

KENT COUNTY COUNCIL

REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Council Chamber, Shepway District Council, Castle Hill Avenue, Folkestone CT20 2QY on Tuesday, 19 February 2013.

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

ALSO PRESENT: Ms S J Carey

IN ATTENDANCE: Ms M McNeir (Public Rights Of Way and Commons Registration Officer) and Mr A Tait (Democratic Services Officer)

UNRESTRICTED ITEMS

5. Application to register land at Mount Pleasant at Hildenborough as a new Village Green (Item 3)

(1) The Commons Registration Officer said that the application for voluntary registration of the land had been made under Section 15 of the Commons Registration Act 2006 which allowed the owners of the land (Hildenborough Parish Council) to apply for to register it as a Town or Village Green.

(2) The Commons Registration Officer referred to the report for a description of the site layout and also tabled colour photographs of the land in question. She added that the Local Member, Mrs V J Dagger had expressed her full support.

(3) The Commons Registration Officer then said that the application passed the two necessary tests in that the land was wholly owned by Hildenborough PC and that the relevant locality was the parish of Hildenborough. She therefore recommended that registration should take place.

(4) The Panel unanimously agreed the recommendations.

(5) RESOLVED that the applicant be informed that the application to register the land at Mount Pleasant has been accepted, and that the land subject to the application be formally registered as a Village Green.

6. Application to register land at Woodlands Road at Lyminge as a new Village Green (Item 4)

(1) The Panel Members visited the site before the meeting. This visit was attended by the applicant, Mr Steven Huntley and by some 5 members of the public.

(2) The Commons Registration Officer introduced the application which had been made under Section 15 (1) of the Commons Act 2006. It had been objected to by

Cripps Harries Hall LLP on behalf of the Tory Family who had been the landowners at the time the application had been made. The Regulation Committee Member Panel had originally considered the application on 15 November 2011 and had resolved to refer it to a non statutory public inquiry in order to clarify the issues.

(3) The Commons Registration Officer then said that the landowners had gifted the land to Lyminge Parish Council shortly before the public inquiry was due to begin. The Parish Council had decided not to present any evidence. As a result, the Inspector had decided that it would not be necessary to hold a public inquiry and that he would produce a report based on the written evidence before him. This report was contained as an Appendix to the agenda papers.

(4) The Commons Registration Officer moved on to explain the Inspector's conclusions (which she shared) on the legal tests which needed to be met for registration to take place. The first of these was whether use of the land had been "as of right." Use had clearly not been by force or secrecy; the question remained as to whether use had been with permission. The Inspector's conclusion had been that although permission had indeed been granted for specific activities such as the annual bonfire, there had been no evidence that this had led to members of the public being excluded from any part of the field whilst they were taking place, as the landowners would have needed to have done if they wished to convey the message that use of the land was generally with permission.

(5) The Inspector had also considered the implications of the recorded Public Rights of Way which crossed the site. He had discounted such use for the purposes of reaching his conclusions. Having done so, he had formed the view that there was sufficient evidence to demonstrate that the use of all the land had been sufficiently widespread for him to conclude that use of the application site had been as of right throughout the period in question.

(6) In respect of whether use of the land had been for the purposes of lawful sports and pastimes, the Inspector had been satisfied that there was a great deal of evidence of a wide variety of activities throughout (and beyond) the period in question. He had therefore concluded that this test had been met.

(7) The Inspector had agreed that the parish of Lyminge was a qualifying locality and that there was no need to attempt to identify a neighbourhood within it. He had therefore moved on to consider whether a significant number of inhabitants of the locality had used the site for lawful sports and pastimes. His conclusion had been, on the balance of probability that (even when excluding use of the Public Rights of Way) there had been sufficient use of the site for such purposes for it to be described as "general" rather than "infrequent or sporadic." The Inspector had therefore come to the view that this test had been met.

(8) The Inspector had also agreed that use had continued for over twenty years up to the date of the application.

(9) The Inspector had concluded as a result of his investigations that all the necessary legal tests had been met and had recommended that the land should be registered.

(10) The Commons Registration Officer explained that whilst it would have been possible for her to have assessed the paperwork, the Inspector had already been instructed to carry out his research. She confirmed that her view was that the Inspector had reached the correct conclusion. She therefore recommended accordingly.

(11) Mr Steven Huntley (applicant) thanked the Commons Registration Officer for the report. He added that the people from the parish of Lyminge had provided a lot of information in order to support the application.

(12) Ms Carey (Local Member) said that the Tory Family had been very good owners of the land. The Parish Council would be able to precept the upkeep of the land to those who benefitted from it.

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

(14) RESOLVED that for the reasons set out in the Inspector's report dated 29 November 2012, the applicant be informed that the application to register the land at Woodland Road at Lyminge has been accepted and that the land be formally registered as a Village Green.