

WILTSHIRE COUNCIL

COMMONS ACT 2006

IN THE MATTER OF AN APPLICATION TO REGISTER LAND DESCRIBED AS 'GREAT LEES FIELD' AT SEMINGTON, Nr TROWBRIDGE AS A NEW TOWN OR VILLAGE GREEN

AGREED NOTE REGARDING A JOINT REQUEST FOR AN ADJOURNMENT

Introduction

1. This agreed note states the parties' request that the Inspector adjourns the inquiry in relation to the above town/village green application to a date not before the beginning of March 2020 and explains the reasons for the request.
2. The parties have reached an agreement in principle that the application will be withdrawn in exchange for, amongst other things, the dedication of a footpath around the perimeter of the site. The purpose of the adjournment would be to give the parties time to complete the details of this agreement, allowing the application to be withdrawn.
3. As set out below, the Inspector has a power to adjourn to enable the parties to complete their settlement agreement, and has a power to allow withdrawal of the town and village agreement application, on which any settlement agreement would be conditional, upon the successful conclusion of that settlement process.
4. The Inspector is invited to grant the adjournment request for the reasons set out below.

Legal framework

5. The Inspector has the power to adjourn the inquiry to a future date (Commons Registration (England) Regulations 2014, Regulation 29(9)).
6. The Registration Authority acting through the Inspector has an implied power to allow the withdrawal of the application.
7. This is recognised in paragraph 61 of the DEFRA guidance, Section 15 of the Commons Act 2006 – Guidance notes for the completion of an application for the registration of land as a town or village green outside the pioneer implementation areas (October 2013), which advises applicants that (emphasis added):

“...If you decide at any stage not to proceed with your application, **the registration authority has discretion either to take no further action on your application**, or to go ahead and determine the application you made, based on the evidence available.”
8. An analogous power to allow a variation of an application was recognised to exist by the House of Lords in *Oxford City Council v Oxford County Council* [2006] 2 AC 674.

9. In the first instance decision ([2004] Ch 253), Lightman J held at paragraph [73] of his judgment that there was no power to allow an amendment. The Judge drew a distinction between a planning application and an application for a town and village green. Unlike a planning application, the Judge held that a TVG application:

"is made for the benefit of the local inhabitants and, as there is a public interest in the full and proper determination of their rights, **it is not open to the applicant, whether by way of a deal with the landowner or otherwise, to prevent the merits of the application (as made) being fully investigated: see the *Anstey case* [1985] Ch 329"**... .

10. However, Carnwath LJ in the Court of Appeal overturned the High Court judgment on this point ([2006] Ch 43). Carnwath LJ held at [102-4] that the registration authority had an implied power to vary an application, and described as sensible and legally unobjectionable the view expressed on the issue by the village green inspector, Mr Vivian Chapman, which was copied out in the judgment as follows (emphasis added):

"My view is that an applicant under section 13 has no absolute right to amend or withdraw an application. It is not unknown for campaigners to make and then purport to withdraw and resubmit section 13 applications as a tactic to inhibit the development of land. I should make it clear that there is no question of such a tactic in this case but I consider that the registration authority must have a power to insist on determining a duly made application so that the status of the land is clarified in the public interest. **However, I consider that it is, as a matter of common sense, implicit in the 1969 Regulations that a registration authority does not have to proceed with an application that the applicant does not wish to pursue (whether wholly or in part) where it is reasonable that it should not be pursued.** It would be a pointless waste of resources for a registration authority fully to process an application that the applicant did not wish to pursue whether wholly or in part unless there were some good reason to do so. In the present case, the city council as landowner has made it clear, through its counsel, that it does wish to have the status of the Trap Grounds as a whole determined. I consider that it is a reasonable wish on the part of the landowner to know whether its land has become a town green or not. I can see no good reason why the status of the reed beds and the ten metre strip should remain in limbo. The fact that Miss Robinson would not object to use of the 10-metre strip as access road to the new school is entirely irrelevant to the question whether that land has become a prescriptive town green. My advice to the county council as registration authority is (a) that Miss Robinson does not have power to insist on amending her application, (b) that the county council has power to allow an amendment where it is reasonable to do so, (c) that in the present case it would be unreasonable to allow the proposed amendment because the city council as landowner wishes to have the status of its land determined, and (d) that the county council should determine the original application as a whole."

11. Carnwath LJ's judgment in this respect was endorsed by Lord Hoffman in the House of Lords at [61-62]. There, Lord Hoffman held that the registration authority acting by its inspector has a power to allow amendments to a TVG application. Its discretion should be "guided by the general principle of being fair to the parties" and the inspector should consider whether any prejudice would be caused by the amendment.

The discretion whether to allow withdrawal

12. The judgments of Lord Hoffman in the House of Lords at [61-62] and of Lord Justice Carnwath in the Court of Appeal at [102-104] apply either directly or by analogy to the discretion of the Inspector to allow withdrawal of a town and village green application:
 - a. They apply directly given that Carnwath LJ endorsed the view of Mr Chapman which was that (emphasis added) “a registration authority does not have to proceed with an application that the applicant does not wish to pursue (**whether wholly or in part**) where it is reasonable that it should not be pursued”.
 - b. If that is wrong, the judgments apply by analogy.
13. Accordingly, in deciding whether to allow a withdrawal of the application, the Inspector should consider whether this would be fair to the parties and whether any prejudice might be caused to third parties.
14. In relation to potential prejudice, there could be potential prejudice caused to third parties who assert that they have rights to use the site for lawful sports and pastimes, in so far as they may wish for the application to be determined.
15. For that reason, the Inspector should not allow the withdrawal of the application in due course unless and until:
 - a. a public notice has been issued by the Registration Authority inviting anyone wishing to object to the withdrawal to respond in writing by a specified date stating the reasons for their objection; and
 - b. the Inspector has had the opportunity to consider any objection made in response to the notice, including the submissions of the parties on that objection.
16. This notice should be publicised in the manner prescribed by Regulation 21(1), for a period of at least 42 days.

Whether to adjourn

17. The parties have reached an agreement in principle on the terms of a settlement, which would include, amongst other things, the dedication of a public footpath around the perimeter of the site if the application was permanently withdrawn.
18. There would be no purpose served in the inquiry proceeding on the listed dates of 4-5 December:
 - a. This would frustrate the ability of the parties to secure an amicable settlement, whilst also requiring the parties and the Registration Authority to incur significant unnecessary additional costs.
 - b. Any potential prejudice that might be caused to third parties can be addressed through the steps identified above.
19. The parties expect an agreement will be reached. They do not expect any party will wish to object to the proposed withdrawal upon satisfactory completion of that agreement.
20. The Friends of Great Lees called a meeting on 25 November 2019 to notify members of the village of Semington of the proposed settlement and the proposal was universally supported.
21. Time is needed for the parties to develop the terms of that agreement and for the Registration Authority to issue a notice publicising the intended withdrawal, as set out above.

Conclusion

22. For the reasons given, we invite the Inspector to allow an adjournment to not before March.
 - a. Realistically, the parties expect that any settlement will be finalised by the end of January.
 - b. The parties propose that they notify the Registration Authority if and when the settlement is concluded, at which point the above notification procedure should be commenced.
 - c. It is sensible therefore to re-list the resumption of the inquiry for a date not before March 2020 in the event that no settlement has been concluded.

23. The parties request that the Inspector's decision on this adjournment request be made through a written decision. The parties respectfully request that a decision be made urgently so that the parties know whether or not attendance will be required on 4-5 December.

24. If the Inspector agrees to the adjournment request, the parties undertake within seven days of the Inspector's decision to send their dates to avoid so that the resumed inquiry can be re-listed.

25. The parties also undertake to notify the Inspector and Registration Authority in writing within seven days of the successful conclusion of a settlement agreement, as per para 22(b) above.

Horatio Waller
On behalf of the Friends of Great Lees

Ruth Stockley
On behalf of the Objectors

27 November 2019