

**Report of the City Solicitor**

**Report to Plans Panel North & East**

**Date: 9 August 2018**

**Subject: DETERMINATION OF APPLICATION TO REGISTER LAND AT GLEDHOW FIELD, GLEDHOW PRIMARY SCHOOL ROUNDHAY AS A TOWN OR VILLAGE GREEN UNDER THE PROVISIONS OF SECTION 15(1) OF THE COMMONS ACT 2006**

Are specific electoral Wards affected? If relevant, name(s) of Ward(s): Roundhay	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

**Summary of main issues**

1. On 4 August 2015 an Application (“the Application”) was submitted to Leeds City Council, in its role as Commons Registration Authority, for registration of land known as ‘Gledhow Field’, Gledhow Primary School, Roundhay (“the Application Land”) as a Town or Village Green, pursuant to Section 15 of the Commons Act 2006.
2. The Council as Commons Registration Authority is legally obliged to consider such applications.
3. Both the Council in its separate capacity as landowner and the governing body of Gledhow Primary School objected to the Application as Principal Objectors, together with approximately 350 individual Objectors.
4. Following consideration of a Report submitted to Plans Panel (North & East) on 1 December 2016, Members determined that a Public Inquiry be called and an inspector be appointed by the City Solicitor, with a view to undertaking an examination of the evidence submitted by the parties concerned, and to prepare a report in relation to their findings for consideration at a future meeting of the Plans Panel.
5. Members are now asked to consider the Inspector’s report attached hereto detailing his findings in respect of the Public Inquiry that took place between 5 and 13 December 2017, and to determine if the recommendations of the Inspector should be accepted.

## **Recommendations**

6. Members are recommended to accept the recommendations of the Inspector and to determine that no part of the Application Land known as 'Gledhow Field' should be added to the statutory Register of Town or Village greens, and therefore, that the Application be rejected.

### **1 Purpose of this report**

- 1.1 To notify Members that a report has been received from the Inspector following the holding of a Public Inquiry into the Application for the purpose on examining of the evidence submitted by the parties concerned.
- 1.2 For Members to determine if the recommendation contained in the Inspector's report should be accepted and the Application to register land at Gledhow Field as a town or village green be rejected.

### **2 Background information**

- 2.1 On 1 December 2016 Plans Panel (North & East) considered a report concerning the above Application and determined that in view of all the circumstances outlined, a Public Inquiry should be held with a view to undertaking a further and more detailed examination of the issues raised and evidence submitted by the Applicant and the Principal Objectors.
- 2.2 Alun Alesbury, a barrister with considerable experience of village green registration matters, was appointed as Inspector in relation to the Public Hearing that was held between 5 and 13 December 2017.

### **3 Main issues**

- 3.1 The Council is the Commons Registration Authority for the registration of town and village greens and has a statutory duty to decide whether an application should be accepted or rejected. Plans Panel (North and East) has delegated authority to accept or reject the Application.
- 3.2 Whilst Panel is not bound to follow the recommendation contained in the Inspector's Report, it will need to give full consideration to the findings of the Inspector on the law and facts when reaching its decision. In this regard it is important to note that in determining whether or not to register the Application Land as a town or village green, it is not possible to take into account the general merits of the Land being registered. Panel is limited to considering whether or not the statutory criteria set out below have been established on the evidence.
- 3.3 The Application was made pursuant to the Commons Act 2006. The Act requires each registration authority to maintain a Register of Town and Village Greens within its area. Section 15 provides for the registration of land as a town or village green where the relevant statutory criteria are established in relation to such land.

- 3.4 The Land subject to the Application is commonly known as 'Gledhow Field', being a mainly grassy area (but with some other vegetation around its edges), situated to the west of Gledhow Primary School. The School itself fronts onto Lidgett Lane, Gledhow, on its eastern side.
- 3.5 The Application Land has belonged to the City Council since early 1946, having been part of a larger area all acquired for 'education purposes'. When Gledhow School was built around 1960, it formed the western part of a large area of school playing field.
- 3.6 In 1981 Leeds City Council granted a 25 year lease of (more or less) the Application Land Roundhay Rugby Football Club, for use for a rugby pitch, and any associated pursuits.
- 3.7 In 1994, due to security concerns, the Application Land was separated off from the School's actively used grounds to the east by a steel palisade fence which was in place right through the whole 20 year period relevant to the Application; being those 20 years immediately leading up to the Application date of 4 August 2015.
- 3.8 The Application seeks the registration of the Application Land by virtue of the operation of section 15(2) of the Commons Act 2006. Under that provision, land is to be registered as a town or village green where (1) 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 (2) they continue to do so at the time of the application.
- 3.9 Therefore, for the Application to succeed, it must, in essence, be established that:-
  - 3.9.1 The Application Land has been used for lawful sports and pastimes; (see para 4.6 below).
  - 3.9.2 Such use continued at the time of the Application; (see para 4.6 below);
  - 3.9.3 Use of the Application Land has taken place as of right; (see para 4.7 below);
  - 3.9.4 A specific locality or of a neighbourhood within a locality exists in relation to the Land; (see para 4.8 below);
  - 3.9.5 Use of the Land for lawful sports and pastimes has been by a significant number of the inhabitants of the identified locality or of a neighbourhood within a locality; (see para 4.9 below);
  - 3.9.6 The use of the Land by a significant number of the inhabitants of the locality or of a neighbourhood must have taken place throughout the period of 20 years leading up to the date of the Application; (see para 4.9 below).

## **4 The Inspector's Report**

- 4.1 In his report the Inspector makes clear that, the burden of proving that the Application Land has become a village green by satisfying each element of the above statutory criteria, rests with the Applicant; the standard of proof being the balance of probabilities. He goes on to confirm that it is not appropriate for him or the Commons Registration Authority to consider the merits of the Land being registered.
- 4.2 The Inspector has set out his findings in respect of each element of the statutory criteria within his report. The full report is attached as a background document to this report.
- 4.3 The Inspector has found on the balance of the evidence, that the Applicant has established those elements of the statutory criteria laid down Section 15 of the Commons Act 2006, discussed at paragraphs 4.6, 4.7 and 4.8 below.
- 4.4 In addition, the Inspector has also found on the balance of the evidence, that the Applicant has failed to establish those elements of the statutory criteria laid down Section 15 of the Commons Act 2006, discussed at paragraph 4.9 below.
- 4.5 Given his finding that the said statutory criteria has not been satisfied in its entirety, the Inspector's recommendation to the Council as Registration Authority that the Application should be rejected, with no part of the Application Land to be added to the Register of Town and Village Greens.
- 4.6 **Use of the Application Land for 'Lawful Sports and Pastimes' continuing 'at the time of the Application'**
- 4.6.1 Lawful sports and pastimes include present day sports and pastimes and the activities can be informal in nature. Hence, it includes recreational walking, with or without dogs, and children's play. However, that element does not include walking of such a character as would give rise to a presumption of dedication as a public right of way, along a defined route.
- 4.6.2 The 'lawful sports and pastimes' need to have been engaged in by a 'significant number' of the relevant local inhabitants of the locality or neighbourhood, which does not mean any particular number, but enough to make a reasonably observant landowner aware that local people generally are asserting a right to use the land, rather than there just being sporadic instances of trespass
- 4.6.3 The Inspector found the evidence of the Applicant's witnesses reasonably convincing that for the last 10 years or so leading up to the Application, local people from the neighbourhood, in reasonably significant numbers, had taken to using this otherwise unused field for things which would count as lawful sports and pastimes, like dog walking around the land generally, meeting up with friends, and occasional picnics or games. This was notwithstanding that some people were also using the land just as providing a 'cut-through' walking route to get from point 'A' to 'B'.

4.6.4 Therefore, the Inspector found both that the Application Land had been used for lawful sports and pastimes, and that these sports and pastimes were found to be continuing at the date of the Application to meet these parts of the statutory test.

#### **4.7 Use of the Application Land ‘as of right’**

4.7.1 In terms of the use of the Application Land being ‘as of right’, the Inspector made the point in his report that the requirement that the use be without force in order to be “as of right” does not merely require the use to be without physical force, such as by the breaking down of a fence. It must also not be contentious.

4.7.2 The Inspector accepted that there is one long-standing sign, near a corner of the Application Land facing outwards, stating ‘No Trespassing’. Whilst this sign is located fairly close to one of the ways where people could enter it, the sign was had been in a heavily overgrown part of the Land, and was fairly difficult to see. In the light of this, the Inspector found that the majority of the use described in evidence should be construed as being ‘as of right’, sufficient to meet that part of statutory test.

#### **4.8 ‘Inhabitants of a locality or of a neighbourhood within a locality’**

4.8.1 In his original application form the Applicant put forward ‘Gledhow’ as the relevant neighbourhood. He did not provide a plan showing the boundaries of ‘Gledhow’, which was acceptable, as the form does not require provision of such a plan.

4.8.2 Subsequently the Applicant sought to clarify the boundary of the ‘neighbourhood’ as being the area contained with, an electoral polling district with the reference ‘ROB’, effectively consisting of the western part of Gledhow, being to the west of Lidgett Lane, with Gledhow Lane as its southern boundary, Gledhow Valley Road on the south-west, and Allerton Grange Way on its north-west.

4.8.3 Having listened to the evidence of both sides as to whether a neighbourhood had in fact been established for the purposes of the Application, the Inspector conducted an accompanied site visit shortly before the conclusion, which took in the boundaries of the neighbourhood put forward by the Applicant.

4.8.4 The Inspector observed that an entirely sensible and reasonable area had been put forward by the Applicant, that had a sufficient element of cohesiveness about it, to be regarded as a ‘neighbourhood’ in a common-sense way, There is no requirement for a ‘neighbourhood’ in the context of the Commons Act to have a name at all, although the Inspector did note certain references to ‘Brackenwood’ in evidence. Irrespective of whether ‘neighbourhood’ put forward could properly be described as ‘Brackenwood’, the Inspector found it was sufficient in nature to meet this element of the statutory test.

#### **4.9 Use by a Significant number of Inhabitants of the Locality or Neighbourhood within a Locality for a period of at least 20 years**

- 4.9.1 Importantly, use of the Application Land needs to be shown to have been the case for the whole of the relevant period of 20 years, being those 20 years immediately preceding the date of the Application. As is not uncommonly the case, the Inspector considered that the evidence given by witnesses from both sides was not always entirely consistent or clear given the length of time witnesses have to cast their minds back
- 4.9.2 He also found, however, that the evidence put forward in support of the Application was very much 'thinner' and more slight in relation to use of the Land for sports and pastimes during the earlier years of the relevant 20 year period, during which the Land was leased to Roundhay Rugby Football Club. The Inspector was not at all convinced, on the evidence as a whole, and having regard to the 'balance of probabilities' test, that it was more likely than not, that significant numbers of local people (not being rugby players present under the lease) were using this land for 'lawful sports and pastimes' during the period 1995 to 2002 approximately.
- 4.9.3 It seemed much more probable to the Inspector, on the balance of the evidence as a whole, that a wider use, sufficient to meet the 'lawful sports and pastimes' and 'significant number' aspects of the statutory criteria, only came about gradually, after the departure of the Rugby Club.
- 4.9.4 Taking into account all the evidence, the Inspector, therefore concluded that *use of the Application Land for lawful sports and pastimes by a significant number of Inhabitants of the Neighbourhood within a Locality had not taken place for the whole of 20 year period immediately preceding the making of the Application.*
- 4.9.5 The findings of the Inspector reached on these aspects of the statutory criteria, if accepted by the Registration Authority, would mean that the Application must be rejected, as the Section 15 (2) of the Commons Act 2016 has not been satisfied in its entirety.

#### **4.10 Statutory Incompatibility**

- 4.10.1 This principle, which took up a considerable amount of time at the Inquiry, and in argument, does not arise from the actual wording of Section 15 of the Commons Act at all, but from case law.
- 4.10.2 This principle should only be applied where the land is held for defined statutory purposes which are incompatible with Commons Act registration, in effect where there is a statutory obligation or duty on the owning authority to use that particular land in a special way which would be clearly incompatible with use of the land as a town or village green.
- 4.10.3 Given that the Inspector has already formed the conclusion, based on the balance of the evidence, that the Applicant had not discharged the burden of proving, on

the balance of probability, that the statutory criteria under Section 15(2) of the Commons Act had been met in full, over the whole relevant 20 year period, addressing the principle statutory Incompatibility is in a sense academic. The Inspector considers it appropriate to address it, however, given the weight placed on the principle in objection, and at the Inquiry itself.

- 4.10.4 In the present case the Council as education authority and landowner, and the Governors of the School, seek to enclose the Land subject to the Village Green Application, held for Education purposes since 1946, and use this particular land as an extended playing field area, in conjunction with a planned expansion of the school's intake. These plans for potential expansion had plainly been worked up over several years, going well back before the Application date.
- 4.10.5 Whilst the Council's Executive Board took a decision on 17th December 2014, approving the expansion of Gledhow Primary School, the description of expansion proposal resolved upon made no specific mention of the expansion involving the fencing off and excluding other people from Gledhow Field.
- 4.10.6 The Inspector, therefore, concluded that an important piece of general legislation such as the Commons Act cannot be overruled by an assumption that what the Executive Board envisaged in December 2014 was that the School's grounds would be expanded and so as to fence in the Application Land. Therefore the doctrine of statutory incompatibility did not apply in the present circumstances and so there was nothing to prevent the Village Green Application from being considered or determined by the Council as Commons Registration Authority.
- 4.10.7 Notwithstanding that there is nothing to prevent the Village Green Application from being determined, the Inspector has already concluded that the Applicant's case had failed to meet the whole of the statutory test laid down in the Commons Act itself, as consequence of which his recommendation is that no part of the Application Land at Gledhow Field should be added to the statutory Register of Town and Village Greens.

#### **4.11 The Inspector's Conclusions and Recommendation**

- 4.11.1 The Inspector came to the following conclusions:-
- 4.11.2 The Applicant has failed to establish on the evidence that a significant number of the local inhabitants within had made the requisite use of this land over the whole of the relevant period of 20 years.
- 4.11.3 The evidence and arguments presented, when considered in the context of recent case law, did not support the assertion of the Principal Objectors, that registration of the Application Land as a town or village green is legally impossible because registration would be incompatible with the statutory functions of the Council as local education authority.
- 4.11.4 The fact that the Application itself was not found to be incompatible with the statutory functions of the Council as local education authority, had no bearing on the Inspector's recommendation, given his finding that Applicant had failed to

establish, on the evidence, that all elements of the statutory criteria laid down Section 15 of the Commons Act 2006 had been met.

- 4.11.5 In light of his conclusions, the Inspector's recommendation to the Council as Registration Authority is that the Application should be rejected and that no part of the Application Land be added to the Register of Town and Village Greens maintained by the Council.

## **5 Corporate Considerations**

### **5.1 Consultation and Engagement**

- 5.1.6 Following initial consideration the Application was circulated to the landowner and the parties holding an interest and relevant Ward Members. In addition a public notice concerning the making of Application was advertised in the Yorkshire Post and posted around the perimeter of the Application Land as well as the Council's website.

- 5.1.7 In light of the receipt of formal Objections to the Application, Members determined that a Public Inquiry should be held to examine the evidence submitted, which was held in the Council Chamber of the Civic Hall between 5 and 13 December 2017. All interested parties were informed of the hearing and a public notice giving details of the venue and date was in the Yorkshire Post and again posted around the perimeter of the Application Land and on the Council's website, in advance of the Inquiry.

### **5.2 Equality and Diversity / Cohesion and Integration**

- 5.2.1 The proposal in this report has no adverse implications for the Council's Policy on Equality and Diversity.

### **5.3 Council policies and City Priorities**

As Commons Registration Authority, the Council is legally obliged to determine town and village green applications impartially and with reference to the statutory provisions and relevant case law.

### **5.4 Resources and value for money**

- 5.4.1 A total fee of £44200.00 was incurred in respect of the entire costs of the Inspector in relation to the hearing itself and all other pre and post hearing matters. No costs were incurred in respect of hiring a venue for the Inquiry as it was held free of charge in the Civic Hall.

### **5.5 Legal Implications, Access to Information and Call In**

- 5.5.1 The determination of an application involves the taking of a quasi-judicial decision which may be the subject of legal challenge. It is therefore essential that the evidence relating to the Application is properly tested prior to the taking of any decision.

5.5.2 Having read the report of the Inspector and with particular reference to his conclusion and recommendation, the Commons Registration Authority consider that he has undertaken a thorough inquiry in relation to all the relevant aspects of both the Application and the Objections thereto. The Inspector has fully considered all the evidence and submissions that have been presented to him and in reaching his conclusions has taken into consideration all the appropriate legal provisions.

## **5.6 Risk Management**

5.6.1 All decisions made by the Council are susceptible to legal challenge, decisions concerning village green applications appear more so in view of the imprecision of certain elements of the statutory test.

## **6 Conclusions**

6.1 Following the testing of evidence at the Public Inquiry the Inspector has concluded that the relevant statutory criteria have not been satisfied in full in relation to the Application Land and that consequently no part of it should be registered as a town or village green.

## **7 Recommendations**

7.1 Members are recommended to accept the report of the Inspector and to determine that the Application to register land at Gledhow Field as a town or village green be rejected; such that no part of the Application Land be added to the Register of Town and Village Greens.

## **8 Background documents<sup>1</sup>**

8.1 The Application Plan.

8.2 The Inspector's Report.

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<sup>1</sup> The background documents listed in this section are available for inspection on request for a period of four years following the date of the relevant meeting. Accordingly this list does not include documents containing exempt or confidential information, or any published works. Requests to inspect any background documents should be submitted to the report author.