



AGENDA

Kent County Council

REGULATION COMMITTEE MEMBER PANEL

Friday, 31st October, 2008, at 2.00 pm
Swale 3, Sessions House, County Hall,
Maidstone

Ask for: **Andrew Tait**
Telephone **01622 694342**

Tea/Coffee will be available 15 minutes before the meeting

UNRESTRICTED ITEMS

(During these items the meeting is likely to be open to the public)

1. Membership
Mr M J Harrison (Chairman), Mr A D Crowther (Vice-Chairman), Mr I T N Jones, Mr S J G Koowaree and Mrs P A V Stockell.
2. Declarations of Interest by Members for items on the agenda for this meeting
3. Application to register land known as "Coronation Field" and "the Village Green" at Wittersham" as a new Village Green. (Pages 1 - 40)
4. Application to divert part of Public Footpath MR493 at Ditton (Pages 41 - 46)
5. Other items which the Chairman decides are Urgent

EXEMPT ITEMS

(At the time of preparing the agenda there were no exempt items. During any such items which may arise the meeting is likely NOT to be open to the public)

Peter Sass
Head of Democratic Services and Local Leadership
(01622) 694002

Thursday, 23 October 2008

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Application to register land known as ‘Coronation Field’ and ‘the Village Green’ at Wittersham as a new Village Green

A report by the Director of Environment and Waste to Kent County Council’s Regulation Committee Member Panel on Friday 31st October 2008

Recommendation: I recommend that the County Council informs the applicant that the application to register the land known as ‘Coronation Field’ and ‘the Village Green’ at Wittersham has not been accepted.

Local Member: Mr. M. Hill OBE

Unrestricted item

Introduction

1. The County Council has received an application to register land known as ‘Coronation Field’ and ‘the Village Green’ at Wittersham as a new Village Green from local resident Mrs. M. Lewis (“the applicant”). The application, dated 12th September 2006, was allocated the application number 592. 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 13 of the Commons Registration Act 1965 and regulation 3 of the Commons Registration (New Land) Regulations 1969. These regulations came into force on the 3rd January 1970 and provide for applications to be made to register new Village Greens in accordance with section 22 of the 1965 Act
3. Although the Commons Registration Act 1965 has now been replaced by the more recent Commons Act 2006, since this application was received prior to the coming into effect of the 2006 Act, it must be dealt with under the original legislation.
4. For the purpose of this application, therefore, section 22 of the 1965 Act (as amended by section 98 of the Countryside and Rights of Way Act 2000) applies. It defines a Village Green as:

‘land on which for not less than twenty years a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged in lawful sports and pastimes as of right, and either:

 - (a) Continue to do so, or*
 - (b) Have ceased to do so for not more than such period as may be prescribed or determined in accordance with prescribed provisions’.*
5. As a standard procedure set out in the regulations, the County Council must notify the owners of the land, every local authority and any other known interested persons. It must also publicise the application in a newspaper circulating in the local area and put up notices on site to publicise the application. The publicity must state a period of at least six weeks during which objections and representations can be made.

The Case

6. The area of land subject to this application (“the application site”) consists of two adjoining (but distinct) areas of land situated at the centre of the village of Wittersham at the junction of Stocks Road (the B2082) with The Street. The first area of land, known as ‘The Village Green’, consists of a landscaped garden incorporating a surfaced walkway, benches and formal planting. The second area of land, known as ‘Coronation Field’, is essentially a playing field. Access to the application site is via two entrances, one on Stocks Road and the other on The Street.
7. The application has been made on the grounds that the application site has become a 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. It is understood that, although the application itself relates to usage over the 20 year period preceding the date of application, there is evidence of a similar pattern of use dating from the mid-1950s, when a local benefactor paid for the acquisition of the land as a ‘space’ for the village.
8. Included in the application were eight detailed statements of use from local residents asserting that the application site has been available for free and uninhibited use for lawful sports and pastimes over the last twenty years and beyond. A further 41 user evidence questionnaires were also submitted in support of the application. A summary of the user evidence is attached at **Appendix C**.

Consultations

9. Consultations have been carried out as required and a large number of responses were received.
10. Members should be aware that part of the application site (Coronation Field) was subject to two planning applications made to Ashford Borough Council in 2006 for the provision of a new Village Hall and parking facilities. Although both planning applications were subsequently withdrawn, the issue has remained very emotive within the village and local opinion on the matter has been divided.
11. This already delicate situation was made worse by the circulation of an anonymous leaflet throughout the village containing what can best be described as personal and subjective views actively inviting people to raise objections to the application for Village Green status. The leaflet bore a copy of the formal KCC Notice of Application on the front and had the misleading appearance of having originated from KCC, to which the applicant (along with other local residents) raised serious concerns. In response to this, and to ensure the County Council’s impartial stance in relation to the determination of the application, a short statement was produced which was read out by the Chairman of the Parish Council at the Parish Meeting and included in any subsequent items of correspondence received in relation to this application.
12. As a result of the consultation, 44 letters of objection to the application were received, including a petition against the registration of the Coronation Field as a Village Green. A summary of the letters of objection is attached at **Appendix D**. It should be noted that, due undoubtedly to the circulation of the anonymous leaflet referred to above, many of

the letters of objection refer to the benefits of the construction of the proposed Village Hall and the perceived need for the Parish Council to retain control of the land.

13. However, it is important to note that the County Council is not able to take into consideration issues relating to suitability, desirability or amenity when determining the application, since the application must be determined solely on the legal tests set out in section 22 of the Commons Registration Act 1965 (as described above).
14. In addition to the letters of objection summarised in Appendix D, a similar number of 'standard format' letters were also received. These letters, identically worded, stated that objections were made on the grounds "*that Coronation Field has not been observed to be in general use by a significant number of local inhabitants; that the Parish Council, as elected representatives of the community, should retain the right to manage the land for the benefit of the whole community in Wittersham; and that there is already a Village Green in Wittersham at Woodlands View and sufficient access to other publicly maintained open space*".
15. It is, however, difficult to place any great deal of weight to these, not least because many arrived without a legible name or address, but more importantly because they provide a shared view in response to an emotive issue rather than provide any actual evidence in rebuttal to the application. Therefore, in considering the consultation responses, Members should be mindful that it is the substantive content of the objections received that is relevant, and not their number.
16. Another point of significance is that the vast majority of the letters of objection received appear to relate only to Coronation Field (upon which it was proposed that the new Village Hall should be built) rather than the more formal landscaped area known as 'the Village Green'. Indeed, some of those objecting to the registration of Coronation Field as a Village Green have stated that they would have no objection to 'the Village Green' being formally registered as such: for example, one objector states "*both the area behind the War Memorial [the Village Green] and the larger playing field behind [Coronation Field] were given as a space for the village, but only the landscaped garden can truly be said to serve the purpose of a village green. I would be happy for this smaller area only to be included in the Register of Village Greens*".

Landowner

17. The application site is owned entirely by Wittersham Parish Council, having been bequeathed to the Council (by way of a conveyance in 1954) to be held as '*a space for the benefit of the Parish of Wittersham*'.
18. The Parish Council has responded to the effect that it has felt it inappropriate to discuss the matter at the Parish Council meeting (and as such to respond formally to the application) since six of the seven Councillors had declared an interest in the matter. However, the Parish Council advised that a public meeting had been held, during which local residents had been encouraged to respond individually.

Legal tests

19. In dealing with an application to register a new 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, neighbourhood or a neighbourhood within a locality?*
- (d) *Whether use has taken place over period of twenty years or more?*
- (e) *Whether use of the land 'as of right' by the inhabitants has continued up until the date of application?*

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

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

20. The definition of the phrase 'as of right' has been considered in recent High Court case law. Following the judgement in the *Sunningwell*¹ case, it is now 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'.

21. In this case, there is no evidence of any of the users ever having been verbally challenged or physically prevented from gaining access to the land, nor is there any suggestion that use of the land has been secretive. Indeed, the land was originally acquired as a space for use by the inhabitants of the village. In his detailed witness statement, Mr. Lyon (who has known the land since 1984) confirms that "*...we have been able to enter the site freely by the designated access points which are never locked. We have entered without using any force and used the site in full and open view. Our use has never been challenged by the landowner*". This view is echoed in the other witness statements submitted in support of the application.

22. However, the key issue in this case concerns the third limb of the definition of 'as of right', which relates to the granting of permission. Permission, in the context of access to land, can take various forms: it can be express permission which is communicated to local residents (e.g. by way of a notice placed in a prominent position on the site) or it can be express permission which is not communicated to local residents (e.g. by way of a formal deed intended to permit recreational use of the land). Alternatively, permission may be implied when overt actions are taken by the landowner to communicate to the users that their use is conditional and may be terminated at any time, for example, by charging a fee for entry.

23. Finally, there may be instances where there is neither any express permission nor any communication with the users. For example, such a situation may arise where land is held in a statutory public trust (e.g. under the Public Health Act 1875 or the Open Spaces Act 1910) for the specific purpose of public recreation; users may not

¹ *R v. Oxfordshire County Council, ex p. Sunningwell Parish Council (2001)*

necessarily be aware of this trust, but their use is nonetheless 'by right' (because the trust specifically provides a right for them to be there) and therefore not 'as of right'.

24. In this case, it was brought to the attention of the County Council that local byelaws had been made in relation to the application site. A copy of the byelaws is attached at **Appendix E** for reference. Whilst the content of the byelaws themselves are of little significance, they refer to having been made under section 164 of the Public Health Act 1875. This has raised a serious question as to whether the application site is held under the 1875 Act, the consequences of which are that the use of the land has been with permission (i.e. by virtue of a statutory trust) and not 'as of right'. This issue is considered in further detail later in this report.

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

25. Lawful sports and pastimes can be commonplace activities including dog walking, children playing, picnicking and kite-flying. 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; solitary and informal kinds of recreation are equally as valid.

26. In this case, the evidence demonstrates that a range of recreational activities have taken place on the land, including blackberrying, dog-walking, nature-watching and photography. The table summarising evidence of use by local residents at Appendix C shows the full range of activities claimed to have taken place. This test is therefore satisfied.

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

27. 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*² 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*'.

28. At Part 4 of the application form, the applicant identifies the locality as being the parish of Wittersham. The applicant describes in her witness statement the facilities available in the local area, which include a Church of England Primary School, a Parish Council, a Village Hall, a Church, a sports club and a number of social groups (e.g. Toddlers, Brownies and WI). All of these facilities are reminiscent of the sort of 'cohesive entity' described in the *Cheltenham Builders* case. Furthermore, it is clear from plotting the addresses of those having provided user evidence onto a map (see **Appendix F**) that all reside within the administrative parish of Wittersham, which provides a clearly defined and legally recognised locality. The test in relation to locality is therefore satisfied.

² *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council (2003)*

29. In terms of the 'significant number' issue, this was considered in the *McAlpine Homes*³ case, in which it was held that significant did not necessarily mean considerable or substantial: Sullivan J stated that what matters is that the number of users has to be sufficient enough to indicate that *'their use of the land signifies that it is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers'*.
30. One of the main criticisms of the application from the objectors is that the application site has not been in frequent use by the local residents. One objector states *"from my observations, its present use is almost nil. I pass it most days with my dog and have never seen a soul on it"*, whilst another adds *"the Parish Council developed a Parish Plan in 1998 in which it stated that Coronation Field was largely underused, re-emphasising the point that the field was not used by a significant number of people, even then. It is even less used at the present time"*.
31. The applicant's evidence is that the application site has been in regular usage for informal recreation by the local community and this view is supported by several witnesses living close by. One of those (who lives opposite the application site) states *"we have observed... that other villagers have used the field and the Village Green on a daily basis for such activities as dog walking, ball games, including golf practice... occasionally, we have seen the field being used for organised games for local clubs, in particular the Brownies and the Youth Club"*.
32. Some of the objectors have attempted to quantify this use in percentage terms (i.e. as percentage proportion of the total population of the village who use the land). For the reasons set out in the *McAlpine Homes* case (see paragraph 29 above) this is not the correct approach. Instead, it is necessary to consider how the situation would have appeared to a reasonable landowner.
33. It is clear from the Parish Plan referred to by one of the objectors that the Parish Council were aware in 1998 (during the material period) that the land was being used, albeit that it was largely underused. The Parish Council had the opportunity at that time to assert its right as landowner and to challenge the local inhabitants' use of the land. For reasons which will become clearer later in this report, they did not; but this does not mean that use was not by a 'significant' number of local inhabitants within the meaning of the 1965 Act and, despite the volume of objections received asserting the land is little used, it is difficult to ignore the not insignificant amount of user evidence (some of which refers to use on a daily basis) produced in support of the application. Once again, the test to be applied here is a more qualitative rather than quantitative one.

(d) Whether use has taken place over period of twenty years or more?

34. 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 up until the date of application. In this case, since the application was submitted in 2006, the requisite twenty-year period is 1986 to 2006 ("the material period").

³ *R (Alfred McAlpine Homes Ltd.) v Staffordshire County Council (2002)*

35. From the user evidence submitted, there appears to have been use of the land over a considerable period. Of the 49 witnesses who have provided user evidence, 17 have used the land during the whole of the material period, with some having used the land far beyond the start of the material period in 1986. There is no evidence to suggest that such use has ever been interrupted for any significant period.
36. The 'usergram' at **Appendix G** clearly illustrates that use has taken place over a continuous period of at least twenty years and as such I am satisfied that this test has been met.

(e) Whether use of the land by the inhabitants is continuing up until the date of application?

37. The application in this case is dated 12th September 2006. There is no evidence to suggest that the application has been submitted in response to actions taken to prohibit or restrict use of the land by local residents (for example, the erection of a notice or physical barrier). Therefore, it can be concluded that the use of the land by the local inhabitants did continue up until the date of application.

Counsel's advice

38. Due to the complex and emotive nature of the application, Counsel's advice on the matter has been sought. Counsel expressed a serious concern regarding whether the use of the land was capable of being 'as of right'. This concern was in response to a copy of byelaws relating to the application site that had been provided by an objector during the consultation process.
39. The existence of byelaws is not a fact which, itself, automatically disqualifies land from becoming registrable as a Village Green. In fact, the applicant has questioned the validity of the particular byelaws in relation to the application site by virtue of the fact that they have not been prominently displayed or placed on deposit with the local Borough Council. However, such debates are largely irrelevant and indeed the byelaws themselves are, in many ways, a 'red herring' since the significance of the existence of byelaws lies not in their content, but rather in the particular legislative provision under which they were made and under which the Parish Council acquired (and now holds) the land in question.
40. In this case, the byelaws were made in 1979 '*under section 164 of the Public Health Act 1875... with respect to a pleasure ground and a recreation ground... [being] the Village Green and the Recreation Ground known as Coronation Playing Field, Wittersham*'. They were confirmed by the Secretary of State in July 1979 and took effect on 1st August 1979.
41. Section 164 of the 1875 Act provides that '*any urban authority may purchase or take on lease lay out plant improve and maintain lands for the purpose of being used as public walks or pleasure grounds...*'. The fact that the byelaws were made under this section of the 1875 Act suggests that the application site may have been a purchased (or 'appropriated') under the 1875 Act, the effect of which (as explained at paragraph 24 above) would be to render use of the land 'by right' and not 'as of right', since

appropriated land would have been entrusted in the local authority and held for the specific purpose of 'public walks or pleasure grounds'.

42. In the case of the application site at Wittersham, it has not been possible to trace any formal deed of appropriation under the 1875 Act. The original conveyance provided for the land to be conveyed to the Parish Council '*to hold... as a space for the benefit of the Parish of Wittersham*' but did not state the legislative provision under which the Parish Council acquired the land. However, Counsel was of the view that the decision in the *Poole*⁴ case supported the notion that an acquisition of land by a public authority can be inferred to have been made in exercise of powers under various Acts (including the Public Health Act 1875) despite the absence of any direct documentary evidence to that effect.
43. The question which then arises (in the absence of a formal deed of appropriation under the 1875 Act) is what evidence is available regarding the circumstances of the acquisition of the land and, more importantly, the statutory power under which the Parish Council was acting when it acquired the land. It is clear from the original 1954 Conveyance that the intention was for the land to be dedicated to the local inhabitants for recreation purposes and both the applicant and various objectors make reference to the fact that the land was purchased by a local person for the benefit of the village. The unqualified use of the word 'space' in the Conveyance is unhelpful but, considering the context as a whole, it could feasibly be inferred that 'space' was intended as a reference to 'public' or 'open' space, otherwise the Conveyance would have been pointless. This proposition is supported by the fact that there is no evidence to suggest that, during the material period, the Parish Council has ever sought to restrict the recreational use⁵ of the land and has not conducted its management of the land in a manner which would be inconsistent with its acquisition as a recreational space for the inhabitants of the village (for example, by restricting or impeding access).
44. Having concluded, on a balance of probabilities, that the land was held under a statutory trust for public recreation (i.e. s164 of the 1875 Act), Counsel went on to consider the effect of this on the 'as of right' usage of the land. This issue arose in a House of Lords case known as *Beresford*⁶, in which Lord Walker said "*where land is vested in a local authority on a statutory trust under section 10 of the Open Spaces Act 1906, inhabitants of the locality are beneficiaries of a statutory trust of a public nature, and it would be very difficult to regard those who use the park or other open space as trespassers... the position would be the same if there were no statutory trust in the strictest sense, but land had been appropriated for the purpose of public recreation*".
45. The fundamental principle behind 'as of right' concept is the fact that, in order to acquire rights, those using the land must start off as trespassers. The acquisition of rights cannot occur if those using the land for recreational purposes already have a right to do so. If land is held by a local authority for recreational purposes then those using the land are not trespassers; they are already there 'by right'. For this reason, Counsel was of the view that the application site was not capable of registration as a Village Green.

⁴ *Attorney-General v Poole Corporation (1937)*

⁵ Reference was made in paragraph 10 to applications for planning permission to construct a new Village Hall on the application site in 2006, but this was outside the material 20 year period and arguably may not have been inconsistent with the use of the land as a 'space' for the village.

⁶ *R(Beresford) v Sunderland City Council (2004)*

46. Regulation 6(3) of the Commons Registration (New Land) Regulations 1969 states: *‘the registration authority... shall not reject the application without giving the applicant a reasonable opportunity of dealing with the matters contained in the statements of [objection] and with any other matter in relation to the application which appears to the authority to afford prima facie grounds for rejecting the application’*. As such, Counsel advised that, before making a recommendation to the Regulation Committee Member Panel, it would be appropriate to write to the applicant informing her that there may be possible grounds for recommending to the Member Panel that the application should be rejected, and providing an opportunity for the applicant to respond accordingly. A copy of this letter (“the regulation six letter”) is attached at **Appendix H** for reference.

Applicant’s response

47. A copy of the applicant’s response is attached at **Appendix I**. For ease of reference, the main points are summarised below:

- The Local Government Act 1972 requires byelaws to be available for public inspection at the offices of the authority by whom the byelaws are made. Neither the Parish Council nor the Ashford Borough Council hold any byelaws in relation to the land and this raises a serious question as to the validity of the byelaws.
- It is accepted that the Parish Council does hold the land in trust (statutory or charitable) to be kept as an open space for the benefit of the Parish but there is little to distinguish the present case with other similar Village Green applications at South Road Recreation Ground at Hythe [which was referred to a Public Inquiry] and Heartenoak Playing Fields at Hawkhurst [which was registered as a Village Green] and consistency of approach should be applied.

48. In response to the applicant’s latter comments it should be noted that each Village Green application is unique and is dealt with upon the facts of each individual case. In the Hythe case, there was no evidence initially to support the contention by the landowner that the land was held under a public statutory trust and there was a serious question regarding continuity of use, hence the need for a Public Inquiry to test the evidence. In the Hawkhurst case, although the land was owned by the Parish Council, there were no known byelaws and the issue of appropriation simply did not arise: the County Council has no investigative duty and can only take decisions in Village Green matters based on the evidence presented to it by the relevant parties.

49. With regard to the former comments, there was obviously some belief at the time that the byelaws were made (in 1979) that the land was held under a public statutory trust for the powers under section 164 of the 1875 Act to be used; it is unlikely that the byelaws would have been confirmed by the Secretary of State had the Parish Council not had the power to make them in the first place. Whether or not the correct procedures were followed subsequent to the confirmation of the byelaws is an entirely separate question and not one which is directly relevant to the Village Green application.

Conclusion

50. From the evidence submitted, it is clear that the residents of the locality of Wittersham have enjoyed the land for recreational purposes over a period of time far in excess of the requisite 20 years without any form of challenge from the Parish Council (as

landowner). There appears to be, from the user evidence submitted in support of the application and the letters received from objectors, some conflict as to the extent of the usage of the land (the 'significant number' issue discussed at paragraph 30 above). This is essentially a question of fact and degree that is difficult to resolve on paper and may benefit from further examination in a public forum.

51. However, there is one issue, it would appear, that presents a 'knock-out blow' for the application and which cannot be overcome: the question of the public statutory trust under which the application site is considered to be held. Despite the lack of a formal Deed of Appropriation, the existence of the byelaws made under section 164 of the Public Health Act 1875 and the manner in which the Parish Council has acquired and managed the land, provides a persuasive argument in favour of the land being held under the 1875 Act. In the absence of any strong evidence to the contrary, it has to be assumed that the land is held under the 1875 Act and, therefore, that use of the land is 'by right' and not 'as of right'.

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

Recommendations

53. I recommend that the County Council informs the applicant that the application to register the land known as 'Coronation Field' and 'the Village Green' at Wittersham 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 Countryside Access Service, Environment and Waste Division, 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 – Table summarising user evidence

APPENDIX D – Summary of letters of objection

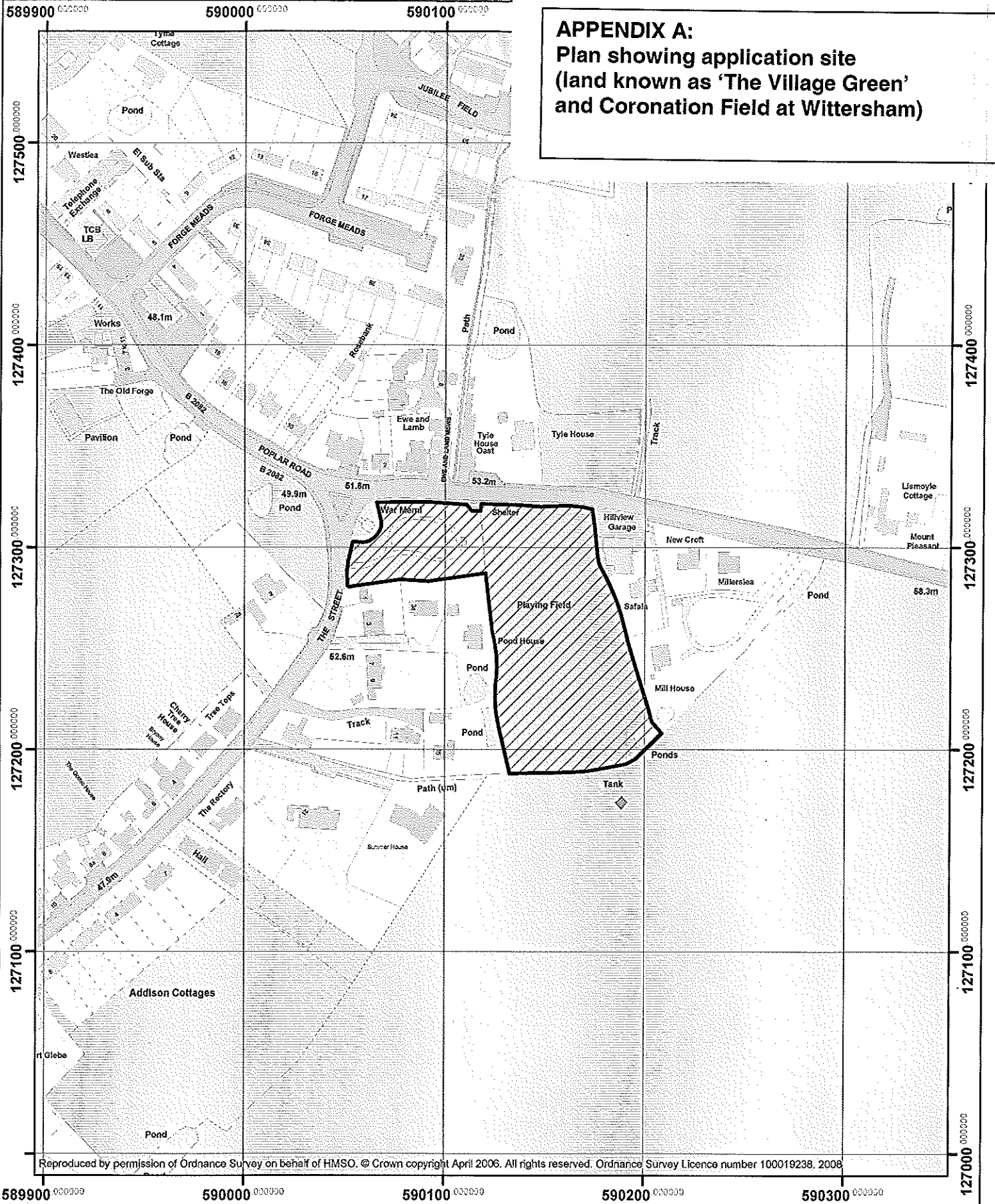
APPENDIX E – Copy of byelaws relating to application site

APPENDIX F – Plan showing the relevant locality

APPENDIX G – Usergram showing period of use

APPENDIX H – Copy of the "regulation six" letter sent to the applicant

APPENDIX I – Applicant's response to "regulation six" letter



APPENDIX A:
 Plan showing application site
 (land known as 'The Village Green'
 and Coronation Field at Wittersham)

Scale 1:2500

Land subject to village green application at Wittersham

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APPENDIX B:
Copy of application formCOMMONS REGISTRATION
KENT COUNTY COUNCIL
REGISTRATION A

18 SEP 2000

VG

*This section for official
use only***COMMONS REGISTRATION ACT 1965 SECTION 13****APPLICATION FOR THE REGISTRATION OF LAND
WHICH BECAME A TOWN OR VILLAGE GREEN
AFTER 2ND JANUARY 1970**¹ *insert name of
registration authority*To the ¹ KENT COUNTY COUNCILApplication is hereby made for the registration as a town or
village green of the land described below, which became so
registrable after 2 January 1970.

Part 1

**Name and address of the applicant or (if more than one)
of every applicant***(Give Christian names
or forenames and surname
or, in the case of a body corporate
or unincorporate, the full title of the
body. If part 2 is not completed all
correspondence and notices will be
sent to the first named applicant).*MIRIAM ANGELA LEWIS
MILL HOUSE
WITTERSHAM
TENTERDEN
KENT
TN30 7EJ

Part 2

Name and address of solicitor, if any.*(This part should be
completed only if a solicitor
has been instructed for the
purposes of the application.
If it is completed, all correspondence
and notices will be sent to the
solicitor)*MR. ALASTAIR WALLACE
PUBLIC LAW SOLICITORS
KING EDWARD CHAMBERS
166B ALCESTER ROAD
MOSELEY
BIRMINGHAM
B13 8HS

Part 3 Particulars of the land to be registered, i.e. the land claimed to have become a town or village green

Name by which usually known
CORONATION FIELD AND VILLAGE GREEN

Locality
PARISH OF WITTERSHAM, KENT

Colour on plan herewith
RED

Part 4 On what date did the land become a town or village green?

1ST AUGUST 2006

Part 5 How did the land become a town or village green?

PLEASE SEE ATTACHED SHEET

Part 6 Name and address of every person whom the applicant believes to be an owner, leasee, tenant or occupier of any part of the land claimed to have become a town or village green (if none are known, write 'none')

WITTERSHAM PARISH COUNCIL
MRS. Y. OSBORNE, CLERK
23 HILLTOP DRIVE
PLAYDEN, RYE
EAST SUSSEX, TN31 7HT

Part 7 For applications to register substituted land (see Note 5); to be disregarded in other cases.

Particulars of the "taken land" i.e. the land which ceased to be a town or village green (or part thereof) when the land described in part 3 became a town or village green (or part)

Name by which usually known

Locality N/A

Colour on plan herewith (if any)

If registered under the 1965 Act, register unit No(s)

Part 8

List of supporting documents sent herewith, if any. (If none are sent, write "none")

NONE

Part 9

If there are any other facts relating to the application which ought to be brought to the attention of the registration authority (in particular if any person interested in the land is believed to dispute the claim that it has become a town or village green) full particulars should be given here. (Continue on the back if necessary)

PLEASE REFER TO WITNESS STATEMENT
OF MIRIAM LEWIS

²If the application must be signed by or on behalf of each individual applicant, and by the secretary or some other duly authorised officer of any applicant which is a body corporate or unincorporate

Date 12/9/06

Signatures ² M A Lewis

(See Note 9)

STATUTORY DECLARATION IN SUPPORT

To be made by the applicant, or by one of the applicants, or by his or their solicitor, or, if the applicant is a body corporate or unincorporate, by its solicitor or by the person who signed the application.

¹Insert full name (and address if not given in the application form)

²Delete and adapt as necessary

³Insert name if applicable

I, ¹ MIRIAM ANGELA LEWIS
solemnly and sincerely declare as follows:-

Ref

1. ² I am [(the person (~~one of the persons~~) who (has) (~~have~~) signed the foregoing application) (the solicitor to (the applicant) (~~one of the applicants~~)]

2. I have read the Notes to the application form.

3. The facts set out in the application form are to the best of my knowledge and belief fully and truly stated and I am not aware of any other fact which should be brought to the attention of the registration authority as likely to affect its decision on this application, not of any document relating to the matter other than those (if any) mentioned in parts 8 and 9 of the application.

⁴Insert "marking" as on plan

4. The plan now produced and shown to me marked ⁴Map A is the plan referred to in Part 3 of the application.

⁵Delete this paragraph if there is no plan referred to in Part 7

R14

5. ~~The plan now produced and shown to me marked ⁴_____ is the plan referred to in Part 7 of the application.~~

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act 1835.

Declared by the said MIRIAM ANGELA
LEWIS
at 39 High Street, Lutterden
in the County of Kent
this 12th day of September 2006.

MA Lewis
Signature of Declarant

Before me
Signature Rosalind K. Johnson
Address 39 High Street Lutterden
Kent TN30 6BT
Qualification Solicitor

REMINDER TO OFFICER TAKING DECLARATION:
Please initial all alterations and mark any plan as an exhibit.

Part 5

Additional Statement

The inhabitants of the parish of Wittersham have indulged in the various activities described below, as of right, for over 20 years as at 1 August 2006, and many of these continue to this day.

The activities which have taken place over the 20 year period include:

- The throwing and kicking of balls
- Walking
- Running
- Jumping
- Keep-fit exercises
- Basketball
- Cricket
- Football
- Dog walking and exercising
- Kite flying
- Blackberry picking
- Tobogganing
- Snowballing and making snowmen
- Operating remote control cars
- Gymnastics
- Use of swings, slide and climbing frame
- Informal socialising
- Picnics
- Needlework
- Wildlife observation and study
- Frisbee playing
- Operating model aeroplanes
- Golf practice
- Brownie and youth club events
- Gardening
- Reading
- Tennis
- Apple picking
- Informal parties

These activities have taken place in various locations on Coronation Field and Village Green over the past 20 years, as described in the attached witness statements. Individual pastimes have taken place on particular parts of the land, and taken together have covered the whole area.

All these activities have taken place without asking permission, predominantly in daylight, without any objection or challenge from the landowner or anyone else. The landowner is fully aware of the use of the land, and entry takes place through recognised unlocked access points.

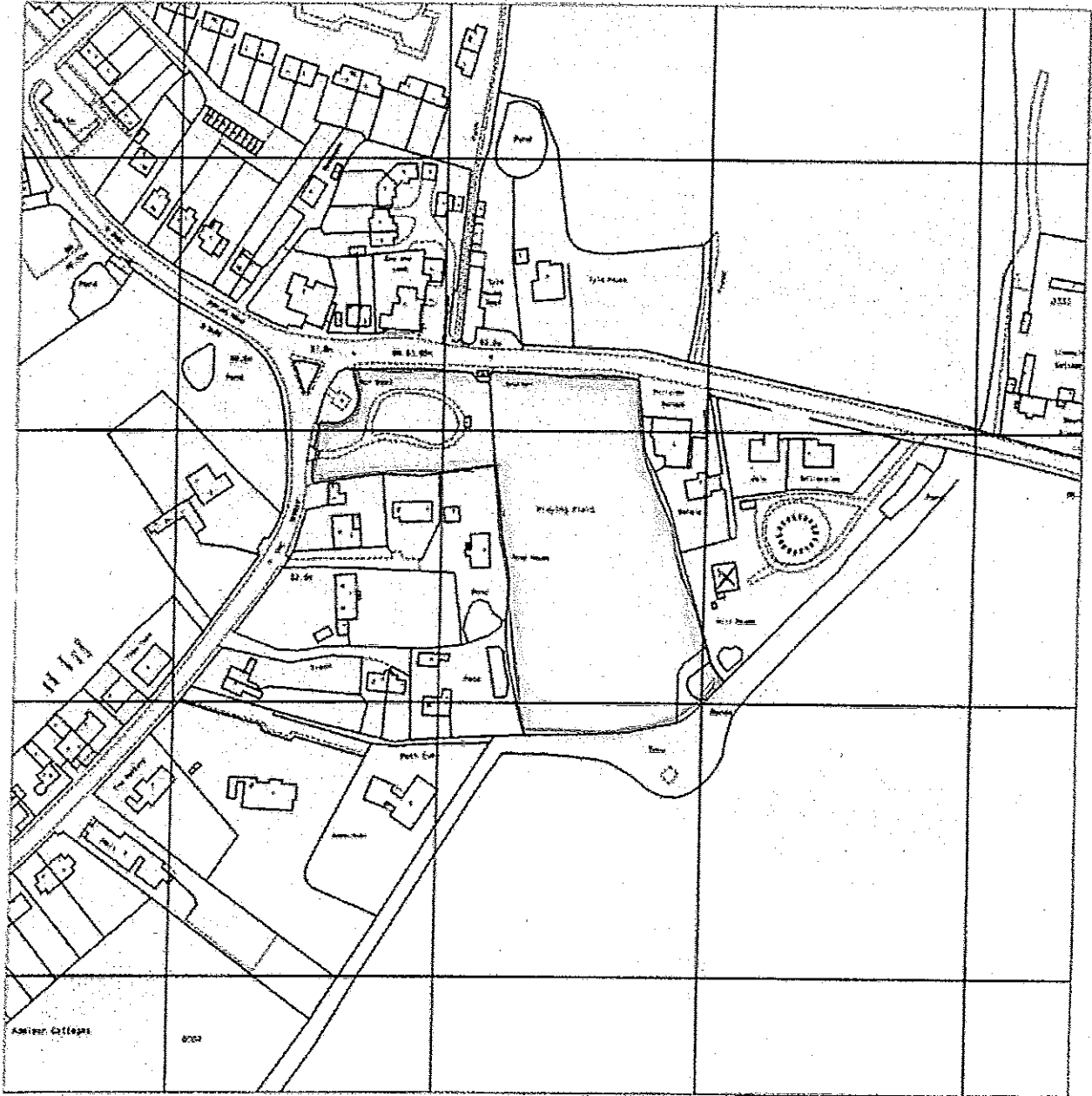
This application relates to usage over the 20 years up to 1 August 2006, but there is evidence of a similar pattern of use dating from around 1954, when a local benefactor paid for the acquisition of the land as "space" for the village.

Map A



Siteplan® 1:2500

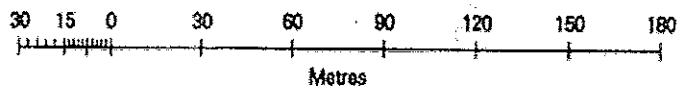
The land bordered in red is the land known as the Village Green and Coronation Field.



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Centre Coordinates: 590140 127257

National Grid sheet reference at centre of this Siteplan: TQ9027

Supplied by: Estate Publications
Serial Number: 00138100

This is the exhibit Map A Page 1 the Statutory Declaration of Miriam Angela Lewis declared before me this 17th day of September 2006 Rosalind K. Johnson

Map B

Scale 1 : 25,000

Wittersham Parish Boundary
shown in red



APPENDIX C:
Table summarising user evidence

Name	Format of evidence*	Dates of use^	Activities undertaken on land	Other comments
Mr. and Mrs. Brown	UEF	1996 – 2006	Walking, blackberrying, playing games	When daughter was younger used the site regularly as a play area. Also used for picnics.
Mr. K. Bryant	UEF	1976 – 1993	Dog walking (daily since 1976), football, frisbee, general play (weekly since 1980s)	
Ms. M. Buxton	UEF	1977 – 2007	Camping and playing as a child, taking daughter to use play equipment there, dog walking, taking playgroup children there to play	
Mr. D. Craib	UEF	1996 – 2006	Dog walking	
Mrs. C. Craib	ST	1996 – 2006	Dog walking and exercising,	Has witnessed use of land by other dog walkers, children (socialising and games) and people blackberrying. Access never prevented and no permission sought.
Mr. K. Dolan	UEF	1999 – 2007	Football, socialising, dog walking (occasionally)	Chairman of Wittersham Football Club. During winter of 2007, own pitches were waterlogged so sent U9's team to train on Coronation Field where drainage is better – did not ask anyone's permission for this.
Mr. J. Eagle	UEF	1996 – 2006	Nature watching, firework displays, taking grandchildren to use play equipment, socialising, blackberrying	
Mrs. P. Eagle	UEF	1996 – 2006	Walking (with and without dog), firework displays , taking grandchildren to use play equipment, socialising, blackberrying	
Ms. D. Ford	UEF	1992 – 2007	Dog walking (daily between 1992 and 2004)	Owner of Hillview Garage (adjoining site)
Mr. G. Ford	UEF	1992 – 2007	Dog walking	
Mrs. V. Gill	UEF	1957 – 2006	Used childrens paddling pool during most days in summer 1960 – 1966/7	
Miss. A. Graham	UEF	2002 – 2007	Not stated	
Mr. C. Griffith	UEF	2000 – 2003	Dog walking	

Mr. S. Harding + Ms. A. Steele	UEF	2002 – 2006	Walking (monthly)	
Mrs. A. Hathaway	UEF	1995 – 2007	Not stated	
Mr. and Mrs. Hilding	UEF	1995 – 2007	Use of children's playground, football, socialising	
Mr. J. Hunt	UEF	1997 – 2007	Blackberrying, nature watching	
Mr. S. Jeffery	ST	2000 – 2006	Dog walking (regularly), picnics, playing with children	
Mr. A. Killeen	UEF	1996 – 2001	Dog walking (daily), jogging (occasionally), socialising (occasionally)	
Mr. K. King	UEF	1978 – 1995	Dog walking, picnics, socialising, blackberrying	
Mrs. M. King	UEF	1978 – 1995	Summer picnics with grandchildren	Also played games with Isle of Oxney Youth Club weekly throughout summers 1986 to 1995 and informal football all year round
Mrs. E. Leaky	UEF	1954 – 2006	Played with children and used paddling pool (1954 – 1960), blackberrying, jogging (1998 – 2006)	
Mr. D. Lewis	UEF	1995 – 2007	Football, cricket, kite flying, snow activities, blackberrying, basketball, playing with remote control cars	
Mrs. M. Lewis	ST	1995 - 2007	Taking children to play on equipment, general playing (e.g. with frisbee), walking, reading, picnics, informal football games (children and adults), socialising, blackberrying, playing in snow, nature watching	Lives adjacent to the site and has, since 1999, had a clear and uninterrupted view of Coronation Field. Has observed many activities taking place on a regular (in some case daily) basis, including dog-walking, informal ball games, children playing, teenagers socialising etc.
Mrs. H. Lyon	UEF	1984 – 2006	Playing with children, walking, kite flying, blackberrying, nature watching	
Mr. P. Lyon	ST	1984 – 2006	Children used play area, walking, relaxing, socialising, kite flying, ball games, Frisbees, model aeroplanes, blackberrying, nature watching	Lives adjacent to land and has observed a number of activities, including occasional use for organised games by local clubs (e.g. brownies and youth club)
Mrs. A. Meade	UEF	1977 – 1996	Playing with children, informal football, picnics, nature watching, brownie parties, kite flying, blackberrying, socialising	

Mr. G. Meade	UEF	1977 – 1996	Playing with children (occasionally), basketball (occasionally), picnics (occasionally), dog walking (regularly), socialising (regularly)	
Mrs. M. Moule	UEF	Early 1990s	As a coach when helping with youth club on a weekly basis	Was clerk to PC at the time the play equipment was officially opened in May 1993 following a grant from the Rural Development Office
Mr. B. Mills	UEF	1983 – 2000	Playing football and basketball, using play equipment, picnics, socialising	
Ms. N. Mills	UEF	1979 – 2006	Using play equipment (every day when it was there) ball games (weekends and holidays), walking	
Mr. M. Page	UEF	1979 – 2007	Not stated	
Mr. D. Pennyfather	ST	1995 – 2006	Walking	Lives adjacent to the site and has clear view of about half of Coronation Field from first floor office. Has also observed a range of activities during the course of own use of the application site, e.g. walking, kite-flying, blackberrying etc. Coronation Field used regularly by village youths for informal sports and exercise whereas Village Green tends to be used more for socialising.
Mrs. J. Pennyfather	UEF	1998 – 2006	Walking, exercise	
Mrs. H. Pettifer	ST	1958 – 2006	Playing with friends as a child (during 1960s) and using play equipment and playing in paddling pool. Own daughter used land for socialising (during 1990s)	
Miss. E. Pettifer	UEF	1984 – 2004	Using play equipment, playing basketball, socialising	
Mrs. J. Rivers	UEF	1960s - 2007	Playing as a child, then taking own children to play (weekly)	
Mr. J. Rivers	UEF	1976 – 2007	Socialising, informal football, exercise	
Miss. J. Rivers	UEF	1989 – 2007	Using play equipment, bonfire night, dog walking	
Mrs. S. Russell	UEF	2004 – 2006	Playing with children, blackberrying	
Mrs. G. Shepherd	UEF	1986 – 2006	Not stated	

Mr. E. Stone	UEF	1960 – 2007	Not stated	
Mrs. J. Sutton	UEF	1982 – 1995	Using play equipment, enjoying open space	
Mr. B. Thomas	ST	2002 – 2006		House overlooks application site and has observed a number of activities taking place on the field on a regular basis – e.g. dog walking, children playing, blackberrying. Gates providing access have never been locked.
Mr. P. Tyrrell	UEF	2003 – 2007	Not stated	
Mrs. M. Walton	UEF	Not stated	Took children to use play equipment.	Daughters have used land when helping with brownies (e.g. games of rounders) and for blackberrying
Miss. A. Walton	UEF	1989 – 2007	Jogging, walking, football, blackberrying, using pay equipment	
Mr. C. Wyatt	ST	1978 – 2006	Taking children to use play equipment (during 1980s)	Has seen other children using land for informal football and general playing. Swings were removed in 1999.

*Format of evidence is either 'User Evidence Form' (UEF) or 'Statement' (ST)

^Where it is stated that use took place until 2006 or 2007, this is generally a reference to the year in which the user evidence form was completed: in many cases, use is likely to be continuing beyond this date.

**APPENDIX D:
Summary of letters of objection received**

Name	Date of letter	Summary of objection
Mr. and Mrs. T. Bailey	17/07/07	Land was purchased by the Parish Council as a space for the people of Wittersham. Due to its position at one end of the village alongside the main road (and other areas of land being available more centrally) it is very little used except for dog walkers and the surrounding residents. It is a village asset and should be kept as a space for the people of Wittersham – a space which may one day have a Village Hall built on it if that is what the village wish for.
Mrs. M. Barkess	07/07/07	Have lived in Wittersham since 1954 and since the sports ground came into being in 1967, Coronation Field has become redundant as a recreational space. The swings, climbing frame and slides have long since gone and some of the activities claimed are unlikely to have taken place. Walked dog there a few times in the 1990s – the land was just an unkempt piece of land.
Mr. and Mrs. M. Bartlett	27/06/07	Have lived in Wittersham since 1994 and have become involved in a number of village activities. The only activity when a great number of villagers make use of the field is the bonfire celebrations organised over recent years by The Swan Inn. Would prefer to see Coronation Field put to good public use for the whole of Wittersham to enjoy. A new Village Hall would be a good opportunity to achieve this and should be examined further.
Mrs. P. Bennison	18/07/07	The field is only used by a very limited number of people. Registration as a Village Green would prevent use for other potential future purposes. It would be in the best interests of Wittersham inhabitants for the ownership to remain with the Parish Council.
Mrs. M. Bracher	13/07/07	The application is not for the benefit of the village as a whole. Present village hall is old and inadequate and does not cater for all needs. The Parish Council should retain control of Coronation Field for the benefit of the community and the future possibility of utilising a part of the land for a new village hall.
Mr. A. Bullock	05/07/07	Letter enclosing a petition (containing 93 signatures) and standard letters of objection from those who are unable to write directly. It would seem reasonable to register the memorial garden as a Village Green and leave the adjacent Coronation Field with its perfectly adequate byelaws to remain.
Cllr. M. Burgess	19/07/07	Coronation Field has never been used for playing football or cricket, as it is too small to facilitate such sports. Has lived in the village for over 70 years and from own experience it is very little used generally due to the busy road. The play equipment which used to be in the field was relocated to Woodland View. The main reason for the application is probably to stop any development which in the future would penalise the village in developing the field. Have known the land since its purchase by the Parish Council. Byelaws were passed by the Parish Council as to its use soon after the purchase but were rarely referred to. After the purchase, the land was used for a few years as a village football field and occasional other village events which the Parish Council allowed. Since about 1970 there have not been any regular or organised activities on this field. About 15 years ago, an area of Borough Council owned land was registered as a Village Green, subsequently a large play area was constructed there and is in frequent use. Use of Coronation Field is rare apart from some occasional dog walkers from the immediate locality.
Mrs. and Mrs. J. Carroll	27/07/07	Since 1967, Coronation Field has become largely redundant for organised sports. Have lived in the village for seven years and during that time have not observed significant numbers of local residents regularly using the land. There are byelaws in existence which regulate activities which might lawfully be undertaken on Coronation Field, therefore use is with the permission of the landowner. Village Green status would take away the right of elected members to determine the future use of the land – there is more benefit to the wider community of the land not being registered. There is no shortage of other public open space in Wittersham village, access to which is via a large network of local footpaths.

Mr. D. Chesson	18/07/07	Wittersham Parish Councillor for 16 years. Village appraisal identified need for a new village hall to be built in Wittersham. Coronation Field was identified as a suitable site. The field was used as a football field for children prior to the opening of the sports club in 1967. The play equipment fell into disrepair and eventually a new play area was provided at Woodlands View. After this Coronation Field became very little used and from own experience have never witnessed anyone using the land for recreational activities over recent years. The land does not meet all the legal criteria for registration as a Village Green as it is used by only an insignificant number of local inhabitants. Coronation Field has been maintained by the Parish Council and made available to use by the public as a recreation ground, and its use must therefore be considered to have been with the express permission of the Parish Council. The land is adequately protected by the conditions under which the Parish Council holds the land.
Mrs. K. Chesson	17/07/07	Former clerk to Wittersham Parish Council. Has lived in Wittersham for over 22 years. Witness statements contained within the application contain a number of inaccuracies and fail to provide the legal proof required that a significant number of inhabitants have regularly used the Coronation Field for the required period. If the land is registered as a Village Green then the whole village will have lost the opportunity to create a modern amenity now needed by the village – Wittersham needs better village hall facilities and provide for the larger community. Few are likely to object to the registration of the land behind the war memorial as a Village Green, but there are many objections to register Coronation Field as such.
Mr. M. Clarke	13/07/07	Former Chairman of the Parish Council (1995 – 2005). Land to the rear of the war memorial already known as 'The Village Green' so there would no objection to formal registration. However, use of Coronation Field as a recreational area was superseded decades ago by other facilities in the village – there are several other open spaces in the village. Hence, there can be no legitimate claim that the land has been used by a significant number of local people
Mrs. J. Dahlhoff	23/07/07	The land was given to the people of Wittersham as an amenity and left to the Parish Council to manage. The application would not be beneficial to the majority of villagers. Activities claimed by the application are neither regular nor enjoyed by a significant number of local people. Land has been available for all to use freely but due to its location has never been extensively used by the majority except on rare occasions (e.g. bonfire nights). Other open space is available which is more central, attractive and accessible to a greater part of the village. Status of the land should not be allowed to change as it is not known what facilities the village may need in the future.
Mr. P. Dahlhoff	08/07/07	Has lived in the village for 30 years and during that time the field has not been used by a significant number of local residents. The village already has a more centrally located village green which is extensively used by local families. The land was given to the people of Wittersham and left to the Parish Council to manage. Activities claimed are neither regular nor enjoyed by a significant number of local people.
Mr. R. Dengate	24/07/07	Coronation Field has never been in any way a centre of community activity – there are far better publicly maintained open spaces in the village. The land is owned and managed by the democratically elected Parish Council in the best interest of the community – any move to have the status of the land changed should come from the Parish Council. Coronation Field has been identified as a potential site for a new village hall and the ultimate decision should remain with the local community.
Mrs. P. Dowding	04/07/07	Did used to be play equipment on the land but it fell into disrepair and a new play area was built at Woodlands View which is closer to where most families live. The sports club opened in the village in 1967 and so now all the football and cricket is played there. In recent years, have only ever seen one person walking dog on the field. Do not believe that many people use the land now – it would be of far better benefit to the community if a new hall was built there.

Mrs. S. Duff	18/07/07	Resident of Wittersham since 1950s – has never seen anyone using the land. Other areas of open space are available within the village. The Parish Council should have the right to maintain the land for the whole village and not just for a handful of residents who wish to block the possible future construction of a new village hall which would benefit all of the villagers.
Miss. J. Elliott	15/07/07	Does not consider that there are a significant number of people who use the field for regular use. As the land was purchased and transferred to the Parish Council to maintain, it has been available for use with permission of the Council for the villagers to use at any time.
Mrs. R. Everett	06/07/07	Land is owned by the Parish Council as an asset for the village, purchased with a donation in 1954, for the benefit of the village. The field is not large enough to be used as either a football or a cricket pitch and never has been. The play equipment were removed from Coronation Field 8 or 9 years ago to a new site as it was considered too dangerous for children to cross the busy main road. Since that time, the field has seen little use. Wittersham has an abundance of open spaces, to register Coronation Field as a Village Green would serve no benefit – it should be left under the control of the Parish Council to decide its future usage.
Mr. W. Everett	25/07/07	Coronation Field was given to the Parish Council for the benefit of the village of Wittersham. Village Green registration would severely restrict future use. Whilst the field might be used by some children living in houses which back onto the field, it is not used by a significant number of the residents of the locality.
Mr. D. Fletcher	17/07/07	Land was given to the village to be used for the benefit of the local villagers. Registration as a Village Green would take any decision making regarding this piece of land away from the village whereas the current situation allows the locally elected Parish Council to retain control of any decision making for the benefit of the village.
Mrs. J. Forth	01/07/07	Have lived in Wittersham for 22 years and seen very little public use of the field during that time - the only occasions recall seeing the field used by more than about 3 people were in November for the past two years' bonfire celebrations. Occasionally visit the field for walks but rarely see anyone else there apart from a few children playing. Main use of the field now is by dog walkers. Witness statements contain a number of inaccuracies.
Mr. D. Harman	08/07/07	Have lived in Wittersham for 38 years and the field has not been used by a significant number of local people from the whole parish community. Village already has a registered village green in a more central and useful location that is extensively used by families. Rights of use were granted to the village by the Parish Council in byelaws passed in 1979 therefore use has not been 'as of right'. There used to be play equipment on Coronation Field but this was moved to Woodland View due to under-use as a result of the field's peripheral location on the outskirts of the village.
Mr. G. Harvey	27/06/07	Walk dog on the site a couple of times a week and very rarely see other people using the land. Change of status should not be granted as it is hoped that new village hall will be built there.
Mrs. K. Head	10/07/07	There are not a significant number of people who use the land on a regular basis – the only use which does take place is by some children who live adjacent to the field and a very few dog walkers. Local people have always had permission to use the land since it was purchased for community use as a recreation ground in 1954.
Dr. A. Lloyd-Smith	25/06/07	Would like to add support for the construction of a new village hall on the Coronation Field site.
Mr. P. Mallet	03/07/07	The number of people who use the field is insignificant. Lives a couple of hundred yards from the field and only used the field on one occasion during 25 years of residency. No objection to land behind the war memorial being registered as a Village Green. The field should remain under the administration of the duly elected Parish Council.
Mr. and Mrs. J. Manning	26/06/07	Field is on the periphery of the Village and rarely used now. Have only ever observed use by the occasional dog walker. It is wiser to retain the option of utilising this area for future residents of the village – in years to come they may wish to build a new village hall. If the land is registered as a Village Green, this option would no longer be available.

Mr. and Mrs. A. Marshall	03/07/07	Land is not suitable for registration as a Village Green as it is unkempt and dangerously close to the road. Have walked dogs on the field and have not been aware of general use over the last 8 years. Byelaws are already in place to preserve and regulate the area.
Mr. M. Mash	17/07/07	Coronation Field was bought in 1954 for the benefit of the parish of Wittersham and byelaws relating to it give permission to villagers to use the field. Have lived in the village for over 20 years and have never seen usage such as that described by the application.
Mrs. S. Mash	18/07/07	The village appraisal in 1997 highlighted the need for a new village hall. The Parish Council felt that Coronation Field would be an ideal site as it is underused due to equipment deterioration and safety issues. The byelaws relating to Coronation Field give permission to villagers to use the field. Have never seen any recreational use of the field except for the bonfire party (with permission from the Parish Council). Coronation Field is not used by a significant number of local residents and the Parish Council should retain the right to manage and control the land for the benefit of the whole community.
Mrs. J. Maynard	09/07/07	Both the area behind the war memorial and the larger field behind were given as open space for the village, but only the landscaped garden can truly be said to serve the purpose of a Village Green. Has lived in Wittersham since 1990. About 14 years ago, considerable money was spent installing play equipment on Coronation Field but the facilities were rarely used. Have seen no great use of the field except for about 3 village bonfires and a few dog walkers. At present land is an available space on which it would be possible to build a new village hall if necessary.
Mrs. J. Neame	23/07/07	Although land was left to the village for its use, it is only ever used by a tiny majority for dog walking. There are plenty of other open spaces already maintained by the Council. Planned new village hall should go on the site so that it is then used by the whole village on a regular basis. Having lived in the village for nearly 60 years, have only used Coronation Field 3 times.
Mrs. S. Parrott	10/07/07	Land was purchased by the Parish Council in 1954, part was transformed into a landscaped garden. Coronation Field itself has been maintained by the Parish Council as an informal recreation area although now it is believed to be very little used. Wittersham already has plenty of public open space. Control of Coronation Field should be left in the hands of the local Parish Council.
Rev. and Mrs. Ridley	23/07/07	Have lived in Wittersham over 20 years. Parishioners have always had the permission and the right to use the field, but very few have ever done so. There is plenty of open space in the parish. The field should remain in the unfettered control of the Parish Council to run as they consider in the best interests of the parish.
Mrs. D. Rowe	15/07/07	During frequent walks through Wittersham in the last 35 years, has rarely observed any use of the field – land is situated on the edge of the village and separated from the most populated areas by main road. There are other open spaces which are more convenient and offer a safer environment. Due to the steady increase in housing stock in the village, there may come a time when Coronation Field is required for other purposes and therefore its current status should not be changed.
Mr. and Mrs. G. Solomon	06/07/07	Have lived in Wittersham for seven years and have never been aware of any activities taking place on the land other than the occasional dog walker. Any sporting or communal activities take place on the sports ground, which is also where the annual village fete is held. Wittersham has a number of open spaces already – the field hardly conforms to the normally accepted definition of a village green. At a recent village meeting, someone produced byelaws from the 1970s governing Coronation Field which gave the right of enjoyment and use of the field to the public. Registration of the land as a Village Green is therefore unnecessary.
Mrs. S. Spencer-Moore	10/07/07	Have been resident of Wittersham for 11 years and during that time have never seen anyone use the land as a Village Green – it is used solely by those people whose properties back onto the field. The sports ground is used for the activities associated with a village green. Purpose of the application is to prevent the possible building of a new village hall.

Mrs. J. Tidd	26/06/07	Parish Council should retain its discretion as to how Coronation Field should be used to support the wider interests of the community. From own observations, present use is almost nil – pass the land on most days with dog and have never seen any use. Would be a pity to put a restriction on the land as future use could be restricted.
Mr. M. Toogood	17/07/07	There are not a significant number of people regularly using the field – it is used only occasionally by some of the children who live adjacent to the field by a very few dog walkers. Over the last 2 years, the local bonfire has taken place on the field. The field was acquired in 1954 and provided as a recreational field for the village. It has its own byelaws and as such people of the village have had the permission and the right to use the field at any time. Application is an attempt to prevent the building of a new village hall on the land.
Mr. D. Tranter	25/06/07	Application is an attempt to prevent the building of a much needed village hall on Coronation Field. The field is not a central location and provides no parking facilities for those who would wish to use it. It is little used and has become very overgrown. Have observed no activities taking place on the land except for one person walking their dog. Parish Council should continue to represent the needs of the whole community without bias and Coronation Field should remain the responsibility of the Parish Council.
Mr. and Mrs. A. Tyler	24/06/07	Land is used by very few people in the village other than those who live adjacent to it. Land should remain under the jurisdiction of the Parish Council to serve the interests and future needs of the village as a whole. Village has very few facilities left, must not allow the most obvious site for a new village hall to be excluded from consideration.
Mrs. L. Watts	03/07/07	Field forms part of a redevelopment plan for the existing village hall and it would be highly contention to change its status. Long term inhabitants have been aware that byelaws exist and that any use of the field has been with permission and not as of right.
Mr. P. Willcocks	01/07/07 23/07/07	Letter of 01/07/07 identical to that of Mrs. J. Forth (see above). Coronation Field is much under used, partly because many parents will not allow their children to play there unsupervised due to safety issues relating to the nearby main road – a recent survey of 23 parents found that only 3 would allow their children to play unsupervised on the land. There are also a number of inaccuracies contained within the witness statements submitted with the application.
	10/10/07	There is a clear link between the Village Green application and that to Ashford Borough Council for planning consent for the new Village Hall on Coronation Field. The application and statements are seriously flawed and should be withdrawn.
Mr. A. Wood	08/07/07	Has lived in Wittersham for 65 years, eight years service on the Wittersham Parish Council. Coronation Field was purchased by the Parish Council in 1954 but there was not enough outfield for village cricket and it was not wide enough for minimum football regulations. In 1964, it was ploughed and reseeded. 1966 to 1974 the field was grazed by sheep. In 1979 byelaws were established for all forms of recreation on Coronation Field which means that activities referred to in the application have been allowed with permission for the last 28 years.

**APPENDIX E:
Copy of byelaws relating to
application site**

PROPOSED BYELAWS RELATING TO THE VILLAGE GREEN AND
RECREATION GROUND, WITTERSHAM.

BYELAWS made under Section 164 of the Public Health Act 1875 by the Parish Council of Wittersham with respect to a pleasure ground and a recreation ground.

- (1) Throughout these byelaws the expression 'the Council' means the Parish Council of Wittersham and the expression 'the ground' means the Village Green and the recreation ground known as the Coronation Playing Field, Wittersham.
- (2) An act necessary to the proper execution of his duty on the ground by an officer of the Council or by any person or servant of any person employed by the Council shall not be deemed an offence against these byelaws.
- (3)(i) A person shall not except in the exercise of any lawful right or privilege bring or cause to be brought on to the pleasure ground known as the Village Green any barrow, truck, machine or vehicle other than:-
 - (a) a wheeled bicycle or other similar machine;
 - (b) a wheel-chair or perambulator drawn or propelled by hand and used solely for the conveyance of a child or children or an invalid.

Provided that where the Council set apart a space on the ground for the use of any class of vehicle this byelaw shall not be deemed to prohibit the driving in or to that space by a direct route from the entrance to the ground of any vehicle of the class for which it is set apart.

- (ii) A person shall not except in the exercise of any lawful right or privilege ride any bicycle or other similar machine on any part of the pleasure ground

known as the Village Green.

- (4) A person shall not on any part of the Village Green skate on rollers, wheels or other mechanical contrivances to the danger of any other person using the Village Green.
- (5) A person shall not cause or permit any dog to enter or remain on the ground unless such dog be and continue to be under proper control and be effectively restrained from causing annoyance to any person.
- (6) A person shall not affix any bill, placard, or notice to or upon any tree, or to or upon any part of any building, seat or other erection on the ground.
- (7) A person shall not except in pursuance of a lawful agreement with the Council or otherwise in the exercise of any lawful right or privilege bring or cause to be brought on to the ground any beast of draught or burden or any cattle, sheep, goats or pigs.
- (8) Every person who shall offend against any of the foregoing byelaws shall be liable on summary conviction to a fine not exceeding Five hundred pounds.
- (9) Every person who shall infringe any byelaw for the regulation of the ground may be removed therefrom by any officer of the Council, or by any constable, in any one of the several cases hereinafter specified: that is to say:-
 - (i) where the infraction of the byelaw is committed within the view of such officer or constable, and the name and residence of the person infringing the byelaw are unknown to and cannot be readily ascertained by such officer or constable;
 - (ii) where the infraction of the byelaw is committed within the view of such officer or constable, and, from the nature of such infraction, or from any other fact of which such officer or constable

may have knowledge, or of which he may be credibly informed, there may be reasonable ground for belief that the continuance on the ground of the person infringing the byelaw may result in another infraction of a byelaw, or that the removal of such person from the ground is otherwise necessary as a security for the proper use and regulation thereof.

Given under our hands and seals this EIGHTH day of MAY 1979

Signed..... E.R. SWEATMAN (CHAIRMAN)

Signed..... E.W. TURNER (VICE-CHAIRMAN)

Members of the Wittersham Parish Council

The foregoing byelaws are hereby confirmed by the Secretary of State and shall come into operation on the first day of August 1979.

Signed by authority of the Secretary of State, (R.F.D.SHUFFREY), An Assistant Under Secretary of State, Home Office, London, SW1 18th July 1979.

This printed copy of the Byelaws is a true copy of the byelaws as confirmed by the Home Office.

C.C. PICKEN

Clerk to the Parish Council

Upgraded by authority of the Parish Council, 9th February 1993

Signed: B.F. WRIGHT (CHAIRMAN)

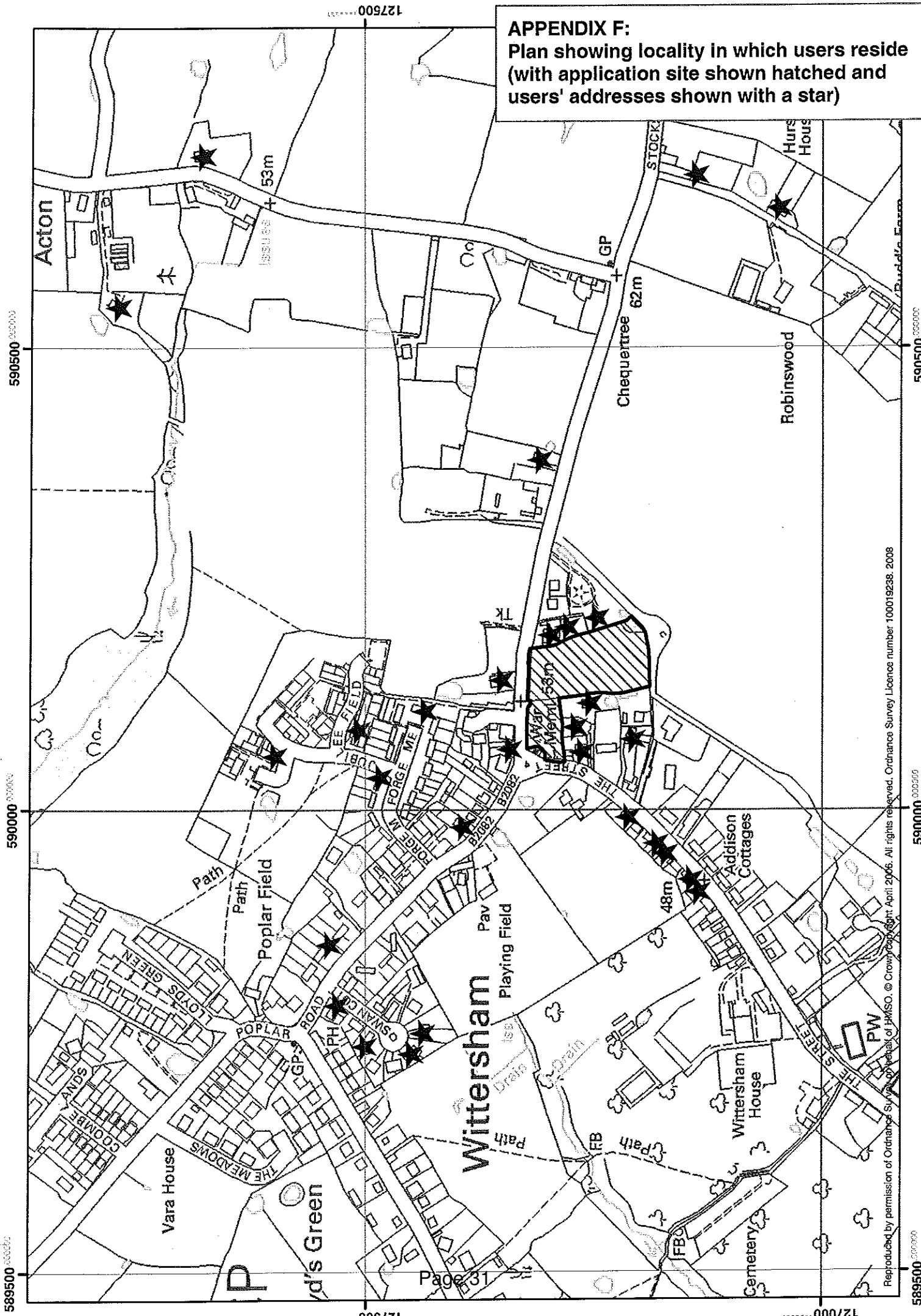
Signed: R.W.C. WINTERBOTHAM (VICE-CHAIRMAN)

M.J. MOULE

Clerk to the Parish Council

B.F. Wright
R.W.C. Winterbotham
M.J. Moule

APPENDIX F:
Plan showing locality in which users reside
(with application site shown hatched and
users' addresses shown with a star)



User	86	87	88	89	90	91	92	93	94	95	96	97	98	99	00	01	02	03	04	05	06	From		
Mrs. A. Meade																							1977	
Mr. G. Meade																								1977
Mrs. M. Moule																								
Mr. B. Mills																								1983
Mrs. N. Mills																								1979
Mr. M. Page																								1979
Mrs. M. Penny																								
Mr. D. Pennyfather																								
Mrs. J. Pennyfather																								
Miss. E. Pettifer																								1984
Mrs. H. Pettifer																								1958
Miss. Jacqui Rivers																								
Mrs. Janice Rivers																								1960
Mr. John Rivers																								1976
Mrs. S. Russell																								
Mrs. G. Shepherd																								1986
Mr. E. Stone																								1960
Mrs. J. Sutton																								1982
Mr. B. Thomas																								
D. Tyrrell																								
Miss. A. Walton																								
Mrs. M. Walton																								1954
Mr. C. Wyatt																								1978

*use of the application site must continue up until the date of application. As the application was made in 2006, the 20 year 'material period' is 1996 to 2006.

APPENDIX H:
Copy of "regulation six" letter sent to applicant (dated 04/04/08)

Mrs. M. Lewis
Mill House
Wittersham
Kent TN30 7EJ

Environment and Waste
Invicta House
County Hall
Maidstone
Kent ME14 1XX
Tel: 01622 221628
Fax: 01622 221636

Direct Line: 01622 221628
Ask for: Melanie McNeir
Email: melanie.mcneir@kent.gov.uk
Date: 4th April 2008
Our Ref: VG/MM/592
Website: www.kent.gov.uk/

Dear Mrs Lewis,

Commons Registration Act 1965

Application to register land in the parish of Wittersham as a new Town or Village Green

As required by Regulation 6 of the Commons Registration (New Land) Regulations 1969, the County Council has been giving further consideration to your application, and the objections thereto, in the light of the points made in your letter of 23rd September 2007.

It is the County Council's duty as registration authority under Regulation 6(3) not to reject an application for registration of land as a town or village green without giving the applicant a reasonable opportunity of dealing with the matters contained in the objection statements "*and with any other matter in relation to the application which appears to the authority to afford prima facie grounds for rejecting the application*".

I am writing to inform you that there do appear to the case officers to be matters affording *prima facie* grounds for recommending rejection of your application to the Regulation Committee Member Panel, as follows.

As you are aware, the County Council has been supplied by an objector with a copy of what appears to be a printed copy of byelaws relating to the land comprised in your application (that is, the land known as the Village Green and the Coronation Playing Field, Wittersham), made on 8th May 1979 and confirmed by the Secretary of State on 18th July 1979 to come into operation on 1st August 1979, certified by the then Clerk to the Parish Council as a true copy of the byelaws as confirmed. That seems to the County Council to be good evidence that such byelaws were indeed made and confirmed on the dates stated. The signatures dated 9th February 1993 of the then Chairman, Vice-Chairman and Clerk provide additional confirmation that the byelaws had been made, confirmed, and come into operation in 1979, and remained in force in 1993.

In your letter of 23rd September 2007, you question whether the 1979 byelaws ever came into operation, and dispute the proposition that if they did, they would have been relevant to the question whether recreational use of the application land was "as of right".

Linda Davies
Director of Environment and Waste





As to the former, the County Council takes the view that production of a version of the 1979 byelaws bearing an original signature on behalf of the Secretary of State is not essential, and that the coming into operation of those byelaws may be established by other evidence. It expects that a thorough search of the Parish Council records would further clarify the history of the 1979 byelaws.

The County Council can see nothing in section 236 of the Local Government Act 1972 to make the validity or enforceability of byelaws dependent upon their being displayed at any location. Nor can it see any requirement for a copy of the 1979 byelaws to have been sent to the Borough Council.

However, the view presently taken by the County Council is that to focus on the 1979 byelaws in considering whether use of the application land was "as of right" is to miss the main point, which is whether the land was acquired and has been held by the Parish Council for a purpose which was inconsistent with recreational use by local people having been "as of right". *Prima facie*, that is the case.

The totality of the land comprised in your application was conveyed to the Parish Council on 4th June 1954 by Style and Winch Limited. The conveyance, which you helpfully exhibited to your witness statement, provided that the land was conveyed to the Parish Council "*to hold ... as a space for the benefit of the Parish of Wittersham*".

Your interpretation of that conveyance is that (to quote from your witness statement) "*the intention was for the land to be kept as an open space for the people of Wittersham*".

The County Council is disposed to agree with that interpretation, although a number of the objectors take issue with it. *Prima facie* at least, the implication of the word "open" seems obvious and natural.

The next question to arise is under what statutory power the Parish Council was acting when it acquired the application land, which the conveyance does not specify. However, the County Council interprets the Court of Appeal's decision in *Attorney-General v Poole Corporation* [1937] 1 Ch 23 as authority for the proposition that an acquisition of land can be inferred to have been made in exercise of the powers conferred by the Open Spaces Acts, or section 164 of the Public Health Act 1875, in the absence of direct documentary evidence to that effect.

Section 7 of the Open Spaces Act 1906 ("the 1906 Act") authorised conveyances of land for or without consideration to parish councils "*for the purpose of the same being preserved as an open space for the enjoyment of the public under this Act*".

Section 164 of the Public Health Act 1875 ("section 164") as originally enacted did not apply to parish councils, and was not extended to apply to them until Schedule 14, paragraph 27 of the Local Government Act 1972 ("the 1972 Act") came into force. So the 1954 acquisition could not have been made in exercise of that power. However, a comparable power was conferred on parish councils by section 8(1)(b) of the Local Government Act 1894 ("the 1894 Act"), that is, power "*to provide or acquire land ... for a recreation ground and for public walks*". Section 8(1)(d) of that same Act conferred power on parish councils "*to exercise with respect to any recreation ground, village green,*

Linda Davies
Director of Environment and Waste





open space, or public walk, which is for the time being under their control... such powers as may be exercised by an urban authority under section one hundred and sixty-four of the Public Health Act 1875, or section forty-four of the Public Health Acts Amendment Act 1890, in relation to recreation grounds or public walks, and sections one hundred and eighty-three to one hundred and eighty-six of the Public Health Act 1875 shall apply accordingly as if the parish council were a local authority within the meaning of those sections ...”

Section 164 empowered urban authorities to “*purchase or take on lease lay out plant improve and maintain lands for the purpose of being used as public walks or pleasure grounds...*” and to make byelaws for the regulation of such public walks or pleasure grounds.

At the same time as making the provisions of section 164 directly applicable to parish councils, the 1972 Act repealed section 8(1)(b) of the 1894 Act, together with parts of section 8(1)(d) (everything down to and including “*public walks, and*”, and the word “*accordingly*”): Schedule 30. The view the County Council takes is that land acquired and held as a public walk or recreation ground under section 8(1)(b) of the 1894 Act up to that date (1st April 1974) was thereafter held under and for the purposes of section 164.

The 1979 byelaws were “*made under section 164 of the Public Health Act 1875 ... with respect to a pleasure ground and a recreation ground*”. That points towards the application land’s having been acquired under section 8(1)(b) of the 1894 Act, rather than under the 1906 Act.

In either case, the County Council’s understanding of the legal consequences is that all recreational use of the application land by the inhabitants of Wittersham (or anyone else for that matter) would have been “of right” or “by right”, rather than “as of right”. In *R(Beresford) v Sunderland City Council* [2004] 1 AC 889, the House of Lords considered whether the use for lawful sports and pastimes had been pursuant to a statutory right, which would have been “*inconsistent with use as of right*” (per Lord Bingham, at paragraph 9). They concluded that the land had not been held under any statutory provision capable of conferring such a right, but for development purposes. What was said about the 1906 Act, section 164, and similar provisions in other statutes was, therefore, strictly *obiter*. However, the County Council respectfully regards their Lordships’ *dicta* as strong persuasive authority that land which is acquired or appropriated by a local authority for the purpose of public recreation is not capable of becoming a town or village green by virtue of use for that purpose.

In paragraphs 86-87 of his judgment, Lord Walker said this:

“A local resident who takes a walk in a park owned by a local authority might indignantly reject any suggestion that he was a trespasser unless he obtained the local authority’s consent to enter. He might say that it was the community’s park, and that the local authority as its legal owner was (in a loose sense) in the position of a trustee with a duty to let him in. (Indeed that is how Finnemore J put the position in Hall v Beckenham Corpn [1949] 1 KB 716, 728, which was concerned with a claim in nuisance against a local authority, the owner of a public park, in which members of the public flew noisy model aircraft). So the notion of an implied statutory licence has its attractions.”





...

Where land is vested in a local authority on a statutory trust under section 10 of the Open Spaces Act 1906, inhabitants of the locality are beneficiaries of a statutory trust of a public nature, and it would be very difficult to regard those who use the park or other open space as trespassers (even if that expression is toned down to tolerated trespassers). The position would be the same if there were no statutory trust in the strict sense, but land had been appropriated for the purpose of public recreation."

Land held under the 1906 Act is held on an express statutory trust for public enjoyment: section 10. While section 164 does not expressly refer to a trust, the courts have treated it as imposing on the local authority landowner duties, analogous to those of a trustee, to hold, manage, and use the land for the purposes of public recreation, and to allow the public access for that purpose. The public have a corresponding right to enter the land for that purpose (subject to control by byelaws and any other restrictions permitted by statute). In addition to *Hall v Beckenham Corporation*, a trustee-beneficiary relationship between authority and public has been referred to in *Attorney-General v Sunderland Corporation* (1876) 2 Ch D 634 (a case on the statutory predecessor of section 164) and *Blake (Valuation Officer) v Hendon Corporation* [1962] 1 QB 283. In the latter case, Devlin LJ said:

"... The purpose of section 164 of 1875 is to provide the public with public walks and pleasure grounds. The public is not a legal entity and cannot be vested with the legal ownership of the walks and pleasure grounds which it is to enjoy. But if it can be given the beneficial ownership, that is what it should have. In the case of buildings, such as libraries and art galleries, the needs of management may be deemed to require the local authority to retain the right of occupation. But the local authority has no right to retain out of lands intended for the enjoyment of the public a right of occupation that is not necessary for their management. In all the cases in which parks have been considered it has been taken for granted that what the public gets is, as in the case of a highway, the beneficial ownership of the land..."

The idea that section 164 imposes a statutory trust for public recreation has since been given statutory recognition in sections 122 and 123 of the 1972 Act.

The position in respect of land acquired under section 8(1)(b) of the 1894 Act would appear to have been analogous.

The conclusion the County Council draws from the material supplied to it by the parties is that, *prima facie* at least, use by local inhabitants (and others) of the land comprised in your application has been pursuant to a statutory right (or licence), and was not "as of right" within the meaning of the definition of "town or village green" in the Commons Registration Act 1965.

The County Council takes the view that a period of six weeks would allow you a reasonable opportunity to consider and investigate the above matters, take legal advice (if so desired), and produce any rebutting evidence which you may have.





I would be grateful if you would accordingly let me have your response to the points made above, and any additional evidence that you would like the County Council to take into account when it next considers your application, **no later than Friday 16th May 2008**. If you find yourself unable to meet that deadline, please let me know as soon as that occurs. If we have not heard from you by that date, the County Council will proceed to further consider your application and the objections thereto, in accordance with Regulation 6 of the 1969 Regulations, on the basis of the information and documents which have been supplied to it by the parties.

I should draw to your attention that in *Oxfordshire County Council v Oxford City Council* [2006] UKHL 25, [2006] 2 AC 674, Lord Hoffmann said (at paragraph 61) that "... *the registration authority has no investigative duty which requires it to find evidence or reformulate the applicant's case. It is entitled to deal with the application and the evidence as presented by the parties*".

This letter is being copied to the objectors, and to the Parish Council as landowner, with an invitation to comment upon it, or provide any further relevant information or evidence, as they see fit.

I look forward to hearing from you in due course.

Yours sincerely,

Miss. Melanie McNeir
Public Rights of Way Officer – Definition Team



Application to register land in the Parish of Wittersham as a Village Green

**Response to the letter from the registration authority,
Kent County Council, dated 4 April 2008**

I note that the case officers consider that there could be prima facie grounds for rejecting the application and I would respond to the points made in the letter as follows:

Contrary to the views expressed by the County Council I believe the Local Government Act 1972 section 236 does require the byelaws to be available for public inspection and in the case of Wittersham, which has no office, this would be at the offices of Ashford Borough Council. Para. (8) of section 236 of the Act states:

(8) A copy of the byelaws, when confirmed, shall be printed and deposited at the offices of the authority by whom the byelaws are made, and shall at all reasonable hours be open to public inspection without payment, and a copy thereof shall, on application, be furnished to any person on payment of such sum, not exceeding 20p for every copy, as the authority may determine.

In July 2006 I enquired about the existence of byelaws to Wittersham Parish Council and they were not aware of any. Ashford Borough Council also confirmed that they do not hold any byelaws relating to the land. It follows then that para 8 above could not have been adhered to.

You state that non-compliance with the requirement of this section of the Act does not affect the enforceability or validity of the byelaws. I cannot agree with that point of view. It must be a reasonable assumption that the intention of the Act, as drafted by Parliament, was to ensure that measures were in place to make people aware of the existence of byelaws. In essence there is little point having byelaws if no one knows of their existence, not least the authority deemed to have made them. It seems doubtful to me that a Court would be able to enforce any penalty for breach of the byelaws if the person committing the offence could not reasonably have been aware that they were doing anything wrong.

I make the above point because I feel it is important. However, I accept that matters relating to the validity of byelaws are in fact not essential to the Council's argument as to why the land would not qualify as a Village Green.

The Council's main argument hinges on how the Parish Council holds the land and under what statutory powers it was acting when it was purchased.

I am heartened to note that the opinion of the County Council concurs with my own, and that of many other villagers, that the intention of the Deed of Conveyance of 4th June 1954 was for the land to be held as an open space. The former Parish Council would not accept this argument and this was the reason why the Village Green application was made.

The County Council is of the opinion that the land was purchased under statutory powers. An alternative argument is that if the money to purchase the land was a gift then the land might

have been purchased as a charitable trust. I am not sure that there is conclusive evidence to support one view or the other.

I do nevertheless accept the view that the Parish Council holds the land in trust, be it statutory or charitable, to be kept as an open space for the benefit of the Parish. This is a view held by myself and many villagers from the outset. We feel that to develop the land would constitute a breach of that trust.

The County Council argues that if the land was acquired for public recreation it is not capable of becoming a village green and I quote from your letter which refers to the House of Lords decision re. Beresford:

“ --the County Council respectfully regards their Lordships’ dicta as strong persuasive authority that land which is acquired or appointed by a local authority for the purpose of public recreation is not capable of becoming a town or village green by virtue of use for that purpose.”

I can see the logic of this argument as if this were not the case then every public park up and down the country, of 20 or more years’ standing, could effectively be a village green.

However I would also expect the County Council to exercise consistency in the decision making process and I refer you to your recent decision to register as a village green land purchased for public recreation by Hawkhurst Parish Council. I would also mention the Public Enquiry which has been recommended to determine the case at South Road Recreation Ground in Hythe owned by Hythe Town Council. Both these cases involve land acquired or appointed by a local authority for public recreation and as such I can see little to distinguish them from the Wittersham case, bar the possible existence of byelaws which the County Council in any case does not consider material to the arguments.

You will be aware that this application has been very controversial in the village and there are strong views on both sides of the argument. However, if the County Council is minded to recommend refusal of the application on the basis that the use has been ‘*by right*’, not ‘*as of right*’, then I am prepared to accept that point of view. I do not now feel a Public Enquiry would be in the best interests of the village if the objective behind the application has been confirmed by other means.

However, if any public authority, company or private individual were in the future to present evidence that the land is not held in trust as recreational land then I would reserve the right to resubmit a further application to register the land as a village green. There are many in the village who would concur with Lord Justice Devlin’s point of view that it is the villagers who have, “*the beneficial ownership of the land*”.

Finally I would like to make the point that this application was made out of a desire to protect recreational land in the village, not as many have stated out of my own self-interest. I take strong exception to the defamatory comments which have been made by some objectors about me and other villagers who have provided witness statements. I trust that the County Council will recognise and uphold the integrity of those who have made statements in support of the application.

Miriam Lewis

23 May 2008

Application to divert part of Footpath MR493 at Ditton

A report by the Divisional Director of Environment & Waste to the Kent County Council Regulation Committee on 31 October 2008.

Recommendation: I recommend the County Council makes an Order under Section 119 of the Highways Act 1980 to divert part of Footpath MR493 at Ditton.

Local Member:	Mrs Trudy Dean	Unrestricted
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Introduction

1. The County Council has received an application to divert part of Footpath MR493 at Ditton by Peter Brett Associates, on behalf of Aylesford Newsprint on the grounds of increasing security and public safety around the Mill Pond. Concerns have been raised due to the repeated acts of vandalism to the bridge, which crosses the Mill Pond, over which the Public Footpath passes.

2. All liaison between the County Council and the landowner, Aylesford Newsprint, has been conducted, at their behest, through their representative Mr Alan Aston of Peter Brett Associates, 30 Tower Hill, West Malling, Kent, ME19 4PR.

Description of Route

3. The existing route of Footpath MR493 is shown by a solid black line between points A and B and the proposed diversion is shown by black dashes between points A and B on Appendix A to this report.

Procedure

4. The County Council may make an Order under Section 119 of the Highways Act 1980 to divert a Public Right of Way if it is satisfied that it is expedient to do so in the landowners interest and the route is not substantially less convenient to the public, having regard to the effect of the diversion on the public enjoyment of the route as a whole.

Consultations

5. Consultations have been carried out as required. No objections have been received from the Statutory Undertakers. No response was received from Tonbridge and Malling Borough Council or The Open Spaces Society.

6. Objections have been received from Aylesford Parish Council, Ditton Parish Council and The Ramblers' Association. All three objectors have stated

that to divert the Public Footpath in order to remove the maintenance obligation to the landowner is unacceptable and the vandalism could be resolved by using metal decking.

7. Ditton and Aylesford Parish Councils both state that the diversion would have a negative impact on public enjoyment by removing the unique perspective of a picturesque Mill Pond. Ditton Parish Council has additionally stated that the proposed route would be dangerously close to the M20 and the proposed timber panels would not provide a sufficient safety barrier.

8. Due to the proximity of the M20 motorway, consultation was also carried out with The Highways Agency in order to ensure - should the proposed diversion go ahead - then no threat was posed to those using the route by the traffic using the M20. The Highways Agency responded stating that a representative has visited the area and provided the proposal did not encroach on Highways Agency land they had no objections. They further added that palisade fencing is already in place protecting the Mill Pond and that the motorway verge was already protected by a safety fence.

View of Members

9. Mrs Trudy Dean, County Member and Borough Councillors Mr J Clements, Mr J Balcombe, Mrs C Grant, Mr B Stone, Mr D Thornewell and Mr D Smith, have been consulted. No responses were received from Mrs Dean, Mr Clements, Mr Balcombe, Mrs Grant, Mr Stone, or Mr Smith. Councillor Mr Thornewell believes the proposal is a reasonable one as it would retain the views of the historic Mill Pond, which is a major feature of the Footpath.

The Case

10. In dealing with the application to divert a Public Right of Way, consideration must be given to the following criteria of Section 119 of the Highways Act 1980: -

- a) Whether it is expedient in the interests of the owner of the land that the right of way in question should be diverted;
- b) Whether the point of termination of the path will be substantially as convenient to the public given that it is proposed to be diverted to another point on the same or a connecting highway;
- c) Whether the right of way will not be substantially less convenient to the public;
- d) The effect that the diversion would have on public enjoyment of the path as a whole;
- e) The effect on other land served by the existing right of way;
- f) The effect of any new public right of way created by the order would have on land over which the right is so created and any land held with it.

I will now take these points and my conclusions upon them individually: -

a) Whether it is expedient in the interests of the owner of the land that the footpath in question should be diverted;

It is expedient to divert the path in the interests of the landowner. The primary reasons for the application to divert Public Footpath MR493 relate to the repeated vandalism to the bridge on the section of the route that crosses the Mill Pond. This has not only given the landowner - to whom responsibility for maintenance of the bridge rests - security concerns but also raised concerns regarding public safety. Although inspection measures have been put in place to reduce the health and safety concerns these will never remove the risks completely.

The diversion of Public Footpath MR493 will remove the maintenance responsibility of the landowner for the bridge, but the primary benefit to the landowner will be the reduced health and safety obligations and risks.

b) Whether the point of termination of the path will be substantially as convenient to the public given that it is proposed to be diverted to another point on the same or a connecting highway;

The common points of termination (Points A-B) will not be altered and are therefore as convenient.

c) Whether the right of way will not be substantially less convenient to the public;

The existing route measures approximately 32 metres (A-B) and the proposed measures approximately 46 metres (A-B). Although there is a small increase in distance, the increase in length is de minimus when actually walking the route, adding less than 1 minutes walking time. The width of the new route will be two metres.

d) The effect that the diversion would have on public enjoyment of the path as a whole;

Public enjoyment of the path as a whole will not be affected. The proposed route will retain its views of the picturesque Mill Pond, with the current bridge being removed to ensure these views remain unhindered.

Although the proposed route is close to the M20 the Highways Agency do not see this as a safety issue, with adequate safety measures already in place to protect the Mill Pond. The noise from the M20 is already audible from the majority of MR493, which runs alongside the M20 for most of its length. The noise levels will not be increased by virtue of being 5 metres closer to the source of the noise on the proposed compared with the current route. The erection of timber panels along the outer boundary of the proposed route will further reduce the visual and noise impact of the M20.

e) The effect on other land served by the existing public right of way;

The effect of the diversion will have no impact on other land served by the existing right of way.

f) The effect of any new public right of way created by the order would have on land over which the right is so created and any land held with it;

The new route created by the Order will have no impact on other land served by the right of way.

I believe that the legal tests are met in all respects

Conclusions

11. A number of objections have been received to this proposal. These objections are based on whether it was expedient to divert in the landowner's interest, on public enjoyment and public convenience. The Ramblers' Association and Ditton Parish Council have both objected to the proposal because they do not believe it is in the landowner's interest. There is an obvious benefit to Aylesford Newsprint in terms of reducing their health and safety obligations in regard to the bridge and the ongoing maintenance of the structure, which requires constant repair following repeated acts of vandalism.

12. Ditton Parish Council have objected on the grounds that the proposed route is substantially less convenient to the public due to its proximity to the M20, which they believe raises concerns over safety with the proposed boarding being an insufficient safety barrier. Advice has been sought from the Highways Agency concerning any possible safety implications on the new route in relation to the M20. The Highways Agency has clearly stated that palisade fencing is in position to protect the Mill Pond, with the motorway verge itself already protected by safety fencing. The proposed route does not fall within the boundaries of the highway. The majority of Public Footpath MR493 already runs in close proximity and parallel to the M20 and there are no reported instances of any safety issues relating to the M20. The proposed timber panels will denote the outer boundary of the proposed new route, and will be erected in addition to the palisade fencing and the safety fencing already in place. These timber panels will shield the proposed route from the visual and noise impact of the M20.

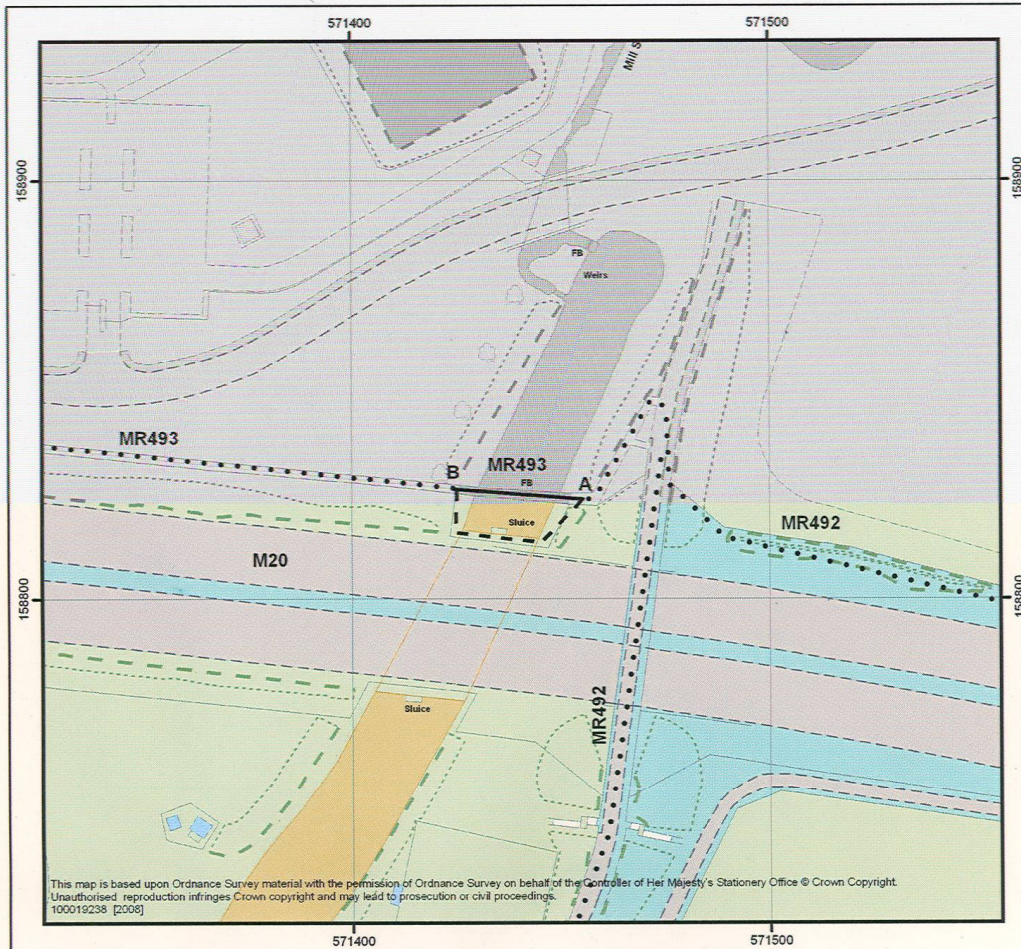
13. Aylesford and Ditton Parish Councils have objected on the grounds that the proposed route will have a negative impact on public enjoyment by removing the view of the Mill Pond. This is not the case. The views of the Mill Pond will be maintained and even enhanced by the removal of the current bridge, which will provide views over the full width of the Pond.

Recommendations

14. Despite there being objections to the proposal I recommend that the County Council makes an Order under Section 119 of the Highways Act 1980 to divert part of MR493, at Ditton, shown in Appendix A to this report, on the grounds that it is expedient to divert the path in the interest of the landowner without prejudicing the public's enjoyment and that the Definitive Map and Statement are amended accordingly.

Appendix A- Map showing the route and location.

Contacts: Sonia Coventry 01622 221512



- Footpath to be deleted
- - - - - Footpath to be added
- Unaffected Routes

APPENDIX A



Scale 1:1,250

**Highways Act 1980
Kent County Council
Public Footpath MR493 (part) Ditton
Proposed Diversion**

Linda Davies
Environment & Waste Director



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