

FOI Transcript – Collingwood Road Village Green Application

- For both the VG applications at Birches and Cootes, was Counsel advice sought? If so, I on behalf of my fellow Trustees request to see the WSCC Instructions to Counsel in each case plus Counsel's resulting Opinion

No, on neither occasion was advice sought from Counsel.

- Was the information that Collingwood Green had been given Asset of Community Value and had been marked as Community Asset land on the original development plans communicated to counsel?

No. Having the status of ACV is not relevant to the legal tests for whether the land in question should be registered as town or village green. ACV status acknowledges the land's value to the community and ensures that, should the land be sold, the community should be offered the opportunity to purchase the land before the sale is opened to the market. It is not a bar to registration as a town or village green, but neither is it a contributing factor in the determination of an application for registration of land as a town or village green. More information can be found at [Assets of community value - House of Commons Library \(parliament.uk\)](https://assets.parliament.uk/libraries/commons-library) and at [What is an asset of community value? | Horsham District Council](https://www.horsham.gov.uk/what-is-an-asset-of-community-value/)

- If counsel was not sought re Birch and Cootes, please give the reasoning as to why it was not sought in those cases but was in our application

In the process of examining the evidence in relation to the Collingwood Road application, the investigating officer considered that there could be a potential incompatibility between use of the land as highway ('by right') and the use of land 'as of right' required for village green registration. Advice was sought from Counsel, acting as an Independent Inspector, as to whether the application could be determined on the papers or whether it was necessary to hold a non-statutory public inquiry. Applications for town and village green registration have to be considered on their own merits. Determination involves an application of the legal tests in the Commons Act 2006 to the facts of a particular case. It is not the same as determinations of planning applications where a decision maker is expected to act consistently (unless there are good reasons not to) in the interpretation of policy. It is open to the registration authority to effect a registration without a non-statutory inquiry, even if there is a dispute as to the factual basis for registration but the registration authority must act reasonably.

Information pertaining to the handling of the Birch Drive and Cootes Green applications is detailed in the Committee reports for each, which have been attached to this response for transparency. In the Cootes Green case, the land was acknowledged as being highway and there is some commentary on that position. In the Birch Drive case, no mention is made of the land being highway in the committee report and no consideration of that status is made.

In neither report is there a consideration of the use of the land as highway ('by right') and the potential incompatibility with the use which qualifies for town or village green registration ('as of right'). As such, the officers in those cases clearly did not perceive that Counsel's advice was required.

- For both the VG applications at Birches and Cootes, please provide the WSCC decision-making written reasons for both the decisions to award VG status to both, including WSCC's review of the actual use of the land by the community prior to the registration (which presumably was part of the application when considering the applications), the results and conclusions thereof. We assume that these must be in writing.

Please refer to the Committee Reports for both registrations attached to this response and their appendices.

- WSCC's reasons for distinguishing my application for VG status and Birch and Cootes historic registrations as VG.

The investigating officer has not distinguished the Collingwood application for town and village green status as against the Birch Drive and Cootes Green applications. In the processing of the Collingwood Road application it was found that the land was maintainable highway and a question was raised over whether the use of the land as highway ('by right') was compatible with registration of the land as a town or village green, which requires the use of the land to be 'as of right'. Advice was sought from Counsel, acting as an Independent Inspector, as to whether the application could be determined on the papers or whether it was necessary to hold a non-statutory public inquiry. The advice (in summary and which has been provided to interested parties) was that the application is bound to fail on account of there being no use of the application land which can qualify as 'lawful sports and pastimes' for the purposes of acquiring a village green prescriptive right. This is because all the activities which local residents have carried out on the land have been lawful uses of the highway verge and thus they undertook those activities by virtue of a pre-existing right they had ('by right'). They were not trespassers. Even if there were some activities which were not lawful uses of the highway, they would amount to an obstruction or nuisance and so would not qualify as lawful sport or pastimes in any event or would be too trivial or sporadic to amount to the assertion of a town and village green right.

The distinguishing factor is only that the incompatibility between use 'by right' and use 'as of right' has been questioned and acted upon in the current case, whereas it was not in the earlier cases. In the context of the undetermined Collingwood Road application however, it cannot be the case that because an error may have been made in relation to Birch Drive and Cootes Green, that those decisions should be followed.

The registration authority has properly sought independent advice and has acted reasonably in doing so. The matter will be reported to the Planning and Rights of Way Committee with a recommendation for a decision not to register the land as a town or village green.