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# Application Decision

Site visit carried out on 9 August 2011

**By Peter Millman BA**

An Inspector appointed by the Secretary of State

Decision date: 16 September 2011

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## Application Ref: COM 209

### The garden of St Peter's Church, forming part of The Castle Greens at Longtown, Herefordshire

Register Unit: VG 30

Registration Authority: Herefordshire Council

- The application, dated 21 September 2009, is made under paragraph 9(4)(a) of Schedule 2 to the Commons Act 2006 ("the 2006 Act").
- The application is made by Mrs G Morris.
- The application is to remove land from the register of town or village greens on the grounds specified in paragraph 9(2) of Schedule 2 to the 2006 Act (other land wrongly registered as town or village green).

**Summary of Decision:** The application is refused.

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### Preliminary Matters

1. This application has been determined on the basis of written evidence and submissions and a visit to the land by the Inspector.

### The Application Land

2. VG 30 comprises an area of land in the vicinity of Longtown Castle, a ruined Norman border castle. The application land is a small elevated enclosure about 45 metres long and 12 wide, cultivated as a garden but entirely surrounded by land which is undisputed village green. The application land in relation to VG 30 is shown on the map attached to this Decision. VG 30 is shaded grey/green, and the application land is shaded blue.

### The Statutory Requirements

3. Paragraph 9(4)(a) of Schedule 2 to the 2006 Act provides that any person may apply to the commons registration authority to remove land from the register of town and village greens. The Commons Registration (England) Regulations 2008 ("the 2008 Regulations") set out the procedures to be followed.
4. The application was made on 21 September 2009<sup>1</sup>. The application form indicates that it has been made in accordance with the provisions of paragraph 9 of Schedule 2 to the 2006 Act which provides (at paragraph 9(2)) that an application can be made where:

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<sup>1</sup> For the purpose of remedying non-registration or mistaken registration under the 1965 Act, the application must be made on or before 31 December 2020.

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- (a) the land was provisionally registered as a town or village green under section 4 of the Commons Registration Act 1965;
  - (b) the provisional registration of the land as a town or village green was not referred to a Commons Commissioner under section 5 of the 1965 Act;
  - (c) the provisional registration became final; and
  - (d) immediately before its provisional registration the land was not (i) common land within the meaning of the 1965 Act; or (ii) a town or village green as specially defined in the Act for these purposes.
5. For these purposes, land is to be taken not to have been a town or village green immediately before its provisional registration if (and only if)
- (a) throughout the period of 20 years preceding the date of its provisional registration the land was, by reason of its physical nature, unusable by members of the public for the purposes of lawful sports and pastimes; and
  - (b) immediately before its provisional registration the land was not, and at the time of the application still is not, allotted by or under any Act for the exercise or recreation of the inhabitants of any locality.
6. An application must be made in accordance with the 2008 Regulations. Paragraph 16 of the 2008 Regulations requires that an application must –
- (a) be made in writing on a form provided by the registration authority to which the application is made; and
  - (b) be signed by, or by a representative of, every applicant who is an individual, and by the secretary of some other duly authorised officer of every applicant which is a body corporate or an unincorporated association.
7. In addition, paragraph 14 of Schedule 4 to the 2008 Regulations requires that an application under paragraph 9(4)(a) of schedule 2 to the 2006 Act must include –
- (a) a description of the land to which the application applies; and
  - (b) evidence of the application of paragraph 9(2) of Schedule 2 to the 2006 Act to the land to which the application relates.
8. The task of proving the case in support of the correction of the register of town and village greens rests with the person making the application, and the burden of proof is the normal, civil standard, namely, the balance of probabilities.
9. Defra's guidance to the Planning Inspectorate<sup>2</sup> states that: "It is particularly important that an application ... is fully examined where, if granted, it would have some effect on the public interest, such as where land would be deregistered. It is for the applicant to adduce [convincing] evidence, and in its absence, the application must not be granted."

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<sup>2</sup> Part 1 of the Commons Act 2006: Guidance to commons registration authorities and the Planning Inspectorate for the pilot implementation, February 2011.

## **Reasons**

### ***The application***

10. It is not disputed that the application was made in accordance with the 2008 Regulations, and I am satisfied that it was.

### ***The registration of the land as town or village green***

11. It is not disputed that VG 30, including the application land, was provisionally registered as town or village green on 9 September 1968, and that registration became final on 2 December 1974.

### ***Whether the provisional registration was referred to a Commons Commissioner under section 5 of the 1965 Act***

12. The provisional registration of VG 30 was referred to a Commons Commissioner before it became final. The Commissioner's Decision, dated 24 September 1974, does not state that the reference was made under section 5, but in my view there can be no significant doubt that it was made under that section; there is no other section under which objection to a provisional registration could have been made. The Decision makes it clear that the reference was made with regard to registration rather than to ownership.

13. Given this reference, the application must fail, and there is no need for me to continue considering the remainder of the criteria.

### **Other matters**

14. The applicant provided undisputed evidence that the application land had, in contrast with most of the remainder of VG 30, been cultivated as a garden since before 1840. I consider it quite possible that at the time of registration it should not have been registered as part of The Castle Greens. The current legislation would not, however, for the reasons given in paragraphs 12 and 13 above, allow me to grant its deregistration even if I considered it probable that the application land should not have been registered.

### **Conclusion**

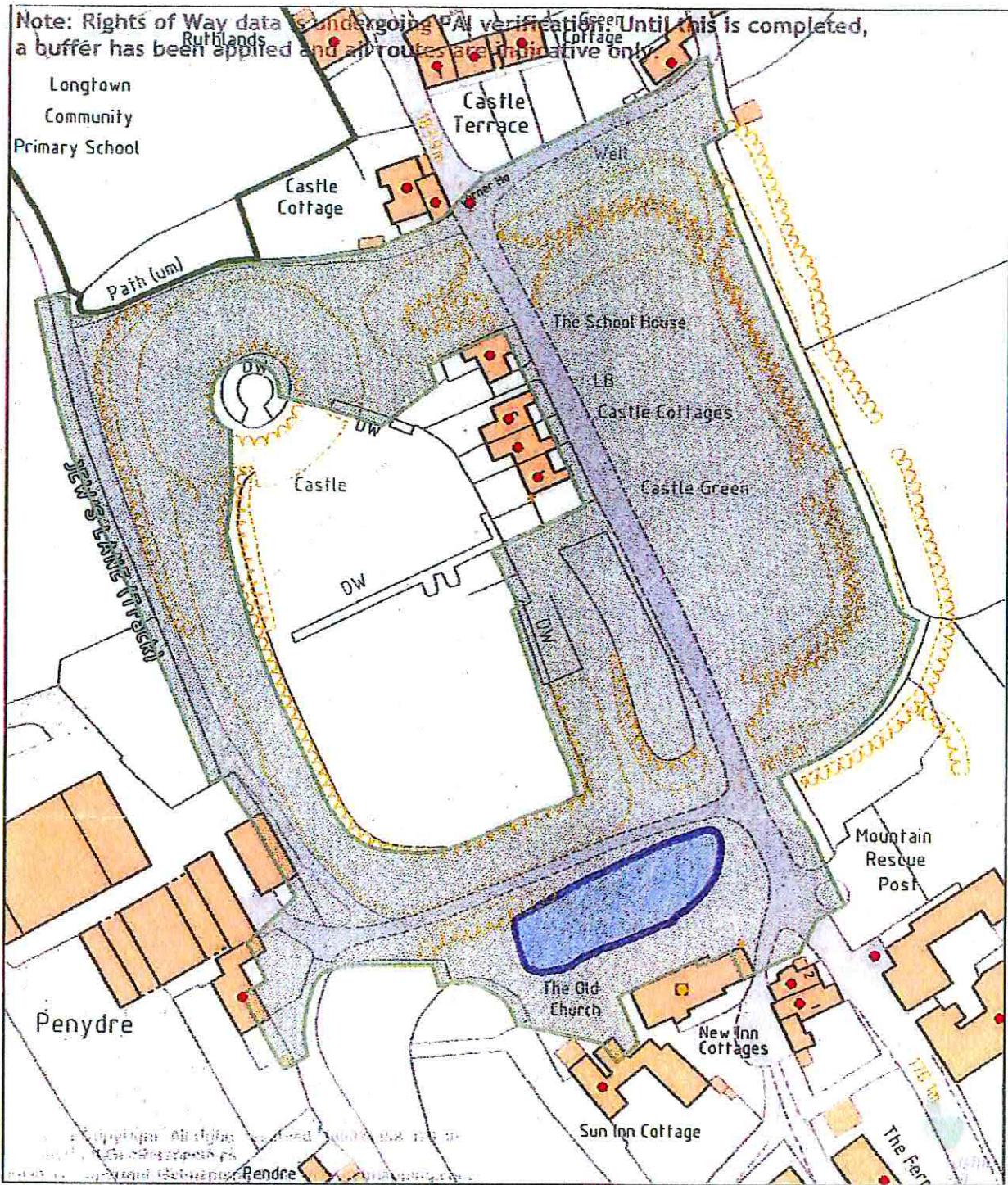
15. I conclude that the application should not be granted.

### **Formal Decision**

16. The application is refused.

*Peter Millman*

INSPECTOR



**Location:** VG30 Longtown Village Green, Longtown, Herefordshire

**Description:** Application for deregistration is for the blue shaded area only

**Please ask for:** George Thompson

**Tel(Direct):** 01432 261991

**Map Scale:** 1:1,250 ; **Map Centre OS Grid Reference:** 332,123.8221423:229,136 2392746

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This map has been produced for Herefordshire Council business purposes only.