

**Village Green Registration
Low Queen Street, Witton Park**

Report of Colette Longbottom, Head of Legal and Democratic Services

Introduction

- 1 The County Council is the registration authority for Town and Village Greens under the Commons Registration Act 1965 and the Commons Act 2006. The County Council must act impartially in its determination.

Purpose of the Report & Background

- 2 To advise the Committee in determining an application to register land north and south of Low Queen Street, Witton Park as town or village green, under the provisions of the Commons Act 2006.
- 3 The application was made by Mr Marek Sochocki as chair of the Witton Park Village Green Committee. A copy of the application is attached at appendix 1. The application was received on 24 August 2007 by the County Council and was accompanied by a plan showing the area claimed as town or village green, together with 62 letters in support from householders in Witton Park and a petition. Following publication of the notice of the application 14 objections were lodged, and these are attached at Appendix 2.
- 4 Due to the nature of the supporting evidence and the conflict with the evidence provided by the objectors, the Members of this Committee were advised that a Non-Statutory Public Inquiry would be the most appropriate way forward to test the evidence. Members agreed to this course of action and to the appointment of a suitable experienced independent inspector. In the circumstances Mr David Manley QC of Kings Chambers, Manchester, a legal expert in Village Greens registration was appointed to hold the Public Inquiry and thereafter to provide a report with a recommendation for consideration by this committee.
- 5 A Public Inquiry was held at Crook Civic Centre on October 5th and 6th 2009; an evening session was held on October 5th 2009. The Inspector has completed his report and a copy is attached at appendix 3. The report was circulated to the applicant and other interested parties for final comment. Dr Gordon of Heritage North representing Mr Belton took the opportunity of forwarding additional information on the 4th November 2009 at Appendix 4.
- 6 The new evidence submitted related to the former Methodist Church and the surrounding grounds. This site is identified hatched on the plan at Appendix 5 and is located at the northern parcel of land the subject of the application. This part of the site had been occupied as a Methodist Church and enclosed

garden. After the submission of further evidence in November 2009 the Inspector concluded that the most appropriate way forward was to reopen the Inquiry to analyse the evidence fully and a subsequent addendum report was produced [see Appendix 6] dealing with the new issues relating to land to the north of Low Queen Street.

- 7 The ultimate decision with respect to this application is a matter for this committee. An assessment of the evidence submitted by all the parties has been undertaken by the Inspector who has had the opportunity to hear witnesses in person and consider all the written evidence. The conclusions in the Inspector's report can be considered by the committee.

The Law

The Commons Act 2006

- 8 Village greens which were not registered as such by July 31st 1970 ceased to be village greens and can only now gain that status through registration under the current statutory provisions. Registration brings about general recreational rights and other statutory protection which effectively precludes further development of the site.
- 9 The Commons Act 2006 is the statutory regime governing village greens, the existence of and subsequent registration of which is subject to the fulfilment of all the requirements set out in section 15 of the Act. Registration of village greens is determined by the County Council who are the Registration Authority and the process of determination of any application made is focused on whether a village green has come into existence as a matter of law.
- 10 The application in question was made under section 15(1) of the Commons Act 2006 which states that:

"A person may apply to the commons registration authority to register land as a town or village green if subsection 2 applies."

Subsection 2 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 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."*

Burden and Standard of Proof

- 11 In order for an application to be successful each aspect of the requirements of section 15(2) must be strictly proven by the applicant. The burden of proof is balance of probabilities and lies with the applicant to prove his case. Therefore the applicant must demonstrate that all the elements contained in the definition of a village green in section 15(2) have been satisfied.

Application Land

- 12 A plan highlighting the two areas of land that are to be considered for registration accompanied this application (see Appendix 1) This plan shows an area of land to the north of Low Queen street and to the south of the railway, enclosed on either side by The Green to the west and Paradise to the east. The northern section also included the grounds of the now demolished Methodist Church adjacent to The Green (see Appendix 5).
- 13 Further submissions of evidence from one of the objectors via Heritage North in November 2009 showed that part of the northern parcel of land had been occupied by a Methodist Church before it's demolition in 1993. Heritage North stated that the church grounds had been of substantial construction and in use during part of the relevant 20 year period which conflicted with the assertions of the applicant who claimed that that the grounds had been in a state of dereliction and used for recreation in the same way as the rest of the northern parcel of land. The application was subsequently amended at the second Public Inquiry with the agreement of the applicant, to exclude the area inclusive of all the Church grounds. This amendment to the application is within the authority's powers to accept.
- 14 The second parcel of land is to the south of both Low Queen Street and High Queen Street, including the playground at the southern boundary of the application land and enclosed on either side by Albion Terrace to the west and Main Street to the east.

Background

- 15 Witton Park was declared a category D village around 1959 and as a result of this the houses on the application land were demolished in stages until the land was free from any dwellings. The land was cleared but left in poor condition so a village action group was set up in or about 1979/1980 to restore the land for the inhabitants of the village. The application land was then cleared of rubble by the Territorial Army and then the villagers paid for the building of a low boundary wall around both the northern and southern parcels of land individually, for the land to be grassed over and for trees to be planted. Wear Valley District Council placed children's play equipment on the southern portion of the land in the 1980s; however this was removed approximately 6 years ago.
- 16 All relevant historical matters were agreed by both the applicant and those who spoke in objection to the application.

Ownership

The land that is the subject of the application is in multiple ownership as follows:

- (i) Carwood West Developments Ltd, 12 Princess Street, Bishop Auckland, County Durham;
- (ii) The Trustees for the Methodist Church Purposes, Central Buildings, Old Elm Street, Manchester, Lancashire;
- (iii) Punch Taverns (CPM) Ltd, Jubilee House, Second Avenue, Burton-Upon-Trent, Staffordshire;
- (iv) Wear Valley District Council (title now vested in Durham County Council);
- (v) Annie Gill, 9 Brusselton View, Bishop Auckland, County Durham;
- (vi) Wilfred Swinbank, 23 Holme Dene, Hunwick, Crook, County Durham;
- (vii) Raymond Hewitson, 2 Orchard View, Meadhope Street, Wolsingham, County Durham.

The Inspector's Report

Assessment of Evidence

- 17 At the public enquiry the inspector heard evidence from a total of 30 people set out in part X of the report; the evidence from these persons is set out clearly in the Inspector's report. In addition to this, written submissions both in support of and against the application were considered by the Inspector.

The Legal Framework

- 18 The Inspector's report at part (vii) to (ix) sets out precisely the legal framework that needs to be applied when considering applications for village greens. The Commons Act 2006 defines a village green as set out in paragraph 8 above. In order for a village green application under section 15(2) of the Commons Act to be successful the applicant must demonstrate that the application land is land 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.*
- 19 "...a significant number..." – It is sufficient to show a general use by the local community as opposed to mere occasional use by trespassers. It is not assessed by a simple headcount of users.
- 20 "...of the inhabitants of any locality..." – This is not defined by any arbitrary margins and must be a recognised county division such as a borough, parish or manor, therefore an ecclesiastical parish can be a locality as required by

section 15(2). It is acceptable for the users to come “predominantly” from the locality as in *Oxfordshire CC v Oxford City Council [2006]*.

- 21 “...or any neighbourhood within a locality...” – It is not necessary to address this point as it is sufficient to establish a locality as opposed to a neighborhood for the purposes of section 15(2) and therefore this part of the definition is not relied on in this case.
- 22 “...have indulged as of right...” – Use “as of right” is use without permission, secrecy or by force; the intentions of the users are not relevant. The classification of the use of the land is based upon the issue of how the use is seen by the land owner. Use is “of right” if it would appear to the reasonable landowner to be an assertion of right. Use is by force once the trespasser becomes aware that his use is objected to, and the use has become contentious and so objected to, by the landowner. There is a general obligation upon the landowner to take reasonable steps to prevent use of the land once he becomes aware of an assertion of rightful use; passive acquiescence to the assertion of rightful use will create a situation of use “as of right.”
- 23 “...in lawful sports and pastimes on the land...” – This is broadly interpreted and involves general recreation use including walking with or without dogs and children’s play.
- 24 “...for a period of at least 20 years...” – The fulfilment of the 20 years continuous use must immediately precede the application under section 15(2).

Applying the Law to the Facts

- 25 Part XI of the Inspector’s report deals with how the law applies to the facts relating to the southern parcel of land. It is clear from the evidence analysed that the land south of Low Queen Street subject of the application in question has been used since approximately 1980 for lawful sports and pastimes, both the applicant and the objector agreed with this. It can also be said that the users are almost exclusively from Witton Park itself.
- 26 Witton Park ecclesiastical parish contains 168 houses and 384 people, almost all of those dwellings being located inside the boundary of the Witton Park settlement as well as the parish. Witton Park parish can therefore be established as a locality for the purposes of the requirement of section 15(2).
- 27 Therefore it can be said that there has been at least 20 years continuous use of the land south of Low Queen Street for lawful sports and pastimes by a significant number of the inhabitants of a locality, i.e. Witton Park parish.
- 28 The assertion by one objector that prohibition notices placed on the southern application land by himself in June 2007 and claimed to have been placed there repeatedly prior to that date which attempt to deny that use has been of right, can be rebutted for the reasons set out in the Inspector’s report:-

- (a) There is no evidence as to the placing of appropriate signage prior to June 2007, and the only evidence of any signage relates to a single notice pinned to a tree in June 2007.
 - (b) The notice of June 2007 was not addressed to local users and was in fact placed the day after a meeting of local councillors to address the fact that travellers had set up camp on the southern portion of the land. It is reasonable to conclude that the notice was placed to address the travellers issue and not to prohibit the use of the land by local inhabitants.
 - (c) The notice "Private Property – Keep Off – No Trespassing" is ambiguous as to what it is actually referring to and cannot be said to be clear enough to amount to prohibition of use of the entire southern portion of land.
 - (d) The subject who placed the sign is not a landowner and therefore does not have any powers to prohibit use of the land.
- 29 It is required that a landowner on discovery of use of his land as of right should take reasonable steps to prevent such use. The placement of a single sign does not constitute taking reasonable steps towards the prohibition of the use of land in this way.
- 30 Part XIII of the Inspector's report deals with the land north of Low Queen Street. The Inspector found that the land had been used for 20 years or more for lawful sports and pastimes and that the users were predominantly from the Witton Park parish which is a locality for the purposes of section 15(2) as discussed above.
- 31 After the submission of further evidence in November 2009 the inspector re-opened the Inquiry on the 30th March 2010 to analyse the evidence fully and a subsequent addendum report [see Appendix 6] was produced dealing with the new issues relating to the land north of Low Queen Street.
- 32 The new evidence submitted was from Heritage North and related to the former Methodist Church and the surrounding grounds. The representations from Heritage North showed that part of the northern parcel of land had been occupied by a substantial Methodist Church before its demolition in 1993. Heritage North stated that the church grounds had been of substantial construction and in use during part of the relevant 20 year period which conflicted with the assertions of the applicant who stated that that the grounds had been in a state of dereliction and used for recreation in the same way as the rest of the land north of Low Queen Street.
- 33 During the course of the Inquiry and after hearing evidence Mr Sochocki, the applicant asked if he could amend his application to exclude the land formerly occupied by the Church together with its walled garden which was accepted.
- 34 Whilst it was not necessary for the Inspector to deal with the detailed evidence relating to the Church and grounds because the applicant conceded that the Church and grounds had not been used by the public as of right, nevertheless the Inspector summarised his findings that the last service was

held on 26th March 1989 and up until then the Church vestry had been used weekly for services. When the Church was not used for services it had been locked. The Inspector concluded from evidence submitted during the second inquiry on March 30th 2010 that there was a substantial structure, i.e. the Methodist Church which remained, although vandalism had resulted in the decline in the fabric of the building and the walling around the grounds. Furthermore the grounds were maintained and used as an allotment where local children would play on the perimeter walls or in the grounds with permission; the cultivated area of the garden was not used. The Inspector concluded that the church itself could not have been used for lawful sports and pastimes by the general community, and similarly the garden area was used by local youths but not the general community and this usage was with either the express or implied permission of the gardener or in secret.

- 35 The Inspector therefore asserted that the application should be rejected insofar as it encompassed the Methodist Church and the surrounding church grounds. The application was therefore amended to exclude the area inclusive of all the Church grounds, which the authority was within its powers to accept. Following the circulation of the Inspector's original report it was pointed out that the reference in (IX) Mrs Lambards' visits to the area in 1962 – 2002 should have been recorded as 2 or 3 times per year and not 2 or 3 times per week.

Overall Conclusions

- 36 The inspector concludes that the applicant has discharged the burden placed upon him strictly proving on the balance of probabilities that:
- (a) The users are significant in number;
 - (b) The users come from a locality recognised by law, namely Witton Park parish;
 - (c) The use of the land which is the subject of the application was used and continues to be used as of right;
 - (d) The use of the land has been for the purpose of lawful sports and pastimes;
 - (e) There has been continuous use of the land for at least 20 years.

Recommendation:

- 37 That Members accept the Inspectors conclusions as set out in the reports provided by him, and agree to the registration of the areas of land shown on the plan accompanying the application at Appendix 1 as village green, with the exclusion of the former Methodist Church and grounds, as identified hatched on the plan at Appendix 5.

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