

Application for the registration of land as a new town or village green

Of land described as Robin Candy's Fields

Under s15 of the Commons Act 2006

Objection by J E Sheppard & Sons (Sawmills)

**OBJECTOR'S COMMENTS
ON INSPECTOR'S REPORT**

1. These comments are provided on behalf of the objecting landowner in accordance with the email from Graeme Stark dated 20 April 2015.
2. The landowner supports the recommendation of the Inspector in his report dated 8 April 2015 ("IR"), together with the conclusion that the application faces "insurmountable obstacles to registration".
3. Whilst in IR482 the position is summarised as providing two reasons to reject the application, it is apparent from the body of the report that the first reason in fact contains two distinct points. There are therefore, on the Inspector's findings, three freestanding reasons why the application must be refused. The Inspector is clear that there are three separate bases for rejecting the application (IR474, 478, 480).
4. These three reasons reflect the three points noted at IR460 (1), (3) and (4). They were:
 - (a) 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 (IR474);

- (b) the Applicants have not demonstrated that there was a sufficient level of use for lawful sports and pastimes by local inhabitants (IR478);
- (c) any use of the land ceased for a lengthy period sufficient to prevent registration, so the Applicants cannot demonstrate use throughout the entire 20 year period (IR479-480).
5. In light of his conclusions, the Inspector did not feel it necessary to reach a conclusion on the point in IR 460(2), namely whether such use as was made of the land was as of right (IR481). The landowner took a number of points relating to as of right use, as summarised in paragraph 233 of its closing submissions dated 23 October 2014:¹
- a. contentious use due to challenges during Mr Candy's period of farming with cattle;
 - b. forcible use where users climbed over fences, hurdles or the like to gain access to the land;
 - c. the stealthy use made by people who accessed the land from gates in their boundaries;
 - d. the (limited) permissive use of the land allowed by Mr Candy.
6. The evidential and legal basis for these objections is set out in the landowner's closing submissions.² In his report, the Inspector clearly found some facts to be as the landowner contended (IR474). The Inspector found in particular that Mr Candy did challenge recreational use of the land (IR473). Otherwise, the landowner's submissions were not addressed by the Inspector.
7. The landowner maintains that these points, and in particular the contentious use due to challenges during Mr Candy's period of farming with cattle, are correct and would be

¹ See also the landowner's legal submissions dated 3 June 2014 at paras 4-9 and the landowner's opening statement dated 17 June 2014 at paras 4-6.

² See eg the landowner's closing submissions dated 23 October 2014 at paras 67-68, 106, 114 and 153.

enough by themselves to provide a further freestanding reason to reject the application.

8. In addition, the Inspector did not reach a conclusion on the landowner's submission that the interruptions to continuous use when the fields were subject to strip grazing and hay growing were enough on their own to be fatal to the application.³ Whilst the Inspector plainly accepted that this strip grazing and hay cropping did occur, and did interfere with the use of the land (IR474), the landowner's particular submission on this point was not addressed. The landowner maintains its position that this would, on its own, be yet another reason that the application must fail.⁴
9. On neighbourhood, whilst the Inspector took the view that "detailed reasoning was provided" by the landowner for its submission that the claimed neighbourhood was not a qualifying neighbourhood for the purposes of s15 of the 2006 Act (IR464), he ultimately concluded that the neighbourhood requirement was satisfied (IR469).
10. The Inspector did, however, conclude that the landowner had "raised a number of significant points" (IR467), in relation to one of which the Inspector acknowledged "the force in the argument" (IR468). The landowner maintains that its submissions on neighbourhood were correct,⁵ although, on the basis of the Inspector's recommendation, that makes no difference to the need to reject the application.
11. If the Council is minded to do anything other than reject the application, it will be necessary for it to address and decide the issues in the landowner's evidence and submissions which the Inspector did not feel it necessary to address. That will require separate and comprehensive legal advice, in addition to what is said in the Inspector's report. The Council could not lawfully disagree with the Inspector's recommendation without grappling with the issues the Inspector left open.

³ Paragraph 233(b) of the landowner's closing submissions dated 23 October 2014.

⁴ See para 22 of the landowner's opening statement dated 17 June 2014, and the landowner's closing submissions dated 23 October 2014 at paras 39-41, 45, 78-79, 98, 233(b).

⁵ See the landowner's legal submissions at paras 19-29, the landowner's opening statement at paras 24-26 and the landowner's closing submissions at paras 199-232.

12. The Inspector found three separate and freestanding reasons why the application had to fail. There are others the Inspector did not find it necessary to consider. It is plain from the Inspector's report, let alone the landowner's evidence and submissions, that the Council cannot lawfully register this land as a village green. The application must be rejected. The Council is respectfully asked to so determine.

RICHARD HONEY

29 May 2015