

TO: PLANNING & REGULATORY COMMITTEE **DATE:** 23 September 2015

BY: HEAD OF LEGAL & DEMOCRATIC SERVICES

DISTRICT (S): MOLE VALLEY

ELECTORAL DIVISION:
LEATHERHEAD AND
FETCHAM EAST
Tim Hall

PURPOSE: FOR DECISION

**TITLE: APPLICATION FOR VILLAGE GREEN STATUS.
LAND AT LEACH GROVE WOOD, LEATHERHEAD**

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 Philippa Cargill (the Applicant) dated 22 March 2013 relating to land at Leach Grove Wood, Leatherhead.

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

Philippa Cargill

Site

Land at Leach Grove Wood, Leatherhead

Date of Application

Nº 1869: 22 March 2013.

ILLUSTRATIVE MATERIAL

Annexe A: Plan of application site
Annexe B: Inspector's report dated 9 June 2015
Annexe C: Neighbourhood/Locality Plan

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 Cargill, under the Commons Act 2006 (No 1869), to have land at Leach Grove Wood, Leatherhead (the land), registered as a town or village green (TVG). The land is identified on the plan appended to the application.
12. NHS Property Services Ltd, 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. At the inquiry the Applicant applied to amend her application on the issue of locality/neighbourhood. The Applicant claims a locality comprising the polling district known as XB falling within the Leatherhead South ward of MVDC (shown by the blue dashed line on plan at Annexe C) or a neighbourhood comprised within the red line shown on plan at Annexe C. The Objector raised no objection to the way in which the Applicant chose to reformulate her case on this point and the Inspector recommends that the Applicant be permitted to amend the application.

15. The Inspector concluded that the Applicant proved that a significant number of inhabitants indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years. However, he did not accept that the locality or neighbourhood within a locality relied upon by the Applicant met the criteria required by the Commons Act 2006 to allow registration of the land as a TVG.
16. The term 'locality' is taken to mean a single administrative district or an area within legally significant boundaries. A 'neighbourhood' need not be a recognised administrative unit. However, it must have a degree of cohesiveness and must be capable of meaningful description. The Inspector's view is that a claimed neighbourhood must be an area which is cohesive, identifiable and recognisable as a community in its own right.
17. On the question of locality the Inspector states in his report:

"..... a polling district is not a qualifying locality within the meaning of this term where it is first used in section 15(3). I accept that a polling district is an area with legally significant boundaries but it has nothing to do with any community of interest on the part of its inhabitants. It is concerned entirely with the practicalities of administering the electoral process within a given area....."

Whilst I accept that polling districts may well be chosen for the convenience of its inhabitants, it seems to me that this is not a description of a community falling within the meaning of the term locality where used in section 15(3). If it did then the term 'locality' would, in my view, be devoid of any coherent meaning at all and could feasibly embrace legally significant boundaries of more or less any description without having any credible relationship at all with the claimed TVG, and, in my view, this cannot have been the statutory intention."

18. On the question of neighbourhood the Inspector states:

"In my view, it must, I think, be substantially a matter of impression whether the claimed area is a neighbourhood or not. My impression, and my considered view having heard the evidence and visited the area, is that the claimed neighbourhood is not a neighbourhood within the meaning of the 2006 Act. Whilst it is correct that it is enclosed within busy, or relatively busy, roads, it did not seem to me that the character of the residential areas differed substantially or significantly from that within the adjoining areas.

The residential properties comprised a mix of styles and ages and there is nothing in the way of facilities (that is, with the exception of the land itself) serving predominately the claimed neighbourhood and none other. There are undoubtedly a number of community facilities located within the claimed neighbourhood but without exception these facilities serve a much wider catchment. In these cases, one is always on the lookout for local shops or true community facilities such as a small parade of shops with a post office, licensed premises, local schools, churches and the like, in other words, the sort of facilities that create a self-contained small community. It is the absence of these features which would indicate that one would need to see some other factor indicating cohesiveness but, with the exception of the land itself and perhaps the allotments as well, there is very really nothing beyond the fact that many of the applicant's witnesses considered that their neighbourhood was simply the area in their own vicinity or where their friends mainly lived."

CONCLUSIONS AND RECOMMENDATION

19. The Inspector's report contained the following conclusions: -

- I find that a significant number of the local inhabitants of the claimed locality shown within the blue dashed lines on App/1 (*Annexe C attached to this report*) (being the polling district XB within the Leatherhead South ward of MVDC) indulged as of right in LSP on the whole of the land for the period of at least 20 years ending on or about 9/01/2013.
- I find that a significant number of the local inhabitants of the claimed neighbourhood shown within the red lines on App/1 and falling within the locality of Leatherhead South ward also indulged as of right in LSP on the whole of the land for the period of at least 20 years ending on or about 9/01/2013.
- I find that the objection advanced by the Objector that the land was not registrable on the ground of statutory incompatibility was not made out.
- I find that the claimed locality is not a locality within the meaning of section 15 of the 2006 Act.
- I find that the claimed neighbourhood is not a neighbourhood within the meaning of section 15 of the 2006 Act.
- Because the Applicant has failed to satisfy all the elements necessary to justify the registration of the land as a TVG, my recommendation to the registration authority is that the application to register (under application number 1869) should be REJECTED.

20. 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.

21. Therefore, Officers recommend that the application be REJECTED.

CONTACT

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BACKGROUND PAPERS

All documents quoted in the report.

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