

## Highways Committee

3 September 2012



### Application for Village Green Registration Belle Vue, Consett

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### Report of Colette Longbottom, Head of Legal and Democratic Services

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#### Introduction

1. The County Council is the registration authority for Town and Village Greens under the Commons Act 2006.
2. In 2009 an application to register an area of land known as Belle Vue, Consett ("the Land") as a Town or Village Green was submitted to the County Council on behalf of the Consett Green Spaces Group ("the Application").
3. The County Council (in its capacity as owner of the Land) objected to the Application.
4. As is standard in disputed applications, the County Council appointed an independent Inspector (Mr Edwin Simpson) to hold a Public Inquiry which sat from 12<sup>th</sup> – 15<sup>th</sup> July 2010.
5. The Inspector recommended that the Application should be refused.
6. The County Council's Highways Committee resolved to refuse the Application on 11 April 2011 ("the Decision").
7. On 8<sup>th</sup> July 2011, Mr Stephen Malpass (a member of the Consett Green Spaces Group) applied to the High Court for permission to judicially review the Decision.
8. On 25<sup>th</sup> July 2012 the High Court quashed the Decision and the Application has therefore been remitted to the County Council (as registration authority) for re-determination. A copy of the judgment is attached to this report as Appendix 1 ("the High Court Judgment").

#### Purpose of the Report

9. To update members in respect of the High Court Judgment.
10. To set out the options considered which are available to the registration authority in re-determining the Application.

11. To seek the Highways Committee's agreement to appoint Mr Edwin Simpson to prepare a supplementary report and to make further recommendations to the Committee in respect of the Application in light of the High Court Judgment.

## **Update**

12. The Application was made under s.15(1) of the Commons Act 2006 which provides that a person may apply to the commons registration authority to register land as a Town or Village green if section 15(2) applies
13. Section 15(2) provides that a village green has come into existence 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.
14. Members will note that in order for land to be registered as a Town or Village Green, one of the criteria which must be met is that the land has been used "as of right" (i.e. use without force, secrecy or permission).
15. Following the Public Inquiry, the Inspector produced two reports dated 11<sup>th</sup> October 2010 and 15<sup>th</sup> February 2011. The Inspector found that due to a Deed dated 4<sup>th</sup> February 1964 made by the Urban District of Consett, the Land was subject to a statutory trust to allow the enjoyment thereof by the public and as such, the Land was used "by right" conferred under the Deed as apposed to "as of right" and as such failed the tests set out in section 15(2) of the Commons Act 2006. As a result, the Inspector recommended that the Application should be refused. In justifying his recommendation, the Inspector relied upon the judgment of Lord Scott in the case of *R (Beresford) v Sunderland City Council* [2004] 1 AC 889.
16. The High Court found that, in the *Beresford* case, Lord Scott had not in fact reached any firm conclusions on the issues which were treated by the Inspector as being settled law in justifying his recommendation. Therefore, the Inspector's reasoning (and the Decision, being as it was based upon the reasoning and recommendations of the Inspector) must be viewed as flawed.
17. The High Court therefore quashed the Decision and the Application has been remitted to the County Council (as registration authority) for re-determination.

## **Options available to the Committee in re-determining the Application**

18. It now falls to the County Council as registration authority to re-determine the Application.

19. In considering the options available in the re-determination of the Application I have considered the following options:
- i) Instructing a new inspector to reconsider the whole Application. This option would include holding a new Public Inquiry.
  - ii) Instructing the original Inspector, Mr Simpson to reconsider the whole Application. This option would include re-convening the original Public Inquiry.
  - iii) Instructing a new Inspector to reconsider the Application and to issue a further supplementary report setting out the Inspector's conclusions in light of the findings of the High Court. This option would not involve holding another Public Inquiry.
  - iv) Instructing Mr Simpson to reconsider the Application and to issue a further supplementary report setting out his conclusions in light of the findings of the High Court. This option would not involve holding another Public Inquiry.

## **Discussion**

20. I do not consider that it is proportionate or necessary to hold another Public Inquiry to re-determine the Application. Whilst the High Court Judgment is clearly fundamental to the validity of the Decision, I do not consider that it necessarily requires the re-consideration of the whole Application by way of a Public Inquiry. The issues raised by the High Court Judgment are relatively limited. In addition, the user evidence has already been considered by the Inspector and it would be disproportionate in my view to require the re-consideration of the user evidence by way of convening a further Public Inquiry. Rather, it would be more appropriate in my view to limit the reconsideration of the Application to those issues resulting from the High Court Judgment without holding another Public Inquiry.
21. I have also considered whether it is necessary to instruct a new Inspector to consider the re-determination of the Application. However, given that Mr Simpson has previously heard and considered the evidence from all parties, it is considered that it would be disproportionate and inefficient to instruct a new inspector in this instance, as any newly appointed inspector would have to spend considerable time familiarising his or herself with the earlier evidence.
22. It is intended that both the Consett Green Spaces Group and the County Council (in its capacity as landowner) will be afforded the opportunity to make further written representations to Mr Simpson prior to the preparation of his supplementary report. There will also be an opportunity for both parties to comment on Mr Simpson's draft supplementary report

prior to the supplementary report being presented to the Highways Committee.

### **Representations from Interested Parties**

23. The Solicitors acting on behalf of both the Consett Green Spaces Group and the County Council in its capacity as owner of the Land have confirmed that they do not object to Mr Simpson being instructed to prepare a further supplementary report in light of the findings of the High Court. In addition, both interested parties raise no objection to the Application being re-considered without a further Public Inquiry.

### **Recommendation:**

24. For the reasons outlined in paragraphs 20 and 21 of this report it is recommended that the Committee authorise the appointment of Mr Edwin Simpson to prepare a supplementary report in light of the High Court Judgment and to make a further recommendation to members of the Highways Committee in respect of the re-determination of the Application.

### **Background Papers**

Appendix 1: Judgment of High Court dated 25<sup>th</sup> July 2012

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