

Response by the Inspector to Comments of Felicity Harrington on behalf of the Collingwood Green Association Trustees

1. In relation to whether a public inquiry should be held, my instructions from the registration authority are legally privileged. However, I can confirm that I considered with an open mind what the most appropriate disposal of the application is. I was not constrained by issues of financial resources. Ultimately, whether to hold a public inquiry is a matter of judgement for the registration authority, acting reasonably. Whilst I understand that some members of the public have a desire for a public inquiry to be held, given that my conclusion is that the application fails on the basis that the land is highway land, I consider that no useful purpose would be served by hearing all the evidence of use.
2. In relation to the evidence of adoption (see Ms Harrington's paragraphs 7 and 8), the adoption agreement set out the agreement between the developer and the Council to construct the highway to the requisite standard so that the Council could adopt the relevant area of land (amongst other areas) as highway to be maintainable thereafter at the public expense. The agreement is not the actual evidence of adoption (this would take the form of a minute or other internal record). However, together with the fact that the land has indeed been maintained at the public expense, the agreement represents clear evidence that the adoption did take place.
3. In relation to 'significant number of local inhabitants' (Ms Harrington's paragraph 9), my paragraphs 10 and 11 were simply setting out the statutory tests. I deal with the fact that any residual non-highway use would be too trivial or sporadic to amount to the assertion of a TVG right later in my advice at paragraph 34. The test of 'significant number' is a slightly different issue, but I do not consider it central to the determination of this application. There is no doubt that a very large number of people have used the land which is claimed to be registered. However, their use has been (either entirely, or almost entirely) pursuant to a right they already have to use the land as highway land.
4. The principle of statutory incompatibility is not relevant in this case (see Ms Harrington's paragraph 10). What is relevant is that the public's use of the land was no 'as if of right' because they already had a right to use the land as highway land.
5. I have no knowledge of the matters which led to the registration of the two areas of land elsewhere in West Sussex which are referred to in paragraph 11 and cannot comment on them. I have considered this application on its own merits.
6. In relation to case law referred to from paragraph 12 onwards of Ms Harrington's letter, DPP v. Jones is House of Lords authority on the scope of permitted uses of a highway. It is not overtaken by the 2006 Act which deals with a different matter, that is registration of land as a TVG. In any event, similar registration provisions were previously contained in the Commons Registration Act 1965.

7. I note the point regarding the landowner's intentions but this is not a matter to consider in the context of whether the registration application succeeds or not.
8. In relation to paragraphs 14 to 18 of Ms Harrington's letter, as I said in my opinion, the scope of permitted activities on a highway will depend on the type of highway concerned. What would be reasonable to carry out on a piece of highway like a grassy verge will be very different to on a motorway. In this case, on a piece of land with no vehicular traffic, it is likely that practically all activities (e.g. football etc.) will not obstruct the passage and re-passage of the public over the land. Hence, all of these activities will have been carried on 'by right' and cannot count towards the acquisition of TVG rights. In other words, the public already has a right to use the land for playing football etc. Therefore, the local inhabitants cannot acquire a TVG right by prescription since the public are not currently acting as trespassers. Ms Harrington supports this point by stating that the Jubilee party did not cause obstructions. If this is the case, then it could be seen as a legitimate use of this particular piece of the highway. In which case, it would not count towards the acquisition of a TVG right.
9. In conclusion, I maintain my opinion that the application is bound to fail on account of the whole of the land being highway land. The use of the words 'bound to fail' is due to the fact that this issue constitutes a 'knock out blow' to the application. Hence, no purpose would be served in holding a public inquiry to investigate the issues any further.

Response by the Inspector to Comments of Paul Dungate on behalf of the Collingwood Green Association Trustees

10. I have been shown an email from Mr Dungate which alleges procedural impropriety in the conduct of the registration authority in consulting on the TVG application. Although I was not involved in that process, I have been asked to comment on whether his concerns should affect the determination process.
11. In effect, Mr Dungate's concern is that the new owner, Ms Singh, was sent an owner's notice informing her of the TVG application and inviting her representations, after the original owner, Danshe Ltd., had already been given that opportunity. Whilst the Regulations do not require the new owner to be informed (and indeed it appears she ought to have been on notice of the application in any event from the sale process), they do not prohibit additional consultation where the registration authority considers it reasonable. In this case, I can understand why it was considered prudent to inform the new landowner. Furthermore, the applicant cannot suggest there has been any prejudice suffered by them as a result. They have had ample opportunity to submit evidence, and Ms Singh has not challenged the evidence of the public's use of the land in any event. Even if the registration authority had not formally notified Ms Singh, there would have been nothing to prevent her from making representations on the application when she took over ownership of the land and the registration authority would have been bound to take those representations into account.

12. I do not consider there has been any procedural impropriety. I note that Mr Dungate laments that it has taken some time for the application to be determined. That is regrettably not unusual in village green cases. Given that the issue at play concerns the effect of the status of the land as highway land, and not disputes of fact, I maintain that this matter can be dealt with without a public inquiry and that course will have the further advantage of bringing the matter to a close far more swiftly than if an inquiry were held and reported on.

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