

## KENT COUNTY COUNCIL

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### REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Tenterden Town Hall on Friday, 11 November 2011.

PRESENT: Mr M J Harrison (Chairman), Mr A D Crowther (Vice-Chairman), Mr A H T Bowles, Mr W A Hayton and Mr S J G Koowaree

IN ATTENDANCE: Miss M McNeir (Public Rights Of Way and Commons Registration Officer) and Mr A Tait (Democratic Services Officer)

### UNRESTRICTED ITEMS

#### **16. Application to register land known as The Playing Field in the parish of Marden as a new Village Green**

*(Item 3)*

(1) The Public Rights of Way and Commons Registration Officer informed the Panel that Marden Parish Council wished to voluntarily register the land in question as a Village Green under the provisions of the Commons Act 2006.

(2) The Public Rights of Way and Commons Registration Officer explained that the County Council needed to establish that Marden PC had the capacity to register the land. This entailed being able to demonstrate that the Parish Council owned the land (which it did) as well as being able to identify the locality in which the users of the land resided. In this case, the locality was the parish of Marden. As these two tests had been passed, she was able to recommend registration.

(3) Mr Richard Adam (Marden Parish Council) said that the case was sufficiently straight forward that the land could have been registered even if the Parish Council had not offered to do so. Registration would enable the land to become an asset that was safeguarded for future generations. He also pointed out that a strip of land to the east and south side of the site (comprising Public Footpath KM280) was not owned by the Parish Council and that it would be essential to ensure that the boundary was carefully drawn.

(4) RESOLVED to inform the applicant that the application to register the land known as the Playing Field at Marden has been accepted and that the land subject to the application be formally registered as a Village Green.

#### **17. Application to register land known as Dawbourne Wood in Tenterden as a new Village Green**

*(Item 4)*

(1) Members of the Panel visited the application site shortly before the meeting. Mr M Billick was present on behalf of the applicant. Mr J Mills, the landowner was also present together with his representative, Mr M Wood from Landnet Ltd.

(2) Mr Billick, Mr Mills and Mr Wood were also present at the meeting together with some 9 members of the public.

(3) The Public Rights of Way and Commons Registration officer introduced the application, which had been made under Section 15 of the Commons Act 2006 by Dr R Crawford on behalf of the St Michael's Village Community Group. It had been accompanied by 26 letters of support. Support had also been given by High Halden PC whilst no comment had been received from Tenterden TC.

(4) The area of land subject to the application was a portion of Dawbourne Wood, some 7½ acres in size. It was in the ownership of Lakehurst Developments Ltd, who had objected. Its formal access was through a gate along Ashford Road. This gate was normally locked but had been opened for the purposes of the site visit that morning. There were no Public Rights of Way (PROWs) across the site. An Order designating four routes across the land as PROWs in 2007 had not been confirmed. Some of the points made during the PROW application had informed the consideration of this application.

(5) The Public Rights of Way and Commons Registration Officer briefly explained that there was no dispute that the land had been used for lawful sports and pastimes by a significant number of inhabitants in the locality of St Michael's in Tenterden. The outstanding issues were whether it had been used "as of right" for a period of twenty years up to the date of application or met one of the criteria set out in Sections 15 (3) and (4) of the Commons Act 2006.

(6) The Public Rights of Way and Commons Registration Officer explained that in order for use of the land to have been "as of right"; use would have needed to be without force, stealth or permission. It was clear that stealth had not been used. There was no evidence of permission having been given. There was, however, a question as to whether use had been by force.

(7) The Public Rights of Way and Commons Registration Officer explained that when establishing whether force had been used, the law of prescription relied on acquiescence on behalf of the landowner. The wooden gates had been locked in 1997 and replaced by a metal gate in 2004, when signs and notices had also been put up. People had continued to access the land through a hole in the fence. However, this did not qualify as "as of right" use because use of the land had become contentious on the basis that the landowner had clearly taken steps to discourage entry onto his land.

(8) The articles published in the local newspaper on 29 May 1997 and 16 December 2004 (shown in Appendix D of the report) clearly demonstrated that there was a general local awareness that public use of the land was contested by the landowner. Consequently, the Public Rights of Way and Commons Registration Officer had concluded that use of the land had certainly not been "as of right" since 2004 and possibly, in her view, not since 1997.

(9) The Public Rights of Way and Commons Registration Officer then examined the question of whether use had taken place over a period of twenty years or more. She said that the period in question had to be 1984 until 2004 because use "as of

right had definitely ceased in the later year (if not before). The user evidence indicated that use had been continuous over that period.

(10) The Public Rights of Way and Commons Registration Officer explained that the application had been made under Section 15 (4) of the Commons Act 2006 which allowed applications to be made in cases where “as of right” use ceased prior to April 2007, provided that the application had been made within 5 years of the date when the application ceased. She said that in this instance, the application had been made on 11 January 2010. This meant that the application had been made more than 5 years after “as of right” use had definitely ceased. As a consequence, the application had definitely failed the “date of application” test. As a consequence, she recommended that the application should not be accepted.

(11) Mr M Wood (Landnet Ltd) responded to a question from Mr Hayton by saying that the site in question was bordered by only two private residential properties. Neither of them had an express right of entry onto the site. He added that use had been continually challenged, particularly during the period when the County Council was considering the Public Rights of Way application during the early years of the previous decade. In addition, Mr Verrall who had carried out the coppicing work had always challenged people who came on site – as he was duty bound to do. Signs and fencing had been put up at the same time to warn people not to enter. The fencing had, however, been broken down.

(12) Mr M Billick spoke on behalf of the applicant. He said that the Public Inquiry on the PROW application had taken place in 2008. The Inspector had ruled that the date for when use of the routes had ceased was between December 2004 and January 2005. She had definitely ruled out an earlier date. The Inspector had also found no evidence to suggest that use of the route had been challenged between 1997 and 2005. Furthermore, the date of submission of the application had been 9 November 2009. The 11 January 2010 date referred to by the Public Rights of Way and Commons Registration Officer was in fact the date of re-submission.

(13) The Public Rights of Way and Commons Registration Officer responded to Mr Billick’s point by saying that the first attempt at a submission had indeed been received in November 2009. However, as it did not meet all the legal criteria, the County Council had not been in a position to accept it at that time. She explained that the “Winchester” case had established that an application could not be deemed to have been submitted until it had met all the criteria and been “duly made.”

(14) In respect of the claim that the January 2010 application had been made in time, the Public Rights of Way and Commons Registration Officer said that the evidence relied upon to prove that use had been challenged in 2004 was the user evidence contained in Appendix C and the newspaper article dated 16 December 2004 (Appendix D).

(15) The Public Rights of Way and Commons Registration Officer then replied to a question from Mr Billick by saying that the evidence given in respect of the Public Right of Way application could not simply be transferred to an application for a Village Green. This was because a Village Green registration conveyed a general right to recreate whereas a PROW related purely to the route in question. Demonstrating that walking had taken place along a linear route would not be sufficient to demonstrate that lawful sports and pastimes had occurred generally on the application site.

(16) Mr M Wood addressed the Panel on behalf of the applicant. He agreed with the conclusions of the Public Rights of Way and Commons Registration Officer and said that the 5 year deadline was statutory. This meant that there was no provision for the County Council to waive this particular test.

(17) A member of the public said that she walked through the woodland and neighbouring orchard. This was very easy to do as the Electricity Board cleared paths whilst working on the pylons. She said she was able to walk freely in the woods using the unofficial paths.

(18) On being put to the vote, the recommendations of the Head of Countryside Access were carried unanimously.

(19) RESOLVED to inform the applicant that the application to register a section of the land known as Dawbourne Wood at Tenterden has not been accepted.