

TO: PLANNING & REGULATORY COMMITTEE

DATE: 27 April 2005

BY: HEAD OF LEGAL SERVICES

DISTRICT (S): GUILDFORD

ELECTRICAL DIVISION:
ASH
Mr John G Ades

PURPOSE: FOR DECISION

**TITLE: APPLICATION FOR VILLAGE GREEN STATUS.
LAND AT THE GREEN, CHAMBERS ROAD, ASH VALE**

SUMMARY REPORT

The Committee is asked to consider, on the basis of the evidence in this report, whether or not to register the land the subject of this application as a Village Green.

Application for Village Green status by Mr Trevor Cooper-Tydeman (the applicant) dated 10th December 2001 relating to land at The Green, Chambers Road, Ash Vale.

The County Council is the Commons Registration Authority under the Commons Registration Act 1965 which administers the Registers of Common Land and Town or Village Greens. Under Section 13 of this Act the County Council can register new land as a Town or Village Green on application.

The recommendation is to REFUSE the application.

APPLICATION DETAILS: Land at The Green, Chambers Road, Ash Vale;
Application for Village Green Status; Dated 10th December 2001.

ILLUSTRATIVE MATERIAL

Annexe A: Application, plan & supporting evidence
Annexe B: Objection received from Mr R Hayden
Annexe C: Aldershot & District Military Byelaws 1976
Annexe D: Counsel's Advice dated 29th May 2003
Annexe E: Letter from Applicant dated 27th July 2003
Annexe F: Letters received in support of application
Annexe G: Ash Parish Council letter dated 20th March 2002

BACKGROUND

1. On 19th December 2001 Surrey County Council received an application for a new village green for the site of The Green, Ash Vale. The application was made on the basis of "*By actual use of the land by the local residents for lawful sports and pastimes as of right for not less than 20 years*". The application was accompanied by 40 questionnaires of evidence in support of the claim for registration from residents of the area of over 20 years, together

with 53 shorter forms of those residents with less than 20 years knowledge.
Annexe A.

2. The Commons Registration (New Land) Regulations 1969 set 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 1st March 2002 with an objection period running from 1st March 2002 until 12th April 2002. The application was placed on public deposit at local libraries and at the District Council offices.
4. One objection was received from a member of the public who has claimed ownership over part of the land and registered a caution against first registration with the Land Registry. **Annexe B**
5. At the end of the objection period copies of all the objections and observations received were sent to the applicant for comment. Copies were also passed to Defence Estates, agents for the Ministry of Defence, the owner of part of the application land. Internal legal advice was sought and the MOD was asked to supply a copy of the Aldershot & District Military Byelaws 1976. **Annexe C.** The byelaws were supplied and Counsel's Opinion was sought in November 2002. This was received on 29th May 2003. **Annexe D.**
6. Counsel's Opinion was sent to all parties for comment. Comments were received from the Applicant on 27th July 2003 **Annexe E** and passed to the objector and the MOD. There have been no further comments from the objector or the MOD.
7. The Commons Registration Officer is therefore now placing this matter before Members for consideration.

CONSULTATIONS AND PUBLICITY

Borough Council

Guildford Borough Council:	No views received.
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Consultees (Statutory and Non Statutory)

The Open Spaces Society:	No views received
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Local Residents – adjoining properties:	3 letters received in support of the application confirming its use by the public. 1 letter received in support but concerned about access to property. 1 letter in support but disputing the total area the subject of the application and containing proof of ownership of a small part of the land. Annexe F.
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Parish/Town Council & Amenity Groups

Ash Parish
Council:

Letter received in favour of the application to protect
the land from any prospective development.

Annexe G.

Summary of publicity undertaken and key issues raised by the public

Documents placed on public deposit at local libraries and local council offices. No representations have been received in response to this publicity.

IMPLICATIONS

8. *Financial:* The cost of advertising has already been incurred.
9. *Title:* No view is taken or needs to be taken one way or the other as to Mr Hayden's claim to title to part of the land.
10. *Sustainable Development:* There are no implications.

HUMAN RIGHTS IMPLICATIONS

11. 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

12. Surrey County Council is the Commons Registration Authority under the Commons Registration Act 1965 which administers the Registers of Common Land and Town or Village Greens.
 13. Under Section 22(1A) of the Commons Registration Act 1965 the definition of a town or village green is (so far as is relevant):

.....land on which for not less than 20 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
 14. One of the tests for acquisition of the status of a Village Green is that the use must be without force, without secrecy and without permission. The first two limbs of this definition have no relevance. Legal advice is that, in relation to the major part of the application site which is owned by the MOD, the use is by statutory permission by virtue of the Byelaws. **Annexe C.**
 15. In relation to the remainder of the application site, title is claimed by Mr Hayden. Legal advice is that there are three reasons why this land on its own should not be registered as a Village Green.
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16. The first reason is that because of the size of the remainder of the site in relation to the size of the whole of the application site, the smaller area is substantially different from that which has been applied for. Therefore the power of the Registration Authority to register a smaller area of land than that applied for does not extend to these circumstances.
 17. The second reason is that the application site is one entity. The physical use of it has not been differentiated and, if use of the greater part has been permissive and not "as of right", none of the application site is capable of being registered.
 18. The third reason is that the remainder of the site had fencing erected around it in 1999/2000 by Mr Hayden. At that point in time, the use became contentious and was not "acquired as of right". There has therefore been an interruption in the ongoing use for the 20 year period up to the date of the application. Legal advice is that at present the effect of the law is to confirm the previous legal situation, namely that the relevant 20 year period is the 20 years up to the date of application.
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CONCLUSIONS AND RECOMMENDATION

19. Village Green status is acquired over land where the use is "as of right for not less than 20 years". In this case the recommendation is that the application by Mr Trevor Cooper-Tydeman dated 10th December 2001 is refused on the following grounds: - as to the larger part of the application site, because the use of it has been by permission of the MOD and; as to the remainder of the site, because the use was effectively challenged before the expiry of the relevant 20 year period.
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CONTACT

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BACKGROUND PAPERS

All documents quoted in the report.