

## EASTERN AREA PLANNING COMMITTEE

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### MINUTES OF THE EASTERN AREA PLANNING COMMITTEE MEETING HELD ON 22 MARCH 2018 AT WESSEX ROOM, CORN EXCHANGE, THE MARKET PLACE, DEVIZES SN10 1HS.

#### **Present:**

Cllr Mark Connolly (Chairman), Cllr Paul Oatway QPM (Vice-Chairman), Cllr Ian Blair-Pilling, Cllr Stewart Dobson, Cllr Peter Evans, Cllr Nick Fogg MBE, Cllr James Sheppard and Cllr Christopher Williams (Substitute)

#### **Also Present:**

Cllr Philip Whitehead

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#### 1. **Apologies**

An apology was received from Councillor Richard Gamble, who was substituted by Councillor Chris Williams.

#### 2. **Minutes of the Previous Meeting**

The minutes of the meeting held on 30 November 2017 were presented for consideration, and it was:

#### **Resolved:**

**To approve and sign as a true and correct record the minutes of the meeting held on 30 November 2017.**

#### 3. **Declarations of Interest**

Councillor Paul Oatway QPM declared a non-pecuniary interest in Minute Item 8 by virtue of being a member of Milton Lilbourne Parish Council. He confirmed he had considered all evidence related to the application with an open mind and would participate and vote on the item.

#### 4. **Chairman's Announcements**

There were no announcements.

#### 5. **Public Participation**

The rules on public participation were noted.

6. **Planning Appeals and Updates**

The report on completed and pending appeals, and an update on recent case law from the Head of Development Management, were presented for consideration.

**Resolved:**

**To note the updates.**

7. **ARTICLE 4 DIRECTION: Land at Crookwood Farm, Crookwood Lane, Potterne, Wiltshire, SN10 QS**

**Public Participation**

Mervyn Dobson spoke in objection to the retention of the permitted development rights on the site.

Judie Boyt spoke in objection to the retention of the permitted development rights on the site.

Johnny Cayford spoke in objection to the retention of the permitted development rights on the site.

Tim Truman spoke in support of the retention of the permitted development rights on the site.

Adrian Harris spoke in support of the retention of the permitted development rights on the site.

Councillor Chris Saunders, Chairman of Easterton Parish Council, spoke in objection to the retention of the permitted development rights on the site.

Councillor Peter Balls OBE, Chairman of Potterne Parish Council, spoke in objection to the retention of the permitted development rights on the site.

Councillor Bill Donald, Urchfont Parish Council spoke in objection to the retention of the permitted development rights on the site.

Andrew Guest, Major Projects and Performance Manager, presented a report which recommended the making of a 'non-immediate' Direction under Article 4 of the Town and Country Planning (General Permitted Development) Order (as amended) to remove 'permitted development' rights for the land at Crookwood Farm. The effect of an Article 4 Direction would remove the permitted development right to hold motor car and motorcycle racing events on the land without planning permission, as was currently permissible for 14 days per year.

The background to the consideration of making the Article 4 Direction was detailed, including the events that had taken place on the site and the raising of concerns over noise, traffic, access and the impact on bridleways. It was confirmed that a planning application to retain motocross jumps on the site had been withdrawn. The requirements under which an Article 4 Direction could be made were detailed, along with explanation that an order could be immediate or non-immediate. The report recommended a non-immediate order, which would require additional consultation and permit the events planned for 2018 to proceed, with a lesser risk of compensation to be offered.

Members of the Committee then had the opportunity to ask technical questions of the officer. Details were sought on liability in the event accidents took place on the site, and clarification of the processes for both immediate and non-immediate orders.

Members of the public then had the opportunity to present their views to the Committee, as detailed above.

The local Unitary Division Member, Councillor Philip Whitehead, then spoke in objection to the retention of permitted development rights on the site. He supported the making of an immediate Article 4 Direction in order to address the serious concerns raised by the current activities on the site.

A debate followed, where the history of the site in its current use was further raised, along with confirming that any Direction would cover the entire farm area, so that any activity could not be moved into another field should a Direction be made. The positive health and social benefits of the activity were debated, but the majority of councillors considered the negative impacts from noise, traffic impact, environmental concerns and more indicated the site was inappropriate for the current use, and that the problems were sufficiently serious to warrant immediate action, particularly as the potential for such a direction had been raised across a long period.

At the beginning of the debate a motion was moved by Councillor Stuart Dobson, seconded by Councillor Chris Williams, to authorise an immediate Direction under Article 4. The reasons for an immediate Direction rather than a non-immediate Direction were given as follows:

- In view of the unsuccessful attempts to obtain a meaningful events management plan to ensure the safety of all users of the highways hereabouts, including emergency services, and to safeguard the amenities of nearby residents from noise and general disturbance.
- In view of the immediate impact of the events themselves on local amenity and the well-being of the area in terms of the traffic generation and the resulting implications for highway safety, and in view of the general disturbance caused by noise in an otherwise tranquil location.

At the conclusion of discussion, it was,

**Resolved:**

**That the Head of Development Management be authorised to make an immediate Direction under Article 4 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), to remove 'permitted development' rights under Part 4, Class B of Schedule 2 with all necessary public consultation.**

**8. WILDLIFE AND COUNTRYSIDE ACT 1981: The Wiltshire Council Parish of Pewsey Path No. 82 and Path No. 82A and the Parish of Milton Lilbourne**

## **Path No.34 and Path No. 34A Definitive Map and Statement Modification Order 2017**

### **Public Participation**

Sarah Ingram Hill, on behalf of impacted landowners, spoke in objection to the Order.

Bernie Bradshaw, on behalf of Pewsey East Walkers, spoke in support of the Order.

George Haddock, on behalf of Pewsey East Walkers, spoke in support of the Order.

Councillor David Fall, on behalf of Milton Lilbourne Parish Council, spoke in support of the Order.

Craig Harlow, acting Rights of Way Officer, presented a report which recommended that the proposed Order be forwarded to the Secretary of State for Environment, Food and Rural Affairs with a recommendation that the Order be confirmed without modification.

The background to the making of the order was detailed, along with explanations of actions that could be taken by landowners to demonstrate a lack of intent for land to be used as a public right of way and summaries of the evidence submitted by users and landowners on the proposed routes. Conflicts of evidence between supporters and objectors of the Order would be tested by the Secretary of State, with the report proposing to support the Order as originally made. The required legal tests for creation of a right of way were also detailed, being that the land must have been used as such without force, without secrecy and without permission, for a continuous period of at least 20 years.

Members of the Committee then had the opportunity to ask technical questions of the officer.

Members of the public then had the opportunity to present their views to the Committee, as detailed above.

A debate followed, where the evidence in support and objection to the use of the land was assessed, along with the strength of that evidence. A motion was moved by Councillor Paul Oatway QPM, seconded by Councillor Ian Blair-Pilling, to forward the Order to the Secretary of State in accordance with the officer's recommendation. At the conclusion of debate, it was,

### **Resolved:**

**That "The Wiltshire Council Parish of Pewsey Path No. 82 and 82A and the Parish of Milton Lilbourne Path No. 34 and 34A Definitive Map and Statement Modification Order 2017" is forwarded to the Secretary of State for the Environment, Food, and Rural Affairs with the recommendation that it is confirmed as made.**

9. **COMMONS ACT 2006 SECTION 15(1) AND (2): Application to Register Land as a Town or Village Green - The Play Area in Morris Road/College Fields in the Baron Park/College Fields Residential Area, Marlborough**

Public Participation

Mr Paul Grace, on behalf of Marlborough College, spoke in objection to the registration of the town or village green.

Mr Ian Mellor, applicant, spoke in support of the registration of the town or village green.

Sally Madgwick, Acting Team Leader - Definitive Map and Highway Records, presented a report which recommended that Wiltshire Council, as Commons Registration Authority, accept the recommendation of the independent inspector to reject the application made under Sections 15(1) and (2) of the Commons Act 2006 to register land at Barton Park, Marlborough, as a town or village green.

The background to the application to register the play area in Morris Road/College Fields, Barton Park, as a town or village green was detailed. The application was submitted on 18 May 2015. As Wiltshire Council, in its capacity as landowner, was a statutory objector to the application to register the land, the Committee at its meeting on 5 January 2017 resolved to appoint an independent inspector to hold a non-statutory public inquiry to examine and establish the facts and relevant law, and to provide a report and a recommended course of action. The inquiry took place in January 2018. The inspector's report and its findings, and relevant evidence, was included with the Committee report. Correspondence since the inquiry report between the council as Commons Registration Authority, the inspector, applicant and objectors, had also been circulated to the Committee.

The legal tests for approving the registering of a town or village green were outlined as detailed further in the report, but in particular that, on the balance of probabilities, applicants must prove that a significant number of local people indulged in lawful sports and pastimes on the land for a period of at least 20 years, in this case from 1995-2015, and that their usage of the land must have been 'as of right'. This would require the use of the land for such purposes to have been without force, without secrecy and without permission.

The independent inspector, following the public inquiry, had concluded that while it was not in dispute that lawful sports and pastimes had taken place on the land across the required period, that use had been 'by right', meaning it had been permitted or actively allowed by the landowners, or otherwise carried out by statutory right. As a result, he had recommended that the application to register the land be rejected, with the full details and reasoning set out in the inspector's report.

Sarah Marshall, Senior Solicitor, confirmed to the Committee that it was able to come to a different decision to that recommended by the independent inspector, but that it could only do so where it considered that the inspector had made a significant error of law or fact, and could support that consideration with clear and valid evidence. Additionally, the Committee was reminded of the

requirement not to predetermine the application, but to consider it with an open mind, taking into consideration all the evidence before it, and to assess whether or not the legal tests for registration of a town or village green had been met as the inspector had concluded.

It was also confirmed that officers acting for the council as a landowner making objections, had received separate legal support than the Committee and supporting officers acting as Commons Registration Authority, to ensure all parties, including applicants and objectors, were treated fairly.

Following the presentation members of the Committee were given the opportunity to ask technical questions of the officers.

Members of the public were then given the opportunity to present their views to the Committee, as detailed above.

The Committee then debated the application for registration, and the recommendations of the independent inspector. Some members raised concerns regarding elements of the inspector's report, in particular reference to relevant legislation under which land was registered and transferred, whether the land had properly been listed as public open space in the past, and past intentions for use of the land. However, a majority of members stated that no significant errors of law or fact had been identified which gave reason to doubt the recommendation of the inspector, and that on the balance of evidence it was therefore clear that while lawful sports and pastimes had taken place on the land, the required legal tests for registration had not been met. In particular it was emphasised that a very clear process had been followed, including the holding of a non-statutory inquiry to test evidence and claims, as well as relevant law, in order for the conclusion to have been properly and fairly arrived at.

A motion to reject the registration of the land in accordance with the reasoning of the independent inspector's report was moved by Councillor Mark Connolly, seconded by Councillor Paul Oatway QPM. At the conclusion of debate, it was,

**Resolved:**

**That the application to register the play area in Morris Road/College Fields, Barton Park, Marlborough, as a town or village green be rejected for the reasons set out in the inspector's report dated 2 March 2018.**

*A recorded vote having been requested by the required number of members, the votes for and against the application were as follows:*

**For (6)**

*Cllr Ian Blair-Pilling  
Cllr Mark Connolly  
Cllr Peter Evans  
Cllr Paul Oatway QPM  
Cllr James Sheppard*

**Against (2)**

*Cllr Stewart Dobson  
Cllr Nick Fogg MBE*

**Abstentions (0)**

*Cllr Chris Williams*

10. **Urgent items**

There were no urgent items.

(Duration of meeting: 3.00 - 5.15 pm)

The Officer who has produced these minutes is Kieran Elliott of Democratic Services,  
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