

DURHAM COUNTY COUNCIL

At a Meeting of **Highways Committee** held in Council Chamber, County Hall, Durham on **Tuesday 8 October 2019 at 9.30 a.m.**

Present:

Councillor C Kay in the Chair

Members of the Committee:

Councillors D Bell, G Bleasdale, J Chaplow, K Hopper, S Hugill, I Jewell, S Morrison (Vice-Chair), R Ormerod, J Rowlandson, K Thompson, J Turnbull and M Wilson

1 Apologies

Apologies for absence were received from Councillors J Considine, S Dunn, D Hicks, K Liddell, O Milburn, P Sexton, J Shuttleworth and A Simpson

2 Substitute Members

There were no Substitute Members.

3 Declarations of Interest

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

4 Application NL43 for Village Green Registration - Romaldkirk, County Durham

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

The Committee received a short presentation which detailed the application site (hatched red on a plan). The presentation also comprised a photograph of the application site from 2009 for reference purposes and that the application site was adjacent to registered village green (for copy of presentation see file of Minutes).

The Solicitor provided the background of the application to the Committee. The Committee were informed that the application had been a long-standing matter and

referred to a Highways Committee decision made in September 2018 which delegated authority to the Head of Legal and Democratic Services to instruct an independent specialist barrister to hold a non-statutory public inquiry to consider the application and thereafter prepare a report to the Committee.

A public inquiry was duly held at The Witham, Barnard Castle on 30 April 2019 and 1 May 2019, following which the Inspector produced her report on 8 August 2019. A copy of the Inspectors report had been sent to the applicant and objectors. A copy of the report was contained in the documentation for the meeting.

The Solicitor advised the Committee that in determining the application it was not open for the Committee to have regard to the desirability of having the land registered as village green. The Committee were legally required to focus on the merits of the application when assessed against the statutory criteria. The Solicitor informed the Committee that the relevant law was contained in Section 15 of the Commons Act 2006. Furthermore, the Committee needed to give due consideration to the advice of Lord Bingham in the R v Sunderland City Council ex parte Beresford [2004] case which was provided as context of how the application should be determined. The standard of proof was to be applied 'on the balance of probabilities.' Therefore, the applicant must demonstrate that all six elements contained in section 15(2) of the Commons Act 2006 (detailed in paragraph 24 of the report) had been proven before the land in question could be registered as village green.

The Committee were informed that the Inspector considered all of the evidence, both written and oral, as part of the public inquiry and her overall conclusions were as follows:

- that the application land comprised land that was capable of registration as a town or village green in principle;
- that the relevant 20-year period was October 1996 until October 2016;
- that the locality of Romalldkirk was a qualifying locality;
- that the application land had been used for some lawful sports and pastimes during the relevant 20-year period – this included dog walking and children playing;
- that the use of the application land for lawful sports and pastimes had been carried out 'as of right'. The inspector found that there was no force or secrecy in the use of the land. Any use was done openly in daylight hours. The inspector also found that there was no permission to use the land and that the 1930 deed referred to in the documentation had been extinguished by the operation of law therefore the 'as of right' test had been satisfied; and
- that the use of the application land for lawful sports and pastimes had continued up until the date of the application.

In reaching her conclusion the Inspector had given due regard to the claimed use of the land being mainly used for walking, with or without dogs. The Inspector noted

from the evidence that use of the land was limited at best and considered that walkers tended to exercise footpath rights, i.e. to use the land as part of a longer walk. The Inspector noted that the site was densely planted at times, therefore it would have been difficult accessing the application land at times during the 20-year period. In terms of usage such as horse riding and children playing, the Inspector found that usage did not occur with any degree of frequency. The nature and size of the land, which was adjacent to more suitable recreational space, meant that the application land was generally unsuitable for children to play.

Having, taken these factors into consideration, the Inspector concluded that the application had failed to establish that the application land had been used for lawful sports and pastimes by a significant number of the inhabitants of the claimed qualifying neighbourhood throughout the relevant 20-year period. The Inspector concluded that the Committee should reject the application and not register any part of it as Town or Village Green.

Accordingly, for the reasons outlined, the recommendation to the Committee was to reject the application.

The Committee then heard from an objector to the application. The objector informed the Committee that he had engaged throughout the process. The objector explained that he was pleased that the Committee had taken the decision in 2018 to refer the matter to an independent inquiry. The process had given all sides ample opportunity to present their cases and the findings spoke for themselves.

The Committee then listened to representations from Mr Nixon of Romaldkirk Parish Council. Romaldkirk Parish Councillors were active members of the community trying to preserve and enhance the village for residents and visitors alike. The land in question had been used freely by all members of the public in the extent of living memory and before. Mr Nixon explained that the that the process undertaken would have been unnecessary, had it not been for a simple error made in 1967 to the map that was traced from the 1930 deed of settlement.

Mr Nixon informed the Committee that use of legal right of access under current legislation was being deliberately obstructed by the objectors. Since the application had been submitted, excessive planting had taken place on the green and over the highways and byways in the village. Earth mounds had been built and a hedge had been planted encircling the land. In addition to this a SORN car, rubbish bins, logs and rocks had all been dumped on the land. In addition to this a public footpath sign and a bench had disappeared. Mr Nixon also referred to incidents alleging people being filmed unlawfully and verbal and physical intimidation of people who wished to use the land. Mr Nixon felt that such factors had a detrimental impact on the visual amenity of a beautiful village, located in a conservation area.

Whilst the Parish Council respected the decision of the public inquiry they felt that local villagers had a better understanding of the usage of the greens and the

application land over the last twenty years. Mr Nixon also alleged that knowledge of use was not understood or acknowledged by the Inspector at the public inquiry. The Parish Council highlighted five points that arose from the public inquiry which wish to make the Highways Committee aware of, those being:

1. The principle objector did not declare that he worked for Durham County Council and appeared to be on first name terms with the stenographer at the inquiry. They considered this to be an undeclared conflict of interest;
2. The objectors were from one extended family and not independent, whereas 'villagers' represented a relatively high percentage of households, i.e. 18 witness statements from only 55 houses in Romaldkirk;
3. The piece of land specified in the judgement was incorrect as half of it was already designated as village green;
4. All but one of the criteria had been met. The one element of criteria it failed on (that it was not being used for sports and activities) was in contradiction to evidence given by both the applicants and the objectors as cited in the report;
5. The report stated that it was unclear who owned the land. This was not in dispute. The Lord of the Manor owned the land, along with the rest of the village greens and were maintained by the Parish Council. The Parish Council were concerned that the letter proving this was omitted from the inquiry report. It was clear, given the number of independent witness statements, that the Parish Council were simply trying to preserve the application land for everyone's use and not for personal gain. In contrast the objectors were in the process of stealing the land for personal financial gain to the detriment of everyone else.

In conclusion the Parish Council felt, that for the reasons outlined, the application should be granted to protect the asset for the whole community and not just one household. Mr Nixon urged the Committee to look at the planting and chipping away of the tarmac on the highways in Teesdale Way and adjoining the land as a matter of urgency before any more damage could be done. Mr Nixon also urged the Committee to investigate obstructions occurring on public land and the intimidation of villagers, matters which had been reported to the police.

The Solicitor referred to the comments made by Mr Nixon regarding the preservation and enhancement of the village green, which was admirable, however, lawfully it was not open to the Committee to have regard to the desirability of having the land registered as village green.

In relation to the employment of the principal objector for which other, correspondence had been received from residents of Romaldkirk, the Solicitor explained that it would be unreasonable to prevent an employee of the Council to protect their private interests simply because they worked for the Council. The requirements of the Localism Act in terms of declaring interests only related to Elected Members of the Council.

The Solicitor accepted that there was only one failure to meet the statutory tests in terms of the actual level of use, however, the law was clear that all six tests had to be met and strictly proven by the applicant for the land to be registered as town or village green. The Solicitor also advised that ownership of the land was only relevant in terms of serving notices and it was not relevant in respect of determination of the application.

The Committee then heard from Councillor J Rowlandson who had spoken to the two local members representing the area. Councillor Rowlandson informed the Committee that the local members were unhappy with the recommendation, however, they accepted the conclusion given that the matter had been to a public inquiry. Councillor Rowlandson sympathised with Romaldkirk Parish Council but agreed with the Inspectors conclusion, adding that village greens and protection of them was a very difficult subject.

Councillor K Thompson queried the reference made during the representations regarding 'stealing the land'. The Solicitor explained that the reference was understood to be a private matter regarding land ownership and was not something for the Committee had to concern itself with given that use of the land was necessary and land ownership was not relevant.

Councillor R Ormerod commented that the essence of the matter appeared to relate to what could be constituted as a 'significant number' which appeared a subjective matter given that there was no definition of 'significant'. Councillor Ormerod also referred to evidence that the land was used as a destination for dog walking. The Solicitor advised that there was case law relating to different uses, specifically whether something was used for recreational use or footpath use. The distinction that the inspector made at the inquiry was that the land was not large enough for a full dog walk and those crossing it were exercising a footpath right by walking over the land as part of a dog walk, which was different to recreational purposes. Councillor R Ormerod didn't feel as though this was satisfactory, however, he reluctantly accepted that it was the law.

Councillor J Turnbull referred to 1967, a time when many authorities registered land as village greens. Councillor Turnbull highlighted that mistakes were made during that time and queried if any checks had been made to ascertain that the land in question was not registered at the time given that he had been aware of areas where certain pieces of land had been omitted in error in 1967 which were later re-registered in 2005.

In response, the Solicitor advised that the Parish Council had initially approached the County Council to seek a correction to the register. It was explained to the Parish Council that this was not possible as the relevant documentation did not exist.

Moved by Councillor K Thompson, **Seconded** by Councillor J Rowlandson and

Resolved

That the application to register land as common land or village green at Romaldkirk be refused.