
Meeting	Planning and Environment Committee
Date	13 February 2014
Subject	Application to Register Land to the West of Friern Barnet Library, N11 as a Town or Village Green.
Report of	Assistant Director of Planning and Development Management
Summary	This report contains the results of the independent public inquiry held into the relevant facts and legal issues in relation to the current application to register the subject land as a Town or Village Green under the Commons Registration Act 2006.

Officer Contributors	Fabien Gaudin, Finchley and Golders Green Area Planning Manager
Status (public or exempt)	Public
Wards Affected	Coppetts
Key Decision	Not applicable
Reason for urgency / exemption from call-in	Not Applicable
Function of	Council
Enclosures	Appendix 1 - 3: Inspector's report and recommendation to the Registration Authority – London Borough of Barnet – 10 th January 2014 Appendix 4: Application Site Plan
Contact for Further Information:	Fabien Gaudin, Finchley and Golders Green Area Planning Manager, 020 8359 4258.

1. RECOMMENDATIONS

- 1.1 That the application for registration as a Town or Village Green under Section 15(2) of the Commons Act 2006 be rejected in respect of the land known as 'land to the West of Friern Barnet Library' on the basis that the qualifying criteria laid down in the Act for a new Town or Village Green are not satisfied.**
- 1.2 That the applicant and landowner be informed of this decision in writing.**

2. RELEVANT PREVIOUS DECISIONS

- 2.1 On 13 February 2013, the Planning and Environment Committee decided that the application for registration as a Town or Village Green under Section 15(2) of the Commons Act 2006 be referred to an independent inspector to conduct a non-statutory public inquiry.

3. CORPORATE POLICIES AND POLICY CONSIDERATIONS

- 3.1 The Council as the Registration Authority is obliged by law to determine applications to register land as a Town or Village Green.

4. RISK MANAGEMENT ISSUES

- 4.1 Case law has firmly established that Registration Authorities should hold public inquiries to examine the evidence when a Town or Village green application is contested as is the case in this instance.
- 4.2 The application is likely to be challenged in the courts should a decision go against the Inspectors recommendation. The public inquiry held into the case concluded that the qualifying criteria laid down in Section 15 of the Commons Act 2006 for a new green in the case of the application site are not satisfied. The Council would therefore be likely to have to bear the full costs.

5. EQUALITIES AND DIVERSITY ISSUES

5.1 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 This application is to be considered under the Commons Act 2006. The application was deemed to be received in whole by the Registration Authority on 28 November 2011.

7.2 Section 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.

7.3 Section 15(2) applies where:

(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.

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 On 13 February 2013, the Planning and Environment Committee decided that the application for registration as a Town or Village Green under Section 15 of the Commons Act 2006 be referred to an independent Inspector to conduct a non-statutory public inquiry.
- 9.3 It was decided by the Inspector following representations by both the Objector and the Applicant that the non-statutory public inquiry would only concentrate on determining whether use of the application land had been 'as of right.' It was agreed that this would be a more resourceful use of time and costs in this particular application.
- 9.4 The public inquiry took place on 28th October 2013 at Hendon Town Hall and representations were made by Paul Wilmshurst for the applicants and Zack Simons for the Council.

10. INSPECTOR'S FINDINGS

- 10.1 The key conclusions are set out below.
- 10.2 In light of records detailed in the Inspector's report (available in Appendix 1), his view is that it had been decided to hold the application land site for the purposes of public recreation by 1950.
- 10.3 The Inspector has detailed a clear history of decision-making over a number of years relating to the intended use of the land as an ornamental garden which was made available, without restriction, for public use.
- 10.4 The decisions detailed in the Inspector's report resulted in the outlay of expenditure on the improvement of the land which was set out, used and maintained for public recreation over the years.
- 10.5 The Inspector concludes that these factors appear to have given rise to a strong evidential basis with the result that public recreational user since at least 1950 has been 'by right' rather than 'as of right'. In the result, the application to register fails on this ground.

11. LIST OF BACKGROUND PAPERS

- 11.1 A copy of the Inspector's full report following the conclusion of the inquiry is attached as Appendix 1.
- 11.2 The application site is shown edged in red in Appendix 4

Cleared by Finance (Officer's initials)	Not Applicable
Cleared by Legal (Officer's initials)	PAR