

DURHAM COUNTY COUNCIL

At a Meeting of **Highways Committee** held in Committee Room 2, County Hall, Durham on **Tuesday 15 October 2013 at 10.00 a.m.**

Present:

Councillor G Bleasdale in the Chair

Members of the Committee

Councillors C Kay (Vice-Chairman), J Allen, B Armstrong, D Bell, H Bennett, I Geldard, D Hicks, S Morrison, R Ormerod, J Rowlandson, R Todd, J Turnbull and R Young

Also Present

Councillor A Shield

1 Apologies for Absence

Apologies for absence were received Councillor O Gunn, K Hopper and M Wilkes.

2 Substitute Members

3 Declarations of interest

There were no declarations of interest in relation to any item of business on the agenda.

4 Application for Village Green Registration - 'The Field', West Lane, High Westwood

The Committee considered a report of the Head of Legal and Democratic Services regarding a an application to register an area of land known as the The Field, West Lane, High Westwood as a town or village green (for copy see file of Minutes).

A copy of the Application (without the supporting user evidence) was attached at appendix 2. Thirteen evidence questionnaires (attached at appendix 3) had been submitted together with a letter from the occupants of Astley House. A spreadsheet summary of the supporting evidence was attached at appendix 4.

As required by the Commons Registration (England) Regulations 2008 notice of the Application had been published on the Council's website and in the local media. The Council's Access and Rights of Way section had advised that there were no recorded public rights of way over or across the Land, however, there was a public right of way (footpath no. 7, Consett) that bordered the south east corner of the land.

The Committee were informed that the application site formed what was part of a school playing field. For any application to be successful all of the elements of section 15 of the Act had to be strictly proven, those being that:

- (i) A significant number of the inhabitants of any locality, or of any neighbourhood within a locality, had indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and;
- (ii) they continued to do so at the time of the application.

The application period was between 1990 and 2003. The land was enclosed with two access gates which appeared consistent with the need to keep children safe from traffic when the land was being used for school activities.

One witness had stated that the land was known as 'the playing field' and another as the 'school field'. Reference was also made to the land being used for school fairs and school related activities until the school closed. Other statements also indicated that the land had been used regularly for school activities as well as dog walking, children playing, summer picnics and bonfires. Therefore, it was considered that the 'lawful sports and pastime' element of the legal test appeared to have been satisfied. The legal representative did however point out that that common sense appeared to dictate that the school would not have wanted people walking their dogs on the land when it was in use by school children playing.

The legal representative informed the Committee that the land had appeared to have been used regularly for school activities. School use would have been with permission. The relevant period for the application was 1990 to 2010. Out of 13 statements, 5 related to the 20 year period and predominately referred to children playing. No distinction had been made between children using the land as part of the school use and the children using the land unconnected to the school. After 2003 when the school closed there would be no need to make such a distinction and it was the period between 1990 and 2003 that proved relevant. It was felt that the legal test had not been met in this regard.

The Committee then heard representations from the applicant who stated that she had lived in the area in 2003 and the school had closed in the late 90's (between 1997 and 1999). Evidence had been provided that the application area had been used by the village for community activities for the past 45 years and beyond. The land was owned by the National Coal Board. There were at least six statements of evidence which suggested that the public had used the land freely and were never excluded at the time. The applicant also challenged the Council's view on the access gates and informed the Committee that the boundary fence was in a state of disrepair when they moved into the area. It was the local residents group who had applied for funding from the Council to repair the fence and create a second gate.

The applicant also informed the Committee that evidence had come to light from a former schoolteacher who was located in a classroom which had an open view of the field. They had stated that people were allowed to walk on the field and were not aware of anyone having being excluded from doing so.

The applicant felt that many of the points provided in relation to the application area had been based on assumptions and not actual evidence and felt that the application should be approved because the application did meet the relevant legal test, given that:

- the general public were never excluded from the land;
- schoolchildren used the school yard to play and not the field;
- the residents association created the second gate;
- members of the village used the field for community purposes

Councillor Alan Shield, local Councillor for the area explained to the Committee that neither he nor Councillor Stelling had not been properly notified of the application before the Committee and the issue had been going for an inexcusable period of time.

Councillor Ormerod queried why an approximate date had been provided in relation to the school closure and queried what the population of the village was.

The legal adviser informed the Committee that the school closure date was an approximation based on research over the Council's intranet. There were no more than 20 houses with a population of around 60 people.

The Chairman informed the Committee that given the circumstances and viewpoints expressed and given the additional, potentially important evidence had been provided, there should be a process whereby the further evidence should be corroborated.

The Committee expressed their concern over the handling of the application and the process that had been followed, given that some Councillors had cancelled other meetings in order to attend what had been a specially arranged meeting.

Resolved

That the application be deferred.

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

The Committee considered a report of the Head of Legal and Democratic Services which provided an update to the Committee on a legal opinion provided by Mr David Manley QC relating to the application received to register land lying to the south of New Row, Eldon as town or village green under the provisions of the Commons Act 2006 (for copy see file of Minutes).

The legal adviser advised the Committee that it needed to determine the application with the key question being as to whether the evidence submitted, on the balance of probabilities, satisfied the statutory test contained in section 15(2) of the Commons Act 2006.

Twenty-two written statements had been provided by local residents and the landowner had objected to the application. A number of statements had been withdrawn since they had been made, some of which had been later reinstated. The Council had previously expressed its concern about the associated withdrawal of statements.

The objectors to the application were of the view that the withdrawn statements should not be taken into account as part of the application. They highlighted to the Committee that the statements were originally made due to people in the village being misinformed about the potential uses of the land and therefore, felt obliged to sign and submit the statements.

Eldon Parish Council had consistently taken the view that it could not withdraw the application once validly lodged, as it was considered that this was only a matter which the County Council as Registration Authority could determine. However, the Parish Council had acknowledged that, if a non-statutory public inquiry was held, it would be able to call little or no evidence in support of the application.

The legal opinion received stated that the County Council could not wholly ignore the evidence as it has been submitted, but by the same token it could not ignore the fact that the deponents wished for it to be withdrawn or effectively ignored. Given that none of the parties, including the applicant had explained their change of position it was the QC's advice that 'their view, all goes to weight' and entitled the Council to conclude that the application had not been supported by credible evidence that supported the case to the necessary standard of proof'. The Barrister's view was that the evidence submitted could not be considered believable as part of the application due to the change in position.

Having considered all of the factors and the legal advice received, the Legal Adviser informed the Committee there appeared to be no credible evidence that could be relied upon and that the statutory test for registration of the application land as a town or village green had not been met by the applicant.

Resolved

That the application be rejected on the basis that the test contained within section 15(2) of the Commons Act 2006 had not been satisfied on the balance of probabilities.