

Minutes of a Meeting of the Miscellaneous Licences Panel held on Thursday 2 May 2013 at City Hall, Bradford

Commenced 1015
Adjourned 1110
Reconvened 1140
Concluded 1200

PRESENT – Councillors

LABOUR	CONSERVATIVE	LIBERAL DEMOCRAT
Abid Hussain	Mallinson	C Reid
Khadim Hussain	Whiteley	
Ikram		
Swallow		

Observer: Councillor R L'Amie

Councillor Abid Hussain in the Chair

6. DISCLOSURES OF INTEREST

- (i) For the sake of transparency, Councillor Swallow disclosed that she was the Council's Play Champion, in relation to Minutes 9 and 10.
- (ii) For the sake of transparency, Councillor Khadim Hussain disclosed that he was a Member of the Local Management Board of Incommunities, owners of the land under discussion, in relation to Minute 10.
- (iii) For the sake of transparency, Councillor Mallinson disclosed that he was a Member of the Local Management Board of Incommunities owners of the land under discussion, in relation to Minute 10.

ACTION: *City Solicitor*

7. MINUTES

Resolved -

That the minutes of the meeting held on 18 October 2012 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.

9. APPLICATION FOR THE REGISTRATION OF LAND AS A TOWN OR VILLAGE GREEN AT LAND AT BACK FIELD, LARCH HILL CRESCENT, ODSAL, BRADFORD VG22BD – COMMONS ACT 2006 s15(3) Wibsey

The City Solicitor (**Document “C”**) presented an application for registration of land at Back Field, Larch Hill Crescent, Odsal, Bradford.

Members were advised that the land was comprised of a green area enclosed by the rear gardens of Numbers 1-71 Larch Hill Crescent, Odsal, Bradford. It was understood to be land left over by the developer of the surrounding houses in the late 1950's, originally intended for the construction of garages but left undeveloped when the developer went into receivership. The land was mainly unregistered and there was no recent planning application for the land, however, the planning history of the land was of no relevance to the determination of the subject village green application as the requirement was to satisfy a statutory test.

The application had been advertised on site and in the local press inviting representations during a six week period expiring on the 26th April 2012. Four letters of objection were received all from residents of Larch Hill Crescent. The letters of objection were appended to Document “C”.

It was explained that a Barrister had been appointed by the Registration Authority to act as Inspector to hear and consider the conflicting evidence put forward. A Non Statutory Public Inquiry was held on 10th December 2012 to hear evidence from the Applicant and the Objectors. The Barrister's recommendation following the Public Inquiry and site visit was that the Council as Registration Authority should reject the application for the reasons set out in Document “C”.

The applicant described the locality in which the site was situated as lying within the ecclesiastical parish of Bradford South and had provided a map from the Diocesan Office as evidence in support. This was sufficient in law to constitute a locality. The Applicant further described the site as being within a neighbourhood within that locality known as Larch Hill Estate and on balance that was accepted by the Inspector.

Members raised a number of questions to which the following responses were provided:-

- Rights to use private land could be accrued by residents. The use did not have to be acquired by the same residents but must have been obtained over a period of 20 years.
- The statutory test to be satisfied to determine the land as a Town or Village Green included four factors all of which must be fulfilled. The factors were that the land must be used by a **significant number of inhabitants**; of the **locality or neighbourhood within a locality**; for **lawful sports and pastimes** as of **right for a period of no less than 20 years**.
- The onus was on the applicant to provide evidence of fulfilling each criterion.
- Walking from A to B was not classed as a 'recreational activity' in the area for the purposes of the statutory test as only part of the land, a footpath, had been used.
- The use of land by children playing was only one element in the land under discussion.

A Ward Councillor representing the applicant addressed the meeting and reported that he had attended the public inquiry. The use of the area by dog walkers was referred to and it was maintained that the use by dog walkers was not restricted to the footpath. It was stressed that a number of witnesses had reported that the area was used by children playing and that use had continued for a number of years. It was reported that the objector had blocked the entrance to the land in question and had cleared the area of grass and vegetation. The findings of the Inspector had been based solely on a site visit which had taken place after the land had been cleared and when residents had been restricted from accessing the site. It was believed that had the Inspector visited prior to those activities taking place he would have concluded very differently.

The Ward Councillor continued to explain that he had represented the area for over 23 years and had been involved on many occasions with residents' actions to maintain and improve the condition of the land.

Following the presentation by the Ward Councillor Members raised a number of issues to which the following responses were provided:-

- To claim adverse possession of the land the possession must be unchallenged for a period of 12 years. It was known that one resident had successfully undertaken that process and it would be prudent to ensure that, should be application to register as a town/village green by approved, that piece of land be excluded from the registration.
- The opportunity to claim adverse possession was available to any resident or indeed anyone.
- Recreational activity could take a variety of forms and did not have to occur on a daily basis. Dog walking was not excluded as a recreational activity if it took place across the whole area of land.

The applicant addressed the meeting and explained that the objector had blocked the entrance to the land; he cleared a large part of the site and erected scaffolding to a height of 20 feet. It was maintained that when the Inspector visited the land he witnessed was in a very different condition to the area which had been used by residents prior to the entrance being blocked. It was explained that the area had not previously been landscaped but that residents had planted trees and children had played in the area. It was maintained that the applicant had lived in the area for over 30 years and for the whole of that period it had been used by local children to play. A bonfire had been organised over a number of years on the land which had been enjoyed by a number of residents.

At this point in the proceedings the Panel passed the following resolution in order to facilitate further detailed consideration of evidence.

Resolved -

That the public be excluded from the meeting during discussion of the item relating to land at Back Field, Larch Hill Crescent, Odsal, Bradford. village green application, on the grounds that it is likely, in view of the nature of the proceedings, that if they were present, exempt information within Paragraph 5 (Legal Privilege) of Schedule 12A of the Local Government Act 1972 (as amended) would be disclosed and it is considered that, in all the circumstances, the public interest in allowing the public to remain is outweighed by the public interest in excluding public access to the relevant part of the proceeding for the following reason:

It is in the overriding interests of proper administration that Members are made fully aware of the legal implications of any decision without the risk of prejudice to the Council's case in any future legal proceedings that may be initiated.

At this point, 11.40 hours, the meeting resumed in a public session. Members concluded after a further detailed consideration of the evidence set out in the Inspectors Report that the land had been used by a significant number of residents of the locality for over twenty years; that there was a strong affiliation with the land by residents of the area currently and in the past; that the evidence suggested that, until the nature of the land had been altered by the blocking of the entrance and clearing of the area, it had been used for dog walking, children playing, nature walks, football and a community bonfire and that it had been demonstrated that the land had been well used and enjoyed by residents for over 30 years.

Resolved -

That, after a further and detailed consideration of the evidence provided, it was decided that all the criteria laid down by statute to register land as a Town or Village Green had been satisfied and the application to register the land at Back Field, Larch Hill Crescent, Odsal, Bradford, should, therefore, be accepted.

ACTION: City Solicitor

**10. APPLICATION FOR THE REGISTRATION OF LAND AS Thornton & Allerton
A TOWN OR VILLAGE GREEN AT COTE LANE,
ALLERTON, BRADFORD VG24BD – COMMONS ACT 2006 s 15(2).**

The report of the City Solicitor (**Document "D"**) presented an application for registration of land at Cote Lane, Allerton, Bradford.

Document "D" reported that the application was founded upon the use of land for lawful sport and pastimes, as of right, by the inhabitants of the locality or a neighbourhood within a locality for a period of at least 20 years counting back from the date when the application was submitted. A plan identifying the areas concerned was attached to Document "D".

The land was comprised of two irregular shaped green areas which formed part of a much larger parcel of land acquired by the Council on 23rd July 1954 under powers conferred on the Council by the Housing Acts 1936-1952 for the purpose of housing. The larger part of the land was progressively developed for housing with the Cote Lane part being built in 1959.

The two areas of land forming the subject of the application were never built on, but as was common on such housing estates the land was laid out as open space and thereafter maintained by the Council. Maintenance records kept by the Council showed that the grass was cut 13 times each year. On 24th February 2003 the application land was transferred to the Bradford Community Housing Trust (BCHT) as part of the housing stock transfer and the maintenance has since been carried out by the new owner. The land was currently within the ownership of Incommunities as successor to BCHT. There was no recent planning application for the land; however, the planning history of the land was of no relevance to the determination of the subject village green application as the requirement was to satisfy a statutory test.

Members were advised that a barrister was appointed by the Registration Authority to act as Inspector to hear and consider the conflicting evidence put forward. A Non Statutory Public Inquiry was held on 6th, 7th and 8th February 2013 to hear evidence from the Applicant and the Objectors. The Inspector reached three conclusions:-

- i. that the evidence did not establish a “neighbourhood”
- ii. that even if it did, use by a significant number of inhabitants over the requisite period of time was not established by the evidence
- iii. that regardless of the above any such use which had taken place was use “by right” not “as of right” by reason of the land being laid out and maintained as open space

The barrister’s recommendation following the Public Inquiry and site visit was that the Council as Registration Authority should reject the application for the reasons set out in Document “D”.

In response to questions it was confirmed that the area was designated as public space. Residents did already have rights to cross the land and children were allowed on the area to play.

Resolved -

That the application to register the land at Cote Lane, Allerton, Bradford as a Town or Village Green be rejected for the reasons set out in the Inspectors’ Report and recommendation received by the Council on 12 February 2013 contained at Appendix 2 to Document “D”.

ACTION: City Solicitor

Chair

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

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THESE MINUTES HAVE BEEN PRODUCED, WHEREVER POSSIBLE, ON RECYCLED PAPER