

KENT COUNTY COUNCIL

REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Thanet District Council, Cecil Street, Margate on Tuesday, 8 February 2011.

PRESENT: Mr M J Harrison (Chair), Mr A D Crowther (Vice-Chairman), Mr J A Davies, Mr S J G Koowaree and Mr R A Pascoe

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

UNRESTRICTED ITEMS

1. Application to register land at Park Avenue, Broadstairs as a new Town Green *(Item 5)*

(1) Members of the Panel visited the application site before the meeting. This visit was attended by Mr T Herron, the applicant and some 10 members of the public.

(2) The Public Rights of Way and Commons Registration Officer introduced the application, explaining that the various areas of landownership within the application site were set out in Appendix D to the report.

(3) The Public Rights of Way and Commons Registration Officer explained that some parts of the application site had been fenced off after the application had been made and that some of its vegetation had very recently been cut down.

(4) The Public Rights of Way and Commons Registration Officer set out the various legal tests that needed to be passed before an application could succeed. The first of these was whether use of the land had been "as of right." The evidence was clear that use had not been with secrecy or permission (although formal games such as Cricket had been the subject of permission). In respect of whether force had been used was far less transparent. The site had been the subject of fencing and notices, but there was conflicting evidence about when these had been erected. Furthermore, Mr and Mrs Brazil had drawn the remains of fencing to the Panel's attention earlier in the day. It could not yet be established whether the land had ever been completely fenced off. The Panel had also seen the private road notice, but further detailed investigation was needed to establish what the effect of that notice had been.

(5) The Public Rights of Way and Commons Registration Officer then considered whether use of the land had been for the purposes of lawful sports and pastimes. Whilst it was accepted by all parties that activities such as dog walking and playing with children had indeed taken place on parts of the land, there was a dispute over which areas of the land had actually been the subject of such use. The applicant considered that the land was looked upon in its totality by those who had used it; whereas the objectors claimed that some areas were impenetrable and incapable of use. A further complication arose as a result of a Public Right of Way crossing the

land. Any decision on this aspect of the application would need to be one which balanced fact and degree.

(6) The Public Rights of Way and Commons Registration Officer went on to address the question of whether use had been by a significant number of inhabitants of a particular locality, or a neighbourhood of a locality. Although the objectors had pointed out that the recognised administrative unit of Upton Ward had only come into existence in 2002, the Courts had upheld that similar areas could be categorised as a locality in such circumstances. The applicant considered that Park Avenue could also be described as a neighbourhood within a locality, but the objectors disagreed. This question would best be addressed by a qualified Inspector. It was considered that the 67 households who had claimed to have used the land would constitute “a significant number” as it would have been enough to make the landowners aware that the land was in use.

(7) The Public Rights of Way and Commons Registration Officer then discussed whether the use had taken place over a period of twenty years or more. The qualifying period was 1987 to 2007 (the year that the application had been made). Many of the people who had given user evidence had been present for the entire period. Account would still need to be taken of the objectors’ contention that use of parts of the land would have been impossible over this period as a result of its impenetrability.

(8) The Public Rights of Way and Commons Registration Officer said that use had definitely continued up to the date of application.

(9) The Public Rights of Way and Commons Registration Officer then explained her conclusions, which were that the large volume of unanswered questions could only be resolved through the mechanism of a non-statutory Public Inquiry.

(10) Mr R A Pascoe moved, seconded by Mr A D Crowther that the recommendations of the Public Rights of Way and Commons Registration Officer be agreed.

(11) The Chairman offered those people who had indicated that they wished to speak to the Panel the opportunity to do so. Each of them indicated that, given the very strong nature of the Officer’s recommendations, they would forego this opportunity.

(12) On being put to the vote, the Motion set out in paragraph (10) above was agreed.

(13) RESOLVED that a non-statutory Public Inquiry be held into the case to clarify the issues.

(14) Following the conclusion of this item, Mr A D Crowther left the meeting.

2. Application to register land adjacent to Barnes Car Park, Westbrook as a new Town Green

(Item 6)

(1) Members of the Panel had visited the application site prior to the meeting. This visit was attended by the applicant, Mr A Sykes, the Local Member, Mr R B Burgess and by 6 members of the public.

(2) The Public Rights of Way and Commons Registration Officer informed the Panel of the history of the application and of the claim by Thanet District Council (the landowner) that the land had been used with permission under the provisions of the Public Health Act 1875.

(3) The Public Rights of Way and Commons Registration Officer set out the various legal tests that needed to be fulfilled in order for an application to succeed.

(4) The first legal test was whether use of the land had been as of right. The Public Rights of Way and Commons Registration Officer explained that a local authority was able to acquire land under various acts, including the Public Health Act 1875, enabling it to be used as a "public walk and pleasure ground." Whenever this occurred, the public was using the land by right and could therefore not acquire a right. Thanet DC had provided a copy of the original Conveyance (dated 1923) and the plan. The Conveyance made no reference to any acquiring power, although it did make reference to management provisions.

(5) The Public Rights of Way and Commons Registration Officer then said that the applicants believed that the land applied for had been created when the sea wall was built after the remainder of the land had been acquired. This was confirmed by the document at Appendix E of the report, which was a plan showing the modern base map overlaying the 1923 Conveyance. In the absence of any evidence to the contrary, she therefore concluded that the land in question had been used as of right rather than by right.

(6) The Public Rights of Way and Commons Registration Officer then said that the user evidence clearly demonstrated that the land in question had been used for lawful sports and pastimes by a large number of people. In addition, there were a number of spots that had in all likelihood been used as picnic areas. Most of the use had been by residents of the electoral ward of Westbrook. Use had therefore undisputedly been by a significant number of residents within a locality.

(7) The Public Rights of Way and Commons Registration Officer also confirmed that the final two tests had been successfully met in that use had clearly been for a period of over twenty years up to and beyond the date of application in 2009.

(8) The Public Rights of Way and Commons Registration Officer concluded that (all the legal tests having been met) the application should succeed.

(9) Mr Sykes, the applicant addressed the Panel. He said that the report had been very fair and well researched and that Town Green status would be very beneficial to the local residents of Westbrook. Both he and a local historian had researched the question of how Thanet DC had acquired their land but they had been unable to find any reference to it between the years 1921 and 1924.

(10) Mr J Thompson, representing Thanet District Council said that he had nothing to add.

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

(12) RESOLVED that the applicant be informed that the application to register the land at Barnes Car Park at Westbrook has been accepted, and that the land subject to the application be formally registered as a Town Green.

3. Application to register land at Mill Lane, Preston as a new Village Green
(Item 2)

(1) The Public Rights of Way and Commons Registration Officer informed the Panel that this land was the subject of a voluntary registration application. Checks had confirmed that the applicant was indeed the owner, and that there were no other interested parties and no restrictive covenants. The owner intended to transfer ownership of the land to Preston Parish Council once Village Green status had been confirmed.

(2) RESOLVED that the applicant be informed that the application to register the land at Mill Lane in Preston has been accepted and that the land subject to the application be formally registered as a Village Green.

Carried Unanimously

4. Application to register land at the High Street, Chiddingstone as a new Village Green
(Item 3)

(1) The Public Rights of Way and Commons Registration Officer informed the Panel that this land was the subject of a voluntary registration application. Checks had confirmed that Chiddingstone Parish Council did indeed own the land, and that there were no other interested parties and no restrictive covenants.

(2) RESOLVED that the applicant be informed that the application to register the land at High Street in Chiddingstone has been accepted and that the land subject to the application be formally registered as a Village Green.

Carried Unanimously

5. Application to register land known as Gighill Green, Larkfield as a new Village Green
(Item 4)

(1) The Public Rights of Way and Commons Registration Officer informed the Panel that this land was the subject of a voluntary registration application. Checks had confirmed that East Malling and Larkfield Parish Council did indeed own the land, and that there were no other interested parties and no restrictive covenants.

(2) RESOLVED that the applicant be informed that the application to register the land known as Gighill Green in Larkfield has been accepted and that the land subject to the application be formally registered as a Village Green.

Carried Unanimously