

Bath & North East Somerset Council

MEETING:	Regulatory (Access) Committee
MEETING DATE:	15th November 2013
TITLE:	Bath Recreation Ground TVG Registration Application
WARD:	Abbey

AN OPEN PUBLIC ITEM

List of attachments to this report:

- Appendix 1 – Plan of land to which the Application relates
- Appendix 2 – Application to register ‘Bath Recreation Ground’ as a TVG
- Appendix 3 – Objections
- Appendix 4 – Representations
- Appendix 5 – Applicant’s comments on the Objections
- Appendix 6 – Inspector’s Initial Advice dated 10 June 2013
- Appendix 7 – Comment on Inspector’s Initial Advice
- Appendix 8 – Inspector’s Further Advice dated 27 September 2013
- Appendix 9 – Applicant’s comments on the Further Advice

1. THE ISSUE

- 1.1 An Application has been received by Bath and North East Somerset Council in its capacity as Commons Registration Authority (“the Authority”) to register land known as Bath Recreation Ground, Bath as a Town or Village Green (“TVG”). The Application was advertised and seven objections were received against registration.
- 1.2 An independent expert was instructed by the Authority to advise the Authority as to whether or not Bath Recreation Ground should be registered as TVG.

2. RECOMMENDATION

- 2.1 The Regulatory (Access) Committee (“the Committee”) is recommended to refuse the application and not register the land edged red on the plan attached at **Appendix 1** (“the Plan”) as a TVG.

3. FINANCIAL IMPLICATIONS

- 3.1 The potential financial implications of the land being successfully registered are not a legally relevant consideration in the determination of the Application.

4. THE REPORT

- 4.1 **Application.** On 16 November 2012, Mr Jack Sparrow of 43 Forester Road, Bathwick, Bath, BA2 6QE (“the Applicant”) applied under section 15 of the Commons Act 2006 (“the 2006 Act”) to register land known as ‘Bath Recreation Ground’ as a TVG. This original Application was assessed by the Authority and was found not to have been duly made. The original application was therefore returned to the Applicant to give him the opportunity to rectify the problems with the original application and resubmit to the Authority. The revised Application was resubmitted to the Authority on 18 December and following a subsequent assessment by Officers of the Authority was found to be duly made on 18 December 2012; the Authority therefore proceeded with the Application on this basis.
- 4.2 The Application, excluding the supporting evidence which is available upon request, is contained at **Appendix 2**. The Application was made on the basis that the land qualifies for registration by virtue of section 15(2) of the 2006 Act, namely that;
- “...a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and they continue to do so at the time of the application”.*
- 4.3 The land to which the Application was made is edged red on the plan contained at **Appendix 1**. The majority of the land is held on charitable trusts by the Trustees of the Recreation Ground, Bath (“the Trustees”); however, the land also includes small sections of approximately 17 privately owned gardens and sections of public highway vested in the Highway Authority. The land to which the Application relates is hereafter referred to as the “Application Land”.
- 4.4 The Application was accompanied by 10 user evidence forms and an assortment of conveyances, agreements, leases, photographs and documents relating to the charitable status of the land. The Authority has a statutory duty under the 2006 Act to consider and dispose of the Application.
- 4.5 **Advertising.** On 10 January 2013, the Application was advertised by placing a notice in the Bath Chronicle and on the Authority’s website and serving notice on all interested parties including the Trustees and all other known or suspected landowners, the ward members and Applicant. Additionally, notices were placed at 19 conspicuous locations around the Application Land and maintained on site until 26 February 2013.

- 4.6 The Authority received seven objections against the Application Land being registered as TVG; these objections are reproduced at **Appendix 3**. The Objections were based on a variety of grounds including;
- i. that use was by permission, licence or 'by right', rather than 'as of right',
 - ii. that significant sections of the Application Land is not accessible to the inhabitants on match days,
 - iii. that sections of the Application Land have not been accessible at any point during the relevant period because they have been occupied by a leisure centre or private gardens,
 - iv. that the Applicant has failed to produce sufficient evidence to prove use by a significant number of inhabitants.

Additionally, 18 emails and letters of support for the Application were received from members of the public during the advertising period (see **Appendix 4**).

- 4.7 On 25 February 2013, the Objections were forwarded to the Applicant to give him an opportunity to respond to the points raised. On 1 April 2013, the Applicant responded to the Objection and challenged each of the points raised (see **Appendix 5**). On 10 April 2013, Officers of the Authority made an assessment of the Application, the Objections and the Applicant's response to the Objections. It was concluded that there remained significant points of dispute between the Applicant and Objectors and it was therefore decided that an independent expert should be instructed to provide advice to the Authority as to how to proceed with the Application.
- 4.8 **Barrister's Advice.** The Authority subsequently instructed Mr Leslie Blohm QC of St John's Chambers in Bristol ("the Inspector") who is a barrister and an independent expert in TVG and trust law. The Inspector considered the Application, the Objections and the Applicant's response to the Objections and on 10 June 2013 provided formal advice to the Authority ("the Initial Advice") (see **Appendix 6**). The Initial Advice carefully assesses the relevant law and evidence and concludes at paragraph 71 of the Initial Advice that; "...the Registration Authority...should dismiss the Application for Registration of The Rec, Bath as a Town or Village Green..."
- 4.9 On 13 June the Applicant and Objectors were given the opportunity to comment upon the Inspector's Initial Advice. The Trustees and the Applicant responded accordingly (see **Appendix 7**) and the Applicant also submitted new evidence in support of their application. These comments were referred back to the Inspector and, taking the comments and new evidence into consideration, the Inspector issued further advice to the Authority on 27 September 2013 ("the Further Advice") (see **Appendix 8**). The Inspector advises at paragraph 17 of the Further Advice that:

"It follows therefore that my advice remains as it was in my earlier advice. There is no reasonable prospect of Mr. Sparrow's application succeeding even if an Enquiry is held. The Authority should therefore determine the application on the evidence before it, and (I advise) should dismiss the application for the reasons set out in paragraph 71 of my earlier advice."

4.10 The Applicant has provided a response to the Further Advice (see **Appendix 9**); however, the response does not raise any new issues of substance which have not already been addressed by the Inspector in the Initial and Further Advice. It now falls to the Committee to determine the Application on behalf of the Authority.

5. STATUTORY TEST

5.1 The statutory test under consideration is set out in section 15(2) of the 2006 Act, which states that; “...*a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and they continue to do so at the time of the application*”. The Application is considered in full in the Inspector’s Initial and Further Advice and members of the Committee are advised to read the report in full before reaching a decision regarding the Application.

5.2 As stated in paragraph 26 of the Initial Advice, the Authority can only consider whether the legislative test set out in the 2006 Act have been met. The Authority cannot take into account whether registration is deemed desirable nor what may or may not happen to the land in the future.

5.3 At paragraph 44 of the Initial Advice, the Inspector identifies three discrete issues that require particular analysis in relation to the Application. These are:

- (1) *Whether use by the public of the land for informal recreation was use ‘by right’ and not ‘as of right’?*
- (2) *Whether use by the public of land that is in the sole control of another – and I refer here to the tennis courts, the leisure centre and other areas – is permissive and hence not ‘as of right’?*
- (3) *Whether there is any relevant recreational use throughout the relevant period of the land demised to Bath Rugby?*

5.4 **Use of the land ‘by right’.** The charitable trusts which exist on almost the entirety of the Application Land grants the inhabitants of Bath the right to use the land for ‘...*games and sports of all kinds tournaments fetes shows exhibitions displays amusements entertainments or other activities of a like character...*’. Any use of the Application Land which is consistent with these categories of use, such as rounders football and fêtes, would be by virtue of a pre-existing right. This use would therefore be ‘*by right*’ rather than ‘*as of right*’ and must be discounted for the purposes of the Application. The Inspector states at paragraph 54 of the Initial Advice that: “*It is not possible to quantify with precision the [as of right] usage from the documentation that I have, although it is fair to say that my general impression of the evidence that I have is that it is not substantial.*”

5.5 **‘Third party’ controlled land.** Significant sections of the Application Land are occupied by third parties including Aquaterra Leisure who run the leisure centre and Bath Spa Tennis Club, Southdown Tennis Club and Bath Croquet Club who occupy the tennis courts and croquet lawns. Use of the leisure centre is by licence, unless the terms of the charitable trust applies to Aquaterra in which case use of the leisure centre will have been ‘*by right*’; in either scenario this would not have been use ‘*as of right*’. The use of the tennis courts and croquet lawns are controlled by the respective clubs and again use will have been either by licence or ‘*by right*’ and will not have been ‘*as of right*’.

- 5.6 The sections of the Application Land to which charitable trusts do not exist are the small sections of approximately 17 privately owned gardens and sections of public highway vested in the Highway Authority. The sections appear to have been erroneously included in the Application; there is no evidence of use of the gardens by the inhabitants of Bath and the sections of public highway have been used for highway purpose and not for lawful sports and pastimes.
- 5.7 **Land demised to Bath Rugby.** In paragraph 61 of the Initial Advice the Inspector states that; *“...the land so demised...has not been used for public sports and games. The only usage has been pursuant to Bath Rugby’s permission (in which case the users are licensees and the use is permissive, and not ‘as of right’)...”* It is immaterial to the determination of this TVG registration application whether or not any constraints on the use of the Application Land are within the terms of the trusts.
- 5.8 **Conclusion.** Paragraph 71 of the Inspector’s Initial Advice advises that;
“...the Registration Authority...should dismiss the Application for Registration of The Rec, Bath as a Town or Village Green pursuant to section 15 Commons Act 2006 on the following grounds:
(1) That usage of The Rec for lawful sports and pastimes ‘as of right’ has not been by a significant number of the inhabitants of Bath;
(2) That usage of the land demised to Bath Rugby plc, and of the Leisure Centre and the tennis and Croquet Courts has not been ‘as of right’.
- 5.9 For the reasons detailed in paragraph 5.8 above, the Application does not demonstrate that the Application Land has been used ‘as of right’ for lawful sports and pastimes by a significant number of the inhabitants of Bath. The Application therefore fails to satisfy the legal tests set out in section 15 of the Commons Act 2006. The Committee is recommended to refuse the Application and not register the Application Land as TVG.

6 RISK MANAGEMENT

- 6.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Authority’s decision making risk management guidance.

7. EQUALITIES

- 7.1 A proportionate equalities impact assessment has not been carried out as the Application must be considered solely in relation to the test set out in the 2006 Act.

8. CONSULTATION

- 8.1 *Ward Councillor; Cabinet Member; Other B&NES Services; Service Users; Local Residents; Community Interest Groups; Monitoring Officer*
- 8.2 Extensive consultation was carried out as detailed in paragraph 4.5 above.

9. ISSUES TO CONSIDER IN REACHING THE DECISION

9.1 Legal Considerations; as detailed in paragraphs 5.1 and 5.2 above.

10. ADVICE SOUGHT

10.1 The Council's Monitoring Officer (Divisional Director – Legal and Democratic Services) and Section 151 Officer (Divisional Director - Finance) have had the opportunity to input to this report and have cleared it for publication.

Contact person	Graeme Stark, Senior Rights of Way Officer
Background papers	Bath Recreation Ground TVG case file Evidence appended to the Application Evidence appended to Bath Rugby plc's Objection
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