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REPORT TO:	HOUSING & COMMUNITY SERVICES	AGENDA ITEM: 14
DATE OF MEETING:	THURSDAY 27 <sup>TH</sup> APRIL 2006	CATEGORY: DELEGATED/ RECOMMENDED
REPORT FROM:	CHIEF EXECUTIVE	OPEN PARAGRAPH NO:
MEMBERS' CONTACT POINT:	HEAD OF LEGAL & DEMOCRATIC SERVICES	DOC:
SUBJECT:	CATHERINE JONATHAN PLAYING FIELD, EGGINTON	REF: AK/RA/4/14
WARD(S) AFFECTED:	EGGINTON	TERMS OF REFERENCE: HCS08

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### 1.0 Recommendations

- 1.1 To formally acknowledge the rights of certain residents of Smedley Court, Church Road, and Fishpond Lane, Egginton to access the Catherine Jonathan playing field from the rear of their properties.
- 1.2 To acknowledge that the Council is not in a position to grant or acquiesce over any rights of way over land belonging to an adjoining landowner, i.e. Egginton Hall. This is not for consideration in this report.

### 2.0 Purpose of Report

- 2.1 To consider whether certain residents of Smedley Court, Church Road, and Fishpond Lane, Egginton have shown to the satisfaction of the Council that they have established a right to use the playing field for recreational purposes only via access to the playing field from the rear of their properties.

### 3.0 Detail

- 3.1 In 1976, the Council purchased the Catherine Jonathan Playing Field in Egginton and at that time, the Council was also granted a right of way over the privately owned road (the access to Egginton Hall) for the purpose of gaining access to and egress from the playing field only. Annex A shows a marked plan of the area. The Council then leased the playing field to Egginton Parish Council on 3<sup>rd</sup> August 1976 and passed the rights over the road to the Parish Council for the above purpose only. The privately owned road is currently the only authorised access point to the playing field which is for recreational purposes only. The right of way is only for the purpose of public access to the playing field and its car park, not as a means of access to the rear of the neighbouring properties. The Council has an obligation to pay a proportionate part of the cost of maintaining the right of way up to normal agricultural standards.

- 3.2 There are gates and/or openings at the rear of a number of properties in Smedley Court, Church Road, and Fishpond Lane, which back onto the playing field. Thereby some residents are able to access the playing field from such gates/openings.
- 3.3 On 20<sup>th</sup> January 2006 the Council received letters from residents of Smedley Court, Church Road, and Fishpond Lane, Egginton. The letters outlined that individuals had enjoyed access to and egress from the land that was previously parkland and now known as the Catherine Jonathan Playing Field via gateways etc. at the rear of their properties. The residents went on to say that in conjunction with this access and egress they also on occasion used the right of way leading from the entrance of the playing field to the public highway on Church Road.
- 3.4 On 23<sup>rd</sup> January 2006 Council Officers were invited to discuss these matters at the Parish Council meeting, at which the local residents were present.
- 3.5 The Council has since received further written correspondence from residents stating that they access the playing field from the gates and openings at the rear of their properties. They claim they are using a right of access onto the playing field, which they have enjoyed for many years, in some cases prior to the land being purchased by the Council and utilised as a playing field in 1976.
- 3.6 An Officer of the Council carried out a site visit and boundaries and gates were inspected and photographs taken. Annexe A shows a marked plan of the area.
- 3.7 It would appear from the above evidence that private access to the playing field may have been established over time, however, it should be noted that there is no evidence to establish any use of the right of way from the point of exit of the playing field onto the adjoining owners land, (i.e. the access to Egginton Hall), and onto the highway.
- 3.8 Should the Council wish to challenge the alleged rights of the owners of the properties it would have to rebut any Statutory Declaration made to the Land Registry. However, if the Council acknowledges the rights the residents are claiming it would need to clarify such in writing to the Parish Council and to the residents and make it clear that the use of such access would be for entry to the playing field for recreational purposes and not as a right of way onto any adjoining land.

#### **4.0 Financial Implications**

- 4.1 Should the Council challenge the rights of owners of the properties concerned, and the owners proceed to establish such rights to the satisfaction of the Land Registry, there may be cost implications for the Council in challenging such claims.

#### **5.0 Corporate Implications**

- 5.1 The owner of the adjoining land at Egginton Hall has indicated that proceedings may be issued for Judicial Review in the High Court if the Council permits residents to use the privately owned right of way from the rear of their properties. It is not recommended in this report that the Council attempt to grant any such rights to residents onto the privately owned right of way, namely the driveway to Egginton Hall.

## **6.0 Community Implications**

6.1 The use and enjoyment of the playing field by the general public, for recreational purposes, will not be affected by the acknowledgement by the Council that certain private rights of 'access only' may have been established by some local residents over time.

## **7.0 Background Papers**

7.1 None

