

WILTSHIRE COUNTY COUNCIL**REGULATORY COMMITTEE**15th December 2004

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 inform the Committee of an application which has been received to register land at Pine Walk/Oak Drive, North Bradley, 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).

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

- 4 The application site is known as land at Pine Walk/Oak Drive, North Bradley and is shown edged red on the plan (Appendix 1). The West Wiltshire District Council is the owner of the land.
5. The application dated 5th January 2004 (Appendix 2) was made by Mr John Denis Matthews of Acorns, 41 Oak Drive, North Bradley, Trowbridge, Wiltshire. Mr Matthews is Chairman of North Bradley Parish Council and he states in part 1 of the application that he makes the application on behalf of North Bradley Parish Council. Mr Matthews' 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 town green on 28th April 2003. His application was accompanied by 9 witness statements in support.
6. Following public notice of the application, comments were received from the owner of the land, West Wiltshire District Council. The District Council has not objected to the application but has requested that consideration of the application is deferred until April 2005. The District Council has recently started a procurement process for a comprehensive leisure and recreational needs assessment of the District. As part of this process, the Council will consult with Town and Parish Councils and the assessment will include information on what area and type of open space is needed/wanted for every community. The District Council has asked that if the matter is not to be deferred, they should be given the opportunity for further comment. The applicant would like the County Council to continue with the application as he can see no reason to delay the process.
7. A copy of the District Council's comments (Appendix 3) is annexed to this report.

8. Mr Matthews has also referred in Part 8 of the Application to a covenant, a copy of which is attached as Appendix 4. The land in question came into the ownership of West Wiltshire District Council on the 27th April 1983 and the covenant is contained in the Conveyance dated 27th April 1983 made between J M H Developments Ltd and West Wiltshire District Council. It reads that the District Council as purchaser will 'not use or permit to be used the Property or any part... except as a recreation area for use by the public at large and not to construct or erect.....any building outbuilding or shedon any part of the Property except those as may be required in connection with the proper use and enjoyment of the Property as a recreation area after approval by the Vendor'.

Mr Matthews makes the point that the land is intended as a recreational area for the use of the public at large. However, the covenant is a contractual issue between the parties to the Conveyance and has no direct bearing on the village green application, which must satisfy the legal tests set out below.

9. Copies of the application, the supporting statements and the applicant's observations are available for inspection in the Members' Room.

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 9 letters in support of the application are from local inhabitants being residents of North Bradley.

Actual Use for Lawful Sports and Pastimes

12. The application for registration asserts that the land has been used for lawful sport and pastimes. There is however no direct evidence of this other than the witness statements which refer generally to use as a recreation area.

As of Right for Not Less than 20 years

13. The applicant claims that the application site became a village green on 28th April 2003 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.

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 House of Lords (in the Beresford case) in November 2003 considered the question of whether the cutting of grass and the provision of seating on a public open space by a local authority, in that case, was sufficient to justify an inference that the public only used the land by virtue of the authority's licence. The House of Lords (overruling a decision of the Court of Appeal) held that the provision of such services by a local authority could not be regarded as overt acts of communicating permission to enter the land. The local authority's actions were not sufficient to constitute use by licence and did not prevent a claim for use "as of right".

14. Use continuing to date of Application

No evidence has been provided as to continuing use.

Environmental Impact of the Recommendation

15. 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 land be registered as village green it will remain as open space. Should the application to register fail, the land, by virtue of the District Council's covenant, will continue to be used as a recreation area; however there is a possibility that building may be permitted on the land if it is 'in connection with the proper use and enjoyment of the Property as a recreation area'.

Risk Assessment

16. The County Council could be at risk of legal challenge in the High Court and if members are minded to approve the application they must be satisfied 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 District Council already maintains the land and would continue to do so, as required by the Schedule to the Conveyance of 27th April 1983 (Appendix 4). 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. There could also be costs implications if there were a legal challenge to any decision made.

Options Considered

18. 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 hearing, is estimated to be in the region of £2,500 which comprises advertising, hire of accommodation and Inspector's fees and expenses. In the absence of any objection, it is not recommended that a Public Inquiry be held in this case.

Reasons for Recommendation

19. To determine whether the application satisfies the legal tests.

Recommendation

20. Members are asked to determine whether or not the area of land should be registered as Village Green or whether to defer consideration of the application in accordance with the request by West Wiltshire District Council.

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