

REPORT TO: Council
DATE: 22 April 2009
REPORTING OFFICER: Strategic Director Corporate and Policy
SUBJECT: Village Green designation – Halebank
WARDS: Halebank

1.0 PURPOSE OF THE REPORT

- 1.1 To make recommendations to the Council in relation to land at Halebank in its capacity as landowner.
- 1.2 To make recommendations to the Council in relation to land at Halebank in its capacity as Village Green Registration authority.

2.0 RECOMMENDATION: That

- (1) the land shown marked by a red outline be dedicated by the Council as Village Green in its capacity as landowner;**
- (2) the Strategic Director Corporate and Policy and the Operational Director and Monitoring Officer (Legal, Organisation Development & Human Resources) be authorised to take such actions as are necessary to give effect to the dedication of the land identified above as Village Green; and**
- (3) the Operational Director and Monitoring Officer (Legal, Organisation Development & Human Resources) be authorised to write in the context of the Council's role as Village Green Registration Authority to the Applicant referring to the Council decision as set out in 2.1 and enquiring whether the Applicant would wish, in the interests of avoiding further public expenditure associated with a potential further public inquiry, to withdraw the current undetermined Application for Village Green status.**

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 Florence Hurley.
- 3.2 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 20 years. This use is equivalent to establishing squatters rights for the recreational use.

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 permission of the landowner and as of right. It has to be a use that is significant and exercised by people who live in a particular locality. What matters is actual use rather than the landowner's intentions for the land. 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 although there are certain limited provisions which would allow it to be undesignated subject to compensating land and approval of Secretary of State.

- 3.3 The first of the two Halebank applications dated from September 2006. This was decided at a full Council meeting in October 2007 after a public inquiry held at the Council's expense in May 2007. The Inspector appointed by the Council found that the application was successful for only part of the land but excluded the whole of the land opposite Lovel Terrace. He made it clear 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.
- 3.4 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 has been amended to reflect this decision.
- 3.5 The Council is both owner of the land and the registration authority under the Commons Registration Act 1965 and the Commons Act 2006. It has been careful to distinguish between those two roles. The Council appeared at the May 2007 Inquiry and gave evidence opposing the designation as Village Green but this was in its capacity as landowner.
- 3.6 The second application dates from Summer 2007 and is for the same area of land as the first application shown with a green outline on the attached plan. It was submitted before the decision on the first application was made and 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 nor is there any express legal requirement to hold a further Inquiry to examine the second application. No Council decision has been made on this second application whether as Registration Authority or in any other capacity. The Council must come to its own decision based on the test set out above. It may also as landowner intervene and, independent of actual use, choose to dedicate the land or any part of it as Village Green.

- 3.8 Since receipt of the second application the Council has gathered evidence and taken independent specialist legal advice. The recommendations in this report are in large part based on that work.
- 3.9 The evidence of actual use of the land edged red on the attached plan is sufficient to satisfy the Council that this land meets the above test. It is therefore recommended that the Council as landowner dedicates this land as Village Green
- 3.10 The evidence of actual use of the land to the North within the green outline and bordering the railway is however inadequate to meet the above test. It is therefore proposed to exclude that land from the dedication.
- 3.11 Consequently the overwhelming majority of the site referred to in the second application is proposed to be dedicated as Village Green. This is done independent of the application.
- 3.12 In light of the recommendation to dedicate the land judged to meet the criteria no further decision is at this time proposed in respect of the land which is the subject of the second application. It is proposed that the Applicant be invited to withdraw this application. Should the Applicant decline this request the Council will then need to decide whether to determine the application with or without a Public Inquiry

4.0 POLICY IMPLICATIONS

- 4.1 There are none.

5.0 OTHER IMPLICATIONS

- 5.1 Should the Council be minded to determine the application following a Public Inquiry this will involve the Council in significant expenditure. Such expenditure will be avoided if the Applicant withdraws the application.

6.0 IMPLICATIONS FOR THE COUNCIL'S PRIORITIES

- 6.1 There are none.

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

- 7.1 There are no background papers under the meaning of the Act.