



Regulatory Committee

Minutes of the meeting held at County Hall, Colliton Park,
Dorchester, DT1 1XJ on Thursday, 13 July 2017

Present:

David Jones (Chairman)

Byron Quayle, Kevin Brookes, Keith Day, Ray Bryan, Jean Dunseith, Katharine Garcia and David Shortell.

William Trite, County Councillor for Swanage attended, by invitation, for minute 14.

Officers Attending: Vanessa Penny (Regulation Team Leader), Phil Crowther (Solicitor), Phil Hobson (Senior Definitive Map Officer) and David Northover (Senior Democratic Services Officer).

Public Speakers

Henry Scott, the Scott Estate - minute 14.

Gerard Jensen, The Friends of Herston Fields – minute 14.

(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 Regulatory Committee to be held on **Thursday, 17 August 2017.**)

Acknowledgement

9 The Chairman took the opportunity to congratulate Phil Crowther on his appointment to Senior Solicitor from August 2017. The Committee endorsed this wholeheartedly.

Apologies for Absence

10 Apologies for absence were received from Councillors Jon Andrews, Shane Bartlett, Beryl Ezzard, Nick Ireland, Jon Orrell, Mary Penfold and Margaret Phipps.

Code of Conduct

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

Minutes

12 The minutes of the meeting held on 22 June 2017 were confirmed and signed.

Public Participation

13 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 Herston Fields, Swanage

14 The Committee considered a report by the Director for Environment and the Economy on an application to amend the Register of Town and Village Greens by the addition of an area of land at Herston Fields, Swanage.

Following a Public Inquiry being held during April 2016, the Inquiry's Inspector had

produced a full and reasoned report to the County Council in which he set out the evidence presented at the Public Inquiry and members were now being asked to consider the conclusions and recommendations reached by him in respect of this application, with the site shown on Drawing 14/36/1 accompanying the Director's report. The Committee's attention was drawn to the critical issues under the statutory test.

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. Photographs and plans were shown to the Committee by way of illustration, showing the claimed application area, its character and setting within the landscape and its relationship with development in Herston and Swanage. Photographs showed where the site was traversed by a footpath and depicted the site from various directions, showing its characteristics, landform and entrances. A graphic showed the addresses of those who had completed user evidence forms. The Committee's attention was drawn to the user evidence summarised in the report, together with a matrix showing the activities in which people participated and charts showing periods and level of use.

The background to the application and what it entailed was explained by officers. The application had been made in 2013 under Section 15(2) of the Commons Act 2006 by the applicant on behalf of 'The Friends of Herston Fields' with the claim that the site had been used, as of right, for lawful sports and pastimes throughout a period of 20 consecutive years. The elements of the tests for registration of the application area and what needed to be satisfied for it to be classified as a town or village green, were stated to the Committee.

Officers confirmed that the only objection to the application – in disputing the claim - had been made by the landowner, the Scott Estate, that the neighbourhood had not been sufficiently defined and, for much of the time, the land had been out of their possession so could not have taken action over how the land was being used during that time.

Responses to this from the 'The Friends of Herston Fields' included how it was considered that the application provided sufficient evidence to support the case for registration and their perception of the way in which the land had been managed in demonstrating that the use was as of right.

Officers advised the Committee about the weight which should be given to the Inspector's recommendations in coming to their decision and how those recommendations should be applied as a basis of their decision. Given this, it was for Committee to now determine the application, having considered the Inspector's report and its recommendations, with any decision being made on the balance of probabilities.

The Director's report set out a summary of the tests to be satisfied for the application to be able to proceed to acceptance and how the Inspector had interpreted the evidence and what he had taken into consideration in coming to his judgement on each, namely:-

- Locality or Neighbourhood within a Locality

the Inspector determined that Herston did exist as a "separate cohesive, identifiable entity", - a neighbourhood – and considered Swanage to be a locality. Consequently, Herston was defined as "a neighbourhood within a locality".

Whilst the Inspector considered that the area identified on the plan as a neighbourhood to be - to an extent – defective, he had subsequently

recommended that further consultation be undertaken to re-identify the area, with particular attention to its eastern boundary. Consequently he was satisfied that Herston was a cohesive area and so was a neighbourhood within the locality of Swanage. If that was wrong, he considered that as a historically separate settlement, Herston would be a locality.

The objector had claimed procedural unfairness in how the post Inquiry material relating to the neighbourhood issues had been considered, so that it he had been deprived of the opportunity to challenge it. Offices explained that both parties had been provided with all the relevant material and necessary documentation considered by the Inspector regarding the issue of neighbourhood; had been party to the Inspector's provisional conclusion and had been given the opportunity to make representations so, on that basis, there was seen to be no case of any procedural unfairness.

- Significant number of inhabitants

given the number of evidence forms from users of the application site, the oral evidence at the Inquiry and the written statements provided, there was considered to be sufficient and satisfactory evidence to demonstrate that there had been sufficient and significant usage of the application area. There was no reason to question the conclusions the Inspector had reached on the credibility of witnesses and their submissions made. Moreover, such usage was seen to have been sufficient for the landowner to have realised that town or village green rights were being asserted.

the Inspector had confirmed that he had discounted use of the public footpath by people who did not live in Herston and during any time when someone had moved away from Herston

- Lawful sports and pastimes throughout the statutory period

on the balance of probability the Inspector judged that the evidence provided by the applicant had made a compelling case that the recreational activities indulged in by the inhabitants of Herston constituted lawful sports and pastimes. There was also sufficient evidence to demonstrate that throughout the statutory period - April 1991 to April 2011 - and indeed prior to this period, people had consistently made use of the whole of Herston Fields for such lawful pursuits and pastimes.

He concluded that the evidence examined revealed that agricultural activity had been sporadic and generally light in nature and had not been so intensive as to prevent usage of the area as described, other than when ploughed.

- As of Right

conclusion was drawn that the level of use by the inhabitants of Herston was at such a level that the objector should have been aware of it. Historically, whilst the land had been tenanted - including by Dorset County Council for the County Farms Estate - it was found that the objector, as landowner, had retained some control of the land through the leases and from visits by its agents.

Whilst it was acknowledged that there was some evidence of steps having been taken by the tenants to thwart use, this was deemed insufficient to demonstrate that use of the area was not 'as of right'.

- On the land

conclusion was drawn that usage had been evident over the whole application site, contrary to the objectors assertions that this was not the case.

- For a Period of at least 20 years

- there was agreement that the 20 year period ended in April 2011 when the application site was ploughed. Consequently the application was being considered under Section 15(3) of the 2006 Act, as it had been made within two years of April 2011. Whilst there had been some low level agricultural use of the land during the 20 year period, this had not been sufficient to be an interruption to use. Moreover the usage of the site had coexisted between user and agriculture, with the differentiation between the ploughing undertaken in 2002 to that taking place in 2011 being detailed in the Inspector's Supplementary Report.

- Other issues – Effect of Leasing the Land

- the objector had contended that prior to the early 2000s, the landowner – the Scott Estate - had no reason to know of any 'untoward' use of Herston Fields because prior to that time they did not control the land :- it being let to tenants, including Dorset County Council. However in the Inspector's assessment - from the evidence provided by the witnesses on behalf of the Scott Estate - that even whilst the land was let, the objector still retained some responsibility for it, as detailed above. Accordingly, had more frequent visits been made, the widespread use of Herston Fields for recreational activities should have been apparent. Accordingly it was adjudged that the Scott Estate did have the means at their disposal to have been aware of the quality of the user as of right over Herston Fields in significant numbers throughout the statutory period and, consequently, could have intervened.

Accordingly, given what the Inspector had taken into consideration he had concluded that, having regard for the legal principles and having analysed both the documentary and oral evidence presented during the Public Inquiry, the case had been made for the registration of Herston Fields as a town or village green.

Given that the Inspector had the benefit of hearing all witnesses who gave oral evidence at the Inquiry, officers considered that he was best placed to consider issues of witness credibility and honesty. On that basis, officers agreed with the reasonable, proportionate and measured conclusions reached by the Inspector in his report and supplementary report and appreciated the grounds for his reasoning. On that basis, officers endorsed his findings and now sought the agreement of the Committee for Herston Fields to be registered as a town or village green.

The opportunity was then given for public speakers to address the Committee. Henry Scott, on behalf of the Scott Estate, drew the attention of the Committee to the representations which had been made by the owner on the Inspector's report. In his consideration, these had not been sufficiently taken into account in the recommendations made and had been seemingly dismissed without thorough consideration of the implications for the Estate.

He took the opportunity to emphasise the implications and consequences which he considered any decision to register the land as a village or town green would have on the Estate's ability to manage and farm the land as it saw fit in the future and the

practical constraints and limitations this would mean for how the land could now be utilised.

In doing so he highlighted what he considered to be errors and inconsistencies in the Inspector's report. He was particularly dissatisfied that the Inspector had accepted all of the applicant's evidence and dismissed all of the Estate's so that the conclusion could be drawn that the Inspector had made his mind up before the Inquiry. He also criticised the Inspector for not analysing use across each field separately and that there was no clear evidence to suggest that unfettered usage had been made of the entire site. For example he said that only three people had used the East Field.

Mr Scott outlined the history of the ownership and stewardship of the site, he confirmed that use of the site had been in the gift of the landowner, with tenancy to the County Council being merely for a peppercorn rent, on the understanding that this stewardship would be conditional on that basis. However this generous arrangement - to provide the opportunity for local farmland to be managed by local people - was now being compromised and challenged and advantage, seemingly, being taken of those arrangements. On that basis, he wholeheartedly opposed the call for the registration of the land.

Gerard Jensen, on behalf of the applicant, confirmed that the claim was being made as Herston Fields had provided an important recreational amenity to the locality of Herston for many years. Evidence taken into account at the Public Inquiry had shown this to be the case, with the pattern and frequency of local residents making use of the fields for lawful recreational use, as of right, over 20 years being established. Consequently, the Inspector's report was considered to be very comprehensive and fair in the judgements made. He now considered that as all the tests for registration had been met, in the judgement of an independent party, then this was considered to be a sound basis for the Committee to be able to endorse its recommendations.

Moreover, the claimed usage had not appeared to have interfered with, or compromised the use of, the land by the Estate or its tenants in the past and, in now classifying the land as a village green, this arrangement would be preserved and meant that its custodianship would be maintained. For this reason, Mr Jensen was confident that the Committee would be minded to accept the claim being made.

The County Councillor for Swanage considered that as the application had been thoroughly tested by independent means at a Public Inquiry and had met all the necessary requirements to be classified as a town or village green, the Committee should now endorse those findings and agree to the claim being accepted so that this land could be preserved for the recreational use of the neighbourhood of Herston.

The Committee were provided with an opportunity to ask questions of the officer's presentation, the content of the Director's report and of the Inquiry Inspector's report and took the opportunity to have their understanding of what the application entailed clarified. The Committee was advised of the considerations that they should take into account in coming to their decision and what material considerations were applicable in making their assessment.

The Committee took all the relevant information and evidence into consideration and, having had the opportunity to consider the merits of the application, in their assessment they could see no grounds on which the Inspector's conclusions and recommendations should not be endorsed. For them it was evident from the evidence in the Inspector's report, and endorsed in the Director's report, that the tests for classifying the application area as a town or village green had been met. Accepting that the land was a village green reflected, and recognised, what usage had been made of it, rather than this being created to allow for such usage.

Accordingly, on being put to the vote, the Committee endorsed the Planning Inspector's findings on the basis of the evidence presented in the Director's report and agreed that the land should be accepted as a village or town green and registered accordingly.

Resolved

That, in considering the application afresh following the Public Inquiry, the application to register land at Herston Fields, Swanage, as shown on Drawing 14/36/1 in the Director's report, as a town or village green be agreed and accepted;

That the land be recorded on the Register of Town and Village Greens

Reasons for decisions

Evidence presented to the County Council and considered by the Inspector appointed by the County Council demonstrates that the application should be accepted and the land registered as a town or village green.

Decisions on applications for town or village greens ensure that changes to the Register of Town and Village Greens comply with the legal requirements and supports 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

Questions from County Councillors

15 No questions were received from members under Standing Order 20(2).

Update Sheet

16 **Application for the registration of a town or village green at Herston Fields, Swanage.**

Letter from Wilsons Solicitors dated 6 July - circulated to Committee Members

Officers remain of the view that the issues raised by the objector in the representations enclosed with the letter are properly dealt with in the Inspector's Supplementary Report and in the Committee Report.

In relation to the neighbourhood issue, the post-inquiry consultation was undertaken in two parts. The first was in effect an 'in principle consultation' on whether the Inspector was entitled to find a neighbourhood which was different from that applied for. The second, at the objector's request, was on the material considered by the Inspector in reaching his recommendation on the extent of the neighbourhood. The objector's representations on neighbourhood attached to the letter were made before they had seen the material considered by the Inspector and the objector made further representations. Thus the objector's assertion that the neighbourhood as found by the Inspector is 'unsupported by the evidence' was made before the objector had seen such evidence.

Further comments received from Gerard Jensen on behalf on the applicant on 10 July 2017

Mr Jensen has submitted comments on the Objector's Representations on the Inspector's Report (which was also attached to the letter from Wilson's Solicitors. In summary these state that

- The objector is seeking to reopen matters that were fully considered by the Inspector
- The differences between the ploughing that took place in 2002, if it did take place and the ploughing in 2011
- The whole of the application site was used and not just a part of it.

Meeting Duration: 10.00 am - 11.30 am