

5th March 2003

COMMONS REGISTRATION ACT 1965 (as amended)
APPLICATION FOR THE REGISTRATION OF A TOWN OR
VILLAGE GREEN: WEST DEAN VILLAGE GREEN, WEST DEAN

Purpose of Report

1. To inform the Committee of an application which has been received to register land at West Dean Village Green, West Dean, Wiltshire as a Village Green under the Commons Registration Act 1965 and to seek a decision on the application.

Background

2. The Commons Registration Act 1965, required all common land and town or village greens to be formally registered. County Councils were charged with compiling the register of such land.

Failure to register any land within the prescribed period, which expired in 1970, resulted in that land ceasing to be common land or town or village green.

3. Further registrations may be made in certain very specific circumstances.

Under Section 22(1A) of the Commons Registration Act 1965 (inserted with effect from 30th January 2001 by Sections 98 and 103(2) of the Countryside and Rights of Way Act 2000) land will be a town or village green:-

“... if it is land on which for not less than twenty years a significant number of inhabitants of any locality or of any neighbourhood within a locality have indulged in lawful sports and pastimes as of right and either:-

(a) continue to do so, or

(b) have ceased to do so for not more than such period as may be prescribed or determined in accordance with prescribed provisions.”

No regulations have yet been made under paragraph (b).

If an application to register land as common land or as a town or village green is made, the County Council as Registration Authority is required to advertise the application in the local press and on the site, inform the other local authorities in the area and the owner, lessee, tenant or occupier of the land concerned. A period of not less than six weeks is allowed for objections to the application to be lodged.

The application and objections must then be considered by the Registration Authority and a decision made as to whether the land is to be registered or not. Whilst there is no formal right of appeal against a rejected application, it is open to the applicant to seek a judicial review of the Authority's conduct, if he believes it to constitute an abuse of power or to be wrong in law, unreasonable, procedurally improper, biased or contrary to legitimate expectations.

Detail

4. The application site is shown shaded on the plan attached as Appendix I. Mr R. H. and Mrs C. A. M. Morgan are the owners of part of the site shown hatched on the plan.
5. The application dated 13th November 2002 was made by Mr Alan Willis of Messrs Whitehead Vizard, Solicitors, on behalf of West Dean Parish Council. The Parish Council's case is that the land became a Village Green in 1990 by user for more than 20 years. The application replaces a previous application, giving an earlier date, which was withdrawn after legal discussions between the applicant's solicitors, the owners' solicitors and the County Council as registration authority.
6. The application is supported by 31 letters or statements from local residents and former residents and details of these (including the claimed uses) are given in Appendix II to this report, (these are the same letters or statements which were used in connection with the earlier application).
7. Following notice to the owners of the application, an objection has been received from Messrs Birketts, Solicitors, on behalf of Mr and Mrs Morgan in relation to the land in their ownership. They have asked that Mr Morgan's letter of 4th March 2002 (submitted in connection with the earlier application) be used as an objection (Appendix III to this report). The enclosures referred to in Mr Morgan's letter are available for inspection in the Members' Room.
8. Messrs Birketts have also made the following point:

The use ceased before the date of the application and therefore does not comply with Section 98 of the CROW Act 2000 which requires continuous use. No regulations have yet been made under the Act to allow a gap between the user and the application.
9. As required by the Regulations, the objection has been forwarded to the applicant for comments and the response on behalf of the Parish Council is attached to this report as Appendix IV.

Issues for Consideration

10. In order to meet the requirements of the Commons Registration Act 1965 (as amended), the applicant must demonstrate that the land has been used by a significant number of local inhabitants for lawful sports and pastimes, as of right for not less than 20 years and continues to be so used. To qualify 'as of right' the use must have been open. It must have been achieved without the use of force. Finally, it must not have been use under licence from the owner. Each of these requirements is examined below.

Actual Use for Lawful **Sports** and Pastimes

11. The statements in support of the application for registration, assert that the land has been used for a wide range of village activities as shown in Appendix II. On behalf of the owner, it is stated that the use has not been continuous and that before the closure of the Red Lion public house (now a private house owned by Mr and Mrs Morgan), many of the events held on the land (eg. The Tug-o-War) were organised by the public house to generate sales and that no sports and pastimes have taken place there since they purchased the property in 1995.

Local Inhabitants

12. The use must be mainly, but need not be solely, by a significant number of inhabitants of any locality or of any neighbourhood within a locality. Most of the letters in support of the application are from local residents.

As of Right for Not Less than 20 years

13. The applicant claims that the land became a village green in 1990 by user for more than **20** years.

In order to qualify for use 'as of right' the users need not necessarily believe that they have any right to go on the land. It is, however, necessary to provide evidence to satisfy the tests of the use without force, without secrecy and without permission. There is a significant conflict between the letters of support and the objection as to whether the land was used with the permission of the proprietors of the then Red Lion public house.

14. Members are informed that an application has been made to Hampshire County Council for adjoining land in that county to be registered as a Village Green.

Hampshire has indicated that it would agree to hold a non-statutory Public Inquiry to deal jointly with the application which it is obliged to determine and the application which is the subject of this report.

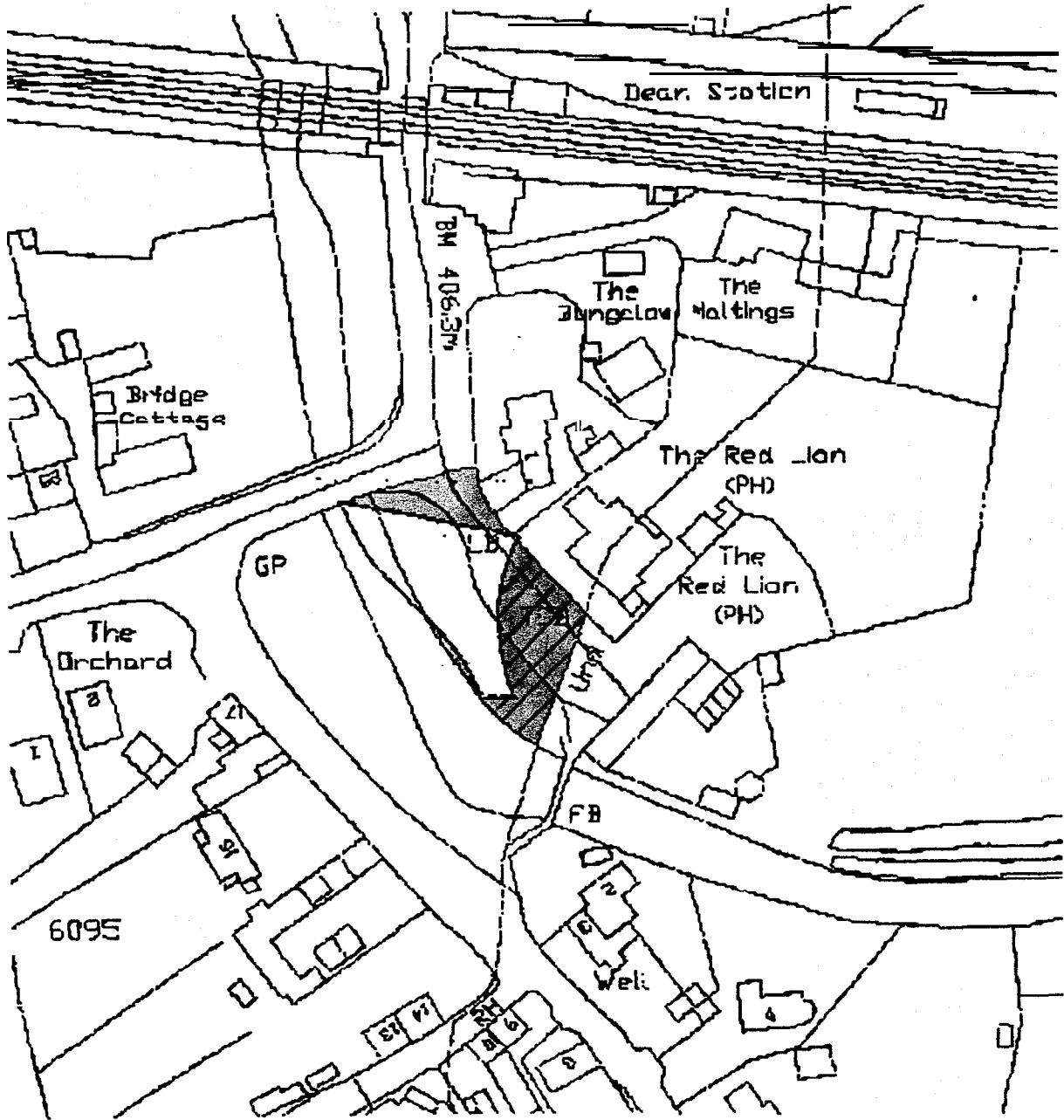
Conclusion

15. It is recommended because of the conflicting evidence that the application to Wiltshire be referred to a Public Inquiry to be held jointly with Hampshire, on the basis of each Council sharing the cost equally.
16. The total cost of a Public Inquiry (to include the Inspector's fee and the cost of the accommodation and advertising), is estimated to be in the region of £5,000 to £7,000. The cost to Wiltshire County Council would, therefore, be in the region of £2,500 to £3,500.

PETER SMITH
Director of Corporate Services

Unpublished documents relied upon in the production of this report:- The application for registration and representations received.

Environmental impact of the recommendations contained in this report:- Approval of the application for registration would result in The West Dean Village Green being registered as a Village Green under the Commons Registration Act 1965.



■ Area to be registered as village green

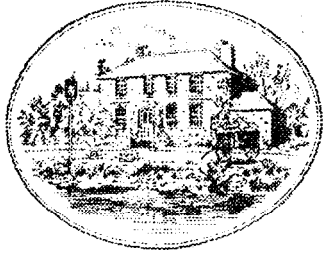
□ Existing area of common land

APPENDIX II

NAME	ADDRESS	YEARS OF PERSONAL KNOWLEDGE	ACTIVITIES
P Parsons	Church Farm, West Dean	1931 →	Maypole, Morris Dancing, Tug-o-War, Picnics, Coronation, Jubilee & Millennium celebrations
S Snell	Netherfield, West Grimstead	1931 →	Fishing, Football, Tug-o-War
M Thomas	Burdon Grane, Highampton Beaworthy, Devon	1940-1957	Communal open space
G Snelling	Manston, Tytherley Road, Winterslow, Salisbury	1940 →	Cricket, Football, Cycling
C Warry	Cobwebs, 14 West Dean	1939 →	Cattle watering, Picnics, Paddling, Tug-o-War, Silver Jubilee, Car Boot Sale
C H Poolman	4 Rectory Hill, West Dean (including Env. Sub-committee statement)	1943''	Fishing, Picnics
R Parsons	27 West Dean	1950 →	
J S Gledhill	Tanglewood, West Dean	1958 →	Maypole, Nature walks, Picnics
P Noyce	The Feller's Lodge, West Tytherley	1963 →	Tug-o-War, Fete, Hunt Meet, Feeding ducks
L & M Palmer	4 Railway Cottage, West Dean	1961 →	Picnics, Paddling, Pony Riding, Charity events
M E L Blair	6 Moody's Hill, West Dean	1958 →	Playing, Bic ycling, Paddling, Sailing boats
M Wootten	not given	1963-1999	Tug-o-War, Greasy pole, Maypole, Dancing, Fetes
S Gruzelier	Pilgrim's Croft, West Dean	1969 →	Duck feeding, Playing, Fund raising
M Lancaster	Rectory Hill House, West Dean	1970 →	Playing, Pony Riding, Dog walking
J L Fletcher	10 Whetlands, Southwell Portland, Dorset	1971-1993	Tug-o-War, Maypole, Celebrations

N A M E	ADDRESS	YEARS OF PERSONAL KNOWLEDGE	ACTIVITIES
J A Holland	Bridge Cottage, West Dean	1979-7	Playing, Sailing boats, Rowing Dinghies
Brig. War-grave	5 West Dean	1982 →	Sailing boats, Feeding ducks, Tug-o-War, Village Festival
A M Hand	Well Cottage, West Dean	1981 →	Picnics, Pony Riding, Treasure Hunt, Barbeques
R Glassock	2 Moody's Hill, West Dean	1983 →	Fishing, Sailing boats, Bicycling, Rollerblading, Picnics
Q R Nicholson	13 The Mead, Hythe, Southampton	17 years	
D T & D L Tucker	Orchard Farm, 15 West Dean	1988 →	Tug-o-War, Duck Derbys, Pig Roasts, Millennium & New Year's Eve parties, 'Volewatch' Naturewatch Club
D & I McKenna	Chantry House, West Dean	1989 →	Walking, Picnics, Duck feeding, Cricket, Musical Evenings, Fetes
J Johns	The Crown House, Clifton-Upon-Teme, Worcestershire	1959-1973	Car parking
S Hunter	3 Strangway, Larkhill	1949- 1998	Picking-up and dropping-off point, Car parking
Dr K S Mann	Algars, Sarum Road, Winchester	1995-1996	Bicycling, Duck feeding
L Hughes	14 Clarendon Close, Romsey	not specified	Fishing, Playing
C Howard	4 Prospect Cottages, Great Bourton, Banbury	"	Pony Riding, Picnics, Tug-o-War, Pillow fights
J Moxham	Idlewild, West Tytherley Salisbury	"	Playing, Paddling, Picnics, Tug-o-War, Fetes
S Hilliard	31 The Rookery, West Dean	"	Duck racing, Tug-o-War, Community gathering
J Cole	6 Hillside Close, West Dean	"	Paddling, Fishing, Swimming

From: Huw & Caroline Morgan



**Red Lion House
West Dean
Wiltshire
SP5 1JF**



Home: (0 1794) 340469
Work: (0 1962) 888224
Fax: (01962) 888210
E-mail: huwmorgan1@compassmag.co.uk

Mr Trevor Slack
Wiltshire County Council
County Hall
Trowbridge
Wiltshire BA14 8JD

4 March 2002

Dear Trevor,

Thank you for your letter of 1 March 2002 concerning the additional time that you have granted to West Dean Parish Council (WDPC). We understand your reasons but believe that you have been overgenerous.

As discussed, I enclose copies of letter received by the planning departments of Salisbury District Council and Test Valley Borough Council in 1996 and 1997. At this time the correspondents were arguing that Change of Use should not be granted for the property as the Red Lion was the hub of village activity. They state that the pub ran the Tug of War, the Duck Derby and many other social and charitable events. Four years on, the same correspondents claimed that the pub had no role in these events. Time plays strange tricks upon the memory! You will see from the attached press cutting that most of those contributing the new evidence in order to support the Village Green application, were strongly opposed to the Change of Use. We see this current application as a continuation of this campaign.

I also enclose relevant extracts from the statements secured by Barbara Burke when (in 1999) WDPC were lobbying for the area to be designated as Highway. It is quite clear that some of the area now being assessed as Village Green was enclosed by sheep pens, used for the grazing and watering of animals and used as car parking. Further, the Whitbread paid for the tarmac surface, the landlord maintained the grassed areas and picnic benches, owned by the pub, for the use of pub customers were present on the grassed areas to the East of the River Dun. Signs concerning car parking (liability and access) on the forecourt were also erected by the brewery who owned the land since the division of the Norman Court Estate in 1945.

I attach minutes from WDPC dating back to the 1960s which discuss the area in front of the Red Lion. You will determine that the Common Land was registered in the early 1970s but usually referred to as the Village Green. This mistaken use of the term Village Green lies at the heart of WDPC's error. Having registered part of the area as Common Land, there is no route back to transfer the land to another register which lists Village Greens.

You will note that in the 1980s all parties were trying hard to disown the approach to the car park as they did not want to pay for its maintenance. It was eventually resurfaced by the brewery and the bill passed onto the Highways Department. The pub landlord paid for the groundworks and seeding of the grassed areas.

We have continued to maintain the land which we own in front of our home. We have cut the grass, built up and seeded the riverbank, planted flowers and maintained the flowerbeds. We have planted shrubs and pruned the trees. Visiting friends park their cars in our car park.

In 1996 we gave permission to Mrs Wooton to use the car park and barn for a plant sale and allowed Mr Wilmot to hold a steam railway rally the same year. We even allowed Mr Hargrave to park his removals van on the car park overnight when he moved to the village. He kindly gave us a bottle of red wine to thank us. Other villagers have asked us whether their friends can park there when attending parties, funerals and sponsored walks and we have again given permission. The organisers of the Vole Watch from Tytherley wrote to ask permission to come onto our land and also wrote to thank us afterwards. Mr Holland claims that he dammed the river, but contemporaneous minutes from the Parish Council show the landlord did it.

In 1998 we have given permission to the fete committee to hold a tug of war using our side of the River Dun. We regretted this decision as we found vomit on our doorstep and damage to the kerbstones as a result. The tug of war has not been held on our land since – mainly because of the robust stance of Wiltshire Constabulary. I attach a letter from Superintendent Hollingshead.

There is no evidence to show that of 'sports and pastimes' have been organised on the car park over a period of 20 years – before or after 1970. Many of the activities quoted took place in the River Dun or upon the Common Land. Regular events, such as the tug of war, were run by the pub and it is clear that charitable and community events were welcomed by the landlords as they generated bar sales. Most of your recent correspondents recognise the involvement of the Red Lion in these activities. It was in the brewery's interest to attract people to the area; the land has always been in private ownership, but attached to a public house. No 'sports and pastimes' have taken place on our land without permission since we purchased the property in 1995.

I enclose a letter from Mr and Mrs Chandler which confirms that we maintain the land and that the pub ran community events. Finally, the records from the Parish Meeting in 1967 show that they accepted that the brewery owned the land as they had seen the deeds. Further, they knew that they could not register the land as Village Green as the historic green was already recorded in a different location. We have all the evidence to show where this village green was.

Finally, I enclose the Save Our Pub Committee Bulletin from 8 October 1995 which lists several of your correspondents as part of the committee. I believe that they should have declared an interest when writing to you as they tried to purchase the Red Lion in 1995. You will also detect that they maintained that the pub was the hub of the village in 1996/7 when dealing with the Change of Use application, and now deny that it had any role to play.

We believe that there has been cynical manipulation of WCC by WDPC who have misled the villagers and now seek to deceive the committee. They first claimed the right to park, then that the land was highway and finally, when they realised that highway would impede, not help, their plans they claimed a Village Green. Please bring these matters to the attention of the Regulatory Committee in your report – I am sure that they will see through the application.

Yours sincerely,

Alan Hargrave

RESPONSE OF THE WEST DEAN PARISH COUNCIL 17TH FEBRUARY 2003Re WEST DEAN VILLAGE GREEN WILTSHIRE
REPLY TO BIRKETTS' COMMENTS.

1. USER

The Applicants have put forward a substantial body of witnesses to support use of the type required to be established for registration of a village green. The Morgans seek to argue that this use has been exercised not as of right but with either their or their predecessors' consent.

This is a pure matter of fact and can be determined only by an enquiry, either statutory, or non-statutory.

2. CROW ACT 2002, SECTION 98

The Applicants say that this Section effectively adds a set of circumstances under which land may become a village green.

They concede that the land is not being used in the way set out in the Commons Registration Act **1965**, Section 21(1A) because the Morgans have stopped that use.

They concede further that there are at present no Regulations made pursuant to Section 2 **1(1) A)(b)**.

However, they say that the definition of "town or village green" contained in Section **21(1)** enables the Applicants to seek registration of the land as a village green either because " the inhabitants of any locality have a customary *right* to indulge in *lawful* sports or pastimes, or on which the inhabitants of a locality have indulged in such sports or pastimes".

3. REGISTRATION AS A VILLAGE GREEN OF LAND ALREADY REGISTERED

This is conceded. The present application is clearly, and on its face, restricted to land not already so registered.