

Update from the Public Rights of Way and Access Service Common Land and Village Greens

A report by the Public Rights of Way and Access Service Manager to Kent County Council's Regulation Committee on Tuesday 30th January 2024.

Recommendation:

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

Introduction

1. Kent County Council is a 'Commons Registration Authority', which means that it is responsible for holding the legal records of all registered Common Land and Village Greens in the county – known as the 'Registers of Common Land and Village Greens' – and for dealing with applications to amend those Registers under the Commons Act 2006 ("the 2006 Act").
 - 1.1 The majority of applications received are made under section 15(1) of the 2006 Act, which provides that any person may make an application to the County Council to register land as a new Town or Village Green, where it can be shown that the land has been used:
 - As of right (i.e without force, secrecy, or permission);
 - For a period of at least 20 years;
 - For the purposes of lawful sports and pastimes;
 - By a significant number of the inhabitants of any locality or any neighbourhood within a locality; and
 - Use has continued up to the date of application or, where use has ceased to be as of right, it did so no more than one year prior to the date of application.
 - 1.2 It is also possible for applications to be made by landowners to voluntarily register land in their ownership as a new Village Green under section 15(8) of the 2006 Act (in which case it is not necessary to demonstrate any evidence of use). This can be useful in situations where, for example, local Councils wish to ensure their land is protected against possible future development, or where developers wish to formally dedicate open space within new developments.
 - 1.3 Additionally, the County Council is also responsible for dealing with other kinds of applications made under the 2006 Act to amend the Registers, for example where the extent of the registered Common Land or Village Green was incorrectly recorded on the Registers.
 - 1.4 Note that whilst the County Council is responsible for managing the legal records, it has no powers in terms of management or enforcement issues relating to Common Land or Village Green, which instead fall to either local Councils or landowners to deal with. Enforcement issues can also be raised by individuals by way of application to a Magistrates Court.

Current Applications

2. Over the last year, nine applications under section 15 of the Commons Act 2006 have been determined by the County Council. Of those, three applications were refused and the remaining six resulted in the successful registration of new Village Greens in Ashford, Whitstable, Loose and Boughton Monchelsea.
 - 2.1 The applications that were refused include the two extremely complex and highly contested cases at Whitstable Beach and Herne Bay (The Downs). These longstanding cases both involved lengthy Public Inquiries and a nearly 500-page Inspector's report for each matter. The deadline period for aggrieved parties to apply to the High Court for Judicial Review of the County Council's decision in either case has now passed, and no such appeal has been made.
 - 2.2 In 2023, two new applications were received to register land as new Village Green (a reduction on previous years). A further application was received¹, but returned to the applicant as the land in question was affected by one of the development-related 'trigger events' set out in Schedule 1A of the 2006 Act, such that the County Council was not able to consider it.
 - 2.3 In the summer of 2023, a Public Inquiry was held in Canterbury in respect of the application to register land at Two Fields at Westbere as a Village Green. The Inspector's report has now been received and the matter will be referred to the Regulation Committee Member Panel in the coming months for final decision.
 - 2.4 There are currently four outstanding applications to record new Village Greens (listed at **Appendix A**), two of which comprise voluntary applications by developers that are on hold pending completion of the developments (because the land cannot be registered as a Village Green until it is available for use).
 - 2.5 A further Public Inquiry is scheduled in relation to the application to register land at Bunyards Farm at Allington². This will take place at County Hall and will commence on Tuesday 19th March 2024. It is expected to last for four days, during which time the Inspector (a Barrister appointed by the County Council) will hear evidence in support of and in opposition to the application, and in due course prepare a report to the County Council setting out her findings. The matter will then be referred to the Regulation Committee Member Panel for final decision later in the year.
 - 2.6 In addition to the outstanding applications relating to Village Greens, the County Council also has three outstanding applications relating to Common Land. Two of these applications are made on the basis that the pieces of land in question were historically Common Land, but never made it onto the Registers, and they therefore seek to have the affected pieces of land formally registered as Common Land. The third application is made on the basis of an alleged error in the Register of Village Greens which may have resulted in a piece of land being mistakenly removed from the Register.

¹ A piece of land at Chattenden Court in Maidstone

² A Public Inquiry was approved by the Regulation Committee Member Panel meeting on Friday 15th September 2023: <https://democracy.kent.gov.uk/ieListDocuments.aspx?CId=182&MId=9382&Ver=4>

2.7 One of those applications is currently with the Planning Inspectorate (because it is of a type for which the Inspectorate is the 'determining authority'), and the other two will be referred to the Regulation Committee Member Panel for final decision later in due course.

Recommendation

3. I RECOMMEND Members consider this report and note its content.

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Appendices:

APPENDIX A: List of outstanding applications under the Commons Act 2006