

HEREFORDSHIRE COUNCIL

**REGULATORY COMMITTEE DECISION NOTICE
APPLICATION TO REGISTER LAND AT ARGYLL RISE, BELMONT,
HEREFORD AS A TOWN GREEN**

APPLICANT'S NAME	Newton Farm Town Green Action Group.
APPLICATION TYPE	Register land as a Town Green.
COMMITTEE MEMBERS	Councillor Brig. P Jones (Chairman) Councillor JW Hope (Vice-Chairman) Councillors DJ Benjamin, Mrs ME Cooper, PGH Cutter, Mrs SPA Daniels, Mrs H Davies, JHR Goodwin, R Mills, A Seldon and DC Taylor
DATE OF MEETING	12th August, 2008

Members of the Council's Regulatory Committee considered an application to register land at Argyll Rise, Belmont, Hereford as a Town Green.

At the meeting the officer presented 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.

The circumstances which had led to the application being made to the Council were considered. It was noted that 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.

The Council had received two applications from the same Applicants to register the Land. The first application was received on 6 February 2006 and the Council had placed notices for two weeks in the Hereford Times and on the Land stating that the application had been made and requesting any objections to be sent to the Council. An objection was received from Herefordshire Housing Limited. A non-statutory Public Inquiry had been conducted by a barrister (Inspector) to hear evidence and legal arguments from the applicants and Herefordshire Housing Limited. It was noted, that if the land was registered as a Town Green, this would effectively prevent any development which would interfere with recreational use. The view of the Inspector was that the application should be refused.

Mr C Whitmey addressed the Committee on behalf of the Newton Farm Town Green Action Group and Mr A Porten QC on behalf of Herefordshire Housing Limited. They suggested that if the Committee was mindful to grant the application, the matter should be deferred because they felt that there was a need to consider all the issues involved.

The Committee determined the application as follows:

We have heard the submissions made by both Mr Whitmey (for the applicant) and by Mr Porten (Counsel for the objector).

We have considered the officer's report and the various written submissions before us in the bundle.

We have studied the report of the Inspector and the second opinion from Mr Petchey.

The burden of proof in this matter rests with the applicant and it is for the applicant to make its case for registration to the civil standard, namely on the balance of probabilities.

We concur with the Inspector that the land in question has been used by a significant number of local residents for various recreational sporting and leisure purposes for over a 20-year period.

This Committee has however to determine whether that use amounts to use "as of right", within the meaning of law to satisfy the test for the establishment of a Town green.

We find that the land in question was acquired for the use of residents of the new residential development, when the estate was laid out following its acquisition under the Housing Act 1957.

We consider that use of the land during the relevant period has been consistent with a site laid out, managed and maintained under the statutory housing powers.

We consider that the recreational use of land was by reason of it being open space held for housing purposes with the context of the estate.

Use "as of right" in the sense of that required to establish Town Green status has not been made out on the balance of probabilities in this application.

The application to register the land as a Town Green therefore fails.

Signed.....Councillor Brig P Jones CBE, Chairman of the Regulatory Committee,

12 August, 2008