

**NORTH YORKSHIRE COUNTY COUNCIL**

**PLANNING AND REGULATORY FUNCTIONS SUB-COMMITTEE**

**10 FEBRUARY 2012**

**LAND AT BLIND LANE, KNARESBOROUGH**  
**APPLICATION TO REGISTER LAND AS A TOWN OR VILLAGE GREEN**

**Report of the Corporate Director - Business and Environmental Services**

**1.0 PURPOSE OF REPORT**

- 1.1 To report on an application (“the Application”) for the registration of an area of land at Blind Lane, Knaresborough identified on the plan at **Appendix 1** (“the Application Site”) as a Town or Village Green.

**2.0 LEGAL CRITERIA**

- 1.1 Under the provisions of the Commons Act 2006 (“the Act”) the County Council is a commons registration authority and so responsible for maintaining the Register of Town & Village Greens for North Yorkshire.

- 1.2 Section 15(1) of the Act sets out that

*Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies*

- 2.3 Section 15(2) of the Act provides for land to be registered as green where:-

(a) *a significant number of the inhabitants of a locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years*

*and*

(b) *they continue to do so at the time of the application*

- 2.4 A commons registration authority needs to be satisfied on the balance of probabilities that all the elements of section 15(2) have been demonstrated to have been met by an application relying on that provision for it to be approved. The onus of proof rests with an applicant.

**3.0 APPLICATION SITE**

- 2.1 The Application Site, shown hatched on the plan at **Appendix 1**, has been owned by Linden North Limited (prior to 1 April 2011 known as Stamford Homes North) since November 2010. Prior to that the site was owned by Winifred Mary Jacob Smith who died in 2003. Her family had a long history of ownership of the land in question.
- 2.2 The Application Site is bounded to the north west by Blind Lane, to the south west by a public footpath and to the south east and north east by residential property.
- 2.3 Planning permission has been granted for the construction of low cost housing across an area of land of which the Application Site forms part and some construction work had taken place before the Application was submitted. It is understood construction work has subsequently stopped.
- 2.4 Various photographs of the Application Site will be displayed on screen at the committee meeting.

#### **4.0 APPLICATION**

- 3.1 The Application submitted by Elizabeth Inman (“the Applicant”), a local resident whose property backs on to the Application Site, was signed by her on 7 March 2011 and received by the County Council on 7 March 2011 and accepted as duly made on 15 March 2011 It relies on the criteria contained in section 15(2) of the Act as having been met. A copy of the standard Form 44 as completed by the Applicant comprises **Appendix 2**.
- 3.2 With the Application was submitted the petition copied at **Appendix 3**, signed by 24 residents (signatures have been omitted from the appendix copy). Additionally in support of the Application a total of 42 pro forma letters from local residents all in the format comprising **Appendix 4** have been submitted.
- 3.3 A further letter of support dated 17 August 2011 was submitted by Mrs D.Brand (**Appendix 5**).
- 3.4 Determining an application of this kind is a matter of assessing evidence to determine whether or not the relevant criteria set out in section 15 the Act have been met. Any representations which might be made relating to the alleged merits or otherwise of a site being a village green are immaterial and must be ignored in considering the application.

#### **5.0 OBJECTIONS**

- 5.1 **David Arnold Cooper(solicitors) (Appendix 6)**

5.1.1 Objection to the Application was received from David Arnold Cooper (solicitors) on behalf of Linden Homes North.

4.0.2 The objection submitted includes affidavits completed by :-

- Richard William Rusby(solicitor to previous landowner)
- Betty Margerite Walker(an acquaintance of the previous landowner)
- Alistair Allan Butler(local resident)
- Chris John Tossell(local resident)

5.1.3 Mr Rusby states that he has dealt with Miss Smith's affairs for in excess of 30 years and visited her fairly regularly during that time. He states that for the first 10 years of his visits the Application Site was a vegetable garden. Thereafter the land concerned was grassed and then left to become overgrown with "a great deal of ground cover" becoming a target for unauthorised dumping of rubbish. His statement does not specify the year in which vegetables were last grown on the site.

5.1.4 Ms Walker describes visiting the Application Site in around 1998 and describes the land as being heavily overgrown, full of rubbish and very difficult to walk through.

5.1.5 The rear boundary of Mr Butler's property is situated opposite the Application Site on the other side of Blind Line. He recalls the hedges around the Application Site becoming overgrown following the death of the former landowner in 2003 and fly tipping that followed making the land unsightly. He does not recall ever seeing dog walkers on the Application Site. He does acknowledge that about 3 years ago children played on a part of the site for a period of time. This he says was following breaking through boundary hedging at the north east corner of the Application Site. Mr Butler also submitted his own objection and photographs included with his affidavit are dealt with elsewhere in this report in reference to his own objection.

5.1.6 The rear boundary of Mr Tossell's property is also situated opposite the Application Site on the other side of Blind Line. He describes how since the death of the previous owner (Winifred Mary Jacob Smith) the land became "completely overgrown". He found the site very difficult to access when attempting to recover stray hens from his own property.

5.1.7 In summary Davies Arnold Cooper consider that the evidence contained in the affidavits makes it clear that the relevant legal criteria have not been met. Comments contained in their letter concerning the alleged intentions of the former landowner and the proposals of the current owner to prevent future access to the site are not material to assessing the criteria.

## **5.2 Harrogate Borough Council (Appendix 7)**

5.2.1 Harrogate Borough Council object to the Application in doing so citing observations of officers and former officers that the site was not readily

suitable for use for leisure pursuits throughout the last 20 years and including photographs taken in 2008 one of which, labelled “middle of the site” showing very thick sapling and weed growth on the site.

### 5.3 **Alastair Allan Butler (Appendix 8)**

5.3.1 Mr Butler completed an affidavit which was submitted with the objection submitted by David Arnold Cooper (see para 5.1.5). He also submitted his own letter of objection. With his letter he submitted aerial photographs showing the Application Site :-

- one dating from 1981 shows the site as ploughed for agricultural use
- two from 1994 show the site covered in long grass and invasive weeds
- a further photo from October 2003 shows what Mr Butler describes as vegetation typical for a site not used for any purpose with invasive tree and shrub species

In his letter, affidavit and later correspondence (see “Further Representations”) Mr Butler explains his expertise in interpreting aerial photography.

### 5.4 **G.M.Warren/Miss P.Fisher/E.M.Robshaw/K.B.Hirst/Mrs J.Robertson Mrs M.C.Andersson/K.R.Burn (“kids played there but without permission”) (Appendix 9)**

5.4.1 Submissions have been received from a further seven objectors listed above in the heading at para 5.4

5.4.2 Mr Warren’s comments relate largely to his view of a lack of merit in the Application Site becoming a green. Miss Fisher refers to her view of the merits of having low cost housing on the land concerned. Issues concerning the merits of the use to which an application site should be put are immaterial in assessing a Town or Village Green application. Miss Fisher does though also include comment on the condition of the site over the last 12 years describing it as a wood with very dense undergrowth.

5.4.3 E.M. Robshaw describes moving to Knaresborough in 1942 and walking down Blind Lane to get to work. It is not clear how long this continued and whilst mention of the site being agricultural use at that time is of interest as background no evidential weight can be given to the letter given the uncertainties of timing.

5.4.4 Mr Hirst has lived in the vicinity of the Application Site since 1965 firstly in Scriven Road and since 1992 in Manor Road. He describes how the Application Site became overgrown following the death of the previous landowner.

- 5.4.5 Mrs Robertson claims to have walked along Blind Lane at least once a week since moving to Knaresborough in 1985. She says that whilst there was some evidence of fruit bushes and trees at first the Application Site was heavily infested with weeds even then. Progressively the site became subject to unauthorised tipping.
- 5.4.6 Mrs Andersson has been resident in Inman Grove for 58 years and claims to have used Blind Lane daily. She says that the Application Site has never been used for leisure pastimes by the local inhabitants and cites the dangerous condition of the site (due to tipped items) in recent times.
- 5.4.7 Mr K.R.Burn has lived in Knaresborough for 71 years. It is not clear whether he is familiar with the Application Site in the present day. Whilst he mentions that the Application Site was a field used to grow kale or cabbages he does mention then when farming of the land ceased kids played there.

## **6.0 APPLICANT RESPONSE (Appendix 10)**

- 6.1 The County Council followed due procedure by offering the Applicant the opportunity to comment on objections received and her further representation was submitted dated 11 September 2011.
- 5.2 In it the Applicant queries objections that describe the site as impenetrable but acknowledge the dumping of household rubbish on the site suggesting the site must have been accessible for dumping to have occurred. There may be some merit in that argument although the suggestion amongst objectors is that tipping occurred largely around the boundary of the Application Site.
- 5.3 The Applicant's understanding of the meaning of "significant" in the context of section 15(2) of the Act is correct but her letter does not contribute to evidencing that a significant number actually have been using the Application Site.
- 6.4 The Applicant questions Mr Butler's interpretation of the aerial photographs from 1994 and 2003 and his conclusions about them evidencing lack of use of the Application Site. The photographs do appear to evidence heavy, largely undisturbed, growth on the Application Site and whilst the Applicant is entitled to her view Mr Butler's expertise (as evidenced under oath) give considerable weight to his interpretation.
- 6.5 In pointing to comments of children playing on part of the site in the last three years the Applicant does not challenge that entry was forced (thus not comprising use "as of right"). It is correct to point out that one of the former Harrogate Borough Council officers' submissions refers to children using the old orchard. In itself though that offers little evidence of use of the whole of the Application Site for A 20 year duration (it is acknowledged that for a claim to succeed it is not necessary to evidence use of all parts of an application site).

6.6 The comment by Mrs Robertson referred to does not contribute in any way to evidencing use of the site for lawful sports and pastimes.

## **7.0 FURTHER REPRESENTATIONS (Appendix 11)**

7.1 Following the Applicant's response the further submissions attached at Appendix 11 were received. No new material issues were raised though in particular the Applicant's suggestion that objectors did not have first hand knowledge of the Application Site was challenged by some largely with justification.

6.2 The Applicant's reference to fly tippers accessing the site was also challenged on the basis that such activity could not be considered a lawful sport or pastime. At no point though did the Applicant suggest her point was to suggest that such activities evidenced that the Application Site was not impenetrable as suggested by some parties.

## **8.0 EVIDENCE REVIEW**

### **8.1 Evidence of use**

8.1.1 Other than the letter from Mrs D.Brand (see para 4.3 above & 10.1.4 below) the Application relies for evidence of use entirely on the petition and pro-forma letters. Evidentially those submissions are weak notwithstanding there are quite a number of them.

8.1.2 The terms "recreation" and "family enjoyment" referred to in the pro-forma letter are too general and unspecific to be given any weight evidentially. Every letter claims that the signatory has themselves accessed the site for at least 20 years. However, there is no further evidence from the individuals concerned to confirm that they have each used the site for the full 20 years. Neither is there any indication of the extent of the site that they have used nor any suggestion of with what regularity by each of the alleged users. It is extraordinary in your officers' experience that ALL those claiming to have used a site in a way which might contribute to it being registered have done so for the full 20 years concerned or more.

8.1.3 The petition, whilst referring to "dog walking" and "childrens playground" is only marginally of any greater evidential value than the pro-forma letter. The petition lacks any detail to help reach a view, even taken at face value, that the nature, extent and regularity of use may have occurred to suggest on the "balance of probabilities" the relevant legal criteria for registration as having been met.

8.1.4 The letter from Mrs Brand (whose property backs onto the Application Site) refers to her playing on the Application Site in the 1960's and 1970's (outside the relevant 20 year period). She goes on to say that her children and grand children have played on the site but is less detailed about the nature and extent of their activities. She ends by advising that people were "playing in

there” until site clearance took place for the proposed housing development recently.

8.1.5 Against a starting point of very weak evidence to support the Application there is convincing evidence to cast doubt that practically the sufficient level of public use has or could have practically taken place across the site during the relevant 20 years from March 1991 until March 2011. Credible detailed witness evidence has been submitted to indicate that neither was the site as whole subject to regular widespread public use during the twenty years but some evidence (in particular photographic) indicates that in general even the potential for such use was impractical. It is true to say that some objector’s evidence recognises some minor sporadic use of the site during the twenty years by children it does not amount to anything that suggests consistent use over twenty years, even of part only of the Application Site.

8.1.6 In summary claims of relevant usage of the Application site appear fundamentally flawed and at best extremely weak and are countered by credible evidence that qualifying use of the site did not take place.

8.1.7 For completeness each of the criteria contained in section 15(2) of the Act is addressed in the following paragraphs below notwithstanding the lack of evidence of use.

## 8.2 **significant number of the inhabitants of a locality, or of any neighbourhood within a locality**

8.2.1 Part 6 of the application form refers to “Scriven Park ward”. Given this the Application appears to be relying on claiming use from a “locality” rather than a “neighbourhood within a locality” and for the purposes of the Application that locality is to be the local electoral ward. A locality needs to be an administrative unit recognised in law and the courts have been satisfied that electoral wards constitute such an area.

8.2.2 What constitutes a “*significant number*” in any one case does not need to be considerable or substantial. The characteristics of the neighbourhood concerned determine what is likely to be considered to constitute being a significant number from that neighbourhood. To constitute use by a significant number the usage needs to signify evidence of general use by the local community. There is no formula as to precisely what number of users will constitute a significant number in any one case.

8.2.3 In the event that credible user evidence had been submitted in the volume of what has been submitted in the petition and by the pro-forma letter used then it seems likely the “significant number” criteria would be met

## 8.3 **as of right**

8.3.1 The courts have interpreted “as of right” to be use which has not been by “*force, stealth nor with the permission or licence of the owner*”.

8.3.2 It is not possible to offer any real assessment on this point without there having credible user evidence to refer to. That said there is some suggestion

of children having played on at least a small part of the site but as a result of an initial break through the site boundary. That use is likely therefore to have amounted to a use “by force” and so not satisfy the “as of right” criteria.

#### **8.4 lawful sports and pastimes**

8.4.1 The courts have interpreted what constitutes “*lawful sports and pastimes*” widely. Again though given the lack of detail in the evidence submitted there is little to comment on other than to say dog walking is, as a general rule, a lawful sport and pastime.

#### **8.5 Period of at last 20 years**

8.5.1 The twenty years in question in this case is from March 1991 until March 2011 being the 20 years preceding the application.

8.5.2 The evidence in support of the Application offers no indication of the regularity of alleged use of the site during the twenty years. Evidence submitted in objection to the Application is convincing that any use of the Application Site by local inhabitants was at most limited and not consistent or extensive enough to justify registration of the land as a Town or Village Green.

#### **9.0 DECISION MAKING**

9.1 The decision whether or not to approve the Application rests with the County Council in its role as a commons registration authority. In doing so it must act impartially and fairly.

9.2 It is not relevant to consider the merits or otherwise of the land being (or not being) registered. Consequently any representation that other open space already exists locally is immaterial and should be ignored. The County Council must direct itself only to whether or not all the relevant criteria set out in section 15 have been met.

#### **10.0 CONCLUSIONS**

10.1 For the Application to be approved the County Council must be satisfied that on the evidence available to it that ALL the criteria contained in section 15(2) of the Act are met.

10.2 Whilst the Courts have suggested that where there is serious dispute a non statutory inquiry be convened by commons registration authorities to fully test evidence there has to be evidence of some substance worthy of testing to justify taking such a step. That is not the case for this Application.

10.3 It is your officers’ view that the evidence is overwhelming that on the balance



of probabilities the relevant criteria of Section 15(2) of the Act are not met by the Application and that it should be refused.

**11.0 RECOMMENDATION**

11.1 That the Committee resolves to refuse the Application on the grounds that it is not satisfied that all the relevant criteria of section 15(2) of the Act are evidenced by the application for the reasons set out in this report.

DAVID BOWE  
Corporate Director – Business and Environmental Services

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Background Documents: Application case file held in County Searches Information - Business & Environmental Services