

REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Palmer Room, Langton Green Village Hall, Winstone Scott Avenue, Langton Green, Tunbridge Wells TN3 0JJ on Tuesday, 24 September 2013.

PRESENT: Mr M J Harrison (Chairman), Mr S C Manion (Vice-Chairman), Mr M Baldock, Mrs V J Dagger and Mr T A Maddison

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

UNRESTRICTED ITEMS

12. Application to register land known as Glebe Field in the parish of Goudhurst as a new Town or Village Green *(Item 4)*

(1) The Panel Members visited the application site before the meeting. This visit was attended by Mr E Bates (applicant) a representative from Goudhurst PC and four members of the public. The applicant drew the Panel's attention to the pathway which had been constructed when the new primary school was opened and used by local people to avoid the main road. He pointed out the parking on the land which occurred when church events were taking place and the chain on the vehicular entry point which prevented local residents using the land for parking. A local resident also pointed out the informal entry point adjacent to the Church Rooms, which was used by a number of people to gain access to the site.

(2) The Chairman informed the Panel that the Local Member, Mr A J King had sent his apologies owing to a clash with other Council business. He had asked to be kept informed of the progress of the application.

(3) The Commons Registration Officer began her presentation by saying that the application had been made by Mr E Bates under section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2008. The application had been accompanied by 112 user evidence forms and other evidence (including a statement detailing the history and use of the site, a copy of the leases between Kent County Council and the Canterbury Diocesan Board of Finance, notes of a meeting between the Parish Council and the landowner regarding the future of the site, photographic evidence of organised activity taking place on the land in question and a programme from the 1997 fete).

(4) The Commons Registration Officer went on to set out the case put forward by the applicant. This was that the site was had been used for generations on a daily basis by a significant number of local people. Although Goudhurst and Kilindown Primary School had a lease which allowed its pupils to play sport on the field, local residents had continued to use the site for their own recreation whilst ensuring that this use did not interfere with school use.

(5) The Commons Registration Officer then described the responses from consultees. Tunbridge Wells BC (Planning and Development) had stated that the field had been used for recreational purposes, although it could not confirm whether this use had been by a significant number of inhabitants of the locality or of a neighbourhood within a locality. A local resident, Mr P Glyde had written in support of the application, saying that the land was in regular use for dog walking, socialising and football. He had also drawn attention to the well-attended fetes and shows which took place during the summer months.

(6) The Commons Registration Officer continued by saying that the site was owned by the Canterbury Diocesan Board of Finance who had leased it to Kent County Council as a school playing field between the years 1966 and 2010. The Landowner had permitted the County Council to construct a footpath in 1998 and to install two gates at either end of the pathway.

(7) An objection had been received from Graham Boulden and Co, acting on behalf of the landowner. The first ground for objection had been that the application was invalid as the application plan included land not owned by the landowner. The Commons Registration Officer said that this was not a factor that could, in itself, invalidate an application. Equally, the fact that the applicant had only moved into Goudhurst in 1996 (after the qualifying period had begun) did not prevent him from claiming Village Green status for the land in question.

(8) Graham Boulden and Co's other grounds for objection were that permission had been granted for use of the field, which signified that use had been "by right" rather than as of right; that some of the recreational use had been ancillary to the main purpose of walking along the footpath; and that part of the land was used for parking in connection with the church. They had also drawn attention to the *Newhaven Port and Properties Ltd v. East Sussex County Council* case where it had been ruled that registration as a Village Green could not take place where it would be inconsistent with the statutory purpose for which the land was held. The Commons Registration Officer advised that this decision had been overturned in the subsequent Court of Appeal judgement in the same case.

(9) The Commons Registration Officer moved on to consideration of the individual tests for registration to take place. The first of these was whether use of the land had been "as of right". She said that use had clearly not been by force or stealth. The question of whether or not the land had been used with permission was disputed by the two parties involved. The landowner had provided a copy of a flyer advertising the 1994 village fete. This had included the statements "*by kind permission of the head teacher*" and "*entry by programme.*" The landowner contended that these statements demonstrated that the head teacher was entrusted by the landowner with control over the application site and that the public would consequently understand that their attendance at the fete was by virtue of his consent on behalf of the landowner.

(10) The applicant's contention was that the lease between the landowner and the County Council specifically restricted use to primary school children. Therefore, the head teacher would not have been in a position to grant permission on behalf of the landowner. His permission would only have been sought to ensure that the fete would not conflict with any school activities. The applicant had also stressed that the

landowner had not been aware that formal activities were taking place on the application site.

(11) The Commons Registration Officer moved on to consider the views of both parties on the implications of the *R Mann v Somerset County Council* case where the Court had found that occasional exclusion from part of the land had been sufficient to communicate to users that their use of the whole land at other times was with the landowner's implied permission.

(12) The landowner contended that entry to the fete was generally by programme, which effectively amounted to a fee being charged. This contention was supported by the local vicar, who had stated that the programmes had been sold in local shops and that the three entrances to the fetes were manned so that those who did not have a programme would be invited to purchase one in order to gain access to the field. In the landowner's view, the circumstances were similar in all pertinent aspects to those in the *Mann* case, preventing the applicant from being able to prove that use had been "as of right" for the period on question.

(13) The Commons Registration Officer said that the applicant's contention was that this case was different to the *Mann* case in that access to the site was not secured and that even though the fetes regularly took up a lot of space, there was still plenty of opportunity for anyone else to use the rest of the land for other recreational activities whilst they were taking place. The applicant also disputed that the sale of programmes was a means of controlling admission. They were, in reality, a means of raising funds towards the cost of the fete.

(14) The Commons Registration Officer concluded this aspect of the application by saying that there was a conflict of fact as to the position when the site was used for fetes and other organised events, making it impossible at this stage to conclude whether use of the site had been "as of right".

(15) The Commons Registration Officer then briefly turned to the other tests. She said that it was clear from the evidence that use of the land had been for lawful sports and pastimes by a significant number of inhabitants of the parish of Goudhurst up to the date of application in 2011. This use had taken place throughout the required period of 1991 to 2011 and, in fact, for a lengthy period before that date.

(16) The Commons Registration Officer summed up by saying that as there was a conflict of fact in relation to the annual fete, the best mechanism for determining whether the "as of right" test had been met was to hold a non-statutory public inquiry. She therefore recommended accordingly.

(17) Mr E Bates (applicant) said that the report had concluded that four of the five requirements for land to be registered as a Village Green had been met but that there was a conflict of fact as to what the position was on days when the application site had been used for fetes and other organised events. The report had therefore been unable to reach a conclusion on whether use of the land in question had been "as of right." The report had accepted that "as of right" use had taken place but was not sure whether this had been the case for the annual village fete. He therefore proposed to deal with this single question.

(18) Mr Bates said that the fetes were organised by a committee made up of representatives from the local Scout group, the Parish Hall committee, the local school Parent Teachers Association (PTA) and the Parochial Church Council (PCC). The chairmanship was rotated between the organisations on a rota basis each year and profits divided between the four.

(19) Mr Bates said he wished to stress that all four organisations were made up of worthy volunteers from the local community and were distinct from, for example, staff members of the local school or church, from which they enjoyed independence and a certain distance.

(20) Mr Bates then referred to the case of *R (Mann) v Somerset* saying that the difference was that in *Mann* the land owner had exercised his right to restrict access, whereas the annual fete on the Glebe Field Glebe was an event which the landowner had confirmed had taken place without his knowledge. A letter dated 1st February 2011, from the Diocese of Canterbury had confirmed (as set out in Appendix 4 of the application) “*that the Diocese was unaware that use was being made of the field by the Parish and by the Fete Committee.*” Mr Bates asked whether it could be made any clearer that this use had been unauthorised.

(21) Mr Bates continued by saying that the fete committee always confirmed the date of the fete with the head teacher of the school at an early stage in order to avoid the obvious embarrassment and inconvenience of a clash of events. However, under the restrictive terms of the lease of the field, the head teacher was not in any way able to grant *permission* for use on behalf of his school, KCC or the Diocese of Canterbury.

(22) Mr Bates summed up this point by saying that the fete would always go ahead and that fete committee merely wished to collaborate with the school over the date. The head teacher had never refused permission and any such refusal would in any case not have been accepted by the fete committee. There had therefore never been a manifest act of exclusion.

(23) Mr Bates then said that residents were encouraged to buy fete programmes from local shops in advance or on the day to help raise funds. On the day of the fete, volunteers with buckets and a supply of programmes were at some entrances for some of the time. The site remained “porous” as other entry points remained vacant and that there was no attempt to “lock down”. Many people were waved in, regardless of their possession of a programme, whilst whole families sharing a single programme were welcomed.

(24) Mr Bates said that he had consulted current and former organisers of the fete and that it was clear that showing or purchasing a programme had never been a prerequisite to entry to the fete. This was because not all entry points were covered by stewards or because the stewards were giving the benefit of the doubt to anyone who said they had left their programme at home or would buy one later. Tea, coffee and cake were sold in the Church Rooms, and the lavatories were only available on site. Foot traffic between the field and the Church Rooms was considerable and not managed.

(25) Mr Bates referred to his own experience, saying that he had forgotten to buy a programme for this year’s event. He had not been challenged at any point despite

coming and going many times on foot and by car while helping on stalls. He said he knew of at least one other parish councillor who had similarly not been challenged when he had also forgotten to buy a programme.

(26) Mr Bates then said that there was no restriction to access or use of that part of the land which was not actually occupied by the paraphernalia associated with the fete, and that residents who wished to do so were able to continue their sports and pastimes as of right. Those visitors not intending to join in the fete tended to become involved by, for example, listening to live music, stopping for a drink or taking the opportunity to throw a wet sponge at their teacher or scout master held in the stocks. All this “*as of right*” use was to be applauded as it had been organised by the community for the community.

(27) Mr Bates concluded his presentation by saying that he hoped that he had helped the committee to better understand that the organisation and management of the fete as an activity “*as of right*”, and that it would therefore confirm the established legal right of access as a Village Green.

(28) The Chairman asked Mr Bates to comment on a letter from Rev Hornsby, the former Vicar. This letter stated that the sale of programmes represented fees for admission. Mr Bates replied that he had not previously seen the letter, but that he did not agree with its content. He added that Rev Hornsby had never actually sat on the fete organising committee.

(29) Mrs B Stafford (supporter) said that she had manned the Parish Council stand at the fete held in 2010. A small child had been reported missing and a search for her had taken place all over the field. There had been concern that she might easily have left the field because two of the entry points had not been manned. Fortunately, she had eventually been found, safe and well. However, this story demonstrated that Mr Bates was right when he said that access to the site could easily take place unchallenged during the fetes.

(30) Mr R Bushrod said that he had been a local resident since 1983. He had served as a Church Warden. He said that he could confirm that there had not been any attempts to restrict access during church fetes and that the Collectors were always instructed not to do so. He then referred to the phrase “by kind permission of the Headteacher” which appeared on the 1994 village fete flyer from 1994 (Appendix D). He said that this was simply an example of village politeness which was not intended (or understood) literally.

(31) Mr G Boulden (Graham Boulden and Co) spoke on behalf of the landowner. He said that he did not agree with Mr Bates’ description of the access arrangements as “porous”. The site had become more regulated after 1996 when the footpath had been constructed.

(32) Mr Boulden then referred to the fete flyer (Appendix D) noting that it contained the words “Entry by Programme.” This, he said would clearly convey to the average person that a right to refuse permission to enter the land would be in effect on the day of the fete.

(33) Mr Boulden also said that use of the footpath did not qualify as a lawful sport and pastime and that a non-statutory public inquiry would afford an opportunity to

build up a more complete picture of the amount of lawful sports and pastimes that had actually taken place. He also asked the Panel to agree that the incident involving the small child mentioned by Mrs Stafford should be understood as a single incident rather than a representative event.

(34) During discussion of this item, Mr Baldock said that he believed that the fact that Canterbury Diocese had been unaware that the land in question was being used for fetes and other organised events indicated that use of the land had been as of right.

(35) Mr T A Maddison moved, seconded by Mr S C Manion that the recommendation of the Head of Regulatory Services be agreed.

Carried 4 votes to 1

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

13. Application to register land at Showfields in Tunbridge Wells as a new Town or Village Green

(Item 6)

(1) The Panel Members visited the application site before the meeting. This visit was attended by Mr R Fitzpatrick (applicant).

(2) The Chairman informed the Panel that the Local Member, Mr J E Scholes had sent his apologies owing to a clash with other County Council business. He had indicated his agreement with the contents of the report.

(3) The Commons Registration Officer tabled aerial photographs of the application site and then explained that the application had been made by Mr R Fitzpatrick under section of the Commons Act 2006 and the Commons Registration (England) Regulations 2008. The application had been accompanied by 38 user evidence forms.

(4) The Commons Registration Officer then said that Cllr C Woodward from Tunbridge Wells BC had replied on behalf of himself, Cllr Mrs B Cobbold and Mr J E Scholes to advise that they were happy to support the application whilst having concerns that Village Green status might prevent redevelopment of community facilities from taking place. Tunbridge Wells BC Planning had stated that it had no objection as Village Green status would not conflict with the designation of the site in the Local Plan as a “neighbourhood centre” and “important local space.”

(5) The Commons Registration Officer then reported that an objection had been received from Mr Colin Lissenden on behalf of the Town and Country Housing Group on the grounds that part of the site was within its ownership. The objection had also stated that the application would severely affect any future regeneration plans and deter future investment to improve the land in the best interests of the local community.

(6) The Commons Registration Officer went on to inform the Panel that the applicant had requested a number of amendments to be made to the application.

These had been agreed as they accorded with DEFRA's guidance on the principle of fairness and because they did not cause any prejudice to any of the parties involved.

(7) The Commons Registration Officer then turned to the objections from the Landowner, Tunbridge Wells BC. These were that registration of a car park, footpaths, circulation areas and walkways of a building complex were outside the scope and intention of the 2006 Act; that 62% of the users had not used the site for the full 20 year period; that several users referred to the use of the site for a "right of way" type use to access community facilities; that use of the land for organised events had been with the permission of the landowner; and that only 12 of the 2200 local residents had used the land for the full qualifying period, which did not constitute a "significant number."

(8) The Commons Registration Officer went on to consider the legal tests which needed to be met for registration to take place. The first of these was whether use of the land had been "as of right". She said that there was no evidence of use being either with force or secrecy. The landowner had contended that it had granted permission for specific community events to take place and had produced a copy of an agreement with the Number One Community Trust for hire of the land for a fun day in 2009. She said that attendance at fun days and any other organised events were not qualifying uses for the purposes of Village Green registration. There had, however, been no evidence that the fun days and fetes had involved fencing off the land, charging a fee or restricting access in any other way. For this reason, the recent decision in *the R Mann v. Somerset County Council* case did not apply.

(9) The second test was whether use of the land had been for lawful sports and pastimes. The landowner had contended that much of the use had been linear use of the footpath. It was also noted that some of the user evidence referred to use of the site during fetes and fun days. The Commons Registration Officer said that there was sufficient evidence of qualifying use (even when public footpath and organised use was excluded) for this test to be met.

(10) The Commons Registration Officer said that the applicant had specified "Showfields Estate, Tunbridge Wells and Ramslye Estate, Tunbridge Wells" as the qualifying locality. Although this did not meet the test, it was only necessary for the Registration Authority to be satisfied that there was such a locality. In this instance, the Tunbridge Wells BC electoral ward of Broadwater met the criterion.

(11) The Commons Registration Officer went on to consider whether use had been by "a significant number" of residents of the locality. She explained that this was not a quantitative test. Even though the landowner had objected that only 12 of the 2200 local residents had used the land for the entire qualifying period, the test was met because of the site had been sufficient to indicate that it was in general use by the community. She referred to comments from Tunbridge Wells BC Planning in support of her conclusion.

(12) The Commons Registration Officer then said that use of the site for recreational purposes had clearly continued up to the date of application.

(13) The Commons Registration Officer said that the landowner had objected that some 60% of the users had not used the site for the entire qualifying period of 1992 to 2012. She explained that this objection had arisen through a misunderstanding of

the meaning of the test. In fact, the site had been in general use by the community throughout the required period.

(14) The Commons Registration Officer concluded her presentation by referring to the landowner's objection that registration of a car park, footpaths, circulation areas and walkways of a building complex were outside the scope and intention of the 2006 Act. She said that the Commons Act 2006 set out the only criteria for registration and did not specify any conditions in terms of the nature and appearance of the land. Furthermore, the fact that the majority of the land was shown in the Borough Council's Local Plan as being an "important open space" confirmed that the landowner was well aware of its amenity value and the recreational use made of it by local residents. There were also no significant conflicts of fact requiring further research. She therefore concluded that all the necessary tests had been met and recommended that the land in question (as amended in (6) above) be registered as a Village Green.

(15) Mr Manion asked whether the establishment of a children's play area could be seen as implying that use had been with permission. In response, the Commons Registration Officer referred to the *R v City of Sunderland ex parte Beresford* case, where the Court had ruled that putting up apparatus for community use did not constitute a communication of permission.

(16) Mr T Warren (Town and Country Housing Group) said that his company owned all the land around the site. If Village Green registration were to take place, it would stifle their community-led regeneration plans. He contrasted the number of user evidence forms with the 100 residents from Ramslye and 200 from Sherwood who had attended local consultation meetings on his organisation's regeneration proposals.

(17) The Chairman clarified that the Panel was not entitled by Law to consider the representations made by Mr Warren. The Panel had a duty to limit itself to careful consideration of whether the criteria for registration had all been met.

(18) Mr R Fitzgerald (applicant) briefly congratulated the Commons Registration Officer on her report and presentation.

(19) Cllr C Woodward addressed the Panel as a supporter of the application. He said that the land in question represented a community facility. He said that he did not wish to see development inhibited and that registration of the land must not be allowed to constrain opportunities for those who lived in the area.

(20) Mr Richard Harris (Tunbridge Wells BC Legal Services) said that his concern was whether the "significant number" test had been met. There had to be sufficient usage to demonstrate that the land in question was in general use by the community. Yet, only 24 user evidence forms had been presented, representing some 1% of the community. This was an extremely low response. This number was further diminished when the number of people using the footpath "by right" was deducted. He added that the land was in need of a substantial amount of investment and it would be unfortunate if this was jeopardised by such a small number of people.

(21) Following discussion, Mr M Baldock moved, seconded by Mr T A Maddison that the application as amended be accepted as set out in the recommendation in paragraph 58 of the report.

Carried 4 votes to 1

(22) RESOLVED that the applicant be informed that the application as amended in Appendix D of the report to register land at Showfields in Tunbridge Wells as a new Town or Village Green has been accepted and that the land subject to the application (as shown at Appendix D) be registered as a Village Green.

14. Application to register land at South View Road in Tunbridge Wells as a new Town or Village Green

(Item 5)

(1) The Panel Members visited the application site before the meeting. This visit was attended by Mrs M Heasman (applicant).

(2) The Commons Registration Officer said that the application had been made by Mrs M Heasman under section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2008. It had been accompanied by 54 user evidence forms and 9 statements of support.

(3) The Commons Registration Officer then said that the application had originally included a tarmac parking area on the north eastern part of the site. Following an objection from Mr C Lissenden of the Town and Country Housing Group, the applicant had expressed a wish to exclude this part of the site from her application.

(4) The Commons Registration Officer continued by setting out the views of the consultees. Tunbridge Wells BC Planning had stated that it was unable to confirm whether the site had been used “as of right” by a significant number of local residents for lawful sports and pastimes. Tunbridge Wells BC had also replied in its capacity as landowner. It had stated that it did not wish to make any representations in respect of the application.

(5) The Commons Registration Officer went on to say that it was still necessary to establish whether each of the individual tests had been met, even though no objection had been received. She therefore moved on to consider the legal tests.

(6) The first test was whether use of the land had been “as of right.” The Commons Registration Officer said that there was no evidence to suggest that use had been by force or stealth. Furthermore, there had been no indication that the landowner had given permission for use of the land. This included implied permission, as no fetes or other events organised by the landowner had taken place on the land in question.

(7) The Commons Registration Officer then said that there had been use of the land for the purposes of lawful sports and pastimes. The user evidence forms had made reference to a wide range of sports and pastimes, notwithstanding references within them to uses associated with the footpath. As 60 local residents in the neighbourhood of High Brooms had attested to use of the site, it was also clear that use had been by a significant number of inhabitants of a neighbourhood within the locality of Tunbridge Wells.

(8) The Commons Registration Officer then confirmed that use had continued up to the date of application (and beyond) and that use had indeed taken place over the entire 20 year period in question. This was 1992 to 2012 rather than 1991 to 2011 as set out in the report.

(9) The Commons Registration Officer concluded her report by saying that as all the legal tests had been met, she recommended that the land in question (as amended) should be registered as a Village Green.

(10) Mrs M Heasman (applicant) briefly thanked the Commons Registration Officer for the hard work that she had put in to producing a thorough report. She confirmed in response to a question by the Chairman that church groups had organised events on the land.

(11) Mr Manion noted that one of the user evidence forms had stated that bonfires had taken place. He asked whether Mrs Heasman knew whether the landowner had been asked for permission. Mrs Heasman replied that she was not personally aware of this activity. She suggested that it might have happened before the area had been properly grassed over.

(12) Mr T A Maddison moved, seconded by Mr S C Manion that the recommendations of the Head of Regulatory Services be agreed.

Carried unanimously

(13) RESOLVED that the applicant be informed that the application to register land at South View Road in Tunbridge Wells as a new Town or Village Green has been accepted, and that the land subject to the application (as amended and shown in Appendix A of the report) be registered as a Village Green.

15. Application to amend the Register of Common Land for land known as "The Lees" at Yalding (CL14)

(Item 3)

(1) The Commons Registration Officer said that the application had been received from Mr H Craddock under paragraph 2 of Schedule 2 of the Commons Act 2006.

(2) The Commons Registration Officer briefly explained that Common Land was defined as land subject to traditional rights or "rights of common." These areas were included within the definition of "Open Access Land" which gave the public the right to gain access on foot.

(3) The land which was the subject of the application had been included in a scheme of regulation and management made under the Commons Act 1899 which permitted District Councils to make schemes of management for common land.

(4) The Commons Registration Officer said that a scheme of management had been made in 1949 by the Maidstone Rural Council in relation to land known as "The Lees" in Yalding. The applicant considered that certain parts of the land included within the scheme of management had been omitted from the formal registration of the land as common land and that the Register of Common Land should be amended accordingly.

(5) The Commons Registration Officer went on to explain that the Panel needed to satisfy itself that the land was not currently registered as Common Land or Village Green and that it had never been finally registered as such. It also needed to be satisfied that the land was either regulated by an Act made under the Commons Act 1876, or subject to a scheme under the Metropolitan Commons Act 1866 or the Commons Act 1899, or regulated as common land under a local or personal Act, or otherwise recognised or designated as common land by or under an enactment.

(6) The Commons Registration Officer said that an objection had been received from KCC Governance and Law on behalf of the County Council's Highways and Transportation Team. This objection set out that those sections of the application site that formed part of the public highway should not be included within any subsequent registration. It was also stated that if the application were to succeed, it would impact on the County Council's statutory duty to assert and protect the rights of the public in relation to the public highway.

(7) The Commons Registration Officer explained that the concerns raised by the objector were not a material consideration. She then said that it was clear that the scheme of management had clearly intended the inclusion of the roads regardless of whether they would have been subsequently capable of formal registration under the later Commons Registration Act 1965. She therefore recommended accordingly.

(8) The Chairman read out correspondence received from Ms V Clothier (KCC Governance and Law) on behalf of behalf of the objector.

(9) Mr T A Maddison moved, seconded by Mrs V J Dagger that the recommendations of the head of Regulatory Services be agreed.

Carried unanimously

(10) RESOLVED that the applicant be informed that the application to amend the Register of Common Land to register additional areas of Common Land has been accepted (as shown in Appendix D of the report) and that the Register of Common Land for unit number CL41 be amended accordingly.