
Meeting	Planning and Environment Committee
Date	13 February 2013
Subject	Application to Register Land to the West of Friern Barnet Library, N11 as a Town or Village Green.
Report of	Acting Assistant Director of Planning and Development Management
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	Fabien Gaudin, Finchley and Golders Green Area Planning Manager
Status (public or exempt)	Public (with separate exempt report)
Wards Affected	Coppetts
Key Decision	Not applicable
Reason for urgency / exemption from call-in	Not applicable
Function of	Council
Enclosures	Plan showing the subject land
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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 to the West of Friern Barnet Library, as shown on the site location plan 2 is 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.

2. RELEVANT PREVIOUS DECISIONS

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

3. CORPORATE POLICIES AND POLICY CONSIDERATIONS

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

4. RISK MANAGEMENT ISSUES

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

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.

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.

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. Acquiescence is not the same as giving permission and on current case law it cannot be said that permission has been given. The conclusion must be that the use has been as of right.

7.11 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 Council Constitution Part 3, paragraph 2, Planning and Environment Committee Function 3, Commons registration and town and village greens.

9. BACKGROUND INFORMATION

9.1 The site is located to the west of Friern Barnet Library. It fronts Friern Barnet Road in the Coppetts ward. It is an open area of land of approximately 575 m².

9.2 The application is jointly made by the Friern Village Residents' Association and the Friern Barnet & Whetstone Residents' Association ('the Applicants').

9.3 The application was received on 28 November 2011. 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 880 addresses.

10.2 Five representations (including two petitions) in support of the application to register the Land as a village green were received. Those representations can be summarised as follows:

- Not enough communal places for the public in Barnet
- Important for both the young, elderly and vulnerable people who have nowhere to sit in the day
- Space already used as informal Village Green
- Space already used and enjoyed for communal events
- Great achievement for community if application successful

10.3 An objection was also received from the London Borough of Barnet in its capacity as landowner ('the Landowner'). The Landowner objected to the registration of the Land on the basis that, having been acquired for the purposes of the Public Health Act 1925 (as evidenced in the deeds relating to the Land), the user by the public was 'by right' rather than 'as of right'. The Landowner argues that the consequence of this is that the use of the land cannot satisfy the statutory tests for registration as a village green, and the application must fail.

11. LIST OF BACKGROUND PAPERS

11.1 Plan showing the subject land

Site Plan - Land to the West of Friern Barnet Library, N11 as a Town or Village Green.

