

TO: PLANNING & REGULATORY COMMITTEE

BY: HEAD OF LEGAL & DEMOCRATIC SERVICES

DISTRICT (S): REIGATE & BANSTEAD

ELECTORAL DIVISION:
HORLEY WEST,
SALFORDS & SIDLOW
Kay Hammond

PURPOSE: FOR DECISION

**APPLICATION FOR VILLAGE GREEN STATUS-
LAND AT THE GREEN, LANDEN PARK, HORLEY**

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 Adrian Woolsey, Philippa Parry, Tina Constanti and Lynda Muggeridge dated 15 January 2017 relating to land at Landen Park, Horley.

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 ACCEPT the application.

APPLICATION DETAILS

Applicants

Adrian Woolsey, Philippa Parry, Tina Constanti and Lynda Muggeridge

Land

Land at Landen Park, Horley

Date of Application

No 1878: 15 January 2017.

ILLUSTRATIVE MATERIAL

Annexe A: Plan of Land submitted with application

Annexe B: Inspector's report dated 11 December 2018

Annexe C: Appendices to Inspector's report including Neighbourhood plan App/1

BACKGROUND

1. On 17 January 2017 Surrey County Council received an application for a new village green for the Land known as The Green, Landen Park in Horley (the Land). The application was made on the basis that *a significant number of 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 application was accompanied by 12 witness statements in support of the application and a survey of 82 households where 77 responses showed support.
2. 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 has to establish whether an application is valid under section 15C of the Commons Act 2006 before the application can be considered.
3. A public notice was placed in the local press on 25 May 2017 with an objection period running from 25 May 2017 until 6 July 2017. The application was placed on public deposit at Reigate & Banstead Borough Council offices and Horley Library.
4. An objection to the application was received from Shoosmiths Solicitors on behalf of Sterling Homes Ltd the owners of the application Land (the Objectors). It was not clear from the evidence provided with the application whether the Land met the criteria for registration. Legal opinion was sought and a view was taken that an independent investigation be conducted 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.
5. A non-statutory public inquiry was held on 19 to 20 November 2018. The Inspector submitted his report to the Commons Registration Officer on 11 December 2018. (Annexe B).
6. The Commons Registration Officer is therefore now placing this matter before members for consideration.

CONSULTATIONS AND PUBLICITY

Borough/District Council

Reigate & Banstead Borough Council No objection

Consultees (Statutory and Non Statutory)

The Open Spaces Society: No views received

Local Residents – adjoining properties: No views received

Horley Town Council Letter in support of application

Rights of Way	No comments
Estates Planning & Management	No views received
County Highways Authority – Highways Information Team	No views received

Summary of publicity undertaken

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

- The cost of advertising has already been incurred.
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ENVIRONMENTAL IMPLICATIONS

- 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

- 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

- 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 (№ 1878) made by Adrian Woolsey, Philippa Parry, Tina Constanti and Lynda Muggerridge, under the Commons Act 2006, to have Land at The Green, Landen Park, Horley, registered as a town or village green (TVG). The Land is identified on the plan appended to the application (Annexe A).
- The freehold owners, Sterling Homes Ltd, oppose the application.
- 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.
- The facts were thoroughly tested with evidence at a public inquiry. The Inspector's report contained the following conclusions: -

1. *Significant number*

It seems to me to be plain and obvious that the oral and other evidence advanced in support of the application to register was more than adequate to demonstrate a sufficiency of use for these purposes. It has already been indicated that the term 'significant' for the purposes of section 15(2) of the CA 2006 does not mean considerable or substantial. What matters is that the number of people using the land has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation rather than occasional use by individuals as trespassers. In my view, this test has been satisfied on the facts of this case. The evidence relied on (which comes from 47% of the total number of households) constitutes, in my view, a significant sample and is more than large enough to demonstrate to a reasonable landowner that a right is being asserted by local inhabitants over his land.

2. *Qualifying neighbourhood*

It is my view that the applicants have made out their case on the neighbourhood issue. I am content that the claimed neighbourhood shown on App/1(Appendix C) is justified on the evidence for the reasons given (see paras 147 to 160 in the Inspector's report). I also take the view that it does not matter that there may be instances where qualifying use occurs by residents living outside this area which, as I find, is only likely to occur on an occasional basis and does not detract from the fact that the predominant use of the green is by those living within the claimed neighbourhood.

3. *'lawful sports and pastimes'*

I am satisfied that those using the green do so for qualifying purposes. I find that the main use is children's play and walking, with or without dogs. It is also clear that the green is a meeting place for local residents and I have no doubt that these activities justify registration. The nature of the claimed use was never questioned by the objector.

4. *'As of right'*

The issue under this head focuses on the objector's contention that an implied licence may be drawn from a combination of the following factors: (a) from the representations which would have been made by Gough Cooper's sales staff to prospective purchasers that public open space on the estate was earmarked for the use of residents; and (b) the fact that open spaces were laid out for use by residents as part of the original planning approval for such development. It will be recalled that the objector speaks of the implied licence being 'communicated through the historical transfers and plans for the development of the estate'.

With one exception, I have no doubt that the use relied on by the applicants was 'as of right' and not 'by right'. The latter only arises, in my view, in the case of the pavement crossing the green. This is not disputed.

It is probable that it was a condition of the material planning permission that the developer should make provision for the open spaces identified on the approved plans and that this included the green. Nor do I doubt either that those living in the claimed neighbourhood will have rightly assumed that the green was available for their use for the purposes of informal recreation. However, it seems to me that the

objector is nowhere near the starting gate in establishing that the conduct of the landowner in tolerating unhindered use of the green since the mid-1970s gave rise to an implied licence.

It seems to me that the provision of open space in the mid-1970s did not amount to overt conduct on the part of the landowner (such as might arise, for instance, by making a charge for admission or asserting his title by the occasional closure of the land to all-comers) which was intended to be understood by residents that they were being conferred with a permission to do something which would otherwise be an act of trespass. The case founded on the seller's purported representations comes nowhere near the test for an implied licence and, in any case, affects only that small handful of first-time purchasers. Further, the mere laying out of the green as an open space (no doubt pursuant to a planning condition) was no more than the provision of a facility for residents and their visitors which the landowner would be unable to withdraw if it formed part of the original planning permission (which I suspect it did). The fact is that until 2016 the objector and Gough Cooper stood by and acquiesced in the use of the green by residents and cared very little, if anything, about it as the local authority were managing it until 2015 when, with the advent of budgetary cuts and/or when the local authority realised that it did not actually own the green, objector realised that it needed to take stock of its position as landowner.

5. 20 years use ending at the time of the application

The main issue under this head (as I understand it) is that the objector is saying that after the local authority stopped cutting the grass in 2015 (Mrs Parry said this occurred in the Spring of that year whereas Mr Woolsey recalls that the grass was last mown in early 2015) areas of the green deteriorated and became less accessible for ordinary recreational use, such that registration would not be justified on the basis that the whole of the green was not in qualifying use for the whole of the 20 year period ending in January 2017 when the application to register was made. The objector is, I think, also saying that although the local authority stopped cutting the grass its management of the green was in decline anyway after 2012.

My findings on this issue are as follows.

- There is no evidence that, prior to 2012, the green was not being properly managed by the local authority.
- I find that both sides of the green were available for use by residents for LSP up to the making of the application to register in January 2017 and that qualifying use took place throughout the whole of the 20 year period up to the making of the application.
- I also find that the growth of the shrubs in the southern area in the period 2008-2016 did not mean that these areas should not be registered; in other words, that time would not have been interrupted in relation to such land. This is because I find that these shrubs ... were integral to the enjoyment of the whole of the green until their removal in October 2016. In other words, we are dealing with what was cultivated land which formed part of the function and attractiveness of the green on its southern side.
- My findings about the use of the green (on both sides) are assisted by what I saw for myself on my accompanied view. The northern area is still usable land for LSP, as is most of the southern area near to where it backs on to the rear of houses in Westleas. The remainder of the southern area is somewhat tussocky and not a particularly attractive destination for LSP but would still be perfectly usable by dog walkers.

6. Conclusion

Accordingly, it is my opinion that the applicants have, with one exception, established all that is necessary to be established under section 15(2) of the CA 2006 to justify registration of the green as a TVG.

The exception involves the omission of the pavement between Landen Park and Arne Grove falling within the area edged green on the plan at App/1.

Although highway land is not precluded by law from being registrable, qualifying use for TVG purposes on such land is markedly constrained by the right of the public to use such land as a highway. This arises from *DPP v Jones* [1999] 2 WLR 625 which held that the public may lawfully do anything reasonable on the highway which does not interfere with the public's right of passage.

What this means is that any highway use of the pavement must be discounted since it is not qualifying use and because the pavement is unlikely to have been used for LSP (or at least to any material extent) the registration of such land is not justified.

CONCLUSIONS AND RECOMMENDATION

15. 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 been met.
16. Therefore, Officers recommend that, with the omission of the pavement between Landen Park and Arne Grove, the application to register the Land be accepted and the remainder of the area edged green should be registered as a new town/village green for the reasons explained in detail in the Inspector's report dated 11 December 2018.

CONTACT

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BACKGROUND PAPERS

All documents quoted in the report.