

KENT COUNTY COUNCIL

REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Medway Room, Sessions House, County Hall, Maidstone on Tuesday, 27 April 2010.

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

ALSO PRESENT: Mr R Brookbank, Mr R F Manning and Mrs E M Tweed

IN ATTENDANCE: Mr C Wade (PROW Team Manager (definition)), Miss M McNeir (Public Rights Of Way Officer (Definition Team)), Mrs A Khroud (Solicitor) and Mr A Tait (Democratic Services Officer)

UNRESTRICTED ITEMS

7. Application to register land at Beecholme Drive, Bybrook as a new Village Green *(Item 3)*

(1) Mr S J G Koowaree explained that he was a Member of Ashford Borough Council. He had, however, taken no part in any decision taken by the Borough Council and was therefore able to approach this application with an open mind.

(2) The PROW Team Manager (definition) introduced the report in detail and explained the grounds for the recommendations set out in paragraph 33 of the report.

(3) Mrs S Smith from Ashford Borough Council spoke in opposition to the application. She said that the Borough Council did not accept the need for it to be able to demonstrate formal appropriation of the land and that the public was in fact using this land "by right" rather than "as of right". The Borough Council could also not agree with the Inspector's conclusion that it should have ring-fenced each separate rental income, as this would have been impractical. In addition, the Borough Council could not accept the Inspector's definition of the claimed neighbourhood as a cohesive area.

(4) In response to Mrs Smith, the PROW Team Manager (definition) said that these points, previously put in writing by Mrs Smith, had been put to the Inspector. She had commented that these points had already been considered by her in making her recommendation and that she saw no reason to change the conclusions that she had reached.

(5) Mrs E M Tweed was present for this item pursuant to Committee Procedure 2.24 and spoke in favour of the application. She said that she was aware that the land had been used for a twenty year period and that the reasons for low attendance at the non-statutory public inquiry were that it had been held in very cold weather on one day in February, making it difficult for people to attend. In addition, a fair proportion of the local residents had moved into the area within the twenty year

period and were therefore not in a position to affirm that they themselves had used the land for lawful sports and pastimes for the entire period.

(6) Mr R A Pascoe moved, seconded by Mr A D Crowther that the recommendations set out in the report be adopted.

Carried Unanimously.

(7) RESOLVED that for the reasons stated in the Inspector's report dated 25 February 2010, the applicant be informed that the application to register the land at Bybrook Road, Kennington has been accepted and that the land subject to the application be formally registered as a Village Green.

8. Application to register land known as King George Playing Field at Hawkhurst as a new Village Green

(Item 4)

(1) The Public Rights of Way Officer introduced the report and the grounds for the recommendation in detail. In particular, she explained the advice from Counsel that the land was held by the Parish Council on a valid Charitable Trust and that the effect of the terms of the deed meant that the use of the land by the public had been "by right" rather than "as of right."

(2) Mr C Maile from Planning Sanity spoke on behalf of the applicants. During his presentation, the Chairman in accordance with the "Conduct of Debate" provisions set out in the Constitution warned Mr Maile that he was committing a breach of order and that he should desist.

(3) Mr Maile made numerous points during his presentation. The main points are summarised below together with the response from the Public Rights of Way Officer:-

(a) The issues raised by the application were of such a degree of complexity that they needed to be aired at a non-statutory public inquiry. The Public Rights of Way Officer replied that the purpose of such inquiries was to establish matters of fact. In this instance, the facts were clearly established. The Legal Services Officer referred to correspondence she had held with DEFRA in which the latter had given its view that there would be no purpose in holding an inquiry once it had been established that the use of the land was by right.

(b) The judgement given in the Oxfordshire case demonstrated that Authorities were not exempt from having land registered. Even Crown land could be so registered. The Public Rights of Way Officer replied that this was correct. The question was the manner in which the land was owned. Each case had to be assessed on its individual merit.

(c) The Commons Act 2006 enabled landowners to register their own land. It would be a strange law indeed if the same facility did not apply to a third party. The Public Rights of Way Officer replied that this was a new provision which enabled voluntary registration. This did not apply in this instance where registration was founded on the English law of prescription.

(d) Section 15 (7) (b) of the Commons Act 2006 enabled the twenty year qualifying period to commence at any point before the use of the land had become by right. Even if the view of Counsel that this had occurred in 1935 was accepted, it would still be possible to register on the basis of the situation which pertained between the years 1915 and 1935. The Public Rights of Way Officer replied that no evidence had been presented to the Registration Authority to indicate whether the land had been used during that period or any twenty year period prior to that.

(e) Who actually controlled the land – the Parish Council or the Charity Commission? If, as was stated by the Parish Council, the Parish Council was acting as the sole trustee, then there were two named individuals on the Charity Commission's website who were not Members of the Parish Council. With the permission of the Chairman, the Clerk to Hawkhurst Parish Council explained that this was an error which would be corrected when he next communicated with the Charity Commission. The purpose of naming individuals on that particular website was to enable the public to identify the actual Members of Hawkhurst Parish Council, which was indeed the sole trustee.

(f) The Parish Council rented the land to various clubs for the purposes of playing collective sports. Once they had done this, the land ceased to be public and the Trust argument ceased to be valid. With the permission of the Chairman, the Clerk to Hawkhurst Parish Council replied that it was true that the football club was charged for the provision of changing facilities and for maintenance of the football pitch. All monies generated in this way were spent on the Charity and could not be spent anywhere else in the Parish. It was recognised that people could in theory walk across the football pitch during a game.

(4) After Mr Maile had completed his remarks, the legal Services Officer stated that she had heard nothing to suggest to her that the recommendations in the report were unsafe. In her opinion, all the facts of the case clearly demonstrated that the land was in use by right and not as of right.

(5) Mr R Harding (Chairman of Hawkhurst Parish Council), Mr B Cova (Hawkhurst Community Partnership) and Mr A McTrusty (Clerk to Hawkhurst Parish Council) addressed the meeting in opposition to the application. They expressed satisfaction with the recommendations in the report.

(6) Mr R F Manning was present for this item pursuant to Committee Procedure Rule 2.24 and spoke. He informed the Panel that he had been asked to become involved from the outset and had soon become aware of the complex nature of the case. He was impressed by the conclusions of Counsel and had nothing further to add.

(7) Mr R A Pascoe moved, seconded by Mr A D Crowther that the recommendations set out in paragraph 31 of the report be agreed.

Carried Unanimously

(8) RESOLVED that the advice from Counsel be endorsed and that the applicant be informed that the application to register the land known as King George

Playing Field at Hawkhurst as a new Town or Village Green has not been accepted.