

HERTFORDSHIRE COUNTY COUNCIL

**DEVELOPMENT CONTROL COMMITTEE
THURSDAY, 29 JUNE 2017 AT 10.00AM**

Agenda Item
No.

1

BROXBOURNE DISTRICT

**APPLICATION FOR THE REGISTRATION OF LAND TO THE REAR OF
MEADWAY AND ST CATHERINE'S ROAD, HODDESDON AS A TOWN OR
VILLAGE GREEN**

Report of the Chief Executive and Director of Environment

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Local Member: Paul Mason

1. Purpose of the Report

- 1.1 To inform Members of the Committee of an application to register land to the rear of Meadway and St Catherine's Road, Hoddesdon, as a town or village green.
- 1.2 To inform Members of the findings and recommendations of an independent inspector following a non-statutory public inquiry.
- 1.3 To ask Members to decide whether to grant or refuse the registration.

2. Summary

- 2.1 On 28 November 2014, Richard Buxton Environmental & Public Law, on behalf of Barbara Tyrrell, made an application to register land ("the Application Land") in Hoddesdon as a town or village green. (See map of Application Land attached at Appendix 1).
- 2.2 The application has been processed by the Access & Rights of Way Team on behalf of the County Council as Commons Registration Authority, in accordance with the Commons Act 2006.
- 2.3 Part of the Application Land is owned by Thames Water and the remainder is owned by the Forgione Family. Following the advertising of the application on 25 June 2015, objections were received from both Savills, acting for Thames Water, and Duffield Harrison LLP, acting for the Forgione Family.

- 2.4 Following the necessary gathering and exchange of information, it was decided that the evidence should be considered at a non-statutory public inquiry. The County Council instructed Mr Alexander Booth QC of Francis Taylor Building, London, a barrister experienced in village green law, to hold the public inquiry, assess all of the available evidence and make recommendations as to whether or not the land should be registered. The inquiry was held at the Marriott Hotel, Cheshunt from 16th to the 18 January 2017.
- 2.5 At the start of the public inquiry the applicant amended their application to remove from the Application Land all the land owned by Thames Water. The Inspector accepted the amendment and Thames Water played no further part in the proceedings.
- 2.6 Following the non-statutory public inquiry the inspector prepared a report in the form of a Main Report (Appendix 2), a Summary Report (Appendix 3) and associated Plan (Appendix 4). The Main Report, dated 14 March 2017, concludes "... it is my recommendation to the Council that it accedes to the Application in part, and registers that part of the Land which forms part of The Paddley as town or village green. However, I recommend that insofar as the Application seeks the registration of the remainder of the Land, then it be rejected ..."

3. Recommendations

- 3.1 The Inspector recommends that the part of the Application Land as shown outlined blue in Appendix 4 should be registered as a town or village green and the remainder of the Application should be rejected.

4. Background

- 4.1 The land subject to this application is located to the south of Hoddesdon and is a mixture of open and grazed land. It consists of approximately 4.6 acres and is bounded on the west by the New River and to the east by the properties of Meadway, Hoddesdon and the local gas distribution centre (see map attached at Appendix 1). There is a public footpath running along the tow path of the new river, which is separated from the land by fencing. There is also a surfaced path running east/west bisecting the land, known as 'Gasworks Lane', connecting a bridge over the New River to the local gas distribution centre and Meadway. The remainder of the land is known locally in two distinct plots; 'Horses Field' being the grazed area lying to the north of Gasworks Lane and 'The Paddley' being the open land directly to the south of Gasworks Lane'.
- 4.2 In 1998, the land was subject to a previous application for registration as village green but this was refused following a non-statutory public inquiry. When determining this 1998 application, the Inspector recommended that the application be rejected on the basis that the applicant had not demonstrated that the land had been used by the inhabitants of a locality within the meaning of section 22 of the Commons Registration Act 1965 (the legislation preceding the Commons Act 2006).

5. The Process

- 5.1 Applications to register town or village greens are made to Hertfordshire County Council as the Commons Registration Authority for Hertfordshire. The procedure for dealing with such applications is laid down in the *Commons Registration (England) Regulations 2014*
- 5.2 An application for registration of land as a town or village green can be made under section 15(1) of the Commons Act 2006 in one of the following circumstances:
- 15(2) where:
- (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in 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.
- 15(3) where:
- (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in sports and pastimes on the land for a period of at least 20 years; and
 - (b) they ceased to do so before the time of the application but after the commencement of this section; and

- (c) the application is made within the period of one year beginning with the cessation referred to in paragraph (b)

- 5.3 If the County Council decides that the requirements set out in paragraph 5.2 above have been met, it must register the land. The determination of the application must be based on whether there is sufficient evidence to show that a town or village green has come into existence.
- 5.4 To assist in determining applications the Registration Authority may appoint an independent inspector to hold a non-statutory public inquiry. The purpose of the inquiry is to hear the evidence for and against the application and allow the Inspector to make recommendations based on that evidence and relevant case law.
- 5.5 There is no statutory right of appeal the County Council's decision. The only way to challenge a decision made by this Committee would be through the process of a judicial review.

6. The Application

- 6.1 This application was made on 28 November 2014 pursuant to section 15 of the Commons Act 2006. It was deemed to be duly made on 27 February 2015. The extent of the Application Land and the claimed neighbourhood were amended during the course of the processing of this application. This is detailed further in para 6.9.
- 6.2 The applicant submitted 48 user evidence forms from local people describing the recreational activities they have enjoyed over the land and the periods of time those activities have taken place. The applicant also submitted photographs, letters of support and information relating to the previous application to register the land as a town or village green which failed in 1998.
- 6.3 The appropriate procedures were followed by the applicant for making the application and by the County Council for the notification of interested parties and advertising the application.
- 6.4 Objections to the application were received from both landowners. The first was from Savills, acting for Thames Water and the second was from Duffield Harrison LLP acting for the Forgiore Family.
- 6.5 The main points contained within Thames Water's objection can be summarised as:
- Registration of the land would adversely impact on Thames Water's operational land and prevent sufficient access to carry out necessary inspection, maintenance or repair to the banks of the New River.

- Registration of the land as a town or village green is incompatible with Thames Water's functions as a Statutory Undertaker.
- 6.6 The main points contained within The Forgione Family's objection can be summarised as:
- The nature and frequency of the claimed use of the land is contested by the Forgione Family.
 - The land has been grazed by licence meaning any claimed use of the land cannot be considered 'as of right'.
- 6.7 Once information from both parties had been received officers of the County Council assessed the documentation and concluded that a non-statutory public inquiry should be held.
- 6.8 Mr Alexander Booth QC was appointed by the County Council as an independent inspector and an inquiry was held on 16th, 17th & 18th January 2017 at the Marriott Hotel, Cheshunt.
- 6.9 During the course of the public inquiry a request was made by the applicant to amend their application in two regards. The first amendment related to the extent of the land applied for; the applicant sought to remove all of land owned by Thames Water from the application. The second amendment related to the neighbourhood claimed; the applicant looked to remove St Catherine's Road from the claimed neighbourhood. No objections to these amendments were made and the Inspector confirmed he accepted the requests.

7. Conclusion

- 7.1 The Inspector's Main Report is attached at Appendix 2, in it he concludes that:
- The Applicant has succeeded in demonstrating the existence of a neighbourhood for the purposes of the section 15 of the Commons Act 2006.
 - The neighbourhood is situated within a qualifying locality for the purposes of section 15 of the Commons Act 2006.
 - During both the relevant periods, there was use of the Land by local people (i.e. inhabitants of the neighbourhood) for the purposes of the Commons Act 2006.
 - Such use of Gasworks Lane by local people as took place during the relevant periods was not for lawful sports and pastimes for the purposes of the Commons Act 2006.
 - Such use of Horses Field by local people for lawful sports and pastimes as took place during the relevant periods was not carried out with sufficient intensity and by sufficient numbers of local people for the purposes of the Commons Act 2006.
 - Local people used The Paddley for lawful sports and pastimes throughout the relevant periods, in sufficient numbers and with

sufficient intensity, to justify registration of the land as town or village green pursuant to the Commons Act 2006

- Such use of The Paddley was carried on as of right; in particular the user was not 'forcible' having regard to the decisions in case law such as Lewis or Winterburn.

7.2 The Inspector's main report recommends that the County Council should accept the application to register that part of the land known as 'The Paddley' as a town or village green but reject those parts of the application relating to the land known as 'Gasworks Lane' and 'Horses Field'. The extent of the land recommended for registration is outlined blue on the Plan of Land for Registration (Appendix 4).

8. Financial Implications

8.1 The finance for processing this application has been sourced from existing County Council budgets.

8.2 However, should any party seek a judicial review of the procedures that have been used by the Registration Authority, the County Council could incur costs which may not be covered by existing budgets.

Appendices:

Appendix 1: Site plan showing the extent of the application (as amended, see paragraph 6.9).

Appendix 2: Main Report of Inspector Mr Alexander Booth QC

Appendix 3: Summary Report of Inspector Mr Alexander Booth QC

Appendix 4: Plan showing the extent of the land recommended for registration

Background information used by the author in compiling this report

Commons Act 2006

The Commons Registration (England) Regulations 2014

Report of Mr Alexander Booth QC, dated 14 March 2017 (updated)

Summary Report of Mr Alexander Booth QC, dated 14 March 2017 (updated)

If you require any further information on the items referred to in this report, please telephone Gavin Harbour-Cooper on 01992 556 186