





### **Summary of publicity undertaken**

7. Documents placed on public deposit at local council offices and 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 Mr Flannigan, under the Commons Act 2006 (No 1871), to have land at The Green, Severn Drive and Rydens Road, Walton on Thames (the land), registered as a town or village green (TVG). The land is identified on the plan appended to the application.
12. Walton on Thames Charity, 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. For the reasons set out in his advice dated 22 June 2016 (Annexe B), Mr Webster recommended that the application to register should be rejected as the use of the land had been 'by right' and not 'as of right'.

15. The Applicant made a further submission on 1 August 2016 (Annexe C) stating his differing view. The Objector was given an opportunity to comment and submitted a further response on 18 August 2016 (Annexe D) supporting the analysis made by Mr Webster.
16. The Applicant was given the opportunity to have the final say and responded on 24 August 2016 reiterating his view that the use of the land had been used 'as of right'. "I still believe that to any neutral observer, the land could not be said to have left the ownership of Walton Charity. The lease gave the council the *temporary* right to occupy it - subject to conditions laid down by the owner, Walton Charity. The Charity was the controlling party and it was the Charity which stipulated the intended use. The Charity was able to terminate the lease if the council impeded that intended use."
17. On 5<sup>th</sup> October 2016 the Principal Property Solicitor advised:

"Under s 15(2) of the Commons Act 2006, the sole issue now in dispute is whether the use of the land was *by right* or *as of right* as set out in the case of *Barkas*.

The Inspector found that the land was leased to Elmbridge Borough Council (EBC) for the whole of the qualifying period (less one day). Thus, EBC owned the land. Whilst the Charity held the freehold title to the land, EBC was the immediate landowner under various leases and had day to day control of the land in terms of management. Under the Law of Property, a leasehold interest is ownership. The status of the Charity is, therefore, irrelevant as it was not the direct landowner. It is also irrelevant as to what the users of the land knew or did not know about this.

EBC held the land for the specific use as a recreation ground in accordance with and the exercise of its statutory powers as landowner.

Thus, the use of the land is use *by right* and *not as of right* and the application fails as not all parts of section 15(2) have been proven."

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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. Therefore, Officers recommend that the application be rejected.

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### CONTACT

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### BACKGROUND PAPERS

All documents quoted in the report.