

Title of Report:	APPLICATION TO REGISTER A TOWN OR VILLAGE GREEN [VILLAGE GREEN 105 TILEHURST]
Report to be considered by:	Executive
Date of Meeting:	17 February 2011
Forward Plan Ref:	EX2201

Purpose of Report: To ratify the report received from the Inspector appointed by the Council in respect of an application to register a Town or Village Green in relation to Village Green 105 Tilehurst [Pincent's Hill].

Recommended Action: To inform the Applicant and the Objectors that the Council will not register the land at Pincent's Hill as a Village Green.

Reason for decision to be taken: As the Inspector cites in his Report annexed to this Decision there is insufficient evidence of use over the relevant periods stated in his Report for the land to be registered as a Village Green

Other options considered: There are none

Key background documentation: The Report dated 29 November 2010

The proposals will also help achieve the following Council Plan Theme:
<input checked="" type="checkbox"/> CPT4 - High Quality Planning

Portfolio Member Details	
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Date Portfolio Member agreed report:	07 February 2011

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Implications

Policy: None

Financial: Costs of the Inquiry and documentation considered in current budget

Personnel: There are no personnel issues raised

Legal/Procurement: In accordance with Commons Act 2006

Property: n/a

Risk Management: n/a

Equalities Impact Assessment: The matter has been aired in a Public Inquiry and no specific equality issues have been raised.

Is this item subject to call-in?	Yes: <input checked="" type="checkbox"/>	No: <input type="checkbox"/>
If not subject to call-in please put a cross in the appropriate box:		
The item is due to be referred to Council for final approval		<input type="checkbox"/>
Delays in implementation could have serious financial implications for the Council		<input type="checkbox"/>
Delays in implementation could compromise the Council's position		<input type="checkbox"/>
Considered or reviewed by Overview and Scrutiny Commission or associated Task Groups within preceding six months		<input type="checkbox"/>
Item is Urgent Key Decision		<input type="checkbox"/>

Executive Summary

1. Introduction

- 1.1 The Report sets out information regarding the Public Inquiry held over eight days at Pincents Manor Hotel in June 2010. The Report refers to the Inspector's own Report of 91 pages setting out the information heard and considered at the Public Inquiry and also taking into account the 84 witness statements produced by the Applicant in respect of the initial Application to Register the land as a Town or Village Green. The Inspector was appointed by the Council as an Independent Inspector to consider the evidence at a Public Inquiry and this has been done as evidenced by the 91 pages produced by the Inspector. The Report is clear and the recommendation is given on page 91. The Executive Report therefore has not expanded upon that Report but has set out various points to set the scene for the implementation of the Recommendation given by the Inspector.

2. Proposals

- 2.1 The Applicant proposed that there was sufficient evidence for the Council as the Commons Registration Authority to register a Town or Village Green. The Information in the Inspector's Report shows that in fact there is no sufficient evidence and the Applicant's Witnesses have not come to proof (i.e. the witnesses have not been able to whilst on oath give the same evidence as that given in their witness statements).

3. Conclusion

The Inspector's conclusion and recommendation is:

"My conclusion and recommendation to the Council as Registration Authority is that **no part** of the Application site at Pincents Hill (off Pincents Lane), Tilehurst should be added to the register of Town and Village Greens, because on the evidence it does not meet the statutory tests required for such registration, under any of the subsections of **Section 15 of the Commons Act 2006**"

Executive Report

4. Background

- 4.1 West Berkshire District Council (WBDC) is the Commons Registration Authority (CRA) for West Berkshire and is subject to the receiving and reviewing of applications for Town or Village Green status under the Commons Act 2006 (The Act')
- 4.2 WBDC received an application on 7 April 2009 from a Mrs Joan Lawrie on behalf of 'The Save Calcot Action Group' under Section 15(2) of the Act to add certain areas of land at Pincents Hill Tilehurst to the Register of Town or Village Greens held by WBDC. The CRA designated this application VG105 Tilehurst.
- 4.3 Any person may apply to the CRA to register land as a Town or Village Green where (1) a significant number of the inhabitants of any locality or neighbourhood within a locality have indulged 'as of right' in lawful sports and pastimes on the land for a period of at least twenty years and (2) they continue to do so at the time of the Application
- 4.4 The CRA received the relevant application and proceeded with the Consultation of various interested parties and relevant land owners in respect of the land. An objection was received from Blue Living the owners of a significant area of land at Pincents Hill and also owners of smaller areas of land who had or hold interests with Blue Living for the development of the land. Various exchanges of correspondences between the main parties and the Commons Registration Officer determined that a non statutory public inquiry should be held and a Decision was drafted and signed off by the Head of Legal Services to this effect. A Public Inquiry was arranged for eight days in June 2010 at Pincents Manor Hotel, which is situated near the site of the Application Area. The Inquiry sat for seven days out of the eight, and one day was used by the Objectors and the Applicant to write their closing statements.
- 4.5 At the Inquiry Mrs Joan Lawrie presented the case for the Applicants and Blue Living appointed Mr Stephen Morgan to act on behalf of the Company. The Council appointed Mr Alun Alesbury an eminent Barrister who has in depth knowledge of applications into Village Green Status.
- 4.6 Over the seven day period, Mr Alesbury heard witnesses for both the Applicant and for Blue Living. Witnesses gave evidence on oath. Mr Alesbury also had all the evidence forms supplied by the Applicant and considered those at the time of his writing his Report.
- 4.7 The Inspector after closing the Inquiry then proceeded to consider **all** the evidence supplied, although he must take more credence on those who gave evidence under oath than those who provided evidence forms. That Report has now been supplied to the CRA and Mr Alesbury has made his recommendation based on the Inquiry and evidence and it is now that Report and recommendation that requires an Individual Members Decision.

2. Short Synopsis of Report by Inspector

- 2.1 The Inspector's Report contains 91 pages plus a plan of the proposed area included in the Applicant's claim for Village Green status. Even though the CRA indicated that the Applicant should re-consider her original plan and it did not appear to be correct, some of the land was removed whilst the majority remained. During the Inquiry several areas were removed from the Application for Village Green status at the request of the Applicant and with the agreement of all parties at the Inquiry. These areas of land were not capable of being used over a period of twenty years as for example the northern arm of the application site is already highway land and others were in private ownership and duly fenced.
- 2.2 At the Inquiry the Applicant also requested that the Inquiry consider Section 15(4) of the Act even though the Application was received by the CRA under Section 15(2) of the Act. Section 15(4) of the Act applies to circumstances where there has been sufficient continuous period of relevant use for at least twenty years but which came to an end before 6 April 2007 (the date when Section 15 come into effect). Under Section 15(2) the CRA had looked at the period from 7 July 1989 to 7 July 2009.
- 2.3 The Inspector has through his Report considered both Section 15(2) and Section 15(4) of the Act. The CRA does not have to take any view at all in respect of Section 15(4) as this was not part of the original Application although we could have included this if the matter had been brought to our attention during the pre inquiry period. The CRA however has taken the view that this was recorded and all parties were aware that the Inspector would consider this section as well as Section 15(2) and no parties will be prejudiced by this sub section being considered at this stage. Indeed, if the CRA now considers the matter then it will not be necessary for the Applicant to resubmit an application for Registration of the land as a Town or Village Green, because the recommendation will be similar.

3. Inspectors' Report

- 3.1 The Inspector after considering all the evidence before him and in considering the two sub sections of Section 15 i.e. Sub Section (2) and (4) has found that the Applicant has not proven sufficiently the case as the Applicant's witnesses did not come to proof i.e. they could not whilst on oath give the same evidence as that given in their witness statements. Many of the witnesses were not aware of the areas in which they walked, undertook picnics and the like. However, the evidence given by the Objector's witnesses and the weight of evidence that had been found in respect of the time period for the submission of the Section 15(4) dates were quite considerable.

- 3.2 The Inspector conclusion and recommendation is:

"My conclusion and recommendation to the Council as Registration Authority is that **no part** of the Application site at Pincents Hill (off Pincents Lane), Tilehurst should be added to the register of Town and Village Greens, because on the evidence it does not meet the statutory tests required for such registration, under any of the subsections of **Section 15 of the Commons Act 2006**"

4. Recommendation

The CRA therefore recommends that the Council should not register the land known as Pincents Hill, Tilehurst [Village Green 105 Tilehurst] in view of the lack of sufficient evidence from the Applicant's witnesses and having considered both Section 15(2) and (4) of the Act feels that neither sub sections (2) or (4) have been sufficiently proven

Appendices

Appendix A – Report of the Inspector, Mr Alun Alesbury dated 29 November 2010

Consultees

Local Stakeholders: n/a

Officers Consulted: David Holling, Head of Legal and Electoral Services, Annette Thomas, Principal Solicitor, Property Team, Corporate Board

Trade Union: n/a