

**Report of the City Solicitor**

**Report to the Chief Planning Officer**

**Date: 10th September 2020**

**Subject: APPLICATION TO REGISTER LAND AT SUNNYBANK RECREATION GROUND, SUNNYBANK LANE, THORNBURY, BD3 7DG AS A TOWN OR VILLAGE GREEN UNDER THE PROVISIONS OF SECTION 15(1) OF THE COMMONS ACT 2006. SEEKING OF APPROVAL TO PUBLICISE THE APPLICATION**

Are specific electoral wards affected? If yes, name(s) of ward(s): Calverley & Farsley	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Has consultation been carried out?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Will the decision be open 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**

**1. Main issues**

- On 24 June 2019 an application was received by Leeds City Council, in its role as Commons Registration Authority (“the CRA”), for registration of land known as Sunnybank Fields, Sunnybank Lane, Thornbury, as a Town or Village Green pursuant to Section 15(2) of the Commons Act 2006.
- It is the responsibility of the CRA to process applications to register land as a Town or Village Green. (The final determination of an application is made by the appropriate Plans Panel).
- Under the provisions of Regulation 5 of The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 (2007 SI no 457), it is incumbent upon the CRA to publicise duly made village green applications and serve them on any person who be an owner, lessee, tenant or occupier of any part of the land affected by an application, or to be likely to wish to object to the application.

## **2. Best Council Plan Implications** (click [here](#) for the latest version of the Best Council Plan)

- The Council is exercising its independent statutory function of Commons Registration Authority

## **3. Resource Implications**

The costs associated with the administrative step of publishing the advert are under £700 (excluding VAT).

As the matter proceeds, further updates on resource implications for the Commons Registration Authority will be reported.

## **Recommendations**

- a) In accordance with the Scheme of Delegation - To authorise the publication of the Application for registration of land known as Sunnybank Fields, Sunnybank Lane, Thornbury, as a Town or Village Green, made pursuant to Section 15(2) of the Commons Act 2006.

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

- 1.1 To inform the Chief Planning Officer of an application ('the Application'), submitted to Leeds City Council in its role as CRA) by Mr K Manik, representing Sunnybank & Woodhall Fields Community Action Group) ('the Applicant'), under the provisions of Section 15(1) of the Commons Act 2006, to register land at Sunnybank Lane Recreation Ground, Sunnybank Lane, Thornbury ('the Application Site') as a Town or Village Green.
- 1.2 To request the Chief Planning Officer to consider the information and recommendations contained in this report, and to seek his authority for the CRA to publish the Application the Council as CRA, pursuant to the 2007 Regulations.
- 1.3 The Chief Planning Officer is authorised to take this decision to publish the Application under the Council's Constitution (Council non-executive functions).

## **2. Background information**

- 2.1 The Council is the CRA under the provisions of the Commons Act 2006 ("the Act") and is obliged to amend the statutory register where any unregistered land in the Metropolitan District of Leeds becomes a town or village green within the meaning of the Act.
- 2.2 On 19 June 2019 an application was purportedly submitted to the CRA by the Applicant, for registration of land at Sunnybank Fields, Sunnybank Lane, Thornbury, as a Town or Village Green pursuant to Section 15 of the Commons Act 2006. This application was rejected as it had not been duly made, in that it did not contain the statutory declaration required by Section 3 of The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007.
- 2.3 On 24 June 2019 a replacement Application was submitted to the CRA by the Applicant, for registration of the Application Site, as a Town or Village Green

pursuant to Section 15 of the Commons Act 2006, (*Background document 8.1*). It was accompanied by supporting evidence in the form of witness questionnaires describing use of the land in accordance with the statutory test described at Paragraph 3.19 below; and also by a petition. This Application contained the requisite statutory declaration and met all other statutory formalities, to enable the CRA to class the application as having been duly made.

- 2.4 Under Schedule 1A of the Commons Act 2006 (as inserted), it is incumbent upon commons registration authorities to write to both the Planning Inspectorate ('PINS') and the local planning authority, in order to ascertain whether any active statutory trigger events exist in relation to application land, excluding the right to apply for its registration as a town or village. Where an active trigger event does exist, the right to apply for registration of the land as a green remains excluded unless and until a corresponding statutory terminating event occurs in relation to the land. Trigger and terminating events broadly relate to whether land is identified for potential development in the planning system at the date of the application.
- 2.5 In accordance with the above, the CRA wrote to both PINS and Planning Services - on 27 June 2019. PINS formally responded on 26 July 2019, to the effect that it was currently considering Leeds City Council Core Strategy Review which could affect the Application Site (i.e. an active trigger event excluding the right to apply).
- 2.6 The CRA notified Planning Services of the PINS response for information, given its significance. Planning Services proceeded to investigate the PINS response, as part of the overall process of assessing the planning status of the Application Site, against all the potential statutory trigger events and corresponding terminating events.
- 2.7 On 4 October 2019 Planning Services formally responded to the CRA to the effect that no active trigger events existed in respect of the Application Site. By way of further information, the CRA was advised that the Site is in fact, largely designated as greenspace, within the Adopted Site Allocations Plan, and that the whole of it falls within the Green Belt (*Background document 8.2*).
- 2.8 In view of the conflict between the two responses received, the CRA notified PINS of the content of the response of Planning Services and sought urgent clarification. On 11 October 2019, PINS submitted a revised formal response to the CRA, confirming that its position was now that no active trigger events applied to the Application Site (in line with that of the position of Planning Services). An apology by PINS was made for the inconvenience caused by the original incorrect response originally provided.
- 2.9 Pursuant to this revised response, the CRA was able to notify the Applicant that the right to apply was not excluded, and therefore, that the Application could be formally acknowledged for processing by the CRA. The application reference VG218 has been allotted to the Application
- 2.10 Once it has been established by a commons registration authority that an application has been duly made and that there no active trigger events apply, excluding the right to apply, it is the responsibility of that authority to publicise village green applications and serve them on any person who be an owner, lessee, tenant or occupier of any part of the land affected by the application, or to be likely to wish to object to the application. This is required by Regulation 5 of The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 (2007 SI no 457).

- 2.11 Land Registry Searches undertaken by the CRA revealed that the whole of the Site is in the ownership of City of Bradford Metropolitan District Council. A site visit was undertaken by the CRA on 7 November 2019. An aerial view of the Site and surroundings is included for information (Background document 8.3), whilst photographs taken during the visit are also provided (Background document 8.4).
- 2.12 It was observed during this visit that the Site is of considerable size, bounded by Sunnybank Lane and Bradford Road. Whilst it is lined by trees and vegetation at its extremities, the Site is otherwise generally open, save for a line of trees that run in a northerly direction from its Bradford Road side, that appear to divide the Site. A steep decline was also observed at that edge of the Bradford Road boundary of the Site, nearest to Sunnybank Road junction.
- 2.13 The Site shows clear signs of being maintained in terms of grass being mown. In addition, a number of football posts were visible (Photo 5.4.1), together with what appeared to be a changing room towards its Bradford Road boundary, opposite Moorland Road (Photo 5.4.2).
- 2.14 What appeared to be open formal accesses to the Site were observed off Bradford Road at points opposite i) Daleside Road, (Photo 5.4.3), ii) Peckover Drive, (Photo 5.4.4) iii) Moorland Road, (Photo 5.4.5) and iv) the parade of shops on Bradford Road, to the north of Calverley Moor Avenue (Photo 5.4.6). The Site could also be accessed via a clear gap in the boundary hedge close to the entrance opposite Moorland Road (Photo 5.4.7), and also through a gap at its boundary with Thornbury Barracks, where posts indicate a fence may once have existed (Photo 5.4.8).
- 2.15 At the entrance to the Site opposite Moorland Road, a heavily rusted sign was observed in the name of 'Bradford Metropolitan District Council', stating that horse riding and motor cycling was prohibited (Photo 5.4.9). Looking across the Site from Bradford Road the back of another sign, partially obscured by vegetation, could be seen (Photo 5.4.10). Due to the wet weather conditions on the day it was not possible to access that part of the Site to view the front of the sign.
- 2.16 There is single open entrance to the Site off on Sunnybank Lane (Photo 5.4.11), with an information board to the side East Leeds Country Park to the side, from which it would appear indicating that the 'Green Gateways Trail' runs through part of the Site (Photo 5.4.12).

### **3. Main issues**

- 3.1 In view of the content of the Application and supporting evidence, together with the observations made during the site visit undertaken, the CRA now seeks the approval of Chief Planning Officer for the Application to be publicised pursuant to the 2007 Regulations and served on the Landowner. The Ward Members for Calverley and Farsley and relevant Council officers will also be notified for information
- 3.2 If authority is given advertise the Application, consideration will, thereafter, need to be given to both the Application and to any objections that are received, in terms of the statutory test laid down by Section 15 of the Commons Act 2006, and associated leading case law.
- 3.3 The Application seeks the registration of the Site 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.

- 3.4 Where evidence is disputed, it is common practice for the CRA to appoint a Barrister to act as an independent inspector; who would consider the Application, and ultimately report upon all legal and evidential aspects, and also provide a recommendation as to how the Application should be determined.
- 3.5 Whilst in particular circumstances, it may prove possible for the Inspector to prepare their report on the basis of the written evidence of the parties alone, it is more common for a non-statutory Public Inquiry to first be held, chaired by the Inspector. Both the decision whether to hold such an Inquiry and the ultimate responsibility to determine the application, lie with the appropriate Plans Panel.

#### **4. Additional issue regarding the doctrine of “Statutory Incompatibility”**

- 4.1 This doctrine concerns the legal question of whether it follows that; where the ownership of land by a statutory body for an identified statutory function; the use of that land ‘as of right’ for public recreation is incompatible with that function. If it is not legally possible for public user to have taken place ‘as of right’ in this circumstance, then an essential element statutory test laid down by Section 15 of the Commons Act 2006 above cannot be met. As such an application for registration of land as a town or village land in this circumstance would be bound to fail.
- 4.2 Until very recently, case law has indicated that where land is owned by a statutory body for an identified statutory function, it does not necessarily mean that use as of right for public recreation is incompatible with that function, notwithstanding that the range of uses may be inhibited as a result of that recreational use. The question of whether “statutory incompatibility” will apply in any particular case is both law and fact dependent.
- 4.3 On 11 December 2019, however, the Supreme Court, published its joint judgement in relation to two joint cases, concerning the doctrine of "statutory incompatibility" land owned by NHS Property Services (NHSPS) and Lancashire County Council, respectively. The land was held by these public authorities; in the first case for statutory health and on the second case for education purposes.
- 4.4 In these cases, the Supreme Court had to decide whether this concept of “statutory incompatibility” extended to a) land lying adjacent to a primary school in Lancaster and held by the local authority in its capacity as education authority; and b) land which adjoins Leatherhead Hospital and is owned by NHSPS. By a majority of three to two, it was found that the concept applied in both cases, consequently dismissing applications brought in both cases by local residents.
- 4.5 In giving judgement it was held that ‘It would be a strong thing to find that parliament intended to allow use of land held by a public authority for good public purposes defined in statute to be stymied by the operation of a subsequent general statute such as the 2006 [Commons] Act. There is no indication in that Act, or its predecessor, that it was intended to have such an effect.’
- 4.6 With regard to the Application before the Council as CRA, for registration of land at Sunnybank Fields, Sunnybank Lane, Thornbury as a town or village green, the

Site is in the ownership of City of Bradford Metropolitan District Council according to Land Registry Searches undertaken (as mentioned at paragraph 3.11 above).

- 4.7 These Searches contain no information as to any purpose for which the Site may be held, nor does the CRA possess such information. The applicable statutory regulations, make provision, both, for a landowner to object to an application, and for an applicant to submit representations in relation to any grounds of objection for consideration.
- 4.8 In terms of the current Application, it is a matter for the Landowner to decide whether to object to the Application and if so, whether justification exists to raise the doctrine of "statutory incompatibility" as a ground of objection. Were it to do so, the Applicant would have an opportunity to respond as to whether he considers it relevant to his Application. It is not considered a matter for the CRA to pre-judge whether the doctrine may be relevant to the Sunnybank Site.
- 4.9 Under the Council's Constitution, Members of the relevant Plans Panel have responsibility for the determination of village green applications. Once the process outlined at paragraph 4.8 above has taken place, the CRA would then be in a position to seek a decision as to the procedure that should be followed in order to progress or resolve the Application.
- 4.10 Notwithstanding the recent Supreme Court judgement, it is, therefore, considered to be a reasonable and proper course of action for the Council, as CRA, to proceed to advertise the duly made Application, and to serve a copy on the Landowner.

## **5. Corporate considerations**

### **5.1 Consultation and engagement**

- 5.1.1 The process of publication is a statutory process under the aforementioned Regulations. This will permit those parties to respond to the application. Notice will also be provided to the Director of City Development and local ward councillors.

### **5.2 Equality and diversity / cohesion and integration**

- 5.2.1 There are no implications relating to Equality and Diversity for the recommendations set out in this report.

### **5.3 Council policies and the Best Council Plan**

- 5.3.1 The Council is exercising its independent statutory function of Commons Registration Authority

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

- 5.4.1 The costs associated with the administrative step of publishing the advert are under £700 (excluding VAT).
- 5.4.2 As the matter proceeds, further updates on resource implications for the Commons Registration Authority will be reported.

## **5.5 Legal implications, access to information, and call-in**

- 5.5.1 The legal comments and procedure to be followed are set out in the body of this report.
- 5.5.2 The decision to publish is not subject to call in as it follows a statutory process.

## **5.6 Risk management**

- 5.6.1 The Council is carrying out a statutory function. The recommendations herein contained is the first step to publish the application. As the matter proceed further reports on any relevant risk management will be published.

## **6. Conclusions**

- 6.1 It is the responsibility of the CRA to process applications to register land as a Town or Village Green. (The final determination of an application is made by the appropriate Plans Panel).
- 6.2 Under the provisions of Regulation 5 of The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 (2007 SI no 457), it is incumbent upon the CRA to publicise duly made village green applications and serve them on any person who be an owner, lessee, tenant or occupier of any part of the land affected by an application, or to be likely to wish to object to the application.

## **7. Recommendations**

- 7.1 In accordance with the Scheme of Delegation - To authorise the publication of the Application for registration of land known as Sunnybank Fields, Sunnybank Lane, Thornbury, as a Town or Village Green, made pursuant to Section 15(2) of the Commons Act 2006.

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

- 8.1 None.

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<sup>1</sup> The background documents listed in this section are available to download from the council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.