

DURHAM COUNTY COUNCIL

At a Meeting of **Highways Committee** held in St Mary's Parish Hall - St Mary's Parish Hall, Newgate, Barnard Castle, DL12 8NQ on **Friday 11 May 2018 at 11.00 am.**

Present:

Councillor C Kay in the Chair

Members of the Committee

Councillors D Bell, S Dunn, A Gardner, K Hopper, R Ormerod, J Rowlandson, J Shuttleworth, J Turnbull and M Wilson

1 Apologies

Apologies for absence were received from Councillors H Bennett, G Bleasdale, J Chaplow, S Hugill, K Liddell, O Milburn, S Morrison, P Oliver, J Robinson, P Sexton and A Simpson.

2 Substitute Members

There were no substitute members present.

3 Minutes

The Minutes of the meeting held on 16 March 2018 were agreed as a correct record and signed by the Chairman.

4 Declarations of Interest

There were no declarations of interest in relation to any items of business on the agenda.

5 Application NL44 for Village Green Registration - Bede Kirk, Barnard Castle

The Committee considered a report of the Head of Legal and Democratic Services regarding an application to register land at Bede Kirk, Barnard Castle as Town or Village Green under the provisions of the Commons Act 2006 (for copy see file of Minutes).

The Solicitor informed the Committee that a decision relating to the application had been deferred from the meeting of the Highways Committee held on 16 March following the receipt of additional evidence. The basis for the decision was that it would have been prejudicial to the landowner to consider the additional evidence at the meeting as they would not have had sufficient time to consider the additional evidence and provide a response.

In terms of the user evidence, the Solicitor informed the Committee that there was a typographical error in Appendix 4 to the report in that eleven persons had provided

additional user evidence, as opposed to ten. He also explained where Appendices 1-4 started and ended in the report pack as it was not entirely clear.

The Solicitor explained to the Committee that the application site contained an area of green space, trees, a footpath and steps from High Row. The area did not include the former police station building or the compound/garage area located to the side of the building, the car parking area immediately adjacent to Bede Kirk or the paved area in front of the building.

The Committee then received a presentation, which comprised the following:

- site plan;
- location plan showing users in the locality who had provided evidence; and
- photos of the site (including views from High Row, steps leading to, view from Bede Kirk and the public car parking area)

(for copy see file of Minutes).

In his presentation to the Committee, the Solicitor explained that the application had generated a large amount of public interest opposing the development of the land. However, to clarify, the application before the Committee for consideration was about whether the land in question had met the statutory criteria contained in Section 15 of the Commons Act for registration as a Village Green.

In order for an application to be successful each aspect of the requirements of section 15(2) had to be strictly proven and the burden of proof in this regard was firmly upon the Applicant. The standard of proof to be applied was 'on the balance of probabilities.' Therefore the Applicant must demonstrate that all the elements contained in the definition of a Village Green in section 15(2) of the Act had been satisfied.

The Solicitor explained to the Committee that fear of loss of the green area and development of the land was not within the Committee's jurisdiction and not for consideration.

The Committee were informed that the application had been made under section 15(1) of the Commons Act 2006. Subsection 2 of the Act stated that 'a village green has come into existence where:

- (a) significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports or pastimes on the land for a period of at least 20 year; and*
- (b) that they continue to do so at the time of the application*

The application had been submitted in July 2017, therefore the 20 year period was from July 1997 to July 2017.

The Solicitor then summarised the evidence submitted by the applicant detailed in paragraphs 25.1 to 25.7 of the report. The Solicitor clarified that in terms of 'significant number' it was not considered that 18 users were sufficient to show general use by the community, nor was it considered that the number of users were sufficient to alert a reasonable landowner that rights were being asserted over the application land.

With the exception of one user, all of the users lived, or had lived, within the locality (Barnard Castle) during the qualifying period.

There was no issue of use by force or secrecy as the land was largely unenclosed and there had been no evidence of any form of notice seeking to control use. There use was without permission and therefore was 'as of right', except for the area of the steps.

The Solicitor explained the ambiguity over dog walking and also advised that as there were only three users for the whole of the qualifying period, his view was that the Applicant had failed to discharge the burden of proving all of the section 15 ingredients. Accordingly, the recommendation was to refuse the application.

The Committee then heard from the Town Mayor of Barnard Castle Town Council. The Mayor explained that if the green space was lost, it would have a detrimental effect on people's health and wellbeing. The green space was a 'safe space' which families used for children's play. Being able to sit on the green space improved quality of life, supported community cohesion and enabled people to participate in lawful sports and pastimes. It also allowed for the good integration of neighbours which had strengthened the community. The Town Mayor felt that money was at the core of the objection and explained that the police had been gifted a new state of the art station with government grants. It was considered that the development of the site should not be an option and keeping it as a green space would reduce deprivation. She suggested that the Police ought to gift the land to the Town Council.

Councillor J Rowlandson commented that in the absence of the local members but as one of the closest Members who lived locally, Bede Kirk was an iconic area which the Committee observed on their site visit. The raised layout of the area complete with trees and indeed the trees throughout Barnard Castle were a major attraction. The green space was enjoyed by many people, particularly the nearby local nursery who used it regularly. Everyone enjoyed the area in one shape or form, whether it was for dog walking, relaxing or playing. Councillor Rowlandson felt that the loss of the green space would be a major loss to the town.

The Applicant then addressed the Committee. The Applicant stated that the legal test must be done on the balance of probabilities. The application contained a collection of evidence proving quality usage of the land.

The police would have observed dog walking, children playing, and people relaxing and enjoying the green space indicated 'implied consent'. The land was used as of right, over 20 year, legitimately for leisure use. The area was not fenced off and had been used by local people. Durham Constabulary had never made any landowner statement or asserted any control over the land. The additional evidence provided previously was strong enough to force an adjournment, to enable the police to provide additional comments or representations. The Applicant went on to suggest that the user evidence did demonstrate that the users were significant in number and collectively, this spanned the whole of the relevant 20 year qualifying period.

The Committee then heard from a supporter to the application who explained the move to maintain the ruins of the medieval chapel. The supporter explained that the land was set

out at the time of the building of the police station was green in recognition of what was a spiritual site and graveyard. This was one of the reasons as to why the site was popular, in addition to it being an area which was pleasant and safe to enjoy. The area was not a shortcut and neither the police nor the housing association had provided valid arguments, nor were they present to support their objections. The supporter also informed the Committee that a petition containing 290 signatures from people who wanted the land maintained as village green, with lots of support coming from people in Barnard Castle had also been circulating in the area which showed the real strength of feeling towards the issue.

The Solicitor reiterated to the Committee that each aspect of the requirements of section 15(2) had to be strictly proven and that the burden of proof was firmly upon the Applicant. He agreed with the Applicant that the standard of proof to be applied was on 'the balance of probabilities'.

In terms of dog walking, the Solicitor concurred with the views of the Town Clerk that dog walking itself was a recreational activity, however, there was a lack of detail in the user evidence regarding this and therefore it was not possible, on the basis of the evidence, to reach the conclusions contended for on this issue by the Applicant.

With regard to the '20 year period' the Town Clerk was correct that it was not necessary for each individual user to have done so for the whole of the qualifying period and that this requirement could be satisfied on a collective basis. However, he advised that this was not the position here; the user evidence, taken collectively, was a long way short of demonstrating use over the whole of the 20 year qualifying period.

Prior to taking any further representations from the Committee the Solicitor referred to the views expressed by Councillor Rowlandson who had spoken as one of the Members present who lived most local to the area. Councillor J Rowlandson confirmed that he continued to have an open mind regarding the matter and wished to listen to any further views that may be expressed during the debate. On that basis, the Solicitor advised he could continue to take part in the decision.

Councillor J Shuttleworth explained that it would be nice for the area to be left as open space but couldn't see evidence of this in the report.

Councillor A Gardner felt that the Town Mayor and Town Clerk had put forward a compelling case. Councillor Gardner queried whether the land would have been well planted and well maintained, had it not been designed for use by the general public. Councillor Gardner referred to the seating, steps and car park and felt that a good design policy had been applied to divide the police station from the area of open space. Councillor Gardner also noted the use of the green space by many local children and also those of the nearby nursery. Councillor Gardner felt it was clear that the land had been used for leisure, sports and pastimes because it had been designed in such a way that encouraged activities of that nature. There was evidence on site that it continued to be used which had been gleaned from the site visit, and as a result of this, the additional views expressed during the meeting and the evidence contained in the report, Councillor Gardner felt that on the balance of probabilities, the statutory test had been met. He therefore moved to support the application for village green status to be granted.

Councillor Dunn seconded Councillor Gardner's motion. In seconding the motion, Councillor S Dunn informed the Committee that he had considered both sides of the argument, however, his opinion had changed having viewed the site. Councillor Dunn felt that the area was not classed as 'a typical village green'. Whilst the area was a site occupied by the police previously, the site had been designed with respect, where the police station could blend in with the community. Councillor Dunn felt extremely disappointed that a representative from the police had failed to attend to state their case, out of respect to the community. A lot of evidence had been gathered, people had incrementally grown up, valued the space and used the space. It was clear from the strength shown within the community the value and respect the site has been shown should be cherished.

With reference to the comments made by Members, the Solicitor informed the Committee that in terms of the evidence, it was the responsibility of the Applicant to provide the necessary evidence. The Committee were not considering the merits of what the land should be used for. The question was had the Applicant strictly proven that all of the criteria under Section 15 of the Act had been met. He reiterated his professional view that the Applicant had not done so.

Councillor Hopper explained that she agreed with all of the remarks made regarding the open space and the use of the land, however, she felt unable to support the application as it lacked a little evidence.

Upon a vote being taken it was

Resolved

That the application to register land as a Town or Village Green be approved.