



## SHEFFIELD CITY COUNCIL Committee Report

**Report of:** Chief Licensing Officer, Head of Licensing

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**Date:** Tuesday 4<sup>th</sup> July 2017 at 10am

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**Subject:** Commons Act 2006  
Application to register land known as '**Lower Walkley Green**',  
as a Town or Village Green

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**Author of Report:** Shimla Finch - 2734264

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**Summary:** The purpose of this report is to assist the Commons Registration Board in deciding how an application made under the Commons Act 2006 for land known as '**Lower Walkley Green**' to be registered as a Town or Village Green should be progressed; whether to determine the application with or without a non-statutory public inquiry.

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**Recommendations:** Members are asked to have regard to the relevant legislation detailed in the report and the application, with supporting evidence included in the appendices, when deciding how the application is to be progressed.

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**Background Papers:** Attached to this report  
(Any further background papers relating to this report can be inspected by contacting the report writer).

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**Category of Report:** OPEN

# REPORT OF THE CHIEF LICENSING OFFICER, HEAD OF LICENSING TO THE LICENSING COMMITTEE (COMMONS REGISTRATION BOARD)

Ref: 74/17

## COMMONS ACT 2006

### Application to register land known as 'Lower Walkley Green', Sheffield as a Town or Village Green

#### 1.0 Purpose of the report

- 1.1 To assist the Commons Registration Board in deciding how an application made under the Commons Act 2006 for land known as '**Lower Walkley Green**' to be registered as a Town or Village Green should be progressed, by determining the application either with or without a non-statutory public enquiry.
- 1.2 The report outlines the details of the application, evidence submitted in support of the application, and the law. Members are to consider all the information contained in the report, with any additional information provided at the meeting, when deciding how the application will be progressed.

#### 2.0 The Legislation

- 2.1 Sheffield City Council is the Commons Registration Authority ("CRA") for any land in its area by virtue of section 4(1) of the Act.
- 2.2 Section 15(1) of the Act states that any person may apply to the CRA to register land as a town or village green provided they can establish, in this instance, that section 15(2) of the Act applies because:
  - a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have 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.
- 2.3 For the application to succeed, it must be established that:
  - i. A significant number of inhabitants of a locality or of a neighbourhood within a locality;
  - ii. have indulged as of right;
  - iii. in lawful sports and pastimes;
  - iv. on the land;
  - v. for a period of at least 20 years; and
  - vi. they continue to do so at the time of the application

#### 3.0 Background - Application and Submissions

- 3.1 The Council received an application to register land known as 'Lower Walkley Green', Sheffield on 6<sup>th</sup> August 2008. A copy of the application and supporting documentation is attached to this report as Appendix 'A'.

- 3.2 A plan showing the Land is attached as Appendix 'B' with the Land outlined in red.
- 3.3 The application was submitted by Kate Jeeves who is a local resident of Walkley and the Secretary of the 'Lower Walkley Green Residents Association'.
- 3.4 The application includes the submission of 52 evidence questionnaires. A snap shot of the evidence has been displayed on a table devised by the Clerk of the Registration Authority at Appendix 'C'. Members are advised to read the questionnaires and supporting documentation fully.
- 3.5 The application site comprises of a parcel of land that sits between Walkley Bank Road, Elliotville Street, Stony Walk and Woodview Road in Walkley, Sheffield, S6.

#### **4.0 Ownership**

- 4.1 Title checks have been carried out on the application site which has indicated that the land is not registered; therefore it is unknown who the owner is.

#### **5.0 Public Notices**

- 5.1 As required by the regulations, public notice of the application was given in the Sheffield Star and a copy was placed on deposit. Formal notice of the application was also given to those believed to have an interest in the land and notices placed on the application land. A copy of the Notice is attached to this report as Appendix "D".

#### **6.0 Comments/Responses**

- 6.1 There have been no objections/comments to the application.

#### **7.0 Statutory Criteria – The Legal Framework**

##### **7.1 Use by a significant number of inhabitants of a locality or of a neighbourhood within a locality**

- 7.1.1 'Significant' does not mean considerable or substantial and what constitutes a significant number is relative to the size of the population of the relevant locality or neighbourhood within a locality. The number of people using the land has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers.
- 7.1.2 In reviewing the evidence Members are to consider recreational use of the land during the relevant period only and should discount any use of the land during that period which has not been shown to be a) by the inhabitants of the area e.g. visiting relatives of persons who are inhabitants, or b) was more akin to the use of a public right of way.
- 7.1.3 The Clerk to the CRA has investigated whether there are any claimed footpaths across the land. A copy of a Modification Order is attached to this report at Appendix 'E' which highlights the area of the application land that is crossed by Sheffield Public Footpath number 533.

- 7.1.4 The Definitive Map and Statement has yet to be consolidated following the issue of the Modification Order, and there are no current or pending applications to further modify the Definitive Map and Statement.
- 7.1.5 The use of the public footpath itself or of any other informal route across the land for activities which are ancillary to the exercise of a public right of way such as walking from point A to point B or dog walking must not be relied upon in support of the registration of a town or village green and should be discounted as qualifying use.
- 7.1.6 The applicant is required to identify by reference to a map, the area to be relied upon as the 'locality' or 'neighbourhood within a locality'. A 'locality' must be an administrative district or an area within legally significant boundaries such as a borough, city, ward, parish or manor. A neighbourhood within a locality need not have such defined boundaries but must be capable of meaningful description and must have a sufficient degree of pre-existing cohesiveness i.e. the attribute of cohesiveness should have predated the relevant period and should not be dependent on use of the claimed green. It is not enough that the only unifying feature of the claimed neighbourhood is its inhabitants' use of the claimed green and it is a question of fact for Members, taking all the circumstances into account, whether a particular area possesses the necessary attribute of cohesiveness.

## **7.2 Use "as of right"**

- 7.2.1 The expression 'as of right' means without force, stealth (secrecy) or permission.
- 7.2.1 Use of the land must be without force. Force can mean physical force e.g. no fences, walls, gates or hedges must have been broken or cut through in gaining access to the land, or it can mean contentious use e.g. continuing to use the land after being told by the owner not to, or in contravention of prohibitive signs displayed on the land.
- 7.2.2 Use of the land must be without stealth. It must be open so that the owner can see that it is taking place and resist it if he wishes.
- 7.2.3 Use of the land must be without express or implied permission. Use is not 'as of right' if users have a statutory or other legal right to use the land. Where the applicants have been permitted to be on the claimed land then their use will have been 'by right' rather than 'as of right'.
- 7.2.4 Use of the land must have been 'as of right' throughout the relevant period.
- 7.2.5 In order to satisfy this criteria, Members must find the evidence shows that on the balance of probabilities the use has been demonstrated to have been 'as of right' throughout the relevant 20 year period. As a general rule, the use should have been of such a character, degree and frequency as to indicate an assertion of a continuous right, rather than a trivial or sporadic use which will not justify registration e.g. an annual bonfire by itself will not do

## **7.3 Lawful sports and pastimes**

- 7.3.1 'Lawful sports and pastimes' is a composite expression and so it is sufficient for a use to be either a lawful sport or a lawful pastime. Moreover, it includes present

day sports and pastimes and the activities can be informal in nature. Hence, it includes amongst other activities; recreational walking, with or without dogs, and children's play.

7.3.2 The sports and pastimes must not be illegal and Members should interpret the word 'lawful' as meant to exclude all activities which would be illegal in the sense of amounting to criminal offences, whether or not they caused damage to the land, such as joy-riding in stolen vehicles or recreational use of illegal drugs.

7.3.3 There is no requirement for the applicants to have participated in a range of diverse sports and pastimes during the relevant period. However, one-off activities such as an annual bonfire night or May Day celebration would suffice to justify registration.

#### **7.4 The land**

7.4.1 There is no legal requirement for the land to consist of grass or to conform to any of the traditional images of a town or village green, or have any other prescribed physical characteristics, in order to qualify for registration.

#### **7.5 Relevant 20 year period**

7.5.1 There must be evidence of qualifying use by inhabitants of the locality or inhabitants of the neighbourhood within the locality for a period of at least 20 years.

7.5.2 The qualifying use for lawful sports and pastimes must be continuous throughout the relevant 20 year period, but it is not necessary for any particular individual to have used the land for the full period of 20 years.

7.5.3 The relevant 20 year period for the purposes of section 15(2) of the Act is determined by use continuing up to the date of the application and for the purposes of this application is therefore calculated to run from 6<sup>th</sup> August 1988 to 6<sup>th</sup> August 2008.

#### **7.6 Continuation of use**

7.6.1 Where use of the land 'as of right' for lawful sports and pastimes continues at the date of the application, the application must be made under section 15(2) of the Act. Any evidence of the use of the land after this date should be discounted as qualifying use.

#### **8.0 Decision Making**

8.1 Determination of the application rests with Sheffield City Council in its role as CRA.

8.2 Members are to note that the Council must determine the application in accordance with the statutory criteria and in accordance with the legislation. The CRA is required to either accept or reject the application for the land to be registered solely on the facts. Any other issues, including those of desirability or community needs, are not legally relevant and cannot be taken into consideration.

Under the current law, land can only have the legal status of a Town or Village Green upon registration.

- 8.3 As this is a preliminary issues meeting, Members are asked to make a decision on the next steps for determination.

## **9.0 Risk Management**

- 9.1 A failure to determine the application in accordance with the law or at all will leave the Council exposed to Judicial Review or a claim of maladministration by the Local Government Ombudsman.
- 9.2 There is no right of appeal against the Council's decision but interested parties could challenge the decision by applying for Judicial Review on limited grounds.

## **10.0 Financial Implications**

- 10.1 There is no power to require a fee or payment from an applicant. Any decision to hold a non-statutory inquiry or seek Counsel advice means that the Council will carry the costs.
- 10.2 Members should note that if an interested party does challenge the decision when determined, significant legal costs are likely to be incurred by the Council in defending the challenge.

## **11.0 Recommendation**

- 11.1 Members are asked to have regard to the relevant legislation detailed in the report and the application, with supporting evidence included in the appendices, when deciding how the application is to be progressed.

## **12.0 Options Open to the Commons Registration Board**

- 12.1 Progress the application to the Commons Registration Board at a further date with/without directions issued by the Board.
- 12.2 Progress the application to a non-statutory Public Inquiry and instruct the Clerk to appoint an Independent Inspector and to report back with the Inspectors recommendations.
- 12.3 Request Counsel's advice on the application before progressing. Details of the advice will be presented to the Commons Registration Board for consideration.

Stephen Lonnia,  
Chief Licensing Officer  
Head of Licensing  
Registration Authority  
Business Strategy and Regulation  
Place Portfolio  
Block C, Staniforth Road Depot  
Sheffield, S9 3HD.

16<sup>th</sup> May 2017

**Appendix 'A'**  
**(Application documents and supporting documents)**

Commons Act 2006: Section 15

# Application for the registration of land as a Town or Village Green

Official stamp of registration authority indicating valid date of receipt:

Application number:

Register unit No(s):

VG number allocated at registration:

(CRA to complete only if application is successful)

Applicants are advised to read the 'Guidance Notes for the completion of an Application for the Registration of land as a Town or Village Green' and to note the following:

- All applicants should complete questions 1–6 and 10–11.
- Applicants applying for registration under section 15(1) of the 2006 Act should, in addition, complete questions 7–8. Section 15(1) enables any person to apply to register land as a green where the criteria for registration in section 15(2), (3) or (4) apply.
- Applicants applying for voluntary registration under section 15(8) should, in addition, complete question 9.

## 1. Registration Authority

To the

Sheffield City Council

**Note 1**  
*Insert name of registration authority.*



**Note 2**

If there is more than one applicant, list all names. Please use a separate sheet if necessary. State the full title of the organisation if a body corporate or unincorporate.

If question 3 is not completed all correspondence and notices will be sent to the first named applicant.

**2. Name and address of the applicant**

Name:

Full postal address:  Postcode

Telephone number: (incl. national dialling code)

Fax number: (incl. national dialling code)

E-mail address:

**3. Name and address of solicitor, if any**

Name:

Firm:

Full postal address:  Post code

Telephone number: (incl. national dialling code)

Fax number: (incl. national dialling code)

E-mail address:

**Note 3**

This question should be completed if a solicitor is instructed for the purposes of the application. If so all correspondence and notices will be sent to the person or firm named here.

**Note 5**

The accompanying map must be at a scale of at least 1:2,500 and show the land by distinctive colouring to enable it to be clearly identified.

\* Only complete if the land is already registered as common land.

**Note 6**

It may be possible to indicate the locality of the green by reference to an administrative area, such as a parish or electoral ward, or other area sufficiently defined by name (such as a village or street). If this is not possible a map should be provided on which a locality or neighbourhood is marked clearly.

**5. Description and particulars of the area of land in respect of which application for registration is made**

Name by which usually known:

Lower Walkley Green

Location:

Sits between Walkley Bank Road, Elliottville Street, Stony Walk and Woodview Road, in Walkley, Sheffield S6

Shown in colour on the map which is marked and attached to the statutory declaration.

Common land register unit number (if relevant) \*

**6. Locality or neighbourhood within a locality in respect of which the application is made**

Please show the locality or neighbourhood within the locality to which the claimed green relates, either by writing the administrative area or geographical area by name below, or by attaching a map on which the area is clearly marked:

Lower Walkley

Tick here if map attached:

**Note 4**

*For further advice on the criteria and qualifying dates for registration please see section 4 of the Guidance Notes.*

*Section 15(6) enables any period of statutory closure where access to the land is denied to be disregarded in determining the 20 year period.*

**4. Basis of application for registration and qualifying criteria**

If you are the landowner and are seeking voluntarily to register your land please tick this box and move to question 5.

Application made under **section 15(8)**:

If the application is made under **section 15(1)** of the Act, please **tick one** of the following boxes to indicate which particular subsection and qualifying criterion applies to the case.

**Section 15(2)** applies:

**Section 15(3)** applies:

**Section 15(4)** applies:

If **section 15(3) or (4)** applies please indicate the date on which you consider that use as of right ended.

If **section 15(6)\*** applies please indicate the period of statutory closure (if any) which needs to be disregarded.

7. Justification for application to register the land as a town or village green

**Note 7**

*Applicants should provide a summary of the case for registration here and enclose a separate full statement and all other evidence including any witness statements in support of the application.*

*This information is not needed if a landowner is applying to register the land as a green under section 15(8).*

After generations of free public use developers have fenced off Lower Walkley Green to stop local people using or crossing the land. Trees have been felled illegally and the natural environment disrupted to the detriment of both residents and the abundant local wildlife that rely on open Green spaces. It is our belief that the builder, working with New Homes developers, are trying to enclose the land and exclude the public in order to claim land in 'adverse possession' for building purposes. The Residents' Association has reopened and maintained long established Rights of Way across this land and continue to use it for recreational purposes. Mature trees planted by Sheffield Council in the early 1980s have newly registered TPOs.

Local historians have looked into the heritage of Lower Walkley Green and we hold maps dating back to the eighteenth century. The land was once part of the Duke of Norfolk's estate and is shown on a variety of maps and plans throughout the 18th, 19th, and 20th centuries. The area is part of a parcel of land acquired by Duke of Norfolk Estates in c1791 and was left unlet to be used as 'common Land' in ACM document S91 of 1795 pages 8 and 46 held at Sheffield Archives. Also the parcel of land i.e. the field was No. 101 in Sheffield Archives ACM document S70 on map of Nether Hallam dated about 1805 is shown in pink, the legend of which is 'allocated as common land'. What is clear is that, with the exception of the edge of the Green at Walkley Bank Road, there has never been a dwelling on the land and the public have always been free to cross it. In living memory local residents have used the land for the grazing of livestock and has always been a favourite place for children to play and to sledge during winter. The local community bonfire was also held here for many years.

Lower Walkley is a very stable community with many residents having spent their entire lives in the area. Some older residents remember playing on the green as children, having seen their children play there and later their grandchildren. The developers have already started to build on the green and through the efforts of the RA and local councillors this has been stopped and the developers forced to apply for retrospective planning consent. Residents are opposing this application.

**Note 8**

*Please use a separate sheet if necessary.*

*Where relevant include reference to title numbers in the register of title held by the Land Registry.*

*If no one has been identified in this section you should write "none"*

*This information is not needed if a landowner is applying to register the land as a green under section 15(8).*

8. Name and address of every person whom the applicant believes to be an owner, lessee, tenant or occupier of any part of the land claimed to be a town or village green

There is a small portion of this area currently being used as a car park for which planning consent was being requested retrospectively. There is no title to this piece of land held at Land Registry. The occupiers are Saxton Mee New Homes.  
At the time of writing that planning application has been withdrawn.

9. Voluntary registration – declarations of consent from 'relevant leaseholder', and of the proprietor of any 'relevant charge' over the land

NONE

**Note 9**

*List all such declarations that accompany the application. If none is required, write "none".*

*This information is not needed if an application is being made to register the land as a green under section 15(1).*

10. Supporting documentation

**Note 10**

*List all supporting documents and maps accompanying the application. If none, write "none"*

*Please use a separate sheet if necessary.*

H.M. Land registry map attached

**Note 11**

*If there are any other matters which should be brought to the attention of the registration authority (in particular if a person interested in the land is expected to challenge the application for registration). Full details should be given here or on a separate sheet if necessary.*

**11. Any other information relating to the application**

It is possible that adverse position may be claimed after a period of 12 years of exclusive use by the developers. The Residents Association believes that the land is crossed by 2 separate Rights of way and one of these is in the process of being registered with Sheffield City Council. The Council Officer has confirmed that the application is very strong and that the association is likely to be successful in their application.

**Note 12**

*The application must be signed by each individual applicant, or by the authorised officer of an applicant which is a body corporate or unincorporate.*

Date:

4 / VIII / 08

Signatures:

*Cate Jewes*

**REMINDER TO APPLICANT**

You are advised to keep a copy of the application and all associated documentation. Applicants should be aware that signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence. The making of a false statement for the purposes of this application may render the maker liable to prosecution.

**Data Protection Act 1998**

*The application and any representations made cannot be treated as confidential. To determine the application it will be necessary for the registration authority to disclose information received from you to others, which may include other local authorities, Government Departments, public bodies, other organisations and members of the public.*

## Statutory Declaration In Support

To be made by the applicant, or by one of the applicants, or by his or their solicitor, or, if the applicant is a body corporate or unincorporate, by its solicitor, or by the person who signed the application.

<sup>1</sup> Insert full name (and address if not given in the application form).

I, Karla Jooves,<sup>1</sup> solemnly and sincerely declare as follows:—

<sup>2</sup> Delete and adapt as necessary.

1.<sup>2</sup> I am ((the person (one of the persons) who (has) (have) signed the foregoing application)) ((the solicitor to (the applicant) (<sup>3</sup>one of the applicants))).

<sup>3</sup> Insert name if Applicable

2. The facts set out in the application form are to the best of my knowledge and belief fully and truly stated and I am not aware of any other fact which should be brought to the attention of the registration authority as likely to affect its decision on this application, nor of any document relating to the matter other than those (if any) mentioned in parts 10 and 11 of the application.

3. The map now produced as part of this declaration is the map referred to in part 5 of the application.

<sup>4</sup> Complete only in the case of voluntary registration (strike through if this is not relevant)

4.<sup>4</sup> I hereby apply under section 15(8) of the Commons Act 2006 to register as a green the land indicated on the map and that is in my ownership. I have provided the following necessary declarations of consent:

- (i) a declaration of ownership of the land;
- (ii) a declaration that all necessary consents from the relevant leaseholder or proprietor of any relevant charge over the land have

Cont/

<sup>4</sup> Continued

been received and are exhibited with this declaration; or  
(iii) where no such consents are required, a declaration to that effect.

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act 1835.

Declared by the said <sup>KATE</sup> ~~Kate~~ Jeeves )  
at Sheffield )  
this 4<sup>th</sup> day of August 2008 )

Kate Jeeves  
Signature of Declarant

Before me \*

Signature: \_\_\_\_\_  
Solicitor  
Address: Sheffield  
Qualification:

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\* The statutory declaration must be made before a justice of the peace, practising solicitor, commissioner for oaths or notary public.

Signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence.

**REMINDER TO OFFICER TAKING DECLARATION:**

*Please initial all alterations and mark any map as an exhibit*

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1980s from Elliottville Street showing newly planted trees



1989

From Woodview Road showing path running corner to corner



1980's

Cherry tree at Stony Walk



1980's

Across the green from Ellottville Street



May 2003

No fence erected in view of old factory on  
Woodwards Road.



2003/04

fence erected Dec 2003 from Woodview Road



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