

## Bath & North East Somerset Council

MEETING:	Regulatory (Access) Committee
MEETING DATE:	30 <sup>th</sup> July 2015
TITLE:	Robin Candy's Fields TVG Registration Application
WARD:	High Littleton

### AN OPEN PUBLIC ITEM

#### List of attachments to this report:

Appendix 1 – Plan of land to which the Application relates

Appendix 2 – Application

Appendix 3 – Objection to the Application

Appendix 4 – Applicants' response to the Objection

Appendix 5 – Inspector's Report

Appendix 6 – Applicants' comments on the Inspector's Report

Appendix 7 – Objector's comments on the Inspector's Report

### 1. THE ISSUE

- 1.1 An Application has been received by Bath and North East Somerset Council in its capacity as Commons Registration Authority ("the Authority") to register land known as Robin Candy's Fields in High Littleton as a Town or Village Green ("TVG"). The Application was advertised and an objection was received against registration.
- 1.2 An independent expert was instructed by the Authority to advise the Authority as to whether or not Robin Candy's Fields should be registered as TVG.

### 2. RECOMMENDATION

- 2.1 The Regulatory (Access) Committee ("the Committee") is recommended to refuse the application and not register the land cross-hatched in blue on the plan attached at **Appendix 1** ("the Plan") as a TVG.

### 3. FINANCIAL IMPLICATIONS

- 3.1 The potential financial implications of the land being successfully registered are not a legally relevant consideration in the determination of the Application. The costs associated with making any TVG and any further public inquiry or hearing would be met from existing budgets.

## 4. THE REPORT

- 4.1 **Application.** On 19 July 2013, Mark F. Collins, Jane E. Leech, Rachel Tidcombe and Leonard W. Sheen (“the Applicants”) applied under section 15 of the Commons Act 2006 (“the 2006 Act”) to register land known as ‘Robin Candy’s Fields’ as a TVG.
- 4.2 The Application, excluding the supporting evidence which is available upon request, is contained at **Appendix 2**. The Application was made on the basis that the land qualifies for registration by virtue of section 15(2) of the 2006 Act, namely that;
- “...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 they continue to do so at the time of the application”.*
- 4.3 The land to which the Application was made is cross-hatched blue on the plan contained at **Appendix 1**. The land is owned by J. E. Sheppard & Sons (Sawmills) and at the time the Application was made was tenanted by Mr Robin Candy, who is now deceased. The land to which the Application relates is hereafter referred to as the “Application Land”. The Authority has a statutory duty under the 2006 Act to consider and dispose of the Application.
- 4.4 **Advertising.** On 25 July 2013, the Application was advertised by placing a notice in the Midsomer Norton, Radstock & District Journal and on the Authority’s website and serving notice on all interested parties including the landowner and tenant, the ward members and Applicant. Additionally, notices were placed at eight conspicuous locations around the Application Land and maintained on site until 11 September 2013. The Authority received an objection, made on behalf of J. E. Sheppard & Sons (Sawmills), against the Application Land being registered as TVG (**Appendix 3**).
- 4.5 On 9 September 2013, the Objection was forwarded to the Applicants to give them an opportunity to respond to the points raised. On 30 September 2013, the Applicants responded to the Objection and challenged each of the points raised (see **Appendix 4**). On 9 October 2013, Officers of the Authority made an assessment of the Application, the Objection and the Applicants’ response to the Objection. It was concluded that there remained significant points of dispute between the Applicants and Objector and it was therefore decided that an independent expert should be instructed to provide advice to the Authority as to how to proceed with the Application.
- 4.6 **Public Inquiry.** The Authority subsequently instructed Mr Martin Edwards (“the Inspector”), initially of 39 Essex Street and subsequently of Cornerstone Barristers, who is a barrister and an independent expert in TVGs. The Inspector considered the Application, the Objection and the Applicants’ response to the Objections and deemed that a non-statutory public inquiry would be necessary to assess the evidence. The inquiry was held over the course of six days in June and October 2014 and the Inspector’s report is contained at **Appendix 5**. The Applicants and Objector were given the opportunity to comment on the Inspector’s report and their responses can be found at **Appendix 6** and **Appendix 7**. It now falls to the Committee to determine the Application on behalf of the Authority.

## 5. STATUTORY TEST

- 5.1 The statutory test under consideration is set out in section 15(2) of the 2006 Act, which states that; “...*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 they continue to do so at the time of the application*”.
- 5.2 The Authority can only consider whether the legislative test set out in the 2006 Act has been met. The Authority cannot take into account whether registration is deemed desirable nor what may or may not happen to the land in the future.
- 5.3 **Significant number of inhabitants.** The Inspector assesses the issue of whether the Application Land was used by a ‘*significant number of inhabitants*’ in paragraphs 470 to 474 of his report. Although the Applicants have stated that the evidence demonstrates that at least 25% of residents have used the Application Land, an assessment of the frequency and quality of use shows that use has not been by a significant number of inhabitants. Paragraph 474 of the Inspector’s Report states that ‘*evidence showed that on a the balance of probability the level of use was such that it could not be said that throughout the 20 year period a significant number of local inhabitants used the Land to such an extent to support the Application*’.
- 5.4 **The inhabitants of any locality, or of any neighbourhood within a locality.** The Inspector assesses the issue of whether the users are the inhabitants of a ‘*neighbourhood within a locality*’ in paragraphs 462 to 469 of his report. Although, the neighbourhood of Greyfield has grown significantly throughout the relevant period, the Inspector notes at paragraph 468 of his report that the ‘*essential characteristics of the neighbourhood did not change to any significant extent*.’ Greyfield is deemed to be a neighbourhood within the meaning of the 2006 Act.
- 5.5 **Lawful sports and pastimes on the land.** The Inspector assesses the issue of whether the Application Land was used for ‘*lawful sports and pastimes*’ in paragraphs 475 to 478 of his report. Some of the activities, such as maintaining hedges, do not constitute qualifying use and other activities, such as fruit picking, are only carried out on a seasonal basis. Paragraph 478 of the Inspector’s Report states that ‘*Thus it cannot be said that on the balance of probability the Applicants have demonstrated that there was a sufficient level of use for lawful sports and pastimes by local inhabitants*.’
- 5.6 **A period of at least 20 years.** The Inspector assesses the issue of whether the Application Land was used for ‘*a period of at least 20 years*’ in paragraphs 479 to 480 of his report. The evidence demonstrates that use temporarily ceased in 2001 during the Foot and Mouth outbreak. There was not a statutory closure relating to the Application Land, as would be required for a Section 15(6) Exemption, and use did not therefore extend across the whole relevant period between 19 July 1993 and 19 July 2013. Paragraph 478 of the Inspector’s Report states that ‘*...the Applicants cannot demonstrate that they used the Land for TVG purposes throughout the entire 20 year period and therefore as a matter of law the Application must be rejected on this basis alone*.’

5.7 **Conclusion.** The Application fails to fulfil elements of the statutory test for registration of the Application Land as set out under section 15(2) of the 2006 Act and paragraph 483 of the Inspector's report states that consequently there are '*insurmountable obstacles to registration.*' The Committee is recommended to refuse the Application and not register the Application Land as TVG.

## 6 RISK MANAGEMENT

6.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Authority's decision making risk management guidance.

## 7. EQUALITIES

7.1 A proportionate equalities impact assessment has not been carried out as the Application must be considered solely in relation to the test set out in the 2006 Act.

## 8. CONSULTATION

8.1 *Ward Councillor; Cabinet Member; Other B&NES Services; Service Users; Local Residents; Community Interest Groups; Monitoring Officer*

8.2 Extensive consultation was carried out as detailed in paragraph 4.4 above.

## 9. ISSUES TO CONSIDER IN REACHING THE DECISION

9.1 Legal Considerations; as detailed in paragraphs 5.1 and 5.2 above.

## 10. ADVICE SOUGHT

10.1 The Authority's Monitoring Officer (Head of Legal and Democratic Services, Council Solicitor and Monitoring Officer) and Section 151 Officer (Divisional Director - Finance) have had the opportunity to input to this report and have cleared it for publication.

<b>Contact person</b>	Graeme Stark, Senior Officer: Public Rights of Way
<b>Background papers</b>	Robin Candy's Fields TVG case file Evidence submitted by Applicants and Objector
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