

## REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the TN2 Community Centre Centre, Greggs Wood Road Sherwood, Tunbridge Wells on Tuesday, 26 October 2010.

PRESENT: Mr M J Harrison (Chairman), Mr A D Crowther (Vice-Chairman), Mr R Brookbank and Mr R A Pascoe

ALSO PRESENT: Mr J R Bullock, MBE and Mr K G Lynes

IN ATTENDANCE: Mr C Wade (Countryside Access Principal Case Officer), Miss M McNeir (Public Rights Of Way and Commons Registration Officer) and Mr A Tait (Democratic Services Officer)

### UNRESTRICTED ITEMS

#### **16. Application to register land at the former Council Offices, Cranbrook as a new Village Green**

*(Item 3)*

(1) Members of the Panel visited the application site prior to the meeting. The visit was attended by Dr L Hall (the applicant); Mrs J Roberts (Tunbridge Wells BC – the landowner) and by some 15 members of the public.

(2) Correspondence from Cranbrook and Sissinghurst Parish Council was circulated to the Panel Members prior to the meeting.

(3) The Public Rights of Way Officer introduced the application. She explained the reasons for the Director of Environment and Waste's recommendations to refuse the application. These were that the Offices themselves could not have been used by the public as of right; and that the land surrounding the building had not been used by a significant number of inhabitants from a neighbourhood within the administrative parish of Cranbrook and Sissinghurst for lawful sports and pastimes (which had only taken place infrequently).

(4) Mr A Bringloe addressed the Panel in support of the application. He said that he had been employed as the most senior Officer at the Borough Council Offices in Cranbrook between 1992 and 2006. During this period there had been a number of activities such as dog walking. Children were always playing outside during Office hours (skateboarding, cycling, football). On occasions, the Office staff had needed to ask the children to keep the noise down. The decision to allow these activities had been taken following consultation with the Police, because it was considered to be preferable for the children to play there than in the road.

(5) Mr Bringloe said that the gates were never shut during the time that he had been there. It would have been pointless to lock them as so many people had keys to the site and building. He took issue with the description of the Offices in paragraph 21 of the report as a commercial building and said that because of the frequency of its

use by the public, it had many of the attributes of a village hall and was seen as such by the local residents. Its many users included the Vine Church, the Town Band (who kept their instruments there), Age Concern and the Kent Highways Project.

(6) Mr Bringloe replied to a question by Mr Pascoe by saying that users were charged for using the building.

(7) Mrs J Martin-Gutkowska said that she lived in the neighbouring Wheatfield Drive. She had personally seen the frequency with which children (including her son) had used the land to play in. She had taken pictures of her son skateboarding there whilst she had personally used the land for bird watching. Many of the residents had affirmed that their children and grandchildren played there as it was the only safe, open place in the vicinity, particularly for those children who lived in Joyce Close (which bounded the site to the North).

(8) Mr N Whitehead said that he lived opposite the Council Offices. He had seen that the site had been used as a playground by teenagers for biking, skateboarding, football, swinging on the railings, tree climbing. Dog walking and overnight camping had also taken place. These uses had continued even after the gates were locked in 2008 after the Borough Council had ceased to occupy the building.

(9) Dr L Hall, the applicant introduced herself as a local Borough Councillor. She said that the building was not a commercial building. It was a public building purchased with tax payers' money. The land was in a Conservation Area and would therefore most appropriately be designated as a village green.

(10) During Dr Hall's presentation, the Chairman ruled that unsubstantiated allegations about the motives of corporate bodies and individuals could not be considered by the Panel. He also warned her that she needed to confine her comments to the matter in hand as it was not within the Panel's remit to come to a decision on anything else.

(11) Dr Hall said that she believed that the application should be referred to a non-statutory Public Inquiry as paragraph 19 of the report had stated that the Law was silent on the question of whether a building could be granted the status of a Village Green. Another reason for an Inquiry was that witnesses had attested that the Offices were overrun by the public with only the Planning Department rooms remaining locked.

(12) Dr Hall then said that the railings on the roof of the building had been placed there in order to prevent children kept climbing onto it to retrieve their footballs. This, and other people's testimonies indicated that there had been far greater use by the public than was suggested in the report. Use had taken place after school, at weekends and during public holidays.

(13) Dr Hall questioned whether the signs at the site entrance gave a clear message to the public that they would be trespassing if they entered the site. On 11 October 2010, they had read "secured for public safety". This was not the same message that now appeared at the entrance.

(14) Dr Hall said that the Summary of user evidence set out in Appendix C to the report was misleading. She considered that placing observations of children playing

in a "Comments" column had the effect of belittling the evidence given. Many people were referring to their own children and grandchildren when they said that they had observed children at play. She did not believe that evidence of use should be confined to personal use alone.

(15) The Public Rights of Way Officer said that the reason that the report referred to a "commercial" building was because it could not be described as "residential" or "recreational". She explained that in order for the building to pass the "use as of right" test, it would have to be freely available at all times of the day. If users were given keys to the building, they were using it with permission. In respect of the land, the report accepted that those who did use the land were in fact doing so as of right.

(16) The Public Rights of Way Officer said that the summary of evidence set out in Appendix C followed a standard formula which acknowledged those who witnessed use by others but separated them out from people who were describing their own personal use. She explained that there was no duty on Officers to investigate in Village Green applications. Their responsibility was to evaluate the evidence provided by applicants and objectors.

(17) Miss J Roberts (Legal Services - Tunbridge Wells BC) said that the gates had been closed on occasions during the qualifying period and had been opened between 6 am and 10.30 pm. The roof railings to which Dr Hall had referred had been installed for Health and Safety reasons in 1998. She could not understand Dr Hall's statement that the signs had been changed recently because an invoice for the signs had been paid for in 2007 and had never been changed since then.

(18) Miss Roberts said that the Panel should ignore irrelevant statements about people's feelings on the matter, use as a cut-through, as a car park or council-related uses. Picnicking had mainly been done by Borough Council employed staff. Whilst the Borough Council accepted that there had been some use of the site car park by youths in the evenings and at weekends, this did not represent use by a significant number of people within a locality or neighbourhood within a locality.

(19) On being put to the vote, the recommendations of the Director of Environment and Waste were unanimously agreed.

(20) RESOLVED that the applicant be informed that for the reasons set out in the report, the application to register the land at the former Council Offices site at Cranbrook as a new Village Green has not been accepted.

## **17. Application to register land at Sherwood Lake in Tunbridge Wells as a new Town Green**

*(Item 4)*

(1) Members of the Panel visited the site prior to the meeting. The visit was attended by the applicant, Mr J Chappell and by Mr K G Lynes, the Local Member. The landowners, Gleeson Strategic Land Limited had been invited but did not attend.

(2) Correspondence from Gleeson Strategic Land Limited dated 19 and 22 October 2010 had previously been circulated to all Members of the Panel. Photographs taken by the Officers had also been circulated to them showing the network of paths through the woodland.

(3) The Public Rights of Way Officer introduced the application and explained the reasons for the Director of Environment and Waste's recommendations. She explained that the landowners had submitted three grounds for objection and considered each of these in turn.

(4) The Public Rights of Way Officer said that the Landowner's first ground for objection was that the evidence submitted related almost exclusively to the lake. She had, however, concluded that there was very clear evidence of use as well trodden paths criss-crossed the site, whilst the large amounts of litter indicated widespread use of the entire site. The Public Rights of Way Officer referred the Panel to Lightman J's comments in paragraph 95 of the first instance in the Oxfordshire case as well as to Lord Hoffman's comments in paragraph 67 of the House of Lords decision in the same case.

(5) The Public Rights of Way Officer said that the Landowner's second ground for objection was that the previous landowner had entered into a legal agreement with the Sherwood Park Angling Club in 1994. This agreement was contained in paragraph D of the report and certainly indicated that the Angling Club was using the land with permission. Gleesons had not, however, been able to provide any further information about the users. Nor had they been able to show in what way this agreement had been enforced. It was therefore very difficult to conclude that the general use of the site had not been as of right.

(6) The Public Rights of Way Officer said that the Landowner's third ground for objection was that a fence had been erected along the boundary with Greggs Wood Road in 2008 and that this had replaced an earlier fence. Gleesons had been asked to provide evidence of locked gates or notices but had been unable to do so.

(7) The Public Rights of Way Officer responded to several criticisms raised by Gleesons in their letters relating to procedural matters. She explained that the County Council had no investigative duty in relation to Village green applications and that it was for the landowners to provide rebutting evidence. They had been provided with ample opportunity to do so. She added that the grounds for holding a Public Inquiry were set out in the Whitney case and referred the Panel to paragraph 66 of the Court of Appeal's judgement in that case. She also responded to the Human Rights issue raised by Gleesons by referring the Panel to Lord Scott's comments in paragraph 86 of the House of Lords judgement in the Oxfordshire case.

(8) The Public Rights of Way Officer concluded her presentation by saying that, in her view, all the legal tests concerning the registration of the land as a Town Green had been met.

(9) Mr J Chappell, the applicant introduced himself as the Chair of the Friends of Sherwood Lake. He said that the local community wanted the lake and woodland registered as a Town Green as they had engaged in lawful sports and pastimes there for an uninterrupted period of more than the required period of 20 years.

(10) Mr F Williams, the local Borough Councillor, said that walkers used the site because they were attracted by the beauty of the woods with their beech trees and sweet chestnuts. They also enjoyed walking their dogs. The lake was not just used for fishing. The local Brownies and many informal users used it for other lawful

pastimes. This was why the entire local population wanted this application to succeed.

(11) The Chairman offered the representatives from Gleeson Strategic Land Ltd the opportunity to address the Panel. They respectfully declined.

(12) Mr K G Lynes (Local Member) said that that local people had lost access to the lake since it had been recently fenced off. Before the fencing had gone up, they had organised litter picking on the site in order to take care of the land. If this application were to be granted, the lake and woodland would be brought back into full enjoyment for the local residents, their children and grandchildren.

(13) On being put to the vote, the recommendations of the Director of Environment and Waste were unanimously agreed.

(14) RESOLVED that the applicant be informed that the application to register the land at Sherwood Lake, Tunbridge Wells has been accepted and that the land subject to the application be formally registered as a Town Green.