

FOR PUBLICATION

DERBYSHIRE COUNTY COUNCIL

REGULATORY - PLANNING COMMITTEE

10 January 2021

Report of the Director of Legal and Democratic Services

**Application to register land at Dale Crescent, The Dale, Hathersage as a
Town or Village Green (VG145)**

1. Purpose

- 1.1 To ask the Committee to determine an application made under the Commons Act 2006 to register land known as Dale Crescent, The Dale, Hathersage as a town or village green.

2. Information and Analysis

- 2.1 The Regulatory, Licencing and Appeals Committee previously authorised the appointment of an independent Inspector to make recommendations to the Council as to the determination of this matter.
- 2.2 Miss Annabel Graham Paul of Counsel was appointed as Inspector on 11 February 2019 and a report was provided to the Council on 04 October 2019.
- 2.3 Miss Annabel Graham Paul's report to the Council is at Appendix 2 and sets out the evidence presented to her and her conclusions in relation to the application.
- 2.4 The application to register land at Dale Crescent was made by a local resident, Brian Griffiths and the relevant date of the application was 31 August 2016.
- 2.5 There were no objections received to the application.
- 2.6 The application was made pursuant to section 15 of the 2006 Act with the relevant 20-year period being from 24 August 1996 to 24 August 2016. The

Inspector writes at paragraph 8 of her report, “*The questions which then arise are:*

(1) *Has there been use of the application land for lawful sports and pastimes for at least twenty years up until 24 August 2016?*

(2) *If so, has such use been by a significant number of inhabitants of any neighbourhood within a locality?*

(3) *If the answer to (1) and (2) is ‘yes’, has that use been ‘as of right?’*”

2.7 The Inspector sets out the evidence presented on behalf of the Applicant from paragraph 13 concluding at paragraphs 18 and 19, “*that the written user evidence is... sufficient (alone) to demonstrate as a matter of impression that there has been a wide range of activities taking place on the land which would qualify as LSP (legal sports and pastimes) throughout the relevant period. In particular... annual community events and a significant amount of recreation in the form of children’s games. This is without taking into account that there must have been additional activities which others from the claimed neighbourhood have also carried out. These are exactly the types of activities which village greens are used for up and down the country and a conscientious landowner (if there had been one present) ought to have been aware that people were asserting a right to use the land as such*” and, “*I therefore consider that the Applicant has discharged the burden of proof in showing that the land has been used by a significant number of local inhabitants for lawful sports and pastimes throughout the relevant period*”.

2.8 At paragraph 20 the inspector considers whether the use of the Application Land had been ‘as of right’, i.e. without force, without secrecy and without permission and reaches the conclusion, in the absence of any objections to the application, that “*once ostensibly qualifying use has been made out by an applicant, the burden shifts to an objector to show that the use is not ‘as of right’. There are no objections to the application and therefore no basis for me to find that the use has been anything other than ‘as of right’*”.

2.9 From paragraph 21, the Inspector considers the question of neighbourhoods and localities noting that, “*although the area is small, this reflects the users of this relatively small piece of land. The Court of Appeal in R (Lancashire County Council v Secretary of State for Environment, Food and Rural Affairs [2018] EWCA Civ 721 stressed that the question of whether a ‘neighbourhood’ exists is not, in any sense, a scientific or technical issue and it is a matter of judgement which is essentially a matter of impression. The determining question, in a word, was “cohesiveness”*”, and concludes that, “*as a matter of impression, it would appear to me that the claimed neighbourhood has a sufficient degree of cohesiveness*” to be considered a neighbourhood for the sake of the application and that the Parish of Hathersage would be a qualifying ‘locality’.

2.10 The Inspector’s conclusion (from paragraph 24) is that:

“In light of the above, I consider that the applicant has proved on the balance of probabilities that all elements of the statutory test for registration of the land as a town or village green have been met and the application should succeed

in full. I therefore recommend that the registration authority register the land as a new town or village green”.

3. Consultation

- 3.1 Notice of the application was posted on site on 1st December 2016 and published in the Derbyshire Times dated 1st December 2016.
- 3.2 No objections were received to the application.

4. Alternative Options Considered

- 4.1 Committee rejects the Inspector’s recommendation in relation to VG145 and resolves not to register the land at Dale Crescent, The Dale, Hathersage as a Town or Village Green. This would be contrary to the recommendation of the Inspector who has considered all the evidence submitted in support of the application and concluded that it is sufficient to prove on the balance of probabilities that the statutory tests for registration have been met.
- 4.2 That Committee neither rejects or accepts the Inspector’s recommendation and resolves not to determine the application. To neither accept nor reject the inspector’s recommendation would leave the application undetermined.

5. Implications

- 5.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

6. Background Papers

- 6.1 Application file VG145 held by the Director of Legal Services. Inspector’s Report dated 4 October 2019.

7. Appendices

- 7.1 Appendix 1 – Implications.
- 7.2 Appendix 2 – Miss Annabel Graham Paul’s report to the Council.
- 7.3 Appendix 3 – Plan showing the land subject to the TVG application.

8. Recommendation(s)

That Committee accepts the Inspector's recommendation in relation to VG145 and resolves to register the land at Dale Crescent, The Dale, Hathersage as a Town or Village Green.

9. Reasons for Recommendation(s)

- 9.1 For the reasons set out in the Independent Inspector's Report of 4 October 2019, that the legal test for registration as a town or village green has been met; that the land has been used by a significant number of inhabitants of a neighbourhood within a locality for lawful sports and pastimes for a period of 20 years and that use has been as of right.

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Implications

Financial

1.1 The cost of determining this matter will be met from the existing budget.

Legal

2.1 Legal considerations are dealt with above and in the Inspectors report at Appendix 2.

Human Resources

3.1 None associated with this report

Information Technology

4.1 None associated with this report

Equalities Impact

5.1 None associated with this report.

Corporate objectives and priorities for change

6.1 *None associated with this report.*

Other (for example, Health and Safety, Environmental Sustainability, Property and Asset Management, Risk Management and Safeguarding)

7.1 In preparing the Report the relevance of the following factors as far as they are not covered by the Report has been considered: social value, environmental, health, personal and property considerations, the prevention of crime and disorder, equality of opportunity.

Inspector's Report dated 4 October 2019

In the matter of an application to register land at Dale Crescent Green as a town or village green

**INSPECTOR'S REPORT
FOR DERBYSHIRE COUNTY COUNCIL
4 October 2019**

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INTRODUCTION

1. I have been appointed as an independent Inspector by the registration authority, Derbyshire County Council, and asked to report with recommendations in respect of an application to register land at Dale Crescent Green, Hathersage as a new town or village green ('the application land').
2. The application was made by Brian Griffiths ('the applicant') on 24 August 2016 (validated on 31 August 2016) under s. 15(2) of the Commons Act 2006. It alleges that the application land has been used by a significant number of the inhabitants of an area coloured green on a plan attached to the application (being land at the Dale, Hathersage, Hope Valley) between 24 August 1996 and 24 August 2016 for lawful sports and pastimes as of right. The application was accompanied by a number of evidence questionnaires / statements and accompanying photographs from local residents attesting to their and others' use of the application land.
3. When I first considered this application in May 2019 I raised concern that the applicant had not properly identified a locality or neighbourhood within a locality where the users of the land come from. I felt that, in the interests of fairness, the applicant ought to be given the opportunity to put forward what he felt was the appropriate locality or neighbourhood within a locality. Given the lack of objections, I did not consider that any prejudice could arise were the applicant to choose to amend the application accordingly. I will now consider the application, as amended by the email from Brian Griffiths dated 3 July 2019, in the context of an alleged neighbourhood marked blue on the plan attached to that email within the claimed locality of the Parish of Hathersage.
4. The application states that residents have been unable to ascertain the ownership of the land from either the Land Registry or from the deeds of their houses. I note that Mr Prince's evidence questionnaire refers to a Mrs Hilda Spooner having owned the field upon which Dale Crescent was built and there is some reference to payment of £1 a year ground rent which then stopped. It does not appear, however, that Mrs Spooner is still alive and it is not known who the field passed to.

5. The application was publicised in the press and a request for information sent to Derbyshire County Council (as Minerals Planning Authority), Peak District National Park (as Local Planning Authority) and The Planning Inspectorate to establish whether any trigger or terminated events had occurred. No objections were received to the application. The application notes that the Council (presumably the County Council) employs a contractor from time to time to cut the grass on the application land; however, the Council does not assert that it is the owner of the land. The land is unfenced, although on its southern boundary it is bounded by a low stone wall.

Relevant Statutory Provisions

6. Section 15(1) of the Commons Act 2006 provides that any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies. The relevant subsection in the context of this application is (2).
7. Section 15(2) applies where:
 - (i) 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 on the land for a period of at least 20 years; and
 - (ii) They continue to do so on the date of the application.

Relevant Questions

8. The questions which then arise are:
 - (1) Has there been use of the application land for lawful sports and pastimes for at least twenty years up until 24 August 2016?
 - (2) If so, has such use been by a significant number of inhabitants of any neighbourhood within a locality?
 - (3) If the answer to (1) and (2) is 'yes', has that use been 'as of right'?

Burden and Standard of Proof

9. I remind myself and the registration authority that the burden lies on the applicant to prove, on the balance of probabilities, that the statutory requirements are met and, as Lord Bingham said in R (Beresford) v Sunderland City Council [2004] 1 AC 889 at [3]:

“It is no trivial matter for a landowner to have land, whether in public or private ownership, registered as a town green ... It is accordingly necessary that all ingredients of this definition should be met before land is registered, and decision-makers must consider carefully whether the land in question has been used by the inhabitants of a locality for indulgence in what are properly to be regarded as lawful sports and pastimes and whether the temporal limit of 20 years’ indulgence or more is met”.

10. Thus, even if a case where there are no objections to the registration of the application land as a TVG, the applicant must still make out their case on the balance of probabilities that each element of the statutory test is met.
11. Having said that, there are certain matters which cannot properly be found absent evidence from an objector. In particular, the burden of proof of showing that qualifying use is either permissive, by force, or by stealth, would fall on an objector on the balance of probabilities (see R (Lewis) v Redcar and Cleveland BC (No 2) [2010] 2 AC 70 at [67] and R (Mann) v Somerset County Council [2017] 4 WLR 170 at [61]) and thus some positive case would need to be made in order to find that use which is ostensibly ‘as of right’ is vitiated by one of these three circumstances.

Issues

12. In light of the above, I consider that the following issues arise in determining the application:

- (i) Has there been qualifying use by a ‘significant number’ of the identified neighbourhood in the Parish of Hathersage between August 1996 and August 2016?
- (ii) If so, is there any reason why that use has not been ‘as of right’?
- (iii) Is the area shown green on the plan accompanying the email from Brian Griffiths dated 3 July 2019 a qualifying neighbourhood and is the locality of the Parish of Hathersage a qualifying locality?

THE EVIDENCE PRESENTED

13. Notwithstanding that there is no objection to there being qualifying use throughout the 20 year period by a significant number of local inhabitants, given that the burden of proof falls on the applicant to establish this, I consider it necessary to summarise the written evidence in order to judge whether the statutory test is met.

Name	Address	LSP	Dates	Frequency (where specified)
Paul Mathieu	4 Dale Crescent, S32 1AP	Playing football with son and friends	2013 to present	Once to several times a week, spring to autumn, less in winter
Ken and Diane Ackerman	3 Dale Crescent, S32 1AP	Recreation, playing games, street parties	1984 to present	Weekly
Catherine Foley	2 Dale Crescent, then 6 Dale Crescent	Sports and games, bike and shooter riding, snow player	1985 to present	Weekly, mainly weekends
Elaine Lindley	11 Dale Crescent, S32 1AP	Playing games, building snowmen, street parties	1963 to present	Weekly

Brian and Susan Wilson	Seastwood Cottages, The Dale, S32 1AQ	Recreation, children's games, street parties	1970 to present	Most days
Jeffrey and Joyce Farnell	14 Dale Crescent, S32 1AP	Fireworks and viewing village gala parade	1989 to present	Occasionally
Joyce Johnston	13 Dale Crescent, S32 1AP	Playing games e.g. cricket, rounders, tennis	1970 - 2016	Summer time, often everyday
David Griffiths	9 Dale Crescent, S32 1AP	Children's games, gala display, street party	1970 to present	Regularly since son young, occasionally since mid-1980s
Brian and Alison Griffiths	7 Dale Crescent, S32 1AP	Street party, football, socialising, cutting the grass	1970 to present	Weekly
Mark, Moira, Charlotte and Hannah Chapman	5 Dale Crescent, S32 1AP	Children's games, socialising, picnicking, snowballing	2012 to present	At least a few times a week
Kate Maison	Five Acres, The Dale S32 1AQ and then Rose Cottage, The Dale, S32 1AQ	Playing games, celebrating Queen's golden Jubilee	1968 to present	Weekly
Alfred Prince	3 Dale Crescent S32 1AP	Recreation, games with children, street parties	1935 – 1984 (outside relevant period)	

Mr and Mrs B Madden	Dale Cottage, The Dale S32 1AQ	Family games, recreation and street party	1999 - 2016	Regular, each week, often
Marie Barnett	3 The Dale, S32 1EQ	Playing with children, dog walking	1995 to present	Weekly
M Laver	1 The Dale, S32 1EQ	Games and dog training	1957 to present	Not disclosed
Philip Wright	10 Dale Crescent, S32 1AP	Recreation, playing games	2004 to present	Weekly
Lisa Harris	1 Dale Crescent, S32 1AP	Children playing cricket, rounders with neighbours, scarecrows	2007 to present	Everyday when children younger, now for social and village events
Amanda Watson and Richard Long	5 School Lane, S32 1SD	Football, running, picnics, snowmen	2013 to present	Daily
Rebecca Cadle	12 Dale Crescent, S32 1AP	Meeting people	2014 to present	Weekly
John Townend	8 Dale Crescent, S32 1AP	Recreation, community events, bonfire night	1963 to present	At least once a week in summer, less frequently in winter

ASSESSMENT

14. I turn then to consider the issues set out above.

Has there been qualifying use by a ‘significant number’ of local inhabitants of the Parish of Hathersage between August 1996 and August 2016?

15. The issue I must consider is whether there was a sufficient continuance of use of sufficient intensity to bring home to a reasonable observer, and in particular to the landowner, that LSP of some sort were taking place throughout the period which are attributable to the acquisition of a TVG right (see R (Barkas) v North Yorkshire CC [2015] AC 195 at [61] and [65]). The key question is “how the matter would have appeared to the owner of the land”, and is not at all concerned with “evidence of the individual states of mind of people using [the land]”: R v Oxfordshire CC ex p Sunningwell [2000] 1 AC 335 at 352-3 and 354-6.

16. The further linked issue is whether use for LSP has been by a significant number of local inhabitants throughout the relevant 20-year period. This is a slightly different question because it turns on whether the assertion of a TVG right by qualifying local inhabitants has been by merely a small and insignificant number of people, indicative of merely use by some households, or whether it can properly be categorised as use by a significant number of qualifying local inhabitants: R (Alfred McAlpine Homes Ltd) v Staffordshire County Council [2002] 2 PLR 1. What is meant by a ‘significant number’ is very much a matter of impression. The number might not be so great as to be properly described as considerable or substantial; but it must be more than *de minimis* and sufficient to indicate general use by the community (see Alfred McAlpine at [71]). Again, I am conscious that the burden is on the applicant to establish this and use must be by a significant number of local inhabitants throughout the relevant period.

17. I should add that it is clear that TVG rights can ‘co-exist’ with other uses of land, in particular the landowners’ own activities (Lewis v Redcar (above)) and use by residents from outside the locality (no predominance test). I therefore do not consider there is any authority to suggest that significance needs to be viewed against the backdrop of other activities taking place on the land. The question is simply whether the number of qualifying users is significant in accordance with McAlpine (above) and the use is of a sufficient intensity to assert a TVG right.

18. I note that the written user evidence is, by its nature, somewhat perfunctory and has not been tested at an inquiry. However, notwithstanding this, I consider it is sufficient (alone) to demonstrate as a matter of impression that there has been a wide range of activities taking place on the land which would qualify as LSP throughout the relevant period. In particular, there seem to have been annual community events and a significant amount of recreation in the form of children's games. This is without taking into account that there must have been additional activities which others from the claimed neighbourhood have also carried out. These are exactly the types of activities which village greens are used for up and down the country and a conscientious landowner (if there had been one present) ought to have been aware that people were asserting a right to use the land as such.
19. I therefore consider that the Applicant has discharged the burden of proof in showing that the land has been used by a significant number of local inhabitants for lawful sports and pastimes throughout the relevant period.

Is there any reason why the use has not been 'as of right'?

20. As I have set out, once ostensibly qualifying use has been made out by an applicant, the burden shifts to an objector to show that the use is not 'as of right'. There are no objections to the application and therefore no basis for me to find that the use has been anything other than 'as of right'.

Is there a qualifying 'neighbourhood within a locality'?

21. The claimed neighbourhood is an area marked blue on a map attached to the applicant's email dated 3 July 2019. It essentially comprises Dale Crescent and surrounding streets and is separated from the main part of Hathersage by a main road. I note that the word 'neighbourhood' in s. 15(2) was drafted with deliberate imprecision and its introduction into the Commons Act 2006 was intended to abolish technicalities (Oxford City Council v Oxfordshire County Council [2006] 2 AC 674 at [27] per Lord Hoffmann). Notwithstanding this, a neighbourhood would normally be an area where people might reasonably regard themselves as living in the same portion or district of the town, as opposed (say) to a disparate collection of pieces of residential development which have

been ‘cobbled together’ just for the purposes of making a TVG application (R (Cheltenham Builders Ltd) v South Gloucestershire District Council [2003] EWHC 2803 (Admin) at [85]).

22. Although the area is small, this reflects the users of this relatively small piece of land. The Court of Appeal in R (Lancashire County Council v Secretary of State for Environment, Food and Rural Affairs [2018] EWCA Civ 721 stressed that the question of whether a ‘neighbourhood’ exists is not, in any sense, a scientific or technical issue and it is a matter of judgement which is essentially a matter of impression. The determining question, in a word, was “cohesiveness” – a distinctly impressionistic and protean concept, which allows ample scope for differences of judgement (see [104] and also [105] – 107)). Although I have not conducted a personal site visit, as a matter of impression, it would appeared to me that the claimed neighbourhood has a sufficient degree of cohesiveness.
23. I understand the Parish of Hathersage to be an identifiable administrative area. This would be a qualifying ‘locality’ (see Oxfordshire County Council v Oxford City Council [2006] 2 AC 674).

CONCLUSION

24. In light of the above, I consider that the applicant has proved on the balance of probabilities that all elements of the statutory test for registration of the land as a town or village green have been met and the application should succeed in full. I therefore recommend that the registration authority register the land as a new town or village green.

RECOMMENDATIONS

25. My recommendations are:

- (1) That my Report should be made available to the applicant and to the landowners, together with final confirmation of the date of the meeting at which the registration authority will reach its decision.

- (2) That the decision on the application is for the registration authority which must exercise its own discretion, save that it must not take into account issues relating to any balance of advantage or disadvantage flowing from registration or non-registration of the land as a TVG.
- (3) That in reaching its decision on the application it must have regard to my overall conclusions and reasoning, as well as any advice from officers.
- (4) That subject to that advice and any late representations received, the application should succeed in respect of the entire application land and for the reasons set out in this Report and summarised above.
- (5) If the registration authority accepts my recommendations and reasons, its reasons should be stated to be “the reasons set out in the Independent Inspector’s Report of 4 October 2019”.

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Plan showing the land subject to the TVG application

