

KENT COUNTY COUNCIL

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 Monday, 23 October 2017.

PRESENT: Mr A H T Bowles (Chairman), Mr I S Chittenden, Mr P J Homewood, Mr R A Pascoe and Mr A M Ridgers

ALSO PRESENT: Mr R A Marsh

IN ATTENDANCE: Ms M McNeir (Public Rights Of Way and Commons Registration Officer), Mr C Wade (Countryside Access Principal Case Officer) and Mr A Tait (Democratic Services Officer)

UNRESTRICTED ITEMS

2. Applications to register land at Cryalls Lane at Sittingbourne as a new Village Green
(Item 3)

(1) The Chairman informed the Panel that he was the leader of Swale BC. He had not participated in any discussion on this application and was able to approach its determination with a fresh mind.

(2) The Commons Registration Officer began her presentation by saying that there had been two applications under section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2014 by Mr M Baldock. The first application had been made on 25 March 2013, and the second on 30 October 2015.

(3) The Commons Registration Officer went on to say that as a result of the Growth and Infrastructure Act 2013, the County Council was required to write to the relevant planning authorities in order to ascertain whether the application site was affected by development or a “trigger event” (with no corresponding “terminating event”). If so, the County Council would be unable to entertain the application. Upon receipt of the first application, all planning authorities (including Swale BC) had confirmed that the site was not subject to any “trigger events.” The County Council had therefore published notice of the application.

(4) During the consultation process, the landowners’ representative had noted that the site had been identified in the draft Local Plan by Swale BC, which meant that it was the subject of a “trigger event. This was confirmed by Swale BC, who had also confirmed that the land allocation had been deleted on 20 February 2014. The advice from Kent Legal Services was that the first application should

be rejected as there was a trigger event affecting the site on the date of application.

(5) There had been no “trigger event” in place when the second application was submitted on 30 October 2015. This was despite the fact that an application for planning permission had been received for a change of use of the land. This application was not published until 27 November 2015, which was after the date of application.

(6) The Commons Registration Officer went on to consider the second application in the light of the legal tests. The first of these was whether use of the site had been “as of right.” The main objector had asserted that a ditch had been constructed along Cryalls Lane in 2004 and that 2 notices had been erected along Cryalls Lane in 2003. They had been unable to provide photographic evidence to this effect. The applicant on the other hand, did not accept that use of the site had been challenged in any way during the qualifying period. .

(7) The Commons Registration Officer turned to the question of whether the land had been used for purposes of lawful sports and pastimes. She said that this was a question where there was a conflict of evidence. The user evidence stated that activities included walking (with or without dogs), fruit picking, picnics and playing with children. The landowners claimed that due to its overgrown state, use would have necessarily been limited to worn paths and tracks and that, in consequence, use would have been limited to walking a linear route. Such use would not qualify as “lawful sports and pastimes. The applicant, on the other hand, disputed that the land was largely inaccessible and argued that even though the land may have been overgrown at some points, this did not prevent some of the activities he was relying upon. The Commons Registration Officer said that more detailed examination was required before a conclusion could be reached on this point.

(8) In respect of the third test (whether use has been by a significant number of inhabitants of a particular locality or a neighbourhood within a locality) the Commons Registration Officer said that the applicant was claiming that the neighbourhood was the New Zealand Estate within the Parish of Borden. This appeared to be a qualifying neighbourhood. The question of whether use had been by a significant number of people from this neighbourhood was less clear as it would need to be demonstrated that use had been by a sufficient number of people to indicate to the landowner that the site was in general use by the community for recreational purposes. It was difficult to reach a definite conclusion on this question, especially when bearing in mind that the nature of the stated use was open to interpretation at this stage.

(9) The Commons Registration Officer said that the last two tests (whether use had continued up to the date of the application and had taken place for a twenty period) were both met, subject to the caveats set out during consideration of the first three.

(10) The Commons Registration Officer concluded her presentation by saying that it was very difficult to assess the evidence on paper and that she

recommended that the issues should be clarified by reference to a non-statutory Public Inquiry.

(11) The Chairman informed the Panel of correspondence from the Local Member, Mr M J Whiting who fully supported the recommendations.

(12) Mr Mike Baldock (applicant) said that he considered the evidence to be clear. No photographic evidence had been produced by the landowners in support of their contention that they had constructed a ditch and erected notices. It would be impossible for the community to provide such evidence to demonstrate that these had never been installed. He nevertheless welcomed the recommended course of action, particularly in the light of statements made about him and officers from Swale BC.

(13) Mr Carl Bennett (UK Power Networks) said that his interest in this matter was to ask whether it would be possible, in the event of Village Green status being agreed, to incorporate easement which would enable his company to carry out essential maintenance work on the land in question.

(14) Caroline Drury (Francis Taylor Building) spoke briefly on behalf of the landowner, Barratt Homes. She said that the recommendation was the entirely appropriate way to proceed.

(15) On being put to the vote, the recommendations were unanimously agreed.

(16) RESOLVED that:-

(a) the original application be rejected; and

(b) a non-statutory Public Inquiry be held into the resubmitted application (made on 30 October 2015) to clarify the issues.

3. Application to register land at Grove Park Avenue at Sittingbourne as a new Village Green

(Item 4)

(1) The Chairman informed the Panel that he was the leader of Swale BC. He had not participated in any discussion on this application and was able to approach its determination with a fresh mind.

(2) The Commons Registration Officer began her presentation by saying that the application had been made under section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2014 by Mr M Baldock. It had been accompanied by 13 user evidence questionnaires and support from Borden PC on the basis that the land had been used for recreational purposes for at least 40 years.

(3) The Commons Registration Officer went on to say that as a result of the Growth and Infrastructure Act 2013, the County Council was required to write to the relevant planning authorities in order to ascertain whether the application site was affected by development or a “trigger event” (with no corresponding “terminating event”). If so, the County Council would be unable to entertain the application. Swale BC had advised that the site had been identified in the emerging Swale Local Plan as “a transport issue requiring further consideration.” They had provided a plan which showed potential improvements highway developments proposed by the developer affecting a strip of land on the western strip of the site bordering Wises Lane. This land had not been the subject of any transport assessment and had not been agreed with either the Borough Council or Kent Highways.

(4) The advice from Kent Legal Services was that that as the land was only identified for potential development and as the plan had not been formally agreed, the information available was too uncertain to positively conclude that the land had actually been identified for development and that therefore, the “trigger event had not occurred. The Village Green application had consequently been accepted for consideration.

(5) The Commons Registration Officer informed the Panel that Swale BC had objected to the application because of its concerns over the impact on future development. She explained that this was not a consideration that could affect the determination of the application. The only issue in the County Council’s remit was whether the application met the legal tests for registration.

(6) The Commons Registration Officer went on to consider the application in the light of the legal tests. The first of these was whether use of the site had been “as of right.” The objectors claimed that the site was incapable of registration because it comprised highway land. This had been confirmed by a covering letter from Kent Highways Services, which also contained a disclaimer to the effect that they could not guarantee the complete accuracy of their reply. She said that it was therefore necessary to establish whether it was indeed Highways land and, if so, the nature of the recreational use on it. Was the land in recreational use or was it simply the case that the right of passage was being exercised.

(7) The Commons Registration Officer continued by referring to the *Cheshire East* case where the judge had concluded that an application to register two verges between the tarmacked surface in all probability concerned highway lands and that the applicant should be entitled to explore the question of what evidence supported its registration. This meant that there was nothing in Law to prevent highway land being a Village Green. It was therefore necessary to filter out the different uses in order to be able to establish whether use of the land had been “as of right.”

(8) The Commons Registration Officer turned to the question of whether the land had been used for purposes of lawful sports and pastimes. The user evidence stated that activities included dog walking, children playing, ball games, picnics and bird watching. The evidence therefore appeared to constitute qualifying use for lawful sports and pastimes. Representations made at a public

inquiry would assist in establishing the nature of this use in the light of the possible highways status of the land.

(9) In respect of the third test (whether use has been by a significant number of inhabitants of a particular locality or a neighbourhood within a locality) the Commons Registration Officer said that the applicant was claiming that the neighbourhood was Grove Park Avenue in the locality of the parish of Borden. Whilst Borden Parish clearly constituted a locality, the question was whether Grove Park Avenue as a single street could be said to constitute a neighbourhood. This question could not be answered on the basis of the evidence currently available. There was a need for further information to be gathered and tested. In respect of whether a significant number of residents had used the land, it appeared from the evidence forms that such use had been sufficient to indicate that the land was in general use by the community.

(10) The Commons Registration Officer said that the last two tests (whether use had continued up to the date of the application and had taken place for a twenty period) were both met.

(11) The Commons Registration Officer concluded her presentation by saying that it was very difficult to assess the evidence on paper, having regard to the *Cheshire East* case. She recommended that the issues should be clarified by reference to a non-statutory Public Inquiry.

(12) The Chairman informed the Panel of correspondence from the Local Member, Mr M J Whiting who fully supported the recommendations.

(13) Mr Mike Baldock (applicant) said that he believed that the arguments used by the objectors were desperate in nature and that they had foisted a non-statutory public inquiry upon the County Council. He considered that the only matter of contention was whether Grove Park Avenue could be considered to be a neighbourhood within a locality. There was, however, no other alternative means of describing the locality.

(14) Mr Hamish Buttle (Quinn Estates Ltd) said that the objectors maintained their objection because the area was critical for their planned development. He agreed with the evidence provided by Swale BC in respect of a "trigger event" having taken place.

(15) On being put to the vote, the recommendations were unanimously agreed.

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

4. Application to register land known as Church Green at Westwell as a new Village Green
(Item 5)

(1) The Commons Registration Officer reported that the application had been made by Westwell PC under section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2014. She added that the Local Member, Mr C Simkins had expressed his full support for the application.

(2) The Commons Registration Officer then informed the Panel that the site was unregistered with the Land Registry and that no communication had been received from anyone claiming to be the Landowner. This did not mean that the application would necessarily succeed as the legal tests all needed to be met.

(3) The Commons Registration Officer briefly explained that all the tests had indeed been met. The land had clearly been used as of right as no one had ever challenged this use. Amongst the lawful sports and pastimes identified were dog walking, conker gathering, community bulb planting and Christmas carols. The site had been used on regular occasions by a enough residents of the civil parish of Westwell to demonstrate that it was in use by a significant number of its inhabitants. Use had been for over twenty years and had continued up to the date of application. She therefore recommended that the land should be registered as a Village Green.

(4) On being put to the vote, the recommendations were unanimously agreed.

(5) RESOLVED that the applicant be informed that the application to register land known as Church Green at Westwell as a new Town or Village Green has been accepted and that the land subject to the application be registered as a Village Green.

5. Application to register land known as Rocks Close Green at East Malling as a Village Green
(Item 6)

(1) The Commons Registration Officer briefly reported that the application for voluntary registration had been made under section 15 (8) of the Commons Act 2006 by East Malling and Larkfield PC. As such, the legal tests which needed to be met were far less onerous than was normally the case.

(2) The Commons Registration Officer confirmed that the necessary legal tests had been met in that a Land Registration search had confirmed that the application site was wholly owned by the Parish Council and that the qualifying locality was the civil parish of East Malling and Larkfield.

(3) On being put to the vote the recommendations were unanimously agreed.

- (4) RESOLVED that the applicant be informed that the application to register the land known as Rocks Close Green at East Malling has been accepted and that the land subject to the application be registered as a Town or Village Green.

6. Application to register land known as Riverhead Parkland at Riverhead as a new Village Green
(Item 7)

(1) The Commons Registration Officer briefly reported that the application for voluntary registration had been made under section 15 (8) of the Commons Act 2006 by Riverhead PC. As such, the legal tests which needed to be met were far less onerous than was normally the case.

(2) The Commons Registration Officer confirmed that the necessary legal tests had been met in that a Land Registration search had confirmed that the application site was for the most part owned by the Parish Council and that the qualifying locality was the civil parish of Riverhead.

(3) The Commons Registration Officer then said that it had come to light during the initial checks that two strips of land were not owned by the Parish Council. The consultation period had then brought to light that the driveways of the properties in St Mary's Drive were also not in the Parish Council's ownership. As a result, the application had been amended by the Parish Council to exclude these areas (as set out in Appendix A of the report).

(4) On being put to the vote the recommendations were unanimously agreed.

(5) RESOLVED that the applicant be informed that the application to register the land known as Riverhead Parkland at Riverhead has been accepted and that the land subject to the application (as amended and shown at Appendix A) be registered as a Town or Village Green.