

REGULATION COMMITTEE

Monday, 29th July, 2024

2.00 pm

**Council Chamber, Sessions House, County Hall,
Maidstone**





AGENDA

REGULATION COMMITTEE

Monday, 29th July, 2024, at 2.00 pm
Council Chamber, Sessions House, County
Hall, Maidstone

Ask for: **Hayley Savage**
Telephone: **03000 414286**

Membership (15)

Conservative (10): Mr S C Manion (Chairman), Miss S J Carey (Vice-Chairman),
Mr D Beaney, Mr T Bond, Mr P Cole, Mr M C Dance, Mr J M Ozog,
Mrs L Parfitt-Reid and Mr H Rayner

Labour (2): Mr B H Lewis and Ms J Meade

Liberal Democrat (1): Mr I S Chittenden

Green and
Independent (2): Mr M Baldock and Mr P Harman

UNRESTRICTED ITEMS

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

1. Apologies and Substitutes
2. Declarations of Interests by Members in items on the Agenda for this meeting.
3. Minutes (Pages 1 - 12)
 - (a) Committee: 7 May 2024 Open Minutes
 - (b) Member Panel: 22 April 2024 Minutes
4. Other Items which the Chairman decides are Urgent

Motion to exclude press and public for exempt business

That under section 100A of the Local Government Act 1972 the public be excluded from the meeting on the grounds that it involves the likely disclosure of exempt information as defined in paragraphs 5 and 6 of Part 1 of Schedule 12A of the Act.

EXEMPT ITEMS

(During these items the meeting is likely NOT to be open to the press and public)

5. Exempt Minutes of the meeting held on 7 May 2024 (Pages 13 - 16)
6. Planning Enforcement Issues
Report to follow.

Benjamin Watts
General Counsel
03000 416814

Friday, 19 July 2024

Please note that any background documents referred to in the accompanying papers maybe inspected by arrangement with the officer responsible for preparing the relevant report.

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KENT COUNTY COUNCIL

REGULATION COMMITTEE

MINUTES of a meeting of the Regulation Committee held in the Council Chamber, Sessions House, County Hall, Maidstone on Tuesday, 7 May 2024.

PRESENT: Mr S C Manion (Chairman) Mr M Baldock, Mr T Bond, Miss S J Carey, Mr I S Chittenden, Mr P Cole, Mr M C Dance, Peter Harman, Mr B H Lewis, Ms J Meade, Mrs L Parfitt-Reid and Mr H Rayner.

ALSO PRESENT: Cllr D Murphy.

IN ATTENDANCE: The Team Leader - Planning Enforcement, Mr G Rusling (Head of Public Rights of Way & Access), Mrs S Thompson (Head of Planning Applications), The Senior Planning Enforcement Officer and Ms H Savage (Democratic Services Officer).

UNRESTRICTED ITEMS

58. Apologies and Substitutes

(Item 1)

Formal apologies had been received from Mr Beaney who was attending virtually.

59. Election of Vice-Chair

(Item 2)

1. Mr Rayner proposed, and Mr Dance seconded that Miss Carey be elected Vice-Chair of the Regulation Committee.
2. Mr Chittenden proposed, and Mr Lewis seconded that Mr Baldock be elected Vice-Chair of the Regulation Committee.
3. Members voted on the election of Vice-Chair, and it was agreed by majority vote that Miss Carey be elected Vice-Chair of the Regulation Committee.
4. RESOLVED that Miss Carey be elected Vice-Chair of the Regulation Committee.

60. Declarations of Interests by Members in items on the Agenda for this meeting.

(Item 3)

There were no declarations of interest.

61. Minutes

(Item 4)

RESOLVED that:

- a) the minutes of the Committee meeting on 30 January 2024 are correctly recorded and that they be signed by the Chairman.
- b) The minutes of the Regulation Committee Member Panel on 24 November 2023 are correctly recorded and that they be signed by the Chairman.
- c) The minutes of the Regulation Committee Mental Health Guardianship Sub-Committee on 18 January 2024 be noted.

Mr Baldock voted against the recommendation to approve the minutes of the Regulation Committee Member Panel on 24 November 2023.

62. Update from Public Rights of Way and Access Service (Oral Report) (Item 5)

1. The Public Rights of Way and Access Service Manager provided an oral report. He explained that statutory instruments required to implement amendments in relation to the Right to Apply under the Highways Act 1980 were scheduled to be put in place later in the year. The Public Rights of Way and Access Service Manager explained that the power to make orders under the Highways Act 1980 sat with both county and district councils equally but in practice the districts had not exercised their power for approximately 30 years. Districts would be obliged to determine an application within 4 months, maintain a schedule of applications, appoint a scale of charges, and have the resources to process applications.
2. The Public Rights of Way and Access Service Manager said districts councils would have the option to either deliver the service or delegate it to the County Council. Delegation to the County Council was the preferred option of the PROW and Access Service due to economies of scale, the Council's expertise, consistency, and the outcome where the Council would be responsible for the highway post confirmation. This would need to be agreed before introduction of the Right to Apply to allow sufficient time for Districts to complete their governance requirements.
3. The Public Rights of Way and Access Service Manager explained the regulations for the 2031 cut-off date for applications (subject to exceptions specified in the Countryside and Rights of Way Act 2000 or the regulations) were still awaited and were expected to include highways recorded in the list of streets and highways in current use at the cut off date.
4. The Public Rights of Way and Access Service Manager updated the committee on Common Land and Village Green applications. The Westbere Village Green application had been determined by a Member Panel and the application had been declined. The Public Inquiry in relation to Bunyard Farm Village Green had been concluded, and the Inspector's Report would be received in due course.
5. Mr Baldock asked about the legal position regarding alleyways between houses and whether there was an obligation on the Council to maintain them. The Public Rights of Way and Access Service Manager said they may be recorded as highways and be included in the list of streets and maintained at public expense. Applications could be made by the public for those not recorded to register them as PROW.

6. Mr Baldock commented, in relation to new developments, that in some cases alternative PROW routes were not provided before building had commenced, and asked why replacement routes could not be in place before the existing route was extinguished. The Public Rights of Way and Access Service Manager said this was a national problem and the only approach was by way of planning condition to require the provision of the new route, at a certifiable standard, at an earlier point or phase of the development.
7. Mr Bond asked about the maintenance and safety of a route, which had been accepted as a right of use, being used by the public. The Public Rights of Way and Access Service Manager explained that in circumstances where the public had acquired the right to use the route through 20 years of use, but it had not been adopted under Section 38 of the Highways Act, the Council was responsible for its safe use by the public but not for its maintenance.
8. RESOLVED that the oral report be noted.

63. Update on Planning Enforcement Issues

(Item 6)

1. The Head of Planning Applications introduced the report which covered the work of the Planning Enforcement Team since 30 January 2024.
2. The Head of Planning Applications said that since the report was published enabling legislation for the new enforcement tools under the Levelling Up and Regeneration Act 2023 had been enacted, and in summary these included:
 - The temporary stop notice which used to have a 28 day provision now had a 56 day provision.
 - The four year rule, which previously applied if no enforcement action had been taken since a building or engineering operation had taken place, had increased to ten years.
 - There was a new provision for an enforcement warning notice.
 - The secretary of State could lodge an appeal and the determination of appeals for Lawful Development Certificates (LDC) had been removed.
 - Fines available for planning enforcement had changed and were now unlimited.
3. RESOLVED that the actions taken or contemplated in the report and any legislative changes for planning enforcement arising from the Levelling Up and Regeneration Act 2023 be noted and endorsed.

64. Future Meeting Dates

(Item 7)

RESOLVED to note that future meetings of the Regulation Committee will take place on the following dates:

Tuesday 17 September 2024 at 10am

Tuesday 21 January 2025 at 10am

Tuesday 17 June 2025 at 10am

Post Meeting Note:

It was resolved later in the meeting that an additional meeting of the Regulation Committee would take place before the September meeting.

65. Other Items which the Chairman decides are Urgent

(Item 8)

The Chair welcomed the Cabinet Member for Economic Development who had responsibility within his portfolio for minerals and waste to the meeting.

66. Update on Planning Enforcement Cases

(Item 9)

EXEMPT ITEMS (Open Access to Minutes)

(Members resolved under Section 100A of the Local Government Act 1972 that the public be excluded for the following business on the grounds that it involved the likely disclosure of exempt information as defined in paragraphs 5 and 6 of Part 1 of Schedule 12A of the Act)

1. The Head of Planning Applications introduced the report which covered the work of the Planning Enforcement Team since 30 January 2024. She said 7 strategic cases and a further additional site accounted for more than half of the current workload and those sites were being prioritised.
2. Members discussed the activities at Raspberry Hill Park Farm, Hoads Wood, Swanton Lane, and Warden Point/Third Avenue, Eastchurch and the recent press coverage for some of these sites.
3. Mr Chittenden said for many years planning enforcement had been understaffed and expressed the need for more resource within planning enforcement to achieve results.
4. The Planning Enforcement Team Leader gave an update on unauthorised (or part unauthorised) planning enforcement matters setting out actions taken or contemplated at Hoads Wood, Bethersden, Ashford; Swanton Lane, Littlebourne, Canterbury; Ancient Woodland Adjacent to Knoxfield Caravan Site, Dartford; Oaktree Farm, London Road, Halstead; Warden Point/Third Avenue, Eastchurch, Isle of Sheppey; Raspberry Hill Park Farm, Iwade; Manor Farm, Willow Lane, Paddock Wood; Knowle Farm, Malling Road, Teston; Court Paddock Farm, Ightham; Former Travel Lodge/Brother Hood Woods, Boughton Bypass Dunkirk; The Pines Nursery, Gravel Castle Road, Barham; Pike Road/Thornton Kennels, Tilmanstone; Shelford Landfill, Broad Oak Road, Canterbury; Cube Metals, Unit A, Highfield Industrial Estate, Bradley Road, Folkestone; R S Skips, Apex Business Park, Shorne; East Kent Recycling, Oare Creek, Faversham; Borough Green Sandpits, Platt; Wrotham Quarry (Addington Sandpit), Addington, West Malling; H & H Celcon, Ightham.
5. In relation to Hoads Wood, Bethersden, the Committee agreed that the recommendation at paragraph 22 of the report be amended.

6. In relation to Warden Point, the Committee agreed that the recommendation at paragraph 42 of the report be amended.
7. In relation to Raspberry Hill Park Farm, the Committee agreed that the recommendation at paragraph 51 of the report be amended.
8. The Committee agreed that an additional meeting of the Regulation Committee be arranged, to consider a report setting out a planning enforcement framework to include:
 - The legal framework available to the Council and other regulatory parties in addressing the strategic cases linked to alleged waste crime cases.
 - A cost and resource assessment.
 - Collaborative working with other regulatory parties.
 - Counsel's opinion regarding Raspberry Hill Park Farm.

And delegation be given to the Chair of the Committee regarding flexibility over the timing of the meeting in accordance with Member and Officer availability.

9. RESOLVED that:
 - a) Subject to paragraphs 5, 6 and 7 above the enforcement strategies outlined in paragraphs 16 to 128 of the report be noted and endorsed; and
 - b) An additional meeting of the Regulation Committee be arranged to consider a report setting out a planning enforcement framework.

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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 22 April 2024.

PRESENT: Mr S C Manion (Chairman), Mr M Baldock, Miss S J Carey, Mr P Cole, and Mrs L Parfitt-Reid

IN ATTENDANCE: Ms M McNeir (Public Rights of Way and Commons Registration Officer), Mr G Rusling (Public Rights of Way & Access Service Manager), Ms S Bonser (Solicitor) and Ms H Savage (Democratic Services Officer)

UNRESTRICTED ITEMS

No substitutes

There were no apologies or substitutes.

Declarations

Mr Cole declared that he was the KCC representative on the Kent Countryside Access Forum.

Application to register land known as Two Fields at Westbere as a new Town or Village Green

(Item 3)

Mr Ian McLean and Mr Jamshid Mavaddat were in attendance for this item.

1. The Public Rights of Way and Commons Registration Officer introduced the report and said that the Council had received an application to register an area of land known as Two Fields at Westbere as a new Town or Village Green from the Two Fields Action Group. The application had been made under Section 15 of the Commons Act 2006 which enabled any person to apply to a Commons Registration Authority to register land as a village green where it could be shown that a significant number of inhabitants had indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years.
2. The Public Rights of Way and Commons Registration Officer explained that the site was registered to four different landowners, including Mr S. Saadat. Every effort had been made by a variety of means to contact Mr Saadat, but a response had not been received.

3. The Public Rights of Way and Commons Registration Officer set out the objections that had been received, as set out in the report, including objections related to development related trigger events that are set out in Schedule 1A of the Commons Act 2006 and the High Court determined that the Council should proceed with the application.
4. The application was considered at a Regulation Committee Member Panel meeting on 2 December 2021 where Members accepted the officer recommendation that the matter should be referred to a Public Inquiry. The Public Inquiry took place during June 2023 where an Inspector was appointed by the Council to hear evidence from both sides in relation to the application. The Inspector had prepared a report setting out his findings and recommendation to the Council and this had been circulated to the Landowners and Applicant for their comments. A copy was also circulated to Panel Members for their consideration prior to the meeting.
5. The Public Rights of Way and Commons Registration Officer explained, as set out in the report, the legal tests that must be considered in determining the application, and the outcome of each test based on evidence received and collated, including the Inspector's opinion on each test. She said for the application to be granted every test had to be met in full and if one test failed, the application falls to be rejected.
6. The Public Rights of Way and Commons Registration Officer highlighted a typographical error in paragraph 20 of the report which should read "second objector's case" and not "first objector's case".
7. The Public Rights of Way and Commons Registration Officer explained that a separate application had been made, under different legislation to that of the application, in respect of the land, by Westbere Parish Council to record a number of Public Rights of Way (PROW) across the application site.
8. The Public Rights of Way and Commons Registration Officer said the Inspector had concluded, for the reasons set out in the report, that the legal tests had not been met and recommended that the application should not be accepted.
9. The Public Rights of Way and Commons Registration Officer said the Applicant and other interested parties were given the opportunity to comment on the Inspector's report and Ms McNeir set out to the Panel their responses. She confirmed that the responses had not changed the view of the Inspector.
10. The Public Rights of Way and Commons Registration Officer explained that it was open to the Council by case law to register a smaller area of the applicant site as a village green. However, having looked at the evidence and the Inspector's Report, it was not considered appropriate in this case. The Inspector considered whether a small area was capable of registration, but he could not identify an area where all the statutory tests had been met.

11. The Public Rights of Way and Commons Registration Officer concluded that the Inspector's view was that the use of the site had been more akin to the nature of Public Rights of Way and that was supported by the Parish Council's separate application to record the Public Rights of Way. The Officers' view, having considered the Inspector's Report, was that the Inspector had considered the case thoroughly and his report accurately represented the evidence and submissions made and the law as it currently stood. Therefore, the Officers considered that the legal tests in this particular case have not been met and the Public Rights of Way and Commons Registration Officer recommended, for the reasons set out in the Inspector's Report dated 15 September 2023, that the Applicant be informed that the application to register the land known as Two Fields at Westbere as a new Town or Village Green has not been accepted.
12. Mr Baldock asked when the application for Public Rights of Way by Westbere Parish Council had been made and the Public Rights of Way and Commons Registration Officer said the application was made well before the Public Inquiry.
13. Mr Ian McLean (Applicant on behalf of Two Fields Action Group) provided a statement in support of the application. Mr McLean said the Council had been very pragmatic as evidenced by the trigger event decision and now had the opportunity to continue that approach in interpreting the Inspector's Report. He said the finding of the village green application was pertinent. He referred to the other landowners, one who was a corporate landowner and was against the application, one who was uninterested and uncontactable, and one who's objection had been dismissed by the Inspector. He said there was an East/West divide where the situation for one field was not identical to the situation of the other. He said the Inspector's Report had confirmed that the use of the East part of the field was as of right. He said the land had become woodland over the many years since it was agricultural land and the question of its use for legal sports and pastimes was answered by the changes that took place in the woodland over the seasons which affected where people walked. He said nature, over the years and seasons, changed the landscape with older people being less adventurous and sticking to the path whilst younger people discovered the woodland and gathered deliberately away from the path. The woodland brought benefits to different people at different times in their lives. He said the entire square foot of land may not be covered but whilst people were in the woodland they were part of it and appreciated everything around them. He said the Inspector's Report looked at the history of the land, but the Panel was able to decide about its future. He said the local community saw the land as a welcome oasis of calm and there was a future where the land could take one community role.
14. A letter from Mr Mavaddat (Landowner on behalf of Mr Mahallati) dated 12 April 2024 to Panel Members was circulated on the morning of the meeting.
15. Mr Mavaddat provided a statement in objection to the application and said he was speechless, and it was 'daylight robbery'. He said for the past 20 years he had spent thousands of pounds on maintaining the land and footpaths, and

planting trees, and questioned why the Applicants were trying to create more footpaths on private land. He said over 100 signs indicating the land was private had been taken away along with an iron gate. Mr Mavaddat questioned the definition of private land and the rights of people to use land that was not theirs. He said he had been patient and calm and referred to a letter he had received from the Applicant interested in purchasing the land, but he had not heard anything more since 2020. Mr Mavaddat referred to the paperwork he had on the matter and refuted the allegation that he had neglected the land for 20 years.

16. Mr Baldock referred to the erection of prohibitive notices in 2018 and why the 20 years' use was not considered from 1998. The Public Rights of Way and Commons Registration Officer clarified that the use had to continue as of right either to the date of application or to within one year of the date of application.
17. Mr Baldock commented that the notices were contradictory and not clear whether there was access or whether use was prohibited. Mr Baldock referred to paragraph 24 of the report and said the map showed that the land included a large number of paths which crossed over each other and questioned why this use of the land was dismissed as not sufficient in terms of the application. He said he did not agree with the Inspector's opinion and suggested more generosity be given in consideration of the significant use of the eastern part of the land, which he felt was beyond the use of PROW, where footpaths had been created and used by a large group of people. He said use was not just the land beneath your feet but should be seen in a wider context and the appreciation of the area as a whole, and the overgrown areas of land, in terms of wildlife and dog walking, could not be dismissed. Mr Baldock said he was comfortable that the eastern part of the land had had sufficient use beyond that of PROW and should be considered as a village green.
18. Mrs Parfitt-Reid said it was clear to her that the tests had not been met and that the notices erected by the landowner made clear that use was prohibited.
19. Miss Carey agreed with the officer's recommendation that the tests had not been met and that the village green application should not be accepted.
20. Members discussed the wording of the landowner's notice and the Public Rights of Way and Commons Registration Officer clarified that there was some debate at the Public Inquiry as to the meaning of the notices and what local residents would have understood. She agreed it was open to interpretation however the Inspector advised that if the sign said 'Private Property' it should be clear that the landowner did not want people using the land.
21. Mr Baldock asked about the fifth part of the land where the landowner supports an application, and the Public Rights of Way and Commons Registration Officer explained that the landowner of this specific area could voluntarily register the land as a village green.

22. Mr Cole said, whilst he had sympathy for the Applicant, he agreed with the officer's recommendation and noted that the matter had been through a Public Inquiry and considered by King's Counsel, a specialist in this area of law.
23. Mr Cole proposed, and Mrs Parfitt-Reid seconded, the recommendation in the report that the Applicant be informed that the land known as Westbere has not been accepted as a village green, and this was agreed by majority.
24. RESOLVED that the Applicant be informed that the application to register the land at Westbere as a Town or Village Green has not been accepted.

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By virtue of paragraph(s) 5, 6a, 6b of Part 1 of Schedule 12A of the Local Government Act 1972.

Agenda Item 5

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