

COMMONS REGISTRATION ACT 1965 (as amended) - SECTION 13

and-

The Commons Registration (New Land) Regulations 1969

In the matter of Application for the registration of Land at Hereford, known as Argyll Rise, Newton Farm, Hereford HR2 ('the Land'), as a town or village green.

APPLICANTS' CLOSING SUBMISSION

- 1 The Applicants are grateful for being given time to make their legal submissions on 'as of right'.
- 2 On our case the matters of fact to be proved concerning the Land (now used excluding the Play Area) in the section 22(1A) definition are:
 - (a) 'not less than twenty years';
 - (b) 'a significant number of the inhabitants';
 - (c) 'a neighbourhood within a locality';
 - (d) 'indulged in lawful sports and pastimes'
 - (e) 'as of right';
 - (f) and 'continue to do so'.
- 3 'Not less than twenty years'. The wording is not '20 years' and it is relevant to take into account the site's prior history. The Objector set out in it submission dated 23.vii.2007 the issues in the case (Issues). Issues [3] appears not to put the 'crucial period' February 1986 to February 2006 in issue. Our WS's gave evidence of the period.
- 4 The matter of public footpaths across the site was raised. Historically they show that local inhabitants would have been used to traversing the ground without let or hindrance.

- 5 'a significant number of the inhabitants'. Issues [4] addresses this with 'locality' (see below). Adopting the test in *McAlpine*: Mr Phillips' expert evidence agreed that the population for the Neighbourhood (L2 yellow area) was roughly 2,000-3,000. In the light of this range of 50% we believe the 2004 figures in 'B' M6 the figure of 2,000 is the more reasonable. The evidence of the WS's and Questionnaires satisfies the test of giving the impression of a significant number.
- 6 'a neighbourhood within a locality': Issues [4.2] refers to *Wiltshire* and *Steed* about locality. Our case is that the locality is at least the Civil Parish of Hereford if not in Belmont Ward and the neighbourhood is the Newton Farm yellow area in L2.
- 7 The clear words of Lord Hoffmann in *Oxfordshire* (Trap Grounds) apply in this application:
27. "Any neighbourhood within a locality" is obviously drafted with a deliberate imprecision which contrasts with the insistence of the old law upon a locality defined by legally significant boundaries. I should say at this point that I cannot agree with Sullivan J in *R (Cheltenham Builders Ltd) v South Gloucestershire District Council* [2004] JPL 975 that the neighbourhood must be wholly within a single locality. That would introduce the kind of technicality which the amendment was clearly intended to abolish. The fact that the word "locality" when it first appears in subsection (1A) must mean a single locality is no reason why the context of "neighbourhood within a locality" should not lead to the conclusion that it means "within a locality or localities".
28. I mention for the sake of completeness that a new Commons Bill which repeals and replaces the 1965 Act is now before Parliament.
- 7A 'as of right'; from *Beresford* the test on local authority land is that the local inhabitants must be made aware by 'overt acts' that land is used with permission. This case as in *Beresford* concerned the free uninhibited 24/7 access to unfenced land. The land in *Beresford* was in substance if not in form a recreational area.

The Land in this application, as was accepted by the Objector's witnesses, is the remnant of open fields including hedgerows, now grown into tree-lines and crossed by public footpaths: which prior to development had facilitated easy access. The Land, unlike the land opposite 'Treago Grove' carried no sign declaring the Land to be 'Public Open Space'. It is therefore reasonable that the inhabitants had no indication whatsoever that the Land was owned or controlled by the local authority. The law concerning 'as of right' will be dealt with in a separate submission.

- 8 The Public Notice plain wording of the transfer of the Land under s.123 to the Objector would not have conveyed to the inhabitants that their use of the Land for indulging in lawful sports and pastimes without permission, without force and without secrecy was under any threat from a social landlord.
- 9 The Land transfer in November 2002 changed the ownership to the Objector. There was no evidence by the Objector nor in cross-examination of overt acts, as understood in *Beresford*, that unequivocally or at all conveyed to the inhabitants needed permission to indulge in lawful sports or pastimes.
- 10 The fact that the Land appears on the UDP plan as 'Safeguarding Open Space and Allotments' (RST4) is only evidence of the Land belonging to a broad category and not ownership or control: e.g. Hereford Racecourse.
- 11 It is accepted that bylaws were in force in the local authority area. As Mr Phillips admitted due to the lack of accompanying maps it was not possible know clearly whether they applied to the Land or not. Evidence was given that dog-litter bins with the Play Area were removed with the Play Area. If the bylaws had applied to the Land it would have been expected that such bins and attendant notices would

have remained in place or repositioned.

- 12 'indulged in lawful sports and pastimes': Issues [5] accepts there were lawful sports and pastimes. Save for bonfires. The evidence submitted by us did not show that the local inhabitants sought or were given any permission for the bonfires they had. The Objector's evidence of Mr Davies showed that rubbish around early November was removed not that local bonfires were stopped. There was no evidence that the inhabitant's dog walking contravened any by-laws: if such were in force on the Land.
- 13 'continue to do so': it was not in issue that the local inhabitants did not continue user for lawful sports and pastimes until February 2006.
- 14 It is submitted that the Applicants have met their burden of proof to have the Land registered as a Town Green.

Christopher J Whitmey

1 August 2007