

REGULATORY COMMITTEE
21 May 2008

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 report to Members on the Interim Report and Recommendations of the Inspector, Miss Lana Wood, to the County Council as Registration Authority in respect of the application by 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 recommendations of the Inspector.

Background

2. On 7 March 2007, Mrs Bell applied 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.
3. The application was advertised in April 2007 and in May 2007 objections were received from the landowner, Salisbury District Council (SDC); the lessee of part of the land, St Edmunds Arts Trust Limited and from Christopher J Whitmey.
4. The Regulatory Committee considered Mrs Bell's application at its meeting on 19 December 2007 (**Appendix 1**). The Committee resolved to appoint an Inspector to conduct a non-statutory public inquiry and to make a recommendation to the County Council as Registration Authority on Mrs Bell's application.
5. Miss Lana Wood, a barrister who specialises in this area of work, was appointed by the Registration Authority. As there were a number of preliminary issues to be considered, the Inspector held a pre-inquiry meeting at Salisbury Arts Centre on 1 May 2008.

Main Considerations for the Council

6. At the pre-inquiry meeting, the Inspector heard submissions from the applicant and all objectors on three issues that had been raised: i) whether the use (such as there has been) of the application land has been "as of right" or "by right" (a key issue in dispute between the applicant and objectors) and whether

this point should be disposed of as a preliminary issue prior to the full inquiry; ii) whether WCC (as prospective landowner) should be permitted to take up SDC's objection; and iii) whether Mr Christopher Whitmey should be debarred from taking any further part in the proceedings.

7. As a result of the submissions made, the Inspector decided that point i) above should be dealt with as a preliminary issue at a hearing to take place prior to the full inquiry. Miss Wood therefore gave directions for the conduct of that preliminary issue and the directions have been circulated to the parties. The Inspector also considered points ii) and iii) above but in her judgement, these are properly matters for decision by the Registration Authority. She has therefore issued her interim Report and Recommendations in respect of these points for determination by the Regulatory Committee (**Appendix 2**).

WCC's application to take up SDC's objection

8. SDC objected to Mrs Bell's application in May 2007. However, SDC has advised WCC as Registration Authority that whilst it wishes to maintain its objection, it does not wish to pursue any further role in the proceedings.
9. WCC, as future landowner, has now applied to join the proceedings and take up SDC's objection. This is pursuant to the provisions of The Wiltshire (Structural Change) Order 2008. Article 6 of the Order requires WCC to prepare for and facilitate "the economic, effective, efficient and timely transfer of the district councils' functions, property, rights and liabilities". In addition, Article 11 imposes general transitional duties on WCC to take necessary steps to prepare for the transfer of the functions, property, rights and liabilities of the district councils and to exercise their functions so as to further the purposes of the Order.
10. WCC is content to adopt the objection of SDC and to become the lead objector in the proceedings. This means that Mrs Bell will effectively face the same grounds of objection and no greater number of active objectors.
11. Mrs Bell has objected to WCC's application to join the proceedings and is concerned that there is a conflict of interest between WCC's role as Registration Authority and future landowner. She is also concerned that there has been a deliberate delay on the part of the Registration Authority in dealing with this matter in order to facilitate WCC joining as objector.
12. Having considered the parties' submissions and the law, the Inspector has concluded that given the prejudice which WCC would suffer by denying it the opportunity to appear and pursue the objection lodged by SDC, "the only appropriate course in all the circumstances is to allow WCC to adopt SDC's objection and pursue it". The Inspector's Report states at paragraph 7: "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". She acknowledged that there had been some delay between the closing date for objections and the consideration of the matter by the Regulatory Committee. She noted, however, that there is no evidence to

support Mrs Bell's suspicion that there was deliberate delay and observed that, in her experience, which is supported by a survey carried out by DEFRA, there are often lengthy delays in dealing with town and village green applications.

Mrs Bell's application to debar Mr Whitmey

13. Mrs Bell has submitted that Mr Whitmey should not be allowed to pursue his objection through the inquiry process. He has no proper connection with Salisbury. He does not reside in the locality and actually lives some 100 miles distant. Mrs Bell submits that because the regulations do not specifically state that any person may object to an application, the question of whether or not someone is allowed to object must be subject to reasonableness.
14. Mr Whitmey's response is that any person is entitled to object to a town/village green application. In any case, he has a legitimate expectation to be heard as his ancestors are buried in the graveyard and/or he was from time to time a visitor to Salisbury and has a right to use the public open spaces. Further, Mr Whitmey said that Mrs Bell's application to debar him was out of reasonable time.
15. The Inspector states at page 6 of her Report: "In my judgement, anyone can object to an application to register a new green, whether or not he or she has any interest in the application land." She is satisfied that provided the statement of objection is properly made and is received by the Registration Authority before the date on which it proceeds to further consideration of the application, the Registration Authority is obliged to consider Mr Whitmey's objection in accordance with the Regulations.
16. The Inspector has therefore made two recommendations in her Report:
 - a. that the Registration Authority should permit WCC to adopt and pursue the objection lodged by SDC;
 - b. that the Registration Authority should refuse the Applicant's application to debar Mr Whitmey from pursuing his objection.

Environmental Impact of the Recommendation

17. There are no environmental issues arising out of the Inspector's recommendations.

Risk Assessment

18. Officers consider that there is a high risk that any decision by the Regulatory Committee not to accept the Inspector's recommendations would be challenged. Such challenge would be by way of judicial review in the High Court and could be on the basis that any such decision is wrong in law, unreasonable, procedurally improper, biased or contrary to legitimate expectations.

Financial Implications

19. There would 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

20. Members may:-
- a) accept both of the Inspector's recommendations as set out at paragraph 22 below;
 - b) reject both of the Inspector's recommendations. If so, Members must give full reasons for the rejection;
 - c) accept/reject one or other of the Inspector's recommendations. If Members reject one of the Inspector's recommendations, they must give reasons for the rejection.

Reasons for Recommendation

21. The reasons for the recommendation are set out in full in the Inspector's Interim Report and Recommendations dated 8 May 2008.

Recommendation

22. It is strongly recommend that Members accept the Inspector's recommendations:-
- (a) that WCC [in its capacity as future landowner] be permitted to adopt and pursue the objection lodged by SDC to Mrs Bell's application; and
 - (b) that the Applicant's application to debar Mr Whitmey from pursuing his objection be refused.

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