

## **REGULATION COMMITTEE**

**20<sup>th</sup> DECEMBER 6.00 PM**

PRESENT: Councillor: Riaz (Chair), Councillors Mead, Rutstein and Worliding.

### **26 APOLOGIES FOR ABSENCE (REF: 1)**

Apologies for absence from the meeting were received from Councillor Ayub.

### **27 MINUTES (REF: 2)**

**Resolved:** That the Minutes of the meeting of the Committee held on 3<sup>rd</sup> November 2010 be taken as read, approved as a correct record and signed by the Chair.

### **28 APPLICATION TO REGISTER LAND ADJACENT TO KESTREL WAY AND PASTURES WAY AS A VILLAGE GREEN (REF: 7)**

The Committee received a report from the Head of Legal Services in relation to an application made on 26<sup>th</sup> January 2010 to register land adjacent to Kestrel Way and Pastures Way as a village green.

The Committee heard that in accordance with the relevant legislation, the application was advertised in the press and on the land, giving a deadline of 9<sup>th</sup> April 2010 for objections to be received.

The Committee further heard that objections were received from the Head of Housing (Strategy and Private Sector) on behalf of the Council and from Aldwyck Housing Group. However, there was a conflict of interest as the Council in this case was the Registration Authority as well as the owner of the land and also an objector to the application. In similar cases the Court of Appeal had held that it was appropriate for the authority to appoint an independent legal expert to conduct a non-statutory enquiry into the factual position, make findings and produce a report and recommendation to the authority in accordance to Article 6 of the Human Right Act, right to a fair trial.

In accordance with the decision of the Regulation Committee on 27<sup>th</sup> April 2010, the Head of Legal Services instructed Counsel to carry out a non-statutory public inquiry into the application. This inquiry was held from 20<sup>th</sup> September 2010 to 22<sup>nd</sup> September 2010 and the Inspector produced a report dated 22<sup>nd</sup> November 2010.

**A summary of the Inspectors report is stated below:**

- **The Applicant failed to prove on a balance of probabilities that there had been recreational use of the land throughout the whole of the relevant period which was more than trivial or sporadic, and, which was not referable to use of the public right of way across the land.**
- **The Applicant failed to prove that either of the neighbourhoods on which he relied in the alternative was a neighbourhood within the meaning of the statute.**
- **The Applicant thus failed in these respects to meet the test for registration.**

**Resolved:** (i) That the report (Ref: 7) be noted.

(ii) That the application to register land adjacent to Kestrel Way and Pastures Way as a village green be refused for the reasons set out in the Inspector's report dated 22 November 2010.

**(Note: The meeting ended at 6.10. p.m.)**