



Regulatory Committee

Minutes of the meeting held at County Hall, Colliton Park,
Dorchester, DT1 1XJ on Thursday, 22 June 2017

Present:

David Jones (Chairman)

Byron Quayle, Shane Bartlett, Kevin Brookes, Ray Bryan, Keith Day, Jean Dunseith,
Beryl Ezzard, Katharine Garcia, Nick Ireland, Jon Orrell, Mary Penfold, Margaret Phipps and
David Shortell.

Members Attending

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Officer Attending: Mike Garrity (County Planning, Minerals and Waste Team Leader), Vanessa Penny (Regulation Team Leader), David Northover (Senior Democratic Services Officer) and Phil Crowther (Solicitor).

For certain items, as appropriate

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(Notes: These minutes have been prepared by officers as a record of the meeting and of any decisions reached. They are to be considered and confirmed at the next meeting of the Cabinet to be held on **Thursday, 13 July 2017.**)

Chairman's Announcements

- 1 The Chairman took the opportunity to thank Councillor Margaret Phipps for chairing the meeting held on the 1 June in the absence of himself and the Vice-Chairman on that occasion.

Apologies for Absence

- 2 An apology was received from Councillor Jon Andrews.

Code of Conduct

- 3 There were no declarations by members of disclosable pecuniary interests under the Code of Conduct.

With reference to minute 6 and having sought and taken legal advice, Councillors Kevin Brookes and Jon Orrell confirmed that as they were both members of Weymouth and Portland Borough Council and the Borough Council had as landowner objected to the Town Green application site at the Nothe, they would withdraw from the meeting and would not take part in the debate.

Minutes

- 4 The minutes of the meeting held on 1 June 2017 were confirmed and signed.

Public Participation

5 Public Speaking

There were no public questions received at the meeting in accordance with Standing Order 21(1).

There were no public statements received at the meeting in accordance with Standing

Order 21(2).

Application for the registration of a town or village green at Nothe Gardens, Weymouth

6 The Committee considered a report by the Director for Environment and the Economy which considered an application to amend the Register of Town and Village Greens by the addition of an area of land at Nothe Gardens, Weymouth, as shown on Drawing 08/18 accompanying the report.

With the aid of a visual presentation, and having regard to the Update Sheet appended to these minutes, the basis for the application was explained and what it entailed. Photographs and plans were shown to the Committee by way of illustration. This showed the claimed application area, its characteristics and setting within the townscape and its relationship with development in that part of Weymouth, including the local road network. Officers confirmed that evidence had established that the land of the application was in the ownership of Weymouth and Portland Borough Council and that the Borough Council had objected to the application. Photographs showed the site from various directions within, depicting features such as entrance signage, interpretation boards, benches, toilets blocks and pathways all of which had been maintained primarily by the Borough Council, in association with Natural England.

The background to the application was explained by officers. This had been made in 2008 by Roger Genge on behalf of 'Friends of Nothe Gardens' with the claim that the site had been used, as of right, throughout a period of 20 consecutive years. In 2012 the applicant asked to amend the application by reducing the area of the claimed green. The Committee's attention was drawn to the user evidence of the claimed green in support of the application which was summarised in the report, together with a matrix showing the activities in which people participated and charts showing periods and level of use. Issues to be considered were set out in Paragraph 9 of the report, with the statutory tests for determining a town or village green being set out specifically in paragraph 9.2.

The Committee's attention was also drawn to a statement of common ground agreed between the applicant and the objector – the Borough Council. This statement set out the matters on which the applicant and the objector agreed and the issues where they disagreed. This narrowed the issues that the Committee needed to determine.

With regard to the Update Sheet, the Solicitor drew the Committee's attention to the withdrawal of the application – on the day preceding the meeting - by the applicant following the applicant's reconsideration of the terms of the Memorandum of Understanding between the Borough Council and the Friends of Nothe Gardens. Essentially this gave assurances that the application land would not be used for development purposes, which was the primary reason for the application being lodged. However the Solicitor confirmed that in its capacity as Registration Authority, the County Council was required to adjudicate on the application and to register the application land if there were sound reasons for doing so or, if not, to reject the application.

Officers summarised the Borough Council's position - in that the land was in public ownership by them and has been used, with permission and by right, for public recreation since the late 19th century - with numerous organised events being held there which had restricted and limited public access. Moreover there were a series of byelaws enacted by the Borough Council which covered Nothe Gardens and served to restrict use. Similarly, evidence had been submitted to support this case, in opposition to the application. This too was outlined in the Director's report.

In response, as officers explained, the applicant stated that his understanding was that Nothe Gardens had been used for recreation by the public - as of right –

preceding their purchase by the Borough Council, with access never having been prevented or restricted even during organised events and that the byelaws had only been effectual since 2005.

Officers clarified that the substantive issue for the Committee to determine was whether use of the application site was 'as of right'. Officers considered that the evidence submitted by the Borough Council, in particular the Byelaws and ownership documents, together with its management and maintenance of Nothe Gardens clearly showed that use was 'by right'.

The attention of the Committee was drawn to the receipt of the view of the County Councillor for Rodwell, Clare Sutton, who considered that the Committee should draw its own conclusions based on the evidence presented and their expertise and experience and, on that basis, she would accept whatever decision was made. However she did feel that the applicant should have been given more opportunity to prepare his case and that description might be afforded him to have this opportunity when he spoke at Committee.

On that basis, the opportunity was provided for Roger Genge to address the Committee. He confirmed that whilst he had formally withdrawn his application, he explained the reasoning for why this had been lodged and the circumstances for this. However, upon reconsideration, he was now satisfied that the Memorandum of Understanding with the Borough Council was sufficient to alleviate his primary concerns for the use of this site.

The opportunity was then provided for members to ask questions of the officers presentation and on what they had heard and took this opportunity to have their understanding of what the application entailed clarified.

Officers drew the Committee's attention to the critical issues under consideration - in terms of the application site, the evidence submitted by both sides and whether use was 'as of right' or 'by right'. The Committee concluded that, in the circumstances, the recommendation contained in the Director's report was wholly appropriate given the evidence that had been asked to consider, with the evidence submitted by the Borough Council - in particular the Byelaws and ownership documents - together with its management and maintenance of Nothe Gardens clearly showed that use was 'by right' and this was conclusive in their view.

Resolved

That the application to register Nothe Gardens, Weymouth as a town or village green be refused.

Reason for Decision

The application site is owned by Weymouth and Portland Borough Council as a public park and gardens. As such the use of the application site is 'by right'. Further, the actions of the Borough Council in maintaining the application site and providing facilities for the public constitute implied permission, supporting the conclusion that use is as of right.

Decisions on applications for town and village greens ensure that changes to the Register of Town or Village Greens comply with the legal requirements and achieves the Corporate Plan objectives of:

Enabling Economic Growth

- Work in partnership to ensure the good management of our natural and historic environment
- Encourage tourism to our unique county

Promoting Health, Wellbeing and Safeguarding

- Actively promote physical activity and sport
- Improve the provision of, and access to, green, open spaces close to where people live

Arrangements for future meetings

- 7 The opportunity was taken to ensure that members knew that the reserve date of Thursday 17 August 2017 would be required to be used for a Committee meeting.

Questions from County Councillors

- 8 No questions were received from Members under Standing Order 20(2).

Meeting Duration: 11.45 am - 1.00 pm