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**ALDBROUGH ST JOHN
VILLAGE GREEN AND COMMON
LAND**

MANAGEMENT POLICY

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Introduction

The Village Greens are an integral part of a village community and, as such, should provide its residents with a focal point around which they can live a peaceful and friendly existence. It is the essence of rural England, evoking cricket matches, village fetes and other communal activities.

Aldbrough St John is fortunate in having not only one of the largest village greens in England, but also two other smaller village greens as well as several smaller areas of grass formally designated village greens,(see map) common land areas managed by the Parish Council on behalf of the village include the stream bank side

This publication is designed to improve our collective enjoyment of this shared asset, ensuring we all understand how it came to be and how it must be looked after and respected. This is not a legal document, and nothing in it is intended to be given as legal opinion. All the references are drawn from primary legislation or Delegated Legislation in the form of regulations made by lawful authorities, or to published guidance issued by specialists in the field. Practical directions issued by Aldbrough St John Parish Council are made within the powers given to it in law, and as the owner of the lands on behalf of the wider community.

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Aldbrough St John Village Greens – Policies & Procedures

1. Aldbrough St John Village Greens

The Village Greens located on the Database of registered town or village Greens in England state that these three Greens are vested in Aldbrough St John Parish Council. Once a Green has been registered voluntarily it will be subject to the same statutory protections as all other registered Green no matter what the size or location. Registration as a town or village Green is irrevocable and land must be kept free from development or other encroachments. Subject to certain statutory exceptions for example compulsory purchase or exchange of land, once registered, land cannot be removed from the register.

See appendix Perimeter of Village Greens. See Appendix 1 for tracks and paths.

2. History and background

Aldbrough St John has the remarkable privilege of having three Village Greens at the heart of the village, and abutted by cottages and larger homes. The ownership of the Greens is vested in the Parish Council. None of the residents within Aldbrough St John have registered their ‘rights of common’ to graze a wide range of livestock such as cattle, horses, donkeys, geese, ducks, sheep, goats, and fowl.?

3. Definition of Village Greens

Village Greens are defined in the Commons Registration Act, 1965 (s.22) as amended by The Countryside and Rights of Way Act, 2000 (s.98) as:

“land ...on which for not less than twenty years a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged in lawful sports and pastimes as of right, and either (a) continue to do so, or (b) have ceased to do so for not more than such period as may be prescribed...”.

Village Greens are protected by the Inclosure Act, 1857 (s.12) and the Commons Act, 1876 (s.29). Section 12 makes it a criminal offence to do any act which injures a Greens or interrupts its use as a place for exercise and recreation. Section 29 also makes it an offence to permanently encroach upon or ‘inclose’ a Green, or to build upon or disturb the soil of a Green otherwise than with a view to its better enjoyment. It is not possible to give consent to do any works that contravene this legislation, as to give such approval would be condoning a criminal offence. In 1897, the Council re-confirmed bye-laws first made the previous year for the control and management of The Greens that further emphasised the protected nature of this special place. These byelaws continue in force today, as confirmed in 1956.

4. Legislation and guidance

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The following is a list of the most common legislation that exists for the protection and rights that cover Village Greens;

1. The Inclosure Acts of 1845 and 1857
2. The Commons Acts of 1876, 1899 & 2006
3. The Open Spaces Act, 1906
4. The Acquisition of Land Act, 1981
5. The Law of Property Act, 1925
6. The Countryside and Rights of Way Act, 2000
7. Various Local Government Acts
8. Bye-Laws for the Regulation of Village Greens, 1897
9. Guidance has also been issued by Department for Environment, Food and Rural Affairs (DEFRA):
10. Management and protection of registered town and village Greens January 2010
11. Vehicular access across Common Land and Town or Village Greens: Non- Statutory Guidance Note October 2007

All are available at www.defra.gov.uk. Advice is also available from the Open Spaces Society.

5. Responsibilities

The Greens are owned and administered by Aldbrough st John Parish Council, who are responsible for their maintenance, protection and upkeep. Any rulings or actions will be made by the Parish Council in accordance with legislation and published guidance from authoritative bodies such as DEFRA. It is the responsibility of the owners of property fronting or directly abutting the Village Greens should check their Deeds as to the boundary of their property to ensure that no items such as flowerbeds, shrubs, hedges, nameplates, or lighting columns extend beyond it. Some property owners, or their predecessors, have laid out access tracks to service their homes that front onto the Greens. These routes have existed for many decades, and possibly over a hundred years in some cases; and, the evolved right to use them for private access is known as a 'prescriptive right', which is protected in law. There is no public right of vehicle access. These rights were also established before the three greens became a registered green.

Over the years, loose surfacing has been laid down by some property owners over the surface of their track. As these tracks are for the private benefit of the householders only (and in some cases, local farmers for access to their land and barns) it is not for the Parish Council, to use public funds, to maintain the tracks. It is the responsibility of these lawful users of the tracks to ensure that anyone from the neighbourhood can enjoy The Greens, which must mean maintaining the tracks in at least a condition that is fit for pedestrians to walk on. As custodians on behalf of the community the Parish Council must ensure that The Greens are protected against encroachment, damage, and uses other than those consistent with its normal enjoyment.

6. Lawful use

Whilst not exhaustive, the following is a list of lawful and prohibited uses of Aldbrough St John Village Greens.

Lawful uses would include:-

1. Walking across it with or without a dog.
2. Playing sports and games.

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3. Use of existing paths for access/egress on foot.
4. Use of existing prescriptive rights of access that cross The Greens with a vehicle.
5. Flying of drones weighing less than 25g, provided this is done in accordance with guidance issued by the Civil Aviation Authority. See <https://www.caa.co.uk/Consumer/Unmanned-aircraft-and-drones/>.

Prohibited uses include:-

1. Any physical alterations to The Greens.
2. Fencing of The Greens (other than by the Parish Council) or otherwise making it inaccessible to the public.
3. Wilful damage (i.e. when a person was aware of the risk of damage) e.g. by vehicles, bicycles or horses; or the storage/siting of building materials or skips unless with the permission of the Parish Council and with no alternative within the adjacent property boundary.
4. Planting of trees except by the Parish Council.
5. The pruning or cutting down of trees except by the Parish Council.
6. The building or introduction of any structure (this includes even small things such as plant pots, steps, bollards, posts, marker stones or similar) except by the Parish Council.
7. The driving of a vehicle across grassed areas (see Common Questions and Answers).
8. Parking of a vehicle on the grass or tracks unless with permission from the Parish Council (see Common Questions and Answers).
9. Camping or caravanning (see Common Questions and Answers).
10. BBQ/Fires
11. Setting up a marquee or gazebo for private parties without authorisation

A degree of common sense must prevail in interpreting the possibilities for the Green's use. However, the overriding factor must be The Greens protection against damage, maintaining access and enjoyment for all in the neighbourhood and guarding against changes of use. The Parish Council will be pleased to advise anyone on The Green's use. You should make contact with the Parish Council through its Clerk or by contacting any of the Councillors.

7. Enforcement

Where The Greens has been unlawfully used or damaged the Parish Council can take actions available to it in law to both seek remedy of the damage or a cessation of the unlawful use. Those responsible will be expected to pay all subsequent costs in relation to The Green's repair or reinstatement, and works will be subject to timescales required by the Parish Council. Should the Council have to commission its own works in relation to repairs or reinstatement all costs incurred will be charged to those responsible for the damage.

8. Public Rights of Way

Not to be confused with rights of access over The Greens generally (see Section 9 below), public rights of way are those footpaths, bridleways and bye-ways that exist over private land for the use of everyone.

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9. Rights of access to properties and land

There is a distinction here between old and new rights. In the past, where owners already had the right (i.e. there had been an access way used by vehicles for many years), North Yorkshire County Council gave consent (in a formal document, not just a letter) to owners selling their properties. This was not a legal right as such rights - condoning the criminal offence of taking vehicles on to Greens – could not be created. It was just consent to the use so that Aldbrough St John Parish Council would not take action in future against the owner. It goes without saying that any access way should have been in use and already constructed. Now, where there is no long term use there is not even the expectation that a right of access could exist for vehicular use and it cannot be created by Aldbrough St John Parish Council. Use on foot only is a different matter- this use is already part of the public right to use the Greens and so does not need to be expressly created. Creating a surface for foot use only - e.g. to stop mud being carried into a house, could be contemplated upon payment of an encoachment fee if the Parish Council was satisfied that there was no interference with the right of the public to use the surface as part of The Greens or a spoiling of their enjoyment. There could be no exclusion of the public from this path and the Parish Council would, in effect, only be giving licence to use the path subject to it being properly maintained by those benefitting from it. Appendix II shows the existing Rights of Access recognised by the Parish Council

10. Maintenance

Aldbrough St John Parish Council maintains all parts of The Greens, whether grassed, earth or surfaced with the exception of private access tracks as explained in Section 5 ‘Responsibilities’ above. The Parish Council will establish and maintain a programme of Planned Maintenance for the greens and fixed assets set out upon it. Whilst grassed areas are cut and seeded as required, other areas may be subject to repair or replacement from time to time dependent on the degree of erosion occurring. All decisions relating to the Green’s maintenance and, repair will be taken by Aldbrough St John Parish Council in the first instance, before any works are carried out

11. Repairing hard surfaces

Background:

‘Hard surfaces’ are not naturally occurring, and have evolved as such over many years. Although varying in their nature they need to be maintained in a condition which allows for safe use by people, animals and (where permitted) vehicles. It is not possible to create new hard surfaces, or extend existing ones, as this would amount to unlawful damage. Hard surfaces of The Greens in Aldbrough St John generally fall into one of the following 2 categories:

1. Footpaths which are not overseen by North Yorkshire County Council (as Highways Authority) but which may be used by the general public as well as residents.
2. Private tracks, crossings & footpaths which are essentially vehicular and pedestrian accesses for one or more properties or nearby farmland. The map in Appendix 1 and 2 shows where the hard surfaces are on The Greens. If clarification is required please contact the Clerk to the Council.

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Maintenance:

Category 1: Maintenance to minimum standards and costs rest with the Parish Council. Works to any higher specification required by property owners benefiting from these public facilities will be at the expense of those owners.

Category 2: Maintenance and apportionment of costs rest with the lawful users served by the tracks. Appendix 1 and 2. Should any areas become unsafe for pedestrians (exercising their right to enjoy all parts of The Greens) then the Parish Council will draw the attention of those responsible to the situation and require appropriate remedial action within a specified time. If necessary the Parish Council will consider stepping in to make safe and recharge those responsible with the costs incurred. It remains unlawful for any grassed areas of The Greens to be damaged or lost due to any works.

12. Inspections

Aldbrough St John Parish Council will inspect The Greens at least annually, but otherwise as required, to determine its condition and that of its assets. The Planned Maintenance programme will be reviewed against these inspections. Any necessary works that may be required will be prioritised with resources made available. The results of such inspections will be formally recorded.

13. Protection of trees

All trees on The Greens are in the ownership of the Parish Council and protected by being in the Conservation Area (the perimeter indicated with a brown line on the plan at appendix 1). They must not be pruned or cut down without obtaining permission from North Yorkshire County Council as the planning authority. The Parish Council will be consulted in that process. Subject to these planning controls the Parish Council has the right to make decisions on the moving and replanting of trees and other plants on the Greens, although it will seek to consult with The Village and others as necessary.

14. Alteration or Change of Use

Any requests to alter or make new use of The Greens should first be referred to the Parish Council. Aldbrough St John Parish Council has limited rights and may only sanction minor alterations that do not undermine the basic rule that no damage must be done, and that any work must be for ‘the better enjoyment’ of users. The Commons Act, 2006 (s.16) sets out how changes of use and significant alterations are managed, with applications submitted to the Secretary of State (through the Planning Inspectorate). This may only be done by the Parish Council or Local Authority. To prevent the overall loss of Village Greens space these will usually include a suitably sized replacement piece of land being exchanged for the intended area of Village Greens concerned, for example to give access to a new development. Further guidance is available online at <http://www.planningportal.gov.uk/planning/countryside/commonland/forms>

16. Outcome

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Village Greens are part of our English heritage and should be protected and enjoyed by everyone as much as possible, and especially by the residents of the village they are connected with. We should all be proud of our Village Greens and feel honoured to live and be a part of a community that has the good fortune to have one.

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Appendix 3.

Common Questions and Answers Question

1: Can vehicles drive over or park on Village Greens?

DEFRA's answer: No. Section 34 of the Road Traffic Act 1988 makes it a criminal offence to drive over, or park on land (including a Green) 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 right. 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 Greens. 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. 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 Greens, 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 DEFRA's view, a court is more likely to find that vehicular use contravenes section 12 or section 29: 1. if the use is very frequent 2. if the use is by very large or slow moving vehicles 3. if the vehicle is parked on the Greens; or 4. if damage is caused to the Greens by the vehicular use A court would need to consider each case on its merits in order to decide whether the vehicular use was an offence, but in one case decided in the Court of Appeal, it was observed that there was 'no sufficient reason to regard the existence and use of [an access track] as injuring the Greens or interrupting its use or enjoyment by others'. Further information regarding vehicular access over Greens can be found in Defra's non statutory guidance note entitled 'Vehicular access across Common Land and Town or Village Greens' at www.defra.gov.uk or on the parish website.

Question 2: Can you camp or caravan on a Village Greens?

Open Green Spaces answer: Probably not - legally it has been generally assumed that camping is not a recreational pastime and that someone putting tents up or placing a caravan on a Village Greens may stop other people from enjoying their right to recreation and exercise. Section 29 of the 1876 Act states that any 'enclosure...or erection thereon', e.g. a tent or caravan, is deemed to be 'a public nuisance' i.e. it is an offence under the Act. A caravan would be deemed to be interfering with the rights (recreational) of others and would probably damage the surface – both offences under the 1876 Act. The owner also has powers in Ingleton Parish Council January 2017 common law to remove a trespasser. Where land is occupied by travellers the owner will need to pursue possession proceedings.

Question 3: Can you graze animals on Village Greens?

Open Green Spaces answer: The owner of the land or someone with rights to graze stock can do so, provided they do not stop people enjoying exercise or recreation. This might mean the Greens, or part of it, is grazed for part of the year and people are put off use for that time. People who are likely to want to use that area in this time must be consulted and decisions made openly and widely

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known. Problems might follow if you needed to fence part or all of the Greens to keep animals from straying - this would fall foul of s29 of the 1876 Act. Those with 'rights of common' to graze livestock are listed on the Register, a copy of which is on the parish website.