# APPLICATION TO REGISTER LAND AT STOKE LODGE AS A TOWN OR VILLAGE GREEN: DIRECTIONS

1. In my draft directions I noted that the extent of the issues in dispute is limited and that many of the relevant facts are uncontroversial. In its response to my draft directions, the City Council as landowner accepts in terms that the land has been used for lawful sports and pastimes, that the use has been for a period of twenty years or more and that it has been by the inhabitants of a neighbourhood within a locality.

2. The issues in dispute are whether the use of the land

   - has not been as of right because of the effect of 3 signs on the land
   - has not been as of right because of the treatment of the land in the Bristol Local Plan Written Statement
   - has not been as of right because the sports use of it to the exclusion of local inhabitants gave rise to an implied permission to local inhabitants to use the land
   - conflicts with the statutory purposes for which the land is held (see *R v East Sussex Council, ex parte Newhaven Port and Properties Limited*[1]).

3. In its representations in response to my draft directions, the City Council as landowner says:

   *In view of the current economic climate and austerity measures, the first objector submits that it would be inappropriate and an unnecessary expense to the public purse for a for a full inquiry to be held at this stage until the points raised on the preliminary issue that the land has been used "by right" have been considered on the papers.*

4. Although whatever the nature of the economic climate, no one wants public money to be spent unnecessarily, the current economic climate does point up the need to avoid unnecessary expense, an aim with which I am confident that the Applicant is in complete sympathy.

5. Moreover, it is clear, in the light of the concessions of the City Council as landowner, that essentially the issues in dispute are ones of law. At the cost of appearing to labour the matter, it seems to me that I should "spell out" what I mean in order to ensure clarity.

6. Although in all cases it falls to an applicant to prove his case, it seems to me that, absent any assertion to the contrary, there would be ample grounds in this particular case on the papers for a registration authority to conclude that the land has been used for lawful sports and pastimes, that the use has been for a period of twenty years or more and has been by the inhabitants of a neighbourhood within a locality. However if the landowner, or anybody else, had contested these facts, then it would have been difficult for the registration authority fairly to determine that dispute without holding a non-statutory public inquiry. But the landowner does not contest these facts, and expressly accepts that the applicant has made them out. In these circumstances it is not necessary for there to be a non-statutory public inquiry to determine that any of these facts are made out.

[1] [2012] 3 WLR 709.

7. This leaves the question of *as of right.* In any particular case, there may be all sorts of factual issues which need first to be determined before a view is formed about whether use has been as of right. Thus there might, for example, be factual issues about whether notices were ever in place; if they were, for how long they were in place; and whether anybody saw the notices.

8. In the present case there evidently were notices, and it is evidently material whether people saw them. This narrow issue might perhaps be the subject of a non-statutory public inquiry. However as the City Council point out, there are a large number of people who filled in evidence questionnaires who accept that they did see the signs.

9. It seems to me unlikely that, if a large number of people saw the signs, the question of how many people saw the signs could be determinative; and, even if it were relevant, a non-statutory inquiry would be unlikely to assist very much or at all in resolving that issue. The live issue appears to be what the effect in law was of the signs.

10. There is a small factual issue in respect of the third sign in that it is suggested that it has been altered in its orientation since the application was made. I would hope that this matter might be capable of agreement – it would be absurd to have a public inquiry just about that matter.

11. Subject to what I say at paragraph 12 below, against this background what I would propose is the following, namely that:

    - the parties should be at liberty to submit such further submissions on the law as to whether the use was *as of right* as they think fit

    - I should carry out an accompanied site inspection

    - that I should then prepare a report with a recommendation to the City Council as registration authority

    - that the interested parties should have the opportunity of making representations in respect of my report and recommendation before the matter is determined by the registration authority.

    As regards bullet point 2, I do not think that it is possible fully to appreciate the matter without seeing the application site. The City Council as landowner's point on the *Newhaven* case would not be addressed at this stage; that case being considered by the Court of Appeal in the New Year.

12. I imagine that the course that I propose will commend itself to the City Council as landowner. It may not commend itself to the Applicant. I think that it is fair that before I do determine to proceed in this way, I should give the Applicant the opportunity to comment. On the orientation of the third sign point, it would be helpful if the City Council could indicate its view on this matter so that the Applicant knows where it stands on this issue before it responds as to the appropriate procedure that I should adopt.

13. On the basis that the matter is further considered on the basis of written representations, I would be particularly assisted by submissions as to how the City Council's arguments are to be read together. By this I have in mind the that the argument from the signs is that use was "vi" or by force; the argument from the local plan and from the permission said to be implied from the exclusion of the public at certain times is that the use was "precario" or by determinable licence.

14. I am very conscious that the easiest course would be to hold a non-statutory public inquiry and to let everything "come out in the wash" so to speak; and one can get to a point where

attempts to save money can be counter-productive. As I view matters at the moment, I think that it should be possible for the costs associated with a non-statutory public inquiry to be avoided and that it is worthwhile trying to achieve this end. However I will carefully consider any representations made to me to the contrary effect.

PHILIP PETCHEY

Inspector

27 November 2012