

City of Bradford Metropolitan District Council

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Minutes of a meeting of the Miscellaneous Licences Panel held on Friday 19 December 2008 at City Hall, Bradford

Commenced 1100
Adjourned 1125
Reconvened 1135
Concluded 1215

PRESENT – Councillors

CONSERVATIVE	LABOUR
Ellis	Sajawal Hussain
L'Amie	Longthorn
Mallinson	

Apologies: Councillors Chadwick, Flowers and L Smith.

Councillor Mallinson in the Chair

6. DISCLOSURES OF INTEREST

No disclosures of interest in matters under consideration were received.

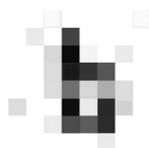
7. MINUTES

Resolved -

That the minutes of the meeting held on 27 June 2008 be signed as a correct record.

8. INSPECTION OF REPORTS AND BACKGROUND PAPERS

There were no appeals submitted by the public to review decisions to restrict documents.



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INVESTOR IN PEOPLE

Suzan Hemingway, Assistant Director Corporate Services (City Solicitor)



**9. APPLICATION FOR THE REGISTRATION OF LAND AS Worth Valley
A TOWN OR VILLAGE GREEN AT LAND AT GRIFFE GARDENS
AND GRIFFE VIEW, OAKWORTH**

The Assistant Director, Corporate Services (City Solicitor) presented a report (**Document "C"**) which outlined an application received for registration of land as a Village Green at Griffe Gardens and Griffe View, Oakworth. It was explained that the Council, as registration authority, must consider and determine the application. Document "C" detailed the regulations set out in the Commons Registration Act 1965.

Background to the application revealed that the land in question was owned by Spellman Developments who had purchased the land from the Council in October 2007. The land was described as an area of grassed highway verge and was identified on the Council's highway records as being part of the adopted public highway.

The application to register the land as a Town or Village Green had been advertised on site and in the local press and one objection from the landowner had been received. A location plan of the area was provided.

The applicant addressed the meeting and provided supporting information which he claimed evidenced a precedent set through a previous decision made by another local authority concerning an application involving highway verge. The legal representative for the objector pointed out that he had not seen this evidence. The applicant maintained that the information had been submitted to the Licensing Team prior to the agenda publication. However, with the agreement of the applicant and the objector the meeting was adjourned to ensure all parties had been allowed adequate time to consider the information.

The applicant maintained that he had submitted the application under amendments made in 2006 to the Commons Registration Act 1965 which had expanded the criteria to register land. This required a significant number of residents to demonstrate that they had indulged in sports and pastimes on the land for 20 years and that they continued to do so. A number of photographs depicting residents using the land had been provided. He claimed that the only issue was of incompatibility of use of the land with its highway status.

The Council's Legal Officer advised that two issues must be considered. These were whether there was sufficient evidence that the land had been used as of right over a 20 year period preceding the making of the application and whether the types of use evidenced were compatible with use as a customary right and otherwise lawful in nature or whether such uses evidenced could be more correctly considered to be compatible with public rights to use the highway.

The applicant claimed that the schedule of evidence provided demonstrated the lands use for recreational purposes for more than 20 years. There were 12 children under 12 years old living on a street of Victoria houses without back gardens. The area was used by these children as common play land. Extracts from a document "A Guide to getting Greens registered" were recited.

The applicant insisted that a clear precedent, set in a previous case in the area of Coots Green, had allowed an area of the highway to be registered as a village green. He concluded that the criteria for registration as a village green had been fulfilled in the case under discussion.

Members questioned if the land was used by neighbouring children residing in Windsor Crescent and were advised that the area was separated from other streets as it was a cul

de sac with no through traffic. The area was used only by the 12 children living in the immediate vicinity.

The barrister acting for the objector addressed the meeting. He reported that he had five points which he wished to be considered:-

- Had the use alleged been “by right” or “as of right”.
It was claimed that, at best, use could be “by right” not “as of right”.
- Evidence did not show that the land was used by a neighbourhood or locality – as required under the legislation.
- There was insufficient evidence of use by a significant number of people in the neighbourhood.
- Evidence of use over a continuous 20 year period had not been demonstrated.
- Registration as a Village Green was not compatible with the lands status as part of the adopted highway.

He addressed each issue as follows:-

- The test to use was had the land been used “by right”. It was believed that this land was incapable of being used “by right” as this was incompatible with its status as highway land. It had been accepted that the land was public and had public right of way access. Registration as a Village Green would interfere with the rights of the public at large.
- It was accepted that the application identified a parish as a locality but that there were no reasons to define the area as a neighbourhood within that locality. There was no evidence to show that the area of Griffe Gardens and Griffe View was distinct from the surrounding streets.
- Evidence submitted suggested use of the land by nine users. There were 15 houses in the area and this did not demonstrate use by a significant number of people in a neighbourhood.
- Use of land must be continuous for a least 20 years. The photographs submitted were not dated and a number appeared to have been taken simultaneously.
- Registration of the land would be incompatible with public rights. The Coots Green case presented referred to a committee report containing recommendations and the facts of the case were entirely different. That committee report carried no weight in the decision being made currently.

Members studied the photographs presented and questioned where the children pictured resided. The lands use as an assembly point for a pipe band was also questioned as it was not believed that there was a pipe band operating in that area.

In response the applicant explained that the band assembled in that area prior to the Oakworth Village gala. The band was hired for the gala and had assembled in the area for many years.

The objectors claimed that the band was imported for the event and that this did not demonstrate the lands use by people in the locality.

The Council's legal officer questioned whether the bands assembling on the highway was not more compatible with a normal highway use rather than evidence of exercising a customary right.

The applicant countered claims that photographs did not demonstrate continuous use and claimed that residents had been unaware that they would have to demonstrate the lands use and had, therefore, not collected evidence over a long period of time. It was explained that there was no paved footpath on the area of land in question. For residents to use the area for access they would have to climb over a wall and the land didn't provide access to any other area.

In response to the claim that there was insufficient evidence of use it was explained that only nine evidence forms had been submitted because it was a small area of only 15 dwellings. Some of the residents had no children and, therefore, were not interested in the land as a play area and one resident was a recluse. It was maintained that a community of nine had formed a neighbourhood. A previous case involving McAlpine builders was referred to and it was claimed that this had demonstrated that use need not be substantial but merely sufficient to show the area was in general use by the neighbourhood.

The objector maintained that the McAlpine case involved a different location and, for example, what would be significant in central London would be different to that in a remote rural area.

Resolved –

That the public be excluded from the meeting on the grounds that it is likely in view of the nature of the business to be transacted or the nature of the proceedings that if they were present exempt information within paragraph 5 (Legal Privilege) or Part 1 of Schedule 12 of the Local Government Act 1972 would be disclosed.

When the meeting resumed in public the Chair thanked all parties for attending and providing evidence for consideration by Members.

Resolved –

That the application to register the land at Griffe View and Griffe Gardens, Oakworth, as a Town or Village Green be refused for the reasons set out in Document "C".

ACTION: Assistant Director, Corporate Services (City Solicitor)

Chair

Note: These minutes are subject to approval as a correct record at the next meeting of the Panel.