REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Staplehurst Village Centre, High Street, Staplehurst TN12 0BJ on Tuesday, 5 March 2013.

PRESENT: Mr M J Harrison (Chairman), Mr R A Pascoe (Vice-Chairman), Mr H J Craske and Mr J Davies

ALSO PRESENT: Mrs P A V Stockell and Mr J N Wedgbury

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

UNRESTRICTED ITEMS

9. Application to register land known as The Cricket Field at Marden as a new Village Green
(Item 3)

(1) Members of the Panel visited the site before the meeting. This visit was attended by the applicant, Mr Trevor Simmons, Mr Roger Day (landowner), Mr Frank Tipples and Mr Steven Wickham (Marden Hockey and Cricket Club) and Mrs P A V Stockell (Local Member.)

(2) The Commons Registration Officer introduced the application which had been made by Mr Trevor Simmons under section 15 of the Commons Act 2006. The application had been accompanied by 30 user evidence forms and had received written support from the Marden History Group and the Marden Society as well as from 19 local residents. Marden PC also supported the application. Letters of objection had been received from 11 local residents.

(3) The Commons Registration Officer went on to say that the landowner was Mr Roger Day who had leased it to the Marden Hockey and Cricket Club. An objection had been received from Bircham Dyson Bell LLP on behalf of the landowner and the Club. Their grounds for objection were that the user evidence only revealed trivial and sporadic recreational use; that use had been "by right" rather "as of right" as many people had been guests of the Club and a significant number of the claimed recreational activities were the same as those undertaken by it; that the relevant locality had not been sufficiently defined and use had not been by a significant number of the residents; that the land had been fenced, with access to it being regulated by stiles and gateways which had been locked when not in use, with private notices visible; and that there was evidence that informal recreational users had been challenged.

(4) The Common Registration Officer moved on to consider the individual legal tests. The first of these was whether use of the land had been "as of right." She said that it was clear that use had not been by physical force or stealth. However, the question of whether use had been challenged remained to be resolved as it was not

clear whether the site had ever been entirely secured to prevent public access. The Panel Members had seen the "Private Ground" notice that morning. It was, however, unclear whether this notice had always been there or had been sufficiently prominent to constitute a clear challenge to access by the public.

(5) A further issue was whether the claimed recreational use was by implied permission. It was possible that if members of the Club were using the site for recreational activity, then the landowner would not have needed to challenge them, as it would have given the impression of an extension of Club membership activity rather than as the assertion of a public right.

(6) The Commons Registration Officer said that the uncertainties described could only be resolved through further and more detailed examination of the evidence.

(7) The second question was whether use of the land had been for lawful sports and pastimes. The Commons Registration Officer said that the user evidence suggested that there had been a range of recreational activities, including dog walking, jogging, playing with children and ball games. It was, however, not possible on the basis of the questionnaires to distinguish between informal and formal cricket. This was an important distinction as any member of the Club who was playing cricket would be doing so "by right" and could therefore not be considered for the purposes of establishing whether lawful sports and pastimes had taken place "as of right." It was also unclear whether tennis activities had taken place on the application site itself or on the neighbouring tennis courts.

(8) The Commons Registration Officer then turned to the question of whether use had been by a significant number of inhabitants of a particular locality or a neighbourhood within a locality. The applicant had specified that the locality was within the boundaries of Stanley Road and Albion Road. The landowner had argued that this was not a sufficiently defined locality. However, there was no reason why the parish of Marden would not suffice as a qualifying locality.

(9) The Commons Registration Officer explained that the term "significant number" meant that the number of people using the site had to be sufficient to indicate to the landowner that the land was in general use by the community for informal recreation. She added that it was not, at this stage, possible to reach a safe conclusion on this point as further evidence would need to be sought to establish the amount of use that was related to the Club and how much was entirely independent of it.

(10) The Commons Registration Officer then said that use of the application site had continued up to the date of the application in 2011 and that the user evidence forms suggested that the land in question had been used for the required 20 year period.

(11) The Commons Registration Officer concluded her presentation by saying that she considered that the most appropriate way forward would be to hold a Public Inquiry in order to clarify the issues that currently remained unclear. This would enable the Panel to reach an informed decision as to whether the land in question was capable of registration as a Village Green.

(12) Mr Trevor Simmons, the applicant said that he believed that the land had been used "as of right." A Public Inquiry would be able to establish that a significant majority of the use had been for informal recreation as opposed to official cricket.

(13) Mr Simmons went on to say that he accepted that he had misunderstood the legislation when he had identified the land between Stanley Road and Albion Road as the "locality." He referred the Panel to Appendix C of the report and said that the user evidence forms had been completed by people from the whole of Marden Parish, which he therefore agreed was the actual qualifying locality.

(14) Mr David McFarland said that he represented the Marden History Group and Heritage Centre, located in the village library. The purpose of this organisation was to seek, preserve, research, inspire interest in and transmit the history of the parish of Marden. He also, on this occasion, represented the Marden Society whose purpose was to protect the character of the village of Marden.

(15) Mr McFarland said that the organisations he represented agreed with, and supported the applicant's submission for the reasons set out in their letters of 9 and 14 July 2012. These letters referred to 637 petitioners who wished to protect the cricket field, and the erection in July 2012 of notices forbidding access to the site by non-members of the Cricket and Hockey Club.

(16) Mr McFarland then said that he wished to put the application into the wider context of the village predicament and its responses. He quoted an extract from a comment that his organisations had posted in the village as shown below.

"The loss of a village cricket ground on which the game has been played for generations, with its attendant civilized sounds of willow on leather and polite applause, the loss of the home of the famous Marden Russets and of the green where children have played "as of right" and been entertained at times, could be seen as a significant loss of Marden's heritage and of a community asset.

This is a sad prospect for villagers and for their children who, in more recent years, have joined the club alongside those from other areas, and can walk safely to play and spectate by right.

Ordained new housing to sustain the village could be located on already identified sites that may well be less intrusive or disruptive, and certainly less destructive of part of the village's heritage."

(17) Mr McFarland then said that construction of a number of new houses in the village caused real concern to the many and delight to the few. He believed that most people accepted that some new housing and new people could help the life and economy of what he described as a splendid working village. The burning question was where these developments would actually take place. Many potential sites had been ordained for new homes.

(18) The Parish Council had organised two open days during the previous weekend for villagers to look at the proposed Neighbourhood Plan. One particular exercise during this open day had encouraged villagers to place a green spot on sites where they would prefer development and red spots where not. There had not been enough space on the map to accommodate all the red spots directed at the Cricket & Hockey club ground, including the cricket field. These had, in fact outnumbered those placed elsewhere on the map.

(19) The Chairman explained that the points made by Mr McFarland could not be considered by the Panel. It could only consider whether the required legal tests had been met and could not take factors such as desirability or possible development proposals into account.

(20) Mr Frank Tipples said that he had been the Chairman of the Marden Hockey and Cricket Club until 2012. The majority of those entering the site had always done so through the gate in Stanley Road. They would therefore have seen the sign on the clubhouse, which had been erected in the 1960s. He believed that anyone who had entered the ground to watch the Club playing cricket was doing so with implied permission. He added that challenges had been made on a number of occasions as health and safety problems would have arisen if dog walkers allowed their pets to run free on the land.

(21) Mr Roger Day (landowner) said that the sign on the clubhouse had first been put up in 1962. The ground had always been secure and fenced. The stiles had been installed in order that people could retrieve the ball after it had been knocked out of the ground.

(22) Mr Day then said that the Marden Hockey and Cricket Club was a private members' club which paid to play. Money was also raised through parents paying for their youngsters to learn and practice the game. Members of the public were encouraged to watch the cricket on match days.

(23) Mr Day said that claims in the user evidence forms that people had used the ground for blackberry picking and making snowmen should be understood in the context that they would be politely asked to leave whenever they had been seen doing so. There had been instances of vandalism and hooliganism on the land which had led to this approach being adopted.

(24) Mr Day replied to a question from the Chairman by saying that there was no financial agreement between himself and the Club.

(25) Mr Davies noted that the locality had been identified as between the boundaries of Stanley Road and Albion Road and that the applicant himself agreed that this was a mistake. He asked whether this meant that the application should be automatically rejected. The Commons registration Officer replied that this was not the case and that it would be one of the issues that could be considered further at an Inquiry.

(26) Mr Pascoe asked whether the status of fee paying members of the Club had an impact on their ability to be considered as "inhabitants of a particular locality" for the purposes of Village Green registration. The Commons Registration Officer confirmed that use by fee paying members could not be considered, as their use of the site was "by right."

(27) Mr H J Craske said that he was completely discounting all development planning considerations. He considered that the application could not be determined until the question had been resolved as to how much use of the land had been "by right" and how much had been "as of right."

(28) Mrs P A V Stockell (Local Member) said that she supported the recommendations as a Public Inquiry would enable the people of Marden to have a proper opportunity to give their views and evidence. It would also ensure that the right decision was made. This would be in the best interests of the people of Marden where (regrettably) the application had led to a division of opinion.

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

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

10. Application to register land known as Rammell Field at Cranbrook as a new Village Green
(Item 4)

(1) The Panel Members visited the application site before the meeting. This visit was attended by Mr Howard Cox (the applicant) and by some 60 members of the public.

(2) The Commons Registration Officer introduced the application which had initially been made by Mr John Davis in March 2011 under section 15 of the Commons Act 2006. Mr Davis had subsequently passed responsibility for the application to Mr H Cox.

(3) The Commons Registration Officer then said that the application had been accompanied by 69 user evidence forms, a number of supporting photographs and 27 letters of support. A petition containing over 1000 signatures had also been received. This petition had been submitted with its stated aim being "in aid of our protest against the building of houses on Rammell Field in Cranbrook, Kent." This was not a consideration that the Panel was entitled to take into account as it could only consider evidence relating to the legal tests set out in the 2006 Act.

(4) The Commons Registration Officer then said that the land was owned by the Trustees of Cranbrook School. It had been acquired in 1922 by an association known as "The Old Cranbrookians Association" to provide a memorial for those who had attended the School and had fallen in the First World War. The Governors of Cranbrook School had agreed to take the conveyance of this field and had formed the Trust in order to (amongst other things) exercise management over it.

(5) The landowner had objected to the application on the grounds that use of the field had not been "as of right" for a continuous period of 20 years up to the date of application; that use by the public had been with permission (or else by force); and that the applicant had failed to correctly specify a "locality" or "neighbourhood within a locality." In support of these objections, the landowner had provided a letter (dated 2011) from the former School Bursar; a letter (dated 1999) from the landowner's planning consultant to Tunbridge Wells BC; letters sent to neighbouring landowners in 1999 and 2005; and copies of letters and invoices relating to the hire of the application site for formal events.

(6) The Commons Registration Officer moved on to consideration of the legal tests. All of these tests had to be met in order for registration to take place. The first

of these was whether use of the land had been “as of right.” She explained that this meant that use would have had to have been without secrecy, force or permission. When considering whether use had been with force, it was necessary to establish not only whether physical force had been used, but also whether the landowner had taken reasonable steps to demonstrate to the public that use was being challenged.

(7) Access to the site during the qualifying period (1991 to 2011) would have been through two gates, as the rest of the boundary had been fenced. The applicants claimed that these gates had never been locked. This was denied by the landowner, who claimed that the pedestrian gate was locked during the school holidays. A letter from the former bursar (set out at Appendix E to the report) stated that he had always conducted regular checks to ensure that the gates were locked between the years 1989 and 2001.

(8) A second area of dispute concerned the notices which the landowner stated had always been on both gates (and replaced on numerous occasions.) Photographic evidence in the form of the Google “streetview” service provided by the applicant from March 2009 had confirmed that a sign was in place on the pedestrian gate during the later part of the qualifying period. The image also appeared to show a chain on the vehicular gate, suggesting that it was locked.

(9) Further evidence that public access had not been unchallenged had been provided by the landowner in the form of letters set out at Appendices F and G to the report.

(10) The Commons Registration Officer said that the evidence provided by the landowner (and indeed the applicant) indicated that the landowner had attempted to challenge use by the public, and that such use was not therefore “as of right.”

(11) The Commons Registration Officer also referred to evidence of booking forms and invoices (Appendix D) in respect of events that had taken place on the land. These documents demonstrated that on the occasions in question, use had been with permission (and therefore not “as of right.”)

(12) The Commons Registration then turned to the question of whether use of the land had been for the purposes of lawful sports and pastimes. She said that 13 of the user evidence forms had not specified the actual use of the application site. Use of the land as a short cut (stated in 2 of the forms) needed to be discounted, as such use would have been evidence of a public right of way but would not qualify as lawful sports and pastimes. Use of the land for dog walking (which had been challenged by the notices erected by the applicant) or for organised events (which had taken place with permission) could also not qualify as evidence in this respect.

(13) The Commons Registration Officer then said that 27 of the 69 user evidence forms claimed informal recreational activities that did qualify as “lawful sports and pastimes.” However, 16 of these only claimed to have done so on an occasional basis. Seven of the remaining 11 had accessed the site using garden gates onto the site. This would have been contentious as the landowner had specifically requested them not to do so; and therefore did not count as a qualifying use. Only four witnesses had actually used the land regularly on a qualifying basis.

(14) The Commons Registration Officer drew the conclusion that there had been some use of the land for lawful sports and pastimes. It remained to be established whether this use had been sufficient to pass the test. This question could now be answered with reference to the next test which was whether use had been by a significant number of inhabitants of a particular locality or neighbourhood within a locality.

(15) The Commons Registration Officer said that the applicant had specified the locality as being “The Hill, Cranbrook, jct Frythe Way, The Hill, Cranbrook, parish of Cranbrook and Sissinghurst. This would not meet the legal tests. However, the parish of Cranbrook and Sissinghurst would satisfy the locality qualification as all the witnesses lived within its boundaries.

(16) The Commons Registration Officer said that the term “significant number” meant that there had to be sufficient users to indicate to the landowner that the land was in general use by the community for informal recreation rather than occasional use by trespassers. In this case, although 69 user evidence forms had been presented, only four of them had been qualifying regular users of the application site. This meant that it was not possible to conclude that the land had been in general “as of right” use by the local community for the purposes of informal recreational activities.

(17) The final two tests were whether use of the land “as of right” had continued up to the date of the application and whether such use had taken place over twenty years or more. The first of these tests had not been met because there was convincing evidence to show that use of the site had not taken place “as of right.” The second test had not been met because each of the documented formal events that had taken place would have interrupted the period of claimed informal recreational use.

(18) The Commons Registration Officer concluded by saying that she considered that the required tests for the registration of the land as a new Village Green had not been met and therefore recommended that the application should not be accepted.

(19) Mr Howard Cox (applicant) said that Rammel Field was in the hearts of the community of Cranbrook. It was notionally their Village Green. The decision to apply for Village Green status had been taken reluctantly as a result of Rammell Field being identified for development in the Local Plan.

(20) Mr Cox said that the Head Teacher of Cranbrook School had claimed that Rammell Field would be unusable for pupils at the School if the land was registered as a Village Green. He disagreed with this view, saying that Village Green status would enable the village to come together and to have a space that it could call its own for evermore. This would continue the local tradition which had seen Rammell Field host fetes, fairs, sports and other events with the full agreement of the School.

(21) Mr Cox continued by saying that the School trustees had not stated their long term plans for the land. The petition calling for houses not to be built on Rammell Field had been signed by a very large number of local people, including former pupils of Cranbrook School. He asked for the Panel’s help to keep Rammel Field free for recreation.

(22) Andrew Walker QC addressed the Panel on behalf of the landowner. He said that the Commons Registration Officer had identified the facts of the case and reached the valid conclusion.

(23) Mr Walker said that the trustees considered that this was a very clear case. Many of the witnesses gave evidence of attendance at rugby matches or of use by pupils for sports. Such evidence could not be counted for the reasons given by the Commons Registration Officer. Other witnesses had attested to their use of the field for dog walking and short cuts or to events that had taken place many decades earlier. Once these statements had been taken out of the picture (as the Law required) it was clear that there had been very little qualifying use of the land.

(24) Mr Walker summarised his comments by saying that the land had not been used as of right by a significant number of people. It was possible to agree that the parish of Cranbrook and Sissinghurst was a qualifying locality. However, there were only 4 witnesses out of a population of some 7,000 whose use of the land had actually been for the purposes of regular lawful sports and pastimes. This meant Rammell Field could only be described as a school playing field, which catered for local clubs.

(25) Mr Walker then said that there would be legal reasons to prevent the School from making use of Rammell Field for the benefit of its pupils if it were to be registered as a Village Green.

(26) Mr Francis Rook (Chairman of Cranbrook and Sissinghurst PC) said that the Parish Council had supported the application based on the evidence provided. It had also taken the view that it would be very beneficial to the town of Cranbrook if the application were to succeed.

(27) Mr R A Pascoe said that the number of signatories to the petition demonstrated that a lot of people cared deeply about Rammell Field. The application had been well made. However, the evidence of the bills and letters set out in Appendix D to the report clearly demonstrated that the application could not succeed.

(28) Mr H J Craske said that Rammell Field would have been an ideal location for a Village Green. The evidence presented was sufficient to persuade him that the legal tests had not been met as the land had been used "by right" and not "as of right."

(29) Mr J A Davies said that the application could not succeed as the evidence of the letters and bills demonstrated that use had not been "as of right."

(30) Mr R A Pascoe moved, seconded by Mr H J Craske that the recommendation of the Head of Regulatory Services be agreed.

Carried unanimously

(31) RESOLVED that the applicant be informed that the application to register land known as Rammell Field at Cranbrook as a new Town or Village Green has not been accepted.

11. Application to register land at Bishops Field at Great Chart as a new Village Green
(Item 5)

(1) The Commons Registration Officer said that the application had been made by Ms S Williams under Section 15 of the Commons Act 2006. The land was owned by Kent County Council, which had applied to Ashford BC for outline permission for the erection of up to 14 dwellings on the site. The immediate question was therefore whether the Panel should determine the application on behalf of the County Council or refer it to the Planning Inspectorate, as provided for in the Commons Registration (England) Regulations 2008 and accompanying guidance.

(2) The Commons Registration Officer briefly outlined the application itself. The site in question was a piece of land of some 1.4 acres situated next to a cul-de-sac known as Bishops Green in the Singleton area of the Great Chart with Singleton Parish. The land had been open until a notice was put up stating *"Public Notice Kent County Council property Land off Long Acre Road Ashford. The public may access this site for recreational purposes only they do so at their own risk. Permission may be revoked at any time."* The date given by the landowners for the erection of the sign was August 2009.

(3) Mr J N Wedgbury (Local Member) asked the Panel to note that he did not agree that the sign had been put up in 2009. He said that he had personally been present when KCC Property had put up the fencing and notice in 2010.

(4) The Commons Registration Officer said that Mr Wedgbury's contribution was further confirmation that there were areas of dispute between the applicants and the landowner. In response to such circumstances, DEFRA's guidance was that an application had to be referred to the Planning Inspectorate when "the registration authority has an interest in the outcome of the application or proposal such that there is unlikely to be confidence in the authority's ability impartially to determine it."

(5) The Commons Registration Officer then said that a previous Panel meeting had taken a decision to refer the Village Green application at Long Field in Cranbrook to the Planning Inspectorate in broadly similar circumstances. As this was an option available to the County Council, she had consulted both interested parties. The Landowner had objected very strongly to the proposed reference to the Planning Inspectorate. The applicant, on the other hand had given her view that the County Council had a direct interest and that the application could only be considered objectively by the Planning Inspectorate.

(6) The Commons Registration concluded her presentation by saying that the circumstances of the case were those envisaged by DEFRA when it had drafted the regulations and issued its guidance. The strong views of the applicant needed to be taken into account and she was therefore recommending reference to the Planning Inspectorate. In the event that the Panel decided not to do so, the application would be reported to the Panel in the Autumn.

(7) Mr R A Pascoe moved, seconded by Mr H J Craske that that the recommendations of the Head of Regulatory Services be agreed.

Carried Unanimously

(8) RESOLVED that the application be referred to the Planning Inspectorate for determination.