

## **Village Green Application: Shoebury Common.**

To the Councils Solicitor, Registration Officer, and Members of the General Purposes Committee.

We would firstly like to state that we are very grateful to the Registration Authority, the Southend Borough Council (SBC) Legal team including Mr Petchey, and the VG Inspector for the courteous and helpful way that our representatives and witnesses were treated at the Public Enquiry.

Having carefully considered the VG Inspector's report, we have the following comments:-

### **1. Land at Shoebury Common (south):**

We wish to make it clear that we accept the conclusion of the Inspector that usage of the land at Shoebury Common (south) was "By Right". Accordingly, we therefore wish to abandon our claim for Village Green status for any part of that land.

### **2. Overflow car park at Shoebury Common (northern section):**

Additionally, whilst welcoming and agreeing the conclusion of the Inspector that usage of the northern overflow car park was "As of Right", we also wish to make it clear that we will not pursue our claim for Village Green status for that area of land – the reasons for that are made clear later in this message at "5. Request to amend VG application with reasons".

### **3. The land in the southern part of Shoebury Common (northern section):**

We request the General Purposes Committee to consider our claim for VG status for a much reduced area, which is the southern part of the northern area of Shoebury Common, being:-

the land described in THE SECOND SCHEDULE clause (i)(b), of the Conveyance dated 9<sup>th</sup> August 1956 from YNYR ALFRED BURGESS to THE MAYOR ALDERMEN AND BURGESSES OF THE BOROUGH OF SOUTHEND-ON-SEA, which states "The remaining land coloured light green and dark green on the plan annexed hereto....."

In pursuing VG status for this land we acknowledge that the Conveyance dated 9<sup>th</sup> August 1956, which is registered with the Land Registry under Title no. EX 833899 states at THE SECOND SCHEDULE (i)(b), that this land shall be set out as ornamental gardens and for other public recreational purposes.

We also acknowledge that the VG Inspector concluded that usage of the land was "By Right".

However, we respectfully challenge that conclusion.

It is our submission that the evidence used by the Inspector for her conclusions regarding the overflow car park applies equally to the land in the southern part of the northern section. Both areas are intrinsically linked.

Facts regarding the difficulties in accessing ALL of the areas of the northern section of Shoebury Common, that were present throughout the entirety of the 20 year review period (November 1993 to November 2013), are as relevant to the southern part of the northern section as they are to the overflow car park area, but have not been fully considered in the conclusions made by the Inspector relative to the southern part.

This is illustrated in comments made by the VG Inspector, at paragraph 7.13 on page 43 in her report, relating to the southern part of the northern section, where it is stated :-

“There is, and has been throughout the relevant period, unrestricted pedestrian access to both areas. I also saw from my site visit that they are very pleasant and attractive areas of open space of different characters.”

We would respectfully suggest that for the inspector to describe pedestrian access as “unrestricted” is an exaggeration not supported by evidence from witnesses. Additionally, these comments appear very much to have been influenced by the condition of the southern part of the northern area at the time of the Inspector’s site visit in July 2015.

What the Inspector saw on that site visit was the result of just prior efforts of the SBC gardening staff, who had spent a very considerable amount of time and energy in ensuring that all of the northern area of Shoebury Common was in pristine condition in readiness for the VG Public Enquiry and the site visit by the VG Inspector!

We would, additionally add that it is possible the Inspector may have been duped into thinking the area was in a similar condition during the relevant VG review period.

However, witness statements confirm the Inspector’s comments most certainly do not reflect the actual condition of the southern part of the northern section in the relevant 20 year VG review period.

During that time, Tamarix bushes were allowed to become excessively overgrown to the extent that access points were blocked. Witness statements confirm the height of the Tamarix bushes was a major concern. One witness described that “she does not always feel safe behind the hedge with young children”. These are just a few examples of circumstances that contributed to making the southern area, of the northern section, uninviting and unwelcoming, which are issues which have to be considered carefully before making claims that areas have unrestricted access.

Such claims were not supported by evidence.

It is our contention that the evidence regarding restriction of access, and actions making areas uninviting & unwelcoming, are extremely important, equally applicable to the overflow car park and the land in the southern part of the northern section, but significantly, was not investigated and considered by the Inspector in the conclusions made relative to the southern part of the northern section.

Some extracts from evidence, presented to the VG Public Enquiry, follow – these relate to restricted access & difficulties with access and comments about the overgrown hedges /Tamarix bushes.

We firmly believe these examples demonstrate why residents and visitors were discouraged from using not just the overflow car park but the garden areas as well. The permanent locking of the car park gates restricted access to the wider area. We contend that the comments apply equally to the overflow car park and the garden areas. Mr Bailey confirms that was the case in respect of his evidence.

In evidence given by Mr Peter Grubb, under "Other Evidence" at paragraph 5.39 on pages 29 and 30 of the Inspector's report, he stated that

"He previously operated the Bumper Boats on the northern area which business was closed following a vandal attack when he also had the boat lake backfilled. That was around 1978/1979. After the loss of the lake, visitors to the area declined. The car park on the northern area was in the past open daily and trading well. When he became the tenant of Uncle Tom's Cabin in 1976, it was operating normally during the summer holidays, at weekends and on public holidays, but remained shut at other times. However, following an invasion by travellers, approximately 20 years ago, the access gates were kept closed and permanently locked. It has not functioned as a normal car park since then".

The date of the traveller invasion would have been around 1993/1994.

Mr Grubb also made comments that "The parking area, however, had no signage" and that "as the Tamarix bushes were allowed to grow, it became hidden from view and its use declined".

Regarding the comment about "no signage": miraculously brand new signage was in place in time for the VG Inspector site visit! And the overflow car park remains locked !

Mr Peter Lovett in his evidence, at paragraph 5.7 on page 12 of the Inspector's report, stated that "the northern area was allowed to deteriorate and there have been no improvements carried out to it over the last 35 years. Instead the Council have merely grown hedges to enclose the northern part from view".

Mr Richard Glass in his evidence, at paragraph 5.14 on page 16 and 17 of the Inspectors report, stated:- "He used the northern area regularly when the boating lake and a putting green were there. He has not used it much latterly.

One of the problems with the northern side is that although you can get in with a buggy, you cannot then get out at the other end." He also added "He does not use the overflow car park area as it is very foreboding. The gate at the entrance is off putting as it is necessary to squeeze through a small gap. The position was different when the boating lake and golf facility were there". Mr Glass also stated "The overflow car parking area has always been laid out as such, but was always closed with the gate firmly locked".

Mrs Barbara Stapleton in her evidence, at paragraph 5.20 on page 20 of the Inspector's report stated:- "On the northern side, she uses the Public Garden occasionally. The Council allowed the hedge to grow quite high on the road frontage, so she does not always feel safe behind the hedge with young children. If the hedge was kept cut by the Council, that area would be used much more." She also stated "the northern area is used a lot less than the southern area, probably due to the high hedge".

Mr John Widdows in his evidence, at paragraph 5.23 on pages 21 & 22 of the Inspector's report, stated:- "They entered the land from the south east corner of the northern area through a space between the bushes. The hedges were very high most of the time". He also stated "He could not see what was taking place over the hedge on the overspill car park area".

Mr Raymond Bailey in his evidence, at paragraph 5.25 on page 23 of the Inspector's report, stated "The gates at the entrance to the overflow car park are kept locked which makes that area unwelcoming".

Some additional information follows about what actually happened during the relevant 20 year period, which we submit describes anything but normal circumstances.

The garden areas, in the southern part of the northern section, were not given proper care and attention during the relevant 20 year period and were kept very far below the standard, for instance, of the nearby gardens along Thorpe Esplanade below Thorpe Bay Gardens.

Our contention is that the reality of the situation is that the garden areas in the southern part of the northern section of Shoebury Common were deliberately neglected and allowed to become overgrown with rose beds left unkept before final removal.

For long periods the grass was allowed to grow long, perhaps using the technique of a previous Head Gardener of the Royal Parks who, some years ago, gave advice in a newspaper article, a copy of which can be made available, that the best way of keeping people off grassed areas, was not to put up "Keep off the grass" notices but, to increase the height of the cut length to at least 100 mm as this discourages all ball playing and general activities on grass, including sitting and picnicking.

In his closing submission, Mr Chris Maile, the VG expert acting on behalf of Friends of Shoebury Common (FoSC), made the point that each area of land must be looked at in isolation to all other areas to determine when the use was "By Right" or "As of Right".

The VG Inspector followed that course regarding the overflow car park area and did not blindly conclude that usage should be classified as "By Right" simply to be in accordance with what was stated in the Conveyance.

The Inspector additionally took full account of the evidence that was available in making her recommendation that usage was "As of Right" for that area of land.

However, the VG Inspector took a different approach in her conclusion regarding the land in the southern part of the northern section at paragraph 7.40 (page 55) of her report, which reads:-

"By that Conveyance, the southern area was required to be used as ornamental gardens and for other public recreational purposes. Minutes have been produced evidencing that that area was formally appropriated for parks and pleasure grounds. It was duly laid out, used and maintained as public recreational area. Thus, again, for the same reasons it has been used "by right".

Unfortunately, the VG Inspector has clearly based her conclusion almost entirely on what is stated in the Conveyance document and has not taken account of the significant amount of evidence available regarding that land in the evidence provided by witnesses.

For the above reason, we respectfully challenge the conclusion made by the Inspector that usage of the garden areas was "By Right". We also respectfully challenge the statement that the area was "maintained"- evidence submitted to the Public Enquiry confirms it was not properly maintained, but deliberately neglected to make the area "unwelcoming" and "uninviting"!

We believe therefore that the Inspector's conclusion in respect of the southern part of the northern section is flawed by not taking into account the significant amount of evidence that was available within the submitted bundle, regarding the overgrown Tamarix bushes etc.

The overflow car park was effectively closed and locked throughout the relevant VG review period.

The permanent locking of the car park gates and the blocking of access points by the overgrown Tamarix bushes, which were allowed to become in an overgrown state, resulted in restricted access to the land.

Taken together, we submit that these actions resulted in access difficulties for potential public entrants to the land, which thus became uninviting and discouraged usage.

We submit that, for a long period that is exactly what happened with the southern part of the northern section of Shoebury Common.

There is copy correspondence and pictures available that can be presented as evidence to support these statements, if required.

The permanent closure of the overflow car park had a dramatic adverse impact on the level of regular visitors to all parts of the northern area of Shoebury Common.

The vast majority of those previous visitors were motorists who had come to enjoy all of the northern area of Shoebury Common, including the garden areas in the southern part of the northern section, rather than the beach supported by Shoebury Common South car park.

For all intents and purposes, the Council decision to permanently close and lock the overflow car park gates effectively removed permission for motorists to use the overflow car park area, as well as the southern part of the northern section.

Because of the circumstances described above, we contend that the actions of the Council, aimed at deterring and stopping usage of the northern area of Shoebury Common, amounted to what we can only describe as tantamount to "containment by stealth".

#### **4. The Classification regarding usage of the land in the southern part of the northern section:**

We consider the conclusion of the VG Inspector that usage of the land in the southern part of the northern section of Shoebury Common was "By Right" to be completely wrong, because that conclusion ignores the facts that were included in the evidence provided by witnesses.

The witness statements revealed the real reasons why the gates of the overflow car park have been closed and locked on a permanent basis since around 1993/1994, being the traveller invasion all those years ago. It is also understood that, during that invasion, considerable damage was caused by the travellers to the fences of properties backing on to the area.

The evidence provided by the witnesses also confirmed other actions taken by the Council to deter usage of the northern section.

With such a long catalogue of actions taken by the Council to stop and deter usage of the northern section of Shoebury Common, it is totally absurd and absolutely bizarre for the VG

Inspector to conclude that usage that occurred, despite all of the obstacles put in place by the Council, was "By Right".

Surely the fact that access was not allowed, for the entirety of the VG relevant period (November 1993 to November 2013), to the vast majority of the previous users, being the motorists who in the past came to visit ALL of the "rural" area in the northern section of Shoebury Common, indicates that the only sensible conclusion can be that usage that has occurred was "As of Right".

#### **5. Request to amend VG application with reasons:**

For all of the reasons submitted in this message, we respectfully request the General Purposes Committee, in determining the outcome of this Village Green application, to now consider for Village Green status only the southern part of the northern section of Shoebury Common, being :-

the land described in THE SECOND SCHEDULE clause (i)(b), of the Conveyance dated 9<sup>th</sup> August 1956 from YNYR ALFRED BURGES to THE MAYOR ALDERMEN AND BURGESSES OF THE BOROUGH OF SOUTHEND-ON-SEA, which states "The remaining land coloured light green and dark green on the plan annexed hereto....."

We would also respectfully request that the overflow car park remains as is.

The principle reasons for this amendment are as follows:-

This solution honours the requirement in the original Conveyance document for the land specified at THE SECOND SCHEDULE clause (i)(a) of the agreement to remain as a car park.

The resultant Village Green, used for unique activities, would have the benefit of a dedicated car park that would also raise revenue for the Council.

There are many community based activities pre-arranged that would use this area, an example being the Tram Stop Project, who are very keen to host an event in a Village Green way. The community to come together to raise funds for various charities, engage in fun activities etc.

The Registration Authority will already be in possession of the application proposal from the Operator of Uncle Tom's Cabin that proposed just such a registration.

That proposal has now been adopted by Friends of Shoebury Common following the resignation of Peter Lovett from the group.

We are now aware of the opportunity that exists to make subsequent and repeated Village Green applications to pursue this matter.

If any clarification, and/or additional information, is needed on any of the above we will be happy to provide them.

Thank you.

Kind regards,

Ray Bailey & Peter Grubb (FoSC)

18<sup>th</sup> November 2015