

WORCESTERSHIRE COUNTY COUNCIL: COMMONS ACT 2006

REPORT FOR DECISION BY HEAD OF LEGAL AND DEMOCRATIC SERVICES

APPLICATION FOR A TOWN GREEN: LAND AT BYRD ROW NORTON & LENCHWICK WORCESTERSHIRE S15 COMMONS ACT 2006

1. The Application

- 1.1 An application under s15 (1) Commons Act 2006 was made by Mrs Barbara McLaren of Windholme, Lenchwick, Evesham, Worcestershire WR11 4TG ("the Applicant") dated 11 November 2010 to Worcestershire County Council as the commons registration authority to register a village green at Byrd Row Norton & Lenchwick.
- 1.2 The application claimed that the land ("the Land") shown on the plan annexed ("the Plan") became a Town Green on 11th November 2010.
- 1.3 The application maintained that the Land had been used by a significant number of local inhabitants for lawful sports and pastimes for upwards of 20 years.
- 1.4 The freehold owners of the land are Mr T.J.F. Smith and Mr A.M. Wadley

2 Objectors

Objections to the application were received from: Mr T.J.F. Smith and Mr A.M. Wadley ("the Objectors").

3. Background

The Land comprises a flat area of open grassland which is largely rectangular in shape. The grass in the centre is currently un-maintained and overgrown, but there is a visible worn path round the perimeter which appears to have been

mown. The eastern part of the Land in front of the Village Hall is well maintained and closely mown. To the north of the Land is a well maintained and equipped children's play area known as Phoenix Park. There is a row of wooden posts and a hedge between the two areas. To the south and west of the Land are open fields. In the south eastern corner, the Land bounds the Village Hall which has a car park to its north. Byrd Row runs north easterly from the north eastern corner of the Land. There are no signs on the Land itself nor any benches, but one set of old goal posts remains in situ.

4. Evidence

4.1 Evidence was supplied in written form with the application as to the use of the land.

4.2 In view of the contentious nature of that evidence and of the evidence of the objectors to the application the Commons Registration Authority decided to hold a non-statutory public inquiry at which Miss Ruth Stockley of Kings Chambers, Manchester acted as Inspector on 20 and 21 February 2013. The Inspector's report was received on 13th May 2013 and the applicants and the objectors were given an opportunity to make further observations. The objectors had no further comments to make. The applicants made several observations which I considered when preparing this report. However as these amounted to a disputed interpretation of evidence rather than an interpretation of the law I did not consider that it affected the Inspector's conclusions or the weight that the Commons Registration Authority should attach to it.

4.3 I attach a copy of the Inspector's report which summarises the evidence and the law and reaches the following conclusions :-

4.3.1 That the Application Land comprises land that is capable of registration as a town or village green in principle;

4.3.2 That the relevant 20 year period is January 1991 until January 2011 under section 15(2);

4.3.3 That the Parish of Norton and Lenchwick is a qualifying locality;

- 4.3.4 That the use of the Application Land for lawful sports and pastimes has been as of right throughout the relevant 20 year period;
- 4.3.5 That the Application Land has not been used for lawful sports and pastimes throughout the relevant 20 year period to a sufficient extent and continuity to have created a town or village green;
- 4.3.6 That the use of the Application Land for lawful sports and pastimes has not been carried out by a significant number of the inhabitants of any qualifying locality or neighbourhood within a locality throughout the relevant 20 year period; and
- 4.3.7 That the use of the Application Land for lawful sports and pastimes continued up until the date of the Application.

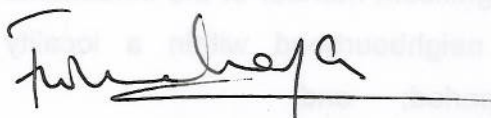
5. The Law

The law requires there to be more than 20 years' continuous use of the Land for lawful sports and pastimes as of right enjoyed by a significant number of the inhabitants of a neighbourhood or a locality. On testing of the evidence at a non-statutory public inquiry the Inspector was of the opinion that the applicants did not satisfy each and every relevant statutory requirement and that the application should be rejected on the following grounds:

- 5.1 The Applicant has failed to establish that the Application Land has been used for lawful sports and pastimes to a sufficient extent and continuity throughout the relevant 20 year period to have created a town or village green ; and
- 5.2 The Applicant has failed to establish that the use of the Application Land has been by a significant number of the inhabitants of any qualifying locality or neighbourhood within a locality throughout the relevant 20 year period

Recommendation

Accordingly having considered the Inspector's report on the outcome of the Inquiry and adopting her reasoning I recommend that the application to register the Land as a Village Green be refused:



Fiona Morgan.
Principal Conveyancer.
Dated: 17 June 2013

I agree/~~do not agree~~ the recommendation made in the report above.



Simon Mallinson
Head of Legal and Democratic Services
Date: 18/6/13