



Mr J Bennett
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Please reply to: Elizabeth Randall
County Legal Services

11th April 2007

Dear Mr Bennett,

Re: Application for Registration of Village Green at Hayle 2696

I refer to your application for registration of a Village Green relating to land at Hayle. Consideration has now been given to the application and I am now writing to update you. The next stage of the process is for a formal report, setting out all the evidence for and against the application, to be written setting out the County Solicitors determination of the application. This report is then sent to the Chairman and Vice Chairman of the Modification Orders Panel for their view. However, if that report is now written the County solicitor's decision, subject to member approval, is that the application must be rejected because the requirement of the 20 years use as of right is not fulfilled. The application was made on 23rd February 2006 and therefore the 20 year period which is relevant to the claim is February 1986 to February 2006. Network Rail have confirmed that there can have been no legal access until 10th December 1986 and therefore the use falls short of the 20 year period and Network Rail also point out that some of the land included in the application is still operational land. This latter point would not be fatal to the application as a whole as the area can be amended but the date of December 2006 is critical and therefore in my view fatal to the application as it presently stands.

In the circumstances I am wondering whether you may wish to consider withdrawing the current application rather than having it formally rejected. It may be that you will be able to submit further evidence to remedy this problem in a new application and therefore this letter also addresses other issues on the merits of the application as I think it is only fair that my reservations are made clear at this stage.

Firstly, in the event that a report were to be written at this stage, leaving aside the 20 year problem, I have further concerns about the nature of the activities on the land. I

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know that there is no public right of way on the definitive map which runs through the land claimed as Village Green. That of course does not mean one may not exist. However in my view the nature of the activities shown in the user evidence forms is in my view more akin to use as a path than as a recreational area. Many of the witnesses write that there is a public footpath crossing the land, many of them refer to using the land as a short cut and a number refer to using it as access to various places. Putting this together with the dog walking and the blackberry picking and the cycling this would all tend in my view towards the use of a specific route together with activities which might take place in the course of such use rather than the general recreational use of a Village Green. Furthermore the photograph produced by the land owner as an exhibit to the statutory declarations supports this contention and the statement that the land was overgrown whereas there is a route clearly on the ground would appear consistent both with the applicant's evidence and the objector's statements. I note also that the applicant in his letter of 31 December acknowledges that if there was an agreement between Penwith and Kerrier Groundwork Trust this would establish a 'permissive right of way'- an acknowledgement in my view about the nature of the use. I am of the view that the evidence produced may well be better submitted as an application to modify the definitive map rather than an application to register a Village Green. I am not saying that it would succeed as an application to modify the map you may well wish to discuss that with our Countryside Service. (ref Mr M Gibbons) I recognise there may be issues over timing and priority of the processing of such an application concerning a definitive map application but that in itself does not mean that the Village Green application should be used as a fall back.

Secondly I note that a line has been drawn around an area which it is submitted is a neighbourhood within a locality. It does appear to be a random line drawn on a map to the extent that it does not appear to be cohesive such as a specific housing estate. For example I note that at the North east boundary the line at Mount Pleasant includes some properties but not others and similarly at Hayle Terrace on the northern boundary. I note the area is claimed as The Foundry but I am not sure that this is a cohesive area. On the other hand Hayle could be a locality but that is not what is claimed. The area of land isn't claimed as a right for all the people of Hayle to use and nor does the evidence produced support that. You may wish to give further consideration to this.

Finally, if the application is to go ahead as one for registration of a Village Green, then the issue of the rights of the residents to use it during the 20 year period and the landowners control of the land needs more investigation. We will therefore be making further enquiries of Penwith District Council in this respect regarding any agreements which may have existed (as above).

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I hope you find this letter helpful. As you will see I am copying in the landowners so that they are aware of the progress of the matter.

Please would you let me know within the next four weeks what your proposals are in relation to this application, taking into account the above information.

Yours sincerely,



Elizabeth Randall
Head of Highways, Planning & Property Team
County Legal Services

Copy to:

- Network Rail, 125 House, 1 Gloucester Street, Swindon, SN1 1GW (FAO: Mr P Langman)
- MacFarlanes, 10 Norwich Street, London, EC4A 1BD (FAO: Joanne Hall)

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