

Update from the Commons Registration Team

A report by the Head of Regulatory Services to Kent County Council's Regulation Committee on 3rd September 2013.

Recommendation:

I recommend that Members consider the report and note its contents

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. Due to the large number of other meetings taking place following the elections and the summer holiday period, there have not been any Regulation Committee Member Panel meetings held since the last meeting. However, two meetings are due to take place later this month and early next month, at which the Panel will consider five applications in the Tunbridge Wells and Ashford areas (see **Appendix A**).
3. There has, however, been a decision by the Planning Inspectorate in respect of the application referred to it due to the County Council's interest in the outcome of the application in its capacity as both landowner and prospective developer. The Planning Inspectorate has rejected the application on the basis that it was not made within the required two year period of grace from when use of the application site ceased to be 'as of right'.
4. Since the last meeting, Public Inquiries into the New Romney application and the Hythe application have taken place and the Inspectors' reports are awaited. These cases are likely to be referred back to a meeting of the Member Panel for final decision later this year. Further Public Inquiries are due to take place later this year at Marden (w/c 11th November 2013) and Westgate (w/c 18th November 2013).
5. There are currently 19 applications awaiting determination, of which 17 are currently under investigation. Six of those cases are currently involved in the Inquiry process (either due to be heard or awaiting an Inspector's report) and five cases are due to be considered by a Member Panel within the next few weeks.
6. This year, for the first time in several years, the County Council has experienced a reduction in the number of Village Green applications being made and the rate has slowed from approximately one per month to one every six to eight weeks. The reduction is due in part to recent legislative changes introduced by the Growth and Infrastructure Act 2013 that now prevent village green applications from being made in cases where the land the subject of a planning application or has been identified for development in a Local or Neighbourhood Plan.

Recent legislative changes

7. At the previous meeting Members considered a report setting out the changes brought into force on 25th April 2013 by the Growth and Infrastructure Act 2013 in relation to the restrictions on the right to apply for village green status. The report also referred briefly to other changes due to come into force later in the year, and the County Council has now been provided with more detailed information regarding those changes.

8. The first change is the reduction of the period of grace during which a village green application can be made. Currently, by virtue of section 15(3) of the Commons Act 2006, applicants have a two-year period within which to make their application once use of the application site is challenged in some way (e.g. the erection of fencing or notices) so that any subsequent use is no longer 'as of right'.
9. The new provision (introduced by section 14 of the Growth and Infrastructure Act 2013) will come into effect on 1st October 2013¹. After that time, applicants will be required to make their village green applications within one year from the date upon which 'as of right' use ends. This will require applicants to respond more quickly to any challenges to recreational use by the landowner and they will need to prepare and submit their applications sooner.
10. The second change, which also comes into effect on 1st October 2013, is the introduction of a system of 'landowner statements' which will enable a landowner to deposit with the County Council a plan showing the extent of his ownership and an accompanying statement which will have the effect of bringing to an end any period of 'as of right' recreational use. The County Council will be required to keep a register of such statements and, when a landowner statement is received, the County Council will be required to publicise it by making a copy of the statement and plan available in the register and erecting notices on site to bring the attention of any recreational users to the fact that the landowner has made the statement. The one year period of grace referred to above will start running from the date that the statement is made, and any prospective applicants will need to ensure that their village green application is made within that one year period.
11. The system of landowner statements is being introduced to give landowners an opportunity to allow recreational use (if any) of their land to continue whilst preventing any formal legal rights from being acquired in the future. It is likely to be of particular interest to large landowners (e.g. developers) who hold land with a view to some alternative future use but who either do not have the means of fencing off each and every piece of their land or who simply do not wish to prevent local people from engaging in recreational activities whilst they have no immediate plans for the land.
12. It is worth noting that this system already exists in relation to Public Rights of Way (where it is known as a 'section 31(6) deposit' under the Highways Act 1980). Currently, it is a service that is offered free of charge in relation to rights of way but, in recognition of the amount of work involved and the significant benefit to the landowner in protecting his land, the Regulations² provide for the County Council to now charge a 'reasonable fee'.

Recommendation

13. I RECOMMEND Members consider the report and note its contents

Background documents:

Appendix A – Schedule of Village Green applications

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¹ By virtue of Article 6 of the Growth and Infrastructure Act 2013 (Commencement No. 2 and Transitional and Saving Provisions) Order 2013 (SI 2013/1488)

² The Commons (Registration of Town or Village Greens) and Dedicated Highways (Landowner Statements and Declarations) (England) Regulations 2013 – available at:
<http://www.legislation.gov.uk/uksi/2013/1774/contents/made>