

Application to register land known as the Long Field at Angley Road in Cranbrook as a new Village Green

A report by the Director of Environment and Waste to Kent County Council's Regulation Committee Member Panel on Tuesday 22nd February 2011.

Recommendation: I recommend that the County Council refers the application to the Planning Inspectorate for determination.

Local Members: Mr. R. Manning

Unrestricted item

Introduction

1. The County Council has received an application to register land known as the Long Field at Angley Road in the parish of Cranbrook as a new Village Green from local resident Mr. P. Allen ("the Applicant"). The application, received on 5th January 2010, was allocated the application number VGA622. A plan of the site is shown at **Appendix A** to this report.
2. Members should be aware from the outset that the purpose of this report is not to determine this application, but rather to consider whether the County Council is in a position to determine this application, for the reasons which are set out in more detail below.

Procedure

3. The application has been made under section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2008.
4. Section 15 of the Commons Act 2006 enables any person to apply to a Commons Registration Authority to register land as a Village Green where it can be shown 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;
5. In addition to the above, the application must meet one of the following tests:
 - **Use of the land has continued** 'as of right' until at least the date of application (section 15(2) of the Act); or
 - **Use of the land 'as of right' ended no more than two years prior to the date of application**, e.g. by way of the erection of fencing or a notice (section 15(3) of the Act); or
 - **Use of the land 'as of right' ended before 6th April 2007** and the application has been made within five years of the date the use 'as of right' ended (section 15(4) of the Act).
6. As a standard procedure set out in the regulations, the Applicant must notify the landowner of the application and the County Council must notify every local authority. The County Council must also publicise the application in a newspaper

circulating in the local area and place a copy of the notice on the County Council's website. In addition, as a matter of best practice rather than legal requirement, the County Council also places copies of the notice on site to provide local people with the opportunity to comment on the application. The publicity must state a period of at least six weeks during which objections and representations can be made.

The application site

7. The area of land subject to this application ("the application site") is known locally as the Long Field and is situated at the junction of Angley Road (A229) and Quaker Lane in the village of Cranbrook. The site is approximately 2.1 hectares (5.2 acres) in size and consists of a grassed field. Access to the site is via the recorded Public Footpaths (WC97 and WC99) which cross the application site. The application site is shown in more detail on the plan at **Appendix A**.

Background

8. Members should be aware that the application site is owned by Kent County Council. In 2009, the northern half of the application site was the subject of a planning application by Kent County Council's Adult Social Services Public Private Partnership Team for the construction of a two-storey care home, composed of 40 apartments, communal areas and staff facilities¹.
9. The matter was dealt with by the County Council's Planning Applications Group. The Countryside Access Service was invited to comment on the application, and did so, but only insofar as Public Footpath WC99 was affected. However, in April 2010 the application was withdrawn, pending the outcome of the Village Green application.

The case

10. The application has been made on the grounds that the application site has become a Town or Village Green by virtue of the actual use of the land by the local inhabitants for a range of recreational activities 'as of right' for more than 20 years.
11. Included in the application were 70 user evidence questionnaires from local residents detailing their use of the application site over a period in excess of twenty years.

Consultations

12. Consultations have been carried out as required. The following responses have been received.
13. The Cranbrook and Sissinghurst Parish Council has responded as follows: "*in light of the documented case proving the current need for homes for local people and in recognition of the need for homes, medical facilities and community spaces*

¹ Planning Application TW/09/977

including a drop-in centre for local elderly, Cranbrook and Sissinghurst Parish Council resolve to object to the application for the Long Field to receive Village Green status currently before Kent County Council". The Parish Council added that the application site has been used for pasture and rented out over the years to local farmers and that local residents have used the land to access the town along registered Public Rights of Way, but that the Parish Council has no evidence that the field has been used for picnics or sport. The Parish Council also states that permissive notices erected by the landowner in 2007 mean that use since that time has not been 'as of right'.

14. Eight local residents also wrote to express their opposition to the application. Their objections have been made on the basis that the application site is not suitable for Village Green status due to the uneven nature of the site and that they have never seen the field being used for lawful sports and pastimes. Some have stated that they believe the application to be vexatious and motivated only by a desire to prevent any future development of the land.
15. In addition to the objections noted above, twenty-four letters of support were received before, during and after the formal consultation period. These letters of support included a range of comments, both in terms of adding to the evidence of use already submitted in support of the application as well as expressing opposition to the loss of a recreational amenity as a result of the proposed planning application.

Landowner

16. As stated above, the application site is owned by Kent County Council. It is registered with the Land Registry under title number K944526.
17. Objection has been made to the application by the County Council's Property Group on the following grounds:
 - That a notice was erected on the application site in around September 2007 stating "this land is owned by Kent County Council, which grants permission for the use of the land by public [sic] for recreational purposes". The effect of this notice, according to the landowner, was to grant a general permission for the recreational use of the land and thus render any subsequent recreational use not 'as of right'.
 - That a fence was erected in June 2009 which split the land in two and entirely enclosed the northern section of the site, thereby creating a substantial interruption to the recreational use of a large part of the application site. Although the fencing was later cut down in places to facilitate access, such use as did take place after this time was with force and not 'as of right'.
 - That evidence questionnaires from 70 people is insufficient to demonstrate that the land has been used by a significant number of the residents of the locality.
 - That the evidence submitted in support of the application demonstrates that the overwhelming majority of the use of the land has been for walking. The evidence does not differentiate between walking on the existing Public Rights of Way (i.e. across the land en route to somewhere else) and walking which is of a more general recreational nature on the land itself (i.e. wandering). It is

the landowner's position that any walking beyond the use of the footpaths is *de minimis* and insufficient to amount to a general right of recreational.

Applicant's response to the objection from KCC's Property Group

18. As required by Regulation 26 of the 2008 Regulations, copies of all of the representations received were sent to the applicant for comment. The applicant's response is focused on the more substantive objection by the landowner, and makes the following points:

- In relation to the notices, the applicant disputes that these were erected in 2007 and states that, according to the local residents' recollections, it was more likely to be 2008. He adds that, in any event, the notices are irrelevant since section 15(7) of the 2006 Act provides that where permission is granted in respect of the use of the land for lawful sports and pastimes, the permission is to be disregarded in determining whether persons continue to indulge in recreational activities on the land 'as of right'.
- The applicant explains that the 2009 fencing was erected on health and safety grounds in relation to the proposed development of the site and not with the specific intention of preventing the recreational use of the land. This was confirmed by KCC representatives at a site meeting. The fencing is irrelevant because it did not prevent access to a large part of the application site and, even if it were relevant, the two year period of grace set out in section 15 means that the application remains valid.
- In terms of use of the land by a significant number of the local residents, the applicant states that the land has been well used by local residents and the 70 user evidence questionnaires submitted in support of the application only represent a small sample of those who have used the land. Only those who have used the land for a period in excess of 20 years have been included in the application, but there are many more who have used the application site, albeit for a lesser period. The applicant adds that the number of letters received in support of the application as a result of the consultation shows the strength of local feeling in relation to the application site.
- Insofar as lawful sports and pastimes are concerned, the applicant accepts that there has been little use of the field for sports, and walking has been the main activity. However, the applicant strongly disputes the landowner's assertion that walking has been confined to the existing Public Rights of Way. In the applicant's view, the fact that well worn tracks cross the field which are not en route to any specific destination, is very strong evidence that walkers have been enjoying the pastime of recreational walking away from the designated Public Footpaths.

Legal tests and discussion

19. The responsibility for determining applications under section 15 of the Commons Act 2006 normally rests with the County Council in its capacity as the Commons Registration Authority. However, more recently, it has been recognised that there may be circumstances in which it is not appropriate for the County Council to determine an application. Under those circumstances, the application must be referred to the Planning Inspectorate who will take on the responsibility for considering the application (including by the holding of a Public Inquiry where necessary) and issuing a decision.

20. The circumstances referred to above are set out in Regulation 27(3)(a) of the Commons Registration (England) Regulations 2008 which states that an application must be referred to the Planning Inspectorate in cases where:

'the registration authority has an interest in the outcome of the application or proposal such that there is unlikely to be confidence in the authority's ability impartially to determine it'

21. DEFRA's guidance² in this respect states that:

'an authority should not refer a case simply because it has an interest in the outcome, but only where that interest would seriously call into question the authority's ability to determine the matter impartially... an authority [should not] refer a case simply because it (whether an officer, Member, committee or executive) has discharged a function or expressed views on a related matter in a different context. So, for example, the test would be unlikely to be satisfied in relation to an application to register land as a new town or village green if the authority had granted planning permission for development of the land or expressed support for the development.

But, in [this] example, if the authority itself owned the land, there might not be confidence in the authority's ability to determine the application having regard to the more subjective nature of the criteria for registration in section 15'.

22. The Property Group's position is that it is not necessary for the application to be referred to the Planning Inspectorate, although it does not qualify this stance with any reasons.

23. However, the applicant takes a different view. He explains that the recent planning application was a highly contentious issue locally and, as the landowner and promoter of the planning application, the County Council cannot be unbiased about the outcome of a Village Green application which, if successful, would effectively prevent such development. Although the planning application was withdrawn, the County Council's Planning Applications Group has made a public statement to the effect that there may well be a further planning application in the future (see attached letter at **Appendix B**).

24. Clearly, the test regarding whether or not there is likely to be confidence in the County Council's ability impartially to determine the application is a subjective one. As DEFRA point out, the nature of a Local Authority is such that it undertakes a variety of roles and functions, some of which will unavoidably involve conflicting interests; indeed, the County Council is quite used to dealing with such issues. There is also a further safeguard in the decision-making process in that the Commons Act 2006 imposes a quasi-judicial function on the County Council and unless that function is discharged in an appropriate manner (i.e. according to the strict legal tests set out in section 15 of the Commons Act 2006), then the County Council leaves itself open to a very costly and time-consuming Judicial Review process.

² 'Guidance to commons registration authorities and PINS for the pioneer implementation' (version 1.41, September 2010), paragraphs 7.19.4 and 7.19.5 at pages 81 and 82

25. However, it is equally important that the matter is considered from the point of view of the applicant and the local community who may not have such a detailed understanding of the decision-making process. If the applicant is not confident of the County Council's ability to impartially determine the application, then it is important to consider whether such doubts are reasonably founded. If, as DEFRA say, it is simply a matter of the County Council exercising conflicting functions (i.e. as the Planning Authority and Registration Authority), then it may not be reasonable for the applicant to doubt the County Council's ability to determine the matter impartially.

26. If, however, the County Council has a significant interest in the outcome of the Village Green application because, for example, it owns the land in question and proposes to develop it in the future, then this is likely to cause to a reasonable person to doubt the County Council's ability to determine the matter impartially.

27. In the current scenario, where the County Council owns the land, has sought to develop the land in the recent past and has made a public statement that it may pursue development options in the future, it seems reasonable that the local community might lack confidence in the decision-making process.

Conclusion

28. In light of the comments above, it therefore seems appropriate that this application be referred to the Planning Inspectorate for determination.

29. If, however, Members are not in agreement with the Officer's recommendation, then a further report will be put to a future meeting of the Regulation Committee Member Panel with a view the determination of the application.

Recommendation

30. I recommend that the County Council refers the application to the Planning Inspectorate for determination.

Accountable Officer: Dr. Linda Davies – Tel: 01622 221500 or Email: linda.davies@kent.gov.uk Case Officer: Miss. Melanie McNeir – Tel: 01622 221511 or Email: melanie.mcneir@kent.gov.uk

The main file is available for viewing on request at the Environment and Waste Division, Environment and Regeneration Directorate, Invicta House, County Hall, Maidstone. Please contact the case officer for further details.
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Background documents

APPENDIX A – Plan showing application site

APPENDIX B – Letter from KCC Planning Applications Group dated 06/05/2010

**APPENDIX A:
Plan showing the application site**

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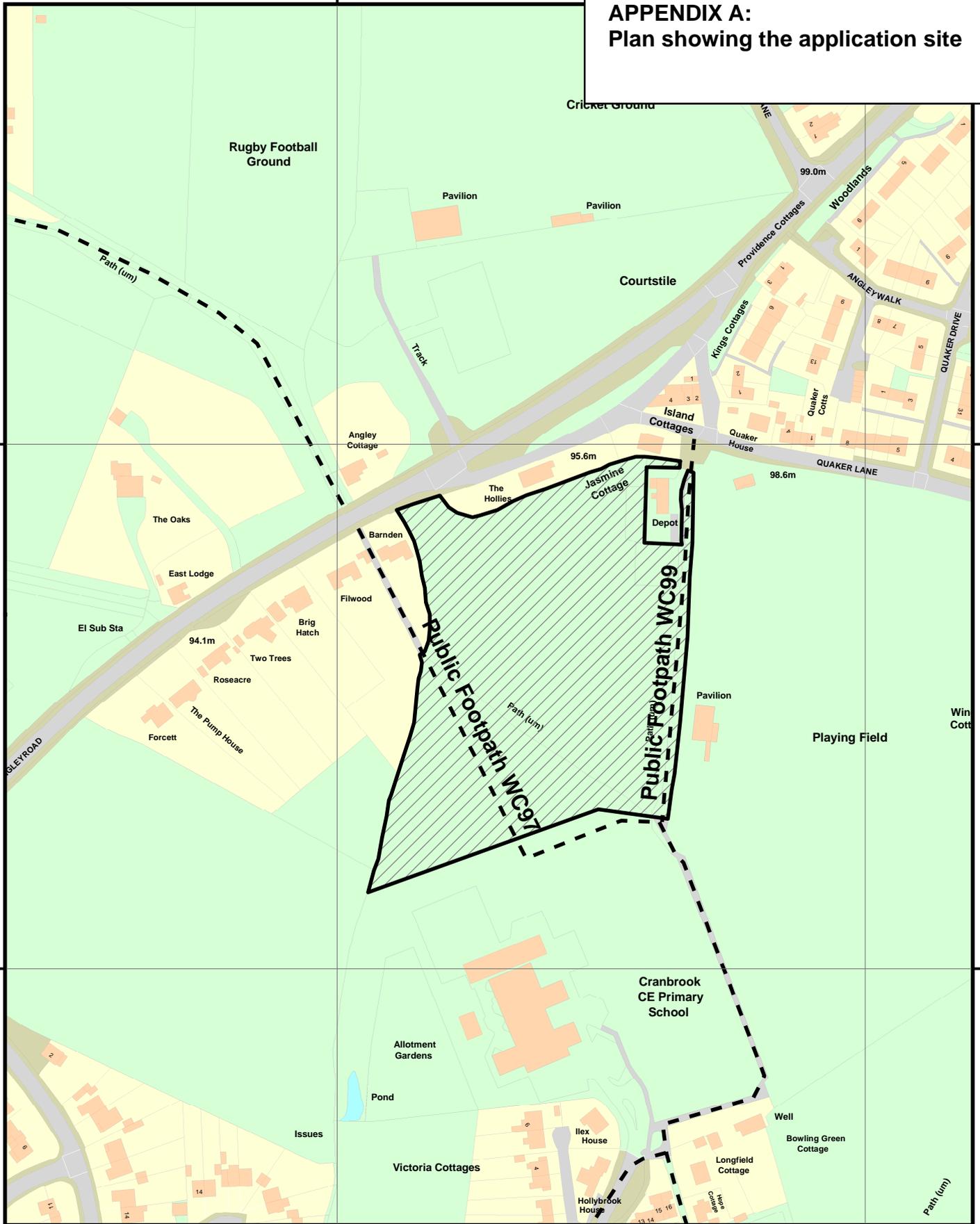
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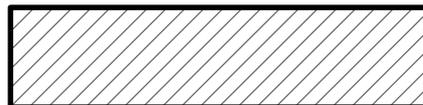
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**Land subject to Village Green application
at 'Long Field', Angley Road, Cranbrook**



**APPENDIX B:
Letter from KCC Planning
Applications Group dated 06/05/2010**



A Oulton
3 Island Cottages
Quaker Lane
Cranbrook
Kent
TN17 2HF

Planning Applications Group
First Floor, Invicta House
County Hall
Maidstone
Kent ME14 1XX
Fax: 01622 221072
Tel: 08458 247 303

Website: www.kent.gov.uk/planning
Direct Dial/Ext: 01622 221066
Minicom: 08458 247905 (hearing impaired)
Ask for: Miss M Green
Your ref:

Our ref: PAG/TW/09/977
Date: 6th May 2010

Dear Sir/Madam

TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION NO: TW/09/977

PROPOSAL: Application for outline approval for 40 extra care apartments for older people including 20-1 bed apartments and 20-2 bed apartments, residents communal areas and staff facilities

LOCATION: Land off Quaker Lane, Cranbrook, Kent, TN17 2HF

I am writing to notify you that the above planning application has been withdrawn. The applicant has advised that further work is being undertaken with regard to the site, and a second planning application may be submitted in the future.

Yours faithfully,

for Sharon Thompson
Head of Planning Applications Group