

KENT COUNTY COUNCIL

REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Whitstable Rugby Club, Reeves Way, Chestfield, Whitstable CT5 3QS on Tuesday, 22 February 2011.

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

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

6. Application to register land known as the Long Field in Angley Road, Cranbrook as a new Village Green
(Item 5)

(1) Mr R A Pascoe and Mr R E Brookbank each made a declaration of Personal Interest as they were Members of the Planning Applications Committee which would be considering any planning application for development of the land in question. Mr S J G Koowaree also made a declaration of Personal Interest as a Member of the Kent Adult Social Services Policy Overview and Scrutiny Committee.

(2) The Public Rights of Way and Commons Registration Officer informed the Panel that the application had been made by Mr P Allen, accompanied by 70 user evidence questionnaires. Objections to the application had been made by Cranbrook and Sissinghurst Parish Council and by 8 local residents. Twenty four letters of support had also been received.

(3) The land in question was owned by Kent County Council and an objection to the application had been received from its Property Group. Kent Adult Social Services had applied for the construction of 40 extra care apartments for older people on the land. This application had been withdrawn. It was still possible that a similar application would come forward at a later stage.

(4) The Public Rights of Way and Commons Registration Officer said that there was a provision for the County Council to refer Village Green applications to the Planning Inspectorate in circumstances when it was considered that the authority had an interest in the outcome which would seriously call into question the authority's ability to determine the matter impartially. The Panel should not consider whether it had confidence in its own ability to act impartially. It was rather a matter of whether a reasonable local resident, in possession of all the facts, could reasonably conclude that the County Council was not in a position to do so.

(5) The Public Rights of Way and Commons Registration Officer concluded her presentation by explaining the grounds for her recommendation. These were that the

County Council owned the land, had recently sought to develop the land and had publicly stated that it might pursue development options in the future. Under these circumstances, the local community could reasonably lack confidence in the decision-making process.

(6) Mr P Allen, the applicant addressed the Panel in support of the recommendations. He said that there was a fair amount of local mistrust of the County Council. This had arisen when it had fenced off the site at the same time as it had put the care apartments planning application forward.

(7) Mr R A Pascoe moved, seconded by Mr A D Crowther that the recommendation set out in paragraph of the report be agreed.

carried unanimously

(8) RESOLVED that the application to register the land known as Long Field at Angley Road, Cranbrook as a new Village Green be referred to the Planning Inspectorate for determination.

7. Application to register land at Grasmere Pastures, Whitstable as a new Village Green

(Item 3)

(1) Members of the Panel visited the application site before the meeting. The visit was also attended by Mr J Spencer from the Grasmere Pastures Residents Action Group and by Mr P Watkins of Kitewood Estates Ltd.

(2) The Chairman informed the Panel that he was the Local Member for this application site. He had had no connection with the application and had not previously expressed any view on its merits. He would therefore be approaching it with an open mind.

(3) The Public Rights of Way and Commons Registration Officer introduced the application. She said that it was a re-submission of an application which had been rejected by the Panel in 2007. Although there was no provision in Law for an identical application to be re-submitted, the circumstances were sufficiently different to enable a re-hearing on this occasion. This was because the new application was submitted under the provisions of the Commons Act 2006 rather than the Commons Registration Act 1965. It contained new evidence, which had not been brought to the Panel's attention in 2007.

(4) The application had been submitted by the Grasmere Pastures Residents Action Group and had been accompanied by 152 user questionnaires. It had received support from Chestfield Parish Council, whilst Canterbury City Council had raised no objection. The landowner, OW Prestland Ltd had objected on the grounds that the specified locality was not a qualifying locality for registration; that the principal use of the site had been through exercise of the Public Footpaths which crossed the land rather than for lawful sports and pastimes; that the land had not been used for lawful sports and pastimes during the months when hay was being grown and harvested; and that use of the site had not been as of right due to the erection of "private property" notices.

(5) The Public Rights of Way and Commons Registration Officer then considered each of the legal tests. In terms of whether use of the land had been “as of right”, use of the land had clearly not been through secrecy or with permission. The question was whether it had been used by force. There had been no fencing before 2004 but there was conflicting evidence around the “private property” signs. The objectors had claimed that there had always been such notices around the site, whilst the applicants and other users claimed either that there had been no notices before 2004 or that they could not recollect them being there. It was also their view that the notices themselves did not refer to the land in question.

(6) The Public Rights of Way and Commons Registration Officer said that the objectors claimed that the principal use of the application site had been to walk along the designated footpath. As such use would be “by right”, it could not have been “as of right” as would be necessary for the site to be registered. The applicants, on the other hand, said that the site had been used by many residents for a great variety of purposes. Clarification of all aspects of the “as of right” legal test could only be achieved through a non-statutory Public Inquiry.

(7) The Public Rights of Way and Commons Registration Officer said that use of the site had been for a number of lawful sports and pastimes, such as kite flying, nature observation and playing with children. However, the majority of use had been for the purpose of walking. Further clarification was needed on the question of how much use had been on the public footpaths as opposed to the rest of the site.

(8) The Public Rights of Way and Commons Registration Officer said that the application had clearly demonstrated that use had been by a significant number of people and that the locality identified by the applicants (the electoral ward of Chestfield and Swalecliffe) was, in her view, one which met the legal test.

(9) The Public Rights of Way and Commons Registration Officer said that although fencing had been erected in October 2004 and the application had been submitted on 14 September 2009, the application did pass the test of being in use up to the date of application because the Law allowed a 5 year grace period.

(10) The Public Rights of Way and Commons Registration Officer said that whilst it was established that use of the site had taken place for a period of over 20 years, there was doubt over the question of whether this period had been interrupted. The objectors claimed that use would have been because of the hay cropping activities, which lasted for several months of the year. The applicants claimed that such activities would last for 3 to 4 days a year and had not prevented lawful sports and pastimes taking place. This conflict of evidence needed the closer scrutiny that only a non-statutory Public Inquiry could provide.

(11) The Public Rights of Way and Commons Registration Officer concluded her presentation by saying that because of the conflicting evidence that made consideration of most of the legal tests difficult to determine, the most appropriate way to proceed would be for the Panel to agree to the holding of a non-statutory Public Inquiry.

(12) Representatives from both the applicants and objectors had previously indicated a wish to speak to the Panel. The Panel Members considered that it would not be possible for the issues to be fully clarified during the meeting and that it would

therefore not be productive to prolong the debate any further. Accordingly, Mr R A Pascoe moved, seconded by Mr A D Crowther that the recommendation set out in paragraph 59 of the report be agreed.

carried unanimously

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

8. Application to register land at Benacre Wood, Whitstable as a new Village Green

(Item 4)

(1) Members of the Panel visited the application site before the meeting. The visit was also attended by Mr A Clark, Mrs A Palmer and Mrs F Cornish from the Friends of Duncan Down; and by N Strand (landowner) and his son Mr J Strand.

(2) The Chairman informed the Panel that he was the Local Member for this application site. He had had no connection with the application and had not previously expressed any view on its merits. He would therefore be approaching it with an open mind.

(3) The Public Rights of Way and Commons Registration Officer introduced the application which had been submitted by The Friends of Duncan Down on 19 October 2009 under the provisions of the Commons Act 2006. It had been accompanied by 50 user evidence questionnaires, photographs, newspaper cuttings and a leaflet. Objections had been received from two of the three landowners, Mrs Lucchesi and Mrs Buchan. They considered that use of the land had been by force as fences had been erected and cut down or otherwise damaged.

(4) The Public Rights of Way and Commons Registration Officer then considered each of the legal tests. In terms of whether use of the land had been “as of right”, use of the land had clearly not been through secrecy or with permission. The objectors were claiming that use had been by force. Investigations had led to the conclusion that there had been no sign of fencing having been put up continually or recently, although there was some evidence of the remnants of old fencing. There had also been much evidence of use being unchallenged or otherwise restricted.

(5) The Public Rights of Way and Commons Registration Officer said that the user evidence indicated a range of activities which qualified as lawful sports and pastimes. These included dog walking, fruit picking, jogging, photography and bird watching.

(6) The Public Rights of Way and Commons Registration Officer said that the applicants had specified the electoral wards of Gorrell and Seasalter as the “locality”. Although it was unclear whether two wards could be combined to represent a “locality”, an analysis of the addresses of those who had submitted user questionnaire forms showed that most users lived in the Gorrell ward, which could appropriately be identified as such. The number of users was also sufficient to be defined as “significant” because there were enough respondents to indicate that the land in question was in general use by the local community.

(7) The Public Rights of Way and Commons Registration Officer said that it was clear that use of the site had continued up to and, indeed, beyond the date of

application. It was equally clear from the evidence user forms that this use had taken place for a period of 20 years.

(8) The Public Rights of Way and Commons Registration Officer concluded her presentation by saying that, in her professional view, each of the legal tests had been met and that she therefore recommended that the land in question should be registered as a Village Green.

(9) Mr A Clark addressed the Panel on behalf of the applicants. He said that The Friends of Duncan Down could have collected more user evidence questionnaires but they had taken the view that there had been no need to gather more than 50. The purpose of making the application was to ensure that the land could be properly protected. The organisation that he represented had achieved a number of nationally accredited awards, demonstrating that its members would work responsibly to achieve this end. He said that all the legal tests had been passed.

(10) Mr N Strand (landowner) said that owing to a family bereavement he had been unable to reply during the consultation period. He fully supported the views of the other two landowners. The land in his ownership had been farmed for 60 years, whilst the land in question had been in disrepair since the 1980s. The northern boundary of the site had never been fenced as it was important to allow the cattle to roam. Fencing had been put up to prevent the cattle from straying into ditches and dykes and there had been no reason to put up a second border to keep the public out.

(11) Mr Strand went on to say that there had not been sufficient opportunity to challenge use of the land, but whenever this had been done, the public had for the most part been apologetic and co-operative. Fences and signs had been put up, mainly in order to prevent anti-social behaviour associated with illegal motorcycle riding. These had been torn down. So too had barbed wire and cord, aimed at stopping motorcycles coming on to the site. This had been torn down immediately. The most notable example had been on Christmas Eve 2009 when cord had disappeared within a day of being put up. The Police had also been involved in trying to prevent such activities.

(12) In response to a question from the Panel, Mr Strand said that his main reason for opposing the application was that he was concerned that Village Green status would be a personal encumbrance due to the additional costs, duties and regulations that would be imposed upon him by DEFRA. He had no objection to walkers using the site and was also prepared to draw up a document giving powers to members of The Friends of Duncan Down to protect the site if the application fell through.

(13) On being put to the vote, the recommendation set out in paragraph 38 of the report was agreed by 4 votes to 0 with 1 abstention.

(14) RESOLVED that the applicant be informed that the application to register the land known as Benacre Wood at Whitstable as a new Village Green has been accepted, and that the land subject to the application be formally registered as a Village Green.