

KENT COUNTY COUNCIL

REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Canterbury City Council, Military Road, Canterbury on Tuesday, 25 May 2010.

PRESENT: Mr M J Harrison (Chairman), Mr A D Crowther (Vice-Chairman), Mr A H T Bowles, Mr R Brookbank and Mr S J G Koowaree

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

9. Application to register land at Dumpton Park Drive at Broadstairs as a new Town Green

(Item 3)

(1) A visit to the site had taken place prior to the meeting. It was attended by the applicant, Mrs L Cousins; Mr J Thompson from Thanet DC and some 12 members of the public.

(2) The Public Rights of Way and Commons Registration Officer introduced the report and the grounds for the recommendation in detail. In particular, she explained the grounds for her view that the land could not be considered to have been used by a significant of inhabitants of a neighbourhood of a locality.

(3) Mr J Keel, a local resident gave a brief description of the history of the site since he had bought one of the neighbouring properties in 1974.

(4) Mr P Heading, a local resident spoke in support of the application. He said that the land in question had been played in by children and that local events had been held on a number of occasions to celebrate such events as Easter or May Day. He provided photographs to support his claim that such use had been made of the site in 1981 and 1989.

(5) Mr Lehman, a local resident stated that he had been aware of and used the land for lawful pastimes since 1987. He said that the land in question had fostered a neighbourhood spirit since that time.

(6) Mrs D Cousins, the applicant addressed the Panel in support of her application. She provided an e.mail from the Land Registry which stated that the land in question would not be offered any class of title. Thanet DC had unlawfully attempted in February 2009 to fence this land off.

(7) Mrs Cousins asked the Panel to accept evidence of use of the land going back before twenty years before the date of application. The Chairman explained that in order for the 20 year test to be passed, it would be essential to be able to

conclusively demonstrate usage during the qualifying period rather than to rely on evidence gathered before it started.

(8) Mrs Cousins referred to the comments made by Morag Ellis QC during the *Leeds Group plc V. Leeds City Council* case. These comments supported the view that a neighbourhood should be defined as a place where people resided and need not be a logical area. The Public Rights of Way Officer replied to this point by saying that these comments were those of the Counsel involved in the case and that the Judgement in this particular case had not supported Counsel's view.

(9) Mrs Cousins disagreed with the interpretation of the law set out in paragraph 36 of the report and quoted Baroness Farrington's comments from Hansard in respect of the Oxfordshire decision. She added that the term "significant" did not mean any particular number.

(10) On being put to the vote, there were 2 votes in favour of the recommendation of the Director of Environment and Waste and 2 votes against.

(11) In accordance with Committee Procedure Rule 2.20, the Chairman used his casting vote in support of the recommendations.

(12) RESOLVED that the applicant be informed that the application to register the land at Dumpton Park Drive, Broadstairs has not been accepted.

10. Application to register land at Brickfields, Mill Lane, Bridge as a new Village Green.

(Item 4)

(1) The Panel visited the application site prior to the meeting. The visit was attended by the applicant, Mrs E Shirley; Mrs Yeats from Canterbury City Council; Mr M Esdale from Bridge Parish Council; Mr B Mummery, the tenant farmer of part of the site and some half dozen local residents.

(2) The Public Rights of Way Officer introduced the report and explained the reasons for the recommendations. Of particular importance was the inconclusive nature of the evidence in respect of the use of the Watermeadow part of the site and the degree to which use of the site could be attributed to the use of public footpaths.

(3) The applicant, Mrs E Shirley addressed the Panel in support of the application. She drew its attention to the entry points at the Watermeadow section of the site and that a number of the paths and trackways veered away from the public paths, indicating that many people steered away from them. She also said that the various water authorities had needed to read the water meter twice a year on the Brickfields part of the site. She claimed that it was therefore very unlikely that the landowners would have erected a fence to keep people out under those circumstances. She referred to the McAlpine case in support of her contention that the use of the site had been by a significant number of residents in a neighbourhood of a locality.

(4) Mrs J Apps, a local resident spoke in support of the application. She said that she had used the site for a number of lawful sports and pastimes since moving into

the neighbourhood eight years earlier and that the rural nature of the land needed to be preserved.

(5) Mr M Esdale from Bridge Parish Council spoke in opposition to the application. He said that Southern Water's meter reading was by easement and probably by a gate rather than through a gap in the fence. He added that the lawful sports and pastimes claimed by the applicants were in fact those associated with the use of the Public Footpath.

(6) Mrs J Taylor (Canterbury City Council) said that the applicant's case had not been made. Most of the witness statements covered a much shorter period than the Law required and consisted mainly of observing people walking along the footpaths with dogs. She went on to say that when the City Council had visited the site on 25 November 2009, they had noticed that much of the fencing had been broken down, strongly suggesting use by force. These fences were in place in order to prevent the horses from escaping.

(7) Mr B Mummery spoke as the tenant on behalf of the landowners. He confined his remarks to the Watermeadows portion of the site. He said that he had been grazing cattle on this land for a period of 35 years. If Village Green status were granted, he would no longer be able to do so. He added that he had met many walkers and that he had always taken a relaxed attitude when people walked across the land. He accepted that people sometimes walked away from the public footpaths but said that they did so because they were following the tracks made by cattle (which seemed to be a footpath) rather than because they were trespassing.

(8) On being put to the vote, the recommendations of the Director of Environment and Waste were carried by 4 votes to 0 with 1 Abstention.

(9) RESOLVED that a non-statutory Public Inquiry be held into the case to clarify the issues.