

**COMMONS REGISTRATION ACT 1965 (AS AMENDED) APPLICATION FOR
THE REGISTRATION OF TOWN OR VILLAGE GREEN:
WEST DEAN VILLAGE GREEN, WEST DEAN**

Purpose of Report

1. To inform the Committee of the outcome of a Pre-Inquiry Hearing, Further Submissions and the Recommendations of the Inspector.

Background

2. At its meeting on 5 March, 2003, the Committee considered objections to register land at West Dean as a Village Green. A copy of the Report to that meeting of the Committee is attached to this Report as Appendix A.
3. The Committee resolved: "To refer the Application to a Public Inquiry to be held jointly with Hampshire County Council because of the conflicting evidence and to request the Solicitor to the Council to negotiate with colleagues at Hampshire on the apportionment of costs".
4. Mr Vivian Chapman, Barrister of 9 Stone Buildings, Lincolns Inn, was appointed to act as Inspector.
5. Messrs Birketts, Solicitors for Mr and Mrs Morgan, the objectors (being the owners of Red Lion House and of that part of the Application Site shown shaded and hatched black on the plan attached to this Report as Appendix B) requested a Pre-Inquiry Hearing to raise legal issues, because they maintained that the applications were bound to fail on points of law.
6. The Pre-Inquiry Hearing was held on 24 April, 2003, the Inspector having carried out an unaccompanied site visit beforehand. The Solicitor to Hampshire County Council had agreed to be represented at the Hearing by Wiltshire County Council. The Solicitor for the Parish Council (the Applicant) and for Mr and Mrs Morgan (the Objectors) attended and made legal submissions. The Inspector advised that he would provide the parties with a written Decision.

Legal Issues Discussed at the Pre-Inquiry Hearing

7. The three points of law disputed as a preliminary issue are set out at paragraph 7 of the Inspector's First Report, a copy of which is attached as Appendix C. The Inspector dismissed the first two points of challenge but accepted the third based on the absence of continuity of user.
8. Section 22 of the Commons Registration Act 1965 (CRA) (as amended by Section 98 of the Countryside and Rights of Way Act 2000) (CROW) sets out the criteria which must be satisfied for land to be registered as a Village Green. One of the criteria is that there must be continuing use of the land for recreational purposes. Messrs Birketts argued that after purchasing the property in 1995, Mr and Mrs Morgan had prevented the use of that part of the land which belongs to them. The Parish Council's Solicitor conceded that there is no recreational user of the land in Mr and Mrs Morgan's ownership. Therefore, the application is unsustainable in relation to Mr and Mrs Morgan's land for lack of continuing user.
9. However, the Parish Council's Solicitor asked that determination of the Application be deferred until such time as Regulations are made under Section 22 CRA (as amended). It is expected that Regulations will specify a period of time during which user may have ceased but which would allow an application to be valid. Messrs Birketts argued that, until the Regulations are made, the uncertainty created would leave a blot on Mr and Mrs Morgan's title which would inhibit any sale of the property. This argument was accepted by the Inspector.

Recommendations in the Inspector's First Report

10. The Inspector concluded and recommended that
 - (i) The Registration Authorities should reject the Applicant's Application for a deferment until the Regulations are made;
 - (ii) The Registration Authorities should reject the Application in relation to such part of the Application Land as lies within the boundaries of Mr and Mrs Morgan's registered title;
 - (iii) The Registration Authorities should accede to the Application in relation to such part of the Application Land as lies outside the boundaries of Mr and Mrs Morgan's registered title;
 - (iv) The Registration Authorities should cancel the proposed Public Inquiry as being unnecessary;
 - (v) The Registration Authorities should, as required, give reasons for part rejection of the Application and those reasons should be "for reasons set out in the Inspector's Report dated 25 April 2003".

Response to Inspector's First Report

11. In letters dated 5 and 11 June, 2003, Mr Alan Willis of Messrs Whitehead Vizard, Solicitor for the Parish Council, questioned the reasoning in the Inspector's Report insofar as it related to the land owned by Mr and Mrs Morgan and raised new legal issues. The letters from Mr Willis are available in the Members' Room.
12. Mr Willis argued that although the present application may not succeed, there is evidence to support a new application based on immemorial user (as distinct from a claim based on more recent user). The Parish Council was, therefore, free to renew the application should the present one be rejected. Any prejudice to Mr and Mrs Morgan arising from a deferral of the present application would therefore only be removed to a very limited extent.
13. Mr Willis also raised the "Trap Grounds" Case referred to by the Inspector in his First Report. One of the parties to that case has appealed to the High Court and it is expected that the case will be heard in the autumn. Enquiries have been made of both Oxfordshire County Council (one of the parties to the action) and to the High Court but no hearing date has yet been fixed. Mr Willis has proposed that consideration of the present application should await the Trap Grounds decision.
14. Messrs Birketts were invited to comment on the correspondence from Mr Willis and their comments are available in the Members' Room.
15. Messrs Birketts contend among a number of points that if the Parish Council is changing its claim to one based on customary rights, then a new application should be made and a full Hearing held to examine the evidence in detail. They accept that if Regulations are made under the amended Section 22 CRA, then the Applicant may make a further application. However, Birketts' view is that in such a case, the new evidence would have to be tested at a full Inquiry.
16. The County Council has also received correspondence from Mr Francis Morland and copies of his letters are available in the Members' Room. Mr Morland has challenged the Inspector's interpretation of Section 22 CRA (as amended) and feels that the matter should go forward to a full Inquiry.
17. The submissions referred to in paragraphs 11, 14 and 16 were sent to the Inspector for his consideration.

Inspector's Further Report

18. The Inspector's Further Report is attached to this Report as Appendix D. Mr Chapman has considered the issue of continuing user under the amended Section 22 CRA in the light of Whitehead Vizard's argument that the DEFRA website recommends Registration Authorities to allow a reasonable time after recreational user is prevented for lodging an application to register a Village Green. Mr Chapman's view is that DEFRA's interpretation is inconsistent with the wording of

the legislation. Furthermore he points out that in the present case the applications were made several years after user of the Morgans' land was prevented.

19. The main point for determination, therefore, is whether the Applicants should be allowed to amend the basis of their claim to one relying on an argument that the land was registrable because it had become a Green under the old definition of Town or Village Green before it was amended by Section 98 CROW. If so, the Inspector's view is that a decision on the application should be deferred until after judgement in the Trap Grounds Case.

The Trap Grounds Case

20. The two issues which are the subject of an application to the High Court for a Declaration are whether :
 - (i) an application can be sustained based on a 'customary right to indulge in lawful sports and pastimes' without the requirement for continuity of user;
 - (ii) an application may be accepted in part and rejected in part.

Recommendations in the Inspector's Further Report

21. The Inspector recommends that the two Registration Authorities "(a) Defer their decision until after judgement in the Trap Grounds Case and (b) Invite further written submissions from the parties after judgement in the Trap Grounds Case." In reaching this recommendation, the Inspector has expressed the view that any prejudice to Mr and Mrs Morgan by deferring a decision on the application is outweighed by the injustice caused to the Parish Council in reaching a decision before the result of the Trap Grounds Case is known.
22. In his First Report, the Inspector recommended that the County Council as Registration Authority should reject the application in relation to Mr and Mrs Morgan's land but register the land lying outside their boundary. In the light of further submissions, he has now changed his recommendation as set out in paragraph 21 above.
23. The recommendation to the Regulatory Committee of Hampshire County Council on 16 July 2003 is as follows:

"The Application for Registration be deferred until after the Judgement in the Trap Grounds Case and thereafter invite further submissions from the Parties after Judgement in the Trap Grounds Case for the reason given in Mr Chapman's Report dated 1 July 2003."

However, Hampshire's recommendations are not a relevant consideration for this Committee. The application to Wiltshire County Council must be considered on its own facts.

24. In legal terms, both courses of action are available to the County Council. However, the issue for consideration is whether the greater prejudice lies with Mr and Mrs Morgan in deferring a decision until the Trap Grounds Case is known or with the Parish Council in making a decision in accordance with the Inspector's first recommendations.
25. In the event of the law being changed by the Trap Grounds decision, it would be open to the Parish Council to make a further application.

Recommendations

26. The Committee is asked to consider the issue of prejudice to the parties. If the Committee considers that the prejudice to the Morgans by delaying dealing with the application is greater, the Committee is recommended to follow the recommendations in the Inspector's First Report namely:
- (i) The Registration Authorities should reject the Applicant's Application for a deferment until the Regulations are made;
 - (ii) The Registration Authorities should reject the Application in relation to such part of the Application Land as lies within the boundaries of Mr and Mrs Morgan's registered title;
 - (iii) The Registration Authorities should accede to the Application in relation to such parts of the Application Land as lies outside the boundaries of Mr and Mrs Morgan's registered title.
 - (iv) The Registration Authorities should cancel the proposed Public Inquiry as being unnecessary;
 - (v) The Registration Authorities should, as required, give reasons for part rejection of the Application and those reasons should be "for the reasons set out in the Inspector's Report dated 25 April 2003".
27. If the Committee considers that the prejudice to the Parish Council is greater by not awaiting the judgment in the Trap Grounds Case, the Committee is recommended to follow the recommendations in the Inspector's Further Report namely:
- (i) The Registration Authorities should defer their decisions until after judgement in the Trap Grounds Case and
 - (ii) The Registration Authorities should invite further written submissions from the parties after judgement in the Trap Grounds Case.

PETER SMITH
Director of Corporate Services

Unpublished documents relied upon in the production of this report:

The Application for Registration and the Representations Received

Environmental impact of the Recommendations contained in this Report:

Approval of the Application for Registration would result in part of the land known as West Dean Village Green being registered as a Village Green under the Commons Registration Act 1965 (as amended).