

Update from the Commons Registration Team

A report by the Director of Environment and Waste to Kent County Council's Regulation Committee on Tuesday 18th May 2010.

Recommendation:

I recommend that Members receive this report for information

Progress with Village Green applications

1. Members have requested that a summary of the current position of applications to register Town and Village Greens be provided at meetings of the Regulation Committee. A copy of the Schedule of Village Green applications is therefore attached at **Appendix A**.
2. The number of Village Green applications received by the County Council for consideration continues to increase year on year. In 2005, the County Council received just 5 applications but today the County Council receives on average one new application every month.
3. There are currently 25 applications outstanding, of which 13 are under investigation. Three Public Inquiries have already been held this year into applications at Ramsgate, Ashford and Gravesend. The Inspector's recommendation has been received and endorsed by Members in respect of the Ashford case, but recommendations in respect of the other two cases are still awaited.
4. There is currently a waiting time of approximately six months before we are able to begin working on an application. This is due not only to the increasing volume of applications received, but also to the fact that applications to register land as a new Village Green are by their nature very complex and time-consuming to resolve. Unlike Public Rights of Way cases where there are appeal mechanisms via the Planning Inspectorate or the Secretary of State, the only means of appeal against the County Council's decision in relation to a Village Green application is by way of a Judicial Review action in the High Court. Additionally, Village Green applications are often extremely emotive locally, particularly where planning issues are involved. Members have agreed these cases are dealt with strictly in order of receipt unless extenuating circumstances dictate that certain cases should be accelerated.

Case Law update

5. The Supreme Court has recently issued an important decision which will have a significant impact on the manner in which certain cases are dealt with. It is the fifth time in a decade that a Village Green issue has been before the highest court in the land. The case decided by the Supreme Court was *R (Lewis) v Redcar and Cleveland Borough Council* (2010) and it was concerned with an application to register land that had been used for part of the relevant period as a municipal golf course. The case considered the interaction between the golfers and the users, and the consequent impact on whether informal recreational use could be considered to have been 'as of right'.
6. Prior to the Supreme Court's judgement, it had always been considered that it was not possible for local residents to show use 'as of right' for the required twenty year period where there had been an acceptance that at certain times and on certain occasions they

would defer to use of the land by others. For example, during the taking of a hay crop by a landowner or whilst organised sports were being played. This was known as the 'deference principle'.

7. The Supreme Court has now held that deference does not preclude the acquisition of user as of right. In essence, the Supreme Court took the view that it was immaterial that there may have been use of the land both by the landowner and by local people since registration of the land as a new green would not prejudice the landowner in his continuing use of the land. It appears to have been recognised by the Supreme Court that although locals would have acquired rights upon the registration of the land as a Green, it would not take away the right of the landowner to continue using the land in the same manner that he had during the twenty year qualifying period. There was give and take then and that principle of give and take should continue in the future.
8. The practical implications of this decision are far reaching. There are many sports grounds and areas of farmland on the urban fringe where it has not been financially practical to exclude local people from using the land when it is not in use by the landowner. School Playing Fields are often used by dog walkers and children out of school hours. Landowners who have ambitions for the future development of their land must now be sure to have taken active steps to keep local people off of such land in order to prevent registration of the land as a new town or village green.

Commons Act 2006 – Pilot Project

9. Since the last report given to the Regulation Committee at its January meeting, the County Council has continued to comply with the requirements of the Project and is currently adhering to a timetable given to all Pilot Authorities by DEFRA. This is primarily to ensure that the required review of the Registers of Common Land and Village Greens is undertaken in line with Regulations accompanying the Commons Act 2006. The aim of this particular aspect of the Pilot is to ensure that the Registers accurately reflect applications that were made under the Commons Registration Act 1965 in the early 1970's.
10. In addition, checks are being undertaken to establish whether recorded Greens or Commons have been encroached or built upon either by way of encroachment by neighbouring properties or by road schemes or other similar types of development. Computer software and the County Council's Geographical Information Systems (G.I.S.) are greatly assisting this exercise. This exercise is virtually complete and the next step in the process is for the County Council to initiate requisite formal 'proposals' in order to remedy the identified issues.

8th National Seminar - Common Land and Town and Village Greens

11. The University of Gloucestershire has organised its 8th National Seminar on Common Land and Town and Village Greens. The focus of the Seminar will be on best practise to actively protect and manage common land and town and village greens. The County Council has been invited to address the Seminar on the best practise methods it has developed for implementing the requirements of the Commons Act 2006 in its role as a Pilot Authority.

Recommendation

12. I RECOMMEND Members receive this report for information.

Background documents:

Appendix A – Schedule of Village Green applications

Contact Officer:

Chris Wade

Public Rights of Way Principal Case Officer

Tel: 01622 221511

**APPENDIX A:
Schedule of Village Green applications**

**Applications resolved by the Regulation Committee since last report
(26th January 2010)**

Description	Parish	Member(s)	Outcome
Land at Chart Corner	Chart Sutton	Mr. E. Hotson	ACCEPTED and registered as VG246 on 19/02/2010
King George Playing Field	Hawkhurst	Mr. R. Manning	REJECTED on 27/04/2010
Land at Beecholme Drive, Bybrook	Ashford	Mrs. E. Tweed	ACCEPTED and registered as VG247 on 27/04/2010

Forthcoming Public Inquiries

Description	Parish	Member(s)	Details
none			

Outstanding applications to be resolved

Description	Parish	Member(s)	Status
Round Wood at Walderslade	Boxley	Mr. P. Carter	On hold at applicant's request
Barton Playing Field	Canterbury	Mr. M. Northey	Awaiting legal submissions following Public Inquiry
The Old Bowling Green at Montefiore Avenue	Ramsgate	Mr. B. Hayton Mr. R. Bayford	Awaiting Inspector's report following Public Inquiry
Broadstairs Cricket Ground	Broadstairs	Mr. B. Hayton Mr. R. Bayford	Under investigation
St Andrew's Gardens	Gravesend	Mr. B. Sweetland Mr. J. Cubitt	Awaiting Inspector's report following Public Inquiry
Brickfields, off Mill Lane	Bridge	Mr. M. Northey	Take to Member Panel on 25/05/2010
Land at Dumpton Park Drive	Broadstairs	Mr. B. Hayton Mr. R. Bayford	Take to Member Panel on 25/05/2010
Ryarsh Recreation Ground	Ryarsh	Mrs. S. Hohler	Under investigation
The Glen	Minster-on-Sea	Mr. A. Crowther	Under investigation
Land adjacent to Barnes Car Park	Margate	Mr. R. Burgess	Under investigation
Land at Sherwood Lake	Tunbridge Wells	Mr. K. Lynes	Under investigation
Brittains Common	Sevenoaks	Mr. J. London	Under investigation
The Downs	Herne Bay	Mrs. J. Law	Under investigation
Former Council Offices site	Cranbrook	Mr. R. Manning	Under investigation
The Allotment Field, Barton Estate	Canterbury	Mr. M. Northey	Awaiting investigation
Grasmere Pastures	Whitstable	Mr. M. Harrison Mr. M. Dance	Awaiting investigation
Land at High Street	Chiddingstone	Mr. P. Lake	Awaiting investigation
Benacre Wood	Whitstable	Mr. M. Harrison Mr. M. Dance	Awaiting investigation

Land at Preston Parade	Hythe	Mr. C. Capon	Awaiting investigation
Land at Hartley Woods	Hartley	Mr. D. Brazier	Awaiting investigation
Land known as Long Field at Angley Road	Cranbrook	Mr. R. Manning	Awaiting investigation
Dawbourne Wood	Tenterden	Mr. M. Hill	Awaiting investigation
Gighill Green	Larkfield	Mrs. T. Dean	Awaiting Investigation
Land at Westwell Lane	Westwell	Mr. R. King	Awaiting Investigation
Land at Mill Lane	Preston	Mr. L. Ridings	Awaiting Investigation