

Wiltshire Council

Southern Area Planning Committee

17 December 2015

Part 1

Commons Act 2006 – Section 15(1) And (3)

Application To Register Land As A Town Or Village Green – The Common / Browns Copse Field / Bluebell Wood Field / Village Hall Field / The Field, Winterslow

Purpose of Report

1. To inform the Committee that:
 - (i) further to its decision made on 24 September 2015 to refuse to register land known as ‘Brown’s Copse’ in Winterslow as a village green, a pre-action protocol letter dated 23 November 2015 has now been received from the applicant Winterslow Opposed to Over-development (‘WOOD’) challenging the lawfulness of the Committee’s decision; and that
 - (ii) the applicant intends to issue proceedings for judicial review in the High Court to set aside the decision.

Background

2. Please see previous minutes and officer’s reports considered by the Southern Area Planning Committee at its meetings dated 30 April 2015 and 24 September 2015. The minutes are attached to this report with the corresponding reports available electronically with this agenda on the following link of the Council’s website or available on request.

<http://cms.wiltshire.gov.uk/ieListDocuments.aspx?CId=148&MId=8872&Ver=4>
3. The Committee will recall that the Council as Commons Registration Authority under the Commons Act 2006 instructed an independent Inspector (and an expert in Village Green law) to hear and consider written and oral evidence by witnesses in support and in objection to the application in November/December 2014 at a non statutory public inquiry which took place

in Winterslow. A non statutory inquiry was considered necessary because the factual evidence was strongly disputed by both the applicant and objector.

4. Following the inquiry, the Inspector produced a report of his findings dated 10 March 2015 and made the following recommendation to Wiltshire Council:

“The Application by Winterslow Opposed to Over Development (WOOD) under Section 15(3) of the Commons Act 2006 be approved but only to the extent that Brown’s Copse is registered as a town or village green in its entirety, other than the north-west corner of the Copse that is owned by Wiltshire Council.”

5. At the Committee meeting dated 30th April 2015, Members of the Committee resolved to ‘*in principle, refuse the report’s recommendation*’ and for the matter to be brought back to a future committee to be voted on by Members – copy of minute attached.
6. The matter was brought back to the Committee on 24 September 2015 where Members of the Committee resolved to accept the Inspector’s recommendation in part and refuse to register the field and a small area of Brown’s copse owned by the Council but to refuse to register Brown’s Copse owned by Mr and Mrs Sheppard. The reasons given by the Committee are set out in the attached minutes of the committee.

Safeguarding Considerations

7. Not applicable in this case

Public Health Implications

8. Not applicable in this case

Environmental Impact of the Proposal

9. Not applicable in this case

Equalities Impact of the Proposal

10. Not applicable in this case

Risk Assessment

11. It is now considered very likely that the Applicant will issue judicial review proceedings against the Council in the High Court before 24 December 2015.

The risks arising from this proposed course of action are covered in a separate Part 2 report.

Financial implications

12. These are considered in a separate Part 2 report.

Legal Implications

13. Where the Registration Authority decides not to register the land as a town or village green, there is no right of appeal for the applicant but the decision of the Council may be challenged through judicial review proceedings in the High Court under Part 54 of the Civil Procedure Rules for which the permission of the Court is required. The application must be made within three months of the date of the decision and in this case the last date for the issue of judicial review proceedings is 24 December 2015. The claim must also be served on any person the claimant considers to be an interested party.
14. If proceedings are issued the Council will have 21 days after service of the claim form to file a response to the claim.
15. If legal proceedings are issued the Solicitor to the Council is authorised under the Constitution to institute, defend, settle or participate in any legal proceedings in any case where such action is necessary either to give effect to decisions of the Council or in any case where the Solicitor to the Council considers that such action is necessary to protect the Council's interests.

Recommendations

16. The Committee is asked;
 1. to note that the applicant is now expected to issue judicial review proceedings before 24 December 2015 in order to challenge the Council's decision to refuse to register Brown's Copse as a village green.
 2. To consider the Council's response to the proposed proceedings under a separate Part 2 report.

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The following unpublished documents have been relied on in the preparation of this Report:

None

Appendices

Extract of minutes 24 September 2015

Extract of minutes 30 April 2015