

<b>Committee:</b> General Purposes Committee	<b>Date:</b> 10 December 2014	<b>Classification:</b> <b>Unrestricted *</b> *	<b>Report No:</b>
<b>Report of:</b> Corporate Director Communities Localities and Culture		<b>Title:</b> Application for registration as town or village green – Wapping Green	
<b>Originating officer(s)</b>  Philip Devonald Interim Head of Legal Operations		<b>Wards Affected:</b>  Wapping & Shadwell	

## 1. **SUMMARY**

- 1.1 The purpose of this report is to determine a second application to register the land known as Wapping Green as a “Town or Village Green” under the Commons Act 2006. The Council is the Registration Authority for the purposes of the Commons Registration Act 1965 and is responsible for compiling and maintaining the Registers of Common Land and Town or Village Green and for any amendments to the Registers.
- 1.2 The procedure for registration is laid down in The Commons Registration (England) Regulations 2008.
- 1.3 Under Section 15 of the Commons Act 2006 a person may apply to the Commons Registration Authority (the Council) to register land as a town or village green where a significant number of inhabitants of any locality or 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 they continue to do so at the time of the application.
- 1.4 The application must be determined on legal issues and evidence. The Council’ function as registration authority is to consider the evidence for and against the application. If the application satisfies the legal requirements, then the Council should accept the application, however if the legal requirements are not fully met then the Council must reject the application.
- 1.5 If the application is accepted, the Council is under a duty to advertise the accepted application in the local newspaper and then allow a period of 6 weeks to allow for any objections to be lodged. If objections are received, the

applicants will be permitted to consider them and make responses. Once the 6 week period has elapsed, the Land will be registered on the Register of Town & Village Greens as a local land charge. If the application is rejected, the applicant must be informed of the reason(s) of the rejection. There is no formal right of appeal but the applicant can seek a Judicial Review if he or she believes the decision made to be wrong in law or procedurally improper.

- 1.6 No procedure has been laid down by the Commons Registration Act 1965 or the Regulations as to how the applications should be determined which is left entirely to the registration authority.
- 1.7 In the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) the power to register a town or village green is specified as a non-executive function. The Council has not delegated the function to a committee or to an officer. Under paragraph 3.3.6 of Part 3 of the Council's Constitution the terms of reference of the General Purposes Committee are set out and include:
- (v) Any other functions which under the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 may not be the responsibility of the Executive and which are not delegated elsewhere under this constitution.

In consequence it is for the General Purposes Committee to determine any application for registration of land as Town or Village Green.

## 2. **RECOMMENDATIONS**

### 2.1 **The Test Section 15 of the Common Act 2006**

***Have (1) a significant number (2) of the inhabitants of a locality or neighbourhood (3) indulged in lawful sports and pastimes (4) as of right (5) on the land (6) for a period of at least 20 years (7) and they continue to do so at the time of the application.***

***NB: The applicant must satisfy all 7 elements of the test.***

#### **Relevant Factors**

***Members should therefore apply the above test and should feature on two particular issues which are central to a determination:-***

- 1) *The quality of the claimed use; and*
- 2) *Whether the claimed use has been “as of right”*

**Irrelevant Factors**

- *The motive for the application*
- *The planning merits*
- *Local opinion*
- *Political philosophical or moral views*

2.2 The General Purpose Committee is recommended to:-

Refuse the application on the ground that the inhabitants of the locality, or neighbourhood have not indulged in lawful sports and pastimes on the land for a period of 20 years “as of right”.

**3. BACKGROUND**

- 3.1 On 19 March 2012 the Turk’s Head Charity made an application under Section 15 of the Commons Act 2006 to register land as a Town or Village Green. The land is known as Wapping Green and is situated adjacent to Wapping Lane, Watts Street and Meetinghouse Alley, Wapping.
- 3.2 The applicants sought to protect this existing area of open space which is maintained by the Council from development pressures upon land in the area.
- 3.3 The application did not contain sufficient appropriate information to fulfil the criteria of Section 15 of the Commons Act 2006 to justify formal consideration by this Committee and it was rejected at a preliminary stage.
- 3.4 On 30 April 2013 The Turk’s Head Charity submitted a further application to register the land. The application is Appendix 1 to this report and it is this application which the Committee is asked to determine. The 105 witness statements submitted are not appended but will be available for inspection at the meeting and the seven 12”x8” photographs will be displayed at the meeting.

**4. CONSIDERATIONS OF THE APPLICATION**

- 4.1 The application consists of the standard Form 44 application form and 10 exhibits including one supporting statement, map of the locality, map of the application site, schedule of broad uses of the land, schedule of clubs and organisations believed to have used the land, statements of support, 105 witness statements, plans and seven photographs.

4.2 The application form states that the application is based on section.15 (2) of the Commons Act 2006. The basis of the application is that the land has been used by the local inhabitants for a period of 20 or more years as of right from 1984 to April 2013, and continues to be used for lawful sports and pastimes. The application then asserts that a significant number of the inhabitants (including clubs and organisations) who live within the 'locality' both past and present have used the village green for a range of sports and pastimes which are set out in greater detail in the supporting statement of evidence as:

- Cricket, Football, Tug of War, Rounders, running, family games, kite flying, playing tag, kicking a ball informally, charity events, army exercises, birthday parties, jubilee parties, carol singing, recycling fair, toddlers learning to walk, workers resting during lunch breaks, walking, wildlife watching, general relaxation and exercise, live music and dancing, dog walking

4.3 The applicants have also mentioned some specified uses being:

- as an open space for enjoying sports, children playing games, picnics and relaxing.
- Since 2010 the applicants Turk's Head Charity have used the land for its annual Wapping Shindig
- an exercise ground by the Army stationed at Tobacco Dock during the London Olympic period.
- Council's uses of the land for recycling events and fun run days.
- holding of outdoor events that would not otherwise take place, e.g. the Summer Shindig, carol singing at Christmas and the Spring recycling fair.
- Use of the land by the elderly as a place to sit down and to rest as it is close to shops and to their homes which do not have gardens or balconies.

4.4 The application cites the various clubs/organisations which use the Land for sports and pastimes:

- St Peter's London's Docks school
- St Patrick's school
- Turk Head's charity for Wapping Shindig
- Turner's Old Star for jubilee parties
- British Army
- The London Borough of Tower Hamlets
- History of Wapping Trust
- Community Solutions for Spring Recycling fair

4.5 The application then refers to the issue of locality citing Lord Hoffman in Oxfordshire County Council v Oxford City Council where he stated that both the

owner of the land and the user should work in partnership to ensure that each are not entitled to interfere with the others' rights or uses. The application states that the context of that case can be applied in this case where the Council can allow on occasions certain clubs and others whether payment by a fee or otherwise to use the land for formal sports which can take place side by side with but not interfering with the others rights.

- 4.6 The above mentioned case ruled that several different localities could be regarded as 'the locality' for the purposes of section 15(2). In this case, the locality is referred to as Wapping and Shadwell.
- 4.7 The supporting statement in the application form then states that it is not a requirement that all of the users of the land are inhabitants of the locality and that all that is required is to demonstrate that by illustration citing the finding of the High Court in R V Staffordshire County Council ex parte McAlpine Homes there being a sufficient numbers to signify that the land was in general use by the local inhabitants. The applicants believe that this has been achieved with the number of representations made in the application. They state that not only sufficient evidence has been submitted but that the evidence is such quality as to demonstrate clearly that this land and its use should be registered as a village green.
- 4.8 The supporting statement in the application then refers to the fact that the inhabitants of the locality (this case being Wapping and Shadwell) using the land for 20 years from October 1992 until October 2012 for lawful sports and pastimes "as of right" without let or hinderance, except to the extent as set out in their statement of support and that on no occasion have the Council challenged the applicants' or any other inhabitant of the locality to the use of the land except to the extent that on some limited occasions part of the land has been used for formal sports in particular the use of playing pitches for football matches by local clubs. They also add that the act of spectating these matches would also be considered a pastime. The supporting statement goes on to state that the exclusive use on occasions of the land by clubs and organisations contributed to the general use of the land as a village green
- 4.9 Para 2 refers to a significant number of inhabitants of the locality both past and present who have used the land for a range of sports and pastimes (listed out in a schedule within Appendix F). Para 2 then goes to state that a number of clubs and organisations from the locality have used the land for formal and informal sports and leisure activities whom live in the locality. Exhibit E lists these clubs and organisations which are believed to have used the land during the 20 year period and Exhibit I (i) and (ii) shows letters supporting the application from the History of Wapping Trust and the Parish of St Peter's London Docks. Exhibit I (ii) apparently quotes former Councillor Emma Jones as supporting the application but this not signed by her (so should not be taken into consideration at this point).

- 4.10 Exhibit G and H contain a list of individuals and their witness statements supporting the application and describing their use of the land. I feel that the application falls short on the relatively low number of people that have supported this application and the number of the witness who have used the land for less than the qualifying period.
- 4.11 Exhibit I provides two letters of support for the application to register the land as a village green by both History of Wapping Trust and the Parish of St Peter's London Docks (referred to earlier). There is a quote by former Councillor Emma Jones but this is not endorsed by her so does not add any weight to the application.

## **5. WAPPING GREEN**

- 5.1 The land is on the corner of Wapping Lane and Watts Street and adjacent to Meetinghouse Alley. It is within the localities of both Wapping and Shadwell wards. It is an area of open green space which is surrounded by residential buildings. The Council is the freehold owner of the land the majority of which was transferred to the Council from the Greater London Council in 1983 for housing and ancillary purposes.

## **6. APPLICABLE LEGISLATION**

- 6.1 Town and village greens are defined in the Commons Registration Act 1965 (as amended by the Countryside and Rights of Way Act 2000), as land:
- which has been allocated by or under any Act for the exercise or recreation of the inhabitants of any locality
  - or on which the inhabitants of any locality have customary right to indulge in lawful sports and pastimes
  - or if it is land on which for not fewer than twenty years a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged in lawful sports and pastimes as of right
- 6.2 Section 15(1) of the Commons Act 2006 states that any person may apply to the commons registration authority to register land to which this part applies as a town or village green in a case where subsection (2), (3) or (4) applies.
- 6.3 Section 15(2) applies where the land has been used as of right for lawful sports and pastimes for 20 years or more before the application was made and this continues after the date of the application.
- 6.4 The Council has the authority to deal with the application to register the land as village green as a non – executive function as Schedule 1 B Licensing and Registration functions, Item 37 gives the power to the Council to register Common land or town or village green.

6.5 The application has to prove that the land satisfies the four part test:

- 1) the land has been used by a significant number of inhabitants of any locality or neighbourhood,
- 2) for “Lawful Sports and Pastimes”,
- 3) “As of Right”
- 4) for not less than twenty years.

If any one of the four criteria is not met, then the application will fail.

- 1) “Significant number of Inhabitants in any locality or neighbourhood”

In *R (Alfred McAlphine Homes Limited) v Staffordshire County Council* 2002, Sullivan J held that “significant number of inhabitants” does not need to be a considerable or substantial number. It was a matter of impression for the decision maker on the evidence and what mattered was that the number of people using the land in question had to be sufficient to indicate that their use of the land signifies that is a general use by the local community for an informal recreational use, rather than occasional use by individuals as trespassers. The applicant will be required to show that the recreational use of the land is predominately, but not exclusively used by the people who live in the locality or neighbourhood. The evidence supporting this application, in particular, the number of witness statements made by local residents regarding their recreational use of the land satisfies this criterion.

- 2) “Lawful Sports and Pastimes”

The activities do not need to be formally organised or have some form of communal element. In the case of *R v Oxfordshire County Council ex parte Sunningwell Parish Council* 1999 it was held that there must be an established pattern of recreational use rather than something trivial or sporadic. The applicant will have to show that the activities relied upon are a sport or pastime rather than referring to using the land as a means of access which will not qualify. The activities listed in support of this application satisfies this criterion.

- 3) “for not less than twenty years”

Using the context of the immediate local area to the Land, there are a significant number of witness statements contained in the application to show that the land has been used by a significant number of local inhabitants for over 20 years.

#### 4) "As of Right"

The definition of "as of right" as found in s.22(1)(A) of the Commons Registration Act 1965 and was discussed in the case of R v Oxfordshire County Council, ex parte Sunningwell Parish Council 2000. To satisfy the criterion of "as of right" the applicant will need to demonstrate that the recreational use of the land has been without force (i.e. unrestricted access to the land), secrecy (i.e. openly) and without permission (i.e. no consent either expressly or implied has been given by the owner).

- 6.6 The land is open grassland which does not have any fencing or other physical boundary to restrict access. The recreational activities referred to in the application are all done openly and not in secret.
- 6.7 However the issue of "without permission" needs to be looked at more carefully. Use cannot be claimed as of right if it is apparent that the uses claimed by the applicants have not simply been tolerated but encouraged.
- 6.8 The Council holds the land on trust for housing and ancillary purposes being recreational use and enjoyment by the general public. The Council has provided benches to encourage use of the land by the public. The Council has general bye-laws which cover the use of land provided to the public.
- 6.9 Looking at the status of the land as ancillary to the surrounding housing land which is subject to the Council's bye-laws coupled with the fact that the Council as owner of the land has given permission and encouraged use of the land by providing seating and maintaining the land for public use in addition to erecting signboards welcoming visitors to enjoy their visit (as shown in one of the photographs in Exhibit J), it would appear that permission has been given by the Council to use the land for recreational use and that use is "by right" rather than "as of right." User "by right" means that users already have a statutory or other public legal right to use the land for those purposes.
- 6.10 The recent Supreme Court decision of R v North Yorkshire County Council & other respondents reported on 21 May 2014 looked at whether public use was "as of right". In that case the Council asserted that the land subject to the application was acquired and is always held for public recreational land pursuant to section 12(1) of the Housing Act 1985 so that members of the public have a statutory right to use the land for recreational purposes and that the relevant period of 20 years had not even started to run and could not do so until the Council ceased using the land under section.12(1)n of the Housing Act 1985. The judgement found that as members of the public had a statutory right to use the land for recreational purposes, therefore they use the land "by right" instead of "as of right."



- 6.11 The Council as landowner invited public use by laying it out and acquiesced to use over the years, considered to be “by right.” “As of right” only occurs where the landowner has not given permission directly or by implication.
- 6.12 As such, whereas the other criteria have been met, the criterion of “as of right” has not been satisfied as the users of the land use the same “by right”, as opposed to “as of right.” It is therefore recommended that this application should be rejected as not all of the criteria required to enable the Council to register the land as a town or village green has been met.

## **7. LEGAL COMMENTS**

- 7.1 The Council is the Registration Authority for the purposes of the Common Act 2006, which governs the registration of town and village greens.
- 7.2 Land may be registered as a village green if a significant number of inhabitants of a locality or neighbourhood have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years.
- 7.3 This is a quasi-judicial decision for the Members of the Committee based on the evidence of law as set out in this report.

## **8 COMMENTS OF THE CHIEF FINANCIAL OFFICER**

- 8.1 There are no financial implications associated with this report.

## **9. ONE TOWER HAMLETS CONSIDERATIONS**

- 9.1 This is a quasi-judicial decision which must be made fairly and objectively. The process in coming to a decision will seek to “ensure that all residents have equal opportunity to participate in the democratic process of the Council” as set out in the Council’s aims and values.

## **10. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

- 10.1 The area of land which is the subject of this application is an important area of green space within this community.

## **11. RISK MANAGEMENT IMPLICATIONS**

11.1 Local residents or other interested parties may seek to challenge any decision in this case. Accordingly, Members must ensure that their deliberations are fair and impartial and the decision is in accordance with the evidence and the law.

**12. CRIME AND DISORDER REDUCTION IMPLICATIONS**

12.1 There are no Crime and Disorder Reduction implications arising from the recommendations in the report.

**13. EFFICIENCY STATEMENT**

13.1 There are no specific Efficiency implications arising from the recommendations in the report.

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**Local Government Act, 1972 Section 100D (As amended)  
List of “Background Papers” used in the preparation of this report**

Brief description of “background papers”	Name and telephone number of holder and address where open to inspection.
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**Legal Files DRDBC.90**

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*Report authors should refer to the section of the report writing guide which relates to Background Papers when completing this section. Please note that any documents listed in this section may be disclosed for public inspection. Report authors must check with Legal Services before listing any document as ‘background papers’.*

**14. APPENDICES**

Appendix 1 – Application dated 30 April 2013

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