

**PLANNING & REGULATION COMMITTEE –  
13 JANUARY 2003**

**COMMONS REGISTRATION ACT 1965: APPLICATION TO REGISTER THE  
TRAP GROUNDS, NORTH OXFORD, AS A TOWN GREEN**

**Application to Register the trap grounds, North Oxford, as a Town Green**

**Extract from the Report of Vivian Chapman, Inspector - Dated 23 December 2002**

**12. Findings of Fact.** On carefully considering all the evidence submitted to the public inquiry, I make the following findings of fact:

**12.1.** The Trap Grounds have at all material times over the twenty years before the application been open and unenclosed so that pedestrian entry by local people has been unimpeded. The only evidence of any barrier is the chain, head-high bar and bollards which successively existed for some period during the 1980s at the entrance to Frog Lane. In my view, these were plainly intended only to prevent vehicular access to Frog Lane and formed no barrier to pedestrian access. They could not be reasonably construed as intended to prevent pedestrian access.

**12.2.** There has not been any sign on or near the Trap Grounds to discourage entry by local people and the city council has never taken any other steps to prevent or deter entry to the Trap Grounds or to remove local people from the Trap Grounds.

**12.3.** Save in a very few cases of organised visits by groups nobody has asked for or been given permission to enter the Trap Grounds by the city council.

**12.4.** The reed beds have not been used to any material extent for recreation. They are generally inaccessible because they are largely under water all year round. Access has been confined to a very few persons particularly interested in their ecology.

**12.5.** The scrubland has been used throughout the twenty year period to a material extent for informal recreation by local people. Use has grown over the twenty year period but I am satisfied that there was material use from the beginning of the twenty year period. There is clear evidence to that effect from witnesses whose evidence I have accepted after hearing their evidence at the public inquiry. During the critical early period from 1982 to 1985, there was the evidence of five witnesses to prove recreational use: i.e., Miss Robinson, Mrs Cannon, Mrs Holbrook, Professor Allport and Mrs Thielker. That evidence is supported by a considerable body of written statements from witnesses who did not give evidence at the public inquiry. Sixteen witnesses who gave written statements but did not appear at the public inquiry gave evidence of recreational use over the critical period of 1982 to 1985. Many witnesses gave evidence of seeing other users. The only contrary evidence came from objectors who did not attend the public inquiry to give oral evidence. The documentary evidence relied upon by Oxford City Council does not cause me to doubt the evidence of the applicant's witnesses. Although the scrubland

bore the marks of its former use as a dump for builders' rubble, dumping had stopped in the 1970s at the latest and the land was left neglected to grow vegetation on and around the rubble. Standing back and applying common sense, it seems to highly probable that such a disused and unprotected open area on the edge of a densely populated part of Oxford would be used by local people for dog walking, children's play and general informal recreation. It seems to me to be a typical case of institutionally owned open land on the urban fringe which is neglected by the landowner because it has long term development plans and which attracts use by local people for informal recreation.

**12.6.** The character of the scrubland has changed over the twenty year period in that it has become more overgrown with maturer vegetation. There have always been beaten tracks across the scrubland, but it has always been possible to leave the tracks and wander generally over the land, and many users have done so. There is no difference in character or user between the ten metre strip that the applicant wishes to exclude from her application and the rest of the scrubland.

**12.7.** The recreational users of the scrubland have predominantly come from a local area which lies within the parish of St Margaret's. Within that area, users have predominantly come from the four streets which lie immediately across the canal from the Trap Grounds, i.e. Hayfield Road, Frenchay Road, Chalfont Road and Polstead Road. I find this unsurprising. Except for people with specialist interests in ecology, the scrubland is principally attractive to people who live within a short walking distance, who want a short walk, with or without their dog, or somewhere close for their children to play.

**12.8.** Frog Lane has principally been used during the relevant twenty year period as a means of access to and egress from the scrubland rather than as a recreational destination in itself. It therefore has more of the character of a right of way than that of a town green.

**13. Applying the Law to the Facts.** I now turn to apply the law to the facts that I have found. It is convenient to consider the various elements of the statutory definition of town or village green, although I do not lose sight of the fact that the definition must be considered as a whole and that the various parts of the definition take colour from each other.

**Land...** The Trap Grounds are plainly "land", even those parts which are under water. See Commons Registration Act 1965 s 22(1).

**...on which for not less than twenty years...** I have found that the scrubland has been used for informal recreation by local people for the twenty years immediately preceding the application. It is true that, in her application, Miss Robinson referred to the wrong twenty year period, but it was not argued by Mr Petchey that this was fatal to her application. In my view, it is permissible to consider the application with reference to the correct twenty year period. It would be absurd to require Miss Robinson to make a new application stating a different period. There is no suggestion that anyone is prejudiced by correcting the mistake in her application.

**...a significant number of the inhabitants of any locality...** In my judgment, the evidence shows sufficient use by inhabitants of the locality of the parish of St Margaret's over the whole of the relevant twenty year period to signify that the land in question was in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers. In my view the number of users who were inhabitants of the parish were "significant" in the ordinary and natural meaning of that word in the English language. In reaching that conclusion, I bear in mind not only the witnesses who gave oral evidence to the public inquiry, but also the supporting evidence of written statements by witnesses who did not give oral evidence and the evidence of many witnesses that they saw other local people indulging in informal recreation on the scrubland at the same time as themselves. I am also assisted in reaching that conclusion by the map prepared by the applicant showing the addresses of witnesses in relation to the boundaries of the parish.

**...or of any neighbourhood within a locality...** Further, it appears to me that the inhabitants of the area principally consisting of Frenchay Road, Hayfield Road, Polstead Road and Chalfont Road can properly be regarded as inhabitants of a neighbourhood within the locality of the parish of St Margaret's. I explained my understanding of the meaning of "neighbourhood" in my Report in the case of Shooter's Hill, Lightwood, Stoke-on-Trent (8th May 2002) as follows: "This raises the question, on which there is yet no guidance from the courts, of what is meant by a "neighbourhood within a locality". It appears to me that the parliamentary purpose underlying s 98 of CRow 2000 was to amend the original definition of town or village green in s 22(1) of the Commons Registration Act 1965 by extending the definition of land worthy of protection by registration so that land which had been used by local inhabitants for recreation for many years did not escape registration because it fell outside the narrow construction placed by the courts on the original definition. The first object of the amendment was to recognise that land worthy of protection might be used for informal recreation by the inhabitants of an area smaller than some defined division of the country known to the law. See, for example, the discussion by Carnwath J of the Report of Mr Ryan QC to Sussex County Council in *R v Suffolk County Council ex p Steed* (1995) 70 P&CR 487 at p 501-502. The second object was to recognise that land worthy of protection might be used both by local people and others and to replace the "predominant user" test in *Sunningwell* by the less stringent "significant number" test. In my judgment, it is necessary to construe s 98 with these purposes in mind.

"Neighbourhood" is a word of very flexible meaning, as reference to any dictionary will confirm. However, it is an ordinary English word which is frequently used in statutes and legal documents. For example, the word is used in relation to restrictive covenants in s 84 of the Law of Property Act 1925 and has been the subject of construction in numerous reported decisions of the Lands Tribunal. Recreational allotments for the inhabitants of a neighbourhood were envisaged in ss. 27 and 30 of the Inclosure Act 1845. Under s 7 of the Commons Act 1876, Inclosure Commissioners were directed to take into consideration the benefit of the neighbourhood, which was defined in the preamble as "the health, comfort, and convenience of the inhabitants of any cities, towns, villages, or populous places in or near any parish in which the land to be enclosed, or any part

thereof, may be situated". In *Stride v Martin* (1897) 77 LT 600 a Queen's Bench Divisional court considered an agreement for the sale of a retail milk business containing a covenant by the vendor not to employ anyone or to retail milk on his own account in the neighbourhood of Southampton or Norham. The court upheld the covenant saying that; "The word "neighbourhood" equals in this case a distance to stop competition." It seems to me that the word "neighbourhood" has to be construed in the light of the context in which and the purpose for which it is used.

In s 98, I consider that the word "neighbourhood" is used by reference to the area in which recreational users of the Application Land reside. It does not seem to me that it is fatal to the application that the area has no neighbourhood name. I think that "neighbourhood" is used as meaning the neighbourhood or vicinity of the Application Land for the purposes of recreational use of that land. ... it seems to me that a court could decide of any given person whether he or she lived in the neighbourhood of Shooters Hill for the purpose of recreational use of that land just as much as a court could decide whether any particular address was in the neighbourhood of Southampton or Norham for the purposes of the restraint in *Stride v Martin*. Legal certainty as to a class of persons does not necessarily require that the whole class can be identified: it is often enough that it can be said whether any particular person is a member of the class: *McPhail v Doulton* [1971] AC 424."

It appears to me that this approach is consistent with the views expressed in the Opinion of Mr George Laurence QC in the case of land at Kilnhurst, Todmorden (27th July 2001) and in the Opinion of Miss Sheila Cameron QC in the case of land at Stroud's Green, Testwood (20th April 2001) . I am also fortified in this view by the fact that as long ago as 1976, the Trap Grounds Amenity Preservation Society described this area as "in the fullest and best sense of the term a neighbourhood". If I am right in that view, then it is a fortiori that recreational user of the scrubland has been by a significant number of the inhabitants of that neighbourhood.

**...have indulged in lawful sports and pastimes...** In my judgment, the informal recreation enjoyed by local people on the scrubland has amounted to lawful sports and pastimes as that expression was construed by the House of Lords in the *Sunningwell* case. However, the City Council takes three important points in objection to this conclusion.

First, the City Council argues that many users of the scrubland were there to observe the flora and fauna and that nature study is not a lawful sport or pastime. If nature study were a lawful sport or pastime, argues the City Council, every nature reserve would be registerable as a town or village green. Now I agree that if somebody enters the Trap Grounds to observe wildlife for professional or academic purposes, one would not regard that person as indulging in sports or pastimes. However, if a person has an amateur interest in wildlife, e.g. as a bird spotter, I do not see how he can sensibly be distinguished from somebody who enters the Trap Grounds for any other recreational purpose. Indulging a hobby of observing wildlife is plainly a pastime. As for the threat to nature reserves, it seems to me that the owners of nature reserves, like the owners of any other open land, must protect themselves from the acquisition of recreational rights by

putting in place the appropriate safeguards, e.g. by erecting signs prohibiting trespass or by controlling access.

Second, the City Council argues that the evidence of recreational user of the Trap Grounds amounts to user of defined routes for the purpose of passage and not to general recreational user of the whole site. With regard to Frog Lane, I consider that this is a good point. Frog Lane, according to the evidence, has predominantly been used as a route for access to and egress from the scrubland rather than for its own intrinsic recreational qualities. This is consistent with its history as a road to the nunnery and latterly to the breakers' yard. Its very name suggests that use has been as a right of way rather than as a town or village green. However, I do not consider that this analysis holds good for the scrubland itself. It is true that, at present, there is a main track which circles the scrubland. However, this track appears to be a relatively recent creation, replacing a main track which formerly led across the scrubland towards Aristotle Lane, but was cut off by the construction of the new school. Further, there is strong evidence that many users do not stay on the main track but wander onto subsidiary tracks and enter the various glades and clearings which are to be found within the scrubland. I do not consider that the user of the scrubland by local people can realistically be characterised as the exercise of a right of way along a defined route.

Third, the City Council argue that the scrubland is now so overgrown that the majority of it is inaccessible and that this in itself precludes registration as a green. As noted above, my estimate is that about 25% of the total area is reasonably accessible, the rest consisting of trees and scrub. In my view, the question whether land has become a town or village green cannot be determined by a mathematical assessment of the amount of the land which is open to recreation. The popular concept of the village green is no doubt the open grassy space in the centre of a village on which the village cricket team plays their matches. Even this will usually not be completely open, but will have some trees and perhaps a pond so that at least part of the surface area of the green is not usable for recreation. However, this is not necessarily the only type of land which can be subject to recreational use. Where the recreational use is informal and consists of activities such as walking, with or without dogs, children's play, exploring and watching wildlife, I do not see why much more densely vegetated land should not be capable of being subject to recreational rights, either by custom or prescription. In my view, it is necessary to look at the words of the statutory definition and to ask whether the scrubland, considered as a whole, is land which falls within that definition. In my view, the evidence proves that the recreational use of the scrubland is, and has been over the relevant twenty year period, sufficiently general and widespread, by way of use not only of the main track but also of minor tracks, glades and clearings, to amount to recreational use of the scrubland viewed as a whole.

**...as of right...** In my judgment, the evidence shows that recreational user of the scrubland has been as of right throughout the relevant twenty year period. The land has always been open to unrestricted pedestrian access. In my view, the chain, head high bar, and bollards which were placed at the entrance to Frog Lane in the 1980s can only be regarded as restrictions on vehicular access. In no sense has the pedestrian recreational

use described by the witnesses been by force or against the opposition of the landowner. Recreational use has been open and not secret or concealed. It is to be noted that no witness was called by the city council to suggest that the city council was unaware that the land was being used by local people for recreation. Further, I consider that the overwhelming amount of the recreational use of the scrubland has not been by permission of the landowner. There is evidence that some organised nature study groups sought and obtained permission to enter the Trap Grounds, but I regard the amount of permissive use as de minimis. It can also be said that these groups were not necessarily from the relevant neighbourhood or locality.

**...and...continue to do so...** In my judgment recreational use of the scrubland is continuing.

**14. Part Registration.** As I read the judgment of Sullivan J in R (on the application of Alfred McAlpine Homes Ltd) v Staffordshire CC the judge's view was (a) there is no legal impediment to registration of part of the application land because it is implicit in every application that it is an application to register each and every part of the land, (b) alternatively, that there is no impediment provided that the part registered is not substantially different from the whole of the application land. I consider that I am entitled to treat view (a) as a ratio decidendi of the case. In the present case, I consider that the registration authority can register the scrubland notwithstanding that it is substantially different from the whole of the land. It seems to me that it would be absurd to construe the 1965 Act and the Regulations made under it as requiring Miss Robinson to make a fresh application to register the scrubland.

**15. Conclusion and Recommendation.** I conclude as follows:

I do not consider that a case has been made out on the evidence to register either the reed beds or Frog Lane east of the stream as a town green. In the case of the reed beds there is no evidence of material recreational use by local people because it has always been under water and inaccessible for ordinary recreation, as the applicant herself accepts. In the case of Frog Lane, I consider that the evidence shows use of Frog Lane as a means of access to the scrubland but not as a recreational area in its own right. It may well be that Frog Lane is subject to a public right of way under Highways Act 1980 s 31, but that is outside the scope of my Report.

However, I consider that the applicant's evidence has proved that the scrubland has become a town green. The scrubland includes the 10 metre strip alongside the railway that Miss Robinson applied to exclude from her application. There is no evidence on which any distinction could properly be made between that strip and the rest of the scrubland. When I refer to the scrubland, I include all the application land west of the stream, including the site of Frog Lane where it formerly ran west of the stream but which is now indistinguishable from the rest of the scrubland and which has lain open to the rest of the scrubland for more than twenty years.

Having looked at the original of Miss Robinson's application, the boundaries of the application land are rather roughly coloured on her application plan A, but I think that the land intended to be the subject matter of the application is reasonably clear. I therefore recommend that the registration authority should register the application land west of the western bank of the stream as a new town green but should reject the application in relation to the application land east of the stream and in relation to the stream itself. Where the stream is culverted under Frog Lane, the line of the western bank should be projected across the Lane. It is necessary to give written reasons for the partial rejection, and I recommend that these should be stated to be "the reasons set out in the Inspector's Report dated 23rd December 2002".

Vivian Chapman

23rd December 2002

Lincoln's Inn