

# Minutes

Name of meeting	<b>GENERAL PURPOSES (APPEALS) SUB COMMITTEE</b>
Date and time	<b>WEDNESDAY, 12 OCTOBER 2011 COMMENCING AT 10.00 AM</b>
Venue	<b>COUNCIL CHAMBER, COUNTY HALL, NEWPORT, ISLE OF WIGHT</b>
Present	Cllr Susan Scoccia (Chairman), Jonathan Bacon, Ian Ward
Officers Present	Catherine Chalkley, Justin Thorne, Simon Wiggins, Jerry Willis

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16. [Minutes](#)

RESOLVED :

THAT the Minutes of the meeting held on [30 August 2011](#) be confirmed.

17. **Declarations of Interest**

There were no declarations declared at this time.

18. [Report of the Strategic Director of the Economy and Environment](#)

Proposed registration of the land at Gurnard Luck, Gurnard, as a Town or Village Green

A schedule of additional representations, received after the printing of the report, was circulated to all parties prior to consideration of the application, including a revised map showing the correct application area.

The applicant was in attendance.

An officer from the village green section gave members a comprehensive presentation setting out details of the application made under Section 15 of the Commons Act 2006, to register land known locally as Gurnard Luck, Gurnard, Isle of Wight as a town or village green. The applicant, Mr J Green believed that the land became a village green on 1 March 2004 as the land had been used by local inhabitants for lawful sports and pastimes as of right for not less than 20 years.

The officer highlighted to members that the application had been accompanied by 59 letters and statements to support the application and that in order for the application to succeed the application would be required to meet all four tests namely that the land had been used:

- By a significant number of the inhabitants of any locality, or neighbourhood within the locality;
- For lawful sports and pastimes;
- As of right;
- For not less than twenty years.

Members noted the comments of the officer who stated that the report had been based on the information submitted and that it was not within their remit to challenge the validity of that information. Furthermore, Members were advised how the applicant had determined the tests being met by virtue of the evidence that had been submitted, to which claims the land owner was in dispute and the outcome of the evaluation of the submissions from all parties.

It was noted that paragraph 51 of the report contained incorrect information and should read:

“The application had been submitted with 59 letters and statements of support, 43 of the letters were from people living in the area of Gurnard, 1 had lived there the majority of the 20 year period, 1 had a second home in Gurnard, 7 resided in Cowes, 4 resided in Northwood, 2 resided in Newport and 1 resided in Porchfield”.

Having heard oral submissions and through questioning of the applicant, the land owner and interested parties, members concluded that a number of the issues were in dispute by either party and that this might be problematic in ascertaining the correct facts. In particular, members noted there were discrepancies within the statements to both the timing and wording of notices on the land and this point was particularly pressed by the representative for the land owner, who claimed there were signs in place from the 1970's and stated there was evidence from emails from Gurnard Parish Council to Rights of Way to show a particular sign had been in place on or around 2002.

During the hearing a coloured picture of that contained on page B – 426 of the report was submitted by the landowner to further clarify that the sign in 2002 stated that the land was private and access was to the footpath only and that the existence of the sign could be corroborated by seven sworn statements.

After receiving all of the representations and having concluded questioning all parties on points of clarification, members entered into private session to consider their decision.

**RESOLVED:**

Upon receiving the report of the village green team section, oral and written evidence from the applicant and land owner and having regard to the decided case law and the Commons Act 2006 (as amended) the sub-committee resolved:

THAT the application be rejected.

The sub-committee's reasons for this [decision](#) were as follows:

Members determined that the statutory tests were not met for the 20 year period. Members did not believe use as of right had been proven in the balance of probability throughout the relevant period. In particular members determined that there was a sign placed on the land on or around 2002 that stated the land was "private property", members also believed that the sign also referred to "access only to the footpath".

Members view was that this would have conveyed a message to users they should not use the area outside of the path. This was a normal objective common sense reading of the sign. Whilst others may have used the land with permission after this sign was in place others in effect used the land without permission and a reasonable user would have realised they were not authorised to do so.

Members noted the size of the area of land in question and the fact there was a footpath through the site and the sign was proportionally adequate mechanism to show a reasonable user were not permitted on the rest of the land.

In reaching their decision the sub-committee had regard to the Human Rights Act 1998, an in particular Article 1 of the First Protocol, Article 8 and Article 6. The sub-committee considered this decision was in accordance with the legal principles of registration and noted this was a matter of law as to whether registration should be made and on the basis of the information before members; the decision was proportionate and necessary.

CHAIRMAN