**IN THE MATTER OF AN APPLICATION
FOR THE REGISTRATION
AS A TOWN OR VILLAGE GREEN
OF LAND KNOWN AS "BELLE VUE PLAYING FIELDS"
AT BELLE VUE, CONSETT, COUNTY DURHAM**

INSPECTOR'S FURTHER REPORT

Background

1. I have previously advised the Registration Authority ("the CRA") in this matter, in a Report dated 11 October 2011 ("the Main Report"), that in my opinion it should refuse the Application to register the Application Land as a town or village green (TVG).

2. As I advised that it should be, the Main Report has been made available to the Applicant and to the Objector for comment. I have been provided with comments from the Applicant dated 5 November 2010 (including a small quantity of additional evidence) and from the Objector dated 4 November 2011. I have taken all of this further material into account, and the purpose of this Further Report is to consider whether it affects the conclusions and recommendations contained in the Main Report.

3. I will make clear at the outset that the new evidence and arguments have not altered the conclusions and recommendations contained in the Main Report. I accordingly remain of the view that the Application Land should not be registered as a TVG for the reasons contained in the Main Report and in this Further Report. I will re-emphasise, however, the point made in paragraph 10 of the Main Report that, whilst it is to be expected that the CRA will consider

carefully and attach weight to my recommendation, I am not an independent adjudicator. At all times the duty of reaching a fair decision upon the application remains with the CRA. It is not a duty that CRA can delegate to an outsider. Thus the CRA remains free to seek other legal advice should it wish to do so, and it will have to reach its own determination on the various matters of fact and law which have arisen. I nevertheless hope that the Main Report and this Further Report will materially assist the consideration and ultimate disposal of the Application.

4. I will consider the points made by the Applicant first ("the Applicant's Response"), followed by those made by the Objector ("the Objector's Response").

The Applicant's Response

5. The Applicant accepts (at paragraph 3 of its Response) the accuracy of the Main Report at paragraphs 1 – 73; but disagrees with certain of the factual conclusions and analysis contained in paragraphs 74 – 120. The paragraph numbering in the sub-headings below refers to the paragraph numbering of the Applicant's Response.

Paragraphs 7 - 19

6. In the Main Report I advised[1] that it was not possible to conclude, on the basis of the three sales/appropriations about which Mrs Wills provided evidence (see the Main Report at paragraph 89), that the whole of the "44 acres or thereabouts" was held from its acquisition for the purpose of public walks or pleasure grounds - although two of those sales/appropriations for new purposes (one of which is within the 44 acres, the other not: see the Main Report at paragraphs 91 and 94) refer to the parcels of land to which they relate being so held prior to the relevant consents. It is *possible* that the whole area was so held. It would, for example, indicate that the 1964 Deed was indeed merely "confirmatory" in its effect – as is perhaps suggested by its own terms. And it would explain the need for the

[1] See the final sentence of paragraph 92.

second (as well as the first and third) of the sales/appropriations referred to by Mrs Wills (see the Main Report at paragraph 93), which appropriated land out of the 44 acres for housing purposes (which land was described simply as being "vested in [the] Council") in connection with the Oakdale Road development. I cannot accept, however, as is perhaps suggested at paragraph 11 of the Applicant's Response, that it is possible to conclude that the 44 acres or thereabouts (or any part of it) was from its acquisition specifically appropriated for housing purposes. Had that been the case, at any rate as far as the land affected by it is concerned, there would have been no need for the November 1938 Appropriation in connection with the Oakdale Road development.

7. The position, in my view, is instead that the CRA can properly conclude no more than that, from the terms of the first and third of these sales/appropriations, that areas of land at the Western end of the "44 acres or thereabouts" (one within; one without) were held as public walks or pleasure grounds prior to their relevant sale/appropriation; and that it was thought necessary to appropriate the second area of land (within the 44 acres) for housing purposes in connection with the Oakdale Road development.[2] It is against that factual background that the terms of the 1964 Deed fall to be judged.

8. In the terms of paragraphs 15 and 19 of the Applicant's Response, my advice to the CRA accordingly remains that it is not possible to conclude one way or the other as to whether the 44 acres or thereabouts was acquired in 1936, or shortly thereafter appropriated, for the purposes of either the 1875 Act or the 1906 Act. The evidence is consistent with that being the case, but it is circumstantial, because related only to particular parcels, and is clearly insufficient to establish it for the whole of the 44 acres (and so for the bulk of the Application Land), even on the balance of probabilities. Which is, of course, why the 1964 Deed

[2] I should make clear that the timing points made in the Applicant's Response at paragraph 10 do not in my view detract from these conclusions. I also do not consider that the further examples of disposals given in paragraph 16 of the Applicant's Response advance the matter one way or the other. There may have been proper appropriations in some or all of the cases mentioned: we simply do not know, because any such evidence is no longer available. But we do have the evidence, such as it is, that is provided by the three extant sales/appropriations.

assumes the significance that it has.

Paragraphs 20 - 23

9. I do not consider that the history of recreational user after the war and prior to the 1964 Deed advances matters much further. However, it is noteworthy that general matters concerning use of the area were being considered by the "Parks and Open Spaces Committee", rather than by any other Committee (see Items 3 – 7 of the additional evidence now produced by the Applicant)[3]. The Housing Committee, for example, appears only to have become involved when specific housing developments were being considered (see Items 1 and 2 of the additional evidence now produced by the Applicant). Equally, I do not regard the discussions in the late 1950s of unauthorised gates providing access to the field, and the possible granting of wayleaves in connection with them, as advancing matters, since the evidence at the Inquiry indicated that generally access was available to the Application Land by means of the ordinary access points at that time. The Minutes go no further than demonstrating that the Council was resisting entrances onto the land being made from private gardens.

Paragraphs 24 - 32

10. It is accepted, at paragraphs 25 and 26 of the Applicant's Response, that the Deed refers to the various parcels in the way set out in the Main Report.

11. I have considered carefully the argument made by the Applicant that the 1964 Deed is incapable of operating as a valid appropriation either because of a want of formality or process, or because it purports to apply to land (i.e. the Oakdale Road development) which had already been appropriated to a different purpose; but I do not accept these arguments. As far as the first is concerned, a particular formal process might clearly have been required had the land concerned been held for an *inconsistent* purpose prior to the entering into of the 1964 Deed.

[3] I note in passing, although these are not the parts of the documents specifically relied on by the Applicant, that there is a reference at para. 39 of Item 4 (which apparently dates from during WWII) to a seat "in the playing-field at Villa Real"; and that at Item 5 (apparently from around 1954) that various views about pitch allocation were being expressed, including the view that "such sites should not be

That is clear from the end of paragraph [30] of the section of Lord Scott's speech in *Beresford* (set out in paragraph 100 of the Main Report), and is reflected in the terms of my own conclusions as set out in the Main Report at paragraphs 117 and 118. (And it is for similar reasons that the three ministerial consents of which Mrs Wills gave evidence were necessary in those instances). But here the position is that the land with which we are concerned was held (either following from the terms of its acquisition, or from a subsequent appropriation evidence of which has been lost, or simply in practice) which was not inconsistent with its use as open space. In any of those cirsumstances, and taking proper account of the reasoning of the House of Lords in the *Beresford* case, I do not consider that anything more formal was required than the 1964 Deed either to clarify that the Application Land was already subject to a statutory trust pursuant either to the 1875 or 1906 Acts; or to operate effectively to subject the Application Land to such a trust.

12. As far as the second argument is concerned, it is met essentially by the same point. Where land had already (by 1964) been appropriated to an inconsistent use (as in the case of the Oakdale Road development), or indeed been disposed of by the Council, there can be no question of the 1964 Deed impressing such land with a statutory trust, or operating to confirm the existence of such a trust.

Paragraph 33

13. I agree with the Applicant that some organised football matches had taken place in the years before 1964 (as evidenced by some of the Minutes from the last 1950s considered above). However, the oral evidence at the Inquiry was that that use for organised matches grew in the middle of the 1960s – see for example the evidence of Mr Burgess, set out at paragraph 43 of the Main Report, that Sunday League matches began in 1965. It is to this evidence that I referred in paragraph 120 of the Main Report. Whether this fact did or did not lie behind the entering into of the 1964 Deed is, in the end however, of no wider significance in terms of the conclusions and recommendations of the Main

allocated to particular clubs but rather to remain totally available to the general public".

Report.

Paragraphs 34 – 35

14. I do not accept that the evidence concerning wayleaves demonstrates that the Council was resisting encroachment to the land generally. The evidence presented at the Inquiry was not to this effect; and nor does the discussion of pitch use recorded in Item 5 of the supplementary evidence submitted by the Applicant suggest that this was the Council's position. What it appears from Items 6 and 7 of that evidence was being resisted was access being made directly from private houses, rather than via the normally available entrances.

Paragraphs 36 - 39

15. I agree with the Applicant that the motivation behind the 1964 Deed was to make the position clear. Whether the Application Land had in fact been impressed with a statutory trust permitting access from more or less the time of its acquisition in 1936 may now never be known. I also agree that various understandings and beliefs came to be held by local people (and indeed no doubt by those working for the Council) as to the way in which the land was held prior to 1964. But be that as it may, I remain of the opinion, and I so advise the CRA, that following the 1964 Deed, and so throughout the relevant 20-year user period from November 1989 to November 2009, the Application Land was impressed with a statutory trust such that all user was "by right" rather than "as of right".

The Objector's Response

16. The Objector supports the conclusions at paragraphs 74-123 of the Main Report, whilst reiterating its stance on the argument contained in paragraphs 51-54 of the Closing Submissions made on its behalf at the Inquiry, concerning the control of the Objector over any use taking place on the Application Land. I advised the CRA at paragraphs 71-73 of the Main Report to reject that argument for the reasons there set out. I have not changed my view following consideration of the Objector's Response.

Conclusion

17. For the reasons contained in the Main Report together with those stated in this Further Report, my advice to the CRA is that it should refuse the Application to register the Application Land as a TVG.

18. As I have already indicated at paragraph 3 above, the CRA must make its own decision and is in law free to follow or not follow my recommendations as it thinks right, applying the correct legal principles and after due consideration of the evidence. It is also free to take further legal advice should it wish to do so before making a determination. In making its determination, the CRA must, of course, leave out of account, as being wholly irrelevant to the statutory questions which it has to decide (i.e. whether the Application Land or any part of it is land which satisfies the definition of a TVG), all considerations of the desirability of the Application Land being registered as a TVG or being put to other uses.

Edwin Simpson
New Square Chambers
Lincoln's Inn
15 February 2011

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