

# PLANNING APPLICATION REPORT



<b>Application Number</b>	21040	<b>Item</b>	02
<b>Date Valid</b>	N/A	<b>Ward</b>	PLYMSTOCK RADFORD

<b>Site Address</b>	LAND KNOWN AS HOOE GREEN, PLYMOUTH		
<b>Proposal</b>	An application to register the land as a town or village green		
<b>Applicant</b>	Mr Robin Blythe-Lord.		
<b>Application Type</b>	Village Green		
<b>Target Date</b>	N/A	<b>Committee Date</b>	Planning Committee: 30 May 2019
<b>Decision Category</b>	N/A		
<b>Case Officer</b>	Mark Lawrence		
<b>Recommendation</b>	The application site should be added to the register of Town and Village Greens		

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## 1. Description of Site

Land known as Hooe Green in the Plymstock Radford Ward, Plymouth and specifically the land within the boundaries of Hooe Village, situate at the southern end of Hooe Lake and adjacent to Hooe Road.

## 2. Introduction

A town or village green is land that is subject to the right of local inhabitants to enjoy general recreational activities on it. Registered greens are protected under statute from encroachment and development.

2.1 Plymouth City Council is the Registration Authority for town or village greens and this means it must maintain a register of all those registered within its registration area. It must be made clear that this application is therefore before the Committee not in its capacity as the Local Planning Authority but as the Town or Village Green Registration Authority.

2.2 The relevant legislation for this particular application is the Commons Act 2006 (the Act) and its associated Regulations.

2.3 The benefits of registering land as a village green are to:

- Secure permanent recording of the land as a town or village green,
- Protect the land from development and other forms of detrimental activity
- Secure the right of local people to enjoy the land for recreation in perpetuity.
- Give the registered land a new status as land for the community, to be valued and enjoyed
- Ensure that existing and prospective owners are aware of the established recreational function of the land.

2.4 However, certain criteria must be met under section 15 of the Act to enable land to successfully be registered as a green.

2.5 Careful consideration must be given to all applications as if successful they can and will place restrictions on the land owner's use of the land.

2.6 Certain checks need to be undertaken by any applicant prior to submitting an application to ensure that there is nothing preventing the registration of the land as a green, such as there is a current planning application for the land which has yet to be determined.

2.7 Once it has been established that there is nothing preventing the possible registration, consideration must be given by the applicant to the essential criteria and the tests needed for a green. The ones relevant for this particular application are those in Section 15(2) of the Commons Act 2006. These are as follows:

“(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.”

2.8 Therefore, it is incumbent upon any applicant to submit with their application for registration evidence to support all the essential criteria. The application is then submitted to the relevant Registration Authority for detailed consideration and determination.

### **3. Process for Determination**

The process for consideration and determination by Plymouth City Council as the Registration Authority is that the application will be allocated to a case officer who will process and progress the application. The authority to make a final decision of any town or village green application is with the Planning Committee as set out in its Terms of Reference. However:

- a) if there are objections which raise issues worthy of being tested orally; or/and
- b) where the evidence is finely balanced; or/and
- c) where the Registration Authority have an interest in the land; or/and
- d) where points of law arise

the Registration Authority has the discretion to appoint an independent person to advise it as to whether the application should be accepted or refused. This is usually undertaken by way of a public inquiry.

3.1 An inquiry for this purpose, set up at the discretion of the registration authority and not as a requirement of law is, therefore, a 'non-statutory inquiry'.

3.2 If an inquiry is held the independent inspector will consider in detail the evidence and then prepare a report with his recommendation. The Council as Registration authority will then determine the application on the basis of the advice provided from the inspector and the evidence submitted.

3.3 With regard to the final decision there is no right of appeal, however, a landowner can under Section 14(b) of the Commons Registration Act 1965 apply to the High Court to rectify the register of town or village greens to delete the registration of a new green. Further both parties do have the right to apply for permission to challenge any decision by way of a judicial review in the High Court.

3.4 As mentioned in Paragraph 2.3 above, land registered as a town or village green is, at present, protected in perpetuity against development. Unless a future landowner is successful in an application to have the land removed from the register, it will be preserved as open land available for recreation. In order to have land removed however the landowner would need to show that it was 'just' to do so based upon whether any prejudice would occur to parties involved in the village green application.

3.5. Members are also advised that a village green application is not a material planning consideration. A planning application can be submitted on land which is registered as a village green, as the village green status of the site is protected by separate legislation and is not in itself a ground for the refusal of planning permission. However the grant of planning permission cannot override legislation protecting the village green status of land.

3.6 It is also important for Members to note that in considering an application of this kind as a Registration Authority, and not as a Planning Committee, it is acting in a 'quasi-judicial' capacity, which means that it must be neutral in terms of any preconceived view towards the side either of an applicant, or of any actual or potential objectors. Importantly there have been no objections to this application, either from Plymouth City Council as the landowner, nor any member of the public.

### **4. The Application**

4.1 The Application for Hooe Green was submitted by Robin Blythe-Lord (the Applicant) of 'Camelot', Amacre Drive, Plymouth on the 12<sup>th</sup> August 2014. The Applicant provided justification for the application, along with other evidence. This included photographic

evidence, various correspondence, site plans and numerous completed evidence questionnaires.

4.2 The Application was advertised and no objections were received by the Registration Authority, including from the landowner Plymouth City Council.

4.3 The Application was then considered further by the Registration Authority. The relevant tests to be applied are those in Section 15(2) of the Commons Act 2006 as set out in Paragraph 2.7 of the officer's report.

4.4 In the application before Members the land was appropriated as Public Open Space, by way of the fact that it was conveyed to Plymouth City Council on the 15<sup>th</sup> September 1962 in accordance with the Local Government Act 1972, with the intention that it was held as Public Open Space. The land has been and continues to be held by Plymouth City Council as Public Open Space. For clarification purposes Members are advised that land which is public open space can be added to the Register of Town or Village Greens, and in accordance with Section 15(8) of the Commons Act, an owning local authority could itself apply for registration as a village green of land which is known as public open space, and there would be no legal grounds for declining such an application.

4.5 The Council's evidence base concludes that the main benefits/services of the site are informal recreation and amenity and Hooe Green has now been formally designated as City Green Space within the Joint Local Plan under policy DEV27 due to the coastal location. Therefore it is apparent that the land has already been established for recreational purposes, by way of the current usage for such purposes by members of the public. The Applicant has provided further evidence showing that the land has been used on many occasions for village fetes and festivals and present within the site are an unmarked football pitch, stainless steel benches, and a children's playground which has been substantially re-furbished with new play equipment. The area is maintained by Plymouth City Council who regularly mow the grass, empty litter bins and undertake general maintenance of the site.

4.6 The evidence provided by the Applicant fully complies with the relevant tests set out in Section 15(2) of the Commons Act 2006, as referred to in Paragraph 2.7 of the officer report.

## **5. Conclusion**

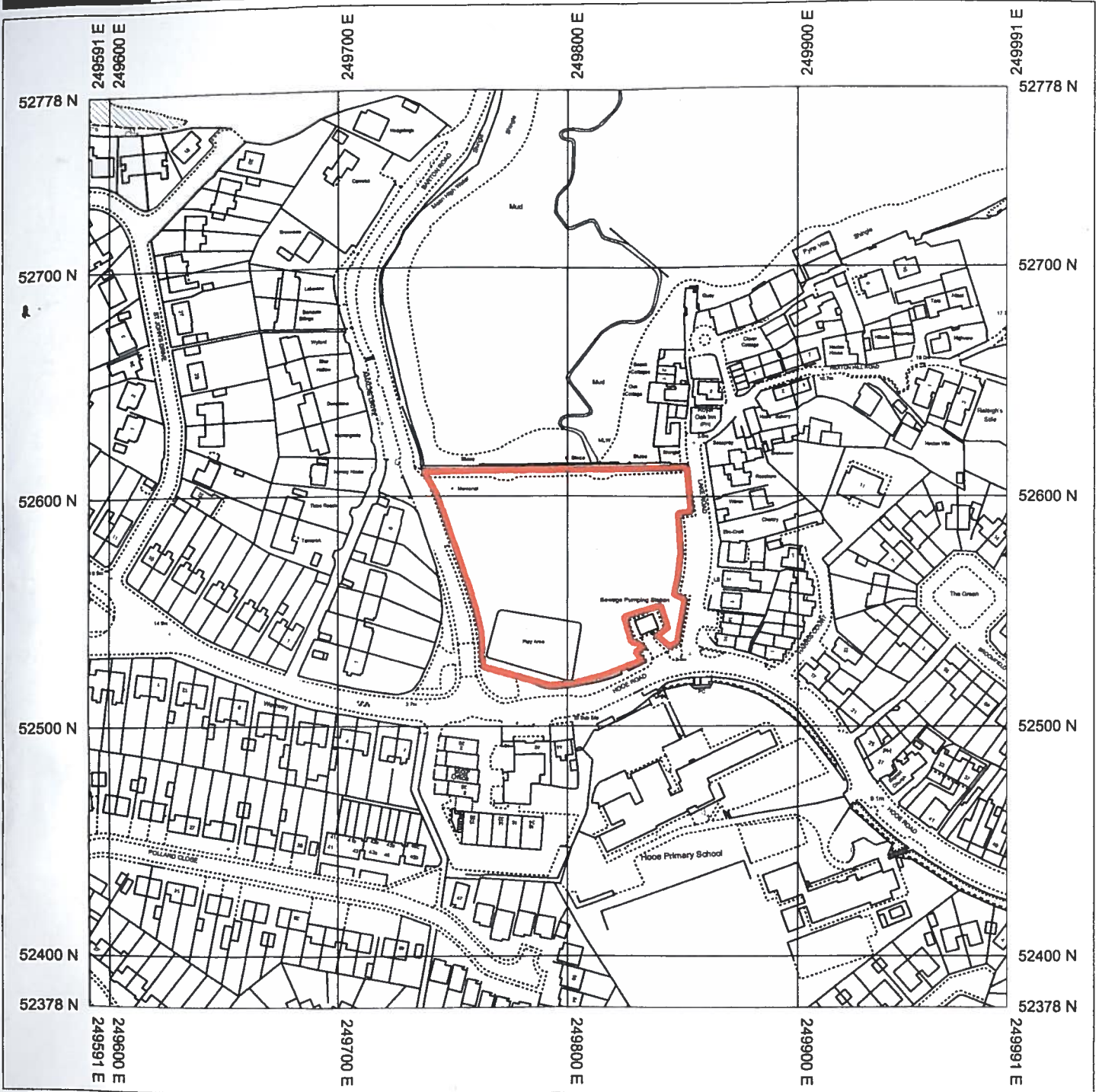
Accordingly my recommendation to the Council as Registration Authority is that the land which is the subject of the application site should be added to the Register of Town and Village Greens, pursuant to the Applicant's application under Section 15(2) of the Commons Act 2006, for the reasons given above in Paragraphs 4.1, 4.5 and 4.6 of my report.

5.1 It should be noted that if the Committee were minded to refuse the application then there would need to be evidence provided to support a different assessment from the officers recommendation, and detailed reasons would need to be given for the contrary decision. Members are therefore advised that where the relevant tests set out in Section 15(2) of the Commons Act 2006 are fully complied with then registration of the land as a Village Green should be made. It is also very important to note that there has been no objections to this application, including from Plymouth City Council as the landowner.

5.2 It is the officer's view therefore that the applicant has addressed the necessary tests set out in the Commons Act 2006. The Council received no objections to this application and on the basis of this the recommendation is that the Registration Authority should register the application site as a Village Green.

## **6. Recommendation**

In respect of the application dated 12 August 2014, it is recommended that the Registration Authority should add to the Register of Town or Village Greens, the application site in accordance with the Applicant's application under Section 15(2) of the Commons Act 2006 for the reasons as set in the Officers Report.



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