

Ms J Stevenson  
Senior Legal Officer  
Suffolk County Council

DX 87951 IPSWICH

**By email to [jane.stevenson@suffolk.gov.uk](mailto:jane.stevenson@suffolk.gov.uk) only**

Our Ref : TCI/208804.1  
Your Ref :  
Date : 3 August 2012

Dear Madam

**Claimed Village Green at Somersham**

As you are already aware, we act for the owner of this site, Orwell Housing Association Limited, and we write in advance of the forthcoming meeting of your Rights of Way Committee on 12 September, at which we understand the application to register our client's land as a village green will be reconsidered.

It is our view that the Inspector misdirected himself as to the law at the original inquiry when he concluded that the landowners had not asserted their right to prevent public use of the land sufficiently strongly to avoid the subsequent continuing public using from being 'as of right'. As is clear from the Inspector's Report, our client's predecessor in title, Mid Suffolk District Council had twice written to local residents informing them of their intention to dispose of the land to a housing association with a view to it being developed for the provision of much needed affordable housing.

We remain of the view that it was very clear to any reasonable person reading those letters that Mid Suffolk District Council was asserting its right as landowner to pursue a development on the land that would conflict with the village green rights now alleged. In our opinion, it is not reasonable to conclude that those local residents were left in any doubt as to the basis on which they were continuing to use the land from that point, i.e. that such use was being permitted by the landowner but with the caveat that the landowner could withdraw permission when it was ready to proceed with its plans for development. From at least the date of the first such letter therefore local people could not have believed that they were using the land 'as of right' but rather would have known that their use was being temporarily tolerated by the landowner.

In any event, further evidence has come to light in recent weeks that strengthens our client's case on this point. In particular, we have now discovered that planning permission was granted by

LEICESTER · LONDON · MANCHESTER · MILTON KEYNES  
NORTHAMPTON · NORWICH

Gipping Rural District Council for a residential development of the site in 1949. We attach a copy that we have taken from the public files held on microfiche by Mid Suffolk District Council.

As this planning permission is held on a public register those claiming village green status for the land are deemed to have notice of it. As such, users of the land have at all times since 1949 been aware of the potential for development of the land, furthering strengthening our argument that such use as there has been of the land cannot have been 'as of right',

In addition, the existence of the planning permission raises another difficulty for the applicant as any village green status is defeated by section 241 of the Town and Country Planning Act 1990 ("section 241").

In summary, section 241 provides that any village green status (which was confirmed in the case of BDW Trading Limited v Spooner and Melin Homes Limited [2011] EWHC B7 as falling within the reference to "open space" in section 241(1)) is overcome by the acquisition (whether compulsorily or otherwise) or appropriation of land by a local authority for planning purposes.

While we have not been able to discover how the land came to be owned by Gipping Rural District Council, it is clear that, even if it had not been acquired by that Council for planning purposes, it must have been appropriated as such in order for the Council (which would then have had powers of appropriation under section 163 of the Local Government Act 1933 (copy enclosed) to have gone on to secure planning permission.

Likewise, the decision by Gipping Rural District Council's successor, Mid Suffolk District Council, to transfer the land to our clients for the purposes of delivering affordable housing shows that, despite the passage of time between the two events, the land continued to be held for the purposes for which it must have been acquired or appropriated in 1949 so that our client continues to have the protection afforded by section 241 by virtue of section 241(1)(b).

Finally, we note that since the close of the inquiry the overwhelming majority of the village have made clear their hostility to the application, represented by the petition signed by over 300 residents. Our client has been working closely with members of the Parish Council in making representations to the committee objecting to the application. At the time of the inquiry the significance of the Inspector's recommendation and its consequences was not fully understood by the community and our understanding is that the majority of the community question the evidence put forward by the Applicant. If the inquiry were to be held today, many of those individuals would be willing to give evidence in support of our client's objection to the application. Notwithstanding the Inspector's conclusions, we therefore consider that this new evidence further supports our client's objection to the application to register the land as a village green and we therefore invite your Committee to dismiss this vexatious application.

Yours faithfully



**Howes Percival LLP**

Direct Dial : 01603 580066  
Fax : 01603 632132  
E-mail : trevor.ivory@howespercival.com