

COMMONS REGISTRATION ACT 1965 – SECTION 13

APPLICATION FOR REGISTRATION OF LAND CLAIMED TO HAVE BECOME A TOWN OR VILLAGE GREEN ON 31 AUGUST 2003

LAND AT FULFORD CROSS, YORK

OBJECTION OF CITY OF YORK COUNCIL

1. On 7th October 2003, Doctor Fiona Johnson applied to City of York Council (the Registration Authority) to register land at Fulford Cross, York as a town or village green.
2. City of York Council (the Council) is also the current freehold owner of the land at Fulford Cross and it has been the freehold owner since 1914.

Onus of Proof

3. The onus of proof when seeking registration pursuant to the Commons Registration Act 1965 rests on the person making the application and the test for considering whether the rights are established is a stringent one: R v Suffolk CC ex parte Steed and Steed (1995) 70 P&CR 487 at 500, on appeal (1996) 75 P&CR 102 at 115.

Relevant Period

4. The Applicant appears to rely upon the period of twenty years prior to 31 August 2003 for the purposes of the Application. The Applicant is unable to demonstrate uninterrupted user of the Application Site for that period because:
 - The Application Site has always been considered and used as part of the adjacent Fulford Cross School Site. The Application Site has been actively managed jointly and at times individually by both the school and the Council over that period time including regularly cutting the grass and maintaining the landscaping, removal of unauthorised

occupiers and parked cars from time to time and dealing with, again from time to time, applications from local residents and others to use the site on particular occasions.

- In particular in the recent past the school and the Council's views and consents have been sought by local residents and others on the planting of trees on the site and also the installation of play equipment. Representatives from the school and the Council have discussed with local residents both of these projects and an agreement was reached as to where the trees should be planted and the play equipment sited which was then approved by the Council and representatives from the school. In respect of the play equipment further agreement was reached that, if required by the Council, the play equipment could be moved at a future date.

Locality

5. The Applicant must demonstrate that the predominant use of the site is by the inhabitants of a particular locality, or of a particular neighbourhood within a locality.
6. The Applicant must demonstrate either that those using the Application Site inhabit a locality that is an administrative unit known to law, or else a neighbourhood that is demonstrably a cohesive unit within a single such administrative unit (see R (on the application of Cheltenham Builders Ltd) v South Gloucestershire District Council – (Unreported 10 November 2003)) This she has failed to do.
7. In the event that the Applicant seeks to rely upon a period of twenty years other than that immediately preceding 31 August 2003 the Applicant must demonstrate that such persons whose use of the Application Site is relied upon, inhabit a single administrative unit known to law (see again R (on the application of Cheltenham Builders Ltd)). This she has failed to do.

As of Right

8. The Applicant must demonstrate that use of the Application Site during any twenty year period was 'as of right'.
9. It is a matter of fact that the Council and the school have during the twenty year period prior to 31st August 2003 made it clear both by their own uses and management of the site that specific permission would be required and was duly obtained for the planting of trees and the installation of play equipment.
10. Accordingly, the Applicant is unable to demonstrate use of the Application Site as of right during the period relied upon.

Reservation

- 11 The Council reserve the right to add to and amend this Objection whether the Applicant exercises the right she has reserved to similar effect in the supporting statement annexed to the Application.

Public Hearing

11. Given the matters alleged in this Objection, the Registration Authority ought to hold an oral hearing, in the form of a Non-Statutory public Inquiry to determine the Application.

26 March 2004

Signed

Neil Hindhaugh

Head of Property Services

City of York Council