

Newhaven West Beach – the fight for Village Green status

Timeline:

2006

January

Breakwater is barricaded off. Newhaven Port & Properties (NPP), the company which owns the beach and breakwater, cites health and safety concerns due to lack of a fence preventing people from falling into the sea.

April (Easter weekend)

Access steps to beach barricaded off. NPP cites health and safety concerns due to cracks in the harbour wall. It is announced that access to the beach will be closed whilst repairs are carried out.

2007

April

No repairs have taken place – but as a result of public demand, the steps to the beach are re-opened



Timeline:

2008

February

An even bigger and more impenetrable barricade is erected across the top of the steps. This time NPP announces that the closure is permanent.

Newhaven Town Council (NTC) starts to seek advice from various sources.

Spring/Summer

Having received legal advice that obtaining Village Green status for the beach would be the best way of getting it re-opened for local people, the Town Council asks local people if they support this idea.

Over 1,000 people fill in forms supporting the Town Council.

September onwards

Two public meetings are held. As a result of these, 60 Newhaven residents come forward to fill in detailed evidence forms in support of the Village Green application.

Hundreds of photos are brought into the Town Council offices to add to the evidence.



Timeline:

2008

16th December

The application for Village Green status for the beach is submitted by Newhaven Town Council to East Sussex County Council (ESCC), which is the Village Green Registration Authority.

2009

January - September

Informal discussions take place between NPP and NTC. Village Green application is put on hold.

In September NPP puts forward a proposal to move the sandy beach to the western side of the breakwater. NPP says that regardless of any repair work to the sea wall and steps, they would still not allow public access to the beach. NTC asks for details of the proposal by the end of December

2010

January

As no further information has been supplied by NPP about their proposal to move the beach to the western side of the breakwater, NTC asks the County Council to proceed with the Village Green application.



Timeline:

2010

March

ESCC announces that a Public Inquiry into the Village Green application will take place in July.

NTC asks NPP to re-open the beach pending the Public Inquiry. Two further meetings take place between NTC and NPP.

19th April

NPP makes a verbal offer to rent the beach to NTC at a peppercorn rent, provided that NTC takes all responsibility for public liability. NTC asks for a draft Heads of Terms agreement in writing.

27th April

The written draft Heads of Terms are received by NTC at 11am by email. NPP states that the offer is conditional on NTC agreeing the terms and formally resolving to withdraw the Village Green application at a Council meeting the following day.

Please see the FAQs for more information about why the town council did not accept this offer.



Timeline:

2010

6th-8th July

Public Inquiry takes place at Meeching Hall. The Inspector hears verbal evidence from 10 Newhaven residents as well as from NTC.

October

The Inspector who sat at the Public Inquiry publishes her recommendation that the beach should be registered as a Village Green

22nd December

The ESCC Village Green Registration Panel meets and accepts the recommendation that the beach should be registered as a Village Green.

However, the registration is deferred for 60 days because NPP announces that it will seek a judicial review of the decision. If ESCC had registered the beach straight away this could have involved them in greater legal costs.



Timeline:

2011

March

NPP applies for permission for a Judicial Review of the decision by ESCC to register the beach as a Village Green

June

The Court gives permission for the Judicial Review to take place.

NTC submits an application to ESCC to modify the Definitive Map (the legal document defining Rights of Way) to show a right of way to the beach.

8th-11th November

Judicial Review takes place at Royal Courts of Justice, The Strand, London – 4 days of very detailed legal argument.



Timeline:

2012

21st March

Result of the Judicial Review announced – that the beach cannot be registered as a Village Green.

The Judge had accepted all the evidence and arguments put forward on the side of NTC during the case, but decides that registration cannot go ahead on a legal technicality introduced by NPP's legal team in writing after the case had closed.

NTC & ESCC seek leave to Appeal.

4th May

The Court gives permission for the Appeal to take place

late Summer/Autumn

Further meetings between NPP and NTC to try and reach an out of court agreement to re-open the beach. This includes a meeting with NPP's insurers to discuss the possibility of a joint insurance policy covering public liability if the beach was open



Timeline:

2012

23rd October

Risk Assessment for the re-opening of the beach carried out by BMT Isis and jointly funded by NPP and NTC is produced, which indicates that the beach could be re-opened if certain safety measures are put in place. Further discussions continue.

December

Draft Heads of Terms for a licence between NPP and NTC to allow the beach to be opened are drawn up. NTC holds two Extraordinary Council meetings to discuss the document. NTC has some concerns about some of the details, but thinks that agreement will be possible after a bit more negotiation. Suddenly shortly before Christmas all negotiations come to an abrupt halt. NTC receives no explanation for this; however it is told that NPP's directors in Rouen, France will not allow any further negotiations unless the Appeal to the Court is immediately dropped. If NTC had dropped the Appeal before the agreement was signed, it would not have been able to appeal again if the agreement had subsequently fallen through.

2013

26th-28th February

Appeal takes place at Royal Courts of Justice, The Strand, London – 3 more days of very detailed legal argument in front of 3 judges.



Timeline:

2013

27th March

Result of the Appeal announced – that the beach can be registered as a Village Green.

All 3 of the judges disagreed with the reasoning of the Judge at the Judicial Review with regard to the legal technicality raised after the case had closed. 2 out of the 3 also accepted all the arguments in favour of the beach being registered as a Village Green.

April

NPP applies to the Supreme Court for permission to appeal against the decision of the Appeal Court.

12th September

ESCC makes an Order amending the Definitive Map (the legal document defining rights of way) to show a right of way to the beach. There is a 42 day objection/consultation period ending on 28th October. NPP formally objects to the Order – this means there will have to be a Public Inquiry.



Timeline:

2014

15th May

The Mayor of Newhaven and the Clerk to Newhaven Town Council travel to Rouen, France to meet with two of the directors of NPP to try and persuade them to drop NPP's appeal to the Supreme Court and allow the beach to reopen. The conversation takes place in French. The directors of NPP demand that NTC takes on legal liability for public access to the beach. NTC offers to pay for insurance to indemnify NPP in the event of any claim, but this is not acceptable to NPP. Under English law liability remains with the landowner (NPP) and it is not possible for it to be passed to NTC under the terms of any licence. Accordingly it is not possible for NTC to meet this demand.

3rd & 4th November

The Supreme Court hears the case. Five judges listen to more detailed arguments about the issues.

2015

25th February

The Supreme Court hands down its judgement.



FAQs

Doesn't the Queen own all beaches?

The Crown does own much of the foreshore (the area between the high tide and low tide levels) around the coast – but it does not own the sandy beach within the harbour arm at Newhaven – this belongs to the Port Authority, Newhaven Port & Properties.

Doesn't a Village Green have to be green?

No – the definition of a village green is that it has to be land which has been used by the people of a specific locality (Newhaven in this case) as of right for lawful sports and pastimes for at least 20 years. It doesn't have to be grassy – there are plenty of other registered village greens that do not look like stereotypical village greens.

What does “as of right” mean?

This is an ancient legal phrase which means that access has to have been without force (because no-one should be able to obtain a right by force), without secrecy (because then the landowner might not know about it) and without permission.

Doesn't the fact that there are harbour bye-laws mean that access has been with permission?

This is one of the issues that have been thoroughly debated at the Public Inquiry, the Judicial Review and at the Appeal. The outcome has been that this would only apply if people knew about the bye-laws because they had been displayed by the beach. Although there are notices about the bye-laws down by the beach now, there weren't any during the 20 year period that was used for the Village Green application (20 years up until 2006). There are other Village Green cases involving bye-laws which provide a legal precedent for this point.

How can you have a village green that is under water for part of every day?

This is another issue that has been thoroughly debated at the Public Inquiry, the Judicial Review and at the Appeal. At no stage has the Inspector or any of the judges involved seen this as a lawful reason to not allow the beach to be registered. There are other watery village greens – there is a lake in Wales for instance; Kingston Beach at Shoreham Harbour is a village green that is partially covered at high tide; and the Trap Grounds in Oxfordshire are a village green that consists of marshland, some of which is permanently under water. Many traditional village greens include a duck pond.

Would the Town Council be willing to help pay for the repair of the steps?

Yes. We'd much rather spend public money doing that, rather than on legal fees. We are still willing to talk to NPP about the best way to get the beach open in a safe way that doesn't jeopardise port operations.

Why didn't the Town Council accept the offer made in 2010 to rent the beach at a peppercorn rent?

NPP sent the Town Council a written offer with Heads of Terms only one day before a Council meeting. They insisted that the offer had to be agreed at the Council meeting the following day and that the village green application had to be withdrawn immediately.

It would not have been legal for the Town Council to make this decision at the meeting without proper notice having been given on a published agenda at least three clear days before the meeting (not including weekends). This notice had not been possible because the offer had not been sent to NTC by NPP in time.

Continued ...

It is doubtful if NTC would have agreed the Heads of Terms as they were drafted in any event because the Terms would have allowed NPP to close the beach at any time for any reason. Further negotiations would have been necessary – but NPP would not negotiate any further unless the Village Green application was withdrawn first. If the Village Green application had been withdrawn, it would not have been possible to reapply.

Wouldn't the Port have to close if the beach was re-opened?

Well, NPP have said something along these lines more than once, but it is hard to see why. The beach was open for over a hundred years without affecting port operations. It has even been used for the storage of jack-up barges in the past whilst remaining open. Solutions can be found to safety issues, even with 21st century health and safety rules. The Town Council remains willing to talk to NPP about how best to achieve these.

Will the Government changes to Village Green legislation prevent the beach from being registered?

No, because any changes to the law will only affect applications for village green status made after the law has been changed, unless the Government decides to make the new law retrospective (which is very unlikely).

How did Newhaven Port (and the beach) end up in French hands?

Back when the breakwater was built in the 1880s, the Port belonged to the London, Brighton and South Coast Railway Company, which had started running ferries to France during the 1850s. This company became part of Southern Railway in 1923 and then part of British Rail when the railways were nationalised in 1948. Ownership of the harbour and ferry service passed along with the merger of the companies. In 1984 Sea Containers purchased Sealink Ferries from British Rail and acquired Newhaven Harbour as part of the deal. In 2001 Sea Containers sold the operational part of the port to a French consortium, who are the current owners of Newhaven Port and Properties, a company registered in the UK.

Why didn't the Town Council just apply for a Right of Way to the beach?

Establishing a Right of Way to the beach would not establish a right to actually go on the beach itself – it would only establish the right to go to the bottom of the steps. A Right of Way is a route from one place to another – wandering about all over the beach for recreational purposes is something different – so the beach itself cannot be a Right of Way, but it can be a Village Green because it has been used in exactly the same sort of way as village greens always have been. The Town Council applied for a Right of Way following the Public Inquiry because it had been established that there wasn't one during the Inquiry and it seemed sensible to get this sorted out, so that when Village Green status is finally confirmed, the right to get to the beach is also in place. However, the lack of a right of way is not a legal reason for the beach not to be granted Village Green status – it just might give NPP an excuse to keep the fence in position.

Why didn't the Town Council include the breakwater in its application?

The legal advice was that the public's use of the breakwater would not comply with the requirements for Village Green status, so it could not be included. We were also advised to concentrate on one thing at a time – which as things have turned out would seem to have been very good advice!

What about the "Human Rights" case?

This is a separate case between NPP and the Government. NPP is claiming that the Commons Act 2006 (which is the Act under which the Village Green application has been made) conflicts with the European Human Rights Act. So far this has been argued at the Judicial Review and was thrown out, following which NPP appealed, and this was also thrown out. NPP are asking the Supreme Court for permission to take this argument there too. Whatever happens with this, it should not affect our case – it is a separate matter and like the new legislation, could not stop the beach being registered as a Village Green unless the Government decided to make any changes in law retrospective (which is very unlikely).

Is the Supreme Court the end of the matter?

Yes. So far as the Village Green case is concerned, the Supreme Court is the end of the matter. There is, however, nothing stopping NPP from opening the beach voluntarily if they choose to do so. The right of way case is still outstanding and the town council will be discussing this further with its legal team over the next few days.

What were the total legal costs to the Town Council?

Total legal costs of Town Council from the very beginning until today

£238,576

This has been paid by local council tax payers over 5 years.

Works out as total for a Council Tax Band D payer over 5 yrs **£70.24**

or **£14 per year**

or **27p per week**

*All information has been supplied by Newhaven Town Council, 18 Fort Road, Newhaven, tel: 01273 516100
Email: admin@newhaventowncouncil.gov.uk; website: www.newhaventowncouncil.gov.uk*