

**Report to:** LICENSING AND ENVIRONMENTAL  
REGULATION COMMITTEE

**Date:** 9<sup>TH</sup> MARCH 2022

**Report of:** BOROUGH SOLICITOR

**Report No:**

**Contact Officer:** Nicola Raby

**Tele No:** 1325

**Report Title:** **Application to register land known as 'Field or Canalside Hall Lane/Ascot Road/Newbury Road' as a new town or village green**

**Non Confidential:**

(**Non-Confidential**) This report does **not** contain information which warrants its consideration in the absence of the press or members of the public

**Purpose:**

To request members to consider and determine an application received to register land known as "The Field or Canalside Hall Lane/ Ascot Road/ Newbury Road" as a town or village green.

**Recommendations:**

That the application is refused and that the application site should not be registered as a town or village green.

**Decision:**

**Background Doc(s):**

(for use on Exec Rep)

**Signed:**

\_\_\_\_\_  
Leader / Executive Member

\_\_\_\_\_  
Monitoring Officer

**Date:**

\_\_\_\_\_

\_\_\_\_\_

## **1 Background**

- 1.1 On 30<sup>th</sup> September 2020, the Council received an application to register land known as the 'Field or Canalside Hall Lane/Ascot Road/Newbury Road', in Little Lever, Bolton as a new Town or Village Green.
- 1.2 The application was submitted by local residents, Mrs Amy and Mr Derek Wunderley ("the applicant").

## **2 The Application Site**

- 2.1 The area of land subject to the application ("the application site") is an area of land which lies to the rear of the gardens of the properties on the western side of Ascot Road, with the northern boundary being the edge of the carriageway of Hall Lane, and the southern boundary starting from the head of the canal and following along the edge of the canal. The irregular shaped piece of land is outlined in red at Appendix B.

## **3 Procedure**

- 3.1 The application was made under section 15 of the Commons Act 2006 which enables any person to apply to a Commons Registration Authority to register land as a Village Green where it can be shown that:

"a significant number of 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;

- 3.2 Additionally, the application must meet one of the following tests:

- **Use of the land has continued** "as of right" until at least the date of the application (section 15(2) of the Act); or
- **Use of the land "as of right" ended no more than two years prior to the date of the application**, e.g. by way of the erection of fencing or a notice (section 15(3) of the Act); or
- **Use of the land "as of right" ended before 6<sup>th</sup> April 2007** and the application has been made within five years of the date the use "as of right" ended (section 15(4) of the Act).

- 3.3 The responsibility for determining applications under section 15 of the Commons Act 2006 normally rests with the Council in its capacity as the Commons Registration Authority. However, where there is dispute over relevant and material facts, case law gives the option of holding a non-statutory public inquiry with a barrister appointed by the Borough Solicitor to sit in the capacity of inspector to make a recommendation to the Licensing and Environmental Regulation Committee in respect of the application.

## **4 The Application**

- 4.1 The application has been made on the ground that the application site has become a Town or Village Green by virtue of actual use of the land by the local inhabitants for a range of recreational activities “as of right” for more than 20 years.
- 4.2 The application is supported by 100 user forms from local residents who detail their use of the site over a period in excess of 20 years.
- 4.3 3 witnesses gave live evidence at the Inquiry in support of the application. Details of the evidence given can be found at pages 11-20 of Mr Carter’s report (Appendix A).

## **5 Landowner**

- 5.1 The application site is owned by Robert Graham Trustees Limited.
- 5.2 Robert Graham Trustees Limited objected to the application on the basis that the requirements for registration had not been satisfied and that the application was deficient on the following grounds:
  - i. It did not identify upon which “limb” the application was put;
  - ii. It failed to identify a qualifying area;
  - iii. It failed establish use of the land for lawful recreational purposes over the relevant 20 year period;
  - iv. Any use of the site had been “by right” and not “as of right”;
  - v. It failed to establish the “significant number” element;
  - vi. It was non-compliant with the Regulations;
  - vii. The application did not prove that he had established all elements required.

## **6 Conclusion**

- 6.1 Mr Martin Carter was appointed to hold a non-statutory public inquiry which took place on 24<sup>th</sup> and 25<sup>th</sup> January 2022 at the Town Hall, Bolton. A copy of his Report can be found at Appendix A. Members will note that he recommends that the application is refused and that the application site should not be registered as a town or village green for the following reasons:
  - i. The applicants have not proven that users came from a defined neighbourhood; and
  - ii. Use of the application site at all times during the relevant period was not use as of right.

## **7 Recommendation**

- 7.1 That the application is refused and the application site should not be registered as a town or village green.