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**Meeting:** Development Management Committee  
**Date:** 2 February 2011  
**Subject:** Application to register land described in the Application as Town Farm Orchard, Town Farm Court, Henlow as a Town or Village Green  
**Report of:** Director of Sustainable Communities  
**Summary:** The report proposes that Central Bedfordshire Council notify the applicant that his application to register the land described as Town Farm Orchard, Town Farm Court, Henlow as a Village Green has not been accepted.

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**Public/Exempt:** Public  
**Wards Affected:** Henlow – Cllrs Jon Clarke and Tony Rogers  
**Function of:** Council

## **CORPORATE IMPLICATIONS**

### **Council Priorities:**

Promoting Healthier Lifestyles - by protecting and promoting access to areas of public recreation and leisure.

### **Financial:**

The provisions of the Commons Act 2006 or any other subordinate legislation do not permit the Council to charge a fee for processing applications to register land as a town or village green.

### **Legal:**

See Guide to the Law at Appendix A and Section 15 of the Commons Act 2006 is set out in full in Appendix B.

### **Risk Management:**

No risk management issues have been identified by the author.

### **Staffing (including Trades Unions):**

No staffing issues have been identified by the author.

**Equalities/Human Rights:**

No equalities/HR issues have been identified by the author

**Community Safety:**

No community safety issues have been identified by the author.

**Sustainability:**

No sustainability issues have been identified by the author.

**RECOMMENDATION(S):**

**That Central Bedfordshire Council notify the applicant that his application to register the land described as Town Farm Orchard, Town Farm Court, Henlow as a Village Green has not been accepted.**

**Introduction**

1. The Commons Act 2006 (“the Act”) makes provision for the registration of common land and of town or village greens. Commons Registration Authorities were created to maintain two registers, one for common land and the other for town/village greens. Central Bedfordshire Council (“the Council”) is the relevant Registration Authority. Section 15 of the Act came into force on 6 April 2007 and made changes to the criteria for the registration of a Village Green in response to a line of cases in the upper courts.

**The Application**

2. Central Bedfordshire Council has received an application dated 29 July 2010 to register land at Town Farm Court, Henlow as a Village Green from a local resident, Mr Raymond Rapacchi (“the Applicant”). The Application was allocated the application number 2/2010 and a copy of the application form is attached at Appendix C.
3. The Application has been made under Section 15(3) of the Act, because the Applicant states that recreational use “as of right” for 20 years or more ended on or after 6 April 2007 but no more than two years before the application was submitted (see Appendix A – heading “As of right” for further details).

**Location of Application Land**

4. The land which is subject of the Application (“the Application Land”) is described by the Applicant as “Town Farm Orchard” and is located at the western end of Town Farm Court, Henlow. A plan of the land is shown at Appendix D to this report.

## Relevant Law

5. The law relevant to this Application is set out in Section 15 of the Act. A guide to the law is attached at Appendix A (including an extract of this Section of the Act at Appendix B), although each element of the statutory criteria/test is addressed in this report. In summary an Applicant must prove that the land has been used by a significant number of local inhabitants for lawful sports and pastimes “as of right” for a period of twenty years.
6. The Commons (Registration of Town and Village Greens) (Interim Arrangements) (England) Regulations 2007 (“the Regulations”) applies to all applications made under the Act and govern how village green applications should be processed by registration authorities,
7. In dealing with an application to register a new Village Green the Council must consider the following criteria:
  - (i) Whether use of the land has been by a significant number of inhabitants
  - (ii) Whether use of the land has been from a particular locality, neighbourhood or a neighbourhood within a locality?
  - (iii) Whether use of the land has been for the purposes of lawful sports and pastimes.
  - (iv) Whether use of the land has been “as of right”?
  - (v) Whether use has taken place on the land identified in the application.
  - (vi) Whether use has taken place over twenty years or more and when the use ended.

Each of the above criteria is considered under the heading “The Evidence and Determination” below.

## Relevant Planning History

8.
  - (a) 23 August 1995 – Certificate of Lawful Use or Development (which confirmed domestic use for more than 10 years) issued by Mid Bedfordshire District Council, which included the Application Land.
  - (b) MB/08/02392/FULL – Invalid application for a change of use of land and buildings from private garden to agricultural use and storage.
  - (c) CB/09/06626/FULL - December 2008: Initial planning application for the residential development of 29 dwellings made, which included the Application Land.
  - (d) 4 March 2009 – Initial planning application withdrawn while Mid Bedfordshire District Council sought confirmation of village settlement envelope behind 53 and 55 High Street.
  - (e) 16 December 2009 - planning application reinstated, following the Planning Inspector’s decision that village settlement envelope included all garden behind 53 and 55 High Street.
  - (f) January & February 2010 – Central Bedfordshire Council requested an ecological and archaeological evaluation before the Development Management Committee consider the planning application.
  - (g) CB/09/06930/FULL – Change of use of garden land to agricultural land granted 12 February 2010.
  - (h) CB/09/06626/FULL – Residential development of 29 dwellings granted subject to Section 106 Agreement in March 2010.

- (i) CB/09/06630/CA – Conservation Area Consent to demolish the bungalow at No 53 High Street, Henlow granted in conjunction with CB/09/06626/FULL above.

### **Consultation and Publicity**

9. The Council considered that pursuant to Paragraph 3 of the Regulations the application had been “duly made” and published the statutory notice in accordance with the Regulations. The Notice of Application (Appendix F) was placed in the Biggleswade Chronicle on 1st October 2010 and displayed on the land itself. It was also served on the landowners and the Parish Council with a request to place the Notice of Application on their parish notice boards.

### **Statement of Objection and Representations**

10. The Application Land is in the private ownership of Mr & Mrs H (“the Objectors”) of 51 High Street, Henlow who submitted a very detailed Statement of Objection within the statutory objection period. In addition 22 letters of representation to the registration were also received by the Council within the objection period, which support one of the Objectors main points of objection, namely, that the land had been used with their permission. One representation letter was received outside the objection period, which also supports the Objectors. One of these letters is from Mr B who was given permission by the Objectors to use an area of the Application Land as a vegetable garden and given a key to the main gate, following his retirement on medical grounds. He states that he spent much of his time in the vegetable garden and confirmed that the children only gained access with permission and that very few strangers entered the Application Land.
11. A copy of the Objector’s key points of objection is at Appendix G and copies of their Statement of Objection and the 23 representations are available for public inspection. Henlow Parish Council replied to the Council advising that as they have co-opted a number of Members at various times during the last three years they cannot comment on the Application. In addition they asked the Council to discount the Applicant's inclusion in "Statement A" which states "We support the views of our Parish Council on the future of the site", as the Parish Council had not discussed the Village Green Application until receipt from the Council.
12. In compliance with the Regulations, the Council sent copies of the Statement of Objection and letters of representation to the Applicant on 2 December 2010. The Applicant was invited to comment on these documents and a number of issues were raised (copy of the Council’s letter is at Appendix H). A copy of the Applicant’s reply dated 3 December 2010 is at Appendix I, which did not address any of the issues that were raised. Although the Applicant subsequently submitted another letter and plan dated 21 December 2010, which is considered at paragraph 15. A letter dated 13 December 2010 was received from the Objectors (Appendix J) commenting on the Applicants response to their Statement of Objection. The Applicant made further comments on the Statement of Objection in a letter dated 5 January 2011 (Appendix K).

## **The Evidence and Determination**

### **(i) Significant Number of Inhabitants**

13. The Application was supported by a Statement by the Applicant and his wife stating that the land had been used by them and residents of Henlow Parish for sports and pastimes (see paragraph 16 for details of claimed use) Another Statement was attached by Mrs S stating that she had also used the land for sports and pastimes (see paragraph 16 for details of claimed use),
14. The Objectors state that Mrs S is the Applicant's daughter and that the Applicant has sought further support in the local press for his claim that a significant number of people used the land, but no further evidence has been submitted to the Council. Therefore, it is considered that this criteria/test has not been met.

### **(ii) Locality, or neighbourhood within a locality**

15. The Applicant stated in his Application that residents from Henlow Parish had used the Application Land. However, he has now recently submitted a plan which indicates that the residents of the six properties in Town Farm Court, Henlow had habitually used the Application Land for over 20 years. However, the Objectors have pointed out that of the representations received by the Council, two of the current residents and five of the past residents refute this. The Applicant's letter dated 5 January 2011 (Appendix K) disputes this point. However, the Council has not received any letters in support of the Application from the residents of the other five properties in Town Farm Court. Therefore, it is considered that this criteria/test has not been met.

### **(iii) Lawful sports and pastimes**

16. The Applicant and his wife state that they have used the land for bonfire parties, wedding receptions, games, walking, bird watching, fruit gathering, sheep grazing, sketching, picnics and caravanning. Other quoted activities would not qualify. While Mrs S states she has used the land for games, athletics, bonfire parties and her wedding reception.
17. Most of these activities are consistent with use as a village green and fall within the criteria/test of "lawful sports and pastimes",

#### **(iv) As of Right**

18. To meet this criteria/test the Applicant needs to demonstrate that the use of the land has been without force, without secrecy and without permission. The evidence from the Objectors supported by the 23 letters of representation (who had used the land at the invitation of the landowners) is that the Applicant and Mrs S were given permission by the Objectors to use the land. There was a "squeeze gate" (this is the Applicant's term) and the Objectors state that it was merely a 12 inch gap at the north end of the Applicant's western boundary to the Application Land until 11th May 2009, when the Objectors closed the said squeeze gate and informed the Applicant that they did not wish him to enter the Application Land. The Objectors have further stated that as the gap is approx 12 inches wide it would not easily afford access to the Application Land. The Objectors further contend that they gave the Applicants a key to the adjacent padlocked main gate to enter the Application Land and therefore entry was with their permission.
19. The Statement of Objection signed by one of the Objectors has provided detailed comments on each of the alleged activities, explaining that they, the Objectors gave permission to certain people to enter the Application Land for these purposes or that some activities may have been carried out in secrecy. In addition, the Objectors have stated that access to the Application Land had been gained through the back yard and vegetable garden of their property (see aerial photo and other photos at Appendix E). The Objectors state that the Applicant's children called at their door for their daughter to play with them and access the Application Land along this route.
20. The Objectors have also indicated that 75% of the land was fenced off and unavailable for the activities claimed for the first 3 years of the claimed 20 year period and that they gave the Applicant a key to the padlocked gate at the end of Town Farm Court. Therefore, it is considered that use has not been "as of right".

#### **(v) Application Land**

21. The Applicant has clearly identified the Application Land on the plan marked "A" submitted with his application form. Therefore, it is considered that this area of land was capable of being used for the twenty year period for the required recreational purposes.

#### **(vi) For a period of twenty years**

22. The Applicant claims a 20 year period from May 1989 to May 2009, when he received a letter from the landowners which withdrew their permission to enter their property. This is permitted under Section 15(3) of the Act.

## **Conclusions**

23. After careful consideration of the evidence submitted by the Applicant, Objectors and the letters of representation, the Council as registration authority considers that there is not evidence of use by a significant number of people nor that the criteria/test of a locality, or neighbourhood within a locality has been met.
24. In addition the evidence has shown that the use of the Application Land has not been "as of right". Therefore, the Application has not satisfied the statutory tests and criteria for registration as a new Village Green under the Commons Act 2006.

## **Appendices:**

Appendix A – Guide to the Law  
Appendix B – Extract from the Commons Act 2006 – Section 15  
Appendix C – Application to register land as a Town or Village Green  
Appendix D – Plan of Application Land  
Appendix E – Photographs showing the pedestrian access to the Application Land  
Appendix F – Notice of Application  
Appendix G – Key points of Statement of Objection  
Appendix H – Letter to Applicant with Statement of Objection and representations  
Appendix I – Applicant's comments on Statement of Objection and representations  
Appendix J - Letter dated 13 December 2010 from the Objectors  
Appendix K – Letter dated 5 January 2011 from the Applicant

## **Background Papers:** (open to public inspection)

- (i) Supporting documents submitted with Application to register land as a Town or Village Green....
- (ii) Statement of Objection and 23 letters of representation. ...

**Location of papers:** Priory House, Chicksands

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