

Report to COMMONS REGISTRATION COMMITTEE

**Application to Register a Village Green –
Land at Hodge Clough Road, Oldham**

**Portfolio Holder: Cllr Shah, Cabinet Member for
Neighbourhood Services**

Officer Contact: Director of Legal Services

Report Author: Alan Evans Group Solicitor
Ext. 3019

18 March 2019

Reason for Decision

Members are asked to determine an application to register land at Hodge Clough Road, Oldham as a village green.

Recommendations

It is recommended that Members accept the recommendation of Alan Evans (barrister of Kings Chambers, Manchester) and reject the application to register land at Hodge Clough Road, Oldham as a village green on the grounds that the land does not meet the legal test for registration as a village green, because use of the land for lawful sports and pastimes has not been “as of right”.

Application to register a village green – land at Hodge Clough Road, Oldham

1 Background

- 1.1 The Council is the Commons Registration Authority for the borough of Oldham and is responsible for determining any applications to register a village green within the borough. The Council has established the Commons Registration Committee which has delegated authority to consider such applications.
- 1.2 On 27 June 2018, the Council received an application to register land on Hodge Clough Road as a village green. A plan showing the location of the land claimed as a village green is annexed to this report as Appendix 1. The land is owned by the Council. First Choice Homes Oldham Ltd (FCHO) has applied for planning permission to develop the land for housing. The application was submitted by Mr Fred Williamson and was supported by 11 letters/statements from local residents setting out their use of the land and a petition containing over 100 signatures that the land should be granted village green status. The letters are annexed to this report as Appendix 2. The petition will be available at the committee meeting for Members to view.
- 1.3 The application was made under section 15(2) of the Commons Act 2006. In accordance with statutory procedures, the application was advertised and two objections were received before the closing date for objection, from FCHO and from the land owner (Oldham Council). The objection from FCHO is annexed to this report as Appendix 3 and the objection from Oldham Council is annexed as Appendix 4. The objections were sent to Mr Williamson for further comment and he made further representations which are annexed to this report as Appendix 5.
- 1.4 To avoid the potential for conflict of interest where an application to register land as a village green relates to Council owned land, the Council has previously agreed that any such application should be subject to independent scrutiny by a barrister who will consider whether the application meets the legal test for registration as a village green and produce a report of his/her findings for consideration by the Commons Registration Committee, which takes the final decision on the application.
- 1.5 The Council appointed Alan Evans, a barrister at Kings Chambers in Manchester with considerable experience of village green law to consider the application and the objections. Mr Evans was instructed that if he was unable to make a recommendation on the submitted documents, he was to hold a non statutory public inquiry to hear evidence relating to the application. In the event, Mr Evans was able to consider the application without holding an inquiry and a copy of his report is annexed to this report as Appendix 6.

2 Legal Test for Registration

- 2.1 The application was made to register the land as a village green under section 15(2) of the Commons Act 2006 which states:

(2) this subsection applies where –

- a) a significant number of the 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; and*
- b) they continue to do so at the time of the application.*

The onus of proof is on the applicant to prove his case meets all the requirements of section 15(2) on the balance of probabilities. A significant body of case law has developed

over the years which provides interpretation of the wording contained in section 15(2) as follows:

2.2 ***“a significant number”***

Significant does not mean considerable or substantial. What matters is that the number of people using the land in question has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers. It is not necessary that the users come predominantly from the claimed locality or neighbourhood, provided a significant number of the inhabitants of the claimed locality or neighbourhood are among the users. The requirement is that the users include a significant number of inhabitants of the claimed locality or neighbourhood, so as to establish a clear link between the locality or neighbourhood and the proposed village green, even if such people do not comprise most of the users.

2.3 ***“of the inhabitants of any locality or of any neighbourhood within a locality”***

A “locality” cannot be created by drawing a line on a map. It must be some division of the county known to the law such as a borough or parish. A “neighbourhood” need not be a recognised administrative unit but it must have a significant degree of cohesiveness e.g. a housing estate can be a neighbourhood. A neighbourhood need not lie wholly within a single locality.

2.4 ***“have indulged as of right”***

Use of land ‘as of right’ means use that is not by force, nor stealth, nor with the licence of the owner. Whether use is of right does not turn on the subjective beliefs of the users i.e. whether they believed they were using it as of right. The unifying element of the three vitiating circumstances (force, stealth and permission) is that each constitutes a reason why it would not have been reasonable to expect the owner to resist the exercise of the right – in the case of use by force, because rights should not be acquired by the use of force; in the case of use by stealth, because the owner would have not known of the user; and in the case of use by permission, because he had consented to the user, but for a limited period. The use must be judged objectively from the stand point of a reasonable land owner.

2.5 ***“in lawful sports and pastimes”***

The words “lawful sports and pastimes” can include informal recreation such as walking, with or without dogs and children’s play.

2.6 ***“on the land”***

Land, substantial parts of which were overgrown and inaccessible for recreation can be registered as a green, provided that the land could be regarded as having been used as a whole for recreation.

2.7 ***“for a period of at least 20 years”***

The relevant use must continue throughout the whole of the 20 year period relied upon, although certain periods of non use can be disregarded.

2.8 ***“and they continue to do so at the time of the application”***

The qualifying use must continue at the date of the application.

3. **Mr Evans’ Report**

3.1 Mr Evans considered the application, the objections from FCHO and the Council and the applicant’s response to the objections. His overall conclusion is that the application land was acquired by the Council for housing purposes in the 1960s, that it was provided and laid out by the Council as public open space in the 1990s and that there was appropriate

power to do so under housing legislation in the Housing Act 1985. Consequently the use of the land by local inhabitants for informal recreation was use of public open space provided and laid out by the Council for that purpose. Their use of the land was pursuant to a public right or a publicly based licence and thus use “*by right*” and not “*as of right*”.

- 3.2 Mr Evans concluded that as the use of the land by local residents has been use “*by right*”, a fundamental requirement for registration of the land as a village green under section 15(2) of the Commons Act 2006 has not been met and the application must fail.

3 **Options/Alternatives**

- 3.1 The options available to Members are as follows:

Approve the application to register the land at Hodge Clough Road as a village green. In order to do so Members would have to be satisfied that the application met the legal tests for registration set out in paragraph 2 above and that Mr Evans was wrong in his assessment of the application.

Reject the application to register the land at Hodge Clough Road as a village green, based on the report of Mr Evans.

4 **Preferred Option**

- 4.1 The preferred option is for the application to be rejected based on the report prepared by Mr Evans, who has considered all the evidence and applied the relevant legal test for registration of land as a village green.

6 **Financial Implications**

- 6.1 As detailed in Para 1.2, the Council has received an application for planning permission from First Choice Homes Oldham Ltd (FCHO) to develop the land for housing, however Members must note this cannot be taken into consideration.

- 6.2 There are no other financial implications arising from the outcome of this report. (Jit Kara/Lee Walsh)

7 **Legal Services Comments**

- 7.1 These are incorporated within the report. Members must determine the application taking all relevant matters into consideration, ignoring those that are irrelevant and giving reasons for their decision that are lawful, reasonable and rational. (A Evans)

8. **Co-operative Agenda**

- 8.1 Not applicable

9 **Human Resources Comments**

- 9.1 Not applicable

10 **Risk Assessments**

- 10.1 Not applicable

11 **IT Implications**

11.1 None

12 **Property Implications**

12.1 The application land is owned by the Council. However the decision on whether to register the land as a village green can only be taken if the legal test for registration is met. Therefore any property implications are irrelevant and cannot be taken into account in deciding whether to register the land as a village green.

13 **Procurement Implications**

13.1 None

14 **Environmental and Health & Safety Implications**

14.1 None

15 **Equality, community cohesion and crime implications**

15.1 None

16 **Equality Impact Assessment Completed?**

16.1 No

17 **Key Decision**

17.1 No

18 **Key Decision Reference**

18.1 N/A

19 **Background Papers**

19.1 The following is a list of background papers on which this report is based in accordance with the requirements of Section 100(1) of the Local Government Act 1972. It does not include documents which would disclose exempt or confidential information as defined by the Act:

File Ref: 13461 (RTG/6)

Name of File: Hodge Clough Road Village Green Application

Records held in Legal Department, Civic Centre, West Street, Oldham OL1 1UL

Officer Name: Alan Evans

Contact No: (0161) 770 3019

20 **Appendices**

20.1 Appendix 1 – Plan showing the application land
Appendix 2 – Evidence submitted in support of the application
Appendix 3 – Objection from FCHO
Appendix 4 – Objection from Oldham Council
Appendix 5 – Further representations by Mr Williamson
Appendix 6 – Report of Alan Evans (barrister)
