

MINUTES of the meeting of Regulatory Committee held at The Council Chamber, Brockington, 35 Hafod Road, Hereford on Tuesday 11 January 2011 at 10.00 am

Present: Councillor JW Hope MBE (Chairman)
Councillor PGH Cutter (Vice Chairman)

Councillors: CM Bartrum, SPA Daniels, JHR Goodwin, RC Hunt,
Brig P Jones CBE, PJ McCaull, A Seldon and JD Woodward

In attendance: Councillor PJ Edwards

108. APOLOGIES FOR ABSENCE

Apologies for absence were submitted by Councillors PGH Cutter and GA Powell.

109. NAMED SUBSTITUTES (IF ANY)

There were no named substitutes present at the meeting.

110. DECLARATIONS OF INTEREST

Councillor R Hunt declared a personal interest in respect of the following item.

111. APPLICATION TO REGISTER LAND AT ARGYLL RISE, BELMONT, HEREFORD AS A TOWN GREEN

The Chairman welcomed those present to the meeting and introduced the Principal Lawyer (Corporate) who was presenting the report contained within the Agenda, Mr V Chapman Q.C. whose role would be to advise the Committee on the legal issues, Mr C Whitmey who was representing the applicants, Newton Farm Town Green Action Group, and Ms M Ellis QC who was representing Herefordshire Housing Ltd (HHL).

The Principal lawyer (Corporate) presented his report which explained the background to the application and the history of the land. It was part of a larger area which had been purchased for housing purposes in 1959 by the former Hereford City Council under the powers of the Housing Act 1957 and was subsequently laid out as open space as part of the surrounding housing development during the 1970s. In November 2002 the land was one of a number of open spaces included in a transfer of the Council's housing stock to HHL.

The report noted that the Committee, at its meeting on 12 August 2008, had rejected a previous application to register the land because it considered that, on the balance of probabilities, use had not been "as of right". The Principal Lawyer explained the reasons in his report as to why he considered that use had been "as of right", notwithstanding barristers' opinions received by the Council were that use of the land had been "by right" under an implied statutory permission.

Mr Whitmey presented the case for the applicants and explained the arguments contained in his written legal submissions, including case law and Inspectors' reports into similar applications, which had been circulated to the Committee. He believed that the land had

probably been laid out as an open space under section 107 of the Housing Act 1957, rather than as a recreation ground under section 93. Mr Whitmey considered that the public did not have a statutory entitlement to use open spaces laid out under section 107 and that use of the land over a period of twenty years had not been “by right” but “as of right”. Mr Whitmey considered that the circumstances of the application were similar to those in the case of *Beresford v City of Sunderland* 2003 where the House of Lords had decided that use of the land had satisfied the “as of right” test.

Ms Ellis QC, acting on behalf of HHL, explained her written legal submissions and other material that had also been circulated to the Committee. In her view it did not matter whether the land had been provided under section 93 or 107 of the Housing Act 1957 as either section would have provided the public with a right to use the land for recreational purposes, and so use would have been “by right” and not “as of right”.

Mr Whitmey and Miss Ellis QC also discussed how the Committee should proceed with the application pending the final decision in the case of *Leeds Group plc v Leeds City Council* which could have fundamental implications for all town green applications.

Mr Chapman summed up the legal arguments which had been presented to the Committee. His conclusion was that, although it was a difficult issue, the land had not been used “as of right”. The Committee also considered suggestions to defer making a decision on the matter pending the outcome of the Leeds case, or to seek guidance from the Courts about the status of the land.

Mr Chapman advised that the Committee was faced with four possible ways of dealing with the matter:

1. to reject the application on the ‘as of right’ point;
2. to defer consideration of the application until the outcome of the Leeds case was known;
3. to seek the directions of the Courts on the ‘as of right’ issue; or
4. to accede to the application

The Committee discussed the alternatives and gave further careful consideration to the legal arguments and the advice received from Mr Chapman. The Committee felt that on the balance of probabilities, it could not be determined that the use of the land had been enjoyed ‘as of right’ and accordingly rejected the application.

RESOLVED THAT:

An application to register land at Argyll Rise, Belmont, Hereford as a Town Green be rejected on the grounds set out in the Decision Notice attached to these minutes.

APPLICANT'S NAME	Newton Farm Town Green Action Group.
APPLICATION TYPE	The registration of land as a Town Green.
COMMITTEE MEMBERS	Councillor JW Hope MBE (Chairman) Councillors CM Bartrum, Mrs SPA Daniels, JHR Goodwin, RC Hunt, Brig. P Jones CBE, PJ McCaull, A Seldon and JD Woodward
DATE OF MEETING	11th January, 2011

Members of the Council's Regulatory Committee met to determine whether land at Argyll Rise, Belmont, Hereford should be registered as a Town Green. The Council is the Registration Authority for determining applications to register land as town or village greens.

At the meeting all the details about the application, the relevant legal aspects and the alternatives that were available to the Council, together with a recommendation that the application should be approved, were given careful consideration.

The circumstances which had led to the application being made to the Council were noted. The land was part of a larger area which had been purchased for housing purposes in 1959 by the former Hereford City Council under the powers of the Housing Act 1957 and was subsequently laid out as open space as part of the surrounding housing development during the 1970s. In November 2002 the land was one of a number of open spaces included in a transfer of the Council's housing stock to Herefordshire Housing Limited.

Mr C Whitmey addressed the Committee on behalf of the Newton Farm Town Green Action Group and Ms M Ellis QC on behalf of Herefordshire Housing Limited which was contesting the application. The Committee was advised by Mr V Chapman QC.

The Committee determined the application as follows:

1. **The Regulatory Committee rejects the application to be found in Appendix 8 of the Agenda for the meeting, under Section 15 of the Commons Act 2006.**
2. **The application is rejected because the Committee is not satisfied that use of the application land during the 20 year period relied upon was "as of right". The Committee considers that the application land was a "recreation ground" and/or an "open space" laid out and maintained for public use under the Housing Act 1957 Sections 93 and/or 107 and the Housing Act 1985 Sections 12 and/or 13 to which the users had a statutory right of access. Use for lawful sports and pastimes was therefore "by right" or "of right" rather than "as of right".**
3. **The Committee has weighed carefully the issues raised which go towards the possibility of deferring its decision in the light of the pending judgement on the Court of Appeal case of Leeds Group plc v Leeds City Council or to seek the directions of the Court. Given its decision to reject the application however, the Committee does not consider it appropriate in the public interest to defer its decision for either reason.**

4. The Committee places on record its gratitude to the advocates in the Case for their clear detailed and careful work which has enabled this decision to be made.

Signed.....Councillor JW Hope MBE, Chairman of the Regulatory

The meeting ended at 2.05 pm

CHAIRMAN