

TELFORD & WREKIN COUNCIL

LICENSING COMMITTEE – 16th January 2013

DETERMINATION OF APPLICATION FOR LAND TO THE SOUTH OF SUTTON HILL WAY, SUTTON HILL, TELFORD TO BE REGISTERED AS A VILLAGE GREEN

REPORT OF ASSISTANT DIRECTOR OF LAW, DEMOCRACY AND PUBLIC PROTECTION

1. PURPOSE

To request members determine the application made by Donald Joseph Hoyle to register land to the south of Sutton Hill Way, Telford as a Village Green.

2. RECOMMENDATIONS

The evidence is submitted for Members to determine whether or not the case has been proved for registration of the land as a Village Green.

3. SUMMARY

An application was received from Donald Joseph Hoyle on 30th April 2009 to have the area of land to the south of Sutton Hill Way (known by various names including Sutton Hill Farm, The Green, Woods Green, Chleford Park, Great Hay and Sutton Way, Sutton Hill, Telford) registered as a Village Green under the Commons Act 2006. The application site (“the Site”) is shown on the plan attached to this report. Evidence was submitted which formed part of the application and, in accordance with the relevant legislation, consultation was carried out with various parties and the application was publicised.

The site is owned by the following:

- a) Telford Golf and Country Club Hotel Limited (Q Hotels)
- b) Homes and Communities Agency
- c) The Council

Objections were originally received from the Hotel, HCA and the Council on the original area proposed for the village green. However, the area was revised and all these landowning parties withdrew their objections. The revised area is shown on the attached plan. Objections were also received from two individual landowners but these too have now been withdrawn.

Therefore, this application is now being considered as an uncontested application.

Members are asked to consider the evidence that has been submitted and

determine, on the balance of probabilities, whether the case has been proven for registration of the Site as a Village Green.

4. PREVIOUS MINUTES

None

5. INFORMATION

5.1 Background

Any person may make an application to the local authority for an area of land to be registered as a Town Green.

The authority may register land as a Town or Village Green if it is satisfied, on the balance of probabilities, that a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years and they continue to do so at the time of the application

A copy of the letter and application form submitted by Donald Joseph Hoyle is attached as Appendix 1. Supporting evidence was also included to demonstrate use of the Site in accordance with the above criteria. The relevant period of 20 years use for the purposes of this application is the 20 years immediately preceding the application date (i.e. the 29th April 2009) and that the use is continuing. However, some of the evidence relates to use which pre-dates that 20 year period.

A copy of the evidence of use forms and additional letters and photographs provided by Mr Hoyle in support of the application are marked "Appendix 2" and attached to members' copies of this report and which can be viewed by during office hours by contacting the author of this report (see details below)

Members should consider all available evidence before making their determination.

5.2 The Process

When an application is received by the authority it must carry out the following steps:-

Allot a number to it – this application has been allotted number 3/2009

Send a notice to every person whom the authority has reason to believe to be an owner, lessee, tenant or occupier of any part of the land affected by the application or to be likely to wish to object to it. This has been done.

Publish in the concerned area a similar notice and a copy of the application – the notice was advertised in the Shropshire Star on 23rd December 2010

Affix the notice to a conspicuous object on any part of the land – a copy of the notice was affixed to posts on the Site. These notices were put up week commencing 29th November 2010.

A period of 6 weeks is allowed for objections or representations to be made about the application.

Letters were sent to all interested parties, including the owners of the Site.

Objections were received from the following:

- a) Homes and Communities Agency – 9th February 2011
- b) The Council as landowner – 9th February 2011
- c) Mrs P Probert (1 Reynards Coppice, Sutton hill, Telford) – 9th February 2011
- d) Q Hotels Limited (who is the freehold owner of part of the Site, although the title register indicates that it is owned by Telford Golf and Country Club Hotel Limited) – 9th February 2011
- e) David Morgan (6 Carnoustie Drive, Sutton Hill, Telford, TF7 4BQ – 20th January 2011

In response to these objections the applicant reduced the area of land to be the subject of the application. The Council accepted this revised/reduced area as a formal amendment to the application because it does not include any new land outside that which was the subject of the consultation/publication process. It is the revised area which is shown as the application site at Appendix 1. Members will note that the evidence forms at Appendix 2 indicate the areas of the application site used by the witnesses.

All objections were withdrawn following the amendment of the area applied for.

In relation to Q Hotels, their main concern was that there were underground cables that served the hotel, and the area shown in the original application would have incorporated land under which these cables lie. As Members will see, the final area does not include this area.

5.3 The Determination

This application has been made with reference to Section 15(2) of the Commons Act 2006. Therefore, Board should consider the following when making their determination:-

20 Years

The Board should be satisfied that this area has been used for a continuous period of 20 years ending on the date of the Application i.e. between 29th April 1989 and 29th April 2009 and that this use was continuing at the time of the application.

Local Inhabitants

There is no clear definition of this. However, case law suggests that inhabitants of a Parish should be considered as “local inhabitants”, as well as other people who live in the locality, for example where the land lies close to the Parish boundary. The neighbourhood relied upon by the Applicant is Sutton Hill, as shown on Map 2 of the application.

Lawful Sports and Pastimes

Again, there is no clear definition. However, sports and pastimes has traditionally included flying kites, playing football, picnicking, walking a dog, kicking a ball and bird watching. Events such as Village Fetes and carnivals would also fall under the definition of sports and pastimes.

Generally

The application must be determined on its own merits by applying the law in relation to the registration of village greens. Members must only consider whether it has been shown, on the balance of probability, that all of the qualifying elements of Section 15(2) have been met. Board should consider the evidence in Appendix 2 and form a view as to whether the case for registering this land as a Village Green has been proved on a balance of probabilities.

Objections

Copies of the objections and exchanges relating to those objections have not been included in this report as they have now been withdrawn. However, the information is available and should Members wish to see it they should contact the author of this report (see details below).

5.4 Environmental Impact and Equal Opportunities

As this is a report which seeks a determination based on evidence submitted there are no environmental or equal opportunities considerations.

5.5 Legal Comment

As this report is prepared by Legal Services there are no additional legal comments.

5.6 Links with Corporate Priorities

The following are considered to be the corporate priorities which indirectly relate to this report:-

- Maintaining a high quality, attractive and sustainable environment
- Promoting healthy communities and improving the quality of life for vulnerable and older people.

However, as mentioned above, this is a report which seeks a determination based on evidence submitted and Members’ considerations are thus defined.

5.7 Opportunities and Risks

This report deals with the processes to be followed to fulfil the Council's statutory duty. The opportunities and risks associated with this decision have been identified and assessed during the statutory process and will be appropriately managed

5.8 Financial Implications

Registration as a Village Green will mean that, generally, the land can only be used for purposes which are not inconsistent with use of the Village Green for lawful sports and pastimes. The Council is one of the relevant landowners and so registration will impact on the potential value of any future capital receipt associated with the land if it was sold, due to the restrictions on usage mentioned above. There are currently no known schemes which will be impacted by this proposal and the Council as landowner has withdrawn its objection to the application. JAC 040113

6. WARD IMPLICATIONS

This report has implications for Cuckoo Oak Ward.

7. BACKGROUND PAPERS

Most of the background papers are already included as Appendices to this report. However, further copies of the Appendices and exchanges of correspondence and other documentation relating to this application are held on file reference 000592 within the Legal Services unit.

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