**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**

ADDENDUM TO INSPECTOR'S THIRD REPORT

Introduction

1. My Third Report in this matter, dated 19 December 2012, has been circulated to the concerned parties for comment before the matter is to be considered by the Highways Committee of Durham County Council (in its capacity as the relevant Commons Registration Authority "the CRA"). I have received comments from the Applicant (the Consett Green Spaces Group ("CGSG")), made on its behalf by John Campbell; and from the Objector (Durham County Council, in its capacity as owner of the land), made by Pat Holding, Principal Solicitor, Planning & Development, Legal & Democratic Services. The latter are brief and simply endorse the conclusions reached in my Third Report. I need say no more about them.

2. I should record that comments on my Third Report were originally sought by 23 January 2013. However, CGSG requested an extension of time until 1 February 2013 to enable research to be done at the National Archives, which request was agreed to; and then asked for a second extension of a further five weeks, to enable more such research to be done. On my advice, the CRA allowed an additional extension only until 6 February 2013, in order for me to be able to consider any submitted comments and for this Addendum to be prepared in time to be circulated before the specially arranged meeting of its Highway Committee to be held on 25 February 2013.

The submissions made on behalf of CGSG

3. I have considered carefully the written Response to my Third Report prepared on behalf of CGSG ("the Response"). I agree with the suggestion made at paragraph 2 of the Response that there is a typographical error in paragraph 23 of the Third Report: the date five lines up from the end of that paragraph should indeed read 4 February 1964; not 1924. I note also that the Response, at paragraph 3, now accepts my conclusion, reached at paragraph 19 of the Third Report, that the phrase "Belle Vue Grounds" was used by the Allotments, Parks and Open Spaces and Cemeteries Committee in the early 1960s in a wider sense than had previously been argued on behalf of CGSG.

4. Paragraph 23 of the Third Report sets out the evidence on the basis of which I have advised that an inference can properly be drawn that the 44 acres or thereabouts, acquired pursuant to the 1936 Conveyance, and including within it the bulk of the Application Land,[1] has been held since that date under section 164 of the 1875 Act, such that user since that date has been 'by right' rather than 'as of right'.

5. I do not find that anything contained in the Response causes me to depart from that advice. The 1936 ministerial consent to the sale of a small parcel of land within the 44 acres for an electricity sub-station described that parcel as presently held "for purposes of public walks and pleasure grounds". The 1949 appropriation, which related in part to other land within the 44 acres, also described the appropriated land as presently held for those purposes. As I said at paragraph 22 of the Third Report, those statements are of greater probative value than is the absence of a specific reference to the basis on which certain other land (within the 44 acres) was held in the 1938 appropriation (which land is simply described as "vested in the said Council"). As I reasoned at paragraph 23 of the Third Report, in the absence of evidence that different parts of the 44 acres were held, formally, for distinct statutory purposes (and there is no such evidence),

[1] See paragraph 25 of the Third Report in respect of the remainder of the Application Land. The view expressed in that paragraph is not affected by this Addendum.

then it is reasonable to conclude, on the balance of probabilities, that all of the 44 acres were held in the manner described in the 1936 and 1949 consents. That conclusion is further supported by the fact (now accepted on behalf of the CGSG) that the committee minutes from the early 1960s show that the phrase "Belle Vue Grounds" was used widely to refer to the area of land as a whole, and that the minutes refer to legal advice having been taken (at a time when more relevant documentary evidence may have been available than is available now), and state that "Belle Vue Grounds are held as public walks and pleasure grounds and that any variation to this would require the consent of the Ministry of Housing and Local Government".

6. I do not agree with the argument made on behalf of the CGSG (at paragraph 4 of its Response) that this reasoning is weakened by the suggestion (it is no more than a suggestion) that it may, from the outset (i.e. from the time of the 1936 Conveyance) have been the intention that the land to be appropriated in 1938 would in due course be used for housing. Even if that were the case, all that we know from the evidence is that it was necessary for the land to be appropriated for housing in 1938, and that that appropriation (unlike in the case of the consents of 1936 and 1949) is silent as to the basis on which the land had been held in the meantime. This does not weaken the inference that the 44 acres, acquired as one parcel, and given the actual evidence available today, including that from the relevant committee in the early 1960s, is more likely than not to have been held as a whole for the purposes of public walks and pleasure grounds.

7. I similarly do not agree that the evidence of Mr Green, referred to at paragraph 5 of the Response, indicates that some of the land was held for a distinct statutory purpose. Such 'filling' of the land, as suggested by the High Court, may simply have been preparatory to its intended recreational use. Nor do I find that the reference to public quarries (see paragraph 6 of the Response) in the 1964 Deed is sufficient to undermine the inference which I have advised the CRA to make. Nor do I find the fact that some of the relevant land is shown on the OS Maps of 1921 and 1939 as being in use as 'allotment gardens' undermines the inference.

We know from the 1936 sale (for the electricity substation) that land then apparently in use as 'allotment gardens' was nevertheless held for the purposes of public walks and pleasure grounds (see paragraph 14 of the Third Report).

8. I add that I also do not consider that the precise language of the Committee Minute from September 1963 (see paragraph 7 of the Response) lessens its significance. The full Minute is in the following terms:

> "*The Clerk reported upon discussions with the Council's Legal Advisers and the Town Clerk of Newcastle in relation to the provision of Charter for Sherburn Park and Belle Vue Grounds and for the Market Square, Consett. It would appear that the Council is adequately covered in so far that the Sherburn Park and Belle Vue Grounds are held as public walks and pleasure grounds and that any variation to this use would require the consent of the Ministry of Housing and local Government and the use of the Market Square is governed by a covenant in the Deeds. The Clerk is instructed to discuss this matter further with the Council's Legal Advisers to ascertain whether a simple Deed of Dedication or similar document could be prepared in respect of the areas concerned.*"

9. I accept that the formulation "in so far that" in the middle of the Minute is not as elegant as it might be; but the meaning of the Minute as a whole is clear. It records that the Council, as far as Belle Vue Grounds was concerned, had been advised that they were held as public walks and pleasure grounds. (It was these committee discussions, of course, which led, in due course, to the Deed of 4 February 1964.)

Conclusion

10. For all of these reasons I remain of the view expressed in my Third Report; and I advise the CRA to refuse this Application for registration pursuant to the Commons Act 2006.

11. As I have made clear in my previous Reports, 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 the 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 Third Report and this Addendum to it will materially assist the consideration and ultimate disposal of the Application. 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
12 February 2013

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