

Bath & North East Somerset Council

TITLE: Field Behind Purlewent Drive TVG Registration Application

WARD: Weston

AN OPEN PUBLIC ITEM

List of attachments to this report:

Appendix 1 – Proposed Register Plan

Appendix 2 – Proposed Register Entry

1. THE ISSUE

- 1.1 An Application has been received by Bath and North East Somerset Council in its capacity as the Commons Registration Authority (“the Authority”) to register land known as the Field Behind Purlewent Drive in Weston, Bath as a Town or Village Green (“TVG”).

2. RECOMMENDATION

- 2.1 It is recommended that the Authority grant the Application and the land edged green on the Proposed Register Plan attached at Appendix 1 and described in the Proposed Register Entry attached at Appendix 2 be registered as a TVG.

3. FINANCIAL IMPLICATIONS

- 3.1 The potential financial implications for Bath and North East Somerset Council, in its capacity as the owner of the land affected by the TVG application, are not a legally relevant consideration in the determination of the Application.

4. THE REPORT

- 4.1 **Application and advertising.** On 16 April 2013, Mr Lewis Hands of 60 Purlewent Drive Bath, BA1 4AZ (“the Applicant”) applied under section 15 of the Commons Act 2006 (“the 2006 Act”) to register land known as ‘Field Behind Purlewent Drive’ as a TVG. The Application was made on the basis that the land qualifies for registration by virtue of section 15(2) of the 2006 Act, namely that;

“...a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and they continue to do so at the time of the application”.

- 4.2 The land to which the Application relates is edged green on the plan contained at Appendix 1. The land is comprised predominantly of grassland and is located to the rear of nos. 58 to 102 Purlewent Drive in Weston, Bath; in all the land is approximately 3.953 hectares. This land is owned by Bath and North East Somerset Council and is hereafter referred to as the “Application Land”.

- 4.3 The Application was accompanied by 492 user evidence forms detailing use of Application Land from 1934 up until the date of the Application. The Authority has a statutory duty under the 2006 Act to consider and dispose of the Application.
- 4.4 On 17 April 2013, Officers of the Authority made a preliminary assessment of the Application and considered the Application to be 'duly made'. On 25 April 2013, the Application was advertised by placing a notice in the Bath Chronicle and on the Authority's website and serving notice on all interested parties including Property Services, the ward members and Applicant. Additionally, notices were placed at six conspicuous locations around the Application Land and maintained on site until 13 June 2013.
- 4.6 On 12 June 2013, Bath and North East Somerset Council's Property Services, in its capacity as the affected landowner, wrote to '*consent to this application on the grounds that the claimed recreational use by residents of Weston Ward is not contested.*' Property Services asked for it to be noted that since the making of the Application there has been a change in legislation, that the Application Land would remain in the Core Strategy and that the Spooner case¹ may have a bearing on the future use of the land. Aside from four statutory undertakers who stated that their plant would not be affected by the Application, there were no other objections or representations received in relation to the Application.
- 4.7 **Statutory Test and Assessment.** The statutory test under consideration is set out in section 15(2) of the 2006 Act, which states that; "*...a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and they continue to do so at the time of the application*". The Authority can only consider whether the legislative test set out in the 2006 Act has been met. The Authority cannot take into account whether registration is deemed desirable nor what may or may not happen to the land in the future. The constituent parts of this test are considered in turn below.
- 4.8 **"a significant number"** The Application Land must be used by a significant number of people. This does not mean '*a considerable or substantial number*' but it does need to be a level of use sufficient to show that the land is in general use by the local inhabitants rather than just use by a few individuals or an isolated group within the community.
- 4.9 The Applicant submitted 492 user evidence forms detailing use of the Application Land during the relevant period; 200 individuals used the Application Land throughout the relevant period and 292 individuals used the Application Land for part of the relevant period. The electoral ward of Weston has a population of approximately 5,200 people and the number of individuals who have used the Application Land is sufficiently high as to constitute use by '*a significant number*' of inhabitants. This test is therefore considered to have been met.
- 4.10 **"of the inhabitants of any locality, or of any neighbourhood within a locality"** A locality, or any neighbourhood within a locality, is the area inhabited by the users of the Application Land. A 'locality' is an area which is capable of being defined by reference to some division of the country known to the law. A 'neighbourhood within a locality' is an area within a locality with a sufficient degree of cohesiveness.

¹ *BDW Trading Ltd (t/a Barratt Homes) v Spooner (representing the Merton Green Action Group) and another* [2011] EWHC B7 (QB)
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- 4.11 For the purposes of the Application, the Applicant is relying upon the electoral ward of Weston as the applicable locality. The electoral ward of Weston is an area known to the law and all 492 of the individuals who completed user evidence forms are, or were at the time of their use of the Application Land, inhabitants of the locality. This test is therefore considered to have been met.
- 4.12 **“have indulged as of right”** Use of the land must be ‘as of right’ which means that use must be without force, without secrecy and without permission.
- 4.13 There has been no suggestion that any use by the public has been by force, secrecy or permission. Additionally, the Application Land appears to have been held by Bath and North East Somerset Council throughout the relevant period for planning purposes. The Application Land does not appear to have been held as Public Open Space and use has not therefore been ‘by right’. This test is therefore considered to have been met.
- 4.14 **“in lawful sports and pastimes”** The Application Land must be used for lawful sports and pastimes which can include a wide range of activities including, but not limited to, dog walking, football and nature watching; the activities must not be contrary to the law such as prize-fighting.
- 4.15 The 492 user evidence forms detail use of the Application Land for a wide variety of activities including nature watching, sledging, kite-flying, picking blackberries and ball games. The most popular activities on the Application Land appear to be walking and dog walking. There is a well-trodden circular route and numerous well-trodden routes across the Application Land. These well-trodden routes indicate that the Application Land was predominantly not used as a linear route and suggest that users wandered about on the land. Use of the land was therefore for lawful sports and pastimes and this test has therefore been met.
- 4.16 **“on the land”** ‘The land’ means the Application Land as detailed in paragraph 4.2 above. The boundary of the Application Land is well-defined on site by hedges and fences and the 492 user evidence forms detail use across the whole of this land. This test is therefore considered to have been met.
- 4.17 **“for a period of at least 20 years and they continue to do so at the time of the application”** The Application Land must be used for a full period of 20 years. The Application was made on 16 April 2013 and the Application Land must therefore have been used from this date back to 16 April 1993.
- 4.18 The user evidence forms detail use of the Application Land going back to 1934 and 200 inhabitants of the electoral ward of Weston used the Application Land throughout the Relevant Period between 16 April 1993 and 16 April 2013. This test is therefore considered to have been met.
- 4.19 **Conclusion.** As summarised above, the Application Land have been used as of right by a significant number of the inhabitants of the electoral ward of Weston for lawful sports and pastimes from at least 16 April 1993 until the submission of the Application. This land therefore meets the legislative tests set out in the 2006 Act and should accordingly be registered as TVG.

5 RISK MANAGEMENT

5.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

6. EQUALITIES

6.1 A proportionate equalities impact assessment has not been carried out as the Application must be considered solely in relation to the test set out in the 2006 Act.

7. CONSULTATION

7.1 *Ward Councillor; Cabinet Member; Other B&NES Services; Service Users; Local Residents; Community Interest Groups;*

7.2 Extensive consultation was carried out as detailed in paragraph 4.4 above.

8. ISSUES TO CONSIDER IN REACHING THE DECISION

8.1 Legal Considerations; as detailed in paragraph 4.7 above.


9. ADVICE SOUGHT

9.1 The Authority's Monitoring Officer (Divisional Director – Legal and Democratic Services) and Section 151 Officer (Divisional Director - Finance) have had the opportunity to input to this report and have cleared it for publication.

Contact person	Graeme Stark, Senior Rights of Way Officer
Background papers	'Field Behind Purlewent Drive' TVG Registration case file including the Form 44 and accompanying evidence.
Please contact the report author if you need to access this report in an alternative format	

AUTHORISATION

Under the authorisation granted by the Ordinary and Annual General Meeting of the Council on 19 May 2011 and the Solicitor to the Council on 1 October 2011, the Senior Rights of Way Officer hereby authorises the land shown edged in green on the Proposed Register Plan (Appendix 1) and detailed in the Proposed Register Entry (Appendix 2) to be registered as Town or Village Green pursuant to section 15 of the Commons Act 2006.


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Graeme Stark
Senior Rights of Way Officer, Highways Maintenance and Public Rights of Way

Dated: 29/07/2013

REGISTER MAP S/VG/104

Field Behind Purlewent Drive Town or Village Green

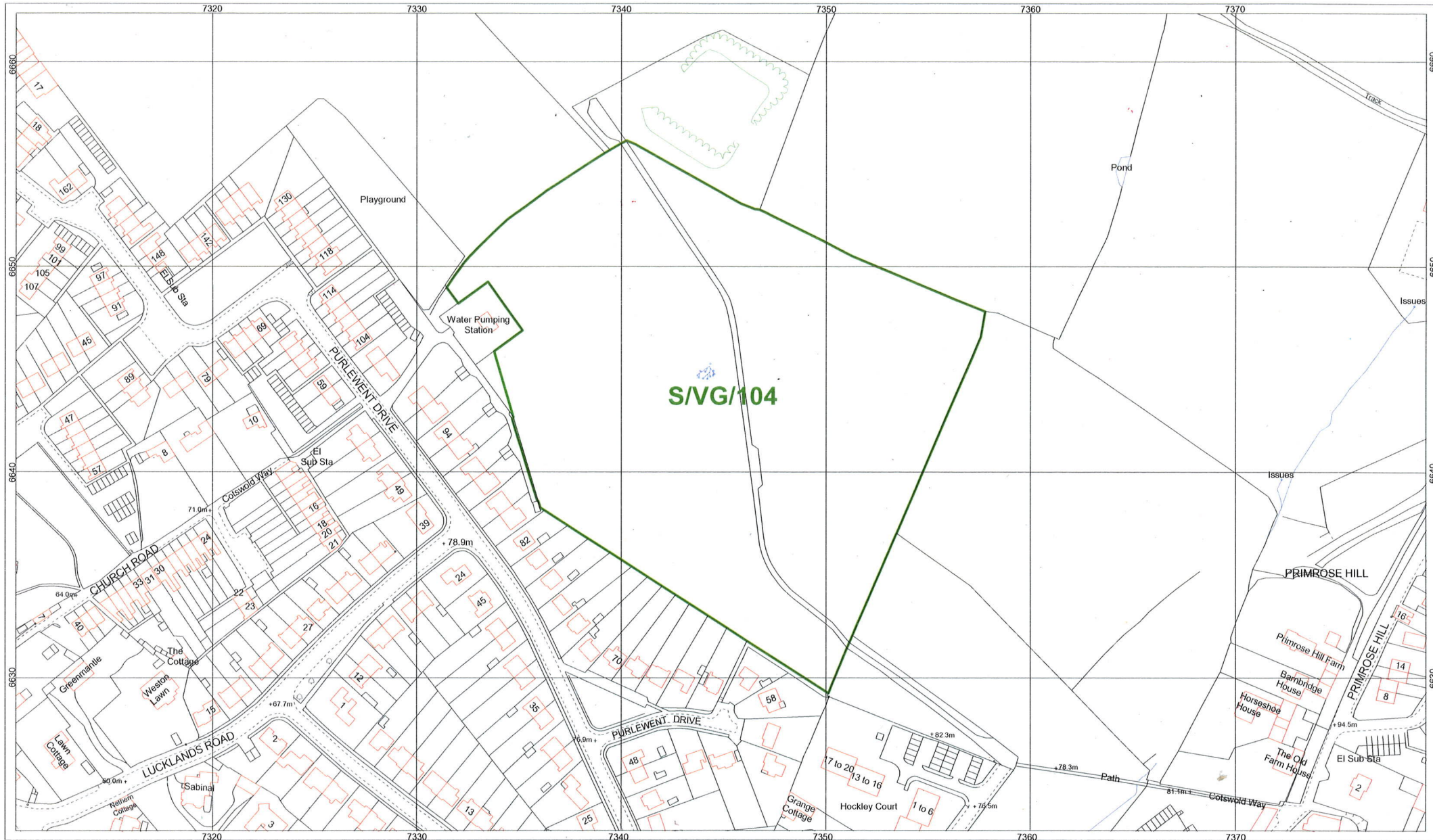
Land registered as
Town or Village Green =

S/VG/104



Scale 1:2500

APPENDIX 1
Proposed Register Plan



Register of Town or Village Greens

REGISTRATION AUTHORITY: Bath and North East Somerset Council
 REGISTER UNIT No.: S/VG/104
 EDITION No.: 1

LAND SECTION – Sheet No.1

<i>No. and date of entry</i>	<i>Description of the land, reference to the register map, registration particulars, etc.</i>
<p>1. 16 April 2013</p>	<p>The land called 'Field Behind Purlewent Drive' containing in all an area of approximately 3.953 hectares located to the rear of nos. 58 to 102 Purlewent Drive in Weston, Bath, as marked with a green verge line inside the boundary on Register Map S/VG/104 and distinguished by the number of this register unit. (Registration under section 15 of the Commons Act 2006).</p> <p>Registered pursuant to application number TVG13/1 made on 16 April 2013 by Mr L Hands of 60 Purlewent Drive, Bath, BA1 4AZ.</p>
<p>2. 29 July 2013</p>	<p>The registration at entry No. 1 above being undisputed became final on 29 July 2013.</p>

Note: This section contains the registration of every right of common registered under the Act and exercisable over the whole or any part of the land described in the land section of this register unit

Register of Town or Village Greens

REGISTRATION AUTHORITY: Bath and North East Somerset Council
REGISTER UNIT No.: S/VG/104
EDITION No.: 1

RIGHTS SECTION – Sheet No.2

1 <i>No. and date of entry</i>	2 <i>No. and date of application</i>	3 <i>Name and address of every applicant for registration, and capacity in which he applied.</i>	4 <i>Particulars of the right of common, and of the land over which it is exercisable</i>	5 <i>Particulars of the land (if any) to which the right is attached.</i>
1. 16 April 2013	1. 16 April 2013	Mr L Hands of 60 Purlewent Drive, Bath, BA1 4AZ (local inhabitant).	The right to indulge in lawful sports and pastimes on the land. (Registration under section 15 of the Commons Act 2006).	The land called 'Field Behind Purlewent Drive' containing in all an area of approximately 3.953 hectares located to the rear of nos. 58 to 102 Purlewent Drive in Weston, Bath, as marked with a green verge line inside the boundary on Register Map S/VG/104 and distinguished by the number of this register unit.
2. 29 July 2013	The registration at entry No. 1 above being undisputed became final on 29 July 2013.			

COMMONS ACT 2006

Note: This section contains the registration of every person registered under the Act as owner of any of the land described in the land section of this register unit. It does not contain any registration in respect of land of which the freehold is registered under the Land Registration Acts 1925 and 1936, but the absence from this section of a registration in respect of any land described in the land section does not necessarily indicate that the freehold of that land is registered under those Acts.

Register of Town or Village Greens

REGISTRATION AUTHORITY: Bath and North East Somerset Council
 REGISTER UNIT No.: S/VG/104
 EDITION No.: 1

OWNERSHIP SECTION – Sheet No.3

1 <i>No. and date of entry</i>	2 <i>No. and date of application</i>	3 <i>Name and Address of person registered as owner</i>	4 <i>Particulars of the land to which the registration applies</i>
1. 16 April 2013	1. 16 April 2013	Bath and North East Somerset Council of Riverside, Temple Street, Keynsham BS31 1LA and Northgate House, Upper Borough Walls, Bath BA1 1RG. (Registration under section 15 of the Commons Act 2006).	The land called 'Field Behind Purlewent Drive' containing in all an area of approximately 3.953 hectares located to the rear of nos. 58 to 102 Purlewent Drive in Weston, Bath, as marked with a green verge line inside the boundary on Register Map S/VG/104 and distinguished by the number of this register unit.
2. 29 July 2013	The registration at entry No. 1 above being undisputed became final on 29 July 2013.		