

## KENT COUNTY COUNCIL

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### REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Stour Room, Sessions House, County Hall, Maidstone on Tuesday, 14 September 2010.

PRESENT: Mr M J Harrison (Chairman), Mr A D Crowther (Vice-Chairman), Mr R Brookbank, Mr T Gates and Mr S J G Koowaree

ALSO PRESENT:

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

### UNRESTRICTED ITEMS

#### **11. Application to register land known as Brittain's Common in Sevenoaks as a new Town Green**

*(Item 3)*

(1) The Public Rights of Way and Commons Registration Officer introduced the report, explaining that it was an application under Section 15 (8) of the Commons Act 2006 which enabled the owner of the land to apply to voluntarily register the land as a new Town Green without having to meet the qualifying criteria. She explained that her recommendation for acceptance was because she was satisfied that the relevant legal tests had been met. This recommendation made an exception of the bus shelter at the east end of the site, as registration would make it difficult to repair or rebuild.

(2) RESOLVED to inform the applicant that the application to register the land known as Brittain's Common at Sevenoaks has been accepted and that the land subject to the application (with the exception of the bus shelter) be formally registered as a Town Green.

#### **12. Application to register land known as Ryarsh Recreation Ground in Ryarsh parish as a new Village Green**

*(Item 4)*

(1) The Public Rights of Way and Commons Registration Officer introduced the report, explaining that it was an application under Section 15 (8) of the Commons Act 2006 which enabled the owner of the land to apply to voluntarily register the land as a new Village Green without having to meet the qualifying criteria. She explained that her recommendation for acceptance was because she was satisfied that the relevant legal tests had been met. This recommendation made an exception of the access track to the Village Hall, as registration would make it an offence to drive a motor vehicle on it (as part of a Village green) and because driving on a Village Green would constitute a damaging activity which would be prohibited under Victorian statutes designed to protect Village Greens .

- (2) RESOLVED to inform the applicant that the application to register the land at Ryarsh Recreation Ground has been accepted and that the land subject to the application (with the exception of the access track to the Village Hall) be formally registered as a Village Green.

### **13. Application to register land known as "The Glen" at Minster-on-Sea as a new Village Green**

*(Item 5)*

- (1) Mr A D Crowther informed the Panel that he was the Local Member and would not take part in the decision – making process.
- (2) The Public Rights of Way and Commons Registration Officer introduced the report, explaining that it was an application under Section 15 (1) of the Commons Act 2006. There had been no objection to the application by the landowner, Swale Borough Council. She explained that her recommendation for acceptance was because she was satisfied that all the relevant legal tests had been met.
- (3) RESOLVED to inform the applicant that the application to register the land at The Glen, Minster-on-Sea has been accepted and that the land subject to the application be formally registered as a Village Green.

### **14. Application to register land known as Barton Playing Field in Canterbury as a new Town Green**

*(Item 6)*

- (1) Further written views from Dr S Bax (the applicant) had been circulated to the Panel before the meeting. Correspondence from Mr M J Northey, the Local Member was tabled.
- (2) The Public Rights of Way and Commons Registration Officer introduced the report, explaining that it was an application under Section 15 (1) of the Commons Act 2006. The application had been considered by a Panel on 12 November 2008. This Panel had deferred making a decision pending a Non-Statutory Public Inquiry.
- (3) The Public Rights of Way and Commons Registration Officer then informed the Panel that the Independent Inspector had concluded that the application had not met the test of use being “as of right.”
- (4) The Public Rights of Way and Commons Registration Officer went on to say that following publication of the Inspector’s report, there had been a ruling by the Supreme Court which had indicated that the “deference test” which had often been used on previous occasions could not be used to determine whether use had been “as of right.” A second QC had been consulted (following a request by the applicant) and had recommended that the original Inspector should be re-consulted in the light of the Supreme Court’s ruling. The Inspector had confirmed his recommendation for rejection of the application on the grounds that use of the land had been by force and could not therefore have been “as of right.”

(5) Dr S Bax, the applicant spoke in support of the application. He used his latest written correspondence as the basis for his remarks. He asked the Panel to either reject the Director of Environment and Waste's recommendation or to defer a decision pending further legal advice. His grounds were that neither the second QC nor the inspector had addressed the judgements of Justice Sullivan or Lord Walker in respect of whether sufficient actions had been taken by the landowner to make clear to others that he was not acquiescing in their use of the land.

(5) Mr B Slater from the Governing Body of Barton Court School spoke as the applicants' representative. He asked the Panel to support the Director of Environment and Waste's recommendation as both the Inspector and the QC had been fully aware of the relevant judgements and had not overturned the original recommendation.

(6) The Public Rights of Way and Commons Registration Officer said that the recommendation for rejection of the application was that (notwithstanding the judgements referred to by Dr Bax in respect of "deference" and "acquiescence") use of the land in this instance had been by force rather than "as of right."

(7) On being put to the vote, the recommendations of the Director of Environment and Waste were unanimously agreed.

(8) RESOLVED that for the reasons set out in the Inspector's report dated 27 November 2009 and his supplementary report dated 15 July 2010, the applicant be informed that the application to register the land known as Barton Playing Field at Canterbury has not been accepted.