

REGULATORY COMMITTEE

18th March 2009

COMMONS REGISTRATION ACT 1965 (as amended)
APPLICATION FOR THE REGISTRATION OF A
TOWN OR VILLAGE GREEN: LAND AT BOURNE HILL, SALISBURY

Purpose of Report

1. To ask the Committee to consider the Inspector's Report on the Preliminary Issue and Recommendations and to seek a decision on the application.

Background

2. On 7 March 2007, Mrs Bell applied to register land in Salisbury known as (a) Wyndham Recreation Ground/Wyndham Park (b) Council Grounds/Bourne Hill Gardens (c) Greencroft (d) St Edmunds Churchyard and (e) The Secret Garden as a town green.
3. The application was advertised in April 2007 and in May 2007 objections were received from the landowner, Salisbury District Council ('SDC'); the lessee of part of the land, St Edmunds Arts Trust Limited (T/A Salisbury Arts Centre) and from Christopher J Whitmey.
4. The Regulatory Committee considered Mrs Bell's application at its meeting on 19 December 2007 and a copy of the report is attached as **Appendix 1**. The Committee resolved to appoint an Inspector to conduct a non-statutory public inquiry and Miss Lana Wood, a barrister who specialises in the area of law of town and village greens, was appointed by the Registration Authority.
5. The Inspector prepared directions on 28 April and as there were a number of preliminary issues to be considered, the Inspector held a Pre-Inquiry Meeting at Salisbury Arts Centre on 1 May 2008. The preliminary issues are explained in the report to Regulatory Committee dated 21st May 2008 attached as **Appendix 2**. Following the Pre-Inquiry Meeting an Interim Report and Recommendations dated 2nd May 2008 ("1st Report") was produced and referred to Regulatory Committee on 21st May 2008.

6. The Committee resolved to accept the Inspector's recommendations that Wiltshire County Council (in its capacity as successor in title to SDC) be permitted to adopt and pursue the objection lodged by SDC to Mrs Bell's application and that the Applicant's application to debar Mr Whitmey from pursuing his objection be refused for the reasons set out in her 1st Report.
7. At the Pre-Inquiry Meeting, the Inspector had invited written submissions on the question of whether the use of the application land had been 'by right' or 'as of right' i.e. whether the public were lawfully entitled to use the land ("by right") or were using the land without use of force, openly and without permission as if they had the right ("as of right").
8. Having considered the submissions, on 19th November 2008 the Inspector produced a report on the Preliminary Issue and Recommendations ("2nd Report"). The 2nd Report recommended that the Registration Authority should reject the application so far as it related to all the application land except the Secret Garden. The Inspector further recommended that the Registration Authority should require the applicant to confirm at what times and during what periods she accepted that the gates to the Secret Garden were locked and to produce further evidence relating specifically to use of the Secret Garden to support her claim that it was used as of right, if she wished to do so. In the circumstances, officers decided to proceed with the second recommendation in order to clarify the position regarding the Secret Garden, so that the Regulatory Committee could consider the application as a whole.
9. In December 2008, the Inspector was informed by one of objectors Mr Whitmey that the date given for her report in paragraph 12.6 (19th November) was inconsistent with the actual date of the report (21st November) and for that reason the Inspector produced a corrected and re-dated report on 7th January 2009 ("3rd Report").
10. Following receipt of the applicant's response regarding the Secret Garden (which included the production of further minutes of the Council), the Inspector produced a Corrigendum to the Report on the Preliminary Issue and Recommendations dated 19 November 2008 and Further Report and Recommendations dated 7 January 2009 ("4th Report") which dealt with the documents served by the Applicant on 12 December 2008. The 4th Report recommended that use of the Secret Garden was not 'as of right' but use which was permitted and controlled by the Landowner (i.e. 'by right') and that the Registration Authority should reject the application in its entirety.
11. Copies of all the documents and the Inspector's Reports are available in the Members Room.

Main Considerations for the Council

12. 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 a period of not less than 20 years and such use has continued to the date of the application.

13. The application is dated 7th March 2007. The application land is (a) Wyndham Recreation Ground/Wyndham Park (b) Council Grounds/Bourne Hill Gardens (c) Greencroft (d) St Edmunds Churchyard and (e) The Secret Garden and a copy of the Plans showing the application land and locality are attached to the application form. The relevant qualifying period is therefore March 1987 to March 2007.

14. Having considered all the evidence and submissions, including further submissions from the applicant received on 12th December 2008 concerning the locking of the Secret Garden, the Inspector made the following recommendations, which are set out in her 3rd and 4th Reports and in her Executive Summary ("5th Report") which is attached as **Appendix 3**:
 - i. That such use as there had been of the Council Grounds/Bourne Hill Gardens by the local inhabitants within the relevant 20 year period had been 'by right' and not 'as of right'.

 - ii. That such use as there had been of Wyndham Recreation Ground/Wyndham Park by the local inhabitants within the relevant 20 year period had been 'by right' and not 'as of right'.

 - iii. That such use as there had been of The Greencroft by the local inhabitants within the relevant 20 year period had been 'by right' and not 'as of right'.

 - iv. That such use as there had been of St Edmunds Churchyard by the local inhabitants within the relevant 20 year period had been 'by right' and not 'as of right'.

 - v. That such use as there had been of the Secret Garden by the local inhabitants within the relevant 20 year period was not use 'as of right' but use which was permitted and controlled by the Landowner (i.e. by right).

15. The Inspector has therefore recommended that the Registration Authority should reject Mrs Bell's application in its entirety.
16. In determining the Town Green application the only question for the Registration Authority is whether the statutory conditions for registration are satisfied as set out in paragraph 12. The Registration Authority has no discretion to balance competing interests. It must be impartial and must deal with the application and evidence as presented by the parties taking into account any recommendations by the Inspector.

Environmental Impact of the Recommendation

17. 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

18. There are potential costs implications if there were a legal challenge to the decision made. The County Council would be at risk of challenge by way of Judicial Review in the High Court by either the applicant or the objectors if the County Council chose not to accept the Inspector's Recommendations. Members must be satisfied on the balance of probabilities that the statutory criteria have been fully met before the application can be approved. It should also be borne in mind that Town/Village Green applications can cause considerable controversy in the locality concerned.

Financial Implications

19. 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 expensive and frequently generate a significant costs liability, which could be in excess of £50,000.

Options Considered

20. Members may:-
 - a) accept the Inspector's recommendations as set out at paragraph 14 i. – v. above;

- b) reject the Inspector's recommendations. If so, Members must give full reasons for the rejection;
- c) accept/reject any of the Inspector's recommendations. If Members reject any of the Inspector's recommendations, they must give reasons for the rejection.

Reasons for Recommendation

- 21. The reasons for the recommendation are set out in full in the Inspector's four reports and the Executive Summary.

Recommendation

- 22. It is strongly recommended that Members accept the Inspector's recommendation that the Application to register the Land at (a) Wyndham Recreation Ground/Wyndham Park (b) Council Grounds/Bourne Hill Gardens (c) Greencroft (d) St Edmunds Churchyard and (e) The Secret Garden, which is also described in Part 3 of the CR Form 30 under application number 2007/2 and shown edged red on the Plan attached to the application, be rejected for the reasons set out in the Inspector's Report on the Preliminary Issue and Recommendations corrected and re-dated 7th January 2009 and in the Inspector's Corrigendum to the Report on the Preliminary Issue and Recommendations dated 19th November 2008 and Further Report and Recommendations dated 7th January 2009.

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