

TO: PLANNING & REGULATORY COMMITTEE

DATE: 18 Nov 2014

BY: HEAD OF LEGAL & DEMOCRATIC SERVICES

DISTRICT (S): ELMBRIDGE

ELECTRICAL DIVISION:
WEST MOLESEY
Ernest Mallett

PURPOSE: FOR DECISION

TITLE: APPLICATION FOR VILLAGE GREEN STATUS.
LAND AT MOLESEY HURST, MOLESEY

SUMMARY REPORT

The committee is asked to consider whether or not to register the land the subject of this application as a Village Green.

Application for Village Green status by Jill Sanders dated 7 October 2011 relating to land at Molesey Hurst: Hurst Park, Hurst Meadows, Little Hurst Meadows, Graburn Way, East Molesey.

The County Council is the Commons Registration Authority under the Commons Registration Act 1965 and the Commons Act 2006 which administers the Registers of Common Land and Town or Village Greens. Under Section 15 of the 2006 Act the County Council is able to register new land as a Town or Village Green on application.

The recommendation is to REJECT the application.

APPLICATION DETAILS

Applicant

Jill Sanders

Site

Land at Molesey Hurst: Hurst Park, Hurst Meadows, Little Hurst Meadows, Graburn Way, East Molesey.

Date of Application

Nº 1864: 7 October 2011.

ILLUSTRATIVE MATERIAL

Annexe A: Plan of application site

Annexe B: Legal Services Report

Summary of publicity undertaken and key issues raised by the public

7. Documents placed on public deposit at local library. No representations have been received in response to this publicity other than those listed above.
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FINANCIAL IMPLICATIONS

8. The cost of advertising has already been incurred.
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ENVIRONMENTAL IMPLICATIONS

9. If the land is registered as a village green it will be subject to the same statutory protection as other village greens and local people will have a guaranteed legal right to indulge in sports and pastimes over it on a permanent basis. Registration is irrevocable and so the land must be kept free from development or other encroachments.
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HUMAN RIGHTS IMPLICATIONS

10. Public Authorities are required to act, as far as possible, compatibly with the European Convention on Human Rights, now enforceable in English Courts by way of the Human Rights Act 1998. The officer's view is that this proposal will have no adverse impact on public amenity and has no human rights implications.
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ANALYSIS AND COMMENTARY

11. Surrey County Council is the Commons Registration Authority under the Commons Registration Act 1965 and the Commons Act 2006 which administers the Registers of Common Land and Town or Village Greens. Before the Commons Registration Authority is an application made by Ms Sanders, under the Commons Act 2006 (No 1864), to have land at Molesey Hurst, East Molesey (the Land), registered as a town or village green (TVG). The land is identified on the plan appended to the application.
12. Elmbridge Borough Council and East Molesey Cricket Club oppose the application.
13. To succeed, the Applicant has to prove on the balance of probabilities (*i.e.*, more than a 50% probability) that a significant number of the inhabitants of any locality, or of 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.
14. Following numerous written representations, Elmbridge Borough Council provided evidence piecemeal that the land was and is held for the purposes of public recreation. This was supported by further research at the Surrey History Centre.
15. The fact that the Land was held by Elmbridge Borough Council for the purposes of public recreation was finally established last year. At that time, the case of Barkas was pending a hearing in the Supreme Court.

16. The Barkas case was decided by the Supreme Court and the decision was published this summer. Legal Services then considered all the evidence in the light of the Supreme Court's decision and submitted its report to the Commons Registration Officer.
 17. The Principal Property Solicitor advised that the use of the land by the general public was by right and not as of right.
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CONCLUSIONS AND RECOMMENDATION

18. Village Green status is acquired over land where a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years. The evidence provided with this application, and the subsequent investigations, show that this criteria has not been met.
 19. In essence the public have the right to use the land already because it has been dedicated for public recreation. It cannot therefore be a village green.
 20. Therefore, Officers recommend that the application be rejected.
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CONTACT

HELEN GILBERT, COMMONS REGISTRATION OFFICER.

TEL. NO.

020 8541 8935

BACKGROUND PAPERS

All documents quoted in the report.