

<b>PLANNING AND ENVIRONMENTAL PROTECTION COMMITTEE</b>	<b>AGENDA ITEM No. 6</b>
<b>8 DECEMBER 2015</b>	<b>PUBLIC REPORT</b>

Cabinet Member(s) responsible:	Councillor 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	
<b>FROM</b> : Hannah Vincent – Legal Services	<b>Deadline date</b> : N/A
<p>1. That the application for registration of land known as Longthorpe Field as a Town or Village Green under section 15(2) of the Commons Act 2006 is refused for the reasons set out in the Inspector’s preliminary ruling report.</p>	

**1. ORIGIN OF REPORT**

- 1.1 This matter came before members of the Planning and Environmental Protection Committee on 4 November 2014. Members resolved to approve the appointment of an Independent Inspector to advise the Council in respect of the application to register Longthorpe 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. PURPOSE AND REASON FOR REPORT**

- 2.1 To inform the Committee of the progress made, following the appointment of an Independent Inspector, in respect of the application received on 7 June 2011 to register Longthorpe Field as a town or village green.
- 2.2 To determine the Application in light of the Inspector’s recommendations.
- 2.2 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 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?	<b>NO</b>	If Yes, date for relevant Cabinet Meeting	<b>N/A</b>
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**4. BACKGROUND**

- 4.1 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. The extent of the Land subject of the Application is shown edged red on the plan at Appendix A.

- 4.3 This application came before members of the Planning and Environmental Protection Committee on 4 November 2014. Members resolved to approve the appointment of an Independent Inspector to advise the Council in respect of the application to register the Land 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. A copy of the report and minutes are provided at Appendix B and C.
- 4.4 The Independent Inspector was appointed on 12 January 2015.
- 4.5 Prior to the Inspector issuing directions for the holding of the public inquiry into the application there was an outcome on a legal case which has implications for the Longthorpe Application. The legal case in question is the Supreme Court's decision in the case *R (on the application of Newhaven Port & Properties Limited) v East Sussex County Council and another* [2015] UKSC 7 (now referred to as 'the Newhaven Case').
- 4.6 The Inspector considered that one of the issues before the court (that of 'statutory incompatibility') was relevant to the Longthorpe application and therefore directed the Applicant and the City Council as Local Education Authority ('the Primary Objector') to provide formal submissions on this issue before arrangements were made to hold the Inquiry.
- 4.7 It was agreed that formal submissions would be served on the council as Commons Registration Authority by 27 April 2015. There would also be an opportunity for the parties to consider each other's responses and provide any rebuttals by 11 May 2015.
- 4.8 The Inspector considered the submissions made by the Applicant and primary Objector and handed down his preliminary ruling report on 13 July 2015.

#### **The Preliminary Ruling of the Inspector**

- 4.9 The Inspector's preliminary ruling considered whether the registration of the Land as a town or village green would be incompatible with its use as a school playing field.
- 4.10 In summary the Inspector concluded:
- 4.10.1 the Land is used as part of the school grounds and is used for school related purposes; it is part of an operational school. The Land is therefore held and used for a specific statutory purpose.
- 4.10.2 owing to its use for a specific statutory purpose there is manifestly an incompatibility between use of the Land as part of Longthorpe Primary School and registration of the Land as a town or village green.
- 4.11 As a result of the Inspector's finding it is no longer necessary to hold an Inquiry to determine whether the historic use of the land satisfies the requirements of section 15 of the Commons Act 2006.
- 4.12 The Inspector concludes by recommending that the council refuse the application ("the Inspector's Recommendation").
- 4.13 The Inspector's Preliminary Ruling Report is provided at Appendix D.

#### **Additional Submission of the Applicant**

- 4.14 Following issue of the Inspectors Preliminary Ruling Report but prior to the application being brought before the council's Planning and Environmental Protection Committee the Applicant made further submissions to the Common's Registration Authority.

- 4.15 The first submission was received directly from the Applicant on 10 September 2015. A second submission, prepared by Counsel was received from the Applicant's solicitor on 14 September 2015.
- 4.16 In the interest of fairness to all parties the Primary Objector was invited to respond to the additional submissions. The response was provided on 30 October 2015.

### **The Inspector's Addendum Report**

- 4.17 The Inspector's Addendum Report considered whether the additional submissions of the Applicant and Primary Objector had any bearing on the Inspector's Recommendation.
- 4.18 In summary the Inspector concluded:
- 4.18.1 the principle from the Newhaven Case is not limited to statutory undertakers and/or operational use of land
- 4.18.2 the land is used as part of the school grounds, it was transferred as such in 1973 and is used for school related purposes; it is part of an operational school. The Land is therefore held and used for a specific statutory purpose.
- 4.18.3 there are specific and obvious examples of self-evident conflict between the current use of the land and the operation of s.15 of the Commons Registration Act 2006
- 4.19 The Inspector maintains his earlier recommendation of 13 July that the council refuse the application
- 4.20 The Inspector's Addendum to the Preliminary Ruling Report is provided at Appendix E.

### **The role of the Committee**

- 4.21 The Inspector's findings are not binding on this Committee. It is for the Committee to reach its own determination on the matters of fact and law arising as a result of the application.
- 4.22 It is for this Committee to determine the Application fairly, putting aside any considerations for the desirability of the land being registered as a Town or Village Green or being put to other uses.
- 4.23 However the Inspector has had the opportunity to assess the application and the formal submissions of the Applicant and Primary Objector as to the implications for the application as a result of the decision in the *Newhaven* case.

## **5. CONSULTATION**

- 5.1 Consultation on the application was undertaken in May 2012. Four letters of support were received and 163 letters of objection.
- 5.2 There is no statutory requirement for further consultation to be undertaken prior to the Committee determining the application.

## **6. ANTICIPATED OUTCOMES**

- 6.1 It is anticipated that the Committee will refuse the application for the reasons set out in the Inspector's Preliminary Ruling and Addendum Reports regarding statutory incompatibility.

## **7. REASONS FOR RECOMMENDATIONS**

- 7.1 The Committee on behalf of the Council (as statutory Commons Registration Authority) has a duty under the Commons Act 2006 and the regulations made thereunder to determine

objectively whether or not the land in question should be registered as a town or village green within the meaning of the Act.

- 7.2 The recommendation is that the Committee accept the Inspector's Recommendation that the application for registration of Longthorpe field as a town or village green under section 15(2) of the Commons Act 2006 be refused on the grounds of Statutory Incompatibility.

## **8. ALTERNATIVE OPTIONS CONSIDERED**

- 8.1 The Council is required by law to determine the application.
- 8.2 The committee could decide that despite the Inspector's Recommendation a public Inquiry into the application should be held. This would enable the Council to test the evidence as to use of the land and whether the application meets the statutory requirements for registration set out in section 15 of the Commons Act 2006, however this would not overcome the Inspector's Recommendation on the issue of statutory compatibility.

## **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 There is no statutory right of appeal against decisions made by the Commons Registration Authority however the decision is subject to challenge by way of judicial review.

## **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
- Committee report and minutes from the Planning and Environmental Protection Committee meeting of 4 November 2014