

**TO:** PLANNING & REGULATORY COMMITTEE      **DATE:** 27 NOVEMBER 2024  
**BY:** COUNTRYSIDE ACCESS OFFICER  
**DISTRICT:** TANDRIDGE      **ELECTORAL DIVISION:** OXTED  
**PURPOSE:** FOR DECISION      **GRID REF:** 541354 151524

**TITLE:**                    **APPLICATION FOR VILLAGE GREEN STATUS, LAND AT THE DELL,  
PAINSHILL, LIMPSFIELD**

## SUMMARY

Application site: Land at The Dell to the rear of properties situated on Pains Hill, Limpsfield, as shown on the plan in **Annex A**

Application proposal: the committee is asked to consider whether to accept the withdrawal of an application to register land as a Town or Village Green.

The 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. Under Section 15 of the 2006 Act the County Council can register new land as a Town or Village Green on application.

Application for Town or Village Green Status was made by Mrs Joanna Chalmers & Mrs M Roulston dated 14/01/2021 relating to land at The Dell, Pains Hill, Limpsfield. The applicants made a request to withdraw the application on 19/07/2023.

**The recommendation is to ACCEPT the withdrawal of the application**

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## APPLICATION DETAILS

***Applicant: Mrs J Chalmers & Mrs M Roulston***

***Land at The Dell, Pains Hill, Limpsfield.***

***Date of Application 14/01/2021***

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## ILLUSTRATIVE MATERIAL

**Annex A:** Application Plan and Location Plan

**Annex B:** Evidence in support of application

**Annex C:** Objections

**Annex D:** Applicant's request to withdraw

**Annex E:** Further comments from landowner

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## 1. BACKGROUND

- 1.1 On 14/01/2021 Surrey County Council received an application for a new Town or Village Green (“TVG”) at The Dell, Limpsfield (**Annex A**).
- 1.2 The Application was made on the basis that “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 20 years”. The use “as of right” was stated in the Application to end on 15 January 2020. This was due to the submission of a Landowner Statement by the landowners, Sutton & East Surrey Water (“SESW”) on 15 January 2020 relating to land including the Application Site. The Landowner Statement brings to an end any use “as of right” over the land. Section 15(3) of the Commons Act 2006 provides for an application to register a town or village green to be made within one year of the use ceasing and the Application was made on the last day of that period.
- 1.3 The Application was accompanied by statements and photographs from people claiming use of the land for recreational use as evidence in support of the claim for registration (**Annex B**).
- 1.4 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 (“CRA”). Following changes to the law, under the Growth and Infrastructure Act 2013, the CRA must establish whether an application is valid under section 15C of the Commons Act 2006 before the application can be considered.
- 1.5 The relevant planning authorities were consulted to establish whether there were any trigger events that would result in the inability of the CRA to proceed with the Application. No trigger events were identified.
- 1.6 A public notice was placed in the local press on 18 May 2023 with an objection period running until 3 July 2023. The Application was placed on public deposit at Oxted library, the Borough Council offices and the offices of the Countryside Access Team.
- 1.7 12 objections were received from the landowner (SESW) and from neighbouring landowners (**Annex C**) and the Applicants were given an opportunity to respond to those objections.
- 1.8 On 19 July 2023 the Applicants responded by indicating that they wished to withdraw their Application (**Annex D**). In their email they indicated that they had initially thought they had the support of the residents and were surprised to see so many objections. They also stated that they had received advice from the Open Spaces Society (“OSS”) who had looked at past cases and found that, where the land was owned by a utility company, the Application was very unlikely to succeed, based on legal precedent. Having no wish to upset the residents and having received the advice from the OSS they felt it best to withdraw their Application.
- 1.9 There is no provision for the withdrawal of an application in the 2006 Commons Act or the Regulations. Whether or not, as a registration authority, we proceed with the Application is a matter for our discretion. We must act reasonably in the circumstances of the case.
- 1.10 Legal advice was sought from the Council’s Legal Services who advised that that we should be cautious about accepting a withdrawal if other persons wish to see the

Application proceed to a determination. As there were a considerable number of people that had given evidence to support the initial Application, the advice was to seek representations on the proposed withdrawal of the Application.

- 1.11 On 10 August 2023 we therefore advertised the fact that the Applicants had requested to withdraw the Application by placing notices on site, in the press, at the local library and on our website. We also sent the notice to the statutory consultees, those that had objected to the Application and those that had given evidence to the Application (for whom we had an address).
- 1.12 We received 3 emails in response, querying what was happening but there were no substantive representations or expressions of interest to take on the Application.
- 1.13 The Council's Legal Services then sought Counsel's opinion on whether the request for withdrawal of the Application should be accepted given all the circumstances.
- 1.14 Counsel advised the Council's Legal Services that there is a basis for the CRA reasonably to conclude that it is appropriate to accept the proposed withdrawal, but suggested two actions that could be carried out to clarify matters.
- 1.15 Firstly the CRA could write to SESW to ask for clarity on:
  - (i) the statutory basis on which the land is held and whether the company considers that registration of the land as a TVG would conflict with any uses the land could be put to in the future pursuant to the powers under which the land is held and
  - (ii) whether the company intends to allow continued use of the land beyond just the lawful use of the public right of way across the land.
- 1.16 Secondly the CRA could write again to those who supported the original Application setting out that unless anyone wishes to take over the Application it is likely to accept the Applicants' proposed withdrawal, inviting anyone who would wish to do so to inform the CRA.
- 1.17 Further to Counsel's advice we therefore addressed this directly with the landowner and received clarification that SESW own the land that is subject to the Application, and it is used for statutory water undertakings. They confirmed there are no current plans to develop the land in the future but that it is needed to safeguard water supplies within the area of Limpsfield. They also confirmed that currently there is and has been, no intention to continue letting the public use the land beyond the public right of way. See **Annex E** for emailed correspondence.
- 1.18 We also wrote, on 2 April 2024, directly to those that had supported the Application and asked them specifically if they wished to take over the Application. We stated that if no-one came forward, the proposed withdrawal of the Application would be referred for a decision. We received no response.
- 1.19 Section 6, Analysis and Commentary below sets out the factors to be considered in this case.
- 1.20 The Countryside Access Officer is therefore now placing this matter before members for consideration.

## 2. CONSULTATIONS AND PUBLICITY

### *Borough/District Council*

2.1 Tandridge District Council No views received

### *Consultees (Statutory and Non Statutory)*

2.2 Ramblers No views received

2.3 Defend our Commons Campaign (Bob Milton) No views received

2.4 Open Spaces Society No views received

2.5 County Councillor (Cllr Cameron McIntosh) Enquired as to who made the Application and followed up with questions about the process throughout.

2.6 Borough Councillors (Cllr Claire Blackwell, Cllr Ian Booth) No views received

2.7 Parish Council (Limpsfield Parish Council) No views received

### *Summary of publicity undertaken*

2.8 Documents placed on public deposit at local council offices and local library.

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## 3. HUMAN RIGHTS IMPLICATIONS

3.1 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 procedure followed in the processing of this Application is compatible with the provisions of the Human Rights Act 1998.

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## 4. FINANCIAL IMPLICATIONS

4.1 The costs of advertising and of seeking Counsel's opinion have already been incurred.

4.2 If the Application were to proceed to determination, this is likely to require a non-statutory public inquiry. The CRA would need to meet the costs of holding the inquiry (including the cost of the venue, appointment of an independent Inspector and administrative costs) from public resources.

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## 5. ENVIRONMENTAL IMPLICATIONS

5.1 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. On registration as a village green, the land must be kept free from development or other encroachments.

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## 6. ANALYSIS AND COMMENTARY

- 6.1 The decision for members is whether to accept the Applicants' request to withdraw the Application to register land as a Town or Village Green, or not. Members are not in this case, deciding whether there are grounds for registering a TVG on the Application Land.
- 6.2 There is no provision for the withdrawal of an application in the 2006 Commons Act or the Regulations. The Courts have recognised that amendments to and withdrawal of applications are possible. With reference to a proposed amendment the House of Lords concluded that the "*registration authority should be guided by the general principle of being fair to those whose interests may be affected by its decision.*"<sup>1</sup> In the same case, the Court of Appeal approved the approach of the Inspector who considered that a registration authority has the power to insist on determining a duly made application to clarify the status of the land in the public interest but also that: "*..it is implicit in the 1969 Regulations that a registration authority does not have to proceed with an application that an applicant does not wish to pursue (whether wholly or in part) where it is reasonable that it should not be pursued. It would be a pointless waste of resources for a registration authority fully to process an application that the applicant did not wish to pursue whether wholly or in part unless there were some good reason to do so.*"<sup>2</sup>
- 6.3 The Defra Guidance 2013 on Section 15 applications states (at paragraph 61): "*If you decide at any stage not to proceed with your application, the registration authority has discretion either to take no further action on your application, or to go ahead and determine the application you made, based on the evidence available*"
- 6.4 The Government website<sup>3</sup> also advises: "*Requests to withdraw or make changes to applications Applicants don't have an automatic right to withdraw applications. If an applicant asks to do so, you must decide whether or not it's reasonable. You should usually allow the withdrawal of applications that need to be made by a specific person (eg the landowner) if they don't want to proceed with it. But be cautious about allowing an application made in the public interest to be withdrawn.*"
- 6.5 The Application is made in the public interest; a successful application to record an area of land as TVG would offer that land some protection from future development and would protect a right of access for recreational use on the land for the public.
- 6.6 Whether or not, as a registration authority, we proceed with the Application is a matter for our discretion. We must act reasonably in the circumstances of the case.
- 6.7 Officers received advice from Counsel as to the question of what would be a reasonable approach in the circumstances of the case. To this end, we have advertised the Applicants' desire to withdraw their Application on site and directly to those that have given evidence of use. No-one has come forward to take on the Application.
- 6.8 In considering this matter, members should also be aware of the impact of the Landowner Statement noted in paragraph 1.2 above. This brought to an end any use "as

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<sup>1</sup> Oxfordshire County Council v Oxford City Council [2006] UKHL 25

<sup>2</sup> Oxfordshire County Council v Oxford City Council [2005] EWCA Civ 175 which concerned an application to register a TVG under s13 Commons Registration Act 1965.

<sup>3</sup> <https://www.gov.uk/guidance/commons-registrations-authorities-applications-and-proposals#how-to-process-applications>"

of right” on the land. The Application was submitted on the last day of the one year grace period under section 15(3) of the Commons Act 2006. If the withdrawal of the Application is accepted, the deposit of the Landowner Statement has removed the opportunity for another village green application for a very long time. If any qualifying use “as of right” continues, the deposit of a further Landowner Statement within 20 years of the previous one, would prevent the 20 year use required for a village green application from accruing.

- 6.9 The issue is therefore whether the public interest, and in particular fairness to those who would have benefited from registration of the land, requires that the Application should nonetheless be determined on its merits.
- 6.10 This is not an application that can be easily determined on the basis of the documentation submitted to date. The evidence submitted with the Application consists of 64 statements of use from members of the public. However, the evidence has not been submitted in the form of witness statements and in some cases more detail would be required, for example, the address of the user and the period of use. There are also several matters arising which merit further investigation:
- i. as there is a right of way across the Application Land, whether there has been sufficient qualifying use beyond the use of, or akin to, a public right of way;
  - ii. the legal effect of the signs relied upon by SESW and whether they mean the use was thereafter not “as of right”;
  - iii. whether in any event the claimed use cannot be relied upon by reason of the principle of statutory incompatibility.

Counsel agreed with the officer view that if the Application had not been proposed to be withdrawn, it warranted being considered by way of a non-statutory public inquiry and thereafter referred to the CRA for determination taking into account the Inspector’s report and recommendations.

- 6.11 If members were minded to reject the request to withdraw the Application, no members of the public have volunteered to take on the Application. As no party would be promoting the Application, it would prove difficult, although not necessarily impossible, to hold a meaningful investigation by way of a non-statutory inquiry or otherwise.
- 6.12 The CRA should also be mindful of the risk of a potential judicial review challenge, by SESW or another objector, to a decision to proceed with the Application.
- 6.13 A further issue to consider is the fact that the Applicants received advice from the OSS that where the land is owned by a utility company, the Application was very unlikely to succeed, based on legal precedent. Officers have not seen this advice. However, this is a reference to the principle of statutory incompatibility:
- i. *The test is whether the land has been acquired by the public authority pursuant to its statutory powers, and is held for the purposes of those powers, where those purposes are incompatible with registration of the land as a green*
  - ii. *The issue of incompatibility has to be decided by reference to the statutory purposes for which the land is held, not by reference to how the land happens to be used at a particular point in time<sup>4</sup>*

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<sup>4</sup> Gadsden and Cousins on Commons and Greens, 3<sup>rd</sup> Edition, para 15-15.



- 6.14 SESW were asked to elaborate on the statutory basis on which the land is held and whether they considered that registration of the land as a TVG would conflict with any uses the land could be put to in the future pursuant to those statutory powers. They stated that:

*“SESW own The Dell, Painshill for the use of statutory water undertakings in association with the efficient supply and use of water to Painshill and the surrounding area”.*

They were unable to provide any information about any currently planned works at the site but went on to comment that:

*“the use of the site for the water undertaking cannot be ruled out indefinitely, dependent on network resilience, treatment requirements and population growth. This is something that is reviewed and updated through SESW’s Water Resources Management Plan (WRMP) in association with the Environment Agency and OFWAT to ensure that their statutory obligations can be fulfilled. Therefore, if the land may be required for operational purposes in the future, this would be outlined in the WRMP.”*

- 6.15 It is not possible to reach a conclusion at this stage on whether the statutory purposes for which SESW hold the land would be incompatible with registration of the land as a TVG. It should, however, be considered as a possibility when considering whether to continue with the Application without an applicant.

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## 7. CONCLUSIONS AND RECOMMENDATION

- 7.1 In exercising its discretion on whether to allow the withdrawal of the Application, made in the interests of the public, the CRA must act reasonably in all the circumstances of the case.
- 7.2 Mindful that the deposit of the Landowner Statement would preclude another village green application for a very long time, the CRA should be cautious about accepting a withdrawal of the Application if other residents wish to see the Application proceed to determination. To that end, publicity was given to the proposed withdrawal of the Application with representations invited.

### Reasons for Recommendation

- 7.3 The proposed withdrawal of the Application was advertised but no person objected to the withdrawal. A further round of publicity was undertaken by contacting previous supporters of the Application to determine whether anyone wished to take over the Application but no responses were received.
- 7.4 There are issues arising from this Application outlined above, including the possibility of statutory incompatibility, which would require further investigation. This would usually be by way of a non-statutory public inquiry but there would be practical difficulties without anyone promoting the Application.
- 7.5 Officers do not consider that rejecting the request to withdraw the Application and the continuation of the investigation to determination would be a proportionate use of resources, bearing in mind the Applicants’ withdrawal of support for the Application, the level of opposition to the Application now felt from some within the local community, and

the possibility that the land may not be able to be registered as TVG due to the way that the statutory undertaker may hold the land.

#### Other options

- 7.6 It is open to the CRA to decline the Applicants' request to withdraw the Application and determine it based on the available evidence. It is likely that this would result in the CRA having to hold a non-statutory public inquiry. It would be difficult, although not necessarily impossible, to hold a meaningful investigation by way of a non-statutory inquiry or otherwise as no party would be promoting the Application.
- 7.7 In summary, it does not seem unreasonable to allow the Applicants' request to withdraw their Application on the grounds that no other local residents have objected or expressed a wish for the Application to be taken forward.

#### **RECOMMENDATION**

Officers recommend that the Applicants request to withdraw the Application is **ACCEPTED** on the grounds that it is reasonable in the circumstances for the reasons given in this report.

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#### **CONTACT**

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#### **BACKGROUND PAPERS**

The Application (No. 1889) and all supporting documentation

**Annex A:** Application Plan and Location Plan

**Annex B:** Evidence in support of application

**Annex C:** Objections

**Annex D:** Applicant's request to withdraw

**Annex E:** Further comments from landowner