

Site photographs

Figure 1	Main northern part of the Land
Figure 2	Main northern part of the Land
Figure 3	Garages near to south-eastern corner
Figure 4	South-west corner of southern strip of the Land
Figure 5	South-east corner of southern strip of the Land

BACKGROUND

1. On 10 September 2015 Surrey County Council received an application for a new village green for the Land to the north of Woodside Road in Chiddingfold (the Land). The application was made on the basis that *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*. The application was accompanied by 54 witness statements and letters in support of the application.
2. The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 sets out the process to be followed by any applicant seeking to register a new town or village green and the process to be followed by the Commons Registration Authority. Following changes to the law, under the Growth and Infrastructure Act 2013, the Registration Authority has to establish whether an application is valid under section 15C of the Commons Act 2006 before the application can be considered.
3. A public notice was placed in the local press on 17 June 2016 with an objection period running from 17 June 2016 until 29 July 2016. The application was placed on public deposit at Waverley Borough Council offices and Haslemere Library.
4. An objection to the application was received from the McLaren Clark Group on behalf of the owners of the application Land (the Objectors). It was not clear from the evidence provided with the application whether the Land met the criteria for registration. Legal opinion was sought and a view was taken that an independent investigation be conducted in the form of a non-statutory public inquiry. This was to enable the County Council, as Commons Registration Authority, to discharge its statutory duty.
5. A non-statutory public inquiry was held on 7 to 10 November 2017. The Inspector submitted his report to the Commons Registration Officer on 7 March 2018. (Annexe C).
6. The Commons Registration Officer is therefore now placing this matter before members for consideration.

CONSULTATIONS AND PUBLICITY

Borough/District Council

Waverley Borough Council

No views received

Consultees (Statutory and Non Statutory)

The Open Spaces Society:	No views received
Local Residents – adjoining properties:	No views received
Chiddingfold Parish Council:	Email in support of application
Rights of Way	No objection
Estates Planning & Management	No views received
County Highways Authority – Highways Information Team	No views received

Summary of publicity undertaken

- Documents placed on public deposit at local council offices and local library.
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FINANCIAL IMPLICATIONS

- The cost of advertising has already been incurred.
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ENVIRONMENTAL IMPLICATIONS

- If the Land is registered as a village green it will be subject to the same statutory protection as other village greens and local people will have a guaranteed legal right to indulge in sports and pastimes over it on a permanent basis. Registration is irrevocable and so the Land must be kept free from development or other encroachments.
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HUMAN RIGHTS IMPLICATIONS

- Public Authorities are required to act, as far as possible, compatibly with the European Convention on Human Rights, now enforceable in English Courts by way of the Human Rights Act 1998. The officer's view is that this proposal will have no adverse impact on public amenity and has no human rights implications.
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ANALYSIS AND COMMENTARY

- Surrey County Council is the Commons Registration Authority under the Commons Registration Act 1965 and the Commons Act 2006 which administers the Registers of Common Land and Town or Village Greens. Before the Commons Registration Authority is an application (№ 1875) made by Mrs Cowley and Mr de Watteville, under the Commons Act 2006, to have Land at The Meadow, Woodside Road, Chiddingfold, registered as a town or village green (TVG). The Land is identified on the plan appended to the application (Annexe A).
- The McLaren Clark Group, on behalf of the freehold owners, oppose the application.

13. To succeed, the Applicant has to prove on the balance of probabilities (*i.e.*, more than a 50% probability) that a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes (LSP) on the Land for a period of at least 20 years.
14. The facts were thoroughly tested with evidence at a public inquiry. At the inquiry the Applicants applied to amend the application to remove a small area from the Land occupied by a group of garages, near to its south-eastern corner. The Objectors raised no objection to the amendment and the Inspector recommended that the Applicants be permitted to amend the application. (Annexe B).

CONCLUSIONS AND RECOMMENDATION

15. The Inspector's report contained the following conclusions: -

- I. *'Locality' or 'any neighbourhood within a locality'*

The Applicants put forward a neighbourhood consisting of the built up area of the actual village of Chiddingfold, within the locality consisting of the Parish of the same name. The Inspector is of the view that the village of Chiddingfold is entirely capable of being reasonably regarded as a 'neighbourhood' in the context of section 15(1) of the 2006 Act.

- II. *'On the land'*

The evidence of use was significantly different in relation to some parts of the application Land. There was a relatively narrow strip of land, running along the southern edge of the site, to the north of the back gardens of the Woodside Road properties, which was of a substantially different character to the rest of the Land.

The southern strip contained considerable areas of regularly mown grass, some areas of garden-type cultivation, an area given over to domestic fowl and quantities of children's play equipment.

The remainder of the Land was much rougher, consisting of rough areas of long grass, interspersed with areas of brambles, bushes and small trees. This area contained a main pathway extending north-eastwards from approximately the middle of the southern strip, to a point approximately central of the north-east boundary of the Land. The northern tip of the site contained a more densely treed area.

Evidence presented at the inquiry suggested that the main, northern part of the Land had been at some stage separated off from the narrow, southern strip by some kind of fencing or other visible boundary treatment. Some other fence or hedge lines were shown as having existed within the area further north.

The Inspector concluded, from evidence presented to the inquiry, that there was a long-term history, extending through the relevant period, of permissive use of the southern strip, at least as a route to pass through, for the benefit of a number of families residing on the north side of Woodside Road. He found that there was a long history of some permissive 'domestic gardening' by individual neighbouring residents, within the southern strip outside the back gardens of Woodside Road properties.

The Inspector is inclined to accept that, on the balance of probabilities, the stock-proof fencing which was clearly on the Land in mid-1993, was more likely than not still there in September 1995, which is the beginning of the relevant 20 year period.

III. 'A significant number of the inhabitants' and 'lawful sports and pastimes'

The evidence presented at the inquiry demonstrated that a mixture of activities, some of which would undoubtedly be 'lawful sports and pastimes', were indulged in by neighbouring residents of Woodside Road and, to a lesser extent, their visitors on significant parts of the southern strip. However, any 'collective' use of parts of the southern strip was physically interspersed with patches of that land being used by individual neighbours for their own garden extensions or gardening purposes, some of which was permitted by licence from the owners.

The Inspector found that the evidence of any use for most of the relevant period by the inhabitants of Chiddingfold, more widely than the immediate Woodside Road neighbours (with back garden gates) and their occasional guests, seemed to be extremely thin and unconvincing.

The evidence taken as a whole has not shown, on the balance of probabilities, that any significant 'lawful sports and pastimes' by a significant number of the inhabitants has taken place on the bulk of the application Land for the full 20 year period and certainly not use at a level which would suggest general use by the local community 'as of right', as opposed to sporadic, occasional trespass.

Although it would be open to the Registration Authority to register a lesser part of the Land, where the evidence justifies such a course, no party sought to suggest this at inquiry and the Inspector saw no real basis for doing so in this case. The Inspector concluded that it was arguable that the activities that took place on the southern strip were in reality akin to a multiple trespass by a number of individuals residing in neighbouring properties via their individual back gardens rather than an 'as of right' use on behalf of the inhabitants of a wider 'neighbourhood' collectively.

IV. 'As of right' and 'for a period of at least 20 years'

For the use of the Land to be 'as of right' it must have been undertaken without force, without secrecy and without permission.

On the evidence presented at the inquiry, the Inspector was inclined to accept that, on the balance of probabilities, there had been at least some noticeable open (i.e. unconcealed) use of a significant proportion of the southern strip of the Land for purposes including 'lawful sports and pastimes' for the full requisite period of 20 years, by people living in the immediately neighbouring properties on Woodside Road. However, any such use by neighbours (and their visitors from time to time) was mixed up with the permissive right for some neighbours to traverse along the strip to access garages, the permissive rights that some neighbours had individually to cultivate a particular patch and other neighbours carrying out the like without permission.

As far as the remainder of the Land further north is concerned, the evidence in the Inspector's opinion, does not come close to establishing that lawful sports and pastimes had been indulged in 'as of right' by a significant number of the inhabitants of Chiddingfold, over the whole relevant period.

V. Conclusion

The onus is on the Applicants to show, by their submissions and supporting evidence that, on the balance of probabilities, all of the statutory criteria under Section 15 of the Commons Act 2006 have been met in this case.

The evidence presented to the inquiry showed that the Land was predominately used by neighbouring residents of Woodside Road rather than the wider inhabitants of the neighbourhood of Chiddingfold. Further, evidence in respect of the use of the Land, in particular the southern strip clearly showed that use was by way of permission from the owners as opposed to 'as of right'. The Inspector's conclusion, in light of the entirety of the evidence presented, is that the Applicants have failed to establish that the statutory criteria has been met even in respect of the undoubtedly more heavily used 'southern strip' of the application Land.

The Inspector's recommendation to the Registration Authority is that no part of the Land to which this application relates should be added to the statutory Register of Town or Village Greens, because on the evidence it does not meet the criteria required for such registration, for the reasons explained in detail in the Inspector's report dated 7 March 2018.

16. Therefore, Officers recommend that:

- a) the Applicants be permitted to amend the application to remove a small area from the Land occupied by a group of garages, near to its south-eastern corner;
- b) the application to register the Land be rejected.

CONTACT

HELEN GILBERT, COMMONS REGISTRATION OFFICER.

TEL. NO.

020 8541 8935

BACKGROUND PAPERS

All documents quoted in the report.