REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in The Assembly Rooms, New Romney TN28 8AS on Tuesday, 19 February 2013.

PRESENT: Mr M J Harrison (Chairman), Mr R A Pascoe (Vice-Chairman), Mr I S Chittenden, Mr H J Craske and Mr R F Manning

ALSO PRESENT: Mrs C J Waters

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

UNRESTRICTED ITEMS

4. Application to register land at Cockreed Lane at New Romney as a new Village Green
(Item 3)

(1) The Panel visited the application site shortly before the meeting. This visit was attended by the landowners Mr and Mrs Frith and some 6 members of the public.

(2) Mr A Frith, the landowner provided a copy of the text of his presentation to all parties prior to the meeting. Mr R A Pascoe noted that this presentation was intending to refer to Shepway DC. Mr Pascoe informed the Panel that he was a Member of Shepway DC but that he had not taken part in any discussions by that Authority about the application or any related topic.

(3) The Commons Registration Officer opened her presentation by explaining that the application had been made in October 2011 under Section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2008. In order for registration to take place, it needed to be shown that a significant number of the inhabitants of any 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.

(4) The Commons Registration Officer then said that the application had been supported by 40 user evidence forms and that letters of support had been received from the Local Member, Mrs Waters and from Shepway DC Councillor, Mrs E Gould.

(5) The Commons Registration Officer went on to inform the Panel that the landowners, Mr and Mrs Frith had objected to the application (supported by an opinion from Counsel.) One of these objections had been that the applicants had not complied with the relevant statutory requirements in relation to the service of notice on the landowner. She therefore went on to address this particular question.

(6) The Commons Registration Officer said that the applicants were required were required by Regulation 20 (1) of the Commons Registration (England) Regulations 2008 to serve notice of the application on the landowner “as soon as reasonably practical after receiving an acknowledgement of an application.” She said that the

Regulations seemed to have been written on the assumption that the Registration Authority would immediately begin working on an application the moment it was received. In practice, KCC had been faced with a six month backlog at the point of receipt. The applicants had therefore been asked to notify the landowner informally but to wait until after KCC had published the notice to do so officially. In the light of the applicant's objection, legal advice had been taken. This advice had indicated that the landowner had placed too much reliance on the words "as soon as reasonably practical." This phrase was not as restrictive as the landowner believed, and DEFRA guidance appeared to advise that the landowner's objection period should run roughly in tandem with the consultation period. She therefore did not consider that the application should be treated as having been abandoned.

(7) Mr Craske asked for confirmation that the application had been acknowledged informally at an early stage. The Commons Registration Officer replied that this had happened within a week of receipt and that the applicants had been asked to informally notify the landowner at the same time.

(8) The Commons Registration Officer moved on to consider the legal tests. The first of these was whether use of the land had been "as of right." There was no evidence to indicate that use had been in secrecy or with permission. The question remained whether such use had been with force. This did not on this occasion mean physical force. The landowner's view was that use had been contentious.

(9) The landowner had stated that there had been verbal challenges and that notices reading "Private Property Keep to Footpath" had been erected in 1992. The applicant, however, disputed this and claimed that no one had seen any such notice or been challenged. This view was supported by some of the user evidence forms. The Commons Registration Officer said that it was not possible to come to a definitive conclusion on this conflicting evidence based on the paperwork. Further investigation would be needed in order to reach an informed conclusion.

(10) The Commons Registration Officer then addressed the question of whether the land had been used for the purposes of lawful sports and pastimes. She referred to the User Evidence Forms set summarised in Appendix C of the report. These described activities such as dog walking, picnicking and blueberry picking. The landowner disputed this, saying that he had not witnessed any significant recreational use and that, in any case, the land had been used for intensive arable crops between 1989 and 1992 (at the beginning of the 20 year period in question) and for sheep grazing between 1993 and 2000.

(11) The Commons Registration Officer said that the landowner had claimed that much of the claimed land use must have been associated with the public footpath. If so, this use would not have been capable of giving rise to a general right to recreate over the whole of the land (as established by the Courts in the *Laing Homes* case.) However, the only way of resolving the conflict of evidence was to test it at a public inquiry.

(12) The Commons Registration Officer 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. Following questioning of the applicant's original description, the applicant had identified Craythorne Manor as the neighbourhood within the locality of New Romney. The applicant claimed that Craythorne was a

historic neighbourhood, but this was disputed by the landowner. This question needed further investigation. So too did the dispute between the two parties as to whether a significant number of people had used the land.

(13) The Commons Registration Officer then confirmed that the test of usage taking place up to the date of the application or within two years of "as of right" use ceasing had been met (although it was not clear whether the period in question ran from 1989 to 2009 or from 1991 to 2011. In either case, the dispute over the landowner's contention that the land had been used for intensive arable crops and sheep grazing needed to be examined in order to establish whether the test of use taking place over twenty years or more had been met.

(14) The Commons Registration Officer concluded her presentation by saying that she was recommending that the application should be considered at a non-statutory public inquiry as the various disputes over evidence could not be resolved on paper.

(15) Mr Mark Skilbeck addressed the Panel as a supporter of the application. He said that he agreed with the recommendations as a non-statutory public inquiry would enable the witnesses to give their statements in greater detail. It would also enable them to describe the gymkhanas and horse shows that had been held on the land.

(16) Mr Skilbeck went on to say that he agreed that the land had at least been used up to 2009. It could be that the erection of fencing in that year had made it more difficult for some of the more elderly inhabitants to access the land. He considered that a public inquiry would test the landowner's contention that signs had been put up on the land at any time as well as the question over how much use had been associated with the public footpath. He was confident that it would be demonstrated that Craythorne Manor was indeed a valid neighbourhood. He concluded by making reference to a planning application made by the landowner in December 2002 in which he said he had described the land as former agricultural land that had not been used for 12 years.

(17) Mr Frith (landowner) said that he objected most strongly to the application which, he believed, would not have been made if the land had not been identified as a preferred site for development by Shepway DC in their core strategy. He said that he had farmed the land continuously since 1966, growing potatoes and wheat, followed by sheep grazing and thereafter by the cultivation of crops such as potatoes, wheat, barley and oil seed rape. There had then been a period of "set aside" as required by DEFRA and the field was now used for sheep grazing. He questioned why no one had objected to the continuous cultivation of the land between 1986 and 1992 if it had been used "as of right" during that period, as it would have been impossible to use it for recreational activities.

(18) Mr Frith then said that he had given permission for various activities such as football and a Gymkhana in aid of the BA BA Walk. He had given a one-off permission for the organisers of the BA BA Walk to cut down the vegetation in order to create a walkway in the field that made it possible for small children and mothers with infants to participate in this charitable event. He said that he had always been a socially responsible and public-spirited farmer and gave a number of examples.

(19) Mr Frith then said that there were a number of reasons why the application should be turned down without recourse to a non-statutory public inquiry. He said that

the applicants had failed on two occasions to put in evidence of a qualifying neighbourhood. Furthermore, they had not given any specific why Craythorne Manor should be categorised as a qualifying neighbourhood. He quoted Lord Hoffman's judgement in the *Oxfordshire CC v. Oxford CC* case in which he had said that the Registration Authority *"has no investigative duty which requires it to find evidence to reformulate the applicant's case. It is entitled to deal with the application and the evidence as presented by both parties."*

(20) Mr Frith concluded his presentation by saying that the effect of the *Beresford* judgement was that the burden to prove all elements of the definition of a Village Green (including a qualifying neighbourhood) was on the applicants and that the application should therefore be rejected because of their failure to do so.

(21) Mr Frith replied to a question from Mr Manning by saying that the land had been put into "set aside" between the years 1992 and 2009. The trench had been dug in August 2003 alongside Cockreed Lane and Rolfe Lane. It had then been filled in after the fencing had been put up.

(22) Mrs C Waters (Local Member) said that she considered that there was not enough conclusive evidence to enable the Panel to reach a safe decision on the application. She therefore agreed with the recommendation that there should be a non-statutory inquiry. This would enable all the relevant facts to be assembled and fully considered. She also confirmed that she had not personally used the site.

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

(24) In seconding the motion, Mr Craske said that he was satisfied on the evidence that the application had been duly made and therefore should not be abandoned.

(25) On being out to the vote, the Panel unanimously carried the motion as set out in (23) above.

(26) RESOLVED that a Public Inquiry be held into the case to clarify the numerous issues.