DEFRA'S CONSULTATION ON THE REGISTRATION OF NEW VILLAGE GREENS

The Open Spaces Society (formally the Commons, Open Spaces and Footpaths Preservation Society) was founded in 1865 and is Britain's oldest national conservation body. It campaigns to protect common land, village greens, open spaces and public paths, and people's right to enjoy them.

The society is a member of the National Common Land Stakeholder Group which advises on the implementation of the Commons Act 2006 and on matters relating to the management of commons.

The society publishes a practical guide to the registration of village greens, 'Getting Greens Registered'. The society has vast experience of advising applicants, landowners and councils on the registration and management of village greens. The society surveyed members to inform this response.

In April 2011, following a survey of members, the society published 'A Framework for Green Spaces' setting out what the proposed new green space designation should achieve.

We welcome the opportunity to respond to this consultation.

Introduction

i. The society, over the past two years, has held discussions with ministers including the former Environment Minister, Huw Irranca-Davies, about the process of registering land as a village green under section 15 of the Commons Act 2006. We are disappointed that our proposals for straightforward changes in regulation, such as time limits, have been ignored. It is accepted that the system could be improved to benefit all those involved; however, we would question the objectives and aims of the reforms, which appear to be predicated on reducing costs to local authorities, who have a duty to determine applications, and to landowners.

ii. There is a need to retain and improve the present registration system rather than destructively reform it.

iii. The planning system is not undermined by greens' claims, in particular because a process requiring 20 years' use to mature cannot be used in an attempt to frustrate a planning application which is determined in a small fraction of that time. Failure of any single element of the section 15 criteria leads to rejection of the application. However, planning applications are often granted and submitted on land already registered as village greens. In addition, frequently 20 years' use of land in accordance with the section 15 criteria is not considered to be a material consideration relevant to planning applications.

iv. The Countryside and Community Research Institute (CCRI) study in 2009 found a majority (52%) of applications were not triggered by a planning application to develop a site and 61% of cases were not triggered by a proposal for development of the site in the Local Plans. There is no evidence base for such a radical reform. Citing Kent as an example of cluster and high level of applications is particularly misleading as Kent is a pilot/pioneer area and the introduction of Part 1 of the Commons Act 2006 was publicised by the authority at Defra's request. This is the reason for the increase in applications rather than vexatious applications being made.

v. The Government's commitment to introduce a Local Green Space designation is cited as a reason for reforming the village green registration system. However, the 'commitment' has already been weakened as the designation will not be statutory.

vi. The draft National Planning Policy Framework (NPPF) states at paragraph 131 that the designation will not be appropriate for most green areas of open space, it introduces vague and subjective criteria and will be subject to the presumption in favour of development. It appears to offer very little protection (as it must not undermine investment in jobs or homes) but it could have the effect of downgrading green space that is not so designated.

vii. Unlike village greens, where local people have the right to use the land for lawful sports and pastimes, the designation will not grant access for the public. The term 'green space' is not defined in the NPPF.

viii. This consultation proposes measures which will severely restrict village green applications and trumpets the new green space designation as a 'suite' of measures in mitigation. The designation is not yet in force and given the criteria, proposed mechanism, the lack of public access and the impact of the presumption in favour of development, it should not be regarded as either an additional or substitute tool to protect land for local communities to use.

Objectives of the reforms:

- To strike a better balance between protecting high-quality green space, value by local communities, and enabling legitimate development to occur where it is most appropriate, and
- Ensure that when land is registered as a green, because of the exceptional protection afforded to new greens, the land concerned really does deserve the level of protection it will get.

i. How will legitimate development be defined and what will be the impact on development proposals put forward for land not allocated in a development plan/framework?

ii. We question how the proposals will meet the objectives, in particular the character test does not necessarily demonstrate an unqualified need for protection or that land deserves protection.

iii. How will local authorities access 'net benefits'? (Impact assessment page l)

iv. The proposals provide no process to do this and so the objectives will not be met.

Current system

i. There are problems with the current system, such as delay, complex criteria and the non-statutory nature of the process. These issues need to be addressed to ensure the system is fit for purpose.

ii. In addition, the review is premature as the courts are currently considering elements of the section 15 criteria. The interpretation of locality and neighbourhood within a locality is being considered in the Court of Appeal (*Leeds Group plc v Leeds City Council, Ref A3/2010/1194*) and also in the case of *Paddico Ltd v Kirklees Metropolitan Council*.

Q1 Taking account of the Government's plan for the new Local Green Spaces designation, do you agree that the problems identified with the present greens registration system are sufficient to justify reform –so that the no change option should be rejected?

i. We believe it is not appropriate to link the proposed new green space designation with the review of the village green registration system.

ii. The designation is an entirely new process and there is no evidence to suggest that new areas will be designated. The new designation will not give access to the land for the public to use. The NPPF is currently only a draft document and it appears will not be debated by parliament or have a statutory basis. The proposed process is to designate through local plans and neighbourhood plans but neighbourhood plans are not mandatory and will be very costly to introduce. They have been proposed to allow more not less development.

iii. The NPPF states (paragraph 131) that the new designation will not be appropriate for most green areas or open space and can only be instigated when a plan is prepared and reviewed. This would appear to limit the opportunity for land to be designated. It is not clear how local communities are to engage in the process or how the local authority will decide which areas of land will be designated. The criteria appear extremely subjective, ie land seen as 'special' (paragraph 131). Also, the Impact Assessment of the NPPF (page 81) states 'the presumption in favour of sustainable development will ensure that the new designation does not restrict development'.

iv. In view of the above, it is misleading to use the proposed new designation as justification for reviewing the village green process; they are entirely separate issues.

v. We accept, and indeed have advocated, that some changes are needed but believe these can largely be achieved by amending the guidance and regulations, not the law. We are very concerned that the recommendation is to introduce a package of reforms, ie all or nothing. The majority of our members surveyed did not believe there was sufficient justification to reform the greens registration system.

Q2 Do you support the proposal to streamline the initial sifting of applications?

i. The initial sifting of applications could be improved provided the necessary safeguards as to impartiality, fairness and transparency could be guaranteed.

ii. We support a basic evidence test by which applications are rejected on grounds of insufficient evidence as long as an applicant can submit a better substantiated claim within a specified period. However, there must be detailed guidance for all parties involved. We would be happy to assist with this.

iii. Once an application has been accepted as duly made, there should be early consultations between the registration authority, applicant and landowner to see if agreement can be reached.

iv. The criteria are complex and many applicants struggle with the different elements of the section 15 criteria, which can lead to weak claims being submitted. Clear standards need to be established otherwise there is a risk that applications will be rejected in error or without due consideration. However, there is a concern that streamlining the system would lead to an erosion of the democratic process.

v. Any process resulting in permanent removal of cases without a proper hearing needs to be very carefully thought through.

vi. The responses from our members were equally split. Half supported streamlining if there was a straightforward process to challenge the decision and provided the criteria were clear, with safeguards and oral submissions being allowed where necessary. Those opposed to streamlining were concerned that the registration authority would not make an impartial decision and the increased influence of council officers would erode the democratic process.

vii. In addition, some felt this system of sifting out applications already exists as registration authorities can reject applications which are not 'duly made' early on in the process, and that it would make no difference to 'vexatious' applications as they would just be resubmitted.

Q3 Do you agree that an initial determination should be made by the registration authority after inviting initial comments from the owner of the land affected by the application?

i. We do not agree with this proposal as it stands. Applicants should be allowed to respond to the owner's comments. Applications must be considered on merit and there should be a full investigation of each case.

ii. The majority of our members objected to this proposal. Those that agreed stipulated that there must be an appeal system.

iii. Any new process must be seen to be fair and reasonable and formal guidance should be introduced to ensure national consistency across all registration authorities.

iv. Safeguarding of the applicants' interest must be paramount.

v. How objective will a landowner's 'initial' comments be in the light of constraints on his future use of the land? Also, what influence will resource and budget factors have on the weight given to landowners' comments?

vi. Any rejection should be required to be submitted to a 'greens claim preliminary rejection appeal sub-committee' of elected members to ensure preliminary rejection is consistent with formal guidance.

Q4 Do you support this proposal to enable landowners to make a deposit of a map and a declaration to secure protection against future proposals to register land as a green?

i. We accept that there should be a mechanism closely based on, or even linked with, section 31(6) of the Highways Act 1980, but only if the process is clear and there are safeguards to make the public aware of land which is subject to a declaration.

ii. The declaration should not take effect until two years after it has been made and it should only be deemed to have been made on the date the declaration is publicised.

iii. The majority of our members objected to this proposal believing community interests would be disregarded, it would encourage speculative purchase of land and declarations could be missed by the community.

iv. Those members who agreed with the proposal said a declaration should not be retrospective, interested parties should be able to react, and the declaration should be with the owner and not the land so that if the land is sold the declaration would cease. The declaration must be made public together with clear details of how to challenge it. Declarations should not be capable of being made in respect of land registered as common land.

Q5 Should landowners or registration authorities be required to take additional steps to publicise a declaration, to ensure that potential users know that they have limited time to make an application to register the land as a green? If so, what steps do you propose?

i. Additional steps should be taken to publicise any declaration, sending information to a parish council is not sufficient to protect the public interest. A site notice should be erected and either a dedicated website set up or information published on the council's website. Local groups, such as scouts and guides, should be informed as well as the Local Access Forums.

Q6 Do you support a proposal to introduce a character test to ensure that greens accord with the popularly held traditional character of such areas?

i. We oppose the introduction of a 'character test' to ensure that greens accord with the popularly held traditional character of such areas. The concept misses the point of registration of land as a green and is contrary to the law. Local people have to show that they have established a right to use the land over a 20-year period, in accordance with the section 15 criteria.

ii. The introduction of such a test would be contrary to the objectives of the consultation as it would inevitably lead to delay where the parties involved present additional information that would be both time-consuming and expensive to resolve. It will result in an increased number of cases being referred to the courts.

iii. The test is subjective and ambiguous. Many areas have fenced or partially-fenced boundaries but there are open access points. Many sites include woodland and scrub. It is unreasonable to exclude post-industrial sites which, in some cases, are the only spaces available to local communities.

iv. The tests would be disastrous for the registration of land as greens as many areas that could currently satisfy the section 15 criteria would fail the 'character test' and not be able to be registered, with the local community losing land that they have established a right to use. There could be Human Rights implications on this aspect.

v. The criteria are already complex and failure to satisfy even one element of section 15 leads to failure of the claim. Introducing additional requirements will take more not less time and will not meet the objectives of the consultation.

vi. At present it is possible to register any piece of land, subject to qualifying use. The much loved, out-of-the-way places are just as important as centrally-located areas of land and people's use of these areas is an excellent example of localism.

vii. The overwhelming majority of our members opposed the introduction of a character test on the basis that greens are varied in character and that traditional characteristics are outdated. There is no evidence to justify the need for a character test and it would make the system more complicated and lead to more delay and cost to all those involved.

Q7 Do you agree with the character test in paragraph 5.5.9 above, i.e. that land must be open and unenclosed in character? Do you support the adoption of additional criteria such as those in paragraph 5.5.11 above?

i. We object to this proposal and believe it would be contrary to the public interest. The present criteria are stringent and complex and the introduction of additional tests would make the system unworkable, and would lose rather than maintain public support in the system.

ii. The majority of our members opposed this proposal commenting that a character test would be used to reject otherwise valid applications, and owners could put up a fence or enclose land to prevent applications succeeding.

iii. Additional criteria were also opposed by a majority of our members as they were merely artificial obstructions designed to reduce applications.

Q8 Do you support the proposal which would rule out making a greens registration application where a site was designated for development in a proposed or adopted local or neighbourhood plan?

i. We do not support the proposal and believe there is no justification for introducing it given the CCRI findings. 61% of cases were not triggered by a proposal for development in a plan. It appears that development will be allowed at the expense of protection as a village green.

ii. The Impact Assessment (page 15) has been distorted to show that the positive impacts for development and reducing costs to local authorities are four times higher than for protecting green spaces valued by local communities.

iii. If this proposal is taken forward, reasonable notice of the site being designated for development in a plan must be given and publicised to tell local people that they must submit any green application/evidence within a prescribed time limit.

iv. An overwhelming majority of our members objected to this proposal.

Q9 Do you support the proposal that a greens register application could not be made after application for planning permission has been submitted in respect of a site, or on which there was statutory pre-application consultation, until planning permission had itself been refused or implemented, or had expired?

i. We object to this proposal. More than half of applications in the CCRI report were not triggered by a planning application. We believe there should be more liaison with planning departments in line with the recommendations made by CCRI. Better links should be established between commons registration officers and planning departments. We are aware of applications to develop land registered as village greens; these are unlawful but planners are either unaware of or ignore the protective legislation.

ii. There are inherent dangers with this proposal as has been evidenced by the draft NPPF, that speculative planning applications will be made. Planning applications would be submitted to prevent land being registered as a village green. If there is to be a direct link, applicants should be allowed to make a village green application within a limited time of any planning application being made.

iii. One of the major problems in the planning system is that planning officers frequently do not allow consideration of village green issues (ie use by local people under section 15, or an on-going village green application) to be given as a material issue for planning purposes.

iv. Section 38 of the Planning and Compulsory Purchase Act 2004 states that decisions on planning applications 'must be made in accordance with the development plan unless other material considerations indicate otherwise'. A greens registration claim is entirely consistent with this statutory directive.

v. All material considerations must be related to the purpose of planning legislation which is to regulate the development and use of land in the public interest. The very nature of qualifying use in the case of greens claim demonstrates the public interest. It is a potential breach of Human Rights legislation arbitrarily to rule out greens claims as a material consideration.

vi. If this issue was properly addressed, it would alleviate many of the problems which cause delays.

vii. If this proposal is given effect, no planning application should be permitted to be made where land is designated as an open space or has been awarded the proposed new green space designation in a local or neighbourhood plan, and an application for a village green should be allowed within a prescribed time limit of a planning application being submitted.

viii. We do not agree that land designated as a green space could not be registered as a village green if 20 years' use (under section 15) could be proved prior to that designation, or if the landowner wished to register land voluntarily as a village green to gain protection.

ix. It is not clear what effect this proposal would have on public rights of way claims.

x. An overwhelming majority of our members objected to this proposal on the basis that developers could put in planning applications to thwart potential greens registration and councils cannot be relied upon to protect green space.

xi. The majority did not support all of the proposals in chapters 5.3 to 5.7.

Q10 Do you support the proposal to charge a fee for applications?

i. We do not support the charging of a fee because applications are made for public benefit and there should not be a charge for registering a right that has already been established.
ii. Charging a fee would have deterred the majority of our members surveyed.

Q11 If so, do you support the proposal for refunding the fee where an application is granted?

i. Without prejudice to our opposition to such a fee, we agree to the fee being refunded. However, some members said this would not help as the money for the fee would still have to be raised in the first instance.

Q12 Do you agree that the fee should be determined by the registration authority and that a ceiling should be set at £1,000?

i. Without prejudice to our opposition to such a fee, we oppose the ceiling of £1,000. We believe any ceiling should be much lower, say £200, and that such a fee should be set nationally and not by individual registration authorities. Many applicants come from areas with low incomes whether in the inner city or countryside.

Q13 Do you support the adoption of all the proposals set out in chapter 5.3 to 5.7 above?

i. No, we do not support the adoption of all the proposals set out in chapters 5.3 to 5.7. An overwhelming majority of our members objected to adoption of all the proposals.

ii. To summarise, we agree to a basic evidence test and early sifting of applications subject to the provisos above.

iii. We accept that landowners should be able to make declarations subject to the safeguards above.

iv. We do not agree to the proposal to introduce a character test, or the adoption of additional criteria, as it will not achieve the objectives of the consultation and will lead to more delay, complexity, cost and referrals to the courts. It will result in genuine applications, which would now satisfy section 15 criteria, being rejected.

v. We are opposed to applications being prohibited where land is designated for development in a plan and where a planning application has been made, for the reasons given above. There must be provision for applications to be made within a prescribed period if this is introduced.

vi. If planning authorities allowed greens criteria as a material consideration, it would alleviate some of the issues raised in the consultation.

vii. We oppose the charging of a fee in principle, because village green applications are made for public benefit. If a fee is to be charged, it should be refundable and the ceiling should be low and set nationally.

viii. We believe that the introduction of the proposals as above would be sufficient to address the perceived problems raised in the consultation.

Q14 Do you support the adoption of the character test in relation to the voluntary registration of land as a green, under section 15(8) of the 2006 Act?

i. There is no justification for subjecting landowners to passing a character test for land they wish to register voluntarily as a village green.

ii. There are very few applications and there is no abuse of the system which was introduced to allow owners to dedicate land as a village green. There are no similar requirements for instance where a landowner makes a dedication under section 16 of the Countryside and Rights of Way Act 2000.

Views invited 15 Do you have any other proposals for reform to the greens system which would help deliver the objectives set out in paragraph 1.3.5 above?

The society has submitted various suggestions to ministers over the last two years. We believe changes in regulations and guidance together with the provisions we support (as above) would make the system more efficient, cost effective and transparent.

- We believe the introduction of time scales for every stage of the process would be the most effective method of dealing with concerns about delay. At present the only time limit is the six-week objection period.

- There should be a basic evidence test subject to the provisos raised in response to questions 2 and 3.

- The authority should have the power to dismiss irrelevant objections.

- There should be consultation between the registration authority, applicant and landowner at an early stage.

- There should be much greater liaison between planning authorities and registration authorities and village green use of land should be a material consideration in planning applications.

- We support the recommendations in the CCRI paper

    - Duly made greens applications to be logged with planning departments and planning departments to inform registration authorities of any planning applications affecting a potential green (paragraphs 7.7.1 and 2).
    - Successful greens applications logged with planning department (7.7.3).
    - Local planning authority to consult commons registration officers in preparing local development framework/plan (7.7.4).

- A panel of experts should be set up to avoid the employment of costly barristers to determine applications.

- Consideration should be given to informal hearings and greater consideration of written representations.

- Once an application has been determined, to avoid judicial review, appeals could be considered by the Lands Tribunal or other relevant body.

Views invited 16/17 Do you wish to see any of the reforms set out in paragraph 5.11.1 above addressed in new legislation on greens?
If so, which of these reforms are a priority for action, and what outcome do you seek to achieve?

- We do not believe there is any need to deal with reassigning title to greens vested in local authorities.

- We believe section 29 Commons Act 1876 and section 12 Inclosure Act 1857 allow the provision of certain facilities on land registered as a green where it is 'with a view to the better enjoyment of the green'. There is therefore no need to consider this issue.

- Parking issues do cause problems on village greens. In principle, we would be opposed to granting consent for temporary parking as it may interfere with the rights of local people to use the land. However, it may be considered with very strict conditions.

- Vehicular access over land, including village greens, is extremely complex and the law was completely overturned in 2004 as a result of the House of Lords decision in *Bakewell Management Ltd v Brandwood*. The failure and subsequent repeal of section 68 of the Countryside and Rights of Way Act 2000 illustrates the difficulties with trying to legislate in this area.

- We would ask that consideration be given to the following:

    - Section 14 of the Commons Registration Act 1965 should be properly repealed nationally by national rollout of Part 1 of the Commons Act 2006. It is prejudicial to people who have registered land as greens and are outside the current seven pioneer areas where section 14 has been repealed. Prejudice is also being caused where the registration authority has an interest in the outcome of a decision. At present it is only the seven pioneer areas where an application can be referred to the Planning Inspectorate for determination,
    - Introduction of new powers for local planning authorities to issue enforcement notices in respect of breaches of section 29 Commons Act 1876 and section 12 Inclosure Act 1857. This would be a pre-court option which could then be pursued through the courts or any other prescribed action if the notices are not complied with. This was proposed in the Common Land Policy Statement 2002 (Defra).

- Where land is provided as open space as part of a development (possibly under Community Infrastructure Levy) it should be required to be registered as a village green
- Express power for local authorities to accept withdrawal of applications
- Express power for local authorities to register part of an application area where the criteria have not been satisfied for the whole of the area.

IMPACT ASSESSMENT

Intervention and options:

- **Why is government intervention necessary?**

i. The number of village green applications is stated to have risen to 200. It was estimated (Defra survey 2009) to be 185 in 2009. This is a tiny proportion of all the planning applications received each year; 475,400 in 2009 and 475,500 in 2010.

ii. In the year ending June 2010, 85% of all district-level planning decisions were granted; an increase of 2% when compared with June 2009.

iii. In the year ending June 2010, 71% of planning applications were processed within 13 weeks (Department for Communities & Local Government, Planning Statistical Release 14, September 2010).

iv. Given that all government departments have had their budgets cut, including Defra, we question why money is being spent on a consultation and review when there are so few greens applications and these applications are not preventing a high percentage of planning applications from succeeding.

v. There is no evidence that the number of applications is spiralling out of control. Many authorities have still not had any applications. Even in pilot/pioneer authorities, where Part 1 of the Commons Act 2006 is in force and Defra have encouraged authorities to advertise that various applications can now be made, including under section 15, there has not been a huge increase in applications.

vi. Kent (used misleadingly as an example of cluster and increased applications), appears to have fewer applications outstanding this year than last year. They now only have 15 awaiting determination as opposed to 28 last year. A report by the Head of Countryside Access to Kent County Council's Regulation Committee, 7 September 2011, stated 'There has also been a slight reduction in the number of applications received this year', with one application being received, on average, every six weeks rather than last year's rate of one per month.

Policy objectives and the intended effects:

- 'To discourage applications for, and exclude from registration, sites which fail to deliver net benefits'

i. We would question how the value of open space used by local people and registered as a village green has been quantified. A Defra survey (2011) of people's views on the environment found that 92% of people said it was very important to have public spaces, parks and commons and other green space nearby.

ii. The National Ecosystems Assessment values the health benefits of being near a green space as £300 per annum per individual. There is scant mention of the health value of green space and its monetised value is not expressed.

iii. The biodiversity value of open space is discussed but the potential for biodiversity enhancement of the land, and its lower costs over developed space, is not recognised.

iv. It is very disappointing that all the work that has gone into the Natural Environment White Paper, and Defra's on-going work on green infrastructure benefits, appears not to have been taken into account.

v. Research by the Commission for Architecture and the Built Environment has found 'green space has a proven track record in reducing the impact of deprivation, delivering better health and well-being and creating a strong community'. It also found that the benefits of green space reduced risk of depression and lung disease.

vi. Local people have to go through a complex legal process and would not do so unless they thought the land delivered a net benefit.

Policy Options 1 & 2:

i. It is not clear how implementing all the measures proposed will lead to 'reduced uncertainty', eliminating 'delays to development' when the risks (page 2) have stated that there could be 'unforeseen consequences of measures addressing complex areas of law'. In addition, it could 'discourage potentially successful applications'.

ii. The introduction of all the proposals could lead to more delay and make the system much harder to administer by local authorities.

iii. The net benefit, in terms of cost, is 10.92 for Option 1 and 8.18 for Option 2. There is no significant difference to justify a whole package of reforms.

iv. The benefit is 11.00 for Option 1 and 8.25 for Option 2. There is no significant benefit to justify the measures being proposed.

Section 1 (page 7)

i. The objectives are to strike a better balance between protecting high-quality green space and enabling development. This is completely inappropriate when the Commons Registration Act 1965 and the current Commons Act 2006 have always required long usage of land by local people who have established rights to use the land. These aims have no relevance or relationship to the legislation.

ii. We entirely support (point 4, page 7) the 'wish to improve the operation of the registration system'. This should be the legitimate basis for the consultation.

Summary and preferred options

i. The controversy which village green applications are perceived to attract is used as a reason for reform. However, there are many local government functions that attract controversy, particularly in the planning system where there is no third-party right of appeal. This perception is not a valid reason for reform.

ii. We strongly disagree with the government's view that the registration system is no longer fit for purpose. The existing criteria under section 15 are complex but the process needs restructuring on the basis of the society's proposals to benefit all parties.

iii. The use of the proposed new green space designation being presented as part of a package of measures to underpin reforms to green (but is not to be considered here) is misleading.

iv. For the sake of completeness, the society's response to the National Planning Policy Framework is attached. It includes the society's concerns about the new designation.

Summary Table (page 15)

i. There appears to be no evidence to support the conclusion that a character test would make any difference or achieve the aims of the consultation. There is frequently no single defining character to many town and village greens.

ii. The admission (paragraph 45) that 'some of the measures will affect the ability of a person to apply' and 'have a significant negative impact' is very disturbing. The sole aim is admitted to be about reducing impediment to development.

B1 Potential rise in the value of land

i. No mention is made of the process for exchange land where land is registered as a green under section 16, Commons Act 2006.

B2 Reducing costs to local authorities

i. The withdrawal of the facility for registration authorities to use inspectors provided by the Planning Inspectorate has resulted in an increase in costs where non-statutory inquiries are held. This facility should be re-instated and consideration given to a panel of experts, for instance, former local authority rights-of-way officers, being set up.

B4 Reduced uncertainty

i. The costs of uncertainty would not necessarily be reduced by any measure which reduces the number of applications. Uncertainty will only be reduced by dealing with process issues and introducing time scales.

B6 Reduced costs for applicants

i. We strongly disagree that the application process 'is not likely to impose excessive costs' on applicants. Applicants' costs do vary depending on whether they obtain legal representation. However, some applicants have incurred costs of up to £50,000. In addition, the time spent on collecting evidence and research varies from four weeks to two years.

C2 Deterrence of potentially successful applicants

i. The admission that these measures may deter applications which would otherwise have been granted is very worrying especially as people would have established a right to use the land.

Character Test

i. The admission that this proposed test would be difficult to apply undermines the aims of the consultation to streamline the system. Lord Hoffmann, in The House of Lords Trap Grounds case said, "To say that the registration authority will recognise a village green when it sees one seems inadequate". It will lead to more, not fewer, cases being referred to the courts.

ii. Applications involving valued open space with long recreational usage will inevitably be rejected on the basis of non-conformity with the character test.

iii. Gadsden (The Law of Commons, (page 377) 1988: 'The land over which courts have confirmed rights is quite frequently very different in nature from the typical green, often being enclosed or very extensive in area.'

iv. ‘Some greens are no more than a generous roadside verge, others diverge from the idyllic standard, which serves as a reminder that the history of village greens is a long and complicated one and caution must be exercised in taking formal measures’. (Commons and Village Greens, Denman, Roberts and Smith) 1967.

v. Village greens display a wide variety of features (as can be seen in Defra’s database of village greens) and range in area from very small to over 70 acres.

vi. The universal characteristic is the use which has been made of the village green for lawful sports and pastimes where rights have been established and this must be retained as the determining factor.