

**Report of the City Solicitor to the meeting of the
Miscellaneous Licences Panel to be held on 14 March
2012 at 4.00pm in Committee Room 4 at City Hall,
Bradford**

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Subject:

**AN APPLICATION FOR THE REGISTRATION OF LAND AS A TOWN OR VILLAGE
GREEN AT LAND AT DOUGLAS DRIVE, BRADFORD**

Summary statement:

**AN APPLICATION HAS BEEN RECEIVED FROM MR MARTIN HALL FOR
REGISTRATION OF LAND AT DOUGLAS DRIVE, BRADFORD KNOWN AS
BRADFORD DYERS FIELD AS A VILLAGE GREEN. THE COUNCIL AS
REGISTRATION AUTHORITY MUST CONSIDER AND DETERMINE THE
APPLICATION.**

**IT IS RECOMMENDED THAT THE APPLICATION BE ACCEPTED FOR THE
REASONS SET OUT IN THE INSPECTORS REPORT RECEIVED BY THE COUNCIL
ON 16 JANUARY 2012**

Suzan Hemingway
City Solicitor

Portfolio: Council and Corporate

Report Contact: Frank Suadwa
Phone: (01274) 432183
E-mail: frank.suadwa@bradford.gov.uk

**Overview & Scrutiny Committee
CORPORATE**

1. Summary

- 1.1 The Council has received an application for the registration of an area of land at Douglas Drive, Bradford known as Bradford Dyers Field as a Village Green from Mr Martin Hall supported by a number of local residents. The application was acknowledged on the 2 February 2011.
- 1.2 The application is founded upon the use of the land for lawful sport and pastimes, as of right, at Douglas Drive, Bradford known as Bradford Dyers Field by a significant number of the inhabitants of a neighbourhood within the locality for a period of at least 20 years. A copy of a plan identifying the area concerned will be available at the meeting.
- 1.3 The Council is the Registration Authority responsible for the determination of such applications under the Commons Act 2006

2. Background

- 2.1 The land forming the subject of the application is unregistered but is believed to have belonged to Bradford Dyers Association who built the houses adjacent to the land. Bradford Dyers Association were taken over by Coates Viyella in the 1960's. They themselves have since gone into receivership and notification of the application was therefore sent to the Receiver but no objection was lodged on their behalf. Land adjoining the site is owned by the Council.
- 2.2 An Independent Barrister was appointed to act as Inspector in order to consider and test the evidence and advise the Council how the application should be determined.
- 2.3 The application was advertised on site and in the local press inviting representations during a six week period expiring on the 22 April 2011. One objection to the application for registration in respect of the site was received by the City Solicitor from Ann Marie Simpson on behalf of herself and her mother of 310 Sticker Lane whose land adjoins the application site but does not form a part of the application. The objector was also in the process of seeking to obtain adverse possession of the land via H M Land Registry but was unsuccessful.

3. Other considerations

- 3.1 The land at Douglas Drive, Bradford known as Bradford Dyers Field is currently within a mixed use area on the current Unitary Development Plan. However, planning policy issues are not relevant to the determination of this application.
- 3.2 A Public Inquiry was opened on 27 October 2011 at City Hall, Bradford but was adjourned due to the non-attendance of the objector. The Objector had also failed to comply with the Directions given by the Inspector requiring the submission of evidence in accordance with a timetable which meant that no evidence was submitted in support of the original objection. The Inquiry was re-convened on 9 January 2012 and despite having been notified of the new date the objector once

again failed to attend or submit and evidence. The Inspector therefore considered the original written objection along with verbal and written evidence in support of the application. A copy of the Inspectors Report is attached as an Appendix to this Report. The inspector on the evidence considered by him recommends that the application be accepted.

4. Options

- 4.1 Members may accept or reject the application for registration. However, full regard must be had of the Inspector's advice and clear factual reasons must be given if it is decided to reject the application contrary to the recommendation of the Inspector.

5. Financial and resource appraisal

- 5.1 Financial provision has already been identified for the administrative and legal cost of determining the application.

6. Legal appraisal

- 6.1 The application has been processed in accordance with the legislation and guidance laid down by statute. A Public Inquiry has been held where the Applicant and the Objector have had the opportunity to present all relevant evidence.

The City Solicitor will summarise the main findings of the Inspector's report at the meeting.

7. Other implications

7.1 Equal Rights

7.1.1 There are no apparent equal rights implications.

7.2 Sustainability implications

7.2.1 There are no apparent implications for sustainability.

7.3 Community safety implications

7.3.1 There are no apparent community safety implications.

7.4 Human Rights Act

7.4.1 The following right is applicable in respect of this application.

Article 6 a procedural right to a fair hearing. A public inquiry has been held and human rights implications have been considered in the procedure established. If the decision is to confirm or reject the application reasons should be given.

7.5 **Trade Union**

7.5.1 There are no apparent Trade Union implications.

8. **Not for publication documents**

8.1 None

9. **Recommendations**

9.1 It is recommended that members accept the recommendations of the Inspector appointed to consider the evidence in relation to a village green application for land at Douglas Drive, Bradford known as Bradford Dyers Field and accept the application for the reasons set out in the Inspector's Report.

10. **Appendices**

10.1 Inspectors' Report

11. **Background documents**

11.1 Land at Douglas Drive, Bradford known as Bradford Dyers Field application, supporting statements and appendices.

**RE: APPLICATION TO REGISTER LAND KNOWN AS “BRADFORD DYERS FIELD”
AND LOCATED OFF DOUGLAS DRIVE, BRADFORD AS A TOWN GREEN
(APPLICATION REFERENCE VG20BP)**

**REPORT
OF INSPECTOR D E MANLEY QC**

- I I was instructed by Bradford Metropolitan District Council as Registration Authority to hold an independent Non-Statutory Inquiry into the above application and to thereafter provide a report in respect of my findings together with a recommendation as to whether the application should be rejected or accepted and the Commons Register amended accordingly.

- II The land is unregistered and was originally owned by the Bradford Dyers Association. In 1964 William Hollins and Company trading as Viyella took over the Bradford Dyers Association. It is probable that Viyella took over ownership of the land. On 7th of January 2009 Viyella moved into Creditors Voluntary Liquidation. The Registration Authority have entered into correspondence with Messrs Poppleton and Appleby in an attempt to trace the owners of the land but that has failed to clarify matters. Messrs Poppleton and Appleby were made aware of the current Town Green application but declined to lodge any objection to the same.

- III In August 2010 the land was fenced off and made inaccessible by Rose Annemarie Simpson of 310, Sticker Lane who subsequently applied to the Land Registry to register adverse possession of the land. That claim was rejected by way of a letter dated 24th of June 2011. The fencing has since been taken down.

- IV The application process has not been wholly straightforward. By way of a Form 44 Application Form dated 29th November 2010 Mr Martin Hall applied pursuant to S15(2) of the Commons Act 2006 to register an area of which the current application land forms only a part as a Town Green. On 10/12/2010 the Registration Authority returned Form 44 to Mr Hall noting that as part of the land was enclosed then that part of the land fell within the provisions of S15(3) of the Commons Act 2006 and not S15(2) ibid.
- V By a Form 44 dated 13th December 2010 Mr Hall applied to register the parcel of land before me as a Town Green pursuant to S15(3) ibid ie. the formerly enclosed area. The application was given the reference VG20BD and the application was supported by way of letters by a considerable number of the inhabitants of Douglas Drive and Douglas Road, Bradford.
- VI The application was objected to by Rose Annemarie Simpson on behalf of herself and her mother by way of an undated letter received by the Registration Authority on 26th April 2011. In summary the basis of the objection was that it was denied that any local residents had used the land for sports or recreation over the relevant period. It was claimed that Ms Simpson and her family had maintained the application land ever since the purchase of 310, Sticker Lane and that they had kept various animals on the land. It was said that the application land was of no use to play on because of its boggy condition.
- VII A Public Inquiry was set for 27th October 2011. Ms Simpson did not attend on 27th October 2011 although she had been served with Notice of the Inquiry by way of posting. At the Inquiry an application was made by Mr Hall to amend the terms of the application so that instead of relying upon use of the land by a significant number of the inhabitants of a locality, namely Bowling St John in the Diocese of Bradford the application should rely upon use by a significant number of the

inhabitants of a neighbourhood within a locality. The neighbourhood was identified as the freestanding enclave of houses comprising Douglas Drive, Douglas Road and Lower Lane. This comprises a group of about 34 houses generally built in the late 1920s and into the 1930s. The locality remained as previously identified. I allowed the amendment but adjourned the Inquiry to 9th January 2012 in order that the Objector should be given notice of the amendment and further so that the amended basis of the application could be advertised.

VIII Notice of the Public Inquiry was placed in the Bradford Telegraph and Argus on 4th November 2011 and objections were invited by 16th December 2011. Three notices were placed on site on 8th November 2011 and the revised Notice was sent to Ms Simpson at 301, Sticker Lane by Recorded Delivery. Ms Simpson did not contact the Registration Authority following the above communication and did not appear at the reconvened Public Inquiry held at Bradford Town Hall on 9th January 2011.

IX **The Law**

S15(3) *ibid* states:

“This subsection applies where -

- (a) A significant number of the inhabitants of ... any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;
- (b) They ceased to do so before the time of the application but after the commencement of this section [06/04/2007]; and
- (c) The application is made within the period of two years beginning with the cessation referred to in paragraph (b).”

Satisfaction of the above criteria entitles the application land to be entered into the Commons Register as a Town Green.

X There is case law upon the provisions and I now turn to this so far as it is relevant.

- “... a significant number”. There are no formulae provided by the statute to address this threshold. “Significant” is a well understood word meaning, *inter alia*, “notable”. It is clear from the case of ***R (Alfred McAlpine Homes Limited) v. Staffordshire CC*** [2002] EWHC 76 Admin that “significant” does

not necessarily denote a considerable or substantial number. At para 71 *ibid* Sullivan J (as he then was) observed “A neighbourhood may have a very limited population, and a significant number of the inhabitants of such a neighbourhood might not be so great as to be properly described as a considerable or substantial number”. It is clear therefore that consideration of “a significant number” cannot be divorced from a consideration of the size of the locality or neighbourhood that is being relied upon. What matters at the end of the day is that the number of people using the land in question must be such as to indicate that the land is in general use by the relevant local community as opposed to occasional relatively limited use by a relatively limited number of people.

- “... of the inhabitants of any locality or of any neighbourhood within a locality ...”. In the present case it is the issue of neighbourhood that requires consideration. “Neighbourhood” is an imprecise concept although as Sullivan J observed in ***R (Cheltenham Builders Limited) v. South Gloucestershire Council*** [2004] JPL 975 at paragraph 85 a neighbourhood must have a sufficient degree of “pre-existing” cohesiveness ie. it must be capable of a meaningful description in some way. The shorter OED defines “neighbourhood” *inter alia*, as “a district or portion of a town, city or country especially considered in reference to the character or circumstances of its inhabitants; a small but relatively self-contained sector of a larger urban area”. In any given case the question of whether or not a “neighbourhood” has properly been identified will be highly fact sensitive.
- “... have indulged in lawful sports or pastimes”. The words form a composite expression which is capable of embracing a wide range of activity such as walking (with or without dogs), children playing etc although the walking must not be such as would give rise to a presumption of dedication as a public

right way (see *Oxfordshire CC v. Oxford CC* [2004] Ch 253 paras 96 - 105.

In my view “pastime” is a very broad concept which embraces a whole host of activities which might be engaged in to pass time agreeably. The activities must have been “lawful” in the sense that they must not involve damage to the land in question.

- “... as of right ...”. Use must therefore not be by force or stealth or licence. “Force” is not limited to physical force but can also include ignoring notices of prohibition, climbing or breaking down fences or gates. The subjective mindset of the user is however not the issue - it is irrelevant whether the user did or did not subjectively believe that he or she had a “right” to use the land.

The burden of proof lies upon the Applicant who must prove satisfaction of the criteria to the relevant civil standard ie. upon a balance of probabilities.

XI The Evidence

Evidence from 8 residents of Douglas Road/Drive:

- (1) Lived at this address circa 35 years. Married with 2 children who are now 37 and 35. The residential area is a neighbourhood - it is isolated and on its own. Nearest post office is ¼ mile away; nearest bus stop is 5 - 10 minute walk. It is an established community. A lot of people lived in the neighbourhood a long time. Whenever there is a public celebration we all club together and celebrate eg. Royal Wedding; the Queen’s Jubilee. We have a Neighbourhood Watch formed about 8 years ago. Mostly people know each other by first name. People help each other out. An example is that a few months ago the gentleman at No. 13 was going to take the elderly resident at No. 17 to the hospital but couldn’t because someone had fly tipped the ginnel so he couldn’t get his car out. We all organised for councillors to visit and Bradford came and removed the material. There is a community. The houses were being built from the late 20’s and into the 30’s.

There is an annual bonfire held on the NE tip of the land. It is sometimes moved - but it is always held within the area talked about. We clear the land up afterwards. I had a dog for 15 years - he died 3 years ago. I would take the dog on the land 2 or 3 times per day. When I was on the land I let the dog off the lead and followed him. I regularly saw children using it - weekends and after school. In the summer the local children camped on it - my children camped on it and children do now. It is a safe place in a big urban area. Children build dens on it all the time. A lot of people went and walked dogs on the land - not all of them were from the neighbourhood - some drove to the land, but generally I would recognise the users. Mostly dog walkers used it, they rarely follow a route. Dog walkers don’t walk through the scrub but children make dens in it and play hide and seek. Mr Wotton cuts the grass at the back of Douglas Road [NB]. that is outside the

application site]. I have seen people on the wider area we are talking about - picnicking in the summer or just sitting about talking while the children play.

- (2) I agree with resident (1) as to why it is a neighbourhood - he's right. I moved in 15 years ago and had 2 boys, 3 and 5 years of age. My youngest has just turned 18. The children were always on the land - climbing trees and playing hide and seek. I have had 2 dogs in my time there. Who ever was home first would take the dog out - either me or my wife. We would wander about with the dog - we usually threw a ball or Frisbee and the dog would fetch it. The nearest park is about a mile away so the site is the only place to have a run around in with a dog. I would frequently see other people there - sure there were dog walkers but I saw kids playing - they would be out in all weather - camping and in tents even in the rain. Adults would often be on the land playing with the kids - throwing a ball or a Frisbee about. I have regularly seen families out together. I have seen people flying kites - not often. I went to the annual bonfire until the land was fenced off. I went before I lived at my present address - it was quite a big event. I have never seen signs prohibiting use or giving permission. Nobody has ever spoken to me about my use of it.
- (3) I agree with resident (1) on the issue of neighbourhood. I have lived there 43 years - I had 2 children who are now 42 and 40. My experience is the same as the others who have spoken - my children played on it all the time when growing up. My grandchildren who are now 20 and 21, used to play out regularly. They lived outside the neighbourhood as defined but within the wider local area. My children were playing on it outside the 20 year period ie. pre-1990. I used it in the 70s as a circuit course for training - I was in the TA. I did my training 2 or 3 times per week. I used to do endurance in the bad weather so I didn't tend to see others using it. I had a dog for 17 years - he died 10 years ago. I used to walk him on there every day. I would take him out early in the morning and whenever he wanted to in the evening. He was a spoilt dog. There used to be a route which followed the southern boundary of the site along the back of Nos 10 - 13 Douglas Drive and then cut across to the top corner but a retaining wall was built in the mid-1990s and cut the route off. People walk dogs over the whole site. Not everybody used the route. I used to see other dog walkers. They just wandered about. There were always kids up there doing what kids do - running about.
- (4) I have lived there from 1977 - 97 ie. from when I was born. Then I bought the house from my dad about 2006. I agree with what people say about neighbourhood. I played on there as a child - it stopped when I was in my teens. I played with other kids from the area. I used to play football and cricket - it wasn't as overgrown as it is now in some parts. We played hide and seek on there a lot. I have 3 children: 10, 15 and 6. I would go up with them once or twice per week when they were younger if the weather was okay. We would walk the dog together, kick a ball and play catch and Frisbee. I saw kids playing all the time - I could always see them from my living room window. I see dog walkers as well. The dog walkers didn't really have a route. I have always attended the bonfire parties. I can recall public celebrations on it - I can't recall what they were for now.
- (5) I have lived there since 1988. My son is now 24 and my daughter is now 28. I think of the neighbourhood as a small community - there are no other houses for about ½ mile and everybody knows everybody. My son used the land - he played football on it with other kids from the neighbourhood. If you

ever wanted him that was where he was. I have had dogs all my life. I have had 3 since 1990s. I've always taken dogs out twice per day and sometimes take them out at lunchtime. I trained all my dogs on it - I use a dummy and they retrieve it. We use the whole area. I train them for the gun. I would see other people - there were a lot of children on it and I saw a lot of dog walkers. The dog walkers would wander all over - there was no particular route. I recognised them - they were just local residents. I would go to the local bonfire every year.

- (6) I agree with what has been said re neighbourhood. Everybody knows each other and helps each other. That is how it should be. I have lived at my address for 41 years. I have had a family there - my children are 44 and 42. I can see the land from my back garden. I used it when the kids were little. Until 5 years ago I kept ferrets for 7 or 8 years. We walked the ferrets on the land - we had no particular route. My son used them for rabbiting. When I am in the garden I can see what is going on in the application land (I see the wider field from within the house) I see people walking dogs regularly. Children are always out - if it is nice weather children will be on that field. They run about. I used to go to the bonfires - it was a big community event.
- (7) I agree with what others have said. I see the land clearly from my kitchen and dining room window. We moved in, in 1997. When I look out I see people using it as everyone has described. There is nowhere else for children to go - it is the only safe place. The immediate area is crisscrossed by roads which carry a lot of HGVs. I use it for walking the dog - I have had a dog since the day we moved in. I walk the dog every day - I go any time as I am at home. I often go with my granddaughter after school. We don't have a route - we wander.
- (8) I have lived Douglas Drive for 32 years. The neighbours have more or less stayed - it is very settled. There is very little crime as we all watch out for each other. When the fence went up there was a lot of complaint - people spoke to each other and we looked into what we could do. We had several meetings at the rugby club and my house and it was a community decision to go down this route. When the fence went up we had about 75% of all residents in attendance. The fence was up for 12 - 14 months and then it was taken down. Once it came down people thought it was all okay and so we didn't have the same level of attendance.

Last winter we had a lot of snow. The men kept all the roads clear and the women made us tea - it is a sense of community. The Neighbourhood Watch actually commenced originally in 1988 - that fizzled out after a few years. Then there was another one started 8 years ago; that fizzled out. And now a new one has started. Most people have lived in the neighbourhood for 20 years or more - it is very settled.

XII Written submissions were lodged for the attention of the Inquiry by:

- M Hall
- K Hargreaves
- R Welch
- S Ainge

- Mr and Mrs J Bloasfuel (?)
- M Burgan
- G and M Cooper
- Mr Daynes
- M Lycett
- J M Guy
- C Marsland
- A Mahdi
- B Mitchell
- B Parsons
- P Parsons
- K Parsons
- D Shale
- J Starbuck
- D Wotton

All of these people live within the claimed neighbourhood.

XIII I carried out an unaccompanied site visit on Sunday 22/10/2011. I was approached on site by Mr Hall who asked if I was the Inspector - I told him that I was but that we must not speak. He respected the situation and withdrew from the site. I asked at the Inquiry if Mr Hall wanted me to carry out an accompanied site visit but he did not feel it necessary. I agreed with him.

XIV The land is an irregularly shaped parcel of land lying to the east of Douglas Road and Douglas Drive. It is crossed by Public Footpaths 304 and 306. Dense brambles cover some parts of the land but large parts are accessible. I did not find the site to be "boggy" on my site visit but firm underfoot and readily capable of being walked over. There was some limited evidence of fly tipping.

XV I have no difficulty at all in accepting that the area of Douglas Drive, Douglas Road and Lower Lane forms a neighbourhood. It is isolated and self-contained. The residents are often very long-standing. On my site visit I noted people talking on the pavement on Douglas Drive. Mr Mitchell gave the clearest of explanations as to why the area has a cohesive quality and I accept this as pointing clearly to the existence of a neighbourhood. Indeed given the isolation of this particular residential area, standing alone amongst a range of fairly harsh urban users I would be very surprised indeed to find there was not a sense of community in this small group of well tended houses.

XVI The relevant 20 year period runs from August 1990 to August 2010. I accept the Applicant's witnesses as witnesses of truth and I attach significant weight to the written submissions placed before the Inquiry which were all handwritten and which were consistent with the oral evidence I heard. This is not a case in which a mass of pro-forma written material is submitted but rather it is a case in which people have taken the trouble to sit down and individually write of their experiences vis-à-vis the land. It is plain from the evidence that the land has been used for recreation consistently over a very long period which well exceeds the 20 years I am concerned with. The uses have been, as one would expect in respect of a greenfield site, located close to an isolated group of houses in an otherwise harsh urban environment. Once again I would have been extremely surprised if people had not regularly used the land for dog walking and if children had not used it for general play. It is moreover quite clear that the land was in general community use; this is not a case where use could ever be described as occasional or sporadic trespass.

XVII For the reasons given I respectfully recommend that the Application be accepted as made out and the land be duly registered as a Town Green.

D E MANLEY QC