

ITEM NO.	
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TITLE	: APPLICATION TO REGISTER LAND KNOWN AS THE LODGES, WALSHAW, BURY, AS A TOWN OR VILLAGE GREEN UNDER THE COMMONS REGISTRATION ACT 1965		
TO / ON	: PLANNING CONTROL COMMITTEE		OCTOBER 2003
REPORT FROM	: COUNCIL SOLICITOR		
STATUS	:		

1.0 TYPE OF DECISION

1.1 What type of decision is to be taken:-

EXECUTIVE DECISION		COUNCIL DECISION	
Key		Non Key	Yes

1.2 If a key decision, has it been included in the Forward Plan

Inclusion in Forward Plan	(Yes or No)	Date of Plan	Not Applicable
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2.0 SUMMARY

The Council must act as Registration Authority and deal with this application to register land as a town or village green under the Commons Registration Act 1965. The land in question is known locally as the Lodges, and the evidence in summary suggests that the land has been used for over fifty years by the public at large, and in particular by members of the public in that locality, without any hindrance, for various sports and pastimes such as walking, fishing, horse-riding, nature viewing, cycling etc.

Since the regulations do not prescribe how contested applications must be determined, best practice indicates that it should be by way of a Non Statutory Public Inquiry set up for this purpose. The Planning Control Committee must therefore decide first, whether to hold an Inquiry and secondly, the style of Inquiry.

3.0 OPTIONS AND RECOMMENDED OPTIONS (with reasons)

1. To instruct a barrister to sit alone as an Inspector and to write a report to the Planning Control Committee -Type A/Sunningwell)
2. To instruct a barrister to hold the Inquiry sitting with members of the Planning Control Committee who can also hear the evidence -Type B/Steed
3. Not to hold a Non-Statutory Public Inquiry at all and to determine the application as a paper exercise.

Recommendation

The Committee is recommended to agree to Option 1.

4.0 THIS REPORT HAS THE FOLLOWING IMPLICATIONS

Corporate Aims	Improvement to the environment.
Policy Framework	The report has been drafted in accordance with the duties and responsibilities of the Planning and Control Committee as detailed in the Constitution.
Statement by Monitoring Officer	The Council must act as Registration Authority and deal with the application to register land as a town or village under the Commons Registration Act 1965.
Statement by Director of Finance and E-Government	Not applicable
Human Resource and IT/Land Property Implications	Not applicable

Wards/Area affected	Boards	Church Ward/ Bury West Area Board	
Scrutiny Interest	Panel's	Not applicable	
Consultations		None	
Call-in		Not applicable	
Briefings		Executive Members/ Chair	Chief Executive

5.0 INTRODUCTION

5.1 In the absence of any statutory rules, the Planning Control Committee must decide the method for dealing with the determination of contested applications for the registration of land as a town or village green.

6.0 BACKGROUND

6.1 Section 1 of the Commons Registration Act 1965 provides that all land which is common land or a town or village green should be registered . If by 2 January 1970 any land which was not so registered, that land was deemed not to be common land or a town or village green. However, to cater for land which subsequently became a town or village green (or common land) Section 13 provides for the amendment of the register in various situations. One such situation is where inhabitants of any locality have indulged in sports and pastimes as of right for not less than 20 years.

However, the Act itself does not prescribe the procedure or even the agency responsible for amendment. This is left wholly to some rather threadbare Regulations. They set out basic guidelines for administrative and procedural steps e.g. accepting the application on the prescribed form, preparing and publishing the appropriate notice, notifying potential objectors, consideration

of objections etc. Essentially, it is a checking and organisational role. There is no provision in the Regulations for determination of the application.

7.0 ISSUES

7.1 For this reason many Registration Authorities have adopted the procedure of instructing Counsel to hold a Non-Statutory Public Inquiry where oral evidence is heard and tested, and after which Counsel will report to the Authority with a recommendation of how the application should be determined. Counsel acts like a Planning Inspector reporting to the Secretary State who hears all the evidence and later produces a written report summarising that evidence, giving his own views on that evidence and recommending how the application should be disposed of. That was the procedure adopted in the House of Lords Sunningwell Case and Lord Hoffman in his speech described the procedure adopted there without any suggestion that it was inappropriate.

However, in the Court of Appeal case of Steed the Judge referred to the procedure adopted in that case, that is where a Barrister sits alone as Inspector. The Judge attached importance to Members having the opportunity to make their own assessment of the submitted evidence when performing their duty. Some authorities therefore instruct Counsel to hold the Inquiry sitting with Members who can then also hear the oral evidence. In this case Counsel then acts as a cross between a Magistrate's Clerk (noting the evidence and advising on the law during the Inquiry) and a Planning Inspector reporting to the Secretary State

Question to be determined

Members of the Planning Control Committee are therefore asked firstly whether the Registration Authority takes the view that fairness does require an Inquiry to be held, so that the evidence can be given and tested orally and if so, secondly to confirm the style of the Inquiry to determine any such application.

Considerations

The Council Solicitor recommends that the Authority holds a Non-Statutory Inquiry, in line with best practice. However, the decision for the Planning Control Committee is whether to adopt one of two alternative procedures.

- a) instructing Counsel to sit alone as Inspector, who writes a report to the Authority with a recommendation of how the Application should be determined and which the Members will consider at a later meeting (which for ease of reference we will call Type A/Sunningwell);
- b) whether the Authority should instruct Counsel to hold the Inquiry sitting with Members of the relevant Committee who can then also hear the oral

evidence. In this case Counsel acts as a cross between a Magistrates' Clerk and Planning Inspector as described earlier (Type B/Steed).

In either case Counsel sitting as Inspector can only ever make a recommendation in his report. The decision has to be that of the Registration Authority through its Members. However that report is an important document. If the Authority relies on its content and reasoning then in any Judicial Review/challenge to the decision to reject the application, it is likely to be considered very carefully by the disappointed applicant, and by the Judge. If the application is accepted and the register is amended to include the land as a town or village green, then an application to the High Court can be made by disappointed objectors under Section 14 of the 1965 Act. The High Court itself can also order the register to be amended so as to remove the new registration if it appears to the Court that a new amendment or a different amendment ought to have been made. It seems that the Court is not confined to remedying errors of law but may consider the overall merits of the amendment. As a report that was an important step in the decision making of the Registration Authority, it is likely to be very carefully considered in any such proceedings.

Background Documents: (attached to the report)

Plan showing the application site

For further information on the details of this report, please contact:

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COUNCIL SOLICITOR