

REPORT TO: Halton Borough Council

DATE: 20th October 2010

REPORTING OFFICER: Operational Director Legal and Democratic Services

SUBJECT: Village Green application– Halebank (2)

WARDS: Halebank

1.0 PURPOSE OF THE REPORT

- 1.1 To provide advice to assist in the determination of the application dated 24 June 2006 made under the Commons Act 2006 by Mrs Florence Hurley that land at Halebank be designated village green.
- 1.2 This Report has been prepared under the powers and duties in relation to Village Greens and Common Land delegated to ODLDS under the Scheme of Delegation to Officers (Constitution).

2.0 RECOMMENDATION

Having regard to the Application dated 20 September 2006, representations received, the Inspector's report dating from Summer 2007, observations on the representations and the information contained in this report, that the Application under the Commons Act 2006 made by Mrs Florence Hurley and dated 20 September 2006 be determined as follows:-

- in respect of the land at Halebank hatched blue on the attached plan be not designated as village green for the purposes of Part 1 of the Commons Act 2006 on the grounds of lack of evidence of qualifying usage specific to that area;

and that

- in respect of the land at Halebank hatched red on the attached plan which has previously been dedicated by the Council as Landowner that red-hatched land be now designated as village green for the purposes of Part 1 of the Commons Act 2006 for the purposes of games, exercise and dog walking.

3.0 SUPPORTING INFORMATION

- 3.1 There have been two applications for Village Green status for the same plot of Council-owned land in Halebank. Both applications were made by Mrs Florence Hurley.

- 3.2 The Council is both owner of the affected land and the registration authority under the Commons Act 2006. Registration authority decisions are matters reserved to the Council. The Council has been careful to keep these two distinct roles separate.
- 3.3 In broad terms, to be successful with such applications the law requires that the land shall have been used continuously as of right for recreational purposes over a period of at least twenty years. This use is equivalent to establishing squatters' rights for the recreational use: "lawful sports and pastimes". Qualifying uses are widely defined to include dog walking, playing football or cricket, jogging and walking. These uses do not have to be organised. The use has to be exercised without the express permission of the landowner and as of right. There must be evidence of such use by a significant number of the inhabitants of any locality, or of any neighbourhood within a locality. What matters is actual use rather than the landowner's intentions for the land or any view that the land might be better used for other purposes. The use is a matter of fact to be proven by the applicant. If the applicant is successful the land can only be used for that claimed purpose. .
- 3.4 The first of the two Halebank applications dated from 2006. That application was decided at a full Council meeting in October 2007 after a public inquiry held at the Council's expense in May 2007. The Council was represented at the May 2007 Inquiry and gave evidence in its capacity as landowner opposing the designation as Village Green. The Inspector appointed by the Council at the Council's expense found that the application was successful for only part of the land but excluded the whole of the land opposite Lovel Terrace. He indicated that the reason he had excluded that land was because, on the date the first application was made, twenty years of use had not passed.
- 3.5 The Council's decision on the first application was in line with the Inspector's recommendations – designating as Village Green the part of the site opposite Clap Gate Crescent and refusing Village Green designation for the rest. The Council's statutory register was amended to reflect this decision.
- 3.6 The second application (the one to be decided today) dates from 20 September 2006 and is for the same area of land as the first application. It was submitted *before* the Council's decision on the first application was made but with knowledge of the Inspector's remarks (as reflected in his Report).
- 3.7 The second application has not been the subject of a public inquiry. There is no express statutory requirement to hold such an Inquiry. No Council decision has been made on this second application as Registration Authority. In April 2009 the Council resolved voluntarily, quite independent of the registration process to dedicate a substantial

part of the land that was the subject of the second application as Village Green. This was not a determination of that second application. The decision was taken as landowner. The second application needs to be determined in relation to the whole site within the Applicant's red line excluding the land designated by the Council as Village Green in October 2007.

- 3.8 The Council's decision in April 2009 included authority to the Operational Director and Monitoring Officer (Legal, Organisation Development & Human Resources) to write to the Applicant in relation to the Council's role as Village Green Registration Authority referring to the Council decision as set out in 3.7 and enquiring whether the Applicant would wish, in the interests of avoiding further public expenditure associated with a potential additional public inquiry, to withdraw the current undetermined second application for Village Green status.
- 3.9 The Applicant replied indicating that she had no intention of withdrawing the application or of revising or amending the area covered by it. The Applicant was given the opportunity to submit any further evidence and has confirmed that she relies on the evidence adduced at the Inquiry in 2007. To date she has indicated that she does not wish to put forward any further evidence. She wishes the matter to proceed to a speedy and objective decision by the Council as statutory Registration Authority.
- 3.10 The evidence of actual use of the land in the second application (excluding the land voluntarily dedicated by the Council in April 2009) by a significant number of the inhabitants of any locality, or of any neighbourhood within the locality along the Northern boundary of the site bordering the railway is inadequate to meet the test set by the legislation. This is perhaps not surprising given the vulnerability of this land to water-logging and the presence of the adjacent railway line which militates against the use of land by a significant number of local inhabitants. It is therefore proposed that this area be excluded from the designation. Members' attention is drawn to the evidence which is listed under the heading of Background Papers at the end of this Report. This evidence should be taken into consideration when the Council comes to its decision on this Report. A volume of these Background Papers is available for Inspection in the Members' Room.
- 3.11 The second application was advertised in the local press in January 2009 and representations were invited. The only representation received was from the Council as landowner. This is attached as an Annex. Members are asked to take this into consideration with the other material referred to in the application and the Inspector's report into the First Application in coming to its decision on the Second Application. The Council must also consider observations by the Applicant on the Council's representation as landowner, which are appended to this report.

4.0 POLICY IMPLICATIONS

There are none.

5.0 OTHER IMPLICATIONS

This is dependent on the process adopted. As previously indicated there will be significant expenditure should the Council be minded to determine the application following a Public Inquiry. There would be no additional expense to the Council as a result of a decision to designate the remaining land shown hatched red as Village Green. The Council already maintains that land as an aspect of its land maintenance budget.

6.0 IMPLICATIONS FOR THE COUNCIL'S PRIORITIES

There are none.

7.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

Document	Place of Inspection	Contact Officer
Second Application	Council Website	Rob Barnett Ext 1052
Inspector's report on First Application		
Notice of Application (Annex 1)		
Representations from Council as landowner		
Observations of Applicant on Council's representations as landowner (Annex 2)		

ANNEX 1

HALTON BOROUGH COUNCIL

SECTION 15(1) COMMONS ACT 2006

LOVEL FIELDS HALEBANK

Notice of an application for the registration of land as a Village Green

To every reputed owner, lessee, tenant or occupier of any part of the land described below, and to all others whom it may concern.

Application has been made to Halton Borough Council Municipal Building Kingsway Widnes WA8 7QF by Florence Hurley, 43 Blackburn Avenue, Widnes, Cheshire WA8 8UY ("the Applicant") under section 15(1) of the Commons Act 2006 and in accordance with the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007. The application seeks the inclusion in the register of town and village greens of the land described in the Schedule below which is claimed to have qualified for registration as a village green on the basis that it has been used by a significant number of the inhabitants of Halebank as of right for lawful sports and pastimes for a period of at least 20 years.

Summary of Applicant's case: The use of the land which is the subject of this Application was considered at an Inquiry in May 2007 but the sole criterion missing as regards the qualification of part of the land was the length of time for which it had been used as of right. In fact by the date of the Inquiry sufficient time had passed but the 'clock' stopped as of the date of application. The land continued to be used as of right and if 'permission' is deemed it is granted only after the expiry of the 20 year period and therefore section 15(7) applies.

The application, which includes a plan of the land proposed for registration may be inspected between the hours of 0900-1730 Monday-Thursday and 0900-1640 at the Municipal Building Kingsway Widnes.

If the registration authority is satisfied that the land described below qualifies for registration as a town or village green, it will so register the land.

Any person wishing to object to the registration of the land as a town or village green should send a statement of the facts on which the objection is based to Mark E Reaney, Operational Director and Monitoring Officer, Municipal Building Kingsway Widnes Cheshire WA8 7QF on or before 5 March 2010.

Any representations that are to be taken into account by the Authority in reaching a decision on the application cannot be treated as confidential and will be copied to the applicant for comment and may be disclosed to other interested parties.

Dated: Thursday 21 January 2009

Signed: Mark E Reaney, Operational Director and Monitoring Officer (Legal, Organisation Development & Human Resources) on behalf of Halton Borough Council as registration authority

Schedule

Description of the land claimed to have qualified for registration as a town or village green: Lovel Fields, Halebank to the North of Lovel Terrace and to the West of Clapgate Crescent

HALTON BOROUGH COUNCIL

OBJECTION BY HALTON BOROUGH COUNCIL TO AN APPLICATION

By Mrs Florence Hurley under section 15(1) of the Commons Act 2006

LOVEL FIELDS HALEBANK

Halton Borough Council as owner of land at Lovel Fields, Halebank to the North of Lovel Terrace and to the West of Clapgate Crescent the subject of an application by Mrs Florence Hurley of 43 Blackburn Avenue, Widnes, Cheshire WA8 8UY ("the Applicant") under section 15(1) of the Commons Act 2006 (the Application) HEREBY OBJECTS to the Application.

The Application seeks the inclusion in the register of town and village greens of the land described in the Schedule below which is claimed by the Applicant to have qualified for registration as a village green on the basis that it has been used by a significant number of the inhabitants of Halebank as of right for lawful sports and pastimes for a period of at least 20 years.

This objection is made on behalf of the owner of the land the subject of the Application namely Halton Borough Council.

This is the second of two such applications made by the Applicant in respect of the whole site.

The first application has already been determined by the Council accepting recommendations to register in respect of part of the site shown edged and hatched green on the attached plan (the X Land).

The Council has also reviewed the situation in respect of the remainder of the land not registered as Village Green in response to the first application and has voluntarily dedicated as village green a substantial proportion of that land shown coloured YYYY on the attached plan (the Y Land).

The present objection relates to the remaining land shown coloured ZZZZ on the attached plan (the Z Land).

The Council's objection in respect of the Z land is as follows:-

1. The evidence of actual use of the land in the second application (excluding the land voluntarily dedicated by the Council in April 2009) is inadequate to meet the test set by the legislation
2. The evidence of use by a significant number of the inhabitants of the locality of the Z land, or of any neighbourhood within that locality is inadequate to meet the test set by the legislation.
3. No evidence is submitted exclusively in respect of the Z land.

It is understood that the Applicant although invited to submit further evidence has indicated that she does not wish to put forward any further evidence beyond that included in her second Application.

No objection is entered in respect of the X land and the Y Land

DATED the day of 2010

Signed

NAME: Ian Leivesley, Strategic Director, Resources

Schedule

Description of the land claimed to have qualified for registration as a town or village green: Lovel Fields, Halebank to the North of Lovel Terrace and to the West of Clapgate Crescent

ANNEX 3

43 Blackburne Avenue
Hale Bank
Widnes
Cheshire WA8 8UX

01/06/10

Mark Reaney,
Operational Director/Monitoring Officer
Legal, Organisational Development & HR
Halton Borough Council
Municipal Buildings
Kingsway
Widnes
WA8 7QF

Dear Mr Reaney,

Village Green - Hale Bank

Thank you for your letter of the 20th April 2010.

I have read the objections submitted by Halton Council with respect to my application for the designation of land at Lovel Fields, Hale Bank as a Village Green.

My observations are as follows:

1 The Council's decision with respect to the original application followed the recommendation by an independent Inspector at a local public inquiry. The Inspector's recommendation to designate the area hatched green on Halton's plan was based on very precise finding of fact relating to the date upon which lawful sports and pastimes commenced on the excluded area. He believed that there was insufficient evidence that the 20 year condition had been met due to the date upon which reclamation and remediation work on the site had been concluded.

2 The second application was submitted on a date that would clearly fulfill the 20 year criteria and would therefore justify the designation of the whole area according to the Inspector's reasoning and the key findings of fact at the original public inquiry.

3 The satisfaction of the 20 year rule is actually conceded by Halton Council's objection letter in so far as there is acceptance that the red hatched area in their plan does satisfy the statutory criteria for Village Green designation. It follows therefore that the Landowner also accepts that the use of green and red hatched areas fulfills the necessary criteria.

4 The Council's decision therefore to object to the designation of the blue hatched area is arbitrary and unsupported by any objective evidence. Evidence submitted by witnesses with respect to the present and original Village Green applications relates to use of the whole of the site. There are no physical characteristics or boundaries that delineate or

separate the red and blue hatched areas and no evidence that the areas are viewed or used in distinctive ways by local residents. There is abundant evidence, in both applications, that this is perceived and used as a single and integrated area for the pursuit of lawful sports and pastimes and has been enjoyed by residents for the requisite 20 year period. The Council's objection and entirely arbitrary distinction between the proposed red and blue hatched areas is based entirely on its desire to develop the blue area for proposed road.

The attempt to justify this distinction on the basis of alleged lack of evidence has, in fact, been severely prejudiced by previous comments from Halton Council officers engaged in the 3MG development project, where the real motives for this objection were made explicitly clear (see Appendix 1).

Yours sincerely,

Florence Hurley (Mrs)

Appendix 1

In May 2009 I was part of a Halton Council and Police Smart Water marking exercise in Hale Bank with Mark Antrobus the council's security adviser along with other council officers who were helping.

As the Chairman of Hale Bank Parish Council I had previously spoken to a senior council officer involved in the 3MG project, Sally McDonald, about residents concerns regarding security issues around the landscaping that was taking place on the site for the proposed freight terminal now named Hale Bank Park or Site 253.

As the councils security adviser Mark Antrobus was already in Hale Bank it was decided that myself and Sally McDonald would do a site visit and put the residents concerns to him and Sally to overcome those concerns. This proved very successful and our village walkabout took us onto the land in front of Lovel Terrace that is currently the subject of Mrs Florence Hurley's Village Green Application.

While on this land the conversation between me and the 3MG officer, Sally McDonald turned to the Village Green. The cost of another Public Inquiry was discussed and I believe the sum of £24,000 was mentioned. Sally McDonald

then stated that the residents could have all the land apart from the disputed wedge of land (now the blue hatched land) adjacent to the railway.

I asked her why that wedge of land was needed and her reply to me was 'you know why.'

Therefore, as the excluded area happens to be identical with the requirements of an access road to the proposed development site at Lovel Fields. Sally McDonald's reply left me in no doubt about the councils intended use of that wedge land.

Parish Councillor Bernard Allen,

Chairman of Hale Bank Parish Council

ANNEX 4

PLAN

SEPARATE CIRCULATION

ANNEX 5

RESPONSE RE ALLEGED STATEMENTS MADE BY COUNCIL OFFICER