



AGENDA

Kent County Council

REGULATION COMMITTEE MEMBER PANEL

Friday, 6th February, 2009, at 2.00 pm
Medway Room, 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 S Chittenden.
Mr J A Davies, 1 Labour Group Member.
2. Declarations of Interest by Members and Officers for items on the agenda for this meeting
3. Application to register land known as "The Market Square" at Aylesham as a new Village Green. (Pages 1 - 32)
4. Application to register land at Montefiore Avenue, Ramsgate as a new Town Green. (Pages 33 - 56)
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, 29 January 2009

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Application to register land known as 'The Market Square' at Aylesham 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 6th February 2009.

Recommendation: I recommend that the County Council informs the applicant that the application to register the land known as 'The Market Square' at Aylesham as a new Village Green has not been accepted.

Local Members: Mrs. E. Rowbotham

Unrestricted item

Introduction

1. The County Council has received an application to register land known as 'The Market Square' at Aylesham as a new Village Green from local resident Mrs. E. Madden ("the applicant"). The application, dated 27th November 2007, was allocated the application number 598. A plan of the site is shown at **Appendix A** to this report and a copy of the application form is attached at **Appendix B**.

Procedure

2. The application has been made under section 15 of the Commons Act 2006 and regulation 3 of the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007. These regulations have, since 1st October 2008, been superseded by the Commons Registration (England) Regulations 2008 which apply in relation to seven 'pilot implementation areas' only in England (of which Kent is one). The legal tests and process for determining applications remain substantially the same.
3. Section 15 of the Commons Act 2006 enables any person to apply to a Commons Registration Authority to register land as a Village Green where it can be shown that:
 - 'a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;*
4. In addition to the above, the application must meet one of the following tests:
 - **Use of the land has continued** 'as of right' until at least the date of application (section 15(2) of the Act); or
 - **Use of the land 'as of right' ended no more than two years prior to the date of application**, e.g. by way of the erection of fencing or a notice (section 15(3) of the Act); or
 - **Use of the land 'as of right' ended before 6th April 2007** and the application has been made within five years of the date the use 'as of right' ended (section 15(4) of the Act).
5. As a standard procedure set out in the regulations, the County Council must notify the owners of the land, every local authority and any other known interested

The application site

6. The area of land subject to this application (“the application site”) is known locally as ‘the Market Square’ and consists of a rectangular area of grassed open space that is surrounded on all sides by a road known as Market Square and situated in the centre of the village of Aylesham.

The case

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 well in excess of 20 years.
8. Included in the application were 10 user evidence questionnaires 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 summary of this user evidence is attached at **Appendix C**.
9. In addition, a number of photographs dating back to 1947 were submitted in support of the application (demonstrating the historical use of the land by the people of Aylesham) as well as several newspaper cuttings from the 1950s which refer to the application site as ‘the village green’.
10. Fifteen letters of support, many from longstanding residents of the village, were also included with the application. These letters confirm use of the land by local residents for a range of recreational activities over a long period.

Consultations

11. Consultations have been carried out as required and the following comments have been received.
12. Aylesham Parish Council has written in support of the application on the basis that registration of the land would protect the green for future generations to use.
13. Cllr. Keen also wrote in support of the application. She explains that the application has been made to preserve the green space in perpetuity because local residents have recently had to fight to save the land from being turned into a car park. Cllr. Keen is of the view that the application site has been the centrepiece of the historic village form many years and it is essential to preserve it as a public open space.
14. One local resident also wrote in support of the application. In his view, the application for village green status must be granted on the basis that the application site has been in public use for over 70 years.

Landowner

15. The application site is owned by Dover District Council. Mr. G. Mandry (Principal Solicitor) has objected to the application on behalf of the District Council.

16. The objection is made on the following grounds:

- Any activities which have taken place on the land have been with the express or implied permission of the landowner by virtue of a series of short-term leases granted to the Parish Council since at least the mid-1970s. Such use has therefore not been 'as of right' and is incapable of giving rise to any rights.
- The land is held in the housing portfolio and the public have been permitted to use it by way of licence with byelaws having been made to regulate use of the application site.
- The user evidence is unclear and not sufficient to show that the relevant legal tests have been met.

17. In support of the objection, the District Council has supplied copies of leases dating back to 1977 as well as associated correspondence.

Legal tests

18. 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 or meets one of the criteria set out in sections 15(3) or 15(4)?*

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

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

19. 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'.

20. In this case, there is no evidence that use of the application site has been with force or in secrecy. Although there are hedges bordering the site, there is a Public Footpath crossing the centre of the site and access via four designated points. None of the witnesses refer to any specific fences or barriers to prevent access.

¹ *R v. Oxfordshire County Council, ex p. Sunningwell Parish Council* [1999] 3 WLR 160

In fact, the District and Parish Councils have actively promoted use of the land by entering into formal leases for the purpose of public recreation.

21. However, there is a central issue concerning whether or not permission (in any form) was ever granted to local residents for the use of the land. Permission (in the context of a Village Green application) can take four forms:

- (i) *Express permission which is communicated to users* – for example a notice posted on site expressly permitting use of it for recreational purposes or other express permission being given by words or in writing.
- (ii) *Express permission which is not communicated to users* – for example in circumstances where there existed an express licence between landowner and local authority making the land available as recreational open space.
- (iii) *No express permission but overt actions taken by the landowner* – for example, where the owner takes sufficient positive and unequivocal steps to inform the users that use is impliedly permitted and may in due course be terminated.
- (iv) *No express permission and not communicated to the public* – for example, where land is held by a public authority under certain statutory powers for the provision of land for public recreation.

22. In the case of Market Square, the Parish Council has entered into a series of short leases with the landowner (the District Council) since at least the 1970s. The relevant 20 year period for the purposes of the Village Green application is 1987 to 2007. This period is covered by four separate five-year leases dated 1983, 1989, 1992 and 1998. In each lease, there is a clause which restricts the use of the land to 'recreational and amenity purposes'. A copy of the 1998 lease is attached for reference at **Appendix D** (the relevant clause is 4.7).

23. The use of the land for recreational purposes by the local residents has therefore been by virtue of the relevant clause in the lease granted to the Parish Council by the District Council (as landowner). Although the existence of the lease has not been communicated to users, this nonetheless amounts to an express permission and falls within the second category of permission listed at paragraph 21 above.

24. Since the effect of the lease is to grant permission to the local Parish Council to make the land available to the local residents for recreational purposes, this is sufficient to render use of the application site by the local inhabitants '*by right*' and not '*as of right*'. Therefore, it is not possible to conclude 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?

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 number of recreational activities have taken place on the land, including nature-watching and playing with children.

27. However, several of the user evidence forms refer to use of the land 'to cross the village' or as a thoroughfare to reach village shops. Such use would be consistent with the use of a Public Right of Way and the exercise of existing rights associated with the recorded Public Footpath running across the centre of the site but would not be sufficient to give rise to general rights of recreation for Village Green usage.
28. It is unclear from the user evidence submitted on paper as to what percentage of use has been attributable to local residents exercising a linear right of passage on foot (i.e. associated with the Public Footpath) and what percentage has been use associated with a general right of recreation (i.e. as a Village Green). There is also reference amongst the user evidence to attending fetes, boot fairs and other community events. Such formal events are likely to have been arranged with the permission of the Parish Council and therefore attendance at these events would have been by implied permission and could not give rise to Village Green rights.
29. Therefore, although it is clear that the application site has been used by local residents generally, on the evidence available it has not been possible to conclude that the application site has been used for the types of activities that would give rise to Village Green rights.

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

30. 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*'.
31. In this case, the applicant has specified the locality at Part 6 of the application form as being 'Aylesham Market Square and surrounding shops and houses' and has helpfully marked on the plan accompanying the application the addresses of those having provided user evidence.
32. As stated above, the locality for the purposes of Village Green registration should be some recognised administrative unit; the definition of locality requires a degree of precision and it is not sufficient to simply specify a collection of roads or a local community that is not formally recognised. Although the user evidence demonstrates use of the application site from those whose homes are situated immediately opposite the land, there is also evidence from people living further afield within the village. This is consistent with the Parish Council leasing the land for 'recreational and amenity purposes' for the benefit of the village residents as a

² *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* (2003) EWHC 2803

whole and not simply those living in the immediate proximity. I therefore consider that the correct locality is the administrative parish of Aylesham.

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

33. 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, the application was submitted in 2007 and therefore the relevant twenty-year period (“the material period”) is 1987 to 2007.

34. From the user evidence submitted, there appears to have been use of the land over a considerable period dating back far beyond 1987, and in some cases as far back as the 1930s. There is little doubt from the evidence presented (including the old photographs and newspaper cuttings) that the application site has been a focal point for the village and used as an open space for a considerable period. In addition, all of the users state in their questionnaires that they have witnessed other people using the land for a range of recreational activities.

35. Therefore, the application site has been used for a period of over 20 years.

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

36. The Commons Act 2006 introduces a number of transitional arrangements regarding the actual use of the land in relation to the making of the application to register it as a Village Green. These are set out at paragraph 4 above.

37. In this case, use of the applications site has not ceased, nor is there any suggestion of any interruption to use prior to the making of the application. Therefore, it appears that use of the land has continued up until the date of application and as such it is not necessary to consider the other tests set out in sections 15(3) and 15(4) of the Act.

Conclusion

38. In order for the application site to be registered as a Village Green, the Registration Authority has to be satisfied that each and every one of the legal tests set out above is met. It is not sufficient that merely some of the tests have been met or that the land has always been considered locally to have the attributes of a Village Green.

39. In this case there are several problems which lead to the conclusion that the necessary tests have not been met. The most significant of these is that use of the land is not considered to have been ‘as of right’ during the material period due to the existence of the lease between the Parish Council and the landowner which makes express provision for the use of the land for recreational purposes.

40. Even if further user evidence were produced to support the application (and overcome the deficiencies with regard to the type and quantity of use), the existence of the leases would, by itself, present a ‘knock-out blow’ to the application. Therefore, it would appear that the relevant legal tests cannot be met

Recommendations

41.I therefore recommend that the County Council informs the applicant that the application to register the land known as 'The Market Square' at Aylesham as a new Village Green has not been accepted.

Accountable Officer:

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

Case Officer:

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

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

Background documents

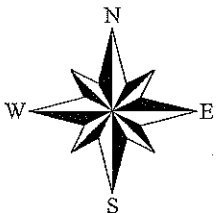
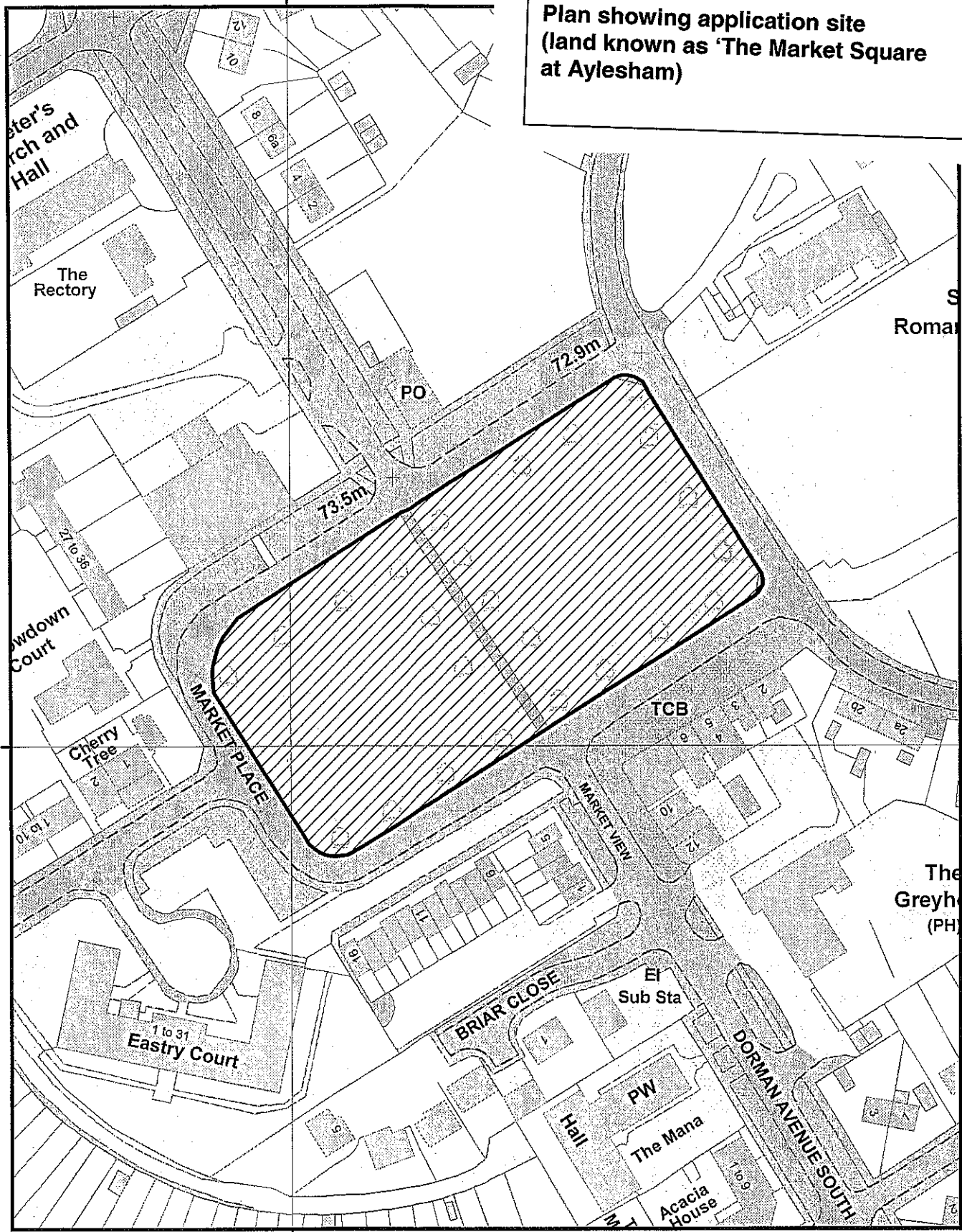
APPENDIX A – Plan showing application site

APPENDIX B – Copy of application form

APPENDIX C – Table summarising user evidence

APPENDIX D – Copy of 1998 lease relating to the application site

APPENDIX A:
Plan showing application site
(land known as 'The Market Square
at Aylesham)



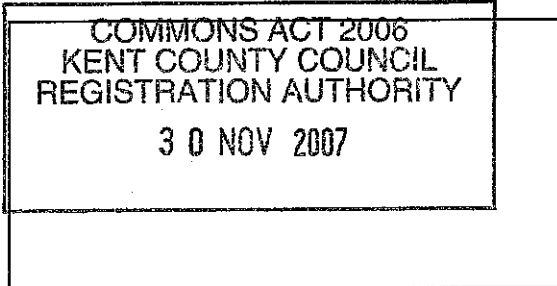
Scale 1:1250

Land subject to village green application
 at 'The Market Square', Aylesham



Commons Act 2006: Section 15
Application for the registration
Village Green

Official stamp of registration authority
indicating valid date of receipt:



Application number:

Register unit No(s):

VG number allocated at registration:

(CRA to complete only if application is successful)

Applicants are advised to read the 'Guidance Notes for the completion of an Application for the Registration of land as a Town or Village Green' and to note the following:

- All applicants should complete questions 1-6 and 10-11.
- Applicants applying for registration under section 15(1) of the 2006 Act should, in addition, complete questions 7-8. Section 15(1) enables any person to apply to register land as a green where the criteria for registration in section 15(2), (3) or (4) apply.
- Applicants applying for voluntary registration under section 15(8) should, in addition, complete question 9.

1. Registration Authority

To the

Kent County Council

Note 1
Insert name of registration authority.

Note 2

If there is more than one applicant, list all names. Please use a separate sheet if necessary. State the full title of the organisation if a body corporate or unincorporate.

If question 3 is not completed all correspondence and notices will be sent to the first named applicant.

2. Name and address of the applicant

Name:

Full postal address:

Telephone number: (incl. national dialling code)

Fax number: (incl. national dialling code)

E-mail address:

3. Name and address of solicitor, if any

Name:

Firm:

Full postal address:
Post code

Telephone number: (incl. national dialling code)

Fax number: (incl. national dialling code)

E-mail address:

Note 3

This question should be completed if a solicitor is instructed for the purposes of the application. If so all correspondence and notices will be sent to the person or firm named here.

Note 4

For further advice on the criteria and qualifying dates for registration please see section 4 of the Guidance Notes.

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

4. Basis of application for registration and qualifying criteria

If you are the landowner and are seeking voluntarily to register your land please tick this box and move to question 5.

Application made under **section 15(8)**:

If the application is made under **section 15(1)** of the Act, please **tick one** of the following boxes to indicate which particular subsection and qualifying criterion applies to the case.

Section 15(2) applies:

Section 15(3) applies:

Section 15(4) applies:

If **section 15(3) or (4)** applies please indicate the date on which you consider that use as of right ended.

If **section 15(6)*** applies please indicate the period of statutory closure (if any) which needs to be disregarded.

Note 5

The accompanying map must be at a scale of at least 1:2,500 and show the land by distinctive colouring to enable it to be clearly identified.

* Only complete if the land is already registered as common land.

Note 6

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

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

Name by which usually known:

The Market Square Aylesham

Location:

Centre of DORMAN AVE NORTH & SOUTH
AYLESHAM

Shown in colour on the map which is marked and attached to the statutory declaration.

Common land register unit number (if relevant) *

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

Please show the locality or neighbourhood within the locality to which the claimed green relates, either by writing the administrative area or geographical area by name below, or by attaching a map on which the area is clearly marked:

map included.
Aylesham Market Square and
surrounding shops & houses.

Tick here if map attached:

7. Justification for application to register the land as a town or village green

Note 7

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

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

(See full statement enclosed.)

The Market Square Oylesham has been used over the years as the evidence proves, as a village green and social area.

The developers Hill Reed have not taken our history or heritage into consideration they plan to develop the area as a parking place for cars
Dover District Local Plan 3.38

Feb 2002

- a Creating a balanced sustainable community
- b Encouraging transport other than the car, walking and cycling.
- c Meeting the accessibility needs of all. children and older people

Our village wants and needs this green area our heart of the village our village green.

Note 8

Please use a separate sheet if necessary.

Where relevant include reference to title numbers in the register of title held by the Land Registry.

If no one has been identified in this section you should write "none"

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

Note 9

List all such declarations that accompany the application. If none is required, write "none".

This information is not needed if an application is being made to register the land as a green under section 15(1).

Note 10

List all supporting documents and maps accompanying the application. If none, write "none"

Please use a separate sheet if necessary.

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

Dover District Council

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

10. Supporting documentation

1 of 1 Map of the market square Aylesham Exhibit A
Photograph of the Market Square Aylesham
x 7
letters of support x 13
Evidence Questionnaire in support x 10

Note 11

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

11. Any other information relating to the application

Permission of course needs to be applied for on the case of holding a carnival from the British Council because of the safety issues involved and police traffic management.

Note 12

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

Date:

1st November 2007

Signatures:

E Mackden

REMINDER TO APPLICANT

You are advised to keep a copy of the application and all associated documentation. Applicants should be aware that signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence. The making of a false statement for the purposes of this application may render the maker liable to prosecution.

Data Protection Act 1998

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

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).

I E. Madden,¹ solemnly and sincerely declare as follows:—

² Delete and adapt as necessary.

1.² I am ((the person ~~(one of the persons)~~ who (has) ~~(have)~~ signed the foregoing application)) ((~~the solicitor to~~ (the applicant) (³ ~~one of the applicants~~)).

³ Insert name if Applicable

2. 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, nor of any document relating to the matter other than those (if any) mentioned in parts 10 and 11 of the application.

3. The map now produced as part of this declaration is the map referred to in part 5 of the application.

⁴ Complete only in the case of voluntary registration (strike through if this is not relevant)

4.⁴ I hereby apply under section 15(8) of the Commons Act 2006 to register as a green the land indicated on the map and that is in my ownership. I have provided the following necessary declarations of consent:

- (i) a declaration of ownership of the land;
- (ii) a declaration that all necessary consents from the relevant leaseholder or proprietor of any relevant charge over the land have

Cont/

⁴ Continued

been received and are exhibited with this declaration; or
(iii) where no such consents are required, a declaration to that effect.

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 E Madden)
)
)
at 33 ~~Canston Drive~~)
Aylesham)
2 Castle Street Canterbury)
this 27th day of Nov 2007)

E Madden
Signature of Declarant

Before me * Selsby

Signature:

MRS S. SELSBY
F. INST. L. EX.
GARDNER CROFT
2 CASTLE STREET
CANTERBURY
KENT CT1 2QH

Address:

Commissioner for Oaths

Qualification:

* The statutory declaration must be made before a justice of the peace, practising solicitor, commissioner for oaths or notary public.

Signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence.

REMINDER TO OFFICER TAKING DECLARATION:

Please initial all alterations and mark any map as an exhibit

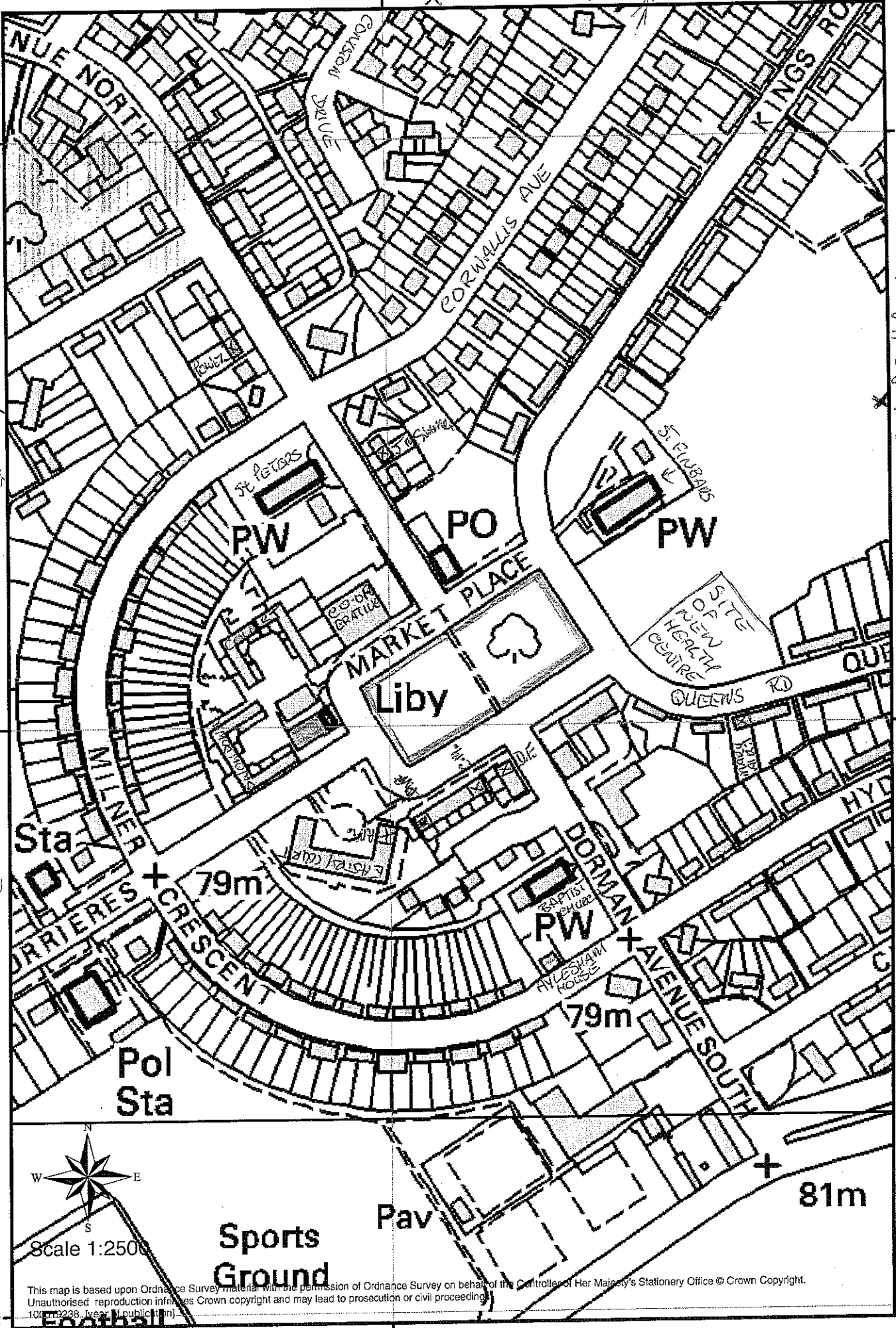
Will you please take into consideration that in a village like Aylesham we do not have solicitors or even a Justice of the Peace or a commissioner of oaths, Mrs & Josie and her husband are successful business people who live in the village and therefore have the same interest in making Aylesham a good place to live.

Page 17
E Madden (applicant)

of Cornwall is
EMAZESH
623600

152500
152200
151900

152500
152200
151900



This map is based upon Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office © Crown Copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings.

DISABLED HOUSING

7. JUSTIFICATION FOR APPLICATION TO REGISTER THE LAND AS A TOWN OR VILLAGE GREEN

The Market Square in Aylesham is not large enough to be used for sports, and so our claim for village green status lies in pastimes, in the past as the submitted evidence will prove and also to the present day. At the heart of the Village the market square has been used over the years for fetes, carnival, church activities, religious groups, children playing, a meeting place for teenagers most are non-disruptive a few of course are not, the planting of commemorative trees by school children, some of these children are now forty years of age, the twinning society have also planted a tree with their French visitors, and also individuals to remember loved ones. When Snowdown Colliery was closed in 1987 a wheel from the head gear was presented to the village and installed in the square it is a reminder of all the villagers who made Aylesham their home through good and bad times a reminder of why the village came into existence part of our history and heritage. At the western end of the square there are two areas of sheltered accommodation for the elderly, and families with handicapped children, the market square gives them an enjoyable green area beautiful in the spring when the cherry trees and horsechestnut trees are in blossom, a safe place for the village people to stroll and enjoy. It is an area to meet up with other people while out shopping or walking the dog, to say hello how are you and of course to exchange the goings on of village life, to linger a while on a good day, or sit on a bench and watch the world go by, the surrounding hedge gives the area an enclosed feeling of safety away from the traffic, as you can see the market square is appreciated by all. We would like to submit the market square Aylesham to be given village green status to protect it from being developed now or in the future. Aylesham is to be enlarged and developed in the near future the people are not generally against the development but the green areas are to be built on, the market square itself has been chosen in the outline plan for an area of parking once this lovely site has been breached it will be lost for ever.

APPENDIX C:
Table summarising user evidence

NAME	ADDRESS	PERIOD OF USE	ACTIVITIES	FREQUENCY OF USE	CHALLENGES/ DETERRENTS TO USE AND OTHER COMMENTS
Mrs. M. Ayres	Queens Road	1948 – 2007 (60 years)	Walking dog, attending fetes, access to other parts of village	Daily	None. Saw other people using the land on a daily basis.
Mr. E. Buckle	Vale View Road	1932 – 2007 (75 years)	To go to work and access shops	Most days	None. Saw other people using the land on a daily basis.
Mr. D. Falconer	Dorman Avenue	1953 – 2007 (54 years)	Playing football, meeting friends, daily walk to shops	Weekly (but daily for last two years)	None. Market Square is used on a daily basis by about 40% of the village people.
Mrs. E. Madden	Coniston Drive	1947 – 2007 (60 years)	Meeting friends and socialising, daily walk to shops, playing as a child	Weekly	None. Market square is very much an active place in the village – it is not large enough to hold sporting activities but people do play with children and it is a meeting place.
Mr. C. McCarthy	Market Place	1991 – 2007 (16 years)	Fete, boot fairs, exercise	Daily	None. The land should be kept for the use of the village school for exercise.
Mrs. C. McNamara	Dorman Avenue North	1969 – 2007 (71 years)	Dog walking, access to shops, socialising, relaxing	Daily	None. Did not use land between 1967 to 1995.
Mrs. I. Messiter	Cornwallis Avenue	1950 – 2007 (57 years)	Village fetes, armistice service, to cross village	2-3 times per week	None. The land has always been used as a thoroughfare and is an integral part of village life.
Mr. A. Morgan	Easty Court	2000 – 2007 (7 years)	Socialising, nature watching, sunbathing	Daily	None. Land has been used for community events, e.g. carnivals, fetes etc.
Mr. and Mrs. A. Moses	Vale View	1952 – 2007 (55 years)	Walking and playing with children	Weekly	None.
Mr. and Mrs. B. Powell	Dorman Avenue North	1953 – 2007 (58 years)	Playing games, attending fairs and fetes	Daily	None. The land is the heart of the village and has been for children and grandchildren.

In addition to the user evidence above, 15 letters of support were received. Comments made included:

- Mr. D. Falconer has lived in Aylesham since 1953 and recalls the Market Square being seeded and planted. He supports the application for village green status as he the land forms a unique heart of the village and should not be destroyed.
- Mrs. J. Armstrong supports the application because in her view the village needs a focal point. It should not be turned into a car park
- Mr. L. Edwards states that the Market Square has been a meeting area for a long time. The materials used to build it came from the Snowdon colliery in memory of those who worked there. It should be left for the people of Aylesham to use for activities in the future.
- Mrs. B. Morgan protests against the alterations being proposed by Dover DC. She uses Market Square daily to feed the birds and the land provides great enjoyment for many people.
- Mr. L. Reynolds states that the green has been used for recreational activities for many years and has concerns that the planning proposals may leave the land open to misuse.
- Mrs. S. Field is the President of the Carnival Committee and explains that the Square has been used for fetes and fund-raising activities over the last 30 – 40 years. It would be a great shame to lose the village green.
- Mrs. E. Buckle is a former Parish Council clerk. She explains the history of the land (regarding the planting of trees and maintenance) and states that the area is enjoyed by all the community and provides a sense of pride.

**APPENDIX D:
Copy of lease with Dover District Council
(dated 14th July 1998)**

DATED

14 July

DOVER DISTRICT COUNCIL

- and -

THE PARISH COUNCIL OF AYLESHAM

LEASE

- of -

Market Square Aylesham
in the County of Kent

J.W. Horne BA
Solicitor, Head of Legal Services
Dover District Council
White Cliffs Business Park
Dover
Kent
CT16 3PJ

LDOCLAYLEPC-L

LEASE dated

14 July

1998 between

- (1) The Landlords: **DOVER DISTRICT COUNCIL** of White Cliffs Business Park Dover Kent CT16 3PJ and whoever for the time being owns the interest in the property which gives the right to possession of it when this Lease ends
- (2) The Tenants: **THE PARISH COUNCIL OF AYLESHAM** and whoever for the time being is entitled to the property under this Lease:-

1. IN this Lease:

- 1.1 A reference to an Act of Parliament refers to that Act as it applies at the date of this Lease and any later amendment or re-enactment of it from time to time in force
- 1.2 A right given to the Landlords to enter the property extends to anyone the Landlords authorise or allow to enter and includes the right to bring workmen and appliances onto the property for the stated purpose
- 1.3 AUTHORITY given to enter the property after giving notice extends in case of emergency to entry after giving less notice than specified or without giving any notice
- 1.4 WHENEVER there is more than one tenant all their obligations can be enforced against all of the tenants jointly and against each individually
- 1.5 ANY agreement or obligation on the part of the Tenants not to do any act or thing (however expressed) shall be construed as including an agreement or obligation on the part of the Tenants not to allow or suffer that act or thing to be done or to take place
- 1.6 ANY obligation to pay money refers to a sum exclusive of value added tax ("VAT") and any VAT chargeable on it is payable in addition
- 1.7 THE Plan is the plan attached to this Lease

2. IN exchange for the obligations undertaken by the Tenants:
 - 2.1 THE Landlords let the property described below ("the property") to the Tenants for five years starting on 19 September 1998 and ending on 18 September 2003 ("lease period") on the Tenants agreeing to pay rent calculated in accordance with the First Schedule
 - 2.2 THE property is the two plots of land situate at the Market Square Aylesham Kent as shown edged red and marked Plot 1 and Plot 2 on the plan
3. THE property is let subject to the rights contained in the Second Schedule
4. THE Tenants agree with the Landlords:-
 - 4.1 TO pay the rent by equal quarterly instalments in advance on the 19th day of March June September and December in each year of the lease period
 - 4.2 NOT to reduce any payment of rent by making any deduction from it or by setting any sum off against it
 - 4.3 TO pay promptly to the authorities to whom they are due all rates taxes and outgoings (if any) relating to the property including any which are imposed after the date of this Lease (even if of a novel nature)
 - 4.4 TO allow the Landlords to enter the property at any time to inspect the state of it
 - 4.5 TO allow anyone who reasonably needs access in order to exercise the rights contained in the Second Schedule
 - 4.6 (a) In this clause "to deal with" means to assign, sublet, mortgage, charge, part with possession of or share
(b) Not to deal with the whole property nor with any part of it separately from the rest

- 4.7 TO use the property only for recreational and amenity purposes ("the use allowed")
- 4.8 TO keep the property clean and tidy at all times and for this purpose only to use grass cutting and cultivation machinery on the property
- 4.9 NOT unnecessarily to fell cut down or destroy any trees on any part of the property
- 4.10 TO maintain and manage the trees on the property to the requirements of the Landlords
- 4.11 NOT to remove any soil or mineral from the property without the Landlords' consent
- 4.12 NOT unless the Landlords give consent in writing to build anything on the property
- 4.13 NOT to hold an auction sale on the property
- 4.14 TO comply with the terms of any Act of Parliament regulation licence or registration authorising or regulating how the property is used
- 4.15 TO do everything necessary to obtain continue and renew any licence or registration required by law for using the property for the use allowed
- 4.16 IN respect of Clauses 4.14 and 4.15 at all times to keep the Landlords indemnified against all claims demands and liability in respect thereof
- 4.17 TO use the property only for the use allowed
- 4.18 TO allow the Landlords on giving at least seven days notice to enter the property to inspect the state of it
- 4.19 TO give the Landlords promptly a copy of any notice received concerning the property and at their expense to comply with the requirements of the notice as it affects the property

- 4.20 IF the Landlords give the Tenants notice of any failure to do repairs or works of maintenance required by this Lease to start the work within two months (or immediately in case of emergency) and to proceed with it diligently
- 4.21 TO insure for not less than Two Million Pounds against liability in respect of personal injury to or the death of any person and damage to real and personal property arising out of the Tenants occupation and use of the property under a policy which satisfied the conditions set out in Clause 4.22
- 4.22 THE conditions with which an insurance policy must comply are:-
- (a) the insured persons shall be the Tenants and the interest of the Landlords shall be noted on the policy
 - (b) the policy is issued by a reputable insurance office or at Lloyds
- 4.23 TO show the Landlords on demand the insurance policy required to be maintained by Clause 4.21 together with the receipt for the last premium and every endorsement varying the terms of the policy. Additionally to deliver up to the Landlords at the start of this Lease and each year on the anniversary date of this Lease a copy of such insurance policy receipts and demands
- 4.24 TO indemnify the Landlords against any expenses, liabilities, claims, demands, proceedings and costs in respect of:-
- (a) personal injury to or the death of any person
 - (b) damage to any real or personal property
 - (c) any nuisance
- resulting from anything done or omitted to be done on the property and wherever the injury damage or nuisance is suffered except to the extent

that the same is due to any act or neglect or omission of the Landlords or of any person for whom the Landlords are responsible

4.25 IN this clause "the Planning Acts" means the Town and Country Planning Act 1990 and the Planning (Listed Buildings and Conservation Areas) Act 1990 and the rules, regulations and orders which are either made under them or are continued by the Planning (Consequential Provisions) Act 1990, as they apply from time to time

4.25.1 to comply with the Planning Acts as they affect the property

4.25.2 not to carry out any development of the property which requires permission

4.25.3 if the Landlords require and at the Landlords' expense to join the Landlords in making representations about any proposed development on the property or neighbouring property

4.25.4 to allow the Landlords to enter the property to comply with any lawful requirement under the Planning Acts, even if that restricts the enjoyment of the property

4.26 TO pay the Landlords' costs incurred as a result of the Tenants applying for the Landlords' consent or approval whether or not it is granted

4.27 NOT to use the property or any part of it for any of the following:- activities which are dangerous offensive noxious illegal or immoral or which are or may become a nuisance or annoyance to the Landlords or to the Owner or Occupier of any neighbouring property

4.28 TO pay all expenses (including solicitors and surveyors fees) which the Landlords incur in preparing and serving

4.28.1 a notice under Section 146 of the Law of Property Act 1925, even if forfeiture is avoided without a Court Order

4.28.2 a schedule of dilapidation recording failure to give up possession of the property in the appropriate state of repair when this Lease ends

4.29 THAT whenever rent or other sums payable by the Tenants to the Landlords remain unpaid after they are due for payment then such rent or other sums shall bear interest at the rate of four per centum per annum above the base lending rate from time to time of National Westminster Bank plc from the date on which such payments are due until paid and the amount of such interest shall be deemed to be part of the rent reserved and recoverable as rent in arrear

4.30 TO yield up the property at the determination of the lease period (however it ends) in the condition required by this Lease

4.31 TO pay the Landlords' legal costs and expenses incurred in preparing and granting this Lease including stamp duty charged on the Counterpart of this Lease

5. THE Landlords agree with the Tenants:-

5.1 SO long as the Tenants do not contravene any term of this Lease to allow the Tenants to possess and use the property without interference from the Landlords anyone who derives title from or any Trustees for the Landlords

6. THE parties agree:-

6.1 THE Landlords are entitled to forfeit this Lease by entering any part of the property whenever the Tenants

6.1.1 are twenty one days late in paying rent even if it was not formally demanded

6.1.2 have not complied with any obligation in this Lease

6.1.3 when a company: it or one of them goes into liquidation, unless that is solely for the purposes of amalgamation or reconstruction when solvent, an administrative receiver of it is appointed or an administration order is made in respect of it

6.1.4 when one or more individuals is are or one is adjudicated bankrupt or an interim receiver is appointed of the Tenant Tenants or one of them

6.2 THE Landlords will continue to maintain only those parts of the property which are so maintained at the date of this Lease future maintenance due to further planting to be carried out by the Tenants

6.3 THE forfeiture of this Lease does not cancel any outstanding obligation which the Tenants owe the Landlords

6.4 NOTHING contained in this Lease affects the powers of the Landlords as Local Authority or Planning Authority or relieves the Tenants from the necessity to obtain all consents and approvals that may from time to time be required from the Landlords as Local Authority or Planning Authority and no consent or approval given by the Landlords in that capacity shall relieve the Tenants from any necessity to obtain any consents or approvals from the Landlords as Landlords which may from time to time be required under this Lease

6.5 THE rules as to the service of notices in Section 196 of the Law of Property Act 1925 apply to any notice to be given under this Lease

7. IT is hereby certified there is no Agreement for lease to which this Lease gives effect

IN WITNESS whereof the parties have executed this Lease as their deed

THE FIRST SCHEDULE

(Determination of Rent)

Throughout the lease period the yearly rent will be £150.00

THE SECOND SCHEDULE

(Rights to which the property is let subject)

1. As to Plot 1

A Deed of Grant dated 13 March 1985 made between Dover District Council (1) The Folkestone and District Water Company ("the Company") (2) being an easement in perpetuity for the Company its successors in title and its and their respective servants and licensees at any time or times thereafter to construct place lay and at all times thereafter to use inspect maintain cleanse repair replace relay conduct and manage a main water pipe the approximate position of which is shown by a green line of the plan attached to this Lease

2. As to Plot 2

A Wayleave Consent dated 21 June 1955 made between Eastry Rural District Council (1) The South Eastern Electricity Board ("the Board") (2) consenting to the Board placing or laying one or more underground electric lines and any necessary ancillary apparatus along a route the approximate position of which is shown by a black line on the plan attached to this Lease and also to the entry by the Board from time to time by their servants agents contractors and workpeople for the purpose of inspecting maintaining repairing and replacing or removing the works or any of them

THE COMMON SEAL of **DOVER**)
)
DISTRICT COUNCIL was hereunto)
)
affixed in the presence of:)

12, 213

R. C. Bowditch

Authorised Chief Officer

SIGNED AS A DEED on behalf)
)
of The Parish Council of)
)
Aylesham named above by its)
)
Chairman **PERCY THOMAS WILSON**)
)
in the presence of:)

P. J. Wilson

NAME:

ADDRESS:

DESCRIPTION OR OCCUPATION:

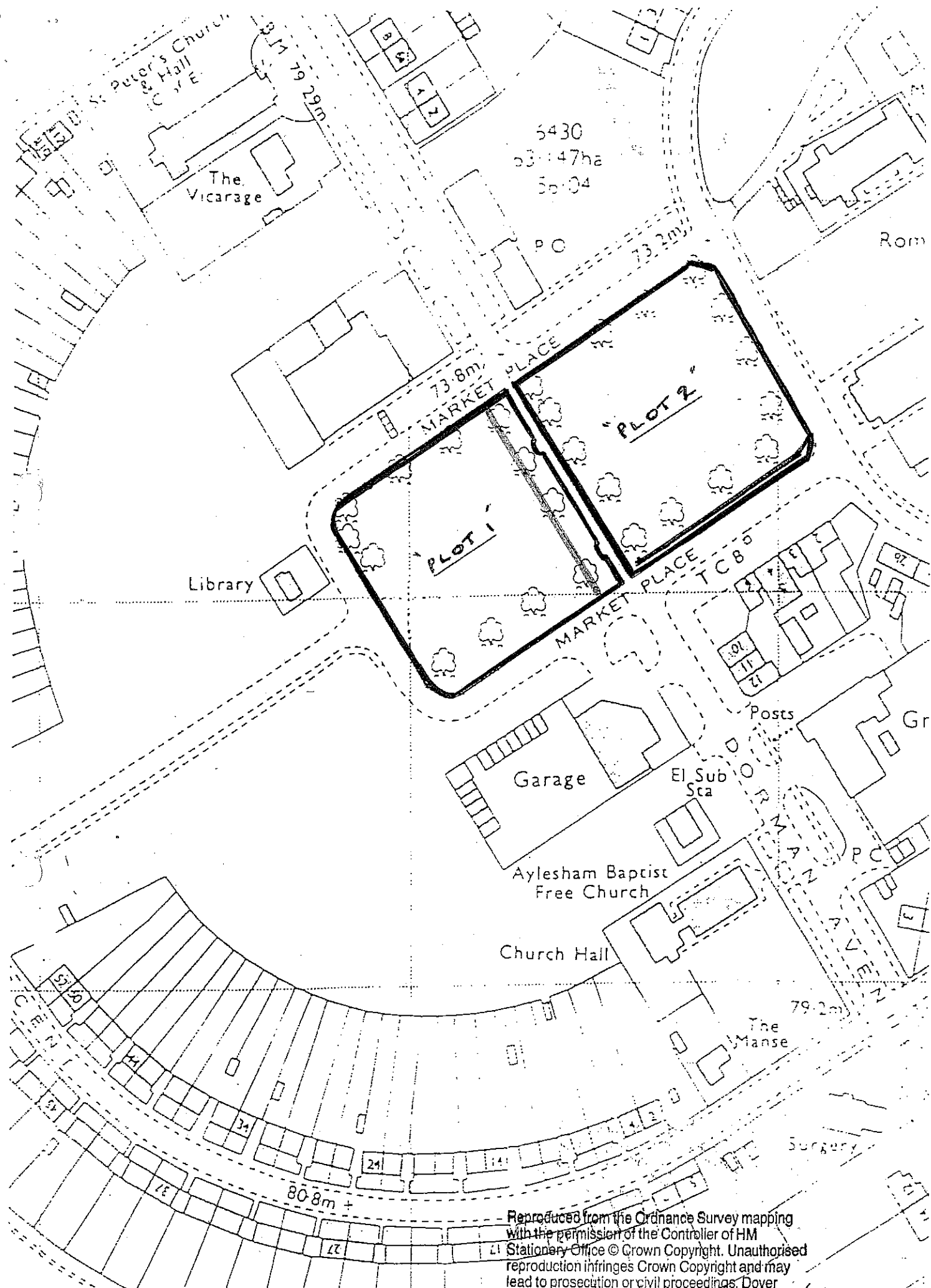
SIGNED AS A DEED on behalf)
)
of The Parish Council of)
)
Aylesham named above by its)
)
Clerk **ERIC BUCKLE**)
)
in the presence of:)

Eric Buckle

NAME: *William Olives*

ADDRESS: *61 Milnes Crescent Aylesham*

DESCRIPTION OR OCCUPATION: *Support Worker*



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Application to register land at Montefiore Avenue, Ramsgate as a new Town Green

A report by the Director of Environment and Waste to Kent County Council's Regulation Committee Member Panel on Friday 6th February 2009.

Recommendation: I recommend that a non-statutory Public Inquiry be held into the case to clarify the issues.

Local Members: Mr. J. Fullarton and Mr. B. Hayton

Unrestricted item

Introduction

1. The County Council has received an application to register land at Montefiore Avenue, Ramsgate as a new Town Green from local resident Mr. M. Matthews ("the applicant"). The application, dated 9th August 2007, was allocated the application number 596. A plan of the site is shown at **Appendix A** to this report and a copy of the application form is attached at **Appendix B**.

Procedure

2. The application has been made under section 15 of the Commons Act 2006 and regulation 3 of the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007. These regulations have, since 1st October 2008, been superseded by the Commons Registration (England) Regulations 2008 which apply in relation to seven 'pilot implementation areas' only in England (of which Kent is one). The legal tests and process for determining applications remain substantially the same.
3. Section 15 of the Commons Act 2006 enables any person to apply to a Commons Registration Authority to register land as a Village Green where it can be shown that:

'a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;
4. In addition to the above, the application must meet one of the following tests:
 - **Use of the land has continued** 'as of right' until at least the date of application (section 15(2) of the Act); or
 - **Use of the land 'as of right' ended no more than two years prior to the date of application**, e.g. by way of the erection of fencing or a notice (section 15(3) of the Act); or
 - **Use of the land 'as of right' ended before 6th April 2007** and the application has been made within five years of the date the use 'as of right' ended (section 15(4) of the Act).
5. As a standard procedure set out in the regulations, the 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

The application site

6. The area of land subject to this application (“the application site”) is known locally as ‘the old bowling green’ and is situated adjacent to Montefiore Avenue at Ramsgate. The application site is an irregular shape that is best described by reference to the plan at **Appendix A**. It consists of a grass surface and is bounded on three sides by hedges, boundary fencing and tennis courts. A Public Footpath abuts the eastern edge of the application site (but does not form part of it) and is delineated by way of very old post and rail fencing which is in a severe state of disrepair. Access to the site is through the dilapidated fencing (which is non-existent in some sections) and via a large, well-established gap at Montefiore Avenue.

The case

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 well in excess of 20 years.
8. Included in the application were 17 user evidence questionnaires 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 summary of the user evidence is attached at **Appendix C**. In addition, a further four statements were submitted from people who have witnessed use of the site from neighbouring properties but who themselves may not necessarily have used it.
9. Also submitted in support of the application are various items of correspondence from Thanet District Council employees, which refer to the history and current status of the site. These include a letter from Mr. B. White (Head of Development Services) confirming that the application site has not been used as a putting green since before 1984.

Consultations

10. Consultations have been carried out as required and the following comments have been received.
11. Local Councillors Mr. A. Poole and Mrs. M. Fenner wrote in support of the application. They state that the application site is in regular usage by local residents and has been used for informal leisure activities for a very long time, without any hindrance of access to the site.
12. Four local residents also wrote in support of the application. They added their own evidence of use and stated that the application site is well used by the local community for activities such as dog walking and ball games.

Landowner

13. The application site is owned by Thanet District Council. Mr. P. Verrall, Parks Manager, has objected to the application on behalf of the District Council.
14. The objection is made primarily on the grounds that, until the mid-1990s, the entire site was run as a games centre (with a defined and fenced boundary) open to the public but requiring them to pay for use of the facilities. Regular access to the site by local residents has only been due to repeated vandalism of the fencing and this has only been since the mid-1990s. Prior to that time, access to the site was with formal permission as part of a paid recreational use of the tennis, putting, croquet or bowls facilities.
15. The objection is supported by an internal email from the District Council's Senior Leisure Officer, Mr. C. Tull. He explains that the site was originally a putting green that, in 1983, was converted to a croquet lawn to enable a group of local residents to establish a croquet club; by 1987, the club had outgrown the site and moved to an alternative venue. He adds that until recent years, the site has always been fenced with designated opening hours for the public to pay to use the facilities on the site but, due to a phase of vandalism, the original fence was damaged beyond repair and this was replaced by new fencing (using the existing concrete posts) in the mid-1990s. This new fencing was also stolen shortly after installation and, despite being replaced on three separate occasions, it became impossible to maintain. The District Council have, however, continuously maintained the area by cutting the grass throughout this period.

Legal tests

16. 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 or meets one of the criteria set out in sections 15(3) or 15(4)?*

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

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

17. 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

¹ *R v. Oxfordshire County Council, ex p. Sunningwell Parish Council* [1999] 3 WLR 160

him or advertise the fact that he has no right to be there, then rights are acquired and further use becomes 'as of right'.

18. In this case, there is no suggestion that the use of the application site by the local residents took place in secrecy and, although those paying to use specific facilities on the site would have had an implied permission to use the rest of the site (for example, it could be said that someone paying to use the tennis courts might have an implied licence to also use the other facilities on the site for which no actual payment was required), there is no evidence that those using the site for informal recreational activities were given formal permission to use it - be it by way of a notice erected on the site, verbally by an employee of the District Council, or otherwise.
19. There is, however, a question as to whether the use of the application site for informal recreation has been by force and in this respect there is a dispute of fact between the evidence of the applicant and that of the objector.
20. The evidence of the recreational users submitted in support of the application suggests that there has been uninterrupted use of the application site without any hindrance to access over a period well in excess of 20 years. In the majority of cases, access to the application site has been via the Public Footpath which abuts the site and when asked in the user evidence questionnaire how they gained access to the application site, the recreational users gave answers such as '*open access from the public right of way*', '*walk in off pavement*' and '*walked on from the footpath which runs adjacent*'.
21. This evidence is supported by the applicant, who has lived opposite the site since 1979 and explains that when he first moved to the property the site was no longer used as a bowling green. He states that '*there has been unimpeded access from both the public right of way and from the [footway] of Montefiore Avenue since approximately that date*' and also makes the point that there must have been gaps in the fencing because otherwise the gang mowers used to cut the grass on the application site would not have been able to access the land.
22. However, the objector refers to the presence of fencing along the edge of the site which would have precluded access to it during the relevant 20 year period. Although the District Council accepts that the fencing has been vandalised on a number of occasions, it states that it has repeatedly made attempts to repair this damage.
23. This appears to conflict with the objector's own admission that no gates exist from the tennis courts onto the application site and thus, when tennis balls have been hit over the tennis court fencing (and on to the application site), the only means of access to retrieve the lost tennis balls has been to exit the tennis courts onto Montefiore Avenue and take the easiest route onto the application site. This would seem to suggest that access onto the application site was not restricted, although it does not conclusively prove the non-existence of the fencing around the application site (as tennis players may have climbed over the fencing to gain access).

24. There is therefore a degree of uncertainty regarding the status of the fencing around the perimeter of the site and the ease with which non-paying recreational users gained access to the application site. The fact that access to the application site was required for gang mowers to carry out routine maintenance and for tennis players retrieving lost tennis balls suggests that the fencing was not as continuous or permanent as the District Council suggests. However, the user evidence also requires more detailed clarification to confirm that there were no periods during which the fencing was completely continuous, as is suggested by the District Council.

(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 dog-walking and training, nature-watching and playing with children. The table summarising evidence of use by local residents at Appendix C shows the full range of activities claimed to have taken place.

(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. Although it is accepted that, in all probability, only those living closest to a piece of land are likely to use it for recreational purposes, there is still a requirement for the purposes of Village Green registration to show that the land has been used by the residents of a defined locality (or neighbourhood) or, as suggested by LJ Pill in a case known as *Steed*³, ‘something more than a place or geographical area – rather a distinct and identifiable community such as might lay reasonable claim to a town or village green’.

29. At part 6 of the application form, the applicant specifies the locality as ‘East Cliff/Dumpton’. In a subsequent letter, the applicant suggests that the application site might better be described by way of being situated in a ‘neighbourhood’ (i.e. ‘East Cliff/Dumpton’ or ‘King George VI park area’) within a ‘locality’ (i.e.

² *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* (2003) EWHC 2803

³ *R v Suffolk County Council, ex parte Steed and another* (1996) 75 P&CR 102

Ramsgate). In either case, it does not matter that the applicant has not precisely defined the correct locality in his application; the burden is not on the applicant to establish the correct locality at the time of application, but rather on the Registration Authority to satisfy itself that there is a relevant locality (or neighbourhood) at the time of registration⁴. The right to use a Village Green is restricted to the inhabitants of a locality or neighbourhood and it is therefore important to be able to define this area with a degree of accuracy so that the group of people to whom the recreational rights are attached can be identified.

30. The application site lies within the District Council ward of Sir Moses Montefiore. This is the sort of legally recognised administrative unit that is entirely capable of being used to define the surrounding locality. However, the ward covers a large area and in this case there may be a need to identify a smaller area which would more accurately describe the immediate neighbourhood in which users of the applications site reside. It is unclear as to whether the 'King George VI park area' is a locally recognised entity that would be sufficiently descriptive to identify those with a right to use the application site.
31. Given the proposed recommendation, it is not necessary to conclude on this issue as this is a point which could easily be clarified at a Public Inquiry and the exact locality (or neighbourhood) would become clear during the course of hearing the witness evidence. It is evident that there is defined locality but there is a question as to whether there is a need to establish a sufficiently 'distinct and identifiable community' that would form a neighbourhood. This latter point requires further clarification.

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

32. 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, the application was submitted in 2007 and therefore the relevant twenty-year period ("the material period") is 1987 to 2007.
33. From the user evidence submitted, there appears to have been use of the land over a considerable period dating back far beyond 1987. Most of the witnesses have known the land in question for well over 20 years, with at least two having lived in the area for over 40 years. In addition, all of the users state in their questionnaires that they have witnessed other people using the land for a range of recreational activities.
34. However, due to the questions regarding the fencing of the land, it is not possible to conclude with any certainty (on the evidence currently available) that the use has been for a *full and uninterrupted* period of 20 years. There is no specific reference in the user evidence regarding whether use of the land has been uninterrupted and this is a point which requires further clarification.

⁴ *Oxfordshire County Council v Oxford City Council* [2006] UKHL 25

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

35. The Commons Act 2006 introduces a number of transitional arrangements regarding the actual use of the land in relation to the making of the application to register it as a Village Green. These are set out at paragraph 4 above.
36. In this case, there is no suggestion that the use of the land by those who have submitted user evidence statements ceased prior to the making of the application. The application appears to have been prompted by concerns regarding the future development of the site rather than any recent attempts to deny access to the site. There is no evidence that use of the application site by the local residents had ceased prior to the making of the application. Therefore, it appears that use of the land has continued up until the date of application and as such it is not necessary to consider the other tests set out in sections 15(3) and 15(4) of the Act.

Conclusion

37. Although the relevant regulations⁵ provide a framework for the initial stages of processing the application (e.g. advertising the application, dealing with objections etc), they provide little guidance with regard to the procedure that a Commons Registration Authority should follow in considering and determining the application. In recent times it has become relatively commonplace, in cases which are particularly emotive of where the application turns on disputed issues of fact, for Registration Authorities to conduct a non-statutory Public Inquiry, which would involve appointing an independent Inspector to hear the relevant evidence and report his/her findings back to the Registration Authority.
38. Such an approach has received positive approval by the Courts, most notably in the *Whitney*⁶ case in which Waller LJ said this: *'the registration authority has to consider both the interests of the landowner and the possible interest of the local inhabitants. That means that there should not be any presumption in favour of registration or any presumption against registration. It will mean that, in any case where there is a serious dispute, a registration authority will almost invariably need to appoint an independent expert to hold a public inquiry, and find the requisite facts, in order to obtain the proper advice before registration'*.
39. As was famously quoted by the judge in another High Court case⁷, *'it is no trivial matter for a landowner to have land, whether in public or private ownership, registered as a town green...'*. This means that it is of paramount importance for a Registration Authority to ensure that, before taking a decision, it has all of the relevant facts available upon which to base a sound decision. It should be recalled that the only means of appeal against the Registration Authority's decision is by way of a Judicial Review in the High Court.

⁵ Commons Registration (England) Regulations 2008

⁶ *R (Whitney) v Commons Commissioners* [2004] EWCA Civ 951

⁷ *R v Suffolk County Council, ex parte Steed* (1996) 75 P & CR 102

40. In this case, there is a serious dispute of fact with regard to the existence and condition of the fencing around the perimeter of the application site. This is a point which is key to the case and has a significant impact on whether use of the application site has been continuous and 'as of right' over the material period. There is also an issue to be addressed with regard to establishing the relevant locality or neighbourhood. A Public Inquiry would allow witnesses to give more detailed evidence that could be subject to relevant questions from the Inspector. This would provide a greater clarity to the user evidence than is currently available in paper form and enable to Registration Authority to come to a more informed decision on the case.

Recommendations

41. I therefore recommend that a non-statutory Public Inquiry be held into the case to clarify the issues.

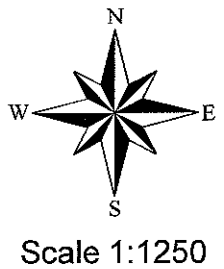
Accountable Officer: Dr. Linda Davies – Tel: 01622 221500 or Email: linda.davies@kent.gov.uk Case Officer: Miss. Melanie McNeir – Tel: 01622 221511 or Email: melanie.mcneir@kent.gov.uk

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

APPENDIX A – Plan showing application site
APPENDIX B – Copy of application form
APPENDIX C – Table summarising user evidence

APPENDIX A:
Plan showing application site
(land known locally as 'the old bowling green' at Montefiore Avenue at Ramsgate)

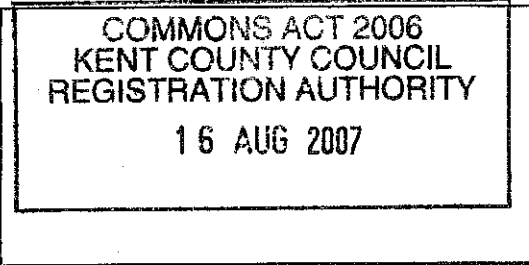


Land subject to village green application
 at Montefiore Avenue, Ramsgate



Commons Act 2006: Section 15
**Application for the registration
Village Green**

Official stamp of registration authority
indicating valid date of receipt:



Application number:

Register unit No(s):

VG number allocated at registration:

(CRA to complete only if application is successful)

Applicants are advised to read the 'Guidance Notes for the completion of an Application for the Registration of land as a Town or Village Green' and to note the following:

- All applicants should complete questions 1-6 and 10-11.
- Applicants applying for registration under section 15(1) of the 2006 Act should, in addition, complete questions 7-8. Section 15(1) enables any person to apply to register land as a green where the criteria for registration in section 15(2), (3) or (4) apply.
- Applicants applying for voluntary registration under section 15(8) should, in addition, complete question 9.

Note 1
Insert name of
registration
authority.

1. Registration Authority

To the

KENT COUNTY COUNCIL.
ENVIRONMENT & ECONOMY.
INVICTA HOUSE, COUNTY HALL.
MAIDSTONE. ME14 1XX.

Note 2

If there is more than one applicant, list all names. Please use a separate sheet if necessary. State the full title of the organisation if a body corporate or unincorporate.

If question 3 is not completed all correspondence and notices will be sent to the first named applicant.

2. Name and address of the applicant

Name:

Full postal address:

Telephone number:
(incl. national dialling code)

Fax number:
(incl. national dialling code)

E-mail address:

3. Name and address of solicitor, if any

Name:

Firm:

Full postal address:

Telephone number:
(incl. national dialling code)

Fax number:
(incl. national dialling code)

E-mail address:

Note 3

This question should be completed if a solicitor is instructed for the purposes of the application. If so all correspondence and notices will be sent to the person or firm named here.

Note 4

For further advice on the criteria and qualifying dates for registration please see section 4 of the Guidance Notes.

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

4. Basis of application for registration and qualifying criteria

If you are the landowner and are seeking voluntarily to register your land please tick this box and move to question 5.

Application made under **section 15(8)**:

If the application is made under **section 15(1)** of the Act, please **tick one** of the following boxes to indicate which particular subsection and qualifying criterion applies to the case.

Section 15(2) applies:

Section 15(3) applies:

Section 15(4) applies:

If **section 15(3) or (4)** applies please indicate the date on which you consider that use as of right ended.

If **section 15(6)*** applies please indicate the period of statutory closure (if any) which needs to be disregarded.

Note 5

The accompanying map must be at a scale of at least 1:2,500 and show the land by distinctive colouring to enable it to be clearly identified.

* Only complete if the land is already registered as common land.

Note 6

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

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

Name by which usually known:

The old putting green Montefiore Avenue
Bowling green site. MAP "B."

Location:

MONTEFIORE AVE RAMSGATE.

Shown in colour on the map which is marked and attached to the statutory declaration.

Common land register unit number (if relevant) *

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

Please show the locality or neighbourhood within the locality to which the claimed green relates, either by writing the administrative area or geographical area by name below, or by attaching a map on which the area is clearly marked:

Since the site is on the Ramsgate/Broadstairs border it is described as East Cliff / Dumpton. It is more accurately defined by reference to the map attached.

Tick here if map attached:

7. Justification for application to register the land as a town or village green

Note 7

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

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

See attached statement.

Note 8

Please use a separate sheet if necessary.

Where relevant include reference to title numbers in the register of title held by the Land Registry.

If no one has been identified in this section you should write "none"

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

Note 9

List all such declarations that accompany the application. If none is required, write "none".

This information is not needed if an application is being made to register the land as a green under section 15(1).

Note 10

List all supporting documents and maps accompanying the application. If none, write "none"

Please use a separate sheet if necessary.

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

THANET DISTRICT COUNCIL.

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

10. Supporting documentation

See Separate sheet.

Note 11

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

11. Any other information relating to the application

[Empty box for additional information]

Note 12

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

Date:

9/8/2007.

Signatures:

M.G.F. Matthews

REMINDER TO APPLICANT

You are advised to keep a copy of the application and all associated documentation. Applicants should be aware that signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence. The making of a false statement for the purposes of this application may render the maker liable to prosecution.

Data Protection Act 1998

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

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).

I.....¹ solemnly and sincerely declare as follows:—
MICHAEL GEORGE FREDERICK MATTHEWS

² Delete and adapt as necessary.

1.² I am ((the person (one of the persons) who (has) (have) signed the foregoing application)) ((the solicitor to (the applicant) (³one of the applicants))).

³ Insert name if Applicable

2. 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, nor of any document relating to the matter other than those (if any) mentioned in parts 10 and 11 of the application.

3. The map now produced as part of this declaration is the map referred to in part 5 of the application.

⁴ Complete only in the case of voluntary registration (strike through if this is not relevant)

4.⁴ I hereby apply under section 15(8) of the Commons Act 2006 to register as a green the land indicated on the map and that is in my ownership. I have provided the following necessary declarations of consent:

- (i) a declaration of ownership of the land;
- (ii) a declaration that all necessary consents from the relevant leaseholder or proprietor of any relevant charge over the land, have

Cont/

⁴ Continued

been received and are exhibited with this declaration; or
(iii) where no such consents are required, a declaration to that effect.

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 *Michael George
Frederic Matthews*

M.G.F. Matthews.

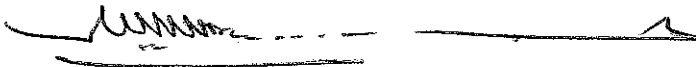
at *44/46 Queen Street,
Ramsgate*

Signature of Declarant

this *9th* day of *August 2007*

Before me *

Signature:



Address:

44-46 Queen St. Ramsgate
M. R. M. DANIEL
SOLICITOR, NOTARY PUBLIC
and COMMISSIONER FOR OATHS
RAMSGATE, KENT

Qualification:

* The statutory declaration must be made before a justice of the peace, practising solicitor, commissioner for oaths or notary public.

Signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence.

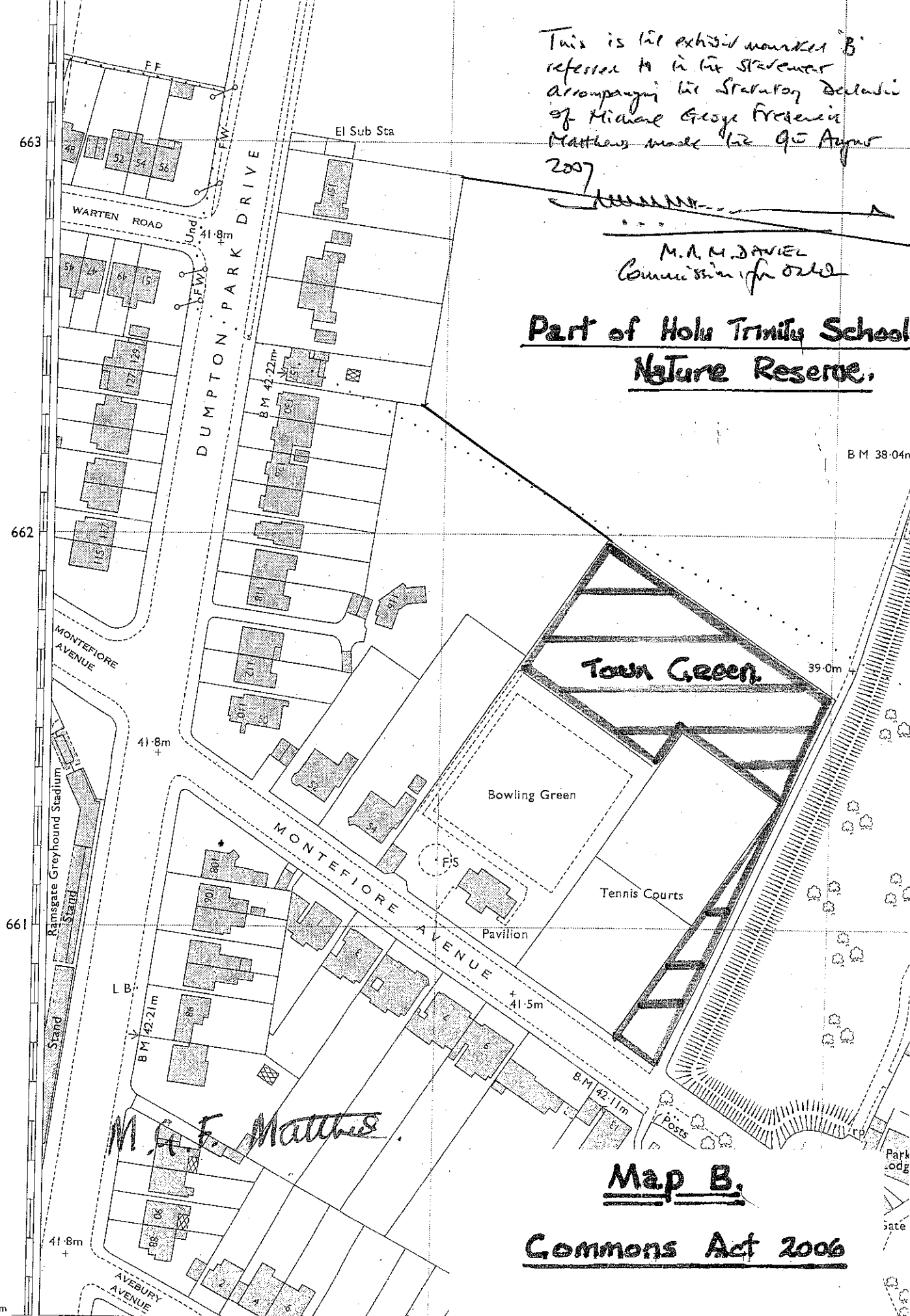
REMINDER TO OFFICER TAKING DECLARATION:

Please initial all alterations and mark any map as an exhibit

This is the exhibit marked 'B' referred to in the statement accompanying the Statutory Declaration of Michael George Frederick Matthews made on the 9th August 2007

M. A. M. DANIEL
Commissioner for Oriel

**Part of Holy Trinity School
Nature Reserve.**



M. A. F. Matthews

Map B.

Commons Act 2006

166000m

060659

RAMSGATE
RAMSGATE MB & CP

SIR MOSES MONTEFIORE WARD

392

Continuation sheet Form 44 Section 7. (Justification of application to register land as a Town Green) Montefiore Avenue Ramsgate

Background

The site that is the subject of this registration application was originally acquired by the Ramsgate Bowling Club Ltd in 1913 and was used as a putting green. Ramsgate Borough Council purchased the whole site including the bowling green and tennis courts in 1948, following the insolvency of the bowling club. Land Registry details show this site to be held as normal freehold land. Ramsgate Borough Council and subsequently Thanet District Council operated this site along with the adjacent leisure facilities until probably the late 70's when the putting green ceased to be used. Possibly around that time portions of the fence and hedges were removed to allow council workers access to the site with self propelled gang mowers from the adjacent public footpaths which run down one side of the site, as there are no gates to this site. There has been unimpeded access from both the public right of way and from the footpath of Montefiore Avenue since approximately that date. It is still referred to as "the old putting green" by some users. It is now bordered on the Northerly side by a nature reserve created by the local primary school.

It is worth pointing out that in many cases witness statements have been made by one member of a household, the answers however apply equally to the spouse. In this submission it is not intended to summarise all of the evidence since it is contained in the witness statements but hopefully to demonstrate that care has been taken to address the requirements of the law relating to registration.

Evidence statements have been witnessed where practicable by a Justice of the Peace. However in cases where this has not been possible the applicant has witnessed them using his status as a Chartered Engineer.

List of Witness Statements Appendix 2.

The following submissions fall into the category of individuals who have used this site for more than 20 years and who still use it. *The number in brackets refers to the evidence questionnaire reference number.*

Mrs Christine Sackett (1)
Mrs Lorna Farley (2)
Mr Peter Flint (3)
Mrs Rhoda Kahl (5)
Mr James Carey (6)
Mr John Challinor (8)
Mrs Pat Haywood (9)
Mrs Rita Smith (10)
Mr Gary Easton (12)
Mr D. W. Bellingham. (14)
Mr William McKnight (15)
Mr Dave Welch (16)
Mr Michael Matthews (20) *Applicant.*

List of Witness Statements Appendix 3.

The following submissions fall into the category of individuals who have either used this site for less than 20 years and who still use it or whose use of the site is not continuous. *The number in brackets refers to the evidence questionnaire reference number.*

Mrs Barbara Ford (4)
Mr Melvyn Robinson (7)
Mr Robert Hopkins (13)
Mr Hall (17) *evidence to follow.*

List of Witness Statements Appendix 4.

The following submissions fall into the category of individuals who have observed that others have used the site for 20 years or more but who have not themselves used it to any appreciable degree. *The number in brackets refers to the submission reference number.*

Mrs Angela Band (18)
Mrs Fiona Wefare (11)
Tom & Sally Band (19)

General remarks on the witness statements

The act requires that it is demonstrated that a significant number of people "of any locality' or "of any neighbourhood within a locality". Many of the local residents who have supplied evidence have lived within several hundred metres of this site for very substantial periods of time and have used the site well in excess of the 20 years demanded by the act. It is anticipated that more witnesses will come forward during the formal consultation process.

The statements show that there is a stable and substantial community of people living close to this site who use it for "lawful sports and pastimes". This in turn reinforces the concept of a stable and identifiable local community who are served by this piece of open space and who value their open spaces and enjoy living in the locality. The community boundary shown on the map shows the neighbourhood that is served by this site that is about 600 metres radially from the site. It includes many of the features of an identifiable community (Doctors surgery, pub etc. etc.) In reality most of the evidence from users comes from people living closer than the boundary drawn on the map. It is also clear that the cohort of people who use this site is being added to as people move into the area and choose to use it.

The Act requires users to have indulged in using this site "as of right" and just a small sample of the answers show that the users felt entitled to walk onto the land from the footpath.

For example an answer from Mrs Kahl to question 19 (Did you ever ask permission) reply "No I did not need to" another answer to the same question Mrs Farley, "No because its all open ground" and so on.

The requirements of use "without force" and "without secrecy" are fairly self evident given the age profile of many of the witnesses. I do not imagine many of them would scale fences (if there were any) in the middle of the night to use this site. In addition the site is in full view of users of the bowling green, and public footpaths.

However it would be misleading to assume that the only "lawful sport and pastime" that occur on the site is dog walking. It has proven much more difficult in the time available to identify the children who play on the site, as they tend to be more transitory than the more established retired users. They play, they grow up and move on but many of the witnesses refer to taking children and grandchildren onto the site.

It may be worthwhile also explaining why many users choose to use this site given the proximity of the local park. Whilst this is not technically relevant to the registration process I think the reasons show that leisure users are quite sophisticated in their choices. Some explanations are in the questionnaire but not all.

Typical answers as to why they used this site were:-

"It's enclosed on 3 sides so my dog can't run away"

"Its peaceful without the hurly-burly of the main park as my dog is old"

"It's flat, out of the wind so I am not frightened to fall over in wet weather as the park gets very slippery"

"I like to sit, it's so peaceful"

It is clear that users adjust their usage according to the time of day weather and so on.

List of Evidence Appendix 5.

A further class of evidence has been derived using direct information supplied by Thanet District Council as a result of direct enquiry and secondary sources based on research using the Freedom of Information Act.

In the first category is a letter from Mr Brian White (Head of Development Services at TDC) who confirms that the site has not been a putting green since before 1984. Similarly an Email from Mr Paul Verrall (Parks & Open Spaces Development Manager) is the source of this information as 1984 was the date when he became responsible for this site. He confirms it was "*not in use in 1984*". This suggests the evidence supplied in the questionnaires by local residents who date the closure of the putting green as mid to late seventies is trustworthy.

Emails from Mr Doug Brown describe this site as "Open Space" and add that because of this fact development of this site would be a departure from the local plan and it would require full council approval. As TDC's Development Control Manager it is reasonable to assume Mr Brown clearly understands what constitutes "Open Space". Reference to the local plan refers to policy CC5 that includes this site as a "green wedge"; this policy is reproduced in full in Appendix 5. It is also worth noting that TDC have rigorously enforced this policy in numerous planning decisions over the years.

This evidence supports the view that within senior TDC officers this site is clearly regarded as open space. This is a considered view by planning professionals and consistent with the lay evidence contained in the registration application.

APPENDIX C:
Table summarising user evidence

NAME	ADDRESS	PERIOD OF USE	ACTIVITIES	FREQUENCY OF USE	ACCESS	CHALLENGES/ DETERRENENTS TO USE AND OTHER COMMENTS
Mr. D. Bellingham	Wickham Avenue	1976 – 2007 (21 years)	Picnic, play area	Not stated	Access from the Public Footpath	None. Assumed land was a public green and part of the park
Mr. J. Carey	Dumpton Park Drive	1978 – 2007 (29 years)	Playing with children, dog walking	Not stated	Open access from footpath	Never been challenged or asked permission to use the land
Mr. J. Challinor	Dumpton Park Drive	1962 – 2007 (45 years)	Dog walking, playing as a child	Variable depending on season	Montefiore Avenue	None. Has regularly seen other people using the land.
Mr. G. Easton	Wallwood Road	1990 – 2007 (17 years)	Relaxing	Not stated	From footpath	Never been challenged or asked permission to use the land
Mrs. L. Farley	Montefiore Avenue	1982 – 2007 (25 years)	Dog walking	Variable – more frequently now	Along footpath	Never been challenged or asked permission to use the land
Mr. P. Flint	Hereson Road	1977 – 2007 (30 years)	Watching tennis and football, dog walking	Quite regularly	From footpath	Never been challenged or asked permission to use the land
Mrs. B. Ford	Wickham Avenue	1996 – 2007 (9 years)	Dog walking, picnics, relaxation	Daily	Not stated	Never been challenged or asked permission to use the land
Mr. S. Hall	Hereson Road	2000 – 2007 (7 years)	Dog exercising and training	4 times per week	Public alleyway	Never been challenged or asked permission to use the land
Mrs. P. Hayward	Wickham Avenue	1982 – 2007 (25 years)	Walking dog, exercise and recreation	Variable	Walk onto land from footpath	None. Seen other people using the land since the putting green closed.
Mr. R. Hopkins	Wallwood Road	1997 – 2007 (10 years)	Walking with grandchildren	Not stated	From alleyway	Never been challenged or asked permission to use the land
Mrs. R. Kahl	Wickham Avenue	1984 – 2007 (23 years)	Dog training and walking, enjoying wildlife	Almost daily	Through entrance by footpath	Never been challenged or asked permission to use the land
Mr. M. Matthews	Montefiore Avenue	1957 – 2007 (50 years)	Dog walking, kite flying	At least once per week	Montefiore Avenue or footpath	Never been challenged or asked permission to use the land
Mr. W. McKnight	Dumpton Park Drive	1985 – 2007 (22 years)	Nature watching	Not stated	From footpath	Never been challenged or asked permission to use the land
Mr. M. Robinson	Dumpton Park Drive	1975 – 2007 (32 years)	Family games and recreation	Not stated	From footpath	Never been challenged or asked permission to use the land
Mrs. C. Sackett	Montefiore Avenue	1957 – 2007 (50 years)	Dog walking, relaxing, playing with children, watching tennis	Several times a week	Montefiore Avenue along the side of tennis courts	Never been challenged or asked permission to use the land
Mrs. R. Smith	Muir Road	1970 – 2007 (37 years)	Dog walking, relaxing	Daily	Montefiore Avenue	Never been challenged or asked permission to use the land.
Mr. D. Welch	Wickham Avenue	1986 – 2007 (28 years)	Dog walking, football, nature watching	2 – 3 times per day	Not stated	Never been challenged or asked permission to use the land

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