

# CHESHIRE EAST COUNCIL

## Rights of Way Committee

---

**Date of meeting:** 16<sup>th</sup> March 2015  
**Report of:** Head of Legal  
**Title:** Village Green Application – Land Adjacent to Chelford Road and Black Firs Lane, Somerford

---

### 1.0 Report Summary

- 1.1 This report deals with an application by Nicholas Bell to register land adjacent to Chelford Road and Black Firs Lane in Somerford as a new village green under section 15 of the Commons Act 2006.

### 2.0 Recommendation

- 2.1 That at its meeting of 16<sup>th</sup> March 2015, the Committee receives and accepts the report of James Marwick (attached as appendix A) and that the application is rejected.

### 3.0 Reasons for Recommendation

- 3.1 Mr Marwick is of the view that there is no obligation to postpone the consideration of the application. The parties have been afforded the opportunity to make representations in writing based upon the report, which is the central item to be considered by the Committee, and every opportunity to make relevant submissions has been afforded during the preparation of the report
- 3.2 The application should be rejected on the basis of Mr Marwick's conclusion that:
- 3.2.1 That section of the Land which is identified in the Development Strategy document is excluded from registration and that part of the Application falls to be rejected.
  - 3.2.2 Regardless of that finding, there has not been sufficient qualifying user of the Land capable of making the Land registerable and therefore the Application should be rejected in its entirety.

### 4.0 Wards Affected

- 4.1 Brereton Rural

## **5.0 Local Ward Members**

- 5.1 Councillor John Wray

## **6.0 Financial Implications**

- 6.1 There would be a cost in the event of an application for judicial review however the Council is the registration authority and therefore has a statutory duty to decide applications.

## **7.0 Legal Implications**

- 7.1 There is no right of appeal against a Committee decision not to register land as a village green. The route for any challenges would be via judicial review.
- 7.2 Although the findings of the Inspector recommended for acceptance by the Committee, the Committee is not bound to follow them

## **8.0 Risk Assessment**

- 8.1 It is important that decisions are taken in a way that demonstrates fairness and complies with the rules of natural justice. To that end the Committee adopted a procedure for determining village green applications on 7 December 2009 and it has followed the adopted procedure in the case of this application

## **9.0 Background and Options**

- 9.1 On 3<sup>rd</sup> May 2013 the Council received an application to register land adjacent to Chelford Road and Black Firs Lane, Somerford as a village green. The application was submitted by Mr. Nicholas Bell and relates to unregistered land which is part of the adopted highway. Ownership of the subsoil is unknown.
- 9.2 The application was made pursuant to Section 15(2) of the Commons Act 2006, on the grounds that the Application Site had been used by the locality for recreational purposes for in excess of 20 years. The Application is supported by 31 statements from local residents either claiming to have used or to have witnessed the use of the Application Land for recreational purposes during this period.
- 9.3 On 12<sup>th</sup> September 2013, the Application was advertised in the Congleton Chronicle and notice of the application was served in accordance with the Commons (Registration of Town or Village Greens)(Interim Arrangements)(England) Regulations 2007. Anyone wishing to object to the Application had until 6<sup>th</sup> December 2013 to do so in writing.

- 9.4 The Registration Authority received an objection from Gateley LLP solicitors, on behalf of Richborough Estates Limited, who have an interest in an area of land bound by the Application Land, on 6<sup>th</sup> December 2013. The Council, as Highway Authority, submitted an objection on 23<sup>rd</sup> January 2014.
- 9.5 On 10<sup>th</sup> June 2014, the Council wrote to the applicant to impose a deadline for submitting comments on the objections by Friday 1<sup>st</sup> August.
- 9.6 On 30<sup>th</sup> June 2014, the Council (as Highway Authority) wrote to the Registration Authority objecting to the application. These comments were forwarded to the applicant and the Registration Authority agreed that the applicant could have until Friday 5<sup>th</sup> September 2014 to provide any comments.
- 9.7 While preparing the report for the 15<sup>th</sup> September PROW committee meeting, the officer drafting the report noted that the changes introduced by the Growth and Infrastructure Act 2013 came into force on 25<sup>th</sup> April 2014 (i.e. before the date the village green application was made). The Council's planning department subsequently confirmed that a "trigger event" may have occurred. By virtue of Section 15C Highways Act 1980, the right to apply for land to be registered as a town or village green ceases to apply if a 'trigger' event (as specified in Schedule 1A of that Act) has occurred in relation to the land.
- 9.8 The Council's legal officer obtained advice from James Marwick and was advised that the application could still go to the PROW committee at its meeting in September but that the applicant and objectors should be given an opportunity to respond on whether a 'trigger event' has taken place before the application is considered. The report to the PROW committee was amended accordingly. The report recommended that an Inspector be appointed to consider the application, based on the papers, in the first instance.
- 9.9 At its meeting on Monday 15<sup>th</sup> September 2014, the Committee resolved as follows:

*That the Head of Legal Services offer the applicant and the objectors twenty eight days to make representations on the potential trigger event which may affect part of the land subject to the village green application.*

*Following expiration of the twenty eight day period referred to in Recommendation 2.1 the Head of Legal Services be authorised to appoint an independent expert to consider the application on the basis of written representations and provide a report.*

*That the Head of Legal Services be given delegated authority to determine if a non-statutory public inquiry should take place upon the*

*recommendation of the independent expert, after consulting the Chairman of this Committee.*

- 9.10 On the 17th September 2014 an email was sent to the applicant and the objectors asking for their comments on the trigger event by 16th October 2014. Further information in relation to the trigger event was sent to the applicant and the objectors on 10th October 2014. Comments were subsequently received from Richborough Estates, Somerford Parish Residents Action Group, the applicant and the Council (as Highway Authority).
- 9.11 On 27<sup>th</sup> November 2014, James Marwick, Barrister of Trinity Chambers, Newcastle upon Tyne was provided with all necessary documentation and instructed to consider the Application. If of the view that the Application can be dealt with by way of written representations and without the need for a non statutory public inquiry to:
- Sit as an independent person to consider it.
  - Thereafter to prepare a report, to go the Council's Public Rights of Way Committee, recommending whether the Application should be approved or not.
- 9.12 In accordance with instructions, in his report dated 12<sup>th</sup> February 2015 (a copy of which is at Appendix A), Mr Marwick concluded that:
- 9.12.1 'A Trigger Event' had occurred excluding the part of the Land which falls within the area of land identified in the Development Strategy document from registration. This has the consequence of severing the parts of the Land which are registrable in two; namely the remaining part of the claimed land on Black Firs lane and the Chelford Road section
- 9.12.2 Rejecting the Applicant's argument to the contrary, there is strong evidence that the Land in its entirety is highway maintainable at public expense so as to justify proceeding on the basis that on balance, it is Highway land.
- 9.12.3 Considering all the evidence relied upon in support of the Application, practically all the user relied on by the Applicant could be regarded as having been enjoyed pursuant to the public's highway rights and therefore must be discounted as qualifying user as any use by right rather than as of right is to be discounted from consideration: per R. (Barkas) v North Yorkshire County Council [2014] UKSC 3. What user that remains, if any, is insufficient to warrant Registration.
- 9.12.4 The evidential position is not rectifiable at a public inquiry for the reasons given in his report. It follows that he is satisfied that his conclusion is one properly reached without the need for a public inquiry
- 9.13 Anita Bradley, Head of Legal Services, being satisfied that the Independent Person's conclusion that the evidential position is not

rectifiable at a public inquiry, determined, in accordance with her delegated authority that it is not necessary to hold a public inquiry.

- 9.14 Mr Marwick's report was circulated to the parties on 25 February 2015 advising that the application is to be considered at the Committee meeting on 16<sup>th</sup> March 2015. The parties were invited to make any representations in relation to the report by 4pm on 4<sup>th</sup> March 2015.
- 9.15 Richborough Estates responded on 26 February 2015 advising that that the report is considered to be to be most thorough and detailed. It has analysed all issues relating to the application, reaches a reasoned conclusion and as a result, the recommendations therein are agreed.
- 9.16 The applicant Mr Bell responded on 2 March 2015. He stated that he would like to address the Committee in relation to the application, but would not be able to attend on the 16th March due to being on holiday. He requested that the application be considered at the next meeting of the Committee, so as to afford him an opportunity to be present and make submissions.
- 9.17 In response to Mr Bell's request, Mr Marwick advised that in his view, there is no obligation to postpone the Committee meeting as the applicant has been afforded the opportunity to make representations in writing based upon the report, which is the central item to be considered by the Committee, and every opportunity to make relevant submissions has been afforded during the preparation of the report. He also pointed out that the Committee has a discretion whether or not to receive written representations made after the 4<sup>th</sup> March as part of their decision making process.

#### **10.0 Access to Information**

The background papers relating to this report can be inspected by contacting the report writer.

#### ***For further information:***

*Officer: Peter Jones*

*Tel No: 01270 685849*

*Email: peter.jones@cheshireeast.gov.uk*