

**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**

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**SECOND ADDENDUM TO INSPECTOR’S THIRD REPORT**

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**Introduction**

1. This Second Addendum is prepared following the receipt on 15 February 2013 by the CRA of further evidence and submissions from the Applicant, headed “Additional Response of the Applicant to the Inspector’s Third Report”, made on its behalf by John Campbell; and Further Representations in response from the Objector, prepared by Vivian Chapman QC, dated 19 February 2013.
2. I have considered carefully the further evidence and submissions from both parties. They have not caused me to alter my existing advice and recommendations to the CRA.

**The new evidence**

3. The new evidence produced on behalf of the Applicant consists of certain correspondence, minutes and notes from the six month period leading up to the Conveyance of 9 May 1936 of 44 acres of land or thereabouts, part of which forms the bulk of the Application Land in this case.
4. I agree with Mr Chapman’s contention at paragraph 3 of his Representations that it is important to examine these documents against the background of Local Government Act 1933, s. 158 (now LGA 1972, s. 120(2)) which authorises a local authority to acquire land for statutory purposes for which the land is not immediately required.

5. The letter dated 22 November 1935 (NA1–2) indicates that Consett Urban District Council was then contemplating a number of possible uses for different parts of the land which was in due course to be the subject of the 1936 Conveyance, including for recreation (numbered para 4) and for housing (numbered para 5). It also makes clear that the land was not needed immediately.
6. There then follow various Ministry of Health notes made between 2 December 1935 and 2 January 1936 (NA3-4). These contemplate more than one way in which the purchase might be structured: see particularly the note dated 5 December 1935 which contemplates purchase directly of part of the land for housing, or a subsequent appropriation to such use. The note of 2 January 1936, together with the letter of the same date (NA5) make clear that recreational use and possible other uses were also under consideration at that stage, and that an Inspector was to visit the area on behalf of the Ministry. In the meantime the Council was to prepare a coloured plan showing the proposed allocation of the land for the various purposes under consideration.
7. It next appears, from the letter of 12 February 1936 (NA6), that the Inspector has visited and reported, and that the Ministry is prepared in principle to approve the proposed purchase; but that no “housing or other permanent buildings” should be constructed until “final settlement has taken place” (presumably a reference to the need for the land to be stabilised before permanent buildings could be erected). The letter proposes that the land therefore be acquired for the purpose of public walks and pleasure grounds (PWPG) and for allotments (part of the land was already being so used, pursuant to an existing lease – see NA1), and notes that consultation with the Ministry of Agriculture will be required in respect of the latter.
8. The letter of 21 April 1936 (NA7) indicates that the Ministry of Agriculture has been consulted, but was not satisfied with the amount of land proposed to be set aside by the Council for allotments (which, it appears, was less than that already in use as such).

9. The “Minute Sheet” (NA8-10), dated 16 December 1937 (i.e. some months after the 1936 Conveyance), is of considerable significance. It records a meeting of that date to discuss the proposed development for housing of land at Dale Avenue. The second paragraph begins as follows:

*The Council wish to erect 80 houses on a site of approximately 6 acres of the 40 acres at Dale Avenue, sanction to the purchase of which for recreation purposes was given on 8 May 1936 [i.e. the day before the 1936 Conveyance].*

10. In addition to this Minute, there is a further, handwritten note (at NA11) dated 21 December 1937, which states that:

*Although this land was nominally acquired for PWPG it was mainly classed as such for convenience of purchase. IIA were not disposed to authorise its acquisition for housing.*

11. The body of new evidence as a whole, particularly the two elements described in paragraphs 9 and 10 above, are in my opinion supportive of the conclusion I have already advised the CRA to reach, that the land subject to the 1936 Conveyance was acquired as a whole for PWPG purposes. Plainly other eventual uses were being contemplated; and some, such as the Dale Avenue housing, came to fruition. But there is no evidence of further discussions with the Ministry of Agriculture (i.e. following the letter of 21 April 1936 (NA7) but before the date of the Conveyance of 9 May) leading to any part of the land being acquired for allotment purposes. The new evidence, read in conjunction with the other relevant evidence already considered in my earlier reports (see particularly paragraphs 22-24 of the Third Report, and the (first) Addendum to the Third Report), accordingly supports the inference that, because the various intended final uses were not yet settled, and “for convenience of purchase”, the land as a whole was acquired for the purposes of public walks and pleasure grounds - no doubt with the possibility of future appropriations in mind should land subsequently be determined to be used for housing, allotments or indeed other purposes. I am therefore unable to agree with the Applicant’s suggestion (at para 2 of its Additional Response, and see paras 18-19) that the new material

“evidences more than one statutory purpose for which the land was held”. It does not do so. It indicates that more than one eventual use was being considered, but supports the inference that the actual acquisition of the land as a whole, under the Conveyance of 9 May 1936, was for the purposes of public walks and pleasure grounds.

### **Conclusion**

12. 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. Use of the land was “by right” rather than “as of right”.
  
13. 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 the First and Second Addendums 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  
22 February 2013

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