

Extract from email from Mendip District email from Senior Strategic Assets Officer, 9 May 2014 to cllr Adam Boyden

“... following our recent telephone conversation, the feedback from members is that there is no interest in pursuing the matter further with the town green application in place. Members have considered the sublease option and are aware of the potential maintenance savings and the Town Council’s proposed additional investment.

In terms of the works identified in the public consultation and the compliance of these if the site was registered as a town green; I can advise that the following items are unlikely to be considered compliant:

- Fence around the children’s play area
- Mini pitch
- Improve Frome Collegians dug out
- Creating a designated dog area
- Creation of a community market garden with allotments
- Creation of new paths
- Fitness equipment

In answer to your query about the fence around the children’s play area, I appreciate that the fence would be very desirable. However, the legal advice is that Section 12 of the Inclosure Act 1857 makes it a criminal offence to undertake any act which interrupts the enjoyment of a green as a place of exercise and recreation. There are no exceptions to this general prohibition. The DEFRA guidance specifically gives the example of fencing as such an interruption. In terms of Section 29 of the Commons Act 1876, the exemption that you referred to (i.e. structures erected with a view to the better enjoyment of the TVG) does not apply to inclosures (e.g. fencing).

This leaves the following works which may be considered acceptable should a Town Green be registered. Many of the identified the works would have revenue implications some significant such as the amenity grass cut which the District Council would not pursue in the current financial climate.

- Seating - This could be accommodated
- Frequent grass cutting - Mowing the grass to amenity standard has significant revenue maintenance implications and for this reason is very unlikely to be an acceptable option.
- Picnic area - This could be accommodated with relatively modest revenue implications.

- Tree planting - This could be accommodated, however, there has been a history of vandalism against trees planted at the play area on this site.
- Areas that encourage wildlife - There may be scope for this depending on what the aspiration was in the public consultation
- More equipment for all children – The provision of additional play equipment may be regarded as questionable but this will really depend upon whether the equipment is classed as a structure and in any event the proportion of the site affected would also be quite limited. Enhancing the play area would be in line with the play strategy as this is a prime play site.
- Dog bins - This could be accommodated
- Employing a dog warden – This would have revenue maintenance implications but can be linked into the new dog warden contract
- Renew surface of path to hospital - This could be accommodated
- Tree and hedge work - This is already a responsibility of the grounds maintenance contract and will be carried out.
- Drainage works so long as improved site drainage - This would greatly improve access and use of the site as some areas can be very boggy.

in terms of play equipment, some items might not be classed as ‘structures’ and that in any event the proportion of the Showfield affected would be quite limited. Whereas, fitness equipment would be likely to be classed as “structures” and would affect a larger area of the Showfield. This interpretation is based on the Commons Act 1876, where it is an offence to:

- 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 other than for the purpose of the better enjoyment of that green.

The DEFRA Guidance states:

*“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.”*

The next steps are for the District Council to draw up a list of prioritised and costed work drawing on the consultation work which has previously been carried out. At this point, it may be possible to give some opportunity for comment from the local community but this will obviously depend upon resources. Once it has been determined what works will be carried out the Council may need to seek consent from the Agricultural Society under the terms of the current leases. Determining the list of priorities and investing the S106 monies will be carried out by the Council's Operational Assets Team. I am sure that they will be in touch with you as ward councillor.

I hope that this answers your queries about what works may be acceptable and those that the District Council may pursue. In the light, of the recent travellers on site, security may well be an additional factor.

Kind regards