

REGULATORY AND APPEALS
COMMITTEE

20thOCTOBER 2008

**JOINT REPORT OF DIRECTOR OF TRANSPORT SERVICES AND DIRECTOR OF
LEGAL AND DEMOCRATIC SERVICES**

**APPLICATION FOR REGISTRATION OF NEW TOWN OR VILLAGE GREEN AT
BULWELL HALL PARK AND BLENHEIM LANE ALLOTMENTS, BULWELL**

1. SUMMARY

- 1.1 The Council as Commons Registration Authority has received an application made under the Commons Registration Act 1965 for an area of land known as Bulwell Hall Park and Blenheim Lane Allotments to be registered as a new Town or Village Green. The application is also brought before Committee for decision on whether the application is 'duly made', and on subsequent progress with the application should it be deemed duly made.
- 1.2 This report also seeks delegated powers to authorise the Director of Legal and Democratic Services and the Legal Services Manager to determine whether future applications for registration of land as Town and Village Greens are duly made and to appoint an independent expert who will make recommendations to the Committee.

2. RECOMMENDATIONS

- 2.1 It is recommended that Members:-
- I) resolve that the application for registration of Bulwell Hall Park and Blenheim Lane Allotments as a Town or Village Green was not duly made for the reasons given at paragraphs 3.4 and 3.6;
 - II) delegate authority to the Director of Legal and Democratic Services or his successor in function and the Legal Services Manager or his/her successor in function, to determine whether any current or future applications made under the Commons Registration Act 1965 or the Commons Act 2006 for registration of Town or Village Green(s) are duly made;
 - III) in respect of any future applications for registration of land within Nottingham as a Town or Village Green that are determined to be duly made by the Director of Legal and Democratic Services or the Legal Services Manager, the Director of Legal and Democratic Services and the Legal Services Manager be given authority to:
 - (i) appoint an independent expert to consider the application; and either:

- (a) in the event that no objections are received to the application to instruct the independent expert to make recommendations regarding the determination of the application to be brought back to Committee for consideration; or
- (b) if objections against such registration are received, to appoint an independent expert to hold (i) either a non-statutory local inquiry or (ii) if all objectors agree to consider written representation and in each case to report to Regulatory and Appeals Committee with recommendations regarding the application.

3. BACKGROUND AND LEGAL FRAMEWORK

- 3.1 The Council are the Registration Authority for Town or Village Greens in the Nottingham City area. This role includes the duty to determine any valid applications to register areas of land as a Town or Village Green. For applications made before 6 April 2007 the relevant legislation is the Commons Registration Act 1965 and The Commons Registration (New Land) Regulations 1969; hereinafter referred to as 'the 1969 Regulations'. For applications made on or after 6 April 2007 the relevant legislation is the Commons Act 2006 and The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007; hereinafter referred to as 'the 2007 Regulations'.
- 3.2 Before considering the merits of the application, the Council must consider whether the application meets all of the procedural requirements detailed in the relevant Regulations, and therefore whether the application is 'duly made'. Once the application has been deemed 'duly made' it must be advertised in accordance with the relevant Regulations and any objections or representations must be considered by the Council before the application is finally determined. It is frequently the case that the land the subject of these applications is owned by the Council and as a conflict of interest arises, it is necessary to appoint an independent adjudicator to report to this Committee.
- 3.3 In March 2007 the Council received an application to register land at Bulwell Hall Park and Blenheim Lane Allotments, Bulwell as a Town or Village Green. The application and the plan submitted with the application showing the area of land covered by the application are attached as Appendix 1. The application was accompanied by over 100 user questionnaires from people detailing how they had used the application land. The area of land included is approximately 280 acres (113 hectares). As the application was received prior to 6 April 2007, the relevant legislation is the Commons Registration Act 1965 and the 1969 Regulations.
- 3.4 On review of the application by officers a number of procedural deficiencies were identified. While the Applicant had used the proscribed application form, and the application was accompanied by a statutory declaration as required by the 1969 Regulations, the deficiencies identified included:

Deficiencies with original application:

3.4.1 Map

the Applicant had supplied a map with his original application which:

- (i) was out of date as it did not show at least two well established housing estates which fall within the area applied to be registered as a Town and Village Green,

- (ii) did not show a scale (although, from a visual inspection was significantly below a scale of at least six inches to the mile, the scale required by Regulation 10(2) of the 1969 Regulations.)
- (iii) did not clearly delineate the boundary of the land to be registered as a thick felt-tip had been used to mark the boundary. Guidance provided by the Open Spaces Society advises applicants not to use a thick felt-tip pen when marking the boundaries of land as this cannot provide an accurate marking.

The map will be used as a basis for the registration, so applicants must be very precise in defining the land the subject of the application for registration, and the applicant must obtain appropriate permissions for use of the map in this way. The map (which is marked 'A') is attached at Appendix 1.

3.4.2 Locality

The Applicant has failed to identify the locality or neighbourhood within the locality, the local inhabitants of which primarily use the area to be registered. Guidance from the Open Spaces Society states that you need to be able to define this area on a map, and this is something that the Council can reasonably require under Regulation 7(d)(ii) of the 1969 Regulations.

3.4.3 Statement of Facts

The Applicant had not provided a full statement of facts, or indicated what activities are alleged to have taken place over what parts of the application area.

- 3.5 The Applicant was written to on 2 August 2007 regarding the procedural deficiencies identified in paragraph 3.4 above, and was given until 31 August 2007 to provide additional information to correct these deficiencies.
- 3.6 The Applicant sent some additional information to the Council on 30 August 2007. However, the following deficiencies remained with his application:

Deficiencies with Additional Information Provided:

3.6.1 Maps

The Applicant provided five additional maps, none of which met the requirements detailed in the letter dated 2 August 2007. The maps received were as follows:

- a) a further copy of the original map (also marked 'A') with the application area again marked with a thick red felt-tip line, making it impossible to decipher where the boundary of the land to be registered lies. This map is attached at Appendix 2.
- b) a print out from Google was provided showing an aerial photograph of the area to be registered. The boundary marked with a thick red-tip pen was not the same as the original map, the two housing estates had been removed from the application site, but an additional area to the south east of the site added. This map is attached at Appendix 3.

- c) an extract of the definitive map for the Hucknall area of Nottinghamshire, which did not show the whole of the application site, and the part included on the map was not outlined in any way. This map is attached at Appendix 4.
- d) an Ordnance Survey map which did not show the whole area to be registered, and the boundary of the land included in the map was marked with thick red pen, but again was not accurate. This map is attached at Appendix 5.
- e) an A3 map (also marked 'A') which had the application area outlined with a thick red line which made it impossible to ascertain exactly where the boundary of the land to be registered lies – an approximate calculation of the total area of the application site is 3 hectares different depending on whether we are working from the inside edge or outside edge of the red line. The boundary of the land is different to the original map (the two housing estates had been removed from the application site, but an additional area to the south east of the site added). The applicant had blacked out the detail regarding the scale and who had drawn the map. This map is attached at Appendix 6.

The replacement map(s) are not acceptable. At least two show a significantly different area of land to be registered as compared with the original map, including an additional area of land and altered the boundary of the land the subject of the application so as to avoid inclusion of two housing estates. All maps submitted have inconsistencies in the boundary of the application area. The original map is exhibited to the applicant's statutory declaration in support of the application. In view of the significant changes to the application area a fresh statutory declaration will be required to exhibit a map which fits the requirements of the 1969 Regulations showing the new application area. The amended map(s), which all show slightly different areas, have not been confirmed by all of the individuals who completed the user forms and failed to confirm that they used the area outlined in the original map as a Town or Village Green.

- 3.6.2 The Applicant failed to identify the locality or neighbourhood within the locality, the local inhabitants of which primarily use the area to be registered, and did not supply a map outlining such locality which had been reasonably required by the Council under Regulation 7 (d) (ii) of the 1969 Regulations.
- 3.6.3 The Applicant's additional information regarding his Statement of Facts does not detail which activities he says have taken place where, and over what period, and what his evidence is for each of these points.
- 3.7 A dedicated officer was then identified to consider the application and act as 'Registration Officer' in relation to applications for registration of Town or Village Greens. The Applicant was given a further opportunity to address the procedural deficiencies with his application in January 2008, when he was informed of the remaining deficiencies with his application and what the Council requires. The Applicant did not address any of the issues identified. The Applicant was invited to a meeting at the Council to discuss the procedural deficiencies with the application in March 2008. However, to date, none of the deficiencies identified have been addressed by the Applicant.
- 3.8 Under paragraph 5 (7) of the 1969 Regulations, where an application appears to a Registration Authority (the Council) after preliminary consideration not to be duly made, the Authority may reject it, but where it appears to the Authority that any

action by the applicant might put the application in order, the Authority shall not reject the application under this paragraph without first giving the applicant a reasonable opportunity of taking that action.

- 3.9 Having considered the application and its supporting evidence, and evidence/ amendments to the application made by the Applicant, it is the officers view that the application has not been duly made and should be rejected under paragraph 5(7) of the 1969 Regulations. The Applicant has had several opportunities to take action to address the procedural deficiencies identified with his application, but has failed to do so.
- 3.10 Delegated authority does not currently exist for officers to determine whether applications to register land as a Town or Village Green under either the Commons Registration Act 1965 or the Commons Act 2006 are 'duly made' (i.e. comply with the procedural requirements detailed in the 1969 Regulations, or the 2007 Regulations respectively.
- 3.11 Members are not asked to decide on the merits of the application, but whether the application meets the procedural requirements detailed in the 1969 Regulations and whether it is therefore 'duly made'.

4. PROPOSALS

- 4.1 If Members are in agreement that the application appended to this report is not duly made for the reasons given in paragraphs 3.4 and 3.6 above, the applicant will be informed of this.
- 4.2 To avoid delay in the event that a further application is received by the Council for registration of land as a Town and Village Green it is proposed that the Legal Services Manager be given delegated powers to determine whether that application is duly made in accordance with the 1969 Regulations or the 2007 Regulations (which ever are applicable), and to appoint an independent expert who will make recommendations to the Committee.

5. FINANCIAL IMPLICATIONS

The cost of referring the application to an independent expert could be in the region of £1,000 to £5,000 (depending on complexity) and the cost of a non-statutory local inquiry could be in the region of £15,000 to £20,000 (depending on its duration and number of witnesses). There is currently no allocated budget to cover this expenditure. Costs would have to be contained within the revenue budget allocation of the Environment and Regeneration Department.

6. LEGAL IMPLICATIONS

- 6.1 Once an application for registration of a Town or Village Green has been deemed 'duly made' it must be advertised in a local newspaper and the landowner must be notified (if known) and any person known to have an interest in the land (ie tenant, lessee or occupier). Specific legal advice will be necessary once an application has been advertised on the merits of the application taking account of the relevant regulations and relevant case law in this area.

- 6.2 As the application has not yet been deemed 'duly made' it has not yet been advertised.
- 6.3 No right of appeal exists in the 1969 Regulations or the Commons Registration Act 1965 against the decision whether the application has been 'duly made'.
- 6.4 It is imperative that all officers exercising the functions of the Council are properly authorised to do so and this report seeks to keep the list of powers delegated to the Corporate Director and other officers up to date so as to facilitate the proper and efficient functioning of the Council.

7. EQUALITY AND DIVERSITY IMPLICATIONS

None.

8. RISK MANAGEMENT ISSUES

None.

9. CRIME AND DISORDER ACT IMPLICATIONS

None.

10. VALUE FOR MONEY

The principals of Value for Money have been followed in the proposals for dealing with applications for Town or Village Greens.

11. List of background papers other than published works or those disclosing confidential or exempt information

Application made under the Commons Registration Act 1965 for land at Bulwell Hall Park, Bulwell dated 12th March 2007 (attached at Appendix 1).

12. Published documents referred to in compiling this report

Commons Registration Act 1965
Common Act 2006
The Commons Registration (New Land) Regulations 1969
The Commons (Registration of Town or Village Greens) Interim Arrangements (England) Regulations 2007
Getting Greens Registered – A guide to law and procedure for town and village greens (produced by The Open Spaces Society).

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9th OCTOBER 2008

APPENDIX 1 APPLICATION

CR FORM 30

Official stamp of registration authority Application No.
indicating date of receipt

Register unit (No(s):

VG

VG

*This section for official
use only*

COMMONS REGISTRATION ACT 1965, SECTION 13

APPLICATION FOR THE REGISTRATION OF LAND WHICH BECAME A TOWN OR VILLAGE GREEN AFTER 2nd JANUARY 1970

¹Insert name of
registration
authority.

To the ¹

Application is hereby made for the registration as a town or village green
of the land described below, which became so registrable after 2nd January
1970.

Part I

Name and address of the applicant or (if more than one) of every applicant.

*(Give Christian names
or forenames and
surname or, in the case
of a body corporate or
unincorporate, the full
title of the body. If
part 2 is not completed
all correspondence and
notices will be sent to
the first named
applicant.)*

Part 2

Name and address of solicitor, if any.

*(This part should be
completed only if a
solicitor has been
instructed for the
purposes of the
application. If it is
completed, all
correspondence and
notices will be sent
to the solicitor).*

Part 3

Particulars of the land to be registered, i.e. the land claimed to have become a town or village green.

Name by which usually known **BULWELL HALL PARK
BLENHEIM LANE ALLOTMENTS**

Locality **BULWELL, NOTTINGHAM**

Colour on plan herewith **AREA SUBJECTED TO VILLAGE GREEN
REGISTRATION ENCLOSED BY RED LINE.**

Part 4

On what date did the land become a town or village green?

01/01/1987

Part 5

How did the land become a town or village green?

**LOCAL INHABITANTS LAWFULLY/FREELY USING THE LAND
FOR IN EXCESS OF 20 YEARS**

Part 6

Name and address of every person whom the applicant believes to be an owner, lessee, tenant or occupier of any part of the land claimed to have become a town or village green. (If none are known, write "none".)

NOTTINGHAM CITY COUNCIL

Part 7

For applications to register substituted land (see Note 5); to be disregarded in other cases.

Particulars of the "taken land", i.e. the land which ceased to be a town or village green (or part thereof) when the land described in part 3 became a town or village green (or part).

Name by which usually known

Locality

Colour on plan herewith (if any)

If registered under the 1965 Act, register unit No(s).

Part 8

List of supporting documents sent herewith, if any. (If none are sent, write "none".)

NONE

Part 9

If there are any other facts relating to the application which ought to be brought to the attention of the registration authority (in particular if any person interested in the land is believed to dispute the claim that it has become a town or village green) full particulars should be given here.
(Continue on back if necessary.)

1908/10 SIR ALBERT BALL BOUGHT BULWELL HALL PARK AND ITS PROPERTIES WHICH INCLUDED BLENNHEIM LANE ALLOTMENTS FOR THE PEOPLE OF NOTTINGHAM SPORTS, LEISURE AND RECREATIONAL PURSUITS.

² The application must be signed by or on behalf of each individual applicant, and by the secretary or some other duly authorised officer of any applicant which is a body corporate or unincorporate.

Date 20

Signature: ²
.....
.....

(See Note 9)

STATUTORY DECLARATION IN SUPPORT

To be made by the applicant, or by one of the applicants, or by his or their solicitor, or, if the applicant is a body corporate or unincorporate, by its solicitor or by the person who signed the application.

¹Insert full name (and address if not given in the application form).

I,¹

solemnly and sincerely declare as follows:-

²Delete and adapt as necessary.

I²

am ((the person (~~one of the persons~~) who (has)(~~have~~) signed the foregoing application)) (~~(the solicitor to (the applicant) (³ one of the applicants))~~).

³Insert name if applicable.

2. I have read the Notes to the applicant form.

3. The facts set out in the application form are to the best of my knowledge and belief fully and truly stated and I am not aware of any other fact which should be brought to the attention of the registration authority as likely to affect its decision on this application, nor of any document relating to the matter other than those (if any) mentioned in parts 8 and 9 of the application.

⁴Insert "marking" as on plan.

4. The plan now produced and shown to me marked 4 " A " is the plan referred to in part 3 of the application.

⁵Delete this paragraph if there is no plan referred to in part 7.

5.⁵ The plan now produced and shown to me marked 4 " A " is the plan referred to in part 7 of the application.

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act 1835.

Declared by the said

at

in the of)

this day of)

Before me

Signature)

Address AS follows:

Qualification A Commissioner for Oaths

REMINDER TO OFFICER TAKING DECLARATION:

Please initial all alterations and mark any plan as an exhibit.

- My house isn't shown on this small map.
- Nottingham City Council's properties including Bulwell Hall Park are enclosed within the red line.
- The easterly boundary follows the route of a dismantled rail track.
- The southerly boundary is Sandhurst Road and Camberley Road as far as the present day Bardney Drive.
- Continuing with the southerly boundary is Blenheim Lane as far as Bulwell's and Hucknall parish boundaries.
- The westerly boundary separates Bulwell and Hucknall parishes.
- The northerly boundary separates Bulwell's and Hucknall's parishes.
- This map does not show a housing estate adjacent to Bulwell's swimming baths (Lido), warehouses and offices on land which is shown as a quarry near the entrance to Blenheim Lane.

Signed.....

Date.....

This is the Exhibit marked "A" referred to in the Statutory Declaration of

me. Before

Mr. A Commissioner for Oaths.

APPENDIX 1: ORIGINAL APPLICATION MAP

