

AT A MEETING of the REGULATORY COMMITTEE of the HAMPSHIRE
COUNTY COUNCIL held in the Council Chamber at The Castle, Winchester on
11 April 2011

PRESENT:

Chairman:
p Councillor R.C. McIntosh

Vice-Chairman:
p Councillor I. Beagley

Councillors:

p F.G. Allgood	p Mrs A. McEvoy
p Mrs C.A. Bailey	a E.J. Neal
p A. Broadhurst	p F. Pearce
p J.V. Bryant	p R. Price
p C. Carter	p Mrs J. Porter
p M.G. Cooper	p D. Simpson
a B.T. Gurden	p J. Wall
p G.M. Hockley	p J.K. West
a S. James	p Mrs S. Wheale
a A. Joy	

197 APOLOGIES FOR ABSENCE

Apologies for absence were submitted on behalf of Councillors Gurden, James, Joy and Neal.

198 DECLARATIONS OF INTEREST

Members were mindful that, where they believed they had a personal or prejudicial interest in any matter to be considered at the meeting, they should normally at the time of the debate declare their interest and, having regard to the circumstances described in paragraphs 9, 10, 11 and 12 of the County Council's Code of Conduct, consider whether to leave the meeting whilst the matter was discussed, save for exercising any right to speak in accordance with paragraph 12 of the Code. The declaration should be made at the time of the relevant debate.

MINUTES

The Minutes of the meeting held on 22 March 2011 were agreed and signed as a correct record.

199 CHAIRMAN'S ANNOUNCEMENTS

As part of Chairman's Announcements, the Head of Legal reminded the Committee that they needed to weigh up the evidence presented. It was also confirmed that any future plans for the land was irrelevant to the item.

200 DEPUTATIONS

Members were reminded that they had approved a scheme which involved the amendment of Standing Order 21 to allow Members to ask questions of deputees for clarification of facts on an agenda item. Questions from Committee Members would be asked through the Chairman, who might seek the advice of the Committee's legal and other advisers as appropriate. The Chairman's decision on a question would be final. Any local Members who requested to speak at the Committee might also be asked questions. The Committee were advised that five deputations had been received for this meeting.

201 APPLICATION FOR REGISTRATION OF LAND LYING TO THE SOUTH EAST OF TITCHBORNE WAY AND BETWEEN THE FORMER RAILWAY SPUR ACCESSING THE ARMAMENTS DEPOT AND THE DISUSED BEDENHAM RAILWAY LINE IN GOSPORT AS TOWN OR VILLAGE GREEN (APPLICATION NO. TVG 248)

Councillor Carter declared a personal, non prejudicial interest in knowing witness 63, as included in Appendix 3, Page 23.

The Committee considered the report of the Director of Culture, Communities and Business Services (Item 6 in the Minute Book), which detailed an application for registration of land in Gosport.

A Solicitor to the Council introduced the item and presented the Committee with a history of the application and a summary of the applicable law. It was confirmed that after an initial non-statutory public inquiry, part of the land had been recommended for refusal for village green status and a grassed area which included some highway verge had been recommended for registration. However, there were legal issues affecting the area recommended for registration relating to Section 19 of the Local Government (Miscellaneous Provisions) Act 1976 which officers believed required further analysis. After further representations from both the land owner and the applicant, further legal advice was taken by the registration authority from a second barrister who was asked to consider the differing legal opinions as to whether use of the area of land was "as of right" or "by right". That Advice concluded that use was "by right".

The Committee received five deputations for this item. Mrs Christine White from Downside in Gosport told the Committee that the area had been used for many years by children and dog walkers but never as formal recreational land until the sports facilities were built. It was used as a depot during recent works

to the railway and it had been promised that the land would be made good once these works had been completed. Mr David Curtis spoke on behalf of the Downside Resident's Association and told the Committee of the public inquiry that had gone ahead and spoke of Gosport Borough Council selling the land to Hampshire County Council in 2008. He also spoke of two letters that had been received from the Executive Member for Environment and a Solicitor to the Council in 2009, which stated that the land would be restored once they had finished using it as a depot. Mr Chris Hope, a local resident, felt that the second Inspector's opinion was formed without having enough local knowledge of the area and was concerned that there were factual errors in the report. Mr Gerard Lidgey, a local resident enforced to the Committee that providing evidence to the Inquiry had been an ordeal for witnesses and felt the report did not deal with natural justice. He felt that the case should have been referred back to the first Inspector after a second legal opinion had been obtained. Mr Lidgey then gave the Committee a brief history of the site and referred to a letter received from the applicant's solicitor three days previously, which had proposed cancelling the meeting due to certain legal responsibilities not being adhered to. Finally the applicant, Mrs Janet Lidgey, reinforced the letters received as mentioned by David Curtis and told the Committee that the area was the only local area suitable for village green activities.

The Head of Legal Services drew Members' attention to the letter sent by the applicant's solicitor, and informed the Committee that deferring the item was an option presented on Page 9 of the report. The Committee were also encouraged to raise any questions they had in response to the letter.

During questions of the officer, Members asked why the report was not referred back to the initial Inspector and it was confirmed that the Inspector had fulfilled his role and provided his recommendations. It was considered that there was nothing to be gained by doing this. It was also confirmed that it was an officer decision to get a second opinion as it was an untested point of law and very complex.

The Committee were informed that the registration authority was not a party to a meeting of Gosport Borough Council in June 2010 and did not hold any minutes from that meeting.,

Members agreed that it was a very delicate area of law that had been investigated and accepted that there was no case law, meaning that this point was currently untested. The Solicitor confirmed that whether the recommendations were agreed to or refused, both scenarios could potentially go to Judicial Review, where a judge would have the final decision.

The recommendations were put to the vote individually;

RESOLVED:

- i. That the procedural applications laid out in paragraph 5.2 of the report be accepted

Vote:

Favour: 17

Against: 0

- ii. That the application made under s15(3) of the Commons Act 2006 be refused on the basis that –
 - a. In respect of the overgrown area and overgrown embankment referred to in paragraph 5.4 above, the application be refused for the reasons set out in the Inspector's Report and for the reasons given in b) below;
 - b. In respect of the remaining land, that the application be refused on the basis that the land in question was held on a statutory basis as a recreational facility and use of the land was therefore pursuant to this statutory right.

Vote:

Favour: 10

Against: 7