

COMMONS REGISTRATION COMMITTEE
18/03/2019 at 4.30 pm



Present: Councillor S Bashforth (Chair)
Councillors Phythian, Shuttleworth and Sykes

Also in Attendance:
Alan Evans Group Solicitor
Sian Walter-Browne Constitutional Services

1 **APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillor Toor.

2 **URGENT BUSINESS**

There were no items of urgent business received.

3 **DECLARATIONS OF INTEREST**

There were no declarations of interest received.

4 **PUBLIC QUESTION TIME**

There were no public questions received.

5 **APPLICATION TO REGISTER A VILLAGE GREEN - LAND
AT HODGE CLOUGH ROAD, OLDHAM**

The Committee gave consideration to a report of the Director of Legal Services which asked them to determine an application to register land at Hodge Clough Road, Oldham as a village green.

Members were informed that on 27 June 2018, the Council received an application to register land on Hodge Clough Road as a village green. The land was owned by the Council and First Choice Homes Oldham Ltd (FCHO) had applied for planning permission to develop the land for housing.

The application was submitted by Mr Fred Williamson and was supported by 11 letters/statements from local residents setting out their use of the land and a petition containing over 100 signatures that the land should be granted village green status.

The Committee noted the application was made under section 15(2) of the Commons Act 2006. In accordance with statutory procedures, the application was advertised and two objections were received before the closing date for objection, from FCHO and from the land owner (Oldham Council). The objections had been sent to Mr Williamson for further comment and he had made further representations.

To avoid the potential for conflict of interest where an application to register land as a village green related to Council owned land, the Council had previously agreed that any such application

should be subject to independent scrutiny by a barrister who would consider whether the application met the legal test for registration as a village green and would produce a report of their findings for consideration by the Commons Registration Committee, which would take the final decision on the application. The Council had appointed Alan Evans, a barrister at Kings Chambers in Manchester with considerable experience of village green law to consider the application and the objections.

Mr Evans considered the application, the objections from FCHO and the Council and the applicant's response to the objections. His overall conclusion was that the application land was acquired by the Council for housing purposes in the 1960s, that it was provided and laid out by the Council as public open space in the 1990s and that there was appropriate power to do so under housing legislation in the Housing Act 1985. Consequently the use of the land by local inhabitants for informal recreation was use of public open space provided and laid out by the Council for that purpose. Their use of the land was pursuant to a public right or a publicly based licence and thus use "*by right*" and not "*as of right*".

Mr Evans concluded that as the use of the land by local residents had been use "*by right*", a fundamental requirement for registration of the land as a village green under section 15(2) of the Commons Act 2006 had not been met and the application must fail.

In considering the application the Committee looked at whether or not the application met all the requirements of section 15(2) of the Commons Act, as outlined in the report, and agreed that the application should be dismissed as the use of the land had been 'by right' rather than 'as of right'.

RESOLVED that the recommendation of Alan Evans (barrister of Kings Chambers, Manchester) be accepted and the application to register land at Hodge Clough Road, Oldham as a village green be rejected on the grounds that the land did not meet the legal test for registration as a village green, because use of the land for lawful sports and pastimes had not been "as of right".

The meeting started at 4.30 pm and ended at 5.25 pm