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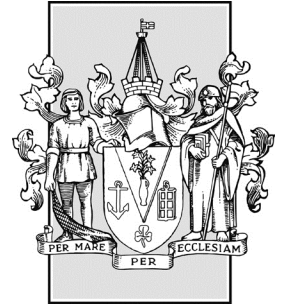
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Date: 24 March 2016

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Dear Councillor

GENERAL PURPOSES COMMITTEE - WEDNESDAY, 23RD MARCH, 2016

Please find enclosed, for consideration at the meeting of the General Purposes Committee taking place on Wednesday, 23rd March, 2016, the following report(s) that were unavailable when the agenda was printed.

Agenda No	Item
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- | | |
|----|--|
| 4. | Supplementary Report
Application to Register Land at Shoebury Common, Shoebury Common Road, Shoeburyness, Essex as a Town or Village Green (Pages 1 - 14)
Report of Corporate Director for Corporate Services attached |
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Yours faithfully

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Distribution

To all Members of the General Purposes Committee

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Southend-on-Sea Borough Council

Supplementary Report of
Corporate Director for Corporate Services
to
General Purposes Committee
on
23rd March 2016

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Report prepared by: Tim Row (Principal Committee Officer)

**Application to Register Land at Shoebury Common, Shoebury Common Road,
Shoeburyness, Essex as a Town or Village Green**

Part 1 (Public Agenda Item)

1. Purpose of Report

1.1 For the General Purposes Committee to consider:

- (a) the comments made by Mr Lovett and Mr Grubb, on behalf of the Friends of Shoebury Common, on the draft report to this Committee in respect of the application for land at Shoebury Common to be registered as a Town or Village Green;
- (b) the response by Mr Tremayne, on behalf of the Council as land owner/objector to those comments by Messrs Lovett and Grubb;
- (c) the concluding comments by Messrs Lovett and Grubb; and
- (d) the comments for consideration by the Committee/Registration Authority in respect of (a) to (c) above.

2. Recommendation

2.1 In reaching its decision on the application, the Committee should consider the contents of this supplementary report. However, the recommendation in the main report remains the same.

3. Background & Procedure

3.1 In accordance with good practice, a draft copy of the report of the Corporate Director for Corporate Services regarding this matter was circulated to Mr Grubb and Mr Lovett on 3rd March 2016 for comment, prior to its publication and circulation to the Committee.

3.2 Mr Lovett responded on 5th March 2016. These comments were forwarded on to Mr Tremayne, acting on behalf of the Council as land owner, to consider. Mr Tremayne's responded on 16th March 2016. Mr Lovett provided some concluding remarks to Mr Tremayne's response on 19th March 2016. This correspondence is set out in full at **Appendix 1** to this supplementary report.

- 3.3 Mr Grubb responded on 7th March 2015. These comments were acknowledged on 14th March 2016 and the procedural matters addressed. Mr Grubb's comments were also forwarded on to Mr Tremayne, acting on behalf of the Council as land owner, to consider. Mr Tremayne's comments were then forwarded to Mr Grubb on 15th March 2016. This correspondence is set out in full at **Appendix 2** to this supplementary report.
- 3.4 Attached at **Appendix 3** is a summary of all the comments and responses identified in paragraphs 3.2 and 3.3 above in the form of a table. The last column of the table sets out the comments for consideration by the Committee/Registration Authority in respect of the points raised.

Comments by Peter Lovett dated 5 March 2016

“Thank you for sending me details received from Peter Grubb, which was a complete surprise. As the Applicant, I believe any changes should have gone through me?”

When I applied for Village Green status, the main area I was looking to use was the land on the North side of Shoebury Common Road. This area of land has been neglected over the years, with no attempt by the Council to encourage any use what so ever. In fact it seemed the Council was deliberately allowing the hedges / grass to grow in order to discourage any leisure facility. This was not the intended use of this land.

Having already spent over £5,000 of the Village Green Fund to apply for this application, I was not prepared to seek further support to proceed with a Judicial Review.

Peter Grubb attended the enquiry for the Council, as the owner of Uncle Tom's Cabin and was always opposed to the inclusion of the North Car Park, which according to the inspector was the only section of land described under law as being "As of Right", but she felt the usage was not enough to comply with the conditions governing Village Greens.

I have been trying to include the above piece of land into the Shoebury Coastal Team meetings, as part of the Shoebury Park Development, presently taking place with Giles Penfold & other interested parties. I attach a brief resume of our suggestions for improving this land, for the benefit of the local community. We are losing green space at an alarming rate, so it would be appreciated if this committee would consider supporting my aim, either as a Village Green or Country Park.

When you consider I invited the Council to meet with me to discuss compromises to the Village Green application as presented, 12 months before the enquiry. I was gutted that this caring Council should refuse this request and would rather spend over £30,000 on legal fees, than invest tax payers money more wisely, on the attached suggestions, with the obvious benefits to the local community this would achieve.

I will attend the meeting on Wednesday 23rd March 2016 at 6.00pm and would welcome the committee's support.”

Response by Peter Tremayne dated 17 March 2016, on behalf of the Council as land owner/objector to application

“Thank you for providing me with me copies of the report to the general purposes committee on which Mr Lovett’s commented on the 5th March 2016. You have asked me for my comments which I limit to the Council’s reasons for holding the public inquiry.

The Council in its capacity as landowner has objected to registration of Shoebury Common as Village Green whether in whole or in part. Whilst the applicants have put forward various proposals for improving the Common I do not consider there is any room for compromise on this fundamental point and for this reason it was also necessary to hold a public inquiry. I would comment:

- 1. The application to register the common as a village does not meet the criteria for registration as set out in the Commons Act 2006. The evidence was fully tested by the holding of the public inquiry before an independent inspector.*
- 2. Shoebury Common provides mixed leisure and tourism facilities adjoining the promenade and the beach. Registration as a village green could fetter and act as deterrent to any potential works even including works that may nevertheless be sympathetic to the use of the greensward areas.*
- 3. The ability to carry out works on a village green is fettered by legislation unless Secretary of State's approval is obtained, and often, only after a special parliamentary procedure has been undertaken. For example, the proposal by Mr Lovett to provide a restaurant would have been subject to these requirements. Registration as a Village Green would therefore deny the Council the flexibility to manage the Common as it sees fit.*
- 4. As is pointed out in the report to the general purposes committee Shoebury Common is already designated as Public Open Space which carries its own additional legal protections.*

Mr Lovett comments that the cost of an inquiry could have been avoided if the parties had met previously and I am assuming he is referring to his letter to John Williams of the 10th November 2014. Whilst you replied to him at the time, primarily his concerns related to ensuring a sea defence scheme that ensured the long term preservation of the common. As the Council subsequently decided to review the sea defence scheme such a meeting would have been premature and no decision has yet been made in this respect. Subsequently the applicants applied to amend their scheme as set out in the report to committee. Whilst this ultimately required the direction of the Inspector at the public inquiry the Council continued to oppose the amended application at the public inquiry for the reasons stated above."

Supplementary comments by Peter Lovett dated 19 March 2016

"May I thank you for commenting on the issues raised. Although I accept the points made, I do not necessary agree with the contents & plan to make a further "Village Green" application in the near future, particularly relating to the North Common, where I feel the inspector did not consider all the legal issues on the table & we were unable to secure sufficient witnesses, who were unfortunately working members of our society and unable to attend the enquiry during the working day.

My main point was that there were compromises on the table and if the Council were willing to spend £50,000 of Tax Payers money on agreed improvements to the Common, rather than on an enquiry, then who knows where it would have taken us? The Council refused even to talk to me and seems content on wasting further money, just to cut the hedges, rather than improve what is on offer & open up the Common to encourage better use. I am forced to seek funding through the Shoebury Coastal Team review.

I will be attending your meeting, to listen to the outcome, so I can inform all our 2,000+ members, just what their Councillors & Officers think of their concerns. I have also listed in red, my comments below.

1. *The application to register the common as a village does not meet the criteria for registration as set out in the Commons Act 2006. The evidence was fully tested by the holding of the public inquiry before an independent inspector. **There is no doubt that evidence was provided to support that the North Common was used consistently by local residents, but she was unwilling to accept our written evidence, through questionnaires, was sufficient. We were unable to encourage all 92 evidence based residents to attend the enquiry, because all were working for a living. In contrast the Council offered only "Oral" evidence and this was accepted, without giving these facts in person.***

2. *Shoebury Common provides mixed leisure and tourism facilities adjoining the promenade and the beach. Registration as a village green could fetter and act as deterrent to any potential works even including works that may nevertheless be sympathetic to the use of the greensward areas. **The Act will allow you to add anything that would improve the land and its agreed use.***

3. *The ability to carry out works on a village green is fettered by legislation unless Secretary of State's approval is obtained, and often, only after a special parliamentary procedure has been undertaken. For example, the proposal by Mr Lovett to provide a restaurant would have been subject to these requirements. Registration as a Village Green would therefore deny the Council the flexibility to manage the Common as it sees fit. **The idea of a single storey restaurant was only considered after the failure to obtain a "Village Green" status, because any investment needs a return. I could not see the Council spending money on this Common, without some financial benefit. There is already evidence to support this view, with very little financial return from the small car park in Thorpe Bay, but they receive increased financial input to the Thorpe Esplanade "Green Space" which is open to encourage use & is full of lovely flower beds & clean cut grassed picnic areas.***

4. *As is pointed out in the report to the general purposes committee Shoebury Common is already designated as Public Open Space which carries its own additional legal protections. **As a public "Open Space", we have no protection and with the Council unwilling to open up the space or create any improvements or volunteer support, it was obvious to local residents that the Council was only interested in Southend & Thorpe Bay. You accepted the South Common, because at least this achieved a revenue of over £50,000 without any investment, from its car***

park. You had very little revenue from the Thorpe Bay Common, but you still spent money to improve the outlook.

Mr Lovett comments that the cost of an inquiry could have been avoided if the parties had met previously and I am assuming he is referring to his letter to John Williams of the 10th November 2014. Whilst you replied to him at the time, primarily his concerns related to ensuring a sea defence scheme that ensured the long term preservation of the common. As the Council subsequently decided to review the sea defence scheme such a meeting would have been premature and no decision has yet been made in this respect. Subsequently the applicants applied to amend their scheme as set out in the report to committee. Whilst this ultimately required the direction of the Inspector at the public inquiry the Council continued to oppose the amended application at the public inquiry for the reasons stated above. I was the Applicant for this Village Green application & the legal fees came out of my pocket. The Sea Wall was a separate fight, the Village Green application was designed to save our 100 year old Common from destruction. If it became a "Residents" Village Green", we would have had the opportunity to improve the area. Our views then are the same as they are today. In Southend, local families that visit the beach, have Southchurch Park to retreat, offering children's playgrounds & picnic areas. If our Officers would take a ride along our seafront from Chalkwell to Thorpe Bay, they would have the evidence to support the fact that views change, once you pass Maplin Way."

Comments by Peter Grubb dated 7 March 2016

“Thank you for giving me the opportunity to comment prior to final dispatch of paperwork.

First off re: Historical point of order.

Friends of Shoebury Common was a joint endeavour formed between Ray Bailey & Peter Grubb initially to fight the proposals for the 7 foot high wall through the heart of Shoebury Common.

Peter Lovett joined at a later stage & by mutual agreement.

For purposes of the VG application, Peter Grubb introduced the legal expert to our group, but because of general commitments of Ray Bailey & Peter Grubb, it was mutually agreed that Peter Lovett would deal with the application under delegation reporting back as when at our regular Monday meetings.

*At the time it was made very clear to him that the application was to be made **for and on behalf of Friends of Shoebury Common by Peter Lovett.***

At no time was Peter Lovett chairman of Friends of Shoebury Common!

Your report point numbers and content.

2.2& 2.3 *Having stated that Peter Lovett made the application in 2.3, by referring to the new chairman in 2.3 it implies Peter Lovett was Chairman in 2.2 which he was not.*

4.2 *It would be more accurate to record that the Council chose not to register the common some years ago when the opportunity arose despite it being known since time immemorial as Shoebury Common.*

7.1 *You have not summarized any of our detail regarding the inaccuracies contained within the report by the VG inspector.*

In particular, she refers to not enough evidence was presented re: the North area ---it was, and was contained within the submitted bundle.

She also confuses different sections of the Common within her report.

7.3 *Area south of Shoebury Common ---- will you pass our papers on or do we have to make fresh application to Corporate Director for Place?*

Since the hearing I have met with Nick Harris to pursue my long held complaints regarding height & thickness of the Tamerix at the North area-- this featured in the evidence of 'containment' & ladies including Council estates officer stating that the general area felt unsafe for the VG hearing.

Attached is my latest contact with Ian Brown detailing a program of works to reduce/remove Tamerix. I believe this has happened following the VG application.

And finally, we are in receipt a copy of the latest email from Peter Lovett - disappointing to see that he still fails to understand the Councils position as land owner re the application!

For the purpose of the report & meeting I am happy to act as spokesperson.

Response by Tim Row dated 14 March 2016, on behalf of the Council as Registration Authority,

“Thank you for your email and comments on the report. These have been passed to Mr Tremayne for his comments and these will be forwarded to you shortly.

1. Re: paragraphs 2.2 & 2.3, I have taken on board your comments regarding the role of Mr Lovett and have made some changes to reflect this. These changes are reflected in red text in the amended draft which I have attached. I will delete the reference to “the current Chairman” and this is indicated by the text being struck through. I believe this now accurately addresses your point.

2. Re: paragraph 4.2. and your submission that the Council not registering the land the land as a common or town and village green some years ago, is a matter for the Council as landowner. Peter Tremayne will no doubt address this matter.

3. Re: paragraph 7.1, this is really a matter for the independent Inspector not a matter for this report although at paragraph 2.4 of her report she states that she has received and read all of the documents. I am confident the independent Inspector did consider all of the evidence provided, including the bundles provided by the Friends of Shoebury Common.

4. This is not relevant to this application however, I will pass on your request, regarding the area of land south of Shoebury Common to be opened up for car parking, to the Council’s Corporate Director for Place for consideration. There is no formal application procedure for this.

5. I am aware that the Shoebury Coastal Community Team are current discussing this area of land but this is not relevant to the determination of this application for the land to be registered as a town or village green.

6. I note that you will be attending the meeting and are acting in the capacity as spokesperson for the Friends of Shoebury Common. I would however, point out that you will not be able to speak or address the Committee at the meeting on 23rd March as previously stated in my previous email. The Committee will be considering the matter by way of written submissions.”

Response by by Peter Tremayne dated 14 March 2016, on behalf of the Council as land owner/objector to application

"I note the contents of the report to the General purposes Committee.

I refer to Peter Grubb's email dated the 7th March 2016. I would comment as follows:-

Paragraph 4.2

Southend Borough Council only became a Commons Registration Authority when it took over the responsibility from Essex County Council on becoming a Unitary Council in 1998. Until conversion to unitary status Southend Borough Council was not responsible for registering land as Village Green under the Commons Registration Act 1965. Shoebury Common has not been registered as such either under that Act or the subsequent Commons Act 2006. However, the majority of the land, apart from the Northern overflow car park, was conveyed to the Council or its predecessor Council as public open space as set out in the inspectors' report.

Paragraph 7.3

The report sets out the finding of an independent inspector after a three day public inquiry and site inspection and the reasons she gave for her findings are fully set out in her report. As far as the Northern area is concerned the Inspector had before her at the hearing the bundles of evidence presented by all parties and heard considerable oral evidence. It is not for the Committee to reconsider the evidence and the inspector's conclusions and recommendations are fully and clearly set out in paragraph 8 of her report."

Supplementary comments by Peter Lovett dated 19 March 2016

"Thanks for your note.

Re points --Happy with amendment (1)

All the rest noted."

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<p>Comments by Peter Lovett dated 5 March 2016</p>	<p>Council’s Response as Land Owner/Objector</p>	<p>Response by Peter Lovett dated 19 March 2016</p>	<p>Comments of Council as Registration Authority</p>
<ul style="list-style-type: none"> • Mainly interested in area north of Shoebury Common Road as appears neglected • Application cost £5000 and is not prepared to seek additional support for Judicial Review • Mr Grubb (of FOSC& Uncle Tom’s Cabin) was opposed to registration of northern overflow car park which was the only piece of land in application Inspector accepted being used “as of right” but insufficient evidence to support application 	<ul style="list-style-type: none"> • Council objected to the application as land owner whether in whole or in part requiring an independent inquiry. <p>Application does not meet criteria and evidence fully tested. Common provides mixed leisure and tourism facilities.</p> <p>Registration could fetter and act as deterrent for any potential works as legislation is restrictive unless Secretary of State’s approval obtained. May require special parliamentary procedure.</p>	<ul style="list-style-type: none"> • Accepts points made but does not agree and plans to make another application for the northern part. <p>Feels Inspector did not consider all the legal issues and were unable to secure sufficient witnesses due to work commitments.</p> <p>Main concern is that compromises were on the table and Council could spend £50,000 of tax payer’s money to improve the common rather than on an inquiry. Council refused to talk and seems content just to cut hedges rather than improve what’s on offer and encourage better use.</p>	<ul style="list-style-type: none"> • Comments noted by the Registration Authority but the Committee is still recommended to refuse application for the reasons set out in the report. <p>All the legal issues were addressed by the independent Inspector as stated in her report. The directions for the inquiry were issued by the inspector and sent to all parties two months in advance of the inquiry.</p>
<ul style="list-style-type: none"> • Now seeking use of land in Shoebury Coastal Community Team meetings – fear of losing green space. Would appreciate committee’s support for my aim for a village green or country park 	<p>If land is registered may restrict flexibility to manage common as it sees fit.</p> <p>Land is designated and held by Council as open space which carries its own additional legal protections.</p>	<p>Unable to get all 92 witnesses to attend due to work commitments. Council only offered “oral” evidence without giving facts in person.</p> <p>Cannot see Council spending money on the common without some financial benefit. This is evident with little financial return</p>	<p>As regards the possible compromises Mr Lovett suggests could be offered, this point is addressed by Mr Tremayne in the Council’s response to him.</p> <p>As mentioned above the applicant and all parties to the hearing were given two month’s notice of the inquiry. The Council gave both oral and written evidence. The independent Inspector gave the parties the opportunity to question witnesses if required.</p> <p>Mr Lovett indicates that the land included in the application could be improved which he is taking forward with Shoebury Coastal Community Team and this may be something he could discuss with Corporate Director for Place.</p>

		<p>from small car park in Thorpe Bay but increased financial input to the Thorpe Esplanade “green space” which is open to encourage use and is full of lovely flower beds and clean cut grassed picnic areas. As open space the Council is unwilling to open it up or create improvements or volunteer support. Council is only interested in Thorpe Bay and Southend. You accepted the South Common as £50,000 revenue was received without any investment from its car park. Very little revenue received from Thorpe Bay Common but money was still spent to improve its outlook.</p>	
<ul style="list-style-type: none"> Invited Council to discuss compromises to application a year before inquiry – surprised Council would prefer to spend £30,000 of Council Tax payers money on legal fees rather than invest in land for benefit of the community 	<ul style="list-style-type: none"> Council responded to Mr Lovett regarding meeting to discuss matter at the time. Mr Lovett’s concerns at that time related primarily to the sea defence scheme that ensured long term preservation of the common. Scheme was subsequently reviewed and meeting would have been premature at that time. Application was subsequently amended by applicants as set out in the report. Council continued to oppose the application for the reasons stated 	<ul style="list-style-type: none"> I was the applicant for this application and paid the legal fees. The sea wall was a separate matter. The application was designed to save our 100 year old common from destruction. Opportunity to improve the area if it became a “residents’ village green”. When travelling from Chalkwell to Thorpe Bay evidence shows views change once you pass Maplin Way. 	<ul style="list-style-type: none"> As mentioned above, Mr Lovett states that the Shoebury Coastal Community Team is discussing this area of land and this may be something he could discuss with Corporate Director for Place. The Committee is still recommended to refuse application for the reasons set out in the report.
<ul style="list-style-type: none"> Will attend meeting and seeks Committees support 		<ul style="list-style-type: none"> Will be attending and will report back to 2000+ members of FoSC 	<ul style="list-style-type: none"> Public may attend the meeting to observe but not speak.

Comments by Peter Grubb	Council's Response as Land Owner/Objector	Response by Peter Grubb	Comments of Council as Registration Authority
<ul style="list-style-type: none"> Point of order – Mr Lovett was not Chairman of FoSC but draft report gives this impression. He made the application on behalf of FoSC 		<ul style="list-style-type: none"> Noted 	<ul style="list-style-type: none"> Report has been amended to reflect this
<ul style="list-style-type: none"> Council chose not to register common some years ago despite it being known as Shoebury Common 	<ul style="list-style-type: none"> Council was not Registration Authority until it became a Unitary Authority in 1998. Land was not registered under Commons Act 2006. The majority of the land was conveyed to Council or its predecessor as public open space 	<ul style="list-style-type: none"> Noted 	<ul style="list-style-type: none"> Land was not registered. Application now made to register land. Independent Inspector has considered evidence impartially and recommends application should be rejected. No change in recommendation
<ul style="list-style-type: none"> No summary of alleged inaccuracies in report by the Inspector particularly insufficient evidence regarding the north area despite it being in the bundle and her confusing different sections of the common 	<ul style="list-style-type: none"> Report fully sets findings on inspector following a 3 day inquiry and site inspection. She had all the evidence contained in the bundles and heard considerable oral evidence. Not for Committee to reconsider the evidence. 	<ul style="list-style-type: none"> Noted 	<ul style="list-style-type: none"> Independent Inspector considered evidence following a 3 day inquiry and site inspection. He report at paragraph 2.4 states she has received and read all documents. The Registration Authority is confident that the matter has been fully considered and is accurate. Does not change the recommendation to reject application as set out in the report.
<ul style="list-style-type: none"> Referring to paragraph 7.3 of the report to the Committee, will you pass on papers to Corporate Director for Place or is a fresh application required 		<ul style="list-style-type: none"> Noted 	<ul style="list-style-type: none"> To be passed to Corporate Director for Place for consideration.
<ul style="list-style-type: none"> Have been working with Council regarding land in North area as part of Shoebury Coastal Team 		<ul style="list-style-type: none"> Noted 	<ul style="list-style-type: none"> Mr Grubb states that the Shoebury Coastal Community Team is discussing this area of land and this may be something he could discuss with Corporate Director for Place.

<ul style="list-style-type: none">• Happy to attend meeting and act as spokesperson		<ul style="list-style-type: none">• Noted	<ul style="list-style-type: none">• Mr Grubb is able to attend but not speak at the meeting and has been informed.
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