

Decision Maker: DEVELOPMENT CONTROL COMMITTEE

Date: Thursday 12 September 2013

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

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

Contact Officer: Marion Paine, Lawyer
Tel: 020 8461 7647 E-mail: Marion.Paine@bromley.gov.uk

Chief Officer: Marc Hume - Director of Renewal & Recreation

Ward: Bromley Town;

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 pastimes 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 14th February 2012 received an application to register land comprising The Italian Garden and Glades Terrace, Kentish Way, Bromley 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 29th – 31st May 2013 to hear the application and objections to the application. The Inquiry was held by Mr Paul Wilmshurst who is a barrister with expertise in this area. On 31st July 2013, he 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 July 2013 prepared by Mr Paul Wilmshurst into the application to register the land comprising The Italian Garden and Glades Terrace, Kentish Way, Bromley as a Town or Village Green, and
2. To decline to register the land in whole or in part for the reasons set out in Mr Paul Wilmshurst's report dated 31st July 2013.

Corporate Policy

1. Policy Status: Existing Policy:
 2. BBB Priority: Quality Environment Vibrant, Thriving Town Centres:
-

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
-

Staff

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

Legal

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

Customer Impact

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

Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments:

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 pastimes 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 14th February 2012 received an application to register land behind The Italian Garden and Glades Terrace, Kentish Way, Bromley as a Town Green.

3.2 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 29th – 31st May 2013 to hear the application and objections to the application. The Inquiry was held by Mr Paul Wilmshurst who is a barrister with expertise in this area. On 31st July 2013, he reported to the Council.

3.3 Bundles of documents comprising the evidence presented in support of and in objection to the application, were subsequently submitted in advance of the hearing, and have been placed in the members' room. Also placed with these bundles is a copy of the report of Mr Paul Wilmshurst, which contains a detailed examination of the evidence given at the Inquiry and in the written documents.

3.4 The report of Mr Paul Wilmshurst also contains a detailed examination of the law applicable to those facts at paragraphs 173 – 216. His summary recommendation is as follows:

1. *In summary I recommend that the application in respect of the Terrace should be rejected for the following reasons:*
 - *The Terrace is not "land" for the purpose of s.15 of the Commons Act 2006*
 - *Use of the Terrace has not been as of right.*
 - *A significant number of the inhabitants of the London Borough of Bromley have not used for lawful sports and pastimes.*
 - *There has not been "20 years" qualifying use.*
2. *I also recommend that the application in respect of the Italian Gardens should be rejected for the following reasons:*
 - *There has not been "20 years" qualifying use.*
 - *Only part of the Italian Gardens has been used for recreation (the hard-standing area should be severed in any event).*

3.5 The advice from Council Officers is that the application should be refused for the reasons given by Mr Paul Wilmshurst.

4. LEGAL IMPLICATIONS

4.1 If Members accept the report the Council will decline to register the land as a Town Green for the reasons given by Mr Paul Wilmshurst. If Members do not accept the 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 Mr Paul Wilmshurst 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)	