
Decision Maker: DEVELOPMENT CONTROL COMMITTEE

Date: Thursday 22 November 2012

Decision Type: Non Urgent Non-Executive Non-Key

Title: APPLICATION TO REGISTER LAND BEHIND 94-98 AND
126 HIGH STREET, BECKENHAM AS A TOWN OR VILLAGE
GREEN

Contact Officer: Greg Ullman, Team Leader: Planning, Litigation and Licensing
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Chief Officer: Mark Hume – Director of Renewal and Recreation

Ward: Copers Cope

1. Reason for report

- 1.1 The Council is the Registration Authority for town and village greens within its area. Section 15 of the Commons Act 2006 provides that land can become a new green if a significant number of the inhabitants of any locality or any neighbourhood within a locality have indulged as of right in lawful sports and past-times on the land for a period of at least 20 years. They must continue to do so at the time of the application or meet the alternative qualifying period specified in section 15. The Council on 3rd November 2011 received an application to register land behind 94-98 and 126 High Street, Beckenham on the basis that it has become a town green. After completion of the statutory requirements, the Council held a non-statutory Public Inquiry on 24th and 25th September 2012 to hear the application and objections to the application. The Inquiry was held by Ms Annabel Graham Paul who is a barrister with expertise in this area. On 31st October 2012, she reported to the Council. The purpose of the report is to consider the application for registration and to decide whether or not to register land as a town green.

2. **RECOMMENDATION(S)**

1. To accept the report dated 31st October 2012 prepared by Ms Annabel Graham Paul into the application to register land behind 94-98 and 126 High Street, Beckenham as a town or village green.
2. To decline to register the land both in whole and in part for the reasons set out in Ms Annabel Graham Paul's report dated 31st October 2012.

Corporate Policy

1. Policy Status: Existing Policy
 2. BBB Priority: Quality Environment and vibrant and thriving town centre
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Financial

1. Cost of proposal: Not Applicable
 2. Ongoing costs: Not Applicable
 3. Budget head/performance centre: Not Applicable
 4. Total current budget for this head: Not Applicable
 5. Source of funding: Not Applicable
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Staff

1. Number of staff (current and additional): Not Applicable
 2. If from existing staff resources, number of staff hours: From existing staff resources
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Legal

1. Legal Requirement: Statutory Requirement
 2. Call-in: Not Applicable. This report does not involve an Executive decision.
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Not Applicable
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable.
2. Summary of Ward Councillors' comments: Ward Councillors gave evidence to the hearing before Ms Graham Paul.

3. COMMENTARY

- 3.1 The Council is the Registration Authority for town and village greens within its area. Section 15 of the Commons Act 2006 provides that land can become a new green if a significant number of the inhabitants of any locality or any neighbourhood within a locality have indulged as of right in lawful sports and past-times on the land for a period of at least 20 years. They must continue to do so at the time of the application or meet the alternative qualifying period specified in section 15. The Council on 3rd November 2011 received an application to register land behind 94-98 and 126 High Street, Beckenham as a town green.
- 3.2 After correspondence from the Council was considered, the Central Beckenham Residents' Association asked that the application be made in the name of the Central Beckenham Residents' Trust. The Council advertised the application in accordance with the statutory requirements and as it received objections, gave the applicants the opportunity to comment on those objections. The Council held a non-statutory Public Inquiry on 24th and 25th September 2012 to hear the application and objections to the application. The Inquiry was held by Ms Annabel Graham Paul who is a barrister with expertise in this area. On 31st October 2012, she reported to the Council.
- 3.3 A bundle of documents comprising the evidence presented in support of the application, both with the application and that which was subsequently submitted of the hearing on 24th and 25th September, has been placed in the members' room. The bundle also contains the documents submitted in objection to the application. Ms Annabel Graham Paul's report also contains a summary of part of the evidence given at the Inquiry and in the written documents.
- 3.4 Ms Graham Paul's findings of fact are contained in paragraphs 117 to 148 of her report. Her application of the facts to the law surrounding town greens is contained in paragraphs 149 to 190.
- 3.5 Ms Graham Paul's conclusions (in paragraph 191) are:
1. That the application should be refused in whole on the basis that the use of the land for lawful sports and past-times has not been of such an amount as would reasonably be regarded as the assertion of a public right.
 2. That the application should be refused in whole on the basis that there has not been use of the land for lawful sports and past-times by a "significant number" of local inhabitants.
 3. Further, in relation to the part of the application land behind the Heras fencing, the applicant has failed to prove that the user of the rear of part of the site was "as of right" for the whole 20 year period on the basis that it was not without force.
- 3.6 Ms Graham Paul's recommendations are contained in the paragraph 192. She reminded members that the decision on the application is for the Council, which must exercise its own discretion, save that it must not take into account issues relating to any balance of advantage or disadvantage flowing from registration or non-registration of the land as a town or village green. In reaching its decision, members can properly have regard to her overall conclusions and reasoning as well as any advice from officers. Subject to that advice and any late representations received, the application should be refused in respect of the entire site for the reasons set out in her report.
- 3.7 The advice from Council Officers is that the application should be refused for the reasons given by Ms Graham Paul.

4. LEGAL CONSIDERATIONS

- 4.1 If Members accept the report the Council will decline to register the land as a Town Green for the reasons given by Ms Graham Paul. If Members do not accept Ms Graham Paul's report they will need to state why and make a decision whether or not to register the land. Members would need to be satisfied that their reasons are robust as the owners of the land in that eventuality may seek a judicial review of any decision to register the land on the grounds that Ms Graham Paul gave through and proper consideration of the application and her findings are correct.

Non-Applicable Sections:	Policy, financial and personnel implications.
Background Documents: (Access via Contact Officer)	