

## KENT COUNTY COUNCIL

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### REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Westgate Hall, Canterbury on Tuesday, 15 November 2011.

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

ALSO PRESENT: Ms S J Carey and Mr M J Northey

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

### UNRESTRICTED ITEMS

#### **18. Application to register land at Woodland Road at Lyminge as a new Village Green** *(Item 3)*

(1) Members of the Panel and Ms S C Carey (the Local Member) visited the application site shortly before the meeting. Mr S Huntley, the applicant was present as were Ms A Rodgers, the landowner's representative and some 12 members of the public.

(2) Ms S J Carey was present for this item pursuant to Committee Procedure Rule 2.21 and spoke.

(3) Correspondence from Lyminge Parish Council was tabled at the meeting. This set out that although the Parish Council neither supported nor opposed the application, it believed that the criteria for registration had been met.

(4) Mr Huntley and Ms Rodgers were also present at the meeting together with Mrs H Burr (supporter) and some 9 members of the public.

(5) The Public Rights of Way and Commons Registration Officer introduced the application, which had been made under Section 15 of the Commons Act 2006 by Mr S Huntley. She acknowledged that a question had been raised during the site visit about the exact boundary of the southern part of the application site and informed the Panel that this question would be thoroughly addressed at the earliest opportunity.

(6) The Public Rights of Way and Commons Registration Officer said that the application had been accompanied by 85 user evidence questionnaires together with supporting correspondence and the view from Lyminge Parish Council that the application passed all the necessary tests.

(7) Objections had been received from Cripps Harries Hall Solicitors on behalf of the Tory Family Foundation which owned the land. The grounds for objection were that the application had not specified its neighbourhood or locality within the

neighbourhood; that use had been infrequent; that use had been “by right” on the Public Right of Way; that use had been interrupted during the summer of 2010 by the archaeological dig which had resulted in the site being cordoned off; and that there had not been sufficiently general for the landowner to realise that a public right was being asserted.

(8) The Public Rights of Way and Commons Registration Officer then considered the legal tests. The first of these was whether use of the land had been “as of right.” It was clear that neither force nor secrecy had been used to access the site. Although fencing had been erected, this had been a recent development and could not form part of the Panel’s considerations of this particular test. There had, however, been a few occasions when the landowner had stated that permission had been granted for certain specific events. The applicant, on the other hand contended that even though permission had been granted on occasion, this did not apply to informal recreational use and therefore did not negate the general assertion by the public of “as of right” use. The landowner had also contended that much of the use of the land had been “by right” walking of the Public Right of Way.

(9) The Public Rights of Way and Commons Registration Officer said that the use “as of right” question was very difficult to resolve on paper. The best way to do so was to scrutinise the evidence through careful cross-examination.

(10) The Public Rights of Way and Commons Registration Officer then considered the question of whether use of the land had been for the purposes of lawful sports and pastimes. The user forms did include such activities as sledging, cycling and playing. However, most of the responses stressed walking. It was difficult for her to assess on paper whether this activity was something which had occurred through use of the Public Right of Way, and a closer examination of the evidence would be able to clarify this particular question.

(11) The Public Rights of Way and Commons Registration Officer said that, on balance, it was likely that use had been by a significant number of inhabitants of the parish of Lyminge – although there was a dispute on the part of the objector about the actual degree of use.

(12) The Public Rights of Way and Commons Registration Officer said it was clear that use of the site had continued up to the date of the application. The question of whether this use had been for a period of twenty years or more was more complex because the applicant was contending that use had been interrupted by the archaeological dig in 2010, by sheep grazing and car parking. The applicant argued that the application had been made before the archaeological dig, that the sheep grazing had encouraged public use and that the car parking was for such a short duration that it became inconsequential in the context of a period of 20 years.

(13) The Public Rights of Way and Commons Registration Officer concluded her presentation by saying that due to the complexity of the issues involved (particularly in respect of the use of the public right of way) she was recommending that a non-statutory public inquiry should be held to clarify the issues.

(14) The Chairman asked whether permission to use the site had ever been refused by the landowner. Ms Rodgers (on behalf of the landowner) replied that permission had been refused since the application had been made.

(15) Mr Stephen Huntley (applicant) said that he loved and respected the countryside and would never knowingly trespass on someone else's land. He would always stick to rights of way unless he believed that there was open access.

(16) Mr Huntley said that he had lived in Lyminge since 1983 and that he had played as a child on the field. He produced photographs of BMX riding, pointing out that this activity took place on bumpy ground which was not on a public right of way.

(17) Mr Huntley continued by saying that many people of all ages had used the whole field. He highlighted a number of activities including playing, walking, petting the grazing sheep and tobogganing. He showed a photograph of sledging on the site, pointing out that no one in the picture was doing so on a right of way. He said that such activities had continued into his children's generation. He showed a number of other photographs of other activities taking place on the site.

(18) Mr Huntley showed a picture of the site taken from GoogleEarth in 2004. He asked the Panel to note that it was difficult to distinguish the public rights of way because there were other tracks on the site where people had also walked. He said that no one had ever told anyone to not use the field or to stick to the public right of way. The fencing and gates that Members had seen during the site visit had only been installed during the last few months.

(19) Mr Huntley said that his motive for bringing forward the application was to preserve the right for local people to continue to use the land as before whilst also preserving its agricultural and amenity value. He had deliberately chosen not to widely publicise the application. Nevertheless, it had achieved widespread support, with 85 people completing user forms and the Parish Council stating its view that the land met the required legal tests for registration.

(20) Mr Huntley concluded his presentation by saying that the site was a special place for him and for other people. Many people had used the land regularly for lawful sports and pastimes in an open and unchallenged manner; and this use had mainly been on parts of the site which had not been designated as public rights of way. He had personally used the land since 1983, whilst others had used it well before that time.

(21) Mrs Rodgers said that she had a written statement from the landowner, Mr Tory. Because of the recommendation in the report, she did not feel that it would be appropriate to ask the Panel to consider it in detail at this stage.

(22) The Panel agreed unanimously that it would defer consideration of this matter pending a non-statutory Public Inquiry for the reasons set out in the report and explained at the meeting by the Public Rights of Way and Commons Registration Officer.

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

**19. Application to register land known as Seaton Meadow at Wickhambreaux as a new Village Green**  
*(Item 4)*

(1) Members of the Panel visited the site prior to the meeting. The visit was attended by Mrs C Le Jeune (Wickhambreaux Parish Council - applicant), Mr. J. Holdstock (Tenant Farmer) and Mr C Perkins (one of the affected landowners). Some 40 members of the public were also present at the visit.

(2) Mr M J Northey was present for this item pursuant to Committee Procedure Rule 2.21.

(3) Mrs C Le Jeune (Chairman of Wickhambreaux Parish Council - applicant) and Mr C Perkins (landowner) were present for this item together with some 30 members of the public.

(4) The Public Rights of Way and Commons Registration Officer introduced the application which had been made under section 15 of the Commons Act 2006 by Wickhambreaux Parish Council. This application had been accompanied by 115 user evidence forms as well as letters of support from Ickham and Well Parish Council (whose boundaries accommodated some of the site); the Local Member, Mr Northey; the local City Councillor; Ickham, Littlebourne and Wickhambreaux Conservation Society; Wickhambreaux CEP School; and Wickhambreaux Village Hall Management Committee. These letters all stated that use of the application site had been without restriction for many generations by local people.

(5) The Public Rights of Way and Commons Registration Officer then said that the land had originally been owned by the Church Commissioners before being auctioned and sold to 4 separate landowners in 2009. All four landowners had objected to the application. One of them (Mr Locke from the Premier Trust) had stated that the land had not been accessed at the times during the year when it had been used for grazing. Mr and Mrs Perkins had stated that use had been by virtue of permission and that non-permitted access had been challenged by the Tenant farmer during the grazing season. Three local residents had also disputed the user evidence. In addition, Mr J Holdstock (the tenant farmer since 1991) had said that use of the site had not been significant and had mainly consisted of people using the Public Right of Way in the north east corner of the site or the path on the north bank of the River Stour. He had also stated that the site had been closed off during the Foot and Mouth epidemic in 2001.

(6) The Public Rights of Way and Commons Registration Officer went on to consider the legal tests. The first of these was whether use of the land had been "as of right". Whilst it was clear that neither force nor secrecy had been employed to gain access, there was an objection which claimed that use had been with permission. The landowner had claimed that permission had been granted for a number of events. The applicant's response to this was that such permission had not been sought for general recreation. The question for the Panel to consider was whether permission had been communicated to the community as a whole. This did not appear to be the case. Objection had also been raised on the grounds that use had been challenged by the Tenant Farmer. This was disputed by the applicant who said that such challenges had only been made in instances of inconsiderate use of the land and did not amount to a challenge to general recreational use. The Public Rights of Way and Commons Registration Officer said that in the light of these factors, she had come to the view that use had probably been as of right but that a

further investigation of the alleged challenges would be necessary before an informed conclusion could be reached.

(7) The second test was whether use of the land had been for lawful sports and pastimes. The Public Rights of Way and Commons Registration Officer said that many activities had been claimed. These included walking, playing, fishing, kite flying and bird watching. The objectors disputed this, saying that they had seen very few examples of such activities and that, in any case, it would have been difficult to play with balls or to fly kites due to the overhead pylons. There was also a dispute over the type of use. It would be necessary to establish how much of the use claimed had been in exercise of the right to walk along the public footpath. This was a very difficult question to consider on paper, whereas a non-statutory Public Inquiry would be able to provide clarity on this question.

(8) The Public Rights of Way and Commons Registration Officer said that the application had specified “the neighbourhood of Wickhambreaux village with Seaton hamlet within the localities of Wickhambreaux and Ickham parishes. This definition appeared to have satisfied the legal test relating to locality. The question of whether use had been by a significant number of inhabitants within that locality was, however, disputed – particularly in relation to the frequency of recreational use of the site. This was a matter which required further examination.

(9) The Public Rights of Way and Commons Registration Officer confirmed that the application had been made well within the two year period of grace specified by Parliament for an application to be made after the erection of fencing (which constituted a challenge to “as of right” use). The twenty year period in question was therefore 1990 to 2010. She explained that the three month period when the site had been closed off in 2001 due to the Foot and Mouth epidemic did not defeat the application because the Commons Act 2006 had specifically exempted events of this nature from the qualifying period. The evidence in respect of continuous use of the land was disputed. The objectors claimed that use had been interrupted during cattle grazing periods and during periods of flooding (particularly from 2000 to 2001). The applicants, however, considered that there had been no disruption when cattle were grazing and that the River Stour levels had been very low. They did not agree that substantial recreational use had been interrupted by flooding. The Public Rights of Way and Commons Registration Officer said that this too was a question that needed further investigation.

(10) The Public Rights of Way and Commons Registration Officer concluded her presentation by saying that as there were so many issues that were unclear, she was recommending that a non-statutory Public Inquiry should be held in order to clarify them.

(11) Members of the Panel commented that they did not feel that they had sufficient information to determine the application at this stage. The Chairman therefore asked whether those people who had previously indicated that they wished to address the Panel, still wished to do so. As no members of the public now wished to speak, the Chairman put the recommendation for a non-statutory Public Inquiry to the vote. This was carried unanimously.

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

