

Application to register land known as Burton Down Park at Herne Bay as a new Town or Village Green

A report by the PROW and Access Service Manager to Kent County Council's Regulation Committee Member Panel on Tuesday 10th December 2024.

Recommendation: I recommend that the Applicant be informed that the application to register the land known as Burton Down Park at Herne Bay has been accepted, and that the land subject to the application (as shown at Appendix A) be formally registered as a Town or Village Green.

Local Member: Mr. D. Watkins (Herne Bay East)

Unrestricted item

Introduction

1. The County Council has received an application to register land known as Burton Down Park at Herne Bay as a new Town or Village Green from the Canterbury City Council ("the Applicant"). The application, made on 26th January 2024, was allocated the application number VGA695.

Procedure

2. Traditionally, Town and Village Greens have derived from customary law and until recently it was only possible to register land as a new Town or Village Green where certain qualifying criteria were met: i.e. where it could be shown that the land in question had been used 'as of right' for recreational purposes by the local residents for a period of at least 20 years.
3. However, a new provision has been introduced by the Commons Act 2006 which enables the owner of any land to apply to voluntarily register the land as a new Village Green without having to meet the qualifying criteria. Section 15 states:
*"(8) The owner of any land may apply to the Commons Registration Authority to register the land as a town or village green.
(9) An application under subsection (8) may only be made with the consent of any relevant leaseholder of, and the proprietor of any relevant charge over, the land."*
4. Land which is voluntarily registered as a Town or Village Green under section 15(8) of the Commons Act 2006 enjoys the same level of statutory protection as that of all other registered greens and local people will have a guaranteed right to use the land for informal recreational purposes in perpetuity. This means that once the land is registered it cannot be removed from the formal Register of Town or Village Greens (other than by statutory process) and must be kept free of development or other encroachments.
5. In determining the application, the County Council must consider very carefully the relevant legal tests. In the present case, it must be satisfied that the applicant

is the owner of the land and that any necessary consents have been obtained (e.g. from a tenant or the owner of a relevant charge). Provided that these tests are met, then the County Council is under a duty to grant the application and register the land as a Town or Village Green.

The Case

Description of the land

6. The area of land subject to this application (“the Application Site”) consists of an area of approximately 4.9 acres (2 hectares) in size, known as Burton Down Park, that is situated at Thundersland Road at Herne Bay. The site comprises a recreation ground that is mainly laid to grass and includes a children’s play area. Access to the site is available from Thundersland Road (also recorded as Bridleway CH50) which runs along the southern boundary of the site.
7. A plan of the Application Site is attached at **Appendix A**.

Notice of Application

8. As required by the regulations, Notice of the application was published on the County Council’s website.
9. The local County Member, Mr. D. Watkins, was also informed of the application and wrote to confirm his full support for it. He noted that the site was a highly valued community space that was used for a wide range of recreational activities.
10. No other responses to the consultation have been received.

Ownership of the land

11. A Land Registry search has been undertaken which confirms that the application site is wholly owned by the applicant under title number K924379.
12. There are no other interested parties (e.g. leaseholders or owners of relevant charges) named on the Register of Title.

The ‘locality’

13. DEFRA’s view is that once land is registered as a Town or Village Green, only the residents of the locality have the legal right to use the land for the purposes of lawful sports and pastimes. It is therefore necessary to identify the locality in which the users of the land reside.
14. A locality for these purposes normally consists of a recognised administrative area (e.g. civil parish or electoral ward) or a cohesive entity (such as a village or housing estate).

15. In this case, the application has been made by the City Council. As noted above, an electoral ward is a qualifying locality for the purposes of Village Green registration and therefore it seems appropriate for the relevant locality to be the electoral ward within which the Application Site is located, namely Beltinge Ward.

Conclusion

16. As stated at paragraph 3 above, the relevant criteria for the voluntary registration of land as a new Town or Village Green under section 15(8) of the Commons Act 2006 requires only that the County Council is satisfied that the land is owned by the applicant. There is no need for the applicant to demonstrate use of the land 'as of right' for the purposes of lawful sports and pastimes over a particular period.

17. It can be concluded that all the necessary criteria concerning the voluntary registration of the land as a Village Green have been met.

Recommendation

18. I recommend that the Applicant be informed that the application to register the land known as Burton Down Park at Herne Bay has been accepted, and that the land subject to the application (as shown at **Appendix A**) be formally registered as a Town or Village Green.

Accountable Officer:

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Appendices

APPENDIX A – Plan showing application site

Background documents

The main file is available for viewing on request at the PROW and Access Service based at Invicta House, County Hall, Maidstone. Please contact the Case Officer for further details.