

**AGENDA MANAGEMENT SHEET**

<b>Name of Committee/PAG</b>	<b>Regulatory Committee</b>
<b>Date of Committee</b>	<b>7<sup>th</sup> September 2006</b>
<b>Report Title</b>	<b>Ashorne Playing Field, Ashorne - Application to Register as Town or Village Green</b>
<b>Summary</b>	An application was submitted in 2005 to register as a Town or Village Green an area of land in Ashorne belonging to the owner of Ashorne House. The Applicant has now indicated that it wishes to withdraw the application. Regulatory Committee is requested to endorse the view of officers that it is appropriate to discontinue this application and not proceed to a determination.
<b>For further information please contact:</b>	P.A.J. Endall Senior Solicitor Tel: 01926 412986
<b>Background papers</b>	An Application under Section 13, Commons Registration Act 1965 dated 31st October 2005.  48 Evidence Questionnaires completed by residents of Ashorne and submitted in support of the application.  Letter from Knight Frank Estate Agents dated 8 <sup>th</sup> November 2005 on behalf of the Landowner.  Letter of objection from Miss K.E. Brown dated 8 <sup>th</sup> December 2005.  Letter of objection from Brian and Sharman Povey dated 7 <sup>th</sup> December 2005.  Statement of Objection dated 23 <sup>rd</sup> December 2005 filed on behalf of Landowner.

**CONSULTATION ALREADY UNDERTAKEN:-**

Details to be specified

- Other Committees/PAG's  .....
- Local Member(s)
- Other Elected Members  .....
- Cabinet Member  .....  
(reports to the Cabinet, to be cleared with appropriate Cabinet Member)
- Chief Executive  .....
- Legal  Peter Endall – Comments incorporated
- Finance  .....
- Other Chief Officers
- District Councils
- Health Authority  .....
- Police  .....
- Other Bodies/Individuals  .....

**FINAL DECISION YES**

## Regulatory Committee - 7<sup>th</sup> September 2006.

### Ashorne Playing Field, Ashorne - Application to Register as Town or Village Green

#### Report of the Strategic Director of Performance and Development

#### Recommendation

That the application to register land at Ashorne as a town or village green submitted by Newbold Pacey and Ashorne Parish Council dated 31<sup>st</sup> October 2005 be discontinued in light of the Applicant's wish to withdraw its application.

#### 1. Introduction

- 1.1 By virtue of the Commons Registration Act 1965 the County Council is responsible for maintaining a register of Common Land, and a register of Town and Village Greens located within its area. The County Council is responsible for determining any applications for the addition of land to the registers on the grounds that it has acquired that status in one of the circumstances set out in the 1965 Act.
- 1.2 On 31<sup>st</sup> October 2005 the County Council received an application from Newbold Pacey and Ashorne Parish Council. The application sought the registration as village green of a parcel of land in Ashorne known locally as "The Cricket Field" or "The Playing Field". The Application Land is depicted on the Plan attached to this Report as Appendix 1. The Application Land belongs to the owner of an adjoining property known as Ashorne House ("the Landowner").
- 1.3 The Application asserts that the land has become village green by virtue of the fact that:  
  
"Use by local inhabitants"

#### 2 Previous History

- 2.1 In accordance with the procedure laid down by the 1965 Act public notice of the Applications was given on 18<sup>th</sup> November 2005 by displaying notices on site and in the local press inviting comments/ objections. A six week objection period was allowed, expiring on the 2<sup>nd</sup> January 2006.
- 2.2 A formal "Statement of Objection" dated 23<sup>rd</sup> December 2005 was filed on behalf of the Landowner. Two further letters objecting to the application, dated 17<sup>th</sup> and 18<sup>th</sup> December 2005, were also submitted.
- 2.3 The Applicant also submitted further evidence in the form of 48 Evidence Questionnaires from residents of Newbold Pacey and Ashorne for periods ranging between 20 and 80 years asserting that use had been made of the Application Land for various forms of recreation.
- 2.3 The Application coincided with a period of considerable uncertainty over the law applicable to the registration of new village greens. In particular a case involving Oxfordshire County Council was pending in the House of Lords which would clarify the principles which would have to be borne in mind in determining this application.
- 2.4 For that reason, at its meeting on 31<sup>st</sup> January 2006 Regulatory Committee resolved to defer determination of the Application until the outcome of the **Oxfordshire** case was known. Judgment in the **Oxfordshire** was finally given on 24<sup>th</sup> May 2006 and officers recommenced discussions with the parties with a view to proceeding with the matter in the most appropriate manner.
- 2.5 However, following considerable discussion the Applicant's eventually gave notice to the County Council on 25<sup>th</sup> July 2006 that they wished to withdraw their application. At first sight that would seem to bring an end to the matter but it is desirable to explain to members the basis upon which the decision to withdraw was made and the response of the Landowner to that withdrawal.

### 3. The Legal Criteria

- 3.1. The report to Regulatory Committee on 31<sup>st</sup> January set out the legal criteria which currently apply in registering new village greens under The Commons Registration Act 1965. The relevant criteria are:-
  - (a) Has the land been used for lawful sports and pastimes?
  - (b) Has the use been by a significant number of inhabitants of any locality, or of any neighbourhood within a locality?
  - (c) Has the use been "as of right"?
  - (d) Has the use been for not less than 20 years? And
  - (e) Has the use continued up until the date of registration

- 3.2 **Ground (e)** - This was the ground which was of chief concern to the House of Lords in the **Oxfordshire** case mentioned above. Prior to the House of Lord's judgment it was widely assumed that a landowner could thwart an application by taking steps, after receipt of the application but before its determination, to prevent access by inhabitants.
- 3.3 The House of Lords in **Oxfordshire** decided that a landowner could bar access by the public and defeat an application, but only if it took those steps before the application was lodged. In this case the Landowner had shortly before lodging of the Application erected Notices around the Application Land forbidding public access. Accordingly, had the Application not been withdrawn it is likely that the recommendation to the Committee would have been to reject the Application on the basis that it would be impossible for the Applicant to demonstrate the required continuity of use. Furthermore, since lack of continuity appeared sufficient by itself to defeat the Application it would not have been necessary to convene an informal Local Inquiry to examine the other disputes between the Applicant and Landowner regarding the evidence submitted in support of the Application.

## 4. The Commons Act 2006

- 4.1 Shortly after the result of the **Oxfordshire** case became known the Government enacted a new Commons Act. The Act will, when fully brought into force, replace the Commons Registration Act 1965 and revise the law governing the registration of new village greens.
- 4.2 The 2006 Act does not directly affect the determination of Applications which were lodged under the 1965 Act. However, in some respects the new Act will be slightly more favourable to Applicants than the old. In particular, the new Act provides that it will no longer be fatal to Applications if the landowner takes steps to prevent public access prior to the lodging of an Application. Applicants will have a 5 year period of grace after public access is prevented to lodge an application.
- 4.3 Importantly to this case it should be noted that the 5 year period of grace will apply retrospectively prior to the 2006 Act. One practical effect of this is that were the County Council to now reject any application on the grounds of lack of continuity of use under the 1965 Act, the unsuccessful Applicant would potentially have the right to submit an entirely fresh Application under the 2006 Act at any time during the next 5 years.

## 5. Withdrawal of the Application

- 5.1 While the final decision on the matter would be one for the Committee to make there does appear to be a powerful case for concluding that the current Application must fail were the Committee to proceed to a

determination at this stage, on the grounds of lack of continuity as discussed above.

- 5.2 Given that, and the fact that the Applicant is likely to be able to lodge a fresh application under more advantageous circumstances under the 2006 Act, it is perhaps possible to surmise as to the motivation behind the Applicant's request to withdraw its current Application.
- 5.3 The Landowner has however sought to argue that the Applicant cannot withdraw an Application once lodged, and that the County Council must proceed to a determination regardless of whether that appears to be a generally worthwhile course of action. It is the Landowner's view that receiving a determination at this stage would be of positive benefit to him and that he should not be deprived of that benefit by virtue of the Applicant's attempt to withdraw.

## **6. Is the County Council obliged or able to determine the Application in spite of the Applicant's Withdrawal?**

- 6.1 It is the duty of the County Council to deal fairly with both the Applicant and the Landowner in this situation and Officers have therefore given careful consideration to the points raised by the Landowner's solicitors on this score.
- 6.2 It is true that the 1965 Act makes no express reference to the possibility that an Applicant may withdraw an Application after it has been lodged. This might be taken as indicating that the Applicant had no power to withdraw.
- 6.3 However, it is worthy of note that other analogous statutory codes (such as that governing applications for planning permission) also do not make express provision for the withdrawal of applications. However, practical experience suggests that the ability to withdraw applications is accepted generally even then, and a right to withdraw an application is generally implied into the power to lodge an application in the first place.
- 6.4 There do appear to be genuine concerns of principle as to whether the County Council should make a determination in the face of the Applicant's wish to withdraw. The registration procedure is in large measure "adversarial" and if the Applicant is no longer willing to put forward its case it would be difficult for the County Council to obtain a balanced picture when reaching its decision.
- 6.5 Furthermore, it should be noted that at various stages during the matter discussions took place between the Applicant and Landowner regarding the possibility of voluntary settlement. Those discussions ultimately proved abortive but the Landowner did canvass the County Council regarding the possibility of the Application being withdrawn in the event that agreement could be reached. If it is accepted that the application could be discontinued under that circumstance it seems logically necessary to accept that the

power to discontinue could apply in other circumstances e.g. when the Applicant wished to withdraw.

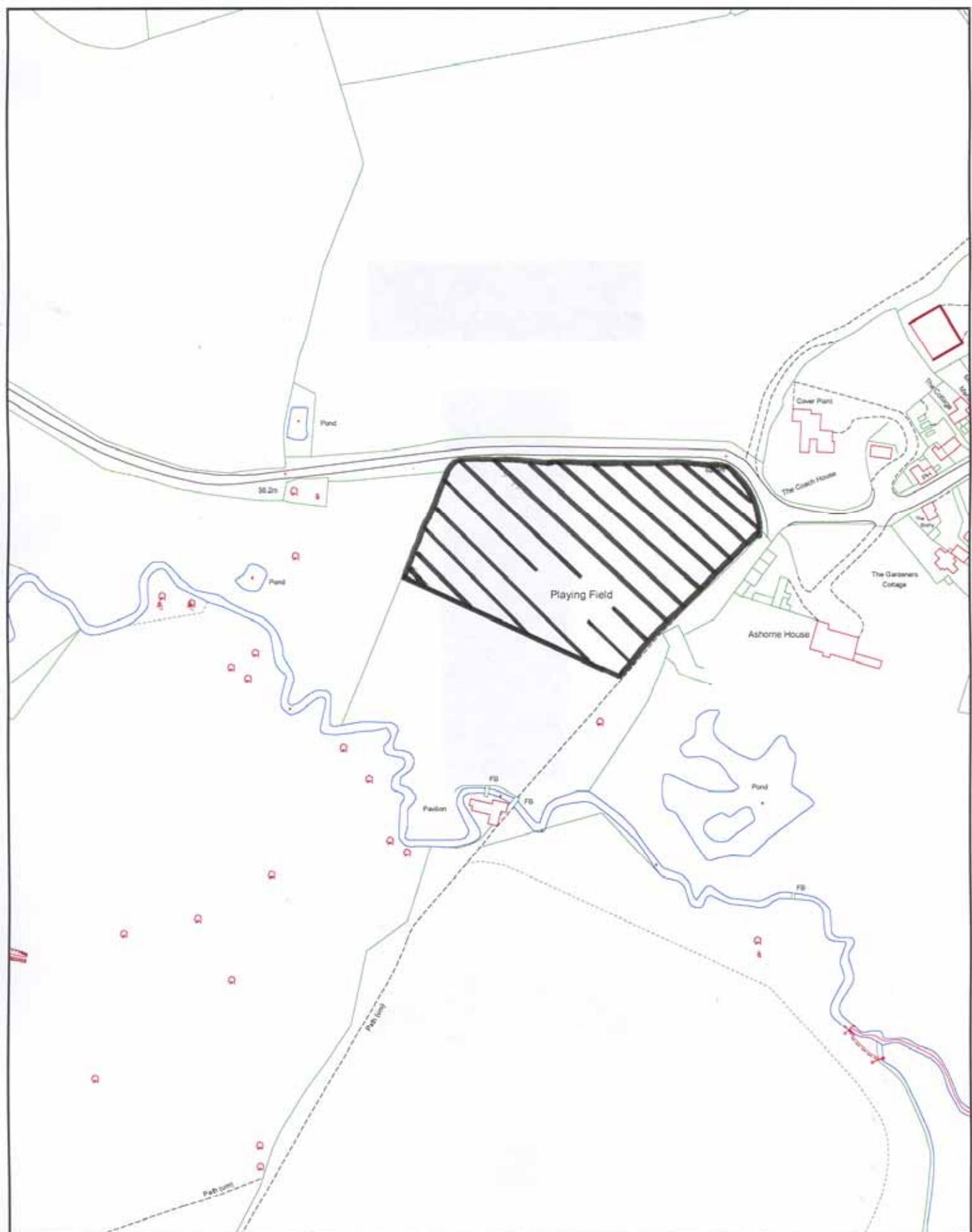
## **7. Conclusions**

- 7.1 It appears to Officers that it is in accordance with the law, and just treatment of both parties, to act on the basis that the Applicant should be able to withdraw their Application. Furthermore, even if it were legally possible to proceed to a determination when the Applicant wished to withdraw, the effects of the Commons Act 2006 are such that any determination made in this case would be of little if any practical benefit to the Landowner.

D.G. CARTER  
Strategic Director of  
Performance and  
Development

Shire Hall  
Warwick

23rd August 2006



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Warwickshire County Council, 100018285, 2006

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