

Update from the Commons Registration Team

A report by the Head of Regulatory Services to Kent County Council's Regulation Committee on Tuesday 27th January 2015.

Recommendation:

I recommend that Members receive this report and note its content.

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. During the last twelve months, there have been four Regulation Committee Member Panel meetings and a total of ten Village Green applications have been considered. Of these, one was referred to Public Inquiry, five were registered as new Village Greens and four applications were rejected or otherwise not progressed.
3. Also over the last twelve months, two Public Inquiries have been held and the County Council is now in receipt of the Inspector's report for these cases; they will be referred to the Member Panel for final decision in the coming months.
4. There are currently 10 applications awaiting determination by the County Council, all of which are currently under investigation. Two new applications have been received since the last Committee meeting and, since the previous backlog has now been eliminated, it has been possible to begin work on these applications immediately.

Commons Act 2006 – implementation update

5. At the last meeting, it was reported that DEFRA were in the process of preparing new regulations to replace the previous regulations published in 2008. The Commons Registration (England) Regulations 2014 came into force on 15th December 2014. The new regulations are available online at:
http://www.legislation.gov.uk/ukxi/2014/3038/pdfs/ukxi_20143038_en.pdf
6. The effect of the new Regulations is to add Cumbria and North Yorkshire to the existing list of seven "pioneer implementation authorities" (which includes Kent). The regulations also allow five types of applications to be made across England, including applications to correct mistakes in the Registers (under section 19(2)(a) of the Commons Act 2006) and applications which allow for the removal of certain types of land that was wrongly registered as Common Land or Village Green (under paragraphs 6 to 9 of Schedule 2 of the 2006 Act).
7. Otherwise, the new regulations are substantially the same and the process for considering and determining applications to register new Village Greens is also largely unchanged. The sole exceptions are that the County Council (not the applicant) will be responsible for notifying landowners that an application has been made and the

County Council will be required to advertise an application by way of notices on site, rather than notices in the local newspaper as was previously the case.

8. Further information on the new regulations is available on the .gov website (where copies of the relevant application forms, now published by DEFRA, may also be obtained) at:

<https://www.gov.uk/common-land-management-protection-and-registering-to-use>

Village Green VG277 at Westgate

9. As Members will recall from the previous meeting, an application for permission to apply for Judicial Review had been made in respect of the County Council's decision (following a Public Inquiry before an independent Inspector appointed by the County Council) to register land forming one of the playing fields at King Ethelbert School at Westgate-on-sea as a new Village Green. The application for permission to apply for Judicial Review was made by King Ethelbert School ("the School"), as landowner, which had opposed the registration of the land as a Village Green from the outset.
10. The application for permission to apply for Judicial Review was made on the basis that the County Council had erred in law in respect of the test to be applied in relation to the 'neighbourhood' issue. The School's position was that the neighbourhood relied upon by the applicant (and accepted by the County Council on the basis of the Inspector's advice) was not a 'qualifying neighbourhood' within the meaning of the Commons Act 2006 because it did not possess the requisite degree of cohesiveness, and that the applicant had failed to demonstrate that there was a sufficient 'spread' of users throughout the qualifying neighbourhood.
11. Legal advice was sought, and on the basis of that advice, the County Council proceeded to defend the decision to register the land and formal Grounds of Defence were lodged with the High Court. Subsequently, on 10th September 2014, the County Council received notification that the Court had refused the School's application for permission to apply for Judicial Review of the County Council's decision.
12. However, shortly afterwards, the County Council received notification that the School was seeking to renew its application for permission to apply for Judicial Review. The process, in respect of a renewed application for Judicial Review, normally involves an oral hearing and thus, on 21st November 2014, all parties attended the High Court for a short hearing in front of Mr. Justice Gilbert.
13. Having heard oral representations, Mr. Justice Gilbert concluded that there was no case to answer and refused the renewed application for Judicial Review. He found that the Inspector's recommendations (upon which the County Council's decision to register the land had been based) were made on the basis of reasoned conclusions, and that the School had not raised any arguable case that the Inspector had not addressed the issue of neighbourhood cohesion correctly. He also added that he had found the School's arguments in respect of their being a spread of users across the qualifying neighbourhood 'profoundly unrealistic'.
14. No appeal has been made against the decision to refuse permission to apply for Judicial Review. Accordingly, Village Green VG277 remains on the Register and there is no further opportunity to challenge its registration.

Recommendation

15. I RECOMMEND Members receive this report and note its content.

Background documents:

Appendix A – Schedule of Village Green applications

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APPENDIX A:
Schedule of Village Green applications

**Applications resolved by the Regulation Committee (Member Panel)
since last report (2nd September 2014)**

Description	Parish	Member(s)	Outcome
None			

Forthcoming Public Inquiries

Description	Parish	Member(s)	Details
Chaucer Field (at the University of Kent campus)	Canterbury	Mr. G. Gibbens	Starts 23 rd February at the Westgate Hall, Canterbury

Outstanding applications to be resolved

Description	Parish	Member(s)	Status
The Downs	Herne Bay	Mr. N. Bond Mr. B. MacDowall	On hold pending Newhaven Beach judgement
The Glebe Field	Goudhurst	Mr. A. King	On hold pending Newhaven Beach judgement
Land at Coldblow Woods	Ripple	Mr. S. Manion	Awaiting further advice
Whitstable Beach	Whitstable	Mr. M. Harrison Mr. M. Dance	Under investigation
Recreation Ground	Hildenborough	Mrs. V. Dagger	Under investigation
Land at West Wood	Hildenborough	Mrs. V. Dagger	Under investigation
Land known as the Old Putting Green	Ramsgate	Mr. A. Terry Ms. Z. Wiltshire	Under investigation
Land at Washford Farm	Kingsnorth	Mr. J. Wedgbury	Under investigation
Land adj to Shadoxhurst Village Green	Shadoxhurst	Mr. M. Angell	Under investigation