

**REPORT FOR: LICENSING AND GENERAL PURPOSES COMMITTEE**

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**Date of Meeting:** 1 March 2010

**Subject:** Application for Registration of Land at Strongbridge Close Estate as a Town or Village Green

**Responsible Officer:** Andrew Trehern - Corporate Director, Place Shaping

**Exempt:** No

**Enclosures:** Copy application on Form 44 and photographs  
Copy two sets of evidence questionnaires of Applicant A and Applicant B  
Plan showing edged red the area of the application land  
DEFRA – Section 15 of the Commons Act 2006: Guidance Notes for the completion of an Application for the Registration of land as a Town or Village Green

## **Section 1 – Summary and Recommendations**

This report introduces an application for registration of land at Strongbridge Close Estate, Rayners Lane as a town or village green, for consideration by the Committee.

**Recommendations:**

That the Committee rejects the application for registration of land at Strongbridge Close Estate as a town or village green and authorises officers to write to the applicants formally confirming this.

## **Section 2 – Report**

### **2.1 Introduction**

- 2.1.1 On 11 July 2008, an application was received in Legal & Governance Services for registration of land at Strongbridge Close housing estate as a town or village green under Section 15 of the Commons Act 2006 ('the 2006 Act') and the Commons Registration Act 1965. The application was made by the Campaign for a Better Strongbridge and submitted by Applicant A with further information later received from Applicant B and Applicant C.
- 2.1.2 After extensive correspondence between Legal & Governance Services and the applicants, the application is now being referred to the Committee with a recommendation that the application is rejected. As will be explained below, the applicants have been given every opportunity to provide the required information to validate their application but have failed to do so. Furthermore, it is submitted that the application is not supported by sufficient information for the land to be registered.
- 2.1.3 The land affected is amenity land at Strongbridge Close, shown edged in red on the enclosed plan. The application land also includes part of the public highway. The land is owned by Metropolitan Housing Trust. Planning permission P/3171/06 for redevelopment of the estate was granted on 6 December 2007 and construction work is well underway. Metropolitan Housing Trust has been notified of the application.
- 2.1.4 Under Regulation 3 of the Commons (Registration of Town or Village Greens)(Interim Arrangements)(England) Regulations 2007 ("the Regulations"), an application must be made in form 44, be accompanied by every document (or a copy) relating to the matter which the applicant has in his possession or is able to supply, and be supported by a statutory declaration and by such further evidence as the registration authority may reasonably require.
- 2.1.5 Criteria for registration
- 2.1.6 Section 15 of the 2006 Act provides that any person may apply to the commons registration authority to register land as a town or village green 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.”

2.1.7 This application has been made under section 15(2), where use of the land continues up to the time of the application. The Committee should be aware that applications may also be made up to two years following the cessation of use. Rejection of this application would therefore not necessarily preclude the applicants resubmitting a further application for consideration in the future, should they be able to fulfil the statutory requirements and adduce further evidence at that time.

#### 2.1.8 Procedure on receipt of application

2.1.9 On receipt of an application, the commons registration authority must consider the application under the Regulations.

2.1.10 Regulations 4 and 5 set out the procedure which the registration authority must follow on receipt of an application. In the first instance this requires the authority to determine whether the application is duly made (i.e. whether it contains all the required information set out in the Regulations). The applicants are to be given a reasonable opportunity to take action to remedy any defects in the application before it is rejected as not duly made.

2.1.11 When an application is duly made there is a procedure for then notifying the owner of the land affected and other interested parties, and publishing a formal notice relating to the application. Following publication of the notice the owner or other interested parties then have a period of 6 weeks if they wish to object to the application. If necessary, a non-statutory public inquiry would be held, and the application is eventually determined by the Committee or a Licensing Panel. In this case it is submitted that the application has not been duly made (see paragraph 2.1.28 below) and no formal advertising of the application has therefore taken place.

#### 2.1.12 Correspondence with applicants

2.1.13 On receipt of the original application in July 2008, a letter was sent to Applicant A acknowledging receipt of the application but stating that no statutory declaration with attached map marked as an exhibit to the statutory declaration was enclosed with the application as is required under the Regulations. The Regulations further provide criteria for the form of map to be attached, i.e. an Ordnance map of a scale not less than 1:2,500 showing the land by means of distinctive colouring.

2.1.14 It was also stated in that letter that a separate full statement in support of the summary of the reasons for registration should be submitted, giving any additional evidence including witness statements in support of the application. A blank Evidence Questionnaire was provided for the applicant's use.

2.1.15 Applicant A thereafter delivered the required statutory declaration to the Council's offices on 21 August 2008, together with completed

Evidence Questionnaires from himself and Applicant B. However, on consideration of the statutory declaration it was noted that the map was not marked as an exhibit to the declaration as is required by the Regulations. A further letter was therefore sent on 27 August 2008 informing Applicant A of this omission.

- 2.1.16 The statutory declaration dated 15 September 2008 was then resubmitted and a letter dated 1 October 2008 was then sent to Applicant A enclosing a receipt for the application and confirming that the application would now be processed.
- 2.1.17 On 28 November 2008, Applicant B sent an e-mail to Legal & Governance Services stating his concerns that construction had commenced on site whilst the town and village green application was under consideration.
- 2.1.18 On 19 December 2008, the application was reviewed and Legal & Governance Services wrote further to the applicants stating that further information was required in relation to their application. In particular, that confirmation was required as to the 'locality' or 'neighbourhood within a locality' (i.e. the area of residence of the users of the land). The term 'locality' must be an administrative area, such as a parish or electoral ward. The term 'neighbourhood within a locality' need not be an administrative area but must have 'a sufficient degree of cohesiveness' (*Cheltenham Builders Ltd v South Gloucestershire District Council [2003] EXHC2803(Admin)*). It was also stated in that letter that further evidence was required from other users of the land. It was also pointed out that use by residents of the estate would not qualify as use 'as of right', as residents would have a right to use the land by virtue of their tenancy or lease agreements.
- 2.1.19 On 14 January 2009, Applicant C wrote to the Council's Legal Services department advising that the land had been used as a green since about 1974 when Strongbridge Close was established, and had been used regularly for the likes of football since that date. In a further letter, Applicant C asked whether his evidence should be given by way of statutory declaration. Legal & Governance Services replied stating that the evidence could be given in any form he wished, but that he might wish to provide a Declaration of Truth, but that in any event it was not appropriate to advise on the form of evidence. It was also pointed out in that letter that the locality had still not been defined by the applicants.
- 2.1.20 In an e-mail dated 2 February 2009, Applicant B stated his opinion that the requested information was impossible to supply and was anyway not required, and that all that was needed was to state what the applicants had witnessed. He mentioned cases at Aylesford and Oxford where the requested information was not required. Officers have searched for relevant case law but it has not been possible to identify the particular cases which correspond to those which Applicant B referred to.

- 2.1.21 A further letter dated 17 August 2009 was then sent to Applicant C, stating that despite his indication in a previous letter that evidence of use was to be provided, none had been received to date, and informing him that the application would be rejected if the points raised in the letters of 19 December to Applicant A and Applicant B were not addressed by the end of August.
- 2.1.22 Letters were also sent to Applicant A and Applicant B on 17 August informing them that the application would be rejected if the points raised were not addressed by the end of August.
- 2.1.23 Applicant B sent an e-mail in reply on 22 August 2009 stating the opinion that further information was not necessary. A reply was sent by Legal & Governance Services explaining why further information was required, and a response was received from Applicant B on 11 October 2009, again stating his opinion that all requirements had been met and again asking why development had been allowed to commence whilst the application was under consideration.
- 2.1.24 In a letter dated 6 November 2009, Applicant C stated: "From a lay man's points of view it seems that as the green area has been used for games and recreations from about 1974 that the case is made".
- 2.1.25 As the information requested was not provided, Legal & Governance Services sent an e-mail message to Applicant B and Applicant A on 14 September 2009 informing them that the application could not proceed.
- 2.1.26 The council's constitution provides that decisions in relation to Town or Village Greens are a non-executive function. Officers therefore consider it appropriate to refer the matter to the Committee for formal consideration.
- 2.1.27 Application not duly made
- 2.1.28 Under Regulation 3, an application must be made in form
- 2.1.29 Regulation 5(4) provides that: "Where an application appears to the registration authority after preliminary consideration not to be duly made, the authority may reject it without complying with paragraph (1) [the requirement to notify the owner and advertise], but where it appears to the authority that any action by the applicant might put the application in order, the authority must not reject .. [it] without first giving the applicant a reasonable opportunity of taking that action".
- 2.1.30 No confirmation of the 'locality' or 'neighbourhood within a locality' has to date been received by Legal & Governance Services. This information is required for a valid application under Section 15 of the 2006 Act. The applicants have been given every reasonable opportunity to validate the application but have failed to do so.
- 2.1.31 Evidence of use

- 2.1.32 Although officers' recommendation is that the application has not been duly made for the purposes of the Regulations, consideration has also been given to the evidence of use supplied by the applicants.
- 2.1.33 In order to meet the criteria for registration, the land must have been used by "a significant number of the inhabitants of any locality, or of any neighbourhood within a locality". There is no definition of the word 'significant' in the legislation, however it was discussed in the case of *R v Staffordshire County Council, ex parte Alfred McAlpine Homes Ltd [2002] EWHC 76 (Admin)*.
- 2.1.34 In that case, Sullivan J said that 'significant' meant 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 in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers.'
- 2.1.35 Sullivan J went on to say: 'The inspector concluded in para 7.1 that substantial use had been made of the meadow for informal recreation for more than 20 years before the application. He referred specifically to six of the witnesses who could give evidence covering the whole of the 20-year period. Mr Wolton's criticisms of the inspector's conclusions are not well founded. It is quite unrealistic to refer simply to the six witnesses or to deal with the matter on the basis that they are only six out of 20,000 or one out of 200, and that such numbers are not significant. I accept that, if all of those six witnesses had said that they had not seen others on the land over the 20-year period, then it would be difficult to see how six out of 20,000 or one out of 200 could be said to be significant. But the fact of the matter is that they did not give such evidence: they were able to give evidence, not merely about what they did themselves, but what they saw others doing on the meadow over the 20-year period. It is difficult to obtain first-hand evidence of events over a period as long as 20 years. In the present case there was an unusual number of witnesses who were able to speak as to the whole of the period. More often an inspector at such inquiries is left with a patchwork of evidence, trying to piece together evidence from individuals who can deal with various parts of the 20-year period. In the present case, however, the evidence of the six witnesses who were able to cover the whole 20-year period was amply supported by many other witnesses who dealt not simply with the last few years but with a very considerable part of the 20-year period, some of them going back almost 20 years, some going back to times before the 20-year period began.'
- 2.1.36 The evidence of use provided has been from Applicant A in the application form and evidence questionnaire, from Applicant B in his evidence questionnaire, and by correspondence from Applicant C.
- 2.1.37 In the application form, at question 7 (summary of the case for registration), Applicant A stated: "The land outlined has been used for over 20 years (1) and also includes a tennis court (2). Access is gained by: 1. public road from the south, 2. public footpath from the northwest corner (3). The said piece of land has been used for over 20 years

without challenge or objection by the owners quoting the Inclosure Act of 1857, updated by Section 15 of the Commons Act (2006).”

- 2.1.38 Applicant A and Applicant B each submitted two sets of evidence questionnaires, in July and August respectively. It was assumed that the earlier evidence questionnaires were to be replaced by the later ones (and in the letters dated 19 December 2008 to Applicant A and Applicant B it was stated that it was assumed they wished to base the application on the later of the questionnaires), although both sets have been attached for consideration by the Committee.
- 2.1.39 In the evidence questionnaires submitted by Applicant A, he stated that he had known and used the land between the years 1972 and 2008. In answer to question 12 (“Why did you go on to this piece of land?”), Applicant A replied “To walk for exercise and visit my local doctor in Welbeck, visit friends and general recreation.” In the later questionnaire, he stated: “To gain use from via public footpath. To gain access from one side to other”. The frequency of use was stated as “at least 4-5 times per year”. Use was for “walking, taking children for exercise”.
- 2.1.40 Applicant A also indicated at question 17 in the earlier questionnaire that he had observed others using the land: “There is an estate community that from time to time has organised outside activities. Also children from surrounding area playing football etc”. in the later questionnaire, he stated: “During the summer months.” He indicated at question 22 (tick boxes) that he had seen the following activities taking place on the land: playing, dog walking, community celebrations, football, cricket, picnicking, people walking and bicycle riding.
- 2.1.41 Applicant B submitted a letter dated 24 July 2008 in which he stated that he had “witnessed children playing football on land at Strongbridge Road, on the Strongbridge Estate between the dates of March and April 2005/2006.”
- 2.1.42 In the evidence questionnaire submitted by Applicant B, he stated that he had known the land between the years 1982 to 2008, and had used the land between 1992 to 2008. In the later questionnaire the dates of use were amended to “2006 to 2008.” Applicant B stated in the earlier questionnaire that he used the land “For walking purposes to visit friends in Twyford and general recreation”, and in the later one “for walking”. He stated that in the later questionnaire that he used the land “occasionally” (in the earlier one it was stated “not at all” but this is assumed to be an error). In answer to question 17 (“Do you know of any community activities that take place or have taken place on the Land?”), Applicant B stated in the earlier questionnaire that he had “witnessed football being played by children”, in the later one he answered “No”. In the tick box question as to activities on the land, he ticked: playing, dog walking, team games, tennis, football, cricket, people walking and bicycle riding.
- 2.1.43 In response to the letter sent by Legal & Governance Services dated 17 August 2009, an e-mail was received from Applicant B on 22 August

2009 stating that 'I am unable to offer further information regarding usage of this space as I have only observed activities over the last two to three years, and that being mainly football and dog walking and that I have no idea by whom except that they are logically local residents from the estate and beyond. Applicant A on the other hand has submitted much more relevant data going back much further... In that e-mail I mentioned other cases which had been accepted with a fraction of the detail you seem to want. As I said applications had been accepted both in Oxford and in Aylesford although the period of time the land was used for recreational activities could not be proved...'. As stated above, it has not been possible to locate the cases which Applicant B refers to. In reply to an e-mail sent in response, a further e-mail was sent by Applicant B on 11 October 2009 stating that all requirements had been met and that "[Applicant A] and myself have witnessed children playing games, mostly football and cricket on that land and people walking dogs etc.

2.1.44 As stated in paragraph 2.1.19 above, correspondence was also received from Applicant C dated 14 January 2009 stating that the land "has regularly been used for the likes of football since that date" [approximately 1974, when the estate was built].

2.1.42 Officers would submit that, even if the application were duly made, the evidence provided would not be sufficient in either quality or quantity to establish that a significant number of the inhabitants of the locality have indulged as of right in lawful sports and pastimes on the land for the full period of 20 years or more.

## **2.2 Legal Implications**

2.2.1 The legal implications are covered within the main body of the report.

## **2.3 Financial Implications**

The rejection of the application as not duly made would not have any financial implications for the Council.

## **2.4 Risk Management Implications**

2.4.1 Not included on the Directorate risk register.

2.4.2 There is no separate risk register in place.

2.4.3 If the application is rejected, there is no right of challenge under the town or village green legislation, although all decisions of the council are of course subject to judicial review if the relevant grounds can be established. Similarly the applicants do have a right of complaint to the Local Government Ombudsman if they feel the council has acted improperly. As stated previously, the applicants may also re-submit a further application within the time frame established by the 2006 Act, should they so wish.

## **2.5 Corporate Priorities**



There are no relevant corporate priorities.

### **Section 3 - Statutory Officer Clearance**

Name: Kanta Hirani	<input checked="" type="checkbox"/>	on behalf of the* Chief Financial Officer
Date: 10 February 2010		
Name: Matthew Adams	<input checked="" type="checkbox"/>	on behalf of the* Monitoring Officer
Date: 18 February 2010		

### **Section 4 - Contact Details and Background Papers**

**Contact:** Rachel Jones, Senior Property Lawyer, Tel: 0208 424 1282

#### **Background Papers:**

Section 15 of the Commons Act 2006 and the Commons (Registration of Town or Village Greens)(Interim Arrangements)(England) Regulations 2007 (SI 2007/457)

DEFRA – Advice on the Implementation and Commencement of Section 15 of the Commons Act 2006 (March 2007)

If appropriate, does the report include the following considerations?

1.	Consultation	YES / NO
2.	Corporate Priorities	YES / NO