

REGULATORY COMMITTEE  
11 February 2009

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**COMMONS ACT 2006**  
**APPLICATION FOR THE REGISTRATION OF A**  
**TOWN OR VILLAGE GREEN: LAND AT BEECH GROVE, TROWBRIDGE**

**Purpose of Report**

1. To ask the Committee to decide whether to hold a non-statutory local inquiry with Mr William Webster, who has currently been appointed, continuing as Inspector or whether a new Inspector should be appointed in his stead.

**Background**

2. On 1 July 2007, Roger Feltham applied to the County Council to register Beech Grove Community Garden as a town green. Mr Feltham's application was accompanied by a statutory declaration and 34 supporting statements. West Wiltshire District Council (WWDC) as landowner objected to the application on the ground that the user evidence submitted by the applicant did not satisfy the statutory requirements.
3. On 23 April 2008, Members considered the application and objection. In view of the challenge to the evidence submitted, Members felt that it should be tested orally. The Committee therefore resolved "to refer the application to a non-statutory local inquiry and to request the Inspector to make a recommendation to this Committee on the application". An excerpt from the Minutes of the meeting is attached as **Appendix 1** and a copy of the previous report with appendices is available in the Members' Room.
4. In July 2008 Mr William Webster, a barrister from 12 College Place, Southampton, was appointed to act as Inspector. Mr Webster is experienced in this area of law and has previously acted as Inspector for the County Council in its capacity as registration authority at another local inquiry relating to a town green application. Prior to appointing Mr Webster, the Deputy Head of Legal Services checked that Mr Webster was able to accept the instructions and had not previously advised WWDC on this matter. Mr Webster confirmed that he had not advised WWDC on the Beech Grove application and that there was no conflict of interest. He had previously advised WWDC on a general issue which was not site specific, that of management of town and village greens after registration. Since there was no reason why Mr Webster could not act as Inspector at the inquiry, he was formally instructed by the County Council.
5. In September 2008, Mr Webster issued Directions for the conduct of the inquiry. The parties were notified that Mr Webster had been appointed and

were sent copies of the Directions. Mr Adams, Chair of the College Estate Residents' Association, who is now acting on behalf of the applicant, sought clarification on some points and on 2 October, he submitted available dates for the inquiry. The inquiry was subsequently arranged for 18 – 20 February 2009.

6. On 5 November 2008 the local councillor for the area raised concerns about the appointment of Mr Webster as Inspector. These concerns were taken up by the applicant, who complained that the appointment of Mr Webster could be seen as unfair and biased towards WWDC.
7. In November 2008, Mr Webster received a copy of a letter that the applicant had sent to the Chief Executive asking that Mr Webster be stood down as Inspector on the ground that he had previously acted for WWDC. By e-mail to the Deputy Head of Legal Services, Mr. Webster commented as follows: "I certainly advised WWDC on a TVG [town or village green] matter in July. The advice I gave was not site-specific and had no bearing on the Beech Grove site nor any issue raised on the current application. I do not consider myself to be conflicted. The difficulty in all this is that there are a limited number of specialists in this branch of the law, all of whom (like myself) are routinely acting for applicants, objector landowners (more often than not local authorities) and registration authorities". Mr Webster also wrote to the Chief Executive along these lines and a copy of his letter is attached at **Appendix 2**.
8. There have since been further complaints from the applicant's representative, on behalf of the College Estate Residents' Association. There has also been some publicity in the local press. The general view of the complainants, as expressed in correspondence, appears to be that Mr Webster would not be an independent inspector since he has advised WWDC on a TVG matter and the inquiry process would be neither fair nor impartial.

### **Main Considerations for the Council**

9. In view of the complaints made by the applicant's representative and others, it was decided that the inquiry arranged for 18 – 20 February would be postponed in order that Members can consider whether the County Council as registration authority should continue to retain Mr Webster as inspector or should appoint a different barrister to take over this role.
10. The legal position is that there is no reason to appoint a new inspector, since it is clear that Mr Webster has not advised WWDC on the current application nor had any dealings with the Beech Grove site. His advice to WWDC was in general terms and not site-specific. There is no conflict of interest which would prevent Mr Webster from continuing as inspector.
11. There are a limited number of barristers sufficiently experienced in this area of law to act as inspector and the County Council seeks to appoint local barristers where possible in order to avoid the greater costs of appointing from outside the area.

12. There is also the question of whether a decision to change the inspector at this stage as a result of complaints which have no valid basis would set a precedent for future management of TVG inquiries.
13. However the purpose of a non-statutory inquiry is to enable the inspector to test the evidence orally to ensure that all relevant factors are taken into account and all irrelevant factors are discounted when making his/her recommendation to the Council. It is therefore important that the applicant, the objector(s) and their supporters play a full role at the inquiry and consider the inquiry process to be fair and transparent.
14. The inquiry will not now take place until after 1<sup>st</sup> April, when ownership of the land will pass to Wiltshire Council but the County Council's Director of Environmental Services has confirmed that in principle the landowner's objection will be maintained.

### **Environmental Impact of the Recommendation**

15. None

### **Risk Assessment**

16. Either party may be able to challenge the County Council's decision in relation to the appointment of the inspector in the High Court. Similarly after the inquiry, if the County Council makes a decision based on the inspector's recommendation and either party to the proceedings considers that the decision is wrong in law or procedurally improper, they may bring judicial review proceedings to challenge the decision.

### **Financial Implications**

17. Mr Webster's fees have been paid to cover his initial work on the case and the Directions he has issued. There has been no cost for cancellation of the proposed venue.

### **Options Considered**

18. Members may:-
  - a) decide that Mr Webster should be retained as inspector at the non-statutory local inquiry and subsequently make a recommendation to the Committee on the application;
  - b) decide that a different barrister experienced in this area of law should be appointed as an inspector to hold a non-statutory local inquiry and make a recommendation to the Committee on the application.

## **Recommendation**

19. Members are asked to consider options a) and b) at paragraph 18 above and decide how the County Council in its capacity as registration authority should proceed in respect of the appointment of an inspector to hold a non-statutory local inquiry and make a recommendation to the Committee on the application.

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