

**MINUTES of the meeting of Regulatory Committee held at
The Council Chamber, Brockington, 35 Hafod Road,
Hereford on Tuesday, 12 August 2008 at 2.00 p.m.**

Present: Councillor P Jones CBE (Chairman)
Councillor JW Hope MBE (Vice Chairman)

Councillors: DJ Benjamin, ME Cooper, PGH Cutter, SPA Daniels,
H Davies, JHR Goodwin, R Mills, A Seldon and DC Taylor

27. APOLOGIES FOR ABSENCE

Apologies for absence were submitted on behalf of Councillor CM Bartrum.

28. NAMED SUBSTITUTES (IF ANY)

Councillor H Davies was appointed named substitute for councillor CM Bartrum.

29. DECLARATIONS OF INTEREST

Councillor Mrs H Davies declared a prejudicial interest in agenda item 5 – Application to Register Land at Argyll Rise Belmont as a Town Green - spoke as a Local Ward Member then withdrew from the meeting for the duration of this item, in accordance with the provisions of the Council's Constitution.

30. MINUTES

RESOLVED: That the Minutes of the meeting held on 15th July, 2008 be approved as a correct record and signed by the Chairman

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

The Chairman explained that thirty minutes would be allocated for speaking by the representatives of the applicants and by the representative of Herefordshire Housing Limited (HHL). He added that each principal side would then be allowed a further ten minutes for summing up purposes.

The Principal lawyer (Corporate) explained the circumstances which had led to the application being made to the Council and presented a report for the Committee to determine whether land at Argyll Rise, Belmont, Hereford should be registered as a Town Green. He said 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 HHL. He advised that the Council had received two applications, from the same Applicants, to register the Land as a Town Green. The first application was received on the 6th February 2006 and the Council 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. The only objection received was from HHL. He advised that in line with a procedure followed by other Registration Authorities the Council had arranged for a non-statutory Public Inquiry which had been conducted by a barrister (Inspector) to hear evidence and legal arguments from the applicants and HHL. He explained that although the landowner would remain the legal owner, if the land was registered as a Town Green, registration would effectively prevent any development of land that would interfere with recreational use. He described the definition of a town or village green in Section 22 of the 1965 Act under which the first application had been made, which provided that :

“land on which for not less than twenty years a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged in lawful sports and pastimes as of right, and either;

continue to do so, or

have ceased to do so for not more than such period as may be prescribed, or determined in accordance with prescribed provisions”

He explained the conclusions of the Inspector about the status of the land following its transfer to HHL as being that certain tests were met in so far as a significant number of local people had used the Land for lawful sports and pastimes for at least 20 years up to the date of the application. However the Inspector considered that, since the Council had laid out the Land as open space for the benefit of local residents in connection with the Housing Act power used to develop the surrounding housing, use of the Land had been by an implied statutory permission rather than “as of right” and so the Land should not be registered as a town green. The Inspector also considered that the statutory procedure followed under section 123 of the Local Government Act 1972 when the Council transferred the Land to HHL would have defeated the application in any event. He said that the Committee must determine the application solely on the basis of applying the legal tests set out in his report and that the decision must not be influenced by matters such as a loss of amenity to local residents if the application was refused, or an obstacle to the Land being developed for housing if the application was approved. He advised that the second application had been received in October 2007 and was made in order to overcome the obstacle to registration which the Inspector felt resulted from the section 123 disposal to HHL in 2002. The second application was made under the Commons Act 2006 which replaced the Commons Registration Act 1965 under which the first application was made. He said that if the Committee accepts the officer’s recommendation that the first application should succeed then it should not be necessary to consider the second application. If the Committee decides not to register the Land under the first application, he said that he would arrange for the second application to be advertised. However, since the evidence of use sent in support of the second application was essentially the same as for the first, he considered that another Public Inquiry would be unnecessary and that the second application could be determined on the basis of any new legal arguments. He said that notwithstanding the views of the Inspector and the second opinion which had been obtained from Mr Petchey QC on the legal issues, he was of the view that the application should be approved and he explained how he had reached that conclusion. He said that if the Committee accepted his recommendation and HHL was dissatisfied, it could seek a judicial review if it wished.

Mr C Whitmey addressed the Committee on behalf of the Newton Farm Town Green Action Group. He said that there were no firm guidelines existing on how applications to be dealt with and that the matter was extremely complex. He said that he had looked at the functions of the Council’s Executive and the committee

procedures and the Constitution, and that he had concluded that the application could be dealt with by the Committee because it fell within its terms of reference. He was of the opinion that the determination was a judicial rather than an administrative process. He was of the view that the decision to hold a public inquiry should have been made by the Committee and he questioned the authority of the officer to submit a report recommending a different course of action to that recommended by the Inspector who conducted the Inquiry. Although he supported the application for registration, he felt that the Inspector had reached the correct conclusion at the Inquiry that there had been insufficient grounds demonstrated to support the application for registration as a Town Green.

Mr A Porten QC acting on behalf of HHL said that in his view the Council should have taken a neutral approach to all the issues raised during the Inquiry and that a decision should be made by the Committee after all the evidence had been gathered. He was of the view that if the Committee was mindful to determine the application in favour of the applicants, contrary to the Inspector's recommendation, then the matter needed to be deferred to allow sufficient opportunity for further representations to be made by all the parties concerned. He referred to the test to support registration and said that the burden of proof fell on the applicants. There was an important legal distinction as to whether there was a right to use the land for open space and whether the land was being used for such purposes as of right. He further explained the differences between the two and said that it was clear why the Inspector had rejected the application because there were no grounds for the land to be used for open space as of right. The land had been purchased for housing purposes and an area of open space had been provided for the use of local residents. At no time had the land ceased to be housing land since it had been acquired by the Council or since its transfer to HHL. He felt that if the application was rejected and the matter went to appeal, there was a strong likelihood that the High Courts would rule in favour of HHL. His view was that there were insufficient grounds for the application to be supported in the light of the evidence available, the Inspector's findings and the legal opinion of Mr Petchey.

The local ward Councillors Mr PJ Edwards, Miss G Powell and Mrs H Davies expressed their support for the application which they felt was aimed at formalising the status of much needed open space which had been used for that purpose by local residents for many years.

The Principal Lawyer (Corporate) answered queries that had been raised by Mr Porten and Mr Whitmey and explained how he had reached the conclusion that there were sufficient grounds to recommend that the application for registration should be approved. He felt that although views had been given as to why the application should be rejected, he felt that there was sufficient scope within the legal framework for a different conclusion to be reached.

Mr Whitmey felt that in view of the evidence that had been presented, if the Committee accepted the recommendation of the Principal Lawyer (Corporate) then a new precedent would be established. Mr Porten was of the view that the Council was no longer taking a neutral stance and that all the evidence pointed against the recommendation in the officer's report. He felt that it was incorrect to differ from the view of the Inspector and the legal opinion which had been obtained from Mr Petchey. Mr Whitmey was also concerned at the stance taken by the local ward Councillors which he felt related solely to social issues and did not take into account the legal facts.

At this junction the Committee went into closed session to consider all the facts and make its decision. It then reconvened and issued the following decision statement:-

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 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.

32. TO CONSIDER THE ADOPTION OF AN EARLY INCREASE IN HACKNEY CARRIAGE FARES 2008/2009 LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

The Licensing Officer presented a report about a request which had been made by the Herefordshire Taxi Association for an early review of the Hackney Carriage Fares in Herefordshire. He explained the powers available to the Council under the Local Government (Miscellaneous Provisions) Act 1976 to set the table of fares based on the time and distance for a journey and all other charges in connection with passenger use. He said that the current fares were reviewed by the Committee in October 2007 but that since then there had been a substantial increase in the fuel costs facing the trade.

Mr J Jones of the Herefordshire Taxi Association explained the costs facing the trade and the practical issues of altering metres to accommodate a new scale of fares. He said that the substantial rise in fuel costs had led to the trade having to meet a 10% increase in costs across the board and he explained how those costs were broken down.

Having considered the matter, the Committee decided that there should be an increase of 10% for taxi fares. The Licensing Officer suggested that following 14 days of advertisement, the increase should take effect from 8 September 2008, and remain in force until a scheduled review in October/November 2009

RESOLVED THAT

The request for a taxi fares increase be accepted as set out above and that providing that there are no public objections during the consultation period ending 4 September 2008; implementation of the increase on 8 September 2008 be delegated to the Acting Head of Environmental Health and Trading Standards. If any objections are received, the matter will be brought back to the Committee for further consideration.

33. AMENDMENT AND ADDITION OF HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE CONDITIONS: LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976, TOWN POLICE CLAUSES ACT 1847

A report was presented by the Principal Lawyer suggesting the implementation of a revised vehicle licence condition 3 because of interpretation problems with the way in which it is currently worded. He said that licence conditions were last reviewed in April 2007. Condition 3 related to existing vehicle licences and stipulated that written authorisation must be obtained from the Licensing Officers before a new or replacement new vehicle was purchased and tested. Under 3.3 the conditions stated that a proposed new vehicle must comply with the following:

“a licence with a wheelchair access vehicle cannot at anytime be replaced with a non-wheelchair access vehicle. A saloon may be replaced with a saloon or upgraded to a wheelchair access vehicle”

This had given rise to interpretation problems as to “like for like” and in particular in relation to saloon cars. Issues of interpretation had arisen between what constitutes a saloon car and what constitutes a multi-purpose vehicle (MPV). The essential purpose of condition 3.3 was to ensure that Herefordshire’s fleet of taxi/private hire vehicles contained an adequate and expanding growing number of wheelchair accessible vehicles. By amending the condition as proposed the protection for wheelchair accessible vehicles would be preserved but the unnecessary distinction between the wide variation of other types of vehicles would be removed. This would empower Licensing Officers to permit vehicle changes quickly and efficiently without the need to refer matters to Regulatory Committee in future. The Committee discussed the matter and the Licensing Officer expressed some reservations about the practical issues involved and the aims of moving towards a greater number of wheelchair accessible vehicles. There were issues about whether the conditions should be based upon accessibility or sill height rather than seating. Having discussed the issues concerned with the officers and considered the alternatives that were available, the Committee felt that there was merit in the matter being deferred for the officers to give it further consideration.

RESOLVED THAT

Consideration of the matter be deferred for further discussions by the Officers.

34. PROCEDURAL ARRANGEMENTS

The Committee noted the procedural arrangements for hearing appeals to ensure that the laws of natural justice were followed to give a fair hearing to the applicants

and to the Licensing Officers.

35. APPLICATION TO RE-INSTATE AN EXPIRED HACKNEY CARRIAGE VEHICLE LICENCE OUTSIDE STANDARD CONDITION 9.5 BY MR BEN SMITH

A report was presented by the Licensing Officer about an application for the reinstatement of a hackney carriage hire vehicle licence outside the Councils policies. He said that Mr Smith's licence had expired on 12th July, 2008 and that he had applied to renew it on 15th July. The policy for renewal stated that "All applications received after the date of expiry will be treated as Grants and not renewals and the appropriate conditions and fees will apply". Mr Smith said that he had been a few days late with his application but hoped that it could still be dealt with as a renewal. The Committee felt that sufficient leeway could be afforded to the officers to allow renewals up to seven days after the expiry of a licence and report the matter to the next meeting of the Committee, rather than the situation where several weeks could elapse before the matter was determined by the Committee and before which the applicant would not be able to use the vehicle.

Having considered all the circumstances regarding the application, the Committee was satisfied with Mr Smith's explanation and agreed that the application could be treated as a renewal and not a new application.

RESOLVED THAT:

An application from Mr B Smith to deviate from the standard condition number 9.5, in respect of plate No.H256 for a Skoda Superb be accepted and granted as a renewal.

36. APPLICATION TO RE-INSTATE AN EXPIRED HACKNEY CARRIAGE VEHICLE LICENCE OUTSIDE STANDARD CONDITION 9.5 BY MR RICHARD ERNEST INGRAM

A report was presented by the Licensing Officer about an application for the reinstatement of a hackney carriage hire vehicle licence outside the Councils policies. He said that Mr Ingram's licence had expired on 7th July, 2008 and that he had applied to renew it on 10th July. The policy for renewal stated that "All applications received after the date of expiry will be treated as Grants and not renewals and the appropriate conditions and fees will apply". Mr Ingram said that he had been a few days late with his application but hoped that it could still be dealt with as a renewal.

Having considered all the circumstances regarding the application, the Committee was satisfied with Mr Ingram's explanation and agreed that the application could be treated as a renewal and not a new application.

RESOLVED THAT:

An application from Mr RE Ingram to deviate from the standard condition number 9.5, in respect of plate No.H266 for a Skoda Octavia be accepted and granted as a renewal.

EXCLUSION OF THE PUBLIC AND PRESS

In the opinion of the Proper Officer, the following items will not be, or are likely not to be, open to the public and press at the time they are considered.

RESOLVED: that under section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting for the

following item of business on the grounds that they involve the likely disclosure of exempt information as defined in Schedule 12(A) of the Act, as indicated below.

These items disclose information relating to any particular applicant for or recipient of or former recipient of, any service provided by the authority.

37. DUAL (HACKNEY CARRIAGE & PRIVATE HIRE) DRIVER LICENCE - TO DETERMINE MATTERS REGARDING A DUAL DRIVERS LICENCE - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

The Licensing Officer referred to agenda item No. 11 and provided the Committee with the circumstances which had given rise to the need for an application for a dual Hackney Carriage/Private Hire driver's licence being referred to the Committee. The applicant provided the Committee with details of the circumstances which had given rise to her receiving a conviction and the reasons why she felt that she should be allowed to become a licence holder.

Having considered all of the facts put forward by the Licensing Officer and the applicant, the Committee considered that the applicant was a fit and proper person under the meaning of the Local Government (Miscellaneous Provisions) Act 1976 and that she could be granted a licence.

38. DUAL (HACKNEY CARRIAGE & PRIVATE HIRE) DRIVER LICENCE - TO DETERMINE MATTERS REGARDING A DUAL DRIVERS LICENCE - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

The Licensing Officer referred to agenda item No. 12 and provided the Committee with the circumstances which had given rise to the need for an application for a dual Hackney Carriage/Private Hire driver's licence being referred to the Committee. The applicant provided the Committee with details of the circumstances which had given rise to him receiving a conviction and the reasons why he felt that he should be allowed to become a licence holder.

Having considered all of the facts put forward by the Licensing Officer and the applicant, the Committee considered that the applicant was a fit and proper person under the meaning of the Local Government (Miscellaneous Provisions) Act 1976 and that he could be granted a licence.

The meeting ended at 5.10 p.m.

CHAIRMAN