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*Development Control  
Committee  
8<sup>th</sup> January 2008*

## **REPORT OF THE HEAD OF PLANNING AND BUILDING CONTROL**

### **Application 04/2312/VG/E1 for Village Green Status, Asbourne Field, Asbourne Road, Lower Farm Estate, Bloxwich**

#### **1. PURPOSE OF REPORT**

To enable Committee to consider an application under Section 13 of the Commons Registration Act 1965 ("the 1965 Act") made by Mr Alan Roy Parkes to Walsall Metropolitan Borough Council as registration authority to register the land known as Asbourne Field, Asbourne Road, Lower Farm Estate, Bloxwich as a village green.

#### **2. RECOMMENDATIONS**

The Committee accepts the recommendations and conclusions of the Inspector's report and resolve not to amend the register of Towns and Village Greens.

#### **3. FINANCIAL IMPLICATIONS**

None arising from this report.

#### **4. POLICY IMPLICATIONS**

Within Council policy.

#### **5. LEGAL IMPLICATIONS**

- 5.1 The Commons Registration Act 1965 provides for Walsall Metropolitan Borough Council as a registration authority to maintain a register of Towns and Village Greens within its area. Section 13 of the 1965 Act provides for the amendments of the register to take place where any land becomes a town or village green.
- 5.2 Section 13 of the 1965 Act does not give any details of the procedure to be followed when determining an application. Instead, the relevant procedure to be followed is largely set out in the Commons Registration (New Land) Regulations 1969. The regulations provide that where written and signed objections are received by the registration authority, the applicant should be given the opportunity to respond to the objections and the application can then be determined. It is at this stage that the registration authority should determine whether to hold a non-statutory enquiry conducted by an independent person. The regulations do not make any express provision for an enquiry.

- 5.3 A non-statutory enquiry is appropriate where one of the objectors to the application is the Council itself. In relation to the application, the registration authority consider it appropriate to hold a non-statutory enquiry conducted by an independent person as one of the objectors to the application was Walsall Metropolitan Borough Council in its Estates capacity. However, the decision to hold a non-statutory enquiry is not a legal requirement. Therefore, the ultimate decision as to whether or not land can be registered as a village green rests with Committee.
- 5.4 What the Council as registration authority has to determine is whether the land qualified on the date of the application as a village green.
- 5.5 “Town or Village Green” is defined by Section 22(1) of the 1965 Act in three ways, usually referred to as Class (A) Statutory Greens, Class (B) Customary Green and Class (C) Prescriptive Green. In this case, if the land is a town or village green it can only be because it is a Class (C) green.
- 5.6 What the Council as registration authority has to determine is whether the land qualified on the date of the application as a Class (C) village green as defined in Section 22(1)(A) of the 1965 Act as amended by Section 98 of the Countryside and Rights of Way Act 2000.

“...land on which for not less than 20 years a significant number of the inhabitants of any locality, or any neighbourhood within a locality, have indulged in lawful sports and pastimes as of right and... continue to do so”.

- 5.7 The owner has to show that the land has become a village green rests with the applicant.
- 5.8 The qualifying use of the land should continue for 20 years up until the date of the application (Oxfordshire County Council v Oxford City Council and Robinson [2006] UK HL25).
- 5.9 The questions relevant to this application are:
- (a) has there been a use of land for lawful sports and pastimes (this includes present days sports and pastimes and the activities can be informal in nature – it includes dog walking and playing with children but not walking of such a character which would rise to a presumption of dedication of a public right of way)
  - (b) has the use of land been for at least 20 years continuing up to the date of the application (the use can be for any 20 year period, but it must be continuous to the date of the application)
  - (c) Locality  
A “locality” must be a division of the County known to the law, such as a borough, parish or manor: A locality cannot be defined simply by drawing a line on a plan
  - (d) As of Right  
This is the subject of more detailed consideration in the Inspectors Report

and attached. However, in essence, as of right” means without force, without secrecy and without permission.

(e) Continuation of Use

The use must continue as of right until the date of the application.

6. **HUMAN RIGHTS**

Bearing in mind Article 6 of the Convention of Human Rights entitling a person whose civil rights are to be determined a right to a fair hearing for an independent and impartial tribunal, the Council as registration authority took the view that consideration of the application by an independent inspector in the form of a non-statutory enquiry to be appropriate.

7. **EQUAL OPPORTUNITY IMPLICATIONS**

None arising from the report.

8. **ENVIRONMENTAL IMPACT**

None arising from the report.

9. **WARD(S) AFFECTED**

Bloxwich East

10. **CONSULTEES**

Officers in Legal Services have been consulted in the preparation of this report.

11. **CONTACT OFFICER**

Val Osborn - extension 2409

12. **BACKGROUND PAPERS**

All published.

David Elsworthy, Head of Planning and Building Control

## 1 BACKGROUND

- 1.1 The application was made by Alan Roy Parkes of Asbourne Road, Lower Farm Estate, Bloxwich acting on behalf of the Lower Farm Community Action Group to register land usually known as Asbourne Field, Asbourne Road, Lower Farm Estate as village/town green (referred to as the "land"). The application was dated 23<sup>rd</sup> November 2004.
- 1.2 Mr Parkes contended that the land became a village green more than 40 years ago but the evidence submitted in support of the application related to the Queens Jubilee Celebrations in 1978.
- 1.3 The application was accompanied by a statutory declaration in support by Mr Parkes dated 6<sup>th</sup> December 2004, an evidence questionnaire submitted in support by Mr Parkes dated 23<sup>rd</sup> November 2004 and 10 statements of evidence from Lower Farm residents. There was also a plan showing the land subject to the application as well as 3 photographs showing the Jubilee Celebrations 1978.
- 1.4 There was a letter provided from one resident of Asbourne Road which concluded that they may object. However, the objection was not pursued at the enquiry and no evidence provided in support of it. In addition, an objection was received on behalf of the governors, head teacher and staff of Lower Farm School including two plans. That objection was pursued at enquiry by the Council in its capacity as land owner .
- 1.5 The Council's Estate Management Service objected to the application on behalf of the Council in its capacity as land owner of Ashbourne Field. A letter was also received from a resident of Ashbourne Road who concluded that they may wish to object to the application.
- 1.6 As the Council was objecting in its capacity as land owner, the Registration Authority took the view that, in order to preserve procedural fairness and avoid any potential conflict of interest, an Independent Inspector should be appointed to preside over a non-statutory inquiry.
- 1.7 The inquiry was held over 2 days namely 10<sup>th</sup> and 11<sup>th</sup> May 2006 with the evidence of the applicant, supporters and objectors being heard. The Inspector's recommendations are attached as the Report dated 3<sup>rd</sup> July 2006.
- 1.8 Neither the 1965 Act nor the Commons Registration (New Land) Regulations 1969 ("the 1969 Regulations) provide any mechanism for the Registration Authority to carry out any factual investigation which may be necessary to allow applicants, supporters and objectors to put their respective cases.
- 1.9 The Registration Authority considered it appropriate to hold a non-statutory Inquiry as one of the Objectors was the Council itself, albeit in its capacity as landowner and bearing in mind Article 6 of the Convention of Human Rights which entitles a person whose civil rights are to be determined a right to a fair hearing before an independent and impartial tribunal. The non-statutory Inquiry took place on the 10<sup>th</sup> and 11<sup>th</sup> May 2006. The Inspector was a barrister experienced in this area of the law.
- 1.10 The Commons Registration Act 1965 provides for each registration authority to maintain a register of town and village greens within its area. Section 13 of the 1965

Act provides for the amendment of the register to take place where any land becomes a town or village green.

1.11 This applicant would have to prove that his application meets the following requirements of Section 13 (c) of the 1965 Act:-

***“...land on which for not less than twenty years a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged in lawful sports and pastimes as of right and either (a) continue to do so, or (b) have ceased to do so for not more than such period as may be prescribed, or determined in accordance with prescribed provisions.”***

No “prescribed provisions” have as yet been made under subparagraph (b), so that part of the definition is not operative. Recent case law has provided helpful rulings and guidance on the various elements of the statutory definition of a village green. These are outlined as follows:-

**(a) Burden and Standard of Proof**

The burden of proof lies on the Applicant to show that the Land has become a village green. All of the elements required to establish that land has become a town or village green must be “properly and strictly proved” on the balance of probabilities

**(b) Lawful Sports and Pastimes**

This includes present day sports and pastimes and the activities can be informal in nature. It includes dog-walking and playing with children, but not walking of such a character which could give rise to a presumption of dedication of a public right of way.

**(c) Correct Twenty Year Period**

The use can be for any 20 year period, but it must be continuous to the date of the application. The applicant can only rely on a period of upwards of 20 years ending with the date of the application.

**(d) Continuity of Use over 20 year Period**

The use for lawful sports and pastimes must be continuous throughout the relevant twenty year period. The use has to show the landowner that rights of a continuous nature are being asserted and it must be more than sporadic intrusion onto the land. That is not to equate an intermission in use with an interruption to it. The use must be frequent, and when sports and pastimes are not being indulged in, there must have been no other activity happening which would have prevented lawful sports and pastimes from being enjoyed, such as agricultural activity:

**(e) Locality**

A “locality” must be a division of the County known to the law, such as a borough, parish or manor: A locality cannot be defined simply by drawing a line on a plan

**(f) As of Right**

This is the subject of more detailed consideration in the Inspectors Report and attached. However, in essence, “as of right” means without force, without

secrecy and without permission.

**(g) Continuation of Use**

The use must continue as of right until the date of the application.

1.12 The Inspector has applied the legal criteria referred to in paragraphs A-G above to the facts detailed in the application, accompanying representations and objections. A more detailed consideration of these matters is contained in the Inspectors Report. However, recommendations and conclusions contained in the Inspector's Report can be summarised as follows.

**2.0 Summary of Inspectors Conclusions and Recommendations**

2.1 The Inspector dealt firstly with the amendment to the application. In Part 4 of the application it stated that the date on which the land became a village green was "more than 40 years ago", namely prior to 1964 given that the application was first made in 2004. Under Section 1(2) of the 1965 Act as of 31<sup>st</sup> July 1970, no land capable of being registered as a village green would be deemed to be a village green unless it was so registered by that date. Therefore, in order for land to become a Class (C) village green thereafter any 20 year period of use could only begin after 31<sup>st</sup> July 1970, and then continue up until the date of the application. Accordingly, if the land became a village green prior to 1964 as suggested, it would have been extinguished in 1970 because it was not then registered. Instead, the earliest date on which land could have become a Class (C) village green was 20 years after 31<sup>st</sup> July 1970. It would be appropriate to permit the applicant to amend Part 4 of his application in relation to the date when the land became a village green to state that it became a village green on 23<sup>rd</sup> November 2004.

2.2 Part 3 of the application form refers to the locality of the land as Asbourne Road, Lower Farm Estate, Bloxwich. However, the applicant case was presented on the basis that the use of land was primarily by residents of the Lower Farm Estate generally. The inspector took the view given that the applicant was unrepresented, the reference to the locality and the application form was completed without an appreciation of the legal implications of that concept. Accordingly, it would be appropriate to permit the applicant to amend Part 3 of his application in relation to the locality of the land to state that it is the Lower Farm Estate. The recommendations and conclusions contained in the Inspector's report can be summarised as follows:

- That all the land has been used for lawful sports and pastimes
- That the Lower Farm Estate is enabled within a wider locality
- That the use of the land for lawful sports and pastimes has been predominantly by the inhabitants of the Lower Farm Estate
- That the use of the land for lawful sports and pastimes has been carried out by a significant number of inhabitants of Lower Farm Estate
- That the relevant 20 year period is 23<sup>rd</sup> November 1984 until 23<sup>rd</sup> November 2004
- That the qualifying uses have been carried out with sufficient frequency and continuity over the 20 year period to be capable of creating a village green
- That the qualifying uses have continued up to the date of the application
- That the use of the land has been as of right until an unknown date in 2000
- That the use of the land has not been as of right from an unknown date in 2000
- That the use of the land has not been as of right from an unknown date in 2000 onwards

- That the use of the land has not therefore been as of right for 20 years and continuing until 23<sup>rd</sup> November 2004, the date of the application

2.3 In view of the use not being as of right from an unknown date in 2000 until the date of the application and so not continuing as of right until the date of the application, for that reason the inspector recommended that the land should not be added to the register of Town and Village Green on that ground.

2.4 It is important to emphasise that the Inspector's Report can only be a set of recommendations and conclusions to the Registration Authority as the Inspector has no statutory power to determine anything. The ultimate decision as to whether the land should be added to the register of town and village greens rests with the registration authority whose decisions are exercised by members of the Development Control Committee.

2.5 The Inspector's recommendations and conclusions are based on current legal principles and case law and in order to avoid any legal challenge ***members are strongly advised to accept the recommendations of the Inspector's Report.***