

## HAMPSHIRE COUNTY COUNCIL

### Decision Report

<b>Decision Maker:</b>	Regulatory Committee
<b>Date of Decision:</b>	11 February 2010
<b>Decision Title:</b>	Application for registration of land forming the site of a disused railway line between Wych Lane in Gosport and Redlands Lane in Fareham as town or village green (Application No. TVG 249)
<b>Decision Reference:</b>	1316
<b>Report From:</b>	Director of Culture, Communities and Rural Affairs

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### EXECUTIVE SUMMARY

#### 1) Summary of decision area:

1.1. Hampshire County Council is the Commons Registration Authority for the purpose of exercising functions under the Commons Act 2006. An application has been made by Mrs Kathleen Goodwin of 106 Woodside, Gosport for the registration of land forming the site of a disused railway line between Wych Lane in Gosport and Redlands Lane in Fareham as a town or village green. The landowner objects to the application. The recommendation is that a non-statutory public inquiry be held.

#### 2) Legal framework for the decision:

##### 2.1. S.15 COMMONS ACT 2006

Registration of greens:

s.15(1) Any person may apply to the commons registration authority to register land to which this part applies as a town or village green in a case where subsection (2), (3) or (4) applies.

s.15(3) This subsection applies where –

(a) a significant number of the inhabitants of any locality, or of any neighbourhood in a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and

(b) they ceased to do so before the time of the application but after the commencement of this section; and

(c) the application is made within the period of two years beginning with the cessation referred to in paragraph (b).

s.15(6) In determining the period of 20 years referred to in subsection [..] (3)(a) .., there is to be disregarded any period during which access to the land was prohibited to members of the public by reason of any

enactment.

**2.2 THE COMMONS (REGISTRATION OF TOWN OR VILLAGE GREENS)  
(INTERIM ARRANGEMENTS) (ENGLAND AND WALES)  
REGULATIONS 2007**

Consideration of objections

6(1) Where an application is made under section 15(1) of the 2006 Act to register land as a town or village green, as soon as possible after the date by which statements in objection to an application have been required to be submitted, the registration authority must proceed to the further consideration of the application, and the consideration of statements (if any) in objection to that application, in accordance with the following provisions of this regulation.

6(2) The registration authority –

- (a) must consider every written statement in objection to an application which it receives before the date on which it proceeds to the further consideration of the application under paragraph (1); and
- (b) may consider any such statement which it receives on or after that date and before the authority finally disposes of the application.

**3) Recommendation:**

- 3.1. That a non-statutory public inquiry be held and the inspector appointed to conduct the inquiry be asked to hear the evidence for and against the application and then to prepare a written report advising the Registration Authority whether to accede to or to reject the application.

## MAIN REPORT:

### 1) Purpose of report:

The purpose of this report is to seek approval to the holding of a non-statutory public inquiry into an application to register land forming the site of a disused railway line between Wych Lane in Gosport and Redlands Lane in Fareham as town or village green.

### 2) Applicant:

Mrs Kathleen Goodwin of 106 Woodside, Gosport, PO13 0YX

### 3) Landowners:

Hampshire County Council

### 4) Description of the land (please refer to the map attached to this report):

The land which is the subject of the application ('the Land') is shown edged red on the plan annexed to this report. It consists of approximately 1.05 hectares of land which formed part of a railway corridor formerly known as the Bedenham Branch Line between Gosport and Fareham. The land is part of the land comprised in the registered title number HP 609123.

### 5) The application:

- 5.1. The application was received on 30 October 2009. It states that the Land should be registered as town or village green because it has been used by a significant number of the inhabitants of a locality for lawful sports and pastimes for at least 20 years and that they continued to do so until on or about 20 August 2009 when fences and barriers along with other security measures were put in place. It is a "duly made" application for the purposes of the Commons Act 2006. The application identifies the relevant locality by reference to a map and defines it as *"the locality to which the claimed green relates to is in Bridgemary in Gosport bordering on Fareham South ward."*
- 5.2. The application was accompanied by a statement in support of the application, some photographs, maps illustrating the 'locality' and 17 user letters. Typical uses described are *"walks with our dog"*; *"blackberry (or other unspecified wild fruit) picking"*; *"nature watching"* (deer; fox; badgers; birds and bats); *"family recreation"*; *"play area"*; *"congregating"* and *"walking"*, all of which are lawful sports and pastimes and activities capable of supporting registration of land as a town or village green. However, some of the use by walkers appears to be as part of a longer walk and might be said to be use of the land as a highway rather than as a village green.
- 5.3. Two further user letters were received, supporting the application. Again, these letters describe typical uses as including *"children playing"*

on it”; “walking the dogs”; social activities” and “picking blackberries”.

## 6) The law

- 6.1. Under section 15 of the Commons Act 2006 applications can be made to amend the Register of Town or Village Greens when land becomes a town or village green. The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England and Wales) Regulations 2007 sets out the procedures to be followed in respect of such applications. In accordance with those regulations, advertisements on site and in the local press invited objections to the application within the period specified in the regulations: in this case the objection period expired on 18 December 2009. One objection was received (from Hampshire County Council, as landowner) and the Applicant has been invited to address the issues raised in that objection.
- 6.2. The law relating to town and village greens is complex and in some areas it is still being developed through the courts. Several of the elements of section 15 (e.g. meaning of use “as of right” and “significant number”) were addressed by the House of Lords in 2006 in the case of Oxfordshire County Council v Oxford City Council, and the Court of Appeal has very recently explored the effect on an application of deference by users to the landowner's activities in R (on the application of Kevin Lewis) v Redcar and Cleveland Borough Council and another. The *Redcar* case has been appealed to the Supreme Court (formerly the House of Lords) and was to be heard during the week commencing 18 January 2010.
- 6.3. In its capacity as Registration Authority, the County Council is required to adjudicate on the application and to register the application land if there are sound reasons for doing so, or if not, to reject the application. It is for the applicant to prove his or her case and there is no requirement for the Registration Authority to instigate its own research into the application. Nonetheless, there may be disputes of fact and/or issues of law to be resolved or considered before a decision can properly be made. Unlike decisions made on applications for rights of way (which are in many ways governed by similar principles of law), decisions made by this Committee on town or village green applications are not subject to review by the Secretary of State through a prescribed statutory and public process: the decision to accede to or reject an application can only be challenged through the Courts by way of judicial review. It is therefore particularly important that the Registration Authority's scrutiny of the application and any objections is thorough and that this Committee is well informed and advised before the application is finally determined.

## 7) The objections and the issues:

- 7.1. The landowner has raised a number of matters in its objection to the application. These are summarised in paragraph 18 of the objection statement, although the subsequent paragraphs expand on the seven issues identified in paragraph 18 and raise more specific issues of

contention. The seven issues set out in paragraph 18 are –

- i) *“insufficient evidence of ‘recreational’ activity – in essence, at face value, the evidence submitted in support of the application reveals “trivial or sporadic activities on some (largely unidentified parts) of the disused railway line... by a very small number of people”;*
- ii) *“use for passage only”;*
- iii) much of the land forming part of this application was inaccessible;
- iv) *“access was gained non-peaceably”* and so any use was not “as of right”;
- v) *“deference”* – as indicated above (para 6.2), the issue of deference is currently being considered by the Supreme Court;
- vi) *“sports and pastimes would not have been lawful”* – reliance being placed upon various statutes concerning the use of railways by individuals;
- vii) *“no ‘locality’, ‘neighbourhood’, ‘significant number’ of inhabitants.*

7.2 Officers consider that there are matters of fact and law which need to be considered in more detail, namely

- i) the extent to which walkers used the land as a highway or for passage rather than as an area over which they were indulging in lawful sports and pastimes;
- ii) the extent to which user deferred to an earlier landowner’s use of the land for rail traffic – use of the line for rail traffic ceased in about March 1991 which may impact on the question of whether or not use of the land was *“as of right”*;
- iii) there is a need to have the evidence tested at an inquiry where witnesses will attend to give evidence and will be available for cross-examination. This will ensure that any future decision is made with the knowledge that the evidence has been fully tested and both applicant and objector have had the opportunity of exploring the Application fully in public. In particular, there are issues over the extent of the land used by users; the purpose for which they enjoyed that use; the evidential question of how access was gained and whether the land was inaccessible. These are some, but by no means all the evidential questions that need to be considered;
- iv) there are also legal issues which will need examining. This report has already indicated that the *Redcar* case on deference is currently before the Supreme Court and the Court’s decision may impact on consideration of this case. Additionally, there are legal issues surrounding whether or not the use of the land was *“as of right”*, but the applicant and objector have differing interpretations on the law surrounding the use of the railway line by individuals.

There is legal argument surrounding s15(3) of the Commons Act 2006, the issue being whether the applicant has satisfied the statutory test of showing that any user was by *“a significant number of the inhabitants of any locality, or of any neighbourhood within a locality”*.

- 7.3. Officers consider that it would be unsafe to determine the application on the basis of the paper application only and that, in the interests of fairness to both parties, it is appropriate to hold a non-statutory public inquiry to test the evidence both for and against the application.
- 7.4. Of note is the fact that Hampshire County Council is the landowner, objector and Commons Registration Authority for the purpose of this application. It is therefore considered appropriate that a non-statutory public inquiry be held to enable the evidence to be tested and the report of an independent inspector be obtained.
- 7.5. If the recommendation of this Report is accepted, then a nine day period commencing 22 March 2010 has provisionally been fixed for the holding of the non-statutory public inquiry.

## 8) Recommendation

That, in connection with the application to register land forming the site of a disused railway line between Wych Lane in Gosport and Redlands Lane in Fareham as a town or village green, a non-statutory public inquiry be held and the inspector appointed to conduct the inquiry be asked to hear the evidence for and against the application and then to prepare a written report advising the Registration Authority whether to accede to or to reject the application.

### CORPORATE AND LEGAL INFORMATION ABOUT THIS DECISION:

<b>Links to the Corporate Strategy</b>		
	Yes	No
Hampshire safer and more secure for all	<input type="checkbox"/>	<input type="checkbox"/>
Maximising well-being	<input type="checkbox"/>	<input type="checkbox"/>
Enhancing our quality of place	<input type="checkbox"/>	<input type="checkbox"/>
<b>OR</b>		
<b>This proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because the County Council, in its capacity as Commons Registration authority has a legal duty to amend the register of towns and village greens in the circumstances described in this report.</b>		

**Section 100 D - Local Government Act 1972 - background documents**

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report.

(NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

*(Quote list of documents here: e.g. list the relevant letters, memos, etc. and their location)*

Document

Location

Files: VG 249

Chief Executive's Department  
(Legal Services)  
Room 157  
E II South  
The Castle  
Winchester