

**IN THE MATTER OF AN APPEAL TO THE FIRST TIER TRIBUNAL  
(INFORMATION RIGHTS)  
UNDER SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000**

EA/2015/0070

**B E T W E E N:-**

**PAUL CAMPBELL (ON BEHALF OF FRIENDS OF MEMORIAL PLAYING FIELD)**  
**Appellant**

**-and-**

**THE INFORMATION COMMISSIONER**  
**Respondent**

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**CLOSED BUNDLE OF DOCUMENTS**

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**Pleadings and other Orders**

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Regid(s) (6)

Linda Spanner

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**From:** Sue Booth <spcclerk@btconnect.com>  
**Sent:** 30 April 2014 11:11  
**To:** Tony Kershaw  
**Cc:** Louise Goldsmith; Bob Lanzer; davidbarling@brambercastle.co.uk  
**Subject:** Freedom of Information request - Village Green (VG93) Steyning Parish  
**Attachments:** ltr Tony Kershaw and Louise Goldsmith April 14.doc

Dear Mr. Kershaw,  
Please see attached letter from Steyning Parish Council.  
Thank you.

Sue Booth  
Clerk to the Council  
01903 812042

30<sup>th</sup> April 2014

Tony Kershaw  
Head of Law and Governance,  
West Sussex County Council,  
County Hall,  
Chichester,  
PO19 1RQ

Dear Mr. Kershaw,

**Freedom of Information Request – Memorial Playing Field, Steyning, VG 93**

The Parish Council has recently received a notification of a new Village Green application for Cuthman's Field in Steyning dated November 2012 (TVG30/35), and as requested this has been displayed as of 24<sup>th</sup> April 2014.

The time lapse between this recent application and notification prompted us to follow up on a previous application that was submitted in September 2012, but was notified (very swiftly) and agreed in the February of 2013 (inside 6 months). We now believe that this application for Village Green status submitted to WSCC in September 2012 by the Friends of Memorial Playing Field (FoMPF) or by their Vice Chairman Paul Campbell was fast tracked and put ahead of other applications by your department (or yourself) and not taken in strict, normal sequential order. ✓

Other applications (as above for Cuthman's Field) made at or around the same time are only now (some 18 months later,) being notified. ✓

This has caused considerable delay and workload to the Parish Council's and to its planning application for a skateboard facility on this land, and, had this application gone through the normal, timely process it would only now be coming through for notification and it is likely that our planning application would have already gone through the HDC planning process. ?

We view this matter very seriously and the Parish Council has incurred costs for legal advice and had this application been dealt with in the normal, strict order this may not have been necessary.

We would like to know please, why and for what reason this application was taken out of turn, and on whose authority. We cannot see any rationale as to why this should be the case.

We would also like copies please, under FOI, of all correspondence, or records of phone calls dating from August 2012 between yourself and Peter Jupp of WSCC, and Paul Campbell, Vice Chair FoMPF, Peter Comber, Chair of FoMPF, or any other member of FoMPF, and any other correspondence relating to this Village Green application (VG93) process and eventual permission being given.

Yours sincerely,

Sue Booth  
Clerk to the Council

c.c. Louise Goldsmith – Leader West Sussex County Council  
Bob Lanzer – Cabinet Member, Corporate Relations  
David Barling – County Councillor Bramber Division

Box 12 (C) (F)

Tony Kershaw  
Head of Law and Governance  
03302 222662 (Direct)  
01243 777697 (Fax)  
tony.kershaw@westsussex.gov.uk  
www.westsussex.gov.uk

County Hall  
West Street  
Chichester  
West Sussex  
PO19 1RF  
01243 777100



13<sup>th</sup> May 2014

Mrs Sue Booth,  
Clerk to Steyning Parish Council  
The Steyning Centre,  
Fletchers Croft  
Steyning  
West Sussex BN44 3XZ

Dear Mrs Booth

**Memorial Playing Field, Steyning - Village Green Application 93**

I refer to your letter of 30<sup>th</sup> April requesting information relating to the above application.

I confirm that the sequence of events relating to the application to which your letter refers is as you describe. It is not accurate to say that the application was "fast tracked" but, in response to representations it was agreed that the notification in relation to VG93 was made more quickly than most applications. The reason for this was that firm representations were made on behalf of the applicant to apply strictly the regulations which state that the notification must be made "on receipt" of the application. In fact the regulations do not mean that the notification occurs immediately as checks and enquiries need to be made in order to ensure that the application is valid. This was explained to the representative of the applicant but it did mean that, in this case, the notification occurred as soon as the application was validated.

It is normal practise for all applications to be dealt with in sequence. This would usually mean that, even once an application has been validated by the usual enquiries they will not then be processed until others received earlier in time have also been validated and processed. Whilst this is usual and accepted practise we did feel bound to apply the wording of the regulations when this was insisted upon by the applicant. As you have indicated in your correspondence no such insistence was made in relation to a more recent application.

You say in your letter that this has caused considerable delay and workload to the Parish Council and to the planning application. I am afraid I fail to understand how that could be the case and perhaps you could explain how a delay or additional workload could have arisen as a result of the above decision. An application for village green status would not affect an application such as the one prepared by the Parish Council in relation to a skateboard park. This was explained to all concerned during the process. It was also considered at the

time the decision was made to publish notification of the village green application.

As the making of an application and indeed the granting of village green status for the land has no bearing upon a planning application which is consistent with that status, it was not considered to be a relevant factor in any decision relating to the application.

Finally you have asked for copies of all correspondence or records of phone calls between officers of the County Council and a Mr Paul Campbell, and any other members of the Friends of the Memorial Playing Field. I should explain however that personal correspondence of that kind is exempt from the application of the Freedom of Information Act as it comprises personal information of the persons sending or receiving that correspondence. All correspondence connected with the application to which the Parish Council would have been entitled would have been submitted to you as part of the formal process given that you were both landowner and an interested Council connected with the application. I trust however that the above summary provides you with sufficient information as to why the application was treated in the way it was in response to specific requests on behalf of the applicant.

Yours sincerely



Tony Kershaw  
Head of Law and Governance

Log 12 (5/6)

Linda Spanner

From: Sue Booth <spcclerk@btconnect.com>  
 Sent: 04 June 2014 10:54  
 To: Tony Kershaw; Paul Finch  
 Cc: Louise Goldsmith; Bob Lanzer; David Barling  
 Subject: RE: Memorial Playing Field Steyning - Village Green Application 93 - CONFIDENTIAL  
 Attachments: WSCC - Kershaw re refusal letter under FOI May 14.docx

Dear Tony Kershaw,  
 Please find attached further letter from Steyning Parish Council on the above matter.  
 Sue Booth

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**From:** Paul Finch [<mailto:Paul.Finch@westsussex.gov.uk>]  
**Sent:** 13 May 2014 16:56  
**To:** [spcclerk@btconnect.com](mailto:spcclerk@btconnect.com)  
**Subject:** Memorial Playing Field Steyning - Village Green Application 93

Dear Mrs Booth,

I am pleased to attach a letter from Tony Kershaw in relation to the above matter.

Regards

Paul Finch

Paul Finch | PA to Tony Kershaw, Head of Law and Governance,  
 West Sussex County Council  
 Location: Room 100, 1st Floor, County Hall, Chichester, PO19 1RQ  
 Internal: 22686 | External: 03302 222686 | E-mail: [paul.finch@westsussex.gov.uk](mailto:paul.finch@westsussex.gov.uk)  
 West Sussex Capita Partnership | [www.capita.co.uk](http://www.capita.co.uk)

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(100,12,25)(6)

4<sup>th</sup> June 2014

Tony Kershaw  
Head of Law and Governance  
County Hall,  
West Street,  
Chichester,  
West Sussex, PO19 1RF

Dear Mr Kershaw

Your letter dated 13<sup>th</sup> May 2014 – Memorial Playing Field, Village Green Application 93

We do not understand your refusal to supply us with the information we requested and we cannot accept your comment *"I should explain however that personal correspondence of that kind is exempt from the application of the Freedom of Information Act as it comprises personal information of the persons sending or receiving that correspondence. All correspondence connected with the application to which the Parish Council would have been entitled would have been submitted to you as part of the formal process given that you were both landowner and an interested Council connected with the application,"* as we believe that, following advice, you may have misinterpreted the act.

We do not want or need, nor have we asked for, personal information and we are happy for this to be redacted. The information we are asking for is from a group (or a person acting on behalf of a group) about a Village Green application and is not about any one person or personal issues. It is our belief that on this basis alone, there should be no issue with you releasing this information and we are concerned that in not doing so WSCC may be seen to be withholding incriminating information.

We do not know if this decision was made by you alone, but the decision caused this council considerable cost. The village green application made by the protestor(s) was, in our view, a calculated ploy to stop the building of the skate-park in the MPF. Bringing forward the application so speedily meant that the council had to seek urgent early legal advice on the village green/skate-park issue at some cost. Had this application been taken as is 'normal practice' and in 'normal sequence' as your letter states, it would only now be coming up for consideration in line with the others applied for at the same time, and we would probably have already had our planning application heard and consequently, we would not have been under such pressure to check out the legal implications of VG status.

In addition the protestor(s) used the VG status to inundate the council with vexatious emails which cost the council 'notionally' in the additional workload it caused. All this did, in fact delay, the skate-park planning application.

We wish to understand what pressure the group or individual acting on their behalf was able to bring to make WSCC take this application ahead of others received earlier or at the same time. We believe the correspondence you hold will help us to understand this. The protestor(s) wrote similarly to all the agencies, authorities, fund suppliers and private companies and WSCC is the first of these to bow under the pressure. In stating that *"In fact the regulations do not mean that the notification*



*occurs immediately as checks and enquiries need to be made in order to ensure that the application is valid. This was explained to the representative of the applicant but it did mean that, in this case, the notification occurred as soon as the application was validated,"* you have confirmed that this was treated as a special case without any justification.

We would like you therefore to accept this letter as a formal complaint from Steyning Parish Council about a potential 'abuse of process' and we request that you either:

- (a) supply us with the information that we have requested under the Freedom of Information Act or;
- (b) undertake an internal review of your refusal on the basis that we do not understand how this correspondence can comprise personal information as defined in the Data Protection Act.

On receipt of your answer the council will decide what further action it may wish to take.

Yours sincerely,

Sue Booth  
Clerk to Steyning Parish Council

Reg 12(5)(c)

Tony Kershaw  
Head of Law and Governance  
03302 222662 (Direct)  
01243 777697 (Fax)  
tony.kershaw@westsussex.gov.uk  
www.westsussex.gov.uk

County Hall  
West Street  
Chichester  
West Sussex  
PO19 1RF  
01243 777100



27<sup>th</sup> June 2014

Mrs Sue Booth  
Clerk to Steyning Parish Council  
The Steyning Centre  
Fletchers Croft  
Steyning  
West Sussex BN44 3XZ

Dear Mrs Booth

**Re: Memorial Playing Field, Village Green Application 93**

I refer to your letter of 4<sup>th</sup> June in response to my earlier letter concerning your request for access to correspondence with an individual.

The request that was made by the Parish Council was for the disclosure of personal correspondence initiated by an individual. In the terms of the Data Protection Act 1998 all of the correspondence with an individual constitutes personal data held in relation to that person. The County Council, as data controller, has a number of obligations in relation to the retention and processing of personal data. Essentially this means that the data cannot be processed other than in accordance with the provisions of the Act. The disclosure of such personal data to third parties can only take place with the individual's consent or in accordance with certain specific provisions set out in the Data Protection Act. When a request is made, such as the one made by the Parish Council, under the Freedom of Information Act, for the disclosure of information which is protected by the Data Protection Act then the County Council is obliged to assert the exemption that the information is protected as personal data by the Data Protection Act and is therefore not available to be disclosed.

You refer to the possibility of deleting the personal details of the author of the correspondence from any disclosure. That however does not deal with the obligations the County Council has under the Data Protection Act. It is the entirety of the correspondence that is protected not the specific personal details of the individual. If the Parish Council were requesting the disclosure of a County Council document which happened to include the personal details of an individual then that of course could be disclosed following the deletion of such personal details. That process is not available when dealing with personal correspondence which is protected in the way described above. I must therefore once again decline your Parish Council's request for the disclosure of this correspondence. The County Council is not seeking to protect its own interests nor to cause any difficulties for the Parish Council. There is nothing particularly controversial in the correspondence but I must abide by the obligations the County Council has as a Data Controller in relation to personal data.

You suggest in your letter that the correspondence includes "incriminating information". I have to say I find that statement somewhat extraordinary. I would be grateful if you could explain what particular crime you think has been committed and who you believe to be the perpetrator of the offence. If you are suggesting that the County Council is in some way involved in such criminal activity then I must ask that you explain what particular concerns have given rise to this belief.

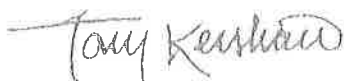
In your further letter you repeat your earlier assertion that the processing of this particular village green application has caused the Parish Council "considerable cost". As before I must ask that you explain how this could possibly happen. The designation of the area as village green could have had no adverse or other impact upon the processing of the Parish Council's planning application. The two are entirely complementary. It is of course a matter for the Parish Council to choose whether to seek legal advice in order to confirm that position, but the advice can only have been that any impact was nugatory.

Finally you ask that the County Council explains its actions in processing this particular village green application which you again assert was "treated as a special case without any justification". In fact your own letter includes the justification which I have previously given to you but I repeat it here. The wording of the regulations which the County Council is obliged to apply in dealing with village green applications is that they must be processed "on receipt". The applicant received the explanation - as all applicants do - that the application could only be processed once it was validated. In this particular case the applicant insisted that it be processed immediately upon validation and, in accordance with the regulations, this is what happened.

I therefore assert and repeat that there was no abuse of process. I can see from your correspondence that the Parish Council has been the subject of lengthy and persistent correspondence from the individual applicant but I am afraid that the County Council cannot carry any responsibility for the actions of the individual concerned nor the impact that his actions may have had upon your own procedures and resources.

Should the Parish Council wish to challenge the County Council's decision not to disclose the personal correspondence requested under the Freedom of Information Act I have set out below the contact details for the Information Commissioner's Office. This letter must constitute the County Council's review of the earlier decision.

Yours sincerely



Tony Kershaw  
Head of Law and Governance

Contact ICO (<http://ico.org.uk>)  
on 0303 123 1113 (local rate) or email [casework@ico.org.uk](mailto:casework@ico.org.uk)

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Reg 12(5)!!

Linda Spanner

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**From:** Sue Booth <spcclerk@btconnect.com>  
**Sent:** 15 July 2014 09:31  
**To:** Tony Kershaw; Paul Finch  
**Cc:** Louise Goldsmith; Bob Lanzer  
**Subject:** Third letter re: Village Green 93 FOI request - Confidential  
**Attachments:** WSCC - Tony Kershaw third letter re village green application July 14 Confidential.docx

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Dear Mr. Kershaw,  
Please find attached further letter regarding the above.  
Sue Booth

Mr. T. Kershaw,  
Head of Law & Governance,  
County Hall,  
West Sussex County Council,  
Chichester.  
PO19 1RF

Dear Mr Kershaw

Village Green No: 93 – Final Freedom of Information request prior to formal ICO complaint -  
CONFIDENTIAL

Thank you for your letter dated the 27<sup>th</sup> June 2014.

Having discussed this with the ICO, they have suggested to us that we take out a formal complaint against WSCC because, from the information we have given them, they do not feel that there is a justification for you to withhold the information we have asked for because; (a) we are not requesting any personal information of any individual; (b) the copies of the letters we are requesting are from a group known as the Friends of Memorial Playing Field or, are signed by individuals who did so on behalf of the group; (c) it is perfectly acceptable under the regulations for you to redact names from the correspondence.

We find it difficult to accept what you say, that there 'is nothing controversial in the correspondence' considering the unusual speed with which the application was approved but if that is the case there should be no issues in providing this information. We are giving WSCC this last opportunity to let us have the requested correspondence before we make a formal complaint to the ICO. Until we do receive the information we have requested we cannot confirm that there has not been some abuse of process or misconduct in public office in the granting of this village green status.

Also on guidance from the ICO, we believe that it is improper and against their guidance, for an internal review to be conducted by the same person who made the original decision to refuse the FOI request. We have copied this letter to Louise Goldsmith to ensure that a proper internal enquiry is conducted in accordance with the guidance.

In your letter to the council dated 13<sup>th</sup> May, you stated:

*"I confirm that the sequence of events relating to the application to which your letter refers is as you describe. It is not accurate to say that the application was "fast tracked" but, in response to representations it was agreed that the notification in relation to VG93 was made more quickly than most applications. The reason for this was that firm representations were made on behalf of the applicant to apply strictly the regulations that state that the notification must be made "on receipt" of the application. In fact the regulations do not mean that the notification occurs immediately as checks and enquiries need to be made in order to ensure that the application is valid. This was explained to the representative of the applicant but it did mean that, in this case, the notification occurred as soon as the application was validated."*

You go on to state;

*"It is normal practice for all applications to be dealt with in sequence. This would usually mean that, even once an application has been validated by the usual enquiries they will not then be processed until others received earlier in time have also been validated and processed. Whilst this is usual and accepted practise we did feel bound to apply the wording of the regulations when this*

was insisted upon by the applicant. As you have indicated in your correspondence no such insistence was made in relation to a more recent application."

Would you please let us know who decided 'that the notification in relation to VG93 was made more quickly than most applications' and why, by your own admission it would appear that WSCC is operating outside of the regulations as a matter of 'accepted practice' – although the regulations do not appear to make exceptions for 'accepted practice'. If it is 'accepted practice' by WSCC as you claim, then this would imply that it was doing so within the regulations and if so, why did WSCC 'feel bound to apply the wording of the regulations' and not adhere to its 'accepted practice' when this was insisted upon by the applicant? This confusing reply leads us to believe that WSCC has/is operating its village green procedures outside of the regulations because either WSCC processes its VG applications in line with the regulations or, it doesn't.

The council was advised that the village green application process would take 18 months and this was truncated into 5 months. As the rightful landowners of the MPF, we are concerned as to why WSCC went against the normal practice of the regulations and felt it necessary to fast track the process without advising the Parish Council. Please explain why the council was not advised about the applicant's insistence on you applying the wording of the regulations and that this application was going to be processed more swiftly than usual?

Could you also explain the following statement; *"In fact the regulations do not mean that the notification occurs immediately as checks and enquiries need to be made in order to ensure that the application is valid. This was explained to the representative of the applicant but it did mean that, in this case, the notification occurred as soon as the application was validated"*. WSCC made no contact with the Parish Council other than sending the normal notification for display and, apart from what would appear to have been a short site visit of 1.5 hours when 10 people were using the field, from which you adduced that *"it seemed apparent that this usage was typical with individuals or small groups walking, sometimes with dogs etc. on the land as part of their daily routine"* few other checks were made, beyond the paperwork and correspondence sent by the applicant.

Could you please tell us if this site visit was made in the presence of the applicant and, why you failed to make the requisite "checks and enquiries" with the council to validate the application?

At the moment we feel that there has been an abuse of the public's trust in that (a) it should reasonably be expected that WSCC should not act 'outside of the regulations' which your response to the council's FOI request appears to indicate and; (b) that WSCC should not have capitulated to outside pressure if it was in fact acting 'within the regulations' and; (c) that WSCC should have been aware that the MPF is/was set out as a recreation and playing field as was detailed in our original letter of objection, maintained by the local authority under its statutory powers, and therefore we believe, should have been considered for exemption. The recent Supreme Court ruling in *Barkas v North Yorkshire County Council* would appear to re-inforce this.

WSCC would appear to have buckled under pressure – the only authority, statutory consultee, company or funder (all of whom, incidentally, had been subjected to threatening and intimidating letters from the FoMPF and their leading members) to do so.

We also believe that your counsel's advice is contradictory and incorrect but not being legally qualified we will leave that to others. However, we would like to point out the following:

The counsel's advice seems contradictory. He/she states "Accordingly there was a public statutory right to use it (the land) for such purposes (recreational use)" then goes on to state in paragraph (c): "Moreover on the information and evidence before me there is nothing to show that that(sic) the users had a statutory right to use the land for public recreational purposes". Please explain these contradictory statements – either the public had the right or they didn't?

Your counsel is incorrect in saying that; "the parish council rely upon section 124 of the 1972 Act(sic) (Local Government Act) which in my view is more akin to the general power in (the) Beresford case" as the council was relating this specifically for the skate-park itself and in your Executive Summary you clearly make this distinction when you stated "The matter of the skateboard facility is a totally separate issue.....and therefore cannot be taken account of when determining whether this application has met the tests under the Act". Why therefore has this been used to undermine the council's objection?

We contend that your summary and recommendation for approval appears contradictory and far from clear, and that the subsequent decision by the members was influenced by the detailed submission by the applicant, the absence of any checking of the validity of the application with the council, a short site visit, your counsel's advice which seems contradictory but above all we believe that the pressure applied by the applicant made WSCC fast-track the application, resulting in a conclusion where WSCC failed to act in the best interests of the public and particularly fell short of the standards of support which any small local council should reasonably expect of its County Council.

We have explained why the council incurred considerable cost and you are quite incorrect in stating that; "the designation of the area as a village green could have no adverse or other impact upon the processing of the Parish Council planning application" - you may well assert that the Village Green and skate-park planning applications are complementary but this has not been the case in this application – but the Village Green status has made a significant impact on our application in terms of time and legal costs. We are frankly, astonished that you should say; "it is a matter for the Parish Council to choose whether to seek legal advice in order to confirm that position" and then to compound this by going on to say; "but the advice can only have been that any impact was nugatory", as it would appear that you may not have a full understanding of the impact that a Village Green registration makes on a landowner and potentially on planning applications. You also know that any council should act properly and seek legal advice on any matter that challenges the legal standing of any of its assets.

As a result of the Village Green registration we have been overwhelmed with correspondence from one of the key members of the FoMPF. The amount of correspondence on the Village Green and other issues, all linked with the planning application for the skate-park, resulted in an ICO hearing which we won, then went to First Tier Tribunal appeal which we won,, all of which involved the council in considerable time, cost and legal fees,

We think you will understand from this letter that we are extremely dissatisfied with the way in which we believe the village green application has been handled. We are far from convinced that the application was handled correctly and in line with WSCC normal practice and, it would appear, gave the FoMPF application special status outside of your 'accepted practice' and without the courtesy of informing the Parish Council that you were doing so and the reasons for it.

We have no wish to involve WSCC and ourselves in a formal complaint to the ICO but unless we receive a satisfactory response, in the form of the information we have requested or a full independent internal review, we shall do so and, dependent on a decision by the council, possibly apply for a Judicial Review of the WSCC decision.

We look forward to your reply within the statutory time limit for FOI requests of 20 days.

*Yours sincerely,*

Sue Booth  
Clerk to the Council