

WILTSHIRE COUNTY COUNCIL**REGULATORY COMMITTEE**2nd February 2005

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 inform the Committee of an application which has been received to register land known as Peasehill to the north of Old Hollow, Mere as village 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).

4. If any application to register land as common land or as 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.

Main considerations for the Council

5. The application site is known as Peasehill, being land to the north of Old Hollow, Mere and is shown coloured red on the plan (**Appendix 1**). Mr P Burfitt is the owner of the land and Mr J Parfitt has entered into an option to purchase in order to develop the land.
6. The application dated 13th July 2004 (**Appendix 2**) was made by The Old Hollow and Shreen Water Residents Association, Hon. Sec. Mrs Adrienne Howell of Lawrences Old Hollow, Mere, Wiltshire BA12 6EG. The Old Hollow and Shreen Water Residents Association's case is that the land has been used by local inhabitants for lawful sports and pastimes as of right for not less than twenty years and that it became a village green on 1st January 2004. The application was accompanied by a Map referred to as Exhibit AH1 (**Appendix 1**), a letter of support from Mere Parish Council and 38 witness statements in support. The content of the witness statements has been summarised in **Appendix 3**.
7. Following public notice of the application, objections were received from the owner of the land, Mr Burfitt and also from Mr Parfitt. These have been summarised in **Appendix 4**. Mr Parfitt submitted a table entitled Objectors' Responses to Selected Witness Statements which is included as **Appendix 5**. The Applicant has responded to the objectors' comments and these are summarised in **Appendix 6**.
8. A copy of the application with the supporting statements/photographs, the objectors' comments together with photographs and the Applicant's responses to the objectors' comments are available for inspection in the Members' Room.
9. The village green application must satisfy the legal tests set out below.

Legal Requirements

10. 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 and that such use has continued to the date of the application. Each of these requirements is examined below.

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. The 38 letters in support of the application are from local inhabitants being residents or former residents of Mere.

Actual Use for Lawful Sports and Pastimes

12. The application for registration asserts that the land has been used for lawful sport and pastimes. The statements accompanying the application contain details of the use of the land, all of which are qualifying uses as summarised in **Appendix 3**.

As of Right for Not Less than 20 years

13. 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 used under licence from the owner. The users need not necessarily believe that they have a right to go on the land. It is, however, necessary to provide evidence to satisfy the tests of use without force, without secrecy and without permission.

The applicant claims that the application site became a village green on 1st January 2004 by actual use of the land by local inhabitants for lawful sports and pastimes as of right for not less than 20 years. It is not necessary for each and every witness to have used the land for 20 years but that the body of evidence, taken together, demonstrates 20 years use. Nevertheless, out of the 38 statements made in support of the application more than 15 refer to continuous use for more than 20 years at the date of the application.

14. Use continuing to date of Application

As stated above, a number of the statements in support refer to use continuing up to the date of the application

15. As Members will note from Appendices 4 and 5 and the documents themselves in the Members' Room, the objectors have contested much of the user evidence. The objectors' case is that the application land

was not suitable for many of the purported uses, was not used “as of right” in many instances and cannot have been used for the full 20 year period as it was still being farmed until 1987. The applicants have made further submissions challenging the objectors' comments.

16. This is an extremely contentious matter. If the application succeeds, the land will be registered as village green and will be of no use to its owner, Mr Burfitt. If the application is rejected, the land will be developed. In 1998 Mr Burfitt granted Mr Parfitt an option to purchase the application land for development. Planning permission was granted to Mr Parfitt in July 2004.
17. The witness evidence in support of the application appears to satisfy the legal tests. However, the objectors challenge the accuracy of the facts as stated in the evidence forms. Members may feel in the circumstances that the evidence needs to be tested before an independent Inspector at an inquiry before they are able to reach a view.

Environmental Impact of the Recommendation

18. Approval of the application for registration would result in the area of land being registered as 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

19. 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

20. 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

21. Members may feel that since this case is particularly contentious, it may be appropriate to appoint an Inspector to hold a non-statutory local inquiry.

Members may:-

- (i) approve the application
- (ii) reject the application
- (iii) decide that a barrister experienced in this area of law be appointed as an Inspector to hold a non-statutory local inquiry and to make a recommendation to the Committee on the application.

Reasons for Recommendation

22. The parties have submitted much conflicting evidence. If Members are minded to proceed with consideration of the application, they must be satisfied on the balance of probabilities that the legal tests have been met before approving the application. Should Members be minded to reject the application, they are required by the Commons Registration (New Land) Regulations 1969 to record the reasons for the rejection.

Recommendation

23. Members are asked to determine whether the area of land should be registered as Village Green or whether a non-statutory local inquiry should be held.

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