KENT COUNTY COUNCIL

REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held Online on Wednesday, 24 February 2021.

PRESENT: Mr A H T Bowles (Chairman), Mr P M Harman, Mr D Murphy, Mr J M Ozog and Mr R A Pascoe

ALSO PRESENT: Mr R A Marsh

IN ATTENDANCE: Mr G Rusling (Public Rights of Way & Access Service Manager), Ms M McNeir (Public Rights Of Way and Commons Registration Officer) and Mr A Tait (Democratic Services Officer)

UNRESTRICTED ITEMS

1. Application to register land at Snowdown as a new Village Green
(Item 3)

(1) Mr D Murphy informed the Panel that as he had Cabinet responsibilities in Dover DC, he would not participate in the decision making for this item.

(2) The Public Rights of Way and Commons Registration Officer introduced her report on The County Council has received an application to register an area of land at Snowdown as a new Town or Village Green from Mr. M. Anderson. This application had been made under section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2014 on 24 January 2019. In order for registration to take place, it would need to be demonstrated 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."* This use of the land had to have ended by no more than one year prior to the date of application.

(3) The Public Rights of Way and Commons Registration Officer said that the land subject to this application consisted of a roughly L shaped area of land of approximately 10.3 acres (4.17 hectares) comprising wooded areas (covering a large part of the northern section of the site as well as along its boundary with Sandwich Road) with a central, grassed open space that included children's play equipment and football goals. It was crossed by two Public Footpaths (EE301 and EE302) which provided access to it from Aylesham Road (on the northern side of the site), Sandwich Road (on the southern side of the site) and South Avenue, which provided easy access to the site from the residential properties comprising the Snowdown settlement.

(4) The application had been accompanied by a statement of support from the applicant, photographs of the application site, as well as 29 user evidence questionnaires demonstrating recreational use of the application site

(5) The Public Rights of Way and Commons Registration Officer then summarised the responses to consultation on the application. Aylesham Parish Council had written in support of the application, noting that it wished to keep the amenity available for children to use in the future. A representation had been received from Mr T Johnstone noting that the application site was the subject of a lease in favour of Aylesham Parish Council, which provided for recreational use of the land, which prevented the site from being registered as a Village Green. Southern Water had objected to the application on the basis that the application site included existing wastewater network assets contained within a permanently fenced compound which had not been accessible for recreational use. They also required to the underground infrastructure in the vicinity for maintenance purposes, possibly triggering a criminal offence if the land were to be registered as a Village Green. They were developing the site as a pumping station and essential sewerage infrastructure for the village.

(6) The Public Rights of Way and Commons Registration Officer went on to say that the vast majority of the application site was owned by the Plumptre Children's Trust, except for a roughly triangular area of approximately 0.2 acres where the application site abutted The Crescent. The entirety of the land owned by the Trust was subject to a lease dated 3 May 1983 in favour of the National Coal Board (now the Coal Authority). Additionally, the central (non-wooded) part of the application site was subject to a sub-lease in favour of Aylesham Parish Council dated 1 October 1974. The remaining small section of land abutting The Crescent was registered to The Coal Authority.

(7) The Trust had objected to the application on the grounds set out below:

- that the application site was leased to the Coal Authority and described in the lease as a Recreation Ground, which meant that use of the land could not be considered to have been "as of right'" ;

- Part of the land was sub-leased to the Aylesham Parish Council for recreational purposes;

- The remainder of the land consisted of woodland scrub and many of the claimed uses could not have taken place due to the nature of the site, such that any use of the woodland areas was necessarily confined to the Public Footpaths; and

- Only a small number of local inhabitants of the 46 dwellings at Snowdown had used the land for the full twenty-year period, such that use was not by a significant number of the local inhabitants throughout the relevant period.

(8) An objection to the application had also been received from the Coal Authority (as lessee) on the following grounds:

- The applicant had failed to show that use of the application site had taken place by a significant number of the local residents, and the claimed usage was not sufficient to demonstrate to a reasonable landowner that Village Green rights were being asserted;

- The applicant had failed to show that recreational use took place over the whole of the application site, with much of the claimed usage referrable to the Public Footpaths that crossed the site or defined tracks through the woodland;

- Use of the application site had been permissive by reference to the leases which existed in respect of the land.

(9) The Public Rights of Way and Commons Registration Officer moved on to consider the tests which all needed to be passed for registration to take place. The first of these was whether use of the land had been "as of right". This meant that use of the land had to be without force, stealth or permission. There was no suggestion of force or stealth in this case. There was, however, a question as to whether the use of the application site had taken place by virtue of some form of permission, for example, by way of a notice on site or (by implication from the actions of the landowner (such as preventing access on certain days). Whilst in some cases, such permission would be communicated to the users of the land, in others it might not. This situation might arise where there was a lease in place which specifically provided for recreational use of the land, albeit that the users of the land were not aware of the specific provisions, or even existence, of this lease.

(10) The Commons Registration Officer said that in this case, the 1983 Lease between the landowning Trust and the now Coal Authority extended for a period of 60 years, expiring on 31 December 2042. It covered the vast majority of the application site (with the exception of the small triangle already owned by the Coal Authority), as well as other areas comprising the former Snowdown Colliery. Clause 13 of the lease provided that: "*the Tenant shall not without the prior written consent of the Landlords… use or permit to be used [the former Pit Head Baths Restaurant] or the Recreation Ground (coloured blue on the Plan)… for any purposes other than those for which they are respectively currently used."* Meanwhile, Clause 7 of the sub-lease 1974 with Aylesham PC provided that the Parish Council would not use the land "*otherwise than for recreational purposes*".

(11) The Public Rights of Way and Commons Registration Officer then referred to the recent and still unreported case *of R v Hereford and Worcester City Council ex parte Ind Coope (Oxford and West) Ltd,* in which the Court had overturned the decision of the City Council to register as a Village Green a piece of land owned by a local brewery and licenced to the local District Council as a children's play area and open area. It was held that "…*if there is an express licence for the use of the land, then the land is used pursuant to that licence. There can be no question of a right being established… I find it impossible to form the view that the public, in some way or other, were capable of acquiring additional rights over and above the rights that the local District Council possessed pursuant to the licence to make the land available for the purposes for which it was used*…".

(12) The Public Rights of Way and Commons Registration Officer also referred to the *Sunningwell* case which had established that the absence of any challenge to recreational use by the local residents could not in itself lead to the conclusion

that the tenant was simply acquiescing to use and allowing Village Green rights of be acquired.

(13) The Public Rights of Way and Commons Registration Officer said that, in the lighty of these judgements, she had concluded that despite the absence of any notices on site, the effect of the leases was to convey an express permission to local residents to use the land for recreational purposes. Therefore, those using the land could not be regarded as trespassers, but rather as users of the land by virtue of a formal arrangement providing for such use. Thus, use of the land had been "by right" rather than "as of right."

(14) The next test was whether use of the land had been for the purposes of lawful sports and pastimes. The Courts had held that dog walking and playing with children [were the kind of informal recreation which might be the main function of a village green. The summary of evidence of use by local residents showed that the activities claimed to have taken place on the application site included walking, ball games, and playing with children. It therefore appeared that the land had been used for a range or recreational activities. The *Cheltenham Builders* case, had established that "*a Registration Authority would not expect to see evidence of use of every square foot of a site*"; so long as it could be shown that "*for all practical purposes, it could sensibly be said that the whole of the site had been so used…*". Although, in this case, there were small sections of the application site that were impenetrable due to vegetation, it was clear from the photographs that even within the wooded areas users were not confined to the paths. The Public Rights of Way and Commons Registration said that it would be wrong to conclude that all (or even most) of the references to walking on the application site were referable to the use of the Public Footpaths crossing it.

(15) The Commons Registration Officer then considered the test of whether use had been by a significant number of inhabitants of a particular locality, or a neighbourhood within a locality. The *Cheltenham Builders* case judgement had been that a locality should normally constitute "*some legally recognised administrative division of the count*y". The concept of a "neighbourhood" did not need to be a legally recognised administrative unit. The Registration Authority had to be satisfied that the area alleged to be a neighbourhood had a sufficient degree of cohesiveness. In this case, the applicant had specified relevant" locality or neighbourhood with a locality" as "Snowdown." All of the users resided within the residential streets comprising the settlement of Snowdown. This constituted a neighbourhood within the parish of Aylesham, which, as an administrative unit, qualified as a locality.

(16) In order to consider the question of whether a "significant number" of the residents, it was necessary to determine whether the number of people using the land in question was sufficient to indicate that the land was in general use by the community for informal recreation rather than occasional use by individuals as trespassers. In this case, the evidence submitted in support of the application demonstrated that use of the application site had taken place on a regular basis by a sufficiently large number of residents to indicate that the application site was in general use by the community.

(18) The Public Rights of Way and Commons Registration Officer briefly informed the Panel that the remaining two tests (whether use had continued over a period of twenty years or more up to the date of application) had clearly been met.

(19) The Public Rights of Way and Commons Registration Officer then considered whether the triangle of land not covered by the lease was capable of registration. She said that this land was substantially smaller than the application site as a whole and the area was thick with vegetation during at least part of the relevant period to the point where it would have been largely impenetrable. She did not, therefore conclude that this smaller area was capable to registration as a Village Green.

(20) The Public Rights of Way and Commons Registration Officer concluded her introduction by saying that she recommended that the application should be rejected as use of the land in question had been “by right” rather than “as of right.”

(21) Representations from members of the public had previously been submitted to the clerk and are set out as written:-

(22) Mr Mark Anderson (applicant) said:-

(23) “In my document dated 5th September 2019, in response to the objections, I asked for a new boundary line to be considered, shown on the accompanying map (page 3) of that document. This updated boundary excludes Southern Water’s facility from the application site, it also excludes the small ‘triangle’ of land actually owned by The Coal Authority. In any further consideration we would like this to be taken into account.

(24) “In the report it is stated that there is a recommendation for the application not to be accepted. It appears that this recommendation has been made due to the question whether the land has been used “as of right” as outlined in the Procedure section 4 and legal test (a) in section 19. It seems that all other legal tests (b) to (e) in section 19 have been met.

(25) “Section 55 the conclusion of the report states that the crux of the matter is whether recreational use of the application site has taken place on a permissive basis. It assumes that the application site has been used “by right” as opposed to “as of right” due to the existence of two leases.

(26) “Sub-lease dated 1 October 1974: This is a sub-lease of a lease dated 23rd June 1924 between The Plumptre Family and Pearson & Dorman Long (the then operators of the coal mine) which we have not had sight of. It is between The National Coal Board and Aylesham Parish Council, the title of the sub- lease states “Land at Snowdown Village”. It refers to the area of land marked “A” on their map and appendix E of the PROW report.

(27) “Clause 7 states that the demised land is not to be used for other than for recreational purposes. This sub-lease does not specifically give anyone else, i.e. the general public, permission for the use of it as a recreation facility.
It should be noted that the sub-lessees are in support of the application.

(28) “Lease dated 3rd May 1983: This lease is between the Plumptre family and The National Coal Board, it is for the lease of Snowdown Colliery and other parcels of land to carry out mining operations. It must be assumed that this lease is a continuance of the 1924 lease otherwise the 1974 sub-lease would be a paradox.

(29) “Clause 1(iv) refers to the recreation land around Snowdown Village. Clause 7(13). Not to use the described lands or any part thereof or permit the same to be used for any purpose other than that of a colliery and mineral producing unit and all other purposes ancillary thereto. The former Pit Head Baths, the Restaurant and the Recreation Ground are mentioned as in paragraph 25 of the PROW report.

(30) “It should be noted that Snowdown was a “pit village.” The houses within the settlement were owned by The National Coal Board and provided for their workers. It is therefore accepted that under the terms of the lease that the miners and their families would have used the recreation Land “by right” for their welfare as an ancillary purpose at that time.

(31) “However, in 1987, Snowdown colliery closed. All mining operations and ancillary activities ceased. The houses in Snowdown were either bought by their tenants or transferred to the local authority. Many of the then inhabitants may have moved away for work or other reasons, maybe passed away. There is a 12-year gap between this time and the beginning of the “material period” in 1999. Obviously, as anywhere else, houses are bought and sold. Since 1987 a significant part of the population has been refreshed.

(32) “There are many residents in Snowdown that have used the Recreation Land around it, on a regular basis, for a long time, who have never had any involvement with the closed coal mine or its then ancillary activities. They have been doing this without secrecy, force or permission. Referring to paragraph 34 of the PROW report, it is accepted that up until 1987 (the pit closure) that the colliery workers and their families (as Coal Board tenants) used the Recreation Ground “by right” as in the leases as part of the welfare programme. However, since that date until 2019 (the end of the “material period”), any use, especially by newer residents not involved with the former coal mine, have done so “as of right”.

(33) I”t is assumed from the PROW report that it can be accepted, from the evidence we have provided, that the whole of the application site has been used for recreational purposes by a significant number of people. ((b) and(c)).

(34) “We ask for the recommendation to not accept the application to be reconsidered. We have offered to exclude the Southern Water facility, it’s access track and the triangle of land owned by the Coal Authority as in my previous response.

(35) “Aylesham Parish Council are the 1974 sub-lease holders (area A), they continue to do some maintenance of the play area, they are in support of this application.

(36) "If you cannot reconsider the whole of said application site, we would ask that you reconsider the two areas referred to as "B" by the Coal Authority, (map in attachment 1 of their objections). These are joined by a hedgerow and track which is uninterrupted apart from a gate giving access to one of the public footpaths. This area still represents a significant amount of the whole site. The Coal Authority have accepted, in their objections to the application as a whole that these areas could be considered. However, the Coal Authority insist that these areas are made up of dense woodland and have not been used for recreation. We have provided evidence, very clearly, to the contrary and that it has been used for generations. Therefore, this area meets all of the tests."

(37) Merrow Golden from FTB Chambers spoke on behalf of the Coal Authority. She said that she did not intend to speak on the main application as her clients fully supported the recommendations in the report. She asked whether, in the event that the Panel was minded to consider registering the small parcel of land (see paragraph 19 above), she would be permitted to make representations on this aspect of the application.

(38) Mr R A Pascoe said that he considered that all the tests had been met except for the first test. He referred to Clause 7 of the 1974 sub-lease and said that this very clearly demonstrated that use of the land was "as of right" rather than "by right."

(39) Mr R A Pascoe moved, seconded by Mr A H T Bowles that the recommendations set out in the report be agreed.
Carried 4 votes to 0 (Mr Murphy not participating)

(40) RESOLVED to inform the applicant the application to register the land at Snowdown as a Town or Village Green has not been accepted.

2. Application to register land at Two Fields, Westbere as a new Village Green
(Item 4)

(1) The Public Rights of Way and Commons Registration Officer introduced her report by saying that the County Council had received an application from Lady L Laws on behalf of the Two Fields Action Group on 18 November 2019 to register an area of land known as Two Fields at Westbere as a new Town or Village Green under the Commons Registration Act 2006 and the Commons Registration (England) Regulations 2014.

(2) The land subject to the application was situated on the Westbere/Sturry parish boundary, south of Staines Hill and Westbere Lane, and consisted of a large area of approximately 37 acres (15 hectares) comprising mixed woodland (some of which has been recently cleared) as well as more open areas of grassland and scrub. Access to the application site was via Public Footpath CB91 which, for the most part, ran alongside the railway line abutting the southern edge of the application site and connected Westbere Lane with Fairview Gardens.

(3) The Public Rights of Way and Commons Registration Officer said that the application had been made under section 15(2) of the Commons Act on the basis that use of the application site had continued “as of right” until the date of the application. The applicant relied upon the parishes of Westbere and Sturry as the qualifying locality for the purposes of the application.

(4) The ownership of the application site was sub-divided into five strips of varying width that were registered with the Land Registry to four different landowners. These were: Bellway Homes Ltd, Mr S Saadat, Westbere Green Space Protection Ltd and Mr S Mahallati.

(5) The Public Rights of Way and Commons registration Officer then said that two objections had been received on behalf of two of the affected landowners. Winkworth Sherwood LLP (on behalf of Bellway Homes Ltd) objected on the basis that:-

- The use of the application site had not been by a significant number of the inhabitants of a single locality, or neighbourhood within a locality;

- Use of the application site had not been “as of right” due to the erection of prohibitive notices erected on site in 2018 (replaced in September 2019);

- The vast majority of the use relied upon consisted of walking (which was considered equivalent to the use of a right of way) and not sufficient to establish use of the application site for lawful sports and pastimes; and

- Use of the application site had ceased to be “as of right” more than one year prior to the submission of the application, such that the tests under sections 15(2) and 15(3) of the Commons Act 2006 were not met.

(6) The objection from Thompson, Snell and Passmore LLP (on behalf of Mr. Mahallati) was made on the basis that:-

- A large proportion of the users had not provided evidence of use of the application site for the full twenty-year period;

- One of the main uses of the application site was for walking and such use fell to be discounted on the basis that it was akin to a right of way usage rather than a general right to recreate;

- Use had not been by a sufficient number to give rise to a general appearance that the land was available for community use;

- Use of the application site had been the subject of verbal challenges by the landowner, and in January 2020 fencing and prohibitive signage had been erected; and

- Local Plan policy OS6 constituted a “trigger event” such as to prevent the registration of the land as a Village Green.

(7) The Public Rights of Way and Commons Registration Officer explained that the County Council had to be satisfied that it was capable of considering the application for Town or Village Green status before it applied the tests for registration. The Growth and Infrastructure Act 2013 had introduced a new provision requiring Commons Registration Authorities, on receipt of a Village Green application, to enquire of the relevant planning authorities as to whether the land subject to a Village Green application was affected by any prescribed planning-related events, known as "trigger events." These events were set out in a new Schedule inserted into the Commons Act 2006). The right to apply for the registration of a Town or Village Green was excluded if any "trigger event" had occurred in relation to the land and only became exercisable again if a corresponding "terminating event" had occurred.

(8) The Public Rights of Way and Commons Registration Officer continued by saying that in this case, following receipt of the Village Green application, the local planning authority had advised that "trigger events" had occurred in respect of the land, but that corresponding "terminating events" had also occurred, which meant that the right to apply for Village Green status was not disengaged. The "trigger events" consisted of four planning applications made during the late 1970s and the 1980s in respect of the application site, all of which had been refused and all means of challenge exhausted. Since there were no current "trigger events" affecting the application, there was no reason for the County Council not to proceed with the determination of the application.

(9) Following advertisement of the application, the issue of a possible (and different) "trigger event" in relation to the application site had been raised by the objectors who suggested that the identification of the entirety of the application site as a "Green Gap" within Canterbury City Council's Local Plan (adopted in July 2017) meant that a "trigger event" had taken place in accordance with paragraph 4 of Schedule 1A of the Commons Act 2006. That paragraph provided specifically that a "trigger event" took place where "*a development plan document which identifies the land for potential development is adopted under section 23(2) or (3) of the [Planning and Compulsory Purchase Act 2004*)."

(10) The Public Rights of Way and Commons Registration Officer said that the objectors were placing reliance upon the recent Court of Appeal decision in *Wiltshire Council v Cooper Estates Strategic Land Ltd* in which it was suggested that the words "potential" and "development" were not to be narrowly construed. A "trigger event only required for the land to be identified as having the *potential for development*, rather than to be to be *specifically allocated for development*.

(11) The applicant's response to the objectors' proposition was that the designation of the land as a "Green Gap" in the Local Plan was not a designation of the land as being suitable for development, but rather of it being unsuitable for development. In the case of a "Green Gap", an exception might be made for developments that were compatible with its continued use for recreational purposes and its maintenance as an open space between settlements, but it would be perverse to assume that Parliament had intended such a designation to prevent the land in question from being afforded the further protection of Village Green status. The decision in the Cooper Estates case could be distinguished

because that decision had been reached on the basis that Village Green registration in that case would frustrate the broad objectives of the relevant development plan, from which it was clear that new housing would be required. In the case under consideration, it was clear that the intention of the "Green Gap" was to preserve the land as open space between settlements.

(12) The public Rights of Way and Commons Registration Officer then said that advice had been sought from Counsel in light of the dispute on the applicability of a possible "trigger event" in relation to the application site. This advice was that the identification of the application site as a "Green Gap" in the Canterbury City Council Local Plan operated as a "trigger event" for the purposes of Schedule 1A of the Commons Act 2006, such that it is not possible for the County Council to consider the Village Green application.

(13) In reaching that advice, Counsel had paid close attention to Policy OS6 in the Local Plan, relating to "Green Gaps", which stated: "*Within the Green Gaps identified on the Proposals Map… development will be permitted where it does not: (a) Significantly affect the open character of the Green Gap, or lead to coalescence between existing settlements; (b) Result in new isolated and obtrusive development within the Green Gap. Proposals for open sports and recreational uses will be permitted subject to there being no overriding conflict with other policies and the wider objectives of the Plan. Any related built development should satisfy criteria (a) and (b) above and be kept to a minimum necessary to supplement the open sports and recreation uses, and be sensitively located and of a high quality design*".

(14) Counsel had further advised that in applying the principles of the *Cooper Estates* case to this application:-

"*The existence of constraints affecting the land is not a reason for ruling out the area from being identified for potential development. The question comes down to the consequences of the land being within a Green Gap, looking at the plan as a whole, and bearing in mind the policy underlying the change in the law, which was that whether or not to protect a piece of recreational land with identified development potential should be achieved through the planning system and not by means of registration of a TVG.*

I accept the point that the effect of the 'green gap' designation is essentially restrictive in that development will only be permitted where it does not affect the open character of the gap or lead to coalescence or result in isolated and obtrusive development. Furthermore, the policy is said to supplement national policies restraining built development in the countryside. It seems unlikely there that any significant built development would be in compliance with this policy.

However, the very fact that such a policy exists appears to acknowledge that the area is under development pressure (see supporting text). It therefore could be said that the policy is identifying the land for 'potential development' and seeking to regulate that development in order to preserve the open character of the Green Gap. Proposals for open sports and recreational uses would be in compliance with the policy (provided they met other policies in the plan). Where these involve a material change of use of land, they would also fall within the meaning of

'development'. It could therefore further be argued that the policy is identifying the land for potential sports and recreational development as well as for more general forms of built development (subject to the restrictions imposed). … It is therefore my view that Policy OS6 does identify the land within the 'green gaps' for potential development. The likelihood of such development being permitted in accordance with the policy will, of course, depend on whether the development applied for significantly affects the open character of the gap or leads to coalescence of settlements or not (or otherwise results in new isolated and obtrusive development). It is clear that the development plan envisages the development pressures on these 'green gap' areas being managed through the planning system. Whilst TVG registration may be in accordance with the restrictive nature of the protection for the green gap, that is not always necessarily going to be the case. For example, TVG registration would prevent sympathetic sports buildings and structures being erected on the land or, by way of another example, a utilities mast being erected which would not affect the open character of the gap. The Courts have emphasized the wide scope of the meaning of 'potential' development. In light of this, I consider that a Court would be more likely than not to conclude that Policy OS6 functions as a 'trigger event' in this case".

(15) The Public Rights of Way and Commons Registration Officer then said that the applicants had been consulted on Counsel's Opinion and had strongly maintained their position (as set out in paragraph 11 above). Their comments had been referred back to Counsel who had accepted that the matter was not clear-cut and was open to interpretation, but had confirmed that her advice remained unchanged.

(16) The Public Rights of Way and Commons Registration Officer concluded her introduction by saying that the issue before the Panel was whether the application site was affected by one of the "trigger events" set out in Schedule 1A of the Commons Act 2006. if so, the application would fall to be rejected without further consideration. Having carefully considered Counsel's advice and revisited all of the submissions made by the parties, she considered that there were good grounds for concluding that the application site had been identified for potential development, such that the County Council was not able to consider the Village Green application.

(18) The Public Rights of Way and Commons Registration Officer then said that if the Panel was not minded to accept her recommendations it should refer the matter to a Public Inquiry for further consideration on the basis that there was a significant conflict of evidence between the applicant and the objectors. This course of action should only be considered if the Panel was satisfied that no "trigger events" applied in respect of the application.

(19) Sir Steven Laws addressed the Panel on behalf of the applicants. He had previously sent a transcript his representations to the Clerk. This is set out as written.

(20) "My name is Sir Stephen Laws; and my wife, Lisa Laws, is the secretary of the group on whose behalf the application has been made. She has asked me to speak on behalf of the group, and I do so as one of its members.

(21) “My submissions to the committee are made assuming that, in the light of the report to the committee, there are only two options for the committee to choose between today. The committee is invited by the report either (a) to accept the tentative, legal advice that has been received to the effect that the designation of the two fields by Canterbury City Council as a “green gap” is a “trigger event” that is fatal to the application, and to disallow the application on that basis, or (b) to submit the application to a public inquiry because of the factual disputes that exist between the applicants and the different landowners.

(22) “If there are in fact other options available, I should be grateful if I could be told: so that I can have an opportunity to address them. We think there is a case that could have been made that, if the legal advice is rejected, the grounds for registration in respect of the part of the site that is not owned by Bellway has been so clearly made out by the applicants that it does not need a public inquiry to decide to register that part of the site. As the committee will know there are four different owners of the different parts of the site. But we accept that there are factual disputes that relate to the Bellway part of the site, and that (if the legal advice is not accepted) it is reasonable to suggest that all aspects of the application are dealt with together at any public inquiry.
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(23) “So, my submission to the committee is that the tentative legal advice about a trigger event should not be accepted at this stage as fatal to the application and that, as a result, the committee should decide that the application should be allowed to proceed and be submitted to a public inquiry.

(24) “The detailed substance of the legal arguments about the effect of the green gap designation can be found in the copy of the legal advice provided to the county council and incorporated in the report to the committee and in the written response to that advice made by the applicants. I understand that the committee has been provided separately with a copy of that written response, even though it was not incorporated in the report. I invite the committee to study both those documents closely, and in their entirety - rather than rely just on the arguably incomplete summary of the applicant’s arguments in the report to the committee. Knowing the committee will be able to do that, I propose not to waste time and will propose to do no more that draw attention to the most important elements of the applicant’s arguments.

(25) “I want to emphasise, in particular, exactly what the effect of the designation of the land as a green gap was. The Canterbury City Council local plan is quite clear about that. First it says in paragraph 11.42:

The objective of the green gap policy is to retain separate identities of existing settlements, by preventing their coalescence.

(26) “The formal policy for green gaps is set out in paragraph 11.48
“*Within the Green Gaps identified on the Proposals Map development will be permitted where it does not:*

a. Significantly affect the open character of the Green Gap, or lead to coalescence between existing settlements;

b. Result in new isolated and obtrusive development within the Green Gap.

Proposals for open sports and recreational uses will be permitted subject to there being no overriding conflict with other policies and the wider objectives of the Plan.

Any related built development should satisfy criteria (a) and (b) above and be kept to a minimum necessary to supplement the open sports and recreation uses, and be sensitively located and of a high quality design."

(27) "Two very important points need to be made about this.

(28) "First, it is clear that the green policy is intended to apply for keeping two settlements separate, and by definition must apply to the land that is between them, and so not included in either. The open character of the green gap is to be preserved and there is to be no coalescence between settlements.

(29) "This is really important because the legal authorities on which the applicants and the legal opinion rely are all precedents in which the land in question had been treated by the local plan (one way or another) as included in a residential settlement. It was, for that reason, that the courts held the land to be available for development. The cases are cases where the issue was whether more was required than just acknowledgement that the land was part of a settlement to indicate that it was available for development. The whole purpose of the trigger event system is to prevent registration as a village green being used to frustrate decisions made by planning authorities, and to that end the courts have given a wide meaning to the expression "available for development" to ensure regard can be had to the spirit of the local plan so far as existing settlements are concerned, as well as to its letter.

(29) "However, in this case there is no question at all of frustrating the spirit, or indeed the letter, of the local plan. The local plan designates the two fields as a green gap specifically for the purpose of securing that the land that is designated should be excluded from the two settlements it is intended to keep apart. It is intended that it should not be available for development if either or both of those settlements needs to expand.

(30) "The second really important point is that the specific policy (viz OS6 6 on green gaps) expressly prohibits any sort of permission for development except in response to proposals for "open sports and recreational uses". The further tests that development will be permitted only where it does not significantly affect the "open character of the gap or lead to coalescence between existing settlements",or result in "new and isolated and obtrusive development" are cumulative, not alternative, conditions. They operate within the constraint that sports and recreational uses are the only uses that may be permitted for the land.

(31) "It follows that the only development that the local plan contemplates in a green gap is the sort which would be completely compatible with - and is confined

to - something that is, for all practical purposes, equivalent to the use of the land for lawful sports and pastimes. In other words, the only uses for which the land is said by the local plan to be made available are the very same uses that would qualify it to be registered as a village green.

(32) "In those circumstances, it is perverse and absurd to argue that designating the land as a green gap is a planning decision that can trigger a ban on registering the land as a village green. If it is impossible to register land as a village green where the local plan makes it available for use and development only in the ways in which a village green could be used or developed, what land can be registered as a village green?

(33) "We have it on the authority of Mr Bumble in Oliver Twist that the law is an ass, but it is not that big an ass. The argument that the designation as a green gap must have that affect because, on a purely literal reading, it can be argued to be within the wording of the statute is quite clever, but it breaks the rule against being too clever by half. Despite a widespread belief to the contrary, the law has to be understood and applied with common sense, and its provisions have effect on that assumption. Common sense suggests that you cannot stop land from being registered as a village green by saying it can be used only for village green purposes.

(34) "That would also be accepting an argument that would, in practice, mean that no land in the country can be registered as a village green. Some sort of development consistent with existing use is in practice always allowed by local plans for every area of land covered by the plan. And all land in England within the area of a planning authority has to be subject to a local plan. If the legal advice is right, it is impossible to imagine how there can be any land within the area of a local planning authority that could escape the argument that it has been the subject of a trigger event.

(35) "If the committee accepts the legal advice that has been received and rejects the application on that basis, it will effectively be deciding that when Parliament decided - as it undoubtedly did - to limit the availability of village green registration, it inadvertently abolished the system of registration altogether.

(36) "I suggest that cannot be the case. But, even if it were, it would be a very significant ruling on the law with implications across the country for a very wide range of those interested in protecting open spaces for public use. The point would be very likely, eventually, to find its way to the administrative court.

(37) "The author of the legal advice herself says that the matter is not clear cut. I suggest it would be quite wrong for the committee to be any more definitive about coming to a decision with such significant implications than the author of the legal advice is about the correctness of her advice.

(38) "I suggest that the committee should not follow the advice, because it is highly problematic and questionable as well as only tentative, but also because this is the wrong moment to make a definitive decision on whether it is right or wrong.

(39) “The time to decide what the law requires in the case of the two fields is when all the facts relevant to the application have been authoritatively determined at a public inquiry, and legal rulings can be made by reference to the established facts, not just hypothetical ones. There are reasons to think there may well be other legal questions that could arise in relation to the application once the facts are properly established. If the application is going to end up in the administrative court, it would be much more sensible for all the legal issues relating to it to be decided at that point, when it is known whether the findings of fact make it necessary to decide them, and when all the legal points and their interactions with each other can be decided at the same time.

(40) “For these reasons, I invite the committee not to act now on the basis of the tentative legal advice that has been received but, instead, to submit the application to a public inquiry - leaving the trigger event issue to be determined (if necessary) at a later stage.”

(41) The Clerk read out the following representations from Louise Harvey-Quirke, City Councillor for Westbere:-

(42) “As the Canterbury City Councillor for Westbere, I would like to offer my full support for this application.

(43) “Westbere is neatly situated between neighbouring villages Sturry and Hersden and opposite the small town of Fordwich in the District of Canterbury. The village itself has small winding roads, historical buildings, nestled in an attractive rural setting. The residents who live in Westbere are incredibly proud of their community and, understandably, they wish to preserve it for as long as possible.

(44) “Both Sturry and Hersden have been heavily developed through the Canterbury Local Plan 2017. Therefore, by approving this village green application, the panel will be helping the local community of Westbere to defend their much-loved open space from the threat of further development.

(45) “During this terrible time of Covid, where people heavily rely on open space for exercise, areas such as the Two Fields have become invaluable to our communities. The pandemic has highlighted the importance of having communal, accessible public spaces, which are safe and inclusive for all who use them.

(46) “A village green at this location would offer many mental and physical health benefits to the residents of Westbere and the surrounding villages.

(47) “We should not forgo the opportunity to help this local community safeguard their wonderful green space, for the benefit of future generations. Therefore, I urge you to grant this application.”

(48) The Clerk read out the following representations from Ann Davies, a local resident from Westbere:-

(49) “I have been a resident of Sturry for over 40 years and during the whole of this time the whole of the land in Westbere subject to this application has been open and accessible to members of the public and well used for informal

recreation. I visited the site often with my children. They were young and it was a wonderful place for collecting blackberries and sloes.

(50) "In later years, as more shrubby vegetation developed on the site we added evening excursions to listen to nightingales singing and now it is a favourite place for walking with my dog. In all but the worst weather I see other people using the fields while I am there. It makes a lovely circular walk that is not too long for the more elderly people who live nearby. The extent to which it is used is evidenced by the number of informal paths which are kept open simply by frequent use and which are accessible from the A28, Westbere Lane and from the public footpath CB91.

(51) "I disagree very strongly that the designation as Green Gap under Local Plan Policy OS6 constitutes a Trigger Event, since the '*related built development'* permitted by this designation is specific to open sports and recreation is not specifically in conflict with Village Green Designation. In coming to the conclusion that designation as a Green Gap constitutes a Trigger point there is an assumption that 'related' building will necessarily include buildings such as dwellings, pavilions etc. Policy OS6 does not say this and it is not a safe assumption. Development is, by definition any kind of construction including that which is necessary to allow proper management of the land and enable recreational use while maintaining public safety. These works would include such operations as drainage, culverts boundary fencing, up-grading of paths and maintenance entrances on to the site, even the erection of goal posts and signage to the extent that they are not covered by existing permitted development rights.

(52) "Policy OS6 could therefore equally be interpreted as enabling open (not indoor) sport and recreation and such other enabling construction work, normally requiring planning permission, as is necessary to manage the site and ensure safe public use and access including use by people with disabilities. There is therefore no assumption that development of this kind would conflict with Village Green status."

(53) The Clerk read out the following representations from Ashley Clark, the Canterbury CC Member for Seasalter:-

(54) "I have seen a copy of the officer report prepared for the Regulation Committee and ask that the following statement be read out to the panel in relation to the Westbere issue.

(55) "I am Ashley Clark, Canterbury City Councillor for Seasalter Ward. I have been a Councillor since 2011 and hold a number of additional responsibilities within Canterbury City Council. Those which are relevant are my long-established role as vice chair of the Planning Committee and I am the appointed Lead Councillor for the District for enforcement and open spaces.

(56) "By profession I am a retired Inspector of Police. I have in the past successfully applied for three village greens, the first two of which were opposed. I have been called upon on several past occasions to advise applicants seeking

to make village green applications. I would not call myself an expert in these matters, but I have considerable experience in the steps required to make a sound application.

(57) "I am sure that the panel are well aware that town and village greens exist to guarantee the rights of local people to engage in lawful sports and pastimes. I note Counsel's advice to the panel and in particular para 28 which states:

I acknowledge, however, that my conclusion stems from a particular interpretation of the policy in light of the comments of the High Court and Court of Appeal in Cooper Estates and it is potentially open to different interpretation and application.

(58) "I do not regard policy OS 6 as creating a trigger event and in that respect I quote the advice of Vivian Chapman QC and Paul Wilmshust in their practical handbook on the issue published by Stone Buildings Barristers Chambers. Both are considered as foremost in their expertise in the field of Village Green Law. In respect of trigger events they mention they will include "land identified for potential development in local and neighbourhood plans, including draft plans" (p.26 2nd edition 2014). There has been no planning application to date in respect of this land.

(59) "The land in question is identified as forming part of a green gap under the 2017 Canterbury Local Plan. The purpose of the green gap policy is to preserve greenness and openness as clearly outlined in Policy OS 6 which states:

Policy OS6 Green Gaps
Within the Green Gaps identified on the Proposals Map (see also Insets 1,3 and 5) development will be permitted where it does not:
a. Significantly affect the open character of the Green Gap, or lead to coalescence between existing settlements;
b. Result in new isolated and obtrusive development within the Green Gap.
Proposals for open sports and recreational uses will be permitted subject to there being no overriding conflict with other policies and the wider objectives of the Plan. Any related built development should satisfy criteria (a) and (b) above and be kept to a minimum necessary to supplement the open sports and recreation uses, and be sensitively located and of a high quality design.

(60) "I know that Counsel is of the view that this could be construed as development in that development could include use for sports and recreational purposes, but this is precisely what village greens exist for. Accordingly, any common sense view would be that Counsel's view is extreme and must be seen as perverse in the sense that the gap exist not for development but to prevent development in the ordinary sense of the word and that green gaps and village greens are entirely compatible. All land has potential for development, but this land has been identified in the Local Plan as clearly not having that potential, in fact quite the opposite. Counsel has doubts and these have been expressed. She goes on to say:

If the registration authority disagrees with my conclusion and decides to proceed to determine the application, I consider that the evidence should be tested by means of a public inquiry. There is no 'knock out' blow to cause the application to fail conclusively at this stage.

(61) "I would urge the Committee to take that course. Not to do that would deny the people of Westbere their expectation of natural justice. To dismiss matters at this early stage on legal advice that has, in itself expressed considerable doubt would in my view be wholly wrong and all relevant matters should receive the proper scrutiny they deserve."

(62) The Clerk read out the following representations from Wayne Murray, Chairman of Westbere Green Space Protection Ltd :-

(63) "As the chairman of Westbere Green Space Protection Limited and an agent who regularly makes planning applications to Canterbury City Council, I would like to reiterate the support I registered in my letter to Ms McNeir of 12 March 2020.

(64) "WGSP owns part of the second of the Two Fields and has covenanted the title to prohibit any form of development on that parcel. This demonstrates the commitment of the residents of the village to preserving the key green spaces around the parish and ensures that a significant section of the Two Fields cannot be developed as the parcel owned by WGSP isolates the adjacent titles, K779400 and K786421, negating the objection from Thomson Snell and Passmore.

(65) "As an agent and resident of Westbere, I have a working knowledge of the current Local Plan and support the position that the designation of the Two Fields as a Green Gap is entirely compatible with the land being a Village Green.

(66) "It is clear that the designation of the land as a Green Gap by the Local Authority is intended to prevent coalescence between settlements and this necessarily restricts any significant development. At no time have the Two Fields been identified as a development opportunity and, as no planning applications have come forward, a Trigger Event has not occurred and is therefore not a valid reason to prevent Village Green Status being awarded.

(67) "The shareholders and officers of the company wholly support the representations being made by the Parish Council and other Westbere residents. We request that the Two Fields should be designated a Village Green."

(68) Ms Anne Williams of Thompson Snell and Passmore LLP addressed the Panel on behalf of Mr Jamshid Mavaddat who exercised power of attorney for the landowner, Mr S Malhallati. She said that the *Cooper Estates* case was the prime legal authority on the question of trigger events. She asked the Panel to support the clear recommendation in the report and the clear legal advice that had been given. The Counsel

who had given this advice was very experienced in Village Green Law, having served as the Inspector on many occasions.

(69) Ms Williams continues that the Court had made relevant observations in the *Cooper Estates* case. The judgement of Lord Justice Lewison had made clear that the word "potential" was a broad concept which was not to be qualified or equated with likelihood or probability.

(70) Ms Williams quoted paragraph 42 of Lord Justice Lewison's judgement in which he had said that it would be too narrow to regard "potential development" as a form of development on the land that would be acceptable. She added that this meant that the bar for trigger events was very low.

(71) Ms Williams then turned to the Green Gaps Policy OS6 in the Canterbury Local Plan which, she said was a permissive policy:

Within the Green Gaps identified on the Proposals Map, development will be permitted where it does not:

(a) Significantly affect the open character of the Green Gap, or lead to coalescence between existing settlements;
(b) *Result in new isolated and obtrusive development within the Green Gap*

She added that the following paragraph in the Local Plan set out the type of development that would be permitted, but did not specify that this was to the exclusion of other development.

(72) Ms Williams concluded by saying that the provisions set out in the Local Plan fitted exactly with those in the Court of Appeal judgement. Development did not need to be clear development or development that was the subject of a planning application.

(73) Ms Williams agreed to the Clerk reading the following text from Mr Ian MacLean, Chair of Westbere PC.

(74) "I am writing to you on behalf of Westbere Parish Council with respect to the meeting on Wednesday 24 February, at which the application to register land at Two Fields, Westbere as a new Village Green is being considered.

(75) "The Two Fields lie within the Parish of Westbere and, as the elected representatives of the Parish, we are all in agreement that this essential amenity should be preserved for the purpose of exercise and recreation, in order to benefit the wellbeing of our community.

(76) "The panel may be interested to know that we have a resident who was born in one of the cottages in the village during the 1940's, they have lived here their whole life. Conversely, we have newer residents who have chosen to move to Westbere in the recent years of 21st Century. The support for this application amongst all of our parishioners old and new is, to our knowledge, unanimous. The Two Fields have been used by residents of all ages for lawful sports and

pastimes for at least 30 years and this continues to be the case. This facility is part of the character of the village and therefore needs to be preserved.

(77) "It is evident from our recent experience of 2020 and the multiple Covid-19 lockdown periods that a nearby area of outside space for exercise and recreation is vital for the physical and mental wellbeing of Westbere residents and our neighbours.

(78) "We are hopeful that the committee will agree that this is the case and we look forward to a decision in support of our community."

(79) Elly Barr-Richardson from Winckworth Sherwood LLP addressed the Panel on behalf of the landowner, Bellway Homes, one of the four freehold owners of the land subject to the application.

(80) Ms Barr-Richardson said that the Panel needed to consider whether a trigger event had occurred pursuant to the provisions of section 15C(1) of the Commons Act 2006, and that the recommendation of the County Council's PROW and Access Managers following advice given to the County Council by its highly experienced counsel, Mrs. Annabel Graham-Paul, was that a trigger event had arisen and, as such, that the application could not be accepted.

(81) Ms Barr-Richardson continued by saying that Bellway was asking the Member Panel to accept the advice of its counsel, and the recommendation of its officer, and to confirm that the application to register Two Fields as a village green was not accepted on the basis that a trigger event had occurred under Section 15C and Paragraph 4 of Schedule 1A of the Commons Act 2006 as a result of the land being identified for potential development in the Canterbury City Local Plan adopted in 2017.

(82) Ms Barr-Richardson then said that Bellway's position was based on key points. The first of these was that the land subject to the application, including that land owned by Bellway, had been designed by Canterbury City Council as a Green Gap in its Local Plan adopted in July 2017. Policy OS6 of the Local Plan provided:

Within the Green Gaps identified on the Proposals Map development <u>will be permitted</u> where it does not:

a. Significantly affect the open character of the Green Gap, or lead to coalescence between existing settlements;

b. Result in new isolated and obtrusive development within the Green Gap.

Proposals for open sports and recreational uses <u>will be permitted</u> subject to there being no overriding conflict with other policies and the wider objectives of the Plan. Any related built development should satisfy criteria (a) and (b) above and be kept to a minimum necessary to supplement the open sports and recreation uses, and be sensitively located and of a high quality design.

(83) Ms Barr-Richardson said that designating the land subject to the application as a Green Gap did not prohibit development on the land, but just

controlled the type of development which would be suitable. Development within a Green Gap was consistent with policy OS6 and could include, for example, new sports pitches or other recreational uses, as Mrs Graham-Paul had acknowledged in her written advice to the County Council (as in her paragraph 23). Section 15(C) of the Commons Act 2006 provided that the right to apply for a town or village green ceased if a trigger event had occurred. Paragraph 4 of Schedule 1A of the Commons Act provided that one such trigger event was a "*development plan document which identifies the land for potential development is adopted under section 23(2) or (3) of the 2004 Act"*.

(84) Ms Barr-Richardson said that the decision of *Wiltshire Council v Cooper Estates Strategic Land Ltd (2019)* confirmed that the phrase "*potential development"* in Paragraph 4 of Schedule 1A was not to be construed narrowly. The development plan only needed to identify the land for *potential* development.

(85) Ms Barr-Richardson said that when these key principles were applied to this application, the Canterbury City Local Plan was clearly a "development plan document". The designation of the land subject to the application as a Green Gap meant that the land had been identified as being suitable for "potential development" for the purposes of para.4 of Schedule 1A of the 2006 Act. She asked the Panel to refer specifically to the wording used in the Local Plan which confirmed that development "will be permitted" where it satisfied the requirements of policy OS6.

(86) Ms Barr-Richardson continued that it was therefore Bellway's position that the identification of the land as a Green Gap under the Local Plan was a trigger event pursuant to Paragraph 4 of Schedule 1A of the Commons Act. Accordingly, the right to apply to register land as a town or village green ceased to apply where a trigger event had occurred.

(87) Ms Barr-Richardson then made the more general point that the registration of the land as a town or village green would prevent development such as the introduction of playing fields on the land from taking place consistent with policy OS6, given the rights that would accrue and vest in local inhabitants following registration. It was to in order to avoid conflict with the operation of planning policy that the statutory provisions concerning trigger events had been introduced, as Mrs Graham-Paul acknowledged in paragraphs 18 and 21 of her written advice. Bellway therefore asked the Panel to decline to accept the application forthwith for the reasons given in her submission.

(88) Mr R A Marsh addressed the Panel as the Local Member. He said that there was sufficient latitude available to the Panel to gain further information which might enable it to come to a decision.

(89) Mr Marsh moved on to Canterbury CC's method of operation. He referred to paragraph 22 of the report, saying that the planning applications considered in the 1970s and 80s had been decisively refused. This indicated the approach that the City Council took in respect of the land.

(90) Mr Marsh then referred to paragraph 28 of the report. The Green Gap had been established by the City Council in 2017. It had never been intended for the

land to be the subject of development purposes and did not qualify as a “trigger event.” Policy OS6 was an “anti-development” policy designed to maintain and protect open space.

(91) Mr Marsh noted that counsel had used the phrase “the restrictive nature of the protection of the green gap” (paragraph 31 of the main report). He said that this was not the case because Canterbury CC did not consider that the green gap was available for any form of development.

(92) Mr Marsh said that paragraphs 35 and 40 of the report indicated that neither counsel nor the officers were completely confident in the advice that they were giving to the Panel. It was the Panel’s role to make the decision.

(92) The people of Westbere were looking for acknowledgement that their 13th century village would receive the respectful treatment it deserved for the application for Two Fields to become a village green.

(93) Mr Marsh concluded by saying that Two Fields constituted the last pair of lungs for east Canterbury. It was not insignificant to him that that page 8 of the Introduction to *Westbere Vision* contained the following quotation from Edmund Burke:

A state without the means of some change is without the means of its conservation.

(94) Mr Harman said that this particular application involved considering a legal argument rather than determination based on the facts. He considered the legal arguments and advice to be unclear and was minded to seek to establish the facts through the mechanism of a non-statutory public inquiry.

(95) Mr Ozog said that given the evidence in front of him, he would be reluctant to come to any decision without a site visit and deeper consideration of the issues that would occur through a non-statutory public inquiry.

(96) Mr Pascoe said that he had read the papers carefully and repeatedly and that he was still not clear in his own mind on the best way forward. He referred to paragraph 28 of Counsel’s advice where she wrote:

I acknowledge, however, that my conclusion stems from a particular interpretation of the policy in the light of comments of the High Court and Court of Appeal in Cooper Estates and it is potentially open to different interpretation and application.

(97) Mr Pascoe moved that the matter be referred to a non-statutory public inquiry, saying that he did not believe that there was any alternative open to the Panel.

(98) Mr J M Ozog seconded the motion.

(99) The Chairman said that he agreed with the motion as he considered it to be somewhat perverse if Canterbury CC’s attempts to safeguard the land could

be used as a trigger event, which could have the effect of opening the land up for a degree of development.

(100) On being put to the vote, the motion was carried unanimously.

(101) RESOLVED that the matter be referred to a non-statutory public inquiry to clarify all the issues.

3. Application to voluntarily register land at Grove Green as a Village Green
(Item 5)

(1) The Public Rights of Way and Commons Registration Officer introduced the report on an application by Maidstone BC, the landowner, to voluntarily register land known as Weavering Heath at Grove Green as a Village Green.

(2) The Public Rights of Way and Commons Registration Officer explained that the County Council as registering authority needed to be satisfied that the applicant was the owner of the land and that any necessary consents had been obtained. In this case, a Land Registry search had confirmed that the site was wholly owned by the Borough Council and that there were no other interested parties such as leaseholders or owners of relevant charges named on the Register of Title. The relevant locality was the parish of Boxley She therefore recommended that the application should be accepted.

(3) On being put to the vote, the recommendations contained in the report were unanimously agreed.

(4) RESOLVED to inform the applicant that the application to register the land known as Weathering Heath at Grove Green in the parish of Boxley has been accepted and that the land subject to the application be formally registered as a Town or Village Green.

4. Application for the transfer of Rights of Common at Higham Common (CL86)
(Item 6)

(1) The Public Rights of Way and Commons Registration Officer briefly introduced the report which concerned an application to amend the Register of Common Land at Higham Common from the RSPB to reflect a transfer of ownership from ET Ledger and Son Ltd to themselves.

(2) The rights of common affected by this application were:"*16 rights of common pasture being rights to graze a total of 16 bullocks, 32 calves, 12 horses or 80 sheep over the whole of the land comprised in this Register unit during the period from 25th March to 25th December each year*."

(3) The Public Rights of Way and Commons Registration Officer confirmed that the Panel could be satisfied that the applicant as the transferee was entitled to enter the application under section 12 of the Commons Act 2006.

(4) On being put to the vote, the recommendations set out in the report were unanimously agreed.

(5) RESOLVED to inform the applicant that the application to transfer the Register of Common Land to reflect the recent transfer of rights of common has been accepted and that the Register of Common Land for Unit CL86 be amended accordingly.