

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 Tuesday, 10 December 2024.

PRESENT: Miss S J Carey (Chair), Cllr T Bond, Mr P Cole and Mr J M Ozog

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

UNRESTRICTED ITEMS

1. Membership and substitutes

(Item 1)

Apologies were received from Mr Manion and Mr Baldock. Mr Ozog was present as substitute for Mr Manion.

2. Declarations of interest for items on the agenda

(Item 2)

There were no declarations of interest.

3. Application to register land known as Bunyards Farm at Allington as a new Town or Village Green

(Item 3)

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 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 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 Applicants' case was that access had been available from a number of points around the site and set out, as in the report and on the plan attached at Appendix B to the report, the different access points. She said the nature of the application site had varied considerably over the last few decades.

3. The Public Rights of Way and Commons Registration Officer noted that the application site was subject to a separate outline planning application for a residential development which was currently under consideration by Tonbridge and Malling Borough Council and it had no bearing on the outcome of the village green application.
4. The Public Rights of Way and Commons Registration Officer said the site was registered to the Trustees of the Andrew Cheale Will Trust and BDW Trading Ltd had a legal interest in the land in the form of an option to purchase. She explained that an objection to the application had been received during the consultation stage from these parties, as set out in the report.
5. The application was previously considered at a Regulation Committee Member Panel meeting on 15 September 2023 where Members accepted the officer recommendation that the matter be referred to a Public Inquiry. The Public Inquiry took place during March 2024 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 her 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.
6. 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.
7. The Public Rights of Way and Commons Registration Officer said the Inspector's view was that the application should fail because the legal tests had not all been met. The application failed to show the use of land was 'as of right' throughout the relevant period and the use of the application land was in the nature of public rights of way use only by the end of the relevant period. The Officers' view was that the parties' evidence and submissions had been carefully examined by the Inspector and the matter had been thoroughly scrutinised. It was considered that the Inspector's Report accurately represented both the evidence and submissions made.
8. The Public Rights of Way and Commons Registration Officer said the Applicants, the landowners, and the objectors were given the opportunity to comment on the Inspector's report but no submissions were received.
9. The Public Rights of Way and Commons Registration Officer recommended, for the reasons set out in the Inspector's Report dated 12 September 2024, that the Applicants be informed that the application to register the land at Bunyards Farm as a new Town or Village Green has not been accepted.

10. Mr Chris Passmore (Applicant) expressed the applicants' disappointment with the recommendations of the Inspector. He said whilst the second reasoning of the Inspector's decision regarding public rights of way could be contested, it was difficult to evidence that Access Point D was accessed on a critical date. Mr Passmore felt the landowner did not look after the land for a long period of time or make a significant effort to deter residents from using it. The residents of Allington felt it was their land to walk on and the local community would lose the land to housing and have to travel further to walk dogs and enjoy nature. Mr Passmore thanked Officers for their work throughout the process.
11. Ms Chay Clark from Birketts LLP (the landowner's solicitor) spoke on behalf of the landowner and respectfully asked the Panel to disregard the Applicant's comments regarding development, and thanked all parties for their time in the matter.
12. Mr Cole expressed his understanding for the Applicants' position but recognised that the four day public inquiry had dealt with the complex issues in detail and was therefore in support of the officer recommendation.
13. Mr Cole proposed, and Mr Ozog seconded, the recommendation in the report that the Applicant be informed that the land known as Bunyards Farm at Allington has not been accepted as a village green, and this was unanimously agreed.
14. RESOLVED that, for the reasons set out in the Inspector's report dated 12 September 2024, that the Applicants be informed that the application to register the land known as Bunyards Farm at Allington as a new Village Green has not been accepted.

4. Application to register land known as Beacon Road in Herne Bay as a new Town or Village Green
(Item 4)

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 at Beacon Road in Herne Bay as a new Town or Village Green from the Save the Beacon Road Community Land Committee. 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 provided an overview of the land and explained that the Applicants' case was that the land had been used for 100 years as a public open space by the local

community for leisure and recreational purposes as of right during a 20 year period.

3. 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. District Councillor Mellish wrote in support of the application and Mr Watkins, the Local Member, responded in more neutral terms.
4. The Public Rights of Way and Commons Registration Officer said that ownership of the site was registered to Canterbury City Council and explained the reasons why, as set out in the report, the application was opposed by the City Council.
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. 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 said the evidence available indicated that the City Council took steps to secure the site by way of erection of a heras fence across the entrance on 18 December 2020, from which point entry to the application site became contentious. Where use 'as of right' ceases more than one year prior to the making of the application then the application must fail. In support of its objection the City Council provided copies of correspondence with a neighbouring property owner confirming that access to the site was prohibited.
7. The Public Rights of Way and Commons Registration Officer considered, as set out in the report, that the legal tests in this particular case had not been met and recommended that the Applicant be informed that the application to register the land at Beacon Road at Herne Bay as a new Town or Village Green has not been accepted.
8. Panel Members asked the Public Rights of Way and Commons Registration Officer questions for clarification purposes and the following was noted:
 - The buildings on the site were part of the former clubhouse and if village green status was granted the buildings would be entitled to stay but de-registration of the land would be required in order to extend the footprint of the building.
 - The Public Rights of Way and Commons Registration Officer was not aware of any information regarding the erection of the rear garden gates of neighbouring properties or whether there was a formal right of access. If a private easement was contained in the title deeds it would not qualify for the purposes of the village green registration. The number of people with rear garden gates may not be significant

enough, for the purposes of the village green application, to indicate the land was used by the general community.

- The Applicant's case is that the heras fencing was at some point breached, however correspondence from a neighbouring landowner confirmed that for 18 months there was no access to the application site.
9. Mr Trevor Huffey (Applicant) provided a statement and said the land had been used as of right since the late 1800s by the general public for various activities including dog walking which was a daily routine. He said the heras fencing which was erected at the end of 2020 was not secure and there was a gap at the side that the public used. It was assumed the heras fencing was erected to stop cars from parking there. There was no mention of pedestrian access being barred and the land continued to be used as no objections were made. Mr Huffey said he was not aware of any correspondence from the neighbouring landowner and said the people of Beacon Road were part of the locality.
 10. Mr Huffey said no further action was taken by the city council following the heras fencing being erected in 2020 until April 2023 when the city council erected a high palisade fence. Following this the applicants wrote to the city council on several occasions over a period of 10 months but did not receive a detailed response. In April of this year the local councillor spoke to the city council's Head of Property and Regeneration and it was agreed that a meeting regarding future use would be helpful, but regrettably the applicants heard nothing further. The land was made an Asset of Community Value in May 2024. The Canterbury District Local Plan identified the land as open space, however under the proposals for the new local plan the land would be re-categorised as a sports ground.
 11. In respect of the outcome of the village green application Mr Huffey would request that the city council clarify the position regarding the local plan and their intended use of land. Following the recommendation of the officers he said the Applicants believed the next step would be a public inquiry or a judicial review, however the small community group did not have the funds to take it to that stage and therefore would like the land to be granted village green status.
 12. Mr Bond asked about the gap in fencing referred to by the Applicant and the Public Rights of Way and Commons Registration Officer referred to page 33 of the agenda pack which showed pictures of the heras fencing (top), and palisade fencing (bottom) where the fencing went across the boundary. Correspondence from the adjoining landowner on 19 December 2020 and 19 August 2022 states that the city council had blocked access to the land indicating that the fence was at one time secure. The Public Rights of Way and Commons Registration Officer commented that if people were squeezing through a gap then arguably they were not accessing the site openly and freely.

13. Mr Ozog commented that if the village green status was granted it may well interfere with the use of the land by the sports club and the Public Rights of Way and Commons Registration Officer confirmed this was the case.
14. Mr Ozog proposed, and Mr Bond seconded, the recommendation in the report that the Applicant be informed that the land known as Beacon Road in Herne Bay has not been accepted as a village green, and this was unanimously agreed.
15. Mr Cole referred to the gap to the side of the heras fence and said he would interpret that as the site being closed and supported the officer recommendation.
16. RESOLVED that the Applicant be informed that the application to register the land known as Beacon Road in Herne Bay as a Town or Village Green has not been accepted.

5. Application to register land known as Upper Castle Field at Tonbridge as a new Town or Village Green
(Item 5)

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 at Upper Castle Field at Tonbridge as a new Town or Village Green from Ms J Wyatt. The application had been made under Section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2014 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 provided an overview of the land and said the land was owned by Tonbridge and Malling Borough Council, who had not objected to the application, and the necessary consultations had been undertaken. No further objections had been received and the Local Members, Mr Hood and Mr Stepto, supported the application.
3. 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. 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.
4. The Public Rights of Way and Commons Registration Officer explained that the application plan at Appendix A had been amended to remove car parking spaces and part of a highway known as The Slade and the amended plan to be considered was shown at Appendix D.

5. The Public Rights of Way and Commons Registration Officer said although the application was not opposed it was important all the legal tests had been met. She said she considered that the legal tests had been met and recommended that the Applicant be informed that the application to register the land known as Upper Castle Field at Tonbridge as a new Town or Village Green, subject to the amended plan at Appendix D, has been accepted.
6. The Chairman asked who amended the plan and the Public Rights of Way and Commons Registration Officer explained that Kent County Council was the determining authority and had discretion to register a lesser area. She confirmed the reasons for the amendment had been explained to the Applicant.
7. Ms Jacqui Wyatt (Applicant) explained that there was evidence of personal use going back 78 years and a local history guide had been published with pictures showing how the land had been used during that time.
8. Local Member, Mr Paul Stepto, provided a statement in support of the application and explained that for many years people (including a nearby school) had used the site for recreational activities including family picnics, dog walking and community events.
9. Local Member, Mr Hood, provided a statement in support of the application. He said the Slade was very much a community and thanked officers for amending the plan. He said the raised area of land was often the only dry piece of green space in town and was used regularly by children.
10. Mr Bond proposed, and Mr Ozog seconded, the recommendation in the report that the Applicant be informed that the land known as Upper Castle Field at Tonbridge has been accepted (per the amended plan shown at Appendix D) and that the land subject to the application be formally registered as a Town or Village Green, and this was agreed unanimously.
11. RESOLVED that the Applicant be informed that the application to register the land known as Upper Castle Field at Tonbridge has been accepted (per the amended plan shown at Appendix D) and that the land subject to the application be formally registered as a Town or Village Green.

6. Application to register land known as Burton Down Park at Herne Bay as a new Town or Village Green

(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 Burton Down Park at Herne Bay 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.

2. 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.
3. The Public Rights of Way and Commons Registration Officer said the necessary consultations had been carried out and the Local Member, Mr Watkins, supported the application. She said no objections had been received, and the Land Registry search confirmed that Canterbury City Council was the owner of the land.
4. Mr Bond proposed, and Mr Cole seconded, the recommendation in the report that the Applicant be informed that the land known as Burton Down Park has been accepted and the land subject to the application (as shown at Appendix A) be formally registered as a village green, and it was agreed unanimously.
5. RESOLVED that the Applicant be informed that the application to register the land known as Burton Down Park has been accepted and the land subject to the application (as shown at Appendix A) be formally registered as a village green.

7. Application to register land at Marley Fields at Hoath as a new Town or Village Green
(Item 7)

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 Marley Fields at Hoath as a new Town or Village Green from Hoath Parish 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.
2. 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.
3. The Public Rights of Way and Commons Registration Officer said the land had been given to Hoath Parish Council by the developer. She said the necessary consultations had been carried out and no objections had been

received, and the Land Registry search confirmed that Hoath Parish Council was the owner of the land.

4. Mr Ozog proposed, and Mr Bond seconded, the recommendation in the report that the Applicant be informed that the land known as Marley Fields at Hoath has been accepted and the land subject to the application (as shown at Appendix A) be formally registered as a village green, and it was agreed unanimously.
5. RESOLVED that the Applicant be informed that the application to register the land known as Marley Fields at Hoath has been accepted and the land subject to the application (as shown at Appendix A) be formally registered as a Town or Village Green.

8. Other items which the Chairman decides are urgent
(Item 8)

There were no urgent items.