



FOR PUBLICATION

DERBYSHIRE COUNTY COUNCIL

REGULATORY - PLANNING COMMITTEE

11 April 2022

Report of the Director of Legal Services

Commons Act 2006

**Report on determination of an application to register land known as
Twyford Road Playing Fields, Willington as a town or village green
(VG118)**

1. Purpose

- 1.1 To ask the Committee to determine an application made pursuant to section 15 of the Commons Act 2006 (“the 2006 Act”) to register land known as Twyford Road Playing Fields, Willington (“the Application Land”) as a town or village green.

2. Information and Analysis

- 2.1 Application VG118 was acknowledged as validly made on 2 July 2010 and notice of the application advertised on 22 July 2010 with a closing date for representations of 3 September 2010. At that time the application was considered to fall within priority 5 of the scheme of prioritisation. The application was raised to priority 2 following notification from the Parish Council that a planning application had been submitted. On 7 January 2021 planning permission was granted for an extension and alterations to Willington Sports Pavilion situated on the application land. The Clerk to the Parish Council has recently contacted the Council to ask that this be given consideration.
- 2.2 The planning permission, as granted, must be commenced within three years of the date of permission. The Parish Council is keen to commence works but are reticent to implement that permission until the TVG

application has been determined. It is therefore considered that the TVG application is re-prioritised as priority 1. A plan showing the land subject to the town or village green application is at **Appendix 2**.

2.3 The application for town or village green status was made jointly by Mr J Stevens, Mr G E Mellor, Mr J B Meynell and Mr S J Tidmarsh, all residents of Willington.

2.4 The application was advertised as required by regulations made under the Commons Act 2006 and objections were received from the Parish Council, as owner of the land, and also from local residents. The applicant was given an opportunity to respond to those objections.

2.5 In order to be registrable as a town or village green, land must meet the relevant statutory definition, in this case found in section 15(2) of the 2006 Act.

2.6 Section 15 of the Commons Act 2006 states:

“15 (1) 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.

(2) This subsection applies where-

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

and

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

2.7 Having considered the case put forward by the applicant and the objection of the Parish Council, the first question to be considered is whether the land has been used as of right during the relevant period by a significant number of the inhabitants of any locality, or of any neighbourhood within a locality. As of right means without force, without secrecy and without permission. The relevant period means a 20-year period of use without interruption, challenge or permission. Where the use of the land has not been challenged or brought into question prior to the date of an application, the relevant period is considered to be the 20 years up to the date of the application. For VG118 the date of the Application is considered as the date that use of the land has been brought into question and the relevant period is from 1990 to 2010. The Applicants have defined the locality as the Parish of Willington. The second question is whether there is a statutory incompatibility between the registration of

the land as a TVG and the purpose for which the Parish Council acquired the land.

User Evidence

- 2.8 In support of the application, the applicants submitted 138 user evidence forms which had been completed by residents of Willington. None of the user evidence submitted with the application refers to any challenges to use at any time and nor do they refer to any obstructions or notices preventing their use of the land or permission being granted for their use. The 20-year period of use under consideration for the purposes of this report is therefore that period up to the date of the application; 1990 to 2010 (the Claim Period).
- 2.9 Of the user evidence forms submitted, the majority describe at least some of their use for organised events or sports. The listed organised sports and events as follows were all undertaken with the express permission of the Parish Council and the Application Land, or part thereof, was hired out to the organisers or clubs for their exclusive use:
- Playing Football – 66 users
 - Watching Football – 41 users
 - Chapel Summer School – 2 users
 - Scouts/Cubs - 12 users
 - Sports/Fun Days – 20 users
 - Carnivals – 41 users
 - Fireworks – 33 users
- 2.10 Only twenty of the 138 users have described their use as not including organised sports or events. Of those users, 11 described using the land for dog walking which is restricted under byelaws to keeping dogs on leads and to allow no fouling and two of those users have not described any use of the application land.
- 2.11 Of the 138 residents who have completed user evidence forms only seven have described all their use in such a way that it can be considered 'as of right' for lawful sports and pastimes. The uses include the following: 'leisure'; with their children or grandchildren; walking, playing/socialising, blackberry picking; other sports / games / pastimes.
- 2.12 The individual residents use of the Application Land varies in longevity from 73 years to 1 year with two users failing to record the years of their use, although one states, 'too far back to remember'. All the residents

who recorded their years of use claim use during the Claim Period. The periods of claimed use is shown below:

- 50 – 73 = 7 users
- 40 – 49 = 20 users
- 30 – 39 = 18 users
- 20 – 29 = 37 users
- 10 – 19 = 48 users
- 1 – 9 = 6 users

2.13 Of the 136 residents who have recorded their years of use, 82 claim to have used the Application Land for a 20 year period or more and 54 for less than 20 years. The user evidence covers the years from 1937 to 2010 with the longest user claiming use for 73 years.

Objections to the Application

2.14 The Council received 17 submissions in objection to the application; one from the Parish Council and the other 16 from local residents.

2.15 The reasons for objecting raised by local residents include the following, which are not considered as relevant objections as they do not question the use of the land by the public:

- The Application Land houses the recycling banks
- The importance of the provision of a GP Surgery which was intended to be built on the land (X4)
- Construction of the surgery would improve the area, yet still afford provision for sport – which would surely be prohibited on a village green
- The Application has been made as a way to delay or prevent the building of the GP Surgery (x3)
- In over 20 years as a Willington resident have never heard it referred to as a village green
- There are alternatives in Willington; small park with swings / 'green' / child friendly designated areas (X6)
- Development supports the preservation of space for competitive sport and the provision for better healthcare
- TVG status would prevent any changes being made including the surgery development
- Would deprive the Parish Council (owners) the flexibility of deciding future use.

- A number of the listed pastimes are no longer accurate; the Scouts have their own premises and only use it for fireworks; the primary school now has its own field.
- Overwhelming majority of Willington residents have voted in favour of selling/leasing the land for a Surgery. The area left is big enough for the football pitch and changing facilities to remain. Still room for dog walking.
- Not seen any other activities in 10 years of living in the village.
- Application is not for children but for the football users
- Comments on the declared uses: Football; Saturday /Sunday and in the week. Scout Group; very occasional and on bonfire night. Carnival; no longer there and not for at least 12 years. After-school group; never seen on the playing field. South Derbyshire District Council event; once a year for one week. Baptist Church; occasional. Junior School; Never seen on the field as they have their own green space adjacent to the school. Cricket Club; did not know it existed.
- Field bought by Parish Council for the benefit of all the people of Willington, there used to be fetes, fairs, carnivals, sports of all kinds but things have changed dramatically over the years: children no longer able to use the field during the football season when teams practice under supervision - they now play at the NPower field.
- The Football Club have manipulated this field for their purposes alone and the reason for the application is the Football Club do not want to lose 'their' field to the surgery.
- The applicants have given no thought to the 300 residents of Willington.

2.16 The residents objecting to the Application also raised various points relating to the use of the Application Land, including the following:

- It does not have the distinctive characteristic of being entirely open as it is completely fenced or hedged.
- It is little used apart from organised football and dog owners exercising dogs, some not responsibly which makes it a hazardous playground.
- Apart from football matches the field is not regularly used other than by people exercising dogs
- The land is little used other than by dog walkers.
- Fields now used by dog owners and their dogs and a very small number for sport
- Lived in the village for 39 years, raised 2 children in the village and only ever used the field to walk dogs.
- Land has not been in continuous use for lawful sports and pastimes. In 20 years to 2010 the only activity witnessed on the Application Land is

people exercising their dogs and (they) have never before witnessed more than two cars parked at the ground.

- The land is not in continuous use by a significant number of the inhabitants of the parish of Willington for sports and pastimes. The area is deserted most of the time, the only activities being recycling and football (played by a small number and persons from other locations)
- Only 200 questionnaires issued to a selected group of residents.
- Questionnaires sent selectively to residents who would be in favour of the Application.
- Questionnaires sent selectively to residents which is not a fair representation of majority opinion.
- Only 104 supporters of registering the Application land as a TVG out of a population of approximately 2700 residents.
- Requirement for registration as a TVG is continuous use by a significant number of inhabitants of the parish for lawful sports and pastimes; The application appears to fail at first hurdle. Following a detailed survey by several villagers recording use over several weeks around Easter, the field was used for dog walking and football. (My) own recording revealed just one child playing with his father and a football.
- When in use by footballers the field is not free to use by the public
- If TVG status were granted what would happen if you were having a picnic, playing rounders, frisbee, children's party etc and the football team turned up; which party would take priority, as Village Green status would be for everyone?
- If successful field would not be fully available - much of the field is used for football training and matches.

Parish Council Objection

2.17 The Parish Council submitted a substantial statement in objection to the Application which sets out their case that the Application Land fails to meet the statutory test under section 15(2). In particular it is the Parish Council's case that the Application Land has not been used as of right but rather by right throughout the Claim Period.

2.18 In support of the statement the Parish Council has provided various pieces of evidence including a copy of the byelaws covering the Application Land, a copy of an aerial photograph showing the scout hut, receipts for payments by Willington FC, completed hire forms and invoices for the hire of the Application Land.

2.19 The Parish Council state that:

- The Application Land was acquired on 05/02/1962 following a Parish Council Meeting of 25/01/1960, when it was resolved to negotiate the purchase of the field, "as a Playing Field for the Parish" subject to Planning Permission.
- The Application Land was acquired, owned, provided by and statutorily regulated by the Parish Council and the conveyancing plan identifies the land as "proposed Playing Field". They quote Carnwath J (Supreme Court judge) who said it is, "obvious that TVG contrasts with other open spaces, for example, recreation grounds maintained by local authorities".
- At a Parish Council Meeting of 29/01/1960 it was recommended that a member from each of the bowls, tennis, football and youth club should be invited to serve on a (Management) Committee along with members of the Parish Council
- At a meeting of 25/10/1976 it was resolved to ask the South Derbyshire District Council to draft byelaws to cover the following: dogs to be kept on leads and not allowed to foul; no motor cycling; no horse riding, but with concessions for pony rides on carnival days with prior written permission from the Parish Council (as resolved at meeting on 27/09/1976)
- From the Parish Council AGM of 31/03/1980, the Chairman's Report noted that, "the Parish Council has been concerned with the use... of the Playing Field and the play areas. Two particular items have been unauthorised accesses and the exercising of dogs. In order to clarify the position of the Parish Council, byelaws to control the use of such areas have been drafted and are shortly to be approved by Central Government. These byelaws will enable the Parish Council to have full control over the use of the areas with the force of the law behind it."
- The byelaws were made on 24/09/1979 and were approved by the Secretary of State and came into operation on 01/06/1980. The byelaws were made under s164 Public Health Act 1876 and s12 & s15 Open Spaces Act 1906 and relate to 'the Pleasure Grounds'. S12 provides that, 'a local authority may exercise all powers...in respect of any open spaces... which may be vested in them...'
- At a meeting of 28/07/1980 it was resolved that a notice of the making of the byelaws should be displayed on site to inform the public
- The Parish Council argue that some Lawful Sports and Pastimes which in themselves are lawful, if carried out on the playing field without express permission, are in breach of the byelaws and the users are therefore committing an offence, particularly if they involve the erection of any post, rail, fence, pole, tent, booth, stand, building or other structure, all of which

would require the Parish Council to grant a licence. It is also prohibited, without licence to offer for sale, let or hire any commodity or article. Also prohibited is the riding of a bicycle, tricycle or similar machine. It is an offence to enter with a dog unless under proper control and efficiently restrained from causing annoyance. Any area of the field marked out for a specific sport can only be used with Parish Council permission. It is prohibited to play any game when the ground is unfit to do so subject to a notice stating it is so. Driving, chipping or pitching a solid golf ball is not allowed. Where a game could cause damage or injury to others, the Parish Council may provide notice that an area is for players of that game only. There is a 'no golf' sign at the entrance to the field which was paid for on 09/04/2001

2.20 Turning their attention to the user-evidence forms the Parish Council state:

- Many of the users have referred to the village Carnival which has been allowed to take place on the Application Land with the express permission of the Parish Council, as proven by the minutes from meetings of 29/10/1990 & 20/01/1992 which record letters from the Carnival Committee requesting permission to use the field. There are also the subsequent 'hire forms' which were completed and received by the Parish Council
- Users refer to Cub Scout use. The Scout Hut used to be on the field before moving elsewhere and there are now recycling facilities in its place. At the Parish Council meeting of 06/01/1992 a request was received from the Scout group to use the land for a monthly car wash service and a sporting event. At the Parish Council meeting of 27/04/1992 it is recorded that the annual rent for the Scout Hut was £1.00. At the Parish Council meeting of 27/07/1992 the Scout group requested use of the Application Land area for a BBQ and Balloon day. Further requests were noted at the Parish Council Meetings of 25/01/1993, 26/07/1993 and 25/07/1994. The Scout group were granted permission to use the field on 09/09/1995, 05/11/2005, 04/11/2006 and 03/11/2007 for fireworks displays and therefore organisers and attendees did so with permission. The Scout Hut was in situ until 1999.
- Many users refer to playing or watching football. The football pitch been in situ since 1962. The pitch and changing rooms are hired out for match days. The pavilion is only available to those hiring the playing fields and not to general public.
- There are records of payments made by the football teams on 16/08/1991, 26/06/1992, 23/10/1992 and 10/06/2003 through to

25/06/2009. The Parish Council provide an example of an agreement for hire in 1997/1998. The playing fields were hired on Sundays (09:30-12:30) & Wednesdays (18:00-20:30). Other football teams and courses have also hired the pitch in 2000, 2001, 2002 and 2003

- Other requests and hire forms include: Pre-school playgroup (1991 and 1992); Baptist Chapel (1990 and 1992); Millennium Committee (*1999/2000); Triathlon Club (2009)

2.21 Concluding their arguments, the Parish Council state:

- Use of Application Land for formal activities such as football matches and training; Carnivals; Fireworks throughout the relevant period has been by licence of the Parish Council.
- Informal use of the Application Land such as dog walking is regulated by Byelaws made under the 1906 Act.
- The Application Land was acquired for recreational use by the public, exercised by the Parish Council under statutory powers.
- Land laid out for public use (e.g. the football pitch) is maintained and regulated under a statutory trust (s10 Open Spaces Act 1906) and use of the Application Land has been pursuant to a legal right, not against the will of the Parish Council, and such use would not have appeared to the Parish Council to have been so in claim of any other right.
- The evidence provided by the Parish Council shows that football teams and others have been permitted to use the field on payment to reserve and use the pitch or the whole field (e.g. carnival / fireworks).
- The Parish Council retained the power to admit or exclude persons.
- Permission has been requested by various persons and groups and consent has been granted, sometimes with restrictions, or refused.
- On occasions the Parish Council has prevented use of the land.
- Parish Council meetings minutes are on public record and there are no other requirements for further publication of Parish Council resolutions
- The Byelaws were notified to the public and are publicly available.
- The Parish Council refer to relevant case law in the objection, and quote Lord Walker at paragraph 81 of R (Beresford) v Sunderland CC (Beresford) in which Lord Walker states, "Where land is vested in a local authority as a statutory trust under section 10 of the Open Spaces Act 1906 inhabitants of the locality are beneficiaries of a statutory trust of a public nature and it would be very difficult to regard those who use the park or other open space as trespassers (even if that expression is toned down to tolerated trespassers). The position would be the same if there was no statutory trust in the strict sense, but land had been appropriated

for purposes of public recreation.” The Parish Council add that, in these circumstances, where the public are able to make use of the land for recreation in pursuance of a legal right, no further consent or licence is required to exclude the operation of S.15 of the 2006 Act and notes that the Parish Council has powers given by statute to bring to an end the operation of the trust and to dispose of the land free of restriction - sections 122 & 123 Local Government Act 1972

2.22 In conclusion to the Parish Council's objection they state that the Applicants have not proven on the balance of probabilities that the use of the land for Legal Sports and Pastimes has been as of right and therefore, nec iv, nec clam, nec precario. That use has been by right under a licence or statutory trust. (Nec vi, nec clam, nec precario, is a Latin legal term meaning 'without force, without secrecy, without permission')

2.23 The applicant has responded to the statements in objection and have raised various points, some of which are not considered relevant as they do not relate to the use of the Application Land and are summarised below:

- The South Derbyshire District Council's own survey shows a shortage of open space to population in Willington
- The Application Land is prime development land
- Alternative land has been found for the new surgery
- Since the approach to build on the land, the applicants and others have asked the Parish Council to hold a Parish meeting to gauge opinion and to submit the area for QE2 2012 playing field status, yet no meeting arranged was arranged
- The Parish Council sets out why they bought the land but fails to give reasons for needing the land
- The original play area had been sold for development but was then purchased by Parish Council following a meeting in 25/04/1960 and registered in the name of the Parish Council for legal reasons

2.24 The Applicants also raised points that are considered valid and are summarised below:

- According to a document, "Parish of Willington Guide (March 1968) there was a playing field committee made up of PC members and sports organisations

- One parishioner claims the land has not had continuous use, which is wrong as shown by the user evidence forms, and the objections themselves indicate usage and therefore support the application
- They believe that the Parish Council contradicts itself because the fact that the football club and other groups use the field with permission and therefore 'by right', shows that individuals are using the field 'as of right'
- It is polite and courteous to allow organised events to take place
- Byelaws can apply to village greens
- All but one of the Parishioners primarily object due to the need for the doctors' surgery and the Applicants' view is that that objection has no basis, as no development currently planned
- The Applicants maintain that they use the field as of right and, as individuals, have never requested or been refused permission.

2.25 In conclusion they write, “we always use this land ‘as of right’ as do most of the parishioners that you might find on the land on any day of the week”

Consideration of the evidence and submissions

2.26 The Applicants have submitted a substantial amount of evidence to support their claim that the Application Land is well used by a significant number of residents of ‘The Parish of Willington’.

2.27 Although there is evidence of significant use of the Application Land the majority of that use appears to be by people either playing or watching football, with the majority of other users referring to events and clubs such as Carnivals, firework displays and cub scout meetings, all of which were undertaken with the permission of the Parish Council and through the hire of the Application Land. The evidence submitted by the Parish Council proves that the Application Land was hired out for such activities. Such permissive use does not satisfy the requirements of the 2006 Act for land to be registered as a TVG as such use is not as of right, but by right.

2.28 There remain other users that have not used the Application Land with express permission but of those twenty residents, eleven have described using the land for dog walking. Such use is restricted by the byelaws described above and for that reason, such use can be considered to be ‘by right’. The byelaws permit the public to walk their dogs on the land, provided the dog is under proper control and efficiently restrained from causing annoyance. Anyone exercising their dogs on the playing field where the dog is not under proper control or efficiently restrained is in breach of the byelaws and subsequently committing a criminal offence.

Therefore, all use for dog walking should be discounted as it cannot be considered as of right.

2.29 Two users failed to describe how they had used the Application Land in any way, which leaves only seven residents who could unrefutably claim to have always used the Application Land 'as of right'. Seven residents in a parish the size of Willington which has circa 3000 inhabitants does not represent a significant proportion of a locality. The 2006 Act does not define what constitutes a "significant number of the inhabitants of any locality... or of any neighbourhood", but in R (Alfred McAlpine Homes Ltd) v Staffordshire County Council [2002] EWHC 76 (Admin), Sullivan J held:

"71. Dealing firstly with the question of a significant number, I do not accept the proposition that significant in the context of section 22(1) as amended means a considerable or a substantial number. A neighbourhood may have a very limited population and a significant number of the inhabitants of such a neighbourhood might not be so great as to be properly described as a considerable or a substantial number. In my judgment the inspector approached the matter correctly in saying that "significant", although imprecise, is an ordinary word in the English language and little help is to be gained from trying to define it in other language".

2.30 The Applicants maintain that they have always used the Application Land as of right yet also state that, "as individuals, we never have requested or been refused permission to use this land for lawful pastimes". However, the Applicants have used the Application Land with permission for the reasons described below:

- Applicant 1: for playing football, Carnivals, firework displays and with the Chapel Summer School
- Applicant 2: for playing football, Carnivals, firework displays, cub scout activities and organised sports events/days
- Applicant 3: for playing football, Carnivals, firework displays, cub scout activities and watching football
- Applicant 4: for playing football, firework displays, cub scout activities and watching football

2.31 The Parish Council have provided copies of byelaws which restrict the use of the Application Land and which were made under S164 Public Health Act 1876 and S12 & 15 Open Spaces Act 1906 advising that S12 provides that, 'a local authority may exercise all powers...in respect of any open spaces... which may be vested in them...' and also refer the registration authority to consider the deliberations in Beresford, in

particular where Lord Walker considers that local inhabitants are the beneficiaries of a statutory trust under section 10 of the Open Spaces Act 1906 and therefore shouldn't be considered as trespassers. The Parish Council's interpretation has weight that where the public are able to make use of the land for recreation in pursuance of a legal right, no further consent or licence is required to exclude the operation of S.15 of the 2006 Act.

- 2.32 The local residents who have objected to the Application have done so for various reasons including the lack of use of the Application Land by individuals, their concerns that the user-evidence forms were limited in number and only delivered to people the Applicants believed would support the Application and perhaps most pertinently the fact that when there were football matches taking place (or other organised events/sports) the Application Land was not free to use for lawful sports and pastimes by the inhabitants of the locality.
- 2.33 The Applicants have argued that all but one of the local residents' objections were primarily based on the need for the new surgery and as that development was no longer going ahead, the objections have no basis. The Applicants are correct that the need for the new surgery is no basis for a valid objection to the Application (regardless of whether the development was due to go ahead or not) but there were four objectors who didn't refer to the surgery at all, while others made other valid points as described above.
- 2.34 In conclusion, the Applicants have not shown, on the balance of probabilities that the Application Land has been used by a significant proportion of the inhabitants of a locality as of right for lawful sports and pastimes and the Parish Council have proven that there has historically been permissive and paid for use of the Application Land.

Further Consideration

- 2.35 On 11 December 2019 a majority of the United Kingdom Supreme Court – Lord Carnwath, Lord Sales and Lady Black JJSC – held that parcels of land owned by Lancashire County Council and NHS Property Services Ltd could not be registered as TVGs because the land was held by the authorities for defined statutory purposes, and registration as a TVG would be in conflict with those statutory purposes. This is known as the principle of 'statutory incompatibility'.
- 2.36 The County Council has previously sought Counsel's advice regarding the application of the *Lancashire* decision when determining TVG

applications where the land is held by a public authority. Counsel's advice is considered below.

- 2.37 In respect of a public authority providing evidence of the statutory powers under which it holds land, Counsel considers *Lancashire* and the need to identify the statutory purpose for which land was held, concluding:

“Statutory incompatibility does not apply like a blanket policy to all land in public ownership. The powers must be identified so that it can be examined if there is, in fact, an incompatibility at all. Therefore, in my view, there needs to be more than an assertion. However, the evidence need not be conclusive and it is reasonable to make presumptions about pieces of evidence that cannot be found anymore.”

- 2.38 Further she states that where a public body has identified the reason for which land was acquired but hasn't identified the specific statutory power that is pursuant to:

“I do not consider that that is necessarily fatal to an argument that statutory incompatibility applies because all local authority powers to acquire and hold land must be derived from some statutory power to hold land for a particular purpose.”

- 2.39 In her advice, relating to another application but where statutory incompatibility was relevant, Counsel considers whether there is an incompatibility between use of the land for 'highways and depots' and registration as a TVG. She observes that use for 'highways and depots' may require potential building operations and vehicular access which would be prohibited by the 19th century Victorian legislation in s. 29 of the Commons Act 1976 and s. 29 of the Commons Act 1876 which applies to nuisances. This observation in relation to 'highways and depots' can also be attributed to other purposes for which land may be held. In this matter, the Application Land was held for recreational purposes and purchased as playing fields for the parish. The Parish Council, has been free to hire out the land to various groups for their sole use, erect structures such as the recycling units and goalposts and to mark out sports pitches upon which use is restricted by byelaws, the Parish Council would also have been free to develop the land as they saw appropriate in order to provide the best facilities for the recreation and sporting pursuits of the parish residents and to provide any facilities to improve the provision of playing fields, such as changing rooms.

- 2.40 Counsel's conclusion in relation to the other application was, “I therefore consider that the application should fail on account of a statutory incompatibility between the Borough Council's holding of the land for

“highways and depots” and the recreational rights that would flow from TVG registration. The consequence is that the Borough Council’s rights prevail, and it is not open to the applicant to register this land as a TVG. I would therefore advise that the application is dismissed.”

2.41 The Applicants for this application were written to and offered the opportunity to comment on the *Lancashire* decision in relation to VG118.

2.42 The Applicants responded on 24 January 2022 suggesting that, in their opinion, the *Lancashire* decision strengthened their Application rather than impeded it, referring to the ‘The Court of Appeal’, which they state “made clear that the critical test is whether or not the statutory rights or duties make the land incompatible for registration as a town or village green”, and that, “The test consists of three central elements, satisfaction of which weighs in favour of incompatibility:

1. There must be specific statutory purposes or provisions relating to the land.
2. Parliament must have conferred on the landowner the powers to use the land for those specific statutory purposes, which are incompatible with the land's use as a town or village green.
3. Registration as a town or village green must clearly impede, restrict or prevent the exercise of the statutory powers or duties relating to the land.”

2.43 The Applicants state:

- The 1962 Willington Parish Council minutes clearly state the purpose of the acquisition of the land, that of an adult playing field.
- It is not a case of ‘implied permission’ where the landowner merely tolerated the public’s use, but the land was acquired for public recreation.
- The Application Land, being recreational, was in keeping with a village green with no other statutory purpose for use, such as housing or commercial
Registration would not impede the exercise of statutory powers or duties. Registration as a town or village green is utterly in keeping with use of the land for the past 60 years.

2.44 The Applicants conclude that, “By having to ask for permission to have larger activities such as local league football or fetes does not impede on the ‘use as of right’ but it is for the purpose of attempting to accommodate conflicting uses. As individuals we have on many occasions been on the area while local league football was being played, as only a part of the area is taken up, the rest can still be used for lawful sports and pastimes

'as of right' (being without force, without permission and not in secrecy) by local inhabitants”.

- 2.45 The Applicants’ opinion that the *Lancashire* decision strengthens their application cannot be upheld by the Council, as Registration Authority. Whether land held for a statutory purpose is incompatible with registration as a TVG is either relevant or not; it can either have no effect on an application or prevent an application from being successful. The Applicants confirm that the land was acquired by the Parish Council for use as an ‘adult playing field’ which would suggest that the land would not be readily available to all local inhabitants but only the adult members of the parish. The Applicants state that, ‘having to ask for permission... (for) local league football or fetes does not impede on the ‘use as of right’’. Unfortunately for the Applicants, this is incorrect as it reiterates and strengthens the Parish Council’s assertion that use of the land has been controlled and permission granted on an ongoing basis and therefore has been by right.
- 2.46 On the evidence presented, the principle of statutory incompatibility may not apply in this situation but, the fact that the land was acquired for use as an adult recreation facility adds weight to the argument that use of the land has been by right rather than as of right.
- 2.47 Given that, on balance, the consideration of the evidence both in support and in objection to the Application shows that the use of the Application Land has been ‘by right’ rather than ‘as of right’ the remaining elements of the statutory test are not addressed although in order to provide thorough consideration, it has been considered whether there is a statutory incompatibility between TVG registration and the purpose for which the land is held by the Parish Council.
- 2.48 The regulations governing the determination of town or village green applications made pursuant to section 15 of the 2006 Act are The Commons (Registration of Town or Village Greens)(Interim Arrangements)(England) Regulations 2007 (“the 2007 Regulations”).
- 2.49 The 2007 Regulations state, at regulation 6(4):
- “The registration authority must not reject the application without giving the applicant a reasonable opportunity of dealing with –
- (a) the matters contained in any statement of which copies are sent to him under paragraph (3); and
- (b) any other matter in relation to the application which appears to the authority to afford possible grounds for rejecting the application.”

2.50 In accordance with the requirements of regulation 6(4)(b) the Applicants have been provided with a copy of the Parish Council's statement, and the Applicants have responded to the matters raised. The Applicants' have also been offered the opportunity to provide their comments on statutory incompatibility and have responded. The Applicants' responses have been considered and this is summarised above.

3. Consultation

3.1 Notice of the Application was published in the Derby Evening Telegraph on 22 July 2010 and posted on site.

3.2 17 objections were received following the Notice of the Application.

3.3 The details and issues raised in response to the consultation are summarised above.

4. Alternative Options Considered

4.1 Committee rejects the recommendation in relation to VG118 and resolves to register the land at Twyford Road Playing Field in Willington as a town or village green, if Committee members believe that the evidence in support of the Application shows that use of the land has been as of right, that is without force, without secrecy and without permission and that the evidence provided by the Parish Council to refute the claim that use has been as of right fails to prove that use of the land has been with the permission of the Parish Council and therefore by right. This option should be rejected because the evidence submitted in objection to the application is sufficient to prove, on the balance of probabilities, that the statutory tests for registration have not been met.

4.2 That Committee neither rejects or accepts the 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 VG118 (legal Services reference 49145) held by the Director of Legal Services.

7. Appendices

7.1 Appendix 1 – Implications.

7.2 Appendix 2 – plan showing the land subject to the town or village green application.

8. Recommendation(s)

That Committee resolves to refuse the application to register the land at Twyford Road Playing Field in Willington as a town or village green.

9. Reasons for Recommendation(s)

9.1 Derbyshire County Council is the Registration Authority for the area of land which is the subject of the application.

9.2 For the reasons set out in this report it has not been shown on the balance of probabilities that the statutory tests for registration have been met; that the Application 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 or more where that use has been as of right; without force, without secrecy and most pertinently without permission.

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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 considered within the main body of the report.

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.

Plan showing the land subject to the town or village green application

