

CHESHIRE EAST COUNCIL

RIGHTS OF WAY COMMITTEE

Date of meeting: 8th December 2014
Report of: Head of Legal Services
Title: Village Green Application – Land adjacent to
No. 16 Bell Avenue, Sutton, Macclesfield

1.0 Purpose of Report

- 1.1 This report seeks a decision on how to proceed with a village green application in respect of land adjacent to No. 16 Bell Avenue, Sutton, Macclesfield (“the Application Land”).

2.0 Recommendations

- 2.1 That the Head of Legal Services be authorised to appoint an independent expert to consider the application on the basis of written representations and provide a report.
- 2.3 That the Head of Legal Services be given delegated authority to determine if a non-statutory public inquiry should take place upon the recommendation of the independent expert, after consulting the Chairman of this Committee.

3.0 Reasons for Recommendations

- 3.1 An application has been received in respect of land adjacent to No. 16 Bell Avenue, Sutton, Macclesfield (“the Application Land”). There are substantial disputes as to fact which will be central to the outcome of the application.

4.0 Wards Affected

- 4.1 Sutton

5.0 Local Ward Members

- 5.1 Councillor Hilda Gaddum.

6.0 Financial Implications

- 6.1 There will be costs incurred by the Council in appointing an independent person to consider written representations. It is envisaged that any such costs will be charged to Legal Services initially with a corresponding recharge to the relevant service during 2014/15.

7.0 Legal Implications

- 7.1 The Council is the registration authority for the purposes of village green applications and the keeping of the register of village greens.
- 7.2 In recent years there has been much case law and legislation surrounding village greens and both case law and legislation continue to evolve. New legislation was introduced by the Growth and Infrastructure Act 2013 which changed the criteria for registration of new village greens and applies to applications received after 25th April 2013. This application was received on 8th March 2013 and therefore will not be subject to the new legislation.
- 7.3 Village greens can be registered either as a result of an application by a third person or by a voluntary registration by the landowner.
- 7.4 It is commonly understood that the Council may hold a public inquiry as a result of an application being received and it is often referred to as 'non-statutory' because the legislation in respect of village greens does not specifically provide for inquiries to be held. The Local Government Act 1972, however, does enable local authorities to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of its functions. In appropriate cases, consideration of written representations only by an independent person would facilitate the determining of the village green application. The holding of an inquiry is at the discretion of the Committee.
- 7.5 The Committee adopted a procedure for determining village green applications on 7 December 2009. Option 4 of that procedure is relevant in this case as it accepts that an application validly made may be referred to an independent person either to consider the application on the basis of written representations or to hold a non statutory public inquiry and to provide a report to the committee. Factors relevant in deciding whether to appoint an independent person are listed in the adopted procedure and include complexity of evidence, where evidence is finely balanced and where the land is owned by the Council.
- 7.6 The burden of proof that the application meets the statutory tests is upon the applicant, on the balance of probabilities.
- 7.7 In deciding upon applications, the Committee should consider the advice given to it by its officers and by any independent person appointed and decide the application in the light of all of evidence submitted and the advice received, and acting in accordance with the principles of natural justice and good administration.
- 7.8 If registered as a village green, land will be subject to the statutory protection of section 12 of the Inclosure Act 1857 and section 29 of the Commons Act 2006. Section 12 protects greens from injury or damage and interruption to their use or enjoyment as a place for exercise and recreation. Section 29 makes encroachment or inclosure of a green,

and interference with or occupation of the soil, unlawful unless it is with the aim of improving the enjoyment of the green.

- 7.9 There is no right of appeal within the Council against the Committee's decision. The route for any challenges would be via judicial review.

8.0 Risk Assessment

- 8.1 If the Council chose to determine the application without independent input, as it is also the highway authority, it may increase the risk of challenge..

9.0 Background and Options

- 9.1 The Council is the registration authority for village greens and responsibility for this function was delegated to the Rights of Way Committee under Part 3 of the Council's Constitution. The terms of reference allow the Committee "to discharge the authority's functions in respect of Commons and Village Greens".
- 9.2 The application was submitted on 8th March 2013 by Sutton Parish Council and the land is shown on Appendix A attached. The evidence in support of the application contains six witness statements stating various uses.
- 9.3 The application is based on the use of the land "as of right" for pastimes such as a children's play area, walking and exercising dogs, bicycle riding, football, and general recreation.
- 9.4 Following the statutory consultation process, the Council received a further 82 letters/forms in support of the application and one letter of objection from Peaks & Plains Housing Trust, who own the land.
- 9.5 The landowners' objection is based on a number of factual and legal submissions, including:
- The use of the land by a "significant" number of inhabitants
 - The "neighbourhood/locality" that use the land
 - That the use of the land is not use "as of right"
 - The actual use of the land
- 9.6 The applicant has disputed the factual grounds on which the objections are based.
- 9.7 Although Cheshire East Council does not have a legal interest in the land, they do have an interest in Peak & Plains Housing Trust. Members should be aware that, in such cases, it is considered appropriate that an independent person be appointed to consider the application.
- 9.8 A non-statutory public inquiry is not being recommended in this report because it is considered that given that some of the objections are of a legal nature, it may be possible for this application to be considered on

the written evidence in the first instance. It may be possible that the independent person, having received the documentation, recommends an inquiry is held instead. In the event of such a request, delegated authority is sought so that the Head of Legal Services can determine whether this is appropriate, after consulting the Chairman of this Committee.

10.0 Access to Information

- 10.1 The background papers relating to this report are listed below and can be inspected by contacting the report writer:

Village green application and supporting evidence

Objections to the application

For further information:

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