HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Regulatory Committee
Date:	22 March 2017
Title:	Application for registration of land known as 'Top Field', Springvale, Kings Worthy as town or village green (Application Nos. VG 262 and VG 267)
Reference:	8193
Report From:	Director of Culture, Communities and Business Services

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1) Summary of decision area:

1.1. Hampshire County Council is the Commons Registration Authority (CRA) for the purpose of exercising functions under the Commons Act 2006. One such function is the determination of applications made to register land as town or village green. The Regulatory Committee, in its capacity as Commons Registration Authority, is asked to consider two applications for registration of land known as 'Top Field', in Kings Worthy, as town or village green. The applications were advertised and attracted an objection, supported by substantial submissions, from the landowner. The applicant was given the opportunity to rebut the objections through an exchange of material. The available relevant evidence for both applications has then been subjected to a non-statutory public inquiry conducted by Morag Ellis QC acting as Inspector on behalf of the County Council, in September and October 2016, and it is recommended that these applications be refused for the reasons set out in Ms Ellis' advice report.

2) Legal framework for the decision:

2.1. S.15 COMMONS ACT 2006

Registration of greens:

s.15(1) Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies.

s.15(2) This subsection applies where-

(a) a significant number of the inhabitants of the locality, or of 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

(b) they continue to do so at the time of the application.

2.2 THE COMMONS (REGISTRATION OF TOWN OR VILLAGE GREENS) (INTERIM ARRANGEMENTS) (ENGLAND AND WALES) REGULATIONS 2007

Consideration of objections

s.6(1) Where an objection is made under section 15(1) of the 2006 Act to register land as a town or village green, as soon as possible after the date by which statements in objection to an application have been required to be submitted, the registration authority must proceed to the further consideration of the application, and the consideration of statements (if any) in objection to that application, in accordance with the following provisions of this regulation.

(2) The registration authority –

(a) must consider every written statement in objection to an application which it receives before the date on which it proceeds to the further consideration of the application under paragraph (1); and

(b) may consider any such statement which it receives on or after that date and before the authority finally disposes of the application.

2.3 COMMONS ACT 2006, SECTION 15, AS AMENDED BY SECTION 16 OF THE GROWTH AND INFRASTRUCTURE ACT 2013 AND THE COMMONS (TOWN AND VILLAGE GREENS)(TRIGGER AND TERMINATING EVENTS) ORDER 2014

s.16 Restrictions on the right to register land as town or village green

(1) In the Commons Act 2006, after section 15B (as inserted by section 15 of this Act) insert –

"15C Registration of greens: exclusions

(1) The right under section 15(1) to apply to register land in England as a town or village green ceases to apply if an event specified in the first column of the Table set out in Schedule 1A has occurred in relation to the land ("a trigger event").

(2) Where the right under section 15(1) has ceased to apply because of the occurrence of a trigger event, it becomes exercisable again only if an event specified in the corresponding entry in the second column of the Table occurs in relation to the land ("a terminating event").

(8) For the purposes of determining whether an application under section 15 is made within the period mentioned in section 15(3)(c), any period during which an application to register land as a town or village green may not be made by virtue of this section is to be disregarded.

(2) Schedule 4 (which inserts the new Schedule 1A to the Commons Act 2006) has effect."

Schedule 1A

Exclusion of right under section 15

Trigger events	Terminating events
An application for planning permission in	(a) The application is withdrawn.

relation to the land which would be determined under section 70 of the 1990 [Town and Country Planning] Act is first publicised in accordance with requirements imposed by any development order by virtue of section 65(1) of that Act.	(b) A decision to decline to determine the application is made under section 70A of the 1990 Act. (c) In circumstances where planning permission is refused, all means of challenging the refusal in legal proceedings in the UK are exhausted and the decision is upheld. (d) In circumstances where planning permission is granted, the period within which the development to which the permission relates must be begun expires without the development having been begun.
2. An application for planning permission made in relation to the land under section 293A of the 1990 Act is first publicised in accordance with subsection (8) of that section.	(a) The application is withdrawn. (b) In the circumstances where planning permission is refused, all means of challenging the refusal in legal proceedings in the UK are exhausted and the decision is upheld. (c) In circumstances where planning permission is granted, the period within which the development to which the permission relates must be begun expires without the development having been begun.
3. A draft of a development plan document which identifies the land for potential development is published for consultation in accordance with regulations under section 17(7) of the 2004 [Planning and Compulsory Purchase] Act.	(a) The document is withdrawn under section 2(4) of the 2004 Act. (b) The document is adopted under section 23(2) and (3) of that Act…
4. A development plan document which identifies the land for potential development is adopted under section 23(2) or (3) of the 2004 Act.	(a) The document is revoked under section 25 of the 2004 Act. (b) A policy contained in the document which relates to the development of the land in question is superseded by another policy by virtue of section 38(5) of that Act.
5. A proposal for a neighbourhood development plan which identifies the land for potential development is published by a local planning authority for consultation in accordance with regulations under paragraph 4(1) of Schedule 4(B) to the 1990 Act it applies by virtue of section 38A(3) of the 2004 Act.	(a) The proposal is withdrawn under paragraph 2(1) of Schedule 4B to the 1990 Act (as it applies by virtue of section 38A(3) of the 2004 Act). (b) The plan is made under section 38A of the 2004 Act…
6. A proposal for a neighbourhood development plan which identifies the land for potential development is made under section 38A of the 2004 Act.	(a) The plan ceases to have effect. (b) The plan is revoked under section 61M of the 1990 Act (as it applies by virtue of section 38C(2) of the 2004 Act). (c) A policy contained in the plan which relates to the development of the land in

	question is superseded by another policy by virtue of section 38(5) of the 2004 Act.
7. A development plan for the purposes of section 27 or 54 of the 1990 Act, or anything treated as contained in such a plan by virtue of Schedule 8 to the 2004 Act, continues to have effect (by virtue of that Schedule) on 25th April 2013 and identifies the land for potential development.	The plan ceases to have effect by virtue of paragraph 1 of Schedule 8 to the 2004 Act.
8. A proposed application for an order granting development consent under section 114 under the 2008 [Planning] Act in relation to the land is first publicised in accordance with section 48 of that Act.	(a) The period of two years beginning with the day of publication expires. (b) The application is publicised under section 56(7) of the 2008 Act…
9. An application for such an order in relation to the land is first publicised in accordance with section 56(7) of the 2008 Act.	(a) The application is withdrawn. (b) In circumstances where the application is refused, all means of challenging the refusal in legal proceedings in the UK are exhausted and the decision is upheld. (c) In circumstances where an order granting development consent in relation to the land is made, the period within which the development to which the consent relates must be begun expires without the development having been begun.
"3.—(1) Schedule 1A(1) to the 2006 Act is amended as follows. (2) In the second column of the Table, in the entry corresponding to the trigger event set out in paragraph 3, after paragraph (b) insert—	
"(c) The period of two years beginning with the day on which the document is published for consultation expires." . (3) In the second column of the Table, in the entry corresponding to the trigger event set out in paragraph 5, after paragraph (b) insert— "(c) The period of two years beginning with the day on which the proposal is published for consultation expires." .	
(4) After paragraph 7 insert— 7A. A draft of a local development order under section 61A(2)(2) of the 1990 Act which would grant permission for operational development of the land is first published for consultation in accordance with provision included (by virtue of paragraph 1 of Schedule 4A to that Act(3)) in a development order made under section 59 of that Act.	(a) The draft is withdrawn. (b) The order is adopted by resolution of the local planning authority (and, accordingly, comes into effect by virtue of paragraph 3 of Schedule 4A to the 1990 Act) (but see paragraph 7B of this Table). (c) The period of two years beginning with the day on which the draft is published for consultation expires.
7B. A local development order which grants	(a) Where the order includes (by virtue of

permission for operational development of the land is adopted by resolution of the local planning authority (and, accordingly, comes into effect by virtue of paragraph 3 of Schedule 4A to the 1990 Act).	section 61C(1) of the 1990 Act(4)) provision which, however expressed, has the effect that the grant of permission ceases to apply on a particular day, that day passes. (b) The order is revoked under section 61A(6) or 61B(8)(a) of that Act(5). (c) A revision of the order prepared under paragraph 2 of Schedule 4A to that Act(6) which provides that operational development of the land is no longer permitted is adopted. (d) A direction is given under provision included in the order by virtue of section 61C(2) of that Act specifying that the permission granted by the order does not apply in relation to the land.
7C. A draft of a neighbourhood development order which would grant permission for operational development of the land is first published for consultation by a local planning authority in accordance with regulations made under paragraph 4(1) of Schedule 4B to the 1990 Act(7).	(a) The draft is withdrawn under paragraph 2(1) of Schedule 4B to the 1990 Act or treated as so withdrawn by virtue of paragraph 2(2) of that Schedule. (b) The order is made under section 61E(4) of that Act(8) (but see paragraph 7D of this Table). (c) The period of two years beginning with the day on which the draft is published for consultation expires.
7D. A neighbourhood development order which grants permission for operational development of the land is made under section 61E(4) of the 1990 Act.	(a) Where the order includes (by virtue of section 61L(1) of the 1990 Act(9)) provision which, however expressed, has the effect that the grant of permission ceases to apply on a particular day, that day passes. (b) Where the order provides (by virtue of section 61L(5) of that Act) that development permitted by the order must begin before the end of a specified period, that period expires without the development having been begun. (c) The order is revoked under section 61M(1) or (2) of the 1990 Act(10).”
(5) After paragraph 9 insert—	
“10. A notice is published by virtue of section 6 of the Transport and Works Act 1992(11) that an application has been made under that section, in circumstances where the notice contains a statement that a direction for deemed planning permission in respect of the land under section 90(2A) of the 1990 Act(12) is being applied for.	(a) The application for a direction is withdrawn. (b) In circumstances where the direction is refused, all means of challenging the refusal in legal proceedings in the United Kingdom are exhausted. (c) In circumstances where the direction is given, the period within which the development to which the direction relates

	must be begun expires without the development having been begun."

3) Applicant: Mrs. M. Mould,
3 Brooke Close,
Kings Worthy,
Winchester,
SO23 7PG.

3.1 During the setting up of the non-statutory public inquiry, a body known as the 'Top Field Action Group', or TFAG, applied to be joined in this application as co-applicant. It was decided, for the purposes of the inquiry, that TFAG should represent the Applicant, rather than adding the Group as a further applicant – see paragraph 2.4 (page 4) of the Inspector's advice report (see **Appendix 3**).

3.2 The Applicant and TFAG are represented by Mr. Paul Wilmshurst of Counsel.

4) Landowner/objector:

Landowner: Drew Smith Limited,
Drew Smith House,
7-9 Mill Court,
The Sawmills,
Durley,
Southampton,
SO32 2EJ.

4.1 Drew Smith Limited is represented by Paris Smith LLP, and Mr. William Webster of Counsel.

4.2 Drew Smith is the principal objector in this case.

5) Description of the land (please refer to the maps attached to this report)

5.1 The land which is the subject of the applications VG 262 and VG 267 ('the Land') is shown edged blue on the plans annexed to this report (**Appendix 1**). It consists of approximately 18.83 hectares of land (VG 262) and this figure includes the Land which is the subject of application VG 267 which is, in effect, a re-application. The Land is comprised in the registered title number HP 385054.

6) Background to the applications:

6.1 The application for VG 262 was received on 13 May 2013, on the grounds that land known as Top Field in Kings Worthy had been used by the inhabitants of the locality for lawful sports and pastimes for twenty years prior to 2013. This application took time to perfect to the point that it was considered to be 'duly made' in October 2013, a requirement set out in the regulations. The new procedures of the Growth and Infrastructure Act 2013 had been followed. The application was formally advertised on Form 45 in November 2015 according to the statutory requirements and an objection to the registration was received from the landowner. The objector advanced arguments in connection with the Growth and Infrastructure

Act 2013 (see legal boxes above), stating that there was a '*strong case*' to defeat the application on a number of grounds (see Regulatory Committee Report of 20 April 2016, at **Appendix 2**).

6.2 In July 2015, the Planning Department of Winchester City Council wrote to the County Council indicating that the land at Top Field eligible for processing for registration as town or village green had been further affected by the provisions of the Growth and Infrastructure Act. A small section of the land had been rendered ineligible for processing in the first instance, but that restriction no longer applied. This led to the County asking the applicant if she wished to re-apply for this small section of land, and this is now the application VG 267. This second application relies on the evidence provided in 2013 for the original application, covering the whole of Top Field, before any building had taken place there.

6.3 On 20 April 2016, this Committee approved the holding of a non-statutory public inquiry to look into the matter. The inquiry was held by an Inspector, Ms Morag Ellis QC, over 5 days on 19 to 23 September, and 18 October 2016, in order that that evidence of witnesses could be tested, and advice given as to whether or not the applications should be acceded to.

7) The Issue to be decided:

7.1 Whether or not to register 'Top Field', Kings Worthy as town or village green, in accordance with section 15(2) of the Commons Act 2006.

8) Discussion:

8.1 Advice had been sought from Mr. Vivian Chapman QC, prior to holding of the April 2016 Committee meeting, and he had confirmed the necessity of holding a public inquiry into these applications. Once authority for the inquiry had been obtained, Mr. Chapman was no longer available to conduct it, and Ms Morag Ellis QC ('The Inspector') was instructed to manage the public inquiry, hear evidence both for and against the applications, and prepare a report to Hampshire County Council advising on whether or not the land should be registered as a Town or Village Green. This advice report was provided to Hampshire County Council on 20 February 2017 (see **Appendix 3**). References to the Inspector's report are given throughout this discussion, both to the individual paragraph, and the page number(s) on which it is to be found. The report summarised the evidence heard at the Inquiry and, broadly speaking, found that:

8.1.1 Sufficient user of the requisite quality has not been established for the relevant periods in either case; and/or

8.1.2 Such user as there was would, predominantly, have carried the appearance of path user rather than a clear assertion of town or village green rights for the relevant periods; and/or

8.1.3 Areas 2 and 3 [see map attached at **Appendix 4**] are subject to Trigger Events under Schedule 1A to the Growth and Infrastructure Act 2013 which mean that they are not eligible for registration.

8.1.4 Accordingly, the Inspector recommends that Applications VG 262 and VG 267 be rejected.

8.2 During the inquiry, it was shown that the 'Land' could be most logically and

conveniently considered not as one whole, but in separate areas, as shown on the Appendix 4 map. Therefore, following the Inspector's example, this report will consider these various sub-divisions of the application Land, along with legal questions raised by the Objector and changes to the law, and then take each of the individual legal tests to demonstrate how the Inspector has reached her conclusions:

8.2.1 Use of the Main Field

8.2.1.1 The Inspector refers firstly to the records kept and presented by Mr. Bright, the farmer, accepted by the Applicant's legal representative as accurately reflecting the '*presence of crops on Main Field during the 8 years*' between 1993 and 1999 [see paragraph 11.1.1, page 150]. Some of the evidential material generated for the Definitive Map Modification Order ['DMMO'] of 2005 refers to users walking round a cropped or farmed field. The Inspector expresses herself satisfied that '*the majority of the Main Field area was in use as arable land between the years of 1993 and harvest-time 2000*'. She also accepts that arable farming took place from 1985 to 1993. The Inspector says that the '*majority*' of the Main Field was cropped until 2000, after which it was put into set aside. Taking all the evidence available to the inquiry, she is satisfied that the south-west corner of Main Field, up to the south-west of the nearby clump of trees, the VG 267 Application Land and Areas 1, 2 and 3 were not cropped '*at any time from 1985 onwards*'. At paragraph 11.1.4 (pages 151-152) the Inspector states that '*the evidence in support of the Application did not establish that people regularly went onto the land when it was being actively cultivated*', and the Applicant and other witnesses '*did not recall crops being grown on the land at all, including the years 1993 to 2000*'. She makes a general point about the evidence put forward in the questionnaires being 'imprecise about location and time and says that '*exploration of the evidence at Inquiry, however, has established a clear position*' [paragraph 11.1.5, pages 152-153].

8.2.1.2 The Inspector has also considered the situation in Main Field after the set aside regime was introduced, after 2000. Management of the land was minimal compared to the previous cropping, consisting of an annual cut of the vegetation in later summer, with the cuttings breaking down in situ over the remainder of the year [paragraph 11.1.7, pages 154-155]. The mature vegetation would be at waist or shoulder height, and was more patchy than a formal crop. Such growth is seen by the Inspector as being more consistent with the description of the area given by '*all of the Applicant's and some of the Objector's witnesses*' of the physical state of the land in the latter two thirds of the relevant period of 20 years, between 1993 and 2013. Aerial photography post 2000 provided to the Inquiry shows that there '*remained a distinct path area around the edges of the central part of the Main Field where long vegetation did not grow*'. Paragraph 11.1.8 (pages 155-157) summarises the Inspector's findings in respect of the cropped part of Main Field, which are that there were crops and no incursions into those crops. She declares that these are '*fatal to the claim insofar as it relates to that area*', since the period of cropping was spread over seven out of the relevant twenty years – '*that is a substantial portion of the required period of user*'. She concludes that user was '*merely "trivial and sporadic"*' and not attributable to the assertion of a village green right. The presence of local inhabitants there was due to their use of the path around the cropped area, corroborated by the evidence put forward for the

DMMO of 2005.

8.2.2 Perimeter Paths

8.2.2.1 Ms Ellis opens her discussion on this matter by saying '*there was a great deal of evidence of the use of the paths around the perimeter of Main Field for walking, dog walking and jogging*', along with other uses that can be interpreted as constituting lawful sports and pastimes for the purposes of village green registration [paragraph 11.2.1, pages 157-158]. The evidence indicates many witnesses confined their use of the Land mainly to the footpaths bordering the field, which tallied with the aerial photographic evidence, and photographs taken at the time of the investigation of the DMMO claim. The perimeter tracks are also recorded on Ordnance Survey maps, though not as public rights of way. At paragraph 11.2.3 (page 158) the Inspector finds it is '*highly significant*' that a Map Modification Order was made (but not confirmed) in 2005. She poses the question '*what would the reasonable landowner have concluded from all this evidence?*' She points to Mr. Bright's evidence that use of a '*predominant track*' around the Main Field '*was tolerated so long as there was no interference with his agricultural activities*'. The County Council, in its capacity as the highway authority, concluded in 2005 that these '*long-standing*' routes should be added to the Definitive Map and Statement as public footpaths, based on the contemporaneous local evidence available, covering a period between 1972 and 2001. In the Inspector's view '*the fact that the Order was not submitted for confirmation does not detract from the significance of the claim being made by the Parish Council or local people or the Authority's decision'* [paragraph 11.2.4, page 158]. The Inspector cites case law that recreational use of a way can contribute to the dedication of public rights, while transit use is not a lawful sport or pastime (paragraph 11.2.5, pages 159-161), and that the benefit of the doubt should be given to the landowner. She says that '*the context in which recreation activities took place here is important*', drawing attention to the pursuit for 8 years of the relevant period by the Parish Council of a rights of way claim (as representatives of the local inhabitants), which was considered to be justified by the highway authority. These factors are seen by the Inspector as '*highly relevant when considering how matters would have appeared to the landowner'*. She also draws attention that evidence put before the inquiry shows that there was a '*"tacit arrangement" in relation to perimeter paths*' [paragraph 11.2.6, pages 161-162].

8.2.2.2 The Inspector accepts that while the Applicant has established, on balance, '*that there were some off-path recreational activities of different kinds on the central area of the Main Field after 2000, they have not presented a clear picture of their extent, either geographically or temporally*' [paragraph 11.2.8, page 164]. She adds [paragraph 11.2.9, pages 164-165] '*by contrast, my firm impression is that the majority of recreational activity occurred on or associated with the clear perimeter paths. It is logical to deduce, from the clarity and persistence of the track in all relevant photographs, that this is where the majority of feet went, not only in the years 1993 to 2000, but for the rest of the relevant period as well*'.

8.2.3 South Western "*Lumps and Bumps*" Area

8.2.3.1 This area was shown never to have been used for growing crops. It was developed as an informal 'playground' for BMX users during the decade after 2000. An earlier patch of land had served the same function, but the

development of Area 1 for housing forced a relocation to the area known as the 'Lumps and Bumps'. The resulting jumps involved considerable disturbance of the ground, reinforced by repeated use, maintaining and extending these features. To use that land for any other purpose would have required a significant amount of work. The Inspector takes the view in paragraph 11.3.3 [page 166] that the transformation of the character of the land in this location to render any other use impracticable '*does not, in my opinion, constitute LSP* [lawful sports and pastimes, qualifying use for village green rights]'. In any case, use of this particular section of the Land was only established in the second half of the relevant period, with no evidence to show there was established recreational use of it before about 2004. The Inspector's conclusion is that the Applicant has not demonstrated the required user in this area of the Application Land, on the balance of probabilities.

8.2.4 North Western Corner: VG 267 Application Land

8.2.4.1 This area lies with the main railway line to the north-west and Hookpit Farm Lane to the north (see **Appendix 4** map). With the development of housing at the northern end of the Land, it is now bounded on the east by properties, and runs down towards the perimeter path. It was agreed in the inquiry that it had not ever been possible to discern its south eastern boundary clearly. Only one witness gave evidence about specific use of this section of the Land, and had reached the boundary fence only with difficulty, something the Inspector confirmed from an unaccompanied site visit [paragraph 11.4.2, pages 167-168]. It did not form a part of the accompanied site visit, by agreement of all the parties attending. The land is heavily overgrown with vegetation, and is now home to what remains of builders' rubble. As with the rest of Main Field, aerial photography shows a '*clear and persistent path in the vicinity of the VG 267 site*' – paragraph 11.4.3, page 168. There is also considerable tree cover there, which is visible in all the photographs except that for 2013, and the Inspector decided that '*there is no reason to conclude that the condition of the vegetation in this area of land was materially different during the relevant periods from its condition at the time of my site visit, when it was pretty well impassable'.*

8.2.4.2 There is, apart from the reference to this land by one witness, a total absence of evidence of use of this area, so the Inspector concludes that she has no basis for saying that the requisite use has been established village green rights on this part of the Land, either under application VG 267 or, for that matter, VG 262 (the two applications overlap), on the balance of probabilities (paragraphs 11.4.4 and 11.4.5, pages 168-169).

8.2.5 Areas 2 and 3

8.2.5.1 The separation of parts of the Land covered by Application VG 262 occurred for the sake of convenience in the inquiry, and there is no evidence that they have ever been so separated on the ground. Both parts are rough and uncultivated ground, with unchecked vegetation. Some patterns are discernible from the aerial photography, but they are generally rough and scrubby areas. The Inspector points out at paragraph 11.5.2 [page 170] that there is '*scope for confusion as to where the Application Site ended and other rough ground, further to the east, started*'. The presence of other houses along Springvale Road to the south may have led to confusion for witnesses who had completed forms or statements, but did not give oral evidence to the inquiry. Witnesses

attested to use of Areas 2 and 3, and the precise positions of the perimeter paths have been subject to variation [paragraph 11.5.3, pages 170-171]. Tracks appear to have run alongside Area 3 to the east and west until circa 2010, after which they became overgrown with scrub. Users talked of small paths through the area off the perimeter path, some of which could be classed as ephemeral, and one witness remembered Area 2 as being '*fairly busy*'. Another witness said she stayed on the tracks.

8.2.5.2 In paragraph 11.5.12 [page 173] the Inspector takes all the evidence relating to these two areas, and agrees with the aerial photography expert witness' conclusion that the land shows '*"evidence of people walking, likely for leisure use, and connecting with established tracks"*', though she adds that she thought that '*there was probably some use of parts of Area 2 for informal play during the early part of the period*' [paragraph 11.5.12, page 173]. Taken together, Ms Ellis does not consider that this pattern of use does represent a '*clear pattern of independent communal recreational user*'. Coupled with fluctuating use, she concludes that the Applicant has not demonstrated qualifying user for the relevant period over either of these areas.

8.2.6. Questions of Law

8.2.6.1 'Trigger Events' – these were introduced by the Growth and Infrastructure Act 2013 (see legal boxes at the start of this report) and they affect whether or not all or part of a village green application can be processed to determination. Officers have followed the regulations governing trigger events (section 15c and Schedule 1A added to the Commons Act 2006), and this application was affected, in that Area 1 (see Appendix 4 map) could not be processed as it was the subject of planning permission that was implemented in 2014. At the time of consulting the landowner that an application for village green rights had been received, the landowner's representative put forward an argument that the section 106 land associated with the planning permission also constituted a trigger event and, in the absence of a corresponding 'terminating event' (such as planning permission not having been exercised), the application would fail. Officers of the registration authority sought advice from Defra, as there is no case law that assists, and did not receive a response that could clarify this matter. This is one of the reasons why authority for a non-statutory public inquiry was sought from the Regulatory Committee, so that the registration authority could receive legal advice from an Inspector in a situation where there is no case law on newly-introduced legislation.

8.2.6.2 Ms Ellis addresses the question, having first stated that she concludes that the sufficiency and quality of user demonstrated to the inquiry does not allow for the registration of village green rights over the Land. If these findings are accepted, then there is no need to consider the question of whether section 106 land falls into the category of 'trigger event' [paragraph 13.1, page 177]. However, for the sake of completeness, she sets out the arguments made by the landowner relating to Paragraphs 1, 4 and 7 of Schedule 1A at paragraphs 13.2.1, and 13.3.1 [pages 177 and 178].

8.2.6.3 In relation to Paragraph 1, it is argued that section 106 land falls within the definition of '*An application for planning permission in relation to the land which would be determined under s. 70 of the 1990* [Town and Country Planning] *Act*'. At paragraph 13.2.2 [page 177] the Inspector rejects this argument, saying that section 106 is a separate legal instrument from a planning

permission and '*it is a contract entered into under s. 106 of the 1990 Act, rather than an application determined under s.70 of that Act*'. At paragraph 13.2.3 [page 178], she confirms that she has '*no doubt that the s.106 Agreement land is unaffected by paragraph 1 of Schedule 1A*'.

8.2.6.4 The objector sought to rely on Paragraphs 4 and 7 if the Applicant's evidence indicated that village green rights could be registered. These paragraphs relate to land identified for potential development through adopted development plans [for precise details, see paragraphs 13.3.1 and 13.3.2, pages 178-179]. Areas 2 and 3 of the Land in Application VG 262 are so identified in a plan set out by Winchester City Council, and saved as 'Policy RT5'. The Inspector concludes that, in principle, Trigger Events therefore apply to Areas 2 and 3 by virtue of Paragraphs 4 and 7, although she heard arguments against this view, suggesting the Policy is not inconsistent with use of the land for lawful sports and pastimes. The Inspector's response is that the word '*development*' refers to operations such as building, engineering or mining, but also excludes agriculture or forestry (see paragraph 13.3.4, page 180), while not excluding '*recreational operations or uses*'. The Policy identifies the land for the provision of new facilities, thereby making a policy statement directed to the granting of planning permission, and the Inspector does not accept Mr. Wilmshurst's submission that such development, which might take many forms, '*would necessarily be consistent with TVG status*' [paragraph 13.3.5, pages 180-181]. The construction offered by Mr. Wilmshurst is not accepted as correct because it involves words being read into the statue, and it is the Inspector's view that the development envisaged by the Policy '*is capable of being inconsistent with TVG rights*'. She confirms in paragraph 13.3.6 [pages 181-182] that the principle of the provisions of the Growth and Infrastructure Act 2013 was that the registration of village green rights should not "*cut across decisions taken in the democratically accountable planning system*'. It is the Inspector's view that prevention of planned recreational development '*directed at meeting the specific needs of the community…on the merits-neutral basis of TVG registration, would…run contrary to the intentions of Parliament…*'.

The Legal Tests for a section 15 application

8.3.1.1 '**A significant number…'** The Inspector was provided with village green user evidence collected on pre-prepared forms (with maps of the Land), and also with user evidence for a previous DMMO application, also collected on pre-prepared forms with accompanying maps. Additionally there were written statements for both sets of user forms. An Order was made for public footpaths over the Land at Top Field in 2005, but this Order has never been confirmed. There were 172 village green user forms, and 42 DMMO forms, along with 11 written statements. The Inspector based her findings on the volume and type of use from this material, the testimony of 12 witnesses in person, 7 written statements and one witness who had completed a form but was speaking as a member of the public and not for one side or the other.

8.3.1.2 Her consideration begins with relevant case law, which says that a 'significant number' is a matter of impression, and must be sufficient to indicate that it constitutes general use by the local community for informal recreation, rather than occasional use as trespass [see paragraph 10.10 on pages 132-133]. Further it must be of a quantity that a reasonable landowner would consider it as the assertion of a public right [paragraph 10.11, page 133], rather than being trivial or sporadic. The Inspector emphasises [paragraph 10.12, pages 133-

134] that it is for the '*Applicant to demonstrate "significance" in relation to the chosen locality and only qualifying user counts for these purposes*'.

8.3.1.3 While there is a mass of evidence provided by the witnesses for the application, it is the quality of that evidence that is at issue. It quickly became obvious at the inquiry that, under cross examination, witnesses appearing in person had difficulty with the issue of cropping of the land. This cropping was evidenced by aerial photography provided by the landowner, particularly the photographs covering the years 1993 to 1999, impinging on the 20-year period where significant user needs to be demonstrated for village green rights to be recorded. Most of the witnesses could not recall a crop on the land at any time they were using it and, when pressed, admitted that they would not use the cropped area [see, for example, paragraph 6.27, page 40, and paragraph 6.44, page 50]. It seemed clear that the predominant use of Top Field was via the perimeter path around the cropped area. The Inspector summarised her findings of the evidence of each witness either appearing at the inquiry or submitting written evidence, weighing the reliability, recall and detail presented. The difficulty that the Inspector has identified in relation to the volume and type of use of the Land is summed up at paragraph 6.46 [page 51]. The Inspector records that she '*asked Mr. Brown about the evidential conundrum that there is a large amount of independent contemporaneous evidence of cropping and yet there were witnesses such as him who were saying that they had never seen it but had been there regularly*'. She reported that Mr. Brown was not able to help her with this matter.

8.3.1.4 Set against this was evidence given in person by Mr. Nigel Bright who, following on from his father, had farmed the Land from 1985 to 2013. He used the land for arable purposes during this time, because grazing was impossible due to the cutting of previous fences. He used the field about 20 times annually, to do practical tasks such as ploughing and harvesting, and was aware of the public walking around the perimeter of the field. Mr. Bright gave details of the various processes relating to the three or so regular crops grown there, and was able to put forward crop records that were required to be submitted for agricultural payments, thereby corroborating the arable use of the central area of Top Field. In relation to members of the public he saw there, at paragraph 8.7 [pages 89-90 '*if they walked round outside that produced no inconvenience to me if they didn't damage crops*'. He confirmed that he intervened if anyone was damaging crops. The Inspector describes Mr. Bright's evidence as clear and helpful, with a '*good and detailed recollection of the land for the whole of the period 1993 to 1999 and indeed before that*'. She gave his evidence '*considerable weight*' [paragraph 8.10.1, page 93].

8.3.1.5 In considering the user evidence, the Inspector prefaced her report with comments on the questionnaires on which the evidence has been collected – these were not devised or provided by the County Council. She draws attention to an exhortation on the forms, stating that '*the object of this questionnaire is to reach the truth of the matter whatever that may be. You are requested to answer the questions as accurately as possible and not to withhold any information, whether for or against the application*' – this is printed in bold [see paragraph 3.3 at pages 8-9]. The Inspector draws attention to the reduced weight given to the contents of forms, in comparison with oral evidence from witnesses attending the inquiry. She says this caution is necessary because of the imprecise nature of '*many of the questions in the*

form…the apparent absence of any legal advice as to the nature of the s.15 CA 2006 requirements and…the clarification and concessions which were made by live witnesses…during the course of the inquiry as a result of examination by Counsel' and her own questioning [paragraph 3.4, pages 9-10].

8.3.1.6 Ms Ellis' conclusion on the collected witness evidence of use of all areas of the Land covered by these two applications is that this legal test has not been met [see paragraph 14.1, page 182].

8.3.2.1 **'…of the inhabitants of any locality, or of any neighbourhood within a locality…'** Mr. Wilmshurst clarified to the inquiry that the locality for the two applications is the Civil Parish of Kings Worthy, and it was accepted by the objector that this is an area capable of being regarded as a 'locality' for the purposes of section 15 of the Commons Act 2006. Further, the Civil Parish has been existence throughout the relevant twenty-year period.

8.3.2.2 The Inspector's view is that, if she is satisfied that all the other relevant statutory tests are met, '*there is a qualifying Locality to which TVG rights could attach'* [paragraph 3.1, page 135].

8.3.3.1 '**…indulged as of right…**' The phrase 'as of right' means without stealth, force or permission. If any user falls within these three categories it must be disregarded.

8.3.3.2 Case law holds that the state of mind of the users is not what matters – rather it is the outward appearance of that use to the 'reasonable landowner' [paragraph 10.28, page 147].

8.3.3.3 Use of the Land in general (though there are differences between the volume of use on different sections of it, as the Inspector has carefully set out in her report) has not been with stealth. The evidence of Mr. Bright, discussed above at paragraphs 8.2.1.1 and 8.2.2.1. indicates that he was fully aware that the Land was in use by the public, albeit mainly confined to the perimeter paths, discussed above at paragraphs 8.2.2.1 and 8.2.2.2.

8.3.3.4 User will be with force not just if fences have to be climbed or cut, but may also be rendered contentious by actions of the landowner indicating that such use is prohibited, by the use of fencing or signage. The Inspector sets out the criteria to be considered when deciding whether use is contentious in paragraph 10.31 of her report, at page 149. It does appear from Mr. Bright's evidence that use of the perimeter track at Top Field was '*tolerated*' provided that people did not go into the crops, when he would intervene and make it clear that this was not acceptable. The Inspector discusses the issue of force in paragraphs 12.4 to 12.9 of her report [pages 174 to 177] where she points out that even if the access via Hookpit Farm Lane was effectively blocked there were other accesses to Areas 2, 3 and 4. Ms Ellis accepted that Miss Hopkins put up two signs in June 2010 [paragraphs 12.6 to 12.8, page 176], and she views the wording of the signs as sufficient to show the landowner did not acquiesce in village green user, though the signs were only in place for a short period. However, the Inspector would not have '*recommended rejection of the Applications on the basis of signs*'. She states that she is also aware that Mr. Bright ejected children that he found trespassing in his crops when he was on the Land by verbally challenging them.

8.3.3.5 Any use of any of the Land with permission from the landowner or the

landowner's tenant acting on his or her instructions would not qualify towards the registration of village green rights. At paragraph 12.3 [page 174] Ms Ellis concludes that Mr. Bright's evidence of '*toleration*' of use of the perimeter paths did not amount to '*proper consent on his part*', even if he **was** in a position to grant permission on behalf of the landowner. This toleration went no further than the perimeter paths. She therefore discounts permission as an issue. However, as she has already concluded that there was not sufficient use of the land, the 'as of right' question has academic significance only.

8.3.4.1 '**…in lawful sports and pastimes…**' The question of what activities have been carried out by the local inhabitants at Top Field is a difficult one, since there has already been a DMMO claim, and there is some overlap between village green activities and other user that qualifies for the recording of highway rights. As the Inspector puts it in her paragraph 10.16 [page 136], '*if user is referable to formal or informal paths, it may, in some instances, not found TVG registration, although the presence of footpaths on the relevant land is not necessarily fatal to a claim*'. As she says in paragraph 10.22 [page 144] '*trips to and from school, work or to conduct other daily business, such as shopping, do not constitute LSP*'. Ambiguity particularly exists in walking activities – for instance recreational walking can found a rights of way claim, as well as qualifying as a lawful sport or pastime. Similarly with dog walking. There is evidence that activities such as berry picking and kite flying did take place on the Land [see paragraph 11.2.7, page 163], but some of these were characterised by the Inspector as '*infrequent*' or '*one-off activities*'. She says at paragraph 11.2.5 [page 160] that '*Picking berries en-route, pausing to admire the view or watch trains, sit down or have a picnic are not, in themselves, activities which are inconsistent with footpath user, nor should they have rung TVG alarm bells in the mind of an owner. Such activities are either incidental to the use of the public footpath…and/or not inconsistent with a right of passage and, to an extent, connected with it*'.

8.3.4.2 As the Inspector states, again in paragraph 10.16 [page 136], '*It is a question of fact, the decisive factor being how matters would have appeared to the reasonable landowner, with the benefit of the doubt being given to the landowner in ambiguous cases such that inferences should be drawn in favour of footpath user rather than TVG user*'. Each case is dependant on its own facts. It is the Inspector's conclusion, stated in paragraph 14.1 (ii) of her report [page 182] that '*such user as there was would, predominantly, have carried the appearance of path user rather than a clear assertion of TVG rights for the relevant periods*', and therefore this test has not been met.

8.3.5.1 '**…on the land…**' In dealing with the two applications covering the whole of Top Field, it became clear that there were geographical divisions mostly relating to the presence of a defined area taking up most of the acreage that had been put to growing arable crops for a substantial part of the relevant twenty-year period. A number of aerial photographs showed this arable area, and the small sections of other land surrounding it fell into natural sub-areas, by nature of their vegetation or use. The map at Appendix 4 was created at the request of the Inspector to show these different areas. In the Inspector's analysis of the evidence, she looks at each of these areas in terms of user evidence from both the Applicant's and objector's witnesses, and she has applied that evidence to these separate areas. This format has also been adopted in the Committee Report.

8.3.5.2 On none of the areas eligible for consideration, namely the Main Field, Perimeter Paths, South Western 'Lumps and Bumps' Area, and North Western Corner VG 267 Application Land, did the Inspector find the quantity and quality of user that would allow for the registration of village green rights. Areas 1, 2 and 3 were all affected by Trigger Events. Though '*it is not necessary to demonstrate qualifying user for the whole period over every square inch of the land, nevertheless the Applicant must demonstrate, on the balance of probabilities, that the whole of the land has been subject to qualifying* user' [paragraph 10.25, page 145]. Therefore, this test has not been met.

8.3.6.1 '**…for a period of at least 20 years…(b) continue to do so at the time of the application.**' Qualifying user of the land must be demonstrated by the Applicant for the whole of the relevant period. Interruptions to use may occur and this would interfere with the running of the time period. During that twenty-year period, the quality of the user of the Land must be of such an amount and nature that a reasonable landowner could regard it as an assertion of a public right.

8.3.6.2 The aerial photography produced in response to the advertisement of the applications indicated cropping on the majority of the Land during the years 1993 to 1999, which the Inspector characterised as '*a substantial portion of the required period of user*', particularly as the witnesses could not establish convincing use of the cropped area during those years [paragraph 11.1.8, pages 155]. Neither the north western area of the VG 267 application nor the south western 'Lumps and Bumps' area received any qualifying use at all, and Areas 1, 2 and 3 are all the subjects of Trigger Events and hence ineligible for the registration of village green rights. Only the perimeter paths received regular use – as the Inspector puts it, this is where the majority of the feet went (see paragraph 8.2.2.2 above). Having considered the ambiguous nature of recreational walking and dog walking, she comes down firmly on the side of the '*benefit of the doubt on these matters* [being given] *to the landowner*', and the less onerous right being recorded [paragraph 11.2.6, page 161]. In these circumstances, this limb of the legal test for the registration of village green rights over Top Field is not met either.

8.4 In summary:

Legal Test	Met?
'A significant number…'	**No** - ● the aerial photographic evidence corroborates cropping over the majority of the land ● witnesses said they would not have gone on cropped land ● questions raised about frequency of use during relevant period ● abundant evidence that perimeter paths being used
'…of the inhabitants of any locality, or of any neighbourhood within a locality…'	**Yes** – ● applicant cites the civil parish of Kings Worthy as the locality ● a parish serves this purpose

	● majority of users live in parish ● the parish has been in existence throughout the relevant 20-year period
'…indulged as of right…'	**Yes** – ● landowner and tenant aware that land being used by the public – farmer Mr. Bright aware that people on the land he was farming ● use open and without permission ● use not contentious – notices denying rights put up in 2010, but in place for a very short time
Legal Test	**Met?**
'…in lawful sports and pastimes…'	**No** – ● pastimes said to have been indulged in fall into acceptable categories ● mostly recreational/dog walking ● some highway use reported on forms ●however, most use confined to perimeter paths and so have appearance of use qualifying for a public right of way rather than village green rights
'…on the land…'	**No** – ● land falls into five separate areas, some of which are not eligible for processing ● much of main eligible area of land cropped, and no consistent evidence of it actually being used for lawful sports and pastimes ● most use confined to perimeter paths
'…for a period of at least 20 years…'	**No** – ● no qualifying user can be shown on Areas 1, 2, 3 and Main Area ● Areas 1, 2 and 3 all subject to Trigger Events and ineligible for consideration ● Main Area cropped from 1993 to 1999, a substantial interruption during relevant 20-year period ● only part of land showing substantial user is perimeter path – ambiguous nature of use ● this use is not that which would suggest the assertion of village green rights – rather, user is capable of contributing to a public right of way ● benefit of doubt must be given to landowner, and right with lower impact recorded

9) The requirement for a non-statutory public inquiry:

9.1 Officers were advised by Vivian Chapman QC to request authority to hold a non-statutory public inquiry into these two village green applications [see Inspector's report, paragraph 1.2, page 2] because of the complex nature of the evidence as

applied to the Land in question, and in relation to the provisions of the Growth and Infrastructure Act 2013. The map at Appendix 4 to the April 2016 report renders graphically the difficulties that officers were facing in a context where even the local planning authority could not give a clear answer to issues thrown up by the new legislation. Defra were unable to give any guidance either and suggested that it was for the Commons Registration Authority to take a view.

9.2 In a context where much is at stake and there is strongly contested evidence, the determination of village green applications as a paper exercise leaves much to be desired. As is recorded in the minutes of the April 2016 meeting (appended to this report as **Appendix 5**) '*the County Council, acting as the Commons Registration Authority, has no interest as to the outcome of an inquiry; its priority is to ensure that a legally sound determination is made by this Committee, and it was felt that the best way of achieving this was through advice from a legally qualified inspector after a public inquiry*'. The Committee had been addressed by a representative of the objector who had '*encouraged Members to defer the application rather than agree to it going to a public inquiry*', citing evidence that the objector had put forward [Minute 254].

9.3 The Inspector herself addresses the need for a non-statutory public inquiry in her advice report. Her first mention of this is at paragraph 1.2 [page 2], where she felt she should '*make it clear, in the light of certain representations made by Mr Webster, on behalf of the Objector, that I agree that it was essential to hold the inquiry, which has enabled me to make clear recommendations to the CRA as to the disposal of the Applications*'. She later cites the '*imprecise nature of many of the questions in the form*' used to collect the evidence. In these particular applications, she draws attention to the '*absence of any invitation to respondents to consider specific areas of the Application land*' [paragraph 3.4(1), page 9]. Forms devised to collect the kind of evidence employed in rights of way and village green applications must be generalised to fit any combination of facts for any situation; they may run to many pages and ask for precision regarding dates when people carry out activities where they are not paying particular attention to what they are doing, when they are wishing to relax or get away from their daily life, or are doing things that they do habitually. Forms **do** ask for detail, but the average person is not likely to provide answers with sufficient detail because of the factors just cited. Forms may be daunting to people, and they usually require the person completing a form to draw on a map where they have been – another difficult task for some people. Coupled with a general lack of knowledge of the onerous legal tests that have to be met for village green rights registration, it is not surprising that registration authorities turn to specialised advice for determination of such applications.

9.4 The Inspector, at paragraph 3.4(3) [page 9] also points out the assistance provided by live witnesses in terms of '*clarifications and concessions*', and placed greater weight on those who did attend in person, rather than only submitting a written statement or a completed user evidence form. She therefore regards '*the elucidation given at the Inquiry as highly relevant to my consideration of the extent to which the questionnaires can be regarded as probative*' [paragraph 3.4(3), page 10]. The Inspector says at paragraph 11.1.5 [page 153] that '*most questionnaires are imprecise about location and time; exploration of the evidence at Inquiry has established a clear position'*.

9.5 It was put to the Committee in April 2016 that the question of whether section 106 agreements constituted Trigger Events had been introduced by the objector, and

that officers had not been able to obtain any specialist assistance in answering this from Defra. Further, there was the issue of whether saved Policies could also be considered to be Trigger Events. This would allow officers to know whether the land affected by a saved Policy could be considered for village green registration. This was the other primary reason for requesting authority to hold the inquiry.

9.6 At Minute 254 for the April 2016 states that '*in debate, Members accepted that more information would be required to make a sound decision on the application. As timescales were similar with both ways forward and DEFRA guidance had not been helpful, it was agreed that the non-statutory public inquiry was the best route forward*' [page 5 of Appendix 5]..

10) Conclusions

10.1 The evidence put forward in these two Applications has been thoroughly examined in a public inquiry over 6 days. The evidence consisted of a large number of completed witness forms, and appearances in person by a number of witnesses, in support of registration of village green rights over Top Field, at Kings Worthy. It also included substantial submissions from the objector, with aerial photography, and personal appearances by witnesses.

10.2 The Inspector has issued an advice report, where she assesses whether the six legal tests under section 15 of the Commons Registration Act 2006 have been met. In carrying out this assessment, the Land that is the subject of these two applications has been subdivided into four areas, three of which cannot be considered for such registration since they have been affected by Trigger Events introduced by the Growth and Infrastructure Act 2013. This leaves Land known as the 'Main Area', comprising the bulk of the Land for consideration.

10.3 The separate elements of the legal test have been discussed with reference to the evidence set forward by the applicant and the objector, relating to the relevant period during which the rights must have been acquired. From this material, only two of the tests, those relating to the locality and the user having been 'as of right', have been met. The consistent conclusion of the Inspector's report is that the type of use that needs to have been demonstrated, capable of indicating to a reasonable landowner that a village green right was being asserted over Top Field by the public, has not taken place over the Land. At paragraph 11.1.8 [page 155-156 of her report], she characterises use of the Main Area as '*trivial and sporadic*'.

10.4 However, the user evidence collected for the Map Modification Order of 2005, when taken in tandem with that collected for the village green applications, does indicate a level of use of the track running around the perimeter of the cropped field that is capable of indicating to a reasonable landowner that a public right is being asserted over the Land. As set out by the Inspector in her paragraph 11.29 at page 164 of her report, the majority of use by the public at Top Field occurred on or is '*associated with the clear perimeter paths*', and she also draws attention to the fact that '*The Highway Authority reached the conclusion in 2005 that these routes were of long standing and should be added to the Definitive Map and Statement as Public Footpaths, on the basis of contemporaneous local evidence*' [page 158].

10.5 Therefore, officers of the commons registration authority consider that use of the Land has not been of the whole of its extent, or any substantial part of its extent.

What use there has been has been too scant to meet the legal test of a '*significant number*', and is of the nature that should be recorded under the Wildlife and Countryside Act 1981 section 53 provisions as a public right of way over the perimeter paths around the former cropped field in the Main Area. Further, since other legal tests set out in section 15 of the Commons Act 2006 have also not been met (see paragraph 8.4 above) the Land does not qualify to be registered as a town or village green.

11) Recommendation:

11.1 That the application to register as a town or village green land shown edged blue on the plans attached to this report at Appendix 1 be refused.

CORPORATE AND LEGAL INFORMATION ABOUT THIS DECISION:

Hampshire safer and more secure for all:	yes/no
Corporate Improvement plan link number (if appropriate):	
Maximising well-being:	yes/no
Corporate Improvement plan link number (if appropriate):	
Enhancing our quality of place:	yes/no
Corporate Improvement plan link number (if appropriate):	
OR	
This proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because the County Council, in its capacity as Commons Registration Authority, has a legal duty to decide whether or not the register of towns and village greens should be amended.	

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report.

(NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

(Quote list of documents here: e.g. list the relevant letters, memos, etc. and their location)

Document	Location
File: VG 262 and VG 267	Countryside Access Team Room 0.01 Castle Avenue Winchester SO23 8UL

IMPACT ASSESSMENTS:

1. Equality Duty

1.1 The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Due regard in this context involves having due regard in particular to:

a) The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;

b) Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;

c) Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionally low.

1.2 Equalities Impact Assessment:

2. Impact on Crime and Disorder:

2.1.

3. Climate Change:

3.1

This report does not require impact assessments but, nevertheless, requires a decision because the County Council, in its capacity as Commons Registration Authority, has a legal duty to amend the register of town and village greens in the circumstances described in this report.