

**Decision Maker:** Executive

**Date:** 10th September 2014

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

**Title:** LAND AT UPPER ELMERS END ROAD AND CROYDON ROAD - APPLICATION FOR REGISTRATION AS A TOWN OR VILLAGE GREEN

**Contact Officer:** Marion Paine, Lawyer  
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**Chief Officer:** Director of Corporate Services

**Ward:** Kelsey and Eden Park;

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1. Reason for report

The Development Control Committee of 9<sup>th</sup> July 2014 considered a report relating to the third party application to register the Land as a new Town or Village Green. The report, which is produced here as Annex A, recommended that, as the application failed to meet the legal criteria for a third party registration, it should be rejected. The committee were minded to register the land and advised that this could be achieved by way of an application for voluntary registration by the Council in its capacity as owner of the Land.. This report is for the Executive as the relevant decision maker to consider whether to follow this course of action.

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2. **RECOMMENDATION(S)**

The decision of the Executive as landowner is sought on whether it is minded to have the Land registered as a new Town or Village Green or not. If it is agreed to seek voluntary registration the Director of Regeneration and Transformation is given delegated authority to submit an application for voluntary registration to the Council as Registration Authority.

### Corporate Policy

1. Policy Status: Not Applicable:
  2. BBB Priority: Quality Environment:
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### Financial

1. Cost of proposal: If the registration takes place, it is not anticipated that this will involve any cost additional to the routine maintenance currently being carried out.
  2. Ongoing costs as 1. above
  3. Budget head/performance centre:
  4. Total current budget for this head: £
  5. Source of funding:
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### Staff

1. Number of staff (current and additional): No additional staff required
  2. If from existing staff resources, number of staff hours: it will be necessary for an officer to complete and submit the application in the event of it being decided to proceed to registration, and another officer will be required to process that application and report to Development Control Committee:
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### Legal

1. Legal Requirement:: The Council as Registration Authority has a statutory duty to process any application made by the Council as Landowner.
  2. Call-in: Applicable
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### Customer Impact

1. Estimated number of users/beneficiaries (current and projected) Residents of the area in which the Land is located – difficult to estimate on current information.:
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### Ward Councillor Views

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

### 3. COMMENTARY

3.1 Reference is made to Annex A, which sets out the detailed legal implications and considerations which are to be applied when considering an application by any party other than the owner of land for the registration of that land as a new Town or Village Green.

3.2 An application was received by the Council, in its capacity as Registration Authority for the purposes of the Commons Act 2006, from Marie Pender, seeking the registration of the Land as a new Town or Village Green.

3.3 As Registration Authority, the Council processed this application, publicised it and sought comments within a consultation period in excess of the minimum required in the legislation. The Applicant was also asked if she wished to submit supporting evidence in excess of that provided with the application.

3.4 A small number of responses were received in the consultation period, including a response from the Council as landowner. As landowner, it was stated that the Council did not consider that the land fulfilled any of the legal criteria for the registration to proceed, and that it was held and maintained as highway land. As such the Council allows members of the public to use the Land *by right* as opposed to *“as of right”* stipulated by the legislation, which means that it fails to fulfil one of the major legal tests. A summary of the responses, including the Applicant’s reply to the proposed recommendation in the report the Development Control Committee are contained in Annex A.

3.5 The Report to Development Control Committee recommended that the application be refused as it clearly failed to meet any of the legal criteria for registration. Members are requested to read Annex A to familiarise themselves with the background and legal considerations, including the importance of the distinction between use *“as of right”* and *“by right”*.

3.6 When the Development Control Committee considered the report to them, they were minded, despite the failure of the application to meet the legal criteria, to register the Land. That committee was advised that It was possible for a land owner on a voluntary basis to dedicate land as a Town Green but this would be a separate matter for the Executive to deliberate upon

3.7 The Commons Act 2006 provides at S15 (8) that *“The owner of any land may apply to the commons registration authority to register the land as a town or village green”*. If such an application is made, then the Council as Registration Authority must grant the application if it is satisfied that the applicant is the owner of the land and that any consents required (eg charge holders, leaseholders) have been obtained. Such an application does not need to satisfy any of the other tests required when a non-owner makes such an application.

3.8 The Draft Minute of the Development Control Committee is produced here as Annex B in order that members may be aware of the reason for their requesting this report.

3.9 The application for registration of the Land as a new town or village green which was submitted by Marie Pender fails to satisfy the legal tests required for the registration to proceed. If however, the Council as land owner wishes the registration to take place, then the way to proceed with this should be by making an application for voluntary registration.

### 4. LEGAL IMPLICATIONS

4.1 Fully addressed in the body of the report and in Annex A.

<b>Non-Applicable Sections:</b>	Policy/Financial/Personnel
Background Documents: (Access via Contact Officer)	