



STUDY OF DETERMINED TOWN AND VILLAGE GREEN APPLICATIONS

**FINAL REPORT TO
COMMON LAND TEAM, DEFRA**

by the

**Countryside & Community Research Institute
and Asken Ltd**

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October 2009

Author Biographies

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Dr Carol Kambites has worked in CCRI since 2004. Carol's research interests are mainly in sustainability, communities and social capital, planning, local governance and the ways in which people relate to the places where they live. She specialises in qualitative research, including face-to-face interviews and focus groups and analysing qualitative data. Carol made initial contact with CRAs to identify the sites, carried out some site visits and wrote the first draft of Chapter 4 of the report.

Ken Taylor is an associate of CCRI and has worked on a series of projects concerned with town and village greens and common land. Ken was involved in evaluating the impact of the proposals for reform that ultimately became the Commons Act 2006, as part of a Regulatory Impact Assessment (RIA) completed for Defra. This experience was invaluable in setting out the research proforma and analyzing reasons for rejections of applications. Ken completed a number of site visits and drafted the chapter on reason for unsuccessful applications.

Dr Owain Jones is a cultural geographer with expertise in the area of place and landscape and community interactions with place and landscape. He has also worked upon numerous research contracts for government and non-government organisations such as Defra, English Heritage and Natural England. He specialises in qualitative, ethnographic research methods and undertaken several of the site visits on this project.

Nick Lewis is a Research Assistant in the CCRI with a broad experience of data collection, analysis and interpretation for a wide range of projects. Currently, research covers data collection and analysis for a review of the effectiveness of the rural development instruments within European Agricultural Policy and document sourcing via routes such as on-line databases, library and internet searches. Nick collected information on the planning aspects and undertook several site visits.

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1. INTRODUCTION AND STUDY OBJECTIVES

1.1 The purpose of the research, as set out in the Project Brief, was to 'examine a sample of the sites which have been registered as town or village greens (TVGs) since January 2004 as well as a sample of those that have not been registered'. The common term for both successful and unsuccessful applications is that either outcome has been 'determined' by Commons Registration Authority (CRA), therefore the study was an investigation into determined town and village green (dTVG) applications. The project also set out to examine whether the sites were earmarked for development in local development plans or subject to planning applications. The full diversity of sites, both approved and rejected, was analysed.

1.2 The Project Brief outlines five main objectives for the research:

- a. Selection and justification of samples successful ad unsuccessful sites;
- b. analysis of the usage, physical and other characteristics of these sites including photographs;
- c. information clarifying the link between the sites and development intentions;
- d. analysis of the reasons for failed applications;
- e. overall analysis of the findings.

1.3 These five objectives form the basis of the report, although the next section briefly provides some background to Town and Village Greens.

2. BACKGROUND

2.1 Origins of Greens

2.1 The term 'green' is colloquially applied to many patches of ground in town and village centres that are undeveloped and perhaps have a slightly unkempt air about them; this is unlike a park, which tends to be a bit more manicured. However, TVGs are distinct entities in legal terms. This section is intended to be a brief introduction to the seemingly arcane world of town and village greens¹.

2.2 Like some of our other customary rights (rights of common, rights of navigation, rights of way), their origins date from centuries ago. Greens arose from the old manorial system and, through custom, became the area of the village where local villagers "indulged in lawful sport and pastimes" i.e. were used for recreation. So, this is where the maypole would probably have been erected and, in later times, perhaps the bonfire built and burnt; local lads would play cricket or knock a football about. There is no definitive list of "lawful sports and pastimes" that can be considered as activities that are conducted on TVGs; case law has established that the qualifying activities are not limited to ancient pursuits or organised games.

2.3 Like other customary rights, the courts started to recognise and protect these areas and the rights of people to use them for recreation of one form or another (one of the earliest cases dates from 1665). Case law now extends back over centuries and predates (and so has primacy over) recent initiatives such as the planning system. So, this protection extends to safeguarding greens against development.

2.4 A further step in the protection of greens was the creation, in the 1970s, of the registers of town and village greens, as required by the Commons Registration Act 1965. The registers were established, and are now maintained, by the CRAs – either the county council or unitary authority (including London Boroughs). The registers are available to the public for viewing in the CRA offices. Like their sister registers (of Common Land), they are meant to be definitive. However, they are definitive only in one direction – if an area of land is registered as a green then its status is beyond legal doubt. However, if an area of land is not registered, this does not necessarily mean it is not a green, as it is possible to make new registrations.

2.2 Registering a Green

2.5 The 1965 Act, and associated regulations², set out four ways in which an area of land could be registered as a TVG:

- a) by or under an act of Parliament
- b) by customary right established by judicial decision
- c) by actual use of the land by local inhabitants for lawful sports and pastimes as of right for not less than 20 years
- d) by substitution or exchange for other land which has ceased to be a TVG.

2.5 Clayden (2003) argues that new greens are now likely to arise only through a claim based on actual use (i.e. using method c)). The Countryside and Rights of Way Act 2000, at s98, made modifications to the law relating to this aspect of TVG legislation by:

¹ Note that, in law, town and village greens are identical; the same law applies in England and Wales but not in Scotland or Northern Ireland.

² Commons Registration (New Lands) Regulations 1969.

- changing the definition of the area from which users are drawn to “a significant number of the inhabitants of any locality, or of any neighbourhood within a locality” (previously, a green was one used by inhabitants of a locality, without reference to neighbourhoods);
- making provision for the introduction of regulations that would prescribe the maximum period between the date when use of the land ceased and the date when an application for registration as a green is submitted.

2.6 In practice, no such regulations were made and the need for them was obviated by Section 15 of the Commons Act 2006.

2.7 It is possible for anyone to apply to register any block of land as a green on the basis of c) above. The Commons Act 2006 also contained a provision that enables the landowner to voluntarily register land as a green.

2.8 In order for an application under method c) to succeed, it is necessary for the applicant to show that:

“a significant number of the inhabitants of any locality, or any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years” {taken to be an ‘unbroken’ period, unless any break in access arose as a result of any enactment}.

and that either:

“they continue to do so (subsection 2(b)); or

they ceased to do so before the time of the application but after the commencement of this section³ and the application is made within the period of two years beginning with the cessation (subsection 3(b and c)); or

they ceased to do so before commencement of this section and the application is made within the period of five years beginning with the cessation (subsection 4 (b and c))”.

2.9 However, sub-section 4 (i.e. the last point) does not apply in relation to any land where:

- *“planning permission was granted before 23rd June 2006 in respect of the land;*
- *construction works were commenced before that date in accordance with that planning permission on the land or any other land in respect of which the permission was granted; and*
- *the land –*
 - o *has by reason of any works carried out in accordance with that planning permission become permanently unusable by members of the public for the purposes of lawful sports and pastimes; or*
 - o *will by reason of any works proposed to be carried out in accordance with that planning permission become permanently unusable by members of the public for those purposes.”*

2.10 All components of the legal test have to be satisfied in order for the green to be accepted for registration and the onus is on the applicant to prove that these tests are

³ The section of the Act commenced on 6th April 2007

satisfied. However, it is open to anyone to object to the application or the CRA themselves may object to the application. Proving that the legal tests for registration are met can be difficult, so a legal expert may be appointed by the CRA to assess the application (usually at a non-statutory public inquiry), and so the details of the application can be subject to very close scrutiny.

2.11 An application for registration may be prompted by an allocation of the land in question for development during the preparation of a Local Plan, or by an application to get planning permission for development. The local residents may only find out about planning permission having been granted when the developer tries to put a stop to their use of the land. The time between the interruption of use of the land by the public and an application for land to be registered is a material factor in determining the application; a long delay may result in the application failing. As our research shows the opposite is also true, that those involved in a planning application may not find out about a successful TVG application when the land is registered and thus while the two processes are legally distinct there can be impact of each on the other.

3. SELECTING AND JUSTIFYING SELECTIONS

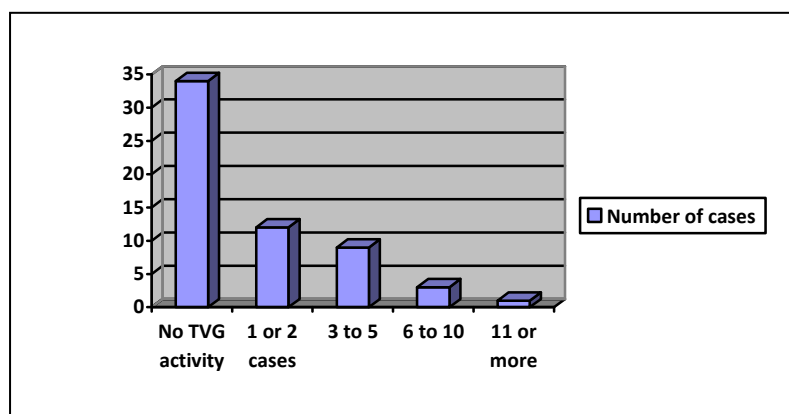
3.1 The research examines a sample of the sites which have been successful in being registered as TVGs and a sample of sites which have been unsuccessful in being registered, from January 2004 to March 2009. The aim of the research is to provide an overall picture of the character and use of both new greens and of failed applications as well as assessing any links between TVG applications and preparation of development plans and submission of planning proposals on the same area of land. Since part of the aim for the research is to generalize about the survey results it is important for the population chosen in the study to be selected according to the rules of statistical theory. This enables statistical inferences to be drawn from the sample to the whole population with confidence.

3.1 Assessing the size of the target and survey population

3.2 Applications for TVG registration are submitted to the CRA, of which there are 149 in England made up of London boroughs (33), metropolitan districts (36), county councils (34) and unitary authorities (46). We note that there are now 153, owing to the recent changes to unitary status in Cheshire and Bedfordshire, but we have retained the CRA structure as at the Defra survey. These 149 CRAs form the target population of CRAs, as they are key organizations that will be interested in the findings of the research. However, the CRAs also hold the survey population, which is the total number of successful and unsuccessful TVG applications within the given timescale. Since the precise total population is not known, it was estimated using valid statistical techniques based on the response to a survey conducted by Defra in 2007 and a small follow-up survey to check the validity of the Defra response.

3.3 Defra’s survey assessed the level of TVG application activity in all 149 CRAs between January 2004 and September 2007. A response was received from 59 CRAs, 40% of all CRAs at that time. Of these 59 CRAs, 34 (58% of those responding) had either not received a TVG application or had not determined one. This left 25 CRAs that had determined at least one TVG application during the given timescale. Table 3.1 below shows the spread of TVG activity among the 59 CRAs that responded.

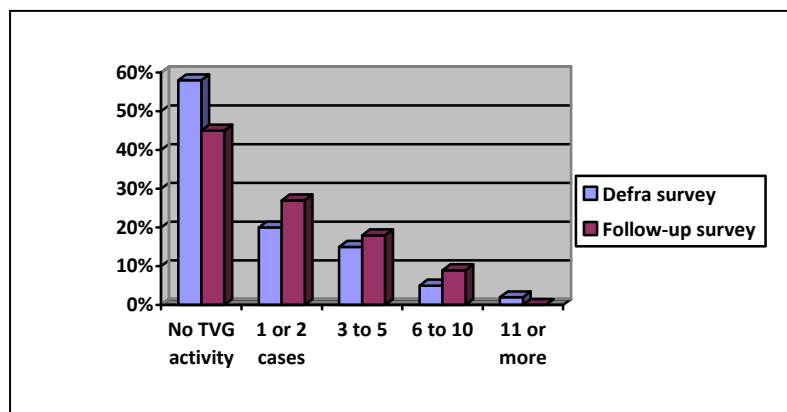
Table 3.1 – Division of TVG activity among respondents to Defra survey



3.4 In order to find out whether or not the level of activity among those not responding to the Defra survey did not differ markedly from those that did respond, a follow-up query was made of 18 randomly selected non-responding CRAs, which represented a 20% sample of all the non-respondents. Information was received from 11 (61%) of the 18 CRAs contacted.

Of these 11, five (46% of those responding) had either not received a TVG application or had not determined one. This was slightly fewer than the proportion responding to the Defra survey without any activity, perhaps suggesting that CRAs were slightly more likely to respond if they had determined some TVG applications. More importantly, it suggests that responses to the Defra survey were roughly proportionate to the whole population and therefore it is reasonable to calculate the total population using this survey as the base line. The breakdown of those CRAs that responded in the follow-up sample is compared to the Defra survey in Table 3.2 below.

Table 3.2 – Comparison of TVG activity in Defra survey (n=59) and Follow-up survey (n=11)



3.5 However, one other check needed to be carried out as over a year had elapsed between the completion of the Defra survey and the start of this research and there was the possibility that applications had been determined during that time. Since the populations being surveyed concern the population of successful and unsuccessful applications, it was important to assess the level of recent activity among those CRAs that did reply to the Defra survey. In order to test this, all of the 25 CRAs that had determined at least one TVG application were contacted plus four CRAs that did respond to Defra but had no TVG applications determined during the given time period. The four CRAs that responded but reported no activity represented just over 10% of the 34 falling into this category. Up-to-date information was received from all but three of the 25 CRAs with TVG activity. Of the 22 CRAs that provided updated information, only five reported no change to the situation from October 2007 until the time of this survey (March 2009). In the case of the four responding but no activity CRAs, a response was received from two of them, in one case no application had been received since 2004 and in the other the one case that had been received had now been determined.

3.6 The result of these two checks means that the estimated total population can now be calculated, as outlined below, and with reasonable confidence in this being a good estimation. Ultimately the survey sample was selected from the activity within 70 CRAs, 47% of all CRAs; of these, 32 CRAs confirmed that at least one application had been determined and these responses were used to calculate the estimated total population of both unsuccessful and successful applications from which the sample was selected.

3.2 Calculating the estimated total populations

3.7 The total population was calculated by taking the number of cases of either successful or unsuccessful cases within any one region and dividing it by the responses received from that region, in order to determine the estimated average number of cases per CRA in that

region. This figure was then multiplied by the actual number of CRAs in that region. Because the numbers replying to the surveys are acceptable but relatively low, the level of statistical confidence in the estimates would also be low, certainly below the 95% level of confidence. In order for this level of confidence to be reached the response rates would have to be over 80%. However, the regional populations can be estimated. So, for example, in the East there are nine actual cases reported from seven of the nine CRAs, thus 9/7 gives 1.3 which was then multiplied by nine (the total number of CRAs in the East region) to give an estimated total population of 11.6 successful cases in the East, rounded up to 12.

3.8 This was repeated for all cases to give an estimated total population of 109 successful cases and 155 unsuccessful cases, as shown in Table 3.3.

Table 3.3 – Sample population by Region

Region	CRAs per Region	CRAs Responding	Successful cases	Estimated total population	Unsuccessful cases	Estimated total population
East	9	7	9	12	18	23
East Midlands	11	6	2	4	6	11
London	33	9	2	7	0	0
North East	11	4	0	0	0	0
North West	21	12	6	11	9	16
South East	23	13	25	44	31	55
South West	14	6	9	21	11	26
West Midlands	14	8	4	7	8	14
Yorks & Humber	13	5	1	3	4	10
Total	149	70	58	109	87	155

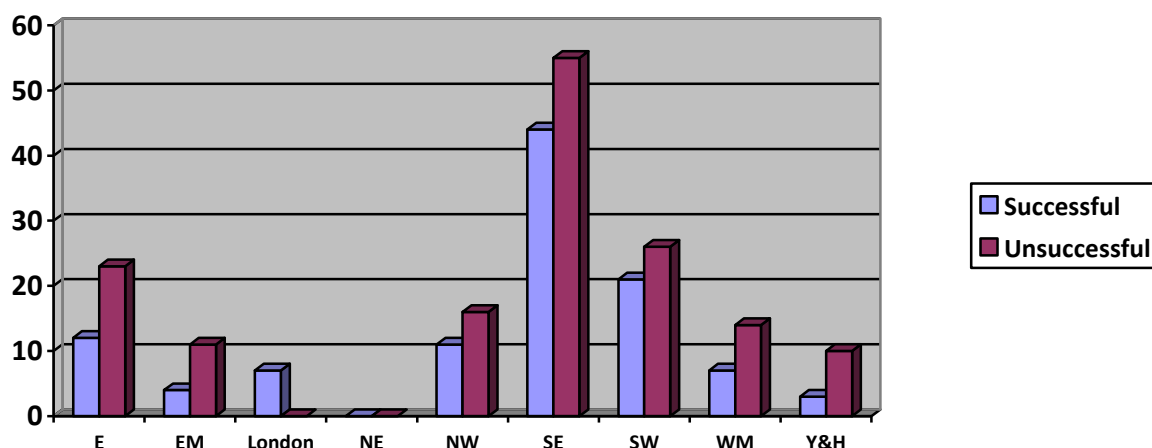
3.9 The sample of successful applications was therefore 109 cases of which the research surveyed 25, 23% of the estimated total population. The sample of unsuccessful applications is 155 cases, and the original intention was to survey 25 sites, 16% of the sample population. However, an error within the South West figures from the Defra survey resulted in an overestimate of the number of unsuccessful cases in this region. This came to light when the CRA was contacted and therefore after other regions had responded meaning that recalculating and re-selecting sites was not a feasible option. Consequently, it was agreed that the adjustment would be managed by retaining the proposed number of surveys by over-surveying the number of sites in the South West as this would enable the selections within other regions to remain unaffected.

3.3 Selecting the sample

3.10 Since the aim of the research was to examine any possible relationships between the planning process and TVG applications and to assess the characteristics of those sites which were subject to applications to be registered it was crucial that the selections were made randomly so that well known cases or particular examples were not inadvertently prioritised. The process chosen for selecting the sample was *stratified random sampling*, a

method of selection which ensures that each of the applications from the pool of unsuccessful and successful applications has an equal chance of being selected and occurs once in the sample. The stratification was based on the regional distribution of the estimated total population of successful and unsuccessful cases.

Table 3.4 – Estimated total population of successful and unsuccessful TVG applications by region



3.11 Table 3.4 shows how the estimated total populations of successful and unsuccessful samples are divided across the nine regions. It shows how the bulk of cases are distributed in the Southern part of the country, with two thirds of the cases in South East, East and South West, and the South East alone accounting for 38% of all determined cases.

3.12 The aim of the stratification was to select cases that represent the regional spread of dTVG applications. In order to do this the sampling rate was the proposed sample size (25 for successful and unsuccessful) divided by the estimated total population and then multiplied by 100 to make a percentage. This approach produced a sampling rate of 23% for successful cases and this was used to select the cases in each region. The overall sampling rate for unsuccessful cases was 16% and this was used to select the cases in each region. However due to the data error in the South West resulting in an over-estimate of the unsuccessful population in that region, the sampling rate in all other regions was actually closer to 14%. In the South West itself the sampling rate was actually 23%.

3.13 An agreed guiding principle was to have at least one case selected in any region where there were determined cases. The result was that the selections reflect the regional distribution. However, regional comparisons were not really possible due to the small populations in each region but an overall comparison was made.

3.14 It was not possible to calculate levels of confidence in this sample size as the numbers are too small. For example if the total population was 100 and a 95% confidence level was required with an interval of + or – 5% then the sample size would have to be 80. The sampling rates used meant that we can be confident in terms of reporting the activity of those who responded to the survey and related follow-ups. There is a chance of bias when estimating across all of the estimated activity; however, the likelihood of this is low as there would appear from the follow-up surveys to be no reason why variation should occur. It is possible that something could become apparent from the case studies themselves, but no reason to doubt the figures did arise. The findings can therefore be rounded up and a possible typology created to gain a national picture of the type and characteristics of the TVG applications that were determined between January 2004 and March 2009.

3.15 Table 3.5 shows the result of using the proposed sampling rates for successful and unsuccessful TVG applications incorporating the principle of having at least one case in regions of low activity.

Table 3.5 – Proposed selection from estimated total population by region

Region	Estimated total Registered	%	Sample allocation	Estimated total Failed	%	Sample allocation
East	12	11	3	23	13	3
East Mid	4	3	1	11	6	2
London	7	6	1	0	0	0
North East	0	0	0	0	0	0
North West	11	10	3	16	9	2
South East	44	41	10	55	32	8
South West	21	21	5	26	17	6
West Mids	7	6	1	14	8	2
York+Humb	3	3	1	10	6	2
Total	109	100	25	155	100	25

3.16 Table 3.5 provides the stratification of the sample but it was still necessary to ensure that the selections were made randomly. In order to ensure this, each case within the successful and unsuccessful samples was numbered. For example Gloucestershire CRA had six successful registrations and these were numbered ‘Gloucestershire 1’ to ‘Gloucestershire 6’; this represented the chronological order where ‘Gloucestershire 1’ was the first TVG application approved in the time period and ‘Gloucestershire 6’ was the last. To this were added the other three successful sites from within the South West. Then all of the nine successful applications arising from the Defra and follow-up samples in the South West region were numbered and random numbers generated between 1 and 9 in order to choose the five cases that were surveyed. The only rules were that a site could only be chosen once and the labelling remained the same throughout the selection process. Those selected became the survey sample and the CRAs and appropriate local planning authorities were then contacted to obtain the details of the case and access the appropriate planning documents.

3.4 Implementing the selection process

3.17 There are several points that need to be outlined regarding the actual implementation of the selection process. Once the sample was chosen, as shown in Appendix 1, each Commons Registration Officer (CRO) was contacted by email. The email outlined the research and requested details regarding the selected TVG applications. The process had to be outlined in detail to ensure that details for the correct TVG applications were obtained as the research team did not have a name or location, just that the selected application was the ‘third successful application since 2004’ taking the chronology from the time the application was received. A copy of the email letter is in Appendix 2. One of the research team then contacted the CRO by telephone a few days later to discuss how the material might be obtained. The most straightforward approach was to request the committee report as this was a standard document across the CRAs and held almost all of the information required by the research and was often available online. Where an application did not go to committee for a decision, other documents such as a county solicitor’s review sufficed. Information was received in all but two cases. These were two of the reserve selections following the revealing of ‘ghost’ unsuccessful cases in the South West. Therefore

throughout the report we will be referring to a sample of 25 successful applications and 23 unsuccessful applications giving a total of 48 dTVG applications as a basis for the research.

3.18 On contacting the CROs, it became clear that some issues were not as clear cut as it would appear. For example, determining what is successful and unsuccessful was more difficult than expected, largely because the terms are not as definitive as they might seem.

3.19 First, the research team had taken the view that unsuccessful applications were 'those where a decision had been made by the CRA not to approve the TVG application'. This included applications where the applicant attempted or requested to withdraw the application. In such situations it is up to the CRA to decide whether to accept the withdrawal or not; if they decide not to allow the withdrawal, they process the application as normal. The other point to note is that not all of the applications assessed went to committee for the decision or were subject to a public inquiry. This needed to be clear to the CROs so they knew which applications to include in their count of unsuccessful applications. As a basis we used the same approach as the Defra survey in 2007, but not all of the CRAs in this survey responded to that survey.

3.20 In terms of successful applications, some of the CRAs commented that there had been a change to the original submission to the Defra survey because of appeals to the initial decisions made by the CRA⁴. The result of this was to move the application from the 'successful' to 'undetermined' category. In the case of one CRA this meant that the number of successful applications in 2009 was actually lower than the number submitted to Defra in 2007. The selections were made on the basis of the current situation. The estimated population was not amended as the change was small and would be balanced out by new determined cases elsewhere.

3.21 The one type of registration that was not included in the survey was voluntary registrations, made by the landowner as these would not have any objections and registration was largely a legal formality. Unfortunately one of these was assessed, and was included in the Defra survey under the wrong category (Attenborough Village Green, Nottingham County Council, site 41). It was too late once this became apparent, so the site has been included in the analysis.

3.22 The documentation received also allowed the research team to assess the means by which the decision was made, and in particular whether an independent inspector was appointed to assist in the decision making process. Of the 25 successful applications, eight (32%) involved an inspector, compared to 17 (68%) which were decided without an inspector. Of the 23 unsuccessful applications, 11 (48%) involved an inspector and 12 (52%) did not. Overall, 29 dTVGs (60%) involved an inspector and 19 (40%) did not. However, in some cases of both successful and unsuccessful applications, it is clear that the legal department within the CRA offered some advice on the correct interpretation of the law. In the vast majority of cases the documentation received was a copy of the committee report within the CRA, which summarised the application, any objections received and the legal interpretation of the evidence including the inspector's report where there was one.

⁴ There is actually no right of appeal against a determination of a TVG application

4. ANALYSIS OF THE USAGE AND CHARACTERISTICS OF SELECTED SITES

4.1 Objective

4.1 The objective of this part of the research was to enable Defra to '*establish a clear picture of the character and features of new and failed greens*' to assist in any policy development in this area. The assessment examined a range of issues:

- What was the character and physical features of determined sites?
- What was the use of the site at the time of the site visit?
- Photographs to support and illustrate the character of the land.

4.2 In order to gather information on the characteristics of the selected dTVGs a member of the research team visited each site and undertook a site survey (see proforma in Appendix 3). The site visit surveys recorded features, such as benches and fencing with photographs to illustrate the character of the site. Once selected, a survey pack including a map and aerial photograph was prepared for recording different features and the position of the photographs. The second part of the proforma was a list of questions to ask local residents and visitors to the site. The minimum was to undertake at least one on-site discussion with a local resident or visitor until a good understanding of the uses and local management of the site was gained.

4.3 This section is based on an analysis of the site reports from the 48 sites, 25 successful sites and 23 unsuccessful sites, which form the core for all the analysis. The first three parts of this chapter consider the size, ownership and land-cover, respectively. The fourth section develops a typology of sites based on their physical characteristics, before the final section draws some tentative conclusions relating the typology to motivations for applications and chance of success. Where appropriate the discussion is illustrated with a selection of the photographs taken by the researchers.

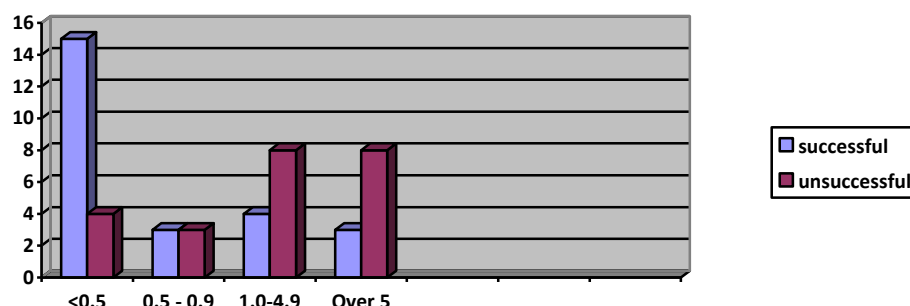
4.2 Size

4.4 The size of the sites varies from less than 0.1 ha (The Common, Forty Green, Bucks (site 6), Bredon Road, Tewkesbury (site 37), Newbold Hill, Rochdale (site 42) and Birch Drive, Billinghamurst, West Sussex (site 10)), all of which were successful, to 114 ha (Bullwell Hall Park, Nottingham City (site 24), which was unsuccessful.

4.5 More than half (25, 52%) of the 48 sites covered one hectare or less, and all but seven of these were successful. Of the 12 sites between 1 and 5 hectares, only four were successful and only three of the 11 sites over 5 hectares were successful, the largest of which was Town Fields in Doncaster, which covers 37 hectares. Table 4.2 provides a full breakdown.

4.6 The graph below (Table 4.1) shows that applications for smaller sites were generally more successful than for larger sites. Since size is not a criterion for determining TVG status this is just an observation and no link should be inferred. In comparison with the ADAS study (ADAS 2006) the sample is similar, where half of the pre-1993 registrations are less than 0.5 ha and a quarter of post-1993 registrations. That study focussed on registrations only; the match is stronger with the successful sites in this survey.

Table 4.1 Size of Successful and Unsuccessful Application Sites (ha)



4.3 Ownership

4.7 The ownership of 40 of the 48 sites was identified with some degree of certainty. The largest proportion of these sites (19, 48% of identified sites), were owned or mainly owned by local authorities. A further five sites (13%) were owned by parish or town councils.

Table 4.2 Application Sites by Size

Size	Site [land owner]
Less than 0.5ha	19 sites (40%), 15 successful, 4 unsuccessful: Outwell Boat Basin (1) [Co]; Glebe Park (2) [PC]; Pimms Village Green (5) [LA]; Forty Green (6) [NK]; Daly Way, Aylesbury (7) [LA]; Herstmonceux (8) [LA]; Birch Drive (10); Groomsland Drive (11); Ramsey Close (12) [LA]; The Green, Hertford (26) [LA]; The Freehold, Hadlow (31) [partly PC]; Well Hill, Tresham (34); Carvers Pool, Chaceley (36) [LA]; Bredon Road, Tewkesbury (37); Newbold Hill, Rochdale (42); Tanhouse Drive, Wigan (43) [C]; Mercury Close, Bampton (44) [PC]; Little Milton Village Green (46) [LA]; Letcombe Regis (47) [PC].
0.5ha - less than 1ha	6 sites (13%), 3 successful, 3 unsuccessful: Snedmore (9) [F]; The Field, Patchway (15) [Co]; The Green, Ash Vale (23) [mostly MoD]; Hearten oak Playing Field (30) [PC]; Gravel Pit, Chaceley (35) [LA]; The Field, Seatoller Close (39) [HA]
1ha - less than 5ha	12 sites (25%), 4 successful, 8 unsuccessful: Witham Flood Meadows (3) [D]; Wood Lane Playing Fields (4) [LA]; Hearn Field, Haccombe with Combe (16) [PC]; Imperial Recreation Ground, Exmouth (17) [LA]; Buckingham Park and Hampton Community Sports Field (21) [LA]; Railway Land, Oswestry (27); Clun Glebe (28) [C?]; Liverpool Road, Burnley (29) [Co]; Grasmere Pastures, Whitstable (32) [F?]; The Arena, Telford (33) [LA]; Onslow Road, Newent (38) [D]; Attenborough Village Green (41) [VGA].
More than 5 ha	11 sites (23%), 3 successful, 8 unsuccessful: Town Fields, Doncaster (20) [LA]; Testwood House Farm (13) [was F now LA]; The Field, Kempshott (14) [D]; Metcalfe Lane, York (18); Land off Germany Lane, York (19); Gala Fields, Bispham (22) [LA]; Bullwell Hall Park (24) [mainly LA]; Buddleia Fields, Croxley Green (26) [part LA, part Co, part PR]; Wigwam Lane Playing Field, Hucknall (40) [part LA and part Co]; Trap Grounds, Oxford (45) [LA]; Frith Wood, Bussage (50) [D]

(successful sites in green, unsuccessful sites in red);

Note: Site name is followed by (reference number) and [type of owner where this is known with some certainty]

Key to owner category: LA = principal local authority, PC = parish council, D = developer, HA = housing association, C = church, F = farmer, Co = company other than farm, VGA = village green association, NK = no known owner, PR = private landowner

4.8 Three sites were owned by farmers, four by developers, at least two by churches, one by a housing association, one was mainly owned by the MoD, one by a local Village Green Association and one was described as a 'remnant of common land', for which the owner was not known. The remaining four were owned, wholly or partly, by companies, including a charitable trust. Apart from the land owned by farmers, only part of one site was in individual private ownership. At least two, both in the largest size category had multiple land ownership. There is also an interesting link between land ownership and public inquiries. Of the eight successful applications that involved an inspector, at least six were wholly or partly owned by the local authority and in most cases this was the CRA. Therefore it may be the case that some CRAs feel obliged to appoint an inspector to appear impartial in TVG situations where they are the landowner to ensure that transparency is evident. In the 11 cases where there was an inquiry in unsuccessful applications only five of the cases were on land owned by the local authority and all were contested.

4.9 As before, the figures from this research concur with those of the ADAS study (ADAS 2006) where three quarters of the registered greens they studied were in the ownership of the principal local authority or the parish council. A number of the registration since 1993 (16%) also had no known owner.

4.4 Land cover

4.10 The largest group of sites (24, 50%) was mainly laid to short grass often with a few trees and occasionally flower beds. Six sites resembled agricultural land, being pasture or (in one case) a ploughed field; three other sites were rough grassland, five were wooded or mainly wooded; one site was a post-industrial brownfield site, one of them now covered with shrub; one consisted of a mixture of uses including allotments; two were now developed, one for housing, the other for industrial units; and the remainder had a mixture of land cover.

4.5 Typology

4.11 For the purpose of analysis, the determined TVG application sites were categorised as follows:

- Small sites within housing estates, mostly owned by local councils or developers (9 sites, 7 successful and 2 unsuccessful);
- Playgrounds and parks (12 sites, 5 successful and 7 unsuccessful);
- Unplanned urban or sub-urban open spaces, including brownfield ex-industrial sites (7 sites, 3 successful and 4 unsuccessful);
- Agricultural (or ex-agricultural) sites which may be owned by farmers or developers (6 sites, all unsuccessful);
- Rural 'open spaces' including woods (14 sites, 10 successful and 4 unsuccessful).

4.12 The following sections look at the five categories in more detail using photographs and findings from the site surveys to provide more detail. It should be reiterated that the classifications have been determined after the site visits and are therefore a 'post-coding' of the information gathered and based on a snapshot as the sites appeared at the time of the site survey.

Small sites within housing estates (9 sites)

4.13 The sites:

- Pimms Village Green, High Wycombe (site 5) [grass, cut short]
- Daly Way, Aylesbury (site 7) [grass, cut short]
- Birch Drive , Billingshurst (site 10) [grass, cut short]
- Groomsland Drive, Billingshurst (site11) [grass, cut short]
- Ramsey Close, Horsham (site 12) [grass, cut short, some trees]
- The Green, Hertford (site 26) [grass, cut short, some trees]
- Bredon Road, Tewkesbury (site 37) [grass, cut short, flower beds]
- The Field, Seatoller Close, Morton (site 39) [grass, cut short]
- Land off Tanhouse Drive, Wigan (site 43) [grass]

4.14 These sites were mainly sites that had been planned into the design of housing estates as open space. A typical small site is shown in Figure 4.1 and a larger site is shown in Figure 4.2.



Figure 4.1: Birch Drive, Billingshurst, West Sussex (site 10) – a small estate site (successful)



Figure 4.2: The Field, Seatoller Close, Morton, Cumbria (site 39) – a larger estate site (successful)

4.15 These sites were all small or fairly small, the largest being 0.6 ha (The Field, Seatoller, Cumbria, site 39), and the smallest being a wide grass verge, estimated as 0.06 ha in area (Bredon Road, Tewkesbury, site 37), as shown in Figure 4.3, which went to public enquiry as the highway authority objected. In this case, the inspector recommended that the area should not be registered but the committee approved the application.



Figure 4.3: Bredon Road, Tewkesbury (site 37) – a wide grass verge (successful)

4.16 Typically, the site would be less than 0.5 ha, unfenced except where it was adjacent to a private house or garden or (in one case) a school playing field, covered with mown grass and a few trees. Generally, there was no or very little furniture and few signs, other than those forbidding dog fouling and advertising neighbourhood watch. One site (Ramsey Close, Horsham, site 12) had a children’s playground in the centre but this was excluded from the area registered as a TVG. The only site in this category to be actually labelled as a village green was Pimms Green in High Wycombe, Buckinghamshire (site 5). The sign was on the side of a house abutting the green and can be seen in Figure 4.4.

4.17 Applications on these sites tended to be successful, with only one of the nine (Daly Way, Aylesbury, site 7) being refused TVG status. From talking to local people, these sites tended to be highly valued, especially as somewhere that children could play whilst being watched from their homes. In some cases evidence of ‘wear and tear’ and information from interviewees on other sites indicates that most were well used, although little use was actually seen. However, some uses were difficult to witness such as use by children, as many of the visits were during the school day, and of dog walking as this is commonly done in the early morning or evening. Additionally, use can fluctuate with the number of children living in the surrounding houses.



Figure 4.4: Village Green plaque, Pimms Grove, High Wycombe, Bucks

4.18 Many of the people interviewed near to these TVGs were aware of and supported the village green applications. However, precise understanding varied considerably from involvement in action groups through to ‘yes it is now permanent open space’. From the discussions with local people there appears to be a common thread that needs careful further examination, notably with a cross reference to the planning information. It would appear that most of the applications in such situations appeared to be motivated by some ‘perceived threat to the land’. The next chapter will assess whether this was the case in terms of planning applications or allocations for development proposals. However, the perceived threat was not always of house building. In one case (Daly Way, Aylesbury, site 7) the application was triggered by a plan to use the land for flood alleviation, involving a sunken tank with a kiosk above and a grasscrete road across the green. Although the application for village green status was unsuccessful, an alternative solution to the flooding problem was found, and the area remains unaltered. In the case of Ramsey Close, Horsham, (site 12) the application was reported by local people to be triggered by a planning

application from a housing association to build affordable homes on the site. In the event, the planning application was rejected and the site was later given TVG status.

Playgrounds and Parks (12 sites)

4.19 The sites:

- Glebe Park, North Hykeham (site 2) [grass, cut short, some tree/shrub planting]
- Wood Lane Playing Fields, Louth (site 4) [grass, cut short]
- Imperial Recreation Ground, Exmouth (site 17) [coarse mown grass]
- Town Fields, Doncaster (site 20) [grass, cut short, some trees]
- Buckingham Park and Hampton Community College Sports Fields (site 21) [grass, cut short, some trees]
- Gala Fields, Bispham (site 22) [grass]
- Bulwell Hall Park and Blenheim Lane Allotments (site 24) [grass, some woodland and water]
- Heartenoak Playing Fields (site 30) [grass, cut short]
- The Arena, Telford Town Park (site 33) [grass, cut short]
- Wigwam Playing Field, Hucknall (site 40) [grass, cut short, rest disturbed ground]
- Attenborough Village Green (site 41) [grass, cut short]
- Mercury Close Play Area, Bampton (site 44) [grass, cut short]

4.20 These sites varied in size from 0.2 ha (Mercury Close, Play Area, Bampton, Oxfordshire, site 44) to the largest site in the sample, Bullwell Hall Park in Nottingham (site 24) at 114 ha. Most of the sites were urban parks, many of which contained sports pitches and other infrastructure and attractions, as well as grassed areas and trees. Figure 4.5 shows part of Town Fields Park in Doncaster, including a running track, and Figure 4.6 shows a train giving rides in The Arena, Telford. However, in the case of Telford, it must be pointed out that only a small part of the park was the subject of the TVG application. This was also true of Glebe Park, North Hykeham, Lincolnshire (site 2), where the land in question was adjacent to the park.



Figure 4.5: Town Fields, Doncaster (site 20) - a large urban park (unsuccessful)



Figure 4.6: The Arena, Telford (site33, unsuccessful)

4.21 However, as well as managed parkland or sports fields, Bulwell Hall Park, the largest site, contained a golf course, an old hall and gardens (now derelict), wooded areas and bodies of water (Figure 4.7) and the TVG application also covered an area of allotments (some of them abandoned).



Figure 4.7: Bulwell Hall Park, Nottingham (site 24, unsuccessful)

4.22 These larger sites tended to be owned by local authorities, although one, Gala Fields, Bispham (site 22), was partly owned by Nordicline (a wholly-owned subsidiary of Asda Stores Ltd). This part of the site was for sale with planning consent, with notices saying that trespassers would be prosecuted, as shown in Figures 4.8 and 4.9.



Figure 4.8: Gala Fields, Bispham (site 22) – ‘for sale’ sign (unsuccessful).



Figure 4.9: Gala Fields, Bispham – ‘no trespassing’ sign (unsuccessful)

4.23 Only two of the larger sites in this category (Town Fields Park in Doncaster, site 20 and Buckingham Park and Hampton Community Sports Fields, Richmond, site 21) were successful in becoming TVGs. In the case of the Richmond site, a sign was erected describing the land as a ‘common’ rather than as a town green.

4.24 The smaller sites in this category tended to be more ‘rural’ and to be playing fields and children’s playgrounds, rather than parks. For example, the smallest site in this category, at Mercury Close, Bampton, Oxfordshire (site 44) was a small children’s play area. Attenborough Village Green, shown in Figure 4.10, was the only green in the sample to be owned by a Village Green Association.



Figure 4.10 - Attenborough Village Green, Nottinghamshire (site 41) – cricket pitch and pavilion (successful)

4.25 Attenborough was one of three of these smaller sites to achieve TVG status (note, this was a voluntary registration by the landowner). The others were Heartenoak Playing Fields, a 0.75 ha parish council owned site in Kent, and Glebe Park, North Hykeham, Lincolnshire (site 2) at 0.2 ha.

4.26 It is harder to gauge information from casual interviews in this category of site, as interviewees seemed to be less closely tied to the locality and thus appeared to be less knowledgeable about the applications. However, as well as the proposed development on part of Gala Fields, Bispham, mentioned above, there are signs of development on a number of the unsuccessful sites. This included the building of a leisure centre on Wood Lane Playing Fields, Louth (site 4), shown in Figure 4.11; and the purchase of part of Wigwam Lane Playing Field, Hucknall, Nottinghamshire (site 40) by a developer, who later went bankrupt. The local view on one site was that 'there was a plan by the parish council to build flats' on part of Mercury Close Play Area; and there was a similar suggestion that the North Hykeham Town Council should sell Glebe Park for development. Such claims are difficult to prove one way or the other but did appear linked to the generation of the TVG application.



Figure 4.11: Wood Lane Playing Fields, Louth (site 4) – building a leisure centre on part of the site (unsuccessful)

4.27 On two of the successful sites in this category, Town Fields Park in Doncaster (site 20) and Buckingham Fields, Richmond (site 21), the application appeared to stem from dissatisfaction with the council's management of the land. However, in the case of Town Fields, Doncaster, further research revealed that a Stakeholder Group had been formed as a result of perceived threats to the park from development, encroachment and loss of open space; this ultimately led to the application being submitted.

Unplanned urban or sub-urban open spaces (7 sites)

4.28 The sites:

- Witham Flood Meadows, Lincoln (site 3) [dense wet grassland and scrub]
- The Field, Patchway (site 15) [dense grass, scrub round edge]
- Land west of Metcalfe Lane, York (site 18) [rough grassland, grazed]
- Land off Germany Lane, York (site 19) [grass, scrub and woodland]
- Railway Land, Oswestry (site 27) [post-industrial scrub]
- Land at Newbold Hill, Rochdale (site 42) [rank grass, few trees]
- Trap Grounds, Oxford (site 45) [rank grass, scrub, woodland and pond]

4.29 Apart from the 18.5 ha site in Osbaldwick, York (site 18), the sites in this category were fairly small, varying in size from the 4 ha of Witham Flood Meadows in Lincoln (site 3) to 0.1 ha site at Newbold Hill, Rochdale (site 42). Ownership is varied, with the two sites owned by companies not linked to farming or development.

4.30 Two of the sites were ex-industrial brown-field sites, one of which (Railway Land, Oswestry, site 27) had become covered with shrub, see Figure 4.12. A second site (land at Newbold Hill, Rochdale, site 42) was suspected of being on the site of a spoil heap from nearby mine workings.



Figure 4.12: former rail siding, Railway land at Oswestry (successful)

4.31 The TVG application for Patchway (site 15), next to the Rolls Royce factory, was submitted when plans for the new Rolls Royce factory were released. The TVG application failed but Rolls Royce met with local people and agreed to keep the land as open space and to cut it once a year.

4.32 Of the remaining sites in this category, the largest, Osbaldwick (site 18), was used for grazing; two others (land off Germany Land, York (site 19) and Patchway,

Bristol (site 15)) were little-used urban or urban-fringe land; and the fourth, Witham Flood Meadows, was a flood meadow site on the edge of Lincoln, now fenced off and due to be developed for housing, as shown in Figure 4.13.



Figure 4.13: Witham Flood Meadows, Lincoln (site 3) fenced for housing development (unsuccessful)

4.33 None of these last four sites was successful in achieving TVG status. Again, from the site visit perspective, all the applications seem to be linked in some way to possible development, although this cannot be proved and in places contradicts the information outlined in the next chapter. In the case of the Osbaldwick site mention was made of an application for 540 homes; the Germany Lane site was reportedly linked to a threat to build a road through the land and the Patchway site was also a subject of a planning application, although, only in the case of Witham Flood Meadows was there any evidence of development taking place. In the case of the two York sites (Osbaldwick and Germany Lane) the planning applications were made the subject of a single public inquiry and the inspector found in favour of the applications.

Agricultural or ex-agricultural sites (6 sites)

4.34 The sites:

- **Snedmore, Kingston (site 9)** [agricultural pasture]
- **Testwood House Farm, Totton (site 13)** [long grass, some hedges]
- **Land at the Field, Kempshott (site 14)** [building site]
- **Land of Liverpool Road, Burnley (site 29)** [business units, greenfield site formerly used for hay production]
- **Grasmere Pastures, Whitstable (site 32)** [rough grassland]
- **Onslow Road, Newent (site 38)** [ploughed field]

4.35 These sites varied in size from 15.7 ha (Grasmere Pastures, Whitstable, site 32) to 1 ha (Snedmore, East Sussex, site 9). Most of one site, The Field, Kempshott, Basingstoke (site 14), had been developed into a housing estate, with the rest of the

area being a building site. The site at Newent (site 38) was also owned by a developer and intended for residential development, as can be seen in Figure 4.14. This site is at present a ploughed field and access is strongly discouraged.



Figure 4.14: Onslow Road, Newent (site 38,) - intended for development (unsuccessful)

4.36 Three of the sites in this category are pastureland and two of them are thought to be owned by farmers. One, at Kingston in East Sussex, is used as a caravan site in the summer. The other, Grasmere Pastures, is a large site surrounded by housing. Its use appears to be contested as evidenced by a notice shown in Figure 4.15.



Figure 4.15: sign at Grasmere Pastures (site 32, unsuccessful)

4.37 A fifth site, Testwood, Hampshire (site 13) is now owned by the local council, who intend to make it into a recreation site. They have installed kissing gates and put up notices. At present the site is grazed with the agreement of local people. This can be seen in Figure 4.16. The site survey did not reveal any perceived development 'threat' to these last three sites.



Figure 4.16: Testwood, Hampshire (site 13) – showing grazing and kissing gate (unsuccessful)

4.38 Another site (land off Liverpool Road, Lowerhouse, Burnley, site 29) is shown in Figure 4.18; this was in agricultural use until the start of the development. At the time of the visit, it was partly developed and the remaining land was lying vacant.



Figure 4.17: land at Lowerhouse, Burnley (site 29) – a greenfield site undergoing industrial development (unsuccessful)

4.39 None of these applications for TVG registration was successful but the application on the Testwood site did appear to result in New Forest District Council taking over the land for public use.

Rural 'open spaces', including woods (14 sites)

4.40 The sites:

- The Boat Basin, Outwell (site 1) [grass, cut short]
- The Common, Forty Green (site 6) [grass, cut short]
- Denefield Estate, Herstmonceux (site 8) [grass, cut short]
- Hearn Field, Haccombe with Combe (site 16) [grass, cut short, some trees]
- The Green, Ash Vale (site 23) [woodland]
- Buddleia Fields, Croxley Green (site 25) [long grass, scrub and woodland]
- Clun and Chapel Lawn Glebe (site 28) [pasture, some woodland]
- The Freehold, Hadlow (site 31) [part allotment, rest overgrown]
- Well Hill, Tresham (site 34) [grass, cut short, some trees]
- The Gravel Pit, Chaceley (site 35) [grass, cut short, some trees]
- Carvers Pool, Chaceley (site 36) [grass, cut short, open water]
- Little Milton Village Green (site 46) [grass, cut short]
- Letcombe Regis Village Millennium Green (site 47) [re-sown grass]
- Frith Wood, Bussage (site 50) [woodland]

4.41 There were fourteen sites in this category. Apart from Frith Wood in Gloucestershire (site 50) at 9.1ha, Hearn Field in Devon (site 16) at 2.7ha, Buddleia Fields in Hertfordshire (site 25) and Clun Glebe in Shropshire at 1.6ha (site 28), they were all under 1ha in size. Two sites were almost entirely wooded and three others were partially wooded including Clun Glebe that was a mixture of woodland and pasture, as shown in Figure 4.18. Most were covered with short grass.



Figure 4.18: Clun Glebe, Shropshire (site 28, unsuccessful)

4.42 Most of the sites seem to be owned by local authorities although the ownership was not always certain. Parish councils owned three sites and the majority of a fourth; County councils were thought to own three sites; one (Frith Wood) was owned by the developer of the neighbouring housing estate; The Green, Ash Vale, Surrey (site 23) was mainly owned by the MoD; The Common, Forty Green (site 6) was thought to be a 'remnant of common land' and had no known owner; and the ownership of the remaining sites was unclear. Figure 4.19 shows a memorial to the man who gave Hearn Field to the parish.



Figure 4.19: Hearn Field, Devon (site 16) – memorial to previous owner who gave the site to the parish (successful)

4.43 Carvers Pool, Chaceley, Gloucestershire (site 36) is shown in Figure 4.20. This was one of the two sites in Chaceley approved at the same time.



Figure 4.20: Carvers Pool, Chaceley (site 36, successful)

4.44 Nine of these 13 sites were successfully registered as greens. Thus, a typical site in this category would be small, council-owned and covered in short grass, possibly with trees and, in two cases, a pond. Unlike the first category these were not planned spaces within a housing development, nor were they formal playgrounds or parks (category 2) or ex-agricultural land (category 3). They are remnants of open space within communities. The four unsuccessful applications included the two wooded sites, Frith Wood (site 50) and Ash Vale (site 23), and one partially wooded site, Clun Glebe (site 28).

4.45 The fourth application to be rejected was The Freehold, Hadlow, Kent (site 31). This was an atypical site, with a complicated pattern of usage involving allotments. Three views of the site can be seen in Figure 4.21. It seems that local residents have taken over parts of the site as allotments or extensions to their gardens. The ownership is uncertain, although part of the site is believed to belong to the parish council. The application was reportedly triggered by an attempt by one resident to claim ownership of the central part of the site.



Figure 4.21: The Freehold, Hadlow, Kent (site 31) – a mixture of uses and land-cover (unsuccessful)

4.46 Using the evidence from the site visits, the triggers for these rural town and village green applications seem to be varied. One reason appeared to be to safeguard, or in the case of Clun Glebe (site 28) to re-establish, community access. There seemed to be three cases of disputed ownership, where someone reportedly claimed ownership of part of the land and, in one case, tried to fence it. Encroachment of cars on a small area of green ‘open space’ was the trigger in at least one case (Little Milton, Oxfordshire, site 46). Threat of building development did not seem to be a major issue and was mentioned in only two cases. In Herstmonceux (site 8), there was generalised concern about the possibility of the site being developed; and the possibility of development was mentioned in Hadlow (site 31), where a claim of ownership was seen as a sign of possible development. However, most of the sites were either too small to develop or unsuitable in other ways. For example, The Common, Forty Green (site 6) was only 0.03 ha, as can be seen in Figure 4.22, and several sites were subject to seasonal flooding.



Figure 4.22: The Common, Forty Green (site 6) – too small for development (also showing sign of car damage on the edge) (successful)

4.47 It is possible that these applications and perhaps some others have been motivated simply by the desire to 'have a village green'.

4.6 Conclusions

4.48 Village green applications are made on a wide variety of sites. These sites can be roughly categorised as:

- Small sites within housing estates, mostly owned by local councils or developers;
- Playgrounds and parks;
- Unplanned urban or sub-urban open spaces, including brownfield ex-industrial sites;
- Agricultural (or ex-agricultural) sites which may be owned by farmers or developers;
- Rural 'open spaces' including woods.

However, there are a few sites that do not fit easily into any of these categories.

4.49 Size of sites can also vary considerably from less than 0.1 ha to over 100 ha, and although size is not a criterion, smaller sites appear to be more successful in becoming TVGs. Looking more closely, small sites within housing estates and small rural 'open spaces' have been more successful than other categories. There were no successful applications on agricultural/ex-agricultural sites in this sample.

4.50 The site survey did reveal a wide variety of motivations for applications for TVG status with many applications triggered by some sort of threat perceived by those who live close to the site. The survey revealed that this was not necessarily the threat of housing or other building development but may simply be a possible denial of public access or a lack of consultation over management. For example, applications on council-run parks and playgrounds may be caused by disagreement with the way in which the council runs the site or by the possibility of part of the site being sold for development. However, some applications, particularly in the rural 'open spaces' category, seem to have been motivated by a general desire to have a village green rather than triggered by a specific or generalised threat.

5. LINKING DETERMINED TVG SITES AND DEVELOPMENT INTENTIONS

5.1 Objective

5.1 The Objective of this part of the research as stated in the tender brief is to provide:

information as to whether the sites within the sample were earmarked for development (within in a local development plan or subject to a planning application) at the time applications - for TVG registration - were submitted.

5.2 This was elaborated in discussion as identifying what was the planning context at the point just before, during and after the application for TVG registration was made. It should be stressed that the research focused on this clear and simple objective of providing information.

5.3 However, the very act of collecting that information begs the unspoken question of whether applications for TVG status might be motivated by the allocation of the site for development in the Local Plan or the submission of a planning application to develop the site. In this regard it is necessary to enter a *caveat*. The researchers were not permitted to ask individual CRAs, local planning authorities or anyone else about their *opinions* concerning the application for TVG registration and its relationship with the planning system. This restricts outputs from the research to the provision of information exactly as stated in the original Objective and precludes any conclusions about a causal relationship between applications for TVG registration and policies / applications for development on the site. Put simply, it is not possible from the information collected from planning authorities to conclude whether an application for TVG registration was motivated by the desire to prevent development.

5.2 Method

5.4 The purpose of the research method adopted was to establish whether each of the 48 TVG sites in the sample was allocated for development in a local development plan around the time of the TVG application, or was the subject of a planning application for development at the time the TVG application was submitted.

5.5 The sample number of 48 TVG applications embraced 41 local planning authorities, including 31 district councils and 10 unitary authorities. These are set out below in Table 5.1.

Methodological difficulties encountered

5.6 The project brief anticipated the matching of TVG sites and information available on the Planning Portal about (a) Local Plan policies and (b) planning applications for those sites to be relatively easy. In the event this proved optimistic and major difficulties were experienced in relation to securing both sets of information.

Table 5.1 – Local planning authorities surveyed

District Councils (31)	Commons Registration Authorities
Ashfield District Council	Nottingham County Council
Aylesbury Vale District Council	Buckinghamshire County Council
Basingstoke & Deane Borough Council	Hampshire County Council
Broxtowe District Council	Nottingham County Council
Burnley Borough Council	Lancashire County Council
Canterbury City Council	Kent County Council
Carlisle City Council	Cumbria County Council
Chiltern District Council	Buckinghamshire County Council
East Devon District Council	Devon County Council
East Herts District Council	Hertfordshire County Council
East Lindsey District Council	Lincolnshire County Council
Forest of Dean District Council	Gloucestershire County Council
Guildford Borough Council	Surrey County Council
Horsham District Council (3 applications)	West Sussex County Council
King's Lynn & West Norfolk Borough Council	Norfolk County Council
Lewes District Council	East Sussex County Council
Lincoln City Council	Lincolnshire County Council
New Forest District Council	Hampshire County Council
North Kesteven District Council	Lincolnshire County Council
Oxford City Council	Oxfordshire County Council
South Oxfordshire District Council	Oxfordshire County Council
Stroud District Council (2 applications)	Gloucestershire County Council
Teignbridge District Council	Devon County Council
Tewkesbury District Council (3 applications)	Gloucestershire County Council
Three Rivers District Council	Hertfordshire County Council
Tonbridge & Malling Borough Council	Kent County Council
Tunbridge Wells Borough Council	Kent County Council
Vale of the White Horse District Council	Oxfordshire County Council
Wealden District Council	East Sussex County Council
West Oxfordshire District Council	Oxfordshire County Council
Wycombe District Council	Buckinghamshire County Council

Unitary Authorities (10) (in each case, also the Commons Registration Authority)

Blackpool Borough Council
Doncaster Metropolitan Borough Council
London Borough of Richmond
Nottingham City Council
Rochdale Metropolitan Borough Council
Shropshire County Council (2 applications)
South Gloucestershire Council
Telford & Wrekin Council
Wigan Metropolitan Borough Council
York City Council (2 applications)

With reference to planning applications

5.7 The (usually informal) name given to the TVG site was often different from the name given by the local planning authority to the site that was subject to an individual planning application. This presented obvious problems in matching TVG application sites with planning application sites.

5.8 It was not possible to identify relevant planning applications online, whether through the Planning Portal or the local planning authority's own website, because in that mode the planning applications were usually identified by reference number rather than by a site name, so it was difficult, if not impossible, to match a TVG site with a planning application site.

5.9 In response it was decided that the most effective way to find out whether there had been any planning applications relevant to the TVG site would be to send individual letters to all 41 local planning authorities, asking whether there had been any planning applications for individual sites around the time of the TVG application (see Appendix 4 for a copy of the letter). This was a laborious process, involving follow-up email letters and, in some instances, telephone calls. In the event the response rate was 92% for all TVG sites (and enhanced to 96% through information gained on site visits); under the circumstances this was exceptionally good.

With reference to planning policies in Local Plans

5.10 The information at the Planning Portal which stated that the relevant Local Plan was not online was out of date for several local planning authorities for which the plan was available online. Similarly, in a number of cases the local planning authorities themselves reported that the relevant plan was not online whereas the plan actually was available online. Some of the online Local Plans did not have a proposals map, or the map was exceptionally difficult to find or read.

5.11 In response to these problems, we asked each local planning authority separately for a hard copy of the relevant Local Plan. Many authorities quoted prices that were well outside the project budget and some said that requested plans were no longer available except for viewing in offices, so a different approach had to be adopted.

5.12 The research team resorted to identifying relevant Local Plans available online at the website of each local planning authority; taken together with the acquisition of some hard copy Local Plan proposals, we were able to access Local Plans for 39 TVG sites (81%), a very good response rate given the severe problems of accessing information, especially when it needs to be remembered that some plans relevant at the time of the TVG application have since been superseded.

5.3 Findings of the Analysis

Analysis of Planning Applications

5.13 We looked at all 48 sites where a TVG application had been made. We received 44 useable responses from local planning authorities concerning planning applications for TVG sites. This represented 92% of all dTVGs (which was raised to 96% by site visit observations that development had taken place on two further dTVG sites).

5.14 The following categories of response from local planning authorities were identified as part of the analysis:

1. no planning applications had been received for the dTVG;
2. planning applications had been received for the dTVG but there was no discernible development relevance to a TVG application;

3. multiple planning applications had been received in the immediate vicinity of the dTVG, but not for the site itself, indicating a degree of development pressure near to the site;
4. planning applications had been received for the development of the dTVG with potential relevance for a TVG application.

5.15 A summary of these responses is shown in Table 5.2. In just over half of the cases (24 cases - 52% of those sites for which information was available) there had been no planning application - or no planning application for development likely to trigger a TVG application. We can say with confidence that in these cases the motivation to apply for TVG status was not triggered by a planning application to develop the site.

5.16 In just under half of the cases (22 cases - 48% of those sites for which information was provided) planning applications had been submitted to develop the site - or there was strong development pressure in the immediate vicinity of the site (and in two cases where the local planning authority had not responded, the site survey confirmed that development had already taken place on the site). Specific planning applications for the development of TVG sites had been made for 19 sites (40%); most of these planning applications were for residential development. Here, while we can say that there was a positive correspondence between planning applications and TVG applications, we cannot say that this was a causal correspondence.

5.17 There was no discernible correlation between (a) the submission and determination of planning applications for dTVG sites and (b) whether or not the TVG application was successful. The only feature of that analysis that suggests a comment was that application for TVG status was successful for two-thirds of the dTVG sites for which no planning application had been made. By comparison, just over half of the sites for which a planning application had been made were not successful in their dTVG applications.

5.18 The tension between the TVG registration process and the determination of planning applications is highlighted in three cases where planning permission was given for the development of the dTVG sites, but where the application for TVG registration was also successful: Railway Land at Oswestry (site 27), Newbold Hill at Rochdale (site 42) and Trap Grounds at Oxford (site 45).

5.19 One interesting feature of the analysis of the usage and characteristics of dTVG sites addressed in Chapter 4 above was that planning applications had been received for the development of all seven dTVG sites (88%) in the 'Unplanned urban or sub-urban open spaces' category: Witham Flood Meadows at Lincoln (site 3), The Field, Patchway (site 15) Land west of Metcalfe Lane, York (site 18), Land east of Germany Lane, York (site 19), Railway Land at Oswestry (site 27), Land at Newbold Hill, Rochdale (site 42), and Trap Grounds, Oxford (site 45).

Table 5.2 – Analysis of planning applications in relation to TVG sites

Site ref	Determined TVG site	Local planning authority	Nature of planning application	Planning status	TVG status
No planning applications made for TVG site (20 sites)					
1	The Boat basin, Outwell	King's Lynn & W Norfolk			Approved
2	Glebe Park, North Hykeham	North Kesteven DC			Approved
6	The Common, Forty Green, Penn	Chiltern DC			Approved
8	Denefield Estate, Herstmonceux	Wealden DC			Approved
9	Snedmore, Kingston	Lewes DC			Refused
10	Birch Drive, Billingshurst	Horsham DC			Approved
11	Groomsland Drive, Billingshurst	Horsham DC			Approved
15	The Fields, Patchway	South Gloucestershire			Refused
16	Hearn Field, Haccombe with Combe	Teignbridge DC			Approved
22	Gala Fields, Bispham	Blackpool BC			Refused
25	'Buddleia Fields', Croxley Green.	Three Rivers DC			Approved
26	'The Green', Hertford	East Herts DC			Refused
32	Grasmere Pastures, Chestfield,	Canterbury City			Refused
33	The Arena, Telford Town Park	Telford & Wrekin			Refused
34	Well Hill, Tresham	Stroud DC			Approved
35	The Gravel Pit, Chaceley	Tewkesbury BC			Approved
36	Carvers Pool, Chaceley	Tewkesbury BC			Approved
37	Bredon Road, Tewkesbury	Tewkesbury BC			Approved
44	Mercury Close Play Area, Bampton	West Oxfordshire DC			Refused
46	Little Milton Village Green	South Oxfordshire DC			Approved
Planning applications made but not for relevant development of TVG site (4 sites)					
17	Imperial Recreation Ground, Exmouth	East Devon DC	2 applications: landfill remediation and erection of lights		Refused
41	Attenborough Village Green,	Broxtowe DC	3 applications including flood defence, equipment store and pavilion extension		Approved
47	Letcombe Regis, Village Green	Vale of The White Horse	Renewal of application for village green	Approved	Approved
50	Firth Wood, Bussage	Stroud DC	Remedial work to trees		Refused

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Site ref	Determined TVG site	Local planning authority	Nature of planning application	Planning status	TVG status
Multiple planning applications made in vicinity of TVG site but not for site itself (3 sites)					
13	Testwood House Farm, Totton	New Forest DC	No applications for site but multiple applications for development in immediate vicinity		Refused
21	Hampton College Sports Field	Borough of Richmond	80 applications in immediate vicinity of TVG site		Approved
23	The Green, Ash Vale	Guildford BC	4 applications in immediate vicinity of TVG site		Refused
Planning applications for development of TVG site (19 sites)					
3	Witham Flood Meadows	Lincoln City	Multiple applications for residential development	Approved	Refused
4	Wood Lane Playing Fields, Louth	East Lindsey DC	Leisure centre has been built on the site (information from site visit only)	Approved	Refused
5	Pimms Grove/Close, High Wycombe	Wycombe DC	Application for new dwellings	Withdrawn	Approved
12	Land at Daly Way, Aylesbury	Aylesbury Vale DC	Application for 2 control kiosks		Refused
7	Ramsey Close, Horsham	Horsham DC	Application for 5 new dwellings		Approved
14	Land at The Field, Kempshott	Basingstoke BC	Residential development has taken place on the TVG site (information from site visit only)	Approved	Refused
18	Land off Metcalfe Lane, Osbaldwick	York City	Major application for residential development called in by SoS – no mention of TVG in SoS decision report	Approved	Refused
19	Land off Germany Lane	York City	Major application for residential development called in by SoS – no mention of TVG in SoS decision report	Approved	Refused
24	Bulwell Hall Park Allotments	Nottingham City	Outline application for residential development	Approved	Refused
27	Railway Land, Oswestry	Shropshire County	Application for mixed use: health centre, 'medical village', new dwellings, live/work units, offices, amenity space, but successful later TVG application halted development process	Approved	Approved
28	Clun and Chapel Lawn Glebe	Shropshire County	Application for extension of graveyard		Refused
29	Liverpool Rd at Lowerhouse, Burnley	Burnley BC	25 applications including: industrial development, cricket clubhouse, public house	1 approved	Refused
30	Heartenoak Playing Fields, Hawkhurst	Tunbridge Wells BC	Application for residential development		Approved
38	Onslow Road, Newent	Forest of Dean DC	Multiple applications for residential development		
39	The Field', Morton, Carlisle	Carlisle City	Application for residential development – refused	Refused	Approved
40	Wigwam Lane Playing Field, Hucknall	Ashfield DC	Multiple applications for residential development	Approved	Refused
42	Land at Newbold Hill, Rochdale	Rochdale MBC	2 applications for residential development	1 approved	Approved
43	Land off Tan House Drive, Winstanley	Wigan MBC	Application for residential development and church	Refused	Approved
45	Trap Grounds, Oxford	Oxford City	Application for affordable dwellings on city-owned site – approved, then subsequent application for TVG status approved	Approved	Approved

Analysis of planning policies in Local Plans

5.20 Again we looked at all 48 sites where a TVG application had been made. We were able to gain access to Local Plans extant at the time of the TVG applications for 39 sites. This represented 81% of all dTVGs. A summary of these responses is shown in Table 5.3 below.

5.21 The following categories of Local Plan allocation were identified as part of the analysis:

1. no development proposal was made in the Local Plan for the dTVG site – or an open space/conservation designation was made;
2. the Local Plan allocated the dTVG site for development;
3. the Local Plan allocated land in the immediate vicinity for development but not for the dTVG site itself.

5.22 There were no proposals for development for a clear majority of dTVG sites – 24 sites (61% of those sites for which we were able to access the relevant Local Plan). For these sites we can say again with confidence that in these cases the motivation to apply for TVG status was not triggered by a proposal for development in the relevant Local Plan.

5.23 In a minority of cases – 13 sites (33% of those sites for which we were able to access the relevant Local Plan) the dTVG site had been allocated for development in the Local Plan and in two further cases the land in the immediate vicinity had been allocated for development. Here, as with the analysis of planning applications, we can say that while there was a positive correspondence between proposals for development in the Local Plan and TVG applications, we cannot say that this was a causal correspondence.

5.24 There was a correlation between (a) whether or not the TVG application was successful and (b) the policies of the relevant Local Plan. There was a tendency for TVG applications to be approved where there were no proposals in the Local Plan for the development of the site – 16 out of 24 sites (67%) – and a similar tendency for such applications to be refused where there were proposals in the Local Plan for the development of the site – 10 out of 13 sites (77%). Again, however, we are unable to say that this is a causal correspondence. There also seems to be a correlation between (a) whether or not an inquiry had taken place and (b) the policies of the relevant Local Plan. In the 13 cases where there were development proposals in the Local Plan there had been eight inquiries (62%), whereas in the 24 cases where there were no proposals in the Local Plan, there were just eight public inquiries (33%).

5.25 The overlap between the TVG registration process and proposals in the Local Plan is illustrated in three cases where the dTVG site was zoned for development in the Local Plan but the application for TVG registration was successful: Denefield Estate at Herstmonceux (site 8), Railway Land at Oswestry (site 27) and Trap Grounds at Oxford (site 45). It will be noted from the preceding sub-section that planning permission was also given to develop two of these sites (sites 27 and 45). In these two cases development proposals in the Local Plan for the dTVG site were subsequently removed as a result of successful applications for TVG status. It seems likely that the proposals for development in the Local Plan had triggered the application for TVG status. By contrast, in one case, Wood Lane Playing Fields at Louth (site 4) - the dTVG site was designated as open space in the Local Plan, but a leisure centre has been built on the site and the application for TVG status was refused.

Table 5.3 – Analysis of planning proposals in Local Plans in relation to TVG sites

Site ref	Determined TVG site	Local planning authority	Proposals for TVG site in Local Plan	TVG status
No development proposal made for TVG site in Local Plan (24 sites)				
2	Glebe Park, North Hykeham	North Kesteven DC	No development plan proposal	Approved
4	Wood Lane Playing Fields, Louth	East Lindsey DC	Designated as open space (but leisure centre built on site)	Refused
5	Pimms Grove/Close, High Wycombe	Wycombe DC	No development plan proposal; site shown as in the built-up area	Approved
6	The Common, Forty Green, Penn	Chiltern DC	No development plan proposal	Approved
7	Land at Daly Way, Aylesbury	Aylesbury Vale DC	No development plan proposal	Refused
9	Snedmore, Kingston	Lewes DC	TVG site outside permitted development boundary - AONB	Refused
10	Birch Drive, Billingshurst	Horsham DC		Approved
11	Groomsland Drive, Billingshurst	Horsham DC	No development plan proposal; site shown as in the built-up area	Approved
12	Ramsey Close, Horsham	Horsham DC		Approved
13	Testwood House Farm, Totton	New Forest DC	Subsequent Local Plan designates as a special area	Refused
16	Hearn Field, Haccombe with Combe	Teignbridge DC	Outside village development area / coastal preservation area	Approved
20	Town Fields, Doncaster	Doncaster MBC	Designated as open space policy area in UDP	Approved
26	'The Green', Hertford	East Herts DC	No development plan proposal; site shown as in the built-up area	Refused
31	The Freehold, Hadlow	Tonbridge / Malling BC		Refused
32	Grasmere Pastures, Chestfield,	Canterbury City		Refused
35	The Gravel Pit, Chaceley	Tewkesbury BC	Designated as landscape protection zone in the flood plain	Approved
36	Carvers Pool, Chaceley	Tewkesbury BC		Approved
37	Bredon Road, Tewkesbury	Tewkesbury BC		Approved
39	'The Field', Morton, Carlisle	Carlisle City	Designated as 'Primary Leisure Area'	Approved
41	Attenborough Village Green,	Broxtowe DC	Designated as policy RC5 – 'existing open spaces'	Approved
42	Land at Newbold Hill, Rochdale	Rochdale MBC	No development proposal in Unitary Development Plan	Approved
43	Land off Tan House Drive, Winstanley	Wigan MBC	No specific policies apply to the site. Shopping centre adjacent to it is covered by Local Centre Policy S1D	Approved
44	Mercury Close Play Area, Bampton	West Oxfordshire DC	No development plan proposals	Refused
46	Little Milton Village Green	South Oxfordshire DC	Designated as Conservation Area	Approved

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Site ref	Determined TVG site	Local planning authority	Proposals for TVG site in Local Plan	TVG status
Development proposal(s) made in immediate vicinity of TVG site in Local Plan (2 sites)				
25	'Buddleia Fields', Croxley Green.	Three Rivers DC	Designated as Green Belt/Local Wildlife Site	Approved
47	Letcombe Regis, Village Green	Vale of The White Horse	Designated as Conservation Area/AONB, but adjacent to sites for residential development	Approved
Development proposal made for TVG site in Local Plan (13 sites)				
3	Witham Flood Meadows	Lincoln City	Proposal for residential development, green wedges, basic natural stock	Refused
8	Denefield Estate, Herstmonceux	Wealden DC	Development will be permitted if it is in accordance with other policies and proposals	Approved
15	The Fields, Patchway	South Gloucestershire	Development within Defined Urban Area and Settlement Boundary/Safeguarded Employment Areas	Refused
18	Land off Metcalfe Lane, Osbaldwick	York City	Proposal for residential development/Action Area	Refused
19	Land off Germany Lane	York City	Proposal for residential development/Action Area	Refused
22	Gala Fields, Bispham	Blackpool BC	Northern part of site designated for industrial development; other land designated as Playing Fields.	Refused
24	Bulwell Hall Park Allotments	Nottingham City	Abandoned allotments allocated as Development Site and Regeneration Zone. Rest of area designated Major Parks, and as part of Open Space Network/Local Nature Reserves	Refused
27	Railway Land, Oswestry	Shropshire County Council	Designated as Town Development Area; development process taking place but halted by later successful TVG application	Approved
29	Liverpool Rd at Lowerhouse, Burnley	Burnley BC	First Deposit proposals map appears to show the area as earmarked for 'Business, industrial and warehousing'; site now contains business units	Refused
33	The Arena, Telford Town Park	Telford & Wrekin	Within Central Telford Area Action Plan which includes a range of land uses	Refused
38	Onslow Road, Newent	Forest of Dean DC	Proposal for residential development	Refused
40	Wigwam Lane Playing Field, Hucknall	Ashfield DC	Proposal for residential development; under construction but abandoned due to bankruptcy	Refused
45	Trap Grounds, Oxford	Oxford City	Proposal for affordable residential development (superseded by later successful application for TVG status)	Approved

5.26 One interesting feature of the analysis of the usage and characteristics of dTVG sites addressed in Chapter 4 above was that six of the seven dTVG sites (86%) in the 'Unplanned urban or sub-urban open spaces' category were allocated for development in the relevant Local Plan: Witham Flood Meadows at Lincoln (site 3), The Field at Patchway, Bristol (site 15), Land west of Metcalfe Lane, York (site 18), Land east of Germany Lane, York (site 19), Railway Land at Oswestry (site 27), and Trap Grounds, Oxford (site 45). This mirrors almost exactly the dTVG sites in this category for which planning applications for development had been received. By contrast, none of the nine dTVG sites in the 'Small sites within housing estates' category were allocated for development in the relevant Local Plan and seven were registered as TVG (78%).

5.4 Summary Conclusions

5.27 In just over half of cases (52%) the application for TVG status was not triggered by a planning application to develop the site and in a clearer majority of cases (61%) the application for TVG status was not triggered by a proposal for development of the site in the relevant Local Plan.

5.28 Where a planning application to develop a site had been made or where a Local Plan allocated the TVG site for development it is not possible to say that the application for TVG status had been triggered by the submission of that planning application or the Local Plan allocation. It might be inferred that there was a positive correspondence between them but, without interviewing a range of actors in the process in each site, it is not possible to say that it was causal.

5.29 While there was no discernible correlation between (a) the submission and determination of planning applications for dTVG sites and (b) whether or not the TVG application was successful, there did seem to be some sort of correlation between (a) proposals for the development of dTVG sites and (b) whether or not the TVG application was successful. TVG applications were generally successful where there were no proposals for development in the Local Plan and unsuccessful where there were such proposals. However, it is not possible within the scope of the research methods used to ascertain whether this is a causal correspondence.

5.30 For nine dTVG sites there were both proposals for development in the Local Plan and planning applications had been made for the development of the site. Of these only two were approved, giving a clear majority (78%) that were unsuccessful. For 13 dTVG sites there was no proposal for the development of the site in the Local Plan and no planning applications for its development. Of these 11 (84%) were successful applications for TVG registrations. The numbers involved mean that this cannot be read as significant. However the absence of both a planning application and proposal for development in the Local Plan suggests that TVG applications are likely to be successful whereas if the opposite is true, i.e. planning application made for the site and proposal for development of the site in the Local Plan, then the applications are likely to be unsuccessful.

5.31 Finally, on a methodological point, the Planning Portal, because it is not kept up to date and complete, is not a useful tool for research purposes as it needs to be checked in every instance against other source material.

6. ANALYSIS OF REASONS FOR FAILED APPLICATIONS

6.1 Objective

6.1 The objective of this part of the research was to examine the sample of 23 failed TVG applications in order to establish the reasons for the failure. The reasons for failure should be articulated to the applicant in a letter that they receive from the CRA outlining why the application failed to meet the criteria necessary to be registered as a TVG. These criteria are set out under section 15 of the Commons Act 2006 as being:

- a significant number of;
- the inhabitants of any locality, or neighbourhood within a locality;
- indulgence in lawful sports and pastimes;
- on the land;
- as of right;
- for a period of at least 20 years.

6.2 Some applications that were considered were made under the Commons Registration 1965 and in these cases slightly different criteria would have been applied. It is also worth noting that in legal terms, 'as of right' splits into three different components – it must be without force, without secrecy and without permission.

6.3 The findings in this section are based on the 23 unsuccessful applications for which the research team have received some relevant documentation. What became apparent very early on was that all CRAs without exception were either unwilling and/or unable to provide us with the letter to the unsuccessful applicant. This may have been because the information was more difficult to find than the reports and maps that were requested, possibly because these were available online, but whatever the reason none were forthcoming.

6.4 Therefore in order to perform the analysis, it was necessary to obtain information about the decision. This was obtained from the CRA, either from websites or by request, in the form of:

- minutes of committee meetings;
- papers submitted to committees;
- reports produced by legal experts (in-house or, more typically, experts appointed to perform the role of independent inspector).

6.5 Some of the expert reports were lengthy and not read in detail. However, all the conclusions were studied and the reasons offered for recommending rejection of the application were identified.

6.6 In order to be accepted for registration as a green, all the legal tests have to be satisfied. If any one of these tests is not met, the whole application fails irrespective of its merits against other tests. Therefore, in some cases, the reasons for failure may not necessarily cover all the failures; for example, if the legal expert established on the balance of probabilities that use has not been 'as of right', then he/she may have rejected the application without considering whether, for example, use had continued uninterrupted for at least 20 years. Another complication is that different reasons for failure may apply to different parts of the candidate site; for example, the Gala Fields application (site 22) failed because part of the area (recreation ground and football pitches) was used 'by right' (i.e. with permission) rather than 'as of right'

(without permission) while another part (formerly in agricultural use) failed because a use had been asserted despite clear evidence that it had been with force and so was not used 'as of right'.

6.7 The committee report summarises the information connected to the application and, if there was a public inquiry, includes the pertinent points from the inspectors report. Not all applications went to a committee for a decision; some were decided by the county solicitor, perhaps because the applicant had requested to withdraw the application or because the application was not 'duly made', a term which means that the application is not complete or relevant. Another point to bear in mind is that the reports of legal experts serve to explain a recommendation made to the relevant CRA committee. However, it is the committee which makes the decision. In virtually all cases, we have assumed that the committee has accepted the recommendation as per the expert report and made their decision accordingly. Also, one site in Hampshire was assessed on the basis of an expert report, but when put to the CRA committee, it was decided to seek a second legal opinion and, to date, this second opinion has not been located.

6.2 Analysis of reasons for failure


6.8 Eight possible reasons for failure were identified compared to the six listed in the project brief. Table 6.1 includes those application which were not 'duly made'. It should be noted that the legal categories do overlap and have an impact on each other to some extent. For example, the tender listed 'indulgence in lawful sports and pastimes' separately from 'on the land' whereas on analysing the reports this separation was not apparent and thus a combined 'qualifying use not established' category has been used. Lastly, the 'for a period of at least 20 years' has been divided into three categories with the additional ones covering 'unbroken use' and 'not up to point of application'. In 11 of the 23 cases (48%) the application went to a public inquiry, a higher proportion than for successful applications where only 8 out of 25 cases (32%) involved an inquiry.

6.9 If the CRA considers that an application has not been duly made, it can reject it without assessing it against the legal tests. This occurred in three cases. However, it is regarded as acceptable practice for the CRA to give the applicant an opportunity to re-submit an application in line with the due process. In one of these cases (Witham Flood Meadows, site 3), the applicant "decided not to pursue it"; in a second (Bulwell Hall Park, site 24), an appropriate application was never actually made; in the other (The Arena, Telford, site 33), we understand that the initial application was withdrawn and another application has now been made. In a fourth case (The Green, Guildford, site 23), the expert's view was that the site to which the application related could not, in the circumstances obtaining there, be considered independently from a much larger area of which it was part; it also failed on other tests.

Table 6.1: Analysis of Reasons for Failure

Candidate TVG	Site Ref. No.	Reason for Rejection							
		Application not duly made	'Significant number of' not established	'The inhabitants of any locality, or neighbour-hood within a locality' not established	'Qualifying use' not properly established	'As of right' not established	'For a period of at least 20 years' not established	'Unbroken use' not established	Use did not continue to date of application
Witham Meadows	3	√							
Wood Lane, Louth	4		√	√	√	√			
Daly Way, Aylesbury	7					√	√		
Snedmore, Kingston	9		√	√					
Testwood, Totton	13			√	√		√		
Land at Kempshott	14		√	√					
The Fields, Patchway	15		√		√	√			
Imperial Rec, Exmouth	17								
Metcalfe Lane, York	18		√	√		√	√		
Germany Lane, York	19				√			√	
Gala Fields, Bispham	22			√		√			
The Green, Ash Vale	23					√		√	
Bulwell Hall Park, Notts	24	√		√					

Candidate TVG	Site Ref. No.	Reason for Rejection							
		Application not duly made	'Significant number of' not established	'The inhabitants of any locality, or neighbour-hood within a locality' not established	'Qualifying use' not properly established	'As of right' not established	'For a period of at least 20 years' not established	'Unbroken use' not established	Use did not continue to date of application
The Green, Hertford	26				√	√			
Glebe land, Clun	28								√
Land at Lowerhouse	29				√	√		√	
The Freehold, Hadlow	31			√	√	√		√	
Grasmere, Whitstable	32					√			
The Arena, Telford	33	√					√		
Onslow Road, Newent	38			√			√		√
Land off Wigwam Lane	40			√		√	√		√
Mercury Close Play area	44					√			
Firth Wood, Bussage	50		√	√	√	√	√	√	


Means data not available

6.10 The most common reason for rejection was a failure by the applicant to show that use was 'as of right'. In the majority of the cases, it was the 'use without permission' that could not be established. For example, in some cases, land was used by the owner for agriculture and/or other uses and the local residents willingly accepted the primacy of use for these other purposes, the implication being that their use at other times was by implied permission (e.g. at land off Germany Lane, York, site 19). In other cases, use was seen to be 'by right' rather than 'as of right'. There were also examples of force being used to gain entry (such as the breaking of fences erected by landowners or tenants). A further point raised in two cases was that use was of a nature that it would be unlikely that the landowner would be able to observe that 'as of right' use was being asserted and so was not able to take action to counter this use (e.g. at land off Liverpool Road, Burnley, site 29).

6.11 The second most common reason for rejection was the inability of the applicant to show that use had been by inhabitants of a locality, or a neighbourhood within a locality. It seems to have become accepted via case law that the locality must be an area defined for some official purpose (e.g. a parish, a ward) but that a 'neighbourhood' could be less clearly defined in terms of having 'hard' boundaries; in such a case however, the applicant must be able to show a degree of cohesiveness. There were examples of applications which failed against one or other of these criteria. For example, in the Newent case (site 38), the expert view was that the applicant had failed to show that the area of Foley Road and Appledown Estate was a neighbourhood within the meaning of the Act. The legal experts, in coming to their opinion, paid close attention to the location of the homes of people who came forward as witnesses and placed less weight on those witnesses who came from outwith the claimed boundaries of the locality and/or neighbourhood. A further consequence of this was that it was sometimes judged that the applicant had failed to demonstrate that use had been by a 'significant number' of people from within the locality/neighbourhood (although this was found in only six cases).

6.12 The next most common cause of rejection was the failure to show qualifying use. This was typically because users had been shown to have stayed on paths and tracks, suggesting a use more akin to rights of way rather than rights to use a green. In one case, the main use of one part of the site appeared to be for growing vegetables and for chatting to the growers rather than 'lawful sport and pastimes'.

6.13 Failure to meet the 20 years of use criterion was the reason for rejection in seven cases. This was sometimes linked to the failure to establish that use had been uninterrupted for the whole of this period. In one case, for example, the inspector believed that agricultural cropping, by its very nature of making use of the whole area, had interrupted use during the claimed period.

6.14 In just three cases, it was judged that the use did not continue up to the date of the application, and so the application should be rejected on these grounds.

7. OVERALL ANALYSIS AND CONCLUSIONS

7.1 Overall analysis

7.1 The site survey revealed that there were no typical characteristics that make up either successful or unsuccessful TVG applications. This analysis did show that successful applications are more likely to be small, although three of over 10 hectares were approved. There was no relationship between ownership and whether the application was successful or not. However, there was a possible link regarding the use of inspectors. In some cases of successful TVG applications the landowner was the local authority and often the CRA. In these cases where objections appeared minimal it seems that the CRA is using the inspector to show transparency in its decisions making. In unsuccessful applications where an inspector was used a wider range of land owners was present and it is possible that the legal judgement of the inspector was used in decision making.

7.2 The ground cover for the majority of sites was grassland and in half of the cases this was managed through cutting. In the remainder of cases the land was either agricultural or unmanaged with varying amounts of tree and scrub cover. Some sites, those that were unsuccessful were being developed. The typology developed suggests that applications for small sites within housing estates are more likely to be successful (seven applications out of nine in the category) than agricultural or ex-agricultural sites (all six applications unsuccessful). Playgrounds and parks featured in 12 sites surveyed and in each case the land was wholly or partly owned by the local authority or parish council but this did not impact on the success of the application.

7.3 The site survey did reveal a wide variety of motivations for TVG applications with many applications triggered by some sort of perceived threat to the site by those who live close to it. This was not necessarily the threat of housing or other building development but also a possible denial of public access or a lack of consultation over management. For example, the site survey highlighted that applications on council-run parks and playgrounds may be caused by disagreement with the way in which the council runs the site or by the possibility of part of the site being lost without consultation. However, some applications, particularly in the rural 'open spaces' category, seem to have been motivated by a general desire to have a village green rather than triggered by a specific or generalised threat.

7.4 The planning section added the issue of planning applications and local development plans to the analysis and revealed that six of the seven of the sites in the 'Unplanned urban or sub-urban open spaces' category had also received planning applications and were included in development proposals under the Local Plan at the time of the application. In only five of these seven cases an inspector was appointed, a higher proportion than in any other category. By contrast, none of the nine dTVG sites in the 'Small sites within housing estates' category were allocated for development in the relevant Local Plan and seven were registered as TVG (78%) and only two, both successful, involved an inspector.

7.5 When the analysis of failed applications is added to the previous chapters it is fairly clear that on many sites it is the need for the applicant to show that the usage has been 'as of right' (i.e. without permission) rather than 'by right' (i.e. with permission). This is particularly difficult in situations where the land is owned by the local authority as the applicant would need to prove the usage to be without

permission on publicly owned land. The numbers are too small to assess any pattern between the typology of characteristics and reasons for failed applications.

7.2 Conclusions

7.6 The site visits show that there is no longer, if there ever was, a typical town or village green. It is evident that these sites can occur in a wide range of situations and locations across England. The same can be said of unsuccessful applications as they occur in sites with similar characteristics and situations.

7.7 Perhaps the most significant finding from this research so far is the existence of two parallel systems between which there is minimal communication: the TVG registration process and planning system. In our view this seems to be problematic. There is no legal requirement for one system to inform the other at any stage and this is understandable as the presence of an application under one system does not affect the legal process of the other (although the outcomes of the process obviously do). Nevertheless, the processes in each system rarely seem to take explicit account of issues / decisions in the parallel system, even though they can have significant importance for each other, particularly as far as the impact on individual sites and the individuals involved are concerned. There would appear to be a need for (a) explicit interaction, albeit not integration, between the two systems, (b) understanding of the 'other' system by practitioners in each system, and (c) the adoption of a greater degree of consistency in such matters as site identification / description and mapping protocols. With specific reference to the first of these requirements, consideration might be given to the following five possible points of contact between the two systems.

1. All applications for TVG registration should be logged directly with the relevant local planning authority (for information only as the TVG registration process cannot take into account planning matters). Further consideration might be given to the point in the TVG registration process at which this might occur: the receipt of the application or the point at which the application is judged to have been 'duly made'. The latter might be more sensible.
2. The local planning authority should inform the Commons Registration Officer of any planning applications made for a site for which an application for TVG registration has been made (for information only as the TVG registration process cannot take into account planning matters). For this system to work, Recommendation 1 needs to be accepted).
3. All successful TVG registrations should be logged directly with the local planning authority. Within the local planning authority, this information should be disseminated to both development control and development plan personnel.
4. The local planning authority should explicitly consult the Commons Registration Officer in the process of preparing the Local Development Framework (formerly Local Plan).
5. A copy of the Local Development Framework (formerly Local Plan) should be sent to the Commons Registration Officer on adoption.

7.8 It is important to note that in counties with a two-tier local government structure the County Council normally is the Commons Registration Authority and the District Council is the local planning authority, so that the suggested points of contact outlined above would be between different local authorities. However, Unitary Authorities normally discharge both functions, so that the points of contact would be within the same authority. Provision needs to be made for contact to take place between CROs and planning officers within the same authority (as the county council is the planning authority for developments such as waste, minerals and most roads).

7.9 Introducing interaction between the two systems would not be difficult, and does sometimes occur now. It would appear that some unitary authorities are already doing this because 'it is good practice' and 'makes the system more effective'. Under the 2006 Act, the CRA has to notify all relevant local authorities; if the CRA was a county council this would mean letting the district council know. However there is no requirement for this to go direct to the planning department at the district council so the application may be received, noted and filed without that department being aware. It should be noted that names allocated to sites are likely to differ between the two systems and that the areas and aspects involved will not always match exactly in the majority of cases. Therefore maps, preferably to an agreed scale and quality, as well as grid references should always be included in any interaction.

7.10 Second, we can infer that in just under half of cases the motivation for TVG registration was driven by, or influenced by, proposals for development in the Local Plan or planning applications submitted for the development of the TVG site, but we cannot confirm that this was a causal relationship because the research method adopted did not permit us to make that conclusion. If confirmation of that causal relationship is to be proved (or disproved), a different research method would need to be adopted involving the selection of case studies for in-depth scrutiny and the use of 'interrogatory' techniques with principal actors in both the TVG and planning processes. For example, a more detailed survey of the individuals involved in the application and in any planning proposals would be required with a rigorous check against all the relevant documentation from both processes.

7.11 Where planning applications to develop the TVG site had been made, these were mainly for residential development. This is perhaps not surprising as the dTVG site was usually close to or integral with a residential areas, therefore making industrial development less likely but there were examples within our survey.

7.12 It should be emphasised that in just over half of cases the motivation for TVG registration was not driven by either proposals in the Local Plan or planning applications for the development of the TVG site. That is not to say that that there was not a 'threat' to the dTVG application site. On some of these sites it would appear that there was a 'perceived' threat of development and this might have been the motive or trigger for the application. In such cases a causal relationship is almost impossible to show with any degree of certainty. In other cases, it would seem that the local community wanted to formally register land that they and others had always regarded as a town or village green.

7.13 The use of inspector appears to have two reasons. In some cases it would appear that the use of an inspector to ensure transparency for local authorities and CRAs who are the land owner or have a vested interest. In other cases inspectors appear to be used in more complex cases for their legal opinion in a complex legal

area to ensure that the right decision is made. Further research may be needed to highlight if reasons of transparency require the use of an inspector. As the Commons Act 2006 becomes embedded the use of the Planning Inspectorate might increase but it is unclear if this will be more cost effective.

7.14 Finally, the analysis of failed applications reveals that TVG applicants find proving that their use is 'as of right' to be most difficult. In many cases this is on local authority owned land. It may be possible for a concentrated study of legal cases to determine that the ownership of local authority land under certain acts, for example the Open Spaces Act 1906, means that the 'as of right' element of a TVG application cannot be proven, or can be proven only if certain criteria are met. This would enable organisations such as the Open Spaces Society to brief those considering a TVG application about the likely success of their application and how it will be assessed. It may also enable the CRA to make a faster decision in some cases as the criteria for assessment would be clearer and more transparent.

8. REFERENCES

ADAS (2006) *Town and Village Greens project* report to Defra, London.

Clayden, Paul (2003) *Our Common Land – the law and history of common land and village greens* (5th Edition) The Open Spaces Society: Henley-on-Thames

Riddall, John (2007) *Getting Greens Registered – A guide to law and procedure for town and village greens* The Open Spaces Society: Henley-on-Thames

APPENDICES**Appendix 1: Actual selection of TVG sites**

CRA	Successful	Unsuccessful	Total / CRA
EAST	3	3	
Norfolk County Council	1st of 1		1
Lincolnshire County Council	2nd of 3	4th & 5th of 6	3
Hertfordshire County Council	2nd of 3	6th of 6	2
EAST MIDLANDS	1	2	
Nottinghamshire County Council	1st of 1	2nd of 2	2
Nottingham City Council		1st of 1	1
LONDON	1	0	
London Borough of Richmond Upon Thames	2nd of 2		1
NORTH EAST	0	0	
None			
NORTH WEST	3	2	
Cumbria County Council	1st of 2		1
Rochdale Metropolitan Borough Council	1st of 1		1
Wigan Metropolitan Borough Council	2nd of 3		1
Lancashire County Council		1st of 2	1
Blackpool Borough Council		1st of 1	1
SOUTH EAST	10	8	
East Sussex County Council	1st of 1	2nd of 4	2
Buckinghamshire County Council	1st & 2nd of 2	3rd of 4	3
Kent County Council	2nd of 2	2nd & 3rd of 3	3
West Sussex County Council	1st, 2nd & 4th of 7		3
Oxfordshire County Council	6th, 8th & 9th of 9	5th of 5	4
Hampshire County Council		1st & 4th of 4	2
Surrey County Council		2nd of 3	1
SOUTH WEST	5	6	
Devon County Council	1st of 2	3rd, 4th and 5th of 5	4
Gloucestershire County Council	1st, 4th, 5th & 6th of 6	1st and 3rd of 3	6
South Gloucestershire Council		1st of 2	1
WEST MIDLANDS	1	2	
Shropshire County Council	2nd of 2	1st of 3	2
Telford & Wrekin Council		4th of 5	1
YORKSHIRE & HUMBERSIDE	1	2	
Doncaster Metropolitan Borough Council	1st of 1		1
City Of York Council		2nd & 4th of 4	2
	25	25	50

Appendix 2 Email letter to CROs

Dear [name, title]

The Countryside and Community Research Institute (CCRI) is undertaking some research for Defra on Town and Village Greens (TVGs) in England. The research will examine a sample of the sites which have been successful in being registered as TVGs and a sample of sites which have been unsuccessful in being registered, from January 2004 to March 2009. The aim of the research is to provide an overall picture of the character and use of both new greens and of failed applications as well as assessing any links between TVG applications and preparation of development plans and submission of planning proposals on the same area of land.

Since part of the aim for the research is to generalize about the survey results it has been important for the sites selected to participate in the study to be selected randomly and without any prior knowledge of location or other details. As a result each case within the successful and unsuccessful samples was numbered with this representing the chronological order in which the successful or unsuccessful applications were received by the CRA. For example, within a CRA where there were 3 successful applications if we request the second then this is the second of the 3 successful applications received since January 2004. Just to repeat this is the point at which the application is first received by the CRA, not the date of the decision or of a revised/complete application but the first date that an application was received for this site. It is therefore possible that the application was received before January 2004, but it is included in our sample because the decision was after January 2004.

The applications we have selected are as follows:

- Successful: 3rd of 3
- Unsuccessful: 2nd of 5

In the next few days one of the research team will contact you and request 2 types of information. First we require the name and location of each selected TVG application together with a named contact in the appropriate local planning authority. Second we will need to discuss how we can obtain the committee notes, decision letters and other public available material. We are not seeking your views or expecting you to send us anything that is not within the public domain.

Thanks in advance for your assistance in this research and we look forward to speaking with you in the next few days.

Yours sincerely

Carol Kambites
Research Fellow, CCRI.

Appendix 3: Site Visit Proforma/Checklist

Title	
Reference	
Location	
CRA	
Owner (if Known)	
Date of Visit	
Surveyor	
Date of Registration/ Rejection	
Size	
Land cover	
OS Map (with outline showing location of green) Give scale and N-direction indicator	
Google Earth (© Google Earth)	

Structures	
Is the area fenced? On boundary? Type of fencing & mark on map	
What roads/public rights of way cross the land? Mark on Map	
Any signage – what do they say (mark location on map)	
Other fixed features <ul style="list-style-type: none"> - Benches - Seats - Cut areas for games - Notice boards - Other (specify) Mark on map	
Site's location relative to neighbourhood – do the houses overlook the area or 'turn their backs on it'?	
Rough age of surrounding properties – give separate dates for separate periods of development	
Evidence of use for recreation	
- seen during visit	
- inferred from what was seen	
- information from local people	
Events that appear to take place	
Photographs Label photos as follows "site Name" "grid ref of spot from where picture was taken" "Direction of photo"	
E.g. Kendal 51129339-N	
E.g. Kendal 51169345-W	
Take as many pictures as you feel are needed to capture the 'character' of the land and its environs	
Note – avoid pictures of people if you can, especially ones in which they can be identified and/or of children	
Recorded on MAGIC? (Y/N) Designations noted	
Any other useful information	

Interview with Local Person

Date interviewed	.../.../.....
Where interviewed	On the land On the street In house In Shop Other (specify)
What name do you give to this area of land?	
Which terms do you think best describes the character of this area of land?	Village Green Waste Land Derelict Land Brownfield site Park Open Space Town Green Kiddies' playground
Are you a resident of the area?	
How close to the 'green' do you live?	
Do you ever make use of the green?	
If so, what for	
What recreational activities go on here that you know of? <ul style="list-style-type: none"> - team games - riding horses - bike riding - children playing - Picnic - Dancing - Village fetes - Strolling/walking/ ambling e.g. river walk - Sketching/drawing - Dog walking for fresh air/exercise - Just 'chilling out' - Other - Anti-social activities like Drinking/drug taking - Picking berries/ mushrooms - Wildlife watching - Kite flying - Social gatherings - Other (Specify) 	
Has use of the area changed recently? <ul style="list-style-type: none"> - Recreational - Grazing 	

- Other uses	
If so, when did this change occur (approx.) and...	
... what was the nature of the change?	
Do you know who owns the land? If so, who?	
Do you know who manages the land? – If so, who?	
What is done to manage it? E.g. Nothing Mow grass Cut back trees/bushes Clear litter Provide benches/seats etc Keep paths open Other (specify).....	
Do you know if there is a residents' association or similar that looks after the green?	
Are you aware of this land being allocated in local planning documents as being earmarked for possible development? Need to be careful how we ask this one – we don't want to set hares running	
Do you know whether this area of land has ever been the subject of an application for planning permission for development/change of use? For example, signs may have put up saying the land was subject of a planning application Need to be careful how we ask this one – we don't want to set hares running	
Are you aware that the land was subject of an application to have it registered as a TVG?	
If yes, are you aware that it was SUCCESSFUL or UNSUCCESSFUL?	
If aware that it was UNSUCCESSFUL – do you know why the application was rejected?	
Was a 'Campaign Group' set up?	
Post Code	
Can you see the Green from your house?	

Appendix 4 - Letter sent to local planning authorities ref planning applications**Subject: Registration of Town and Village Greens - Research for Defra**

Dear Development Control Manager

The Countryside and Community Research Institute (CCRI) is undertaking research for Defra on Town and Village Greens (TVGs) in England. The research will examine a sample of the sites that have been successful in being registered as TVGs and a sample of sites which have been unsuccessful in being registered - from January 2004 to March 2009.

The aim of the research is to provide an overall picture of the character and use of both new greens and of failed applications as well as assessing any links between TVG applications and preparation of development plans and submission of planning proposals on the same area of land. In this latter context we are interested to see whether, during the period specified above, there have been any planning applications for sites for which TVG registration applications have been made – whether or not the application for registration was approved.

Since part of the aim for the research is to generalize from the survey results it has been important for the sample sites to be selected randomly and without any prior knowledge of location or other details. One such site has been selected in your local planning authority:

The Common, Brindle Lane, Forty Green, Penn, Map reference SU924918

I should be grateful if you could tell me whether any planning applications were submitted for this site between January 2000 and March 2009. If the answer is 'no', then a simple email response to that effect will be sufficient and will be much appreciated.

If, however, a planning application has been made for the sites, I should be grateful if you could let me know by email (a) the nature of the planning application, (b) the date of the application and (c) your reference number for that application. It is possible that, in response to receiving that information, a member of the research team would like to telephone you to ask you for further information about the planning application. I should be grateful if you would confirm that you would be willing to receive such a telephone call.

One further point – would you please let me know, again by email, which development plan was in force at the time that each application for TVG registration was made.

Thank you very much in advance for your assistance in this research.

Yours sincerely

Stephen Owen, Professor of Local Planning

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