

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 Thursday 21st February 2008

Recommendation: I recommend that the County Council endorses the advice received from Counsel that a non-statutory Public Inquiry is held into the case to clarify the issues

Local Member: Mr. D. Brazier

Unrestricted item

Background

1. The County Council has received an application to register land at Hartley Woods, Hartley (nr. Longfield) as a new Village Green from the Hartley Parish Council ("the applicant"). A plan of the application site is shown on Appendix A. Objection to this application was lodged by the landowner, Southwark Council.

Previous resolution of the Regulation Committee

2. On the 29th November 2007, a Regulation Committee Member Panel was appointed to consider this application. A copy of the report is attached at Appendix B. The Officer's recommendation was that the application be accepted and the land registered as a Village Green. However, following very late representations received from the solicitor acting on behalf of Southwark Council, the panel decided to defer a decision until further legal submissions had been received from Southwark Council. Members also agreed that the County Council would seek its own legal advice from Counsel on this matter.

Submissions received from Hartley Parish Council

3. Following the meeting, a letter was received from Hartley Parish Council responding to some of the issues which had been raised at the meeting itself. A copy of the letter is attached at Appendix C. The main points can be summarised as follows:
 - (i) Although the Parish Council welcomes further discussions with Southwark Council regarding the future use of the land, The Parish Council has no confidence that an acceptable agreement would be reached due to a repeated lack of engagement from Southwark Council;
 - (ii) Use of the land has been 'as of right' and Southwark Council has made no attempt to prevent such use or to advertise the fact that local people using the land had no right to be there;
 - (iii) Hartley Woods is extensively used for recreational walking, dog walking and a number of recreational activities as is demonstrated by the number of informal footpaths which criss-cross the land; and
 - (iv) When Southwark Council tried to fence off the land, this was met with resistance from local people and the Parish Council received a number of

letters in objection. This further demonstrates the significant use of the land by local people.

4. Enclosed with the letter were three additional user evidence forms from people asserting use of the land since the 1960s, ten letters of complaint sent to the Parish Council regarding the fencing erected by Southwark Council in April 2006, and a campaign leaflet relating to the Parish Council elections in May 2007 which refers to the desire to secure open access to Hartley Woods.

Submissions received from Southwark Council

5. Legal submissions prepared by George Lawrence QC were received from Southwark Council (“the objector”) on the 11th January 2008. A copy of the submissions are attached at Appendix D. In summary, Southwark Council considers that the application should be rejected on the following grounds:
 - (i) Use of the land has not been ‘as of right’ throughout the 20 year period (1985 to 2005) due to the publication of a leaflet encouraging use of the land;
 - (ii) Use has not been predominantly by residents of the locality as the leaflet was circulated in south-east London and people from that area would be likely to have visited the land the claimed land as a result of the invitation contained in the leaflet; and
 - (iii) Use has not been by the residents of a defined locality as the boundaries of Hartley parish were changed in the early part of the required 20 year period.

Letter received from local residents

6. Since the Regulation Committee Member Panel meeting in November, two further letters have been received from local residents. Copies of these letters are attached at Appendix E (Mrs. Sharpe) and Appendix F (Dr. Roberts).
7. Mrs. Sharpe, who attended the meeting in November, wrote to object to the land being registered as a Village Green. She is of the view that as Southwark is one of the poorest boroughs in the country it was unfair that they should be expected to maintain the land for the use of the residents of Hartley, especially as there are already 300 acres of under-used amenity land in the parish along with a large network of footpaths.
8. Dr. Roberts also wrote to express concern that, in his view, very few local residents were aware of the application being made by Hartley Parish Council. Dr. Roberts enclosed with his letter a copy of an article which appeared in the Hart Magazine (a local publication sponsored by the local churches and distributed throughout Hartley) in July 1993. The article recounts the history of Hartley Woods and refers to a proposal whereby “*the woods (the Southwark section) would be vested in The Woodland Trust who would take over the management i.e. open up the footpaths at present overgrown and choked...*”. Dr. Roberts considers that this clearly brings into question the statements which declare that the woodland has been freely accessible for the last 20 years and thus questions the validity of the application.

Further consideration

9. In light of the further submissions made by the applicant and the objector, Counsel's advice has been sought. The advice received was that there are a number of factual issues which cannot be resolved through further written exchanges of representations and as such the best way forward would be for a non-statutory Public Inquiry to be held to clarify the issues.
10. Although Counsel did not feel that, on the face of it, the leaflet would necessarily prevent use by local residents from being 'as of right', it was considered that further information was required regarding the circulation of the leaflet (for example, where and to whom exactly was it circulated?) in order to reach an informed decision. Counsel also considered that further clarity was required regarding the exact parts of the land being used and how much of the use was attributable to walking on the Public Footpath which crosses the land.
11. In my view, before any final decision is taken, the County Council should heed Counsel's advice to hold a non-statutory Public Inquiry to test the evidence. As there is clearly a significant body of user evidence relating to the land in question, it would be unwise for the application to be refused before further investigation had taken place.
12. However, given the uncertainties regarding the leaflet and the locality as well as the concerns raised by Counsel, it is felt the County Council would be placing itself in a precarious position were it simply to go ahead and register the land. The letters from local residents regarding the overgrowth of the paths during the early 1990s also raise serious questions regarding accessibility and the extent of the usage of the land during the *whole* of the 20 year period (i.e. between 1985 and 2005) which would be best addressed at a Public Inquiry.

Recommendation

13. I recommend that Members endorse the advice received from Counsel and that a non-statutory Public Inquiry be held into the case to clarify the issues.

Appendices

- APPENDIX A – Plan showing the application site
- APPENDIX B – Copy of the report presented to Regulation Panel on 27th November 2007
- APPENDIX C – Copy of letter from Hartley Parish Council
- APPENDIX D – Copy of legal submissions made by Southwark Council
- APPENDIX E – Copy of letter received from Mrs. I. Sharpe (local resident)
- APPENDIX F – Copy of letter received from Dr. J. Roberts (local resident)

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Background Documents: *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.*