

DURHAM COUNTY COUNCIL

At a Meeting of **Highways Committee** held in Committee Room 2 - County Hall, Durham on **Friday 30 September 2011 at 2.30 pm**

Present:

Councillor J Robinson (Chair)

Members of the Committee:

Councillors B Arthur, A Bainbridge, S Hugill, A Naylor, J Shiell, L Thomson, R Todd, C Woods and R Young

Apologies:

Apologies for absence were received from Councillors G Bleasdale, D Burn, N Foster, D Hancock, J Maslin, P Stradling, T Taylor, E Tomlinson, J Turnbull and A Wright

Also Present:

Councillor Andy Turner
P Holding – Principal Solicitor, Planning and Development

1 Declarations of Interest, if any

There were no declarations of interest received.

Prior to the consideration of the report the Chair confirmed that all members of the Highways Committee who were in attendance had received training on village green matters.

He noted that the Committee would be addressed by Charles Holland, Barrister on behalf of Dr Gordon, an objector, and Dr M Bell on behalf of the applicants. He also noted that an additional written statement had been submitted by an objector, Mrs Lambard, and that her sister Mrs Tarn was present but did not wish to speak to her statement. A copy of the statement had been provided to all parties.

One of the local Members Councillor Andy Turner was also in attendance who wished to comment but would take no part in the determination of the application.

That Chair also advised that a site visit had been held earlier that day at which Members of the Committee present at this meeting were in attendance, together with representatives from the applicants and objectors.

Late additional correspondence had been received from Anthony Walters, Solicitors, on behalf of his client, who represented the owner of the former Methodist Church and grounds, and this had been circulated to all parties. Mr C Holland was to address the issues outlined in the correspondence.

2 Village Green Registration, Low Queen Street, Witton Park

P Holding, Legal Advisor presented the report of the Head of Legal and Democratic Services to assist the Committee to determine the application to register land known as Low Queen Street, Witton Park.

P Holding advised that the application had been received on 24 August 2007 in accordance with Section 15 (2) of the Commons Act 2006, together with 62 letters of support from householders and a petition from the Chair, Witton Park Village Green Committee.

There were 7 owners of the land, including the former Wear Valley District Council, now Durham County Council.

Following advertisement 14 letters of objection were received and an independent Inspector was appointed to conduct a non-statutory Public Inquiry. The Inquiry was held on 5 and 6 October 2009 and oral evidence was provided by 23 supporters and 7 objectors, details of which were set out in Appendix 3 of the report.

The Inspector produced his first report and comments were received from both the applicants and objectors with further evidence produced by Dr Gordon of Heritage North on 4 November 2009 that a Methodist Church located on the northern parcel of the application land and grounds was in use by the Church during the 20 year period.

A further Inquiry was held on 30 March 2010 to hear evidence on the use of the Church and the Inspector's final report was included at Appendix 6 which concluded that the whole of the site met the statutory test for registration with the exclusion of the plot on the northern part of the application site where the Methodist Church and grounds were located.

P Holding continued that the law stated that a village green came into existence when a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, had indulged as of right in lawful sports or pastimes on the land for a period of at least 20 years, and they continued to do so at the time of the application. She outlined to Members how this applied to both the area of land to the south of Low Queen Street and the area to the north.

With regard to the area to the south she explained that evidence confirmed that the land south of Low Queen Street had been used since approximately 1980 for lawful sports and pastimes by a significant number of inhabitants and had been used almost overwhelmingly by inhabitants of Witton Park parish.

It was claimed that one objector placed a prohibition notice on site. However there was no evidence that this notice was placed on site prior to June 2007. It was limited to one sign on one tree and had been placed there to address a traveller issue. In addition the notice was ambiguous as to what was intended and was not erected by the landowner.

In terms of the area of land to the north of Low Queen Street, she advised that the Inspector's first report found that the land had been used for lawful sports and pastimes for 20 years and that the users were predominantly from Witton Park. As already stated new

evidence from Dr Gordon of Heritage North led to a further Public Inquiry on 30 March 2010 and on hearing evidence at that Inquiry the applicant withdrew this area of land formerly occupied by the Church and grounds from the application.

The Inspector concluded that the Church and grounds did not meet the statutory test for registration as the Church had been in use for 5-6 years during the relevant 20 year period and that the hatched area on the plan at Appendix 5 should be excluded on the basis that it had not been used for lawful sports and pastimes for 20 years.

At this point P Holding stated that she had received a request from Anthony Walters, to adjourn the proceedings because he considered that certain areas adjacent to the former Church should be excluded from the application. Details of this request were set out in the correspondence referred to at the start of the meeting, and which had been circulated to all parties.

Mr Holland addressed the Committee on behalf of the applicants.

He commenced by stating that his client had no objection to the area south of Low Queen Street being registered as village green. Their issues were in relation to land north of Low Queen Street in so far as it consisted of the former Carwood Street and Garden Street. He had pointed out the approximate location of these streets to Members on site earlier that day.

He considered that it was beyond dispute that his client, in owning the plot of land was granted an express right of way on a deed of settlement dated 8 September 1859, details of the right were set out in the e-mail sent to P Holding on 29 September 2011.

The deed plan showed that 'Market Street' became 'Carwood Street' and 'West Parade' was the road to the west of his client's property, now called 'The Green'. The deed gave an express right of way over Carwood Street, The Green, part of Cross Street and Garden Street, Low Queen Street and part of Main Street.

He continued that not exercising this right of way was not sufficient to amount to abandonment and therefore as a matter of law his client had the right to use these streets, even if they were no longer in evidence.

He also had the right to improve the rights of way; his land was a development site and the access to it was not up to an adoptable standard.

Every individual had a right under the European Convention on Human Rights to the 'peaceable enjoyment of their property'. Were the Council to register the land as village green this would have the effect of depriving his client of his property rights without compensation, and therefore constituted a breach of human rights. He considered that the Council must have regard to this. The difference between his client's situation and the other owners of the land was that they had not prevented local inhabitants from using the land for 'lawful pastimes' over the 20 year period.

To conclude he respectfully asked Members to take into account the relative injustice of his client's position and asked for an adjournment in respect of the application to the north of Low Queen Street in order to resolve these issues to the satisfaction of all parties. He

reiterated that his client had no issues with the other area of land included in the application, and suggested that Members could proceed to make a decision in respect of the land south of Low Queen Street today.

In response, P Holding stated that she had not had sight of the easement and acknowledged that the area did have a number of streets on it but that these were no longer in existence, having been demolished some years ago. The local inhabitants had therefore been able to utilise the land freely, with the exception of the area occupied by the former Church and grounds, as concluded by the Inspector. She reminded Members that in determining the application, they had to apply the law and consider whether the evidence presented to them met the statutory test for registration of the land as village green within the meaning of Section 15(2) of the Commons Act 2006.

She appreciated that the objector wished to develop his land, and that there was a private easement for the rights of way, but emphasised that Members could not take into consideration the potential use of this site in the future.

With regard to human rights she had examined Article 1 of the First Protocol to the European Convention on Human Rights and did not consider that there was a breach. In the first instance this was a statutory process defined by the provisions of the Commons Act 2006. Secondly, she did not consider that deprivation of a landowners possession of an easement constituted 'deprivation' within the meaning of this protocol. If the application was approved, the objector could utilise the easement as long as it did not interfere with the rights of the village green.

Village green rights and rights of way could co-exist but she acknowledged that a concern for the objector would be that he may not be able to upgrade the rights of way to a level that would be acceptable to him, because of the statutory protection afforded to village greens in relation to carrying out works. However, she reiterated that this was not a consideration for the Committee.

At this point she referred to the additional statement submitted by a further objector Mrs Lambard, a copy of which had been circulated to all parties, and read it out to Members. In response to Mrs Lambard's statement, she stated again that it was not for Members to determine how the land should be used but to consider whether it met the requirements for registration.

Dr Bell addressed the Committee on behalf of the applicants. In the first instance he referred to the late submission of information from Anthony Walters, Solicitors and commented that throughout this process the applicants had become used to progress being delayed due to the receipt of late information, but he did not consider that this meeting was the time to submit new evidence.

At both Inquiry's the Inspector had concluded that the application met the requirements of Section 15(2) of the Commons Act 2006.

He was amazed that the land had not been registered already, he had himself witnessed people using the land for recreational purposes with the area beyond the former Church and grounds being used by children for a different sort of play. When the streets had been

demolished local residents had worked with the Territorial Army to make the land into a 'village green'.

He considered that the issue raised by the objector was a 'non-point' and that there was no reason why the application could not be determined. Many village greens had some form of crossing over them and he considered that the only argument the objector had was that he had rights of way that he would continue to use. He added that if the site was developed, access could be secured to the front of his land via 'The Green'.

He referred to case law and a case in Cleveland that had held that a common could co-exist with a golf course. This showed that rights exercisable on village greens could co-exist with other rights. He also noted that the barrister in his representations to the Committee had not provided case law to support his argument.

With regard to human rights he considered that if approved, the decision to register the land as village green would be fair and proportionate and would not constitute a breach of Article 1 of the First Protocol.

He therefore respectfully suggested that Members should determine the application today for both areas of land.

At this point Councillor Andy Turner stated that both local Members for Witton Park were satisfied with the Inspector's recommendations.

The Chair asked Mr Holland if he wished to make any further comment who replied that he did not.

Members were therefore asked to consider the request by Mr Holland on behalf of his client for an adjournment in respect of the land to the north of Low Queen Street. This was unanimously rejected.

The Committee proceeded to determine the application. A Member stated that he was satisfied that there was a significant number of users within the recognised locality and that this use had been as of right for 20 years. He therefore proposed that the Inspector's conclusions be accepted.

A Member seconded this proposal and stated that the Legal Officer had rightly focussed the Committee on what they needed to take into account today in terms of the requirements of the legislation. Therefore having considered the Officer's report and Appendices, and the additional information submitted, together with the comments put forward by the objector's representative, the applicant's representative, and the Legal Officer at the meeting, he was satisfied that the conclusions of the Inspector in relation to the registration of the areas of land shown on the plan at Appendix 5, with the exclusion of the former Methodist Church and grounds, should be accepted.

This was echoed by a further Member who commented that it was disappointing that the application had taken such a long time to reach determination.

Members were asked to vote and it was unanimously

RESOLVED

That the Inspector's conclusions as set out in the reports provided by him, be accepted and the areas of land shown on the plan accompanying the application at Appendix 1 of the report be registered as village green, with the exclusion of the former Methodist Church and grounds, as identified hatched on the plan at Appendix 5.