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Date: 19 January 2010

Dear Member

**REGULATION COMMITTEE - TUESDAY, 26 JANUARY 2010**

I enclose a revised version of Item 5 "Applications to register land as a Town or Village Green under Section 15 of the Commons Act 2005", for consideration at next Tuesday, 26 January 2010 meeting of the Regulation Committee. The amendments consist of revisions to the recommendations as well as paragraphs 12 – 14 of the report.

**Agenda No    Item**

5.    **Applications to register land as a Town or Village Green under Section 15 of the Commons Act 2006** (Pages 1 - 4)

Yours sincerely



**Peter Sass**  
**Head of Democratic Services & Local Leadership**

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## **Applications to register land as a Town of Village Green under section 15 of the Commons Act 2006**

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A report by the Director of Environment and Waste to Kent County Council's Regulation Committee on Tuesday 26<sup>th</sup> January 2010

### **Recommendation:**

#### **I recommend that**

**(a) all applications for the registration of land as a new Town of Village Green made under section 15 of the Commons Act 2006 be dealt with in order of receipt; and**

**(b) that in exceptional circumstances, where Officers consider that a particular case should be accelerated, agreement to depart from the standard policy set out at (a) above will be sought from an Informal Member Group of the Regulation Committee.**

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### **Introduction**

1. Kent County Council is the 'Commons Registration Authority' for the purposes of the Commons Act 2006 (and, previously, the Commons Registration Act 1965). In this capacity, it is responsible for holding the legal record of Common Land and Town or Village Greens for the county, known as the Registers of Common Land and Town or Village Greens, and for making any necessary amendments to the Registers using the requisite legal processes.
2. Section 15(1) of the Commons Act 2006 enables any person to apply to a Commons Registration Authority to register land as a Village Green where it can be shown that:  
*'a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;*
3. In addition, section 15(8) of the Commons Act 2006 enables landowners to voluntarily dedicate land as a new Town or Village Green.
4. Once land is registered as a new Town or Village Green it falls within the protection afforded by Victorian statutes. In particular, the Inclosure Act 1857 and the Commons Act 1876 make it an offence (amongst other things) to place any structures or materials upon a Town or Village Green, or to do anything which interrupts the use and enjoyment of the Green as a place for recreation and enjoyment. In practice, the effect of these statutes is to provide very strong protection for land which is formally registered as a Town or Village Green and, ultimately, to prevent any development from taking place on the land.

## Applications

5. The County Council receives a number of applications to register land as a new Town or Village Green every year, but in recent times the numbers of such applications have increased considerably, as is illustrated at **Appendix A** to this report. This increase is likely to be attributable to the amount of proposed development in this county as well as the increased publicity that this area of work has received following the enactment of the Commons Act 2006.
6. It is no easy task for an applicant to apply for land to be registered as a new Town or Village Green since the process involved is a quasi-judicial one. The County Council is unable to formally register any land on a capricious basis; it must be satisfied that all the relevant legal tests relating to the registration of the land as a new Town or Village Green (as set out in section 15 of the 2006 Act) have been met.
7. Each application is unique and supported by a wealth of evidence submitted for consideration by the County Council. Applications are complex to resolve and the law in this area of work is constantly changing. Unlike Public Rights of Way cases where the County Council has an investigative duty to look into the matters raised in a particular application, there is no equivalent duty (or indeed power) in relation to the determination of Town or Village Green applications. As such, some applications require non-statutory Public Inquiries in order to resolve conflicts and issues of fact and degree on the submitted written evidence.
8. All applications to register land as a new Town or Village Green are referred to the Regulation Committee (or a panel of Members from the Committee) for final decision; there are no delegated powers to Officers in relation to the determination of Town or Village Green applications. In taking decisions on these applications, the County Council has to be mindful that the only right of appeal is by way of a Judicial Review through the High Court, which is both costly and time consuming. All applications are therefore given very careful consideration both by Officers and Members before a decision is made.

## Policy

9. Given the increasing number of applications received and the fact that these applications are both complex and time-consuming to resolve, it is inevitable that a backlog of applications has arisen. At present, there is a delay of approximately six months before work is able to commence on any particular application. A schedule of outstanding applications is attached at **Appendix B**.
10. In fairness to all applicants, it has been the policy of the Commons Registration Team to deal with these applications strictly in order of receipt. However, as is perhaps human nature, applicants and landowners affected by such applications often tend to the view that their particular application has a far greater priority than others. Whilst this is understandable, the reasons cited for accelerated resolution often relate equally to one case as they do to the next.

11. At present there is no written policy relating to the resolution of such applications. I therefore wish to formalise the current arrangement of dealing with applications in order of receipt by seeking the endorsement of the Committee to this approach.

### **Accelerated applications**

12. In formalising the policy, it is also important that the County Council does not unduly disenfranchise applicants and/or landowners in cases where there are extreme extenuating circumstances. For example extreme implications upon any of the parties involved in respect of funding, legal or planning issues, and indeed personal health which delay of the resolution may worsen.

13. Once an application has been received the County Council is under a legal duty to process it. It will normally take a minimum of six months to process such an application from start to finish. It may therefore be necessary for an application to be accelerated, but it is anticipated that this would only be used on exceptionally rare occasions.

14. Should such a circumstance arise, it is proposed that agreement to accelerate the application should be sought from an Informal Member Group consisting of the Chairman and the vice-Chairman of the Regulation Committee together with one other member from the Committee. This would enable the issue to be dealt with more expeditiously and avoid the need for a Member Panel meeting to be arranged (which can take several weeks). The purpose of seeking agreement from such an Informal Member Group would also assist in the avoidance of any potential accusations of bias at a later date.

### **Recommendations**

15. I recommend that:

- (a) all applications for the registration of land as a new Town of Village Green made under section 15 of the Commons Act 2006 be dealt with in order of receipt; and
- (b) that in exceptional circumstances, where Officers consider that a particular case should be accelerated, agreement to depart from the standard policy set out at (a) above will be sought from an Informal Member Group of the Regulation Committee.

### **Background documents**

APPENDIX A: Facts and figures relating to Village Green applications received

APPENDIX B: Schedule of outstanding applications

### **Contact:**

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