

DURHAM COUNTY COUNCIL

At a Meeting of **Highways Committee** held in Council Chamber, County Hall, Durham on **Monday 25 February 2013 at 10.00 am**

Present:

Councillor G Bleasdale in the Chair.

Members of the Committee:

Councillors B Arthur, J Armstrong, A Bainbridge, J Blakey, M Dixon, S Hugill, A Laing, A Naylor, J Shiell, P Stradling, L Thomson, R Todd, E Tomlinson, J Turnbull, C Woods and R Young.

Also Present:

Councillors M Williams and C Vasey.

1 Apologies for Absence

Apologies for absence were received from Councillors D Burn, N Foster, D Hancock, D Marshall, J Maslin, J Robinson, T Taylor and A Wright.

2 Substitute Members

Councillor J Armstrong substituting for Councillor N Foster, Councillor J Blakey substituting for Councillor A Wright, Councillor M Dixon substituting for Councillor J Robinson and Councillor A Laing substituting for Councillor D Marshall.

3 Declarations of interest

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

4 Application for Village Green Registration - Belle Vue, Consett

The Committee considered a report of the Head of Legal and Democratic Services which provided details in relation to an application received in 2009 on behalf of the Consett Green Spaces Group to register land known as Belle Vue, Consett as a Town or Village Green under the Commons Act 2006 (for copy see file of Minutes).

The Planning and Development Solicitor advised the Committee that further representations had been received since the publication of the Committee report, which the Inspector had been given an opportunity to consider. A second addendum to the Inspector's third report had been produced and circulated to the Committee in an addendum to the Committee report.

Councillor Woods requested a short adjournment to allow those Members who had not had the opportunity to read the addendum to the Committee report and the Chair granted an adjournment of 15 minutes.

Upon reconvening at 10.20 am, Members confirmed to the Planning and Development Solicitor that they had all read the addendum to the Committee report and had understood the contents.

The Committee received a presentation from the Planning and Development Solicitor which provided a brief summary of the application and the long and complex history (see paragraphs 2 -19 of the Committee report).

The Planning and Development Solicitor referred Members to section 15(2) of the Commons Act 2006 which contained the legal test which must be satisfied in order for the land to be registered as a town or village green.

The Planning and Development Solicitor advised the Committee that the legal test was paraphrased in paragraph 27 of the report to Committee. Members of the Committee were referred to section 15(2) of the Commons Act 2006 which stated that:

“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.*

The Committee were advised that in order for the application to succeed it must be established that each element of the legal test contained in section 15(2) of the Commons Act 2006 had been satisfied.

The Planning and Development Solicitor explained each element of the legal test contained in section 15(2) of the Commons Act 2006 to the Committee. In particular, members were advised that there was a minor error in paragraph 29 of the Committee report – the word “sufficient” should be replaced with the word “necessary”.

The Planning and Development Solicitor advised that paragraph 30 of the Committee report should be disregarded and advised members as follows:

- A “locality” must be an administrative division of the country or an area within legally defined boundaries (such as a borough, parish or manor).
- A “neighbourhood” need not have legally defined boundaries but must have coherence and be capable of description in some way (such as a housing estate). A neighbourhood must be situated within one or more localities. There is no requirement that the users of the application land must come predominantly from the claimed locality or neighbourhood.

All but one of the elements of the legal test contained in section 15(2) of the Commons Act 2006 was conceded by the Landowner. The main point of contention which was referred to in the Inspectors report, was whether the land had been used 'by right' as opposed to 'as of right'.

The Inspector had concluded that there was powerful support for the inference that;

- the land acquired pursuant to the 1936 Conveyance, was, as a whole, held pursuant to section 164 of the Public Health Act 1875 since its acquisition in 1936,
- the use of the land had therefore been 'by right' as opposed to 'as of right',
- the evidence with the application would not support the registration of those areas of the land not acquired pursuant to the 1936 Conveyance, as on the evidence, there had not been sufficient qualifying use of that area of land, and,
- the Applicant had therefore failed to strictly prove the elements of the test set out in Section 15 of the Commons Act 2006.

Councillor Temple, local member, noted that there were a number of substitute members on the Committee and asked whether each of the substitute members had received the necessary training on town and village greens. This was confirmed by the Chairman of the Committee.

Councillor Temple was concerned that the Highways Committee had received, and been expected to read and understand the additional information circulated in such a short time period. He referred to the meeting held on 11 April 2011, where Members had placed trust in the Inspector's findings and resolved to refuse the application and now following a High Court Judges ruling, found that their trust had been misplaced. Due to an error of law, the application was before the Committee again with new evidence provided by the Consett Green Spaces Group. It proved that the land was purchased and held for statutory purposes and not exclusively for the purpose of public walks and pleasure grounds. The documents provided were from the time that the land was purchased and confirmed that it was for building of roads, allotments and housing development. He reiterated that the Committee had placed a degree of trust in the recommendations of the last report and the High Court Judge had ruled that the decision was unlawful. Finally, the evidence the land was used 'as of right' had been proven by the applicant and therefore the Committee should approve the application.

A representative on behalf of Durham County Council, as the Landowner, confirmed that the County Council was satisfied that the application did not meet the statutory requirements to be registered as town or village green and was in agreement with the recommendations at appendix 8. For the application to be approved, all parts of the test applied at Section 15 of the Commons Act 2006 needed to have to be proven by the Applicant. In this case, an independent Inspector had found, following a Public Inquiry, and then further evidence provided that the application had failed to meet all elements of the test that was required. The land had been held pursuant to section 164 of the Public Health Act 1875 since its purchase in 1936 by the Local Authority, for the purpose of public walks and pleasure grounds, and therefore used by right. The Applicant had failed to meet all requirements of the test as the land had not been used 'as of right'.

Councillor Woods queried the use of the land under section 164 of the Public Health Act 1875 and if the Council had to maintain it for the purpose of public walks and pleasure grounds. The Planning and Development Solicitor confirmed that there was a procedure for the Council to change the land from one use to another.

Councillor A Bainbridge was concerned that the evidence was being interpreted differently by professional people as there should have been no argument regarding the conclusion. He was also concerned that people in Consett had been using the land for over 70 years, yet it was not protected as public walks and pleasure grounds.

Councillor Woods referred to the lengthy and costly process, the substantial paperwork which had been provided, and the previous decision to refuse the application which had resulted in a Judicial Review. The outcome of the judicial review was important as a High Court Judge had disagreed with the conclusion of the Inspector and the recommendations which had been put forward at the last meeting.

In relation to questions from Councillors Hugill and Wood about the suitability of the land for the construction of buildings, the Planning and Development Solicitor reminded members that the issues of cost and expense and potential future uses of the site did not apply when making the decision – it was to be based on whether, on the evidence presented to the Committee, the application met the legal test at section 15(2) of the Commons Act 2006.

Councillor Shiell referred to the legal test in terms of registering the land as town or village green and remained convinced that it had not been met based on the evidence provided and the land had been used 'by right', therefore he moved the recommendation confirmed in the report to refuse the application.

Councillor Armstrong seconded the proposal based on the evidence presented in the report.

On a vote being taken it was,

Resolved

That the application to register land known as Belle Vue, Consett, be refused for the reasons outlined in paragraph 60 of the report.