

REGULATORY COMMITTEE

13 April 2005

COMMONS REGISTRATION ACT 1965 (as amended)
APPLICATION FOR THE REGISTRATION
OF A TOWN OR VILLAGE GREEN: LAND AT PINE WALK/OAK DRIVE,
NORTH BRADLEY

Purpose of Report

1. To ask the Committee to consider the application of John Denis Matthews to register land at Pine Walk/Oak Drive, North Bradley, as a village green under the Commons Registration Act 1965 (as amended) and to seek a decision on the application.

Background

2. A report relating to an application to register land at Pine Walk/Oak Drive, North Bradley as a village green under the Commons Registration Act 1965 was considered by the Committee at its meeting on 15th December 2004 (**Appendix 1**). At that time, no evidence of continuing use up to the date of the application had been provided by the applicant.
3. The Committee resolved "To defer consideration of the application to register land at Pine Walk/Oak Drive, North Bradley as a Village Green in order to allow more time for evidence of use to be obtained".

Main Considerations for the Council

4. The application site, being land at Pine Walk/Oak Drive, North Bradley, is shown edged red on the plan attached to Mr. Matthews' application dated 5th December 2003 (**Appendix 2 of Appendix 1 to this report**). The applicant states that the land became a village green on or about April 28th 2003. The landowner is West Wiltshire District Council.
5. Following the December 2004 meeting, the applicant was asked to clarify the issue of continuing use and he submitted a further 58 evidence of user statements. A substantial number of these show that the land is used by local inhabitants on a continuing basis for recreational activities. This further evidence has been served on West Wiltshire District Council as landowner but no comment or objection has been received. Copies of the 58 further supporting statements are available for inspection in the Members' Room.

6. 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. This last requirement has always been interpreted as use up to the date of the application.
7. However the legal position has been fundamentally altered by a judgement of the Court of Appeal, issued on 24 February 2005, 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.

Legal Issues arising from the Judgement

8. 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.

9. 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"*.
10. 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

11. The legal requirements which must be satisfied are set out at paragraphs 11 – 14 of the December 2004 report. However these must be re-considered in the light of the further user evidence and the recent Court of Appeal decision. Each of the requirements is therefore examined below.

Local Inhabitants

12. 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 statements in support of the application are from residents of North Bradley.

Actual Use for Lawful Sports and Pastimes

13. The application asserts that the land has been used for lawful sports and pastimes. 57 of the later statements submitted contain details of the recreational use of the land, all of which are qualifying uses.

As of Right for not less than 20 years

14. 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 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.
15. 57 of the further statements in support of the application satisfy this requirement. They state that the users of the land did not believe they needed

permission from the owner. Furthermore, following the Beresford decision (**paragraph 13 of Appendix 1**), acts undertaken by West Wiltshire District Council as landowner, such as cutting the grass, are not sufficient to defeat a claim for use “as of right”.

Continuing Use

16. In his application Mr Matthews seeks to establish that the land which is the subject of his application became a village green on or about 28th April 2003. It is clear from the Court of Appeal’s decision summarised above that the applicant must also 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. A substantial number of the further statements submitted show that the residents use this land on a regular basis for recreational activities. Furthermore the landowner has neither commented on nor objected to the application and the further user evidence.

Environmental Impact of the Recommendation

17. Approval of the application for registration would result in the area of land being registered as a village green under the Commons Registration Act 1965.

Risk Assessment

18. The Council could be challenged in the High Court on the grounds that the Council has reached a decision that no reasonable Council could reach. If Members are minded to grant the application, they must therefore be fully satisfied on the balance of probabilities that the legal tests have been met.

Financial Implications

19. If the land were to become registered it would not place any obligation on the County Council to maintain the land. The District Council already maintains the land and would continue to do so, as required by the Schedule to the Conveyance of 27th April 1983 (**paragraph 8 and Appendix 4 of Appendix 1 to this report**). The only financial implication is the administration cost of dealing with the application, report and registration. There could also be costs implications in the event of a successful legal challenge to any decision made.

Options Considered

20. 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 the law, be appointed as an Inspector to hold a non-statutory local inquiry and make a recommendation to the Committee on the application.

Reason for Recommendation

- 21. The evidence submitted by the applicant is persuasive and appears to meet the legal tests on the balance of probabilities. There are no objections to the application.

Recommendation

- 22. Members are recommended to register the land at Pine Walk/Oak Drive, North Bradley edged red on the plan attached to the application of Mr John Denis Matthews dated 5th December 2003 as a village green under the Commons Registration Act 1965.

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

Statements in support of the application.