
COMMONS REGISTRATION ACT 1965 (as amended)
APPLICATION FOR THE REGISTRATION OF A TOWN OR
VILLAGE GREEN : PENLEIGH PARK, WESTBURY

Purpose of Report

1. To inform the Sub-Committee of an application which has been received to register land at Penleigh Park, Westbury, as a town green under the Commons Registration Act 1965, and to seek a decision on the application.

Background

2. The Commons Registration Act, 1965 required all common land and town or village greens to be formally registered. County Councils were charged with compiling the register of such land.

Failure to register any land within the prescribed period, which expired in 1970, resulted in that land ceasing to be common land or town or village green.

3. Further registrations may be made in certain very specific circumstances.

Under Section 22(1A) of the Commons Registration Act, 1965 (inserted with effect from 30th January 2001 by Sections 98 and 103(2) of the Countryside and Rights of Way Act 2000) land will be a town or village green:

“... if it is land on which for not less than twenty years a significant number of inhabitants of any locality or of any neighbourhood within a locality have indulged in lawful sports and pastimes as of right and either:-

- (a) continue to do so; or
- (b) have ceased to do so for not more than such period as may be prescribed or determined in accordance with prescribed provisions.”

No regulations have yet been made under paragraph (b)

If any application to register land as common land or as a town or village green is submitted, the County Council as Registration Authority is required to advertise the application in the local press and on site, inform the other local authorities in the area, and the owner, lessee, tenant or occupier of the land concerned. A period of not less than six weeks is allowed for objections to the application to be lodged.

The application and objections must then be considered by the Registration Authority and a decision made as to whether the land is to be registered or not. Whilst there is no formal right of appeal against a rejected application, it is open to the applicant to seek a judicial review of the Authority's conduct if he believes it to constitute an abuse of power or to be wrong in law, unreasonable, procedurally improper, biased, or contrary to legitimate expectations.

Detail

4. The application site measuring 6.45 acres is known as Penleigh Park Recreation Ground. The area shown hatched on the attached plan is in the ownership of West Wiltshire District Council and Persimmon Homes (Wessex) Limited are owners of the land shown cross-hatched on the plan.
5. The application dated 19th February 2001 was made by Mr. Patrick Taylor, of 12, Lilac Grove, Westbury, Wiltshire. Mr. Taylor's case is that the land has been used as of right for not less than twenty years and that it became a town green on or about 31st October 1991. Mr. Taylor's full statement is annexed to this report as Appendix One.
6. Thirty three inhabitants of Westbury signed a statement accompanying the application, maintaining that Penleigh Park Recreation Ground has been used freely and at liberty and without any restriction or permission by the public for over 20 years (up to the present) for recreation and sport. A further eight affirmed to a similar use for periods of from 16 to 5 years, (up to the present).
7. Following public notice of the application, objections were received from the following: West Wiltshire District Council, Persimmon Homes (Wessex) Ltd., Westbury Town Council, Mr. J.D. Annetts, Deputy Town Mayor, Mr. R. Arnold, Acting Secretary, Westbury Youth Football Club, Mrs. J.J. Carpenter, Mr. N. Hawker, Mrs. D. Pearce, Mr. M. Pearce.
8. A copy of the first three representations listed above (but not the plans and appendices referred to) extracts from the remaining representations (Appendix Two) and the applicant's observations on the representations (Appendix Three) are annexed to this report. Copies of the application, the objections in full and the applicants' observations are available for inspection in the Members' Room.

Issues for Consideration

9. In order to meet the requirements of the Commons Registration Act 1965 (as amended), the applicant must demonstrate that the land has been used by a significant number of local inhabitants for lawful sports and pastimes as of right for not less than 20 years. To qualify 'as of right' the use must have been open. It must have been achieved without the use of force. Finally it must not have been use under licence from the owner. Each of these requirements is examined below.

Actual Use for Lawful Sports and Pastimes

10. The statements in support of the application for registration assert that the land has been used for recreation and sport as of right. The objectors contend that whilst the land may have been used for these purposes, the use has been with the permission of and under the management of West Wiltshire District Council.

It is further contended that the inhabitants do not continue to use the whole of the site for lawful sports and pastimes.

Local Inhabitants

11. The use must be mainly, but need not be solely, by a significant number of inhabitants of any locality or of any neighbourhood within a locality.

As of Right for Not Less than 20 years

12. The applicant claims that the land became a town green on or about 31st October 1991 by the actual use of the land by the local inhabitants for lawful sports and pastimes as of right for not less than 20 years.

In order to qualify for use “as of right” the users need not necessarily believe that they have any right to go on the land. It is, however, necessary to provide evidence to satisfy the tests of the use without force, without secrecy and without permission.

On behalf of West Wiltshire District Council and Persimmon Homes (Wessex) Limited, it is claimed that the making of bylaws and the provision of signs, fencing, play equipment, a pavilion and litter bins and the letting and maintenance of sports pitches make it clear that the Recreation Ground is a facility provided for public recreation.

The applicant, in his two letters of 22nd June 2001, and his letter of the 8th August 2001 (Appendix Three) disputes both the factual claims made and the inferences which are to be drawn from them. Members will need to consider the relevant weight to be given to the District Council’s assertions and the letters refuting them.

In giving consideration to these matters, members’ attention is drawn to a recent Court of Appeal decision (the Beresford Case) in which it was held that if it was apparent from the circumstances of that case that the land had been made available to the public, and their use had not simply been tolerated but in effect encouraged, then a licence should be implied from the circumstances.

Conclusion

13. In considering this application, members need to consider and determine whether, on the evidence, local people have as of right used Penleigh Park Recreation Ground for lawful sports and pastimes for the required period of time, or whether the use has been by licence. If it is considered that the use has been of right, the application for registration should be approved; if it is considered that the use has been by licence the application should be rejected.

14. Members have, in the past, especially where there has been a conflict of interest, authorised the appointment of an independent legally qualified inspector to hold a Public Inquiry. The cost to the County Council of holding an inquiry, based on a one day's hearing is estimated to be in the region of £2,500 which comprises advertising, hire of accommodation and Inspector's fees and expenses.
15. Given the legal position, following the Beresford Case and in the absence of a conflict of interest, it is not recommended that a Public Inquiry be held in this case. Members are asked to determine whether or not the land should be registered as a Town Green.

PETER SMITH
Director of Corporate Services

Unpublished documents relied upon in the production of this report: The application for registration and representations received.

Environmental impact of the recommendations contained in this report: Approval of the application for registration would result in Penleigh Park Recreation Ground being registered as a Town Green under the Commons Registration Act 1965.



TITLE NUMBER

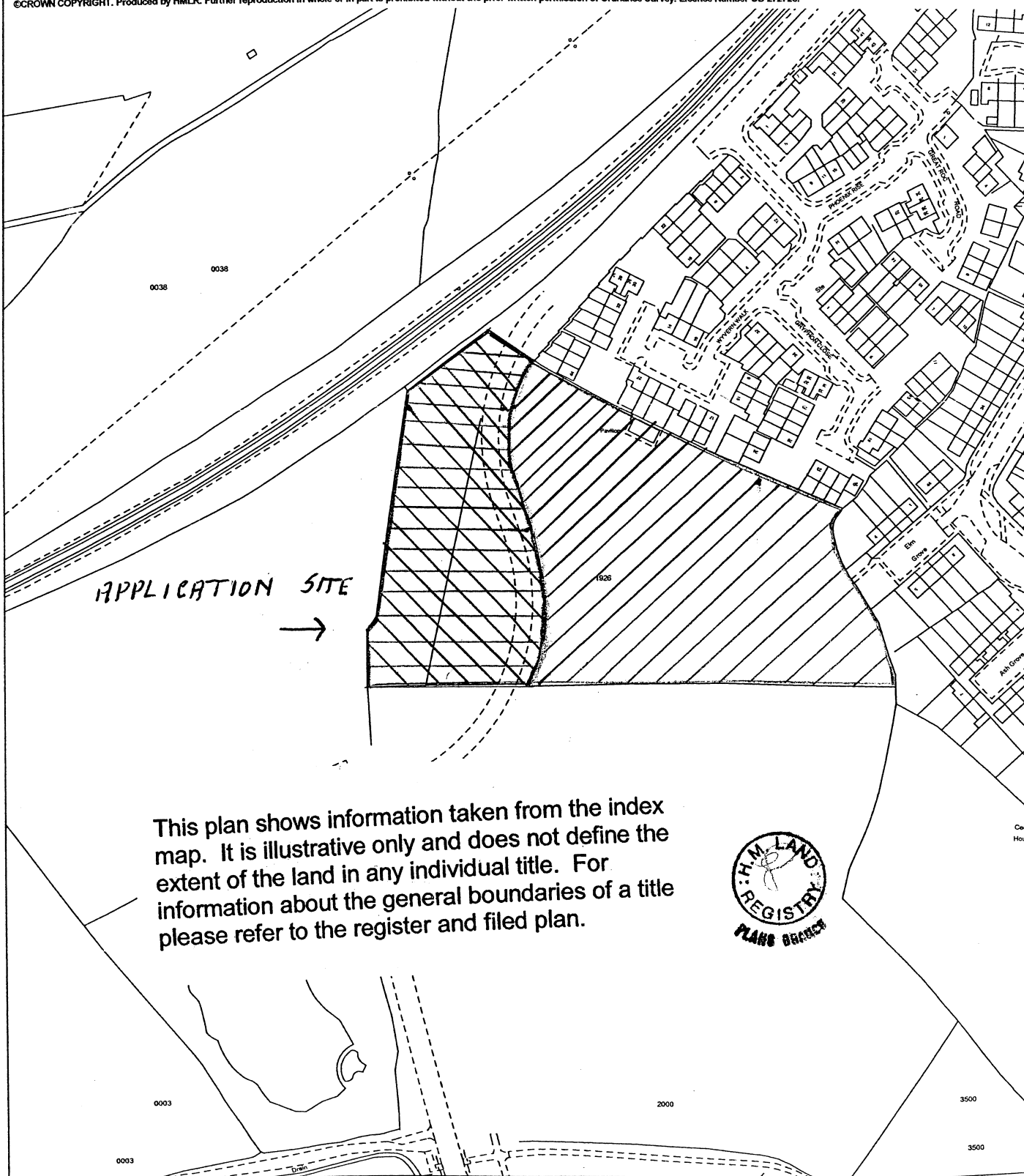


ORDNANCE SURVEY MAP REFERENCE:

ST8651SW

SCALE 1:2500

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APPLICATION SITE
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This plan shows information taken from the index map. It is illustrative only and does not define the extent of the land in any individual title. For information about the general boundaries of a title please refer to the register and filed plan.



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