

BRISTOL CITY COUNCIL

PUBLIC RIGHTS OF WAYS AND GREENS COMMITTEE

17 September 2012

Report of: Commons Registration Authority

Title: Application for land known as Laundry Fields to be registered as a town or village green Bristol made under the Commons Act 2006

Ward: Frome Vale

Officer Presenting Report: Anne Nugent, Senior Solicitor, Legal Services

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RECOMMENDATION

Before arriving at a final determination of the application to register the land known as Laundry Fields, Bristol as a town and village green it is recommended that (a) an inquiry be held (b) appoint an independent inspector to conduct the inquiry.

Summary

This report relates to an application for land known as Laundry Fields, Bristol to be registered as a town or village green made under the Commons Act 2006

The significant issues in the report are:

As set out in the report

Policy

1. There are no specific policy implications arising from this report.

Consultation

Internal

2. Not applicable

External

3. Not applicable

Context

4. The Council as registration authority has received an application to register land known as Laundry Fields, Bristol (the application land) to be registered as a town or village green Bristol made under the Commons Act 2006.
5. The plan of the application land is set out in Appendix A to this report.
6. The application in the prescribed form, Form 44, was verified by a statutory declaration of Mr John Freeman on behalf of Snuff Mills Action Group.
7. The Applicant asserts that the land has been used by a significant number of inhabitants. Inhabitants have indulged as of right in lawful sports and pastimes for activities including cricket, football (until 1993/4), cub-scouting and walking on the land for a period of at least 20 years under section 15(2) of the Commons Act 2006 and continue to do so at the date of the application.
8. An objection to the registration of the application land has been received from (the Objector) as *'the usage of the land by the public for 'lawful sports and pastimes' has not been 'as of right', as required by section 15(2) Commons Act'*. A preliminary issue on the procedure was raised but the CRA considered that the application was duly made within the requisite 20 years after usage stopped on 27 July 2009 and proceeded to publish the Regulation 5(1) notice.
9. The Objector submitted detailed documentary evidence to support its objection. A summary is set out in the officer's assessment of evidence appendix B.
10. The Applicant was given, and accepted, an opportunity to make representations on the Objector's submissions/evidence (applicant's reply). A summary is set out in the officer's assessment of evidence appendix B.

Proposal

11. PROWG Committee on behalf of the Council (as statutory Commons Registration Authority) has a statutory duty under the Commons Act 2006 and the regulations made thereunder to determine objectively

whether or not the land in question should be registered as a Town or Village Green within the meaning of the Act.

12. Where there is a serious dispute of fact, such as here, the procedure of conducting a non-statutory public inquiry should be considered.
13. Before arriving at a final determination of the application to register the land known as Laundry Fields, Bristol as a town and village green it is recommended that (a) an inquiry be held (b) appoint an independent inspector to conduct the inquiry.
14. The inspector will then report back to the Commons Registration Authority with recommendations. CRA will then bring the matter back to PROWG.

Other Options Considered

15. The other options considered are:
 - 15.1 PROWG or a sub-committee to conduct a public inquiry;
 - 15.2 A council legal officer to conduct a public inquiry;
 - 15.3 Reject the application on the papers.
16. As there are various legal issues arising, rather than simple factual disputes, there are advantages to using an independent inspector trained in this area of the law. A council legal officer with suitable expertise could conduct the inquiry but due to the economic downturn legal officers are working to capacity in these areas of work. To wait until a suitable officer had sufficient time to conduct the inquiry would cause an unreasonable delay.
17. Rejecting the application on the papers where there is a dispute of fact not yet tested at public inquiry could be considered to be unfair and puts the Council at risk of legal challenge.

Risk Assessment

18. The options leave the Council open to legal challenge. In spite of the fact that legal challenge in cases of this nature is the exception rather than the norm, it must be pointed out to members that there are, nonetheless, legal risks associated with this decision.
19. These risks are mitigated against by the Council's demonstration of a fair and transparent process in its determination of the application and a

decision based on detailed consideration of the evidence.

Public Sector Equality Duties

20. Before making a decision, section 149 Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following “protected characteristics”: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:

- i) Eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.
- ii) Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to --
 - remove or minimise disadvantage suffered by persons who share a relevant protected characteristic;
 - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons' disabilities);
 - encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- iii) Foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to –
 - tackle prejudice; and
 - promote understanding.

Legal and Resources Implications

Legal

21. The City Council in its capacity as Commons Registration Authority has responsibility under the Commons Act 2006 to determine whether the land or a part thereof should be registered as a green.

The Law

22. Section 15 of the Commons Act 2006 enables any person to apply to a Commons Registration Authority (CRA) to register land as a town or

village where it can be shown that:

“A significant number of inhabitants of any locality, or any neighbour within the locality, having indulged as of right in law sports and past times on the land for a period of at least 20 years”

23. In addition to the above, the application must meet the test under Section 15(2) of the Act in particular that use of land has continued “as of right” until at least the date of the application.
24. The applicant must establish that the land in question comes entirely within the definition of a town or village green, in Section 15(2) of the Act. The Registration Authority must consider on the balance of probabilities whether or not the applicants have shown that:
 - a significant number of inhabitants of the locality or neighbourhood indulged in lawful sports and pastimes as of right on the land for a period of at least twenty years; and they continue to do so at the time of the application.
25. In its capacity as Registration Authority the City Council has to consider objectively and impartially all applications to register greens on their merits taking account of any objections and of any other relevant considerations. Wholly irrelevant considerations such as the potential use of the land in the future must be left out.

“As of right”

26. User “as of right” means user without force, secrecy or permission (*nec vi nec clam nec precario*). User as of right is sometimes referred to “as if by right” and must be contrasted with use “by right”.

Procedure

27. The application has been made under Section 15(2) of the Act 2006. The regulations that govern the procedure are the (Commons Registration of Town or Village Greens) Interim Arrangements (England) Regulations 2007. In accordance with the outline procedure PROWG reserves to itself the decision as to who is to conduct an inquiry. The outline procedure does not prevent PROWG from appointing an independent inspector.

Legal advice provided by: Anne Nugent, Senior Solicitor, Legal Services.

Financial

28.

(a) Revenue

In the event of any subsequent legal challenge any costs over and above those normally met from existing revenue budgets can be met from the central contingency.

(b) Capital

There are no specific policy implications arising from this report.

Financial advice (Revenue) from Tony Whitlock, Corporate Finance
Financial advice (Capital) from Jon Clayton, Corporate Finance.

Land

There are no specific policy implications arising from this report.

Personnel

Nil

Appendices

Appendix A – Map of Application Land
Appendix B- Officer assessment of evidence

Local Government (Access to Information) Act 1985 Background Papers:

Application papers/ statement of objections/ response available at the Council House, College Green.

Section 15 Commons Act 2006

Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007

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APPENDIX (8) A

Scale 1:3000

Red line outlines application Boundary



Assessment of Evidence –Laundry Fields

Applicant's evidence

1. The Application dated 31 May 2011, was received on 1 June 2011. On the application form, the Applicants assert *'the that the residents of Stapleton and Fishponds have enjoyed partaking of legal sports and and pastimes in Laundry Fields, Fishponds , Bristol for at least twenty years, as of right'*.
2. The application is supported by a full statement , by 67 evidence forms and maps of the application land. The full statement says *'all the evidence demonstrates the huge importance to the local community of this level, enclosed green space in such a built up area . The evidence shows that people have used this land as of right for the required 20 year period without force or secrecy'*.

The Objector's evidence

3. An objection to the registration of the application land has been received from Pinsent Mason LLP, solicitors acting for the landowner, the Homes and Communities Agency dated 13 January 2012.
4. The objections are summarised as follows;
 - The Applicants evidence is insufficient to signify that the land had been in general use for informal recreation by significant numbers of inhabitants of the locality or neighbourhood with a locality. It only demonstrates occasional use by a small group of individuals, some trespass and some use by express permission.
 - The level of use is 'trivial' over the 20 year period of the 71 evidence questionnaires 31 are of the same period, in a locality of over 20,000.
 - 'As of right, there is no evidence of use of the land anything other than the public using Public Rights of way at the site. There is nothing to suggest use 'as of right'.
 - The land has been used by organised football teams. This use has been permitted, and cannot be said to have been used 'as of right'.
 - The Applicant's evidence of user should be viewed with caution as it has been produced with a view obstructing redevelopment of the site.
 - There is insufficient evidence to establish that use of the land by the public establishes that the use of the site by the local community as a town or village green 'as of right' for 20 years and continuing at the date of the application.
 - The evidence submitted is by a small and insignificantly number of geographically restricted and localised objectors.
 - Any use of the site is with express permission ie organised league football. The witness statements of Mr R Tovey and Mr C Rumley are provided to to demonstrate this.
5. The Objector has invited the Registration Authority to arrange a non-statutory public inquiry to allow the evidence to be tested by an inspector under cross examination.

The Applicants Response to the Objections.

- 6 The Applicants were invited to respond to the statement of Objections. Below is a summary of their response:
- The law says " A significant number" does not "significant or substantial number". That the amount of witness statement submitted is sufficient .
 - That it is now settled law that applicants can rely on more than one neighbourhood
 - That there is abundant evidence of lawful sports and pastimes
 - That the land has been used for 20 years. There are no competing issues. The land has been used without interruptions.
 - As of right. The '*reasonable landowner*' test is no longer applicable.
 - *Nec vi nec clam nec precario*. No permission. The land has not been used with permission, under a licence , nor by-law or notice. No one has stopped their use of the land.
 - The use of the land by the football teams has not detracted the use of the land by local inhabitants.
 - The locking of the gates at the site and the maintenance of the site do not provide evidence of permission.
 - By force- there is multiple access points to the land which have not been blocked.
 - Secrecy- the use of the land has always been open.
7. The Applicants consider that the the registration has two options '*(a) to discount all the statement of fact put forward by the Objector ; (b) provide an opportunity within the procedure for the Objector to put forward evidence and for the Applicant to respond to it*'

Conclusions

8. The application is made under Section 15(3) Commons Act 2006. The qualifying criteria is that:
- (a) *a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;*
 - (b) *they ceased to do so before the time of the application but after the commencement of this section; and*
 - (c) *the application is made within the period of two years beginning with the cessation referred to in paragraph (b).*
9. The burden of proof lies on the Applicant to prove that the criteria in made out, on the balance of probabilities.
10. In my view, this is not a straight forward case, there is a significant objection from the HCA. It does not consider that the the applicants evidence is sufficient to establish 20 years user. The HCA's case that the witness is insufficient to support the application. Nor does it consider that the use by the applicants has been *nec vi nec clam nec precario*. It cites the use of the land by the football clubs as illustrating the land was used with express permission and therefore could not be 'as of right' .
11. There is also a significant conflict of evidence. The Applicants in their further submissions have strongly rejected the HCA' s evidence. They argue that the Objector has not provided sufficient evidence to support it's case and that it has misstated the law.

12. My recommendation is that before this matter is determined it be referred to a non-statutory inquiry to examine the evidence and thereafter to report to the registration authority.

24 August 2012
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