

Health and Safety Report: Question regarding; is any planning permission required for the Parish Council to place posts on parts of the village green to prevent/deter parking and/or driving onto it.

PURPOSE OF REPORT

1. To address and report back on the H&S issue raised regarding the illegal placing of flint stones on the village green, and the related matter of the Parish Council inserting posts on the village green so as to prevent illegal off street parking.

RECOMMENDATION

2. Having received advice from BDBC Planning Department, as follows; "*I would advise that the means of enclosure around the village green (i.e. small timber posts and rope or chain link between) would not require planning permission subject to the height of such posts not exceeding 1 metre in accordance with Schedule 2, Part 2, Class A of The Town and Country Planning General Permitted Development Order (2015)*" [paragraph 4 below]...
...**it is RECOMMENDED that:**the Parish Council agrees:-

- a. in principle to the erection of 'telegraph' style posts along the boundary of the unadopted roads; subject to the receipt of an acceptable estimate for the works, and to the release of the appropriate funds to proceed, and,
- b. considers whether or not to insert similar posts along the adopted roads, and if so should they be 'not nearer than 15 metres from those roads'?... (see paragraph 6 below at end of report for advice/guidance given by Defra.).

BACKGROUND

3. EXTRACT from DRAFT Minutes of Hannington Parish Council meeting Sept 2017

1. **Car parking on village green:** The Council noted that damage was sometimes being caused to the edges of the village green from a combination of vehicles coming out of drives, parking half on the unadopted road and half on the village green, large vehicles trying to turn round the corners, and by vehicles going on the green to get past parked cars. It was noted that some residents may have tried to address this problem by placing large flint stones on the village green as well as on their verges. The Clerk reminded the Council that in response to an unrelated request from a resident regarding them putting flint stones etc on their verge to protect it (and their fence/garden), the Clerk had been informed by the Highways Authority that if a resident were to place an obstruction e.g flint stones on their verge, and as a result of their action there was an accident, or damage caused to a car, cyclist, pedestrian etc, the resident/home owner could be sued for damages. The Highways Authority suggested that any resident considering this action should seek advice from their insurers as to their cover!

The issue is further complicated as:-

- the village green is registered to the Parish Council, and no other person should place any obstruction on the village green without its explicit approval, and,

- two of the roads around the village green are 'highways roads' and the other two are 'unadopted roads'.

The Council noted that when the village church has an 'event' it places 'do not park' signs.

The Council considered the following options:-

1. **to put up 'No Parking' notices on the Village Green.**
2. **to put up further 'telegraph pole posts' at the south end of the green in place of the flint stones.**

Cllr Hertz informed the meeting his understanding was that, although the village green is registered to Hannington Parish Council, it still requires approval from the Borough Council to 'damage the surface' of the village green e.g. by inserting posts or by putting up signs on it!!

COUNCIL AGREED the following action:-

- to remove the flint stones, *[the Clerk sent an email 27th November to Hannington Farm asking for these flintstones to be removed, and to provide an estimate for the erection of ten posts.]*
- to ask residents to ask guests not to park so that vehicles will **NOT** have to go on the village green to pass, and
- **to seek clarification from BDBC regarding the need for their agreement to 'damage the surface of the village green' prior to making a decision, and if it is necessary, to seek approval/permission from BDBC to either or both of putting up 'No Parking' notices and/or putting in 'telegraph pole posts'.**

ACTION: CLERK

4. Response from BDBC Planning Department

Stephanie Baker <Stephanie.baker@basingstoke.gov.uk>

Thu 02/11,

10:58 You; simon@sbtproperty.co.uk; janusz@hertz.me.uk; robert.finlayson@lambbrooks.com; oliver_larminie@newton.co.uk; clare45@tiscali.co.uk;

Dear Chris,

Thank you for your emails.

I understand this relates to the written query you submitted, 17/03630/EN10, which is a 10 day enquiry due for a response by 9th November.

Regarding action you can take for vehicles being parked on the land, as you have indicated the land is owned by/ registered to the Parish Council it would be private land such that any unauthorised parking would be a private matter, not to be controlled by the Borough Council, County Council or Police.

Having taken an initial look, I would advise that the means of enclosure around the village green (i.e. small timber posts and rope or chain link between) would not require planning permission subject to the

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height of such posts not exceeding 1 metre in accordance with Schedule 2, Part 2, Class A of The Town
and Country Planning General Permitted Development Order (2015).

The relevant planning legislation is attached as 'GPDO 2015'.

In respect of placing 'no parking' signage on the green, I would advise that this would not require express
Advertisement Consent subject to the size of each sign not exceeding 0.3 square metre in area, there
being no illumination, no character or symbol exceeding 0.75m in height and no part of the sign being
more than 4.6 metres above ground level.

The relevant advertisement consent legislation and guidance document are attached.

I hope this has resolved your query.

Kind regards,

Stephanie Baker
Senior Planning Officer
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www.basingstoke.gov.uk/signup

5. Question raised by Clerk regarding erection of posts on village green

From: Chris Pottinger [<mailto:chrispottinger@live.co.uk>]
Sent: 02 November 2017 08:31
To: DevelopmentControl <DevelopmentControl@basingstoke.gov.uk>
Cc: Cllr Simon Taylor <simon@sbtproperty.co.uk>; Cllr Janusz Hertz <janusz@hertz.me.uk>; Cllr Robert
Finlayson <robert.finlayson@lambbrooks.com>; Cllr Oliver Larminie <oliver_larminie@newton.co.uk>;
Cllr Clare Kinnear <clare45@tiscali.co.uk>; Cllr Donald Sherlock
<Cllr.Donald.Sherlock@basingstoke.gov.uk>
Subject: Re: Question regarding; is any planning permission required for the Parish Council to place
posts on parts of the village green to prevent/deter parking and/or driving onto it

Dear Sir,

Are you able to answer the question I raised on 27th October? I know that I only sent it a
week ago, but I have received another letter of complaint from a Parish Councillor, on behalf of
residents, that vehicles associated with the building of a new property at Rose Cottage are
continuing to park their vehicles on the village green.

This is despite an email sent by me, as Clerk, to all residents reminding them they should NOT
park on the village green. I have also separately emailed the owners of Rose Cottage (6th
October) asking them to remind their builders that they should not park on the village green;
to which I have not received a reply.

If they continue to do so, could you advise me what actions I can advise the Parish Councillors
that they may take e.g. should I inform somebody formally in the Borough Council, County
Council or, in extremis, as the parking is 'unlawful' could they inform the police?

Yours sincerely,

Chris Pottinger,

Clerk, Hannington Parish Council

Question regarding; is any planning permission required for the Parish Council to place posts on parts of the village green to prevent/deter parking and/or driving onto it

Chris Pottinger

You;development.control@basingstoke.gov.uk

Dear Sir/madam,

I am the Clerk to Hannington Parish Council. I was advised this morning to put my question in writing.

The Parish Council, at its last meeting in September, discussed problems with 'cars parking on the village green'. I have reproduced at the end of this email the relevant extract from the DRAFT Minutes of that meeting. This provides a full picture of the issues raised... I have highlighted in red, the salient point.

You will see that one of the parish Councillors advised the Parish Council meeting that *"although the village green is registered to Hannington Parish Council, it still requires approval from the Borough Council to 'damage the surface' of the village green e.g. by inserting posts or by putting up signs on it!!"*

His 'source' appears to be Defra's guidance 'Maintenance and guidance on the protection of registered town and village greens'. see extract below

Section 29 of the Commons Act 1876 makes it a public nuisance to:

- encroach on a green (e.g. extending the boundary of an abutting property so as to exclude people from that area);
- inclose a green (i.e. by fencing it in, whether or not the effect is to exclude public access);
- erect any structure other than for the purpose of the better enjoyment of the green, or
- disturb, occupy or interfere with the soil of the green (e.g. camping) other than for the purpose of the better enjoyment of that green.

If the above provisions were to be interpreted strictly, an act which causes any injury to a green would appear to be an offence under section 12 of the 1857 Act and any disturbance or interference with the soil of the green (other than for the purpose of better enjoyment of the green) would technically be deemed a public nuisance under section 29 of the 1876 Act. However, in Defra's view, in considering whether or not any given development or action contravenes either or both of these statutes a court is likely to be concerned with whether material harm has been caused to a green and whether there has been interference with the public's recreational enjoyment. Other issues that might be relevant include the proportion of a green affected by the development or activity and the duration of the interference.

I am therefore writing to you **"to seek clarification from BDBC regarding the need for their agreement to 'damage the surface of the village green' prior to making a decision, and if it is necessary, to seek approval/permission from BDBC to either or both of putting up 'No Parking' notices and/or putting in 'telegraph pole posts' "**.

Kind regards,
Chris Pottinger,
Clerk, Hannington Parish Council

6. Separate but related issue regarding whether or not it is a legal offence to drive over or park on village greens.

3. Can vehicles drive over or park on greens?

Section 34 of the Road Traffic Act 1988 makes it a criminal offence to drive over, or park on land (including a green⁹) not forming part of a road without lawful authority to do so. In this context 'lawful authority' includes either the lawful permission of the owner of the land or a private vehicular right¹⁰. Those who have lawful permission, a private right or some other form of lawful authority may drive over, or park on, a green without committing an offence under the 1988 Act. Furthermore it is not an offence under the 1988 Act to drive on a green within 15 yards of a public road solely for the purposes of parking on the green¹¹.

However, irrespective of whether an offence has been committed under the 1988 Act, driving over or parking on a green may still be an offence under section 12 of the 1857 Act or section 29 of the 1876 Act (see question 1). For example, if a court adopted a strict interpretation of section 12 of the 1857 Act, any interruption of the use or enjoyment of a green would be an offence under that provision. However, in Defra's view, occasional driving of private vehicles over a green in exercise of a private right of way, for the purposes of parking on private land beyond the boundary of the green, is unlikely to be viewed by a court as giving rise to an offence under the 1857 and 1876 Acts, if the interference with recreational enjoyment is very brief. In our view, a court is more likely to find that vehicular use contravenes section 12 or section 29:

7.

Chris Pottinger,

Clerk, Hannington Parish Council.

4th December 2017