

From: Director – Environment and Waste

To: Regulation Committee – 19th May 2009

Subject: Progress report on applications to register Town and Village Greens and the Commons Act 2006 DEFRA Pilot Project.

Classification: Unrestricted

Summary: Update Members of the current position relating to applications received by the County Council to register land as a Town or Village Green and the Commons Act 2006 Pilot Project .

FOR INFORMATION

Introduction

1. At the Regulation Committee meeting of 27th January 2009, Members requested that a summary of the current position of applications to register Town and Village Greens be provided at future meetings of the Regulation Committee.
2. I therefore attach (at **Appendix A**) a copy of the Register of current applications received by the County Council showing the present situation with regard to the investigation and decision making process. Members may wish to have verbal updates at Committee on particular sites within the Schedule. Prior notice of this would be helpful.
3. The number of Village Green applications received by the County Council for consideration continues to increase year or year. In 2005, the County Council received five applications; in 2008 this figure increased and the County Council received eleven applications. Many applications appear to have been prompted by the threat of development and this appears to be a particular problem in Kent compared with other counties.
4. There are currently twenty two applications outstanding. Of these, seven are under investigation and a further three are the subject of separate Public Inquiries later this year.
5. There is currently a waiting time of approximately six months before we are able to begin working on an application. This is due not only to the increasing volume of applications received, but also to the fact that applications to register land as a new Village Green are by their nature very complex and time-consuming to resolve. Unlike Public Rights of Way cases where there are appeal mechanisms via the Planning Inspectorate or the Secretary of State, the only means of appeal against the County Council's decision in relation to a Village Green application is by way of a Judicial Review action in the High Court. Additionally, Village Green applications are often extremely emotive locally, particularly where planning issues are involved.

Other Village Green issues

6. In addition to the above, the County Council is looking to resolve one further outstanding issue that has previously been before the Committee.

The Booth Field at Harrietsham

7. The County Council received an application in 2001 to register an area of land known as the Booth Field at Harrietsham as a Village Green. A non-statutory Public Inquiry was held in 2003. In May 2004, following submission of the Inspector's report, Members agreed with the Inspector's conclusion that this land should be added to the Register. In December 2004, the Attorney General sought proceedings in the High Court seeking removal of the land from the Register.
8. On the 24th January 2006 the matter was heard in the High Court by Justice Lightman. On the 27 January 2006 he ordered that the Village Green at the Booth Field, Harrietsham be deleted from the Register. However, a proviso was added that specific areas are reinvestigated by the Local Authority by way of a further Public Inquiry under the auspices of the original Inspector.
9. As so often happens in the law of Village Greens, matters were overtaken by further decisions of the Courts. During 2007, two cases emerged that would have a direct effect upon Justice Lightman's decision. These were ***Betterment Properties (Weymouth Limited) v Dorset County Council*** and ***High Peak Borough Council v Derbyshire County Council and Budd***. The ***Betterment*** case was subsequently referred to the Court of Appeal in 2008.
10. The implication of these decisions meant, in basic terms, that the County Council would not be able to hold a further Public Inquiry. Those cases and in particular the ***Betterment*** case in the Court of Appeal had determined that matters of this nature had to be decided by the High Court and not by a local Registration Authority. The County Council is therefore currently liaising with Counsel with regard to returning those issues relating to the Booth Field to the High Court for further consideration.

Commons Act 2006 – Pilot Project

11. Since the last verbal report given to the Regulation Committee at its January meeting, the County council is still continuing to comply with the requirements of the Project and is currently adhering to a timetable given to all Pilot Authorities by DEFRA. This is primarily to ensure that the required review of the Registers of Common Land and Village Greens is undertaken in line with Regulations accompanying the Commons Act 2006. The aim of this particular aspect of the Pilot is to ensure that the Registers accurately reflect applications that were made under the Commons Registration Act 1965 in the early 1970's. In addition, checks are being undertaken to establish whether recorded Greens or Commons have been encroached or built upon either by way of encroachment by neighbouring properties or by road schemes or other similar types of development. Computer software and the County Council's Geographical Information Systems (G.I.S.) are greatly assisting this exercise.
12. Officers from this Authority were also invited by DEFRA to assist with a training day for Members of its Planning Inspectorate. This included seven of the Planning Inspectors charged with determining Public Inquiries both in respect of this area of work and Public Rights of Way. Officers from this Authority were also asked to present to representatives of the other Pilot Authorities at a Best Practise Event held in Bristol.
13. Representatives from Parish and District Councils and those representing landowner interests were invited to a Seminar on Common Land and Town and Village Greens held in the Lecture Theatre at Sessions House on the 14th May. It is hoped that this will have

given further publicity to the Pilot Project and at the same time raised the profile of the County Council within this area of work. Almost 90 delegates accepted this invitation and Speakers included an expert from DEFRA and a leading Barrister in this area of expertise.

Recommendation

14. I RECOMMEND Members receive this report for information.

Case Officer:

Chris Wade 01622 221511

Background documents:

Appendix A - Register of applications to record land as a Town or Village Green.