

PLANNING AND ENVIRONMENTAL PROTECTION COMMITTEE	AGENDA ITEM No. 6
TUESDAY 4th NOVEMBER 2014	PUBLIC REPORT

Cabinet Member(s) responsible:	Cllr Hiller – Cabinet Member for Planning and Housing Services	
Contact Officer(s):	Nick Harding – Head of Development and Construction Hannah Vincent – Planning and Highways Lawyer	01733 454441 01733 452623

APPLICATION TO REGISTER LAND AT LONGTHORPE PLAYING FIELD AS A TOWN AND VILLAGE GREEN UNDER THE COMMONS ACT 2006

R E C O M M E N D A T I O N S	
FROM : Hannah Vincent – Legal Services	Deadline date : N/A
<p>1. That the Committee approve the appointment of an Independent Inspector to advise the Council in respect of the application to register Longthorpe field as a town and village green, to hold a public inquiry into the application and to make recommendations to the Council as to its determination.</p>	

1. ORIGIN OF REPORT

- 1.1 This report is submitted to the Committee as a result of an application submitted under the Commons Registration Act 2006 to register land known as Longthorpe field as a town or village green.

2. PURPOSE AND REASON FOR REPORT

- 2.1 To inform the committee of an application received to register land as a town or village green.
- 2.2 To obtain the Committees approval for the appointment of an Independent Inspector to advise the Council in respect of the application to register Longthorpe playing field as a town or village green, to hold a public inquiry into the application and to make recommendations to the Council as to its determination.
- 2.3 This report is for the Committee to consider under its Terms of Reference No. 2.5.1.1 and Schedule 2.5.3.4 of the Part 3, Section 2 of the Constitution to exercise the functions of the Council under the Town and Country Planning act 1990 (as amended), specifically “Registering common land or town and village greens.”

3. TIMESCALE

Is this a Major Policy Item/Statutory Plan?	NO	If Yes, date for relevant Cabinet Meeting	
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4. BACKGROUND

- 4.1 The Council is the Registration Authority responsible for maintaining the register of town or village greens under the Commons Act 2006 (“the Act”).
- 4.2 An application dated 7 June 2011 (“the Application”) was submitted to the Council by Mr David Worth (“the Applicant”) to register an area of land known as Longthorpe Field (“the Land”) as a town or village green. The application was allocated reference RSN5812.
- 4.3 The application is based upon evidence of recreational use of the Land for over 20 years by members of the locality or neighbourhood ‘as of right’.
- 4.4 A copy of the Application (without the supporting ‘use’ evidence) is at Appendix 1.
- 4.5 The extent of the Land subject of the Application is shown edged red on the two plans at Appendix 2. Longthorpe Primary School is situated to the north of the Land with the south and east bounded by residential dwellings. There is a Council maintained public open space to the west of the Land.
- 4.6 The Land (approx. 1.6 hectares) is owned by the Council and is held as education land as part of Longthorpe Primary School. It is currently used as a playing field in connection with Longthorpe Primary School. The field is unfenced and therefore may be accessed by members of the public.
- 4.7 Following receipt of the application a public meeting was held on 18 January 2012 to discuss the application and seek a compromise solution that would satisfy the Applicant, the School and local residents without the need to hold an Inquiry.
- 4.8 At least two further meetings were held in March 2012 however a compromise was not reached.
- 4.9 Following the inability of the Applicant and objectors to reach a compromise a public notice was placed in the Peterborough Evening Telegraph on 21 May 2012 with an objection period running for 8 weeks until 16 July 2012. In addition site notices were posted in the locality of the Land and a copy of the application placed on public deposit at the Town Hall, Bridge Street, Peterborough
- 4.10 Following publication of the notice, 4 letters of support and 163 letters of objection were received, as detailed in paragraph 5 below.

Relevant Legislation

- 4.11 The Commons Act 2006 is the statutory regime governing town and village greens, replacing the registration system enacted by the Commons Registration Act 1965. In addition, 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
- 4.12 Section 15 of the Act sets out the requirements that must be satisfied if land is to be registered as a new green.
- 4.13 In order for an application to succeed, the Applicant must establish that the Land has been used:
 - “as of right”, that is without force, without permission and not in secret
 - by a significant number of local inhabitants
 - for lawful sports and pastimes
 - for twenty years, prior to the date of the application.

- 4.14 The Council as the Commons Registration Authority must determine whether a village green has come into existence as matter of law.
- 4.15 In the case of any rejection of an application by the Registration Authority, a written notice of the reasons for the rejection must be given in the decision notification.

Burden and Standard of Proof

- 4.16 For an application to be successful all of the elements of Section 15 of the Act have to be strictly proven and the burden of proof in this regard is firmly upon the Applicant
- 4.17 The Applicant must demonstrate that all of the elements contained within section 15 have been satisfied on 'the balance of probabilities'.
- 4.18 The Council as registration authority has no investigative duty in relation to town or village green application which requires it to find evidence or to reformulate the applicant's case.

5. CONSULTATION

- 5.1 Following consultation, which commenced on 21 May four letters in support of the application were received, in addition to the evidence supplied by the Applicant.
- 5.2 In addition 163 letters of objection were received including letters from the Headmaster of Longthorpe Primary School and the Council as landowner.

Objections

- 5.3 The majority of the letters objecting to the application were in the form of a proforma template setting out the following concerns:
- there are many other green spaces in the local area that can be used for public recreation including the public open space to the west of the playing field
 - the primary use of the field has always been that of a school playing field
 - the town green status will limit the Council's ability to restrict access to this area in the future if persons use the area for anti-social behaviour.
- 5.4 In addition the following independent objections were received:
- if the application is successful the school's ability to use the field fully for the benefit of its pupils will be restricted
 - dispute that the evidence provided by the applicant and witnesses' demonstrates that the field has been used by a 'significant' number of inhabitants of the locality as required by the legislation
 - the town green status is unnecessary
 - the field has predominantly been used by the school rather than local residents
- 5.5 The School and the Council as landowner have raised the following objections:
- the field has been in regular and frequent use by pupils of Longthorpe School since 1976
 - members of the public are excluded from any school activities taking place on the field
 - the field is maintained by the school
 - registration as a town or village green would prevent the school from erecting fencing around the perimeter
 - the school site was designated to be used as a site for a primary school in the initial development of the area. From 1976 to present the school have had exclusive use of the property to carry out activities on the field during school hours, for extended school use and for occasional events at weekends. On such occasions members of the public have been excluded from using the field.

- There is designated public space, maintained by the Council on the field adjoining the school field.
- The conveyance of the land to the council contains the right for the council to fence the land
- The field is not used by a significant number of residents within the locality.

Support

- 5.6 The four letters of support and Application set out the following points in support of the application:
- registration as a town or village green will protect the community use of the field
 - fencing the field will deprive the community of a well-used play area

6. ANTICIPATED OUTCOMES

- 6.1 It is anticipated that the Committee will approve the appointment of an Independent Inspector and hold a public Inquiry.
- 6.2 Following the Public Inquiry the Inspector will write a report with his recommendation. Thereafter the application (along with the Inspectors recommendation) will be brought back to Committee for determination.

7. REASONS FOR RECOMMENDATIONS

- 7.1 It is a statutory requirement that the Commons Registration Authority must determine whether a village green has come into existence as matter of law.
- 7.2 The Committee is entitled under its Terms of Reference No: 2.5.3.4 to determine the application without recourse to a Public Inquiry, however where there are disputes of fact or the Commons Registration Authority is landowner it is usually recommended that an Inquiry is held to test the evidence and ensure impartiality.

8. ALTERNATIVE OPTIONS CONSIDERED

- 8.1 The Council is required by law to determine the application.
- 8.2 The Council, in an attempt to limit the cost to the public purse of holding an Inquiry has attempted to negotiate with the applicant to reach a compromise which both the School and local residents are satisfied with however this has not been successful.
- 8.3 Determine the application without a public inquiry. The Council as Commons Registration Authority may determine the application without recourse to an inquiry but it is likely that any decision made by the authority in these circumstances would be subject to challenge and therefore this is not recommended.

9. IMPLICATIONS

- 9.1 The Council has a duty to act fairly and impartially in relation to the application in its capacity as Registration Authority.
- 9.2 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.
- 9.3 The cost of determining this application will be met from the existing budget.

10. BACKGROUND DOCUMENTS

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985

- Application dated 7 June 2011 for registration of land as town or village green

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