

# APPENDIX TWO

AGENDA ITEM NO.

WILTSHIRE COUNTY COUNCIL

REGULATORY COMMITTEE

10 April, 2002

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**COMMONS REGISTRATION ACT 1965 (as amended)**  
**PENLEIGH PARK, WESTBURY – JUDICIAL REVIEW PROCEEDINGS**

**Purpose of Report**

1. To inform the Committee about three judicial review applications brought by 13 Claimants in respect of decisions made by the County Council concerning land at Penleigh Park, Westbury and to give a status report on the court proceedings.

**Background**

2. On 19 February 2001, an application was made by Mr Patrick Taylor to register land at Penleigh Park Recreation Ground as a town green. The application was advertised and several objections were received. There was also a great deal of public interest in the application. The matter was therefore referred to the Environmental Services Sub-Committee on 3 October 2001 and a copy of the Report is attached as Appendix A.
3. Members will note that the Report set out in some detail the requirements of the Commons Registration Act 1965 which had to be met for the land to be registered as a town green. As well as the papers appended to the original Committee Report, a complete set of documents was available for inspection in the Members' Room. This comprised Mr Taylor's full application with all appendices, the supporting statements, all letters of objection and full appendices to the responses by West Wiltshire District Council and Persimmon Homes.
4. Members took legal advice and resolved that the land should not be registered as a town green since this was a facility provided by West Wiltshire District Council for public use by implied licence. A copy of the relevant minute is at Appendix B.
5. On 6 August 2001, 29 further applications had been received by the County Council for the whole or parts of the land in the original application. These included two further applications from the original Applicant, Mr Patrick Taylor. On 9 August 2001, a further four applications had been received.
6. Since the 33 new applications related to the whole or part of the land which was already under consideration as a result of Mr Taylor's application, officers sought Counsel's

advice as to whether the County Council was under a duty to process the new applications. The cost of processing 33 new applications within a reasonable time would have been excessive. The advertising costs alone would have amounted to £10,000 - £12,000 and there would also have been resourcing implications.

7. Counsel's advice was that since the 33 further applications raised no fresh issue over and above those raised in the original application, they would be bound to fail if the original application was unsuccessful. The Claimants were therefore advised that the new applications would not be advertised until the original application had been resolved. They would then only be considered if it was clear that they differed in any material respect from the original application.
8. Since Mr. Taylor's original application was unsuccessful and no fresh issues were raised, the 33 further applications have not been advertised or considered.

### **Judicial Review Challenge**

9. On 9 November 2001, Mr Taylor applied to the High Court for permission to judicially review the Sub-Committee's decision made on 3 October. He seeks an Order to quash the Sub-Committee's decision and a further Order that the County Council must reconsider and re-determine his application. On 5 December 2001, a further application was made by David and Susan Illsley in respect of two of the new applications seeking an Order that the County Council must determine their applications. Finally, on 7 December 2001, an application was made by Christine Mitchell and 9 others also seeking an Order that the County Council should determine their applications.
10. On 14 January 2002, Mr Taylor was granted permission by the High Court to continue with his application. Although the second and third cases have not yet been granted permission to continue, the matter will now be heard over three days from 20 to 22 May 2002 and all outstanding issues will be dealt with at that time. The County Council proposed that the matter be dealt with in this way in order to save the costs of a number of separate hearings.
11. The County Council has no option but to defend its position, although the cost of doing so will be extremely high. The Environmental Services Sub-Committee had available to it all relevant papers and members took legal advice. They reached their decision following a proper process. There are no reasonable grounds for settling this matter. If members were asked to re-consider their decision, unless new evidence had been submitted, they would reach the same view. Furthermore, the County Council would be laying itself open to legal challenge by other interested parties who oppose the town green applications if it were to settle these claims.

### **Current position**

12. The County Council has invited all Claimants in the three cases to withdraw their claims immediately on the basis that each party bears its own costs. The Claimants have also been put on notice that if they proceed with their claims and are subsequently unsuccessful, the County Council will have no alternative but to pursue them and those representing them in court for reimbursement of costs. The Claimants are currently taking independent legal advice on this issue.
13. The costs in this case will run into tens of thousands of pounds. Several thousand pounds have already been expended on Counsel and in-house solicitor costs. These are likely to increase drastically in the weeks leading up to the hearing, particularly in officer time in preparation of documents for the hearing. The costs are increased in having to deal with 13 Claimants. Since this is a specialist area of law, London Counsel have been instructed and their costs for the hearing are likely to be in the region of £15,000 to £20,000. Overall, the County Council's costs are likely to amount to somewhere in the region of £50,000.
14. If however the County Council does not defend these claims, there will be implications for all future village or town green applications where an application is refused.

### **Conclusion**

15. Members are asked to note the position. A further report will be presented to members after the hearing when judgement has been given.

**PETER SMITH**

Director of Corporate Services

2<sup>nd</sup> April, 2002

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

The applications for registration, representations received, correspondence with applicants and objectors and Court pleadings

Environmental impact of the recommendations contained in this report:      None