

Decision Maker: **DEVELOPMENT CONTROL COMMITTEE**

Date: **Tuesday 29 January 2013**

Decision Type: Non-Urgent Non-Executive Non-Key

Title: **ITALIAN GARDENS AND GLADES TERRACE APPLICATION
FOR REGISTRATION AS TOWN OR VILLAGE GREEN**

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Chief Officer: Director of Resources

Ward: Bromley Town

1. Reason for report

To update committee in relation to the submissions arising from the application for registration of the site as a Town or Village Green, report on specialist legal advice received from Counsel, and agree on the next steps required to process the application.

2. **RECOMMENDATION(S)**

That a Public Inquiry be held to recommend whether or not the site be registered as a Town or Village Green.

Corporate Policy

1. Policy Status: Not Applicable:
 2. BBB Priority: Quality Environment Vibrant, Thriving Town Centres:
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Financial

1. Cost of proposal: Estimated to be under £40,000
 2. Ongoing costs: Non-Recurring Cost:
 3. Budget head/performance centre: 420030/2208
 4. Total current budget for this head: £n/a
 5. Source of funding: Provision set aside for Queens Gardens Development within Legal Services revenue budget
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Staff

1. Number of staff (current and additional): currently and until work completed, one legal officer to advise Council in capacity as Registration Authority and one to advise Council in capacity as land owner.
 2. If from existing staff resources, number of staff hours: Difficult to estimate at this stage
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Legal

1. Legal Requirement: Statutory Requirement:
 2. Call-in: Not Applicable:
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Difficult to project numbers
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? No
2. Summary of Ward Councillors comments:

3. COMMENTARY

3.1 The site comprises 2 areas adjacent to each other, namely the entrance terrace leading to The Glades shopping centre built on top of part of the car park of that centre, and secondly, the Italian Garden, which leads to Queens Gardens.

3.2 An application to have the site registered as a Town or Village Green (“The Application”), made on behalf of Bromley Civic Society and Friends of Bromley Town Parks and Gardens in terms of Section 15 of the Commons Act 2006 (“The Act”) was received by the Council on 14th February 2012.

3.3 The Council is the owner of the site and Aviva Life and Pensions Ltd hold a long lease, whilst CSC Bromley Limited are their tenants in possession. When the Council acquired the site in 1986 using powers under the Town & Country Planning Act, it was acquired for the purpose of facilitating the development of The Glades. It has never been appropriated to any other purpose and therefore continues to be held for planning purposes.

3.4 By way of general background, prior to the receipt of The Application, a planning application for extending the development of The Glades shopping centre had been received and was due to be heard by Development Control Committee on 14th February 2012. This proposal involved the provision of built development over the site covered by The Application. The planning application was refused by the Committee, as was a subsequent planning application for an amended scheme.

3.5 The Council is the Registration Authority in Terms of The Act, which means that it has the ultimate responsibility for deciding whether or not the application should succeed.

3.6 For The Application to succeed, The Act requires the applicant to should be demonstrate that land which is capable of being registered, and on which 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 prior to the application.

3.7 In terms of The Act, the Council as Registration Authority is required to publicise the Application and to invite objections. This was done and objections were received from the Council in its capacity as landowner, Aviva Life and Pensions Ltd and CSC Bromley Ltd. These objections were notified to the Applicant, who responded with further observations. All relevant documents may be inspected on file by the Committee.

In summary, the objections were as follows:

3.7.1. There has not been a use for lawful sports and pastimes,

3.7.2. The use has not taken place for the requisite period of 20 years prior to the application,

3.7.3. The use has not been by a significant number of the inhabitants of a qualifying locality,

3.7.4. The use has not been “as of right”, and

3.7.5. The site is not land which is capable of being registered as a Town or Village Green, as it is held for planning purposes.

3.8 Whilst the Act provides that the Council as Registration Authority carries responsibility for the making of the decision as to whether The Application should succeed, the courts have supported the view that a realistic and transparent way for complex or disputed applications to be dealt with is to hold a public inquiry into the competing claims. Such an Inquiry would be held

before a barrister or similarly qualified person, who would then make a recommendation to the Council as to whether the application should succeed.

3.9 Given the position of the Council as Landowner and objector, and given that there is an argument that objections 3, 4 and 5 may be considered as preliminary points which, if adequately supported might suggest that the application could be rejected without recourse to further investigation, the advice of a barrister specialising in this field of law was sought.

3.10 The advice of that barrister is held on file and is not a public document, but may be inspected by members.

3.11 In essence, the advice is that these objections are not sufficient to reject the application without further consideration of evidence. The barrister was subsequently asked to confirm the advice in relation to point 5 in particular, and, in discussion, was robust in his view that the fact of the site being held for planning purposes was not necessarily at odds with Town or Village Green status. This is supported by case law (in particular *BDW Trading (t/a Barratt Homes) v Spooner* in 2011) which states that land may be registered as a Town or Village Green notwithstanding that development may take place there.

3.12 The strong recommendation in the advice is that a Public Inquiry should take place where evidence in support of the opposing claims may be given and considered by an independent expert, who would then make recommendations to the Council as to the merits of the Application.

4. FINANCIAL IMPLICATIONS

Cost of holding a public Inquiry

5. LEGAL IMPLICATIONS

Covered in the body of the report

6. PERSONNEL IMPLICATIONS

2 legal officers to advise the Council in different capacities.

Non-Applicable Sections:	Policy Implications
Background Documents: (Access via Contact Officer)	The application, objections and response to objections may all be viewed on file. In addition, the legal opinion which was obtained from the specialist barrister may also be viewed by committee members, but this is a confidential document.