

COMMONS ACT 2006

APPLICATION TO REGISTER LAND KNOWN AS ROBIN CANDY'S FIELDS AS A TOWN OR VILLAGE GREEN OBJECTION BY J E SHEPPARD & SONS (SAWMILLS)

1. Introduction

- 1.1. The fields over which the Village Green Application has been made ('the Land') are owned by J E Sheppard & Sons (Sawmills)('the Owner').
- 1.2. The Land was let under an Agricultural Tenancy in 1955 to Robin Candy.
- 1.3. Since about 2001, the Land has been licensed to N F Clothier and Sons for the grazing of sheep.

2. The Application and Statutory Provisions

- 2.1. The Application was dated 17 July 2013 and registered by Bath and North East Somerset Council ('the Council') on 19 July 2013. The user evidence forms accompanying the Application were mostly, if not all, dated in July 2013.
- 2.2. The Application appears to have been made pursuant to Section 15 (2) of the Commons Act 2006. That means the Council must be satisfied that:
 - (i) A significant number of the inhabitants of the locality or neighbourhood
 - (ii) have indulged as of right
 - (iii) in lawful sports and pastimes on the Land
 - (iv) for at least 20 years and
 - (v) continued to do so at 17 July 2013.

3. The Objection

- 3.1. The Owner objects is made on the basis that the Application fails to satisfy the test under Section 15(2) of the Commons Act 2006 in a number of regards. These are set out below.

A significant number of inhabitants

3.2. The Owners do not at present disagree that the residents of Greyfield Road, Greyfield Common, Westwood Ave, Up the Gug, the various houses now on the former Colliery Site and Gores Park constitute a neighbourhood. However, there are at least 137 properties on these three roads. Evidence forms were received from only 38 households which is approximately 28% of the total households in this neighbourhood. That is not a significant number such as to satisfy the Section 15 test. Further the Parish Council has resolved not to support the application. That must cast doubt on the level of use claimed.

As of Right

3.3. The Owners do not believe that any use of the fields has been as of right. The Land was used by Mr Candy to keep first, his dairy herd and latterly his calf rearing and beef cattle from 1955 until 2001. The cattle were generally in the fields from early April to mid November. During most of these years, a hay crop was also grown during the months when the cattle were not in the field. After 2001 and until the present time, sheep owned by N F Clothier and Sons were kept in the fields.

3.4. Mr and Mrs Candy and others are clear that the fields were not used to the extent claimed. Indeed if Mr Candy did see anyone on the Land he would turn them away or occasionally give qualified permission.

3.5. This position is made clear by a number of user witnesses who did not use the fields when there was livestock present. Further there are user witnesses who expressly state that they were given permission to use the field. Some witnesses acknowledge that qualified permission was given they could not take dogs into the field when livestock was present or that they must keep to the field edge while the hay crop was grown.

3.6. The Owners accept that a handful, perhaps ten, of the properties adjoining the fields have gates into it. These gates are in varying degrees of repair and some very recently installed. The Owner understands that these gates were installed and used to allow the respective owners to access the hedge/fence, wall or other boundary structure on their

boundary in order to maintain it. Indeed that is Mr Candy's understanding and recollection.

- 3.7. Therefore user was not as of right. The users of the field were doing so with express permission. Any other use cannot have been as of right if use did not take place whilst livestock was present. That is because users must have acknowledged they were not asserting a right by ceasing use at these times.

Lawful Sports and pastimes

- 3.8. The Owners accept that the activities claimed are lawful sports and pastimes for the purposes of Section 15.

For 20 years

- 3.9. There is simply no sufficient evidence that the claimed uses took place over 20 years. Only small number of the households which completed evidence forms had used the Land for 20 years or more by 17 July 2013. The majority of users' use spans, in most cases, significantly less than 10 years.
- 3.10. Of those whose use was the 20 years or more, they mostly used the Land very infrequently typically ranging from once per month or a few times a year. That use is simply insufficient to satisfy the test.
- 3.11. Further the use was not for a continuous period of 20 years. When livestock were present, use ceased and so the 20 year period would be reset.
- 3.12. Mr Candy kept livestock on the Land for significant periods of the year until late October 2001. That is some 12 years ago. The user evidence suggests that the use of the fields by the user witnesses increased when Mr Candy sold off his cattle. The evidence is not good enough to show that there was significant numbers of people in the neighbourhood using the fields for 20 years or more.

- 3.13. The Owners accept that the user witness forms show use continuing until the date of the Application but they do not accept that use was taking place at the levels claimed.
- 3.14. The Owners also have a number of letters and statements from local people which support their objection and dispute the evidence submitted with the application. These are enclosed with this objection.
- 3.15. The Applicant has also written to the Owners saying that ‘the application follows concern by residents ... about the possibility of development of this land’. The proposed development is on a small part of the claimed village green. The question therefore arises as to why, if the use was as claimed, the application was not made sooner.

4. **Conclusion**

- 4.1. The evidence submitted with the Application is insufficient to register a Town or Village Green. For most of the year until October 2001, cattle were kept in the fields. During this time either the local people did not use the fields or their use was with permission. Since 2001 the Land has been used for grazing sheep and the farmer’s agent has not seen people using the fields, other than occasionally, despite living next to the fields.
- 4.2. The number of people using the fields for the claimed uses has not been sufficient since July 1993 to satisfy the test under Section 15 of the Commons Act 2006. Whilst the user evidence, if taken on face value, shows use to have increased during the 20 year period, claimed increase in use from, say, 2003 – 2013 cannot make up for the lack of use from 1993 – 2001 (when the cattle were sold).
- 4.3. The Applicants has failed to satisfy the statutory test. Therefore, the Owners respectfully request that the Council reject the Application.