

REGULATORY COMMITTEE

30th July 2008

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 Inspector's Report and Recommendation and to seek a decision on the application.

Background

2. 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was submitted in November 2005 on behalf of Ernest Clive Rowland and the application by Valerie Mould was subsequently withdrawn.
3. Mr. Rowland's application was advertised and notices served as required by the Commons Registration (New Land) Regulation 1969. The two landowners whose land is affected by the application, Lilac Investments and Alan Brown, both submitted objections, challenging the applicant's evidence.
4. The Regulatory Committee considered the application at its meeting on 13 June 2007 and a copy of the report is attached as **Appendix 1**. In view of the conflicting evidence, the Committee resolved that the application should be referred to a non-statutory local inquiry with a request that the Inspector should make a recommendation on the application to the Committee.
5. Mr William Webster, a barrister from 12 College Place, Southampton who is an expert in this field of law, was appointed to act as Inspector at the Inquiry. The Inquiry was held at the Corn Exchange in Devizes on 19, 20 and 21 May 2008.

Main Considerations for the Council

6. In order to meet the requirements of the Commons Registration Act 1965 (as amended), the applicant must prove on the balance of probabilities that each element of the statutory requirement for proof of a town green has been satisfied. The statutory requirement is that the land must have 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.

7. The application is dated 25 November 2005 so the qualifying period runs from 1985 - 2005. An analysis of the evidence was included in the report to the previous meeting on 13 June 2007 (**Appendix 1**). A copy of the application, including the application plan (Plan 'A'), is attached as **Appendix 2**. All other documents which were appended to the earlier report are available in the Members' Room or from the Report Author.
8. The application land is part of the former Roundway Hospital site. It comprises two adjoining parcels in separate ownership. On the plan marked 'C' attached to the application form (**Appendix 2**), the two parcels are shown coloured pink and blue. The pink parcel is known as the Meadow and belongs to Lilac Investments Ltd. and the blue parcel is known as the Orchard and belongs to Mr Alan Brown.
9. At the Inquiry, the Inspector heard submissions from the representatives for the applicant and one of the two objectors, Lilac Investments, and the witness evidence for both parties. The other objector, Alan Brown, did not take part in the Inquiry but had submitted a written statement.
10. Having considered all the evidence and submissions, Mr Webster made a number of findings which are set out in his Report. He found that the following elements of the statutory requirement have not been met:
 - a. The claimed "neighbourhood of South Devizes" is not a neighbourhood within the meaning of section 22(1A) of the Commons Registration Act 1965. A neighbourhood must be an area which is cohesive, identifiable and recognisable as a community in its own right. The neighbourhood of South Devizes is far too large to comprise a single cohesive community. It comprises a number of smaller neighbourhoods, made up of housing estates of varying ages, some of which have not been in existence for 20 years.
 - 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. Those using the land must have known that they were there under licence granted by the hospital authority. For example, there were facilities on the site (a cricket pitch, pavilion and tennis court) which were used by the hospital whenever it wanted. Also, the land was well maintained which would make it apparent that it belonged to the hospital and public access was only available if it was acceptable to the hospital. The hospital could exclude the public from the land if it wished.
 - c. There had not been sufficient user of the Orchard land (roughly one-half of the application land) to satisfy the requirement. This finding was based on oral evidence at the Inquiry.
 - d. The fencing around the balancing pond within the Orchard land had been in place since 2003, at which point any recreational user would have ceased, so this area had been excluded from public use.

- e. Public use of the Meadow land (the remainder of the application land) was at the very least interrupted during 2 periods: (i) in 1996/7, by the fencing and security measures adopted by the developers, and (ii) during the drainage works that occurred in 2003/4. Between November 2003 and September 2004, the Meadow land was probably taken over by the drainage work and its aftermath; during this period recreational user would either have ceased completely or been too sporadic to satisfy the requirement for a town green.
 - f. The presence of the fencing and security measures also meant that recreational user of the Meadow land could not have been as of right during those periods.
11. Since the statutory requirements for claiming a town green have not been met, the Inspector has recommended that the application be rejected. Copies of the Inspector's 57-page report are available in the Members' Room (and further copies can be obtained from the Report Author). The Inspector has also provided an Executive Summary of his report, which is attached as **Appendix 3**.
12. In determining a town green application, the only question for the registration authority is whether the statutory conditions for registration are satisfied, as set out at paragraph 6 above. The registration authority has no discretion to balance competing interests. It must be impartial and must deal with the application and the evidence as presented by the parties, taking into account any recommendation by the Inspector.

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 is likely to be developed.

Risk Assessment

14. 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. Members would have to be satisfied on the balance of probabilities that the statutory criteria have been fully met before the application could be approved. It should be borne in mind that town and village green applications can cause considerable controversy in the locality concerned.

Financial Implications

15. If the land were to become registered it would not place any obligation on the County Council to maintain the land. There would be costs implications if there were a legal challenge to any decision made. High Court proceedings are invariably expensive and could give rise to a significant costs liability if unsuccessful.

Options Considered

16. Members may:-
- a. approve the application, or
 - b. reject the application. If so, Members are required by the Commons Registration (New Land) Regulations 1969 to record the reasons for the rejection.

Reasons for Recommendation

17. The reasons for the recommendation are set out in the Inspector's Report and Recommendation dated 26 June 2008.

Recommendation

18. It is strongly recommended that Members accept the Inspector's recommendation:
- that the application to register the land at Drews Park Devizes identified in Part 3 of the CR Form 30 under application number 2005/4, as shown edged in red on Plan 'A' attached to the application, be rejected.

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