



AGENDA

Kent County Council

REGULATION COMMITTEE MEMBER PANEL

Thursday, 2nd August, 2007, at 1.00 pm Ask for: **Andrew Tait**
Darent Room, Sessions House, County Hall, Telephone **01622 694342**
Maidstone

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 J A Davies, Mr I T N Jones, Mr S J G Koowaree and Mr F Wood-Brignall.
2. Declarations of Interest by Members for items on the agenda for this meeting.
3. Proposed withdrawal of application to register a Town or Village Green at Sandyhurst Lane, Westwell (Pages 1 - 4)
4. Application to register land at Duncan Down, Whitstable as a new Village Green. (Pages 5 - 24)
5. Application to register land at South Road Recreation Ground, Hythe as a new Village Green. (Pages 25 - 40)
6. 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

Wednesday, 25 July 2007

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Proposed withdrawal of application to register a Village Green at Sandyhurst Lane, Westwell

A report by the Director of the Environment and Waste Division to Kent County Council's Regulation Committee Member Panel on Thursday 2nd August 2007.

Recommendation: I recommend that the County Council accedes to the applicant's request to withdraw the application and takes no further action on this case.

Local Member: Mrs. E. Tweed

Unrestricted item

Background

1. In August 2004, the County Council received an application to register land at Sandyhurst Lane, Boughton Aluph, Ashford as a Town or Village Green from Mr. H. Leclerq of Sandyhurst Lane, Ashford. A plan of the site is attached and marked Appendix A. Objection to this application was lodged by the landowner, Ashford Borough Council.

Initial resolution of the Regulation Committee

2. On the 28th July 2005, a Regulation Committee Panel was appointed to consider this application. Having considered the Officer's report and on the basis of legal advice received, the Panel agreed with the recommendation that the applicant be informed his application to register the land as a Town or Village Green had not been accepted.

Judicial Review proceedings

3. On 1st August 2005 a letter was received from the applicant claiming that the decision taken by the Panel was flawed on a number of grounds and asking for the decision to be overruled and revoked. Counsel's opinion was therefore sought and the advice received was that the decision taken by the Panel was flawed, mainly due to relevant facts not being taken into consideration. In addition, case law quoted during the meeting and in the Officer's report was not directly applicable as thought at the time of the decision, and this therefore made the decision incorrect.
4. The County Council therefore conceded that there was an error of law in the making of the decision. Accordingly, the County Council consented to an Order of the High Court quashing the decision so that the application could be remitted to the County Council for re-determination. The Quashing Order was made in the High Court on the 19th January 2006.

Second resolution of the Regulation Committee

5. Following the quashing of the previous decision, advice was sought from Counsel as to how to proceed with the application. On 16th March 2006, another Regulation Committee Panel was appointed to reconsider this application based on advice received from Counsel. This advice suggested that the County Council should hold a non-statutory Public Inquiry to clarify the disputed facts of the case. A Barrister was

Item 3

appointed to act as an independent Inspector and a Public Inquiry was initially arranged for October 2006. However, prior to this Inquiry, the applicant informed the County Council that he was in discussions with Ashford Borough Council regarding the future use of the land, and both parties formally requested an adjournment to provide the opportunity for their discussions to be concluded.

6. By March 2007, the date of the rescheduled Inquiry, it became apparent that the parties were very close to reaching a private agreement which involved putting the land into a trust to ensure its future management. The applicant approached the County Council and asked that the application be withdrawn.
7. This placed the County Council in a difficult position as there is no current procedure or indeed provision for the withdrawal of applications set out in the Commons Registration (New Land) Regulations 1969. There has, in the past, been much debate as to whether it is possible in law for an applicant to withdraw an application once it has been submitted to the County Council for determination.
8. Advice was therefore sought from Counsel in order to prevent any further legal challenge to the County Council. Counsel's view was that, given the lack of guidance within the regulations, the most that could be expected of the County Council was that it should act reasonably under the particular circumstances of this case. Counsel felt that there may be a 'public interest' element to consider and therefore the County Council might be seen to be acting unreasonably if it were to allow the withdrawal of the application simply on the applicant's request. This is because there is a wide body of user evidence accompanying the applicant and, even if the applicant wanted to discontinue his involvement with the application, there may be other local residents who hold a different view and would wish to pursue the application.
9. In order to overcome this problem, it was decided that a notice should be advertised in the local newspaper and on site to inform local residents that the applicant wished to withdraw the application and providing the opportunity for objections to be made to the withdrawal. This was done in May 2006 and no objections have been received as a result of this notice. This being the case, it does not seem unreasonable to allow the applicant to withdraw his application on the grounds that no other local residents have expressed a wish for the application to be taken forward.

Recommendation

10. I therefore recommend that the County Council accedes to the applicant's request to withdraw the application and takes no further action on this case.

Background documents

APPENDIX A – Plan showing the application site

Accountable Officer:

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

Case Officer:

Mr. Chris Wade – Tel: 01622 221511 or Email: chris.wade@kent.gov.uk

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

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Item 4**Application to register land at Duncan Down, Whitstable
as a new Village Green**

A report by the Director of Environment and Waste to Kent County Council's Regulation Committee Member Panel on Thursday 2nd August 2007.

Recommendation: I recommend that the County Council informs the applicant that the application to register the land at Duncan Down, Whitstable has been accepted, and that the land subject to the application be formally registered as a Village Green.

Local Members: Mr. M. Harrison and Mr. M. Dance

Unrestricted item

Introduction

1. The County Council has received an application to register land at Duncan Down, Whitstable as a new Village Green from Mr. A. Clark on behalf of The Friends of Duncan Down ("the applicant"). The application, dated 2nd November 2005, was allocated the application number 588. A plan of the site is shown on Appendix A to this report and a copy of the application form is attached at Appendix B.

Procedure

2. Applications to register new Village Greens are normally made under section 13 of the Commons Registration Act 1965 and regulation 3 of the Common Registration (New Land) Regulations 1969. These regulations came into force on the 3rd January 1970, and regulation 3 enables the making of an application where, in accordance with section 22 of the 1965 Act, after the 2nd January 1970 any land becomes a Town or Village Green.
3. For the purpose of registration, section 22 of the 1965 Act (as amended by section 98 of the Countryside and Rights of Way Act 2000) 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'.*
4. 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 the press and put up a site notice. The publicity must state a period of at least six weeks during which objections and representations can be made.

The Case

5. The area of land subject to this application (“the application site”) consists of an area of oak woodland approximately 2.5ha in size situated on the southern fringes of the urban area of Whitstable. It lies adjacent to a large area of land known locally as ‘Duncan Down’, part of which was registered as a Village Green (VG128) following the enactment of the Commons Registration Act 1965 and the remained of which was successfully registered as a new Village Green (VG232) in 1992. The remained of the site is surrounded by open farmland.
6. The application has been made on the grounds that the application site has become a village green by virtue of use of the land by the local inhabitants for lawful sports and pastimes continually and as of right for a period in excess of the last twenty years. Included in the application are six sworn statements from local residents asserting that the application site has been available for free and uninhibited use by local residents for lawful sports and pastimes over the last twenty years and beyond. In addition, there are a further 45 completed user evidence forms from local residents as well as leaflets and photographs showing the area of land in question. Letters of support have also been received from the Kent Wildlife Trust as well as the Whitstable Improvement Trust.
7. It should be noted that Land Registry searches have revealed that there is no known landowner for the majority of the application site. Small parcels of the site are owned by individuals and all known persons with an interest in the land have been contacted directly. In addition, notices advertising the application have been placed on site and in the local newspaper, thereby providing anyone with an interest in the land with the opportunity to comment on the application.

Objections

8. Consultations have been carried out as required. One objection has been received from Devine Homes (“the objector”) who own a small part of the application site (as shown on the plan at Appendix C).
9. Devine Homes only acquired the land in August 2006, after the initial consultations had taken place, and therefore have not been able to produce any detailed information in support of their objection. However, the objection is made on the grounds that the applicant has produced no specific evidence of use relating to the section of the land which is owned by Devine Homes.
10. In response to this, I would accept that the burden of proof that the definition is satisfied rests upon the applicants for registration, but would add that the standard of proof required is the usual civil standard – i.e. the balance of probabilities. However, I do not consider that it is the Registration Authority’s role, in the absence of any strong evidence to the contrary, to question the validity of the user evidence which has presented to it in good faith in support of the application. If the landowner is able to provide credible, fact-based evidence that appears to directly conflict with the user evidence submitted, then it may be appropriate to undertake further research or even to hold a non-statutory public

inquiry. This is not the case in this instance as no evidence has been supplied in support of the objection. I will return to the issue of whether use has taken place over the whole of the land in question later on in this report.

Legal tests

11. 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 by the inhabitants is continuing up until the date of registration?*

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

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

12. 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'.

13. In this case, there is no evidence of any of the witnesses ever having been verbally challenged or physically prevented from gaining access to the land. Of the 51 witnesses, 32 claim to have used the land at least once per week (and in some cases, use has been daily). If use had not been 'as of right', it could reasonably be expected that at least one of these witnesses, given the frequency of use, would have encountered some sort of hindrance to their use of the land. This does not appear to have been the case and therefore I am satisfied that 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?

14. 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.

15. In this case, the majority of use of the land has been for dog walking, which is unsurprising given the close proximity of the land to a large urban area. The fact that the main use of the application site has been for dog walking is not

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

inconsistent with village green rights being acquired. Indeed, in the *Sunningwell* case, Lord Hoffman agreed with a previous judgement in another case in which it had been held that *'that dog walking and playing with children were, in modern life, the kind of informal recreation which may be the main function of a village green'*.

16. However, witnesses also appear to have used the land for a wide range of recreational activities, including fruit picking, picnics, photography, nature studying and playing with children. Included at Appendix D is a table summarising evidence of use by local residents which shows the full range of activities claimed to have taken place. I am therefore satisfied that the land in question has been used 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?

17. The Countryside and Rights of Way Act 2000 inserted a new section dealing with locality into section 22 of the 1965 Act. It should now be shown that the use made of the land has been and continues to be by inhabitants of any locality, or of a neighbourhood within a locality. The use need not be exclusively by local inhabitants, but they should be the significant number.

18. In this case, the applicant has helpfully provided a plan showing the area within which users of the land reside (attached at Appendix D) and, at Part 3 the application form, has defined the locality as 'Duncan Down, Whitstable'.

19. 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'*. He later went on to indicate that this could mean that the locality should constitute *'some legally recognised administrative division of the county'*. In light of this, I do not consider that Duncan Down in itself forms either a cohesive community or an administrative division capable of such definition. However, this in itself is not fatal to the application as the onus is not on the applicant to commit himself to or 'prove' the locality, but for the registration authority to determine whether the 'locality' disclosed by the user evidence meets the statutory test.

20. I have therefore carefully considered the user evidence in the context of the 'locality' issue. It is clear from the map at Appendix E that the user evidence is concentrated mainly within an area which is bounded by Borstall Hill/Canterbury Road to the west, by Millstrood Road to the north-east and by the Thanet Way to the south. Some users also come from the wider Whitstable area, but the majority are concentrated within what is known as the Gorrell Ward of Whitstable. I therefore consider that the locality in this case is Canterbury City Council's Gorrell Ward.

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

21. 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 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*".

22. As previously stated, there appears to be regular use of the land by a large number of people and this is evidenced by the large number of user evidence forms submitted in support of the application. Although this number may only be small in relative terms compared to the total population of the Gorrell Ward locality, I do not consider that it is by any means insignificant. Therefore, I am satisfied that use of the land in this case has been by a significant number of inhabitants of a particular locality.

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

23. The table at Appendix D shows that there is evidence of use from the witness statements dating back as far as 1933. Of the 51 witnesses, 34 have used the land for at least 20 years. It seems clear that use has therefore taken place for a full period of twenty years and, in some cases, for a great deal longer.

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

24. The recent amendment made by the CROW Act required that use of the claimed green continues up until the date of registration 'as of right'. However, partly in response to the large number of village green applications which were being defeated simply because landowners were erecting fences or notices at the last minute prior to the determination of the application, this requirement was overturned by the House of Lords in the *Oxfordshire*⁴ case. It is now held that use need only take place up until the date of application and not necessarily continue to the date of registration.

25. There is nothing to suggest that use did not continue until date of application. Officers have accessed the site freely on site visits and the application does not appear to have been prompted by any particular challenge to use (e.g. a fence being erected). None of the witnesses make mention of any challenge or physical obstruction and therefore I am satisfied that use of the land by the local inhabitants did continue up until (and beyond) the date of application.

Other matters

26. Another important point to mention is the character of the land. Members may be surprised to find an area of woodland being subject to an application to register it as a village green. Although the application site may not appear to fit the traditional image of a village green – a small grassy open space serving as a focal

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

⁴ *Oxfordshire County Council v Oxford City Council and Catherine Mary Robinson (2006)*

point of a rural village community – this is not something which can be taken into account in determining this case. Apart from the criteria set out in the Commons Registration Act 1965, there is no legal authority on the physical appearance of a village green. By way of example, in 1977 some rocks at Llanbadrig in Wales which had been used by the inhabitants of the locality to moor boats while engaged in the pastime of boating were registered as falling within the statutory definition of a village green. In this case, the fact that the application site is woodland is therefore not, in itself, an immediate barrier to registration.

27. However, an issue has been raised by the objector with regard to the use of the land and, in particular, whether it can rightfully be said that the *whole* of the land has been used for the types of sports and pastimes asserted by the witnesses given the nature of the site. This issue was discussed in the *Oxfordshire* case, which concerned an area of land in Oxford known as the Trap Grounds that consisted of a three-acre reed-bed and three acres of scrubland, grassland, and woodland, lying between a canal and a railway line. By reason of impenetrable growth, only 25% of the land was accessible for walkers.

28. In that case, Lightman J said that *'there is no mathematical test to be applied to decide whether the inaccessibility of part of the land precludes the whole being a Green. The existence of inaccessible areas e.g. ponds does not preclude an area being held to be a Green... overgrown and inaccessible areas may be essential habitat for birds and wildlife, which are attractions for bird watchers and others.'* Lord Hoffman, in the same case, also added *'If the area is in fact intersected with paths and clearings, the fact that these occupy only 25% of the land would not in my view be inconsistent with a finding that there was recreational use of the scrubland as a whole. For example, the whole of a public garden may be used for recreational activities even though 75% of the surface consists of flowerbeds, borders and shrubberies on which the public may not walk.'*

29. It is a well-established principle of this area of law that the Registration Authority need not be satisfied that every square foot of the land has been used for the purposes of lawful sports and pastimes and, if necessary, the Registration Authority may register a lesser area than that applied for. However, in this case I am satisfied that the land, as a whole, has been used for the activities described in this report and, given the lack of distinct or discernable boundaries between the different parts of land ownership and the myriad of informal paths which crisscross the land (evidence of use), it would not be appropriate in this particular case to attempt to make assumptions regarding which sections of the land over which the users had engaged in their lawful sports and pastimes; indeed, the nature of site means that the land should be treated as a whole.

Conclusion

30. From close consideration of the evidence submitted, I have concluded that all the legal tests concerning the registration of the land as a Village Green (as set out above) have been met.

Recommendations

31. I recommend that the County Council informs the applicant that the application to register the land at Duncan Down, Whitstable has been accepted, and that the land subject to the application be formally registered as a Village Green.

Accountable Officer:

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

Case Officer:

Mr. Chris Wade – Tel: 01622 221511 or Email: chris.wade@kent.gov.uk

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

Background documents

APPENDIX A – Plan showing application site

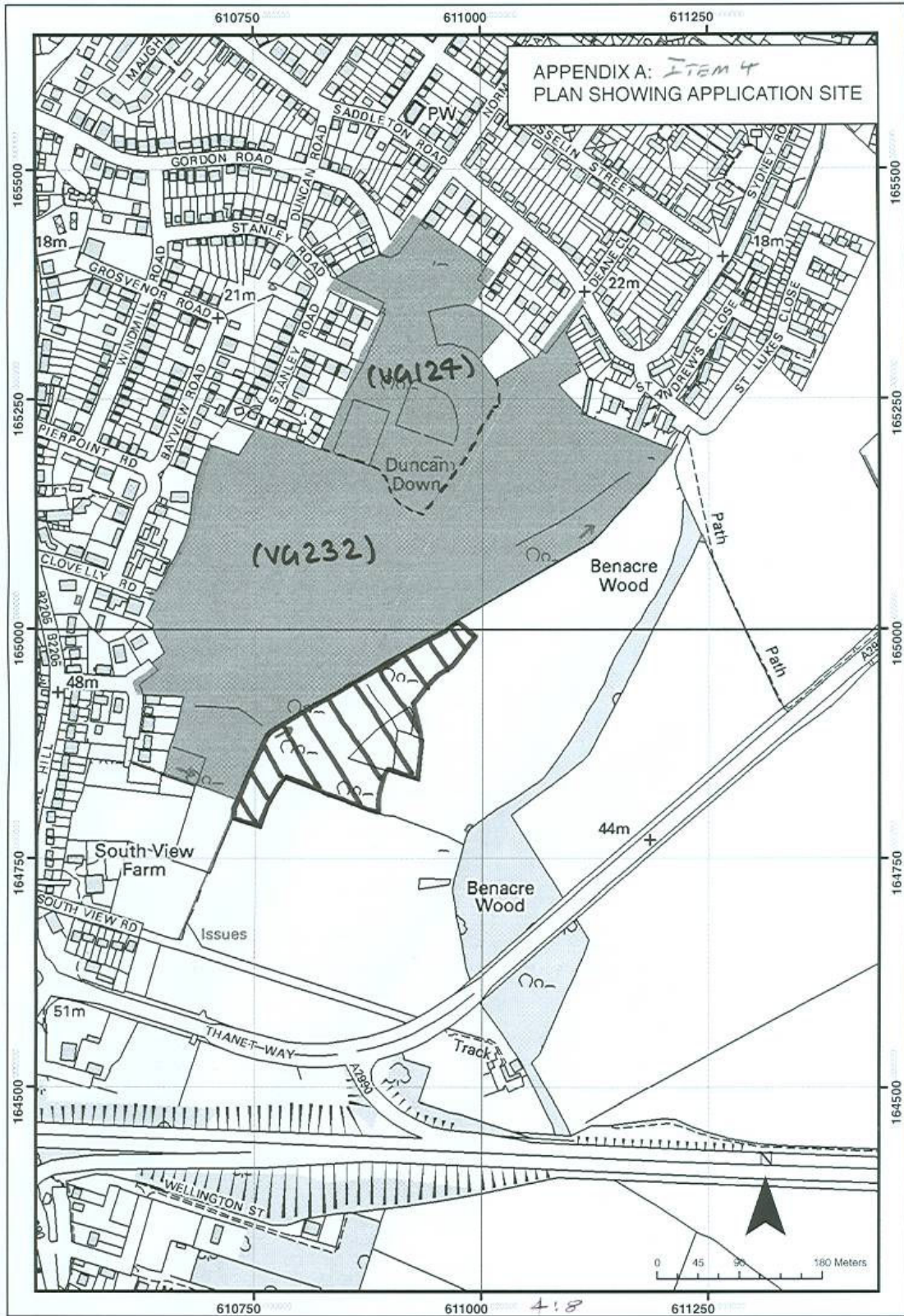
APPENDIX B – Copy of application form

APPENDIX C – Plan showing land ownership

APPENDIX D – Table summarising user evidence

APPENDIX E – Map showing the locality

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Official stamp of registration at
indicating date of receipt

APPENDIX B: ITEM 4
COPY OF APPLICATION FORM



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 COUNCIL PTA

Application 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).*

THE FRIENDS OF DUNCAN DOWN
SECRETARY
MR ASHLEY JOHN CLARK
2, HILLTOP
STANLEY ROAD
WHITSTABLE
KENT
CT5 4QE PTA

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)*

NONE

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 *DUNCAN DOWN
(CORRELL WOOD - PART)*

Locality *DUNCAN DOWN, WHITSTABLE*

Colour on plan herewith *SHOWN BORDERED IN RED
ON PLAN AJC/2*

Part 4

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

1st JUNE 2005

Part 5

How did the land become a town or village green?

*BY USE BY THE INHABITANTS FOR
LAWFUL SPORTS AND PASTIMES
CONTINUALLY AND AS OF RIGHT FOR
A PERIOD IN EXCESS OF THE LAST
20 YEARS - PLEASE SEE ATTACHED
AFFIDAVITS AND SURVEY FORMS AJC/6*

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')

PLEASE SEE ATTACHED DOCUMENT

AJC/4

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)

NOT APPLICABLE

Name by which usually known

Locality

Colour on plan herewith (if any)

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

4:10

Part 8

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

PLEASE SEE LIST OF AFFIDAVITS
AND LIST OF EXHIBITS AJC/1 - AJC/7

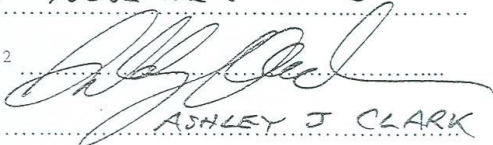
PTD,

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)

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 2ND NOVEMBER 2005

Signatures ² 

ASHLEY J CLARK
SECRETARY FRIENDS OF DUNCAN DOWN

4:11

PTD

(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.

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

² Delete and adapt as necessary

³ Insert name if applicable

I, ¹ ASHLEY JOHN CLARK
solemnly and sincerely declare as follows:-

1. ² I am [(the person (~~one of the persons~~) who (has) (~~have~~) signed the foregoing application) (~~the solicitor to~~ ^{PTA} (~~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.

⁴ Insert "marking" as on plan

4. The plan now produced and shown to me marked ⁴ AJC/2 is the plan referred to in Part 3 of the application. ^{PTA}

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

5. ⁵ The plan now produced and shown to me marked ⁴ NOT is the plan referred to in Part 7 of the application. APPLICABLE

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

Declared by the said ASHLEY JOHN CLARK

.....)

at WHITSTABLE, KENT

in the of

this 2nd day of November 2005



Signature of Declarant

Before me
Signature PF Addis

Address PAUL F. ADDIS OBE LLB.
SOLICITOR
FURLEY PAGE SOLICITORS
52-54 HIGH STREET

Qualification WHITSTABLE
KENT. CT5 1BG

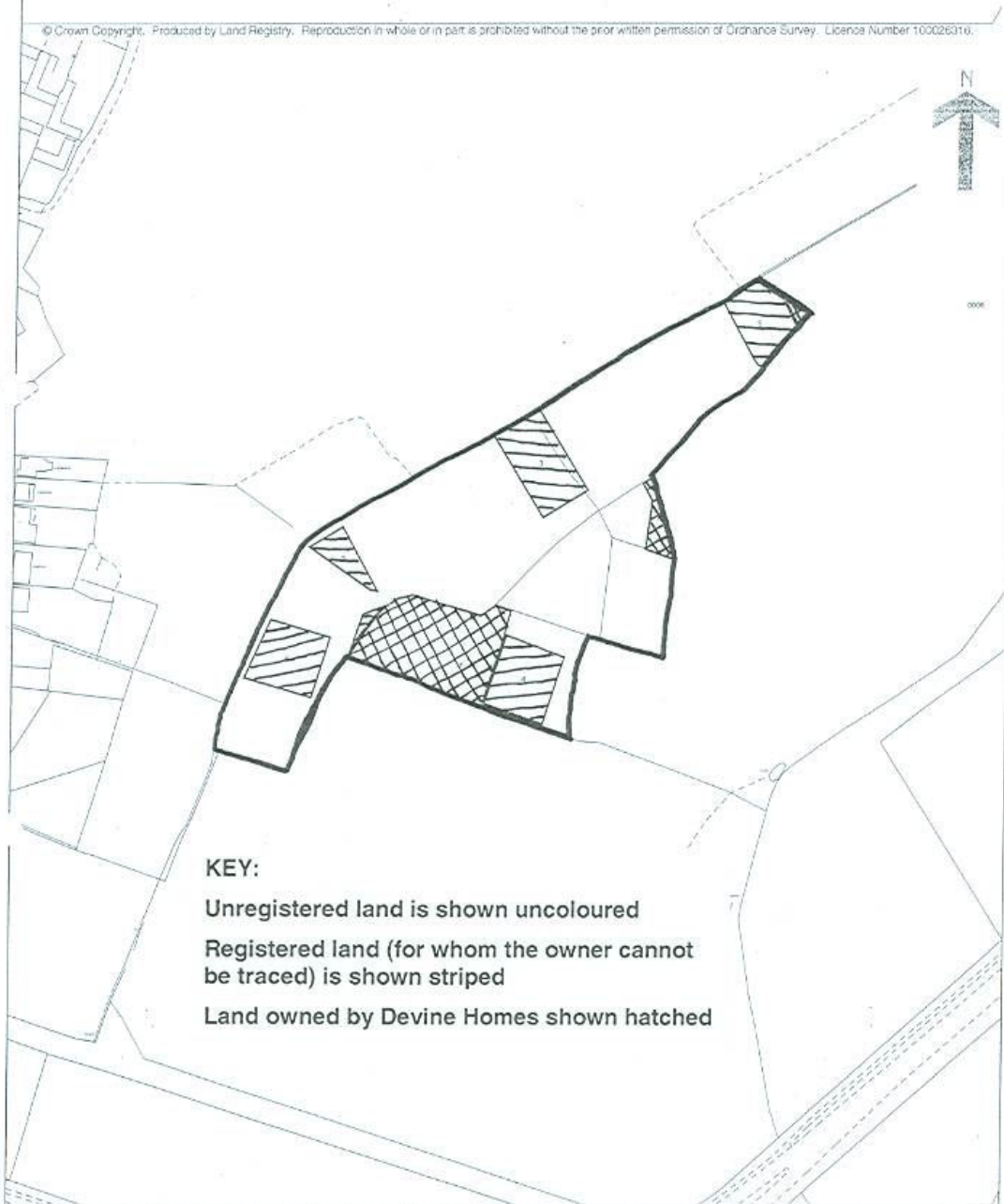
REMINDER TO OFFICER TAKING DECLARATION:
Please initial all alterations and mark any plan as an exhibit.

Land Registry
Index map plan

Ordnance Survey
Scale 1:2500
Plan prepared on

APPENDIX C: *ITEM 4*
PLAN SHOWING LAND OWNERSHIP
(with the application site edged in a bold black line)

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KEY:
Unregistered land is shown uncoloured
Registered land (for whom the owner cannot be traced) is shown striped
Land owned by Devine Homes shown hatched

This plan should be read in conjunction with result C65QVGB.

This plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. See Land Registry Public Guide 7 - Title Plans.

4:13



APPENDIX D: TABLE SUMMARISING USER EVIDENCE

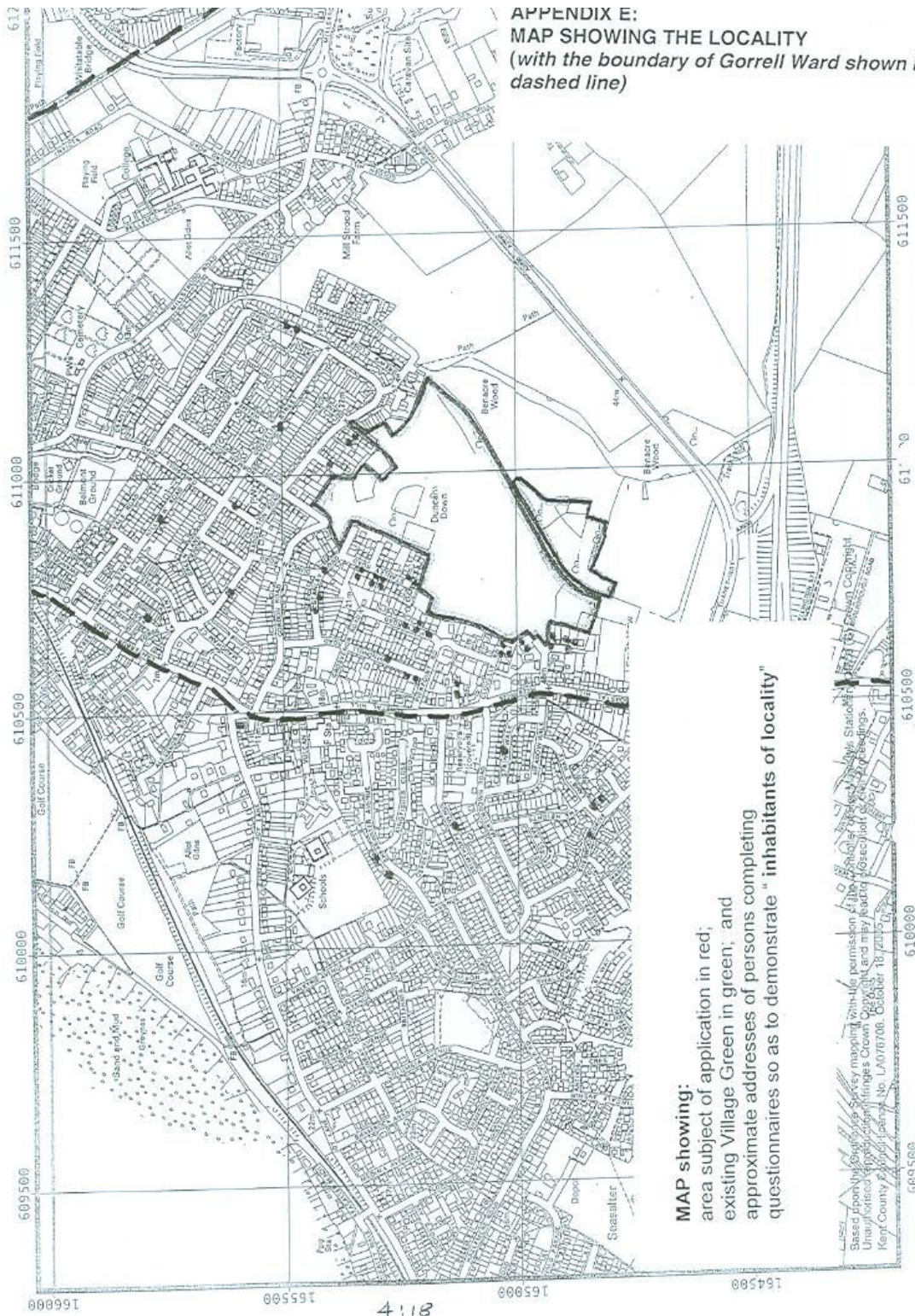
NAME	ADDRESS	PERIOD OF USE	ACTIVITIES	FREQUENCY OF USE	COMMENTS
T. Allen	Windmill Court	1985 – 2005	Walking, blackberry picking, children's games	Weekly	
C. Atkins	Stanley Road	Since 1961	Walking	Three times per year	
A. Bays	Sherwood Drive	1964 – 2005	Playing with children, dog walking	Several times per week	Use of land has always been as of right – never any challenges or physical barriers to use.
W. Brett	Stanley Road	1933 – 2005	Dog walking	Most days	
A. Clark	Stanley Road	Since 1960	Picnics, playing as a child, dog exercising, bicycle riding, kite flying, blackberry picking, photography, nature studying	Daily as a child (1960-1973), 'at regular intervals' (1973-1998), several times a week (1998 - present)	Lived close to Duncan Down until 1973 when moved away. Returned regularly to visit parents and moved back permanently in 1998. Current address backs onto existing Village Green
C. Clark	Stanley Road	1963 – 2005	Picnics, children's games, blackberry picking, dog walking, litter picking	At weekends only as a child, but now use daily	
S. Cooper (Mrs)	Benacre Road	1987 – 2005	Walking, nature walks with children, dog walking, general relaxation and enjoyment	Daily	
S. Cooper (Mr)	Benacre Road	Since 2000	Walking dogs, cycling	Several times per week	
M. Cooper	Benacre Road	Since 1968	Walking	Weekly	
G. Copp	Benacre Road	Since 1985	Walking	Frequently in 1980s and 1990s, less so now	
R. Cornish	Bayview Road	1998 – 2005	Walking	Twice weekly	
F. Cornish	Bayview Road	1998 – 2005	Walking, birdwatching	Weekly	
D. Croft	Stanley Road	1990 – 2005	Dog walking	Weekly	
S. Croft	Stanley Road	1990 – 2005	Dog walking	Weekly	
P.	Paddock	Since	Dog walking	Regularly – once/	

Cumming	View	1981				twice per month	
M. Drinkwater	Saddleton Road	1995 – 2005	Dog walking			Every couple of months	
C. Edwards	Windmill Road	1967 – 2005	Dog walking			At least once a week	
D. Ellis	Hunters Chase	1988 – 2005	Dog walking, playing with children			Daily	Lives adjacent to existing Village Green – has used area often with family. Land is criss-crossed with a network of paths. Never challenged.
E. Ellis	Hunters Chase	1988 – 2005	Dog walking			Daily	
L. Evans	Grimshill Road	Since 1980	Playing as a child and dog walking in later years			Frequently	
S. Frith	Island Wall	Since 1974	Walking with children and dog			Occasionally	
G. Garnham	Bayview Road	1997 – 2005	Playing with children and dog walking			Weekly, sometimes more	
A. Herbert	Shearwater Avenue	1970 – 2005	Dog walking			4-5 times per month	
R. Hills	Hilview Road	1978 – 2005	Dog walking, general exercise, playing as a child			Daily	Always considered land to be part of existing village green and have treated it as such. Never challenged.
J. Houghton	Clovelly Road	1981 – 2005	Walking			Several times a month	
W. Houghton	Clovelly Road	Since 1981	Walking			Several times a week	
M. Houghton	Clovelly Road	Since 1981	Walking			Not stated	
M. Humphris	Northwood Road	1965 – 2005	Walking, nature studying			At weekends	
D. Johnstone	Stanley Road	1999 – 2005	Walking, mushroom picking			Monthly	
A. Kearn	Gosselin Street	1949 – 2005	Dog walking, recreational walking, fruit picking, nature studying, general relaxation, playing as a child			Weekly, sometimes daily	Lived in Whitstable since 1939 and recalls using land in earliest childhood memories. Often see others using land. Woodland has a number of well-trodden paths kept open by constant use.
N. Kernighan	Borstal Hill	1990 – 2005	Walking, exploring, nature studying			At least twice per week	

M. Lerigo	Lambs Walk	1964 – 2005	Dog walking, fruit picking, photography, picnics, playing with children	Formerly daily, now periodically	
V. Lerigo	Lambs Walk	1964 – 2005	Fruit picking, dog walking, childrens games	Not stated	
C. Masters	Windmill Road	1979 – 2005	Dog walking	Not stated	
P. Masters	Windmill Road	Since 1979	Walking	Occasionally	
E. Middleton	Shearwater Avenue	1983 – 2005	Dog walking	Once or twice per week	
D. Murray	Borstal Avenue	1976 – 2005	Dog walking	Daily	
W. Murray	Borstal Avenue	1976 – 2005	Dog walking	Daily	
M. Pitchford	Bayview Road	Since 1980	Dog walking	Regularly	
P. Revell	Grimthorpe Avenue	1971 – 2005	Dog walking, nature studying, blackberry picking	Daily in 1970s and 1980s, currently occasionally	
S. Rouse	Sydenham Street	1990 – 2005	Dog walking	Daily	
Z. Slade	Borstal Hill	1970 – 1985	Walking, blackberry picking	Fortnightly	
N. Smith (Mrs)	Stanley Road	2000 – 2005	Walking	Two to three times per year	
N. Smith (Mr)	Stanley Road	2000 – 2005	Bird watching, dog walking	Regularly, every week	
H. Snell	Senacre Road	1985 – 2005	Walking, recreation	Frequently in 1980s/1990s, less so now	
J. Spurrier	Essex Street	1984 – 2005	Playing with children, walking	At least weekly	
D. Tant	Stanley Road	1998 – 2005	Dog walking	Two or three times per month	
N. Tant	Stanley Road	Since 1998	Dog walking	Once or twice per month	
R. Tunstill	Sydney Road	1947 – 2005	Dog and recreational walking	Two to three times per week	
D. Tunstill	Sydney	1968 –	Dog walking	Twice a week	

	Road	2005			
C. Wallace	Spring Walk	1971 – 2005	Dog walking	Two to three times per month	

**APPENDIX E:
MAP SHOWING THE LOCALITY
(with the boundary of Gorrell Ward shown in a
dashed line)**



MAP showing:
 area subject of application in red;
 existing Village Green in green; and
 approximate addresses of persons completing
 questionnaires so as to demonstrate "inhabitants of locality"

LDSBY
 Based upon Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office.
 Under the Crown Copyright Act 1994 and may have been modified by the Ordnance Survey.
 Kent County Council, No. LA/07/708, October 18, 2015.

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Item 5**Application to register land at South Road Recreation Ground, Hythe
as a new Village Green**

A report by the Director of Environment and Waste to Kent County Council's Regulation Committee Member Panel on Thursday 2nd August 2007

Recommendation: I recommend that the County Council endorses the advice received from Counsel that a non-statutory Public Inquiry be held into the case to clarify the issues

Local Member: Mr. C. Capon

Unrestricted item

Introduction

1. The County Council received an application to register land at South Road Recreation Ground, Hythe as a new Village Green from Mr. M. Ross of St. Leonards Road, Hythe ("the applicant"). The application, dated 16th November 2005, was allocated the application number 589. A plan of the site is attached and marked Appendix A and a copy of the application form is attached at Appendix B.

Procedure

2. Applications to register new Village Greens are normally made under section 13 of the Commons Registration Act 1965 and regulation 3 of the Common Registration (New Land) Regulations 1969. These regulations came into force on the 3rd January 1970, and regulation 3 enables the making of an application where, in accordance with section 22 of the 1965 Act, after the 2nd January 1970 any land becomes a Town or Village Green.
3. For the purpose of registration, section 22 of the 1965 Act (as amended by section 98 of the Countryside and Rights of Way Act 2000) 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'.*
4. 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 the press and put up a site notice. The publicity must state a period of at least six weeks during which objections and representations can be made.

The Case

5. The area of land subject to this application ("the application site") is situated in the town of Hythe. It is known locally as South Road Recreation Ground, and consists of

a large recreation ground as well as several landscaped paths (Wakefield Walk, Lucy's Avenue and Ladies Walk) which are already registered as Public Footpaths on the Definitive Map.

5. The application has been made on the grounds that the application site has become a village green by virtue of use of the land by the local inhabitants for a period of at least 20 years 'as of right' for the purposes of lawful sports and pastimes. Included with the application are 43 statutory declarations from local residents asserting that the application site has been available for free and uninhibited use by local residents for lawful sports and pastimes over the last twenty years and beyond. A summary of this evidence is provided at Appendix C. In addition to this, a number of letters of support have also been received from local residents as a result of the public consultation process.

Objection

6. Notice of the application was duly served, published in the local newspaper and advertised on site as required by the Act. In response to this, a joint objection was received from Hythe Town Council and Shepway District Council ("the objector"). Hythe Town Council is the owner of the land and has maintained it as a recreation ground for many years. Shepway District Council had an interest in the land as they planned to use it for the construction of a multi-million pound sports centre. However, since the objection was made, it is understood that the Private Finance Initiative in relation to the proposed new sports centre has now fallen through and Shepway District Council no longer have any interest in the land. However, Hythe Town Council maintains its objection.
7. The objection can be broadly divided into three areas:
 - That the tennis courts are fenced off from the recreation ground and have not been available for unrestricted general public use. Use of this part of the land has therefore not been as of right as the tennis courts have been hired out for payment of a fee.
 - That the cricket and football pitches have also been hired out of use on receipt of payment. On the occasions when they have been hired out, they have not been available for general recreational usage. This has created an interruption to any period of twenty years usage on the basis that use of the land for informal recreation has always deferred to the use of the land for organised sports, thereby defeating any acquisition of rights.
 - That it is thought that the land is held under the Public Heath Act 1875 (which would mean that any use of the land would be by right and not as of right), although it has not been possible to trace any documentation confirming this. In 1915, the Local Government Board approved the appropriation of just over 4 acres of land for the purpose of public walks and pleasure grounds (i.e. under the 1875 Act). In 1921, Hythe Town Council applied for the appropriation of approximately 13 acres for the purposes of a pleasure ground, but a copy of this has not yet been found.

Applicant's response to the objection

8. In response to the objection, the applicant has made the following points:

- That use of the land has always been as of right, i.e. without force, secrecy or permission, and that the only charge which has been made by the Town Council has been for the use of the Town Council's utensils (e.g. goal posts, cricket pavilion etc.) which were erected to assist public usage of the land. This is supported by a statement made by the Town Clerk in 1924 confirming that this was the case.
- That when organised sports take place, the extent is only over part of the land and is temporary in nature. Such use is not exclusive and the public are still allowed access. Furthermore, there is no more of an interruption to the public's rights when organised sports take place, than when someone is undertaking informal sports and pastimes (e.g. picknicking) – the land is only temporarily out of general use.
- That the permission to appropriate 4 acres of the land in 1915 was never implemented (due to the occupation of the town by the army during World War I and the lack of resources) and, given that it was strictly limited to three years, subsequently lapsed meaning that there can never have been a legal appropriation. After the war, the original plan to lay out public walks and pleasure ground was abandoned in favour of the creation of a war memorial and recreation ground for returning soldiers and their families. In any case, the only part of the land which the objector claims might be held under the 1875 Act amounts to only one third of that which is subject to the application.
- That the objector has not been able to produce a single document, minute, hire-agreement or record in support of their case.

Advice from Counsel

9. Given the complexity and the emotiveness of this application, as well as the wider issues relating to the future use of the land, it was felt appropriate to seek Counsel's opinion before any recommendation was put to the panel. Counsel has advised that the best way forward would be for a non-statutory Public Inquiry to be held to clarify the issues, in particular with regard to the Public Health Act question and the use of the land for organised sports (e.g. football and cricket). This would be of benefit to all parties as it would not only allow the applicant to put forward his case in more detail than the written objection process enables him to do, but it would also enable the objector to have the true status of the land determined once and for all.

Conclusion

10. Although the Commons Registration (New Land) Regulations 1969 provides a framework regarding the submission of applications, the subsequent advertisement of the application, the consideration of objections and the method of registration of the land, it provides little guidance with regard to the procedure which a Registration Authority should follow in considering and determining such an application. In practice, in cases which are particularly emotive or where the application turns on a disputed issues of fact, many authorities have begun in recent times to take the step of appointing an independent Inspector to conduct a non-statutory Public Inquiry into the application and to report whether it should be accepted or not. This practice has been approved by the courts, most recently in the *Whitmey*¹ case.

¹ R (Whitmey) v Commons Commissioners (2004)

11. In my view, before any decision is taken the County Council should heed Counsel's advice to hold a non-statutory Public Inquiry to explore the issues further. The Public Health Act does raise an issue which prevents the County Council from registering the land without further investigation and further information is required with regard to the actual use of the land. However, it is also clear that there is a large body of user evidence to support the application and therefore it cannot be rejected out-of-hand, especially in the absence of any substantive defence to the claim from the objector. The contentious nature of this case means that a Public Inquiry would provide all parties to have their say and for a decision to be reached by an independent Inspector who is well versed in this area of complex legislation.

Recommendation

12. I recommend that Members endorse the advice received from Counsel and that a non-statutory Public Inquiry be held into the case to clarify the issues.

Background documents

APPENDIX A – Plan showing the application site

APPENDIX B – Copy of the application form

APPENDIX C – User evidence table

Accountable Officer:

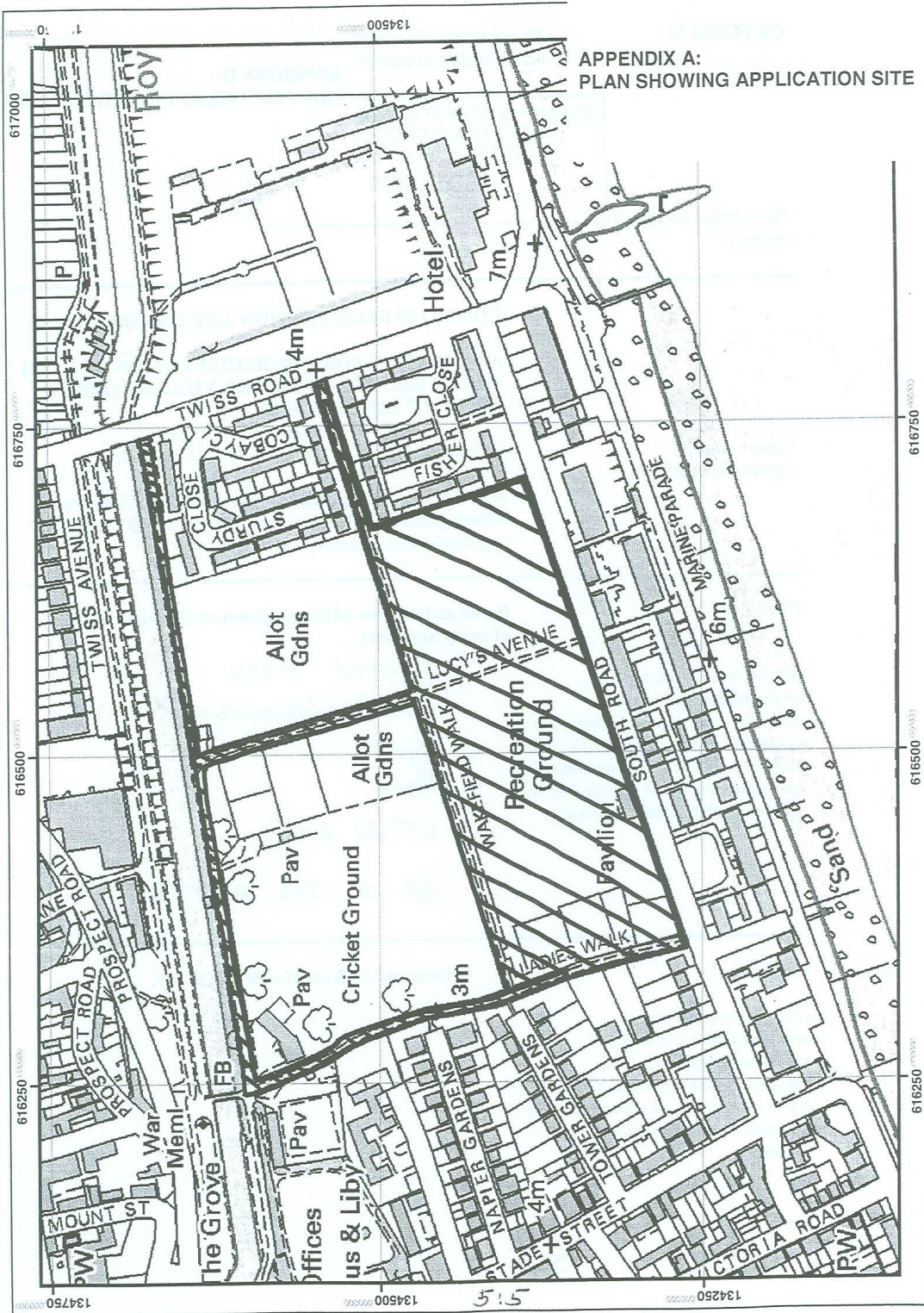
Dr. Linda Davies – Tel: 01622 221500 or Email: linda.davies@kent.gov.uk

Case Officer:

Mr. Chris Wade – Tel: 01622 221511 or Email: chris.wade@kent.gov.uk

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

APPENDIX A:
PLAN SHOWING APPLICATION SITE



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Official stamp of registrar
indicating date of receipt

APPENDIX B: *ITEM 5*
COPY OF THE APPLICATION FORM



*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 COUNCIL*

Application 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).*

*MARTIN ROSS
81 St. LEONARDS ROAD
Hythe
Kent
CT 21 6HE*

Tel: 01-303 267736

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)*

5:6

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 *SOUTH ROAD RECREATION GROUND*

Locality *Hythe*

Colour on plan herewith *Edged Red and coloured YELLOW*

Part 4 *15th NOVEMBER 2005*
On what date did the land become a town or village green?
By the Public Health Act 1875 [1] 9th MARCH 1915 and/or
By actual use of the land for over [2] More than 20 years ago.
less than 20 years

Part 5

How did the land become a town or village green?

In 1915 the land was laid out as a public recreation ground under the Public Health Act 1875 and has been used in that way ever since. See attached affidavits and/or statutory declarations. Note the use of the words "Appropriation of Land for Pleasure Ground purposes" in the 12/1/1915 PLAN AND BY THE STATUTORY DECLARATIONS FILED HEREWITH

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')

*Hythe Town Council
Council Offices
Stade St
Hythe, Kent*

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

Colour on plan herewith (if any)

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

5:7

Part 8

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

- (1) Copy of the approval of Appropriation of Corporate land with Plan
- (2) Copy of Hyde Town Council Land Certificate Plan showing "Recreation Ground."
- (3) Bundle of supporting statutory declarations.

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)

The Council are (1) considering fencing the said land and (2) proposing to build on it.

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 November 15th 2005

Signatures² [Signature]

(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, MARTIN ROSS,
solemnly and sincerely declare as follows:-

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~~)] and the applicant

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 ⁴DKR is the plan referred to in Part 3 of the application.

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

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 MARTIN ROSS

at 147 HIGH STREET HYTHE KENT

in the COUNTY of KENT

this 16th day of NOVEMBER 2005


Signature of Declarant

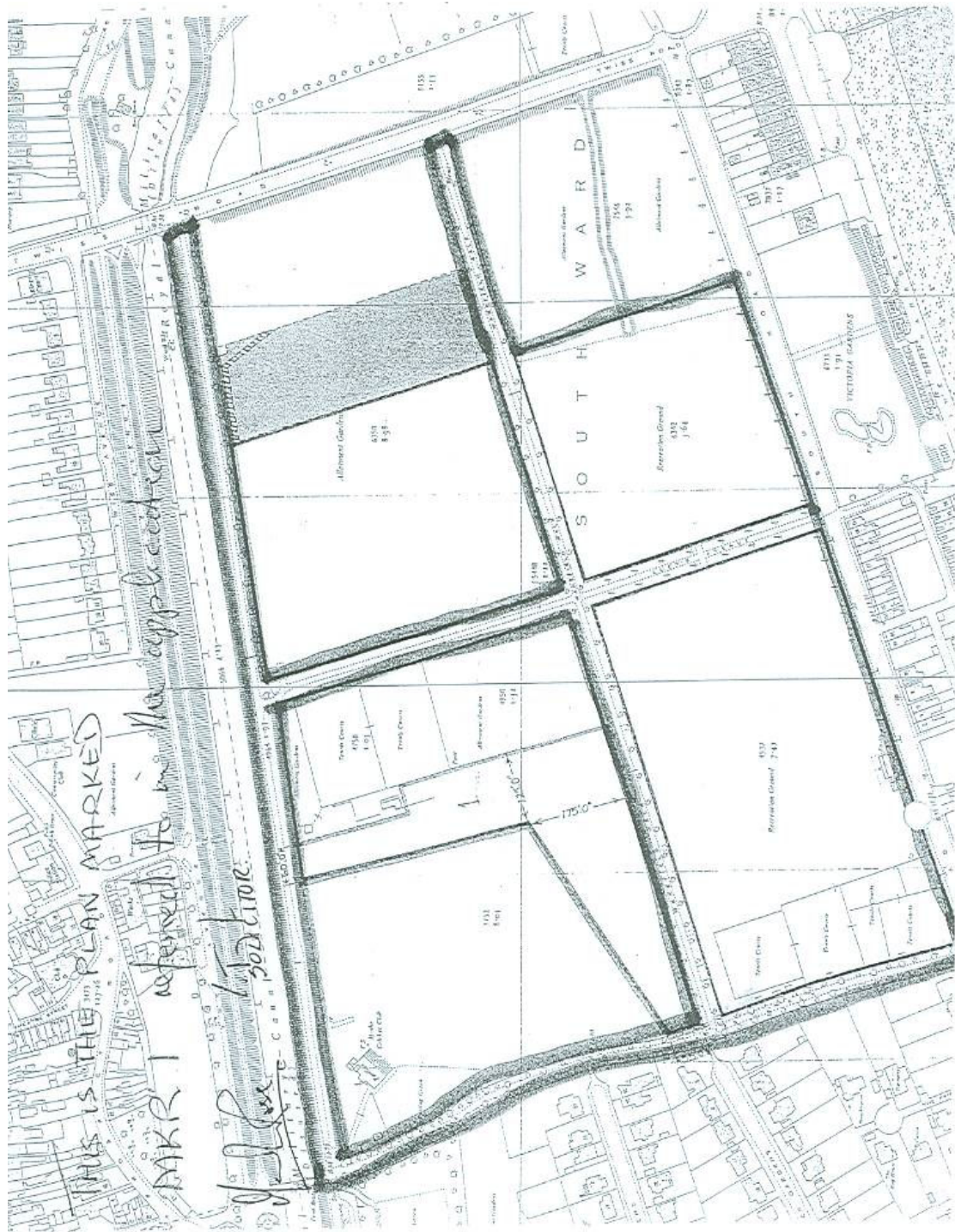
Signature L. Taylor Before me

Address

Qualification

LISA E. TAYLOR
SOLICITOR
ROBSON & Co.
147 HIGH STREET
HYTHE
KENT CT21 5JN

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



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**Table summarising user evidence in support of the application to register
land at South Road Recreation Ground, Hythe as a new Village Green**

Name	Address	Length of residency (assumed period of use)	Activities
Gwyneth Bishop	40 Marine Parade	50	Walking, kite-flying, picnics
John Bishop	40 Marine Parade	80	Walking, kite-flying, running, informal cricket, dog-exercising, Frisbee, bird-watching, hockey, tennis
M. Bishop	40 Marine Parade	43	Kite-flying, football, cricket, boules, running, Frisbee, dog-exercising
Graham Brandon	3 Tower Gardens	35	Dog-walking, kite-flying, informal cricket and football, picnics, frisbee, cycling
Jennifer Brandon	3 Tower Gardens	25	Dog-walking, kite-flying, informal cricket and football, frisbee, cycling
Jeremy Brockhurst	Brockwood, Hillcrest Road	30	Walking, kite-flying, dog exercising, football, sunbathing
Yvonne Brockhurst	Brockwood, Hillcrest Road	28	Walking, dog exercising, kite-flyine, playing football, sunbathing
Marc Carney	7 Tower Gardens	20	Playing football/cricket/rounders. Walking, running, kite-flying, picnics
Vivienne Carney	7 Tower Gardens	20	Playing tennis, kite-flying, watching football matches, dog-walking, picnics, general recreation
Elisabeth Cloke	15 Lynton Road	40	Playing with grandchildren, watching cricket and football, dog-walking
Harry Cloke	15 Lynton Road	74	Playing as a child, dog-walking, watching football and cricket matches, playing with own children
Avril Crosby-Emery	34 Stade Street	91	Sports, running, picnics, playing as a child, exercising dogs, general recreation, kite-flying, watching football matches
Martin Daniels	Radnor Park West	24	Picnics, playing ball games, stargazing, rowing (when flooded by sea)
Frazier Dann	3 Southstone Court	30	Kite-flying, informal football and cricket, walking for exercise
Frances Esdaile	Mandi South Road	36	Picnics, informal rounders/football, kite-flying, playing with children, watching fireworks, general recreation
Roger Francis	8 Southstone Court (South Rd)	15	Walking, football, ball games, dog-training
Tessa Francis	8 Southstone Court (South Rd)	15	Walking, ball games with grandchildren
Andrea Fringley	28 Fisher Close	36	Walking, informal cricket/baseball/football/tennis
Mrs. T. George	7 Southstone Court	22.5	Walking, dog exercising, picnics, playing with children
Josephine	36 Marine Parade	35	Walking, kite-flying, cricket, football

Hagger				
Cyril Hardy	24 Fisher Close	28	Walking, dog-walking/exercise, watching football and cricket matches, playing with children, Frisbee, kite-flying, ball games	
Ben Hinx-Edwards	13 Tower Gardens	22	Walking, kite-flying, Frisbee, informal football, cycling	
C. Holloway	Pound Cottage, 47 Seabrook Road	21	Walking, watching sporting activities, general recreation	
Monica Holloway	Pound Cottage, Seabrook Road	21	Walking, playing with children, general recreation, informal sports with family	
Donald Hyde	21 Ormonde Road	75	Various games and sports as a schoolboy, sports days and fetes in the 1930s	
Josephine Kelly	25 Fisher Close	30	Walking, informal cricket/football/tennis, kite-flying	
Philip Kelly	46 Nursery Fields	21	Walking, ball games, Frisbee, photography, bird-watching, watching cricket matches	
Marcus Little	74 Marine Parade	49	Astronomy, dog-walking, general recreation, playing with boomerang	
Margaret Little	74 Marine Parade	49	Games with children, picnics, dog-training, general recreation, sunbathing, kite-flying	
D. Lloyd	4 Hermitage Close	37	Walking	
Alison Miles	5 Tower Gardens	30	Dog-exercising, picnics, informal sports with children, kite-flying, cycling	
Colin Miles	5 Tower Gardens	49	Football, cricket, tennis, rugby, kite-flying, school sports, dog-exercising, cycling	
Linda Mitchell	52 Stade Street	25	General recreation and exercise, reading, sunbathing	
Cecily Partridge	Halfway, Barrack Hill	39	Walking, watching cricket, ball games with children, picnics, playing tennis, watching football matches	
Sheila Phalan	The Hermitage	44	Dog-exercising	
Frederick and Doreen Piper	1 Cobay Close	32	Dog-walking, recreational walking, ball games, kite-flying, watching football and cricket matches	
Martin Ross	81 St Leonards Road	18	Walking with and without dog, kite-flying, playing hand ball, cycling, watching football and cricket, picnics	
Jean Smith	Stirlings, 22 New Road	34	Dog-exercising, picnics	
Doreen Turner	10 South Road	35	Walking, kite-flying, informal cricket, picnics, watching sport activities	
Ronald Turner	10 South Road	35	Walking, kite-flying, running, cricket, ball games, general recreation	
Adrian Wetherall	8 South Road	30	Walking, family games, rounders, dog-exercising, kite-flying	
Moira Wetherell	8 South Road	32	Dog-walking, rounders, cricket, kite-flying, ball games, teaching	

Maureen Young	29 North Street	9	children to ride bicycles Informal cricket/rounders/football, picnics, Frisbee
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