

Report of the City Solicitor to the meeting of the Miscellaneous Licences Panel to be held on 18 October 2012 at 10.30am in Committee Room 3

A

Subject:

AN APPLICATION FOR THE REGISTRATION OF LAND AS A TOWN OR VILLAGE GREEN AT LAND OFF THORNHILL ROAD, STEETON APPLICATION NO VG 19BD.

Summary statement:

AN APPLICATION HAS BEEN RECEIVED FROM SHONA COLE AND JOANNE STOKES FOR REGISTRATION OF LAND OFF THORNHILL ROAD, STEETON. THE COUNCIL AS REGISTRATION AUTHORITY MUST CONSIDER AND DETERMINE THE APPLICATION.

IT IS RECOMMENDED THAT THE APPLICATION BE REJECTED

City Solicitor

**Portfolio: LEADER OF COUNCIL &
STRATEGIC REGENERATION**

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Overview and Scrutiny Area: CORPORATE

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1. **Summary**

- 1.1 The Council has received an application for the registration of land off Thornhill Road, Steeton.
- 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 Act 2006.

2. **Background**

- 2.1 The land is registered at HM Land Registry under Title No WYK 830038 and is owned by Redrow Homes Limited .The land forms part of the site of a proposed residential development for which planning permission has been granted under reference11/03602/MAF dated 2 December 2011. However, the planning history of the land is of no relevance to the determination of the subject village green application.
- 2.2 The application was advertised on site and in the local press inviting representations during a six week period expiring on the 14th January 2011 One objection from the landowner was received.

3. **Other considerations**

- 3.1 A Barrister was appointed to act as Inspector in determining the application relating to the site and a Non Statutory Public Inquiry was held on 18th September 2012 to hear evidence from the Applicant and the Objector. His recommendation following the Public Inquiry was that the Council as Registration Authority should reject the application for the reasons set out in the Report. A copy of the Inspector's Report will be made available on a restricted basis (in the interest of sustainability) to members of the Panel. A copy will be available for public inspection at the meeting.
- 3.4 The applicant describes the locality in which the site is situated as lying within the ecclesiastical parish of St Stevens Steeton and has provided a map from the Diocesan Office as evidence in support. This is sufficient in law to constitute a locality.

4. **Options**

- 4.1 Members may confirm or reject the application for registration. However, full regard must be had of the Inspector's advice and factual reasons must be given if it is decided not to follow the recommendation of the Inspector.

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 Inspector concluded after hearing legal submissions from the applicant and the objector at a preliminary Inquiry that there was not an arguable case that a significant number of the inhabitants of St Stevens Steeton ecclesiastical parish have used the claimed land for lawful sports and pastimes. The applicants had therefore failed on a balance of probabilities to establish use by a significant number of the Parish's inhabitants and therefore the application was bound to fail. In coming to this conclusion the Inspector particularly noted the following facts:

- The overwhelming majority of users are from a part of Steeton contained by Thornhill Road/Styveton Way to the west; Ings Road and Heron Road to the north, St Stephens Road to the east and Skipton Road/Coppy Road to the South i.e. the "red line" area. There are many residences beyond this chosen part of Steeton, both to the east and south that are not represented. I note that six people who have completed evidence questionnaires live beyond the "red line" but not only are these insignificant numerically but only Audry Wyn claims 20 years user.
- The parish also comprises the settlement of Eastburn and yet not one single user is claimed to come from this settlement.
- No users are claimed from the outlier properties beyond the main settlements of Steeton and Eastburn.
- The evidence questionnaires exclusively speak of personal use i.e. they do not speak of the users seeing other people from the broader locality on the land.

6.4 The Council as Registration Authority is able to determine this application on its merits based on the evidence which has been provided by the applicant and paying due regard to the recommendations of the Inspector in his Report and Recommendation received on 20th September 2012.

7. Other implications

7.1 Equal Rights

7.1.1 There are no apparent equal rights implications.

Equality Act 2010 – Section 149 – In writing this report due regard has been taken of the need to eliminate unlawful discrimination, harassment and victimisation, advance quality of opportunity between different groups and foster good relations between different groups. It is not considered that any issues with regards thereto are raised in consideration of this application.

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 off Thornhill Road, Steeton as a town or village green for the reasons set out in this report and the Inspectors' Report and Recommendation received on 20th September 2012

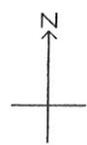
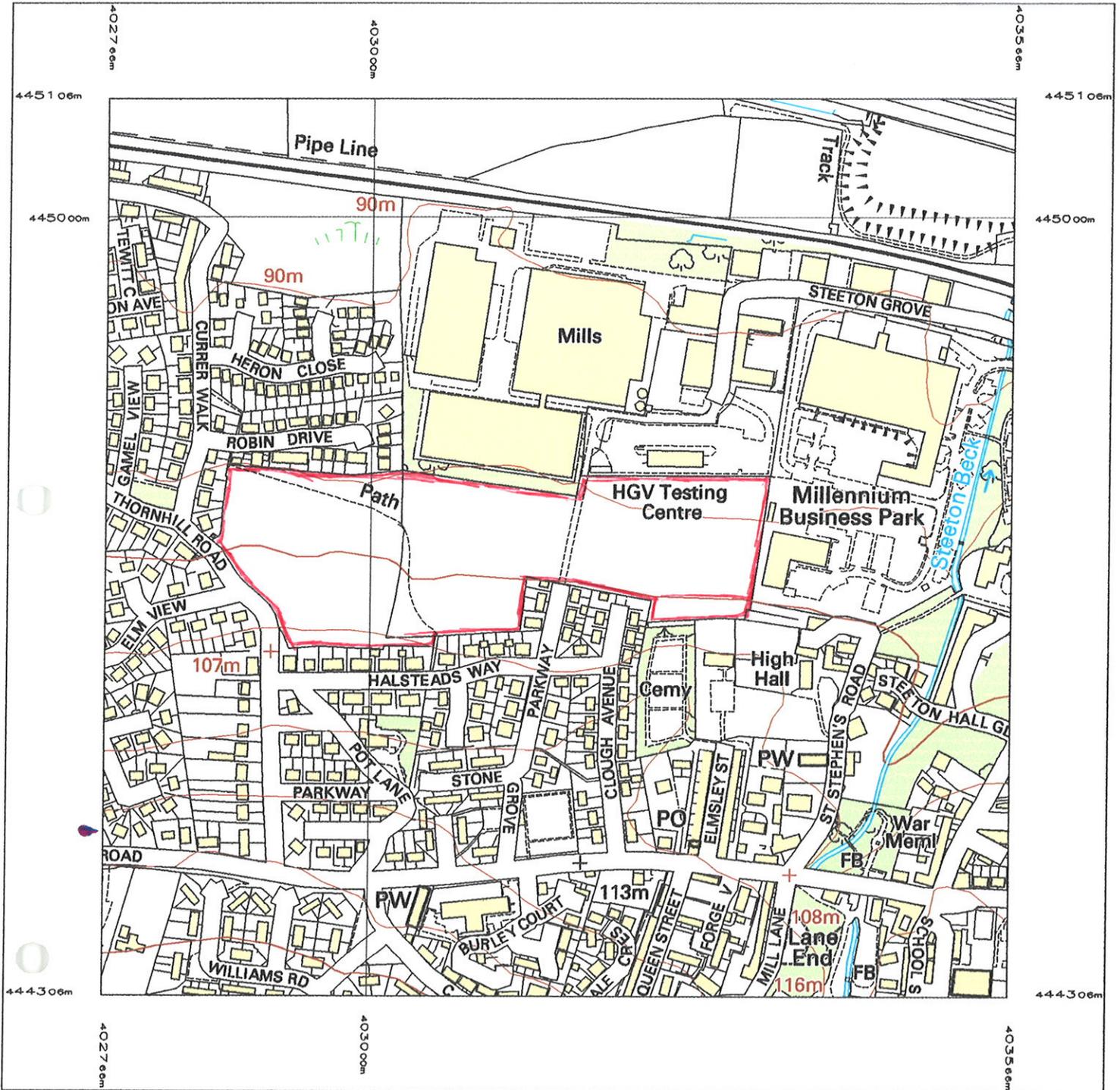
10. **Appendices**

10.1 Plan showing application site.

11. **Background documents**

11.1 Application form relating to land off Thornhill Road, Steeton including supporting statements, documents and photographs.

11.2 Objection from landowner



Plotted 23 Oct 2010 from Ordnance Survey digitally derived data.

Produced using significant survey information from Ordnance Survey large scales digital data, and incorporated into OS Landplan Jul 2010.

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Administrative boundaries revised to May 2010.

Additional boundaries information:

This OS Landplan plot is enlarged from derived mapping produced at 1:10000 scale

Contours are at 5 metre intervals.

Heights are given in metres above Newlyn Datum. The representation of a road, track or path is no evidence of a right of way.

The alignment of tunnels is approximate.

An OS Landplan symbols leaflet is available on request from Ordnance Survey Mapping and Data Centres.

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Plot centre coordinates: 403166 444706

Supplied by: Mail Boxes Etc - Bradford

Plot serial number: 00014600

Scale 1:5000