

Report of the Director of City Strategy

**APPLICATION TO REGISTER LAND WEST OF METCALFE LANE,
YORK AS A TOWN OR VILLAGE GREEN**

Summary

1. This is an application under Section 15(1) of the Commons Act 2006 (“the 2006 Act”) to register land to the west of Metcalfe Lane, York as a town or village green. The application relies on the criterion set out in section 15(2) of the Act. The extent of the application is illustrated on the plan that was attached to the application at Appendix 1. Copies of all the documents submitted in connection with the application are available for Members of the Committee and interested members of the public to view at 9 St Leonard’s Place by prior appointment.

Background

2. The Council, acting as the Commons Registration Authority, must determine the application. This responsibility is a quasi-judicial function and is separate from all other functions the Authority carries out (for example, landowner, local planning authority). The responsibility is to decide whether or not the land subject to the application satisfies the statutory criteria for registration based on the evidence submitted. The Council’s Constitution provides for the application to be determined by this Committee.
3. The procedure for submitting and determining the application is set out in the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 (“the Regulations”).
4. The application was made by Mr Mark Warters of 9 Yew Tree Meadows, Osbaldwick, acting on behalf of the Friends of Osbaldwick Meadows, to register land West of Metcalfe Lane, York (“the application land”) as a town or village green. The application was dated 28 September 2007.
5. The Applicants contended that the land became a village green on 28 September 2007. The application was supported by a statutory declaration in support by Mr Warters dated 28 September 2007, supporting photographs and 104 statements of evidence from supporters. There was also a plan showing the land subject to the application.

6. The appropriate procedures were followed by the Applicants for making the application and by the Registration Authority for the notification of interested parties and advertising the application.
7. The Council's Property service objected to the application on behalf of the Council in its capacity as landowner of the application land. Joseph Rowntree Housing Trust also made an objection in view of its interest in purchasing and developing the application land.
8. The 2006 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 Regulations. 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.
9. There is no provision in the Regulations for an oral hearing, for compulsion of witnesses or the taking of evidence on oath. Many Registration Authorities have however adopted the procedure of appointing a barrister as an independent Inspector to hold a non-statutory public inquiry on behalf of the Registration Authority. This is an appropriate arena where oral evidence can be heard and after which the Inspector writes a report to the Authority assessing the evidence, applying it to the issues and making a recommendation as to how the application should be determined.
10. As the Council was objecting in its capacity as landowner, 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 public inquiry. The Inspector duly appointed is Mr Roger Lancaster, a barrister.
11. The public inquiry was held over 4 days namely 12th to 15th February 2008 at Burnholme Community College and heard the evidence of the Applicants, supporters and Objectors and other interested people. The Inspector also carried out a site inspection of the application land. The Inspector's recommendations are attached as the report dated 1 March 2008 as Appendix 2. This has been circulated to Members of the Committee and to the Applicants and Objectors. Copies of all the documents that were before the public inquiry are available for Members of the Committee to view at 9 St Leonard's Place by prior appointment.
12. It is for the applicant who seeks village green status to satisfy the Registration Authority (the Council) that the requirements of section 15(2) of the 2006 Act are satisfied. These are that the application land is land on which "a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and they continue to do so at the time of the application".
13. Therefore, to establish that particular land qualifies under this section, an applicant must satisfy a number of requirements with their evidence. The burden

of proof is upon the applicant. It is imperative that all the requirements are fulfilled. Failure on a single point fails the whole application.

14. Each of the requirements is analysed as follows:-

...a significant number of the inhabitants... “Significant” does not mean a considerable or substantial number. What matters is that the number of people using the land in question has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers.

...of any locality... A “locality” cannot be defined simply by drawing a line on a map. A “locality” is some administrative unit known to the law, such as a borough, parish or village.

...or of any neighbourhood within a locality...A “neighbourhood” need not be a recognised administrative unit. A housing estate can be a neighbourhood. The neighbourhood must fall within a “locality”, although the House of Lords has held that it can fall into more than one locality (for which see above).

...have indulged in lawful sports and pastimes...The words “lawful sports and pastimes” include informal recreation such as walking, with or without dogs, and children’s play. It does not include walking of such a character as would give rise to a presumption of dedication as a public right of way (for example simply walking along the line of a path).

...as of right... Use of land “as of right” means use without force, without secrecy and without permission and does not turn on the subjective beliefs of the users.

...for not less than 20 years...The use for lawful sports and pastimes must be continuous throughout the relevant 20 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. The use must be frequent, and when sports and pastimes are not being indulged in, there must have been no other activity happening that would have prevented lawful sports and pastimes from being enjoyed.

...and continue to do so. The use must be continuous up to the date of the application.

Consultation

15. The application was received on 28th September 2007 and validated on 18th October 2007 and given the unique identifying number NEW/CYC/VG/001. Public notices were erected at the main points of access to the site. A notice was published in the York Press on 24th October 2007 and also sent to all parties with an interest in the land. These were identified as Joseph Rowntree Housing Trust and the landowner, City of York Council. Objections were requested to be delivered to the Interim Head of Legal and Democratic Services no later than 5th December 2007.

16. Following the receipt of objections from both interested parties and as the Registration Authority is also the land owner a non-statutory public inquiry was arranged for 12th February in order for an independent Inspector to hear the case for both sides. A pre-inquiry meeting was held on 7th January to discuss procedural matters. Notices were issued as before on 11th January to advise of the date and venue for the public inquiry.
17. The inquiry was duly held in February 2008 as explained in paragraph 11 above.

Options

18. Option A - Determine the application following the Inspector's recommendation to reject the application to register land to the west of Metcalfe Lane as a town or village green.

Option B - Register land to the west of Metcalfe Lane as a town or village green, thereby rejecting the Inspector's recommendation because Members are of the opinion that there are sound and cogent reasons to do so.

Analysis

19. A non-statutory public inquiry conducted by an independent person is appropriate where one of the objectors to the application is the Council itself.
20. The non-statutory public inquiry was duly held in February 2008 and lasted for 4 days in which both side were given the opportunity to put their case to the independent Inspector, Mr Roger Lancaster.
21. The Inspector has considered at length in his report both the law relating to town and village greens and the evidence provided in support of and in objection to the application. After summarising the evidence in support of and the evidence against the registration, he then goes on to apply the law to the evidence. He makes a recommendation to the Authority to reject the application. A detailed consideration of these matters is contained in the Inspector's report.

Corporate Priorities

22. The Council as Registration Authority, has an obligation to properly determine the claim that the land should be registered as a town or village green, regardless of the Council's corporate priorities.

23. Implications

- **Financial** None
- **Human Resources (HR)** None
- **Equalities** None

- **Legal** For an application to succeed, each of the elements required by section 15(2) of the 2006 Act must be established. The burden of proof lies firmly on the applicant, who must provide sufficient evidence to prove, on the balance of probabilities, that as a matter of fact, all of the elements required to establish that the application land has become a town or village green are properly and strictly proved.

The fact that the Registration Authority decided to hold a non-statutory public inquiry presided over by an independent Inspector is evidence of its thorough and reasonable approach to this case. The content and reasoning of the Inspector's report was brought about in the optimum circumstances of a non statutory public inquiry held over 4 days where both the applicant and objectors presented the case to the inquiry. The Inspector heard the evidence in person and this was tested by cross-examination by both sides.

The Inspector has applied the legal criteria referred to in paragraph 14 above to the facts in this case. The Inspector's recommendations and conclusions are based on current legal principles and case law.

The ultimate decision as to whether the land should be added to the register of town and village green rests with the Registration Authority whose decisions are exercised by Members of the Licensing and Regulatory Committee. Whilst the Committee is not bound by the Inspector's recommendation, it would need to have clear and robust reasons for departing from his recommendation. The decision of the Committee must be based on the strict legal merits and is not a matter of policy.

Under the 2006 Act there is no statutory right of appeal to the Secretary of State against the Council's decision and the only challenge to a decision made by this Committee would be through the process of judicial review of the procedure and processes that have been applied to the determination.

- **Crime and Disorder** None
- **Information Technology (IT)** None
- **Property** None
- **Other** None

Risk Management

24. Potential risks are those of judicial review of the procedure and processes that have been applied to the determination.

Recommendations

25. The Committee accepts the conclusions and recommendation of the Inspector's report and resolves to reject the application.

Reason: For the reasons set out in the Inspector's report dated 1 March 2008.

Contact Details

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Report Approved **Date** 5th March 2008

Specialist Implications Officer(s)

Legal
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Wards Affected:

All

For further information please contact the author of the report

Background Papers

Report of Mr Roger Lancaster, Barrister as Inspector dated 1 March 2008
Application for registration and papers produced in support of application and objection at public inquiry on 12th, 13th, 14th and 15th February 2008.

Annexes

Annex 1 Plan showing the application land
Annex 2 Report of Mr Roger Lancaster, Barrister as Inspector dated 1 March 2008