

THE PUBLIC RIGHTS OF WAY AND GREENS COMMITTEE

15 MARCH 2012

APPLICATION TO REGISTER LAND KNOWN AS GROVE WOOD, FISHPONDS,
BRISTOL, AS A NEW TOWN OR VILLAGE GREEN

FURTHER LEGAL ADVICE

1. The Council decided that the application for registration should be considered at a non-statutory inquiry, and appointed Mr. Leslie Blohm QC to conduct that Inquiry. Mr. Blohm heard oral and received documentary evidence, and held a site visit. He delivered his report dated 25 January 2012 which recommended registration of the land as a Town and Village Green. As Mr. Blohm said the decision as to whether to register the land or not remained that of the Council¹ in the light of the Report and any further evidence or submissions put before it.
2. Three documents have subsequently been submitted in further opposition to the Report's recommendation, being objections from Lady Katrina Jafari; Representations by John Mair on behalf of Lord Housang Jafari and Rhino Group Ltd., and an Objectors response to Grove Wood Public Inquiry Inspectors Report by Rhino Group Ltd. Those documents make cross-references to the submissions in each, and also repeat their submissions.

¹ Report, para. 127.

3. The issues raised by the further submissions are as follows:

- 3.1 The application should have been rejected at the outset because it originally related to more than one locality;

Response = The Application was not defective on its face as a matter of law. Case law establishes that user need not be predominantly by the inhabitants of one locality or neighbourhood. Therefore usage effective to establish a Town or Village Green may be had by more than one locality or neighbourhood simultaneously. The Council considered the application to be 'duly made' within the relevant regulations and was therefore obliged to consider it on its merits, and subject to any application to amend that might be made.

- 3.2 The Council should not have conducted an Inquiry (even a non-statutory inquiry through an Inspector) because it was interested in the outcome;

Response = The process of appointing an Inspector to conduct a non-statutory Inquiry where an application is difficult or contentious is one that has been repeatedly approved by the Courts. Although such decisions have often been reviewed by the Court, it has not been suggested that where a Council is interested in the outcome of an Inquiry that the entire investigative process should be conducted by another Registration Authority. The reference of the matter to a non-statutory Inquiry conducted by a barrister is considered an appropriate means of dealing with this application.

3.3 The Inspector should not have been appointed because he has previously acted for the Council in its capacity as a landowner, and was therefore not independent.

Response = It is not suggested that Mr. Blohm was in fact biased in the conduct of the Inquiry, or in reaching his recommendation. The suggestion is made by Mrs. Jafari that Mr. Blohm was 'not likely to bite the hand that feeds him', or that he might reasonably be perceived to be biased because he would not want to be seen as acting in what are asserted by Mrs. Jafari as the interests of the Council. This complaint is based on the prior assertion that the Council had a motive or intention or interest in having the land registered as a Town or Village Green.

Mr. Blohm QC is a very senior member of the Independent local bar who specialises in Town and Village Green law. As such he is obliged to accept work from his clients under what is referred to as the 'cab rank' rule. That work will come from landowners, developers, registration authorities and applicants for Registration. Mr. Blohm is also a judge, being a part-time Recorder of the Crown Court and County Court, and a Deputy Judge of the High Court (Chancery Division). As such he must follow his oath of office, to act impartially in carrying out his function. Mr. Blohm was not appointed to act as a judge here, but his role is similar to that. A well-informed observer would be confident that he would make his own decision, and not be influenced by the fact that his clientele has included the Council. That he has been instructed by the Council as landowner in connection with other unrelated Town or Village Green matters does not necessarily lead to the conclusion that he should not have been appointed, or that his Report should not be followed. The test for bias in a decision maker is whether a fair-minded and informed observer would conclude

that there as a real possibility that the decision-maker was biased. It is for the Committee to consider whether, in the light of the facts, it considers it right to rely on Mr. Blohm's report, and the weight that it should give it.

- 3.4 The Council should not allow the application to amend the application to alter the identity of the neighbourhoods relied upon.

Response = This aspect of the application has been dealt with at paragraphs 17 to 19 of Mr. Blohm's Report, in which he advised acceptance of the proposed amendment.

- 3.5 The Inspector failed to address the legal issues, and in particular the Issue relating to usage of the land pursuant to an existing Public Right of Way, or a claimed public right of way.

Response = The initial legal objections were referred to and considered at paras. 13 & 14 of the Report. The Final submissions made on behalf of the Objectors are set out at para. 94 of the Report. The Report considers those submissions in addressing whether the statutory requirement for Registration has been satisfied on the evidence.

Consideration of the effect of the existence of a public right of way, a claimed public right of way, and the nature of the usage on and off of those rights of way are to be found at paras. 119-120 of the Report. Mr. Blohm heard the evidence, and in particular the cross-examination that Mrs. Jafari refers to in her Objections. Having accepted the evidence of the witnesses called on behalf

of the Applicants, this was a decision on an issue that he was obliged to make, and has made.

3.6 The evidence in support of the application was partial and biased

Response = This was a contention that has been asserted by the Objectors throughout the Inquiry. It is a matter which the Inspector would have to consider in determining whether the evidence that he heard was reliable or not.

3.7 The Report does not explain why the evidence of the Applicants is preferred to that of the Objectors.

Response = This is not a legal requirement. In the resolution of hotly contested matters of fact, a Tribunal may have regard to many matters in considering the reliability of witnesses. This may relate to inconsistencies with other evidence; internal inconsistencies of evidence; likelihood of truth or accuracy; demeanour when giving evidence; or otherwise. The Inspector found that the Applicants witnesses were honest and reliable. The Inspector did not find Mr. Jafari a reliable witness² and was critical of Mr. Mair's evidence³. He did not pass comment on Mrs. Jafari's evidence. In those circumstances where evidence is contradictory an Inspector has to consider whose evidence he prefers, and the Inspector has done that in his findings of fact.

Anne Nugent, for Head of Legal Services
15 March 2012
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² Report para. 88

³ Report para. 90