

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of meeting: 13th June 2016
Report of: Director of Legal Services and Monitoring Officer
Title: Village Green Application – Land Adjacent to Chelford Road and Black Firs Lane, Somerford

1.0 Purpose of Report

1.1 This report is intended to apprise members of the outcome of the Judicial Review the decision to refuse to register land at Black Firs Lane, Somerford as a village green. It also seeks authority to appoint an independent expert to reconsider that matter and report to a subsequent meeting of this Committee.

2.0 Recommendations

2.1 That the Director of Legal Services be authorised to appoint an appropriately qualified independent expert to conduct a non-statutory public inquiry to consider the application and provide the Committee with a report and recommendation for determination.

3.0 Reasons for Recommendations

3.1 The High Court has quashed the Council's decision to refuse the application thereby declining to register the land in question as a village green. Consequently, the Council must now re-take the decision curing the defects in process identified by the court.

4.0 Background

4.1 An application in respect of land along the verge of Black Firs Lane and Chelford Road, Somerford ("the Application Land") was initially submitted in May 2013, and refused at Committee on 15th September 2014, following a written report provided by an independent expert, Mr James Marwick.

4.2 The decision to refuse the application was subsequently challenged by Judicial Review proceedings in the High Court on the following four grounds:-

- (i) Did the Defendant act in breach of the rule of natural justice that no one should be judge in their own cause?
- (ii) If the Defendant was entitled to act on the advice of an independent legal expert, was Mr Marwick such an expert?

- (iii) Was Mr Marwick's advice vitiated by procedural error by allowing the Defendant to put in evidence opposing the TVG application out of time and not giving Mr Bell the opportunity to comment on the late evidence before giving his opinion?
 - (iv) Was the decision of the Defendant procedurally erroneous in that Mr Marwick did not hold a public inquiry to find facts?
- 4.3 In respect of Ground (i) the court found in favour of the Council finding that the Council's practice of appointing an independent expert to consider the matter and report to the Public Rights of Way Committee, who would then determine the matter on the basis of that report, was a lawful process in keeping with the rules of natural justice.
- 4.4 In respect of Ground (ii) the court found that Mr Marwick was a suitable independent expert.
- 4.5 In respect of Ground (iii) the court found that Mr Marwick had fallen into error, procedurally, by accepting late highways evidence from the Council and not giving Mr Bell sufficient time to comment on the same.
- 4.6 In respect of Ground (iv) the court found that there was sufficient dispute over matters of fact such that the testing of the evidence (by cross examination) in a non statutory public inquiry was required.
- 4.7 Consequently, the court case was lost and the decision quashed on account of two linked procedural errors made in the course of the consideration of the matter by Mr Marwick. However, importantly, the court found no fault with the Council's practice of determining such matters by appointing an independent expert to consider and report to its Public Rights of Way Committee.
- 4.8 On account of the finding, the Council must re-determine the matter. In light of the findings, it would be prudent to do so by means of a non-statutory public inquiry held by an independent expert, who would then report to this Committee for a determination.
- 4.9 Members should note that the Council considers the land in question to be comprised within the public highway and so has objected to its registration on that basis.

5.0 Wards Affected

- 5.1 Brereton Rural / Congleton West

6.0 Local Ward Members

- 6.1 Councillors John Wray, Paul Bates, Gordon Baxendale and George Hayes

7.0 Financial Implications

7.1 There will be costs in the region of £15000 exclusive incurred by the Council in appointing an independent person to hold a non-statutory public inquiry.

7.0 Legal Implications

7.1 These are set out in the main body of the report.

8.0 Risk Assessment

8.1 These are set out in the main body of the report.

10.0 Access to Information

10.1 The background papers comprise the documents relating to the application and the High Court judgement. These are available upon request.

For further information:

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