



AGENDA

Kent County Council

REGULATION COMMITTEE MEMBER PANEL

Tuesday, 25th May, 2010, at 1.00 pm
Canterbury City Council, Military Road,
Canterbury

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

Tea/Coffee will be available 15 minutes before the meeting

UNRESTRICTED ITEMS

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

1. Membership
Conservative: Mr M J Harrison (Chairman), Mr A D Crowther (Vice-Chairman), Mr R E Brookbank, Mr T Gates.

Liberal Democrat: Mr S J G Koowaree.
2. Declarations of Interest by Members for items on the agenda
3. Application to register land at Dumpton Park Avenue at Broadstairs as a new Town Green (Pages 1 - 24)
4. Application to register land at Brickfields, Mill Lane, Bridge 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

Monday, 17 May 2010

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Application to register land at Dumpton Park Drive, Broadstairs as a new Town Green

A report by the Director of Environment and Waste to Kent County Council's Regulation Committee Member Panel on Tuesday 25th May 2010.

Recommendation: I recommend that the County Council informs the applicant that the application to register the land at Dumpton Park Drive, Broadstairs has not been accepted.

Local Members: Mr. R. Bayford and Mr. B. Hayton

Unrestricted item

Introduction

1. The County Council has received an application to register land at Dumpton Park Drive, Broadstairs as a new Town Green from local resident Mrs. L. Coussins ("the Applicant"). The application, dated 26th January 2009, was allocated the application number VGA608. A plan of the site is shown at **Appendix A** to this report and a copy of the application form is attached at **Appendix B**.

Procedure

2. The application has been made under section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2008.
3. Section 15 of the Commons Act 2006 enables any person to apply to a Commons Registration Authority to register land as a Village Green where it can be shown that:
 - 'a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;*
4. In addition to the above, the application must meet one of the following tests:
 - **Use of the land has continued** 'as of right' until at least the date of application (section 15(2) of the Act); or
 - **Use of the land 'as of right' ended no more than two years prior to the date of application**, e.g. by way of the erection of fencing or a notice (section 15(3) of the Act); or
 - **Use of the land 'as of right' ended before 6th April 2007** and the application has been made within five years of the date the use 'as of right' ended (section 15(4) of the Act).
5. As a standard procedure set out in the regulations, the Applicant must notify the landowner of the application and the County Council must notify every local authority. The County Council 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 small area of grass of approximately 150 square metres situated between property numbers 132 and 134 Dumpton Park Drive at Broadstairs. It is bounded on two sides by walls and fencing, but open on the remaining two sides. Access to it is via the footway of Dumpton Park Drive.

The case

7. 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.
8. Included in the application were twelve statements 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 evidence in support of the application is attached at **Appendix C**.
9. Also received in support of the application were a number of photographs showing community events taking place, use of the land by local residents and maintenance of the application site by local residents. Several newspaper cuttings reporting a community party that took place on 11th July 2009 were also provided, as well as a CD containing photographs and a video of the event. In addition, a petition in support of the application containing 73 names was included.
10. Letters of support from the local Ward Councillors (Cllrs. Russell and Peppiatt), the Deputy Mayor of Broadstairs and St. Peter’s (Cllr. D. Lawson) and the former local MP Dr. Stephen Ladyman were also submitted in support of the application.

Consultations

11. Consultations have been carried out as required and the following comments have been received.
12. The Broadstairs Society wrote to express its support for the application but did not have any evidence to offer.
13. Cllr. C. Wells also wrote in support of the application, stating that the local residents had enjoyed the use of the land for community and amenity purposes over a number of years. He states that the land has traditionally been a meeting place for dog walkers and horse riders, and has been used for a number of community events.

Landowner

14. The application site is unregistered with the HM Land Registry and there is no known owner. However, Thanet District Council ("the District Council") claims to have an interest in the land and has submitted an objection to the application.
15. The objection is made on the following grounds:
- Due to the size of the site, it is questionable as to whether it could sustain all the activities claimed to have taken place;
 - Use has not been by a significant number of the residents of the locality;
 - Residents living within several hundred metres of the same road cannot be considered either a neighbourhood or a locality for the purposes of Village Green legislation; and
 - A number of those who have made statements have not clearly stated that they have actually used the land - they have merely indicated that they would support such use.

Legal tests

16. 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'?

17. The definition of the phrase 'as of right' has been considered by the House of Lords. Following the judgement in the *Sunningwell*¹ 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'.
18. In this case, there is no evidence to suggest that the use of the land by local residents has not been 'as of right'. In its objection, the District Council does not seek to dispute the evidence of use, nor has it adduced evidence to suggest that such use has been ever been challenged or hindered in any way.

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

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

19. 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 activities².
20. 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*'³.
21. In this case, the evidence demonstrates that the land has been used for a number of recreational activities, as well as local community events. The summary of evidence of use by local residents at **Appendix C** shows the full range of activities claimed to have taken place.
22. The District Council questions whether, given the small size of the application site, it would have been capable of sustaining the activities alleged to have taken place. The physical nature of the site will restrict the type of activities that are capable of taking place on it. Clearly, it does not lend itself to the types of sports (e.g. football or cricket) that one might expect to see on a larger application site, but it is capable of supporting a number of pastimes, including those referred to in the application. A pastime is an activity which amuses and serves to make time pass agreeably: sitting in deckchairs, children playing, dog walking and socialising with neighbours all fall within this definition. Since 'lawful sports and pastimes' within the context of the Act are one composite group (see above), it matters not that the vast majority of activities relied upon constitute only pastimes.
23. The District Council also criticises the quality of the evidence submitted in support of the application, stating that whilst many people record their observations of use, there is little evidence of actual use of the application site. It is true that there are flaws in the user evidence. Whilst providing a broad overview of the use of the land in general terms, there is little in the way of detail as to the exact nature of the use, the frequency and regularity of such use, or the duration of such use.
24. Reference is made in the application form and in a few of the statements to community events such as croquet, barbeques and picnics, but there is no information regarding the dates or frequency of such events, or whether they have been taking place throughout the relevant period. In support of the application, a number of photographs were subsequently submitted showing a community bonfire night and a fete (the latter also being evidenced by newspaper articles). However, these events appear to have taken place during 2009, after

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

³ *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

the submission of the application, and are therefore outside the relevant twenty year period (which runs retrospectively from the date of the application, i.e. January 1989 to January 2009).

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

25. The right to use a 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. Identifying the relevant “locality” or “neighbourhood within a locality” can be problematic but it does not matter if the applicant fails to precisely defined the correct locality in his application; the burden is not on the applicant to establish the correct locality at the time of application, but rather on the Registration Authority to satisfy itself that there is a relevant locality (or neighbourhood) at the time of registration⁴.

“locality”

26. 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 Builders⁵ 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*’.

27. At part 6 of the application form, the Applicant specifies the locality as ‘Dumpton Park’. This is not a legally recognised administrative boundary and thus would not satisfy the requisite legal test. It is therefore necessary to consider whether there is a relevant locality.

28. As shown on the plan at **Appendix D**, the application site is situated within the Thanet District Council ward of Viking. It is also within the County Parish of Broadstairs which covers a much wider area. Both of these areas are recognised at law and could constitute a relevant locality. Alternatively, it has also been held by the Courts that an ecclesiastical parish could form a recognised locality since they are known to the law and have defined boundaries⁶. The application site falls within the ecclesiastical parish of St Peter in Thanet and this would be equally capable of constituting a locality.

“a significant number”

29. 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*

⁴ *Oxfordshire County Council v Oxford City Council* [2006] 4 All ER 817

⁵ *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at page 90

⁶ *R (Laing Homes Ltd.) v Buckinghamshire County Council* [2003] 3 EGLR 70

*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*⁷. 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.

30. In this case, the application is supported by evidence of use from 10 households, each situated within a maximum of 150 metres from the application site (as shown on the plan at **Appendix E**). Even taking the smallest potential locality (in geographical terms), which would be the Viking ward of Thanet District Council, evidence of use from 10 households living immediately adjacent would be insufficient to demonstrate that the land had been use by the community as a whole.

31. In cases where the "locality" is so large that it is difficult to show that the application site has been used by a significant number of people from that locality (as is the case here), it will be necessary to consider whether there is a relevant "neighbourhood" within the wider locality.

"neighbourhood within a locality"

32. On the subject of neighbourhood, the Courts have held that *'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 has 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*⁸.

33. Although it is accepted that, in all probability, only those living closest to a piece of land are likely to use it for recreational purposes, there is still a requirement for the purposes of Village Green registration to show that the land has been used by the residents of a defined area or, as suggested by LJ Pill in a case known as Steed⁹, *'something more than a place or geographical area – rather a distinct and identifiable community such as might lay reasonable claim to a town or village green'*.

34. There is, of course, no generally accepted or recognised number of local inhabitants required in order for the use of a piece of land to give rise to the acquisition of Village Green rights. However, had it been Parliament's intention that use of any piece of land by a small number of people living in just one nearby street, then this would undoubtedly have opened the floodgates for Village Green applications across the country. The very nature of a 'village' green implies that it has been used by a not insignificant number of local residents from a recognisable community – a community which, at the very least perhaps, consists of a grouping of streets or roads which form a cohesive entity.

35. The District Council is of the view that *'the residents live along several hundred metres of road which can hardly be considered a neighbourhood or indeed a*

⁷ *R (Alfred McAlpine Homes Ltd.) v Staffordshire County Council* [2002] EWHC 76 at paragraph 71

⁸ *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at page 92

⁹ *R v Suffolk County Council, ex parte Steed and another* (1995)

*locality*¹⁰. In response, the Applicant states that the group of houses in question form a discrete geographical area stretching along Dumpton Park Road between its junctions with Salisbury Avenue and Bay View Road, being bounded to the rear by the railway line and to the front by a steep escarpment on the seaward side of Dumpton Park Road. The Applicant also adds *'it is, in its culture and regard by the inhabitant of it, a village and the area applied for is its village green. This, however, does not mean that only the people who live along this stretch of Dumpton Park Drive use the green. Many people from the further locality of the Bay View Road and Salisbury Avenue houses use it to exercise their dogs and stop and chat with their neighbours as well as attending community activities...'*¹¹.

36. Until recently, it had been thought that use of an application site should be predominantly by residents of the neighbourhood or the locality (i.e. it was not necessary for use to be exclusively by the residents of a neighbourhood or locality). However, the 'predominance test' has now been removed¹² and use by people from outside the relevant neighbourhood or locality is to be disregarded. In this respect there appears to be some uncertainty regarding the exact boundaries and extent of the neighbourhood relied upon by the Applicant in this case; she asserts that the relevant neighbourhood consists only of the few houses along Dumpton Park Drive but adds that people from outside that neighbourhood also use the site. Under the new interpretation, their use would have to be disregarded.
37. The question to be considered is whether the small group of houses along Dumpton Park Drive are capable of constituting a qualifying neighbourhood. It is not clear in this case that the neighbourhood asserted by the Applicant is a 'neighbourhood' in the true sense of the word. It is neither a separate cohesive entity nor an identifiable community within the wider locality; rather it is a group of houses that are geographically proximate to the immediate vicinity of the application site.
38. The fact that the neighbourhood as relied upon by the Applicant is unsuitable is further qualified by the requirement for use to have been in general use by the local community. It is true that a qualitative, rather than quantitative, approach is required, but if the neighbourhood is unduly restricted, a reasonable landowner might conclude that use of the application site was by a few individuals living in the immediate vicinity rather than the general local community as a whole asserting a right to use the land as a Town Green; as such, s/he would have no reason to resist such use. The Applicant states that there is evidence of use from the wider community (i.e. from Salisbury Avenue and Bay View Road) but has not adduced such evidence in support of the application. On the evidence currently available, therefore, it cannot be said that use has been by a significant number of the residents of the locality.

¹⁰ See letter of objection from Mr. J. Thomson on behalf of Thanet District Council dated 25/11/09

¹¹ See letter from Mrs. L. Coussins (the Applicant) dated 07/05/10 at pages 4-5

¹² Following the decision in *R(Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust) v Oxfordshire County Council* [2010] EWHC 530 (Admin)

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

39. 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. Where there has been no challenge to the use of the land and use 'as of right' is continuing, the twenty-year period is to be calculated retrospectively from the date that the application was made.

40. In this case, the application was made in January 2009. Therefore, the relevant twenty-year period ("the material period") is 1989 to 2009.

41. The vague nature of the witness statements means that it is difficult to pinpoint exactly when each of the witnesses began using the applications site. They have, however, provided dates when they first moved to the area and it is possible to draw an inference that their use has been since that time, but this is only an inference and it is not possible to conclude decisively on the information available.

(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)?

42. The Commons Act 2006 requires use of the land to have taken place 'as of right' up until the date of application or, if such use has ceased prior to the making of the application, to fulfil one of the alternative criterion set out in sections 15(3) and 15(4) of the 2006 Act (as set out at paragraph 4 above).

43. In this case, there is no suggestion from the evidence submitted both in support of and in objection to the application that the use of the land by the local residents for the purposes of informal recreation has ceased prior to the making of the application.

44. Therefore, it appears that use of the land has continued up until the date of application and as such it is not necessary to consider the other tests set out in sections 15(3) and 15(4) of the Act.

Conclusion

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

Recommendation

46. I recommend that the County Council informs the applicant that the application to register the land at Dumpton Park Drive, Broadstairs has not been accepted.

Accountable Officer:

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

Case Officer:

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

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

Background documents

APPENDIX A – Plan showing application site

APPENDIX B – Copy of application form

APPENDIX C – Table summarising user evidence

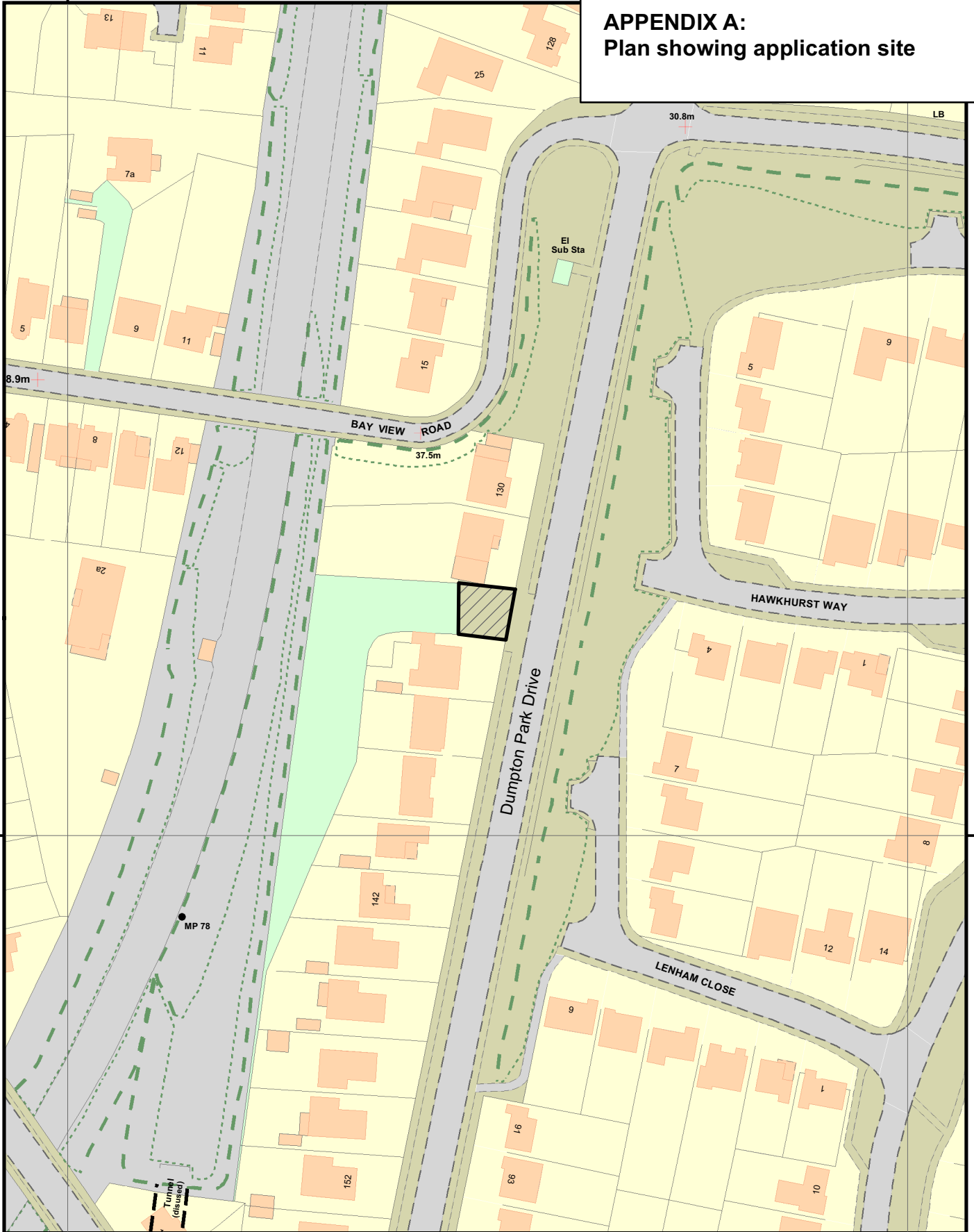
APPENDIX D – Plan showing the District Council wards

APPENDIX E – Plan showing the area within which users reside

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APPENDIX A: Plan showing application site



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Land subject to Village Green application
at Dumpton Park Drive, Broadstairs



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**APPENDIX B:
Copy of application form**

FORM CA9

Commons Act 2006: section 15

**Application for the registration of land
as a new Town or Village Green**



This section is for office use only

Official stamp of the Registration Authority
indicating date of receipt:

<p>COMMONS ACT 2006 KENT COUNTY COUNCIL REGISTRATION AUTHORITY 27 JAN 2009</p>
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Application number:

608

VG number allocated at registration
(if application is successful):

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Note to applicants

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

- All applicants should complete parts 1–6 and 10–12.
- Applicants applying for registration under section 15(1) of the 2006 Act should, in addition, complete parts 7 and 8. Any person can 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 part 9. Only the owner of the land can apply under section 15(8).
- There is no fee for applications under section 15.

Note 1

*Insert name of Commons
Registration Authority*

1. Commons Registration Authority

To the: KENT COUNTY COUNCIL

<p><i>*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.</i></p>	<p>If section 15(3) or (4) applies, please indicate the date on which you consider that use 'as of right' ended and why:</p> <p>If section 15(6)* is being relied upon in determining the period of 20 years, indicate the period of statutory closure (if any) which needs to be disregarded:</p>
<p>Note 5 <i>This part is to identify the new green. The accompanying map must be at a scale of at least 1:2,500 and shows the land by means of distinctive colouring within an accurately identified boundary. State the Land Registry title number where known.</i></p>	<p>5. Description and particulars of the area of land in respect of which application for registration is made</p> <p>Name by which usually known: THE MEADOW</p> <p>Location: BETWEEN 132 and 134 DUMPTON PARK DRIVE, BROADSTAIRS, CT10.</p> <p>Common Land register unit number (only if the land is already registered Common Land):</p> <p>Please tick the box to confirm that you have attached a map of the land (at a scale of at least 1:2,500): <input checked="" type="checkbox"/></p>
<p>Note 6 <i>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). If this is not possible a map should be provided on which a locality or neighbourhood is marked clearly at a scale of 1:10,000.</i></p>	<p>6. Locality or neighbourhood within a locality in respect of which the application is made</p> <p>Indicate the locality (or neighbourhood within the locality) to which the claimed green relates by writing the administrative area or geographical area by name below and/or by attaching a map on which the area is clearly marked:</p> <p>DUMPTON PARK</p> <p>Please tick here if a map is attached (at a scale of 1:10,000): <input type="checkbox"/></p>

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).

7. Justification for application to register the land as a Town or Village Green

This application concerns an extended grassed area of unregistered land which has been a feature of this part of Dumpton Park Drive since houses began to be built here in the 1970s. Many people who moved in when the houses were built are still resident.

It has become a focal point of the locality and is used for many different purposes. Primarily, residents with dogs tend to use it as a stopping point and an area for the exercise of their pets. It is also used as a safe playground area for grandchildren of residents, and for those residents of an active disposition, it is used for games such as croquet, boule/pétanque etc.

It is also a communal area for an active community of neighbours who have gathered for barbecues, picnics etc.

We feel as a community that we would like to protect this piece of land as a social asset for the future..

Note 8

Use a separate sheet if necessary. 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, proprietor of any "relevant charge", tenant or occupier of any part of the land claimed to be a town or village green

The land is unregistered with the HM LR.

Note 9

List or enter in the form all such declarations that accompany the application. This can include any written declarations sent to the applicant (i.e. a letter), and also any such declarations made on the form itself.

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

Note 10

List all supporting consents, documents and maps accompanying the application. Evidence of ownership of the land must be included for voluntarily registration applications. There is no need to submit copies of documents issued by the Registration Authority or to which it was a party but they should still be listed. Use a separate sheet if necessary.

10. Supporting documentation

- Statements from:-

- Mr and Mrs Bowers, 130 Dumpton Park Drive
- L.M and G. Coussins, 132 "
- Mr and Mrs P. Heading, 134B "
- Mrs N Hutchings, 134A "
- Mr R and Miss D Scherer, 136 "
- Mr and Mrs J. Keel, 138 "
- Mrs D. Adams, 140 "
- Mr and Mrs J Lehmann 93 "
- Mr and Mrs I Bernard Flat 2, 1 Seacroft Rd.

- Map showing the land, at a scale of 1:2,500

Note 11

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

11. Any other information relating to the application

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.

12. Signature

Signature(s) of applicant(s): *L.M. Coussins*

Date: *26th January 2009*

REMINDER TO APPLICANT

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

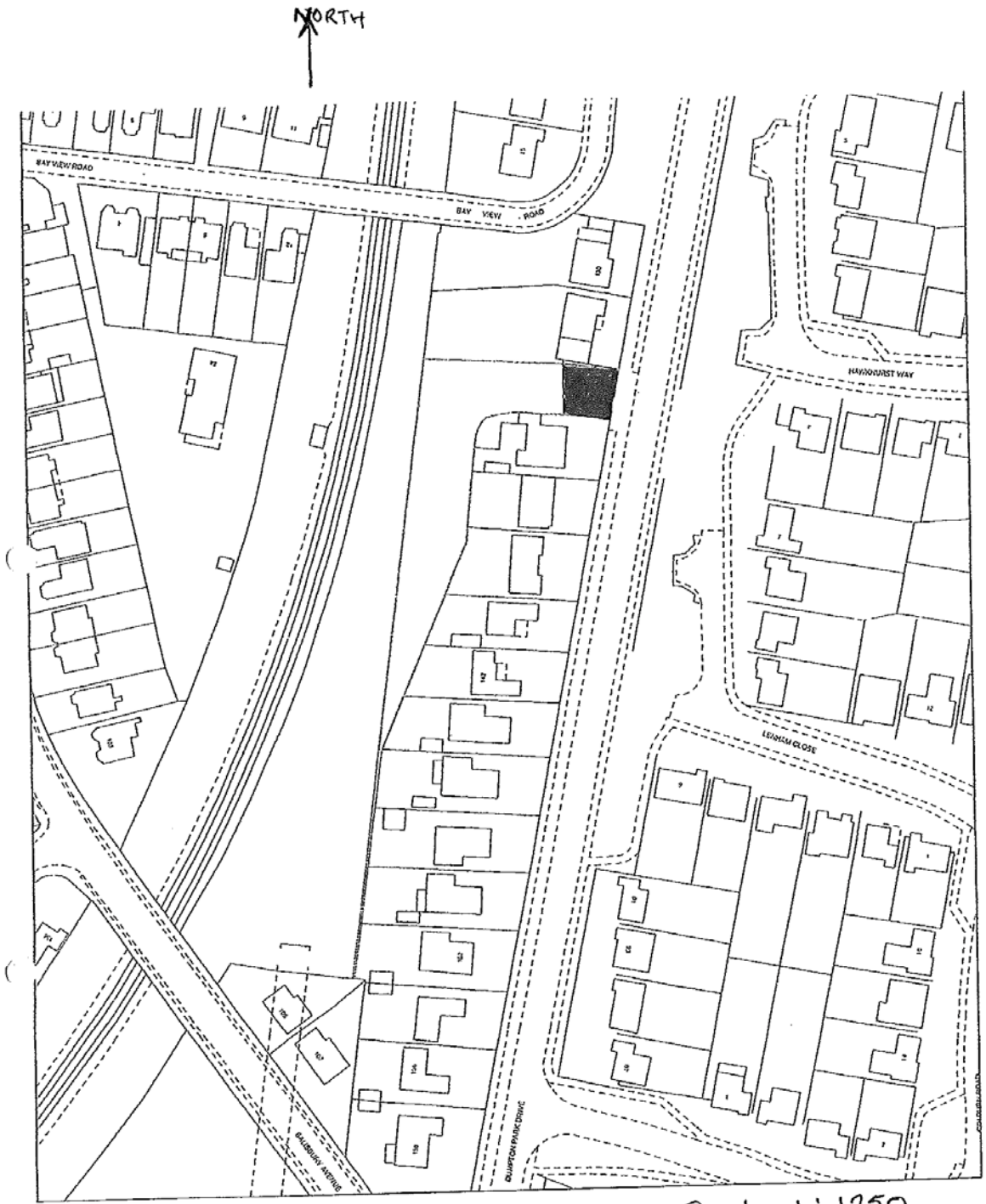
Please send your completed application form to:

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

Data Protection Act 1998

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

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



This plan should be read in conjunction with result N84KFFB

Scale 1:1250

■ = village green application



**APPENDIX C:
Summary of evidence**

Mr. and Mrs. Keel

Have lived at 138 Dumpton Park Drive since 1974. Four sons all used application site as a place to play. Site has been used as a community asset for recreation, dog-walking and neighbourly gatherings. Often children playing games on the application site or, in the summer, neighbours sitting on deckchairs.

Mr. R. Sherer and Miss. D. Sherer

Have lived at 136 Dumpton Park Drive for over 20 years. Application site is a treasured haven of peace and tranquility which have often used for a short walk and chat with neighbours and friends. It has been used by the community in all the ways one would attribute to a Village Green. Often people sitting on folding chairs on sunny days with visiting children and grandchildren playing nearby.

Mr. and Mrs. Bernard

Lived at 130 Dumpton Park Drive for over 20 years until recently, and now live nearby. During most of the time we lived at Dumpton Park Drive, we had a dog who regularly exercised on the application site. All dog owners of the neighbourhood regarded this area as the focal point of their dog walk.

Mr. and Mrs. Lehmann

Moved to 93 Dumpton Park Drive over 20 years ago. Parents live adjacent to the application site. Children played on the application site regularly with friends and neighbours use it as an area for play and dog-walking. Still see the application site being used it does provide a social meeting place and recreational area.

Mrs. D. Adams

Moved to 140 Dumpton Park Drive in 1986 and have always regarded the application site as a Village Green. Over the years, have used the site with family for numerous get-togethers with friends and neighbours. Dog-walkers use the land to socialize and children visiting their grandparents play there as the local park is some distance away and means crossing a busy road.

Mrs. N. Hutchings

Has lived at 134A Dumpton Park Drive since 1980. Grandchildren use the land constantly when visiting. It is a communal space for people to walk their dogs, socialize and play games.

Mr. and Mrs. Coussins

Have lived at 132 Dumpton Park Drive since 2003. During the summer and throughout the year it is used for different recreational purposes by the local residents. It is used as an area for croquet and other games, and a stopping place for dog-walkers and socializing.

Mr. and Mrs. Heading

Have recently purchased 134 Dumpton Park Drive from mother, who lived there since 1976. During regular visits have always enjoyed the application site as an open

space for socialising with neighbours and games of croquet. Own children played on the land during regular visits to grandmother.

Mr. and Mrs. Bowers

Moved to 130 Dumpton Park Drive in 2005. Have used the site for recreation and dog-walking.

Mr. and Mrs. Johnston

Live at 144 Dumpton Park Drive and have always regarded application site as a community asset.

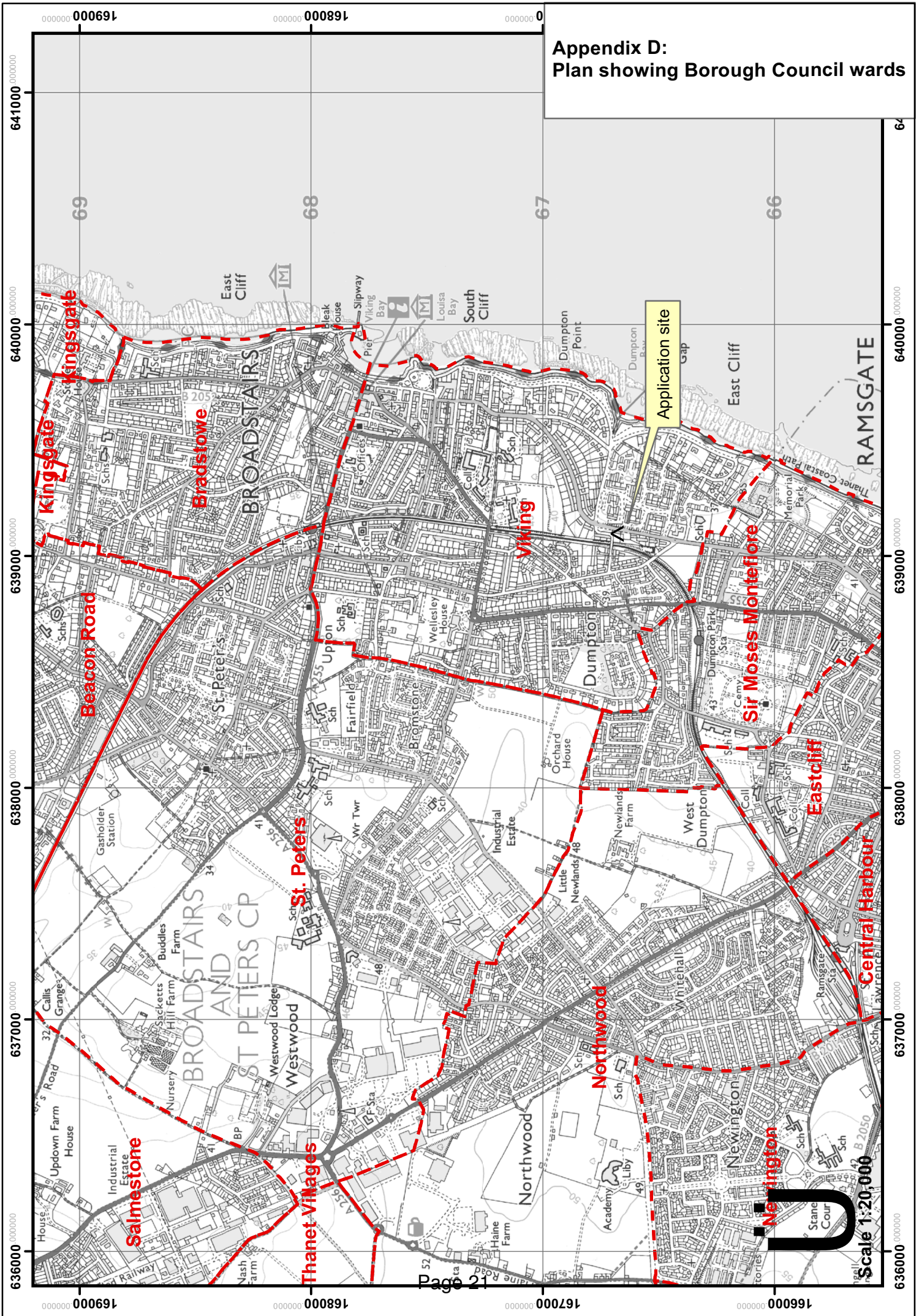
Mrs. Y. Stevens

Has lived at 152 Dumpton Park Drive for 1993 and walk dog on application site. Often meet neighbours doing the same and regard the application site as a Village Green.

Mrs. M. Tucker

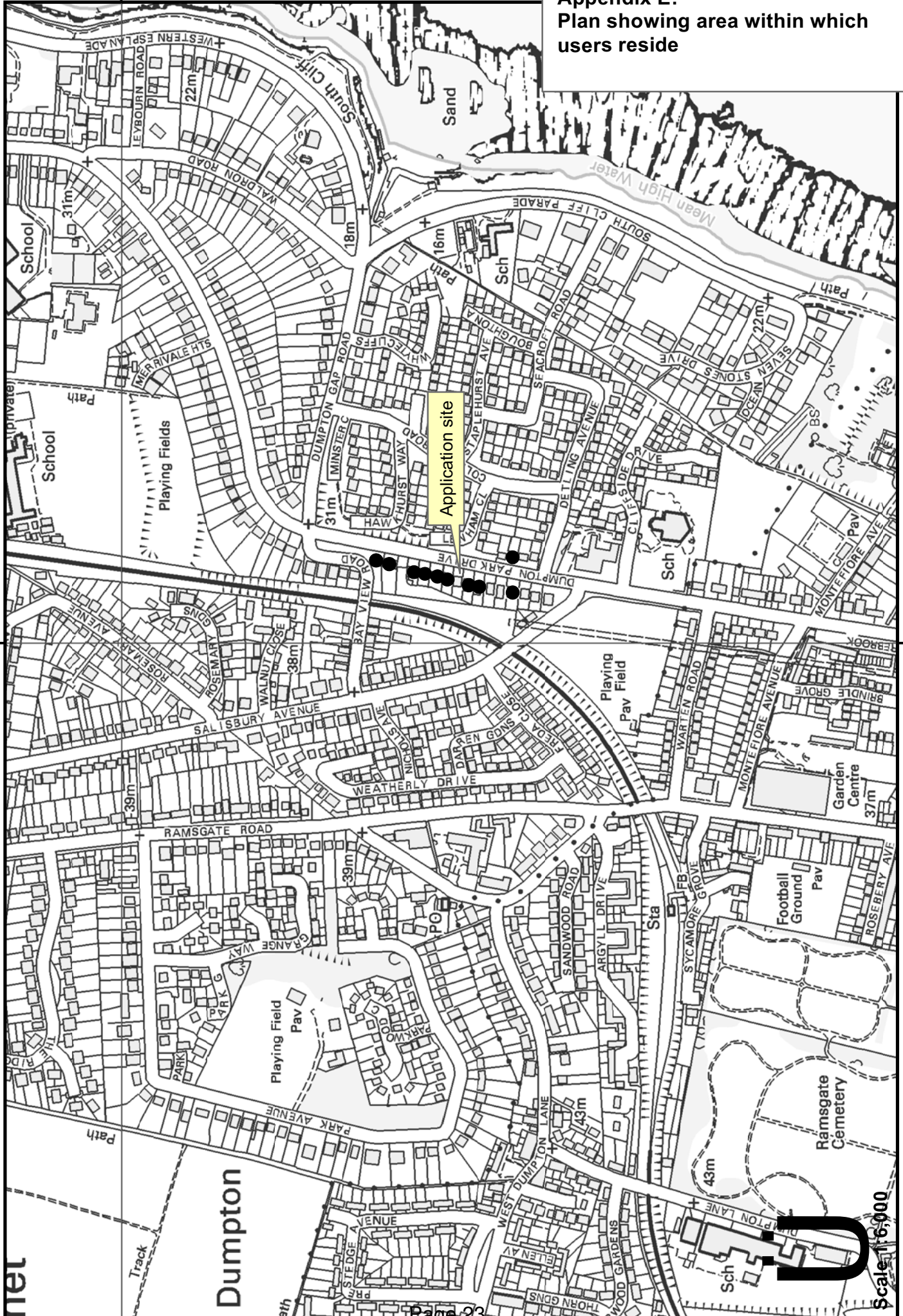
Has lived at 146 Dumpton Park Drive for 40 years and support application for Village Green status.

**Appendix D:
Plan showing Borough Council wards**



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**Appendix E:
Plan showing area within which
users reside**



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Application to register land at Brickfields, Mill Lane in the parish of Bridge as a new Town or Village Green

A report by the Director of Environment and Waste to Kent County Council's Regulation Committee Member Panel on Tuesday 25th May 2010.

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

Local Members: Mr. M. Northey

Unrestricted item

Introduction

1. The County Council has received an application to register land at Brickfields, Mill Lane in the parish of Bridge as a new Town or Village Green from local resident Mrs. E. Shirley ("the Applicant"). The application, dated 16th December 2008, was allocated the application number VGA607. A plan of the site is shown at **Appendix A** to this report and a copy of the application form is attached at **Appendix B**.

Procedure

2. The application has been made under section 15 of the Commons Act 2006 and Commons Registration (England) Regulations 2008.
3. Section 15(1) 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 6th April 2007** and the application has been made within five years of the date the use 'as of right' ended (section 15(4) of the Act).
5. As a standard procedure set out in the Regulations, the Applicant must notify the landowner of the application and the County Council must notify every local authority. The County Council 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 fields of approximately 6.7 hectares (16.5 acres) situated to the south of Mill Lane in the parish of Bridge.
7. The site is crossed by two Public Footpaths (CB301 and CB302). Access to the site is also available via a set of steps leading up to a gap in the hedge at the western end of its frontage with Mill Lane, as well as two field gates situated on either side of the driveway to Brickfield Cottage.
8. The site is known locally as ‘The Water Meadows’ and ‘Brickfield’. Although there is no precise delineation between the two sections, broadly speaking the area to the west of Brickfield Cottage (consisting of grass paddocks) is known as ‘Brickfield’ and the area to the east of Brickfield Cottage (crossed by the footpaths and the river) is known as ‘The Water Meadows’.

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 actual use of the land by the local inhabitants for a range of recreational activities ‘as of right’ for more than 20 years.
10. Included in the application were 15 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**.

Consultations

11. Consultations have been carried out as required. In response to the consultation, three objections have been received.
12. Bridge Parish Council has objected to the application on the basis that the application site does not, in the Parish Council’s view, fulfil the legal criteria for Village Green status. In relation to the eastern part of the site (referred to as ‘The Water Meadows’), the Parish Council states that the Public Rights of Way which cross the field are used by local dog walkers and ramblers, but that access has only been on the footpaths and the farmer has given specific permission for community events such as an annual tug-of-war and barbeques. In relation to the western part of the site (known as ‘Brickfields’), The Parish Council states that the land has only been used by local people for recreational purposes since the grazing of horses ceased a few years ago. There has never been any formal public access to the site and the use has taken place only by virtue of the fencing being broken down since the horses were removed
13. Local resident Mr. S. Lewis has objected to the application. Mr. Lewis has lived locally for over 40 years and within 100m of the application site since 1991. From 2001 until approximately 2007, Mr. Lewis undertook the complete restoration of the hedge that borders the site along Mill Lane and, during this period, at no time did he see the application site being used for lawful sports and pastimes. According to Mr.

Lewis, it is only since the removal of the horses from the site 2/3 years ago that the application site has been used for other purposes.

14. Mr. B. Mummery, who has used the site for grazing his cattle, has also objected to the application. In relation to the eastern part of the site (The Water Meadows), Mr. Mummery states that access to the site is via kissing gates at either ends of the footpaths. The vehicular access gate has always been locked. The Public Footpaths are well defined paths used by the majority of walkers, either to access the wider rights of way network or to exercise their dogs. It is possible to pick blackberries from the Public Footpaths. In relation to the western part of the site (Brickfields), Mr. Mummery has only been aware of public access to the site over the last 2/3 years, access to it being by means of a trampled fence off Mill Lane.

Landowner

15. The application site was originally owned by Marquess Conyngham. The eastern part of it (known as Brickfield) was sold in 1963 to the then Bridge Blean Rural District Council (now Canterbury City Council), and the remainder (known as The Water Meadow) was sold in 1976 to Cantley Ltd. The current ownership of the site is shown on the plan at **Appendix D**.
16. The whole of the application site has been used for grazing by Mr. B. Mummery of Great Pett Farm who holds an agricultural tenancy and grazing agreement (for the part of the land owned by Cantley Ltd) and, until recently, Mrs. H. Parren who held a grazing licence (for the part of the land owned by Canterbury City Council).

Canterbury City Council

17. According to the City Council, the land was originally acquired for housing purposes under the Housing Act 1957. In 1983, part of the land within the City Council's ownership was appropriated under section 120(1)(b) of the Local Government Act 1972, and in 1985 the remainder of the land owned by the City Council was appropriated to the same purpose. To this day, the land remains held by the City Council under section 120 of the 1972 Act, which provides that a Council may acquire by agreement any land for the purposes of 'the benefit, improvement or development of the area'.
18. The land has been let and used for grazing for the majority of the relevant 20 year period. Until 1993, the land was let to Mr. Mummery who grazed approximately 20 beef cattle on the land. After 1993 and until 2006, the land was let to Mrs. Parren who grazed approximately 7 horses on the land. During the first few years of her licence agreement, Mrs. Parren reportedly used electric fencing to keep her animals in and intruders out, but this was abandoned after several years due to the constant theft of the batteries serving the electric fence.
19. The City Council has objected to the application on the basis that the use of the land by local residents has only taken place since the grazing ceased (in 2006). The City Council's case is also that any access that has taken place to the site has been by force, by the breaking down of fencing, and therefore not 'as of right'. It further adds that the gap in the hedge at Mill Lane (to which several users refer) was secure when the horses were grazed there, and that it was not there prior to 2006. It further adds that the gap in the hedge at Mill Lane (to which several users

refer) was secure when the horses were grazed there, and that it was not there prior to 2006.

20. The City Council's objection is supported by evidence of their ownership, copies of the relevant licence agreements, evidence of repairs to fencing and a witness statement from a Council employee who was responsible for managing the site.

Cantley Ltd

21. An objection to the application has also been received by Mr. C. Gooch of Savills who act as Land Agents on behalf of Cantley Ltd. Mr. Gooch has managed the estate for 30 years.
22. Mr Gooch states, from his own experience and visits to the area, that many people use the Public Footpaths on the eastern part of the site. He has, on occasions, seen people picking blackberries and sloes from the bushes adjoining the Public Footpaths, but his observations did not include many of the activities mentioned in the witness statements.

Legal tests

23. 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'?*

24. The definition of the phrase 'as of right' has been considered by the House of Lords. Following the judgement in the *Sunningwell*¹ 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 secrecy'

25. There is no evidence to suggest that the use of the application site has been with secrecy. Many of the user evidence forms refer to observations of use by other people: for example, one witness who uses part of the site on a daily basis said *'in the last 20 years, I have witnessed many locals using the site for dog walking, for*

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

walking and for playing'², whilst another states 'I daily see many villagers walking their dogs all about Water Meadow on and off the footpaths'³.

'without permission'

26. Nor is there any suggestion that use of the site for informal recreational purposes has been with permission. There is evidence that permission has been sought for specific events such as an annual tug of war over the river⁴ and the parking of vehicles for a wedding in 2007 on the part of the site known as Brickfield⁵. Additionally, the grazing of livestock on the land by Mr. Mummery and Mrs. Parren has also been the subject of a specific consent. However, none of these forms of permission are referable to the informal recreational use of the land.

'without force'

27. There is, however, a question with regards to the third limb of the definition of 'as of right' in respect of whether use has been without force. Force does not necessarily relate solely to the use of physical force to break down barriers to gain entry; it may be equally applicable in cases where users ignore a notice erected on the site prohibiting such use because such use would be contentious⁶.
28. Dealing firstly with non-physical force, the City Council refers to the presence of a notice at the entrance of the private trackway leading to Brickfield Cottages which states 'private road – no unauthorised entry'; it has been in place since 1997 and was renewed in 2003. However, the notice is clearly intended to deter (probably vehicular) access along the trackway and not general recreation on the adjacent fields. In order to have the effect of negating use 'as of right' the notice must clearly communicate to the users that the landowner is not acquiescing to their use. In this case, the majority of users do not refer to entering the site along this trackway and therefore would not have been aware of the notice.
29. Even if the users were aware of the notice, they do not specifically relate to the general recreational use of the land. In a recent case in the High Court⁷, the landowner erected 'no public right of way' notices at the entrances to a meadow. The Court held that these notices did not have the effect of rendering use 'with force' since they were referable only to the use of the informal trackways as public rights of way and not to the general recreational use of the meadow. The same principle would apply in the present case.
30. The City Council also disputes that use has been 'as of right' on the Brickfields part of the site on the basis that physical force has been used to gain access as fencing has been broken down. In support of this, the City Council has produced copies of quotes and invoices relating to repairs to the fencing around the Brickfields site in 1990, 1994, 1996 and 2003. It adds that the gap at Mill Lane (to which reference is

² Mr. Stephen Fawke's witness statement dated 14th January 2009, at paragraph 3

³ Mrs. Winifred Jarrett's witness statement dated 15th January 2009, at paragraph 2

⁴ See Mr. Mummery's letter of objection dated 12th November 2009 and Bridge Parish Council's letter of objection dated 19th November 2009

⁵ See Canterbury City Council's letter of objection dated 11th August 2009

⁶ *Newnham v Willison* (1988) 56 P&CR 8

⁷ *R (Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust) v Oxfordshire County Council* [2010] EWHC 530 (Admin)

made by the users) was secure whilst the horses were grazed there and as such there was no gap there prior to 2006.

31. The evidence of the City Council is, to a degree, supported by the users; Mrs. Harding⁸ states that *'there has always been a gap [along Mill Lane] since I have lived here [25 years] but it has become more obvious over the years. It used to be more hidden and there was a wire across it even though people would just clamber over it'*, and Mr. Wilding⁹ states that *'Brickfield can be accessed by clambering over a gate (or opening it, when it is unlocked)...'*. However, other users state that they have used Brickfields over the years and never had any difficulty accessing the site.
32. In relation to the Water Meadow part of the site, it is difficult to argue that access to it has been with force due to the existence of the Public Footpaths crossing the site. The footpaths are not fenced off from the rest of the field and there are no physical barriers to prevent walkers from straying off the recognised paths.

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

33. 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 activities¹⁰.
34. 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'*¹¹.
35. In this case, the evidence demonstrates that the land has been used for a wide range of recreational activities, predominantly walking (with or without dogs), blackberrying and playing with children. The summary of evidence of use by local residents at **Appendix C** shows the full range of activities claimed to have taken place.

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

⁸ Mrs. Glenys Harding's witness statement dated 14th December 2008, at paragraph 3

⁹ Mr. David Wilding's witness statement dated 17th December 2008, at paragraph 3

¹⁰ *R v. Oxfordshire County Council and another, ex parte Sunningwell Parish Council* [1999] 3 All ER 385

¹¹ *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

*Cheltenham Builders*¹² 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 locality¹³.

37. In this case, the applicant does not specify a locality in the application, although various references are made in the application to the village of Bridge. The map at **Appendix E** shows that those who have submitted evidence all fall within the civil parish of Bridge. This is clearly a legally recognised administrative unit which is capable of forming a locality for the purposes of Town or Village Green registration.

38. The City Council asserts that the applicant’s failure to specify a locality is fatal to the application. However, it has been held by the Courts that the application form ‘is not to be treated as though it is a pleading in private litigation. A right... is being claimed on behalf of a section of the public. The Registration Authority should, subject to considerations of fairness... [to all parties]..., be able to determine the extent of the locality within which inhabitants are entitled to exercise the right in the light of all the available evidence’¹⁴. Therefore, it is not considered that the omission by the applicant is detrimental to the application.

39. 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’¹⁵ (the “sufficiency test”).

40. Whether the use of the land has been ‘sufficient’ is considered in the next section below.

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

41. 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. Where there has been no challenge to the use of the land and use ‘as of right’ is continuing, the twenty-year period is to be calculated retrospectively from the date that the application was made.

42. In this case, the application was made in December 2008. Therefore, the relevant twenty-year period (“the material period”) is 1988 to 2008.

Brickfields

43. The City Council’s case is that the western part of the site (‘Brickfields’) has never been used for anything other than seasonal grazing during the relevant period and

¹² *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at 90

¹³ *R (Laing Homes Ltd.) v Buckinghamshire County Council and another* [2003] 3 EGLR 70 at 83

¹⁴ *R (Laing Homes Ltd.) v Buckinghamshire County Council* [2003] EGLR 70 at 82 per Sullivan J

¹⁵ *R (Alfred McAlpine Homes Ltd.) v Staffordshire County Council* [2002] EWHC 76 at [71]

that since the paddocks ceased to be used for grazing in 2006, unknown persons have broken down the fencing in places to allow pedestrian access. This contention is supported by the evidence of Mr. Mummery, Mr. Lewis and the Bridge Parish Council.

44. Mr. Mummery states that he has only become aware of public access over the past few years by means of a trampled fence off Mill Lane. Mr. Lewis vigorously denies that there was any recreational use of the Brickfields part of the site during the period of approximately 2001 and 2006. He states that it is only since the removal of the horses from the site there has been increased usage for dog training classes and by dog walkers generally. The Bridge Parish Council adds that whilst the horses were kept on the Brickfields site, there was no public access but, after the horses were removed, the fences were broken down and people have begun to use it.
45. Looking at the user evidence, the use of the Brickfields part of the site appears to be very sparse. Of the 16 witnesses who have submitted evidence in support of the application, 9 have not used Brickfields and a further 4 avoided the site when the horses were grazed there. Of the remaining three witnesses who have used the site, one has only used it since 2001. Therefore, on the evidence currently available, it would appear that the Brickfields part of the site has not been used by a significant number of people over the relevant twenty year period.

The Water Meadow

46. Mr. Gooch, on behalf of Cantley Estates, states that whilst he is aware that many people use the Public Footpaths crossing the Water Meadows on the eastern part of the site (occasionally picking blackberries and sloes from adjoining bushes), his observations have not included many of the other recreational activities mentioned in the witness statements. In support, Mr. Mummery states that the fields have been grazed each year with cows and although the footpaths are well used, he has challenged people straying off the footpaths.
47. The fact that the Water Meadow part of the site is crossed by Public Footpaths does somewhat complicate the situation. Many of those who have submitted evidence in support of the application refer to recreational activities on site, but it is unclear from the written evidence the degree to which those recreational activities have been undertaken and the manner in which they would have appeared to the landowner - i.e. would the landowner have believed the use to be in exercise of an existing Public Right of Way, or would it have been apparent that the users were asserting a general right of recreation over the land.
48. The issue was considered by the Courts in *Laing Homes*¹⁶, in which the judge said that: *'it is important to distinguish between use that would suggest to a reasonable landowner that the users believed they were exercising a public right of way to walk, with or without dogs... and use that would suggest to such a landowner that the users believed that they were exercising a right to indulge in lawful sports and pastimes across the whole of the fields'*.

¹⁶ *R (Laing Homes) v Buckinghamshire County Council* [2003] 3 EGLR 70 at 79 per Sullivan J.

49. The exercise of distinguishing between types of use is something that is very difficult to achieve on paper. It is a question of evidence that requires more detailed scrutiny, preferably by way of the cross examination of witnesses in a public forum.

Foot and Mouth closure

50. One of the witnesses¹⁷ refers to the closure of the footpaths during the Foot and Mouth crisis. In Kent, all Public Rights of Way crossing farmland or woodland were closed between 6pm on 27th February 2001 and 6am on 12th May 2001 using powers under the Foot and Mouth Disease Order 1983. There would, necessarily, have been an interruption to the use of the land, particularly the Water Meadows, during this time. However, section 15(6) of the Commons Act 2006 states that in determining the 20 year period, “*there is to be disregarded any period during which access to the land was prohibited to members of the public by reason of any enactment*”. Therefore, the closure of the land during this time would not automatically defeat the application for the registration of the land as a Village Green.

(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)?

51. The Commons Act 2006 requires use of the land to have taken place ‘as of right’ up until the date of application or, if such use has ceased prior to the making of the application, to fulfil one of the alternative criterion set out in sections 15(3) and 15(4) of the 2006 Act (as set out at paragraph 4 above).

52. In this case, there is no suggestion from the evidence submitted both in support of and in objection to the application that the use of the land by the local residents for the purposes of informal recreation has ceased prior to the making of the application.

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.

Conclusion

54. The evidence in relation to the Brickfields part of the site is undoubtedly weak, particularly in terms of use being ‘as of right’ and by a ‘significant number’ of the local inhabitants. By implication, since the field were let for grazing for horses, it seems common sense to conclude that the field would have been completely secured by a diligent tenant to ensure that the animals did not escape or were not stolen. However, the City Council has not been able to produce any conclusive evidence that the fields were, at any time during the relevant period, completely secure, nor that the field gates providing access to the fields were ever locked.

55. By contrast, there is a significant evidence of use of the Water Meadow part of the site. However, the evidence in relation to the Water Meadow part of the site is not conclusive and there are queries regarding the degree to which the use of the site

¹⁷ Mr. Douglas Harding’s witness statement dated 16th December 2008, at paragraph 4

can be attributed to the Public Footpaths. This is an issue which requires further clarification.

56. Although the relevant regulations¹⁸ provide a framework for the initial stages of processing the application (e.g. advertising the application, dealing with objections etc), they provide little guidance with regard to the procedure that a Commons Registration Authority should follow in considering and determining the application. In recent times it has become relatively commonplace, in cases which are particularly emotive of where the application turns on disputed issues of fact, for Registration Authorities to conduct a non-statutory Public Inquiry. This involves appointing an independent Inspector to hear the relevant evidence and report his/her findings back to the Registration Authority.
57. Such an approach has received positive approval by the Courts, most notably in the Whitmey¹⁹ case in which Waller LJ said this: *'the registration authority has to consider both the interests of the landowner and the possible interest of the local inhabitants. That means that there should not be any presumption in favour of registration or any presumption against registration. It will mean that, in any case where there is a serious dispute, a registration authority will almost invariably need to appoint an independent expert to hold a public inquiry, and find the requisite facts, in order to obtain the proper advice before registration'*.
58. It is important to remember, as was famously quoted by the judge in another High Court case²⁰, that *'it is no trivial matter for a landowner to have land, whether in public or private ownership, registered as a town green... [the relevant legal tests] must be 'properly and strictly proved'*. 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.
59. A Public Inquiry would allow witnesses to give more detailed evidence that could be subject to relevant questions from the Inspector. This would provide a greater clarity to the user evidence than is currently available in paper form and enable the Registration Authority to come to a more informed decision on the case.

Recommendations

60. I 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

¹⁸ Commons Registration (England) Regulations 2008

¹⁹ *R (Whitmey) v Commons Commissioners* [2004] EWCA Civ 951 at paragraph 66

²⁰ *R v Suffolk County Council, ex parte Steed* [1997] 1 EGLR 131 at 134

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 – Summary of user evidence

APPENDIX D – Plan showing ownership of the application site

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APPENDIX A: Plan showing the application site

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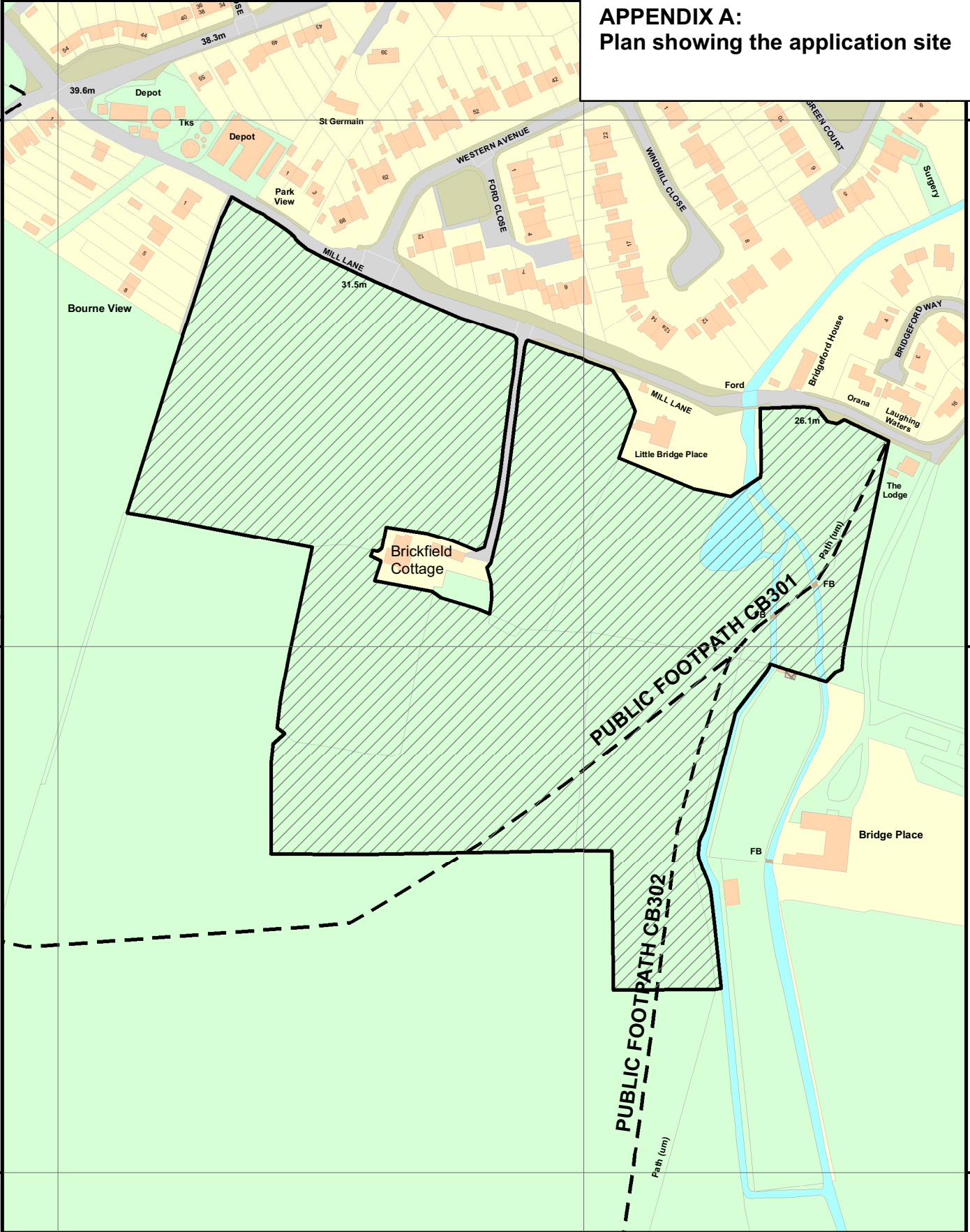
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Land subject to Village Green application
at Brickfields, Mill Lane, Bridge



FORM CA9

Commons Act 2006: section 15

**Application for the registration of land
as a new Town or Village Green**

APPENDIX B:
Copy of the application form



This section is for office use only

Official stamp of the Registration Authority
indicating date of receipt:

COMMONS ACT 2006 KENT COUNTY COUNCIL REGISTRATION AUTHORITY 18 DEC 2008
--

Application number:

607

VG number allocated at registration
(if application is successful):

--

Note to applicants

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

- All applicants should complete parts 1–6 and 10–12.
- Applicants applying for registration under section 15(1) of the 2006 Act should, in addition, complete parts 7 and 8. Any person can 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 part 9. Only the owner of the land can apply under section 15(8).
- There is no fee for applications under section 15.

Note 1
*Insert name of Commons
Registration Authority*

1. Commons Registration Authority

To the: KENT COUNTY COUNCIL

Note 2

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

2. Name and address of the applicant

Name: EMILY EDITH SHIRLEY

Full postal address:
(incl. Postcode) NETTERBURY, MEADOW CLOSE
BRIDGE, KENT CT4 SATTelephone number: 01227 830 364
(incl. national dialling code)Fax number:
(incl. national dialling code)

E-mail address: emilyeshirley@hotmail.co.uk

Note 3

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

3. Name and address of representative, if any

Name:

Firm:

Full postal address:
(incl. Postcode)Telephone number:
(incl. national dialling code)Fax number:
(incl. national dialling code)

E-mail address:

Note 4

For further details of the requirements of an application refer to Schedule 4, paragraph 9 to the Commons Registration (England) Regulations 2008.

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:

<p><i>*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.</i></p>	<p>If section 15(3) or (4) applies, please indicate the date on which you consider that use 'as of right' ended and why:</p> <p>If section 15(6)* is being relied upon in determining the period of 20 years, indicate the period of statutory closure (if any) which needs to be disregarded:</p> <p>ACCESS TO SOME OF THE SITE WAS DENIED DURING THE FOOT & MOUTH OUTBREAK FROM EARLY FEBRUARY 2001 FOR ABOUT 6 MONTHS. THE FOOTPATHS WERE CLOSED.</p>
<p>Note 5 This part is to identify the new green. The accompanying map must be at a scale of at least 1:2,500 and shows the land by means of distinctive colouring within an accurately identified boundary. State the Land Registry title number where known.</p>	<p>5. Description and particulars of the area of land in respect of which application for registration is made</p> <p>Name by which usually known: WATER MEADOW / BRIDGEFIELD BRIDGE LANE Land off MILL LANE, IN BRIDGE COLOURED YELLOW.</p> <p>Location: BRIDGE, KENT</p> <p>Common Land register unit number (only if the land is already registered Common Land):</p> <p>Please tick the box to confirm that you have attached a map of the land (at a scale of at least 1:2,500): <input checked="" type="checkbox"/></p>
<p>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). If this is not possible a map should be provided on which a locality or neighbourhood is marked clearly at a scale of 1:10,000.</p>	<p>6. Locality or neighbourhood within a locality in respect of which the application is made</p> <p>Indicate the locality (or neighbourhood within the locality) to which the claimed green relates by writing the administrative area or geographical area by name below and/or by attaching a map on which the area is clearly marked:</p> <p>AREA COLOURED YELLOW</p> <p>Please tick here if a map is attached (at a scale of 1:10,000): <input checked="" type="checkbox"/></p>

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).

7. Justification for application to register the land as a Town or Village Green

Bridge village is a linear village. IT does not have an official village green. Locals have to seek out places in the surrounding countryside for their games and pastimes. Much of the surrounding countryside is used to grow crops or for grazing sheep. Apart from the recreation ground which is forbidden to dog walkers, Bridge has only one obvious and centrally located place where villagers can carry out their recreational pursuits without hindrance. That is Water Meadow & Bricksfield ('the site').

The site has been used by a significant number of local people from the village of Bridge, for many, many years and at least, for one continuous twenty year period. It has been used for recreational purposes. Activities include dog walking, walking, nature observation, soft fruit picking and cont.

Note 8

Use a separate sheet if necessary. 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, proprietor of any "relevant charge", tenant or occupier of any part of the land claimed to be a town or village green

Bricksfield: Canterbury City Council
(OWNER) Military Road, Canterbury
Kent CT1 14W

WATER MEADOW: AS ABOVE but only
(OWNER) a small part of it

OWNER 2 CANTLEY ESTATES LIMITED
SAVILLS, ROLFES HOUSE, 60 MILFORD ST., SALISBURY SP1 2BP
BRIAN MUMMERY
TENANT 1 GREAT PETT FARM
PETT HILL, BRIDGE, KENT CT4 5AN

7. (from FORM CA9)

↳ Cont.

and game playing by children & adults. It is one of the few local places where people can wander about freely at will to do whatever takes their fancy.

Cattle & horses have grazed the Site over the years but this has not stopped people using it. The only time part of the Site (Water Meadow) was not open to the public use was during the foot & mouth crisis in and around 2001.

Note 9

List or enter in the form all such declarations that accompany the application. This can include any written declarations sent to the applicant (i.e. a letter), and also any such declarations made on the form itself.

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

Note 10

List all supporting consents, documents and maps accompanying the application. Evidence of ownership of the land must be included for voluntarily registration applications. There is no need to submit copies of documents issued by the Registration Authority or to which it was a party but they should still be listed. Use a separate sheet if necessary.

10. Supporting documentation *

- A MAP OF PROPOSED VILLAGE GREEN & SURROUNDING AREA 1:2,500
 - B MAP OF PROPOSED VILLAGE GREEN & SURROUNDING AREA 1:10,000
 - C EMILY SHIRLEY WITNESS STATEMENT
 - D DAVID WILDING WITNESS STATEMENT
 - E PETER ELGAR WITNESS STATEMENT
 - F DAVID WATERS WITNESS STATEMENT
 - G STEPHEN FAWKE WITNESS STATEMENT) TO FOLLOW
 - H DOUG HARDING WITNESS STATEMENT
 - I GLENS HARDING WITNESS STATEMENT
 - J MARIE LOCKLEY WITNESS STATEMENT
 - K LETTER FROM KATE BESWICK - KCC DATED 6.10.2008
- * MORE EVIDENCE TO FOLLOW AS AGREED

Note 11

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

11. Any other information relating to the application

(16.12.2008)
I HAVE SPOKEN TO MELANIE MCNIER, SHE HAS CONFIRMED THAT I MAY SUBMIT FURTHER EVIDENCE. THIS I INTEND TO DO BECAUSE A PLANNING APPLICATION FOR PART OF THE SITE IS IMMINENT & I HAVE NOT HAD SUFFICIENT TIME TO GATHER ALL THE NECESSARY EVIDENCE.

IT IS LIKELY THAT THIS APPLICATION WILL BE OPPOSED IN PART BY SOUTHERN HOUSING WHO WISH TO BUILD SOME HOUSES ON THE SITE AS WELL AS CANTERBURY CITY COUNCIL WHO OWN PART OF THE SITE.

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.

12. Signature

Signature(s) of applicant(s):



Date:

16. DECEMBER. 2008

REMINDER TO APPLICANT

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

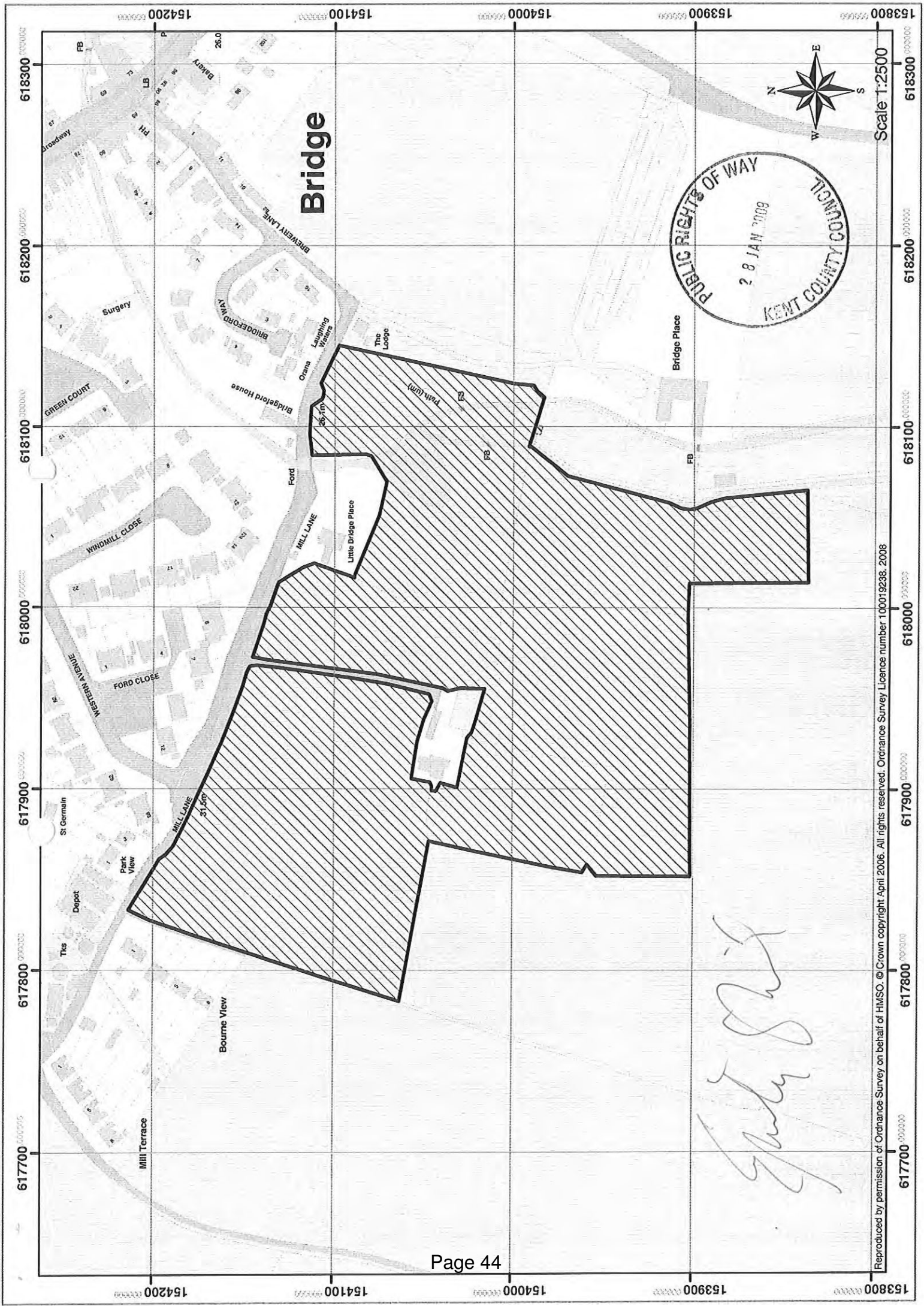
Please send your completed application form to:

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

Data Protection Act 1998

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

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



Bridge



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Handwritten signature

APPENDIX C: Summary of user evidence

Mr. Raymond Andrews

- Has lived in and near the village for 83 years.
- As a child, lived close to the application site crossed it to gate to school every day. Recalls wondering all over the site and making rafts to go on the pond. More recently, has used the site for walking and picking watercress from the river. Often see other people using the site, mainly dog walkers.
- NB use refers only to eastern part of the site (The Water Meadow), has not used western part (Brickfield) but has seen dog walkers there.

Mrs. Joanna Apps

- Has used the site since 1984 when visiting friends (5 – 6 times per year). Moved to Bridge in 2001 and now lives at Bourne View, adjacent to the application site and with a view over it. Regularly walks past the site to take children to school.
- First started using the site in 2001 through gap in hedge along Mill Lane. No prohibitive notices or difficulty gaining access at any time.
- Regularly seen other people using the land for walking, exercising dogs, running and playing with children. Saturday dog training classes took place during 2007, 2008 and 2009. Children have played football and other games on the field, Girl Guides have camped there and the Scouts have played rugby.
- Driveway to Brickfields cottage has a 'private' sign on it, but this related to driveway and not to application site.
- When first moved to Bridge in 2001, the hedgerow along Mill Lane was dense, thick, high and contained many different plants and trees. Over a period of time, the hedge was cut back, thinned out and gaps appeared.

Mr. Peter Elgar

- Has lived in the village for 24 years, but has known the site since the 1930s (when visiting relatives). Used the site during most of life, but more frequently over the last 24 years.
- Now walk across the site at least twice a week and pick blackberries when they are in season. Has seen cattle grazing in the fields, but they do not bother anyone.
- Often see other people using the application site for recreational purposes, e.g. children playing and dog walkers. People do not stick to the footpaths but wander about.

Mr. Stephen Fawke

- Has lived in the village for 38 years (except 1992 – 1996, but regular visits to parents).
- Used the eastern part of the application site (The Water Meadow) on a weekly basis since coming to the village 38 years ago. As a child, played sports on the land, now use approximately twice a year for walking and blackberry picking with family. Have witnessed many local people using the site for dog walking, or for walking and playing.
- Used the western part of the site (Brickfields), approximately twice a year to pick berries but did not enter when the horses were there. Access is via a gap in the hedge from the Water Meadow. It is a popular place for flying kites and playing games. Has also seen ball games played there and dogs with their owners.

Mr. Brian Foster

- Has lived in Bridge for over 40 years. First used the eastern section (the Water Meadow) of the site in the 1950s, for blackberry picking and dog walking.
- Usually see other people walking dogs. They meander all over the site and do not always stick to the footpaths. Access to the site is via the field gate on the driveway to Brickfield Cottage.
- Has not used western section (Brickfields), but children have used for tobogganing during winter months. Has seen other people walking dogs on the site.

Mr. Douglas Harding

- Has lived in the village for 51 years. And witnessed numerous other villagers using the site for recreational purposes during this period.
- Used the site as a child to play games and look for tadpoles in the pond. The site is now mostly used by people walking their dogs but has also seen children playing there too.
- Have used the eastern part of the site (The Water Meadow) on a weekly basis to walk and exercise dogs, and always see other people wandering around. Does not recall access to the site being restricted, but the footpaths were closed for a short period about 9 years ago during the foot and mouth crisis.
- The western part of the site (Brickfield) is mostly used by dog walkers and children who play there. There is a gap in the hedge at Mill Lane near Bourne View which is used to gain access. There used to be more brambles and recall a wire or two but this did not stop people from getting onto the field. Has used on a regular basis over the last 20 years to walk dogs. When the horses were there, did not enter the field. Did see others in the field with the horses, but use has increased since the horses have left.

Mrs. Glenys Harding

- Has lived in the village for 38 years.
- Regularly used the eastern section of the site (The Water Meadow) for dog walking on a weekly, sometimes daily, basis over the last 20 years. Does not stay on footpaths but wanders over the field. Also used to take children to the river for paddling or playing. Always see other people walking their dogs and often see other children playing there.
- Never used the western part of the site (Brickfield) but have seen other people using it, especially children playing. Noticed people entering via a gap on Mill Lane at the corner with Bourne View. There has always been a gap there, but it has become more obvious over the years. Used to be more hidden and there was a wire across it, even though people would just clamber over it.

Mrs. Ann Hollingsbee

- Has lived in the village for 54 years. As a child, used to play on the application site. Now own children and grandchildren play on the site.
- In the last 20 years, have regularly walked across the eastern part of the site (The Water Meadow). Always see people walking dogs and families with children. People wander on and off the footpaths.
- Apart from children using the western part of the site (Brickfield), also observed dog walkers.

Mr. David Hover

- Has lived in village for 23 years.
- From 1987 to 2004, used eastern part of the site (The Water Meadow) daily to walk dogs. Has not used since, but has observed other local people using it for dog walking. Did not stick to footpaths unless the cows were in the field.
- Many people could be seen out and about enjoying the site.
- Has not personally used the western part of the site (Brickfield).

Mr. Geoffrey Jarrett

- Has lived in the village for 76 years and used the site as a child to swim in the river, play and fish for trout.
- Has not used the application site in the last 20 years, but has passed it on numerous occasions and seen many local people using it, mainly for exercising dogs.
- The eastern part of the site is more popular (The Water Meadow), but have seen people using the western part of the site also (Brickfield).

Mrs. Winifred Jarrett

- Has lived in the village for 61 years, and lived at Brickfield Cottage as a child.
- Use the eastern part of the site (The Water Meadow) on a daily basis for dog walking. Often see local people walking their dogs all over the Water Meadow, on and off the footpaths.

Mrs. Marie Lockley

- Has lived in the village for 20 years and has used the application site for dog walking for most of this time. Has also witnessed numerous other local people using the site for recreational purposes during this period.
- Has used the eastern part of the site (The Water Meadow) occasionally over the years for dog walking. Often see children collecting nuts or berries, or families playing.
- In the past, used the western part of the site (Brickfield) occasionally for dog walking, in the last 18 months have used it more regularly. Many people use the site for dog walking. Did not use the site when the horses were there about 7 years ago.

Mr. Peter Malkin

- Has lived in the village for 42 years at Bridge Country Club which is situated adjacent to the site.
- Can see the entire site from house and there is a gateway from property leading onto the site. Use it for dog walking and always see many local people using the site to walk their dogs.
- Has not used the western part of the site, but can see it from house and has observed many people walking around, usually with dogs.

Mrs. Ann Shirley

- Has lived in the village for 33 years, and at Little Bridge Place (adjacent to the site) since 1970.
- Has walked on the eastern part of the site (The Water Meadow) on a regular basis. Has seen other local people, mainly dog walkers, doing the same. Also pick blackberries and pick litter on the site.
- There is a gate from garden which opens onto the Water Meadow. Used to be a wire across the gate to stop cattle escaping into garden, but about 7 years ago the gate was replaced and has been used regularly since to enter application site.
- New fencing was erected on part of the Water Meadow some time ago in order for horses to be kept, but did not use that part of the site then.
- Have never used the western part of the site (Brickfield) but have seen other people, mainly dog walkers, doing so. They enter from the corner of Mill Lane and Bourne View and exit via a field gate on the driveway to Brickfield Cottage.

Mrs. Emily Shirley

- Has lived in the village since 1987 (apart from a period of one year when lived in nearby village).
- Access to the site can be gained from the gates on either side of the driveway to Brickfield Cottage and via the kissing gate where Public Footpath CB301 joins Mill Lane.
- Has used the site for dog walking on a weekly basis since 1988. Generally, do not stay on footpaths but wander at will or follow a circuit. Have also seen countless other people using this area, there are always people walking their dogs or children playing near the pond.
- The western part of the site is less well used, but is still used on a regular basis by local people. It has become less accessible since Brickfield Farm was sold and the land divided. Has visited Brickfield on a regular basis over the years by entering through gap at the corner of Mill lane and Bourne View. Used to visit when children were younger for nature watching and, more recently, for picking berries and exercising dogs. Have often seen dog walkers and children playing. Do not recall trying to enter the site when the horses were there but did see other people in the field during this time.

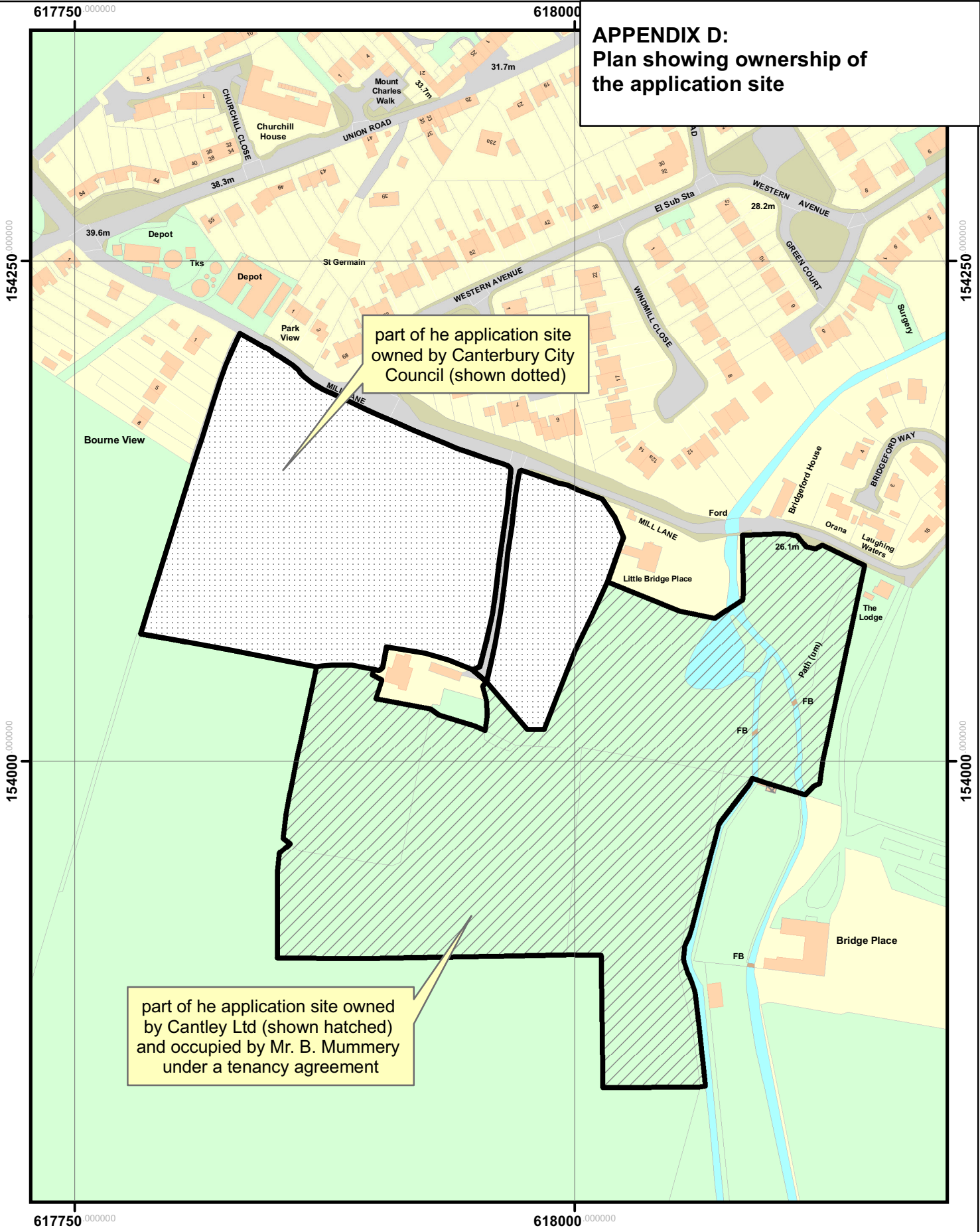
Mr. David Waters

- Has lived in the village for 77 years and has used application site for recreational purposes all of life.
- Regularly used the eastern section (The Water Meadow) on a regular basis to pick blackberries along the river, to pick nuts and to look at the pond. There are always dog walkers and children playing there.
- The western part of the site (Brickfield) was very popular as a child, when we used to play cricket and football there. Still see people using the site, but not as much as they used to. Do not use this part of the site now, but in the last 20 years, I have passed occasionally on a bicycle and would sometimes see dog walkers and children playing, usually in the summer evenings.

Mr. David Wilding

- Has lived in the village since 1987 and, since 1996, has lived at a house which fronts onto the application site.
- From 1987 to 2002, walked dogs on the site and to the present day have also used for recreational purposes. Usually enter the eastern part of the site ('The Water Meadow') via the kissing gate on Mill Lane and wandered at will around the site.
- The western part of the site (Brickfield) can be accessed by clambering over a gate (or opening it when unlocked) off the driveway to Brickfield Cottage and via the gaps in the hedge off Mill Lane. The gap at the corner with Bourne View has existed since at least 1987. have regularly entered onto this part of the site to visit the horses that were kept there and often saw other villagers entering this part of the site to visit the horses, walk dogs or play with children.

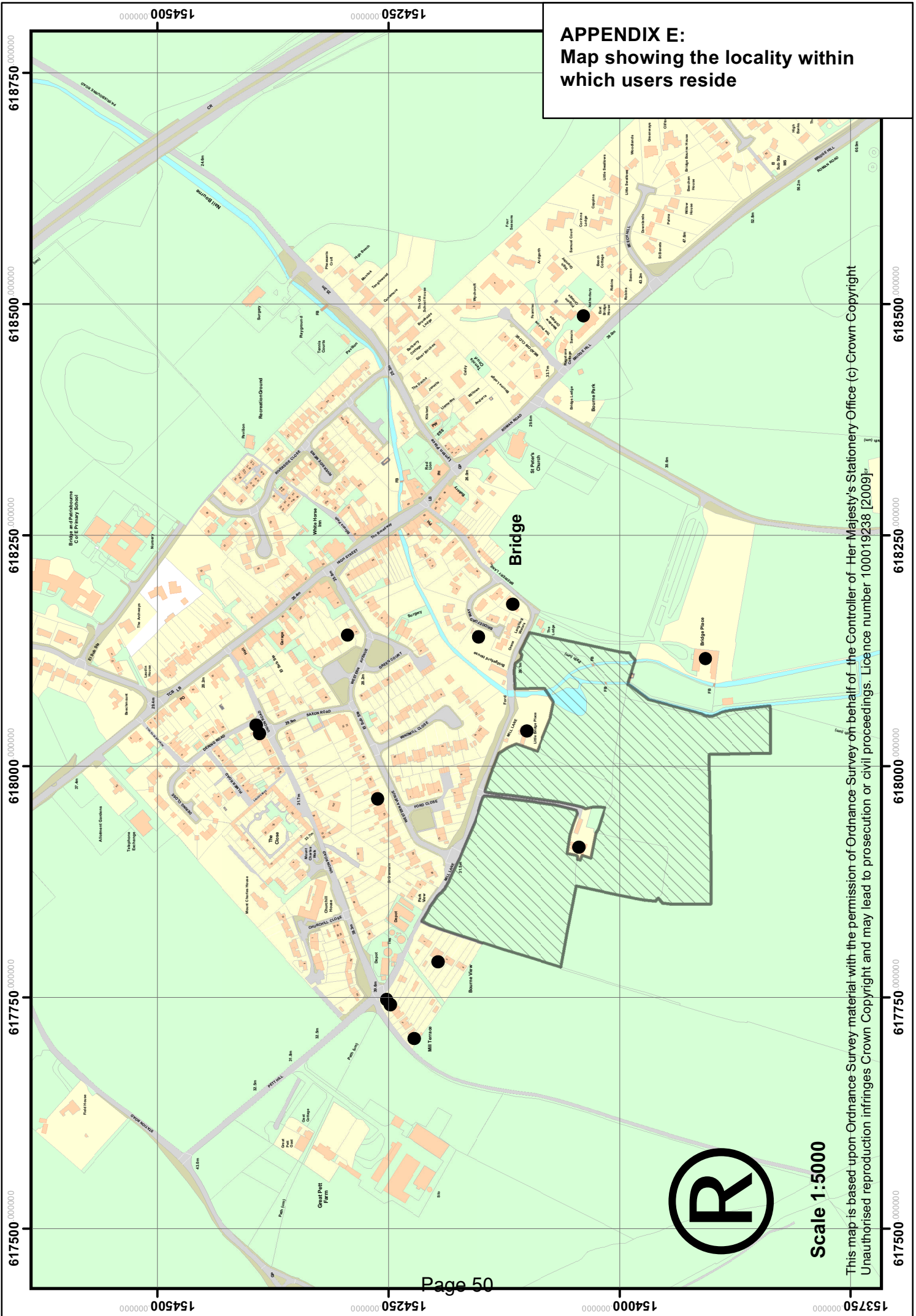
**APPENDIX D:
Plan showing ownership of
the application site**



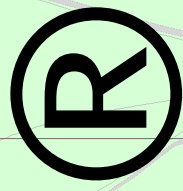
**Land subject to Village Green application
at Brickfields, Mill Lane, Bridge**



APPENDIX E:
Map showing the locality within
which users reside



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Scale 1:5000