

Planning and Rights of Way Committee

30 March 2021

Application to register land known as Rascals Wood Field in the parish of Shipley as a Town or Village Green

Report by Director of Law and Assurance

Electoral division/s: Billingshurst

Summary

West Sussex County Council, as Registration Authority for town and village greens received an application to register land known as Rascals Wood Field in the parish of Shipley in November 2019.

The application was made by local resident, Mrs Tessa Nash and sought to register the land as a village green under Section 15(2) Commons Act 2006.

During the statutory consultation process, objection to the application was made on behalf of the Landowners, Occupiers and Catesby Estates Limited.

An Independent Inspector, Mr Stephen Whale (Barrister Landmark Chambers) was appointed to hold a non-statutory public inquiry into the matter. This was held between 19 and 21 January 2021 and Mr Whale reported his findings and recommendation in a full report dated 15 February 2021. The full report is attached at Appendix 1.

Recommendation

That the application for the registration of land know as Rascals Wood Field as a Town or Village Green be refused for the reason set out in the Inspectors report dated 15 February 2021.

1. Introduction

- 1.1 The application made by Mrs Tessa Nash to register land known as Rascals Wood Field in the parish of Shipley as a Town or Village Green was received on 28 November 2019.
- 1.2 The application seeks to register the land as a Town or Village Green under the provisions of Section 15(2) Commons Act 2006.
- 1.3 In order for an application to succeed it must be shown;

- a) that a significant number of the inhabitants of any 'locality' (or of any 'neighbourhood within a locality')
 - b) have indulged in lawful sports or pastimes as of right (i.e. without permission, force or secrecy) on the application land for at least 20 years and they continue to do so at the date of the application.
- 1.4 The application land comprises a broadly triangular field extending to approximately 0.9 HA and includes the main access track to and from the neighbouring farm, including dwelling house, Rascals Farm. During the course of the Inquiry it was agreed by all parties that an area of dense bramble on the eastern edge of the site be removed from the application. A copy of the agreed application plan can be found at Appendix 2.
- 1.5 It is the applicant's case that the land has been used by local residents for the purpose of "dog walking, kite flying, flying toy planes and general recreational use of an unspoilt area" for over 30 years.
- 1.6 The application was supported by 29 users evidence questionnaires which testified to use of 31 individuals from 29 different postal addresses.
- 1.7 The application was advertised in line with the statutory requirements on 12 March 2020.
- 1.8 Objection to the application was received from the landowners, Mr and Mr Burge, the occupiers of the neighbouring farm (Rascals Farm) Mr and Mrs Driscoll, and Catesby Strategic Land Limited – known all together as "The Objectors".
- 1.9 Catesby Strategic Land Limited have an interest in the application land by way of an option agreement and submitted a planning application to Horsham District Council on the 6 April 2020 for the following development – "Outline application with all matters reserved except for access (excluding internal estates roads), for the erection of up to 100 residential units, with the associated vehicular and pedestrian access". It is to be noted that Horsham District Council refused the planning application and an appeal has been lodged by Catesby Estates (the applicants for the planning permission).
- 1.10 For information, a copy of the Horsham District Council's decision notice (dated 7 August 2020) and reasons for refusal of the planning application can be found at Appendix 3.
- 1.11 The Objectors submitted an objection to the Village Green application. They considered that the application failed to overcome the burden placed upon the applicant to establish that the core requirements of Section 15 of the Commons Act 2006 have been established.

2. The Handling of the Application

- 2.1 In consideration of the representations made by the Objectors and the Applicant, and on the basis that there is not a right of appeal to village green decisions, an Independent Inspector was appointed to convene a non-statutory inquiry and provide a report to the County Council.

- 2.2 The inquiry provides a suitable platform to enable the various evidence to be efficiently explained and tested before an inspector.
- 2.3 In ***Somerford Parish Council v Cheshire East Borough Council & Anor [2016]*** the High Court quashed a decision made by a Registration Authority where it had proceeded by way of written submissions only. It was held by the court that there had not been a fair opportunity to make submissions on all the evidence and moreover there was a need to explore the issues by receiving and testing oral evidence at a public inquiry.

3. Consideration of the application

- 3.1 Due to the ongoing Covid pandemic, the inquiry was held virtually between 19 – 21 January 2021 and was live streamed on the County Council’s website. Details of the Inquiry, including the deadlines for submitting representations were published in the local press, sent to the Parish Council, Horsham District Council and notices were also posted on site.
- 3.2 Having heard the evidence both in support of and in opposition to the application, the Inspector (Mr Stephen Whale, Barrister, Landmark Chambers) produced a report to the County Council (Appendix 1). He considered that there were four issues for him to determine and his response to these are set out in paragraphs 12 and 13 of his report. These issues are:
- Issue 1: Is the neighbourhood relied upon by Mrs Nash a “neighbourhood” for the purposes of section 15(2) of the 2006 Act?
 - Issue 2: Is the locality relied upon by Mrs Nash a “locality” for the purposes of “neighbourhood within a locality” in section 15(2) of the 2006 Act?
 - Issue 3: Did a significant number of the inhabitants of the claimed neighbourhood within the claimed locality indulge in lawful sports and pastimes on the land during the 20 years ending 28 November 2019?
 - Issue 4: Did those inhabitants indulge in those lawful sports and pastimes on the land during those 20 years as of right?
- 3.3 His overall conclusions can be found at paragraph 79 of the report. He concluded:
- In relation to Issue 1, that the neighbourhood relied upon by the applicant is not a “neighbourhood” for the purposes of Section 15(2) Commons Act 2006.
 - In relation to issue 2, that the locality relied upon by the applicant is not a “locality” for the purposes of “neighbourhood within a locality” in section 15(2) Commons Act 2006.
 - In relation to issue 3, an insignificant number of the inhabitants of the claimed neighbourhood within the claimed locality indulged in lawful sports and pastimes on the land during the 20 years.

- 3.4 Given the Inspectors conclusions in relation to issues 1 – 3 (as set out above and in the main report attached) issue 4 does not arise for determination.
- 3.3 The Inspector, at paragraph 80 of his report, therefore stated that the application be refused.

4. Overall Conclusion and Recommendation

- 4.1 The recommendation of the Director of Law and Assurance is that Members should follow the recommendation of the Inspector, Mr Stephen Whale, on the basis that he has had the opportunity to hear, in public, all of the evidence and legal arguments. Such evidence has been tested under oath through cross-examination.
- 4.2 For the reasons set out at 3.3 above and in accordance with the findings of Mr Stephen Whale, members are recommended to refuse the application.

5. Other options considered (and reasons for not proposing)

- 5.1 Not applicable in this instance.

6. Consultation, engagement and advice

- 6.1 The application was advertised in line with the statutory requirements as detailed in paragraph 1.7. Details of the public inquiry and the deadline for submissions were also published in accordance with the directions of the appointed Inspector.

7. Finance

- 7.1 The County Council is under a duty to investigate applications to register Village Greens and all costs associated with the consideration of the application by officers' falls within existing budgets.
- 7.2 Cost implications arise:
- i. In the holding of a non-statutory inquiry to hear the evidence
 - ii. Should the decision of the committee be challenged by way of Judicial Review.
- 7.3 The decision taken by the investigating officer and the Rights of Way Committee is a decision based on the application of strict legal tests and the above costs cannot be a consideration in the determination of the application.

8. Risk implications and mitigations

- 8.1 The decision is one that must be taken on strict legal tests:
- i. If the application is not determined in accordance with the tests this could lead to a successful legal challenge by way of Judicial Review.
- 8.2 In reaching a recommendation the investigating officer has considered the evidence and recommendation set out in the Inspectors report.

9. Policy alignment and compliance

Equality and Human Rights Assessment

- 9.1 The County Council has a duty to have regard to the impact of any proposal on those people with characteristics protected by the Equality Act. Officers considered the information provided by the applicant, together with the responses from consultees and other parties, and determined that the proposal would have no material impact on individuals or identifiable groups with protected characteristics.

Human Rights Act 1998 Implications

- 9.2 It is unlawful for a public authority to act in any way, which is incompatible with a convention right. The rights, which should be considered, are rights pursuant to Article 8, Article 1 and Protocol 1 and Article 6.
- 9.3 Article 8 protects the right to respect for private and family life including an individual's home. This is a qualified right and there may be interference by a public authority if that authority does so with an intention of protecting the right and freedom of others.
- 9.4 Article 1, Protocol 1 deals with the protection of property. Again, this is a qualified right and interference of it may take place where it is in the public's interest to do so subject to the conditions provided by law. Any interference, however, must be proportionate. The main body of the report identifies the extent to which there is interference with these rights and whether the interference is proportionate.
- 9.5 The Committee should be aware of Article 6, the focus of which (for the purpose of this Committee) is the determination of an individual's civil rights and obligations. Article 6 provides that in the determination of these rights, an individual is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal. Article 6 has been subject to a great deal of case law. It has been decided that for rights of way matters, the decision making process as a whole, which includes the right of review by the High Court, complied with Article 6.

Crime and Disorder

- 9.6 The Definitive Map Modification Order process involves the application of legal tests, which mean that it is not possible to give weight to any effect on crime and disorder

Climate Change

- 9.7 Enhancement of places for recreation such as a Village Green is a positive contribute towards the Council stated ambition of being carbon neutral by 2030, however such considerations are not matters that can be taken into account when consideration applications against the strict legal tests

Public Health

- 9.8 The addition of new village greens could assist in enhancing the general health and wellbeing of the communities served by the Council. However,

such considerations are not matters that can be taken into account when considering applications against the strict legal test.

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Appendices

- 1) Inspectors report dated 15 February 2021
- 2) Revised application plan
- 3) Planning Application decision notice of Horsham District Council dated 7 July 2020

Background papers

- Application form and original application plan