



## AGENDA

### Kent County Council

## REGULATION COMMITTEE MEMBER PANEL

**Tuesday, 27th October, 2009, at 10.30 am**      Ask for:      **Andrew Tait**  
**Darent Room, Sessions House, County Hall,**      Telephone      **01622 694342**  
**Maidstone**

*Tea/Coffee will be available 15 minutes before the meeting*

### **UNRESTRICTED ITEMS**

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

1. Membership  
Conservative: Mr M J Harrison (Chairman), Mr A D Crowther (Vice Chairman), Mr T Gates, Mr R A Pascoe.  
  
Liberal Democrat: Mr S J G Koowaree.
2. Declarations of Interest by members for Items on the Agenda
3. Exchange of land at Heartenoak Playing Field (VG239) at Hawkhurst (Pages 1 - 14)
4. Application to register Public Rights of Way on the former Bayham Estate, Lamberhurst and Pembury (Pages 15 - 20)
5. Other Items that 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

**Monday, 19 October 2009**

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## Exchange of Land at Hartenoak Playing Field (VG239) at Hawkhurst

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A report by the Director of Environment and Waste to Kent County Council's Regulation Committee Member Panel on Tuesday 27<sup>th</sup> October 2009

**Recommendation: I recommend that the County Council informs the applicant that the application to amend the Register of Village Greens to reflect the recent exchange of land has been accepted and that the Register of Village Greens for unit number VG239 be amended accordingly.**

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Local Members: Mr. R. Manning

Unrestricted item

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### Introduction

1. Kent County Council is the 'Commons Registration Authority' for the purposes of the Commons Act 2006 (and, previously, the Commons Registration Act 1965). In this capacity, it is responsible for holding the legal record of Common Land and Town or Village Greens for the county, known as the Registers of Common Land and Town or Village Greens, and for making any necessary amendments to the Registers using the requisite legal processes.
2. The County Council has received an application to amend the Register of Village Greens from the Hawkhurst Parish Council ("the applicant"). The application, received on 14<sup>th</sup> August 2009, has been made under section 14 of the Commons Act 2006 and seeks to amend unit number VG239 of the Register of Town or Village Greens to reflect a recent exchange of land. 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**.

### Background

3. In August 2005, the County Council received an application under section 13 of the Commons Registration Act 1965<sup>1</sup> from a local resident to register the Hartenoak Playing Field at Hawkhurst as a new Village Green ("the Village Green application"). The land in question was under the ownership of the Hawkhurst Parish Council, who opposed the application for Village Green status.
4. In August 2006, following a separate application made by the Hawkhurst Parish Council to Tunbridge Wells Borough Council under the Town and Country Planning Act 1990 ("the planning application"), planning permission was granted for a scheme of affordable housing involving the building of 23 dwellings on the site as well as associated parking provision and landscaping.
5. The Village Green application was successful and, at a meeting of the Regulation Committee Member Panel on 30<sup>th</sup> November 2006, Members agreed that the land subject to the application should be registered as a Village Green on the basis that

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<sup>1</sup> Now superseded by section 15 of the Commons Act 2006

the relevant legal tests for the registration of the land as a Village Green had been met<sup>2</sup>. The effect of the Village Green status was to prevent any future development of the land<sup>3</sup> and, despite planning permission being granted, the Parish Council was unable to proceed with its plans to develop the land in question.

6. In July 2007, the Parish Council made an application to the Secretary of State for Environment Food and Rural Affairs under section 147 of the Inclosure Act 1845 (“the exchange of land application”). This legislation<sup>4</sup> enabled applications to be made where such an exchange would be beneficial to the owners of the lands affected and where it is considered that such an exchange would be just and reasonable. The purpose of the exchange was to transfer the status of Village Green (and associated rights) to the new land to be given in exchange for the existing section of Village Green.
7. Following a Public Inquiry held in January 2009, the exchange of land application was approved by the Secretary of State for Environment Food and Rural Affairs. A copy of the Order of Exchange (dated 15<sup>th</sup> July 2009) is attached at **Appendix C**.
8. However, although the Secretary of State has approved the Order of Exchange, the exchange of land application does not take effect in law until the Register of Village Green is amended to reflect it<sup>5</sup>. This requires a further application to the Commons Registration Authority to amend the Register of Village Greens<sup>6</sup>.

## Procedure

9. Section 14 of the Commons Act 2006 enables such applications to be made. The application must be made in accordance with the provisions of the Commons Registration (England) Regulations 2008 (“the 2008 Regulations”).
10. As a standard procedure set out in the 2008 Regulations, the County Council must put a copy of the Notice of Application on its own website. The publicity must state a period of at least six weeks during which objections and representations can be made. In addition, the County Council is required to notify all local Councils of the application.
11. In determining the application, the County Council must be satisfied that:

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<sup>2</sup> The necessary legal tests were contained in section 22 of the Commons Registration Act 1965 which defined a Village Green as ‘*land on which for not less than twenty years a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged in lawful sports and pastimes as of right*’.

<sup>3</sup> The Inclosure Act 1857 and the Commons Act 1876 make it an offence (amongst other things) to place any structures or materials upon a Village Green, or to do anything which interrupts the use and enjoyment of the Village Green as a place for recreation and enjoyment.

<sup>4</sup> Now superseded by section 16 of the Commons Act 2006

<sup>5</sup> Regulation 45 of the Commons Registration (England) Regulations 2008 states that ‘*the relevant instrument [i.e. the Order of Exchange] does not... operate at law until, further to the granting of an application made under [section 14 of the Commons Act 2006] the disposition effected by that instrument is registered in the register of common land or the register of town or village greens*’.

<sup>6</sup> Paragraph 8(2) of Schedule 4 of the Commons Registration (England) Regulations 2008 states that ‘*there must be an application to the registration authority for amendment of a register of common land or of town or village greens in the event of a disposition effected by a relevant instrument in relation to registered land...*’

- the applicant is entitled to make an application under section 14;
- the instrument effecting the exchange is a 'relevant instrument' (i.e. one that is cited in paragraph 8 to Schedule 4 of the 2008 Regulations); and
- a copy of the 'relevant instrument' has been included with the application.

12. It should be noted that it is not within the County Council's remit to consider the merits (or otherwise) of the exchange of land as this has already been the subject of a separate statutory process.

## **The Case**

### Description of the land

13. The area of land to be exchanged ("the village green land") consists of a broad 'L-shaped' area of landscaped open space of approximately 5300 square metres in size forming part of Heartenoak Playing Field at Hawkhurst. It forms part of the Village Green unit number VG239.

14. The area of land to be given in exchange ("the exchange land") consists of 5500 square metres of currently agricultural land which lies adjacent to the northern boundary of the Village Green.

### Notice of Application

15. As required by the regulations, Notice of the application was published on the County Council's website. No objections have been received.

### Capacity to apply

16. The County Council must be satisfied that the person making the application under section 14 of the Commons Act 2006 has the capacity to apply. Those eligible to apply for such applications are listed in a table set out at Schedule 4 of the 2008 regulations, an extract of which is attached at **Appendix D**.

17. For the purposes of this type of application (i.e. to record the effects of an Order of Exchange made under section 147 of the Inclosure Act 1845), the applicant must be the same person(s) as for the exchange of land application.

18. As Hawkhurst Parish Council made the application for the Order of Exchange under the Inclosure Act 1845, they are also therefore able to make the application to amend the register under the Commons Act 2006.

### The 'relevant instrument'

19. The County Council must also be satisfied that the instrument effecting the exchange is a 'relevant instrument' (i.e. one that is cited in paragraph 8 to Schedule 4 of the 2008 Regulations – see **Appendix D**). The applicant must also supply a copy of the relevant instrument.

20. In this case, the 'relevant instrument' is the Secretary of State's Order of Exchange. A copy has been supplied by the applicant and this is attached at **Appendix C**.

### **Conclusion**

21. It can therefore be concluded that the necessary criteria concerning the amendment of the Register of Town or Village Greens for unit number VG239 have been met.

### **Recommendations**

22. I recommend that the County Council informs the applicant that the application to amend the Register of Village Greens to reflect the recent exchange of land has been accepted and that the Register of Village Greens for unit number VG239 be amended accordingly.

Accountable Officer:

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

Case Officer:

Miss. Melanie McNeir – Tel: 01622 221628 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 – Copy of the Order of Exchange

APPENDIX D – Extract from the Commons Registration (England) Regulations 2008

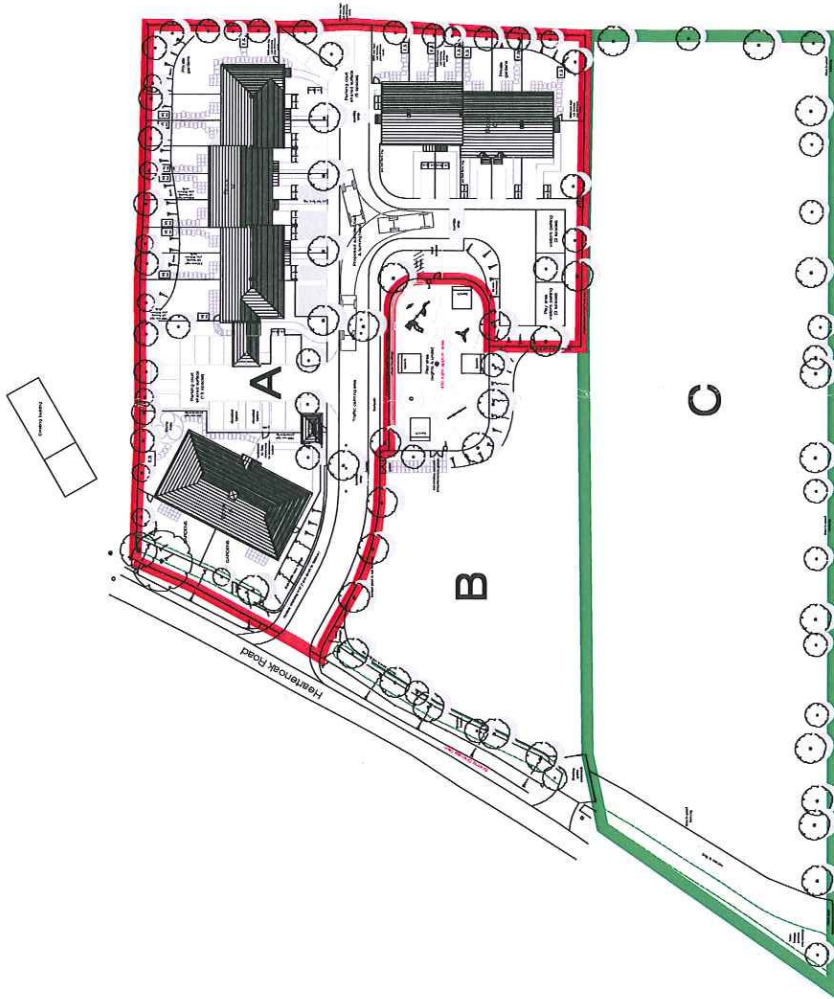
KEY

- █ Development Land
- █ Replacement Land

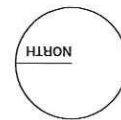
ACCOMMODATION SCHEDULE:

- Block A  
8 No 1 bed/2 person flats @ 51 sq/m
- Block B  
8 No 2 bed/4 person houses @ 76 sq/m  
1 No 3 bed/5 person wheelchair house @ 102 sq/m
- Block C  
3 No 2 bed/4 person houses @ 76 sq/m  
3 No 3 bed/5 person houses @ 91 sq/m

Total: 23 units  
Parking: 39 spaces (170%)



- A = DEVELOPMENT LAND (0.53 Ha)  
\*EXCLUDES CHILDREN'S PLAY AREA
- B = REMAINING VILLAGE GREEN (0.25 Ha)  
\*INCLUDES CHILDREN'S PLAY AREA
- C = REPLACEMENT LAND (0.55 Ha)
- B + C = NEW PLAYING FIELD (0.80 Ha)



APPENDIX A

Preliminary

Scale	Date	Drg. No.	Rev.
1:1250 @ A4	07/08/2009	3707-110	-

Drawing  
Proposed Site Plan  
& Extended Playing Field  
Selected Land Areas

Project  
Hartnook Playing Field,  
Hawkhurst

Client  
Orbit Housing Group

5 Old Lodge Place, St Margarets, Twickenham TW1 1RQ  
T 020 8891 9191 F 020 8891 9192 W churchill-hui.com



Commons Act 2006: section 14

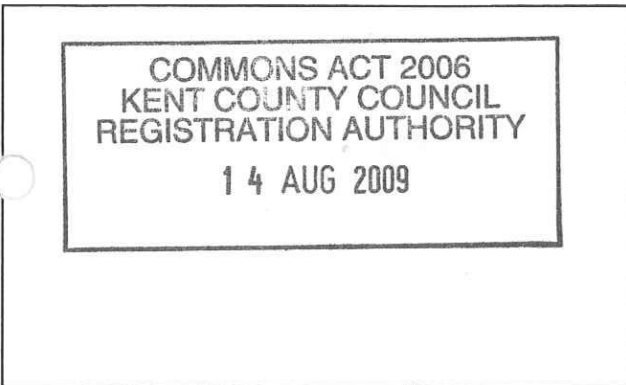
Application to register a statutory disposition



*This section is for office use only*

Official stamp of the Registration Authority indicating date of receipt:

Application number:



CAA4 1UG239

**Note to applicants**

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

- All applicants should complete parts 1-9
- There is a restriction on the persons who can apply pursuant to section 14; see column 4 of the table in paragraph 8 of Schedule 4 to the Commons Registration (England) Regulations 2008
- If your application relates to only part of a right of common then you must also submit an application under section 8 to apportion the right
- The application must be accompanied by a fee. Ask the Registration Authority for details of the fee

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

**1. Commons Registration Authority**

To the: *Kent County Council*

Please tick the box to confirm that you have enclosed the appropriate fee for this application:





**Note 2**

If there is more than one applicant, list all names. Use a separate sheet if necessary. State the full title of the organisation if the applicant is a body corporate or unincorporate. If you supply an email address in the box provided, you may receive communications from the Registration Authority or other persons (e.g. objectors) via email. If part 3 is not completed all correspondence and notices will be sent to the first named applicant.

**2. Name and address of the applicant**

Name: HAWKHURST PARISH COUNCIL

Full postal address: THE OFFICE AT THE MOON  
(incl. Postcode) HAWKHURST  
TN18 4NT

Telephone number: 01580 752058  
(incl. national dialling code)

Fax number: 01580 752058  
(incl. national dialling code)

E-mail address: hawkhurstpc@btconnect.com

**Note 3**

This part should be completed if a representative, e.g. a solicitor, is instructed for the purposes of the application. If so all correspondence and notices will be sent to the person or firm named here. If you supply an email address in the box provided, you may receive communications from the Registration Authority or other persons (e.g. objectors) via email.

**3. Name and address of representative, if any**

Name:

Firm:

Full postal address:  
(incl. Postcode)

Telephone number:  
(incl. national dialling code)

Fax number:  
(incl. national dialling code)

E-mail address:

**Note 4**

See the Table at paragraph 8(8) of Schedule 4 to the Regulations.

The persons who can apply to register a statutory disposition is dependent on the enactment which gave effect to the relevant instrument. For example where common land was compulsorily purchased under section 21 and Schedule 4 to the Compulsory Purchase Act 1965, only the authority who acquired the land may apply under section 14 to register the statutory disposition.

**4. Basis of application for registration and qualifying criteria**

Please describe the amendment required in the Register:

AS PER ORDER OF EXCHANGE DATED 15/7/09 FROM SECRETARY OF STATE AT DEFRA.  
PLAN 3707.108 REV.D REFERS AND FIRST + SECOND SCHEDULE OF THE ORDER.

Please describe the relevant instrument which has given effect to the disposition:

ORDER OF EXCHANGE UNDER S147 OF INCLOSURE ACT 1845.

Please describe why you qualify as the applicant

OWNER OF THE SITE

**Note 5**

*Specify the rights entry affected by the disposition. If the application relates to only part of a right, this application must be accompanied by an application to apportion rights under section 8.*

**5. Identification of the right affected**

Please specify the register unit number to which this application relates:

VG 239

Please specify (if relevant) the registered rights entry number to which this application relates:

Please tick the box if you have submitted an application to apportion the right under section 8:

**Note 6**

*Describe, if applicable, the land given in exchange which must be shown on a map. The accompanying map must be at a scale of at least 1:2,500 and show the land by means of distinctive colouring within an accurately defined boundary.*

**6. Land given in exchange with the statutory disposition**

Please tick one of the following boxes to indicate whether an exchange of land must be registered as a consequence of this application.

Yes:

or

No:

(if no, go to part 7 and omit the questions immediately below)

Please specify the rights to be vested in the exchange land:

None

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

**Note 7**

List all supporting consents, documents and maps accompanying the application, including: a copy of the relevant instrument effecting the disposition, and any consent, authorisation, approval or certificate given for the purposes of that relevant instrument and evidence that you are the person who acquired land or rights or both under the relevant instrument. There is no need to submit copies of documents issued by the Registration Authority or to which it was a party but they should still be listed. Use a separate sheet if necessary.

**7. Supporting documentation**

ORDER OF EXCHANGE FROM SECRETARY OF STATE  
AT DEFACTO DATED 15 JULY 2009

DRAWING 3707.108 REV D - PLAN ACCORDANT  
FOR USE IN DEFINING AREAS OF EXCHANGE.  
DITTO PLAN AT 1:2,500.

DWG. 3707-4010 SHOWING DISTANCE TO  
NEAREST NORTH BOUNDARY.

**Note 8**

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

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

THE EXCHANGE LAND IS OWNED BY  
THE PARISH COUNCIL AND IS CURRENTLY  
BEING REGISTERED AS SUCH AT THE  
LAND REGISTRY.

**Note 9**

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

**9. Signature**

Signature(s) of applicant(s): *A. McEvoy*  
*CLERK TO HASTINGS PARISH COUNCIL*

Date:

**REMINDER TO APPLICANT**

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

**Please send your completed application form to:**

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

**Please make the cheque payable to "Kent County Council"**

***Data Protection Act 1998***

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

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

## DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS

## ORDER OF EXCHANGE

WHEREAS Hawkhurst Parish Council, the person interested under the provisions of the Inclosure Acts 1845 to 1882 and the Commons Act 1899 in the lands and hereditaments specified in the First Schedule hereunder written, situate in the Parish of Hawkhurst, in the Borough of Tunbridge Wells, in the County of Kent, and Nigel Velvick, the person interested under the provisions of the said Acts in the lands and hereditaments specified in the Second Schedule hereunder written, also situate in the said Parish of Hawkhurst, being desirous of effecting an Exchange of the said lands and hereditaments, made due application to the Secretary of State for Environment, Food and Rural Affairs to direct inquiries respecting and to proceed with the same under the provisions of the said Acts;

AND WHEREAS due notice by advertisement in two successive weeks of the said proposed Exchange has been given, and one calendar month has elapsed from the publication of the last of such advertisements and no notice of dissent from such proposed Exchange has been given, and the Secretary of State for Environment, Food and Rural Affairs having duly made inquiries is of opinion that such Exchange would be beneficial to the owner of such respective lands and hereditaments, and that the terms thereof are just and reasonable;

NOW the Secretary of State for Environment, Food and Rural Affairs in pursuance of the said Acts and of all other powers enabling him in that behalf hereby Orders and Declares that the lands and hereditaments specified in the said First Schedule and shown coloured red on the plan hereunto annexed, with the rights, easements and appurtenances thereto belonging, shall be given by Hawkhurst Parish Council and taken by Nigel Velvick in exchange for the lands and hereditaments specified in the said Second Schedule and shown coloured green on the said plan;

AND that the said lands and hereditaments specified in the said Second Schedule and shown as aforesaid on the said plan, with the rights, easements and appurtenances thereto belonging, shall be given by Nigel Velvick and taken by Hawkhurst Parish Council in exchange for the said lands and hereditaments specified in the said First Schedule and shown as aforesaid on the said plan: to the intent that the lands taken in Exchange shall be and enure to, for and upon the same Uses, Trusts, Intents and Purposes, and subject to the same Conditions, Charges and Incumbrances as the lands given in Exchange would have stood limited or been subject to if this Order had not been made.

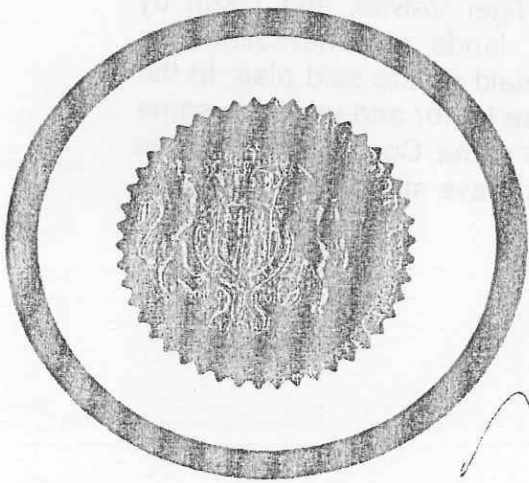
THE FIRST SCHEDULE above referred to:- Lands and hereditaments situate in the Parish of Hawkhurst, in the Borough of Tunbridge Wells, in the County of Kent, given in Exchange to and taken by Nigel Velvick, -

COLOUR ON PLAN	DESCRIPTION	EXTENT
Coloured red	Land forming the southern and western part of Heartenoak Playing Field Village Green (VG 239), Hawkhurst, Kent, situated between Heartenoak Road to the east and allotment gardens to the west.  The mines and minerals are in the same ownership as the surface and are intended to pass with the surface.	5300 square metres

THE SECOND SCHEDULE above referred to:- Lands and hereditaments situate in the Parish of Hawkhurst, in the Borough of Tunbridge Wells, in the County of Kent, given in Exchange to and taken by Hawkhurst Parish Council,-

COLOUR ON PLAN	DESCRIPTION	EXTENT
Coloured green	Land immediately to the north of and adjoining Heartenoak Playing Field Village Green (VG 239), Hawkhurst, Kent.  The mines and minerals are in the same ownership as the surface and are intended to pass with the surface.	5500 square metres

In witness whereof the Official Seal of the Secretary of State for Environment, Food and Rural Affairs is hereunto affixed this ...15<sup>th</sup> day of ...July..., Two Thousand and Nine.



*Martin Steer*

Martin Steer  
 Authorised by the Secretary of State  
 To sign in that behalf



## Extract from the Commons Registration (England) Regulations 2008

### Applications pursuant to section 14: statutory dispositions

8.— (1) This paragraph applies to applications referred to in sub-paragraph (2).

(2) There must be an application to the registration authority for amendment of a register of common land or of town or village greens in the event of a disposition effected by a relevant instrument in relation to registered land or a registered right of common.

(3) A “disposition” in relation to land, or in relation to a registered right of common, to which this paragraph applies is one made under or pursuant to an enactment listed in column 1 of the table following this paragraph, as described in the corresponding entry in column 2.

(4) A “relevant instrument” (as defined in section 14(3) of the 2006 Act) to which this paragraph applies is any relevant instrument made under or pursuant to an enactment listed in column 1 of the table as described in the corresponding entry in column 3.

(5) Paragraph (6) applies where—

(a) in connection with a disposition of registered land, other land is given in exchange or otherwise substituted; or

(b) in connection with a disposition of a registered right of common, other land is to be burdened with an equivalent right of common.

(6) The application to be made under sub-paragraph (2) must include an application for the registration of that other land as common land or as a town or village green, as the case may be, and, where applicable, for the registration of the equivalent right of common.

(7) The application must be made by the person or body specified in the entry in column 4 of the table corresponding to the relevant enactment.

(8) The application must include—

(a) evidence of the applicant’s capacity to make the application (as described in sub-paragraph (7));

(b) a copy of the relevant instrument effecting the disposition, and of any consent, authorisation, approval or certificate given for the purposes of that relevant instrument;

(c) the number of the register unit and, where applicable, the number of the rights section entry, in the register of common land or town or village greens for the right of common to which the application relates; and

(d) a description of the amendment required to be made in the register of common land or town or village greens.

(9) Where it relates to only part of a right of common, the application must be accompanied by an application made for the purposes of section 8 of the 2006 Act.

### Statutory dispositions: persons who must apply for amendment of register

<i>Column 1 – Enactment</i>	<i>Column 2 – Dispositions</i>	<i>Column 3 – Relevant Instrument</i>	<i>Column 4 – applicant</i>
Inclosure Act 1845, section 147	The exchange of lands not subject to be inclosed, or as to which no inclosure is pending	The order made by the Secretary of State by which that exchange is effected	The applicants for the order

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From: Chris Wade (Public Rights of Way Principal Case Officer)

To: Regulation Committee Panel Meeting – 27<sup>th</sup> October 2009

Subject: Application to register Public Rights of Way on the former Bayham Estate, Lamberhurst and Pembury.

Classification: Unrestricted District: TUNBRIDGE WELLS

Local Member: Mr A King

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**Summary: To seek approval to inform the Secretary of State that the County Council wishes to take a neutral stance at any Public Inquiry into this application**

**FOR DECISION**

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**Introduction**

1. On 5<sup>th</sup> of April 2005, a Regulation Committee Member Panel meeting resolved to reject an application lodged by the Ramblers Association (“the applicant”) under provisions contained within Section 53 of the Wildlife and Countryside Act 1981. The application was seeking to modify the Definitive Map of Public Rights of Way by adding a number of Public Footpaths across the former Bayham Estate. The application was in respect of land both in Kent and East Sussex.
2. In such cases, where an application is refused, the applicant has the right of Appeal to the Secretary of State. As reported to Members of the Regulation Committee on the 22<sup>nd</sup> January 2008 (a copy of this report is attached at **Appendix A**), the applicant took the opportunity to exercise this right. Within the same report I indicated to Members that the Secretary of State would no doubt be taking into account the judgement of what was then a recently decided case in the House of Lords and in consequence may well direct the County Council to go against its original decision not to make a Definitive Map Modification Order.

**Secretary of State’s decision**

3. On the 27<sup>th</sup> March 2009 the Secretary of State informed the County Council that having considered the appeal it was considered that an Order should be made in respect of the relevant parts of a route known as “The Red Route” which falls within Kent County. A map showing the route is attached at **Appendix B**.
4. Accordingly the Secretary of State, under provisions available to him, directed the County Council to make an Order to modify the Definitive Map of Public Rights of Way to record the “Red Route” at Public Footpath status. A similar direction was given to East Sussex County Council.

**Definitive Map Modification Order**

5. In consequence, the County Council made the necessary Order on the 5<sup>th</sup> August 2009. An objection period was allowed and expired on the 28<sup>th</sup> September 2009. At

the expiration of this period one objection had been received from Knights Solicitors of Tunbridge Wells on behalf of affected landowners. As a result of this objection the County Council has no option other than to send the Order to the Planning Inspectorate for resolution: almost certainly by way of a Public Inquiry.

### **Counsel's opinion**

6. At the January 2008 Regulation Committee Members agreed that the County Council should seek Counsel's opinion on further action in the event the County Council received a direction from the Secretary of State. This has been sought and Counsel whilst appreciating that a different interpretation has been place upon the legislation since the County Council took its original decision, is of the view that the Council should still continue with its normal practise in such circumstances. Counsel does not consider that such action would disenfranchise either the applicant or the objector.
7. In this respect, this Authority (in line with other Local Authorities in a similar position across the Country on the receipt of a direction from the Secretary of State), maintains a neutral stance at any consequent Inquiry and whilst facilitating the Inquiry and providing information and evidence already considered to the Inspector would take no positive role in either asserting or objecting to the Order. I would therefore seek Members approval to inform the Secretary of State (Planning Inspectorate) that the County Council wishes to maintain a neutral stance in respect of any Public Inquiry held into the addition of a Public Footpath across the former Bayham Estate at Pembury and Lamberhurst.

### **Recommendation**

8. I recommend that the County Council informs the Secretary of State that it will maintain a neutral stance at any Public Inquiry held into the addition of a Public Footpath crossing the former Bayham Estate at Pembury and Lamberhurst.

### **Background documents**

APPENDIX A – Copy of report to Regulation Committee on 22<sup>nd</sup> January 2008  
APPENDIX B – Plan showing claimed routes

### **Case Officer:**

Mr. Chris Wade – Tel: 01622 221511 or Email: [chris.wade@kent.gov.uk](mailto:chris.wade@kent.gov.uk)

From: Chris Wade (Public Rights of Way Principal Case Officer)  
To: Regulation Committee- Tuesday 22<sup>nd</sup> January 2008  
Subject: Application to register Public Rights of Way on the former Bayham Estate, Lamberhurst and Pembury.  
Classification: Unrestricted District: TUNBRIDGE WELLS

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**Summary:** To inform Members of the current position relating to this application and to seek approval to refer the eventual decision from the Government Office for the North East to Counsel for advice on further action.

**FOR DECISION**

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**Introduction**

1. On 5<sup>th</sup> of April 2005, a Regulation Committee Member Panel meeting resolved to reject an application lodged by the Ramblers Association (“the applicant”) under provisions contained within Section 53 of the Wildlife and Countryside Act 1981. The application was seeking to modify the Definitive Map of Public Rights of Way by adding a number of Public Footpaths across the former Bayham Estate.
2. In such cases, where an application is refused, the applicant has the right of Appeal to the Secretary of State. The applicant exercised this right, and the matter is currently being dealt with by an Inspector appointed by the Secretary of State. The Government Office for the North East is responsible for the administration of this process.

**The effect of the ‘Godmanchester’ case**

3. The original decision to reject the Ramblers Association’s application was based upon a number of factors. In order to be successful with their application, the Ramblers’ Association needed to show that the criteria contained within section 31 of the Highways Act 1980 had been met. Section 31 reads as follows:  
‘where a way over land... has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway *unless there is sufficient evidence that there was no intention [by the landowner] during that period to dedicate it*’ (emphasis added).
4. One of the prime factors considered in this case was whether the landowner had taken sufficient **overt** actions in order to inform the general public that he had no intention to dedicate rights for the public on land within his ownership. The interpretation which had to be given the words ‘overt’ and ‘intention’ *at the time* of the County Council’s decision had been decided by the Court of Appeal which clearly held that any action taken by a landowner in a manner that appeared to show his desire not to dedicate such rights would be enough to deny the public, despite the fact that some (if not all) of those actions were not being made in a manner that the public would have been aware of.
5. A good example of this at Bayham was the tenancy agreements which were in force during the relevant 20 year period of claimed use. The landowner made it quite clear

to his tenants within this agreement that it was his intention that no rights of Way should be dedicated to the public. Although the clause within these agreements would not have been available to the public at large, the interpretation of the word 'overt' *at the time* deemed this was enough to show the landowner had no intention to dedicate. Members, in taking their original decision, interpreted that evidence at the time in the accepted manner and this was one of the reasons why the Regulation Committee Member Panel rejected the application.

6. The question arising in the Godmanchester case, which was finally heard in the House of Lords, was the relevance of such actions and, in particular, whether such actions constituted *sufficient evidence* of a landowner's lack of intention to dedicate. After careful consideration and having heard submissions from very learned Barristers representing both parties, the Law Lords decided that the previous interpretation of the word 'sufficient evidence' in the lower courts was wrong. As a result of this decision, it is now considered that landowners must bring to the attention of users of the way by very deliberate acts to show that they have no intention to dedicate the path to the public: the fact that they might have written this in other documents to which the general public do not have access is simply not enough.

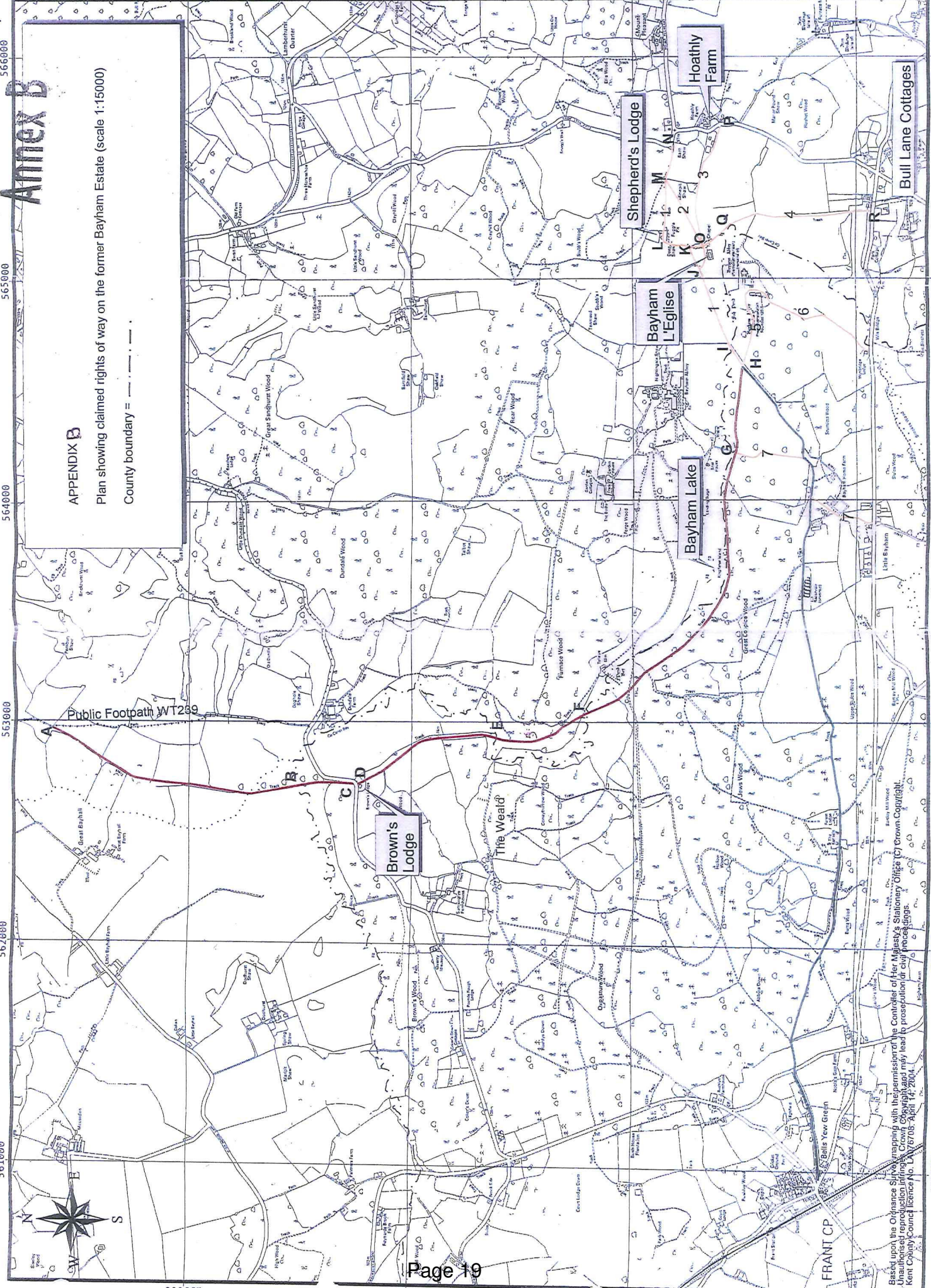
### **The powers of the Secretary of State**

7. As a result of the appeal by the applicants against the County Council's resolution, the decision as to whether or not an Order should be made has now passed to the Secretary of State. He has the power to direct the County Council to make an Order should he deem it appropriate. The Inspector appointed by the Secretary of State to take a decision on this matter has no option other than to interpret the words 'sufficient evidence' and 'overt' in the manner decided in the House of Lords. It is therefore possible that the County Council may receive a direction from the Secretary of State to go against the original decision not to make an Order. If this should be the case, then I would ask for Members approval to seek Counsel's opinion as to the stance the County Council should take at any subsequent Public Inquiry.

### **Recommendation**

8. I recommend that members receive this report for information.
9. I also recommend that the County Council seeks Counsel's opinion on further action in the event the County Council receives a direction from the Secretary of State to make a Definitive Map Modification Order to add Public Rights of way across the former Bayham Estate.





**Annex B**

**APPENDIX B**

Plan showing claimed rights of way on the former Bayham Estate (scale 1:15000)

County boundary = - - - - -

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