

# CHESHIRE EAST COUNCIL

## Public Rights of Way Committee

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**Date of Meeting:** 11<sup>th</sup> September 2017  
**Report of:** Director Of Legal (Interim)  
**Subject/Title:** Village Green Application – Application to register land in the Parish of Somerford as a town or village green

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### 1.0 Purpose of Report

- 1.1 This report deals with an application by Mr Nicholas Bell under section 15(2) of the Commons Act 2006 to register an area of land in the Parish of Somerford as a new village green under section 15 of the Commons Act 2006.

### 2.0 Recommendations

- 2.1 That the Committee receives and accepts the report of Timothy Jones, Barrister (attached as appendix A), and
- 2.2 That the application is rejected and the application land is not registered as a Town or Village Green.

### 3.0 Reasons for Recommendation

- 3.1 The application is recommended for rejection because Mr Jones has concluded that part of the land covered by the application should be excluded from the site in any event as it has been the subject of a trigger event, and in relation to the remainder of the land
1. the Applicant has not demonstrated that the use of the land took place as of right, and
  2. the Applicant has not demonstrated that the area specified in the application was a locality or neighbourhood, and
  3. the Applicant has not demonstrated that if it had been a locality or neighbourhood that the use would have been significant for at least 20 years;

A failure to establish any one of these means that the application should be rejected.

### 4.0 Ward Affected

- 4.1 Brereton Rural

## **5.0 Local Ward Members**

5.1 Councillor J Wray

## **6.0 Financial Implications**

6.1 There would be a cost in the event of an application for judicial review, as has occurred previously, 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 Independent expert are 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 originally determined the application on 16<sup>th</sup> March 2015 without the benefit of a non-statutory public inquiry. A successful Judicial Review in the High Court of that decision identified that a non-statutory public inquiry was necessary to determine issues due to disputes as to factual issues. The order of the High Court to hold a non statutory public inquiry has been followed.

## **9.0 Background and Options**

9.1 The Council is the registration authority for village greens and responsibility for this function is delegated to the Public Rights of Way Committee under the Council's constitution.

9.2 The application is dated 2 May 2013 and was submitted to Cheshire East Borough Council on 3 May 2013 by Mr Nicholas Bell. The application relates to a piece of land described in the application form as Somerford Green/The Green, land adjacent to Chelford Road and Black Firs Lane, Somerford and it was advertised in accordance with the statutory requirements. The land, the subject of the application ('the land'), is shown hatched red on the map attached as Appendix B.

9.3 The application is made pursuant to section 15(2) of the Commons Act 2006. That requires the applicant to demonstrate on the balance of probabilities that the land was used :

- a. for lawful sports and pastimes for a period of at least 20 years and that this use continued to the date of the application
- b. by a significant number of the inhabitants of a locality or of a neighbourhood within a locality

c. as of right

- 9.4 Cheshire East Borough Council in its capacity as Highways Authority objected to the application as did Richborough Estates who had obtained planning permission to develop land bound by the application land.
- 9.5 This Committee originally received a report on 15<sup>th</sup> September 2014 and resolved that an independent expert be appointed to consider the application on the basis of written representations and to provide a report to the Committee. On the 16<sup>th</sup> March 2015 a further report to the Committee recommended that the view of the independent expert be accepted and the application be rejected. The Committee resolved as such.
- 9.6 Following the decision, a Judicial review of that decision was commenced on 15 June 2015 alleging amongst other things that there had been a procedural error as the Independent expert had not given the Applicant the opportunity to comment on late evidence submitted by the Highway Authority, and that there should have been a public inquiry held to determine facts. In relation to these two points the Judicial review application succeeded and the town and village green application fell to be determined again.
- 9.7 At its meeting on 13<sup>th</sup> June 2016 the Public Rights of Way Committee received a report and resolved that an appropriately qualified independent expert be appointed to conduct a non statutory inquiry to consider the application and provide the Committee with a report and recommendation for determination.
- 9.8 The Independent expert was provided with copies of the application, plan and supporting information in the form of witness statements, photographs and correspondence as well as both of the objector's objection letters and supporting information. Additionally he was provided with the information that resulted in the Judicial review and copy of the High Court decision. He further issued directions for the conduct of the public inquiry and received further information as a result.
- 9.9 A non statutory public inquiry was held on 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> May 2017. Mr Nicholas Bell represented himself until he withdrew from the Inquiry following giving his own evidence, and Mr Christian Hawley of Counsel appeared on behalf of the Highway Authority and Mr Andrew Piatt, Solicitor appeared on behalf of Richborough.
- 9.10 The Independent expert's report is attached as Appendix A. It takes account of the written information produced to the Inspector and evidence received during the Inquiry.
- 9.11 The Independent expert notes at paragraphs 44-50 that a number of applications from the parties were made prior to and at the Inquiry. At these paragraphs he details them and his reasons for either accepting, or not, the application.

- 9.12 The Independent expert has considered the point that a part of the application site falls within Site Congleton 1 of the Development Strategy published by Cheshire East Council. By virtue of s15C of the Commons Act 2006, the right to apply for land to be registered as a town or village green ceases to apply if a trigger event has occurred in relation to that land. This discussion takes place at paragraphs 59-62 of the report. The conclusion that part of the site falls within Site Congleton 1 and is therefore subject to the trigger event is the same conclusion that the High Court reached when considering the Judicial Review application.
- 9.13 The Applicant advances Somerford triangle as a neighbourhood rather than a locality but the Inspector did not find evidence supportive of this. The Independent experts findings on this are set out at paragraphs 73 to 81 of his report.
- 9.14 The independent expert discusses the use of the application site “as of right” and whether the site is highway land, and concludes at paragraph 66 that all of the land the subject of the application is highway land. At paragraph 72 he also concludes that the activities relied on by the Applicant (excluding the selling of cars) are lawful uses of the highway.
- 9.15 The independent expert acknowledges that there was limited use of the land earlier in the required 20 year period, but is not satisfied that there has been significant later use of the land in the 20 year period required, paragraph 84.
- 9.16 In his overall conclusion at paragraphs 85-87 the Independent expert concludes that he is of the firm opinion that no part of the land should be registered as a village green, and recommends that the land is not registered.
- 9.17 A draft copy of the report has been circulated to the Applicant and the Objectors for them to review and check for accuracy. The Applicant has noted one point regarding his request for an adjournment, and the report has been amended to take this point into account. No comments were received from the two Objectors.

#### **10.00 Access to Information**

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

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