



**Appendix 4**

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**LARCOMES**  
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By First Class Post and Fax: 01962 845335

Your Ref: VG243(7/08)  
Our Ref: CJG/VEB/547526-1  
Date: 8 October 2010

Dear Madam

re: Application to Register Land known as Longbridge Road Play Area,  
Bramley, as a Town or Village Green

On 21<sup>st</sup> September, you forwarded to me by email a copy of the Inspector's Report in the above matter.

By emailed exchanges following our receipt of the Report, you kindly agreed to a short extension of time for the Objectors to forward to you any comments on that Report.

Such comments are attached herewith. A hard copy shall follow by first class post.

I would be obliged if our comments are made available to the members of the Registration Committee who shall be sitting to consider this matter (among other agenda items) on 27<sup>th</sup> October.

Lawyer Members Andrew Turner · Julian Quartermain  
Mark Tooley · Lynn Davison · Julia Davis  
Richard Hoggood · Christopher Gates  
Non-Lawyer Member Janice Ward (Practice Director)  
Associate Lisa Beuzeval  
Solicitors Christina Hayles · Amanda-Jane Shackleton  
David Sumner  
Fellows of the Institute of Legal Executives  
Paul Lee · Sandra Phillips  
Financial Services & Taxation Manager Debbie Brown  
Authorised and Regulated by the Financial Services Authority  
Regulated by the Solicitors Regulation Authority  
Larcomes LLP is a Limited Liability Partnership  
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It is additionally our clients' wish to make oral representations to the Registration Committee on 27<sup>th</sup> October and I would be obliged if you would let me know the procedure for making such representations. At the current time it is the Objectors' wish that such representations will be made by Vivian Chapman QC.

Look forward to hearing from you.

Regards

Yours sincerely



Chris Gates

LARCOTES LLP

*Encs*

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

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COMMENTS OF OBJECTORS ON INSPECTOR'S REPORT

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168, London Road,  
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Ref CJG.547526-1

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

**COMMENTS OF OBJECTORS ON INSPECTOR'S REPORT**

**Introduction**

[1] These are the comments of the Objectors on the Inspector's Report dated 14<sup>th</sup> September 2010.

**Status of Report**

[2] There is no statutory basis for the appointment of an inspector to hold a public inquiry and to report with his recommendation whether the county council, as commons registration authority ("CRA"), should accede to or reject an application to register land as a new green. The procedure has grown up, and has been approved by the courts, as a way in which the CRA can inform itself on the facts and the law before making its decision. However, the decision is for the CRA and the CRA alone. It is not in any way bound by the Report. The CRA will of course pay careful regard to the Report but it is not only entitled but is legally bound to make its own decision. It is free, if it thinks fit, to take a second opinion, before making its decision. It is free to disagree with the recommendation in the Report if it considers that the recommendation was wrong.

**Errors in Report**

[3] These objectors submit that the recommendation in the Report was wrong for the following reasons:

- The inspector failed adequately to consider whether local people as defined in the Act(s) had used the whole of the application land for recreation.
- The inspector failed correctly to apply the "significant number" test,
- The inspector failed to apply the correct principles in determining whether user failed to be "as of right" because it was contentious,
- The inspector misconstrued the Public Health Act 1875 and the Open Spaces Act 1906 in determining whether user during the period of maintenance by BDBC was "by right" rather than "as of right".

**Use of whole of application land**

[4] The inspector failed to consider whether the whole of the application land was capable of use for recreation during the whole of the 20 year period. There was ample evidence that a substantial proportion of the application land was covered in scrub and impenetrable brambles, particularly so during the growing season. See WS of John

Bell paras. 6 & 10 [O/14], photographs at [O51/52/53/54] and WS of David Tuffin para. 5 [O/60]. However, the inspector appears to have based his recommendation on a finding that **some** parts of the application land were accessible for recreation. See Report para. 232. He failed to consider whether the application land was used as a whole for recreation throughout the relevant 20 year period.

[5] Moreover, in his Report the inspector fails to acknowledge the fact that a substantial element of the recreational user described by the applicant's witnesses in evidence occurred in the area of a ditch some 5 metres wide running along the entire southern boundary of the site, but which forms neither part of the Objectors landholding, nor the so-called village green. All such evidence should therefore have been discounted. This also goes to the "significant number" test below.

#### **The "significant number" test**

[6] The applicant based her case on user by a significant number of the inhabitants of the civil parish of Bramley. It is accepted that the civil parish of Bramley is capable in law of being a "locality". The inspector rightly accepted at para. 206 of his Report that the correct test was that laid down in the *McAlpine* case, i.e. general use by the local community. The relevant local community was thus Bramley. However, the overwhelming majority of the applicant's witnesses came from Longbridge Road or from roads in the very close vicinity. The inspector failed to consider the geographical size and population of Bramley or whether the users could realistically be regarded as "the local community of Bramley" as opposed to the inhabitants of Longbridge Road and a small number of other roads in the close vicinity.

[7] In the 2001 census, the population of Bramley was 3,393 with a projected population of 3,670 by 2008. The applicant adduced the evidence of 56 witnesses of whom only 22 gave oral testimony at the Inquiry; this represented just 0.6% of the inhabitants of the stated locality. In the unrelated village green Inquiry regarding land at Station Road, Marsh Gibbon, considered by the Rights of Way Committee of Buckinghamshire County Council on 14<sup>th</sup> July 2010, the Inspector in that matter considered use of the land by approximately 2% of the population of the locality as failing to be a sufficiently significant number to meet the test.

#### **Contentious use**

[8] In assessing whether the steps taken by the landowner to deny access to the land made recreational user contentious and so not as of right, the inspector lost sight of the principle which he himself recognised in para. 207 of his Report, i.e. that it is necessary to consider how the matter would have appeared to the landowner, and was distracted by the evidence from many of the applicant's witnesses (evidence which the objectors say is bizarre and incredible) that they did not notice the landowner's actions or did not appreciate that they were a challenge to the right of local people to use the application land for recreation.

[9] The inspector fully accepted the landowner's evidence of the steps taken to secure the land and dispute the right of local people to use the land: see para. 240 of the Report. It is submitted that, applying the proper test, the landowner plainly did enough to make it clear from the landowner's perspective that he disputed the right of

local people to use the land. See para. [18] of the objectors' closing submissions. The inspector's approach puts an impossible demand on landowners. It is wrong in principle that local people can acquire rights over land by tearing down the fence which the landowner erected along the W boundary, breaking off the padlocks which the landowner installs on the gated entrance to the land, tearing down the "Private Property" sign that he erects on the boundary fence and moving the massive tree trunks that he deposits to block the E entrance to the land.

[10] Greater steps to secure the site were not deemed necessary by the landowners since, on the innumerable site visits conducted by John Bell, the only evidence of use of the land by 3<sup>rd</sup> parties was along the defined informal routes crossing the site, as a short cut or concurrent with dog walking. Since it had always been the landowners' intention to incorporate a formal footpath into their planning applications for development, such use as was apparent to the landowner was therefore considered inconsequential. This theme was addressed at length over a considerable period of time with the planning department of the local borough council and in dealings with the parish and at no stage was the objector ever informed that the site was subject to recreational use.

#### **The "by right/as of right" issue**

[11] The inspector rightly accepted that if the application land was subject to s. 164 of the PHA 1875 or s. 10 of the OSA 1906 while it was being maintained by BDBC until 1999 then any recreational user by local people would be "by right" and not "as of right". The inspector however held that neither statute applied because BDBC was not maintaining the land with the consent of the landowner but by mistake. It is submitted that the inspector has misunderstood the submissions set out in paras. 21-29 of the objector's closing submissions. The objectors submitted that such consent was to be inferred. However, they also submitted, in the alternative, that the statutes applied even if BDBC acted without the consent of the landowner and by mistake. The inspector did not address this argument. If he had, he would have reached a different conclusion.

[12] PHA 1875 s. 164 empowers a local authority to "maintain land for the purpose of being used as public walks or pleasure grounds" and to "support or contribute to the support of public walks or pleasure grounds provided by any person whatsoever". There is no requirement that the local authority should own or have a legal interest in the land or that it should have the consent of the landowner. If a local authority in fact maintains land as a public open space (as BDBC unquestionably did maintain the application land until 1999) then plainly the public who use the land are not trespassers but have a right to use it. There are other reasons than mistake why the landowner might not be involved, e.g. because the landowner cannot be traced.

[13] Under OSA 1906 s. 9(b) a local authority can undertake the management of an open space whether it has an interest in the soil of the land or not. The statutory trust in s. 10 is triggered if the local authority acquires "control" over an open space. There is no statutory requirement that such control should be acquired with the consent of the landowner. Even if BDBC maintained the application land by mistake, it did in fact take (i.e. "acquire") control of the land and maintained it as a public open space. The statutory trust was thereby triggered.

[14] The simple underlying principle is that if a local authority spends public money on maintaining a public open space, the public have the right to use it.

**Conclusion**

[15] There are serious legal errors in the Report which have caused the inspector to reach the wrong conclusion. The CRA is respectfully requested to take a second opinion from leading counsel specialising in this area of the law before determining the application.

Losborne LLP

(for and on behalf of the Director)

