

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 Action Group and Ms M Ellis who was representing Herefordshire Housing Ltd (HHL).

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 consider 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.

The Principal lawyer (Corporate) advised that at its meeting on 12 August 2008 the Committee had rejected a previous application to register the land because the Committee did not consider that there was conclusive evidence to support the legal criteria under which land can be registered as a Town Green. He explained what the criteria were and the different ways in which the parties involved had interpreted matters, the cases that they had put forward in support or against the application, and the legal opinions given. In recent months there had been more information brought to light including legal issues arising from a case regarding land in Leeds (Leeds Group Plc v Leeds city Council) which may have a bearing on the land at Argyll Rise. Because of these developments, a fresh application had been received from the applicants to register the land. He advised that the key issue was

whether the applicants could demonstrate that the land fulfilled the necessary criteria to be used as open space 'as of right', or whether it had been used 'by right'. If it was 'as of right' it could be registered as a Town Green which would prevent it from being developed for housing purposes.

Mr C Whitmey presented the case for the applicants and explained those matters from his report which supported the application. He referred to the views that had been expressed by members of the legal profession and the inspectors who had conducted public inquiries about the land. He said that there was much common ground between the applicants and HHL about the legal issues regarding the land but that it was the 'as of right' matter on which there was a difference of opinion. He pointed to the way in which the land had been laid out as open space and used by local residents for that purpose for a number of years. He explained those issues which he felt were of particular relevance and which supported the contention of the applicants that there was sufficient evidence to support the 'as of right' definition for the land to be registered as a Town Green.

Ms M Ellis QC, acting on behalf of HHL, presented her documentation which she said supported the view of HHL that the applicants had not provided evidence to fulfil the 'as of right' criteria for the land to be registered as a Town Green. The land and surrounding area had been purchased under the powers of the Housing Act 1957 and it was clear that although it had been laid out for use as open space, at no stage had ministerial consent been sought for it to be formally designated as such. She also felt that there were further doubts raised about the 'as of right' issue regarding the length of time the land had been used. The Commons Act 2006 allowed applications to be made within five years in relation to use "as of right" which had ceased before 6th April 2007, and that any use 'as of right' would have ended when the land was transferred to HHL. She also considered that the outcome of the appeal in the Leeds case could strengthen her contention that there was no 'as of right' and that should the Council decide otherwise in respect of Argyll Rise, this would leave it open to challenge.

Mr Chapman summed up the cases put forward by the participants who were given the opportunity to ask questions and in turn provide summaries of their cases. The Committee carefully considered all the points that had been made in the submissions. The Committee also considered suggestions from some of its Members that it might be advantageous 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. The legal representatives and the applicant's representative gave their views and advice on the Committee taking either course of action.

Mr Chapman said that the Committee had been provided with an extensive amount of information and that highly detailed arguments had been put forward in support of the application and against it. He suggested 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 about the 'as of right' status;
4. to accede to the application

The Committee discussed the alternatives and gave further careful consideration to the points made by the representatives and the advice received from Mr Chapman and the Principal lawyer (Corporate). Having considered the matter in some detail, the

Committee felt that on the balance of probabilities from the evidence provided, it could not be determined that the open space 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

The meeting ended at 2.05 pm

CHAIRMAN

