NORTHERN AREA PLANNING COMMITTEE ADDITIONAL INFORMATION

04th October 2017

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.

7. Application to Register Land as a Town or Village Green- Land Adjacent to Vowley View and Highfold, Royal Wootton Bassett

Comments on Representation from Blake Morgan LLP

The CRA has followed the statutory process and has given each party the reasonable opportunity to comment on the application and the objections / representations of support. On the implied permission, what the landowner needs to do is to make clear their ability to regulate or exclude access through a revocable permission, perhaps by occasional closure of the land to all concerned. By excluding people when the landowner wishes to use the land for their own purposes or on occasional days, they make plain that use on other occasions occurs because they do not choose to exercise their right to exclude and so permit such use. In the RWB case, there is no evidence that the gate was locked on any occasion and therefore it was not demonstrated to the local inhabitants that their use of the land was by a revocable permission.

Trigger Events

The Officers report is not deeply flawed in its advice to Committee. The Planning Authorities have been consulted and advised that there are no planning trigger events in place over the land or any part of it. DEFRA guidance advises that the Registration Authority should consult on this matter with the two Planning Authorities – in this case Wiltshire Council as Planning Authority and the Planning Inspectorate, which was done in this case. The CRA also requested further advice from Wiltshire Council Planning Officers regarding the objectors specific point regarding trigger events and the Core Strategy Document. The Planning Officers are believed to have sought their own legal advice on this point. The purpose of the Settlement strategy is to provide a framework and identify areas of grown where development will be focused in order to provide the basis for future decision on potential development in identified settlements which include Market Towns and Community Areas. Without more the settlement hierarchy cannot be considered to undertake the specific task to 'identify land for development'. The Core Strategy is therefore not aimed at specific sites without a neighbourhood plan or development plan, both of which would be site specific.

The land the subject of the town/village green application has already been subject to 4 planning applications – 1 withdrawn and 3 dismissed at appeal. Those four planning applications were trigger events but they were all followed by termination events. The latest appeal decision includes within the reasons: *"The proposal would be contrary to that part of Wiltshire Core Strategy Policy CS57 which requires development to have regard to the compatibility of adjoining buildings and uses including the impact upon the amenities of existing occupants. It would also be contrary to one of the core planning principles set out in the National Planning Policy Framework which requires a good standard of amenity for all existing and future occupants of land and buildings."*

The Core Strategy does not itself "identify" the land and therefore cannot be a valid trigger event under the trigger event identified by the landowner being 'A development plan document which identifies the land for potential development is adopted under s.23(2) or (3) of the Planning and Compulsory Purchase Act 2004'.

The case R (on the application of Newhaven Port and Properties Ltd) (Appellant) v East Sussex County Council and another 2015) is concerned with use of a beach (West Beach) which was wholly uncovered by water for only a few minutes each day. The question

(amongst others) considered by the court was whether byelaws gave members of the public permission to use the beach for lawful recreational pursuits. The court held on that point that the user was by permission in the light of the Byelaws.

User Evidence

The objectors were given the opportunity but have not previously challenged the user evidence presented in support of the application. It is considered that evidentially sufficient evidence has now been provided to the CRA enable the CRA to reach a decision on the application and a non-statutory public inquiry is not considered to be necessary in this case where the objectors have presented no evidence in order to challenge the user evidence submitted by the applicant. Hearing from the witnesses at a public inquiry is unlikely to assist the CRA in its consideration of the two legal points of objection, i.e. the timescales and validity of the application and whether or not a trigger event is in place over the land by reference to the Wiltshire Core Strategy document.

There is evidence that after the fence was erected, local inhabitants continued to use the land for the purposes of lawful sports and pastimes, accessing the land via an unlocked gate. If the landowners had wished to prevent access or provide access only on a permissive basis, why was the gate not locked at that time. There is no evidence of signage placed on the land to communicate to the public that the land was private and that access was prohibited / permissive only. On the matter of implied permission, what the landowner needs to do is to make clear their ability to regulate or exclude access through a revocable permission, perhaps by occasional closure of the land to all concerned. By excluding people when the landowner wishes to use the land for their own purposes or on occasional days, they make plain to users that use on other occasions occurs because they do not choose to exercise their right to exclude and so permit such use. In this case there is no evidence that the gate was locked on any occasion before May 2015 and therefore it was not demonstrated to the local inhabitants that their use of the land was by a revocable permission.

The case R (on the application of Newhaven Port and Properties Ltd) (Appellant) v East Sussex County Council and another 2015) is concerned with use of a beach (West Beach) which was wholly uncovered by water for only a few minutes each day. The question (amongst others) considered by the court was whether byelaws gave members of the public permission to use the beach for lawful recreational pursuits. The court held on that point that the user was by permission in the light of the Byelaws.

Skeleton arguments are required to be filed by both parties in a Court case. If the matter proceeds to final hearing, one party will have lost the case but both will have filed skeleton arguments. Committee can only rely on binding judgements not a party's skeleton argument.

BLAKE MORGAN

Ms Janice Green
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Our ref: 00014237/000200

3 October 2017

Dear Ms Green

Application to Register Land as a Town or Village Green – Land adjacent to Vowley View and Highfold, Royal Wootton Bassett

Introduction

1. We are surprised and disappointed that the officers have moved to producing a report without any further communication with our clients following the submission of our objections on 18 November 2016 and 2 March 2017. The officer's report to committee is deeply flawed in its advice.

2. We do not intend to repeat the submission already made by Mr Gregory Jones QC but rely upon them *mutatis mutandis* and we respectfully request that members re-read these opinions including whether the application was made in time.

3. The officer's report to committee at paragraph 22 wrongly advises the committee that it is bound by the advice from the planning authority on this point. It states: "Wiltshire Council, as the Registration Authority, must rely upon the responses given by the planning authorities." [Underlining added] As a result, the report contains no reasoning on why the committee should reject the Opinions of Mr Jones QC. This advice given by officers is erroneous. The Registration Authority must make up its own mind, it is not bound by the views of the planning authority. The officer should make clear that the report is wrong and correct this advice immediately.

4. We turn now to the question of whether the application is valid. Put shortly if a "trigger" event occurred before the date of the application then the application to register as a village green is invalid and the application must be rejected. One such trigger event is if a draft plan or adopted plan contains policies which identifies the land "for potential development".

5. There is no dispute that the following policies (set out below) were adopted before the application to register was made. So if they identify this site as land for potential development the application to register is invalid and the Registration Authority has no jurisdiction to entertain the application. It is to be noted that this is a wide test. All that is necessary is for the policy to "identify" the land as having the "potential" for development. The policy need not be an allocation.

6. The totality of the response contained in the officer's report to the opinions of Mr Gregory Jones QC that the plan "*identifies the land for potential development*" is simply as follows:

> "The Head of Spatial Planning has given the following advice:
>
> *"I have considered the objector's assertions that there is a trigger event in place. However, I can confirm that in our opinion no trigger event has occurred in relation to the land in question, as the land/site (subject of the application) is not specifically identified for potential development, although strategic policy for the area exists as set out in the Wiltshire Core Strategy (adopted January 2015)."* [Underlining added]

7. It contains absolutely no sound reasoning and it is simply wrong. It erroneously characterises Mr Jones's legal opinions as "assertions". The reference to the land/site not being "specifically" identified is wrong both as a matter of fact and is also wrong as a matter of approach. Dealing with the question of fact first.

8. In the present case, the land in question is subject to the adopted Wiltshire Core Strategy ("CS"). The CS was adopted in January 2015[1]. Policy CP 1 of the CS provides:

> "**Core Policy 1**
> **Settlement Strategy**
>
> The Settlement Strategy identifies the settlements where sustainable development will take place to improve the lives of all those who live and work in Wiltshire.
>
> The area strategies in Chapter 5 list the specific settlements which fall within each category.
>
> **Principal Settlements**
>
> Wiltshire's Principal Settlements are strategically important centres and the primary focus for development. This will safeguard and enhance their strategic roles as employment and service centres. They will provide significant levels of jobs and homes, together with supporting community facilities and infrastructure, meeting their economic potential in the most sustainable way to support better self-containment.
>
> The Principal Settlements are: Chippenham, Trowbridge and Salisbury.
>
> **Market Towns**
>
> Outside the Principal Settlements, Market Towns are defined as settlements that have the ability to support sustainable patterns of living in Wiltshire through their current levels of facilities, services and employment opportunities. Market Towns have the potential for significant development that

[1] https://pages.wiltshire.gov.uk/wiltshire-core-strategy-web-version-new-june.pdf

will increase the jobs and homes in each town in order to help sustain and where necessary enhance their services and facilities and promote better levels of self-containment and viable sustainable communities.

The Market Towns are: Amesbury, Bradford on Avon, Calne, Corsham, Devizes, Malmesbury, Marlborough, Melksham, Tidworth and Ludgershall, Warminster, Westbury, and Royal Wootton Bassett." [Underlining added]

CP2 states *inter alia*

> "Within the limits of development, as defined on the policies map, there is a presumption in favour of sustainable development at the Principal Settlements, Market Towns, Local Service Centres and Large Villages." [Underlining added]

The current site is within the limits for development of Royal Wootton Bassett.[2] Wiltshire Council having considered these policies has previously accepted that the "location of the site is therefore considered appropriate for development in principle..."[3] It is clear that the land is specifically within Royal Wootton Bassett and expressly "identifies" the land/site as having the "potential" for development. Indeed it uses the same words used in the statutory provision.

Without prejudice to the foregoing we turn now to whether the approach of requiring the land/site to be specifically identified is correct. Whilst there is no decided case law on the meaning of the adoption or making by the local planning authority of a local plan or neighbourhood plan which "*identifies the land for potential development*", the matter did come before the court in *Re The Queen on the application of Long live Southbank v Lambeth LBC* (Ref: CO/17042/2013). In that case the Judge, Lang J adjourned the hearing in order for the Secretaries of State to make submissions as to their understanding of the legislation and in particular the secondary legislation relating to the meaning of this phrase. The submission from counsel instructed on behalf of the Secretaries of State whilst not legally binding represents the most authoritative statement by the authors of the regulations as to the correct meaning. They are supported by a sworn witness statement made on behalf of the Secretaries of State (attached hereto). At paragraph 18 of the skeleton argument the Secretaries of State make clear that the phrase must be given its "plain meaning". They expressly reject the approach taken by the Head of Spatial Planning that there needs to be some degree of specificity.

The Evidence

Without prejudice to the foregoing, the objectors do not accept the applicant's evidence satisfies the required statutory test. There is no objective evidence demonstrating a continuous use as of right for the required 20 years. The objectors would, therefore, wish that they have the opportunity to test the evidence at a non-statutory inquiry. Moreover, notwithstanding it is the objector's position that any access to the site has been by implied permission. This is evidenced, for example, but not only, by the fact that even when the gate was first

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[2] This confirmed, for example, in the Wiltshire Council officer's report in respect of application reference 14/12039/FUL.
[3] Ibid.

installed it was left open. (See *R (on the application of Newhaven Port and Properties Limited) (Appellant) v East Sussex County Council and another 2015*] UK SC 7).

Conclusion

The Registration Authority must reject this application as invalid. My clients reserve the right to seek judicial review of any decision to declare the application valid.

Without prejudice to the foregoing, the evidence produced does not support the view that the test of continuous and open use without implied licence has been satisfied and my clients would wish to have the opportunity to test the applicant's case before a non-statutory hearing.

Yours faithfully

Guthrie McGruer
Partner Team Manager - Planning
For and on behalf of Blake Morgan LLP

Claim No: CO/17042/2013

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

BETWEEN:

THE QUEEN

on the application of

LONG LIVE SOUTHBANK

Claimant

-and-

LONDON BOROUGH OF LAMBETH

Defendant

-and-

1. SOUTHBANK CENTRE LIMITED

2. THE ARTS COUNCIL OF ENGLAND

3. SECRETARY OF STATE FOR THE ENVIRONMENT, FOOD[1] AND RURAL AFFAIRS

4. SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT

Interested Parties

-and-

THE OPEN SPACES SOCIETY

Intervener

SECRETARIES OF STATE'S SKELETON ARGUMENT

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[1] Not "FARMING".

Introduction

1. On 7 March 2014, Lang J ordered the joining of the Secretaries of State as Third and Fourth Interested Parties with a deadline of 1 July 2014 (later extended) for their skeleton arguments and any evidence. The learned Judge subsequently indicated through correspondence that she would like the Secretaries of State to respond to the Claimant's ("LLS's") case by way of a skeleton argument and then in oral submissions at the adjourned hearing.

2. These proceedings arise out of the 20 September 2013 decision of the London Borough of Lambeth ("the Council") that LLS's application to register land at the Undercroft as a town or village green ("TVG") was not valid.

3. The Secretaries of State's position is that the Council's approach was correct in law.

4. The Growth and Infrastructure Act 2013 ("GAIA") introduced provisions restricting the ability to apply for TVG registration and so delay or undermine development proposals.

Legal framework

5. Section 15C of the Commons Act 2006 ("the 2006 Act"), as inserted by section 16(1) of GAIA,[2] provides as follows:

> "(1) The right under section 15(1) to apply to register land in England as a town or village green ceases to apply if an event specified in the first column of the Table set out in Schedule 1A has occurred in relation to the land ("a trigger event").

[2] In force since 25 April 2013. LLS's purported application post-dates this date.

(2) Where the right under section 15(1) has ceased to apply because of the occurrence of a trigger event, it becomes exercisable again only if an event specified in the corresponding entry in the second column of the Table occurs in relation to the land ("a terminating event").

(3) The Secretary of State may by order make provision as to when a trigger or a terminating event is to be treated as having occurred for the purposes of this section.

(4) The Secretary of State may by order provide that subsection (1) does not apply in circumstances specified in the order.

(5) The Secretary of State may by order amend Schedule 1A so as to –

(a) specify additional trigger or terminating events;

(b) amend or omit any of the trigger or terminating events for the time being specified in the Schedule.

(6) A trigger or terminating event specified by order under subsection (5)(a) must be an event related to the development (whether past, present or future) of the land.

(7) The transitional provision that may be included in an order under subsection (5)(a) specifying an additional trigger or terminating event includes provision for this section to apply where such an event has occurred before the order is made or before it comes into force and as to its application in such a case.

(8) For the purposes of determining whether an application under section 15 is made within the period mentioned in section 15(3)(c), any period during

which an application to register land as a town or village green may not be made by virtue of this section is to be disregarded."

6. Schedule 1A to the 2006 Act, inserted by Schedule 4 to GAIA, is before the Court and is not set out here. Suffice it to say for now perhaps that the Council relies upon trigger events under paragraphs 1, 3, 4 and 7.

7. Section 16(4) of GAIA provides as follows:

> "For the purposes of the application of section 15C of the Commons Act 2006 (as inserted by subsection (1) above), it does not matter whether an event specified in the first column of Schedule 1A to that Act occurred before or on or after the commencement of this section."

Submissions

Common ground

8. It is common ground for the purposes of these proceedings that the 2013 planning application does not constitute a trigger event. It is likewise common ground that, with respect to the claimed four trigger events, there is no corresponding terminating event. Given section 16(4) of GAIA, it does not matter when any of the four claimed trigger events occurred. Furthermore, it must be common ground that only one of the claimed four trigger events must be found to be a trigger event in order for LLS's claim to fail.

Statutory interpretation

Plain meaning rule

9. The starting point must be the words of section 15C(1) of the 2006 Act. The meaning of these words is plain.

10. There has been a purported application "...to register land in England..." Section 15C(1) goes on to refer to "an event". This is not limited or qualified in any way. Similarly, "in relation to the land" (plainly a reference to the "land" the subject of the purported application) has a broad meaning.

11. There is nothing in the plain wording of section 15C(1) to support the proposition that "An application for planning permission in relation to the land..." within the meaning of Schedule 1A paragraph 1 is referable to planning permissions which, if granted, "would prevent or materially interfere with the use of land for lawful sports or pastimes". LLS wrongly focuses only on the wording of Schedule 1A, which expressly relates to section 15C, to the exclusion of the plain words of section 15C(1).

12. Similarly, the meaning of "An application for planning permission in relation to the land" in Schedule 1A paragraph 1 is plain. The "application" is unqualified. There is nothing in the plain wording of Schedule 1A to support the proposition that only applications which, if granted, "would prevent or materially interfere with the use of land for lawful sports or pastimes" constitute a trigger event.

13. The trigger event in Schedule 1A paragraph 1 is the *first publicity* of the application for planning permission in relation to the land which would be determined under section 70 of the Town and Country Planning Act 1990 ("the 1990 Act"). Provided

there is a qualifying "application for planning permission in relation to the land," and which is *first publicised* in accordance with requirements imposed by a development order by virtue of section 65(1), a trigger event has occurred in relation to the land. By virtue of section 15C(1) of the 2006 Act, the right under section 15(1) to apply to register land in England as a TVG therefore ceases to apply. The fact that, *after* the occurrence of the trigger event, the local planning authority grants the application for planning permission subject to such a condition as is mentioned in section 72(1)(b) of the 1990 Act (a "planning permission granted for a limited period") does not alter the fact that a trigger event has *already* occurred in relation to the land.[3]

14. An application for planning permission in relation to the land by way of an application for planning permission for development already carried out is still an application "which would be determined under section 70 of the 1990 Act" and hence there is a trigger event upon the first publicity of that application in accordance with requirements imposed by a development order by virtue of section 65(1) of the 1990 Act. By virtue of section 15C(1) of the 2006 Act, the right under section 15(1) to apply to register land in England as a TVG therefore ceases to apply. Once again, the fact that, *after* the occurrence of the trigger event, the planning permission granted by the local planning authority includes planning permission for development carried out before the date of the application does not alter the fact that a trigger event has *already* occurred in relation to the land.[4]

15. The plain meaning rule applies in this case.

[3] The Council's 6 July 2005 planning permission is just such a planning permission.
[4] On its face, it is arguable that the Council's 6 July 2005 planning permission does not include planning permission for development carried out before the date of the application.

16. By way of an application dated 10 May 2005, received by the Council the next day, there *was* an application for planning permission in relation to the land which would be determined under section 70 of the 1990 Act. Provided this application *was* first publicised in accordance with requirements imposed by a development order by virtue of section 65(1) of the 1990 Act, a Schedule 1A paragraph 1 trigger event *has occurred* in relation to the land. LLS's purported application would therefore be invalid because the right under section 15(1) to apply to register the land in England as a TVG had ceased to apply.

17. The interpretation of section 15C(1) with respect to Schedule 1A paragraph 1 is equally applicable to Schedule 1A paragraphs 3, 4 and 7, as is the plain meaning rule.

18. The phrase "identifies the land for potential development" is common to Schedule 1A paragraphs 3, 4 and 7. Its meaning is plain. None of the three species of document must identify the land "with some degree of specificity". Clearly there does not need to be an "active development proposal". Provided that the land is identified for potential development, this will suffice. Moreover, it is not the case that the potential development "must be such as to prevent or materially interfere with the use of the land for lawful sports or pastimes". LLS's case in all three respects runs directly counter to the plain words of the statute.

19. LLS's case that it is "only site allocation policies that clearly fall within the scope of paragraphs 3, 4 or 7 of Schedule 1A" is obviously wrong. Just by way of one example, a "development plan for the purposes of section 27 or 54 of the 1990 Act" within the meaning of Schedule 1A paragraph 7 need not and may not include a "site allocation policy". The effect of LLS's case would thus be to render Schedule 1A paragraph 7 otiose in these local planning authority areas. That cannot be right.

20. The Secretaries of State do not invite the Court, in LLS's words, to adopt an "expansive interpretation" of the legislation. They simply invite the Court to apply its plain words. If it does so, and if on the facts there has been any or all of the relevant "publicity for consultation" (Schedule 1A paragraph 3), "adoption" (Schedule 1A paragraph 4) or "continued effect" (Schedule 1A paragraph 7), LLS's right under section 15(1) to apply to register the Undercroft as a TVG ceased to apply, the Council correctly decided that its purported application was invalid and this claim fails.

21. The implication of LLS's case is that its claim can only succeed if it can persuade the Court (a) not to apply the plain meaning rule, but rather (b) to apply a purposive construction of the provisions in issue and then (c) to construe those provisions in the way it contends for.

Explanatory Notes

22. LLS contends that the Explanatory Notes to GAIA support its case. It cites R (Westminster CC) v NASS [2002] 1 WLR 2956 and R v Montila [2004] 1 WLR 3141 in support. LLS overlooks the reference in Montila at [36] to "headings". The heading to section 15C is "Registration of greens: exclusions". The heading to Schedule 1A is "Exclusion of right under section 15". These aspects of the "contextual scene" support the proposition that the trigger events in Schedule 1A paragraphs 1, 3, 4 and 7 are wider in their ambit than the very narrow ambit contended for by LLS.

23. Moreover, paragraph 4 of the Explanatory Notes does *not* support LLS's case. The bullet point emphasised by it in part follows this prior explanation: "The main

elements of the Act that cover *promoting growth* and *facilitating the provision of infrastructure, and related matters*, are:"[5] Once again, this aspect of the "contextual scene" militates against LLS's narrow interpretation of the trigger events. The same can be said for the bullet point that follows, with its emphasis on "excluding the right to apply" and "to safeguard against the system being used to stall or stop development". There is no suggestion whatsoever that the trigger events are only those which would "prevent or materially interfere with the use of the land for lawful sports or pastimes".

Pepper v Hart

24. The legislation is neither ambiguous nor obscure. A literal meaning of it does not lead to an absurdity. It is to be noted that section 15C(3)-(7) empowers the Secretary of State to make orders to address the kind of *reductio ad absurdum* scenarios postulated by LLS.[6] It follows that there is no warrant in referring to Parliamentary material (or extra-Parliamentary material) as an aid to the construction of the legislation.

25. If the Court decides that it is permissible to refer to this as an aid to construction, the Secretaries of State's position is that it undermines rather than supports LLS's case. It clearly discloses the mischief aimed at or the legislative intention lying behind the statutory words, namely to prevent the TVG registration system from being used to stop or delay planning development and to protect the ability of communities to promote development in their area through local and neighbourhood plan-making; to reduce the financial burden on local authorities in considering applications and the

[5] Emphasis added.
[6] He has in fact exercised this power: see The Commons (Town and Village Greens)(Trigger and Terminating Events) Order 2014, SI 2014/257.

cost to landowners whose land is affected by those applications; and to remove unnecessary uncertainty and delays that are difficult for those affected in the community.[7] LLS's case is contrary to that mischief aimed at or that legislative intention.

Human rights

26. The Court should reject LLS's submissions on the presumption against interference with rights.

27. GAIA simply changes the future effect of past events, and, what is more, the exclusion lifts upon the occurrence of a corresponding terminating event.

28. GAIA does not impact upon TVGs already registered, or upon the criminal statutes which protect them. It does not prevent anyone indulging as of right in lawful sports and pastimes on land. It does not preclude anyone from taking part in the planning system, such as by objecting to planning applications. It does not finally determine the right to apply under section 15(1) in that this right becomes exercisable again if there is a corresponding terminating event. The Secretary of State may by order provide that section 15C(1) does not apply in specified circumstances or omit any of the trigger events specified in Schedule 1A. In any event, a TVG becomes a TVG only upon registration not upon the necessary indulging over a period of at least 20 years or upon the application for registration.

29. It is telling that LLS can cite no human rights authority to support its case, other than by way of inapposite analogy.

[7] Rt Hon Michael Fallon MP, then Minister of State for Business and Enterprise, Commons Committee 10th sitting, 29 November 2012. The Court is also referred to Tom Surrey's witness statement.

30. In Feldbrugge v Netherlands (1986) 8 EHRR 425, the relevant Appeals Board ruled against the applicant on her appeal against a decision that she was no longer entitled to sickness allowance. The issue under consideration at [36]-[40] was whether the dispute over the asserted right in issue concerned a civil right (to which Article 6(1) applied) or a public law right (to which it did not apply). The ECHR in Pressos Compania Naviera SA v Belgium (1996) 21 EHRR 301 concluded that under the Belgian rules of tort claims for compensation came into existence as soon as the damage occurred and that a claim of this nature "constituted an asset" and therefore amounted to a "possession" within the meaning of Article 1 of the First Protocol.

31. These cases are far removed from the present case. There is nothing in either of them to support the proposition that any section 15 right to apply for registration engages Article 6(1) or Article 1 of Protocol 1, still less do they support the proposition that that section 15C and the trigger events in Schedule 1A should therefore be interpreted as LLS would wish for them to be interpreted. The same goes for its other inapposite analogies.

Conclusion

32. Subject to one of the relevant claimed trigger events having occurred in fact (for example, publicity of the 2005 application in accordance with requirements imposed by a development order by virtue of section 65(1) of the 1990 Act), and given their correct meaning in law, this claim for judicial review should be dismissed.

STEPHEN WHALE

LANDMARK CHAMBERS, LONDON

23 JULY 2014

On behalf of the 4th Interested Party
Initials/surname of witness: T. Surrey
Statement No: 1
Date of Statement: 23 July 2014

IN THE HIGH COURT OF JUSTICE
ADMINISTRATIVE COURT

Claim No. CO/17042/2013

LONG LIVE SOUTHBANK

Claimant

- and -

THE LONDON BOROUGH OF LAMBETH

Defendant

-and-

(1) SOUTHBANK CENTRE LIMITED

(2) THE ARTS COUNCIL OF ENGLAND

(3) THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS

(4) THE SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT

Interested Parties

THE OPEN SPACES SOCIETY

intervener

WITNESS STATEMENT OF TOM SURREY

I, TOM SURREY of the Department for Environment, Food and Rural Affairs will say as follows

Introduction

1. My name is Tom Surrey and I am a Deputy Director at the Department for the Environment, Food and Rural Affairs (Defra). My policy responsibilities include the law on registering town and village greens. I have been in post for two years. I make this witness statement from matters within my own knowledge and belief save where the contrary appears. Where I refer to matters which have been provided to me by others, they are true to the best of my knowledge.

The proceedings

2. There is a right to apply to register land as a town or village green under section 15(1) of the Commons Act 2006, provided a significant number of the local inhabitants have used the land as of right for lawful sports and pastimes for at least 20 years. Section 15C of that Act, which was inserted by the Growth and Infrastructure Act 2013, provides that the right ceases to apply in certain circumstances.

3. On 20 September 2013 the London Borough of Lambeth refused an application to register the Undercroft, at the Southbank Centre, as a town green and Long Live Southbank has been granted permission to bring a claim for judicial review of the decision.

4. Mrs Justice Lang, who is presiding over the case, adjourned the hearing and, in an email communication dated 10 March 2014 from the Court to the Treasury Solicitor's Department invited the Secretary of State for the Environment Food & Rural Affairs, or other relevant Secretary of State, to consider joining the proceedings as an Interested Party, and produce a skeleton argument and make oral submissions at the trial.

5. In the light of the fact that what is now section 15C of the Commons Act 2006 was the result of collaboration between Defra and the Department for Communities and Local Government, which has overarching policy responsibility for the planning

system, it was determined that both departments would join as Interested parties, and this was confirmed in an email communication to the court on 3 April 2014.

Background

6. The general aims of the Growth and Infrastructure Act 2013 are expressed in paragraph 3 of the Explanatory Notes to the Act, namely

> *"promoting growth and facilitating provision of infrastructure, and related matters; other infrastructure provisions; economic measures."*

7. The Members in charge of what was the Growth and Infrastructure Bill (and thus "promoting the bill" for *Pepper v Hart* purposes) during the Committee and Report stages in the House of Commons were Michael Fallon, at the time Minister of State for Business and Enterprise and Nick Boles, at the time Parliamentary Under Secretary of State for Planning. In the House of Lords the Members in charge of the bill were Lord Ahmad, then Lord's Whip and Baroness Hanham, then Parliamentary Under Secretary of State at the Department for Communities and Local Government. There was no need for Defra ministers to be involved in the Parliamentary handling of the bill, but they supported the reform of the town and village greens legislation, for which they are responsible, and Defra officials participated fully in work on the Bill.

Town and village green reforms in the 2013 Act

8. The 2013 Act contains three measures which amend the law on registering town and village greens under the 2006 Act. When the Bill was introduced the clauses relevant to the town and village greens reforms were 12, 13 and 14[1]. However, when the bill was enacted as the Growth and Infrastructure Act 2013, the relevant town and village greens reforms were, and are, found in sections 14, 15 and 16.

[1] http://www.publications.parliament.uk/pa/bills/cbill/2012-2013/0075/cbill_2012-20130075_en_1.htm

9. Section 14 of the 2013 Act amended 15(3)(c) of the 2006 Act to reduce to one year the period of grace which applies where use of the land as of right has ceased. Section 15 of the 2013 Act introduced sections 15A and 15B into the 2006 Act. These provide for statements through which landowners can bring an end to any use of their land as of right and the registers for recording those statements.

10. Section 16 of the 2013 Act inserted 15C and Schedule 1A into the 2006 Act. Section 15C excludes the power to make an application under section 15(1) where a trigger event has occurred in relation to the land. The ability to apply remains excluded until a terminating event (which corresponds with the trigger event) has occurred in relation to the land. Schedule 1A prescribes the list of trigger and terminating events, all of which relate to the development of land through the planning system.

Aims of the reforms

11. The aim of the 2010 Penfold review was to "identify areas where there is scope to support investment by streamlining the process for securing consents obtained alongside or after, and separate from, planning permission ('non-planning consents')", and it recommended to Government "Reviewing the operation of registration of town and village greens in order to reduce the impact of the current arrangements on developments that have received planning permission". The Government accepted his recommendation[2].

12. In the 10th sitting of the House of Commons Public Bill Committee for the Growth and Infrastructure Bill on 29 November 2012[3], Michael Fallon confirmed, during the

[2] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/32238/10-1216-government-response-penfold-non-planning-consents.pdf

[3] See Hansard debate for 29 November 2012, col 369: http://www.publications.parliament.uk/pa/cm201213/cmpublic/growthandinfrastructure/121129/pm/121129s01.htm

debate on clause 12 (statements by owners), the intention behind the town and village greens reforms was:

> *"..first, to prevent the registration system from being used to stop or delay planning development and to protect the ability of communities to promote development in their area through local and neighbourhood plan-making; secondly, to reduce the financial burden on local authorities in considering applications and the cost to landowners whose land is affected by those applications; and, thirdly, to remove unnecessary uncertainty and delays that are difficult for those affected in the community."*

13. Statement of Truth

I believe that the facts contained in this statement are true.

Signed  Date 23|7|14

8a 17/03112/FUL - Land adjacent to Barton Piece, Silver Street, Colerne, SN14 8DY

Officer comment
Condition 3 – substitute "car parking" for "garage".

Condition 4 applied in error - carried over from previous recommendation. The proposal is for a garage not a car port so it is proposed this condition is substituted with:

"Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re- enacting or amending that Order with or without modification), the garage hereby permitted shall not be converted to habitable accommodation.

REASON: To secure the retention of adequate parking provision, in the interests of highway safety."

8b 17/06735/FUL - Northwood Barn, Doncombe Lane, North Colerne

Late Representation

The applicant has submitted a bat survey report.

Officer comment
The Ecology Officer has reviewed the report and concludes that ecology has been sufficiently addressed and can be removed as a reason for refusal (refusal reason 3).

8c 17/07011/FUL - Land South of Shoe Cottage, The Shoe, North Wraxall, Wiltshire, SN14 8SG

Condition 10 shall be amended to read :

No development shall commence on site until a scheme for the discharge of surface water from the site (including surface water from the access / driveway), incorporating sustainable drainage details together with permeability test results to BRE365, has been submitted to and approved in writing by the Local Planning Authority. The approved drainage system shall be fully implemented prior to the first use of the development.

REASON: To ensure that the development can be adequately drained

2 additional conditions as follows:

No external lighting shall be installed on site until plans showing the type of light appliance, the height and position of fitting, illumination levels and light spillage spillage in accordance with the appropriate Environmental Zone standards set out by the Institute of Lighting Engineers in their publication "Guidance Notes for the Reduction of Obtrusive Light" (ILE, 2005)", have been submitted to and approved in writing by the Local Planning Authority. The approved lighting shall be installed and shall be maintained in accordance with the approved details and no additional external lighting shall be installed.

REASON: In the interests of the amenities of the area and to minimise unnecessary light spillage above and outside the development site.

No portable buildings, van bodies, trailers, vehicles or other structures used for storage, shelter, rest or refreshment, shall be stationed on the site without the prior approval in writing of the Local Planning Authority.

REASON: In order to protect the living conditions of nearby residents and/or the rural character of the area.

8d 17/06617/FUL - Blarney Cottage, Biddestone Lane, Yatton Keynell, Nr Chippenham, SN14 7BD

Late Representation

The agent submits that the dormer window serving the new bathroom is to be obscure glazed.

Officer comment

The type of glazing is not annotated within the plans however this oversight can be addressed by the following additional condition:–

Before the development hereby permitted is first occupied the first floor dormer window in the west (rear) elevation shall be glazed with obscure glass only and the windows shall be maintained with obscure glazing in perpetuity.

REASON: In the interests of residential amenity and privacy.

8f 17/05460/FUL - Land at Cedar Lodge, 3 Cove House Gardens, Ashton Keynes, Wiltshire, SN6 6NS

The following additional condition should be added in the event that permission is granted:

The drainage details shall be carried out in accordance with design and details outlined in the Supplementary Drainage System and Drawing No 1652_0421c (Proposed Ground Floor Plan) received by the LPA 21/08/2017.

REASON: To ensure that the development is adequately drained

8g 17/05672/FUL - Land to West of Forest Lane, Forest Lane, Chippenham, Wiltshire, SN15 3PX

Officer comment
The requirement for a s106 agreement to require the stopping up of the highway is considered to be superfluous as matters such as this are controlled by other legislation falling out side of planning legislation. The recommendation should be changed and should read as follows:

***GRANT** planning permission, subject to conditions.*

An additional condition is also required:

The occupation of the development authorised by this permission shall not begin until the stopping up of the highway has been completed and that the relevant Highway Authority have certified in writing that the stopping up procedure to the extent required to implement the permission has been undertaken.

REASON: In the interest of highway safety and for the avoidance of doubt.

8h 17.07192.FUL - Land off Abberd Lane, Abberd Lane, Abberd, Nr Calne, Wiltshire, SN11 8TE

Late Representation

A letter has been received from the applicant providing clarification and additional details to the published committee report. These are summarised below:

- The application has been subject to significant pre-application consultation, which is linked to consented proposals for the extended Care Home, opposite, on Forest Lane. These pre-application discussions resulted in the reduction in the number of units, layout of the proposal and landscaping within the site.

- Further to receipt of consultation responses in relation to the submitted scheme, additional alterations were made to the scheme to address concerns raised. These include but not limited to the inclusion of additional land within the red outline and thereby reducing the overall density, reduction in the size of unit 4, increased spacing between units, larger private gardens.

- As part of pre-application and post-submission discussions, the applicant has also sought to meet with the Ward Member to address initial concerns to discuss issues, but without success.

- Regarding impact on a public right of way, the proposals have sought to formalise the extinguishment of Public Footpath CHIP 17. This is a part-section of footpath which serves no public function having been severed by development to the north west when the wider Pewsham development was brought forward. In effect, it is a footpath that leads to nowhere. An application to have the footpath extinguished has been confirmed and CHIP 17 no longer exists and therefore does not have a material effect upon decision-making in this regard.

- Regarding provision of the two/three storey units, only one dwelling is proposed, this being to provide additional accommodation catering for larger families. The design is two and a half storey in nature and features a half-storey using the eaves space to ensure that the ridge and eaves heights are marginally increased over standard two storey development whilst providing additional space and without increasing the footprint of the dwelling.

- An arboricultural and ecological assessment was submitted by the developer. The reports confirm that the site is of low ecological value with suitable mitigation suggested for local wildlife.

Officer comment
An additional condition is required:

Prior to the commencement of development details of the finished colour of the flue hereby approved shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

REASON: In the interests of the visual amenity of the area and to ensure a satisfactory appearance of the development.

8i 17/02820/OUT - Land south of Brook Farm, Great Somerford, Chippenham, Wiltshire, SN15 5JA

Officer Comment
There is an error in the report with the 'S106 contributions'. The report currently reads:

- A contribution for householder bin/recycling facilities (£91 per unit = £1274)

This is incorrect and should read:

- A contribution for householder bin/recycling facilities (£91 per unit = £728)