

KENT COUNTY COUNCIL

REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Ripple Village Hall, Pommeus Road, Ripple CT14 8JA on Tuesday, 26 November 2013.

PRESENT: Mr M J Harrison (Chairman), Mr S C Manion (Vice-Chairman), Mr M Baldock and Mr C W Caller

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

UNRESTRICTED ITEMS

19. Application to register land known as Coldblow Woods in the parish of Ripple as a new Town or Village Green (Item 3)

(1) Members of the Panel visited the application site before the meeting. This visit was attended by Mr R Chatfield (applicant), the landowner, Mr N Fielding (with Rhodri Price-Lewis QC and Ms J Laver - Fuller Long Planning Consultants) and some 20 members of the public.

(2) The Commons Registration Officer began her presentation by saying that the application had been made by Mr R Chatfield under section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2008. The application had been accompanied by 124 user evidence forms and other evidence (including Land Registry searches, a detailed history and use of the site, photographs showing various activities taking place on the site and a letter from Ringwould Cricket Club). A further 202 user evidence forms had subsequently been submitted.

(3) The Commons Registration Officer went on to set out the case put forward by the applicant. This was that the site consisted of two plots of land. The northern section had been owned by the MoD until it was sold to Ledger Farms in the 1970s. The southern section had also been owned by the MoD until being sold to a local family in 1992. The current owner of the southern section, TG Claymore had erected barbed wire and taken other action to restrict access in August 2012. Up to this point, the applicants claimed that residents had enjoyed unrestricted access and use of the site for more than 30 years.

(4) The Commons Registration Officer then described the responses from consultees. Ripple PC had indicated that it neither supported nor opposed the application. Deal TC has written in support, stating that the local population had made continued use of the land for lawful sports and pastimes for many years and that this activity had remained unchallenged until very recently. A petition containing over 1700 signatures in support of the application had also been received (although this was of little value as evidence of use). The Local Member, Mr S C Manion had given a neutral response. There had also been over 100 e-mails and letters of support as well as a letter of objection from a member of the public.

(5) The Commons Registration Officer continued by saying that the landowners were represented by Fuller Long Planning Consultants who had objected to the application on the grounds that informal use of the site had been sporadic and insufficient to notify a reasonable landowner that a public right was being asserted; that there had been a break in the twenty year period of use in 1999/2000 when the land had been occupied by travellers; that the alleged use had only been attested by some 2% of the local population, which was not a significant number; that use of the land had been by stealth to a significant degree; and that any use had been contentious and therefore by force as the landowners had done everything that was reasonably possible to stop unauthorised use through fencing, signage and challenges.

(6) The landowners' objections had been supported by six statutory declarations. The Commons Registration Officer summarised this evidence which was that the southern section had been owned by the MoD until it was sold to Mr Luckhurst in November 1992, three months into the material period. Whilst in the ownership of the MoD the land had been securely fenced with locked gates and "No Admittance" signs along the boundary. The land had actually been advertised as "fenced" for the purposes of the auction when Mr Luckhurst had purchased it. From 1993, openings had started to appear in the fencing and chains and padlocks had been stolen. Replacement fencing and padlocks had been provided up to 1996 when Dover DC had issued a direction prohibiting fencing of the land. The land had then been occupied by travellers in 1999/2000 which would have provided a disincentive to informal recreation.

(7) The statutory declarations had also given evidence in respect of the northern section of the land. This was that Mr Ledger, the landowner had made regular visits to the area. He had become aware of the use of the woodland and had attempted to discourage use by spreading slurry in the woodland on numerous occasions and by closing gaps in fencing and erecting earth banks. This was because he had been concerned about possible damage to crops on the adjacent field (which he also owned).

(8) The Commons Registration Officer moved on to consideration of the individual tests for registration to take place. The first of these was whether use of the land had been "as of right". She said that the landowners' position and supporting evidence was that the land had been securely fenced in the early 1990s with no public access being permitted. After acquiring the land, the landowners had attempted to prevent use by erecting fences, spreading slurry, using tree trunks and earth banks to bar access and by challenging people who used the land. Dover DC had prohibited fencing on the land in 1996. This had led to anti-social behaviour and the occupation of the site by travellers in 1999. In the early 21st century, a ditch and bund had been constructed to restrict access. The landowners' contention was therefore that they had taken every reasonable step to deter access to the site but that their efforts had been met with vandalism.

(9) The Commons Registration Officer then said that the applicant's evidence differed in many ways from that of the landowners. He said that the site was bordered on all sides by public rights of way or by Coldblow Road, and that this had led to a significant number of residents entering the land through an easy access. Furthermore, there was a lack of fencing between the northern and southern sections

of the land, permitting people to pass unobstructed between them. There had never been any fencing around the northern plot, whilst the chain link fencing around the southern section had been broken down or had fallen down well before the MoD had vacated the land in 1992. Access had been free and easy until late 2012 when barbed wire and earth ramparts had been erected by the owner of the southern section.

(10) The applicant had provided two pieces of evidence to support his contention of general usage. An aerial photograph dated 2008 showed well-defined tracks across the whole grassland area, whilst the Dover DC "Statement of Reasons" of 1996 (which prohibited the erection of fencing) described the land as "*mainly neglected grassland and, apparently used by the general public informally.*"

(11) The applicant had also refuted the landowners' evidence of challenges to use having been made. He stated that the gap described by the applicant had only been barricaded to prevent access and damage to crops. This had not prevented access to or within the woodland. He also stated that although slurry had been spread on the adjacent field, this had not happened in the woodland and that it would not have been possible for a tractor or slurry tanker to access it.

(12) The applicant had also commented on the landowners' contention that the land had been secured by fencing and notices during the period when it was MoD property. He noted that the landowners' witnesses had provided various versions of the alleged wording on the signs and considered it unlikely that they would have been maintained after the MoD had ceased to actively use the site in the late 1970s. A number of user evidence questionnaires had referred to notices on the site but none of them had forbidden entry. Meanwhile, contemporaneous evidence from the 1990s strongly suggested that the fencing had not been at all secure during this period. It seemed highly improbable to him that the fencing could have deteriorated during the period 1992 to 1996 when Dover DC's Statement of Reasons had described the state of the land as "neglected."

(13) The Commons Registration Officer concluded her analysis of the "as of right" test by explaining that when a serious conflict of factual evidence of this nature occurred, the officers did not have the powers to undertake any further investigation themselves. It was therefore not possible at this stage to conclude whether use of the site had taken place "as of right."

(14) The Commons Registration Officer turned to the question of whether use of the land had been for the purposes of lawful sports and pastimes. She said that although some of the use had been associated with the public right of way, there was sufficient evidence for her to conclude that, due to the range of recreational activities, this test appeared to have been met.

(15) The next test was whether use had been by a significant number of inhabitants of a particular locality, or a neighbourhood within a locality. The Commons Registration Officer said that this test had been met because the administrative parish of Walmer was a qualifying locality and the volume of evidence submitted strongly suggested that the land was in general use by the local community during the relevant period.

(16) The Commons Registration Officer briefly explained that the application had been made in November 2012 which was well within the period when use had been challenged in August of that year by prohibitive notices and the erection of barbed wire fencing. The application had therefore been made within the two year grace period set out in the Commons Registration Act. The land had also been in use for longer than the required period of 20 years. This meant that the final two tests had been met, subject to the question of whether this use had been “as of right.”

(17) The Commons Registration Officer concluded her presentation by saying that the ability of the land to be registered as a Village Green hinged on the question of whether the use of the site had been “as of right.” The most effective way of establishing the answer to this question was through the mechanism of a Public Inquiry, enabling the evidence to be tested by an independent Inspector who would produce a report on his or her findings to the Registration Authority. She therefore recommended accordingly.

(18) Mr Baldock asked whether the Panel was entitled to register part of the land. He suggested that the Panel could decide to register the northern section. The Commons Registration Officer replied that it was open to the Panel to register only part of the application site, but she considered that there was a sufficient level of confusion in respect of the entire application site to make a Public Inquiry into the application as a whole the safest option.

(19) The Chairman asked whether, in the light of the recommendation, any of the parties wished to address the Panel. The applicant, Mr Chatfield said that he did not wish to speak beyond confirming that the records he would be relying on were held by Dover DC.

(20) Rhodri Price-Lewis QC addressed the Panel on behalf of the landowners. He said that he did not believe that the applicant had been able to prove his contention that use of the land had been “as of right.” The existence of signs and fencing demonstrated that use had been contentious and therefore by force. This was underlined by the acceptance by all parties that signs had been broken down over time. He then referred to the three months at the beginning of the twenty year period in 1992 when the land had been owned by the MoD. He said that when Mr Ledger had participated in the auction, he had been informed in writing that the land was fenced. He added that he did not accept that a significant number of residents of the locality of Walmer had used the site.

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

(22) RESOLVED that a Public Inquiry be held into the case to clarify the outstanding issues.