

In the Matter of
an Application to Register land at
Bourne Hill, Salisbury
as a Town or Village Green

INTERIM REPORT AND RECOMMENDATIONS

of Miss LANA WOOD

20 May 2010

County Secretary & Solicitors Department

Wiltshire County Council

County Hall

Trowbridge

WILTS

BA14 8JN

Ref: DF/WCS06729

Sarah Marshall/Barbara Mills

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1. The Village Green Application

On 7th March 2007 the Council, as registration authority, received an application from Mrs Christine Bell of Basement Flat, 67a Wilton Road, Salisbury, Wiltshire SP2 7ER to register land known as Bourne Hill Park, The Greencroft, St Edmunds Arts Centre Graveyard, College Street Car Park and Wyndham Park as a town or village green pursuant to s.13 of the Commons Registration Act 1965 (“the CRA 1965”). The application was in Form 30, as required by the Commons Registration (New Land) Regulations 1969 (“the 1969 Regulations”), and was verified by a statutory declaration of Christine Ruth Bell dated 7th March 2007.

The application was publicised in accordance with the 1969 Regulations. The following objections were received by the Council:

- (1) An Objection dated 29th May 2007 from Salisbury District Council
- (2) An Objection dated 24th May 2007 from St Edmunds Arts Trust Limited
(t/a Salisbury Arts Centre)
- (3) An Objection dated 15th June 2007 from Mr Christopher Whitmey

2. Appointment of Inspector

By resolution of the Regulatory Committee of Wiltshire County Council made on 19th December 2007 the Registration Authority resolved to refer the application to a non-statutory public inquiry to be conducted by a barrister experienced in the law of town and village greens with a request that he/she makes a recommendation to the Committee on the application. I am the barrister so appointed.

3. Pre-inquiry meeting

I gave Directions for a pre-inquiry meeting and held a Pre-Inquiry Meeting on 1st May 2008 at Salisbury Arts Centre. The Applicant, Mrs Bell, was represented by Mr John Cheyne a retired solicitor and a member of the Salisbury Town Green Group. Salisbury District Council was not present or represented. St Edmunds Arts Trust Limited (t/a Salisbury Arts Centre) was represented by Mr Deryck Newland, its Director. Mr Christopher Whitmey appeared in person. Wiltshire County Council appeared and was represented by Mr David Matthais QC instructed by Tim O'Hara and Trevor Slack of the County Council.

As a result of the submissions I heard at the Pre-Inquiry Meeting, I have decided to hear as submissions on the question of whether the use (such as there has been) of the application land has been by right or as of right and to dispose of that matter as a preliminary issue. I have given directions for the proper conduct of that preliminary issue. In my judgment those decisions are properly within my remit as inspector.

A number of other matters arose at the Pre-Inquiry Meeting, which in my judgment are properly matters for decision by the Registration Authority, and I set out those matters in detail and my recommendations below. The following applications were made:

- (1) Wiltshire County Council applied to be permitted to take up Salisbury District Council's objection.
- (2) The Applicant applied for a direction that Mr Christopher Whitmey should be debarred from taking any further part in the proceedings.

Wiltshire County Council's application

In support of Wiltshire County Council's application to be permitted to take up Salisbury District Council's objection, Mr Matthais made the following submissions: Salisbury District Council's objection was dated 29th May 2007. Since that date the Local Government and Public Involvement in Health Act 2007 had been passed. Pursuant to that Act, Wiltshire County Council had made a proposal that there should be a single unitary authority in Wiltshire. That proposal had been accepted by the government. The government's acceptance of Wiltshire County Council's proposal has been subject to challenge by judicial review. That challenge was rejected by the High Court and Court of Appeal. Mr Matthais stated that he understood that an application for permission to appeal to the House of Lords has been made, but not determined.

The Wiltshire (Structural Change) Order 2008 was made on 25th February 2008 and came into force on 26th February 2008. The Order makes provision for the transfer of all local government functions to Wiltshire council on 1st April 2009. All land currently in the ownership of Salisbury District Council will transfer to Wiltshire council. Article 6 of the Order adds transitional functions to the functions of Wiltshire council exercisable during the transitional period beginning on the coming into force of the Order (26th February 2008) and ending on the fourth day after the 2009 election day, of preparing for and facilitating the economic, effective, efficient and timely transfer of the district councils' functions, property, rights and liabilities to Wiltshire council.

Salisbury District Council has indicated to Wiltshire that it wishes its objection to remain in place but not to pursue an active role in these proceedings. Wiltshire council wishes to be permitted pursue the objection actively pursuant to its transitional function in order to protect its future property interest in the land the subject of the application.

Wiltshire is content to adopt the objection of Salisbury District Council and to become the lead objector.

Mr Matthais submitted that allowing Wiltshire County Council to pursue Salisbury District Council's objection would not cause any prejudice to the Applicant: the grounds of objection were the same, and she would face no greater number of active objectors.

The Applicant stated that the application lodged in March 2007. It was advertised and objections were to be entered by 29th May 2007. There had been delay in processing the application which had made the Applicant suspicious that the true reason for the delay was to stall the application until such time as Wiltshire County Council would be able to say it had an interest in appearing. The application did not go before a regulatory committee until December 2007.

Further, there had been plenty of opportunity for Wiltshire to make its position plain. Although the Order was made on 25th February 2008, no letter was written by Wiltshire County Council asking to be permitted to participate in the inquiry until 22nd April 2008.

The Applicant also raised the following concern: the County Council as both Registration Authority and future owner of the lands affected by the application has stated that it has set up internal Chinese Walls to avoid any conflict between its role as registration authority and its role as property owner. However, Mr Trevor Slack, who is currently on the team representing the County Council as property owner, dealt initially with the application and had some informal meetings with supporters of the application. The Applicant was concerned that matters might have been raised at those meetings by individuals which should not properly be within the knowledge of those representing the County Council as property owner. In my judgment, the matter of whether particular individuals employed by Wiltshire County Council should or should not be part of the team representing the Council as property owner and the related question of whether the Chinese walls which have been established are effective is outside my remit as inspector, but I felt it appropriate to bring these concerns to the attention of the Registration Authority. It is extremely important that separate representation and Chinese Walls should be maintained within the authority.

Application to debar Mr Whitmey

The Applicant submitted that Mr Whitmey should not be allowed to pursue his objection through the inquiry process. He had no proper connection with Salisbury. He did not reside in the locality, but resided some 100 miles distant. The Applicant stated that the Regulations do not say specifically that any person may object. A greater number of objections leads to greater work and pressure for the Applicant.

Mr Whitmey had given four names of people he claimed as ancestors who were buried in the graveyard, but had submitted no evidence of how they are related to him. The Applicant doubted that he had any genuine connection with the land the subject of the application. The Applicant was unable to understand what Mr Whitmey's motivation for objecting to the application was: it was difficult to see why he would object to lawful sports and pastimes being carried out in St Edmund's graveyard, but not to the moving of graves or to the Beerex festivals. The Applicant submitted that Mr Whitmey's rights would not be prejudiced by registration of the land as a town or village green.

It was submitted that it caused the Applicant difficulty to have another objector arguing slightly different points.

Mr Whitmey stated that he has at present has lodged 4 objections to village green applications, and is advising in relation to a fifth. The point that he is not entitled to object or to pursue his objection at an inquiry has not been taken in any of the other applications.

Mr Whitmey relied on the words of Lord Denning in *New Windsor Corporation v. Mellor* [1975] 1 Ch 380¹: "Any person in the world can apply for registration [of a town or village green], and any person likewise, can object to it."

Mr Whitmey said that even if his primary submission that any person is entitled to object were to be rejected, in this case he had a legitimate expectation to be heard, as his ancestors were buried in St Edmund's graveyard and/or he was from time to time a visitor to Salisbury and had a right to use the public open spaces.

Further, the Applicant had known of Mr Whitmey's objection since June 2007 and the application to debar him was out of reasonable time. The Registration Authority had never raised any question as to whether Mr Whitmey was entitled to objection, and it could not do so, unless his objection was groundless and vexatious.

In reply, the Applicant submitted that the words of Lord Denning in *New Mellor* were obiter dicta.

The law

The Commons Act 2006 received Royal Assent on 19th July 2006. Section 15 of the Act was brought into force by the Commons Act (Commencement No. 2, Transitional Provisions and Savings) (England) Order 2007². By paragraph 4(4) of the Order, where an application has been made before 6th April 2007 to a registration authority, pursuant to section 13(b) of the Commons Registration Act 1965, for the amendment of the register of town or village greens as a result of any land having become a town or village green and the registration authority has not determined the application before 6th April 2007, the registration authority shall continue to deal with the application on and after 6th April 2007 as if section 13(b) had not been repealed. The

¹ At page 388A.

² SI 456/2007

applicable definition for the purposes of this application is therefore that contained in the Commons Registration Act 1965.

The application therefore falls to be determined under the provisions of the Commons Registration Act 1965 as amended by the Countryside and Rights of Way Act 2000. Procedure on applications to register new greens under the Commons Registration Act 1965 is governed by The Commons Registration (New Land) Regulations 1969. These regulations have proved quite inadequate to resolve many disputed applications and registration authorities have had to resort to procedures not contemplated by the Regulations to deal with such applications. The most striking omission is that the Regulations provide no procedure for an oral hearing to resolve disputed evidence. The Commons Commissioners have no jurisdiction to deal with disputed applications to register new greens: *R (Whitney) v Commons Commissioners*³ The regulations seem to assume that the registration authority can determine disputed applications to register new greens on paper. A practice has grown up, repeatedly approved by the courts, most recently by the House of Lords in *Oxfordshire County Council v. Oxford City Council* (“*The Trap Grounds case*”)⁴, whereby the registration authority appoints an independent legally qualified inspector to conduct a non statutory public inquiry into the application and to report whether it should be accepted or not.

Who can apply?

Regulation 3 makes provision for application to be made for registration of land as common land or a town or village green. Regulation 3(4) states (as relevant):

“An application for the registration of any land as common land or as a town or village green may be made by any person...”

It is clear therefore, in my judgment that anyone can apply to register land as a new green, whether or not he is a local person or has used the land for recreation.

Preliminary consideration

After the application is submitted, the registration authority gives it preliminary consideration under regulation 5(7). The registration authority can reject the application at this stage, but not without giving the applicant an opportunity to put his application in order. This seems to be directed to cases:

- Where Form 30 has not been duly completed, or
- Where the application is bound to fail on its face, e.g. because it alleges less than 20 years use or where the supporting documents disprove the validity of the application

Publicity

If the application is not rejected on preliminary consideration, the registration authority must publicise the application under regulation 5(4).

³ [2005] 1 QB 282.

⁴ [2006] UKHL 25.

Objectors

Provisions concerning the consideration of objections are set out in Regulation 6 as follows (as relevant):

“(1) As soon as possible after the date by which statements in objection to an application have been required to be submitted, the registration authority shall proceed to further consideration of the application, and the consideration of statements (if any in objection thereto, in accordance with the following provisions of this regulation.

(2) The registration authority shall not consider any statement in objection to an application unless it is in writing and signed by or on behalf of the person making it, but subject as aforesaid, the authority shall consider every statement in objection to an application which it receives before the date on which it proceeds to the further consideration of the application under paragraph (1) above, and may consider any such statement which it receives on or after that date and before the authority finally disposes of the application.

(3) The registration authority shall send the applicant a copy of every statement which it is required under paragraph (2) above to consider, and of every statement which it is permitted under that paragraph to consider and intends to consider, and shall not reject the application without giving the applicant a reasonable opportunity of dealing with the matters contained in the statement of which copies are sent to him under this paragraph and with any other matter in relation to the application which appears to the authority to afford prima facie grounds for rejecting the application.”

In my judgment, the registration authority has a discretion under Regulation 6 to consider Wiltshire’s application as a late objection under Regulation 6(2). Further, in my judgment, the registration authority has a separate discretion, to deal with this application as a situation not provided for in the regulations, in a way which is fair, balancing the prejudice which might be caused to the Applicant by allowing the application against the prejudice which might be caused to Wiltshire by refusing the application.

In my judgment, anyone can object to an application to register a new green, whether or not he or she has any interest in the application land. An objection statement is required to be in writing and signed by or on behalf of the person making it. If those conditions are satisfied, and the statement is received before the date on which the Registration Authority proceeds to further consideration of the application, which in my judgment was the date of the meeting of the Regulatory Committee (19th December 2007), in my judgment the Registration Authority is required to consider the statement and has no discretion to exclude it from consideration on the ground that its maker has no connection with the land the subject of the application.

7. Applying the Law to the Facts

Wiltshire County Council’s application

I am satisfied that the prejudice which would be caused to Wiltshire County Council in its role as future owner of the application land by denying it the opportunity to appear and pursue the objection lodged by Salisbury District Council is such that the only appropriate course in all the circumstances is to allow Wiltshire County Council to adopt Salisbury District Council's objection and pursue it. In reaching this conclusion I take into account the following matters: Salisbury District Council has indicated to Wiltshire County Council its intention not to pursue the objection actively. It has not withdrawn its objection but has stated that it does not intend to make any further submissions. It did not appear at the pre-inquiry meeting, which is consistent with its stated position. I am not satisfied that the Applicant will face any substantial prejudice if the application is allowed. The Applicant will not face any more objections or grounds of objection if the Registration Authority permits Wiltshire County Council to adopt and actively pursue the objection lodged by Salisbury District Council. Although there has been some delay between the date on which Wiltshire County Council acquired its transitional functions and its application to be allowed to participate in the inquiry, I am satisfied that no prejudice has been caused to the Applicant by this delay. So far as the elapse of time between the closing date for objections and the consideration of the application by the Regulatory Committee is concerned, there is no evidence to support the Applicant's suspicion that the application was deliberately delayed in anticipation of the Wiltshire (Structural Change) Order 2008. In my experience, which is supported by the findings of a survey carried out by DEFRA⁵ town and village green applications, there are often lengthy delays in dealing with town and village green applications.

Application to debar Mr Whitmey

I am satisfied that the Registration Authority is obliged to consider Mr Whitmey's objection. The objection is in writing and signed by Mr Whitmey. It is dated 25th May 2007 and was received before the Registration Authority proceeded to further consideration of the application. I do not consider that it would be open to the Registration Authority to refuse to consider Mr Whitmey's objection on the basis that he has no real connection with the application land, even if it were satisfied that he did have no real connection with the application land.

8. Recommendations

I **recommend** that the Registration Authority should permit Wiltshire County Council to adopt and pursue the objection lodged by Salisbury District Council.

I **recommend** that the Registration Authority should refuse the Applicant's application to debar Mr Whitmey from pursuing his objection.

I recommend that the reasons for these decisions should be stated to be "the reasons set out in the Inspector's Interim Report and Recommendations dated 20 May 2010".

Lana Wood
20 May 2010
Lincoln's Inn

⁵ Registration of new town or village greens – monitoring survey on the impact of regulations under section 15 of the Commons Act 2006 (DEFRA October 2007)