

Decision Report for the Application to Record Beckwith Green, Hoddesdon as Village Green

Summary

- Having taken into account the evidence presented to it by the applicant, Mr Taplin, and the landowner, Broxbourne Borough Council (“BBC”), Hertfordshire County Council (“HCC”) has decided that on the balance of probabilities the land known as Beckwith Green in Hoddesdon is held on statutory trust by BBC as public open space and that therefore user of the land is “by right” and not “as of right” as required in order to satisfy the criteria for registration of the land as village green.
- As a result of this finding HCC has decided to reject the application.

Case Background

On 29th November 2005 Mr Taplin made an application to HCC to record Beckwith Green as village green. The land subject to the application is edged in red and green on the attached plan. His application was supported by 70 user evidence forms.

The application was advertised on 6th March 2009 and received one objection, from the landowner, BBC. BBC did not dispute the evidence of 20 years’ use of the land by the public, but alleged that the use could not be “as of right” as the land was purchased for the purpose of public open space. BBC included with its objection a large amount of documentation which it claimed supported its case. HCC assessed this documentation together with all other available evidence in relation to the relevant legislation and case law in order to come to a decision as to whether the land is held as public open space.

The legislation relating to the application

The application was made under section 13 of the Commons Registration Act 1965 (“the 1965 Act”).

The phrase “town or village green” is defined in section 22(1) of the 1965 Act (as amended) as being:

*“land which has been allotted by or under any Act for the exercise or recreation of the inhabitants of any locality or on which the inhabitants of any locality have a customary right to indulge in lawful sports and pastimes **or** which falls within subsection (1A) of this section.”*

In this case, the application is made on the basis that the land falls within subsection 1A. This provides as follows:

“Land falls within this subsection if it is land on which for not less than twenty years a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged in lawful sports and pastimes as of right, and... continue to do so”.

The phrase “as of right” is relevant here. For use to be “as of right” it must have been exercised without force, without secrecy and without the permission of the landowner. If the land is open space, as argued by BBC, it would be held on a statutory trust for the public under the Open Spaces Act 1906 (“the 1906 Act”) and use of it by the public would be “by right” and not “as of right” thus defeating the claim for village green status.

Case law relating to the application

In its objection BBC referred to the cases of *Attorney-General v Poole Corporation* (1937) 1 Ch 23 (“*Poole*”) and *R v City of Sunderland ex parte Beresford* (2003) UKHL 60 (“*Beresford*”).

In *Beresford* the land in question had been purchased by the local development corporation pursuant to the New Towns Act 1965 and was identified in the New Town Plan as “parkland/open space/playing field”. Between 1977 and 1979 it was laid out as a cricket pitch with wooden benches installed to accommodate 1100 people. The land was transferred to the Commission for New Towns in 1989 and Sunderland City Council in 1996.

The commons registration authority initially rejected the application on the basis that the land had not been used “as of right” as user had been with implied permission. The village green applicant sought judicial review of this decision, but the application was dismissed. The subsequent appeal to the Court of Appeal was also dismissed and the village green applicant appealed to the House of Lords (“HoL”), as it was then named.

The HoL allowed the appeal on the basis that user had not been with implied permission and held that the land should be registered as village green.

Although the point had not been raised in the courts below, the HoL requested both sides to put forward submissions regarding the position if the land had been acquired by Sunderland City Council as open space (although, in the event, it was accepted that on the facts of the case the land had not been acquired as open space). The opinions of the HoL on this matter are therefore not strictly binding but they are nonetheless of highly persuasive value.

The HoL considered section 10 of the 1906 Act. This section provides that:

“a local authority who have acquired any estate or interest in or control over any open space... under this Act shall ... hold and administer the open space ... in trust to allow, and with a view to, enjoyment thereof by the public as an open space”.

Any public use of such land would therefore be under the statutory trust imposed by section 10, and not “as of right”.

The HoL then went on to consider whether land had to be expressly acquired under the 1906 Act for section 10 to apply. The HoL referred to the Court of Appeal decision in *Poole*. In that case, the land was conveyed to the local authority “in fee simple to the intent that the same may for ever be preserved and used as a pleasure or recreation ground for the public use but the conveyance made no express

reference to the 1906 Act. However, the Court of Appeal believed that the 1906 Act applied.

In *Beresford*, the HoL took the same approach and stated:

“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 the 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”.

On the basis of the above case law, it is HCC’s view that **if** the evidence establishes on the balance of probabilities that the land at Beckwith Green was acquired as open space, then it would be subject to the statutory trust imposed under section 10 of the 1906 Act. User of the land would thus be “by right” not “as of right” and thus the criteria for registration of a village green under section 22(1A) would not have been satisfied.

The evidence presented by BBC relating to the acquisition of Beckwith Green as Open Space

BBC has provided a number of documents in support of its contention that the land is open space. These consist of title documents relating to the land’s acquisition and council minutes of Hoddesdon Urban District Council (“HUDC”), who was BBC’s predecessor. The council minutes relate to the intentions of HUDC when the land was acquired. BBC also provided a booklet of byelaws dated 1st March 2006 entitled “Byelaws made under section 164 of the Public Health Act 1875 and section 15 of the Open Spaces Act 1906 and sections 12 and 15 of the Open Spaces Act 1906 by the Borough of Broxbourne with respect to pleasure grounds, public walks and open spaces”. Beckwith Green is listed in Schedule 1 as “Tregelles Open Space, Hoddesdon”.

The land was purchased in two lots on separate occasions. The land edged red on the attached plan is registered at the Land Registry under title number HD35571 and shall be referred to in this report as the Registered Land. The land edged green on the attached plan is not registered at the Land Registry and shall be referred to as the Unregistered Land.

Consideration is given in this section of the report to the evidence relating to the acquisition of Beckwith Green and whether, on the balance of probabilities, the land was acquired as open space and is subject to the statutory trust under section 10 of the 1906 Act.

The Registered Land

1963	Photocopy of undated contract of sale	This is a copy of a draft contract. There is no evidence to show that this was the final version of the contract which was exchanged
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		<p>between the parties prior to the transfer of the land. The particulars describe the land to be sold and there is a black and white plan attached to the copy of the draft contract. From the particulars and the plan, it would appear that the area of land to be sold is the Registered Land. Condition H states that "The property is sold on the footing that the permitted use thereof for the purposes of the Town and Country Planning Acts is use as an open space". There is no evidence that condition H was included in the final version of the contract. The price to be paid for the land is £23,000. G.F.Havell and Son Limited is described as the Vendor.</p>
27.2.63	Council minute 1218 Land, Tregelles Road Planning and Development Committee	<p>The second paragraph of the minute appears to be referring to the Registered Land and states "With regard to the larger area comprising the remainder of the Beckwith open space, a letter had been received on the 11th February stating that the owner's claim for compensation had been sent to the District Valuer, which would enable the negotiations to be concluded soon"</p>
24.4.63	Council minute 97 Beckwith Estate Open Space Planning and Development Committee	<p>Refers to minute 1218. It states "the report of the District Valuer was submitted, assessing a sum of £23,000 for the purchase of the 1.745 acres of land". The Council is to pay the vendor's surveyor's fees, plus the vendor's legal costs and stamp duty. This is consistent with the terms of the draft contract.</p> <p>It was recommended that subject to any necessary approvals, the council purchase the 1.745 acres of land comprising part of the Beckwith Estate open space in accordance with the terms negotiated by the district valuer. It was resolved "That the Finance and General Purposes Committee be requested to approve application being made to the Minister of Housing and Local Government for consent to the borrowing of £23,900 for the proposed purchase".</p>
Sometime between April 1963 & August 1963		<p>Contracts are exchanged. No evidence of the final signed copy has been produced.</p>
29.8.1963	Official copies and title plan for title no. HD35571	<p>The Registered Land was first registered in 1956 and was originally part of a larger plot registered under title number HD14483 which included the properties on Tovey Avenue,</p>

		Hamilton Avenue, Dorchester Avenue and Rodney Crescent. The land was sold to BBC by GF Havell and Son Ltd. From the Proprietorship Register, it would appear that the land was transferred to HUDC on 29 th August 1963. There are no restrictions in the title to the land which limit use of the land to open space.
4.9.63	Council minute 450 Beckwith Open Space Planning and Development Committee	This states "Further to Minute No. 97, it was noted that the formal consent of the Minister of Housing and Local Government had been received to the borrowing of £23,900 for the purchase of the 1.745 acres of land and the purchase had been completed on 29 th August 1963. This is consistent with the official copies for the Registered Land.
15.1.64	Council minute 955 Beckwith Open Space	This minute is generally referring to problems associated with purchasing land as open space and the price to be paid for such land. There is a reference to the purchase of the Registered Land as an example.

Assessment of the evidence relating to the Registered Land

There are a number of references in the council minutes to the acquisition of the Registered Land as open space. Chronologically, the acquisition of the land can be traced via the draft contract, the official copies and the council minutes. Council minute 1218 on 27th February 1963 suggests that HUDC intended the land to be open space, and the draft contract with condition H supports this. The price to be paid for the Registered Land in the contract is consistent with council minutes 97 and 450. However, there is no reference to any restriction on the land being used as open space in the official copies or that the final contract for sale reflected the draft copy supplied by BBC.

HCC obtained the advice of counsel, Ms Ross Crail (dated 3rd November 2010), regarding the strength of the evidence supplied by BBC. In paragraph 11 of her advice, Ms Crail states that subject to what she says in paragraphs 15 and 16 of her advice, in her view, the documentation contemporaneous with the acquisitions does infer that the application land has been held pursuant to section 10 of the 1906 Act. However, at paragraph 15 of her advice she states that the County Council should not arrive at a conclusion on the basis of extracts from an incomplete set of council minutes, unless the other relevant minutes have been lost or destroyed and are unavailable.

Subsequent to counsel's advice, BBC produced further council minutes (minutes 450 and 955 above). One of counsel's concerns was that minute 97 was only a recommendation and that there was no evidence that the recommendation had been accepted. Minute 164 provides evidence that that recommendation was in fact accepted. Minute 955 is consistent with the other evidence. The evidence provided by BBC after counsel's opinion therefore supports the evidence that it had initially provided.

The Unregistered Land

27.2.63	Council minute 1218 Land, Tregelles Road Planning and Development Committee	States that "Further to Minute No. 838, the Committee noted that following an application by W.J.Haward Limited, the County Council had issued a certificate under section 17 of the Land Compensation Act 1961 that planning permission for development of the firm's land might reasonably have been expected to be granted at a net density of 12 dwellings per acre. Now that this certificate had been issued, the District Valuer would be asked to negotiate with the owners in regard to the price to be paid by the Council for the acquisition of the land". This appears to be referring to the Unregistered Land as references to Tregelles Road, W.J Haward Limited and the section 17 certificate are all continued in the district valuer's report (see below).
11.11.63	District valuer's report	The report describes the land subject to the report as an area of 0.75 of an acre or thereabouts. The amount of compensation is listed as £15,200. The report notes that a purchase notice has been served under section 129 of the Town and Country Planning Act 1962 and that the scheme and purchase of the acquisition is "open space". The claimant is named as Messrs. W.J. Haward Limited.
20.11.63	Council minute 784 Beckwith Open Space Planning and Development Committee	The district valuer's report dated 11 th November 1963, assessing a sum of £15,200 plus surveyors' fees and legal costs for the purchase of the 0.75 of land fronting Tregelles Road was submitted. Consideration of the report was deferred to the next meeting.
15.1.64	Council minute 955 Beckwith Open Space	Amongst the general discussion of the difficulties of buying land for the purpose of open space, reference was made to the "Beckwith open space now being purchased from W.J. Haward Limited".
4.3.64	Council minute 1137 Beckwith Estate Open Space Planning and Development Committee	It was recommended "That subject to any necessary approvals, the Council purchase the 0.75 acre of land comprising the remainder of the Beckwith Estate open space in accordance with the terms negotiated by the District Valuer". It was resolved that the Finance and General Purposes Committee be requested to approve application being made to the Minister of Housing and Local Government for consent to the borrowing of £15,665 for the proposed purchase.
24.6.64	Council minute 304 Beckwith Estate Open	Further to minute 1137, the Committee noted that the formal consent of the Minister of

	Space Planning and Development Committee	Housing and Local Government had been received to the borrowing of £15,665 for the purchase of the 0.75 acre of land forming part of the Beckwith Estate Open Space. The purchase of the land would therefore be proceeded with.
28.8.64	Conveyance	The parties to the conveyance were three members of the Haward family and HUDC. The area of land to be purchased was shown on a plan attached to the conveyance and described as being an area of 0.75 of an acre or thereabouts. The conveyance makes no reference to the land being purchased as open space nor does it refer to the statutory powers under which the land was being acquired.

Assessment of the evidence relating to the Unregistered Land

The district valuer's report is evidence that it was HUDC's intention that the land was purchased as open space. Although the conveyance does not state that was the purpose of the acquisition, the conveyance and the district valuer's report are consistent and it can be inferred that the two documents are referring to the same piece of land. The council minutes show a clear timeline between the commencement of negotiations and the conclusion of the sale.

As stated above, subsequent to counsel's advice, BBC produced further council minutes (minutes 955, 1137 and 304). These council minutes are consistent with and support the other documents provided by BBC.

As stated above, subject to paragraphs 15 and 16 of her advice, counsel is of the view that the documentation contemporaneous with the acquisitions does infer that Beckwith Green is held pursuant to section 10 of the 1906 Act.

Byelaws and the local plan

BBC produced an extract from the Broxbourne Local Plan, which was adopted on 8th December 2005, after the date of the application for registration of the land as village green. A copy is included with this report. Listed in the subsection "Informal Open Spaces" is "Tregellis Road". As BBC points out, whilst the spelling is inconsistent, there is no other road by that name in the borough that could be the road referred to.

BBC also produced a booklet entitled "Byelaws for pleasure grounds, public walks and open spaces". These byelaws were made in 2006, and so also postdate the village green application. As counsel notes, at paragraph 9 of her advice, there was no information contained in the byelaws as to which statutory provisions the byelaws in relation to the application land had been made under.

Counsel's view is that "The inclusion of the application land in Schedule 1 to the 2006 byelaws is certainly consistent with its being held under the 1906 Act. However, it is not in itself probative of the land's be so held or even of [BBC's] considering it to be so held ... Moreover, the byelaws were not made or operative during the period relied on by Mr Taplin in his application [for registration as village green]".

Mr. Taplin's comments on the evidence put forward by BBC

Mr Taplin puts forward a number of submissions to refute BBC's contention that the land is held under the Open Spaces Act 1906. These can be summarised as follows:

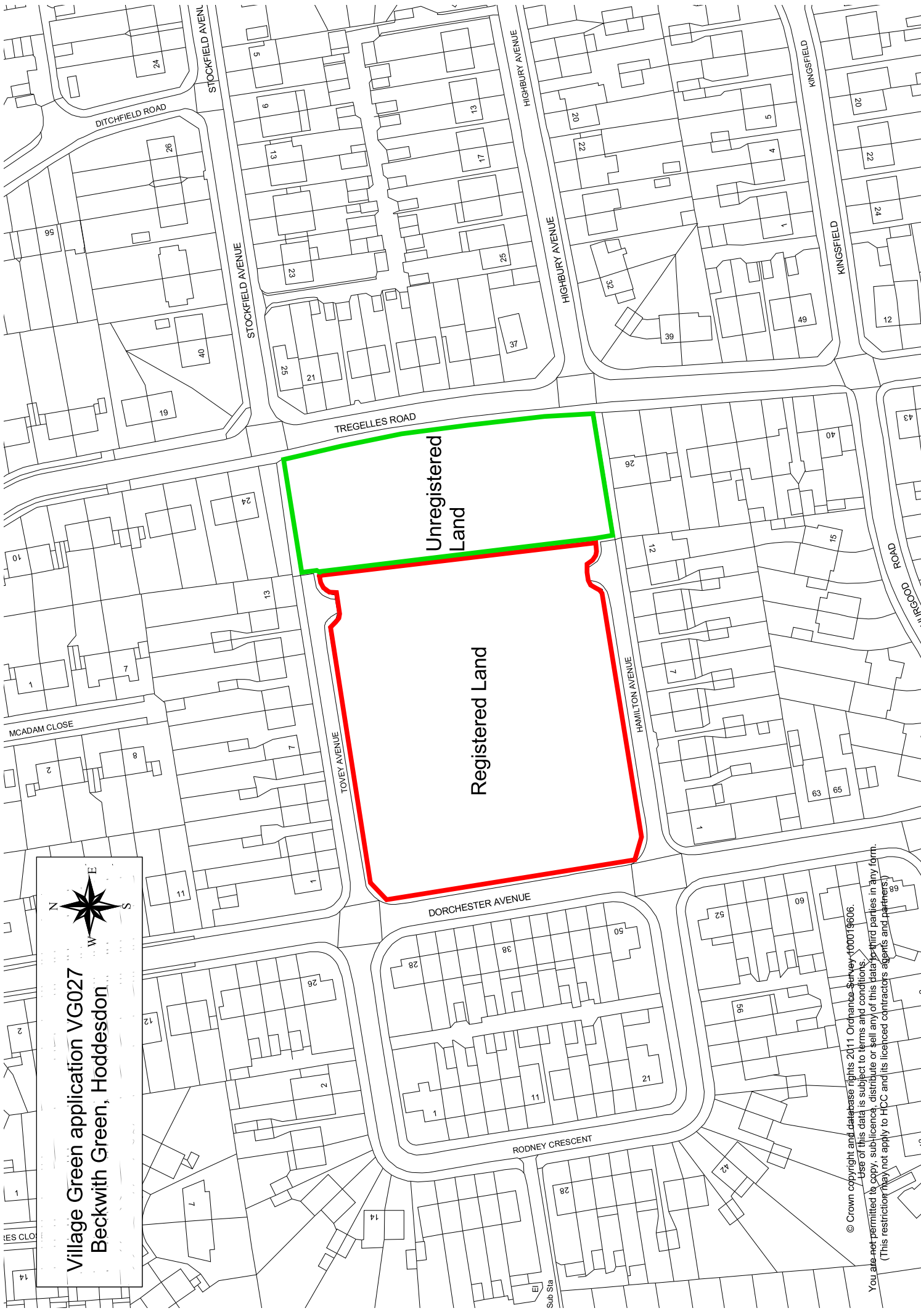
- None of the local residents are aware of the land's apparent status, as there are no signs or notices on the land advertising the fact.
- The booklet of byelaws relating to open spaces in the borough of Broxbourne published by BBC is a relatively late document, having a publication date that postdates the Beckwith Green application. The land in question is listed as Tregelles Open Space, which is not a name that the land is known by locally. In addition, the byelaws have never been advertised by BBC as relating to Beckwith Green.
- An undated booklet of parks and opens spaces in Broxbourne published by BBC does not list Beckwith Green in it.

Conclusion

HCC is of the view that on the balance of probabilities, the evidence contained in the title documentation, the district valuer's report, the draft contract for sale and the council minutes is sufficient to establish that the land was acquired by HDUC (BBC's predecessor) as open space. It also believes that the evidence shows that the land is held on a statutory trust under section 10 of the 1906 Act on the authority of *Beresford* and *Poole*, albeit there is no express reference to the 1906 Act in the title documents. HCC is also of the view that the byelaws do not provide evidence that the land is held under the 1906 Act and, in any event, they post-dated the application. HCC accepts that Beckwith Green is not listed in the undated booklet of parks and open spaces in Broxbourne. However, this booklet does not appear to be a comprehensive list of all the open spaces in BBC's area but focuses on the larger areas of land in the borough with features that may be of wider interest to the public.

HCC has therefore decided to reject the application on the basis that use of the land during the relevant twenty year period has not been "as of right" but "by right" by virtue of the land being held under a statutory trust for public use under section 10 of the 1906 Act.

Hertfordshire County Council
10th January 2012



Village Green application VG027
Beckwith Green, Huddesdon

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