

## KENT COUNTY COUNCIL

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### REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the The Swan Public House, 75 Sea Road, Westgate-on-Sea CT8 8QG on Tuesday, 3 June 2014.

PRESENT: Mr M J Harrison (Chairman), Mr S C Manion (Vice-Chairman), Mr A D Crowther, Mr T A Maddison and Mr J N Wedgbury

ALSO PRESENT: Mr H Birkby

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

### UNRESTRICTED ITEMS

**7. Application to register land at Ursuline Drive at Westgate-on-Sea as a new Village Green**  
*(Item 3)*

(1) The Panel Members visited the site before the meeting. This visit was attended by Mr G Rickett (applicant), Mr P Luxmore (Executive Headteacher, King Ethelbert School) and Mr R Safferey (Business Manager, King Ethelbert School).

(2) The Commons Registration Officer introduced the application which had been made under Section 15 of the Commons Act 2006 by Mr G Rickett. An objection to the application had been received from King Ethelbert School. The application had been considered at a meeting of the Panel on 26 February 2013 where it had been agreed to refer the matter to a non-statutory Public Inquiry. The minutes from that meeting were contained in the report (Appendix B).

(3) The Commons Registration Officer informed the Panel that the Public Inquiry had been held over five days in November 2013 and that the Inspector's report had been received on 25 March 2014. The Commons Registration Officer then moved on to outline the Inspector's findings and conclusions in respect of the five legal tests which needed to be passed for registration to take place.

(4) The first test had been whether use of the land had been "as of right." The Inspector had concluded that use had neither been on a permissive nor a secretive basis. Although the objectors had contended that some members of staff might have verbally challenged some users, they had been unable to point to any named individuals who had been asked to leave the site. There had therefore been insufficient evidence to demonstrate that use of the land had been contentious. As a consequence, the Inspector had found that use of the land had been "as of right."

(5) The second test was whether use of the land had been for the purposes of lawful sports and pastimes. The Inspector had heard evidence from the applicant's witnesses of a range of activities taking place on site, including walking, running, photography, playing with children, blackberrying and nature observation. The

objector had claimed that such informal use had been concentrated around the perimeter and was therefore more consistent with a “public rights of way” type of use. The Inspector had found that use had taken place on the whole of the site and that it would not have appeared to a reasonable landowner to have been limited to any particular path or route. Consequently, she had concluded that use of the whole site had been of a sufficient nature and intensity to give rise to Village Green rights.

(6) The third test was whether use had been by a significant number of inhabitants of a particular locality, or a neighbourhood within a locality. The applicant had identified “the Linksfield Estate within the locality of the ecclesiastical parish of St Saviour’s, Westgate-on-Sea. The Inspector had considered whether the fact that the identified neighbourhood’s name was not used by local residents within the area. She had found that this did not bar registration of the land as a Village Green as the neighbourhood relied upon by the applicant had natural and built boundaries, facilities, socio-economic and architectural character to constitute a qualifying neighbourhood. She had quoted the judgement of Lord Hoffman in the *Oxfordshire* case in support of her findings by referring to his statement that the word “neighbourhood” had been drafted in the legislation to be deliberately imprecise and avoid technicalities, particularly in respect of an urban area.

(7) The Inspector had also been satisfied that the applicant had been able to demonstrate significant use of the site by people from the identified neighbourhood. She had noted the objector’s view that there had been less evidence of such use at the beginning of the period in question, but had considered that this was to be expected and did not materially alter her opinion that there had been sufficient use by the local residents to demonstrate that the land had been in general use by the community rather than occasional use by individual trespassers. Use had also been by people from entire neighbourhood rather than just by those whose houses immediately adjoined the site. The Inspector had therefore concluded that the test had been met.

(8) The Inspector had found that use of the land as of right had continued up to the date of the application. She had concluded that this particular test had been met and that no evidence to the contrary had been presented to her.

(9) The final test was whether use had taken place over a period of twenty years or more during the material period of 1991 to 2011. The Inspector had considered representation by the objector that there had been times when recreational users would have been excluded as a result of school activities. The Inspector had referred to the judgement in the *Betterment* case which had required exclusion to have been complete, either through the erection of barriers or by someone physically preventing entry onto the land. As this had not happened, the Inspector had found that there had been no general “physical ouster of the public” during the twenty year period and that the test had been met.

(10) As a result of her findings, the Inspector had recommended that the application site should be registered as a new Village Green because all of the tests had been met.

(11) The Commons Registration Officer said that on receipt of the Inspector’s report, she had forwarded its contents to the applicant and the objector. The applicant had not submitted any further comments. The objector had raised a number

of concerns. The entire response was contained at Appendix C to the report. In summary, the concerns were that the land would cease to be usable for school activities on safety grounds; that the Inspector had adopted an unfair and unreasonable approach; that activity had been confined to walking around the perimeter of the site; that the Inspector had been unjustified in concluding that "Linksfield Estate" was a neighbourhood; that there should be a spread of users across the claimed neighbourhood; and the Inspector had not been even-handed in her approach, leading her to reach an unreasonable conclusion.

(12) The Commons Registration Officer said that she had considered the points raised by the objector. She had asked the Inspector whether she wished to change any of her conclusions in the light of the objector's response. The Inspector had responded that she had no reason to do so. The Commons Registration Officer had noted the School's concerns over the ability of school pupils to continue to use the land in question. She said that this was not a factor that the Panel was entitled to take into consideration.

(13) The Commons Registration Officer said that there was no cause to consider that the Inspector might have been biased. She was an independent person with no personal interest in the outcome, whose expertise had been used by KCC to consider the various tests. She had given careful consideration to all representations made including whether use of the land had been "public rights of way type use." Her conclusions on this matter had been evidence-based. She added that, despite the objector's view to the contrary, there was no need in Law for an even spread of users within a neighbourhood. Nevertheless, the Inspector had concluded that use had been by people from the neighbourhood in general (as opposed to those within the immediate vicinity of the application site).

(14) The Commons Registration Officer concluded her presentation by saying recommending that registration should take place on the grounds set out in the Inspector's report.

(15) The Panel noted a letter from Roger Gale, MP which expressed support for the Inspector's views.

(16) Mr G Rickett (applicant) provided the Panel with a transcript of his presentation. He said that the field had been part of the Westgate Tennis Club in the 1930s up to the War and had been owned by Ivor Reid. It had been compulsorily purchased during the War by the MoD and used for stationing troops. It had been acquired by KCC after the War and had then been transferred to King Ethelbert School in 2010 when it became an academy. Local people had enjoyed use of the field ever since for leisure and sport for several decades. Such use had never been challenged by KCC or by the school

(17) Mr Rickett continued by saying that the purpose of applying for registration of the field had been to retain it as an open space for recreational use by all sections of the local community. The Inspector had carefully examined evidence by local residents as well as staff of the school. She had concluded that the tests had been met in full.

(18) Mr Rickett then said that the land had been used for walking, nature studies, photography, children's play, football, kite flying, family activities, picnics and dog

walking. It also contained a wealth of wildlife, including rare species of butterfly. These were closely monitored by the Butterfly Conservation Group. The area had therefore become a popular place for local residents to bring their children and grandchildren for nature study.

(19) Mr Rickett said he was sorry that the Headteacher had opposed registration and that he believed that school children could no longer use the field. Evidence given by the school's staff during the Inquiry had confirmed that organised sports had not actually taken place there for a great many years and that the school only very occasionally made any use of it at all. He felt that the school children were making far more use of the land out of school hours, since it had stopped being used formally.

(20) Mr Rickett said that he could see no legal or practical reason why the school could not use the land for its activities if it wished to do so as it would simply require parental permission which the school could hold on its files. This was what was happening at the nearby Chartfield Primary School.

(21) Mr Rickett then said that the Panel had the opportunity to do something special in a forgotten part of Westgate-on-Sea. The area would be available for children's recreation for years to come. He hoped that the school would accept the challenge of working with the local community to make it a well used Village Green. This had always been the intention of local residents, as could be seen from the beginning of the application process in 2011.

(22) Mr Rickett concluded his presentation by listing the supporters of the application. These were local Westgate-on-Sea residents, the Residents Association, local health walkers, a local GP, The Open Spaces Society, the Butterfly Conservation Group, Kent Wildlife, Monkton Nature Reserve, Thanet DC, the two local District Councillors, the local MP, the 71 local residents who had filed detailed evidence of their use of the field, and the 32 residents who had given evidence to the Inquiry (including 17 who had given oral evidence).

(23) Mr Tom King (Thanet District Councillor) congratulated Mr Rickett for the work he had undertaken to bring forward the application. He fully endorsed the efforts made by the local people to support the application and was in complete agreement with the Inspector's conclusions. He added that he did not believe that the pupils at King Ethelbert School would be precluded from using the land as it would be free for all to enjoy.

(24) Mrs E Sherratt (Kent Law Clinic) spoke on behalf of the applicants. She provided a detailed document which she summarised rather than reading the full text. She said that the Inspector had carefully considered the apparently irreconcilable views put forward by both parties. She had been very careful to explain the reasons why some of the evidence presented on behalf of the objectors was unreliable. For example, she had fully accepted the integrity of the evidence provided by the Headteacher, Mr Luxmore but had concluded that he had limited personal knowledge of the events. As a result of her meticulous work, the Inspector's conclusions were safe and unchallengeable.

(25) Mrs Sherratt then said that the Inspector had not misdirected herself in Law in terms of her evaluation of the evidence which had led her to conclude that lawful

sports and pastimes had taken place on the entire area of the land rather than simply taking place on established tracks on the perimeter of the site.

(26) Mrs Sherratt turned to the question of whether “Linksfield Estate” constituted a neighbourhood. She said that the Inspector had correctly concluded that it had grown up separately from the rest of the town both in terms of its housing and of physical separation. Her objective analysis of the evidence had brought her to the rational conclusion that it was a neighbourhood in terms of its geography, history, socio-economy and physicality. A sufficient number of witnesses had also agreed that it was a neighbourhood.

(27) Mrs Sherratt concluded her remarks by saying that the objectors had claimed that the application should fail because there had not been an even spread of users across the neighbourhood. There was, however, no legal requirement for this to be the case. It would, in her opinion, be perverse if the Panel were to overturn the Inspector’s conclusions on these grounds or on any other.

(28) Ms Colette McCormack (Winckworth Sherwood) spoke on behalf of King Ethelbert School. She said that she had concerns about the way in which the Inspector had applied the Law. This was particularly the case in respect of the “neighbourhood” findings where she had given undue weight to the applicant’s claims despite the inconsistencies in the statements given by witnesses. She asked the Panel to bear in mind that each individual test had to be passed in full before registration could take place. If the Panel were to register on the basis of the less than conclusive evidence that there was a definable neighbourhood (and despite the lack of an even spread of residents throughout it), there would be grounds for a judicial review, which would stand every chance of succeeding.

(29) Ms McCormack then said that the School was committed to providing a service to the young people and the community as a whole. She wished to underline that there were no plans for development on the land in question. However, if the application were to succeed, the School would be in the position of being responsible for the maintenance of the field but would not be able to make any use of it due to child protection issues. The School was willing to work with the community and was not averse to allowing the community to use the land by a permissive right.

(30) Mr Paul Luxmore (Executive Headteacher, King Ethelbert School) said that the School catered for 800 pupils and had always used the land and now owned it as a result of becoming an Academy. The School had spent a great deal of money defending the application as it had a public duty to do so.

(31) Mr Luxmore then said that he did not believe that the Inspector’s report and conclusions were compliant with the Law. The Inspector’s approach had been skewed in favour of the applicants throughout, to the point where she had even said that she would help the applicants make their case.

(32) The Commons Registration Officer explained that the Inspector had provided copies of relevant guidance and case law to both parties. Her main concern had been to ensure that all concerned were clear about what needed to be proven. If she had given more procedural and legal advice to the applicants than to the objectors it was because the objectors had been legally represented, whereas the applicants had not been. This should not be construed as bias on her part.

(33) Mr Luxmore then said that the entire process had been skewed from the start. He asked why the meeting place for the site visit had been Ursuline Drive and why the Panel meeting was taking place in a venue used by the applicants.

(34) Mr Luxmore said that if the land were to be registered as a Village Green, it would prevent its further use for school activities due to the child protection issues involved. He asked the Panel to apply common sense when exercising its judgement. It was patently obvious that use by the public had only taken place on the perimeter. Therefore the status quo should continue. He could see no reason why the application should succeed.

(36) During discussion of the application, Mr Maddison said that he understood the views of the Headteacher but felt that the difficulties he had put forward could be overcome. He considered that the evidence demonstrated that all the criteria for registration had been met.

(37) Mr Wedgbury said that he agreed that the criteria had been met and that he hoped that the School would take the opportunity to build stronger links with the community.

(38) Mr Manion said that, although he applauded the School for its attempts to protect the public purse. Nevertheless, the legal tests for registration had all been met.

(39) The Chairman said that he was disappointed to hear that the School had not softened its approach and that it had suggested that it might seek a judicial review. The process had been very fair and thorough and the conclusions of the Inspector had been robust.

(40) On being put to the vote, the recommendations of the Head of Regulatory Services were agreed with no opposition.

(41) RESOLVED that for the reasons set out in the Inspector's report dated 25 March 2014, the applicant be informed that the application to register land at Ursuline Drive at Westgate-on-sea has been accepted, and that the land shown at Appendix A of the report be registered as a Village Green.