



## AGENDA

### Kent County Council

## REGULATION COMMITTEE MEMBER PANEL

**Monday, 16th November, 2009, at 12.00 pm** Ask for: **Andrew Tait**  
(or on the return of Members from visits to  
the sites)  
**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 and Mr R A Pascoe.  
  
Liberal Democrat: Mr S J G Koowaree.
2. Declarations of Interest by Members for Items on the agenda
3. Application to register land at Fountain Walk, Northfleet as a new Village Green (Pages 1 - 24)
4. Application to register land known as St Andrew's Gardens, Gravesend as a new Village Green. (Pages 25 - 50)
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

**Friday, 6 November 2009**



## Application to register land at Fountain Walk, Northfleet as a new Town or Village Green

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A report by the Director of Environment and Waste to Kent County Council's Regulation Committee Member Panel on Monday 16<sup>th</sup> November 2009.

**Recommendation: I recommend that the County Council informs the applicant that the application to register the land at Fountain Walk, Northfleet has not been accepted.**

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Local Members: Mr. L. Christie and Mr. H. Craske

Unrestricted item

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### Introduction

1. The County Council has received an application to register land at Fountain Walk, Northfleet as a new Town or Village Green from local resident Mr. S. Baker ("the applicant"). The application, dated 10<sup>th</sup> June 2008, was allocated the application number VGA602. 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(1) 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 1<sup>st</sup> October 2008, been superseded by the Commons Registration (England) Regulations 2008 which apply only in relation to seven 'pilot implementation areas' 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 Town or Village Green where it can be shown that:
  - 'a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;*
4. In addition to the above, the application must meet one of the following tests:
  - **Use of the land has continued** 'as of right' until at least the date of application (section 15(2) of the Act); or
  - **Use of the land 'as of right' ended no more than two years prior to the date of application**, e.g. by way of the erection of fencing or a notice (section 15(3) of the Act); or
  - **Use of the land 'as of right' ended before 6<sup>th</sup> April 2007** and the application has been made within five years of the date the use 'as of right' ended (section 15(4) of the Act).
5. As a standard procedure set out in the regulations, the County Council must notify the owners of the land, every local authority and any other known interested

persons. It must also publicise the application in a newspaper circulating in the local area and place a copy of the notice on the County Council's website. In addition, as a matter of best practice rather than legal requirement, the County Council also places copies of the notice on site to provide local people with the opportunity to comment on the application. The publicity must state a period of at least six weeks during which objections and representations can be made.

### **The application site**

6. The area of land subject to this application ("the application site") consists of a rectangular piece of land of approximately 770 square metres situated at Fountain Walk in Northfleet. The land is situated to the rear of the Chiltern House Garage (on London Road) and abuts the rear of properties in Fountain Walk. The application site consists of an area of grassed open space with trees.
7. Access to the application site has been via the paths which serve the Fountain Walk estate. However, since February 2007, the application site has been fenced off with close-boarded fencing and there has been no access to it from the Fountain Walk estate, although access is possible via a gap in the chain link fencing abutting the rear of Chiltern House Garage.

### **Background**

8. Members should be aware that the application site forms part of a larger area of land that has been the subject of a planning application which proposes the re-development of the Chiltern House Garage into a three-storey development of 14 self-contained flats. According to the development plans, it is proposed that the application site be transformed into a car park and amenity space.
9. Planning Permission for the development was granted by Gravesham Borough Council in August 2008. However, work on the development has not yet begun pending the outcome of the Town or Village Green application. If the Town or Village Green application were to be successful, the effect would be to prevent the development of the application site, regardless of the planning permission, since Town or Village Green status confers special protection on the land which effectively prevents any form of development<sup>1</sup>.
10. The planning background is provided for information only as it is not a relevant consideration for the purposes of determining an application for the registration of land as a Town or Village Green. Members should be guided solely by the legal tests specified in section 15(1) of the Commons Act 2006 which are set out at paragraph 17 below.

### **The case**

11. The application has been made on the grounds that the application site has become a Town or Village Green by virtue of the actual use of the land by the local inhabitants for a range of recreational activities 'as of right' for more than 20 years.

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<sup>1</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.

12. Included in the application were nine statements of use from local residents asserting that the application site has been available for free and uninhibited use for lawful sports and pastimes over the last twenty years and beyond. A summary of the user evidence is attached at **Appendix C**. Also submitted with the application were five letters of support and a petition containing 45 signatures.

### **Consultations**

13. Consultations have been carried out as required. In response to the consultation, three further letters of support were received from local residents (one from the applicant and two from people who had previously submitted user evidence).

### **Landowner**

14. An objection has been received from Vertex Law LLP on behalf of the landowner, Mr. R. Todd (“the landowner”). The objection is made primarily on the basis that on 26<sup>th</sup> March 1968, the former owners of the land, Chevron Oil (UK) Ltd, granted to the Northfleet Urban District Council a personal licence in respect of the land. Under this licence, the Urban District Council (now Gravesham Borough Council) undertook to ‘*use the land for the purpose of an open space only*’. The landowner contends that use of the land was therefore by virtue of a fully revocable licence and, as such, was not ‘as of right’. A copy of the licence agreement is attached at **Appendix D**.

15. The landowner also refers to the presence of a ‘no ball games’ sign to regulate the activities that took place on the land, and expresses concerns regarding the sufficiency of use by the local residents.

16. Brenchley Homes Ltd (“the second objector”) have also objected to the application on the basis that use of the application site has been referable to the licence agreement and has therefore not been ‘as of right’ for the required 20 year period.

### **Legal tests**

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

- (a) *Whether use of the land has been 'as of right'?*
- (b) *Whether use of the land has been for the purposes of lawful sports and pastimes?*
- (c) *Whether use has been by a significant number of inhabitants of a particular locality, or a neighbourhood within a locality?*
- (d) *Whether use 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 (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'?**

18. The definition of the phrase 'as of right' has been considered by the House of Lords. Following the judgement in the *Sunningwell*<sup>2</sup> case, it is considered that if a person uses the land for a required period of time without force, secrecy or permission (*nec vi, nec clam, nec precario*), and the landowner does not stop him or advertise the fact that he has no right to be there, then rights are acquired and further use becomes 'as of right'.

*...without force...*

19. In this case, there is no evidence of any of the users ever having been verbally challenged or physically prevented from gaining access to the land. The existence of the licence agreement which refers to the land being used as an open space is good evidence that use of the land has not been challenged by the landowner. In fact, there is a positive inference that the tenants of Fountain Walk have actually contributed towards the maintenance of the land as part of their rental payments to the Borough Council<sup>3</sup>.

20. The concept of force in relation to 'as of right' is not restricted to physical barriers or challenges to use. If a person repeatedly ignores a notice which clearly indicates that they do not have the right to enter the land, then their use may be considered to be with force.

21. In this case, there is there no evidence to suggest that there have been any prohibitive notices on the land, other than the 'no ball games' signs to which reference is made by the landowner and by one of the witnesses<sup>4</sup>. The effect of the signs was simply to restrict the playing of ball games (presumably to prevent nuisance to neighbouring properties) and not to prevent use of the application site by local residents for other lawful sports or pastimes. There is no evidence that the signs were put there as a result of local byelaws or that they were legally enforceable.

*...without secrecy...*

22. There is no evidence that use of the application site has been with secrecy. In addition to recreational use by the local residents, residents meetings have been held openly on the site during summer months and residents have also tended the planted areas. The Borough Council has also regularly maintained the site for use by the local residents and mown the grass to facilitate such use.

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<sup>2</sup> *R v. Oxfordshire County Council and another, ex parte Sunningwell Parish Council* [1999] 3 All ER 385

<sup>3</sup> Part 11 of the application form states "residents requested the Council supply landscaping which the Council supplied from the gardening fund which the residents pay into". In his letter of support, Mr. Hurstfield states that "the residents have paid for the upkeep of the area to the local Council and is part of the rent paid for the accommodation". In his user evidence form, Mr. Eldridge states "throughout the time living here, I along with other residents have paid the Council to have the area of grass cut and boundaries kept planted and tidy".

<sup>4</sup> In her user evidence form, Mrs. Millins states that "the Council provided 'no ball games' [signs] and a dog litter bin in 1997 and 2003".

...without permission...

23. The key issue in this case concerns the third limb of the 'as of right' concept: permission. Permission in this context can take various forms. It can be express or implied, and it may or may not be communicated to the recreational users of the land.
24. In this case, it is common ground between the parties that there has existed a licence agreement in respect of the application site. The agreement is dated 26<sup>th</sup> March 1968 and was made between the then owner, Chevron Oil (UK) Ltd, and the then Northfleet Urban District Council (now Gravesham Borough Council). It provides that licence is to be revocable at any time, that the Council is to be responsible for all outgoings in respect of the land, and that the land is to be used as an open space only. A copy of the agreement is attached at **Appendix D**.
25. It is not clear when the licence came to an end. The landowner states that the licence '*came to an end not later than February 2007, when the land was fenced...*'. The second objector states that '*the licence was not extended when Ray Todd purchased the site on 21<sup>st</sup> August 1992*'. The applicant states that '*these arrangements continued when the land was acquired by Chiltern House Garage*'.
26. When Mr. Todd purchased the site in 1992, he was under no legal obligation to continue with the licence since the agreement had been between the previous landowner and the Council. However, by his conduct in continuing to allow the local residents to use the land as an open space, it is possible that Mr. Todd effectively renewed the licence.
27. It is not necessary for the purposes of the Town or Village Green application to arrive at a conclusion as to the exact date of termination of the licence. What matters is whether the licence was in force *at any point* during the relevant twenty year period (i.e. the twenty years immediately preceding the erection of the fence in February 2007). For the application to succeed, use of the land by the local residents must have been 'as of right' throughout the whole of the twenty year period.
28. On the supposition that the licence did end in 1992 (although there is no positive evidence to suggest that it did not continue until 2007), use of the land during the five-year period 1987 to 1992 would have been pursuant to an express licence granted on a revocable basis by the then landowner, Chevron Oil (UK) Ltd.
29. The issue of a licence in relation to Town or Village Green registration was considered in the case of *Ind Coope*<sup>5</sup> where the Council registered a piece of land which was the subject of a licence agreement between the Council and the landowner for the use of the land as a children's playground and open area. The judge held that the land had been wrongly registered as a Village Green, stating that "*...if there is an express licence for the use of the land, then the land is used pursuant to that licence. There can be no question of a right being established... I find it impossible to form the view that the public, in some way or other, were capable of acquiring additional rights over and above the rights that the local District*

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<sup>5</sup> *R v Hereford and Worcester City Council ex parte Ind Coope (Oxford and West) Ltd.* (unreported)

*Council possessed pursuant to the licence to make the land available for the purposes for which it was used...”.*

30. The facts of this case are therefore very similar to the situation considered by the Courts in *Ind Coope*. In light of the decision of the Court in that case, it therefore must be concluded that the use of the land at Fountain Walk was as a result of the licence agreement for, at the very least, five years of the relevant twenty year period (if not during the whole period). Use was therefore not ‘as of right’ during the whole twenty year period.

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

31. Lawful sports and pastimes can be commonplace activities including dog walking, children playing, picnicking and kite-flying. It is not necessary to demonstrate that both sporting activities *and* pastimes have taken place since the phrase ‘lawful sports and pastimes’ has been interpreted by the Courts as being a single composite group rather than two separate classes of activities<sup>6</sup>.

32. Legal principle does not require that rights of this nature be limited to certain ancient pastimes (such as maypole dancing) or for organised sports or communal activities to have taken place. The Courts have held that ‘*dog walking and playing with children [are], in modern life, the kind of informal recreation which may be the main function of a village green*’<sup>7</sup>.

33. In this case, the evidence demonstrates that the land has been used for gardening, relaxing, socialising, dog-walking, playing with children and picnics. The table summarising evidence of use by local residents at **Appendix C** shows the full range of activities claimed to have taken place.

34. The landowner contends that not all of the activities listed in the application can properly be considered to be ‘lawful sports and pastimes’. It is suggested that just sitting on a bench or socialising with neighbours cannot be said to fall within the context of lawful sports and pastimes for the purposes of Town or Village Green registration. Whilst it is an arguable proposition, it is difficult to reach a conclusion on this since it is not a matter that has yet been before the Courts.

35. Some residents refer to using the land to walk to the shops and the Post Office. Such use is not a lawful sport or pastime and is likely to be referable to the use of the land as a convenient short-cut rather than constituting the type of recreational activities associated with the acquisition of Town or Village Green rights. It should therefore be disregarded when considering the user evidence as a whole.

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<sup>6</sup> *R v. Oxfordshire County Council and another, ex parte Sunningwell Parish Council* [1999] 3 All ER 385

<sup>7</sup> *R v Suffolk County Council, ex parte Steed* [1995] 70 P&CR 487 at 508 and approved by Lord Hoffman in *R v. Oxfordshire County Council and another, ex parte Sunningwell Parish Council* [1999] 3 All ER 385



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

36. In considering this issue, the starting point is to establish whether there is a relevant locality within which the users of the land reside. The definition of locality for the purposes of a Town or Village Green application has been the subject of much debate in the Courts and there is still no definite rule to be applied. In the *Cheltenham Builders*<sup>8</sup> case, it was considered that ‘...at the very least, Parliament required the users of the land to be the inhabitants of somewhere that could sensibly be described as a locality... there has to be, in my judgement, a sufficiently cohesive entity which is capable of definition’. The judge later went on to suggest that this might mean that locality should normally constitute ‘some legally recognised administrative division of the county’. In another case, it was suggested that an ecclesiastical parish would be sufficient to constitute a relevant locality<sup>9</sup>.
37. Having established a relevant locality, it must be shown that a significant number of the residents of that locality must have used the land in question. The Courts have held that ‘significant’ in this context does not necessarily mean considerable or substantial: what matters is that the number of users has to be sufficient enough to indicate that ‘their use of the land signifies that it is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers’<sup>10</sup> (the “sufficiency test”).
38. In some cases, it may be that the locality is too large and, as a result, it is not possible for the sufficiency test to be met. In such cases, it may be necessary to identify a relevant neighbourhood within a locality. This concept has also been considered by the Courts: ‘it is common ground that a neighbourhood need not be a recognised administrative unit. A housing estate might well be described in ordinary language as a neighbourhood... The registration authority have to be satisfied that the area alleged to be a neighbourhood has a sufficient degree of cohesiveness; otherwise the word “neighbourhood” would be stripped of any real meaning’<sup>11</sup>.

‘locality’

39. In this case, all those who have submitted evidence in support of the application live in the properties on Fountain Walk. Fountain Walk is a housing estate and therefore would not constitute the type of legally recognised administrative area required to demonstrate a locality (although it be sufficient to indicate a neighbourhood – see paragraph 42 below).
40. The only area that could properly be described as a locality is the Borough Council ward of Northfleet North. As is shown on the map at **Appendix E**, this ward covers a very large area and has a population of over 6,700 people<sup>12</sup>. The ecclesiastical parish of St. Boltoph, Northfleet covers an even larger area<sup>13</sup>.

<sup>8</sup> *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at 90

<sup>9</sup> *R (Laing Homes Ltd.) v Buckinghamshire County Council and another* [2003] 3 EGLR 70 at 83

<sup>10</sup> *R (Alfred McAlpine Homes Ltd.) v Staffordshire County Council* [2002] EWHC 76 at paragraph 74

<sup>11</sup> *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at 92

<sup>12</sup> The exact figure as at the 2001 census was 6,723

<sup>13</sup> It covers the Borough Council ward of Northfleet North and encompasses part of Northfleet South ward and a small section of Painter’s Ash ward.

41. Both of these localities are too large to be able to demonstrate that a significant number of the residents have used the application site. It is therefore necessary to consider whether there is a relevant neighbourhood within a locality.

*'neighbourhood'*

42. As stated at paragraph 38 above, a housing estate can, in principle, constitute a neighbourhood for the purposes of Town or Village Green registration. It might therefore be suggested that Fountain Walk might reasonably be classed as a neighbourhood within the wider locality of the Borough Council Ward of Northfleet North.

43. However, it is also arguable that use of the land by eleven residents living in the immediate vicinity would not be sufficient to indicate to a landowner that the land was in general use by the local community.

44. In light of the fact that the use of the land was known to (and expressly approved by) the landowner, it is therefore not necessary to conclude on this matter.

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

45. 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. In this case, use 'as of right' ceased when the fencing was erected in February 2007 and as such the requisite period is 1987 to 2007.

46. From the user evidence submitted, there appears to have been use of the land over a considerable period dating back to the construction of the Fountain Walk estate in the late 1960s. The licence agreement is dated 26<sup>th</sup> March 1968 which indicates that the land has been available for use as an open space since that time. Neither the landowner nor the second objector have sought to challenge the proposition that the land has been used for a full period of twenty years, and neither has advanced any arguments that there has been a break in the continuity of such use.

47. Of the 11 people who have used the land (listed at **Appendix C**), five have used the land for the full 20 year period, one has used it for 17 years (since 1990) and the remaining five have used the land for six years or less.

48. Therefore, it can be concluded that use of the land has taken place over a period of over twenty years.

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

49. As set out in paragraph 4 above, use of the land 'as of right' should either have:

- a) Continued to the date of application; or
- b) Ceased not less than two years prior to the date of the application; or
- c) Ceased prior to 1<sup>st</sup> April 2007, but the application has been made within 5 years from the date at which use 'as of right' ceased.

50. In this case, use of the land ceased in February 2007 when the fencing was put up. The application is dated 10<sup>th</sup> April 2008.

51. Therefore, the application would fall within the third criterion (with use 'as of right' ceasing prior to 1<sup>st</sup> April 2007). Since the application has been made within five years from the date at which use 'as of right' ceased, this test has been met.

## Conclusion

52. As was noted by the Court of Appeal in *Steed*<sup>14</sup>, 'it is no trivial matter for a landowner to have land, whether in public or in private ownership, registered as a town green... [the relevant legal tests] must be properly and strictly proved'. In order for the application to succeed, it is vital that each and every element of the legal tests set out in section 15 of the Commons Act 2006 be proved.

53. In this case, it has been shown that the use of the land by the local residents has been pursuant to a licence agreement between the landowner and the Council which expressly provided for such use for at least part, if not all, of the relevant twenty year period. There is also evidence that the residents of the Fountain Walk estate have paid for the upkeep of the land as part of their rental payments to the Council. As a result, use of the land cannot be said to have been 'as of right'.

54. It is therefore concluded that the legal tests concerning the registration of the land as a Town or Village Green (as set out above) have not been met.

## Recommendations

55. I recommend that the County Council informs the applicant that the application to register the land at Fountain Walk, Northfleet has not been accepted.

Accountable Officer:

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

Case Officer:

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

The main file is available for viewing on request at the Countryside Access Service, 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 the licence agreement dated 24<sup>th</sup> March 1968

APPENDIX E – Map showing ward boundaries

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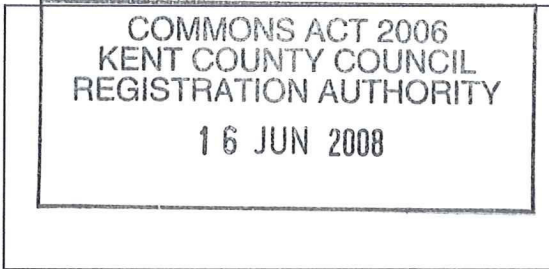
<sup>14</sup> *R v Suffolk County Council, ex parte Steed and another* [1997] 1 EGLR 131 at 134



**Commons Act 2006: Section 15**

**Application for the registration of land as a Town or 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

**Note 1**

*Insert name of registration authority.*



**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.

FEBRUARY 2007

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

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

Name by which usually known:

LAND BEHIND CHILTON HOUSE GARAGE

Location:

CHILTON HOUSE GARAGE  
128 LONDON ROAD NORTHFLEET DANGLA

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:

AREA OF LAND BETWEEN CHILTON HOUSE  
GARAGE AND HOUSES OF FOUNTAIN WALK  
(TO NORTH OF GARAGE)

Tick here if map attached:

**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.



## 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).

The Fountain Walk Council Estate was completed in 1969. The piece of land in question is an open grassed space bordered by trees. A licence agreement was made between Gravesend Borough Council and the Chevron Petroleum Company who owned the land at that time. There does not appear to have been any security of tenure although the Borough Council agreed to maintain the area and cut the grass. It was used by the residents 'as of right' from 1969 as an amenity area. Children were able to play there in safety, benches were provided for older residents & others used the area for recreation. These arrangements continued when the land was acquired by Giltan House Garage. In February 2007 the owner enclosed the entire area with a high fence so that it was no longer accessible to the residents. A number of residents will testify to the long term use of this piece of ground.

**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).

**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**

CHILTON HOUSE GARAGE  
128 LONDON ROAD  
NORTHFLEET  
KENT  
DA11 9LE

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

**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).

**10. Supporting documentation**

X

**Note 10**

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

Please use a separate sheet if necessary.

**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.

**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.

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

The garage owner fenced the village green off with no prior notification although he was supposed to give 28 days notice as the residents thought the land belonged to the council because the residents have been paying to maintain it for 39 years. In that time the land collapsed twice and the council re-filled and grass both times. The council erected a public notice saying no ball games allowed therefore being used as a play area

Date:

10-06-2008

PTD.

Signatures:



**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.

Also a dog bin was placed on the same notice therefore being used by dog walkers.


Residents requested the council supply landscaping which the council supplied from the gardening fund which the residents pay into.

A bench was donated from a prior resident to be placed on the village green after her death, unfortunately it was vandalised and taken away for repair but can't be replaced due to being fenced off.

At present the village green is being used to store part exchanged or used cars which is a great concern to residents as they are parked next to a petrol station and if they was to ~~catch~~ catch a light it would cause a great deal of damage to surrounding areas including the flats which have no easy means of escape.

It used to be a safe place for children to play where parents could watch over them as it was secluded from the main road.

Chairman: 

Secretary: 

Block Rep: 

## 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.*

<sup>1</sup> *Insert full name (and address if not given in the application form).*

I...<sup>3</sup> BAKER.....<sup>1</sup> solemnly and sincerely declare as follows:—

<sup>2</sup> *Delete and adapt as necessary.*

1.<sup>2</sup> I am ((the person (one of the persons) who (has) (have) signed the foregoing application)) ((the solicitor to (the applicant) (<sup>3</sup> one of the applicants)).

<sup>3</sup> *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.

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

4.<sup>4</sup> 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/*





KentView Print  
Kent County Council  
Scale: 1:1250  
Tuesday, 3 June 2008  
15:53:46  
Initials

AREA TO BE LISTED AS VILLAGE GREEN

\* ALAN TAMER - LETTER RECEIVED POSITION FROM RESIDENT

110 SIMON BAYLER (SIGNED AFFIDAVIT)

**APPENDIX C:  
Summary of user evidence**

<b>Name</b>	<b>Type of evidence*</b>	<b>Address</b>	<b>Period of use</b>	<b>Comments</b>
Mr. S. Baker	LS	6 Fountain Walk	2003 – 2007 (4 years)	Children used the green for playing games and for learning to ride bicycles. The land has been used by the residents of Fountain Walk for many years for relaxation and enjoyment. The Council kept the land tidy and mowed the grass.
Mrs. V. Bartholomew	UEF and LS	73 Fountain Walk	1970 – 2007 (37 years)	Used the land daily as a cut-through to shops and Post Office until it was fenced off. The land was always kept in good condition.
Mrs. R. Cook	UEF	16 Fountain Walk	1978 – 2007 (29 years)	Used the land weekly as a communal area until it was fenced off in 2007. Held residents meetings in the summer.
Mrs. J. Dalley	UEF and LS	78 Fountain Walk	1984 – 2007 (23 years)	Used the land daily for recreation and as a cut-through to the Post Office until it was fenced off in February 2007.
Mr. B. Eldridge	UEF and LS	61 Fountain Walk	2001 – 2007 (6 years)	Used daily for tending the garden, walking/playing with dog, sitting on the bench. Residents have paid the Council for the upkeep of the land (mowing grass etc).
Ms. D. Golding	UEF	67 Fountain Walk	2003 – 2007 (4 years)	In February 2007, fence was put up around the land preventing use. Used daily for playing with children, socialising with neighbours, picnics.
Mr. S. Hurstfield	LS	74 Fountain Walk	1980 – 2007 (27 years)	Land has been in common usage by the residents of Fountain Walk for over 30 years. It has been used recreationally by the residents, as a children's play area and as a meeting place. The residents have paid for the upkeep of the area as part of the rent paid for the housing.
Mrs. M. Lindley	UEF	29 Fountain Walk	2004 – 2007 (3 years)	Used daily until fence was put up in 2007 for socialising, short-cut to shops, and playing with children.
Miss. T. Lindley	UEF	29 Fountain Walk	2004 – 2007 (3 years)	Used for gardening and socialising
Mrs. A. Martin	UEF and LS	80 Fountain Walk	1967 – 2007 (40 years)	Used daily for walking to shops.
Mrs. P. Millins	UEF and LS	14 Fountain Walk	1990 – 2007 (17 years)	Used daily for socialising, dog-walking, relaxing, exercising and playing with children. Recalls 'no ball games' notices in 1997 and 2003.

**\*UEF = user evidence form  
LS = letter of support**



To:- Chevron Oil (U.K.) Limited

re: Land at rear of premises known  
as Chilton House, Service Station,  
128 London Road, Northfleet in  
the County of Kent

IN CONSIDERATION of your allowing us to use the land  
shown edged red on the plan annexed hereto for the purpose  
of *an Open Space* from and including the date hereof  
We The Urban District Council of Northfleet of The Town Hall,  
Northfleet in the County of Kent acting by our Clerk  
*Frank*  
Drewery *F.* Bunkall

Clerk and Solicitor  
Northfleet Urban District Council

I hereby certify that this is a true copy of  
the Original ~~Document~~

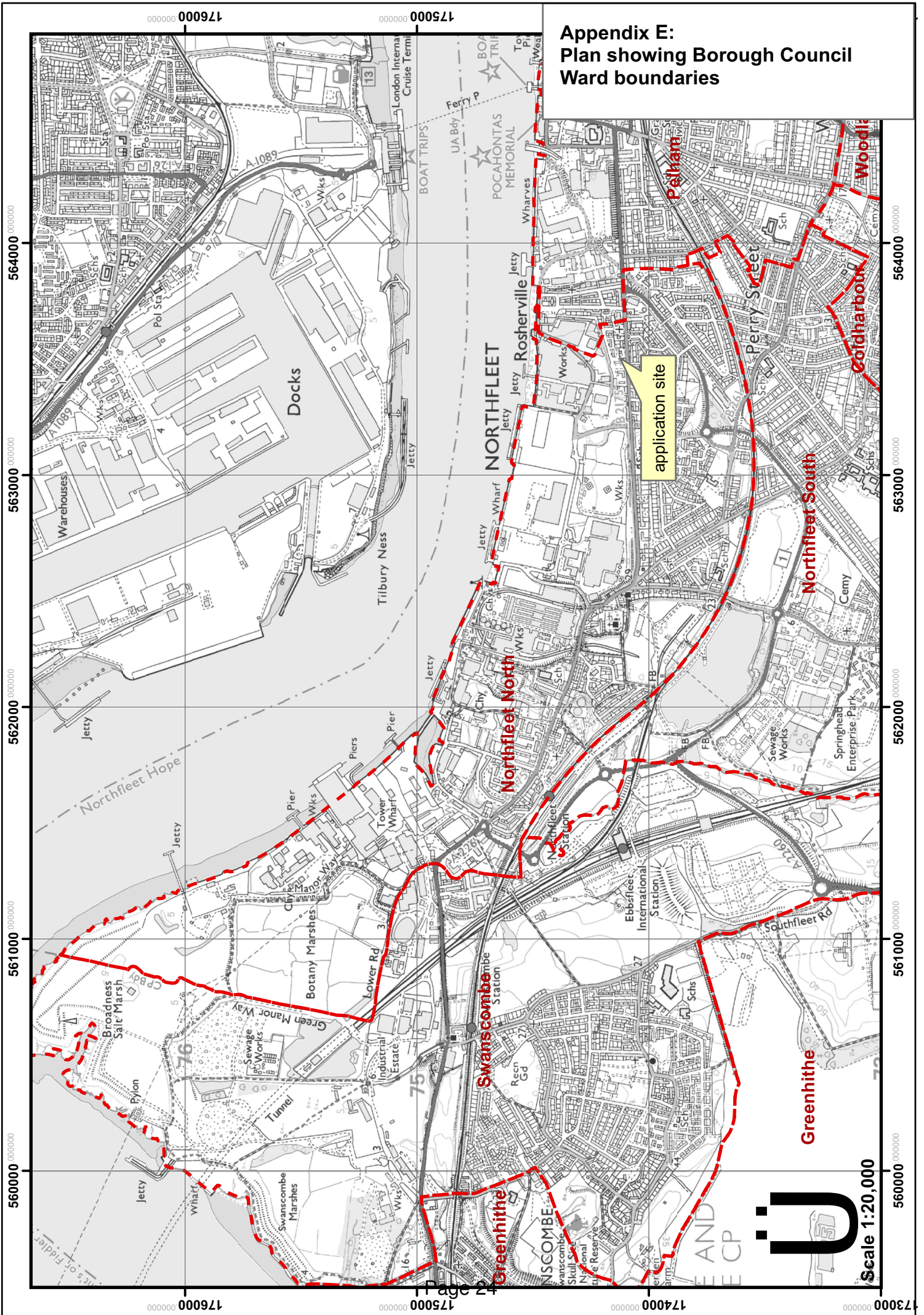
*Drewery F Bunkall*

- HEREBY ACKNOWLEDGE 1. That we shall be using the  
land as licensees only and that no tenancy or agreement  
for a tenancy of any kind exists or shall be created or  
come into existence between us
2. The Licence shall be revocable at any time by you or  
ourselves
3. During the period of the Licence we will pay all  
outgoings in respect of the land
4. The Licence is personal to us and we shall not be  
entitled to assign the benefit of it or grant sub-licences
5. Nothing herein contained shall confer on us any right  
to exclusive occupation of the land and you or your  
agents or licensees will have the right to enter upon the  
land at all times and for any purpose
6. We will use the land for the purpose of *an* *Open Space*  
only
7. We will quit the land forthwith on demand and leave  
the same in as good a condition as the same is now in
8. We will pay your legal costs in connection with the  
preparation and completion of the Licence

Dated *26th* March 1968

*(Sgd)* *Drewery F Bunkall*  
Signed..... stamp  
Clerk of the Council  
for and on behalf of the  
Urban District Council of

**Appendix E:  
Plan showing Borough Council  
Ward boundaries**



## Application to register land known as St. Andrew's Gardens at Gravesend as a new Town or Village Green

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A report by the Director of Environment and Waste to Kent County Council's Regulation Committee Member Panel on Monday 16<sup>th</sup> November 2009.

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

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Local Members: Mr. J. Cubitt and Mr. B. Sweetland

Unrestricted item

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### Introduction

1. The County Council has received an application to register land known as St. Andrew's Gardens in Gravesend as a new Town or Village Green from local civic society, Urban Gravesham ("the applicant"). The application, dated 26<sup>th</sup> July 2008, was allocated the application number VGA603. 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(1) 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 1<sup>st</sup> October 2008, been superseded by the Commons Registration (England) Regulations 2008 which apply only in relation to seven 'pilot implementation areas' 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 Town or Village Green where it can be shown that:
 

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

persons. It must also publicise the application in a newspaper circulating in the local area and place a copy of the notice on the County Council's website. In addition, as a matter of best practice rather than legal requirement, the County Council also places copies of the notice on site to provide local people with the opportunity to comment on the application. The publicity must state a period of at least six weeks during which objections and representations can be made.

### **The application site**

6. The area of land subject to this application ("the application site") is situated to the north of Crooked Lane and The Terrace (A226) in the town of Gravesend. The application site is an irregular shaped piece of land of approximately 0.65 hectares (1.6 acres) which extends roughly from Town Pier in the west to the Clarendon Hotel in the east.
7. The western section of the application site, which fronts the River Thames, consists of formal landscaped gardens with a grass area, paved paths, planting and benches. The eastern section of the site, which lies to the rear of Royal Pier Mews, is less formally landscaped and consists largely of an open space with a grass surface.
8. Access to the site is from the footways of Crooked Lane, The Terrace and Royal Pier Road. The application site is shown in more detail on the plan at **Appendix A**.

### **The case**

9. The application has been made on the grounds that the application site has become a Town or Village Green by virtue of the use of the land by the local inhabitants for a range of recreational activities 'as of right' since the 1940s.
10. Included in the application were 22 statements from local residents detailing their knowledge and use of the application site. A summary of these statements is attached at **Appendix C**.
11. Also submitted in support of the application were a number of photographs showing the application site and use of it by local people, several articles from the local newspaper (the Gravesend Reporter) concerning the site, various planning documents relating to the site or to neighbouring properties and a number of relevant extracts from the Gravesend Corporation minute books (dates ranging between 1951 and 1966) relating to the acquisition and management of the site.

### **Consultations**

12. Consultations have been carried out as required and the following comments have been received.
13. County Councillor for Gravesham East, Mrs. M. Newell, wrote in support of the application on the basis that she had lived in Gravesend for nearly 40 years during which time St. Andrew's Gardens had always been an open space available for recreational use by local residents. She states that the land is of particular attraction to people who come to shop and enjoy the river, and is also a point where walkers start their journey along the Saxon Shore Way. The Borough Council has

responsibility for the upkeep of the gardens and ensuring that it is kept clean and litter free.

14. Borough Councillor Lyn Miller also wrote to express her support for the application.

## **Objections**

15. An objection to the application has been made by Gravesham Borough Council (“the Objector”). There has also been a second objection from Edinburgh House Estates Ltd, who are developers with an interest in the land, but this simply expresses support for Gravesham Borough Council’s objection and makes no further submissions in relation to the merits of the application.

16. The Objector claims to own the entirety of the application site, although it is the applicant’s case that parts of the site have never been acquired by the Objector. The situation is complicated by the fact that historically the land comprised of a number of smaller, separate parcels which have been acquired on a piecemeal basis by the Borough Council over a period of many years (between 1914 and 1988).

17. The objection is supported by extracts from the Borough Council’s terrier and copies of Conveyances for various parts of the site. Although the Objector has been able to prove paper title to some parts of the site, other parts remain unaccounted for. There is therefore an unresolved question regarding ownership but, of itself, this does not preclude the registration of the land as a Town or Village Green.

18. It is the Objector’s case that the application site is held (both expressly and impliedly) for the purposes of ‘*public walks and pleasure grounds*’ under section 164 of the Public Health Act 1875. The Objector has conceded that not all of the contemporaneous documentation can be found, but the evidence that is available ‘*clearly points to the use of this power [i.e. section 164 of the Public Health Act 1875] and the treatment of the land as a public open space by GBC and its predecessors for many years*’.

19. The effect of section 164 of the Public Health Act 1875 is discussed in further detail below, but, in essence, the Objector’s argument is that the use of this power renders use of the land by the local residents ‘by right’ (because, in the Objector’s view, they have the right to use it by virtue of it being held as for the purposes of public walks and pleasure grounds) and not ‘as of right’.

## **Legal tests**

20. 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'?**

21. The definition of the phrase 'as of right' has been considered by the House of Lords. Following the judgement in the *Sunningwell*<sup>1</sup> case, it is considered that if a person uses the land for a required period of time without force, secrecy or permission (*nec vi, nec clam, nec precario*), and the landowner does not stop him or advertise the fact that he has no right to be there, then rights are acquired and further use becomes 'as of right'.
22. In this case, there is no suggestion that the use of the application site by the local residents took place by force or with secrecy. It is clear from the evidence submitted in support of the application and a visit to the site that access to the application site has never been denied. Access is easily achieved via the footways of Crooked Lane, The Terrace and Royal Pier Road.
23. There is, however, a question as to whether the use of the application site for recreation has been by virtue of an implied permission. Where land is held by a local authority, it is important to determine the powers under which that authority originally acquired and now holds the land in order to establish whether the use of the land by the local residents has been 'as of right'.
24. It is the Objector's case that the land is held under the Public Health Act 1875 ("the 1875 Act"). Section 164 of the 1875 Act provides that '*any urban authority may purchase or take on lease, lay out, plant, improve and maintain lands for the purpose of being used as public walks and pleasure grounds...*'. This section also provides powers for the use of such lands to be regulated by byelaws and, later legislation provided for such lands to be closed for limited periods<sup>2</sup> and for the provision of any play equipment and benches<sup>3</sup>.
25. The effect of the 1875 Act has been considered in general terms by the Courts (albeit not specifically in relation to the acquisition of Town or Village Green status). In *Hall v Beckenham Corporation*<sup>4</sup>, the land concerned was held under the 1875 Act and the judge found in that case that "*as far as the local authority is concerned, if the land is purchased under their statutory powers, it is dedicated to the use of the public for the purpose of a park*"<sup>5</sup>. He added later in his judgement "*I think that the Beckenham Corporation are the trustees and the guardians of the park...*"<sup>6</sup>.
26. In *Blake v Hendon*<sup>7</sup>, it was considered that "*the purpose of section 164 of the Act of 1875 is to provide the public with public walks and pleasure grounds. The public are not a legal entity and cannot be vested with the legal ownership of the walks and pleasure grounds which they are to enjoy. But if they could be given the beneficial ownership, that is what they should have...*".

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<sup>1</sup> *R v. Oxfordshire County Council and another, ex parte Sunningwell Parish Council* [1999] 3 All ER 385

<sup>2</sup> Section 44(1) of the Public Health Amendments Act 1890, as amended by section 53 of the Public Health Act 1961

<sup>3</sup> Section 76(1) of the Public Health Acts Amendment Act 1907

<sup>4</sup> *Hall v Beckenham Corporation* [1949] 1 All ER 423

<sup>5</sup> *Hall v Beckenham Corporation* [1949] 1 All ER 423 at 426

<sup>6</sup> *Hall v Beckenham Corporation* [1949] 1 All ER 423 at 427

<sup>7</sup> *Blake (Valuation Officer) v Hendon Corporation* [1961] 3 All ER 601 at 607

27. There is therefore judicial support for the proposition that land held under section 164 of the Public Health Act 1875 is the subject of a statutory trust, with members of the public being the beneficiaries of the trust.
28. The specific issue of the effect of section 164 of the 1875 Act on an application to register land as a Town or Village Green has never been before the Courts. However, the House of Lords have considered the effect of similar provisions (namely the Open Spaces Act 1906) on such an application.
29. In *Beresford*<sup>8</sup>, Lord Walker said this: “where land is vested in a local authority on a statutory trust under section 10 of the Open Spaces Act 1906, inhabitants of the locality are beneficiaries of a statutory trust of a public nature, and it would be very difficult to regard those who use the park or other open space as trespassers... the position would be the same if there were no statutory trust in the strictest sense, but land had been appropriated for the purpose of public recreation”. The suggestion is therefore that use of the land which is held by a local authority under a public statutory trust is ‘by right’ and not ‘as of right’ since the use of the land is no more than the use to which the public is entitled (in their capacity as beneficiaries of the trust).
30. It is the Applicant’s case that the chaotic and incomplete state of the Objector’s records in relation to the acquisition and ownership of the application site mean that it is not possible to conclude definitely that the whole of the application site is held for the purposes of section 164 of the 1875 Act. During the relevant period, significant parts of the application site have not been in the Objector’s legal ownership and as such could not have been formally appropriated for the purposes of public walks and pleasure grounds under the 1875 Act.
31. Even if it can be shown that parts of the site have been acquired for the purposes of the 1875 Act, the Applicant’s position is that there is no decided authority which states conclusively that land held under section 164 of the Public Health Act 1875 is not capable of registration as a Town or Village Green. The Applicant contends that the views expressed by the House of Lords in *Beresford* (see paragraph 29 above) did not form part of the main judgement (which was not concerned with and did not address the effect of the 1875 Act) and the House of Lords expressly reserved their position on that point.
32. Were it the case that there was clear documentary evidence to suggest that the whole of the application site had been formally appropriated under the provisions of the 1875 Act then it is arguable that this would present a ‘knock-out blow’ to the application. However, that is not the case here. The Objector has produced evidence that small parts of the land have been expressly acquired for the purposes of public walks and pleasure grounds under the 1875 Act. In relation to other parts, the relevant documentation is missing and the Objector places reliance on hand-written entries into its own records of land purchases and odd extracts from Committee minutes.

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<sup>8</sup> *R(Beresford) v Sunderland City Council* [2003] UKHL 60 at paragraph 87

33. In effect, the County Council is being asked by the Objector to draw inferences from the evidence available that the whole of the application site has been acquired specifically for the purposes of the 1875 Act. It would seem unsatisfactory to proceed on this basis where the County Council's decision in relation to this application has such a significant bearing on the future of the application site. In order for a decision to be taken in relation to the application, the County Council needs to be clear, as a finding of fact, as to the basis of the use of the land and, in particular, whether such use was 'as of right'. It is not, on the evidence currently available, possible for the County Council to draw such conclusions.

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

34. Lawful sports and pastimes can be commonplace activities including dog walking, children playing, picnicking and kite-flying. It is not necessary to demonstrate that both sporting activities *and* pastimes have taken place since the phrase 'lawful sports and pastimes' has been interpreted by the Courts as being a single composite group rather than two separate classes of activities<sup>9</sup>.

35. Legal principle does not require that rights of this nature be limited to certain ancient pastimes (such as maypole dancing) or for organised sports or communal activities to have taken place. The Courts have held that '*dog walking and playing with children [are], in modern life, the kind of informal recreation which may be the main function of a village green*'<sup>10</sup>.

36. In this case, the statements provided by local residents demonstrate that the land has been used as a place to visit, to meet friends and socialise, to sit and read or watch the boats on the river, to sunbathe, to have lunch and as a play area for children. **Appendix C** shows the full range of activities claimed to have taken place.

37. In addition to the evidence of use, those providing statement have also detailed the use by others that they have seen taking place on the application site. This includes fishing, socialising, cycling, ball games, dog-walking and people eating their lunch.

38. The Objector does not dispute that most of the activities (with the exception of people walking through the site from A to B on the footpaths) are capable of falling within the scope of lawful sports and pastimes.

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

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

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

<sup>10</sup> *R v Suffolk County Council, ex parte Steed* [1995] 70 P&CR 487 at 508 and approved by Lord Hoffman in *R v. Oxfordshire County Council and another, ex parte Sunningwell Parish Council* [1999] 3 All ER 385



*“locality”*

40. The definition of locality for the purposes of a village green application has been the subject of much debate in the courts and there is still no definite rule to be applied. In the *Cheltenham Builders*<sup>11</sup> case, it was considered that ‘...at the very least, Parliament required the users of the land to be the inhabitants of somewhere that could sensibly be described as a locality... there has to be, in my judgement, a sufficiently cohesive entity which is capable of definition’. The judge later went on to suggest that this might mean that locality should normally constitute ‘some legally recognised administrative division of the county’.
41. At part 6 of the application form, the Applicant specifies the locality as ‘Gravesend’. The Objector accepts that Gravesend would be capable of constituting a locality, but denies that use of the land has been confined to the inhabitants of Gravesend.
42. The Courts have found that use need not be exclusively by the residents of the locality, although there is a need to demonstrate that use has been predominantly by the residents of the locality<sup>12</sup>. There is certainly evidence to suggest that use is not exclusively by the residents of the locality, but this is a matter of fact and degree that cannot be resolved on the evidence currently available and requires further clarification. A Public Inquiry would allow evidence to be heard and a more informed conclusion to be reached with regard to this issue.

*“a significant number”*

43. The word “significant” in this context does not mean considerable or substantial: ‘a neighbourhood may have a very limited population and a significant number of the inhabitants of such a neighbourhood might not be so great as to properly be described as a considerable or a substantial number... what matters is that the number of people using the land in question has to be sufficient to indicate that the land is in general use by the community for informal recreation rather than occasional use by individuals as trespassers’<sup>13</sup>. Thus, what is a ‘significant number’ will depend upon the local environment and will vary in each case depending upon the location of the application site.
44. In this case, the application has been accompanied by 22 statements of use. These statements are but a representative sample of the type of use that has taken place on the land and they provide useful evidence regarding the use of the land by other people.
45. In any case, it is clear that the Objector has been fully aware of the use of the land by local people and as such it is not necessary to consider this point in detail.

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

46. 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

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<sup>11</sup> *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at page 90

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

<sup>13</sup> *R (Alfred McAlipne Homes Ltd.) v Staffordshire County Council* [2002] EWHC 76 at paragraph 71

case, the application was submitted in 2008 and therefore the relevant twenty-year period (“the material period”) is 1988 to 2008.

47. It is clear from the statements of use provided by the Applicant and the Objector’s assertions regarding the acquisition of the land for the purposes of public walks and pleasure grounds that the land has been available for use for a considerable period. Newspaper articles record that part of the gardens were officially opened by the Mayor of Gravesend in June 1952<sup>14</sup>.
48. However, there are deficiencies in the user evidence insofar as many of the statements provided are vague in their description of the duration, regularity and type of use. For example, several of those people completing statements state that they have lived in the area and known the land for a long period, but do not provide specific information as to their *actual* use of the land (dates, frequency etc) during that time. It is also unclear as to whether those who used the application site to play as children prior to the material period have continued to use the application site for other activities during the material period.
49. There is also a question as to whether use of the application site has been without interruption throughout the material period. The Objector asserts that the application site has, at various points during the material period, been closed for the purpose of undertaking various works such as the removal of play equipment, the reinstatement of the river wall and the creation of a riverside walk. On the other hand, the Applicant contends that access to the site has never been restricted.
50. Once again, this is an area which requires further investigation and cannot be resolved on the evidence currently available.

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

51. 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.
52. In this case, there is no suggestion that the use of the land has 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. The open nature of the site means that people need only step onto the application site from a public highway without meeting any barriers or obstructions. The only way in which access could be prevented is to fence the site in its entirety: no mention is made of this ever having happened by any of the witnesses and there is no evidence of the remains of any fencing visible on the site itself.
53. 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.

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<sup>14</sup> See article entitled ‘*Will be focal point of re-planned town*’ in the Gravesend Reporter, 21<sup>st</sup> June 1952

## Conclusion

54. Although the relevant regulations<sup>15</sup> provide a framework for the initial stages of processing the application (e.g. advertising the application, dealing with objections etc), they provide little specific 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. This involves appointing an independent Inspector to hear the relevant evidence and report his/her findings back to the Registration Authority.
55. Such an approach has received positive approval by the Courts, most notably in the *Whitmey*<sup>16</sup> case in which the judge 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'*.
56. In determining an application to register land as a new Town or Village Green, the County Council must be satisfied that each of the legal tests relating to registration have been *"properly and strictly proved"*<sup>17</sup>. 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.
57. Clearly, in this case there is a significant issue with regard to whether the use of the application site has been 'as of right'. Although there is strong evidence that parts of the site are held under section 164 of the 1875 Act, the Objector has not been able to produce all of the necessary documentation in respect of the remaining sections, and key parts of the evidence (such as records of decisions to appropriate land for public walks and pleasure grounds) are incomplete or missing. Whilst it is arguable that an inference could be drawn that the whole of the land is held under the 1875 Act, it is an entirely different matter for the County Council to draw legal conclusions without the evidence being tested in full and being subject of cross-examination by the parties.
58. Putting the effect of the 1875 Act aside, there are issues with the evidence of use that has been presented in support of the application and there are many questions of fact arising from the statements submitted in support of the application. There are also further disputes regarding the closure of the application site and any resulting interruption to use during the material period.

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<sup>15</sup> Commons Registration (England) Regulations 2008

<sup>16</sup> *R (Whitmey) v Commons Commissioners* [2005] QB 282 at 302

<sup>17</sup> *R v Suffolk County Council, ex parte Steed* [1997] 1EGLR 131 at 134

59. The County Council is required to take a decision based upon the facts presented to it by the parties; it has no investigative duty in respect of an application to register land as a Town or Village Green and nor has it any general power to inquire into shortfalls in the evidence. This is a case where there is no clear evidence of a 'knock-out blow', but where there is also some uncertainty regarding whether or not the legal tests required for registration have been met. It is a case where further information is required to clarify the issues and overcome the factual disputes in the evidence.

60. As such, it seems appropriate that the matter be referred to a Public Inquiry where the main issues can be explored in further detail.

### **Recommendations**

61. 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.

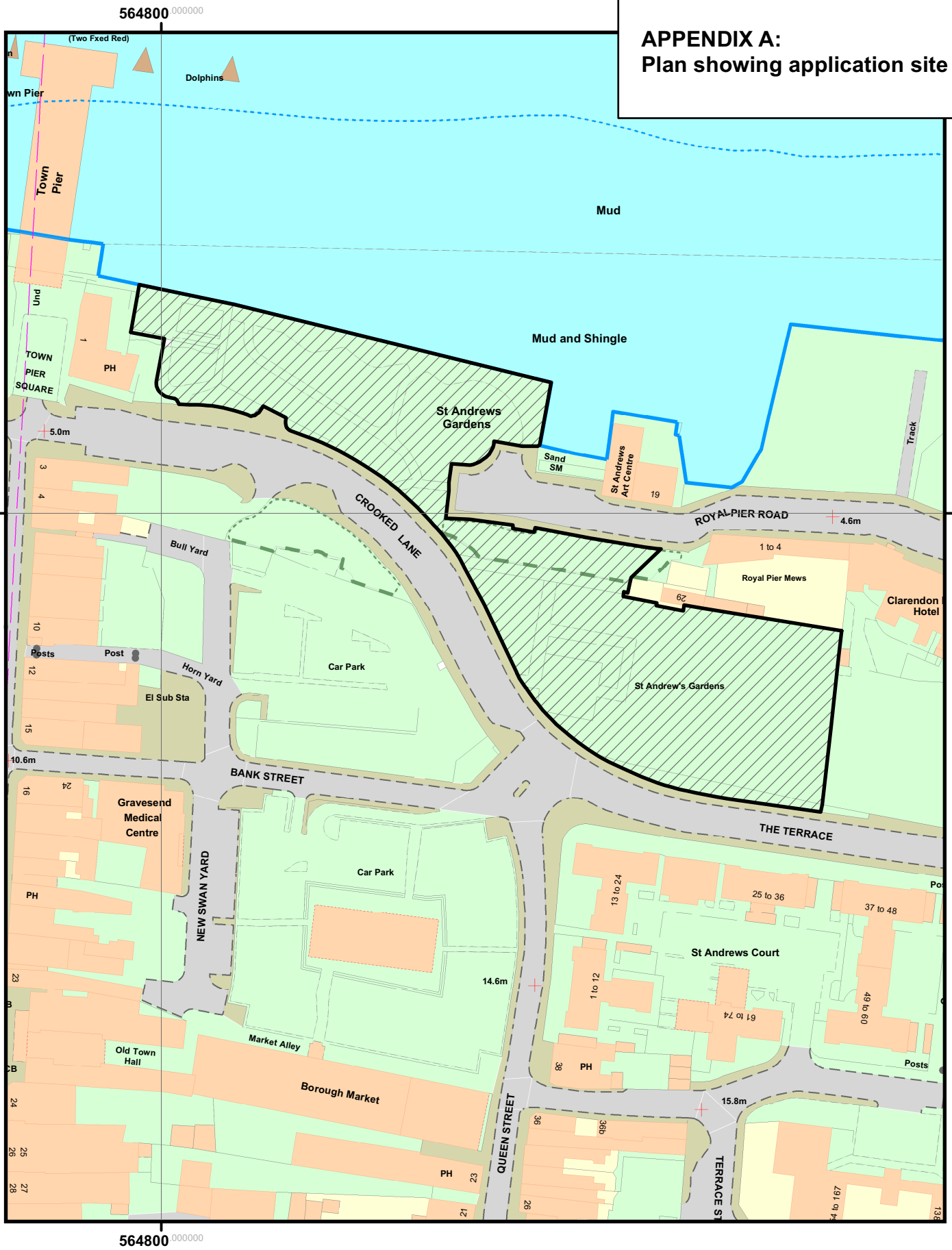
### **Background documents**

APPENDIX A – Plan showing application site

APPENDIX B – Copy of application form

APPENDIX C – Summary of statements submitted in support of the application

**APPENDIX A:  
Plan showing application site**



Scale 1:1250

**Land subject to Village Green application  
at St. Andrew's Gardens, Gravesend**



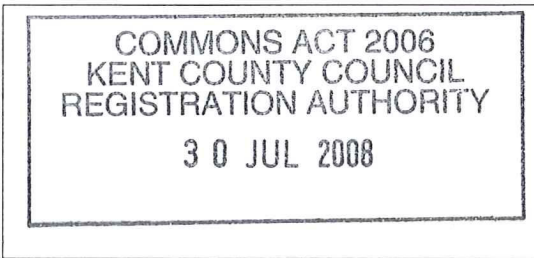
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Commons Act 2006: Section 15

# Application for the registration of land as a Town or 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.

Kate Beswick  
Room IH-2  
Invieta House

County Hall  
Maidstone  
Kent  
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.

**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.

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

Name:

Full postal address:

Postcode

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 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:

St Andrew's Gardens.

Location:

Crawesend, Kent.

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:

Crawesend, Kent

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).

St. Andrew's Gardens (as outlined in exhibit A) is land on which for more than twenty years a significant number of the inhabitants of Gravesend, have indulged in lawful sports and pastimes as of right and continue to do so.

Please see:

Exhibit A, Location Map, St. Andrew's Gardens

Exhibit B, Statement Suzanne Couves

Exhibit C, Statement. Robert Victor Couves.

Exhibit D, Statement. Kulbinder Dio.

Exhibit E, Statement. Jonathan Roger Clay

Exhibit F, Statement. Martin McKay

Exhibit G, Statement. Claire Brown

Exhibit H, Statement Andrew Maxted.

Exhibit I, A Brief History

Exhibit J Recognition in Planning Application.

Exhibit. K Recognition in Planning Application Appeal.

Exhibit. L Green and Protection Site.

Exhibit M Statement M.A. Larkin.

Exhibit N Gravesend Borough Local Plan and Review statement outlined in red.

Exhibit O photograph - young people enjoying the open space.

Exhibit P photograph - Andy Daisley - friend playing guitar.

Exhibit Q photograph - views across St. Andrew's Gardens towards the Thames & the PHA.

Exhibit R photograph - ladies enjoying the upper area St Andrew's Gardens.

Exhibit S photograph - views from upper area St Andrew's Gardens.

Exhibit T photograph - St Andrew's Gardens, walking the dog.

**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).

**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**

Crawesham Borough Council.  
Civic Centre  
Windmill Street  
Crauesend  
Kent.

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

**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).

**10. Supporting documentation**

**Note 10**

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

Please use a separate sheet if necessary.

Exhibit A - Location map St. Andrew's Gardens Crauesend  
Exhibit B - Statement, Suzanne Couves.  
Exhibit C - Statement, Robert Victor Couves  
Exhibit D - Statement, Kulbinder Dio  
Exhibit E - Statement, Jonathan Roger Clay  
Exhibit F - Statement, Martin McKay  
Exhibit G - Statement Claire Brown  
Exhibit H - Statement Andrew Marted

Exhibit I - A Brief History

Exhibit J - Recognition in Planning Application.

Exhibit K - Recognition in Planning Application Appeal.

Exhibit L - Green Grid Protection Site.

Exhibit M - Statement M A Larkin.

Exhibit N - Crawesham Borough Local Plan and Review

## 10. Supporting documentation cont. . . .

cont exhibit N - statement outlined in red.

Exhibit O - photograph - young people enjoying the open space

P - photograph - Andy Dausley & friend playing guitars.

Exhibit Q - photograph - views across St Andrews Gardens towards the Thames & the PLA.

Exhibit R - photograph - ladies enjoying the upper area St Andrews Gardens.

Exhibit S - photograph - views from upper area St. Andrews Gardens.

Exhibit T - photograph - St Andrews Gardens & walking the dog

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

**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.*

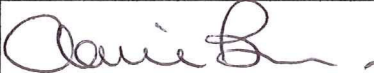
**Note 12**

*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:

26-07-08.

Signatures:



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**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.*

<sup>1</sup> *Insert full name (and address if not given in the application form).*

I...CLAIRE BROWN...,<sup>1</sup> solemnly and sincerely declare as follows:—

<sup>2</sup> *Delete and adapt as necessary.*

1.<sup>2</sup> I am ((the person (~~one of the persons~~) who (has) (~~have~~) signed the foregoing application)) ((~~the solicitor to (the applicant) (<sup>3</sup>one of the applicants~~)).

<sup>3</sup> *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.

<sup>4</sup> *Complete only in the case of voluntary registration (strike through if this is not relevant)*

4.<sup>4</sup> 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/*

<sup>4</sup> 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  
CLAIRE BROWN.  
at Gravesend Kent  
this 28<sup>th</sup> day of July 2008

*Claire R.*

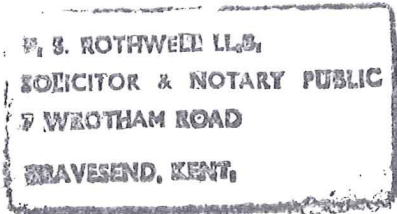
Signature of Declarant

Before me \*

Signature:

*[Signature]*

Address:



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.

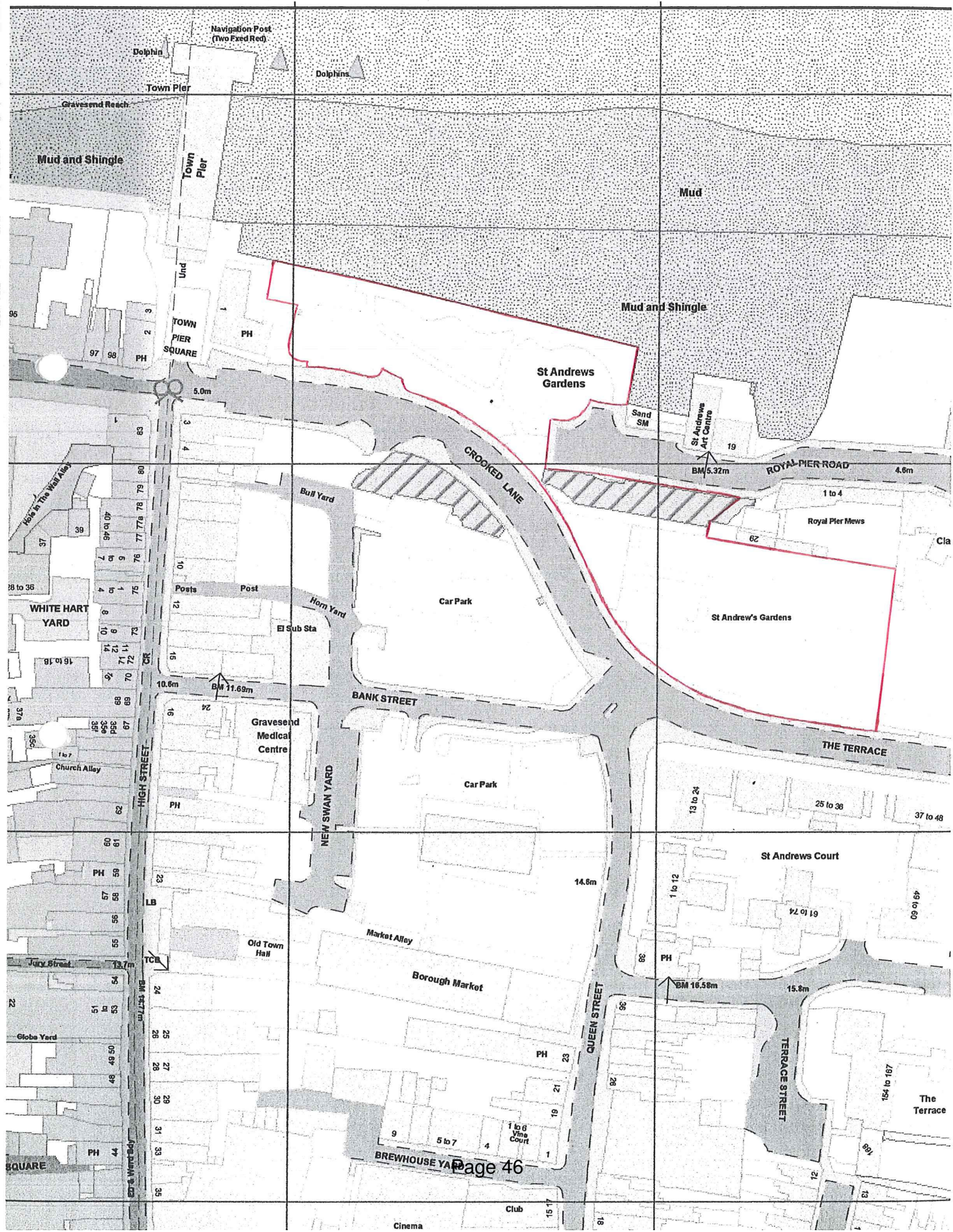
REMINDER TO OFFICER TAKING DECLARATION:

Please initial all alterations and mark any map as an exhibit

Exhibit A.

564800

564900





**APPENDIX C:  
Summary of statements submitted in  
support of the application**

**Suzanne Couves (Exhibit B)**

- Has known the application site since moving to Gravesend area in 1976.
- Father-in-law (and later his granddaughter) lived in Royal Pier Road and would often walk through gardens to visit them.
- when daughter was young (1980s and 1990s), would often sit in the garden area: *“the grass was a well-used play area where people of all ages would picnic and sunbathe. Children would fly kites and play ball games. Children would fly kites and play ball games.”*
- *“local people and visitors have always used this open area, close to the High Street and shops, as it is the only area where one can sit and enjoy the river because the promenade open space is quite a long walk from the centre of the town...”*

**Robert Couves (Exhibit C)**

- Born in 1940 in Royal Pier Road. Recalls playing on open wasteland long before the formal gardens and play areas were officially opened.
- Always played and walked through the application site to and from school, town and to the station. There was a playground that was well used by local children, but this was removed and the area became an open space for ball games.
- There were benches set out and many people would sit out and eat their sandwiches at lunchtime.
- *“I have always remembered these gardens as a well used public space enjoyed by local residents and visitors alike”.*

**Kulbinder Dio (Exhibit D)**

- Has known the application site as a recreation area used by many local people for in excess of 35 years.
- Used to play there was a child along with other siblings. There used to be a play area which had climbing frames and a roundabout (now removed).
- Often go past this area and see children kicking a ball around or playing chase or people walking their dogs.

**Jonathan Clay (Exhibit E)**

- Has lived in Gravesend since 1993 and has used the application site as a place to visit, meeting friends as well as watching boats and other activities on the river.
- *“The Gardens are used by a significant number of people from the locality for sports and pastimes, and I am told and I believe that this has taken place for more than twenty years”.*
- Has personally observed a range of other activities taking place on the land, including fishing, people meeting friends, cycling, ball games, dancing, singing, eating and drinking, dog-walking.
- Use of the land has at all times been open, without force and without permission.

**Martin McKay (Exhibit F)**

- Has lived in Gravesend since 1996 and has know the application site as a place to visit during that time. Has used the land for meeting friends, reading, walking as well as watching boats and other activities on the river.
- Has personally observed a range of other activities taking place on the land, including fishing, people meeting friends, cycling, ball games, dancing, singing, eating and drinking, dog-walking.

**Claire Brown (Exhibit G)**

- Has lived in Gravesend since 1987 (in Royal Pier Road since 2002). Has used the land to exercise with dog, meeting friends and watching the boats and other activities on the river.
- Has personally observed a range of other activities taking place on the land, including football, picnics, playing musical instruments, dog-walking, sunbathing, exercising pets, cycling, children playing, reading and people having their lunch breaks.

**Andrew Maxted (Exhibit H)**

- Has lived in Gravesend since 2002.
- *“St Andrews Gardens are in constant use by local people who benefit from the open space, river front access, open play area and a place to rest and relax at all times of day”.*
- Has personally observed a range of other activities taking place on the land, including fishing, ball games, picnics, dog-walking, and socialising.

**Mr. M. Larkin (Exhibit M)**

- Has lived in Gravesend since 1945. Gravesend Corporation laid out the land with a garden and play area in 1952 and improved it in later years.
- More recently, the application site has become neglected and the play areas and seating removed, but the area is still used by local people for fishing, ball games, children playing, and socialising. It is also an area that attracts local amateur artists.
- Use the area as part of a riverside walk for the Gravesend Heritage Association for both adults and children. It is a safe place for children to play and for adults to rest.

**Lynsey Alston (Exhibit BB)**

- Has lived in Gravesend since 1978 (opposite the application site for the last 2 years). Used the application site as a place to meet friends and play when younger and, more recently, as a place to sit and read.
- Has personally observed a range of activities taking place on the land, including socialising, cycling, football, dog-walking as well as eating and drinking.
- Use has been open, without force and without permission at all times.

**Maureen Martin (Exhibit CC)**

- Has lived in Gravesend since 1994. During that time, has used the application site as a place to take grandchildren to picnic and play, and as a place to visit with friends and family to watch the activity on the river.
- Has personally observed a range of activities taking place on the land, including socialising, cycling, football, dog-walking as well as eating and drinking.
- Use has been open, without force and without permission at all times.

**Helen Aspinal (Exhibit EE)**

- Has lived in Gravesend since 1999, but played on the site as a child when visiting aunt (1967 to 1975).
- Use has been open, without force and without permission at all times.

**Raymond Bardoe (Exhibit FF)**

- Has lived in Gravesend since 1971. During that time, has used the application site as a place to take visiting friends from outside the area and to play with own children when they were young.
- Has personally observed a range of activities taking place on the land, including fishing, socialising, cycling, football, dog-walking as well as eating and drinking.
- Use has been open, without force and without permission at all times.

**Jennifer Bardoe (Exhibit GG)**

- Has lived in Gravesend since 1965. During that time, has used the application site as a place to meet and enjoy time with elderly father, read, eat lunch, and play with children when they were younger.
- Has personally observed a range of activities taking place on the land, including fishing, socialising, cycling, football, dog-walking as well as eating and drinking.
- Use has been open, without force and without permission at all times.

**Daniel Bardoe (Exhibit HH)**

- Has lived in Gravesend since 1974. During that time, has used the application site as a place to play as a child and in later years to enjoy time with friends.
- Has personally observed a range of activities taking place on the land, including fishing, socialising, cycling, football, dog-walking as well as eating and drinking.
- Use has been open, without force and without permission at all times.

**Mrs. J. Jaques (Exhibit MM)**

- Has lived in Gravesend since 1970. During that time has used the application site as a place to sit and look at the river and to eat lunch.
- Has personally observed many games and activities taking place on the land.
- Use has been open, without force and without permission at all times.

**Mr. P. Jaques (Exhibit NN)**

- Has lived in Gravesend since 1970. During that time has used the application site as a place to sit and look at the river.
- Has personally observed many games and activities taking place on the land.
- Use has been open, without force and without permission at all times.

**F. Jaques (Exhibit OO)**

- Has lived in Gravesend since 1985. During that time has used the application site as a place to sunbathe, socialise and eat lunch.
- Has personally observed many games and activities taking place on the land.
- Use has been open, without force and without permission at all times.

**Alida Christensen (Exhibit PP)**

- Has lived in Gravesend since 1988. Has used the application site to meet friends and play there as a teenager.
- Has personally observed a range of other activities taking place on the land including fishing, socialising, cycling, football, dog-walking and eating and drinking.
- Use has been open, without force and without permission at all times.

**Mr. J. Howell (Exhibit QQ)**

- Has lived in Northfleet since 1946. Was working for Gravesham Borough Council when St. Andrew's Gardens was created in the early 1960s for use as a leisure area for the general public. Made regular visits to view the river scene.
- Has personally observed a range of other activities taking place on the land, including fishing, picnics, socialising, dog-walking and football. Know from personal experience that these activities have taken place since at least the mid-1960s.
- Use has been open, without force and without permission at all times.

**Alan King (Exhibit RR)**

- Has lived in Gravesend since 2003 and has used application site to meet friends, visit, read and sunbathe.
- Has personally observed a range of other activities taking place on the land, including fishing, socialising, football, dog-walking, eating and drinking.

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