**IN THE MATTER OF AN APPLICATION
FOR THE REGISTRATION
AS A TOWN OR VILLAGE GREEN
OF LAND KNOWN AS "BELLE VUE PLAYING FIELDS"
AT BELLE VUE, CONSETT, COUNTY DURHAM**

INSPECTOR'S THIRD REPORT

Background

1. I have previously advised the Registration Authority ("the CRA") in this matter, in a Report dated 11 October 2010 ("the Main Report"), that in my opinion it should refuse this application ("the Application") to register the Application Land (as defined in the Main Report) as a town or village green ("TVG"). The Main Report was made available to the Applicant and to the Objector for comment, which led to a Further Report dated 15 February 2011 ("the Further Report"). I again advised that in my opinion the Application should be refused.

2. On 11 April 2011 the CRA resolved on the basis of the two Reports to refuse registration. That decision has been quashed in judicial review proceedings,[1] in the course of which new relevant evidence also emerged. The matter has now been remitted by the High Court to the CRA to reconsider in the light of that judgment ("the Judgment") and the newly discovered evidence; and I have been instructed, following a resolution of the CRA's Highway Committee dated 3 September 2012, to prepare this Report ("the Third Report") to assist the CRA in its reconsideration.

[1] *R (Malpass) v Durham County Council* [2012] EWHC 1934 (Admin), Judge Kaye QC.

The High Court decision

3. The ground on which the CRA's earlier determination was quashed was that "the Inspector's reasoning ... that the 1964 Deed[2] could amount to an informal, but lawful, recognition or appropriation of the land for public purposes was legally flawed" (Judgment at para 42 (and see para 44); see also the summary of the submissions of Charles George QC at paras 34-39); reasoning which reflected the fact that I was not able to advise the CRA, on the state of the evidence at the time of the preparation of both the Main Report and the Further Report, that it was possible to conclude, on the balance of probabilities, that the bulk of the Application Land had been originally acquired (pursuant to the Conveyance of 9 May 1936) for the purposes of public recreation, such that subsequent user by local inhabitants would have been 'by right' rather than 'as of right'. My advice was that, although it was *possible* that that had been the case, there was insufficient evidence to conclude, on the balance of probabilities, that it *was* the case. It was that which led me, in turn, to consider whether the 1964 Deed might itself have operated to subject the relevant land to recreational trusts - which the High Court has now determined it was incapable of doing.

The further evidence and representations

4. To assist in its reconsideration of the matter following the decision of the High Court, the CRA has invited representations on behalf of the Landowner (Durham County Council (in that capacity, "DCC")) and the Applicant (Consett Green Spaces Group ("CGSG")). Both parties have made written representations (received by me on 19th October 2012), and I have taken them carefully into account. The representations made on behalf of CGSG exhibited 10 documents; 7 of which were available to me at the time of my earlier Reports, but the first 3 of which are new to me (see further below at para 12 of this Report). I have also considered the new evidence before the High Court, as exhibited to a Witness Statement of Bryan Smith on behalf of DCC dated 19 December 2011.

[2] That is, the Deed dated 4 February 1964, a copy of which was attached to the Main Report as Appendix

The submissions made on behalf of DCC

5. The Witness Statement of Bryan Smith of 19 December 2011 put before the High Court some material which had been available at the Inquiry (see para 3 of the Witness Statement), together with certain new material, consisting of copies of Minutes of the of the Allotments, Parks and Open Spaces and Cemeteries Committee of Consett UDC (see para 4 of the Witness Statement), which I have not previously considered. These included the Minutes dated 10 September 1963 (also now put before me on behalf of CGSC - see below) and further Minutes of the same Committee dated 8 October, 12 November and 10 December 1963; and of the full Council of 4 February 1964. It was at this last meeting that the sealing of the 1964 Deed of the same date was authorised.

6. In the written representations made on behalf of DCC, Vivian Chapman QC submits that, on the basis of all of the evidence now available, I ought to advise the CRA to conclude, on the balance of probabilities, that the bulk of the Application Land has, since its acquisition in 1936, been held for the purposes of s164 of the Public Health Act 1875 ("the 1875 Act"). If this is the true position, then it is clear that the consequence would be that subsequent user cannot have been 'as of right'.

7. Mr Chapman's submissions proceed as follows. As the relevant Conveyances (of 1922, 1936 and 1979) by which the Application Land was acquired are not specific as to the statutory power pursuant to which the acquisitions were being made, the relevant statutory power has to be identified, on the balance of probabilities, from such other evidence as it available. He submits that there are four classes of material from which the inference that the greater part of the Application Land was held for the purposes of section 164 of the 1875 Act can and should be drawn.

8. First, the history of the use of the greater part of the Application Land is that it has been used for public recreation since the 1950s, i.e. for more than half a

4, and its terms set out in paras 75-76 of the Main Report.

century (excluding the part of the Application Land acquired in 1979, where the evidence is that it has been used for recreational use since then). Given the presumption that the successive local authority landowners will have acted lawfully within their powers (see Judgment, para 41, first bullet point), the strong inference should be that the Application Land was acquired for public recreational use.

9. Secondly, that the evidence from certain appropriations or sales of parts of the Application Land suggests that the land was regarded as held for the purposes of s164 of the 1875 Act. Thus the ministerial consent to sale of 24 June 1936, which related to part of the land acquired in 1936, referred to that land as "vesting in the said Council for purposes of public walks and pleasure grounds" (see the Main Report at paras 90-92 and Judgment, para 16). And the ministerial consent to appropriation of 31 March 1949, which also related, in part, to a section of the land acquired in 1936, also referred to that land as "vesting in the said council for purposes of public walks and pleasure grounds" (see the Main Report at para 94 and Judgment, para 18).

10. Thirdly, that the Minutes of the Consett UDC from the 1940s and 1950s show the Application Land being administered by the Parks and Open Spaces Committee (see the Further Report at para 9, including the footnote); and the (newly produced) minutes of the Allotments, Parks and Open Spaces and Cemeteries Committee between September 1963 and February 1964 again show that the land was being administered by the committee dealing with parks and open spaces. These minutes also specifically refer to "Belle Vue Grounds" (in the Minute for 10 September 1963) as "held as public walks and pleasure grounds" and (in the minute for 10 December 1963) as (with other areas) "these public places". Mr Chapman submits that this is powerful evidence that the Application Land was regarded from the 1930s onwards by the holding local authority as held for the purposes of s164 of the 1875 Act.

11. Finally, Mr Chapman relies upon the terms of the 1964 Deed itself. The High Court has held that this Deed did not effect an informal appropriation. In light of

the other evidence, its purpose must therefore have been to record the fact that the Application Land was already held for public open space purposes.

The submissions made on behalf of CGSG

12. The 3 new documents produced on behalf of CGSG (see para 4 of this Report above) consist of an OS Map of 1921; an OS Map of 1938/39; and the Minutes of the Allotments, Parks and Open Spaces and Cemeteries Committee of Consett UDC dated 10 September 1963, to which I have already referred.

13. Mr John Campbell, in the written representations made on behalf of CHSG, stresses, at paras 7-11, that the 1936 Conveyance (by which the greater part of the Application Land was acquired by DCC) simply refers to "such land being required by the Council for purposes for which they are authorised by statute to acquire land", without being specific as to the statutory powers being exercised or the purposes for which the land was required. He also draws my attention to the two areas of land shown on the 1921 OS Map and the 1938/9 OS Map as "Belle Vue Park" (outside and to the West of the Application Land, in the area now occupied by Council Offices, but formerly part of Berry Edge Quarry, and part of the subject of the 1979 Conveyance) and "Villa Real Park" (at the Northern end of the Application Land, also the subject of the 1979 Conveyance, being part of the former Black Dyke Quarry - but separate from that part of that Quarry the subject of the 1922 Conveyance: compare the plan attached to the 1922 Conveyance, which shows "Villa Real Park" to the West of the land conveyed, with the plan attached to the 1979 Conveyance, which identifies as the parcel conveyed the same area that is shown on the 1921 and 1938/9 OS Maps as "Villa Real Park"; and see generally para 121 of the Main Report). I will return to the significance which Mr Campbell submits should be given to these matters in due course (at paras 17-20 below).

14. Mr Campbell's written representations deal next with the relevant ministerial consents to certain sales and appropriations of land in the area of the Application Land, to which I have already referred in setting out Mr Chapman's submissions.

Mr Chapman, it will be recalled, submits that I should conclude from the fact that these consents refer to the plots of land concerned as held "for the purposes of public walks and pleasure grounds" as evidence, at any rate in the absence of any evidence to the contrary, that the larger area of land of which they formed part was similarly so held at the relevant time. The consent of 24 June 1936 relates to a thin strip of land to be used as an electricity substation (which, helpfully, can be seen on the 1938/9 OS Map (just above and to the left of the title box), although not - of course - on the 1921 OS Map). I found as a fact in the Main Report (at para 92) that this thin strip of land was a part of the land conveyed by the 1936 Conveyance. Whilst I agree with Mr Campbell (see para 13 of his written representations) that a comparison of the two (newly-available) OS Maps of 1921 and 1938/9 suggests that the thin strip was taken out of land then in use as "allotment gardens", that does not affect my conclusion that it was equally land the subject of the 1936 Conveyance. The relevant chain of events was that the strip was part of the land conveyed by the 1936 Conveyance, and already at that stage in use as "allotment gardens" (that land is shown as divided from the bulk of the land in the plan attached to the 1936 Conveyance - where the word "Clark" has been written; and see too the plan attached to the 1936 Consent, which confirms that the strip was within the allotment portion). The strip was then sold, within it appears two months of the 1936 Conveyance, for use as an electricity substation.

15. The ministerial Consent of 31 March 1949 regarding an appropriation of land also relates (in part) to land subject to the 1936 Conveyance – although not land now forming part of the Application Land. The 4,882 square yards concerned is shown by the plan attached to the 1949 Consent to extend over the land described as "Belle Vue Park" in the 1921 and 1938/9 OS Maps (being one part of the land later the subject of the 1979 Conveyance) *and* over land to the East of "Belle Vue Park" within the land subject to the 1936 Conveyance (both being in the general area of the former Berry Edge Common Quarry): see the Main Report at para 94.

16. As I have already indicated, Mr Chapman relies on the evidence of these Consents in support of an inference that the entirety of the land the subject of the 1936 Conveyance (some 44 acres, and comprising the bulk of the Application Land) was held, from 1936, for the purposes of "public walks and pleasure grounds", and so held in exercise of the powers of the 1875 Act.

17. Mr Campbell, on the other hand, argues that there are separate explanations why the precise parcels of land the subject of these two ministerial Consents were described as held for these purposes (i.e. that they were parts, respectively, of land used as "allotments gardens" and as "Belle Vue Park"); and that it would accordingly be unsafe to extrapolate that the entire 44 acres was so held. Indeed, he suggests that the fact that these more specific explanations are available in these two instances, but not in the case of the 21 November 1938 Consent (which also relates to land forming part of the 44 acres, but not part of the Application Land, i.e. the Oakdale Road development), where the land is *not* described as being so held, is a powerful argument *against* the entirety of the land acquired in 1936 having been held for the purposes of public walks and pleasure gardens from that date (see the written representations made on behalf of CGSG at paras 12-19).

18. At paragraphs 20-28 of his written representations, Mr Campbell argues that the Committee and Council Minutes from 1963 and 1964, to which I have already referred, and the history of the development of Sherburn Park to the South of the Application Land, lend further support to his contentions. As far as the Minutes are concerned, he submits that I should give little weight to the mere fact that responsibility for the Application Land lay with the particular Committee concerned, because, at any rate by 1963/4, it was plainly being used for organised football and rugby, as well in part as allotments and (he argues) specific, small areas of public park; and so it is unsurprising, and of no consequence, that matters concerning the land are before this, rather than a different, Committee. Next he draws my attention to the fact that the Minutes of 10 September 1963 refer to "Sherburn Park and Belle Vue Grounds" as held as public walks and pleasure grounds, whereas the Schedule to the 1964 Deed,

although it refers expressly to "Sherburn Park Consett" (at para (b)), otherwise relevantly speaks of the "44 acres or thereabouts of land situate and known as Number One Consett" (at para (c)), rather than of "Belle Vue Grounds". This Mr Campbell argues (see in particular para 26(e)-(g) of his written representations) suggests that the reference in the Minutes to "Belle Vue Grounds" ought to be understood as extending only to "Belle Vue Park" and its immediate vicinity; the 44 acres as a whole instead being known as "Number One Consett".

Conclusions

19. I will begin my advice to the CRA by saying that I do not accept this last contention. It seems to me plain from the Minutes of 1963 and 1964 that the relevant Committee used the phrase "Belle Vue Grounds" to apply to a very much larger area than that shown as "Belle Vue Park" in the 1921 and 1938/9 OS Maps. For example, the Minutes of 10 September 1963 show the Committee considering (at Item 15(e), under the heading "Playing Fields") an application by the Caravan Club to hold a rally on "Belle Vue Grounds", which the Committee determined to recommend to the Council "subject to the site being limited to that part of Belle Vue Grounds adjacent to Villa Real Estate ...". And on page 2 of the Minutes of the meeting of 12 November 1963, at para (e), there is reference to a request, under the heading "Belle Vue Grounds", for permission to extend the rugby pavilion. It is in my view accordingly quite plain that the phrase "Belle Vue Grounds" was being used by the Committee in a wider sense than simply extending to the site shown as "Belle Vue Park" in the OS Maps of 1921 and 1938/9.

20. The consequence of this is that I see no reason to distinguish in the way urged upon me by Mr Campbell between the 1963/4 resolutions of the Committee and in due course of the Council, and the terms of the 1964 Deed. The Deed plainly applies to the "44 acres or thereabouts" (para (c) of its Schedule), and I do not think that it provides any evidence, when read in conjunction with the relevant Minutes, of separate areas of that land being held by the Council for different

purposes. I accordingly cannot advise the CRA to accept the reasoning contained particularly in paras 19 and 26 of Mr Campbell's written submissions.

21. I also do not accept the suggestion made by Mr Campbell in paragraph 27 of his submissions that "[t]he appropriation for housing in 1938, together with the 1938 OS Map, shows that one reason the council had for purchasing the 44 acres was for housing". On the contrary, the need for the land concerned (which comprised part of the 44 acres, but is not now part of the Application Land) to be appropriated for the purposes of Part V of the Housing Act 1936 indicates that it was not already held for such purposes.

22. It is true that that appropriation (of 1938) does not provide direct evidence of the purposes for which the land was then held (other than that it was not already held for the purposes of Part V of the Housing Act 1936) because the relevant land is simply described as "vested in the Council". But the ministerial consents to the sale of certain land in 1936 and to the appropriation of other land in 1949 are of considerably greater probative value to the CRA. Both of these relate to land comprising part of the land acquired by the 1936 Conveyance (the 1936 consent land entirely so; the 1949 consent land in part so, the consent in that case also extending to land in due course passing under the 1979 Conveyance: see paragraph 15 above[3]). In each case the land concerned is described as currently held "for purposes of public walks and pleasure grounds", i.e. for the purposes of section 164 of the 1875 Act.

23. In my view this is evidence which, in the absence of sufficient evidence suggesting that different parts of the land acquired by the Council in 1936 were held for distinct statutory purposes (and there is no such sufficient evidence), supports the inference, which Mr Chapman invites me to make, that the whole of

[3] For this reason I also do not accept Mr Campbell's submission that the need for ministerial consent in 1949 arose because the land concerned comprised a specific public park, "Belle Vue Park". The land to which the 1949 consent related was larger than the plot so described on the OS Maps of 1921 and 1938/9, extending significantly into the land acquired in 1936: see Mr Campbell's written submissions, particularly at para 19, and see para 17 of this Report above. Nor do I accept the suggestion, as to which see para 13 of the written submissions, that the land subject to the 1936 consent was held "for the purposes of public walks and pleasure grounds" on the particular basis that it was part of a parcel of allotment grounds.

that land was held for the stated purposes pursuant to the 1875 Act. One must start from the presumption that land held by a public authority is held lawfully for some purpose (see Judgment at the first bullet point of para 41). From that starting point, and in the absence of sufficient evidence that parts of the land were held pursuant to distinct powers, the 1936 and 1949 consents are some indication that the land as a whole was held "for the purposes of public walks and pleasure grounds". I also agree with Mr Chapman's submission that there is further support for the conclusion that the land can be considered as a whole in this way provided by the history of use of the Application Land and by the terms of the 1964 Deed (see paras 8 and 11 above). Most significantly, however, there is strong support for the inference which I am asked to draw contained in the 1963/4 Minutes of the UDC's Allotments, Parks and Open Spaces and Cemeteries Committee (which were not available to the CRA at the time when it considered my two earlier Reports). The relevant minute of the meeting of 10 September 1963 reports legal advice having been taken, and states that "Belle Vue Grounds are held as public walks and pleasure grounds and that any variation to this use would require the consent of the Ministry of Housing and Local Government". I have already indicated my view that the use of the description "Belle Vue Grounds" is plainly used by this Committee to extend widely. When read in conjunction with the relevant minute from the meeting of 10 December 1963 (describing "Belle Vue Grounds" as one of "these public places"), and alongside the terms of the Deed of 4 February 1924, entered into following a full Council meeting of the same date, these descriptions provide powerful support, in my opinion, for the inference that the land acquired under the 1936 Conveyance was, as a whole, held pursuant to section 164 of the 1875 Act since its acquisition in 1936.

24. I accordingly advise the CRA to draw the inference, from the totality of the evidence now before it, that the 44 acres or thereabouts acquired by the 1936 Conveyance, was held from the outset pursuant to section 164 of the 1875 Act. It follows from that inference that user by local inhabitants of the greater part of the Application Land has since that date been 'by right' rather than 'as of right'.

25. That land is not however the entirety of the Application Land. It also includes two small parcels of land at its Northern edge (see the plan at Appendix 5 to the Main Report), one acquired by the UDC in 1922 and the other in 1979. However, for the reasons given in the Main Report at paras 121-123 I remain of the view that these small parcels of land are not capable of being registered alone.

Recommendation

26. In accordance with my factual conclusions and the reasoning set out above, and on the basis of the law contained in the Commons Act 2006, as interpreted by the Courts, I recommend that the CRA should refuse the Application.

27. As I have made clear in my previous two Reports, and reiterate now, whilst it is to be expected that the CRA will consider carefully and attach weight to my recommendation, I am not an independent adjudicator. At all times the duty of reaching a fair decision upon the application remains with the CRA. It is not a duty that the CRA can delegate to an outsider. Thus the CRA remains free to seek other legal advice should it wish to do so, and it will have to reach its own determination on the various matters of fact and law which have arisen. I nevertheless hope that this Report will materially assist the consideration and ultimate disposal of the Application. In making its determination, the CRA must, of course, leave out of account, as being wholly irrelevant to the statutory questions which it has to decide (i.e. whether the Application Land or any part of it is land which satisfies the definition of a TVG), all considerations of the desirability of the Application Land being registered as a TVG or being put to other uses.

Edwin Simpson
New Square Chambers
Lincoln's Inn
19 December 2012

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INSPECTOR'S THIRD REPORT

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