as to be regarded as a neighbourhood, within the usual meaning of that word.

- 10.4 Use of land as of right means that use was not by force (for example, in face of the landowner's objections); nor secretly (for example, only at times when users knew that the landowner would not have noticed); nor by licence (for example, under a permission granted by the landowner for a limited period). Photographs of a children's party for the Queen's Silver Jubilee in 1977 and of a Big Lunch in 2010 with bunting around the Land and a gazebo on it indicate that the Land was not being used secretly. It seems that the landowner, whoever it is, has effectively abandoned the Land and so use would appear not to have been by force or with permission.
- 10.5 The Land must have been used for lawful sports and pastimes. Activities identified in evidence forms include birthday and street parties, picnics and football, all of which count as lawful sport and pastimes.
- 10.6 It is not necessary for the land used for sports and pastimes to resemble the traditional picture of a village green, and the relatively small area of this Land and its location should not prevent it qualifying as a town green.
- 10.7 The evidence forms describe the Land as being used for recreational purposes since 1977 up to when the application was received in 2010 and this meets the 20 years requirement.

## **11. Community Impact**

- 11.1 Registration of the Land would ensure that it remains available to the local community for recreational use. When land is registered as a town or village green it can be used for all lawful sports and pastimes, not just those enjoyed at the time of registration, but this would be subject to any restrictions which might be lawfully imposed e.g. by bye-laws.

## **12. Equality and Human Rights**

- 12.1 Land registered as a green is equally available to all members of the local community.
- 12.2 Although the landowner (albeit unknown here) remains the legal owner, registration effectively prevents any future development of land that would interfere with recreational use. The courts have held that this is not inconsistent with the European Convention on Human Rights when balanced against the purpose of registration which is to preserve open space in the public interest.

## **13. Financial Implications**

- 13.1 Approval or refusal of the application will have no financial implication for the Council.

## **14. Legal Implications**

- 14.1 If the evidence submitted with an application is disputed or if there are legal arguments around it then registration authorities have adopted a practice of holding a public inquiry conducted by an independent barrister who will make a recommendation to the authority. However, no objections have been received from the landowner or anyone else, the evidence has not been disputed and the Council's legal officer cannot see any arguable issues regarding the application or the evidence. It was therefore considered that an inquiry was unnecessary.
- 14.2 The standard of proof for registration of a new green is the balance of probabilities. The evidence showing the Land has been used as of right for at least 20 years for lawful recreational purposes has not been contested and so it would be reasonable to conclude that the applicants are correct in claiming that the evidence demonstrates that the Land qualifies as

a green.

- 14.3 The application has been submitted, publicised and managed in accordance with the procedural requirements of the Commons Registration (England) Regulations 2008.

## **15. Risk Management**

- 15.1 The applicants, or perhaps a last minute objector, might seek to have the Committee's decision judicially reviewed and so it is important that the decision is made by applying the legal criteria identified above to the evidence submitted and not on the basis of any perceived benefits or disadvantages in the Land being registered as a town green.

## **16. Consultees**

- 16.1 An advertisement in the Ross Gazette and notices on site invited anyone concerned with the application to make representations to the Council but none were received.

## **17. Appendices**

- 17.1 None.

## **18. Background Papers**

- 18.1 Evidence forms and photographs submitted with the application and the results of a web search on The Gresleys.