

Item No. 6.2	Classification: Open	Date: 25 January 2012	Meeting Name: Council Assembly
Report title:		Application for the Registration of a New Town or Village Green at King's Stairs Gardens, Jamaica Road, London SE16	
Ward(s) or groups affected:		Rotherhithe	
From:		Strategic Director of Communities, Law & Governance	

RECOMMENDATIONS

Council assembly is asked to:

1. Consider the contents of this report and the summary of the evidence provided with the application as set out in Appendix 1.
2. Agree the application to register King's Stairs Gardens, Jamaica Road, London SE16; as a Village Green.

BACKGROUND INFORMATION

3. The purpose of the Register of Common Land and Town and Village Greens is to register land as common land or as a town or village green and to register rights of common exercisable over land so registered.
4. The former Greater London Council were, until 1986, responsible for maintaining the registers of Common Land and Town and Village Greens. In 1986 this function was transferred to local authorities and in the London Borough of Southwark (the Council) is currently held by the Local Land Charges service.
5. The Council has seven areas of Common Land registered, all of which are in the southern part of the borough, primarily in Nunhead, East Dulwich and Dulwich Village.
6. Prior to August 2011, there had been no new applications for the registration of either Common Land or Town and Village Greens, since the council took over this function in 1986. There have been some minor amendments to existing registrations.

The application

7. On 1 August 2011, the Council received an application to register a new Town and Village Green, located in the north of the borough at an area known as King Stairs Gardens. The application is made under Section 15(2) of the Commons Act 2006.
8. The plan attached to the application (Appendix 2) shows the boundary of the area to be considered as fronting the River Thames to the north, the rear

gardens of properties in Elephant Lane to the east, Jamaica Road to the south and Fulford Street and Paradise Street to the west. The application was accompanied by numerous supporting documents consisting of completed questionnaires carried out on behalf of the applicant, Elaine Holland.

9. The application is made on the basis that a significant number of inhabitants of the locality or any neighbourhood within that locality have indulged as of right in lawful sports and pastimes on the land for a period of 20 years and they continue to do so.
10. Upon receipt of the application for the registration of a new Town and Village Green, arrangements were made for the publication of a Notice in the Southwark News and South London Press, indicating that the Council had received the request and that a consultation period had begun.
11. The Notices were in the editions of the Southwark News on 8 September 2011, and the South London Press on 9 September 2011. The Notices advised that the consultation process was open until Monday 24 October 2011, with any representations being sent by post or e-mail, prior to that date, for consideration. Copies of the application and supporting documents could be inspected at Bermondsey One Stop Shop and Rotherhithe Library.
12. Site Notices were placed at six locations around the application area notifying residents and visitors that the consultation process had begun and indicating access to document arrangements together with any representations on 8 September 2011.
13. At the closing date of the consultations there were no representations received by either post or e-mail regarding the proposed application for registration of a new Town or Village Green at King Stairs Gardens. Thus no objections to this application were received.
14. As the land is owned by the council, formal notice was given to the council's Head of Property. Thames Water was served with a notice as an interested party, as the site was identified as a preferred site in relation to the Thames Tunnel or 'Super Sewer'.

KEY ISSUES FOR CONSIDERATION

History of the land

15. The council does not hold any information or records about how it came into the possession of the land. Extensive research was undertaken to establish how (for what purpose) the council holds the land. The only information officers have been able to obtain is from the London Metropolitan Archives who were able to provide a plan of the site of King's Stairs Gardens stating that it was transferred to the London Borough of Southwark under the Local Government Act 1985 Local Government Reorganisation (property etc.) Order 1986 Article 3 Schedule 1 Paragraph 1(b). That provides that land held by an abolished council for their purposes of their functions relating to parks (including country parks), open spaces and burial grounds shall vest in the local council. It is normally the transfer order that would specify whether the land is transferred for a particular purpose (e.g. use as park) or whether it simply vests in the council for general purposes. However, this information is generally contained in the specific transfer

order, which officers have not been able to obtain a copy of.

16. Enquiries were made with the London Metropolitan Archives, the National Archives at Kew, the British Library and DCLG but a copy of the transfer order could not be obtained.
17. The only other relevant information that is available on the Internet is available from Wikipedia which has the following entry:

In July 1947 the London County Council (LCC) declared Bermondsey a Reconstruction Area, and as part of wholesale post-war regeneration approved the idea of extending Southwark Park to the river. The idea of a link to the river pre-dated the Second World War by a few years, but the post-war need to reconstruct gave this aim more resonance.

In January 1948 the LCC Planning Committee endorsed the policy of a park by the river at King's Stairs riverside.

Putting the policy into practice proved to be a slow business because of a combination of objections by amongst others Bermondsey Borough Council and local businesses. For instance in 1953 the LCC's Draft Development Plan for London was subject to an Inquiry and the Bermondsey and Rotherhithe Chamber of Commerce objected to the park extension.

In September 1954 the Ministry of Housing approved the compulsory purchase of land in order to extend the park, but this took a few years to implement.

In 1960 the LCC approved a design for the King's Stairs riverside walk, which was opened in November 1962. In January 1963 the LCC approved the name King's Stairs Gardens.

In 1964 the LCC agreed a grassed area to the south of The Angel public house. Again the implementation seems to have been delayed due to financial constraints, and it was not until 1968 that the Greater London Council (the successor body to the LCC) reappraised the site, and agreed to three green space additions. These were finally completed by 1982, and it is in that form that King's Stairs Gardens still exists today.

The land as it presently exists

18. The area of King's Stairs Gardens that is maintained by the Parks Section is approximately 34,404 square meters. There is a play area which is a dog free zone, there are picnic spots within the park and the Thames Riverside Path runs close to the park.

The relevant considerations

19. The relevant considerations in determining the Application for the registration of a new Town or Village Green at King Stairs Gardens, London SE16 are set out briefly below.
20. The section 15(2-) Commons Act 2006 allows the registration of a village or town green for land on which: -

- **a significant number of the inhabitants** of any locality, or of any neighbourhood within a locality
- **have enjoyed a lawful sport or pastime**
- **as of right**
- **for a period of 20 years** (section 15, Commons Act 2006).

Significant number

21. In the application's supporting documents there are 137 completed questionnaires from inhabitants of the locality/neighbourhood. Of these, 55 have stated that they have used King's Stairs Gardens for sports or pastimes for at least 20 years. This is 40.1% of the respondents. Of the 137 questionnaires it would appear that approximately 23 have addresses outside the locality/neighbourhood. However, there is case law which suggests that there is no requirement for most of the users to have lived in the locality or neighbourhood. The requirement is that those people are among the recreational users of the land and it does not matter that some users come from elsewhere.
22. This criterion requires that a 'significant number of inhabitants' of a locality or neighbourhood within a locality have indulged in lawful sports and pastimes on the land for at least 20 years.
23. A 'significant number' does not mean 'a considerable or substantial number'. The number of people using the land has to be sufficient to indicate that it is in general used by the local community for informal recreation. Significant is a matter of impression after analysing the evidence. What matters is that the number of people using the land is sufficient to indicate that it is in general used by the inhabitants of any locality or neighbourhood within a locality. Members are referred to Appendix 1 which summarises the evidence, including a column entitled 'others' which is there to show that in the evidence provided other people or members of their family also are referred to as using King's Stairs gardens in the manner required in the column entitled 'others'.
24. Analysis of the evidence shows that there is use of the application area, by the inhabitants of the locality and further afield, for sports, pastimes and community activities and that these uses have been in existence for at least 20 or more years. The evidence also suggests that the application area is used for these various sports and pastimes at all times of the day and is therefore not limited to specific periods of the day.

The locality

25. An applicant for registration under section 15(1) is required to identify, by description or by reference to a map, the area relied upon as the 'locality or the 'neighbourhood within the locality, a significant number of inhabitants of which have used the land for recreation.
26. The application states the locality/neighbourhood as the "Parish of St Peter and The Guardian Angels". A plan was also included with the application, showing the extent of the locality/neighbourhood.
27. A locality is defined as a legally recognised administrative area, such as a civil parish, or an ecclesiastical parish. An electoral ward would also qualify.

28. Officers accept that the relevant locality/neighbourhood to consider is the Parish of St Peter and The Guardian Angels. The summary of evidence at Appendix 1 shows whether each person lives within or outside the locality.

Lawful sports and pastimes

29. These activities do not need to be either organised or have a communal element. Activities such as dog walking, kite flying, solitary or family activities are sufficient to justify registration as long as there is an established pattern of use and it is not trivial or sporadic. It is also not necessary for local inhabitants to have participated in a range of diverse sports and pastimes. One off annual activities are unlikely to suffice to justify registration, as such an activity would be too sporadic to amount to continuous use for lawful sports and pastimes. Once registered the land can be used generally for sports and pastimes and use is not limited to pre-registration activities.
30. The lawful sports and pastimes relied upon by the applicant are walking, running, games, children's playground, community activities and nature education. A summary of the types of activities undertaken can be seen in Appendix 1.

As of right

31. In order to meet this criterion, the applicant needs to provide evidence that the application site has been used for lawful sports and pastimes without force, without secrecy and without permission. There is no evidence to suggest that the application does not meet the criteria relating force and permission.
32. However, with regard to the criterion that the land must have been used without permission, Members are advised that the situation is not entirely clear. As set out in the section above explaining the history of the land, the council does not have any information as to the purpose for which the land is held. This is relevant here because if users already have a statutory or other legal right to use it for lawful sports and pastimes, the use is considered to be 'by right' or 'of right'. This is because where there are express statutory provisions that confer the right to use the land for recreational purposes, the land is effectively held on trust for that the enjoyment for that purpose by the general public who is in essence the beneficiary of the trust and cannot be regarded as trespassers.
33. Members are advised that the application area is managed by the Parks and Open Spaces and that the general public is permitted to use the park for recreational purposes.
34. Nonetheless in the absence of any evidence that there is a statutory or other legal right to use King's Stairs Gardens for recreational purposes, the council would have difficulty resisting the application for registration on this basis.

For a period lasting at least 20 years

35. There must be evidence of qualifying use for a period of at least 20 years. It is not necessary for particular individuals to have used the land for the full period of 20 years, but there should be evidence that the local inhabitants taken together have used the land for the full period.
36. The evidence submitted with the application shows that the quantity and

regularity of use are such as to demonstrate to a reasonable landowner that such a right was being asserted. In order to demonstrate sufficient use, one has to take a broad view of the usage. Officers' view is that the applicant has established use for a period lasting at least 20 years.

37. The broad range of uses, from the supporting documents submitted with the application, range from, walking, games, use of children's playground, nature education, running/jogging, walking the dog, taking in the river views, picnics and just relaxing/reading. The range of uses appear from the supporting documents, to have been in place for many years, from the 1970's and 1980's, and would certainly comply with the twenty year requirement for the application. The summary of evidence at Appendix 1 shows how many people have used King's Stairs Gardens for 20 years, and how many people have used the area for less than 20 years.

Community impact statement

38. The proposed registration of the new application for Town and Village Greens will enable the residents, young and old, of the locality and others from within the borough and further afield, to continue enjoyment of an open space for lawful sports and pastimes.

Legal implications

39. If no objection is received (as is the case in this application), the Council can register the application, if it is satisfied that the application is properly made and evidenced.
40. The Commons Act 2006 (the Act) and the Commons (Registration of Town or Village Greens)(Interim Arrangements)(England) Regulations 2007 (the Regulations) govern the procedures applicable to an application for registration as a village green. The council's role in relation to village green applications is as Registration Authority.
41. The effect of registration of land as a village green is that the right for local people to use the land for recreational uses is protected. Any development must facilitate that right. In short the land is preserved as a green. Any owner or tenant's rights are still preserved but they must not interfere or be inconsistent with the established lawful recreation uses. It is important in terms of the significance of the decision to note the effect on the landowner (in this case the council) as it restricts the owner's right to deal freely with the land.
42. In order for the land to qualify for registration as a town or village green, the Commons Act 2006 requires that the land must have been used 'as of right' for lawful sports and pastimes for a period of at least 20 years by the inhabitants of any 'neighbourhood' or 'locality'.
43. The determination of an application by the Registration Authority is a non-executive function and does not involve any exercise of discretion. The Registration Authority's role is to ascertain how the land in question has been used for the relevant period and on what legal basis. The question then is whether or not in light of the aforementioned considerations the land is properly registrable as at own or village green under the Act.

44. The application must be determined impartially and without reference to any planning permission or other proposal which may be pending or has been granted in respect of the land. It is not uncommon for applications for registration of a town or village green to be prompted by some sort of proposed development (in this case the Thames Tunnel). However, it is important for Members to bear in mind that the merits of the Thames Tunnel and the relative merits of registration of King's Stairs Gardens as a town or village green are not material matters for the consideration of the Registration Authority.
45. Members are therefore advised that they should not take into account in its deliberations any views they may have as to the benefits or disbenefits of the Thames Tunnel or the relative merits of registering King's Stairs Gardens as a village green.
46. Where the council as Registration Authority makes a determination regarding this application, it must notify the applicant and objectors of its decision. If the application is refused, reasons for refusal must be given. If the application is allowed, notice (but not necessarily reasons) must be given to all who objected.
47. Where a decision is taken to register a village green, this may be challenged by way of judicial review by an objector. Similarly where a decision is taken not to register the land as a village green, the applicant may seek to judicially review the Registration Authority's decision. There is no statutory right of appeal.
48. Part 3P, paragraph 1 of the constitution (page 63) provides that all matters that are not reserved to Council Assembly, Cabinet or a committee are delegated to the appropriate chief officer. It further advises in paragraph 3 of that part of the constitution that it is the responsibility and duty of the chief officer that where appropriate matters are reported to Council Assembly. In this case it was considered appropriate for the matter to be reported to Council Assembly due to the high profile nature of the development proposed by Thames Water.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Application for Registration of a New Town and Village Green	Local Land Charges Service, 160 Tooley Street, London SE1 2QH	Paul Horsnell 020 7525 7686
Supporting documents accompanying application	Local Land Charges Service, 160 Tooley Street, London SE1 2QH	Paul Horsnell 020 7525 7686

APPENDICES

No.	Title
Appendix 1	Summary of Evidence
Appendix 2	Plan of King's Stairs Gardens

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Communities, Law & Governance	
Report Author	Paul Horsnell, Land Charges Manager	
Version	Final	
Dated	11 January 2012	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Communities, Law & Governance	Yes	Yes
Finance Director	No	No
Cabinet Member	Yes	Yes
Date final report sent to Constitutional Team	12 January 2012	