

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 Monday 22 April 2024.

PRESENT: Mr S C Manion (Chairman), Mr M Baldock, Miss S J Carey, Mr P Cole, and Mrs L Parfitt-Reid

IN ATTENDANCE: Ms M McNeir (Public Rights of Way and Commons Registration Officer), Mr G Rusling (Public Rights of Way & Access Service Manager), Ms S Bonser (Solicitor) and Ms H Savage (Democratic Services Officer)

UNRESTRICTED ITEMS

No substitutes

There were no apologies or substitutes.

Declarations

Mr Cole declared that he was the KCC representative on the Kent Countryside Access Forum.

Application to register land known as Two Fields at Westbere as a new Town or Village Green

(Item 3)

Mr Ian McLean and Mr Jamshid Mavaddat 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 known as Two Fields at Westbere as a new Town or Village Green from the Two Fields Action Group. 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 site was registered to four different landowners, including Mr S. Saadat. Every effort had been made by a variety of means to contact Mr Saadat, but a response had not been received.

3. The Public Rights of Way and Commons Registration Officer set out the objections that had been received, as set out in the report, including objections related to development related trigger events that are set out in Schedule 1A of the Commons Act 2006 and the High Court determined that the Council should proceed with the application.
4. The application was considered at a Regulation Committee Member Panel meeting on 2 December 2021 where Members accepted the officer recommendation that the matter should be referred to a Public Inquiry. The Public Inquiry took place during June 2023 where an Inspector was appointed by the Council to hear evidence from both sides in relation to the application. The Inspector had prepared a report setting out his findings and recommendation to the Council and this had been circulated to the Landowners and Applicant for their comments. A copy was also circulated to Panel Members for their consideration prior to the meeting.
5. The Public Rights of Way and Commons Registration Officer explained, as set out in the report, the legal tests that must be considered in determining the application, and the outcome of each test based on evidence received and collated, including the Inspector's opinion on each test. She said for the application to be granted every test had to be met in full and if one test failed, the application falls to be rejected.
6. The Public Rights of Way and Commons Registration Officer highlighted a typographical error in paragraph 20 of the report which should read "second objector's case" and not "first objector's case".
7. The Public Rights of Way and Commons Registration Officer explained that a separate application had been made, under different legislation to that of the application, in respect of the land, by Westbere Parish Council to record a number of Public Rights of Way (PROW) across the application site.
8. The Public Rights of Way and Commons Registration Officer said the Inspector had concluded, for the reasons set out in the report, that the legal tests had not been met and recommended that the application should not be accepted.
9. The Public Rights of Way and Commons Registration Officer said the Applicant and other interested parties were given the opportunity to comment on the Inspector's report and Ms McNeir set out to the Panel their responses. She confirmed that the responses had not changed the view of the Inspector.
10. The Public Rights of Way and Commons Registration Officer explained that it was open to the Council by case law to register a smaller area of the applicant site as a village green. However, having looked at the evidence and the Inspector's Report, it was not considered appropriate in this case. The Inspector considered whether a small area was capable of registration, but he could not identify an area where all the statutory tests had been met.

11. The Public Rights of Way and Commons Registration Officer concluded that the Inspector's view was that the use of the site had been more akin to the nature of Public Rights of Way and that was supported by the Parish Council's separate application to record the Public Rights of Way. The Officers' view, having considered the Inspector's Report, was that the Inspector had considered the case thoroughly and his report accurately represented the evidence and submissions made and the law as it currently stood. Therefore, the Officers considered that the legal tests in this particular case have not been met and the Public Rights of Way and Commons Registration Officer recommended, for the reasons set out in the Inspector's Report dated 15 September 2023, that the Applicant be informed that the application to register the land known as Two Fields at Westbere as a new Town or Village Green has not been accepted.
12. Mr Baldock asked when the application for Public Rights of Way by Westbere Parish Council had been made and the Public Rights of Way and Commons Registration Officer said the application was made well before the Public Inquiry.
13. Mr Ian McLean (Applicant on behalf of Two Fields Action Group) provided a statement in support of the application. Mr McLean said the Council had been very pragmatic as evidenced by the trigger event decision and now had the opportunity to continue that approach in interpreting the Inspector's Report. He said the finding of the village green application was pertinent. He referred to the other landowners, one who was a corporate landowner and was against the application, one who was uninterested and uncontactable, and one who's objection had been dismissed by the Inspector. He said there was an East/West divide where the situation for one field was not identical to the situation of the other. He said the Inspector's Report had confirmed that the use of the East part of the field was as of right. He said the land had become woodland over the many years since it was agricultural land and the question of its use for legal sports and pastimes was answered by the changes that took place in the woodland over the seasons which affected where people walked. He said nature, over the years and seasons, changed the landscape with older people being less adventurous and sticking to the path whilst younger people discovered the woodland and gathered deliberately away from the path. The woodland brought benefits to different people at different times in their lives. He said the entire square foot of land may not be covered but whilst people were in the woodland they were part of it and appreciated everything around them. He said the Inspector's Report looked at the history of the land, but the Panel was able to decide about its future. He said the local community saw the land as a welcome oasis of calm and there was a future where the land could take one community role.
14. A letter from Mr Mavaddat (Landowner on behalf of Mr Mahallati) dated 12 April 2024 to Panel Members was circulated on the morning of the meeting.
15. Mr Mavaddat provided a statement in objection to the application and said he was speechless, and it was 'daylight robbery'. He said for the past 20 years he had spent thousands of pounds on maintaining the land and footpaths, and

planting trees, and questioned why the Applicants were trying to create more footpaths on private land. He said over 100 signs indicating the land was private had been taken away along with an iron gate. Mr Mavaddat questioned the definition of private land and the rights of people to use land that was not theirs. He said he had been patient and calm and referred to a letter he had received from the Applicant interested in purchasing the land, but he had not heard anything more since 2020. Mr Mavaddat referred to the paperwork he had on the matter and refuted the allegation that he had neglected the land for 20 years.

16. Mr Baldock referred to the erection of prohibitive notices in 2018 and why the 20 years' use was not considered from 1998. The Public Rights of Way and Commons Registration Officer clarified that the use had to continue as of right either to the date of application or to within one year of the date of application.
17. Mr Baldock commented that the notices were contradictory and not clear whether there was access or whether use was prohibited. Mr Baldock referred to paragraph 24 of the report and said the map showed that the land included a large number of paths which crossed over each other and questioned why this use of the land was dismissed as not sufficient in terms of the application. He said he did not agree with the Inspector's opinion and suggested more generosity be given in consideration of the significant use of the eastern part of the land, which he felt was beyond the use of PROW, where footpaths had been created and used by a large group of people. He said use was not just the land beneath your feet but should be seen in a wider context and the appreciation of the area as a whole, and the overgrown areas of land, in terms of wildlife and dog walking, could not be dismissed. Mr Baldock said he was comfortable that the eastern part of the land had had sufficient use beyond that of PROW and should be considered as a village green.
18. Mrs Parfitt-Reid said it was clear to her that the tests had not been met and that the notices erected by the landowner made clear that use was prohibited.
19. Miss Carey agreed with the officer's recommendation that the tests had not been met and that the village green application should not be accepted.
20. Members discussed the wording of the landowner's notice and the Public Rights of Way and Commons Registration Officer clarified that there was some debate at the Public Inquiry as to the meaning of the notices and what local residents would have understood. She agreed it was open to interpretation however the Inspector advised that if the sign said 'Private Property' it should be clear that the landowner did not want people using the land.
21. Mr Baldock asked about the fifth part of the land where the landowner supports an application, and the Public Rights of Way and Commons Registration Officer explained that the landowner of this specific area could voluntarily register the land as a village green.

22. Mr Cole said, whilst he had sympathy for the Applicant, he agreed with the officer's recommendation and noted that the matter had been through a Public Inquiry and considered by King's Counsel, a specialist in this area of law.
23. Mr Cole proposed, and Mrs Parfitt-Reid seconded, the recommendation in the report that the Applicant be informed that the land known as Westbere has not been accepted as a village green, and this was agreed by majority.
24. RESOLVED that the Applicant be informed that the application to register the land at Westbere as a Town or Village Green has not been accepted.