

In the Matter of
An Application to Register
Land at Mercury Close Play Park, Bampton
As a New Village Green

REPORT
of Mr. VIVIAN CHAPMAN Q.C.
27th. May 2008

Oxfordshire County Council
Legal & Democratic Services
County Hall,
New Road,
Oxford OX1 1ND
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Introduction

[1] In this case I am asked to advise Oxfordshire County Council (“OCC”) on its duties as commons registration authority in relation to an opposed application under s. 15(2) of the Commons Act 2006 (“CA 2006”) to register land known as Mercury Close Play Park, Bampton (“the Park”) as a new village green.

[2] I wrote an Opinion and gave Directions both dated 5th. March 2008 seeking further evidence and submissions from the parties in relation to the issue whether there has been recreational use of the Park “as of right” or whether such use has been “by right” under a statutory trust.

The purchase of the Park

[3] In the light of the material now available, the history of the purchase of the Park is fairly clear.

[4] The site of the Park (together with other land) was purchased by the Secretary of State for War in 1962.

[5] In the mid 1960s, the Ministry of Defence (as successor to the War Ministry) laid out the Park as a children’s play area for the Mercury Close housing development which was built to house personnel of the armed services and their families. The Ministry installed children’s play equipment in the Park. Subsequently, other land in the vicinity of the Park was also developed for housing.

[6] In the mid 1980s, the housing was no longer required by the Ministry of Defence for housing members of the armed services and was sold to the private sector. This left the Park to be disposed of.

[7] By a letter dated 14th February 1986, the Property Services Agency (“PSA”) offered to sell the Park to the Council for £250. The letter also offered the Council an option to purchase the playground equipment, which was said to have a replacement value of £650.

[8] A minute of a meeting of the Council on 19th February 1986 recorded receipt of the letter from the PSA and that the Council resolved to acquire the Park and the play equipment subject to contract at a value to be assessed by the District Valuer.

[9] By a letter dated 20th February 1986, the Council wrote to the PSA accepting the offer to sell the Park for £250 and offering £250 for the playground equipment.

[10] By a letter dated 27th February 1986, the PSA accepted the offer of £250 for the playground equipment.

[11] By a Conveyance dated 29th January 1987, the Park was conveyed by the Secretary of State for Defence to the Council. The Conveyance:

- does not state the statutory power under which the Council acquired the Park,
- does not contain any covenant by the Council to use the Park for recreational purposes, and
- does not transfer ownership of the play equipment (which seems to have been done under some separate instrument).

[12] A trawl of the Council minutes and of the Council’s purchase files has not disclosed the statutory power under which the Council purchased the Park. It seems probable that the Council simply did not consider the issue.

[13] Since acquisition in 1987, the Council has maintained the Park as a play area for local people and has maintained and replaced the play equipment as necessary.

The statutory trust

[14] As explained in my Opinion of 5th March 2008, the Council must have purchased the Park under some statutory power and so it is necessary to infer from the 1987 Conveyance and the surrounding circumstances under what statutory power the Council acquired the Park. It seems to me clear that the Council purchased an existing public recreational area with the intention of continuing to use it as a public recreational area.

[15] To my mind, the further evidence confirms the inference which I regarded as probable in para. 20 of my Opinion of 5th March 2008, i.e. that:

- the application land was purchased either under s. 9 of the Open Spaces Act 1906 or s. 164 of the Public Health Act 1875,
- it is accordingly subject to a statutory trust for public recreation, and
- the land is not registrable as a new green because user has been “by right” rather than “as of right”.

Applicants' argument

[16] In Mr. Simmons's letter of 12th April 2008, he argues that the Park was purchased not as a permanent recreational area but for temporary recreational use while another park at New Road was sold and replaced. He contends that consequently the most fitting statutory power under which the 1987 Conveyance was entered into by the Council was s. 124 of the Local Government Act 1972

[17] I cannot see any evidence that this was the intention of the Council at the time of purchase of the Park.

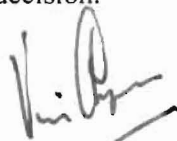
[18] However, even if such an intention could be proved, I do not think that a purchase under s. 9 of the OSA 1906 or s. 164 of the PHA 1875 is dependant upon an intention to use the acquired land permanently for recreation. A parish council which holds land on the statutory trusts of s. 10 of the OSA 1906 or s. 164 of the PHA 1875 can override the statutory trusts (subject to certain statutory safeguards) by an appropriation to other uses under LGA 1972 s. 126 or by a disposal under LGA 1972 s. 127.

Conclusion

[19] I conclude that the Park was acquired by the Council in 1987 under statutory powers conferred by s. 9 OSA 1906 or s. 164 PHA 1875 and that the Park has consequently been held by the Council since 1987 on a statutory trust for public recreational use. Recreational use of the Park by local people since 1987 has therefore been "by right" and not "as of right". The requirements of CA 2006 s. 15(2) have not been fulfilled and the application must fail. In my view, no public inquiry is necessary and the application can be dealt with on paper consideration.

[20] I recommend that the registration authority should reject the application to register the Park as a new green. The registration authority must give written reasons for rejection of the application. I recommend that those reasons are stated to be "the reasons set out in the Report of Mr Vivian Chapman QC dated 27th May 2008".

[21] If the applicants are dissatisfied with the decision of the registration authority, they are entitled to apply to the High Court for permission to apply for judicial review of the decision.



Vivian Chapman QC
27th May 2008
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