

Hampshire County Council

Decision Report:

Decision Maker:	Regulatory Committee
Date of Decision:	11 September 2013
Title:	Application for the registration of land known as 'Durnsford Avenue Open Space/Play Area' in the Borough of Hart, as town or village green
Reference:	5145
Report from:	Director of Culture, Communities and Business Services

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1. Executive Summary:

1.1 Hampshire County Council is the Commons Registration Authority for the purpose of exercising functions under the Commons Act 2006. An application has been made by Mr. T. Gwyn Williams of Durnsford Avenue, Fleet for the registration of land known as 'Durnsford Avenue Open Space/Play Area' as town or village green. Research carried out by the County Council, as the registration authority, indicates that a covenant in the conveyance by which Hart District Council purchased the land indicates that it is held for general public access in perpetuity, and therefore is not eligible for registration as town or village green. A report was previously taken to this Committee on 25 April 2012. Members deferred the item in order to allow negotiations to take place with the landowner with a view to a voluntary registration of this land as village green. No such voluntary registration has been forthcoming, and the application should now be determined. The recommendation is that this application be rejected, on the grounds that this land cannot be registered as a village green.

2. Legal framework for the decision:

2.1 Section.15 Commons Act 2006

Registration of greens:

(1) Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies.

- (2) This subsection applies where -
- (a) a significant number of the inhabitants of the locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and
 - (b) they continue to do so at the time of the application.
- (3) This subsection applies where –
- (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;
 - (b) they ceased to do so before the time of the application but after the commencement of this section: and
 - (c) the application is made within the period of two years beginning with the cessation referred to in paragraph (b).
- (4) This subsection applies (subject to subsection (5)) where –
- (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;
 - (b) they ceased to do so before the commencement of this section; and
 - (c) the application is made within the period of five years beginning with the cessation referred to in paragraph (b).

3. Applicant: Mr. T. Gwyn Williams,
Formerly of 15 Durnsford Avenue,
Fleet,
GU52 7TA

4. Landowners: Hart District Council,
Civic Offices,
Harlington Way,
Fleet,
GU51 4AE

5. Description of the land (please refer to the map attached to this report)

5.1 The land which is the subject of the application ('the Land') is shown edged blue on the plan annexed to this report. It consists of approximately 0.35 acres (0.14 hectares) of land lying close to the Basingstoke Canal in a residential area south of the Aldershot Road in Fleet. The Land is comprised in the registered title number HP 664793.

6. The application:

- 6.1 The application was received on 24 December 2009. It states that the Land should be registered as town or village green because it has been used by a significant number of the inhabitants of a locality (or neighbourhood in a locality) for lawful sports and pastimes for at least 20 years, and they continue so to use it. The application did not identify any locality or neighbourhood within the locality, in respect of which the application is made.
- 6.2 The application was accompanied by a map of the land being claimed as town or village green, photographs, appraisal documents, minutes, a copy of a newspaper article, letters of support and 97 completed user evidence forms.

7. Land ownership documents:

- 7.1 A Land Registry search was carried out on title HP664793, to check that Hart District Council are currently the freehold owners of the Land being applied for. The title document supplied by the Land Registry contains a '*Charges Register*' section in which it is recorded that the Land is affected by a conveyance dated 30 March 1973, made between (1) Chansom Limited and (2) Fleet Urban District Council, who purchased the land on that date.
- 7.2 A copy of the conveyance of 1973 has been obtained from Hart District Council, the successor to Fleet Urban District Council. The covenant is found at paragraph 2 of this conveyance, and reads '*The Council hereby covenant with the Company and their successors and assigns that they will*
- (a) Not use or allow or permit to be used the land hereby conveyed for any other purpose than an open space site and children's [sic] play area for use by the general public*
 - (b) Keep and maintain the land hereby conveyed in a good condition suitable for use as an open space*
 - (c) Keep the play equipment erected thereon in good condition*
- 7.3 This clause of the 1973 conveyance indicates that Fleet Rural District Council covenanted to hold the Land as a play area '*for use by the general public*', and the covenant bound '*their successors and assigns*', in this case Hart District Council. A copy of the relevant covenant is annexed at Appendix 1.
- 7.4 To meet the legal tests in Section 15 of the Commons Act 2006, use of land being claimed as town or village green must be 'as of right', that is without stealth, force or permission. The acquisition of rights cannot occur if those using the land for recreational purposes already have a right to do so. If the land is held by a local authority specifically for the purposes of recreation, those using it are not trespassers – they are already there 'by right' and cannot acquire a new right. This Land is

being held by the local authority for that purpose, and is therefore not of the nature of land that can be registered as town or village following the acquisition of rights.

- 7.5. Since the use by the public of this Land is not of a nature that can contribute to the acquisition of village green right, and the covenant under which it is held renders the Land ineligible for village green registration, the application should therefore be rejected.

8. Issues to be decided:

- 8.1 Officers consider that the nature of the covenant on which the Land is held means that the application to have it registered as a village green must fail. There is nothing that the applicant can do to change the legal basis on which the Land is used by the general public, which includes the inhabitants who have given evidence of their use.
- 8.2 Members are reminded that the legal test that is required to be met to register a town or village green is 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'*. Where use by the inhabitants has 'by right', from the date of its purchase by Fleet Rural District Council in 1973 onwards, and not 'as of right' as the legal test outlined requires, there can be no qualifying use during the 20 years prior to the making of the application in 2009.
- 8.3 As it appears not to be possible for the applicant to demonstrate that use of the Land has been 'as of right' for the period 1989 to 2009, the authority must therefore reject the application.

9. Deferment for negotiations:

- 9.1 At the meeting on 25 April 2012, Members resolved that the determination of this application should be deferred until an opportunity had been given for negotiations to take place between Fleet Town Council and Hart District Council, the landowner, to explore the possibility of a voluntary registration under section 15(8) of this land.
- 9.2 More than a year has elapsed since this decision and, after attempts to see whether any progress has been made on this, no such voluntary registration has been put forward to the Registration Authority.
- 9.3 In these circumstances, the application falls to be determined by the Registration Authority, and the recommendation from the previous report still stands and is set out below.

10. Recommendation

- 10.1 That, in connection with the application to register land known as Durnsford Avenue Open Space/Play Area, Fleet, as a town or village green, officers of the commons registration authority consider that use of the Land has been 'by right' not 'as of right' and consequently does not qualify. It is therefore recommend that Members reject the application.

CORPORATE OR LEGAL INFORMATION:**Links to the Corporate Strategy**

Hampshire safer and more secure for all:	yes/no
Corporate Improvement plan link number (if appropriate):	
Maximising well-being:	yes/no
Corporate Improvement plan link number (if appropriate):	
Enhancing our quality of place:	yes/no
Corporate Improvement plan link number (if appropriate):	
OR	
This proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because the County Council, in its capacity as Commons Registration Authority, has a legal duty to decided whether or not the register of towns and village greens should be amended.	

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

Document

File: VG250

Location

Countryside Access Team
Room 0.01
Castle Avenue
Winchester, SO23 8UL

IMPACT ASSESSMENTS:

1. Equalities Impact Assessment:

1.1

2. Impact on Crime and Disorder:

2.1

3. Climate Change:

- a) How does what is being proposed impact on our carbon footprint / energy consumption?

- b) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

This report does not require impact assessments but, nevertheless, requires a decision because the County Council, in its capacity as Commons Registration Authority, has a legal duty to amend the register of town and village greens in the circumstances described in this report.