

In the Matter of
An Application to Register
Land at Longbridge Road, Bramley, Hampshire
As a New Town or Village Green

COMMENTS ON DRAFT REPORT

Settled by Mr VIVIAN CHAPMAN QC

12th June 2011

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Ref CJG.547526-1

64480/VRC/11/52/wp/S4/Longbridge Comments

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[1] The non statutory inspector, Mr. Booth, advised in favour of the registration of the application land as a new green. Hampshire County Council (HCC) rightly felt sufficient doubt about the report of the inspector to take a second opinion from Ms. Morag Ellis QC, an eminent silk very experienced in the law of TVGs.

[2] In her Advice dated 3rd March 2011, she advised in the clearest possible terms that the application land should not be registered because user had not been proved by a significant number of the inhabitants of the claimed locality. See para 4.1 of her Advice:

“Accordingly, I would recommend against registration on the basis that user has not been proved by significant numbers of the claimed locality”

[3] In her Note dated 11th May 2011, Miss Ellis QC confirmed that advice. See para. 2 of her Note:

“I have explained over the telephone that the points which Ms. Baker makes do not cause me to revise my conclusions and I am asked to confirm the oral advice in writing”.

[4] Ms. Ellis’s Advice, as confirmed in her Note, should be followed. There is no point in taking a second opinion unless it is acted upon.

[5] In the recent case of Gosport 248, the inspector advised in favour of registration of part of the application land (which happened to be owned by HCC). HCC again took a second opinion from Ms. Ellis QC who advised rejection of the TVG application. HCC accepted the opinion of Ms. Ellis and rejected the application. If HCC were to hold a second public inquiry in the present case, there would be an inexplicable discrepancy between its treatment of the present case and that of Gosport 248. It would be quite wrong in principle for HCC to treat a case in which HCC was the landowner differently from a case in which it was not.

[6] In TVG cases, the landowner has the burden of paying its own legal costs of a public inquiry, win or lose. The objecting landowner is a small company with very limited resources. The costs which it has already incurred are already crippling. Its legal fees to date exceed £70,000.00. If it has to face incurring the costs of a second public inquiry its very survival will be at risk. It is necessary to be fair to the landowner as well as the applicant. The landowner has been drawn into the TVG application through no fault of its own. The applicant has had the fullest possible opportunity to present her evidence at the first public inquiry. She has failed to prove her case and there is no reason why she should be given a second bite at the cherry. If she fails at the second public inquiry, will she be given the opportunity of proving her case at a third or fourth public inquiry? What if an inspector at a second public inquiry disagrees with the views on the law of both Mr. Booth and Miss Ellis? The whole point of a public inquiry is that it is the opportunity for all parties to present their evidence and for the commons registration authority to decide on the success or failure of the application in the light of that evidence. There must be finality, subject only to review by the court.

[7] The issue on which Miss Ellis QC has advised that the application fails does not require any further evidence. The objecting landowners have submitted no new evidence. The addresses of the applicant's witnesses are all known. The size, shape and population of Bramley are matters of public knowledge. All the relevant material is therefore already before HCC. It is as plain as a pikestaff, in the light of Miss Ellis's Advice (confirmed by her Note), that the application fails for failure to prove user by a significant number of the inhabitants of the chosen locality.

[8] If the applicant says that Miss Ellis QC is wrong, she can challenge the decision to reject her application by judicial review. HCC will not have to play any active role in judicial review proceedings and the case can be fought out in the court between applicant and objector (as interested party). HCC and the objecting landowner will not incur the costs of a second public inquiry and the parties will have the advantage of obtaining a final decision from a tribunal which can award costs to the winning party. This looks like a case which is going to end up in court in any event and there is no point in interposing another costly public inquiry.

[9] HCC is requested to follow Miss Ellis's Advice (confirmed by her Note) and reject the application forthwith.

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12th June 2011,
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