

CABINET (HOUSING) COMMITTEE

29 June 2016

CABINET

6 July 2016

SECTION 15A COMMONS ACT 2006 TOWN OR VILLAGE GREENS DEPOSIT OF STATEMENT BY OWNER

REPORT OF ASSISTANT DIRECTOR (ESTATES AND REGENERATION)

Contact Officer: Kevin Warren Tel No: 01962 848 528

RECENT REFERENCES:

None

EXECUTIVE SUMMARY:

This report seeks a resolution to delegate authority to the Assistant Director (Estates and Regeneration) in consultation with the Portfolio Holder for Economy and Estates to lodge landowner Statements under section 15A of the Commons Act 2006 with Hampshire County Council as the Commons Registration Authority. Such Statements would bring to an end any existing period of an as of right recreational use of land in the Council's ownership with a view to protecting the land for possible future development. If accepted by the Commons Registration Authority, such Statements would prevent registration of the land as a town or village green where the required twenty year period of recreational use has not been achieved. This does not necessarily prevent future recreational use of land with the specific consent of the Council.

RECOMMENDATIONS (TO CABINET):

That the Assistant Director (Estates and Regeneration) in consultation with the Portfolio Holder for Economy and Estates is authorised to complete and deposit statements under section 15A Commons Act 2006 with the Commons Registration Authority in respect of land within Winchester City Council's ownership.

CABINET (HOUSING) COMMITTEE

29 June 2016

CABINET

6 July 2016

SECTION 15A COMMONS ACT 2006 TOWN OR VILLAGE GREENS DEPOSIT OF STATEMENT BY OWNER

REPORT OF ASSISTANT DIRECTOR (ESTATES AND REGENERATION)

DETAIL:

- 1 Introduction
- 1.1 Under section 15 of the Commons Act 2006 “any person may apply to the commons registration authority to register land ... as a town or village green” where “(a) 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”
- 1.2 Therefore applications to register land as a town or village green can be made once local residents have been using land for recreational purposes as of right for a period of at least 20 years.
- 1.3 The consequence of registration is that the land is effectively ‘sterilised’ as there can be no development on town or village greens. Even if an application subsequently fails, the time it takes for Hampshire County Council (as the Commons Registration Authority) to consider the application can be significant. One current application made by a local resident has still not been determined after 3 years.
- 1.4 An application, therefore, whether successful or not, has the potential to limit how the Council can use the land that it owns.
- 1.5 Section 15A of the Commons Act 2006 and the Commons (Registration of Town or Village Greens) and Dedicated Highways (Landowner Statements and Declarations) (England) Regulations 2013 came into force on 1 October 2013. This Section permits landowners to deposit statements in respect of land that they own which will have the effect of bringing to an end any period during which persons have indulged as of right in lawful sports and pastimes on the land to which the statement relates.
- 1.6 This is an important provision which, if used, will have the effect of maintaining the ‘Council’s’ maximum flexibility in terms of the use of land

within its ownership. The provision is likely to be of particular use in furthering the Council's own new build council housing programme.

- 1.7 Section 15A provides a power for a landowner to deposit a statement with the Commons Registration Authority which will have the effect of bringing to an end the time during which local residents may have been using the land as of right for recreational purposes. This would mean that, in cases where local residents have not been using land for 20 years, they would not be able to make applications for land to be registered as town or village greens, as they would not have the requisite period of use of the land.
- 1.8 In such cases, the effect of registering a Section 15A Notice would be to prevent the land from acquiring town or village green status for a further 20 years by 'stopping the clock' on the period of time for which the land has been continuously used. The hiatus would then provide an opportunity for the land in question to be sold and/or developed.
- 1.9 Where the requisite period of twenty years' use as of right has already accrued by the time the deposit of the statement and map takes place, an application for registration of the land as a town or village green can still be made within the relevant period [now one year] from the date of the deposit of the landowner's statement.
- 1.10 The deposit of the statement and map will not prevent commencement of a new period of recreational use as of right, but an owner of land may deposit subsequent statements in order to interrupt future periods of use.
- 1.11 The Commons Registration Authority is required to give notice of the deposit of a statement and map, by publishing it on their website and bringing it to the attention of users of the land in order to make the local community aware that any recreational use of the land as of right has been interrupted, triggering the operation of the grace period for an application to be made in reliance on section 15(3) of the 2006 Act (in cases where the criteria for registration have been satisfied).
- 1.12 While the provision gives the opportunity to "stop the clock" it does not prevent claims for Town and Village Green status being granted where the criteria for registration have been satisfied. Furthermore, its use must be seen in the context of broader consultation with Members and communities on the future uses of pieces of Council owned land. Even if the "clock" is stopped Members will, in each case, retain the ability to decide on the future use of affected land, taking account of all the views expressed as part of consultation and decision making processes..

OTHER CONSIDERATIONS:

- 2 COMMUNITY STRATEGY AND PORTFOLIO PLANS (RELEVANCE TO):
 - 2.1 The proposal supports the *Active Communities* and *Efficient and Effective* Priority Outcomes. It also supports the objectives of medium term financial

planning to ensure effective use of available resources including asset management, developing an HRA Asset Management Strategy, increasing the supply of affordable housing and provision of housing to meet community needs.

3 RESOURCE IMPLICATIONS:

3.1 The current fees payable to the Commons Registration Authority are:-

- a) an initial fee of £365 per application, based on a minimum of six hours' work by the Commons Registration Authority
- b) an additional amount of £50.70 per hour for any additional time spent, potentially subject to agreed cap.

3.2 The fees are set by the Commons Registration Authority and are periodically reviewed.

4 RISK MANAGEMENT ISSUES

4.1 Lodging a Landowner's Statement might have the effect of triggering a Town and Village Green Application. However, the same is true of any other action, for instance Member reports, publicity or consultation. that may bring development ideas to the attention of the community.

4.2 The lodging of a statement provides more certainty as to the status of land as a town or village green because it 'stops the clock' and provides a time period of twelve months in which to register applications for existing town or village green status. If no application is made within 1 year the Council can be certain that the land is not a town or village green. The risk of not lodging a Statement is that time may accrue that allows a Town and Village Green Application to be successful, thus compromising the Council's ability to manage it's own assets as it see fit.

BACKGROUND DOCUMENTS:

None

APPENDICES:

Appendix 1 Application Form – CA16

SCHEDULE 1

Regulation 2(2)(a)

Application Form

Form CA16

Application Form for deposits under section 31(6) of the Highways Act 1980 and section 15A(1) of the Commons Act 2006

Please read the following guidance carefully before completing this form

- 1. Guidance relating to completion of this form is available from <http://www.defra.gov.uk/rural/protected/greens/>. Please refer to these separate notes when completing this form.*
- 2. Parts A and F must be completed in all cases.*
- 3. The form must be signed and dated by, or by a duly authorised representative of, every owner of land to which the application relates who is an individual, and by the secretary or some other duly authorised officer of every owner of land to which the application relates which is a body corporate or an unincorporated association.*
- 4. In the case of land in joint ownership all the joint owners must complete paragraphs 2 and 3 of Part A and complete and sign the application in Part F, unless a duly authorised representative completes and signs the form on behalf of all of the owners of the land. Paragraph 3 should be completed in full to clearly explain the capacity of each applicant e.g. trustee, landowner's managing agent, executor.*
- 5. 'Owner' is defined in section 61(3) of the Commons Act 2006 and section 31(7) of the Highways Act 1980 and means, broadly, a legal owner of the freehold interest in the land.*
- 6. Where the application relates to more than one parcel of land, a description of each parcel should be included in Paragraph 4 of Part A and the remainder of the form should be completed to clearly identify which statement and/or declaration relates to which parcel of land. This may require the insertion of additional wording. See separate notes for further guidance. Multiple parcels of land should be clearly identified by coloured edging on any accompanying map.*
- 7. Where a statement or declaration requires reference to colouring shown on an accompanying map or previously lodged map, the colouring must be clearly specified and must match that shown on the relevant map. For example, if a footpath is specified in a Part C declaration as shown coloured brown, the accompanying map or previously deposited map referred to must reflect that colouring.*
- 8. An application must be accompanied by an ordnance map, or (in respect of declarations under Part C or statements under Part D of this form) refer to a map previously deposited in accordance with the Commons (Registration of Town or Village Greens) and Dedicated Highways (Landowner Statements and Declaration) (England) Regulations 2013 or (if deposited before 1st October 2013) in accordance with section 31(6) of the Highways Act 1980. Any accompanying map must be an ordnance map at a scale of not less than 1:10,560 showing the boundary of the land to which the application relates in coloured edging.*
- 9. An application must be accompanied by the requisite fee – please ask the appropriate authority for details.*

10. 'Appropriate authority' means (a) in relation to a map or statement deposited or declaration lodged under section 31(6) of that Act, an appropriate council (as defined in section 31(7) of the Highways Act 1980); and (b) in relation to a statement and map deposited under section 15A(1) of the 2006 Act, a commons registration authority (defined in section 4 of the Commons Act 2006 and section 2 of the Commons Registration Act 1965). In practice, the appropriate council and commons registration authority will usually be the same body.

**PART A: Information relating to the applicant and land to which the application relates
(all applicants must complete this Part)**

1. Name of appropriate authority to which the application is addressed:

2. Name and full address (including postcode) of applicant:

3. Status of applicant (tick relevant box or boxes):

I am

(a) the owner of the land(s) described in paragraph 4.

(b) making this application and the statements/declarations it contains on behalf of [*insert name of owner*] who is the owner of the land(s) described in paragraph 4 and in my capacity as [*insert details*].

4. Insert description of the land(s) to which the application relates (including full address and postcode):

5. Ordnance Survey six-figure grid reference(s) of a point within the area of land(s) to which the application relates (if known):

6. This deposit comprises the following statement(s) and/or declarations (*delete Parts B, C, or D where not applicable*):

PART B: Statement under section 31(6) of the Highways Act 1980

[I am/*insert name of owner*] is] the owner of the land described in paragraph 4 of Part A of this form and shown [*insert colouring*] on the map accompanying this statement.
(*delete wording in square brackets as appropriate and/or insert information as required*)

[Ways shown [*insert colouring*] on the accompanying map are byways open to all traffic.]

[Ways shown [*insert colouring*] on the accompanying map are restricted byways.]

[Ways shown [*insert colouring*] on the accompanying map are public bridleways.]

[Ways shown [*insert colouring*] on the accompanying map are public footpaths.]

No [other] ways over the land shown [*insert colouring*] on the accompanying map have been dedicated as highways.

(*delete wording in square brackets as appropriate and/or insert information as required*)

PART C: Declaration under section 31(6) of the Highways Act 1980

1. [I am/[insert name of owner] is] the owner of the land described in paragraph 4 of Part A of this form and shown [insert colouring] on the map [accompanying this declaration/lodged with [insert name] Council on [insert day, month, year]].

(delete wording in square brackets as appropriate and/or insert information as required)

2. On the [insert day] day of [insert month, year] [I/my/[insert name of owner's] predecessor in title [insert name]] deposited with [insert name] Council, being the appropriate council, a statement accompanied by a map showing [my/[insert name of owner's]] property [insert colouring] which stated that:

[the ways shown [insert colouring] on that map [and on the map accompanying this declaration] had been dedicated as byways open to all traffic]

[the ways shown [insert colouring] on that map [and on the map accompanying this declaration] had been dedicated as restricted byways]

[the ways shown [insert colouring] on that map [and on the map accompanying this declaration] had been dedicated as bridleways]

[the ways shown [insert colouring] on that map [and on the map accompanying this declaration] had been dedicated as footpaths]

[no [other] ways had been dedicated as highways over [my/[insert name of owner's]] property]. *(delete wording in square brackets as appropriate and/or insert information as required)*

[3. On the [insert day] day of [insert month, year] [I/my/[insert name of owner's] predecessor in title [insert name]] deposited with [insert name] Council, being the appropriate council, a declaration dated [insert day, month, year], stating that no additional ways [other than those marked in the appropriate colour on the map accompanying that declaration] had been dedicated as [byways open to all traffic] [restricted byways] [bridleways] [footpaths] since the deposit of the statement referred to in paragraph 2 above.]

(delete if not applicable and delete wording in square brackets as appropriate and/or insert information as required)

4. No additional ways have been dedicated over the land [insert colouring] on the map [accompanying this declaration/referenced in paragraph 1 above] since the statement dated [insert day, month, year] referred to in paragraph 2 above [since the date of the declaration referred to in paragraph 3 above] [other than those [byways open to all traffic] [restricted byways] [bridleways] [footpaths] marked in the appropriate colour on the map accompanying this declaration] and at the present time [I/[insert name of owner]] [have/has] no intention of dedicating any more public rights of way over [my/the] property.

(delete wording in square brackets as appropriate and/or insert information as required)

PART D: Statement under section 15A(1) of the Commons Act 2006

[I am/[insert name of owner] is] the owner of the land described in paragraph 4 of Part A of this form and shown [insert colouring] on the map [accompanying this statement/deposited with [insert name] Council on [insert day, month, year]].

[I/[insert name of owner]] [wish/wishes] to bring to an end any period during which persons may have indulged as of right in lawful sports and pastimes on the whole or any part of the land shown [insert colouring] on the [accompanying map/map referenced above].

(delete wording in square brackets as appropriate and/or insert information as required)

PART E: Additional information relevant to the application
(insert any additional information relevant to the application)

PART F: Statement of Truth
(all applicants must complete this Part)

WARNING: If you dishonestly enter information or make a statement that you know is, or might be, untrue or misleading, and intend by doing so to make a gain for yourself or another person, or to cause loss or the risk of loss to another person, you may commit the offence of fraud under section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years' imprisonment or an unlimited fine, or both.

I BELIEVE THAT THE FACTS AND MATTERS CONTAINED IN THIS FORM ARE TRUE

Signature (of the person making the statement of truth):

Print full name:

Date:

You should keep a copy of the completed form

Data Protection Act 1998 - Fair Processing Notice

The purpose of this Fair Processing Notice is to inform you of the use that will be made of your personal data, as required by the Data Protection Act 1998.

The appropriate authority (see explanation of definition in above guidance notes) in England is the data controller in respect of any personal data that you provide when you complete this form.

The information that you provide will be used by the appropriate authority in its duties to process applications to deposit statements, maps and declarations under section 31(6) the Highways Act 1980 and statements under section 15A(1) of the Commons Act 2006. The information you provide will also be used by the appropriate authority in its duty to update the registers in which details of such deposits are recorded under the Dedicated Highways (Registers under Section 31A of the Highways Act 1980) (England) Regulations 2007 and the Commons (Registration of Town or Village Greens) and Dedicated Highways (Landowner Statements and Declarations) (England) Regulations 2013.

The appropriate authority is required by the legislation above to maintain a register which holds information provided in this form, which can be inspected online or in person by members of the public on request. It may also be required to release information, including personal data and commercial information, on request under the Environmental Information Regulations 2004 or the Freedom of Information Act 2000. However, the appropriate authority will not permit any unwarranted breach of confidentiality nor will they act in contravention of their obligations under the Data Protection Act 1998.