

APPEAL REFERENCE: CR.2019.001

IN THE FIRST-TIER TRIBUNAL (GENERAL REGULATORY CHAMBER)

IN THE MATTER OF THE LOCALISM ACT 2011 COMMUNITY RIGHT TO BID

BETWEEN

OLIVER'S BATTERY LIMITED

Appellant

-and-

WINCHESTER CITY COUNCIL

First Respondent

-and-

OLIVER'S BATTERY PARISH COUNCIL

Second Respondent

SUBMISSION BY THE SECOND RESPONDENT

By way of response the Second Respondent submits the following:

1. The Second Respondent oppose the Appellant's case and request that the First Tier Tribunal refuse the Appeal and uphold the decision of The First Respondent to include the land on the list of community assets on the grounds that the evidence submitted to the First Respondent was sufficient to establish that the

land was land of community value as per section 88 of the Localism Act 2011 and the evidence submitted did entitle the Respondent to reach that decision; or in the alternative should the Tribunal accept that the Appellant's submission that the evidence submitted to First Respondent was insufficient that the Appeal is refused and the land remains correctly listed as land of community value as per section 88 of the Localism Act 2011 by virtue of further witness evidence to be submitted by the Second Respondent.

2. In the Grounds of Appeal, the Appellant contends it is "agricultural land", which is misleading. Agriculture describes the practice of growing crops or raising animals. The land in question is not used for the feeding, breeding or raising livestock or cultivated for the growing of crops. As the field is neither cultivated nor used for grazing, it is a good location for skylarks (an RSPB Red List species) and wild flowers. Furthermore, the legislation refers to "actual use".

3. In the Grounds of Appeal, the Appellant refers to a summary of responses. A series of questions was sent to local residents in emails in February and March 2018. The first series of questions was based on a request for further information from the First Respondent. The Second Respondent sent a summary of these responses to the First Respondent to support the nomination of the land as an Asset of Community Value (ACV). The second short series of questions was to check and correct some erroneous statements made by the Appellant. The names and addresses of the respondents can be provided.

4. In the Grounds of Appeal, the Appellant contends that the evidence relied upon is vague and contradictory. However, the nature of user evidence from a local community in respect of that community's use of a piece of land will unavoidably represent all of the different perspectives and experiences of that use. The multiplicity of use and the experience of that use will inevitably result in a collection of evidence from different members of that community that records different experiences. Furthermore, some differences in evidence are to be expected from a broad section of the local community. Witness statements can be provided regarding actual current use of the land.
5. In the Grounds of Appeal, the Appellant contends that photographic evidence submitted by the Appellant was not considered so the material evidence was not properly taken into account. The Second Respondent can submit photographic evidence regarding actual current use of the land.
6. In the Grounds of Appeal, the Appellant contends that the actual current use of the land is largely of the PROW (public rights of way) and that the use of the land off those ways is *de minimis*. There is no minimum user requirement and consequently no need to show significant use. However, actual current use of the land by the community off the PROW is significantly more than *de minimis*. The PROW on the north and west sides of the land have not been maintained and are very overgrown. Consequently, new paths used by walkers, runners, cyclists and horse riders have been created approx. 10 metres inside the land running roughly parallel to the official PROW generated by continuous community use of the land. In addition, many other paths used by walkers, runners, cyclists and horse riders have been created across the land through frequent use that are not

PROW. Several of these other paths lead to or around the two tumuli in the middle of the land, which are part of a Scheduled Monument, described by Historic England as having considerable archaeological potential. The definitive legal map provided by Hampshire County Council (HCC) shows the PROW (the base map HCC use is the Ordnance Survey which also shows black dashed lines for some of the other paths across the land). Furthermore, the current Google Earth map clearly indicates many of the extensively used routes across the land and a version has been marked up with all the main footpaths and bridleways currently in use across the land. A site visit will clearly establish the existence of all these footpaths and bridleways.

7. In the Grounds of Appeal, the Appellant contends that the Appellant has made numerous efforts to exclude the public. The Second Respondent disputes this. In particular, the Second Respondent has seen no evidence of fencing or hedging being used to exclude the public. There are multiple entry points to the land and no physical barriers. The Appellant states that some signs indicating that the land was private were erected only twice within about a week in 2016 and it appears from the photographs provided that these were badly sited and implied that the use of the PROW was forbidden. If the Appellant has visited the land on numerous occasions, they would be well aware of significant community use, not least from the many established well-used paths across the land. The fact that the Appellant considers there to be a need to erect signs undermines the assertion that actual use is *de minimis*. Furthermore, the use of the land by the local community does not involve force or deception and trespass does not in itself prevent an ACV listing.

8. In the Grounds of Appeal, the Appellant contends that the First Respondent failed to properly consider whether there should be a partial listing. The Second Respondent does not support a partial listing. There is sufficient evidence that the local community and others use of the land is not restricted to the PROW or the extensive network of established well-used paths across the land.
9. In the Grounds of Appeal, the Appellant contends that there is evidence of vandalism and criminality. The PROW and other paths across the land are used extensively by other users as well as members of the local community, as it is a gateway to the countryside beyond. There is no evidence that the signs erected twice within a week in 2016 were removed by members of the local community. The informal social use of the land does not encourage bad behaviour and it is entirely peaceable in nature. The Appellant has previously acknowledged that there is no evidence of anti-social behaviour regarding use of the land.
10. Contrary to the Appellant's contention, the land is in actual current use that furthers the social wellbeing or social interests of the local community. Not only have the local community established a multitude of paths across the land over many years, they also derive benefit from looking at other parts of the land from the footpaths and bridleways around the perimeter. The use of the land should be looked at as a whole and the current actual use of the land is not "ancillary" to any other use of the land.
11. Although the Appellant would like to develop the land for housing, the Winchester Local Plan Part 1 Proposals Map confirms that the land lies within an area identified as a Local Gap (CE2) and Settlement Gap (CP18) and

consequently obtaining planning permission is unlikely within the near future.

It is, therefore, entirely realistic to think that the land will continue to be used by the local community in ways that furthers their social wellbeing and social interests.

Sara Sawyer

Clerk to Oliver's Battery Parish Council

clerkoliversbattery@gmail.com

7th May 2019