

ERMINGTON PARISH COUNCIL

The Minutes of Ermington Parish Council Meeting held remotely due to the coronavirus pandemic Friday 15 January 2021 at 7.30 pm

Present: Cllrs Denis Onley (Chair), Ian Creese, John Dunlop, Steve Yates, Claire Cross
County Councillor Richard Hosking (*from 7.45 pm to 8.03 pm*)
District Councillor Tom Holway (*from 7.45 pm to 8.05 pm*)
Teresa Drew (Parish Clerk and Responsible Financial Officer)

Parishioner(s) / Visitor(s): 2

124/2020 APOLOGIES FOR ABSENCE - None

125/2020 DECLARATIONS OF MEMBERS' INTEREST(S) IN RESPECT OF ANY ITEM ON THIS AGENDA

Cllr Cross declared an interest in agenda item 10 Planning.

126/2020 PARISH COUNCILLOR VACANCIES

There are currently five vacancies – no applications have been received since the last Parish Council meeting.

The notice advertising vacancies can be seen on parish noticeboards, on the website and in the parish magazine.

**127/2020 REPORT FROM DEVON COUNTY COUNCILLOR RICHARD HOSKING, INCLUDING
OUTSTANDING ITEMS FROM PAST MEETINGS**

1. We are now in another lockdown. This tightening of restrictions is due to a sharp increase in cases, partly as a result of a new variant of the virus that spreads more prolifically (by bouncing). The danger is that NHS resources that have become stretched through staff illness may become overwhelmed. Visit www.gov.uk for advice.
2. The good news is that two new vaccines have received approval for use in the UK and the first doses of the Oxford vaccine were delivered in early January.
The AstraZeneca produced Oxford vaccine is easier to store and thus easier to deliver, and the Government is accelerating the vaccination programme as fast as possible. The ambition is that the delivery of immunity to the vulnerable through vaccination will overtake, reduce and contain the spread of the new variant virus, however we must remember that immunity takes at least a fortnight to establish following vaccination.
The Moderna vaccine developed by a company in the US has been approved for use in the UK and will be available in the Spring.
3. There have been 1,758 cases of Coronavirus confirmed in Devon in the week to 10th January, bringing the total number of confirmed cases to 15,724. Sadly, there were 26 deaths confirmed in the County in the same week.
4. Schools are now opening only for vulnerable children and those of key workers, to be reviewed on 14th February 2021. Tuition will be delivered online. Additional funding has been made available to provide those in need with the hardware to view content on the internet.
5. The Government will be supporting families that qualify with free school meals and anyone facing hardship should contact <http://devoncf.com/apply/community-food-programme-2/>
6. A third round of hardship financing was announced on 11th January. <https://www.devon.gov.uk/coronavirus-advice-in-devon/document/covid-19-fund/>

I have not been advised of any change in the e-mail support Neil.Hawke@southwestdevon.gov.uk. and helpline telephone number (01803) 861297.

Continued/....

7. The Chancellor has announced £4.6 billion in new lockdown grants to support businesses and protect jobs.
- a) The introduction of one-off top-up grants for businesses forced to close in the retail, hospitality and leisure sectors with grants worth up to £9,000 per property.
 - i) Businesses with a rateable value of £51,000 or above: £9,000
 - ii) Businesses with a rateable value between £15,000 and £51,000: £6,000
 - iii) Businesses with a rateable value of £15,000 or below: £4,000
- This one-off grant is in addition to the existing monthly grants of up to £3,000 per month for businesses obliged to close.
- b) A further £594 million is also being made available for Local Authorities and the Devolved Administrations to support other businesses not eligible for top up grants.
8. A further reminder that guidance on how to obtain financial help is available to Parishioners through;
- a) the Citizens Advice Bureau 0344 411 1444
and soft touch signposting for businesses through;
 - b) the Heart of the Southwest Local Enterprise Partnership 03456 047047
Saturday and Sunday 10:00am to 4:30pm.
9. A huge thank you to all of our volunteers throughout South Brent & Yealmpton Division who are still, nearly a year after the announcement of the pandemic, helping the vulnerable who are isolating or quarantined as a result of Coronavirus.
10. We have not been notified of any variation in the recognisable symptoms of the virus;
- a) temperature 37.8 degrees plus
 - b) new, continuous cough
 - c) loss or change in sense of taste or smell.
11. Hands, face and even more space essential to contain the spread in the next few weeks as the race between virus and vaccination accelerates. Please stay at home unless your journey is essential.
12. Please remember to exercise during lockdown
13. Broadband. Connecting Devon and Somerset, with support from DCMS, have just before Christmas signed new contracts with three separate suppliers - Airband, Truespeed and Wessex Internet, that will deliver full fibre connectivity to 56,396 homes and businesses across six procurement lots within Devon and Somerset in phases between 2021 and 2024. These contracts represent public funding of £36.8 million including £12.3 million from local authorities and the Heart of the South West LEP. Current total delivered: 350,631 (85.37%).
14. Recycling Centres
- Household Waste Recycling Centres will remain open through lockdown, however the resale shops will be closed.
- The winter opening hours are;
Monday to Friday 9:00am to 4:30pm
Saturday and Sunday 10:00am to 4:30pm.
15. The United Kingdom has now largely completed the transition and emerged from the European Union with a Trade Deal.
- a) How to Import
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/910155/How_to_import_goods_from_the_EU_into_GB_from_January_2021.pdf
 - b) How to export
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/927051/How_to_export_goods_from_GB_into_the_EU_from_January_2021.pdf

127/2020 REPORT FROM DEVON COUNTY COUNCILLOR RICHARD HOSKING, INCLUDING OUTSTANDING ITEMS FROM PAST MEETINGS (continued)

16. I have received an enquiry from a parishioner concerning the footpath adjoining the slipway from Endsleigh junction to the A38 overpass. I am advised that the lion's share of this footpath is not in my Division. Those concerned should contact Cllr Roger Croad. I will happily join with Roger if he wishes to campaign for this as a project. I anticipate that the Ivybridge Town Council may be interested in lobbying for this too.
17. I have written to the County asking for more detail of the tree planting scheme adjacent to the A3121. My assumption is that they are considering the principle before producing a detailed scheme.
18. Westlake. I have written to the Flood Management Team requesting their involvement with the flooding issues at Westlake. The immediate response is that we need to have threat to life or internal flooding to inspect. Cllr Creese has kindly responded with his knowledge of property flooding and I await a response. I anticipate we may have to wait for the lifting of lockdown.
19. We have now received the decision of the County Solicitor on the application for an area of land to be designated as a Village Green. I understand that the application was refused as the land had been used by permission rather than "as of right" and this concurs with my understanding of the issue.
20. The covers on Town Hill should be dealt with eventually by Skanska (or M Group who have acquired the contract with the Business of Skanska). The covers are completely stuck. There is a large backlog of works of this type so may take a while to complete.
21. Pleased to answer any questions.
22. Wishing you all a very Happy New Year

090/20 Blocked drains on the left-hand side of Town Hill and Chapel Street, grate needs to be removed to assess the situation. DCC Highways have it on their list of jobs.

090/20 River Erme erosion A3121 - aerial survey is due, when completed an assessment of movement of the riverbank will be confirmed.

090/20 Flooding Westlake – Cllr Hosking to waiting for a response from DCC Highways, but due to the COVID restrictions unable to have a site meeting.

090/20 River Erme erosion A3121 – no further update.

090/20 Playing field application to be a Village Green. See Devon County Council Solicitor's decision attached.

128/2020 REPORT FROM DISTRICT COUNCILLOR TOM HOLWAY, INCLUDING OUTSTANDING ITEMS FROM PAST MEETINGS

Businesses in need of financial grants are being encouraged to come forward and apply via a new much simpler process.

Leisure centres had closed.

129/2020 PUBLIC OPEN FORUM - Questions and Comments from Members of the Public to Parish Councillors, County and District Councillors

Clerk reported during November 2020 = 0 crimes were reported In Ermington Parish.

Cllr Cross has a volunteer for an Ermington Primary School Lollipop person.

Cllr Cross – has been asked to write an article for the parish magazine on what the Parish Council is doing. Resolved Cllr Cross will submit an article. **ACTION: Cllr Cross**

130/2020 IDEAS TO REDUCE SPEED OF VEHICLES/ TRAFFIC CALMING AND PEDESTRIAN SAFETY THROUGH THE VILLAGE

- Quotes for 20 mph speed limit road signs for the village locations – **Cllrs Yates**

- Ermington Primary School to be asked to design “20 mph is plenty” signs – **Cllr Cross – awaiting a response from the Primary School**

- Update on flashing speed sign near the Ermington Store and More from street lighting department – **Cllr Creese - Street Lighting confirmed there is power but the sign itself has failed, so will be replaced.**

131/2020 REPAIRS TO READING ROOMS AND THEIR FUTURE

Cllr Creese had received a breakdown of costs from two of the three contractors which had been circulated to Councillors. The third building contractor did not wish to pursue the project.

Complete Carpentry & Construction Ltd - £7,100.00 + vat @ 20%

AMBC Building Contractors Ltd - £ 6,550.00 + vat @ 20%

Resolved to ask AMBC Building Contractors Ltd if the repairs could be carried out during school holidays and road closure would have to be arranged to carry out the necessary repairs. If AMBC Building Contractors could not carry out the repairs during school holiday, ask Complete Carpentry & Construction Ltd. **ACTION: Cllr Creese**

132/2020 APPROVAL OF PARISH COUNCIL MEETING MINUTES

Resolved the minutes of Ermington Parish Council meeting held on 9 December 2020 would be signed by the Chair.

133/2020 PLANNING

Cllr Cross left the Zoom meeting at 7.43 pm.

Reference: 4244/20/HHO

Proposal: Householder application for single storey rear extension

Site Address: 2 Erme Bridge Cottages, Ermington, PL21 9NN

Recommendation: Object – it is a conservation area with a modern extension which is not in keeping with the historic frontage of the building. One of the pictures is labelled incorrectly in the planning application. The hedge is growing over the highway, impeding the view points and causing danger to road users so should be reduced.

Cllr Cross returned to the Zoom meeting at 7.52 pm.

Planning Decisions

APPLICATION NUMBER: 3313/20/FUL Ermington

LOCATION: Woodcock Barn Burraton PL21 9JZ

PROPOSAL: Block of three stables and tack/feed room to provide accommodation for horses and sheep

DECISION: Conditional Approval

APPLICATION NUMBER: 2738/18/FUL Ermington

LOCATION: Richmond Place Central Avenue Lee Mill

PROPOSAL: Erection of six small business units for Classes B1, B2 and B8 Use including parking, turning and alterations to access

DECISION: Conditional Approval

134/2020 FINANCE

It was resolved to approve the following payments:

Description	Gross	VAT	Nett
Clerk's Salary - December 2020	£606.34	-	-
EDF Energy – monthly Direct Debit – December 2020	£24.00	£1.20	£22.80
Annual subscription to Ivybridge and District Association of Local Councils	£7.00	-	-
Dart Fire Protection – servicing of Reading Rooms, fire extinguisher	£31.32	£5.22	£26.10
Reimbursement to Clerk for purchases from Greenham – 4 x road signs, 6 x cones for Road Warden	£221.73	£44.35	£266.08
db Computer Repairs – update to website December 2020 and January 2021	£60.00		

RECEIPT(S) – None

GRANT REQUEST - Ermington Village Fund - purchase of LED lights and three timer switches for Christmas display in the village £268.76 – Resolved to pay the purchase of lights and switches. **ACTION: Clerk**

Resolved to send a thank you to the Ermington Village Fund for the village Christmas display. **ACTION: Clerk**

135/2020 REPORTS ON LOCATED AREAS OF RESPONSIBILITY:

- Churchyard Committee - **Cllr Dunlop** – *no meetings have taken place. Awaiting a response from the Churchyard Committee to our offer of samplings and help planting, to create a hedge along the Churchyard boundary fence to improve biodiversity and create a wildlife corridor.*
- Ermington Play Park & Climate Change = tree planting & play equipment - **Cllr Cross** – *the Parish Tree Warden is counting the saplings and which species. Any extra saplings to be offered to the Churchyard Committee and land owners. Rob Sekula SHDC will be receiving design ideas to submit to a panel of which Cllr Cross will be involved, to look at which design is suitable for Ermington Play Park.*
- Reading Rooms prior to opening for hire, cleaning costs – **Clerk** - *to arrange PAT testing and cleaning once COVID restrictions have been lifted.*
- Road Warden Scheme/Review of Parish Salt Bins – **Cllr Creese** – *Nick Colton DCC Highways has been contacted, requesting the salt bin in Westlake to be returned to its original place and replenished. DCC Highways could not supply a grit bin to the “The Spires”, Ermington but salt bags can be requested. All other DCC salt bins are now full.*
- Parish footpaths, Footpath from Higher Keaton to Fernham and cycling routes – **Cllr Yates**
- Allotments – **Cllr Yates** – *seeking land within the parish which can be used for allotments. There had been a suggestion of using the land below “The Spires”. Following last year’s consultation about its future, the residents wanted the area to continue to be lightly managed as a wildlife area.*

136/2020 MODBURY CROSS WOODLAND PLANTING – see attached information from Devon County Council

Cllr Onley enquired why DCC Highways had purchased four specific plots and not all of the land, which would include the river bank. Cllr Hosking thought that only the land adjacent to Modbury Cross would be purchased to deal with the highways plan. Cllr Hosking has asked DCC for more detail and the plan for the land. **ACTION: Cllr Hosking**

Resolved, Cllr Onley will contact DCC Highways, to request the Parish Council is involved in the planning for the Modbury Cross Woodland creation scheme. **ACTION: Cllr Onley**

137/2020 CORRESPONDENCE TO NOTE

- SHDC - Have Your Say on the Interim Devon Carbon Plan – *information currently available on Parish website – Resolved Cllr Onley will respond.*
- DCC - New free courses for Devon adults – *information currently available on Parish website*
- Cllr Holway - Avian Influenza housing order
- DCC - Temporary Traffic Notice - CHAPEL STREET, Ermington (TTRO2138203) – *information currently available on Parish website*
- DCC - Devon unlikely to see a return to Tier 1 before Christmas as fall in positive cases slows
- DCC - Trading Standards consumer news
- SHDC - Can your residents help us test our website? – *information currently available on Parish website*
- DCC - Modbury Cross Woodland Creation- consultation
- SHDC - Have Your Say on Housing Priorities Across the South Hams and West Devon – *information currently available on Parish website*
- Cllr Hosking - Coronavirus briefing
- Cllr Hosking - Christmas Bubbles, Vaccines, NHS Apps, Free school meals holiday voucher scheme
- Devon Communities Together - supporting local communities in Devon to address the Climate Emergency

137/2020 CORRESPONDENCE TO NOTE (continued)

DCC - District Council Committed to Climate Change – *information currently available on Parish website*
SHDC - Coastal Erosion Challenges at Beesands – *information currently available on Parish website*
SHDC - South Hams Housing Strategy Consultation Launch
Mr Roberts City Cycle Couriers - Clearance Of Drains
DCC - Devon sees rise in cases, a smaller, shorter Christmas is safer and the vaccination roll out continues
Cllr Holway - SCC Weekly Newsletter 14.12.2020
SHDC - 2021/22 Local Government Finance Settlement: Technical Consultation
DCC - A379 Fancy Cross (nr Modbury) - Night-time Road Closures – *information currently available on Parish website*
DCC - Devon's case numbers rise again, tightening of Christmas restrictions and a New Year message of hope
SHDC - Thank you and Please Share
Cllr Hosking - A379 Fancy Cross Embankment, Near Modbury - Repair Scheme – *information currently available on Parish website*
Zurich - In case you need us this Christmas
Cllr Hosking - Devon to move up to Tier 3 from midnight tonight
Office of the Police and Crime Commissioner - Covid Restrictions - What you can and cannot do in a Tier 3 area
DCC - Happy New Year to you all and an opportunity to participate in Natural England's Countryside Code Survey
Cllr Hosking - Prime Minister announces national lockdown
Cllr Hosking - Members' COVID-19 Bulletin: 8 January 2021
Devon Communities Together - Important Covid-19 Update from Devon Communities Together - 8th January 2021
DCC - Commons Act 2006: Section 15 Land at Ermington Park Fawns Close Ermington PL21 9NB
DCC - INVESTING IN DEVON GRANT - Project No: 995 - Ermington Community Hall - Refurbishment of Reading Rooms

Email from parishioner - A3121 Flooding near Flete Eastern Lodge – information passed to Cllr Hosking
Email from a property owner in the parish – querying the future/repairs of Reading Rooms. Clerk has responded stating repairs are being considered to the lower rooms. Cllr Yates will inform the owner of the planned repairs to the Reading Rooms. **ACTION: Cllr Yates**
Email from parishioner - junction of Ermington road where it joined the bridge at Ivybridge slip road - proposed changes to the Ermington road/Ivybridge Plymouth slip road see 1 December 2020 notes. *Resolved to support parishioners' concern in connection with the footpath adjacent to the slip road from the proposed work towards the Plymouth bound A38. The regulation footpath width has now been enlarged considerably for safety reasons. As the footpath is used considerably more by families, children, cyclists and large mobility scooters, request the footpath is upgraded to comply with safety regulations as there is room to do so. ACTION Clerk to email Cllr Roger Croad and copy to Cllr Hosking and Ivybridge Town Council.*

Ros Davies DCC - Parish Paths Partnership in Ermington – email sent to Cllr Yates.

138/2020 TO CONFIRM DATE OF NEXT PARISH COUNCIL MEETING

The next Parish Council Meeting to be held remotely on Zoom due to the Coronavirus pandemic will take place on [2 February 2021](#) at [7.30](#) pm.

Meeting closed at 8.40 pm.

Denis Onley

.....
(Ermington Parish Council Chair)

Date: 2 February 2021

Agenda and minutes can be viewed on the Ermington Parish website
<http://www.ermingtonparish.com/parish-council/archives>

To report issues to the local Police. Members of the public who have a non-urgent matter to bring to the attention of their Local Policing Team, the easiest way of contacting them is
<https://www.devon-cornwall.police.uk/your-area/teams/ivybridge/Overview>
or
the contact form: <https://www.devon-cornwall.police.uk/your-area/teams/ivybridge/Contact>

To report highway issues - <https://www.devon.gov.uk/roadsandtransport/report-a-problem/>

Find out about possible delays due to roadworks in Devon via an interactive map - <https://apps1.wdm.co.uk/Live/Devon/PBLC/PIP/Map.aspx?cg=sws>

SHDC website to report full bins etc. - <https://apps.southhams.gov.uk/webreportit> - click on report from drop down menu.

- 7 JAN 2021



Parish Clerk
Ermington Parish Council
Orchard Barn
Higher Keaton
Ermington
Devon PL21 0LB

County Solicitor
Legal Services & Communications
County Hall
Topsham Road
Exeter
EX2 4QD
DX 744970 Exeter 31

Our Ref: PLU/New Land 55
Your Ref:

Tel: 01392 382937
Email: landcharges@devon.gov.uk
Fax: 01392 382286

05 January 2021

Dear Sirs

**Commons Act 2006: Section 15
Land at Ermington Park Fawns Close Ermington PL21 9NB**

I am writing to you as the Parish Council has previously commented on the above application to register the land described as a village green. The application has been determined by the Commons Registration Authority.

The Commons Registration Authority has rejected the application. I have enclosed a copy of the report and legal advice received from Francis Taylor Building.

A copy of the decision will appear on the County Councils website <https://www.devon.gov.uk/environment/common-land-and-town-and-village-greens/public-notices>

Yours faithfully

A handwritten signature in black ink that reads "Paul Uren".

PAUL UREN
for County Solicitor

Textphone 0845 1551020
www.devon.gov.uk

Chief Executive Phil Norrey

**COMMONS ACT 2006 SECTION 15
ERMINGTON PARK FAWNS CLOSE ERMINGTON**

The Application

Devon County Council as the Commons Registration Authority ("the CRA") has received an application affecting land known as Ermington Park, Fawns Close, Ermington ("the Application Land") from Mrs Cross on behalf of the Friends of Ermington Park (both referred to within this report as "the Applicant") under Section 15(2) of the Commons Act 2006 ("the Application").

15 Registration of greens

- 1) Any person may apply to the Commons Registration Authority to register land to which this Part applies as a town or village green in a case where subsection (2) applies.
- 2) This subsection applies where: -
 - a) 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 twenty years; and
 - b) they continue to do so at the time of the application.

The Application has been publicised as specified under Regulations 20 and 21 of the Commons Registration (England) Regulations 2014 giving a period of 42 days for representations to be submitted.

Representations

The CRA has received representations during the consultation period from South Hams District Council (SHDC), Ermington Parish Council (EPC) and Mr Holliday, a resident of Ermington, as detailed below (together, the "Objectors").

SHDC have objected to the Application as follows: -

The Application Land was originally acquired by the Rural District Council of Plympton St Mary ("RDC") for the purposes of the Physical Training and Recreation Act 1937 under Section 4.

"A local authority may acquire, lay out, provide with suitable buildings and otherwise equip, and maintain lands, whether situate within or without their area, for the purpose of gymnasiums, playing fields, swimming baths or bathing places holiday camps or camping sites, or for the purpose of centers for the use of clubs, societies or organisations having athletic, social or educational objects, and may manage those lands and buildings themselves, either with or without a charge for the use thereof or admission thereto, or may let them, or any portion thereof, at a nominal or other rent to any person, club, society or organisation for use for any of the purposes aforesaid."

Section 4 was repealed by section 81 of and Schedule 2 to the Local Government (Miscellaneous Provisions) Act 1976 and replaced by section 19 of the 1976 Act. Sub-section (5) of that Act provided that

(5) Any property which, immediately before the date when this subsection comes into force, is held by a local authority for the purposes of section 4 of the Physical Training and Recreation Act 1937 shall on and after that date be held by the local authority for the purposes of this section.

Section 19 of the 1976 Act provides:

(1) A local authority may provide, inside or outside its area, such recreational facilities as it thinks fit and, without prejudice to the generality of the powers conferred by the preceding provisions of this subsection, those powers include, in particular, powers to provide—

(a) indoor facilities consisting of sports centres, swimming pools, skating rinks, tennis, squash and badminton courts, bowling centres, dance studios and riding schools;

(b) outdoor facilities consisting of pitches for team games, athletics grounds, swimming pools, tennis courts, cycle tracks, golf courses, bowling greens, riding schools, camp sites and facilities for gliding;

(c) facilities for boating and water ski-ing on inland and coastal waters and for fishing in such waters;

(d) premises for the use of clubs or societies having athletic, social or recreational objects;

(e) staff, including instructors, in connection with any such facilities or premises as are mentioned in the preceding paragraphs and in connection with any other recreational facilities provided by the authority;

(f) such facilities in connection with any other recreational facilities as the authority considers it appropriate to provide including, without prejudice to the generality of the preceding provisions of this paragraph, facilities by way of parking spaces and places at which food, drink and tobacco may be bought from the authority or another person;

and it is hereby declared that the powers conferred by this subsection to provide facilities include powers to provide buildings, equipment, supplies and assistance of any kind.

(2) A local authority may make any facilities provided by it in pursuance of the preceding subsection available for use by such persons as the authority thinks fit either without charge or on payment of such charges as the authority thinks fit.

SHDC, who took over the statutory functions of the RDC, have provided a copy of the Conveyance dated 29 March 1973 which cites the purpose of the acquisition as being for the purposes of the Physical Training and Recreation Act 1937 under Section 4.

SHDC (or its predecessor, the RDC) laid out the Application Land in compliance with the statutory requirements, which consists of amenity land, a skate park, a play park and space which regularly accommodates formal football and cricket matches. SHDC have also provided photographic evidence confirming there are also a number of signs prohibiting activities such as “no dogs” and “no ball games”

EPC have objected to the Application on similar grounds to SHDC with reference to the purpose of the original acquisition by the RDC and the signage referred to above prohibiting certain activities.

Whilst accepting the value of the Land as a valued amenity, there was one objection to the Application by a third party on the grounds of limited availability of parking and a suitable location for whole village gatherings within the village.

There are no Public Rights of Way shown on the Definitive Rights of Way Map crossing the Application Land.

As specified under Regulation 25(3) of the Commons Registration (England) Regulations 2014, the Applicant was provided with a copy of the representations referred to above on 24 October 2018 and provided a written response to those representations on 29 November 2018. The Applicant's response is summarised below as follows:

- The Applicant claims the Application Land is mainly used for informal recreational activities rather than booked for more formal sports activities such as football and cricket.
- The Applicant has acknowledged that the use of the Application Land for the 2018 annual Ermington Summer Fair was the first time SHDC had formerly acknowledged the use of the Application Land for the same.
- Ermington Primary School and Pre School use the Application Land in an "ad hoc" way throughout the year. Dog owners exercise their dogs on the Application Land and meet other people with dogs.
- People meet on the Application Land to exercise and reflect.

The Applicant does not think the residents of Ermington equate Ermington Park with a sports and recreation ground as SHDC and EPC claim. The Applicant therefore believes the Application Land has been used 'as of right' as opposed to "by right..."

The CRA sought Counsel's advice in determining this Application. The advice from Counsel was clear and unequivocal in advising the CRA that the Application Land should not be registered as a town or village green. A copy of Counsel's advice is appended to this report and was sent to the Applicant on 16 October 2019, along with a draft report on behalf of the County Solicitor recommending that the CRA was of the view that the Application failed to meet the requirements for registration as a town or village green under s.15(2) of the Commons Act 2006 on the basis that the use of the Application Land by the inhabitants of the relevant locality has been "by right" and not "as of right".

Oral Representations

In accordance with Regulation 27(7)(a) of the Commons Registration (England) Regulations 2014 the Applicant was given an opportunity by the CRA to make oral representations and the CRA met with the Applicant at County Hall on Thursday 6 February 2020. The Applicant provided the following oral representations, which are summarised below:

The Applicant confirmed they could provide evidence that the Application Land had been used 'as of right' and not "by right" for the following uses:

- informal football and cricket matches

- children playing
- dog walking
- the Ermington Summer Fair
- local skate park; and
- use by the local school for ad-hoc events such as sports days.

The Applicant acknowledged that SHDC had requested payment in 2018 for the use of the Application Land for the Ermington Summer Fair. In addition, it was also acknowledged that the Ermington Summer Fair had only recently been held on the Application Land. Therefore, the Applicant was unable to show that the Summer Fair had been held on the Application Land for the time period required under section 15(2) of the Commons Act 2006 (whether payment had been made or not).

The Applicant acknowledged that they had applied for an EU grant to create the skate park upon the Application Land and had obtained the consent of SHDC for the construction and use of the same upon the Application Land. Therefore, the use of the Skate Park cannot be said to be "as of right".

The Applicant confirmed the Application Land has not always been fully enclosed, as there is no gate within the boundary of the Application Land located next to an adjoining residential housing development. This, in itself, is not inconsistent with the use of the Application Land by SHDC for the purposes under which it is claimed to be held.

The Applicant also felt that a change of Councillors at Ermington Parish Council required the CRA to offer the Parish Council a further opportunity to make representations on the Application. This would allow the views of the new Parish Council (which differ from the old Parish Council) to be heard. The CRA did not feel this to be necessary as Ermington Parish Council had already been provided with an opportunity to respond to the Application in accordance with the relevant legislation and had done so.

During the oral representations, the Applicant requested a further opportunity to provide further evidence of the use of the Application Land "as of right". The County Solicitor considered the Applicant's request and on the 20 February 2020 the Applicant was given an extension of time to submit further written evidence in support of the Application. Any evidence provided by the Applicant in support of the Applicant's claim that the Application Land had been used 'as of right' would be sent to the Objectors, who would be offered a further period of time within which to comment on the further evidence provided.

Further representations

The CRA received correspondence from the Applicant by email on 17 March.

The Applicant's response is summarised below:

1. The CRA should ask SHDC to provide relevant documentary evidence to support the claim they have managed Ermington Park under the Physical Training and Recreation Act 1937,
2. The Applicant offered to ask Ermington Parish Council to reconsider their response to the Application, as since the Parish Council elections in May 2019, the composition of the Council has changed and now includes many of its supporters.

3. The CRA should ask SHDC to provide evidence of publicity informing organisations and local people they can book the Park 'by right' for sports and recreation purposes and seek financial accounts to show sports clubs, local schools & local people have paid to do so, over the preceding 20 years, not just the 2019 Annual Fair
4. The CRA should consider challenging the SHDC claim that the Park is an enclosed space, given the availability of photographic evidence that it is not fully enclosed but open at one side which would not restrict others from using it 'as of right'. Also, the boundaries that are provided to the housing, River Erme & A3121 road, have not been provided by SHDC, but by others, sometimes through local fundraising or pre-date the Park
5. Should the CRA decide to make a decision not to register the Park as a Village Green without critically challenging the claims of SHDC, the Applicant believes this may be considered 'maladministration'.

The CRA did not consider the Applicant's response to have provided any further evidence to satisfy the requirements of section 15(2) of the Commons Act 2006 that any such use of the Application Land has been 'as of right'. There is no evidence that the formal cricket and football pitches have been used formally without payment for the time period required by s.15(2) of the Commons Act 2006. Indeed, the Applicant stated in their original representations that the pitches are used on an "informal" basis, which is not inconsistent with the use of the Park for the purposes under which it was acquired and continues to be held by SHDC. Similarly, there is no evidence that the Ermington Summer Fair has been held on the land without payment for the relevant time periods. Nor does the lack of a boundary gate amount to sufficient evidence that the park is being used by the local inhabitants "as of right"

Conclusion

The CRA has reviewed the application and concludes as follows:

SHDC have provided evidence (which is also consistent with representations made by EPC) that the Application Land was acquired under Section 4 of the Physical Training and Recreation Act 1937 ("PT&RA 1937") By section 19 of the Local Government (Miscellaneous Provisions) Act 1976 ("LG(MP)A 1976") land previously held under section 4 of the PT&RA 1937 was automatically appropriated and held under the S19 of LG(MP)A 1976. Therefore, following the decision of the Supreme Court in the leading case in this area of law, R (Barkas) v North Yorkshire County Council, land held by an authority pursuant to a statutory provision (in this case Section 4 of the PT&RA 1937, as re-enacted), is used by members of the public under a statutory right i.e. "by right" and not "as of right".

In addition, the CRA has reviewed the photographic evidence and representations of both the Applicant and those who objected to the Application and concludes that none of the evidence provided is sufficient to show the Application Land is used by local inhabitants in a manner which is inconsistent with the purposes under which the Application Land is held and is therefore "by right" and not "as of right".

The CRA does not believe that sufficient evidence has been provided to suggest that any past use of the Application Land for the annual Ermington Summer Fair or more

formal football and cricket matches has been on anything other than an "ad hoc" basis and therefore any such use cannot be said to be "as of right" as opposed to "by right".

s.15(2) of the Commons Act 2006 requires an applicant to show:

- a) 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 twenty years; and
- b) they continue to do so at the time of the application.

The Application fails to meet the requirements for registration as a town or village green under s.15(2) of the Commons Act 2006 on the basis that the use of the Application Land by the inhabitants of the relevant locality has been "by right" and not "as of right".

Decision

The CRA having considered the Inspectors recommendation and further evidence rejects the application.


JANE SHADBOLT
COUNTY SOLICITOR

DATED: 18 December 2020

ADVICE

Introduction

1. I am asked to advise Devon County Council, the registration authority, in respect of an application by Mrs Claire Cross (evidently on behalf of a group known as “The Friends of Ermington Park”) to register land known as Ermington Park, Fawns Close, Ermington as a town or village green. The application, which was made under section 15 (2) of the Commons Act 2006, was received by the Council on 1 May 2018 and publicised in accordance with the regulations. Three objections were received, namely from South Hams District Council (the owner of the land), Ermington Parish Council and Mr Michael Holliday, a resident of Ermington. The Friends responded to the objections by an e mail dated 30 November 2018.
2. The objections of the District Council and the Parish Council raise a point of law by way of objection to registration, namely that the use of the land has been by virtue of a right under statute, namely section 4 of the Physical Training and Recreation Act 1937, and not *as of right* as is required under section 15 of the 2006 Act. The way this point is summarised by the two Council objectors is to say that the use relied upon has been *by right* and not *as of right*. I am asked to advise as to the correctness of this objection.
3. The facts do not appear to be in dispute, although some are not entirely clear¹.

The facts

4. The land in question is about 3.75 acres and lies on the south-eastern side of the village of Ermington. It was acquired on 29 March 1973 by Plympton St Mary RDC; the conveyance of that states that the acquisition was *For the purposes of the Physical Training and Recreation Act 1937*. The land was laid out as a park or recreation ground² and has subsequently been maintained as such. More particularly there is a fenced area in the north-western corner which is used as a children's play area (and contains play equipment)³ and, nearby, an area of hardstanding which functions as a skate park. Access is available at all times via unlocked gates. The land is used for informal recreation.
5. South Hams District Council say that the land accommodates formal football and cricket matches which have to be booked and paid for; the Council marks out the pitches⁴. The Friends in their response dispute this. There are in the Questionnaires references to Ermington Cricket Club (but not to a Football Club). I wonder whether the explanation for the discrepancy is that pitches have been hired out in the past but not recently.
6. The Park is used for the annual Ermington Summer Fair; and in 2018 South Hams District Council charged for this. It is not clear whether in previous years permission had been sought and given; it appears that no charge was made.

¹ See paragraphs 4 and 5 below.

² I am not sure whether it was so laid out by Plympton St Mary RDC or South Hams District Council (which came into existence on 1 April 1974).

³ There are “No dogs” and “No Ball Games” signs at the entrance to this area.

⁴ The Parish Council say that the land is used for football and cricket matches.

Section 4 of the Physical Training and Recreation Act 1937

7. As enacted section 4 of the Physical Training and Recreation Act 1937 provided

A local authority may acquire, lay out, provide with suitable buildings and otherwise equip, and maintain lands, whether situate within or without their area, for the purpose of gymnasiums, playing fields, holiday camps or camping sites, or for the purpose of centres for the use of clubs, societies or organisations having athletic, social or educational objects, and may manage those lands and buildings themselves, either with or without a charge for the use thereof or admission thereto, or may let them, or any portion thereof, at a nominal or other rent to any person, club, society or organisation for use for any of the purposes aforesaid. The authority may also provide and, where necessary, arrange for the training of, such wardens, teachers and leaders as they may deem requisite for securing that effective use is made of the facilities for exercise, recreation and social activities so provided.

8. Section 4 was repealed by section 81 of and Schedule 2 to the Local Government (Miscellaneous Provisions) Act 1976 and replaced by section 19 of the 1976 Act. Sub-section (5) of that Act provided that

(5) Any property which, immediately before the date when this subsection comes into force, is held by a local authority for the purposes of ... section 4 of the Physical Training and Recreation Act 1937 ... shall on and after that date be held by the local authority for the purposes of this section.

9. Section 19 provides:

(1) A local authority may provide, inside or outside its area, such recreational facilities as it thinks fit and, without prejudice to the generality of the powers conferred by the preceding provisions of this subsection, those powers include in particular powers to provide—

- (a) indoor facilities consisting of sports centres, swimming pools, skating rinks, tennis, squash and badminton courts, bowling centres, dance studios and riding schools;*
- (b) outdoor facilities consisting of pitches for team games, athletics grounds, swimming pools, tennis courts, cycle tracks, golf courses, bowling greens, riding schools, camp sites and facilities for gliding;*
- (c) facilities for boating and water ski-ing on inland and coastal waters and for fishing in such waters;*
- (d) premises for the use of clubs or societies having athletic, social or recreational objects;*
- (e) staff, including instructors, in connection with any such facilities or premises as are mentioned in the preceding paragraphs and in connection with any other recreational facilities provided by the authority;*
- (f) such facilities in connection with any other recreational facilities as the authority considers it appropriate to provide including, without prejudice to the generality of the preceding provisions of this paragraph, facilities by way of parking spaces and places at which food, drink and tobacco may be bought from the authority or another person;*

and it is hereby declared that the powers conferred by this subsection to provide facilities include powers to provide buildings, equipment, supplies and assistance of any kind.

(2) A local authority may make any facilities provided by it in pursuance of the preceding subsection available for use by such persons as the authority thinks fit either without charge or on payment of such charges as the authority thinks fit.

Section 15 (2) of the Commons Act 2006

10. Section 15 (2) of the Commons Act 2006 provides for the registration of land as a town or village green in circumstances where:

(a) 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

(b) they continue to do so at the time of the application (emphasis supplied).

11. In any particular case there can be arguments about the various requirements for registration. In the present case the only requirement in issue is whether use of the land has been *as of right*.

Consideration

12. As both the District and the Parish Council state, the leading case on this area of law is *R (Barkas) v North Yorkshire County Council*, decided by the Supreme Court in 2015⁵. It will be helpful to explain the context to that decision.

13. It has always⁶ been necessary in order to establish a case for registration of a new town or village green to show that use has been *as of right*. The phrase *as of right* reflects the Latin phrase *nec vi, nec clam, nec precario*. This may be translated as *not by force, not secretly, not by consent*. Accordingly, when claims were made (as they were made) to register local authority parks and recreation grounds they inevitably failed because the use was obviously by consent. More broadly, it would have been remarkable if local people had been able to register new town or village greens on the basis of use which reflected a statutory entitlement (that is, on the basis of use of the land in accordance with the statute by reference to which it was made available for that use by the local authority). However, this analysis was called into question by *R (Beresford) v Sunderland City Council*⁷ which suggested that land might be registrable as a town or village green in circumstances where its use for recreation had been encouraged by the landowner. This led to a period of uncertainty before another case came before the highest court (now the Supreme Court). In *Barkas*, Scarborough Borough Council had provided the Helredale Playing Field in Whitby for use by local people under a statutory power to provide recreation grounds under section 12 (1) of the Housing Act 1985.

14. The key passage in *Barkas* is the following in the speech of Lord Neuberger:

20 In the present case, the council's argument is that it acquired and has always held the field pursuant to section 12(1) of the 1985 Act and its statutory predecessors, so the field has been held for public recreational purposes; consequently, members of the public have always had the statutory right to use the field for recreational purposes, and, accordingly, there can be no question of any "inhabitants of the locality" having indulged in "lawful sports and pastimes" "as of right", as they have done so "of right" or "by right". In other words, the argument is that members of the public have been using the field for recreational purposes lawfully or precario, and the 20-year period referred to in section 15(2) of the 2006 Act has not even started to run—and indeed it could not do so unless and until the council lawfully ceased to hold the field under section 12(1) of the 1985 Act.

⁵ [2015] AC 195.

⁶ The relevant law dates back to 1965; registration of new village greens based on 20 years' use did not "take off" until a landmark decision of the House of Lords: *R v Oxfordshire County Council, ex parte Sunningwell Parish Council* [2000] 1 AC 335.

⁷ [2004] 1 AC 889 (HL).

21 In my judgment, this argument is as compelling as it is simple. So long as land is held under a provision such as section 12(1) of the 1985 Act, it appears to me that members of the public have a statutory right to use the land for recreational purposes, and therefore they use the land “by right” and not as trespassers, so that no question of user “as of right” can arise. In *Sunningwell* [2000] 1 AC 335, 352H–353A, Lord Hoffmann indicated that whether user was “as of right” should be judged by “how the matter would have appeared to the owner of the land”, a question which must, I should add, be assessed objectively. In the present case, it is, I think, plain that a reasonable local authority in the position of the council would have regarded the presence of members of the public on the field, walking with or without dogs, taking part in sports, or letting their children play, as being pursuant to their statutory right to be on the land and to use it for these activities, given that the field was being held and maintained by the council for public recreation pursuant to section 12(1) of the 1985 Act and its statutory predecessors⁸.

15. I do not think that the facts upon which I am asked to advise can properly be distinguished from those of *Barkas*. It follows that I consider that the use in the present case was *by right* and not *as of right* and accordingly did not count towards registration of a new town or village green.
16. I entertain no doubt that section 19 of the 1976 Act is an appropriate statutory power under which a recreation ground of the kind represented by Ermington Park may be provided by a local authority. It will be seen that the power is a broad one and the particular cases set out in paragraphs (a) to (d) are without prejudice to the general power to provide recreational facilities which, accordingly, may include a recreation ground. The local authority has a power to charge for its provision of such facilities but in the present case it generally did not do so; use both by those who paid and those who did not pay would not have been *as of right* but *by right*.
17. Although generally the local authority did not charge, it did (it says) charge for the hire of football and cricket pitches. This raises the **possibility** that there could have been some football and cricket use which should have paid but did not. By this, I mean not informal cricket or football but formal games, requiring in the case of football, a marked out pitch and the provision of goals⁹ and in the case of cricket, a prepared pitch. If there were any such use, it would not have been *by right* but, on the face of it, *as of right*¹⁰. There is however no evidence that there was any such use; and it is evident that the great preponderance of use was *by right*. I note that the thrust of the Friends’ response to the objections was that there was no formal use of the land for football or cricket at all which, if correct, excludes the possibility of formal use for which payment was not made.
18. The possibility exists that whoever in the past organised the Summer Fair did so without reference to the District Council and without paying. It is possible that this use was *as of right* and not *by right*, although I require more information to form a view about this. However, the use, day in, day out of the land was evidently *by right* for informal recreation by individuals. Against this background, I do not consider that use for a summer fair on a number of occasions could lead to a finding that it had been used for twenty years for *lawful sports and pastimes*¹¹.
19. It seems to me that the Friends’ submission in response to the objections does not engage with the implications of *Barkas*. I would readily accept that the informal use relied upon would justify registration of the land as a town or village green if that informal use were not *by right*; however, for reasons which I have explained, I think that it was *by right*. To a lay person it may seem counter-

⁸ The Supreme Court went on to overrule *Beresford*.

⁹ Neither the District or Parish Council’s evidence speaks about the provision of goals.

¹⁰ There might have been situations where it was contentious and therefore not *as of right* for this reason.

¹¹ In *R (Lewis) v Redcar and Cleveland Borough Council (No 2)* [2010] 2 AC 70, Lord Walker did not consider that land might be registered on the basis of an annual bonfire on Fireworks Night: see paragraph 47.

intuitive that, in order to establish a town or village green, what he or she needs to demonstrate is use which is not permitted (and thus by way of trespass¹²). However, this is the case.

Conclusion

20. I conclude that Ermington Park should not be registered as a town or village green and that Mrs Cross's application should be rejected

Specific questions

21. I turn to address the specific questions that I am asked

(1) Does Ermington village form a locality for the purpose of section 15?

22. Yes. In village green cases there can often be argument as to whether relevant use has been by the inhabitants of a locality or a neighbourhood within a locality. However, the present is not such a case. Not surprisingly the courts have had no difficulty in finding that a village may be a locality for the purposes of registering a new village green. In Sunningwell (see footnote 6 above) the locality relied upon was the village.

(2) If the answer to (1) above is *Yes*, is the District Council correct that the land has been acquired for and used in accordance with the Physical Training and Recreation Act 1937?

23. Yes, subject to the caveat that, as explained above, the 1937 Act has now been superseded by the Local Government (Miscellaneous Provisions) Act 1976.

(3) If the answer to (2) above is *Yes*, has the use by the inhabitants of Ermington village been *by right* and not *as of right*?

24. Yes.

(4) If the answer to (3) above is *Yes*, should the application be rejected on the basis that the use is *by right*?

25. Yes.

(5) Generally, as to any other matters which counsel deems relevant to the application.

26. I should emphasise that the particular procedure which it adopts for the determination of applications is a matter for the registration authority subject, of course, to the overriding requirement of fairness. However, in cases where the written advice of counsel has been obtained, I consider that there is merit in inviting comment from the parties on that advice before taking the matter to Committee (or making a delegated decision upon the registration). In the present case, I would expect the Applicant to accept the legal advice; however, the process of inviting comment does enable any outstanding concerns to be "flushed out" and commented upon before a decision is made. This may enhance satisfaction with the process and reduce the prospect of judicial review (unlikely in this case in any event).

¹² Albeit, not by force.