

# LICENSING PANEL MINUTES

## 10 DECEMBER 2013

**Chairman:** \* Councillor John Nickolay

**Councillors:** \* Ajay Maru \* William Stoodley

\* Denotes Member present

### 191. Appointment of Chairman

**RESOLVED:** That Councillor John Nickolay be appointed Chairman of the Licensing Panel Hearing.

### 192. Declarations of Interest

**RESOLVED:** To note that the following interests were declared:

Agenda Item 5: Whitchurch Playing Fields – Application Under Section 15(1) of the Commons Act 2006 to Register the Land as a Town Green

Councillor John Nickolay declared a non-pecuniary interest in that he knew the applicant. He declared a further non-pecuniary interest in that he had been present at a demonstration against development proposals for Whitchurch Playing Fields. He would remain in the room whilst the matter was considered and voted upon.

### 193. Minutes

(See Note at conclusion of these minutes).

## RESOLVED ITEMS

### 194. Public Questions, Petitions and Deputations

**RESOLVED:** That

- (1) it be noted that no public questions were put, or petitions received at this meeting under the provisions of Committee Procedure Rules 17 and 15 (Part 4B of the Constitution) respectively;
- (2) Committee Procedure Rule 16, which relates to deputations, be suspended for the duration of Agenda Item 5.

The Chairman then invited both the Applicant and the Objector to speak, for no more than a total of 10 minutes each.

The Applicant outlined the following points in support of the application:

- only one resident had supported the objector, but over 150 had supported the application;
- the objector's main witness had withdrawn their statement;
- the Inspector's report had ignored the existence of gates from private properties on to the land;
- there was no evidence that the pedestrian gates in Wemborough Road were locked regularly;
- residents adjoining the land could not remember whistles or announcements being used to signal that the gates about to be closed;
- the Headteacher of Whitchurch Junior School had subsequently withdrawn her support for the Objector's case.

The Applicant made reference to proposals for development of the land and associated consultation. She believed it was important to preserve remaining green field areas, and stated that the locality was already well served with sport and leisure facilities. She told the Panel that they had an opportunity to secure the land as a resource for current and future generations and implored them to do so.

An officer, representing the Council as landowner and Objector, stated that the obligation fell on the Applicant to demonstrate that the statutory criteria for registration as a Town Green had been met, and that the Inspector's report (having considered the evidence submitted to the non-statutory inquiry) recommended rejection of the application on the basis that the Applicant had not satisfied the relevant criteria.

**195. Whitchurch Playing Fields - Application under section 15(1) of the Commons Act 2006 to register the land as a Town Green**

**In attendance:**

Applicant:	Melanie Lewis
Objector: (for the Council as Landowner)	Andrew Connell Phillip Loveland-Cooper
Legal Advisers:	Katherine Hamilton Matthew Adams
Democratic Services Officer:	Una Sullivan
Observers Present:	Emma Gribbin Abraham Hayeem Elvin Samson Adolphus Pais Mrs Preston

The Panel considered a report of the Director of Legal and Democratic Services which presented the findings of Mr Stephen Morgan, Inspector, following a non-statutory public inquiry in relation to an application to register Whitchurch Playing Fields as a Town Green, under Section 15(1) of the Commons Act 2006 ("the Act").

An officer introduced the report and explained that in order to allow the application, the Panel would have to be satisfied that the Applicant had demonstrated that strict statutory criteria had been met.

She also explained that as the Council was both landowner and Registration Authority, a potential conflict of interest existed. This had been addressed by keeping all processes for either role, including legal advice, entirely separate, and by holding a non-statutory public inquiry into the matter. The Inspector had conducted a thorough examination of all the evidence and had concluded that the application should be rejected on the basis that the use of the land by local inhabitants for lawful sports and pastimes was by way of an implied permission and therefore could not be as of right.

Following an explanation of the relevant statutory provisions, the Panel was requested to permit the Applicant's request to amend the application so as to be determined under Section 15(2) as opposed to Section 15(3) of the Act. The Panel were referred to the Inspector's report in which he stated that such an amendment would not prejudice the Objector.

Members of the Panel agreed to determine the application under Section 15(2) of the Act.

The Panel was then requested to consider the Inspector's report, being mindful that while they might be sympathetic to public support for the application, they could only have regard to whether or not the statutory criteria had been met and were to disregard potential future land use or development proposals.

Members discussed the broad definitions of 'significant number' and 'use as of right', and the degree to which organised sport and managed functions could be proved. They noted that a number of residents had private access to the land via their garden gates, but also that other users – namely Stanmore Baptist Church and the Scout Hut - had been given keys for access to the land. The legal officer (acting on behalf of the Registration Authority) referred the Panel to the Inspector's report which had identified evidence of formal permitted recreational use by schools, sports clubs and the Stanmore Baptist Church. The level of this use, although reduced in recent years, could be considered sufficient, and of such a nature, as to render any use for lawful sports and pastimes by local inhabitants to be by way of an implied permission. Based on the evidence submitted, the Inspector's view was that the Council had, from time to time, locked entrances to the land and undertaken repairs to the fence along Abercorn Road which was sufficient to render use of the land by local inhabitants for informal recreation by way of an implied permission and not use as of right.

While a specific figure could not be given for a 'significant number', the burden of proof lay with the Applicant to demonstrate such volume of use. The Panel noted that while there had been only one statement in support of the Objector, there had been over 150 in support of the application. However, they accepted that this support did not necessarily mean that the qualifying criteria had been met. The officer commented that the Inspector accepted there had been a level of regular use of the land by local inhabitants for recreational use throughout the 20 year period, but that that use had not been of a sufficient quality to satisfy Section 15 of the Act.

The Panel was reminded that in reaching a decision they could not have any regard to any future use and or development proposals for the land.

(The Panel then adjourned from 8.45 pm – 9.20 pm to receive legal advice.)

The Chairman, having thanked those present for the way they had conducted themselves and the applicant for her presentation, announced the Panel's decision and it was

**RESOLVED:** That

- (1) the Panel agreed to determine the application under Section 15(2) of the Commons Act 2006; and in doing so;
- (2) the Panel agreed unanimously to reject the application on the basis that the applicant has not successfully demonstrated use 'as of right' by a significant number of residents over the 20 year period.

(Note: The meeting, having commenced at 6.30 pm, closed at 9.25 pm).

(Signed) COUNCILLOR JOHN NICKOLAY  
Chairman

[Note: Licensing Panel minutes are:-

- (1) approved following each meeting by the Members serving on that particular occasion and signed as a correct record by the Chairman for that meeting;
- (2) not submitted to the next panel meeting for approval.

Reasons: The Licensing Panel is constituted from a pooled membership. Consequently, a subsequent Panel meeting is likely to comprise a different Chairman and Members who took no part in the previous meeting's proceedings. The process referred to at (1) above provides appropriate approval scrutiny].