

KENT COUNTY COUNCIL

REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Riverside Centre, Dickens Road, Gravesend DA12 2JY on Tuesday, 19 July 2011.

PRESENT: Mr M J Harrison (Chairman), Mr A D Crowther (Vice-Chairman), Mr R Brookbank, Mr R J Lees Mr T Prater

ALSO PRESENT: Mr R A Pascoe Mr B J Sweetland

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

UNRESTRICTED ITEMS

15. Application to register land at St Andrew's Gardens, Gravesend as a new Town Green *(Item 3)*

(1) The Members of the Panel had visited the site prior to the meeting. The visit was attended by Mrs C Brown (Urban Gravesham - the applicant) and Mr J Foxwell.

(2) Correspondence from Mr H R Craske had been circulated to the Members of the Panel prior to the meeting.

(3) The Public Rights of Way Officer introduced the application which had been made by Urban Gravesham under Section 15 of the Commons Act 2006. It had previously been considered by the Panel on 16 November 2009, when it had been decided to refer it to a non-statutory public inquiry. The Inquiry had taken place in May 2010 and the Inspector's report had been published in July 2010. Following submissions received from the Applicant and comments upon them from the Objector, the Inspector had published a second report in April 2011 re-affirming her findings.

(4) The Public Rights of Way Officer set out the legal tests that had to be met in order for the application to succeed. The Inspector had concluded that use of the site had been by a significant number of the inhabitants of the locality for the purposes of lawful sports and pastimes for a period of at least 20 years.

(5) The Public Rights of Way Officer explained that the Inspector had focussed on the question of whether use of the site had been "as of right." She had concluded that it had not been used by force or stealth. The question of whether use had been with permission had been far more complicated. She had established that although most of the land was owned by Gravesham Borough Council, this ownership had been acquired at various times under various powers. Because one of those powers had been Section 164 of the Public Health Act 1875 (for the purposes of public walks and pleasure grounds), those parts of the site had been used "by right" rather than

“as of right.” The Inspector had therefore concluded that the site was incapable of registration in its entirety.

(6) The Public Rights of Way Officer referred to Appendix B of the report, which showed the powers under which the land had been acquired by the Borough Council. She said that the Inspector had considered the application afresh in respect of each individual section of the site. Those acquired under Section 164 of the Public Health Act 1875 were not capable of registration for the reasons set out in (5) above. The same principle applied in respect of land at the eastern end of the site, which the Borough Council had originally acquired for other purposes, but which had later been formally appropriated for use as public walks and pleasure grounds.

(7) The Public Rights of Way Officer said that the Inspector had then applied the legal tests to parcels of land that came under a further three categories. These were: land which had been acquired and held for other purposes (such as street improvement works); land acquired for unknown purposes; and land to which Gravesham Borough Council could not prove formal ownership.

(8) The Public Rights of Way Officer referred to Appendix C of the report in order to identify which parcels of land the Inspector had decided should not be registered because there had been no or insufficient evidence of use for recreational purposes (lawful sports and pastimes). The Inspector had also concluded that some of the surfaced paths could not be registered because use of them would have been by a “rights of way” type user rather than for general recreation. This left six small and unconnected parcels of land which the Inspector had recommended should be registered. These were identified in Appendix D to the report.

(9) Mr B J Sweetland (Local Member) informed the Panel that although he was a Member of Gravesham Borough Council, he was speaking in his capacity as a local representative. He said that he, the local MP and the local Borough Councillors all thoroughly supported the application. He believed that the site should be registered in its entirety because (in principle) the application had passed the necessary tests. The site in question represented the last good view of the Thames and common sense demanded its registration. He was personally aware that it had been used by the public for the last thirty years.

(10) The Chairman ruled that Mr Sweetland should not refer to the planning history of the site in his presentation because this was an irrelevant consideration for the Panel. He also explained that the Panel was fulfilling a quasi-judicial function, which meant that it had to consider the application on the basis of the Law as it stood rather than in the light of what it might wish the Law to be.

(11) Mrs C Brown (Urban Gravesham) addressed the Panel as the applicant. She said that she wished to take issue with the Inspector’s findings because on the one hand she had concluded that the entire site had been used for lawful sports and pastimes; on the other hand, though, she had then considered the same question again when she had moved on to consider which component parts of the site had been used “as of right” or “by right.”

(12) Mrs Brown went on to say that the Inspector had ruled out some of the areas on the grounds that they were unsuitable for recreation. She said that conclusions such as these were, in her view, based on the Inspector’s own personal preferences

rather than on fact. She gave as an example, areas which the Inspector had described as “too steep” on the basis of two witnesses stating that they had not played football on it. The Inspector had not asked questions about these areas of other witnesses. Mrs Brown then listed a number of activities which she felt the Inspector should have established and then taken into account. These included gathering conkers, BMX riding, eating and drinking, metal detecting and courting. She also considered that the conclusion that the paths were used as “public rights of way” uses rather than for recreational purposes to be erroneous. This was because the path went to the boundary fence of Thames House, where people congregated to sit, eat and drink.

(13) Mrs Brown then referred to the land at the eastern end of the site. The Inspector had concluded that this land had been “formally appropriated” for public walks and pleasure. She said that this conclusion had been reached on the basis of a ministerial letter received by the Borough Council in 1960 and delegated powers used by Officers. She believed this conclusion to be mistaken as there was no record of such appropriation in the Council Minutes and Officers did not receive delegated powers until the enactment of the Local Government Act 1972.

(14) Mrs Brown concluded her presentation by saying that her Counsel had advised that there was no binding authority to support the view that land held for the purposes of public walks and pleasure was not capable of registration as a Town or Village Green.

(15) The Public Rights of Way Officer advised the Panel that once the Inspector had made the decision that the site needed to be considered section by section, she had no option but to consider whether each of these sections individually passed the legal tests. It was the applicant’s responsibility (rather than the Inspector’s) to provide evidence of use for lawful sports and pastimes. The Panel should therefore make its decision on the basis of what the Inspector had been able to establish during the Inquiry rather than on what the applicant was now claiming to be the case. There was nothing to prevent the applicant from coming forward with a fresh application at a later stage if she considered that she had sufficient evidence to make a material difference to the Inspector’s findings.

(16) Mr T Prater moved that the entire application site be registered as a Town Green. This motion fell as there was no seconder.

(17) Mr A D Crowther moved, seconded by Mr R J Lees that the recommendations of the Head of Countryside Access be agreed.

(18) The Democratic Services Officer advised that the motion set out in (17) above could not be amended by asking the Panel to register the entire site. As the recommendation was to not register some 80% of the site, such an amendment would represent a negation. If the Panel wished to register the entire site, it could do so by voting against the motion – at which point it would be in a position to decide what it wished to do in respect of the application.

(19) On being put to the vote, the Motion set out in (17) above was carried by 4 votes to 1.

(20) RESOLVED that for the reasons set out in the Inspector's report dated 28 July 2010, the applicant be informed that the application to register land known as St Andrew's Gardens at Gravesend had been accepted in part, and that the areas shown edged in black at Appendix D to the report be registered as a Town Green.