
Meeting	Planning and Environment Committee
Date	18 December 2013
Subject	Application to Register Land known as Finchley Garden Village, Upper and Lower Greens, Village Road, N3 1TL as a Town or Village Green.
Report of	Assistant Director - Development Management and Building Control
Summary	This report contains the result of officers' investigations into the relevant facts and legal issues in deciding whether or not to register the subject land as a Town or Village Green under the Commons Act 2006.

Officer Contributors	Lesley Feldman, Hendon Area Planning Manager
Status (public or exempt)	Public (with separate exempt report)
Wards Affected	Finchley Church End
Key Decision	Not applicable
Reason for urgency / exemption from call-in	Not applicable
Function of	Council
Enclosures	Appendix A - Plan showing the subject land
Contact for Further Information:	Lesley Feldman Hendon Area Planning Manager, 020 8359 4974.

1. RECOMMENDATIONS

1.1 That the application for registration as a Town or Village Green under Section 15(2) of the Commons Act 2006 in respect of the land known as Finchley Garden Village, Upper and Lower Greens, Village Road, N3 1TL, as shown on the site location plan 2 is either;

- **REFUSED** as the application cannot meet the requirements of s15(3) of the Act as the applicant's use has been 'by right' and not 'as of right' and it cannot be established that the use of the land by the applicants has been without permission of the landowner which in this case is LB Barnet; or,
- **REFERRED** to a non-statutory public inquiry for an independent Inspector to determine the Village Green status of the land

1.2 That the legal advice contained in the exempt report is noted.

Members should note the following advice in the relevant sections of the report as set out below:

2. RELEVANT PREVIOUS DECISIONS

2.1 None

3. CORPORATE POLICIES AND POLICY CONSIDERATIONS

3.1 The Council is obliged by law to determine applications to register land as a village green.

4. RISK MANAGEMENT ISSUES

4.1 Such matters should not form part of the Committee's considerations.

5. EQUALITIES AND DIVERSITY ISSUES

Equality Duties and the Equality Act 2010

The Equality Act 2010 (the Act) came into force in April 2011. The general duty on public bodies is set out in Section 149 of the Act. The duty requires the Council to pay regard to the need to eliminate discrimination and promote equality with regard to those with protected characteristics such as race, disability, and gender including gender reassignment, religion or belief, sex, pregnancy or maternity and foster good relations between different groups when discharging its functions.

Equality duties require Authorities to demonstrate that any decision it makes is reached in a fair, transparent and accountable way, considering the needs and the rights of different members of the community. This is achieved through assessing the impact that changes to policies, procedures and practices could have on different equality groups. It is an opportunity to ensure better decisions are made based on robust evidence.

Section 149 of the Act states that:

- (1) A public authority must, in the exercise of its functions, have due regard to the need to-
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- (2) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to-
 - (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
 - (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different to the needs of persons who do not share it;
 - (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- (3) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular steps to take account of disabled persons' disabilities.
- (4) Having due regard to the need to foster good relations between persons who share relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to-
 - (a) tackle prejudice, and
 - (b) promote understanding
- (5) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.
- (6) The relevant protected characteristics are-
 - age;
 - disability
 - gender reassignment
 - pregnancy and maternity
 - race
 - religion or belief
 - sex
 - sexual orientation

The proposals would not result in any physical alterations to the site. It is not considered that any of the protected groups listed above would be affected by the proposal.

S149 (5) of the Act requires that the Council have due regard to the need to:-

“(5) having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:-

- (a) Tackle prejudice and
- (b) Promote understanding”

The proposals would not result in any physical alterations to or change of use of the site. It is not considered that there would be any change in the type of relation of any protected groups listed above who would remain unaffected by the proposals.

6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)

6.1 None in the context of this report.

7. LEGAL ISSUES

7.1 S.15(1) of the 2006 Act provides that any person may apply to a commons registration authority to register land as a town or village green, where one of subsections (2), (3) or (4) applies.

7.2 This application is made under s.15 (2), which states:

(2) This subsection applies where—

(a) 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**

(b) they continue to do so at the time of the application. (*Emphasis added*)

7.3 “A significant number”

7.4 There is no statutory definition of a “significant number” of local inhabitants . It does not mean considerable or substantial. What matters is that the number of people using the land in question has to be significant to indicate that their use of the their land signifies that it is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers. It is considered that the application would meet this criteria.

7.5 “of any locality”

7.6 A “locality” cannot be created by drawing a line on a map. A “locality” must be a division of the county known to the law, such as a borough, parish or manor.

In this application the locality identified in the application is the 'Finchley Garden Village Conservation Area'. There is case law, namely 'Paddico Ltd v Kirklees MC & Ors' [2012] EWCA 250 that a conservation area is not a sufficiently defined locality to sustain an application for registration. In that case it was found that a conservation area, while being a locality with legally significant boundaries, existed only for a specific statutory purpose and without boundaries defined by reference to its characteristics as an area "of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance" rather than by reference to any community of interest on the part of its inhabitants.

The Council informed the applicant on 28 November 2013, that they would be willing to allow him further time to amend the application, as this may be simply an error. He was provided a further seven days to consider whether he wished to amend his application in relation to locality or neighbourhood. At the time of writing the report the Council has not received any further representations from the applicant in respect of the same. The applicant was also informed about a more fundamental problem in respect of the 'as of right' aspect of the application, which is dealt in detail below:

7.7 "or of any neighbourhood within a locality"

7.8 A neighbourhood need not be a recognised administrative unit. A housing estate can be a neighbourhood.

7.9 "As of right during the relevant period"

7.10 To be "as of right" the use must have been without force, without secrecy and without permission. There is open access to the land and the use has not taken place secretly.

7.11 In this case, there is clear evidence that the land was bought by the Borough of Finchley on 4th June 1941 from the Finchley Co-partnership Society Limited. There is a reference in a minute of the Parks and Open Spaces Committee on 29th November 1938 which records that the Finchley Co-partnership Society Ltd is willing to sell the land to the Borough of Finchley "for the use of the public". There is a restriction registered on the title as follows: "RESTRICTION registered on 24th July 1941 – Except under an Order of the Registrar no disposition is to be registered unless authorised by the Public Health Acts 1875 to 1936 or some other Act or Authority".

7.12 The most significant evidence is that found in the Bye-Laws of LB Barnet relating to Pleasure Grounds 1978. These Bye-Laws are explicitly made under s164 of the Public Health Act 1875 and s15 of the Open Spaces Act 1906. In the First Schedule the land is identified as "Village green, Village Road" and is subject to Bye-Laws.

7.13 It is clear that in 1978 with the adoption of the Bye-Laws, whatever the statutory purpose the land had been held for previously, the land became subject to the Bye-Laws and therefore at that point the land was appropriated for that statutory purpose. For almost the whole of the period of 1988-2008 the land has been held by LB Barnet for the purpose of public recreational use under the Public Health Act and Open Space Act. This as a result confirms

that the public were permitted by the Council to use the land for recreational activities for the period in question. Therefore, the use of the land has been 'by right' and not 'as of right' and the application cannot fulfil the requirements of s15(3) of the Commons Act 2006.

7.14 On 28 November 2013, the applicant was also informed that the Council was minded to refuse the application. He was provided a link to the bye-laws on the same date to allow him an opportunity to review the material upon which the Council's considerations have been based. The applicant was provided this information in order to view and respond to the results of the Council's investigations and to possibly allow him the possibility to conduct his own search of archive material. He was provided the opportunity to make further submissions if he thought, for any reason, that the Council's conclusion about 'user by right' is incorrect. He was informed that his responses would then be put for the attention of the committee who will then take his view into consideration before making a final decision. He was requested that he provide his responses by 12 December 2013. The applicant was provided all the remaining evidence, including committee reports and land documents relating to the land on 5 December 2013.

7.15 There are a number of further legal issues which are dealt with in the exempt report.

8. CONSTITUTIONAL POWERS (Relevant section from the Constitution, Key/Non-Key Decision)

8.1 Councils Constitution, Responsibility for Functions, the Planning and Environment Committee Terms of Reference include "Commons registration and town and village greens".

9. BACKGROUND INFORMATION

9.1 The site comprises open space is located on either side of Village Road bounded to the north and east by numbers 31 to 50 Village Road and to the south and west by numbers 9 to 26 Village Road in the Finchley Church End ward. It comprises 2 triangles of land with the road passing through it from north-west to south-east.

9.2 The application is made by the Finchley Garden Village Residents' Association ('the Applicants').

9.3 The application was received on 05 July 2010. It was accompanied by a statutory declaration in support, relevant maps and evidence forms.

10. ANALYSIS OF APPLICATIONS AND REPRESENTATIONS

10.1 The application was advertised by way of press notice, site notice and letters sent to 245 addresses and the Finchley Society and Friends of Windsor Open Space.

10.2 Three representations in support of the application to register the Land as a village green were received. Those representations can be summarised as follows:

- The green was an important part of childhood and provided a safe open space to play
- The green is a locus for community events
- Has been used by residents and non-residents
- It has been used as a village green for 102 years
- Organised events have been set-up and arranged by the residents

10.3 An objection was originally received from highway officers. However this related to the inclusion of the public highway within the application site. This has subsequently been omitted and the plan amended accordingly.

11. LIST OF BACKGROUND PAPERS

11.1 Plan showing the subject land.

Cleared by Finance (Officer's initials)	JH
Cleared by Legal (Officer's initials)	PR