



LICENSING AND SAFETY COMMITTEE

7 MARCH 2018

THE DETERMINATION OF APPLICATIONS FOR THE REGISTRATION OF LAND AS A TOWN OR VILLAGE GREEN – DELEGATIONS TO THE LICENSING SUB-COMMITTEE AND THE CHIEF LEGAL OFFICER

Report from: Perry Holmes - Chief Legal Officer

Authors: Alison Poulson - Licensing & Local Land Charges Manager
Stephen Platt – Democratic Services Officer

Summary

This report seeks the Committee's agreement to the delegation of determining applications for the registration of land as a town or village green, where representations have been received and not withdrawn, to the Licensing Sub-Committee. The report also seeks agreement to the delegation of functions to the Chief Legal Officer.

The report advises that the Committee itself may still exercise any functions it has delegated to a Sub-Committee or an Officer and it proposes that, in each case, a mediation meeting between all parties to the application be held before the application is referred to the Licensing and Safety Committee or Licensing Sub-Committee for determination.

1. Budget and Policy Framework

- 1.1 Chapter 3 of the Council's Constitution sets out the functions of the Licensing and Safety Committee which include functions relating to licensing and regulation as set out in Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000. Included in Schedule 1 and listed under Licensing and Registration are functions relating to common land and town or village greens.
- 1.2 Under Article 14 of the Constitution, the Monitoring Officer has delegated authority to make minor changes to the Constitution, with a copy of such changes being supplied to all Group Leaders and Whips within 14 days. All

other changes to the Constitution will only be approved by the Council after consideration of the proposal by the Monitoring Officer.

2. Background

- 2.1 A town or village green is usually land that is used 'as of right' by the local community for sports and pastimes, either formally or informally. This use must have been by a significant number of local inhabitants for a continuous period of at least 20 years.
- 2.2 Medway Council, as the Commons Registration Authority (CRA) has a duty under Section 4 of the Commons Act 2006 to keep a register of common land and a register of town and village greens. As CRA, the Council also has a duty under paragraph 26 of the Commons Registration (England) Regulations 2014 to determine applications to amend this register, unless it has an interest in the outcome of the application such that it brings into question the Council's ability to determine it impartially. In this case the application would be referred to the Planning Inspectorate for determination and it may decide to hold a hearing.
- 2.3 Section 15 C of the Commons Act 2006 sets out the legislative requirements for registration of land as a town or village green. For an application to be successful it must meet all of the legislative requirements and failure to meet one of the legislative requirements will result in the whole of the application being refused.
- 2.4 The current process for dealing with an application to register land as a town or village green includes the following steps:
 - 2.4.1 The Council's Local Land Charges Service, checks that the application has been correctly made.
 - 2.4.2 The Local Land Charges Service formally advertises the application, allowing six weeks for representations to be made.
 - 2.4.3 Any representations received are forwarded to the applicant for comment.
 - 2.4.4 Where representations against the application have been made and not withdrawn, the application is referred to the Licensing and Safety Committee for determination.
 - 2.4.5 When determining an application under the Commons Regulations (England) Regulations 2014, the CRA:
 - (a) may not refuse an application without first offering the applicant an opportunity to make oral representations; and
 - (b) may not grant or refuse an application without first offering any person (other than the applicant) for whom the grant or refusal

would represent a determination of that person's civil rights an opportunity to make oral representations.

3. Proposal

- 3.1 It is proposed that the process for dealing with an application to register land as a town or village green, as set out in paragraph 2.4 above, be amended to include the holding of a mediation meeting between all parties to the application before the application is referred to the Licensing and Safety Committee or Licensing Sub-Committee for determination. This meeting will seek to reach agreement on issues before the application is determined and a Council Legal Officer will be in attendance. Should the application still require referral to the Licensing and Safety Committee or Licensing Sub-Committee, a different Legal Officer will attend to advise Members.
- 3.2 It is further proposed that the Licensing and Safety Committee delegate the determination of applications for town and village green registration, where representations have been received and not withdrawn, to the Licensing Sub-Committee. To comply with the Commons Regulations (England) Regulations 2014, the Licensing Sub-Committee would be required to hear any oral representations that the applicant or other interested parties wished to make before reaching a decision on an application.
 - 3.2.1 It is considered that, in a majority of cases, it would be appropriate for the Licensing Sub-Committee to consider applications for town or village green registration. The sub-committee, which is made up of seven members of the parent Licensing and Safety Committee, already follows a process, principally on taxi matters, which involves hearing oral representations and questioning relevant parties. The current proposal would extend that format to include town or village green registration.
 - 3.2.2 It is important to note that the delegation to the Licensing Sub-Committee set out above would not preclude the parent Licensing and Safety Committee from determining an application. The Committee would retain this right if it was deemed to be a more appropriate course of action, given the circumstances of the case, by the Chief Legal Officer in consultation with the Chairman of the Licensing and Safety Committee, or in their absence, the Vice-Chairman of the Committee.
 - 3.2.3 It is envisaged that complex or high profile applications would be referred to the Licensing and Safety Committee, rather than the Licensing Sub-Committee. This would also be the case where there was a conflict of evidence or a dispute in respect of the legal requirements set out in the Commons Act 2006. In the event of a conflict or dispute of this nature, the Council, as CRA, may decide to hold an inquiry conducted by a suitably qualified member of the legal profession. A report from the inquiry would then be presented to the Licensing and Safety Committee for its consideration when determining the application.

- 3.3 It is proposed that the decision whether to hold an inquiry prior to the determination of an application by the Licensing and Safety Committee, be delegated to the Chief Legal Officer.
- 3.4 A flow chart of the proposed revised process for dealing with applications to register land as a town or village green is at Appendix A.
- 3.5 To enable the delegations within the revised process, it is proposed that the terms of reference for the Licensing Sub-Committee, as set out in Chapter 3, Part 2 of the Constitution, Responsibility for Council Functions, be amended to include the words printed in bold below:

- To determine hackney carriage, private hire and other licensing **and registration** issues not covered by the Licensing Act 2003 nor the Gambling Act 2005.

- 3.6 In addition, it is proposed that the delegations of the Chief Legal Officer, as set out in Part 4, Employee Delegation Scheme, be amended to clarify the functions that do not require referral to the Licensing and Safety Committee or Licensing Sub-Committee, these being as follows:

- The decision making process for applications with no objections received.
- To determine whether an application should be referred to the Licensing and Safety Committee rather than the Licensing Sub-Committee.
- To instruct Counsel and hold/instruct for an inquiry to be held to form a decision for recommendation to the Council for determination.

- 3.6.1 In order to achieve this, the following amendments to paragraph 6.15 of the delegations to the Chief Legal Officer are proposed:

6.15 Licensing and Registration:

- Except where a **decision is reserved for Full Council**, to manage all licensing and registration functions of the Council including the licensing and registration of pleasure boats, hackney carriage and private hire, sex establishments, street and house to house collections, motor salvage, scrap metal dealers, street trading consents, **common land and town or village greens** and such other services as may be authorised.
- **With regard to the registration of land as a town or village green:**
 - (i) **to determine any application for the registration of land as a town or village green where there are no objections received to the application;**

(ii) to decide, in consultation with the Chairman of the Licensing and Safety Committee, or in their absence, the Vice-Chairman of the Committee, whether applications where an objection has been received and not withdrawn should be referred to the Licensing and Safety Committee for determination rather than the Licensing Sub-Committee; and

(iii) to hold public inquiries prior to the determination of applications where necessary and to instruct Counsel in relation to the same.

3.7 The Monitoring Officer, who has delegated authority to make minor changes to the Council's Constitution, would be asked to amend the Constitution to incorporate the amendments set out above and also to correct an erroneous reference in Part 2 of Chapter 3. Currently, the registration of common land and village greens is incorrectly included in the functions of the Planning Committee in a schedule summarising the purpose and remit of each Council committee.

4. Risk management

4.1 Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community. Article 14 of the Council's Constitution places an obligation on the Monitoring Officer to monitor and review the operation of the Constitution to ensure that its aims and principles are given full effect. It is important that this is done on an ongoing and regular basis to minimise the risk of the Council failing to operate its governance arrangements in line with current legislation and best practice.

4.2 There is a risk that the Council may receive a legal challenge if the processes put in place for licensing matters do not comply with the relevant legislation.

5. Financial and legal implications

5.1 There are no specific financial implications arising from this report.

6. Legal implications

6.1 Town and village green registration is a non executive function as set out in the Local Authorities (Functions and Responsibilities) (England) Regulations 2000.

6.2 Medway Council has a statutory duty set out in paragraph 26 of the Commons Registration (England) Regulations 2014 to determine applications to amend the registers of common land and town and village greens.

6.3 Under Article 14 of the Constitution, the Monitoring Officer has delegated authority to make minor changes to the Constitution.

7. Recommendations

7.1 That the Licensing and Safety Committee:

7.1.1 notes that town and village green registration is a function of the Licensing and Safety Committee and not the Planning Committee and that the Constitution requires amendment to clarify this;

7.1.2 delegates the function of determining applications for the registration of land as a town or village green, where representations have been received and not withdrawn, to the Licensing Sub-Committee unless the Chief Legal Officer, in consultation with the Chairman of the Licensing and Safety Committee, or in their absence, the Vice-Chairman of the Committee, is of the opinion that an application should be determined by the Licensing and Safety Committee;

7.1.3 agrees the delegations to the Chief Legal Officer with regard to the registration of land as a town or village green, as set out in paragraph 3 of the report; and

7.1.4 notes that the Monitoring Officer, who has delegated authority to make minor changes to the Council's Constitution, will amend the Constitution to reflect these delegations.

Lead officers

Alison Poulson, Licensing and Local Land Charges Manager

Telephone No: 01634 332774 Email alison.poulson@medway.gov.uk

Stephen Platt, Democratic Services Officer,

Telephone No: 01634 332011 Email stephen.platt@medway.gov.uk

Appendices:

Appendix A – Flow chart of proposed revised process for dealing with applications to register land as a town or village green

Background Papers:

The Commons Act 2006:

The Commons Registration (England) Regulations 2014

Proposed revised process for dealing with applications to register land as a town or village green

