

CABINET

22 NOVEMBER 2016

REFERRAL FROM BUSINESS SUPPORT OVERVIEW AND SCRUTINY COMMITTEE - MEMBER'S ITEM: COUNCIL LAND AT HALL WOOD AND HOOK WOOD, LORDSWOOD

Portfolio Holder: Councillor Adrian Gulvin, Resources

Report from/Author: Perry Holmes, Chief Legal Officer

Summary

This report sets out a referral from the Business Support Overview and Scrutiny (O&S) Committee in response to a request from Councillor Wildey for action regarding the protection of amenity land and ancient woodland, which is owned by the Council at Hall Wood and Hook Wood in his ward of Lordswood and Capstone, following the receipt of correspondence from concerned local residents.

1. Budget and Policy Framework

- 1.1 Any Member of an Overview and Scrutiny Committee is entitled to give notice that they wish an item relevant to the functions of the Committee to be included on the agenda for the next available meeting of the Committee (Constitution - Overview and Scrutiny Rules - Chapter 4, Part 5, Paragraph 9.1). Councillor Wildey requested that an item concerning the above matter be considered by the Business Support O and S Committee.
- 1.2 Consideration of the recommendation from Business Support O&S Committee is a matter for Cabinet as it concerns a review of Council owned land.

2. Background

- 2.1. The issue raised by Councillor Wildey is the impact of the potential loss of amenity land and ancient woodland in his ward (Lordswood and Capstone). Councillor Wildey had received letters (copies attached at Appendix 1 to Appendix A) from concerned constituents and had proposed that Cabinet should take action to protect the Council's land.

2.2. The matter was considered at the meeting of the Business Support O&S Committee which took place on 27 October 2016. A record of the discussion and the recommendation to the Cabinet from the Committee are set out at paragraph 4.

3. Advice from the Chief Legal Officer on the Member's item as reported to the Business Support O&S Committee

3.1 The Council owns the land shown edged black, shaded grey, hatched black and cross hatched black on the plan (shown at Appendix 2 to Appendix A) . This includes a play area and ancient woodland; these areas are used by the public for recreational purposes.

3.2 The land is covered by a number of planning policies, which gives it a level of protection for continued public use, these are as follows:

3.2.1 Hook Wood as edged black on the attached plan is designated as: An area of Local Landscape importance (Policy BNE34), a site of nature conservation interest and/or a local nature reserve (Policy BNE36), a proposed Community Forest/Woodland (Policy BNE44) and as protected open space (Policy L3).

3.2.2 Hall Wood as hatched black on the attached plan is designated as: An area of Local Landscape importance (Policy BNE34) and a site of nature conservation interest and/or a local nature reserve (Policy BNE36).

3.2.3 The area of land cross hatched black is designated as: An area of Local Landscape importance (Policy BNE34).

3.2.4 The play area, shaded grey is designated as: An area of Local Landscape importance (Policy BNE34) and as protected open space (Policy L3).

3.3 The Council does have the option of adding an extra level of protection for the land by seeking as landowner to register the land as a "Village Green." This would assist in its retention as amenity land. The process for registration can be conducted by the Land Charges team in the Council as a "Commons Registration Authority."

3.4 However, Guidance issued by the then Department for Environment, Food and Rural Affairs under the relevant legislation on registering "Village Greens" the Commons Act 2006, includes the requirement where the landowner has a vested interest in the outcome of the registration process to refer the matter to the Secretary of State for decision.

3.5 The impact of registering land as a Village Green means that the residents of the locality will have the right to use the land for lawful sports and pastimes.

3.6 Village Greens also enjoy considerable statutory protection under Victorian statutes, namely the Inclosure Act 1857 and the Commons Act 1876. These statutes make it an offence, amongst other things, to encroach, enclose or

erect structures (other than with a view to the better enjoyment) on a Village Green, or to do anything which interrupts the use of the Village Green as a place for exercise and recreation.

- 3.7 Should the Council wish to utilise the land at a later date an application to de-register the land would need to be made to the Secretary of State. Any application to de-register an area of this size (in excess of 200 square metres) must be accompanied by a proposal to register an alternative area under Section 16(4) of the Commons Act 2006. Without such an alternative proposal any application to de-register would not be successful.

4. Business Support Overview and Scrutiny Committee – 27 October 2016

- 4.1 Members considered a report which set out a response to a request from Councillor Wildey for action regarding the protection of amenity land and ancient woodland, which is owned by the Council at Hall Wood and Hook Wood in his constituency of Lordswood and Capstone, following the receipt of correspondence from concerned local residents.
- 4.2 Councillor Wildey commented that he had brought this item forward at the request of local residents who were concerned at the prospect of a loss of amenity at the sites if the planning application for housing at Gibraltar Farm was approved. He added that he felt these sites, as council owned ones, needed extra protection from developers.
- 4.3 In response to a request for advice about the position of Members of the Committee who were also Members of the Planning Committee, the Chief Legal Officer commented that the Gibraltar Farm planning application was currently with the planning inspectorate and a decision was awaited. He advised Members who sat on the Planning Committee not to discuss the planning application but any discussions about the issues around loss of amenity and how the sites could be protected would not amount to predetermination.
- 4.4 A Member spoke in support of the recommendation in the report and commented that Capstone Valley was not designated. He suggested Cabinet could take this opportunity to review any other non designated green spaces in Medway and also consider if there were any further means to protect the two sites, such as designating them as Assets of Community Value. It was also suggested that, as part of this review, the designation of Rede Common could be looked at urgently.
- 4.5 Other Members supported the idea of protecting the land and that there was cross party recognition of the importance of Capstone Valley as a significant site which should be protected from development. A Member expressed his discomfort with the idea that the sites should be designated as village greens when, in his view, they were clearly not village greens. It was suggested that instead a review take place of the Council's open spaces to look at what could be protected, with sites of minimal value considered for development. The point was also made that as these sites were in Council ownership they were

not at risk of being developed. The recommendation in the paper risked setting a precedent and could trigger many other applications which, if not dealt with consistently, would be unfair to others in a similar situation. By looking at these sites in isolation there was a danger of an inconsistent approach developing to protecting open spaces. Preferably, such a review should take place separately from the Local Plan process so that it could be concluded more quickly.

- 4.6 The Chief Legal Officer undertook to look at whether the sites in Lordswood were capable of being listed as assets of community value. He advised Members that approximately 18 months ago there had been an attempt to force the Council to sell part of the sites but this had been successfully rejected.
- 4.7 In response, Councillor Wildey made the point that there was more pressure for development in the Capstone Valley than other areas and therefore a greater need for these sites to be protected.
- 4.8 It was then proposed that, given there were no current plans or prospect of the development or disposal of the Hall Wood and Hook Wood sites, the Council should look at this from a strategic perspective with a review of all of its significant open spaces to consider their future designations and how these can be maintained into the future.
- 4.9 The Committee agreed to recommend to Cabinet that, given there are no current plans or prospect of the development or disposal of the Hall Wood and Hook Wood sites, the Council look at this from a strategic perspective and carry out a review of all of its significant open spaces to consider their future designations and how these can be maintained into the future.

5. Advice and analysis on options

- 5.1 The options open to Cabinet are as follows:
 - *Option 1 - agree recommendation from Business Support O&S Committee to commence a review of significant open spaces owned by the Council.*
- 5.2 The review would be wide ranging covering all open spaces considered to be significant by the Council, significance would need to be determined by criteria objectively set, either relating to physical size or another factor. It would be a detailed piece of work which would require considerable input of resources to carry out in any depth. It is clearly important that there be objective criteria used to establish significance, so as to ensure consistent decision making in determining which assets should be considered for further levels of protection, particularly as they are already afforded substantial protection by the various planning and other designations as previously mentioned in the report to O&S.
- 5.3 Should the review identify further areas of open space which are thought to be worthy of further protection there would then need to be a further decision making process, regarding what mechanism is best to provide that. One of the

options is to designate the areas as Village Greens but this does raise its own problems. For example should the Council wish to use its land assets in a different way in the future replacement areas of land of equivalent size and amenity would need to be identified to allow for any application for the removal of the designation to be granted. Identifying areas of land in Medway for development is already proving a challenge to the Council, and so finding suitable areas of land to designate as replacement village Green Areas is likely to prove increasingly difficult if not impossible in the years ahead.

5.4 Additionally, Land is not without intrinsic value, in fact the area to which Councillor Wildey has specifically referred to in the members item has been the subject of an offer to purchase for a large sum. Any restriction on the use of land has an effect on its value and it is clear that the higher the level of protection applied to land, the more depressive the effect on its value is likely to be.

- *Option 2 - do not agree recommendation from Business Support O&S Committee*

5.5 Clearly the intention to protect areas of public land in Medway for the future amenity of residents is a laudable objective there are a number of mechanisms in place already to ensure this happens. With the Local Plan process moving forward it will be possible in due course to designate areas which are deemed suitable for such protections. At the present time where there are considerable constraints on public resources, it may be open to question as to whether it would be an appropriate use of resources to undertake such an intensive piece of work which may in fact repeat work undertaken as part of the Local Plan process or even potentially conflict with the Local Plan.

5.6 As mentioned in the analysis of option 1 above there is also the potential to devalue the Council's land holdings, which may have a detrimental effect on the Council's financial position and could hamper its ability to make best use of its resources.

- *Option 3 - agree recommendation from Business Support and/or agree original proposal to seek to register the Hall Wood and Hook Wood as village green.*

5.7 The analysis of the first part of this recommendation can be found at option 1 above.

5.8 In relation to the second part of this option there are a number of factors which Cabinet need to consider. As members will appreciate one of the issues with this course of action is that it has the potential to set a precedent for ward members to request that areas within their wards are also designated. A piecemeal approach to designation is likely to have a detrimental effect on the Local Plan process and hinder the Council's ability to effectively allocate sites for appropriate development.

- 5.9 The area that Councillor Wildey has asked Cabinet to consider for designation has already been the subject of an offer to purchase. Any designation would adversely impact on the potential value of the land and make the subsequent sale of that land unlikely.
- 5.10 As Members will no doubt be aware the adjoining site is currently the proposed site for a development of several hundred houses. The planning application for that site is in dispute, and the application was heard at a recent public inquiry, and the application is now being considered by the Secretary of State and it is anticipated that a decision will be released in the next few months.
- 5.11 The use of a village green application to frustrate development was a tactic hitherto employed by community groups, however in 2015 the Government altered the legislation governing such designations so that where there exists a planning application in relation to an area of land proposed as a village green, an application for designation is not possible if it is made by such a group.
- 5.12 As the Council is the land owner the legislative preventions to a Village Green application, (such as an application for planning permission and allocation in the local plan as set out in s15 Commons Act 2016) do not apply. Any decision taken by the Council would be open to a legal challenge by way of judicial review which brings financial and reputational risks for the Council.
- 5.13 Taking into account all of the above if Members consider that the protection of the ancient woodland and amenity land for local people is such that they believe that an application for a Village Green is the most appropriate and timely way to achieve the necessary protection then such an application can be made to the Secretary of State. Ultimately a public enquiry will determine the issue.

6. Risk Management

- 6.1 The following risks are considered relevant:

Risk	Description	Action to avoid or mitigate risk
No action is taken by the Council to register the land as a Village Green following the receipt of letters from local residents.	This area of public space/ancient woodland could be lost if the extra protection afforded a Village Green was not applicable.	Seek to register the land as a Village Green.
The Council has a vested interest in the outcome of registration.	The decision process could be open to challenge.	The Council should refer any decision to register the land as a Village Green to the Secretary of State for determination.

The Council's land is devalued.	Registration of the Council's land as a Village Green could have an adverse impact on its value.	None.
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7. Consultation

- 7.1 A strategic review would need to identify criteria for classifying an area as significant before it could be considered for any further protection. The criteria would need to be objective in order to ensure consistent decision making. In order to establish this it may be that a consultation exercise should be undertaken to consider the views of the community relating what type of area they view as significant.
- 7.2 Should Cabinet decide to request the Director of Regeneration, Culture, Environment and Transformation to apply to designate the Hall Wood and Hook Wood areas as a Village Green the statutory process to be followed (as set out at paragraph 8.2 below) does not require any specific consultation however in the interest of transparency in local government it would be advisable to consult with the community in the locality and specifically with adjoining land owners to ascertain the levels of support and opposition to the proposed designation.

8. Financial and Legal Implications

- 8.1 Rule 9.1 of the Overview and Scrutiny rules in the Council's Constitution provides that any member of an Overview and Scrutiny Committee is entitled to give notice that he/she wishes an item relevant to the functions of the Committee to be included on the agenda for the next available meeting of the Committee. This is to comply with the requirements of section 9FC Local Government Act 2000. The consideration of this item was therefore a proper matter for the Business Support Overview and Scrutiny Committee to have considered.
- 8.2 The Commons Act 2006 sets out the process by which a landowner can voluntarily register land at Section 15(8) and it is set out below:
- 8.2.1 The Council as land owner makes a voluntary application; this would be done by the Director of Regeneration, Culture, Environment and Transformation.
- 8.2.2 The Council obtains consent from the holders of: any leases granted for a term of 7 years or more, registered charges over the land registered at the Land Registry or under the Land Charges Act 1972 or legal mortgages;
- 8.2.3 The required application form (Form 44) should be completed;
- 8.2.4 The application should be supported by a statutory declaration and evidence in support of the application setting out how the community use the area;

- 8.2.5 The application is then referred to the Secretary of State as the Council has a vested interest in the land.
- 8.3 As discussed above at paragraph 5 above, it is imperative that the application to designate any area is made purely to secure its position as an area of amenity for the community. Any designation made in order to prevent development of any site or any adjoining site would be extremely vulnerable to challenge and would leave the Council exposed in terms of financial and reputational risk in the wake of a successful judicial review.
- 8.4 The areas of Hall Wood and Hook Wood are immediately adjacent to a site which is the subject of a Planning Appeal where the decision of the Secretary of State is awaited, as such any application to designate this area as a village green will be the subject of considerable scrutiny and Cabinet must provide detailed reasons as to why they believe this area of land should be the subject of any such designation.
- 8.5 There would be no significant financial implications arising directly from the decision to conduct a strategic review of open spaces to consider future designations.

9. Recommendations

- 9.1 Cabinet is asked to consider the following recommendation from the Business Support Overview and Scrutiny Committee and agree a way forward:

That, given there are no current plans or prospect of the development or disposal of the Hall Wood and Hook Wood sites, the Council look at this from a strategic perspective and carry out a review of all of its significant open spaces to consider their future designations and how these can be maintained into the future.

- 9.2 Cabinet is also asked to consider the 3 options set out in paragraph 5 above.

10. Suggested reasons for decision

- 10.1 The Business Support O&S Committee has recommended a review of all open spaces owned by the Council to enable consideration of their future designations and how these can be maintained into the future.

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Appendices - Appendix A – report considered by Business Support O and S Committee on 27 October 2016

Background Papers - None



BUSINESS SUPPORT OVERVIEW AND SCRUTINY COMMITTEE

27 OCTOBER 2016

MEMBER'S ITEM: COUNCIL LAND AT HALL WOOD AND HOOK WOOD LORDSWOOD

Report from: Chief Legal Officer

Author: Noel Filmer, Head of Valuation & Asset Management

Summary

This report sets out a response to a request from Councillor Wildey for action regarding the protection of amenity land and ancient woodland, which is owned by the Council at Hall Wood and Hook Wood in his constituency of Lordswood, following the receipt of correspondence from concerned local residents.

1. Budget and Policy Framework

1.1 Under Medway Constitution Overview and Scrutiny Rules (Chapter 4, Part 5, Paragraph 9.1), Councillor Wildey has requested that an item concerning the above matter is included on the agenda for this meeting.

2. The Issue

2.1. The issue raised by Councillor Wildey is the impact of the potential loss of amenity land and ancient Woodland in his constituency of Lordswood. Councillor Wildey has received letters (copies attached at Appendix 1) from concerned constituents and is proposing that Cabinet takes action to protect the Council's land.

3 Director's comments

3.1 The Council owns the land shown edged black, shaded grey, hatched black and cross hatched black on the plan (at Appendix 2) . This includes a play

area and ancient woodland; these areas are used by the public for recreational purposes.

- 3.2 The land is covered by a number of planning policies, which gives it a level of protection for continued public use, these are as follows:
 - 3.2.1 Hook Wood as edged black on the attached plan is designated as: An area of Local Landscape importance (Policy BNE34), a site of nature conservation interest and/or a local nature reserve (Policy BNE36), a proposed Community Forest/Woodland (Policy BNE44) and as protected open space (Policy L3).
 - 3.2.2 Hall Wood as hatched black on the attached plan is designated as: An area of Local Landscape importance (Policy BNE34) and a site of nature conservation interest and/or a local nature reserve (Policy BNE36).
 - 3.2.3 The area of land cross hatched black is designated as: An area of Local Landscape importance (Policy BNE34).
 - 3.2.4 The play area, shaded grey is designated as: An area of Local Landscape importance (Policy BNE34) and as protected open space (Policy L3).
- 3.3 The Council does have the option of adding an extra level of protection for the land by seeking as landowner to register the land as a "Village Green." This would assist in its retention as amenity land. The process for registration can be conducted by the Land Charges team in the Council as a "Commons Registration Authority."
- 3.4 However, Guidance issued by the then Department for Environment, Food and Rural Affairs under the relevant legislation on registering "Village Greens" the Commons Act 2006, includes the requirement where the landowner has a vested interest in the outcome of the registration process to refer the matter to the Secretary of State for decision.
- 3.5 The impact of registering land as a Village Green means that the residents of the locality will have the right to use the land for lawful sports and pastimes.
- 3.6 Village Greens also enjoy considerable statutory protection under Victorian statutes, namely the Inclosure Act 1857 and the Commons Act 1876. These statutes make it an offence, amongst other things, to encroach, enclose or erect structures (other than with a view to the better enjoyment) on a Village Green, or to do anything which interrupts the use of the Village Green as a place for exercise and recreation.
- 3.7 Should the Council wish to utilise the land at a later date an application to de-register the land would need to be made to the Secretary of State. Any application to de-register an area of this size (in excess of 200 square metres) must be accompanied by a proposal to register an alternative area under

Section 16(4) of the Commons Act 2006. Without such an alternative proposal any application to de-register would not be successful.

4. Risk Management

4.1 The following risks are considered relevant:

Risk	Description	Action to avoid or mitigate risk
No action is taken by the Council to register the land as a Village Green following the receipt of letters from local residents.	This area of public space/ancient woodland could be lost if the extra protection afforded a Village Green was not applicable.	Seek to register the land as a Village Green.
The Council has a vested interest in the outcome of registration	The decision process could be open to challenge.	The Council should refer any decision to register the land as a Village Green to the Secretary of State for determination.
The Council's land is devalued.	Registration of the Council's land as a Village Green could have an adverse impact on its value.	None.

5. Financial and Legal Implications

5.1 Rule 9.1 of the Overview and Scrutiny rules in the Council's Constitution provides that any member of an Overview and Scrutiny Committee is entitled to give notice that he/she wishes an item relevant to the functions of the Committee to be included on the agenda for the next available meeting of the Committee. This is to comply with the requirements of section 9FC Local Government Act 2000. The consideration of this item is therefore a proper matter for this Committee.

5.2 The Commons Act 2006 sets out the process by which a landowner can voluntarily register land at Section 15(8) and it is set out below:

5.2.1 The Council as land owner makes a voluntary application;

5.2.2 The Council obtains consent from the holders of: any leases granted for a term of 7 years or more, registered charges over the land registered at the Land Registry or under the Land Charges Act 1972 or legal mortgages;

5.2.3 The required application form (Form 44) should be completed;

5.2.4 The application should be supported by a statutory declaration and evidence in support of the application setting out how the community use the area;

5.2.5 The application is then referred to the Secretary of State as the Council has a vested interest in the land.

6. Recommendation

6.1 Business Support Overview and Scrutiny Committee notes and debates this report.

6.2 Business Support Overview and Scrutiny Committee refers this matter to Cabinet with a recommendation that it considers seeking to register the land shown edged black, hatched black, cross hatched black and shaded grey on the plan attached to this report (at Appendix 2) as a village green and that if a decision is made that the Council will seek to register the land as a village green that this decision is referred to the Secretary of State for determination.

Lead contact:

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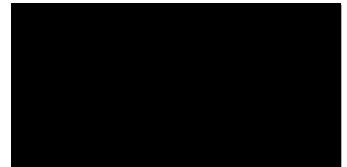
Background Papers

None

Appendices

Appendix 1 - Letters from constituents

Appendix 2 - Hook Wood & Hall Wood



ME5 8QZ

07 October 2016

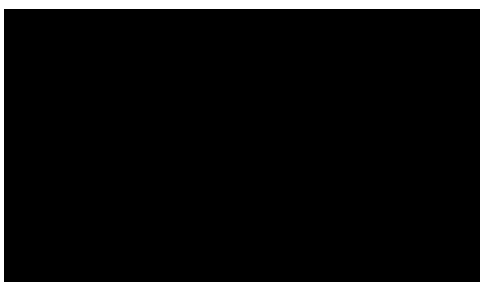
Dear David,

I am writing to you with serious concern over the increasing number of applications for housing development in the Medway area and the potential depletion of our ancient woodland and green spaces. I refer, in particular, to Hall Wood in Lordswood which is likely to be heavily affected if the current application for housing at Gibraltar Farm is given the green light.

Whether or not this development is ultimately allowed, I would like to plead with you and Medway Council to do everything in your power to ensure that Hall Wood (and the surrounding area) is protected in its entirety. It is important to protect our environment and the wildlife and flora and fauna within and I understand that this particular wood is in serious danger of being adversely affected if any building goes ahead on the Gibraltar Farm land. Residents in the area wish to continue to have uninterrupted enjoyment of this semi-rural area as it is well-used by individuals and families for walking and exercise and walking their dogs. We cannot allow any diminution or destruction of our ancient woodland and green spaces.

The residents of Lordswood greatly value the open spaces, woodland and fields that surround us. Please don't take the wood out of Lordswood!

Yours sincerely





ME5 8QY

Dear Councillor Wildey

I have read in the local newspaper that there is an inquiry being held into a planning application for possibly 450 houses to be built at Gibraltar Farm in Capstone Valley.

I am concerned that the woodland around that area will be destroyed especially Hall Wood and Hook Wood which need to be protected.

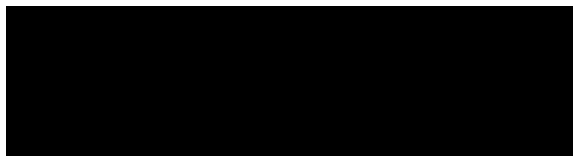
Hall Wood, Hook Wood and the other surrounding amenity area are important pieces of woodland with an abundance of wildlife, trees, plants and wildflowers. We do not want this destroyed as it gives many people pleasure, myself included to walk and enjoy the environment.


Trees are important to the environment working as a filter to help to give us clean air.

I have lived in this area for a long time and so much of our area is being ruined by the building of, in my opinion too many houses, taking away our beautiful wooded and open spaces.

I hope this letter will be taken into consideration.

Yours sincerely





ME5 8PB

Dear Sirs

I have heard from my neighbours that there is a planning application for building a number of houses in Capstone Valley.

I very much against this as I have heard that the woodland around the Leisure Centre could be destroyed.

I am told this area is called Hook Wood and Hall Wood and I don't know if this will affect the Leisure Centre and surrounding play fields.

I had much pleasure taking my grandchildren to play in the woods and surrounding fields when they were young, looking at all the wildlife and trees.

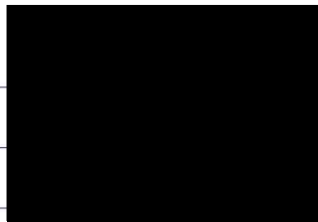
It would be such a shame if these beautiful areas were destroyed or spoilt due to the building of houses.

I ask you as my local Councillors to do anything you can to protect these areas.

Thank you.

Yours faithfully





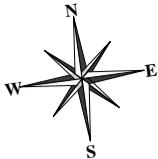
NE5 8YJ

Dear David Willey,

As my councillor for Lodswood and Capstone I felt I had to write to you concerning 1st the building application for Gibraltar Farm, 2nd Hook Wood and Hall wood. We need to keep the green belt here and I hope you will do everything in your power to protect it.

Yours Sincerely





Hook Wood & Hall Wood - Appendix 2

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