



SHEFFIELD CITY COUNCIL

Committee Report

Report of: Chief Licensing Officer, Head of Licensing on behalf of the Registration Authority

Date: 27th October 2015 – 10am

Subject: Commons Act 2006
Application to register land known as 'Smithy Wood', Sheffield as a Town or Village Green

Author of Report: Shimla Finch - 2734264

Summary: To consider an application made under the Commons Act 2006 for land known as 'Smithy Wood', Sheffield to be registered as a Town or Village Green.

The Council held a non-statutory public inquiry chaired by an independent Inspector who considered the application and reported to the Council. The Licensing Sub -Committee is invited to consider the report of the independent Inspector and determine whether the above land should be registered as a Town or Village Green.

Recommendations: Members are recommended to accept the recommendations in the Inspector's report and to determine that the application to register land at 'Smithy Wood', Sheffield as a Town and Village Green, be refused, because the applicant has failed to satisfy the statutory criteria contained in section 15(2) of the 2006 Act.

Background Papers: Inspectors Report – attached to this report
Bundles provided at the Inquiry will be available for Members at the Town Hall
(Any further background papers relating to this report can be inspected by contacting the report writer).

Category of Report: OPEN

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

Ref: 75/15

COMMONS ACT 2006

Application to register land known as 'Smithy Wood', Sheffield as a Town or Village Green

1.0 Purpose of the report

- 1.1 To consider an application made under the Commons Act 2006 for land known as 'Smith Wood' Sheffield to be registered as a Town or Village Green.
- 1.2 The Council held a non-statutory public inquiry chaired by an independent Inspector who considered the application and reported to the Council.
- 1.3 The Licensing Sub-Committee is invited to consider the report of the independent Inspector Mr Richard Ground, Barrister, Conerstone Barristers and determine whether the application satisfies the statutory criteria for registration as Town or Village Green and should be included in the register.

2.0 The Legislation

- 2.1 Town and village greens developed under customary law. These were areas of open space, more commonly called "greens", which had been used by local people, for lawful sports and other pastimes for many years and which came to be recognised and protected by the courts. These areas of open space might include organised or informal games, picnics, fetes, dog walking and similar activities.
- 2.2 A green can be in private ownership or owned or maintained by town and parish councils.
- 2.3 These areas of open space or greens can now be protected by making an application for registration as a "town or village green" under Section 15 of the Commons Act 2006 (the "Act").
- 2.4 Section 4(1) of the Act provides that applications for registering land as "town or village greens" must be made to Sheffield City Council, who is the Commons Registration Authority (CRA) for any land in their area.
- 2.5 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 one of the following tests, namely:
 - that Section 15(2) applies if the land has been used 'as of right' for lawful sports and pastimes for 20 years or more before the date the application is made, and this use continues at the date of the application; or
 - that Section 15(3) applies where the land has been used for lawful sports and pastimes 'as of right' for 20 years or more, where the use ended after 6 April 2007, no more than one year before the date of the application, or

- that Section 15(4) applies where the land has been used for lawful sports and pastimes ‘as of right’ for 20 years and has ended before 6 April 2007. Further, the application must be made within five years of the date the use ‘as of right’ ended.
- 2.6 Whether the application is made under Sections 15(2), 15(3) or 15(4) the application must show that a significant number of the inhabitants of any locality of any neighbourhood within a locality have indulged in lawful sports or pastimes ‘as of right’ (i.e. without permission, force or secrecy) on the land for at least 20 years, rather than ‘by right’ (i.e. in exercise of a legal right to do so). These requirements reflect the ancient law of custom, where long use ‘as of right’ created a presumption that the local inhabitants had established recreational rights over the land in question.
- 2.7 Section 15(6) of the Act makes it clear that in determining the 20 year period, there is to be disregarded any period during which access to the land was prohibited to members of the public by reason of any enactment.
- 2.8 Furthermore, Section 15(7) of the Act provided that in respect of subsection (2)(b) that –
- (a) where persons indulged as of right in lawful sports and pastimes immediately before access to the land is prohibited (as specified in subsection 6 above), those persons are to be regarded as continuing so to indulge; and
 - (b) where permission is granted in respect of use of the land for the purposes of lawful sports and pastimes, the permission is to be disregarded in determining whether persons continue to indulge in lawful sports and pastimes on the land “as of right”.
- 2.9 The current application has been made under Section 15(2).

3.0 Background

- 3.1 The Council received an application to register land known as ‘Smithy Wood’, Sheffield as a town/village green on the 14th November 2013. The original application Form 44 and plan is attached at Appendix ‘A’.
- 3.2 On the 25th September 2014, the Licensing Sub-Committee (Commons Registration) considered a report concerning the above application and determined that in view of all the circumstances outlined, a non-statutory public inquiry should be held with a view to undertaking a further and more detailed examination of the issues raised and evidence submitted by the applicant and the objectors.
- 3.3 Mr Richard Ground, a barrister with experience of village green registration matters, was appointed as Inspector in relation to the non-statutory public inquiry and to produce and report with recommendations. The inquiry was held over five days, namely between 14th, 15th, 16th, 17th and 23rd April 2015.
- 3.4 The applicant and objectors were informed of the non-statutory public inquiry.
- 3.5 The full report of the Inspector is attached at Appendix ‘B’. The report sets out the law; the evidence heard and recommendations.
- 3.6 The Inspectors report was circulated to the applicant and objectors for any comments. Minor amendments have been made to the report following the objector’s

comments which are incorporated in the report attached at Appendix 'B'. A copy of the objectors and applicants comments are attached at Appendix 'C'.

- 3.7 The Inspector has provided a response to the applicant's comments which are at Appendix 'D' and concludes that the comments have not changed the finding of his report.
- 3.8 Members determining this application have been provided access to bundles of the Public Inquiry including closing submissions.
- 3.9 The Council cannot delegate the decision making process to the independent Inspector as the decision is for the Council and under part 3 of the Council's Constitution the function of the Licensing Sub-Committee (Commons Registration) include determining village green applications. It should be emphasised that the Inspector's recommendations are not binding on the Sub-Committee, and the Sub-Committee must consider the Inspectors report and decide whether it agrees with the Inspector's conclusions on the key issues. However where the Sub-Committee decided not to follow the report's recommendations it would need to provide detailed reasons for not doing so.

4.0 The Inspector's Report

- 4.0.1 In the report the Inspector makes clear that the burden of proof of satisfying each element of the statutory criteria rests with the Applicant.
- 4.0.2 The application seeks the registration of the Land by virtue of the operation of section 15(2) of the 2006 Act. Under that provision, land is to be registered as a town or village green where:-
 - “(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.”
- 4.0.3 The Inspector has indicated the following issues to be critical in this case:
 - i) The meaning of locality and neighbourhood within a locality.
 - ii) The test for the quality of user required to satisfy the statutory test.
 - iii) The meaning of significant number
- 4.0.4 The inspector also makes clear that there is no dispute with the relevant period in this case, the relevant period being 14th November 1993 to 14th November 2013.

4.1 Locality and Neighbourhood

- 4.1.1 The inspector has detailed in paragraph 5 of his report the law relating to locality and neighbourhood and how it applies to this case.
- 4.1.2 The inspector is satisfied on the basis of evidence provided and application of the law that the applicant can rely on the 'Civil Parish of Ecclesfield' being a 'locality'.
- 4.1.3 Paragraphs 5.17 to 5.23 of the Inspectors report details the criteria of a 'neighbourhood' and has accepted that 'Cowley Estate' is a 'neighbourhood' within the 'locality' of the 'Civil Parish of Ecclesfield'.

4.2 Lawful Sports and Pastimes

- 4.2.1 The Inspector considered in detail, with reference to relevant case, the use of the land and in particular footpath use. A central issue was whether the evidence of footpath use constitutes the assertion of a public right-of-way against an assertion of a right to use the land for lawful sport and pastimes. Where the use asserts a public right of way this use may be discounted when deciding the issue of whether a significant number of inhabitants of a locality have indulged as a right in lawful sports and pastimes.
- 4.2.2 The inspector has discussed the distinction between lawful sports and pastimes and footpath use through paragraph 6.2 to 6.30 of his report whilst applying the law to this case.
- 4.2.3 The Inspector concluded that the vast majority of the use of the land was footpath use and should be discounted before considering whether there are a significant number of users or a sufficient quality of user.

4.3 Significant Number and Quality of User

- 4.3.1 The law on significant number and the test for the quality of user has been applied to the facts of this case in paragraphs 7 to 7.17 of the Inspectors report.
- 4.3.2. The Inspector, when considering all the evidence, did not consider the use of Smithy Wood was very great. At paragraphs 7.6 -7.10, he details the issues that led him to this conclusion. He further advised that when the non-neighbourhood use, footpath type use and none legal use is stripped out, what is left is trivial and sporadic and not significant in number.
- 4.3.3 He went on include that the use of Smithy Wood was insufficient to indicate that it was in general use by the local community for informal recreation. The use was not such an amount or in such a manner, as would reasonably be regarded as the assertion of a public right. Therefore the use fails the test for significant number in section 15 of the Commons Act 2006.

5.0 Inspectors Conclusion and Recommendation

- 5.1 The Inspector recommends to the Registration Authority to refuse this application for a village green on the basis that the use has not been by a significant number of inhabitants of the neighbourhood and is insufficient to pass the test set out in Redcar (R (Lewis) v Redcar and Cleveland Borough Council [2010] 2 AC 70).
- 5.2 The Inspector also takes the view that Cowley Estate is a neighbourhood within a locality within the meaning of section 15 of the Commons Act 2006.

6.0 Legal Implications

- 6.1 The Council must determine the application in accordance with the statutory criteria, set out in paragraph 2 of this report. The Sub-Committee are required to carefully consider the report of the Independent Inspector which sets out the law, the evidence and his recommendations and the Sub-Committee must determine the application. As discussed elsewhere in this report, the Sub-Committee must decide the application themselves and are not bound by the inspector's recommendations.

6.2 This is a quasi-judicial process and consequently Members sitting on the Sub-Committee must consider whether they have an interest that should be declared and where an interest is declared, consideration must be given as to whether they may take part in the decision making process.

6.3 Registration of the village green does not place the Council under any duty to maintain it.

7.0 Risk Management

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

8.0 Financial Implications

8.1 Significant costs have been incurred in undertaking the Independent Public Inquiry.

8.2 Members should note that if an interested party challenges the Sub-Committee's decision legal costs, which may be significant, may be incurred by the Council.

10. Recommendation

10.1 Members are recommended to accept the recommendations in the Inspector's report and to determine that the application to register land at 'Smithy Wood', Sheffield as a Town and Village Green, be refused, because the applicant has failed to satisfy the statutory criteria contained in section 15(2) of the 2006 Act.

11. Options Open to the Commons Registration Board

11.1 Accept the Inspectors recommendations and refuse the application.

11.2 Not accept the Inspectors recommendations and grant the application in full or in part and register the land as a Town or Village Green.

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

16th September 2016

Appendix 'A'

Application and Plan



SCHEDULE

Regulation 2(2)

Forms

Form 44

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:
COMMONS ACT 2006
SHEFFIELD CITY COUNCIL

1 4 NOV 2013

COMMONS REGISTRATION AUTHORITY

Application number: **LC/2013/VG02**

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 to 6 and 10 and 11.
- Applicants applying for registration under section 15(1) of the 2006 Act should, in addition, complete questions 7 and 8 as appropriate. 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 the voluntary registration under section 15(8) should, in addition, complete question 9.

Note 1
Insert name of registration authority:

1. Registration Authority

To the

Sheffield City Council
licensing Section
Block C, Staniforth Road Depot S93HD.

<p>Note 2 <i>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.</i></p> <p><i>If question 3 is not completed all correspondence and notices will sent to the first named applicant.</i></p>	<p>2. Name and address of the applicant</p> <p>Name: <input type="text" value="COWLEY RESIDENTS ACTION GROUP"/></p> <p>Full postal address: <input type="text" value="31, GLENWOOD CRESCENT, CHAPELTOWN, SHEFFIELD"/> <input type="text" value="Postcode S35 14U"/></p> <p>Telephone number: <input type="text" value="0114 2465082"/> (incl. national dialling code)</p> <p>Fax Number: <input type="text"/> (incl. national dialling code)</p> <p>E-mail address: <input type="text" value="jeanh999@aol.com"/></p>
	<p>3. Name and address of solicitor, if any</p> <p>Name: <input type="text"/></p> <p>Firm: <input type="text"/></p> <p>Full postal address: <input type="text"/> <input type="text" value="Postcode"/></p> <p>Telephone number: <input type="text"/> (incl. national dialling code)</p> <p>Fax Number: <input type="text"/> (incl. national dialling code)</p> <p>E-mail address: <input type="text"/></p>

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.

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 that of a community or town council, 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:

SMITHY WOOD

Location:

Adjacent to M1 at Junction 35 with Cowley Hill.

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:

See map 2.
Cowley View Estate, Chapelton, Sheffield

Tick here if map attached:



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).

Refer to page 1 of Application letter.

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).

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).

Note 10

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

Please use a separate sheet if necessary.

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

We believe the land belongs to a property company called St. Paul's Developments.

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

10. Supporting documentation

Map 1 - Smiddy Wood
Map 2 - Locality
10 photographs of Woodland
15 Questionnaires
11 letters or emails

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

The owner may challenge the application and EXTRA also have an interest in the land.

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:

14. 11. 13.

Signatures:

Jean M. Howe
(Chair of CRAQ)

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 the applicant's or applicants' solicitor, or, if the applicant is a body corporate or unincorporated, by its solicitor, or by the person who signed the application.

¹ *Insert full name (and address if not given in the application form).*

L.....¹ solemnly and sincerely declare as follows:

² *Delete and adapt as necessary.*

1.² I am ((the person (~~one of the persons~~) who (has) (~~have~~) signed the foregoing application)) (~~(the solicitor to (the applicant) ('one of the applicants'))~~).

³ *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.

⁴ *Complete only in the case of voluntary registration (strike through if this is not relevant).*

4.⁴ 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/

Continued

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

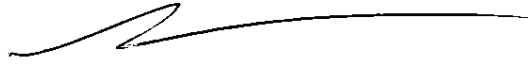
And I make this solemn declaration, conscientiously believing the
same to be true, and by virtue of the Statutory Declarations Act 1835.

Declared by the said)
JEAN MARY HOWE)
at 102 (1/2 BUNNICKS ROAD))
CHRYSTON)
this 14th day of November 2011)

Jean M. Howe.
Signature of Declarant

Before me*

Signature:


SPAWN TITMUNGTO

Address :

Qualification :

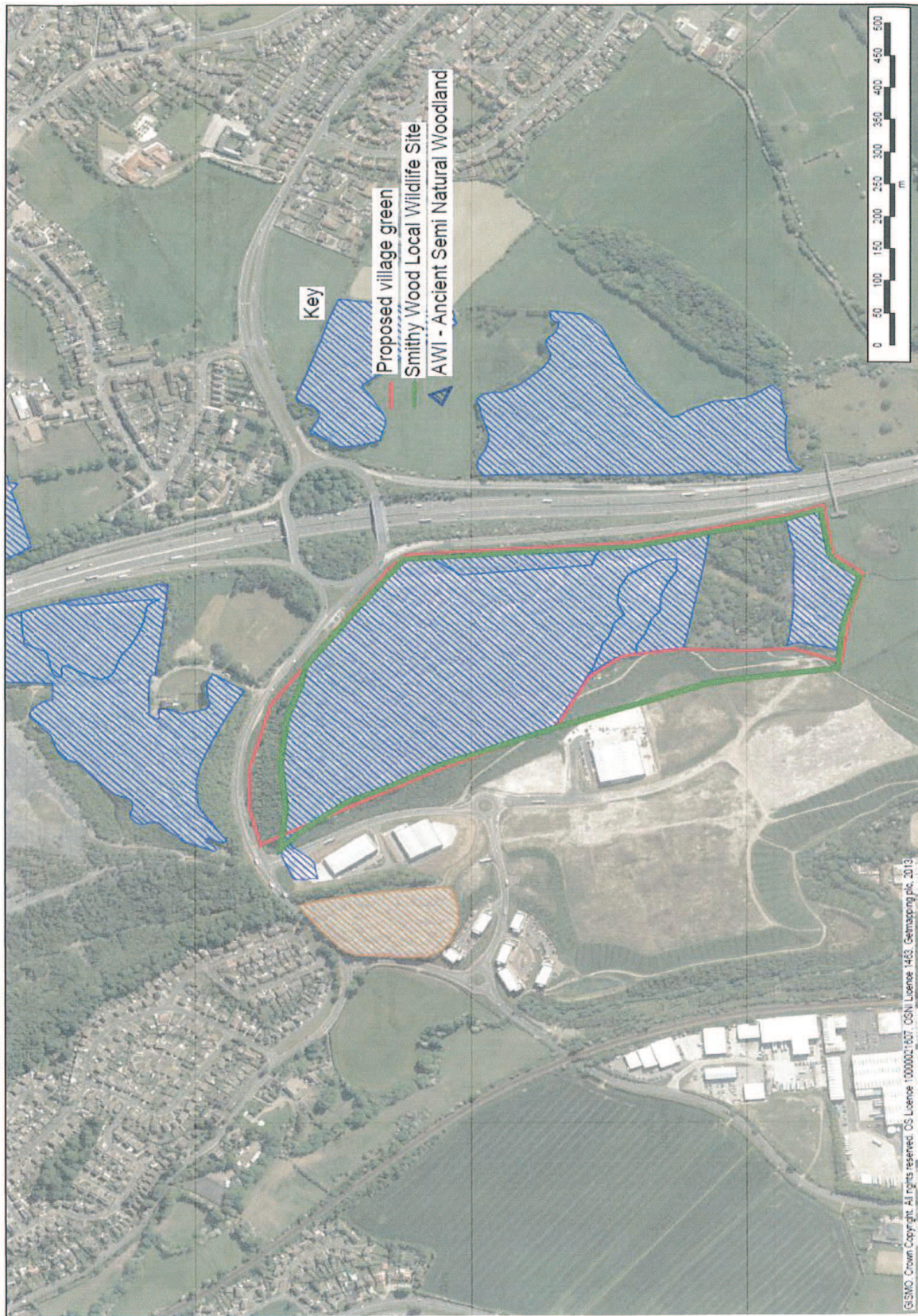
SOLICITOR

* 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



Cowley Residents Action Group (CRAG) - Application for the claim of Smithy Wood as a Village Green.

Summary - See Question 7 of Form 44 attached.

Attached please find an application under Section 15(1) of the Commons Act 2006, claiming Smithy Wood, near Chapeltown, Sheffield, as a Village Green.

A significant number of residents from the local area have been using Smithy Wood continuously for at least the last 20 years, and continue to do so as of today's date. They have used the wood for various forms of recreation, and have done so as of right. Cowley Residents Action Group have acted on behalf of local residents to collect the required evidence of recreational use, and are submitting this application on behalf of residents from the locality / neighbourhood in the locality, shown on the map included with this application.

We believe that we have met all the criteria stipulated under Section 15.2, and on that basis, claim Smithy Wood as our Village Green. We have included Form 44, copies of letters from residents, emails from residents, comments made available to us by the Woodland Trust from people who have shared their memories of Smithy Wood, and copies of photographs taken by local people. We have included the necessary Ordinance Survey map identifying the area under claim, and have attached it to Form 44. Also included are questionnaires completed by local people, detailing their recreational use of Smithy Wood. Each questionnaire has two maps attached that allow respondents to indicate information like where they access the woodland, any notices they have seen, any fencing that they know to exist, and so on. They have also indicated where they live relative to the woodland. This information has been plotted on Map in order to identify the 'locality' as defined in Section 15 of the Commons Act 2006. Sheffield woodland expert Professor Mel Jones has graciously agreed that we can include his "**SMITHY WOOD: A brief history and an appraisal of the significance of the site**" document with our application, as an informative document that points out why Smithy Wood is special, not only to us. We wholeheartedly agree with his conclusions and add this to our reasons for wanting to retain this area as our Village Green, it is our history.

We are submitting this application now, but are expecting to receive additional letters/questionnaires of evidence of recreational use. They will be in the same format as those presented here and are not expected to materially change our claim. We will present them in one additional submission within 2 weeks of submitting this application, so as to limit the need to re-publicise the claim. While we agree that this is not ideal, it is necessary so as not to deprive harder to reach users of their right to be heard on this matter.

Statement

Smithy Wood dates back to at least 1200AD. It is an Ancient Woodland with some very beautiful and irreplaceable old trees. It lies adjacent to the M1 Motorway at Junction 35 with Cowley Hill. When you are in the Woodland it is so peaceful that you would never know that you were so near a main road.

Cover Image - the aerial view of the area being claimed as a Village Green by Cowley Residents Action Group, the RED outline being the claim area. For information only. Additional Ordinance Survey maps included.

Local people have used the woodland for recreation for well over 20 years, either frequently or less frequently, and still use it today, hopefully for many years to come. There are several paths crossing the woodland and the area is partly enclosed, although the fencing has not been maintained in many places. There is a fence separating the edges from the motorway and the rest is wooden fencing, which goes part way down Cowley Hill. There is the remnant of a gatepost, but no gate, where the fence ends. The rest of the woodland is not enclosed and there are no notices to say that this is private land.

Below the woodland there is now a business park where Smithy Wood Coking Plant was situated until 1972. When the coking plant was working the workers often spent their break times wandering the woodland. Today many local people use the woodland for leisure. The questionnaires from local residents tell how they played in the woods as children, hide and seek, building dens, nature trails, bug hunts, bike riding, bark rubbing and tracking, at all times of the year. They now have their own children and grandchildren who they take to Smithy Wood for exactly the same pursuits and would like to continue doing so. There are some local walking groups who use the woodland and some horse riders as well as local dog walkers. Many speak about the peace and tranquillity that they find there. One lady went there after a bereavement exactly for that reason.

There are 15 questionnaires from local families and ~~2~~¹¹ letters or emails from other families, out of a locality of approximately 200. They have all, except three, used the land for at least 20 years, some of them since being children in the 1950's and still use it today. I believe this is a significant amount of local residents who are all passionate about keeping this woodland for future enjoyment. They have never been stopped from using the land. Local residents are particularly passionate about Smithy Wood, because tens of thousands of trees have been felled at Hesley Wood, on the other side of Cowley Hill, after planning permission was given last January, for a company to open cast mine there. Our group was formed to fight that planning submission because we are all nature lovers. The spoil heap had regenerated for 40 years and had an abundance of wildlife.

We were told by the planners that wildlife from Hesley Woods would move to the adjacent woodland. Many of the birds, most noticeably three buzzards, now circle over Smithy Wood. We need to protect the wildlife that lives there so that no more of their habitat is lost in our area. Please help us to protect this irreplaceable, Ancient Woodland of Smithy Wood from any future development by granting our request to make Smithy Wood our village green, so that it will be there for future generations to enjoy.

