

REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Council Chamber, Sessions House, County Hall, Maidstone on Friday, 18 March 2016.

PRESENT: Mr A H T Bowles (Chairman), Mr C W Caller, Mr A D Crowther, Mrs V J Dagger and Mr P J Homewood

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

UNRESTRICTED ITEMS

2. Application to register land known as Chaucer Fields in Canterbury as a new Town Green (Item 3)

(1) The Panel Members had all received an electronic copy of the Inspector's report dated 6 August 2015 prior to the meeting

(2) The Chairman informed the Panel that he had previously lived in the vicinity of the site in question. He had not been involved at any stage in the application and was able to approach the determination of the application with a fresh mind.

(3) The Commons Registration Officer introduced the application which had been made under Section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2008. She referred to Appendix A of the report which showed the location of the site as well as the Public Rights of Way and tracks which crossed it. She also provided photographs of the site including the brown signs (Appendix B) that the Inspector concluded had been erected in 1990 which stated "This land is private property and access by members of the public is by licence only and may be revoked at any time."

(4) The Commons Registration Officer then said that the University of Kent (landowner) had erected blue signs in March 2011, and that this had been made by a group of local resident shortly thereafter in April 2011.

(5) The Commons Registration Officer went on to say that the University of Kent as the landowner had objected to the application. They had claimed that the documentation submitted in support of the application had not been sufficient to prove that use of the land for lawful sports and pastimes had been by a significant number of residents of the locality; that use of the land had been with permission communicated by notices positioned at each entrance to the site; and that such use as had occurred had been confined to public footpaths and "desire lines".

(6) The application had been considered by a Regulation Committee Member Panel on 11 September 2012. The decision had been taken to accept the

recommendation to refer the matter to a Public Inquiry. This Inquiry had taken place in February and March 2015.

(7) The Commons Registration Officer moved on to consideration of the Inspector's consideration of the legal tests, each of which had to be met in full for registration to take place. She explained that the task for the Panel was to consider whether it could be shown that a significant number of the residents of a locality or of any neighbourhood within a locality had indulged as of rights in lawful sports and pastimes on the land for a period of at least 20 years.

(8) The first test was whether use of the land had been as of right. It had been agreed by the landowner that use of the land had not been by force or stealth. The University of Kent's objection had been on the basis that use of the site had been with permission. The Inquiry had heard evidence regarding various signs which were said to have been put up before 1990. The main focus had been on the photographs described in paragraph (3) above which stated "This land is private property and access by members of the public is by licence only and may be revoked at any time." Although these photographs had been undated, it had been accepted by the end of the Inquiry that these had been erected between November 1989 and April 1990. In the Inspector's view the most likely date had been between 15 and 22 February 1990.

(9) The Commons Registration Officer said that the Inspector had been satisfied that anyone entering the application site from any of its access points would have seen one of the notices once they had been put up. For this reason, use of the site would have been permissive for as long as the signs were in existence. As the application period had begun in March 1991 (20 years before the erection of the blue signs in 2011), the application would fail if the original signs had been up at any stage after that point. The landowners had accepted that some of the signs had been vandalised, but the Inspector had noted that the University had a maintenance programme. In her view, it was highly unlikely that the landowners would have gone to the trouble of erecting boundary signs with the required legal wording only to fail to maintain them. Her conclusion had been that a number of the signs had been in existence as late as the mid 2000s. For this reason, the Inspector had concluded that use of the land had been with permission and therefore "by right" rather than "as of right."

(11) The Commons Registration Officer then turned to the question of whether the land had been used for lawful sports and pastimes. The Inspector's view was that a significant amount of evidence had been presented to her to demonstrate that the whole site had been used for a wide range of activities.

(12) The Commons Registration Officer went on to consider whether use of the land had been by a significant number of inhabitants of a particular locality or neighbourhood within a locality. The applicants had put forward four claimed neighbourhoods. The Inspector had very carefully considered the representations made and had also walked in the areas claimed. She had concluded that the Harkness Drive Estate constituted a neighbourhood within the locality of the ecclesiastical parish of St Dunstan's.

(13) The Commons Registration Officer said that the application had been well made well within the two year grace period set out in Section 15 (3) of the Commons

Act 2006. The Inspector had also concluded in the light of the evidence given by a significant number of witnesses that the land had also been used for recreational purposes throughout the 20 year period.

(14) The Inspector's overall conclusion had been that the application should not succeed because it failed the test of use having been "as of right" throughout the entire qualifying period of March 1991 to March 2011.

(15) The Commons Registration Officer then said that the Inspector's findings had been sent to the applicants and the landowner for comment. The applicants had accepted that the Inquiry had been professional and thorough, although they were disappointed at the outcome. They still considered that the signs had deteriorated rapidly as a result of neglect by the University and had also put forward the suggestion that even if no other part of the site was considered to be registerable, the strip of land to the south east of the bridleway ought to be. This was because all of the signs had been located on the north west side of the bridleway and there had been nothing which would have conveyed that their message also referred to this strip of land. This suggestion had been put to the Inspector who had concluded that this piece of land would not have been treated any differently to the rest of the site either by the University or the public.

(16) The Commons Registration Officer concluded her presentation by saying that the Inspector's report had been accurate and impartial and that her application of the evidence to the legal tests had been considered and reasonable. Having considered the Inspector's report very carefully, she did not consider that the legal tests had been met and therefore recommended accordingly.

(17) Mr Richard Norman addressed the Panel on behalf of all the applicants. He expressed appreciation for the Inspector's thorough and detailed report as well as for Ms Melanie McNeir's helpful approach to the application and her clear and thorough summary of the issues.

(18) Mr Norman then said that he was pleased that the Inspector had agreed that the site had been used for lawful sports and pastimes and that it was within a qualifying neighbourhood within a locality. He wished it to be recorded that the applicants had considered St Michael's Road and Whitstable Road as cohesive neighbourhoods and that they had not simply sought to identify them as such for the purposes of the application. They each had active Residents' Associations which had been set up for reasons which had nothing to do with the site.

(19) Mr Norman went on to discuss the Inspector's findings in relation to the brown signs. He said that they had all either disappeared or been covered in graffiti by the time that the blue signs had been erected in March 2011. It had also been accepted that they had gone up in February 1990. They had clearly been neglected and the University of Kent had needed to rely mainly on the testimony of its own staff, whose testimony had clearly been co-ordinated and prompted by the photographs provided. This did not mean that there had been any deliberate dishonesty by the landowner; merely that their witnesses were less reliable than those provided by the applicants, whose statements did not necessarily agree with one another.

(20) Mr Norman asked the Panel to consider carefully whether to register the portion of the site south east of the Bridleway. The applicants considered that it was

definitely segregated from the rest of the site, as was demonstrated by the first photograph. The signs were all to the north west of the Bridleway and would have naturally led people to the view that their content only related to the larger portion of the land.

(21) Mr James McCreath of Wilberforce Chambers spoke on behalf of the landowner. He said that the application had been considered by the Inspector at an Inquiry which had lasted for 9 days and had come to the only conclusion which was fair in Law. This was because Mr Norman and the other applicants would have needed to be able to prove that the signs had not been readable by the public on every single day during the 20 year qualifying period. They had, instead sought to cast doubt on whether they had actually been in existence all the time.

(22) Mr McCreath then said that the Inspector had duly considered the applicants' representations in respect of the portion of land south east of the Bridleway. He read out the following extract from paragraph 308 of the Inspector's report:

"The arguments that Mr Westaway advanced to the effect that the 1990 signs should not be regarded as referable to that part, or to any other part other than the south of the track and west of the bridleway, are inconsistent with the evidence and with the geographical, historical and practical realities of the situation. Any reasonable local inhabitants entering the Application Land as a from the directions identified in paragraph 23 above would have considered themselves to be entering the Application Land as a whole, and would have understood "this land" accordingly."

(23) The Commons Registration Officer said that although there was a hedge on one side of the bridleway, there were gaps within it. People entering the land from Lyndhurst Close would have considered that its message applied to both sides of the bridleway. Another sign to the north east of the site at Leycroft Close also made it clear that it applied to the site in its entirety.

(24) On being put to the vote, the recommendations of the Commons Registration Officer were unanimously agreed.

(25) RESOLVED that for the reasons set out in the Inspector's report dated 6 August 2015, the applicants be informed that the application to register land known as Chaucer Fields at Canterbury has not been accepted.