

## **Commons and Town Greens Sub Committee**

Meeting to be held on 23 September 2014

Electoral Division affected: Preston Rural
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### **Commons Act 2006**

### **Commons Registration (England) Regulations 2008**

#### **Application VG106 under section 15(8) of the Commons Act 2006 for registration of land at Cumeragh Village Square, Whittingham, Preston City, as a town or village green**

(Appendices 'A', 'B', 'C', 'D' refer)

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#### **Executive Summary**

An application by the owner of land at The Square, Cumeragh Village, Whittingham, Preston City for it to be registered as a town/village green.

#### **Recommendation**

That the Application be accepted and the land shown on the plan with the application (attached at Appendix 'B' to this report) added to the Register of Town Greens and that appropriate Notice be given pursuant to the Statutory Regulations.

#### **Background and Advice**

Section 15 of The Commons Act 2006 (the 2006 Act) came into force in April 2007 with most of the remaining sections of the 2006 Act coming into force in Lancashire in October 2008. The 2006 Act makes provision for the registration of common land and of town or village greens and the maintenance of the registers of common land and town and village greens by Registration Authorities. The County Council is the Registration Authority for the County of Lancashire and determination of applications to alter the registers including the determination of applications to register town greens has been delegated to the Commons and Town Greens Sub-Committee.

Section 15 provides for applications to be made to register town greens. Some applications seek to add new town greens claimed against the wishes of owners with the need to prove 20 years relevant use, as of right, but also, under S15(8), the application can be for registration of land as a town green because the owner wants it to be recorded as such. This second type of application was not able to be made under the old 1965 legislation but was introduced in the Commons Act 2006.

In June 2014 an application was accepted as being duly made by Whittingham Parish Council under S15 (8) to register land at Cumeragh Village Square, Whittingham, Preston City as a town or village green. A copy of the application is set out at Appendix 'A'. A plan of the area sought to be registered was provided by the applicant (Appendix 'B') and evidence of their freehold land ownership under land registry title number LAN90912 (Appendix 'C').

The Commons Registration (England) Regulations 2008 (the 2008 Regulations) were made under the 2006 Act and now apply to this application.

It is advised that where an applicant is to register land voluntarily he does not have to prove the criteria in S15 (2) (3) and (4) of the 2006 Act – e.g. 20 years use, use by sufficient amount of local residents. Instead it is an application by a landowner with written consent from any tenant or mortgagee. In this matter the application land has no tenant nor mortgagee. It is the case however that the application must be advertised and any representations received have to be taken into account on making the decision. It is advised that the determination of applications by a registration authority is a quasi-judicial function and there is a duty to act reasonably. If ownership is clearly proved but registration of the land would be incompatible with some other rights or status of the land it is suggested that consideration would need to be had to such information.

It is advised that once a village/town green has been registered voluntarily it will be subject to the same statutory protections as all other registered greens and local people will have a guaranteed legal right to indulge in sports and pastimes over it on a permanent basis. In general terms, causing damage to village greens is a criminal offence.

Greens are protected under S12 Inclosure Act 1857 against injury or damage and interruption to their use or enjoyment and under s29 of the Commons Act 1876 against encroachment or inclosure. Registration is irrevocable and the land will need to be kept free from development or similar. The right to apply for Secretary of State's approval to carry out works on Common Land does not apply to Greens.

In this matter the application land is three areas of open ground in Whittingham as shown on the plan at Appendix B. The Applicant has included a map showing the area of land sought to be registered as a green. There are no recorded public rights of way across the land subject to this application. Aerial photographs and photographs from Google Street maps are attached as Appendix 'D'.

The criteria in the 2006 Act is that an application may be made by an owner of the land. It is advised that Whittingham Parish Council have evidenced their land ownership in respect of the land subject to this application by providing land registry title documentation as detailed above. The land is owned by the Parish Council. The Regulations provide for the Applicant to serve Notice of the Application on all occupiers of the land and the Parish Council has confirmed there are no occupiers on the land concerned.

The Sub-Committee is advised that S.15 (8) of the 2006 Act states the owner of any land may apply to the commons registration authority to register the land as a town or village green. Whittingham Parish Council is an owner (defined by S61 Commons Act 2006) who wishes to register their land and has complied with the Regulations. The County Council has received no objections to the application and having considered the Regulations, the 2006 Act and DEFRA's guidance to commons

registration authorities..' dated January 2014 it is recommended that the application be accepted and the land is added to the Register of Town Greens.

## **Consultations**

The Application was published in accordance with Regulation 21 by publishing a notice of the application on Lancashire County Council's website and by serving a notice of the application by email on those who have previously asked to be kept informed of all applications and proposals and have provided an email address for this purpose. Notices were also posted on the site subject to this application and on Whittingham Parish Council's notice board and were available to view at Preston City Councils offices. No objections have been received to the application.

## **Implications:**

Legal:

There are legal implications as referred to in the report. Whittingham Parish Council's interest will be overlaid by the legal protection for town greens if the application is accepted. If the application is accepted by the Sub Committee the residents of Whittingham will enjoy rights on the and for sports and pastimes.

## **Risk management**

The decision to be made by the Sub-Committee could be subject to judicial challenge. It is advised that all the relevant matters outlined in the report and attached documentation are to be taken into account.

## **Local Government (Access to Information) Act 1985 List of Background Papers**

Paper	Date	Contact/Directorate/Tel
File 3.644	Various	Saleha Khalid, Office of the Chief Executive, 01772 536098

Reason for inclusion in Part II, if appropriate  
N/A