

Highways Committee

15th October 2013

Village Green Registration – Land lying to the south of New Row, Eldon



Report of Colette Longbottom, Head of Legal and Democratic Services

Purpose of the Report

1. To update the Committee on the advice provided by Mr David Manley QC relating to the application received to register land lying to the south of New Row, Eldon ('the Land') as town or village green under the provisions of the Commons Act 2006.
2. To obtain this Committee's decision on the application.

Background

3. The Council received an application from Eldon Parish Council ('the applicant') on 18th July 2011 to register the Land as a village green. The application was accompanied by 22 written statements from local residents of Eldon all asserting community use of the land for a range of recreational activities.
4. The Land is not enclosed and comprises of open green space which is freely accessible by the public. It lies to the south of three rows of terraced houses known as Front Row, South Row and New Row. Open countryside lies to the south and west of the Land and to the east there is an adopted highway.
5. Mr D Jefferson ('the objector') acquired the Land with his brother on 17th August 2011.
6. After being supplied with copies of the supporting witness statements the objector contacted some, if not all, of the witnesses who then signed a pro-forma document stating that they wanted to withdraw their statements and no longer wished the Land to be registered as a village green.
7. The Council wrote to all of the witnesses seeking clarification. That resulted in three statements being reinstated. After the objector was advised the application was still being considered, two witnesses, again, withdrew their statements. There is only one remaining statement from a Mr R Hodgson.

Legal position

8. The Council now needs to determine the application. The key question is whether evidence has been submitted which, on a balance of probabilities, satisfies the statutory test contained in section 15(2) of the Commons Act 2006. That section states 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.
9. In relation to the evidence no potential witness has sought to explain why they wish to withdraw their statement (and in Mr Hodgson's case no explanation is offered as to why he wishes to reinstate his statement). No witness has stated that the content of the original statement was false.
10. The objector's position is that the statements have been withdrawn and should not be taken into account as part of the application. He asserts that the witnesses were misinformed about potential uses of the Land and felt obliged to sign the original witness statements.
11. The applicant is somewhat dismayed by events. It only made the application at the behest of the local community and refutes the above assertion made by the objector. The Parish Council has consistently taken the view that it could not withdraw the application once validly lodged, as it was considered that this was then only a matter which the County Council as Registration Authority could determine. However, it acknowledges that, if a non-statutory public inquiry is held, it will be able to call little or no evidence in support of the application.
12. In order to decide the way forward the Council obtained a legal opinion from Mr David Manley QC. He advised that very little weight should be attached to any of the evidence submitted. To quote from Mr Manley's advice:-

'The Council cannot wholly ignore the evidence as it has been submitted, but by the same token it cannot ignore the fact that the deponents wish it to be withdrawn or effectively ignored. None of the deponents, including Mr Hodgson, has explained their volte face and this, in my view, all goes to weight and entitles the Council to conclude that the application has not been supported by credible evidence that supports the case to the necessary standard of proof'.
13. The Barrister's view is that the evidence submitted can not be considered believable as part of the application due to the change in position.

14. It now falls to the Council as registration authority to determine the application. The options are:-
- a. to reject the application for registration on the basis that the test contained within section 15(2) of the Commons Act 2006 has not been satisfied on the balance of probabilities; or
 - b. to refer the matter to a non-statutory public inquiry before Members or before Counsel to determine the application. A non-statutory public inquiry is usually only necessary where the evidence needs to be tested by cross examination such as where the landowner is opposing the registration or there are inconsistencies with the evidence; or
 - c. to accept the application and register the Land as a village green on the basis that the test contained within section 15(2) of the Commons Act 2006 has been satisfied on the balance of probabilities.
15. The decision on this application is a matter for this Committee. Officers are of the view that as no credible evidence can now be relied upon, the statutory test for registration of the application land as a town or village green has not been met by the applicant.

Recommendation

16. It is **RECOMMENDED** that the Land is not registered as a town or village green and the application be rejected.

Background Paper(s)

None

Contact: Louise Kelly Tel: 03000 269671

Appendix 1: Implications

Finance

The cost of arranging an Inquiry is part of the Council's statutory responsibilities.

Staffing

There are no staffing implications.

Risk

There are no specific risk issues.

Equality and Diversity

The Inquiry process is intended to give all interested parties the opportunity to participate.

Accommodation

Not applicable.

Crime and disorder

Not applicable.

Human rights

The Inquiry will be the fairest way of permitting interested parties to exercise their rights.

Consultation

The application has been publicised by way of Notice in the locality, the local press and posted on the Council's website.

Procurement

Not applicable.

Disability Issues

Not applicable.

Legal Implications

The application must fulfil the requirements of Section 15 of the Commons Act 2006.