DURHAM COUNTY COUNCIL

At a **Special Meeting** of **Highways Committee** held in St Helen Auckland Parish Centre, Middlewood Green, St Helen Auckland on **Friday 21 March 2014 at 11.15 a.m.**

Present:

Councillor G Bleasdale in the Chair

Members of the Committee:
Councillors C Kay (Vice-Chairman), H Bennett, O Gunn, D Hicks, K Hopper, O Milburn, S Morrison and J Turnbull.

Also Present:
Councillors C Wilson and R Yorke.

1 Apologies for Absence

Apologies for absence were received from Councillors J Allen, D Bell, I Geldard, D Hall, R Ormerod, P Stradling, R Todd, M Wilkes and R Young.

2 Substitute Members

There were no substitute members.

3 Declarations of interest

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

4 Village Green Registration West Auckland: Fleece & Nursery

The Committee considered a report of the Head of Legal and Democratic Services which sought determination of an application to register land known as the Fleece and Nursery, as town or village green under the provisions of the Commons Act 2006. The land was located between Front Street and the Nursery, north of the Green, in West Auckland. The application had been made on the basis of a claimed 20 years' usage of the land to the date of the application for lawful sports and pastimes as of right by a significant number of the local inhabitants (for copy see file of Minutes).

The application in question had been made under section 15(1) of the Commons Act 2006 which stated that:

"Any person may apply to the commons registration authority to register land as a town or village green in a case where subsection 2 applies."

Subsection 2 applies 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 or 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."

The Principal Solicitor advised the Committee that the wording had been analysed very thoroughly by the courts and each phrase had been interpreted with a clear legal view on its meaning. The phraseology meant that to establish a village green, you could not be exercising in secret and use had to be without permission. The qualifying 20 years of uninterrupted use for lawful sports and pastimes also had to be evidenced. Lawful sports and past times equated to children playing, people walking around the site with dogs, picnics and playing games etc. The area also had to be part of a neighbourhood, community or locality.

In order for an application to be successful each aspect of the requirements of section 15(2) had to be strictly proven by the applicant. The burden of proof had to demonstrate on the balance of probabilities that the land had been used for lawful sports and pastimes to a sufficient extent by local inhabitants over the relevant period. The question for the Committee in this instance was to decide if the applicant had demonstrated, to the satisfaction of the Committee, that all the elements contained in the definition of a village green in section 15(2) had been properly satisfied.

The Principal Solicitor informed the meeting that the Committee had undertaken a site visit prior to the meeting and provided a brief outline of the application. The application had been submitted by West Auckland Parish Council due to a dispute of ownership rights over the land. The application was dated 8 August 2011, and received by the County Council on 11 August 2011.

The significance of the dates were highlighted to the Committee and the 20 year period worked back to 11 August 1991. The application was detailed in Appendix 1 to the report. A total of 23 user evidence forms had been submitted with the application. These were standard forms used by all councils. The evidence contained on the forms had been summarised and were detailed in Appendix 2 to the report. The interruptions to usage over the 20 year period were detailed in Appendix 3 to the report.

On receipt of the application the Council published the relevant statutory notice and objections were received. The objections were detailed in Appendix 4 to the report.

The Principal Solicitor explained, that where conflicts of evidence arose, the Council usually recommended that a public inquiry be held which provided everyone with an opportunity to present their case, so it could be assessed fully. The Highways Committee agreed this course of action on 12 July 2012 and a non-statutory public inquiry was held to test the evidence. The inquiry was conducted by a barrister and legal expert on village green issues which was held on 26 and 27 June 2013. The inspectors report was received on 13 October 2013 and was attached as Appendix 5 to the report.

A copy of the inspectors report had been circulated to both the applicant and the objectors who both responded. Their responses were detailed in Appendix 6 to the report.

In addition to these representations, further representations had also been received from Helen Goodman MP and Lord Foster who had written expressing their support for the application. The Principal Solicitor was of the opinion that these additional representations did not provide any additional evidence to assist the Committee in making a determination on the issue.

Referring to the inspectors report, the Principal Solicitor summarised the oral evidence provided at the inquiry and also referred to the written evidence supplied by way of the user evidence forms. In terms of the written evidence provided, the predominant use for the land was for walking with, or without dogs and children playing. The applicant had stated in their written submission, that since 2006, the owner of 24 Front Street, West Auckland had taken vehicular access across the land with both private and commercial vehicles for which there had been many vehicle movements per day.

The objectors stated that they had purchased 24 Front Street, West Auckland in 1989 and that they had used the application land for vehicular access to the north and south. They claimed that the land had only been used by dog walkers as a short cut to and from the Front Street. They also mentioned that the only part of the land which had been used for recreational purposes had now been fenced in. A further objection had also been received which indicated that the site had only been used by parents and by people walking their dogs.

The applicant had responded that the land was still used for recreational enjoyment, despite the actions of the objectors, which included the parking of cars, equipment and horse boxes, grazing horses and burning of industrial waste. Such occurrences did not encourage community activity, however, the activities still continued, albeit to a lesser extent.

On the day of the public inquiry the inspector heard evidence from eight people. Four were in support of the application, three were against and a there was also evidence from a further third party. The inspector had also considered all of the written evidence but made the point that it had not been tested in cross examination and therefore, where written evidence conflicted with the oral evidence, the written evidence was given a lesser weighting. Periods prior to 2011 had been excluded and only evidence was considered from people within the parish area.

In applying the statutory test the inspector concluded that the area of land met the definition of ‘land’ and the application site was a recognised area.

In terms of the carrying out of lawful sports and pastimes, there was evidence of such activities being carried out on the land within the 20 year period and this was ‘as of right’.

In terms of the ’20 year period’ the inspector concluded that the area had not been used for lawful sports and past times throughout the relevant period 1991-2011 to a sufficient extent and continuity to have created a town or village green.

The Committee were informed that village green activities do involve walking, but the walking has to occur all over the site. If there was evidence of people going from one point to another, both across and though the site, that would be akin to creating a public footpath and the inspector had to exclude that on those grounds.

There was the impression that a significant amount of walking occurred over the land but this amounted to people using it as a short cut rather than recreating on the land generally. No oral evidence was given at the inquiry of people exercising their dogs over the land generally. The evidence was of people using it as short cut for means of access. The written statements were unspecific as to whether the land was being used as a thoroughfare or general recreational facility.

The burdon of proof was on the applicant to prove whether it was one thing of the other. Not for inspector to make assumptions.

The other use of the site was described as 'children playing', however, there was limited amount of evidence on this use. 3 witnesses stated that children no longer played on the site since vehicular movements started in 2006 and was within the period of the 5 years where it appeared that the area wasn't being used. The inspector concluded that qualifying use had been sporadic and insufficient to demonstrate recreation rights over the land. The inspector therefore concluded that the land ought not to be registered as a village green and recommended, on the specific grounds that:

(i) the Applicant had failed to establish that the application land had been used for lawful sports and pastimes to a sufficient extent and continuity throughout the relevant 20 year period to have created a town or village green; and

(ii) the applicant had accordingly failed to establish that the use of the application land had been by a significant number of the inhabitants of any qualifying locality or neighbourhood within a locality throughout the relevant 20 year period.

The Principal Solicitor explained that the matter for the Committee to determine was (i) did the use continue for 20 years; and
(ii) was it sufficient to bring home to the landowner, if there had been one, that the local inhabitants were carrying out activities on the land were they resisted or permitted by a landowner.

The Principal Solicitor commented that the Council's view concurred with that of the inspector in that, the use of the land was diminishing and had been extremely limited during the last five years. There was a clear legal requirement that you had to demonstrate the '20 year' requirement. It was the Council's opinion that, on that basis, the applicant had failed to discharge the burdon of proof to demonstrate on the balance of probabilities that the land had been used for lawful sports and pastimes to a sufficient extent by local inhabitants over the relevant period.

The Committee then heard representations from Mr Roberts of West Auckland Parish Council. Mr Roberts commenced his representation by explaining the work of the parish council since it came into being in 2003 and the partnership working undertaken with others to improve the overall environment and area. This had been carried out successfully, with the exception of the area in question which had been blighted by problems.

Mr Roberts detailed a catalogue of incidents which had occurred, this included:

- the cessation of grass cutting;

- horses grazing on the land;
- in 2006 fences were removed and the objectors established a vehicular route through the nursery (this was highlighted on images from Google Earth);
- there was trespass of private land;
- the objectors use of the land had been from 2006 and not the 25 years they had claimed;
- since 2006 the objectors had used the land 'as their own back yard'
- use of both accesses was excessive and largely by non-domestic vehicles, caravans, vans, horse boxes, lorries and a double-decker bus;
- in 2010 matters deteriorated and the nursery land had been fenced off with some form of ownership being attempted.

Mr Roberts explained that despite all the issues outlined, community use had continued. In submitting the application, the Parish Council had provided 23 witness statements which identified community use. 85% of those statements were by people who either lived on, or, regularly used the land for the 20 year period for lawful sports and pastimes including children playing, football and cricket. The area had been well used and was well-loved land.

Mr Roberts introduced two local residents to the meeting, one of which who had lived with his mother on the nursery from 1966 to 1991. He had visited every week since 1991. He recalled the area as being open grassland, a beauty spot and a hive of activity during summers. People had been unable to use it more recently because of the state of the land. The very idea that the land had not been used for recreation was incorrect. Once vehicular activity occurred in the area, it had become a very difficult place to live and the resident fully supported the Parish Council in their application.

One further local resident informed the Committee that prior to 2007, the area had been very quiet. However, in more recent times, the area was awash with lorries, vans, motorbikes, quads and caravans. Children were unable to play, essentially due to safety reasons. Incidents became so bad in the area that they arranged to have CCTV installed.

Mr Roberts concluded his representations in highlighting that both the Police and Council Neighbourhood Enforcement Officers were regularly called to incidents in the area but despite all of the points made, recreational activities did continue but it was plain to see how community use had been eroded and damaged the area. Its use may have declined but had never diminished. If established as a village green the Parish Council had a community restoration scheme and plans for the area.

The Committee then heard from Mrs Armstong, one of the objectors. Mrs Armstrong informed the Committee that she had nothing to further to add and stood by the original objection that she had made. She drew the Committee's attention, to the conclusion in the inspectors report and reiterated that the Parish Council had not met the criteria for establishing a village green. The area had been used daily as access to rear of property from 1989 to the present day. No accidents had ever been attributed to the access.

Councillor Yorke, local Councillor for West Auckland explained that both he and Councillor Wilson, the other local Councillor were dismayed that the report was recommending refusal of the application yet, there was no doubt that the land had been used for well over 100 years. There were many parcels of land across County Durham with no ownership

rights, yet the fact of the matter was that this area had been looked after by Bishop Auckland Urban District Council, then Wear Valley District Council and now Durham County Council. Councillor Yorke highlighted that Durham County Council had spent millions of pounds along with Natural Heritage in West Auckland. This area was seen as the final piece of the jigsaw and an important piece of land used by children and families located on that side of village, without having to cross a road. The area had been used for a continuous 20 year period, but there was a 5-6 year period where activities were curtailed because of horses, caravans and the other vehicles as explained previously. Councillor Yorke believed that if someone else had reviewed the report they may have come to a different conclusion. Councillor Yorke reiterated that the MP for Bishop Auckland and Lord Foster both supported the application. West Auckland Parish Council were seeking approval of the application, as did residents of West Auckland.

Cllr Gunn explained that she understood what had to be established and had listened to the points expressed by all parties, very carefully. Councillor Gunn felt that the 23 witness statements were not an insubstantial number and believed that it had been demonstrated that land had been used for recreational use over the 20 year period. She felt that walking over the site was recreational use and had been persuaded by the 23 witness statements not to support the application for refusal and would support the application to register the land as village green.

Cllr B Armstrong drew the Committee's attention to the photos from 1991 to 2006 and highlighted how the area had deteriorated over the years. Councillor Armstrong indicated her support for the application on the basis of the 23 witness statements.

Cllr Hicks referred to the police reports highlighted by the Parish Council and indicated his support for the application.

Cllr Kay explained that the Committee had been called to determine the application and were being asked to undertake a quasi-judicial function to best of their ability. Councillor Kay stated that in his opinion, the site had been used for the last 20 years for continual activity, however, after 2006, for whatever reason, that use had diminished, but more importantly, had not ceased.

Councillor Hopper explained that activity on land may have diminished but didn't stop altogether and that was the basis for her judgement. The activities did not stop, but were merely curtailed and she would be minded to support the registration for village green.

Cllr Kay sought clarification from the Principal Solicitor, if the reasons provided by the Committee were enough to substantiate the decision that the Committee had appeared to be forming.

The Principal Solicitor advised that evidence contained in the witness statements had not been tested, therefore the oral evidence was more reliable because it had been tested in cross examination. Without cogent contrary evidence it was difficult to depart from the conclusion of the inspector and the Committee had to demonstrate that there were clear legal grounds for approving the application.

Councillor Kay pointed out that the inspector stated in the report that the Commons Registration Authority, would take time to consider all of the contents of the report prior to

coming to its decision and queried the purpose of the meeting, if the Committee were bound by the inspectors subjective decision. Councillor Kay explained that Committee's view appeared to be different from that of the inspector and they believed that there had been significant use of the land for a continual period of 20 years.

The Principal Solicitor clarified the views of the Committee who were of the opinion that the witness statements provided more reliable evidence despite the comments made in the inspectors report. The Committee felt that the site had been used continually during the 20 year period and there had been significant usage for recreational purposes. In addition to this, Members of the Committee who spoke were of the view that the site had been used for the 20 year period, however, this had diminished in the last few years. Nevertheless, despite the conclusion of the inspector, the evidence in the statements and local knowledge confirmed that there had been sufficient use throughout.

It was **Moved** by Councillor Morrison, **Seconded** by Councillor B Armstrong and

Resolved
That the inspectors report and officers recommendation contained in the report be rejected and that the land known as the 'Fleece and Nursery', West Auckland be registered as village green on the basis that the Committee felt that the site had been used continually during the 20 year period and there had been significant usage for recreational purposes.