

WILTSHIRE COUNCIL

WESTERN AREA PLANNING COMMITTEE

13 DECEMBER 2017

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**COMMONS ACT 2006 – SECTIONS 15(1) AND (3)**  
**APPLICATION TO REGISTER LAND AS A TOWN OR VILLAGE GREEN –**  
**GREAT LEES FIELD, SEMINGTON**

**Purpose of Report**

1. To consider the evidence submitted with an application made under Sections 15(1) and (3) of the Commons Act 2006, to register land off Pound Lane, Semington, known as Great Lees Field, as a Town or Village Green, in order to determine the application.

**Relevance to 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, is in receipt of an application dated 24 June 2016, made under Section 15(1) of the Commons Act 2006, to register land off Pound Lane, Semington, known as Great Lees Field, as a Town or Village Green (see **Appendix A**). Section 15(1) of the Act states that:

*“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 application is also made under Section 15(3) of the Act where use of the land for recreational purposes has ceased and the application is made within one year of the cessation of use. Wiltshire Council, as the Registration Authority, must therefore consider the evidence in order to determine the following:

*“(3) This subsection applies where –*

- (a) *a significant number of inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;*
- (b) *they ceased to do so before the time of the application but after commencement of this section; and*
- (c) *the application is made within the relevant period.*

(3A) *In subsection (3), “the relevant period” means –*

- (a) *in the case of an application relating to land in England, the period of one year beginning with the cessation mentioned in subsection (3)(b);*
- (b) *in the case of an application relating to land in Wales, the period of two years beginning with that cessation.”*

5. The application is made jointly by Mr Steven Hall, Mr Jon Jonik and Dr William Scott, as the “Friends of Great Lees Field”.
6. The application land is in the joint ownership of Mr William Peter Stuart-Bruges, who has owned the land since 1987, and his nephew, Mr Arthur Haythornthwaite. Great Lees Field is located off Pound Lane in the parish of Semington and occupies an area of approximately 3.86 hectares, presently being ploughed and cropped. The application land lies between Pound Lane to the south and the Kennet and Avon Canal to the north. The residential development of Pound Close is located to the east of the field and the field to the west is owned by Mr Thomas Masters and his sister Ms Julia Masters (please see location plan at **Appendix B**). Footpath No.1 Semington leads east-west at the northern boundary of Great Lees Field, south of the canal, part of the longer route of the footpath leading generally south-west from the Hilperton Parish boundary, (north-west of the swing bridge over the canal to the west of Great Lees Field), to Semington High Street, adjacent to the Somerset Arms pub. The route of Footpath No.1 Semington through Great Lees Field has not been changed since it was recorded within the Bradford and Melksham Rural District Council Area definitive map and statement of public rights of way, dated 1952.
7. From 1951 to 2016 the land has been subject to grazing agreements made between the landowners and the Masters’ family, save for the year 2000 when there was no agreement in place. It is claimed by the landowner that during 2000, with no such agreement in place, the land had become overgrown and weed killer was applied before the land was reseeded. It is also claimed that the land was ploughed at this time.
8. The evidence suggests that the land was ploughed in April 2016, leading to the cessation of claimed user and triggering the application to register the land as a Town or Village Green. Therefore, the relevant twenty year user period in this case may be calculated retrospectively from that date as April 1996 – April 2016.

9. The land has been subject to three planning applications since 1989. Planning application no.16/05783/OUT, for the erection of 75 dwellings including 30% affordable homes with ancillary public open space and play areas and access from Pound Lane (Outline application relating to access), is now the only valid application on this site, where the decision of Wiltshire Council, as the Planning Authority, to refuse the application, is presently being appealed.
10. The Growth and Infrastructure Act 2013 introduced provisions to make it more difficult to register land as a Town or Village Green, including, at Section 16, the removal of the “right to apply” to register land where specified planning “trigger events” have occurred, e.g. where 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. In the Semington case the Planning Authorities have confirmed that there are no such trigger or terminating events in place over the land and the above-mentioned planning application no.16/05783/OUT is not a valid trigger event where it was first publicised after receipt of the Town/Village Green application. Therefore, the “right to apply” is not extinguished.
11. The land has also been subject to an application to modify the definitive map and statement of public rights of way, by adding footpaths over Great Lees Field and the adjacent field to the west, in the ownership of the Masters’ family. The definitive map modification order (DMMO) application was made on 26 April 2016, shortly before the Town or Village Green application. It was refused by Wiltshire Council as the Surveying Authority, on the grounds that the application failed to make a reasonable allegation regarding the acquisition of public rights of way over the land and further that all claimed paths leading from the Pound Lane gate, were not used “as of right” owing to the locking of the gate and the subsequent damage to it.

### **Main Considerations for the Council**

12. The Council, as Registration Authority, has considered the following evidence in its consideration of the application:
  - (i) Application dated 24 June 2016 and received by Wiltshire Council on the same date, in the form of “Form 44” and statutory declaration, including:
    - 66 completed witness evidence forms;
    - Supplementary information “The Case for a Village Green”;
    - Photographs.

- (ii) Submissions in objection to the application on behalf of the landowner (Mr William Stuart Bruges), dated 18 November 2016, including:
    - Submission of Alan Evans, Counsel at Kings Chambers – 17 November 2016;
    - Statement from Mr William Stuart-Bruges (including annotated decision report, statement and Gateley Plc letter relating to the recently refused DMMO application) – 17 November 2016;
    - E-mail from Mr Arthur Haythornthwaite (joint landowner), confirming his support of the statement submitted by Mr William Stuart-Bruges – 17 November 2016.
  - (iii) Representation of support – Semington Parish Council – 14 October 2016.
  - (iv) Representation of support – Mr S Hall (joint applicant) – 16 November 2016.
  - (v) Representation of support – The Friends of Great Lees Field (the applicants) 22 January 2017 (formal response to objections).
  - (vi) Submissions in objection to the application on behalf of the landowner (in response to the formal comments on the objections from the applicant), dated 10 March 2017 and including:
    - Further statement dated 6 March 2017 from William Peter Stuart-Bruges, with appendix containing grazing agreements;
    - Further comments of Alan Evans, Counsel of Kings Chambers – 9 March 2017.
13. It is noted that the tenants of Great Lees Field, TJ and JMK Masters, have not provided any evidence in this case.
14. Officers have considered the evidence submitted 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 (please see paragraphs 14.1 – 14.78 of the Decision Report attached at **Appendix C**, in which the evidence is considered in detail).

### **The Evidence**

15. The legal test to be applied in this case, i.e. Section 15(3) of the Commons Act 2006, may be broken down into a number of components, each of which must be satisfied in order for the application 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 Registration Authority to further investigate the claim. The standard of proof lies in the balance of probabilities. Officers have carefully considered the evidence submitted, both in support of and in objection to the application, in order to draw the following conclusions:

### **Significant Number of Inhabitants:**

16. There is insufficient evidence of community events taking place, “as of right”, over Great Lees Field. However, given the size of the locality identified as Semington, having a population of 930 in 2011, (Semington Census Information 2011 – Wiltshire Council), the number of witnesses giving evidence, 65 of whom have also observed others using the land, is sufficient to suggest use of the land by a significant number of inhabitants of the locality, rather than just occasional use by individuals as trespassers.
17. The objectors challenge the evidence regarding use of the land by a significant number of inhabitants of the locality, only in their analysis of the points of access and suggest that it cannot be shown that a significant number of inhabitants have used the land “as of right” for lawful sports and pastimes, where the evidence of those witnesses who used the Pound Lane field gate, is removed, (evidence relating to use of the Pound Lane gate is discussed later in this report).

### **Of any Locality or of any Neighbourhood Within a Locality:**

18. The witness evidence supports the locality of Semington Parish, as identified within the application form. There appear to be others coming from outside the village and parish, from the surrounding areas and beyond, but this is acceptable where a significant number of inhabitants do come from the identified locality. All of the witnesses who have supplied witness evidence forms are presently residents of Semington and the area identified qualifies as a “locality”, as an administrative district or area with legally significant boundaries. The applicants and the witnesses identify a number of facilities, infrastructure and activities available to the community. Officers therefore consider that the applicant has successfully discharged the burden of proof with regard to identifying a “locality”.
19. The objectors make no submissions regarding the identified locality.

### **Have Indulged as of right:**

20. Officers consider that use of the field by local inhabitants, has been “as of right”, i.e. without permission, without force, without secrecy, for the reasons set out in the following paragraphs:

### **Without Permission:**

21. The evidence suggests that permission was sought and granted for the activities of car parking, bonfire celebrations and gymkhanas. There are also two reports of permission being sought to access the field from private gardens in Pound Close, for the purposes of access to the rear of the property, or for deliveries.

Once these activities are removed as qualifying use “as of right”, there is no further evidence submitted by witnesses or objectors, of permission being sought or granted in respect of other activities taking place on the land and officers must therefore conclude, on the balance of probabilities, that the majority of use is likely to have continued on the land without permission.

**Without force (locked gate):**

22. There are five points of access into Great Lees Field:

- (i) Gate off Pound Lane;
- (ii) Wiltshire gate/gap in the western field boundary, between Great Lees Field and the field to the west in the ownership of the Masters’ family;
- (iii) Stile at the north-west corner of the field on Footpath No.1 Semington;
- (iv) Stone stile at the north-east corner of the field on Footpath No.1;
- (v) Property owners in Pound Close have rear access gates into the field.

(In evidence, the applicants, and a small number of witnesses, identify an access point in the western field boundary approximately 20 metres north of Pound Lane. However, on site visits in October 2016 and August 2017, officers were unable to identify a gap/access still in existence at this location; however, it may have been available to users previously, perhaps during the relevant user period).

23. The landowner provides a great deal of evidence regarding the locking of the Pound Lane gate which, in evidence provided in the DMMO application, was successful in defeating the claim to add paths which utilised the gate, where this use would be by force as the gate was locked and subsequently damaged. The Town/Village Green case is determined under separate legislation and the evidence is subject to differing legal tests. In the officers’ analysis of the points of access to the field as part of the Town/Village Green claim, it was found that whilst the majority of the witnesses had used the Pound Lane gate, 42 witnesses had also used other/alternative entrances to the field, as listed at paragraph 22 above.

24. Officers conclude that where the locking of the Pound Lane gate forms part of the objector’s case that use has been by force and use is therefore not “as of right”, there is sufficient evidence in this case to suggest that where alternative access points have been open and available, users were not required to use force to enter Great Lees Field.

### **Without Force (prohibitory notices):**

25. Use by force does not just refer to physical force, but also where use is deemed contentious, for example by erecting prohibitory notices in relation to the use in question.
26. In the Semington case, the landowner, in objection, claims that since 1987 signs have been fixed to the Pound Lane gate indicating that Great Lees Field was private and/or that there was no right of way. Photographs are provided purporting to show notices stating "Private No Right of Way" cast to the ground in 2004. Similarly, the landowner claims to have affixed the same notices to the Wiltshire gate in the western field boundary and again submits photographic evidence purporting to show signs at this location stating "Private Land no Right of Way" having been removed and cast to the ground.
27. The landowner relies upon the case of Taylor v Betterment (Mrs G Taylor (on behalf of the Society for the Protection of Markham and Little Francis) v Betterment Properties (Weymouth) Ltd (1) and Dorset County Council (2) [2010] EWCA Civ 250, where it was held that if a landowner displays opposition to the use of the land by erecting a suitably worded sign which is visible to, and is actually seen by the local inhabitants, then their subsequent use of the land will be contentious and on that account forcible. Moreover, if the signs were not seen by many users of the land because they were repeatedly unlawfully removed soon after erection, the landowner would nevertheless have done all that was required to make use contentious.
28. Officers conclude that the principles set out within the Betterment case law regarding prohibitory notices rendering use "by force", cannot be applied in the Semington case where the landowner has provided insufficient evidence to the Registration Authority to show that these signs were erected and subsequently removed. None of the witnesses mention prohibitory notices on the access points to Great Lees Field and the photographic evidence provided by the landowner, purporting to show these signs removed and cast to the ground, is insufficient. There is no information provided within the photographs to show that the notices were indeed erected/removed from access points on Great Lees Field. The signs on the two access point are an area of strong dispute so far as the user evidence and landowner evidence is concerned.
29. Additionally, there is no evidence that prohibitory notices were erected (and subsequently vandalised/removed), on the alternative access points on Footpath No.1, or to the rear of properties in Pound Close.
30. In the Semington case, the evidence regarding the erection of prohibitory notices is not sufficient to render use by force and therefore not "as of right".

### **Without Force:**

31. When considering a Town/Village Green application, the Registration Authority is asked to determine only whether lawful sports and pastimes undertaken on the land, have been carried out without force. In this case, there is no evidence to suggest that the activities have been undertaken with force.
32. There is a conflict in the evidence regarding access to the field, i.e. the locking and damage to the Pound Lane gate and the erection of prohibitory notices erected at the Pound Lane gate and the gap/Wiltshire gate in the western field boundary. However, even if use of these two access points was found to be by force, there is alternative access to the field from Footpath No.1 and from the garden gates of properties in Pound Close and significant witness evidence that alternative access points have been used (42 witnesses refer to access points other than the Pound Lane gate). There is no evidence to suggest that these alternative access points have been obstructed at any time during the relevant period and no evidence to suggest the access to the field has been prevented, perhaps by fencing the footpath out of the field. Officers therefore cannot conclude that use of the field or access to the field has been by force in the village green case.

### **Without Secrecy:**

33. Officers conclude that use of the field has been without secrecy. Nine witnesses claim to have been seen on the land, (perhaps by the tenant farmers), without challenge. None of the witnesses refer to being challenged whilst using the land and the landowner presents no evidence of incidents of users being challenged. Mr Stuart-Bruges contends that he visited Great Lees Field infrequently (at least annually), however, officers consider that on those occasions he would have been aware of the access gates from properties in Pound Close, which did not access onto public rights of way.

### **Have indulged in lawful sports and pastimes:**

34. Is the evidence provided sufficient to demonstrate, on the balance of probabilities, that the land has been used for the exercise of lawful sports and pastimes, or has the main user been the use of linear routes for the purposes of walking and dog walking, including routes to access the canal, which could give rise to a claim for rights of way, rather than Town/Village Green rights?
35. The land has been the subject of a DMMO application, supported by 18 completed witness evidence forms. 13 of these witnesses have also completed evidence forms for the Town/Village Green application, (although please note that DMMO and Town/Village Green applications are determined under separate



legislation and the evidence is subject to differing legal tests). In the Town/Village Green application the land is used mainly for the purposes of dog walking and walking, 37 users walk with dogs and 29 users walk on the land, whilst 65 witnesses have seen dog walkers and 64 witnesses have seen people walking on the land. Some of the witnesses suggest the use of linear routes, e.g. *“To dog walk either around the edge or on the path diagonally across”* and *“To walk to the canal”*, which is not user consistent with claiming Town/Village Green rights.

36. Additionally:

- Aerial photographs suggest a number of “tracks” over the field which could be associated with the use of linear routes.
- The users do not successfully identify community events taking place over the land.
- The only seasonal activity appears to be blackberry picking, 7 witnesses giving their own evidence of this use and 57 having seen this activity taking place.
- After use for the purposes of walking and dog walking are removed, blackberry picking is the next most popular activity, followed by playing / children playing (5 witnesses give direct evidence, 59 seen); Kite flying (5 give direct evidence, 35 seen); Exercise (4 give direct evidence); Cricket (3 direct evidence, 14 seen) and Football (2 direct evidence, 19 seen).
- There are 49 instances of use other than dog walking/walking upon the land (31 users), not including the use seen. The number of witnesses giving direct evidence of undertaking these activities themselves is low when compared to the number of witnesses who claim to have seen these activities taking place. Direct evidence of use would provide greater evidential weight.

37. Whilst the applicants have provided photographs, which it is claimed record inhabitants undertaking lawful sports and pastimes on the land, officers consider that the photographs of village boys playing cricket on the field in the 1950s and village girls and boys playing cricket on the field (probably in the late 1980s), do not provide sufficient detail to identify the land as Great Lees Field. The sequence of photographs which it is claimed show children from a local nursery school being taught in the field in 2016, appear to show the children using Footpath No.1 Semington, (which leads from Semington High Street, through Great Lees Field to the swing bridge over the canal and then to the Hilperton Parish boundary), including pictures of the children (i) on the towpath; (ii) on Footpath No.1 to the east of Great Lees Field, (given the post and rail fencing in the background of the photograph) and (iii) on Footpath No.1 at the swing bridge in the field to the west of Great Lees Field, (given the three concrete structures visible in the background). The photographs included with the application, provide no additional evidence of lawful sports and pastimes being undertaken on Great Lees Field.

38. It is considered that hearing direct evidence from witnesses, and the cross-examination of witnesses on this point at a public inquiry, would assist the Registration Authority in its determination of the application, where all elements required to establish a new green must be satisfied, on the balance of probabilities.

**On the Land:**

39. There is no evidence to suggest that any part of the land should be excluded from the application, for example, where it was not possible for local inhabitants to use part of the land. There is no evidence to suggest that activities have taken place on part of the land which would cause substantial interference with the use of that part of land for lawful sports and pastimes, for example tipping, which would prevent registration of part of the land. The grazing agreements over the land and the subsequent agricultural activities associated with it do not appear to have caused substantial interference with the use of the land and are transient in their nature.
40. As examined in the previous section, there remains the question of whether the whole of the application land has been used for lawful sports and pastimes, where the main use of the field has been walking and dog walking, perhaps use of linear routes rather than the whole of the application land.
41. Officers must conclude that where the application is successful, the whole of the application land should be registered, where there is no evidence that any part of the land has been unavailable for the exercise of lawful sports and pastimes.

**For a Period of at least twenty years:**

42. The relevant user period in this case may be calculated retrospectively from April 2016 when use ceased as, according to the evidence, Great Lees Field was ploughed, the Pound Lane gate locked, prohibitory notices erected and the land subsequently planted. The user period in question is therefore April 1996 – April 2016, with the application being made no more than one year from the cessation of use, (in this case the application was received by the Registration Authority on 24 June 2016 and put in order on 9 September 2016, following the Registration Authority’s letter dated 25 August 2016 requesting that the application be put in order, where, under Regulation 5(4) of “The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007” *“it appears to the authority that any action by the applicant might put the application in order, the authority must not reject the application under this paragraph without first giving the applicant a reasonable opportunity of taking that action.”*). 65 witnesses have used the land within the identified user

period and 34 witnesses have used the land for the full 20 year user period. The earliest user dates from 1938, suggesting long use.

43. Four witnesses refer to the Pound Lane gate being locked in the past for short periods, e.g. when cattle were on the field, spraying of the grass was taking place and/or travellers were present in the area. Where agricultural activities are taking place on the land, in the case of *Oxfordshire County Council v Oxford City Council* [2006] UKHL 25, Lord Hoffman commented that *"I do not agree that the low-level agricultural activities must be regarded as having been inconsistent with use for sports and pastimes...if in practice they were not."* Officers consider that the locking of the Pound Lane gate - which in any event is only one of the entrances to the field - for short periods does not provide a significant interruption to use: (i) where there is no further evidence provided of when these occasional interruptions took place (i.e. did they take place within the relevant user period?); (ii) the agricultural activities taking place were transient in nature; (iii) the agricultural activities appear to have had little impact upon use and the two activities appear to have co-existed; (iv) where there are alternative access points into the field, i.e. from Footpath No.1; the gap/Wiltshire gate in the western field boundary and gates in the gardens of properties in Pound Close.
44. There is significant evidence of long use of Great Lees Field, before and during the relevant user period of April 1996 – April 2016. The agricultural activities taking place over the land in relation to the grazing agreements in place over the land from 1951 – 2015/16 (excluding 2000), have not presented a substantial interruption to use of the land for lawful sports and pastimes. However, officers consider that there is a conflict of evidence in the twenty year user period, where the landowner claims that the land was ploughed in 2000, thereby creating a significant interruption to the twenty year user period, whilst witnesses make no reference to this event and the applicants claim that the ploughing of the land in April 2016 is the first time the land has been ploughed in living memory. It is considered that hearing direct evidence from witnesses on this point at a public inquiry would assist the Inspector in determining whether or not the field was ploughed in 2000. If the field was ploughed in 2000, this would potentially cause a significant interruption to the twenty year user period.

**Use has ceased:**

45. The application is made under Sections 15(1) and (3) of the Commons Act 2006, where use has ceased and the application to register the land as a Town/Village Green is made within one year of the cessation of use. The evidence suggests that use of the land came to an end on 27 April 2016 when the field was ploughed. The application therefore appears to be correctly made within the period of one year of the cessation of use, on 27 April 2016, the application being received by Wiltshire Council as the Commons Registration Authority on 24 June 2016 and being put in order on 9 September 2016.

46. There is a conflict of evidence where the landowner claims that the land was ploughed in 2000, which would present a significant interruption to use of the land for lawful sports and pastimes and render the application invalid under Section 15(3) of the Commons Act 2006, whereby the application would not be made within one year of the cessation of use in 2000 and if use resumed after the ploughing, a period of user of twenty years or more could not be shown in this application, (because the use ends in April 2016). If the field was ploughed in 2000, the application would be considered to be fatally flawed. However, the applicants contend that before April 2016 the land had not been ploughed in living memory. It is therefore considered that hearing direct evidence from witnesses is required on this point at a public inquiry which, once the Inspector had provided a recommendation to the Commons Registration Authority, would assist the Registration Authority in determining the application, where all elements required to establish a new green must be satisfied on the balance of probabilities.

### **Overview and Scrutiny Engagement**

47. Overview and Scrutiny engagement is not required in this case. The Commons Registration Authority 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)”.

### **Safeguarding Considerations**

48. Considerations relating to safeguarding anyone affected by the registration of the land as a Town or Village Green under Sections 15(1) and (3) of the Commons Act 2006, are not considerations permitted within the Act. The determination of the application must be based upon the relevant evidence alone.

### **Public Health Implications**

49. Considerations relating to the public health implications of the registration of the land as a Town or Village Green under Sections 15(1) and (3) of the Commons Act 2006, are not considerations permitted within the Act. The determination of the application must be based upon the relevant evidence alone.

### **Corporate Procurement Implications**

50. Where land is registered as a Town or Village Green, there are a number of opportunities for expenditure to occur and these are considered at paragraphs 54 - 56 of this report.

## **Environmental and Climate Change Impact of the Proposal**

51. Considerations relating to the environmental or climate change impact of the registration of the land as a Town or Village Green under Sections 15(1) and (3) of the Commons Act 2006, are not considerations permitted within the Act. The determination of the application must be based upon the relevant evidence alone.

## **Equalities Impact of the Proposal**

52. Considerations relating to the environmental or climate change impact of the registration of the land as a Town or Village Green under Sections 15(1) and (3) of the Commons Act 2006, are not considerations permitted within the Act. The determination of the application must be based upon the relevant evidence alone.

## **Risk Assessment**

53. Wiltshire Council as the Commons Registration Authority has a duty to process applications made under Section 15(1) of the Commons Act 2006, to register land as a Town or Village Green, in a fair and reasonable manner. If the Registration Authority 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 a risk of a significant costs order being made against the Registration Authority if it was found to have made errors in processing the application or found to have determined the application in an unlawful manner.

## **Financial Implications**

54. Presently there is no mechanism by which a Registration Authority may charge the applicant for processing an application to register land as a Town or Village Green and all costs are borne by the Council.
55. There is currently no clear statutory guidance available to authorities regarding when it is appropriate to hold a non-statutory public inquiry; however, it is the authority's duty to determine applications in a fair and reasonable manner. In cases where there is a significant dispute of the facts, case law supports the holding of a non-statutory public inquiry. The inquiry would be open to all members of the public and all parties, i.e. the applicant; supporters; the landowners and objectors, who would be able to give evidence which would be tested in cross-examination and re-examination, which would be considered to meet the Council's duty as the Commons Registration Authority to determine the application in a fair and reasonable manner.

56. The cost of a three day non-statutory public inquiry is estimated to be in the region of £8,000 - £10,000, (estimated figures to include a three day inquiry; two days preparation and three days report writing). In the Semington case it is considered that appointing an independent Inspector and holding a non-statutory public inquiry in order for the Inspector to hear from the witnesses and consider the evidence producing a recommendation to the Registration Authority, would assist the Council as Registration Authority in its determination of this application.

### **Legal Implications**

57. If the land is successfully registered as a Town or Village Green, the landowner is able to challenge the Registration Authority's decision by appeal to the High Court under Section 14(1)(b) of the Commons Registration Act 1965 ('1965 Act'), which applies where Section (1) of the Commons Act 2006 is not yet in place, which applies to 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.
58. Where the Registration Authority determines not to register the land as a Town or Village Green, there is no right of appeal for the applicant. However, it is open to both parties (landowner or applicant) to judicially review the decision, for which 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 Council as Commons Registration Authority.

### **Options Considered**

59. The options available to the Registration Authority are as follows:
- (i) Based on the available evidence, to register the land as a Town or Village Green where it is considered that the legal tests for the registration of land, as set out under Sections 15(1) and (3) of the Commons Act 2006, have been met in full over the whole of the application land, or
  - (ii) Based on the available evidence, to register the land in part, where it is considered that the legal tests for the registration of land, as set out under Sections 15(1) and (3) of the Commons Act 2006, have been met in full over only part of the application land, or
  - (iii) Based on the available evidence, to refuse the application where it is considered that the legal tests for the registration of land, as set out under Sections 15(1) and (3) of the Commons Act 2006, have not been met in full, or

- (iv) Where, after consideration of the available evidence, it has not been possible for the Registration Authority to determine the application, to hold a non-statutory public inquiry, appointing an independent Inspector to preside over the inquiry and examine the evidence, including the oral evidence of witnesses in order to provide a report and recommendation to assist the Council as Commons Registration Authority in its determination of the application.

### **Reasons for Proposal**

60. In the Semington 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 the application being made not more than one year following the cessation of use, is in dispute. Matters of particular conflict within the evidence include:
- (i) Is there sufficient evidence of the exercise of lawful sports and pastimes over the land, where the majority of use undertaken on the land has been walking and dog walking?
  - (ii) The alleged ploughing of the land in 2000, which would lead to a cessation of use at that time, where 20 years use after 2000 could not be shown and the application would no longer be valid under Section 15(3) of the Commons Act 2006.
61. It is the duty of the Registration Authority to determine the application in a fair and reasonable manner. The Registration Authority has received objections to the registration of the land as a Town or Village Green which cannot be resolved. A non-statutory inquiry is therefore considered necessary in this case because the factual evidence is strongly disputed by both the applicant and the objector. It is open to the Registration Authority 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 Registration Authority to reject the Inspector's report and recommendation it can only lawfully do so if the Registration Authority finds that the Inspector made a significant error of fact or law. If the Inspector's recommendation is rejected the Registration Authority must give legally valid reasons supported by evidence of the error of fact or law otherwise the Registration Authority's decision would be open to legal challenge.

## **Proposal**

62. That Wiltshire Council, as the Commons Registration Authority, appoints an independent Inspector to preside over a non-statutory public inquiry, in order that a recommendation can be made to the Council as the Registration Authority, to assist in its determination of the application to register land off Pound Lane, Semington, known as Great Lees Field, as a Town or Village Green, as soon as is reasonably practicable.

### **Tracy Carter**

Director – Waste and Environment

Report Author:

**Janice Green**

Rights of Way Officer

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### **The following unpublished documents have been relied upon in the preparation of this report:**

- 1) Included with the Application Form:
  - (i) 66 completed witness evidence forms;
  - (ii) Supplementary information “The Case for a Village Green”;
  - (iii) Photographs.
- 2) Submissions in objection to the application on behalf of the landowner (Mr William Stuart-Bruges) dated 18 November 2016, including:
  - Submission of Alan Evans, Counsel at Kings Chambers – 17 November 2016;
  - Statement from Mr William Stuart-Bruges (including annotated decision report, statement and Gateley Plc letter relating to the recently refused DMMO application) – 17 November 2016;
  - E-mail from Mr Arthur Haythornthwaite (joint landowner), confirming his support of the statement submitted by Mr William Stuart-Bruges – 17 November 2016.
- 3) Representation of support – Semington Parish Council – 14 October 2016.
- 4) Representation of support – Mr S Hall (joint applicant) – 16 November 2016.
- 5) Representation of support – The Friends of Great Lees Field (the applicants) 22 January 2017 (formal response to objections).
- 6) Submissions in objection to the application on behalf of the landowner (in response to the formal comments on the objections from the applicant) dated 10 March 2017 and including:



- Further statement dated 6 March 2017 from William Peter Stuart-Bruges, with appendix containing grazing agreements;
- Further comments of Alan Evans, Counsel of Kings Chambers – 9 March 2017.

(Please note that the above documents are available to be viewed at the Offices of Wiltshire Council – Rights of Way and Countryside, Unit 9, Ascot Court, White Horse Business Park, Trowbridge, Wiltshire, BA14 0XA.)

**Appendices:**

**Appendix A** – Application to register land as a Town or Village Green – Great Lees Field, Semington (received by Wiltshire Council as the Registration Authority 24 June 2016)

**Appendix B** – Location Plan

**Appendix C** – Decision Report (6 October 2017)