



PLANNING COMMITTEE

6th January 2011

Report of Head of Planning and Building Control

Proposed Village Green Status for land at the junction of Walhouse Road and Charlotte Street, Walsall. **Application Number: 10/0528/VG**

1.0 PURPOSE OF REPORT

To enable Committee to consider an Application under Section 13 of the Commons Registration Act 1965 ("the 1965 Act") by Mr Paul Russell, Chair of the Friends of the Chuckery Corner Green (FoCCG) at 52 Charlotte Street, Walsall WS1 2BA and Alan McDevitt Secretary of FoCCG of 67 Charlotte Street, Walsall, WS1 2BB to Walsall Metropolitan Borough Council as Registration Authority ("RA") to register land at the junction of Walhouse Road and Charlotte Street, Walsall as a village green.

2.0 RECOMMENDATIONS

To register land at the junction of Walhouse Road and Charlotte Street, Walsall as a village green. There is no need to hold a non-statutory inquiry.

3.0 FINANCIAL IMPLICATIONS

None arising from the report.

4.0 POLICY IMPLICATIONS

The site has no site specific allocation within the Council's saved policies of the Unitary Development Plan. Policy LC1 seeks to redress deficiencies in the provision and accessibility to urban open spaces that provide for sport and recreation, both formal and informal.

5.0 LEGAL IMPLICATIONS

The Commons Registration Act 1965 provides for the RA to maintain a register of Towns and Village Greens within its area. Section 13 of the 1965 Act provides for the amendments of the register to take place where any land becomes a town or village green. The Application was received prior to the new Commons Registration Act 2006 coming into force. The 2006 Act deals with all Applications to register land as a town or village green made after 6th September 2007.

- 5.1 Section 13 of the 1965 Act does not give any details of the procedure to be followed when determining an application. Instead, the relevant procedure to be followed is largely set out in the Commons Registration (New Land) Regulations 1969. In particular, under Regulation 5(7) of the 1969 Regulations, the RA needs to undertake a preliminary consideration of the Application to ascertain that it is

“duly made”. In essence, that the Applicant as complied with procedural requirements.

- 5.2 Assuming that the Application is duly made, the next step is for the RA to give the appropriate notice of the Application to every person other than the Applicant, who the RA has reason to believe to be an owner, lessee, tenant or occupier of any part of the land affected or likely to wish to object to the Application.
- 5.3 Once the six weeks notice period has expired, the RA should then proceed to consider the objections along with the Application. If no objections are received, the RA should then proceed to determine the Application by assessing whether the Applicant has established each of the requisite elements of a town or village green. Regulation 6(3) of the 1969 Regulations provide that where written and signed objections are received by the RA, the Applicant should be given a reasonable period to respond to the objections as well as any other matter which on the face of it appear to be grounds for the rejection of the Application and the Application can be determined. It is upon the expiry of this period that the RA should determine whether to hold a non-statutory inquiry conducted by an independent person. The regulations do not make any express provision for an inquiry.
- 5.4 Nonetheless the RA has a general discretion to hold a non-statutory inquiry so long as the ultimate decision remains with the RA.
- 5.5 A non-statutory inquiry is generally appropriate in two particular circumstances, namely:-
 - (a) where there is a serious and material factual dispute between the Applicant and Objector which is difficult to resolve from documentary evidence alone; or
 - (b) where one of the objectors is the Council itself.
- 5.6 In relation to the current Application, the RA considers it not appropriate to hold a non-statutory inquiry conducted by an independent person as there have been no objections in line with the above circumstances. The decision to hold a non-statutory inquiry is not a legal requirement. The ultimate decision as to whether or not the land should be registered as a town or village green rests with the Council's Planning Committee.
- 5.7 The RA has to determine whether the Application land meets the statutory criteria.
- 5.8 “Town or Village Green” is defined by Section 22(1) of the 1965 Act in three ways, usually referred to as Class (A) Statutory Greens, Class (B) Customary Green and Class (C) Prescriptive Green. In this case, if the land is a town or village green it can only be because it is a Class (C) green.
- 5.9 The RA has to determine whether the land qualified on the date of the Application as a Class (C) village green as defined in Section 22(1)(A) of the 1965 Act as amended by Section 98 of the Countryside and Rights of Way Act 2000.

“...land on which for not less than 20 years a significant number of the inhabitants of any locality, or any neighbourhood within a locality, have indulged in lawful sports and pastimes as of right and.....continue to do so.”

- 5.10 The burden of proof as to whether the land has become a village green rests with the applicant.
- 5.11 The qualifying use of the land should continue for 20 years up until the date of the Application (Oxfordshire County Council v Oxford City Council and Robinson [2006] UK HL25).
- 6.0 **HUMAN RIGHTS**
Bearing in mind Article 6 of the Convention on Human Rights entitling a person whose civil rights are to be determined a right of a fair hearing for an independent and impartial tribunal, the RA took the view that the consideration of the Application by an independent inspector in the form of a non-statutory inquiry to be appropriate.
- 7.0 **EQUAL OPPORTUNITY IMPLICATIONS**
None arising directly from this report.
- 8.0 **ENVIRONMENTAL IMPACT**
None arising directly from this report.
- 9.0 **WARD(S) AFFECTED**
St Matthews and Paddock Wards.
- 10.0 **CONSULTEES**
Officers in Legal Services have been consulted in the preparation of this report and have advised that there is a view that Chuckey Ward could be used as a definition of the community and that evidence submitted with the application would not necessarily be significant to warrant registration. However, the RA have taken a different definition of the community and note that further evidence has been received as a result of public consultation.
- 11.0 **CONTACT OFFICER**
Andrew Thompson
Principal Planning Officer 01922 652403
- 12.0 **BACKGROUND PAPERS**
Application reference 10/0528/VG.

David Elsworthy
Head of Planning and Building Control.

Development Control Committee
21 October 2010

12.0 BACKGROUND AND REPORT DETAIL

12.1 The Application was made by Paul Russell Chair of The Friends of the Chuckery Corner Green (FoCCG) of 52 Charlotte Street, Walsall, WS1 2BA and Alan McDevitt Secretary of FoCCG of 67 Charlotte Street, Walsall, WS1 2BB to register the application land known as land at the junction of Walhouse Road and Charlotte Street, Walsall as a village/town green (referred to as "the land"). The Application was dated 18th June 2010.

12.2 Mr Russell contends the land should be registered under subsection 15(2) of the Act in:

a) that a significant number of the inhabitants of the neighbourhood within the locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and

b) the continue to do so at the time of the application.

12.3 The Application relates to a parcel of land to the northern side of Walhouse Road and western boundary of Charlotte Street. The land is approximately 1625 sq m and is border by a low metal triprail on Walhouse Road frontage and 2m high fencing on the Charlotte Street frontage. Other boundaries are formed by 2m high boundary treatment in a mix of fencing and hedging to private gardens. The land has several trees located around the outside of the site although it is relatively flat and is grassed. Immediately at the junction, on the Charlotte Street frontage, there is no boundary treatment allowing unrestricted access to the site.

The Application was accompanied by a statutory declaration in support by Mr Wilkes dated 1st October 2003, an evidence questionnaire submitted in support by Mr Wilkes dated 26th September 2003 and 28 statements of evidence from residents. These statements include the activity (for example playing of sport, walking the dog, riding a bike and use of the site as a shortcut); when the activity occurred and a brief description of memories. These statements come from residents of Tantarra Street, Charlotte Street, Sovereign Walk, Pershouse Street, Rowley Street, Calder Avenue, Walhouse Close, and Holtshill Lane.

Also in support of the application a video interview with Barry Hill (a local resident who has been in the area since at least World War Two) has been submitted. Mr Hills recollects the area and the area being used for bonfire night and other social activity. Photos of recent (2009) activity on the Green have also been submitted.

12.4 It is noted that since the demolition of buildings on the site Walsall Council has maintained the site and installed two benches. It is claimed that the Council has been maintaining the area since the 1970s.

12.5 Following notice given by the RA of the Application 7 letters and a petition of 50 signatures were received. 5 letters were in support, 1 letter against and 1 letter raising general comments about flytipping.

- 12.6 The supporting letters state the Village Green would provide a much needed green space in the area and that the site has been used by residents and their families for sport and leisure activities since at least 1973 and further evidence of the area existing since 1947 (Mr Hill).

Objectors, whilst raising objections of anti-social behaviour and fly-tipping, also provide evidence of the area being used for recreation, in particular by local children. As such, objections received as a part of public consultation also show that there is evidence of significant members of the community using the open space.

The FOCCG have also responded during the course of the consultation with a timeline from mid 1970s to present day of activity and support for the proposals.

- 12.7 The Commons Registration Act 1965 provides for each RA to maintain a register of town and village greens within its area. Section 13 of the 1965 Act provides for the amendment of the register to take place where any land becomes a town or village green.
- 12.8 The process of determining whether or not the Application should be registered as a town or village green involves applying the facts contained in the Application and submitted in evidence to the law. This is the legal framework.

The Applicant must prove that the application land should be registered as a Town Village Green on the basis that it meets the criteria for registration under Section 13 of the Commons Registration Act 1965. As the current Application was made in June 2010, the definition of Town Village Green which the Inspector has to consider was inserted into Section 22 of the 1965 Act by Section 98 of the Countryside and Rights of Way Act 2000. That section inserted a new Section 22(1A) into the 1965 Act which had the effect that land could be registered as a Town Village Green if it fell within the subsection by virtue of Section 22(1A).

Land falls within this subsection if it is land on where for not less than 20 years a significant number of inhabitants of any locality, or of any neighbourhood within a locality has indulged in lawful sports and pastimes (LSP) as of right and either:-

- (a) continue to do so; or
- (b) has ceased to do so for not more than such period as may be prescribed or determined in accordance with prescribed provisions.

No provisions were ever prescribed and paragraph (b) is irrelevant.

Therefore, for the Application to succeed it must be established that:-

- a) Lawful sports and pastimes - has there been a use of land for lawful sports and pastimes (this includes present day sports and pastimes and the activities can be informal in nature – it includes dog walking and playing with children but not walking of such a character it would rise to a presumption of dedication of a public right of way)
- b) Has the use of the land been for at least 20 years continuing up to the date of the Application (the use can be for any 20 year period, but it must be continuous to the date of the Application)

- c) Locality or neighbourhood within a locality – a “locality” must be a division of the County known to law, such as a borough, parish or manor: A locality cannot be defined simply by drawing a line on a plan. In contrast, a “neighbourhood” need not be recognised as an administrative unit. For example, a housing estate can be a neighbourhood. However, a neighbourhood cannot be any area drawn on a map. Instead it must have a sufficient degree of cohesiveness
- d) Significant number – “significant” does not mean considerable or substantial. What matters is that the number of people using the land in question has to be sufficient to indicate that the use of the land signifies that it is in general used by the local community for informal recreation rather than occasional use by individuals as trespassers.
- e) 20 year period – the qualifying use can be for any 20 year period, but it must continue up until the date of the Application. Therefore, the only period upon which the applicant can rely on is a period of upwards of 20 years ending with the date of the Application.
- f) Continuity of use over 20 year period – the qualifying use of the lawful sports and pastimes must be continuous throughout the relevant 20 year period.
- g) As of right – use of the land “as of right” is a use without force, without secrecy and without permission. There is no longer a need to show that the use is such as to give the outward appearance to a reasonable landowner that the use is being asserted and claimed as of rights by local inhabitant: (Regina (Lewis) -v- Redcar and Cleveland Borough Council (2) 2010)
- h) Continuation of Use – The use must continue as of right until the date of the Application

12.11 The applicant has to prove that the Application meets the following requirements inserted into Section 22 of the Commons Registration Act 1965 by Section 98 of the Countryside and Rights of Way Act 2000. By Section 22(1a):-

Case law provides useful rulings and guidance on the requirements of the statutory criteria set out above. In its capacity as a RA, either that the authority registers the land because the Application has satisfied the statutory criteria and therefore either:-

- (a) the land should be registered as a town or village green; or
- (b) that the Application and evidence submitted fails to meet the statutory criteria and therefore should not be registered.

However, as a public body, the RA must give regard to the statutory principles upon which the Application must be determined. The Application must be determined in accordance with the legal criteria set out in Section 13 of the

Commons Act 1965 and the case law as amended by Section 98 of the Rights of Way Act 2000.

Guidance is given in the case of R -v- Sunderland City Council ex-parte Beresford [2004] where it was stated that all of the ingredients of the definition of a village green should be met before it is registered and the decision makers must consider carefully whether the land in question has been used by the inhabitants of the locality for the indulgence of what are properly to be regarded as lawful sports and pastimes and whether the 20 years indulgence is met.

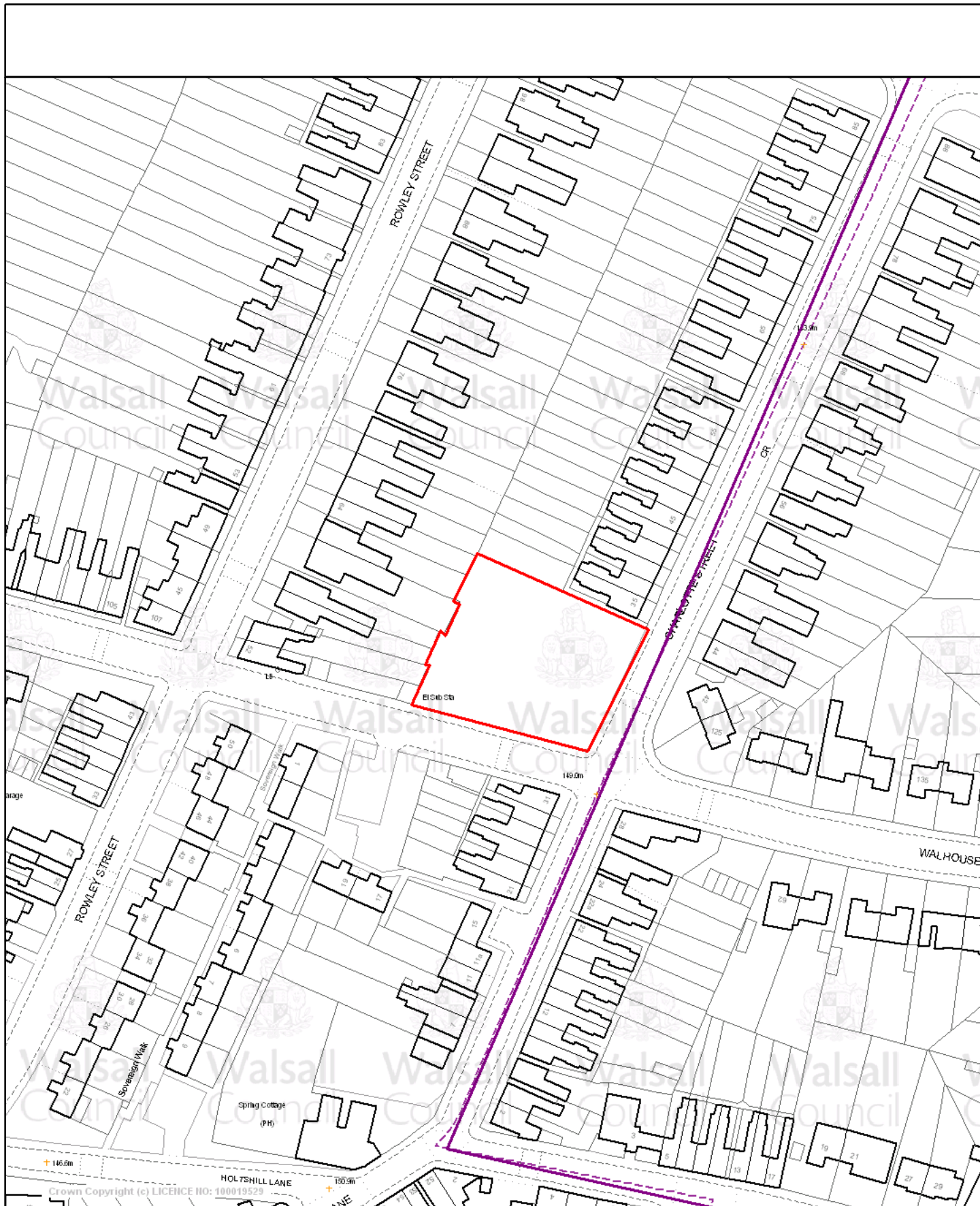
The burden of proof lies on the applicant to show that the land has become a village green. All of the elements required to establish that the land has become a town village green must be “properly and strictly proved” on the balance of probabilities.

12.13 Summary of Applicant’s Case

In the view of Officers, this application should succeed and the application site should be registered as a TVG for the following reasons:

- (a) Evidence has been submitted to show that the site has been used for lawful past times and recreation. Examples include walking of dogs, playing of football, cricket and other ball games, learning to ride a bike and general community activity and meetings (for example on bonfire night).
- (b) The application site has been used for a period of 20 years and access continues for local residents.
- (c) As previously stated “significant” does not mean considerable or substantial. What matters is that the number of people using the land in question has to be sufficient to indicate that the use of the land signifies that it is in general used by the local community for informal recreation rather than occasional use by individuals as trespassers. This is the case in this instance.
- ;
- (d) There is evidence to show continuity of user throughout a twenty year period by local inhabitants, given that there is a large amount of evidence from not only 1990s and 2000s but prior to this area being formed by demolition in approximately 1973.

Accordingly, in the case of the Application relating to the Council owned land at Walhouse Road and Charlotte Street, the legal requirements necessary to register the land as a Town Village Green has been met.



Walsall Council

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