

COMMONS REGISTRATION COMMITTEE
11th SEPTEMBER 2008

PRESENT Councillors Ball (substitute for Councillor Bashforth), Hindle, E
Hulme, Lord and G Shaw

Apologies for absence: Councillor Bashforth

Aileen Johnson, Director of Legal and Democratic Services

Karen Mellor, Head of Constitutional Services

Representing the Council:

Alun Alesbury, Counsel for the Objector (the Council as
Landowner)

Paul Entwistle, Assistant Director, Legal and Administrative
Services, OMBC

Representing the Applicant:

Mr Gilchrist, Counsel for the Applicant

Rev. David Joynes (the Applicant)

Item 1 **ELECTION OF CHAIR**

Members agreed that Cllr Hindle be elected Chair for this
meeting.

Item 2 **URGENT BUSINESS**

There was no urgent business.

Item 3 **DECLARATIONS OF INTEREST**

There were no declarations of interest received.

Item 4 **MINUTES**

The Minutes of the meeting held on 1 April 2008 were
approved as a correct record.

Item 5 **COMMONS REGISTRATION COMMITTEE MINUTES 1** 8090021
APRIL 2008

See item 4.

Item 6 **PUBLIC QUESTION TIME**

There were no public questions.

Item 7 **APPLICATION TO REGISTER LAND AT THE FORMER** 8090023
OAK COLLIERY SITE, OLDHAM AS A TOWN OR VILLAGE
GREEN

The Committee received a report of the Director of Legal and
Democratic Services attaching the report of Martin Carter
(Counsel), the Independent Inspector who had heard an
Application from Rev. David Joynes for Town Green status on
the Oak Colliery Site, Hollinwood, Oldham.

The Committee was invited to now determine the Application from Rev. David Joynes, to which the Council as landlord had submitted an objection.

The Director of Legal and Democratic Services explained the procedure by which the Council had dealt with this application to register town or village greens which relate to land owned by the Council, as agreed by the Committee at its meeting on 1 April 2008.

The Committee considered the report of Mr Carter dated 4 July 2008 containing his reasoning and recommendations to the Council as Commons Registration Committee following his hearing of the application on 8 April and 2 May 2008, together with the submission of the Applicant and Objector, and their oral presentations on the same. The Applicant requested that he be permitted to submit a detailed witness statement dated 09.08.08 of Lawrenson Hughes. The Applicant advised there was an error on the date and it should have read 09.09.08.

Counsel for the Applicant circulated a letter dated 09.09.08 which provided an additional witness statement. The Applicant suggested that, if the Committee considered the evidence to be important, it should refer the matter back to Mr Carter to review. The Committee agreed to accept and note this new evidence but did not consider it necessary to refer it back to Mr Carter. Counsel for the Applicant stated in support of the Applicant's case that he was not asking for the Committee to reject Mr Carter's recommendations, but rather the Committee refer the matter for a second opinion (to Mr Chapman QC) on the grounds that the Applicant did not accept Mr Carter's interpretation of the term 'as of right' in relation to the purchase of the land as open space in 1972. The Applicant's view was that Mr Carter was wrong to reach the conclusion that the land had been purchased under the Open Spaces Act 1906 and that Mr Carter had failed to have proper regard to what relevant Council minutes said and drew an inference from the use of the expression "open spaces" which it was not open to him to draw.

The Chair then invited the Council to comment. Alun Alesbury, Counsel for the Council stated that he did not consider referring the matter for a second opinion would be a satisfactory use of public funds, given that a full public enquiry had already taken place and an expert in the field had reached a sensible view. He also considered there to be no new points of evidence presented. The Applicant was seeking to reargue the points he had argued before Mr Carter and on which Mr Carter had made a recommendation to the

Commons Registration Committee.

At this part of the proceedings, the Committee adjourned into private session.

RESOLVED: That the application be referred to Mr Chapman QC for a second opinion on the specific point raised by the applicant in respect of the use of the land subject to the application being “by right” rather than “as of right” therefore any use of the land by the public was “by right” rather than “as of right” (this being one of the elements of the statutory requirements in the Commons Registration Act which the applicant had to prove).