

REGULATORY COMMITTEE

19 December 2007

COMMONS REGISTRATION ACT 1965 (as amended)
APPLICATION FOR THE REGISTRATION OF A
TOWN OR VILLAGE GREEN: LAND AT BOURNE HILL, SALISBURY

Purpose of Report

1. To ask the Committee to consider the application of Christine Ruth Bell to register land in Salisbury known as (a) Wyndham Park and Bourne Hill Car park, (b) Bourne Hill Gardens and The Secret Garden (c) St Edmunds Churchyard and (d) The Greencroft 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 30th 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. Christine Bell's application to register land in Salisbury known as (a) Wyndham Park and Bourne Hill Car park, (b) Bourne Hill Gardens and The Secret Garden (c) St Edmunds Churchyard and (d) The Greencroft as a town green was received by the County Council on 7 March 2007. The application site is shown edged in red on the plans attached to Ms Bell's application (**Appendix 1**).
8. The applicant states that the land in question became a town green on 28 February 2007 by virtue of the actual use of the land by local residents for lawful sports and pastimes for not less than 20 years. Ms Bell and two members of her family have signed statements in support of the application. In addition, a total of 161 pro-forma supporting statements/ questionnaires and a petition with 9 signatures have been filed.
9. The application was advertised in April 2007 and in May 2007 objections were received from the landowner, Salisbury District Council; the lessee of part of the land, St Edmunds Arts Trust Limited and from Christopher J Whitmey whose ancestors are said to be buried in the churchyard. The applicant has submitted a response to the landowners' objections and Mr Whitmey has replied to the applicant's response by submissions dated June and August 2007. Copies of all the documents are available in the Members' Room and are also available for inspection through either of the report authors.
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. 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 and Salisbury District Council has stated that it "*takes objection to every aspect of the Application*".
11. Since the evidence conflicts to a great extent, it should be tested by oral evidence before an Inspector. Also, in view of the potential conflict of interest, the Council's impartiality as registration authority would be strengthened if the application were to be referred to a non-statutory public inquiry. The Council would appoint a barrister experienced in this area of law to act as Inspector and hear oral evidence from the applicant and the objectors. The Inspector would then make a recommendation to the Committee on the application.
12. It follows from the above that this is an extremely contentious matter. Salisbury District Council intends to redevelop part of the site in order to build new Council offices. There has been significant local opposition to this development

and the local residents have created the Salisbury Town Green Group with the stated aim of protecting the green spaces around the city. It follows that if the application succeeds, the land will be registered as a town green and Salisbury District Council's plans to redevelop Council House will be disrupted. If the application is rejected, the land will be developed.

Environmental Impact of the Recommendation

13. 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 will be developed.

Risk Assessment

14. In light of the programme for one unitary authority for Wiltshire, there is a conflict of interest between the County Council's position as registration authority and its position as future owner of the land currently owned by Salisbury District Council. There is a high risk, therefore, that any decision made by the County Council on the papers alone would be challenged. Such challenge would be by way of judicial review in the High Court on the basis that it was improper for the Council to adjudicate on the application in these circumstances. This could, potentially, generate significant public and political interest. There are also cost ramifications which are dealt with in paragraph 16 below.

Financial Implications

15. 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.
16. There would also be costs implications if there were a legal challenge to any decision made. High Court proceedings are invariably expensive and frequently generate a significant costs liability, which could be in excess of £50,000.

Options Considered

17. Members may:-
 - a) approve the application;
 - b) reject the application. If so, Members must give reasons for the rejection in accordance with regulation 8(1) of the Commons Registration (New Land) Regulations 1969;

- c) 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

- 18. As stated at paragraph 14 above, there is a conflict of interest between the County Council's position as registration authority and its position as future owner of the land currently owned by Salisbury District Council. Any decision made by the County Council on the papers alone would be open to challenge, with the resulting costs implications. By appointing an Inspector to hear the evidence at a non-statutory public inquiry and make a recommendation to the Committee, the Council would maintain its impartiality.

Recommendation

- 19. Whilst Members have the option to approve or reject the application, given the conflict of interest, it is strongly recommend that Members refer the application to a non-statutory public inquiry to be conducted by a barrister experienced in this area of law, with a request that he/she makes a recommendation to the Committee on the application.

IAN GIBBONS
Head of Legal & Democratic Services

Report Authors
BARBARA MILLS
Deputy Head of Legal Services

DEIRDRE FENTON
Legal Officer

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