

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Regulatory Committee
Date:	12 April 2017
Title:	Application for registration of land known as Monks Brook, Eastleigh as town or village green (Application No. VG 234)
Reference:	
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 for the purpose of exercising functions under the Commons Act 2006. An application has been made by Mrs. Janet Ticehurst for the registration of land known as Monks Brook, in the Borough of Eastleigh, as a town or village green. The landowner objects to the application. The recommendation is that a non-statutory public inquiry be held.

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.

3) Applicant: Mrs. J. Ticehurst,
1 Mardon Close,
Swaythling,
Southampton,
SO18 2HP.

4) Landowner/objector:

Landowner: Hampshire County Council,
The Castle,
Winchester,
SO23 8UJ.

North Stoneham Developments Limited, and the Highwood Group Limited, of The Hay Barn, Upper Ashfield Farm, Hoe Lane, Ashfield, Romsey, SO51 9NJ have the benefit of an option to purchase over the application land.

Hampshire County Council is represented by George Laurence QC, and is the sole 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 application VG 234 ('the Land') is shown edged blue on the plan annexed to this report. It consists of approximately 3.35 hectares (8.28 acres) of land.

6) The application:

6.1 The application for VG 234 was received in September 2007. The Land is part of a larger area, the other part of which lies within the boundary of the City of Southampton, the owner of this adjoining section. The application was accompanied by maps, photographs, a petition and letters from local residents. The application, covering the whole area known as Monks Brook in its two adjoining administrative areas (Hampshire County Council and Southampton City Council) affects both parts. Because the information relating to use of the Land for the purposes of registering a village green (contained in the letters included by the applicant) was largely anecdotal in nature, officers of the Registration Authority sought the agreement of the landowner in 2015 to seek relevant documentary

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information about how local inhabitants had used the land. This was via specialised user evidence forms, prepared by the Association of Commons Registration Authorities, and 15 of these were returned.

- 6.2 A report was taken to the Regulatory Committee on 28th September 2007, requesting authority for Southampton City Council to deal administratively with the application relating to the land lying within Hampshire, and to revert back to the County Council after a non-statutory public inquiry had been held by Southampton City Council, once the Inspector's decision letter with a recommendation as to the determination of the application had been received. The non-statutory public inquiry was never held.
- 6.3 Another report was taken to this Committee on 27th April 2011, seeking permission to secure information from Southampton City Council about progress in processing the application. This was provided, and the whole application was returned to Hampshire, and the County Council has since then endeavoured to get consent from Southampton City Council to process the application to determination for both pieces of land. No such consent was forthcoming. In 2016, it was decided by officers to resolve the application as it relates to land within the County boundary only.
- 6.4 As set out in the 2011 report, the County Council needs to operate a waiting list for the processing of village green applications, and this particular application is the oldest undetermined matter on that list, because of the reasons outlined above.
- 6.5 Even though the application Land forms part of a larger site, which has the benefit of outline planning permission granted in 2015 by Eastleigh Borough Council, as the village green application was submitted before 25th April 2013, the commencement date of new legislation, it is not affected by the provisions of the Growth and Infrastructure Act 2013 (set out in the attached **Appendix 1**) and all of the Land shown on the attached plan can be processed to determination. At the time this application was made, the legislation relating to trigger and terminating events was not in existence and does not apply, and so could not affect the processing of village green applications to determination. Therefore, the legal tests in section 15 of the Commons Act 2006 are the only tests to be applied in making this determination.
- 6.6 The application was advertised on Form 45 on 1st July 2016, and attracted one objection, from Hampshire County Council, in its role as the landowner. The objection was accompanied by a submission, summarised in section 7 of this report.
- 6.7 In accordance with the Regulations, the landowner's objections were sent to the applicant for comment. The applicant submitted a brief document in response, but this was not a point by point rebuttal of the arguments put forward.

7) **Issues to be decided:**

- 7.1 Officers consider that there are matters of fact and law which need to be considered in more detail, namely
 - the landowner contends that use of the Land is not significant in terms of the legal test set out in section 15 of the Commons Act 2006
 - the landowner questions the existence of the locality of Swaythling before May 2002, and the cohesiveness of that locality

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- officers take the view that the actual volume, and type, of user on this land needs to be fully assessed as far as is possible

- 7.2 In these circumstances, officers consider that it would be unsafe to determine the application on the basis of the paper application only and that, in the interests of fairness to both parties, it is appropriate to arrange a non-statutory public inquiry, to test the evidence both for and against the application.
- 7.3 In any case, for the sake of transparency, given that the County Council is the Registration Authority for Hampshire, and also the owner of the Land that is the subject of the application, it is (and was in 2007) considered necessary to hold a non-statutory public inquiry, in accordance with usual practice and to avoid any conflict of interest, and to demonstrate impartiality in determining the application.
- 7.4 In considering the matters raised in this report, Members are welcome to inspect the representations and evidence submitted by each party.
- 7.5 Members may, of course, take the alternative view that, in the light of the nature of the arguments described, they do consider it appropriate to determine this matter without recourse to a public inquiry. If this is the case, then they can reject the recommendation and officers will bring a full report, describing the evidence both for, and against, the application to a later Committee meeting.
- 7.6 If the recommendation in this report is accepted, then it is anticipated that the non-statutory public inquiry will be held later in 2017.

8) Recommendation:

- 8.1 That, in connection with the application to register land known as Monks Brook, Eastleigh, as a town or village green (VG 234), a non-statutory public inquiry be held, and the inspector appointed to conduct the inquiry be asked to hear evidence for and against the application, and then to prepare a written report advising the Registration Authority whether to accede to, or to reject, the application.**

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

File: VG 234

Location

Countryside Access Team
Room 0.01
Castle Avenue
Winchester
SO23 8UL

IMPACT ASSESSMENTS:

1. Equality Duty

1.1.

2. Impact on Crime and Disorder:

2.1.

3. Climate Change:

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.