

Division(s):

ITEM [ ]

**PLANNING & REGULATION COMMITTEE – 19 October 2015**

**COMMONS ACT 2006:  
IN THE MATTER OF AN APPLICATION TO REGISTER  
HUMPTY HILL, HIGHWORTH ROAD, FARINGDON  
AS A TOWN OR VILLAGE GREEN**

**Report by the County Solicitor & Head of Law & Culture**

**Introduction**

1. On 19 April 2013, Mr Robert Stewart on behalf of the Friends of Humpty Hill of 14 The Pines, Faringdon applied to the County Council as Registration Authority under Section 15 of the Commons Act 2006 to register land known as Humpty Hill, Highworth Road, Faringdon in Oxfordshire (“the Application Land”) as a Town or Village Green. This application, a copy of which is attached at Annex 1, was submitted formally in pursuance of the Act and has now to be determined by the County Council.
2. The Planning & Regulation Committee have delegated powers to determine such applications, provided they are ‘duly made’.
3. The application was considered initially by Legal Services who provided advice as to whether the application was ‘duly made’. In light of such advice the application was accepted as ‘duly made’ and was subsequently publicised in accordance with the statutory requirements.
4. One substantive objection was received during the statutory 6-week objection period from Gladman Developments Ltd, Charles Francis Nigel Allaway and Rosemary Ann Pollock (together the “Objector”). The objection raised several factual and legal issues in relation to the application and so an independent public inquiry was held. Dr Charles Mynors (“the Inspector”), a barrister experienced in the area of law was appointed to chair the Inquiry.
5. The Inquiry sat on 16-19 March 2015 and 24 March 2015 at the Sudbury House Hotel, Faringdon with a site visit on 23 March 2015.
6. A copy of the Inspector’s Report is appended at Annex 2. The main points to note are summarised below.

**The Application Site: Land at Humpty Hill, Faringdon**

7. The application form describes the Application Land as Humpty Hill, Highworth Road, Faringdon in Oxfordshire. The Application Land is shown edged red on the map included as part of Annex 1.

8. The Application Land is a grass meadow, roughly rectangular in shape and adjoins the western end of the built-up area of Faringdon. The land is bounded on all 4 sides by hedges and Highworth Road runs along the southern boundary. The land gently slopes from the southern boundary.
9. The hedges are generally thick and impenetrable, except for pedestrian access in the form of kissing gates at the north-eastern and south-eastern corners.
10. A public footpath (207/2, Great Faringdon Footpath No 2) runs between the two kissing gates. In addition, there is a roughly circular informal path around the field, overlapping with the public footpath on the eastern boundary. There is also a second, less well-defined path running hard up against the boundary hedges.
11. At the gate on the southern boundary there is a sign giving a revocable permission for persons to use the land for recreation.
12. The whole of the Application Land is registered at HM Land Registry under title number ON273315. The registered proprietor is Charles Francis Nigel Allaway and Rosemary Ann Pollock.
13. The locality or neighbourhood relevant to the application is described as the civil parish of (Great) Faringdon.

### **The Town Green Application**

14. The application form was duly signed by Mr Stewart and supported by the prescribed Statutory Declaration. The Applicant submitted several additional pieces of information in support of his application, including a supporting statement and some 71 evidence questionnaires by other local residents who used the land. Further evidence and statements were also submitted by the Applicant in preparation for the public inquiry.
15. On 15 July 2013 the Applicant provided an updated version of the plan attached to his application, drawn to the correct scale and exhibited as part of his statutory declaration. This was as requested by the registration authority. This is the map that is included as part of Annex 1 hereto.

### **The Determination of the Application**

16. Having been received by the County Council and accepted as 'duly made', the application was duly published in accordance with Regulation 5 of the Commons Registration (Registration of Town and Village Greens) (Interim Arrangements) (England) Regulations 2007 by publication in a local newspaper, posting notices on site, and placing

copies on public deposit. A copy of the statutory notice, application and plan was also served on the landowner.

17. The statutory objection period expired on 19 March 2014. A substantial objection was received from the Objector dated 18 March 2014. An objection was also received from Scottish & Southern Electricity due to the presence of overhead power lines. Some statements in support of the application by local people were also received.
18. The principal grounds for objection were in summary as follows:-
  - a. That the Applicant had not established a 'locality or ... neighbourhood within a locality';
  - b. That the Applicant had failed to show use of the land by 'a significant number' of local people;
  - c. The use of the land was not of sufficient intensity and quality to bring home to the reasonable landowner that public rights were being asserted;
  - d. The Applicant has not shown that the land was used for 'lawful sports and pastimes';
  - e. The Applicant has not proved use of the whole of the land (as opposed to the footpaths and tracks);
  - f. The Applicant has not shown that the uses were 'as of right', in that according to the objector the use was either by right (in so far as it related to public right of way use) or forcible (in so far as locked gates were crossed or climbed, gaps made in hedges etc)
  - g. The landowners warned local people to get back onto the public footpath, therefore contesting local use of the land; and
  - h. Use by local people was small scale and sporadic.
19. In a separate letter the Objector also raised the argument that, since the registration authority had needed to go back to the Applicant for further information (the plan) the application was not 'duly made' until that later date. By that time, it was argued, the provisions of s15C Commons Act 2006 had come into force and there was no right to apply due to the existence of a 'trigger event' (an application for planning permission). The registration authority considered that this application was still 'duly made' in accordance with the *Church Commissioners v Hampshire County Council* [2014] EWCA Civ 634 and this point was not subsequently pursued.
20. The County Solicitor consulted Counsel on these issues. Ultimately it was considered that the issues raised were ones of fact as well as law and could not be resolved simply in writing and that a public Inquiry would need to be held.
21. It is important to note at this stage that the Council as Commons Registration Authority is essentially neutral in this matter. It is simply

concerned to assess the application and register the Application Land if it qualifies properly for registration. In carrying out this assessment it must look back over the use of the land and apply the statutory test under s15 Commons Act 2006. The potential future use of the land, or its desirability in planning terms, is not relevant to the assessment that the Council as Commons Registration Authority needs to make.

### **The Public Inquiry**

22. A public Inquiry chaired by an independent barrister was therefore held on 16-19 March 2015 and 24 March 2015 at the Sudbury House Hotel, Faringdon with a site visit on 23 March 2015.
23. The Applicant represented himself and the Objector was represented by Counsel. Both parties called witnesses to give evidence in person and further written evidence was also given to the Inquiry.
24. The Inspector subsequently submitted his Report and recommendation to the County Solicitor on 27 September 2015 a copy of which is attached at Annex 2.

### **The Inspector's Recommendations**

25. The Inspector's findings are summarised at the beginning of his Report and are briefly as follows:
  - a. that the Application Land, as a whole, has been used for twenty years by the inhabitants of Faringdon Civil Parish for lawful sports and pastimes, up to the date of the application; and
  - b. that such use has been "as of right".
26. The Inspector sets out his conclusions in more detail from paragraph 160 of his Report. He finds as follows:-
  - a. The general use of the land has been as a grass meadow. There has been low-level agricultural use through the year, peaking during a two-week period in the summer when the hay crop is cut and baled. No arable crops have been planted or ploughing carried out;
  - b. The growing grass usually presented no obstacle to general recreation, either on or off the paths. The landowners and others had witnessed people using the paths (and occasionally elsewhere on the land). As the grass grew longer, it made off-path use more difficult;
  - c. The evidence generally disclosed use of the land for walking (with or without a dog), children playing, and informal football, less strenuous activities such as bird watching, nature study,

enjoying the view, and generally “hanging out”, “lounging about” or “chilling”, and seasonal activities such as blackberrying, other fruit gathering, sledging and tobogganing;

- d. Use of the land was predominantly but not exclusively on the formal and informal footpaths, but there was evidence that some activities took place all over the land;
  - e. Cattle were grazed on the field in 1996 and 1997. This would have been during the months approximately May/June to September/October. Only 10 or so cattle were grazed and the Inspector found that their presence did not materially affect the use of the land for lawful sports and pastimes;
  - f. The landowner was aware of the use of the land by local people and took only cursory steps to prevent it. There was only low-level conflict between the recreational and the agricultural use and neither materially impeded the other;
  - g. In respect of the sign put up at the southern entrance, the Inspector finds that this was installed on or after 18 April 2011 and therefore that the 20-year period required was 1991-2011 and the application was made inside the 2-year period referred to in section 15(3) of the 2006 Act; and
  - h. The relevant locality is the civil parish of Great Faringdon and the users of the land came predominantly from that area.
27. In conclusion, the Inspector finds that the land is a “classic case” of use for dog walking and childrens’ play. The use of the footpaths indicated use of the land as a generally circular walk for recreation (although some can be attributed to footpath use, in particular people following the north-south public footpath). The recreation and agricultural uses existed side-by-side and the landowners were aware of this and did not forbid or make use permissive until the sign was erected in 2011.
28. In particular, the co-existence of uses on the land is expressly dealt with in recent case-law and in particular by the Supreme Court in *R. (on the application of Lewis) v Redcar and Cleveland BC* [2010] UKSC 11, to which the Inspector refers in his Report.
29. In view of these conclusions and the more detailed discussions of the law and evidence in his Report, the Inspector recommends that the application be approved and the Application Land be registered as a town or village green.
30. The County Solicitor supports these conclusions.

## RECOMMENDATION

26. **Having received the Opinion of the Inspector set out in Annex 2 to this report, the Committee is RECOMMENDED to APPROVE the application for registration as a new Town or Village Green that plot of land known as Humpty Hill, Highworth Road, Faringdon in Oxfordshire that site being indicated clearly on the map included in the application submitted by Mr Robert Stewart on 19 April 2013.**

PETER CLARK

County Solicitor & Head of Legal Services

Background papers:            Appendices to Form 44  
   Additional Evidence Questionnaires  
   Objections by Charles Francis Nigel Allaway,  
   Rosemary Ann Pollock and Gladman  
   Developments Ltd dated 18 March 2014  
   Responses received to statutory consultation  
   Procedural Directions of the Inspector dated 19  
   December 2014  
   Skeleton Closing Submissions on Behalf of the  
   Objector dated 24 March 2015  
   Inquiry Bundles  
   In Members' Resource room from 12 October 2015  
   until the conclusion of the meeting.

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