

## KENT COUNTY COUNCIL

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### REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Margate Media Centre king Street, Margate CT9 1DA on Monday, 16 April 2012.

PRESENT: Mr M J Harrison (Chairman), Mr A D Crowther (Vice-Chairman), Mr H J Craske, Mr J A Davies and Mr S J G Koowaree

ALSO PRESENT: Mr W A Hayton

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

#### **6. Application to register land at Park Avenue, Broadstairs as a new Town Green** *(Item 3)*

(1) The Panel Members visited the application site prior to the meeting. This visit was attended by the Local Member, Mr W A Hayton; the applicant, Mr T Herron; Mr B Solly and Mr J Philpott (Broadstairs Cricket Club); Mr B Kenyon (landowner); and Mr C Cagney from Barnes Marshland (representing Mrs A Brazil – landowner).

(2) The Commons Registration Officer said that the application had been made by Mr T Herron under Section 15 of the Commons Registration Act 2006. The land in question was 3.6 hectares in size, crossed by a public footpath which ran along its south-eastern fringe. Ownership of this land was split between eight different landowners. She referred the Panel to Appendix B of the report, which showed the various individual ownership plots. She drew attention to the plot of land which was owned by Thanet DC and had been leased (for a 100 year period) to Broadstairs Cricket Club.

(3) The application had been considered by the Panel on 8 February 2011 and the decision had been taken to refer the matter to a non-statutory Public Inquiry. Lana Wood, a Counsel with great experience in Village Green Law had been appointed as the Independent Inspector. She had held the Public Inquiry in September 2011 and produced a detailed written report in January 2012.

(4) The Commons Registration Officer moved on to summarise the Inspector's findings in respect of the legal tests that needed to be met for the application to succeed. The first of these was whether use of the land had "been as of right," i.e. without force, secrecy or permission. All parties had agreed that there had been no secrecy. In respect of the question of force, the test was whether use of the land had been contentious. The Inspector had concluded that although the Cricket Club had put up some fencing, this had not been done to a sufficient extent to render use of this part of the land, use by force. Mr and Mrs Kenyon had drawn attention to the "Private Road" notice at the junction of "The Cricketers" private road and Park

Avenue. Whilst this action would have stopped use by motor vehicles, it would not have had this effect on pedestrians and cyclists. The owners of the land registered to the Greatex Investment Company had taken steps to remove children's dens and rope swings from their land. This action ensured that use of their part of the application site was contentious and therefore not "as of right."

(5) Broadstairs Cricket Club had provided the Inspector with a copy of the lease of their land from Thanet DC. They had claimed that the clause in the lease which required them to permit public access to the surrounds of the cricket field for the purposes of reasonable recreation meant that use was with permission. The Inspector had noted that this clause did not require admission to the cricket field itself and had seen no evidence that the Cricket Club had communicated the permission (which was a necessary action to make the permission effective). In addition, the Cricket Club had not attempted to regulate the access, as it was entitled to do. None of the other landowners had objected that use had been with permission.

(6) The Inspector had concluded as a result of these findings that with the exception of the land registered to the Greatex Investment Company, use of the application site had been "as of right."

(7) The Commons Registration Officer then summarised the Inspector's findings in respect of whether use of the land had been for lawful sports and pastimes. The Inspector had concluded that on all but one of the individual plots of land there had not been sufficiently regular sports and pastimes to suggest to a reasonable landowner that a right was being asserted. In some cases, she had reported that activities were attached to the Public Footpaths rather than the land itself. The exception was the land leased by the Cricket Club, where the Inspector had concluded that the land had been used for a wide variety of activities.

(8) The Commons Registration Officer continued by reporting the Inspector's findings on the question of whether use had been by a significant number of local inhabitants of a particular locality or a neighbourhood within a locality. The Inspector had accepted the applicant's identification of Park Avenue as a neighbourhood but was concerned that the applicant had specified the former Upton Ward as the locality. This was because Upton had become subsumed into the current electoral ward of Viking. A significant number of residents from the neighbourhood had used the Cricket Ground.

(9) The Inspector had also concluded that use of the Cricket Ground had taken place for a twenty year period up to the date of application. Her overall recommendation to the County Council was therefore that registration should not take place for any of the plots of land apart from the Cricket Ground. As matters stood at the time of the Public Inquiry, this area too could not be registered, but only because the applicant had not specified a valid locality. She had therefore recommended that the applicant should be given the opportunity to amend his application by identifying one. This would save a lot of time and resources, as to not register the Cricket Ground area simply because an invalid locality had been specified would simply invite another application with this flaw corrected.

(10) Having been invited to specify a different locality, the applicant had then identified the "Town of Broadstairs." The Inspector had accepted this as a valid

locality (the Town having the same boundary as Broadstairs and St Peter's TC) and had therefore recommended that the Cricket Ground area should be registered.

(11) The Commons Registration Officer said that the Inspector's findings had been sent to all interested parties for comment. The applicant had replied that he agreed that the land owned by Mr and Mrs Brazil should not be registered but considered that the private road (The Cricketers) and the land registered to Greatex Investment Company had passed all of the necessary tests.

(12) Broadstairs Cricket Club had responded by saying that it had challenged activities such as golf that were damaging to the pitch and that it had always roped off the cricket square in order to deter people from walking and playing on it.

(13) Clark Holt Solicitors (on behalf of Broadstairs Cricket Club) had responded by saying that too much leniency had been shown to the applicant. They had also reported advice they had received from Counsel to the effect that the application should fail because the applicant had not been able to show that use had been by a significant number of people from both the locality and the neighbourhood.

(14) The Inspector had been re-consulted following receipt of the comments. She had confirmed her advice that it had been correct to invite the applicant to specify a locality. She had also considered the views of Counsel employed by Clark Holt Solicitors and confirmed that, in her judgement, the question of significant use should be judged only by reference to the claimed neighbourhood. Finally, the Inspector had written that no evidence had been presented at the Public Inquiry to suggest that any part of the Cricket Ground area should be treated differently. Broadstairs Cricket Club had not provided evidence to attest that the cricket square had always been in the same place during the qualifying period or that it had been continuously roped off. As a result of these considerations, she had confirmed her recommendations.

(15) The Commons Registration Officer concluded her presentation by saying that following careful consideration of the Inspector's report and subsequent advice, she recommended that the Inspector's recommendations should be implemented.

(16) Mr Brian Kenyon (landowner) said that he was impressed by the hard work of the Cricket Club in maintaining the site. He believed that registering the Cricket Ground could lead to disruption of cricket activities. He asked who would maintain the land if the Club had to leave and urged that there should be a compromise in order to conserve the area.

(17) Mr Trevor Herron (Applicant) said that he was disappointed by the Inspector's recommendations, particularly in respect of her decision to discount children playing near the footpath where adults walked under the "lawful sports and pastimes" criteria. He explained that he had initially identified Upton Ward as the locality because this had seemed at the time to be reasonable and identifiable.

(18) Mr Christopher Cagney from Barnes Marshland spoke on behalf of Mrs Ann Brazil. He said that she was very grateful for the Inspector's detached and learned report which had covered every aspect of the evidence. He also thanked the Commons Registration Officer for her helpful work throughout the process.

(19) Mr Brian Solly (Chairman of Broadstairs Cricket Club) said that the Cricket Club had voiced concerns rather than formally objecting to the application.

(20) Mr Solly said that the cricket square had always been fenced off (as was the case for all cricket clubs) and that the Rugby pitches had never gone across it (contrary to the views of the Inspector). He was very worried by the recommendation to register the square because only that morning he had asked two boys to move off it. They had replied that they could do as they liked because they were on a village green. He therefore did not agree with Mr Herron's view that nobody would harm the square, saying that if they did, there would be nothing that the Club could do about it.

(21) Mr Solly continued by saying that Broadstairs Cricket Club coached 90 Juniors and that it played in a League that was only three steps below International Cricket. In addition, it maintained the land, regularly clearing up the rubbish which people simply threw over their fences. He asked who would care for the land if the Club was forced to move away; which was a potential consequence of a decision to register.

(22) Mr W A Hayton (Local Member) said that he could see both sides of the argument but that he did not agree with the specification of the Town of Broadstairs as the Locality. This was because most of the residents served by the Town Council did not know where the ground was, let alone use it for lawful pastimes. He asked why this land had been singled out rather than, for example, North Foreland Golf Club.

(23) The Commons Registration Officer replied to Mr Hayton by saying that the Inspector had been content to accept Broadstairs Town as the Locality because it was a recognisable administrative unit. The "Significant Number" test had been passed because the land had been used by a significant number of residents within the neighbourhood of Park Avenue within the locality of Broadstairs. There was no need under these circumstances for a significant number of residents of the locality of Broadstairs to have used it.

(24) In response to questions from Mr Craske, Mr Solly said that cricket matches had been disturbed by dog walkers and youths playing football. The square was always in the same place and had not been moved at all since the Club started using it.

(25) The Chairman asked for an explanation of what would happen in the event that the cricket field was registered. The Commons Registration Officer replied that the Supreme Court had considered this question during its deliberations on the *Lewis v. Redcar* case in 2010. The Court had concluded that the rights of the landowners and the residents would continue to exist as before. In the context of this application, the Cricket Club would still be able to assert its own use of the land.

(26) Mr Parkin, who was acting as Mr Herron's legal representative said that there was no reason why the entire Cricket field (including the square) should not be registered. It was perfectly possible for anyone to walk onto the square because the rope surrounding it was so low that it could easily be stepped over. He added that ownership of the land would remain where it was and said that he did not expect any greater use than was presently the case. There were plenty of other places for people to go to for recreation. He expected that use of the Cricket Field would

continue in the way it had always done. The members were entitled to play cricket and if anyone were to walk onto the field, they would do so at their own risk.

(27) Mr Herron said that the application had been supported by Broadstairs and St Peter's TC as well as the Broadstairs Society. This was confirmed by the Commons Registration Officer who showed the Panel a letter dated 12 May 2010 from the Town Council. This letter expressed broad support for the application but did not provide any evidence in respect of the tests set out in Section 15 of the Commons Act 2006.

(28) The Principal Case Officer said that although the Town Council had not been re-consulted since the Public Inquiry, this was not a flaw in the process because its views had been given and evaluated. Had the Town Council wished to give more detailed evidence, it could have done so at the Public Inquiry (of which it had been made aware) or at any other time. He added that the question of whether to register could only be decided with reference to the law and without emotion. The fact that the Town Council wished the application well was not a matter that the Panel was permitted to give any weight to.

(29) Mr Davies said that he did not agree with the Principal Case Officer's view because the Town Council should have been re-consulted as a matter of course in the light of the Inspector's recommendations. He was not satisfied that consultation had been fully carried out.

(30) Mr Davies then said that he was not persuaded by the Inspector's conclusions. He questioned whether Park Avenue constituted a neighbourhood and added that the length of rope and posts around the Cricket Square was an indication to the public that they should not go on it. He also noted the evidence given by the Cricket Club that although some cricket matches had been disrupted, informal recreational use by local residents had overwhelmingly deferred to the use of the land by the Cricket Club. He therefore concluded that the land had not been used "as of right."

(31) The Chairman noted that paragraphs 1.100 and 1.101 of the Inspector's report gave a detailed explanation of the reasons that she considered that use had been "as of right."

(32) Mr Craske said that he was convinced by the Inspector's views on the locality and neighbourhood tests. He had carefully read the Inspector's conclusions on the "as of right" question in respect of the cricket ground in general and on the cricket square itself. He found her reasoning compelling and would be very reluctant to disagree with it.

(33) Mr Hayton said that in most instances in Kent, a Village Green existed before Cricket was played on it. This was how it should be. In this case, the Cricket Club would find its ability to play matches compromised by people doing as they wished.

(34) On being put to the vote, the Head of Regulatory Services' recommendations were carried by 3 votes to 2.

(35) RESOLVED that for the reasons set out in the Inspector's report dated 4 January 2012, the applicant be informed that the application to register land at Broadstairs Cricket Ground and surrounding woodland has:-

- (a) been accepted in relation to the Cricket Ground (as shown on the plan at Appendix D to the report); and
- (b) been rejected in respect of the application site.