AGENDA

Kent County Council

REGULATION COMMITTEE MEMBER PANEL

Tuesday, 29th July, 2014, at 10.00 am
Council Chamber, Sessions House, County Hall, Maidstone

Ask for: **Andrew Tait**
Telephone **01622 694342**

Tea/Coffee will be available 15 minutes before the meeting

Membership

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

UNRESTRICTED ITEMS

(During these items the meeting is likely to be open to the public)

1. Membership and Substitutes
2. Declarations of Interest by Members for items on the agenda
3. Application to register land known as Kingsmead Field in Canterbury as a new Village Green (Pages 3 - 26)
4. Application to register land known as Chaucer Field at Canterbury as a new Village Green (Pages 27 - 38)
5. Other items which the Chairman decides are Urgent

EXEMPT ITEMS

(At the time of preparing the agenda there were no exempt items. During any such items which may arise the meeting is likely NOT to be open to the public)

Peter Sass
Head of Democratic Services

(01622) 694002

Monday, 21 July 2014

Application to register land known as Kingsmead Field in the city of Canterbury as a new Town or Village Green

A report by the Head of Regulatory Services to Kent County Council's Regulation Committee Member Panel on Tuesday 29th July 2014.

Recommendation: I recommend that the applicant be informed that the application to register land known as Kingsmead Field at Canterbury as a Town or Village Green has not been accepted.

Local Member: Mr. G. Gibbens Unrestricted item

Introduction

1. The County Council has received an application to register land known as Kingsmead Field in the city of Canterbury as a new Town or Village Green from local residents Ms. A. Bradley, Ms. S. Langdon and Mr. M. Denyer ("the applicants"). The application, made on 16th July 2012 was allocated the application number VGA650. A plan of the site is shown at **Appendix A** to this report.

Procedure

2. The application has been made under section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2008.

3. Section 15 of the Commons Act 2006 enables any person to apply to a Commons Registration Authority to register land as a Village Green where it can be shown that:

   'a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;

4. In addition to the above, the application must meet one of the following tests:

   • **Use of the land has continued** 'as of right' until at least the date of application (section 15(2) of the Act); or

   • **Use of the land 'as of right' ended no more than two years prior to the date of application**[1], e.g. by way of the erection of fencing or a notice (section 15(3) of the Act).

5. As a standard procedure set out in the 2008 Regulations, the applicant must notify the landowner of the application and the County Council must notify every local authority. The County Council must also publicise the application in a newspaper circulating in the local area and place a copy of the notice on the County Council's website. In addition, as a matter of best practice rather than legal requirement, the County Council also places copies of the notice on site to

[1] Note that from 1st October 2013, the period of grace is reduced from two years to one year (due to the coming into effect of section 14 of the Growth and Infrastructure Act 2013). This only applies to applications received after that date and does not affect any existing applications.

provide local people with the opportunity to comment on the application. The publicity must state a period of at least six weeks during which objections and representations can be made.

The application site

6. The area of land subject to this application ("the application site") consists of a recreation ground of approximately 3.6 acres (1.5 hectares) in size, known as Kingsmead Field and situated on Kingsmead Road (opposite the Kingsmead Leisure Centre) in the city of Canterbury.

7. The application is bounded on its north-western side by the River Stour, to the south-east by the Riverside Children's Centre and along its south-western boundary by the footway of Kingsmead Road. The north-eastern boundary does not correspond with any physical features on the ground but runs roughly parallel with the boundary of the residential development at Stonebridge Road. The application site is shown in more detail on the plan at **Appendix A**.

8. Access to the application site is via a gap in the hedge on the footway of Kingsmead Road, the vehicular entrance and parking area off Kingsmead Road and there is also an entrance adjacent to the new housing development at Stonebridge Road. There are no recorded public rights of way crossing the application site.

Previous resolution of the Regulation Committee Member Panel

9. As a result of the consultation, an objection to the application was received from Canterbury City Council ("the City Council") in its capacity as landowner[2]. The objection was made on the basis that throughout the relevant period the application site was held by the Council under section 19 of the Local Government (Miscellaneous Provisions) Act 1976 specifically for the purpose of public recreation. Accordingly, the City Council's position is that any use of the application site by local residents took place by virtue of the fact that the land was made available by the City Council for such use, and cannot be considered to have taken place 'as of right'.

10. The matter was considered at a meeting of the Regulation Committee Member Panel held on Tuesday 26th November 2013. At that meeting, having heard and carefully considered oral representations from various parties, the Panel resolved to defer determination of the application until the Supreme Court had handed down its judgement in the case of *R (Barkas) v North Yorkshire County Council* [2014] UKSC 31 ("the Barkas case").

11. A copy of the Officer's report is attached at **Appendix B** to this report and a copy of the minutes of the meeting are attached at **Appendix C**.

[2] The City Council is the owner of the vast majority of the application site, but a small strip of land abutting Stonebridge Road on the northern boundary of the application site is owned by Berkeley Homes PLC. No representations regarding the application have been received from Berkeley Homes.

Legal tests

12. In dealing with an application to register a new Town or Village Green the County Council must consider the following criteria:
    (a) Whether use of the land has been 'as of right'?
    (b) Whether use of the land has been for the purposes of lawful sports and pastimes?
    (c) Whether use has been by a significant number of inhabitants of a particular locality, or a neighbourhood within a locality?
    (d) Whether use of the land 'as of right' by the inhabitants has continued up until the date of application or, if not, ceased no more than two years prior to the making of the application?
    (e) Whether use has taken place over period of twenty years or more?

13. As set out in the previous report to the Panel (copy attached at **Appendix B**), there is no dispute that the application site has been used for the purposes of lawful sports and pastimes for a period in excess of twenty years to the date of the application, and the evidence suggests that such use has been by a significant number of the residents of the neighbourhoods of 'Northgate' and 'St. Stephen's' within the locality of the city of Canterbury.

14. However, as previously established, the issue in this case turns on whether use of the application site has taken place 'as of right' and, more specifically, whether use of the application site during the relevant period had taken place by virtue of some form of permission. The following paragraphs, dealing with this issue, are taken from the original report and are reproduced here for ease of reference:

> *"Appropriation of the land*
>
> The granting of permission can take many forms; it can be direct and communicated (e.g. by way of a prominent notice placed on the site), or it can also be indirect and uncommunicated (e.g. by way of a private deed). In some cases, it is quite possible that recreational users will be using a piece of land without being aware that their use is with some sort of permission; this can often be the case where the land is owned by a local authority.
>
> Local authorities have various powers to acquire and hold land for a number of different purposes to assist in the discharge of their statutory functions. For example, a local authority can acquire land specifically for the purposes of providing housing or constructing a new road. The mere fact that a local authority owns land therefore does not automatically mean that the local inhabitants are entitled to conduct informal recreation on it. However, local authorities do also have powers to acquire land for the purposes of public recreation, such as playing fields and parks. In those cases, the land is provided specifically for the purposes of public recreation and those using it are doing so by invitation of the Council.
>
> In considering a Village Green application in relation to local authority owned land, it will therefore be important to identify the powers under which the land is held by the local authority: if the local authority already holds the land specifically for the purposes of public recreation, then use

of the application site is generally considered to be by virtue of an existing permission and, hence, is not ‘as of right’.

The issue was considered in the Beresford case, in which Lord Walker noted that *“where land is vested in a local authority on a statutory trust under section 10 of the Open Spaces Act 1906, inhabitants of the locality are beneficiaries of a statutory trust of a public nature, and it would be very difficult to regard those who use the park or other open space as trespassers... the position would be the same if there were no statutory trust in the strictest sense, but land had been appropriated for the purpose of public recreation”*. The suggestion is, therefore, that use of land that is held by a local authority specifically for recreational purposes is ‘by right’ and not ‘as of right’ since the use of the land is no more than the use to which the public is already entitled.

More recently, in the Barkas case [the Court of Appeal judgement], Sullivan LJ agreed that ‘*while they are not binding… Lord Walker’s observations are highly persuasive, and I can see no sensible reason for drawing a distinction between land held under section 10 [of the Open Spaces Act 1906] and land which has been appropriated for recreational purposes under some other enactment’*. He went on to conclude, in that case, that the application site had been appropriated for the purpose of public recreation under an express statutory power and, as such, the local inhabitants indulged in lawful sports and pastimes on that land ‘by right’ and not ‘as of right’.

In the case of Kingsmead Field, the Council has provided evidence that the application site was appropriated in 1967 for the purpose of public recreation (i.e. ‘for use as a playing field’) under section 163 of the Local Government Act 1933 (“the 1933 Act”).

The 1933 Act was repealed in its entirety and replaced by the Local Government Act 1972 (“the 1972 Act”): section 144 of the 1972 Act provided local authorities with a power to provide facilities for recreation. That power was also subsequently repealed and replaced by an equivalent power contained in section 19 of the Local Government (Miscellaneous Provisions) Act 1976 (“the 1976 Act”), which enables a local authority to provide ‘*such recreational facilities as it thinks fit*’.

Thus, throughout the relevant twenty-year period, the application site has been held by the Council under section 19 of the 1976 Act specifically for the purposes of public recreation. This is confirmed by the extracts from the ‘Register of Council-owned land’ provided by the applicants. The land has therefore been made available and used in a manner that is entirely consistent with the statutory power under which it is held – i.e. for general informal recreational use. Accordingly, the recreational users of that land cannot be regarded as trespassers and their use cannot give rise to a right of recreation.

Therefore, by virtue of the fact that the application site has been held by the Council for recreational purposes, any informal recreational use of it has taken place ‘by right’ and not ‘as of right’.”

15. As is recorded in the minutes attached at **Appendix C** to this report, at the previous Member Panel meeting the applicants (and others) argued that the matter was not clear-cut and that the County Council ought to wait for the Supreme Court's decision in the Barkas case which would, in their view, clarify the legal position.

16. Some Members of the Panel were minded to accede to the applicants' request and, on being put to the vote, it was agreed that a final decision on the matter would be deferred until the Supreme Court's decision in respect of Barkas was available.

The decision of the Supreme Court in the *Barkas* case

17. The background to the Barkas case is that it concerned an area of land of approximately two hectares, known as Helredale Playing Field, in Whitby. The land had been acquired by the local Council in 1951 who had maintained it as a recreation ground pursuant to section 80(1) of the Housing Act 1936 (now section 12(1) of the Housing Act 1985). The application site had the appearance of a municipal recreation ground and, for at least fifty years up until the date of the application, had been used by local residents for recreational activities including dog walking and children playing. An application was made to register the land as a Village Green but, following a Public Inquiry, the Registration Authority resolved to reject the application on the basis that, although there was ample evidence of recreational use by local residents, such use had not take place 'as of right'.

18. The applicant sought a Judicial Review of the Registration Authority's decision, which was rejected by the High Court. An appeal against that decision was sought in the Court of Appeal, which also failed, and a final appeal was made to the Supreme Court. On 21st May 2014, the Supreme Court handed down its judgement. In it, the Court unanimously dismissed the appeal and ruled that, where land is lawfully allocated by a local authority for public use, members of the public have a statutory right to use the land and, in doing so, their use is 'by right' and not 'as of right'.

19. Lord Neuberger, delivering the leading judgement, concluded that[3]:

> *"so long as land is held under a provision such as section 12(1) of the 1985 Act, it appears to me that members of the public have a statutory right to use the land for recreational purposes, and therefore use the land 'by right' and not as trespassers, so that no question of user 'as of right' can arise. In Sunningwell at pp 352H-353A, Lord Hoffman indicated that whether user was 'as of right' should be judged by "how the matter would have appeared to the owner of the land", a question which must, I should add, be assessed objectively. In the present case, it is, I think, plain that a reasonable local authority in the position of the Council would have regarded the presence of members of the public on the Field, walking with or without dogs, taking part in sports, or letting their children play, as being pursuant to their statutory right to be on the land and to use it for these activities, given that the field was being held and maintained by the Council for public recreation pursuant to section 12(1) of the 1985 Act and its statutory predecessors.*

[3] At paragraphs 21 and 24 of the judgement

…
I agree with Lord Carnwarth that, where the owner of the land is a local, or other public, authority which has lawfully allocated the land for public use (whether for a limited period or an indefinite period), it is impossible to see how, at least in the absence of unusual additional facts, it could be appropriate to infer that members of the public have been using the land 'as of right' simply because the authority has not objected to their using the land. It seems very unlikely that, in such a case, the legislature could have intended that such land would become a village green after the public had used it for twenty years. It would not merely be understandable why the local authority had not objected to the public use: it would be positively inconsistent with their allocation decision if they had done so. The position is very different to that of a private owner, with no legal duty and no statutory power to allocate land for public use, with no ability to allocate land as a village green, and who would be expected to protect his or her legal rights".

20. The situation at Kingsmead Field is almost identical to the one under consideration by the Supreme Court in the sense that, as far as the landowning local Council was concerned, the application site was being held and maintained by it as a recreational facility under section 19 of the Local Government (Miscellaneous Provisions) Act 1976. As such, the City Council would have regarded informal recreational activities taking place on the application site as precisely the type of use that it would expect to see being made of it; there was simply no reason (or indeed power) for the Council to challenge or attempt to curb informal recreational use of the application site all the time that it was lawfully appropriated for such use.

21. Recreational use of the Kingsmead Field by the local residents therefore took place by virtue of the fact that it was specifically provided by the City Council for such purposes. Such use simply cannot be regarded as having taken place 'as of right'. Accordingly, as the test relating to use of the site being 'as of right' is not met, the application as a whole must fail.

The parties' comments on the Supreme Court's decision in *Barkas*

22. A copy of the Supreme Court's judgement has been forwarded both to the applicants and the Council for their comments.

23. The applicants responded to the effect that the decision in the Barkas case could be distinguished from the situation at Kingsmead Field for the following reasons:
    - The Local Government (Miscellaneous Provisions) Act 1976 provides a discretionary power for a local authority to provide land for recreational purposes but it confers no right on the public to actually use the land and, as there is no reference to the 1976 Act in the Barkas case, its effect on 'as of right' use remains open to question;
    - Kingsmead Field was originally appropriated for use as a playing field for formal or organised sports (with informal 'lawful sports and pastimes' co-existing with this formal usage) but ceased to be used as such some time ago with the City Council seeking to appropriate it to a different usage;

- The City Council did not undertake any positive acts to communicate permission for use of the field by local residents for informal recreation and made no attempt to 'visibly commit' the land for recreation;
- No signs were visible on Kingsmead Field until 2010 at the earliest and the current sign does not communicate permission to use the land;
- In Barkas, the land had the appearance of a municipal recreation ground and was maintained by the local Council, but Kingsmead Field does not does look like a recreation ground at all and has only been irregularly maintained by the City Council.

24. The City Council's response was that it had already shown that the land was held Local Government (Miscellaneous Provisions) Act 1976 for the purposes of providing recreational facilities and the Barkas decision has confirmed that where land is held for public recreation, members of the public have a statutory right to use that land for recreational purposes and there can be no question of their use being 'as of right'. Accordingly, the City Council's view is that the application must fail.

Conclusion

25. Essentially, the applicant's position (as set out in paragraph 23 above) is that local people using Kingsmead Field for informal recreation were doing so as trespassers (because they had no formal right to use the land) and, as such, their use was sufficient, after 20 years, to give rise to Village Green rights. However, this position is entirely untenable: where a local authority provides land for recreational purposes, those using the land simply cannot be regarded as trespassers. It does not matter that the statutory provision under which the land is provided is a discretionary power[4] that does not specifically confer a public right because, as was made clear in Barkas[5], *"where land is held for that purpose [i.e. public recreation], and members of the public then use the land for that purpose, the obvious and natural conclusion is that they enjoy a public right, or a publicly based licence, to do so. If that were not so, members of the public using for recreation land held by the local authority for the statutory purposes of public recreation would be trespassing on the land, which cannot be correct".*

26. It is correct that, in the case of a private landowner, the law requires positive acts to be undertaken to communicate to users that their use is by virtue of a revocable permission. However, Barkas does not impose any such requirement where the land is held by the local authority for public recreation and the land in question in the Barkas case did not have any such signs[6]. Furthermore, the Supreme Court did not make any findings in respect of the appearance of the land or the need for maintenance of it by the local Council.

[4] Section 19 of the Local Government (Miscellaneous Provisions) Act 1976 states that a local authority may provide such recreational facilities as it sees fit. The provision in the Barkas case, section 12(1) of the Housing Act 1985, states that a local housing authority may provide and maintain recreation grounds; both are discretionary powers and that sense, contrary to the applicants' submission, there is no distinction. The provision in the 1976 Act is wider than that in the 1985 Act, but both ultimately confer a right to provide a public recreational facility.

[5] see paragraph 23 of the judgement

[6] The signs at Helredale Playing Field (referred to at paragraph 7 of the judgement) referred only to keeping dogs on leads and asking dog owners to clear up after their dogs.

27. As such, the conclusion set out in the previous report remains unchanged following the Supreme Court's judgement in the Barkas case. That conclusion was:

> *"regardless of whether any (or even all) of the other relevant tests are met, the fact that the application site is held for the purposes of public recreation presents a knock-out blow to the possibility of registering the land as a Village Green. This is central and insurmountable issue that cannot be addressed through the provision of further user evidence on the part of the applicants and, for this reason, it would be a futile exercise to hold a Public Inquiry as per the applicants' request. Accordingly, for the reasons set out above, the unavoidable conclusion is that the land is not capable of registration as a Village Green".*

28. The decision of the Supreme Court in the Barkas case has undoubtedly clarified the position with regard to land held in public ownership for the recreational purposes. Indeed, it is now abundantly clear that such land is not capable of registration as a Village Green on the basis that any informal recreational use that is made of it by local residents cannot be deemed to have taken place 'as of right'.

Recommendation

29. I recommend that the applicant be informed that the application to register land known as Kingsmead Field at Canterbury as a Town or Village Green has not been accepted.

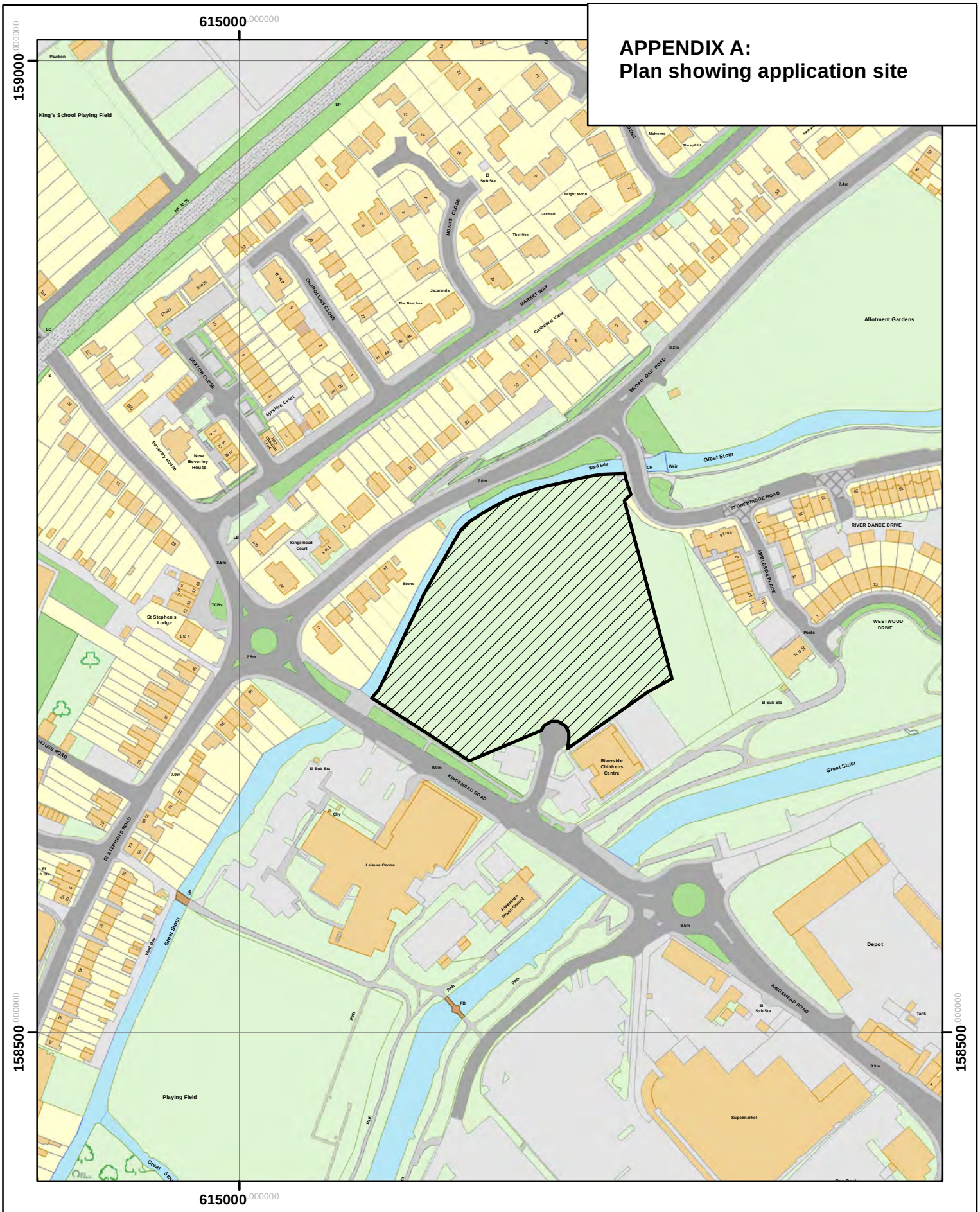
Accountable Officer:
Mr. Mike Overbeke – Tel: 01622 221568 or Email: mike.overbeke@kent.gov.uk
Case Officer:
Ms. Melanie McNeir – Tel: 01622 221511 or Email: melanie.mcneir@kent.gov.uk

The main file is available for viewing on request at the PROW and Access Service, Invicta House, County Hall, Maidstone. Please contact the Case Officer for further details.

Background documents

APPENDIX A – Plan showing application site
APPENDIX B – Copy of the report to Kent County Council's Regulation Committee Member Panel on Tuesday 26th November 2013
APENDIX C – Copy of the minutes from Kent County Council's Regulation Committee Member Panel on Tuesday 26th November 2013

APPENDIX A:
Plan showing application site



Land subject to Village Green application at Kingsmead Field at Canterbury

Page 11

Scale 1:2500

Kent County Council
kent.gov.uk

APPENDIX B:
Copy of the previous report to the RCMP on Tuesday 26th November 2013

Application to register land known as Kingsmead Field at Canterbury as a new Tow

A report by the Head of Regulatory Services to Kent County Council's Regulation Committee Member Panel on Tuesday 26th November 2013.

Recommendation: I recommend that the applicant be informed that the application to register land known as Kingsmead Field at Canterbury as a Town or Village Green has not been accepted.

Local Member: Mr. G. Gibbens — Unrestricted item

Introduction

1. The County Council has received an application to register land known as Kingsmead Field in the city of Canterbury as a new Town or Village Green from local residents Ms. A. Bradley, Ms. S. Langdon and Mr. M. Denyer ("the applicants"). The application, made on 16th July 2012 was allocated the application number VGA650. A plan of the site is shown at **Appendix A** to this report and a copy of the application form is attached at **Appendix B**.

Procedure

2. The application has been made under section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2008.

3. Section 15 of the Commons Act 2006 enables any person to apply to a Commons Registration Authority to register land as a Village Green where it can be shown that:

   'a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;

4. In addition to the above, the application must meet one of the following tests:
   - **Use of the land has continued** 'as of right' until at least the date of application (section 15(2) of the Act); or
   - **Use of the land 'as of right' ended no more than two years prior to the date of application**[1], e.g. by way of the erection of fencing or a notice (section 15(3) of the Act).

5. As a standard procedure set out in the 2008 Regulations, the applicant must notify the landowner of the application and the County Council must notify every local authority. The County Council must also publicise the application in a newspaper circulating in the local area and place a copy of the notice on the County Council's website. In addition, as a matter of best practice rather than legal requirement, the County Council also places copies of the notice on site to

[1] Note that from 1st October 2013, the period of grace is reduced from two years to one year (due to the coming into effect of section 14 of the Growth and Infrastructure Act 2013). This only applies to applications received after that date and does not affect any existing applications.

provide local people with the opportunity to comment on the application. The publicity must state a period of at least six weeks during which objections and representations can be made.

The application site

6. The area of land subject to this application ("the application site") consists of a recreation ground of approximately 3.6 acres (1.5 hectares) in size, known as Kingsmead Field and situated on Kingsmead Road (opposite the Kingsmead Leisure Centre) in the city of Canterbury.

7. The application is bounded on its north-western side by the River Stour, to the south-east by the Riverside Children's Centre and along its south-western boundary by the footway of Kingsmead Road. The north-eastern boundary does not correspond with any physical features on the ground but runs roughly parallel with the boundary of the residential development at Stonebridge Road. The application site is shown in more detail on the plan at **Appendix A**.

8. Access to the application site is via a gap in the hedge on the footway of Kingsmead Road, the vehicular entrance and parking area off Kingsmead Road and there is also an entrance adjacent to the new housing development at Stonebridge Road. There are no recorded public rights of way crossing the application site.

The case

9. The application has been made on the grounds that the application site has become a Town or Village Green by virtue of the actual use of the land by the local inhabitants for a range of recreational activities 'as of right' for a period well in excess of 20 years.

10. Included in support of the application were an explanatory statement, 335 user evidence questionnaires, various maps showing the application site and the relevant localities, Land Registry documentation, open space profiles for the neighbourhoods relied upon, various photographs and images of the application site, extracts from the City Council's register of Council-owned land, various Ordnance Survey maps (ranging between 1955 and 1994), a wikipedia extract regarding the former Kingsmead Stadium, statements from local students and various documents relating to the City Council's proposal to dispose of the land for development purposes.

11. Members should be aware that the application appears to have been prompted by a proposal by the local Council to sell the application site for development, which has been the subject of substantial local opposition. It is important to stress from the outset that the future use of the application site (including any perceived threat of development) is not a matter that the County Council is able to take into consideration in determining the Village Green application; the County Council is concerned solely with the legal tests set out in section 15 of the Commons Act 2006.

Consultations

12. Consultations have been carried out as required.

13. Over 100 responses in support of the application were received from local residents. A number of these letters consist of objections to the proposed development of the application site, but a very large number of the responses also refer to regular usage of the land by local residents for a range of recreational activities and offer further evidence of use in addition to the user evidence questionnaires already submitted in support of the application.

14. The local County Councillor, Mr. G. Gibbens, also wrote in support of the application. He noted that local residents with whom he had spoken had confirmed their open and unchallenged use of the application site for a range of recreational activities for well in excess of twenty years.

Landowners

15. The vast majority of the application site is owned by Canterbury City Council ("the Council") and is registered with the Land Registry under title number K809686. A small section of the application site (comprising a strip of land situated on the northern boundary adjacent to Stonebridge Road) is registered to Berkeley Homes PLC under title number K917461.

16. The Council has objected to the application on the grounds that the land has been held by it for the purpose of public recreation and, accordingly, any such use of the application site has not taken place 'as of right'.

17. The Council's case is that it acquired the land on 9th December 1936. By letter dated 10th March 1967, the Ministry of Housing and Local Government gave consent '*to the appropriation by your Council under section 163 of the Local Government Act 1933 of certain land containing an approximate area of 10 acres situate adjoining Kingsmead Road, Canterbury, for use as a playing field*'. The plan attached to the letter confirms that the application site was wholly included with the area of land subject to the appropriation.

18. The Local Government Act 1933 referred to in the appropriation was eventually replaced by Local Government (Miscellaneous Provisions) Act 1976. Throughout the material period, therefore, the application site was held by the Council under section 19 of the Local Government (Miscellaneous Provisions) Act 1976.

19. The Council contends that the fact that the land has been held specifically for recreational purposes means that informal recreational users of the application site cannot be regarded as trespassers; they were there by virtue of an existing right which arose from the Council's power to provide recreational facilities for local residents. The Council's position is that, for this reason, the application cannot succeed and is therefore bound to fail.

Legal tests

20. In dealing with an application to register a new Town or Village Green the County Council must consider the following criteria:

(a) *Whether use of the land has been 'as of right'?*
(b) *Whether use of the land has been for the purposes of lawful sports and pastimes?*
(c) *Whether use has been by a significant number of inhabitants of a particular locality, or a neighbourhood within a locality?*
(d) *Whether use of the land 'as of right' by the inhabitants has continued up until the date of application or, if not, ceased no more than two years prior to the making of the application?*
(e) *Whether use has taken place over period of twenty years or more?*

I shall now take each of these points and elaborate on them individually:

(a) Whether use of the land has been 'as of right'?

21. In order to qualify for registration as a Village Green, recreational use of the application site must have taken place 'as of right'. This means that use must have taken place without force, without secrecy and without permission ('*nec vi, nec clam, nec precario*').

22. In this case, the application site forms part of an established recreation ground and, as such, there is no suggestion that any use of the land has been with force or in secrecy. However, there is an issue relating to whether use of the application site has taken place with permission.

Appropriation of the land

23. The granting of permission can take many forms; it can be direct and communicated (e.g. by way of a prominent notice placed on the site), or it can also be indirect and uncommunicated (e.g. by way of a private deed). In some cases, it is quite possible that recreational users will be using a piece of land without being aware that their use is with some sort of permission; this can often be the case where the land is owned by a local authority.

24. Local authorities have various powers to acquire and hold land for a number of different purposes to assist in the discharge of their statutory functions. For example, a local authority can acquire land specifically for the purposes of providing housing or constructing a new road. The mere fact that a local authority owns land therefore does not automatically mean that the local inhabitants are entitled to conduct informal recreation on it. However, local authorities do also have powers to acquire land for the purposes of public recreation, such as playing fields and parks. In those cases, the land is provided specifically for the purposes of public recreation and those using it are doing so by invitation of the Council.

25. In considering a Village Green application in relation to local authority owned land, it will therefore be important to identify the powers under which the land is held by the local authority: if the local authority already holds the land specifically for the purposes of public recreation, then use of the application site is generally considered to be by virtue of an existing permission and, hence, is not 'as of right'.

26. The issue was considered in the Beresford[2] case, in which Lord Walker noted that *"where land is vested in a local authority on a statutory trust under section 10 of the Open Spaces Act 1906, inhabitants of the locality are beneficiaries of a statutory trust of a public nature, and it would be very difficult to regard those who use the park or other open space as trespassers... the position would be the same if there were no statutory trust in the strictest sense, but land had been appropriated for the purpose of public recreation"*. The suggestion is, therefore, that use of land that is held by a local authority specifically for recreational purposes is 'by right' and not 'as of right' since the use of the land is no more than the use to which the public is already entitled.

27. More recently, in the Barkas[3] case, Sullivan LJ agreed that '*while they are not binding... Lord Walker's observations are highly persuasive, and I can see no sensible reason for drawing a distinction between land held under section 10 [of the Open Spaces Act 1906] and land which has been appropriated for recreational purposes under some other enactment*'. He went on to conclude, in that case, that the application site had been appropriated for the purpose of public recreation under an express statutory power and, as such, the local inhabitants indulged in lawful sports and pastimes on that land 'by right' and not 'as of right'.

28. In the case of Kingsmead Field, the Council has provided evidence that the application site was appropriated in 1967 for the purpose of public recreation (i.e. 'for use as a playing field') under section 163 of the Local Government Act 1933 ("the 1933 Act").

29. The 1933 Act was repealed in its entirety and replaced by the Local Government Act 1972 ("the 1972 Act"): section 144 of the 1972 Act provided local authorities with a power to provide facilities for recreation. That power was also subsequently repealed and replaced by an equivalent power contained in section 19 of the Local Government (Miscellaneous Provisions) Act 1976 ("the 1976 Act"), which enables a local authority to provide '*such recreational facilities as it thinks fit*'.

30. Thus, throughout the relevant twenty-year period, the application site has been held by the Council under section 19 of the 1976 Act specifically for the purposes of public recreation. This is confirmed by the extracts from the 'Register of Council-owned land' provided by the applicants. The land has therefore been made available and used in a manner that is entirely consistent with the statutory power under which it is held – i.e. for general informal recreational use. Accordingly, the recreational users of that land cannot be regarded as trespassers and their use cannot give rise to a right of recreation.

31. Therefore, by virtue of the fact that the application site has been held by the Council for recreational purposes, any informal recreational use of it has taken place 'by right' and not 'as of right'.

Use of the land for formal events

32. In light of the conclusion above, it is not necessary to consider this issue in detail, but it is included here for the sake of completeness.

---

[2] *R v City of Sunderland ex parte Beresford* [2003] UKHL 60 at paragraph 87 per Lord Walker
[3] R (Barkas) v North Yorkshire County Council [2012] EWCA Civ 1373 at paragraph

33. The issue of organised events was recently considered by the courts in the Mann[4] case, which concerned an area of grassland, part of which was used 'occasionally' for the holding of a beer festival and fun fair. During these times, an entrance fee was charged to enter the affected part of the land, although public access to the remainder was not denied. It was held that occasional exclusion from part of the land was sufficient to communicate to users that their use of the whole land at other times was with the landowner's implied permission.

34. The Council asserts that, in this case, there have been long periods during which the application site has not been available for informal recreational use due to the hiring out of the land for the purposes of circuses, funfairs and other activities on an at least annual basis since at least 2002. These events have been the subject of formal agreements with the City Council (copies of which have been provided). When the field was let out for these purposes, the majority of the application site was occupied for between four and six days, during which time a fee was charged for entry onto the land. The Council's position is therefore that the hiring out of the land for formal events, during which time informal recreational use was largely excluded, constituted a manifest act of exclusion and brings the matter squarely within the context of the decision in the Mann case.

35. However, the applicants' case is that the issue relating to formal events on the land is one of fact and degree that requires further scrutiny of all of the circumstances of the case. In any event, at no time did the Council attempt to exclude local residents from the land; on the contrary, there is a sign in place stating that the application site is available for public use. No charges have been made for entry to the funfair and, although a charge was made for the circus, this was for the performance and not for entry onto the land itself. The use of the application site for formal events operated by third parties coexisted peacefully with the concurrent use of the application site for lawful sports and pastimes.

36. As is noted above, given the position in respect of the appropriation of the land, it is not necessary to conclude on this particular issue. In some respects, this case (where the land is in public ownership) can be distinguished from the situation in Mann (which involved the actions of a private landowner) on the basis that the land in this case was already provided by the Council for recreational purposes and its hiring out for circuses and funfairs formed part of the Council's powers to provide such facilities, rather than a commercial act designed to communicate the landowner's control of the land.

37. The issue is arguably open to interpretation and, were it not for the appropriation issue, then it may be appropriate to further investigate the position in respect of the formal use of the land.

(b) Whether use of the land has been for the purposes of lawful sports and pastimes?

38. Lawful sports and pastimes can be commonplace activities including dog walking, children playing, picnicking and kite-flying. Legal principle does not require that rights of this nature be limited to certain ancient pastimes (such as maypole

[4] *R (Mann) v Somerset County Council* [2012] EWHC B14 (Admin)

dancing) or for organised sports or communal activities to have taken place. The Courts have held that '*dog walking and playing with children [are], in modern life, the kind of informal recreation which may be the main function of a village green*'[5].

39. The significant body of evidence of use submitted by local residents indicates that the application site has been used on a regular basis for a range of recreational activities. These include dog walking, children playing, picnics, kite flying and ball games (e.g. rounders, football and cricket).

40. The contention that the land has been used for recreational activities is not in dispute, and the Council has not sought to challenge the evidence of use submitted in support of the application.

41. Accordingly, it appears to be common ground between the parties that the application site has been used for the purposes of lawful sports and pastimes.

(c) Whether use has been by a significant number of inhabitants of a particular locality, or a neighbourhood within a locality?

42. The right to use a Town or Village Green is restricted to the inhabitants of a locality, or of a neighbourhood within a locality, and it is therefore important to be able to define this area with a degree of accuracy so that the group of people to whom the recreational rights are attached can be identified.

43. The definition of locality for the purposes of a Town or Village Green application has been the subject of much debate in the Courts. In the Cheltenham Builders[6] case, it was considered that '*...at the very least, Parliament required the users of the land to be the inhabitants of somewhere that could sensibly be described as a locality... there has to be, in my judgement, a sufficiently cohesive entity which is capable of definition*'. The judge later went on to suggest that this might mean that locality should normally constitute '*some legally recognised administrative division of the county*'.

44. In cases where the locality is so large that it would be impossible to meet the 'significant number' test (see below), it will also necessary to identify a neighbourhood within the locality. The concept of a 'neighbourhood' is more flexible than that of a locality, and need not be a legally recognised administrative unit. On the subject of 'neighbourhood', the Courts have held that '*it is common ground that a neighbourhood need not be a recognised administrative unit. A housing estate might well be described in ordinary language as a neighbourhood... The Registration Authority has to be satisfied that the area alleged to be a neighbourhood has a sufficient degree of cohesiveness; otherwise the word "neighbourhood" would be stripped of any real meaning*'[7].

45. In this case, the applicants have specified (at part 6 of the application form) that the application site is located 'within the neighbourhood of Northgate, on the boundary with the neighbourhood of St. Stephen's. Both neighbourhoods are situated within the locality of the city of Canterbury'.

---

[5] *R v Suffolk County Council, ex parte Steed* [1995] 70 P&CR 487 at 508 and approved by Lord Hoffman in *R v. Oxfordshire County Council, ex parte Sunningwell Parish Council* [1999] 3 All ER 385

[6] *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at 90

[7] *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at page 92

46. There can be no dispute that the city of Canterbury is a legally recognised administrative unit and would undoubtedly be a qualifying locality.

47. In terms of the qualifying neighbourhoods, the applicants rely on 'Northgate' and 'St. Stephen's'. Both are established electoral wards of Canterbury City Council and the applicants' contend that both are cohesive entities that are identifiable areas within the wider locality. The 'Northgate' neighbourhood comprises a mix of light industry and residential development, with a high proportion of social housing and student accommodation, and a number of community facilities (including a community centre and local shops) centred on Kingsmead Road. The second neighbourhood, 'St. Stephen's', is primarily a residential neighbourhood, united by a Residents Association, and also with its own community facilities (including St. Stephen's Church and St. Stephen's Infant and Junior Schools).

48. There is therefore nothing to indicate that the neighbourhoods and the locality identified by the applicants are not qualifying entities for the purpose of Village Green registration.

"a significant number"

49. The word "significant" in this context does not mean considerable or substantial: '*a neighbourhood may have a very limited population and a significant number of the inhabitants of such a neighbourhood might not be so great as to properly be described as a considerable or a substantial number... what matters is that the number of people using the land in question has to be sufficient to indicate that the land is in general use by the community for informal recreation rather than occasional use by individuals as trespassers*'[8]. Thus, what constitutes a 'significant number' will depend upon the local environment and will vary in each case depending upon the location of the application site.

50. In this case, the application is supported by 335 user evidence questionnaires from local residents, with many of these attesting to use of the application site on a daily basis. In addition, a large number of the 100 respondents to the consultation also refer to their own recreational use of the application site. Once again, the proposition that the application site is used by the local residents is not contested by the Council and this issue is therefore not in dispute.

51. From the evidence available, it would therefore appear that the application site has been used by a significant number of the residents of the neighbouhoods of 'Northgate' and 'St. Stephen's' within the locality of the city of Canterbury.

(d) Whether use of the land 'as of right' by the inhabitants has continued up until the date of application or, if not, ceased no more than two years prior to the making of the application?

52. The Commons Act 2006 requires use of the land to have taken place 'as of right' up until the date of application or, if such use has ceased prior to the making of the application, section 15(3) of the 2006 Act provides that an application must be made within two years from the date upon which use 'as of right' ceased.

---

[8] *R (Alfred McAlpine Homes Ltd.) v Staffordshire County Council* [2002] EWHC 76 at paragraph 71

53. In this case, there is no evidence to suggest that informal recreational use of the application site was challenged by the Council prior to the making of the Village Green application in July 2012. The application appears to have been prompted by a proposal (advertised in the Kent on Sunday on 8th April 2012) on the part of the Council to appropriate the application site to planning purposes. However, no attempt was made by the Council at this stage (or even before) either to restrict or prevent use of the application site for informal recreational purposes.

54. Therefore, use of the application site has continued up to (and indeed beyond) the date of the application and this test is met.

(e) Whether use has taken place over a period of twenty years or more?

55. In order to qualify for registration, it must be shown that the land in question has been used for a full period of twenty years. In this case, as discussed above, there is no evidence to suggest that use of the application ceased prior to the making of the application. The application was made in July 2012 and, as such, the relevant twenty-year period ("the material period") is to be calculated retrospectively from this date, i.e. 1992 to 2012.

56. The user evidence suggests that recreational use of the application site has taken place well in excess of the required twenty-year period. Other than the fairs and funfairs discussed above, there is nothing to suggest that there have been any substantive periods between 1992 and 2012 when the application site was inaccessible to local residents or unavailable for informal recreational use.

57. Therefore, it would appear that the use of the application site has taken place for a period of twenty years.

Conclusion

58. As Members will be aware, in order for an application to register a new Village Green to be successful, the County Council must be satisfied that each and every one of the relevant legal tests is met in full; if one test fails, then the application as a whole must be rejected. It is also relevant, as is noted above, that the County Council cannot consider issues relating to amenity, desirability or suitability in relation to the registration of the land as a Village Green.

59. In this case, the applicants assert that the matter is not clear-cut and ought to be referred to a Public Inquiry for further consideration on the basis that the legal and factual issues require more detailed evaluation. The Council's position is that the application must, as a matter of law, be refused and there is no need for an inquiry (or any other further fact finding) unless the applicant is able to put forward a credible case that the application site has not been held by the Council for recreational purposes.

60. The fact that the application site has been used for informal recreational by the local residents during the relevant period does not appear to be in dispute; rather, the case turns upon the manner in which the application site was held by the Council during the relevant period and whether, as a result, the informal recreational use by local inhabitants can be considered trespassory in nature, thereby giving rise to an established right.

61. The applicants' position in this respect is that the Council's opposition to the application is made without any evidential basis, and the documents provided (relating to ownership and the 1967 appropriation) '*merely serve to illustrate points which would appear to be accepted by the parties*' but neither go to the actual use of the application site during the relevant period. Thus, it would appear from this statement that the applicants accept that the land was appropriated in 1967 for recreational purposes and (it must follow) that it has been held by the Council for such purposes under section 19 of the Local Government (Miscellaneous Provisions) Act 1976.

62. That being the case, the evidence of use of the application site merely serves to confirm that it has been used by the local inhabitants in the manner for which it is provided by the Council; in many respects, it is immaterial to the case because it appears that such use has taken place by virtue of a power which enables the Council to '*provide such recreational activities as it thinks fit*'. Such use has therefore been 'by right' in exercise of an existing right to use the land.

63. For this reason, regardless of whether any (or even all) of the other relevant tests are met, the fact that the application site is held for the purposes of public recreation presents a knock-out blow to the possibility of registering the land as a Village Green. This is central and insurmountable issue that cannot be addressed through the provision of further user evidence on the part of the applicants and, for this reason, it would be a futile exercise to hold a Public Inquiry as per the applicants' request. Accordingly, for the reasons set out in above, the unavoidable conclusion is that the land is not capable of registration as a Village Green.

Recommendation

64. I recommend that the applicant be informed that the application to register land known as Kingsmead Field at Canterbury as a Town or Village Green has not been accepted.

Accountable Officer:
Mr. Mike Overbeke – Tel: 01622 221568 or Email: mike.overbeke@kent.gov.uk
Case Officer:
Ms. Melanie McNeir – Tel: 01622 221511 or Email: melanie.mcneir@kent.gov.uk

The main file is available for viewing on request at the PROW and Access Service, Invicta House, County Hall, Maidstone. Please contact the Case Officer for further details.

Background documents

APPENDIX A – Plan showing application site
APPENDIX B – Copy of the application form

APPENDIX C:
Copy of the minutes from the RCMP meeting on Tuesday 26th November 2013

REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Kingsmead Leisure Centre, Kingsmead Road, Canterbury CT2 7PH on Tuesday, 26 November 2013.

PRESENT: Mr M J Harrison (Chairman), Mr S C Manion (Vice-Chairman), Mr M Baldock and Mr C W Caller

ALSO PRESENT: Mr G K Gibbens

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

UNRESTRICTED ITEMS

18. Application to register land known as Kingsmead Field in Canterbury as a new Town or Village Green
(Item 3)

(1) Members of the Panel visited the application site before the meeting. This visit was attended by Ms S Pettman and Mr B Gore on behalf of the applicants and Mr R Griffith from Canterbury City Council.

(2) Before making her presentation, the Commons Registration Officer noted that the applicants had very recently sent representations individually to Members of the Panel. In the light of the comments contained within them, she had sought further advice from Counsel. This advice had been received within the previous 12 hours, and supported the conclusions set out in the report.

(3) The Commons Registration Officer began her presentation by saying that the application had been made by Ms A Bradley, Ms S Langdon and Mr M Denyer under section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2008. The application had been accompanied by 335 user evidence forms and other evidence (including maps showing the site and relevant localities, photographs of the site, extracts from Canterbury CC's register of Council-owned land, and various statements from local students). Documents relating to the City Council's proposal to dispose of the land for development purposes had also been included, and the Commons Registration Officer explained that they needed to be disregarded by the Panel for the purposes determining whether to register the land in question as a Village Green.

(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 by local inhabitants for a range of activities "as of right" for more than 20 years.

(5) The Commons Registration Officer then described the responses from consultees. Over 100 supporting messages had been received including a letter from the Local Member, Mr G K Gibbens.

(6) The Commons Registration Officer continued by saying that the site was owned by Canterbury City Council apart from a small section on the northern boundary, which was owned by Berkeley Homes PLC.

(7) Canterbury CC had objected to the application on the grounds that it held the land under their power to provide public recreational facilities, which meant that use of the land by the public had been "by right" rather than "as of right." No objection had been received from Berkeley Homes.

(8) 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. In this case, however, the land had been held by the City Council as land appropriated for public recreation in 1967 for "use as a playing field" under section 163 of the Local Government Act 1933 (replaced by section 144 of the Local Government 1972 and then by section 19 of the Local Government (Miscellaneous Provisions) Act 1976).

(9) The Commons Registration Officer referred to case law. Lord Walker had noted in the *Beresford* case that it would be very difficult to regard people who used land appropriated for public recreation as trespassers. This had been supported in the *Barkas* case by Sullivan LJ who had ruled that when an application site had been appropriated for the purposes of public recreation under an express statutory power, the local inhabitants would have indulged in lawful sports and pastimes on that land "by right" and not "as of right."

(10) The Commons Registration Officer noted a secondary issue in relation to the fact that the land had been hired out for formal events such as circuses and funfairs. The City Council had relied on the *Mann* case in support of its view that occasional exclusion from part of the land was sufficient to communicate to users that their use of the whole land at other times was with the landowner's permission. The applicants, however, disputed this view, pointing out that the City Council had never attempted to exclude people from the site and that no charges had ever been made for entry to the funfair. The charge for admission to the circus had been in respect of the performance rather than for admission onto the land itself. In their view, the use of the land for formal events had coexisted peacefully with the concurrent use of the application site for lawful sports and pastimes.

(11) The Commons Registration Officer said that it was unnecessary to consider the question of formal events on the site in detail because the appropriation of land issue was, in itself, sufficient to demonstrate that use had been "by right" and not "as of right."

(12) The Commons Registration Officer then briefly turned to the other tests. She said that all parties agreed that the land had been used for the purposes of lawful sports and pastimes. The evidence also suggested that a significant number of residents of the neighbourhoods of Northgate and St Stephen's within the City of Canterbury locality had used the site. Use of the land had continued up to and beyond the date of application over the required period of twenty years.

(13) The Commons Registration Officer summed up by saying that regardless of her view that all the other tests appeared to have been met, the application had failed

to meet the "as of right" test because it had been held by the City Council for the purposes of public recreation, representing a "knock out" blow to the application. She therefore recommended accordingly.

(14) Mr Baldock asked whether at any stage during the requisite period, the land in question had been used for any other purpose apart from public recreation. The Commons Registration Officer confirmed, in reply, that it had always been held for recreational purposes during the 20 year period.

(15) In response to a question from Mr Baldock, the Commons Registration Officer said that Village Green rights could not be acquired in any way whilst the land in question was statutorily held by a local authority for recreational purposes.

(16) Mr Barrie Gore addressed the Panel as a supporter of the application. He said that the *Barkas* case had been considered by the Court of Appeal but that it was now due to be considered by the Supreme Court in April 2014. Its eventual verdict would clarify the legal position in respect of this particular application. He considered it very possible that the Appeal Court judgement would be reversed and suggested that consideration of this application should be delayed pending the Supreme Court judgement.

(17) Mr Gore said that following receipt of the agenda papers, Counsel's opinion had been sought and sent to some of the Panel Members. He believed that this opinion should be a part of the evidence base for consideration of the application. He stressed the argument made by the applicants' counsel that the Local Government (Miscellaneous Provisions) Act 1976 did not enable Canterbury CC to appropriate land at all and that it simply enabled it to provide recreational facilities. It was on this basis that the *Barkas* case had been given leave to proceed to the Supreme Court. The most equitable course of action would be to delay the decision because it had a direct bearing on the outcome of this case. It would clarify the position in respect of "as of right" use, which was the only test that this application was currently considered to have failed to pass.

(18) The Commons Registration Officer advised that the Panel should deal with the application on the basis of the law as it stood. To do otherwise would be prejudicial to the landowner who was entitled to a timely decision. She added that her recommendation did not rely on the *Barkas* case so much as the *Beresford* case which was most pertinent.

(19) Mr Gore said that the comments made by Lord Walker in *Beresford* were not, infact, a part of the judgement in this case. This was a further complication in what was already a very complex area of law which the Supreme Court would be able to resolve.

(20) Mrs Sue Langdon (applicant) said that she agreed with Mr Gore's view that the decision should be delayed pending the outcome of the *Barkas* case in the Supreme Court. This was the only fair course of action, particularly as the decision could be expected in June 2014. Given the likelihood that Barkas would finally clarify the legal position and enable the Panel to be fully confident that its decision was both fair and lawful, natural justice demanded that the requested delay should be granted. Should the Panel decide to turn down this request, the applicants would seek to judicially review the decision.

(21) The Commons Registration Officer said that *Barkas* related to a provision within the Housing Acts. Its significance in this case was that Sullivan L J's ruling had approved Lord Walker's statement in *Beresford* as part of the judgement, confirming the law in respect of "as of right" use.

(22) Ms Janet Taylor (Canterbury CC) said that she had received Counsel's opinion in response to the late submission provided direct to the Panel Members by the applicants. This set out that the City Council could not hold land by virtue of a legal vacuum. The land had been acquired in 1967 under section 163 of the Local Government Act 1933. This Act had been modified and replaced and was currently held under section 19 of the Local Government (Miscellaneous Provisions) Act 1976 which gave very wide powers to a local authority to provide land for recreational purposes in such a way as it deemed fit. This meant that use of the land had been with permission and invitation.

(23) Mr Alex Davies (Berkeley Homes PLC) said that he did not wish to comment.

(24) The Chairman invited comments from the public. One comment was made in respect of the sign put up on the site by Canterbury CC. The ruling in *Beresford* had been that permission had to be communicated and revocable to indicate that use of the land was by licence.

(25) The Commons Registration Officer replied to the previous point by saying that the sign did not convey permission but was consistent with the fact that the City Council had provided the land for public recreation.

(26) Mr G K Gibbens (Local Member) said that Kingsmead Field sat in the middle of his electoral ward. Its status had been one of the two main issues during the Local Government elections in May 2013.

(27) Mr Gibbens went on to say that the field was widely used by local residents for relaxation, dog walking and games. It was the only green space for some considerable distance, which was important in the context of Northgate, one of the most deprived wards in Kent.

(28) Mr Gibbens noted that four of the required tests had been met and that the only area of dispute was whether use had been by right or as of right. This issue was a key point in the *Barkas* case which was going forward to the Supreme Court in April 2014.

(29) The "as of right" test was very contentious and the subject of substantial case law. However, he did not believe that there was any case law which specifically related to the provisions of section 19 of the Local Government (Miscellaneous Provisions) Act 1976 within Village Green law at present. The *Barkas* case was expected to clarify a number of outstanding issues in relation to Village Greens and publicly owned land, including the status of the Local Government (Miscellaneous Provisions) Act. He therefore believed that it would be prudent for the Panel to defer taking a decision until the Supreme Court had considered the *Barkas* case and given its ruling.

(30) Mr Gibbens concluded his remarks by saying that the residents had already been very clear in their views and hoped that in due course Village green status would be granted. They would be surprised and disappointed if the Panel were to reject the application whilst the outstanding case was being considered in the Supreme Court and very shortly before that court had given its ruling. Postponing the decision seemed to be the only fair and reasonable thing to do, and would have no cost implications for either KCC or Canterbury CC.

(31) Mr Baldock suggested that a Public Inquiry could be held in accordance with the applicants' request. The Commons Registration Officer advised that a Public Inquiry would only be appropriate if there was a serious factual dispute, but in this case the City Council accepted that the land had been used for recreational purposes and the case turned on an interpretation of the Law. As such, it was not necessary to hold a Public Inquiry.

(32) Mr S C Manion moved and it was duly seconded that the recommendations of the Head of Regulatory Services be agreed.

Lost 3 votes to 1

(33) Mr M J Harrison moved, seconded by Mr C W Caller that consideration of this application be adjourned pending the judgement of the Supreme Court in respect of the *Barkas* case.

Carried 3 votes to 1

(33) RESOLVED that consideration of this application be adjourned pending the judgement of the Supreme Court in respect of the *Barkas* case.

Application to register land known as Chaucer Fields at Canterbury as a new Town or Village Green

A report by the Head of Regulatory Services to Kent County Council's Regulation Committee Member Panel on Tuesday 29th July 2014.

Recommendation: I recommend that Members endorse the Inspector's advice (contained in her report dated 22nd January 2014) to proceed with this application on the basis that section 15(7)(b) of the Commons Act 2006 does not have retrospective effect.

Local Member: Mr. G. Gibbens Unrestricted item

Introduction

1. The County Council has received an application to register land known as Chaucer Fields in the city of Canterbury as a new Town or Village Green from a group of local residents, namely Mr. J. Barton, Mr. R. Norman, Mrs. P. Cherry, Mrs. S. Power and Mr. A. Pearlman ("the applicants"). The application, made on 21st April 2011 was allocated the application number VGA635.

Procedure

2. The application has been made under section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2008.

3. Section 15 of the Commons Act 2006 enables any person to apply to a Commons Registration Authority to register land as a Village Green where it can be shown that:

   'a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;

4. In addition to the above, the application must meet one of the following tests:

   • **Use of the land has continued** 'as of right' until at least the date of application (section 15(2) of the Act); or

   • **Use of the land 'as of right' ended no more than two years prior to the date of application**[1], e.g. by way of the erection of fencing or a notice (section 15(3) of the Act).

5. A full copy of section 15 of the 2006 Act is provided for ease of reference at **Appendix A**.

6. As a standard procedure set out in the 2008 Regulations, the applicant must notify the landowner of the application and the County Council must notify every local authority. The County Council must also publicise the application in a

[1] Note that from 1st October 2013, the period of grace was reduced from two years to one year (due to the coming into effect of section 14 of the Growth and Infrastructure Act 2013). This only applies to applications received after that date and does not affect any existing applications.

newspaper circulating in the local area and place a copy of the notice on the County Council's website. In addition, as a matter of best practice rather than legal requirement, the County Council also places copies of the notice on site to provide local people with the opportunity to comment on the application. The publicity must state a period of at least six weeks during which objections and representations can be made.

The application site

7. The area of land subject to this application ("the application site") is situated adjacent to Chaucer College on the University of Kent campus in the city of Canterbury. The application site consists of approximately 17.6 hectares (43.5 acres) of meadow and woodland which forms a green space between the main university buildings and the residential estates in the vicinity of Salisbury Road in the St. Stephen's area of the city of Canterbury. The application site does not have any officially recognised name, although it has latterly become known locally informally as Chaucer Field.

8. Access to the application site is via its unfenced boundary along University Road[2], or via the Public Rights of Way (Public Footpaths CC5 and CC6 and Bridleway CC8) which cross and abut the site, providing access from the residential estates to the south and east of the application site.

Previous resolution of the Regulation Committee Member Panel

9. As a result of the consultation, an objection to the application was received from the University of Kent ("the University") in its capacity as landowner. The objection was made on the following grounds:
   - That the documentation submitted in support of the application is not sufficient to prove that a significant number of the inhabitants of the locality have indulged in lawful sports and pastimes on the land between 1991 and 2011;
   - That there is clear evidence that the use of the application site is with the permission of the University, communicated by notices positioned at each entrance to the application site throughout the relevant period; and
   - That use has not been by a significant number of the residents of the locality or neighbourhood and such use as was made was confined to footpaths and desire lines.

10. The matter was considered at a meeting of the Regulation Committee Member Panel held on Tuesday 11th September 2012, at which Members accepted the recommendation that the matter be referred to a Public Inquiry for further consideration.

11. As a result of that decision, Officers instructed an independent Barrister ("the Inspector") experienced in this area of legislation to hold a Public Inquiry and to report her findings back to the County Council. A pre-Inquiry meeting was held on Thursday 13th December 2012 and arrangements were made for the Public Inquiry to commence on Monday 18th March 2013 and continue, as necessary, during that week.

[2] University Road is a private road but Public Footpath CC69 runs over it thereby providing a public right of access on foot.

Proposed amendment to the application

12. Prior to the commencement of the Public Inquiry, the applicants contacted the County Council[3] to advise that they wished to amend their application, stating that:

> *"having taken Counsel's advice and having further considered the evidence, we wish to pursue the application under section 15(2), and not under section 15(3) as originally stated. On the basis that permission has been given to use the land, we shall rely upon section 15(7)(b) in conjunction with section 15(2). We note that this has a bearing on the 20 year period to be considered, and for this reason we wish to make use of evidence covering the entire period referred to in the evidence questionnaires and witness statements, from 1944 to 2011".*

13. As Members will be aware, section 15(2) of the Act applies in situations where use of the application site 'as of right' is continuing up until the date of the application, whilst section 15(3) applies where use has ceased to be 'as of right' prior to the making of the application. In this case, the application had been made under section 15(3) on the basis that use of the application site had already ceased to be 'as of right' by virtue of the erection, by the University, of notices granting permission to local residents to use the application site. Those notices, which read "*The University of Kent at Canterbury hereby gives notice that the land is private property and any access by members of the public is by licence only and may be revoked at any time*", had been erected by the University in March 2011 (i.e. several weeks prior to the making of the application). Thus, the twenty year period relied upon by the applicants in the application as originally made was March 1991 to March 2011.

14. Section 15(7)(b) of the Act provides that, where the application site has already been used for a full period of twenty years and permission is subsequently granted for the recreational use of the land, '*the permission is to be disregarded in determining whether persons continue to indulge in lawful sports and pastimes on the land 'as of right'*". The effect of this provision is therefore that where a landowner grants permission for recreational use after local residents have already been using the application site for a period of at least twenty years, that permission will not be sufficient to constitute a formal challenge to such use or to cause 'as of right' use to cease.

15. In this case, it is clear that the applicants, instead of making their application under section 15(3) of the Act (i.e. on the basis of use 'as of right' ceasing in March 2011), could equally have made their application under section 15(2) of the Act (i.e. on the basis of use continuing) in conjunction with the provision in section 15(7)(b) of the Act (so that the University's 2011 permissive notices would be disregarded).

16. However, the added complication in this case is that the University contends that recreational use of the application site has taken place on a permissive basis

[3] By way of a letter dated 31st January 2013

since late 1989 or early 1990 when it had previously erected permissive notices. It is not clear (as yet) whether or not these notices were still in place by March 1991 or their effect on 'as of right' use at that time. The applicant therefore seeks to rely on section 15(7)(b) of the Act in order to disregard the permissive notices erected in late 1989 or early 1990.

17. The issue that is in dispute between the parties is whether section 15(7)(b) of the Act can be relied upon in instances where the grant of permission preceded the commencement of section 15 (which was brought into force on 7th April 2007). If section 15(7)(b) of the Act is not considered to have retrospective effect, and the University were to succeed in demonstrating that use of the application site had been permissive for any part of the period March 1991 to March 2011, the application would unavoidably fail.

18. The University responded to the applicant's proposed amendment by suggesting that the Inquiry could not proceed as scheduled if the amendment were to be allowed due to the time required to research the evidence going back to 1944 and that, in any event, section 15(7)(b) did not have retrospective effect and could not be relied upon in respect of a grant of permission pre-dating the coming into effect of the legislation on 7th April 2007. The University further suggested that, in order to prevent unnecessary work and costs for all parties, a hearing ought to be held to consider this preliminary issue before proceeding to hear the user evidence in full at a Public Inquiry.

19. Accordingly, on the advice of the Inspector, a hearing was held on 18th March 2014 at which both parties made representations before the Inspector on this issue. The Inspector subsequently prepared a report (dated 22nd January 2014) setting out her findings and recommendation to the County Council as to how it should proceed with this matter. The report is summarised below, but a full copy is available on request from the case officer.

The applicant's case

20. The applicants' case is essentially that there is nothing to suggest that the language "permission is granted" used in section 15(7)(b) was intended to apply only to permission granted after that section came into force; it can and should be applied to permission granted at any time. Indeed, there are other provisions within section 15 (namely section 15(6) which relates to periods of statutory closure) which clearly apply to events that occurred prior to the coming into effect of the legislation on 7th April 2007.

21. The applicants' suggest that the section 15(7)(b) was introduced to prevent local residents from losing out in cases where the landowner had granted permission for lawful sports and pastimes and they had been induced by a false sense of security and therefore took no steps to secure registration of the land as a Village Green. The policy aim was therefore to protect the position of local residents because, if a grant of permission was made after 20 years' use and local residents had no reason to suspect that their use was being challenged, there would be no reason for them to make a Village Green application and, eventually (due to the specified periods of grace), their right to do so would be lost. In this regard, the applicants note that the provision was not exceptional in widening the range of circumstances in which land could qualify for Village Green status and

followed the general trend of legislative reform to make registration easier. As such, the provision should be interpreted in the applicants' favour.

The University's case

22. The University's case is that section 15(7)(b) is not naturally read as being retrospective because it employs the present tense ("is granted") rather than "has been granted", and can be contrasted with other sub-sections where the past tense is used to refer specifically to events pre-dating the commencement of section 15. Furthermore, the applicants' construction of section 15(7)(b) would conflict with the presumption against retrospectivity applicable in the interpretation of statutes[4]. Accordingly, any ambiguity should be resolved against a retrospective construction.

23. The University also suggests that three provisions weigh against giving section 15(7)(b) retrospective effect:
    - As the law then stood (prior to the 2006 Act), a landowner could bring 'as of right' use to an end by erecting a permissive notice and it would be contrary to principle for that defence against registration to be removed afterwars without compensation;
    - The Commons Registration Act 1965 (which preceded the 2006 Act) provided that if land was not registered prior to 31st July 1970 it was no longer registrable, but the applicants' submission opens up the possibility of reliance being placed on receational use going back decades, which cannot be right;
    - Decisions of Commons Registration Authorities as to the registrability of land as a Village Green were and are intended to be subject to the doctrine of *res judicata*[5] (i.e. not reopened) and it cannot have been Parliaments for the 2006 Act to allow the merits of previous decision to be reopened by new applications on the basis that a grant of permission had not been sufficient to defeat use 'as of right'.

The Newhaven[6] case

24. The Newhaven case concerned an application to register an area of tidal beach as a Village Green. The owners, Newhaven Port and Properties Ltd., sought a judicial review of East Sussex County Council's decision to register the land as a Village Green. The claim was upheld by the High Court but the decision was reversed, and the appeal dismissed, in the Court of Appeal.

25. None of the factual issues of that case are relevant to the question under consideration, but of note is the fact that both courts were asked for, and declined to make, a declaration of incompatibility[7] between section 15(4) of the 2006 Act (i.e. the five year period of grace) and the European Convention of Human Rights.

---

[4] In English law there is a presumption that legislative provisions do not operate retrospectively unless the wording of the statute makes it clear that Parliament intended the provision to be retrospective.
[5] The Common Law doctrine of *res judicata* refers to "a matter [already] judged" and prevents relitigation of the same claim.
[6] *R (Newhaven Port & Properties Ltd) v East Sussex County Council (No 2)* [2013] EWCA Civ 673
[7] A 'declaration of incompatibility' is a declaration issued by judges in cases where they consider that a provision of primary legislation (i.e. an Act of Parliament) is incompatible with the UK's obligations under the European Convention of Human Rights (incorporated into English law by the Human Rights Act 1998).

26. Giving his reasons, Lewison LJ (in the Court of Appeal) reviewed the statutory provisions contained in section 15 of the 2006 Act and noted that:

> *"29. The overall aim of the 2006 Act is not in doubt. It is to legitimise long recreational use by local inhabitants of open spaces, provided that the use has continued 'as of right' for a period of 20 years. As mentioned, use as of right means use without force, without stealth and without permission. Accordingly use as of right can, in principle, be stopped if the landowner grants permission for the use, or prevents access to the land. All rights of registration under section 15 require the local inhabitants to establish 20 years' use 'as of right'.* ***Thus under section 15 it remains open to a landowner to prevent use from being use as of right if within the 20 year period he grants permission for the use to continue****, or bars access to the land. Thus each of the gateways to registration takes as its starting point the fact that the landowner has acquiesced in public recreational use for at least 20 years.*
>
> *30.* ***Once the 20-year period has expired, section 15(7) prevents a subsequent grant of permission from having this effect****. It does this by providing that for the purpose of section 15(2)(a) use as of right is treated as continuing. However, the grant of permission was only one way in which use could be prevented from counting as use as of right. Another way was by barring access to the land, with the consequence that either (a) any subsequent use of the land would not be use without force or (b) the use would cease altogether. Where that happens after the commencement of section 15, section 15(3) gives the inhabitants a period of two years in which to make their application for registration. Since section 15(3) only applies if use continues after the commencement of the section, there was no need to provide for section 15(7) to apply to section 15(3)(b), since the use as of right would be deemed to be continuing (and hence not to have ceased) as a result of section 15(2)(b).*
>
> *31. Section 15(4) applies where three conditions are satisfied. The first is that local inhabitants have indulged in lawful sports and pastimes as of right for 20 years. Thus it will have been open to the landowner, before the expiry of the 20 year period, to have prevented the use from being use as of right by the grant of permission or barring access. Section 15(4) is therefore predicated on the assumption that the landowner has not availed himself of that opportunity. So the starting point is that the local inhabitants have established a full period of 20 years' use as of right. The second condition is that use as of right ceased before the commencement of the section. As noted, use will cease to be use as of right if it is forcible or permissive. But section 15(7) applies only for the purposes of section 15(2)(b). It does not apply to section 15(4).* ***If, therefore, a landowner granted permission for use to continue after the expiry of the 20-year period, but before the commencement of the section, then the use will have ceased to be use as of right*** *for the purposes of section 15(4). This is more favourable to the landowner that the position of the landowner under section 15(2) or section 15(3)" (emphasis added in bold).*

27. Although not directly concerned with the interpretation of section 15(7)(b), the presumption in the Newhaven case appears to have been that section 15(7)(b) applies only to post-Act permission and does not operate retrospectively.

The Inspector's conclusions and recommendation

28. Having heard and carefully considered the parties' submissions, the Inspector concluded that she preferred the University's interpretation of section 15(7)(b) of the 2006 Act (i.e. that it does not apply to permissions granted prior to the commencement of the section) to that of the applicants. She considered that[8]:

> *"As a matter of the language of section 15(7)(b) itself, the natural reading of the words "permission is granted" seems to me to be as referring exclusively to permissions granted once the section has come into force, rather than as extending to permissions granted up to 35 years previously. The expression connotes the initial act by which the landowner gives permission, not the continuation of a pre-existing state of affairs.*
>
> *That reading is reinforced by the absence from subsection (7) of any uses of the past tense: "is satisfied", "indulge", "is prohibited", "are to be regarded as continuing so to indulge", "is granted" and "is to be disregarded in determining whether persons continue to indulge" are all naturally read as prospective rather than retrospective. I agree with both parties that subsections (7)(a) and (7)(b) should if possible be interpreted consistently and I do not see how "indulge as of right in lawful sports and pastimes immediately before access is prohibited" is to be read as "indulge or indulged as of right in lawful sports and pastimes immediately before access to the land is or was prohibited"."*

29. She further added that it would be surprising, if section 15(7)(b) was intended to apply to pre-commencement permissions, that the reach of the provision was not clearly spelled out for the benefit of all concerned (including landowners) and that the obvious reading of section 15(4) in conjunction with section 15(7)(b) is that pre-commencement permissions following 20 years' qualifying user were dealt with by section 15(4) and post-commencement permissions following 20 years' qualifying user were dealt with by section 15(7)(b).

30. In respect of the Newhaven case, the Inspector noted that the Court of Appeal accepted the rationale that the longer grace period specified in section 15(4) of the 2006 Act (and applying only to pre-commencement cessations) was that where a landowner had granted permission for use between expiry of a 20-year period of qualifying user and commencement of section 15, section 15(7)(b) would not be available to applicants, so they would have to apply within the grace period allowed by section 15(4) if they were to succeed. The Court of Appeal's approach was clearly, in her view, that section 15(7)(b) was not retrospective, and it would not be appropriate for the County Council to depart from the Court of Appeal's analysis.

31. For these reasons (and others which are set out in full in her report), the Inspector's recommendation[9] to the County Council is as follows:

> *"to decide that on its proper construction, section 15(7)(b) of the Commons Act 2006 does not allow reliance on user as of right terminated by a grant of permission preceding the date of commencement of section 15, and to proceed with the consideration and determination of the*

[8] See paragraphs 76 and 77 of the Inspector's report
[9] See paragraph 108 of the Inspector's report

application (and any other section 15 application by the applicants) on that basis".

The parties' comments on the Inspector's report

32. On receipt a copy of the Inspector's report was forwarded to the parties for their comments.

33. The applicants rejected the Inspector's recommendation and urged the County Council to reconsider the position. They suggested that the Inspector's conclusion that, on a natural reading of section 15(7)(b), the provision refers exclusively to permissions granted after the 2006 Act came into force (on 7th April 2007) is flawed and reiterated their view that the wording "is permitted" is apt to refer to any permission, whether granted before or after commencement of the Act. The applicants added that neither the Inspector nor the County Council was bound to follow the reasoning in the Newhaven case in support of the conclusion that section 15(7)(b) is retrospective, and argued that the case did not directly turn on the interpretation and effect of section 15(7)(b) and there was no argument one way or another before the Court of Appeal on this point. In any event, the applicants' preferred course of action was to adjourn the Inquiry until the Supreme Court's decision on the matter.

34. The University initially chose not to make any comments but, having had sight of the applicants' comments, noted that it would be perverse for the County Council to reject the Inspector's recommendations and, instead, it ought to proceed with the Inquiry in accordance with the Inspector's recommendation that the application be considered and determined on the basis of a period of use between 1991 and 2011. The University suggested that to do otherwise would be to proceed on a mistaken basis of law, thereby resulting in further delay and prejudice to the University as landowner.

Conclusion

35. The parties' comments have been referred back to the Inspector and, having considered these, she has advised that she can see nothing within the comments of either party to change the conclusion previously reached in her report of 22nd January 2014. The Inspector reiterated her disagreement with the applicants' case that section 15(7)(b) can be applied to pre-commencement permission and confirmed that the advice and recommendation contained in her report still stand.

36. She also noted that, since receipt of the parties' comments, Newhaven Port and Properties have withdrawn their appeal to the Supreme Court so that there is no longer any question of adjourning further consideration of the application to await the outcome of the appeal to the Supreme Court. Thus, this leaves the Court of Appeal's judgement as the sole authority and, in the Inspector's view, the County Council ought to follow its approach.

37. It should be noted that the Inspector's advice also accords with DEFRA's current guidance[10] that '*in DEFRA's view, section 15(7)(b) can be relevant only to a permission which was granted on or after 6th April 2007, the date on which that provision came into force (because it cannot have been intended to have retrospective effect on the actions of landowners who had taken steps, before that date, to bring to an end use as of right)*'.

38. Therefore, having had regard to all of the submission made by the parties, as well as the advice provided by the Inspector, it would appear that the appropriate way to proceed with this matter is on the basis that section 15(7)(b) is not retrospective and, accordingly, that the Inquiry therefore proceed (subject to any further amendments proposed by the applicant) to consider the use of the application site between March 1991 and March 2011.

Recommendation

39. I recommend that Members endorse the Inspector's advice (contained in her report dated 22nd January 2014) to proceed with this application on the basis that section 15(7)(b) of the Commons Act 2006 does not have retrospective effect.

Accountable Officer:
Mr. Mike Overbeke – Tel: 01622 221568 or Email: mike.overbeke@kent.gov.uk
Case Officer:
Ms. Melanie McNeir – Tel: 01622 221511 or Email: melanie.mcneir@kent.gov.uk

The main file is available for viewing on request at the PROW and Access Service, Invicta House, County Hall, Maidstone. Please contact the Case Officer for further details.

Appendices

APPENDIX A: Section 15 of the Commons Act 2006

[10] See paragraph 8.10.72 of DEFRA's '*Part 1 of the Commons Act 2006: Guidance to commons registration authorities and the Planning Inspectorate for the pioneer implementation*' (January 2014 edition).

APPENDIX A:
Full text of section 15 of the Commons Act 2006

15 Registration of greens

(1) Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies.

(2) This subsection applies where—
(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and
(b) they continue to do so at the time of the application.

(3) This subsection applies where—
(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;
(b) they ceased to do so before the time of the application but after the commencement of this section; and
(c) the application is made within the period of two years beginning with the cessation referred to in paragraph (b).

(4) This subsection applies (subject to subsection (5)) where—
(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;
(b) they ceased to do so before the commencement of this section; and
(c) the application is made within the period of five years beginning with the cessation referred to in paragraph (b).

(5) Subsection (4) does not apply in relation to any land where—
(a) planning permission was granted before 23 June 2006 in respect of the land;
(b) construction works were commenced before that date in accordance with that planning permission on the land or any other land in respect of which the permission was granted; and
(c) the land—
(i) has by reason of any works carried out in accordance with that planning permission become permanently unusable by members of the public for the purposes of lawful sports and pastimes; or
(ii) will by reason of any works proposed to be carried out in accordance with that planning permission become permanently unusable by members of the public for those purposes.

(6) In determining the period of 20 years referred to in subsections (2)(a), (3)(a) and (4)(a), there is to be disregarded any period during which access to the land was prohibited to members of the public by reason of any enactment.

(7) For the purposes of subsection (2)(b) in a case where the condition in subsection (2)(a) is satisfied—
(a) where persons indulge as of right in lawful sports and pastimes immediately before access to the land is prohibited as specified in subsection (6), those persons are to be regarded as continuing so to indulge; and
(b) where permission is granted in respect of use of the land for the purposes of lawful sports and pastimes, the permission is to be disregarded in determining whether persons continue to indulge in lawful sports and pastimes on the land “as of right”.

(8) The owner of any land may apply to the commons registration authority to register the land as a town or village green.

(9) An application under subsection (8) may only be made with the consent of any relevant leaseholder of, and the proprietor of any relevant charge over, the land.

(10) In subsection (9)—

"relevant charge" means—

(a) in relation to land which is registered in the register of title, a registered charge within the meaning of the Land Registration Act 2002 (c. 9);

(b) in relation to land which is not so registered—

(i) a charge registered under the Land Charges Act 1972 (c. 61); or

(ii) a legal mortgage, within the meaning of the Law of Property Act 1925 (c. 20), which is not registered under the Land Charges Act 1972;

"relevant leaseholder" means a leaseholder under a lease for a term of more than seven years from the date on which the lease was granted.

This page is intentionally left blank