

Meeting	Gambling, Licensing & Regulatory Committee
Date	13 March 2017
Present	Councillors Douglas (Chair), Aspden, Crisp, D'Agorne, Hayes, Hunter, Mercer, D Myers, Orrell and Richardson (Left at 4.30pm)
Apologies	Councillors Boyce (Vice-Chair), Funnell, Gillies, Gunnell and Mason

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## **25. Declarations of Interest**

Members were asked to declare any personal interests not included on the Register of Interests, any prejudicial interests or any disclosable pecuniary interests which they may have in respect of business on the agenda. None were declared.

## **26. Minutes**

Some Members raised concerns with the level of detail included in the minutes dated 6 February 2017.

Resolved: That the minutes of the meeting held on 6 February 2017 be brought back to the next meeting for approval.

## **27. Public Participation**

It was reported that there had been one registration to speak at the meeting under the Council's Public Participation Scheme on the following item:

### 4. Application to Register Land as a Town or Village Green

Mr Chris Barrett spoke, on behalf of Friends of Holgate Community Garden, over their concerns that this area may be the preferred access route for York Central. He also thanked CYC for consideration of the application.

## **28. Application to Register Land as a Town or Village Green**

Members considered a report which asked them to determine an application to register land known as Holgate Community Garden and Play Park (also known as Upper St Paul's Terrace play area) as a town or village green.

Officers gave a brief background to the report and in response to points raised by Members stated that:

- It was Defra guidance that applicants did not have an automatic right to withdraw applications and that Registration Authorities had a discretion to determine applications when it is in the public interest to bring them to a conclusion.
- Use of the area applied for had been 'by right' as the Council held the land for the specific purpose of it being used as 'open space'. Therefore it could not lawfully be registered as a village green.
- It was not considered appropriate to refer the application to the Planning Inspectorate as both the applicants and Council as objector agreed that the application failed the statutory test for registration as a village green.
- There was no dispute between the applicants, the objectors and the Registration Authority that there was clear evidence that the use of land was 'by right' and not 'as of right' and that the application therefore failed on a point of law. This meant there was no disputed point of law to be independently determined, nor was it necessary to independently determine the subjective elements of the statutory test.
- The more subjective details of the application criteria, as described in paragraph 7 of the report, had not been assessed as regardless of determination of these elements of the statutory test, the application had failed the statutory requirement for usage 'as of right'.
- The application had come to this meeting as it was a function of this Committee to determine village green applications under the Council's Constitution.
- There had been no public consultation period akin to a planning application, as this was not a planning application, however interested parties had been contacted, signs had been posted in the local area and the issue had been covered in the Press in accordance with the relevant Regulations.

Officers clarified to Members that, should they be minded to choose Option 2 and not determine the application, that this could lead to a situation where the Objectors sought to judicially review that decision in order to seek a determination and therefore proper reasons should be given for choosing Option 2. They also reiterated that it was the responsibility of this Committee to determine applications brought before them. In this case it was for transparency purposes, rather than merely allowing the applicants to withdraw the application.

Members then considered the following Options:

1. Refuse the application.
2. To not determine the application.

Resolved: That Members not determine the application and no further action be taken.

Councillor Douglas, Chair

[The meeting started at 4.00 pm and finished at 4.45 pm].