

# Public Document Pack

To: Members of the Planning & Regulation Committee

## ***Notice of a Meeting of the Planning & Regulation Committee***

**Monday, 5 March 2012 at 2.00 pm**

**County Hall, New Road, Oxford**

*Peter G. Clark.*

Peter G. Clark  
County Solicitor

February 2012

Contact Officer: **Graham Warrington**  
Tel: (01865) 815321; E-Mail:  
graham.warrington@oxfordshire.gov.uk

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*Members are asked to contact the case officers in advance of the committee meeting if they have any issues/questions of a technical nature on any agenda item. This will enable officers to carry out any necessary research and provide members with an informed response.*

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### **Membership**

Chairman – Councillor Steve Hayward  
Deputy Chairman - Councillor Mrs Catherine Fulljames

#### *Councillors*

Alan Armitage  
Tony Crabbe  
Anda Fitzgerald-O'Connor  
Jenny Hannaby  
Ray Jelf

Peter Jones  
Stewart Lilly  
David Nimmo-Smith  
Neil Owen  
G.A. Reynolds

John Sanders  
Don Seale  
John Tanner

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#### **Notes:**

- **Date of next meeting: 16 April 2012**

## **Declarations of Interest**

This note briefly summarises the position on interests which you must declare at the meeting. Please refer to the Members' Code of Conduct in Part 9.1 of the Constitution for a fuller description.

### **The duty to declare ...**

You must always declare any "personal interest" in a matter under consideration, i.e. where the matter affects (either positively or negatively):

- (i) any of the financial and other interests which you are required to notify for inclusion in the statutory Register of Members' Interests; or
- (ii) your own well-being or financial position or that of any member of your family or any person with whom you have a close association more than it would affect other people in the County.

### **Whose interests are included ...**

"Member of your family" in (ii) above includes spouses and partners and other relatives' spouses and partners, and extends to the employment and investment interests of relatives and friends and their involvement in other bodies of various descriptions. For a full list of what "relative" covers, please see the Code of Conduct.

### **When and what to declare ...**

The best time to make any declaration is under the agenda item "Declarations of Interest". Under the Code you must declare not later than at the start of the item concerned or (if different) as soon as the interest "becomes apparent".

In making a declaration you must state the nature of the interest.

### **Taking part if you have an interest ...**

Having made a declaration you may still take part in the debate and vote on the matter unless your personal interest is also a "prejudicial" interest.

### **"Prejudicial" interests ...**

A prejudicial interest is one which a member of the public knowing the relevant facts would think so significant as to be likely to affect your judgment of the public interest.

### **What to do if your interest is prejudicial ...**

If you have a prejudicial interest in any matter under consideration, you may remain in the room but only for the purpose of making representations, answering questions or giving evidence relating to the matter under consideration, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

### **Exceptions ...**

There are a few circumstances where you may regard yourself as not having a prejudicial interest or may participate even though you may have one. These, together with other rules about participation in the case of a prejudicial interest, are set out in paragraphs 10 – 12 of the Code.

### **Seeking Advice ...**

It is your responsibility to decide whether any of these provisions apply to you in particular circumstances, but you may wish to seek the advice of the Monitoring Officer before the meeting.

**If you have any special requirements (such as a large print version of these papers or special access facilities) please contact the officer named on the front page, but please give as much notice as possible before the meeting.**

# AGENDA

1. **Apologies for Absence and Temporary Appointments**
2. **Declarations of Interest - see guidance note opposite**
3. **Minutes** (Pages 1 - 8)

To approve the minutes of the meeting held on 16 January 2012 (**PN3**) and to receive information arising from them.

4. **Petitions and Public Address**
5. **Retention and continued use of a single temporary classroom unit (ref T2 E198) for a further period of 5 years at Longfields Primary School, Longfields, Bicester - Application R3.0010/12** (Pages 9 - 14)

Report by the Director for Environment & Economy (Growth & Infrastructure) (**PN5**)

The report describes why the school are applying to renew planning permission, outlines the objection received and other responses to the application and sets out relevant planning policies along with the comments and recommendation of the Deputy Director for Environment & Economy (Growth and Infrastructure).

***It is RECOMMENDED that Application No. R3.0010/12 be approved subject to conditions to be determined by the Deputy Director for Environment & Economy (Growth & Infrastructure) but to include the following matters:***

1. ***The development must be carried out strictly in accordance with the plans and drawings submitted with the application.***
2. ***Building to be removed by 31 March 2017.***
3. ***Repainting of external doors, walls and railings within 6 months.***

***School Accommodation Informative:***

***The school is advised to investigate the provision of a more permanent solution to its long-term accommodation needs before this consent expires.***

**6. Installation of a 93 square metre modular building extension to existing children's centre (incorporating an enclosed linkway) to provide additional accommodation for 40 children for a temporary period of 5 years at Eynsham Primary School, Beech Road, Eynsham - Application R3.0018/12 (Pages 15 - 22)**

Report by Deputy Director for Environment & Economy (Growth & Infrastructure) (PN6)

The report describes the proposal to extend the Children's Centre at Eynsham Primary School, outlines the four objections and other responses which have been received to the application and sets out relevant planning policies along with the comments and recommendation of the Deputy Director (Growth and Infrastructure).

***It is RECOMMENDED that Application No. R3.0018/12 be approved subject to conditions to be determined by the Deputy Director for Environment & Economy (Growth & Infrastructure) to include the following matters:***

- 1. The development be carried out strictly in accordance with the plans and drawings submitted with the application.***
- 2. Temporary permission – building to be removed in 5 years.***
- 3. External materials to be agreed.***
- 4. Travel plan to be updated***
- 5. Drainage to be approved prior to occupation of the building.***
- 6. Landscaping to be approved prior to development taking place.***

**7. Relevant Development Plan and other Policies (Pages 23 - 26)**

This paper sets out the policies referred to in Items 5 and 6 and should be regarded as an Annex to each of those reports

**8. Commons Act 2006: Delegation of decision-making powers to officers (Pages 27 - 38)**

Report by County Solicitor and Director for Environment & Economy (PN8).

The Commons Act 2006 section 15(8) introduced a new power for a landowner to apply for voluntary registration of its own land as a town or village green using a simple statutory procedure. There are presently no officer delegations in relation to decisions under the Commons Act 2006, which at present must be determined by the Planning & Regulation Committee.

***The Committee is RECOMMENDED to delegate to the Director for Environment & Economy the power to determine applications for registration of new town or***

**village greens under section 15(8) of the Commons Act 2006, provided always that:-**

- (a) satisfactory evidence is obtained that the criteria set out in Regulation 7 of the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 are met;**
- (b) all statutory provisions are complied with and departmental guidance is taken into account where necessary;**
- (c) legal advice from the County Solicitor is obtained and taken into account where necessary.**

**9. Commons Act 2006: In the matter of an application to register the Blackbird Leys Park, Blackbird Leys, Oxford as a Town or Village Green (Pages 39 - 72)**

Report by County Solicitor & Head of Legal and Democratic Services (**PN9**)

In June 2011 an application was made by Mr William Clark for registration of land known as the Blackbird Leys Park Park, Blackbird Leys, Oxford in Oxfordshire as a Town or Village Green under the Commons Act 2006. The land is owned in part by the Oxford City Council and in part by the Oxfordshire County Council.

The County Council is the Commons Registration authority with statutory responsibility for determining such applications.

Objections were received by the Commons Registration Authority to the application and legal advice was obtained from a specialist barrister in relation to a preliminary issue. In light of that advice, this report sets out a recommendation to the Council.

There are no delegated powers to officers to determine such an application and therefore the Planning & Regulation Committee is required to determine the application.

***Having received the Further Opinion of Counsel set out in Annex 2 to this report, the Committee is RECOMMENDED to REJECT the application for registration as a new Town or Village Green that plot of land known as Blackbird Leys Park, Blackbird Leys, Oxford in Oxfordshire that site being indicated clearly on the Application Map of the application submitted by Mr William Clark and dated 6 June 2011.***

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### **Pre-Meeting Briefing**

There will be a pre-meeting briefing at County Hall on **Monday 5 March 2012** at **midday** for the Chairman, Deputy Chairman and Opposition Group Spokesman.

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## PLANNING & REGULATION COMMITTEE

**MINUTES** of the meeting held on Monday, 16 January 2012 commencing at 2.00 pm and finishing at 3.20 pm.

**Present:**

**Voting Members:**

Councillor Steve Hayward – in the Chair

Councillor Mrs Catherine Fulljames (Deputy Chairman)

Councillor Tony Crabbe

Councillor Mrs Anda Fitzgerald-O'Connor

Councillor Jenny Hannaby

Councillor Ray Jelf

Councillor David Nimmo-Smith

Councillor Neil Owen

Councillor John Sanders

Councillor Don Seale

Councillor John Tanner

Councillor Jean Fooks (In place of Councillor Alan Armitage)

Councillor Patrick Greene (In place of Councillor Peter Jones)

Councillor Lawrie Stratford (In place of Councillor G.A. Reynolds)

**Other Members in Attendance:**

Councillor Stewart Lilly (for Agenda Item 6)

**Officers:**

Whole of meeting

G. Warrington and J. Crouch (Law & Governance)

J. Hamilton (Environment & Economy)

Part of meeting

**Agenda Item**

**Officer Attending**

6.

J. Duncalfe (Environment & Economy)

7.

N. Woodcock (Environment & Economy)

*The Committee considered the matters, reports and recommendations contained or referred to in the agenda for the meeting, together with a schedule of addenda tabled at the meeting and decided as set out below. Except as insofar as otherwise specified, the reasons for the decisions are contained in the agenda, reports and schedule, copies of which are attached to the signed Minutes.*

**1/12 APOLOGIES FOR ABSENCE AND TEMPORARY APPOINTMENTS**

(Agenda No. 1)

The Committee stood in silent tribute in memory of Councillor Roger Belson.

The Committee also wished Councillor Peter Jones a speedy recovery following his recent illness.

The following apologies for absence and temporary appointments were received:

<i>Apology</i>	<i>Temporary Appointment</i>
Councillor Alan Armitage	Councillor Jean Fooks
Councillor Peter Jones	Councillor Patrick Greene
Councillor George Reynolds	Councillor Lawrie Stratford

**2/12 DECLARATIONS OF INTEREST - SEE GUIDANCE NOTE OPPOSITE**

(Agenda No. 2)

Councillor	Item	Nature of Interest
Councillor Fulljames	Item 3 – Minutes 41/11 and 50/11 – Energy from Waste application, Ardley.	Personal. In the event that the legal process in respect of the application was discussed.
Mrs	Item 7 – Frank Wise school – Application No R3.0144/11.	Personal. Member of Cherwell District Council Planning Committee. She advised that she had not expressed an opinion on the application in that capacity and therefore intended to participate in discussion and voting on that item.

**3/12 MINUTES**

(Agenda No. 3)

The Minutes of the meeting held on 5 December 2011 were approved and signed by the Chairman

**4/12 CHAIRMAN'S UPDATES**

(Agenda No. 4)

Waterstock

Mr Hamilton advised that at the hearing in the High Court on 19 December the Wyatt Brothers had been allowed further time until 27 January 2012 to prepare an adequate specification for the removal of waste.

Energy from Waste, Ardley

Mr Hamilton advised that the Liaison Committee had held its inaugural meeting on 10 January 2012. Membership had been extended to include Bucknell Parish Council and Cherwell District Council but proposals to further extend representation to some of the other 19 parishes also affected had been resisted. However, those parish councils would be sent minutes of future meetings and given the opportunity to raise issues if necessary. Representatives of statutory undertakers could also be invited to address specific issues.

Councillor Mrs Fulljames thanked officers for their work in establishing the Liaison Committee.

Ashgrove Farm, Ardley

Mr Hamilton advised that the odour management plan was still with the Environment Agency for agreement. The Agency were monitoring the site and Agrivert were already working to a number of principles set out in the plan, which included a reduction in the size of windrows and levels of waste of 25% and a general improvement in working and management practices.

**5/12 PETITIONS AND PUBLIC ADDRESS**

(Agenda No. 5)

<b>Speaker</b>	<b>Item</b>
David Hignell (Sutton Courtenay Parish Council)	)
Dee McDonald (Hansons UK)	)6. Application No.11/02440/CM
County Councillor Stewart Lilly	)

**6/12 TO CRUSH, SCREEN, BLEND AND STOCK REJECT BUILDING BLOCKS, FURNACE BOTTOM ASH AND REJECT MATERIALS FROM CONCRETE MAKING TO MAKE MATERIAL FOR BLOCK MAKING AT HANSON'S UK, SUTTON COURTENAY - APPLICATION NO. 11/02440/CM**

(Agenda No. 6)

The Committee considered (PN6) an application to import reject building blocks and to crush, screen and blend that material with other locally available materials to produce recycled material for block making for export.

Mr Hignell referred to the general concern felt by residents in Sutton Courtenay, which primarily revolved around the laissez faire attitude of the 2 main operators on the landfill site and the general perception locally that due to the character and appearance of the site there seemed to be little support from the regulatory authorities. The cumulative effect of many individual applications now gave the appearance of an industrial and commercial waste land, which conflicted with the provisions of the Vale of White Horse District Council's Adopted Local Plan. Noise, dust, light and odour pollution and infestation of flies from the site continually affected the quality of life and had, over time, gradually eroded local amenities. The parish council acknowledged that not all of these problems were caused by this particular operation and that the application needed to be considered on its merits and against development plan policies. However, the cumulative impact of successive developments should be a material consideration and at very least have warranted an environmental impact analysis. There were questions over the sustainability of the application regarding traffic/vehicle generation, particularly as material was not sourced locally, the amount of material to be stockpiled when crushing would only take place for 6 weeks of the year and its potential effect on surface water drainage. The proposals could also affect the Millennium Common area and local footpath network. The parish council felt that enough was enough and were asking the county council to seriously consider their objection and the further imposition which would be placed on the local community.

Responding to Councillor Crabbe he advised that the concern of the parish council revolved around the cumulative effect of developments and not the retrospective nature of the application itself.

Dee McDonald advised that the site was in the right location and appropriate for this type of operation. It was a designated aggregate stock piling area well screened and some distance from existing settlements. It had good access to the local road network and the company were willing to continue operating within the provisions of the current routeing agreement, which would help protect local communities from traffic. The operation contributed to the local economy realising a £5,500 business rate and if permission was granted the company would make a contribution to the Science Vale UK Strategic Schemes. The proposal also realised the need to divert waste from landfill and by securing production of secondary and recycled aggregate on a site, which was part of an existing mineral extraction and landfill site and close to the market for the recycled material, it conformed with policies W3 and W4 of the Minerals and Waste Local Plan. As far as she was aware there had been no complaints raised at the Millennium Common steering group as a result of this operation and the company were confident that that would continue, particularly as

the crushing operation would only take place for 6 weeks in any one year. She urged the Committee to approve the application by having regard to the responses from statutory consultees, none of whom had objected.

She responded to questions from:

Councillor Tanner – material would be stored in an existing storage area. With regard to the retrospective nature of the application the Company had thought that permission had been given but as soon as it had been realised that that was not the case had immediately sought to regularise the situation.

Councillor Sanders – sites at Thatcham and Coleshill did not have the necessary capacity for this operation.

Councillor Fooks – the 6 week crushing block would not be undertaken in one period but spread over the year. However, when in operation the crusher would be on site for at least a week at a time. It was also dependent on weather conditions.

Councillor Crabbe – the operation had been going for at least 2/3 years.

Councillor Lilly speaking as local member confirmed that he had received no comments from Appleford parish but was aware of the feeling within Sutton Courtenay regarding the cumulative effect of permissions. He chaired the local liaison committee and although there had been a few occasions where conditions on the Sutton Courtenay site as a whole had not been complied with he felt the situation generally was improving. In this case the applicants having realised they were operating without permission had immediately applied for permission and although there had been some anxiety regarding extra vehicle movements he had no concerns with this particular operation. However, restoration was particularly important as was protection of storm water drainage and conditions generally needed to be vigorously enforced, particularly those relating to noise, routing and suppression of dust and he suggested a maximum noise level be set for vehicles operating on site and a specific height limit applied to stockpiles. These measures could help allay local concerns and he assured the Committee and the parish council that the liaison committee would do its bit to help police the operation.

Responding to a question from Councillor Greene he agreed that specific noise level limits would be preferable and would be more than happy to see a larger contribution from the applicants to the Science Vale UK Strategic Schemes.

Mr Duncalfe advised that the level of contribution to the strategic schemes fund had been worked out to a specific formula and could not therefore be arbitrarily increased. However, officers could discuss with the applicants the possibility of a larger contribution. He reminded the Committee that neither the Vale of White Horse District Council or Sutton Courtenay Parish Council had objected to the application on the grounds of noise but a specific figure of 55 dba LAeq could be applied to Condition 11 and a specific height for the stockpiles of say 5 metres to Condition 10. He confirmed that the 16 additional movements were to be added to the current operation but was unable to confirm if it was possible to transport material from other sites by rail.

Councillor Hannaby understood the concerns of the parish council. However the site was well established and welcoming the opportunity that the application presented to divert waste building material from landfill she moved and Councillor Greene seconded that the officer recommendation be approved subject to amending Condition 10 to include a 5 metre height limit for stockpiles of material, Condition 11 to include a maximum noise level of 55dbaLAeq for vehicles operating within the site and an additional condition securing a surface water drainage scheme to protect the adjacent stream from pollution. The motion was put to the Committee and -

**RESOLVED:** (by 13 votes to 1) that subject to compliance with the current site routing agreement and a contribution of £7,804.84 (index linked) to Science Vale UK Strategic Schemes that planning permission be granted subject to conditions to be drawn up by the Deputy Director for Environment & Economy (Growth & Infrastructure) but to include those matters set out below:

1. Detailed compliance condition.
2. Operating hours – Mon – Fri 0700-1800 and Saturdays 0700-1300.
3. No operation on Sunday and Bank Holidays.
4. Operation to cease by end of 2030 with restoration to be completed by 2032.
5. Crushing of blocks for only 6 weeks a year.
6. Details of mobile plant to be submitted and agreed.
7. Restoration and aftercare to take place in accordance with landfill permission restoration and aftercare.
8. Steps to be taken to prevent any solid matter, reject block material, concrete waste of furnace bottom ash or excess amounts of suspended matter from passing into any water course.
9. No oil storage tanks to be sited.
10. All stock piles not to exceed the height of the trees or a height of 5 metres whichever was lower to the west of the site.
11. Effective silencers to be provided on plant, machineries and vehicles operating within the site in order that noise did not exceed 55 dba LAeq.
12. Reversing vehicles shall not emit warning noise that may have adverse impacts on neighbours or properties.
13. No buildings, plant and machineries to be erected without consent.
14. No imported material to be deposited on the land except reject blocks from Coleshill, Thatcham and Milton, concrete waste from Concrete batching plants at Sutton Courtenay landfill site and furnace bottom ash from Didcot Power Station.
15. No material shall be exported except to Milton.
16. Existing hedges/trees on the site boundary to be retained and maintained.
17. Written notice to be given to MPA of the completion of this development.
18. No access to be used by HGVs other than on to the existing access onto the Didcot Perimeter road.
19. No vehicles to enter public highway unless its wheels have been sufficiently cleaned.
20. Working areas and stockpiles to be sprayed with water to suppress dust.
21. Surface water drainage scheme to protect the adjacent stream from pollution.

**7/12 RETENTION AND CONTINUED USE OF A TRIPLE RELOCATABLE BUILDING, UNIT REF E241 (T2) FOR A FURTHER PERIOD OF 5 YEARS AT FRANK WISE SCHOOL, BANBURY - APPLICATION R3.0144/11**

(Agenda No. 7)

The Committee considered (PN7) an application for the retention and continued use of a temporary building for a further period of five years at Frank Wise School, Banbury.

Councillor Stratford referred to the good reputation enjoyed by the school and moved the officer recommendation.

Councillor Tanner however felt the school needed a permanent building and that a permission granted for 5 years would not exert enough pressure for that to happen. He moved an amendment that planning permission be granted for a period of 2 years and not 5. The amendment seconded by Councillor Sanders was put to the Committee and lost by 12 votes to 2.

The original motion was then put to the Committee and carried by 13 votes to 1.

**RESOLVED:** that Application No. R3.0144/11 be approved subject to conditions to be determined by the Deputy Director for Environment & Economy (Growth & Infrastructure) to include the following matters:

1. The development must be carried out strictly in accordance with the particulars contained in the application and the plans.
2. Temporary building to be removed by 31 January 2017.
3. School travel plan to be revisited within 3 months with a view to reducing local congestion around the school site. Revised travel plan to be implemented within 6 months.
4. Reinstatement of the playing field within 3 months of the removal of the building.
5. Restoration of netball court to its original position once the temporary building had been removed on 31 January 2017.
6. Submission of a landscaping scheme.
7. Implementation of the approved landscaping scheme.

..... in the Chair

Date of signing .....

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**For: PLANNING AND REGULATION COMMITTEE – 5 MARCH 2012**

**By: DEPUTY DIRECTOR FOR ENVIRONMENT & ECONOMY (GROWTH & INFRASTRUCTURE)**

**Development Proposed:**

**Retention and continued use of a single temporary classroom unit (ref T2 E198) for a further period of 5 years.**

**Division Affected:** Bicester

**Contact Officer:** Naomi Woodcock **Tel:** Oxford 815708

**Location:** Longfields Primary School, Longfields, Bicester, Oxfordshire, OX26 6QL.

**Applicant:** Oxfordshire County Council

**Application No:** R3.0010/12

**District Council Area:** Cherwell

**Recommendation:** The report recommends that planning permission should be granted subject to conditions.

**Location (see site plan Annex 1)**

1. Longfields Primary School is located on the Longfields housing estate just to the east of Bicester Town Centre.

**Site and Setting (see site plan Annex 1)**

2. The diamond shaped school site is bounded on three sides by residential development together with the Bicester to London railway line to the north east (the Bicester North station lies just to the north west).
3. A public footpath runs immediately adjacent to the school's northwest boundary.
4. The temporary building is located to the rear of the main school building.
5. Vehicular and pedestrian access is taken from Longfields to the west of the school site.

6. The nearest dwellings to the temporary building are located 75<sup>1</sup> metres to the west on Maple Road and 90 metres to the south on Moor Pond Close.
7. Views of the classroom are partially screened from the west by trees and from the south by a 2 metre hedge along the southern site boundary.

### **Background and Details of the Development**

8. The Childrens Education and Families Directorate argues that the classroom is needed because:
  - there is insufficient space within the permanent school building to accommodate the total number of pupils on the school roll; and
  - funding for a permanent replacement building has not been forthcoming.
9. The temporary building is of a standard prefabricated functional design with a mineral felt roof and upvc windows. The paintwork on the textured plywood walls and doors are faded. No alterations are proposed to the appearance of the building.
10. The applicant considers that the building is in sound condition and suitable for use for another five years.
11. No changes are proposed to staff or pupil numbers as a result of this proposal.

### **Representations**

12. There have been no third party representations.

### **Consultations**

13. Cherwell District Council – No objection subject to the removal of the building at the end of the five year period.

Bicester Town Council – Object. Although there is a clear need for the classroom, permanent facilities should be provided.

Transport Development Control – No objection.

Drainage Engineer – No objection.

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<sup>1</sup> All distances are approximate

**Relevant planning policies (see Policy Annex to the committee papers)**

14. Planning applications should be decided in accordance with the Development Plan unless material considerations indicate otherwise.
15. The relevant development plan policies are:
  - The South East Plan (SEP) 2026 – Policies: S3.
  - The Cherwell Local Plan (CLP) 1996 – Policies: C28.

The Non Statutory Cherwell Local Plan (NSCLP) 2004 is also a material consideration in the determination of this proposal. Policy R11 is relevant in this case.

16. The SEP forms part of the development plan. However, the government has made it clear that it intends to abolish regional strategies. The Localism Act enables the Secretary of State to revoke the whole or any part of a regional strategy by order. Whilst no such order had been made at the date this report was drafted, the published intention to revoke is a material consideration to which substantial weight should be given.

**Comments of the Deputy Director for Environment & Economy (Growth & Infrastructure)**

17. The key planning issues are:
  - (i) whether the renewal of planning permission in this instance is appropriate;
  - (ii) whether the external appearance of the temporary building is acceptable.

(i) Whether renewal of planning permission is in this instance appropriate:
18. Policy S3 of the SEP requires local authorities to ensure that there is an adequate provision of school facilities.
19. In this instance, although Bicester Town Council has indicated that it understands the need for the development, it considers that a permanent replacement building should be provided.
20. Although I appreciate the sentiment expressed by the Town Council regarding permanent accommodation and I accept that a more permanent solution is preferable, my view is that renewal of planning permission is in principle acceptable at this point because:
  - there is insufficient space within the permanent school building to accommodate current and future pupil numbers;
  - there are no funds currently available to provide permanent replacement accommodation; and
  - the proposal supports the aim of policy S3 of the SEP.

(ii) Whether the external appearance of the temporary classroom building is acceptable:

21. Policy C28 of the CLP requires the external appearance of any development to be sympathetic to the character of the urban context in which it sits and Policy R11 of the NSCLP looks to permit community facilities provided, amongst other things, they are appropriate in terms of scale, siting and design.
22. Temporary buildings are generally not particularly sympathetic to the site where they are located. However, in my view this building is not unduly obtrusive as it is located to the rear of the main school building. Views from the south and west are partially screened by existing landscaping and views from Longfields are obscured by the main school building.
23. The building itself, whilst structurally sound, has a rather tired looking appearance. A condition requiring the repainting of the external doors and walls would address this issue. I therefore consider that subject to condition the external appearance of the temporary building is acceptable.

**Conclusion**

24. Retention of this single temporary building would enable Longfields Primary School to continue to accommodate its current and future pupil population. Although not an ideal solution to the school's accommodation needs, the renewal of planning permission for a further five years is justified and consistent with policy S3 of the South East Plan.

**Recommendation**

25. **It is RECOMMENDED that Application No. R3.0010/12 be approved subject to conditions to be determined by the Deputy Director for Environment & Economy (Growth & Infrastructure) but to include the following matters:**
  1. **The development must be carried out strictly in accordance with the plans and drawings submitted with the application.**
  2. **Building to be removed by 31 March 2017.**
  3. **Repainting of external doors, walls and railings within 6 months.**

**School Accommodation Informative:**

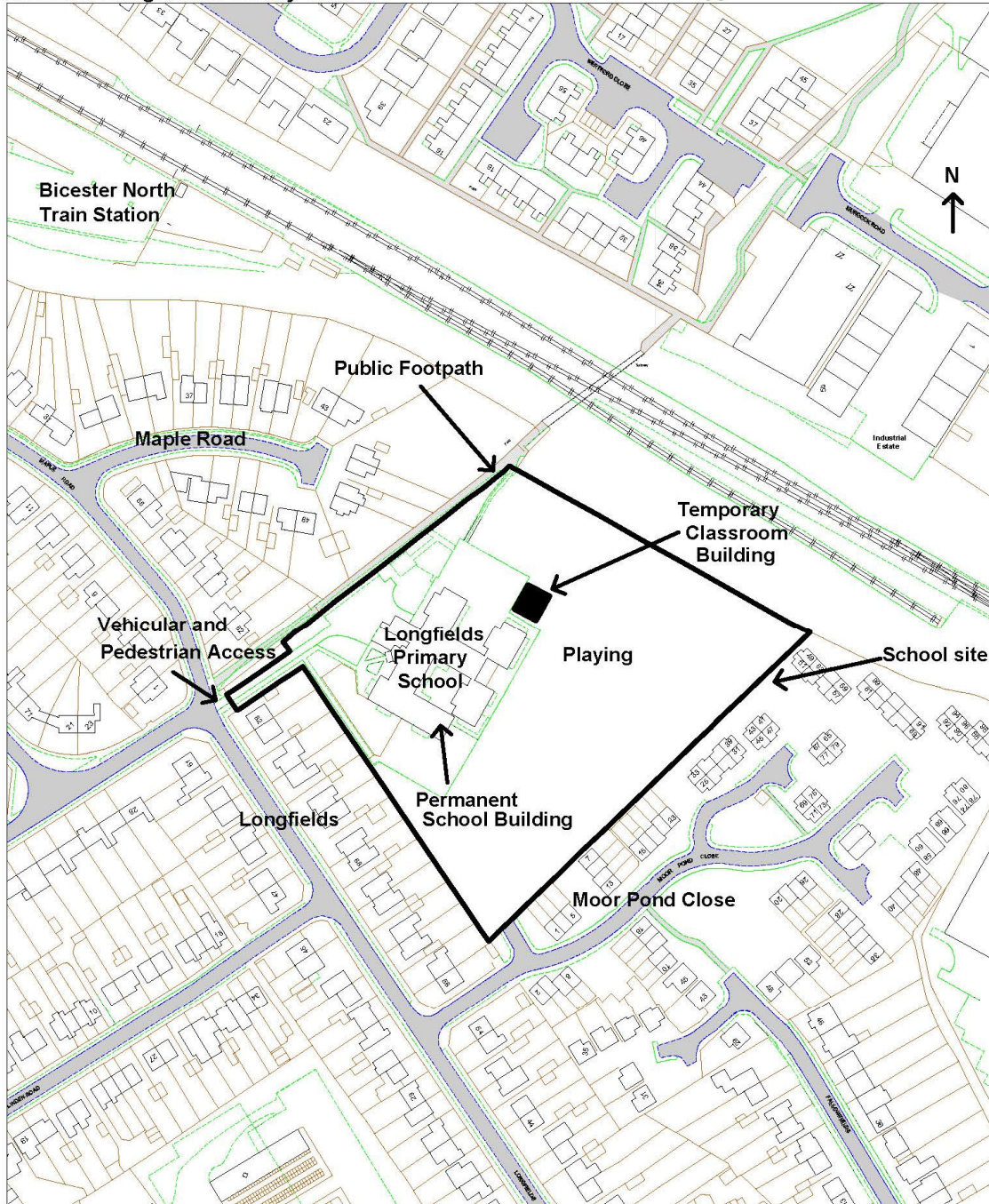
**The school is advised to investigate the provision of a more permanent solution to its long-term accommodation needs before this consent expires.**

MARTIN TUGWELL  
DEPUTY DIRECTOR for ENVIRONMENT & ECONOMY (GROWTH &  
INFRASTRUCTURE)

February 2012

Annex 1: Longfields Primary School

Application No: R3.0010/12



This plan shows only an indication of the proposed development and should not be scaled from

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**For: PLANNING AND REGULATION COMMITTEE – 5 March 2012**

**By: DEPUTY DIRECTOR FOR ENVIRONMENT & ECONOMY (GROWTH & INFRASTRUCTURE)**

**Development Proposed:**

**Installation of a 93 square metre modular building extension to existing Children's Centre, (incorporating an enclosed linkway) to provide additional accommodation for 40 children for a temporary period of 5 years.**

**Division Affected:** Eynsham

**Contact Officer:** Kevin Broughton      **Tel:** Oxford 815272

**Location:** Eynsham Primary School, Beech Road, Eynsham, Witney, OX29 4LJ

**Applicant:** Oxfordshire County Council

**Application No:** R3.0018/12

**District Council Area:** West Oxfordshire

**Recommendation:** The report recommends that the application be approved subject to conditions.

## CONTENTS

- Part 1 – Facts and background
- Part 2 – Relevant planning documents
- Part 3 – Other Viewpoints
- Part 4 – Opinion and conclusions

## **Part 1 – Facts and Background**

### Location (see site plan Annex 1)

1. Eynsham CP School is located on the eastern edge of Eynsham at the end of Beech Road.

### Site and Setting (see site plan Annex 1)

2. The school site is bounded by housing to the south, a path with housing beyond to the west, a children's play area and housing to the north and the B4449 to the east.
3. The proposed extension (of modular construction) would be located on grassed play area to the north of, and adjoining the, existing Children's Centre.
4. Vehicular and pedestrian access is from the main school entrance on Beech Road to the west.
5. The nearest dwellings to the proposed building are 45<sup>1</sup> metres to the north beyond the children's play area. Properties in Millmoor Crescent are 50m to the west.
6. There are substantial hedges on the northern and western boundaries of the school site. They are about 1.8 metres in height.

### Background and Details of Development

7. Planning permission for the Children's Centre was granted planning permission in November 2009.
8. A company called Earlyworld use the Children's Centre under licence from the County Council to provide a Breakfast and Holiday Club for 40 Children. The proposed modular building would enable up to an additional 40 children to be accommodated.
9. The proposed building would be accessed through the existing Earlyworld / Children's Centre.
10. The proposal would require three more staff if it reached its full capacity.
11. The building would be a timber clad modular building constructed on concrete piers.
12. There would be an enclosed walkway linking the modular building to the existing Earlyworld / Children's Centre.

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<sup>1</sup> All distances are approximate

**Part 2 – Relevant Planning Documents (see policy annex attached to committee papers)**

13. Planning applications should be decided in accordance with the Development Plan unless material considerations indicate otherwise.
14. The relevant development plan documents, in this instance, are:
  - The South East Plan (SEP) 2026
  - The West Oxfordshire Local Plan (WOLP) 2011.
15. The SEP forms part of the development plan. However, the government has made it clear that it intends to abolish regional strategies. The Localism Act enables the Secretary of State to revoke the whole or any part of a regional strategy by order. Whilst no such order had been made at the date this report was drafted, the published intention to revoke is a material consideration to which substantial weight should be given.

**Relevant Policies**

16. The relevant policies are:
  - SEP2026 – S3.
  - WOLP 2011 – BE2, NE6, NE9, TLC1.

**Part 3 – Other Viewpoints**

**Representations**

17. Four objections have been received raising the following points:
  - Problems of extra traffic on the local roads, particularly for out of hours use.
  - Parking problems during peak times.
  - Noise from the Earlyworld centre.
  - The building and its surroundings are inadequate for the purpose.
  - Concerned about the felling of trees.
  - Concerned about Co2 Emissions
  - Light pollution
  - Lack of toilet facilities in the proposed building

*Copies of the letters are available in the Members' Resource Centre.*

**Consultations**

18. West Oxfordshire District Council – (no response received at the time of drafting the report).

Eynsham Parish Council – No objection, but concerned about a temporary unattractive building being placed onto this newly built attractive building.

Environment Agency – Due to the application having a low environmental risk, the Agency have not provided an individual response.

Transport Development Control – A travel plan for the Children’s Centre and Earlyworld combined is required.

Oxfordshire Drainage Team – Details to ensure the proposed drainage will function are required.

#### **Part 4 – Opinion and Conclusion**

Comments of the Deputy Director for Environment & Economy (Growth & Infrastructure)

19. The key planning issues are related to impacts on local people:

- (i) Highways and parking;
- (ii) Affect on amenity due to visual and noise intrusion; and
- (iii) Other material issues.

(i) Highways and Parking

20. WOLP Policy TLC1 says that planning permission will not be granted if a development would generate unacceptable levels of traffic on the local highway network. Currently 40 children attend the Earlyworld Centre and this application would provide additional accommodation for up to 40 additional children. These extra numbers already attend the school. Highways Development Control have not objected to the application but suggest that a travel plan should be required by condition.

21. It is my view that the application would not generate unacceptable levels of traffic on the local highway network because:

- During term time the children attending the centre would do so on their way to and from the school, so there should be no extra traffic.
- During the school holidays there would be an increase in children coming to the site with up to 80 children being accommodated. There would of course be none of the other traffic associated with school activities as the school would be closed. In addition, the school car park could be used for parking of visitors during holiday periods.
- During term times, the children using the Earlyworld Centre would be dropped off earlier and picked up later which should ease congestion at peak times (although it could extend the time that the ‘school run’ takes place.)

Overall the impact is not likely to significantly add to congestion during peak times.

(ii) Affect on amenity due to noise and visual intrusion

22. WOLP Policy TLC1 of the West Oxfordshire Local Plan says that planning permission will be granted for community facilities to meet local needs. It also states that permission will not be granted if the development has an adverse impact on the character of towns and villages. In this instance I believe that it should not because:

- Although views of the unit would be possible from the path to the rear of Millmoor Crescent and from the children's play area to the north, it would be seen through the existing play group area. From the children's play area, it would be partly screened by the existing hedge. It would also be seen against the backdrop of the recently built Children's Centre.
- The County's tree officer has suggested that the tree nearest the building should be removed. Replacement planting could be a condition on any planning permission given.
- The proposed modular building would be of cedar clad construction, giving it a more attractive appearance than a standard temporary unit and would, in my view, sit well on the site between the rear of the existing Children's Centre and the boundary hedge.
- The visual impact of lighting has been raised as a concern. There would in fact be no floodlighting as part of the proposal.
- With regard to noise, I would comment as follows; the proposal would not be a new use, but it would allow intensification of the existing use. The Breakfast / Holiday Club operates from 7.30am to 6.00pm which would roughly equate to the normal working day. The site is located on a primary school which already generates noise from children when playing outside. This proposal would be no different, apart from the time before and after the normal school day. However, because of the distance of properties from the site, and that they are separated on one side by an existing children's play area; it would not in my opinion lead to a serious loss of amenity.

(iii) Other material issues

23. In response to the concern about CO2 emissions; the building would be covered by modern Building Regulations and would be required to meet modern construction standards.
24. An objection has been received on the grounds that there are no toilet facilities in the proposed modular building. The lease for the building includes the use of facilities, including toilets, in the Children's Centre.

Conclusions

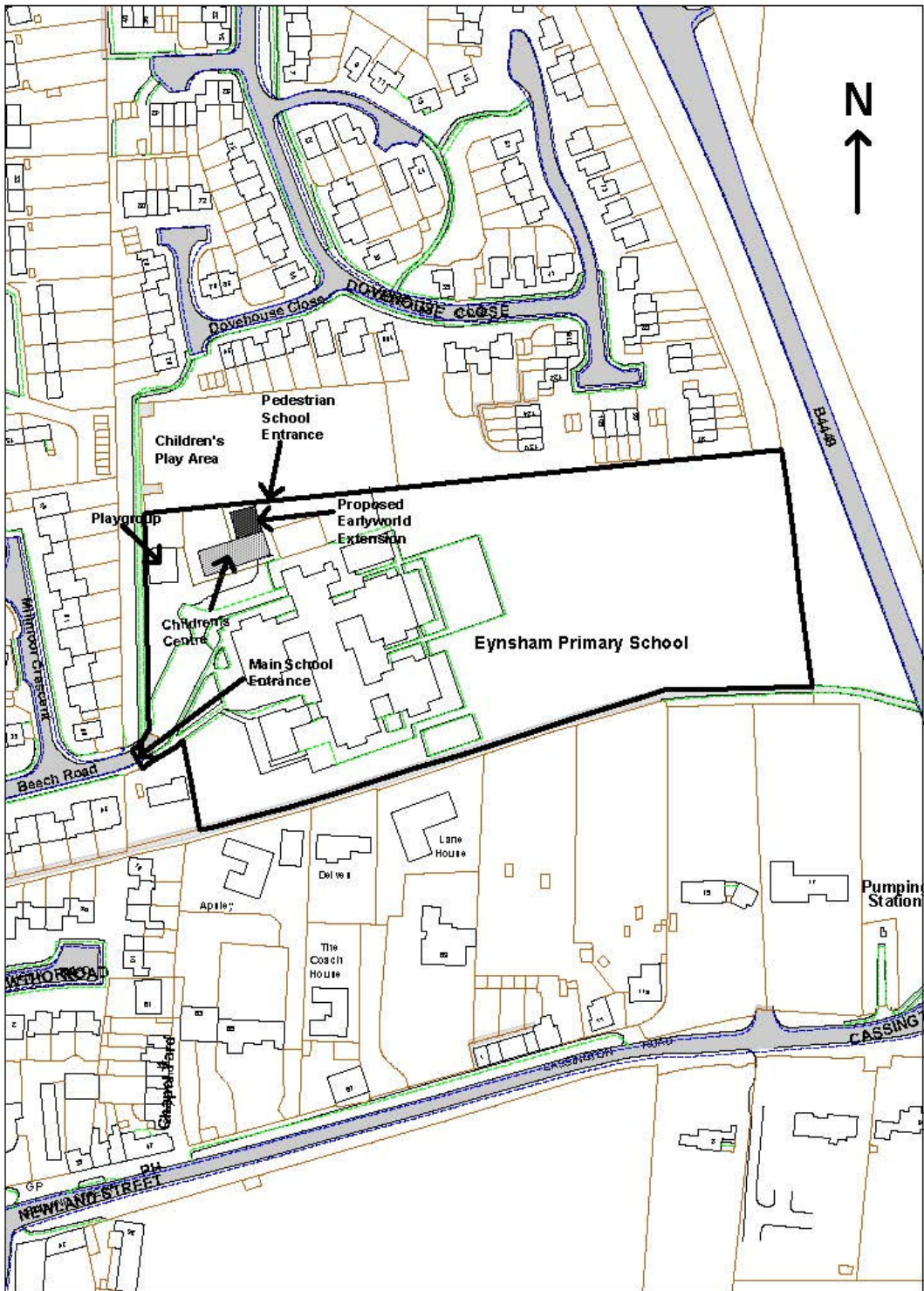
25. The proposed modular building would provide valuable additional accommodation to this community facility to meet an important local need. With the addition of conditions to deal with issues relating to external materials, landscaping / replacement planting, an updated travel plan and site drainage, the impact on local amenity is considered to be negligible and the effect on the highway network acceptable. As such the development is considered to be acceptable on its planning merits.

Recommendation

26. **It is RECOMMENDED that Application No. R3.0018/12 be approved subject to conditions to be determined by the Deputy Director (Growth & Infrastructure) to include the following matters:**
1. **The development be carried out strictly in accordance with the plans and drawings submitted with the application.**
  2. **Temporary permission – building to be removed in 5 years.**
  3. **External materials to be agreed.**
  4. **Travel plan to be updated**
  5. **Drainage to be approved prior to occupation of the building.**
  6. **Landscaping to be approved prior to development taking place.**

MARTIN TUGWELL  
DEPUTY DIRECTOR FOR ENVIRONMENT & ECONOMY(GROWTH &  
INFRASTRUCTURE)

February 2012



This plan shows only an indication of the proposed development and should not be scaled from

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## PLANNING & REGULATION COMMITTEE – 5 MARCH 2012

### POLICY ANNEX (RELEVANT DEVELOPMENT PLAN AND OTHER POLICIES)

#### The South East Plan - Regional Spatial Strategy for the South East of England, May 2009

##### POLICY S3: EDUCATION AND SKILLS

Local planning authorities, taking into account demographic projections, should work with partners to ensure the adequate provision of pre-school, school and community learning facilities. Policies should advocate the widening and deepening of participation through better accessibility, reflecting the role the planning system can play in developing and shaping healthy sustainable communities. Policies should:

- i. take account of the future development needs of the economy and the community sector
- ii. encourage mixed use approaches, that include community facilities alongside 'formal' education facilities
- iii. seek to ensure access for all sections of society to education facilities at locations with good public transport access.

#### West Oxfordshire Local Plan 2011

##### POLICY BE2 – GENERAL DEVELOPMENT STANDARDS

New development should respect and, where possible, improve the character and quality of its surroundings and provide a safe, pleasant, convenient and interesting environment.

Proposals for new buildings and land uses should clearly demonstrate how they will relate satisfactorily to the site and its surroundings, incorporating a landscape scheme and incidental open space as appropriate.

A landscape scheme accompanying detailed proposals for development should show, as appropriate, hard and soft landscaping, existing and proposed underground services, a phasing programme for implementation and subsequent maintenance arrangements.

Proposals will only be permitted if all the following criteria are met:

Quality of Development and Impact upon the Area:

- a) the proposal is well-designed and respects the existing scale, pattern and character of the surrounding area;

- b) new buildings or extensions to existing buildings are designed to respect or enhance the form, siting, scale, massing and external materials and colours of adjoining buildings, with local building traditions reflected as appropriate;
- c) the proposal creates or retains a satisfactory environment for people living in or visiting the area, including people with disabilities;
- d) existing features of importance in the local environment are protected and/or enhanced;
- e) the landscape surrounding and providing a setting for existing towns and villages is not adversely affected;
- f) in the open countryside, any appropriate development will be easily assimilated into the landscape and wherever possible, be sited close to an existing group of buildings.

Crime:

- g) good design has been used to help reduce the opportunities for crime.

Energy and Resources:

- h) regard has been given to:
  - i. principles of energy and resource conservation:
  - ii. provision for sorting and storage facilities to facilitate recycling of waste.

#### POLICY NE6 – RETENTION OF TREES, WOODLANDS AND HEDGEROWS

Planning permission will not be granted for proposals that would result in the loss of trees, woodlands or hedgerows, or their settings, which are important for their visual, historic or biodiversity value. Removal will only be allowed where it can be demonstrated that the proposed development would enhance the landscape quality and nature conservation value of the area.

#### POLICY NE9: SURFACE WATER

New development or intensification of existing development will not be permitted where the additional surface water run-off would result in adverse impacts such as an increased risk of flooding, river channel instability or damage to habitats, unless appropriate attenuation and pollution control measures are provided.

#### POLICY TLC1: NEW TOURISM, LEISURE AND COMMUNITY FACILITIES

Permission will be granted for:

- a) visitor-related proposals which respect and enhance the intrinsic qualities of the District;
- b) community facilities to meet local needs;
- c) the recreational and cultural use of land on a small scale to meet local needs;
- d) new recreational and cultural buildings where they are essential to the existing use of the associated land and are appropriate in scale, design and siting.

Proposals for leisure, tourist and community developments will not be allowed where they would have an adverse impact on the character or environment of the countryside or on towns and villages within the District or would generate unacceptable levels of traffic on the local highway network.

## Cherwell Local Plan 1996 (CLP)

### POLICY C28: CONSERVATION AREAS

Control will be exercised over all new development, including conversions and extensions, to ensure that the standards of layout, design and external appearance, including the choice of external-finish materials, are sympathetic to the character of the urban or rural context of that development. In sensitive areas such as conservation areas, the area of outstanding natural beauty and areas of high landscape value, development will be required to be of a high standard and the use of traditional local building materials will normally be required.

## The Non-Statutory Cherwell Local Plan 2011 (NSCLP)

### POLICY R11: COMMUNITY FACILITIES

Proposals for community centres, village halls, allotments and other local facilities will be permitted provided the development:

- (i) is conveniently located for the population it is intended to serve;
- (ii) is appropriate in terms of scale, siting and design;
- (iii) would not lead to significant loss of amenity to adjacent properties; and
- (iv) would not be visually intrusive.

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Division(s): All

## **PLANNING & REGULATION COMMITTEE – 5 MARCH 2012**

### **COMMONS ACT 2006: DELEGATION OF DECISION-MAKING POWERS TO OFFICERS**

**Report by the County Solicitor & Director for Environment & Economy**

#### **Introduction**

1. The County Council is the commons registration authority for the County of Oxfordshire and is responsible for determining, amongst other matters, applications for registrations of new town or village greens under section 15 of the Commons Act 2006. Planning & Regulation Committee have delegated powers to determine such applications, provided they are 'duly made'.
2. There are currently no delegations to officers to determine any applications. In light of experience gained since the coming into force of s15 of the Commons Act 2006 it is considered that a delegation to the Director for Environment & Economy to determine applications under s15(8) of the 2006 Act (voluntary applications by a landowner to register its own land) should be made.

#### **The Legal Background**

3. Section 15 of the Commons Act 2006 was brought into force on 6 April 2007 and included a new statutory power in subsection 8 for the owner of land to apply voluntarily to the commons registration authority for the registration of its own land as a new town or village green.
4. Section 15(9) of the 2006 Act further provides that if such an application is made, the landowner must obtain the written consent of any relevant leaseholder or the proprietor of any relevant charge. These terms are subsequently defined by s15(10).
5. The commons registration authority's duties in respect of such applications are set out in Regulation 7 of the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 as follows:-

“Where an application is made under section 15(8) of the 2006 Act to register land as a town or village green, the registration authority must grant it provided it is satisfied that—

- (a) the applicant is the owner of the land; and
- (b) any consents which are required by section 15(9) of the 2006 Act have been obtained.”

6. The wording of Regulation 7 therefore makes it clear that the commons registration authority must register such an application if it is satisfied that the two criteria are met. On registration, the newly-registered town or village green would be subject to statutory protection under s12 Enclosure Act 1857 and s29 Commons Act 2006 in the same way as other greens.
7. A copy of DEFRA non-statutory guidance on the voluntary registration of greens is annexed to this Report.

### **Section 15(8) In Practice**

8. There has been some uptake of this new statutory power by landowners in Oxfordshire. This has been primarily from Parish Councils who hold land for public recreational purposes and wish to give it greater security for such use in the future.
9. In such cases at present, the application is assessed by Rights of Way & Commons and Legal Services. The ownership of the land is checked along with any necessary consents from leaseholders or charge holders.
10. In addition to this, the boundaries of the application area are checked to identify whether any buildings, public rights of way or vehicular accesses are affected. If so, this is brought to the applicant's attention so that consideration can be given as to whether to exclude these areas from the application.
11. Legal Services also investigate title to the property to establish ownership. If the title discloses any third party rights that may be affected by the application (for example rights of pre-emption or overage) the applicant is recommended to notify that third party of the application and to obtain consents where necessary.
12. Legal Services also checks that the person making the application (if different from the landowner) has the landowner's authority to make the application. This is particularly important in cases where e.g. a Parish Clerk is making an application on behalf of a Parish Council.
13. As there are at present no officer delegations in respect of matters under the Commons Act 2006, an application which meets the statutory test must in all cases be reported to the Planning & Regulation Committee even though the Committee must register the application and therefore has no discretion in the matter.
14. There is a cost to the Council in officer time (both Environment & Economy and Legal Services) in preparing the application and the subsequent attendance at Committee. It is considered that these costs are better expended on contentious applications where Members have wider factual and legal issues to consider and can exercise discretion in making their decision.

## **The Proposed Officer Delegation**

15. It is considered that decisions as to registration of voluntary applications by landowners under s15(8) of the 2006 Act should be delegated to the Director for Environment & Economy as set out in the recommendation following.
16. This delegation should be reviewed and amended as necessary if the legislation is amended in the future.

## **RECOMMENDATION**

17. **The Committee is RECOMMENDED to delegate to the Director for Environment & Economy the power to determine applications for registration of new town or village greens under section 15(8) of the Commons Act 2006, provided always that:-**
  - (a) **satisfactory evidence is obtained that the criteria set out in Regulation 7 of the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 are met;**
  - (b) **all statutory provisions are complied with and departmental guidance is taken into account where necessary;**
  - (c) **legal advice from the County Solicitor is obtained and taken into account where necessary.**

PETER CLARK  
County Solicitor & Head of Legal Services

HUW JONES  
Director for Environment & Economy

Contact Officer: Rob Dance, Planning and Regulation Service Manager  
Tel: (01865) 815077  
Richard Goodlad, Solicitor Tel: (01865) 323917

February 2012

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# The Commons Act 2006 and voluntary dedication of land as a town or village green

April 2011



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This document is also available on the Defra website.

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**April 2011 (Version 1.1)**

#### **Version control**

Version 1.1 (April 2011)

Paragraph 26: interpretation of 'disposal' revised such that dedication of land by local authorities is in Defra's view a disposal and is subject to the controls under 123 and 127 of the Local Government Act 1972.

# **The Commons Act 2006 and voluntary dedication of land as a town or village green**

## **Introduction**

This guidance provides advice to landowners in England on dedicating land as a town or village green and on alternative mechanisms to provide public access to land. It does not attempt to provide a comprehensive explanation of every issue. The guidance is non-statutory and has no legal effect.

## ***Part 1***

### **Dedication of land as a new town or village green**

1. New powers are available under section 15(8) of the Commons Act 2006 which for the first time allows you, the owner of land, to voluntarily dedicate your land as a town or village green by applying to have it included in the register of town or village greens. It is open to any landowner — including a private individual, organisation, or public body — to make use of this new power. Specific guidance for local authorities and charities appears at the end of this note.
2. Town and village greens derive from customary law. They were originally areas of land used by local people for sports and pastimes and where this long-standing use created legally recognised recreational rights over the land. These rights are not defined in law but can include activities such as dog-walking, blackberry-picking, picnicking, and playing games such as cricket or football.
3. In Defra's view, once a green has been registered voluntarily it will be subject to the same statutory protections as all other registered greens and local people will have a guaranteed legal right to indulge in sports and pastimes over it on a permanent basis. Generally speaking, causing damage to village greens is a criminal offence under two 19<sup>th</sup> century Acts: greens are protected by section 12 of the Inclosure Act 1857 against injury or damage and interruption to their use or enjoyment, and by section 29 of the Commons Act 1876 against encroachment or inclosure of a green. Registration as a town or village green is irrevocable and so land must be kept free from development or other encroachments. Subject to certain statutory exceptions for compulsory purchase or exchange of land, once registered, land cannot be removed from the register. Therefore, before embarking on the registration of land as a town or village green, you are advised to consider carefully the implications.
4. You may particularly wish to consider voluntary registration of land as a new green where:
  - a. You own land that is already used by local people, perhaps with your permission, for recreation, and you wish to formalise the position and protect the land for their use in the future. Or you may wish to allocate land for this purpose which has not previously been used for recreation.

## **The Commons Act 2006 and voluntary dedication of land as a town or village green**

- b. You are an organisation promoting or funding the provision or improvement of an open space or recreational area, and would like the land registered as a condition of your support.
  - c. You want to create a lasting public memorial or put something back into the community by providing an open space.
  - d. You are a developer who is required to provide a recreational area on part of a development site as a planning condition or planning obligation — or a planning authority that considers it appropriate to require such registration as part of the agreement.
5. If land you intend to dedicate voluntarily is designated as a site of special scientific interest, you should consult Natural England to see whether voluntary dedication is compatible with the special status of the land. It is an offence for owners and occupiers of SSSIs to carry out any operation specified in the notification of the site without the consent of Natural England. Contact Natural England for more details.

### **New procedures**

6. Section 15 of the 2006 Act changes the legal definition of a town or village green and sets out the qualifying circumstances in which land may be newly registered. Anyone can apply to have land registered as a green if it has been used by local people for recreation 'as of right' (*i.e.* without permission, force or secrecy) for at least 20 years. But under section 15(8), you, as the landowner, can apply to register without meeting these criteria.
7. The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007<sup>1</sup> set out how registration applications can be made, and how they are dealt with and determined by the commons registration authority (usually the county council or unitary authority). The regulations prescribe a new application form and are accompanied by detailed non-statutory guidance notes for applicants. **These documents can all be obtained via Defra's common land website at: [www.defra.gov.uk/wildlife-countryside/issues/common/town-villagegreens](http://www.defra.gov.uk/wildlife-countryside/issues/common/town-villagegreens).**

### **Application to register**

8. The application process for voluntary dedication can be completed very simply if you are the sole owner — that is, you own the freehold of the land, and the land is not subject to any lease, tenancy, mortgage *etc.* Otherwise you must obtain the consent of any lease or charge holder of the land, including a tenant or mortgagee. You will need to apply to the commons registration authority using the new application form 44. The authority is not required to advertise the application and does not have to examine the merits of registering the land; it need only be satisfied that you are legally entitled to apply to register.
9. You will need to consult any lease or charge holder in advance of the application to inform them you intend to seek voluntary registration. They will need to provide you with a signed document which includes their name and address, a

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<sup>1</sup> SI 2007/457: available on the internet at: [www.opsi.gov.uk/si/si2007/20070457.htm](http://www.opsi.gov.uk/si/si2007/20070457.htm)

## **The Commons Act 2006 and voluntary dedication of land as a town or village green**

statement of the nature of their relevant interest in the land, and their formal consent to the application.

10. The application must include a map and description of the land claimed for registration as a town or village green. It also needs to identify the locality or neighbourhood within a locality where local people live who will have a right to use the green. For example, this may be identified by reference to a recognised administrative area, such as a civil parish or electoral ward, or an obvious geographical characteristic such as a village or housing estate. In cases of voluntary registration, it is up to you to decide what locality or neighbourhood should have recreational rights over the land. Defra's view is that, in relation to any land registered as a green, only the inhabitants of the defined locality or neighbourhood will have the legal right to indulge in sports and pastimes over the green.

11. You will need to confirm in the statutory declaration that you are the owner of the land and are applying to register it as green and, if required, that you have obtained all the necessary consents. In some cases the registration authority may decide to ask you for further evidence of ownership before it accepts your application. If the authority is satisfied that your application is properly made, the land will be registered as a town or village green. An application cannot be rejected, but it may be returned if there is any doubt about your ownership of the land or you have not obtained the necessary consents.

## **Public space secured through the planning system**

12. The planning system may be used to secure an area of public open space in accordance with Local Development Framework policies through the use of planning conditions or planning obligations ('section 106 agreements'). The new power in the Commons Act 2006 for a landowner to dedicate a new green may be appropriate where you are required to provide an area of public open space as part of a development. In such cases the authority may wish to require that you dedicate the area as a town or village green to ensure it is protected in perpetuity.

13. More information on planning obligations and planning conditions, including Circular 5/05: *Planning Obligations* and Circular 11/95: *Use of conditions in planning permission*, is available via the Department for Communities and Local Government website at: [www.communities.gov.uk](http://www.communities.gov.uk).

## **Lottery funded projects**

14. Lottery funded projects which are aimed at acquiring or improving land and providing new or better recreation facilities can make use of the new opportunity for dedication of land as a green under the 2006 Act. Further information on the distribution of lottery money to natural heritage and environmental projects can be found on the Heritage Lottery Fund website at: [www.hlf.org.uk](http://www.hlf.org.uk) and the Big Lottery Fund website at [www.nof.org.uk](http://www.nof.org.uk).

15. Natural England will consider whether formerly publicly funded land-based schemes, aimed at improving green spaces in both the countryside and urban areas, can take advantage of the new dedication provision. For example, this may enable the owners of some Millennium and Doorstep Greens which were established in the past under special grant schemes to register them now as town or village greens.

## **The Commons Act 2006 and voluntary dedication of land as a town or village green**

### **Dedicating common land as a green**

16. The Commons Act 2006 enables you to dedicate your land as a town or village green even if it is already registered as common land. Any rights of common registered over the common land will be preserved on registration as a green.

### **Part 2**

17. There are some alternatives to dedicating land as a town or village green which can provide long-term protection for the land or public access. These are explained in more detail below.

### **Dedication of new common land**

18. You can create new common land. You may grant a new right of common over the land, and you (or the new commoner) can then apply to the commons registration authority to register the land as common land. A new right of common must comprise a right for one person to take the product of the soil of land belonging to another person: for example, a right to graze animals on the land. It is possible to limit the right of common so that it does not have a significant impact — for example to graze one sheep on one day each year, or to gather fallen wood.

19. Currently the registration procedure is set out in the Commons Registration Act 1965 until a new system under Part 1 of the Commons Act 2006 is introduced at a later date. An application to register land as common land can be made by any person, but it is best if the application is made by you, as the landowner, because you will be able to provide the necessary evidence. The application should be submitted to the commons registration authority (usually the county council or unitary authority) for the area in which the land is located. The commons registration authority will provide a copy of the application form — form 29 for registration of new common land and form 31 for the registration of a right — and provide advice on the procedure for registration. Until the 2006 Act is brought into force, forms 29 and 31 will need to be accompanied by a formal document, known as a deed, which shows how the land has become common land subject to rights of common: you may need to consult a solicitor to help you execute the necessary deed.

### **Dedication of access to common land**

20. Registered common land is generally subject to public access rights on foot for open-air recreation under the Countryside and Rights of Way Act 2000 (CROW). If you own common land already subject to CROW access rights, you have the option to give others, such as horse riders, legal rights to enjoy the land too. You can do this:

- a. by dedicating rights for other users over the land: see paragraph 23 below; or
- b. by making a deed under section 193(2) of the Law of Property Act 1925 and depositing it with the Planning Inspectorate (acting on behalf of the Secretary of State). The effect of the deed is to disapply the CROW rights and instead apply the access rights under the 1925 Act, which include rights for horse riders. You must decide whether to make the deed revocable or irrevocable. The form of section 193 deed is not

## **The Commons Act 2006 and voluntary dedication of land as a town or village green**

prescribed in statute but the Planning Inspectorate can advise on a model form which can be used.

21. The second approach is also suitable if you want to grant access over common land which is excepted from the rights under CROW, such as a golf course. Where section 193 has been applied to land by deed, it becomes an offence to drive on any part of the land, or to camp on the land. You may also apply to the Planning Inspectorate for 'an order of limitation' (similar to byelaws), which can create criminal offences to deal with particular problems occurring on that land. The Planning Inspectorate will make an order only if it is satisfied that the limitations on public access are necessary to protect your or commoners' interests in the common, or for the protection of flora, fauna or geographical or physiographical features of the land.

22. You can ask the Planning Inspectorate for advice about deeds and orders of limitation under section 193 of the Law of Property Act 1925, at:

Common Land Casework  
The Planning Inspectorate  
Rm 4/05 Temple Quay House  
The Planning Inspectorate  
2 The Square, Bristol  
BS1 6PN  
Email: [commonlandcasework@pins.gsi.gov.uk](mailto:commonlandcasework@pins.gsi.gov.uk)  
Tel: 0117 372 6210

### **Dedication of access land under CROW**

23. CROW introduced a new right of access on foot throughout England to mapped areas of mountain, moor, heath, down and registered common land. CROW also gave landowners and long leaseholders a new option voluntarily to dedicate their land permanently for public access if they wish to do so. Making a dedication under section 16 of the Act does not prevent you from changing use of the land, or prevent its development, but it:

- gives the public a legal right of access to land that would not otherwise be covered by CROW, such as woodland;
- offers you the opportunity to share public access to the land forever, and also offers landowners the opportunity to demonstrate their commitment to public access; and
- ensures that the right of access to such land remains in force if the land changes hands.

24. Where land is already mapped under CROW as open country or registered common land, dedicating it will help to ensure that the right of access continues even if the land loses those characteristics at some point in the future. It can also (at your discretion) create higher rights over the land than normally apply under CROW — for example to ride a horse, or to use a canoe on water.

25. If you are interested in making a dedication you can find out more information from the guidance available on the Defra website at [www.defra.gov.uk/wildlife-countryside/cl/accessopen/accessopen07.htm](http://www.defra.gov.uk/wildlife-countryside/cl/accessopen/accessopen07.htm). This sets out further information and the steps you need to take to register the dedication.

## **The Commons Act 2006 and voluntary dedication of land as a town or village green**

### **Dedication of local authority land and charity land**

26. Local authorities are able to dedicate land in their ownership for public access as a town or village green under the Commons Act 2006 (part 1 above), under section 193 of the Law of Property Act 1925 (paragraph 20 above), or under section 16 of CROW (paragraph 23 above). The dedication of land under the Commons Act 2006 as common land by the grant of new rights of common (paragraph 18) or as a town and village green would, in Defra's view, be a disposal<sup>2</sup> (of an interest in the land, to the extent of the interest/right now given to the inhabitants of the locality/neighbourhood), and a local authority contemplating creating new common land or a green must act in accordance with section 123 (in relation to county and district councils) or section 127 (in relation to parish councils). Circular 06/93 on disposal consent under the Local Government Act 1972 is available via the Department for Communities and Local Government website at: [www.communities.gov.uk](http://www.communities.gov.uk).

27. Charities and their trustees can also dedicate land as a town or village green, or under the alternative provisions set out in Part 2 above, so long as any new right granted to the public (or in the case of a new green, to local people) in this way is either directly or indirectly a way of furthering the purposes of the charity and that such a dedication is in the best interests of the charity. In making this decision, regard must be had to those who are the beneficiaries of the charity. If trustees are in doubt whether a dedication is in the interests of the charity, they should take advice from the Charity Commission. The normal statutory constraints on disposal by charities do not apply to such dedications because they are not considered to amount to a disposal. Guidance is available on the Charity Commission website at [www.charity-commission.gov.uk](http://www.charity-commission.gov.uk).

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<sup>2</sup> Section 270(1) of the Local Government Act 1972 defines 'land' as "includes any interest in land and any easement or right in, to or over land".

Division(s): Leys & Lye

## **PLANNING & REGULATION COMMITTEE – 5 MARCH 2012**

### **COMMONS ACT 2006: IN THE MATTER OF AN APPLICATION TO REGISTER THE BLACKBIRD LEYS PARK, BLACKBIRD LEYS, OXFORD AS A TOWN OR VILLAGE GREEN**

#### **Report by the County Solicitor & Head of Legal & Democratic Services**

##### **Introduction**

1. On 6 June 2011, Mr William Clark of 108 Pegasus Road, Blackbird Leys, Oxford applied to the County Council as Commons Registration Authority under Section 15 of the Commons Act 2006 to register land known as Blackbird Leys Park, Blackbird Leys, Oxford in Oxfordshire (“the Application Land”) as a Town or Village Green. This application, a copy of which is attached at Annex 1, was submitted formally in pursuance of the Act and has now to be determined by the County Council.
2. The Planning & Regulation Committee have delegated powers to determine such applications, provided they are ‘duly made’.
3. The application was considered objectively by Rights of Way & Commons and Legal Services as to whether the application was ‘duly made’. The applicant was contacted in order to clarify or rectify certain technical points in the application. The application was accepted as ‘duly made’ on 19 July 2011 and was subsequently publicised in accordance with the statutory requirements.
4. Objections were received during the statutory 6-week objection period from the Oxford City Council (part landowner and “Lead Objector”), the Oxfordshire County Council (as part landowner), the Oxford Sports Council, Blackbird Leys Parish Council, Mr Ian Fieldwick and Ms Rosalie Porter. In its Objection dated 5 October 2011 the Lead Objector raised several potential grounds of objection to the application and requested that one ground in particular be dealt with as a preliminary issue.
5. The Commons Registration Authority subsequently sent the application and objections to an independent barrister for an Opinion on the preliminary issue. Counsel gave an initial Opinion dated 21 December 2011 in which he advised that the preliminary issue raised by the Lead Objector had at least a reasonably strong prospect of success and invited further submissions by the parties on the preliminary issue.
6. The Lead Objector subsequently made further submissions dated 17 January 2012 and the Applicant also made further submissions dated 18 January 2012. These were sent to Counsel who provided a Further Advice dated 17 February 2012

7. A copy of Counsel's Further Advice is appended at Annex 2. The main points to note are summarised below.

### **The Application Site: Land at the Blackbird Leys Park, Blackbird Leys, Oxford**

8. The application form describes the Application Land as Blackbird Leys Park, being 'all that land between Pegasus Road and Cuddesdon Way, bordering College, tennis court on SW side, car park, playgroup, bowling green & play park NE side'. The Application Land is shown edged red on the 'Application Map included as part of Annex 1.
9. In subsequent correspondence, the Applicant clarified that the football pitches were not intended to be included in the Application Land and sought to exclude other areas from the application. The Commons Registration Authority has power to register a smaller or different area where it is just to do so (Oxfordshire County Council v Oxford City Council and another [2006] UKHL 25 at para 61 per Lord Hoffman) but in light of the recommendation in this report the Commons Registration Authority does not need to consider this point further.
10. The whole of the Application Land is registered at HM Land Registry under title numbers ON42872 and ON290997. The registered proprietor of the former title is the Oxfordshire County Council and the latter Oxford City Council.
11. The neighbourhood relevant to the application is described as Pegasus Road, Blackbird Leys. No plan of the neighbourhood was attached to the original application although the Applicant did subsequently provide a plan outlining the claimed neighbourhood.

### **The Town Green Application**

12. The application form was duly signed by the Applicant and supported by the prescribed Statutory Declaration. The Applicant submitted several additional pieces of information in support of his application, including a supporting statement and several statements from users of the application land.

### **The Determination of the Application**

13. Having been received by the Commons Registration Authority and accepted as 'duly made', the application was duly published in accordance with Regulation 5 of the Commons Registration (Registration of Town and Village Greens) (Interim Arrangements) (England) Regulations 2007 by publication in a local newspaper, posting notices on site, and placing copies on public deposit. A copy of the statutory notice, application and plan was also served on the Oxford City Council and the Director for Environment & Economy of the Oxfordshire County Council as landowners.

14. The statutory objection period expired on 10 October 2011. An objection was received from the Lead Objector dated 5 October 2011. A letter dated 6 October 2011 was also received from the Oxfordshire County Council as landowner confirming that it also objected to the application and adopted the Lead Objector's submissions in this respect.
15. The principal grounds for objection were as follows:
  - a. The use of the Application Land has not been 'as of right' but rather under a statutory right to do so. This is because the land was throughout the relevant 20-year period held by the relevant Council landowner under statutory powers to hold and provide land for public recreation ("the preliminary issue").
  - b. That the evidence submitted by the Applicant is inadequate to demonstrate use for lawful sports and pastimes during the whole or part of the qualifying period.
  - c. Any such use has been interrupted physically by the lawful and authorised use made of the land by the relevant Council landowner.
  - d. Any use by local inhabitants does not conform to use by persons asserting a right to use the land for lawful sports and pastimes.
  - e. Pegasus Road in Blackbird Leys does not in law or fact comprise a qualifying neighbourhood capable of supporting a town or village green application.
  - f. The Applicant has not defined a qualifying locality.
  - g. The evidence disclosed does not demonstrate use by a significant number of inhabitants of the neighbourhood.
16. The Lead Objector requested that the registration authority consider and determine the point in 15(a) above as a preliminary issue. The registration authority assented to this and specified the date of 11 November 2011 for further submissions by the parties on the preliminary issue.
17. Further representations were received from the Lead Objector on 26 October 2011 and a further petition with evidence was received from the Applicant on the same date. These were sent to Counsel for advice on whether the application could be determined on the basis of the preliminary issue raised by the Lead Objector. Counsel provided an initial Advice dated 21 December 2011 in which he advised that the preliminary issue was at least strongly arguable but asked for clarification and further submissions by the parties.
18. The Lead Objector therefore submitted its response dated 17 January 2012 and the Applicant did likewise on 18 January 2012. These further responses were subsequently sent to Counsel who provided a Further Advice dated 17 February 2012.

19. It is important to note at this stage that the County Council as Commons Registration Authority is essentially neutral in this matter. It is simply concerned to assess the application and register the Application Land if it qualifies properly for registration. As such this role is entirely separate from its interest as part-landowner or the interest of the Lead Objector in relation to the application. The legal work in relation to these issues has been dealt with by different legal officers in Legal Services and management procedures have been put in place to ensure that no actual conflict of interest situation arises.

### **Counsel's Recommendations**

20. Counsel's findings on the preliminary issue are set out fully in his Further Advice dated 17 February 2012 and are summarised briefly as follows:
- a. In respect of the land owned freehold by the Lead Objector, he is satisfied that it was appropriated for public recreation purposes in 1963 and was subsequently subject to byelaws under the Public Health Act 1875 and the Open Spaces Act 1906.
  - b. In respect of the land owned freehold by the County Council and leased to the Lead Objector, this land is held by the Lead Objector 'as a recreation education social and leisure centre'. It was therefore held under s19 Local Government (Miscellaneous Provisions) Act 1976.
  - c. Having reviewed recent case law on the point, he finds judicial authority for the proposition that, where land is held or appropriated for public recreational uses by a local authority, such public use is 'by right' (i.e. pursuant to a statutory right to do so) and not 'as of right' so as to qualify for registration under the Commons Act 2006.
  - d. His conclusion therefore is that the use has not been 'as of right' and the application must therefore fail on the preliminary point.
  - e. There is therefore no need to consider the other objections raised by the Lead Objector.
21. In view of these conclusions and the more detailed discussions of the law and evidence in his Further Advice, Counsel recommends that the application be rejected.
22. The County Solicitor supports these conclusions.

### **Relevance Of Past Planning Determinations**

23. It is important to stress that, in considering the application to register the Application Land as a town or village green, the Committee is exercising its delegated regulatory functions as commons registration authority for town and village greens. Those functions derive from entirely different legislation to that relating to its functions as local planning authority (LPA), and entirely different considerations apply.

24. In considering planning applications, the LPA is looking forward in time to contemplate the consequences of land use changes.
25. In considering whether the Register of Town and Village Greens should be amended in consequence of the application, the Committee has to look back in time to see whether there is evidence that town or village green rights have accrued.
26. It follows that matters relating to the future or proposed uses of the Application Land, and the existence of any planning permissions in respect of it, are not relevant to the consideration of this application by the Committee acting in its capacity as commons registration authority. Such matters should not be taken into account by the Committee and should not influence the determination of the outcome.

## **RECOMMENDATION**

27. **Having received the Further Opinion of Counsel set out in Annex 2 to this report, the Committee is RECOMMENDED to REJECT the application for registration as a new Town or Village Green that plot of land known as Blackbird Leys Park, Blackbird Leys, Oxford in Oxfordshire that site being indicated clearly on the Application Map of the application submitted by Mr William Clark and dated 6 June 2011.**

PETER CLARK  
County Solicitor & Head of Legal Services

Background papers:

Appendices to Form 44

Objection of Oxford City Council dated 5 October 2011 plus appendices thereto

Objection of Oxfordshire County Council dated 6 October 2011

Objection of Oxford Sports Council dated 2 October 2011

Objection of Blackbird Leys Parish Council dated 6 September 2011

Objection of Mr Ian Fieldwick dated 14 September 2011

Objection of Ms Rosalie Porter dated 27 September 2011

Representations on the preliminary issue by Oxford City Council dated 26 October 2011

Further evidence by the Applicant dated 11 November 2011

Initial advice of Mr Charles Mynors dated 21 Decemer 2011

Letter from Oxford City Council dated 17 January 2012

Submissions from Applicant dated 18 January 2012

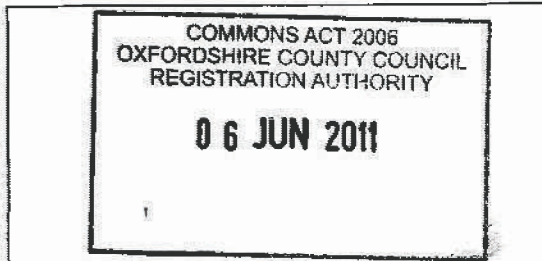
Contact Officer: Richard Goodlad, Solicitor (Tel: 01865 323917)  
February 2012

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## Commons Act 2006: Section 15

**Application for the registration of land as a Town or Village Green**

Official stamp of registration authority indicating valid date of receipt:



Application number:

NL REG 28

Register unit No(s):

VG number allocated at registration:

(CRA to complete only if application is successful)

**Applicants are advised to read the 'Guidance Notes for the completion of an Application for the Registration of land as a Town or Village Green' and to note the following:**

- All applicants should complete questions 1–6 and 10–11.
- Applicants applying for registration under section 15(1) of the 2006 Act should, in addition, complete questions 7–8. Section 15(1) enables any person to apply to register land as a green where the criteria for registration in section 15(2), (3) or (4) apply.
- Applicants applying for voluntary registration under section 15(8) should, in addition, complete question 9.

**Note 1**

Insert name of registration authority.

**1. Registration Authority**

To the

OXFORDSHIRE COUNTY COUNCIL  
NEW ROAD  
OXFORD

**Note 2**

If there is more than one applicant, list all names. Please use a separate sheet if necessary. State the full title of the organisation if a body corporate or unincorporate.

If question 3 is not completed all correspondence and notices will be sent to the first named applicant.

**Note 3**

This question should be completed if a solicitor is instructed for the purposes of the application. If so all correspondence and notices will be sent to the person or firm named here.

**2. Name and address of the applicant**Name: 

Full postal address:

Postcode Telephone number:  
(incl. national dialling code) Fax number:  
(incl. national dialling code) E-mail address: **3. Name and address of solicitor, if any**Name: Firm: 

Full postal address:

  
Post code
Telephone number:  
(incl. national dialling code) Fax number:  
(incl. national dialling code) E-mail address:

**Note 4**

For further advice on the criteria and qualifying dates for registration please see section 4 of the Guidance Notes.

\* Section 15(6) enables any period of statutory closure where access to the land is denied to be disregarded in determining the 20 year period.

**4. Basis of application for registration and qualifying criteria**

If you are the landowner and are seeking voluntarily to register your land please tick this box and move to question 5.

Application made under **section 15(8)**:

If the application is made under **section 15(1)** of the Act, please **tick one** of the following boxes to indicate which particular subsection and qualifying criterion applies to the case.

**Section 15(2)** applies:

**Section 15(3)** applies:

**Section 15(4)** applies:

If **section 15(3) or (4)** applies please indicate the date on which you consider that use as of right ended.

If **section 15(6)\*** applies please indicate the period of statutory closure (if any) which needs to be disregarded.

**5. Description and particulars of the area of land in respect of which application for registration is made**

Name by which usually known:

BLACKBIRD LEYS PARK

Location:

ALL THAT LAND BETWEEN PEGASUS ROAD AND CUDDESDON WAY, BORDERING COLLEGE, TENNIS COURT ON SW SIDE, CARPARK, PLAYGROUP BOWLING GREEN & PLAY PARK NE SIDE

Shown in colour on the map which is marked and attached to the statutory declaration.

Common land register unit number (if relevant) \*

**6. Locality or neighbourhood within a locality in respect of which the application is made**

Please show the locality or neighbourhood within the locality to which the claimed green relates, either by writing the administrative area or geographical area by name below, or by attaching a map on which the area is clearly marked:

The neighbourhood is Pegasus Rd, Blackbird Leys, though there is also support for Blackbird Leys Park attaining Town Green status from a much wider area of Blackbird Leys and beyond from many who have and still use it.

Tick here if map attached:

**Note 5**

The accompanying map must be at a scale of at least 1:2,500 and show the land by distinctive colouring to enable it to be clearly identified.

\* Only complete if the land is already registered as common land.

**Note 6**

It may be possible to indicate the locality of the green by reference to an administrative area, such as a parish or electoral ward, or other area sufficiently defined by name (such as a village or street). If this is not possible a map should be provided on which a locality or neighbourhood is marked clearly.

## 7. Justification for application to register the land as a town or village green

### Note 7

Applicants should provide a summary of the case for registration here and enclose a separate full statement and all other evidence including any witness statements in support of the application.

This information is not needed if a landowner is applying to register the land as a green under section 15(8).

This land has been used by a significant number of residents of Pegasus Road (and the surrounding areas of Blackbird Leys) as of right in lawful activities, pastimes and sports for at least 20 years (actually more than 40 years) under section 15(2) of the Commons Act 2006 as witnessed by the enclosed statements showing many and varied uses including walking, dog walking, cricket, kite flying, jogging, informal kick about football and rugby, children's play, cartwheels + handstands, picnics, relaxing, enjoying trees + birds, watching meteor shower, looking at the stars, bonfire night to name just a few, by local people from (before) 1991 to 2011 and continuing

**Note 8**

Please use a separate sheet if necessary.

Where relevant include reference to title numbers in the register of title held by the Land Registry.

If no one has been identified in this section you should write "none"

This information is not needed if a landowner is applying to register the land as a green under section 15(8).

**Note 9**

List all such declarations that accompany the application. If none is required, write "none".

This information is not needed if an application is being made to register the land as a green under section 15(1).

**Note 10**

List all supporting documents and maps accompanying the application. If none, write "none"

Please use a separate sheet if necessary.

**8. Name and address of every person whom the applicant believes to be an owner, lessee, tenant or occupier of any part of the land claimed to be a town or village green**

OXFORD CITY COUNCIL  
 ST ALDATES  
 OXFORD  
 (AND POSSIBLY  
 OXFORDSHIRE COUNTY COUNCIL  
 NEW RD  
 OXFORD )

**9. Voluntary registration – declarations of consent from ‘relevant leaseholder’, and of the proprietor of any ‘relevant charge’ over the land**

**10. Supporting documentation**

Ordinance Survey map of Blackbird Leys Park  
 Maps showing location/houses of witnesses who have written statements  
 Statements from residents of Pegasus Road  
 few statements from other Blackbird Leys people

**Note 11**

If there are any other matters which should be brought to the attention of the registration authority (in particular if a person interested in the land is expected to challenge the application for registration). Full details should be given here or on a separate sheet if necessary.

**11. Any other information relating to the application**

OXFORD CITY COUNCIL HAVE CONSIDERED PUTTING A NEW SWIMMING POOL AND POSSIBLY AN ICE RINK ON THE LAND, BUT NO DECISION HAS YET BEEN MADE. THEY MAY STILL WANT TO OPPOSE THIS APPLICATION

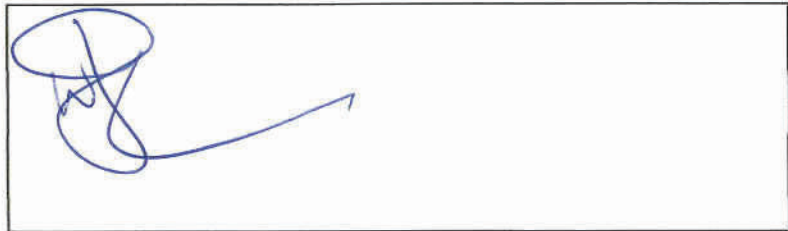
**Note 12**

The application must be signed by each individual applicant, or by the authorised officer of an applicant which is a body corporate or unincorporate.

Date:

2<sup>nd</sup> June 2011

Signatures:



**REMINDER TO APPLICANT**

You are advised to keep a copy of the application and all associated documentation. Applicants should be aware that signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence. The making of a false statement for the purposes of this application may render the maker liable to prosecution.

**Data Protection Act 1998**

The application and any representations made cannot be treated as confidential. To determine the application it will be necessary for the registration authority to disclose information received from you to others, which may include other local authorities, Government Departments, public bodies, other organisations and members of the public.


## Statutory Declaration In Support

To be made by the applicant, or by one of the applicants, or by his or their solicitor, or, if the applicant is a body corporate or unincorporate, by its solicitor, or by the person who signed the application.

<sup>1</sup> Insert full name  
(and address if not  
given in the  
application form).

WILLIAM CLARK.....<sup>1</sup> solemnly and sincerely declare as follows:—

<sup>2</sup> Delete and adapt  
as necessary.

*Geoff Lovelob*   
1.<sup>2</sup> I am ((the person ~~(one of the persons)~~ who (has) ~~(have)~~ signed  
the foregoing application)) ((the solicitor to (the applicant) (<sup>3</sup> one of the  
applicants)).

<sup>3</sup> Insert name if  
Applicable

2. The facts set out in the application form are to the best of my knowledge and belief fully and truly stated and I am not aware of any other fact which should be brought to the attention of the registration authority as likely to affect its decision on this application, nor of any document relating to the matter other than those (if any) mentioned in parts 10 and 11 of the application.

3. The map now produced as part of this declaration is the map referred to in part 5 of the application.

<sup>4</sup> Complete only in  
the case of  
voluntary  
registration (strike  
through if this is not  
relevant)

4.<sup>4</sup> I hereby apply under section 15(8) of the Commons Act 2006 to register as a green the land indicated on the map and that is in my ownership. I have provided the following necessary declarations of consent:

- (i) a declaration of ownership of the land;
- (ii) a declaration that all necessary consents from the relevant leaseholder or proprietor of any relevant charge over the land have

Cont/

<sup>4</sup> Continued

been received and are exhibited with this declaration; or  
(iii) where no such consents are required, a declaration to that effect.

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act 1835.

Declared by the said *William Clark*  
at *Henman W, Oxford*  
*OX4 2SN*  
this *2* day of *June 2011*

  
Signature of Declarant

Before me \* *Geoff Rendell, solicitor*

Signature: *Geoff Rendell*

Address: *50W Oxford Business Park South,*  
*OX4 2SN (Tel 01865 781110)*

Qualification: *Solicitor*

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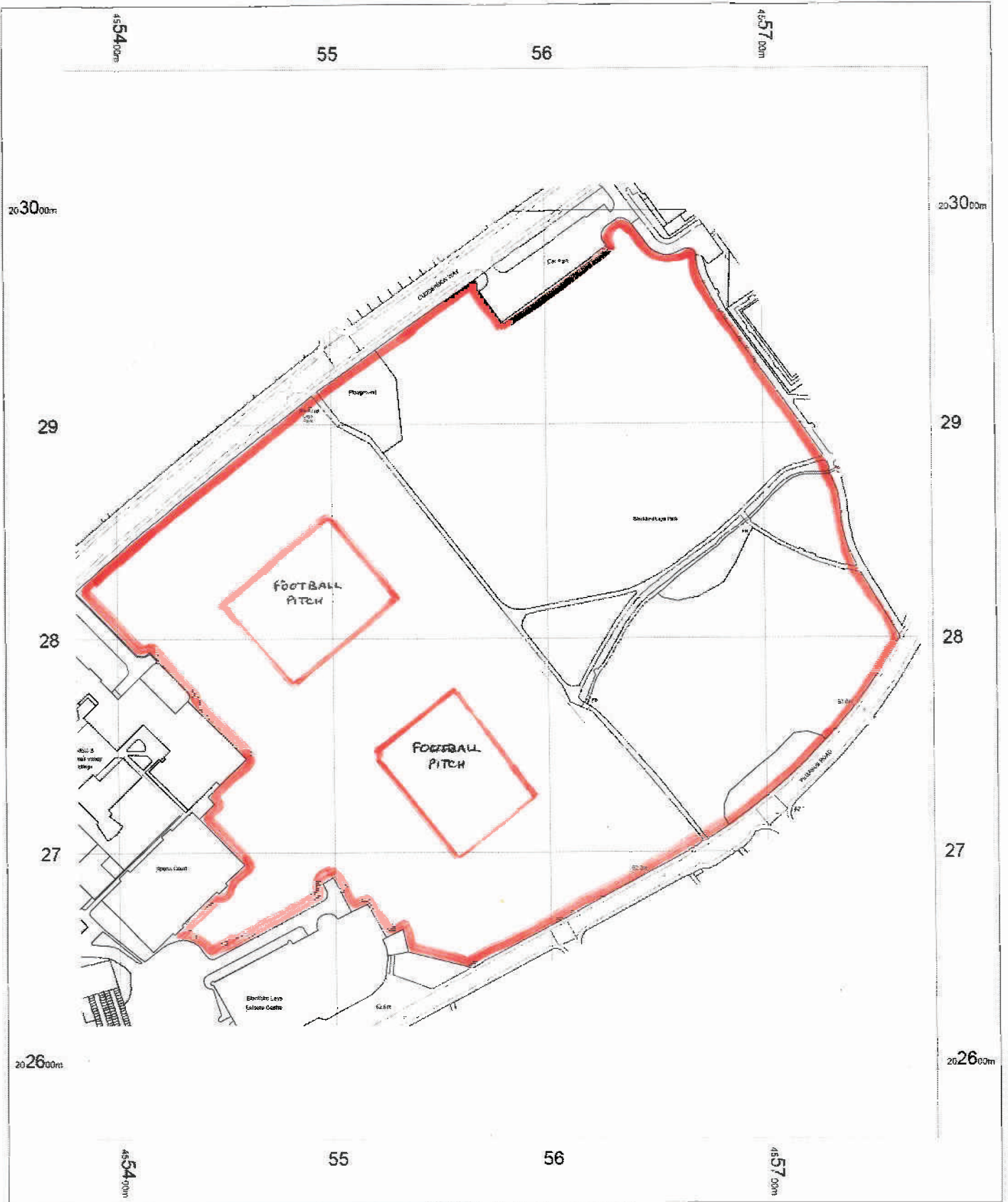
\* The statutory declaration must be made before a justice of the peace, practising solicitor, commissioner for oaths or notary public.

Signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence.

**REMINDER TO OFFICER TAKING DECLARATION:**

*Please initial all alterations and mark any map as an exhibit*

---



*Geoff Rendall  
Solicitor*



OS Mastermap  
31 May 2011, ID: BW1-00075084  
maps.blackwell.co.uk

1:2500 scale print at A4, Centre: 455577 E, 202816 N

©Crown Copyright Licence no. 100041046



**BLACKWELL'S**  
www.blackwellmapping.co.uk

TEL: 01865 333 677  
maps.oxford@blackwell.co.uk

## Further advice

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### Introduction

#### *The application for registration*

1. The County Council, in its capacity as registration authority under the Commons Act 2006 (“the Registration Authority”), has received an application to register as a town or village green certain land at Blackbird Leys, Oxford (“the Application Land”), made by Mr William Clark of 108 Pegasus Road. The application was registered on 25 July 2011 as having been duly made. It was supported by representations from various local residents as to the use they had made of the Application Land. The Applicant subsequently submitted a “petition” (in reality, further evidence) from himself; also letters from two others.
2. An objection has been made to the application by Oxford City Council, dated 5 October 2011 (“the Objection”).<sup>1</sup> That letter requested that certain matters be dealt with as a preliminary issue. This was followed by further representations from the City Council, undated but sent under cover of a letter dated 26 October 2011.
3. The County Council, in its capacity as freehold owner of part of the Application Land, has submitted an objection to the Application, dated 6 October 2011, which adopted and agreed with the objection submitted by the City Council. It also supported the request for certain matters to be dealt with as a preliminary issue.

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<sup>1</sup> Note that the letter enclosing this objection was produced in such a way that the date is altered each time it is printed, so that it is referred to in the papers as having been written on various dates.

4. The Oxford Sports Council also objected to the application, by a letter dated 2 October 2011, although it did not offer any evidence or legal argument to support its objection. Ms Porter, of 18 Trinity Road, in a letter dated 27 September 2011, wrote to support the construction of a new swimming pool on part of the Application Land, but did not formally object to the Application as such.

*My preliminary advice*

5. I have already briefly considered this matter, in a preliminary advice dated 21 December 2011.
6. I noted that, on the basis of the material supplied by the Applicant, there seemed to be at least a reasonably strong likelihood that all or some of the Application Land had been used by local people for lawful sports and pastimes for the relevant period. Whether that was so, how much of the Land was used, and whether those who used it were the inhabitants of a neighbourhood or a locality, in the sense in which those terms are used in the 2006 Act, would need to be tested at an inquiry.
7. However I also noted that, even assuming that the Land (or at least some of it) had indeed been used for lawful sports and pastimes for the relevant 20-year period by inhabitants of a qualifying locality or neighbourhood, it would be necessary to consider carefully the legal basis on which such use had taken place, to see whether or not it had been, or even could have been, “as of right”. And on the basis of the material supplied by the City Council, it seemed to me that there was at least a reasonably strong likelihood that all or some of the use of the Application Land for lawful sports and pastimes had not been “as of right”, in that it has been by permission.
8. Clearly it is for the Applicant to demonstrate that the use relied upon has been as of right. The Objector has put forward arguments to suggest that that the use has been by permission; at the time of giving my preliminary advice, I had seen nothing from the

Applicant to refute this. However, as I noted, there might have been other documentary material relevant to this matter. And both parties should be given an opportunity to make legal or other submissions. But if the Applicant were to be unable to make out his case on this issue, there would be no point in going on to hold an inquiry – which could be both time consuming and expensive – into the nature and duration of the use of the Land.

9. I therefore suggested that the parties be invited to make written submissions on this preliminary issue – namely, what was the legal basis of any use of the Application Land by local people for lawful sports and pastimes over the relevant 20-year period, and in particular was such use by permission? On receipt of those representations, I would then advise further as to whether the application could be determined without further ado, or whether it needed to go on to an inquiry.
10. The Registration Authority accordingly invited the parties to make written submissions in the light of that preliminary advice; and both took advantage of that invitation. I am accordingly now asked to re-visit the matter in the light of the material initially before the Registration Authority and those further submissions. For ease of reference, this advice incorporates (so far as still relevant) and supersedes my preliminary advice.

### **The documentary evidence**

11. The Objection and the further representations by the City Council between them referred to a number of documents, of which copies were enclosed, as follows (in date order):

16 April 1963, approved by full Council, 22 April 1963	Minutes of the City Council's Estates Committee	Objection, Appendix 2
2 August 1984	Agreement relating to Redfield Sports Hall, between County Council and City Council	Further representations

26 August 1987	Joint User Agreement between County Council and City Council	Objection, Appendix 5
26 August 1987	Lease between County Council and City Council	Objection, Appendix 6
8 July 1996; confirmed by Secretary of State, 23 September 1996	Byelaws made by City Council	Objection, Appendix 3
18 January 2006	Licence for alterations to Leisure Centre	Further representations, Annex (c)
9 November 2010	Deed of termination, between County Council, City Council and Oxford and Cherwell Valley College	Further representations, Annex (b)
9 November 2010	Deed of surrender of lease, between County Council and City Council	Further representations, Annex (b)
9 November 2010	Lease between County Council and City Council	Objection, Appendix 6.

12. In the event, no challenge to the validity of any of these documents has been made by the Applicant; and he has chosen not to make any comments on them, nor to submit any further documents. I have therefore examined the position as to the ownership of the Application Land as disclosed by the Objectors' documents, as listed above, taking them at face value.

13. Approximately two fifths of the land that is the subject of the application is owned freehold by the Oxford City Council. This land was acquired by the City Council in the 1890s, and was apparently appropriated in 1963 for "public walks and pleasure grounds purposes in accordance with section 164 of the Public Health Act 1985". Byelaws were then apparently made under section 164 and under the Open Spaces Act 1906, regulating the use of the land by the public. I say "apparently" in both cases because the relevant papers produced by the City Council do not identify the land concerned with precision – although the City Council has subsequently clarified that

matter, and I am satisfied, at least on the balance of probability, that the papers do indeed refer to the land in question.

14. As for the remainder of the Application Land not owned by the City Council, most of it was the subject of a joint user agreement entered into in 1987 by the County Council, as freehold owner, and the City Council. The land involved was indicated on the amended plan (originally Appendix 4 to the Objection) produced with the further representations from the City Council, and in more detail on the plan forming part of the agreement. The latter plan identified three areas of land, bounded in green, blue and red (referred to as “the Red Land, the Blue Land” and “the Green Land”), which together constituted the whole of the Application Land other than the portion owned by the City Council.
15. The substantive parts of the agreement itself applied to the Red Land and the Green Land. The recitals to that agreement provided that the City Council wished to provide recreational facilities for the inhabitants of the district, under section 19 of the Local Government (Miscellaneous Provisions) Act 1976 and all other powers in that behalf. Clause 1 of the agreement provided that the Red Land and the Green Land were jointly to be used for educational, recreational and community purposes.
16. The Red Land and the Blue Land were the subject of lease granted by the County Council to the City Council, also in 1987. That lease did not contain recitals equivalent to those in the joint user agreement, and did not state the power under which the city Council leased the land. But it did contain a restriction (in clause 2(16)) that the City Council should not use the premises other than as a recreation education social and leisure centre.
17. The joint user agreement and the 1987 lease were both superseded by a further lease dated 9 November 2010, for a term starting on 1 October 2006, which thus applies to all of the application land other than the portion owned freehold by the City Council – that is, the Red Land, the Blue Land and the Green Land. This lease contained a

restriction (in clause 2.17) that the City Council shall not use the land other than as a recreation education social and leisure centre. The 1987 agreement superseded a similar agreement, albeit relating to a smaller area, made in 1984.

## **The submissions of the parties**

### *The Applicant's submissions*

18. In his initial application, the Applicant did not deal with the issue of the legal basis for the use of the Application Land by local people. In his supplementary representations, as I have noted above, he did not submit any further documentary evidence, but relied on brief legal submissions. These were to the effect that nothing had ever been done that formally and overtly made it plain to users of the Land that their use of it had been with or by permission. He relied in particular upon the judgment of Janet Smith J in *R (Sunderland) v Beresford* [2001] 1 WLR 1327 and the speech of Lord Hoffmann in *R (Godmanchester Town Council) v Secretary of State* [2008] 1 AC 221.
19. Given that I had set out in my preliminary advice the position as I understood it on the basis of the documentary material supplied by the Objectors, summarised at paragraphs 11 to 17 above, and given that no further evidence was supplied by the Applicant, I assume that he is content to accept as accurate the material to which I have already referred, and also my analysis of it.
20. As for legal authorities, *Beresford* has of course been the subject of a decision of the House of Lords ([2004] 1 AC 889), which overturned both the judgment of Janet Smith J referred to by the Applicant and that of the Court of Appeal. The passage most favourable to him is perhaps this, in the speech of Lord Scott:

“[46] Where a town or village green is concerned, however, a sufficient indication, express or implied, that the right of the public to use the land for recreational purposes was intended to be permanent could not itself endow the land with that status. But the quality of the use of the land by the public, following the dedicatory indications in question, would surely be "as of right". It seems to me to be quite unreal to draw a distinction between the quality of use of a path or track by members of the public following an express or implied dedication and the quality of the recreational use by

members of the public of a piece of land following permission given by a landowner that, if dedication of land as a town or village green had been possible, would have constituted a dedication. In each case the quality of the use, entirely consistent with the nature of the permission that had been given, would have been "apparently as of right". The only difference would have been that in the case of the public right of way the landowner could not, once the dedication had been accepted by public use, terminate the use, but in the case of the land used for recreational purposes the landowner could, provided the 20 years had not expired, terminate the use. But this difference does not seem to me to bear upon the quality of the use of the land by the public in the meantime.

[47] Let me try to illustrate the point I am making by examples. If a landowner puts up a notice which says "The public may use this path as a public highway", use by the public thereafter would surely be use as of right. If a landowner puts up a notice which says "The public may use this land for recreational purposes as a village green", use by the public thereafter, until the landowner cancelled the notice and/or excluded the public, would similarly be use as of right. Whether express or implied, permission to use a path over land or to use land for recreational purposes may be of a sufficiently dedicatory character to justify the same conclusion, namely that use by the public thereafter is use "as of right".

[48] I agree with Mr Petchey that, in the present case, the attitude of the successive owners of the sports arena to the public use of the land for recreation was more than mere acquiescence or toleration. There was, I agree, positive encouragement. The provision of the rows of benches was to make more comfortable the watching of the activities of others. The cutting of the grass was in order to enhance the enjoyment of the sports arena by those using it. I am receptive to the submission that the successive owners had impliedly consented to the recreational use of the land by the public. The users were, in my opinion, certainly not trespassers. But this does not, in my opinion, answer the question whether the use was "as of right" or "nec precario".

[49] Was there any sign that the permission was intended to be temporary or revocable? There was none. The fact that the land was publicly owned seems to me highly material. Neither the WDC nor the CNT nor the council were, or are, private landowners. Their respective functions were and are functions to be discharged for the benefit of the public. The provision of benches for the public and the mowing of the grass were, in my opinion, not indicative of a precatory permission but of a public authority, mindful of its public responsibilities and function, desirous of providing recreational facilities to the inhabitants of the locality. In these circumstances there seems to me to have been every reason for the inhabitants of the locality who used the sports arena to believe that they had the right to do so on a permanent basis.

[50] Accordingly, the nature of the implied permission from the landowners that the evidence shows to have been present was not, in my opinion, such as to prevent the use of the sports arena by the public from being use "as of right". The positive encouragement to the public to enjoy the recreational facilities of the sports arena, constituted, in particular, by the provision of the benches, seems to me not to undermine but rather to reinforce the impression of members of the public that their use was as of right.

[51] Smith J and the Court of Appeal were, in my respectful opinion, led astray by according the concept of permission and, thus, of implied permission, a rigidity of character and effect that is not justified. They concluded that because use pursuant to permission will sometimes, or often, or usually, be inconsistent with use as of right, it will always be inconsistent with use as of right. The conclusion, my Lords, must in my opinion depend upon the nature of the permission, objectively assessed or construed. To conclude that use pursuant to implied permission is inconsistent with use as of right

may in most cases be correct. But the conclusion is an evidentiary one; it is not a rule of law. And in the present case it is not, in my opinion, a correct evidentiary conclusion.

[52] For these reasons I would, on the basis on which the case has been argued before your Lordships, allow the appeal.

21. In other words, the difference is not between express and implied permission, but between permission (which will be revocable) and quasi-dedication (which will not).

22. As for *Godmanchester*, this was a right of way case, relating to the proper interpretation of section 31(1) of the Highways Act 1980, which provides as follows:

“Where a way over any land ... has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.”

23. Lord Hoffmann at paragraph 32, held as follows:

“I think that upon the true construction of section 31(1), “intention” means what the relevant audience, namely the users of the way, would reasonably have understood the landowner's intention to be. The test is, as Hobhouse LJ said, objective: not what the owner subjectively intended nor what particular users of the way subjectively assumed, but whether a reasonable user would have understood that the owner was intending, as Lord Blackburn put it in *Mann v Brodie* 10 App Cas 378 , 386, to “disabuse [him]” of the notion that the way was a public highway. The Court of Appeal said that this would involve reading words into the Act; placing a gloss on the statute. But, outside the criminal law and parts of the law of torts, it is common to use the word intention in an objective sense, as in the intention of Parliament, the intention of the parties to a contract and, even in Latin, the *animus possidendi* which a squatter must have to acquire a title by limitation.”

24. The Applicant accordingly argued that in the present case the Owners of the Land had failed to communicate their intention not to dedicate the Land to local people for recreation. The Land was therefore used not by permission, but as of right.

#### *The Objectors' submissions*

25. The City council wrote to clarify one or two specific points raised in my preliminary advice – notable as to the identity of the land referred to in the 1963 appropriation

and the 1996 byelaws (see paragraph 14 above). Otherwise, it was content to rely on its original objection and the subsequent representations.

26. The land owned freehold by the City Council was acquired in the 1890s, and had been held for public walks and pleasure ground purposes, under section 164 of the Public Health Act 1875. Further, byelaws have been made under the 1875 Act and under the Open Spaces Act 1906. On that basis, members of the public have a right to use the land for such purposes – see *Att-Gen v Loughborough Local Board* The Times, 31 May 1881; *Hall v Beckenham Corpn* [1949] 1 KB 716; and *Blake v Hendon Corpn* [1962] 1 QB 283. Such use is therefore not “as of right”.
  
27. Reference was also made to the speech of Lord Walker in *Beresford*, at paragraph 87:

“After that approach had been suggested there was a further hearing of this appeal in order to consider the effect of various statutory provisions which were not referred to at the first hearing, including in particular section 10 of the Open Spaces Act 1906, sections 122 and 123 of the Local Government Act 1972 and section 19 of the Local Government (Miscellaneous Provisions) Act 1976. Where land is vested in a local authority on a statutory trust under section 10 of the Open Spaces Act 1906, inhabitants of the locality are beneficiaries of a statutory trust of a public nature, and it would be very difficult to regard those who use the park or other open space as trespassers (even if that expression is toned down to tolerated trespassers). The position would be the same if there were no statutory trust in the strict sense, but land had been appropriated for the purpose of public recreation.”
  
28. The land subject to the leases of 1987 and 2010 was the subject of restrictions in each lease that the City Council should not use it other than as a recreation education social and leisure centre”. Such leases, it is argued, must have been under the section 19 of the Local Government (Miscellaneous Provisions) Act 1976. As with the land held under the 1875 Act, therefore, its use must be by right and not as of right. Again, see the speech of Lord Walker in *Beresford* at paragraph 87.
  
29. And the same is true for the land that was the subject of the joint user agreement of 1987. That agreement explicitly stated that recreational facilities were to be provided on the land under section 19 of the 1976 Act.

30. Accordingly, in respect of each of the three categories of land, use for lawful sports and pastimes was not “as of right”.

## Analysis

### *The Beresford case*

31. I have considered carefully the speeches of the Judicial Committee of the House of Lords in *Beresford*. At first blush, the facts are similar to those in the present case – an open space, owned by a public authority, on which members of the public indulge in lawful sports and pastimes with the active encouragement of the authority. It was agreed by all in *Beresford* that those using the land in that case were not trespassers – and in that sense they had a perfect right to be on the land on a permanent basis. They were thus there not by virtue of a revocable permission, or an implied licence, but as of right (see, for example, Lord Scott at paragraph 49; Lord Rodger at paragraph 60; Lord Walker at paragraph 83).
32. However, the speeches in *Beresford* did note that the position would be different if there could be shown to have been an appropriation of the land in question as open space for recreation – in that case, there had been no such appropriation. Thus Lord Scott agreed that the position would be different if it could be shown that the land had been held under a trust under the Open Spaces Act 1906 (even if only by implication) (paragraphs 30, 52). Thus at paragraph 30 he said:

“It is, I think, accepted that if the respondent council acquired the sports arena “under the 1906 Act”, the local inhabitants’ use of the land for recreation would have been a use under the trust imposed by section 10 of the Act. The use would have been subject to regulation by the council and would not have been a use “as of right” for the purposes of class c of section 22(1) of the Commons Registration Act 1965.

But Mr Petchey accepted that Mr Laurence was correct in contending that the sports arena had not been acquired “under the [1906] Act” and that section 10 did not, therefore, apply. Here, too, although your Lordships cannot, in view of this concession, conclude that Mr Laurence’s contention is wrong, I do not, for myself regard the point as clear. Is it necessary in order for open space land to have been acquired under the Act, for it to be expressly so stated, whether in the deed of transfer or in some council minute? *Att-Gen v Poole Corpn* [1938] Ch 23 is interesting on this point. The open space

land in question had been conveyed to Poole Corporation "in fee simple to the intent that the same may for ever hereafter be preserved and used as an open space or as a pleasure or recreation ground for the public use". There was no express reference in the conveyance to the 1906 Act but the Court of Appeal thought it plain that the Act applied. Indeed counsel on both sides argued the case on the footing that that was so (see Sir Wilfrid Greene MR, at p 30).

It seems to me, therefore, that the 1906 Act should not have been set to one side in the present case simply on the ground that in the documents relating to the transfer to the council no express reference to the 1906 Act can be found. It would be, in my view, an arguable proposition that if the current use of land acquired by a local authority were use for the purposes of recreation and if the land had not been purchased for some other inconsistent use and the local authority had the intention that the land should continue to be used for the purposes of recreation, the provisions of section 10 would apply (cf counsel's argument in the *Poole Corpn* case, at p 27). But your Lordships cannot take the argument to a conclusion in the present case."

(I have subdivided the paragraph in the reported judgment into three sections, for ease of comprehension).

33. And at paragraph 52, immediately following the longer passage quoted at paragraph 20 above, Lord Scott said:

... I am, however, for reasons which will have appeared, uneasy about this conclusion. Where "open space" land comes into the ownership of a "principal council", I think there to be strong arguments for contending that the statutory scheme under the Local Government Act 1972, whether or not the Open Spaces Act 1906 or section 22(1) of the New Towns Act 1981 are applicable, excludes the operation of section 22(1) of the Commons Registration Act 1965. But these arguments have not been addressed to your Lordships. I think also, as at present advised, that the power of disposal of "open space" land given to principal councils by section 123 of the 1972 Act will trump any "town or village green" status of the land whether or not it is registered. But this, too, if the council wish to take the point, must be decided on another occasion."

34. Lord Rodger indicated that if the land was used by virtue of one of the statutes applying to local authority land, the result would be use "of right", not "as of right" (paragraph 62). He also agreed with Lord Walker, who held as follows:

"[87] After that approach had been suggested there was a further hearing of this appeal in order to consider the effect of various statutory provisions which were not referred to at the first hearing, including in particular section 10 of the Open Spaces Act 1906, sections 122 and 123 of the Local Government Act 1972 and section 19 of the Local Government (Miscellaneous Provisions) Act 1976. Where land is vested in a local authority on a statutory trust under section 10 of the Open Spaces Act 1906, inhabitants of the locality are beneficiaries of a statutory trust of a public nature, and it would be very difficult to regard those who use the park or other open space as trespassers (even if that expression is toned down to tolerated trespassers). The position would be the

same if there were no statutory trust in the strict sense, but land had been appropriated for the purpose of public recreation.

[88] Those situations would raise difficult issues but in my opinion they do not have to be decided by your Lordships on this appeal, and would be better left for another occasion. The undisputed evidence does not establish, or give grounds for inferring, any statutory trust of the land or any appropriation of the land as recreational open space. Counsel for Sunderland rightly did not argue for some general implied exclusion of local authorities from the scope of section 22 of the Commons Registration Act 1965.

[89] It is worth summarising the salient points of the evidence.

....

[90] In short there is no evidence of any formal appropriation of the land as recreational open space by the city council or its predecessors. Nor is there material from which to infer an appropriation. Such action by the WDC or the CNT would have been unnecessary, and at or after the city council's acquisition in 1991 an appropriation as open space would have been inconsistent with the site's perceived development potential. It is true that the public's interim use of the land for recreation was not inimical to the city council's interests. But user can be as of right even though it is not adverse to the landowner's interests."

35. This appears to lead to the slightly paradoxical result that an authority that appropriates land explicitly as recreational open space is in a strong position if it wishes to resist the land being registered as a town or village green, in order to enable it to develop the land for some other purpose. But if an authority declines to appropriate a site because of its "perceived development potential", it may be vulnerable to the site being registered as a green, thus preventing the hoped-for development.
36. However, be that as it may, the speeches in *Beresford* seem to make a clear distinction between land that has been explicitly appropriated for use as recreational open space – including in particular land held under the 1906 Act or the 1976 Act – and land that was acquired and is still held for some other purpose.

#### *An article in The Conveyancer*

37. A recent article in *The Conveyancer* argues forcefully that this distinction is incorrect. In *Uncommon confusion: parallel jurisprudence in town or village green applications* [2012] Conv 1, 55, Richard Austen-Baker and Ben Mayfield examine at length the speeches in *Beresford*, and conclude that there is no basis for the position, often taken

by inspectors in relation to local authority land, that land used “by right” – that is, in pursuance of a public right – cannot be eligible to be registered as a green.

38. The authors cite paragraph 30 of the speech of Lord Scott, quoted above, and suggest that this seems “shaky ground” on which to build the edifice of “By right”. They argue (at p 60) that

“First, the point was made obiter and all parties accepted that this was not germane to the issue, so there was no reason for the point to be properly argued. (Counsel had in fact been called back to the House to deal with this point but it had quickly become evident that it was not a live issue in the case.) Secondly, the point is a narrow one and depends entirely on the original acquisition of the land being made expressly under powers in the 1906 Act, which will only apply in a limited number of cases.”

However, it is markworthy that they only quote the first two sentences of that paragraph in Lord Scott’s speech (that is, the first sub-paragraph as set out above). And in the remainder of that paragraph Lord Scott makes it plain that it is at least arguable that section 10 of the 1906 Act would apply even if not explicitly referred to.

39. The authors of the article go on to consider Lord Walker’s speech, arguing (at p 62) as follows:

“There is no doubt that Lord Walker expressed concern over the operation of the law in this area, in particular its use as a weapon against the development of local authority land. His Lordship contended that the applicants in *Beresford* were able to “stretch the concept of a town or village green close to, or even beyond, the limits which Parliament is likely to have intended” (para [92]). Closing the case with this ungenerous statement, Lord Walker betrays the concerns of local authorities who would rather develop urban green spaces than preserve them. He felt this to be a usurpation of conventional planning laws and a device which was used to bypass regular development controls.

Non-statutory inspectors might have had similar concerns when drafting their opinions to authorities, and will no doubt have been heartened by Lord Walker’s reservations. This ought not to mean that inspectors can take it upon themselves to change the law, however, and should not be taken as authority for the imposition of a limitation on registration of town or village greens, using the device of “by right”. If this were the case it would be practically impossible for applicants to claim user as of right over authority-owned land. Indeed, much of the land owned by local authorities is held under local government statutes which give wide powers for the authority to permit access, exclude access and deal with the land as they wish. The fact that these authorities are capable of granting a permissive right should not be taken as support for an argument that public use is “by right”. Any rights in such instances are the property of the authority, not the property of the users.”

40. They conclude (at p 64):

“Much of the land across which locals may enjoy rights is in the hands of local authorities. The race to develop this land has been observed and commented upon by a number of objectors. It is no surprise that the closing and development of land is capable of galvanising local groups formed to oppose the loss of their open spaces. Development controls in planning law might not always be sufficient to prevent the loss of green spaces but this is not the only tool at the disposal of local objectors. The law on town or village greens was expressly designed to supplement existing laws on development and its use does not usurp or avoid planning law. The application of an imaginary test at local enquiries and a statutory test in the House of Lords creates two tiers of justice for these local groups. The eradication of the virus of “use by right” is essential to the proper administration of the registration process for town or village greens.”

This at least makes plain the ideological standpoint of the authors. But their thesis is nevertheless worthy of careful consideration.

#### *The Barkas case*

41. However, since that article in *The Conveyancer* was written, the matter has been considered (again) by the courts, in *R (Barkas) v North Yorkshire County Council* [2011] EWHC (Admin), unreported. The judgment in that case was handed down on 20 December 2011.

42. This concerned land that had been laid out as a recreation ground, open to the public as well as to those living in nearby Council estates, under the Housing Acts. An application had been made to register it as a town or village green. The inspector (Mr Vivian Chapman, QC) considered that the critical issue in the case was whether recreational user of the land by local people had been “by right” or “as of right”.

43. Mr Chapman concluded that the land had been set out and maintained under section 80 of the Housing Act 1936, which enabled local authorities to provide open space in connection with housing (the statutory successor to that is section 12 of the Housing Act 1985). He reasoned, in paragraph 124 of his report, that the 1906 Act created (by section 10) and expressed a statutory trust for public recreation. However, he observed:

“... there is authority that where a statute empowers a local authority to acquire and lay out land for public recreation, the public have a legal right to use it. This point has been explored in relation to the Public Health Act 1875 s 164 (which contains no express trust for public recreation) in a series of cases ... ”

He set them out, and added:

“The same principle must apply to a recreation ground laid out under statute as an area for public recreation on a council estate. Council tenants, who are the primary objects for the provision of recreation must have had a legal right to use the land for harmless recreation. It would be absurd to think of them as trespassers unless they first obtained the permission of the council to use the land for harmless recreation. Where the recreation ground, as in the present case, is laid out and maintained as a recreation ground open to the public pursuant to statutory powers, it seems to me that the public must similarly have a legal right to use the land for harmless recreation. Again, it would be absurd to regard them as trespassers. This view is supported by the *obiter* comments of Lord Walker in para 87 of *Beresford*. I therefore consider that at least until 2003, when SBC [that was being a reference to the interested party] ceased to be owner of the remaining council houses, recreational use of the Field by local people was by right and not as of right.”

He thus recognised that the passage in Lord Walker’s speech in *Beresford*, at paragraph [87], quoted above, was plainly *obiter*, but considered that it supported his view that neither local people nor the public generally had used the land as trespassers.

44. Langstaff J agreed that the land in that case had been provided under section 80 of the 1936 Act. Further, he accepted that not merely Council tenants but those who lived elsewhere had been entitled to use the land – which, he noted (at para 23), was a general question, applicable to all cases in which section 80 and its statutory successors had been used. He concluded:

“[29] The point is whether or not a recreation ground could be provided. If it was and if it was laid out for general public use, there would be nothing that would prevent it. That does not mean in my view that some of those using it were trespassers, whether to be regarded as tolerated trespassers or not, nor does it mean that they were permitted to be there and, I should add, if they had been permitted or were held to be permitted to be there, then they would be in no position to make an application under the 2006 Act because their position would be precarious within the traditional meaning of that word.

[30] The conclusion I reach is furthermore consistent with the position of a local authority as a public body. Its powers and its duties are related to the fact that it is representative of those who come within its area of authority. That area is far larger and wider than a housing estate on part of the local authority's area.

[31] The emphasis in the sections of the Housing Act is on public provision, it is not, as I read it, essentially upon making provision for classes of the public distinct from one another, even though a recreation ground may only be set up under section 80 if it will be of benefit to people in housing accommodation to which that is related. The point I

make about the general functions of a local authority is amply supported by considering other statutes, which demonstrate that the public policy is in emphasising the public provision which local authorities may make (see for instance the Open Spaces Act and the 1875 Act) to the extent that they may be regarded as of any assistance at all.

[32] Accordingly, the conclusion which the Inspector came to at paragraph 124 and 125 was, as it seems to me, one reached not in error of law but with a careful and proper regard to the facts, to the authority so far as it was of assistance and upon a proper application of the statute. It follows that in conclusion, this application, despite its subtle and careful nature, is one which has to fail and does.

45. In short, he upheld the hypothesis that land used by the public in the exercise of a right – as it happened, in that case as right under the Housing Act – is not used “as of right”. He thus supported the view of Mr Chapman, and disagreed with the authors of the article in *The Conveyancer*. That conclusion of Langstaff J is plainly not *obiter*, and is binding on the County Council as Registration Authority.

#### *Application to the present case*

46. In this case, each part of the Application Land has been provided and maintained by the City Council or County Council under statutory powers relating to open space and recreation, as pointed out by the Objectors (see paragraphs 25 to 29 above) and not disputed by the Applicant. Members of the public using the land thus did so by right, and not “as of right”.

#### **Conclusion**

47. It follows that the present application must necessarily fail, regardless of the extent of any use of the land by local people. The Registration Authority should therefore reject it forthwith, and may do so without first holding an inquiry.

**CHARLES MYNORS**

FRTPI, FRICS, IHBC, Barrister

17 February 2012

In the matter of the Commons Act 2006  
And in the matter of land at Blackbird Leys  
Fields, Oxford

## Further advice

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17 February 2012

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– Advice 2

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