

## Update from the Commons Registration Team

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A report by the Director of Environment and Waste to Kent County Council's Regulation Committee on Tuesday 25<sup>th</sup> January 2011

### Recommendation:

**I recommend that Members receive this report for information**

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### 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. During the last twelve months, there have been 7 Regulation Committee Member Panel meetings and a total of 13 applications to register land as a new Village Green have been determined. Of these, 6 were registered as new Town or Village Greens.
3. The County Council continues to receive applications at a rate of approximately one a month and Officers are dealing with a large number of enquiries in relation to Village Greens generally. There are currently 22 Village Green applications outstanding, of which 15 are currently under investigation. There are two Member Panels scheduled to take place in February at which it is intended to deal with 8 cases. It is hoped that this will enable Officers to reduce the current backlog of six months.

### Case Law update

4. There has been yet another important case since the last report to Members in September, which will have an impact upon the manner in which Members take decisions in the future on applications to register land as a Town or Village Green. It seems opportune therefore to provide Members of this Committee with a short resume of one of the main findings set out by the Judge in the recent High Court decision in *Betterment Properties v Dorset County Council*<sup>1</sup> ("the Betterment case").
5. The Betterment case gives greater amplification to the expression 'as of right'. In this respect it contains an important discussion of when use of land is not 'as of right' for Town and Village Green purposes because it is *contentious*.
6. The previous understanding of 'as of right' as meaning without force, secrecy or permission has been well recited to Members in the past. The Judge in the Betterment case however has now concluded that use was not 'as of right', even if all of the other tests have been met, when such use was contentious.
7. To put this in context it is important to understand the background to the application. the application related to land in Weymouth in Dorset where the landowners had sought for many years to ward off trespass by erecting signs, mending fences and warning off trespassers. The signs and fences were continually ripped down by persons unknown and local people continued to trespass. Eventually, the landowners simply gave up trying to prevent trespass and consequently, several years later, an application to register the land

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<sup>1</sup> [2010] EWHC 3045 (Ch)

as a Town or Village Green was successful. New landowners challenged the registration through the Courts on the basis use was not 'as of right' for the full twenty years because the qualifying use of the land was contentious

8. The Judge accepted this argument. He further expanded his view that use of land is not 'as of right' when the owner of the land is doing everything consistent with his means and proportionately to the user, to contest and to endeavour to interrupt use. In other words, when such use is contentious. He therefore quashed the registration on that basis.

### **Commons Act 2006 – Pilot Project**

9. The County Council continues to work on the review of the Registers of Common Land and Village Greens required by the pilot project. A number of issues have been identified for resolution and these are now being progressed. These are covered in a separate report to the Regulation Committee at this meeting.

### **Recommendation**

10. 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

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

**Applications resolved by the Regulation Committee since last report  
(9<sup>th</sup> September 2010)**

<b>Description</b>	<b>Parish</b>	<b>Member(s)</b>	<b>Outcome</b>
Barton Playing Field	Canterbury	Mr. M. Northey	REJECTED on 14/09/2010
Ryarsh Recreation Ground	Ryarsh	Mrs. S. Hohler	ACCEPTED and registered as VG248 on 14/09/2010
The Glen	Minster-on-Sea	Mr. A. Crowther	ACCEPTED and registered as VG249 on 14/09/2010
Brittains Common	Sevenoaks	Mr. J. London	ACCEPTED and registered as VG250 on 14/09/2010
The Old Bowling Green at Montefiore Avenue	Ramsgate	Mr. B. Hayton Mr. R. Bayford	REJECTED on 19/10/2010
Land at Sherwood Lake	Tunbridge Wells	Mr. K. Lynes	ACCEPTED and registered as VG251 on 26/10/2010
Former Council Offices site	Cranbrook	Mr. R. Manning	REJECTED on 26/10/2010
Brickfields, off Mill Lane	Bridge	Mr. M. Northey	REJECTED on 30/11/2010

**Forthcoming Public Inquiries**

<b>Description</b>	<b>Parish</b>	<b>Member(s)</b>	<b>Details</b>
none			

**Outstanding applications to be resolved**

<b>Description</b>	<b>Parish</b>	<b>Member(s)</b>	<b>Status</b>
Round Wood at Walderslade	Boxley	Mr. P. Carter	On hold at applicant's request
Broadstairs Cricket Ground	Broadstairs	Mr. B. Hayton Mr. R. Bayford	To be referred to Member Panel for decision in February
St Andrew's Gardens	Gravesend	Mr. B. Sweetland Mr. J. Cubitt	Awaiting further legal advice
Land adjacent to Barnes Car Park	Margate	Mr. R. Burgess	To be referred to Member Panel for decision in February
The Downs	Herne Bay	Mrs. J. Law	Under investigation
The Allotment Field, Barton Estate	Canterbury	Mr. M. Northey	To be referred to Member Panel for decision in February
Grasmere Pastures	Whitstable	Mr. M. Harrison Mr. M. Dance	To be referred to Member Panel for decision in February
Land at High Street	Chiddingstone	Mr. P. Lake	To be referred to Member Panel for decision in February
Benacre Wood	Whitstable	Mr. M. Harrison Mr. M. Dance	To be referred to Member Panel for decision in February
Land at Princes Parade	Hythe	Mr. C. Capon	Under investigation
Land at Hartley Woods	Hartley	Mr. D. Brazier	Under investigation
Land known as Long Field at Angley Road	Cranbrook	Mr. R. Manning	To be referred to Member Panel for decision in February
Dawbourne Wood	Tenterden	Mr. M. Hill	Under investigation

Gighill Green	Larkfield	Mrs. T. Dean	To be referred to Member Panel for decision in February
Land at Westwell Lane	Westwell	Mr. R. King	Under Investigation
Land at Mill Lane	Preston	Mr. L. Ridings	To be referred to Member Panel for decision in February
Seaton Meadow	Wickhambreaux	Mr. M. Northey	Awaiting investigation
Land at Woodland Road	Lyminge	Ms. S. Carey	Awaiting investigation
Land known as Fisherman's Beach	Hythe	Mr. C. Capon	Awaiting investigation
Land at Mountfield Road	Meopham	Mr. M. Snelling	Awaiting investigation
Playing Field	Marden	Mrs. P. Stockell	Awaiting investigation
Scrapsgate Open Space	Minster-on-Sea	Mr. A. Crowther	Awaiting investigation