

## Update from the Commons Registration Team

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A report by the Director of Environment and Waste to Kent County Council's Regulation Committee on Tuesday 26<sup>th</sup> January 2010.

### **Recommendation:**

**I recommend that the County Council's role and participation in the pilot implementation of Part I of the Commons Act 2006 be noted and that the action taken thus far is commended.**

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### **Background**

1. The law of Common Land and Village Greens is rooted deep in customary law and dates back to medieval times. During the nineteenth century, increasing awareness and recognition of the importance of such land to local communities as places for recreation gave rise to increasing statutory protection with the passing of the Inclosure Act 1857, the Commons Act 1876 and the Commons Act 1899.
2. The Commons Registration Act 1965 gave all local authorities a duty, for the first time, of registering all Common Land and Village Greens within their administrative area, as well as details of ownership and any rights of common that existed (e.g. a right to graze animals). However, the task of establishing registers proved to be complex, lengthy and costly, and the 1965 Act was flawed in many ways. For example, some land provisionally registered under the Act was wrongly struck out, whilst other land was overlooked and never registered, and many Village Greens became wrongly registered as Common Land (and vice versa) or their depiction on the Register plans was inaccurate.
3. Another major flaw was that the scope for correcting errors was very limited and, as a result, many events (e.g. new road schemes) which affected entries in the Registers of Common Land or Village Greens have not been registered and the Registers have, in consequence, become significantly out of date since they were first compiled in 1970.

### **The Commons Act 2006**

4. The recent 2006 Act is designed to replace and significantly improve the now much out-dated 1965 legislation. The most voiced criticism of the 1965 system is that much of the information recorded in the Registers under that Act were not capable of change or easy amendment and this has left Registration Authorities with a legacy of something more akin to a "Domesday Book" today rather than a useful 'Living Record'.
5. The Registers were intended to provide conclusive evidence of the facts shown as at the date of registration. Yet, the original registration took place in the late 1960s and early 1970s and, accordingly, many entries in the Registers are only conclusive of what the legal position was more than 40 years ago. Since first registration many things might have happened without being recorded in the Registers. For example rights of common might have been transferred, apportioned

or extinguished without any record in the Registers. Some Common Land may have ceased to be Common and other Common Land may have come into existence without any mention in the Registers.

6. The Commons Act seeks to bring the registration of Common Land and Village Greens into the 21<sup>st</sup> century by making a swathe of individual reforms to make the registers more useful. These include:
  - Abolishing the requirement for ownership registration (a function now covered by the Land Registry)
  - Reforming the substantive law of Commons
  - Attaching new consequences to registration and non-registration
  - Updating the registers
  - Correcting existing mistakes
  - Provision for registers to be held electronically
7. The net effect of these reforms is that the Registers will be much more useful in showing the current legal position in relation to information held by the County Council.

### **The County Council's role as a 'Pilot Authority'**

8. In order to ensure that Government Ministers can be kept fully informed in relation to any costs or problems associated with a future national roll out of this new legislation, DEFRA invited applications from English Local Authorities to participate in a pilot project.
9. Kent County Council is one of seven Commons Registration Authorities that were invited to participate. The result of this participation is that relevant provisions contained within Part I of the 2006 Act have been brought into force in these seven registration areas at least two years before the rest of the country. The pilot project began on 1<sup>st</sup> October 2008 and is due to run until October 2010.
10. In terms of budgetary provision members should note that the County Council has been allocated funding by DEFRA of £20,514 to assist the County Councils costs in participating in the pilot project. Provision has also been made within the Act for the County Council to charge fees in respect of certain applications. Currently these are set as default fees by DEFRA and have been deliberately set at a low level, but it is my intention to increase these fees to reflect actual costs within this authority (although it should be noted the fee per application cannot exceed £1000).

### **Progress**

11. A wealth of work has already been undertaken in ensuring that correct processes and decision making procedures are in place to reflect the new requirements provided for by the new legislation. The County Council's website has been upgraded, databases have been established and revised guidance notes to assist potential applicants have been produced. DEFRA have taken a number of the systems developed by Officers from this Authority and recommended use as a means of Best Practise by the other Pilot Authorities.

12. Considerable liaison has taken place, with the District and Parish Councils and other stakeholders, culminating in a seminar attended by over 100 representatives in May of last year. The seminar was successful and many compliments were received.
13. As a result of this seminar, liaison is still continuing and several meetings with Parish Councils have been undertaken over the last few months. A number of Parish Councils have been keen to ensure that relevant land within their jurisdiction has been correctly recorded.
14. As part of the legal requirement of the Act the County Council has a duty to undertake a review of the approximately 300 areas of Common Land and Village Greens currently recorded in the Register. The purpose of this is twofold; firstly to ensure that the Register correctly records the original application and secondly, but equally as importantly, to ensure that there has, since the date of the original registration, been no unauthorised encroachment or other unlawful activity over those areas of land.
15. This duty has been somewhat time-consuming but, having devised a system whereby the registered land can be checked electronically through the utilisation of Global Information Systems (G.I.S.) layers and aerial photographs, work is progressing satisfactorily and a number of issues have been identified.
16. Approximately half of the registered areas have been reviewed and a spreadsheet developed in order to record the anomalies and the action that will need to be taken in due course. Once this work is concluded the County Council will then have to initiate legal proposals in order to correct any errors or omissions.

### **Applications to register land as a new Town or Village Green**

17. In addition to the above, during the last twelve months, Officers have investigated a number of applications to register land as a Town or Village Green. A schedule of applications is attached at **Appendix A**. Members from the Regulation Committee have taken part in six Regulation Panel meetings at which decisions for these particular applications were determined.
18. This year, there are currently three Public Inquiries relating to Village Greens that have been arranged. These relate to cases where there appear to be conflicts of evidence in the written submissions of the parties that can only be resolved by way of further oral submissions and cross examination in a public forum.
19. The County Council currently has 25 Village Green applications outstanding and work will continue to resolve these applications during the coming months.

### **Recommendation**

20. **That the County Council's role and participation in the pilot implementation of Part I of the Commons Act 2006 be noted and that the action taken thus far is commended.**

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 last year (2009)**

<b>Description</b>	<b>Parish</b>	<b>Member(s)</b>	<b>Outcome</b>
Cherry Orchard Playing Field	Herne	Mr. A. Marsh	REJECTED (following Public Inquiry) on 14/12/2009
The Market Square	Aylesham	Mr. S. Manion	REJECTED on 14/12/2009
The Green at London Road	Stone	Mrs. P. Cole	ACCEPTED and registered as VG245 on 07/08/2009
Derringstone Green	Barham	Mr. M. Northey	ACCEPTED and registered as VG244 on 16/05/2009
Land at Fountain Walk at Northfleet	Gravesend	Mr. L. Christie Mr. H. Craske	REJECTED on 16/11/2009
Victoria Recreation Ground	Canterbury	Mr. M. Vye	REJECTED on 14/12/2009

**Applications referred to Public Inquiry this coming year (2010)**

<b>Description</b>	<b>Parish</b>	<b>Member(s)</b>	<b>Details</b>
The Old Bowling Green at Montefiore Avenue	Ramsgate	Mr. B. Hayton Mr. R. Bayford	Public Inquiry starts 03/02/2010
Land at Beecholme Drive, Bybrook	Ashford	Mrs. E. Tweed	Public Inquiry starts 22/02/2010
St Andrew's Gardens	Gravesend	Mr. B. Sweetland Mr. J. Cubitt	Public Inquiry starts 10/05/2010

**Outstanding applications to be resolved**

<b>Description</b>	<b>Parish</b>	<b>Member(s)</b>	<b>Status</b>
Round Wood at Walderslade	Boxley	Mr. P. Carter	On hold at applicant's request
Barton Playing Field	Canterbury	Mr. M. Northey	Awaiting legal submissions following Public Inquiry
Broadstairs Cricket Ground	Broadstairs	Mr. B. Hayton Mr. R. Bayford	Awaiting evidence from applicant
King George Playing Field	Hawkhurst	Mr. R. Manning	Take to Member Panel on 19/02/2010
Land at Chart Corner	Chart Sutton	Mr. E. Hotson	Take to Member Panel on 19/02/2010
Brickfields, off Mill Lane	Bridge	Mr. M. Northey	Under investigation
Land at Dumpton Park Drive	Broadstairs	Mr. B. Hayton Mr. R. Bayford	Under investigation
Ryarsh Recreation Ground	Ryarsh	Mrs. S. Hohler	Under investigation
The Glen	Minster-on-Sea	Mr. A. Crowther	Under investigation
Land adjacent to Barnes Car Park	Margate	Mr. R. Burgess	Under investigation
Land at Sherwood Lake	Tunbridge Wells	Mr. K. Lynes	Under investigation
Brittains Common	Sevenoaks	Mr. J. London	Awaiting investigation
The Downs	Herne Bay	Mrs. J. Law	Awaiting investigation

Former Council Offices site	Cranbrook	Mr. R. Manning	Awaiting investigation
The Allotment Field, Barton Estate	Canterbury	Mr. M. Northey	Awaiting investigation
Grasmere Pastures	Whitstable	Mr. M. Harrison Mr. M. Dance	Awaiting investigation
Land at High Street	Chiddingstone	Mr. P. Lake	Awaiting investigation
Benacre Wood	Whitstable	Mr. M. Harrison Mr. M. Dance	Awaiting investigation
Land at Preston Parade	Hythe	Mr. C. Capon	Awaiting investigation
Land at Hartley Woods	Hartley	Mr. D. Brazier	Awaiting investigation
Land known as Long Field at Anglely Road	Cranbrook	Mr. R. Manning	Awaiting investigation
Dawbourne Wood	Tenterden	Mr. M. Hill	Awaiting investigation