

**Commons Registration Act 1965/Commons Act 2006**

**Land at Elmbridge Recreation Ground, Queen Elizabeth Way, Woking**

**Application for a new Village Green**

**Application No 1887**

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**STATEMENT OF OBJECTION**

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**BY**

**Woking Borough Council**

**Civic Offices**

**Gloucester Square**

**Woking**

**Surrey**

**GU21 6YL**

**Ref : AJF/7244**

This statement is notice of objection submitted on behalf of Woking Borough Council as landowner to an application made by the Applicant to Surrey County Council on 9 December 2019 pursuant to section 15(2) of the Commons Act 2006 to register an area of land as a village green.

### Background

1. The application is made by Robert A Shatwell in respect of land known as Elmbridge Recreation ground. The application is accompanied by 2 photographs and various signatures of local residents.
2. Woking Borough Council is the registered freehold owner of the land under land registry title number SY756213. The land is located between Queen Elizabeth Way and Elmbridge Lane, Woking, Surrey.
3. Council records confirm the land is managed by the Housing team as local housing authority. The land was acquired by the Council for the purposes of providing housing. Council records show that all the properties surrounding the recreation ground were council owned but some have over the years been sold to tenants under the Right to Buy Scheme. However, a number of properties are still retained by the Council as housing and even those properties sold under the Right to Buy Scheme the council has a vested interest in those properties as Freeholder.
4. Planning records show that planning permission was granted in 1948 for the houses in the Elmbridge estate. A subsequent planning consent was granted in 1964 for the construction of a rear access to serve the 75 council houses. The permission refers to open spaces and the plans show the recreation ground in situ. The land has therefore been partly developed as public sector housing accommodation and remainder of the land was set aside as a recreation ground provided and maintained by the Council. The land has been laid out as such and made available for public recreation. It has been subsequently managed and maintained it for this use thereafter.
5. The Council has researched its archives in order to discover material relevant to the acquisition of the land. A conveyance dated 12 April 1951 made between A & J Simmons Limited and Urban District Of Woking states:-
 

*“2. The said property being required by the Council in the exercise of their Statutory functions under the Housing Acts 1936 – 1949 .....*”
6. The conveyance confirms the land was acquired for the purposes of the Council meeting its statutory obligation to provide housing under the Housing Act 1936. Since the land was laid out as a recreation ground it was made available to the occupiers of the Elmbridge estate under the statutory power within section 80 of the Housing Act 1936 and subsequently under the similar provisions of section 12 of the Housing Act 1985.
7. The housing was built and the Council has laid out and maintained the recreation ground pursuant to the now section 12 of the Housing Act 1985.

8. The Council as local housing authority has provided and maintained in connection with housing accommodation provided by them a recreation ground to serve a beneficial purpose in connection with the requirements of the persons for whom the housing accommodation is provided. Members of the public therefore have a statutory right to use the land for recreational purposes. As such the land is held under s.12 of the 1985 Act and is used “by right” (i.e. with permission) and not “as of right”.
9. The Supreme Court in the case *R (Barkas) –v- North Yorkshire County Council 2014* held that land cannot not be registered as a town or village green where its use by the public was permitted by statute as such use is considered to be by right rather than as of right.

#### Maintenance of the land for open public recreational space

10. The land has been maintained by the Council. The general grounds maintenance is carried out by council contractors Serco as part of an Environment contract, which covers all the Council’s green space, including public parks and recreation grounds, highway verges and Housing land. The Council has provided an informal kick-about area comprising two MUGA goal ends with rubber surfacing immediately in-front of each.
11. Maintenance of the land by Serco includes grass cutting of the open space area once a month, the land has a weekly inspection by a qualified play inspector, the vegetation is cut back annually, annual weed killing of the area for hardstanding weeds usually around June/July. Other works will also be carried out if needed or requested by the Council.
12. These acts of maintenance and management of the land are evidence that the land has been set out and is maintained as a recreation ground pursuant to section 80 of the Housing Act 1936. Such acts may also be considered to give rise to an inference of permission.

#### Development Plans

13. The land was considered as part of the Strategic Housing Land Availability Assessment (SHLAA) in 2017. The main role of the SHLAA is to provide information on the opportunities available to meet the Borough’s housing requirement. The land is identified SHLAA ref - SHLAAHOE017. The report sets out that this parcel of land currently contains parking areas, garages and open recreation space. Among the identified constraints to residential development was the loss of open recreation space. It is therefore clear that the land remains open recreation space.

#### Statutory Criteria to be met for registration

14. The criteria which must be met for an application to add land to the register of town and village greens to be successful are set out in Section 15 of the Commons Act 2006 Act. The application has been made under Section 15(1) which states:-

*“Any person may apply to the commons registration authority to register land as a town or village green if subsection 2 applies”.*

15. Section 15(2) provides that a town or village green has come into existence where:-
- “a) *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; and*
- b) *they continue to do so at the time of the application.*”
16. For the land to qualify as a village green evidence must be submitted to satisfy all the criteria above. Failure to meet any one of the tests means that the land is not legally a green and cannot be registered as such.

#### Grounds of Objection

17. The usage of the land by the public for lawful sports and past times has not been ‘as of right’ as required by s15(2) of the Commons Act 2006.
18. The land is held under statutory powers for recreational purposes and the public have the right to use the land for recreational purposes. The Council argues that the users are exercising their statutory right to use the land.
19. The burden of proof lies upon the Applicant to show that all the qualifying criteria have been properly and strictly proved. As set out in the case of *R–v- Suffolk CC ex p Steed 1996* the onus of proving that the land has become a town or village green lies upon the applicant. The court stated “*it is no trivial matter for a landowner to have land registered as a village green so it must be properly and strictly proved*”.

#### Significant number

20. The application is supported by 4 signatures from residents stating the land has been used for over 30 years for the purposes of ‘recreation, dog walking, air and exercise’. There is also 48 signatures from residents stating they use the land for the purposes of ‘recreation, dog walking, air and relaxation’.
21. It is noted that the 2006 Act does not define what constitutes a ‘significant number’. However, the approach adopted by the High Court in the case of *R (Alfred McApline Homes Ltd) –v- Staffordshire County Council 2002* was that *what matters is that the number of people using the land in question has to be sufficient to indicate that their use of the land signifies that it is the general use by the local community for informal recreation, rather than occasional use by individuals as trespassers*. It was accepted that it does not mean a considerable or substantial number. The Council does not dispute that 52 signatures from residents constitutes a significant number.

#### Inhabitants of any locality, or of any neighbourhood within a locality

22. The use needs to be a significant number of inhabitants of a locality or of a neighbourhood within a locality.
23. The applicant fails to identify in the application whether it is a locality or neighbourhood within a locality. However, a map was provided marking the area shaded in orange. The area appears to fall within the Hoe Valley ward.

24. The evidence by way of signatures does not provide the residents address. It is therefore not enough to demonstrate that the inhabitants came from the Hoe Valley ward of Woking. In our opinion this element of the criteria has not been satisfied.

#### Lawful sports and pastimes on the land

25. The evidence submitted refers to 'recreation' amongst other things. They fail to describe the range of activities undertaken. In the case of *R –v- Oxfordshire CC, ex parte Sunningwell PC 2000* it is established that lawful sports and pastimes do not have to be organised sports or have a communal element. Informal and solitary activities such as dog walking are sufficient as long as there is an established pattern of use and it is not trivial and sporadic.
26. The evidence submitted as part of the application is not detailed enough and does not specify how much use of the land there was by them during the relevant period. Matters of how regularly the land was used and for what purpose are crucial. In the absence of evidence that precisely describes the nature of recreation/activities undertaken and state how the land was used, and how often e.g. how many times per week it does not meet the criteria. The use may have been occasional which doesn't satisfy the criteria.

#### As of right

27. The Applicant must show, on the balance of probabilities, that the use was "as of right", which is part of the qualifying criteria under section 15 of the 2006 Act.
28. For the use to be 'as of right' it must be without force, without secrecy and without permission.
29. The Council does not dispute the land has been used openly and without force. The Council disputes the use has been 'as of right'. It is the Council's submission that the use was with permission. The land is held under statutory powers for recreational purposes and the public have the right to use the land for recreational purposes.
30. The Council argue that the residents have exercised their statutory right to use the land for recreational purposes. The land is held under statutory powers and as a result the use is considered to be by right rather than as of right.
31. The land was purchased by the Council and the 1951 conveyance specifies the statutory power under which it entered into the conveyance.
31. As mentioned above the Supreme Court case of *R (Barkas) –v- North Yorkshire County Council 2014* established land cannot not be registered as a village green where its use by the public was permitted by statute as such use is considered to be by right rather than as of right.
32. This element of the criteria is therefore not satisfied.

#### For a period exceeding 20 years

33. The applicant must show that local inhabitants have used the land continuously for not less than 20 years. Whilst there are 4 signatures stating they have used the land for over 30 years, the remaining 48 signatures from residents stating they use the land for

the purposes of 'recreation, dog walking, air and relaxation' do not say how long they have used the land for. As such this evidence offers no weight to satisfy this element of the criteria.

34. The Council has already set out above its concerns about the weight that can be offered to the evidence in the form of 4 signatures.
35. The Council is of the opinion that there is insufficient evidence of a qualifying use of the land for a continuous period of over 20 years and this element of the criteria is not satisfied.

#### Conclusion

36. It is clear from evidence provided by the applicant that it does not satisfy the criteria set out in section 15 (2) of the 2006 Act.
37. For the above reasons the Council invites the Registration Authority to consider the matters set out in this statement and dismiss the application.