

## KENT COUNTY COUNCIL

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### REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Council Chamber, Ashford Borough Council on Tuesday, 28 June 2011.

PRESENT: Mr M J Harrison (Chairman), Mr A D Crowther (Vice-Chairman),  
Mr H J Craske Mr T Gates

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

#### **11. Application to register land at Princes Parade, Seabrook as a new Town Green** *(Item 4)*

(1) Members of the Panel visited the site of the application prior to the meeting. The visit was attended by the applicant, Mrs D Maskell; the Local Member, Mr C J Capon and three other local residents.

(2) The Public Rights of Way Officer introduced the application, explaining that it had been made by Mrs D Maskell under the Commons Act 2006. The application had been supported by 57 user evidence questionnaires. The land was owned by Shepway DC, who had objected because, in their view, there had not been 20 years continuous use of the site by a significant number of residents, and because use had not been “as of right.”

(3) The Public Rights of Way Officer set out the legal tests that needed to be met if registration were to take place. She said that the land had been used for the purposes of lawful sports and pastimes by a significant number of inhabitants of the East Ward of the Hythe Town Council administrative area (the “locality”). In addition, such use as there had been had been “as of right” and had taken place up to the date of application.

(4) The Public Rights of Way Officer informed the Panel that most (86%) of the site had been fenced off during 2002/03 for the purpose of dredging operations. Although legislation had been passed which exempted closure of the site during periods of statutory enactments (such as the outbreak of Foot and Mouth disease), this event did not qualify for such an exemption. The same applied to the eastern end of the site, which had been closed off in the mid 1990s and also during 2002 during construction of the car park. The public footpaths and their abutting grass verges were incapable of registration. For these reasons, she recommended that the land in question should not be registered as a Village Green.

(5) Mrs D Maskell (Applicant) said that in her view, the Commons Act could be interpreted to enable the Panel to disregard the period when Shepway DC had erected fencing to be disregarded. This was because the Law used the term “any

enactment” when it permitted the Registration Authority to do so. The site had been fenced off to enable Shepway DC to carry out its duties under the Health and Safety at Work Act 1974. She pointed out that Shepway DC’s bundle itself claimed that the work was undertaken in such a way as to allow some public access to part of the site at all times.

(6) Mrs Maskell then said that the user questionnaires indicated that the site had been used immediately after removal of the fencing, demonstrating its continued accessibility.

(7) Mrs Maskell showed the Panel an aerial photograph and identified a green strip most of the way around the site and a triangular area at one end. She said that these areas were not Public Rights of Way and were therefore capable of registration.

(8) Mrs Maskell concluded her presentation by saying that the Panel Members should have particular regard to the term “any enactment” in the Commons Act 2006, bearing in mind that the only reason that Shepway DC had fenced the area off was to enable it to carry out its statutory duties rather than to exclude the public for any other reason.

(9) Mr Timothy Moreshead (Landmark Chambers) spoke on behalf of Shepway District Council. He said that the District Council agreed with the recommendation but that it still considered that use had not been by a significant number of people in a locality.

(10) Mr Moreshead disagreed with Mrs Maskell’s legal interpretation of the term “any enactment” by saying that Parliament had intended this term to cover those periods when it had taken the use of the land out of the control of the landowner rather than whenever the landowner(s) were carrying out their legal duties.

(11) On being put to the vote, the recommendations of the Head of Countryside Access were carried unanimously.

(12) RESOLVED that the applicant be informed that the application to register the land at Princes Parade, Seabrook as a new Town Green has not been accepted.

## **12. Application to register land at Westwell Lane, Westwell as a new Town Green** *(Item 5)*

(1) Members of the Panel had visited the application site prior to the meeting. The visit was attended by Mr R Butcher (Westwell Parish Council) and Mr D Robey, the local ward Member from Ashford Borough Council.

(2) The Public Rights of Way Officer introduced the application, which had been made by Westwell Parish Council under the Commons Registration Act 2006. Attempts (including consultation with the Parish Council and the Land Registry Office) to identify the landowner had failed and no response had been received to consultation.

(3) The Public Rights of Way Officer briefly outlined the legal tests which the application needed to meet in order for registration to take place. These had all been met and she was therefore recommending that registration should take place.

(4) The Panel unanimously agreed the Head of Countryside Access' recommendations and informed the appellants that there was no need for them to make representations.

(5) RESOLVED that the applicants be informed that the application to register the land at Westwell Lane, Westwell as a new Village has been accepted, and that the land subject to the application be formally registered as a Village Green.

### **13. Application to register land known as Pilgrims Way, Canterbury as a new Village Green**

*(Item )*

(1) Members of the Panel had visited the application site prior to the meeting. The visit was attended by Mr S Bax (applicant), Mrs J Taylor (Canterbury City Council) and some 11 members of the public. These included Rev Walling from Barton Residents Association.

(2) Correspondence from Dr S Bax in response to the report had been circulated to the Panel before the meeting. Correspondence from Mr M J Northey (Local Member) in support of the application was tabled.

(3) The Public Rights of Way Officer introduced the application, which had been made under the Commons Act 2006. It had been accompanied by 8 user evidence questionnaires. The land in question had been acquired by Canterbury City Council in 1926 under the Allotments Act.

(4) The Public Rights of Way Officer reported that Canterbury City Council had objected to the application on the grounds that the land had not been used by a significant number of the residents of the locality for the purposes of lawful sports and pastimes over the required period. It had refused permission for a BMX track to be built in 1997 and had removed BMX jumps erected by local youths in 2001.

(5) The Public Rights of Way Officer set out the legal tests that needed to be met in order for registration to take place. She said that, in her view, use had been as of right for a period of twenty years up to the date of the application.

(6) The Public Rights of Way Officer then said that the user evidence questionnaires and evidence provided by the City Council had indicated that use of the land had been trivial and sporadic. For this reason, it could not be said that use had been for lawful sports and pastimes or by a significant number of inhabitants of a particular locality or neighbourhood within a locality. Accordingly, she recommended that the application should not be accepted.

(7) Mr Murphy, a local resident said that he had lived opposite the site since 1985. he had played ball games since 1986. Numerous people had used the site, including an elderly lady who used to walk her dog. He asked the Panel to ensure that this part of Canterbury remained open for recreational use by local residents.

(8) Dr S Bax (applicant) said that the only question that now needed to be addressed was whether use had been by a sufficient number of local people for the landowners to have been made aware that the land was in use. A number of people had observed use which was more widespread than the report suggested, because it had only taken actual claimed usefully into account - although observed use had been reported.

(9) Dr Bax produced an aerial photograph taken in 1998, which he said indicated that the grass had been trimmed and footpaths laid out. Other photographs suggested that the land had been walked on and that the City Council had been aware of this to such an extent that it had cut the grass at least once a year since 1987.

(10) Dr Bax concluded his presentation by saying that use of the land had been sufficient for Canterbury City Council to have been aware of it. However, it had chosen not to take steps to put a stop to this use. He therefore suggested that the Panel should either confirm the Village Green status or defer the application to enable a non-statutory public inquiry to examine the "significant usage" question in greater detail. The land was needed as an open space for local residents.

(11) The Public Rights of Way Officer commented on Dr Bax' presentation by saying that the Members of the Panel were not allowed to take the question of the need for open space into consideration. Nor could it now consider the new evidence provided by the aerial photograph and the user questionnaire from Mr and Mrs Murphy. The applicant had been asked to provide such information on 10 December 2010. This would have been the appropriate time for this to have been given to the officers. It was important to note the judgement of the Supreme Court that the use of the land needed to be of such amount and in such manner to indicate to the City Council that it was of *general* use by the community.

(12) Mrs J Taylor (Canterbury City Council) said that she was satisfied with the recommendation to not accept the application. She said that four allotment owners had given evidence that there had been very little use. Two ladies had walked their dogs on the land for a period but this had stopped. Since that time, use had been very occasional indeed, which was the reason that the City Council had not noticed it. On the one occasion in 2001 that the land had been widely used as a BMX track, the City Council had asked the boys to leave.

(13) Dr Bax summed up his case by saying that its primary point was whether the landowner would have known that use was taking place. In his view there was enough evidence to demonstrate that the City Council should have been aware.

(14) The Chairman assured Dr Bax that his request for consideration of the application to be deferred pending a non-statutory public inquiry would be recorded in the Minutes.

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

(16) RESOLVED that the applicant be informed that the application to register the land at Pilgrims Way, Canterbury as a new Village Green has not been accepted.

