

KENT COUNTY COUNCIL

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

3. Membership

(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.

4. Application to register land at Culverstone Green, Mountfield Close at Meopham as a new Village Green

(Item 3)

(1) Members of the Panel visited the application site prior to the meeting. This visit was attended by Mrs L Boycott (a Gravesham Borough Councillor) and Mr M Ciuca (Gravesham BC Legal Services.)

(2) The Chairman had been unable to attend the visit to the site owing to traffic congestion. He offered to vacate the chair in favour of one of the other four Panel Members. The Panel agreed that his absence from the site visit should not prevent him from either chairing the meeting or from in any other way participating in the decision making process.

(3) Mr H R Craske informed the Panel that he was a Gravesham Borough Councillor. He had, though, at no stage been involved in discussions about this application and therefore did not have a personal interest in this matter.

(4) The Commons Registration Officer introduced the application by saying that it had been made by a local resident, Mrs B Field under Section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2008 and had been accompanied by 17 User Questionnaire forms. The site of the application was a discrete part of the Culverstone Recreation Ground, consisting of grassland and trees. It had been planted with daffodils which were in full flower when Members had visited the site.

(5) The land in question was owned by Gravesham BC which also owned the rest of the Recreation Ground, having been acquired by the Borough Council from the

former Strood Rural District Council in March 1974. Gravesham BC had objected to the application on the grounds that the land had been acquired specifically for the purposes of public recreation and that use of the site had therefore taken place “by right” rather than “as of right.”

(6) The Commons Registration Officer then considered each of the legal tests. The first of these was whether use of the land had been “as of right.” It was evident that people had been able to use the land freely and without hindrance. In order for the application to succeed, this use would also have needed to be without permission. Gravesham BC had claimed that it had acquired the land from Strood Rural District Council in exercise of powers contained in the Physical Training and Recreation Act 1937. Although the Deed of Transfer between the two authorities was silent on this point, there was a significant body of evidence (set out in paragraph 21 of the report) in support of the Borough Council’s contention.

(7) The Commons Registration Officer explained that although there was no specific legal provision to prevent land held under the Physical Training and Recreation Act being registered, there were strong judicial precedents to suggest that this was the case. She referred to the *Beresford* and *Barkas* Court cases. In the second of these, the High Court had ruled that as the public were legally entitled to use the land, they should not be regarded as trespassing when they did so. As the Physical Training and Recreation Act enabled a local authority to provide such recreational authorities as it saw fit, the conclusion in respect of this application was that use of the land could only have been “by right” rather than “as of right” and that the application did not pass the first test.

(8) The Commons Registration Officer moved on to consider the second test which was whether use of the land had been for the purposes of lawful sports and pastimes. She said that some of the User Questionnaires had claimed that the land had been used for football and dog shows. This seemed unlikely, and suggested to her that there was a possibility of confusion over the land in question. It was quite possible that they were referring to the main Recreation Ground, which would be far more suitable for such events. This had been confirmed by Cllr Mrs Boycott at the site visit. Other users had given evidence of children playing and blackberrying.

(9) The third test was whether use had been by a significant number of inhabitants of a particular locality or neighbourhood within a locality. The Commons Registration Officer said that the site was located in the Parish of Meopham. Culverstone could be categorised as a neighbourhood within the locality as it had its own Community Centre and Primary School. She agreed with a comment made by Mr Craske that the residents of Culverstone considered themselves as a coherent community. It was, though, not clear that the 9 households (all but two of which were situated in Mountfield Close) constituted a “significant number” of users, particularly as there was a question over whether some of them were describing activities on the land in question.

(10) The Commons Registration Officer briefly considered the last two tests. Use of the site had indisputably continued up to the date of application and had taken place over a period of twenty years or more. Even this needed to be considered in the light of the questions about the accuracy of the user evidence; some of which could well have related to the main Recreation Ground rather than the application site.

(11) The Commons Registration Officer concluded her presentation by saying that the questions surrounding the user evidence could have been clarified through the mechanism of a non-statutory Public Inquiry. However, the application had suffered a “knock-out blow” because the application site was held by Gravesham Borough Council under the Physical Training and Recreation Act 1937 and that, in consequence, use of the land had been “by right” rather than “as of right.”

(12) Mr Marius Ciuca from Gravesham Borough Council said that he was in agreement with the recommendations. He noted that different users had identified the locality in different ways. It was variously described as “Culverstone”, “Culverstone Green” and “Mountfield Close.”

(13) The Commons Registration Officer replied to Mr Ciuca’s comments by saying that it was not unusual for descriptions of the locality to vary in this way. Such differences were unimportant in terms of determining the application as consideration of whether there was a qualifying locality was undertaken by Officers as part of their own investigations.

(14) On being put to the vote, the recommendations of the Head of Regulatory Services were carried unanimously.

(15) RESOLVED that the applicant be informed that the application to register land at Mountfield Close at Culverstone Green in the parish of Meopham as a Village Green has not been accepted.

5. Transfer of Rights of Common at Higham Common (CL86)

(Item 4)

(1) Mr H R Craske informed the Panel that regularly walked on the land in question. However, none of the parties concerned were known to him and he was able to approach this matter with a fresh mind.

(2) The Commons Registration Officer said that this was an application that the County Council was able to consider as part of the Pilot Project. She explained that Common Land had been defined in the Commons Registration Act 1965 as land subject to traditional rights (“rights of common”) or waste land of a manor not subject to rights of common. The most widely exercised rights of common (which legally went back to medieval times) was the right to graze animals. There were also other less familiar rights such as “pannage” (a right to turn out pigs in woodland to graze on acorns) or “piscary” (a right to fish).

(3) The Commons Registration Officer then turned to the application itself. The land had been acquired from the University of Cambridge by ET Ledger and Son Ltd. Evidence of a Deed of Sale had been provided. The transfer of the Rights of Common associated with this land would not take place until it was entered on the Register.

(4) On being put to the vote, the recommendations of the head of Regulatory Services were unanimously agreed.

(5) RESOLVED to inform the applicant that the application to amend the Register of Common Land to reflect the recent transfer of rights of common has been accepted and that the Register of Common Land for Unit CL86 be amended accordingly.