

Update from the Commons Registration Team

A report by the Head of Countryside Access to Kent County Council's Regulation Committee on Tuesday 15th May 2012.

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. So far this year, 2 such cases have been considered at two separate Regulation Committee Member Panel meetings held in March and April, one of which was successful in part (and resulted in the registration of a smaller area of the application site as a new Village Green) and one of which was not successful.
3. The Public Inquiry into the Grasmere Pastures Village Green application (which has had to be adjourned on several occasions due to unforeseen circumstances) did take place as planned last month, but the complexity and volume of paperwork in relation to this application meant that progress at the Inquiry was slower than originally envisaged and it was not possible to hear all of the evidence within the scheduled six-day period. The Inquiry will therefore reconvene on Monday 18th June 2012 and will continue, as necessary, over the following days.
4. Further Public Inquiries will take place in the coming months in relation to applications at Cranbrook (commencing on 4th September 2012), Lyminge (commencing on 1st October 2012) and Wickhambreaux (commencing on 12th November 2012).
5. There are currently 20 applications awaiting determination, of which 13 are currently under investigation. The number of Public Inquiries and the delay in holding the Inquiries in respect of certain cases has increased the backlog of applications slightly, but Officers still aim to begin work on all applications received within six months from the date of receipt.

Recent case law

6. The long awaiting decision in what has become known as the Newhaven Beach case (*Newhaven Port and Properties Limited v East Sussex County Council* [2012] EWHC 647 (Admin)) has recently been issued by the High Court. The case concerned a 15 acre area of tidal beach; although the beach was wholly covered for 42% of the time and wholly uncovered for only a few minutes each day, the local residents had used the land for more than 20 years for various lawful sports and pastimes. The landowner ("the Port Authority") challenged East Sussex County Council's decision to register the land as a Village Green.

7. A number of points were argued before the judge and the judgement deals with some interesting issues. The Port Authority argued that a Village Green could only be registered if it had the character and appearance of a traditional Village Green (which a tidal beach did not), but the judge rejected this argument saying that there was nothing in the legislation to impose a restriction on the character of land that could be registered as a Village Green. In relation to the contention that the beach was covered by water for most of the time and as such could not be used for lawful sports and pastimes during those times, the judge held that it was not necessary for recreational use of the application site to be non-stop, to extend to every part of the land or to be the dominant use of the land.
8. The only point on which the Port Authority succeeded in its arguments related to the manner in which the land was held by the Port Authority. The judge agreed that registration as a Village Green would be inconsistent with the statutory regime under which the beach was held by the Port Authority because, although there was no immediate conflict (since the beach was not currently being used for harbour purposes), it was reasonably foreseeable that there might a conflict in the future should the Port Authority decide to use the beach for harbour purposes (in which case the Victorian statues which protect Village Greens would make it unlawful to interrupt the recreational use of the beach). On this point alone, the judge quashed East Sussex County Council's decision to register the land as a Village Green.

Consultation on the registration of new Town or Village Greens

9. At the last Committee meeting in January, it was reported that the County Council is still awaiting further news from DEFRA regarding the consultation carried out last Autumn regarding the proposals to reform the system for registering new Town or Village Greens under section 15 of the Commons Act 2006.
10. The County Council is still awaiting the outcome of this consultation from DEFRA and there is no indication as yet as to when DEFRA intends to publish its conclusions. These will of course be reported to the Committee in due course.

Recommendation

11. 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
(24th January 2012)**

Description	Parish	Member(s)	Outcome
Broadstairs Cricket Ground	Broadstairs	Mr. B. Hayton Mr. R. Bayford	ACCEPTED in part and registered on 16/04/12
Land at Mountfield Road	Meopham	Mr. M. Snelling	REJECTED on 20/03/12

Forthcoming Public Inquiries

Description	Parish	Member(s)	Details
Grasmere Pastures at Whitstable	Whitstable	Mr. M. Harrison Mr. M. Dance	Reconvenes on 18/06/12 at Whitstable Castle
Land known as Long Field at Angley Road*	Cranbrook	Mr. R. Manning	Commences 04/09/12 at Unity Hall, Hawkhurst
Seaton Meadow	Wickhambreaux	Mr. M. Northey	Commences 12/11/12 at Ickham Village Hall
Land at Woodland Road	Lyminge	Ms. S. Carey	Commences 01/10/12 (local venue TBC)

**Note that this case has been referred to the Planning Inspectorate for determination.*

Outstanding applications to be resolved

Description	Parish	Member(s)	Status
Round Wood at Walderslade	Boxley	Mr. P. Carter	On hold at applicant's request
The Downs	Herne Bay	Mrs. J. Law	Awaiting Inspector's report following Public Inquiry
Land known as Fisherman's Beach	Hythe	Mr. C. Capon	Under investigation
Scrapsgate Open Space	Minster-on-Sea	Mr. A. Crowther	Under investigation
The former airfield	Lympne	Ms. S. Carey	Under investigation
Rammell Field	Cranbrook	Mr. R. Manning	Under investigation
Chaucer Field (at the University of Kent campus)	Canterbury	Mr. G. Gibbens	Under investigation
Sandgate Escarpment	Sandgate	Mr. T. Prater	Under investigation
Land at Duncan Down	Whitstable	Mr. M. Harrison Mr. M. Dance	Under investigation
Land at Cockreed Lane	New Romney	Ms. C. Waters	Under investigation
The Glebe Field	Goudhurst	Mr. A. King	Awaiting investigation
The Cricket Field	Marden	Mrs. P. Stockell	Awaiting investigation
Land at Ursuline Drive	Westgate	Mr. R. Burgess	Awaiting investigation
Land at Bishop's Green	Great Chart	Mr. J. Wedgbury	Awaiting investigation
Land at Four Acres	East Malling and Larkfield	Mrs. T. Dean	Awaiting investigation
Land at Mount Pleasant	Hildenborough	Mrs. V. Dagger	Awaiting investigation
Land at Willow Road	East Malling and Larkfield	Mrs. T. Dean	Awaiting investigation