

Addendum to Report to Durham City Council in respect of an Application made pursuant to the Commons Act 2006 by Mr Marek Sochocki as Chair of the Witton Park Village Green Committee to register land north and south of Low Queen Street, Witton Park as a Village Green

Summary of Inquiry Outcome

- I) Following publication of my initial report of October 2009 recommending that the application be granted in full Dr Gordon of Heritage North representing Mr Belton took the opportunity of forwarding additional information dated 04/11/09 to show that part of the northern parcel of land the subject of the application had been occupied by a substantial Methodist Church together with enclosed garden during the relevant 20 year period ie. from 23/08/1987. The Authority sought clarification from Heritage North by way of a letter dated 03/12/09 to which a response was duly provided dated 11/12/09. Further information was received from Heritage North dated 12/01/2010. The Applicant's response to the aforesaid information was sent to the Authority by way of a covering letter dated 20/01/2010. It was apparent that a conflict of evidence had arisen insofar as Heritage North asserted that the Church and grounds had been of substantial construction and in use during part of the relevant 20 year period while the Applicant stated that the Church and gardens had been in a state of dereliction and used by local people for recreation along with the rest of the northern parcel of land the subject of the Application. I reopened the Inquiry on 30/03/2010 to hear the competing evidence.

- II) As a result of the aforesaid the following outcomes have occurred:
- (a) My initial report be amended so that Mrs Lambard's visits to the area 1962 - 2002 should be recorded as being 2 or 3 times per year and not 2 or 3 times per week; and
 - (b) That Mr Sochocki's request to amend his application to exclude the land formerly occupied by the Church together with its walled garden be allowed;
 - (c) That subject to (b) above my recommendation to the Authority is that the application be granted and the relevant land be registered by the Authority as a Village Green.

In the light of the above it is not necessary for me to set out a long report which deals with all of the detailed evidence relating to the Church land. There is no bar to the Authority either allowing amendments to an application or otherwise registering less land than identified in the Form 44 Application. I shall however summarise, very briefly, my findings of fact for completeness. I wish also to take this opportunity to express particular thanks to the Reverend Phipps who attended the Inquiry to give factual evidence which was not contradicted by any party.

III) My findings of fact on the relevant issue of the Church land are as follows:

- That the last service was held in the Church on 26/03/1989;
- That up until this point the Church had been used for a weekly service which had been held in the vestry due to the decline in size of the congregation;
- That when not in use for services the Church was locked (see evidence of Mr Belton and confirmation by Rev Phipps that this is normal Methodist practice);
- That the Church, certainly up to this point, was a substantial structure in sound condition and continually insured in respect of public liabilities;
- That the Church was sold for the purposes of redevelopment on 19/07/1991 and subsequently demolished and the site cleared in March 1993;
- That until demolition the Church remained a substantial structure albeit that vandalism resulted in some decline in the fabric of the building and walling around the garden;

- That certainly up to closure of the Church the garden was maintained and largely used for growing vegetables and the keeping of chickens;

- That a few local children/youths would play in the garden but that play was (a) either with the permission of the gardener who was liked and respected by the children or otherwise was in secret at periods when the gardener was not present; and (b) was essentially restricted to climbing trees in the garden or playing on the boundary walls. The cultivated area was not used out of respect for the gardener.

IV) The result of Mr Sochocki's amendments means that I am not strictly required to address the legal implications of the above findings of fact which are, I believe, uncontentious. However, for completeness I will analyse them as follows. The Commons Act 2006 only defines "land" so as to make it clear that land "includes land covered by water" (see S61 ibid). It therefore sheds little light on the question of how one approaches land covered by a building. While I can envisage that a building in an advanced state of dereliction might be used for sports and pastimes that does not arise in this case. For 5 or 6 of the relevant 20 years the Church was either in use and otherwise secured or vacant but substantial and at least locked from time to time. It was not, and could not, be used by the

general community for lawful sports and pastimes. The same may be said of the garden land. There was limited use of this area rather than general community use and much of the use was either by way of express or implied permission (secret use when the gardener was not there was not an assertion of right but trespass by a small group of well meaning young people). In all these circumstances I have no doubt that the Application should be rejected insofar as it embraces the Church and its garden land. Mr Sochocki's amendment was a wise recognition of the inevitable.

- V) There is one final matter. Mr Gill submitted additional information following the close of the Inquiry namely that at a meeting in June 2007 the issue of making a village green application was discussed and that he told people that the land was not a village green and that further he erected a notice on the southern land. This is the notice referred to in my first report. I am not obliged to deal with this additional evidence but I will for sake of completeness. I repeat that I have difficulties with Mr Gill's credibility as a witness. He did not put his latest suggestion to any witness at the October 09 Inquiry and nobody suggested he had ever said as much. Moreover, I would not consider the placing of one ambiguous sign on land, which sign was quickly removed, as taking reasonable steps to draw people's attention to the fact that use was not of right.

VI) I trust that this Addendum includes all matters in a satisfactory manner.

I thank my Instructing Solicitor and her team for her invaluable and efficient support throughout the whole process.

D E MANLEY QC