

## DURHAM COUNTY COUNCIL

At a Meeting of **Highways Committee** held in Council Chamber, County Hall, Durham on **Monday 11 April 2011 at 2.30 pm**

### **Present:**

**Councillor J Robinson (Vice Chair)**

### **Members of the Committee:**

Councillors B Arthur, A Bainbridge, S Hugill, D Marshall, T Taylor, L Thomson, R Todd, E Tomlinson and A Wright

### **Officers:**

Chris Simmonds (Legal Advisor) and D Roberts (Democratic Services)

### **Apologies:**

Apologies for absence were received from Councillors G Bleasdale, D Burn, D Hancock, J Maslin, D Morgan, J Shiell, P Stradling, C Woods and R Young

**Also Present:** P Holding (representing the County Council, landowner and objector)

### **1 Declarations of Interest**

There were no declarations of interest.

***NOTE:** Prior to consideration of the report the Vice-chair confirmed that all members of the Highways Committee present at the meeting had received training on village green matters. He noted that the Committee would be addressed by representatives of the applicant and objector and by Councillor O Temple (local member). He also referred to the site visit that had taken place earlier that day and in particular to representations received from both the applicant and objector that they had been denied the opportunity to attend because of incorrect information provided with regard to the meeting point. He indicated that this matter would be considered once the Committee had heard from the speakers, although he pointed out that neither side would have been permitted to put their arguments at the site visit anyway.*

*Copies of a letter received from Mr J Campbell (Consett Green Spaces Group) were circulated to members of the Committee and the objector's representative; colour copies of a map illustrating land affected by various conveyances were also circulated to members and the applicant, objector and Councillor Temple.*

## 2 Village Green Registration: Belle Vue Playing Fields, Consett

The Legal Adviser presented the report of the Head of Legal and Democratic Services to assist the Committee in determining an application to register land known as Belle Vue Playing Fields as Town or Village Green under the provisions of the Commons Act 2006.

The report detailed the background to the application (made in October 2009 by Mr J Campbell as chair of the Consett Green Spaces Group). Following receipt of an objection from the Council's Asset Management Service (the Council being the landowner) an independent inspector was appointed to conduct a Non-Statutory Public Inquiry, which was duly held between 12<sup>th</sup> and 15<sup>th</sup> July 2010. The Inspector had provided an initial report and, following the receipt of further comments from both the applicant and objector, a final report in February 2011.

The report outlined the Committee's role in determining the application and summarised relevant case law and the legal test to be applied in determining the application. The Inspector's findings, detailed in the report, had led him to recommend that the application for registration be refused.

The Committee was addressed by the applicant, Mr J Campbell, who suggested that the Inspector's recommendation was unsound and that the application should be granted.

Mr Campbell pointed out that both the Inspector and the County Council had conceded that all elements of the legal test were met, with the exception of the '*as of right*' use of the land; he argued that the Inspector's conclusion that a deed made by the Urban District Council of Consett in 1964 established permission for the public to use the land was unsafe. He did not believe that this document established conclusively that the public used the land '*by right*' rather than '*as of right*'.

Mr Campbell reviewed the history of transactions relating to the Application land and concluded that the bulk of the land was not acquired '*for the purpose of public walks and pleasure grounds*' and that it was not acquired or appropriated under the Public Health Act or Open Spaces Act. He did not believe that the application should be refused on the basis of an obscure deed drawn up almost 50 years ago and urged members to grant the application as use of the land had been '*as of right*', as required by the law.

The Vice-chair gave members an opportunity to seek clarification on any matter from Mr Campbell and the Legal Adviser, following which (there being no points raised) the Committee was addressed by Councillor Temple.

Councillor Temple emphasised that Belle Vue Playing Fields had been used by the public for many, many years and that they had done so '*as of right*' – they had not needed to seek permission to do so; no-one knew or cared who owned the land. He referred to various paragraphs in the Inspector's report which he felt highlighted certain inconsistencies. He noted that, had the applicants been aware of the importance of the 1964 Deed and the interpretation of it, they would have focused

on it a good deal more at the Inquiry. He reminded members that lawyers in the case seemed to agree that the 1964 Deed was a '*bad document*' and that the Highways Committee was charged with making the decision in this case, not the Inspector.

Mrs P Holding, solicitor, representing the County Council (landowner and objector) then addressed the Committee. She complimented the Inspector on the way he had conducted the Inquiry and on the thoroughness of his report; she supported his conclusion that the application should be rejected. She reiterated the Council's argument that most of the application site was used by the public because it was open space that they were entitled to use for recreation purposes by virtue of the 1964 Deed. She acknowledged that the Deed was not well drafted but emphasised that the Inspector had carefully considered all the evidence and documentation presented at the Inquiry. She referred to conveyances produced by the Council, one of which dated back to 1936 and which identified the Application land as open space. She supported the Inspector's conclusions on the status of the land and pointed out that land which may look and feel like Village Green cannot be registered as such unless it meets the strict criteria of section 15(2) of the Commons Act 2006; this application failed to meet those requirements and so she asked the Committee to reject it.

The Legal Adviser noted that, having heard the arguments, it was now up to members to determine the application; he asked that they read paragraphs 11 and 12 of the Inspector's final report again as members had been referred to these paragraphs and it was important to set them in context and members were afforded an opportunity to do so.

The Vice-chair referred to earlier comments about the site visit and asked members to consider whether, in the circumstances, a further site visit should take place. The Legal Adviser advised that it was for the Committee to consider whether there was benefit to be gained from an accompanied site visit for elements of the site to be pointed out by the applicant and objector in which case the matter should be deferred for a further site visit. If members considered that they had seen everything relevant to their deliberations they may decide not to defer for a further site visit.

It was decided not to hold another site visit.

Councillor D Marshall proposed that the application be refused; he was seconded by Councillor Todd.

**RESOLVED:**

That the application to register land known as Belle Vue Playing Fields as Town or Village Green under the provisions of the Commons Act 2006 be refused.

With reference to the question of whether those areas of land not falling within the area described in the 1964 Deed should be registered by the Committee of its own volition as Town or Village Green Councillor Tomlinson moved that the Committee should not so register the land as there was insufficient evidence of use of those areas to meet the legal test; he was seconded by Councillor Wright.

**RESOLVED:**

That the land not within the area described in the 1964 Deed should not be registered by the Committee of its own volition.