

## KENT COUNTY COUNCIL

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### REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Stour Room, Sessions House, County Hall, Maidstone on Tuesday, 20 March 2012.

PRESENT: Mr M J Harrison (Chairman), Mr H J Craske, Mr J A Davies, Mr S J G Koowaree and Mr R J Lees

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

#### 1. Membership and Substitutes

*(Item 1)*

The Committee membership varied from that shown on the agenda by the inclusion of Mr H R Craske and Mr R J Lees instead of Mr A D Crowther and Mr T Gates.

#### 2. Application to register a new Town or Village Green at The Booth Field, Harrietsham

*(Item 3)*

(1) Correspondence dated 19 March 2012 from Mr David Pegg, the applicant was tabled at the meeting. The Chairman agreed to accept this document.

(2) The Principal Case Officer set out the history of the application under discussion. This had originally come forward in 2001 and had been objected to by the Booth and Baldwin Charity (the landowners). Following a non statutory Public Inquiry, a Panel had registered all the land except the tennis courts on 20 May 2004.

(3) The decision to register was challenged in the High Court by the Treasury Solicitors (acting on behalf of the landowner which was a registered charity.) In the light of case law in force at that time, the County Council had accepted that the cricket field and tennis courts parts of the land were not capable of registration, whereas the situation was less clear in respect of the children's playground and the rough areas of grass around the cricket field.

(4) On 24 January 2006, a High Court Order was made requiring the deletion of the land from the County Council's register. It was also agreed that the possible registration of the playground and the rough areas (Areas C and D) should be remitted to the County Council for reconsideration. This would initially take the form of a further non statutory Public Inquiry.

(5) The Principal Case Officer referred to the subsequent High Court decisions in respect of the *Betterment* and *High Peak* cases. These cast doubt on whether the High Court had the ability to remit the case back to the County Council.

(6) As a result of the two judgements, the Inspector for the non-statutory Public Inquiry advised the County Council that it should not proceed and recommended that advice on the implications of these judgements should be sought from Counsel.

(7) The County Council had asked the applicant and the landowner for their views. The applicant had considered that an application should be made for the Order to be set aside and that the Village Green registration should remain as it was prior to the Order. The Landowner considered that it would not be appropriate to set the Order aside. The County Council then sought advice from Counsel.

(8) The Principal Case Officer then set out the three options that had been considered by Counsel. The first of these (Option 1) was to arrange for a non-statutory Public Inquiry to reconsider the application for Areas C and D. Counsel's advice to the County Council was that in the light of the *Betterment* and *High Peak* judgements, it was unlikely that the County Council actually had the power to do so. In addition, the Order itself only required the deletion of the registration. The reconsideration of parts of the application was a private arrangement between the parties which did not form part of the Order.

(9) The second possible option (Option 2) considered by Counsel was for the County Council to apply to the High Court to set the Order aside. This would lead to all the land (except the tennis courts) being registered as a Village green with a formal decision needing to be made by the Court on the validity of the registration. Counsel had advised that this option would entail the County Council having to defend the registration by actively supporting the application (as the applicant himself had not been a party to the High Court proceedings). The implications of such action would be that the County Council would prejudice its impartiality in respect of Village green applications, and that this would not be an appropriate course of action.

(10) The third option (Option 3) considered by Counsel was for the County Council to take no further action. Counsel considered this to be the most equitable solution because the County Council did not appear to have the power to reconsider the application and had no positive duty to take any further action to seek to have the Order set aside. This approach would comply fully with the wording of the Court Order. A decision to take this approach would also enable the applicant to take action through the various legal remedies available to him.

(11) The Principal Case Officer was asked by the Chairman to comment on the content of Mr Pegg's letter. He said that the initial view taken by Officers based on previous legal advice had been that it would be best to seek to set the Order aside. The "15 month hiatus" between October 2010 and February 2012 referred to by Mr Pegg had not been a period of inactivity. It had involved a great deal of consideration within the County Council, including legal advice. The opinion of Counsel had been sought as a result of internal discussions as a result of the *Betterment* and *High Peak* judgements and following the recommendation of the Inspector who had initially been appointed to conduct the non-statutory Public Inquiry. Mr Pegg had been asked for his views. These had been taken into account, and had been one of the factors that had led to Officers seeking the advice of Counsel.

(12) The Principal Case Officer replied to a question by saying that it would have been open to Mr Pegg to submit a fresh application up to the point where 5 years had elapsed. This option was now no longer available as any such application would now

be out of time. However, Mr Pegg could still himself apply to the High Court to have the Order set aside so that the Court could consider the matter.

(13) The Principal Case Officer concluded his presentation by saying that a decision on how to proceed needed to take account of the risks to the County Council. Option 1 was strongly discouraged by Counsel whilst Option 2 would involve the County Council in having to present the case on behalf of the applicant. Counsel had therefore recommended that the Panel should resolve to take no further action. This would put the applicant in a position to decide how he wished to proceed with the application (including consideration of the legal remedies open to him) whilst enabling the County Council to maintain its neutrality.

(14) Mr Davies noted Mr Pegg's comments that he had "been given such little time to review, consult, consider and properly respond to the turn of events." The Principal Case Officer replied that Mr Pegg had been given plenty of opportunity to put in his comments and that these had been incorporated in the recommendations. He accepted that Mr Pegg would have only become aware of Counsel's latest advice in the Council's letter to him of 21 February 2012. This advice, however, related to the County Council's own legal position rather than to the merits of the applicant's case.

(15) Mr Richard Cook from the Booth and Baldwin Trust briefly explained that the land in question had been bought by the Trust in the 1920s for the benefit of the local School. The Tennis and Cricket Clubs rented their playing areas from them. It had cost the Trust a large sum of money to defend its interests during the application period and it would reluctantly need to do so again if Option 3 was not agreed.

(16) Panel Members commented that if it were to agree to Option 2, the County Council would be placed in an invidious position of effectively becoming the applicant. The High Court Order had been perfectly clear that the land in question had to be deleted from the Register. There was no obligation upon the County Council to do anything else.

(17) In agreeing the recommendations, the Panel asked the Principal Case Officer to provide Mr Pegg with a full written response to the points raised in his letter.

(18) RESOLVED that:

- (a) no further action be taken in relation to this matter; and
- (b) Mr Pegg be provided with a full written response to the points raised in his letter of 19 March 2012.