

ST ALBANS DISTRICT

APPLICATION FOR THE REGISTRATION OF LAND AT BERNARDS HEATH, ST ALBANS AS A TOWN OR VILLAGE GREEN

Report of the Director of the Environment

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Local Member: Roma Mills

1. Purpose of the Report

- 1.1 To inform members of the Committee of an application to register land at Bernards Heath, St Albans as a town or village green
- 1.2 To inform members of the findings and recommendations of an independent Inspector following a non statutory local inquiry.
- 1.3 To ask members to decide whether to accept or reject the application.

2. Summary

- 2.1 On 16th October 2000 an application to register land at Bernards Heath, St Albans as a town or village green (as shown on Appendix 1) was received by Hertfordshire County Council from the Bernards Heath Village Green Preservation Society.
- 2.2 The application has been processed by the Environment Department, on behalf of the County Council as registration Authority, in accordance with the Commons Registration Act 1965.
- 2.3 The land is owned by Hertfordshire County Council. On 12th April 2001 the Corporate Services Department, acting for the landowner, submitted an objection to its registration as a town or village green.
- 2.4 The evidence from both parties was cross-examined at a non-statutory Public Inquiry held on 24th and 25th June 2002 in St Albans. An independent Inspector, Mr Vivian Chapman, was appointed to hold the Inquiry and to make a report with recommendations to the Registration Authority based on the evidence and current case law.
- 2.5 The Inspector recommends that the application should be rejected.
- 2.6 The full text of the Inspector's Report is attached to this report as Appendix 2.

3. Conclusion

The application to register land at Bernards Heath, St Albans, as a town or village green should be rejected for the reasons set out by the Inspector in his report dated 8 July 2002

1. Background

- 1.1 The land subject to the application for registration as a town or village green consists of an area of open land, known as ‘the Lower Heath’, behind the Fire and Ambulance Station, off Harpenden Road, in the north of St Albans. The area was formerly the site of the Ariston Works and was bought by Hertfordshire County Council in 1960 for a proposed new secondary school. It has been laid out as a playing field since the mid-1960s.
- 1.2 The land has been used by the Pioneer Youth Club which is owned by Hertfordshire County Council and is adjacent to the Fire Station. Local people have gained access through three main entry points and used the land for various informal recreational activities.
- 1.3 Although the field was briefly fenced along its southern boundary, access to the site was unhindered through the two other points.
- 1.4 In 1994 Hertfordshire County Council erected three signs on the land. One sign is in the south-east corner of the land near the boundary with Bridle Close and a second is between the Pioneer Club and the Heathlands School. The third sign, which is no longer present, was erected near the entrance by the Fire Station. The signs read “PRIVATE PROPERTY NOTICE PURSUANT TO SECTION 31 HIGHWAYS ACT 1980 NO PUBLIC RIGHT OF WAY”

2. Legal Process

- 2.1 On 16th October 2000 the Bernards Heath Village Green Preservation Society, submitted a formal application to Hertfordshire County Council, who are the Registration Authority for Hertfordshire under *the Commons Registration Act 1965* (“*the 1965 Act*”), to have the land shown on the attached plan (Appendix 1) registered as a town or village green.
- 2.2 The application is supported by statements from local people describing the recreational activities they have enjoyed over the land and the periods of time those activities have taken place. Copies of the statements are available to view in Rights of Way Unit at County Hall by prior appointment. Application should be made to the author (telephone number at the head of this report).
- 2.3 On 12th April 2001 the Corporate Services Department, acting for Hertfordshire County Council as the landowner, submitted an objection to its registration as a town or village green.
- 2.4 Until 30th January 2001, a town or village green was defined in section 22 of the 1965 Act as “land....on which the inhabitants of any locality have indulged in lawful sports and pastimes as of right for not less than twenty years”.
- 2.5 Since the application was received by the County Council before this time, application falls to be decided against this definition.
- 2.6 The determination of the application must be based on whether the evidence supporting the application shows that a village green has come into existence and should therefore be registered. If the County Council decides that the land in question meets the requirements of this definition, it must register the land. There is no statutory right of appeal to the First Secretary of State and the only challenge to a decision made by this Committee would be

through the process of a judicial review of the procedures and processes that have been applied to the determination.

- 2.7 The initial procedure for dealing with applications to register land as a town or village green is laid down in statutory Regulations. The applicant followed the prescribed procedures in his application, as did the County Council in notifying interested parties and advertising the application.
- 2.8 However there is no statutory procedure laid down in the Regulations for making decisions on applications.
- 2.9 At a meeting on 4th December 2001 officers from the Environment Department and County Secretary's Department concluded that both the case for the applicant and the case for the objector had merit and there were unresolved contradictions between the two cases. Given this, and the fact that Hertfordshire County Council is acting as both Registration Authority and as owner of the land, it was decided that in the interests of Human Rights and following the good practice and precedents set in the previous applications for town or village greens, an informal non-statutory public inquiry should be held.
- 2.10 The inquiry was held on 24th and 25th June 2002 before an independent Inspector appointed by the Council. His name is Mr Vivian Chapman and he is a practising barrister. He regularly acts as Inspector at similar inquiries around the country each year.
- 2.11 The Inspector's role was to hear evidence for and against the application, and to make a report with recommendations to the County Council as Registration Authority, based on that evidence and its interpretation in the light of the case law.
- 2.12 On 31st January 2001, section 98 of the *Countryside and Rights of Way Act 2000* ("the 2000 Act") came into force, which amended the definition of a town or village green to
"land which for not less than twenty years a significant number of the inhabitants of any locality, or any neighbourhood within a locality, have indulged in lawful sports and pastimes as of right, and either (a) continue to do so, or (b) have ceased to do so for not more than such period as may be prescribed, or determined in accordance with prescribed provisions".
- 2.13 No regulations have yet been made to accompany this new definition.
- 2.14 In his report the Inspector was asked to consider whether his recommendations would be any different if the applicant made a fresh application subject to the new definition introduced by the 2000 Act.

3. The Inspector's Recommendations

- 3.1 The Inspector recommended that the application should be rejected for the reasons set out in his report.
- 3.2 He found that whilst the land was a clearly defined area and that informal recreation enjoyed by local people on the land amounted to lawful sports and pastimes within the context of the 1965 Act definition, the application failed because firstly user of the land had not been by the inhabitants of any "locality" and secondly because there had not been user "as of right" for the full 20 years before the application.

- 3.3 The Inspector also found that if a fresh application were made under the new definition, it would fail. He found that although under the new definition the informal recreational user had been by a significant number of the inhabitants of a neighbourhood within a locality (i.e. the neighbourhood of Bernard's Heath within the locality of St Albans), user "as of right" had not been proved for the 20 years immediately before the application and was not continuing.
- 3.4 The full text of the Inspector's Report is attached to this report as Appendix 2.

4. Conclusions

For this reasons set out in the Inspector's Report date 8th July 2002, this report concludes that the application to register the land as a town or village green should be rejected by the County Council acting as Registration Authority pursuant to the 1965 Act.

5. Financial and Resource Implications

- 5.1 The finance that has been required to process this application has been resourced from existing County Council budgets.
- 5.2 However, should the applicant seek judicial review of the procedures and processes that have been used by the Registration Authority in determining this application such review procedures could incur costs for the Registration Authority that may not be covered by existing budgets.

Background information used by the author in compiling this report

Commons Registration Act 1965
Commons Registration (New Land) regulations 1969
Countryside and Rights of Way Act 2000
Report of Mr Vivian Chapman of 8th July 2002

If you require any further information on the items referred to in this report, please contact Beth Lardeur on 01992 556186.