

**Applicant's Comments**  
**in the matter of Village Green Application 243**  
**Longbridge Road Play Area, Bramley**

## **Introduction**

1. Hampshire County Council as Registration Authority (RA) is entrusted by Parliament with the duty to determine this application to register the land known as 'The Play Area' at Longbridge Road, Bramley under the Commons Act 2006. The landowners objected to the registration and so it was agreed to hold a Public Inquiry. Pursuant to this Mr Anthony Booth QC was appointed as Inspector and a Public Inquiry was held on 26 –28<sup>th</sup> April 2010 and was continued on 21<sup>st</sup> June and 28<sup>th</sup> June 2010.
2. The Objectors, represented by Mr Chapman QC, were defeated at Public Inquiry. Subsequent to the Inspector's report and in response to a request from the Objector, the RA then obtained a second opinion from Ms Ellis QC.
3. Ms Ellis subsequently advised that she would recommend against registration on the basis that use has not been proved by significant numbers of the inhabitants of the claimed locality.

## **4. Issues**

The Applicant contends that:

- (a) If the Registration Authority follow the advise of Ms Ellis without reverting to Mr Booth, the Inspector, the decision will be unlawful in the public law sense.
- (b) The advice of Ms Ellis is not impartial and has no basis in law.
- (c) The advice of Ms Ellis is flawed and unsafe. She was not present at the Inquiry and is taking irrelevant considerations into account. If it is to be considered at all, it should carry less weight than that of the Inspector who was present over the whole of the Inquiry.
- (d) Ms Ellis was not requested to comment on the merits of the application but she has clearly done so.

### **Legal tests**

5. In dealing with an application to register a new Town or Village Green as required by the Commons Act 2006 section 15, the County Council must consider the following criteria:
  - (a) *Whether use of the land has been 'as of right'?*
  - (b) *Whether use of the land has been for the purpose of lawful sports and pastimes?*

- (c) *Whether use has been by a significant number of inhabitants of a particular locality, or a neighbourhood within a locality?*
- (d) *Whether use has taken place over a period of twenty years or more?*
- (e) *Whether use of the land 'as of right' by the inhabitants has continued up until the date of application.*

These are, quite rightly, demanding provisions to fulfil. An applicant is required to satisfy the RA not only as to the type of activities carried out and the period during which those activities have been engaged in, but also the origin and the number of the people engaging in those activities and the manner in which they have engaged in them. The Applicant contends that the correct legal principles for this application have been tested and found to be satisfied and that Ms Ellis' opinion has no basis in law.

6. Hampshire County Council advised that the inquiry would be heard over 3 days in April and, from the numerous witnesses that had submitted written statements, 30 witnesses were found to be available on those dates. During the inquiry it became apparent that given the large number of witnesses that passionately wanted to give evidence and due to the strength and aggression of the cross examination, not all of the witnesses would be able to be heard so an extra two days extension was ordered.
7. The legal tests were strictly applied to the evidence given by the witnesses and all witnesses except the 4 children were most vigorously cross-examined by the Objector's counsel. After due consideration the Inspector found that the Applicant had proved the case for registration of the application land. The Inspectors report is a detailed and lengthy report and has been prepared with meticulous care and thoroughness. As the landowners were defeated, and as a matter of course, their legal counsel sent 2 sets of representations objecting to the Inspectors report on many points. These were passed to the Inspector for comment, however he was not swayed by any of the legal arguments submitted.
8. Despite the quality and substance of the evidence, the Inspector's written report and his subsequent confirmation that all legal matters had been considered, the Registration Authority, without advising the Applicant, requested advice from Ms Ellis and forwarded the Objector's comments to her. The Applicant has repeatedly applied to have sight of the instruction to Ms Ellis but that request has been denied. However from the Decision Report it appears that Ms Ellis was instructed to consider the following:
  - (a) the as of right/by right issue in light of developing case law
  - (b) the relationship between the spread of user and the locality
9. Despite the concerns of the RA Officer, Ms Ellis found in the Applicant's favour with regard to the 'as of right/by right' issue.
10. The Applicant cannot understand why Ms Ellis has stated that use has not been proved by significant numbers of the inhabitants of Bramley when she herself states on page 22 of her report that the definitive answer regardless of recent case law is that **significant numbers should be "sufficient to**

indicate that their user of the land signifies that it is in general use by the community for informal recreation, rather than occasional use by individuals as trespassers”.

11. Ms Ellis contends that Bramley was too populous and too extensive geographically to be considered a locality, however by law the area needs to be defined so that the group of people to whom the recreational rights are attached can be identified. By stating Bramley as a locality the Applicant is stating that the majority of the residents of Bramley are aware of this land and many have used it to some degree over the 20-year period. If agreed by the Registration Authority all residents of Bramley will then have a right to use this land. Ms Ellis continues to contradict her own opinion by quoting case law throughout her document that supports the applicant’s case, for example item 3.4 on pages 17-18 and item 3.8 on pages 20-21.
12. In the Inspector’s supplementary report dated 13<sup>th</sup> October 2010 he states that there is **‘no dispute that the civil parish is capable of amounting to a locality for the purpose of the 2006 Act.’**
13. Ms Ellis states that an Applicant should demonstrate a genuine relationship between user and the claimed locality; relevant factors will be numbers, geographical spread, and physical functional links between the claimed green and the whole of the specified locality. She states case law on page 21 that a locality should be **“something more than a place or a geographical area – rather, a distinct and identifiable community, such as might reasonably lay claim to a TVG as of right”**. Ms Ellis appears to be of the opinion that Bramley is not a distinct and identifiable community which is clearly incorrect Ms Ellis, although acknowledging this case law, seems to have ignored the content and meaning of the precedent which must remain definitive.
14. It is helpful to revisit the relationship between user and the village of Bramley that were documented in the application, and proved at the inquiry.
  - i) The parish of Bramley runs along the minor ‘C32’ road running west/east through the village. The historic pattern of development in Bramley is predominately linear, with the majority of development within a stretch of the C32 between Campbell Road and Cufaude Lane.
  - ii) The application land is geographically central in the village of Bramley, and in close proximity is the railway station, rail crossing, garage, bakers (approx. 1000 yards), primary school, public house, car park, convenience store with post office and off-licence and estate agent (approx. 1/4 mile).
  - iii) There is a public right of way recorded in Bramley commonly known as the ‘Cinder Path’ which leads south from the railway station and the crossroads in the middle of Bramley and the above mentioned village facilities. After a pleasant walk of approx 1000 yards lies the application land on your left.
  - iv) The application land has been open space for over 30 years and has been regarded as many residents as a children’s play /open space for the whole of this time. It was maintained (in error) by Basingstoke

District Council and then by Basingstoke Borough Council for over 20 years. It is triangular in shape, a pleasant grassed area with large oak trees and other shrubs along one edge ideal for rope swings and dens originally bordered by a dry ditch and field but for the last 8 years of the application period has been occupied by a housing estate from which several of the witnesses that gave verbal evidence lived. There is a tarmac path leading from this development to the Play Area. The northerly side is bordered by Longbridge Road (58 houses) and the western border is the previously mentioned public footpath which is ideal for access from both the north and south. On the other side of the footpath is a small area of land of noted as having 'Importance for Nature Conservation'.

- v) Many of the witnesses gave evidence of their children using the land for informal play with friends from other parts of the village. Most village children of primary school age (4 – 11 years) attend the local primary school (1/4 mile away), and many pass the play area on their way to and from school. Other evidence was heard and cross-examined of seeing residents walking their dogs on the application land, even the objector stated in his planning application that he was aware that residents used the land for walking dogs. In the application there is correspondence from Basingstoke Council stating that the land is presently used for recreational activities. Ms Ellis's argument that that the application land would only be known to a handful of residents does not hold up as the application land 'Longbridge Road Play Area ' was included in the Open Spaces Audit conducted by Basingstoke & Deane Borough Council.
- vi) Mr Graham Brailey a resident of Longbridge Road states that as a volunteer football coach for the local youth team he used to train the members of the team that came from all over Bramley on the application land, and many of the witnesses that gave verbal evidence spoke of their children's school friends joining them in play in the summer evenings, at weekends and in the school holidays. Judy Watkins whose two children played there and a member of the local WI stated that one of the activities of the group was a 'litter pick' and the application land formed one of the destinations for these activities.
- vii) The residents of the Forge Field estate that was built in the year 2000 were told by the developers that the application land was to be made available to them and a tarmac path was constructed to allow easy entry to the play area.
- viii) The objectors produced a letter from B&DBC to a resident of Longbridge Road (dated over 20 years ago) stating that the local council could not keep the play area solely for the residents of Longbridge Road and that it had been designated open space for all residents.
- ix) It was proved at the inquiry that the landowners were aware that the land was a play area when they purchased it around 2001.
- x) It was proved at the inquiry and confirmed by the land owners that the land has never been totally enclosed along all the boundaries and therefore there was no reason why residents and their children should

not have used the area for lawful sports and pastimes regularly and without any hindrance.

- xi) Photographs of the application land appear on the internet on map websites.
- xii) Many press and local magazine articles, parish council minutes were included in the application and show that the land is known to the majority of the villagers and is evidence of its continued value to the community.
- xiii) The application holds correspondence from Basingstoke & Deane Borough Council to the landowners confirming that the land was considered by the residents of Bramley as a recreational area.

It appears that Ms Ellis did not look any further than the Objector's comments before arriving at her advice. In his supplemental report Mr Booth states that the evidence that he heard was not only sufficient but **'more than sufficient to demonstrate use by a "significant number" of the inhabitants of Bramley'**

15. Throughout all of the qualifying period the land has remained open to local people to use for leisure and recreational activities. Every day for all of this period local people have used the land for recreation, chatted to friends and neighbours and their children have played games and messed about in the open air as children, do unencumbered by the restraints of formal brightly coloured play areas and away from traffic, but close enough to their homes or those of friends in case of trouble or injury.
16. In the Inspector's report he concluded that **"he was satisfied that use of the land for sports and pastimes was carried on by a 'significant number' of local people"**.
17. The Applicant objects in the strongest terms to the suggestion of a second Public Inquiry. Not only would this course of action be burdensome on both parties and on the taxpayer but nothing will be gained from a regurgitation of evidence. Whatever the outcome of a second inquiry, legal counsel for one side or the other would again try to overturn the outcome. The applicant implores the Registration Authority to adopt the only lawful resolution of this application and to view the Inspector's report as the definitive document. All the legal tests have been proved, and Ms Ellis's opinion, which is predicated on one very minor matter, has no basis in law.
18. The Applicant respectfully demands that the Members do now agree to register the land known as 'Longbridge Road Play Area' as a Village Green.

Catherine Baker  
Applicant  
14<sup>th</sup> June 2011