

Application to register land known as The Downs Herne Bay as a new Town or Village Green

A report by the PROW and Access Manager to Kent County Council's Regulation Committee Member Panel on 17 July 2017

Recommendation: I recommend that the applicant's request to amend his application to register land known as The Downs Herne Bay be accepted.

Local Member: Unrestricted item

Introduction

1. The County Council received an application to register land known as The Downs Herne Bay as a new Town or Village Green from Mr Philip Rose ("the applicant"). The application made on 1st September 2009 was allocated the application number VGA614.
2. The Head of Countryside Access Service submitted a report to the County Council's Regulation Committee on the 13 June 2011. Members resolved the matter should be subject to a Public Inquiry.
3. The Inquiry was held over a period of eight days during 2011 and 2012. Evidence was heard, and the Inspector issued her report in 2013. Post Inquiry submissions were submitted by both the applicant and the Canterbury City Council. Advice was sought by the County Council from leading Counsel in consequence of these submissions.

The Case.

4. It became apparent there were issues needing further resolution before a final decision as to whether to register the land affected by the application could be given. The original Inspector had, in the meantime, been appointed to the Judiciary. The County Council has therefore appointed another Barrister to fulfil this role. The Inquiry is reconvened to commence on the first of October.
5. There is however, one area for which fundamental amendment is required, and one which needs amendment prior to the recommencement of the Inquiry. This relates to the qualifying Locality or Neighbourhood within a Locality. The applicant had originally identified this as the former Urban District Council area of Herne Bay. However, although this matter was not raised at the Inquiry and indeed was accepted by the Inspector, the Objector, Canterbury City Council, has only recently challenged this on the basis that such an area did not exist during the qualifying twenty-year period.
6. All parties agree with this. To remedy the situation, and to enable the reconvened Inquiry to properly proceed, the current Inspector, a senior Barrister well versed in this area of legislation, has advised the best course of action would be for the

County Council to allow the applicant to amend his application and thus cite a more appropriate Neighbourhood or Locality. In the ordinary way, such an application to amend so long after the original application would be deemed as too late. However, this is no ordinary case. In short, the application was accepted by the County Council with the applicant citing the area of the Former Urban District Council of Herne Bay as the qualifying Locality. The Inspector at the consequent Inquiry accepted that. Her reason for that however was not expanded upon. It is only just, in June 2018, that Canterbury City Council (the Objector) challenged this point.

7. Fairness to the parties is the general principle guiding registration authorities in considering whether to allow amendments to registration applications (Oxfordshire County Council v Oxford City Council 2006). The Objector in this case, Canterbury City Council agree the proposed amendment would not cause it any prejudice.
8. Had the point been taken by the City Council in its original objection or cited this at the previous Inquiry the applicant could have protected his position by applying to amend them. However, it did not do so and neither the Registration Authority nor the Inspector queried the assumption that the Application defined a qualifying locality. The Registration Authority could not properly proceed to accept the Application on the basis of that assumption, if it is a false one as the City Council, albeit late in the day, contends and fairness would seem to require that the parties be put in the position that they would have been in had the point been taken at the outset.
9. As a matter of principle therefore, the current Inspector recommends that Mr Rose should be allowed to amend the Application to rely in the alternative on another claimed locality or neighbourhood within a locality.
10. The applicant is therefore applying to amend his Application to argue in the alternative that the relevant locality is one of the following:
 - (a) The locality of the urban area of Herne Bay
 - (b) The locality of the electoral ward of Beltinge
 - (c) Herne Bay as a neighbourhood within the locality of Canterbury District
 - (d) The locality of Reculver.

Legal tests

11. In dealing with an application to register a new Town or Village Green the County Council must consider the following criteria:
 - (a) *Whether use of the land has been 'as of right'?*
 - (b) *Whether use of the land has been for the purposes of lawful sports and pastimes?*
 - (c) ***Whether use has been by a significant number of inhabitants of a particular locality, or a neighbourhood within a locality?***
 - (d) *Whether use of the land 'as of right' by the inhabitants has continued up until the date of application or, if not, has ceased no more than one year prior to the making of the application?*
 - (e) *Whether use has taken place over period of twenty years or more?*

The sole issue before members today relates to point (C).

(c) Whether use has been by a significant number of inhabitants of a particular locality, or a neighbourhood within a locality?

12. The right to use a Town or Village Green is restricted to the inhabitants of a locality, or of a neighbourhood within a locality, and it is therefore important to be able to define this area with a degree of accuracy so that the group of people to whom the recreational rights are attached can be identified.
13. The definition of 'locality' for the purposes of a Town or Village Green application has been the subject of much debate in the Courts. In the *Cheltenham Builders*¹ case, it was considered that *'...at the very least, Parliament required the users of the land to be the inhabitants of somewhere that could sensibly be described as a locality... there has to be, in my judgement, a sufficiently cohesive entity which is capable of definition'*. The judge later went on to suggest that this might mean that locality should normally constitute *'some legally recognised administrative division of the county'*.
14. In cases where the locality is so large that it would be impossible to meet the 'significant number' test (see below), it will also be necessary to identify a neighbourhood within the locality. The concept of a 'neighbourhood' is more flexible than that of a locality and need not be a legally recognised administrative unit. On the subject of 'neighbourhood', the Courts have held that *'it is common ground that a neighbourhood need not be a recognised administrative unit. A housing estate might well be described in ordinary language as a neighbourhood... The Registration Authority has to be satisfied that the area alleged to be a neighbourhood has a sufficient degree of cohesiveness; otherwise the word "neighbourhood" would be stripped of any real meaning'*².

Conclusion

The Inquiry has reopened and adjourned until October, with Directions allowing for evidence and submissions on the qualifying locality/neighbourhood issue. Accordingly, both parties have time and opportunity to deal fully with the proposed alternatives and the Registration authority would not be acting unfairly in allowing the amendment.

Recommendation

I recommend that the applicant be given permission to amend the application to rely on the alternatives set out in paragraph 10 above with the Inspector's recommendation to the Registration Authority thereon to be included in her report.

¹ *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at 90

² *ibid* at page 92

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The main file is available for viewing on request at the PROW and Access Service, Invicta House, County Hall, Maidstone. Please contact the Case Officer for further details.