

REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Marden Cricket and Hockey Club, Albion Road, Marden TN12 9EF on Tuesday, 3 June 2014.

PRESENT: Mr M J Harrison (Chairman), Mr S C Manion (Vice-Chairman), Mr A D Crowther, Mr T A Maddison and Mr J N Wedgbury

ALSO PRESENT: Mr H Birkby and Mrs P A V Stockell

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

UNRESTRICTED ITEMS

8. Application to register land known as the Cricket Ground at Marden as a new Village Green
(Item 3)

(1) The Panel visited the site of the application shortly before the meeting. The visit was attended by Mr Trevor Simmons (Applicant), 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 in 2011 under section 15 of the Commons Act 2006. The land in question was owned by Mr Roger Day who had leased it to the Marden Hockey and Cricket Club. Both Mr Day and the Club had objected to the application. The application had been considered by a Regulation Committee Member Panel in March 2013 where the decision had been taken to refer the decision to a non-statutory Public Inquiry. This had taken place in November 2013.

(3) The Commons Registration Officer moved on to summarise the Inspector's findings in respect of the five criteria that needed to be satisfied if registration were to take place. The first of these was whether use of the land had been "as of right." The Inspector had found that use had not taken place in a secretive manner. She had also been satisfied that use had not been by force. She had then considered whether use had been with permission. In her judgement, the significant point had been that the Club had exercised control over the use of the land in order to avoid damage and maintain the facilities in a good condition. The public had been welcome to watch local sports taking place, but had been excluded from the area of play whilst matches were taking place. Even though the Club had not specifically expressed an invitation to attend, it had communicated this invitation by its actions. The Inspector had therefore concluded that use of the application site had been by virtue of an implied permission and that use had been "by right" and not "as of right."

(4) The second test was whether use of the land had been for the purposes of lawful sports and pastimes. All parties had agreed that this test had been met, and the Inspector had been satisfied that this had been the case.

(5) The third test was whether use had been by a significant number of inhabitants of a particular locality or a neighbourhood within a locality. There had been no dispute that the village of Marden constituted a qualifying neighbourhood within the locality of the parish of Marden. The Inspector had been satisfied that a significant number of local people from the locality had used the site for informal recreation. However, in the light of her findings that such use had not been “as of right”, she had concluded that there had been insufficient qualifying use for this test to be passed.

(6) The Commons Registration Officer briefly summarised the Inspector’s findings in respect of the final two tests. She had accepted that because informal use had not ceased prior to the application being made, this test had been passed. Equally, such use had taken place over the entire qualifying period between 1991 and 2011.

(7) The Inspector’s overall conclusion had been that the applicants had failed to demonstrate that the vast majority of the use of the site had been “as of right”. Furthermore, any residual “as of right” use had been too trivial or sporadic to carry the outward appearance of the assertion of a public right. She had, accordingly, recommended that the County Council should reject the application.

(8) The Commons Registration Officer said that the Inspector’s report had been sent to both parties for comment. The objectors had not responded. The applicants had replied in detail as set out in paragraph 49 and Appendix C of the report. She did not go into detail of the applicant’s views except in respect of the installation of the dog litter bin on the land by Maidstone BC. She said that this had been done without the landowner’s consent and had been removed.

(9) The Commons Registration Officer concluded her presentation by saying that, having considered the applicant’s comments, she had formed the conclusion that the Inspector had been right to say that the Club had not been inactive and that its actions had been sufficient to communicate an implied permission. Consequently, she recommended to the Panel that registration should not take place.

(10) Mr Trevor Simmons (applicant) said that the Regulation Committee Member Panel at its meeting on 5 March 2013 had considered that two of the five tests had been met. This Panel had referred the matter to a non-statutory Public Inquiry as it had considered the other three to be not proven. The Inquiry had heard more detailed evidence on these three tests.

(11) Mr Simmons then said that he could not understand how the Inspector had reached her conclusions. Mrs Holland and Mrs Lerwill had both stated that they did not believe that their use of the land had anything to do with a general understanding communicated by the landowner. He too had never been aware of this.

(12) Mr Simmons continued by referring to the letter from Freddie Jackson of *Cripps Harries Hall* dated 6 May 2014 (Appendix C). He said that this letter drew attention to the fact that express permission had only been given by the landowner in respect of the use of the bonfire and the clubhouse. This letter also made the point that the existence of the dog litter bin between the late 1990s and 2012 indicated that there had been a general acceptance of dog walkers on the land. This bin had only been removed after submission of the application and the groundsman who had

given evidence on behalf of the landowner to the effect that it had only been there for the benefit of Club members had been described as “unreliable” by the Inspector.

(13) Mr Simmons then said that most of the Hockey and Cricket Club members were from outside Marden whilst those in favour were from the village and were all unaware of any form of permission having been given to them to use the land.

(14) Mr Simmons concluded his presentation by saying that although he personally believed that all doubts over the appropriateness of registration had been satisfied, the Panel might consider partial registration of the most frequently used part of the site to the rear of the tennis courts and on the west side. He called on the Panel to reject the Inspector’s advice. This would prevent 125 years of history being lost whilst ensuring that the countryside remained protected.

(15) The Commons Registration Officer confirmed that it would be open to the Panel to register part of the land as a Village Green. The Inspector had considered this possibility but had recommended that no part of the application site was capable of being registered.

(16) Mrs Annabelle Blackmore (Local Borough Councillor) said that she had attended the Public Inquiry for two days. She had been struck by the number of local people who had given evidence in support of the application. This was indicative of the great level of local interest in the application, as was the large turnout from local people for this Panel meeting. Even more people would have been present if the meeting were not taking place at a time when parents were picking children up from school.

(17) Mrs Blackmore continued by saying that the site was well maintained and that local people respected it. This was evidenced by the lack of litter. The site had been well used. Some local residents could point to 50 years of use on their part.

(18) Mrs Blackmore concluded her remarks by saying that Mr Simmons could have been advised to put forward a second application, calling for partial registration. The most important thing was that something was done to stop the planning application on the land from being successful. A petition containing 300 signatures against the planning application had recently been compiled. She noted that all those people who supported the application had their addresses identified in the Inspector’s report, whilst those who were opposed did not. Had the Inspector published all the addresses, it would have been apparent to all that the only opposition to the application came from people outside Marden.

(19) The Chairman advised that the Panel was only able to consider whether the legal tests for registration had been met. The merits of any planning applications could not be considered in any way.

(20) The Commons Registration Officer explained that the reason that the applicants’ witnesses had their home addresses included in the Inspector’s report was that it needed to be established whether they were residents of the relevant neighbourhood within the locality. This detail was irrelevant for objectors.

(21) Mr David McFarland (Marden History Group and Heritage Centre) said that his organisation sought to preserve, research, inspire interest and transmit the history of

the parish of Marden. The main accent on this occasion was that of preserving a part of the Village's history which was under threat. It was therefore with great sadness that he had read the Inspector's report.

(22) Mr McFarland said that the local people were impressed by and appreciated the hard work of the Officers and the Inspector at the Public Inquiry. It was, however, not always possible to understand the arguments that had led to the Inspector's conclusions.

(23) Mr McFarland then said that he believed that, for the application to fail, the Inspector would have needed to demonstrate that those people who had used the land "by right" actually outnumbered those who had done so "as of right." He was also concerned that no significance had been attached to the dog litter bin. He asked the Panel to carefully consider this particular point as set out in Mr Jackson's letter (Appendix C).

(24) Mr McFarland also asked the Panel to bear in mind that the Public Inquiry had been held in the Club Pavilion and that this could have had a psychologically adverse impact on those supporting the application – particularly in the light of the intimidation of female witnesses by the landowner's Counsel. He noted that the Panel meeting was also taking place in the same venue.

(25) The Chairman explained that the reason for holding the Panel meeting in Marden was to enable as many local people as possible to attend. The alternative would have been to hold it at County Hall in Maidstone, which would have involved travel as well as the difficulties of finding a suitable parking space.

(26) Mr Steven Wickham (Marden Hockey and Cricket Club) said that the Inspector had investigated the application in great detail. A lot of evidence had been given and there had been much questioning by Barristers. After three months of consideration, the Inspector had produced a very thorough report of 65 pages. He believed that the Panel should accept her recommendations.

(27) The Commons Registration Officer replied to Members' questions by saying that if registration were to take place, it would mean that any local person could use any part of the land for lawful sports and pastimes at any time. She also said that if registration of part of the site were to take place, it would involve setting precise boundaries. She re-iterated that the Inspector had considered whether parts of the land were capable of registration but had concluded that they were not.

(28) Mrs P A V Stockell (Local Member) said that she had supported reference to a Public Inquiry at the previous meeting of the Panel in March 2013. She had agreed that a Public Inquiry would enable the applicants to demonstrate that the application met all the tests. She now believed that the applicants had demonstrated this, even though the Inspector's report had come to a different conclusion.

(29) Mrs Stockell went on to say that, whilst the Inspector could make recommendations, it was a matter for the Panel to decide whether to accept her advice. In her view, the evidence provided to the Inspector had demonstrated that a significant number of the inhabitants of the village of Marden within Marden Parish had indulged as of right in lawful sports and pastimes for a period of more than 20 years.

(30) Mrs Stockell then said that the Hockey and Cricket Club intended to move on. When it did so, the land was in danger of being lost to the people of Marden. If Village Green status were granted, it would enable the local people to enjoy it in perpetuity. This was a piece of England that needed to be preserved.

(31) Mr S C Mannion moved, seconded by Mr J M Wedgbury that the recommendations of the Head of Regulatory Services be agreed.

Carried with no opposition

(32) RESOLVED that for the reasons set out in the Inspector's report dated 28 March 2014, the applicant be informed that the application to register land known as the Cricket Field at Marden has not been accepted.