Birmingham City Council

Report to Licensing and Public Protection Committee

15 January 2025

Title:	**APPLICATION FOR THE REGISTRATION OF A TOWN/VILLAGE GREEN AT THE GLENMEAD UNATTACHED SCHOOL PLAYING FIELD, GLENMEAD ROAD, PERRY BARR (OSCOTT WARD)**
Committee Chair:	Councillor Sam Forsyth, Chair of Licensing and Public Protection Committee
Relevant Overview and Scrutiny Committee:	Not applicable
Report Author:	Tarndip Singh Sidhu, Principal Lawyer Legal and Governance 07785 453597 tarndip.sidhu@birmingham.gov.uk
Authorised by:	Deborah Carter-Hughes, Assistant Director Legal Services – Corporate Law & Deputy Monitoring Officer Legal & Governance, Council Management Directorate
Is this a Key Decision?	No
If this is a Key Decision, is this decision listed on the Forward Plan?	Not Applicable
Reason(s) why not included on the Forward Plan:	Not Applicable
Is this a Late Report?	No
Reason(s) why Late:	

Is this decision eligible for 'call in?'	No
If not eligible, please provide reason(s):	Not Applicable
Wards:	Oscott Ward
Does this report contain exempt or confidential information?	No
Has this decision been included on the Notification of Intention to consider Matters in Private?	No
Reasons why not included on the Notification:	Not Applicable

1 EXECUTIVE SUMMARY

1.1. This report relates to an application for the registration of a town/village green at 'Glenmead Unattached School Playing Field', Glenmead Road, Perry Barr in Oscott ward ("the Application"). The Application is required to be considered and determined by the Council in its capacity as Registration Authority in accordance with the Commons Act 2006 ("the Act"). The report seeks the determination of the Application by Licensing and Public Protection Committee.

2 COMMISSIONERS' REVIEW

2.1 This report does not require Commissioner review.

3 RECOMMENDATIONS

3.1 The Licensing and Public Protection Committee is recommended to:

Approve the application for the registration of a town/village green at 'Glenmead Unattached School Playing Field', Glenmead Road, Perry Barr.

4 KEY INFORMATION

Context

The Application

4.1 The Application was received from Councillor Barbara Dring ("the Applicant") of the Oscott Ward. The Application is made under section 15(2) of the Act to register the land at 'Glenmead Unattached School Playing Field', Glenmead Road, Perry Barr, Birmingham, B44 8UQ ("the Application Site") as a town/village green.

The extent of Application Site applied for is shown edged pink on the plan attached hereto as Appendix 1. The freehold title to the Application Site is owned by Birmingham City Council Education Department ("the Landowner").

4.2 The Council is the Registration Authority for the purposes of the Commons Act 2006 and is required to process and determine the Application. The Application has been processed in accordance with the statutory procedure set out in the Act. The Application must be determined based on the statutory test set out in the Act

The Statutory Test

4.3 Under the Act, the statutory test which needs to be satisfied in order for the Application to succeed 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 meets the requirements for 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.

4.4 Given the multi-faceted and legalistic nature of the statutory test, the Applicant submitted a detailed supporting statement prepared by community researchers, working on behalf of the Applicant, with support from Birmingham Voluntary Service Council. In addition, 171 evidence questionnaires and 3 witness statements were submitted which had been completed by current and previous residents of the local area setting out how the land had been used by them. The Application and supporting evidence addressed each aspect 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 121 evidence questionnaires completed by people who live / have lived in the neighbourhood during the relevant 20-year period, together with 50 evidence questionnaires completed by people living a short distance outside the neighbourhood. In addition, 3 witness statements from present long-standing residents of the neighbourhood have been submitted. As the estimated number of dwellings in the neighbourhood is 210, 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 edged pink 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 fenced but unlocked 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 comprehensive list of the sports and pastimes indulged in by inhabitants of the neighbourhood with the most common being dog walking, health and well-being (exercise, walking, jogging, health, relaxing), activities with children (football, cricket, picnics, riding bikes and scooters, playing frisbee, playing ball, flying model planes, drones and kites, playing rounders, playing tennis, badminton and swing-ball, collecting leaves for craft activities), socialising (seeing friends and meeting the local community). 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.

Objection

4.5 The Landowner (Birmingham City Council Education Department) submitted an objection on the following basis:

a) the site is currently classified as an unattached school playing field ("USPF") which is available for schools to use on a hire basis should they wish to/need to. Although there has not been any official school use of the site for some time;

b) as the site is currently unused as a USPF the maintenance regime (in line with the Council's other unused sites) is reduced to perimeter cuts and fire breaks only. In recent years the site has had additional maintenance on it as the funding for this was provided by the local ward councillors;

c) a quote via the Council's grounds team for the costs associated with maintaining the site for the remainder of the year (from July 2024) for 5 cuts is approximately £7,000 (for a full year this cost will be significantly more);

Education have no identified usage for the site currently, but still incur costs associated with it, such as minimal maintenance and costs associated with the disused changing rooms on site so it would be Education's preference to dispose of the site to gain capital receipt to support the Council's financial recovery plan.

Proposal and Reasons for Recommendations

4.6 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" in respect of factual and evidential matters relating to the statutory test, the Registration Authority may commission an independent expert (usually a barrister) to hold a non-statutory public inquiry to establish the requisite facts and to give LPPC advice/recommendations on the determination of that application.

4.7 On this occasion, although an objection to this Application has been submitted by the Landowner, the points raised by the Landowner in the objection do not relate to any aspect of the statutory test which is the basis for determination of the application on factual and evidential grounds. The Landowner has not produced any information or evidence to assert that the Application fails to meet any of the criteria which make up the statutory test. Therefore, the objection submitted by the Landowner is considered to have little or no weight.

4.8 On this basis, as there is no 'dispute' in relation to the evidence submitted by the Applicant or the extent to which the Application satisfies the statutory test, there is no requirement for the Application to be referred to another forum such as a public inquiry for determination.

4.9 As explained in section 4.4 of this report, Legal officers have carefully evaluated the Application and supporting evidence submitted by the Applicant and consider that the Application has satisfied the criteria for a town/village green in accordance with the statutory test set out above. On that basis, it is considered that LPPC can proceed to determine the application and it is recommended to approve the Application for the registration of a town/village green at the Application Site.

4.10 Notwithstanding the objection to the Application, following a careful evaluation of the Application and supporting evidence by officers, it is considered that the statutory test has been satisfied.

Other Options Considered

4.11 The Council could commission an independent expert non-statutory inquiry (conducted by a barrister who is an expert in the relevant law) to hear the evidence and establish the requisite facts and to give LPPC advice/recommendations on the determination of the Application. This procedure has been used for complex and contested town/village green applications in the past when there has been a 'serious dispute' in relation to factual and/or evidential matters. However, this would have significant cost and time implications and is not considered to be necessary on this occasion as the objection to the Application has not addressed any aspect of the statutory test and there is no dispute in relation to factual or evidential matters.

5 RISK MANAGEMENT

5.1 There is no right of appeal against the decision of the Council as Registration Authority. Any challenge to the decision made by the Council would have to be by way of judicial review. As the statutory process has been followed and the decision is being made based on the statutory test set out in the Act, it is considered that the risk of any challenge is low.

6 CONSULTATION

6.1 In accordance with the procedure set out in legislation, 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. The Application Site is owned by Birmingham City Council Education Department and therefore the statutory notice to the landowner referred to in 4.2 was served on Education as the landholding department.

7 MEMBER ENGAGEMENT

Ward Councillor (s)

7.1 Not applicable

Overview and Scrutiny

7.2 Not applicable

Other

7.3 Not applicable

8 IMPACT AND IMPLICATIONS

Finance and Best Value

8.1 There is no specific budget allocation within Licensing Services for Village Green applications. All costs identified be kept separate and excluded from ring-fenced Licensing costs and will therefore form a financial burden within the LPPC Revenue Budget. These will need to be mitigated by savings and income outside of the Licensing Service.

Legal

8.2 The Council is the Registration Authority for the purposes of the Commons Act 2006, under which it is required to determine town/village green applications. This function is delegated to the Licensing and Public Protection Committee. The Council is required to process the Application in accordance with the statutory procedure set out therein. The Application must be determined based on the statutory test set out in the Act.

Equalities

8.3 No specific equalities issues have been identified. The Application must be determined in accordance with the statutory test set out in the Act.

Procurement

8.4 There are no procurement implications arising out of this report.

People Services

8.5 There are no staffing implications arising from the recommendations in this report.

Climate Change, Nature and Net Zero

8.6 ‘There are no climate change, nature and net zero carbon implications arising from the recommendations in this report.

Corporate Parenting

8.7 There are no implications or opportunities in relation to the Corporate Parenting responsibility arising from the recommendations in this report.

Other

8.8 The determination of the Application is consistent with the Council’s corporate strategic outcomes and priorities, in particular a ‘Healthy Birmingham’ and ‘Green Birmingham’.

9 APPENDICES

9.1 Appendix 1 - Site plan showing the Application Site

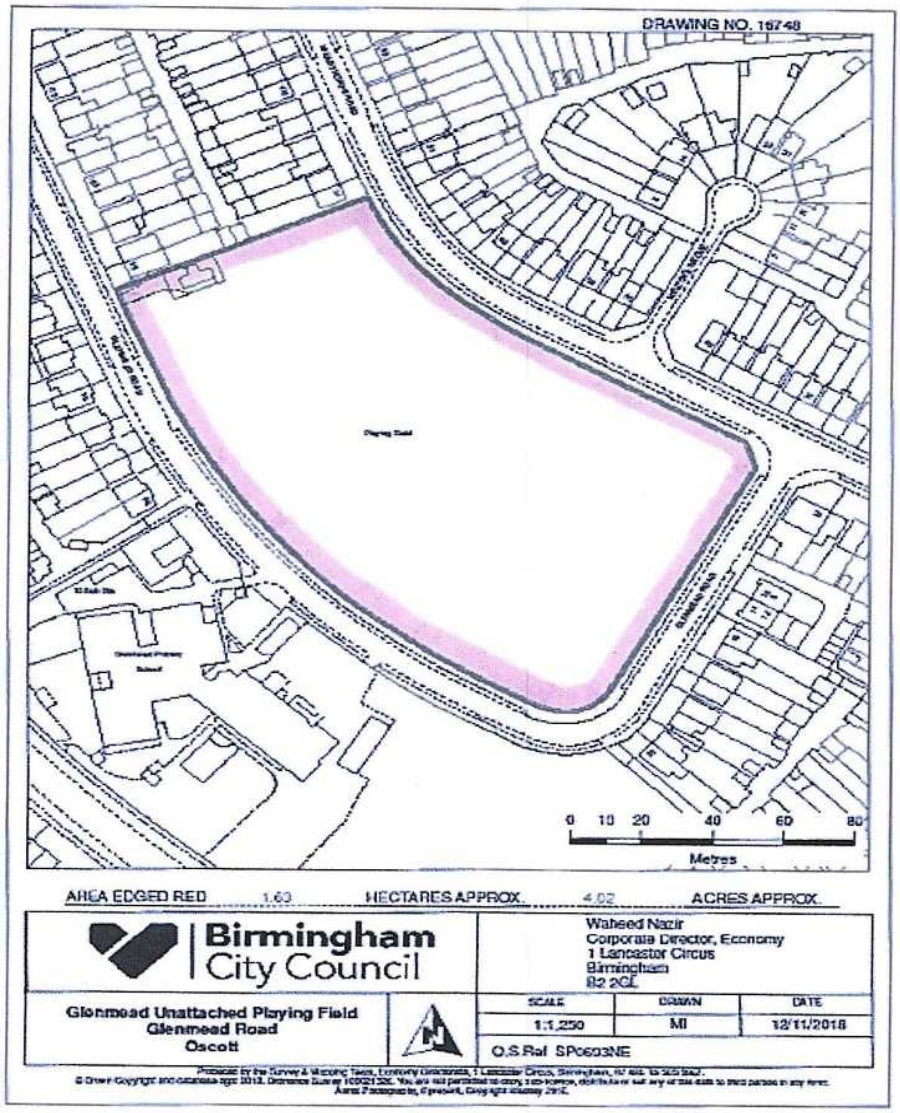
9.2 Appendix 2 – plan showing the claimed neighbourhood within a locality

10 BACKGROUND PAPERS

10.1 Application and supporting documents submitted by the Applicant

Summary of the Case for Registration of Glenmead Unattached School Playing Field as a Village Green (addendum to application note 7)

Glenmead Unattached Playing Field, Glenmead Road



Glenmead Rd - Google Maps

Appendix 1a

Glenmead Unattached School Playing Field Consultation Area

Figure 1 - consultation area