

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to:	LICENSING AND PUBLIC PROTECTION COMMITTEE
Report of:	ACTING CITY SOLICITOR
Date of Decision:	18 JANUARY 2017
SUBJECT:	TO NOTE THE DELETION OF THE REGISTRATION OF WESTHILL PLAYING FIELDS FROM THE REGISTER OF TOWN/VILLAGE GREENS IN COMPLIANCE WITH AN ORDER OF THE HIGH COURT
Wards affected:	SELLY OAK

1. Purpose of report:

The Committee is asked to note the deletion of the Registration of Westhill Playing Fields from the Registry of Town/Village Greens following a successful application to the High Court by the Landowner to delete the Registration. A High Court Order for the deletion was made on the 31 October 2016 and required compliance by the 28th November 2016. The deletion was made on the 24th November.

2. Decision(s) recommended:

- 2.1 To note the deletion of the Registration of Westhill Playing Fields from the Register of Town/Village Greens in compliance with an Order of the High Court.

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3. Consultation
<p>Consultation should include those that have an interest in the decisions recommended.</p> <p>3.1 <u>Internal</u></p> <p>The Chairman and Vice Chairman of Licensing and Public Protection Committee; Selly Oak Ward Members; Alison Harwood, Acting Service Director of Regulation and Enforcement and Chris Neville, Head of Licensing .</p> <p>3.2 <u>External</u></p> <p>Given the nature of the decision recommended there is no obligation for external consultation.</p>
4. Compliance Issues:
<p>4.1 <u>Are the recommended decisions consistent with the Council's policies, plans and strategies?</u></p> <p>The Deletion of the Registration is a legal requirement, and is necessary to comply with a Court Order. Compliance will ensure the Council continues to act in a lawful manner and which is consistent with the Council Business Plan and Budget.</p> <p>4.2 <u>Financial Implications</u> <u>(Will decisions be carried out within existing finance and Resources?)</u></p> <p>Annually a budget of £50,000.00 is provided from corporate resources to pay for the administration of Town and Village Green applications and to fund independent Inquiries. of Any unspent balances for the relevant financial year are carried over to the following financial year as approved by this Committee.</p>
<p>4.3 <u>Legal Implications</u></p>

Birmingham City Council is the registration authority (“the Registration Authority”) for the purposes of Commons Registration and maintains the Register of Town and Village Greens. Under the Constitution the Registration function is delegated to the Licensing and Public Protection Committee.

Failure of the Council to have complied with the High Court Order would have left the Council Open to proceedings for contempt of Court. The usual remedy for contempt is a fine, but the Court also has powers to make a further Order for compliance, or for imprisonment of a Council representative. The Council would also be liable to pay the costs of the contempt proceedings.

4.4 Public Sector Equality Duty

As the deletion is to comply with a Court Order, it is not within the scope of the public sector equality duty in the Equalities Act 2010.

5. Relevant background/chronology of key events:

5.1 In May 2008 an application (“the 2008 Application”) was received from Muriel Caddy, Ann Haigh, Joanne Ward, Kevin Bailey and Kathleen Thomas (“the Applicant”) on behalf of Friends of Westhill Playing Fields Selly Oak to register land at Westhill Playing Fields Selly Oak (“the Site”) as a Town/ Village Green.

5.2 The freehold title to the Site is owned by Westhill Endowment a charitable trust (“the Landowner”.) Objections were received from the Landowner, and by a local resident, who has since passed away.

5.3 The Statutory tests in s15 (1) and S15 (4) of the Commons Act 2006 (“the 2006 Act”) are whether at the time the Application was made the Site was land on which, for not less than 20 years, a significant number of the inhabitants of the locality, or of any neighbourhood within a locality, had indulged in lawful sports and pastimes as of right. The Courts have also held use “as of right should” have been without force, secrecy or permission.

- 5.4 Your Committee authorised the appointment of an independent Inspector to hold a non-statutory inquiry to hear evidence from the parties and assess the requisite facts, and to give the Registration Authority a recommendation as to the determination of the 2008 Application.
- 5.5 A public local inquiry was held on 5th, 6th and 7 May 2010, at which the independent Inspector heard the evidence in relation to the 2008 Application. The independent Inspector provided a report dated 4th July 2010 (“The Inspector’s Report”) to the Registration Authority which recommended that the Site (excluding an area including tennis courts and a car park) should be registered as a Town/Village green, as the statutory tests in the 2006 Act had been met. A plan showing the registered Site edged red and coloured green is annexed as Appendix 1.
- 5.6 On the 16th March 2011 your Committee considered The Inspector’s Report; there was no reason for your Committee to reject either the findings of the Inspector or her recommendation to register the land. Accordingly your Committee resolved that the Inspector’s Report be endorsed, and that the application for the registration of a Town/Village green at Westhill Playing Fields, Selly Oak be granted for the reasons set out in the Inspector’s Report. A copy of the Report to your Committee (with the Inspector’s Report annexed) , and the minutes of the meeting are annexed as Appendix 2 and Appendix 3 respectively.
- 5.7 The Registration was completed in March 2011, the Landowner did not challenge the Registration.
- 5.8 On 24 February 2016 the Landowner applied to the High Court (“the “Court Application””) to cancel the Registration under S14(b) of the Commons Registration Act 1965 (“ the 1965 Act”) on the grounds that the statutory tests had not been met in 2011, and it was just to rectify the Register. The Council as Registration Authority was named as the Respondent (the Defendant) to the Court Application.

- 5.9 : Under s14 (b) of the 1965 Act the High Court may order rectification of the Register if four criteria are satisfied, namely:-
- (i) the register must have been amended pursuant to section 13 of the 1965 Act;
 - (ii) the amendment (ie: the original registration of the land as a Town/ Village green) ought not to have been made;
 - (iii) the error cannot be corrected pursuant to regulations made under the 1965 Act; and
 - (iv) it must be just to rectify the register.

There is no statutory time limit for an application for rectification to be lodged.

5.10 On the advice of Counsel the Council decided not to take an active part in the proceedings, but instead take a neutral stance.

5.11 The Landowner wrote to each of the five original Applicants for the 2008 Application giving details of the proposed claim, and asked if they would like to take part in the proceedings as Respondents. Four of the five declined, one did not respond.

5.12 The High Court hearing was on 31 October 2016, and was a full rehearing of the 2008 Application. The Court considered witness evidence from both the Applicant and for the Landowner (through witness statements prepared for the original 2010 Application.) No oral evidence was given. The Landowner (who was represented by a Q.C. and a Junior Counsel) challenged some of the findings of fact by the Inspector, invited the Court to make alternative findings; and argued that as a result the Site should not have been registered as the statutory tests had not been met.

5.13 In particular the Landowner argued two issues when considering whether the Playing Field had been used “as of right” i.e. the use must have been without force, secrecy or permission including :

5. 13 (1) the erection of signs around the Playing Field through the period; The Court found that the signs stated that the Playing Fields were the private grounds of Westhill and that any notice granting permission to dog walkers to use the Playing Fields precluded all other recreational activity i.e. permission was only granted to dog walkers.

This exclusion of other uses meant that the Landowner had not “acquiesced” in the claimed use, which could not therefor be “as of right”.

5. 13 (2) The Court also found that the temporary use of the site by a developer to facilitate the construction of a Crest Nicholson development nearby interrupted the qualifying period of 20 years use by inhabitants of the locality, and access to the Playing Fields was precluded from Weoley Park Road. Although there was still technically access through the adjoining church, there was no evidence of the public using such access. In particular, the Court concluded any use of the Playing Fields by the youth clubs during the Crest Nicholson development was done secretly.
- 6 As a result the Court concluded that the Playing Field was not used “as of right” and the Site should not be registered as a Town Village Green. The Court ordered that the Register be rectified pursuant to section 14(b) of the 1965 Act to remove the Site from the Register as a town or village green by 28 November 2016.
7. In a meeting of your Committee on the 16th November the Head of Licensing provided an update of the Court decision, which is recorded under minute number 765.
- 8 The Court Order was complied with on 24th November 2016 when in consultation with the Chairman the Registration of the Site was deleted. The Committee is requested to note the deletion of the Registration.

7. Evaluation of alternative option:

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8 Reasons for Decision:
8.1 To note the cancellation of the Registration in accordance with the Court Order.

Signatures	<u>Date</u>
Chief Officer

List of Background Documents used to compile this Report:
1. Court Order dated 31 October 2016 2. Register of Entry of Town and Village Green relating to the site

List of Appendices accompanying this Report:
1. Plan showing Site of Town and Village Green registered in March 2011. 2. 16th March 2011 Licensing Committee Report with attached Inspector's Report dated 4 th July 2010.

Report Version	<u>1</u>	Dated	
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