

WILTSHIRE COUNCIL

NORTHERN AREA PLANNING COMMITTEE

1 MARCH 2023

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

Purpose of Report

1. To:
 - (i) Consider the Advisory Report, dated 9 January 2023, submitted by Mr William Webster of 3 Paper Buildings, appointed by Wiltshire Council as the Commons Registration Authority (CRA), to Act as an independent Inspector to:
 - preside over a non-statutory public inquiry, held on 8-9- November 2022 at Stanton St Quintin Village Hall, to consider two applications made under Sections 15(1) and (2) of the Commons Act 2006, to register land adjacent to Seagry Road, Lower Stanton St Quintin, as a town or village green (TVG), and
 - produce an advisory report to include a recommendation to the CRA to assist in its determination of the applications.
 - (ii) Recommend that Wiltshire Council accepts the Inspector's recommendation that the applications be rejected on the ground that the criteria for registration laid down in Section 15(2) of the Commons Act 2006 have not been satisfied.

Relevance to the Council's Business Plan

2. Working with the local community to provide an accurate register of TVGs, making Wiltshire an even better place to live, work and visit.

Background

3. This report relates to two applications made by Stanton St Quintin Parish Council under Sections 15(1) and (2) of the Commons Act 2006 to register land as a TVG in the parish of Stanton St Quintin. The relevant regulations/guidance for the processing of applications under Sections 15(1) and (2) of the Commons Act 2006, are "The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007" and DEFRA "Guidance to

Commons Registration Authorities in England on Sections 15A to 15C of the Commons Act 2006” – December 2016.

4. The parish of Stanton St Quintin lies in north Wiltshire, to the north of Chippenham and the south of Malmesbury. The parish is divided into two main residential areas, Stanton St Quintin to the west of the main A429 road which leads from the M4 motorway (north of Chippenham), via Malmesbury and Cirencester, to Coventry in the West Midlands, and Lower Stanton St Quintin to the east of the A429. The application land is located at Lower Stanton St Quintin, please see Location Plan at **Appendix A**.
5. The application land is a semi-circular area adjacent to the vehicular highway Seagry Road, Lower Stanton St Quintin, as shown on the plans attached at **Appendix B**. The land laid to grass, (the ownership of which is not registered at the Land Registry), covers an area of approximately 408 square metres. There are trees, including a commemorative tree, planted on the land and, placed on the land, there are two commemorative wooden benches, a picnic table and Stanton St Quintin Parish Council’s notice board. A low stone and concrete capped wall forms the southern boundary of the site between the application land and the properties to the south at Lower Stanton St Quintin. The northern, eastern and western boundaries abut Seagry Road, which is a public highway, without gates or other limitations for access, (see **Appendix B** Application Plans and **Appendix C** Photographs of Application Land).
6. There are two separate applications to register the land. To summarise, the applications are separated where 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.
7. In the Stanton St Quintin case, upon receipt of the first application to register the whole of the semi-circular area of land as a TVG, (application no.2018/01, received 30 April 2018, see **Appendix B**), as advised by “DEFRA Guidance to Commons Registration Authorities in England on Sections 15A to 15C of the Commons Act 2006 – December 2016”, 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, (Lower Stanton St Quintin - new direct access to highway for vehicles and pedestrians over verge to class C road in 30mph limit), without a corresponding terminating event. 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.

8. When 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 B**). Consultation with the Planning Authorities regarding this application confirmed that there were no planning trigger events in place on this section of the land 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.
9. The applications were accepted as complete and in order on 30 July 2020 and as required by the regulations, formal notice of the applications was served on interested parties, posted on site and advertised in a local newspaper on 13 August 2020, with a closing date for representations and objections to be received in writing on or before 28 September 2020. The applications in full were also placed on public deposit at the offices of Wiltshire Council, as required. Where ownership of the application land is not registered at the Land Registry , notice of the applications posted on site and advertised in a local newspaper were addressed *“To every owner, lessee, tenant or occupier of any part of the land described below and to all others whom it may concern.”*, as required by the regulations, but no additional parties have come forward to claim ownership of the land or any part of it. 8 objections and 23 representations were received following notice of the applications.
10. As part of the statutory procedure for determining town and village green applications, where objections are received, they must be forwarded to the applicant allowing the applicant a reasonable opportunity for dealing with the matters raised. Comments on the objections from Stanton St Quintin Parish Council were received on 10 December 2020 and amended 18 January 2021. The objectors were then given further opportunity to respond, and their representations were received on 5 January 2021 (Mr M Reeves and Mrs K Reeves); 19 January 2021 (Mr M Reeves); 26 January 2021 (Mrs O Kelly and Mr J Kelly); 2 February 2021 (Mr M Reeves and Mrs K Reeves).
11. Wiltshire Council, as the CRA, must determine the applications in a manner that is fair and reasonable to all parties. All the elements of the legal test laid down at Section 15(2) of the Commons Act 2006 must be demonstrated, the standard of proof being the civil standard of proof on the balance of probabilities that ‘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 over the land for a period of at least 20 years and they continue to do so at the time of the application’. The onus is upon the applicant to establish this and the Council, as CRA, has no investigative duty in relation to TVG applications which would require it to find evidence or reformulate the Applicant’s case. The Council considered the evidence and the objections received as set out below, within a

report to the Northern Area Planning Committee dated 25 May 2022, a copy of the Committee Report and its Appendices (referenced below) may be viewed on the Wiltshire Council website using the following link: [Agenda for Northern Area Planning Committee on Wednesday 25 May 2022, 2.00 pm | Wiltshire Council](#)

Evidence considered in Northern Area Planning Committee Report (25 May 2022):

- (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 8**).
- (iv) Objections received prior to formal consultation period (Mr M Reeves 11 June 2018) (**Appendix 8**).
- (v) Trigger/terminating event consultation replies (**Appendix 12**).
- (vi) Objections and representations received during formal notice period for applications 2018/01 and 2019/01 (13 August 2020 – 28 September 2020) (**Appendix 6** and **Appendix 7**).
- (vii) Applicants’ revised comments on the objections (10 December 2020) (**Appendix 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 10**).
- (ix) Additional evidence submitted by Applicants’ (April 2021) (**Appendix 11**).
- (x) Officers Report regarding extent of highway – 2019 (**Appendix 18**).

12. Within the report at paragraphs 59-60, Officers highlighted some areas of concern when interpreting the evidence adduced:

“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 at 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 [REDACTED] 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.”

13. Officers recommended that given the substantial dispute of the evidence in this case; the difficulties inherent in interpreting the written 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, it would be open to Wiltshire Council, as the CRA, to hold a non-statutory public inquiry at which the evidence of all parties would be heard and tested through cross-examination and to address the legal points raised, appointing an independent Inspector to preside over the inquiry and to provide an advisory report and recommendation to the determining authority. It was resolved by the Northern Area Planning Committee on 25 May 2022:

“To approve the appointment of 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.

Members considered that due to the serious dispute of facts they would be unable to make a decision to approve or deny the application without further examination of the evidence.”

14. Wiltshire Council appointed Mr William Webster, of 3 Paper Buildings, as an independent Inspector to preside over a non-statutory public inquiry and to produce an advisory report containing a recommendation to Wiltshire Council as the determining authority. The inquiry was held at Stanton St Quintin Parish Hall, located not far from the application land, on 8-9 November 2022 inclusive, with closing submissions from both parties in written form following the close of the inquiry. The Parties' Inquiry Bundles and closing submissions may be viewed on the Wiltshire Council website, using the following links:
<https://apps.wiltshire.gov.uk/RightsOfWay/Green/Index/TVG2018001>
<https://apps.wiltshire.gov.uk/RightsOfWay/Green/Index/TVG2019001>
Mr Webster submitted his advisory report with recommendation and Appendices 1-5, to Wiltshire Council as the CRA on 9 January 2023 (please see advisory report attached at **Appendix D**).

Main Considerations for the Council

15. Under the Commons Registration Act 1965, Wiltshire Council is charged with maintaining the register of TVG's and determining applications to register new greens. The applications to register land off Seagry Road, Lower Stanton St Quintin, as a town or village green, have been made under Sections 15(1) and

(2) of the Commons Act 2006, which amended the criteria for the registration of greens. Sections 15(1) and (2) of the Act, state:

“15 Registration of greens

(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.

(2) This subsection 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 the application.”

16. There is currently no statutory or non-statutory guidance available to authorities regarding when it would be considered appropriate for a CRA to hold a non-statutory public inquiry. However, judicial cases have confirmed that it is the authority's duty to determine an application in a fair and reasonable manner and judicial decisions have also sanctioned the practice of holding non-statutory inquiries. In *R (Cheltenham Builders Ltd) v South Gloucestershire District Council* Admn 10 Nov 2003 the Court decided that the holding of a non-statutory public inquiry in some circumstances would be necessary as a matter of fairness. In *R (on the application on Naylor) v Essex County Council* [2014] EWHC 2560 (Admin) the Court confirmed that a public inquiry was one means by which a CRA may obtain evidence other than from the Applicant and any Objector or by which it may test or supplement that which it has received in written form. In the Inspectors advisory report (**Appendix D**) it is stated:

“20. The regulations which deal with the making and disposal of applications by registration authorities outside the pilot areas make no mention of the machinery for considering the application where there are objections. In particular no provision is made for an oral hearing. A practice has, however, arisen whereby an expert in the field is instructed by the CRA to hold a non-statutory inquiry and to provide an advisory report and recommendation on how it should deal with the application.

21. In Regina (Whitmey) v Commons Commissioners [2004] EWCA Civ 951 Waller L.J suggested at [62] that where there is a serious dispute, the procedure of conducting a non-statutory public inquiry through an independent expert should be followed almost invariably.

However, the registration authority is not empowered by statute to hold a hearing and make findings which are binding on the parties. There is no power to take evidence on oath or to require the disclosure of documents or to make orders as

to costs. However, the registration authority must act impartially and fairly and with an open mind.”

17. In the Stanton St Quintin case, the Inspector considers that it would not have been possible for the applications to be determined by the CRA without holding a public inquiry, i.e., based on the written evidence alone:

74. It will be recalled that App/5 summarises the user evidence lodged in support of both TVG applications which is, in my view of limited value. It would be quite impossible to strictly prove the case for registration on the basis of this evidence alone although it is clearly consistent with the oral evidence...

111. As a general rule considerably less weight should be attached to the evidence of witnesses who do not give oral evidence. This is principally because the Objector will not have had an opportunity to test this evidence by cross-examination.”

18. The Inspector clearly sets out the legal tests to be applied:

“22. The only question for the registration authority is whether the statutory conditions for registration are satisfied and the onus is on the Parish Council to establish this on the balance of probabilities. There is no scope for the application of an administrative discretion or any balancing of competing interests. In other words, it is irrelevant that it may be a good thing to register the land as it is a convenient open space for use by local inhabitants or that it is a necessary step to prevent its development in the future.”

19. Following consideration of the available documents and the hearing of evidence given in chief; in cross-examination and in re-examination at the public inquiry, the Inspector presented an advisory report to Wiltshire Council, dated 9 January 2023, (please see report attached at **Appendix D**), in which he considers the evidence and reaches the following conclusions and makes a recommendation to the CRA regarding the determination of the applications:

Highway Land:

“6...the Objectors put before the inquiry a very detailed report dated 1 November 2022 from a Robin Carr who is well known as an expert witness in cases involving public rights of way...It is Mr Carr’s view that the application land is highway land...

8. It seemed to me (i) that it would be appropriate for the highway issue to be adjudicated upon by a Court, and (ii) that the highway issue might turn out to be of academic interest only if the applications to register were rejected on other grounds. I therefore recommended to the CRA that the issue of whether the application land was highway land should be set to one side and that the inquiry

should continue on other grounds, namely whether registration was justified by reference to the usual qualifying criteria. The parties accepted this outcome and Mr Carr was stood down.”

The Inspector additionally found that a section of the application land recorded as highway at the eastern side of the site, could not be registered as TVG:

“17...in the case of the blue land within the red edging on App/1 which is within the highway land. In my view, such land would not be registrable because of the right of the public to use the land as a highway...”

Statutory incompatibility:

“42...No. [REDACTED] is served with the utilities shown on the plan at O/35 which were installed in 1986/87 or earlier with the exception of gas which was installed in 2017. Although the Objectors’ counsel raises the issue of statutory incompatibility it seems to me that these services fall within the agreed principle of ‘give and take’ discussed in TW Logistics Ltd v Essex County Council [2021] AC 1050...”

96...I see no incompatibility between the 2006 Act and the statutory regime applying to the installation of domestic gas supplies. The application land in this case is plainly not held for a statutory purpose which would be incompatible with its registration as a TVG. It is also now established (see TW Logistics Ltd v Essex County Council [2021] 1050) that after registration a landowner is entitled to use his land in any way which did not interfere with the public’s recreational rights and members of the public had to exercise their rights reasonably and with respect to a landowner’s concurrent use. I cannot see how the exercise of statutory powers in this instance will be frustrated by the registration of the application land as a TVG? To suggest without more (if this is what is being suggested) that land beneath which ordinary household utilities have been laid by service providers under the various enabling Acts (covering digital, electricity, gas and water supplies) should be removed from the 2006 Act is, I think, misconceived and takes the principle much further than was ever contemplated by the Supreme Court in the well-known cases on this subject. Not only would such a proposal emasculate the 2006 Act but I am unaware of any case which would support this. Indeed, it is conceded that the point in issue has not been tested in the courts. I therefore find against the Objectors on this issue.”

“ ‘of the inhabitants of the locality’

13. ...On this application the claimed locality is the civil parish of SSQ of which Lower Stanton St Quintin (‘LSSQ’) forms part, being separated from the rest of the village by the A429. The population of the village was 705 at the time of the 2021 census. I was told that there are 79 dwellings in LSSQ although it may be

slightly more than this. In view of the presence of the A429 any regular use of the land by those living to the west of the road is liable to be minimal, if at all...

'have indulged as of right'

14. To be qualifying use it must be use 'as of right' which means that it must be without force, secrecy or by permission (the so-called 'tripartite test'). It has been held that once the claimed use has passed the threshold of being of sufficient quantity and of a suitable quality, it is necessary to assess whether any of the elements of the tripartite test applied, judging these questions objectively from how the use would have appeared to the landowner. In this case, of course, no one knows who owns the land although the claimed use has undoubtedly been peaceable, open and without consent...

'lawful sports and pastimes'

15. The expression 'lawful sports and pastimes' (LSP) form a composite expression which includes informal recreation such as walking, with or without dogs, and children's play. I should perhaps mention that the "Wee Free Library" box not only started up after the qualifying period ended but is also located outside the application land...

'for at least 20 years'

18. The relevant period in this case is, in the case of the first application, April 1998 to April 2018. In the case of the second application it is April 1999 to April 2019...

The evidential focus in this case

115. The application must be tested against the criteria for registration contained in section 15(2) of the CA 2006, namely whether a significant number of the inhabitants of (in this instance) SSQ had indulged as of right in LSP on the application land during the relevant 20-year period ending in April 2019.

116. I start by dealing with the application land and its context which, in my view, provides a useful starting point as to how, by whom and the frequency with which the land is likely to have been used for qualifying purposes?

117. We are dealing with a small parcel of land on the side of a road where the passing traffic is only light. LSSQ is a very small settlement and at this end of Seagry Road there are likely to be few pedestrians. I have a note that there are only 79 houses in the village on the eastern side of the A429. This figure may not be entirely accurate but the population of LSSQ is plainly small and the number of recreational walkers, with or without dogs, or children able to use the land for play is going to be even smaller.

118. *The land has no pavement running alongside it and in practice is too small to walk around or for ball games or for children to play unsupervised in view of its proximity to the road. In truth it is little more than a wide verge.*

119. *It is not as if the land is located near a busy estate or at the convergence of popular public rights of way. There is no school or shop on this side of the A429 nor any laid out communal open space available for walks etc.*

120. *Although the grass is cut periodically in the summer it cannot be an easy place to walk on at other times. I noted that the land is soft underfoot and I suspect that it would be damp and boggy in the wetter weather.*

121. *The fact that the land is unlikely to be used with any frequency by local residents is amply borne out by the fact that there are no tracks on the land nor other signs of wear to indicate that it is in active use.*

122. *The land has no rubbish bin or bin for dog faeces which one might have expected to see if it was being used more than just occasionally by walkers, with or without dogs, or by those stopping to snack or drink or merely just to chat with friends (as doubtless occurred during the pandemic).*

123. *The land had even more trees until fairly recently and has never been a completely open space. The trees and their low branches are undoubtedly intrusive when walking on and around the land.*

124. *Although the land has 2 benches on it at the moment and a picnic table, this has not been a longstanding position. One bench was put there over 20 years ago and the other is of more recent origin. The picnic table was only put there in late 2018. In truth, for most of the twenty years there has only been one bench on the land and its condition in the photographs shows that it was probably used only rarely as a functioning seat. One only has to look at the photo of the older bench in O/29 which was evidently taken on 21 November 2017 where the seat is seen to be covered with mould and lichen.*

125. *The application land has no view or outlook of particular interest although I accept that it is a wide enough place off the road for friends to meet and talk for short periods. It is, I think, just as likely that the people will stop and chat on the pavement on the opposite side of the road rather than sit on a dirty/wet seat/seats and make a mess of their clothing (and perhaps also get their shoes wet if it has been raining). Indeed, unless perhaps it were a warm, sunny day, it seems to me unlikely that many people, if out for a walk with their dog and/or child in a push chair, would choose to stop and/or sit down on the application land for any appreciable length of time and especially if they are close to home.*

126. It is true that the land is a place where, perhaps at a push, communal events can take place. I have already indicated that the 6 church services in the early 2000's do not count. This then leaves (i) the Royal Wedding in April 2011, (ii) the Queen's 90th Birthday in June 2016, (iii) the Community Garden Project in May 2018 and (iv) the Book Sale in June 2018. These four events were one-off events, and I am not aware of other events in the course of the qualifying period. They would have lasted for a few hours at a time and could even have attracted non-qualifying residents. It is also worth bearing in mind what Mrs Reeves said about the Queen's 90th Birthday celebrations in June 2016 where she says that only around a dozen people turned up, including she and her husband plus two newcomers to the village, and they all left after ten minutes.

The quality of the oral evidence adduced by the Parish Council...

129. It seems to me that the real problem with the case for registration is that it is woefully short on proof...the law requires such claims to be properly and strictly proved. It means that sufficient use of the application land for LSP must be made out by local residents for the whole of the 20 year qualifying period...it needs to be shown that the use of the land must signify that it is in general use, as opposed to only occasional use, by the local community...

139. In the result, I find that there were too few witnesses who could speak reliably about the use of the land over the period of 20 years ending with the date of both applications. I therefore accept the submission of the Objectors' counsel that the applicant's evidence came from far too few local inhabitants for it to constitute a "significant number" within the meaning of section 15(2)(a) of the 2006 Act.

140. When looked at in the round, these applications concern a small parcel of open land on the side of a road which is far too small to be of much practical use for LSP. On the basis of the written and oral evidence which has been put to the inquiry I find that the LSP claimed is likely to have been too trivial or sporadic and would not have been sufficient in terms of duration, nature or quality to support registration. I also take the view that the points which I make in paras 116-126 about the application land and its context are supportive of my findings on the balance of probabilities on the evidence before the inquiry.

Recommendation

141. In the light of the above discussion, I recommend that the applications to register the application land (proceeding under application number 2018/01 and application 2019/01) should be **rejected** on the ground that the criteria for registration laid down in section 15(2) of the CA 2006 have not been satisfied.

142. The CRA must give written notice of its reasons for rejecting the application. I recommend that the reasons are stated to be “the reasons set out in the Inspector’s Advisory Report dated 9 January 2023”.

20. There is no obligation placed upon the determining authority to follow the Inspector’s recommendation; however, **if the Committee decide not to follow the Inspector’s recommendation which is supported by the very detailed and thorough consideration of the evidence in the Inspector’s Advisory Report (Appendix D), the Committee must provide sound evidential reasons for departing from the recommendation before it.** Members of the Committee are requested to consider the Inspector’s Advisory Report and the available evidence in order to determine whether or not the application land should be registered as a TVG.
21. If it is determined to reject the applications, as recommended by the Inspector, the Regulations set out the process for concluding the application. The CRA will send written notice of the decision to every concerned Authority; the Applicant and every person who objected to the application, including reasons for the rejections. The application forms and all accompanying documents will be returned to the Applicant.

Safeguarding Implications

22. Considerations relating to the safeguarding implications of the proposal are not permitted within Section 15 of the Commons Act 2006. Determination of the applications must be based only upon the relevant evidence before the CRA.

Public Health Implications

23. Considerations relating to the public health implications of the proposal are not permitted within Section 15 of the Commons Act 2006. Determination of the applications must be based only upon the relevant evidence before the CRA.

Environmental and Climate Change Considerations

24. Considerations relating to the environmental and climate change impact of the proposal are not permitted within Section 15 of the Commons Act 2006. Determination of the applications must be based only upon the relevant evidence before the CRA.

Equalities Impact of the Proposal

25. Considerations relating to the equalities impact of the proposal are not permitted within Section 15 of the Commons Act 2006. Determination of the applications must be based only upon the relevant evidence before the CRA.

Risk Assessment

26. The holding of a non-statutory public inquiry and the production of the subsequent advisory report and recommendation to Wiltshire Council as the CRA, from an independent Inspector, have reduced the risk to the Council of a potential legal challenge where the evidence of witnesses has been heard, tested and considered.

Financial Implications

27. Presently, there is no mechanism by which the Registration Authority may charge the applicant for processing applications to register land as a TVG and all costs are borne by the Council.
28. Where the Council makes a decision to register / not to register the land as a TVG it must give clear reasons for its determination as this decision is potentially open to legal challenge where any decision of the Council is open to judicial review. The legal costs of a successful challenge against the Council could be in the region of £40,000 - £100,000.
29. There is no duty for Registration Authorities to maintain land registered as a TVG.

Legal Implications

30. If the CRA determines not to register the land as a TVG, the only right of appeal open to the applicant is through judicial review proceedings and challenging the lawfulness of the decision in the High Court. The Court's permission to bring proceedings is required and the application must be made within three months of the date of the decision to determine the TVG application. A landowner could also use judicial review proceedings to challenge the Council's decision if the land were to be registered as a TVG.
31. If the land is successfully registered as a TVG, the landowner could potentially challenge the CRA's decision by appeal to the High Court under Section 14(1)(b) of the Commons Registration Act 1965 ('the 1965 Act'), which allows the High Court to amend the register only if it can be shown that the registration ought not to have been made and that it is just to rectify the register. The overall effect is that the registration of the land is deemed to have been made under Section 13 of the 1965 Act and there is a preserved right under Section 14 to apply to the court to rectify the registration of the TVG without limit of time. The application, which could be made many years after the decision and potentially enables the Court to hold a re-hearing of the application and consideration of the facts and law, could lead to de-registration of the land.
32. Judicial review proceedings are a complex area of administrative law where every aspect of the law and facts relevant to the decision and the CRA's decision making process would be subject to detailed analysis by the Court. Due to the complexity of such cases the legal costs can quickly escalate. If the judicial review proceedings are not successfully defended, the Aarhus convention

(concerning the legal costs for environmental cases) does limit the costs liability so far as the Council as CRA is concerned (if the case is lost) to £35,000; however, the CRA would also be required to meet its own legal costs to defend the case (which would be a broadly similar sum if not more depending on the issues that may arise during the proceedings), in addition to the applicant's costs. The applicant's potential maximum costs liability, if their case is unsuccessful, is £5,000.

33. The issue of 'pre-determination' or approaching the decision with a 'closed mind', (for example a decision maker having already made up their mind on the application before considering the evidence and/or Inspector's recommendation and making the decision), is a serious allegation and one that a CRA must avoid. There is a potential reputational issue for a CRA if a Court was to make a finding that 'pre-determination' took place before a committee made a formal decision to determine an application to register land as a TVG. The Court may order that the decision be quashed, and the decision sent back to the CRA to be re-made.

Options Considered

34. The options available to the Committee in the determination of the applications, are as follows:
- (i) Accept the Inspector's recommendation that the applications made by Stanton St Quintin Parish Council, to register land adjacent to Seagry Road, Lower Stanton St Quintin as a TVG, under Sections 15(1) and (2) of the Commons Act 2006, be rejected for the reasons set out in the Inspector's Advisory Report dated 9 January 2023.
 - (ii) To register part of the land subject to the applications made by Stanton St Quintin Parish Council to register land adjacent to Seagry Road, Lower Stanton St Quintin as a TVG, under Sections 15(1) and (2) of the Commons Act 2006, in accordance with the available evidence.
 - (iii) Not accept the Inspector's recommendation that the applications made by Stanton St Quintin Parish Council, to register land adjacent to Seagry Road, Lower Stanton St Quintin as a TVG, under Sections 15(1) and (2) of the Commons Act 2006, be rejected and resolve to register all of the land subject to the applications as a TVG, in accordance with the available evidence, (excluding the area already recorded as highway, see App/1 of Inspector's Advisory Report at **Appendix D**).
35. **Where Members of the Committee do not resolve to accept the Inspector's recommendation in full and make an alternative determination, clear reasons for this decision, based on evidence, must be given as the decision of the CRA is open to legal challenge by both the applicants and the landowners.**

Reasons for Proposal

36. In the Stanton St Quintin case, the evidence of whether a significant number of inhabitants of any locality, or 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, with use continuing at the time of application, is in dispute and a number of legal points raised by the Objectors. It is the duty of the determining authority to determine the applications in a fair and reasonable manner. Due to the substantial dispute of fact in this case, Wiltshire Council determined to hold a non-statutory public inquiry where the facts of the case would be likely to be resolved by the inquiry process through witnesses giving oral evidence in chief and through cross-examination and re-examination, including consideration of documentary evidence by the Inspector.

37. Following the close of the inquiry, the Inspector presented a well written and extremely thorough consideration of the evidence in a 37-page Advisory Report with 5 Appendices, dated 9 January 2023, (**Appendix D**), and containing the following recommendation to Wiltshire Council, as the CRA:

*“141...I recommend that the applications to register the application land (proceeding under application number 2018/01 and application 2019/01) should be **rejected** on the ground that the criteria for registration laid down in section 15(2) of the CA 2006 have not been satisfied.*

142. The CRA must give written notice of its reasons for rejecting the application. I recommend that the reasons are stated to be “the reasons set out in the Inspector’s Advisory Report dated 9th January 2023”.”

38. Officers are satisfied that over the course of the two days of the public inquiry, the Inspector carried out a thorough and detailed examination of the evidence, all parties being given full opportunity to make their representations and to cross-examine other parties on their evidence. Officers consider that the Advisory Report (**Appendix D**), is a correct and accurate reflection of the witness and documentary evidence and that the Inspector’s recommendation should be accepted.

Proposal

39. That Wiltshire Council, as the CRA, accepts the Inspector’s recommendation and that the applications to register land adjacent to Seagry Road, Lower Stanton St Quintin, as a TVG, (proceeding under application number 2018/01 and application 2019/01), should be **rejected** on the ground that the criteria for registration laid down in section 15(2) of the Commons Act 2006 have not been satisfied, for the reasons set out in the Inspector’s Advisory Report dated 9 January 2023.

Samantha Howell

Director Highways and Transport

Report Author:

Janice Green

Senior Definitive Map Officer

The following unpublished documents have been relied on in the preparation of this Report:

None

Appendices:

Appendix A – Location Plan

Appendix B – Application Plans

Appendix C – Photographs of Application Land

Appendix D – Inspector’s Advisory Report with Appendices 1-5

Mr William Webster, 3 Paper Buildings – 9 January 2023