

SHEFFIELD CITY COUNCIL

Licensing Sub-Committee

Meeting held 25 September 2014

PRESENT: Councillors Geoff Smith (Chair), Josie Paszek and Vickie Priestley

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1. APOLOGIES FOR ABSENCE

- 1.1 No apologies for absence were received. Councillor Anne Murphy attended the meeting as a reserve Member, but was not required to stay.

2. EXCLUSION OF PUBLIC AND PRESS

- 2.1 No items were identified where resolutions may be moved to exclude the public and press.

3. DECLARATIONS OF INTEREST

- 3.1 There were no declarations of interest.

4. COMMONS ACT 2006 - APPLICATION TO REGISTER "SMITHY WOOD" AS A TOWN OR VILLAGE GREEN

- 4.1 The Chief Licensing Officer submitted a report to consider an application to register land known as "Smithy Wood" adjacent to the M1 at Junction 35 with Cowley Hill, Sheffield, as a Town or Village Green.
- 4.2 Present at the meeting were Jean Howe (Chair of Cowley Residents Action Group (CRAG) attending on behalf of CRAG (the Applicant), Jacqueline Cox (Legal Adviser to CRAG), Paul Brackenbury (Deputy Chair, CRAG), Geoff Driver, Colin Taylor, Mick Harrison, David Miller, B. Glossop, Chris Perring, M. Widdowson (on behalf of the Applicant); David Newton attending on behalf of Axis 1 Limited/St. Paul's Development PLC (the Objector), Glenn Sharpe and Martin Carter (legal representatives acting on behalf of the Objector); Carolyn Forster (on behalf of the Clerk to the Registration Authority), Brendan Twomey (Legal Adviser to the Sub-Committee) and Jennie Skiba (Democratic Services).
- 4.3 The Chair of the Sub-Committee outlined the procedure which would be followed during the hearing.
- 4.4 In response to questions from the Chair, Jean Howe indicated that there were nine witnesses in attendance, two of whom had not completed questionnaires in support of the application, and that the Applicant intended to submit an additional piece of evidence, in the form of a statement from a new witness, who was unable to attend.

Mrs. Howe further advised the Committee that the Deputy Chair of CRAG would be addressing the Sub-Committee. Speaking on behalf of the Objector, Martin Carter indicated that there was one witness in attendance, three witness statements had been submitted which the witness would speak to, and one new piece of material was to be tabled in the form of a larger scale map of the site.

- 4.5 Jean Howe stated that the report was incomplete, in that three questionnaires were missing. She introduced local Councillor Steve Wilson, Oliver Newham (Woodland Trust) and Christina Dore (former Ecologist), as interested parties.
- 4.6 Martin Carter outlined submissions on behalf of the Objector asking for the hearing to be adjourned and for a non-statutory inquiry to be arranged. He stated that the Objector is the owner of the vast majority of the site and feels that there has been a lack of clarity in the procedure to be followed, which could lead to unfairness; also that the law requires a non-statutory inquiry takes place regarding the circumstances of the case and feels that starting or completing a two day hearing when it could potentially change at any time to an inquiry is a waste of time and resources for everyone involved.
- 4.7 Martin Carter submitted that the Licensing Sub-Committee's hearing procedure gave no indication as to whether the Sub-Committee will allow the parties to submit additional evidence at the hearing. He added that no directions have been made in advance for the disclosure of evidence; the Objector had made its evidence available in advance and was aware that the Applicants have been canvassing locally for persons to attend the hearing and give evidence. He further stated that the Objector has had no notice of how many persons would be giving evidence, or of their relevant details and to this end, he felt that the Objector was at a serious disadvantage as he has not had a proper opportunity to consider all the evidence.
- 4.8 Martin Carter asserted, citing the decision in R (Whitney) v Commons Commissioners, that on the evidence presently disclosed, there is serious dispute about matters such as the amount, nature, duration, continuity and other qualities of the alleged users of the land and feels that for these reasons a non-statutory public inquiry should be held.
- 4.9 At this stage in the proceedings, the Chair asked the applicants whether they wished to adjourn, and for how long, to consider the submissions made by the objectors. Jean Howe requested that the Sub-Committee adjourn for one hour to allow CRAG the opportunity to consider and respond to the submissions of the Objector. The proceedings were duly adjourned and all attendees were asked to leave the room.
- 4.10 After a period of one hour, the meeting was then re-opened to all parties and the proceedings re-commenced.

- 4.11 Paul Brackenbury, Deputy Chair of CRAG, responded on behalf of the Applicants. He stated that, having considered the submissions made by the Objectors, the Applicant believed the request that a public inquiry should be held was an obvious delaying tactic. Further, that the Applicants wished for the hearing to continue as the procedure had been sent out to all parties in advance and that the arguments for a non-statutory inquiry did not stand up. He added that the Applicants are just ordinary people, who were unpaid and who simply wished to continue to enjoy the amenities provided by the site. Further, he felt that their case was robust, the evidence clear and that most of the evidence was much of the same. In addition, the Applicant had serious concerns that if the hearing was adjourned, and that before the application was decided, there would be a decision in the planning application relating a Motorway Service Area on the site which may render this application null and void.
- 4.12 In response, Martin Carter stated that the Objectors' concerns over the procedure had been made known prior to the hearing and that when the planning application is considered, the outcome will have no effect on this application.
- 4.13 RESOLVED: That the attendees involved in the application be excluded from the meeting before further discussion takes place on the grounds that, in view of the nature of the business to be transacted, if those persons were present, there would be a disclosure to them of exempt information as described in paragraph 5 of Schedule 12A to the Local Government Act 1972, as amended.
- 4.14 Brendan Twomey reported orally, giving legal advice on various aspects of the application.
- 4.15 At this stage in the proceedings, the meeting was re-opened to the attendees.
- 4.16 RESOLVED: That the application to register land known as "Smithy Wood" adjacent to the M1 at Junction 35 with Cowley Hill, Sheffield as a Town or Village Green be referred to a non-statutory inquiry for the following reasons:-

The Sub-Committee felt that on hearing the representations made and on considering the papers submitted, it is satisfied that there is a serious dispute between the parties. In addition, the Sub-Committee felt that there appeared to be evidential matters which impact on the fairness of the proceedings which could be remedied at an inquiry, in particular an Inspector at a public inquiry would be able to give directions on the disclosure of all evidence, witnesses and interested parties, thereby ensuring that all parties have a proper opportunity to prepare and make their case.

With respect to concerns raised about the planning issue, the planning procedure and the Town or Village Green application are separate procedures, are not connected in any way by law and should not be considered together. To take into account any implications of a planning application would be irrelevant when hearing a Town or Village Green application. The Sub-Committee understood the concerns of the applicants regarding a delay in the application being heard, but feel that they must ensure that the application is considered fairly and it is their view that the principles of natural justice would be best met by a non-statutory inquiry.

Both parties were informed that the recommendations and a full report of the inquiry will be brought back to this Sub-Committee for a final decision. The report will set out all the evidence that has been heard and the Sub-Committee will be asked to consider this and make the final decision and can decide whether to accept the recommendations or not.

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