

DR/38/20

Report title: APPLICATION TO REGISTER LAND AT LUXFIELD, VICARAGE LANE, GREAT BADDOW, CHELMSFORD, ESSEX CM2 7SU AS A TOWN OR VILLAGE GREEN

Report to: Development & Regulation Committee

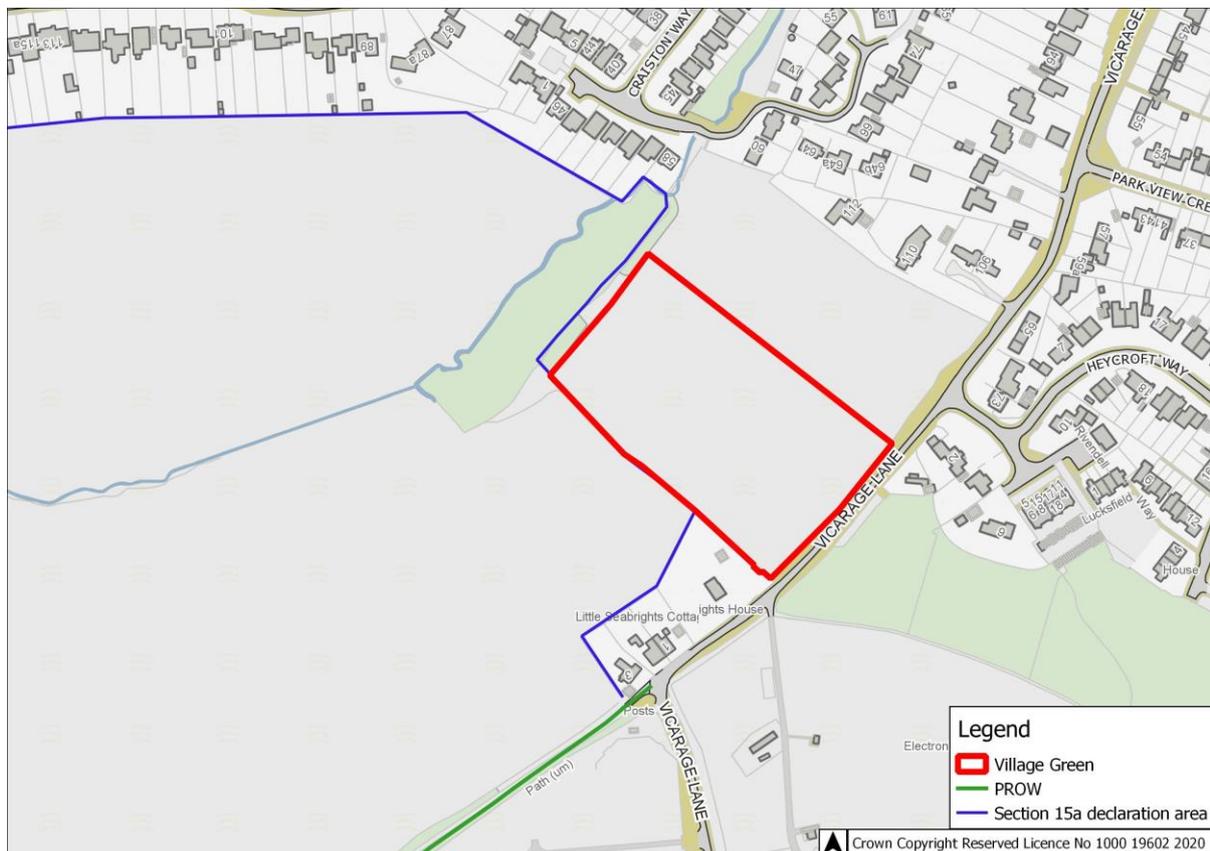
Date: 27 November 2020

For: Decision

Report by: Head of Legal

Enquiries to: Jacqueline Millward 033301 39671

County Divisions affected: Great Baddow



1. PURPOSE OF REPORT

To consider an application made by Great Baddow Parish Council under Section 15(8) of the Commons Act 2006 (“the 2006 Act”) as amended, to register land at Luxfield, Great Baddow, Chelmsford as a Town or Village Green.

For the Essex area, Regulation 7 of the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 (“the 2007

Regulations') states that 'where an application is made under section 15(8) of the 2006 Act to register land as a town or village green, the registration authority must grant it provided it is satisfied that – (a) the applicant is the owner of the land; and (b) any consents which are required by section 15(9) of the 2006 Act have been obtained.'

2. BACKGROUND

The County Council has a duty to maintain the Registers of Commons and Town and Village Greens.

The powers set out in section 15(8) of the Commons Act 2006 allow an owner of land, to voluntarily dedicate land as a town or village green by applying to have it included in the register of town or village greens.

This provision departs from the customary law usually applying to the registration of Town and Village Greens but Defra's guidance indicates that once a green has been registered voluntarily it will be subject to the same statutory protections as all other registered greens and local people will have a guaranteed legal right to indulge in sports and pastimes over it on a permanent basis. Subject to certain statutory exceptions for compulsory purchase or exchange of land, once registered, land cannot be removed from the register.

Section 15 of the 2006 Act changes the legal definition of a town or village green and sets out the qualifying circumstances in which land may be newly registered. Anyone can apply to have land registered as a green if it has been used by local people for recreation 'as of right' (*i.e.* without permission, force or secrecy) for at least 20 years. But under section 15(8) a landowner can apply to register without meeting these criteria.

The 2007 Regulations set out how voluntary registration applications can be made, and how they are dealt with and determined by the commons registration authority. The 2007 Regulations prescribe a new application form and are accompanied by detailed non-statutory guidance notes for applicants.

The application process for voluntary dedication is made on Form 44 and includes a map and description of the land claimed for registration as a town or village green. It also needs to identify the locality or neighbourhood within a locality where local people live who will have a right to use the green and it is up to the applicant to decide what locality or neighbourhood should have recreational rights over the land. Defra's view is that, in relation to any land registered as a green, only the inhabitants of the defined locality or neighbourhood will have the legal right to indulge in sports and pastimes over the green. Consent needs to be obtained from any lease or charge holder of the land, including a tenant or mortgagee.

The commons registration authority is not required to advertise the application and does not have to examine the merits of registering the land; it need only be satisfied that the landowner is legally entitled to apply to register.

A statutory declaration is required to confirm that the applicant is the owner of the land, is applying to register it as a green and, if required, that the applicant has obtained all the necessary consents. In some cases the registration authority may decide to ask for further evidence of ownership before it accepts the application. If the authority is satisfied that the application is properly made, the land will be registered as a town or village green.

An application cannot be rejected, but it may be returned if there is any doubt about the ownership of the land or if the applicant has not obtained the necessary consents.

There is a separate pending application (both for public rights of way and village green status) by a different person which will need to be decided separately and does not form part of this decision. That is at an early stage and awaiting action from the applicant in that case.

3. THE APPLICATION SITE

The application form indicated the land is known as Luxfield. The location of the land is to the north west side of Vicarage Lane. The applicant confirms that the land is open to Vicarage Lane and access is available along the boundary with it

The nature of the land is largely wooded but with some more open areas for recreation and some informal pedestrian paths through it.

The Form 44 application referred to a plan on which the application site is marked and is transposed onto a map of the area on the front page of this report.

4. THE APPLICATION

In June 2020 the Parish Council signed their application to register the land as Village Green application and emailed it to the County Council in July and the original documents were subsequently received in July 2020.

The application sets out the name and address of the applicant and a description of the land the subject of the application.

The land is registered at the Land Registry and a copy of the register was provided. It names the Applicant as the landowner. This complies with the requirements of section 61(3) of the 2006 Act which states that:

- (a) references to the ownership or the owner of any land are references to the ownership of a legal estate in fee simple in the land or to the person holding that estate;
- (b) references to land registered in the register of title are references to land the fee simple of which is so registered.

The property contained in the registered title EX530433 solely consists of the land comprising the boundary of the application site. There are no charges applying to the Title or any other recorded interests. The Applicant has confirmed there are no access rights over the land.

The Applicant supplied a copy of their resolution of 13th January 2020 to make the application. This was in the following terms and there was no accompanying formal report to the meeting on which the resolution was based.

024/20 Luxfield

A member of the public is seeking support from the Parish Council to register land including Luxfield as a village green, thereby preserving the land and preventing it being sold for development. The Parish Council owns part of the land (91m) from Seabrights House along Vicarage Lane.

Cllr C Shaw proposed that the Parish Council should support the application to register Luxfield as a village green. The proposal was seconded by Cllr K Ronaldson. 10 Councillors were in favour, 1 abstained.

5. LOCALITY

In part 6 of the form, which asks the applicant to show the locality to which the claimed green relates either by writing the administrative area or geographical area by name or by attaching a map on which the area is clearly marked, the applicant stated "Great Baddow Parish" and "CK Great Baddow Village Ward". Great Baddow is a parish and is legally capable of satisfying the criteria for a locality.

6. CONCLUSION

The application as amended is compliant with the requirements of sections 15(8) and (9) of the 2006 Act.

There is no reason for the application to be returned.

7. RECOMMENDED

That the application as amended is accepted and the land shown on the map at the front of this report be added to the Register of Town and Village Greens for the reasons set out in this report.

The new green will be VG 262.

BACKGROUND PAPERS

Application by Great Baddow Parish Council with supporting papers.

Ref: Jacqueline Millward CAVG/120