

## Agenda Item 12

Legal and Property Services  
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# Report

**Subject** : Application to register lands at Bourne Hill etc as a village green  
**Report to** : The Cabinet  
**Date** : Wednesday 05 September 2007  
**Author** : John Crawford  
**Cabinet Member for Resources** : Councillor Andrew Roberts

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## 1. Summary:

Cabinet to resolve whether or not to continue to defend an application to register lands at Bourne Hill, St Edmunds Churchyard, Wyndham Park and the Greencroft edged in bold on the attached plan ["the Lands"] as a town or village green.

## 2. Background:

- 2.1. On 12.04.2007 Wiltshire County Council ["WCC"] published notice of an application ["the application"] to it by Mrs C R Bell ["the applicant"] to register the Lands as a town or village green under Commons Registration Act 1965 as amended. A copy of the application is attached as Appendix 1. The application is supported by a number of individuals.
- 2.2. A formal response was lodged on behalf of the Council with WCC on 29.05.2007. A copy of the summary grounds of objection ["the summary grounds"] is attached as Appendix 2. Separate objections have also been lodged by the Arts Centre and one individual.
- 2.3. A separate report is being presented to Cabinet on alternative options for protecting the green spaces surrounding Bourne Hill.

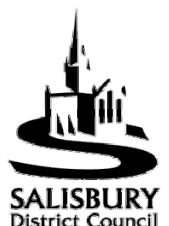


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### **3. The current position:**

- 3.1. It is Officers understanding from discussions that they have had with Officers at WCC that WCC's Regulatory Committee will consider the application at its meeting on 19.09.2007. It is Officers view that it is likely for the reasons set out in paragraph 26 of the summary grounds WCC will appoint a barrister to hold a non statutory public inquiry into the application and to report to WCC with a recommendation to accept or reject the application whether in whole or in part. Any inquiry is likely to take between 6 and 12 months to complete.
- 3.2. At its meeting on 23.07.2007 Cabinet agreed to some parts of the Lands being appropriated temporarily for planning purposes for the Council's office project. External legal advice is that appropriation for planning purposes for development in accordance with a planning permission will defeat any subsequent attempt to register the appropriated parts as a town or village green.

### **4. The application:**

- 4.1. To be successful in the application the Applicant will have to prove on a balance of probabilities that the Lands have been used for lawful sports and pastimes by a significant number of the inhabitants of a neighbourhood within a locality as of right for a period of not less than 20 years to the date of the application.
- 4.2. WCC may consider that it is in the public interest to have the status of the Lands determined whether or not any or all of the parties wish at any time to withdraw from the process.
- 4.3. WCC may register part or parts only of the Lands if it is satisfied that such part or parts but not all of the Lands have become a new green.
- 4.4. If the application is successful local people are given recreational rights over the Lands and no structures could be placed on them other than in limited circumstances.
- 4.5. There is no power to award costs. WCC will be responsible for the costs of any Inquiry. The parties will be responsible for their own costs for contributing to any Inquiry.

### **5. Options:**

- 5.1. Maintain the Council's objection and participate in any inquiry.
  - 5.1.1. It is Officers view that there are elements of the application which independently of the merits of seeking to have the Lands registered as a green the Council should continue to object to in any event.
    - The Council House car park will continue to be required for parking ancillary to the Council House whether by this Council or its successor.
    - College Street car park is an income producing asset.
    - The Staff Open Area is included within the proposals for the Council's office project.
    - The extension to the Arts Centre might have to be removed if the application were successful with regard to its footprint.

- The future of the old swimming pool site has not yet been determined and the Council would potentially forgo redevelopment value of upto £2M.

5.1.2. Should Council maintain its objection Counsel would be instructed to represent the Council at any inquiry. Assuming an Inquiry took a week Counsel's costs would likely to be in the region of £15000-£20000.

5.2. Maintain the Council's objection and not participate in any inquiry.

This option avoids the Council incurring costs in participating in any inquiry but whilst the evidence that is submitted by the Council to WCC will be taken into account it will not carry the same weight as oral evidence given to any inquiry which can be tested by cross examination. This option increases the risk of the application succeeding in whole or in part.

5.3. Withdraw the Council's objection.

An inquiry is still likely to take place for the reasons set out in 3.1 above. This option exposes the Council to an even greater risk of the application succeeding in whole or in part.

#### **6. Consultation undertaken:**

"Prescribed" internal consultees

#### **7. Recommendations:**

Cabinet resolves to maintain the Council's objection and participate in any inquiry.

#### **8. Background papers:**

- Statements in support of the application
- Statements from Officers in response to the application
- Statements objecting to the application

#### **9. Implications:**

- Key decision: no
- Financial: set out in the report. There is funding available in the council's corporate legal budget to meet the expenditure of participation in any inquiry. If the Village Green application was successful the council would potentially forgo a capital receipt of up to £2 million
- Legal: set out in the report
- Human rights: none as the Council will not determine the application
- Personnel: should Cabinet decide on the recommended option Officers will be required to attend any inquiry to give evidence
- ICT: none
- Community safety: none
- Environmental: none
- Council's core values: communicate
- Wards affected: Salisbury City wards

Village Green Application Form

Official Stamp of Registration Authority indicating date of receipt  This section for official use only	Application No: 2007/ <sup>2</sup> <del>12</del> Register Unit No(s): VG VG
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COMMONS REGISTRATION ACT 1965, SECTION 13

APPLICATION FOR REGISTRATION OF LAND WHICH BECAME A TOWN OR VILLAGE GREEN AFTER 2ND JANUARY 1970

IMPORTANT NOTE: - Before filling in this form, read carefully the notes at the end. An incorrectly completed application form may have to be rejected.

<p><sup>1</sup>Insert name of registration authority</p> <p>Part 1</p> <p><i>(Give Christian names or forenames and surname or, in the case of a body corporate or unincorporate, the full title of the body. If Part 2 is not completed all correspondence and notices will be sent to the first named applicant.)</i></p>	<p>To the<sup>1</sup> <i>Wiltshire County Council</i></p> <p>Application is hereby made for the registration as a town of village green of the land described below, which became so registrable after 2nd January 1970.</p> <p>Name and address of the applicant or (if more than of one) of every applicant</p> <p><i>Christine Ruth Bell</i>  <i>Christine R. Bell</i>                  Basement Flat                  67a. WILTON ROAD                  SALISBURY                  WILTS                  SP2 7ER.</p>
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Part 2

(This part should be completed only if a solicitor has been instructed for the purposes of the application. If it is completed, all correspondence and notices will be sent to the solicitor.)

Name and address of solicitor, if any.

N/A

Part 3

Particulars of the land to be registered, ie. the land claimed to have become a town or village green

Name by which usually known *Bourne Hill Park, The Greencroft, St Edmunds Arts Centre graveyard, College St Car Park, Wyddham Park*

Locality *North East of Salisbury Centre within the ring road*

Colour on plan herewith

*Red*

Part 4

On what date did the land become a town or village green?

More than 20 years ago

Part 5

How did the land become a town or village green?

28th FEBRUARY 2007 CR6.  
By usage of the public/local inhabitants for leisure, walking, games, lawful sports and pastimes

Part 6

Name and address of every person the applicant believes to be an owner, lessee, tenant or occupier of any part of the land claimed to have become a town or village green. (If none are known, write none.)

Salisbury District Council

Part 7

For application to register substituted land (see Note 5); to be disregarded in other cases.

Particulars of the "taken land", i.e. the land which ceased to be a town or village green (or part thereof) when the land described in part 3 became a town or village green (or part).

Name by which usually known

Locality

N/A

Colour on plan herewith (if any)

If registered under the 1965 Act, register unit No(s).

Part 8

List of supporting documents sent herewith, if any. (if none are sent, write "none".) 14 letters (more to follow)

- Letters from SDC to Tony West 4/1/05
- " " St. Eds Community Ass re access
- " Mrs S. Banc Mrs J. Davies
- Mrs Senior Mrs K. Nouse
- Mrs J. Burden Mr ADWOOD MARGATE
- Mrs Sparks Mr R.B. Cummings
- Christine Bell Mr. S.R. Davies
- C. Duller
- Mrs Grace
- Mrs. Cox

Katie Price	Mary Stephens
R. MacCall	Sarah Reeve-Tucker
Mary Smith	Yvonne Watts
J. Trickett	Graham Turner
Hilary Munro	

Part 9

If there are any other facts relating to the application which ought to be brought to the attention of the registration authority (in particular if any person interested in the land is believed to dispute the claim that it has become a town or village green) full particulars should be given here.

<sup>2</sup>The application must be signed by or on behalf of each individual applicant, and by the Secretary of some other duly authorised officer of any applicant which is a body corporate or unincorporate.

Signatures<sup>2</sup>

*[Handwritten Signature]*

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### STATUTORY DECLARATION IN SUPPORT

*(see note 9)*

To be made by the applicant, or by one of the applicants, or by his or their solicitor, or, if the applicant is a body corporate or unincorporate, by its solicitor or by the person who signed the application.

<p><sup>1</sup>Insert full name (and address if not given in the application form)</p> <p><sup>2</sup>Delete and adapt as necessary.</p> <p><sup>3</sup>Insert name if applicable</p> <p><sup>4</sup>Insert marking as on plan.</p> <p><sup>5</sup>Delete this paragraph if there is no plans referred to in part 7.</p>	<p><sup>1</sup> CHRISTINE RUTH BELL solemnly and sincerely declare as follows:-</p> <p>1.<sup>2</sup> I am ((the person) (<del>one of the persons</del>) who (has) (have) signed the foregoing application)) ((the solicitor to (the applicant) (<del>one of the applicants</del>)).</p> <p>2. I have read the Notes to the application form.</p> <p>3. The facts set out in the application form are to the best of my knowledge and belief fully and truly stated and I am not aware of any fact which should be brought to the attention of the registration authority as likely to affect its decision on this application, nor of any other document relating to the matter other than those (if any) mentioned in parts 8 and 9 of the application.</p> <p>4. The plan now produced and shown to me marked <sup>4</sup> is the plan referred to in part 3 of the application.</p> <p>5.<sup>5</sup> The plan now produced and shown to me marked <sup>4</sup> the plan referred to in part 7 of the application.</p> <p>And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act 1835.</p>
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Declared by the said CHRISTINE RUTH BELL  
Signature of Declarant

at WILSONS STEUWES HOUSE  
in the SALISBURY of WILTSHIRE  
this 7th day of March 2007

Signature before me  
[Signature]  
Address STEUWES HOUSE  
SALISBURY WILTSHIRE  
Qualification SOLICITOR

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Please initial all alterations and mark any plans as an exhibit.

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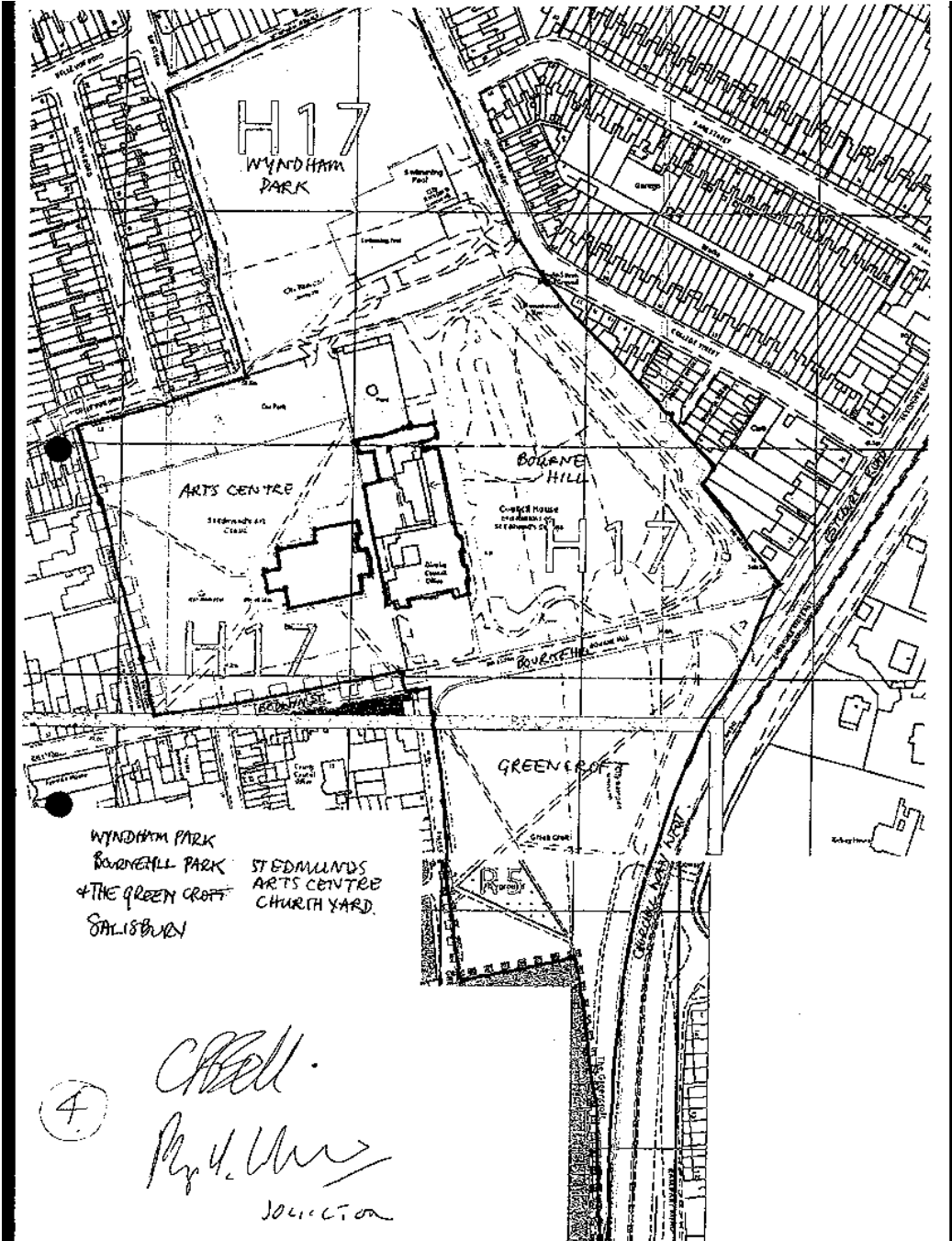
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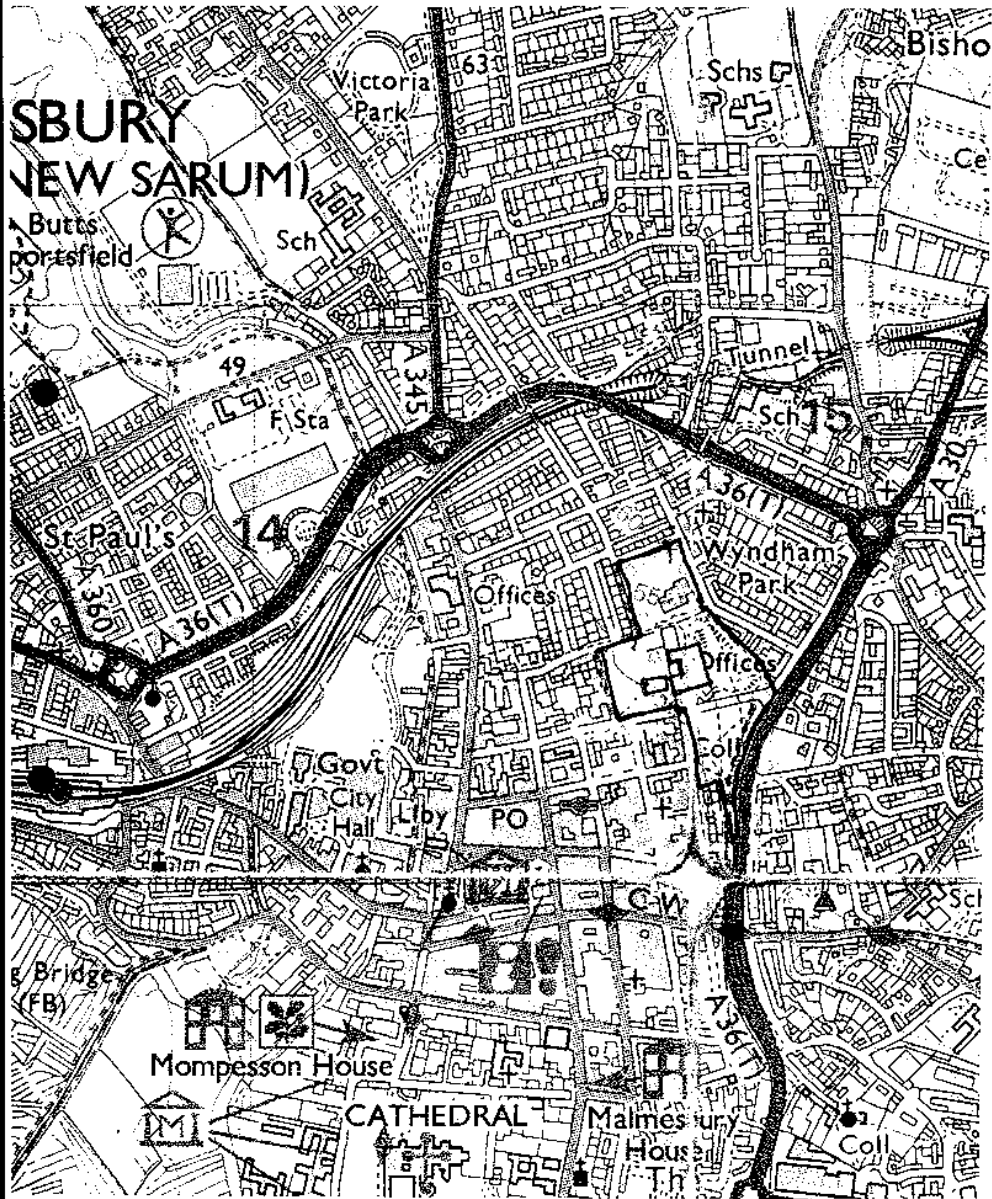
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**IN THE MATTER OF AN APPLICATION BY CHRISTINE RUTH BELL TO REGISTER LANDS IN SALISBURY INCLUDING:**

- 1. WYNDHAM PARK AND BOURNE HILL CAR PARK**
  - 2. BOURNE HILL GARDENS AND THE SECRET GARDEN**
  - 3. ST EDMUNDS CHURCHYARD, AND**
  - 4. THE GREENCROFT**
- AS A TOWN OR VILLAGE GREEN**

**APPLICATION REFERENCE NUMBER: 2007/2**

**WCC REF: TSS07489**

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**SUMMARY OF GROUNDS OF OBJECTION  
OF SALISBURY DISTRICT COUNCIL**

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**Introduction**

1. Salisbury District Council (“the Council”) is the freehold owner of the land that appears to be the subject of this undated application (“the Application”) made by one Christine Ruth Bell (“the Applicant”) to have a large swathe of land in central Salisbury registered as a town green, under section 13 of the *Commons Registration Act 1965* (as amended) – “the CRA 1965” – upon the basis that “the land became a Town or Village Green on the 28<sup>th</sup> February 2007 by virtue of the actual use of the land by the local inhabitants for lawful sports and pastimes as of right for not less than 20 years and such use is continuing” (per the relevant Notice from Wiltshire County Council – “Wiltshire” - as Registration Authority dated 12<sup>th</sup> April 2007). Wiltshire apparently received the Application on the 7<sup>th</sup> March 2007.
  
2. In order for the application to succeed the Applicant would have to (a) identify precisely which areas of land she is seeking to have registered, and (b) in the case of each area of land so identified, precisely why she is entitled to call for its registration. As to the latter point, in respect of each area of land the burden of proof must rest squarely upon the Applicant to prove on the balance of probabilities that the following qualifying requirements are met, namely:
  - 2.1 that the area of land has been used for lawful sports and pastimes;

- 2.2 by a significant number of the inhabitants of a locality, or of a neighbourhood within a locality;
  - 2.3 as of right;
  - 2.4 for a period of not less than 20 years; and
  - 2.5 that use conforming to the above has continued to the date of the Application (i.e. to the 7<sup>th</sup> March 2007).
3. The onerous effect of registration of land as a green is such that a registration authority must scrutinise carefully the evidence submitted in support of an application to ensure that the burden of proof has been discharged. In *R (Beresford) v Sunderland City Council* [2001] 1 AC 889, Lord Bingham said:
- “As Pill LJ rightly pointed out in *R v Suffolk County Council ex parte Steed* (1996) 75 P&CR 102, 111: “it is no trivial matter for a landowner to have land, whether in public or private ownership, registered as a town green ...”. It is accordingly necessary that all ingredients of this definition should be met before the land is registered, and decision-makers must consider carefully whether the land in question has been used by the inhabitants of a locality for indulgence in what are properly to be regarded as lawful sports and pastimes and whether the temporal limit of 20 years’ indulgence or more is met.”
4. As an important preliminary point, the Council contends that the Application is embarrassing in the sense of being so unsatisfactory and unclear in a number of respects that it is not possible to answer it comprehensively without the Applicant providing significant clarification and particularisation of her case.
5. Firstly, one cannot even understand from the Application precisely which areas of land the Applicant is genuinely seeking to have registered, and why. The plans accompanying the Application would appear to indicate a desire to have a large swathe of land registered, as aforesaid. However, that swathe of land includes many diverse parts, incorporating *inter alia* an adopted highway (i.e. Bourne Hill road) for which Wiltshire is responsible as local Highway Authority, large buildings (i.e. the Arts Centre extension building, and the

disused swimming pool building), car parks, a consecrated burial ground (St. Edmund's Churchyard), and areas that have always been within the secure walled curtilage of the Council House (i.e. the Secret Garden and the Staff Open Area). Is the Applicant really seeking to have such areas registered? Because of the diverse nature of the various areas incorporated within the large swathe of land shown on the plans accompanying the Application, the Applicant must in the case of each area explain whether and if so why she contends she is entitled to seek registration of that area, so that the Council may know the purported case it must meet, and so that the Registration Authority is in a position to scrutinise carefully the evidence submitted in support of the application in respect of each area to consider whether the burden of proof in each case has been discharged.

6. Secondly, more than half of the supporting documents referred to in Part 8 of the Application (purportedly letters from named individuals) have not been provided. Specifically, the alleged letters from the following named individuals have not been provided:

- 6.1 Mrs Sevier
- 6.2 Mrs J. Burden
- 6.3 Mrs Sparks
- 6.4 C. Duller
- 6.5 Miss Bell
- 6.6 Mrs K. Nouse
- 6.7 Mr A.D. Woolmington
- 6.8 Mr R.B. Dury
- 6.9 R. MacCall
- 6.10 J. Truckle
- 6.11 Mary Stephens
- 6.12 Sara Reeve-Tucker
- 6.13 Yvonne Watts

Accordingly, neither the Council nor any other objector nor the Registration Authority is in any position to scrutinise more than half of the supporting documents referred to in Part 8 of the Application. It is incumbent upon the Applicant to indicate whether she now proposes to seek permission from the

Registration Authority to amend her Application to delete reference to alleged letters from the above named individuals, or whether she proposes to seek permission to supply some or all of the alleged letters late.

7. Thirdly, with reference to sub-paragraphs 2.1 and 2.2 above (i.e. proof of user for lawful sports and pastimes by a significant number of the inhabitants of a locality, or of a neighbourhood within a locality) the Applicant has made no attempt to state her case concerning the nature of and/or boundaries of the relevant “locality” or “neighbourhood within a locality” for the purposes of the Application. Since she must prove user “by a significant number of the inhabitants”, it is axiomatic that she must first state and explain her case concerning the nature of and/or boundaries of the relevant “locality” or “neighbourhood within a locality” for the purposes of her Application. Unless until she does so, objectors and the Registration Authority are left guessing as to what her case is in this regard. The Applicant lives in Wilton, a former village albeit now incorporated within the City boundary, but located on the other side of Salisbury some miles away from Bourne Hill. Is Wilton supposed to be within the relevant “locality” according to the Applicant’s case? When the Applicant has stated and explained her case concerning the nature of and/or boundaries of the relevant “locality” or “neighbourhood within a locality” for the purposes of her Application, she must then state and explain her case regarding user “by a significant number of the inhabitants” of that “locality” or “neighbourhood within a locality” – which she has also made no attempt to do in the Application. What does she contend is “a significant number” in the context of her Application, and can she then prove that level of user in respect of lawful sports and pastimes? In particular, what are the “lawful sports and pastimes” to which her Application refers and that she seeks to prove?
  
8. Plainly, until the Application is particularised and clarified at least in sufficient detail to meet the concerns expressed above, any objections made by the Council (and other objectors) regarding the merits of the Application, can only be regarded as provisional objections, in the sense that fairness will dictate that the Council (and other objectors) are given a full opportunity to supplement/amend/alter such objections, and if necessary to file further

evidence, in the light of a properly particularised and clarified Application and with clear knowledge of precisely what supporting documents are to be relied upon by the Applicant. The Council accordingly reserves the right to supplement/amend/alter its objections, and if necessary to file further evidence, in respect of the Application in due course.

9. For the present, the Council takes objection to every aspect of the Application for the reasons summarised below, and in reliance upon the evidence filed herewith and the evidence filed by and on behalf of other objectors to the Application. Different considerations affect different areas within the swathe of land to which the Application purports to apply. The different areas will be considered in turn below.

**Wyndham Recreation Ground and Council Grounds**

10. Both those areas of land (and what is now the College Street car park) were acquired by the Council's predecessor in title by a conveyance dated 25<sup>th</sup> March 1927, as explained in paragraph 7 of the witness statement herein of Peter John Crawford. The acquisition was made under the Public Health Acts 1875 to 1925, and prior to the acquisition the City resolved at a special council meeting held on 17<sup>th</sup> December 1926 to use St Edmunds College as Municipal Headquarters, the grounds attached to St Edmunds College (i.e. the Council Grounds) as a public park, and to use the field adjoining Wyndham Terrace (i.e. Wyndham Recreation Ground) and any remaining portion suitable, for recreation purposes (see the exhibit marked "PJC7" to the statement of Peter John Crawford). This was in effect a resolution to "maintain (the) lands for the purpose of being used as public walks or pleasure grounds" pursuant to the powers contained in section 164 of the *Public Health Act 1875* ("PHA 1875"), and in due course byelaws were made by the Council in respect of the Council Grounds pursuant to the Council's powers under that Act (see the exhibit marked "PJC10" to the statement of Peter John Crawford).
11. Accordingly, since 1927 people have in fact been using and enjoying the Wyndham Recreation Ground and the Council Grounds not "as of right" (which is a crucial ingredient for the definition of "town or village green" contained in



section 22(1A) of the CRA 1965), but rather “of right” or “by right” on account of the fact that those areas were appropriated as places of public recreation in December 1926. Although they may appear superficially similar, the phrases “as of right” on the one hand, and “by right” or “of right” on the other, have been interpreted in significantly different ways by the courts – indeed, it might be said that their meanings have been interpreted as being diametrically opposed to one another. A person does something “as of right” because he has no right to do it, but acts as though he does. “As of right” imports “the absence of any of the three characteristics of compulsion, secrecy or licence – ‘nec vi, nec clam, nec precario’, phraseology borrowed from the law of easements ...” (per Scott L.J. in *Jones v Bates* [1938] 2 All ER 237, cited with approval by Lord Hoffmann in *R v Oxfordshire County Council ex p. Sunningwell* [2000] 1 AC 335). “It has often been pointed out that ‘as of right’ does not mean ‘of right’. It has sometimes been suggested that its meaning is closer to ‘as if of right’ ...” (per Lord Walker in *R (on the application of Beresford) v City of Sunderland* [2003] UKHL 60). It follows that the Application cannot succeed with regard to any part of the Wyndham Recreation Ground or the Council Grounds.

### **Greencroft**

12. This area of land was acquired by the City from The Reverend George Hugh Browne under an indenture dated 2<sup>nd</sup> October 1883 (see the exhibit marked "PJC21" to the statement of Peter John Crawford) “subject nevertheless to all ways rights of recreation and other rights or easements to which the said premises are subject”. The acquisition was made pursuant to the City’s powers under the *Open Spaces Act 1906* (“OSA 1906”), and in due course byelaws were made by the Council in respect of the Greencroft pursuant to the Council’s powers under sections 12 and 15 of that Act (see the exhibit marked "PJC10" to the statement of Peter John Crawford). Accordingly, since 1883 people have in fact been using and enjoying the Greencroft for recreational purposes not “as of right”, but rather “of right” or “by right”. As with the Wyndham Recreation Ground and the Council Grounds, it follows that the Application cannot succeed with regard to any part of the Greencroft.

### **St Edmund's Churchyard**

13. St Edmund's Churchyard (and the church thereon) was acquired by the Council from the Church Commissioners for England under a conveyance dated 28<sup>th</sup> November 1979 (see the exhibit marked "PJC17" to the statement of Peter John Crawford), by which the Council covenanted not to use the land "for any purposes other than for purposes ancillary to the use of the said building (i.e. the church building) and as a public open space ...". The acquisition was made pursuant to the City's powers under the OSA 1906 to acquire and maintain open spaces and burial grounds. Accordingly, since 1979 people have in fact been using and enjoying the Churchyard as a public open space not "as of right", but rather "of right" or "by right". As with the Wyndham Recreation Ground, the Council Grounds and the Greencroft, it follows that the Application cannot succeed with regard to any part of St Edmund's Churchyard.
  
14. Furthermore, however, St Edmunds Churchyard remains consecrated land and there are innumerable graves beneath the land. Pursuant to section 11(2) of the OSA 1906: "The playing of any games or sports shall not be allowed in any burial ground in or over which a local authority have acquired any estate, interest or control under this Act ..." save in the case of a consecrated burial ground, with the express sanction of the bishop. There is no evidence of any such express sanction in this case, and so the playing of games or sports would be unlawful on the land in question. Accordingly, it follows that the Application cannot succeed with regard to any part of St Edmund's Churchyard for at least one other cogent reason; namely, that people cannot have "indulged in lawful sports and pastimes" thereon.

### **Council House Car Park**

15. The Council House Car Park was made available for members of the public to use for free car parking at weekends and outside office hours (i.e. outside the hours of 9 am to 5 pm Monday to Friday). This was permissive user, and not user "as of right". Inside office hours parking was by permit only, such permits being obtainable from the reception desk in the Council Offices. In practice only users of the building were granted such permits. Again however, this was permissive user, and not user "as of right".

16. Over and above that however, it is surely absurd for the Applicant to contend that user for the purposes of car parking can be construed as indulgence in “lawful sports and pastimes”.
17. Finally, whatever the status of the public’s user of the Council House Car Park, it was brought to an end on the 10<sup>th</sup> January 2007 when the area was fenced off and signage erected giving notice that the car park would be closed from that date until further notice. Therefore, whether or not the public has ever enjoyed relevant user as of right in respect of that area, it has certainly not done so since the 10<sup>th</sup> January 2007. Accordingly, the public did not enjoy user as of right in respect of those areas and “continue to do so” in order to fulfil the requirements of section 22(1A) of the CRA 1965, at the date when the Application was made, namely the 7<sup>th</sup> March 2007. The date when the Application was made is the critical date in this regard, as decided by the House of Lords in *Oxford County Council v Oxford City Council [2006] UKHL 25* (see in particular Lord Hoffmann at paragraph 44, and Baroness Hale at paragraph 143).

#### **College Street Car Park**

18. College Street Car Park and the access road to it from College Street has been the subject of various parking places orders from and including the 2<sup>nd</sup> August 1965 to date (see the copy of the original *City of New Sarum [Parking Places][Amendment] Order No 1 1965* at the exhibit marked "PJC9" to the statement of Peter John Crawford). Signs indicate regulated parking. User of this car park in accordance with the relevant regulations was permissive user, and not user “as of right”. Over and above that however, as with the Council House Car Park, it is surely absurd for the Applicant to contend that user of the College Street Car Park and the access road to it from College Street for the purposes of car parking can be construed as indulgence in “lawful sports and pastimes”.

#### **Bourne Hill Road**

19. This is an adopted highway for which Wiltshire is responsible as local Highway Authority. The public has the right of passage along it. It is not user “as of

right”. Over and above that however, as with the car parks, it is surely absurd for the Applicant to contend that user of the Bourne Hill road for the purposes of passage can be construed as indulgence in “lawful sports and pastimes”.

### **The Secret Garden and The Staff Open Area**

20. These are two open areas that have always been within the secure walled curtilage of the Council House. The Secret Garden is located to the north of the site of the recently demolished prefabricated offices at the rear of the Council House. The Staff Open Area is located to the south of the site of those prefabricated offices. Both of these open areas are within the area enclosed by brick walls much of which link and date back to the walls enclosing the courtyard to the front of the Council House. Thus the Secret Garden and the Staff Open Area and the Council House are properly regarded as comprising a self contained walled unit.
21. The public never had any access to the Staff Open Area, and has certainly not enjoyed any user “as of right”.
22. Prior to August 1996 the public had no access to the Secret Garden which was kept locked at all times and only used by the parks’ staff as a storage area. In 1996 the Secret Garden was renovated, and in August 1996 opened as a memorial garden in memory of those councillors who had died whilst in office. Thereafter, the Secret Garden was opened to the public approximately during office hours Monday to Friday, and kept locked at all other times, including weekends, bank holidays and outside office hours Monday to Friday (see the witness statements herein of Reg Williams, Parks Manager, and Andrew Cole, Senior Parks Officer at the Council). Such limited user of the Secret Garden by members of the public was permissive user, and not user “as of right”. Furthermore, it only continued for less than eleven years (from August 1996 to March 2007 when the Secret Garden was secured on the 9<sup>th</sup> March 2007 following the eviction of the protesters pursuant to the Order of Blackburne J. date the 7<sup>th</sup> March 2007 – as to which, see paragraph 17 of the witness statement herein of Peter John Crawford). Moreover, the limited public user was not for

the purpose of indulging in “lawful sports and pastimes” since it was a memorial garden as aforesaid.

**The Arts Centre Extension Building and The Disused Swimming Pool Building**

23. It is hard to imagine how the Applicant proposes to advance her Application for the registration of these two buildings as a town green. It is submitted that they are patently outwith anything contemplated by section 22(1A) of the CRA 1965. The Disused Swimming Pool Building has been closed for the last four years, during which time the public has had no access to that building at all. Public access to the Arts Centre Extension Building (leased to the St Edmund’s Arts Trust Limited – see the exhibit marked PJC 18 to the statement of Peter John Crawford) on the other hand has, of course, been permissive access, and certainly not user “as of right”.

**Frontage and Eastern Flank Of The Disused Swimming Pool Building**

24. Unlike the remainder of the Wyndham Recreation Ground, it could not be alleged by the Applicant that the areas of land in front of and along the eastern flank of the Disused Swimming Pool have been used in connection “lawful sports and pastimes”. Rather, these are areas that were set aside to provide access to the swimming pool, and steps, pathways and other structures have been built upon them accordingly. To be specific, the areas in question are the strips of land (a) fronting the Disused Swimming Pool and adjoining the College Street Car Park access road, and (b) running along the eastern flank of the Disused Swimming Pool and adjoining College Street. This is over and above the reasons stated in paragraphs 10 and 11 above as to why the entirety of the Wyndham Recreation Ground should not be registered as a town green in any event.

**Strip Of Land Beyond The Northern Wall To The Secret Garden**

25. A narrow strip of land runs beyond the northern wall to the Secret Garden and up to the pavement running alongside the College Street Car Park access road (“the Land Beyond”). The public were excluded from the Land Beyond by secure fencing that was erected around in on the 27<sup>th</sup> February 2007. Accordingly, the public did not enjoy user as of right in respect of the Land

Beyond and “continue to do so” in order to fulfil the requirements of section 22(1A) of the CRA 1965, at the date when the Application was made, namely the 7<sup>th</sup> March 2007. This is over and above the reasons stated in paragraphs 10 and 11 above as to why the entirety of the Council Grounds should not be registered as a town green in any event.

### **Hearing The Application**

26. This Application can only properly be dealt with by an oral hearing at a full independent inquiry (see Lord Hoffmann at paragraph 29 in *Oxford County Council v Oxford City Council [2006] UKHL 25*). It is submitted that this is a paradigm example of a case in which fairness makes an oral hearing not merely an option but a necessity (see Sullivan J. at pages 986-987 in *R (Cheltenham Builders Limited) v South Gloucestershire District Council [2004] JPL 975*), and moreover that the circumstances make it impossible for Wiltshire properly to adjudicate the Application otherwise than in accordance with advice received following an independent inquiry. Relevant factors include (a) that as local Highway Authority Wiltshire is an interested party in respect of the Application, and will presumably be making objection to it insofar as it potentially affects a stretch of adopted highway for which Wiltshire is responsible, (b) that Wiltshire is a potentially interested party in another sense, namely because there is a possibility that Wiltshire will become a Unitary Authority in the near future, in which case it would own most of the land potentially affected by the Application, (c) that the Council House development project (“the Project” as referred to in the witness statement herein of Peter John Crawford) which the Application threatens to disrupt is a very high profile and publicly controversial project (indeed there can be little doubt from the timing of the Application and the identity of the Applicant that the Application was made with a view to disrupting the Project), (d) that the consequences in terms of wasted costs and damages if the Project were disrupted by the Application being even partially successful, would be very considerable indeed, (e) there are at least two further objectors to the Application apart from the Council and presumably Wiltshire in respect of the highway, and (f) that the Application will inevitably give rise to important and difficult issues of both fact and law.

Signed .....

For and on behalf of Salisbury District Council

Dated the 29<sup>th</sup> May 2007