Item 5

From: Divisional Director – Environment and Waste

To: Regulation Committee – 19th September 2006

Subject: Legislation Affecting the Registration of Town and Village Greens

Classification: Unrestricted

Summary: To update Members on the situation regarding a recent Judgement in The House of Lords that affects the registration of Town and Village Greens.

Recommendation: That Members take note of the judgment and its relevance to the registration of Town and Village Greens

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Background

1. Under provisions contained within the Commons Registration Act 1965 the County Council has a duty to maintain a Register recording Town and Village Greens. The County Council also has the duty of ensuring this is kept fully updated and any person may apply to the County Council for the addition of areas of land where, in their view, a significant number of the inhabitants of a locality or a neighbourhood have indulged in sports and pastimes on the relevant land for the requisite twenty year period.

2. This has never been a straightforward task. One particular point that had been causing Registration Authorities concern related to the date up to which use of the land in question had to continue. Previous interpretation of the legislation meant that Registration Authorities could not register land unless use was continuing up until the date of registration.

3. This simply meant that in many cases upon becoming aware of an application landowners went out and erected fencing or notices which made it impossible for any continued use up until the date of registration despite the fact that in many cases the twenty year qualifying period had been attained.

4. However, the case of Oxford City Council v Oxford County Council ex parte Mrs Mary Robinson (known colloquially as the “Oxford” or “Trap Grounds” case) has given the judiciary the opportunity to untangle the legislation. This case was heard in the House of Lords and in May of this year a judgement was issued. It is felt therefore opportune to bring to Members attention some of the more salient parts of the judgement.

5. In summary, the Law Lords decided that in order for land to be registered as Town or Village green, use must be as of right, for a minimum of twenty years and the

inhabitants of the relevant neighbourhood or locality must be able to show continued use up until the *date of application*. So if an applicant can prove qualifying use for 20 years or more up to the date of the application and subject to all legal criteria being met, the applicant is entitled to succeed regardless of what happens after the date of application.

6. Another contentious point had been the extent to which Registration Authorities could deviate from the application plan or amend the application form. The House of Lords has confirmed that Registration Authorities are entitled, without any amendment of the application, to register only that part of the land which the applicant has proved to have been used for the necessary period.

7. Likewise, the date specified by the applicant on the application form as to when the land became a Village Green is also no longer binding upon the Registration Authority, which can proceed as if some other date had been inserted there. For example the date immediately before the date of the application.

8. Finally, Members may also be interested to know that the proposed Commons Act has now received Royal Assent and a further briefing note will follow in due course.

Recommendation

9. I RECOMMEND that Members take note of the recent House of Lords judgment and its relevance to the registration of Town and Village Greens.

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