

KENT COUNTY COUNCIL

REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Council Chamber, Sessions House, County Hall, Maidstone on Tuesday, 17 December 2013.

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

ALSO PRESENT: Mr D Baker

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

UNRESTRICTED ITEMS

21. Application to register land at Cockreed Lane in New Romney as a new Town or Village Green (Item 3)

(1) The Commons Registration Officer tabled some aerial photographs of the application site, taken in 1990 and in 2005/06. She also tabled some street view images taken in 2009 prior to the land being fenced off.

(2) The Commons Registration Officer began her presentation by saying that the application had been made by Mrs A Jeffery under section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2008. It had been considered by a Regulation Committee Member Panel on 19 February 2013. This Panel had accepted a recommendation to refer the matter to a Public Inquiry for more detailed consideration.

(3) The Commons Registration Officer informed the Panel that the Public Inquiry had been held over 5 days in mid July 2013 and that the Inspector had produced his findings on 30 August 2013. These had reached conclusions on the legal tests, which the Commons Registration Officer proceeded to summarise.

(4) The first test was whether use of the land had been "as of right". The Inspector had concluded that use had certainly not taken place in a secretive manner. He had then considered whether use had been by force. Whilst there had been no physical force, there remained the question of whether use had taken place in defiance of a challenge by the landowner (either verbally or through the erection of prohibitory signage. The Inspector had accepted that the landowner had indeed put up signs in 1992 and in 2000. He did not, though, consider that these notices were sufficient to render use forcible. This was because they had only been standing for a period of between one day and two weeks at a time, and all the applicant's witnesses had confirmed that they had not seen them. As a consequence, the landowner could not be said to have undertaken sufficient action to inform the public at large that use was being challenged.

(5) The Inspector had also considered the question of whether use had been by permission. He had concluded that, whilst the landowner had granted permission for some uses such as dog walking and football, there was still a sufficient volume of evidence to indicate that he had not done so for the majority of users. For this reason, the Inspector had advised that use had not been by permission.

(6) The Commons Registration Officer then said that the Inspector had also looked at the question of whether use had been “by right” as a consequence of being in respect of the Public Footpath. In his professional view, the descriptions in this case of activities such as dog walking and children playing were associated with the Public Footpath and therefore needed to be discounted when assessing whether use of the application site had been “as of right.”

(7) The Inspector had then considered whether use of the land had been for the purposes of lawful sports and pastimes. He had been satisfied that the such activities had taken place, citing evidence of dog walking, horse-riding, cycling, children’s play and kite flying. He had, however, concluded that many of these activities had involved “linear use” associated with the Public Footpath. He had concluded that, once such use was discounted, the body of qualifying use had not demonstrated the requisite degree of intensity to give rise to a right of recreation.

(8) 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 Inspector had considered the applicant’s claim that the neighbourhood was the area north and northwest of the High Street in New Romney within the locality of the Town Ward of new Romney Town Council. He had found that the neighbourhood described did not possess the sufficient degree of cohesiveness to qualify as such and meet the requirement of the Commons Act 2006. He had noted that none of the landowner’s witnesses had recognised the neighbourhood as comprising an area distinct from the rest of new Romney. Furthermore, many of the applicant’s witnesses had been unable to agree with the definition put forward.

(9) Having dismissed the applicant’s defined neighbourhood, the Inspector had found it unnecessary to expressly consider whether a significant number of residents had used the land in question. The Commons Registration Officer said that the Inspector’s conclusions, made elsewhere in his report, demonstrated that he had been satisfied that the use had not been sufficient to give rise to a general right to recreate across the whole of the land.

(10) The Commons Registration Officer briefly confirmed that the Inspector had accepted that the application had been made in October 2011 which was within the two year period of grace specified in the Act. He had then found that the land had not been used in the requisite manner throughout the relevant 20 year period because the it had been cropped in 1989/90, 1990/91 and 1991/92. Almost all the applicant’s witnesses had confirmed that they would avoid the land at these times, other than for the purposes of walking along the Public Footpath or following other linear routes around the perimeter.

(11) The Commons Registration Officer then quoted the Inspector’s overall conclusions in favour of his recommendation that the application should be rejected. He had stated:

"I conclude that the Applicant has failed to demonstrate: (i) that the Land was used with sufficient intensity during the Relevant Period; (ii) that use of the Land was undertaken by the inhabitants of a qualifying neighbourhood which possessed the necessary degree of cohesiveness for the purposes of the 2006 Act; and (iii) that the Land was not (sic) used as a town or village green during the period 1989 – 1992, at which time it was in intensive agricultural use".

(12) The Commons Registration Officer informed the Panel that she had sent the Inspector's report to the applicant and objectors. The latter had not commented on the findings. The applicant had highlighted a number of issues and urged the County Council not to accept the Inspector's conclusions. She had pointed out that none of the users of the land had seen any prohibitive notices, that the Inspector had considered some of the objector's witnesses' evidence to be overstated, that the majority of the use had not been permissive, and that the requisite activities had taken place on the land. The applicant had also said that she did not accept the Inspector's conclusions that the Public Footpath had been heavily used and had asserted that some witnesses had in fact made reference to using the land when crops were being grown.

(13) The Commons Registration Officer concluded her presentation by saying that, having carefully considered the Inspector's report and the applicant's response to it, she considered that the legal tests in relation to the registration of the land as a new Village Green had not been met. She therefore recommended accordingly.

(14) Mr Caller asked whether the planting of crops always constituted a challenge to right of use. The Commons Registration Officer replied that such activity was not normally an overt challenge, but would of course have an impact upon recreational use of the land. The test was whether it would appear to a member of the public that the landowner did not believe that there was a right to recreate on the land.

(15) Mr Baldock referred to the Inspector's comments on page 6 of the report where he had quoted the *DPP v. Jones 1999* case in support of his opinion that the activities he had cited constituted rights of way type use rather than "as of right" use. He said that dog walkers would often let their dogs off the lead and allow them to roam over the entire area. The Commons Registration Officer replied that for the purposes of determining Village Green applications, the significant factor was how this would appear to the landowner. There had been a lot of very detailed cross examination during the Public Inquiry. The outcome had been that the Inspector had concluded that the landowner would have considered the activities to be related to the Public Footpath rather than as an assertion of a right to recreate.

(16) Mr M Skilbeck addressed the Panel on behalf of the applicant. He introduced himself as a retired solicitor and thanked the Chairman for agreeing to a postponement from the previously set date for the meeting. He added that Mrs Jefferey had unfortunately had another appointment that she had been unable to postpone.

(17) Mr Skilbeck then noted that the Inspector's conclusions (*quoted in 11 above*) seemed to suggest that the applicant had been unable to show that the land was not used as a town or village green in 1989 to 1992. The Commons Registration explained that this was clearly a grammatical error as the text of the report clearly

indicated that the Inspector believed that the applicant had not shown that the land had been so used.

(18) Mr Skilbeck asked for Mrs Jefferey's letter of 10 October 2013 to be tabled. A copy of this letter was thereupon given to all Members of the Panel and others present.

(19) Mr Skilbeck drew attention to the fact that none of the 15 applicant's witnesses who had given evidence at the Public Inquiry and 32 people who had completed user evidence forms had testified to having seen the signs. Two other witnesses had seen signs, but these had simply been warnings of dogs worrying sheep. He said it was inconceivable that 47 people in total could have failed to see such signs if they had been put up.

(20) Mr Skilbeck then referred to the Inspector's comments that some of the objector's witnesses had given overstated evidence. He pointed to one reference in the Inspector's report to one such witness being "*of limited assistance*". He also noted that another witness must have had credibility issues because she had stated that the ditch went around the boundary of Rolfe Lane even though there was vegetation protecting that boundary.

(21) Mr Skilbeck went on to draw attention to the Inspector's findings that the requisite types of activity had been carried out on the land and that the majority of the use had not been permissive.

(22) Mr Skilbeck said that, for the purposes of establishing a neighbourhood within a locality, the Inspector should have relied on the Local Development Framework Core Strategy which described the whole land as "North-West of New Romney." Furthermore, the Inspector had not referred in his report to two witnesses who had confirmed that, in their view, the neighbourhood existed as claimed.

(23) The Commons Registration Officer replied that a neighbourhood needed to be a cohesive entity capable of definition. The Inspector had taken the view that as local people could not agree that a neighbourhood existed, a geographical description of the area set out in a planning document was irrelevant.

(24) Mr Baldock asked whether people responding to an Inspector's question was a conclusive way of defining whether a neighbourhood existed. He considered that it was quite possible that different people could describe a neighbourhood in a different way when asked, but that this did not necessarily mean that a neighbourhood could not be defined. The Commons Registration Officer replied that this was a question of fact and degree. On occasions (such as at High Brooms in Tunbridge Wells) all parties accepted the neighbourhood proposed. It was not necessary for all parties to agree completely and precisely. On this occasion, however, there had been very little agreement at all. Even amongst the applicant's own witnesses.

(25) Mr Skilbeck asked the Panel to note that the Inspector had accepted (despite his conclusions on linear use) that 2 witnesses had walked on the land when the crops were growing on it.

(26) The Commons Registration commented on the general question of the reliability of witnesses by saying that the Inspectors had a great deal of experience in

establishing the facts through skilled questioning. This enabled them to discount evidence that was either over-zealous or mistaken.

(27) Mr D Kavanagh (Projects Manager – E&A Strategic Land) addressed the Panel on behalf of the landowner. He said that he had attended the Public Inquiry and read the Inspector's report and the witness statements. The Inspector had concluded that the application should fail, and nothing the applicant had written since, in any way suggested that his conclusions needed to be revised. He asked the Panel to support the Inspector's recommendations and bring to an end to what he considered had been a long and vexatious process.

(28) Mr D Baker (Local Member) said that he had lived and worked in Romney Marsh for 6 years. People in Romney Marsh considered that they lived in one area regardless of which part of it they happened to inhabit. He referred to the Inspector's view that some of the landowner's evidence had been overstated and asked the Panel to notice that one witness had stated that he had been able to see through the foliage whilst driving. This was clearly an example of such overstatement. Whilst he had concerns about some of the statements that had been made, he nevertheless considered that the Inspector's recommendations were correct.

(29) Mr C W Caller moved, seconded by Mr S C Manion that the recommendations of the Head of Regulatory Services be agreed,

Carried 4 votes to 0 with 1 abstention.

(30) RESOLVED that for the reasons set out in the Inspector's report dated 30 August 2013, the applicant be informed that the application to register land at Cockreed Lane in New Romney has not been accepted.