

AGENDA SUPPLEMENT (3)

Meeting: Western Area Planning Committee

Place: Online Meeting

Date: Wednesday 17 June 2020

Time: 3.00 pm

The Agenda for the above meeting was published on 9 June 2020. Additional documents are now available and are attached to this Agenda Supplement.

Please direct any enquiries on this Agenda to Jessica Croman, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 718262 or email jessica.croman@wiltshire.gov.uk

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This Agenda and all the documents referred to within it are available on the Council's website at www.wiltshire.gov.uk

- 7a **Application to Register Land Known as 'Great Lees Field' Off Pound Lane, Semington, as a Town or Village Green (Pages 3 - 14)**

DATE OF PUBLICATION: 17 June 2020

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Application reference number: 2016/02

WILTSHIRE COUNCIL

COMMONS ACT 2006

IN THE MATTER OF AN APPLICATION TO REGISTER LAND DESCRIBED AS 'GREAT LEES FIELD' AT SEMINGTON, Nr TROWBRIDGE AS A NEW TOWN OR VILLAGE GREEN

AGREED NOTE REGARDING A JOINT REQUEST FOR AN ADJOURNMENT

Introduction

1. This agreed note states the parties' request that the Inspector adjourns the inquiry in relation to the above town/village green application to a date not before the beginning of March 2020 and explains the reasons for the request.
2. The parties have reached an agreement in principle that the application will be withdrawn in exchange for, amongst other things, the dedication of a footpath around the perimeter of the site. The purpose of the adjournment would be to give the parties time to complete the details of this agreement, allowing the application to be withdrawn.
3. As set out below, the Inspector has a power to adjourn to enable the parties to complete their settlement agreement, and has a power to allow withdrawal of the town and village agreement application, on which any settlement agreement would be conditional, upon the successful conclusion of that settlement process.
4. The Inspector is invited to grant the adjournment request for the reasons set out below.

Legal framework

5. The Inspector has the power to adjourn the inquiry to a future date (Commons Registration (England) Regulations 2014, Regulation 29(9)).
6. The Registration Authority acting through the Inspector has an implied power to allow the withdrawal of the application.
7. This is recognised in paragraph 61 of the DEFRA guidance, Section 15 of the Commons Act 2006 – Guidance notes for the completion of an application for the registration of land as a town or village green outside the pioneer implementation areas (October 2013), which advises applicants that (emphasis added):

“...If you decide at any stage not to proceed with your application, **the registration authority has discretion either to take no further action on your application**, or to go ahead and determine the application you made, based on the evidence available.”
8. An analogous power to allow a variation of an application was recognised to exist by the House of Lords in *Oxford City Council v Oxford County Council* [2006] 2 AC 674.

9. In the first instance decision ([2004] Ch 253), Lightman J held at paragraph [73] of his judgment that there was no power to allow an amendment. The Judge drew a distinction between a planning application and an application for a town and village green. Unlike a planning application, the Judge held that a TVG application:

“is made for the benefit of the local inhabitants and, as there is a public interest in the full and proper determination of their rights, **it is not open to the applicant, whether by way of a deal with the landowner or otherwise, to prevent the merits of the application (as made) being fully investigated: see the *Anstey case* [1985] Ch 329”... .**

10. However, Carnwath LJ in the Court of Appeal overturned the High Court judgment on this point ([2006] Ch 43). Carnwath LJ held at [102-4] that the registration authority had an implied power to vary an application, and described as sensible and legally unobjectionable the view expressed on the issue by the village green inspector, Mr Vivian Chapman, which was copied out in the judgment as follows (emphasis added):

"My view is that an applicant under section 13 has no absolute right to amend or withdraw an application. It is not unknown for campaigners to make and then purport to withdraw and resubmit section 13 applications as a tactic to inhibit the development of land. I should make it clear that there is no question of such a tactic in this case but I consider that the registration authority must have a power to insist on determining a duly made application so that the status of the land is clarified in the public interest. **However, I consider that it is, as a matter of common sense, implicit in the 1969 Regulations that a registration authority does not have to proceed with an application that the applicant does not wish to pursue (whether wholly or in part) where it is reasonable that it should not be pursued.** It would be a pointless waste of resources for a registration authority fully to process an application that the applicant did not wish to pursue whether wholly or in part unless there were some good reason to do so. In the present case, the city council as landowner has made it clear, through its counsel, that it does wish to have the status of the Trap Grounds as a whole determined. I consider that it is a reasonable wish on the part of the landowner to know whether its land has become a town green or not. I can see no good reason why the status of the reed beds and the ten metre strip should remain in limbo. The fact that Miss Robinson would not object to use of the 10-metre strip as access road to the new school is entirely irrelevant to the question whether that land has become a prescriptive town green. My advice to the county council as registration authority is (a) that Miss Robinson does not have power to insist on amending her application, (b) that the county council has power to allow an amendment where it is reasonable to do so, (c) that in the present case it would be unreasonable to allow the proposed amendment because the city council as landowner wishes to have the status of its land determined, and (d) that the county council should determine the original application as a whole."

11. Carnwath LJ's judgment in this respect was endorsed by Lord Hoffman in the House of Lords at [61-62]. There, Lord Hoffman held that the registration authority acting by its inspector has a power to allow amendments to a TVG application. Its discretion should be "guided by the general principle of being fair to the parties" and the inspector should consider whether any prejudice would be caused by the amendment.

The discretion whether to allow withdrawal

12. The judgments of Lord Hoffman in the House of Lords at [61-62] and of Lord Justice Carnwath in the Court of Appeal at [102-104] apply either directly or by analogy to the discretion of the Inspector to allow withdrawal of a town and village green application:
 - a. They apply directly given that Carnwath LJ endorsed the view of Mr Chapman which was that (emphasis added) “a registration authority does not have to proceed with an application that the applicant does not wish to pursue (**whether wholly or in part**) where it is reasonable that it should not be pursued”.
 - b. If that is wrong, the judgments apply by analogy.
13. Accordingly, in deciding whether to allow a withdrawal of the application, the Inspector should consider whether this would be fair to the parties and whether any prejudice might be caused to third parties.
14. In relation to potential prejudice, there could be potential prejudice caused to third parties who assert that they have rights to use the site for lawful sports and pastimes, in so far as they may wish for the application to be determined.
15. For that reason, the Inspector should not allow the withdrawal of the application in due course unless and until:
 - a. a public notice has been issued by the Registration Authority inviting anyone wishing to object to the withdrawal to respond in writing by a specified date stating the reasons for their objection; and
 - b. the Inspector has had the opportunity to consider any objection made in response to the notice, including the submissions of the parties on that objection.
16. This notice should be publicised in the manner prescribed by Regulation 21(1), for a period of at least 42 days.

Whether to adjourn

17. The parties have reached an agreement in principle on the terms of a settlement, which would include, amongst other things, the dedication of a public footpath around the perimeter of the site if the application was permanently withdrawn.
18. There would be no purpose served in the inquiry proceeding on the listed dates of 4-5 December:
 - a. This would frustrate the ability of the parties to secure an amicable settlement, whilst also requiring the parties and the Registration Authority to incur significant unnecessary additional costs.
 - b. Any potential prejudice that might be caused to third parties can be addressed through the steps identified above.
19. The parties expect an agreement will be reached. They do not expect any party will wish to object to the proposed withdrawal upon satisfactory completion of that agreement.
20. The Friends of Great Lees called a meeting on 25 November 2019 to notify members of the village of Semington of the proposed settlement and the proposal was universally supported.
21. Time is needed for the parties to develop the terms of that agreement and for the Registration Authority to issue a notice publicising the intended withdrawal, as set out above.

Conclusion

22. For the reasons given, we invite the Inspector to allow an adjournment to not before March.
 - a. Realistically, the parties expect that any settlement will be finalised by the end of January.
 - b. The parties propose that they notify the Registration Authority if and when the settlement is concluded, at which point the above notification procedure should be commenced.
 - c. It is sensible therefore to re-list the resumption of the inquiry for a date not before March 2020 in the event that no settlement has been concluded.

23. The parties request that the Inspector's decision on this adjournment request be made through a written decision. The parties respectfully request that a decision be made urgently so that the parties know whether or not attendance will be required on 4-5 December.

24. If the Inspector agrees to the adjournment request, the parties undertake within seven days of the Inspector's decision to send their dates to avoid so that the resumed inquiry can be re-listed.

25. The parties also undertake to notify the Inspector and Registration Authority in writing within seven days of the successful conclusion of a settlement agreement, as per para 22(b) above.

Horatio Waller
On behalf of the Friends of Great Lees

Ruth Stockley
On behalf of the Objectors

27 November 2019

29 November 2019

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Horatio Waller
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Dear Mr Waller

Re: Commons Act 2006 – Sections 15(1) and (3)
Application to Register Land Known as Great Lees Field, Semington, as a Town or Village Green

I am instructed by the Rights of Way team and the Council as Commons Registration Authority, Thank you for the e-mail dated 27th November 2019 addressed to Janice Green in the Rights of Way team and attaching Agreed Note Regarding a Joint Request for an Adjournment in the Matter of an Application to Register Land Described as 'Great Lees Field' at Semington, Nr Trowbridge as a New Town or Village Green (also attached to this letter).

The Council as the Registration Authority notes your detailed request to adjourn (as agreed by the applicants and objectors) the continuation of the public inquiry, scheduled to be held on Wednesday 4th and Thursday 5th December 2019, at Semington Village Hall, until a date not before the beginning of March 2020.

Whilst the DEFRA non-statutory guidance 2013 "Section 15 of the Commons Act 2006 – Guidance notes for the completion of an application for the registration of land as a town or village green outside the pioneer implementation areas" , states that an application may be withdrawn, it is at the discretion of the Registration Authority to continue to the determine the application or take no action as set out in paragraph 61 below;

"61. ...If you decide at any stage not to proceed with your application, the registration authority has discretion either to take no further action on your application, or to go ahead and determine the application you made, based on the available evidence."

In considering your request, the Registration Authority has therefore taken into account the matters of the public interest in the continuation of the inquiry, including the duty of the Registration Authority

to determine applications to register land as a town or village green in a fair and reasonable manner and the timing of the request to adjourn the inquiry. The Inspector appointed by the Council, as the Registration Authority, Mr William Webster, was also informed of your request and has recommended that that it is in the public interest for the public inquiry (which has been running for 3 days) to be concluded and for the application to be determined by the Registration Authority. The Registration Authority has now considered your application, the Inspector's recommendation and has exercised its discretion and concluded that it is in the public interest for the Inquiry to continue to conclusion and for the Inspector to make a recommendation to the Council based on the law and evidence he has heard and is due to hear during the inquiry, to enable the Council to properly determine the application. Your joint request to adjourn is therefore refused.

The Council considers that the application to register the land as a town or village green is a matter of public interest where it is supported by 66 users of the land and is of wider public interest than just the two parties who have requested the adjournment. Additionally, the late timing of the written request to adjourn the inquiry which was received on 27th November is unfair from the public interest perspective in particular when the inquiry is due to sit again on 4 and 5 December. It will also not be possible within the timescales to make a recommendation to Members of the Council who will ultimately determine this application. The continuation of the inquiry has been advertised and arrangements (including the venue) are now in place. There is only an agreement in principle between the parties requesting the adjournment (the details of which are not yet completed or agreed at this stage) regarding a field edge footpath over the land, the use of which (passing and repassing) and maintenance would come under the Highways Act 1980 rather than the town and village green application which comes under the Commons Act 2006 (and concerns use of the entire parcel of land through lawful sports and pastimes).

It is of course open to the parties if they so wish to renew the application for adjournment at the opening of the inquiry next week on 4th December.

The public inquiry regarding the application to register land known as Great Lees Field, Semington, as a town or village green will therefore resume at 10:00am on Wednesday 4th December 2019, at Semington Village Hall.

Yours sincerely,



Mrs Sarah Marshall
Solicitor

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C.C Ellie Kiely
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Mr Steven Hall
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INVESTOR IN PEOPLE

Ruth Stockley (Counsel for the Objector)
William Stuart-Bruges
Mr W Webster - Inspector
Ms J Green- CRA

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17 June 2020

This is information that has been received since the committee report was written. This could include additional comments or representation, new information relating to the site, changes to plans etc.

7a.

Application to Register Land Known as 'Great Lees Field' Off Pound Lane, Semington, as a Town or Village Green (Pages 13 - 318)

Comments on Public Statements – Reference 1 – Dr William Scott

1. Officer's note the representations made by Dr W Scott on behalf of the Friends of Great Lees Field included in the Agenda Supplement 2, regarding the request to adjourn the public inquiry until a date not before the beginning of March 2020. The request to adjourn (which was made by an agreed note and attached) was received shortly before the Public Inquiry second sitting on 4 December 2019. The request was made because the landowners and applicants had reached an agreement in principle that the application to register the land as a TVG would be withdrawn in exchange for the landowners granting a right of way around the perimeter of the field.
2. The request to adjourn was forwarded to the Inspector for comment and considered by officers and a decision was made to refuse the request to adjourn which was confirmed to Horatio Waller of FTB Chambers (for the landowner) by letter dated 29 November 2020 which was copied by email to all parties (see copy letter attached).
3. The Inspector heard representations from the parties at the public inquiry on 4 December 2019.
4. The decision to refuse the request to adjourn the public inquiry and the reasons for this decision are considered in;
 - a. Paragraphs 13 and 14 of the Officers report to committee (agenda item 7a)
 - b. Paragraphs 52 to 58 of the Inspector's Report to Committee at appendix D of the Officer's report.

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Western Area Planning Committee

17 June 2020

Agenda Item Supplement – Extract’s Officer’s Report and Inspector’s Report

Paragraphs 13 – 14 of the Officers Report

Main Considerations for the Council

13. It should be noted that prior to the resumed inquiry on 4 December 2019, the CRA received a joint request from Counsel acting for both the applicants and the objectors, to adjourn the inquiry to a date not before the beginning of March 2020, in order to allow the parties time to continue ongoing discussions and complete the details of an agreement where the parties had, in principle, agreed that the town/village green application would be withdrawn in exchange for the dedication of a footpath around the perimeter of the site. The DEFRA advice - “Section 15 of the Commons Act 2006 – Guidance notes for the completion of an application for the registration of land as a town or village green outside the pioneer implementation areas” October 2013, states:

“61. ...If you decide at any stage not to proceed with your application, the registration authority has discretion either to take no further action on your application, or to go ahead and determine the application you made, based on the available evidence.”

14. This request was considered by both the CRA on receipt and by the Inspector at the inquiry and commented upon within the Inspector’s report (Appendix D). Where it is at the discretion of the Registration Authority, it was concluded that the inquiry should continue and the application be determined where there was a wider public interest and due to the difficulties that a six month adjournment would cause to the Inspector being obliged to make findings on the earlier evidence.

Extract from paragraphs 52 to 58 of the Inspector’s Report

Application to adjourn

52. Shortly before the start of the resumed hearing on 4 December 2019 (Day 4) the CRA received an agreed joint note dated 27 November 2019 from counsel acting for As and Os (to be found at the end of the supplemental CRA bundle) in which the CRA was invited to adjourn the public inquiry to a date ‘not before the beginning of March 2020’. The note invited the CRA to make an urgent decision in order that the parties might know whether their attendance was required at the resumed hearing on 4-5 December 2020.

53. I was consulted about this by the CRA and it was my recommendation that an adjournment of the public inquiry should not be permitted on public interest grounds and a reasoned letter was sent both parties on 29 November 2019 notifying them of WC’s decision. The parties were also informed that if they wished to renew their joint application to adjourn they could so at the resumed inquiry which was then less than a week away and where all necessary arrangements had been made and publicised in advance.

54. The reason given for the requested adjournment was that the parties had reached agreement in principle that the application would be withdrawn in exchange for (amongst other things, about which I was given no details) for a

dedication of a footpath around the perimeter of the land. It was suggested that an adjournment would give the parties time to work out the details of the suggested agreement (which, it is said, they expected to reach) and that to continue the inquiry might frustrate the ability of the parties to secure an amicable settlement. It also seemed to me that the Rights of Way team at WC would need to be brought into these negotiations in order to see whether they were minded to support any proposal by the landowner to dedicate land as a public right of way in view of their powers under the Highways Act 1980.

55. The CRA has a discretion whether to allow an adjournment in much the same way as it has a discretion to allow an application to be withdrawn before it has been determined. Where it would be reasonable to allow an application to be withdrawn the discretion will no doubt be exercised in favour of the withdrawal. Much will depend on the context which might include the prospects of the application succeeding in law and the measure of support which it enjoyed within the local community. In this case we were about to begin day four of what proved to be a five day inquiry in what is a well supported application. In such circumstances (unlike in private law litigation) there is, as it seems to me, an obvious legitimate public interest in the application being determined in order that the status of the land might be determined rather than being left in a state of limbo.

56. The inquiry was told that As had contacted 'a number of people' who had submitted completed evidence questionnaires and that there had been a meeting which approved the application for an adjournment. There was no suggestion that everyone, or at least an overwhelming majority of those who had lodged written evidence, had signified their consent to the proposed adjournment although a number of them clearly had.

57. I invited submissions on the application to adjourn at the start of Day 4 and the matter was also discussed privately by myself with officers of WC who attended the hearing. It was my recommendation that the application should be rejected and that the inquiry should continue (which it did) which was the unanimous view of these officers which I later communicated to the parties in open session. In my remarks I noted (a) that there was a wider public interest in seeing the application through to a conclusion now that we were part way through the inquiry (and by that stage 12 witnesses supporting the application had already given oral evidence); (b) that the CRA had not been presented with evidence that the overwhelming majority of those who supported the application to register had agreed to the proposal to adjourn; and (c) that by adjourning the inquiry to March or even April 2020, whenever it could be refixed to suit the convenience of the parties and their witnesses, it would mean that there would potentially be a gap of around 6 months before the inquiry resumed which made it extremely difficult for the Inspector who was obliged to make findings on the earlier evidence.

58. It is my view that the application to adjourn was, in the exercise of their undoubted discretion in the matter, rightly rejected by the CRA.