

Cabinet

03 June 2025

Part 1 - Public

Executive Key Decision



Cabinet Member	Robin Betts, Cabinet Member for Housing, Environment and Economy
Responsible Officer	Adrian Stanfield, Director of Central Services & Deputy Chief Executive
Report Author	Adrian Stanfield, Director of Central Services & Deputy Chief Executive

River Lawn, Tonbridge – voluntary application to register as a village green

1 Summary and Purpose of Report

- 1.1 This report invites Members to consider the submission to Kent County Council of a voluntary application to register land owned by the Borough Council at River Lawn Road, Tonbridge as a village green.

2 Corporate Strategy Priority Area

- 2.1 Improving housing options for local people whilst protecting our outdoor areas of importance.
- 2.2 Registration of the land owned by the Borough Council at River Lawn Road, Tonbridge will provide protection against any future development of the land. The relevant considerations are set out in detail in this report.

3 Recommendations

- 3.1 Cabinet is asked to confirm whether the Borough Council should make a voluntary application for registration of the land at River Lawn, Tonbridge (shown at Annex 1) as a village green.

4 Introduction and Background

- 4.1 On 18 February 2025 full Council gave consideration to a Notice of Motion (25/004) pursuant to Council Procedure Rule No. 5.7 submitted by Cllr Hood in relation to granting River Lawn, Tonbridge village green status.
- 4.2 The Notice proposed that the Council should resolve that

- In accordance with section 15(8) of the Commons Act 2006, as the landowner it will voluntarily apply for the land known as River Lawn, River Lawn Road, Tonbridge to be registered as a village green; and
- A review is undertaken of the policy of rewilding to River Lawn to assess its success and whether this is the most appropriate management of this open space and that the review is considered by the Communities and Environment Scrutiny Select Committee.

- 4.3 Council resolved that the action requested by Motion 25/004 be agreed.
- 4.4 In respect of the resolution to voluntarily apply for registration of land as a village green, any decision by the Council to make such an application in its capacity as landowner will require the approval of Cabinet as this is an executive function. This report therefore invites Cabinet to consider the matters set out below and confirm whether it wishes to approve an application for voluntary registration under the Commons Act 2006.
- 4.5 The previous history relating to the village green status of this land is set out below. For completeness a plan showing the extent of the Borough Council's land ownership at River Lawn Road is attached as **Annex 1**. The land detailed at Annex 1 would form the basis for any application made for voluntary registration.
- 4.6 Members may be aware that in March 2018 an application was made by the Barden Road Residents Association to Kent County Council to register the land as a Village Green.
- 4.7 A town or village green is an area of open space which by immemorial custom has been used by the inhabitants of the town, village or parish, for the purposes of playing lawful games and recreation. There is no legal distinction between town greens and village greens; the names merely refer to the geographical location of the green.
- 4.8 The core requirement common for applications to register new town and village greens under section 15 of the Commons Act 2006 is that 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.
- 4.9 The application by the Barden Road Residents Association was rejected by KCC in January 2020 on the grounds on the basis that a 'trigger event' had occurred under the Commons Act 2006 as a result of land being identified for potential development in TMBC Core Strategy Policy CP23 and the Tonbridge Central Area Action Plan 2008. No further challenge was made to the decision of KCC by the Residents Association.

- 4.10 Under section 15(8) of the Commons Act 2006, the Borough Council (as the owner of the land) can apply voluntarily for the land to be registered as a town or village green. In such cases, the Council would not need to show that the land has been used by local inhabitants for lawful sports and pastimes for at least 20 years.
- 4.11 Any application by the Borough Council to voluntarily register the open space at River Lawn Road would be unaffected by the provisions relating to trigger and terminating events, which was the basis for the rejection of the previous application to the County Council by Keep River Lawn Green.
- 4.12 The implications of any such application are set out below.
- 4.13 Once registered, the land would be protected by long-standing legislation that effectively means that the land cannot be developed. For example, Section 12 of the Inclosure Act 1857 makes it a criminal offence to do any of the following
- undertake any act which interrupts the use or enjoyment of a green as a place of exercise and recreation
 - wilfully cause injury or damage to any fence on a green;
 - wilfully take any cattle or other animals onto a green without lawful authority;
 - wilfully lay any manure, soil, ashes, rubbish or other material on a green; or
 - undertake any act which causes injury to the green
- 4.14 Section 29 of the Commons Act 1876 deems it to be a public nuisance, and therefore an offence, to
- encroach on or inclose a green;
 - erect any structure on, disturb, interfere with or occupy the soil of, a green unless this is done “with a view to the better enjoyment of such town or village green”.
- 4.15 The voluntary registration of the land as a village green would therefore strip the land of its development potential (set out in paragraph 7 below). It would also place a fetter on the Council’s ability to manage its asset in response to any change in circumstances in the future.

Charging for use of a village green

- 4.16 Inhabitants of the locality within which a green is situated have the right to use that green for lawful sports and pastimes. By definition any right can be exercised free of charge. Therefore, although the owner of a green may ask a local inhabitant to pay a donation for their use of a green, that person would be under no obligation to pay. This principle would apply equally to a request for a contribution to

maintain a green as it would to a request for a payment to enter an organised event such as a fête or sports match which was being held on the green. A local inhabitant cannot be required to pay a fee to exercise a right.

- 4.17 Commercial activities can be carried out provided that they do not unduly interfere with the public's rights, it is therefore possible to have "dual use" greens – this could include a situation where tables and chairs are temporarily placed on a small area of the green. That temporary use might not "unduly interfere" with the rights of the public to use the remainder of the green to exercise their rights. For example in the recent Supreme Court case of *TW Logistics v Essex County Council* [2021], the court there considered that temporary storage of materials by TW did not unduly interfere with the public's rights over an area of hardstanding. The commercial use was not incompatible with the registration as a green and TW's continuing commercial activities would not constitute an offence under the Commons Act 1876.

Release from registration as a village green

- 4.18 In considering whether to pursue voluntary registration of the land, Members will no doubt wish to understand the ability of the Council to remove that registration in the future.
- 4.19 Under section 16 of the Commons Act 2006 an owner of a green may apply to the Secretary of State for land to be released from registration. If successful, such an application would result in the land no longer being subject to protection as a green.
- 4.20 If the application relates to the release of land with an area of more than 200 square metres (the River Lawn areas is approximately 1,500sqm), the application must include a proposal to register an alternative site as common land or a town or village green (*section 16(2), CA 2006*). The alternative site would be registered in exchange for the release of the original land. If the release land is smaller than 200 square metres, a proposal for replacement land may be included, but there is no absolute requirement. However, it is the policy of the Secretary of State to avoid the net loss of town and village greens. Therefore, the Secretary of State generally expects that land will be offered in exchange even where the release land is less than 200 square metres.
- 4.21 A proposed exchange under section 16 will be considered by the Secretary of State and will not be approved automatically. The Secretary of State will wish to take into account the impact of the exchange having regard (amongst other things) to the public interest.
- 4.22 When deciding whether to grant the release, the Secretary of State is required to consider:

- The interests of those who have rights over the land (particularly rights of common) and anyone who occupies the land.
- The interests of the neighbourhood.
- The public interest, including:
 - nature conservation;
 - conservation of the landscape;
 - the protection of public rights of access to any area of land; and
 - the protection of archaeological remains and features of historic interest
- Any other relevant matters
- If an application to release land with an area of up to 200 square metres does not include an exchange proposal, the extent to which the absence of a proposal is detrimental to the interests of the public, the neighbourhood and those with rights over the original land

4.23 Members will therefore note that the release of village green status is difficult to achieve, and at the very least would require the release of an equivalent area of land for designation as a village green.

5 Proposal

5.1 Cabinet is asked to confirm whether the Borough Council should make a voluntary application for registration of the land at River Lawn, Tonbridge (shown at Annex 1) as a village green.

6 Other Options

6.1 An alternative to the Village Green process is to consider designating the area as a Local Green Space (LGS) through the preparation of the Local Plan.

6.2 Policies allowing for the creation of Local Green Space (LGS) designations are set out in paragraphs 101-103 and footnote 7 of the 2021 version of the National Planning Policy Framework (NPPF).

6.3 Paragraphs 106 to 108 of the NPPF provide that

‘106. The designation of land as Local Green Space through local and neighbourhood plans allows communities to identify and protect green areas of particular importance to them. Designating land as Local Green Space should be consistent with the local planning of sustainable development and complement

investment in sufficient homes, jobs and other essential services. Local Green Spaces should only be designated when a plan is prepared or updated, and be capable of enduring beyond the end of the plan period.

107. The Local Green Space designation should only be used where the green space is: a) in reasonably close proximity to the community it serves; b) demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife; and c) local in character and is not an extensive tract of land.

108. Policies and decisions for managing development within a Local Green Space should be consistent with national policy for Green Belts set out in chapter 13 of this Framework.'

- 6.4 Management of land designated as LGS will remain the responsibility of its owner.
- 6.5 On 23 November 2021 the Cabinet Member for Environment & Climate Change resolved, following a recommendation from the Street Scene and Environment Services Advisory Board that the area of land at River Lawn, Tonbridge be considered for designation in the Local Plan as a Local Green Space.
- 6.6 Work is currently progressing to consider sites for LGS designation. Any update in respect of this specific site will be provided at the meeting.

7 Financial and Value for Money Considerations

- 7.1 Voluntary registration of the land as a village green would be likely to prevent future development and would therefore deprive the land of much of its value. It may also set a precedent in respect of other areas of open space within the Borough.
- 7.2 In accounting terms, the land at River Lawn is held in our accounts at a nil value. This is in accordance with RICS guidance, as the land is not subject to any planning permission.
- 7.3 A marketing appraisal of the site was undertaken by Hartnell Taylor Cook in July 2020, although this wasn't a red book (RICS) valuation. The appraisal was as follows:-
 - the appraisal for Retirement Living and a café showed a positive Residual Land Price of approximately £1,825,000 exclusive of VAT.
 - the appraisal for private residential, some Social & Affordable housing and a café showed a positive Residual Land Price of approximately £620,000 exclusive of VAT

7.4 Members are asked to note that the appraisal is likely to have changed since July 2020, so the above figures are for guidance purposes only.

7.5 Voluntary registration would also mean that the Council would continue to be responsible for maintenance of the area, effectively in perpetuity.

8 Risk Assessment

8.1 The risks of pursuing voluntary registration of the land as a village green, and those relating to the application to register public rights of way are set out within the body of this report

9 Legal Implications

9.1 Set out elsewhere in this report.

10 Consultation and Communications

10.1 If approved, the policy will be published on the Council's website.

11 Implementation

11.1 If Cabinet approve the voluntary registration of the land at River Lawn Road, an application would be submitted to Kent County Council.

12 Cross Cutting Issues

12.1 Climate Change and Biodiversity

12.1.1 Limited or low impact on emissions and environment.

12.1.2 Climate change advice has not been sought in the preparation of the options and recommendations in this report.

12.2 Equalities and Diversity

12.2.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

Background Papers	None
Annexes	Annex 1 – plan of TMBC land ownership at River Lawn Road, Tonbridge