

COMMONS REGISTRATION ACT 1965, SECTION 13

**APPLICATION NUMBER 2005/4 FOR THE REGISTRATION OF LAND AT
DREWS PARK, DEVIZES AS A TOWN OR VILLAGE GREEN**

EXECUTIVE SUMMARY OF INSPECTOR'S REPORT

1. This matter concerns an application to register roughly 4.6 acres of open land at Drews Park in Devizes as a town or village green ('TVG'). The applicant, although named in the application form as Ernest Rowland, is in fact the *Drews Park Village Association*. The Registration Authority (RA) is Wiltshire County Council (which maintains registers of common land and TVGs within their area) and the criteria for application of the land as a TVG is whether, for a period of not less than 20 years before the application was made (which in this case, occurred in November 2005), a significant number of the inhabitants of any locality or of any neighbourhood within a locality, have indulged in lawful sports and pastimes as of right on the application land.
2. The applicable law is that arising under the *Commons Registration Act 1965*, as amended by section 98 of the *Countryside and Rights of Way Act 2000*. The new *Commons Act of 2006* only applies in relation to applications to register made after April 2007. The effect of registration as a TVG is that, save in exceptional cases, any enclosure or development of the TVG land will be prevented. Registration is therefore a serious matter for any landowner.
3. The law is complex and the elements involved in the analysis concern proof of
 - (a) uninterrupted recreational activity for 20 years before the application date
 - (b) by a significant number of the inhabitants of any locality or
 - (c) of any neighbourhood within a locality, and that such user has been
 - (d) as of right (in

the sense that it has not been by force, stealth or by permission). These elements are not as straightforward as they may appear and have been considered in a torrent of litigation in recent years. It must be appreciated at the outset that there is no scope for the application of any administrative discretion or of any balancing of competing interests, in contrast to an application for planning permission. In other words, either the qualifying criteria for registration are satisfied or they are not.

4. In order to lessen the risk of legal challenge in those cases where there is conflict between the landowner and those applying for registration, it has become the practice in recent years for the *RA* to instruct an expert in the field (usually a barrister) to conduct a public inquiry with the aim of resolving factual or legal disputes and to provide a report containing a recommendation on whether the application to register should be acceded to or rejected. It is the duty of the *RA* to be impartial. It has no investigative duty which requires it to find evidence or re-formulate the applicant's case and it is under a duty to deal with the application and the evidence as presented by the parties.
5. In this case I made the following findings:
 - (a) The claimed neighbourhood of South Devizes in the amended application is not a neighbourhood within the meaning of s.22(1A) of the Commons Registration Act 1965.
 - (b) User by the public of the application land before closure of Roundway Hospital in 1995 was by virtue of an implied licence and was therefore not as of right.
 - (c) Any user of the Orchard land (comprising roughly one-half of the application land) after 1995 has been too trivial and sporadic to support an application to register such land as a *TVG*.
 - (d) The fenced area within the Orchard land containing the balancing pond (a surface water drainage facility installed by developers after 2002) has, since around 2003, been excluded altogether from public use and could not qualify as a *TVG* on this basis alone. The presence of such fencing also

meant that any user of this part of the Orchard land could not have been as of right.

(e) Public user of the Meadow land (the remainder of the application land) was (at the very least) interrupted during 2 periods: (i) between early 1996 and late 1997, by the fencing and security measures adopted by the developers, and (ii) during the drainage works that occurred between November 2003 and May 2004.

(f) The presence of the fencing and security measures mentioned in (e) above also meant that any recreational user of the Meadow land could not have been as of right during the periods mentioned. In the case of (e)(ii), insofar as any land in the Meadow was unaffected by the drainage works, the user relied on was also too trivial and sporadic to support an application to register such land as a *TVG*.

6. My recommendation is that the application to register the land identified on CR FORM 30 under application No.2005/4 as a *TVG* be **REJECTED**.

William Webster

Inspector

9 July 2008