

Report of the Assistant Director Corporate Services (City Solicitor) to the meeting of the Miscellaneous Licences Panel to be held on Friday 19 December 2008

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Subject:

AN APPLICATION FOR THE REGISTRATION OF LAND AS A TOWN OR VILLAGE GREEN AT LAND AT GRIFFE GARDENS AND GRIFFE VIEW, OAKWORTH

Summary statement:

AN APPLICATION HAS BEEN RECEIVED FROM MARK BURT OF 10 GRIFFE GARDENS, OAKWORTH FOR REGISTRATION OF LAND AT GRIFFE GARDENS AND GRIFFE VIEW, OAKWORTH. THE COUNCIL AS REGISTRATION AUTHORITY MUST CONSIDER AND DETERMINE THE APPLICATION.

IT IS RECOMMENDED THAT THE APPLICATION BE REJECTED

Assistant Director Corporate Services
(City Solicitor)

Portfolio: CORPORATE

Report Contact: Frank Suadwa
Phone: (01274) 432183
E-mail: frank.suadwa@bradford.gov.uk

**Improvement Committee Area: CORPORATE
IMPROVEMENT COMMISSION**

1. Summary

- 1.1 The Council has received an application for the registration of land at Griffé Gardens and Griffé View, Oakworth as a Village Green from Mark Burt of 10 Griffé Gardens, Oakworth
- 1.2 The application is founded upon the use of land for lawful sport and pastimes, as of right, by the inhabitants of the locality or a neighbourhood within a locality for a period of at least 20 years counting back from the date when the application was submitted. A plan identifying the area concerned is attached to this report.
- 1.3 The Council is the Registration Authority responsible for the determination of such applications under the Commons Registration Act 1965.

2. Background

- 2.1 The land is registered at HM Land Registry under Title No WYK 828307 and is owned by Spellman Developments Limited who purchased the land from the Council in October 2007. The land forming the subject of the application is an area of grassed highway verge and is identified in the Council's highway records as being part of the adopted public highway.
- 2.2 The application has been advertised on site and in the local press inviting representations during a six week period expiring on the Friday 3rd April 2008. One objection from the landowner has been received.

3. Other considerations

- 3.1 The adjacent land was previously owned and used by the Council as the former Low Bank Lane Depot and the grass verge has been maintained to a degree by the Council's Street Scene Team having cut the grass as part of its planned maintenance programme.
- 3.2 The applicant has produced a number of evidence forms from residents in support of the claim that the grass verge has been used over a number of years for recreational activities. There are a number of photographs which have been submitted showing children playing on the grass verge but no date has been given as to when these photos were taken. A number of the photos do however appear to have been taken on a single occasion. Evidence including a further photograph has also been submitted arguing that the verge has been used as the meeting point for the band at the start of the annual village gala.
- 3.4 The applicant describes the locality in which the site is situated as lying within the ecclesiastical parish of Oakworth and has provided a map from the Diocesan Office as evidence in support. This is sufficient in law to constitute a locality but it is more likely that any claimed use has been by inhabitants of a neighbourhood within that locality known as Griffé Gardens and Griffé View, Oakworth. This meets the legal

criteria required under the legislation in that the neighbourhood must fall within the locality and have some degree of cohesiveness.

4. Options

- 4.1 Members may accept or reject the application for registration. However, full regard must be had to the evidence produced and the objection made. Factual reasons must be given if it is decided to accept the application.

5. **Financial and resource appraisal**

- 5.1 Financial provision has already been identified for the administrative and legal cost of determining the application.

6. **Legal appraisal**

- 6.1 The application has been processed in accordance with the regulations laid down by statute.

- 6.2 The applicant is required to show that the land has been used by a significant number of the inhabitants of the locality or a neighbourhood within a locality for lawful sports and pastimes as of right for a period of not less than 20 years.

- 6.3 Whilst evidence has been provided to the Registration Authority and the landowner has lodged an objection, there is a significant legal issue affecting the application. The land forms part of the adopted public highway and therefore its registration as village green based on use by a narrow section of the public is incompatible with use by the public at large in the exercise of highway rights. Highway verge is a part of the adopted public highway and the public have a right to use it for pedestrian passage and in an emergency for the parking of vehicles where necessary to avoid obstruction of the main carriageway. It follows therefore that any extensive recreational activities on the highway verge which interfered with the public right of passage would have been unlawful. This is further evidenced in this case where in the past the Council has taken enforcement action to have vehicles and equipment removed from the land

- 6.4 The Council as Registration Authority is able to determine this application on its own merits based on the evidence which has already been provided by the applicant.

7. **Other implications**

7.1 **Equal Rights**

- 7.1.1 There are no apparent equal rights implications.

7.2 **Sustainability implications**

- 7.2.1 There are no apparent implications for sustainability.

7.3 **Community safety implications**

7.3.1 There are no apparent community safety implications.

7.4 **Human Rights Act**

7.4.1 The following right is applicable in respect of this application.

Article 6 a procedural right to a fair hearing. An opportunity has been given for objections to be made. The supporting evidence has been produced and human rights implications have been considered in the procedure established. If the decision is to confirm or reject the application reasons should be given.

7.5 **Trade Union**

7.5.1 There are no apparent Trade Union implications.

8. **Not for publication documents**

8.1 None

9. **Recommendations**

9.1 It is recommended that members reject the application to register the land at Griffe View and Griffe Gardens, Oakworth as a town or village green for the reasons set out in this report

10. **Appendices**

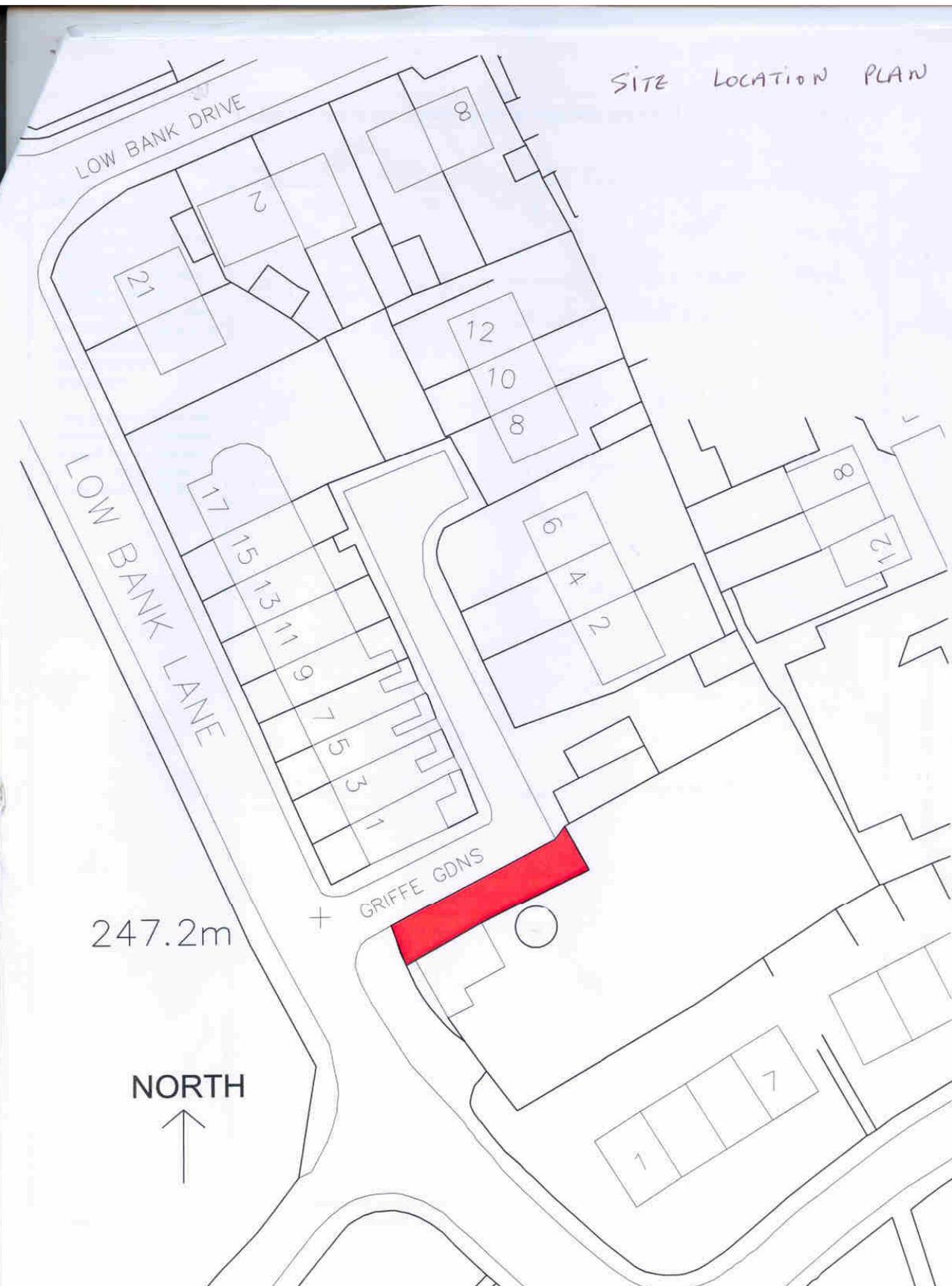
10.1 Plan showing application site.

11. **Background documents**

11.1 Application form relating to land at Griffe View and Griffe Gardens, Oakworth including supporting statements, documents and photographs.

11.2 Objection from landowner

SITE LOCATION PLAN



247.2m

NORTH
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SCALE 1:500