

## Application to register land at the former Council Offices site at Cranbrook as a new Village Green

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A report by the Director of Environment and Waste to Kent County Council's Regulation Committee Member Panel on Tuesday 26<sup>th</sup> October 2010.

**Recommendation: I recommend that the County Council informs the applicant that the application to register the land at the former Council Offices site at Cranbrook as a new Village Green has not been accepted.**

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Local Members: Mr. R. Manning

Unrestricted item

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### Introduction

1. The County Council has received an application to register land at the former Council Offices in the parish of Cranbrook as a new Village Green from local resident and Borough Councillor Dr. L. Hall ("the Applicant"). The application, dated 8<sup>th</sup> August 2009, was allocated the application number VGA615. A plan of the site is shown at **Appendix A** to this report and a copy of the application form is attached at **Appendix B**.

### Procedure

2. The application has been made under section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2008.
3. Section 15 of the Commons Act 2006 enables 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 the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;*
4. In addition to the above, the application must meet one of the following tests:
  - **Use of the land has continued** 'as of right' until at least the date of application (section 15(2) of the Act); or
  - **Use of the land 'as of right' ended no more than two years prior to the date of application**, e.g. by way of the erection of fencing or a notice (section 15(3) of the Act); or
  - **Use of the land 'as of right' ended before 6<sup>th</sup> April 2007** and the application has been made within five years of the date the use 'as of right' ended (section 15(4) of the Act).
5. As a standard procedure set out in the regulations, the Applicant must notify the landowner of the application and the County Council must notify every local authority. The County Council must also publicise the application in a newspaper circulating in the local area and place a copy of the notice on the County Council's website. In addition, as a matter of best practice rather than legal requirement, the

County Council also places copies of the notice on site to provide local people with the opportunity to comment on the application. The publicity must state a period of at least six weeks during which objections and representations can be made.

### **The application site**

6. The area of land subject to this application ("the application site") is known locally as the former Council Offices site and is situated at the junction of the High Street and Wheatfield Drive in the village of Cranbrook. The site is approximately 0.3 hectares (0.75 acres) in size and consists of a large building, parking areas to the front and rear, and is landscaped with smaller grassed areas. Formal access to the site is via a vehicular gate to the front of the building off the High Street and another vehicular gate to the rear of the building off Joyce Close.
7. The application site is shown in more detail on the plan at **Appendix A**.

### **The case**

8. The application has been made on the grounds that the application site has become a Town or Village Green by virtue of the actual use of the land by the local inhabitants for a range of recreational activities 'as of right' for more than 20 years.
9. Included in the application were 48 user evidence questionnaires from local residents detailing their use of the application site for at least 20 years and, in several cases, for over 40 years. A summary of the evidence in support of the application is attached at **Appendix C**.

### **Consultations**

10. Consultations have been carried out as required. The following responses have been received.
11. The Cranbrook and Sissinghurst Parish Council has objected to the application on the following grounds:
  - Since constructed and until its closure, the application site was constantly in use as a working office building, housing Council services and the Citizens Advice Bureau. Whilst the Borough Council did allow, upon payment, some community activities within the building, it remained a working Council office;
  - Whilst on occasions local youths have used the car park for unauthorised skating and cycling, this has been confined to the times when offices were closed and despite a locked front gate;
  - The lawned area will only ever have been used extremely rarely as a spot for picnicking as it is within 8ft of the busy High Street vehicular traffic;
  - There is no right of way across the car park; and
  - Whilst the car park has been used for civic occasions, such as an assembly point for parades, permission for the use has been granted by the Borough Council.

12. Mr. A. Bringloe, a former employee of the Tunbridge Wells Borough Council who was based at the site, wrote to express his support for the application. Mr. Bringloe was a senior Officer responsible for the day-to-day management of the site between 1992 and 2006. He states:

- The public have always used the site "as of right";
- People have always exercised their dogs and walked through the site from Joyce Close since at no time were any gates closed;
- Children have always played on all parts of the site, which was popular for skate-boarding and roller-skating; and
- The land was not fenced off and people were not deterred from walking on the land.

### **Landowner**

13. The application site is owned by the Tunbridge Wells Borough Council ("the Borough Council"). Objection has been made to the application by the Borough Council on the following grounds:

- The activities relied upon are in the main activities which are not of a recreational nature and took place within the building. They do not constitute 'lawful sports and pastimes' for the purposes of the relevant legislation;
- The application site includes the Council offices and its circulation space and car park. Until 2006, these areas were in active use by the Council and as such the application site was not capable of use for any activity which could be regarded as a lawful sport or pastime;
- If the application site was used for recreational purposes (which is refuted by the Borough Council), these activities were, of necessity, occasional and sporadic;
- Several of the user evidence forms refer to use of the application site as a short cut. Such use does not amount to a lawful sport or pastime;
- The applicant has failed to demonstrate that there is a relevant locality or a neighbourhood within a locality; and
- Use of the application site has not been 'as of right' as notices were erected in 2008 stating that the site was private property and that there was no public right of access through the car park.

### **History of the site**

14. The site, which formed part of a larger area, was originally acquired by the former Cranbrook Rural District Council in the late 1950s. The building was officially opened in 1962 and, in 1974, following local Government re-organisation, the site was transferred to Tunbridge Wells Borough Council. Over time, the size of the site has reduced as various parts have been sold off for other purposes.

15. In recent years, the building on the site has been used as offices for various Borough Council departments (including Planning and Highways) as well as a meeting venue for Council Committees. It has also provided public access to Council services (such as the payment of Council tax and collection of bus passes) and was used by many community groups and services, with space being let to organisations such as Age Concern and the Citizen's Advice Bureau.

16. In February 2006, a decision was taken by the Borough Council to close the building. Since that time, the various Council departments and organisations that used site have been gradually vacated. In August 2009, a Special cabinet meeting approved the demolition of the building and, in October of the same year, the building was finally closed and windows boarded up. To this day, the building remains on site pending the outcome of the Village Green application.

### **Preliminary considerations**

17. Members will note that a significant proportion of the application site (approximately 30%) is occupied by a building of a commercial nature. This element of the application requires special consideration.

18. On this issue, the Borough Council is of the view that an application to register land upon which a building is located is "manifestly outside the scope and intention of the Commons Act 2006"<sup>1</sup>. The applicant's position, on the other hand, is that the Commons Act 2006 includes any building on land or a site designated as a Village Green and that such a building becomes part of the designation. She adds that, in her view, "the presence of a building is not a deterrent to deciding in favour of the applicant"<sup>2</sup>.

19. The legislation is silent in this respect: the Commons Act 2006 does not define the term "land" and its predecessor, the Commons Registration Act 1965, defined land simply as "includes land covered with water"<sup>3</sup>. The only recent authority in relation to the type of land that is capable of registration as a Village Green is the case of Oxfordshire<sup>4</sup>, in which it was held that there was no requirement for land to conform to the traditional image of a Village Green in order to be capable of registration provided that the relevant legal tests have been met. However, this case was concerned with an area of scrubland and did not refer to buildings.

20. It is therefore necessary to adopt a purposive approach and to consider what Parliament's intention was in enacting the legislation. In Sunningwell<sup>5</sup>, Lord Hoffman described the position as follows:

*"The main purpose of the Act of 1965 was to preserve and improve common land and town and village greens. It gave effect to the Report of the Royal Commission on Common Land 1955-1958 (1958) (Cmd 462) which emphasised the public importance of such open spaces. Some commons and greens were in danger of being encroached upon by developers because of legal and factual uncertainties about their status. Others were well established as commons or greens, but there was uncertainty about who owned the soil ..."*

21. It is clear from this passage that the Commons Registration Act 1965 was concerned with the preservation of open spaces. Indeed, the Royal Commission

<sup>1</sup> See Tunbridge Wells Borough Council statement of objection (undated but received on 04/04/10) at paragraph 12

<sup>2</sup> See applicant's response to objection from TWBC (undated but received on 18/07/10)

<sup>3</sup> Section 22, Commons Registration Act 1965

<sup>4</sup> *Oxfordshire County Council v Oxford City Council* [2006] 1 All ER 817 (HL)

<sup>5</sup> *R v Oxfordshire County Council ex parte Sunningwell Parish Council* [1999] 3 All ER 385 at 388

report itself refers to the need to preserve, in the public interest, "*the last reserve of uncommitted land in England and Wales*"<sup>6</sup>. As such, it can be concluded that it was not Parliament's intention for commercial buildings to be registered as a Village Green.

22. Furthermore, the proposition that a commercial building could be registered as a Village Green does not sit comfortably with the Victorian statutes that protect Village Greens. In particular, under the Commons Act 1876, it is an offence and a public nuisance to encroach upon or inclose a Village Green, or to erect any structure unless it is for the purpose of the better enjoyment of the Village Green. The Victorian statutes clearly envisage that a Village Green will generally be an open space that it to be kept free of structures (save, perhaps, for small structures associated with the recreational use) and indeed it is on this basis that many Village Green applications are made. Buildings, on the other hand, are the subject of a separate statutory scheme under the Planning (Listed Buildings and Conservation Areas) Act 1990.
23. Even if a commercial building were to be capable of registration as a Village Green under this legislation, it is clear that the Council Offices themselves have not been used "as of right" (i.e. without force, secrecy or permission).
24. The applicant states, quoting Mr. Bringloe, that groups had unrestricted access to the building as well as to the site, adding that the building and the land were both open to the entire community of Cranbrook. Whilst access may have been unrestricted in the sense that selected groups had their own keys to the building to gain access outside of Council operating hours, the very fact that those organisations were provided with keys is a clear indication that their use was with the consent of the Council. This is also evidenced by copies of invoices for the payment of a fee in respect of the use of the premises<sup>7</sup>.
25. It is therefore inconceivable that members of the general public (i.e. those un-associated with the groups using the site or the Council itself) would have been able to wander off the street and into all areas of the building as and when they pleased. Particularly during the time that Council departments were operational at the site, it would have been, at best, irresponsible and negligent for all areas of the building to be left completely unlocked and unattended during evenings and weekends. In that latter sense, access to the building was thus not unrestricted and use of it was by invitation and not "as of right".
26. It is therefore suggested, for the reasons described above, that the building itself is not capable of registration as a Village Green. However, this leaves the area of land which surrounds the building (composed of the car park and formal landscaping). If it is found that the legal tests are met in respect of the remaining land, then it would be possible for the County Council to register a lesser area than that originally applied for<sup>8</sup>.

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<sup>6</sup> Report of the Royal Commission on Common Land 1955 – 1958

<sup>7</sup> Kumon Maths Class invoice dated 07/07/09 for hire of Council Chamber, Cranbrook

<sup>8</sup> *R (McAlpine Homes Ltd.) v Staffordshire County Council* [2002] EWHC 76 (Admin) at paragraphs 79, 80 and 82

## Legal tests

27. In dealing with an application to register a new Town or Village Green the County Council must consider the following criteria:

- (a) *Whether use of the land has been 'as of right'?*
- (b) *Whether use of the land has been for the purposes of lawful sports and pastimes?*
- (c) *Whether use has been by a significant number of inhabitants of a particular locality, or a neighbourhood within a locality?*
- (d) *Whether use of the land 'as of right' by the inhabitants has continued up until the date of application or meets one of the criteria set out in sections 15(3) or (4)?*
- (e) *Whether use has taken place over period of twenty years or more?*

I shall now take each of these points and elaborate on them individually:

### **(a) *Whether use of the land has been 'as of right'?***

28. The definition of the phrase 'as of right' has been considered by the House of Lords. Following the judgement in the *Sunningwell*<sup>9</sup> case, it is considered that if a person uses the land for a required period of time without force, secrecy or permission (*nec vi, nec clam, nec precario*), and the landowner does not stop him or advertise the fact that he has no right to be there, then rights are acquired and further use becomes 'as of right'.

29. In this case, there is no reference in the user evidence submitted in support of the application to any challenges to use prior to the recent erection of notices and locking of gates when use of the building ceased. According to the user evidence, the access gates were locked and 'private land' notices were erected in approximately 2008 or 2009.

30. The Borough Council contends that use of the application site has not been 'as of right' because during 2008, after the use of the application site as Council Offices ceased, notices were erected on the site stating 'private property' and 'no public right of access through the car park'. The applicant states that the erection of the notices did not deter use of the application site.

31. It does not matter if users ignore the notices and continue to use the application site. The requirement for use to have been without force extends beyond physical force and if users ignored notices then their use would have been contentious and thus not 'as of right'<sup>10</sup>. The critical issue is therefore the wording of the notices and the message conveyed to the users of the land. The 'private property' sign was affixed to the building rather than at entrance gates and arguably could have been interpreted by users as applying only to the building. The 'no right of access through the car park' could be interpreted as referring to the use of the land as a

<sup>9</sup> *R v. Oxfordshire County Council, ex parte Sunningwell Parish Council* [1999] 3 All ER 385 (HL)

<sup>10</sup> *Smith v Brudenell Bruce* [2002] 2 P&CR 4

short-cut rather than for general recreational purposes<sup>11</sup>. It is therefore unlikely that the notices, by themselves, were sufficient to render use of the application site not 'as of right'.

32. The Borough Council also states that when trespassers were occasionally witnesses on the site, they were expressly asked by the caretaker and other staff to leave. This is supported by a statement by the current Facilities Manager. However, this evidence is, to a degree, contrary to that of Mr. Bringloe, who asserts that recreational use of the site was never challenged whilst he was responsible for the site. It is possible to reconcile these two accounts by the fact that the current Facilities Manager only took up her post after Mr. Bringloe's departure in 2006 which may have resulted in a change in policy.
33. In the absence of any evidence to the contrary, it can be concluded that use of the application site (insofar as it relates to the land surrounding the building) was 'as of right' until the erection of the notices in 2008. However, as stated at paragraph 25, use of the building itself has not been 'as of right'.

**(b) Whether use of the land has been for the purposes of lawful sports and pastimes?**

34. Lawful sports and pastimes can be commonplace activities including dog walking, children playing, picnicking and kite-flying. It is not necessary to demonstrate that both sporting activities *and* pastimes have taken place since the phrase 'lawful sports and pastimes' has been interpreted by the Courts as being a single composite group rather than two separate classes of activities<sup>12</sup>.
35. Legal principle does not require that rights of this nature be limited to certain ancient pastimes (such as maypole dancing) or for organised sports or communal activities to have taken place. The Courts have held that '*dog walking and playing with children [are], in modern life, the kind of informal recreation which may be the main function of a village green*'<sup>13</sup>.
36. The evidence of use submitted in support of the application is summarised at **Appendix C**. It can be seen that the overwhelming majority of use of the application site falls within one of three categories: parking on the site, using the site as a cut-through to and from Joyce Close, and activities that are directly related to the Council or the use of the building.
37. Parking is not a lawful sport or pastime and, indeed, were the land to be registered it would become unlawful by virtue of the registration<sup>14</sup>.

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<sup>11</sup> In *R (Oxfordshire and Buckinghamshire mental health NHS Foundation Trust) v Oxfordshire County Council* [2010] EWHC 530 (Admin), a notice stating 'no public right of way' was held to refer only to the assertion of a public right of way and not sufficient to defeat an application for Village Green status.

<sup>12</sup> *R v. Oxfordshire County Council, ex parte Sunningwell Parish Council* [1999] 3 All ER 385 (HL)

<sup>13</sup> *R v Suffolk County Council, ex parte Steed* [1995] 70 P&CR 487 at 508 and approved by Lord Hoffman in *R v. Oxfordshire County Council and another, ex parte Sunningwell Parish Council* [1999] 3 All ER 385

<sup>14</sup> Section 34 of the Road Traffic Act 1988 makes it a criminal offence to drive over or park on land not forming part of a road without lawful authority.

38. Using the site as a cut-through is not a lawful sport or pastime as it is indicative of a public rights of way type user along a linear route rather than a general right of recreation across the whole of the site. In the case of Laing Homes<sup>15</sup>, it was held that footpath-type use should be disregarded: *"it is important to distinguish between use that would suggest to a reasonable landowner that the users believed they were exercising a public right of way to walk, with or without dogs... and use that would suggest to such a landowner that the users believed that they were exercising a right to indulge in lawful sports and pastimes across the whole of the fields"*. In Oxfordshire<sup>16</sup>, Lightman J suggested that *"... if the position is ambiguous, the inference should generally be drawn of exercise of the less onerous right (the public right of way) rather than the more onerous (the right to use as a green)"*.
39. Finally, reference is made in the user evidence to activities such as 'visiting the planning office to make inquiries on Council matters'<sup>17</sup>, 'visiting groups who had rooms in the building'<sup>18</sup>, 'access to the Citizens Advice Bureau'<sup>19</sup>, and 'using Council facilities'<sup>20</sup>. These are referred to at **Appendix C** as 'Council-related use'. Such uses are not lawful sports and pastimes for the purposes of section 15 of the Commons Act 2006. Furthermore, uses which are associated with the various groups who used the site for organised gatherings would not have been 'as of right' since such use would have been with the knowledge and permission of the Council.
40. The test for the quality of the user has been set out recently by the Supreme Court in the Redcar<sup>21</sup> case: *"if the user for at least 20 years was of such amount and in such manner as would reasonably be regarded as being the assertion of a public right... the owner will be taken to have acquiesced in it"*. This means that the applicant must demonstrate that there is an established pattern of use, and that such use was of such a manner as to indicate to the landowner that it consisted of the assertion of a public right; use which is trivial or sporadic will not carry the outward appearance of the assertion of a public right<sup>22</sup>.
41. In this case, once user for the three categories described above is excluded, there remains little actual evidence of use for informal recreational purposes. Of the 48 user evidence questionnaires submitted in support of the application, 37 refer only to parking, footpath-type or Council-related uses. This leaves 11 people who have used the land for other purposes. Of those, 4 people have used the site only for 'meeting friends' or 'chatting to friends' and it is unclear as to whether such use was ancillary to the use of the building. One person refers to using the site to play as a youngster which would have been outside of the relevant twenty-year period. The remaining users refer to only occasional use for recreational purposes (or do not state the frequency of use at all) and only one person states that they have used the land on a weekly basis over the last 48 years for the purposes of playing with children.

<sup>15</sup> *R (Laing Homes Ltd.) v Buckinghamshire County Council* [2003] 3 EGLR 70 at 79 per Sullivan J

<sup>16</sup> Oxfordshire first instance at para 102

<sup>17</sup> See user evidence questionnaire of Mrs. E. Link

<sup>18</sup> See user evidence questionnaire of Mrs. J. Martin-Gutkowska

<sup>19</sup> See user evidence questionnaire of Mrs. M. Mullen

<sup>20</sup> See user evidence questionnaire of Mrs. A. Warren

<sup>21</sup> *R (Lewis) v Redcar and Cleveland Borough Council* [2010] UKSC11 at paragraph 67 per Lord Hope

<sup>22</sup> *R v. Oxfordshire County Council, ex parte Sunningwell Parish Council* [1999] 3 All ER 385 (HL)



42. On a careful analysis of the evidence, it is therefore clear that there has been some use of the application site for lawful sports and pastimes, but the vast majority of use has been for non-recreational purposes. Such use as there has been for informal recreational purposes has been infrequent and unlikely to amount to the assertion of a public right of general recreation across the whole of the application site.

**(c) Whether use has been by a significant number of inhabitants of a particular locality, or a neighbourhood within a locality?**

43. The right to use a Village Green is restricted to the inhabitants of a locality or of a neighbourhood within a locality and it is therefore important to be able to define this area with a degree of accuracy so that the group of people to whom the recreational rights are attached can be identified.

44. The definition of locality for the purposes of a Village Green application has been the subject of much debate in the courts and there is still no definite rule to be applied. In the *Cheltenham Builders*<sup>23</sup> case, it was considered that *'...at the very least, Parliament required the users of the land to be the inhabitants of somewhere that could sensibly be described as a locality... there has to be, in my judgement, a sufficiently cohesive entity which is capable of definition'*. The judge later went on to suggest that this might mean that locality should normally constitute *'some legally recognised administrative division of the county'*.

45. At part 6 of the application form, the Applicant specifies the locality by reference to the location of the site and surrounding roads: "part of the parish of Cranbrook". This is not a legally recognised administrative boundary and thus would not satisfy the requisite legal test. However, the application site does fall within the administrative parish of Cranbrook and Sissinghurst which is recognised at law and would be capable of constituting a locality for the purposes of the tests in section 15 of the Commons Act 2006.

46. Having established a relevant locality, it is also necessary to consider whether the use of the application site has been by a significant number of the residents of that locality. The word "significant" in this context does not mean considerable or substantial: *'a neighbourhood may have a very limited population and a significant number of the inhabitants of such a neighbourhood might not be so great as to properly be described as a considerable or a substantial number... what matters is that the number of people using the land in question has to be sufficient to indicate that the land is in general use by the community for informal recreation rather than occasional use by individuals as trespassers'*<sup>24</sup>. Thus, what is a 'significant number' will depend upon the local environment and will vary in each case depending upon the location of the application site.

47. In this case, the application is supported by 48 user evidence questionnaires. However, as stated above, the majority of the use referred to does not consist of informal recreational use. As such, the application site has not been used by a significant number of the residents of the locality for lawful sports and pastimes.

<sup>23</sup> *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at page 90

<sup>24</sup> *R (Alfred McAlpine Homes Ltd.) v Staffordshire County Council* [2002] EWHC 76 at paragraph 71

**(d) Whether use of the land by the inhabitants is continuing up until the date of application or meets one of the criteria set out in sections 15(3) or (4)?**

48. The Commons Act 2006 requires use of the application site to have taken place 'as of right' up until the date of application or, if such use has ceased prior to the making of the application, to fulfil one of the alternative criterion set out in sections 15(3) and 15(4) of the 2006 Act (as set out at paragraph 4 above).
49. Recreational use ceases to be 'as of right' when it is no longer without force, without secrecy or without permission. So, for example, if a fence is erected but people continue to access the site by breaking down the fence or climbing over it, then subsequent use is considered to be with force and as such is not 'as of right'.
50. In this case, there is evidence of notices having been erected on the application site as well as the main access gates being locked prior to the application being made in September 2009<sup>25</sup>.
51. As stated above, it is uncertain what the true effect of the notice was on the use of the land. However, the locking of the access gates did constitute a clear and overt challenge to use and the user evidence suggests that this act materially interrupted the use of the site for recreational purposes. The locking of the gates, according to the user evidence (although it is disputed by the Council), did not occur until 2008. Therefore, it is considered that the date upon which user as of right ceased was 2008.
52. Use did not therefore continue 'as of right' until the date of the application, but would fall within the exception set out in 15(3) of the Commons Act 2006, namely that use 'as of right' ceased within two years of the date of the application.

**(e) Whether use has taken place over a period of twenty years or more?**

53. In order to qualify for registration, it must be shown that the land in question has been used for a full period of twenty years. The period of twenty years is calculated retrospectively either from the date of the application (in cases where use 'as of right' has not ceased) or from the date at which use of the application site 'as of right' ceased.
54. Having established that use of the application site ceased to be 'as of right' from 2008, the relevant twenty-year period ("the material period") is 1989 to 2009.
55. Of the eleven people who have used the application site for informal recreational purposes, all but one appear to have used it during the relevant period. Therefore, there has been very limited use of the application site for informal recreational purposes for a period of at least 20 years but, as stated above, this use would not have been of a nature or frequency sufficient to amount to the assertion of a public right over this period.

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<sup>25</sup> Note that the application is dated August 2009 but was not formally accepted by the County Council as being duly made until September 2009.

## **Conclusion**

56. From close consideration of the evidence submitted, it has been concluded that the legal tests concerning the registration of the land as a Village Green (as set out above) have not been met.

## **Recommendation**

57. I recommend that the County Council informs the applicant that the application to register the land at the former Council Offices site at Cranbrook as a new Village Green has not been accepted.

Accountable Officer:

Dr. Linda Davies – Tel: 01622 221500 or Email: linda.davies@kent.gov.uk

Case Officer:

Miss. Melanie McNeir – Tel: 01622 221511 or Email: melanie.mcneir@kent.gov.uk

The main file is available for viewing on request at the Environment and Waste Division, Environment and Regeneration Directorate, Invicta House, County Hall, Maidstone. Please contact the case officer for further details.

## **Background documents**

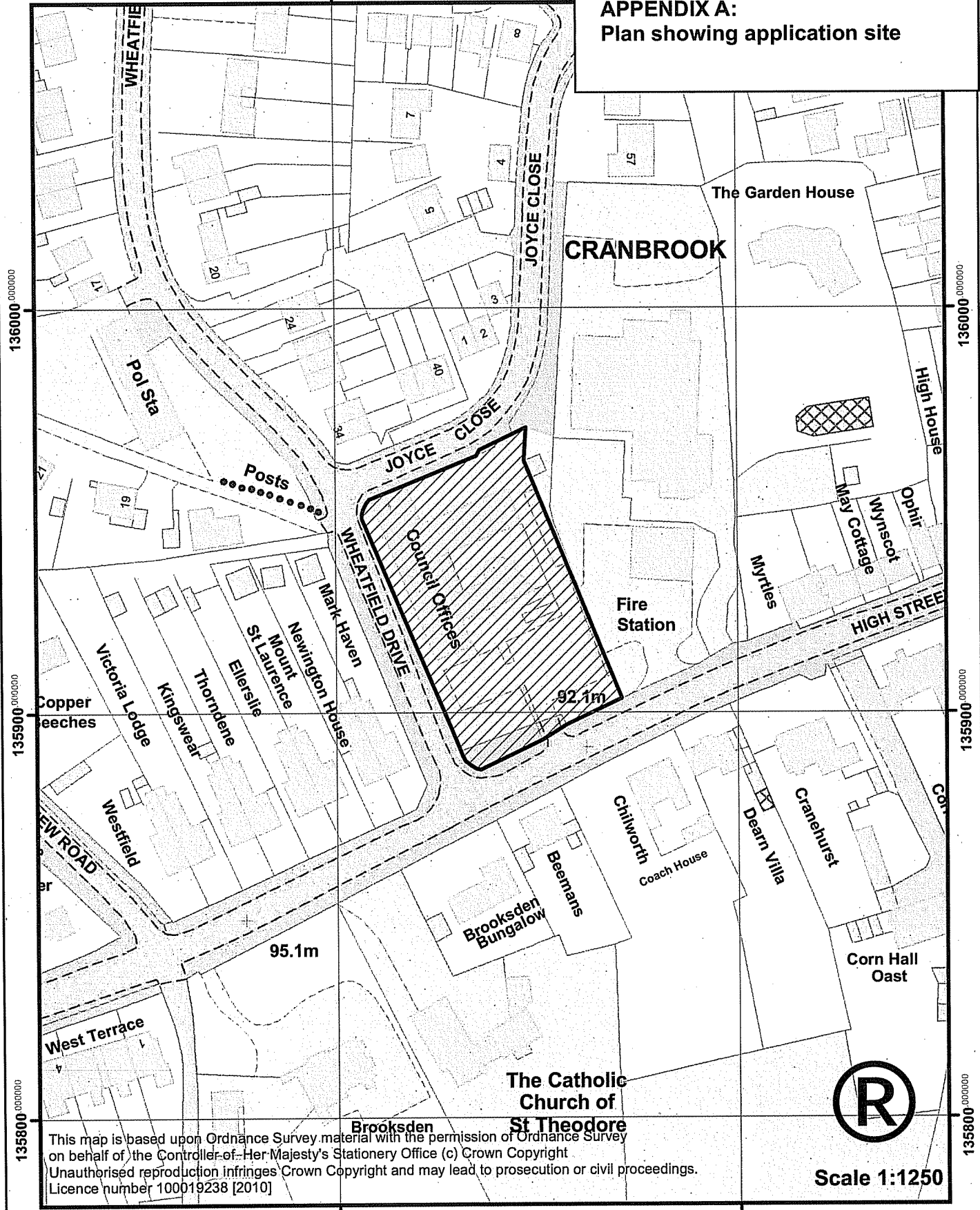
APPENDIX A – Plan showing application site

APPENDIX B – Copy of application form

APPENDIX C – Summary of user evidence in support of the application

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**APPENDIX A:  
Plan showing application site**



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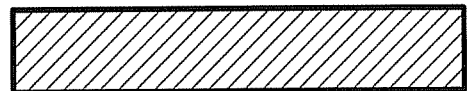
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**Land subject to Village Green application at the former Cranbrook Council Offices site, High Street, Cranbrook**



FORM CA9

Commons Act 2006: section 15

Application for the registration of land  
as a new Town or Village Green

APPENDIX B:  
Copy of the application form



*This section is for office use only*

Official stamp of the Registration Authority  
indicating date of receipt:

COMMONS ACT 2006  
KENT COUNTY COUNCIL  
REGISTRATION AUTHORITY  
08 SEP 2009

Application number:

VG4615

VG number allocated at registration  
(if application is successful):

**Note to applicants**

Applicants are advised to read the 'Part 1 of the Commons Act 2006 (changes to the commons registers):  
Guidance to applicants in the pilot implementation areas' and to note the following:

- All applicants should complete parts 1-6 and 10-12.
- Applicants applying for registration under section 15(1) of the 2006 Act should, in addition, complete parts 7 and 8. Any person can apply to register land as a green where the criteria for registration in section 15(2), (3) or (4) apply.
- Applicants applying for voluntary registration under section 15(8) should, in addition, complete part 9. Only the owner of the land can apply under section 15(8).
- There is no fee for applications under section 15.

*Note 1*  
*Insert name of Commons*  
*Registration Authority*

**1. Commons Registration Authority**

To the:

<p><b>Note 2</b> If there is more than one applicant, list all names. Use a separate sheet if necessary. State the full title of the organisation if the applicant is a body corporate or unincorporate. If you supply an email address in the box provided, you may receive communications from the Registration Authority or other persons (e.g. objectors) via email. If part 3 is not completed all correspondence and notices will be sent to the first named applicant.</p>	<p><b>2. Name and address of the applicant</b></p> <p>Name: LINDA HALL</p> <p>Full postal address: HIGH MEADOWS, (incl. Postcode) CURTISDEN GREEN, CRANBROOK, TN17 1LA</p> <p>Telephone number: 01580-213468 (incl. national dialling code)</p> <p>Fax number: (incl. national dialling code)</p> <p>E-mail address: linda@lindh6pp.plus.com</p>
<p><b>Note 3</b> This part should be completed if a representative, e.g. a solicitor, is instructed for the purposes of the application. If so all correspondence and notices will be sent to the person or firm named here. If you supply an email address in the box provided, you may receive communications from the Registration Authority or other persons (e.g. objectors) via email.</p>	<p><b>3. Name and address of representative, if any</b></p> <p>Name:</p> <p>Firm:</p> <p>Full postal address: (incl. Postcode)</p> <p>Telephone number: (incl. national dialling code)</p> <p>Fax number: (incl. national dialling code)</p> <p>E-mail address:</p>
<p><b>Note 4</b> For further details of the requirements of an application refer to Schedule 4, paragraph 9 to the Commons Registration (England) Regulations 2008.</p> <p>* The Gallery was full at last meeting of Rastan Area Planning Committee.</p>	<p><b>4. Basis of application for registration and qualifying criteria</b></p> <p>If you are the landowner and are seeking voluntarily to register your land please tick this box and move to question 5. Application made under section 15(8); <input type="checkbox"/></p> <p>If the application is made under section 15(1) of the Act, please tick one of the following boxes to indicate which particular subsection and qualifying criterion applies to the case.</p> <p>Section 15(2) applies: <input checked="" type="checkbox"/> land use</p> <p>Section 15(3) applies: <input checked="" type="checkbox"/> building use <sup>1 part of</sup></p> <p>Section 15(4) applies: <input checked="" type="checkbox"/></p> <p>Users were given notice by TWBC to cease use of building at end of June/July 2007. Planning service was with drawn then, BUT use of building continues for Planning Committee meetings which are open to public. ✓</p>

\*Section 15(6) enables any period of statutory closure where access to the land is denied to be disregarded in determining the 20 year period.

If section 15(3) or (4) applies, please indicate the date on which you consider that use 'as of right' ended and why. *This is difficult to decide. Children still play on the land & adults still use it to walk dogs & to cross to High Street from Joyce Close. But the office closed just over 2 years ago (July 2007) for consultation with TWBC officers over planning & highways issues, & for paying one's Council tax/rent, etc., & for community groups. It is only just recently that <sup>small</sup> notice indicating 'private property' has gone up but this is to deter vandals who have stolen from the roof.*  
 If section 15(6)\* is being relied upon in determining the period of 20 years, indicate the period of statutory closure (if any) which needs to be disregarded:

**Note 5**  
 This part is to identify the new green. The accompanying map must be at a scale of at least 1:2,500 and shows the land by means of distinctive colouring within an accurately identified boundary. State the Land Registry title number where known.

**5. Description and particulars of the area of land in respect of which application for registration is made**

Name by which usually known:  
*As you will see from replies, this name has changed over the years. It is currently known as the Cranbrook Council office site.*

Location:  
*close to top of High Street, Cranbrook.*

Common Land register unit number (only if the land is already registered Common Land):

Please tick the box to confirm that you have attached a map of the land (at a scale of at least 1:2,500):

**Note 6**  
 It may be possible to indicate the locality of the green by reference to an administrative area, such as a parish or electoral ward, or other area sufficiently defined by name (such as a village). If this is not possible a map should be provided on which a locality or neighbourhood is marked clearly at a scale of 1:10,000.

**6. Locality or neighbourhood within a locality in respect of which the application is made**

Indicate the locality (or neighbourhood within the locality) to which the claimed green relates by writing the administrative area or geographical area by name below and/or by attaching a map on which the area is clearly marked:

*High Street & Wheatfield Way, part of Parish of Cranbrook*

Please tick here if a map is attached (at a scale of 1:10,000):

**Note 7**

Applicants should provide a summary of the case for registration here and enclose a separate full statement and all other evidence including any witness statements in support of the application.

This information is not needed if a landowner is applying to register the land as a green under section 15(8).

See Appendix I  
for proof of right of  
way across land.

**7. Justification for application to register the land as a Town or Village Green**

People have used site for a wide variety of purposes some involving land & some the building on the site.

Building

- 1) Inspecting applications for planning permission & consulting planning officers.
- 2) Attending Planning Committee meetings which are open to public.
- 3) Attending other public meetings, such as TWBC meeting in January/Febr. 2007 re want Cranbrook waste on the site.
- 4) People went to offices to pay their rates/council tax & council rent.
- 5) They went to collect bus timetables & tourist-type information.
- 6) A large number of local clubs & societies, used premises for their meetings, as churches, if they paid hire fees, these were very low and market rates because of their charitable status.

Land

- 7) Children play on site, riding bikes, scooters, learning to ride bike in safe environment away from traffic
- 8) Children learnt to roller skate on it, & play football
- 9) " Playhide & seek even today & chase one another.
- 10) " Play with their dogs, or site chat with friends.
- 11) People picnic under oak tree.
- 12) Adults walk, exercise dog, use right of way across it for <sup>pedestrian</sup> access to Joyce Close now, & in past for access to RDC hall & Magistrate's Court.

**Note 8**

Use a separate sheet if necessary. This information is not needed if a landowner is applying to register the land as a green under section 15(8).

**8. Name and address of every person whom the applicant believes to be an owner, lessee, proprietor of any "relevant charge", tenant or occupier of any part of the land claimed to be a town or village green**

Tunbridge Wells Borough Council, Town Hall,

" " "



**Note 9**

List or enter in the form all such declarations that accompany the application. This can include any written declarations sent to the applicant (i.e. a letter), and also any such declarations made on the form itself.

**9. Voluntary registration – declarations of consent from any relevant leaseholder of, and of the proprietor of any relevant charge over, the land**

**Note 10**

List all supporting consents, documents and maps accompanying the application. Evidence of ownership of the land must be included for voluntarily registration applications. There is no need to submit copies of documents issued by the Registration Authority or to which it was a party but they should still be listed. Use a separate sheet if necessary.

**10. Supporting documentation**

**Note 11**

List any other matters which should be brought to the attention of the Registration Authority (in particular if a person interested in the land is expected to challenge the application for registration). Full details should be given here or on a separate sheet if necessary.

**11. Any other information relating to the application**

I suspect that T Wells B.C. may challenge, even though the people of Cranbrook declared at a public meeting held in the building in 2007 that they wished the site and building to become a community asset. I know this because as a TWBC councillor I was present at this meeting and had already consulted the people by means of a petition which garnered nearly 1300 signatures in the space of a few hours just before Xmas 2006.

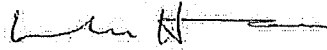
During Spring of 2007, the then leader of the Council promised to a community group set up by Sir Kenneth Warren, retired M.P., a brother Sir K. & a senior officer to visit the site to see what was needed to make it acceptable to the town. A few days later, this leader was deposed, the members being unaware of his promise. Not only has the promise not been fulfilled, but plans are afoot to dispose of site for housing.

I should like this application to be fast-tracked, because demolition is due the day after CAB move out on 8th October & housing will follow & pedale barred from the site.

**Note 12**

The application must be signed by each individual applicant, or by the authorised officer of an applicant which is a body corporate or unincorporate.

**12. Signature**

Signature(s) of applicant(s): 

Date: 28th August 2009.

**REMINDER TO APPLICANT**

You are responsible for telling the truth in presenting the application and accompanying evidence. You may commit a criminal offence if you deliberately provide misleading or untrue evidence and if you do so you may be prosecuted. You are advised to keep a copy of the application and all associated documentation.

Please send your completed application form to:

The Commons Registration Team  
Kent County Council  
Countryside Access Service  
Invicta House  
County Hall  
Maidstone  
Kent ME14 1XX

**Data Protection Act 1998**

The application and any representations made cannot be treated as confidential. To determine the application it will be necessary for the Commons Registration Authority to disclose information received from you to others, which may include other local authorities, Government Departments, public bodies, other organisations and members of the public.

A copy of this form and any accompanying documents may be disclosed upon receipt of a request for information under the Environmental Information Regulations 2004 and the Freedom of Information Act 2000.

### **Full Statement justifying application to register the land as Town or Village Green**

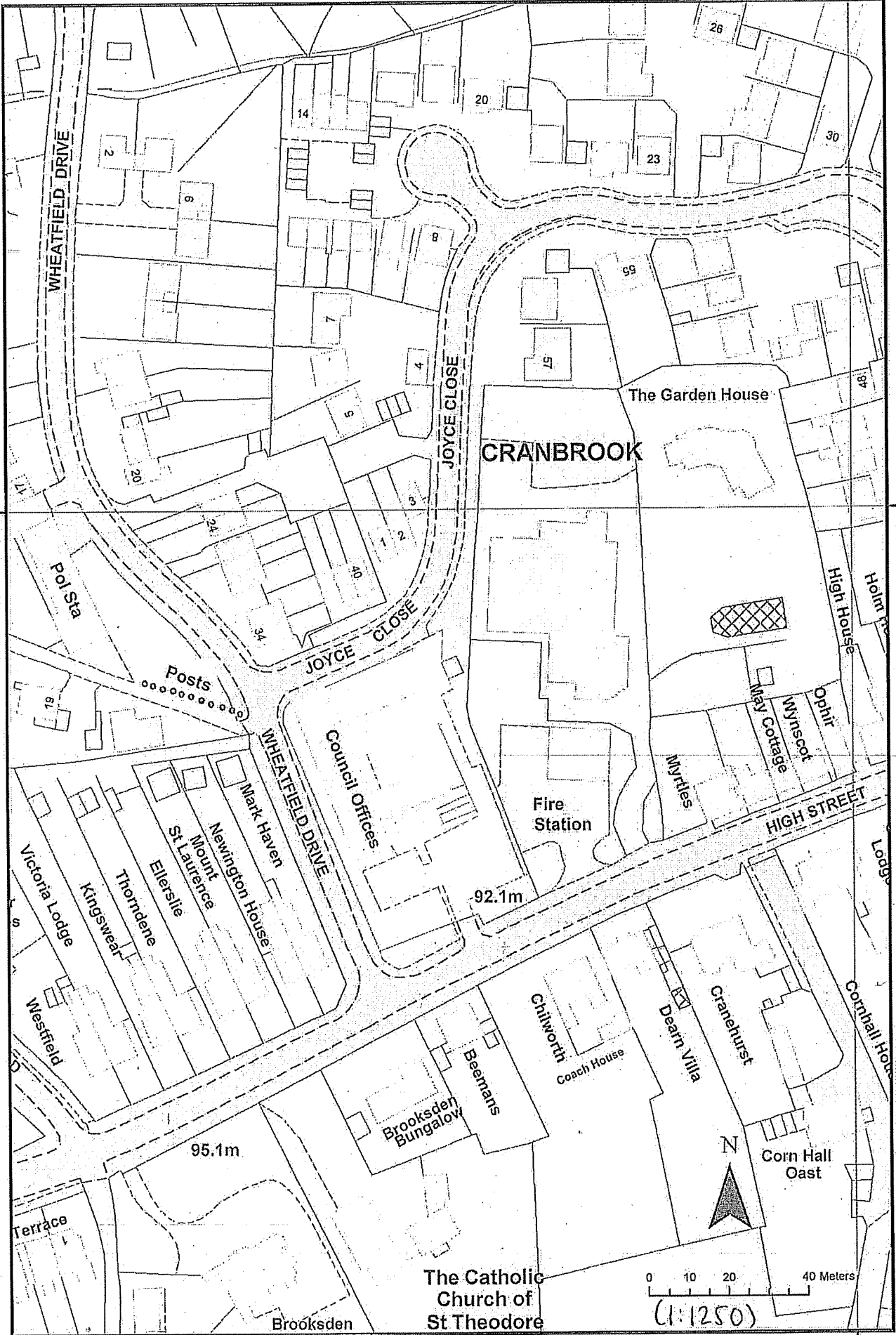
The original land, much larger than the current site, was bought by the Cranbrook Rural District Council in late 1950s. In early 1960s the RDC erected the current building on part of the site as its council offices. At this point the RDC still had a community hall on the site which people hired for children's birthday parties while, during weekdays and in evenings, community groups were accommodated in the hall for dress-making classes, for keep fit for the elderly, for WI, etc. Some replies suggest that even church services were held in the hall. In all this time, in other words, for over fifty years, while these activities took place, the land was not fenced off and people were not deterred from walking on the land for recreation, not just to visit the different buildings, while children played games on the land, like hide and seek, and learned to ride their bikes on it, as they still do, while adults walked on it and exercised their dogs.

In 1974 Cranbrook was incorporated into the borough of TWells. Then in late 1980s the Magistrates Court, which was also on the larger site was demolished, because TWBC sold off a large portion of the land for executive housing. This housing development also necessitated demolishing the old RDC hall. A promise was given at the time (and it is in the TWBC minutes) that a replacement community hall would be built. In the meantime, a suite of extra rooms, **specifically for the displaced community groups**, were added to the back of the council offices building, including a kitchen and toilets, many of whom had already been installed in the RDC hall for twenty years or more and therefore using the land.

The original building and the current land (although this is a mere slice now of the original purchase) were paid for by Cranbrook Rural district ratepayers, but the benefits of the sale of the land went into the coffers of TWBC and the promised community hall was NEVER built. In 2007 parts of the current building were closed; the planning officers whom people consulted over planning applications were removed to the Town Hall and planning docs can now only be accessed online, unless one is prepared to trek to TWells. Most of the user groups were given notice to quit by June/July 2007, except two groups which stayed on, including CAB. They are still in occupation of a portion of the building and people visit them on a daily basis. Their legal occupation of the building is an anomaly, because they may appear to hire their rooms from TWBC but, since they receive a hefty grant from TWBC, which pays their rent, in effect they pay nothing for their presence on site and this has been the case for more than 20 years. They have been given notice to quit by 8<sup>th</sup> October 2009. Cabinet in TWells voted last week to demolish the building.

This is a complicated issue because use of the land/site, which originally was several times larger than currently, is still active in the memories of the local people. For more than 20 years the current building sat in a very much larger site to which the whole town had access and their children played on, while adults walked their dogs, chatted with neighbours, went to use the RDC hall and the Magistrates Court. Then since the sell off of the larger portion of the land for housing, people have still exercised their dogs and themselves on what is left of the land, attended classes in the building, attended open, public meetings. 'See you at the offices' is a common call for youngsters as it is a safe, nearby place to play away from traffic.

The land has become over time the place where marching groups like the scouts/cubs meet, line up and start their parades, as last year when the brass band involved in the commemoration of the Howitzer changed into their uniforms there before marching up to the War Memorial.



136000

136000

The Catholic Church of St Theodore

0 10 20 40 Meters  
(1:1250)

**APPENDIX C:  
Summary of user evidence submitted  
in support of the application**

Name	Dates of use	Frequency of use	Type of use				Comments
			Cut through	Parking	Council-related use	Informal recreational use not associated with Council	
ANFORD, J	1992 – present	Occasional	Y	Y			
BADCOCK, J and D	1974 – present		Y	Y		Cycling	Notices on land since closure of offices. Used by others for skateboarding, picnicking, cycling, outdoor meetings, and ball games
CAMBURN, M	Since early 1960s	As necessary		Y	Y		Gates closed and private notices erected in 2009. Frequent use by others.
CHANDLER, N	42 yrs	Weekly but now monthly	Y		Y		Assembly for parades
CHAPMAN, J	1984 – 2007	Weekly			Y		Rented from Council for classes 1984 - 2007
COWLES, B	48 yrs	Weekly			Y	Playing with children	Seen daily use by children and visitors to offices
COWLES, P	40 yrs				Y	Football, walking, running, socialising	
CRABTREE, C	1988 – present	Monthly, now occasionally	Y		Y		
CRAGGS, J	32 yrs	Daily	Y		Y		Seen use by children
CUNNINGHAM, G	1980 – 1988 1994 – 2009	Occasional			Y		Car park gates locked 2009. Observed use by skateboarders since office closure
DANN, M	1962 – present	Occasional			Y		
DOE, R	1977 – present	Occasional		Y			Seen use by others for skateboarding, ball games, parking, gatherings
DONOVAN, P	1977 – present		Y		Y		Sought permission for building use 1990 – 2007. Seen daily use by others.
ELGOOD, D	30 yrs		Y		Y		Land is used by children and community groups
ELGOOD, R	25 yrs	Occasional			Y		Aware of occasional use by others
FRANKS, J	1959 – present	Occasional	Y				

Name	Dates of use	Frequency of use	Type of use				Comments
			Cut through	Parking	Council-related use	Informal recreational use not associated with Council	
GOODCHILD, P	1986 – present	Occasional	Y				Permission obtained for use of building for church activities 1986 – 91, 97 – 99
HALL, L	10 yrs		Y		Y		Seen use by others: children playing, exercising dogs, assembly for parades
HASTIE, E	1999 – present		Y			Cycling, walking, playing, ball games	
HINKLEY, P	1980s – present	Weekly	Y		Y		Seen children playing on site
HOOPER, E	1971 – present	Occasional	Y	Y	Y		Gates locked 2008
HOOPER, J, M	1958 – present	Occasional	Y	Y		Meeting friends	Private notice and gate locked approx 2 yrs ago
HOOPER, J, M, D	1958 – present	Occasional	Y	Y		Meeting friends	
LINK, E	1970s – present		Y		Y		Often see children playing, riding bikes etc. Gates locked 2008.
LLOYD, J	1987 – present	Occasional	Y				Regularly used by others for walking, exercise, cycling
LLOYD, M	1987 – present	Occasional	Y		Y		Used by others on a daily basis
MALIN, J	1957 – present	Occasional	Y	Y		Chatting to friends	No notices on site until recently
MARLEY, P and A	1987 – present	Fairly often	Y		Y		Used by children playing
MARTIN – GUTKOWSKA, J	1977 – present	Variable	Y		Y		From 2008, gates locked and notices erected. Children still use for skateboarding, cycling etc.
MULLEN, M	1980 – present	Occasional			Y		Seen use by others for walking dogs and children playing
MULRENNAN, A	19 yrs		Y				Often used by children to play and gather. Also used as assembly point for parades
MULRENNAN, J	19 yrs	Occasional			Y		

Type of use

Name	Dates of use	Frequency of use	Cut through	Parking	Council-related use	Informal recreational use not associated with Council	Other	Comments
MUMMERY, P	33yrs	Monthly	Y		Y		Parades	Notice appeared on building when the Council closed it
PARTIS, A	1969 – present	Weekly	Y					Seen use by children, groups assembling for parades
PHILPOT, S	1965 – present	Weekly	Y				Assembly point for parades	
REYNOLDS, A and V	1962 – present	Monthly	Y		Y			Gate recently locked at evenings and weekends
RYAN, E	1964 – 2007				Y			
STANLEY, J	1988 – 2008				Y			
STRUTT, S	1968 – present	Occasional	Y		Y			Seen use by others: children playing, community events
SUMMERS, D	1977 – present	Occasional	Y	Y		Meeting people		Regularly used by local people
SUMMERS, V	30 yrs	Weekly	Y	Y	Y			
SWANN, M	1973 – present	Occasional	Y		Y			
WALSH, R	20 yrs		Y					Used by others for access, parking and children playing
WALTON, H	1969 – present	Occasional				Meeting friends, walk dog, place of assembly		Gates locked over last 2 yrs
WARREN, A	1967 – present	Weekly	Y		Y			Notice erected after offices closed in 2008. Site used daily by others.
WARREN, K	1967 – present		Y		Y			Signs posted in 2008 stating private property. Regularly used by others.
WEBSTER, M	1972 – present					Used land to play as youngsters.		Building used for many clubs and meetings
WHITEHEAD, N and M	17 yrs		Y	Y				Seen use by others daily for parking, footpath, skateboarding, cycling, ball games.