

This booklet is written to pass on the knowledge and experience gained in getting a successful Village Green registration for Coombe Wood in Essex.

It is down to the two Ps, PREPARATION and PRESENTATION. Years of diligent preparation can be undone by a poor presentation; equally the best presentation cannot mask poor preparation.

Background

Coombe Wood is approximately 30 acres of ancient woodland in Thundersley, South East Essex to which the local residents had enjoyed unrestricted and unhindered access for as long as anyone could remember. In the woods is the remains of a large pond and in 2002 a planning application was made to restore this and fence it off to be a private fishing pond. Although occupying only a small part of the woods it alerted the local residents to the possibility that the access previously enjoyed could be stopped and the use of the woods would be lost.

A local organisation, Friends of Coombe Wood was formed with the aim of seeing how access and use could be preserved. It was soon realised that no one knew who owned the woods, nor had anyone given it any thought; they were just there and had been used. Investigation showed that Coombe Wood was part of an estate that had been sold off as plot land in 1910, long before compulsory land registration, and there was no one person owning it.

The only way we could see of ensuring freedom of access into the future rested with obtaining registration as a Village Green under the Commons Act of 1965. An application was duly made in 2003 and after a three day public enquiry Village Green status was granted over the southern part (60%) of Coombe Wood in 2007. The inspector concluded that there was insufficient evidence of use over the remainder. A major factor for this was that the local council (Castle Point Borough Council) had requested a low key approach, due to the nature of the land ownership, which was abided by. This somewhat restricted the publicity given to the application and resulted in a less comprehensive gathering of evidence than would ordinarily have been made. The local council confirmed this approach at the hearing and that it had been adhered to.

Subsequent to this a vast amount of evidence of usage over the remaining 40% emerged and it was felt that had this been before the inspector a different conclusion would have been reached.

Accordingly a second application was made in 2008, by a different applicant, for a different 20 year period under the new Commons Act 2006. This was successful and in February 2013 Essex County Council accepted the application thus granting the whole of Coombe Wood Village Green status.

This could not have been achieved without the support and assistance of the local council (Castle Point Borough Council), Castle Point Association of Volunteer Services (CAVS), the Open Spaces Society and the Environmental Law Foundation.

Form an organisation

Do not underestimate the amount of work involved in preparing a Village Green application. The first thing to do is to form an organisation to support an application. Two advantages are gained. First, it makes sense to have many people helping but an organisation can direct and co-ordinate the work. It is amazing how much diverse expertise exists within a community. Second, you gain a degree of authority because people are interfacing with a formal organisation rather than an individual and that makes a big difference.

The organisation needs to be a formal one so you need

- A constitution that lays down the aims and rules of the organisation. Don't go overboard; restrict yourselves to achievable aims like, 'to preserve the right of the local residents to use the land'.
- A meaningful name, we used Friends of Coombe Wood, as the land is known as Coombe Wood.
- Elected officials, we suggest at least a Chairman, Vice Chairman, Secretary and Treasurer. A couple of committee members are also useful.
- To keep formal minutes of meetings, signed and agreed.
- Members, we charge a fee of £5 per household (better than individuals) but also request donations. Many members give an extra £5 and some as much as £25. We have between 60 and 80 households being members.
- A dedicated bank account, most banks offer Community Bank accounts, no interest but no charges either.
- To hold an Annual General Meeting where the Chairman's and Treasurer's reports are tabled and officers elected.
- Headed paper with a nice logo and a contact address, normally that of the secretary.
- To issue news letters to members, we also send newsletters to councillors and other parties who are not members of our organisation but either use or have an interest in the woods as it gives us more visibility in the community. You could leave copies in the local council offices, local pub etc.

Now you have your organisation set up you can join societies that offer help in the area of getting Village Greens registered, like the Open Spaces Society. Since you are a third sector, not for profit, charitable, volunteer organisation you can join your local Association of Volunteer Services. In our case it was Castle Point Association of Volunteer Services (CAVS). These give invaluable help and advice. They won't do it all for you but, for instance, CAVS advised us on formulating a constitution and assisted us with printing. Put 'affiliated to' in the footer of your headed paper.

Sounds a lot of work? It is but so necessary. When you approach organisations for assistance they may well ask who you are and require a copy of the constitution and summary of accounts.

Above all you gain RESPECT and people listen to you.

Remember friends help you, enemies don't, so make friends not enemies.

What have you got to do?

Now you have the organisation in place it is time to consider what you have to prove beyond all reasonable doubt. First, read the exam paper, secondly, read it again. No one passes an exam answering the wrong question or ignoring a question.

You have to show 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'. Each element can be considered in its own right.

Having the community behind you is essential; they can get quite passionate about these things!

Read as many inspectors' reports as possible, especially those that failed, and determine why they did so. What are you going to do to make sure your application does not fail in the same way?

Spreading awareness

Spreading awareness of your campaign is important if you are to get sufficient evidence of use and hopefully recruit members to your organisation. Local newspapers, particularly free ones, are often looking for such stories so give them a call. Do not forget the social networking sites like Twitter and Facebook as a way of 'spreading the word'.

However avoid such terms as 'battle' and 'fight' which can inflame objectors, rather use 'campaign' and 'legal process'.

The locality (or neighbourhood within a locality)

The Commons Act 2006 only confers rights to use the land to the residents of a neighbourhood not to the population as a whole and the establishment of such is often questioned. If you cannot prove a viable neighbourhood the application could be seriously jeopardised.

A neighbourhood implies boundaries. Find lots people who are prepared to come forward and declare usage of the land and who don't want their use taken away; recruit them as members to your organisation if possible. Get a map of the area and put a cross where they live. Hopefully you will get the greatest density closest to the land becoming sparser the further away they live.

Now to draw some boundaries that captures the majority of users. It is no use extending the boundary two miles just to get one user; equally you don't want to exclude 25% of them. Things that make good boundaries are ones that form an impediment to people crossing them to use the land thus, to some extent, isolating the community. Where there is a break between houses is best. It can be difficult to draw boundaries through an unbroken swathe of houses. Examples are

- Parish or ward boundaries
- Main roads, particularly if they are a bus route. A dual carriageway is even better.
- Railway line
- River or stream
- A steep hill
- Open land like a golf course
- Industrial site
- Playing fields to which the public have no access
- School or collage
- Offices
- Factory
- Group of shops

The boundaries should not be straight lines on the map, a mistake we made at first. The Inspector said it is reasonable for a boundary to 'squiggle' about picking up clusters of homes.

For Coombe Wood, to the North, the roads were dead ends, ending in open land which eventually led to a dual carriageway. To the South, the roads were again dead ends, ending in open land leading eventually to a golf course. To the east is a sixth form college and to the West is a steep hill at the bottom of which is the parish boundary which is also a main road with a bus route. Coombe Wood lay neatly in the centre of the neighbourhood. We were lucky in having such easily definable boundaries.

It helps to establish the viability of a neighbourhood if you can show it contains

- Shops
- Restaurant or café
- Chemist
- Churches
- Church hall
- Post office
- Doctors
- Dentists
- Schools
- Nursing home
- Health clinic
- Vet

The neighbourhood we defined for Coombe Wood included most of these.

Make sure you include proof of the above in your submission and presentation.

Our defined neighbourhood was accepted.

Evidence of use

You have to prove use of all of the land by the community over the 20 year period. No one expects every single person to have used every single square inch of the land for the entire 20 year period. So, some people might have used one bit, others another bit, some people might have used it for the first 5 years, others of the last 6 years etc, but for the whole of the 20 year period someone used all of it. It helps if your evidence shows use well before the specified 20 year period.

If an organisation like the Scouts or Guides or local school or Mothers and Toddlers group has used the land; get them on your side. They have a continually changing membership and in the 20 year period hundreds of members must have used the land. Coombe Wood has a local church hall on its boundary and all the community groups operating out of the hall like Scouts, Guides and Sunday School used the land. They estimated that 75% of their membership lived within the defined neighbourhood. Scout and Guide Leaders, even the district commissioner, came and gave supporting evidence at the enquiry of use of the land by their members.

We used 3 methods of proving usage

- **Questionnaire**

Ours was based on an example from the Open Spaces Society but these carry the least weight as they cannot be subjected to cross examination at a public enquiry and, like petitions, can be viewed with a degree of scepticism. Attach a map of the neighbourhood and get people to put a cross where they live and certify that they agree with the boundaries of the neighbourhood. Make sure questions like these are included

- Did you know who owned the land at the time
- Did anyone ever challenge you
- Any fences or signs
- Did anyone give you permission to use the land or did you ever ask for it
- Years of use
- Which bit did you mainly use
- Used for....
- Who else did you see using the land, how many and how often
- Anyone with you
- Age and gender

What you want is a wide range of ages and a wide spectrum of use across the whole land and *not all the same words*. Make sure you impress on the Inspector that you know they carry less weight but they must count for something and should not be dismissed especially as they show such diverse use by the community.

On both occasions we had over 200 completed questionnaires from users which we analysed and produced analyses by age, type of use, area of use etc. This made sure the inspector had this information before without him having to work it out for himself, which cannot be relied upon. We did scrutinise them and rejected those (about 5) which were ambiguous or confusing.

If a questionnaire mentions use by more than one person, say husband and wife, or parents and children it must be signed by all or it will only count as one user.

- **Statements**

Written statements by users of their use and experiences count more than a questionnaire, especially if they are accompanied by photographs showing use of the land. Try and get statements from a range of people, all age groups with widely differing experiences. We had nearly 40 including one from an 8 year old, complete with spelling mistakes. Whilst we did not put words in their mouths, that must never happen, we did scrutinise their statements for inaccuracies and suitability and got the people to correct them where necessary but left anything that reflected their personality or feelings. Leave out ones that don't really help your cause.

If these can be endorsed by a Commissioner of Oaths it is even better.

- **Witnesses**

Greatest weight goes to witnesses who are prepared to read out their statement at an enquiry and be cross-examined on it. Whilst we did not coach them we did explain the procedure to them and made sure they were happy and confident enough to do it and could speak clearly not mumble. We had 26 witnesses at the second enquiry, from a teenager who was doing his A levels but came along to give evidence (we made sure the Inspector was made aware of that) to a guide leader in uniform. From a scout troop leader to a 'little old lady' who simply walked her dog in the woods.

The more witnesses the better even if the Inspector balks at the quantity. Hopefully the questionnaires and written statements will convey the same picture as the witnesses which should be pointed out to the inspector.

Significant use

You have to show use by a significant number of the local community. We added up the homes in our defined neighbourhood and it came to 1500. Given we had some 200 plus questionnaires and the use by the community groups we were looking at over 10% and that is significant.

Equally there may be some areas of the land that cannot be used in terms of footprint but this can be part of the beauty of using the land. For instance in Coombe Wood there is a pond (well you cannot walk on a pond) but it looks nice. There are small clumps of impenetrable brambles but again that is part of the nature of woodland. The House of Lords ruled that even if only 25% of the land was available for lawful pursuits and pastimes that should not be detrimental to registration, indeed the nature of the land may be a major factor in its use.

Lawful pursuits and pastimes

The law will confer on local residents use for those lawful pursuits and pastimes they declared at the time of application. Most sports like bike riding count, so does walking the dog or bird watching or simply children playing. Equally a peaceful wander through the woods counts, but difficult if there are no trees on your application area. Therefor what is possible depends on the topography and vegetation of the area. Coombe Wood is a wood, with streams and brooks running through, it so kite flying is not realistic, but playing hide and seek is. On open land just a walk in the fresh air for relaxation or a sit down to read a book counts.

Make sure you cover all the activities that have taken place remembering that how the land is used may well vary with the seasons like sunbathing in the summer and snowball fights in the winter, so make sure this is covered. Community events like bonfire night are a good example even though they may only be once a year. There is no requirement that an activity must take place throughout the year to count.

You cannot do any work on the land without the consent of the owner; only use it for those lawful pursuits and pastimes that you have engaged in in the past so chopping down trees is not a lawful pursuit.

What does **not** count is using the land as a short cut to get from A to B, which is not using the land. With Coombe Wood, or any other wooded area, there is a tendency for people to make tracks which

they stick to. This could give rise to 'public right of way' claims however use of tracks can be for lawful pursuits and pastimes not just footpath use, it depends on the terrain. It helps if users have left the tracks; children and dog walkers are good at doing this so make sure they have said this. We pointed out that in Coombe Wood tracks tend to fall into disuse and new ones made depending on the season and what vegetation was growing. Fallen trees and branches would make a track unusable and new ones would be made. We had photographic evidence of such disused tracks and recent ones. We also pointed this out to the inspector on his accompanied visit.

As of right and 20 year period

Use has to be 'as of right' and not 'by right'. In other words you did not have permission to use the land, you were trespassing. Use was without force, secrecy or permission. There were no notices up, no fences, and no one ever challenged you. Equally you did not creep about hoping to remain unseen. If, for instance, a land owner told the headmaster of a school that the children could use the land but that was never passed down to the teachers or pupils or parents and the land owner did nothing else that does not make it 'by right', permission has to be communicated down to the users.

Local Councils and other bodies like the Church do make open spaces available to the public but there is often a notice to that effect. Also such spaces may be listed on the council web site (as is the case with Castle Point Borough Council) and the list is available at the council offices. You use these areas 'by right' and they are out of scope of Village Green registration.

The use during the 20 year period has to be unbroken, an application failed recently and one of the reasons was that there was a 3 months period when access was unavailable due to some construction work taking place and the area was fenced off.

Land ownership

It is your responsibility to identify the land owners and mark on map who owns what. The Land Registry will help, for a fee, which is why you need members for your organisation paying a small membership fee.

Village Green registration does not alter the ownership of the land and even if the owner says he will not oppose registration, as did some plot owners in Coombe Wood, you still need to meet the criteria. You cannot apply for Village Green registration on the strength that no one opposes it.

Preparation

Now your organisation has spent hundreds of hours preparing all this evidence make sure that everything is in order, all the Is dotted and ts crossed. You know who is going to support you and who is going to oppose you. You have a good idea of how any opponents are planning their attack and how you will counter them. You have ample proof that every criterion can be proven beyond doubt – hopefully.

We kept organisations such as the Open Spaces Society abreast of our progress to make sure we were on the right track.

In goes the application accompanied by all the evidence, that is where your friends come in, CAVS did thousands of copies for us at a very competitive rate.

Organising the evidence

This is an IT bit. It was most helpful in our second application when we were lucky to have legal representation. You will invariably collect documents and evidence in many different formats. We scanned them all in to the computer, converted them all into pdf format and joined them together into one large pdf file. There are a number of pdf tools available that will convert almost anything into pdf format, allow you to delete or insert pages, and number the pages sequentially. The advantage was that it was easy to hold all the data electronically and restructure it or add bits and then at the press of a button renumber all the pages sequentially. We could send the whole application and evidence to anyone electronically as one file. It was printed from that one file (with every page sequentially numbered) rather than the alternative which was to try and photocopy the loose sheets. It was used in the presentation at the public enquiry.

Funding

Getting funding for legal fees is almost impossible but there are organisations and charities that will help you. We did a complete 'request for funding package' with the background to our case, the history of Coombe Wood, letters of support from our MP, maps, pictures and all the evidence, with analysis, to support our case. We even did a summary of how we would present our case.

On the strength of this we obtained, through Castle Point Association of Volunteer Services (CAVS), a legal review of our application, complete with all the evidence etc, using the Bar Pro Bono scheme. This was done to determine if we stood any chance of success. Following some revision and additional work where the legal team thought we were weakest they thought we had a good chance and would support us so we went ahead with the application which was made by a local resident. She has always said that Friends of Coombe Wood was her support team.

This emphasises the importance of having that formal organisation behind you and affiliating yourself with these other organisations. Then through the Environmental Law Foundation we obtained the services of a barrister who took on our case at a rate we could afford. For this we had to produce evidence of our income and expenditure over the years. We costed the hours of voluntary work we had put in.

Representation

If you can get legal representation, do so, but it can be expensive, see section on funding. We represented ourselves at the first Coombe Wood inquiry but obtained the services of a barrister at a price we could afford for the second. I thought we did a good job but the barrister was brilliant and ably assisted by a team from the Environmental Law Foundation.

Presentation

Next comes the other P, presentation. Not much to say here but some things which stood out in the second Coombe Wood public enquiry.

- Witness organisation

Some 26 people were prepared to stand up and read out their statement and then be cross-examined both by objectors and our barrister. We had to give a chronological list to the inspector of our witnesses. A member of Friends of Coombe Wood had already arranged the day and time for each person, then made sure they were present, we even picked a few up and took them home, so we had an unbroken stream of witnesses. We had a copy of their statement ready in case they had forgotten theirs.

- Venue

Visit the place where the enquiry will be held in advance and familiarise yourself with it. What parking is there, is there a café near for use during the lunch break, do your witnesses know how to get there, see what there is available to help you in your presentation. If there is something get permission to use it. Don't find out all this on the day!

- Overhead projection

The council chamber where our enquiry was held is equipped with 2 overhead projectors and drop down screens with separate computer screens for where the inspector and other officials sat. We got permission to use it from the council and tried it out the week before so we knew how it all worked. This sort of set up is becoming more available now in venues where enquiries are held. If not, do you have access to an overhead projector that you can bring and use?

Our evidence was on a laptop, as one pdf file so we could easily jump to any page, plugged into the screens. As each witness readout their statement it was up on the overhead screens. The public gallery was full of our supporters and rather than listen to someone reading from a sheet of paper (boring), objectors, our legal team and the public gallery all could read it on the overhead screens.

Witnesses were given a laser pointer and when asked where they lived a map of the locality was projected and the laser used to point to their house on the map.

When asked how they entered and exited the area and which part they used a map of the application area was projected and the laser pointer again used.

If you have not got this facility give consideration as to how you are going to get these points across and come prepared. Perhaps a big paper map, hand drawn but reasonably accurate and snooker cue for witnesses to use as a pointer.

The moral is 'use the available technology'

If you are doing it yourself then make sure you bring out all the evidence you so painstakingly collected. When you cross-examine witnesses make sure they do not stray from the point, we had pre-prepared what questions to ask each witness based on their statement. Perhaps they had not been explicit on what area they had used.

Each evening we held a 'council of war' on the day's event. Had the inspector asked for anything, if so get it and make it available for the next day? Did something need to be clarified? Was there something we missed that we could bring up next day? Had a weakness been exposed that needed to be remedied next day? Did something not run as smoothly as it should, if so, improve it next day? Did an objector raise something that we needed to counter?

Our barrister's summing up ran to 8 pages and took half an hour, essentially he went through everything on the lines of 'you have heard how Mr X used the land from x to y for a,b and c' and how..... You need to reiterate to the inspector all the evidence he has heard in support of your application.

The inspector will do an accompanied visit after the enquiry at which time you can point out anything you mentioned in evidence at the hearing but you cannot introduce new things. Make a list of what you want to point out during the visit and make sure it is brought out at the enquiry. For example you might want to point out the tree the scouts used to climb up and install a bird box.