

COMMONS REGISTRATION COMMITTEE

1 APRIL 2008

REPORT OF THE DIRECTOR OF LEGAL & DEMOCRATIC SERVICES

PROCEDURE FOR DETERMINING APPLICATIONS TO REGISTER TOWN OR VILLAGE GREENS ON COUNCIL OWNED LAND

1. Purpose of report

- 1.1 To seek approval for a procedure to aid the determination of four applications to register town or village greens which relate to land owned by the Council.
- 1.2 To recommend to Council that constitutional changes be made in relation to such applications to avoid the need for future requests as set out in 1.1 above to the Commons Registration Committee, thereby streamlining the process.

2. Recommendations

- 2.1 That recommendations to change the Constitution in relation to Town and Village Green applications be made to Council as follows :
 - 2.1.1 **that** any application to register town or village greens on land owned by the Council be dealt with by way of a non-statutory public inquiry which will make a recommendation to the Commons Registration Committee, who will then determine the application, unless the Director of Legal & Democratic Services is of the opinion that it is not necessary for the application to be first dealt with by way of a non-statutory public inquiry, and can therefore go straight to Committee for determination;
 - 2.1.2 the Director of Legal & Democratic Services be given delegated power to select the chair of any non-statutory public inquiry referred to in recommendation 2.1.1 above, and to make the necessary arrangements for the holding of the inquiry;
 - 2.1.3 that in any other circumstance the power to decide how an application (whether or not it relates to Council owned land) should be determined, for example, by delegation to another authority, should be delegated to the Commons Registration Committee; and
 - 2.1.4 that it be clarified that in circumstances where the Director of Legal & Democratic Services deems any application not duly made, that is, where it is clear to her that there is no legal basis on which the application can succeed, the Director has the power to refuse the application as of right.
- 2.2 That the Committee agree that the four applications relating to Council owned land referred to in 5.1 below which are currently awaiting determination be dealt with by way of non-statutory inquiry in accordance with the suggested procedure outlined in 4.4 of this report.

- 2.2.1 Members should note that if they are agreeable to 2.2 above, while all applications will be dealt with as expeditiously as possible, it is the intention of the Director of Legal & Democratic Services to fast track the application in relation to Oak Colliery given its strategic significance to the Council's Building Schools for the Future programme.

3. Background

- 3.1 The Commons Registration Act 1965 established the Council as the Registration Authority for the purposes of compiling and maintaining registers of common land and village greens for the Borough of Oldham. This Act imposed a duty on the Council to consider all applications to register land as a town or village green within the Borough. The procedure for registration was laid down in the Commons Registration (New Land) Regulations 1969. The Commons Act 2006 subsequently replaced the Commons Registration Act 1965.
- 3.2 Despite the introduction of the Commons Act 2006, the 1969 Regulations continue to be the method by which applications to register a town or village green are processed.
- 3.3 Under the Regulations, an application is made on the prescribed form and must be accompanied by a statutory declaration. The Council, once it is satisfied the application is in order, that is, that it is duly made, is under a duty to advertise it in the local newspaper and notify the landowner (if known) and any person known to have an interest in the land. A period of six weeks is allowed for objections to be lodged. If any objections are received, the applicant is given the opportunity to comment on them. At the end of the consultation process, the evidence submitted for and against the application has to be considered and a decision taken on whether the application satisfies the statutory requirements for registration.
- 3.4 The statutory requirements for registration are (in summary) that a significant number of the inhabitants of any 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. The applicant must satisfy the Registration Authority that the statutory requirements are met in their entirety. If not, the application will fail. Applications will be determined on issues of fact, and sometimes potentially quite complex legal points.
- 3.5 The consequence of registration as a town or village green is that the land can be used for recreational use and nothing should be done which will interfere with these activities. Registration can therefore be destructive of the value of the land to its owner, as the owner is severely restricted in what future use can be made of the land, with limited legal redress. For this reason, applications to register land as town or village greens are often opposed by the landowner. It is therefore very important for the Commons Registration Authority to make its decision properly and judiciously to ensure it comes to the correct decision properly directed in law. This will also ensure that neither party can successfully challenge its decision, either in law or on the facts.

4.0 Methodology and Rationale

- 4.1 The Regulations are silent as to the method by which the Registration Authority should reach its decision.

- 4.2 The Council's Constitution is very brief, and simply sets up a Commons Registration Committee to determine any application duly made. Annual Council agreed a Committee of, currently, 3 Labour and 2 Liberal Democrat members, to be appointed as and when required.
- 4.3 In the past in Oldham applications to register town or village greens have been dealt with by way of a report to the Commons Registration Committee by the Borough Solicitor reviewing the evidence and setting out a recommendation for the Committee to consider with both parties in attendance and making representations.
- 4.4 There is no requirement in the Regulations for an oral hearing, but it is important that the Registration Authority does its best to resolve disputes of fact, and ensures that natural justice is observed. This may be by way of a hearing before the Commons Registration Committee where evidence can be tested by way of questioning, or a more formal non-statutory inquiry held before an independent inspector who prepares a report containing a recommendation to the Committee, which makes the final decision.
- 4.5 A practice has been developing amongst local authorities across the country where they appoint an independent expert (often a Barrister) who conducts a non-statutory public inquiry along the lines of a planning inquiry. The Inspector will consider the law and test the evidence submitted by the applicant and any objectors and prepare a report of his recommendations for the instructing Council to consider and accept, through, as here, its Commons Registration Committee, or whatever vehicle it has chosen to determine the application.
- 4.6 There is particular merit in such an approach where the Council is not only required to act as Registration Authority but is also landowner, as it removes any perception of adverse conflict of interests, predetermination or bias, particularly where the Council as landowner is objecting to the application, by allowing the case for and against the application to be tested before an independent and professionally qualified inspector knowledgeable in this area of law.
- 4.7 In my view this type of hearing can be distinguished from planning/licensing decisions as these are areas with which the Authority is well versed, both from a member and officer perspective.
- 4.8 It would of course still be open to the Registration Authority not to accept the recommendations of the Inspector, but it would have to be very clear on its reasoning, ensuring it was in accordance with public law rationale and the principles set out elsewhere in this report.
- 4.9 Other Authorities have from time to time delegated their power to determine applications to another Authority under section 101 of the Local Government Act 1972, and again this is a perfectly acceptable arrangement to make depending on the circumstances of the particular local authority, and the ability to set up reciprocal arrangements with others.

- 4.10 In the current circumstances I would advocate the non-statutory inquiry route as the better option, more expeditious for a Metropolitan Borough whilst achieving an outcome of independence.
- 4.11 The Commons Act requires Registration Authorities to determine town and village green applications, but no special provisions have been included in the legislation for Registration Authorities to deal with applications relating to their own land. It seems therefore that Parliament has decided that no alternative arrangements are required in such cases, leaving the handling of such matters to the integrity of the individual local Registration Authorities.
- 4.12 As well as acting reasonably in accordance with the celebrated case of *Associated Provincial Picture Houses v Wednesbury Corporation* [1948], the Council must comply with the Human Rights Act when carrying out its statutory functions as Registration Authority. Article 6 of the Human Rights Convention requires that in the determination of a person's civil rights and obligations they are entitled to a fair trial, which effectively epitomises the principles to which Local Authorities sitting in their quasi-judicial capacities have been operating for years.
- 4.13 It is all the more important therefore in the light of 4.12 above that where the Registration Authority is both the landowner and sitting in a quasi-judicial capacity to determine an application the potential for bias to arise which may either jeopardise the right to a fair hearing (or be seen to), or put the Council at increased risk of challenge is recognised and addressed.
- 4.14 Given the relatively few numbers of applications it receives, this Authority (like many others) does not currently possess a great deal of in-house expertise at both Member and Officer level, which heightens the risk in the current cases referred to in this report. This is undoubtedly a factor in the alternative processes adopted by others and highlighted in this report.
- 4.15 As Members will be aware, any person aggrieved by a decision of the Registration Authority may apply to the High Court to judicially review that decision if they believe there has for example been bias, unfairness or an error of law.
- 4.16 Whilst there are of course financial implications to the Council of using an Inspector where Council owned land is involved, provided they are not excessive and deemed reasonable for the complexity of the case, they are in my view both justified and proportionate to the risks previously set out. They are therefore also ultimately in the best interests of the public, the democratic process, and the Council, financially, reputationally and professionally.
- 4.17 If Members and Council were happy to delegate as set out in this report, I would in any event keep under review when it was appropriate or otherwise to appoint an inspector as discussed above, as in a year or so the bank of precedents, experience and expertise built up once the present applications have been heard may provide sufficient confidence to recommend that inspectors in these circumstances are no longer needed. Each case would of course have to be considered on its merits.

5.0 Additional suggested delegations to Council

- 5.1 If Members are happy with the proposals set out above, they may wish to consider some additional delegations for completeness.
- 5.2 There may be situations where applications to register land, even where the Council owns the land, are so unreasonable or obviously fail on their merits that it is not necessary for an independent adjudicator to determine them. In such situations it would be unwieldy to follow the process I have suggested above. I also recommend therefore that the Director of Legal & Democratic Services be given delegated authority to determine when it is or is not necessary to hold a non-statutory public inquiry.
- 5.3 For completeness I also recommend that the Director be given delegated authority to appoint a suitably qualified independent inspector to chair any inquiries and to make all necessary arrangements for the holding of the inquiry including for example arranging a suitable venue, and giving directions to be complied with by the applicant and objectors.

6.0 Current Applications on Council owned land

- 6.1 The Council currently has four applications to register town or village greens on land that it owns. These are as follows: -
- (i) Land north of Chadderton Fire Station.
 - (ii) Land at Garforth Street Recreational Open Space, Chadderton.
 - (iii) Land at Crossley Estate and Fold Green Estate, Chadderton.
 - (iv) Land at Oak Colliery, Hollinwood.
- 6.2 It is recommended that all four of the applications set out at 6.1 above be dealt with in accordance with the procedure outlined in this report at 4.4 above, and that the Committee delegate the process to the Director of Legal & Democratic Services accordingly.

The following is a list of background papers on which this report is based in accordance with the requirements of Section 100D of the Local Government Act 1972. It does not include documents which would disclose, exempt or confidential information as defined by that Act.

Relevant papers are contained in the files reference RTG/2, RTG/3, RTG/4 and GEN0331.

The above papers and documents may be inspected during normal office hours by contacting Mr A Evans, Group Solicitor – telephone 0161 770 3019 at the Civic Centre, West Street, Oldham.