



Meeting: Torbay Council

Date: 26 February 2015

Wards Affected: St Marychurch

Report Title: Registration of Land within Maidencombe as a Village Green

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1. Purpose and Introduction

- 1.1 On 26 September 2013 this matter went before Council and a decision was made to register the land as a Village Green but that registration only to take effect upon the transfer of the land (for no consideration) to a company set up by the residents of Maidencombe.
- 1.2 Discussions have been held with resident groups within the village and it is not felt that the transfer of land is an option for the community at the current time.
- 1.3 This matter is therefore resubmitted for consideration to amend the previous decision made on 26 September 2013, removing the requirement for the land to be transferred before registration takes place.

2. Proposed Decision

- 2.1 That Torbay Council, as Common Registration Authority, register the land shown edged red on Plan EM2295 set out at Appendix 2 to the submitted report and the land be entered in the Council's Register of Town or Village Greens by the Council's Land Charges Manager.

3. Reason for Decision

- 3.1 The reason for the decision being required is that the Council has received an application from local residents to register the land as Village Green. Whilst it does not oppose such an application, it is simpler for a voluntary application as landowner to be made and that to be accepted by the Council as Commons Registration Authority.

Supporting Information

4. Position

- 4.1 A report was taken to Full Council on 26 September 2013 about the registration of the land as a Village Green and a copy of the report is contained as Appendix 1 to this report.
- 4.2 The land is shown edged red on plan EM2295 (Appendix 2 to this report). It is managed by the Torbay Coast & Countryside Trust (TCCT) notwithstanding the fact that the 60-year lease for the larger area around Maidencombe has not yet been completed. It is currently used as an open space and as an occasional overflow car park by the TCCT.
- 4.3 The decision taken by the Mayor on 26 September 2013 was as follows:
- (i) That the land shown edged red on plan EM2295, be transferred for no consideration to a company set up by the residents of Maidencombe or a properly constituted trust set up for the benefit of the residents of Maidencombe; and
 - (ii) That an application be made to Torbay Council in its separate capacity as Common Registration Authority for Torbay for the land to be registered as Town or Village Green (TVG).
- 4.4 The Maidencombe residents have since indicated that they are not willing to take on the legal liabilities associated with the formation of either a company or trust and therefore another mechanism is required to obtain Town or Village Green status on the land.
- 4.5 The TCCT have confirmed that they support the proposal for the Council to register the land as a Town or Village Green.
- 4.6 The following is mentioned in the 2013 report but before agreeing to the land being registered as a town or village green Members must bear in mind the following considerations:-
- 4.6.1 Once registered the land will likely remain registered in perpetuity unless an alternative site can be identified and that site is accepted by the Secretary of State taking into account consideration laid down in the Commons Act 2006. It is not considered likely that such an application would be successful as there is no suitable alternative site. Members must note that the deregistration of a town or village green is not a decision in the gift of the Council.
 - 4.6.2 There are relatively few activities that can be carried out on land registered as town or village green. Essentially, should the land be registered, its future use shall be limited to the type of recreational activities that have been listed in paragraph 4.2 to the 2013 report. No development of the land would be able to

take place and other proposed uses may be unlawful (including the parking of cars). Whether an activity 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 enclosed, so that the public cannot access that part freely, it is likely to be unlawful and therefore susceptible to legal challenge. Due to the nature of the land and the limited uses that the land has been put to date, it is not envisaged its registration as a town or village green will have a significant impact however there is always the chance that objections will be received, particularly if access to the land, or part of it, is obstructed for any reason. When considering objections the court is not entitled to consider any benefits that the activity objected to is bring to the area, however significant those benefits may be.

- 4.7 As mentioned above the TCCT currently maintain the land and it is understood that the TCCT is willing to do so after registration.

5. Possibilities and Options

- 5.1 If the recommendation is not approved and the Council, as landlord, does nothing then the alternative options are as follows:

5.1.1 The Council, as Commons Registration Authority, considers any application from local residents to register the land as a Village Green.

5.1.2 The Council excludes the land from the lease to the TCCT, declares it surplus and seek to sell it on the open market. The Council will need to follow its Community Asset Transfer policy with the likelihood that the Residents Association will put in an application.

5.1.3 The Council (as with Paignton Green) provides a unilateral covenant not to allow any permanent structure to be erected on the site for a period of 100 years from the date of the covenant being made.

6. Equal Opportunities

- 6.1 An Equalities Impact Assessment is not required in relation to this decision.

7. Public Services (Social Value) Act 2012

- 7.1 The proposals do not require the procurement of services etc or the carrying out of works.

8. Consultation

- 8.1 Since September 2013 further consultation has been held with the Maidencombe Residents Association (MRA) and the Maidencombe Community Group. Both are in support of the registration of the land as a Village Green.
- 8.2 The Local Access Forum was contacted by the Council prior to the submission of the 2013 report with the one comment being in support of the proposal.
- 8.3 It should also be noted that the person with the benefit of the covenant between William Coysh and Torbay Council in the conveyance dated 13 September 1934 (details in para 4.3 of the September 2013 report) have written to confirm her support to register the land as a Village Green.

9. Risks

- 9.1 The risks for offering the land for registration and accepting such offer is that a future use that the Council seek to use the land for may not be possible. Any monetary value that the land may presently have will be lost.

Appendices

Appendix 1 'Voluntary Registration of Land in Maidencombe as a Village Green' report submitted to the Council meeting on 26 September 2013

Appendix 2 Plan EM2295

Additional Information

None