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Date:

Dear Member

REGULATION COMMITTEE - TUESDAY, 17 MAY 2011

I am now able to enclose, for consideration at next Tuesday, 17 May 2011 meeting of the Regulation Committee, the following report(s) that were unavailable when the agenda was printed.

Agenda No	Item
5	<u>Update on Home to School Transport Appeals (Oral Report) (1 - 2)</u>
7	<u>Update on recent Public Rights of Way cases (3 - 4)</u>

Yours sincerely

Peter Sass
Head of Democratic Services

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Dear Geoff

I am very well thank you and I hope you are too.

You are correct that transport appeals are not a statutory requirement.

The reason why transport appeals exist in Kent and in my opinion the reason why they are and will continue to be legally necessary is set out below-

1. The education legislation provides KCC with a broad discretion to pay the whole or part of the cost of school transport.

2. Under the existing transport policy (in addition to providing free transport where it is legally required to do so) KCC has decided to exercise that discretion in relation to certain categories of pupil e.g. (and in general terms) those attending their nearest denominational school beyond statutory walking distance and those attending grammar school beyond that distance. KCC does not offer free or directly subsidised transport to other categories of pupil to whom it could potentially do so.

3. Under the proposed new transport policy, if adopted, (in addition to providing free transport where it is legally required to do so) KCC will not provide free transport or directly subsidised transport to any new entrants to any category of school.

4. It is well established in administrative law that when given a discretionary power a local authority must not fetter that discretion i.e. it may not say that we will never consider exercising its discretion in relation to categories of individuals who may otherwise potentially benefit from the exercise of that discretion. If a local authority does behave in such a manner it will most probably be behaving unlawfully and its actions will be subject to challenge by way of judicial review. Any such challenge would most probably result in the local authority being ordered by the Court to consider whether or not it should exercise its discretion based upon the facts of the individual applicant.

5. One way in which local authorities can avoid successful legal challenge in these circumstances is to incorporate a safety valve into their policy which allows for awards to be made in exceptional circumstances to those who would not otherwise fall within the published policy. In Kent this is the function which the appeals procedure undertakes, as it allows for awards to be made to those who do not meet the requirements of the published policy and providing that occasionally awards are made following an appeal it provides evidence that KCC is not fettering its discretion. It also carries out a second necessary function of offering an appeal where mistakes have been made.

6. Thus, if KCC was to dispense with its Member appeals procedure it would either have to change its policy to allow for awards to be made by officers (with an appeals stage to a more senior officer) in exceptional circumstances or it would have to risk facing judicial review claims from dissatisfied parents.

7. I also agree that restricting the right to appeal to representations made by the complainant's local Councillor would most probably be found to be procedurally unreasonable in a judicial review sense, in the post Human Rights Act environment, because it does not comply with the requirements of Article 6 the "right to a fair trial".

Best Regards

Mark Radford

Consultant

for and on behalf of Geoffrey Wild, the Director of Governance and Law.

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From: Rudd, Geoffrey - BSS GL

Sent: 10 May 2011 16:29

To: Radford, Mark - BSS GL

Cc: Bagshaw, Scott - ELS SSP; Tait, Andrew - BSS GL

Subject: Transport Appeals to the Regulations Committee Panels

Hi Mark

Hope you are fit and well.

We have been asked about the legal basis for Transport appeals and I attach an e-mal and enclosures relating to that. The question has been asked by County Councillor Mike Whiting.

My understanding is that whereas Admissions Appeals are governed by legislation set out in the Admissions Code which is a legally binding document ther isn't anything quite like that for Transport Appeals. I accept that Natural Justice would require that someone should have the right to appeal a decision but I am not sure where that stands in law. A few years ago parents didn't attend the appeals and there case was put by their County Councillor. It appears other LAs may do something similar to this. The County Council then resolved at one of its meetings (but I can't recall when) that under the Human Rights Act parents had the right to come to an appeal themselves and this has been the practice ever since.

I would welcome your views on this.

No doubt you will advise me about costs involved for your advice.

Many thanks

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Update on recent Public Rights of Way cases

A report by the Head of Countryside Access to Kent County Council's Regulation Committee on Tuesday 17th May 2011.

Recommendation:

I recommend that Members receive this report

Introduction

1. As Members will be aware, the Public Rights of Way team deals with a variety of cases in relation the modification of the legal record of Public Rights of Way, known as the Definitive Map. Copies of the Registers of applications are available on the County Council's website at:
http://www.kent.gov.uk/environment_and_planning/countryside_access/definitive_map_and_statement/changing_the_network.aspx
2. The purpose of this report is to bring to the attention of the Committee to two recent cases of note.

Claimed Public Footpaths on the former Bayham Abbey Estate in Tunbridge Wells

3. Members will be aware of this ongoing and longstanding case which was first dealt with by the Committee at a Member Panel meeting on 5th April 2005. At that meeting, it was resolved to reject an application made by the Ramblers' Association under provisions in the Wildlife and Countryside Act 1981 to record on the Definitive Map several Public Footpaths running across the Bayham Abbey Estate. Following a successful appeal against the County Council's decision, Definitive Map Modification Orders were made in relation to two long distance route across the Estate. Objections to the Orders were made by the landowners. The County Council, with this Committee's approval, retained a neutral stance at the subsequent Public Inquiry which was held in December 2010. The Public Inquiry was chaired by an Inspector appointed by the Planning Inspectorate and heard a considerable amount of evidence both in support of the application and in objection to it.
4. The Inspector's decision was issued on 1st April 2011. The Inspector found that there was insufficient evidence of use throughout the relevant twenty year period to record the routes as Public Footpaths. He also concluded that, due to various obstacles to use (including a missing bridge and locked gates), it was not physically possible for the public to have used the routes without interruption. Therefore, the Inspector refused to confirm the Definitive Map Modification Orders and rejected the application.
5. Now that a final decision has been taken and all parties have been informed accordingly, the matter has now been concluded and no further action is required by the County Council. The only right of appeal against the Inspector's decision is by way of an application for Judicial Review in the High Court (within three months of the date of the decision). It is not known at this stage whether it is the intention of the Ramblers' Association to appeal against the decision.

Proposed Diversion of Public Footpath SD284 at West Kingsdown

6. This application was considered by members of a Regulation Committee Panel on the 29th January 2010. A site visit was held and, during the more formal meeting, Members were addressed by the landowner and representatives of the two objectors, the Parish Council and the Ramblers Association. Despite the objections, it was agreed that the County Council should make a Public Path Diversion Order. Following the making of this Order, formal objection was lodged by the two objectors. There were no other duly made objections from any other source.
7. As a result of further consideration, the Parish Council withdrew its objection. However, the matter had to be referred to the Planning Inspectorate for resolution because the Ramblers' Association refused to withdraw its objection. The Planning Inspectorate has decided to hold a public Hearing, as the Ramblers' Association representative has exercised his right to be heard.
8. The Ramblers Association Kent Executive has now withdrawn the objection lodged on its behalf. However, the County Council has been informed by the Planning Inspectorate that the Hearing, programmed for 5th July 2011, still has to continue because the representatives who objected on behalf of the Ramblers Association and the Parish Council wish to maintain those objections in their own right. The County Council has written to the Planning Inspectorate expressing dissatisfaction at this turn of events but to no avail.

Recommendation

9. I RECOMMEND Members receive this report.

Contact Officer:

Mr. Chris Wade

Public Rights of Way Principal Case Officer

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