

## HAMPSHIRE COUNTY COUNCIL

### Decision Report

<b>Decision Maker:</b>	Executive Member for Countryside and Rural Affairs
<b>Date:</b>	18 September 2020
<b>Title:</b>	Proposed changes to the Policy for prioritisation of applications received under Part 1 of the Commons Act 2006
<b>Report From:</b>	Director of Culture, Communities and Business Services

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### Purpose of this Report

1. This report seeks approval for changes to be made to the Countryside Service's Policy for prioritisation of applications received under Part 1 of the Commons Act 2006, which seek to make changes to the registers of commons and Town and Village Greens ('TVGs').
2. It is proposed that the following amendments are made to expand the scope of the policy:
  - a) expand the scope for prioritising applications to register TVG rights on land that is proposed for development;
  - b) introduce the capacity for applications to amend the commons register to also be prioritised, dependent upon the current and intended use of the land.

### Recommendation

3. That the Executive Member for Countryside and Rural Affairs approves the proposed changes to the Policy for Prioritisation of Applications received under Part 1 of the Commons Act 2006 as set out in paragraphs 2a and b.

### Executive Summary

4. This report sets out the background of the County Councils management of the register of Commons and Town and Village Greens (TVG), the context of the existing policy and the proposed changes to the policy.

5. The existing Policy adopted in 2016 requires amendment to provide greater flexibility in instances where land that is the subject of a TVG application is slated for development but is not subject to a trigger event.
6. Currently in such instances the existing policy does not provide for these applications to be prioritised. Given the potential for the resulting delays to frustrate development or create uncertainty about how the land can be used, officers consider that the existing criteria should be relaxed to enable these applications to be expedited, thus providing certainty to affected landowners, residents and developers at the earliest opportunity.
7. The amendments proposed in this paper seek to resolve this issue and ensure that such applications can be prioritised.

### **Contextual information**

8. The County Council has a statutory duty to maintain the registers of both Commons and Town and Village Greens (TVGs), and to process applications from members of the public to amend those registers (as set out in the provisions of the Commons Act 2006). These functions are dealt with by the Countryside Service's Map Review Team.
9. For many years, the Countryside Service processed TVG applications on a chronological basis. However, in recent years it has come under some pressure to take applications out of turn in instances where the land was earmarked for development. It was therefore agreed that a policy should be produced to formalise the basis for prioritising such applications, and a new policy was approved by the then Executive Member for Culture, Recreation and Countryside in July 2016 (see Appendix 1). In essence, the policy provided for the prioritisation of applications in instances where the land was subject to one or more 'trigger events', as set out in Schedule 1A to the Commons Act 2006.
10. For context, 'trigger events' were introduced as an amendment to the 2006 Act by the Growth and Infrastructure Act 2013. They relate to the development of land as part of the planning process. Where they can be shown to have occurred, they cause the right to apply to register land as a town and village green to cease.
11. It has become clear that the 2016 policy needs to be amended to provide greater flexibility in instances where land that is the subject of a TVG application is slated for development but is not subject to a trigger event. Currently in such instances the existing policy does not provide for these applications to be prioritised. Given the potential for resulting delays to frustrate development or create uncertainty about how the land can be used, officers consider that the existing criteria should be relaxed to enable these

applications to be expedited, thus providing certainty to affected landowners, residents and developers at the earliest opportunity.

12. The proposed amendments to the existing policy would also see the introduction of a priority system for the determination of applications to amend the commons register. Many of the applications received under this cover seek to deregister land already registered as common, and in recent cases, applicants have asserted that the recorded status of land as a registered common is a blight either to their residential dwelling or their business operations.
13. Although the number of incoming applications to amend the commons register are currently low (there are 4 applications on the register, all of which were submitted in 2018), it would be consistent to align the priority for their determination with TVGs. It is also feasible that in future, parts of the Commons Act 2006 not currently in force in Hampshire will be introduced, and as this would likely result in an increase in the number of commons-related applications being received, it is considered that it would prudent to implement a policy for prioritising these applications now.
14. It should be noted that discharging functions under Part 1 of the Commons Act 2006 represents only a minor proportion of the work undertaken by the Map Review Team. In particular, applications to amend the Definitive Map of Public Rights of Way occupy a much greater share of officer time, not least because a) the backlog of applications is significantly larger than either the commons or TVG waiting lists and b) carries a right of appeal if applications are not determined swiftly (this right does not extend to applications made under Part 1 of the 2006 Act). Accordingly, the majority of the team's resources have been channelled into this area of work, with only a small proportion of time spent on tackling the commons and TVG waiting list. However, the proposed policy will enable any application in either list to be prioritised, as and when appropriate.
15. A draft of the proposed updated policy is attached (Appendix 2). The proposed amendments are minor in nature and are highlighted in yellow. The changes are outlined below:
  - a) The title and preamble to the policy has been amended to make it clear that it now incorporates functions relating to commons as well as TVGs.
  - b) An additional paragraph has been included to detail the decision-making process for prioritising both commons and TVG applications.
  - c) The amended policy retains all previously existing references to prioritisation on the basis that a trigger event has occurred, but the

relevant section has been adjusted to make it clear that this relates solely to TVG applications.

## **Finance**

16. There are no financial implications to this change to policy.

## **Performance**

17. Currently the Commons and Town and Village Green registers have 11 TVG and 4 Commons applications outstanding, the most recent been submitted in 2018.

18. The management of applications for amendments to the Commons and Town and Village Green Registers is important but is a lower priority to the processing of Definitive Map Modification Orders (DMMOs), where, linked with the Governments 2026 deadline for the closure of the Definitive Map for historical claims, there is a backlog of over 150 applications (approx. 20 new application pa).

## **Consultation and Equalities**

19. Because the proposals relate to work programming within the Countryside Service, no external consultation has taken place. However, the proposals have been instigated by issues that have emerged from communication received from local members and local planning authorities.

20. It is not believed that this policy change will have any negative implications for applicants.

## **Timings / Next Steps**

21. Subject to approval, it is proposed that the policy change will take immediate effect.

22. On approval, a review of the existing applications will be made, with any meeting the new criteria being prioritised for investigation. We believe this to be 2 applications.

## **Conclusions**

23. For the reasons set out in this paper, it is considered that the existing policy should be updated to ensure a consistent approach to the prioritisation of

both TVG and commons applications, as well ensuring that, where appropriate, applications can be prioritised.

## **Appendices**

2020-02-24 SRM Decision - Commons and Village Greens - Prioritisation Change - Appendix 1 - existing policy

2020-02-24 SRM Decision - Commons and Village Greens - Prioritisation Change - Appendix 2 - draft policy

**REQUIRED CORPORATE AND LEGAL INFORMATION:**

**Links to the Strategic Plan**

<b>Hampshire maintains strong and sustainable economic growth and prosperity:</b>	yes/no
<b>People in Hampshire live safe, healthy and independent lives:</b>	yes/no
<b>People in Hampshire enjoy a rich and diverse environment:</b>	yes/no
<b>People in Hampshire enjoy being part of strong, inclusive communities:</b>	yes/no
<b>OR</b>	
<b>This proposal does not link to the Strategic Plan but, nevertheless, requires a decision because:</b> It is a change to the operational policy of the Council	

**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.)**

Document

Location

None

## EQUALITIES IMPACT ASSESSMENT:

### 1. Equality Duty

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 by or under the Act with regard to the protected characteristics as set out in section 4 of the Act (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation);
- Advance equality of opportunity between persons who share a relevant protected characteristic within section 149(7) of the Act (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic within section 149(7) of the Act (see above) and persons who do not share it.

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

- The need to remove or minimise disadvantages suffered by persons sharing a relevant protected characteristic that are connected to that characteristic;
- Take steps to meet the needs of persons sharing a relevant protected characteristic that are different from the needs of persons who do not share it;
- Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

### 2. Equalities Impact Assessment:

See guidance at <http://intranet.hants.gov.uk/equality/equality-assessments.htm>

Insert in full your **Equality Statement** which will either state:

- why you consider that the project/proposal will have a low or no impact on groups with protected characteristics or*
- will give details of the identified impacts and potential mitigating actions*