

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, 29 July 2014.

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

ALSO PRESENT: Mr G K Gibbens

IN ATTENDANCE: Ms D Fitch (Democratic Services Manager (Council)) and Ms M McNeir (Public Rights Of Way and Commons Registration Officer)

UNRESTRICTED ITEMS

9. Application to register land known as Kingsmead Field in Canterbury as a new Village Green
(Item 3)

(1) The Commons Registration Officer reminded the Panel that this application had been considered at their meeting on 13 November 2013 and a copy of the report and minutes of that meeting were attached as appendices to the report. At that meeting the Panel had decided to defer consideration of the application pending the judgement of the Supreme Court in the case of R (Barkas) v North Yorkshire County Council (“the Barkas case”).

(2) The Commons Registration Officer explained that the application had been submitted by local residents in July 2012 under section 15 of the Commons Act 2006 claiming that the application site had become a Town or Village Green by virtue of the use of the land by local inhabitants for a range of recreational activities as of right for will in excess of 20 years. Copies of an aerial photograph showing the application site were available. As a result of the consultation on the application Canterbury City Council, the majority landowners, had raised an objection to the application and the details of this were set out in paragraph 9 of the report.

(3) The Commons Registration Officer explained the legal tests and how they applied to this application (paragraphs 12 – 14 of the report refer) and outlined the decision in the Barkas case (paragraphs 17 to 21 of the report refer). She then outlined the comments made by both parties on the Barkas case and the conclusions to be drawn from this case in relation to this specific application.

(4) In conclusion the Commons Registration Officer stated that in relation to the use “as of right” test the key to this was that the land had been provided by the Local Authority for recreation purposes which was a bar to this application as had been confirmed by the Barkas case.

(5) The Chairman invited Mrs S Langdown to address the Committee on behalf of the applicants. Mrs Langdown expressed her gratitude to the Panel for agreeing last

November to defer any decision their application, pending the outcome of the Barkas case in the Supreme Court. She informed the Committee that this delay has been extremely helpful as it has given the applicants and Canterbury City Council the opportunity to look at ways in which this matter might be resolved to their mutual benefit. She stated that she was pleased to report that the City Council has decided to designate that area of Kingsmead field corresponding to our application for a village green, as a Protected Open Space. She explained that it was for this reason and having regard for the public purse, that they had decided not to pursue any appeal of this Panel's likely decision based upon the recommendation before you.

(6) Mrs Langdown asked for it to be noted that in the Barkas case Lord Neuberger and Lord Carnwath, in their respective summaries both allowed for the possibility of exceptions to the general proposition that land being held in public ownership is incapable of registration as a village green. She expressed the view that no doubt these and other aspects of the current law on village greens would continue to be tested. She confirmed that as far as the applicants were concerned they were content that they had for now achieved a measure of protection for Kingsmead field.

(7) Mr Cordes, representing Canterbury City Council, was invited to speak but confirmed that, in light of the statement made by Mrs Langdown, he did not need to do so.

(8) The Chairman invited Mr Gibbens, the local member for the Kingsmead Field area, to speak. Mr Gibbens thanked the Panel for the way in which they had conducted their consideration of this application. He expressed his support for the efforts of local residents to protect this area of public open space especially as such areas were of a premium in Canterbury and should be retained. The deferment of the determination of the application had enabled the local residents to work with Canterbury City Council, who had received a clear message that people across Canterbury wanted this area to be protected.

(9) Mr Maddison moved and Mrs Dagger seconded the recommendation in the report. There were 4 Members for the motion and 1 abstention. The motion was therefore carried.

(10) RESOLVED that the applicant be informed that the application to register land known as Kingsmead Field at Canterbury as a Town or Village Green has not been accepted.

10. Application to register land known as Chaucer Field at Canterbury as a new Village Green

(Item 4)

(1) The Commons Registration Officer updated the Panel on the background to this procedural matter that was before them in relation to the application to register land known as Chaucer Fields in Canterbury as a new Town or Village Green. The application had been made by a group of local residents in April 2011 and an objection to the application had been received from the University of Kent (as landowner). This matter had been considered by a meeting of the Panel on 11 September 2011 where the Panel had agreed to refer this application to a Public Inquiry for further consideration.

(2) The Commons Registration Officer explained that as a result of that decision officers had instructed an independent Barrister (the Inspector for the Public Inquiry) experienced in this area of legislation to hold a Public Inquiry and arrangements were made for this to commence on 18 March 2014. Prior to the commencement of the Inquiry the applicants had contacted the County Council and stated that they wished to amend their application to rely on section 15(2) of the Commons Act 2006 in conjunction with section 15(7)(b), instead of section 15(3). Further details of this amendment were set out in paragraphs 12 – 27 of the report. The Commons Registration Officer explained in some detail the effect of the proposed modification and the arguments both in support of and in opposition to allowing the proposed amendment. She also referred to the case of R (Newhaven Port & Properties Ltd) v East Sussex County Council (the Newhaven case). The presumption in this case appeared to be that section 15(7)(b) applied only to post-Act permission and did not operate retrospectively.

(3) The Commons Registration Officer explained that a hearing had been held on 18 March 2013 at which both parties had made representations to the Inspector on this issue. The Inspector's conclusions and recommendations were summarised in paragraphs 28 to 31 of the report. The Inspector had expressed a preference for the University's interpretation of section 15(7)(b) of the Commons Act 2006 (i.e. that it did not apply to permissions granted prior to the commencement of the section on 7 April 2007).

(4) The Commons Registration Officer referred to the comments by the applicants and landowners on the Inspector's report as set out in paragraphs 33 and 34 of the report. The Inspector advised that having considered these comments she could see nothing within them to change the conclusion reached in her report of 22 January 2014. The Inspector had also noted that Newhaven Port & Properties had withdrawn their appeal to the Supreme Court so that there was no longer any question of adjourning further consideration of this application. The Commons and Registration Officer confirmed that the Inspector's advice accorded with DEFRA's current guidance.

(5) The Chairman referred the Committee to the recommendation set out in the report and commended the tireless work carried out by the parties involved. Mr Manion thanked the Commons Registration Officer for a clear report on a complex issue and moved the recommendation in the report. This was seconded by Mr Maddison.

(6) The motion was agreed unanimously.

RESOLVED that the Inspector's advice (contained in her report dated 22 January 2014) to proceed with this application be endorsed on the basis that section 15(7)(b) of the Commons Act 2006 does not have retrospective effect.