

LEICESTERSHIRE COUNTY COUNCIL
DEVELOPMENT CONTROL AND REGULATORY BOARD

13TH APRIL 2017

APPLICATION TO DE-REGISTER A TOWN OR VILLAGE GREEN AT
BITTESWELL, LEICESTERSHIRE

COMMONS ACT 2006

REPORT OF THE DIRECTOR OF LAW & GOVERNANCE

Purpose of Report

1. The purpose of this report is to advise members of the Board of an application ('the application') the County Council has received from the Powell and Welch Almshouse Charity Trustees that land known as the Almshouses at Bitteswell, Leicestershire, ('the Almshouses') being part of the land within the registered Village Green at Bitteswell under registration VG60 be corrected and be removed from registration.

Recommendation

2. The application is Granted and the Almshouses at Bitteswell, Leicestershire be removed from the register of town or village greens at VG 60.

Reason for Recommendation

3. Evidence shows that the Almshouses were incorrectly registered as being part of the Village Green on the first application for registration of the whole of the village green. Accordingly, the Almshouses should never have been included as being part of the Village Green at Bitteswell. The statutory requirements under the Commons Act 2006 with regard to the correction of mistaken registration of the land as a village green have been satisfied.

Circulation under the local issues alert proceeding

4. Mrs R. Page C.C.

Officer to contact

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Background

6. This report concerns the Almshouses at Bitteswell Village Green. Their address is 1-6 Powell Row Bitteswell. The location of the Almshouses is shown on the plan attached at Appendix 1 to this report. The Village Green is in the ownership of the Bitteswell with Bittesby Parish Council ('the Parish

Council'). The Almshouses are in the ownership of the Powell and Welch Almshouse Charity Trustees ('the Almshouse Trustees').

7. The County Council pursuant to provisions contained in the Commons Act 2006 is the Commons Registration Authority ("CRA") for Leicestershire for Town and Village Greens and for Common Land.
8. Although the 2006 Commons Act contained provisions to correct non registration or mistaken village green registrations these provisions were not brought into force until December 2015. Prior to that date the Almshouse Trustees had been in contact via solicitors with the then County Solicitor to point out that on closer examination the registered Village Green at Bitteswell had incorrectly included the Almshouses. At the time of this contact it was not possible for the Village Green registration to be amended and the Almshouse Trustees were notified accordingly.
9. With the change in the law it was open to the Almshouses Trustees to make an application for the Village Green register at VG 60 to be corrected.
10. Every application for correction has to be supported by evidence to demonstrate that all the statutory requirements in connection with the mistaken registration have been complied with.
11. On receipt of an application for correction the CRA must notify and consult with all interested parties and in particular everyone who has a direct interest in the land. Any representations received must then be taken into account by the CRA before a decision is reached. Public notices advertising the application are now no longer required to appear in the local press but notification 'on site' is required. If any representations are received the CRA it then has to decide whether or not a local inquiry needs to be held. If so an independent inspector is appointed who then considers the matter and thereafter prepares a report for consideration by the CRA.
12. Under the County Council's constitution the Director of Law & Governance has delegated authority to determine TVG applications on behalf of the CRA. This delegated Authority is carried out in consultation with the relevant local Member. In this case the local member, Mrs Page requested that the decision regarding this application be taken by the Development Control and Regulatory Board to ensure transparency.
13. Following pre-application correspondence with regard to the process and procedure to be followed with regard to an application to correct the mistaken registration of the Almshouses, as being part of this Village Green, an application on behalf of the Almshouse Trustees was submitted on 6th August 2016. The application was checked and as a result of correspondence a number of minor amendments were made. The CRA determined that the application complied with the Regulations and was therefore valid on 1st November 2016 and the application was advertised on the County Council's website and a site notice was put up. The application was also notified as required by the Regulations to Harborough District Council and the Parish Council.
14. Consultations were carried out by the CRA in accordance with the prescribed Regulations.

15. No objections or representations were received. The period for representation was the statutory minimum of 42 days. The consultation period expired on 06 January 2017.

Description of Bitteswell Village Green

16. The registered entry for VG60 describes the Village Green as being 'the piece of land known as the Village Green in the Parish of Bitteswell as marked with a green verge line inside the boundary of the register map and distinguished by the number on this register unit'. A copy of the plan is attached to this report shown as Plan 2. The provisional registration took place on 1st July 1968 and being undisputed became final on 1st October 1970.
17. As can be seen from the Plan 2, it was clear that the Almshouses as shown were included as part of the registration. At Plan 3 attached to this report is the plan apparently submitted with the original application for a registration of the Bitteswell Village Green. That plan clearly shows the Almshouses were not intended to be included as part of the Village Green application.
18. It has not been possible through the passage of time to identify/understand why the Almshouses were subsequently included as being part of the registered Village Green. It may be as the County Council's solicitor who originally looked at this felt that it was the County Council's error in including Almshouses as being part of the Village Green. Passage of time however, has meant that the original application is not now available and therefore to determine which statutory provision should apply with regard to the application to correct the mistaken registration, it was decided that the provisions of the Commons Act 2006 Schedule 2 should apply and an application therefore should be made to de-register a building wrongly registered as a town or village green under paragraph 8 of Schedule 2.

The Law

19. Accordingly, the application has been made under paragraph 8 of Schedule 2.
20. An application under paragraph 7 will only succeed if it can be shown that before registration as a Village Green the Almshouses comprising buildings that were in existence at the date of registration.
21. In more detail therefore, in considering this application the CRA must look for evidence that:-

The application has been correctly made on statutory form CA13;

A description of the land to be de-registered;

Provisional registration of the land as village green under the Commons Registration Act 1965 has occurred;

The provisional registration has become final without reference to the Commons Commissioner for the determination;

The land to be de-registered complies with the requirements of paragraph 8. This requires that:

- the land was covered by a building or belonged to a building on the date of the provisional registration
- the land has been at all times, and still is, covered by a building or belongs to a building - though it doesn't have to be the same building or even a building that was legally built

Consideration of the application

22. The application was made in the correct form and the procedural evidence referred to above has been supplied. The issue for consideration is whether the status of the Almshouses land is such to fall within paragraph 8.

23. The application included the following supporting documentation:-

The 1976 decision of the Commons Commissioner referring to registration, VG. 60 and confirming that the Parish Council were owners of the Village Green;

A copy of an Almshouses Charity Trust Scheme dated June 1889 confirming at that date the Almshouses were in existence at that date. The approximate date of construction of the Almshouses is believed to be 1847

A copy of the Land Registry title details confirming that in respect of the Almshouses the Powell and Welch Almshouse Charity are the registered proprietors;

A copy of a letter from the Parish Council indicating their understanding that the Almshouses should not have been registered as Village Green in the first place;

A copy of the map submitted with the original registration showing that the Almshouses were not to be included as part of registration.

24. The Register details for VG 60 confirms the Provisional Registration took place on 1st July 1968. The details further confirm that there was no reference to the Commons Commissioner as the Register states that the 1968 registration being "undisputed" became final on 1st October 1970.

25. I am satisfied that the requirements of the Commons Act 2006 have been complied with and in particular those specified at Schedule 2 Paragraph 8. It is clear from the information submitted that the Almshouses should never have been included as part of the Bitteswell Village Green registration.

26. I repeat that there have been no representations or objections to the Almshouses being removed from Village Green registration.

Assessment

27. In the light of the information submitted with this application, noting the fact that it complies with the statutory requirements, it is clear that the Almshouses should not have been included as part of the Bitteswell Village Green registration.

Recommendation

28. The application is Granted and the Almshouses at Bitteswell, Leicestershire be removed from the register of town and village greens at VG 60.

Financial Implications

29. Although it was open to the CRA to charge a fee to consider this particular application the circumstances and uncertainty in connection with the original incorrect registration were such that acting under delegated powers the Director determined it was not appropriate to charge the Almshouse Trustees the fee for correction of mistaken registrations that starts at £1500. It should be noted that applications for TVG registrations are free.

Equality and human rights implications

30. There are no implications arising from this report.

Background papers

31. Application, correspondence in connection with the application as submitted.

Appendix 1 - Notice Plan

Appendix 2 - Plan VG 60 showing Almshouses as being part of the Village Green

Appendix 3 - Original application plan showing Almshouses as not to be included as part of Bitteswell Village Green.