

Agenda Item 11



Meeting: Council

Date: 26 September 2013

Wards Affected: St Marychurch

Report Title: Voluntary Registration of Land in Maidencombe as a Village Green

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1. Purpose and Introduction

- 1.1 Residents from Maidencombe have asked for the land shown edged red on the plan numbered EM2295 ('the Land') and attached to this report to be registered as a Town or Village Green ('TVG'). The land is situated in Maidencombe village.
- 1.2 It is intended that immediately prior to the registration of the land as a TVG the land will be transferred to the residents, either by transferring the land to a company set up by the residents or to a properly constituted trust with two or more residents acting as trustees
- 1.3 As landowner the Council is able to apply to itself as Commons Registration Authority for Torbay to register land as a TVG. The decisions to transfer the land and to make the application to register the land are both executive decisions and therefore decisions for the Mayor. The decision as to whether to register the land as a TVG is a Council decision.
- 1.4 As separate decisions are required (two from the Mayor and one from full Council acting as Commons Registration Authority) the recommendation is split into two parts with the second part being subject to the Mayor first agreeing to the application to register the land as Town or Village Green.

2. Proposed Decision

Decision of the Mayor

- 2.1 **That subject to the Council agreeing to the application to register the Land as Town or Village Green the land 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**
- 2.2 **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 subject to the Council agreeing that registration will only be completed simultaneously with the completion of the transfer of the Land, proposed at paragraph 2.1

Decision of Full Council

2.3 That the application to register the Land be accepted and the Land be entered in the Council's Register of Town or Village Greens by the Council's Land Charges Manager such registration to be completed simultaneously with the completion of the transfer of the Land proposed at paragraph 2.1 and not before

3. Reason for Decision

- 3.1 If the residents were to make an application to register the Land as TVG under the Commons Act 2006 then, if it so wished, there are sufficient grounds for the Council (acting as landowner) to successfully object to the application.
- 3.2 Landowners have the ability under s15(8) of the Commons Act 2006 to voluntarily apply to the relevant Commons Registration authority for their land to be registered as a TVG. It is considered that, due to the nature of the land and the fact that the majority of local residents are in support, it is appropriate for an application to be made for land to be registered as TVG and for that application to be accepted.
- 3.3 The registration is to be subject to the completion of the transfer so that if the transfer to the residents is not agreed the land is not registered as TVG and left in the Council's ownership.
- 3.3 There is a covenant preventing any buildings being erected on the land without the consent of the adjacent landowner. As such (and particularly in light of the planning considerations outlined below) it is considered to be very unlikely that the site could be developed and therefore were the land to be sold it the capital receipt would be very small.
- 3.4 In order to avoid the Council being burdened with the responsibility of maintaining the Land once it has been registered as TVG it is intended that the Land be transferred to the residents who will be responsible for the upkeep of the Land. The Land is presently maintained by TCCT and is used by TCCT use the Land for overflow parking. Once registered as TVG such use would be subject to legal challenge therefore the benefits TCCT currently derive from the Land would be lost. The transfer of the land to the residents will also mean that they control the future use of the Land so far as it is consistent with its status as TVG.

Supporting Information

4. Position

- 4.1 The land is shown edged red on plan EM2295. 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.

4.2 The Maidencombe Residents Association have indicated that the land has for many years been used for purposes consistent with those of a Village Green including sports such as recreational football & cricket; picnics, bird-watching, berry picking and other recreational pastimes - there have been village sports such as throwing the wellie, archery, sack races etc. There have been stalls for flowers and produce from villagers and for the past two years the green has been used for the 'Barn Dance on the Green', supported by villagers and other nearby residents.

4.3 The land is included within the Council title DN516755. A conveyance of the land (and other land) dated 13 September 1934 made between (1) William Coysh and (2) The Council of the Borough of Torbay contained the following covenant:

"For the benefit of the house at present occupied by the Vendor on the opposite side of the road the Corporation hereby covenant with the Vendor and his successors in title that the Corporation and their successors in title will not erect or permit to be erected on the land forming Ordnance Number 618 any building without the consent of the Vendor or his successors in title".

Note – The land forming Ordnance Number 618 includes the land edged red on plan EM2295.

4.4 The Planning Department have indicated that, given the constraints on this site, there is unlikely to be a development that they would find acceptable in planning terms. The only likely exceptions would be community backed projects that delivered community benefits (e.g. a small development on this site to pay for a community development elsewhere). However, it is considered that even this seems unlikely given the clear feeling of the community here and the constraints in the existing Local Plan. Other than that a development would have to be so exceptional in terms of design that it is worth making an exception for (rural exceptions policy) but again this would be difficult to achieve here.

4.3 The TCCT have confirmed that they support the MRA's proposal for the Council to voluntarily apply for the land to be registered as a Village Green.

4.4 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

above. 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 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 Consideration will need to be given as to who maintains the land in the future. As mentioned above the TCCT currently maintain the land. If the Council does agree to voluntarily register it as a Village Green then the Council could request that the Villagers maintain it. The Residents Association's understanding is that the TCCT will continue to be responsible for its maintenance.
- 4.8 Due to the existing restrictions on the use of the Land the value of the land is small (although no formal valuation has been carried out). The Land's registration as TVG reduces any value further. The Council is obliged to obtain the best consideration reasonable obtainable in respect of any disposal that it enters into. However, where the disposal is considered to be for the improvement of the economic, social or environmental wellbeing of all or any parts of its area or all or any persons presents in its area a Council is entitled to dispose of the Land for an undervalue of up to £2million. Clearly the disposal does not amount to a disposal at an undervalue greater than £2million and it is considered that the disposal is for the social and environmental wellbeing of Maidencombe, its residents and all persons visiting the area.

5. Possibilities and Options

- 5.1 If the recommendation is not approved and the Council, as land owner, 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. As stated above officers believe there are sufficient grounds for the Council acting as landowner to successfully object to any such application.

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 has been carried out and is attached to this report as Appendix 2.

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 The Maidencombe Residents Association (MRA) has carried out consultation with the village. All residents were invited to a meeting on 15 May 2013 to discuss this matter, which was apparently well attended. The MRA have informed the Council that there was a unanimous show of hands in support of the proposal and no hands were raised in objection.

8.2 The Local Access Forum was contacted by the Council with the one comment being in support of the proposal.

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	EM2295
Appendix 2	Equalities Impact Assessment

Additional Information

None