

Update from the Commons Registration Team

A report by the Head of Countryside Access to Kent County Council's Regulation Committee on Wednesday 7th September 2011.

Recommendation:

I recommend that Members receive this report.

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. Since the last Regulation Committee meeting in May, five applications have been determined by Member Panel, which brings the total to 12 applications having been determined this year. This has greatly assisted in reducing the backlog of applications awaiting resolution; this time last year there were 28 applications outstanding, whilst currently there are now just 15. There has also been a slight reduction in the number of applications received this year, with an application being received on average every six weeks rather than last year's rate of one per month.
3. There are four Public Inquiries in relation to Village Green applications due to take place over the next few months. One is currently under way (week commencing 5th September) at Whitstable, and another is due to take place next week (week commencing 12th September) at Broadstairs. Further Inquiries are scheduled to take place in Cranbrook in October and in Herne Bay in November.

Commons Act 2006 – Pilot project

4. Work continues on updating the Registers of Common Land and Village Greens, both in terms of KCC-initiated proposals to correct known errors in the Registers and applications received from members of the public to make certain amendments to the Registers. Two recent cases of note, which were reported to the last Regulation Committee meeting in May, involve Village Greens at Seasalter (VG128) and Wittersham (VG235).
5. Members will recall that the County Council has been dealing with an application from Mrs. A. Wilks to amend the Register of Village Greens for VG128 at Seasalter by increasing the registered extent of the Village Green. The necessary consultation processes have been completed and, in consequence, 45 objections have been received to the application. These objections originate from landowners affected by the application. As required by the relevant Regulations¹, the matter has now been referred to the Planning Inspectorate. There has been no information from the Planning Inspectorate as to how it intends to proceed with the determination of this application, but it is expected that, given the volume of objections, a Public Inquiry is

¹ The Commons Registration (England) Regulations 2008

likely to be held into the matter. Further updates will be provided to the Committee in due course.

6. Also at the Committee's last meeting in May, authority was sought (and obtained) to commence work on a proposal to correct the Register of Village Greens for VG235 at Wittersham. This was due to an entry made in the Register referring to an exchange of land agreement which it is now known was invalid and had no lawful effect. The proposal is therefore to restore the Register to its original position and delete the reference to the exchange of land agreement. The necessary consultation procedures are currently under way, with a deadline for responses of 12th September 2011. As with the Seasalter case, the matter will ultimately be referred to the Planning Inspectorate for decision and the outcome will be reported to the Committee in due course.
7. On a more general note, after many months of uncertainty, there now appears to be some progress on determining the future of this legislation. It will be recalled that the purpose of the pilot project has been to test the provisions contained in Part 1 of the Commons Act 2006 in a limited number of areas in order to help shape the form of a national implementation of the legislation.
8. No formal announcement has yet been made, but it is understood from colleagues at DEFRA that the Minister has approved a decision to continue with the implementation of this legislation. At this stage, it is likely that this will continue on a piecemeal basis, with the legislation being rolled out to a further group of volunteer local authorities in 2013. Further information on this will be reported to the Committee when it becomes available.

Consultation on the registration of new Town or Village Greens

9. DEFRA has recently launched a consultation on proposals to reform the system for registering new Town or Village Greens under section 15 of the Commons Act 2006. A full copy of the consultation document is available at:
<http://www.defra.gov.uk/consult/2011/07/25/town-village-greens>.
Alternatively, a hard copy of the document is also available on request from the Public Rights of Way and Commons Registration Officer.
10. The reforms are being proposed in response to growing concerns regarding the volume, nature, cost and impact of Village Green applications, and the Government's desire to achieve an improved balance between protecting valuable open space and enabling development to occur. The consultation has been launched at the same time as the publication for consultation by the Department for Communities and Local Government of a draft National Planning Policy Framework, which includes a commitment to introduce a new Green Spaces Designation through the planning system.
11. Although the consultation document includes an option which involves no change to the current system, the Government has indicated that it does not believe that this is an appropriate response to the problems identified with the current system. The reforms proposed are therefore set out below.
12. The first proposal is to refine the current system, by giving Commons Registration Authorities more powers to reject weak or vexatious applications at an early stage,

providing a system whereby landowners can make a declaration that any use of their land for recreational purposes is with their permission, and introducing a 'character test' to consider whether the land in question is recognisably similar to the popular perception of a traditional green.

13. The latter element of this proposal would involve the addition of a new, more subjective test to the existing legal tests set out in section 15 of the Commons Act 2006. It has been proposed in response to the increasing number of Village Green applications which involve land that do not have the traditional characteristics of a Village Green; for example, school playing fields, woodlands, beaches etc. The new test proposed would mean that only land which is open, unenclosed and uncultivated would be capable of registration. It would therefore limit registration to land with a more traditional appearance of a Village Green. However, the concern with this is that it would lead to applications involving valued open space that had been subject of long recreational usage being rejected on the basis of non-conformity with the character test.
14. The next proposal is to create a link between the planning system and the village green registration system. Currently, the two are mutually exclusive which means that sites earmarked for development can still be the subject of a subsequent application for Village Green status (thereby thwarting any proposed development if successful) and, similarly, planning permission can be granted and development commenced on the land before the outcome of an outstanding Village Green application is known. The reform being proposed would prevent a Village Green application from being made in relation to any land in respect of which there was a pending application for planning permission.
15. The third proposal involves the introduction of a fee for dealing with Village Green applications. The reason for this proposal is to reflect the substantial costs to Commons Registration Authorities in dealing with Village Green applications, but also to increase commitment from applicants and thereby deter spurious applications. The proposal is to charge a fee of up to £1000, which would be refundable if the application were to be successful.
16. The introduction of a fee is arguably the most controversial of the proposed reforms. On the one hand, it would allow Commons Registration Authorities to recoup some of the costs of dealing with the application (but not where it is successful) and encourages only properly constructed applications to be made, thereby reducing the burden on Commons Registration Authorities. However, the disadvantage of this option is that it may well deter worthwhile applications from communities without the means to pay the necessary fee, and could give rise to a perception that the authority is pre-disposed to reject the application in order to retain the fee.
17. Members' views on the consultation are welcomed. The deadline for response to DEFRA is 17th October 2011. Officers will be compiling a response to be sent to DEFRA via the Cabinet Member for Customer and Communities.

Recommendation

18. I RECOMMEND Members receive this report.

Background documents:

Appendix A – Schedule of Village Green applications

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

**Applications resolved by the Regulation Committee since last report
(17th May 2011)**

| Description | Parish | Member(s) | Outcome |
|------------------------------------|---------------|-----------------------------------|---|
| Land at Hartley Woods | Hartley | Mr. D. Brazier | ACCEPTED and registered as VG257 on 13/06/11 |
| The Allotment Field, Barton Estate | Canterbury | Mr. M. Northey | REJECTED on 28/06/11 |
| Land at Princes Parade | Hythe | Mr. C. Capon | REJECTED on 28/06/11 |
| Land at Westwell Lane | Westwell | Mr. R. King | ACCEPTED and registered as VG258 on 28/06/11 |
| St Andrew's Gardens | Gravesend | Mr. B. Sweetland Mr. J. Cubitt | ACCEPTED IN PART ONLY and registered as VG259 on 19/07/11 |

Forthcoming Public Inquiries

| Description | Parish | Member(s) | Details |
|--|---------------|---------------------------------|--|
| Grasmere Pastures at Whitstable | Whitstable | Mr. M. Harrison Mr. M. Dance | Commences 05/09/11 at Whitstable Castle |
| Broadstairs Cricket Ground | Broadstairs | Mr. B. Hayton Mr. R. Bayford | Commences 12/09/2011 at the Broadstairs Campus of Christ Church University |
| Land known as Long Field at Angley Road* | Cranbrook | Mr. R. Manning | Commences 11/10/11 at Unity Hall, Hawkhurst |
| The Downs | Herne Bay | Mrs. J. Law | Commences 28/11/11 at St. Andrew's Hall, Hampton |

**Note that this case has been referred to the Planning Inspectorate for determination due to KCC's interest in the outcome of the application. The Inquiry is being held by the Planning Inspectorate.*

Outstanding applications to be resolved

| Description | Parish | Member(s) | Status |
|--|----------------|------------------|--------------------------------|
| Round Wood at Walderslade | Boxley | Mr. P. Carter | On hold at applicant's request |
| Dawbourne Wood | Tenterden | Mr. M. Hill | Under investigation |
| Seaton Meadow | Wickhambreaux | Mr. M. Northey | Under investigation |
| Land at Woodland Road | Lyminge | Ms. S. Carey | Under investigation |
| Land known as Fisherman's Beach | Hythe | Mr. C. Capon | Under investigation |
| Land at Mountfield Road | Meopham | Mr. M. Snelling | Under investigation |
| Playing Field | Marden | Mrs. P. Stockell | Under investigation |
| Scrapsgate Open Space | Minster-on-Sea | Mr. A. Crowther | Under investigation |
| The former airfield | Lympne | Ms. S. Carey | Awaiting investigation |
| Rammell Field | Cranbrook | Mr. R. Manning | Awaiting investigation |
| Chaucer Field (at the University of Kent campus) | Canterbury | Mr. G. Gibbens | Awaiting investigation |
| Sandgate Escarpment | Sandgate | Mr. T. Prater | Awaiting investigation |