

# Southend-on-Sea Borough Council

Agenda  
Item No.

Report of Corporate Director for Corporate Services

to

**General Purposes Committee**

on

**23<sup>rd</sup> March 2016**

Report prepared by: Tim Row (Principal Committee Officer)  
and Mike Vancoevorden (Chief Legal Assistant)

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

**Part 1 (Public Agenda Item)**

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## **1. Purpose of Report**

- 1.1 To present the findings and recommendations of the independent Inspector appointed to conduct the non-statutory local public inquiry in respect of the application for land at Shoebury Common to be registered as a Town or Village Green. A copy of the independent Inspector's report is attached at **Appendix 1.**
- 1.2 To seek the Committee's endorsement of the independent Inspector's recommendations and reject the application.

## **2. Recommendation**

- 2.1 **That the independent Inspector's report and findings be noted.**
- 2.2 **That, pursuant to the independent Inspector's recommendations, the application dated 22<sup>nd</sup> November 2013 by Mr Peter Lovett on behalf of the Friends of Shoebury Common for land at Shoebury Common, Shoebury Common Road, Shoeburyness (and as requested to be amended at the public inquiry on 30<sup>th</sup> June 2015) to be registered as a Town or Village Green be rejected.**
- 2.3 **That the new submission by Mr Peter Grubb on behalf of the Friends of Shoebury Common to register that part of Shoebury Common to the north of Shoebury Common Road (excluding the northern overflow car park) as a Town or Village Green also be rejected.**
- 2.4 **That, pursuant to the independent Inspector's recommendations, the Council, as Registration Authority, does not include the Application Land or any part of it in its Register of Town and Village Greens.**

## **3. Background**

- 3.1 The Council is the Commons Registration Authority for the Borough of Southend-on-Sea. It is required to register land as a Town or Village Green

where the relevant statutory requirements have been met. There is no land registered as a Common or Town or Village Green within the Borough.

- 3.2 On 22<sup>nd</sup> November 2013, the Council received an application, made by Mr Peter Lovett on behalf of the Friends of Shoebury Common, that the land at Shoebury Common, Shoebury Common Road, Shoeburyness should be registered as a Town or Village Green. The application was made under section 15(1) of the Commons Act 2006 (“the Act”).
- 3.3 The application sought to register (i) the area of land south of Shoebury Common Road to the rear of the beach huts from Thorpe Esplanade to Ness Road, including the car parking areas; and (ii) the area of land north of Shoebury Common Road to the rear of the residential properties in Leitrim Avenue from Waterford Road to the boundary of the residential property in Lodwick, including the northern overflow car park. A plan illustrating these areas is attached at **Appendix 3**.
- 3.4 The grounds of the application are that, pursuant to the provisions of the Act, Shoebury Common should be registered as a Village Green on the basis that a significant number of inhabitants of the localities of West Shoebury and Thorpe Ward have indulged “as of right” (which is a necessary legal requirement for registration as a Town or Village Green) in lawful sports and pastimes on the land for a period of at least twenty years, and that use continued up and until the date of the application.

#### **4. Shoebury Common**

- 4.1 Shoebury Common is land owned by the Council containing a variety of facilities including a café, beach huts, public conveniences, changing facilities for the disabled, car parks and overflow car parking areas, beach shelters, a kite surfing school and areas of greensward. It is maintained as amenity grassland and it is registered in the Borough local Plan as public open space. It has no special environmental or wildlife designation (e.g. SSSI, RAMSAR etc.). A plan of the area illustrating the location of the above-mentioned facilities is attached as **Appendix 2**.
- 4.2 Whilst the areas of land affected by the application are collectively known as Shoebury Common, it is not registered as Common Land.
- 4.3 Members will recall that this area of land was also included in the Council’s sea defence scheme proposals, which were opposed by the Friends of Shoebury Common. The Council has subsequently resolved not to proceed with the sea defence scheme (Minute 674 of the meeting of Council held on 26 February 2015 refers). However, the application for the land to be registered as a Town or Village Green was not withdrawn.

#### **5. Objection to the Application**

- 5.1 Shoebury Common has been conveyed to the Council and held subject to powers under Section 164 of the Public Health Act 1875 and Section 76 of the Public Health Amendments Act 1906 (“the Public Health Acts”) as recreational

open space and the covenants in the conveyance and indentures to the Council or its predecessor authorities give effect thereto.

- 5.2 It was decided in the Supreme Court last July in the case of “Barkas v North Yorkshire Council” that land which is already held in public ownership and has been made available to the public as recreational land under statutory powers is generally not capable of being registered as Town or Village Green under Section 15 of the Act. The reason for this is that to satisfy the criteria under this section of the Act such use must have been “as of right” (without force, secrecy or permission). Where rights are exercised pursuant to statutory powers, they are legally deemed to have been exercised “by right” (with permission) and fail to meet the requirements of the Act for registration as a Village Green.
- 5.3 The rights exercised by the public over Shoebury Common have been, by law, exercised with the permission of the Council, as land owner, and therefore are deemed to have been exercised “by right” and not “as of right”. The application therefore fails to meet the requirements of the Act.
- 5.4 The Council, as land owner, formally objected to the application on the grounds discussed above. In addition, the Council as land owner also objected to the application for the area of land comprising the northern overflow car park to be registered as a Town or Village Green on the grounds that there was insufficient evidence to establish that the area had been used for lawful sports and pastimes by a significant number of the inhabitants of a qualifying locality or neighbourhood within a locality throughout the relevant 20 year period.
- 5.5 A full discussion is contained in the independent Inspector’s report. Members should further note that land which is used by the public as open space or as a public garden for the purposes of public recreation can, for the purposes of the Local Government Act 1972, only be appropriated for any other purposes where land is no longer required for its original purpose as open space. Such a proposal must first be advertised and all objections must be considered before any decision is made to appropriate open space for any other purpose. Otherwise approval is required by the Secretary of State. This therefore already gives protection as to the future use of Shoebury Common.

## **6. Public Inquiry**

- 6.1 As the Council is the land owner, objecting to the application, as well as the Commons Registration Authority, an independent Inspector was appointed to enable the evidence to be tested impartially at a non-statutory local public inquiry. This is consistent with Government guidance.
- 6.2 Accordingly, Miss Ruth Stockley (a barrister at King Chambers, Manchester) was appointed as the independent Inspector. Miss Stockley had sat as an Inspector on many occasions and has had no prior involvement with the Council or Southend on Sea. Her duty, as independent Inspector, was to conduct the inquiry, consider the evidence and prepare a report containing her findings and recommendations for the Council, as Registration Authority, to consider. The inquiry was held over three days commencing 30<sup>th</sup> June 2015.

- 6.3 At the outset of the public inquiry, the independent Inspector indicated that she would recommend that the Applicant's request for the central areas of Shoebury Common South containing Uncle Tom's Cabin, the public conveniences and other buildings, together with the public car park and overflow car parks to be removed from the application, be accepted by the Registration Authority. The Council, in its role as objector to the application, did not oppose this amendment to the application. The application then proceeded only in respect of the area to the north of Shoebury Common Road and part of the land to the south restricted to a thin strip of land behind the beach hut areas and a greensward area to the east. These areas are identified in the plan attached at **Appendix 4**.
- 6.4 Having considered all of the documentation and evidence presented at the inquiry, together with the legal submissions, the Inspector has concluded and recommended in her report dated 13<sup>th</sup> October 2015 that the Council, as Registration Authority, should reject the Application, in its entirety, and should not add the Application Land or any part of it to its Register of Town and Village Greens on the specific grounds that:
1. The use of the application land other than the area comprising the northern overflow car park for lawful sports and pastimes has been "by right" and not "as of right" throughout the relevant 20 year period; and
  2. The Applicants have failed to establish that the application land comprising the area of the northern overflow car park has been used for lawful sports and pastimes by a significant number of the inhabitants of a qualifying locality or neighbourhood within a locality throughout the relevant 20 year period.
- 6.5 It is important to note that the independent Inspector has no power to determine the application or any substantive matters relating thereto. She is only able to publish a set of recommendations for the Registration Authority to consider based on her impartial consideration of the evidence. The determination of the application rests with this Committee, having regard to the independent Inspector's recommendations.
- 6.6 A full copy of the independent Inspector's report is attached at Appendix 1 and has been circulated to parties involved in the inquiry.
- 6.7 Shortly after the inquiry and prior to the receipt of the independent Inspector's report, Mr Lovett resigned from the Friends of Shoebury Common group. Mr Peter Grubb has now taken over the role in dealing with the application on behalf of the Friends of Shoebury Common.
- 6.8 Following the receipt of the independent Inspector's report, Mr Grubb on behalf of the Friends of Shoebury Common raised various concerns regarding the accuracy of the Council's evidence, particularly in relation to the area south of Shoebury Common and its use for car parking. These were all matters dealt with at the public inquiry. The Friends of Shoebury Common have now subsequently accepted the independent Inspector's conclusions in respect of the application for a Town or Village Green in so far as it relates to the land to the south of Shoebury Common Road. They also accept the independent

Inspector's conclusion regarding the overflow car parking area to the north of Shoebury Common Road.

## **7. Further Proposals by the Friends of Shoebury Common**

- 7.1 The Friends of Shoebury Common have, now made a further submission, a copy of which is attached at **Appendix 5**. In summary, it essentially requests:
1. That the areas of land between Shoebury Common Road and the northern overflow car parking area, as illustrated in pink on **Appendix 6**, be registered as a Town or Village Green;
  2. The northern overflow car parking illustrated area hatched blue on **Appendix 6** be retained for car parking purposes; and
  3. The area illustrated cross-hatched blue on **Appendix 6**, south of Shoebury Common Road, to the east of the current car parking area, be opened up for car parking purposes.
- 7.2 This submission is, in effect, a further amendment to their application by reducing the area of land being sought to be registered as a Town or Village Green. On this basis, it is recommended that this should also be rejected for the reasons discussed in Section 8 of this report below.
- 7.3 Additionally, the proposal by the Friends of Shoebury Common that the area south of Shoebury Common Road is opened up for car parking (as described in paragraph 7.1.3 above) is not relevant to this application for Town or Village Green. It is a request for a change of use of this area from open space to car parking. Any such change of use would require that land to be appropriated and it is not within this Committee's remit to consider such a request. This request should be referred to the Council's Corporate Director for Place for consideration.

## **8. Reasons for Recommendations**

- 8.1 The Council, as Registration Authority, is required to determine the application to register Shoebury Common, or parts of it, as a Town or Village Green, following consideration of the independent Inspector's report.
- 8.2 The application has, to date, been robustly defended on the grounds that there is no legal basis under the Act for registering Shoebury Common as a Town or Village Green. This position is supported by the recommendations of the independent Inspector in her report, who has considered and tested the evidence impartially and has determined that the applicant has not demonstrated that the statutory criteria for registration have been met. She has therefore recommended that the application should be rejected in its entirety, and that the Council as Registration Authority should not add the Application Land or any part of it to its Register of Town and Village Greens. Therefore, there is no legal basis for approving the application.

## **9. Background Papers**

- The Commons Act 2006
- Voluntary Dedication of Land as a Town or Village Green - Department for Environment, Food and Rural Affairs (March 2012)
- The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007
- Planning Inspectorate Common Land Guidance Sheet 2b
- Report of Ruth Stockley, independent Inspector dated 13<sup>th</sup> October 2015

## **10. Appendices**

- Appendix 1: Report of Miss Ruth Stockley (Independent Inspector) dated 13<sup>th</sup> October 2015
- Appendix 2: Plan illustrating Shoebury Common
- Appendix 3: Plan Illustrating Application Land
- Appendix 4: Plan illustrating the Amended Application Land
- Appendix 5: Further proposals by Mr Grubb on behalf the Friends of Shoebury Common
- Appendix 6: Plan illustrating new submission by the Friends of Shoebury Common