

REGULATORY COMMITTEE

13th June 2007

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**COMMONS REGISTRATION ACT 1965 (as amended)**  
**APPLICATION FOR THE REGISTRATION OF A**  
**TOWN OR VILLAGE GREEN: LAND AT DREWS PARK, DEVIZES**

**Purpose of Report**

1. To ask the Committee to consider the application of Ernest Clive Rowland to register land at Drews Park, Devizes as a town green under the Commons Registration Act 1965 (as amended) and to seek a decision on the application.

**Background**

2. Under the Commons Registration Act 1965, all common land and town or village greens were required to be formally registered. County Councils as registration authorities were charged with compiling a register and failure to register land within the prescribed period, which expired in 1970, resulted in that land ceasing to be common land or town or village green.
3. However under Section 22(1A) of the Commons Registration Act 1965 (inserted with effect from 30<sup>th</sup> January 2001 by the Countryside and Rights of Way Act 2000), land can continue to be registered provided the registration authority is satisfied that it meets the statutory criteria.
4. If an application to register land as common land or as a town or village green is submitted and is validly made, the 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 must be allowed for objections to the application to be lodged.
5. 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, the applicant or an objector may seek permission from the High Court to judicially review the Authority's decision if he/she believes it to constitute an abuse of power or to be wrong in law, unreasonable, procedurally improper, biased, or contrary to legitimate expectations.
6. The Commons Act 2006 has made changes to the law on the registration of town or village greens but it does not have retrospective effect. This application was submitted before the 2006 Act came into force and must therefore be considered under the Commons Registration Act 1965.

## **Main Considerations for the Council**

7. An application by Valerie Mould to register land at Drews Park, Devizes as a town green was received by the County Council in May 2005. It was advertised and objections were received. However a second application was submitted in November 2005 on behalf of Ernest Clive Rowland and the application by Valerie Mould was subsequently withdrawn.
8. The application site is shown edged in red on Plan A attached to Mr. Rowland's application dated 25<sup>th</sup> November 2005 (**Appendix 1**). The applicant states that use of the land has continued uninterrupted from 1979 to the present day. The application was accompanied by Mr. Rowland's Statutory Declaration in support and 3 further Statutory Declarations regarding use of the land. Twenty-two questionnaires were also submitted completed by users of the land who live in the locality.
9. The land which is the subject of the application is partly owned by Lilac Investments and partly by Alan Brown and has been in their ownership since 2002. Plan C attached to Mr. Rowland's application at Appendix 1 shows the area of land owned by Lilac Investments shaded pink and edged black and the area of land owned by Mr. Brown shaded blue and edged green. Both landowners have objected to the application and their objection is attached dated February 2006 (**Appendix 2**). The applicant's response to the landowners' representations is attached as **Appendix 3** and the landowners' reply to the applicant's response dated July 2006 is attached as **Appendix 4**.
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 inhabitants of any locality or of any neighbourhood within a locality 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.

## **Inhabitants of a Locality**

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. Plan B attached to Mr. Rowland's application at appendix 1 shows edged in the blue the locality of the users who have provided evidence. The applicant states that this is a clearly defined locality in that it includes the electoral wards of Roundway, Devizes South and Devizes East. The landowners contend that the locality is a false one and has been drawn to encompass the areas in which the witnesses live.
12. In the case of *R v South Gloucestershire District Council ex parte Cheltenham Builders* (2003), Mr. Justice Sullivan stated that "whatever may be meant by "locality" ....., I am entirely satisfied that it does not mean any area that just happens to have been delineated in however arbitrary a fashion on a plan." He states further "It may well be difficult to define the boundary of a "locality" on a plan because views may differ as to its precise extent, but there has to be, in my judgment, a sufficiently cohesive entity which is capable of definition" and he refers to a locality as being a "distinct and identifiable community".

13. It is difficult to ascertain from the evidence submitted whether the area delineated on the plan is a distinct and identifiable community. From the plan alone, it would appear not to be so. Furthermore, the witness evidence in support of the application merely gives the addresses of the witnesses and it is therefore not possible to ascertain how the 22 witnesses are spread throughout the area. In order to judge whether the locality as shown meets the statutory definition, it would be necessary to hear oral evidence.

#### Actual Use for Lawful Sports and Pastimes

14. The applicant asserts that the land has been used for lawful sports and pastimes. The statements accompanying the application contain details of the use of the land, all of which support the qualifying uses as stated in Part 5 of the application form. The landowners challenge the use of the land and question whether the user evidence refers to the correct land. They refer to the fact that part of the land was an orchard belonging to Roundway Hospital and is so overgrown that public recreational use would be impossible. Again the evidence is so contradictory that it would need to be tested to be able to judge what use there has been and whether it has been for lawful sports and pastimes.

#### Use As of Right

15. 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 applicants to provide evidence to satisfy the tests of use without force, without secrecy and without permission.
16. All the statements in support of the application say that the users of the land did not believe they needed permission to use it. All but two confirmed their belief that people carrying out activities on the land have a right to do so. Two users merely stated that there were no restrictions on use. The landowners contend that during the time that the hospital was operational (until the early 1990's), local people would have been aware that the land was part of the hospital and that they had no right to use it. They maintain that following the closure of the hospital, there were security guards on site to protect both the building and the surrounding land. The users deny this, stating in their evidence that they were never challenged.
17. There is also conflicting evidence as to whether any or part of the claimed land was fenced. Both the applicant and the landowners have submitted Statutory Declarations in support of their position.
18. In December 1995, the claimed land formed part of land bought by a development company and following the grant of planning permission in July 1997, they entered into a section 106 agreement with Kennet District Council. In the agreement, the land in question was defined as the "Open Space" and the owner was obliged to arrange for the grass to be cut in the Open Space. The landowners contend that the agreement did not require the owners to permit the public to enter and use the land without hindrance and that open

space does not necessarily mean land which the public can access and use. The applicant however refers to Condition 34 of the planning consent for the redevelopment of the site which states that the Open Space “shall be retained as open amenity land and shall not be enclosed or used for any other purpose”.

#### Use Continuously for 20 Years

19. The applicant claims that the application land became a town green by actual use of the land by local inhabitants for lawful sports and pastimes as of right for not less than 20 years. The House of Lords in the case of *Oxfordshire County Council v Oxford City Council and Another* (2006) has clarified when the 20 year period must end. The relevant period is the 20 year period immediately before the date of the application. Mr. Rowland’s application is dated 25<sup>th</sup> November 2005, therefore the qualifying period runs from 1985 – 2005.
20. The user evidence confirms use over a 20 year period and continuing up to 2005, the date of the application. It is not necessary for each witness to have used the claimed land for 20 years; it is the body of evidence taken as a whole which must demonstrate use continuously throughout the 20 year period. The chart at **Appendix 5** sets out the dates when each witness used the claimed land and from the evidence presented, the statutory requirement appears to be met.
21. The landowners challenge this evidence. They doubt that the claimed land was used as described either during the period when the hospital was operational or after it had closed and when security was maintained by Securicor. They have produced evidence that during 1995 to 2000, members of the public who attempted to use the land for recreational activities were turned away by on-site security. The applicant’s witnesses deny this.
22. This is an extremely contentious matter. If the application succeeds, the land will be registered as a town green and will be of no use to its owners. If the application is rejected, the land may be developed.
23. Copies of all the documents are available in the Members’ Room. These comprise (i) the application with supporting Statutory Declarations and user evidence forms; (ii) the representations of Lilac Investments and Alan Brown dated February 2006, including 9 appendices; (iii) the response to representations made by Lilac Investments and Alan Brown dated June 2006 with one further Statutory Declaration; and the reply to response by applicants to representations of the landowners dated July 2006.

#### Environmental Impact of the Recommendation

24. Approval of the application for registration would result in the area of land being registered as a Town Green under the Commons Registration Act 1965. Should the application to register fail, the land may be developed.

### **Risk Assessment**

25. 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 town and village green applications can cause considerable controversy in the locality concerned.

### **Financial Implications**

26. 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 administrative 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 - £5,000 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**

27. Members may:-
- a. approve the application
  - b. reject the application
  - c. 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.
28. 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.

### **Reasons for Recommendation**

29. On the evidence submitted, the application appears to satisfy the statutory requirements, however the objectors have challenged the user evidence and the applicant's ability to satisfy the requirements for registration of a town green. The evidence of the applicant and the objectors is equally persuasive. Since the evidence conflicts to such a great extent, it should be tested by oral evidence before an Inspector.
30. 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**

31. Members are asked to refer the application to a non-statutory local inquiry and to request the Inspector to make a recommendation to the Committee on the application.

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Unpublished documents relied upon in the production of this report: None.