

KENT COUNTY COUNCIL

REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Church Farm Hall, 198 New Hythe Lane, Larkfield ME20 6ST on Monday, 21 January 2013.

PRESENT: Mr M J Harrison (Chairman), Mr A H T Bowles, Mr I S Chittenden, Mr H J Craske and Mrs V J Dagger

ALSO PRESENT: Mr P J Homewood

IN ATTENDANCE: Ms M McNeir (Public Rights Of Way and Commons Registration Officer) and Mr A Tait (Democratic Services Officer)

UNRESTRICTED ITEMS

1. Application to register land known as Walderslade Woods in the parishes of Boxley and Aylesford as a new Village Green
(Item 3)

(1) The Commons Registration Officer introduced the application by explaining that it was a voluntary registration made by Kent County Council (Property) under Section 15 (8) of the Commons Act 2006.

(2) The Commons Registration Officer referred to a colour map showing the Walderslade Wood area and showed the sections of land which were excluded from of the application by either being a registered caution contained in favour of Hillreed Homes Ltd or because they were situated in the administrative area of Medway Council.

(3) The Commons Registration Officer then briefly set out the application's history. Boxley PC had originally wished to register land on the eastern side of Walderslade Wood. Following negotiations with KCC Property and Infrastructure, the Parish Council had requested the withdrawal of this application (as agreed by a Panel meeting on 17 July 2012) whilst the County Council had made the application which was before the Panel at this meeting.

(4) The Commons Registration Officer informed the Panel that all the necessary criteria had been met. This included the qualifying locality test which had specified the ecclesiastical parish of Holy Trinity South Chatham. She therefore recommended that registration should take place, apart from those areas shaded on the map shown at Appendix A of the report.

(5) The Commons Registration Officer replied to questions from Mr Chittenden by saying that the County Council did not have a conflict of interest in this case as it was a voluntary application. The Laing Homes case had established that an ecclesiastical parish could be designated as a qualifying locality and that responsibility for maintenance of the Village green would rest with the landowner.

(6) Mr P J Homewood (Local Member) said that he welcomed the application and the recommendation in the report. The land was used by many local people for recreation and he was glad that this would continue.

(7) On being put to the vote, the recommendations of the Head of Regulatory Services were carried unanimously.

(8) RESOLVED that the applicant be informed that the application to register the land known as Walderslade Woods in the parishes of Boxley and Aylesford has been accepted (with the exception of the small parcel of land situated in Medway Council's administrative area and the land falling within Land Registry title number K703174) and that the land (excluding the Medway section and title K703174) be formally registered as a Village Green.

2. Application to register land at Willow Road in Larkfield as a new Village Green

(Item 4)

(1) The Commons Registration Officer introduced the application by explaining that it was a voluntary registration made by East Malling and Larkfield Parish Council under Section 15 (8) of the Commons Act 2006.

(2) The Commons Registration Officer tabled colour photographs of the site before explaining that it was necessary for the registering authority to satisfy itself that the applicant was the owner of the land in question and that any necessary consents had been obtained.

(3) The Commons Registration Officer informed the Panel that the Local member, Mrs T Dean supported the application. Some local people had expressed concerns that the local Parish Council might later decide to install play equipment and create a formal recreation area, and that this would lead to the land becoming a haven for anti-social behaviour. She advised that this was not a matter that the County Council could take into consideration but that in any case, the Parish Council had indicated that this was not its intention.

(4) The Commons Registration Officer then confirmed that the qualifying locality was East Malling and Larkfield parish. She concluded by saying that all the criteria for registration had been met and that she therefore recommended that registration should take place.

(5) Mr David Thornevell (Chairman of East Malling and Larkfield PC) said that the land in question had been donated to the Parish Council, which had full ownership. He also confirmed that the Parish Council had no intention of installing play equipment on the land.

(6) On being put to the vote, the recommendations of the head of Regulatory Services were carried unanimously.

(7) RESOLVED that the applicant be informed that the application to register the land at Willow Road in Larkfield has been accepted and that the land subject to the application be formally registered as a Village Green.

3. Application to register land at Four Acres in East Malling as a new Village Green *(Item 5)*

(1) The Chairman explained that due to the inclement weather Members had decided not to visit the application site. He asked the applicant to confirm that she was content for consideration of the application to take place despite this. The applicant confirmed that she was in agreement.

(2) The Commons Registration Officer tabled colour photographs of the site. Two of these had been taken from the block of garages to the south east of the site. The other two had been taken from a gap in the hedge along Public Footpath MR105.

(3) The Commons Registration Officer said that the application had been made by Mrs J Kollnberger under section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2008.

(4) The application had been accompanied by 38 user evidence questionnaires from local residents, a supporting statement, photographs of the site and a location map. East Malling and Larkfield PC had written in support of the application, confirming that the site had been used for recreation since the housing estate had been built more than 20 years earlier. Further support had been received from Cllr L Simpson (Tonbridge and Malling BC) and from the Local Member, Mrs Dean.

(5) The Commons Registration Officer said that the landowner, Russet Homes Ltd had raised no objection. She confirmed that they would retain ownership of the site if it was registered.

(6) The Commons Registration Officer then explained that the task for the Panel was to consider whether it could be shown that a significant number of the residents of a locality or of any neighbourhood within a locality had indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years up to the date of application. This meant that the Panel had to consider whether every single test contained in section 15 of the Commons Act 2006 had been met.

(7) The Commons Registration Officer then set out the legal tests. The first of these was whether the land had been used "as of right". She said that there was no evidence that any of the use had been by force, secrecy or with permission. The supporting evidence had referred to free and unrestricted throughout the 20 year qualifying period. In the absence of any challenge (or evidence to the contrary), she concluded that this test had been met.

(8) The Commons Registration Officer went on to say that the second test was whether use of the land had been for the purposes of lawful sports and pastimes. Some of the user evidence specified that the land had been used as a short cut to the public footpath. This needed to be discounted for the purposes of this particular test. Nevertheless, most of the activities set out in Appendix C to the report referred to qualifying activities such as dog walking, ball games and picnicking. She therefore concluded that this test had been met.

(9) The third test was whether use had been by a significant number of inhabitants of a particular locality or neighbourhood within a locality. This test had been met because the Four Acres Estate had all the unifying elements of a neighbourhood within the locality of East Malling and Larkfield parish. There were 46 households on the Four Acres estate and all but 7 of them had provided evidence. This would have been sufficient to indicate to the landowner that the site was in general use by the community.

(10) The Commons Registration Officer said that the final two tests had clearly been met as use had taken place for over the required period (1992 to 2012) up to and beyond the date of application.

(11) The Commons Registration Officer concluded her report by saying that she was recommending registration of the site as all the tests had been met.

(12) Mrs J Kollnberger (Applicant) said that she fully agreed with the report and its conclusions. The necessary evidence had been provided to demonstrate that all the tests had been met. Children were able to play there safely, and did so on a daily basis. On the previous day, they had been building snowmen on the land.

(13) Mr D Thornewell (Chairman of East Malling and Larkfield PC) confirmed that the Parish Council supported the application.

(14) On being put to the vote, the recommendations of the Head of Regulatory Services were agreed unanimously.

(15) RESOLVED that the applicant be informed that the application to register the land at Four Acres at East Malling as a new Village Green has been accepted, and that the land subject to the application be formally registered as a Village Green.