

Regulatory Committee

Meeting to be held on Wednesday, 29 January 2020

Part I

Electoral Division affected:
Rossendale East;

Determination of Town and Village Green Application VG107 relating to land at 'Waterbarn Recreation Ground', Waterbarn Lane, Stacksteads, Bacup

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Executive Summary

The appointment of an Inspector to hear the evidence and report in respect of Application No. VG107 relating to land at 'Waterbarn Recreation Ground', Waterbarn Lane, Stacksteads, Bacup.

Recommendation

That the Registration Authority hold a "public inquiry" as prescribed under the Commons Registration (England) Regulations 2014 (the Regulations) in particular Part 3 thereof to appoint an Inspector to hold the inquiry and to provide a report and recommendation to the determining authority in connection with the Application VG107 relating to land at 'Waterbarn Recreation Ground', Waterbarn Lane, Stacksteads, Bacup.

Background and Advice

At the meeting on 25 July 2001, the Committee established the Commons and Town Greens Sub-Committee with power to act in connection with decisions to alter the Commons Registers including determination of applications to add land as a town or village green. This Sub Committee no longer exists and the power for these matters now rests with the Regulatory Committee.

The Commons and Town and Green Sub-Committee at its meeting on 24 October 2008 resolved that the primary preference for the future determination of applications was:

That the Registration Authority could arrange its own hearing of oral evidence and submissions requesting parties to follow directions as given and to cross examine the evidence. This would be non-statutory and no Statutory Regulations prescribe procedure. Information given would be taken into account by the Sub-Committee.

The Sub-Committee could hear the evidence, cross examinations and submissions and then assess the application of the law. This would not incur a fee for an inspector. A report would be prepared by the advising officer with assistance from Counsel, if required.

It was also resolved that when the above primary procedure was considered unsuitable an alternative procedure for the determination of an application would be agreed.

At the meeting of the Regulatory Committee on 26th June 2019, a report was presented on the establishment of a Special Sub-Committee with power to act in respect of Application No. VG107, relating to land at Waterbarn Recreation Ground, Waterbarn Lane, Stacksteads, Bacup.

The Committee were advised that Application VG107 required that oral evidence be heard and tested through cross examination, and that this would require arranging a hearing at which members of the Special Sub-Committee would listen to the evidence and then determine the application.

At the time of the meeting of the Regulatory Committee, it was advised that the preferred way of proceeding was not of concern and the Committee were informed that should they consider the primary procedure as agreed by the Commons and Town Greens Sub-Committee on 24 October 2008 to be unsuitable at the present time, and that an alternative way of dealing with the determination would be appropriate, then Committee were advised they could authorise that the Registration Authority hold a public inquiry, as prescribed under the Commons Registration (England) Regulations 2014, appointing an Inspector to hold the Inquiry, and to provide a report and recommendation to the Special Sub-Committee.

The Committee subsequently resolved as follows:

'(i) Approved the establishment of a Special Sub-Committee to determine Application No. VG107 relating to land at Waterbarn Recreation Ground, Waterbarn Lane, Stacksteads, Bacup.

(ii) Agreed that, subject to the above, the membership of the Special Sub-Committee for VG 107 be drawn from 3 members of the Regulatory Committee, on the basis of 2 members of the Conservative Group and 1 member of the Labour Group.

(iii) Agreed that nominations to serve on the Special Sub-Committee be submitted by the respective political group secretaries.

(iv) Agreed that the quorum for the Special Sub-Committee be 2 members.'

Following the meeting of the Regulatory Committee on 26th June 2019, the legal representatives of the current landowners (TMJ Contractors Limited) have raised concerns with regards to the Authority's proposed use of a "hearing before members" to test the evidence which is a procedure sitting outside the statutory provision for an Inquiry before an Inspector. Whilst it is advised that the non-statutory

procedure is a lawful and proper procedure, a challenge to its use will involve the authority in expense and officer time.

The documents in this matter are also becoming large by number and size and significant new decisions dealt with by the senior courts in connection with Town green law have recently been handed down.

In view of the above, it is advised that the primary preference to deal with this application to hold a non-statutory hearing in front of members is now considered less suitable in this matter.

It is advised that VG107 is a contested application with the landowner, TMJ Contractors Limited having an interest in the land. The landowner strongly opposes the application and disputes the evidence of the applicant. There is also a large amount of local interest in the land.

It is therefore felt that having a full report from a suitably qualified Barrister, and their recommendation following them hearing the evidence and giving a full consideration of the documents with good knowledge of the law would best protect the Authority.

In the circumstances, it is advised that a public Inquiry be held, as prescribed under the Regulations, appointing an inspector to hold the inquiry and to provide a report and recommendation to the determining authority. Members could attend the inquiry and listen if they so wish but it would be the Inspector who would prepare a report and recommendation.

It is believed that the cost of appointing an Inspector and holding an inquiry is justifiable, to ensure the Authority is able to determine the matter shortly and have an expert hear the evidence and evaluate same and thereby put the Authority at a reduced risk of challenge in this particular matter.

Following the public inquiry, the independent Inspector will then make a recommendation as to whether the application meets the statutory criteria under Section 15 of the Commons Act 2006. Once the Inspector's report and recommendation has been received, the officer will prepare a report for consideration by the Special Sub-Committee and include all relevant documents. The Special Sub-Committee will also have received relevant information and training.

Consultations

N/A

Implications:

This item has the following implications, as indicated:

Risk management

The risk to the Authority in not accepting the recommendation and instead proceeding to deal with this matter with a Special Sub-Committee hearing evidence would be that the Authority may well be left open to legal challenge.

Legal

Both procedures discussed above are lawful procedures for the determination of an application to register land as a Town Green. However, the appointing of an Independent Inspector at an inquiry has a clear procedure under the Regulations and would enable the complexities of the law on Town Green registration to be effectively applied in this matter in the near future with a reduced risk of challenge.

Financial

It is estimated that the cost of the inquiry would be in the region of £12k. The costs of the inquiry will be met from within legal services budget.

Local Government (Access to Information) Act 1985

List of Background Papers

Paper	Date	Contact/Directorate/Tel
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None		
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Reason for inclusion in Part II, if appropriate		
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