

APPENDIX 3

In the Matter of
An Application (TVG 249) to Register
Land at the Disused Railway, Bridgemarky, Gosport, Hampshire
As a New Town Green

SECOND REPORT

of Mr. VIVIAN CHAPMAN Q.C.

29th May 2010

Hampshire County Council

The Castle,

Winchester,

Hampshire SO23 8UJ

Ref. R23A30/IA/cl

66599/VRC/10/79/wp/S4/Gosport 249 Second Report

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Introduction

[1] I delivered my Report in this case on 19th May 2010. I understand that it is still being studied by the CRA and has not yet been circulated to the parties. On 24th May 2010, I was supplied by email with further written submissions of Mr. Lidgery sent to the CRA by email on 22nd May 2010. I was asked whether these further submissions affected the contents of my Report. I was engaged in a public inquiry out of London without access to the papers in this case from 24th to 28th May inclusive and therefore have only been able to give proper consideration to Mr. Lidgery's further submissions today.

[2] In the introduction to his further submissions, Mr. Lidgery says that he had not had a proper opportunity to deal with the *Warneford Meadow* case at the public inquiry because (a) he was not supplied with a copy of the case and (b) he did not appreciate that it was a relevant High Court authority. Mr. Lidgery is a retired solicitor who does not specialise in this area of the law and I see no good reason to exclude his further submissions on the *Warneford Meadow* case from consideration.

Notices Issue

[3] In my Report, I found that notices were clearly exhibited during the relevant 20 year period at Fareham Station giving public warning to the public not to trespass upon the railway and that such notices were renewed as often as obliterated or destroyed. Mr. Lidgery argues that the signs erected at Fareham Station were not sufficient to negative user of the application land "as of right" because they were far away and directed to trespass on the main line. I agree with Mr. Lidgery's submission. However, I did not rely on these signs as negating user "as of right" but rather as being relevant to the issue whether user of the application land was in the nature of

“lawful” sports and pastimes if it constituted a criminal offence under s. 55 of the British Transport Commission Act 1949.

Predominance test

[4] Mr. Lidgey argues that it is not a legal requirement that recreational users of the application land should come predominantly from the claimed neighbourhood. I agree. It was so held in the *Warneford Meadow* case. However, I did not recommend that the application should be rejected on the ground that users did not come predominantly from the claimed neighbourhood.

Conclusion

[5] Having carefully considered Mr. Lidgey’s further submissions, I see no reason to alter the contents of my Report.

Vivian Chapman QC
29th May 2010
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