



Title: **Torre Abbey Meadows, Torquay – Application for Registration of a Town or Village Green**

Public Agenda Item: **Yes**

Wards Affected: **Tormohun**

To: **Council**

On: **8 December 2011**

Key Decision: **No**

Change to Budget: **No**

Change to Policy Framework: **No**

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## **1. What we are trying to achieve**

- 1.1 An Application was made on 23 April 2009 by a local resident, Mr Ian Handford, to register Torre Abbey Meadows ('the Application Land') as a Town or Village Green under the Commons Act 2006. It falls to the Council as Registration Authority to consider and resolve the Application as one of its statutory functions. The application is based on use by community of the Tormohun Ward for 20 years up to the date of the application. A copy of the Application is available as a background paper.

## **2. Recommendations for decision**

- 2.1 That the Council rejects the Application on the following ground:-

That at all times during the Council's ownership of Torre Abbey Meadows up to the date of the application (and at all times since that date) Torre Abbey Meadows been held and maintained by the Council under Section 164 of the Public Health Act 1875 for public walks or pleasure grounds and has been by implied permission available for recreational use by the public for lawful sports and pastimes. Accordingly, the Applicant is unable to show that there has been use of Torre Abbey Meadows as a Town or Village Green "as of right" for the requisite period of 20 years (as provided under Section 15(2) of the Commons Act 2006.

### **3. Key points and reasons for recommendations**

- 3.1 To succeed in an application to register land as a Town or Village Green under the Commons Act 2006, an applicant needs to prove actual use of the land by a significant number of local inhabitants for lawful pastimes as of right for not less than 20 years continuing at least to the date of the application.
- 3.2 The phrase “as of right” is a technical law term stating that the use of the land must not be by force, by stealth or by permission.
- 3.3 However, the subject Application Land has been made available as public open space by the Council under its statutory powers by Section 164 of the Public Health Act 1875 so that enjoyment of the land by the public is permissive and therefore cannot be “as of right”.

### **Legal Issues**

- 3.4 Section 15(2) of the Commons Act 2006 provides that any person may apply to the commons registration authority to register land to which this [section] applies as a town or village green in a case where 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 they continue to do so at the time of the application
- 3.5 The grounds of Mr Handford’s Application are that the Application Land became a town or village green on 23 April 2009 ‘by virtue of use of the [Application Land] during the last eighty years for a considerable number of outdoor public events which include annual fairs, carnivals, charity events and festivals. The [Application Land has] been used to accommodate large marquees for sports events and music festivals. Both locals and visitors benefit from the availability of the green open space and the Italianate gardens and associated lawns. With the neighbouring bowling greens and the Torre Abbey Pitch and Putt Golf Course, the whole area is looked on as a peaceful area to visit. The Meadow lawns are enjoyed by families, both local and visitors, who use the open Greens as a safe area in which to play and enjoy as a picnic area’. The locality whose inhabitants claim to use the land is the locality of the ward of Tormohun.
- 3.6 In written advice obtained from leading Counsel on Town and Village Green applications relating to a similar application affecting Wellswood Park the advice stated that “The land which [the applicant] is seeking to register as a Town or Village Green is a park owned by the Council. The point is that if land has been made available as public open space by a Local Authority under its statutory powers, it is hard to see how use of that land can be as of right. The phrase as of right is a technical law term denoting that the use of the land must not be by force, by stealth (ie secretly) or by permission. The underlying idea behind use which is as of right is that users must act as if they had a right to go on to the land. It is inappropriate to describe use of a park as of right where the position is that users actually do have the right to go on to the land. The point has been considered by registration authorities on a number of occasions, and to my knowledge, no park or recreation ground has ever been registered”.
- 3.7 Officers have reviewed the relevant case law and endorse this view and are not aware of any change to this position since the advice was provided.

- 3.8 Therefore, the recommendation is that as a matter of law, the Application fails.
- 3.9 The Council as Registration Authority must now proceed to the determination of the Application. The Council must determine this in accordance with the law. It must disregard its status as the owner of the freehold of the Application land and any views it may have on proposals relating to any part of the land. There is no prescribed procedure which the Council must follow other than it must give a reasonable opportunity to the Applicant for dealing with any matter which appears to the authority to afford possible grounds for rejecting the Application.
- 3.10 The Applicant must prove on the balance of probabilities that 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 Application land for a period of at least 20 years, and they continue to do so at the time of the application. The expression "lawful sports and pastimes" has been held in a leading case to include informal recreation such as walking with or without dogs and children's play. There is little doubt that the Application land has been and continues to be used for informal recreation. However, the key issue is that the Council has permitted this use: the application land is a public park.

### **Conclusion**

- 3.11 Having considered the Application and the objections to it, Officers consider that the Application should be rejected for the reasons set out in the recommendation.

**For more detailed information on this proposal please refer to Appendix A.**

**Anne-Marie Bond**  
**Executive Head Commercial Services**

## Supporting information

### A1. Introduction and history

- A1.1 The history of the Application site is set out in the objection Report by the Council in its capacity as Landowner dated 2 August 2010.
- A1.2 In brief the Application Land was for the most part purchased by the Mayor Aldermen and Burgesses of the Borough of Torquay by Conveyances of 29 September 1920 and 13 October 1930 respectively. The 29 September 1920 Conveyance was from the surviving trustee of the Cary Settled Estates of land at the junction of Belgrave Road and Torbay Road. That Conveyance was made pursuant to a Contract for sale dated 3 May 1920 whereby the Borough acting by its Town Clerk agreed to buy the land concerned “in exercise of the powers in that behalf given to him by the Public Health Act 1875 and all other powers him thereunto enabling”. Clause 14 of that Contract states “The scheduled hereditaments are being purchased for the purpose of public pleasure grounds under the authority of the Public Health Act 1875 or any other public or local Act now or hereafter in force enabling him in this behalf”.
- A1.3 Officers consider that the vast majority of Application Land is held under the Public Health Act 1875. Those parts of the Site that are not held under the Public Health Act were bought for highways purposes or for construction of the RICC. Furthermore, members will be aware that several sites on the Application Land are leased (e.g Abbey Park Café, the Balloon) and therefore cannot have been used for lawful sports and pastimes up until the date of the application.
- A1.4 The Application seeks inclusion of the site in the Register of Town or Village Greens on the basis that the Application Land became a town or village green on 23 April 2009 ‘by virtue of use of the [Application Land] during the last eighty years for a considerable number of outdoor public events which include annual fairs, carnivals, charity events and festivals. The [Application Land has] been used to accommodate large marquees for sports events and music festivals. Both locals and visitors benefit from the availability of the green open space and the Italianate gardens and associated lawns. With the neighbouring bowling greens and the Torre Abbey Pitch and Putt Golf Course, the whole area is looked on as a peaceful area to visit. The Meadow lawns are enjoyed by families, both local and visitors, who use the open Greens as a safe area in which to play and enjoy as a picnic area’. The locality whose inhabitants claim to use the land is the locality of the ward of Tormohun. The Application Land is outlined and hatched green on the plan attached to the Application.
- A1.5 Following lodgement of the Application, public advertisement was carried out in the local press, within Council buildings and on site with a closing date of 2 August 2010 for responses.
- A1.6 The public consultation produced 3 objections, from the Council, the Riviera Centre and Lindstrand Aeroplatforms. The Application included 51 completed questionnaires as evidence of local peoples concerns at the loss of further public access to the Application Land. Copies of the objections and the completed questionnaires are available as background papers.

## **A2. Risk assessment of preferred option**

### **A2.1 Outline of significant key risks**

A2.2 Whilst there is no formal right of appeal under the Commons Act 2006 if an Application is rejected it is open to the Applicant to seek a judicial review of the Council's conduct if he believes it to constitute an abuse of power or to be wrong in law, unreasonable, procedurally improper, biased or contrary to his or the inhabitants' legitimate expectations. Judicial review is a High Court remedy which would involve Counsel and a risk of costs if the Applicant were successful. It is not considered by officers that an application for judicial review of a decision based on the above recommendation would be successful.

A2.3 A decision to register the land as a Town or Village Green might be subject to a High Court Review by an objector to the Application.

There are no other risks envisaged.

## **A3. Other Options**

A3.1 To approve the Application.

A3.2 To defer consideration of the Application by arranging a non-statutory Public Inquiry to be chaired by an independent inspector experienced in such matters who would report to the Council as Registration Authority with his recommendations.

## **A4. Summary of resource implications**

A4.1 Following the Outline of significant key risks discussed in Section A2 above, there will be no operational resource implications for the Council if the Application is approved since there will be no change to the use of the site.

A4.2 Conversely, if the Application were refused with or without a non-statutory Public Inquiry, then as also discussed earlier, the Applicant might apply for Judicial Review with a significant demand on resources and risk of costs.

A4.3 Officers do not consider that in the circumstances it would be a sensible use of the Council's resources for the matter to be resolved by a non-statutory Public Inquiry.

## **A5. What impact will there be on equalities, environmental sustainability and crime and disorder?**

A5.1 None.

## **A6. Consultation and Customer Focus**

A6.1 Whilst there was no consultation with the Overview and Scrutiny Board or Working Parties there was a public consultation exercise using public notices, a local newspaper advertisement and deposit of copies of the Application at Torquay Library and Torbay Council Connections Office.

A6.2 The residents of Tormohun Ward will be principally affected.

A6.3 Officers are aware that many Members would like for part of Torre Abbey Meadows and other similar areas throughout Torbay to be voluntarily registered as Town or Village Greens and it is within the Council's powers to register land owned by it as Town or Village Green subject to the Mayor first volunteering the land for voluntary registration. At Annex A is a briefing note on the voluntary registration of land owned by the Council as Town or Village Greens which Members are asked to consider and provide the report author with their thoughts. If Members indicate a willingness to voluntarily register areas of land owned by the Council, it is intended that discussions with residents and Members will take place on the possible ramifications of such action and if appropriate a further report to be brought to full Council requesting the voluntary registration of areas within Torbay.

**A7. Are there any implications for other Business Units?**

A7.1 No.

**Appendices**

Appendix 1 - Discussion Paper on the Voluntary Registration by the Council of its land as Town or Village Greens

**Documents available in Members' Rooms**

Two pieces of advice from leading Counsel on the voluntary registration of land owned by local authorities as town or village green

**Background Papers:**

The following documents/files were used to compile this report:

'Application for village green status of Abbey Meadows' dated 23 April 2009

Objection by Torbay Council in its capacity as landowner to the Application.

Letter from the Applicant dated 27 August 2009 enclosing 51 completed questionnaires as evidence of local peoples concerns at the loss of any further public access to the Application Land

Objections from Lindstrand Aeroplatforms Limited and the Riviera International Conference Centre Limited

C:\Documents and Settings\csl075\Desktop\Anthony Butler\Monitoring\Report to Council re Torre Abbey Meadows Torquay.doc

### **Discussion Paper on the Voluntary Registration by the Council or its land as Town or Village Greens**

Members across all parties would like to protect green spaces throughout Torbay for future generations by voluntarily registering them as town or village greens. This is legally possible and would involve the Mayor offering each area for voluntary registration and Full Council confirming the registration.

Registration of land as a town or village green protects each area from development in perpetuity. To paraphrase the legislation that protects town and village greens; it is unlawful to interrupt local peoples sports and pastimes and/or erect any fence or structure which is not with a view to the better enjoyment of the town or village green.

Only the inhabitants of a defined locality have a right to use the land, and only they or the landowner can take action against any person who are considered to have acted unlawfully. When voluntarily registering the town or village green the council can define the locality that has the right to use the land.

It is a simple and cheap process to object to the use a town or village green is put and a process that can ultimately result in an activity being stopped altogether.

The problem the council has is that some activities that currently or may take place in the future on our greens would be unlawful under the legislation protecting town or village greens. The most significant current activity that could be affected is the annual waste management conference on Paignton Green. Available in the members room are two pieces of advice received from leading counsel and you will see from the advice entitled 'Further Advice' it is considered that the conference in its current form would be unlawful. The presence of the conference is already challenged by some locals, however the present grounds for challenge are not that straightforward, and officers are confident that any attempted legal challenge could be defeated. Crucially, once registered, as a town or village green, a green cannot be 'un-registered', nor can exemptions from the legislation be created or rules allowing certain activities be set.

With regard to future uses of all the greens, as can be seen from the advice from counsel, whether a matter is unlawful is always a matter of fact and degree. However, if a significant proportion of a town or village green is fenced off or otherwise, so that the public cannot access that part without payment, it is likely to be unlawful and therefore possible to stop.

There is currently no intention to develop any of the three greens above, however there are many ideas for events that may be held on them in the future. The majority of these events will still be able to take place regardless of registration, however some may not, if an application is made to the magistrates to stop them. It is apparent from the two pieces of advice from counsel, it is not clear what is and isn't lawful under the legislation and unfortunately, once registered, if it is found that certain activities are deemed to be unlawful, the council is not able to 'un-register' the greens to allow those activities.