

KENT COUNTY COUNCIL

REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Council Chamber, Sessions House, County Hall, Maidstone on Wednesday, 20 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) and Ms S Bonser (Senior Solicitor)

UNRESTRICTED ITEMS

10. Application to register land at Bybrook Road/The Pasture at Kennington as a new Town or Village Green
(Item 3)

Councillor Chris Morley (Kennington Community Council), Councillor Diccon Spain (Kennington Community Council), Mr Daniel Kozelko (Barrister), Ms Sibel Ucur and Mr Paul Bartlett 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 Bybrook Road at Kennington as a new Town or Village Green from Kennington Community Council. 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 said the necessary consultations had been undertaken and evidence from residents in support of the application had been received. As set out in the report, she 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.
3. The Public Rights of Way and Commons Registration Officer discussed the evidence received in conjunction with each of the tests to be considered, but concluded, for the reasons set out in the report and explained to the Panel, that the legal tests had not been met and recommended that the application should not be accepted. She advised Panel Members that if they

considered that there were serious disputes of fact, the matter could be referred to a Public Inquiry.

4. Councillor Chris Morley (Applicant on behalf of Kennington Community Council) provided a statement in support of the application. He said the application had been submitted in the summer of 2020 during the first stage of the Covid-19 pandemic where the ability to reach out to residents to gain their views was limited. He said Ashford Borough Council had maintained the land from time to time since 1967 and the landowner had not contributed to the cost. He said the land was registered as an Asset of Community Value provided for under the Localism Act 2011 approved by Ashford Borough Council.
5. Councillor Diccon Spain (Applicant on behalf of Kennington Community Council) provided a statement in support of the application. He referred to Bockhanger, the defined neighbourhood area used within the application, and said the area was huge compared to the small area of land in question and he would expect this to affect the amount of evidence obtained. He said the age of children riding bikes was not material and the evidence submitted in respect of this pastime was acceptable. Councillor Spain highlighted that the land had been used for half a century since 1967 by residents living close to it.
6. Mr Daniel Kozelko (on behalf of the Landowner) provided a statement in objection to the application. He said he broadly agreed with the officers' report that the land should not be registered. He referred to the test that considered whether the land had been used by a 'significant number of inhabitants of a particular locality, or a neighbourhood within a locality' and said this had not been met due to the small numbers involved and insufficient evidence regarding which areas of the land were being used. He said the number of user evidence questionnaires provided in support of the application was low at just 22 and that the evidence provided was insufficient. He went on to say that no photos had been provided, and satellite photos did not show people using the land.
7. Mr Bartlett (Local Member) addressed the Panel in support of the application. He provided an explanation of the area in terms of dog walking as a lawful sport and pastime and objected to the view taken in the report that the size of the site limited this activity. Mr Bartlett said he and other local residents had big dogs and had regularly walked them on the land which he said was plenty large enough for dogs to be exercised. Mr Bartlett suggested the matter be referred to a Public Inquiry.
8. Mr Baldock said there was an argument for an alternative neighbourhood to be considered and commented, with regards to photo evidence, that what could reasonably be expected should be considered. He said sporadic events should not be dismissed as they were still usage and what community spaces were for.
9. Mr Rayner proposed, and Mr Chittenden seconded the recommendation at paragraph 61 in the report.

10. The Chair put the recommendation set out in the report to the vote and it was agreed by the majority.
11. RESOLVED that the Applicant be informed that the application to register the land at Bybrook Road/The Pasture at Kennington as a Town or Village Green has not been accepted.

11. Application to register land at Quantock Drive at Ashford as a new Town or Village Green
(Item 4)

Mr Paul Bartlett, Councillor Andrew Buchanan and Mrs Pauline Lowman 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 Quantock Drive at Ashford as a new Town or Village Green from Mr P Bartlett in his capacity as the Local Member and on behalf of the community that he represents. 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 provided an overview of the land and explained the legal tests the Council must consider in determining the application, and the criteria and outcome of each test. She said the necessary consultations had been undertaken and evidence from residents in support of the application had been received.
3. The Public Rights of Way and Commons Registration Officer explained that the land was sold at auction within days of the application being made. She said the landowner had not engaged with officers regarding the application and different steps had been taken to contact them, consultation notices had been placed on the land, and a press article appeared on Kent Online. The Public Rights of Way and Commons Registration Officer clarified that the lack of objection did not affect the outcome of the application and for the application to be successful the legal tests needed to be met.
4. Having set out those tests in connection with the evidence received in support of the application, the Public Rights of Way and Commons Registration Officer recommended to Members that, for the reasons set out in the report and explained to the Panel, the legal tests had been met and the applicant should be advised that the application has been accepted (and the land be registered as a Village Green).
5. Mr Baldock asked for clarification regarding the boundary of the land where it appeared an area had been missed off and the Public Rights of Way and Commons Registration Officer confirmed this was the plan submitted by the applicant and it was not possible to change the boundaries.

6. Mr Chittenden asked whether photos had been provided in evidence of the use of the land and the Public Rights of Way and Commons Registration Officer confirmed they had.
 7. Mr Paul Bartlett (Applicant) addressed the Panel in support of the application. He said he felt sufficient publicity had taken place to make the landowner aware of the application including an interview on Radio Kent. Mr Bartlett clarified that the boundary line on the application plan had been made freehand. He said the land was the only Asset of Community Value on the estate and served as a meeting place including public meetings in relation to the application. He said the application was timely as the Borough Council had called for sites for the next local plan and it was vital the land be registered to avoid the risk of development on the land.
 8. Councillor Andrew Buchanan addressed the Panel in support of the application. He said the Quantock Estate was almost a village in itself due to its position between main roads. He said residents who had lived there since the estate was built in the 1960s had been led to believe that the land was part of the landscaping scheme and for as long as they could remember had been maintained by the Council.
 9. Mrs Pauline Lowman, a local resident, addressed the Panel in support of the application. She said the land had been used daily by dog walkers, was a meeting place for local residents and had always been a valued space especially during the Covid-19 pandemic lockdown. She said the land had many trees with preservation orders. She said she had lived opposite the land for 52 years and it had been used by her children when they were young and was now enjoyed by her grandchildren.
 10. Mr Rayner proposed, and Mr Dance seconded, the recommendation in the report.
 11. Mr Baldock asked whether a second application was possible for the land not included within the boundary on the Applicant's plan and the Public Rights of Way and Commons Registration Officer advised that, in theory, this could be done provided that there was evidence of use available specific to those small pieces of land.
 12. The Chair put the motion set out in paragraph 46 of the report to the vote and it was agreed unanimously.
 13. RESOLVED that the applicant be informed that the application to register land at Quantock Drive at Ashford as a new Town or Village Green has been accepted, and that the land subject to the application be registered as a Village Green.
- 12. Application to register land at West Cliff Bank at Whitstable as a new Town or Village Green**
(Item 5)

Mr Mark Dance (Local Member) and Ms Rebecca Booth (Canterbury City Council) were in attendance for this item.

1. Mr Mark Dance informed the Panel that he was in attendance as the Local Member for this application and was therefore not a Member of the Panel for this item and would not form part of the decision making.
2. 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 West Cliff Bank at Whitstable as a new Town or Village Green from Canterbury City Council. The application had been made under Section 15(8) of the Commons Act 2006 which enabled the owner of any land to apply to voluntarily register land as a new Village Green without having to meet the qualifying criteria.
3. The Public Rights of Way and Commons Registration Officer provided an overview of the land and explained that, in respect of voluntary applications, there was no need for any legal tests to be met and the relevant criteria for the voluntary registration of land as a new Town or Village Green under section 15(8) of the Commons Act 2006 required only that the County Council was satisfied that the land was owned by the applicant.
4. The Public Rights of Way and Commons Registration Officer said the Land Registry search confirmed that Canterbury City Council was the owner of the land and recommended to Members that the applicant should be advised that the application has been accepted.
5. Mr Baldock asked if Canterbury City Council would have an obligation to maintain the land if they became the registered landowner, and the Public Rights of Way and Commons Registration Officer said there was no legislation specific to Village Greens that required landowners to maintain land, but they did have a responsibility under the Occupiers Liability Acts to ensure land was safe to use.
6. Ms Rebecca Booth (Applicant) on behalf of the Friends of West Cliff Bank Group made the following statement:

“We are delighted that West Cliff Bank is being considered today for village green status. The Friends of West Cliff Bank have enjoyed huge support from local residents, environmental organisations and Canterbury City Council since this project started in 2021. We were delighted in the Autumn of 2021 to have unanimous agreement from Canterbury City Council members that this tranche of land between West Cliff and the Golf Course in the town centre of Whitstable should be put forward to become a village green.

The land had been largely untended for ten years and is now a thriving habitat for plants and animals, a precious biodiversity that the Friends group has been keen to support and maintain whilst opening up this green space for the enjoyment of local residents. Getting this balance right is always difficult but the Friends group has engaged many environmental and wildlife organisations to get advice including the Butterfly Conservation Trust, Kent

Reptile and Amphibian Group, Kent Field Club, Natural Whitstable, Kent Tree and Pond Wardens and Jon Ford Environmental Consultancy. We have benefitted from comprehensive surveys and received detailed reports which have confirmed what we already knew that West Cliff Bank provides a rich and varied habitat for hundreds of native species of plants and animals. We are using this information to develop a management plan which will enable us to protect the flora and fauna on West Cliff Bank going forward.

Local residents have engaged with the Friends of West Cliff Bank from the beginning, with around 160 people joining our group. We have a core committee of 8 people who meet regularly to manage our plans and discuss future strategy. In September 2022, we started a monthly volunteer action morning which takes place on the first Saturday of the month and is open to all members of our group. Armed with tools donated by Canterbury City Council, we have concentrated on creating a single pathway across the scrub from one entry point on West Cliff to the other on the golf course causeway. The path has been cut back carefully to create minimum impact. Along the way, working with the Butterfly Conservation Trust, we have created a butterfly bed planted with sorrel and teasel to attract the elusive Fiery Clearwing and form part of a corridor for this rare moth across Kent.

Before our volunteer days, it was almost impossible to enter the land but now we have a clear route through enabling access for local people. Once West Cliff Bank has the village green status it deserves, the Friends group will be able to start fundraising to put in steps on the slopes, working with Canterbury City Council to make the land fully accessible to everyone so that the people of Whitstable can really benefit from this beautiful green corner of Whitstable.”

7. Mr Dance (Local Member) addressed the Panel in support of the application. He said he had visited the site and fully supported the application.
8. Mr Rayner proposed, and Mr Baldock seconded, the recommendation in the report.
9. The Chair put the motion set out in paragraph 19 of the report to the vote and it was agreed unanimously.
10. RESOLVED that the applicant be informed that the application to register land at West Cliff bank at Whitstable as a new Town or Village Green has been accepted, and that the land subject to the application be registered as a Village Green.

13. Application to register land at Preston Parade at Whitstable as Common Land
(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 an area of land at Preston Parade at Whitstable as Common land from the

Open Spaces Society. The application had been made under Paragraph 4 of Schedule 2 of the Commons Act 2006 which allowed for anyone to apply to register land as Common Land.

2. The Public Rights of Way and Commons Registration Officer explained the application had been briefly considered at the full Regulation Committee on 24 January 2023 where it was agreed that a decision on the matter should be deferred to enable the provision of further information.
3. The Public Rights of Way and Commons Registration Officer provided an overview of the land and explained the relevant legal tests, under Paragraph 4 of Schedule 2 of the Commons Act 2006, that the Council must consider in determining the application.
4. The Public Rights of Way and Commons Registration Officer explained that following exchanges of representations with the landowner/objector, the Applicant agreed that the land subject to the application was not capable of registration as Common Land and had requested that the application be withdrawn.
5. 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.
6. Mr Baldock declared an interest in that he was a member of the Open Spaces Society.
7. Mr Rayner proposed, and Mr Dance seconded, the recommendation in the report.
8. The Chair put the motion set out in paragraph 20 of the report to the vote and it was agreed by majority.
9. RESOLVED that the County Council agrees to the Applicant's request to withdraw the application to register land at Preston Parade at Whitstable as Common Land.

14. Other items which the Chairman decides are urgent
(Item 7)

There were no urgent items.