WILTSHIRE COUNCIL **AGENDA ITEM NO.**

NORTHERN AREA PLANNING COMMITTEE

25 MAY 2022

COMMONS ACT 2006 – SECTIONS 15(1) AND (2) APPLICATIONS TO REGISTER LAND AS TOWN OR VILLAGE GREEN – LAND OFF SEAGRY ROAD, LOWER STANTON ST QUINTIN

Purpose of Report

1. To consider the evidence submitted with two applications made under Sections 15(1) and (2) of the Commons Act 2006, to register land off Seagry Road, Lower Stanton St Quintin, as a Town or Village Green (TVG), in order to seek approval to appoint an independent Inspector to hold a non-statutory Public Inquiry and provide an advisory report for the Northern Area Planning Committee on the applications to register land off Seagry Road, Lower Stanton St Quintin, as a TVG.

Relevance to the Council's Business Plan

2. Working with the local community to provide a countryside access network fit for purpose, making Wiltshire an even better place to live, work and visit.

Background

3. Wiltshire Council, as the Commons Registration Authority (CRA), is in receipt of two applications made under Section 15(1) of the Commons Act 2006, to register land off Seagry Road, Lower Stanton St Quintin, as a TVG, (see **Appendix A-2** Application Plans). The relevant dates for the applications are the dates of receipt by the CRA on 30 April 2018 (application no. 2018/01) and 26 April 2019 (application no. 2019/01), respectively. Section 15(1) of the 2006 Act states, (see relevant legislation at **Appendix A-5**):

   "15 Registration of green
   (1) Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies."

4. The applications are also made under Section 15(2) of the Act where use of the land for recreational purposes is claimed to be continuing at the time of application. Wiltshire Council, as the CRA, must therefore consider the evidence in order to determine the applications under Section 15 (2) of the Act which applies 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 application.

5. The applications are made by Stanton St Quintin Parish Council. Application no.2018/01 is signed by the then Chair, Cllr Nick Greene, and application no.2019/01 is signed by the subsequent Chair, Cllr Adrian Andrews.

6. The land is unregistered and covers an area of approximately 408 square metres, located off Seagry Road at Lower Stanton St Quintin, being presently planted with trees and laid to grass with two commemorative wooden benches; a picnic table and benches; the "Wee Free Library"; Stanton St Quintin Parish Council notice board and a commemorative tree, present on the land. The southern boundary of the site is formed by a low stone and concrete capped wall. This forms the boundary between the application land and the properties [redacted] and [redacted] Lower Stanton St Quintin, located to the south of the application land. The application land is semi-circular in shape, the north; east and west boundaries being the recorded highway Seagry Road, without gates or other limitations upon access, (see **Appendix A-1** Location Plan, **Appendix A-2** Application Plans and **Appendix A-3** Photographs of Application Land).

7. The property [redacted] Lower Stanton St Quintin is owned by Mr M Reeves, the main Objector in this matter; however, he is not the registered owner of the application land. He has previously applied for planning permission for a vehicular access over the application land to form a direct link between his property and the Seagry Road highway: Planning Application no.18/01108/FUL for a new direct access to highway for vehicles and pedestrians over verge to class C road in 30mph limit –

   Application registered – 1 February 2018
   Decision – Refused 7 March 2018
   Appeal Decision – Dismissed 3 October 2018

8. The Growth and Infrastructure Act 2013, introduced provisions to make it more difficult to register land as a TVG, including, at Section 16, the removal of the "right to apply" to register land where specified planning "trigger" events have occurred, e.g. an application for planning permission in relation to the land, which would be determined under Section 70 of the Town and Country Planning Act 1990, is first publicised in accordance with the requirements imposed by a development order by virtue of Section 65(1) of that Act. The right to apply is revived where a corresponding "terminating" event has taken place, e.g. planning permission is refused and all means of challenging the refusal by legal proceedings in the UK are exhausted and the decision upheld.

9. In the Stanton St Quintin case, upon receipt of the first application to register the whole of the semi-circular area as a TVG, (application no.2018/01, received 30 April 2018, see **Appendix A-2** Application Plans), as advised by "DEFRA Guidance to Commons Registration Authorities in England on Sections 15A to 15C of the Commons Act 2006 – December 2016", (see **Appendix A-5**), the CRA consulted with the relevant Planning Authorities who confirmed that there

was a valid planning trigger event in place over part of the land in the form of planning application no.18/01108/FUL, without a corresponding terminating event, (see trigger event consultation replies at **Appendix A-12**). The guidance states that where there is a planning trigger event in place on only part of the land, the application may be processed as usual on that part of the land which is not subject to the exclusion. Therefore, the application 2018/01 was accepted by the CRA in part.

10. When the planning application no.18/01108/FUL was refused and all means of appeal were exhausted, a planning "terminating" event was considered to have taken place and the right to apply to register the land previously affected by the planning application, was revived. Therefore, the Parish Council applied to register the section of land excluded from the original application, (application no.2019/01 received 26 April 2019, see application plan at **Appendix A-2**). Consultation with the Planning Authorities regarding this application confirmed that there were no planning trigger events in place on this section of the land, (please see trigger event consultation replies at **Appendix A-12**), (although this is disputed by the Objector, Mr M Reeves), and the application was accepted by the CRA. For the purposes of this report, the applications are taken together to cover the whole of the semi-circular area of land.

Main Considerations for the Council

11. The Council, as the CRA, has considered the following evidence in its consideration of the application:

    (i) Application no.2018/01 dated 18 April 2018 and received by Wiltshire Council on 30 April 2018, in the form of "Form 44" and statutory declaration, including statement from Mrs H Creasy.

    (ii) Application no.2019/01 dated 18 April 2019 and received by Wiltshire Council on 26 April 2019, in the form of "Form 44" and statutory declaration.

    (iii) Supplementary Information provided by Mr Reeves for Planning Application no.18/01108/FUL (14 February 2018 - Mr M Reeves) (Extract **Appendix A-8**).

    (iv) Objections received prior to formal consultation period (Mr M Reeves 11 June 2018) (**Appendix A-8**).

    (v) Trigger/terminating event consultation replies (**Appendix A-12)**.

    (vi) Objections and representations received during formal notice period for applications 2018/01 and 2019/01 (13 August 2020 – 28 September 2020) (**Appendix A-6** and **Appendix A-7**).

    (vii) Applicants' revised comments on the objections (10 December 2020) (**Appendix A-9**).

(viii) Objectors' comments on the Applicants' comments on the objections (5 January 2021; 19 January 2021 and 2 February 2021 – Mr M Reeves and Mrs K Reeves; 26 January 2021 – Mrs O Kelly and Mr J Kelly) (**Appendix A-10**).

(ix) Additional evidence submitted by Applicants' (April 2021) (**Appendix A-11**).

(x) Officers Report regarding extent of highway – 2019 (**Appendix A-18**).

12. Officers have considered the evidence submitted, (please see paragraphs 14.1.-14.84. of the decision report attached at **Appendix A**, in which the evidence is considered in detail) and concluded that there are matters of dispute within the evidence, which are likely to be resolved by holding a non-statutory public inquiry at which the witnesses may give evidence in chief and be subject to cross-examination. Appointing an independent Inspector to preside over a public inquiry and produce a recommendation to the CRA, would assist the CRA in its determination of this application.

The Evidence

13. The legal test to be applied in this case, i.e. Section 15(2) of the Commons Act 2006, may be broken down into a number of components, each of which must be satisfied in order for the applications to succeed, where it is no trivial matter for a landowner to have land registered as a green. The burden of proving that each of the statutory tests is met lies with the applicant and there is no duty placed upon the CRA to further investigate the claim. The standard of proof lies in the balance of probabilities, i.e. that it is more likely than not that recreational rights for local inhabitants, have been acquired. Officers have carefully considered the evidence submitted both in support of and in objection to the applications, in order to draw the following conclusions, (please see paragraphs 14.1.-14.84. of the decision report attached at **Appendix A**, which examines the evidence in detail):

Significant Number of Inhabitants

14. Caselaw (High Court in R v Staffordshire County Council, ex parte Alfred McAlpine Homes Ltd [2002] EWHC 76 (Admin)), has set out that "significant" does not necessarily mean a considerable or substantial number, as a small locality or neighbourhood may only have a very small population, but that the number of people using the land must be sufficient to show that the land was in general use by the local community, for informal recreation, rather than just occasional use by individuals as trespassers. The requirement is that users should include a significant number of inhabitants of the claimed locality or neighbourhood, in order to establish a clear link between the locality or neighbourhood and the proposed green. In this case, 21 statements (including 4 completed jointly), are submitted in support of the application, 21 of these 25 individuals are identified as residents of the parish of Stanton St Quintin, (please see witness evidence summary at **Appendix A–14**). Being a small rural area with a relatively low population and witness evidence of use of the land by others and with others; the presence of local amenities on the land and community

events taking place on the land, this is considered sufficient evidence to show that the land was in general use, by the local community, for informal recreation, rather than just occasional use by individuals as trespassers. Additionally, there is evidence of maintenance of the land by the Parish Council, public maintenance of a piece of land which did not have local benefit, was unlikely to have persisted.

15. The Objectors dispute that the land has been used by a significant number of inhabitants and claim the main use is by people from outside the locality.

Of any Locality or of any Neighbourhood Within a Locality

16. A TVG is subject to the rights of local inhabitants to enjoy general recreational activities over it. The “locality” or “neighbourhood within a locality” is the identified area inhabited by the people on whose evidence the application/s rely and it is the people living within the identified locality or neighbourhood who will have legal rights of recreation over the land if the applications are successful. In the case of Paddico (267) Ltd v Kirklees Metropolitan Council & Ors [2011] EWHC 1606 (Ch) (23 June 2011), these two distinct areas were defined as follows: a “locality” being an administrative district or an area with legally significant boundaries, such as a borough or parish, whilst a “neighbourhood” does not need to be an area known to law, but must be a cohesive area which is capable of meaningful description, such as a housing estate.

17. In this case the applications identify the parish of Stanton St Quintin as the defined locality, which itself has two distinct parts separated by the main A429 road, Stanton St Quintin to the west and Lower Stanton St Quintin to the east. The claimed use of the application land appears to be mainly by residents of Lower Stanton St Quintin, rather than the entire parish of Stanton St Quintin, as the identified locality in this case, (please see witness evidence map at **Appendix A-16**). However, there are clear links identified between the land and the whole of the parish, through Parish Council maintenance of the land; amenities relevant to the whole of the parish, such as the parish notice board, located on the land and the land as a focal/connection point of the village, (as mentioned by many of the supporters). The TVG applications themselves are made by Stanton St Quintin Parish Council.

18. The Objectors’ claim that the majority of use of the land is by those living outside the locality of Stanton St Quintin altogether and that maintenance of the land by the Parish Council for 50 years is not sufficiently demonstrated and is irrelevant in any case.

19. Additional evidence obtained through the means of an inquiry would assist the CRA in reaching a conclusion on this point.

Have Indulged as of Right

20. Officers conclude that the land has been used “as of right”, i.e. without force, without secrecy and without permission, as follows:

21. **Without Permission** - There is no evidence that the inhabitants sought or were given permission to use the land. Mr M Reeves in objection considers that the application fails on the "as of right" test, by virtue of his claim that the application land is already highway and thus any use of the land is not "as of right", but "by right" under the Highways Act. However, Officers do not agree that the application land is public highway which is supported by the highway record held by Wiltshire Council as the local highway authority and therefore the argument regarding use being "by right" does not follow, (excluding that section of the application land on the eastern side which is recorded public highway and should be correctly excluded from the application land).

22. **Without Force** – In the Planning Inspectorate publication *"Wildlife and Countryside Act 1981 – Definitive Map Orders Consistency Guidelines"*, (updated 16 March 2021), it is stated that *"force would include the breaking of locks, cutting of wire or passing over, through or around an intentional blockage such as a locked gate."* The application land in this case is open to the public highway (Seagry Road) on three sides, giving unhindered access from the highway. It is therefore considered that users of the land would not have been required to use force to enter the land.

23. Use by force does not refer just to physical force, but also where use is deemed contentious, for example by erecting prohibitory notices in relation to the use in question. In the Supreme Court judgment R (on the application of Lewis) (Appellant) v Redcar and Cleveland Borough Council and another (Respondents) (2010), Lord Rodger commented that:

    "The opposite of "peaceable" user is user which is, to use the Latin expression, vi. But it would be wrong to suppose that user is "vi" only where it is gained by employing some kind of physical force against the owner. In Roman law, where the expression originated, in the relevant context vis was certainly not confined to physical force. It was enough if the person concerned had done something which he was not entitled to do after the owner has told him not to do it. In those circumstances what he did was done vi."

    In the Stanton St Quintin case, there is no evidence of notices ever having been erected on the land, or any other action which would have deemed use of the land contentious and thus use by force.

24. **Without Secrecy** – There is no evidence that users of the land did so in secrecy and there are photographs of events taking place on the land in an open manner, (please see **Appendix A-17**).

In Lawful Sports and Pastimes

25. Although there is a lack of direct evidence relating to dog walking/walking and playing on the land, given the land as the location of the "wee free library"; two benches; picnic table with benches and village notice board, it is reasonable to assume that local inhabitants would visit the land frequently to make use of these amenities and it is clear from the evidence that the land provides a focal point for local people to gather and celebrate national events. There is also, produced in evidence, an itinerary of open-air church services for Pentecost held

annually between 2001 and 2007 (excluding 2004), (one or two were cancelled due to the weather, but Mrs Cullen confirms her attendance at the 2001 service). Mrs Cullen also makes reference to a party on the green for the wedding of Prince William and Catherine Middleton, in April 2011 and the Queen's Jubilee in 2012 and there is photographic evidence of children planting wildflower seeds on the land for a community garden in May 2018, (please see **Appendix A-17**). These events might be less frequent, i.e. annually, however, photographic evidence of events taking place on the land is limited and from the witness evidence statements provided it is not always clear if witnesses are speaking to their own use of the land for these activities or an indirect knowledge of activities, (please see summary of witness evidence at **Appendix A-14** and photographs of events taking place on the land at **Appendix A-17**). There certainly appears to be a desire locally to register the land, but the decision of the CRA must be based on evidence and additional evidence regarding lawful sports and pastimes taking place on the land would assist the CRA in making a determination on this point.

26. The Objectors dispute use of the land for lawful sports and pastimes and that if events have occurred, they have been infrequent and poorly attended. The Objectors do focus upon community events taking place on the land; however, other activities such as walking, small gatherings, sitting on benches, viewing the parish notice board, etc, can equally contribute to TVG status and are perhaps activities which are less likely to come to the attention of the Objectors than large, organised events, although Mrs K Reeves states, in her belief that that application land is highway, "*The real current usage of the land is not under threat. People will continue to use this land for walking across, walking their dogs, small gatherings and sitting on benches as they have done for many years."* and Mr M Reeves in the supplementary information for the planning application no.18/01108/FUL states: *"The most regular use for this verge is by villagers looking at the notice board or people using the one relatively clean bench, often these are cyclists taking a breather, not villagers. Non (sic) of these usages are frequent. The only other use of this verge is people walking across it…"*.

On the Land

27. There are photographs of events and activities taking place on the land, (see **Appendix A-17**); however, the Objectors contend that the application land as a whole is in fact highway land and therefore cannot be recorded as TVG. The current highway record is not conclusive in law, but it is reasonable for the Council to rely upon these records and the burden of proving otherwise lies with the person questioning its validity. In this case the evidence regarding the highway record has been investigated in detail and the extent of highway maintainable at the public expense is correctly recorded at this location, (please see Officer's report regarding extent of highway, 2019 at **Appendix A-18**), therefore the majority of the application land is capable of registration as a TVG, although this is disputed by the Objectors. Additionally, the Objectors are concerned that if the land is indeed highway, it has wider public rights, therefore if the land is registered as TVG, the Council would fail in its duty to protect and assert all public rights.

28. At the eastern side of the land there is a section of the application land which is shown in the highway records to be maintainable at the public expense and if the land is successfully registered as a TVG, it is proposed to exclude from the registration that part of the application land which is existing highway.

For a Period of at Least Twenty Years

29. There is evidence of events taking place within the relevant user periods of 1998-2018 and 1999-2019, for example, the itinerary of open-air church services for Pentecost taking place annually between 2001 and 2007 (excluding 2004 with one or two cancellations); a party on the green to celebrate the wedding of Prince William and Catherine Middleton, in April 2011; the Queen's Jubilee in 2012 and photographic evidence of children planting wildflower seeds on the land for a community garden in May 2018. There is also some evidence that the activities of walking across the land, walking dogs, small gatherings and sitting on benches, have taken place for many years. However, there appears to be a gap in the evidence of use for the early part of the user periods in question. Additional evidence would assist the CRA in making a determination on this point.

30. The Objectors, who have also known the land for the full relevant user periods, dispute events/activities taking place on the land and those that did take place were poorly attended. In the early years of the user periods, they claim that the land was untidy and unkempt, in a condition which did not lend itself to the exercise of lawful sports and pastimes. Mr and Mrs Reeves both confirm their knowledge of only one event taking place on the land within the relevant time period, the Queens 90th birthday celebrations in June 2016.

31. Additionally, Wessex Water considers that the 20 year user periods may not be met where at any time the exercise of lawful sports and pastimes within the requisite time periods, (i.e. 1998-2018 and 1999-2019), may have been halted by the service of the requisite notice under Sections 159 and 168 of the Water Industry Act 1991, for the installation/maintenance of apparatus. However, Wessex Water provides no specific example of such interruption, based upon its own activities, within the relevant time periods. Any interruption to user for the maintenance of apparatus is likely to have been for only a very short period and is unlikely to have covered the whole of the application land. Also, it is understood that Wessex Water plant was installed in around 1986, it would appear that use of the land for lawful sports and pastimes and for the activities of the statutory undertakers have co-existed throughout the relevant user periods, and the principle of "give and take" is applied to the two uses, as set out in the case of TW Logistics Ltd v Essex County Council [2018] EWCA Civ 2172, which examines the rights of all parties, including the landowner, following the registration of land as a TVG.

They Continue to do so at the Time of Application

32. The evidence suggests that use of the land is continuing at the time of the applications, for example the VE day celebrations in 2020; a book sale to raise funds for the "Wee Free Library" in June 2019 and the subsequent opening of the library in the same month, as events occurring after the date of receipt of the

second TVG application (2019/01), by the CRA on 26 April 2019. Photographs of these events taking place are included at **Appendix A-17**. The Objectors dispute that events held on the land post 30 April 2018, (the date of receipt of application no.2018/01), are admissible as evidence is this case, i.e. events taking place after the first application to register the land as a TVG. Officers would disagree where these events demonstrate use of the land continuing after the applications, which is part of the legal test set out at Section 15(2) of the Commons Act 2006.

Comments on Other Objections

33. **Land ownership** - The matter of ownership of the land is not of great concern in this application, it is noted that Stanton St Quintin Parish Council does not own the land and the Officer who previously considered the extent of highway at this location, in her 2019 report considers, (see **Appendix A-18**): *"Whatever the history of ownership of this land since 1783 it is irrelevant to the matter of whether highway rights were subsequently acquired."* Officers would suggest that the same is true in the TVG case. The land in question is not registered and the notices of application were correctly posted on site and in a local newspaper addressed to all owners and occupiers as the CRA are required to do under statute. No landowner has come forward. For the purposes of correctly recording the rights of local inhabitants over the land, it matters not that there is no recorded landowner, or that the land is not owned by the Parish Council, if the legal tests as set out at Section 15(1) and (2) of the Commons Act 2006 are met in full.

34. **Human Rights Act 1998** - The Objector, Mr M Reeves, is concerned that services provided to his property located beneath the application land will be made criminal if the land is registered as TVG by virtue of the "Victorian Statutes", i.e. Section 12 of the Inclosure Act 1857 *"Protecting from nuisances town and village greens and allotments for exercise and recreation"*, which makes it an offence to carry out any act to the injury of the green or to the interruption of the use or enjoyment thereof as a place for exercise and recreation, and Section 29 of the Commons Act 1876, *"Amendment of law as to town and village greens",* any encroachment on or inclosure of a green and also any erection thereon or disturbance or interference with, or occupation of the soil thereof, which is made otherwise than with a view to the better enjoyment of the green, is deemed a public nuisance. Mr Reeves is concerned that the services will be removed, and this would be an improper action for the Council and a breach of the Human Rights Act under which every *"person is entitled to the peaceful enjoyment of his possessions"* which includes property. In addition, the Human Rights Act Article 14, prohibits discrimination, including discrimination due to association with a particular property. Article 8 of the Act is also applicable where it includes "respect" for "his home" and "family life".

35. If Mr Reeves is correct that the area now being claimed as TVG is in fact highway, it would be possible to lay new services in the highway and carry out works to the existing services present in the highway, with the relevant permissions. However, the highway authority does not agree that the area claimed as TVG is highway which is supported by the highway record held by Wiltshire Council.

36. Mr Reeves refers to the Victorian Statutes under Section 12 of the Inclosure Act 1857 and Section 29 of the Commons Act 1876, under which it becomes an offence to disturb the soil of the green otherwise than with a view to better enjoyment or the land, or to undertake any action which interrupts its use as a place for exercise and recreation. It is not possible to carry out works on a TVG and it is not generally possible to gain consent for works on a TVG under Section 38 of the Commons Act 2006, as it would be on common land, the only remedy for works to a TVG is the exchange of land to remove TVG status from the land requiring works. Mr Reeves is understandably concerned that if the land is registered, it will require the removal of the services to his property, located within the land, where it will not be legally possible to carry out works and maintenance which will require disturbance to the soil of the green, not for the benefit of the green. This, he claims, would result in a breach of the Human Rights Act, making the existing services criminal; cutting off his property from the services it has enjoyed since 1987 and making the installation of new services illegal, (services were installed in 1986/7 with the exception of gas which was installed in 2016). Wessex Water shares these concerns and the effect of registering the land as a TVG on its ability to meet its statutory duties as the appointed sewerage and water undertaker. Wales and West Utilities has requested that if the land is registered the presence of the gas pipe is recognised to ensure that it is not damaged or disturbed and that access can be maintained for repair or maintenance.

37. The TW Logistics Supreme Court case, T W Logistics Ltd (Appellant) v Essex County Council and other (Respondents) [2021] UKSC 4, is the first case which examines the scope of the rights of the parties involved, including the landowner, post registration of a TVG and scrutinises the effect that the Victorian Statutes and other legislation might have in respect of the landowner. It confirms that the landowner does not lose all rights and what was not criminal before registration does not become criminal by virtue of registration/legislation, as long as the activities which they continue to undertake are consistent with the activities undertaken before registration, with “give and take” on both sides.

38. Parallels may be drawn in the Stanton St Quintin case and Officers would suggest, in applying the caselaw, that although the statutory undertakers are not landowners, where plant is already present under/in/over/across/along the land, the maintenance of these services is consistent with the presence of the plant prior to registration, this use of the land by the utility companies having co-existed alongside the use of the land by local inhabitants since 1986/87 and 2016 and is therefore not made a criminal offence or a nuisance under the Victorian Statutes. The use of the land by statutory undertakers for carrying on their undertakings, is warranted by law as referred to by Wales and West Utilities (the Gas Act 1986) and Wessex Water (Section 159 and 168 of the Water Industry Act 1991) and use by local inhabitants has been shaped around the use by statutory undertakers, through the practice of “give and take” which has taken place previously and can lawfully continue.

39. **Trigger event – Planning Inspectorate reply** – Mr Reeves in objection contends that Wiltshire Council, as the CRA, should not have continued to consider the TVG application (2019/01), given the Planning Inspectorate reply dated 17 May 2019 (application no.2019/01 consultation dated 30 April 2019):

"I confirm that a trigger event has occurred but no corresponding terminating event has occurred on the land
The land is part of a site allocation plan which is with our Local Plans Team and is still under consideration as part of the Wiltshire Council Local Plan.
I would suggest discussing with the relevant Team/Programme Officer at Wiltshire but I think the Trigger Event might be para 3 of Schedule 1A of the Commons Act 2006."
(Please see trigger event consultation replies in full at **Appendix A-12**).

40. Mr Reeves claims that Wiltshire is acting in contravention of paragraph 79 of the DEFRA Guidance to Commons Registration Authorities in England on Sections 15A to 15C of the Commons Act 2006 and exceeding its authority by ignoring the Planning Inspectorate's response. As such, he has carried out a Freedom of Information (FOI) request amongst other CRA's as to whether or not they had continued to determine an application in the light of Planning Inspectorate advice that a trigger event had occurred on land subject to an application. Of 72 requests made by Mr Reeves, 60 responses were received with data on 544 TVG applications and showed that none of the CRA's had ignored a Planning Inspectorate response confirming an exclusion applied and then continued to progress the application.

41. Officers consider that the nature of the FOI request made of other CRA's in England, does not assist in the determination of whether or not a planning trigger event applies over the land and in this case. Each of the 544 applications referred to, must be considered on their own merits. The CRA has not ignored the advice of the Planning Inspectorate, but indeed followed their suggestion and carried out further consultations with the Wiltshire Council Spatial Planning Department, who confirmed that the Planning Inspectorate reply was most likely a reference to the Wiltshire Housing Sites Allocation Plan (WHSAP), which does not allocate sites in Lower Stanton St Quintin and therefore is not a relevant trigger event, (reply dated 7 June 2019, please see **Appendix A-12** trigger event consultation replies). The advice given in the Planning Inspectorate response is vague and they do not identify the plan which they refer to and they invite the CRA to clarify with Wiltshire Council's own Officers, which of course it has done. Officers have viewed the FOI request sent to other CRAs and without the specific detail of the Planning Inspectorate reply dated 17 May 2019 and the subsequent Wiltshire Council Spatial Planning reply, the FOI request is out of context, not site specific and does not assist this case. It is not correct to consider the Planning Inspectorate reply in isolation in this case without reference to the subsequent reply from Wiltshire Council Spatial Planning Officers.

42. **Trigger event – 2015 Planning permission on adjacent site –** Mr Reeves contends that the planning permission for the remodelling of his property, adjacent to the application land, granted in 2015 and ongoing, is a valid planning trigger event at paragraph 1 of schedule 1A of the Commons Act 2006, *"in relation to the land"*, where the development needs this land for services, which has the effect of extinguishing the right to apply to register the land as a TVG, (planning application no.15/08031/FUL – [redacted] Lower Stanton St Quintin – Conversion of bungalow to a house by adding a second storey and new roof – approved with conditions 7 October 2015). This planning permission has not

been identified as a valid planning trigger event by the relevant planning authorities and, in fact, the majority of services provided in the land pre-date the 2015 planning permission, being present since 1986/87, with the exception of gas installed in 2016.

43. **Cooper Estates Case** – Mr Reeves claims that comparisons may be drawn between this case and the Royal Wootton Bassett case in the Court of Appeal, where Wiltshire Council lost its case regarding the trigger event point, i.e. land included within the settlement boundary for Royal Wootton Bassett as a Market Town, within the Wiltshire Core Strategy (WCS) Document was sufficient to identify the land within an adopted development plan, as a valid planning trigger event which would extinguish the right to apply to register the land in Royal Wootton Bassett as a TVG. Mr Reeves suggests that the land in the Stanton St Quintin case is comparable where the land is included within a draft plan under paragraph 3 of Schedule 1A to the Commons Act 2006, as the land at Royal Wootton Bassett came under paragraph 4 for a full plan. Officers do not agree that the two cases are comparable, unlike Royal Wootton Bassett, Stanton St Quintin does not have an identified settlement boundary within the WCS document. Officers disagree that a trigger event is in place on the land, given the consistent replies of the Planning Authorities. In the Planning Inspectorate reply dated 17 May 2019, it is suggested that the CRA should seek further advice from local planners, who confirmed no trigger event was in place where the draft WHSAP is not site specific and does not sufficiently identify the land.

Overview and Scrutiny Engagement

44. Overview and Scrutiny engagement is not required in this case. The CRA must follow the statutory procedure which is set out under "The Commons (Registration of Town or Village Green) (Interim Arrangements) (England) Regulations 2007 (2007 SI no.457)" and DEFRA Guidance, (see **Appendix A-5**).

Safeguarding Considerations

45. Considerations relating to safeguarding anyone affected by the registration of the land as a TVG under Sections 15(1) and (2) of the Commons Act 2006, are not considerations permitted within the Act. The determination of the applications must be based upon the relevant evidence alone.

46. The Committee's attention is brought to the High Court decision in the case of Somerford Parish Council v Cheshire East Borough Council (1) and Richborough Estates (2) [2016] EWHC 619 (Admin) where the High Court quashed the local Borough Council's decision not to register land as a new town or village green on the basis of procedural error. The case highlights a number of practical points to note regarding privilege, equity and the importance of the Public Inquiry in determining an application to register land as a TVG. The court's decision also reinforces the findings in the Whitmey case, (see paragraph 51 below) and the need for Registration Authorities to hold a non-statutory Public Inquiry where there are sufficient disputes over factual issues.

Public Health Implications

47. Considerations relating to the public health implications of the registration of the land as a TVG under Sections 15(1) and (2) of the Commons Act 2006, are not considerations permitted within the Act. The determination of the applications must be based upon the relevant evidence alone.

Corporate Procurement Implications

48. In considering and determining applications to register land as a TVG, there are a number of opportunities for expenditure to occur and these are considered at paragraphs 53-55 of this report.

Environmental and Climate Change Impact of the Proposal

49. Considerations relating to the environmental or climate change impact of the registration of the land as a TVG under Sections 15(1) and (2) of the Commons Act 2006, are not considerations permitted within the Act. The determination of the applications must be based upon the relevant evidence alone.

Equalities Impact of the Proposal

50. Considerations relating to the equalities impact of the registration of the land as a TVG under Sections 15(1) and (2) of the Commons Act 2006, are not considerations permitted within the Act. The determination of the applications must be based upon the relevant evidence alone.

Risk Assessment

51. Wiltshire Council has duty, at common law, to process applications made under Section 15(1) of the Commons Act 2006 to register land as a TVG, in a fair and reasonable manner, as set out in the case of R (on the application of Whitmey) v Commons Commissioners [2004] EWCA Civ 951, where Arden LJ at paragraphs 28 and 29, held that:

"28...the registration authority is not empowered by statute to hold a hearing and make findings which are binding on the parties by a judicial process. There is no power to take evidence on oath or to require the disclosure of documents or to make orders as to costs (as the Commons Commissioners are able to do: section 17(4) of the 1965 Act). However, the registration authority must act reasonably. It also has power under section 111 of the Local Government Act 1972 to do acts which are calculated to facilitate, or are incidental or conducive, as to the discharge of their functions. This power would cover the institution of an inquiry in an appropriate case.

29. In order to act reasonably, the registration authority must bear in mind that its decision carries legal consequences. If it accepts the application, amendment of the register may have a significant effect on the owner of the land or indeed any person who might be held to have caused damage to a green and thus to have incurred a penalty under section 12 of the Inclosure Act 1857). (There may be other similar provisions imposing liability to offences or penalties). Likewise, if it

wrongly rejects the application, the rights of the applicant will not receive the protection intended by Parliament. In cases where it is clear to the registration authority that the application or any objection to it has no substance, the course it should take will be plain. If however, that is not the case, the authority may well properly decide, pursuant to its powers under section 111 of the 1972 Act, to hold an inquiry…"

At paragraph 66 Waller L J agreed:

"66. I make these points because the registration authority has to consider both the interest of the landowner and the possible interest of the local inhabitants. That means that there should not be any presumption in favour of registration or any presumption against registration. It will mean that, in any case where there is a serious dispute, a registration authority will invariably need to appoint an independent expert to hold a public inquiry, and find the requisite facts, in order to obtain the proper advice before registration."

52. If the Council fails to pursue its duty it is liable to complaints being submitted through the Council's complaints procedure, potentially leading to complaints to the Local Government Ombudsman. Ultimately, a request for judicial review could be made with significant costs against the Council if it is found to have acted unlawfully.

Financial Implications

53. Presently, there is no mechanism by which a CRA may charge the applicant for processing an application to register land as a TVG and all costs are borne by the Council.

54. It is possible for the CRA to hold a non-statutory public inquiry into the evidence, appointing an independent Inspector to produce a report and recommendation to the determining authority. There is no clear guidance available to authorities regarding when it is appropriate to hold an inquiry; however, it is the authority's duty, at common law, to determine the application in a fair and reasonable manner and its decision is open to legal challenge, therefore a public inquiry should be held in cases where there is serious dispute of fact, or the matter is of great local interest. The responsibilities of the Council in this regard were recognised by the justices in the Court of Appeal in the case of R (on the application of Whitmey) v The Commons Commissioners [2004] EWCA Civ. 951, see paragraph 51. above. Even where a non-statutory public inquiry is held, there is no obligation placed upon the authority to follow the recommendation made.

55. The cost of a three or four day non-statutory public inquiry is estimated to be in the region of £12,000 - £15,000 plus VAT. In the Stanton St Quintin case, it is considered that appointing an independent Inspector to hold a non-statutory public inquiry, in order to hear from the witnesses and consider the evidence, producing a recommendation to the CRA, would assist the Council, as the CRA, in its determination of the applications.

Legal Implications

56. If the land is successfully registered as a TVG, the landowner is able to challenge the CRA's decision by appeal to the High Court under Section 14(1)(b) of the Commons Registration Act 1965, which applies where Section (1) of the Commons Act 2006 is not yet in place, as in Wiltshire. A challenge under the 1965 Act is not just an appeal but enables the High Court to hold a complete re-hearing of the application and the facts of law. There is currently no statutory time limit in bringing these proceedings following the registration of the land.

57. Where the Registration Authority determines not to register the land as a TVG, there is no right of appeal for the applicant. However, it is open to both parties, (landowner or applicant), to judicially review the decision of the CRA, whether that is to register the land or not to register the land, for which the permission of the court is required and the application to challenge the decision must be made within three months of the date of the decision of the CRA.

Options Considered

58. The options available to Wiltshire Council as the CRA, are as follows:

(i) To appoint an independent Inspector to hold a non-statutory Public Inquiry and examine the evidence including any oral evidence given by witnesses and provide an advisory report and recommendation for the CRA to assist the CRA in its determination of the application.

(ii) Based on the available evidence, to register the land as a TVG either in full or in part where it is considered that the legal tests for the registration, as set out under Sections 15(1) and (2) of the Commons Act 2006, have been met in full either over the whole or over part of the application land, or

(iii) Based on the available evidence, to refuse the applications where it is considered that the legal tests for the registration of the land as a TVG, as set out under Sections 15(1) and (2) of the Commons Act 2006, have not been met in full.

Reasons for Proposal

59. In the Stanton St Quintin case, the evidence of whether a significant number of 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 least 20 years, with use continuing at the time of application, is in dispute. Matters of particular conflict within the evidence include:

(i) use by a significant number of the inhabitants of any locality, or of any neighbourhood within a locality,
(ii) user as of right,
(iii) the exercise of lawful sports and pastimes on the land for a period of at least 20 years.

60. Additionally, the Objectors raise the following legal points:

(1) Is the land subject to a planning trigger event which would extinguish the right to apply to register the land as a TVG?

(a) by virtue of planning permission granted for the re-development of 29A Lower Stanton St Quintin (15/08031/FUL - 2015) and the required services present being “in relation to” the application land, and/or

(b) the Planning Inspectorate trigger event consultation reply dated 17 May 2019, regarding a development plan.

(2) The effect of registration of the land as a TVG upon existing services for the neighbouring property, located in/on the land.

61. It is possible to seek a legal opinion regarding these points before proceeding to a non-statutory public inquiry at a cost to the CRA; however, where the evidence regarding use of the land by local inhabitants for legal sports and pastimes for a period of 20 years of more, as of right, is disputed, it may be preferable to proceed to hold a non-statutory public inquiry and seek the Inspector’s opinion on these legal points.

62. It is the duty of the CRA, at common law, to determine the applications in a fair and reasonable manner. The CRA has received objections to the registration of the land as a TVG which have not been resolved. A non-statutory public inquiry is therefore considered necessary in this case because the factual evidence is strongly disputed. It is open to the CRA to appoint an independent Inspector to preside over the inquiry and produce a report with recommendations to the determining authority. Although it is open to the CRA to later reject the Inspector’s report and recommendation, it can only lawfully do so if the CRA finds that the Inspector has made a significant error of fact or law. If the Inspector’s recommendation is rejected, the CRA must give legally valid reasons, supported by evidence of the error of fact or law, otherwise the CRA’s decision would be open to legal challenge.

63. Where the Registration Authority decides not to register land as a town or village green there is no right of appeal to the council or for example to the Secretary of State as there is with a planning application. The applicant’s course for redress is by way of judicial review to the High Court. Applications of this nature, focus closely on the procedure used in the decision making process. To avoid the risk of the significant costs of defending a legal challenge it is important that the Council adopts the proper decision making process in dealing with this application.

Proposal

64. To seek approval to appoint an independent Inspector to hold a non-statutory Public Inquiry and provide an advisory report for the Northern Area Planning Committee on the applications to register land as a TVG at Seagry Road, Lower

Stanton St Quintin. As there is significant dispute regarding the evidence and legal points raised by the Objectors regarding planning trigger events, property and highway issues and the presence of services within the application land, to propose that an independent Inspector be appointed on behalf of the CRA to preside over a non-statutory public inquiry at which the evidence of all parties will be heard and tested through cross-examination and to address the legal points raised in order that a recommendation can be made on the applications to the CRA, to assist the CRA in its determination of the applications to register land off Seagry Road, Lower Stanton St Quintin, as a TVG, as soon as is reasonably practicable.

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Appendices:

Appendix A: Decision Report – 3rd February 2022 (with Appendices):

Appendix 1 - Location Plan

Appendix 2 – Application Plans

Appendix 3 – Photographs of Application Land

Appendix 4 – Aerial Photographs

Appendix 5 – i) Commons Act 2006 – Section 15

ii) The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007

iii) DEFRA Guidance to Commons Registration Authorities in England on Sections 15A to 15C of the Commons Act 2006 – December 2016

Appendix 6 – Objections (8)

Appendix 7 – Other Representations (23)

Appendix 8 – Supplementary Information provided by Mr Reeves for Planning Application no.18/01108/FUL (Extract) and Objections from Mr M Reeves prior to Service of Form 45

Appendix 9 – Applicants' Revised Comments on the Objections

Appendix 10 – Objectors' Comments on Representations

Appendix 11 – Applicants' Additional Evidence (April 2021)

Appendix 12 – Trigger/Terminating Event Consultation Replies

Appendix 13 – Documents Relied Upon

Appendix 14 – Summary of Witness Evidence

Appendix 15 – Summary of Objectors' Evidence

Appendix 16 – Witness Evidence Map

Appendix 17 – Photographs of Events on the Land

Appendix 18 – Officer's Report Regarding Extent of Highway-2019