North Somerset Council

REPORT TO THE PLANNING & REGULATORY COMMITTEE

DATE OF MEETING: 19 AUGUST 2020

SUBJECT OF REPORT: APPLICATION FOR A TOWN / VILLAGE GREEN ON LAND AT BROOKFIELD WALK / HITHER GREEN, CLEVEDON

TOWN OR PARISH: CLEVEDON

OFFICER/MEMBER PRESENTING: HEAD OF LEGAL AND DEMOCRATIC SERVICES

KEY DECISION: NO

REASON: THIS IS NOT AN EXECUTIVE DECISION.

RECOMMENDATIONS

That the Council as Commons Registration Authority should refuse the application to register the land shown edged red on the map marked Appendix 1 by reason that the entirety of the application land is held by public authorities and statutory bodies on a statutory basis that is inconsistent with the registration of land as a town village green.

1. SUMMARY OF REPORT

An application to register the land as a Town Village Green was received by the Council on 17 September 2019 and was subject to consultation. Independent legal advice was sought on the application and submissions made thereon and that advice has informed the recommendation in this report.

2. POLICY

None.

3. DETAILS

The application was received on 17 September 2019 from Jakobus van Blerk and was formally advertised on 29 October 2019 inviting objections by 20 December 2019.

Three objections were received during the consultation period; one from North Somerset Council (in its land owning capacity), one from Highways England which owns part of the application site and one from a neighbouring landowner (the application plan was unclear as to whether a small strip of land on the boundary of the application site and in the ownership of the neighbouring land owner was intended to be included in the application land).

Clevedon Town Council, owner of part of the site submitted its support of the application. In addition, 151 additional expressions of support were received from members of the public.

Due to the application land being in public ownership legal advice was sought on whether the land was eligible for registration as a town village green as a matter of law. Advice was sought from Leslie Blohm QC and his initial opinion was received on 28 January 2020. Mr Blohm QC advised further information was required from the land owners to determine the issue and such further information was sought and obtained.

The land owners' further submissions were provided to the applicant for further comment. The applicant submitted his own legal opinion and further evidence.

All submissions were supplied to Mr Blohm QC who provided his second opinion which is appended to this report as Appendix 2. Mr Blohm QC concludes

> I advise the Registration Authority:
> (1) That the land vested in the Council is held by them for planning purposes, and that is a defence to the registration of that land as a TVG by operation of the principle of statutory incompatibility as set out in Newhaven and interpreted in Lancashire;
> (2) That it appears that the land vested in Highways England should not be registered by reason of statutory incompatibility with the highway purposes for which it is held;
> (3) That it appears that the land vested in the Town Council should not be registered by reason of statutory incompatibility with the purposes of the Small Holdings and Allotments Act 1908;
> (4) That this further advice should be sent to the applicant and the objectors and their comments sought within 21 days. If there is no further comment, then the application should be considered by the relevant decision-making body, my advice being that the application should be refused and the reason being that the entirety of the application land is held by local authorities and statutory bodies on a statutory basis that is inconsistent with registration of the land as a Town or Village Green.
> (5) If there is further comment, then those representations should be considered before the final decision is made.

In accordance with sub-paragraph (4), Mr Blohm QC's advice was submitted to the applicant and objectors for further comment. North Somerset Council, Clevedon Town Council and Highways England submitted no further comment. The applicant submitted the following further comment:

> "We do not agree with the statements that the land was held for planning purposes. We have no further comments as time don't allow us to gather proof at this time."

Mr Blohm QC advised 21 days be allowed for further submissions. Comments were invited on 12 June 2020 to be submitted by 3 July 2020. The applicant sought an extension of time until 13 July 2020 which was allowed. He did not seek any further extension of time and did not submit any comment by 13 July 2020. A final request for comments by no later than 17 July 2020 was sent but none were received. The final comment set out above was provided on 20 July 2020.

Considering that an extension of time was granted for the duration requested, and no further extension was sought, the committee is invited to consider that the applicant had sufficient time to prepare a response. The comment that it is not agreed that land is held for planning purposes is unsubstantiated by evidence and when balanced against the analysis carried out by Mr Blohm QC in his advice, the committee is recommended to follow the recommendation for the reason given, namely that the application should be refused by

reason that the entirety of the application land is held by local authorities and statutory bodies on a statutory basis that is inconsistent with registration of the land as a Town or Village Green.

Part of the application site is also the subject of a planning application for the erection of a school, reference 20/P/0605/R3. At the time of writing this report the planning application is yet to be determined. The application to register the site as a town village green was received before the planning application and accordingly the town village green application is required to be determined.
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4. CONSULTATION

The application was subject to statutory requirements for consultation including advertisement in the press and a notice at site. All owners of land included in the application site were consulted on the application and given the opportunity comment on the legal advice received.

5. FINANCIAL IMPLICATIONS

Officer time will be required to conclude the administration of the application. The council is statutory registration authority and is required to determine applications received.

Costs

Not applicable.

Funding

Not applicable.

6. LEGAL POWERS AND IMPLICATIONS

The application was made under the Commons Act 2006, section 15(2) under which it is claimed that a significant number of the inhabitants of any locality or neighbourhood have indulged as of right in lawful sports or pastimes on the land for a period of at least 20 years and continued to do so at the date of the application.

The procedure for determining applications in North Somerset is set out in the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007. Officers have administered the application and carried out consultation to meet the requirements of these regulations as detailed in section 3 above.

Decisions of registration authorities in determining town village green applications can be subject to judicial review.

7. CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS

Refusing to register the application land as town village green will mean that it will not benefit from the statutory protections afforded to greens. However, land can only benefit from registration if it meets the statutory test and independent legal advice concludes that it does not.

8. RISK MANAGEMENT

The council has a statutory duty to determine the application in accordance with the statutory scheme. The council owns part of the application site and care has been taken to ensure that separate officers have dealt with this application when acting as registration

authority to those responding on behalf of the council as land owner. To ensure transparency and independence, external legal advice has been sought on whether the land satisfies the legal test to be registered as a town village green.

9. EQUALITY IMPLICATIONS

No equality impact assessment has been carried out. The application has to be assessed against the statutory test for registration.

10. CORPORATE IMPLICATIONS

Not applicable.

11. OPTIONS CONSIDERED

The council is required to determine the application. Specialist independent legal advice has been sought to assist the committee in this task.

AUTHOR

Emma Anderson, Solicitor, 01275 888825

APPENDICES

Appendix 1 – map of application land
Appendix 2 – legal opinion of Leslie Blohm QC dated 11 June 2020

BACKGROUND PAPERS

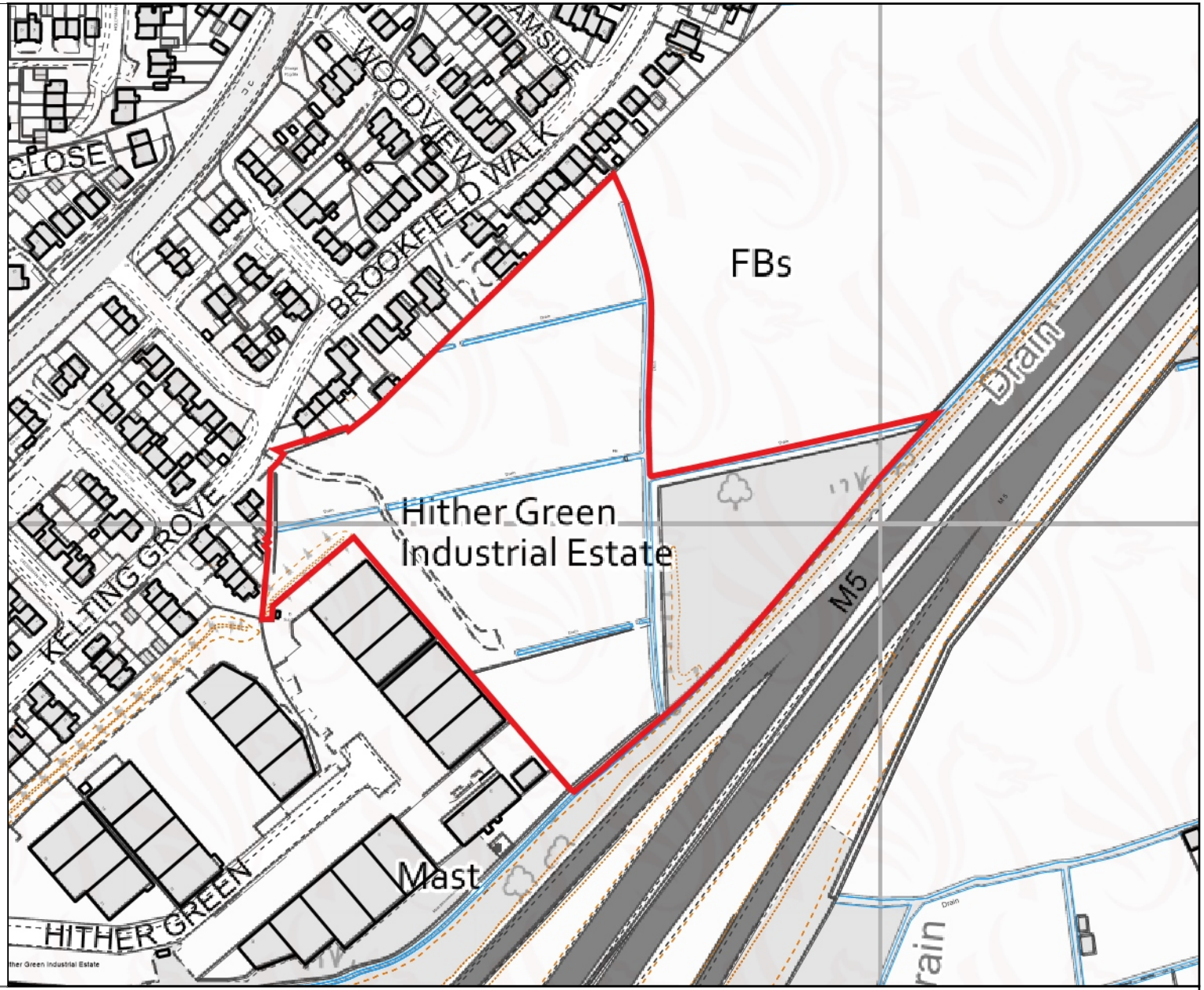
application and supporting documentation, submissions of parties and advices as considered by counsel in providing his opinion.

Appendix 1

Common land and town or village greens

Land and property

10K Vector Map Local



Location plan

Scale: 1:2500
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Date: 25 September 2019
Time: 11:09:53

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Appendix 2

In the matter of an application to register land at Brookfield Walk/Hither Green, Clevedon as a Town or Village Green

Further Advice

Instructions

1. I have been asked to advise North Somerset Council ('NSC') further in connection with the application made by Mr. Van Blerk in September 2019 to register land adjacent to the M5 at Brookfield Walk/Hither Green, Clevedon, as a Town or Village Green. I previously advised NSC by an advice dated 29 January 2020, which dealt specifically with the objections to such applications based on the doctrines of statutory incompatibility (the 'Newhaven defence'), and use of land 'by right' (the 'Barkas defence').

2. I advised that I was not able to conclude, on the information supplied, that these objections were bound to succeed on the state of the evidence and information supplied. I therefore advised that the applicant and the objectors be given an opportunity to make further submissions and provide relevant evidence. Both objectors (NSC in its capacity as landowner – which I shall refer to as 'the Council') and Highways England have made further submissions; the Council by e-mail dated 26 February 2020 and Highways England by letter dated 27 February 2020.

3. In the light of those further submissions I have been asked to deal with the following matters:
   (1) To confirm that the statutory incompatibility objection is not being pursued, as regards the land vested in the Council, and to state the consequences of that;
   (2) To advise whether the Council has established a Barkas defence to registration in respect of the land vested in it;

(3) To advise on the best means of dealing with the application land vested in Highways England;

(4) To advise on the best means of dealing with the application and vested in Clevedon Town Council;

(5) Whether it is established or not, to advise on the procedure to be adopted;

(1) Statutory Incompatibility – Land vested in the Council.

4. As I read the Council's submissions, it appears to assert that the land was acquired for amenity purposes in 1981, being amenity land used as informal open space under the Town and Country Planning Act 1971, and subsequently the Town and Country Planning Act 1990. I note that the Council asserts that the subsequent appropriation of the land for educational purposes would take place under section 232 Town and Country Planning Act 1990. This provision enables authorities to appropriate land that is held for planning purposes to other statutory purposes that lie within the authority's power. The equivalent power in the Town and Country Planning Act 1971 was contained in section 124(1), and this related to land that had been acquired for planning purposes under section 122 *ibid*[1] (or acquired for some other purpose, but subsequently appropriated for planning purposes).

5. It is not entirely clear to me whether the Council maintains that it appropriated the proposed Baytree Special School site to education purposes prior to the making of this TVG application. It asserts that it purported to appropriate that land for those purposes by the decision of the Executive Member made on 28 August 2019. That gave rise to a preliminary question as to whether the Executive Member had authority to make such an appropriation. The Council has maintained that the Executive Member does have such power pursuant to the Council constitution, and purported to exercise that power. The Applicant's response does not take issue with the authority of the Executive member so to act. However, as the Council does not now assert that there was an *effective* appropriation to educational purposes before the application was made, this point is no longer material (see below).

[1] Itself re-enacted as section 226 of the 1990 Act.

6. Next, I indicated in my advice[2] that for a valid appropriation to have taken place, if the land subject to the appropriation was open space, the appropriation would have had to have complied with the formal requirements set out in section 122 Local Government Act 1972. The Council now states that a 'final formal appropriation' would have been made once planning permission for the construction of the new school was granted. The Council now asserts that this appropriation would take place under section 232 Town and Country Planning Act 1990.

7. Section 232 of the 1990 Act provides that land that has been acquired or appropriated for planning purposes may be appropriated for any purpose for which they are or may be in authorised in any capacity to acquire land other than an enactment contained in Part IX of the 1990 Act or Chapter V of Part I of the Planning (Listed Buildings and Conservation Areas) Act 1990. Where the land in question consists of or forms part of an open space, section 232(4) requires a local authority to publish notice of its intention so to do for at least two consecutive weeks in a newspaper circulating in its area; and shall consider any objections to the proposed appropriation which may be made to them.

8. Given that the Council does not assert that any such newspaper notice has been published, it follows that it necessarily appears that the Council is asserting, first that the land is presently held 'for planning purposes for amenity use', and that the Council has not yet appropriated the land for educational purposes. It follows that the circumstances postulated in my initial advice, that the land was held at the time of the TVG application for educational purposes (which would be analogous to if not identical with the situation considered by the Supreme Court in R v SSEFRA oao Lancashire County Council [2019] UKSC 58 ('Lancashire')), is not put forward by the Council.

[2] See para. 20.

9. The Applicant in his further submissions[3] asserts that it is for the Council to raise any specific basis of objection to registration; and that the Council has not suggested that the basis on which the land was originally held was inconsistent with registration. Whilst I accept that this is generally correct, and the Registration Authority is not obliged to formulate defences for those parties most closely involved in the application – the applicant and the respective landowners - I do note that the Council has raised statutory incompatibility as a defence (and does not withdraw it) and has asserted, albeit elliptically, that the land is held under Part IX of the 1990 Act. In these circumstances I do consider that (subject to the applicant and the objectors being entitled to comment on my views) I should consider whether the application can be successful or will necessarily be defeated, on that footing.

10. Two issues arise here. The first is as to the statutory purpose for which the Land was in fact acquired and is presently held. The second is whether that purpose is one with which registration of the land under section 15 of the Commons Act 2006 is incompatible, and specifically (in the light of the present submission by the Council) whether land that is held by a local authority for planning purposes is, for that reason, excluded from the operation of section 15 Commons Act 2006, under the Newhaven principle of statutory incompatibility.

11. I consider first the actual purpose for which the land was acquired in 1981. I required the Council to disclose all the information that it had that was relevant to that matter. It has disclosed further documentation within the cover of 'Enclosure 10'. Although that cover included some correspondence relating to the development of the land, of indirect assistance, it did not contain any information directly concerning the statutory purpose of the land. I advise on the footing that I have the entirety of relevant information.

12. As a matter of law, a local authority where it is a creature of statute can only hold land that it is lawfully authorised to hold. It can only hold land for any one particular statutory purpose at any one time, although it can vary the statutory basis for which

[3] Drafted by Mr. Brett, Counsel.

it holds property by appropriation to another purpose. The purpose for which land is acquired held is a matter of fact – See BANES v HM A-G [2002] EWHC 1623 (Ch). In my view there are four possibilities. These are:

(1) That the land was held for planning purposes under the Town and Country Planning Act 1971;

(2) That the land was held as public open space, under either the Open Spaces Act 1906 or the Public Health Act 1875 or some other statutory provision;

(3) That the land was held for some other, unspecified and presently unknown purpose;

(4) That the land was not held for a particular lawful purpose at all.

The Applicant has not put forward any alternative basis on which the land was acquired and held, although that may have been because he considered that the Council was not putting forward any case of statutory incompatibility.

13. 'Planning purposes' is not a term that is expressly defined by the 1990 Act, but s.246 states that 'any reference to appropriation of land for planning purposes is reference to the appropriation of it for the purposes for which land could be acquired under s.226 & s.227'. Therefore, the acquisition (or appropriation) of land for planning purposes means an acquisition or appropriation which will either facilitate the carrying out of development, re-development or improvement which is likely to contribute to the economic, social or environmental well-being of the area, or which is required in the interests of the proper planning of the area in which the land is situated. Section 226(4) provides that it is immaterial by whom the local authority proposes that any activity under the section be performed.

14. Section 232 authorises authorities that hold land for planning purposes to appropriate it to any other purpose. Common land can only be so appropriated with the consent of the Secretary of State (section 232(4)) whilst open space has to go through the newspaper publication and consideration proposals before being so appropriated. Section 233 contains similar powers relating to the disposal of land held for planning purposes.

15. Land held by a local authority for planning purposes is whilst it is so held, subject to the following power:

> **"235 Development of land held for planning purposes.**
>
> (1) A local authority may—
>
> (a) erect, construct or carry out on any land to which this section applies any building or work other than a building or work for the erection, construction or carrying out of which, whether by that local authority or by any other person, statutory power exists by virtue of, or could be conferred under, an alternative enactment; and
>
> (b) repair, maintain and insure any buildings or works on such land and generally deal with such land in a proper course of management.
>
> (2) This section applies to any land which—
>
> (a) has been acquired or appropriated by a local authority for planning purposes, and
>
> (b) is for the time being held by the authority for the purposes for which it was so acquired or appropriated."

16. Where land is held for planning purposes, it may be held for the purpose of development in some unspecified but contemplated manner. It is often acquired for the purpose of facilitating the development of a larger or different area of land. Its acquisition for planning purposes expressly enables the acquiring authority to override existing restrictive covenants and easements (see section 237 of the 1990 Act and section 203 Housing and Planning Act 2016).

17. There is authority to the effect that the appropriation of land previously held for planning purposes will override registered TVG rights (see BDW Ltd. v Spooner [2011] EWHC 1486 (QB) (HHJ Seys Llewellyn QC). Although the decision has been criticised (see Gadsden on Commons & Greens (2nd. ed.) at 14-70) it remains authoritative. Whilst the decision does not directly affect the present issue (there has been no such appropriation), it is an indicative view that Parliament did not intend that land held by local authorities for planning purposes should be obstructed in its development by the existence of TVG rights.

18. In my view, it is necessarily inconsistent with the holding of land for planning purposes that local inhabitants might acquire TVG rights over that land such that any usage that interfered with the exercise of those rights (beyond the 'give and take' acknowledged

by the Supreme Court in R v Redcar & Cleveland BC oao Lewis [2010] AC 70) would be actionable as an unlawful nuisance and, a criminal offence as contravening the 'Victorian statutes' - see section 12 Inclosure Act 1857 and section 29 Commons Act 1876. The power to erect buildings on the soil is the most obvious power that is incompatible with TVG registration. More broadly, land that is held for planning purposes contemplates development in its broad, Planning Act sense as the carrying out of building works or a material change of use, that may otherwise have been inhibited by third party rights or ownership. Where land is acquired on this basis, it is evident from the specific provision as to appropriation that Parliament intended that the land, if not subsequently disposed of, would be put to some changed use in the public good. I conclude that it would be inconsistent with this statutory scheme for land so held to be subject to the restrictions that are imposed on its registration as a TVG.

19. Turning to the factual purpose for which the land was acquired and held, the evidence that I have been shown indicates that the land was acquired for planning purposes. I come to this view for the following reasons:
    (1) The absence of reference to a specific statutory purpose in the 1981 conveyance is an indication that the Council had not decided to use the land for a specific statutory purpose. Had the land been acquired for the purpose of being held as public open space under specific statutory provision, it is likely that it would have said so;
    (2) The acquisition of the land arose as a term of the section 52 agreement entered into between the developers and the Council relating to the proposed development of an industrial estate. The land to be so conveyed (described in the section 52 Agreement as 'the pink land') was part of the red land so described in the section 52 Agreement. The section 52 Agreement recited that the first developer had applied for planning permission to develop *inter alia* the red land (recital (4)) in the manner set out in the plans.
    (3) There is no indication that the land was 'amenity land' prior to the conveyance; rather the planning documentation and conveyance indicated that the land would become amenity land subsequently.

(4) The second developer (who owned the pink Land – see clause 6) covenanted to carry out a tree planting scheme over the red land (clause 3). The developers covenanted to build a landscaped bank on the North Western boundary of the pink land ((First Schedule para. 3).

(5) The correspondence between Mr. Trembridge and Mr. Vanstone in 1979 discussing the proposed development of the land in the context of the wider planning application describes the amenity area as being part of Phase 2 of the planning process if planning permission was granted, indicating that the developers (and probably the Council as well) was contemplating a change of use of the pink or amenity land.

(6) In his reply of 26 November 1979 from Mr. Vanstone on behalf of the Council to Mr. Trembridge, Mr. Vanstone states the proposed amenity area 'would be' public open space, which again indicates a contemplated change of use.

20. The subsequent factual use of the land for public recreation with the tacit consent of the Council is not in my view inconsistent with the acquisition of the land for planning purposes. If the applicant is correct in his assertions, the Council has tolerated the use of the land. Such toleration would not necessarily be indicative of the purpose for which the land was originally acquired. It is consistent with the Council envisaging that the land would be used as public open space in the future; but that until it appropriated the land for that specific statutory purpose, it would be retained as land held for planning purposes, but used *pro tem* for the particular contemplated purpose.

21. If I was wrong in my conclusion that the land was acquired and held for planning purposes, then I would have concluded that the land was acquired as a public open space under section 164 Public Health Act 1875, on the footing that the use of the land as a public walk was the specific use contemplated by the Council at the date of acquisition. For the reasons I set out below, a Barkas defence would be open to the Council in these circumstances.

(2) Has the Council established a Barkas defence to registration in respect of the land vested in it;

22. A Barkas ([2014] UKSC 31) defence arises when an objector to an application for registration can demonstrate that the public, during the relevant 20 year period, had a right to use the land for lawful sports and pastimes. If such a right is established, then the consequence is that the factual usage by the public at that time is use 'by right', and not use 'as of right'. Although the right asserted can be an equivalent private right, in many cases it derives from a statutory entitlement to use the land by reason of the statutory purpose for which the local authority holds the land. In Barkas the Supreme Court held that holding land as recreation land pursuant to section 80(1) Housing Act 1936 was sufficient to give local inhabitants the right to use the land for recreational purposes such that they would not be trespassers in the event that they so used it; and hence their usage of it would not be 'as of right' in the wording of section 15 of the Commons Act 2006. The principle is discussed by Lord Neuberger at [14]. Other statutes to the same effect are section 9 of the Open Spaces Act 1906, and section 164 Public Health Act 1875. There are other provisions to like effect.

23. The burden lies on the objector to establish the existence of this right. The evidence supplied by the Council does not in my view establish that the land was held pursuant to a statutory provision that conferred on local inhabitants the right to use the land for recreation; and the Council asserts that it was held as 'amenity land'. However, as I have indicated above, in my view the land was acquired for planning purposes.

(3) To advise on the best means of dealing with the application land vested in Highways England.

24. The submission on behalf of the applicant states that the application is not being pursued further as regards the land vested in Highways England. Given that Highways England have raised a factual case that the land acquired by their predecessor was acquired for highway purposes (whether drainage, as suggested in their letter of 27 February 2020 and/or as a screen from the motorway), and given that I have advised that such a landholding would fall within the principles set out in Newhaven, such a claim relating to that land would fail if pursued to a contested hearing.

25. Once a Registration Authority is seized of the application, the application is not an *inter partes* dispute that the applicant can simply withdraw or amend. The Authority can allow the application to go forward as amended, but it must make any such decision 'fairly' – Oxfordshire County Council v Oxford City Council [2006] UKHL 25 at [18], [2006] 2 AC 674. As between the applicant and Highways England there is agreement that this application relating to this part of the land should be withdrawn. My advice at present is that this should be dealt with at the same time as the Executive Member or appropriate committee deals with the remaining substantive application.

(4) To advise on the best means of dealing with the application and vested in Clevedon Town Council.

26. The Town Council does not object to the registration of the land vested in them. The evidence appears to be that the Town Council holds the land for the purposes of an allotment (see clause 3(i) of the conveyance of 2 November 1984).

27. Where land is held for allotment purposes, it does not permit general recreation by the public. A Barkas defence would therefore not be available to the Town Council.

28. However, this leaves the question as to whether land held for the purpose of allotments is statutorily incompatible with TVG Registration. Land held by local authorities as allotments is held under the provisions of the Small Holdings and Allotments Act 1908, for the purpose of providing a sufficient number of allotments and letting them to inhabitants (section 23 *ibid.*). If the land is held under some other statutory provision, then I would consider it. But as I understand from my researches, this is the statutory basis on which the Town Council holds allotment land. That section is not of itself inconsistent with TVG registration. It might also be said that the working of the soil inherent in the use of allotments is not necessarily inconsistent with TVG registration, in that this is part of the landowner's right that is reflected in the give and take of landowner and communal recreational usage. For example, the public might walk around an allotment without interference with its cultivation.

29. However, the 1908 Act also gives the local authority specific management powers relating to the land:

> "26. Improvement and adaptation of land for allotments
>
> (1) The council of a borough, urban district, or parish may improve any land acquired by them for allotments and adapt the same for letting in allotments, by draining, fencing, and dividing the same, ac-quiring approaches, making roads and otherwise, as they think fit, and may from time to time do such things as may be necessary for maintaining such drains, fences, approaches, and roads, or otherwise for maintaining the allotments in a proper condition.
>
> (2) The council may also adapt the land for allotments by erecting buildings and making adaptations of existing buildings, but so that not more than one dwelling-house shall be erected for occupation with any one allotment; and no dwelling-house shall be erected for occupation with any allotment of less than one acre."

30. The exercise of this power is inconsistent with the registration of the land as a TVG, as such work (save possibly insofar as it reflected the level of work that had been during the relevant period of 20 years carried out by the local authority) would infringe the Victorian Statutes. The decision in Lancashire provided that where use of land as a TVG would be incompatible with the general statutory powers under which land is held, the operation of the Commons Act 2006 is excluded (per, Lords Carnwath and Sales, at para. [57]).

31. On this footing, it would follow that any recreational usage of the land vested in the Town Council could not be 'as of right', and therefore that the application would fail. This is a little counter-intuitive, given that the Town Council either does not oppose or indeed supports the application insofar as it applies to their land. But the function of the Registration Authority in an application which is at least in part contested (as this substantially is) is not to rubber stamp the application, but to assess whether it is made out. Where there is no factual dispute, the result may be obvious. Here the relevant facts and law indicate that the application should fail, and it is therefore the Registration Authority's duty to reject the application insofar as it relates to the Town Council's allotment land.

32. It may be open to the Town Council, if it so wishes, to appropriate the allotment to recreational purposes. That may be difficult because the 1984 conveyance contained

a covenant on the part of the Town Council to use the land as allotment land only; and the conveyance also contained a grant of a right of way to serve the allotment over the Council's adjoining land. I say no more about this.

(5) Advise on the appropriate procedure to be adopted;

33. The Registration Authority should supply the applicant and the landowners (Council, Town Council and Highways England) with copies of this further advice, and ask for their comments within 21 days. If those comments do not cause me to change my view as expressed above, I would advise the Authority to convene a meeting of the appropriate committee, or refer the matter to the authorised Executive Member, to consider this advice, together with any officer's report on it, with a view to deciding whether or not to dismiss the applications insofar as it concerns the Council's land and the Highway Authority's land.

Conclusion

34. I advise the Registration Authority:

(1) That the land vested in the Council is held by them for planning purposes, and that is a defence to the registration of that land as a TVG by operation of the principle of statutory incompatibility as set out in Newhaven and interpreted in Lancashire;

(2) That it appears that the land vested in Highways England should not be registered by reason of statutory incompatibility with the highway purposes for which it is held;

(3) That it appears that the land vested in the Town Council should not be registered by reason of statutory incompatibility with the purposes of the Small Holdings and Allotments Act 1908;

(4) That this further advice should be sent to the applicant and the objectors and their comments sought within 21 days. If there is no further comment, then the application should be considered by the relevant decision-making body, my advice being that the application should be refused and the reason being that the entirety of the application land is held by local authorities and statutory bodies on a statutory basis that is inconsistent with registration of the land as a Town or Village Green.

(5) If there is further comment, then those representations should be considered before the final decision is made.

35. If I can be of any further assistance, please do not hesitate to contact me in chambers.

Leslie Blohm QC
St. John's Chambers,
101 Victoria Street,
Bristol,
BS1 6PU

11 June 2020