

DURHAM COUNTY COUNCIL

At a Meeting of **Highways Committee** held in Council Chamber, County Hall, Durham on **Thursday 12 July 2012 at 10.00 am**

Present:

Councillor G Bleasdale in the Chair

Members of the Committee:

Councillors B Arthur, A Bainbridge, N Foster, D Marshall, A Naylor, P Stradling, E Tomlinson, J Turnbull, C Woods and R Young.

Apologies:

Apologies for absence were received from Councillors J Robinson, D Burn, D Hancock, S Hugill, J Maslin, J Shiell, T Taylor, L Thomson, R Todd and A Wright.

Also Present:

Councillors J Alvey, A Cox and J Wilkinson.

1 Declarations of interest

Councillor C Woods declared an interest in relation to Item No. 3 (Voluntary Registration, High Pittington) as a Member of Pittington Parish Council. She confirmed her intention to leave the meeting during the consideration of the item.

Councillor John Turnbull declared an interest in relation to Item No. 2 (Application to Register Land as Town or Village Green, The Green, Esh Winning) as a Member of Brandon and Byshottles Parish Council.

2 Application for Village Green Registration - The Green, Esh Winning

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

The Planning and Development Solicitor informed the Committee that the application had been made by the Friends of Esh Winning Village Green and received in July 2009. The application was accompanied by a plan of the locality/neighbourhood, together with 83 letters in support from householders in Esh Winning. One objection had been received and subsequently withdrawn.

The application had been made under section 15 of the Commons Act 2006 whereby any person could apply to the Commons Registration Authority to register land as a town or village green if 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 20 years and they continue to do so at the time of the application.

The Planning and Development Solicitor clarified that it was necessary for the applicant to demonstrate;

- general use as oppose to mere occasional use,
- that the users within the locality or neighbourhood must possess a degree of cohesiveness,
- that use “as of right” can be defined as use without permission, secrecy or by force,
- that lawful sports and pastimes could be interpreted as general recreational use, such as childrens play, games, picnics, pastimes and sports,
- that the onus is on the applicant to prove the period of use on the balance of probabilities.

From the accompanying evidence provided with the application, the Planning and Development Solicitor concluded;

- that there were a significant number of users and the majority were from the surrounding areas within a locality defined as Brandon and Byshottles,
- that there was substantial use recorded which went back as early as the 1940’s and there was no suggestion that people had used it with permission of the landowner, with force or with secrecy,
- that the land had been used for recreational activities which could be broadly categorised as informal recreation and the playing of games,
- that the specific period of use would be defined as 20 years previous to the application date, this being 1989–2009, which equated to approximately three quarters of the user evidence,
- that the footpath marked on the plan could not be registered as village green as it’s use as a footpath excluded it from recreational use and pastimes.

The Planning and Development Solicitor informed the Committee that the applicant had proved on the balance of probabilities that the land referred to as The Green, excluding the footpath, had been used by a significant number of people from the surrounding neighbourhood within a locality, and that it was used and continued to be used as of right, for the purpose of lawful sports and pastimes, and that there had been continuous use of the land for at least 20 years immediately preceding the date of the application.

The Chairman of the Friends of Esh Winning Village Green stated that the application had been submitted in July 2009. The grass space was left vacant purposely, for local people to enjoy when the houses were erected in the immediate area between 1948 and 1954. A play area had been erected, a travelling fayre visited annually, and there was freedom for many other pastimes. The group were of the opinion that the land was the only piece of central green space for the neighbourhood to enjoy and was therefore precious and in need of safeguarding.

Resolved:

That the area of land shown on plan 5a of the report (excluding the footpath shown shaded blue) at Appendix 1 be registered as a Town or Village Green.

3 Voluntary Registration - High Pittington

Prior to the consideration of this item, Councillor Woods withdrew from the meeting and took no part in the debate.

The Committee considered a report of the Head of Legal and Democratic Services regarding an application to register land known as The Buddle, High Pittington as Town or Village Green, under the Commons Act 2006 (for copy see file of minutes).

The Principal Planning and Development Solicitor informed the Committee that the application had been submitted by Pittington Parish Council to voluntarily register land as village green and referring to Section 15(2) of the Commons Act 2006 whereby any person could apply to the Commons Registration Authority to have land registered as green if it had been used by local people for recreation 'as of right' for at least 20 years. Under Section 15(8) a landowner could apply to register land as village green without meeting that criteria. The village green would be subject to the same statutory protection as other registered village greens and local people would have the legal right to indulge in sports and pastimes over it on a permanent basis.

In response to concerns regarding maintenance of the land, the Principal Planning and Development Solicitor confirmed that the Parish Council would continue with the existing arrangements.

Resolved:

That the area of land edged black on the plan be registered as Village Green.

4 Village Green Registration - Land known as the Fleece and Nursery Land, West Auckland

The Committee considered a report of the Head of Legal and Democratic Services which sought the appointment of an Inspector to hold a Public Inquiry to assist in determining an application received from West Auckland Parish Council to register The Fleece and Nursery Land, West Auckland as Town or Village Green, under the Commons Act 2006 (for copy see file of minutes).

The Principal Planning and Development Solicitor referred to Section 15 of the Commons Act 2006 whereby any person could apply to have land registered as village green if it had been used by local people for recreation 'as of right' for at least 20 years.

The application did contain evidence that the land had been used over a period of 20 years for activities such as football, walking dogs, children playing, community celebration, games and general recreation however, an objection had been received from an adjacent land owner. The objector claimed he had taken access across the land, grazed horses and used it freely at all different times without hindrance from any third party and he denied that any use had been undertaken on the site other than a shortcut to Front Street by dog walkers.

The Principal Planning and Development Solicitor explained, that when a conflict of evidence arised such evidence should be tested, and recommended that the appropriate

solution was to hold a non-statutory public inquiry to give all parties the opportunity to present evidence orally, to a suitably qualified Inspector. Following a Public Inquiry, the Inspector would prepare a report for the consideration together with a recommendation.

The Principal Planning and Development Solicitor informed the Committee that since the report had been circulated, the applicant had approached the objector in an attempt to reach a resolution. Ample time would be given for both parties in reaching an agreement, before appointing an Inspector to avoid unnecessary cost to the Council.

Resolved:

That a suitably qualified Inspector is appointed to hold a Public Inquiry for the purpose of receiving and assessing evidence.