

**COMMONS REGISTRATION ACT 1965 (as amended)**  
**APPLICATION FOR THE REGISTRATION OF A**  
**TOWN OR VILLAGE GREEN: LAND TO THE NORTH OF OLD HOLLOW,**  
**MERE KNOWN AS PEASEHILL**

**Purpose of Report**

1. To ask the Committee to consider the application of the Old Hollow and Shreen Water Residents Association to register land known as Peasehill to the north of Old Hollow, Mere, as a town or village green under the Commons Registration Act 1965 (as amended) and to seek a decision on the application.

**Background**

2. A report relating to the application to register land known as Peasehill to the north of Old Hollow, Mere as a town or village green under the Commons Registration Act 1965 (as amended) was considered by the Committee at its meeting on 2<sup>nd</sup> February 2005 (**Appendix 1**).
3. The Committee resolved "To hold a non-statutory local inquiry to consider the application for the registration of land to the north of Old Hollow, Mere, known as Peasehill as a village green."

**Main Considerations for the Council**

4. The application site is shown coloured red on the plan attached to the February 2005 report (**Appendix 1 of Appendix 1 to this report**). The applicant states that the land became a village green on or about 1<sup>st</sup> January 2004. Mr. P. Burfitt is the owner of the land. Mr. J. Parfitt has an option to purchase the land from the owner and has recently obtained planning permission to develop the site. Both Mr. Burfitt and Mr. Parfitt have lodged objections to the application.
5. Following the Committee resolution on 2<sup>nd</sup> February 2005, initial steps were taken to arrange a non-statutory local inquiry. However on 24<sup>th</sup> February 2005, the Court of Appeal issued its judgement in the case of *Oxfordshire County Council and (1)Oxford City Council and (2) Robinson*. The judgement, which was unanimous, establishes some key principles which Commons Registration Authorities are now required to apply in the determination of an application for registration of land as a town or village green under the Commons Registration Act. The

decision has a significant bearing upon the determination of this application for the reasons set out below.

### **Legal Issues arising from the Judgement**

6. The definition of a "town or village green" in the Commons Registration Act 1965 was amended by the Countryside and Rights of Way Act 2000. The amendment came into effect from 30 January 2001 and provided that a town or village green includes land on which for not less than 20 years a significant number of the 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.

There are as yet no "prescribed provisions" under (b) above and therefore this provision has no practical effect.

7. The relevant issues decided by the Court of Appeal are:
- The recreational use must "continue" to the date of registration;
  - Any application for registration made after 30th January 2001 must be considered in accordance with the amended definition set out above;
  - An application cannot succeed on the basis that the land "became" a village green at some earlier date claimed in the application. The Court held that *"there is no legal basis for treating the land as having acquired village green status by virtue of an earlier period of qualifying use. The mere fact that it would at some earlier time have come within the statutory definition is irrelevant, if it was not registered as such"*.
8. The Court recognised the impact that this interpretation of the law is likely to have on the opportunities for registration of new greens under this particular class. In his judgement Lord Justice Carnwarth stated:

*"I agree that a consequence of my interpretation is that the owner may be able to take action to bring the qualifying use to an end, and that this is likely to limit substantially the opportunities for registration of new class "c" greens. However, I do not accept that this reading is so obviously unreasonable, or contrary to the legislative intention, that it must be rejected. It means simply that the landowner, who otherwise will be deprived by operation of law of the effective use of his land, is given the final opportunity to assert his rights. As I have said,*

*the history of the 1965 Act gives no support for a broad interpretation of the provisions for new greens. Indeed, a restrictive view can help to provide an answer to possible human rights objections. If the landowner fails to assert his rights, even at this late stage, then it may be legitimate to infer that the land has been dedicated or abandoned to recreational use, and to recall that fact by registration as a class "c" green. Parliament gave the Secretary of State the power to limit the landowner's options by describing a different time limit. That power not having been used, I see no reason for the Court to take over that task, and no proper basis on which it could do so".*

### **Implications for the present case**

9. In their application the Old Hollow and Shreen Water Residents Association seek to establish that the land which is the subject of their application became a town or village green on or about 1<sup>st</sup> January 2004 and the evidence in support of their application has been adduced on this basis. It is clear from the Court of Appeal's decision as summarised above that this is no longer sufficient and that in order to succeed in their application, the Residents Association must show that qualifying recreational use of the land has continued to the date of registration i.e. the date on which the Committee determines the application. Such use must fall within the definition of "town or village green" in the Commons Registration Act 1965 (as amended), which requires that use must be "as of right" (paragraph 6 of this Report).
10. To qualify "as of right" the use must be open. It must be achieved without the use of force. Finally it must not be use under licence from the owner. The users need not necessarily believe that they have any right to go on the land. It is, however, necessary for the applicant to provide evidence to satisfy the tests of use without force, without secrecy and without permission and following the Court of Appeal decision, the evidence must demonstrate use as of right to the date of determination of the application.
11. On 17<sup>th</sup> August 2004 Mr Parfitt erected a barbed wire fence beside the bridleway which runs along one side of the land in question. In early March 2005, he and Mr. Burfitt placed signs at various points to emphasise that the land was private property. He later submitted a Statutory Declaration detailing the steps that he and Mr. Burfitt had taken to prevent access to the land and to make the public aware that the land was private property (**Appendix 2**).
12. The applicant was served with a copy of the statutory declaration and responded by letter of 25<sup>th</sup> March (**Appendix 3**). The applicant has confirmed that the fence was erected in August 2004 and by e-mail of 30<sup>th</sup> March, has admitted that access is gained to the land by climbing

through the fence (**Appendix 4**). The landowner has asserted his rights of ownership and has made this clear not only by fencing but also by notices denying access to the public unless by express consent. It is clear therefore that use of the land by the applicant cannot be as of right, both by their own admission and through the acts of the landowner.

13. The applicant has asked that their application be deferred pending a possible appeal against the Court of Appeal's decision to the House of Lords. Leave to appeal was refused by the Court of Appeal and any appellant would therefore have to seek leave to appeal from the House of Lords. It is understood that neither Oxfordshire County Council nor Oxford City Council intend to appeal the decision and no application has been lodged to date by Miss Robinson. Unless an extension of time is granted, it is believed that Miss Robinson has until 7<sup>th</sup> April to apply for leave to appeal.
14. The County Council as registration authority is also required by The Commons Registration (New Land) Regulations 1969 to proceed to further consideration of this application as soon as possible. The Council must make its decision according to the law as it stands at the date of determination. It would be unreasonable to defer further consideration of the application on the basis that there may be an appeal at some time in the future. This would not be a relevant factor to take into account and would leave the Council open to challenge by way of judicial review.

### **Environmental Impact of the Recommendation**

15. Approval of the application for registration would result in the area of land being registered as a town or village green under the Commons Registration Act 1965. Should the application to register fail, it is the intention that the land be developed.

### **Risk Assessment**

16. The County Council could be at risk of challenge in the High Court by either the applicant or the objectors on the grounds that the Council has reached a decision that no reasonable Council could reach. If members are minded to approve the application, they must be satisfied on the balance of probabilities that the legal tests have been met. It should be borne in mind that village green applications can cause considerable controversy in the locality concerned.

### **Financial Implications**

17. If the land were to become registered it would not place any obligation on the County Council to maintain the land. The only financial implication is the administration cost of dealing with the application,

report and registration. In the event of a non-statutory Local Inquiry being held to determine the application, the costs of the Inquiry would be borne by the County Council as registration authority. The cost to the County Council of holding an inquiry, based on a one day hearing, is estimated to be in the region of £2,500 which comprises advertising, hire of accommodation and Inspector's fees and expenses. There would also be costs implications if there were a legal challenge to any decision made.

### **Options Considered**

18. Members may:-

- (i) approve the application
- (ii) reject the application; if so, Members must give reasons for the rejection in accordance with regulation 8(1) The Commons Registration (New Land) Regulations 1969;
- (iii) decide that a barrister experienced in this area of law be appointed as an Inspector to hold a non-statutory local inquiry and make a recommendation to the Committee on the application.

### **Reasons for Recommendation**

19. The applicant cannot show that recreational use of the land has continued as of right to the date of registration i.e the date on which the Committee determines the application, as the landowner has prevented such use by the erection of fences and signs.

### **Recommendation**

20. Members are recommended to reject the application to register land known as Peasehill to the north of Old Hollow, Mere coloured red on the plan attached to the application of the Old Hollow and Shreen Water Residents Association dated 13<sup>th</sup> July 2004 and to give their reasons for the rejection.

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Unpublished documents relied upon in the production of this report:  
Correspondence with applicant and objector.  
Statutory Declaration of Mr. J. Parfitt.