

BACKGROUND

1. On 19 November 2012 Surrey County Council received an application for a new village green for the land of Murray House Play Area, Palmer Crescent, Ottershaw. 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 38 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 in its capacity as freehold owner of the application land (the Objector). 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 30th June 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 Lewis, under the Commons Act 2006 (№ 1868), to have land at Murray House Play Area, Palmer Crescent, Ottershaw (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's report contained the following conclusions: -
 - 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*'. This is, firstly, because the application land had been acquired by the objector in 1997 for the purposes of the Open Spaces Act 1906 (OSA 1906) and, secondly, because the claimed use of the land was permissive and again not '*as of right*'.

- The acquisition for the purposes of the OSA 1906 meant that the application land has been held on the statutory trusts of section 9 OSA 1906 which operates to confer an entitlement on the public to use the land for informal recreation, albeit subject to regulations by the byelaws. The fact that the public have a right to use the application land for informal recreation will preclude user '*as of right*' within the meaning of the law as it is now to be applied following the decision of the Supreme Court in *Barkas*.
- 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 during the qualifying period.

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

HELEN GILBERT, COMMONS REGISTRATION OFFICER.

TEL. NO.

020 8541 8935

BACKGROUND PAPERS

All documents quoted in the report.