

Application to register land as a new Village Green at Hartley Woods, Hartley (Nr. Longfield)

A report by the Director of Environment and Waste to Kent County Council's Regulation Committee Member Panel on Tuesday 12th May 2009.

Recommendation: I recommend, for the reasons stated in the Inspector's report dated 27th January 2009, that the applicant be informed that the application to register the land at Hartley Woods, Hartley has been accepted, and that the land subject to the application be formally registered as a Village Green.

Local Member: Mr. David Brazier

Unrestricted item

Introduction and background

1. The County Council has received an application to register land at Hartley Woods, Hartley as a new Village Green from the Hartley Parish Council ("the applicant"). The application, dated 18th April 2005, was allocated the application number VGA585. A plan of the site is shown at **Appendix A** to this report.

Procedure

2. This application has been made under section 13 of the Commons Registration Act 1965 and regulation 3 of the Common Registration (New Land) Regulations 1969. These regulations came into force on the 3rd January 1970, and regulation 3 enables the making of an application where, in accordance with section 22 of the 1965 Act, after the 2nd January 1970 any land becomes a Town or Village Green.
3. Although the Commons Registration Act 1965 has now been replaced by the Commons Act 2006, because this application was received prior to the coming into effect of the new 2006 Act, it must be dealt with under the former legislation.
4. For the purpose of this application, therefore, section 22 of the 1965 Act (as amended by section 98 of the Countryside and Rights of Way Act 2000) applies. It defines a Village Green as:

'land on which for not less than twenty years a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged in lawful sports and pastimes as of right, and either:

- (a) continue to do so, or*
- (b) have ceased to do so for not more than such period as may be prescribed, or determined in accordance with prescribed provisions'.*

5. As a standard procedure set out in the regulations, the County Council must notify the owners of the land, every local authority and any other known interested persons. It must also publicise the application in the press and put up a site

notice. The publicity must state a period of at least six weeks during which objections and representations can be made.

The application site

6. The area of land subject to this application (“the application site”) consists of a large area of woodland of approximately 32 acres (13 hectares) in size situated to the east of the village of Hartley. The application site is bounded on its northern edge by a railway line, on its eastern edge by the now disused former Longfield refuse depot (which lies adjacent to Hartley Bottom Road) and on the remaining sides by fields and woodland. There is a Public Footpath (SD215) running along the eastern edge of the application site.
7. Access to the site is via Public Footpath SD295 from Gorse Wood Road or via Public Footpath SD296 from Manor Lane. There is also a well-trodden track leading to the site from Beechlands Close, although this is not a recorded Public Right of Way. This network of footpaths allows local residents easy and direct access onto the site.

Previous resolution of the Regulation Committee Member Panel

8. In response to the application, an objection was received from the landowner, Southwark Council (“the objector”) on the following grounds:
 - That user had not been as of right on the basis that (a) the application land was clearly fenced off from adjoining properties with local residents failing to take notice of lawful barriers and (b) by reason of the licence conferred by a leaflet which had been distributed in the area.
 - That there was no difference in the use of the eastern part of the application land and land to the north of that area, known as Longfield Depot, and yet Longfield Depot had not been claimed as a town or village green. If there were doubts or reasons why Longfield Depot could not be claimed, those doubts or reasons would apply to Hartley Wood.
 - The evidence of 19 witnesses accompanying the application was not a significant number of the inhabitants of the claimed locality.
 - User had not been predominantly by local people.
 - The area of the Parish of Hartley had changed during the relevant period and could not therefore be a qualifying locality.
9. The matter was considered at a Regulation Committee Member Panel meeting on Thursday 21st February 2008, where Members accepted the recommendation that the matter be referred to a non-statutory Public Inquiry for further consideration. A copy of the Officer’s report presented to the panel is attached at **Appendix B**.
10. As a result of this decision, Officers instructed Counsel experienced in this area of law to act as an independent Inspector. A non-statutory Public Inquiry took place at All Saints Church Centre Hartley from Tuesday 30th September to Friday 3rd October 2007, during which time the Inspector heard evidence from interested parties and carried out an accompanied site visit.

11. The Inspector subsequently produced a detailed written report of her findings which is attached at **Appendix C**.

Legal tests and Inspector's findings

12. In dealing with an application to register a new Town or Village Green the County Council must consider the following criteria:

- a) *Whether use of the land has been 'as of right'?*
- b) *Whether use of the land has been for the purposes of lawful sports and pastimes?*
- c) *Whether use has been by a significant number of the inhabitants of a particular locality, neighbourhood or a neighbourhood within a locality?*
- d) *Whether use has taken place over period of twenty years or more?*
- e) *Whether use of the land by the inhabitants is continuing up until the date of application?*

I shall now take each of these points and elaborate on them individually in accordance with the Inspector's findings:

(a) Whether use of the land has been 'as of right'?

13. The definition of the phrase 'as of right' has been considered in recent High Court case law. Following the judgement in the *Sunningwell*¹ case, it is now considered that if a person uses the land for a required period of time without force, secrecy or permission (*nec vi, nec clam, nec precario*), and the landowner does not stop him or advertise the fact that he has no right to be there, then rights are acquired and further use becomes 'as of right'.

14. The Inspector concluded that in her judgement use of the land for recreational purposes by the local inhabitants was use as of right tolerated by the landowner. The Inspector was not satisfied that the leaflet referred to by the London Borough of Southwark had been generally distributed within the Parish of Hartley and in consequence was not providing licence to use the application land. In her judgement, the leaflets intended readers were Youth organisations from the London Borough of Southwark.

(b) Whether use of the land has been for the purposes of lawful sports and pastimes?

15. Lawful sports and pastimes can be commonplace activities including dog walking, children playing, picnicking and kite-flying. Legal principle does not require that rights of this nature be limited to certain ancient pastimes such as maypole dancing, for example.

16. The Inspector concludes that there was ample evidence of use of the application land over the whole of the relevant period for dog walking, walking and children's play.

¹ *R v. Oxfordshire County Council, ex p. Sunningwell Parish Council (2001)*

(c) Whether use has been by a significant number of local inhabitants of a particular locality, neighbourhood or a neighbourhood within a locality?

17. The Countryside and Rights of Way Act 2000 inserted a new section dealing with locality into section 22 of the 1965 Act. It should now be shown that the use made of the land has been and continues to be by the inhabitants of any locality, or of a neighbourhood within a locality. The use need not be exclusively by local inhabitants, but they should be the significant number. A locality must comprise more than a geographical area and should be a distinct and identifiable administrative unit. Neighbourhoods must have a sufficient degree of cohesiveness, but need not be a recognised administrative unit.
18. Here the Inspector held that in her judgement the whole of the application site has been used by a substantial number of local inhabitants, sufficient to indicate to a reasonable landowner that the whole of the site was in use by local inhabitants generally for recreation. She concluded that Hartley Civil Parish was a qualifying locality. In her judgement there was a good fit between the users and the claimed locality.

(d) Whether use has taken place over period of twenty years or more?

19. The requisite period is a minimum of 20 years counting retrospectively from the date of application: in this case, it is between 19th April 1985- and the 18th April 2005. In this respect, the Inspector identified from the evidence presented to her, that there was use of a period of twenty years or more.
20. The inspector further concludes within her report that despite assertions made during the Inquiry from the main objector, neither the Great Storm of October 1987 nor the preventative measures put in place by the County Council in respect of the 2001 Foot and Mouth outbreak, caused interruption of use during the relevant period.

(e) Whether use of the land by the inhabitants is continuing up until the date of application?

21. The Commons Registration Act 1965 (as amended by the Countryside and Rights of Way Act 2000) requires that use of the application site continues up until the date of registration. However, this was overturned in a recent House of Lords case, known as the *Oxfordshire*² case, in which it was held that use need only continue up until the date of application and not registration.
22. The Inspector accepted that the use of the application land continued down to the date of the application.

Inspector's conclusions

23. The Inspector's overall conclusions in respect of the land subject to the application are as follows:

² *Oxfordshire County Council v Oxford City Council and Catherine Mary Robinson (2006)*

That the application succeeds and accordingly that the Registration Authority should accept the application.

Comments on the Inspector's report from the applicant and objector

24. On receipt, the Inspector's report was forwarded to the applicant and the main objector for their information and further comment.

- Despite ample opportunity and reminder the County Council has heard nothing further from either party.

Conclusions

25. Having heard the evidence presented by both parties at the non-statutory Public Inquiry and considered the Inspector's thorough and detailed analysis of the evidence (contained within her report), I conclude that the requirements of the Commons Registrations Act 1965 have been met in this case and that the County Council should therefore register the land subject to the application as a new Village Green.

Recommendations

26. I recommend, for the reasons stated in the Inspector's report dated 27th January 2009, that the applicant be informed that the application to register the land at Hartley Woods, Hartley has been accepted, and that the land subject to the application be formally registered as a Village Green.

Accountable Officer:

Dr. Linda Davies – Tel: 01622 221500 or Email: linda.davies@kent.gov.uk

Case Officer:

Mr. Chris Wade – Tel: 01622 221511 or Email: chris.wade@kent.gov.uk

The main file is available for viewing on request at the Environment and Waste Division, Environment and Regeneration Directorate, Invicta House, County Hall, Maidstone. Please contact the case officer for further details.

Background documents

APPENDIX A – Plan showing application site

APPENDIX B – Copy of the report presented to Regulation Panel 21st February 2009

APPENDIX C – Copy of Inspectors Report and Recommendations