

In the Matter of
an Application to Register land at
Bourne Hill, Salisbury
as a Town or Village Green

EXECUTIVE SUMMARY OF
REPORT ON THE PRELIMINARY ISSUE
AND RECOMMENDATIONS
of Miss LANA WOOD AND OF
THE FURTHER REPORT
of Miss LANA WOOD

County Secretary & Solicitors Department

Wiltshire County Council

County Hall

Trowbridge

WILTS

BA14 8JN

Ref: DF/WCS06729

Barbara Mills

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1. The Village Green Application

- 1.1. On 7th March 2007 Wiltshire County Council, as registration authority (“the Registration Authority”), received an application from Mrs Christine Bell of Basement Flat, 67a Wilton Road, Salisbury, Wiltshire SP2 7ER to register land known as Bourne Hill Park, The Greencroft, St Edmunds Arts Centre Graveyard, College Street Car Park and Wyndham Park as a town or village green pursuant to s.13 of the Commons Registration Act 1965 (“the CRA 1965”).
- 1.2. The application was duly publicised. The following objections were received by the Registration Authority:
 - (1) An Objection dated 29th May 2007 from Salisbury District Council
 - (2) An Objection dated 24th May 2007 from St Edmunds Arts Trust Limited (t/a Salisbury Arts Centre)
 - (3) An Objection dated 15th June 2007 from Mr Christopher Whitmey
- 1.3. By letter dated 27th March 2008, enclosing a marked plan entitled “Revised Application Plan”, the Applicant modified the extent of the land which she sought to have registered as a town or village green (the Revised Application Plan). In my judgment no prejudice is caused to the Objectors by allowing the Applicant to modify the extent of the land the subject of the application, and the modification should be permitted.

2. The Application Land

2.1. The application land comprises five areas:

2.1.1. Wyndham Recreation Ground/ Wyndham Park

This is the area of land marked with the words "Wyndham Park" in manuscript on the Revised Application Plan and shown edged in red on attachment 1 to the Applicant's submissions on the preliminary issue. Within that area, the area occupied by the former swimming pool and marked with the words "Swimming pool" in manuscript and edged in black on attachment 1 to the Applicant's submissions on the preliminary issue is now excluded from the application land.

2.1.2. Council Grounds/ Bourne Hill Gardens

This is the area of land marked with the words "Bourne Hill" in manuscript on the Revised Application Plan and shown edged in green on attachment 1 to the Applicant's submissions on the preliminary issue. The area occupied by the Council House to the west of the green line forming a rectangle from the boundary with the highway at Bourne Hill to the south to the boundary with the area referred to as "the Secret Garden", defined below, is now excluded from the application land.

2.1.3. Greencroft

This is the area of land marked with the words "Greencroft" in manuscript on the Revised Application Plan and shown edged in red on attachment 1 to the Applicant's submissions on the preliminary issue. A path running approximately north to south on the eastern side of the land is excluded from the application land.

2.1.4. St. Edmunds Churchyard

This is the area of land marked with the words "Arts Centre" in manuscript on the Revised Application Plan and shown edged in green. The whole of the area occupied by the Salisbury Arts Centre Building and its extension is now excluded from the application land. The area marked in manuscript "College Street Car Park" on the Revised Application Plan and shown hatched in black on that plan to the north of this area is also excluded from the application land.

2.1.5. The Secret Garden

This is the rectangular walled area of land, shown with a pond marked at its centre, to the north of the area occupied by the District Council offices.

2.2. The Greencroft is registered at HM Land Registry under Title Number WT253153. Salisbury District Council was registered as proprietor of Title Number WT253153 on 10th October 2006.

- 2.3. The other parts of the application land, together with the areas excluded from the application land referred to above, are registered at HM Land Registry under Title Number WT250411. Salisbury District Council was registered as proprietor of Title Number WT250411 on 5th July 2006. Its title is subject to a lease dated 23rd January 2004 of Salisbury Arts Centre for a term of 99 years from 24th June 2001. The Lessee's title is registered under Title Number WT228665. The area demised by the Lease is outlined in red on the Title Plan, and comprises the building, including its extension, but not the churchyard.

3. Appointment of Inspector

- 3.1. By resolution of the Regulatory Committee of Wiltshire County Council made on 19th December 2007 the Registration Authority resolved to refer the application to a non-statutory public inquiry to be conducted by a barrister experienced in the law of town and village greens with a request that he/she makes a recommendation to the Committee on the application. Lana Wood was the barrister so appointed ("the Inspector").

4. Procedure

- 4.1. The Inspector held a Pre-Inquiry Meeting on 1st May 2008. The Inspector decided to dispose of the question of whether the use (such as there had been) of the application land had been by right or as of right as a preliminary issue issued directions for the proper conduct of that preliminary issue at the Pre-Inquiry Meeting.
- 4.2. The Inspector produced an Interim Report and Recommendations dated 2nd May 2008. On 21st May 2008 the Registration Authority's Regulatory Committee resolved to accept the Inspector's recommendations.
- 4.3. All parties, with the exception of St Edmunds Arts Trust Limited (t/a Salisbury Arts Centre), served written submissions on the preliminary issue in accordance with the Inspector's directions.
- 4.4. The Inspector produced a Report on the Preliminary Issue and Recommendations originally dated 19th November 2008 but amended and re-dated 7th January 2009 ("the Report").
- 4.5. The Inspector's Report sets out the submissions made by each parties on the Preliminary Issue in sections 5-9 of the Report.
- 4.6. The Inspector 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 that part of the application land was used as of right, if she wished to do so. The Registration Authority followed the Inspector's recommendation. The Further Report dated 7th January 2009 ("the Further Report") contains the Inspector's advice and recommendation in relation to the application to register the Secret

Garden as a town or village green following receipt of the Applicant's response.

5. The Law

- 5.1. The applicable definition of a prescriptive green is contained in section 22 of the Commons Registration Act 1965 as amended by section 98 of the Countryside and Rights of Way Act 2000:

“...land on which for not less than twenty years a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged in lawful sports and pastimes as of right, and either (a) continue to do so, or (b) have ceased to do so for not more than such period as may be prescribed, or determined in accordance with prescribed provisions.”

- 5.2. No regulations have been made to implement paragraph (b).
- 5.3. Use of land “as of right” means use without force, stealth or permission and does not turn on the subjective beliefs of users¹. User “as of right” must be use as a trespasser and not use pursuant to a legal right².
- 5.4. The law is set out in detail in section 10 of the Inspector's Report and in section 3 of the Further Report.

6. The Inspector's Conclusions

- 6.1. In section 11 of the Report the Inspector applied the law to the facts as she found them to be in relation to the preliminary issue. In section 4 of the Further Report the Inspector applied the law to the facts as she found them to be in relation to the Secret Garden.

Wyndham Recreation Ground/ Wyndham Park

- 6.2. The Inspector was of the opinion that it is more likely than not that Wyndham Recreation Ground/ Wyndham Park was appropriated under section 69 of the Public Health Act 1925 on acquisition. She found that there was no evidence that Wyndham Recreation Ground/ Wyndham Park had since been appropriated to any other use. She therefore concluded that during the relevant 20 year period Wyndham Recreation Ground/ Wyndham Park has been held under section 19 of the Local Government (Miscellaneous Provisions) Act 1976. Any use of Wyndham Recreation Ground/ Wyndham Park by the local inhabitants within the relevant 20 year period therefore had been by right rather than as of right.

The Greencroft

- 6.3. The Inspector found that the passing of byelaws in 1978 under the Open Spaces Act 1906 in relation to the Greencroft indicated that the area had been

¹ R v Oxfordshire CC ex p Sunningwell PC, *ibid*.

² R (Beresford) v Sunderland CC [2003] UKHL 60, [2004] 1 AC 889, paras 3, 9 & 30

appropriated to open space use under the Open Spaces Act 1906 by, at the latest, 1978. She concluded therefore that any use of the Greencroft by the local inhabitants within the relevant 20 year period had been by right rather than as of right.

St Edmund's Churchyard

- 6.4. The Inspector found that all of the documentary evidence was consistent with WCC's case that St Edmund's Churchyard was acquired and is held under the Open Spaces Act 1906. Although the Conveyance itself did not recite that it was made pursuant to the Open Spaces Act 1906, she considered that it was open to her to infer from all the circumstances that the land was acquired pursuant to those powers and did so conclude. Such use as there has been of St Edmund's Churchyard by the local inhabitants within the relevant 20 year period had been by right rather than as of right.

The Secret Garden

- 6.5. The Applicant accepted that the Secret Garden was locked during the relevant period, both at night, and, latterly, following the retirement of the last Parks Attendant (on an unspecified date) at random times during the day. The Inspector was of the opinion that locking and unlocking gates is a clear overt act by the landowner. By locking the gates the landowner clearly asserted his right to exclude the public from the area at times of the landowner's choosing. She considered that a licence to use the land at times when the gates were left open could clearly be implied from the securing of the area by the landowner so as to exclude members of the public at other times. She therefore concluded that when the public did make use of the area, at times when the gates were not locked, they did so by implied permission of the landowner. Accordingly such recreational use as there had been of the Secret Garden was not use as of right, but was use which was permitted and controlled by the landowner.

7. Inspector's recommendations

- 7.1. The Inspector **recommended** that the Registration Authority should reject the application in its entirety.
- 7.2. The Registration Authority must give the applicant written notice of its reasons for rejecting the application³. The Inspector **recommended** that the reasons are stated to be "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 2008".

Lana Wood
23 January 2009
Lincoln's Inn

³ The Commons Registration (New Land) Regs. 1969 reg 8 (1)