

Request for Village Green application

Final Decision-Maker	Policy & Resources Committee
Lead Head of Service	Director of Finance and Business Improvement
Lead Officer and Report Author	Corporate Property Manager
Classification	Public
Wards affected	Boxley

Executive Summary

On 18 June 2019 a petition was presented to the Communities, Housing and Environment Committee requesting that the Council apply to Kent County Council (the Commons Registration Authority) for Weaving Heath to be registered as a Village Green. The Committee resolved at its meeting on 12 November 2019 that the petitioners' request be referred to the Policy and Resources Committee, which is responsible for making decisions regarding land and property.

This report makes the following recommendations to this Committee:

1. To endorse the petitioners' aspirations for Weaving Heath.
2. To leave it to any other person that wishes to do so to apply for registration of Weaving Heath as a Village Green.
3. To refer the decision on how to respond to an application to a meeting of this Committee at the relevant time.

Timetable

Meeting	Date
Communities, Housing and Environment Committee	12 November 2019
Policy and Resources Committee	22 January 2020

Request for Village Green application

1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	The Safe, Clean and Green corporate priority is relevant but there is no incremental impact as Weaving Heath would continue to be held as public open space.	Corporate Property Manager
Cross Cutting Objectives	As for corporate priorities.	Corporate Property Manager
Risk Management	Covered in the risk section of the report.	Corporate Property Manager
Financial	If the Council were to apply for Village Green registration there would be an opportunity cost in terms of officer time being devoted to this project at the expense of other work.	Section 151 Officer & Finance Team
Staffing	If the Council were to apply for Village Green registration staffing resources would be required, which would be at the expense of other work.	Corporate Property Manager
Legal	The council has a discretion as owner of the land to apply to register the land as a village green under s15 (8) of the Commons Act 2006. It is a discretion not a duty and the decision will be made by Policy and Resources Committee having considered relevant factors.	Legal Team
Privacy and Data Protection	No implications.	Corporate Property Manager
Equalities	No implications.	Corporate Property Manager
Public Health	Open Space contributes to health and wellbeing. There is no incremental change arising from this report as Weaving Heath would continue to be held as public open space.	Corporate Property Manager
Crime and Disorder	No implications.	Corporate Property Manager

Procurement	No implications.	Corporate Property Manager
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2. INTRODUCTION AND BACKGROUND

- 2.1 As part of the development of Grove Green, a section 52 Planning Agreement (equivalent to the current section 106 Planning Agreements), was made between the Council and Ward Homes on 30 March 1982. As part of that agreement the land now known as Weaving Heath was transferred to Maidstone Borough Council, subject to necessary easements and rights and a covenant in favour of the owners that the land be used by the Council as a public space. This has continued from 1982 to date and is required by the transfer covenant to continue until 30 March 2062.
- 2.2 On 18 June 2019 a petition was presented to the Communities, Housing and Environment Committee requesting that the Council approach Kent County Council to register Weaving Heath as a Village Green. Registration would have the effect of protecting Weaving Heath as public open space in perpetuity. Notwithstanding the covenant referred to above, the petitioners were concerned about what might happen to the land after 2062.
- 2.3 The Communities, Housing and Environment Committee resolved that a full report on the options available be prepared for the appropriate Committee. Under the Council's Constitution, the Policy and Resources Committee is responsible for making decisions regarding land and property. Accordingly, the Communities Housing and Environment Committee subsequently agreed at its meeting on 12 November 2019 to refer the matter to the Policy and Resources Committee.

Rationale for registration as a Village Green

- 2.4 In presenting the petition to the Communities, Housing and Environment Committee in June 2019, the following points were made:
- The area was used by the community for walking trails, dog walking, a street picnic, fitness classes and boot camps. The area also provided a much needed wildlife haven.
 - The area was much used by the community and had a recognised voluntary group which provided assistance with de-littering and general upkeep.
 - Local people are best placed to help decide on what is best for their area.
 - There was no protection for this area in the Council's Local Plan.

- After 80 years the Council could choose to change the use of the land, so to safeguard it, the residents would like to ensure that the area is fully protected.
- The residents wanted to improve their community amid traffic chaos and over-development.

Criteria for registration as a Village Green

2.5 The Commons Act 2006 section 15 covers the registration of land as village greens. There is a power under section 15 (1) that may be used by any person to apply to the Commons Registration Authority (Kent County Council) to make a registration, providing evidence that the criteria for registration are met. In summary, the criteria are that the land has been used:

- 'as of right' (i.e. without secrecy, permission or force);
- for a period of at least 20 years;
- for the purposes of lawful sports and pastimes;
- by a significant number of the inhabitants of any locality, or of any neighbourhood within a locality; and
- use has continued up until the date of application or, if this is not the case, use ceased to be 'as of right' no more than one year prior to the date of application.

There is extensive case law that may be used by the registration authority to interpret the criteria. The criteria need to be met before a registration process can be commenced.

2.6 In this case the registration authority may consider that the use of the land by local inhabitants is not "as of right" because the covenant requiring use as a public space means that Maidstone Borough Council as owner is permitting its use.

2.7 Should the registration authority believe the criteria to be met for an application to be accepted, it would then advertise the application and serve notice on the landowner. Six weeks would be allowed for objections to be made to the application.

2.8 The application and any objections would be considered by the registration authority and a report submitted for decision to the relevant member or committee of the registration authority.

Landowner power to apply for registration

2.9 There is a discretionary power under section 15 (8) for the owner of the land, in this case Maidstone Borough Council, to apply for the land to be registered as a village green. Consent has to be sought from the holders of any relevant charge over the land. There are many rights and easements subsisting over Weaving Heath but legal officers consider that none meet the definition of relevant charge for the consent requirement, so this would pose no obstacle.

2.10 As set out in paragraph 2.4, it is open to any person to make an application for registration. However, petitioners have requested that Maidstone Borough Council make the application. It is understood that this route has been chosen because:

- an application from the landowner is considered to carry greater authority
- the Council is believed to have more capacity, in terms of knowledge, contacts and expertise, to undertake the necessary work.

Policy considerations

2.11 The Council's Local Plan and its Parks and Open Spaces 10 Year Plan set out its commitment to maintaining existing open spaces, including Weaving Heath. No allocations have been made for development on Weaving Heath.

2.12 The Council has no plans for an alternative use of Weaving Heath and supports its continued use as open space. As the land is in the Council's ownership, any decision about alternative uses would be for the Council to make and would be subject to the democratic process, and would include public consultation.

2.13 It is not the policy of the Council to constrain or restrict how its assets may be used in the future. It is for the Council to determine at the relevant time what is the most appropriate use for the benefit of the whole Borough's residents.

3 AVAILABLE OPTIONS

3.1 Option 1 – The Council applies as landowner to register Weaving Heath as a Village Green as requested by the petitioners.

3.2 Option 2 – To endorse the petitioners' aspirations for Weaving Heath, and to leave it to any other person that wishes to do so, to apply for registration.

4 PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

4.1 Option 2 – To endorse the petitioners' aspirations for Weaving Heath and to leave it to any other person that wishes to do so to apply for registration.

4.2 This approach is consistent with the Council's support for open spaces but leaves the initiative with the local community to pursue the matter. From the Council's viewpoint, devoting resource to registering Weaving Heath as a Village Green contributes nothing further to its existing commitment to

maintaining it as open space, so would not be a productive use of officer time.

- 4.3 Members may request that the matter be brought back to this Committee, if and when the registration authority requests comments on any application, so that they may decide whether or not to object to the registration at the relevant time.
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5 RISK

- 5.1 The risk about which the petitioners are concerned is that development takes place on Weaving Heath, so that its value to the local community as open space for walking, leisure and a haven for wildlife is lost.
- 5.2 As indicated in paragraphs 2.11 to 2.13, this risk is minimal. Weaving Heath is protected by covenant as open space for the next forty years. The Council owns the land and is therefore able to fulfil its commitment to keeping it as public open space. Any future application for development of the site would be subject to public consultation.
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6 CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 6.1 This matter arose following a local petition.
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7 NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 7.1 If option 2 is chosen there are no further steps to be taken until the registration authority consults on any application.
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8 REPORT APPENDICES

None.

9 BACKGROUND PAPERS

None.