In the Matter of

An Application to Register

Land known as Belle Vue Playing Fields, Consett, County Durham

As a New Town or Village Green

REPRESENTATIONS OF DURHAM COUNTY COUNCIL

AS OBJECTOR

Introduction

[1] These are the representations of Durham County Council as landowner(DCC) addressed to Mr. Edwin Simpson, the non-statutory inspector, in relation to his reconsideration of his reports to the commons registration authority (CRA) in the light of the decision of the High Court in the case of *R (Malpass) v The County Council of Durham* [2012] EWHC 1934 (Admin).

[2] The submission of DCC is that the inspector should find that the application land is and has at all material times since local authority acquisition been held for the purposes of s. 164 of the Public Health Act 1875 (PHA 1875). The result would be that use of the land for recreation by local people has never been "as of right" and that the inspector should recommend to the CRA that the application to register the application land as a new town or village green (TVG) ought to be rejected.

[3] In essence, DCC invites the inspector to adopt the view described as "quite compelling" by the judge at paras. 42 & 45 of his judgment.

Holding powers

[4] Local authorities are creatures of statute and they can only acquire, hold and use land pursuant to statutory powers. See the submissions of Mr. George QC recorded at para. 39 of the judgment and accepted by the judge.

[5] It follows that the application land has, at all material times, been held by the successive local authority owners under some statutory power and for some statutory purpose. In an ideal world, the conveyance or transfer of land to a local authority would explicitly identify the statutory power under which the land was acquired. If it does not do so, the relevant statutory power has to be identified, on the balance of probabilities, from such other evidence as is available.

The acquisition of the application land

[6] This is a case where none of the conveyances of the three parts of the application land recorded the precise statutory power under which the relevant part of the land was acquired:

- The 1922 Indenture (Appendix B to the WS of Anna Wills) simply spoke of the land "being required by the Council for purposes for which they are authorised by statute to acquire land"
- The 1936 Conveyance (Appendix C to the same WS) used the same formula
- The 1979 Conveyance (Appendix E to the same WS) is simply silent on the question of statutory acquisition power.

[7] However, in each case the relevant land must have been acquired under some statutory power. It is therefore necessary to consider the evidence in order to infer, on the balance of probabilities, what that statutory power was. DCC submits that the proper inference, on the balance of probabilities, was that the application land was acquired under s. 164 PHA 1875

Drawing the inference

[8] It is submitted that there are four classes of material from which the inference can collectively be drawn:

- The history of use of the application land
- References to the existing statutory purpose on sale or appropriation of land formerly forming part of the same land
- References to the existing statutory purpose in council minutes
- The 1964 deed.

Use of the land

[9] The evidence is that the application land (other than the land acquired in 1979) has been used for public recreation since the 1950s, i.e. for more than half a century. There is a presumption that the successive local authorities landowners have acted lawfully within their powers rather than unlawfully outside their powers. See judgment para. 41 first bullet point. The strong inference is that the land was acquired for public recreational use. There is evidence that the land was originally partly disused quarry land which was used for land reclamation but this is explicable as preparation of the land for recreational use. See para. 15 of the judgment.

[10] The evidence is that the 1979 land has been used for public recreation since acquisition.

Appropriation or sale

[11] There is evidence that on appropriation or sale of land formerly part of the same body of land as the application land, the land was regarded as being held for the purposes of PHA 1875 s. 164.

[12] The ministerial consent to sale of 24th June 1936, which related to part of the land acquired in 1936, referred to the land as "vesting in the said Council for purposes

of public walks and pleasure grounds". See inspector's first report paras. 90-92 and judgment para. 16.

[13] The ministerial consent to appropriation of 31st March 1949, which also related to part of the land acquired in 1936, also referred to the land as "vesting in the said council for purposes of public walks and pleasure grounds". See inspector's first report para. 94 and judgment para. 18.

Council minutes

[14] Minutes of the Consett UDC in the 1940s and 1950s showed use of the application land being administered by the Parks and Open Spaces Committee. There is a reference in minutes dating from WWII to "the playing field at Villa Real" and in minutes of the about 1954 to "such sites should not be allocated to particular clubs but rather to remain available to the general public". See para. 9 of the inspector's second report

[15] Minutes of the Consett UDC's Allotments, Parks and Open Spaces and Cemeteries Committee between September 1963 and February 1964 showed that responsibility for the application land was administered and managed by the committee dealing with parks and open spaces. See judgment para. 33. The minutes of 10-09-63 refer to the application land as held for the purposes of public walks and pleasure grounds. The minutes of 10-12-63 refer to "these public places".

[16] This is powerful evidence that the application land was regarded from the 1930s onwards by the holding local authority as held for the purposes of s. 164 PHA 1875.

The 1964 deed

[17] The 1964 deed can only have done one of two things:

- To effect an appropriation of the application land to the purposes of PHA 1875 s. 164 (or perhaps the OSA 1906), or
- To record in a formal written instrument that the land was held for public open space purposes under PHA 1875 s. 164 (or perhaps OSA 1906 s. 10).

[18] The inspector considered that the purpose and effect of the 1964 deed was an appropriation. However, the High Court has held that, as a matter of law, it did not effect an appropriation. It is submitted that the purpose and effect of the 1964 deed must therefore have been to record the fact that the application land was held for public open space purposes.

[19] This construction is consistent with the language used in the 1964 deed. The 1964 deed is explicable by the fact that the statutory purpose for which the land was held was not recorded in any of the relevant conveyances.

[20] The 1964 deed did not therefore effect any legal change in the status of the land, but it is powerful evidence that the land was regarded in 1964 as already held for public open space purposes.

[21] It is possible that the 1964 deed did not apply to certain small parts of the application land. See first report of inspector para. 121. Those parts are clearly a very small part of the application land which would not, in any event, justify registration on their own. See para. 122 of the same report.

Conclusion

[22] It is submitted that the combined effect of all this evidence is that there is a powerful inference that the application land was acquired and has at all material times been held for the purposes of PHA 1875 s. 164. It follows that recreational use by local people has not been "as of right" and the application to register the application land as a new TVG should be rejected.

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9th October 2012
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