

## NORTH YORKSHIRE COUNTY COUNCIL

### PLANNING AND REGULATORY FUNCTIONS COMMITTEE SUB-COMMITTEE

8 OCTOBER 2010

#### APPLICATION FOR REGISTRATION OF LAND BEECH WALK – EASTWAY PLAY AREA, EASTFIELD, SCARBOROUGH AS A TOWN OR VILLAGE GREEN

##### **1.0 PURPOSE OF REPORT**

- 1.1 To report on an application for the registration of an area of land known as Beech Walk / Eastway Play Area in Eastfield Near Scarborough as a Town or Village Green.

##### **2.0 STATUTORY AUTHORITY**

- 2.1 For the purposes of the Commons Act 2006, the County Council is the Registration Authority for common land and town or village greens within North Yorkshire.
- 2.2 Under Section 15 of the Commons Act 2006 the registers may be amended where any land becomes a town or village green.

##### **3.0 BACKGROUND TO THE APPLICATION**

- 3.1 The land comprised in the application is owned by Scarborough Borough Council and is shown hatched black on the plan attached to this report as Appendix A. It comprises an open area of maintained grassland. Photographs of the site will be distributed to Members at the meeting.
- 3.2 The application was submitted by Eastfield Parish Council and is dated 30 May 2008 and was received for consideration on 12 June 2008. Subsequent to receiving the application it was necessary to clarify certain points with the Applicant in particular with reference to the matter of locality (see later in this report). Additionally your officers sought clarification from Scarborough Borough Council to the initial objection it made to the application.
- 3.3 The application submits that the land became a Town or Village Green on 30 May 2008 by virtue of its actual use by local inhabitants for lawful sports and pastimes as of right during a period of at least 20 years up to and including that date.

3.4 The Applicant submitted evidence from local residents of use of the land during this period in the form of 37 letters claiming use of the land regularly by local residents as an area for recreation and leisure including by children as a play area and for ball games (football, cricket, rounders etc.) and flying kites. There is a small playground on the site containing swings and a slide. People claim to have walked their dogs and have also used it for general exercise and picnics.

#### 4.0 **PUBLIC ADVERTISEMENT AND OBJECTION**

4.1 Statutory requirements to publish public notice of the Application in the local press, post similar notices on site and serve notice on affected landowners have been complied with.

4.2 An initial holding objection was received from Scarborough Borough Council suggesting further evidence was to be submitted. However correspondence was received from the Borough Council's Legal and Support Services in April this year to advise that the Cabinet of the Borough Council had resolved that no objection be submitted and so the holding objection was revoked.

#### 5.0 **LEGAL ISSUES**

5.1 Section 15(2) of the Commons Act 2006 provides that land should be registered as a green where it is shown that:-

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

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

5.2 The task of proving the case in support of registration of the land as a town or village green rests with the person making the application, and the burden of proof is the normal, civil standard: the balance of probabilities.

#### 6.0 **ASSESSMENT OF LEGAL CRITERIA**

6.1 Applications of this nature are not determined by reference to the merits of assigning any particular status to the land in question, but on the evidential tests set out section 15(2). Members, who will sit in a quasi-judicial capacity are to determine the Application upon considering the evidence set out before them in this report.

6.2 As of Right

6.3 The courts have determined in principal that use “as of right” means use which has been exercised “without force, stealth nor licence of the owner”

6.4 There is no assertion in this case that the user has been by force, stealth or licence. The site is unfenced and readily accessible from all sides. Consequently your officers are satisfied that this criteria has been satisfied.

6.5 Significant number / locality / neighbourhood / lawful sports or pastimes / 20 years

6.6 To date the Courts have held that ‘significant’ does not necessarily mean a substantial number of users, but that the number of people using the land has to be sufficient to signify that the land has been in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers.

6.7 Given the extent and nature of the supporting correspondence your officers are satisfied that the requirement to demonstrate use by a “significant number” is met by the Application.

6.8 The Registration Authority must be able to define the “locality” or “neighbourhood” whose inhabitants stand to benefit from the town green rights, if they are established. This is on the basis that usage by those inhabitants over time, subject to all the other tests, has given rise to the rights. Without identifying a ‘locality’ or ‘neighbourhood’ the Authority cannot then go on to assess whether a ‘significant number of the inhabitants’ of said locality or neighbourhood have indulged in the recreational use.

6.9 DEFRA Guidance to Applicants sets out that they should

*“try to specify the locality or neighbourhood by reference to a recognised administrative area, such as a civil parish or electoral ward, or an obvious geographical characteristic such as a village or housing estate. If that is not possible, then [they] should instead include a map showing what [they] believe to be the locality or neighbourhood, for example by drawing a line around it.”*

6.10 The Applicant has confirmed that the locality being relied on in this case is the electoral ward of Eastfield (identified on the plan comprising Appendix B to this report). The majority of the numerous users submitting supporting evidence with the Application are residents of the locality concerned. In the circumstances your officers are satisfied that an appropriate locality is identified by the Application.

6.11 There is no evidence to suggest any of the sports and pastimes exercised are unlawful and no questions have been raised about use having taken place for anything less than the requisite twenty years. Consequently your officers consider that the activities described as having been participated in by those whose letters were submitted as evidence with the Application are recreational activities sufficient to amount to “lawful sports and pastimes” exercised for at least 20 years up to and including the date of the application.

**7.0 RECOMMENDATION**

7.1 That the application by Eastfield Parish Council to register the area of land known as Beech Walk / Eastway Play Area be approved.

DAVID BOWE  
Corporate Director Business and Environmental Services

Background Papers

File No NEW VG46 held in Commons Registration - Business and Environmental Services

Contact: Chris Stanford

**APPENDIX A**

THIS IS THE MAP REFERRED TO  
IN THE STATUTORY DECLARATION OF  
STEVEN CLIVE SIMPSON MADE  
BEFORE ME THIS 30<sup>TH</sup> DAY OF MAY  
2008.

*AS NOTED*

RICHARD JAMES NORTH











