

Local Members Interest	
Phillip White	East Staffordshire - Dove

Countryside and Rights of Way Panel – 20 August 2019

Commons Act 2006– Section 15 Application for the Registration of Land known as College Fields off Forest School Street, Rolleston-on-Dove, Staffordshire as a Town or Village Green

Report of the Director of Corporate Services

Recommendation

1. That the Application Reference Number NVG37 for the registration of land known as College Fields off Forest School Street, Rolleston-on-Dove as a Town or Village Green should
 - (i) fail for the reasons set out in the Inspector’s Report dated 15 April 2019 and
 - (II) that the land should not be registered as a Town or Village Green.
2. That the applicants should be notified that the reasons for refusal of the application are those contained in the Inspectors report dated 15 April 2019.

PART A

Why is it coming here – what decision is required

1. Staffordshire County Council is the Registration Authority responsible for maintaining the register of Town or Village Greens under the Commons Act 2006, (“The Act”). Determination of applications for land to be registered as a Town or Village Green falls within the terms of reference of the Countryside and Rights of Way Panel of the County Council’s Regulatory Committee.
2. The Panel is acting in a quasi-judicial capacity when determining these matters and must only consider the facts, the evidence, the law and the relevant legal tests. All other issues and concerns must be disregarded.
3. To consider an application by Mr Liam Holmes and Mr Simon Anderson, to register land known as College Fields off Forest School Street, Rolleston-on-Dove as a Town or Village Green under Section 15 of the Commons Act 2019.
4. To consider the report of Mr William Webster, Barrister at Law, an Independent Inspector appointed by the County Council, in its capacity as Registration Authority, who presided at a non-statutory public inquiry held on 12 to 15 March 2019.
5. To decide, having regard to and having considered, the Application and the accompanying documentation, the objections to the Application, the Inspector’s Report, his findings of law and of fact, and his conclusions and recommendation as whether to accept or reject the Application.

PART B

Background:

6. The County Council is the Registration Authority responsible for maintaining the register of Town or Village Greens under the Commons Act 2006 ("the Act").
7. Members may recall that this application was afforded priority at their meeting on 19 October 2018. The Inspector makes reference to the issues that were contained in that report at para 56. He correctly states that those factors lie outside the scope of his report. Your officers would reiterate that the only considerations that the Panel should have in mind in arriving at its decision are the facts, the evidence, the law and the relevant legal tests.
8. Section 15(1) of the Act states that any person may apply to the Commons Registration Authority to have land registered as a town or village green ("TVG") in a case where one of the 3 following subsections applied.
9. The applicants made the application under section 15(2) which states:
This subsection applies where—
 - (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and
 - (b) they continue to do so at the time of the application.
10. The application was duly received and stamped with the date, 17 April 2013, and given the reference number NVG37. A copy of the Form 44 and accompanying statutory declaration is attached as Appendix A.
11. The procedure for dealing with applications on receipt and made under s15(1) of the Act is set out in the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007.
12. The County Council, as Registration Authority, published notice of the Application in accordance with the Regulations on 03 October 2018. One objection to the application was received.
13. The objection received was from the landowner, Bellway Homes. The objector invited the County Council to reject the application and provided a statement and documentation upon which that argument was based. This material is included within the objector's bundle referenced at para 17 below
12. The legislation provides no procedure for determining applications by means of an oral hearing where the evidence is disputed. Whilst it is, on occasion, possible to determine disputed applications on paper, where that is not the case the practice is to hold a non-statutory public inquiry into the matter. This process has been repeatedly approved by the courts including the Supreme Court.
14. The County Council, in accordance with the desire to deal with the matter without delay appointed an independent expert, Mr William Webster, a barrister versed in this area of law, to act as an Independent Inspector to
 - (i) advise on whether the application could be decided without recourse to an oral hearing
 - (ii) if not, to advise on the procedure to be followed and
 - (iii) to act as the Inspector for that process and

(iv) to report with his findings of fact and recommendations in the law so as to enable the Registration Authority to more properly determine the application.

15. Mr Webster advised that the facts were sufficiently in dispute that the matter could not be decided on the documentation alone and that the matter should proceed to a non-statutory public inquiry.

The Public Inquiry

16. Prior to the inquiry opening the Inspector issued directions to the various parties. These included the requirement that each party should prepare and circulate a bundle which included all the documents that they intended to rely upon.
17. The applicant's bundle was to be in red folders, the objector's in blue folders and the registration authority in green. To assist members of the Panel in coming to a decision a copy of all documents submitted to the Public Inquiry have been placed on deposit in the members' library and will be available for inspection prior to and at the meeting of the Panel. An electronic version is attached as Appendix B.
18. The Public Inquiry was held at the Rolleston Scout Headquarters which was a suitable venue close to the area of land claimed as a village green, on Tuesday 12 March to Friday 15 March 2019 inclusive. An evening session was held on 13 March for members of the public who were unable to attend during the day and wished to give evidence.
19. The inquiry was originally intended to run from the 12 to 14 March inclusive but thanks to the applicant being able to rearrange work commitments the additional session on 15 March was made possible.
20. Mr Holmes, one of the applicants, presented the case for the application.
21. The objector was represented by Mr Douglas Edwards QC of Counsel and Mr Alex Woolcott, a solicitor with Winckworth Sherwood LLP.
22. During the course of the inquiry 13 members of the public gave evidence in support of the application.
23. The Inspector carried out an accompanied site visit with both the applicant and the objector's representatives present.
24. After the conclusion of the public inquiry both applicant and objector provided written closing submissions. Copies of these are attached as Appendix C and D respectively.
25. Following receipt of the closing submissions the Inspector produced his report of the inquiry, dated 15 April 2019 and which is attached as Appendix E.

The Inspector's Report

26. Mr Webster has submitted a 96 page report to the Registration Authority which includes details of the oral evidence presented at the Public Inquiry.
27. Within his report the Inspector has broken down the requirements of the statute as set out in s15(2) of the Act. The different elements are set out in Para 8 to 20 and contain references to the case law as appropriate.
28. The Inspector has based his findings of fact on the evidence both oral and documentary and the summary of facts is to be found at para 244 to para 246 entitled "Summary of findings of fact".
29. In that summary the Inspector states that he finds that one component of the statutory requirement is not satisfied, that the use is not "*as of right*".

30. This element is set out in paragraphs 10 to 13 inclusive. The Inspector has set out his conclusions on this factor, the evidence he considers is applicable and the relevant case law in paragraphs 222 to 243.
31. Members need to carefully consider the findings of fact and law set out in these paragraphs. The attention of the Panel is drawn to the Inspector's recommendation at para 247.

Comments on Inspector's Report

32. Since the report was circulated the applicant has commented upon the report and asked that the panel consider a further statement. He has also asked that the Panel pay particular attention to his closing submissions. Copies of his email, comments and closing submission are attached at Appendix F
33. The objector and Inspector were provided with copies of Mr Holmes' comments for their views. The objector declined to comment further.
34. The Inspector responded, and a copy of his reply is attached at Appendix F. He does not consider that Mr Holmes has raised any issues that he has not addressed in the report.
35. Mr Holmes was provided with a copy of that reply and has commented further. A copy is included in Appendix F

Officer's comments

36. Members will be aware that in common with rights of way the use by members of the public must be "*as of right*" and must satisfy the Latin maxim, nec vi, nec clam, nec precario, (not by force, not secretly and not by permission). It is the first element that the Inspector considers is not satisfied, nec vi., not by force.
37. The question of what constitutes force has been considered at length by the courts and at paragraph 223 to 224 the Inspector refers to the case of *Winterburn v Bennett* and quotes from Lord Richards. In delivering his judgment his Lordship also said in reference to force,

"The phrase "without force" carries rather more than its literal meaning. It is not enough for the person asserting the right to show that he has not used violence. He must show that his user was not contentious or allowed only under protest."
38. In this circumstance the "*force*" arises not solely from the removal of fencing, or the climbing over or through the post and rail fence but also from the notices. That gives rise to contentious use as Lord Richards states.
39. After careful consideration of his report your Officers, who are acting on behalf of the Registration Authority, accept the Inspector's findings of facts, his application of the law and relevant legal tests and his conclusion and recommendation.

Determination of the Application

40. The function of the Inspector is to establish the facts, apply the relevant law to the facts and make a recommendation to the Registration Authority.
41. It is the function of the Registration Authority to determine the Application, having regard to the evidence before the inquiry, the documentary evidence, the Inspector's findings and conclusions and the relevant burden of proof.
42. The burden of proof rests upon the applicant to show that, on the balance of probabilities, the Application Land has become a town or village green.
43. In order to meet that test, the Panel need to be satisfied that it is more probable than not that the Application Land has become a Town or Village Green.

44. The applicant and the objectors had the opportunity to present all of their evidence to the Inspector at the public inquiry and to cross-examine witnesses. The Inspector has had the benefit, which members of the Panel do not have, of hearing the oral evidence and forming a first-hand impression of the demeanour and credibility of the witnesses. He has also conducted an analysis of the documentation. Finally, he has given detailed justification for his recommendation.
45. Nonetheless, it is a matter for the Panel to consider the whole of the Inspector's report, along with the further representations made by the Applicant and the Inspector's response to those, and then to decide whether or not to determine the Application on that basis.
46. Should the Panel decide to reject the Inspector's findings they would need to have good reasons based upon the facts or the application of the relevant legal tests for disagreeing with the Inspector's conclusion.
47. In the case of previous applications, the advice of your officers has been that a site visit by the Panel to view the Application site was not essential. Your Officers consider that the Panel does not need to make a site visit in this instance.

Equalities Implications

48. This report has been prepared in accordance with the County Council's Equal Opportunities Guidelines.

Resource Implications

49. This report has no direct resource implications. The cost of holding the public inquiry into the application has been met from existing budgetary provision. If the Panel decision is challenged by way of an application for judicial review there will be significant additional resource and financial implications.

Legal and Risk Implications

50. The effect of the Panel decision if in line with both the Inspector's and Officer's recommendation will be to refuse to add the area of land applied for to the Register of Town and Village Greens.
51. It is up to the Panel to make the decision but if the Panel decides to accept the Application, that is to reject the inspector's recommendation, members must be aware that this decision must be based upon the applicable law and a finding of facts which differs substantially from the Inspector's conclusions.
52. There is a possibility of the Panel's decision being successfully challenged by way of Judicial Review. Officers consider this risk to be low if the decision is based upon the facts and applicable law.

John Treadwell
Director of Corporate Services

Report author:

Author's Name: Mr. M. Murphy
Ext. No.: 277249

INDEX TO APPENDICES

Appendix A	Copy of Form 44 and accompanying statutory declaration and map
Appendix B	Public Inquiry bundles
Appendix C	Applicant closing submission and accompanying documents
Appendix D	Objector closing submission
Appendix E	Inspector's Report
Appendix F	Applicant comments on report and Inspector's reply