

PLYMOUTH CITY COUNCIL

Subject: Village Green Application for land at
Billacombe Road, Plymstock

Committee: Planning Committee

Date: 20 June 2013

CMT Member: Anthony Payne - Director of Development

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Ref: PL/14852/JAR

Part: 1

Executive Summary:

An application was received on the 18 May 2012 under section 15 of the Commons Act 2006 to register land at Billacombe Road as a village green, as shown on the plan attached as Appendix 1. The application has been made by a local resident and has been validly submitted. The application has been advertised and objections have been received. In its capacity as Commons Registration Authority the Council has to decide whether the land comes within the criteria set out in the above section of the Commons Act 2006. The Council must consider objectively and impartially all village green applications for registration on their merits, taking into account any objections and any other relevant considerations. The law does not lay down a statutory process for determining these applications. However, it is essential that this process is fair to both applicants and objectors. Currently village green applications are determined by the Planning Committee as set out in the Council's Constitution. It is necessary though to decide whether it would be advisable in this case to instruct a qualified inspector to consider the application and advise the Council after holding an inquiry or receiving written representations from the parties. In this particular case at Billacombe Road it is considered that it would be advisable to hold an inquiry before the application is determined by the Planning Committee. Appendix 2 outlines the process for assessing village green applications.

Corporate Plan 2011-2014:

The consideration of Village Green applications forms part of the statutory Planning process and the outcome of such decisions will form part of the Planning policy framework as set out in the Council's adopted Core Strategy and emerging Plymouth Plan.

<http://www.plymouth.gov.uk/corporateplan.htm>

**Implications for Medium Term Financial Plan and Resource Implications:
Including finance, human, IT and land**

The outcome of the decision on the Village Green application may have an impact on the value of the land currently held by the Council, although this has not yet been quantified. However, this is not a consideration for the Council as the Commons Registration Authority but for the Council as landowner. There would be a financial implication for the Council in preparing and attending a public inquiry. This may include external legal costs (estimated at approx. £15,000) and would need to be financed from existing Place Directorate budgets.

Other Implications: e.g. Community Safety, Health and Safety, Risk Management and Equality, Diversity and Community Cohesion:

None

Recommendations & Reasons for recommended action:

To agree for a non statutory public inquiry to be held to consider the Billacombe Road village green application and for the application to then be determined by the Planning Committee

Reason: Due to the complexity of this case this would be the most open and fair process to deal with the application.

Alternative options considered and reasons for recommended action:

To allow the Council, through the Planning Committee, to consider the matter without the need for a public inquiry. However this alternative is not recommended by officers because of the Council's other interests in this matter as land owner and highway authority. Furthermore an interested party, Persimmon Homes, has specifically requested a public inquiry. It is good practice for a public inquiry to be held if any party makes such a request.

Background papers:

Application ref no PL/14852/JAR (VG1/12)
Form 44 Application Form to register land as village green
Evidence questionnaires

Sign off:

Fin	Plac eF PD1 314 002	Leg	1771 6/A C.	HR		Corp Prop		IT		Strat Proc	
Originating SMT Member											

I. Introduction

1.1 On 18 May 2012 the Council as the Commons Registration Authority (“the Authority”) received an application for an area of land at Billacombe Road known as “Billacombe Village” to be registered as a village green (“the Application”). The site is outlined in appendix I. The Application was submitted by Mrs Faye Tongue (“the Applicant”) and the basis of the Application is that the land has been used for at least 20 years as of right by the inhabitants for lawful sports and pastimes and that they continued to do so at the date of the Application.

1.2 The Applicant’s justification for the Application to register the land as a village green is:

“the land is an open space adjacent to the north side of the Billacombe Road that has been used by local residents and others for various leisure pursuits. There has never been any attempt by the land owners over the last 25 years to restrict any form of access to the area. At various times people walk dogs, children play games, collect blackberries and generally enjoy the area. The space is an area that’s been constantly used and enjoyed without restriction. By applying for village green status it will enable the unrestricted usage by the local residents to continue. Over the past 25 years or more hundreds of people have benefited from free unrestricted access which should be maintained for the generations to come. Trees and woods are important in our lives they provide homes for wildlife, purify the air we breathe and offer a calm and peaceful place to escape to from a noisy and stressful world. So it’s no exaggeration to say they are vital to life. The strength of feeling in the Plymstock area is extremely high for maintaining this natural green space. This is sufficiently demonstrated by the number of evidence forms supporting this proposal.”

1.3 The Application is submitted under the provisions of the Commons Act 2006 (“the 2006 Act”) and it is claimed that the land satisfies the qualifying criteria as set out in section 15(2) of the 2006 Act and as such should be registered as a town and village green.

1.4 Under section 15(2) of the 2006 Act an applicant needs to prove:

- (a) that a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;
- (b) they continued to do so at the date of the application.

1.5 If land is registered as a village green it protects that land from development, as it is an offence to build on a green or to interrupt its use or enjoyment by the public. It secures the right of local people to use the land for recreation.

1.6 The Application was considered to establish whether it had been “duly made” as set out in the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 (“the 2007 Regulations”).

1.7 With regard to the procedural requirements under the 2007 Regulations they had been complied with and the application form had been completed appropriately. Therefore it was considered that the Application had been “duly made”.

2. Objections

2.1 On 12 October 2012 the Application was advertised in accordance with the 2007 Regulations. There followed a period within which objections and representations could be submitted to the

Council.

2.2 Objections have been received from the following:

- (i) Mr. Prowse
- (ii) Mr.Hext
- (iii) Plymouth Cycling Campaign
- (iv) Sustrans Limited
- (v) Railway Paths Limited
- (vi) Persimmon Homes (Wessex) Limited
- (vii) Plymouth City Council (Highways Authority)
- (viii) Plymouth City Council (Landowner)

2.3 The objections cover the following issues:

- (i) evidence questionnaires submitted are not sufficient
- (ii) site is densely vegetated and inaccessible
- (iii) legal requirements have not been fulfilled
- (iv) not used for leisure purposes during the last 25 years
- (v) will be detrimental to possible future cycle track
- (vi) this land is important for transport scheme for Plymouth Eastern Corridor
- (vii) land affected by an option agreement dated 13/08/04 for access to proposed Plymstock Quarry development
- (viii) general objection as landowner
- (x) not been used for recreational uses
- (xi) highway land so it is already used by right and not as of right
- (xii) locality/neighbourhood not identified
- (xiii) part of land is HMPE
- (xiv) authorised development is ready to commence so status of land needs to be resolved
- (xxv) as it's highway land the actual use is only for passing and re-passing

3. Procedure (see also appendix 2)

3.1 Registration of a town or village green is a non statutory procedure. The Council, therefore, can decide the procedure it wishes to follow but this discretion must be exercised in a manner which is fair to both applicants and objectors. What fairness requires by way of procedure will depend on the circumstances of a particular application.

3.2 The usual practice for the majority of registration authorities is for the straightforward cases where there are no significant issues or objections to be dealt with by the authority. The more complex cases are normally referred to a suitably qualified independent person (usually a barrister or a planning inspector). This person will then advise the authority after holding an inquiry or receiving written representations from the parties. This advice will include a recommendation whether to accept or reject the application. It is generally regarded as good practice for an inquiry to be held if any party makes such a request.

3.3 Issues which would give rise to a referral to an independent person would be where the evidence appears to be finely balanced, where the authority has an interest in the land (such as landowner), or where points of law arise.

3.4 A decision on the application is made in light of all the evidence submitted and on the advice received either from officers or an independent person.

3.5 Currently, the determination of village green applications is undertaken by the Planning Committee as set out in Plymouth City Council's Constitution.

4. Land at Billacombe Road

4.1 The Application at Billacombe Road is a complex one which involves some significant issues. They are as follows:

- (i) The Council is the freehold owner of part of the land in question.
- (ii) The Council is also the highway authority for some of the land included in the Application
- (iii) There are some detailed objections which raise important evidential points
- (iv) Due to point (ii) above this raises some legal issues which need to be considered

4.2 It should also be noted that Persimmon have specifically requested that the Authority convene a public inquiry. They have requested this on the basis that given the scale of the Application and the plain dispute as to fact which arises between the Applicant of the village green application and Persimmon and any other objectors, that the Application must be determined following a public inquiry. They add that this method of dealing with the Application would be consistent with the guidance given in the Court of Appeal in R(Whitmey)-v- Commons Commissioner [2005]. Due to the fact that Persimmon are in a position to commence the authorised development for which they have planning permission (Plymstock Quarry) and some of this land is to be used for access to that site, they consider it is imperative that the status of the land is resolved.

4.3 It is considered in this particular case that due to there being a significant conflict in the evidence between the Applicant and the objectors it is fair and reasonable to deal with this by way of a public inquiry. This would enable all interested parties to be heard and have an opportunity for all the evidence and legal issues to be considered in detail. As the Council are not only the Registration Authority but the highway authority and a landowner it is best practice to have this case initially considered by an independent third party and then referred to the Planning Committee for the final decision.

5. Conclusion

5.1 It is considered that due to the complex nature of this Application and the usual practice when considering such applications, that it should be referred to an independent person for an inquiry to be held. This will enable all the parties the opportunity to present their case and to ask questions of others. Further, any legal issues will be considered in more detail.

5.2 As the Council has an interest in the land as owner and as the highway authority an inquiry will be an open and transparent way to deal with the Application.

5.3 Consequently it is considered that this Application should be referred to an independent person for an inquiry to be held. Then the Application will be determined by the Planning Committee having received this advice.