

MUNICIPAL YEAR 2010/2011 REPORT NO. 45

MEETING TITLE AND DATE:
Planning Committee 31st
August 2010

REPORT OF:
Director of Finance &
Corporate Resources

Agenda – Part: 1

Item: 17

Subject: Application to Register Land Adjacent to 68 Weir Hall Avenue, N18 as a Town or Village Green

Wards: Upper Edmonton

Cabinet Member consulted:

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1. EXECUTIVE SUMMARY

- 1.1 The Council is the Registration Authority for the purposes of registering and maintaining a register of Town and Village Greens.
- 1.2 An application was received under Section 15 of the Commons Act 2006 for an area of open land adjacent to 68 Weir Hall Avenue, London, N18 1EE (“the Application Land”), to be registered as a Town or Village Green. The Council, in disposing of their duties under the Act decided to hold a Non – Statutory Inquiry for an independent assessment of the evidence by an Inspector. The findings of the Inquiry are set out in the Inspectors report annexed hereto which sets out the legal requirements for land to be registered as a Town or Village Green, as well as the evidence produced.

2. RECOMMENDATIONS

To accept the recommendations of the independent Inspector that neither the whole nor any part of the Application Land should be added to the Register of Town and Village Greens because on the evidence it does not meet the statutory tests required for such registration.

3. BACKGROUND

- 3.1 The Application Land is situated within the London Borough of Enfield although the former registered proprietor is the London Borough of Haringey. The Council is the Registration Authority for the purpose of registering town and village greens and must determine an application to register land situated within the borough.
- 3.2 Under s.15(2) of the Commons Act 2006, Mrs Jobson, a local resident, submitted an application to the Council in November 2009. Notifications were sent out by the Council (LBE) informing all relevant parties, of the application. Objections were received from St. Pancras and Humanist Housing Association as owners of the land.
- 3.3 Given that the Council had previously granted planning permission for development on the Application Land it was felt appropriate to hold an Inquiry with an independent Inspector. The Inspector appointed was Ms Anne Williams, Barrister at Law of 6 Pump Court who has considerable experience of acting as an Inspector at Non-Statutory Inquiries in respect of Town or Village Green applications.
- 3.4 A successful application under s.15(2) of the Commons Act 2006 would need to demonstrate that (a) *'a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports or pastimes on the land for a period of at least 20 years and that (b) 'they continue to do so at the time of the application'.*

Therefore under subsection 15(2)(a) of the 2006 Act the Applicant must demonstrate with evidence that all the limbs of the legal tests have been met i.e. that:

- i) a significant number of inhabitants
- ii) of any locality or of any neighbourhood within a locality
- iii) indulged in lawful sports or pastimes
- iv) as of right
- v) for a period of not less than 20 years,
- vi) that use is continuing at the time of the application

The Inspector was not satisfied that the application to register the Application Land as a town or village green met all the legal tests. In summary the findings of the Inspector are as follows:-

Neighbourhood within a locality

The Inspector accepted the Applicant's request to amend the application to clarify that the application related to the second limb of the test i.e. 'a neighbourhood within the locality'. The Inspector did not consider that the neighbourhood put forward by the Applicant lacked a sufficient degree of

cohesiveness took the view the application should fail on this ground. Furthermore, the locality must have been substantially the same throughout the 20 year period and the claimed locality, being the local government ward of Upper Edmonton, had only existed for 12 years. Again the Inspector considered the application failed on this ground

Significant number of the inhabitants of the neighbourhood

The Inspector took the view that application failed on this ground as oral evidence came from only 4 addresses within the claimed neighbourhood and had difficulty in identifying names and addresses of other users of the Application Land. The written evidence submitted was vague.

Lawful sports and pastimes

The Inspector accepted that the types of activities described by the witnesses as having taken place on the Application Land are lawful sports and pastimes.

'As of right'

The Inspector considered given the failure of the Applicant to satisfy the above tests there is no requirement for the Registration Authority to form a view in respect of this test. However it was felt by the Inspector that the use of the Application Land was 'by right' as oppose to 'as of right' as permission for residents use could be implied due to the 'open space' status of the Application Land whilst it was in the ownership of the Tottenham UDC and later L. B. Haringey

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 As Registration Authority the Council must determine the application made by Mrs Jobson.
- 4.2 It would be usual for the Council as Registration Authority, having appointed an Inspector to inquire and report, to follow the recommendations of that inspector. However, the Committee is not obliged as a matter of law to follow the recommendations although it would only lawfully be able to reject the recommendation on the basis that the legal test for establishing a village green had been made out by the Applicant.

To reject the findings of the independent Inspector and for the Committee sitting as Registration Authority to reconsider the evidence and make it's own finding.

5. REASONS FOR RECOMMENDATIONS

5.1 The Council acting as Registration Authority, appointed an independent Inspector to inquire and report, on the evidence submitted by Mrs Jobson and objection raised by the land owner. Having reviewed the evidence and heard submissions from all interested parties the Inspector found that the application to register the Application Land as a Village Green did not satisfy the statutory tests contained within the Commons Act 2006.

5.2 Given the considerable experience of the Inspector in presiding over Town and Village Green Inquiries and the detailed reasoning set out in her report annexed, there is no reason why the Inspector's recommendation should not be approved.

6. COMMENTS OF THE DIRECTOR OF FINANCE AND CORPORATE RESOURCES AND OTHER DEPARTMENTS

6.1 Financial Implications

There are no financial costs associated with this decision save for the legal costs which have been met from within existing budgets.

6.2 Legal Implications

The Council has a duty to keep and maintain a register of all Town and Village Greens within its borders. Under Section 15 of the Commons Act 2006 any person may apply to the Commons Registration Authority to register land as a Town or Village Green.

As a Commons Registration Authority the Council has a duty to determine applications made under Section 15 of the Commons Act 2006 in accordance with the regulations contained within Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007.

6.3 Property Implications

As the land in question is owned by St Pancras and Humanist Housing Association, it appears that there are no significant property implications that may affect Enfield Council.

7. KEY RISKS

No significant risks have been identified. The decision is heavily dependent on the professional opinion of the Inspector.

8. IMPACT ON COUNCIL PRIORITIES

8.1 Fairness for All

8.2 Growth and Sustainability

8.3 Strong Communities

The acceptance of the recommendations of the Inspector regarding the application of the area of open land adjacent to 68 Weir Hall Avenue to be registered as a Town or Village Green, will mean that the land cannot be legally used in this way by the local community.

9. PERFORMANCE MANAGEMENT IMPLICATIONS

N/A

10. HEALTH AND SAFETY IMPLICATIONS

N/A

Background Papers: Inspectors Report (undated)