

## KENT COUNTY COUNCIL

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### REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Thanington Resource Centre, Thanington Road, Canterbury CT1 3XE on Tuesday, 18 March 2014.

PRESENT: Mr M J Harrison (Chairman), Mr S C Manion (Vice-Chairman), Mr A D Crowther, 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

#### **1. Application to register land known as Montefiore Woodland at Ramsgate as a new Village Green**

*(Item 3)*

(1) The Commons Registration Officer began her presentation by explaining that the land in question was owned by Ramsgate Town Council who wished to voluntarily register it as a Village Green.

(2) The Commons Registration Officer then explained that the Commons Act 2006 had introduced a provision which enabled land to be voluntarily registered if the owner applied and with the consent of any relevant leaseholder of, and the proprietor of any relevant charge, over the land.

(3) The land consisted of some 1.45 acres of woodland. Land Registry searches had revealed that it was wholly owned by the Town Council.

(4) An objection to the application had been received from Mr S Berger who represented Samber Ltd. This was a registered charity, whose land lay north west of the application site. The charity wished to rebuild the theological college which had once stood on the application site, having been built in the late 1860s and demolished in 1964. The land had been owned by Sir Moses Montefiore who had set up a trust in 1866 with guidelines as to the administration of the college and a strict prohibition on the sale of the land. The Charity considered that Village Green status would conflict with its aim of rebuilding the college. It had therefore asked for the application to be amended so as to facilitate the reconstruction of the college.

(5) The Commons Registration Officer said that Mr Berger's representations had been forwarded to the applicants for comment. Ramsgate TC had taken the position that the trust had been superseded by various land transactions and that the Town Council was the current lawful landowner.

(6) The Commons Registration Officer said that she had taken advice from KCC Legal Services on the comments made by Mr Berger and on the Copy of the Register of Title. The advice received had been that the land had been registered to Ramsgate TC and that there was no evidence to suggest that any error had been

made in the registration. Land Registry guaranteed the Town Council title to the land. There was, therefore, no reason in respect of ownership for registration not to proceed as requested by the landowner.

(7) The Commons Registration Officer concluded her presentation by saying that, having established that Ramsgate TC was the legal owner of the land, it was still necessary to establish that the land was situated in an identifiable locality. In this instance, the appropriate locality was the Ramsgate TC electoral ward of Sir Moses Montefiore. She therefore recommended that the land should be formally registered as a Village Green.

(8) Mr David Holder identified himself as a representative of Samber Ltd. He explained that the charity wished to rebuild the theological college in respect of Sir Moses Montefiore's wishes. He had been a very famous philanthropist during the 19<sup>th</sup> Century and it was very appropriate that his memory was preserved in this way.

(9) Mr Holder said that Samber Ltd had only received the report a week before the meeting and that an adjournment was requested to enable a thorough examination of the legal aspects of the case.

(10) The Chairman ruled that Samber Ltd had been given sufficient time by the Commons Registration Officer to examine any aspect of the case they wished. He noted that she had written to Mr Berger on 20 February 2014, inviting him to check the Land Registry records if he had any doubts about the land ownership question. This had followed Mr Berger's original letter of 4 September 2013.

(11) The Democratic Services Officer advised that the agenda had been published five clear working days ahead of the meeting in accordance with the provisions of the Local Government Act. The speaking procedures made clear that this was an opportunity for members of the public to set out what they felt was missing from or insufficiently stressed in the report, rather than for the introduction of new evidence.

(12) Mr Holder stated that, in his view, the application had not been properly made. He referred to the Commons (Registration of Town and Village Greens (Interim Arrangements) (England) regulations 2007 which required an application to be made on a Form 44 and to be accompanied by a statutory declaration. The Commons Registration Officer explained that the regulations referred to by Mr Holder had been superseded by the Commons Registration (England) Regulations 2008 as a result of Kent's participation in the pioneer implementation of Part 1 of the Commons Act 2006. She confirmed that the application had been correctly made.

(13) Mr Holder referred to the Copy of the Register of Title set out in Appendix C of the report. He noted that section A2 made an exception of the disused tunnel running underneath the land from the registration. He said that if, for any reason, it became necessary for work to be carried out on the tunnel, Village Green status for the land above would make it difficult to do so.

(14) The Chairman ruled that this was not a matter that the Panel was entitled to consider. He added that he, nevertheless, did not believe that this question should be of concern, as the tunnel was disused and the entrances to it were not on the land in question.

(15) Mr Holder then said that section C of the Copy of Register of Title made reference to both Custodian and Managing Trustees. This implied that there was some doubt in respect of whether the Town Council fully owned the land.

(16) The Commons Registration Officer referred to the advice from KCC Legal Services, which had been given in the light of both Mr Berger's letter of 4 September 2013 and of the Copy of the Register of Title.

(17) Mr S C Manion moved, seconded by Mr A D Crowther that the recommendations of the Head of Regulatory Services be agreed.

*Carried unanimously.*

(18) RESOLVED that the applicant be informed that the application to register the land known as Montefiore Woodland at Ramsgate has been accepted and that the land subject to the application be formally registered as a Village Green.

## **2. 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 application. This visit was attended by Mr and Mrs C Perkins and Mr D Pierce (landowners).

(2) The Commons Registration Officer introduced the application which had been made under section 15 of the Commons Act by Wickhambreaux Parish Council. She confirmed that all the statutory consultation arrangements had been carried out.

(3) The Commons Registration Officer said that the land had been owned by the Church Commissioners until 2009 when it had been sold in different plots to four separate landowners.

(4) The Commons Registration Officer then said that the application had been considered by the Panel on 15 November 2011 where it had been decided that a non-statutory Public Inquiry would be held to clarify the issues. This had taken place in November 2012 and February 2013, and the Inspector had provided a detailed report dated 13 December 2013.

(5) The Commons Registration Officer moved on to outline the Inspector's findings in respect of the legal tests. The Inspector had concluded that use of the land had been "as of right" because use had clearly not been by force or stealth. She had not accepted the landowners' view that the tenant farmer waving and acknowledging people using the land constituted implied permission, and had therefore concluded that use had also not been with permission and that the test had consequently been met.

(6) The second test was whether use of the land had been for the purposes of lawful sports and pastimes. The Inspector had found that the vast majority of use had consisted of walking along a limited number of defined routes. Given the size of the land, she had concluded that this did not suggest general recreational use of a nature which would have led a reasonable landowner to consider that a right was being asserted to indulge in lawful sports and pastimes over the whole land. The test had not been met because the majority of use was not "qualifying use" and the

remainder (which was no more than “trivial or sporadic”) was insufficient to give rise to Village Green registration.

(7) The Inspector had then considered the third test, which was whether use had been by a significant number of inhabitants of a particular locality or a neighbourhood within a locality. The Inspector had found that the two civil parishes of Wickhambreaux and Ickham did constitute a locality. She had, though, not accepted that the applicants had been able to identify a sufficiently cohesive neighbourhood to meet the requirements of the Commons Act 2006. Consequently, she had concluded that the test had not been met. She had, therefore, not gone on to consider whether use had been by a significant number. The Commons Registration Officer said that in the event that the Inspector *had* been satisfied on the neighbourhood question, her findings in respect of the lawful sports and pastimes test would have precluded her from finding that use had been by a significant number of its inhabitants.

(8) The Commons Registration Officer briefly explained that the Inspector had been satisfied that use of the site had ceased less than two years prior to the application, and that use had taken place over a period of twenty years or more (apart from a small amount of the land which had been enclosed for two months in 1998 by the Environment Agency for borehole drilling works).

(9) The Commons Registration Officer moved on to summarise the Inspector’s conclusions which were that the application should fail because the applicants had been unable to identify a cohesive neighbourhood; that the Registration Authority had no power to substitute a differently defined neighbourhood (which would, in any case, have been unfair to the landowners if it had done so); that the majority of use of the land had been for “rights of way” type use rather than for lawful sports and pastimes over the whole of the land; and that the amount of use that qualified as “lawful sports and pastimes” was insufficient for registration to take place.

(10) The Commons Registration Officer said that the Inspector’s report had been sent to the applicants and the landowners for comment. Wickhambreaux PC had expressed its disappointment at the Inspector’s recommendations, pointing to the 160 user evidence questionnaires, 60 witness statements and the photographic evidence it had provided. One of the landowners had replied giving his full support to the recommendations and praising its meticulous detail.

(11) The Commons Registration Officer recommended to the Panel that it should reject the application for the reasons set out in the Inspector’s report.

(12) Mr C Perkins (landowner) said that he did not agree with Wickhambreaux PC’s claim that the issue had been one of access. The landowners had made a number of offers to the Parish Council. These were access during daylight hours, the permitted use of 4 acres of the land, and a permissive footpath along the river bank. All of these offers had been rejected.

(13) Mr Perkins said that Wickhambreaux PC had complained about the number of witnesses that the Inspector had chosen to hear from. He disagreed with this view because there had been 23 witnesses from the applicant’s side. This would have been more than sufficient to make the case if it had been sufficiently strong. He also disagreed with the Parish Council’s view that the user evidence questionnaire should contain a legal definition of neighbourhood, noting that the applicants had provided guidance notes to their witnesses.

(14) Mr Perkins said that he wished to thank Ms Melanie McNeir and the Public Rights of Way Team for the professionalism and impartiality that they had shown throughout the process.

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

*Carried unanimously*

(16) RESOLVED that for the reasons set out in the Inspector's report dated 13 December 2013, the applicant be informed that the application to register land known as Seaton Meadow at Wickhambreaux has not been accepted.