

KENT COUNTY COUNCIL

REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Kings Hall, Herne Bay on Monday, 13 June 2011.

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

ALSO PRESENT: Mrs J P Law

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

UNRESTRICTED ITEMS

9. Application to register land at Hartley Woods, Hartley as a new Village Green (Voluntary Registration)

(Item 3)

(1) The Public Rights of Way Officer briefly explained that a large part of Hartley Woods in the ownership of Southwark LB had been registered in 2009. As a consequence, Hartley PC had offered to voluntarily register the remainder of the land which was under its ownership.

(2) As this was a voluntary registration, the only matters for the Panel to consider were whether the applicants actually owned the land; and whether use of the land would be by people living in a locality.

(3) The necessary checks had proved that Hartley PC was indeed the landowner, whilst it was appropriate that the locality should be defined as the civil parish of Hartley.

(4) On being put to the vote, the recommendations of the Head of Countryside Service were unanimously agreed.

(5) RESOLVED that the applicant be informed that the application to register the land at Hartley Woods in Hartley has been accepted, and that the land subject to the application be formally registered as a Village Green.

10. Application to register land known as The Downs at Herne Bay as a new Town Green

(Item 4)

(1) Members of the Panel visited the application site shortly before the meeting. Mr P Rose, the applicant and Ms R McIntyre were present.

(2) Mrs J N Law was present for this item pursuant to Committee Procedure 2.24.

(3) Also present at the meeting were Mr P Rose (applicant) and Ms R McIntyre (supporter), Mrs J Taylor (Legal Services – Canterbury CC) and Mrs R Doyle (Canterbury CC Portfolio Holder for Environment and Street Scene).

(4) The Public Rights of Way Officer introduced the application, which had been made under Section 15 of the Commons Act 2006. She informed the Panel that it had been accompanied by more than 1000 user evidence questionnaires, three letters of support and a petition containing 70 signatures.

(5) Ownership of the land was predominantly by Canterbury City Council who had objected that the land was not capable of being registered.

(6) In 1970 the Commons Commissioner had determined that the land (which at that time was mainly owned by Herne Bay Urban District Council) should not be registered.

(7) The Public Rights of Way Officer briefly explained that there was no dispute that the land had been used for lawful sports and pastimes by a significant number of inhabitants in the locality of Herne Bay for a period of over twenty years up to the date of the application. The outstanding issue was whether it has been used “as of right”.

(8) The Public Rights of Way Officer explained that in order for use of the land to have been “as of right”; use would have needed to be without force, stealth or permission. It was clear that neither force nor stealth had been used. The critical question was whether it had been used without permission.

(9) In order to ascertain whether use had been with or without permission, it was necessary to investigate the purposes for and powers under which it had been acquired. The City Council’s records were incomplete in this regard, although it claimed that the land had mainly been acquired under the Public Health Act 1875 as open space for the use and enjoyment of the public.

(10) The Public Rights of Way Officer said that such land as had been acquired under the 1875 Act would, in her and Counsel’s opinion, be incapable of registration as use would have been “by right” rather than “as of right.” She added that the applicant disputed this interpretation of the Law and that it had never been tested in the Courts.

(11) The Public Rights of Way Officer then said that the applicant had argued that it would be wrong to place reliance on entries in the Register of Council-owned land which referred to “presumably Public Health Act 1875.”

(12) The Public Rights of Way Officer concluded her presentation by saying that Counsel had advised that there were a large number of unanswered questions in respect of how the land was held by the City Council. The best solution would be to hold a Non-Statutory Public Inquiry as this would enable the individual parcels of land to be examined in more detail. She therefore recommended accordingly.

(13) Mrs Law asked whether the petition was used as evidence as some of the signatories lived outside the locality of Herne Bay. The Public Rights of Way Officer

replied that the petition was merely a request to Canterbury City Council to support the application. It was the User Evidence forms which had enabled the locality to be identified.

(14) Mrs J Taylor (Canterbury City Council) explained that the parcels of land had originally been acquired by Herne Bay Urban District Council. The records had been damaged during the floods of 1953.

(15) Mr Pascoe asked why the Byelaws were considered to be important. The Public Rights of Way Officer replied that their significance was that they purported to show that the land had been acquired under the Public Health Act 1875.

(16) Mr Rose (applicant) requested the Panel to register the land as a Village Green without going to a non-statutory Inquiry. In support of this request, he said that his legal advisor disputed that land acquired under the Public Health Act 1875 could not be registered as a Village Green.

(17) Mr Rose then said that he also disputed that the land was held under the 1875 Act. He quoted Vivian Chapman QC in support of his view that it was incumbent on Canterbury CC to prove that it held the land under the 1875 Act and that the Panel should not allow the City Council to assert that this might be the case and then claim that the applicant needed to disprove it. In this instance, the City Council could only demonstrate that 3% of the land in question was held under that Act.

(18) Mr Rose continued by saying that the City Council itself agreed that 50% of the application was not held under the 1875 Act. It was either not registered to the Council, or it was registered as a "long user" or had been acquired under the Coast Protection Act.

(19) Mr Rose then said that although the City Council claimed that it owned the other 50% of the land by virtue of the 1875 Act, it had failed to provide the necessary evidence to this effect in the 21 months since the application had been made. It was therefore unlikely that they would ever be able to do so.

(20) Mr Rose spoke in detail about the various parcels of land. He provided the Panel with a laminated map, accepting the Chairman's observation that one of the title numbers was incorrect.

(21) Members of the Panel considered that they did not have sufficient detailed evidence to make a decision at this point and unanimously agreed the Head of Countryside Access Service's recommendations.

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