

**MINUTES OF A MEETING OF THE
COMMONS REGISTRATION COMMITTEE
HELD ON 28 MARCH 2018 AT 7.05 - 10.20 PM**

Committee Members Present

Councillors: Tim Holton, John Kaiser, John Jarvis, Malcolm Richards, Angus Ross, Rachelle Shepherd-DuBey, Wayne Smith and Bill Soane

Officers Present

Madeleine Shopland, Democratic and Electoral Services Officer
Catherine Woodward, Legal Officer
Callum Wernham, Democratic and Electoral Services Officer (Clerk to the Committee)
Mary Severin, Borough Solicitor

1. ELECTION OF CHAIRMAN FOR 2017/18 MUNICIPAL YEAR

RESOLVED: That Councillor Tim Holton be elected Chairman of the Commons Registration Committee for the remainder of 2017/18 Municipal Year.

2. APPOINTMENT OF VICE CHAIRMAN FOR THE 2017/18 MUNICIPAL YEAR

RESOLVED: That Councillor John Kaiser be appointed Vice Chairman of the Commons Registration Committee for the remainder of the 2017/18 Municipal Year.

3. APOLOGIES FOR ABSENCE

An apology for absence was submitted from Councillor Philip Houldsworth.

4. MINUTES OF PREVIOUS MEETING

The minutes of the meeting of the committee held on 13 January 2016 were confirmed as a correct record and signed by the Chairman.

5. DECLARATION OF INTEREST

There were no declarations of interest.

6. APPLICATION FOR REGISTRATION OF LAND AT LIMMERHILL AS A VILLAGE GREEN

Councillor Tim Holton reminded attendees that the purpose of the meeting was to determine the registration of the land at Limmerhill as a village green.

Catherine Woodward, Legal Officer from Wokingham Borough Council, highlighted elements of the Inspector's report dated 18 September 2017, the Inspector's supplementary report dated 18 October 2017 and the Inspector's observations dated 9 December 2017 on the Applicant's comments dated 22 November 2017 which had been provided to all members of the Committee. She stated that the Applicant, Lynn Forbes, had made the application under section 15(3) of the Commons Act 2006 on the basis that a significant number of the inhabitants of any locality or of any neighbourhood within a locality had indulged as of right in lawful sports and pastimes (LSP) on the land for a period of at least 20 years and that the application had been made within 1 year of the use ceasing. She continued by stating that fencing had been erected around the land in September 2014 and the period for qualifying use (under section 15(3) of the Commons Act 2006) in this instance was from September 1994 to September 2014.

Catherine Woodward outlined that the current owner of the land, Monopro Limited, had objected to the application on the basis that the statutory requirements for registration had not been met. It was noted that the Commons Regulations 2007, Regulation 6(7) stated that the authority must not refuse an application without giving the Applicant a reasonable opportunity to deal with objections and other matters. Catherine Woodward continued to state that as the solicitor acting for the landowner had raised issues of fact in their objection to registration it had been considered necessary to convene a non-statutory public inquiry to examine the factual evidence. The non-statutory inquiry had been held between 12 December and 20 December 2016. It was noted that an Inspector undertook an accompanied site visit on the morning of the final day of the inquiry. Following the conclusion of the inquiry, the Inspector presented her initial report and her supplementary report advising the registration authority on the application. Before arriving at a decision, the Council was legally obliged to take in to account the contents of the application for registration and any material accompanying it. The meeting was advised that the Council was also obliged to take into account any objections or other written representations; all oral representations made at the public inquiry, the findings made at any site visit and the report and recommendations of the Inspector following the public inquiry.

Catherine Woodward continued by stating that the Committee could depart from the Inspector's recommendations if they considered it appropriate to do so. In relation to the application that was being heard, it was considered that the recommendations of the Inspector should be followed for the reasons set out in the Inspector's report and the supplementary report. It was recommended that the application for registration of land be refused with regard to the recommendation of the Inspector whom was appointed to consider all the facts.

Catherine Woodward emphasised that the onus was on the applicant to prove that every element of the qualifying conditions had been met as the consequence to the landowner was severe should the application be granted. The Applicant must have demonstrated continual use to a sufficient extent throughout the period September 1994 to September 2014. The Applicant must have demonstrated that they had indulged as of right, openly and without force, secrecy or permission, in lawful sports and pastimes (LSP) on the land, which could have included activities such as football or picnics. It was stressed that the Committee could not use its' discretion on this matter, instead following only the criteria of section 15-3 of the Commons Act.

The Inspector (paragraph 300 of the Inspector's report) felt that there had not been sufficient use for lawful sports and pastimes throughout the 20 qualifying years. The Inspector's report stated that activities indulged on the land mainly consisted of walking dog walking. The Inspector had concluded that the use of the land for other purposes was too sporadic. The electoral ward of Everdons West had been deemed to be an acceptable locality in this instance, but it had been noted that the Applicant had failed to demonstrate sufficient cohesiveness within the community using the land to enable the neighbourhood of Woosehill to be accepted as a neighbourhood within a locality. The Inspector had looked at the evidence as a whole, and had concluded that that public use of the land did not become significant until the year 2000 and at that stage the usage appeared to be that of use as a right of way rather than LSP. Whilst a smaller area of the land may have been considered for registration, the Inspector concluded that there had been insufficient evidence of 20 years qualifying use. The Applicant's comments to the Inspector following the circulation of her reports of the 18th September 2017 and 19th October 2017 had not changed the Inspector's findings as they were considered to restate the original inquiry evidence, therefore the recommendation was to reject the application.

Sarah Gee, Objector to the application, stated that an abundance of evidence heard during the original inquiry which had been dealt with completeness. She continued by asking the Members to consider the Inspector's findings and accept the Inspector's recommendation of rejection of the application.

Lynne Forbes, Applicant, stated that all the material had been presented at the inquiry and that she of the view that the Inspector had discounted witnesses at the time. She presented pictures of children playing on the land and photography of the area, which she stated qualified as LSP. She stated that children had indulged in activities such as kite flying and foraging away from footpaths, which would be classed as LSP. There was public transport access to the land, which was a requirement of a village green. It was noted that the land has been a historic settlement divide. Lynne Forbes mentioned that a Wokingham Borough Council consultant had previously recommended her to make a village green application. She mentioned that the field had been a benefit to the wellbeing of local residents. Lynne Forbes felt that none of the above had been highlighted by the Inspector. It was stated that the field had been used for guide dogs training, rambles, walkers, horse riders and ecology groups. A photograph from 1985 showing a deep worn footpath was shown. Lynne Forbes asked the Committee to consider reviewing the Inspector's recommendation.

The members of the Committee queried the assertion that the land had been used over the qualifying years for the training of guide dogs. In response, Sarah Gee stated that there was no record of training of guide dogs on the land in 1994. Catherine Woodward stated that the Inspector would have taken all the evidence presented in to account, and that she would have made a note of the photograph of the worn footpath and that she was entitled to have concluded from the evidence presented to the inquiry that the use of the land was as a public right of way rather than for LSP. Lynne Forbes stated that five bundles of documents had been submitted to the Inspector and felt that the Inspector may not have taken all of this evidence in to account.

Jason Barlow, Resident, spoke in favour of the application. He had moved to the area in 1999 and had been told about the field by neighbours. When he first used the field he had noticed a clear worn track present. He stated that he had had fostered guide dogs and had taken them over the field over the years. It was noted that his children has played in the field and that he only saw some residents whilst using the field.

Peter Pattison, Resident, spoke in favour of the application. He began by stating that he had been a resident in the area for over 31 years. He felt that the report had lost sight of the fact that the field had been a community asset. He continued to say that the field had always been used by residents in a responsible way with the former owners placing no restriction on its use. He described how his own children had played in the field from 1987 onwards and felt that this was not mentioned in the reports. He described that children had taken part in qualifying LSP activities throughout the years on the land. Peter Pattison felt that the land had been used in excess of the 20 qualifying years by residents. He noted that the field was the only green space between Wokingham and Barkham.

The Members sought clarification on a number of issues including what a reasonable landowner may have done in response to people accessing their land without permission and the Limmerhill Residents Association and were advised that the function of the Committee was not to consider new evidence which should have been presented at the

inquiry but instead to decide whether the elements of section 15-(3) of the Commons Act 2006 had been satisfied.

Rex Lucas, Resident, spoke in favour of the application. He stated that he had used the land since 1995. He outlined that there had been two disputes, the use of land for LSP and significant use by residents between 1994 and 2000 and that he felt all other criteria had been met. He continued by saying that many LSP activities including football had taken place on the land which the Inspector had disputed. He felt that the Inspector had given no consideration to the creation of the paths, and that many of the paths had been used as shortcuts to other places whereby LSP would have taken place. He noted that the lack of photography of LSP taking place did not mean that it had not occurred. He recalled a 2002 High Court case where four to five witnesses were sufficient for a village green application, with this application having two residents for the full 20 year period and at least five others from throughout the period.

Councillor Angus Ross asked whether there was confusion over LSP and right of way usage on the land. In response, Rex Lucas stated that he felt the Inspector had overlooked that the footpaths had been used as convenient shortcuts to other parts of the field so that LSP could take place. Catherine Woodward clarified that the Inspector had found that the majority of the use had been for walking and public right of way and that the case law required the decision maker to consider how the use of the land would have appeared to the reasonable land owner and thus the Inspector had considered whether they would have seen the use as the assertion a public right of way.

Lynne Forbes informed the Committee that the Inspector's report had taken significantly longer to be produced than had been anticipated. She felt that during this time the Inspector may have lost sight of some of the evidence. She stated that lots of dog walking occurred on the field and that she had provided sufficient evidence and photography to support this. She questioned why the Inspector had not contested the photographic evidence provided.

Salli Scott, Resident, spoke in favour of the application. She felt that her evidence had been not included in the Inspector's report. She stated that Geocaching had taken place and that wildlife had been observed on the field. She stated that livestock had now been placed on part of the land.

Neil Hodgson, Resident, spoke in favour of the application. He had moved to the area in 1981 and met a great number of new friends through the field. He commented that users of the field had attended the funeral of another of the field users which he felt demonstrated a community aspect. He agreed with the Inspector's findings that the majority of the field's use had been for dog walking. He stated that that both his children and grandchildren had used the field and that Easter egg hunts and picnics had taken place on the field. He felt that some of his evidence had not been mentioned in the Inspector's report.

Nigel Rattue, Resident, spoke in favour of the application. He indicated that he had moved to the area in 1987 and had used the field for skiing during winter months and that the field had been used for dog walking and blackberry picking. He stated that he was a teacher, and had tested kites and toboggans on the field with his students.

Mark Ashwell spoke in favour of the application. He stated that the Applicant had taken London Chambers legal advice whom was of the opinion that the Inspector's

recommendation was flawed. He stated that as there was no public right of way on the field, the tracks could have been used for LSP activities or as a means to get to an area of the field whereby LSP were conducted. He continued by adding that kite flying, ball games, den building, picnics and other activities had taken place on the field over the years which would qualify as LSP.

In response to a comment about the type of use that the field had seen, Catherine Woodward clarified that if there were any doubt over the type of use then case law had established that the lesser right (public right of way) should be recognised.

In response to a question regarding 'significant use', Mary Severin, Borough Solicitor (Commons Registration Officer), clarified that 'significant' referred to a significant number of residents using the field for LSP. The Inspector had doubted the level of use between 1994 and 2000. When asked whether the Members could disagree with the evidence presented, Mary Severin stated that they could only do so if they deemed it to be perverse. Catherine Woodward added that the Inspector was entitled to reach her conclusion having considered all the evidence presented at the inquiry and after having regard to the relevant law that a public right of way had been asserted over LSP.

In response to questions regarding the situation should evidence have been missed during the inquiry, Catherine Woodward reiterated that the onus was on the Applicant to ensure that the Inspector was aware of all of the evidence and the key points during the inquiry and that the parties and their legal advisers had had ample opportunity to do so. In response to a query as to whether the Inspector had looked at evidence submitted by Mr Pattison, Catherine Woodward read out paragraph 67 of the Inspector's report which confirmed that the Inspector had considered Mr Pattison's evidence.

Catherine Woodward stated that from the evidence presented at the inquiry only a small number of residents had demonstrated use of the field for lawful sports and pastimes the full qualifying 20 years, which the Inspector had deemed to be insufficient.

Lynne Forbes had noted that Wokingham District Council had made a mention of the field in 1973.

The Committee considered at length all the submissions made by the Applicant, the Objector and the speakers, as well as the lengthy report of the Inspector dated 18th September 2017, her supplemental report dated 18th October 2017 and all the other documents referred to in the officer's report.

On balance, after carefully considering those submissions made at the Committee meeting, the Committee:

RESOLVED: That they [the Committee] would support the Inspector's conclusion that the Application for registration of the land known as Limmerhill Field as a new village green should be rejected on the basis that it fails to meet the statutory test for registration under s15(3) of the Commons Act 2006 for the reasons given in her reports dated 18th September 2017 and 18th October 2017.