
Licensing and Regulatory Committee

DATE
6 March 2009

Report of the Director of City Strategy

APPLICATION TO REGISTER LAND EAST OF FORDLANDS ROAD AND SOUTH OF GERMANY LANE, YORK AS A TOWN OR VILLAGE GREEN

Summary

1. The purpose of this report is to consider an application under Section 15(1) of the Commons Act 2006 ("the 2006 Act") to register land to the east of Fordlands Road and south of Germany Lane, York as a town or village green. The extent of the application is illustrated on the plan 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. If the application land comes within the statutory definition of a town or village green, the Commons Registration Authority must register the land as such in the register of town or village greens maintained by it in accordance with the 2006 Act.
3. 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.
4. 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").
5. The application was made by Mr Alan Smith of 72 Fordlands Road, Fulford, acting on behalf of the Friends of Germany Beck, to register land to the east of Fordlands Road and south of Germany Lane, York ("the application land") as a town or village green. The application was dated 31st January 2008.
6. The applicant contended that the land became a village green on 31st January 2008. The application was supported by a statutory declaration in support by Mr

Smith dated 31st January 2008, supporting photographs and 87 statements of evidence of alleged use from supporters. There was also a plan showing the land subject to the application.

7. The appropriate procedures were followed by the applicant for making the application and by the Registration Authority for the notification of interested parties and advertising the application.
8. Statements of objection were received from Wakeford Properties Ltd and Fulford Land Ltd as freehold owners of the site. Objections were also received from Persimmon Homes (Yorkshire) Ltd, Hogg Builders (York) Ltd and Pilcher Homes Ltd who have an interest in the land expressed as an Option to Purchase.
9. 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 the Registration Authority receives written objections, the applicant should be given the opportunity to respond to the objections and the application can then be determined.
10. 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 at Law as an independent Inspector to hold a non-statutory public inquiry on behalf of the Registration Authority when an application is contested. 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.
11. It was apparent, on preliminary consideration of the documentation, that there were conflicting assertions of fact and complex issues of law in respect of the application. Accordingly it was decided that an independent Inspector, Mr Alan Evans, should be appointed to preside over a non-statutory public inquiry and make a recommendation on the application. Mr Evans is a Barrister at Law experienced in this area of the law. He issued directions to the parties setting out the procedure to be followed prior to and during the inquiry. These included his requirements for the parties to exchange evidence before the inquiry.
12. The public inquiry was held over 9 days namely 21st to 24th October 2008 at The Guildhall and 15th to 19th December 2008 at Kings Manor, and heard the evidence of the applicant, supporters and objectors and other interested people. The Inspector also carried out a site inspection of the application land on 6th January 2009. The Inspector submitted his report on the application to the Registration Authority on 22 February 2009. Members are asked to consider the Inspector's report, which is attached as Appendix 2. This has been circulated to Members of the Committee and to the applicant and objectors.
13. It is for the applicant who seeks village green status to satisfy the Registration Authority (the Council) on the balance of probabilities that all 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”.

14. This can therefore be broken down into a number of elements:-

- 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.

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

Consultation

15. The application was received on 31st January 2008 and validated on 1st February 2008 and given the unique identifying number NEW/CYC/VG/002. Public notices were erected at the main points of access to the site. A notice was published in the York Press on 20th February 2008 and also sent to all parties with an interest in the land. These were identified as Wakeford Properties Ltd and Fulford Land Ltd as freehold owners of the site, and Persimmon Homes (Yorkshire) Ltd, Hogg Builders (York) Ltd and Pilcher Homes Ltd who have an interest in the land.

16. Objections were requested to be delivered to the Head of Civic Democratic and Legal Services no later than 16th April 2008.

17. Following the receipt of objections, the Registration Authority arranged a non-statutory public inquiry for 21st October 2008 in order for an independent Inspector to hear the case of all the parties. A pre-inquiry meeting was held on 2nd September 2008 to discuss procedural matters. Notices were issued as before on 1st October 2008 to advise of the date and venue for the public inquiry.

18. The inquiry was duly held in October and December as explained in paragraph 12 above.

Options

19. Option A - The Inspector has concluded that the criteria for registering land to the east of Fordlands Road and south of Germany Lane as a town or village green has not been met and, having considered the Inspector's report, the Inspector's report should be accepted and the application for this piece of land to be registered as a town or village green be refused.

20. Option B - Having considered the Inspector's report, Members are of the opinion that there are sound and cogent reasons to reject the content and reasoning of the Inspector's report and his recommendation.

Analysis

21. A public inquiry into the application was considered to be the most appropriate means of enabling the evidence in this matter to be tested properly and for submissions in respect of legal matters to be properly addressed.
22. Both the applicant and the objectors have had the opportunity to present all the relevant evidence to the Inspector at the public inquiry and to submit their witnesses to cross-examination.
23. In the preparation of his report, the Inspector has taken into account all of the evidence which was been submitted and heard at the inquiry and has had regard to the relevant law. He makes a recommendation to the Registration Authority to reject the application.
24. Your officers accept the Inspector's findings of fact, his interpretation of the relevant law and the application of that law to those findings of fact and his conclusions and recommendations. Your officers recommend, therefore, that the Committee accept the Inspector's recommendations for the reasons set out in the Inspector's report.

Corporate Priorities

25. 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.

26. Implications

Financial Such matters should not form part of the Committee's consideration.

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 9 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 paragraphs 13 and 14 above to the facts in this case. The Inspector's recommendations and conclusions are based on relevant 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 based on findings of fact and interpretation of the legal principles. The decision of the Committee is a legal decision 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

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

Recommendations

28. The Committee accepts the conclusions and recommendations of the Inspector's report dated 22 February 2009 by Mr Alan Evans and resolves to reject the application to register the land as a town or village green for the reasons set out in the Inspector's report.

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Report Approved Yes Date 23/02/2009

Specialist Implications Officer(s)

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Wards Affected: *List wards or tick box to indicate all*

All

For further information please contact the author of the report

Background Papers:

Report of Mr Alan Evans, Barrister as Inspector dated 22 February 2009
Application for registration and inquiry documents referred to in paragraph 1

Annexes

Annex 1 Plan showing the application land
Annex 2 Report of Mr Alan Evans, Barrister at Law, as Inspector dated 22 February 2009