

KENT COUNTY COUNCIL

REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Darent Room, Sessions House, County Hall, Maidstone on Friday, 15 September 2023.

PRESENT: Mr S C Manion (Chairman), Mr M Baldock, Mr I S Chittenden, Mr M C Dance and Mr H Rayner

IN ATTENDANCE: Ms M McNeir (Public Rights Of Way and Commons Registration Officer), Mr G Rusling (Public Rights of Way & Access Service Manager), Mrs K Goldsmith (Research Officer - Overview and Scrutiny), Ms H Savage (Democratic Services Officer) and Ms S Bonser (Senior Solicitor)

UNRESTRICTED ITEMS

6. Application to register land known as The Downs at Herne Bay as a new Town or Village Green
(Item 3)

This item was taken after Item 4 and before Item 6.

1. The Public Rights of Way and Commons Registration Officer introduced the report and said that the Council had received an application to register land known as The Downs at Herne Bay as a new Town or Village Green from Mr P. Rose. She explained that at the time of the application Mr Rose was a local resident in Herne Bay but had since moved to another part of the country. The application had been made under Section 15 of the Commons Act 2006 which enabled any person to apply to a Commons Registration Authority to register land as a village green where it could be shown that a significant number of inhabitants had indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years.
2. The Public Rights of Way and Commons Registration Officer explained that the matter was considered at a Regulation Committee Member Panel meeting on 13 June 2011 at which the matter was referred to a Public Inquiry for further consideration. A Barrister ("the First Inspector") was instructed to hold a public inquiry which took place in 2011/12 who advised that the site be registered as a new village green except for two small areas. KCC Officers had concerns about this approach and took a second opinion which, along with evolving case law, resulted in a long delay and the re-opening of the Public Inquiry.
3. The Public Rights of Way and Commons Registration Officer set out the officers' concerns in respect of the First Inspector's report, the findings of the Second Inspector's report and their considerations and conclusions in relation to the legal tests that were required to be met for the application to be successful.

4. The Public Rights of Way and Commons Registration Officer said officers supported the views set out in the Second Inspector's Report and recommended, for the reasons set out in the Second Inspector's report, that the application to register the land as a new Village Green should not be accepted.
5. Mr Baldock asked, in relation to Section 22(2) of the Coast Protection Act 1949, which provides a Coastal Protection Authority with a power to 'lay out public parks, pleasure grounds or recreation grounds' over land held by it for coast protection purposes, whether there was any evidence that any powers had been enacted. The Public Rights of Way and Commons Registration Officer said Canterbury City Council had made the land available for recreational purposes and therefore those using it for such were not trespassing.
6. Mr Rayner proposed, and Mr Chittenden seconded, the recommendation set out at paragraph 112 in the report.
7. The Chair put the motion set out in paragraph 6 to the vote and it was agreed unanimously.
8. RESOLVED that, for reasons set out in the Second Inspector's report dated 7 April 2022, that the Applicant be informed that the application to register the land known as The Downs at Herne Bay as a new Village Green has not been accepted.

7. Application to register land known as Whitstable Beach as a new Town or Village Green
(Item 4)

This item was taken after Item 5 and before Item 3.

Ms Sarah Woolnough of Furley Page Solicitors (representing the Whitstable Oyster Fishery Company) was in attendance for this item.

1. The Public Rights of Way and Commons Registration Officer introduced the report and said that the Council had received an application to register land known as Whitstable Beach as a new Town or Village Green from Mr P. McNally on behalf of the Whitstable Beach Campaign. The application had been made under Section 15 of the Commons Act 2006 which enabled any person to apply to a Commons Registration Authority to register land as a village green where it can be shown that a significant number of inhabitants had indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years.
2. The Public Rights of Way and Commons Registration Officer explained the matter had been going on for some time and was considered at a Regulation Committee Member Panel meeting on 19 May 2015 at which it was decided that the matter be referred to a Public Inquiry. A Barrister was

subsequently instructed to hold a Public Inquiry and the report was published on 7 April 2022.

3. The Public Rights of Way and Commons Registration Officer explained that the Application Site had previously been the subject of two applications for registration as a Village Green, both made under section 13 of the Commons Registration Act 1965 (which was the predecessor to section 15 of the Commons Act 2006), and these had been refused.
4. The Public Rights of Way and Commons Registration Officer, as set out in the report, explained the legal tests the Council must consider in determining the application and the outcome of each test based on evidence received and collated. She said for the application to be successful every test had to be met.
5. The Public Rights of Way and Commons Registration Officer discussed the Inspector's finding and explained that although Members were not bound by the Inspector's Report, officers believed the Inspector's approach was correct. Officers agreed with the Inspector's findings that the legal tests had not been met and recommended to Members, for the reasons set out in the Inspector's report, that the application should not be accepted.
6. Mr Dance informed the Panel that he was the Local Member for this application and confirmed he had taken no part in any discussions of the application and was able to approach the determination of the application with a fresh mind.
7. The Chair referred to an email from the Applicant, Mr McNally, dated 13 September 2023, which was circulated to Panel Members prior to the meeting.
8. The Chair put the recommendation set out at paragraph 117 in the report to the vote and it was agreed by the majority.
9. RESOLVED that, for reasons set out in the Inspector's report dated 7th April 2022, that the applicant be informed that the application to register the land known as Whitstable Beach as a new Village Green has not been accepted.

8. Application to register land known as Bunyards Farm at Allington as a new Town or Village Green
(Item 5)

This Item was taken after Item 2 and before Item 4.

Mr Duncan Edwards, Ms Alison Bundock, Ms Lynne Lawrence, Mr Chris Passmore, Mr Tom Cannon, and Ms Katie Rowe (on behalf of BDW Trading Ltd) were in attendance for this item.

1. The Public Rights of Way and Commons Registration Officer introduced the report and said that the Council had received an application to register an area of land at Bunyards Farm at Allington as a new Town or Village Green

from Mr C Passmore, Mr J Willis, Mr T Wilkinson, Cllr P Harper, Mr T Walker, and Mr D Edwards. The application had been made under Section 15 of the Commons Act 2006 which enabled any person to apply to a Commons Registration Authority to register land as a village green where it can be shown that a significant number of inhabitants had indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years.

2. The Public Rights of Way and Commons Registration Officer set out the location of the site and informed Members that the site was subject to a planning application which was under consideration by the local authority. She said this had no relevance on the decision being made in relation to the village green application and the two were separate legal processes.
3. The Public Rights of Way and Commons Registration Officer set out the evidence that had been submitted in support of the application and the consultations that had been carried out. She said that objection to the Application had been received from DAC Beachcroft LLP on behalf of the Landowners and BDW Trading Ltd. She explained that BDW Trading Ltd had a legal interest in the land in the form of an option to purchase and set out the reasons why BDW Trading Ltd believed the application failed to meet the requirements.
4. The Public Rights of Way and Commons Registration Officer, as set out in the report, explained the legal tests the Council must consider in determining the application, and the outcome of each test based on evidence received and collated. She said that every single test had to be met for the application to be successful. She said there were serious disputes within the evidence which officers had not been able to reconcile, and the officers' recommendation was for a Public Inquiry to be held to enable further consideration of the evidence and oral testimony to be received from witnesses.
5. Mr Duncan Edwards (Applicant) provided a statement in support of the application. He said an ecological group had been working to develop a nature route from Allington to Barming and he had been involved in drawing up the facts about the land, during which he had collected 60 witness statements. Mr Edwards highlighted key points including that fences had deteriorated over the last 20 years, and they were not sufficient to contain livestock. He said at no point did the owner take action to exclude residents and he believed hay making could be done alongside pastimes.
6. Ms Alison Bundock, a local resident, provided a statement in support of the application. She said she had lived in Beaver Road since June 2001 and had accessed the land as an extension of the open space. She said the land had been used by her family and friends for den building, playing in woods and, since 2011, for dog walking.
7. Ms Lynne Lawrence provided a statement in support of the application on behalf of a local resident who lived in Cornwall Close. She said local residents had assumed the right to walk on the land as there was not any private signage to advise otherwise or anyone maintaining the land. She

said the Importance of the land being registered as a village green could not be understated.

8. Ms Lynne Lawrence, a local resident, provided her own statement in support of the application. Ms Lawrence had lived in Cornwall Close since the spring of 2001 and had been attracted to the site due to its open access and fields nearby and used it for dog walking. She said many people used the fields for various family activities including nature spotting. She had never been told not to use the site and the fencing had deteriorated. She said the area had depth of meaning to the people in the area.
9. Mr Chris Passmore (Applicant) provided a statement in support of the application. He said he had been the chief evidence collector and had worked logically around Allington Way to establish which residents had accessed the land before making the application. He said he had emphasised to residents when asking for their submissions that it was a legal process that could be challenged. He said more evidence forms could be submitted if required. He said residents who had accessed the land since the 1980s had not been told to leave by the landowner.
10. Mr Tom Cannon (Local Member) provided a statement in support of the application. He said more evidence could have been gathered and a significant number of residents had and were using the site. He referred to the google image of an access point included in the report and said that the access points may have changed over the years.
11. Ms Katie Rowe, on behalf of BDW Trading Ltd provided a statement in objection to the application. She said that BDW Trading Ltd and the landowners opposed the application and disputed the claims that the land had been used as of right in lawful sports and pastimes for a period of at least 20 years. BDW Trading Ltd and the landowners supported the officers' recommendation that a Public Inquiry be taken so that all the evidence could be assessed.
12. Mr Baldock said he supported the recommendation of a Public Inquiry so that further evidence for the whole period could be obtained in relation to boundaries and fencing, mutual use of the land for horses and recreation, and examples of recreation use.
13. Mr Baldock proposed, and Mr Dance seconded the recommendation in the report.
14. Mr Chittenden asked for clarification regarding the planning application on the land and the Public Rights of Way and Commons Registration Officer confirmed if planning consent was granted there was nothing to stop the developer from going ahead, however, this would not be in the developer's interests in the event that the village green application was accepted at a future date.
15. The Chairman put the motion set out in paragraph 64 of the report to the vote and it was agreed unanimously.

16. RESOLVED that a Public Inquiry be held into the case to clarify the issues.

9. **Other items which the Chairman decides are urgent**
(Item 6)

There were no urgent items.