

Bath & North East Somerset Council

MEETING:	Regulatory (Access) Committee
MEETING DATE:	25 October 2011
TITLE:	Newbridge Meadows TVG Registration Application
WARD:	Newbridge

AN OPEN PUBLIC ITEM

List of attachments to this report:

Appendix 1 – Application to register ‘Newbridge Meadows’ as a Town or Village Green

Appendix 2 – Plan of land to which the application relates

Appendix 3 – Inspector’s report dated 23 August 2011

Appendix 4 – Applicant’s comments on the Inspector’s report

Appendix 5 – Plan of land advised for registration

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 Newbridge Meadows in Newbridge, Bath as a Town or Village Green (“TVG”). The Application was advertised and an objection was received from the Council’s Property Services department.
- 1.2 An independent expert, Mr Leslie Blohm QC of St John’s Chambers in Bristol (“the Inspector”) was appointed by the Authority to conduct a non-statutory public inquiry and then report with a recommendation in relation to the application. The Regulatory (Access) Committee (“the Committee”) is asked to consider the Application and the Inspector’s report and to determine whether land at Newbridge Meadows should be registered as TVG.

2. RECOMMENDATION

- 2.1 The Committee is recommended to register the land edged red on the plan attached at Appendix 5 as a TVG.

3. FINANCIAL IMPLICATIONS

- 3.1 The potential financial implications, for the Council as landowner, 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 20 April 2010, Mr John Frederick Rory Weston of 44 Old Newbridge Hill, Bath, BA1 3LU (“the Applicant”) applied under section 15 of the Commons Act 2006 (“the 2006 Act”) to register land known as ‘Newbridge Meadows’ as a TVG. The Application, excluding the user evidence forms, is contained at Appendix 1; (the user evidence forms are available upon request). 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”.

4.2 The land to which the Application was made is shaded on the plan contained at Appendix 2. The land is comprised of an western meadow shaded blue and an eastern meadow shaded green (“the Meadows”), a ‘corridor’ connecting the Meadows shaded red (“the Corridor”), a pathway shaded purple (“the Pathway”) and a vegetated bund shaded orange which separates the Meadows, Corridor and Pathway from the Newbridge Park and Ride (“the Bund”). This land is all owned by Bath and North East Somerset Council and is hereafter referred to collectively as the ‘Application Land’.

4.3 The Application was accompanied by 49 user evidence forms detailing use of Application Land from 1909 up until the date of the Application. The Authority has a statutory duty under the 2006 Act to consider and dispose of the Application.

4.4 **Assessment and Advertising.** On 24 April 2010, Officers of the Authority made a preliminary assessment of the Application as to whether it was duly made. Due to an ambiguity relating to the ‘locality or neighbourhood within a locality’ to which the Application relates (see Paragraph 5.6 below), the Applicant was asked to clarify his position on this point. The Applicant subsequently modified the Application to relate solely to the locality of the electoral ward of Newbridge; the Authority therefore proceeded with the Application as being duly made.

4.5 On 20 May 2010, 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 Property Services, the ward members and Applicant. Additionally, notices were placed at 10 conspicuous locations around the Application Land and maintained on site until 20 July 2010.

4.6 On 16 July 2010, Bath and North East Somerset Council’s Property Services (“the Objector”) objected to registration of the Application Land as a TVG (“the Objection”) on the grounds that;

- i. the land has been used ‘by right’ rather than ‘as of right’,
- ii. the land has not been used by the inhabitants of the stated neighbourhood within a locality,
- iii. the land has been used for way of passage rather than as a TVG,
- iv. part of the Application Land is inaccessible for use,
- v. and, part of the Application Land has been blocked by travellers.

Additionally, 49 letters of support for the Application were received from members of the public during the two month advertising period.

- 4.7 On 20 July 2010, the Objection was forwarded to the Applicant to give him an opportunity to respond to the points raised. On 6 September 2010, the Applicant responded to the Objection and challenged each of the points raised. On 16 September 2010, Officers of the Authority made an assessment of the Objection and the Applicant's response to the Objection. It was concluded that there remained significant points of dispute between the Applicant and Objector and it was therefore decided that a non-statutory public inquiry should be held to assess the evidence and relevant areas of law.
- 4.8 **Non-Statutory Public Inquiry.** The Authority subsequently instructed the Inspector, who is a barrister and an independent expert in TVG law, to preside over a non-statutory public inquiry ("the Inquiry") into the Application.
- 4.9 The Inquiry was scheduled to open on 11 April 2011 and to run for four days in the Council Chamber, Guildhall, High Street, Bath, BA1 5AW. On 3 March 2011, the Inquiry was advertised by placing a notice in the Bath Chronicle and on the Authority's website and by serving notice on all interested parties including the Objector, the ward members and the Applicant. Additionally, notices were placed at 10 conspicuous locations around the Application Land and maintained on site until 14 April 2011.
- 4.10 The Applicant and Objector were both given the opportunity to present their evidence, call witnesses, cross-examine witnesses, make legal submissions and present their cases for and against registration. At the opening of the Inquiry, the Applicant's agent stated that, although they were not amending the Application at this point, they would not be offering any evidence in support of registering the Bund and Pathway which comprise part of the Applicant Land. The Inspector also carried out a site visit accompanied by both the Applicant and Objector. The Inquiry concluded on 14 April 2011.
- 4.11 On 23 August 2011, the Inspector issued his report on the Application and recommended that the Meadows and the Corridor (the land shown edged in red on the plan contained at Appendix 5) should be registered as TVG. On 23 August 2011, the Authority sent the Inspector's report to the Objector and Applicant and asked both parties to provide any comments they may have on the report. On 19 September 2011, the Objector responded stating that they did not have any comment on make on the Inspector's report. On 20 September 2011, the Applicant responded and his comments are contained at Appendix 4.

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 report and members of the Committee are advised to read the report in full before reaching a decision regarding the Application. Additionally, the constituent parts of this test are considered in turn below.

- 5.2 As detailed in paragraph 2 of the Inspector's report, 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 **“a significant number”** The Application Land must be used by a significant number of people. This does not mean ‘*a considerable or substantial number*’ but it does need to be a level of use sufficient to show that the land is in general use by the local inhabitants rather than just use by a few individuals or an isolated group within the community. The Inspector addresses this test in paragraphs 110 to 112 of his report.
- 5.4 The Applicant submitted 83 user evidence forms detailing use of at least part of the Application Land during the relevant period. A number of these individuals attended the Inquiry to give evidence of their use of the land and were cross-examined by the Objector's advocate and questioned by the Inspector. A number of witnesses who gave evidence stated that they saw other inhabitants of Newbridge using the Application Land in addition to those who gave evidence to the Inquiry.
- 5.5 At paragraph 112 of his report, the Inspector states that; “*...there has been user by a significant number of the inhabitants of the locality...*” This test is therefore considered to have been met.
- 5.6 **“of the inhabitants of any locality, or of any neighbourhood within a locality”**A locality, or any neighbourhood within a locality, is the area inhabited by the users of the Application Land. A ‘locality’ is an area which is capable of being defined by reference to some division of the country known to the law. A ‘neighbourhood within a locality’ is an area within a locality with a sufficient degree of cohesiveness.
- 5.7 As detailed in paragraph 4.4 above, the Applicant amended his original application to relate solely to the locality of the electoral ward of Newbridge. The electoral ward of Newbridge is an area known to the law and the users of the Application Land are inhabitants of the locality. At paragraph 5(2) of his report, the Inspector notes that; “*The Objector accepts that Newbridge Ward is a locality for the purpose of the Commons Act 2006*”; this test is therefore considered to have been met.
- 5.8 **“have indulged as of right”** Use of the land must be ‘as of right’ which means that use must be without force, without secrecy and without permission. The Inspector addresses this test in paragraphs 98 to 108 of his report.
- 5.9 There has been no suggestion that any use by the public has been by force, secrecy or permission; however, the Objector has advanced a number of arguments as to why they believe use of the Application Land has been ‘by right’ rather than ‘as of right’.

- 5.10 Firstly, the Objector contended that the Meadows and the Corridor have been acquired and/or held for purposes which make use of the land 'by right'; however, these purposes did not permit public recreation. Secondly, the Objector has contended that permission to use the Meadows and Corridor for public recreation is either to be implied or that the Council is permitting use of the land and that use is not trespass and therefore not 'as of right'. However, there is no evidence of any decision on the part of the Council from which this can be inferred. Thirdly, the Objector contended that the Council have maintained the land and the public have used it for recreational purposes. However, this does not demonstrate that the Council made any express decision that the land should be used for public recreation. In conclusion, none of these points indicate that use was 'by right'. Use was therefore 'as of right' and this test is considered to have been met in relation to the Meadows and Corridor.
- 5.11 On 27 January 1994 the Council appropriated land, including the Pathway, under section 10 of Open Spaces Act 1906. This land was therefore held on trust for recreational use by the public, and consequently its use for lawful sports and pastimes has been 'by right' and not 'as of right'. As detailed in paragraph 5.14 below, no evidence was presented to the Inquiry about use of the Bund and it is therefore not necessary to address the issue of 'as of right' in relation to the Bund.
- 5.12 **"in lawful sports and pastimes"** The Application Land must be used for lawful sports and pastimes which can include a wide range of activities including, but not limited to, dog walking, football and nature watching; the activities must not be contrary to the law such as badger-baiting. The Inspector addresses this test in paragraph 109 his report.
- 5.13 Witnesses at the Inquiry gave evidence of their use of the land for a wide range of activities. Although dog walking was the most common pastime on the Application Land, witnesses also detailed use of the Application Land for blackberry picking, ball games, nature watching, kite flying and socialising. The Inspector rejects the suggestion that the land was used as a linear route and notes that users wandered about on the land. Use of the land was therefore for lawful sports and pastimes and this test has therefore been met.
- 5.14 **"on the land"** The land' means the Application Land as detailed in paragraph 4.2 above. The Bund which separates the two meadows from the Newbridge Park and Ride is fenced off from the remainder of the Application Land by an old post-and-wire fence which has made it inaccessible during the 20 year period detailed in paragraph 5.16 below. It was suggested at the outset of the Inquiry that the Pathway at the southeastern end of the Application Land had only been used for the purposes of a footpath. At the Inquiry, the Applicant did not offer any evidence in support of either the Bund or the Pathway being registered as TVG. As the Bund forms a separate parcel of land to the rest of the Application Land, and has not been used by the local inhabitants, it fails to meet this test.
- 5.15 However, the lawful sports and pastimes detailed in paragraph 5.13 above have taken place on the Meadows and the Corridor. This test is therefore considered to have been met in relation to the Meadows and Corridor, which are edged in red on the plan at Appendix 5.

5.16 “for a period of at least 20 years and they continue to do so at the time of the application” The Application Land must be used for a full period of 20 years. The Application was made on 20 April 2010 and the Application Land must therefore have been used from this date back to 20 April 1990.

5.17 Witnesses at the Inquiry detailed use of the Application Land going back several decades and at paragraph 89 of his report, the Inspector states that; *“I have no doubt that there has been use of the land described as the meadow land for a period in excess of twenty years prior to the date of the application, for lawful sports and pastimes.”*

5.18 Although it is accepted by all sides that there were travellers on the Meadows during the 20 year period, the Inspector concludes at paragraph 95 of his report that; *“I am of the view that any reasonable person, or landowner, being aware of the use of the land, would conclude that the Meadow land part of the Application land had been used as a whole for the purpose of lawful sports and pastimes for the requisite period of twenty years, notwithstanding the usage of part of it by new age travellers.”* This test is therefore considered to have been met.

5.19 **Conclusion.** As summarised above and detailed in the Inspector’s report, the Meadows and the Corridor have been used as of right by a significant number of the inhabitants of the electoral ward of Newbridge for lawful sports and pastimes from at least 20 April 1990 until the submission of the Application. This land therefore meets the legislative tests set out in the 2006 Act and should accordingly be registered as TVG.

5.20 It has not been demonstrated that the Bund and the Pathway have been used as of right for lawful sports and pastimes and this land should not therefore be registered as TVG.

6 RISK MANAGEMENT

6.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council'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 paragraphs 4.5 and 4.9 above.

9. ISSUES TO CONSIDER IN REACHING THE DECISION

9.1 Legal Considerations; as detailed in paragraph 5.1 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	Newbridge Meadows TVG Case User Evidence Forms Joint Evidence Bundle Joint Bundle of Authorities
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