

**TO:** PLANNING & REGULATORY COMMITTEE  
**BY:** COUNTRYSIDE ACCESS OFFICER  
**DISTRICT** REIGATE AND BANSTEAD  
DISTRICTCOUNCIL

**DATE:** 27 SEPTEMBER  
2023

**ELECTORAL DIVISION &  
MEMBER:**

REDHILL WEST AND  
MEADVALE  
NATALIE BRAMHALL

**PURPOSE:** FOR DECISION

**GRID REF:** 527778 151147

**TITLE:** APPLICATION FOR VILLAGE GREEN STATUS, LAND AT REGENT  
CRESCENT, REDHILL

### SUMMARY

The committee is asked to consider whether to register the land the subject of this application as a Village Green.

Application for Village Green status by Neil Jones as Chair of the Regent Crescent Green Preservation Society (the Applicant) dated 4 May 2021 relating to land at Regent Crescent, Redhill.

The County Council is the Commons Registration Authority (CRA) 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 can register new land as a Town or Village Green (TVG) on application.

**The recommendation is to REJECT the application.**

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### APPLICATION DETAILS

#### ***Applicant***

Mr Neil Jones as Chair of Regent Crescent Green Preservation Society (RCGPS)

#### ***Land***

Regent Crescent Green, Redhill

#### ***Date of Application***

4 May 2021: Reference APP1888

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### ILLUSTRATIVE MATERIAL

Annex A: Plan of Land submitted with Application.

Annex B: Plan showing blue line neighbourhood.

Annex C: Highways Agreement 9 Feb 1966 including Memorandum 5 July 1966 and Plan of Extent of Publicly Maintainable Highway.

Annex D: Inspector's Report.

## 1. BACKGROUND

- 1.1 On 4 May 2021 Surrey County Council received an application for a new village green for the site of Regent Green Crescent, Redhill. A plan of the Application Land is attached at Annex A.
- 1.2 The Application was made on the basis that “a significant number of the inhabitants of any locality or 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 14 witness statements from people who claimed that the site had been in constant use for over 20 years as evidence in support of the claim for registration. Also included with the application was the constitution document for RCGPS, minutes of the inaugural meeting, a membership list, posters advertising community events to be held on the Application Land and photographs of the site showing use being made of it.
- 1.3 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. Following changes to the law, under the Growth and Infrastructure Act 2013, the Registration Authority must establish whether an application is valid under section 15C of the Commons Act 2006 before the application can be considered.
- 1.4 The relevant planning authorities were consulted to establish whether there were any trigger events that would result in the inability of the Council to proceed with the Application. No trigger events were identified.
- 1.5 A public notice was placed in the local press on 15 July 2021 with an objection period running until 6 September 2021. The application was placed on public deposit at local libraries and at the District Council offices.
- 1.6 Due to delays caused by the holiday period an extension to the objection period was granted and an objection was then lodged dated 20 September 2021 from Curwen Group Ltd, the then owner of the land, and the Applicant was given an opportunity to respond to that objection.
- 1.7 Legal advice was sought on the merits of the application and the appropriate method of determination. The view was taken that an independent investigation should be held 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.
- 1.8 The Application Land was sold on 28 April 2022 and the new landowners, Luckyhome Properties Ltd were informed about the Application and were subsequently supplied with copies of the Application, supporting documents, Curwen Group objection, and Applicant’s response to it.
- 1.9 Due to their late involvement with the land and Application Luckyhome requested that they be given time to appoint a representative and as a result the Public Inquiry was scheduled for 24 - 27 January 2023.
- 1.10 In reviewing the documents put forward by the previous owners (Curwen Group) the representatives of the new owners (Luckyhome) identified further points of objection which they indicated would be pursued at the Inquiry. These further points were shared with the Applicant and comments on them sought.
- 1.11 In December 2022 Legal Services received additional information from the Highways Information Team regarding the status of the area of land claimed as TVG in the Application, namely that it formed part of the publicly maintainable highway. This

information was an Agreement under section 40 of the Highways Act 1959 dated 5 February 1966, as varied by a Memorandum dated 5 July 1966 relating to the Application Land and a plan showing the Application Land included within the extent of the publicly maintainable highway. This information was sent to the parties, and they were asked to address the content as part of their case. Annex C contains a copy of these documents.

- 1.12 The non-statutory public inquiry was held at Reigate and Banstead Town Hall over the course of 4 days from 24 – 27 January 2023. The Inspector was Stephen Morgan of Landmark Chambers, and he heard evidence from supporters and objectors as well as from a representative of the Highways Information Team from Surrey County Council.
- 1.13 The Inspector submitted his report to the CRA on 2 May 2023 (Annex D) setting out his recommendation to refuse the Application.
- 1.14 Section 6, Analysis and Commentary below sets out the factors to be considered in this case.
- 1.15 We are therefore now placing this matter before members for consideration.

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## 2. CONSULTATIONS AND PUBLICITY

### ***Borough/District Council***

Reigate and Banstead Borough Council                      No response received.

### ***Consultees (Statutory and Non-Statutory)***

The Open Spaces Society    No response received.

The Ramblers    No response received.

The Defend Our Commons Campaign                              No response received.

Residents  
(Neighbouring Properties)                      Support for application received from Head  
Teacher and Chair of Governing body at St Matthews School

County (and Borough) Councillor  
(Cllr Mrs Bramhall)    Support given to applicant throughout  
application

Borough Councillors  
(Cllr Michalowski, Cllr Sachdeva)                              No response received.

### ***Summary of publicity undertaken***

Documents placed on public deposit at local council offices and local library.

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## 3. HUMAN RIGHTS IMPLICATIONS

- 3.1 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.

## 4. FINANCIAL IMPLICATIONS

- 4.1 The costs of advertising and of holding the non-statutory public inquiry have already been incurred.
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## 5. ENVIRONMENTAL IMPLICATIONS

- 5.1 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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## 6. ANALYSIS AND COMMENTARY

- 6.1 The Application before the CRA for determination was made under Section 15(2) of the Commons Act 2006 and relates to an area of green open space bordered by the houses on Regent Crescent and a section of Linkfield Lane, Redhill (as shown on the plan at Annex A).
- 6.2 The freehold owners, Luckyhome Properties Ltd, oppose the Application.
- 6.3 To succeed, the Applicant must prove, on the balance of probabilities, 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 on the land for a period of at least 20 years continuing up to the date of the application. These are the criteria on which the Application must be assessed, and it is not for the CRA to concern itself with the merits of any competing uses for the Application Land in determining the Application.
- 6.4 The Application was understood to be based on the neighbourhood shown by the blue line on the plan at Annex B, within the locality of Redhill West & Wray Common electoral ward. However, it became clear during the Inquiry that the Applicant's case alternatively relied on just the locality of Redhill West & Wray Common. The implications of this are discussed further below.
- 6.5 The Inspector's Report summarises (in section 2 and 3) the evidence submitted and heard at the Inquiry in support of both the Applicant's case and the objector's case and he then identified (in section 4) three key issues that arose:
- Whether any recreational use of the Application Land was sufficient, and if so, whether it continued to the date the Application was received (the sufficiency of use issue),
  - Whether the requirement for the Applicant to demonstrate a locality or a neighbourhood within a locality can be satisfied (the locality and neighbourhood issue),
  - Whether any recreational use was 'as of right' and thus qualifying use, or "by right" or otherwise permitted and therefore not qualifying (the *as of right* issue).

If it is concluded that the Application does not meet the requirement in relation to any one of the above, the Application must be refused. Each of the identified issues was assessed in detail in section 4 of the Inspector's Report and the findings are summarised below.

- 6.6 The Sufficiency of Use Issue  
Only user that is within the qualifying 20-year period up to the date of the Application (2001 – 2021), is by inhabitants from the claimed area and is carrying out ‘lawful sports and pastimes’ on the land (rather than just walking through) should be counted when looking at whether there is sufficiency of use. When evaluating that evidence, what matters is how that use would appear to owner of the land.
- 6.7 The claimed qualifying user on the Application Land can broadly be categorised as children playing, the walking of dogs and communal events including organised and impromptu gatherings.
- 6.8 In his assessment, the Inspector also considered the impact on usage of the Application Land of the Covid 19 restrictions and changes to the mowing regime towards the end of the qualifying period. However, taking into account all the circumstances, neither were considered likely to amount to a temporal interruption.
- 6.9 The Inspector considered use by the residents within the blue line neighbourhood area (as shown on the map at Annex B) but also looked at whether use by the school children attending St Matthews School (during school term times, weekdays and out of lockdowns) would have satisfied the sufficiency of use issue if the area on which the Applicant based their Application was the alternative wider “locality” (Redhill West & Wray Common electoral ward) rather than the “neighbourhood within a locality” (the blue line neighbourhood).
- 6.10 The Inspector concluded that use by people living within the blue line neighbourhood area during the qualifying period increased from about 2006 but that evidence of there being a lot of people from the blue line area using the Application Land prior to 2006 (when there were fewer families) was less than clear or convincing and that use was not therefore sufficient. He also concluded that there was no convincing evidence of any meaningful number of events on the land prior to 2006/7.
- 6.11 When considering use by the children at the school, however, the Inspector concluded that there was considerable use made of the Application Land by those going to the school throughout the qualifying period. Indeed, he concluded that, during term time it is likely to have been the more significant use of the land during the school week and particularly so in the earlier part of the 20-year period when there were less children living in the blue line neighbourhood. If the school related use is included, therefore, but only on that basis, the Inspector concluded that the significant use criterion is met throughout the qualifying period. However, if school related use IS included then the Application needs to be assessed based on the locality being Redhill West & Wray Common electoral ward and not based on the Applicant’s primary case which relied upon the claimed blue line neighbourhood within that locality.
- 6.12 This conclusion, however, would have implications which are addressed below.
- 6.13 The Locality and Neighbourhood Within a Locality Issue  
For an application to be properly considered an applicant must identify *either* a locality *or* both a neighbourhood within a locality AND a locality. In this instance the Applicant defined the neighbourhood as the blue line area on the plan at Annex B, and their Application was based on use by the residents of that neighbourhood within the locality of the Redhill West & Wray Common electoral ward.
- 6.14 The Inspector considered whether the blue line neighbourhood was sufficiently defined and identifiable to satisfy the description ‘neighbourhood’ which case law has established needs to have a sufficient degree of cohesiveness to mean anything. His analysis of the properties that were included within the blue line indicates that he found the line to be somewhat arbitrary. Comments by the witnesses at the Inquiry indicated that there was a

wide range of views as to what they considered their neighbourhood to be and that whilst there was a connection to the Application Land there was a lack of other factors demonstrating cohesiveness. He concluded that the Applicant had not demonstrated sufficient cohesiveness or distinctiveness or logic to the chosen boundaries for the claimed neighbourhood to satisfy the legal requirement.

- 6.15 The locality is significant in this case in two related aspects:
- i. if the Inspector had concluded (or the CRA concludes) that the claimed neighbourhood qualifies as a matter of fact or degree, it would still be necessary for the Applicant to demonstrate that this lay within a qualifying locality; and
  - ii. during the Inquiry, it became clear that the Applicant was relying on the locality of the Redhill West & Wray Common electoral ward as an alternative position.
- 6.16 The Inspector commented that there would appear to be no reason in principle why the electoral ward of Redhill West & Wray Common is not a qualifying locality. However, the objector raised the issue of whether the changes in the electoral ward over the qualifying period have resulted in substantial boundary changes for the locality during the relevant 20-year period which could prevent registration. The locality relied upon, Redhill West & Wray Common, was created in 2019 by adding three polling districts to the electoral ward of Redhill West.
- 6.17 In his closing submissions, the Applicant accepted that, if necessary, the objector should have the opportunity to comment on this aspect of the case further by written submissions to ensure there would be no prejudice to either side.
- 6.18 The Inspector was not in a position to conclude whether the current electoral ward could properly be relied upon. The matter was raised late in the Inquiry and neither the Inspector nor the parties were in a position to deal with it properly. The Inspector made clear at the Inquiry that he would not adjudicate on this point and, if it became necessary to do so to determine the Application, he would ensure that the parties were given a proper opportunity to make further representations as appropriate.
- 6.19 In summary, on the locality or neighbourhood within a locality issue the Inspector concluded that the claimed blue line neighbourhood did not satisfy the legal requirement in section 15(2) as interpreted by the courts.
- 6.20 In addition, although the Inspector concluded that considering the school related use the Application would satisfy the sufficient use requirement throughout the qualifying period, it has not been demonstrated that those school related users are inhabitants from the locality relied upon or that the change in the locality that has taken place during the qualifying period has not been such that would prevent reliance upon it.
- 6.21 If the CRA does not agree with the conclusion on the as of right issue set out below, it is recommended that the Applicant be given an opportunity to address the outstanding issues relating to locality and the objector to make further representations before the alternative basis is considered by the CRA.
- 6.22 The "As of Right" Issue  
Use that qualifies in these cases is use that is 'as of right' which is defined as being without force, secrecy, or permission. If it is established that use was, for example, pursuant to an existing right or with the permission of the landowner then that use would not have been as of right, it would have been by right, and use would not qualify.
- 6.23 The issues at the Inquiry centred on whether the Application Land is highway maintainable at public expense (HMPE) and consideration of the consequences of that.
- 6.24 The Highway Authority consider that the Application Land is publicly maintainable highway pursuant to a s40 Highways Act 1959 Agreement dated 9 February 1966 as

varied by a later Memorandum dated 5 July 1966 between Regent Surfaces Company Limited and the Mayor Aldermen and Burgesses of the Borough of Reigate (the Road Agreement). However, the Highway Authority commented that: *“The Highway Authority does not object to the application on the basis that if TVG status is granted it should not impede the duty of the Highway Authority to maintain the Land pursuant to s41 of the Highways Act 1980. There are no plans to carry out any highway schemes which might alter its open space status.”*

- 6.25 During the Inquiry consideration was given to the interpretation of the Memorandum dated 5 July 1966 varying and forming part of the Road Agreement referred to above. The discussions centred on whether the Memorandum incorporated the Application Land as HMPE and/or open space or neither. Following the close of the Inquiry the parties were given an opportunity to make further representations specifically on the interpretation of this document and the implications relating to that.
- 6.26 The Inspector considered at length the issues arising from the Memorandum varying the Road Agreement and concluded that the Road Agreement lawfully dedicates the Application Land as public highway. Given the fact that the rights over a highway are not limited to the right to pass and repass and a highway can include verges and amenity and treed areas he was of the view that the reference to open space within the varied Agreement does not make it a nullity.
- 6.27 The Inspector went on to consider the issue of whether highway land is in principle capable of being registered as a TVG and the rights arising over highway land. In the circumstances of this case, he concluded that use of the Application Land for recreational purposes is within the scope of the public’s right of access to a highway. Hence the use cannot be as of right as it is authorised by the highway status of the land.
- 6.28 In addition the Inspector noted that the varied Road Agreement makes it expressly clear that this additional part of the highway is an open space grassed area which, like the road itself, is to remain for ever open to the use of the public (clause 9 as varied). The Inspector was therefore unable to see how users of the land for lawful sports and pastimes could be considered to be trespassers and their use as of right.
- 6.29 The Inspector concluded that having regard to all the circumstances of the Application Land, the highway status does preclude its registration as a TVG as the claimed use for lawful sports and pastimes has not been as of right.
- 6.30 The Inspector went on to consider whether the use was otherwise not as of right. This is only relevant to the determination of the Application if the CRA does not accept the Inspector’s conclusions on the highway status of the Application Land. Permission can be express or implied and in terms of the latter, by conduct. The Application Land was mowed regularly throughout the twenty year period (less in the last year or so due to the pandemic) by or on behalf of the Highway Authority and there may have been a limited amount of litter picking by the authority. In the varied Road Agreement, the original owner had clearly authorised the authority to allow the land to be used as open space. The Inspector commented that it seemed wholly unrealistic in those circumstances that those using the Application Land would be, or be considered by the landowner to be, trespassers. In summary, the Inspector considered that this point was not straightforward but concluded that use was pursuant to implied permission of the landowner and thus not as of right.

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## 7. CONCLUSIONS

The Inspector's Report contained the following conclusions and recommendations:

7.1 The sufficiency of use issue

The significant use criterion is only met if the school related use is included and thus the Application is assessed based on the locality being Redhill West & Wray Common electoral ward, as the Applicant contended in the alternative, and not based on the Applicant's primary case of the claimed blue line neighbourhood within that locality.

7.2 The locality and neighbourhood within a locality issue

The claimed neighbourhood does not satisfy the legal requirement in section 15(2) as interpreted by the courts. The Applicant does not suggest any alternative neighbourhood and it is not considered on the evidence that there is an obvious alternative that the CRA should consider even if it would be appropriate to do so.

7.3 Even if the CRA takes a different view and considers that the claimed neighbourhood does satisfy the statutory requirement, in the Inspector's view, the sufficiency of user requirement can only be met if the school related use is included as explained above.

7.4 The Application would satisfy the sufficiency of use requirement by including the school related use; however, it has not been demonstrated that those school related users came from the locality relied upon alternatively to the claimed neighbourhood. The Applicant has not demonstrated that the change in the locality that has taken place during the qualifying period has not been to an extent that prevents reliance upon it.

7.5 The as of right Issue

The Application Land has been lawfully dedicated as public highway by the Road Agreement dated 9 February 1966, as varied by the Memorandum dated 5 July 1966. Given that the use is a reasonable use of the highway in the circumstances and consequently by right and not as of right then it cannot be registered as TVG.

7.6 However, although this point is less straightforward in the particular circumstances, if the conclusion on the highway status of the Application Land is not accepted by the CRA, in any event use was pursuant to the implied permission of the landowner and therefore not as of right.

7.7 Accordingly, the Inspector's recommendation to the CRA is that the Application is refused.

7.8 If the CRA does not accept the conclusions on the as of right issue, the Inspector recommends that the CRA should consider whether to allow the Applicant to seek to address the locality issues before dismissing the Application by reason of the sufficiency or locality/neighbourhood issue. Fairness requires that the objector would be given an opportunity to make further representations before the alternative basis is considered again by the CRA (see para 8.2).

## 8. RECOMMENDATION

8.1 Officers recommend that the Application be refused on the grounds that use of the Land has not been as of right as required by section 15(2) of the Commons Act 2006 for the reasons given in the Inspector's Report.

8.2 If members do not agree with the conclusions on the as of right issue, which would defeat the Application, it is recommended that the Application is deferred. This would be to allow the parties the opportunity through written representations to address the locality issues. An updated report considering this point would then need to be brought to



Committee before a decision is made on whether the Application has shown sufficiency of use within a qualifying locality to register the land as TVG.

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**BACKGROUND PAPERS**

The documents relating to Application No.1888:

- i. The documents referred to in the report
- ii. The application and supporting documentation
- iii. Curwen Group objection
- iv. Applicant's response to objection
- v. Luckyhome Properties Ltd additional grounds for objection
- vi. Highway Authority comments
- vii. The Inquiry documentation
- viii. Post Inquiry exchange of correspondence on Highway issue

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