

# AGENDA

## Kent County Council

### REGULATION COMMITTEE MEMBER PANEL

Thursday, 21st February, 2008, at 1.00 pm  
Waterton Lee - Invicta House, County Hall,  
Maidstone

Ask for: **Andrew Tait**

Telephone **(01622) 694342**

*Tea/Coffee will be available 15 minutes before the meeting*

#### **UNRESTRICTED ITEMS**

*(During these items the meeting is likely to be open to the public)*

1. Membership: Mr M J Harrison (Chairman), Mr A D Crowther (Vice-Chairman), Mr I S Chittenden, Mr T Gates and Mr I T N Jones.
2. Declarations of Interest by Members for items on the agenda for this meeting.
3. Application to register a Village Green at Hartley Woods, Hartley (Pages 1 - 24)
4. Other Items which the Chairman decides are urgent

Peter Sass  
Head of Democratic Services and Local Leadership  
(01622) 694002

**Wednesday, 13 February 2008**

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## **Application to register land as a new Village Green at Hartley Woods, Hartley (nr. Longfield)**

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A report by the Director of Environment and Waste to Kent County Council's Regulation Committee Member Panel on Thursday 21<sup>st</sup> February 2008

Recommendation: I recommend that the County Council endorses the advice received from Counsel that a non-statutory Public Inquiry is held into the case to clarify the issues

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Local Member: Mr. D. Brazier

Unrestricted item

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### **Background**

1. The County Council has received an application to register land at Hartley Woods, Hartley (nr. Longfield) as a new Village Green from the Hartley Parish Council ("the applicant"). A plan of the application site is shown on Appendix A. Objection to this application was lodged by the landowner, Southwark Council.

### **Previous resolution of the Regulation Committee**

2. On the 29<sup>th</sup> November 2007, a Regulation Committee Member Panel was appointed to consider this application. A copy of the report is attached at Appendix B. The Officer's recommendation was that the application be accepted and the land registered as a Village Green. However, following very late representations received from the solicitor acting on behalf of Southwark Council, the panel decided to defer a decision until further legal submissions had been received from Southwark Council. Members also agreed that the County Council would seek its own legal advice from Counsel on this matter.

### **Submissions received from Hartley Parish Council**

3. Following the meeting, a letter was received from Hartley Parish Council responding to some of the issues which had been raised at the meeting itself. A copy of the letter is attached at Appendix C. The main points can be summarised as follows:
  - (i) Although the Parish Council welcomes further discussions with Southwark Council regarding the future use of the land, The Parish Council has no confidence that an acceptable agreement would be reached due to a repeated lack of engagement from Southwark Council;
  - (ii) Use of the land has been 'as of right' and Southwark Council has made no attempt to prevent such use or to advertise the fact that local people using the land had no right to be there;
  - (iii) Hartley Woods is extensively used for recreational walking, dog walking and a number of recreational activities as is demonstrated by the number of informal footpaths which criss-cross the land; and
  - (iv) When Southwark Council tried to fence off the land, this was met with resistance from local people and the Parish Council received a number of

letters in objection. This further demonstrates the significant use of the land by local people.

4. Enclosed with the letter were three additional user evidence forms from people asserting use of the land since the 1960s, ten letters of complaint sent to the Parish Council regarding the fencing erected by Southwark Council in April 2006, and a campaign leaflet relating to the Parish Council elections in May 2007 which refers to the desire to secure open access to Hartley Woods.

### **Submissions received from Southwark Council**

5. Legal submissions prepared by George Lawrence QC were received from Southwark Council (“the objector”) on the 11<sup>th</sup> January 2008. A copy of the submissions are attached at Appendix D. In summary, Southwark Council considers that the application should be rejected on the following grounds:
  - (i) Use of the land has not been ‘as of right’ throughout the 20 year period (1985 to 2005) due to the publication of a leaflet encouraging use of the land;
  - (ii) Use has not been predominantly by residents of the locality as the leaflet was circulated in south-east London and people from that area would be likely to have visited the land the claimed land as a result of the invitation contained in the leaflet; and
  - (iii) Use has not been by the residents of a defined locality as the boundaries of Hartley parish were changed in the early part of the required 20 year period.

### **Letter received from local residents**

6. Since the Regulation Committee Member Panel meeting in November, two further letters have been received from local residents. Copies of these letters are attached at Appendix E (Mrs. Sharpe) and Appendix F (Dr. Roberts).
7. Mrs. Sharpe, who attended the meeting in November, wrote to object to the land being registered as a Village Green. She is of the view that as Southwark is one of the poorest boroughs in the country it was unfair that they should be expected to maintain the land for the use of the residents of Hartley, especially as there are already 300 acres of under-used amenity land in the parish along with a large network of footpaths.
8. Dr. Roberts also wrote to express concern that, in his view, very few local residents were aware of the application being made by Hartley Parish Council. Dr. Roberts enclosed with his letter a copy of an article which appeared in the Hart Magazine (a local publication sponsored by the local churches and distributed throughout Hartley) in July 1993. The article recounts the history of Hartley Woods and refers to a proposal whereby “*the woods (the Southwark section) would be vested in The Woodland Trust who would take over the management i.e. open up the footpaths at present overgrown and choked...*”. Dr. Roberts considers that this clearly brings into question the statements which declare that the woodland has been freely accessible for the last 20 years and thus questions the validity of the application.

## Further consideration

9. In light of the further submissions made by the applicant and the objector, Counsel's advice has been sought. The advice received was that there are a number of factual issues which cannot be resolved through further written exchanges of representations and as such the best way forward would be for a non-statutory Public Inquiry to be held to clarify the issues.
10. Although Counsel did not feel that, on the face of it, the leaflet would necessarily prevent use by local residents from being 'as of right', it was considered that further information was required regarding the circulation of the leaflet (for example, where and to whom exactly was it circulated?) in order to reach an informed decision. Counsel also considered that further clarity was required regarding the exact parts of the land being used and how much of the use was attributable to walking on the Public Footpath which crosses the land.
11. In my view, before any final decision is taken, the County Council should heed Counsel's advice to hold a non-statutory Public Inquiry to test the evidence. As there is clearly a significant body of user evidence relating to the land in question, it would be unwise for the application to be refused before further investigation had taken place.
12. However, given the uncertainties regarding the leaflet and the locality as well as the concerns raised by Counsel, it is felt the County Council would be placing itself in a precarious position were it simply to go ahead and register the land. The letters from local residents regarding the overgrowth of the paths during the early 1990s also raise serious questions regarding accessibility and the extent of the usage of the land during the *whole* of the 20 year period (i.e. between 1985 and 2005) which would be best addressed at a Public Inquiry.

## Recommendation

13. I recommend that Members endorse the advice received from Counsel and that a non-statutory Public Inquiry be held into the case to clarify the issues.

## Appendices

- APPENDIX A – Plan showing the application site
- APPENDIX B – Copy of the report presented to Regulation Panel on 27<sup>th</sup> November 2007
- APPENDIX C – Copy of letter from Hartley Parish Council
- APPENDIX D – Copy of legal submissions made by Southwark Council
- APPENDIX E – Copy of letter received from Mrs. I. Sharpe (local resident)
- APPENDIX F – Copy of letter received from Dr. J. Roberts (local resident)

Accountable Officer:

Dr. Linda Davies – Tel: 01622 221500 or Email: linda.davies@kent.gov.uk

Case Officer:

Miss. Melanie McNeir – Tel: 01622 221511 or Email: melanie.mcneir@kent.gov.uk

Background Documents: *The main file is available for viewing on request at the Environment and Waste Division, Environment and Regeneration Directorate, Invicta House, County Hall, Maidstone. Please contact the case officer for further details.*

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**Application to register land  
Hartley Woods, Hart**

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A report by the Divisional Director of Environment and Waste to the Kent County Council Regulation Committee on 29<sup>th</sup> November 2007.

**Recommendation:** I recommend that the applicant be notified that the application to register the land at Hartley Woods, Hartley has been accepted and that the land subject to the application be formally registered as a Village Green.

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Local Members: Mr. D. Brazier

Unrestricted item

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### **Introduction**

1. The County Council has received an application to register land at Hartley Woods, Hartley (nr. Longfield) as a new Village Green from the Hartley Parish Council ("the applicant"). The application, received on 18<sup>th</sup> April 2005, was allocated the application number 585. A plan of the application site is shown on Appendix A to this report and a copy of the application form is attached at Appendix B.

### **Procedure**

2. This application to register land as a new Village Green is made under section 13 of the Commons Registration Act 1965 and regulation 3 of the Common Registration (New Land) Regulations 1969. These regulations came into force on the 3<sup>rd</sup> January 1970, and regulation 3 enables the making of an application where, in accordance with section 22 of the 1965 Act, after the 2<sup>nd</sup> January 1970 any land becomes a Town or Village Green.
3. For the purpose of registration, section 22 of the 1965 Act (as amended by section 98 of the Countryside and Rights of Way Act 2000) defines a Village Green as:  
*'land on which for not less than twenty years a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged in lawful sports and pastimes as of right, and either:*
  - (a) *continue to do so, or*
  - (b) *have ceased to do so for not more than such period as may be prescribed, or determined in accordance with prescribed provisions'.*
4. As a standard procedure set out in the regulations, the County Council must notify the owners of the land, every local authority and any other known interested persons. It must also publicise the application in the press and put up a site notice. The publicity must state a period of at least six weeks during which objections and representations can be made.



## The Case

5. The area of land subject to this application ("the application site") consists of a large area of woodland situated to the east of the village of Hartley. The application site is bounded on its northern edge by the railway line, on its eastern edge by the now disused former Longfield refuse depot (which lies adjacent to Hartley Bottom Road) and on the remaining sides by fields and woodland. There is a Public Footpath (SD215) which running along the eastern edge of the application site.
6. Access to the site is via Public Footpath SD295 from Gorse Wood Road or via Public Footpath SD296 from Manor Lane. There is also a well-trodden track leading to the site from Beechlands Close, although this is not a recorded Public Right of Way. This network of footpaths (shown at Appendix C) allows local residents easy and direct access into the site.
7. The application is made on the grounds that local residents have used the land for lawful sports and pastimes, and have done so without permission and without challenge for a continuous period of at least 20 years. In support of the application, the Parish Council submitted six sworn affidavits from local residents as well as a further 13 user evidence questionnaires.

## Objections

8. Consultations have been carried out and notices advertising the application have been placed on site and in the local newspaper, as required by the Act. Following this consultation, several letters of support have been received from local Councillors and residents. However, one objection has been received from Hephher Dixon Ltd who act on behalf of the landowners, Southwark Council ("the objector").
9. The objection has been made on the grounds that the site has not been generally accessible over the entire twenty year period and that local residents have been prevented from entering the land by the erection of fencing around the site, thereby making any entry 'by force' and therefore not 'as of right': the objector asserts that "*clearly fences have been erected in the last 20 years and attempts have been made to break through those fences*". In addition, the objector states that the application site lies adjacent to other land owned by Southwark Council which has been used for the same activities identified in the application yet which is not included and challenges the fact that the application only includes 19 local residents, which only represents a tiny proportion of the population of the village.
10. Members should be aware that following the receipt of the objection from the objector and the subsequent exchange of comment from both parties, the applicant requested (in June 2006) that the investigation of the case was put on hold to provide the opportunity for the applicant and the objector to enter into negotiations with regard to the future use of the land. It has not been possible for the parties to reach agreement and therefore (in April 2007) the applicant asked the County Council to resume its investigation into the matter, but requested that

the application site be modified to exclude the eastern spur of land running adjacent to Public Footpath SD217 and out towards Hartley Bottom Road. In light of the recent *Oxfordshire* judgement, in which Lord Hoffman held the view that 'it would be pointless to insist upon a fresh application (with a new application date) if no prejudice would be caused by an amendment', the County Council has acceded to this request and therefore the area to be considered is that as shown hatched on the map at Appendix A.

### Legal tests

11. In dealing with an application to register a new Village Green the County Council must consider the following criteria:
- (a) *Whether use of the land has been 'as of right'?*
  - (b) *Whether use of the land has been for the purposes of lawful sports and pastimes?*
  - (c) *Whether use has been by a significant number of inhabitants of a particular locality, neighbourhood or a neighbourhood within a locality?*
  - (d) *Whether use has taken place over period of twenty years or more?*
  - (e) *Whether use of the land by the inhabitants is continuing up until the date of application?*

I shall now take each of these points and elaborate on them individually:

#### **(a) *Whether use of the land has been 'as of right'?***

12. The definition of the phrase 'as of right' has been considered in recent High Court case law. Following the judgement in *Sunningwell*<sup>1</sup>, it is now considered that if a person uses the land for a required period of time without force, secrecy or permission (*nec vi, nec clam, nec precario*), and the landowner does not stop him or advertise the fact that he has no right to be there, then rights are acquired and further use becomes 'as of right'.
13. In this case, there is nothing to suggest that use has taken place subversively, or that any formal permission has been granted to the local residents for such usage during the 20 year period preceding the application (1985 to 2005); indeed, from the user evidence submitted with the application, there is no mention of any challenge to use during this time and none of the witnesses recall any barriers, prohibitive notices or fencing to deter use.
14. Although vague mention is made by the objectors of fencing having been in place during the material 20 year period and subsequently broken down, there is nothing to suggest that use has been with force and none of the witnesses sttest to this being the case. Although one witness recalls fencing on the land in the 1970s and another makes mention of being challenged during the 1960s, neither of these incidents fall within the 20 year material period.
15. Even if the perimeter of the site had been securely fenced (and this does not appear to have been the case), then the Public Footpaths which cross and abut

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<sup>1</sup> *R v. Oxfordshire County Council, ex p. Sunningwell Parish Council (2001)*

the site would have enabled unfettered access to the site itself at all times. The only way in which access to this site could have been prevented, is for the Public Footpaths (particularly SD215) to have been securely fenced on both sides of the route (thereby preventing people from wandering off the main path); this appears never to have been the case and as such it is not possible to place a great deal of weight upon the objector's statement with regard to fencing.

16. Furthermore, it is important to note that use of this land has actually been encouraged as a result of the publication of a leaflet by the landowner. This leaflet (copy included at Appendix D) includes general information about Hartley Woods as well as a nature trail for visitors to follow. Although the leaflet is undated, mention is made of campsite bookings 'from summer 1984 onwards' and therefore it can be taken that this document was probably published immediately prior to the material period and was almost certainly available during the early part of the material period.

17. I therefore consider that, in the absence of any evidence to the contrary, use of the land must have been 'as of right'.

***(b) Whether use of the land has been for the purposes of lawful sports and pastimes?***

18. Lawful sports and pastimes can be commonplace activities including dog walking, children playing, picnicking and kite-flying. Legal principle does not require that rights of this nature be limited to certain ancient pastimes (such as maypole dancing) or for organised sports or communal activities to have taken place; solitary and informal kinds of recreation are equally as valid.

19. In this case, the evidence suggests that the majority of use of the land has been for recreational walking or dog walking, but witnesses also claim to have used the land for other recreational activities such as picnicking and bird-watching. Included at Appendix E is a table summarising evidence of use by local residents.

20. The fact that the main use of the application site has been for dog walking is not inconsistent with village green rights being acquired. Indeed, in the *Sunningwell* case, Lord Hoffman agreed with a previous judgement in another case in which it had been held that '*dog walking and playing with children were, in modern life, the kind of informal recreation which may be the main function of a village green*'.

21. The application site consists of woodland with a network of informal pathways worn through the undergrowth. The fact that recorded Public Footpaths cross the land means that there may be some use attributable to Public Right of Way but the network of lesser tracks leading off the main footpath and meandering through the site gives substance to the local residents evidence of wandering around the site.

22. Clearly, the fact that the majority of the site consists of woodland would have limited certain types of usage or activity which are commonly associated with Village Greens (e.g. kite-flying, playing informal cricket etc). However, the character of the land is irrelevant: although the application site may not appear to

fit the traditional image of a village green, this is not something which can be taken into account in determining this case. Apart from the criteria set out in the Commons Registration Act 1965, there is no legal authority on the character of land capable of qualifying for registration as a Village Green. Indeed, this was one of the points confirmed by the House of Lords in the recent *Oxfordshire* case.

23. Another relevant issue discussed in the *Oxfordshire* case (which concerned an area of land in Oxford known as the Trap Grounds that consisted of a three-acre reed-bed and three acres of scrubland, grassland, and woodland, lying between a canal and a railway line) was whether *all* of the land had to have been capable of use by the local residents in exercising lawful sports and pastimes.

24. In that case, by reason of impenetrable growth, only 25% of the land was accessible for walkers. Lightman J said that *'there is no mathematical test to be applied to decide whether the inaccessibility of part of the land precludes the whole being a Green. The existence of inaccessible areas e.g. ponds does not preclude an area being held to be a Green... overgrown and inaccessible areas may be essential habitat for birds and wildlife, which are attractions for bird watchers and others.'* Lord Hoffman, in the same case, also added *'If the area is in fact intersected with paths and clearings, the fact that these occupy only 25% of the land would not in my view be inconsistent with a finding that there was recreational use of the scrubland as a whole. For example, the whole of a public garden may be used for recreational activities even though 75% of the surface consists of flowerbeds, borders and shrubberies on which the public may not walk.'*

25. It is a well-established principle of this area of law that the Registration Authority need not be satisfied that every square foot of the land has been used for the purposes of lawful sports and pastimes and, if necessary, the Registration Authority may register a lesser area than that applied for. However, in this case I am satisfied that the land, as a whole, has been used for the activities described in this report and, given the lack of distinct or discernable boundaries between the Public Footpaths and the myriad of informal paths which crisscross the land (which are further evidence of use), it would not be appropriate in this particular case to attempt to make assumptions regarding which sections of the land over which the users had engaged in their lawful sports and pastimes; indeed, the nature of site means that the land should be treated as a whole.

***(c) Whether use has been by a significant number of inhabitants of a particular locality, neighbourhood or a neighbourhood within a locality?***

26. The Countryside and Rights of Way Act 2000 ("the CROW Act") inserted a new section dealing with locality into section 22 of the 1965 Act. It should now be shown that the use made of the land has been and continues to be by inhabitants of any locality, or of a neighbourhood within a locality. The use need not be exclusively by local inhabitants, but they should be the significant number.

27. Included in Appendix F is a plan showing the locality from which the users of the land originate. The application form identifies the locality as being the parish of

Hartley. This has not been challenged by the objector and I am satisfied that the locality consists of a defined geographical area and recognisable community.

28. In terms of the number of users, the objector has queried the fact that there are only 19 user evidence forms submitted with the application and considers that this does not constitute the 'significant number' of local inhabitants required for the legal tests to be met.

29. This issue was considered in more depth in the *McAlpine Homes*<sup>2</sup> case, in which it was held that significant did not necessarily mean considerable or substantial: Sullivan J stated that what matters is that the number of users has to be sufficient to indicate that "*their use of the land signifies that it is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers*".

30. In this case, there is evidence of use by at least 22 witnesses and responses to the initial consultation (from Sevenoaks District Council and local Councillors) confirms that the land is in far wider use by local residents. I consider that the fact that many witnesses appear to have been using the land on a regular basis – in some cases several times per day – amounts to far more than simply occasional use by trespassers. The user evidence submitted by the applicant shows consistent use of the land over a very long period and this is substantiated by the physical evidence of the informal paths on the ground.

***(d) Whether use has taken place over period of twenty years or more?***

31. The application site appears to have been used by local residents over a considerable length of time; evidence of use appears to date back as far as 1954, with the majority of people having used the application site since at least the early 1970s. As the date of the application is July 2005 (and there is no suggestion that use had been challenged at any time prior to the application being submitted in 2005) I have taken the relevant twenty-year period as being 1985 to 2005.

32. All of the 22 witnesses have used the land for the *full* twenty-year period; nine have used the application site for over 40 years. The frequency of use is also high, with the majority of users stating that they use the application site on at least one occasion per week. I am therefore satisfied that use has taken place over a period of more than twenty years.

***(e) Whether use of the land by the inhabitants is continuing up until the date of application?***

33. The recent amendment made by the CROW Act 2000 required that use of the claimed green continues up until the date of registration 'as of right'. However, this was recently overturned in the House of Lords case known as the *Trap Grounds*<sup>3</sup> case, in which it was held that use need only continue up until the date of application and not registration.

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<sup>2</sup> *R (Alfred McAlpine Homes Ltd.) v Staffordshire County Council (2002)*

<sup>3</sup> *Oxfordshire County Council v Oxford City Council and Catherine Mary Robinson (2006)*

34. As stated above, use of the application site has continued without challenge until the date of application and indeed beyond.

### **Conclusions**

35. Careful consideration has been given to all of the available evidence. There appears to be significant evidence of use over a long period, which includes not only the 20 year period prior to the application but also stretches as far back as the 1950s. There is nothing to suggest that use has not been 'as of right' and no evidence to this effect has been produced by the landowner despite several opportunities being provided to facilitate this. Under the circumstances, I conclude that the land has been used for lawful sports and pastimes for an appropriate period by residents of the locality and as such has become a Village Green by virtue of such use.

### **Recommendations**

36. I therefore recommend that the applicant be notified that the application to register the land at Hartley Woods, Hartley has been accepted and that the land subject to the application be formally registered as a Village Green.

Accountable Officer: Linda Davies - 01622 221500 - linda.davies@kent.gov.uk
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Background documents: The main file is available for inspection at the Environment and Waste Division, Environment and Regeneration Directorate, Invicta House, County Hall, Maidstone. Please contact Mr. Chris Wade on 01622 221511.
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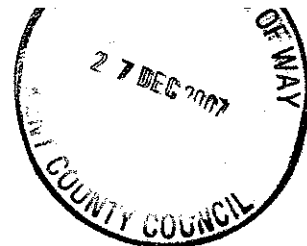
### **Background documents**

- APPENDIX A – Plan showing application site
- APPENDIX B – Copy of application form
- APPENDIX C – Copy extract of the Definitive Map of Public Rights of Way
- APPENDIX D – Leaflet entitled 'Hartley Wood'
- APPENDIX E – Table summarising user evidence
- APPENDIX F – Plan showing the locality



**APPENDIX C:  
Copy of letter from Hartley Parish Council**

HARTLEY PARISH COUNCIL  
Clerk to the Council: Mrs J Hoad  
The Parish Council Office, Hartley Library, Ash Road  
Hartley, Longfield, Kent DA3 8EL Tel/Fax: 01474 709441  
E Mail: [mail@hartleyparishcouncil.org.uk](mailto:mail@hartleyparishcouncil.org.uk)  
Website: [www.hartleyparishcouncil.org.uk](http://www.hartleyparishcouncil.org.uk)



19<sup>th</sup> December 2007

Miss M McNeir  
Public Rights of Way Officer (Definition Team)  
Kent County Council  
Environmental and Waste  
Invicta House  
County Hall  
Maidstone  
Kent ME14 1XX

Dear Miss Mcneir

**Application for a Village Green Registration at Hartley Wood, Hartley, Kent**

I am writing on behalf of Hartley Parish Council to respond to two letters dated 21<sup>st</sup> November 2007 and 27<sup>th</sup> November 2007 from solicitors, Field Fisher Waterhouse, acting on behalf of Southwark Council, which were sent to Kent County Council in respect of Hartley Parish Council's application for land at Hartley Wood to be registered as a Village Green.

Field Fisher Waterhouse have raised a number of issues and I will respond to each of them in turn.

**1. Negotiated Settlement**

Whilst the Parish Council welcomes a discussion with Southwark Council about the Application, it is doubtful whether a negotiated settlement could be reached due to Southwark Council's distinct lack of real desire to engage in any discussions with the Parish Council.

Following a meeting with Southwark Council on 24<sup>th</sup> May 2006, the Parish Council agreed to temporarily suspend its Application to allow further discussions to take place on the future of Hartley Wood and the adjoining landfill site. The Parish Council wrote to Southwark Council on 23<sup>rd</sup> August 2006 enquiring whether any developments had taken place since the meeting on 24<sup>th</sup> May and when no response was received, a further enquiry was sent on 13<sup>th</sup> September 2006.

cont'd/..



The Parish Council wrote, once again, to Southwark Council on 18<sup>th</sup> December 2006 giving notice of its intention to resurrect the Application on 31<sup>st</sup> January 2007, unless it heard otherwise from Southwark and that it would be amending the application to confine the area of land within the Application to that owned by Southwark Council in Hartley Wood, therefore excluding an area of scrub land to the south of the land fill site from the Application.

Southwark Council wrote on 9<sup>th</sup> January 2007 suggesting that the two parties should meet sometime during February or March, but when the Parish Council came forward with some proposed dates, Southwark Council informed the Parish Council that due to internal restructuring it did not believe it would be appropriate to meet at these times, although it confirmed a meeting could be arranged at sometime in the future.

Despite the Parish Council's best endeavours Southwark Council has thwarted every attempt to further any meaningful discussion and on 3<sup>rd</sup> April 2007 the Parish Council resolved to proceed with the Application, as amended. Notwithstanding, the Parish Council continued to attempt further discussions with Southwark and more recently a meeting was arranged to be held on 26<sup>th</sup> September 2007, but was cancelled by Southwark two days before the two parties were due to meet.

The Parish Council appreciates that any discussions with Southwark Council will have no effect on the outcome of the Application, which will be determined solely on the evidence presented under the relevant legislation. However at the meeting of the Regulation Committee held on 29<sup>th</sup> November 2007, Southwark's legal advisor stated that he believed there was a strong possibility of a negotiated settlement and that it would not be sensible for the Application to proceed if there was a real chance of a settlement. Since this meeting no further contact has been forthcoming from Southwark Council or their legal advisors and the Parish Council has no confidence that Southwark Council will honour those assurances given to the Panel Members.

## **2. Legal and factual issues**

### **(a) Whether the use of the land has been "as of right".**

From the evidence submitted to Kent County Council, the Parish Council is satisfied that members of the public have used the land at Hartley Wood for the required period and more, without force, secrecy or permission and that Southwark Council has made no attempt to prevent such use or advertised the fact that they had no right to be there.

### **(b) Whether use of the land has been for the purposes of lawful sports and pastimes.**

Hartley Wood is extensively used for recreational walking, dog walking and running as well as more passive recreational activities such as picnicking and bird watching, as may be demonstrated by the number of footpaths that criss-cross the land.

Southwark Council's solicitor refers to a letter from Mr D Waugh in which he states that he and his children exercised a right of way through the woods to and from the school. Mr Waugh makes reference to Strawberry Valley which is an area of woodland to the west of the Application site and does not form part of the Application.



**(c) Whether use has been by a significant number of inhabitants of a particular locality, neighbourhood or neighbourhood within a locality.**

The Parish Council was advised by Kent County Council that at least six affidavits from local people supporting the Application should be submitted and that further evidence should be gathered on questionnaires provided by the Open Spaces Society. The Parish Council has duly complied with these requirements when submitting its Application on 8<sup>th</sup> April 2005.

In response to the Parish Council's Application to register land at Hartley Wood as a Village Green, Southwark Council, in April 2006, attempted to fence off the land, thus preventing access to members of the public. This was met with some resistance and enclosed are a number of letters and e mails from parishioners expressing their objections to Southwark's actions. Three further evidence questionnaires were also sent to the Parish Council which were not submitted with the original Application, but are now enclosed for the Panel's consideration.

**(3) Appointment of an Inspector**

The Parish Council is very concerned at the suggestion made in the correspondence from Southwark's solicitors that there should be an independent inspector appointed to review the merits of the application. Southwark is attempting to delay the application and cast doubt on the independence and professional ability of the County Council to deal with the application fairly.

**Issues raised at the Regulation Committee held on 29<sup>th</sup> November 2007**

**(1) Representations made by a member of the public**

At the meeting of the Regulation Committee, a member of the public spoke in opposition to the Application, stating that Hartley residents had not been consulted on the matter. The Parish Council would like to point out that its intention to submit an Application seeking registration of land at Hartley Wood as a Village Green had been included in two editions of the Council's newsletter, which is published quarterly and delivered to every household in the Parish. Information on the Parish Council's Village Application was also published on the Council's website and has been discussed on many occasions at Council meetings. At no time did the Council receive any objections to the Application.

The present Council who electioneered under the banner of "Putting Hartley First" and who were all duly elected in May 2007, campaigned on a number of local issues, one of which included securing open access to Hartley Wood. The previous Council elected into office in May 2003 also campaigned on this issue. A copy of the 2007 election manifesto is enclosed for Panel Members' information. This demonstrates a clear mandate from the residents of Hartley in support of the Parish Council's action to register the land in Hartley Wood as a Village Green and therefore the Parish Council would request that Panel Members disregard these representations.

**(2) Question raised by a Panel Member**

One of the Panel Members appeared to be under the impression that Hartley Parish

Council had not responded to a question raised about the extent of land included within the Application. The Parish Council wrote to Kent County Council on 10<sup>th</sup> July 2007 explaining that the area of woodland to the west of SD215 had not been included in the application as the land in question was in various ownerships, including the Parish Council and that some of the owners could not be traced. However the Parish Council would be reviewing the matter after the determination of the current Application, with a view to seeking registration of the other areas of land in Hartley Wood, provided this Application was successful.

**(3) Development plans for the land fill site**

At the meeting of the Regulation Committee, Southwark referred to proposals for the future use of the landfill site. When the Parish Council met Southwark Council on 24<sup>th</sup> May 2006, plans were tabled at that meeting for the development of the landfill site as a proposed riding school. Any future plans Southwark may have for the landfill site would not be effected by the designation of the land in Hartley Wood as a Village Green.

The Parish Council started gathering evidence in support of an Application to register land at Hartley Wood as a Village Green in 2002 and formally submitted its Application in April 2005. This has been a long standing issue for the Parish Council and therefore would respectfully request Kent County Council determine the Application in favour of the Parish Council at the earliest opportunity, and so bring the matter to a conclusive resolution.

Yours sincerely



Julie Hoad  
Clerk to the Council

Encs

Cc Mr A Tait, Democratic Services Officer

**APPENDIX E:**  
Copy of letter received from Mrs. I. Sharpe



Hartley  
LONGFIELD  
Kent  
DA3 8DZ

January 31st 2008

Southwark Council  
Town Hall  
Peckham Road  
London SE5 8UB.

Application for village Green status by Hartley Parish Council on Borough of Southwark Land.

Dear Melanie McNeir,

I felt I had to put pen to paper after enquiring about some of these facts. I notice that the Borough of Southwark is one of the poorest Boroughs in the country compared to Sevenoaks that are one of the richest. I therefore consider it immoral that Parish Council in Sevenoaks should expect the Borough of Southwark to maintain land for its use.

Within the parish of Hartley and nearby we already have over 300 acres of Amenity Land that can be enjoyed and used by people for dog-walking, picnicking etc. This does not include the many footpaths that people have the right to walk on and use. Most of this land is underused.

It appears to me rightly or wrongly that they want even more land to control with other people footing the bill, which seems quite wrong to me.

Yours sincerely,

Mrs Ivy Sharp.

A handwritten signature in cursive script that reads 'Ivy Sharp'.



**APPENDIX F:  
Copy of letter received from Dr. J. Roberts**

Hartley  
LONGFIELD  
Kent  
DA3 8DZ

February 4th 2008

Miss Melanie McNeir  
Public Rights of Way Officer  
Kent County Council  
Environment and Economy  
Invicta House  
County Hall,  
Maidstone  
Kent ME14 1XX.

**Hartley Wood-Village Green Application**

Dear Miss McNeir,

Very few members of the public in Hartley are aware of this application being made on our behalf by Hartley parish Council. It is a case of the minority deciding for the majority. I have been looking into the History of this piece of land and have come across an article published in the Hart Magazine in July 1993. This magazine is sponsored by the local churches and is distributed throughout Hartley.

I have enclosed a copy of the article on the woodland written by Mrs Fry for your perusal. As I did not live in Hartley in 1993 I cannot comment on its accuracy. Mrs fry has lived in Hartley for most of her life and was a very respected District and Parish Councillor. In fact she was Chairman of Hartley Parish Council between 1986 and 1989. I would therefore not doubt the accuracy of her work.

In the article she states that the "footpaths" are "at present overgrown and choked". The question needs to be asked, if the land was in this state how did people manage to walk over it? This clearly brings into question the statements you have which declare that the woodland has been freely walked on for the last 20 years. It also questions the validity of the Village green Application.

Yours Sincerely,

*J. E. Roberts*

Dr J.E.Roberts.

Cc Mr Kemp Head of property Southwark Council.

## HOW TO SAVE OUR WOODLANDS. WILL YOU HELP?

The part of Hartley Woods owned by Southwark Borough Council and the land going down to Hartley Bottom have been put on the market by Southwark. Southwark has owned land here for over a hundred years dating from the time when the rubbish from that area came by road and rail and was deposited on the tip - which is now grassed over. Hartley Parish Council has already taken steps to secure Hartley Woods itself for the village, but they have no jurisdiction over the section owned by Southwark. At one time it was hoped that Sevenoaks District Council would purchase the area and leave it for "passive" leisure, but that involvement has now fallen through.

Hartley Parish Council is deeply concerned that the Woods should not be purchased by somebody who would use it for anti-social activities. The Council sought the advice of The Woodland Trust who have experience in the saving and management of woodland. To this end, the Parish Council arranged a meeting with the Trust. This had to be done at very short notice because of the date that offers had to be sent in to Southwark. About twenty residents came to the meeting together with representatives from Longfield Parish Council. The cost of purchase would be beyond the Parish Council on its present budget and therefore other ways of acquiring the area (just the woods) were examined. The Woodland Trust could put in an offer supported by pledges from residents for which the WHOLE OF THE VILLAGE would be canvassed. The Parish Council would make a useful contribution, and small grants might be available from other public authorities. The woods (the Southwark section) would be vested in The Woodland Trust who would take over the management i.e. open up the footpaths at present overgrown and choked; coppice in rotation; and keep the woods as a natural habitat.

Enquiries are going forward to this end (the Parish Council have decided formally on this matter) and a Public Meeting will be held in July. This will be well-publicised in Hartley and other areas affected. In other places where the Woodland Trust has operated successfully, e.g. Fawkham, donors gave generously that a large sum of money was raised. Without that scale of giving the purchase of the wood would have lapsed. Our residents will be asked to give a one-off donation to save these woods for ourselves and for posterity. Every donation - of whatever size - will be a step towards keeping Hartley and its woodland beautiful.

Please watch for the notices, and if you care about our woodland and want to make sure that they stay with us please come along with your friends to the meeting. The purchase that is attempted to be made is of the woods only, not the infill land.

If you would like some more information before the notices are sent out - or wish to offer your help in distribution leaflets - please contact any of the members of Hartley Parish Council.

Yvonne Fry (for Hartley Parish Council)

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**APPENDIX E:**  
Copy of letter received from Mrs. I. Sharpe



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LONGFIELD  
Kent  
DA3 8DZ

January 31st 2008

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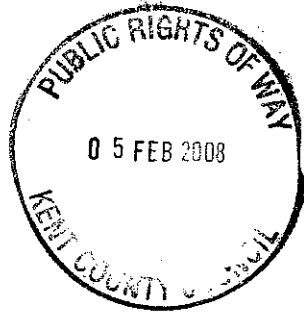
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