

# Town and Village Greens Project

## Market Research Report Stages 1 and 2



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# Executive Summary

## 1. Introduction

In April 2005 ADAS were commissioned by Defra to undertake a research survey of Town and Village Greens within England and Wales. The three main objectives were to:

- Review and update existing data on greens
- Identify and analyse conflicts of interest occurring in relation to the registration of new greens
- Analyse the problems arising over the use and management of greens including vehicular access and parking

## 2. Method

The survey was conducted in two stages. Stage one addressed the first of the project objectives and comprised three elements. Firstly a review of literature on greens and summary of the issues raised; secondly an analysis of the Defra database of greens registered pre 1993 and thirdly an email survey amongst Commons Registration Authorities to provide an update on the number of greens applied for and registered since 1993.

Stage 2 involved a series of in depth face to face and telephone interviews. Commons Registration Officers and Council solicitors were consulted to provide an understanding of registration issues, whilst Parish Councillors were interviewed to explore the issues associated with the management of greens. During these interviews registration information was obtained on 55 greens, whilst management information was obtained on 43 greens. Greens were then selected for case study analysis. 10 registration and 10 management case studies were conducted. The case studies involved obtaining further information on the registration and management issues through additional telephone interviews. For the management case studies green owners, managers and other stakeholders were contacted. For the registration case studies applicants, objectors and legal representatives were consulted.

## 3. Survey Findings

### 3.1 Stage 1 Update of Existing Data on Village Greens

An analysis of the existing greens database suggests that approximately 4300 town and village greens had been registered prior to 1993 across England (no comparable data was available for Wales). Since 1993 the 114 authorities who responded to the survey had received 380 village green applications, which suggests that in the order of 560 applications may have been received across all authorities in England and Wales. 89 successful applications had been processed by the authorities that responded to the survey, which suggests that the number of newly registered greens could be nearer to 133 across all authorities in England and Wales. This represents a 2-3% increase in greens recorded pre 1993. 30% of applications that had been received since 1993 were however still being processed at the time of the survey, which could result in a further increase in the total number registered.

Based on aggregated pre and post 1993 data the greatest proportion of all village greens are located in the East of England (19%) and South East (19%), whilst London

has the smallest concentration (2%). Based on authorities who responded to the survey the greatest number of greens post 1993 appear to have been registered in Yorks and Humber (20%), although the number of applications was actually slightly higher in the South East (69) than in Yorks and Humber (52). The conversion of applications to registered greens was the greatest in the East of England where 16 of the 26 applications were approved.

The size of the village greens (pre and post 1993) varied between less than 0.1 ha to over 10ha. ¾ of the greens were however under 1ha. Pre 1993 ¾ of all the greens registered in England were LA owned, with only 12% being privately owned. Post 1993 the proportion of privately owned greens appears similar however just over 40% do not seem to have any registered owner, or the ownership details have not been recorded.

Objections were received for just under 1/3 of the applications mentioned by the Registration Authorities during the email survey. This is lower than the figure obtained during the stage 2 survey where 56% of the 55 applications/greens under consideration had received objections.

## 3.2 Stage 2 Registration Issues

### **Processing Village Green Applications**

It became evident during the research that the logistics of handling a village green application within the Registration Authority is an important area for Defra to consider. It impacts on how Defra can optimise communication between itself and the authority and influences the speed of handling applications.

Commons Registration Officers (CROs) and County solicitors share the responsibility for processing applications for town and village greens, however the job titles vary between authorities. The CRO and solicitor are likely to be in different departments. The CRO often handles many of the administrative tasks associated with an application such as sending out the application form and posting statutory notices. The legal representative is much more involved in legal enquiries, writing reports, considering the application in detail and making legal decisions. This person will also have far greater knowledge of the legislation than the CRO, although knowledge amongst CROs does vary.

Defra need to maintain an up to date database of contacts and be very aware of who within the authority they should be contacting to provide for example updates on legislation or case law to ensure it is received by the person most able to act on the information. Although the CROs were administratively very efficient, there is no guarantee that a communication from Defra sent to a CRO referring to case law would be acted upon.

Village greens are also unlikely to be a fulltime role for either the CRO or solicitor, which can create problems when a number of applications need to be dealt with simultaneously.

Going to public inquiry and handling several applications can create financial as well as resource problems for the Registration Authorities, as funding needs to be found for the inspectors and associated inquiries. A delay in processing applications is possible in some cases where resource and financial constraints mean that the applications have to be processed over a longer time scale. These applications may not necessarily be handled in chronological order where a higher priority is assigned to a case with high public interest, or where pressure from developers is high.

The infrequency of applications in some authorities results in time being spent by CROs and legal representatives refreshing their knowledge of the legislation and recent case law. Even authorities with more frequent applications need to set aside time to keep up to date with case law. Concise communication of the implications of recent case law may be of value, although the organisation that should take responsibility for this would need to be considered carefully.

The regulations are generally closely followed by the Registration Authorities. Where the regulations become more vague in relation to the need for a public hearing and how objections should be dealt with, there is some variation in the process followed. For example in terms of the use of external inspectors or internal representatives and considering written objections instead of going to public inquiry.

Most authorities appear to take great care to remain neutral and will not give any guidance to applicants in respect of the application submission. A minority do however offer more guidance. Where the proposed green is on Council owned land, an independent solicitor is appointed or the application and objections are handled by two solicitors within the Council, operating behind Chinese walls. The need for neutrality is very important as any possible incidence of favouring the applicant or objector will be identified by the unsuccessful party.

Most authorities appear to have appointed a representative committee to review the solicitor's report or review the findings of the public inquiry, however the committee title varies considerably e.g. The Commons Rights of Way Committee and the Planning Regulation Committee.

An application may be returned by the CRO following a very preliminary review of its content, to allow the applicant to resubmit, however the applicant would not be advised as to the detailed information they need to provide. The Council solicitor would review the form in more detail. The application may be rejected at this stage, returned to the applicant for resubmission or taken forward pending objections, a public inquiry and a final decision by the appropriate Council committee. Common reasons why an application would be rejected include an inability to fulfil the usage criteria and prove as of right.

The length of time from submission of an application to the outcome is considered too long and can range from 1-4 years where objections are raised. The high profile cases impact on the time to process applications, as the authorities often wait for the outcome of these cases before making a determination on their current applications. Applications with no objections can be processed much more quickly, over a period of 1-2 months.

Where an application is contested and a public hearing required, the time between the submission of the application and the public hearing is likely to be in the region of 3-4 months. This time period was considerable acceptable. Thus the time between the hearing and the final decision appears to be where the greatest delay occurs.

Without a clear system for the determination, the applicant is unaware at the outset the full process their application is likely to go through and the time it is likely to take. For example it may or may not go to public inquiry.

The time period for submission of objections i.e. 6 weeks is not always enforced and can favour the objector if the timing is allowed to drift.

The formal public hearing although usually seen as a fair system, can be very daunting to witnesses, which in some circumstances can affect the presentation of the evidence and ultimately the outcome.

### **Legislation**

Current town and village green legislation is often described by solicitors and Commons Registration Officers particularly but also by applicants and objectors as vague, complex and outdated. It is now in need of review. A key issue is the need to go to public inquiry. Despite the criticisms over the vagueness of the legislation there is however still an apparent need for choice in this matter. Greater clarification is needed to overcome difficulties in defining as of right, lawful pastimes, neighbourhood, locality and significant number. Changes in interpretation through case law can cause additional confusion. The literature review demonstrates the wealth of case law, which deals with the interpretation of locality, period of use and as of right. The decision in the Sunningwell case opened the gates to a flood of applications with debate on the meaning of individual words and phrases argued over in great detail. There is also considered to be conflict between the definitions within the CROW Act and the original definition.

Section 22 was believed to impact on all or most applications. The registration officers believed there is evidence that it results in many applications being turned down e.g. due to an inability to meet the 20 years usage and difficulty in providing evidence of appropriate activities taking place.

There was a desire for more clarity with regard to the meaning of Section 22. Case law was thought to make the situation even more complicated as each case puts a different interpretation on it e.g. Trap Grounds. There was certainly a belief that the general public will find this confusing.

### **Development Pressure**

Development pressure does appear to have a major influence on the decision to apply for village green status, with a significant proportion of post 1993 applications being a result of a desire to stop development. The exact proportion of applications influenced by development is unclear as no formal record is kept by the Registration Authority, as this can not be taken into account when determining the application. There is a suggestion however that half to three quarters of all applications are driven by a desire to stop development. Many more application forms have been requested, compared to those that have been submitted. It is possible that a proportion of these applications had been considered in order to stop development.

Proposed developments appear to be for local housing. Numerous applications submitted as a response to potential development have been successful and have stopped development. Even where applications have not been successful the delay to development may have resulted in a decision to develop elsewhere. Evidence also suggests development pressure will continue to be a major driver for applications in the future.

The influence of development pressure was also highlighted in the literature review. The Town and Village Greens Of England and Wales – 1996 Landscape Research Vol. 21, reports severe pressure from competing land use interest, and predicts that the long-term future of village greens will depend upon increased local vigilance.



### **Problems Faced by Applicants and Objectors**

Applying for the registration of a village green or objecting to a village green application is a lengthy, complicated and potentially costly process for the lay person. There are three major issues facing both applicants and objectors. Firstly the perceived complexity of the application form which is directly related to insufficient knowledge of the legislation, and understanding of legal jargon and the application criteria. Secondly a lack of understanding of how best to present the evidence both in writing on the application form and verbally during a public inquiry to ensure maximum positive impact and avoid misinterpretation. Thirdly the time and effort required to collect evidence. Applicants appeared to require months rather than weeks to collect the evidence. Making contact with residents who had used the land in the past but had since moved out of the area was difficult, as was obtaining clear statements of use from often elderly residents.

Professional help or legal knowledge is usually crucial for presenting a robust case via the application/ objection form and at the public hearing. The Open Spaces Society offers valuable impartial advice on completing the application form and the application process, as well as moral support. Greater support is however often required to help both applicants and objectors in the form of a solicitor. This presents an additional problem in terms of the cost of representation, which may be in the region of £4,000-£12,000. The professional fees often have to be raised by the local community or the individual applicant/objector.

## **3.3 Management of Village Greens**

### **Management Activities and the Provision of Facilities**

For the majority of greens considered within the survey the Council both owned and managed the green. Cases were however found where the Council managed greens owned by charities, local land owners and a local college. The main focus of the management activity was grass cutting, which occurred on nearly all the greens, followed by tree works and maintenance and maintenance of green furniture. In a number of cases the Councils were also responsible for the maintenance of sports fields and buildings. Over half the Parish Councils interviewed indicated they provided additional facilities on the greens, the most common being playground facilities. A similar proportion of the Parish Councils requested additional facilities. Play equipment/ improvements to play areas was the most frequently mentioned followed by a community hall/youth centre.

### **Management Issues**

Of the 43 greens considered within the study 35, 81% had a management issue. On many occasions however the Parish Councils described these issues as fairly minor. Many of the issues appeared to be “social” rather than truly “management” in nature. The most common problems were caused by youths (drinking or riding on the greens), litter and vandalism (1/2 the greens). Parking (1/3 greens) and vehicle access/vehicles driving across the green (1/7 of the greens) were also common issues. The actual maintenance of the greens themselves gave rise to a number of problems on 1/5 of the greens.

Management of privately owned greens appeared to be an issue amongst several of those interviewed for a number of reasons. Firstly due to a lack of awareness as to who was legally responsible for the management of the greens e.g. the Parish Council or the owner. Secondly in relation to the payment of upkeep of privately owned greens and the issue as to whether landowners who had had their land effectively taken away

from them, with no recompense, are legally obliged to manage/maintain the green for the enjoyment of others.

Action was taken in many cases to combat a management issue, however the actions were not in the main considered to be “enforcement” action. In the majority of cases there did not appear to be any formal processes to report or deal with management issues. The managers did however take action, as they thought appropriate relevant to the severity of the situation and type of problem with which they were faced. Many Councils indicated they dealt with the issue in an informal manner wherever possible. Despite this view of informality however, on a number of occasions the police had been involved to combat anti-social behaviour (1/10 of the greens).

Physical barriers had been put in place on at least 7 of the greens to combat parking and vehicle access. The barriers took the form of stones, bollards and wooden posts. Community officers had been assigned and CCTV put in place in some areas again to combat the anti-social behaviour. There does appear to be some level of contradiction in the fact the Parish Councillors described the incidents as minor, yet several had to take action to stop the problem. On a number of occasions however no action had been taken or the Council had dealt with the matter informally by placing notices on windscreens or visiting offending residents at home to ask that they do not misuse the green.

Although parking appeared to be an issue on 1/3 of the greens under consideration there were mixed views on whether this represented a problem. Parking was actually allowed in some cases during fairs, football and cricket matches. Where unauthorised parking did occur the Councillors often described it as a minor problem.

Parking on the green resulted from a range of factors including adjacency to local schools, public houses or hospitals where parking was insufficient, parking by people visiting and walking in the area, parking by local residents and for access to village fetes and sports events. Thus a number of the problems are fairly recent and have resulted from insufficient parking elsewhere that is potentially out of the control of the Town or Parish Council. This type of parking would however perhaps result in frequent use over extended time periods, compared to occasional use for a football match or even during school dropping off and picking up time.

Only a proportion of the Councils who reported parking occurred on their greens felt it caused a problem. The problem caused was primarily damage to grass, which was exacerbated by bad weather and poor drainage.

Those Councils that reported problems with parking each had their own way of dealing with them. In the majority of cases no enforcement action had been taken. Instead the Councils themselves mainly dealt with the issue informally. A physical barrier to prevent people gaining access to the green was the most commonly used deterrent, whilst a number of Councils made contact with offenders politely requesting that they refrained from parking on the green.

Vehicle access across greens occurred on ¼ of the greens. Only four of the 27 Councils however, considered it to be a problem and only fairly minor/isolated incidents at that. Issues relating to vehicle access did not appear to be restricted solely to access to premises, but were also related to access to fairs, access by contractors for maintenance and by emergency vehicles. Instances were also found of unauthorised access by youths in cars and mopeds.

There didn't appear to be any formal arrangements in place to deal with issues relating to access. Three of the Councils did however call the police to deal with

youths accessing the green. With the exception of one of the Councils, the remainder did not appear to exercise their legal rights to prohibit/control access across the greens.

In the majority of cases there also did not appear to be any formal processes in place for local residents to raise management issues/problems, which could therefore mask the actual level of issues/problems. It must be noted, however, that in some cases management issues/problems were raised by the manager/owner of the greens which could therefore question whether a formal process is required especially where managers/owners (e.g. Parish Councils) are proactive in the community and therefore knowledgeable of the issues.

### **Understanding of Village Green Status and Legislation**

There are no available registration details for 52% of the “greens” considered within this report. It is possible that a number of the “greens” referred to by the Parish Councils are not actually registered village greens, despite the fact that the Parish Councils consider them to be. There is therefore potentially some confusion or lack of understanding over village green status amongst the owners and managers of land used by the general public.

There also appeared to be a lack of knowledge, amongst many landowners/managers of greens regarding the legislation relating to the management of them and enforcement action that could be undertaken to resolve any issues/problems. This may or may not be linked to the number of potentially unregistered “greens” within the study. This lack of knowledge was of particular significance with regard to the issue of cars parking on/at the edge of greens and vehicles driving across greens to access premises. It is worth bearing in mind, however, that parking/access issues did not appear to be a major concern.

## **4. Recommendations**

### **4.1 Registration Issues**

Defra must take into account the roles and responsibilities of the various people within the Council, who are involved in the application and registration process, when communicating with the Registration Authorities and potentially when planning changes to the legislation. Not only should Defra consider the involvement of both the Commons Registration Officers and the legal representatives, but it should also take into account that these representatives may be based in different offices or buildings, they may have a variety of job titles and they are likely to have other job responsibilities in addition to village green applications. It will be important to maintain an up to date database of contacts within the Registration Authorities to improve the effectiveness of communications.

The application form is too complex. It not readily understood by the lay person and has also received criticism from Registration Authorities and The Open Spaces Society. An easier to understand form is required. Ideally an example completed form, or at least instructions for completion should be provided.

There is a case to clarify the regulations and introduce clearer guidance on how to deal with applications in respect of objections. A simpler way of keeping solicitors up-to-date with case law, rather than relying on individuals to review all the case law should also be considered.



There is a need to clarify and simplify village green legislation in relation to the application criteria. The outcome of this process needs to benefit the Council solicitors and also applicants and objectors, by reducing the time input required for each application and increasing the clarity of the criteria on which a successful application is based. The number of cases going to the High Court is delaying the determination of the application. A clarification of the legislation may theoretically increase the number of cases that can be settled by public inquiry.

Although the regulations need to enable a choice between the need to go to public inquiry or to go straight to committee, more detailed guidelines would ensure greater consistency.

## **4.2 Management of Village Greens**

It is recommended that the issue of awareness and understanding of the legislation be explored further. Many of the owners/managers appear to have little detailed knowledge of the legislation surrounding the management of greens or are not formally enforcing the legislation, particularly in relation to cars parking on, gaining access via the greens.

Defra may wish to consider how best to inform green managers/owners of the current legislation. Largely the management of greens appears to be the responsibility of Parish/Town Councils and involves lay people without detailed knowledge of legislation/formal procedures. Bombarding them with printed copies of the current legislation may therefore not be the most appropriate method for disseminating this information. A more user-friendly approach such as a website, dedicated help line or local forums may be avenues to explore.

Providing clarity on the management responsibilities of private landowners will be of value, as this appears to be the cause of some tension between the local Council and landowner.

At present there does not appear to be a standard process for raising or resolving management issues. There does however appear value in allowing Councils to deal with issues locally taking a low-key “friendly” approach where possible. Providing an opportunity for owners/managers to share ideas for successfully resolving problems may however be of benefit. Given the impact of anti-social behaviour on green management close links with and an understanding of the support available from the police would appear beneficial.

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## 1. Introduction

In April 2005 ADAS were commissioned by Defra to undertake a research survey of Town and Village Greens within England and Wales.

The overall aim of the project was to provide empirical data on certain issues relating to greens in England and Wales.

The survey was conducted in 2 stages:

- Stage 1: Review and update existing data on greens
- Stage 2:
  - a. Identification and analysis of conflicts of interest occurring in relation to the registration of new greens.
  - b. Analysis of the problems arising over the use and management of greens including vehicular access and parking.

## 2. Background

Town and village greens (“greens”) have long been considered a quintessential feature of the English landscape. In some instances their origins precede the Norman conquest, while others were created by 19<sup>th</sup> century Inclosure Commissioners. Typically greens are areas set aside for recreation of the local inhabitants. Although some greens are privately owned, many are owned and maintained by local authorities. Since the implementation of the Commons Registration Act 1965 greens have been registered but on a separate register from common land. Land cannot be registered as both green and common land but some greens may have rights of common over them.

The law on greens is abstruse and while the 1965 Commons Registration Act provides a definition and provisions for registration, earlier legislation in the Inclosure Act 1857 and the Commons Act 1876 provides protection against illegal damage and encroachment. In recent years decisions that have significant implications for greens are being made by the courts through case law.

The Common Land Policy Statement (Defra, 2002) explored issues surrounding greens as well as common land, and outlined some proposed changes to the law on greens. Despite the importance of greens in the landscape, and their significance as an amenity resource, there is remarkably little information available on the condition, use and status of greens. In particular there is a need to strengthen the evidence base in areas identified by the Common Land Policy Statement as requiring attention. We know there are concerns about the current procedure and criteria for registering new greens, and that conflicts are occurring over the utilisation of greens, vehicular access and the provision of public facilities. This research is thus aimed at improving the evidence base to assist in further policy development relating to greens.

### 3. Stage 1 Objectives

The specific objectives and requirements of stage 1 were as follows:

- a. To review existing literature on greens and summarise the issues addressed
- b. Review and update existing data

To conduct a survey of Commons Registration Authorities to provide information on:

- The number of applications for registration of greens since 1993
- The number of successful applications (i.e. the number of new greens registered)
- Location, size and ownership characteristics (i.e. private, local authority or other public body)
- Any further details or comments on objections to registration or issues regarding the management of greens.

The results of the survey were to be analysed to illustrate the number of new applications and registrations for greens by each Commons Registration Authority, the rate of change in registrations and any geographic variability across England and Wales.

### 4. Literature Review

This section of the report comprises firstly a listing of relevant literature, highlighting the key elements of the documentation. The second part of the review summarises and reports on a number of issues raised within the published literature.

The following literature list has been compiled by ADAS utilising the resources of the ADAS library in association with the British Library.

#### 4.1 Published Literature

1. 1965 Commons Registration Act  
Led to Commons and Greens being mutually exclusive. First statutory definition of greens.
2. 1983 Common Land Forum with the Countryside Commission  
Proposed new Commons Act 1986. This aimed to make for better management of Common Land and regulation of access.
3. AREA 1987 Vol 19  
Public Access, Commons and Village Greens.  
J Aitchison (Dept for Geography Aberystwyth)  
Commons & Village Greens cover approximately 4 % of the total land area of England and Wales. The Commons Land Forum proposed legal rights of access to all such areas. The article concludes that greens could be more effectively managed and fully utilised and called for a new Commons Act to release these areas from legal encumbrances.
4. Getting Greens Registered

A Guide to Law and Procedures for Towns and Village Greens by Open Spaces Society supported by the Countryside Commission 1995.

This very clear guide aimed at increasing understanding of the law surrounding Town and Village Greens by the general public.

5. The Town and Village Greens of England and Wales. 1996 Landscape Research Vol 21

The paper looks at the distribution of town and village greens in England and Wales and discrepancies in data. There is a concentration in the South East and Midlands, with further concentration in North Yorkshire, Durham and Cumbria. This paper reports severe pressure from competing land use interest, and predicts that their long-term future will depend upon increased local vigilance.

6. 1998 – Good Practice Guide on Managing and use of Common Land CCRU and Cheltenham and Gloucester College

7. Countryside and Rights of Way Act 2000

This amended the Definitions of Greens.

8. Rights of Way Law Review

2000 Nov.

Village Greens – Non Statutory Public Inquiries

Rhodri Price Lewis.

Discusses the problems of the lack of rules laid down as to how Registration Authorities should carry out Inquiries.

It is after 2000 with revised definitions of Greens and emerging case law, and increasing development pressure, that there seems to be a marked increase in both interest and awareness of town and village green issues often from the standpoint of a tool to prevent development of open spaces.

9. Greater Protection and Better Management of Common Land in England And Wales DETR. Feb 2000 Consultation report.

This paper follows the work of a range of bodies, Countryside Commission, NFU and other bodies in preceding years and covers key issues such as:

- Mistaken registration.
- Enhancing protection of registered land.
- Possible new registration and reinstatement of removed registrations.
- Problems of maintaining register.
- Un-resolved registration.

10. Summary of Responses to Consultation Paper. Defra “greater protection and Better Management of Common Land in England and Wales” 2002.

11. Common Land Policy Statement 2002 Defra

This document represents the Government conclusions on the consultation of the earlier document "Greater Protection and Better Management of Common Land in England and Wales" 2002.

Proposals aimed to correct errors, provide better maintenance of registers, improve the registrations process in particular for town and village greens, clarify the controls over land and strengthen the protection of all registered land, including flexible management frameworks.

12. Rights of Way Law Review

2002 Vol Sept.

New Definitions of Town or Village Green.

The article discusses the legal issues of where the old and new definitions of Greens should be applied. The new definition is more favorable due to the flexibility of the concept of neighbourhood, and in general it is viewed as detrimental to the rights of landowners.

13. New Law Journal

June 2002.

Alex Booth.

Town and Village Green Law.

Cites the House of Lords V Oxfordshire County Council EX P Sunningwell 2000, 1 AC 335 - as a watershed as it allowed the adoption of a very broad interpretation of "Sport or Pastime" and made concessions in respect of the requirements "as of right".

14. TMc Alpine Homes Ltd V Staffordshire County Council 2002 all ER(D) 96  
January

The recommendation of the Inquiry was that the Local Authority should accede to Part of an application for registration of a green – contrary to regulations. This indicated a presumption of intent on the part of Parliament, and conferred a power to Local Authorities to use their discretion to make whatever amendment if the register seemed most appropriate.

15. Agricultural Use of Management of Common Land

Report of Stakeholder working group.

April 2003.

The group was set up to consider in more detail the issues raised in Section 5 – "Agricultural Use and Management" of the Common Land Policy Statement of 2002.

16. Rights of Way Review Feb 2003

Village Greens – Non Statutory public Inquiries.

Edward F Cousins.

Recently Registration Authorities have been challenged in establishing “non-statutory Inquiries” due to the fact that such inquiries are not covered by the Tribunals legislation, nor are they subject to the supervision of the Councils or Tribunals.

Further they breach the provisions so Article 6 (Right to a fair trial) of the European Convention of Human Rights. Proposals in the Common Land Policy Statement 2002 concluded that the existing arrangements should continue. The article advises of issues and problems.

17. Open Space

Sept 2003

Hay and Greens Don't Mix

Case File

This is an article about the application of Laing Homes Ltd V Buckinghamshire County Councils 2 B D 2003. The High Court quashed the decision of Buckinghamshire County Council to register 38 acres as village green at Hazelmere in Bucks. Laing appealed on three grounds.

- Insufficient evidence that the whole of the land was used as a green.
- Use of the fields for haymaking is not compatible with a village green.
- The use was not as of right.

18. Estates Gazette

2003 Vol 9 Aug

Battle Lines drawn on the village Green

In Whitton in Middlesex, local residents lodged an application to register land as a village green, in an attempt to prevent the building of affordable housing. Since 1999 the Open Spaces Society has helped some 24 applications to register Green.

Developers argue that residents know that sites are not village greens, but simply want to stop development. Their actions remove development value and leave maintenance management and safety issues unresolved. The court has held that the registering of land as a green is not contrary to the Human Rights Act.

19. Our Common Land

The Law and History of Common Land and Village greens.

Open Spaces Society.

Paul Claydon 2003.

Excellent summary of legislation on common land and town and village greens.



20. New Village Greens problems and issues: A Seminar 2 Harcourt Buildings

Discussion of a wide range of problems and issues surrounding village green legislation.

21. Law of Commons and Town and Village Greens

Navjit Ubhi and Barry Denyer Greens

2004 Published Jordans

Review of legislation pre 1066 to 2004

22. Estates Gazette

March 2004.

Landowners must get defensive.

- Town and Village Greens.

Jan Hebblethwaite.

Evolving Case Law 1.

- (i) High court decision Oxfordshire County Council V Oxford City Council 2004  
Up to this decision, it was generally understood that a site could not be deemed to be a Village Green unless it had been registered under the Commons Registration Act 1965. In this case it was held that Registration merely records status – it does not confer status.
- (ii) 1999 Oxfordshire County Council ex parte Sunningwell Parish Council 1999 3, EG 85 found that the Parish Council were using “land as a right “ despite an earlier ruling. The case opened the floodgate for applications.
- (iii) Applications of Laing Homes Ltd, Buckinghamshire County Council 2003, the annual cutting of hay put pay to a claim of use as of right.
- (iv) Beresford V Sunderland City Council 2003. Land had been earmarked for a new college of Education was registered as a green.

These cases have caused great alarm in development circles and indeed uncertainty.

- (v) Case of Whitney has obtained leave to bring a judicial review of a decision of the Commons Commissioners on the application of Whitney V Commons Commissions 2003. He claims that the Commons Commissioners have jurisdiction to determine both future applications for registration and any objections – currently these go to a non-statutory public inquiry and are resolved by registration authority at the high court in July 2004 Whitneys appeal was dismissed.

23. The Proposed Commons Bill July 2004 (Draft)

Aims to protect common land by,

- Enabling commons to be managed sustainably at the local level.
- Providing many commons with additional protection against misuse, encroachment and unauthorised development.

- Making improvements to the registration system.

24. Workshops on Draft Commons Bill 2 + 22 Mar 2004

Wide range of concerns discussed and agreed.

25. England and Wales Court of appeal Civil Divisions Decisions between Oxfordshire County Council and Oxford City Council and Catherine Mary Robinson 2005.

The Court of Appeal has clarified the law over registration of village greens. The key finding was that the relevant date for considering whether land can become a village green is the date of registration (and not earlier).

This means that at any time before registration, if the landowner has called into question the right of local people to use his land by notices or preventing access, the land will not be registerable.

26. New Village Greens: Issues and Arguments Following the Oxfordshire Case

Chambers of Robin Purchas QC. 2005

## 4.2 Summary of Issues Raised

### 4.2.1 Definition of Town and Village Greens

Section 22 of the 1965 Act states that a town or village green means land:

- a. Which has been allotted by or under any Act for the exercise or recreation of the inhabitants of any locality or
- b. On which the inhabitants of any locality have a customary right to indulge in lawful sports and pastimes or
- c. On which the inhabitants of any locality have indulged in such sports and pastimes as of right for not less than 20 years

as amended by the CROW Act section 22 of the 1965 Act provides:

Town or village green means land:

- a. Which has been allotted by or under any act for the exercise or recreation of the inhabitants of any locality or
- b. On which the inhabitants of any locality have a customary right to indulge in lawful sports and pastimes or
- c. Which falls within subsection 1A of this section

Subsection 1A provides that:

Land falls within this subsection if it is on land on which for not less than 20 years a significant number of inhabitants of any locality, or of any neighbourhood within a locality, have indulged in lawful sports or pastimes as of right, and either

- a. Continue to do so, or
- b. Have ceased to do so for not more than such period as may be prescribed, or determined in accordance with prescribed provisions.

#### 4.2.2 Short Introduction to Town & Village Green Issues

It is not clear why the third definition of greens was inserted into the 1965 Act. It may have been because Parliament was concerned that without it, land which had for generations been regarded as a village green, would not achieve registration if its owner was able to demonstrate that it could not have existed in 1189 (the enclosures). On that basis, it could not have been a customary - class b green.

The vast majority of greens were added to the Register during the initial registration period, which ended in 1970. It was hoped that all disputed applications would be determined by Commons Commissioners not long after that, but in fact it took several years to clear the backlog, and settle all the arguments.

However, some years later, a trickle of fresh applications for registration began. These applications concerned village greens, which had acquired that status after the expiration of the initial registration period. This gave rise to some interesting case law as people realized that registration could be used as a means of defeating unpopular development proposals. They had realized that after 20 years they could seek to assert the creation of a new class (c) village green i.e. one that had existed up to 20 years since 1970.

#### 4.2.3 Meaning of Locality

Various cases caused a debate on the meaning of the term "locality".

Landowners sought to rely on old law and argued that registration could only occur if it were possible to identify sufficiently, the extent of the locality whose residents were to benefit from registration. Initially the courts took a liberal view with Lord Denning in *New Windsor Corporation v Mellor* stating that:

*"So long as the locality is certain that is enough"*

This was modified by Harman J in *R v Suffolk County Council and MOD v Wiltshire County Council* that:

*"impossible for a village green to be created by the exercise of rights save on behalf of some recognizable unit of this country"*

Applicants from then on had to identify legally recognizable "localities" for the purposes of applications, often Parishes, which local people often did not even know existed.

Then the amendment of class c greens by the CROW act Section 1 a quoted above further widened the scope of what could be considered a locality.

#### 4.2.4 Criterion as of Right

The accepted wisdom initially was that in order to justify registration, people had to believe they were using it "as of right".

This required applicants to demonstrate a state of mind, and in many cases this was not possible and many applications failed.

This problem for applicants was largely removed when, in the House of Lords judgement in the *Sunningwell* case, the Court did away with the need to prove belief on the part of those whose use was relied upon in support of registration.

The decision in *Sunningwell* and the CROW amendment opened the gates to a flood of applications with debate on the meaning of individual words and phrases argued over in great detail, with a flood of new caselaw created, and great confusion and fear for landowners who generally sought to protect what they saw as their rights.

However, it remains the case that if a landowner can demonstrate that the use of his land by the local inhabitants had been permissive, then that use is not sufficient for rights to accrue.

#### 4.2.5 Extent of Use

Prior to *McAlpine Homes v Staffordshire County Council*, the common view was that the authorities only had the power to register the precise area of land specified on the application. *Sullivan J* took the view in this case that the registration authority could exercise its discretion. In the current Oxfordshire case, the “extent” of the land used by qualifying persons is mainly overgrown and impenetrable--- a decision is awaited.

#### 4.2.6 The Oxfordshire Case

A Miss Robinson of North Oxford, sought to register as a green an area of land located between the railway and the Oxford Union canal, owned by the County Council, who objected, leading to a non statutory public inquiry. The inspector recommended that Miss Robinson’s application be accepted, even though he found that only 25% of the land was accessible.

Ten questions have now been submitted to the High Court for determination:

(i) The substantive effect of class (c) registration

What rights, if any, are enjoyed by the relevant inhabitants where land has been registered as a green, and what criminal sanctions are applicable to such greens under the 19<sup>th</sup> century legislation relating to town and village greens?

##### **Rights Arising from Class (c) Registration**

Once a town or village green is registered, one cannot deduce whether the green falls within class a, b or c. Consequent to this situation, *Lightman* concluded that Parliament must have intended that the same rights attach to class c greens as a and b greens, and that following registration as a class c green, the local inhabitants (or the qualifying locality) enjoyed the right to indulge in lawful sports and pastimes. *Carnwath LJ* did not agree finding that *Lightman’s* approach effectively ignored the nature of customary rights

(ii) Whether New Class (c) Greens Give Rise to Penal Sanctions

For *Lightman J*, having found that rights did attach to class c greens, it was a short step to deciding that those rights were protected by penal sanction in section 12 of the Inclosure act 1857 and section 29 of the Commons act 1876, just as with class a and b greens.

##### **The effect of the 2000 Amendment CROW Act**

Should the recreational use continue to the date of the application, the date of registration, or some other date, and secondly, must any application made after the commencement date of CROW be considered exclusively in accordance with the amended definition?

(iii) Continuity of Use

Lightman J held that:

*“it cannot sensibly require ..... continuation until the date of determination of the application by the registration authority or judgement by the court, for such a construction would enable the landowner in all cases to defeat a claim to the existence of a green placing a notice in appropriate terms on the land in question after the application has been made or proceedings commence and before the determination or judgement and accordingly frustrate the purpose of the legislation.”*

Lightman concluded that to construe the requirement for continuing use as extending to the date of determination as opposed to the date of application would be absurd for the same reasons as those given by Sullivan in the Cheltenham Builders case.

The Court of appeal however held that the words “continue to do so “ can only be taken as referring to the moment when the register is amended under section 13. Carnwath acknowledge the possible sterilizing affect that this interpretation would have on the legislation, but refused to accept that it was contrary to legislative purpose. This is perhaps the most controversial part of the judgement in that merely by erecting a notice, a landowner can now defeat an application for registration. DEFRA has formally disagreed with Carnwath, however, for the time being, the decision of the Court of Appeal stands.

(iv) The Appropriate Definition

The Court of Appeal has held that all applications made after the commencement of CROW must be considered under the amended definition. The effect of the decision is that all applications made after January 30<sup>th</sup> 2001, must be determined by reference to the amended definition of a green even where it is said that the land became a green before that date.

**Free-Standing Periods of Use**

(v) The Date on Which Land Becomes a Class (c) Green

Lightman decided that after 20 years of use as of right the land's status crystallizes as a green and is registerable from such moment on.

This is controversial, since section 13 of the 1965 Act provides that regulations shall provide for the amendment of a register where land has become a green--- land becomes a green when the qualifying requirements are met and these qualifying requirements are not dependent or contingent on the process of registration. The controversial aspect of this finding by the Court of Appeal is that it robs the express wording of the 1965 Act that land becomes a green of any meaning and makes the acquisition of status dependent upon the outcome of the process of registration.



### **Amendments to the Application**

Three questions of procedure arose on the facts of the Oxfordshire Case:

- (1) Whether a registration authority has a power to treat an application as having specified a different date in Part 4 and to determine the application on that basis:
- (2) Whether as a matter of law it is open to an authority to permit the application to be amended:
- (3) Whether as a matter of law it is open to an authority to accept the application in respect of part only of the land included in the application.

(vi) The applicants power to amend

(vii) The authorities power to allow an amendment

(viii) The authorities power to register part of the land only

At first the Court decided that there was no power for the applicant to amend the application, nor for the Authority to allow an amendment of the application.

Carnwath however, held that subject to achieving fairness to all parties, applications could be allowed to be amended following submission and that the registration authority has power to register land on a different basis in terms of details and area to that set out in the application, so that the answers to questions vi vii and viii should be in the affirmative.

### **The Evaluation of Evidence**

(ix) Inaccessible Areas

Lightman urged authorities to take a common sense approach in deciding whether, having regard to its physical characteristics (which may have changed over a 20-year period) the whole of the land or a part of it, satisfies the statutory definition.

(x) Existence or Potential Existence of Rights of Way

Lightman's judgement was that, in general, the question is how the use of the land would appear to a landowner. If the use would appear to a landowner to be consistent with use as public right of way, that use should be discounted from use contributing to the qualification of that land as a green. In all other circumstances, it will be a matter of judgement for the registration authority to determine how matters would have appeared to the landowner.

#### **4.2.7 Other Relevant Decisions**

The Courts have endorsed the practice of convening non-statutory public inquiries to determine contested applications. Where an authority holds an interest in contested land, the inquiry should be held in circumstances consistent with obligations under the European Convention of Human Rights.

The Court also concluded that a dispute as to whether land has or has not, become a green, could be determined by an application directly to the Court for a declaration. The Court however has no power to register land or amend the register.

#### 4.2.8 Notices and Fences

##### **The Post Oxfordshire Position in Relation to Notices**

As result of Oxfordshire (until such time as the Secretary of State makes the appropriate regulations specifying otherwise), for land to be registered, the use has to continue, and continue as of right, up to the time of registration, and not up to the date of application.

This means that the owner is given a further period in which to erect prohibitory or permissive notices on the land, and to make clear by other means that any continuing use of the land for lawful sports and pastimes is contentious, and therefore not as of right. Any landowner who has been notified of an application to register his land should ensure that notices are erected on the land.

##### **The Post Oxfordshire Implications for Fencing**

Oxfordshire has the same implications for fencing. Previously a landowner could still exclude local inhabitants by erecting the fencing in the period between application and registration, but in law, such exclusions was irrelevant to the question of registration, since the relevant period ended on the application date. Since Oxfordshire, the effect of post application fencing is two fold. First, if the fencing is effective, it prevents use continuing, and 2<sup>nd</sup>, even if it is breached, provided efforts to maintain the fencing are taken, any subsequent use will be forceful, and not “as of right”.

##### **De-registration of a Class a or b Green**

Land registered because it was in the first category ie an a or b green, arising from an allotment or a customary right—will presumably in most cases, carry on being used for recreation as before. Even if it falls into complete disuse, the pre1965 rights presumably still exist.

It is however possible for such land to cease to be a green under any of the following:

Section 147 and 148 of the Inclosure Act 1845

Paragraph 6 of the Acquisition of Land Act

Any other statute providing, on the exchange of land, for the transfer of rights, trusts or incidents attaching to the land given in exchange from that land to the land taken in exchange and visa versa.

In other words it is possible for a class a or b town or village green to be taken either by an authority possessing compulsory powers, or under a special act of Parliament.

##### **De-registration of a Class (c) Green**

If land ceases to be used by local people for informal recreation, it could arguably be taken off the register. The only difference between an old class c green, and a new one, is that it is not possible to use the de-registration process under section 13 as an indirect means of attacking an initial registration since section 10 puts that beyond challenge.

#### 4.2.9 Liability for Safety for People Using a Green

This is in principle determined by the Occupiers Liability Acts 1957 and 1984.

In short, the duty under the 1957 act applies to protect those who have a right to be on the land, and requires the occupier to protect them from any danger. The lesser

duty of the 1984 act, by contrast, protects those who do not have a right to be on the land, but only from dangers of which the occupier is aware or which he or she believes to exist.

## 5. Stage 1 Method – Review and Update of Existing Data

The survey was conducted via a quantitative email survey amongst 170 Commons Registration Officers across England and Wales.

ADAS were provided with a database of Commons Registration Officers by Defra. This formed the sample base for the study. During the process of the survey the database was extensively amended to ensure it contained the most up to date relevant information. In many cases the named contact for the Commons Registration Officer was incorrect or out of date. Numerous email addresses and telephone numbers also had to be sourced or updated. The revised database has been made available to Defra as a separate document.

ADAS were also supplied with a database of village greens within England, which had not been updated since 1993. Data from this database has been analysed to show the spread of greens by geographical area, the proportion of privately owned and LA greens and the size profile of greens. Past data for Wales was not available and as such it has not been possible to draw comparisons with current and past village green data for Wales.

Each Commons Registration Officer (CRO) was sent a letter, on Defra headed paper, giving prior notice of the study and requesting feedback on the accuracy of the contact information. This stage prompted numerous authorities to report a change of Commons Registration Officer.

5 CROs were contacted by telephone to identify the likely number of applications they had processed since 1993, the format in which data was stored and the accessibility of this data. Feedback from this stage enabled the most appropriate wording and structure for the questionnaire to be identified.

A pilot study was conducted amongst 5 authorities to test the content of the questionnaire and logistics of the distribution and collation process. Responses were received from 3 CROs. A number of amendments were made to the questionnaire as a result of this process.

Approximately 1 week after distribution of the letter, a questionnaire and covering email were sent to all CROs.

After approximately 2 weeks an email was sent reminding the CROs who had not yet replied to return the questionnaire. Further telephone contact was made 1 week later to chase those who had still not replied.

In total replies were received from 114, out of the 170 CROs within the sample. This represents an excellent 67% response rate.

The resultant data was processed within the QPSMR data analysis package. The data tables can be found alongside data from the current greens database within the Stage 1 findings section of this report.

## 6. Stage 1 Findings – Review and Update of Existing Data

### 6.1 Sample

Questionnaires were sent to 170 Commons Registration Authorities.

Replies were received from 114 authorities. This represents a return rate of 67%.

The following table shows the geographic distribution of Registration Authorities who did and did not reply to the survey.

Table 1: Geographic Distribution of Authorities Who Replied to the Survey

| Region                 | Number     | If replied to survey |
|------------------------|------------|----------------------|
| East                   | 7          | Yes                  |
| East Midlands          | 5          |                      |
| Greater London         | 25         |                      |
| North East             | 7          |                      |
| North West             | 9          |                      |
| South East             | 14         |                      |
| South West             | 10         |                      |
| Wales                  | 18         |                      |
| West Midlands          | 9          |                      |
| Yorkshire & Humberside | 10         |                      |
| <b>Yes Total</b>       | <b>114</b> |                      |
| East                   | 3          | No                   |
| East Midlands          | 4          |                      |
| Greater London         | 9          |                      |
| North East             | 3          |                      |
| North West             | 14         |                      |
| South East             | 7          |                      |
| South West             | 4          |                      |
| Wales                  | 3          |                      |
| West Midlands          | 6          |                      |
| Yorkshire & Humberside | 3          |                      |
| <b>No Total</b>        | <b>56</b>  |                      |
| <b>Grand Total</b>     | <b>170</b> |                      |

## 6.2 Applications

Of the 114 authorities within the survey 61 (54%) had registered applications for town and village greens since 1993, 53 authorities (46%) had not processed any applications since 1993.

Table 2: Number of Greens Applied for since 1993

*Question 1: How many applications for registration of Town and Village Greens has your Local Authority processed since January 1st 1993*

|                                     |     |
|-------------------------------------|-----|
| Base (number of local authorities): | 114 |
| Total applications submitted        | 380 |
| Average per authority               | 3.3 |

380 applications for town and village greens had been received by the sample since 1993. This represents 3.3 applications per authority.

Thus this would suggest that based on a total number of 170 Commons Registration Authorities, there is likely to have been in the order of 561 applications across England and Wales since 1993.

## 6.3 Greens Registered Pre and Post 1993

### 6.3.1 Greens Registered Pre 1993

Prior to 1993 the data suggests that **4314** town and village greens had been registered, across England. An additional 56 “greens” were listed on the database however there was no location, green number or other details to confirm the existence of these greens.

Comparable data is not available for Wales.

### 6.3.2 Greens Registered Post 1993

Table 3: Number of Greens Registered Since 1993

*Question 2. How many out of these were successful applications (i.e. the number of new greens registered since January 1st 1993, which remain registered)?*

|                                     |      |
|-------------------------------------|------|
| Base (number of local authorities): | 114  |
| Total successful applications       | 89   |
| Average number per authority        | 0.78 |

89 successful applications had been processed by the authorities that responded to the survey.

The average number per authority was 0.78. Based on the total sample of 170 authorities, this would suggest that in fact the number of newly registered greens could be nearer to 133.

Table 4: Total Number of Greens

Pre 1993 we are aware that 4314 greens had been registered in England.

Thus since 1993 the number of greens has increased by approximately 2-3%.  
(Calculation based on pre 1993 data for England only.)

|                             | Pre 1993          | Post 1993                  | % Change |
|-----------------------------|-------------------|----------------------------|----------|
| Number of greens registered | 4314 England only | 88-133 (England and Wales) | +2/3%    |

#### 6.4 Withdrawn Applications

In addition to the 89 greens that are known to have been registered since 1993, a further 6 had been registered but since withdrawn.

#### 6.5 Applications Still Being Processed

Of the 380 applications dealt with since 1993, by the authorities that responded to the survey, 115 were still being processed. Thus the number of registered greens could increase further. Based on the conversion of applications to registered greens since 1993 i.e. 23%, the number of greens could potentially increase by 27 greens to 116 once all current applications have been processed.



## 6.6 Geographical Distribution of Applications Post 1993

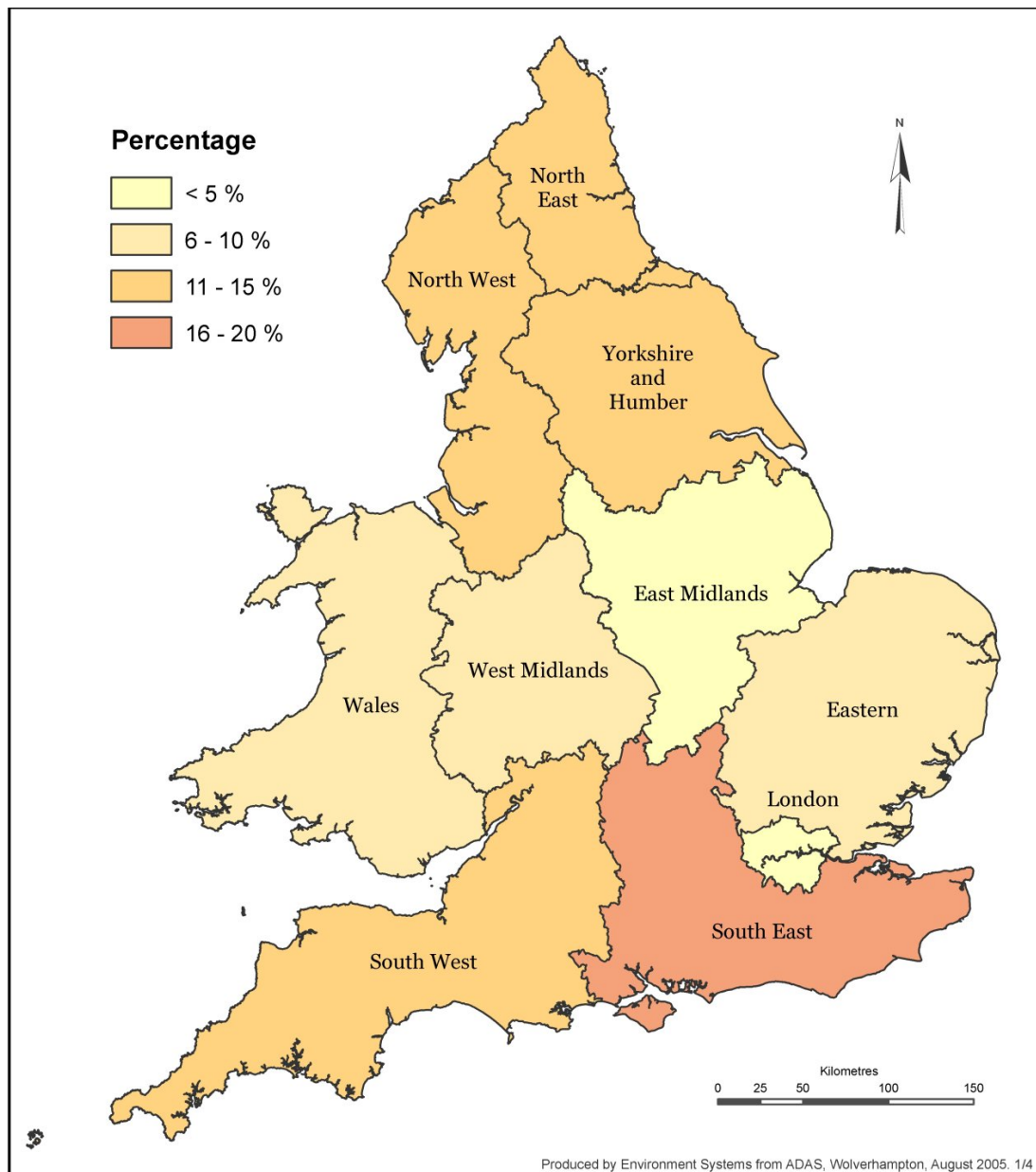
Table 5: Distribution of Town and Village Green Applications by Government Region

| Region             | Number     | %  |
|--------------------|------------|----|
| East               | 26         | 7  |
| East Midlands      | 18         | 5  |
| Greater London     | 8          | 2  |
| North East         | 40         | 11 |
| North West         | 50         | 13 |
| South East         | 69         | 18 |
| South West         | 42         | 11 |
| Wales              | 37         | 10 |
| West Midlands      | 38         | 10 |
| Yorkshire &Humber  | 52         | 14 |
| <b>Grand Total</b> | <b>380</b> |    |

Within the sample the South East had the highest number of applications followed by Yorkshire and Humber and the North West. London and also the East Midlands had relatively few applications in comparison. The London figure is very low considering the number of London Authorities who replied to the survey (i.e.25).

The following map shows the geographical distribution of applications post 1993.

Map 1: Distribution of green applications since 1993



The following table shows the distribution of applications by county.

Table 6: Distribution of Applications Post 1993 by County

| County                   | Number    | % |
|--------------------------|-----------|---|
| <i>Base</i>              | <i>89</i> |   |
| North Yorkshire          | 32        | 8 |
| Durham                   | 25        | 7 |
| Cumbria                  | 22        | 6 |
| Kent                     | 20        | 5 |
| Gloucestershire          | 19        | 5 |
| Hampshire                | 18        | 5 |
| Lancashire               | 17        | 4 |
| Lincolnshire             | 16        | 4 |
| Cambridgeshire           | 15        | 4 |
| Worcestershire           | 13        | 3 |
| Devon                    | 13        | 3 |
| Northumberland           | 12        | 3 |
| Staffordshire            | 12        | 3 |
| West Yorkshire           | 11        | 3 |
| Isle of Wight            | 8         | 2 |
| East Sussex              | 8         | 2 |
| Pembrokeshire            | 7         | 2 |
| Shropshire               | 7         | 2 |
| Cornwall                 | 7         | 2 |
| Warwickshire             | 6         | 2 |
| Norfolk                  | 6         | 2 |
| Caerphilly               | 6         | 2 |
| Tameside                 | 6         | 2 |
| Greater London           | 5         | 1 |
| Buckinghamshire          | 5         | 1 |
| Oxfordshire              | 4         | 1 |
| Ceredigion               | 4         | 1 |
| Suffolk                  | 4         | 1 |
| Portsmouth               | 4         | 1 |
| Barnsley                 | 4         | 1 |
| Powys                    | 3         | 1 |
| Tyne & Wear              | 3         | 1 |
| East Riding of Yorkshire | 3         | 1 |

| County               | Number | %   |
|----------------------|--------|-----|
| Surrey               | 3      | 1   |
| Cwmbran              | 3      | 1   |
| Caernarfon           | 3      | 1   |
| Anglesey             | 3      | 1   |
| Port Talbot          | 2      | 0.5 |
| Flintshire           | 2      | 0.5 |
| Swansea              | 2      | 0.5 |
| Slough               | 2      | 0.5 |
| Redcar and Cleveland | 2      | 0.5 |
| Blackpool            | 2      | 0.5 |
| Cheshire             | 1      | -   |
| Bedfordshire         | 1      | -   |
| Trafford             | 1      | -   |
| Swindon              | 1      | -   |
| Rochdale             | 1      | -   |
| Plymouth             | 1      | -   |
| Nottinghamshire      | 1      | -   |
| North Somerset       | 1      | -   |
| Grimsby              | 1      | -   |
| Bridgend             | 1      | -   |
| Blaenau Gwent        | 1      | -   |

## 6.7 Geographical Distribution of Village Greens

The following table shows the distribution of registered town and village greens pre and post 1993.

Table 7: Distribution of Registered Greens by Government Region

| Successful applications<br>by GO region | Pre 1993    |     | Post 1993 |     | Pre and post 1993 |     |
|---|-------------|-----|-----------|-----|-------------------|-----|
| <b>Total</b>                            | <b>4314</b> |     | <b>89</b> |     | <b>4403</b>       |     |
| North East                              | 420         | 10% | 8         | 9%  | 428               | 10% |
| North West                              | 400         | 9%  | 6         | 7%  | 406               | 9%  |
| Yorkshire & Humber                      | 471         | 11% | 18        | 20% | 489               | 11% |
| Wales                                   | -           | -   | 10        | 11% |                   |     |
| East Midlands                           | 440         | 10% | 10        | 11% | 450               | 10% |
| West Midlands                           | 351         | 8%  | 12        | 13% | 363               | 8%  |
| East Anglia                             | 838         | 19% | 6         | 7%  | 844               | 19% |
| Greater London                          | 73          | 2%  | 2         | 2%  | 75                | 2%  |
| South East                              | 837         | 19% | 12        | 13% | 849               | 19% |
| South West                              | 484         | 11% | 5         | 6%  | 489               | 11% |

Of the greens registered post 1993, the highest proportion was registered in Yorkshire and Humber, followed by West Midlands and the South East. The smallest proportion was registered in Greater London. Pre 1993 the largest numbers of registered greens were located within East Anglia and the South East, with the smallest number located in Greater London. Given the small proportion of greens registered since 1993 there has been no change in the geographic profile of registered greens.

Given the counties listed in the pre 1993 database it is difficult in some cases to draw a direct comparison between pre and post 1993 data, however it is interesting to note the large proportion of newly registered greens in Lincolnshire (11%). Please refer to the following two tables for the distribution of registered greens by county, pre and post 1993.

Table 8: Distribution of Registered Greens by County Pre 1993

| County pre 1993    |             |
|--------------------|-------------|
| <i>Base</i>        | <i>4314</i> |
| North Yorkshire    | 9.2%        |
| Cumbria            | 6.8%        |
| Durham             | 5.6%        |
| Essex              | 5.1%        |
| Suffolk            | 4.4%        |
| Kent               | 4.1%        |
| Oxfordshire        | 4.0%        |
| Warwickshire       | 3.9%        |
| Norfolk            | 3.5%        |
| Hampshire          | 3.3%        |
| Gloucestershire    | 3.3%        |
| Cambridgeshire     | 3.0%        |
| Northamptonshire   | 2.8%        |
| Hereford/Worcester | 2.4%        |
| Hertfordshire      | 2.2%        |
| Northumberland     | 2.2%        |
| Leicestershire     | 2.2%        |
| Devon              | 2.0%        |
| Lincolnshire       | 2.0%        |
| Buckinghamshire    | 1.9%        |
| Nottinghamshire    | 1.9%        |
| Avon               | 1.7%        |
| Greater London     | 1.7%        |
| West Sussex        | 1.7%        |
| Surrey             | 1.6%        |
| Derbyshire         | 1.4%        |
| Cleveland          | 1.3%        |
| Humberside         | 1.3%        |
| Cornwall           | 1.3%        |
| East Sussex        | 1.2%        |
| Bedfordshire       | 1.1%        |
| Somerset           | 1.1%        |
| Berkshire          | 1.1%        |
| Lancashire         | 1.1%        |
| Staffordshire      | 1.0%        |
| Dorset             | 1.0%        |
| Cheshire           | 0.9%        |
| Wiltshire          | 0.8%        |
| Shropshire         | 0.6%        |
| Tyne and Wear      | 0.6%        |
| South Yorkshire    | 0.5%        |
| Isle of Wight      | 0.4%        |
| Greater Manchester | 0.3%        |
| Merseyside         | 0.2%        |
| West Midlands      | 0.2%        |

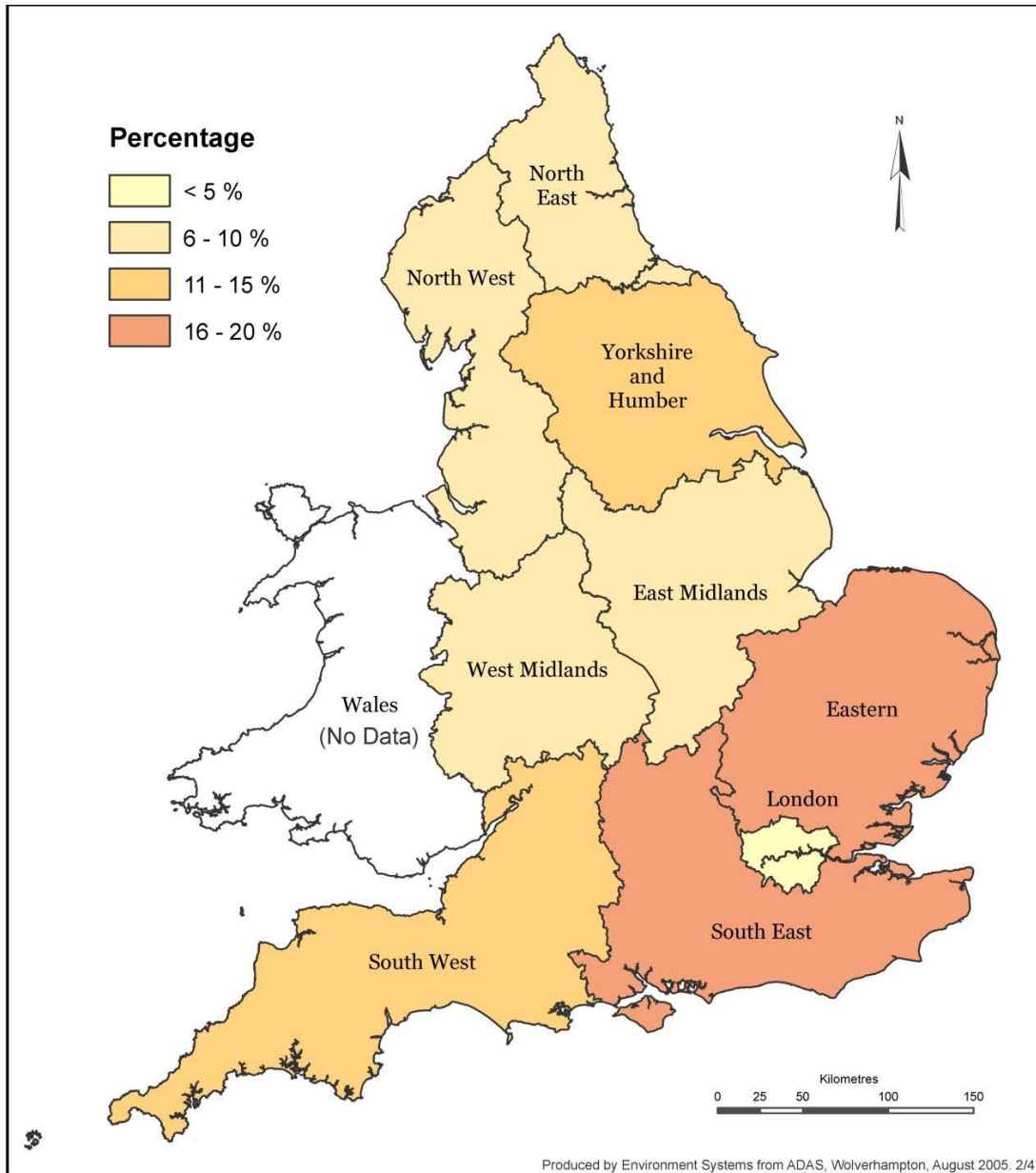
Table 9: Distribution of Newly Registered Greens Since 1993

| County post 1993         |     |
|--------------------------|-----|
| <i>Base</i>              | 89  |
| Lincolnshire             | 11% |
| West Yorkshire           | 11% |
| Warwickshire             | 7%  |
| North Yorkshire          | 7%  |
| Norfolk                  | 4%  |
| Kent                     | 4%  |
| Pembrokeshire            | 4%  |
| Northumberland           | 3%  |
| Durham                   | 3%  |
| Cumbria                  | 3%  |
| Gloucestershire          | 3%  |
| Lancashire               | 2%  |
| Isle of Wight            | 2%  |
| Oxfordshire              | 2%  |
| Buckinghamshire          | 2%  |
| Devon                    | 2%  |
| Powys                    | 2%  |
| Hereford and Worcester   | 2%  |
| West Midlands            | 2%  |
| East Riding of Yorkshire | 2%  |
| Cambridgeshire           | 1%  |
| Bedfordshire             | 1%  |
| Hertfordshire            | 1%  |
| London                   | 1%  |
| Tyne and Wear            | 1%  |
| Cheshire                 | 1%  |
| East Sussex              | 1%  |
| Hampshire                | 1%  |
| Caerphilly               | 1%  |
| Ceredigion               | 1%  |
| Flintshire               | 1%  |
| Neath Port Talbot        | 1%  |
| Staffordshire            | 1%  |
| Shropshire               | 1%  |



The following map shows the geographical distribution of registered greens pre and post 1993.

Map 2: Proportion of greens registered pre 1993



Map 3: Proportion of greens registered post 1993

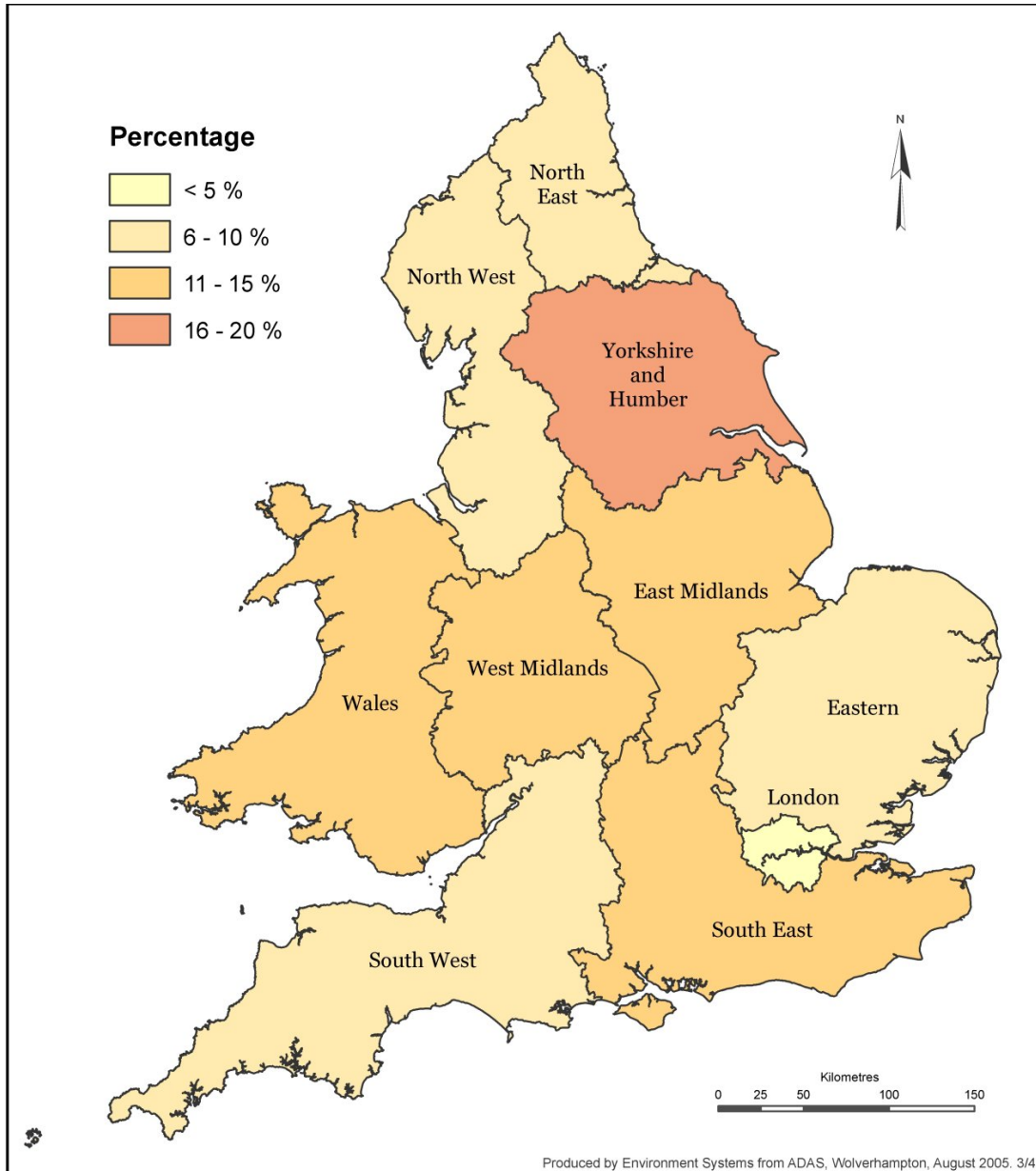


Table 10: Distribution of Applications and Registrations Since 1993

| Region         | Number of applications | % of appl'ns | Number of registrations | % of reg'ns | Conversion rate (reg'ns as a % of appl'ns) |
|----------------|------------------------|--------------|-------------------------|-------------|--|
| <b>Total</b>   | <b>380</b>             | <b>380</b>   | <b>89</b>               | <b>89</b>   | <b>23</b>                                  |
| North East     | 40                     | 11           | 8                       | 9           | 20   |
| North West     | 50                     | 13           | 6                       | 7           | 12   |
| Y & Humber     | 52                     | 14           | 18                      | 20          | 35   |
| Wales          | 37                     | 10           | 10                      | 11          | 27   |
| East Midlands  | 18                     | 5            | 10                      | 11          | 55   |
| West Midlands  | 38                     | 10           | 12                      | 13          | 31   |
| East Anglia    | 26                     | 7            | 16                      | 7           | 61   |
| Greater London | 8                      | 2            | 2                       | 2           | 25   |
| South East     | 69                     | 18           | 12                      | 13          | 17   |
| South West     | 42                     | 11           | 5                       | 6           | 12   |

The largest number of applications were received in the South East, followed by Yorkshire and Humber and the North West. The highest number of registrations post 1993 did however occur in Yorkshire and Humber followed by East Anglia. Overall 23% of the applications were converted to registered greens. The conversion of applications to greens in the South West was fairly low at 17%. It is possible that there is a link between the number of applications and the level of development pressure in the region. The highest conversion of applications to registered greens occurred in East Anglia and the East Midlands.

## 6.8 Size Profile

Table 11: Size Profile of Village Greens Pre and Post 1993

|                                      | Pre 1993 | Greens registered since 1993 | Total pre and post 1993 |
|--------------------------------------|----------|------------------------------|-------------------------|
| <i>Base: successful applications</i> | 4314     | 89                           | 4403                    |
| <b>Registered Area</b>               | %        | %                            | %                       |
| less than 0.1 ha                     | 15       | 8                            | 15                      |
| 0.1 to less than 0.2 ha              | 22       | 7                            | 22                      |
| 0.2 to less than 0.3                 | 11       | 4                            | 11                      |
| 0.3 to less than 0.5 ha              | 11       | 6                            | 11                      |
| 0.5 to under 1 ha                    | 15       | 7                            | 7                       |
| 1 to under 1.5 ha                    | 7        | -                            | 7                       |
| 1.5 to under 2 ha                    | 6        | 2                            | 6                       |
| 2 to under 3 ha                      | 6        | 6                            | 6                       |
| 3 to under 10 ha                     | 4        | 6                            | 4                       |
| 10ha and over                        | 1        | 2                            | 1                       |
| Unstated                             | -        | 52                           |                         |

The largest proportion of greens registered are between 0.1 and 0.2 ha in size (22%). 59% were under 0.5ha.

## 6.9 Ownership

Table 12: Ownership Profile of Village Greens Pre and Post 1993

|   | Pre 1993 | Post 1993 | Total pre and post 1993 |
|---|----------|-----------|-------------------------|
| <i>Base: successful applications</i>                  | 4314     | 89        | 4403                    |
| Private ownership                                     | 12%      | 12%       | 12%                     |
| Local authority (e.g. County council, Parish Council) | 75%      | 36%       | 74%                     |
| Other public body (e.g. University, College)          | 1%       | 4%        | 1%                      |
| Joint private and Local authority ownership           | 4%       | 3%        | 4%                      |
| Other   | 7%       | 31%       | 7%                      |
| Not stated  | 1%       | 12%       | 7%                      |
| <i>Detail of others as a % of the total sample</i>    |          |           |                         |
| Under Land Reg. Act                                   | 2%       | -         |                         |
| Local trust/charity                                   | 1%       | -         |                         |
| Parish Trustees/meeting                               | 1%       | 1%        |                         |
| No owner registered                                   | -        | 16%       |                         |
| Not known/undecided/not proved                        | -        | 9%        |                         |
| Registered under land registry                        | -        | 2%        |                         |
| Section 13  | -        | 1%        |                         |
| Public Highway  | -        | 2%        |                         |
| Other   | 4%       | -         |                         |

Pre 1993 ¾ of all the greens registered in England were LA owned, with only 12% being privately owned.

The post 1993 information shows that a large proportion of the newly registered greens are also LA owned, however the proportion appears to have decreased substantially. The data does however indicate that ownership details post 1993 were often either absent or not readily available and may explain the apparent change in ownership profile.

## 6.10 Objections to Registration

Table 13: Objections to Registration

*Question 8: Were there any objections to the application prior to registration?*

| <i>Base: successful applications</i> | 89 |     |
|--------------------------------------|----|-----|
| Yes                                  | 29 | 33% |
| No                                   | 39 | 44% |
| Not stated                           | 21 | 24% |

Table 14: Number of Objections

|                                      | Number of applications |     |
|--------------------------------------|------------------------|-----|
| <i>Base: Yes at Table 13</i>         | 29                     |     |
| Number of objections per application |                        |     |
| 1                                    | 16                     | 55% |
| 2                                    | 4                      | 14% |
| 3                                    | 3                      | 10% |
| 8                                    | 1                      | 3%  |
| Numerous                             | 4                      | 14% |
| Not stated                           | 1                      | 3%  |

An objection was recorded for 29 (33%) of the 89 greens registered since 1993, with only 1 objection being registered in the majority of cases.

Table 15: Nature of Objections

| Nature of objections  | Number of applications |     |
|---|------------------------|-----|
| <i>Base: Yes at Table 13</i>  | 29                     |     |
| Objections from owner   | 9                      | 31% |
| Validity of evidence to support application (alleged period of use for lawful sports) | 7                      | 24% |
| Site not used for claimed activities  | 5                      | 17% |
| Proposed planning/development/planning permission granted                             | 4                      | 14% |
| land not thought suitable for village green (eg site too small)                       | 4                      | 14% |
| Vehicle access/Access for specific use  | 2                      | 7%  |
| Land already public space   | 2                      | 7%  |
| Size of land  | 1                      | 3%  |
| Didn't want children playing on it  | 1                      | 3%  |
| Claimed ownership of water  | 1                      | 3%  |
| Fencing/signage on site   | 1                      | 3%  |

In at least one third of the cases where an objection was received this was raised by the owner of the land. In 4 (14%) of the 29 applications where an objection was recorded this appeared to be related to potential development on the land in question.

## 6.11 Management Issues

Table 16: Management Conflicts

*Question 10: Have there been any conflicts associated with management issues or the use of the greens since registration?*

| <i>Base: successful applications</i> | 89 |     |
|--------------------------------------|----|-----|
| Yes                                  | 6  | 7%  |
| No                                   | 48 | 54% |
| Not stated                           | 35 | 39% |

Only 6 out of the 89 newly registered greens appeared to have a management issue associated with them. This information must however be treated with caution as it is clear from conducting the stage 2 research and talking to the Commons Registration Officers in detail, that the majority of Registration Authorities are not involved in the management of the greens and thus may be unaware of any conflict.



Table 17: Number of Management Conflicts

| Number of conflicts          | Number of applications |     |
|------------------------------|------------------------|-----|
| <i>Base: Yes at Table 16</i> | 6                      |     |
| Number of conflicts          |                        |     |
| 1                            | 3                      | 50% |
| Numerous                     | 3                      | 50% |

Table 18: Nature of Management Conflicts

| Number of conflicts                                   | Number of applications |     |
|---|------------------------|-----|
| <i>Base: Yes at Table 16</i>                          | 6                      |     |
| House tethering                                       | 1                      | 17% |
| Access to pond debated for years                      | 1                      | 17% |
| Boundary disputed                                     | 1                      | 17% |
| Going to High Court to try and de-register green      | 1                      | 17% |
| Planning application submitted, plans to develop land | 1                      | 17% |
| Tipping of garden waste                               | 1                      | 17% |
| Vehicle access claimed across VG                      | 1                      | 17% |

## 7. Stage 2 Objectives

### 7.1 Identification and analysis of conflicts of interest occurring in relation to the registration of new greens

There is some anecdotal evidence to suggest that conflicts are occurring over the registration of new greens. This appears to be an issue where both development pressures and the demand for recreational open space are high. Specific issues that ADAS were required to examine are outlined below.

- How well are the present procedures for registering new greens working?
- How much time do people need to organise an effective application for registration of a green?
- What obstacles do people face when applying to register a green?
- Is the current interpretation of Section 22 of the Commons Registration Act 1965 (as amended by Section 98 of the Countryside and Rights of Way Act), concerning the requirement for continuous use up to the date of application, causing applications for registration of greens to be turned away by authorities?
- Are there other problems being caused by the interpretation of the definition in Section 22?
- How do Registration Authorities handle applications for greens? For example, are applications being determined by public inquiry, internal hearing, committee hearing, etc? What happens in cases where the land is owned by the authority or it has another interest in it?
- How often is there a development context for applications to register greens? Where this is the case, what proportion of claims lack the requisite period and type of use by local inhabitants? What proportion of cases have prevented a development that had received planning permission and what was the nature of the proposed development?

### 7.2 Analysis of the problems arising in relation to the use and management of greens including vehicular access and parking

Very little is known about the ways in which town and village greens are managed and what facilities are available to the public to improve their enjoyment of these areas. ADAS were required to obtain information on the following:

- The type of recreational facilities provided and demand for new ones.
- Different management problems arising on greens, the management arrangements already in place and identification of good practice.
- Examples of enforcement action taken against illegal encroachment, including the mechanisms by which conflicts on greens are resolved and who actually takes action.

Parking and access for vehicles (particularly to homes) have been identified as significant issues on greens but very little evidence exists as to the extent of the problem. ADAS were asked to address the following questions:

- The extent to which greens are used for parking and vehicular access to premises (where, when did it take place, who was involved, proportion of greens affected, whether any lawful authority or right was claimed for the use of the green)?

- What problems are caused by parking of vehicles on, and vehicular access over, greens (is there a consensus about the problems, or are views widely differing)?

## **8. Stage 2 Method**

This stage of research was conducted in two phases.

1. Interviews with Registration Authorities and Parish Councils
2. Case study consultations

In addition an interview was also conducted with the Open Spaces Society.

### **8.1 Registration Authorities**

The aims of the registration authority interviews were to:

- Explore the registration process used by the authority;
- Understand opinions of the current legislation and registration process;
- Identify potential case study greens; and
- Collect information on additional greens where there were/had been registration or management issues.

Initially these interviews were also intended to explore the management of village greens, however it soon became apparent that management responsibility lay primarily with the Parish Councils. Additional interviews were therefore conducted with local councils. Please refer to section 8.1.1 for further information.

10 Registration Authorities were selected for inclusion in this phase of the research. The authorities were selected to include:

- A good geographical spread, in terms of Government region, including England and Wales;
- Rural and urban Registration Authorities;
- A mix of authorities with a large and small number of greens based on the pre 1993 greens database;
- Authorities known to have greens registered since 1993 based on the stage 1 survey findings; and
- Greens registered since 1993 with known registration issues as identified during stage 1.

All authorities contacted had responded to the stage 1 email survey.

The following table details the Registration Authorities included within the research.

Table 19: Registration Authorities

| Registration Authority    | Government Region | Number of greens pre 1993 | Number of applications since 1993 | Number of greens registered since 1993 |
|---------------------------|-------------------|---------------------------|-----------------------------------|--|
| Durham                    | North East        | 240                       | 25                                | 3                                      |
| Lancashire                | North West        | 48                        | 17                                | 2                                      |
| Lincolnshire              | East Midlands     | 84                        | 16                                | 10                                     |
| Staffordshire             | West Midlands     | 44                        | 12                                | 1                                      |
| Warwickshire              | West Midlands     | 168                       | 6                                 | 6                                      |
| Gloucestershire           | South West        | 143                       | 19                                | 3                                      |
| Caerphilly                | Wales             | Unknown*                  | 6                                 | 1                                      |
| Swansea/Neath Port Talbot | Wales             | Unknown*                  | 4                                 | 1                                      |
| Bedfordshire              | East England      | 49                        | 1                                 | 1                                      |
| Oxfordshire               | South East        | 172                       | 4                                 | 2                                      |

\*Defra were not able to provide data on greens within Wales pre 1993

Primarily face-to-face but also telephone interviews were conducted with Commons Registration Officers (or the equivalent) and solicitors at each of the selected authorities. Each face-to-face interview lasted approximately 2 hours, whilst each telephone interview lasted approximately 1 hour. In total 19 interviews were conducted.

The topic guide within appendix 1 details the topics covered during these interviews.

#### 8.1.1 Council Interviews

In addition to making contact with the solicitors and CROs, 27 interviews were conducted with clerks/councillors from Parish/Town/Borough Councils within many of the Registration Authorities included within this stage of the research. Please refer to table 20 for a list of interviewees.

The aim of these interviews was to gain an understanding of the management of village greens and identify potential case studies. The interviews were conducted via telephone and lasted on average 25 minutes. The topics covered during the interview are included within the topic guide within Appendix 1.

Table 20: Parish/Town/Borough Councils interviewed

| Name of Parish Council                              | Name of village green/s   | County          |
|---|---|-----------------|
| Heath and Reach Parish Council                      | Heath Green   | Bedfordshire    |
| Northill Parish Council                             | Caldecote Green, Ickwell Green and Northill Common                        | Bedfordshire    |
| Sandy Town Council                                  | Beeston Village Green   | Bedfordshire    |
| Stotfold Town Council                               | Hitchin Road Recreation Ground, The Green, Riverside Recreation Ground    | Bedfordshire    |
| Toddington Parish Council                           | The Greens  | Bedfordshire    |
| Gainford and Langton Parish Council                 | The Village Green   | Durham          |
| Staindrop Parish Council                            | Staindrop Village Green   | Durham          |
| Hamsterley Parish Council                           | Hamsterley Village Green  | Durham          |
| Moreton in Marsh Town Council                       | The Village Green   | Gloucestershire |
| Eccleston Parish Council and Croston Parish Council | The Green, Eccleston and Croston Village Green                            | Lancashire      |
| Freckleton Parish Council                           | Memorial Park and Recreation Ground                                       | Lancashire      |
| Grimsargh Parish Council                            | Grimsargh Village Green   | Lancashire      |
| Newburgh Parish Council                             | The Green   | Lancashire      |
| Overkellat Parish Council                           | The Village Green   | Lancashire      |
| Overton Parish Council                              | The Green   | Lancashire      |
| North Hykeham Town Council                          | North Hykeham Village Green   | Lincolnshire    |
| Baldons Parish Council                              | Marsh Baldons Village Green   | Oxfordshire     |
| Carterton Town Council                              | Alvescot Road Recreation Ground and Swinbrook Road Recreation Ground      | Oxfordshire     |
| Leafield Parish Council                             | The Village Green   | Oxfordshire     |
| Leek Town Council                                   | Ball Haye Green Recreational Ground                                       | Staffordshire   |
| Swansea + Neath Port Talbot Council                 | Sketty Green, Llangyfelach Village Green, Eastern Penrallt, Penrice green | Swansea         |
| Ilmington Parish Council                            | Upper and Lower Green   | Warwickshire    |
| Kineton Parish Council                              | Little Kineton Village Green  | Warwickshire    |
| Long Itchington Parish Council                      | The Green, The Pond and The 'Triangle' Green                              | Warwickshire    |
| Rugby Borough Council                               | Hillmorton Green  | Warwickshire    |
| Southam Town Council                                | Park Lane Recreation Ground   | Warwickshire    |

## 8.2 Case Study Consultations

20 case studies were identified for detailed examination based on information obtained during interviews with the Registration Authorities and Parish Councils. The case studies comprised registered greens and unsuccessful applications for greens. For ease throughout the report both the registered and unregistered greens are referred to as “case study greens”.

The case study greens were selected on the following basis:

- 10 greens with an associated registration issue;
- 10 greens with a known management issue;
- A mix of ownership type i.e. public body, privately owned and disputed ownership/ownership unknown.<sup>1</sup>
- A mix of successful and unsuccessful village green applications; and
- A good geographical spread.

The registration case study greens were registered/applied for between 1999 and 2004. The year of registration for the management case study greens ranged between 1970 and 2004.

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<sup>1</sup> The stage 1 survey identified that the largest proportion of greens (75%) were owned by a public body. The case study greens within the management survey reflect this, however a greater number of privately owned greens were included in the registration study to ensure a range of registration issues were explored.

The following table summarises the 20 case studies.

Table 21: Case Study Greens

|                           | The green                              | Local Authority                | Private/<br>public<br>owner | Successful<br>/unsuccessful village<br>green applications |
|---------------------------|--|--------------------------------|-----------------------------|---|
| Registration case studies |  |                                |                             |   |
| 1                         | Clifton Village Pond                   | Bedfordshire                   | Disputed                    | Successful  |
| 2                         | The Green Cascade                      | Caerphilly                     | Private                     | Successful  |
| 3                         | The Hollow                             | Durham                         | Unknown                     | Successful  |
| 4                         | The Hangings                           | Gloucestershire                | Private                     | Successful  |
| 5                         | Ingol Head                             | Lancashire                     | Private                     | Successful  |
| 6                         | The Field, Greetwell Road              | Lincolnshire                   | Public                      | Unsuccessful  |
| 7                         | The Glebe (Sunningwell)                | Oxfordshire                    | Private                     | Successful  |
| 8                         | Land at Moorland Road                  | Staffordshire                  | Private                     | Unsuccessful  |
| 9                         | Abercregan                             | Swansea & Neath<br>Port Talbot | Public                      | Successful  |
| 10                        | Kingsbury                              | Warwickshire                   | Public                      | Successful  |
| Management case studies   |  |                                |                             |   |
| 1                         | Clifton                                | Bedfordshire                   | Disputed                    | Successful  |
| 2                         | The Green Cascade                      | Caerphilly                     | Private                     | Successful  |
| 3                         | Hamsterley Village Green               | Durham                         | Public                      | Successful  |
| 4                         | The Hangings                           | Gloucestershire                | Private                     | Successful  |
| 5                         | Grimsargh                              | Lancashire                     | Public                      | Registration details<br>unknown*                          |
| 6                         | North Hykeham Village<br>Green         | Lincolnshire                   | Public                      | Not registered*   |
| 7                         | Leafield                               | Oxfordshire                    | Public                      | Successful  |
| 8                         | Ball Haye Green<br>Recreational Ground | Staffordshire                  | Public                      | Registration details<br>unknown*                          |
| 9                         | Abercregan                             | Swansea & Neath<br>Port Talbot | Public                      | Successful  |
| 10                        | Hillmorton Green                       | Warwickshire                   | Public                      | Registration details<br>unknown*                          |

\*. <sup>2</sup> Although the Parish Councils clearly identified and reported on a number of greens for the case studies, it was not possible to identify all the village green numbers from the Registration Authority. Thus it is possible that these “greens” are not actually officially registered greens, despite the fact they are considered to be greens by the Parish Councils

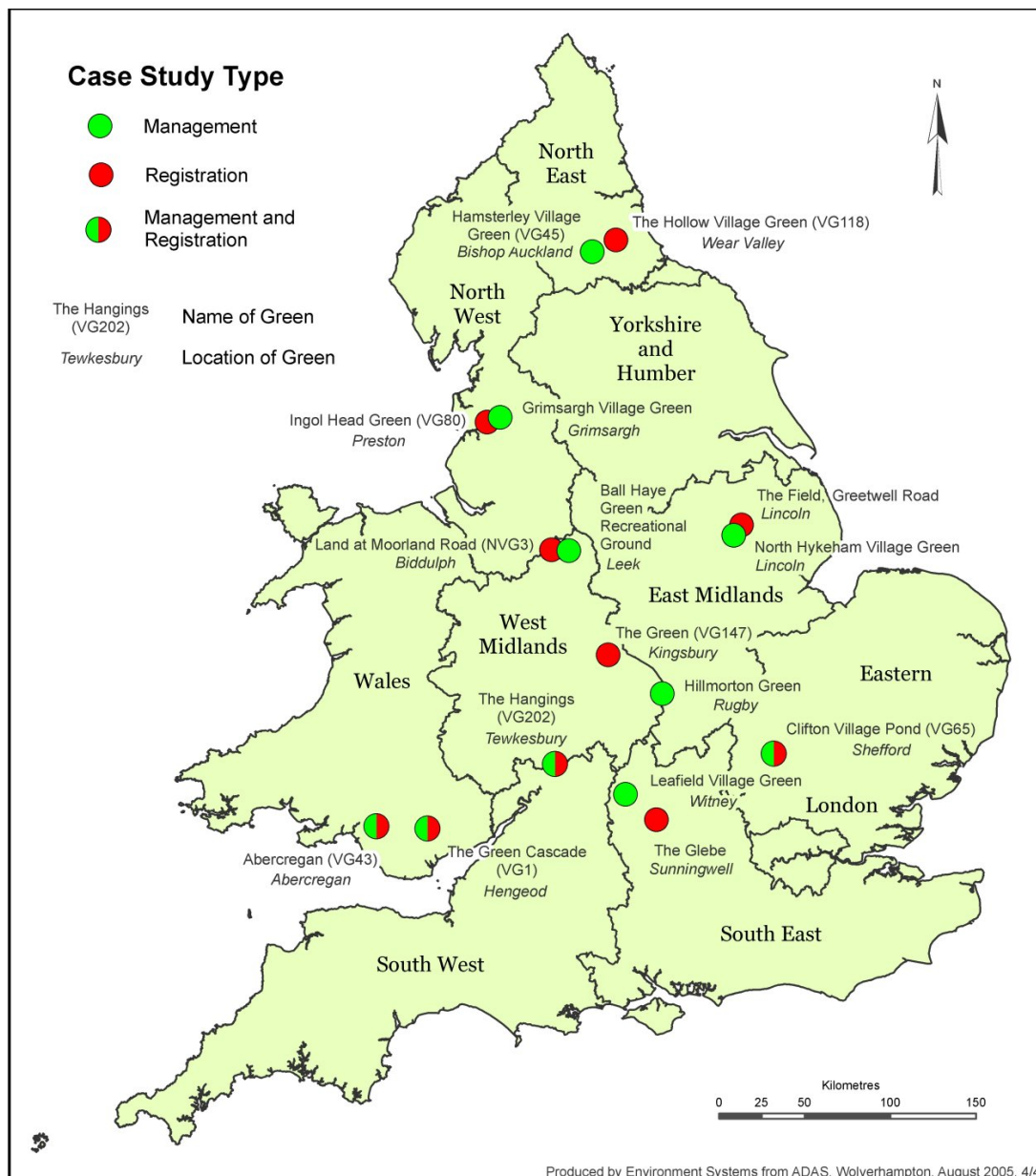
<sup>2</sup> Investigation of the greens without registration details was considered, however upon discussion with Defra the decision was taken not to undertake further research.



The detailed case studies are included within Appendix 4 of this report. An analysis of the case study information is located within sections 10 and 13 of this report.

Map 4 shows the spread of registration and management case study greens across England and Wales.

Map 4: Spread of registration and management case study greens



### 8.2.1 Additional Greens

In addition to the 20 case study greens, details were obtained for additional greens (45 registration greens and 33 management greens) during the phase 1 interviews with the Registration Authorities and the Parish/Town/Borough/District Councils. The detailed information on these greens can be found in Appendix 2, however the issues arising from an analysis of these greens are integrated within the stage 2 findings.

## 9. Stage 2 Findings - Registration Issues

### 9.1 Introduction

The following section contains the findings of interviews conducted with Commons Registration Officers (CROs) and solicitors from 10 Local Authorities, namely Bedfordshire, Oxfordshire, Swansea & Neath Port Talbot, Caerphilly, Gloucestershire, Staffordshire, Warwickshire, Lancashire, Lincolnshire and Durham. This section also reports on an interview with a representative of the Open Spaces Society. The interviews aimed to provide an understanding of the issues associated with the registration of Town and Village Greens since 1993.

### 9.2 The Process of Dealing with Applications

The responsibility for handling applications for village greens is often shared by one or more solicitors and an administrator, plus on occasion further administrators to handle land searches. The solicitor may not however be located in the same department as the administrator/CRO. Town and village greens is unlikely to be a full time responsibility, which can cause resource issues when a “complex” application arrives or several applications need to be dealt with. The CRO does not necessarily have this as a job title. Job titles included, administrator, committee officer and committee clerk.

The CROs and solicitors appear to be long term employees of the Councils, having worked on village green applications/registrations for between 6 and 15yrs. Difficulties in identifying the correct named contact within the Registration Authority during the Stage 1 research, did however suggest that the CRO position had changed hands fairly recently within a number of authorities.

The CROs or administrators are usually responsible for responding to the initial inquiry, distribution of application forms, placing public notices, informing owners, maintaining records and up dating the register. The solicitors however handle legal enquiries, write reports, take legal decisions and consider applications in detail.

The level of knowledge amongst solicitors appears high, although given the low frequency with which applications are received in some authorities time is often needed to refresh their memory of the regulations for each new application. The Open Spaces Society is consulted by those less familiar with the process. At least one solicitor had been invited to train other authorities on the village green process.

CROs/administrators have a good grasp of the mechanics, but are unlikely to have a clear understanding of the legislation or the impact of case law. Knowledge does however vary as a number communicate with the Open Spaces Society and have some knowledge of case law.

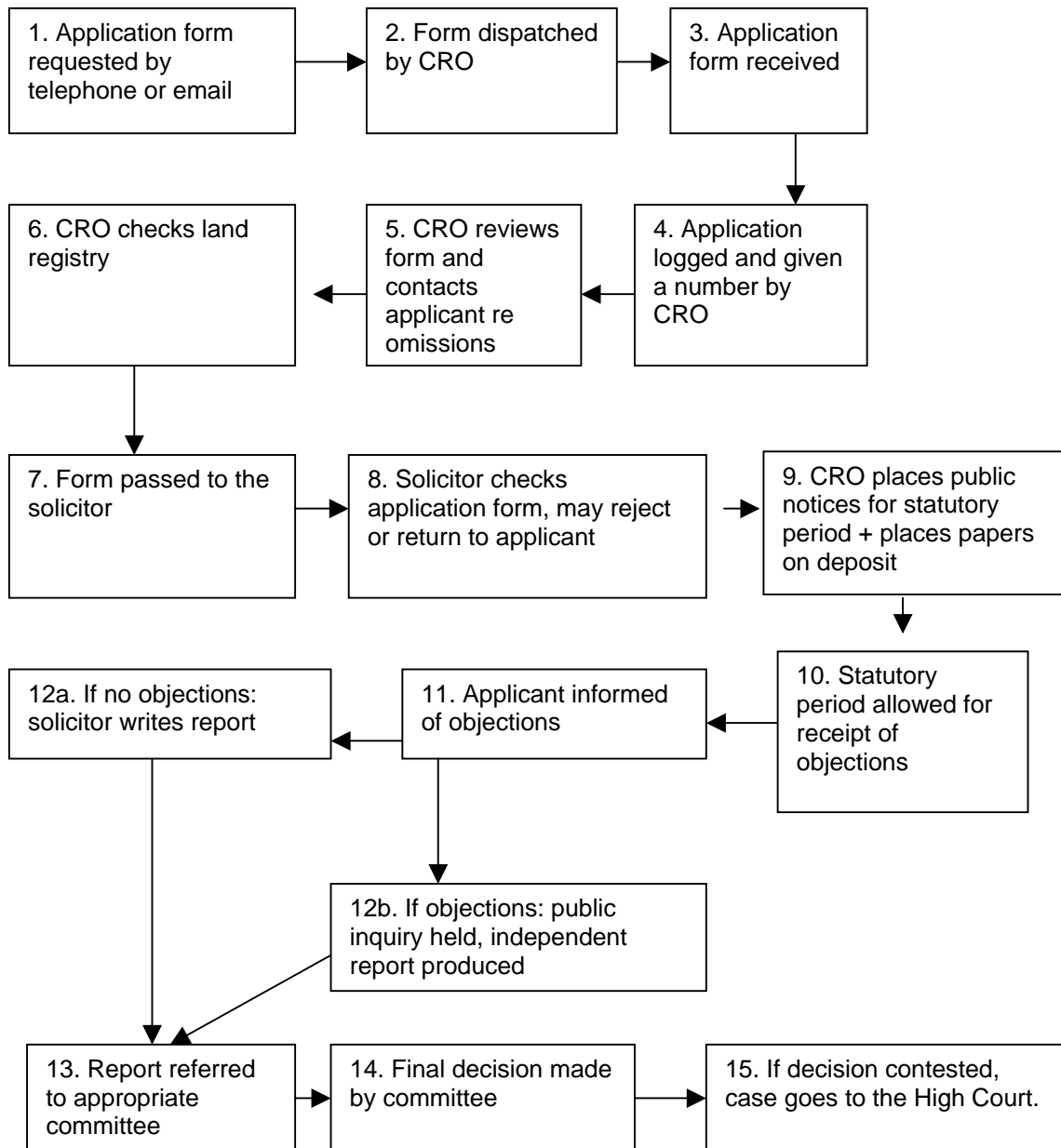
Defra must consider who they should communicate with. The solicitor and the CRO may need to be copied in on all communications. Defra can not assume however that the CRO will understand the implications of any communication, the solicitor must have sight of it. The variation in job titles and departmental locations shows the value of Defra maintaining an up to date database of contacts.

Where the regulations for dealing with applications are specific, they appear to be followed very carefully by the Registration Authorities. Where the legislation becomes more vague e.g. how to deal with objections or whether to hold an inquiry, the authorities have done their best to develop a system that is fair and workable. This has resulted in some slight variation in procedure across a number of authorities. Authorities have reported no adverse feedback whatever the system, in fact praise has been received by some authorities where their cases have gone to the High

Court. Advice has been taken from well known Inspectors and also the Open Spaces Society to help develop an appropriate system.

The general process for dealing with applications is shown within the following flow diagram.

Figure 1: Process for Dealing with Applications



The application process starts with a request from a potential applicant for an application form. This request is often made by telephone but also by email and often direct to the Commons Registration Officer. At this stage some advice may be sought from the CRO on the procedures the applicant has to follow. In the main little or no advice is given by the Council to ensure it remains independent, however a minority of Councils do appear to meet applicants to offer help and support or provide help over the telephone on the type of information to include in the application. The form is then

dispatched by the CRO. In a minority of cases explanatory notes are sent with the form.

Many of the requested application forms are not returned, however those that are completed and returned are often received by the CRO although in some cases the Council solicitor. The CRO would then log the application and assign it an application number. The CRO may at this stage take an initial look at the form to identify obvious errors or missing information. The CRO may then contact the applicant to advise them of the missing information and allow them the opportunity to resubmit. Once the application has been logged and an initial review undertaken the land register is checked to confirm the current status of the land in question.

The application would then be passed to the solicitor who reviews it in detail. If the application does not fulfil the required criteria it may be rejected outright or may be sent back to the applicant allowing them further time to resubmit. Advice would not however be offered on the changes that are needed to fulfil the criteria.

Once the application has passed this initial review by the solicitor, the regulations are followed in terms of placing public notices in local papers, libraries etc. The relevant papers are placed on deposit and the land owner notified of the application. The statutory noticed period is allowed for the receipt of objections and the applicant is then informed of these objections.

If no objections are received the Council solicitor will prepare a report on the application. If objections are received however, which is likely to be the case<sup>3</sup> a public inquiry would often be held, for which an independent inspector would be appointed. During the inquiry the case is heard for both the applicant and objector, with witnesses being called for both sides as required. Following the enquiry the Inspector would prepare a report providing a recommendation for the outcome of the application.

Reports from the solicitor or inspector are then referred to an appropriate council committee comprising representatives from a mix of political parties. It is the responsibility of this committee to recommend whether the application is successful or unsuccessful. The committee usually has the final decision unless the case is contested, in which case it may go to the High Court. The committees to which the reports are referred vary by name between different councils. Committees identified during the survey include a Countryside and Rights of Way Panel, a Commons Rights of Way Committee, an Area Development Committee, Licensing Committee and a Planning and Regulation Committee. The size of the committee varies, but evidence suggests that it comprises 3-10 people.

### 9.2.1 Variations in the Process

Most authorities appear to go straight to public inquiry where objections exist, if the evidence needs testing or where the issues are complex. A minority invite written response to objections, which can be a lengthy process – if issues still remain then a decision is taken whether to go to public inquiry.

One authority does not go to public hearing if “use as of right” can be proved even if objections are received. They give the applicant the opportunity to consider and respond to objections.

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<sup>3</sup> Of the 55 greens/applications within the survey for registration issues, objections were reported to have been made to 56% of the applications. No objection was made to 29% of the applications, whilst in a further 14% of the cases it was not possible to ascertain whether an objection had been made.

One of those interviewed tries to avoid public inquiries by appointing a committee to consider written evidence in relation to objections. A report is submitted by the solicitor to the appointed committee. If controversy still exists, an informal public hearing will take place – both the objectors and applicant are represented but the committee leads the hearing and not a specialist inspector.

If the level of complexity does not warrant a public inquiry, but is not straight forward enough to go straight to committee, one authority, seeks written opinion from a barrister. In another authority the committee hears the evidence, whilst the solicitor clerks the meeting. No independent inspector had yet been appointed. A minority include a site visit by committee members.

In a further case a report is produced after an informal hearing or committee review of the evidence. The committee then considers the recommendation.

One solicitor indicated that after the public inquiry, the inspector's report would be circulated to the objectors and the applicant, allowing 2-3 weeks for them to respond. The solicitor then prepares the report, which is forwarded to the Licensing Committee. The point was made that the solicitor has to take care when preparing the committee report. There has to be sufficient information on which to base a decision, but without too much legal jargon to make the process difficult for the committee who are not legal experts.

One authority only involved the Council solicitor if there was an objection to the application, otherwise the committee officer/CRO would handle the application and even prepare a report for the committee. This officer was considering encouraging the solicitors to rule that future applications of a similar nature to those already dealt with should go to committee rather than a public hearing, particularly given that recent case law means that applications are more easily rejected. This would reduce time and expense. 3-4 years ago this authority had few objections and didn't take the applications to committee. They were dealt with by the officers (CRO equivalents). The greens involved were described as traditional greens with few contentious issues. Nowadays given the increase in objections the committee is involved.

The choice of inspector may vary according to the complexity of the case. A more junior inspector may be appointed for less complex cases to reduce costs. The inspector seemed in most cases to be a barrister. There appeared to be a number of inspectors known to the authorities, with Vivian Chapman, being mentioned on numerous occasions.

### **9.2.2 Time Period**

The greens often took 1-4 years to register if objections had been made, and this was considered a long time period. The inspectors report alone appeared to take several months to prepare. Clearly awaiting the outcome of high profile cases such as Sunningwell and Trap Grounds has or is delaying the outcome of a number of applications.

One authority reported a backlog, which could only be cleared over a number of years due to limited resources. An influx of applications was thought to have resulted due to the outcome of the Sunningwell case. A report had been prepared for the Regulatory Committee which set out a plan to deal with the back log of applications in chronological order, but with the option to give higher priority to applications with overwhelming public interest.

Straightforward applications with no objections, which clearly fulfil all criteria, can be processed quickly and possibly within one or two months depending on the timing of the committee meeting.



During an interview with the Open Spaces Society, the contact raised concern over the absence of time constraints on the different stages of the application process, with the exception of the 6 week limit for objections, as in effect the registration authority can take as long as it wishes to process the application.

### **9.3 Registration Issues**

The mechanics of the process that are set out in the regulations do not appear to be contested and are followed quite closely by the Registration Authorities. There is, however, vagueness and a lack of clarity in how to deal with objections and whether a public hearing should be held. This is why there appears to be variation in the way the applications are dealt with. Each Council appears to have to define its own procedures regarding determining an application. The regulations were often in fact described as outdated, complex and vague. This lack of clarity and vagueness results in a need to consult other bodies to seek guidance e.g. the Open Spaces Society and independent inspectors.

Although the regulations need to enable a choice between the need to go to public inquiry or to go straight to committee, more detailed guidelines would ensure greater consistency.

Case law and consequent changes in interpretation clearly result in time spent keeping up with cases. Waiting for the outcome of high profile cases can in fact cause a delay to the outcome of some applications. Several examples were cited where delays had occurred whilst the outcome of high profile cases were decided e.g. Sunningwell and Trap Grounds.

The 1965 Commons Registration Act was understood by a small number of the Registration Authorities to be a first set of legislation and due to time pressure the additional areas didn't arrive. As a result there is uncertainty over what village greens can be used for and what rights people have once they are registered. The CROW Act has defined what common land can be used for, but this is not the case for village greens. The Commons Registration Officers found it difficult to define "as of right". There have been a number of cases where it has been difficult to prove whether people have the right to use the land or whether the land owner has given permission. Case law is also relied upon to define what is a lawful pastime.

The Open Spaces Society's view of the legislation was that most of the required elements were contained within it. The contact did however feel that regulations regarding the 20 year period needed to be tightened as currently the "goal posts" appear to be continually moving. In terms of "as of right", there was understood to be such a wealth of case law on how this can be interpreted that it is not something that you can legislate for more than it is already.

Although many authorities held public inquiries in order to determine applications, where objections had been made the cost to the Council in terms of financial cost and resources was high. As discussed previously the Councils often don't have full time village green solicitors or CROs and public inquiries take up more than the resources usually available. A decision has to be taken as to the priority of the application compared to other Council business. The cost for a public inquiry will be in excess of £7,000 and potentially reaching £25,000 and a limited number can be held a year as a result.

The suggestion was made by a few authorities that there should be a Commons Commissioner or Independent Inspectorate, who would deal with all cases, rather than each Council appointing an independent inspector at cost to them. This would

take the pressure off the authority, particularly in cases where the authority have an interest e.g. development, or where there is pressure being exerted by developers, applicants and objectors.

It was indicated during the interviews that in a number of examples a green does not have an owner, as it was reported that vesting greens to Parish Councils does not now apply to new greens. There was some interest expressed in ensuring that all new greens are vested to the Parish Councils. The stage 1 analysis of the village greens database showed that no ownership data was available for approximately 1/3 of the greens.

The Registration Authorities generally reported feeling under pressure from the applicant, objector and developers.

A number of other gaps and anomalies were reported:

- Can an application be amended at a public inquiry before the inspectors report – e.g. if the dates of use are changed?
- Can the application be approved in part?
- On a few occasions there was an issue with the period of use definitions in the 1965 and CROW ACT. One Act suggests the period of use ends at the point of application, the other at registration. If you failed on one Act can you look at the other?

There was positive reaction by one solicitor to a recent email by Defra, which updated the authorities on changes to the regulations. This was praised as being pro-active and reduced the need for the Registration Authorities to review the recent case law.

## 9.4 The Application Process

### 9.4.1 Application Criteria

The solicitors overall had a good knowledge of the detail of the application criteria as included in the legislation. There were, however, variations in their level of knowledge and confidence. Some authorities would need to refresh their knowledge should a new application arise. There were believed to be areas within the legislation where there was a lack of clarity. Knowing the basics was seen as one issue, being able to apply the regulations was another, particularly when the courts change the interpretation of the criteria. It was understood by all authorities interviewed that anyone can apply to register a green.

Key criteria were seen as:

- Continuous use for 20 years by a significant number of inhabitants of a locality or neighbourhood within a locality.
- Use as of right – without force, secrecy or permission.
- Use for lawful sports and pastimes.

#### 9.4.2 Reasons for Rejection of an Application

The following table lists a number of situations where an application would be rejected as identified by the Commons Registration Officers and solicitors. Where available examples are provided. Inability to fulfil the usage criteria appeared to be the most common problems reported by the CROs and solicitors.

Table 22: Reasons for rejection of application

| Reason for rejection   | Example green  |
|--|--|
| Incorrectly filled in forms was a common problem. These would be sent back to the applicant for them to resubmit within a specified time frame. The forms often missed the statutory declaration, or lacked sufficient information on 20 years usage | Billy Morgan's field   |
| Inability or difficulty in proving use "as of right" e.g. to learn of a lease giving permission to use the land.   |  |
| Inability to fulfil usage criteria (4 greens) e.g. people walk on public rights of way rather than use the land as a whole   | Park Mill Swansea, Frith Wood, Oystermouth, land was next to a highway and unsuitable for use for games.                               |
| Use not by inhabitants of the locality   | Brynroad Balkwood  |
| Recognition that in light of the Trap Grounds case that an application was unlikely to succeed as the owner could erect a sign denying use.  | At least one known case in Staffordshire   |
| Failing to define a locality correctly, or failing to identify a locality.   |  |
| The landowner or objector could show interruption of use.  |  |
| Insufficient people had used the land.   |  |
| An attempt to use a revised application for a smaller area of land, which included the evidence previously submitted for a larger area.  | The Wong, Horncastle<br>This application was not accepted and was subsequently revised to make it appropriate to the land in question. |

On a general point it was felt that there are more obstacles in the way of registration now given recent case law.

#### 9.4.3 Other Issues Regarding Application

It became clear during the study that many applicants, particularly members of the general public are not legally represented and don't have the necessary legal knowledge to complete the form in a way that would present the best case for their application. The developers are however, likely to have representation. This clearly places them in a beneficial position compared to members of the public without representation.

The general public was not the only group to find it difficult to complete the form appropriately. The Registration Authorities reported that the Parish Councils don't necessarily understand the criteria, sometimes mixing up village greens and common



land, highways and village greens and writing the 20 years usage information in the wrong place.

Despite an awareness of this lack of knowledge the Registration Authorities have to remain neutral and avoid providing advice (in most cases). The applicants are sometimes referred to the Open Spaces Society for advice and appropriate forms. One authority reported they sent out explanatory notes with the application form.

An insufficient number of application forms was mentioned by a minority of CROs. This resulted in them photocopying application forms, an unsatisfactory solution, as they were then required to accept a photocopy in return.

#### **9.4.4 Ownership**

Ownership of the land by the County Council, for which a village green application has been received is a reason why the usual procedures for dealing with an application would be altered. For example a local resident may have applied for a village green to be registered in response to a potential development on Council owned land. The Council planning department would thus in theory be against the registration taking place. It is important in this situation for the registration department to remain impartial and ensure a conflict of interest does not occur. The solicitor handling the registration proceedings would therefore not act for the Council who may be objecting to the registration. The situation may be dealt with in three ways a) by appointing an independent solicitor to represent the Council, b) creating “Chinese walls” within the Council and Council solicitors handle both sides of the case, or c) holding a public inquiry to ensure the case is dealt with fairly.

### **9.5 Section 22**

The Registration Authorities were asked a number of questions specifically on Section 22 of the Commons Registration Act 1965 (as amended by Section 98 of the Countryside Rights of Way Act), concerning the requirement for continuous use up to the date of application. The aim was to explore knowledge and understanding of Section 22 and whether this caused applications for registration of greens to be turned down by the authorities.

There was mixed awareness of what Section 22 referred to when mentioned during the interviews. Some were aware of the name but did not have immediate recognition of the content. Others were instantly aware of the name and content, whilst others were very aware of the content after prompting but didn’t immediately know the name. One solicitor believed it related to changing ownership and removing land from the register.

After prompting with an introduction to Section 22, it was believed to impact on all or most applications. The registration officers believed there is evidence that it results in many applications being turned down e.g. the Biddulph application didn’t show 20 years usage, and there was also difficulty in providing evidence of appropriate activities taking place.

There was a desire for more clarity with regard to the meaning of Section 22. Case law was thought to make the situation even more complicated as each case puts a different interpretation on it e.g. Trap Grounds. There was certainly a belief that the general public will find this confusing.

The lack of clarity arose over how the applicant can define locality and also the rights people have on the land e.g. with regard to maintenance - will the parish maintain it?

A specific difficulty was that there is an original definition and a revised version in the CROW Act. If the House of Lords accept the Trap Grounds case there will be two definitions in use. The CROW Act was believed to have added a further layer into the legislation.

One solicitor with a good grasp of Section 22 felt that it can result in development being delayed or stopped. One authority did however feel that Section 22 had little effect, as usage and locality criteria have not caused a problem, with people naturally applying for an easily recognised local area.

## 9.6 Trap Grounds

The case of Oxfordshire County Council v Oxford City Council and Catherine Mary Robinson concerned an area of land known as the Trap Grounds in Oxfordshire. In this case the Court of Appeal gave a number of rulings about various aspects of registration. The most significant of which was that an application to register land as a green will fail if the landowner challenges the public's use of the land for lawful sports and pastimes before the land is finally registered, irrespective of the period or manner of qualifying use.

There was some concern expressed over the case by the interviewees, as it will result in fewer registrations of genuine new greens (unless the land is not owned). It will, however, stop frivolous applications to stop planning development. Awaiting the outcome of the case is currently delaying decisions over applications. There was, however, some feeling that it may clarify what rights people do have.

## 9.7 Influence of Development on TVG Applications

Development was identified as a key issue and a very common reason for submitting a TVG application. This supports evidence collected during the literature review.

"<sup>3</sup>/<sub>4</sub>, most, all" were given as proportions of applications linked to development. (One authority believed it was less of an issue for them, with only one development related application.) Furthermore the Registration Authorities believed that numerous application forms, that had been requested but not returned, were also linked to a desire to stop development. Based on analysis of the 55 greens, development was thought to be the reason for the application in 47% of the cases. In a further 25% of cases the influence of development was unknown. It was only possible to rule out the influence of development in 27% of 55 greens. 7 out of the 10 applications for the case study greens reported on in section 10 were thought to have been to stop development.

It must be remembered however that the link between development and applications is not officially recorded or counted and can be just a "feeling" the CRO or solicitor has. Furthermore the solicitors ensure that the reason for the application e.g. to resist development is not considered when determining the application.

Thus although it is not possible to be precise about the level of impact of development on a decision to submit a village green application the available evidence from the Registration Authorities does suggest a strong link. The following comments from the Authorities support this view.

- "It is a hot topic. All applications have been to stop development. There is huge development pressure on the area given adjacency to (major city) where houses and land are more expensive."
- 75% of new applications are likely to have been triggered by development.

- Only one application was not linked with development – it is a very political issue – feel people do use the village green application as a last stand against development.
- “It is a common motivation. I feel the House of Lords suggested this is an issue.”
- “This has lead to a flurry of applications.”
- More applications anticipated to stop development.

The Open Spaces Society contact re-enforced the view that if the public become aware of a development threat they will want to ensure that the land is registered. Parish Councils were also as anxious to make applications to protect land for future generations.

## 10. Stage 2 Findings - Registration Case Studies

### 10.1 Introduction

As detailed in the stage 2 method section of this report, 10 case study “greens” were explored in detail. The aim was to understand opinion of the application/registration process from the point of view of the applicant and the objector. The greens included within this study are listed in the table below. In addition less detailed information was collected on a further 45 greens. Thus registration information was collected on 55 greens/applications in total. The additional 45 greens are detailed in appendix 2 of this report, however aggregated data has been integrated within this section of the report.

Table 23: Registration Case Study Greens

|                           | The green                 | Local Authority                | Private/<br>public<br>owner | Successful<br>/unsuccessful village<br>green applications |
|---------------------------|---------------------------|--------------------------------|-----------------------------|---|
| Registration case studies |                           |                                |                             |   |
| 1                         | Clifton Village Pond      | Bedfordshire                   | Disputed                    | Successful  |
| 2                         | The Green Cascade         | Caerphilly                     | Private                     | Successful  |
| 3                         | The Hollow                | Durham                         | Unknown                     | Successful  |
| 4                         | The Hangings              | Gloucestershire                | Private                     | Successful  |
| 5                         | Ingol Head                | Lancashire                     | Private                     | Successful  |
| 6                         | The Field, Greetwell Road | Lincolnshire                   | Public                      | Unsuccessful  |
| 7                         | The Glebe (Sunningwell)   | Oxfordshire                    | Private                     | Successful  |
| 8                         | Land at Moorland Road     | Staffordshire                  | Private                     | Unsuccessful  |
| 9                         | Abercregan                | Swansea & Neath<br>Port Talbot | Public                      | Successful  |
| 10                        | Kingsbury                 | Warwickshire                   | Public                      | Successful  |

2 out of the 10 case studies were unsuccessful applications. Including further unsuccessful applications in the case study survey proved difficult, due to difficulties in identifying and making contact with the applicants and objectors. Of the 55 greens on which registration information was collected however, 44% were unsuccessful, 51% were successful and the remainder were either ongoing or had been withdrawn.

3 of the case study greens were publicly owned, whilst 5 were known to be privately owned. The ownership of 2 of the greens was either disputed or unknown. Across the 55 greens 36% were known to be publicly owned, whilst 25% were privately owned. The ownership status of the remainder was unknown. National data from the stage 1 survey indicates that 75% of village greens are actually publicly owned. The registration case studies do not therefore accurately reflect the national picture in terms of ownership, however the greens were selected on the basis that they would provide valuable information on issues surrounding registration in terms of the applications and objections to the application. The availability of suitable interviewees also had an influence on the final selection.

Within the 10 case studies interviews were conducted with a range of applicants, legal representatives for the applicant, applicant supporters, objectors, legal representatives of objectors, land owners and developers.

The following table identifies the range of consultees, whose views were taken into account when analysing the case study information.

Table 24: Range of People Interviewed for Registration Case Studies

| Type of consultee  | Number    |
|--|-----------|
| Applicant – Local resident(s)                                    | 8         |
| Applicant – Local resident supporting a group of local residents | 3         |
| Applicant – Parish Council                                       | 2         |
| Representative of applicant - Legal                              | 1         |
| Objector – Land owner (business)                                 | 2         |
| Objector – Land owner (developer)                                | 1         |
| Objector – Local resident(s)                                     | 2         |
| Objector - Local resident supporting a group of local residents  | 1         |
| Objector – Local Education Authority                             | 1         |
| Objector – Borough Council                                       | 1         |
| Representative of objector – Land agent                          | 1         |
| Representative of objector – Legal                               | 2         |
| Representative of objector – Planning consultant                 | 1         |
| Representative of objector – Village Green consultant            | 1         |
| Registration Authority   | 2         |
| <b>Total number of interviews</b>                                | <b>29</b> |

Within the case studies local residents were the most likely to be the village green applicants. When considering the 55 greens on which information was collected 41% of the applicants were local residents, whilst 27% were Parish or Town Councillors.

The objectors interviewed comprised a mix of local residents, land owners and local councils/authorities. There was a similar mix across the 55 greens under consideration (council 26%, owner 26%, local resident 16%, unknown 32%).

## 10.2 Reasons for Application

In 7 of the 10 case studies the primary reason for the application was to stop development. This clearly supports the view amongst the Registration Authorities that development pressure is a key issue. The following table outlines the reasons for a number of the case study TVG applications.

Table 25: Reasons for Application

| Reason for application   |
|--|
| One applicant, a local resident submitted an application to secure land to stop development, for which a planning application had already been submitted. A housing developer owned the land.  |
| The local residents made the application in response to an owner erecting a fence on the land preventing access.   |
| In one case local residents took extreme action and physically stopped the erection of a fence by the owner, by parking vehicles on the land and “camping out” on the land overnight.  |
| One applicant, again a local resident was concerned that the County Council was planning to develop land previously used by a local school. This application was unsuccessful.   |
| Two applicants, again local residents submitted an application to prevent the Borough Council from building bungalows on the land.   |
| A group of residents, understood to be part of an organisation called Green Wedge, applied to register land owned by English Partnerships and a leisure organisation, in order to stop development and preserve the land for recreational use. |
| In a further case study the application was made by the Parish Council to preserve the rights of the locals to use a village pond in response to a claim of ownership by nearby landowners.  |

As reported previously applications for at least 47% of the 55 “greens” included within the survey were known to have been made to stop development.

## 10.3 Views of the Application Process

### 10.3.1 Accessing the Application Form

The application form appeared easy to obtain.

### 10.3.2 Completing the Application Form

In most cases the applicants found it difficult to complete all the required information on the application form.

The professional representatives did, however, see the application process as more straightforward and within their capabilities. A solicitor reported his familiarity with the form and was able to judge that the Council would require a public hearing. (This solicitor believed the application process to be straightforward and as expected.)

There were a number of issues, which caused the “lay” applicants difficulties. These issues are listed in the following table.

Table 26: Difficulties for Lay People in Completing the Application Form

|   |
|---|
| Time and effort needed to complete the application form and collate the required evidence   |
| A lack of understanding of the legal aspects of the criteria  |
| Understanding what was required   |
| A lack of understanding how the information was going to be used  |
| The forms were perceived to be complicated  |
| The criteria for a successful application perceived to be vague and ambiguous   |
| Difficulties in collating the information in the required format  |
| A simple mistake e.g. providing incorrect dates could lose the case   |
| Need for professional help – without this there was concern that the information would be open to interpretation  |
| Difficulties in establishing 20 year usage – one applicant (Biddulph), in terms of establishing whether use was as of right or whether permission had been granted. |

Overall there were three very important issues which caused the lay person difficulties with the application form. Firstly the perceived complexity of the application form, which is directly related to insufficient knowledge of the legal jargon and the application criteria. Secondly a lack of understanding of how best to present the required information within the application to ensure maximum positive impact and avoid misinterpretation. The first and second issues are closely related. The third major issue was the time and effort needed to complete the application form and collect all the required evidence.

It was evidently difficult for the lay person to understand what was required of them and the application to ensure that it was accepted. An example completed form was suggested to show the type and amount of information that was required to aid their understanding. Generally the form was perceived as being very complicated and the criteria for application vague and ambiguous in places. It was also difficult to collate the information in the required format as the instructions were not clear e.g. the requirement for a significant number of people.

A lack of understanding how the information was to be used caused the lay applicant problems as without this knowledge it was hard for them to know how to present the most relevant information in the best way without any likelihood of misunderstanding or misinterpretation. Professional help was needed to combat the latter concern.

A lack of understanding of the legal aspects of the application criteria and more specifically the meaning of the legal jargon was a major barrier. The following quote emphasises this point.

*“You get caught up in the legalistic terminology and it’s a stab in the dark as to what the underlying message is. You’re not sure you are getting all the information you need for your application” (Biddulph applicant)*

One applicant with a good legal background clearly benefited from this knowledge and consequently had no problem with the submission of the application.

There was reported to be a number of ways to make mistakes in the application, such as providing incorrect dates and this gave rise to concern that it was possible to lose



the case due to mistakes on the form or in specific information within the evidence. Without professional help, it was also a concern that the information would be open to interpretation. Difficulties in establishing the 20 year usage was an issue for one non-successful applicant in terms of determining whether the use was as of right, or whether permission had been granted.

The Open Spaces Society contact also criticised the application form. It was reported to be out of date, a point which has been raised with Defra. This was known to create problems for the Registration Authorities and the applicant and allows for objections that wouldn't otherwise occur. The Society believed that applicants were often surprised that the onus was on them to prove the criteria and collect the evidence.

The time and effort needed to both complete the application form and collect all the required evidence was as described previously a major issue. The applicants were often surprised how much time and effort was actually needed. Periods of 6 weeks, 3 months, 6 months, 14 months and 18 months were cited as the time taken to collect the supporting information. The time did however vary according to the complexity of the case. Generally the more complex the case the longer the time input needed. The applicant who only spent 6 weeks collecting the information now feels she should have spent more time collecting even more information to support her case. The Open Spaces Society contact confirmed that this was a problem that she was aware of.

One applicant actually spent 120 hours completing the form and collecting the required information. This applicant believed that they might not have applied if they knew how much time and effort was needed. Collecting specific information from non-professional people proved difficult, as they often became caught up in their memories.

The work involved in collecting information and completing the form was often very intensive. One applicant described working on the application solidly for 6 weeks. Photocopying the form and supporting evidence was also a major task and quite an expensive one. Fortunately for one applicant the Council gave permission to use their photocopier.

Making contact with current local residents and also people who had moved away from the area was time consuming and extremely hard work. In the case of The Glebe, Sunningwell, information was collected from local residents via a self-completion questionnaire. One unsuccessful applicant (Biddulph) described the process as "hard and emotionally draining". He felt that nothing he "had done in an office environment had been as emotionally fraught and difficult". This person was actually a business professional, with experience of project management and presentations.

One Parish Council reported the importance of strong leadership and commitment from the local community to be able to maintain the motivation and direction necessary to "stay the course" on a long drawn out case, thus emphasising the amount of time and effort involved.

The form itself was reported to take several hours to complete once all the required information had been collated. Thus overall completing an application form required a great deal of time and determination.

### 10.3.3 Professional Help

As a result of the difficulties in completing the form a number of the applicants (but not all) sought professional help and found this invaluable. The Open Spaces Society



played an important role here, and was contacted by applicants in at least 6 of the case studies. The help provided by the Open Spaces Society ranged from general advice on completing an application form, information on the application process to providing less specific moral support. More specific examples of the support received are included in the table below.

Table 27: Help Provided by the Open Spaces Society

| Case study green  | Type of support from the Open Spaces Society  |
|-------------------|---|
| The Green Cascade | Contacted both the Council and Open Spaces Society and was briefed on completing the form   |
| Clifton Pond      | The Open Spaces Society backed the application and gave support, although a comment was made that they were only able to comment on the application rather than provide the guidance that was ideally required. |
| The Hollows       | Contacted the Open Spaces Society and also bought a book on applying for village greens.  |
| Abercregan        | Resident joined the Open Spaces Society to gain a better understanding of the law and to receive advice on the application process.   |
| Biddulph          | The Open Spaces Society gave much appreciated moral support in the early stages. Although little additional help was needed it was of value to have the Society on hand should the need arise                   |
| Kingsbury         | The applicants sought assistance from the Open Spaces Society but found that they had to pay a subscription to get this help.   |

The Open Spaces Society confirmed that they did provide help with each element of the application criteria, although they were not able to comment on the evidence provided, a point which was a disappointment to a number of the applicants interviewed within the study.

Legal help was also enlisted to complete the form and/or represent the applicants at the public inquiry.

One applicant commented that he would have had great difficulty facing the objector's representative without help from a barrister friend. In this instance no charge was made for the help. Another applicant was advised by a solicitor to appoint a barrister for the public inquiry. This cost the applicants £4,000, however this was a little less expensive than expected as the barrister was keen to take on the case.

In the Ingol Head Green case a solicitor completed the form and helped put the application together. Fortunately the work was done on a pro-bono basis. The work should have cost in the region of £10,000.

As the Sunningwell case became more complex and controversial a QC was brought in to help with the application. The costs were borne by the local residents who put considerable effort into fund raising activities to raise the fee required.

The Biddulph applicant also sought advice from other applicants who had gained experience of the process. In one case where no professional help was sought, the applicant had a legal background.

#### 10.3.4 Time to Make a Decision

The length of time between the submission of the application and decision regarding the application was often considered to be too long. The time elapsed between application and determination ranged from 3 months, 5 months, 6 months, 1 year, 2 years to 3-4 years.

- In the Sunningwell case the applicants had to wait 3-4 years for a decision
- The decision on the Clifton pond was actually delayed pending the outcome of the Sunningwell case
- Delayed committee meetings increased the time period in one case. The Council were also thought to have taken a long time to respond.
- In the Ingol Head Green case, the time period was extended, as the application had to be re-submitted and the applicants were asked to continually provide additional information.

One applicant (whose application proved unsuccessful) took quite a pragmatic view in that he was happy that the decision was taking a long time, as nothing could be built on the land whilst the outcome was undecided.

A further unsuccessful applicant, although unhappy with the final outcome, did not have a problem with the 3 year time-scale, which included an appeal process, as this forced the local authority to find an alternative brown site for the development.

Where the application was contested and a public hearing required, the time between the submission of the application and the public hearing was likely to be in the region of 3-4 months. This time period was considerable acceptable. Thus the time between the hearing and the final decision appears to be where the greatest delay occurs.

#### 10.3.5 Perception of the Process

##### **Time and Effort Involved**

Given the difficulties and the time and effort involved, one applicant indicated they would not go through the process again, even though it was successful.

In a number of cases the length of the application process combined with the complexity of the case and the amount of evidence involved, made the process very difficult, time consuming and complicated for the applicant.

##### **Public Inquiry**

A number of positive comments were received in relation to the public inquiry. All the case study applications went to public inquiry. The fact that the public inquiry was led by someone outside the area was looked on favourably by one applicant. Other comments reported favourably on a fair hearing, and applicants being treated with respect. Despite some positive points of view however many applicants were less satisfied.

The use of a public inquiry was considered unnecessary in one case as all the evidence including photographs and video footage had previously been supplied to the Council.

A few applicants were also dissatisfied with the decision to go to public inquiry, as this was seen as an easy way out for the Council and a way to avoid making a decision themselves. The use of inspectors was thought to cause unnecessary expense.

The view was aired by one applicant that attending a public inquiry was clearly not a straightforward experience and could be quite daunting for local residents. There was some concern that if witnesses are not briefed on what to say whilst being cross-examined the evidence may harm the case. Difficulties arose in one case where older residents who supported the application were afraid to give evidence against the Council, for fear of upsetting them.

The complex legal language used at the inquiry was criticised by one unsuccessful applicant as it was likely to be intimidating to those taking part. Despite this the inspector was described as friendly and the public inquiry was considered to be well handled.

A further applicant was frustrated, as the public inquiry did not use all the evidence collected.

### **Bias Toward the Objector by the Council**

In one case the Council were criticised for not remaining neutral, as they appeared more hostile to the applicant than the objector, an ex Council member. The County Council was also criticised in another case for not showing the support expected. In this case they were accused of not wanting to oppose a local Diocese.

There was criticism in the Ingol Head case that the Council had set the public hearing date quite early not giving the applicants much time to prepare their case. This encouraged the view that the Council was not in favour of the application. Despite this the hearing was thought to have been handled well, and the applicants were treated fairly, with respect and were listened to throughout. The hearing was fair, with pertinent and difficult questions being asked of both sides. The solicitor however, was not convinced that the Committee of County solicitors were the right people to make the decision.

### **Legislation**

There was also criticism of the legislation by one unsuccessful applicant, with regard to the need to prove continuous use for 20 years, as the Council could easily defeat the applicant by fencing off the land and as such discontinuing use. Another comment referred to the need for the legislation to refer to intent, i.e. the reason for application, e.g. to protect the land from private ownership.

One unsuccessful applicant had an issue with the level of proof required to stop an area of land being developed. This applicant felt the legislation was not on the side of saving green sites, as it was not strong enough to back up applications for village green status.

### **Cost**

The high cost of applying for a green was an issue. In one case the total cost was reported at £12,000, of which £4,500 was raised locally, whereas the remaining £7,500 was paid by the applicant. Local fund raising was necessary in the Ingol Head Green and Sunningwell cases. The Parish Council in another case bore the costs themselves by working on the application in their own time without pay.

#### **10.3.6 Suggested Improvements**

A number of improvements to the current system were suggested by the applicants and their representatives, which related to financial support, legal support and the availability of information and example documentation.

One applicant suggested a central source of information for the public to access, including a summary of the latest case law rulings, to reduce the time and effort needed to identify and collate this information.

A grant system or financial support system to defend areas of land was also suggested. This same applicant was in favour of Defra continuing to consult applicants to help prepare a Parliamentary Bill that would close the loop holes in the current legislation, and help protect green spaces.

A further suggestion was to provide an example application document with all the necessary keywords and prompts, showing the type and amount of information required.

Given the value of having legal representation, it was suggested that Defra could provide this help to applicants. Another applicant suggested that the local authority could provide unbiased legal advice.

## 10.4 The Objector's View

### 10.4.1 Reasons for Objecting to a Village Green Application

Taking into account the 55 "greens" on which registration information was obtained, objections had been recorded on 56% of the applications. It was not known whether objections had been received in a further 15% of the cases. In terms of the 10 case studies, objections were received on 9 out of the 10 applications. The case studies were however selected on the basis of having a registration "issue" and thus applications that received an objection may be over-represented slightly.

The reasons for objecting to the application amongst 31 out of the 55 greens are shown in the following table. The responses are based on interviews with the CROs, Council solicitors and case study respondents. The quantification of the different responses must be treated with some caution, as this is often dependent on the respondent's description of the objection rather than an analysis of the case notes.

Usage not "as of right", but by permission, force or stealth accounted for objections to 12 of the 31 applications. Disputed use for the continuous 20 year period, accounted for 7 objections, disputed use for lawful sports and pastimes for 6 objections and no significant use by local residents for 5 objections.

Table 28: Reasons for Objections

| Objection  | Number of greens |
|--|------------------|
| Not “as of right” (no qualification)                     | 5                |
| Use by permission/implied permission                     | 5                |
| Use by force/stealth                                     | 2                |
| Not continuous use for 20yrs                             | 7                |
| No significant use by local residents                    | 5                |
| Disputes use for lawful sports and pastimes              | 6                |
| Covenant/lease states that land is for use as open space | 3                |
| Concern over vehicle access to property/garage           | 2                |
| Unknown/other  | 3                |

*Base: 31 applications. More than one type of objection could have been made to each of the 31 applications.*

Disputed usage was the basis of an objection within many of the 10 case studies, whilst disputed period of use in relation to the required 20 year period and use “as of right” were also issues. The following table provides details of the objection to each of the 10 registration case study greens.

Table 29: Basis for Objections

| Case study green         | Reason for the objection   |
|--------------------------|--|
| The Hangings             | If the land became a green the owners of the land would not have access for maintenance and emergency purposes in respect of the lock. They also disputed the usage period and type of use. The applicant's evidence that the land was used for ball games, drawing, painting or kite flying was considered farcical. As the land was reported to have only been restored from a derelict state in 1983, the claimed usage was believed unlikely.                                |
| Abercregan               | The application for this green was opposed by local residents who had never seen the land used for local activities and would like to see the land developed. Another site in the area was believed to be suitable for use as a green.   |
| Clifton Pond             | Local residents believed the land was theirs and disputed the usage claimed by other residents.  |
| The Glebe                | The usage was again disputed on this land. There was believed to be one footpath and other use constituted trespass. Much of the land was used for grazing. There was reported to be a notice indicating that it was private land.   |
| The Hollow               | The objector claimed ownership of the land, which had been used for farming since 1935. Usage by local residents for sports and pastimes was disputed given the use by the farmer. He had grown hay, harrowed and fertilised the land. The land was also registered for IACS. The farmer received payment by Northern Electric for the electricity poles on the land.  |
| The Field Greetwell Road | An objection was made by the Local Education Authority (land owner) and the local school, given that the school used the site as their only playing field and it was important that they controlled use by others in the interest of the children's safety. Current use by locals was believed to be by stealth.   |
| Ingol Head Green         | The objection was made by a solicitor acting on behalf of English Partnerships. It was made on the basis that the land was not for recreational purposes, nor was it used by a significant number of inhabitants, nor was it as of right as there had been licensed use of the land and fencing had been erected by the landowner. There was also believed to be a break in the 20 year period as engineering works had been carried out on the land.                            |
| The Green Kingsbury      | The Borough Council argued that the application failed to satisfy the statutory criteria and that the use of The Green was not sufficient. Various alleged shortcomings cited included that The Green was not formally allocated as a green space/for recreation purposes, there were originally signs on The Green forbidding the playing of games and that local inhabitants had always asked the Borough Council for permission before holding special events upon The Green. |
| Moorland Road Biddulph   | The planning consultant acting for the objector contended that the land had not been used for the 20-year period continuously for past times and leisure activities.   |

#### **10.4.2 Ease of Compiling and Presenting Objections**

Previous experience and knowledge of the village green application process or at least a legal background were key benefits to the objectors. Professional help from a legal representative or experienced consultant was often necessary. Those without any relevant knowledge found the process difficult and daunting. Solicitors, however, found the appropriate paperwork and process much more straightforward.

The process of collecting evidence and preparing statements was lengthy and involved considerable effort. Concern was raised over witnesses feeling intimidated by the process who as a result may not attend the hearing, which would then impact on the strength of the case.

As was the case for preparing a village green application, cost was an issue for preparing a case to object to an application. Objectors often had to fund legal help themselves.

The following table provides further detail on problems faced by the objectors within the case studies.

Table 30: Examples of Problems Faced by Objectors to the Case Study Greens

| Case study green | Problems faced   |
|------------------|--|
| Green Cascade    | One businessman who owned the Green Cascade land was on receipt of the notice of application unsure what it actually meant. He visited the land and felt it looked nothing like a green. After seeking advice from solicitors he was advised to get representation and was warned of the high cost. He initially tried to build his own case and provide written evidence of his objections. This did, however, prove very difficult due to a lack of any relevant knowledge and experience. The difficulties encountered, together with the lack of time available due to running his own business and the prospect of the public hearing led this objector to call on the help of an expert in the form of a village green consultant, who was advertised on the web. The consultant had no difficulty in taking the case forward. He collected evidence through interviews with relevant people, represented the objector at an inquiry, responded to the inspector's report and attended the Council meeting where the report was discussed. |
| The Hangings     | The objector in the Hangings case had a planning background and as a result was comfortable with the process of the public hearing. He reported that he would have found this difficult without his planning experience. Despite this he still sought representation at a cost of £1,500.  |
| Abercregan       | The Abercregan objectors obtained the evidence and gave evidence at the public inquiry without legal support, however, within the group of residents was a Councillor, who would appear to have guided the other residents through the process.  |
| Clifton          | In the Clifton case the objector was a lawyer and as such found the forms and process quite straightforward. Deciding on what basis to object was the most difficult issue. He did feel that a lay person would certainly need legal representation.   |
| The Hollow       | A solicitor was also appointed in the case of The Hollow, however the objector still found it difficult to raise the objection. It took considerable time to collect information and prepare statements. A further difficulty was that not all witnesses are prepared to attend a public inquiry and thus support the case.  |
| Biddulph         | A planning consultant was appointed to act for the objector in the Biddulph case.  |
| The Fields       | The LEA in The Fields case, sought help from the County Council, who drafted the statement of objection. Despite this they still found the process fairly difficult as it was a new area of law for them. They reported that they were actually reliant on the Council's advice in terms of what evidence was needed and how to collect the evidence. The process of collecting information was time consuming and hard work.  |
| Ingol Head       | English Partnerships appointed a solicitor to submit on their behalf.  |
| Kingsbury        | In the Kingsbury case the objector was a solicitor and as such found it fairly easy to raise the objections despite this being the first time they had been involved in a village green application.   |



#### 10.4.3 Opinion of the Process for Determining an Application

There were mixed reactions to the process of handling the application/objections to the application. In some cases the process was seen as fair and was thought to work fairly well.

The process at the hearing was described by one successful objector as easy and straightforward, particularly in comparison to the process of collecting the evidence.

A solicitor acting on behalf of the objector in the Ingol Head Green case was very satisfied with the decision to go to public inquiry and felt the process for raising the objection proceeded reasonably. He commented favourably on the use of a specific committee and clerk to deal with the inquiry. The solicitor found the process easy and straightforward, particularly as no technical procedure was adopted and he was familiar with attending public inquiries. In addition, the objector interviewed felt that the process worked very well. He believed that everyone had a fair and reasonable opportunity to put their case forward.

The Glebe objector representative felt the process worked fairly well, and the County Council handled the case in exemplary fashion i.e. appointing a barrister to hear both sides.

The Kingsbury objector felt that the process worked fairly well. He thought that the process was not a problem and that it went fairly smoothly.

The LEA, a successful objector felt that instructing quality, experienced Counsel was key to the smooth running and success of the objection process.

Where people were less satisfied a number of criticisms were made. The three main areas of criticism were:

- There was a perceived bias toward the applicant
- The decision did not take into account the future use or protection of the green.
- Dissatisfaction with the legislation

A number of examples were given where there was believed to be a bias toward the applicant due to for example, the free advice available to applicants or a specific decision made at a public hearing.

In one case an applicant was known to have received free advice from the Council and the Open Spaces Society, whilst the landowner had to pay Counsel fees. Thus the process was seen to be biased in favour of the applicant. The landowner also faced more risk, in that he could lose his land through an unfavourable outcome, or incur costs higher than the value of the land.

A representative for an objector felt that there was also a bias toward the applicant (successfully registered green). He felt the inspector took the view that they must support the local people who have done a good job collecting and presenting all the evidence. He also criticised the fact the witnesses were not required to be under oath and there was no right to cross-examine. Some witnesses refused to be cross-examined.

One objector felt very strongly that the decision made by the Council was unlawful. The Ombudsman suggested that he take it to the High Court. The objector was not prepared to do this given the risk and cost involved. The view was that the Council had favoured the applicant. The Council had also not followed the Inspectors recommendation and waited for February 2001 when section 98 came into force. The

objector had also been involved in another objection to a village green application and had been subject to bad press and physical attack.

The solicitor in the unsuccessful objection to the Ingol Head Green was unhappy that the recommendation to reject the application was overturned. The applicants evidence was undermined by witnesses not attending the public hearing, the number of people using the land was not clear and as it was not clear which of four sites the application referred to. It was felt that if the hearing had been more factual than political it would have favoured the objector more.

In a number of cases the final decision to register a green was not thought to take into account the future use or protection of the green. In the Abercregan case the inspector was also criticised for not taking sufficient notice of the objector's views. Here the application was believed to be to stop development and the green has still not been used or managed since registration. In the case of the Clifton pond the objector was unhappy that the successful outcome of the registration did not provide the pond with any protection from local use.

There was criticism from the legal representative for The Glebe objectors that the application had clearly been made to stop development. Following registration the Parish Council applied to make part of the Glebe a burial ground, perhaps suggesting a lack of interest in its use as a recreational area.

The Kingsbury objector thought that it would have been better if the County Council had held the hearing locally to Kingsbury rather than everyone having to travel to Warwick.

One solicitor described the law as messy, and inappropriate to say that trespass can constitute as of right. This aspect of the law should in his opinion be reviewed.

Finally there was one case where the wrong forms were sent out to objectors on which to record their objection. This error was however raised by the supporting solicitors and resolved.

#### **10.4.4 Suggestions for Change Made by Objectors to Village Green Applications**

A solicitor acting on behalf of an unsuccessful applicant (Ingol Head Green), would like to see village greens as part of the planning appeals process. Although the local authorities would have a view, it was felt that the Secretary of State should get involved when deciding to confirm village green status. This would mean the decision would be based more on fact than local politics.

The involvement of Defra was also suggested in order to develop procedure, given the increased use of village green applications to oppose development.

The objector interviewed in the Ingol Head case thought that it would be welcomed if any decision to designate a village green was followed by compulsion upon the Local Authority to designate such area within their Local Plan/Unitary Development Plan as "public open space". Any "owner" would then be able to issue the Local Authority with a Purchase Notice and not have to bear the responsibilities of ownership without the freedom of ownership prior to village green status.

## 11. Stage 2 Conclusions and Recommendations – Registration Issues

There are a number of key issues affecting the registration of village greens, and a number of obstacles facing both applicants and objectors.

### 11.1 Conclusions

#### 11.1.1 Resources

The responsibilities for processing applications are usually shared by a Commons Registration Officer and legal representative, who may work from different departments. The job titles for both vary from authority to authority. Village greens are unlikely to be a full time role, which can create problems when a number of applications need to be dealt with simultaneously.

Going to public inquiry and handling several applications can create financial as well as resource problems for the Registration Authorities, as funding needs to be found for the inspectors and associated public inquiries.

A delay in processing applications is possible in some cases where resource and financial constraints mean that the applications have to be processed over a longer time scale. These applications may not necessarily be handled in chronological order where a higher priority is assigned to a case with high public interest, a high profile or potentially where pressure from developers is high.

The infrequency of applications in some authorities results in time being spent by CROs and legal representatives refreshing their knowledge of the legislation and recent case law. Even authorities with more frequent applications need to set aside time to keep up to date with case law.

#### 11.1.2 The Process

The regulations are generally closely followed by the Registration Authorities. Where the regulations become more vague in relation to the need for a public hearing and how objections should be dealt with, there is some variation in the process followed. For example in terms of the use of external inspectors or internal representatives and considering written objections instead of going to public inquiry.

Most authorities appear to take great care to remain neutral and will not give any guidance to applicants in respect of the application submission. A minority do however offer more guidance. Where the proposed green is on Council owned land, an independent solicitor is appointed or the application and objections are handled by two solicitors within the Council, operating behind Chinese walls.

The need for neutrality is very important as any possible incidence of favouring the applicant or objector will be identified by the unsuccessful party.

Most authorities appear to have appointed a representative committee to review the solicitors report or review the findings of the public inquiry, however the committee title varies considerably e.g. The Commons Rights of Way Committee and the Planning Regulation Committee.

The length of time from submission of an application to outcome is considered too long and can range from 1-4 years where objections are raised. The high profile cases impact on the time to process applications, as the authorities often wait for the outcome of these cases before making a determination on their current applications.

Applications with no objections can be processed much more quickly, over a period of 1-2 months.

Without a clear system for the determination, the applicant is unaware at the outset the full process their application is likely to go through. For example it may or may not go to public hearing.

The time period for submission of objections i.e. 6 weeks is not always enforced and can favour the objector if the timing is allowed to drift.

The formal public hearing although usually seen as a fair system, can be very daunting to witnesses, which in some circumstances could affect the presentation of the evidence and ultimately the outcome.

### **11.1.3 Legislation**

Current town and village green legislation is often described by solicitors and Commons Registration Officers particularly but also by applicants and objectors as vague, complex and outdated and is in need of review.

Key issues are:

- The need to go to public inquiry (despite the criticisms over the vagueness of the legislation there is still an apparent need for choice in this matter)
- Difficulties in defining as of right
- Definition of a lawful pastime
- Definitions of neighbourhood, locality, significant number
- Changes in interpretation through case law – which can cause more confusion due to continually changing interpretations
- Conflict between the definitions within the CROW Act and the original definition.

### **11.1.4 Development Pressure**

Development pressure does appear to have a major influence on the decision to apply for village green status, with a significant proportion of post 1993 applications being a result of a desire to stop development. Proposed developments appear to be for local housing. Numerous applications submitted as a response to potential development have been successful and have stopped development. Even where applications have not been successful the delay to development may have resulted in a decision to develop elsewhere.

Evidence suggests that many more applications have been considered by potential applicants, compared to those that have been submitted, based on the number of application forms requested. It is possible that a proportion of these applications had been considered in order to stop development.

Evidence also suggests development pressure will continue to be a major driver for applications in the future.

### **11.1.5 Obstacles Facing Applicants and Objectors**

Applying for the registration of a village green or objecting to a village green application is a lengthy, complicated and potentially costly process for the lay person.

Three major issues facing applicants and objectors are:

- The time and effort required to collect evidence;
- Understanding the type and volume of evidence needed to support their case. Thus in effect understanding the current legislation and application criteria; and
- Presenting the evidence both in writing and verbally.

The applicants and objectors do therefore face similar types of problem.

Professional help or legal knowledge is usually crucial for presenting a robust case via the application/ objection form and at the public hearing. This presents further problems in terms of the cost. The professional fees have to be raised by the local community or the individual applicant/objector.

The Open Spaces Society offer valuable impartial advice, however greater support is required to help both applicants and objectors in the form of a solicitor.

Applicants appear to require months rather than weeks to collect the required evidence.

## **11.2 Recommendations**

Defra must take into account the roles and responsibilities of the various people within the Council, who are involved in the application and registration process, when communicating with the Registration Authorities and potentially when planning changes to the legislation. Not only should Defra consider the involvement of both the Commons Registration Officers and the legal representatives, but it should also take into account that these representatives may be based in different offices or buildings, they may have a variety of job titles and they are likely to have other job responsibilities in addition to village green applications. It will be important to maintain an up to date database of contacts within the Registration Authorities to improve the effectiveness of communications.

The application form is too complex. It not readily understood by the lay person and has also received criticism from Registration Authorities and The Open Spaces Society. An easier to understand form is required. Ideally an example completed form, or at least instructions for completion should be provided.

There is a case to clarify the regulations and introduce clearer guidance on how to deal with applications in respect of objections. A simpler way of keeping solicitors up-to-date with case law, rather than relying on individuals to review all the case law should also be considered.

There is a need to clarify and simplify village green legislation in relation to the application criteria. The outcome of this process needs to benefit the Council solicitors and also applicants and objectors, by reducing the time input required for each application and increasing the clarity of the criteria on which a successful application is based. The number of cases going to the High Court is delaying the determination of the application. A clarification of the legislation may theoretically increase the number of cases that can be settled by public inquiry.

Although the regulations need to enable a choice between the need to go to public inquiry or to go straight to committee, more detailed guidelines would ensure greater consistency.

## 12. Stage 2 Findings - Management of Greens

### 12.1 Introduction

Interviews with the CROs and solicitors revealed that the responsibility for town and village greens most often lay with the Parish Councils. A number of interviews were, therefore, conducted with Parish/Town/Borough Councils in order to understand the issues surrounding the management of village greens.

Telephone interviews were conducted with 27 Parish/Town/Borough Councils across nine of the ten local authority areas in which the Commons Registration Officer interviews were conducted i.e. Bedfordshire, Lancashire, Oxfordshire, Lincolnshire, Staffordshire, Durham, Gloucestershire, Warwickshire and Swansea/Neath Port Talbot Council. No interviews were conducted in Caerphilly as this area had only one registered green, which was currently unmanaged. The owner of the green declined the opportunity to take part in this study.

Information was obtained from the Parish Councils on 39 greens, as shown in the table below. A further 4 greens were identified following discussions with the CROs and explored in detail during the case studies. Thus at minimum the results of this section of the report are based on 39 greens, but where comparative information was collected the information is based on all 43 greens. The case study greens identified through interviews with the CROs are Clifton Pond, The Hangings, Abercregan and The Green Cascade.

Table 31: Parish/Town/Borough Councils interviewed

| Name of Parish Council                              | Name of village green/s  | County          |
|---|--|-----------------|
| Heath and Reach Parish Council                      | Heath Green  | Bedfordshire    |
| Northill Parish Council                             | Caldecote Green, Ickwell Green and Northill Common                     | Bedfordshire    |
| Sandy Town Council                                  | Beeston Village Green  | Bedfordshire    |
| Stotfold Town Council                               | Hitchin Road Recreation Ground, The Green, Riverside Recreation Ground | Bedfordshire    |
| Toddington Parish Council                           | The Greens   | Bedfordshire    |
| Gainford and Langton Parish Council                 | The Village Green  | Durham          |
| Staindrop Parish Council                            | Staindrop Village Green  | Durham          |
| Hamsterley Parish Council                           | Hamsterley Village Green   | Durham          |
| Moreton in Marsh Town Council                       | The Village Green  | Gloucestershire |
| Eccleston Parish Council and Croston Parish Council | The Green, Eccleston and Croston Village Green                         | Lancashire      |
| Freckleton Parish Council                           | Memorial Park and Recreation Ground                                    | Lancashire      |
| Grimsargh Parish Council                            | Grimsargh Village Green  | Lancashire      |
| Newburgh Parish Council                             | The Green  | Lancashire      |
| Overkellat Parish Council                           | The Village Green  | Lancashire      |
| Overton Parish Council                              | The Green  | Lancashire      |
| North Hykeham Town Council                          | North Hykeham Village Green  | Lincolnshire    |
| Baldons Parish Council                              | Marsh Baldons Village Green  | Oxfordshire     |
| Carterton Town Council                              | Alvescot Road Recreation Ground and Swinbrook Road Recreation Ground   | Oxfordshire     |
| Leafield Parish Council                             | The Village Green  | Oxfordshire     |
| Leek Town Council                                   | Ball Haye Green Recreational Ground                                    | Staffordshire   |
| Swansea + Neath Port Talbot Council                 | Sketty Green, Llangyfelach, Eastern Penrallt, Penrich                  | Swansea         |
| Ilmington Parish Council                            | Upper and Lower Green  | Warwickshire    |
| Kineton Parish Council                              | Little Kineton Village Green   | Warwickshire    |
| Long Itchington Parish Council                      | The Green, The Pond and The 'Triangle' Green                           | Warwickshire    |
| Rugby Borough Council                               | Hillmorton Green   | Warwickshire    |
| Southam Town Council                                | Park Lane Recreation Ground  | Warwickshire    |

The majority of the greens discussed within this section were publicly owned which fits with the profile of greens across England and Wales (Stage 1 survey data indicates



that 75% of all town and village greens in England are publicly owned). Although the value of including more private greens was recognised, trying to secure interviews with owners/managers of these greens proved to be more problematic. Problems encountered primarily related to:

- Being unable to make contact with private owners/managers;
- Private businesses not necessarily still being in operation; and
- Individuals declining the opportunity to take part in the study.

## 12.2 Management and Ownership of Village Greens

In the majority of cases the Councils interviewed both owned and managed the greens. Exceptions to this were where:

- One Council continued to manage a green that had been bought by residents and registered as a charity;
- Swansea had 4 registered greens only one of which was under the ownership and management of the Authority;
- One Council managed a green which again was charity owned and the Council were trustees;
- Another Council managed a green that was owned by a local college; and
- Two Parish Councils managed greens that were part of land belonging to a large country estate/local landowner.

Thus approximately 9 of the 39 greens discussed with the Parish Councils were managed by the Parish Council, but owned by another body.

All respondents had knowledge of the management issues associated with the greens in their authority. Many of the respondents however either appeared to have little detailed knowledge of the legislation surrounding the management of greens or were not formally enforcing the legislation, particularly in relation to cars parking on the town/village greens.

## 12.3 Management Activities

Grass cutting was by far the main activity undertaken as part of the management process being cited by all the respondents. Tree works/management and maintaining green furniture (e.g. benches, posts erected to stop vehicle access, fencing, flagpoles) were also mentioned by a large proportion of the sample. A number of other activities are listed in the table below.



Table 32: Management Activities

| Activity  | Number of Councils |
|---|--------------------|
| Grass cutting   | 27                 |
| Tree works/management + maintaining green furniture   | 15+                |
| Maintaining play areas and maintaining/replacing play equipment                                     | 7                  |
| Maintenance/management of cricket greens, football pitches, bowling greens and multi-use play areas | 7                  |
| Maintenance of buildings e.g. youth shelter, scout/brownie building                                 | 6                  |
| Fairs/car boot sales  | 4                  |
| Maintenance of flower beds/gardening/weed control   | 5                  |
| Maintaining war memorials, millennium stone, water pump   | 3                  |
| Litter picking  | 2                  |
| Pond maintenance  | 2                  |
| Maintenance of notice boards  | 2                  |
| Ensuring adequate insurance   | 1                  |
| Drainage  | 1                  |

Base 27 Local Councils

## 12.4 Recreational Facilities

Recreational facilities were provided on greens by approximately two-fifths of the Councils interviewed. Playground facilities for younger children were the main type of recreational facilities mentioned.

Table 33: Types of recreational facility provided

| Facility              | Number of Councils |
|-----------------------|--------------------|
| Playground facilities | 7                  |
| Football pitch        | 3                  |
| Cricket pitch         | 3                  |
| Sports area           | 3                  |
| Bowling green         | 1                  |
| Skate park            | 1                  |

*Base 27 Local Councils*

In the majority of cases the recreational facilities were provided by the Council interviewed.

Less than half of the Councils interviewed were aware of any demand for additional or different facilities. Amongst those aware of a demand, play equipment/improvements to play areas and a community hall/youth centre were the main additional/different facilities mentioned. Other additional/different facilities demanded are included in the following table.

Table 34: Additional facilities required

| Facilities required                           | Number of Councils |
|---|--------------------|
| Play equipment/improvements to play areas     | 5                  |
| Community hall/youth centre                   | 3                  |
| Skateboard park                               | 2                  |
| Football area/goal posts                      | 2                  |
| Fencing around the play area to keep dogs out | 1                  |
| A bench                                       | 1                  |
| Ballpark                                      | 1                  |
| New drainage system                           | 1                  |
| Planting/environmental improvements           | 1                  |
| Bus shelter                                   | 1                  |
| Teen area                                     | 1                  |

*Base 27 Local Councils*

In the main, demand came from residents' (x10 Councils) although some demand also came from children/young people (x4) and Parish Councils (x2).

Two Councils stated that generally they went out and asked residents/young people what they would like when they had money available. One of these Councils mentioned that they had money from developers who it was understood were obliged to provide money for open spaces and recreational facilities.

Staindrop Council Durham mentioned that a few years ago the existing playground, on another area of land in the village needed updating. Local residents asked to have these facilities on the green but the Council reminded them that the green was there for uninterrupted use and that they couldn't have organised things on the green. In addition, the Parish Clerk pointed out what would have to be done to make sure the children would be safe. The local residents decided that they preferred to have the existing equipment updated.

## **12.5 Problems Authorities Face When Managing Greens**

Across the 43 greens on which management information was collected 35 (81%) of the greens had a management issue. In fact all the Councils interviewed could identify at least one management issue/problem. It is important to bear in mind that the majority, if not all, of the respondents stressed that the issues were quite minor. Some even went as far as to say that they wouldn't classify them as issues/problems at all.

The majority of Councils with management problems stated that only one of their greens was affected by management problems although it is worth noting, however, that over half of these had only one green in their authority area.

Table 35: Types of management problems/issues faced

| Nature of management issues          | Number of Greens |
|--------------------------------------|------------------|
| Parking                              | 15               |
| Youths (including mopeds)            | 11               |
| Management – who to do it/cost of it | 9                |
| Access (inc driving on grass)        | 6                |
| Litter/cans/bottles                  | 6                |
| Damage to equipment/vandalism        | 6                |
| Safety                               | 1                |
| Golfers                              | 1                |
| Molehills                            | 1                |
| Trees not grow                       | 1                |
| Fencing                              | 1                |
| Leaves                               | 1                |
| Dog fouling                          | 1                |
| Pond                                 | 1                |

*Base 43 greens*

Many of the problems faced appeared to be “social”, rather than truly “management” in nature. Youths, vandalism, litter accounted for 23 management issues. Parking and access across the green was common accounted for a further 21 issues. The actual maintenance of the green gave raise to 9 problems either caused by a lack of funds to maintain the green/equipment or no grass cutting taking place.

### 12.5.1 How Management Problems Are Dealt With

Probably due to the deemed lack of severity of management issues/problems, the majority of Councils were unaware of any “enforcement action” being undertaken or required. In most cases however some action was taken even though it was not considered “enforcement”. The types of action undertaken are listed in the following table. Please note that any one Council may undertake more than one type of action.

Table 36: Action Taken to Deal with Management Problems

| What is being done?                                    | Number of Greens |
|--|------------------|
| Wooden posts/stones/safety bollards added around green | 7                |
| Parish Council dealing with it                         | 5                |
| Will use police to keep an eye on/deal with it         | 4                |
| Extend alcohol byelaws/alcohol ban                     | 4                |
| Assign community officers                              | 4                |
| CCTV   | 3                |
| Letter to offenders                                    | 2                |
| Public meeting   | 1                |
| Legal advice   | 1                |
| Youth shelter installed                                | 1                |
| Pond group to drain and sort pond                      | 1                |
| Park warden  | 1                |
| Nothing  | 6                |

In 7 cases physical barriers were put in place to deal with parking or vehicle access. The police were involved in 4 cases, whilst community officers and a park warden had been assigned to work on 5 greens. CCTV had actually been installed on 3 greens. In the latter cases action had been taken to combat anti-social behaviour.

In the majority of cases there didn’t appear to be any formal processes in place to deal with management issues/problems. Instead it appeared that, where they could be, issues/problems were largely dealt with as they occurred, with those responsible for dealing with them taking a fairly relaxed, low-key approach wherever possible.

### 12.5.2 Likelihood of Management Problems Being Resolved

A number of the Councils interviewed had managed to resolve some of the management issues/problems they faced. Just as many, however, had problems/issues that they believed were unlikely to be resolved in the near future.

The problems that had been resolved were very varied and in a number of cases quite specific to the individual circumstances surrounding each green. A problem with litter had been resolved through setting up a litter patrol, whilst moles had been dealt with by the Council. A conflict with residents over the visual impact of a fence was

expected to diminish overtime as nearby plants grew and provided a screen. In one location the police had successfully dealt with youths drinking and littering, helped by the enforcement of a drinking ban in the area.

In several other areas however anti-social behaviour formed the basis of problems which were unlikely to be resolved. Problems such as vandalism, drinking, littering and noise were thought likely to become greater issues. Leek Parish Council was hoping to reduce these problems via the installation of a new ballpark, however one councillor in another area believed the availability of organised activities or venues for young people had not reduced the problem.

## 12.6 Parking and Vehicle Access

The majority of the Councils interviewed had knowledge of greens in their authority that were used for parking and/or that were used by vehicles to gain access to premises.

Again, it is perhaps worth noting here the lack of reference to the legislation by the councillors and an inconsistency and relaxed approach to parking on the greens during events. This suggests either a limited/lack of knowledge of the legislation surrounding the issue of cars parking on greens or a willingness to adapt the “rules” to suit them. It is also possible that this links to the fact that a number of the “greens” without registration details may not actually be greens at all.

### 12.6.1 Extent to which Greens in the Area were Used for Parking

Although parking at the edge of the green was an issue for a large proportion of the Councils interviewed, the problems were often described as minor. In some cases where authorised parking occurred there was deemed not to be a problem. 15 (35%) of the 43 greens experienced some form of parking issue. The following table summarises the parking encountered.

Table 37: Use of the Greens for Parking

| Nature of use   | Number of greens |
|---|------------------|
| Parking on the green/edge of the green – no explanation of reason for use | 5                |
| Authorised parking during fairs, football and cricket matches             | 4                |
| Parking when visiting a local school, hospital or pub                     | 4                |
| Unauthorised use when attending local events                              | 2                |
| Parking by walkers  | 1                |
| Parking by youths   | 2                |
| Residents parking on the green  | 1                |

In 4 of the 15 cases parking was allowed by the Council by visitors to local fairs and sports events. For example Councillors associated with the Grimsargh village green in Lancashire understood that parking was not allowed on the green, however parking takes place on the green during football and cricket matches, which is not challenged by the Council. There is a cricket ground on Ickwell Green in Bedfordshire and cars park on the green when matches are being held but this is again with the knowledge and permission of the Parish Council. No parking is however allowed at other times

or on a nearby smaller green. Gainford and Langton Parish Council in Durham also allow parking on the green in summer for those attending events.

In most cases parking actually occurred on the edge of the green. Parking on the green resulted from a range of factors including adjacency to local schools, public houses or hospitals where parking was insufficient; parking by people visiting and walking in the area, and for access to village fetes and sports events. For example on the Marsh Boldens Village Green in Oxfordshire parking occurs on the edge of the green next to a local school. The problem is fairly recent and coincides with the expansion of the school. In the case of the Sketty Green in Swansea, the number of cars parked near to or within the boundary of the green has increased recently due to problems of parking for students and staff at the nearby hospital. Members of the public sometimes park on the edge of the green when visiting the village hall, for example for yoga or fetes. The Triangle Green in Warwickshire has a recent problem with pub car parking since the local pub re-opened after some development work. The pub only has a small car park so cars are parking on the edges of the green and eroding them. Some cars also park on the centre of the green.

Thus a number of the problems are fairly recent and have resulted from insufficient parking elsewhere that is potentially out of the control of the local Council. This type of parking would however result in frequent use over extended time periods, compared to occasional use for a football match or even during school dropping off and picking up time.

Residents driving onto/parking on the green adjacent to their houses was a fairly recent problem for Little Kineton Village Green in Warwickshire, which has arisen as families seem to have more cars and not enough space to park them at their houses.

### **Problems Caused by the Parking of Vehicles on the Greens**

Less than one third of the Councils experienced problems caused by the parking of vehicles on the green. Problems identified related mainly to damage to grass, which was exacerbated by bad weather and poor drainage.

### **Who Causes the Problems?**

There did not appear to be one overriding type of culprit responsible for causing problems with regards to parking on the greens. Offenders identified by the Councils who reported problems with parking included:

- Contractors working at the school parking large vehicles at the edges
- Footballers, cricketers, spectators at the matches
- Local residents in houses adjacent to the green
- Parents taking their children to school
- Parents taking their children to the play area
- People going to the pub. Not locals as they tend to walk to the pub.
- Youths joyriding on the green at night
- Local residents.

### **Dealing with the Problems**

Those Councils that reported problems with parking each had their own way of dealing with the problem. In the majority of cases no enforcement action had been

taken. Instead the Councils themselves mainly dealt with the issue informally. A physical barrier to prevent people gaining access to the green was the most commonly used deterrent, whilst a number of Councils made contact with offenders politely requesting that they refrained from parking on the green.



Table 38: How Problems Caused by Parking on Greens was Dealt with

| Examples of Action   | Number of greens |
|--|------------------|
| Considering/have put in place posts/bollards/fencing   | 7                |
| Polite, low key contact with local residents/offenders (door to door, via letters and notices placed on the car windscreens) | 3                |
| New car park proposed  | 1                |
| Drainage problems to be rectified  | 1                |
| Police have erected no parking signs   | 1                |
| Police called  | 1                |
| Contractors asked to cover the repair costs  | 1                |
| Cover ground with material to reduce damage  | 1                |
| Nothing  | 6                |

In the case of Staindrop village green the Parish Council is strictly against parking on the green and prohibits it. Bollards have recently been placed on the green to stop parking and the police have assisted by erecting “no parking signs”.

The issue of parking on The Village green, Gainford and Langton in Durham was dealt with a friendlier manner, as was the case for many of the greens. Notes were placed on the windscreen of those cars that are persistent offenders. The note is polite and advises drivers they are destroying the edge of the green. The Parish Clerk has also knocked on doors and asked people to remove their cars because they are damaging the green. 12 years ago the Parish Council paid for anti-parking posts around the vulnerable spots. The posts are now at the end of their life and are becoming rotten at the bottom. As soon as a gap appears between the posts people park in the gap and encroach on the green.

#### 12.6.2 Extent to which Greens in the Area are Used for Vehicle Access (including unauthorised use by mopeds)

Vehicle access across greens occurred on 10 greens within just over 1/3 of the Councils. Only four Councils however, considered it to be a problem and only fairly minor/isolated incidents at that. Issues relating to vehicle access did not appear to be restricted solely to access to premises, but were also related to access to fairs, access by contractors for maintenance and by emergency vehicles. Instances were also found of unauthorised access by youths in cars and mopeds.

Table 39: Examples of vehicle access across greens

| Example of access                                 | Number of greens |
|---|------------------|
| Youths on mopeds/motorbikes                       | 4                |
| Access by vehicles to village fairs/cricket match | 3                |
| Access by contractors (for mowing/gardening)      | 3                |
| Authorised access by residents to their land      | 3                |
| Access by unknown drivers overnight               | 1                |
| Unauthorised access to houses by residents        | 1                |
| Access to changing rooms by emergency vehicles    | 1                |

Contractors have access to The Green, Toddington in Bedfordshire for mowing the grass and maintaining trees. Tyre tracks are however very occasionally found in the middle of the night most likely caused by someone doing a U-turn on the green. In the case of Marsh Maldens Village Green in Oxfordshire access is gained to local fairs via the green, however this access is authorised. Occasionally unauthorised access is made by youths on motorbikes at night. Although this does not cause a major problem it is close to an old people's home and as such the noise from the motorbikes can be a problem.

### Dealing with the Problems

There didn't appear to be any formal arrangements in place to deal with issues relating to access. Three of the Councils did however call the police to deal with youths accessing the green. For example the police were occasionally called to remove moped riders from the Ickwell Green. One Parish Council told a resident that he was not allowed to go over the green at Long Hitchington in Warwickshire. The resident went to his solicitor but took no further action once he realised he had no rights of access across the green.

With the exception of one of the Councils, the remainder did not appear to exercise their legal rights to prohibit/control access across the greens.

## 13. Stage 2 Findings - Management Case Studies

### 13.1 Introduction

As detailed in the method section of this report, 10 case study greens were explored in detail. The aim was to understand more about the issues facing the management of greens. All case studies were selected on the basis that management issues had been identified in relation to these greens.

6 of the 10 case studies were selected from greens mentioned during the Parish Council interviews (which are reported on during section 13). The remaining 4 case study greens were identified through consultation with the Registration Authorities.

Table 40: Management Case Study Greens

|                         | The green                              | Local Authority                | Private/<br>public sector | Successful/<br>unsuccessful      |
|-------------------------|--|--------------------------------|---------------------------|----------------------------------|
| Management case studies |  |                                |                           |                                  |
| 1                       | Clifton                                | Bedfordshire                   | Disputed                  | Successful                       |
| 2                       | The Green Cascade                      | Caerphilly                     | Private                   | Successful                       |
| 3                       | Hamsterley Village Green               | Durham                         | Public                    | Successful                       |
| 4                       | The Hangings                           | Gloucestershire                | Private                   | Successful                       |
| 5                       | Grimsargh                              | Lancashire                     | Public                    | Registration<br>details unknown* |
| 6                       | North Hykeham Village<br>Green         | Lincolnshire                   | Public                    | Not registered                   |
| 7                       | Leafield                               | Oxfordshire                    | Public                    | Successful                       |
| 8                       | Ball Haye Green<br>Recreational Ground | Staffordshire                  | Public                    | Registration<br>details unknown* |
| 9                       | Abercregan                             | Swansea & Neath Port<br>Talbot | Public                    | Successful                       |
| 10                      | Hillmorton Green                       | Warwickshire                   | Public                    | Registration<br>details unknown* |

Interviews were conducted with those responsible for the management of the greens and/or involved with raising management issues/problems. Those interviewed ranged from Parish/Town/Borough/City Councils to private organisations, local residents and local authorities.

Three of those interviewed were both the manager/owner of the green(s) and the person raising the management issue/problem.

The following table identifies the range of consultees, whose views were taken into account when analysing the case study information. 20 individual interviews were conducted in total.

Table 41: Range of Persons Interviewed for Management Case Studies

| Type of consultee  | Number    |
|--|-----------|
| Manager/owner of the Green – Town Council  | 2         |
| Manager/owner of the Green – Borough Council   | 2         |
| Manager/owner of the Green – Parish Council  | 5         |
| Manager/owner of the Green – City Council  | 1         |
| Manager/owner of the Green – Private organisation  | 1         |
| Person/organisation raising management issue/problem – Parish Council  | 1         |
| Person/organisation raising management issue/problem – Borough Council (Community Development Worker)        | 1         |
| Person/organisation raising management issue/problem – Local resident who applied for green to be registered | 3         |
| Person/organisation raising management issue/problem – owners of adjacent land                               | 1         |
| Person/organisation raising management issue/problem – group of volunteers who help with management aspects  | 1         |
| Other interested parties – Town Council  | 1         |
| Other interested parties – Local Authority   | 1         |
| <b>Total number of interviews</b>  | <b>20</b> |

## 13.2 The Management of Town & Village Greens

### 13.2.1 The Nature of the Management Issues/Problems

Parking on the greens and greens not being managed/maintained appeared to be the most frequently cited problems/issues within the case studies.

The range of problems/issues identified during the case studies are listed in the table below included:

Table 42: Management Issues Identified on the Case Study Greens

| The green                                  | Management issue   |
|--|--|
| Hillmorton, Clifton, Hamsterley, Grimsargh | Parking on the green/alongside the green   |
| Green Cascade, Abercregan, The Hangings    | Greens not being managed/maintained  |
| North Hykeham, Ball Haye, Grimsargh        | Anti-social behaviour – litter, vandalism  |
| North Hykeham                              | Dog fouling  |
| Ball Haye Green                            | Motorbikes and mopeds ridden across the green  |
| Leafield                                   | Erection of a fence on the green to provide a play area for school children – opposed by residents |
| Grimsargh                                  | Drainage problems  |
| Clifton pond                               | Lack of proper access to the pond for maintenance  |
| Clifton pond                               | High number of ducks causing road safety and water pollution problems                              |

3/4 of the case study greens had undertaken/were in the process of undertaking measures to resolve the management issues/problems they were facing.

### North Hykeham

Lincolnshire County Town Council had introduced a number of initiatives to combat anti-social behaviour on North Hykeham Village green (e.g. petty vandalism, damage to play equipment, broken glass, litter and noise). They had introduced an alcohol ban to assist the police and they were part of the crime and disorder group in the town so that they could work with the police, the Council, youths and businesses. They also had a police trained Park Warden who managed and supervised the street furniture and the play areas on the green. The Warden also issued tickets for dog fouling. In addition, this Council paid towards having CCTV coverage on the main green, which was managed by the City Council.

### Hillmorton Green

Problems with parking on the Hillmorton Green in Warwickshire had worsened over the last 5-10 years, as more children seemed to be driven to school rather than walk, even when they lived very locally. The constant use by cars was damaging the turf, particularly when the grass was wet. To combat the problem the Borough Council erected a low wooden fence along one edge of the green to prevent cars getting onto the grass. They also constructed a double kerb on certain parts so that cars could not mount the kerb as they had previously done. Some fencing that had been in place for about 15 years was also replaced. Some areas remained unfenced but these were not affected by cars parking on the edge.

### **Leafield Green**

The Parish Council allowed the school to fence off a portion of the Leafield Green in Oxfordshire as a garden/ play area/ teaching aid (e.g. to learn about horticulture and nature) because part of their playground had been lost due to an extension to the school buildings. The fence had an unlocked wicket gate to allow open access to all. Some local residents opposed to the fence felt that it contravened the Commons Act of 1876, was an encroachment on the green and that it was constructed without any consultation with people in the village.

Prior to erecting the fence the council contacted the Oxford Association of Local Councils (OALC) to check that they could use part of the green without contravening any acts (e.g. Commons Act 1876). Once objections were raised at a Parish Council meeting, a public meeting was organised to get everyone's viewpoints. The Parish Council got in touch with Defra in April 2005 to clarify the situation regarding encroachment and the 1876 Act. They also got in touch with OALC again in April 2005. OALC in turn got in touch with National Association of Local Councils (NALC) who replied stating that they thought the Council had acted lawfully and had the backing of most residents.

The Parish Council discovered, however, that the fence required planning permission as it was just over 1m high. They acknowledged that they committed a minor and technical breach of the planning regulations and were advised to apply for a concession for a technical breach of rules, which they did in June 2005. They were still awaiting a response on this matter. The Parish Council was sure that the fence did not contravene the Commons Act of 1876 and once the issue of its height was sorted out they were sure that the matter would be resolved. They might face further action by a select few residents regarding the fence, but did not think that the fence would actually have to come down.

### **Grimsargh Green**

Drainage improvements had been carried out on the Grimsargh green in Lancashire in several phases to reduce the problem of water logging. The condition of the green had improved and further work planned for 2005 was thought likely to completely resolve the problem. A further issue with parking had yet to be resolved. The City Council was trying to encourage people to use public transport to reach the green. As there was no designated parking in the locality a parking area may have to be considered in the future.

### **Clifton Pond**

Clifton Pond in Bedfordshire faced a number of problems, in relation to access for maintenance and residents, parking around the pond and road safety concerns caused by the large number of ducks using the pond.

There was no easy access to the pond and as a result the Parish Council had to ask permission from the adjoining landowners to gain access via their land. Ownership of the pond had been in dispute for years (before and after the application to register as a village green) and this also affected access. The Parish Council believed that the lack of access was a long-term problem and was unlikely to be resolved as long as the present owner of the adjoining land remained. The previous owner allowed everyone access to the pond. Although the access issue was still disputed the County Council was hoping for an amicable agreement and believed that delicate negotiations were required rather than enforcement action.

There were about 200 mallards that used Clifton Pond, which couldn't be culled as they were protected. They nested in neighbouring gardens, fouled the water in the pond and caused concern from a road safety point of view as a main road runs alongside the pond and the ducks tended to wander on the road and in amongst parked cars. The problems associated with the number of ducks was likely to be long-term - as long as people keep feeding the ducks they were unlikely to go elsewhere.

Although there was no parking on the pond itself, cars parking around the outside of the green could block the "kerbless pavement" as the road was narrow. Yellow lines were painted on the most dangerous parts to prevent parking, though it still happened elsewhere.

### **Hamsterley Village Green**

In the case of the Hamsterley village green in Durham a number of properties adjoined the green and residents had to drive across small parts of it to get to their houses. About 3 years ago, when two residents wished to sell their properties they were forced to create an easement<sup>4</sup> and pay the Parish Council a sum of money for the right to drive across the green. There had however been a change of heart by the Council and this easement no longer applied.

### **Ball Haye Green**

Litter and the use of the green for riding motorbikes were problems on the Ball Haye Green in Staffordshire. Litter was collected everyday to reduce the former problem. The Local Residents Association was aware of the problems/issues and made sure that the Town Council was aware of them through regular meetings. There was also a Community Support Officer who patrolled the area if there was a problem but they couldn't be there all the time. The issue of providing additional recreational facilities was currently being addressed with a ballpark being constructed on the green. The area around the ballpark was to be landscaped and seating to be put in.

For the remaining three case study greens no measures had been taken to resolve the management issues/problems. One of the Councils claimed that they had not been made aware of any management issues.

### **The Hangings**

In the case of The Hangings in Gloucestershire, the council noted that action had not been taken as the party responsible for the management of the green was still in dispute. Once the land had been registered the landowner, who initially objected, wrote to the County Council to say they accepted the recommendation to register the green. They also stated that they wished to work as closely as possible with all interested parties, but they had concerns about who carried responsibility for the maintenance of the land from then on.

Since owning the land, the landowner had been paying the Borough Council to carry out the grass cutting as a gesture to keep it clean and tidy. Over a year had passed since registration and the landowners decided they no longer wished to carry on paying the Borough Council to cut the grass. They wrote to the Council to ask if they would take on this responsibility. The Council confirmed that they had received a letter from the landowner stating that now the land is a village green they were no longer prepared to maintain the land.

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<sup>4</sup> a legal interest in land which should be created by means of a Deed under a seal

### **Abercregan**

This green had previously been maintained by a gentleman from the Forestry Commission. The gentleman had since passed away and no one has taken over cutting the grass on the green.

### **The Green Cascade**

The Green Cascade is privately owned by a local resident, but no-one actually manages the green. The Council has been approached and asked if they would cut the grass however this has not yet been resolved.

## **13.3 Raising Management Issues/Problems**

### **13.3.1 The Process for Raising Management Issues/Problems**

For three of the case study greens the management issues/problems were raised by the manager/owner of the greens in question. They did not, therefore, necessarily need to formally raise the issue/problem and if they could not deal with it they knew whom to contact to get the ball rolling.

The Town Council got to hear about issues/problems on North Hykeham village green from their ground staff and the Park Warden. Occasionally they also got calls from the public although they hadn't had any recently. They believed that the process for raising problems/issues was very easy. They said that they acknowledged issues and dealt with them as quickly and as best as they could. In addition, they mentioned that their Park Warden had been police trained and was, therefore, able to address members of the public. This Town Council felt that the process was essential and worked very well.

The Parish Council did not really have to formally raise any issues in terms of the management of Grimsargh green. The City Council who owned and managed the green was aware of the problems. The local cricket club was actually responsible for managing the cricket ground, which comprised approximately 10% of the total area of the green.

The Parish Council raised the issue of access to the Clifton Pond with the County Council on a number of occasions over the years and the County Council had been liaising with the owners of the adjacent land who would not permit the Parish Council access via their land. The Council had tried to reach an agreement without resorting to enforcement action but the issue was still unresolved.

Rugby Borough Council was responsible for the maintenance of the Hillmorton green. This mainly involved grass cutting and maintenance of public benches. A local Councillor and other local residents noticed the problem with car parking/ damage to grass and reported it to Rugby Borough Council. As well as reporting the problem to the Borough Council, the local Councillor and others also talked to the people who parked their cars there (mainly mothers dropping their children off at the local school) but to no avail. They often received a rude response. The Borough Council organised the installation of fence/kerbs to remedy the situation.

The Councillor had no difficulty in raising the problem, however it may be that given their links with the Council they were in a better position than a lay person to raise the issue/problem. The respondent claimed that no formal process was followed although the damage was fairly obvious to the Borough Council. It was felt that convincing the people causing the problem to park elsewhere was a more difficult task, which is why physical adaptations had to be made to the green.



One respondent reported that they had contacted the Council approximately one year ago to ask if they would cut the grass on the Green Cascade in Caerphilly. Despite the Council saying they would try and contact the owner to see if they would do something about it, the respondent had heard nothing from either party.

Another respondent had not yet raised the management issue with the Local Authority as they felt this should be a last resort. He said that he and some other local residents were actively looking for a ride on mower in order for them to cut the grass on the Abercregan green themselves.

The Parish Council, who was approached by a local school about erecting a fence around part of the Leaffield green for their use, appeared to follow quite a formal process. Objections to the fence were first raised at a Parish Council meeting. As a result of these objections, a public meeting was held and chaired by a district Councillor. Although only seven of the 60 or so residents at the meeting objected some of the objectors got in touch with Defra to clarify the legal situation. The Parish Council also gave them a copy of their letter from Defra. Objectors then got in touch with West Oxford District Council planners who said that the fence was 0.1m too high so therefore needed planning permission.

In the Ball Haye case, the local residents tended to contact the Community Safety Partnership (CSP) who in turn contacted the Town Council if management problems/issues needed to be raised. In addition, there was also a Residents Association through which issues could be raised. If the issues were regarding anti-social behaviour and there was a criminal issue then the police were generally contacted. Information was shared between all the parties involved. Through this information sharing exercise they could put processes into action. If, for example, they identified a youth causing problems they could talk to social workers, education welfare etc. If individuals were causing problems there they might find they were causing problems elsewhere. One respondent felt that local residents found it fairly easy to raise issues/problems and that the process worked well.

Those involved with the management of the greens were mainly the owners of the greens, namely: Parish/Town/Borough/City Councils, a private organisation and a local authority. Two respondents used contractors to cut the grass.

Based on interviews amongst local residents and others involved in raising management issues, the owners and those responsible for managing the greens appeared to have caused the management issues/problems through lack of management/maintenance provision for at least three of the case study greens i.e. Green Cascade, Abercregan and The Hangings.

Others responsible for causing management issues/problems included:

- Adjoining land owners;
- Dog walkers;
- Local residents driving across the green to get to houses;
- The Parish Council providing a fenced off area for a local school;
- Parents parking on the edge of the green when taking children to school;
- Visitors to the village hall parking on areas surrounding the village hall on grass cutting days. The grass there does not get cut; and
- Youths.

### 13.3.2 The Outcome

Less than half of the case study greens had resolved/were in the process of resolving their management issues/problems.

The drainage problems on the Grimsargh green were being/should soon be resolved by the City Council. It was believed that once the drainage issues were resolved then the remaining management/maintenance of the green would be made easier. The City Council was also considering building a parking area to allow more cars to park in the area without damaging the green. The use of police patrols should also keep any nuisance use by youths under control.

As mentioned previously the Town Council had undertaken a number of initiatives to address issues relating to anti-social behaviour in the vicinity of the North Hykeham green. Since the introduction of the Park/Dog Warden they believed the number of incidences of anti-social behaviour and dog fouling around the North Hykeham village green had reduced although they could not quantify this. In addition, the Council had deterred people from using the green. If people were found to be guilty of anti-social behaviour and the Town Council could get police assurance that people had been doing this then they would write a letter to the parent/guardian of individuals saying that they were not welcome in the area. The Town Council had executed this action previously and found that it did work.<sup>5</sup>

In the case of the Ball Haye Green the respondent recalled that bikes were confiscated and the offending children were visited at their parent's houses. Police also patrolled the area. Progress was being made to reduce the anti-social behaviour problems.

The steps taken by the Borough Council had helped and the problems with parking on the Hillmorton Green were much better. It was estimated that there had been a 95% reduction in parking on the edges since the double kerb measures and sections of low fencing were put in place.

Six of the case study greens, however, had not yet resolved their management issues/problems. Generally this was because the Council were awaiting a response from/needed to get in touch with/were in negotiations with the landowner/adjacent landowner or because they didn't feel there was necessarily an issue to be resolved.

Neither of the problems associated with the Clifton Pond had been resolved as yet. The County Council, Parish Council and owners of the adjacent land were still in negotiations.

The issue with the maintenance of the Green Cascade had not been resolved and the grass was still uncut. The Council had further reported that they had recently received a second inquiry asking for the grass to be cut. They were now undecided on how to proceed. They were not sure of their responsibility and if they should be paying for the grass to be maintained. They also mentioned the fact that they would need to get the owners permission if they were to agree to the cutting of the grass.

The Hamsterley village green gave rise to a number of issues. The Council, however, accepted these. To stop the whole village parking on the green would be very difficult and generally people did not abuse the fact that they were able to drive on the green.

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<sup>5</sup> Note banning members of the public from a green is not lawful, unless through an anti-social behaviour order (ASBO).

As long as the management team used their common sense no long-term problems were foreseen.

It was not known yet what the outcome was to the problems with The Hangings. To date, the Town Council had not received a response from the landowner. Although the landowner had cancelled the contract with the Borough Council to cut the grass they had continued to cut the grass anyway, 'probably as they were passing'.

The issue with the Leafield Green had not yet been resolved. The Parish Council felt that the fence did not contravene any Commons Acts but the objectors had yet to be convinced of this. At present, the fence remained standing.

The issue of maintaining the Abercregan green had not been resolved.

### **13.3.3 Suggested Improvements**

One respondent felt that the legal area of village greens was a minefield, that the law was very vague, out of date and very difficult. They believed that there were huge gaps in the legislation and that it wasn't brought in to deal with what it has to deal with today. They felt, therefore, that the law needed to be tightened up.

Another respondent requested knowledge of the legal position with regards to vehicles and bikes on the village greens.

One respondent believed that generally, how well people were able to get issues/problems dealt with depended on who owned the land. They felt that people could get passed from pillar to post and that if it was open land then it was not easy to get issues addressed. For example, in their area there was a housing transfer where some of the land was sold but some wasn't. No one knew who owned what. It was felt that ownership was an issue and it was suggested that maybe this was an area for the Land Registry to investigate.

### **13.3.4 Additional Comments**

The Parish Council stated that they had many aspirations for improving the Grimsargh green and that these were set out in their Parish Plan. In addition, the City Council was putting together a long-term strategy to try to work with this.

The Parish Council, who was approached by the local school about erecting a fence around part of the Leafield green for their use, believed that they had another option open to them regarding the piece of land in question. As the land was less than 209 square metres, they believed that they could have the land compulsorily purchased or appropriated under the Acquisition of Land Act 1981. This would mean that the piece of land would no longer have village green status. The Parish Council stressed, however, that they did not wish to go down this route and that they wanted to keep the land as part of the village green.

## 14. Stage 2 Conclusions and Recommendations – Management of Greens

### 14.1 Conclusions

#### 14.1.1 Management Issues

Issues of a social nature appear to be more widespread than maintenance issues. A large proportion of the problems identified relate to litter and disruptive behaviour by youths. Cars parking on/at the edge of the greens is also a common problem. It is, however, important to note that many Councils consider any problems to be minor, despite the fact the action is taken to combat the problem.

#### 14.1.2 Ownership

Management of privately owned greens appears to be an issue due to a lack of understanding or acceptance of who is legally responsible for the management of the greens e.g. the Parish Council or the owner. The problem relates to the payment of upkeep and whether landowners who have had their land effectively taken away from them, with no recompense, are legally obliged to manage/maintain the green for the enjoyment of others.

#### 14.1.3 Village Green Status

There are no available registration details for 52% of the “greens” considered within this report. It is possible that a number of the “greens” referred to by the Parish Councils are not actually registered village greens, despite the fact that the Parish Councils consider them to be. There is therefore potentially some confusion or lack of understanding over village green status amongst the owners and managers of land used by the general public.

#### 14.1.4 Legislation

There appears to be a lack of knowledge, amongst many landowners/managers of greens regarding the legislation relating to the management of them and enforcement action that could be undertaken to resolve any issues/problems. This may or may not be linked to the number of potentially unregistered “greens” within the study.

This lack of knowledge is of particular significance with regard to cars parking on/at the edge of greens and vehicles driving across greens to access premises. It is worth bearing in mind, however, that parking/access issues did not appear to be a major concern amongst many of those who identified this as an issue.

#### 14.1.5 Raising Management Issues/Problems

In the majority of cases there does not appear to be any formal processes in place for local residents to raise management issues/problems, which could therefore mask the actual level of issues/problems.

It must be noted, however, that in some cases management issues/problems are raised by the manager/owner of the greens which raises the question whether a formal process is required especially where managers/owners (e.g. Parish Councils) are proactive in the community and therefore knowledgeable of the issues.

#### **14.1.6 Enforcement Action**

In the majority of cases there didn't appear to be any formal processes in place to deal with management issues/problems. Instead it appeared that, where they could, owners/managers dealt with issues/problems as they occurred preferably in a fairly relaxed, diplomatic, low-key manner.

This is particularly highlighted through the issues surrounding parking/access to premises, where although problems were identified they were deemed to be, in the main, minor incidents. Consequently few green owners/managers appear to exercise their legal rights to prohibit/control parking on/access across the greens.

A number of actions are however taken to combat problems. The nature of these actions varies by Council and the problem under consideration. Physical barriers and communication with offenders via letter or face to face contact are used to combat parking on the greens. CCTV, park wardens, community groups and liaison with the police are measures employed to reduce problems caused by anti-social behaviour, from youths in particular.

### **14.2 Recommendations**

It is recommended that the issue of awareness and understanding of the legislation be explored further. Many of the owners/managers appear to have little detailed knowledge of the legislation surrounding the management of greens or are not formally enforcing the legislation, particularly in relation to cars parking on, gaining access via the greens.

Defra may wish to consider how best to inform green managers/owners of the current legislation. Largely the management of greens appears to be the responsibility of Parish/Town Councils and involves lay people without detailed knowledge of legislation/formal procedures. Bombarding them with printed copies of the current legislation may therefore not be the most appropriate method for disseminating this information. A more user-friendly approach such as a website, dedicated help line or local forums may be avenues to explore.

Providing clarity on the management responsibilities of private landowners will be of value, as this appears to be the cause of some tension between the local Council and landowner.

At present there does not appear to be a standard process for raising or resolving management issues. There does however appear value in allowing Councils to deal with issues locally taking a low-key "friendly" approach where possible. Providing an opportunity for owners/managers to share ideas for successfully resolving problems may however be of benefit. Given the impact of anti-social behaviour on green management close links with and an understanding of the support available from the police would appear beneficial.

## Appendix 1: Topic Guide

### TVG Research Project – Stage 2 Topic Guide

#### **Notes for the interviewer:**

*Tape record the interview where the respondent agrees + make notes or take copies of any printed material shown to you during the interview if it could potentially help with the case studies. Keep a written record of names of people to talk to in relation to potential case studies.*

#### **Aims:**

1. *To understand the issues surrounding the registration of town and village greens*
2. *To understand the problems arising in relation to the use and management of village greens*
3. *Identify case studies – and the contacts that need to be made for these case studies – we need information on 5-6 greens per authority interviewed, of which 2-3 need to have potential for case study analysis*

**BE AWARE THAT YOU MAY NEED TO TALK TO SOMEONE ELSE ABOUT A NUMBER OF ISSUES INCLUDING:**

*A) The link between development and applications for greens*

*B) Management of greens*

### Introduction for the Respondent

Thank you for agreeing to take part in this discussion. As you are aware we are conducting a study for Defra on town and village greens and are trying to understand more about the issues facing registration and management of greens.

My name is \_\_\_\_\_ and I work for the ADAS market research team.

The discussion will be very informal, and will last about 1 hour. I have a list of topics that I would like to cover although we may find as we go through the interview that there are other topics that we need to talk about.

I would like to tape record the discussion. I will not pass the tape on to the client, but will just use it to help me analyse the information and make sure I don't miss anything. **(If respondent does not agree, make notes instead).**

### Background Questions

1. Could you firstly outline to me your role and responsibilities as a CRO within this authority?
2. And how long have you been in this role with this authority?
3. Did you work as a registration officer in another county previously?
4. Who else within the authority deals with village greens? *Record names and department*

5. How are responsibilities split between different people or different departments?  
*(Explore who does what, probe management issues, decision making re outcome of applications)*

### Registration (Greens applied for or registered since 1993)

6. What do you understand is the process for registering a green? *Probe: Who can apply, how do they apply*
7. What do you understand is the formal process for dealing with applications for village greens?
8. And how in practice does your authority deal with applications?
9. Does this vary from the formal process in any way? *If so explore how this varies*
10. Can you take me step by step through the process? *Probe for different stages, time-scale, decision processes, people involved*
11. What kind of problems or situations do you face when dealing with an application? *Probe – lack of information, appeals to amend an application...*
12. How do you deal with these problems?
13. *Are applications determined by public inquiry, internal hearing or committee hearing?*
14. *Does the method by which an application is determined vary?*
15. *What are the reasons why the process would vary?*
16. *Does the process of dealing with applications vary depending on who owns the land or who has an interest in it? If the process does vary ask: How does the process differ?*
17. *How well do you understand the criteria an application has to meet for it to be successful?*
18. *What criteria are you aware of that an application would have to fulfil to be successful?*
19. *What do you feel are the main reasons why an application would be rejected? Explore whether the period of time over which a green has been used or the type of use by local people are issues*
20. *What is your opinion of the current registration process?*
21. *Why do you say that?*  
  
Explore in detail the reasoning behind their answer – probe what runs smoothly, what causes problems or concerns. Explore examples of where issues or problems have occurred. Reiterate confidentiality if necessary.
22. *How well do you feel you understand the legislation regarding village greens?*
23. *Have you heard of Section 22 of the Commons Registration Act?*
24. *What is your understanding of it?*

If they are not aware or don't understand tell them: I understand that an application for a green must prove that local people have made continuous use of the land up to the date of application.



25. *Do you have any idea whether the essence of section 22 as I have just described it, results in applications being turned down in your authority?*
26. *If yes to the above ask - What proportion or what number of applications do you think this affects in your authority?*
27. *Are you aware of any other potential effects that section 22 may have?*
28. *Does it in your view help the application process or does it cause any problems? If so explore how it helps or causes problems*
29. *What is your view on the relationship between development pressures and the desire to maintain open spaces. How big an issue is it?*
30. *How do you think this link between development pressures and the need for open spaces impacts on the submission of applications for village greens?*
31. *Are you aware whether any applications have been influenced by potential development within this authority? Probe for examples of where it has or could have occurred*
32. *How common a reason do you think this could be for applying for a village green?*
33. *I would like to get a better understanding of why applications for greens are successful or unsuccessful and also the objections to registration that have been received.*

Could we go through some details of applications (respondent needs to have been pre-warned about this to enable paperwork to be made available or to arrange a discussion with another person)

If possible go through all applications since 1993 – if this is not possible try and gather information on 3-4 good examples.

USE PROFORMA - For each green try and gather:

- Background information
- Name and location of the green
- Who applied for the green to be registered? (make a record of contact details)
- Were there any objections?
- What was the nature of these objections?
- Who made the objections? (Record name and contact details)
- Is there any indication that the application may have been made to hinder development?
- Was the application successful?
- *If unsuccessful* Why was it not successful?

**Management Issues: For all greens (no restriction on date of registration – but a mix of dates would be valuable)**

34. Who actually manages the town and village greens once they have been registered?
35. Does this vary according to who owns the green? If so how does this vary?
36. Does your authority actually manage any greens?



37. If so do you manage all the greens you own – *If not explore how the relationship between ownership and management works*
38. Do you have any knowledge of the management issues associated with the greens in this authority?  
*If no, ask who you should speak to and close the interview*  
*If yes continue*
39. What does the management process actually involve?
40. What recreational facilities are provided on greens in your area?
41. Who provides these facilities?
42. Are you aware of any demand for a) additional or b) different facilities?
43. If yes to the above: Who is demanding these facilities?
44. What is the level of demand for a) additional or b) different facilities?
45. What problems does your authority face when managing greens?
46. Who causes these problems?
47. How long term are the problems – which are long term and which are more quickly resolved?
48. How many or what proportion of your greens are affected by management problems?
49. How does your authority deal with management problems?
- Explore:*
- What enforcement action is taken
  - Who takes any enforcement action.
50. How likely is it that the management problems will be resolved? – probe *examples of where issues are resolved are not resolved*

**FOR THE ABOVE QUESTIONS ASK FOR EXAMPLES OF GREENS WHERE MANAGEMENT ISSUES HAVE ARISEN AND IDENTIFY WHO TO TALK TO, TO FIND OUT MORE**

**Parking and Vehicle Access:**

51. Do you have any knowledge of greens in your authority that
- a) are used for parking and
  - b) that are used by vehicles to gain access to premises?

**If no to both of the above ask who would be the best person to talk to and record contact details for follow up at a later date. Close interview.**

52. To what extent do you think greens in your area are used for **parking**

*Probe:*

- What proportion of greens are affected?
- Which greens does this take place on? (Identify some examples)
- Is any lawful authority or right claimed for use of the green?

53. What problems if any are caused by the parking of vehicles on the greens?

54. Who causes the problems?

55. How are the problems dealt with?

56. Who deals with the problems?

57. How big a problem is vehicle parking? – *Probe how many greens it affects in their area*

58. To what extent do you think greens in your area are used for **vehicle access**

*Probe:*

- What proportion of greens are affected?
- Which greens does this take place on? (Identify some examples)
- Is any lawful authority or right claimed for use of the green?

59. What problems if any are caused by vehicle access to premises across the greens?

60. Who causes the problems?

61. How are the problems dealt with?

62. Who deals with the problems?

63. How big a problem is vehicle access? – *Probe how many greens it affects in their area*

(Examples: we need details on 2-3 greens where there are management issues – what the problems are, who is involved, what is being done, the location and name of the green. Please collect contact details where you can as we need to re-contact these people during the case studies.) – USE PROFORMA

## **Appendix 2: Information on all Greens Included in the Study**

The following section details the information collected on the 55 registration and 43 management greens. Information is provided for each green. In addition aggregated data in table format is included for registration and management issues.

## Registration Greens

| Name of the green                      | Location of the green     | Local Authority Area              | VG No. | Area of green (ha)* | Who was the applicant(s)? | Ownership - private/public    | Who is the owner(s)?          | Were there any objections? | Nature of the objections   | Who was the objector(s)? | Was there any indication the application was made to hinder development? | Outcome – suc/unsuc                           | Date of registration | Date of application |
|--|---------------------------|-----------------------------------|--------|---------------------|---------------------------|-------------------------------|-------------------------------|----------------------------|--|--------------------------|--|---|----------------------|---------------------|
| Clifton Village Pond                   | Clifton, Bedfordshire     | Bedfordshire County Council       | VG65   | 0.05 ha             | Parish Council            | Ownership has not been proved | Ownership has not been proved | Yes                        | Dispute over ownership of an area of water in the village. Objectors believed they owned the land also disputed that area was used for recreation. | Local residents          | No   | Successful                                    | 27-Apr-00            | 1997/98             |
| Land at Nelson                         | Nelson                    | Caerphilly County Borough Council | N/A    | Not known           | Not stated                | Public                        | Welsh Development Agency      | Yes                        |  |                          | Yes  | Unsuccessful                                  |                      | Unknown             |
| Land at Caerphilly Road, Ystrad Mynach | Ystradawr                 | Caerphilly County Borough Council | N/A    | Not known           | Local Residents           | Public                        | Police Authority              | Yes                        | Not been continuously used for 20 year period  | Not known                | Yes  | Unsuccessful                                  |                      | 1999                |
| Pontywaun Farm                         | Cross Keys                | Caerphilly County Borough Council | N/A    | Not known           | Local Resident            | Public                        | Council                       | Yes                        |  |                          | No   | Unsuccessful                                  |                      | 2000                |
| Land at southern part of Borough       | Near Newport              | Caerphilly County Borough Council | N/A    | Not known           | Not stated                | Public                        | Council                       | Not known                  |  |                          | Yes  | Unsuccessful                                  |                      | Unknown             |
| Land at Bryn Road                      | Bryn Fields, Upper Trelyn | Caerphilly County Borough Council | N/A    | Not known           | Local Councillor          | Private                       | Housing Developer             | Yes                        |  |                          | Yes  | Unsuccessful                                  |                      | 23-Feb-00           |
| Billy Morgan's Field                   | Pontlottyn                | Caerphilly County Borough Council | N/A    | Not known           | Local residents           | Private                       | Developers                    | Not known                  |  |                          | Yes  | Still ongoing - public inquiry at end of June |                      | Unknown             |
| The Green Cascade                      | Penpedairheol, Hengoed    | Caerphilly County Borough Council | VG1    | Not known           | Local action group        | Private                       | Local resident                | Yes                        | Disputed use had been for 20 years and for lawful sports and pastimes. Also concerns about access to a garage.                                     | Owner                    | Yes  | Successful                                    | 31-Jul-03            | 02-May-02           |

| Name of the green | Location of the green                    | Local Authority Area           | VG No. | Area of green (ha)* | Who was the applicant(s)? | Ownership - private/public | Who is the owner(s)?                                    | Were there any objections? | Nature of the objections   | Who was the objector(s)?                | Was there any indication the application was made to hinder development? | Outcome – suc/unsuc | Date of registration | Date of application |
|-------------------|--|--------------------------------|--------|---------------------|---------------------------|----------------------------|---|----------------------------|--|---|--|---------------------|----------------------|---------------------|
| Abercregan        | Neath Port Talbot                        | County of Swansea              | VG43   | 0.82 ha             | Local resident            | Public                     | Local Authority - although still trying to be verified. | Yes                        | Site not used for the claimed activities such as village sports day, carnivals, teas, fetes, football training, barbecues  | Councillor on behalf of local Residents | Yes  | Successful          | Pending              | Jan-00              |
| Oystermouth       | Village (Swansea) - Yards from Sea Front | County of Swansea              | N/A    | Not known           | Community Council         | Public                     | City & County of Swansea                                | Yes                        | 45 pieces of evidence were submitted objecting to the registration of the land as a village green.   | Not known                               | Yes  | Unsuccessful        |                      | 02-July-99          |
| Parkmill          | Gower, Swansea                           | County of Swansea              | N/A    | Not known           | Community Council         | Private                    | The Somerset Trust                                      | No                         | Not known  | Not known                               | No   | Unsuccessful        |                      | 10-Sept-92          |
| Satley            | Satley, Derwentside                      | Durham County Council          | VG115  | 8.1 ha              | Not known                 | Not known                  | Not known   | No                         |  |   | Not known  | Successful          | Feb-94               | Not known           |
| Low Pitington     | Pitington, Durham                        | Durham County Council          | VG117  | 61.5 ha             | Not known                 | Not known                  | Not known   | Yes                        | Not stated   | Not known                               | Not known  | Successful          | Dec-94               | Not known           |
| The Hollow        | Crook, Wear Valley                       | Durham County Council          | VG118  | 0.18 ha             | Local resident            | Not known                  | Not known   | Yes                        | The land had not been used continuously for 20 years   | Local resident                          | No   | Successful          | May-01               | 02-Jul-99           |
| The Hangings      | Tewkesbury                               | Gloucestershire County Council | VG202  | Not known           | Local resident            | Private                    | Navigation Trust  | Yes                        | The purchase of the land was subject to covenants not to use the property other than as a recreational area for 25 yrs. Owners stated land could not have been used prior to 1983 because only then was the area brought back from a derelict state. Disputed claims made as to leisure activities e.g. painting, kite flying etc. | Local residents                         | No   | Successful          | 03-Feb-04            | 15-Nov-99           |
| Jubilee Gardens   | South Cerney                             | Gloucestershire County Council | N/A    | 0.34 ha             | Parish Council            | Public                     | District Council  | Yes                        | The District Council licenced use of the application land as an open space and stated that it could not have been used 'as of right'. The resident objected on the basis that the land already had planning permission for 7 affordable homes  | District Council and local resident     | Yes  | Unsuccessful        |                      | 06-Apr-99           |
| Coates            |  | Gloucestershire                | N/A    | Not                 | Not known                 | Not known                  | Not known   | Not known                  | Not known  | Not known                               | Not known  | Unsuccessful        |                      | Not known           |

| Name of the green                | Location of the green           | Local Authority Area           | VG No. | Area of green (ha)* | Who was the applicant(s)?                            | Ownership - private/ public | Who is the owner(s)?               | Were there any objections? | Nature of the objections  | Who was the objector(s)?             | Was there any indication the application was made to hinder development? | Outcome – suc/unsuc | Date of registration | Date of application |
|----------------------------------|---------------------------------|--------------------------------|--------|---------------------|--|-----------------------------|------------------------------------|----------------------------|---|--------------------------------------|--|---------------------|----------------------|---------------------|
|                                  |                                 | e County Council               |        | known               |  |                             |                                    |                            |   |                                      |  |                     |                      |                     |
| Botloes Green                    | Newent                          | Gloucestershire County Council | N/A    | Not known           | Chairman of residents association and local resident | Public                      | County Highways                    | Yes                        | Concern over vehicular access to the property, potential traffic congestion, disputed stated use of the land.   | Local businessman and local resident | No   | Unsuccessful        |                      | 24-Feb-00           |
| Frith Wood                       |                                 | Gloucestershire County Council | N/A    | Not known           | Not known  | Not known                   | Not known                          | Not known                  | Not known   | Not known                            | Yes  | Unsuccessful        |                      | Not known           |
| The Roebuck Field                | Ruardean                        | Gloucestershire County Council | N/A    | Not known           | Not known  | Not known                   | Not known                          | Not known                  | Not known   | Not known                            | Yes  | On-going            |                      | Not known           |
| Boulton Lane                     |                                 | Gloucestershire County Council | N/A    | Not known           | Not known  | Not known                   | Not known                          | Not known                  | Not known   | Not known                            | Not known  | Unsuccessful        |                      | Not known           |
| Upper Rissington                 |                                 | Gloucestershire County Council | N/A    | Not known           | Not known  | Not known                   | Not known                          | Not known                  | Not known   | Not known                            | Yes  | Unsuccessful        |                      | Not known           |
| Well Hill Tresham                |                                 | Gloucestershire County Council | N/A    | Not known           | Not known  | Not known                   | Not known                          | Not known                  | Not known   | Not known                            | Not known  | Unsuccessful        |                      | Not known           |
| The Recreation Ground, Goosnargh | Preston                         | Lancashire County Council      | VG75   | 1.62 ha             | Not known  | Public                      | Local Authority                    | No                         |   |                                      | Not known  | Successful          | 23-Apr-97            | Not known           |
| Ingol Head Green, Fulwood        | Preston                         | Lancashire County Council      | VG80   | 5.50 ha             | Local resident                                       | Private                     | English Partnerships and Golf Club | Yes                        | Use was not 'as of right' or continuous and that the land had not been used for 20 years by a significant number of inhabitants.  | Owners                               | Yes  | Successful          | 04-Apr-02            | Sep-00              |
| Irwell Vale Village Green        | Irwell Vale, Rossendale Borough | Lancashire County Council      | VG79   | Not known           | Local residents                                      | Private                     | Limited company                    | Yes                        | Use had been permitted and there had not been use of the application land by a significant number of inhabitants of the claimed locality throughout the 20 year period. | Owner                                | Yes  | Unsuccessful        |                      | 16-May-00           |
| The Square                       | Whittingham                     | Lancashire County Council      | VG81   | Not known           | Parish Council                                       | Private                     | NHS Executive                      | Yes                        | The lease of the application land granted by the landowner  | Owner                                | No   | Unsuccessful        |                      | 01-Nov-00           |

| Name of the green                     | Location of the green                 | Local Authority Area        | VG No. | Area of green (ha)* | Who was the applicant(s)?                                     | Ownership - private/ public | Who is the owner(s)?  | Were there any objections? | Nature of the objections  | Who was the objector(s)?   | Was there any indication the application was made to hinder development? | Outcome – suc/unsuc | Date of registration | Date of application |
|---------------------------------------|---------------------------------------|-----------------------------|--------|---------------------|---|-----------------------------|-----------------------|----------------------------|---|--|--|---------------------|----------------------|---------------------|
|                                       |                                       |                             |        |                     |   |                             | North West            |                            | covenanted that the land was not to be used for any purpose other than a public open space with or without a children's playground or play area.  |  |  |                     |                      |                     |
| Heys Street Neighbour-hood Play Space | Heys Street, Thornton Cleveleys       | Lancashire County Council   | VG82   | Not known           | Local resident (Member of the Heys Street Green Action Group) | Public                      | Borough Council       | Yes                        | The land was open to the public at large and there was an implied permission for the public to enter and use the land. There was no evidence of any sports or pastimes having been exercised, although obviously the land could have been used by any member of the general public, not just those in the immediate vicinity.   | Owners and Housing Association   | Yes  | Unsuccessful        |                      | 31-May-01           |
| Top Pasture by the Dams               | Waterside Colne, Pendle Borough       | Lancashire County Council   | VG83   | Not known           | Vice Chair of Waterside Community Project                     | Private                     | Local residents       | Yes                        | There was insufficient evidence that use had been for lawful sports and pastimes by a significant number of the inhabitants of a locality or neighbourhood. In addition, use of "the dams" on the land had been for specific persons with permission and therefore use was not 'as of right'. Also some of the field may not have been accessible for some of the claimed twenty year period. | Owner and joint owner of land on the northern edge of the application land | No   | Unsuccessful        |                      | 23-Jan-02           |
| Land off Liverpool Road               | Lowerhouse, Burnley                   | Lancashire County Council   | VG88   | Not known           | Local residents   | Private                     | DTR (Rossendale ) Ltd | Yes                        |   | Owners   | Yes  | Unsuccessful        |                      | 17-Mar-03           |
| Aunsby Village Green                  | Aunsby, North Kesteven                | Lincolnshire County Council | KVG38  | Not known           | Parish Council  | Not known                   | Not known             | No                         |   |  | Not known  | Successful          | 25-Feb-94            | 18-Sep-93           |
| Village Hall Green                    | Fulbeck, South Kesteven               | Lincolnshire County Council | KVG39  | Not known           | Parish Council  | Not known                   | Not known             | No                         |   |  | Not known  | Successful          | 22-Aug-95            | 10-Apr-95           |
| The Green                             | Sutton Cum Beckingham, North Kesteven | Lincolnshire County Council | KVG40  | Not known           | Parish Council  | Not known                   | Not known             | No                         |   |  | Not known  | Successful          | 16-Apr-97            | 23-Jan-97           |
| The Green                             | Braceby, South Kesteven               | Lincolnshire County Council | KVG41  | Not known           | Local resident  | Not known                   | Not known             | No                         |   |  | Not known  | Successful          | 05-Jan-99            | 20-Aug-98           |

| Name of the green                    | Location of the green         | Local Authority Area        | VG No. | Area of green (ha)* | Who was the applicant(s)? | Ownership - private/ public | Who is the owner(s)?                       | Were there any objections? | Nature of the objections   | Who was the objector(s)?  | Was there any indication the application was made to hinder development? | Outcome – suc/unsuc | Date of registration | Date of application |
|--------------------------------------|-------------------------------|-----------------------------|--------|---------------------|---------------------------|-----------------------------|--|----------------------------|--|---|--|---------------------|----------------------|---------------------|
| Recreational Areas, Windsor Gardens  | Long Sutton, South Holland    | Lincolnshire County Council | HVG21  | Not known           | Local residents           | Not known                   | Not known                                  | No                         |  |   | Not known  | Successful          | 19-Dec-00            | 23-Sep-99           |
| The Green, Fleet Church End          | Fleet, South Holland          | Lincolnshire County Council | HVG22  | Not known           | Parish Council            | Not known                   | Not known                                  | No                         |  |   | Not known  | Successful          | 21-Dec-00            | 18-May-00           |
| Village Green                        | Little Humby, South Kesteven  | Lincolnshire County Council | KVG42  | Not known           | Parish Council            | Not known                   | Not known                                  | No                         |  |   | No   | Successful          | 28-Feb-03            | 25-Jan-02           |
| Bell Tree Green                      | Welbourn, North Kesteven      | Lincolnshire County Council | KVG43  | Not known           | Parish Council            | Not known                   | Not known                                  | No                         |  |   | Not known  | Successful          | 28-Feb-03            | 09-Apr-02           |
| Land adjacent to Aisby Green (KVG28) | Aisby, South Kesteven         | Lincolnshire County Council | KVG44  | Not known           | Parish Council            | Not known                   | Not known                                  | No                         |  |   | Not known  | Successful          | 21-Jul-04            | 20-Mar-04           |
| Land adjacent to Glebe Park          | North Hykeham, North Kesteven | Lincolnshire County Council | KVG45  | Not known           | Member of Town Council    | Public                      | Local Authority                            | Yes                        | The land was not a village green   | Parish Council  | Yes  | Successful          | 05-Apr-05            | 05-May-04           |
| The Field                            | Greetwell Road                | Lincolnshire County Council | N/A    | Not known           | Local resident            | Public                      | County Council / Local Education Authority | Yes                        | Use was not 'as of right' and not continuous.  | County Council in capacity as Local Education Authority and Sport England | Yes  | Unsuccessful        |                      | 19-Jul-01           |
| Binbrook Playing Fields              | Binbrook, Lincolnshire        | Lincolnshire County Council | N/A    | Not known           | Local resident            | Public                      | County Council / Local Education Authority | Yes                        | A significant number of residents of the locality had not made use of the land, use was not 'as of right', was not continuous up to determination and was by stealth/force.  | County Council in capacity as Local Education Authority                   | No   | Unsuccessful        |                      | 24-Jun-03           |
| Fosters Field                        | Milman Road, Lincoln          | Lincolnshire County Council | N/A    | Not known           | Local residents           | Public                      | City Council                               | Yes                        | Not common land/village green. County Council said use was not 'as of right' and had been implied permitted by the Council. LEA said it would prevent Authority from fulfilling statutory duty to provide school with provision for playing field. | City Council and Local Education Authority                                | Yes  | Unsuccessful        |                      | 11-Oct-01           |



| Name of the green   | Location of the green               | Local Authority Area         | VG No. | Area of green (ha)* | Who was the applicant(s)? | Ownership - private/ public            | Who is the owner(s)?            | Were there any objections? | Nature of the objections  | Who was the objector(s)?       | Was there any indication the application was made to hinder development? | Outcome – suc/suc     | Date of registration | Date of application |
|---|-------------------------------------|------------------------------|--------|---------------------|---------------------------|--|---------------------------------|----------------------------|---|--------------------------------|--|-----------------------|----------------------|---------------------|
| The Glebe   | Sunningwell, Nr Abingdon            | Oxfordshire County Council   | VG121  | 4.05 ha             | Parish Council            | Private                                | Diocesan Board of Finance       | Yes                        | Use was by force/stealth  | Diocesan Board of Finance      | Yes  | Successful            | 28-Sep-99            | 9-Nov-95            |
| North Newington   | North Newington, Cherwell           | Oxfordshire County Council   | VG122  | Not known           | Parish Council            | Not known                              | No decision of ownership as yet | No                         |   |                                | No   | Successful            | 24-May-04            | 28-Jan-04           |
| Station Meadow  | Cronshaw Close, Didcot              | Oxfordshire County Council   | N/A    | Not known           | Local resident            | Public                                 | District Council                | Yes                        | Covenant on land that it could not, without consent, be used for anything other than public open space.   | District Council               | Yes  | Application withdrawn |                      | Nov-04              |
| Ladydale Meadow   | Leek                                | Staffordshire County Council | VG45   | 2.02 ha             | Local resident            | Private                                | Local resident (now deceased)   | Yes                        | Land not used 'as of right'   | Housing developer              | Yes  | Successful            | 13-Feb-03            | 26-Oct-99           |
| Colliery Fields and Fields at Ellison School Playing Fields | Wolstanton                          | Staffordshire County Council | NVG11  | Not known           | Local residents           | Public                                 | County Council                  | Yes                        | Land not used 'as of right'   | County Council and supermarket | Yes  | Unsuccessful          |                      | 23-Aug-02           |
| Moorland Road   | Biddulph                            | Staffordshire County Council | NVG3   | Not known           | Local resident            | Private                                | Housing developer               | Yes                        | Land not used 'as of right'   | Housing developer              | Yes  | Unsuccessful          |                      | 11-Nov-99           |
| The Green   | Little Kineton, Stratford-upon-Avon | Warwickshire County Council  | VG151  | 1.58 ha             | Parish Council            | Unknown landowner+ adjoining landowner | Private                         | Yes                        | Disputed whether had been use by the public and whether use was 'as of right'. Also objected because pond misused and didn't want people wondering around it. | Both owners                    | No   | Successful            | 17-Jul-95            | 07-Jun-93           |
| The Green   | Kingsbury, North Warwickshire       | Warwickshire County Council  | VG147  | 0.40 ha             | Local residents           | Public                                 | Borough Council                 | Yes                        | Disputed whether use was 'as of right'.   | Borough Council                | Yes  | Successful            | 26-Oct-00            | 16-May-00           |
| The Patch   | Wootton Wawen, Stratford-upon-Avon  | Warwickshire County Council  | VG148  | 0.21 ha             | Parish Council            | Public                                 | County Council                  | No                         |   |                                | No   | Successful            | 24-May-01            | 24-Sep-00           |
| The Green   | Church Lawford, Rugby               | Warwickshire County Council  | VG149  | 0.11 ha             | Local resident            | Public                                 | Highway Authority - owner       | No                         |   |                                | No   | Successful            | 27-Nov-03            | 20-Nov-02           |

| Name of the green    | Location of the green | Local Authority Area        | VG No. | Area of green (ha)* | Who was the applicant(s)? | Ownership - private/public | Who is the owner(s)?              | Were there any objections? | Nature of the objections  | Who was the objector(s)? | Was there any indication the application was made to hinder development? | Outcome – suc/unsuc | Date of registration | Date of application |
|----------------------|-----------------------|-----------------------------|--------|---------------------|---------------------------|----------------------------|-----------------------------------|----------------------------|---|--------------------------|--|---------------------|----------------------|---------------------|
|                      |                       |                             |        |                     |                           |                            | unknown                           |                            |   |                          |  |                     |                      |                     |
| The Green            | King's Newman, Rugby  | Warwickshire County Council | VG150  | 0.03 ha             | Local resident            | Public                     | Highway Authority - owner unknown | No                         |   |                          | No   | Successful          | 27-Nov-03            | 20-Nov-02           |
| Park Court Play Area | Stratford-upon-Avon   | Warwickshire County Council | VG152  | 0.22 ha             | Local resident            | Private                    | Housing Association               | Yes                        | Admitted use by public but disputed whether it was 'as of right'. | Housing Association      | Yes  | Successful          | 07-Dec-04            | 07-Aug-03           |

## Registration Greens – Counts of Individual Responses

| Area of green<br>(ha)* | No. |
|------------------------|-----|
| 0.03 ha                | 1   |
| 0.05 ha                | 1   |
| 0.11 ha                | 1   |
| 0.18 ha                | 1   |
| 0.21 ha                | 1   |
| 0.22 ha                | 1   |
| 0.34 ha                | 1   |
| 0.40 ha                | 1   |
| 0.82 ha                | 1   |
| 1.58 ha                | 1   |
| 1.62 ha                | 1   |
| 2.02 ha                | 1   |
| 4.05 ha                | 1   |
| 5.50 ha                | 1   |
| 61.5 ha                | 1   |
| 8.1 ha                 | 1   |
| Not known              | 39  |

| Who was the applicant(s)?                            | No. |
|--|-----|
| Local resident                                       | 15  |
| Parish Council                                       | 14  |
| Not known  | 9   |
| Local residents                                      | 8   |
| Not stated   | 2   |
| Community Council                                    | 2   |
| Local action group                                   | 1   |
| Local Councillor                                     | 1   |
| Vice Chair of Waterside Community Project            | 1   |
| Chairman of residents association and local resident | 1   |
| Member of Town Council                               | 1   |

| Ownership - private/public             | No. |
|--|-----|
| Public                                 | 20  |
| Not known                              | 19  |
| Private                                | 14  |
| Not proved                             | 1   |
| Unknown landowner+ adjoining landowner | 1   |

| Who is the owner(s)?                     | No. |
|--|-----|
| Not known                                | 18  |
| Local Authority                          | 3   |
| Local resident/s                         | 3   |
| Borough Council                          | 2   |
| Council                                  | 2   |
| County Council                           | 2   |
| County Council/Local Education Authority | 2   |
| District Council                         | 2   |
| Highway Authority - owner unknown        | 2   |
| Housing Developer                        | 2   |
| City & County of Swansea                 | 1   |
| City Council                             | 1   |
| County Highways                          | 1   |
| Developers                               | 1   |
| Diocesan Board of Finance                | 1   |
| English Partnerships and Golf Club       | 1   |
| Housing Association                      | 1   |
| Limited company                          | 1   |
| Navigation Trust                         | 1   |
| NHS Executive North West                 | 1   |
| No decision of ownership as yet          | 1   |
| Ownership has not been proved            | 1   |
| Police Authority                         | 1   |
| Private                                  | 1   |
| The Somerset Trust                       | 1   |
| Welsh Development Agency                 | 1   |
| DTR (Rossendale) Ltd                     |     |

| Were there any objections? | No. |
|----------------------------|-----|
| Yes                        | 31  |
| No                         | 16  |
| Not known                  | 8   |

| Nature of the objections  | No. |
|---|-----|
| Not known   | 8   |
| Land not used 'as of right'   | 3   |
| Not been continuously used for 20 year period   | 2   |
| 45 pieces of evidence were submitted objecting to the registration of the land as a village green.  | 1   |
| A significant number of residents of the locality had not made use of the land, use was not 'as of right', was not continuous up to determination and was by stealth/force.   | 1   |
| Admitted use by public but disputed whether it was 'as of right'.   | 1   |
| Concern over vehicular access to the property, potential traffic congestion, disputed stated use of the land.   | 1   |
| Covenant on land that it could not, without consent, be used for anything other than public open space.   | 1   |
| Dispute over ownership of an area of water in the village. Objectors believed they owned the land also disputed that area was used for recreation.  | 1   |
| Disputed use had been for 20 years and for lawful sports and pastimes. Also concerns about access to a garage.  | 1   |
| Disputed whether had been use by the public and whether use was 'as of right'. Also objected because pond misused and didn't want people wondering around it.   | 1   |
| Disputed whether use was 'as of right'.   | 1   |
| Not common land/village green. County Council said use was not 'as of right' and had been implied permitted by the Council. LEA said it would prevent Authority from fulfilling statutory duty to provide school with provision for playing field.  | 1   |
| Site not used for the claimed activities such as village sports day, carnivals, teas, fetes, football training, barbecues   | 1   |
| The District Council licenced use of the application land as an open space and stated that it could not have been used 'as of right'. The resident objected on the basis that the land already had planning permission for 7 affordable homes   | 1   |
| The land was not a village green  | 1   |
| The land was open to the public at large and there was an implied permission for the public to enter and use the land. There was no evidence of any sports or pastimes having been exercised, although obviously the land could have been used by any member of the general public, not just those in the immediate vicinity.   | 1   |
| The lease of the application land granted by the landowner covenanted that the land was not to be used for any purpose other than a public open space with or without a children's playground or play area.   | 1   |
| The purchase of the land was subject to covenants not to use the property other than as a recreational area for 25 yrs. Owners stated land could not have been used prior to 1983 because only then was the area brought back from a derelict state. Disputed claims made as to leisure activities e.g. painting, kite flying etc.  | 1   |
| There was insufficient evidence that use had been for lawful sports and pastimes by a significant number of the inhabitants of a locality or neighbourhood. In addition, use of "the dams" on the land had been for specific persons with permission and therefore use was not 'as of right'. Also some of the field may not have been accessible for some of the claimed twenty year period. | 1   |
| Use had been permitted and there had not been use of the application land by a significant number of inhabitants of the claimed locality throughout the 20 year period.   | 1   |
| Use was by force/stealth  | 1   |
| Use was not 'as of right' or continuous and that the land had not been used for 20 years by a significant number of inhabitants.  | 1   |
| Use was not 'as of right' and not continuous.   | 1   |

| Who was the objector(s)?   | No. |
|--|-----|
| Not known  | 10  |
| Owner/s  | 6   |
| Local residents  | 3   |
| Housing developer  | 2   |
| Parish Council   | 1   |
| Owners and Housing Association   | 1   |
| Owner and joint owner of land on the northern edge of the application land | 1   |
| Local businessman and local resident                                       | 1   |
| Housing Association  | 1   |
| District Council and local resident  | 1   |
| District Council   | 1   |
| Diocesan Board of Finance  | 1   |
| County Council in capacity as Local Education Authority and Sport England  | 1   |
| County Council in capacity as Local Education Authority                    | 1   |
| County Council and supermarket   | 1   |
| Councillor on behalf of local Residents                                    | 1   |
| City Council and Local Education Authority                                 | 1   |
| Borough Council  | 1   |

| Was there any indication the application was made to hinder development? | No. |
|--|-----|
| Yes  | 26  |
| No   | 15  |
| Not known  | 14  |

| Outcome – successful/unsuccessful             | No. |
|---|-----|
| Successful                                    | 28  |
| Unsuccessful                                  | 24  |
| Still ongoing - public inquiry at end of June | 1   |
| On-going                                      | 1   |
| Application withdrawn                         | 1   |

| Date of registration | No. |
|----------------------|-----|
| 2005                 | 1   |
| 2004                 | 4   |
| 2003                 | 6   |
| 2002                 | 1   |
| 2001                 | 2   |
| 2000                 | 4   |
| 1999                 | 2   |
| 1997                 | 2   |
| 1995                 | 2   |
| 1994                 | 3   |
| Pending              | 1   |

| Date of application | No. |
|---------------------|-----|
| 2004                | 4   |
| 2003                | 3   |
| 2002                | 7   |
| 2001                | 3   |
| 2000                | 10  |
| 1999                | 8   |
| 1998                | 1   |
| 1997/98             | 1   |
| 1997                | 1   |
| 1995                | 2   |
| 1993                | 2   |
| 1992                | 1   |
| Not known           | 12  |



## Management Greens

| Name of the green              | Location of the green | Local Authority Area        | VG No.         | Date of registration | Area of green (ha)* | Ownership - private/public    | Who is the owner(s)?          | Were there any management issues? | Nature of the management issues  | Who was involved?  | What is being done?  |
|--------------------------------|-----------------------|-----------------------------|----------------|----------------------|---------------------|-------------------------------|-------------------------------|-----------------------------------|--|--|--|
| Heath Green                    | Heath and Reach       | Bedfordshire County Council | VG6            | 01-Oct-70            | 0.07                | Public                        | Parish Council                | Yes                               | Problems with nuisance use by youths and parking at edge of green.   | Clerk of Parish Council, Parish Council and local residents.     | Police patrols. Parish Council is going to create parking bays to remove the need to park on the edge of the green.  |
| Caldecote Green                | Northill              | Bedfordshire County Council | VG18           | 21-Feb-73            | 1.48                | Public                        | Parish Council                | Yes                               | Local youths and visitors cause the problems with mopeds and littering.  | Parish Council and local residents                               | Parish Council deal with littering.  |
| Ickwell Green                  | Northill              | Bedfordshire County Council | VG20           | 01-Oct-70            | 4.99                | Public                        | Parish Council                | Yes                               | Problems with littering, youths on mopeds. Parking on green at cricket matches but not a problem.  | Parish Council and local residents                               | Police called for youth problems, Parish Council deal with litter. Parking at cricket matches is with permission of Parish Council so no action required.                                  |
| Northill Common                | Northill              | Bedfordshire County Council | Not registered |                      | Not known           | Public                        | Parish Council                | No                                |  |  |  |
| Beeston Green                  | Sandy                 | Bedfordshire County Council | VG14           | 01-Oct-70            | 4.33                | Public                        | Town Council                  | Yes                               | Only problem has been disagreement over play area (e.g. some want it some don't, some want it fenced to keep dogs off).  | Deputy Clerk of Town Council                                     | No fencing put around play area as it is common land. No other problems to resolve.  |
| The Green                      | Stotfold              | Bedfordshire County Council | VG8            | 01-Oct-70            | 1.20                | Public                        | Town Council                  | No                                |  |  | Trying to extend alcohol byelaws i.e. no drinking in public open spaces. Two community officers assigned to the area; no police station nearby so difficult to police the situation.       |
| Hitchin Road Recreation Ground | Stotfold              | Bedfordshire County Council | Not registered |                      | Not known           | Public                        | Town Council                  | No                                |  |  | Trying to extend alcohol byelaws i.e. no drinking in public open spaces. Two community officers assigned to the area; no police station nearby so difficult to police the situation.       |
| Riverside Recreation Ground    | Stotfold              | Bedfordshire County Council | Not registered |                      | Not known           | Public                        | Town Council                  | No                                |  |  | Trying to extend alcohol byelaws i.e. no drinking in public open spaces. Two community officers assigned to the area; no police station nearby so difficult to police the situation. CCTV. |
| Clifton Village Pond           | Clifton, Bedfordshire | Bedfordshire County Council | VG65           | 27-Apr-00            | 0.05 ha             | Ownership has not been proved | Ownership has not been proved | Yes - on-going                    | Highways need access to the pond to maintain it/clean it. Have had access through the railings adjacent to the road but causes difficulties with traffic and ease of access. | Local residents (applicants), Parish Council and County Council. | Council suggested access via local resident's land but they're not happy about this as it would involve removing some hedges and replacing with a fence.                                   |

| Name of the green          | Location of the green       | Local Authority Area              | VG No.                   | Date of registration                             | Area of green (ha)* | Ownership - private/ public | Who is the owner(s)? | Were there any management issues? | Nature of the management issues   | Who was involved?   | What is being done?  |
|----------------------------|-----------------------------|-----------------------------------|--------------------------|--|---------------------|-----------------------------|----------------------|-----------------------------------|---|---|--|
| The Green Cascade          | Penpedairheol, Hengoed      | Caerphilly County Borough Council | VG1                      | 31-Jul-03  | Not known           | Private                     | Local resident       | Yes                               | Nobody manages it. The Council were asked to cut the grass but declined.  | Council   | Nothing  |
| Llangyfelach Village Green | Graveyard, Church and Tower | County of Swansea                 | VG26                     | 1972   | Not known           | Private                     | Church in Wales      | Yes                               | The church cut the grass. There is a gate to bring in vehicles for burials, weddings. Completely overgrown - not managed.   | Owner   | Grass is cut and it is kept tidy.  |
| Abercregan                 | North of Port Talbot        | County of Swansea                 | VG24                     | Not yet fully registered as query with ownership | Not known           | Public                      | Local Authority      | Yes                               | It is not managed/ maintained by the Council. The gentleman, from the Forestry Commission, who had the cut the grass for the last 3 years has passed away and the grass is not cut. | The Environmental Directorate at the Council and local residents  | Residents would gladly cut the grass but they need a decent ride on mower which they are currently looking for.  |
| Eastern Penrallt           | Llanrhidian                 | County of Swansea                 | VG9                      | 26-Feb-68  | Not known           | Private                     | Local resident       | Yes                               | The green is not managed and is not used as a green. It is overgrown rough land. Footings cut out for houses in 1974 still remain.  | Not known   | Nothing  |
| Penrice Green              | Outside of the Church       | County of Swansea                 | VG11                     | 26-Feb-68  | Not known           | Private                     | Local resident       | Yes                               | There is access across the green for some cars to get to houses.  | Owner   | Grass is cut and it is kept tidy.  |
| The Village Green          | Gainford & Langton          | Durham County Council             | Don't know if registered | Not known  | Not known           | Private                     | Local Estate Owner   | Yes                               | Cost of management/maintenance, youths and parking.   | Local residents, visitors, Parish Council.  | Try to be low key and deal with the issues diplomatically. The police are called or people are approached directly e.g. for parking incidents.   |
| Village Green              | Hamsterley                  | Durham County Council             | VG45                     | 04-Dec-70  | Not known           | Public                      | Parish Council       | Yes                               | People drive over the green to get to their houses. People also park on the green when events on at the village hall.   | Local residents, visitors, Parish Council.  | Nothing. People use their common sense and it seems to work.   |
| High Street                | Moreton in Marsh            | Gloucestershire County Council    | Registered               | 01-Oct-70  | Not known           | Public                      | Parish Council       | Yes                               | Driving on the grass. Parking during school dropping off time.  | Local residents, particularly parents collecting children from school, the school and the Town Council. | Large cotswold stones have been put in place to stop people parking on the grass. Notices are being put up and soon the traffic warden will be able to issue tickets. Also the school are communicating with parents through the children to 'shame parents not to do this'. |
| The Hangings               | Tewkesbury                  | Gloucestershire County Council    | VG202                    | 03-Feb-04  | Not known           | Private                     | Navigation Trust     | Yes                               | Current owners no longer wish to pay the Borough Council to cut the grass and asked if the Borough Council would take on the responsibility.  | Owner and Borough Council   | The Council sent a response to the owner but have yet to receive a response. The owners have continued to cut the grass.   |
| The Green                  | Newburgh                    | Lancashire County Council         | Don't know if            | Not known  | Not known           | Public                      | District Council     | Yes                               | One side of green is on a slope so difficult to cut. Two sides of green have the A5209 next to it so  | Parish Council, District Council and local residents  | £11k of funding being used to update image of green. Safety bollards at edge to  |

| Name of the green           | Location of the green  | Local Authority Area        | VG No.                   | Date of registration | Area of green (ha)* | Ownership - private/ public | Who is the owner(s)? | Were there any management issues? | Nature of the management issues   | Who was involved?  | What is being done?   |
|-----------------------------|------------------------|-----------------------------|--------------------------|----------------------|---------------------|-----------------------------|----------------------|-----------------------------------|---|--|---|
|                             |                        |                             | registered               |                      |                     |                             |                      |                                   | that raises safety issues. Youths occasionally leave empty bottles/cans on the Green.   |  | deter vehicles. No other action required as few problems with nuisance use.   |
| Grimsargh Village Green     | Grimsargh              | Lancashire County Council   | Don't know if registered | Not known            | Not known           | Public                      | City Council         | Yes                               | Drainage problems and knock on effect this has on maintenance etc. Youths drinking, rogue cars driving on green. Golfers causing damage to nearby houses. Occasional car parking at edge of green.            | Parish Council, City Council, local residents and golfers      | Extra parking is being considered. Youth shelter just been installed. Multi-use playwall considered, as well as potential £650K worth of improvements. Drainage should be the first priority.   |
| Memorial Park               | Freckleton             | Lancashire County Council   | Don't know if registered | Not known            | Not known           | Public                      | Parish Council       | Yes                               | Problem with youths drinking and leaving cans/bottles.  | Parish Council, local residents and the police                 | CCTV installed. Police patrols.   |
| Recreation Ground           | Freckleton             | Lancashire County Council   | Don't know if registered | Not known            | Not known           | Public                      | Parish Council       | Yes                               | Problem with youths drinking and leaving cans/bottles, driving scooters onto football pitches.  | Parish Council, local residents and the police                 | CCTV installed. Police patrols.   |
| The Green                   | Overton Village Centre | Lancashire County Council   | Don't know if registered | Not known            | Not known           | Public                      | Parish Council       | No                                |   |  |   |
| Community Woodland          | Overton                | Lancashire County Council   | Don't know if registered | Not known            | Not known           | Public                      | Parish Council       | Yes                               | Trees have had difficulty establishing due to coastal location.   | Parish Council   | Monitoring tree health/growth.  |
| The Green                   | Eccleston              | Lancashire County Council   | Don't know if registered | Not known            | Not known           | Public                      | Parish Council       | Yes                               | Problems include vandalism, nuisance use, riding bikes over flowerbeds.   | Parish Council and local residents                             | No need for any particular action against youths e.g. involving police.   |
| Croston Village Green       | Croston                | Lancashire County Council   | Don't know if registered | Not known            | Not known           | Private                     | Registered Charity   | No                                |   |  |   |
| North Hykeham Village Green | North Hykeham          | Lincolnshire County Council | Not registered           |                      | Not known           | Public                      | Town Council         | Yes                               | Anti-social behaviour e.g. petty vandalism, damage to play equipment etc. and dog fouling.  | Local residents, the Town Council and the police.              | The Park Warden can issue tickets for dog fouling, an alcohol ban was introduced in 2002, work with the police through the local crime and disorder group, and have a police trained Park Warden to address/manage issues.                        |
| Leaffield Village Greens    | Leaffield              | Oxfordshire County Council  | VG15                     | 14-Jan-76            | 1.83 ha             | Public                      | Parish Council       | Yes                               | Problem with fence which was erected around edge of green by school. Some wanted it removed though majority of village in favour of it. Minor problems with molehills and damage to edge of green by lorries. | Parish Council Clerk, Headmistress and Society for Open Spaces | Parish Council have taken legal advice to check they have not contravened any Acts. Held a public meeting at the village hall to get views of the villagers (chaired by District Councillor). Fence still on green and problem seems to have died |

| Name of the green                | Location of the green | Local Authority Area         | VG No.                   | Date of registration | Area of green (ha)* | Ownership - private/ public | Who is the owner(s)?                | Were there any management issues? | Nature of the management issues   | Who was involved?   | What is being done?   |
|----------------------------------|-----------------------|------------------------------|--------------------------|----------------------|---------------------|-----------------------------|-------------------------------------|-----------------------------------|---|---|---|
|                                  |                       |                              |                          |                      |                     |                             |                                     |                                   |   |   | down. Molehills being dealt with by Parish Council.   |
| Alvescot Road Recreation Ground  | Carterton             | Oxfordshire County Council   | N/A                      | Not known            | Not known           | Private                     | Charity (Town Council are trustees) | Yes                               | Main problem: youths causing damage (close to town centre); bonfires on grass; damage to play equipment.  | Town Council, contractor and local residents.                         | Unlikely to be resolved though police keep an eye on things.  |
| Swinbrook Road Recreation Ground | Carterton             | Oxfordshire County Council   | N/A                      | Not known            | Not known           | Public                      | Town Council                        | Yes                               | Main problem is with youths causing damage.   | Town Council and local residents                                      | Unlikely to be resolved though police keep an eye on things.  |
| Marsh Baldon's Village Green     | Marsh Baldon          | Oxfordshire County Council   | VG4                      | 03-July-73           | 9.71 ha             | Private                     | College                             | Yes                               | Parking is the main problem, due to school on edge expanding. Exacerbated by contractors working at the school. Mainly verges that are affected. Previously some leaves dumped on the green. Potholes by school bus stop. | Parish Council, Clerk and local residents                             | Once the school is rebuilt, they will tackle the parking problem either by laying stuff down on ground to allow grass to grow through or by installing posts to deter vehicles. Meeting between school governors and representatives of the Parish Council should be arranged. School will be asked to confirm that the contractors would be responsible for repairing the damage caused by their vehicles. |
| Ball Haye Green                  | Leek                  | Staffordshire County Council | Don't know if registered | Not known            | Not known           | Public                      | Town Council                        | Yes                               | Vandalism and litter.   | Local residents   | Litter is picked each day, local residents association make the Town Council aware of any problems and a Community Support Officer patrols the area if there has been a problem.  |
| Park Lane Recreation Ground      | Southam               | Warwickshire County Council  | Don't know if registered | Not known            | Not known           | Public                      | Town Council                        | Yes                               | Problems include vandalism and lack of money. Occasionally parking on green e.g. at fairs but doesn't cause a problem. Youths causing vandalism.  | Town Council Clerk, Town Council Community Group and local residents. | CCTV may be installed. Police called out when motorbikes on the green. Community group aim to get funding for new play equipment etc.   |
| Upper Green                      | Ilmington             | Warwickshire County Council  | Don't know if registered | Not known            | Not known           | Public                      | Parish Council                      | Not considered to be              | Parking by people walking in the area   |   | Not a problem   |
| Lower Green                      | Ilmington             | Warwickshire County Council  | Don't know if registered | Not known            | Not known           | Public                      | Parish Council                      | No                                |   |   |   |
| Village Green                    | Long Itchington       | Warwickshire County Council  | Don't know if            | Not known            | Not known           | Public                      | Parish Council                      | Yes                               | Pub car parking   |   |   |

| Name of the green       | Location of the green               | Local Authority Area        | VG No.                   | Date of registration | Area of green (ha)* | Ownership - private/ public            | Who is the owner(s)? | Were there any management issues? | Nature of the management issues   | Who was involved?  | What is being done?   |
|-------------------------|-------------------------------------|-----------------------------|--------------------------|----------------------|---------------------|--|----------------------|-----------------------------------|---|--|---|
|                         |                                     |                             | registered               |                      |                     |  |                      |                                   |   |  |   |
| Village Pond            | Long Itchington                     | Warwickshire County Council | Don't know if registered | Not known            | Not known           | Public                                 | Parish Council       | Yes                               | Main problem is that pond occasionally dries out.   | Parish Council Clerk. Community group are involved with pond restoration project.  | Pond group will be draining the pond, re-building banks to reinforce them (mature tree roots are now visible at the banks) and doing some new plantings.  |
| The 'Triangle' Green    | Long Itchington                     | Warwickshire County Council | Don't know if registered | Not known            | Not known           | Public                                 | Parish Council       | Yes                               | Main problem is parking of vehicles at edge of and sometimes in centre of green, causing damage to grass. | Parish Council Clerk. Local pub - cause of car parking problem.                    | Wooden posts will probably have to be put in around the edge to prevent cars getting onto grass. Parish Council and pub both asking people not to park there.   |
| Hillmorton Green        | Rugby                               | Warwickshire County Council | Don't know if registered | Not known            | 1.48 ha             | Public                                 | Borough Council      | Yes                               | Problem with car parking on green and at edges of green.  | Borough Council and local residents, particularly those taking children to school. | A low wooden fence has been erected at edge of green to prevent cars getting onto grass. Old fencing has been replaced and a double kerb has been constructed in certain areas so cars cannot mount kerb. |
| The Green               | Little Kineton, Stratford-upon-Avon | Warwickshire County Council | VG151                    | 17-Jul-95            | 1.58 ha             | Unknown landowner+ adjoining landowner | Private              | Yes                               | Parking is causing a problem and starting to damage the edge of the green.                                | Local residents  | Parish Council are writing to residents to request that they don't park on or at the edge. Some wooden posts are in place around the edge and more may be required.                                       |
| The Green               | Toddington                          | Bedfordshire                |                          |                      |                     |  |                      | Yes                               | Parking around the edge of the green – not a major problem  |  | Byelaw signs around the green   |
| Sketty Green            |                                     | Swansea                     |                          |                      |                     |  |                      | Yes                               | Parking due to insufficient parking at nearby hospital  |  | Wooden bollards limit the damage  |
| Staindrop Village Green |                                     | Durham                      |                          |                      |                     | Public                                 | Parish Council       | Yes                               | Parking on edge of green if no-where to park  |  | Bollards. No parking signs erected by police.   |

## Management Greens – Counts of individual responses

| Date of registration                             | No. |
|--|-----|
| 2004   | 1   |
| 2003   | 1   |
| 2000   | 1   |
| 1995   | 1   |
| 1976   | 1   |
| 1973   | 2   |
| 1972   | 1   |
| 1970   | 6   |
| 1968   | 2   |
| Not yet fully registered as query with ownership | 1   |
| Not known  | 26  |

| Area of green (ha)* | No. |
|---------------------|-----|
| 0.05 ha             | 1   |
| 0.07 ha             | 1   |
| 1.20 ha             | 1   |
| 1.48 ha             | 2   |
| 1.58 ha             | 1   |
| 1.83 ha             | 1   |
| 4.33 ha             | 1   |
| 4.99 ha             | 1   |
| 9.71 ha             | 1   |
| Not known           | 33  |

| Ownership - private/public              | No. |
|---|-----|
| Public                                  | 30  |
| Private                                 | 9   |
| Ownership has not been proved           | 1   |
| Unknown landowner + adjoining landowner | 1   |
| No information                          | 2   |

| Who is the owner(s)?                | No. |
|-------------------------------------|-----|
| Parish Council                      | 17  |
| Town Council                        | 8   |
| Local resident                      | 3   |
| Registered Charity                  | 1   |
| Private                             | 1   |
| Ownership has not been proved       | 1   |
| Navigation Trust                    | 1   |
| Local Estate Owner                  | 1   |
| Local Authority                     | 1   |
| District Council                    | 1   |
| College                             | 1   |
| City Council                        | 1   |
| Church in Wales                     | 1   |
| Charity (Town Council are trustees) | 1   |
| Borough Council                     | 1   |

| Were there any management issues? | No. |
|-----------------------------------|-----|
| Yes                               | 35  |
| No                                | 8   |

| Nature of management issues?         | No. |
|--------------------------------------|-----|
| Youths (inc their use of mopeds)     | 15  |
| Parking                              | 11  |
| Access (inc driving on grass)        | 6   |
| Litter                               | 6   |
| Management – who to do it/cost of it | 9   |
| Damage to equipment                  | 6   |
| Safety                               | 1   |
| Golfers                              | 1   |
| Molehills                            | 1   |
| Trees not grow                       | 1   |
| Fenicing                             | 1   |
| Trees                                | 1   |
| Leaves                               | 1   |
| Dog fouling                          | 1   |
| Pond                                 | 1   |

| Who was involved?       | No. |
|-------------------------|-----|
| Local residents         | 22  |
| Parish Council          | 16  |
| Town Council            | 8   |
| Police                  | 3   |
| Owner                   | 3   |
| Visitors                | 2   |
| Borough Council         | 2   |
| School                  | 2   |
| District Council        | 1   |
| City Council            | 1   |
| County Council          | 1   |
| Community Group         | 1   |
| Contractor              | 1   |
| Pub                     | 1   |
| Golfers                 | 1   |
| Society for Open Spaces | 1   |
| Not known               | 1   |



| What is being done?                                    | No. |
|--|-----|
| Wooden posts/stones/safety bollards added around green | 7   |
| Parish council dealing with it                         | 5   |
| Will use police to keep an eye/deal with it            | 4   |
| Extend alcohol byelaws/alcohol ban                     | 4   |
| Assign community officers                              | 4   |
| CCTV   | 3   |
| Letter   | 2   |
| Public meeting   | 1   |
| Legal advice   | 1   |
| Youth shelter installed                                | 1   |
| Pond group to drain and sort pond                      | 1   |
| Park warden  | 1   |
| Nothing  | 6   |

## Appendix 3: Open Spaces Society Interview

An interview was conducted with a representative of the Open Spaces Society in order to understand their view of the application process.

### **The Registration Process**

The Open Spaces Society understood the current registration process and described it as follows:

- An application form is sent together with evidence to the registration authority;
- The registration authority decides whether the application has been duly made;
- The application then goes to Counsel to decide how to proceed and determine the application;
- The application is advertised for objections; and
- The application may be decided by independent advice, lay panel or public inquiry.

It was reported that since the Whitney and Cheltenham builder's case most cases are on hold. This case has gone to the Court of Appeal.

### **What is your Opinion of the Current Registration Process?**

The Open Spaces Society representative felt that on the positive side the process is flexible as there are no statutory procedures and as such it is easier for the lay person to understand.

She was, however, concerned that there are no time constraints on the different stages, with the exception of the 6 week limit for objections. This means that a registration authority can take as long as it wants to process the application and when objectors are late with their objections this delays the process further.

Developers were known to argue that the process takes too long, however they are believed to be the ones that don't stick to the 6 week rule.

The informal nature of the non-statutory inquiries was thought to have largely been lost as they are being run on a civil court basis with inspectors issuing pre inquiry directions and meetings. Since most objectors and owners bring in barristers it was difficult to see how this could be addressed. The lay applicants were likely to want to know what the process will be, however it is difficult to provide an answer to this apart from "the inspector will run it how he wants to run it" because there isn't any regulation on the format of the inquiry.

It was suggested that a different body hear the applications. A comparison was made with Section 194 Law of Property, where Defra are responsible for the administration of the applications and the Open Spaces Society are consulted. If there is an inquiry Defra organise it and send an internal representative to run it, rather than use an independent inspector. The Open Spaces Society were initially of the opinion that local people should be entitled to a local hearing, but this view appears to have changed given the loss of informality and flexibility.

The required time and funding for Registration Authorities to process applications was raised. The approach described above i.e. using another specified body for the inquiries was favoured as it would reduce time and cost.

As previously identified, current practice involved the appointment of a barrister acting for the objectors and building up case law which is rapidly sent round on the basis of their

intellectual argument. The Open Spaces Society is considering there should be some change here. They would wish to maintain the view that there should be a local inquiry, however, changes are believed to be needed in how the application is handled, particularly in respect of the funding and conflicts of interest for Registration Authorities. The view was that it would be perhaps better to have someone in house to run the inquiry.

### **Development Pressures**

The representative was asked her view on the relationship between development pressures and the desire to maintain open spaces.

The Society have worked with the Government on urban green space and this led to a revision of the planning and policy guidance 17, which refers to opening up open spaces. The Councils were believed to be still getting to grips with these changes. Unfortunately she was unable to comment on the political aspects of this.

The representative felt there is now more awareness of keeping green spaces open and also greater awareness in respect of environmental issues.

When asked about the link between development pressures, the need for open spaces and the subsequent impact on the submission of applications for village greens the representative found this quite difficult to answer. She felt that there are Parish Councils just as anxious to make applications to protect land for future generations, but there is no doubt if people become aware of a development threat they will want to ensure that it is registered. It was, however, felt that the landowner has always had the means to prevent an application being successful.

### **Enquiries Received by the Open Spaces Society**

The majority of enquiries received by the Society in respect of village greens are from applicants or potential applicants. They do, however, receive enquiries from Registration Authorities and some County Councils who are members.

Contact is also received from landowners, developers and they do get enquiries from solicitors. Generally the Society tries to persuade the solicitors to become members and they normally do. In these cases, depending on what they ask for, there might be a charge. They will always ask them to make a donation.

The Open Spaces Society publication "Getting Greens Registered" can be sent out as required. The Society was rewriting this publication, however due to the Trap Grounds case this is now on hold.

Enquiries received by the Society include:

- What is the process?
- What it will mean to them if they are successful?
- How long will the process take?
- What do they have to do?
- Help with application form
- Questions on each element of the criteria from applicants

The way in which the Society responds to these questions varies as some people need more help than others and also due to the complexity of the case. Most people initially phone with

an inquiry, however they are usually asked to write in as every case is so different. The Society will then write or email back responses.

### **Information Available to Enquirers**

In addition to verbal information the Society are able to offer fact sheets, their publication 'Getting Greens Registered' which includes a draft application form and also the website. They offer a list of solicitors that can be sent out but there is a charge for this.

They also put people in touch with other members who have a lot of knowledge and experience and who may have been involved in registration. This service is however only for members. This type of contact is very useful to those seeking help, particularly because of the current legislation. The Society can't say specifically that certain things will happen for each application.

The Society can only offer the facts. They cannot offer any help with evidence or supporting the evidence. Very rarely the Open Spaces Society may send someone to support individuals at an inquiry. This may be another member who has been through the process before. Sometimes the Society will write to the registration authority to say that they support the application. They will also write to the registration authority if they feel they are not handling the process correctly, in support of the applicant, for example.

Sometimes people do send sample forms to them, which they can comment on, however they can't comment on the evidence.

The Society gives priority to members, particularly when an issue is likely to be on going. There is a membership fee, but after that is paid the advice is free. They do, however, ask for donations. There does appear to be some debate about this, but the Society is a charity. Most people do appear to join if they have an inquiry.

Every two or three years the Society tries to survey Registration Authorities, to obtain up to date information and a comprehensive picture of the application process.

As the Society provides factual advice and does not get involved in the detail of any evidence they are not placed in a difficult situation with regard to handling enquiries from applicants and objectors.

### **Problems Encountered by Applicants**

A key problem faced by applicants is believed to be the time taken to speak to people and collate information needed for the application.

The application form, (CR Form 30), was reported as being completely out of date. The Society have discussed this with Defra, however, the Commons Bill is taking priority for Defra at moment. There is an acknowledgement by Defra that the form is not as good as it could be. This causes problems for the Registration Authorities and the applicant and allows for objections that wouldn't otherwise occur. The form is not as clear as it could be.

Applicants also need help with and raise questions on each element of the application criteria.

A number of applicants are surprised that the onus is on them to prove the criteria and collect the evidence.

### **Fairness of the System for the Applicant and Objector**

The fact that objectors can make their objections outside of the 6 week period was seen as unfair to the applicant.

It was also believed that applicants can feel they are “in the dark”. Nobody can tell them what the registration authority is doing or going to do next, for example will it go back to Council and if so what will they decide? The registration authority can also face difficulties, as they have to make a decision on the process without any statutory basis.

In terms of human rights issues, the applicants are entitled under article 1 to a fair and independent hearing. If the registration authority decides not to hold an inquiry and base its decision on written legal advice or advice from an internal source the applicant/ objector would not have the opportunity to raise their view.

Sometimes the registration authority were reported to make their decision on an application too early. Authorities have been known to contact objectors and owners before even telling the applicants. There has been a judicial review because a registration authority said an application had not been duly made it was challenged and overturned.

It was felt that human rights issues with regards to the objector and applicant will feature more and more within future cases.

Defra are apparently aware of these human rights issues. The Whitney case does in fact look at some human rights issues.

### **Opinion of the Legislation**

The view was that most of the required elements are in the legislation, however section 98 was thought to have made the legislation worse rather than more flexible.

It was felt that there are problems with locality and the 20-year period. It was believed that the 20-year period needs to be considered so that the goal posts are not continually moving.

In terms of “as of right”, there was understood to be such a wealth of case law on how this can be interpreted that it is not something that you can legislate for more than it already is.

Some aspects of the legislation were in need of clarification.

### **Management of Greens**

The Society do receive requests for advice on the management of village greens. They help as far as they can, however there is little advice for them to offer as there is little in the statute of regulations on the management of greens.

They receive questions on insurance matters and occupier's liability and such matters as who can mow it and who can't. They will advise on these issues.

They also receive enquiries about parking issues, but they have to say that the Open Spaces Society remit is for public issues and if it is affecting the village green then they will help. If it is a civil issue it may or may not be something they become more involved with.

The enquiries come from owners, Councils and local residents.

### **Defra's Role**

The Society's opinion of the role Defra plays in the registration process was explored, however the Society representative found it difficult to comment. The Society doesn't usually see the information Defra sends out.

Since Defra don't have the same role as they do for common land the representative was not sure how many people would go to them for advice.

The Society representative would like Defra to be more robust about some things, but she felt they have to act within their remit and that by not giving their opinion on case law they were able to keep within their remit. The “Getting Greens Registered” booklet produced by the Society does actually include some case law examples, references and information.

The Open Spaces Society was currently thought to work well with Defra.