

DURHAM COUNTY COUNCIL

At a Meeting of **Highways Committee** held in Committee Room 2, County Hall, Durham on **Wednesday 6 November 2013 at 9.30 a.m.**

Present:

Councillor C Kay in the Chair

Members of the Committee

Councillors D Bell, H Bennett, I Geldard, O Gunn, K Hopper, O Milburn, S Morrison, J Robinson, P Stradling, R Todd, J Turnbull and M Wilkes.

1 Apologies for Absence

Apologies for absence were received from Councillors J Allen, B Armstrong, G Bleasdale, D Hall, D Hicks, R Ormerod and R Young.

2 Substitute Members

There were no substitute members present.

3 Declarations of interest, if any

Councillor P Stradling declared an interest in relation to Item No. (Application for Village Green Registration – ‘Church Green’, Horden).

4 Application for Village Green Registration - 'The Green', Elm Crescent, Kimblesworth

The Committee considered a report of the Head of Legal and Democratic Services regarding an application to register an area of land as town or village green known as ‘The Green’ at Elm Crescent, Kimblesworth (for copy see file of Minutes).

The Committee were informed that 30 witness letters had been submitted with the application. The application was advertised as stipulated by regulations. No formal objections to the application had been received.

The Legal Adviser informed the Committee that section 22 of the Commons Registration Act 1965 would apply in the case presented before them given that the application had been submitted prior to the Commons Act 2006. The applicant must demonstrate that all elements contained within section 22 of the Act must have been satisfied on the ‘balance of probabilities’, those being:

- the inhabitants of any locality
- have indulged in such sports and pastimes
- as of right

- for not less than 20 years

A local resident had questioned the extent of the land as it included an area within his ownership and had raised an issue regarding access. The applicant had advised that the application plan should be reconfigured to exclude the area within his ownership and the area was included as an oversight and did not reflect the position on the ground. The application had requested that the area detailed in Appendix 6 to the report be excluded from the registration.

The legal adviser informed the Committee that the majority of the application site was owned by the County Council and confirmed that the area of land owned by Mr Hind, had actually been included in error.

Mr Hind confirmed that he had nothing to add to the application and confirmed that the eastern edge of the boundary consisted of mixed hedge which acted as a barrier of segregation.

Resolved

That the land, excluding the area within the ownership of Mr Hind, had been satisfied by the applicant and that the application for registration of the land known as 'The Green', Kimblesworth be agreed.

5 Application for Village Green Registration - 'Church Green', Opposite St Mary's Church, Blackhills Terrace, Horden

Prior to the commencement of the item, Councillor P Stradling left the meeting.

The Committee then considered a report of the Head of Legal and Democratic Services regarding an application by Horden Parish Council to register land known as 'Church Green', opposite St Mary's Church, Blackhills Terrace, Horden as town or village green under the provisions of the Commons Act 2006 (for copy see file of Minutes).

The Committee were informed that the land was bounded by walls with gaps for access which led onto Tarmac surfaced footpaths over and across the site. 95% of witnesses had used the land for access.

The legal test which the Committee had to consider was under Section 15(2) of the Commons Registration Act 2006 and the relevant time period which applied was between 1992 and 2012. Under Section 15(2) of the Act the Committee must be satisfied, based on the evidence, that each element of the test had been proven on the balance of probabilities. Those being:

- There must be a significant number of the users who originate from the whole of the relevant neighbourhood;
- Use as of right;
- significant number of the inhabitants of any locality/any neighbourhood within a locality had indulged as of right in lawful sports and pastimes;
- for a period of at least 20 years and must continue to do so at the time of the application.

It appeared that the land had been used for access along defined paths by the majority rather than being used as a whole for general recreational purposes. An assessment of evidence by officers had taken place and it was considered that the statutory test for registration of the application had not been met and that the land should not be registered as town or village green.

Councillor Milburn explained to the Committee that the user evidence provided, by way of the tick boxes on the witness forms appeared to indicate that many wide and varied activities had been witnessed taking place on the land. This had included organised activities such as carol singing. Councillor Milburn felt that the application had been supported by relevant evidence.

The legal adviser informed the Committee that the activities referred to by Councillor Milburn were relevant in terms of the 20 year time period, however, the main use appeared to be that of walking.

Councillor Gunn supported those views expressed by Councillor Milburn and felt that the advice to reject the application was contradictory, particularly due to the fact that the tick boxes contained on the questionnaire had indicated that activities such as sledging, ball games and skating had all taken place during the prescribed period. Whilst Councillor Gunn accepted that a lot of walking took place over the land it appeared to be largely a recreational area and was not in support of rejecting the application.

The legal adviser informed the Committee that the advice provided had been based on the evidence presented before the Committee.

Councillor Robinson queried if the County Council were aware as to who owned the land and reiterated those comments made by Councillors Milburn and Gunn. Councillor Robinson also felt that the design of the evidence questionnaire needed to be re-visited.

Councillor Wilkes commented that it was clear that the area had been used for many other activities other than walking and the area had been used by people from wider areas. People had provided statements that the land had been used for other activities.

Councillor Morrison felt that 18 out of 20 user evidence forms submitted had indicated uses other than that of walking and supported the comments made by Councillors Milburn and Gunn.

Prior to the Committee making a determination on the issue, Councillor Kay queried whether there were any legal implications to consider given that the strength of feeling from the Committee had been a preference to accept the application. The legal adviser confirmed that there were no legal implications providing the Committee were satisfied that sufficient evidence had been provided.

Resolved

- (i) That the application be agreed;
- (ii) That officers consider that the evidence questionnaires in support of registration as a new green be looked at, particularly in relation to the section relating to 'activities that inhabitants had seen taking place on the land'.