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| Report to: | LICENSING AND PUBLIC PROTECTION COMMITTEE | |
| Report of: | INTERIM CITY SOLICITOR | |
| Date of Committee: | 09 MARCH 2022 | |
| SUBJECT: | APPLICATION FOR THE REGISTRATION OF A TOWN/VILLAGE GREEN AT 'THE FIELD' DUGDALE CRESCENT, SUTTON COLDFIELD, B75 5EU (SUTTON NEW HALL WARD) ("THE APPLICATION") | |

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| 1. Purpose of Report: |
| 1.1 This report seeks the determination of the above Application by Licensing and Public Protection Committee. |

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| 2. Decision(s) Recommended: |
| The Licensing and Public Protection Committee is requested to: |
| 2.1 Approve the application for the registration of a town/village green at 'The Field', Dugdale Crescent, Sutton Coldfield. |

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| 3. Consultation |
| <p>3.1 <u>Internal</u></p> <p>The application site is owned by Birmingham City Council and therefore the statutory notice to the landowner referred to in 3.2 was served on the landholding department in the Council.</p> <p>3.2 <u>External</u></p> <p>Notice of the Application was posted at the application site and published in the local press, and was also served upon the landowner in line with legislative requirements. There have been no objections to the Application received from the landowner or any third parties.</p> |
| 4. Compliance Issues: |
| <p>4.1 <u>Are the recommended decisions consistent with the Council's policies, plans and strategies?</u></p> <p>The determination of the Application is consistent with the Council's corporate strategic outcomes and priorities, in particular a 'Healthy Birmingham' and 'Green Birmingham'.</p> <p>4.2 <u>Financial Implications (Will decisions be carried out within existing finances and Resources?)</u></p> <p>There is no financial implication for the Licensing Service for Village Green applications. Licensing and Public Protection Committee hold the decision making role only in this process.</p> <p>4.3 <u>Legal Implications</u></p> <p>Birmingham City Council is the registration authority ("the Registration Authority") for the purposes of the Commons Act 2006, ("the Act") under which it is required to determine town/village green applications. This function is delegated to the Licensing and Public Protection Committee ("LPPC"). The determination of town/village green applications is based on a statutory test that is set out in the Act, as further detailed below in the report. The failure to properly discharge this statutory function could result in the Council's determination of the Application being judicially challenged. As the Application is unopposed and is recommended for approval, the risk of this occurring is considered to be low.</p> <p>4.4 <u>Public Sector Equality Duty</u></p> <p>No specific Equality issues have been identified. The Application must be determined in accordance with the statutory test set out in the applicable legislation.</p> |

5. Relevant Background/Chronology of Key Events:

The Application

- 5.1 The Application was received from a local resident in the Sutton New Hall ward (“the Applicant”) on behalf of a group referring to itself as ‘Friends of the Green’. The Application is made under section 15(2) of the Commons Act 2006 to register the land at Dugdale Crescent, Sutton Coldfield, B75 5EU (“the Application Site”) as a town/village green. The extent of Application Site applied for is shown on the plan attached hereto as Appendix 1. The freehold title to the Application Site is owned by Birmingham City Council (“the Landowner”).
- 52 Notice of the Application was posted at the Application Site and published in the local press. Notice of the Application was also served upon the Landowner. There have been no objections to the Application received from the Landowner or any third parties.

The Statutory Test

- 53 Under the Act, the statutory test which needs to be satisfied in order for the Application to success is whether at the time the Application was made, the Application Site was *“land on which, for not less than 20 years a significant number of the inhabitants of the locality, or of any neighbourhood within a locality, had indulged in lawful sports and pastimes as of right, and continued to do so at the time of the application”*. The onus is upon the Applicant to produce evidence to demonstrate, on the balance of probabilities, that the Application Site qualifies as a town/village green in accordance with the statutory test. The consequence of registering the Application Site as a town/village green is that once land is registered as a village green, it can only be used for that purpose.
- 54 Given the multi-faceted and legalistic nature of the statutory test, the Applicant also submitted a detailed supporting statement from its legal advisor setting out how the Application and supporting evidence satisfy each limb of the statutory test. The various components of the statutory test can be broken down and considered in the following way:

- ***“a significant number of inhabitants”***

The requires that the use should be by “a significant number of inhabitants” of a locality or a neighbourhood within a locality. To satisfy this requirement, the Applicant has submitted 111 evidence questionnaires completed by people who live / have lived in the neighbourhood during the relevant 20-year period, together with a further 29 questionnaires were submitted from people living a short distance outside the neighbourhood. In addition, 21 witness statements from present and former residents of the neighbourhood have been submitted. As the estimated number of dwellings in the neighbourhood is 450, it is considered that the evidence submitted by the Applicant constitutes a significant number and therefore satisfies this criterion.

- ***“locality or a neighbourhood within a locality”***

This requires that the inhabitants in support of the Application should live in an identifiable locality or a neighbourhood within a locality. Given the extent of the claimed neighbourhood relative to the geography of the local area (as shown on the plan at Appendix 2), the neighbourhood identified by the Applicant is considered to constitute an identifiable “neighbourhood” for the purposes of the statutory test.

- ***“as of right”***

This criterion contains three separate aspects which all have to be met. A long line of case law establishes that the Applicant must show that the use throughout the 20-year period occurred without force, without stealth and without the permission of the landowner. The Application Site is unfenced and there is no record of notices ever having been put up by the Landowner to indicate that permission to use it is either given or withheld. The many evidence questionnaires and witness statements submitted by the Applicant describe how the inhabitants of the neighbourhood entered and used the Application Site without force or secrecy. In the absence of any express or implied permission to use the Application Site, this criterion has been satisfied.

- ***“lawful sports and pastimes”***

This criterion requires that that inhabitants of the neighbourhood must have used the Application Land for “lawful sports and pastimes”. The evidence questionnaires that have been submitted by the Applicant provide a full list of the sports and pastimes indulged in by inhabitants of the neighbourhood with the most common being dog walking, playing (as a child or with a child), walking, football and local neighbourhood events. Given the significant number of questionnaires submitted and the consistency of the claimed sports and pastimes across the many questionnaires, it is considered that this evidences that there has been continual use of the Application Land for the claimed sports and pastimes.

- ***“not less than 20 years”***

This criterion requires that the claimed sports and pastimes must have taken place continuously for not less than 20 years, and continued at the time of the application. The many evidence questionnaires submitted by the Applicant describe how the Application Site has been used by the local inhabitants without interruption throughout the requisite 20-year period and that the use continues. This criterion is therefore satisfied.

6. Determination of the Application

- 6.1 There is no specific procedure prescribed in the legislation for the determination of town/village green applications. The procedure to be adopted to determine the Application is at the discretion of the Registration Authority, acting through LPPC. Counsel’s advice in respect of previous town/village green applications stated that where an application raises a “serious dispute” the Registration Authority may be required to commission an independent expert non-statutory inquiry to establish the requisite facts and to give LPPC advice/recommendations on the determination of that application. However, given that this Application is unopposed and there is no ‘dispute’ in relation to the evidence submitted by the Applicant, there is no requirement for a public inquiry for the determination for this village green application.
- 6.2 As explained in section 5 of this report, Legal officers have carefully evaluated the Application and supporting evidence submitted by the Applicant and consider that the Application Site qualifies as a town/village green in accordance with the statutory test set out above. On that basis, LPPC is recommended to approve the Application for the registration of a town/village green at the Application Site.

7. Evaluation of Alternative Option(s):

- 7.1 The Council could commission an independent expert non-statutory inquiry (conducted by a barrister who is an expert in the relevant law) to establish the requisite facts and to give LPPC advice/recommendations on the determination of the Application. This procedure has been used for complex contested applications in the past, but would have significant cost and time implications and is not considered to be necessary on this occasion as the Application is unopposed and a careful analysis by officers of the Application and supporting evidence has concluded that the statutory test has been satisfied.
- 7.2 The determination of the Application could be delegated to a Licensing Sub-committee to further investigate and review the Application and supporting evidence before determining it. However, as the Application is unopposed and a careful analysis by officers of the Application and supporting evidence has concluded that the statutory test has been satisfied, it is considered that in the current circumstances with the ongoing pandemic it is preferable for the Application to be determined immediately by LPPC.

8. Reasons for Report

- 8.1 The Application is unopposed and based on a careful evaluation of the Application and supporting evidence, officers consider that the statutory test has been satisfied.

Signatures

Satinder Sahota
Interim City Solicitor

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Date

List of Background Documents used to Compile this Report:

1. Application and supporting documents submitted by the Applicant

List of Appendices accompanying this Report (if any):

1. Appendix 1 - Site plan showing the Application Site
2. Appendix 2 – plan showing the claimed neighbourhood within a locality

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| Report Version | 1.0 | Dated | 18 January 2022 |
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This is a detailed street map of the Mere Green area in Sandbury, Dorset. The map shows a residential neighborhood with numerous streets, including Sherlock Lane, Durdale Crescent, and Little Sutton Road. Key features include Mere Green Primary School, a large green field, and a black boundary line outlining a specific area. The map is credited to OpenStreetMap contributors.