REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Westgate Hall. Westgate Road, Canterbury CT1 2BT on Tuesday, 11 September 2012.

PRESENT: Mr M J Harrison (Chairman), Mr I S Chittenden, Mr R F Manning and Mr R A Pascoe

ALSO PRESENT: Mr G K Gibbens

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

12. Application to register land known as Scrapsgate Open Space at Minster-on-Sea as a new Village Green
(Item 3)

(1) Members of the Panel visited the site before the meeting. The visit was attended by Mr Ken Ingleton (Chairman of Minster-on-Sea PC) and by Mr John Stanford and Mr Mike Young (also Minster-on-Sea PC). Mr A D Crowther, Vice-Chairman of the Regulation Committee was also present.

(2) The Commons Registration Officer introduced the application which had been made by Minster-on-Sea PC under section 15 of the Commons Act 2006. She said that the land in question (except for a small tract to the north of the sewage pumping station) was owned by Swale BC who had made no formal objection.

(3) Swale BC had confirmed that the land had been registered in their name in 1967 and had also drawn attention to a reference to the Physical Training and Recreation Act 1937 contained in the Land Registry title. This suggested that the land might have been held for recreational purposes. However, no further documentation had been produced as supporting evidence to this effect.

(4) The Commons Registration Officer then explained that the task for the Panel was to consider whether it could be shown that a significant number of the residents of a locality or of any neighbourhood within a locality had indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years up to the date of application. This meant that the Panel had to consider whether every single test contained in the Commons Act 2006 had been met. This was necessary, even though there had been no objection to the application.

(5) The Commons Registration Officer went on to consider each of the tests. She said that there had indisputably been no question of force or secrecy in the use of the site. Furthermore, there was no confirmation that the land had been held under the provisions of the Physical Education and Training Act 1937; nor was there any other

evidence that use had been with permission. She therefore concluded that use of the land had been “as of right.”

(6) The Commons Registration Officer then said that there was sufficient evidence to demonstrate that the land had been used for lawful sports and pastimes. Use had been by a significant number of people from the administrative area of Minster-on-Sea – as evidenced by the 86 user forms. This use had been taking place for well over the required 20 year period and had continued up to and beyond the date of application in November 2010.

(7) The Commons Registration Officer concluded her presentation by saying that as all the legal tests had been met, her recommendation to the Panel was that the land should be formally registered as a Village Green.

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

(9) RESOLVED to inform the applicant that the application to register the land known as Scrapsgate Open Space and Playing Field at Minster-on-Sea as a new Village Green has been accepted, and that the land subject to the application be formally registered as a Village Green.

13. Application to register land at Duncan Down, Whitstable as a new Village Green
(Item 4)

(1) The Commons Registration Officer briefly introduced the report, explaining that she had concluded that the user evidence demonstrated that the site had been used by local residents without challenge for recreational purposes for a period in excess of 20 years and that all the legal tests for registration had been met. She therefore recommended that the land in question should be registered as a Village Green.

(2) Mr Ashley Clark, the applicant addressed the Panel. He said that this was the third Village Green application at Duncan Down, and that registration would ensure that the overall size of the Village Green would be 52 acres – one of the largest in the Country.

(3) Mr Clark added that the Friends of Duncan Down had installed a footbridge across the brook in order to improve access and to enable the site to be tidied up. There had been an objection from a local resident to this activity. Once the land was registered as a Village Green, its status would be regularised and it would be properly maintained. The user evidence clearly demonstrated that the land had been used for lawful sports and pastimes for longer than the required period – so it was entirely appropriate that registration should take place.

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

(5) RESOLVED to inform the applicant that the application to register the land at Duncan Down in Whitstable as a new Village Green has been accepted, and that the land subject to the application be formally registered as a Village Green.

14. Application to register land known as Chaucer Field at Canterbury as a new Village Green
(Item 5)

(1) Members of the Panel visited the application site before the meeting. This visit was attended by the applicant, Mr Richard Norman; representatives from the University of Kent (the landowners); Mr G K Gibbens (the local Member) and some 25 members of the public.

(2) The Commons Registration Officer introduced the application which had been made under Section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2008. The application had been accompanied by 262 user evidence questionnaires together with detailed statements of use from the applicants, photographs, a map showing the locality, a newspaper article and a list of facts and figures relating to St Stephen's ward in the city of Canterbury. Letters of support had also been received from 85 local residents and students at the University.

(3) The Commons Registration Officer said that the University of Kent as the landowner had objected to the application. They had claimed that use of the land for lawful sports and pastimes had not been by a significant number of residents of the locality; that use of the site had been with permission; and that such use as had occurred had been confined to public footpaths and "desire lines".

(4) The Commons Registration Officer then said that it was the University's contention that signs had been erected at some point between November 1989 and April 1990 at each entrance to the University (including Chaucer Field). These had stated that the land was private property and that access was by way of a revocable licence. Since then, these signs had often become illegible, but had also been replaced from time to time. The University also believed that the land was unattractive and unsuitable for lawful sports and pastimes as much of it was densely covered in trees, whilst other parts had been used to take a hay crop.

(5) The Commons Registration Officer then referred to Appendix D of the report which contained 11 statutory declarations from current and former University employees. Their evidence was that notices had been in place at various times (explaining that use was by revocable permission) and that the land was mainly used as a short cut to and from the University. Any other use (such as by dog walkers) had been in exercise of existing rights of way over the application site.

(6) The Commons Registration Officer went on to consider the legal tests, each of which had to be met in full for registration to take place. She explained that the task for the Panel was to consider whether it could be shown that a significant number of the residents of a locality or of any neighbourhood within a locality had indulged as of rights in lawful sports and pastimes on the land for a period of at least 20 years.

(7) The first test was whether use of the land had been as of right. It was agreed by all parties that use of the land had not been by force or stealth. However, it was far more difficult to evaluate whether it had been with permission (and therefore "by right"). A number of the user evidence questionnaires had been submitted by students and employees of the University. It could be persuasively argued that their

use of the site enjoyed implied permission as the University would have no reason to challenge it.

(8) There was a dispute between the applicants and the landowner over the effectiveness of the Notices, which the University said it had erected in 1990. The evidence given by objectors in Appendix D indicated that they had been visible and replaced from time to time. The applicants, on the other hand, did not accept that these Notices had been sufficiently visible at any point during the qualifying period (beginning in 1991) to indicate to users of the site that this use was with permission. The Commons Registration Officer said that this conflict in evidence could only be clarified through the mechanism of a non-statutory public inquiry, where the claims and counter-claims could be tested.

(9) The Commons Registration Officer then said that the same thing could also be said in respect of evidence given by users about the type of use. For instance, many people had claimed to have walked or dog-walked on the land. It was not clear whether these activities had taken place on the footpaths and linear rights of way (which would have been "by right") or more generally on the land as a whole.

(10) The Commons Registration Officer therefore said that she would not be in a position to conclude whether use of the land had been "as of right" until the evidence in respect of the Notices and walking areas had been examined in detail.

(11) The Commons Registration Officer then turned to the question of whether the land had been used for lawful sports and pastimes. The University claimed (in opposition to the user evidence) that the only activities on the land had been those in relation to the footpaths and linear rights of way. They disputed that there had been such activities as picnicks or games. This was another question which would need careful examination.

(12) The Commons Registration Officer went on to consider whether use of the land had been by a significant number of inhabitants of a particular locality or neighbourhood within a locality. The applicants had specified the City of Canterbury as the locality and the four neighbourhoods of the St Michael's Road/Salisbury Road Estate, the Harkness Drive estate, the Whitstable Road/St Thomas Hill area and the Roper Road area. It was likely that at least one of these areas would meet the neighbourhood criteria. Use seemed to be by a sufficient number of people for it to be classified as "significant." This conclusion was still a tentative one, as it would depend on the Inspector's findings in respect of the type of use and the "as of right" questions.

(13) The Commons Registration Officer said that the application had been well made within the two year grace period set out in Section 15 (3) of the Commons Act 2006. The site had also clearly been used for recreational purposes throughout the 20 year period – albeit that the question of whether this use qualified for the purposes of registration remained to be clarified.

(14) The Commons Registration Officer concluded her presentation by saying that she was recommending reference to a non-statutory Public Inquiry as this was the most appropriate way to resolve the disputes in evidence and reach a sound decision.

(15) The Panel Members indicated that, having read the papers and heard the presentation from the Commons Registration Officer, they were strongly minded to agree to hold a non-statutory Public Inquiry. The Chairman therefore asked all parties whether they still wished to address the Panel and, if so, to consider whether they needed to go into great detail.

(16) Mr Richard Norman addressed the Panel on behalf of all the applicants. He said that he lived in St Michael's Place and had been a Professor of Philosophy at the University until 2006. He then outlined the applicants' views on each of the tests.

(17) Mr Norman said that it was the applicants' contention that there was a huge body of evidence to demonstrate that the site had been used for lawful sports and pastimes and that this use had not been confined to use associated with the public rights of way. It therefore followed automatically that this use had been by a significant number of inhabitants of a particular locality or neighbourhood in a locality. It was uncontentious that this use had continued up to March 2011 and that the application had been made well within the required two year grace period. Use had clearly taken place for well over the specified twenty year period.

(18) Mr Norman then said that there was no question of the site having been used by force or secrecy. The question that remained to be answered was whether use had been with permission. The signs which Members of the Panel had seen that morning were irrelevant as they had taken erected after the qualifying period. Those signs which had been put up in 1989/90 before the qualifying period had started had become illegible and had deteriorated because they had not been maintained. It was therefore contended that the landowners had acquiesced in "as of right" use. The applicants would be providing the Public Inquiry with photographic evidence to conclusively demonstrate this point.

(19) John Karras QC spoke on behalf of the landowner. He said that the University was in full agreement with the recommendation in the report. The landowner was not claiming that there had been no recreational use at all. The questions were whether this use could be claimed to have been by a significant number of people from a locality or neighbourhood within a locality; and whether the signs had at times been sufficiently visible to demonstrate that use was with permission. There was insufficient evidence available to the Panel at this time to enable it to reach a fully informed conclusion, and there needed to be independent scrutiny before it could do so.

(19) Mr Karras went on to say that the evidence given by Mr Brearley in Appendix D strongly suggested that the permissive signs had been in place since 2002. Mr Czarnomski had given evidence to say that there had been signs in place at every entrance since 2005.

(20) Mr Karras said that he had asked on behalf of the landowner for unredacted copies of the user evidence and was pleased to say that he had received an assurance that these would be made available for the Public Inquiry.

(21) Mr G K Gibbens (Local Member) said that he had no involvement in making the application. He had, however, personally used the area for a 13 year period, particularly for dog walking.

(22) Mr Gibbens continued by saying that he had been able to wander at will on the land without fear of challenge and with no restriction at all. Many people had given evidence that they had carried out other lawful sports and pastimes apart from walking. This included tobogganing in the part of the site known as the "bomb crater" (although he had personally never participated in this particular activity). Use of the site had been by the residents of St Stephen's Ward in Canterbury. Many people claimed to have used the site for 40 years. There was no doubt, too that the twenty year test had been met and that the application had been made within the grace period prescribed by Law. He asked the Panel to agree to the recommendation to hold a non-statutory Public Inquiry.

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

(24) RESOLVED that a non-statutory Public Inquiry be held into the case to clarify the issues.