

**Manchester City Council  
Report for Resolution**

**Report to:** Licensing and Appeals Committee – 22 October 2018

**Subject:** Application to Register Land Known as Godfrey Ermen Playing Field, Abbey Hey as a Town or Village Green (Application TG18)

**Report of:** Head of Planning, Building Control and Licensing

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**Summary**

The Council received an application to register land known as Godfrey Ermen Playing Fields in Abbey Hey as a town or village green.

An independent barrister, sitting as Inspector, held a non-statutory public inquiry into the application and prepared a written report containing his recommendation for its determination.

The Committee is asked to consider the Inspector's report and determine the application.

**Recommendations**

That the Committee accept the recommendation of the Inspector in his written report dated 18 July 2018 and resolve to accept the application to register land known as Godfrey Ermen Playing Field, Abbey Hey, Manchester, shown on the plan at Appendix A, for the reasons set out in the report. The Council is to take all necessary steps to confirm such registration.

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**Wards Affected**

Gorton Abbey Hey

<b>Manchester Strategy outcomes</b>	<b>Summary of the contribution to the strategy</b>
A thriving and sustainable city: supporting a diverse and distinctive economy that creates jobs and opportunities	None relevant to this decision
A highly skilled city: world class and home grown talent sustaining the city's economic success	None relevant to this decision
A progressive and equitable city: making a positive contribution by unlocking the potential of our communities	None relevant to this decision

A liveable and low carbon city: a destination of choice to live, visit, work	None relevant to this decision
A connected city: world class infrastructure and connectivity to drive growth	None relevant to this decision

**Full details are in the body of the report, along with any implications for**

- Equal Opportunities Policy
- Risk Management
- Legal Considerations

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### **Financial Consequences – Revenue**

No relevant consequences

### **Financial Consequences – Capital**

No relevant consequences

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### **Contact Officers:**

Name: Justin Hobson  
Position: Senior Lawyer  
Telephone: 801 34097  
E-mail: j.hobson@manchester.gov.uk

Name: Fraser Swift  
Position: Principal Licensing Officer  
Telephone: 800 31176  
E-mail: f.swift@manchester.gov.uk

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### **Background documents (available for public inspection):**

The following documents disclose important facts on which the report is based and have been relied upon in preparing the report. Copies of the background documents are available up to 4 years after the date of the meeting. If you would like a copy please contact one of the contact officers above.

- Commons Act 2006
- Part 1 of the Commons Act 2006: Guidance to commons registration authorities and the Planning Inspectorate, December 2014
- Application form and accompanying appendices
- Objections to the application

- First Directions issued July 2017
- Second Directions issued March 2018
- Further evidence of the landowner objector and the applicants submitted in preparation for the Inquiry

## **1.0 Introduction**

- 1.1 In May 2016 the Council, as Registration Authority, received an application to register as a Town or Village Green the land described as being usually known as Godfrey Ermen Playing Fields, located to the rear of Ackroyd Avenue, Abbey Hey, Manchester.
- 1.2 An independent barrister was instructed by the Council to sit as Inspector and hold a non-statutory public inquiry to hear the evidence and submissions both for and against the application and, after holding the inquiry, to prepare a written report to the Registration Authority containing his recommendation for the determination of the application.
- 1.3 The purpose of this report is to ask the Committee to consider the Inspector's report and determine the application.

## **2.0 Background**

- 2.1 In May 2016 the Council, as Registration Authority, received an application under Section 15(1) of the Commons Act 2006 to register as a Town or Village Green the land described as being usually known as Godfrey Ermen Playing Fields, located to the rear of Ackroyd Avenue, Abbey Hey, Manchester. A copy of the plan which accompanied the application, showing the area of land in question edged red, is attached to this report at Appendix A.
- 2.2 The effect of registering an area of land as a Town or Village Green is that local inhabitants have the right to take part in any lawful sport or pastime on the green, and not just those activities which were enjoyed prior to the registration of the land.
- 2.3 Further, once registered, the green gains various statutory protections. The two statutes providing this protection are the Inclosure Act 1857 and the Commons Act 1876, and the principal protections include making it a criminal offence to:
  - undertake any act which causes injury or damage to the green (e.g. digging turf)
  - undertake any act which interrupts the use or enjoyment of a green as a place of exercise and recreation (e.g. fencing a green so as to prevent access)

and a public nuisance to:

- encroach onto a green (e.g. extending the boundary of an adjacent property)
- inclose a green (e.g. fencing it in, whether or not public access is excluded)
- erect any structure on a green, other than for the purpose of the better enjoyment of the green
- disturb, occupy or interfere with the soil of the green (e.g. camping), other than for the better enjoyment of the green.

2.4 Whilst these protections are in place, it should also be said that Government guidance does indicate that the nature, extent and effect of any act, encroachment, disturbance etc. may be relevant in deciding whether any enforcement action should be taken.

### **3.0 Application**

3.1 The application was made by Emily Hulley of The Orchards, Ackroyd Avenue, Manchester, M18 8TL; Anne Hern of 27 Underwood Close, Manchester, M18 8UY; Caroline Martin of 22 Ackroyd Avenue, Manchester, M18 8TL; and Terence Hulston of 8 Violet Street, Manchester, M18 8TU (“the Applicants”) and was stamped as received by the Registration Authority on 31 May 2016.

3.2 It was claimed that on 30 May 2016, the application land had been and continued to be used as of right for lawful sports and pastimes by a significant number of the inhabitants of a neighbourhood within a locality for a period of at least 20 years.

3.3 The application was submitted with supporting documentation comprising over 140 completed evidence questionnaires, a Land Registry extract in respect of the register of title for the application land, photographs, aerial imagery, an Ordnance Survey plan of the field showing various tracks thereon and a plan of the neighbourhood relied on.

3.4 In accordance with the statutory requirements, notice of the application was advertised on 28 July 2016. Any objections to the application were invited to be made by 30 September 2016 (this later being extended to 4 November 2016 following a request by the landowner). Two objections were received, one from The Greater Manchester Trust for Recreation (“the Trust”) as the owner of the application land and the second from Mr. Mooney (a local resident).

3.5 In further accordance with the prescribed procedures, the Applicants were given an opportunity to respond to the objections. On 3 February 2017 the Registration Authority received a detailed response to the Trust’s objection from the Applicants together with a much shorter response in respect of Mr. Mooney’s objection.

3.6 Consideration of the Trust’s objection and the Applicants’ response clearly demonstrated there were serious disputes between the Applicants and the Trust over a range of issues and factual matters relevant to the question of whether the statutory elements necessary for registration were established (see 5.6 and 5.7). The Court of Appeal’s guidance in the *Whitney* case<sup>1</sup>, states that in such circumstances, an independent legal expert should be instructed by the Registration Authority to hold a public inquiry to assist with the determination of the application for a new green.

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<sup>1</sup> R on the application of *Whitney* v Commons Commissioners (Court of Appeal, 2004)

- 3.7 Alan Evans of Kings Chambers, Manchester, was instructed by the Registration Authority to sit as Inspector and hold a non-statutory public inquiry to hear the evidence and submissions both for and against the application and, after holding the inquiry, to prepare a written report to the Registration Authority containing his recommendation for the determination of the application.
- 3.8 In preparation for the Inquiry, the Registration Authority issued directions to the objectors and the applicants. These included the opportunity for both parties to submit any further evidence on which they intend to rely.

#### **4.0 Non-Statutory Inquiry**

- 4.1 The non-statutory Inquiry was held at The Mechanics Conference Centre in Manchester between 22 and 25 May 2018, where both the Applicants and the Trust (as objecting landowner) were represented by counsel. Mr Mooney attended as a witness on behalf of the Trust.
- 4.2 The Inspector subsequently prepared a report dated 18 July 2018 and a copy is attached to this report for consideration by the Committee at Appendix B. Members are requested to note the report and to consider its findings.
- 4.3 A full copy of the Inspector's report was provided to both the Applicants and the objectors on 23 August 2018.
- 4.4 Members will note that paragraphs 1-13 of the Inspector's report deal with preliminary matters, including an outline of the application. At paragraph 5, the Inspector confirms that he had visited the application land, both prior to and after the Inquiry. At paragraph 13 the Inspector confirms that the Inquiry and his assessment of the application proceeded by reference to a revised neighbourhood boundary submitted by the Applicants.

#### **5.0 Consideration of the Evidence**

- 5.1 The Inspector's report proceeds to describe the application land ("the Field"), its history and the surrounding area in paragraphs 14-22. Members will note at paragraph 22, the Inspector confirms that, following the submission of a planning application in respect of the land, no trigger event had occurred so as to exclude the Applicants' right to apply to register the application land as a green.
- 5.2 The Inspector then considered the evidence given in support of the application. 15 live witnesses gave evidence at the Inquiry. An account of the live evidence heard at the Inquiry is given in paragraphs 23-62.
- 5.3 The Inspector then proceeded to set out the evidence given in objection to the application. 2 live witnesses gave evidence at the Inquiry. An account of the live evidence heard at the Inquiry is given in paragraphs 63-85.

- 5.4 In paragraphs 86-128, the Inspector sums up the submissions that were made to him by the objector. In paragraphs 129-184, he sums up the submissions made by the applicant.
- 5.5 The Inspector sets out his findings of fact and analysis in paragraphs 185-236.
- 5.6 As referred to by the Inspector at paragraph 7, the application sought the registration of the land under section 15(1) of the Commons Act 2006 (“the 2006 Act”) on the basis that section 15(2) applied. Section 15(2) applies where:
- (a) *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*
  - (b) *they continue to do so at the time of the application.*
- 5.7 In paragraph 185, the Inspector sets out the main issues, in regards of the above-mentioned statutory criteria, which were specifically contended by the objector. These being:
- (a) whether the claimed neighbourhood is a qualifying neighbourhood within the meaning of section 15(2) of the 2006 Act;
  - (b) whether the claimed use was with force (“vi”) and/or with permission (“precario”) and thus not as of right during the relevant 20 year period; and
  - (c) whether the Applicants have established the requisite degree and extent of qualifying use by a significant number of the inhabitants of a qualifying neighbourhood throughout the relevant 20 year period.

The Inspector proceeded to address the above issues in the order: (a); (c); and (b).

- 5.8 In paragraphs 186-196, the Inspector considered issue (a) - whether the claimed neighbourhood is a qualifying neighbourhood. For completeness, the Inspector first confirmed at paragraph 186 that the Trust and the Applicants were in agreement that the City of Manchester was an appropriate locality to satisfy the statutory requirement that the claimed neighbourhood is one “*within a locality*”. Determining the issue, the Inspector stated he was in no doubt that the claimed neighbourhood is a qualifying neighbourhood for the purposes of the statutory criteria. He found that the claimed neighbourhood has “a strong cohesiveness in geographic terms”, with the boundaries being “clear and rational”, and that “the evidence, overall, shows there to be community cohesiveness in relation to the claimed neighbourhood”. The Trust had contended that while Abbey Hey may well be a qualifying neighbourhood, the applicants’ claimed neighbourhood formed only part of Abbey Hey. In considering this point, the Inspector stated that in his opinion this was more an issue of nomenclature, rather than substance, which did not affect his assessment of the claimed neighbourhood being a qualifying neighbourhood. [The Inspector went on to state that if a more meaningful description of the

claimed neighbourhood were required, he did not see why that should not be eastern Abbey Hey.]

- 5.9 In paragraphs 197-218, the Inspector considered issue (c) - whether the Applicants had established the requisite degree and extent of qualifying use by a significant number of the inhabitants of a qualifying neighbourhood throughout the relevant 20 year period. The Inspector initially considered the recreational use of paths on the field. He then turned to the recreational use of the remainder of the field. Following this, he considered whether or not the path use was to be discounted from his overall assessment of the field use on the grounds of having had the appearance to the landowner of being the exercise of public rights of way (rather than the exercise of a right to indulge in lawful sports and pastimes across the whole of the Field). The Inspector determined that it was not to be discounted. The Inspector then considered whether the field had been used by a significant number of the inhabitants of the neighbourhood. At paragraph 218, the Inspector concluded that a significant number of the inhabitants of the neighbourhood have indulged in lawful sports and pastimes on the Field for a period of at least 20 years.
- 5.10 Finally, in paragraphs 219-236 the Inspector considered issue (b) - whether the claimed use was with force ("*vi*") and/or with permission ("*precario*") and thus not as of right during the relevant 20 year period. Considering the issue of forcible use first, the Inspector considered the Trust's actions to communicate their opposition to the use of the field to those using it, particularly via correspondence. The Inspector found that the correspondence had not been sufficient to effectively indicate that use of the field by local inhabitants was not accepted by the Trust. The Inspector also found that the Trust had not throughout the relevant 20 year period erected any signs indicating use of the Field was not permitted, obstructed access to the Field, nor taken any steps to prevent access to the Field from adjacent residential properties via rear their gates. Turning to permissive use, the Trust's case was that use of the Field by dog walkers was permissive in the period from 2000, when such permission was granted, until 2004, when permission was revoked, the issue turning on a correspondence. The Inspector found that there was no evidence that such permission had been communicated to the local inhabitants. The conclusion reached by the Inspector was that the use of the Field has throughout the relevant 20 year period been "as of right".
- 5.11 The Inspector's overall conclusions are set out in paragraphs 237-238. He concluded that all elements of the statutory definition in section 15(2) of the 2006 Act have been met and recommends to the Registration Authority that the application should be accepted and that the Field should be registered as a town or village green.

## **6.0 Key Policies and Considerations**

### **(a) Equal Opportunities**

- 6.1 There are no equal opportunities issues arising from this report.

## **(b) Risk Management**

- 6.2 As with any such decision made by the Council it can be challenged by way of 'Judicial review'.

## **(c) Legal Considerations**

- 6.3 There are no additional legal considerations to those already highlighted within this report and the Inspector's report at Appendix B.

## **7.0 Conclusion and recommendations**

- 7.1 The Council has the benefit of a very full, and detailed report, prepared by the expert Inspector pursuant to an Inquiry which considered detailed evidence.
- 7.2 It is recommended that the Committee accept the recommendation of the Inspector in his written report dated 18 July 2018 and resolve to accept the application to register land known as Godfrey Ermen Playing Field, Abbey Hey, Manchester, shown on the plan at Appendix A, for the reasons set out in the report. The Council is to take all necessary steps to confirm such registration.