

TO: PLANNING & REGULATORY COMMITTEE **DATE: 18 Nov 2014**

BY: HEAD OF LEGAL & DEMOCRATIC SERVICES

DISTRICT (S): RUNNYMEDE **ELECTRICAL DIVISION:**
ADDLESTONE
John Furey

PURPOSE: FOR DECISION

**TITLE: APPLICATION FOR VILLAGE GREEN STATUS.
LAND AT ONGARHILL BRICK FIELD, off MARLEY CLOSE, ADDLESTONE**

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 Joanna Reilly dated 4 October 2012 relating to land at Ongarhill Brick Field, off Marley Close, Addlestone.

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
Joanna Reilly

Site
Land at Ongarhill Brick Field, off Marley Close, Addlestone

Date of Application
№ 1867: 4 October 2012.

ILLUSTRATIVE MATERIAL

Annexe A: Plan of application site
Annexe B: Inspector's report dated 24.07.14

BACKGROUND

1. On 4 October 2012 Surrey County Council received an application for a new village green for the site of Ongarhill Brick Field, off Marley Close, Addlestone. The application was made on the basis that *a significant number of 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 application was accompanied by 42 evidence questionnaires.
2. The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 sets out the process to be followed by any applicant seeking to register a new town or village green and the process to be followed by the Commons Registration Authority.
3. A public notice was placed in the local press on 11 January 2013 with an objection period running from 11 January 2013 until 22 February 2013. The application was placed on public deposit at Runnymede Borough Council offices and New Haw Library.
4. An objection to the application was received from Runnymede Borough Council (the objector) in its capacity as freehold owner of the application land. It was not clear from the evidence provided with the application whether the land met the criteria for registration. Legal opinion was sought and a view was taken that an independent investigation be conducted in the form of a non-statutory public inquiry. This was to enable the County Council, as Commons Registration Authority, to discharge its statutory duty.
5. A non-statutory public inquiry was held on 16 July 2014. The Inspector submitted his report to the Commons Registration Officer on 24th July 2014.
6. The Commons Registration Officer is therefore now placing this matter before members for consideration.

CONSULTATIONS AND PUBLICITY

Borough/District Council

Runnymede Borough Council	Objection received
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Consultees (Statutory and Non Statutory)

The Open Spaces Society:	No views received
Local Residents – adjoining properties:	2 letters/emails received in support of the application
Rights of Way	No objection
Estates Planning & Management	No views received
County Highways Authority – Highways Information Team	No views received

Summary of publicity undertaken

7. Documents placed on public deposit at local council offices and local library.
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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 Mrs Reilly, under the Commons Act 2006 (No 1867), to have land at Ongarhill Brick Field, off Marley Close, Addlestone (the land), registered as a town or village green (TVG). The land is identified on the plan appended to the application.
12. Runnymede Borough Council, as the freehold owner, opposes 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 (LSP) on the land for a period of at least 20 years.
14. The facts were thoroughly tested with evidence at a public inquiry. The Inspector concluded that the applicant has failed to prove that use of the application land for lawful sports and pastimes during the whole of the qualifying period (1990-2010) had been '*as of right*'. The reasons for this are as follows:
 - a) The application land was acquired by the objector's predecessors in 1948 for housing purposes;

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- b) Sometime in the early to mid-1980s the objector had, in relation to the application land, used its statutory powers under either:
 - i. Section 93(1) Housing Act 1957 and section 12(1) Housing Act 1985 which empowers a local authority to provide and maintain recreation grounds on land held for housing purposes, or
 - ii. Section 107 Housing Act 1957 and section 13(1) Housing Act 1985 which empowers a local authority to set out an open space for recreation on land acquired for housing purposes.
 - c) The absence of the consent of the Minister (1957 Act) or the Secretary of State (1985 Act) under (b)(i) is not fatal to the objector in view of the presumption of regularity or of legal certainty which will prevent administrative acts from being challenged long after they have been taken and acted upon.
 - d) The exercise of the foregoing Housing Act powers engages the decision of the Supreme Court in *Barkas* which is that where land is provided by a local authority under a statutory holding power which empowers the authority to allow the land to be used by the public for recreation then the public's use will be 'by right' and not 'as of right'.
 - e) As a result of *Barkas*, the public's use of the application land during the qualifying period was such that it could not qualify for registration as a TVG.
 - f) The 1997 byelaws impliedly granted permission to the public to use the application land for activities which were not prohibited or otherwise subject to regulation. The implied permission was communicated to the public by the fact that the byelaws were displayed on the application land in February 2002 for a period sufficient to stop time running when it came to qualifying user (even if this had been possible) 'as of right'.

CONCLUSIONS AND RECOMMENDATION

- 15. 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.
- 16. 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.
- 17. Therefore, Officers recommend that the application be rejected.

CONTACT

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BACKGROUND PAPERS

All documents quoted in the report.