



AGENDA

Kent County Council

REGULATION COMMITTEE MEMBER PANEL

Tuesday, 14th September, 2010, at 2.00 pm Ask for: **Andrew Tait**
Stour Room, Sessions House, County Hall, Telephone **01622 694342**
Maidstone

Tea/Coffee will be available 15 minutes before the meeting

UNRESTRICTED ITEMS

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

1. Membership
Conservative (4): Mr M J Harrison (Chairman), Mr A D Crowther (Vice-Chairman),
Mr R E Brookbank and Mr T Gates.

Liberal Democrat (1): Mr S J G Koowaree
2. Declarations of Interest by Members for items on the agenda
3. Application to register land known as Brittain's Common in Sevenoaks as a new Town Green (Pages 1 - 18)
4. Application to register land known as Ryarsh Recreation Ground in Ryarsh parish as a new Village Green (Pages 19 - 34)
5. Application to register land known as "The Glen" at Minster-on-Sea as a new Village Green (Pages 35 - 56)
6. Application to register land known as Barton Playing Field in Canterbury as a new Town Green (Pages 57 - 68)
7. 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, 6 September 2010

Application to register land known as Brittain's Common at Sevenoaks 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 14th September 2010.

Recommendation: I recommend that the County Council informs the applicant that the application to register the land known as Brittain's Common at Sevenoaks has been accepted, and that the land subject to the application (with the exception of the bus shelter) be formally registered as a Town Green.

Local Member: Mr. J. London

Unrestricted item

Introduction

1. The County Council has received an application to register land known as Brittain's Common at Sevenoaks as a new Town Green from the Sevenoaks Town Council ("the applicant"). The application, dated 23rd June 2009, was allocated the application number VGA613. 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. Traditionally, Town and Village Greens have derived from customary law and until recently it was only possible to register land as a new Town or Village Green where certain qualifying criteria were met: i.e. where it could be shown that the land in question had been used 'as of right' for recreational purposes by the local residents for a period of at least 20 years.
3. However, a new provision has been introduced by the Commons Act 2006 which enables the owner of any land to apply to voluntarily register the land as a new Village Green without having to meet the qualifying criteria. Section 15 states:

"(8) The owner of any land may apply to the Commons Registration Authority to register the land as a town or village green.

(9) An application under subsection (8) may only be made with the consent of any relevant leaseholder of, and the proprietor of any relevant charge over, the land."
4. Land which is voluntarily registered as a Town or Village Green under section 15(8) of the Commons Act 2006 enjoys the same level of statutory protection as that of all other registered greens and local people will have a guaranteed right to use the land for informal recreational purposes in perpetuity. This means that once the land is registered it cannot be removed from the formal Register of Town or Village Greens (other than by statutory process) and must be kept free of development or other encroachments.

5. In determining the application, the County Council must consider very carefully the relevant legal tests. In the present case, it must be satisfied that the applicant is the owner of the land and that any necessary consents have been obtained (e.g. from a tenant or the owner of a relevant charge). Provided that these tests are met, then the County Council is under a duty to grant the application and register the land as a Town or Village Green.

The Case

Description of the land

6. The area of land subject to this application (“the application site”) consists of an area of grassy open space of approximately 1.3 acres (0.5 hectares) in size situated at the junction of London Road with Brittain's Lane in Sevenoaks. The application site is generally open and unfenced, with the exception of the property boundaries on the southern edge of the site. It is bounded on its eastern edge by Public Footpath SU45. Photographs of the site are attached at **Appendix C**.

Notice of Application

7. As required by the regulations, Notice of the application was published on the County Council's website. In addition, copies of the notice were displayed on the application site itself. The local County Member was also informed of the application.
8. No representations, either in support of or in opposition to the application, have been received.

Ownership of the land

9. A Land Registry search has been undertaken which confirms that the application site is wholly owned by the Sevenoaks Town Council under title number K945896. A copy of the Register of Title is attached at **Appendix D**.
10. There are no other interested parties (e.g. leaseholders or owners of relevant charges) named on the Register of Title.

The 'locality'

11. DEFRA's view is that once land is registered as a Town or Village Green, only the residents of the locality have the legal right to use the land for the purposes of lawful sports and pastimes. It is therefore necessary to identify the locality in which the users of the land reside.
12. A locality for these purposes normally consists of a recognised administrative area (e.g. civil parish or electoral ward) or a cohesive entity (such as a village or housing estate). Since the application has been made by Sevenoaks Town Council, it seems appropriate that the locality should therefore be the administrative area of the Town Council so that all the residents of the town have the legal right to use the land.

Bus shelter

13. Members will note from the photographs at **Appendix C** that there is a bus shelter on the application site. It is not considered appropriate for the bus shelter to be registered as part of a new Town or Village Green. Town and Village Greens are heavily protected by Victorian statues which make it an offence to deposit materials on the surface, to encroach or to erect structures upon a Town or Village Green. If the bus shelter were to fall into a state of disrepair in the future, Town Green status would make it difficult for the structure to be rebuilt. Therefore, to avoid any potential problems arising in the future, it is preferable to exclude the bus shelter from the registration of the land as a new Town Green.

Conclusion

14. As stated at paragraph 3 above, the relevant criteria for the voluntary registration of land as a new Town or Village Green under section 15(8) of the Commons Act 2006 requires only that the County Council is satisfied that the land is owned by the applicant. There is no need for the applicant to demonstrate use of the land 'as of right' for the purposes of lawful sports and pastimes over a particular period.

15. I have concluded that all the necessary criteria concerning the voluntary registration of the land as a Town Green have been met. However, the bus shelter should be excluded from the registration.

Recommendations

16. I recommend that the County Council informs the applicant that the application to register the land known as Brittain's Common at Sevenoaks has been accepted, and that the land subject to the application (with the exception of the bus shelter) be formally registered as a Town Green.

Accountable Officer:

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

Case Officer:

Miss. Melanie McNeir – Tel: 01622 221628 or Email: melanie.mcneir@kent.gov.uk

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

Background documents

APPENDIX A – Plan showing application site

APPENDIX B – Copy of application form

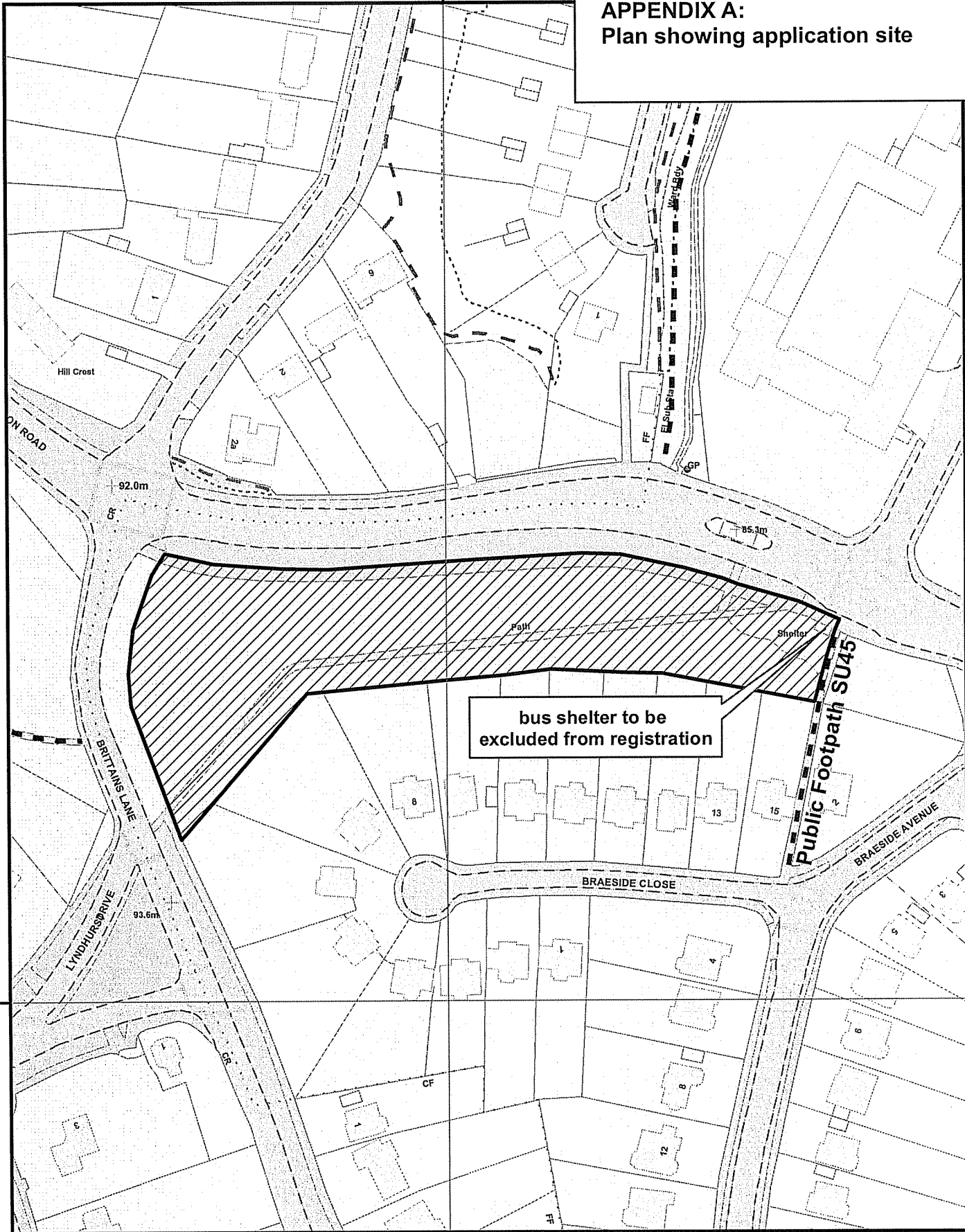
APPENDIX C – Photographs of the application site

APPENDIX D – Official copy of register of title from Land Registry

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**APPENDIX A:
Plan showing application site**



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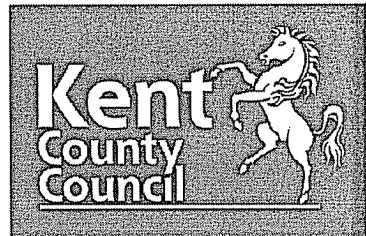
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**Land subject to Town Green application
at Brittains Lane, Sevenoaks**



M
Scale 1:1250



FORM CA9

APPENDIX B:
Copy of the application form

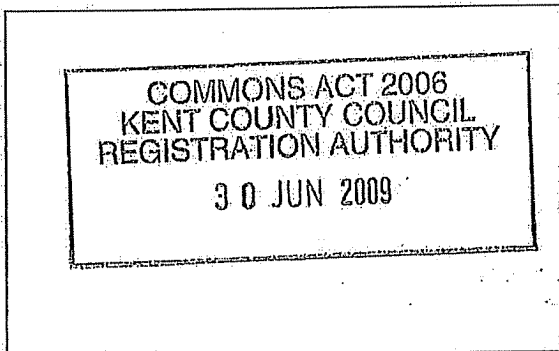
Commons Act 2006: section 15

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:



Application number:

V6A 613



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: The Commons Registration Team
Kent County Council
Countyside Access Service
Invicta House
County Hall
Maidstone
Kent. ME14 1XX

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: Sevenoaks Town Council
Full postal address: Town Council Offices
(incl. Postcode) Bradbourne Vale Road
Sevenoaks
Kent TN13 3QG
Telephone number: 01732 459953
(incl. national dialling code)
Fax number: 01732 742577
(incl. national dialling code)
E-mail address: council@sevenoakstown.gov.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: N/A
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>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: Brittains Common</p> <p>Location: Junction of Brittains lane / London Road (A224)</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>Parish of Sevenoaks Town</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

Not applicable registered under s. 15(8)

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

Sevenoaks Town Council
Town Council Offices
Bradbourne Vale Road
Sevenoaks
Kent
TN13 3QG

<p>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.</p>	<p>9. Voluntary registration – declarations of consent from any relevant leaseholder of, and of the proprietor of any relevant charge over, the land</p> <p>Sevenoaks Town Council</p> <p>Minute No: 11 - Open Spaces & Leisure Committee 7.7.2008</p> <p>Minute No: 31 - Town Council 27.10.08</p>
<p>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.</p>	<p>10. Supporting documentation</p> <p>i) Map of location (marked 10.i)</p> <p>ii) Map of Sevenoaks Parish (marked 10.ii)</p> <p>iii) Sevenoaks Town Council Minute (marked 10.iii)</p>
<p>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.</p>	<p>11. Any other information relating to the application</p> <p>Not Applicable</p>

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. Lortie*

Date: *23rd June 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.

(10.1)



Based upon the Ordnance Survey map with the permission of the Controller of Her Majesty's Stationery Office. Crown Copyright Licence No. LA076709. Additional information copyright Kent County Council.

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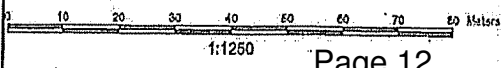
551800

LAND ADJ BRITAIN'S LANE AND SOUTH OF LONDON ROAD RIVERHEAD SEVENOAKS



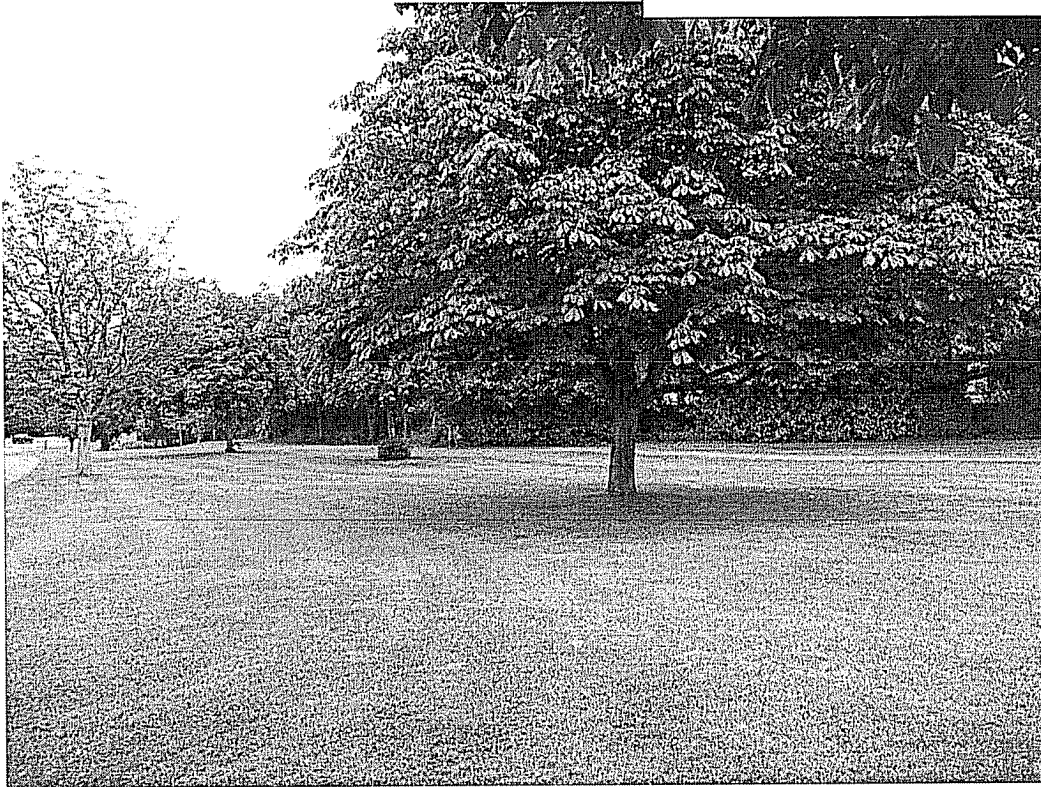
PROPERTY GROUP
County Hall, Maidstone
Kent ME14 1XQ
Tel: 08458 247247

Drawn By	Date
JTN	JUL 2007



Drawing No.
TQ5155/13C

APPENDIX C:
Photographs showing application site



Above: View from London Road and Brittain's Lane junction looking EAST

Below: View from Lyndhurst Drive and Brittain's Lane junction looking EAST



Official copy of register of title

Title number K945896

Edition date 25.09.2008

- This official copy shows the entries in the register of title on 29 January 2010 at 14:04:55.
- This date must be quoted as the "search from date" in any official search application based on this copy.
- The date at the beginning of an entry is the date on which the entry was made in the register.
- Issued on 29 January 2010.
- Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.
- For information about the register of title see Land Registry website www.landregistry.gov.uk or Land Registry Public Guide 1 - *A guide to the information we keep and how you can obtain it.*
- This title is dealt with by Land Registry Tunbridge Wells Office.

A: Property register

This register describes the land and estate comprised in the title.

KENT : SEVENOAKS

- 1 (07.08.1936) The Freehold land shown edged with red on the plan of the above title filed at the Registry and being Land on the south side of London Road, Sevenoaks.
- 2 The land has the benefit of the following rights reserved by a Transfer of the land lying to the east of the land in this title dated 30 April 1990 made between (1) The Kent County Council and (2) Colin Spencer Smith and Carol Ann Smith:-

"EXCEPTING AND RESERVING in fee simple unto the Council and its successors in Title the owners or occupiers for the time being of the remainder of the land comprised in the above title ("the said adjoining land") the rights easements and privileges specified in the First Schedule hereto

THE FIRST SCHEDULE above referred to

(1) The right (in common with the Purchasers and all others entitled thereto) of the free and uninterrupted passage and running of water soil gas and electricity by and through those sewers drains watercourses pipes wires cables and other service conduits which serve the said adjoining land and which run under along or over the Property with full right and liberty for the Council and its successors in title to the said adjoining land at all reasonable times and upon giving notice in writing except in cases of emergency to enter upon the Property with or without workmen and appliances for the purpose of inspecting repairing cleansing maintaining renewing relaying or removing the said sewers drains watercourses pipes wires cables and other service conduits or removing therefrom any obstruction the Council and its successors in title making good at their own expense and to the reasonable satisfaction of the Purchasers and the Purchasers'



A: Property register continued

successors in title to the Property all damage and disturbance caused by the exercise of such rights as aforesaid and also paying a fair proportion in common with all other persons having the like right to use the said sewers drains watercourses pipes wires cables and other service conduits of the expense of repairing cleansing maintaining and renewing the same

(2) Any other rights and easements or quasi-rights and quasi-easements at present appurtenant to or enjoyed with the said adjoining land over or in relation to the Property."

- 3 (23.09.2008) The land has the benefit of the rights granted by but is subject to the rights reserved by a Transfer of the land in this title dated 12 September 2008 made between (1) The Kent County Council and (2) Sevenoaks Town Council .

NOTE: Copy filed.

B: Proprietorship register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute

- 1 (23.09.2008) PROPRIETOR: SEVENOAKS TOWN COUNCIL of Town Council Offices, Bradbourne Vale Road, Sevenoaks, Kent TN13 3QG.
- 2 (23.09.2008) The price stated to have been paid on 12 September 2008 was £27,000.

C: Charges register

This register contains any charges and other matters that affect the land.

- 1 A Conveyance of the land in this title and other land dated 10 May 1926 made between (1) The Right Honourable Hugh Earl Amhurst (Vendor) (2) Edward Windsor Hussey and George Windsor Clive and (3) Julius Joseph Runge (Purchaser) contains covenants details of which are set out in the schedule of restrictive covenants hereto.
- 2 A Conveyance of the land in this title and other land dated 17 July 1936 made between (1) Norah Cecil Runge, Peter Francis Runge and Edward Henry Herbert (Vendors) (2) John William Ronald Ford and (3) Derby & Co (Contractors) Limited (Company) contains covenants details of which are set out in the schedule of restrictive covenants hereto.
- 3 The land subject to an Agreement under seal as to drainage dated 20 May 1937 made between (1) The Rural District Council of Sevenoaks and (2) Derby & Co Limited

NOTE: Copy filed under K14087.

- 4 The land is subject to the covenants, exceptions and reservations, agreement and declaration contained in a Transfer of the land in this title dated 14 April 1938 made between (1) Derby & Company (Contractors) Limited and (2) The County Council of the Administrative County of Kent.

NOTE: Original filed under K21807.

C: Charges register continued

Schedule of restrictive covenants

- 1 The following are details of the covenants contained in the Conveyance dated 10 May 1926 referred to in the Charges Register:-

The PURCHASER hereby covenants with the Vendor that the Purchaser and the persons deriving title under him will at all times hereafter duly observe and perform all and singular the restrictive and other covenants and stipulations set forth in the Third Schedule hereto but so nevertheless that the Purchaser or other the owner or owners for the time being of the premises hereby conveyed shall as regards any of the aforesaid covenants or stipulations which are restrictive of the user of the land be liable only in respect of breaches which occur while he or they shall respectively be the owner or owners of the land or of the part thereof in respect of which any such breach occurs.

THE THIRD SCHEDULE above referred to

No building erected or to be erected on any part of Ordnance Numbers 114, 117 part 115 part 187a, 204, 205 and 206 shall be used as a manufacturing workshop or factory and no noisy noisome or offensive manufacture trade business or occupation shall be carried on on any part thereof and nothing shall take place thereon which shall be or become a damage nuisance or annoyance to the Vendor or the owners tenants or occupiers of any adjoining property or the neighbourhood or which may tend to depreciate the value of any other part of the Montreal Estate as residential property.

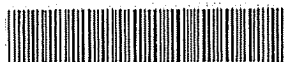
NOTE: The land in this title forms part of Ordnance Numbers 204, 205 and 206.

- 2 The following are details of the covenants contained in the Conveyance dated 17 July 1936 referred to in the Charges Register:-

"The Company hereby covenant with the Vendors to the intent that the covenant in this clause contained may so far as possible bind the property hereinbefore conveyed and all persons who now are or shall hereafter become entitled to any estate or interest therein or any part thereof but not so as to bind the Company or any such person after the Company or such person shall have disposed of all estate or interest therein and to the further intent that this covenant shall enure for the benefit of the remainder of the Montreal Estate or any such part thereof as may subsequently be sold by the Vendors expressly with the benefit of this covenant or to which the benefit of this covenant may at any time be expressly annexed by the Vendors that the Company and its successors in title will henceforth perform and observe the restrictions and stipulations set out in the First Schedule hereto Provided that the Vendors shall not be under any reciprocal obligation in respect of the said stipulations and restrictions and may waive release vary or modify the same or any of them and sell or transfer or otherwise deal with any of their remaining property free from the same or subject to such other stipulations and restrictions as they may think fit.

THE FIRST SCHEDULE ABOVE REFERRED TO

1. Artistic and pleasing buildings only shall be erected and no building or erection shall be erected upon any part of the said land unless the Company shall have previously submitted plans and elevations showing the description thereof together with a statement of the materials to be used externally to the Surveyor for the time being of the Vendors (hereinafter referred to as "the Surveyor") who must first approve the same and shall have paid a fee of Two guineas to the Surveyor therefor.



Schedule of restrictive covenants continued

2. No temporary buildings caravans or huts on wheels shall at any time be brought or allowed to remain upon any part of the said land.

3. Private detached dwellinghouses only with a suitable cottage if desired for the occupation of domestic employees and usual outbuildings and garage accommodation (with or without rooms over for Chauffeur or Gardener) may be erected upon the said land provided that a cottage shall not be erected except in conjunction with a dwellinghouse having at least One and a half acres permanently attached to it and such cottage shall be occupied only by employees at the house in conjunction with which such cottage is erected. The net prime cost of each dwellinghouse exclusive of any cottage garage or outbuildings shall not be less (except with the consent of the Surveyor) than Seven hundred pounds. No house cottage garage or other outbuilding shall be erected unless the materials to be used shall previously have been approved of by the Surveyor.

4. No trade or business of any description whatever shall at any time hereafter be carried on upon the said land or in any buildings erected thereon and nothing shall take place thereon which shall or may be or become a nuisance damage or annoyance to other owners tenants occupiers of adjoining property or to the Vendors or which may tend to depreciate the value of any part of the Vendors' estate in the neighbourhood but the said land and buildings shall be used only for private residential purposes as shall be approved in writing by the Surveyor.

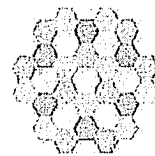
5. No sand stone or other materials shall be removed from the said land except so far as may be necessary in the erection of a house and other buildings thereon.

6. No advertisement or hoarding shall be exhibited on the said land except such as relates to the selling or the letting of the said lands or buildings thereon or a professional plate."

End of register

Land Registry
Official copy of
title plan

Title number K945896
Ordnance Survey map reference TQ5155NE
Scale 1:1250
Administrative area Kent: Sevenoaks



© Crown Copyright. Produced by Land Registry. Reproduction in whole or in part is prohibited without the prior written permission of Ordnance Survey. Licence Number 100026316.



This official copy issued on 29 January 2010 shows the state of this title plan on 29 January 2010 at 14:04:55. It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002). This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. See Land Registry Public Guide 19 - Title Plans and Boundaries. This title is dealt with by Land Registry, Tunbridge Wells Office.



Application to register land at Ryarsh Recreation Ground in the parish of Ryarsh as a new Village Green

A report by the Director of Environment and Waste to Kent County Council's Regulation Committee Member Panel on Tuesday 14th September 2010.

Recommendation: I recommend that the County Council informs the applicant that the application to register the land at Ryarsh Recreation Ground at Ryarsh has been accepted, and that the land subject to the application (with the exception of the access track to the Village Hall) be formally registered as a Village Green.

Local Member: Mrs. S. Hohler

Unrestricted item

Introduction

1. The County Council has received an application to register land at Ryarsh Recreation Ground at Ryarsh as a new Village Green from the Ryarsh Rural Community Council ("the applicant"). The application, dated 4th February 2009, was allocated the application number VGA609. 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. Traditionally, Town and Village Greens have derived from customary law and until recently it was only possible to register land as a new Town or Village Green where certain qualifying criteria were met: i.e. where it could be shown that the land in question had been used 'as of right' for recreational purposes by the local residents for a period of at least 20 years.
3. However, a new provision has been introduced by the Commons Act 2006 which enables the owner of any land to apply to voluntarily register the land as a new Village Green without having to meet the qualifying criteria. Section 15 states:
 - "(8) The owner of any land may apply to the Commons Registration Authority to register the land as a town or village green.*
 - (9) An application under subsection (8) may only be made with the consent of any relevant leaseholder of, and the proprietor of any relevant charge over, the land."*
4. Land which is voluntarily registered as a Town or Village Green under section 15(8) of the Commons Act 2006 enjoys the same level of statutory protection as that of all other registered greens and local people will have a guaranteed right to use the land for informal recreational purposes in perpetuity. This means that once the land is registered it cannot be removed from the formal Register of Town or Village Greens (other than by statutory process) and must be kept free of development or other encroachments.

5. In determining the application, the County Council must consider very carefully the relevant legal tests. In the present case, it must be satisfied that the applicant is the owner of the land and that any necessary consents have been obtained (e.g. from a tenant or the owner of a relevant charge). Provided that these tests are met, then the County Council is under a duty to grant the application and register the land as a Town or Village Green.

The Case

Description of the land

6. The area of land subject to this application (“the application site”) consists of an area of grassy open space of approximately 5 acres (2 hectares) in size situated on Birling Road in the parish of Ryarsh. The application site is bounded on all sides by fencing, but excludes the area around the Village Hall and car park. Photographs of the site are attached at **Appendix C**.

Notice of Application

7. As required by the regulations, Notice of the application was published on the County Council’s website. The local County Member was also informed of the application.
8. No representations, either in support of or in opposition to the application, have been received.

Ownership of the land

9. A Land Registry search has been undertaken which confirms that the application site is wholly owned by the Ryarsh Rural Community Council under title number K887030. A copy of the Register of Title is attached at **Appendix D**.
10. There are no other interested parties (e.g. leaseholders or owners of relevant charges) named on the Register of Title.

The ‘locality’

11. DEFRA’s view is that once land is registered as a Town or Village Green, only the residents of the locality have the legal right to use the land for the purposes of lawful sports and pastimes. It is therefore necessary to identify the locality in which the users of the land reside.
12. A locality for these purposes normally consists of a recognised administrative area (e.g. civil parish or electoral ward) or a cohesive entity (such as a village or housing estate). Since the application has been made by Ryarsh Rural Community Council, it seems appropriate that the locality should therefore be the village of Ryarsh so that all the residents of the village have the legal right to use the land.

Access track to Village Hall

13. Members will note from the plan at **Appendix A** and the photographs at **Appendix C** that part of the application site includes the access track to the Village Hall.
14. Section 34 of the Road Traffic Act 1988 makes it an offence for a person to drive a motor vehicle over a Village Green without lawful authority (i.e. without prior permission). Additionally, driving over a Village Green is also likely to constitute a damaging activity which would be prohibited under the Victorian statutes designed to protect Village Greens.
15. Therefore, to avoid any potential problems arising in the future, it is preferable to exclude the access track from the registration of the land as a new Village Green.

Conclusion

16. As stated at paragraph 3 above, the relevant criteria for the voluntary registration of land as a new Town or Village Green under section 15(8) of the Commons Act 2006 requires only that the County Council is satisfied that the land is owned by the applicant. There is no need for the applicant to demonstrate use of the land 'as of right' for the purposes of lawful sports and pastimes over a particular period.
17. I have concluded that all the necessary criteria concerning the voluntary registration of the land as a Village Green have been met. However, the access track to the Village Hall should be excluded from the registration.

Recommendations

18. I recommend that the County Council informs the applicant that the application to register the land at Ryarsh Recreation Ground at Ryarsh has been accepted, and that the land subject to the application (with the exception of the access track to the Village Hall) be formally registered as a Village Green.

Accountable Officer: Dr. Linda Davies – Tel: 01622 221500 or Email: linda.davies@kent.gov.uk Case Officer: Miss. Melanie McNeir – Tel: 01622 221628 or Email: melanie.mcneir@kent.gov.uk

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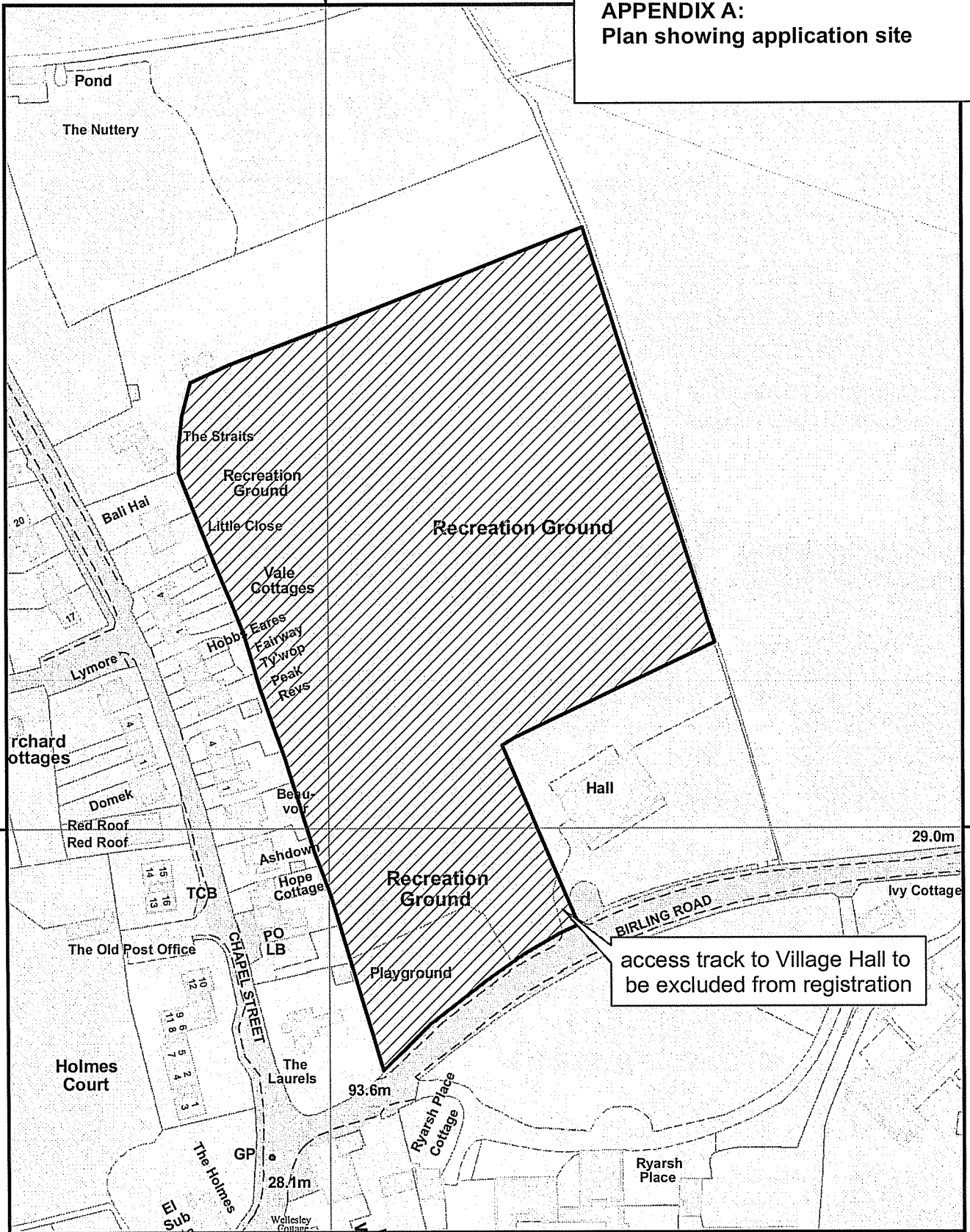
Background documents

- APPENDIX A – Plan showing application site
- APPENDIX B – Copy of application form
- APPENDIX C – Photographs of the application site
- APPENDIX D – Official copy of register of title from Land Registry

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567000

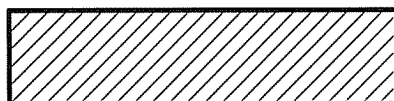
APPENDIX A:
Plan showing application site



567000



Land subject to Village Green application at
Ryarsh Recreation Ground, Birling Road, Ryarsh



FORM CA9

APPENDIX B:
Copy of application form

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:

COMMONS ACT 2006
KENT COUNTY COUNCIL
REGISTRATION AUTHORITY
09 FEB 2009

Application number:

609

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: DAVID CHARLES STORRY
FOR AND ON BEHALF RYABSH RURAL COMMUNITY
Full postal address: NOVIN THE STREET (COUNCIL)
(incl. Postcode) RYABSH KENT
Telephone number: 01732 875580
(incl. national dialling code)
Fax number: -
(incl. national dialling code)
E-mail address: wjw@rnpfproperty@aol.com

Note 3

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

3. Name and address of representative, if any

Name: AS ABOVE
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 style="text-align: center;">N A</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: RYARTH RECEPTION GROUND</p> <p>Location: BURLING ROAD RYARTH 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 style="text-align: right;">ALREADY WITH YOU</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 style="text-align: center;">TITLE PLAN ALREADY WITH YOU</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

TO MAINTAIN THE AMENITY FOR RYARSH VILLAGE AND TO PROTECT IT IN THE LONG TERM AGAINST DEVELOPMENT OR OTHER USES

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

NONE ITS REGISTERED CLEAR UNENCUMBERED FREEHOLD TITLE

<p>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.</p>	<p>9. Voluntary registration – declarations of consent from any relevant leaseholder of, and of the proprietor of any relevant charge over, the land</p> <p style="text-align: center;">NONE</p>
<p>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.</p>	<p>10. Supporting documentation</p> <p style="text-align: center;">MY LETTER OF THE 12TH JANUARY 2009 TO CMLF WAVE WHICH INCLUDED A TITLE PLAN</p>
<p>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.</p>	<p>11. Any other information relating to the application</p> <p style="text-align: center;">NONE</p>

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:

4th February 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.

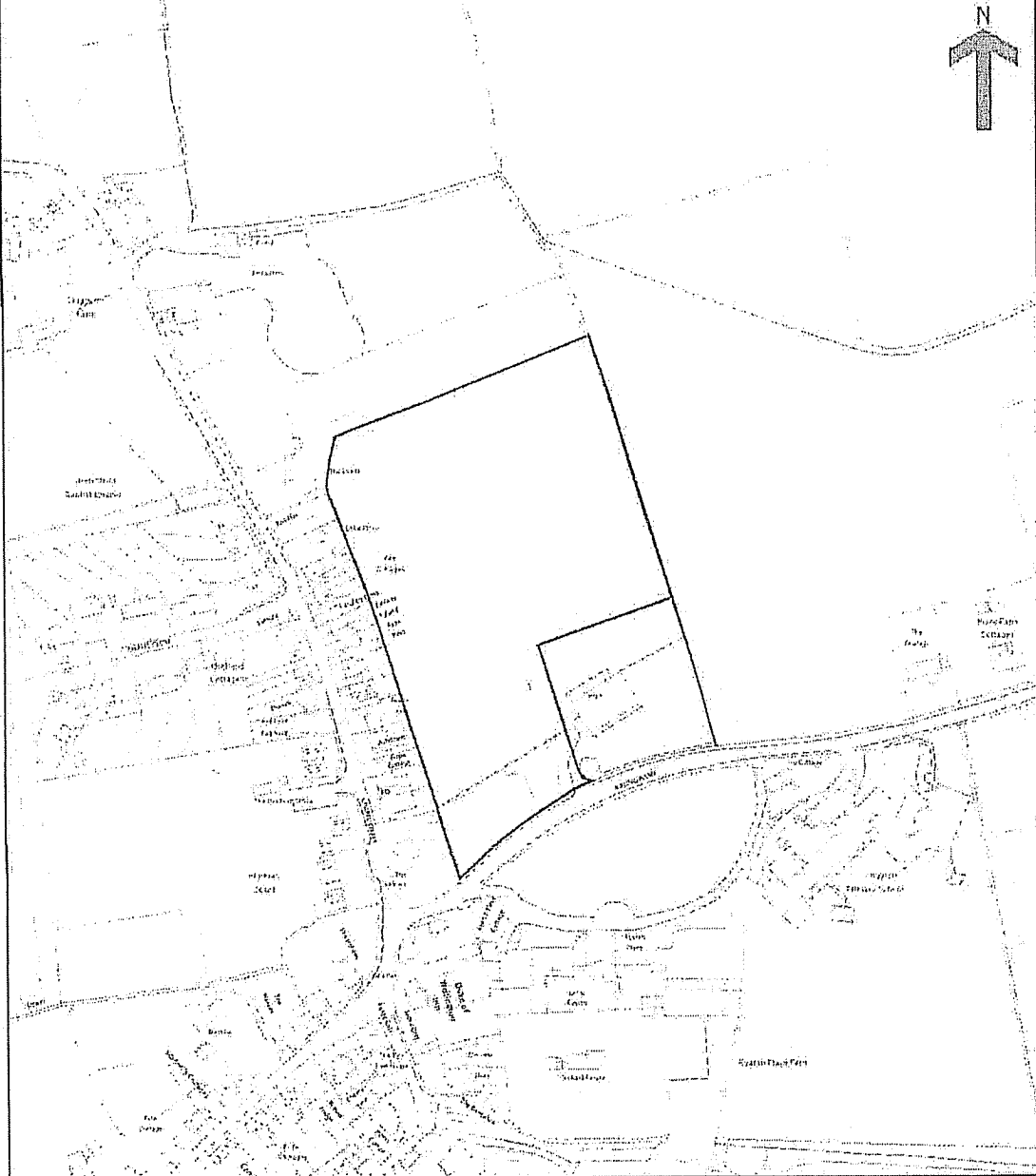
A copy of this form and any accompanying documents may be disclosed upon receipt of a request for information under the Environmental Information Regulations 2004 and the Freedom of Information Act 2000.

Land Registry
Current title plan

Title number **K887030**
Ordnance Survey map reference **TQ6760SW**
Scale **1:2500**
Administrative area **KENT : TONBRIDGE AND MALLING**



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This is a copy of the title plan on 12 JAN 2009 at 09:51:06. This copy does not take account of any application made after that time even if still pending in the Land Registry when this copy was issued.

This copy is not an 'Official Copy' of the title plan. An official copy of the title plan is admissible in evidence in a court to the same extent as the original. A person is entitled to be indemnified by the registrar if he suffers loss by reason of a mistake in an official copy. If you want to obtain an official copy, the Land Registry web site explains how to do this.

The Land Registry endeavours to maintain high quality and scale accuracy of title plan images. The quality and accuracy of any print will depend on your printer, your computer and its print settings. This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortion in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. See Land Registry Public Guide 7 - Title Plans.

This title is dealt with by Land Registry, Tunbridge Wells Office.



Above: view from Birling Road looking north

Below: view from northern end of Recreation Ground looking south towards Birling Road



**APPENDIX C:
Photographs of application site**

Official copy of register of title

Title number K887030

Edition date 23.02.2006

- This official copy shows the entries in the register of title on 14 September 2009 at 13:30:38.
- This date must be quoted as the "search from date" in any official search application based on this copy.
- The date at the beginning of an entry is the date on which the entry was made in the register.
- Issued on 14 September 2009.
- Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.
- For information about the register of title see Land Registry website www.landregistry.gov.uk or Land Registry Public Guide 1 - *A guide to the information we keep and how you can obtain it*.
- This title is dealt with by Land Registry Tunbridge Wells Office.

A: Property register

This register describes the land and estate comprised in the title.

KENT : TONBRIDGE AND MALLING

- 1 (10.12.1919) The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being Ryarsh Recreation Ground, Birling Road, Ryarsh, West Malling.
- 2 (05.07.2005) The Transfer dated 24 January 2005 referred to in the Charges Register contains a provision as to light or air.

B: Proprietorship register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute

- 1 (05.07.2005) PROPRIETOR: THE RYARSH RURAL COMMUNITY COUNCIL of The Old Post Office, Chapel Street, Ryarsh, West Malling, Kent ME19 5LU.
- 2 (05.07.2005) The price stated to have been paid on 24 January 2005 was £25,000.
- 3 (05.07.2005) RESTRICTION: No disposition by the proprietor of the registered estate to which section 36 or section 38 of the Charities Act 1993 applies is to be registered unless the instrument contains a certificate complying with section 37(2) or section 39(2) of that Act as appropriate.
- 4 (05.07.2005) RESTRICTION: No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered



B: Proprietorship register continued

charge is to be registered without a certificate signed on behalf of Kent County Council of County Hall, Maidstone, Kent ME14 2LX by its conveyancer that the provisions of clauses 13.4.1 and 13.4.3 of the Transfer dated 24 January 2005 referred to in the Charges Register have been complied with.

C: Charges register

This register contains any charges and other matters that affect the land.

- 1 The land is subject to the following rights granted by a Transfer of the adjoining hall to the south east dated 25 October 1978 made between (1) The Kent County Council (Transferor) and (2) Ryarsh Parish Council (Transferee):-

"TOGETHER WITH a right of way at all times and for all purposes over the land coloured brown on the said plan in connection with the use occupation and enjoyment by the Transferee and its successors in title of the land hereby transferred."

NOTE:-The land coloured brown referred to is tinted yellow on the title plan.

- 2 The parts of the land affected thereby are subject to the rights in respect of a foul water sewer in the approximate position shown by a blue broken line on the title plan granted by a Deed dated 14 September 1983 made between (1) The Kent County Council and (2) Ryarsh Parish Council.

NOTE: Copy filed under K478974.

- 3 (05.07.2005) A Transfer of the land in this title dated 24 January 2005 made between (1) The Kent County Council and (2) The Ryarsh Rural Community Council contains restrictive covenants.

NOTE: Copy filed.

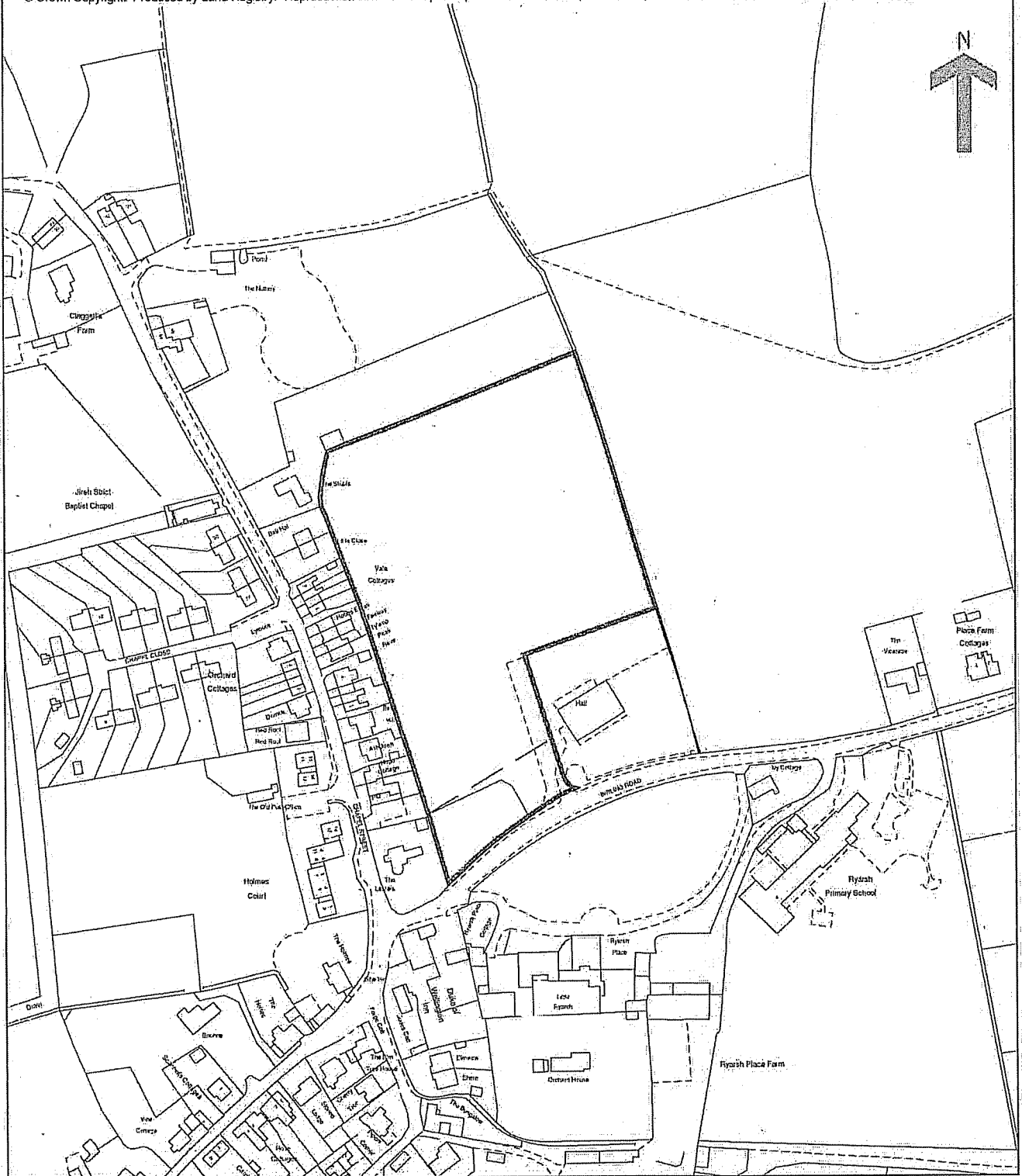
End of register

Land Registry
Official copy of
title plan

Title number K887030
Ordnance Survey map reference TQ6760SW
Scale 1:2500
Administrative area Kent: Tonbridge and Malling



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This official copy issued on 14 September 2009 shows the state of this title plan on 14 September 2009 at 13:30:38. It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002).

This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. See Land Registry Public Guide 19 - Title Plans and Boundaries.

This title is dealt with by Land Registry, Tunbridge Wells Office.



2 6 2 1 0 2 4 0 0 3

Application to register land known as ‘The Glen’ at Minster-on-Sea as a new Village Green

A report by the Director of Environment and Waste to Kent County Council’s Regulation Committee Member Panel on Tuesday 14th September 2010.

Recommendation: I recommend that the County Council informs the applicant that the application to register the land at The Glen at Minster-on-Sea as a new Village Green has been accepted, and that the land subject to the application be formally registered as a Village Green.

Local Members: Mr. A. Crowther

Unrestricted item

Introduction

1. The County Council has received an application to register land known as ‘The Glen’ at Minster-on-Sea on the Isle of Sheppey as a new Village Green from the Minster-on-Sea Parish Council (“the Applicant”). The application, dated 5th March 2009, was allocated the application number VGA610. 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”) is known locally as ‘The Glen’ and consists of a large area of open space, approximately 9 hectares (22 acres) in size, situated at the centre of the village of Minster-on-Sea. It is bounded on its northern edge by the rear of properties in Wards Hill Road, on its eastern edge by Whybournes Chase, on its southern edge by the rear of properties on Queenborough Drive and on its western edge by properties in Hillside Road, Woodland Drive and The Glen. Access to the application site is via several entrances around the site.
7. The application site is shown in more detail on the plan at **Appendix A** and in the photographs at **Appendix C**.

The case

8. 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.
9. Included in the application were 137 standard-form witness statements from local residents asserting that the application site has been available for free and uninhibited use for lawful sports and pastimes for at least 20 years. A summary of the evidence in support of the application is attached at **Appendix D**.
10. Also received in support of the application were a number of photographs showing the use of the application site (taken during the period 1980 to 2007), various press articles (dating from the period 1983 – 2008) reporting a regular Good Friday open air service taking place on the application site, as well as copies of insurance certificates (dated 1991, 1992 and 2000) verifying the existence of play equipment on the application site.

Consultations

11. Consultations have been carried out as required. No responses have been received.

Landowner

12. The application site is registered with the HM Land Registry under title numbers K948541, K948343, K198002, K278131 and K252033. All of these title numbers state the registered owner as being the Swale Borough Council.
13. Swale Borough Council has been contacted and has confirmed that it has no objection to the application.

Legal tests

14. 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'?*

15. 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'.

16. In this case, there is no evidence to suggest that the use of the land by local residents has not been 'as of right'. The user evidence statements specifically ask witnesses to confirm that their use has been "without permission, without force or seeing notices to stop me and without being secretive". There is not mention of any challenges or restriction to use.

17. The evidence statements are supported by the physical state of the application site. Due to its vast size and open nature, it would be very difficult to secure the site in its entirety and as such there can be no suggestion that use has ever been with force. Although there are formal notices erected by Swale Borough Council on the site, these refer only to the existence of CCTV on the site and byelaws which prohibit the playing of golf, camping, entry to the site by motor vehicles and dog-fouling. The signs do not in any way attempt to discourage or prohibit use, nor do they confer any general permission for local people to use the application site.

18. In the absence of any evidence to the contrary, it can be concluded that use of the application site has been 'as of right'.

(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

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

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 user evidence statements refer to the use of the land for 'lawful sports and pastimes' as a generic category. In signing the statements, many people have elaborated on their use of the application site, and a selection of comments have been summarised at **Appendix D**. The activities cited include dog-walking, picnics, kite-flying, blackberrying, playing with children, recreational walking and ball games. It is clear that the situation of the site at the centre of a residential area and the nature of the site means that it both lends itself to, and actually has been used, for a range of recreational activities.

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

22. 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.
23. The definition of locality for the purposes of a Village Green application has been the subject of much debate in the courts and there is still no definite rule to be applied. In the *Cheltenham Builders*⁴ 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*'.
24. At part 6 of the application form, the Applicant specifies the locality by reference to the location of the site and surrounding roads. This is not a legally recognised administrative boundary and thus would not satisfy the requisite legal test. However, the application site does fall within the administrative parish of Minster-on-Sea which is recognised at law and would be capable of constituting a locality for the purposes of the tests in section 15 of the Commons Act 2006.
25. Having established a relevant locality, it is also necessary to consider whether the use of the application site has been by a significant number of the residents of

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

⁴ *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at page 90

that locality. The word “significant” in this context does not mean considerable or substantial: ‘a neighbourhood may have a very limited population and a significant number of the inhabitants of such a neighbourhood might not be so great as to properly be described as a considerable or a substantial number... what matters is that the number of people using the land in question has to be sufficient to indicate that the land is in general use by the community for informal recreation rather than occasional use by individuals as trespassers’⁵. 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.

26. In this case, the application is supported by witness statements from 137 people living across the parish of Minster-on-Sea. This is shown on the plan at **Appendix E**. The evidence refers to regular usage of the site by local residents and as such it is possible to conclude that it has been in general use by the community.

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

27. 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.

28. In this case, the application was made in March 2009. Therefore, the relevant twenty-year period (“the material period”) is 1989 to 2009.

29. The fact that the user evidence submitted in support of the application consists of standard-form statements means that it is difficult to pinpoint exactly when each of the witnesses began using the applications site. In some cases, witnesses have helpfully elaborated on the exact period of use, but in nearly all cases witnesses attest to at least 20 years’ use.

(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)?

30. 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).

31. 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.

32. 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.

⁵ *R (Alfred McAlpine Homes Ltd.) v Staffordshire County Council* [2002] EWHC 76 at paragraph 71

Conclusion

33. From close consideration of the evidence submitted, it has been concluded that the legal tests concerning the registration of the land as a Town Green (as set out above) has been met.

Recommendation

34. I recommend that the County Council informs the applicant that the application to register the land at The Glen at Minster-on-Sea as a new Village Green has been accepted, and that the land subject to the application be formally registered as a Village Green.

Accountable Officer:

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

Case Officer:

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 – Photographs showing application site

APPENDIX D – Summary of user evidence in support of the application

APPENDIX E – Plan showing the area within which users reside

595000 000000

**APPENDIX A:
Plan showing the application site**

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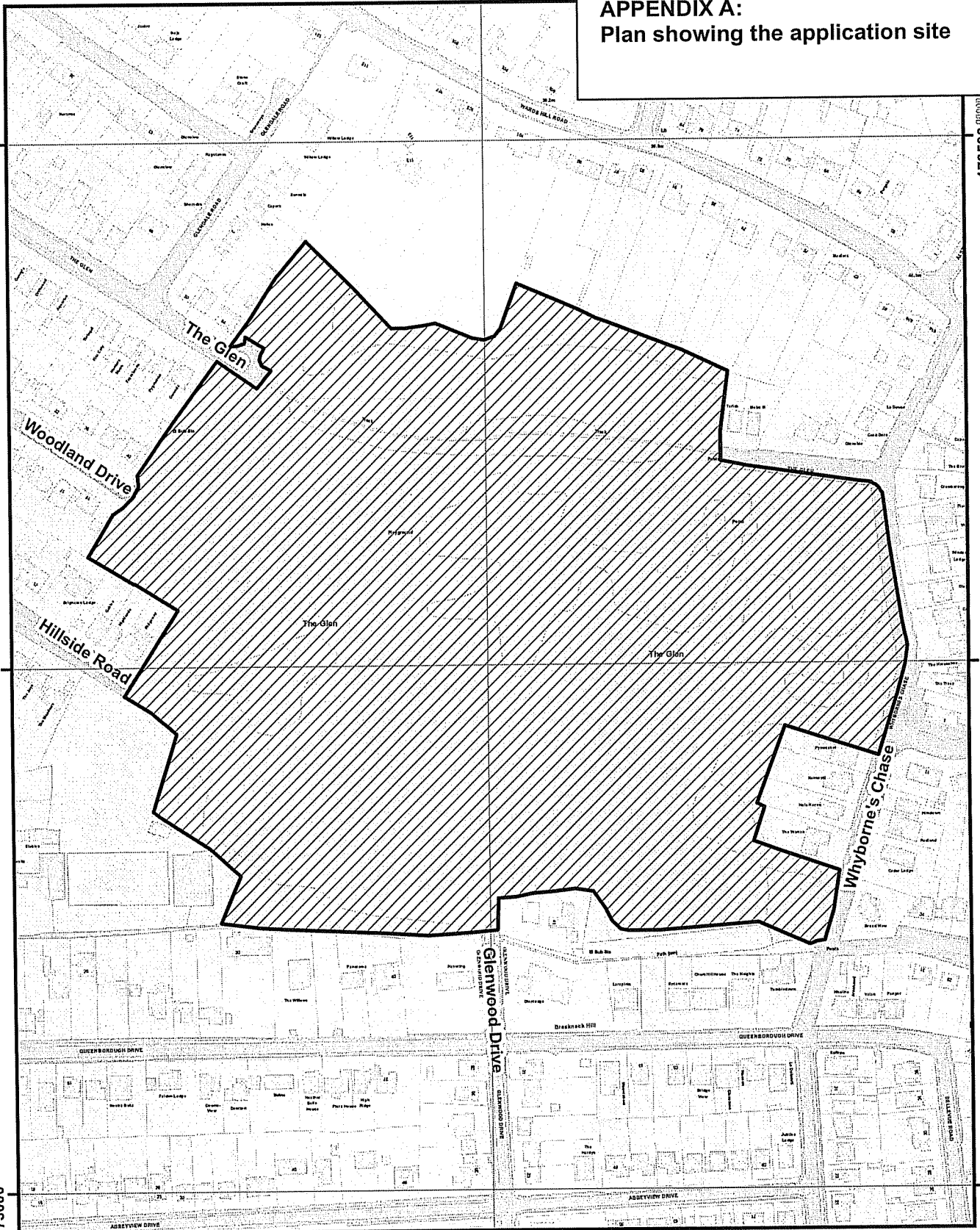
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Scale 1:2500

**Land subject to Village Green application
at 'The Glen', Minster-on-Sea**

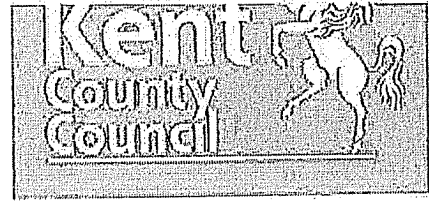


**APPENDIX B:
Copy of application form**

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 12 MAR 2009</p>
--

Application number:

610

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: COMMONS REGISTRATION TEAM
KENT COUNTY COUNCIL
COUNTRYSIDE ACCESS SERVICE
INVIETA HOUSE
COUNTY HALL
MAIDSTONE
KENT
ME14 1XX

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: *MINSTER ON-SEA PARISH COUNCIL*

Full postal address: *clo 'KITS C-ty'
THE GLEN,
MINSTER-ON-SEA
SHARNESS,
KENT ME12 2SD*

Telephone number: *(07748) 967782*
(incl. national dialling code)

Fax number: *—*
(incl. national dialling code)

E-mail address: *minsterparish@btinternet.com*

Note 3

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

3. Name and address of representative, if any

Name:

Firm:

Full postal address:
(incl. Postcode)

Telephone number:
(incl. national dialling code)

Fax number:
(incl. national dialling code)

E-mail address:

Note 4

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 style="text-align: center;">/</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 style="text-align: center;">/</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 GLEN</p> <p>Location: MINSTER-IN-SEA, ISLE of SHEPPEY, 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 <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>THE PARCEL OF LAND KNOWN AS 'THE GLEN' IN MINSTER-IN-SEA, SHEPPEY, KENT, SURROUNDED BY THE GLEN ROAD, WARDS HILL ROAD, QUEENSBOROUGH DRIVE AND WHYBONES CHASE IN MINSTER-IN-SEA SHEPPEY, KENT.</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

A SIGNIFICANT NUMBER OF THE RESIDENTS OF MINSTER-ON-SEA HAVE INDULGED AS OF RIGHT IN LAWFUL SPORTS AND PAST TIMES ON THE LAND KNOWN AS 'THE GLEN' IN MINSTER-ON-SEA FOR A PERIOD OF MORE THAN TWENTY YEARS AND THEY CONTINUE TO DO SO AT THE TIME OF THIS APPLICATION.

THESE RESIDENTS, USING 'THE GLEN' HAVE DONE SO WITHOUT PERMISSION, WITHOUT BEING STOPPED OR BEING NOTICES TO STOP THEM, WITHOUT BEING SECRETIVE ABOUT IT. THEY HAVE DONE THIS FOR A CONTINUOUS PERIOD OF ^{MORE THAN} TWENTY YEARS.

THIS APPLICATION SEEKS AN INCLUSION IN THE REGISTER OF TOWN AND VILLAGE GREENS OF THE LAND KNOWN AS 'THE GLEN' WHICH IS QUALIFIED FOR REGISTRATION BY VIRTUE OF THE USE OF THE LAND FOR THE PURPOSES OF LAWFUL SPORTS AND PAST TIMES 'AS OF RIGHT' AND WITHOUT CHALLENGE FROM THE LANDOWNER FOR A PERIOD OF MORE THAN TWENTY YEARS.

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

LEN MAYATT,
LANDSCAPE OFFICER (PARKS + OPEN SPACES)
COMMUNITY ENVIRONMENTAL SERVICES
SWALE BROUGH COUNCIL

SWALE HOUSE
EAST STREET
SITTINGBONE
KENT
ME10 3HT

<p>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.</p>	<p>9. Voluntary registration – declarations of consent from any relevant leaseholder of, and of the proprietor of any relevant charge over, the land</p> <p style="text-align: center;">NOT APPLICABLE</p>
<p>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.</p>	<p>10. Supporting documentation</p> <ul style="list-style-type: none"> - 148 SUPPORTING WITNESS STATEMENTS - COPIES OF PRESS ARTICLES (1983-2008) RE GOOD FRIENDLY OPEN AIR SERVICE AT 'THE GLEN' - PHOTOGRAPHIC EVIDENCE FROM 1980 OWNERS SHOWING VARIOUS RECREATIONAL ACTIVITIES BEING ENJOYED AT 'THE GLEN' - COPIES OF STATE BODIES COUNCILS INSURANCE CERTIFICATES + REPORTS VERIFYING EXISTENCE OF PLAY EQUIPMENT AT 'THE GLEN' - WITNESS STATEMENT FROM CHRIS MIDDLETON LOCAL P.E. TEACHER INCLUDING COPY OF MAP USED FOR SCHOOL OUTDOOR PURSUITS DATED 1991,
<p>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.</p>	<p>11. Any other information relating to the application</p> <p>OF PARTICULAR RELEVANCE IS THE FACT THAT 'THE GLEN' IS NO LONGER DESIGNATED AS A LOCAL LANDSCAPE AREA IN THE LOCAL PLAN. (IT IS EXTREMELY WELL USED BY LOCAL RESIDENTS AND VISITORS TO THE AREA FOR INFORMAL RECREATION.) THE AREA IS NO LONGER PROTECTED!</p>

Note 12

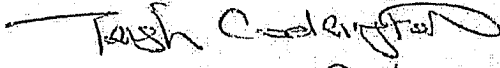
The application must be signed by each individual applicant, or by the authorised officer of an applicant which is a body corporate or unincorporate.

12. Signature

Signature(s) of applicant(s):

Date:

5/3/09.



TRISH GOODING
PARISH CLERK
ON BEHALF OF
MINSTER-IN-SEA PARISH
COUNCIL

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.

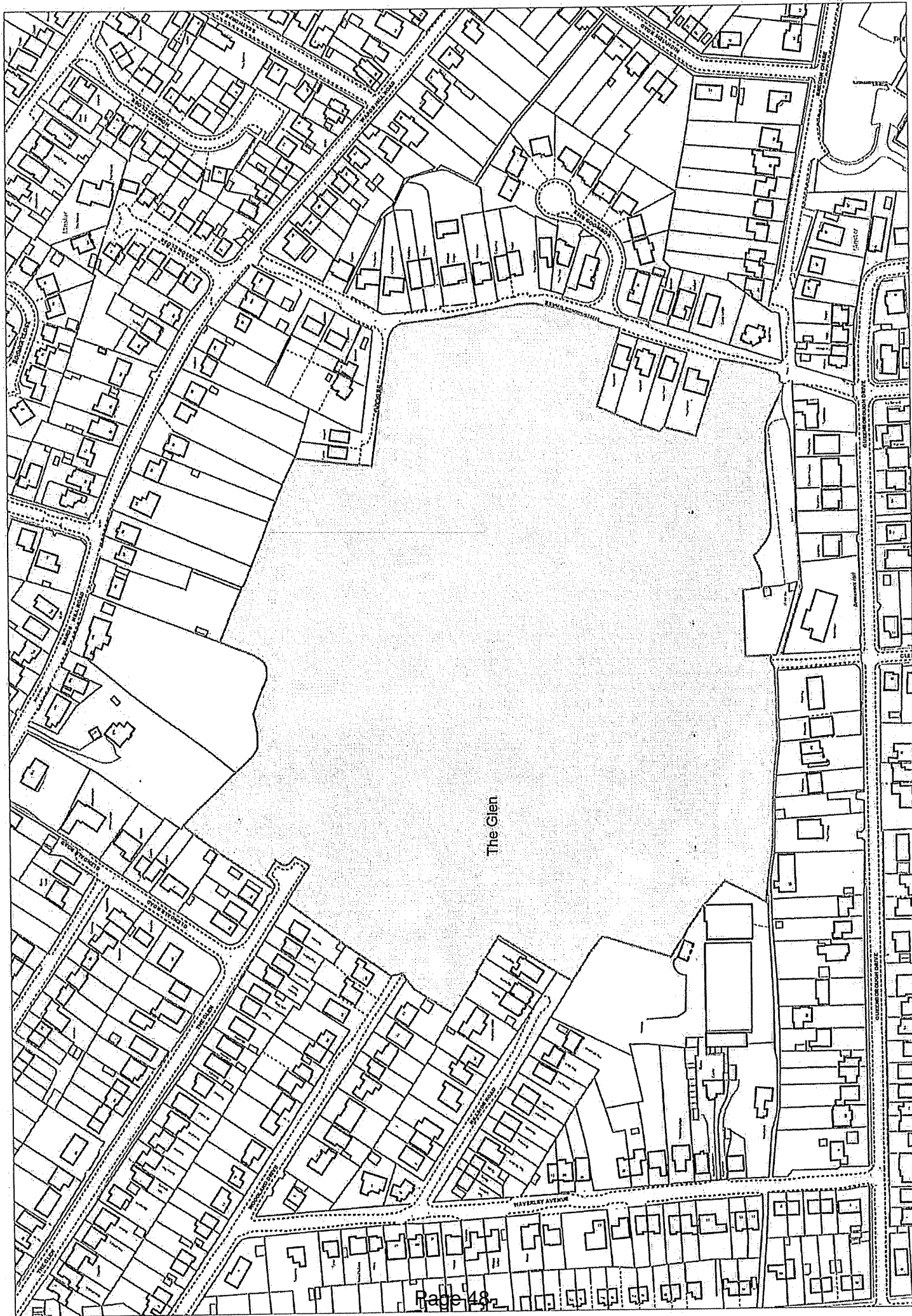
Please send your completed application form to:

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.



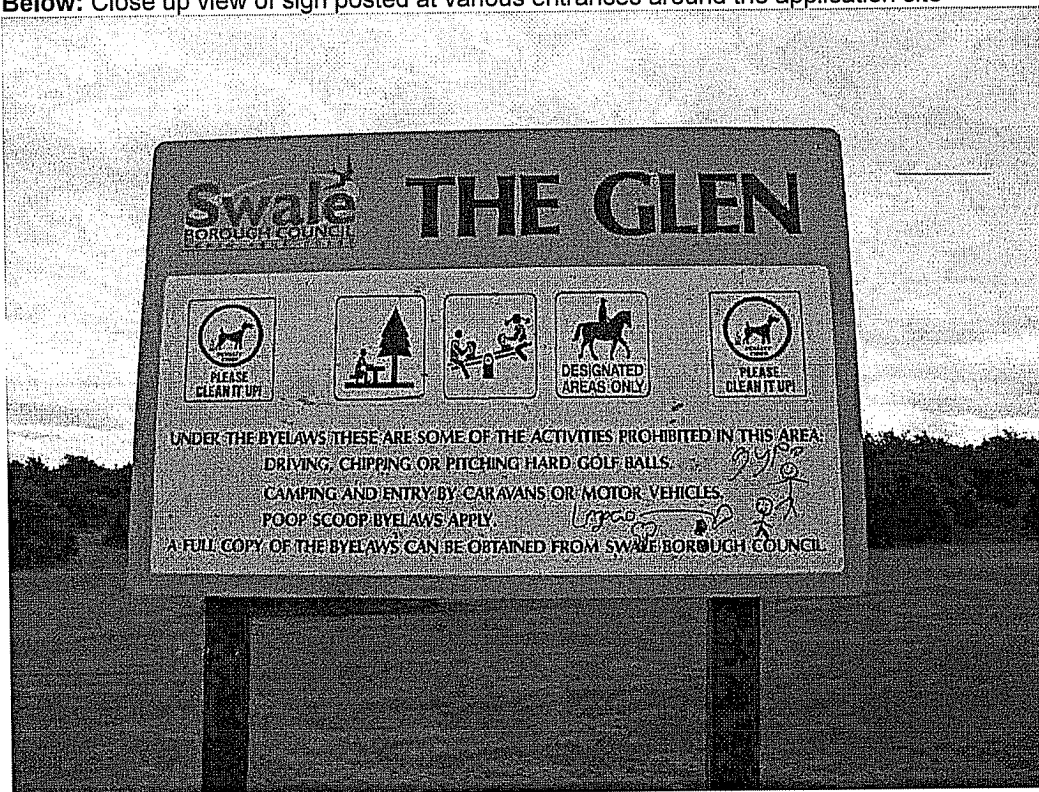
The Glen

**APPENDIX C:
Photographs showing application site**



Above: Entrance onto the application site from the public highway known as The Glen

Below: Close up view of sign posted at various entrances around the application site





Above: Entrance onto the application site from Woodland Drive (looking SOUTH)

Below: Entrance onto the application site from Woodland Drive (looking EAST)





Above: Entrance onto the application site from Whybournes Chase (adjacent to property known as 'Pyewacket', looking WEST)

Below: Entrance onto the application site from Glenwood Drive (looking NORTH)





Above: Entrance onto the application site from Hillside Road

Below: View on the application site from Hillside Road entrance looking SOUTH WEST towards Glenwood Drive





Above: Photograph showing play equipment taken from The Glen entrance to application site

**APPENDIX D:
Summary of user evidence**

The user evidence submitted in support of this application consists of identical 'standard form' statements which have been individually signed by local residents.

The statements all read: *"As a resident of Minster on Sea, I have indulged as right in lawful sports and pastimes on the land known as 'The Glen' in Minster-on-Sea, Sheerness, Kent for a period of more than twenty years and I continue to do so at the current time. I have done this without permission, without force or seeing notices to stop me and without being secretive about this"*.

In addition, a number of people added their own comments in a space at the bottom of the form setting out their own observations and evidence of use in greater detail. A sample of these comments is reproduced below.

Mrs. M. Ingleton: "I lived in Brecon Chase from '55 – '63 before moving to other areas of Minster. Most of this time I have had a dog that I've walked in The Glen. Local children enjoy playing on the grass, swings and slides and in and around the pond – the only publicly available pond as far as I know. I have used the area for blackberrying, enjoying the view and sunshine. Anytime I have visitors, I take them on a 'Beauties of Minster' walk either around The Glen or by the sea. I can produce photographs taken more than 20 years ago of winter sports, dog walking and the Good Friday service..."

Mrs. L. Taylor: "I have walked through and used this area since childhood and my children and friends played regularly in the Glen. Now I intend to take my grandson this spring when he next visits. It is an important asset and only common, open space in Minster..."

Mrs. V. Kingsnorth: "I have used the Glen for 44 years to play in when I was young, to ride in when I was older, with my children, and now to walk the dog. The Glen is a very rare open space, open to everyone and needs to be kept"

Mrs. P. Hibberd: "We have walked 'the Glen' for 47 years, since living in Minster, my four children and friends played there as children constantly, and also my grandchildren and now my great grandchild now uses the swings with her mother. We have always had one or two dogs and they have also made use of the Glen. A truly wonderful place for all with lovely trees and a view".

Mrs. J. Stanon: "The Glen has always been a beautiful place to be. I enjoyed the use of it as a child and now walking my dogs. The views and trees provide relaxation and a chance to exercise your legs and walk in peace and quiet".

Mrs. C. Brookes: "I have used the Glen regularly since 1986 (when my children were very young) for playground facilities, picnics, kite flying, contact with nature (woods and pond) and consider it now a part of their lives as much as my own. I walk my dog twice a day on the Glen. I want my children to be able to take their own children there to enjoy the activities they did when they

were young. I think it is an important asset as it is free space where children can be entertained with minimal cost”.

Mrs. S. Armfield: “I frequently walk my dogs in ‘The Glen’ and I enjoy the peace and tranquillity of the green space within the bounds of Minster. Both of my teenage children have enjoyed playing games with Guides and Scouts over the last 15 years. I also enjoy the wide variety of bird and wildlife the Glen supports”.

Mrs. J. Harden: “I played on the Glen all through my childhood and my four children also used the Glen for playing. I now live right on the Glen and love the fact I can walk around the area whenever I want. It is and always has been a great park area for our Islanders to sue and enjoy”.

Mrs. C. Stevens: “I have been going to and using the Glen for the last 30 years. I now take my children there as not having a big garden they can run around and enjoy the fresh air”

Mr and Mrs. J. Sacher: “We have lived for over 30 years in the Glen road long before being made up and our children always were allowed to play safely in the Glen area. Even now along with many others we regularly take walks and also enjoy the snow! I was one of those organising in getting recreational equipment in the Glen, walking our dogs and when collecting the children from school to enjoy the pond area and generally letting off steam. Football is enjoyed by many and we have every year a teddy bears picnic for the very young and a family outing plying rounders/cricket”.

Mr. S. Maxwell: “Our house borders onto the Glen and always every week we have used the Glen for exercise and enjoyment. To have such a peaceful/tranquil area at our backdoor is a pleasure”.

Miss. S. Smith: “The Glen has always been a special place, for my grandchildren to play, as it’s the only area in Minster where they feel safe. I take my dog for a walk over the Glen every day”.

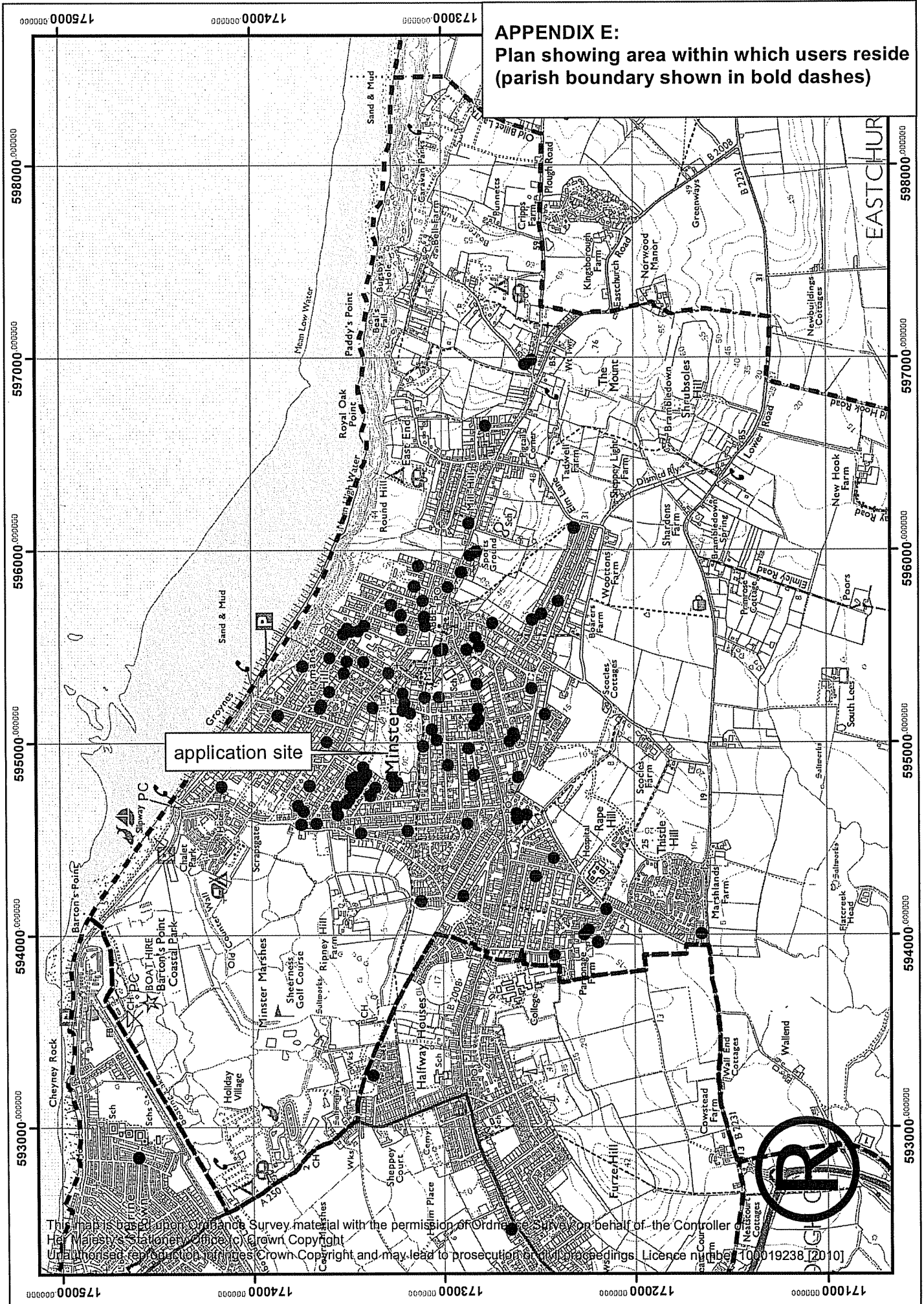
Mr. M. Butcher: “Me and my family have used an continue to use the Glen in Minster for various sporting and recreational activities, i.e. dog walking, football, sledging, sunbathing and just taking in the view from the top of bunny bank”.

Mrs. C. Tierney: “We as a family have used ‘the Glen’ in Minster since 1977. We have walked our dogs and continue to do so, also our daughter played and had picnics there”.

Mrs. V. Austen: “I have lived in Minster most of my life, played in the Glen as a child, taken my own children and grandchildren for picnics, to play cricket, football and also attended church services held there”.

Mrs. J. Cooke: “Having lived close to The Glen for 39 years. All our family have regularly used The Glen for picnics, flying kites, playing football and rounders. We now take our granddaughter to play on The Glen”.

APPENDIX E:
Plan showing area within which users reside
(parish boundary shown in bold dashes)



This map is based upon Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office to Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Licence number 100019238 [2010]

Application to register land known as Barton Playing Field at Canterbury 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 14th September 2010

Recommendation: I recommend, for the reasons set out in the Inspector's report dated 27th November 2009 and his supplementary report dated 15th July 2010, that the applicant be informed that the application to register the land known as Barton Playing Field at Canterbury has not been accepted.

Local Member: Mr. M. Northey

Unrestricted item

Introduction and background

1. The County Council has received an application to register land known as Barton Court Playing Field at Spring Lane in Canterbury as a new Town Green from local resident Dr. S. Bax ("the applicant"). The application, dated 10th May 2007, was allocated the application number 595. A plan of the site is shown at **Appendix A** to this report.

Procedure

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

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

5. As a standard procedure set out in the regulations, the County Council must notify the owners of the land, every local authority and any other known interested persons. It must also publicise the application in a newspaper circulating in the 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 large playing field situated in the St. Martin's area of the city of Canterbury, which is known locally as Barton Playing Field. The application site forms a rectangular shape that is bounded on all sides by adopted highways known as Spring Lane, Pilgrims Road and Pilgrims Way (part of which is recorded on the Definitive Map of Public Rights of Way as Byway Open to all Traffic CC41). The application site is shown on the plan at **Appendix A**.
7. The greater part of the application site is owned by Barton Court School whilst the remainder is owned by Chaucer Technology School. There is close cooperation between the staff of the schools and the site is used by both schools for sports activities both during the school day as part of the teaching curriculum and for after-school clubs and events. Formal access to the site is via two pedestrian gates at each end of the field, and via a vehicular access gate along Pilgrims Way.

Previous resolution of the Regulation Committee Member Panel

8. Objections to the application were received from Canterbury City Council, eight local residents, the KCC Local Education Officer. Barton Court School and Chaucer Technology College also objection to the application in their capacity as landowners.
9. The matter was considered at a Regulation Committee Member Panel meeting on Wednesday 12th November 2008, where Members accepted the recommendation that the matter be referred to a non-statutory Public Inquiry for further consideration.
10. As a result of this decision, Officers instructed Counsel experienced in this area of law to act as an independent Inspector. A non-statutory Public Inquiry took place at The Guildhall in Canterbury commencing on Monday 14th July 2009 and continuing over a period of 5 days, during which time the Inspector heard evidence from all interested parties. The applicant and the landowning objectors were represented by Counsel at the Inquiry.
11. The Inspector subsequently produced a detailed written report of his findings dated 27th November 2009. The Inspector's findings and conclusions are summarised below, but a full copy of the Inspector's report is available from the Case Officer on request.

Legal tests and Inspector's findings

12. 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 the 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 by the inhabitants is continuing up until the date of application?*

I shall now take each of these points and elaborate on them individually in accordance with the Inspector's findings:

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

13. 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'.

14. Whilst there was no evidence to suggest that use had been with permission or in secrecy, there was much debate at the Inquiry as to whether the use had been with force. As the Inspector explains:

"Force' does not just mean physical force. User is by force in law if it involves climbing or breaking down fences or gates or if it is contentious or under protest. Where for example there is a 'state of perpetual warfare' between the landowner and user, then the use would not be 'as of right'".

15. In this case, issues arose as to whether the site had been fenced in its entirety, whether the access gates had been locked, and the existence of prohibitory notices.

Fencing

16. The Inspector heard evidence, and was satisfied, that at the beginning of the qualifying period, there was a chain link fence in place around the application site. This was acknowledged by several witnesses (on both sides) at the Inquiry and supported by photographs produced by the landowning objectors taken in the early 1990s. The evidence was that, during the whole of the relevant twenty year period, this fence had been the subject of persistent vandalism. Although some of the witnesses did not recall repairs to the fencing, the evidence was that the damage to the chain link fence was repeatedly repaired by the schools' ground staff, who described the situation as a 'constant battle' against the vandalism.

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

17. In 2000, due to the deterioration of the chain link fence, the schools commissioned a joint project to replace the fence with a welded mesh fence. This was done by contractors. The Inspector found that:

“...it enclosed the whole of the application site when completed and that Mr. Sutherland [member of staff at Chaucer Technology School], who was involved in the commissioning of the project, satisfied himself that this was the case, as did Mr. Plowman [member of staff at Barton Court School]. I am satisfied that it only remained intact for a short period before the former pattern of vandalism started again. The balance of the evidence suggests that it remains intact only for a matter of weeks before the “battle” to respond to vandalism began again. Mr. Plowman in particular records that it was in place for about six weeks before the damage to the fence recommenced.”²

18. The contention that the fencing continued to be repaired by the schools’ ground staff when required and as expeditiously as manpower and resources allowed was supported by several witnesses and by the production of invoices which refer to the purchase of sections of welded mesh fence between 2001 and 2004.

19. The fencing was finally replaced in 2007 by a more substantial fence, although this was not completed until after the application was made and is therefore outside the relevant twenty-year period.

Gates

20. There are three means of formal access to the site: two pedestrian gates and one vehicular entrance. The Inspector found that there was conflicting evidence at the Inquiry as to the extent to which these gates were locked. He found that:

“First, the policy of both schools was to lock the gates. That this was the case is entirely consistent with the efforts made to maintain the fence around the school to prevent trespass and the policy of staff to challenge trespassers (which I refer to below); I find it unlikely that it was not the practice to lock gates given the considerable efforts made to repair damage to the fence to prevent unauthorised access. Secondly, I find that the Chaucer School was particularly careful to lock its gate in order to prevent the students of that school using the application site as a shortcut at the end of the school day and thereby interfering with on-going Barton Court School lessons. Thirdly, as with the fence, the vandalism extended to the gates and locks. The evidence I heard is that locks on the gates were cut leaving the gates openable. The school would purchase replacement locks. However, I find that there would have been periods of several weeks, particularly where locks were damaged during the holidays, before the locks were replaced. This in my view goes a considerable way to explaining why several witnesses for the applicant did not recall the gates being locked...”³

² Paragraph 186 of the Inspector’s report dated 27th November 2009

³ Paragraph 190 of the Inspector’s report dated 27th November 2009

Notices

21. The Inspector also heard conflicting evidence regarding notices. Many witnesses did not recall any notices on the application site, but members of school staff do recall notices being present at various points in time, particularly near the gates.

22. The Inspector found that the notices were:

“...sporadically present during the qualifying period and in particular in 1994 and after the erection of the welded-mesh fence in 2000 near the Barton School gate, and during part of 1993 and 1994 near the Chaucer School gate. However, notices were the subject of consistent vandalism. The limited periods during which these notices were in place, their localised position explains why the applicant’s witnesses did not recall the presence of these notices.”⁴

Inspector’s conclusions regarding use ‘as of right’

23. Following a careful analysis of the issues surrounding the fencing, gates and notices, the Inspector concluded that the landowner had not tolerated or acquiesced to the recreational use of the application site during the relevant twenty-year period and, indeed, had actively taken steps to prevent public access through the repeated attempts to secure the fencing and replace the broken locks. He said:

“The landowners have during the whole of the qualifying period gone to considerable lengths in my view to resist and physically prevent trespass onto the application site. Both the chain link fence in existence at the start of the qualifying period and the subsequent welded mesh fence were the subject of consistent and determined vandalism. The landowners’ response was continually to repair openings which were made in the fence as quickly and effectively as time and resources permitted. This is not in my view consistent with a landowner tolerating or acquiescing in trespassory use of his land. The decision to replace the chain link fence with a more robust structure in 2000 is clearly consistent with a landowner seeking to resist trespassory use.

The fact that vandalism and subsequent trespass continued does not in my view detract from the overall conclusion that the landowners were doing all they reasonably could do, or be expected to do, to resist entry onto their land. The position is akin to the ‘perpetual state of warfare’ referred to in *Smith v Brundenell-Brice*...

... I consider that throughout the qualifying period, the landowners did all they reasonably could be expected to have done to prevent unauthorised user of the application site.

...

⁴ Paragraph 193 of the Inspector’s report dated 27th November 2009

On the basis of the evidence concerning repairs to fences and locking of, and replacement of locks to, gates, I conclude that the landowners were not during the qualifying period tolerating or acquiescing in local inhabitants' use of the application site but were taking active steps to physically prevent that use."⁵

24. For these reasons, the Inspector was unable to conclude that use of the application site had been 'as of right'.

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

25. Lawful sports and pastimes can be commonplace activities including dog walking, children playing, picnicking and kite-flying. 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 activities⁶.

26. 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*'⁷.

27. In respect of the use of the land for lawful sports and pastimes, the Inspector found:

"the overall impression I derive from the evidence in support of the application is that for the vast majority, use was not daily but more irregular and in some cases even occasional. Many witnesses referred to weekend use only or use generally only during school holidays. Nevertheless there has been a consistent pattern of use for recreational purposes."⁸

28. The Inspector concluded that there had been material use of the application site for lawful sports and pastimes during the relevant twenty-year period such as to satisfy this element of the legal tests.

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

29. The definition of locality for the purposes of a village green application has been the subject of much debate in the courts and there is still no definite rule to be applied. In the *Cheltenham Builders*⁹ case, it was considered that '*...at the very*

⁵ Paras 205, 206, 207 and 209

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

⁷ *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 at 397

⁸ Paragraph 195 of the Inspector's report dated 27th November 2009

⁹ *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at 90

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'.

30. Where the locality is large, it will also be necessary to identify a 'neighbourhood' within the locality. 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'*¹⁰.
31. Finally, use must have been by a significant number of local inhabitants. The word "significant" in this context does not mean considerable or substantial: *'a neighbourhood may have a very limited population and a significant number of the inhabitants of such a neighbourhood might not be so great as to properly be described as a considerable or a substantial number... what matters is that the number of people using the land in question has to be sufficient to indicate that the land is in general use by the community for informal recreation rather than occasional use by individuals as trespassers'*¹¹. 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.
32. In support of this application, the applicant relied upon the neighbourhood of 'Barton and Spring Lane' within the wider locality of the ecclesiastical parish of St. Martin and St. Paul. At the Inquiry, the objectors conceded that the area described by the applicant as demonstrating a neighbourhood and locality were properly so described and met the legal requirements.
33. The Inspector concluded that:

"... the level of use of the application site during the qualifying period was such as to be described as general use by the community for informal recreation. Although, as I have found, few individuals have in fact used the application site very regularly, nevertheless, when considered collectively during the qualifying period there has been a pattern of general use by the community rather than occasional and sporadic.

...

I am satisfied that the neighbourhood 'of Barton and Spring Lane', as described by [the applicant], demonstrates a sufficient degree of cohesiveness to be regarded properly as a neighbourhood. I have no reason to doubt the validity of the parish of St. Martin and St. Paul as a locality. I conclude and advise therefore that this element of the qualifying definition is met."¹²

¹⁰ *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at 92

¹¹ *R (Alfred McAlipne Homes Ltd.) v Staffordshire County Council* [2002] EWHC 76 at paragraph 71

¹² Paragraphs 199 and 201 of the Inspector's report dated 27th November 2009

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

34. In order to qualify for registration, it must be shown that the land in question has been used for a full period of twenty years up until the date of application. In this case, the application was submitted in 2007 and therefore the relevant twenty-year period ("the material period") is 1987 to 2007.
35. The Inspector accepted the applicant's evidence that the land had been used for a period of at least twenty years.

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

36. Section 15(2) of the Commons Act 2006 requires that use of the application site continues up until the date of application.
37. There was no dispute at the Inquiry that use had continued until the date of the application.

Subsequent correspondence

38. On receipt, the Inspector's report was forwarded to the applicant and the landowning objectors for their information and further comment.
39. The applicant initially asked that, due to a landmark case being heard by the Supreme Court which might potentially have a bearing on the outcome of the application, consideration of the application was deferred until the Supreme Court's decision had been issued. Whilst the County Council was not prepared to defer its decision indefinitely on the basis of another case, circumstances were overtaken by events and the expedited decision of the Supreme Court was issued earlier than expected.

The decision in *R (Lewis) v Redcar and Cleveland Borough Council* ("Lewis")

40. The Inspector's report was written on the basis of the Court of Appeal's decision in *R (Lewis) v Redcar and Cleveland Borough Council*¹³. It had been held by the Court of Appeal that, in addition to being without force, secrecy or permission, recreational use must also appear to a reasonable landowner as the assertion of a right. If, therefore, users actively avoided part(s) of the application site because they were, at the time, in use by the landowner, it was previously thought their use was not 'as of right' since they modified their behaviour and, in doing so, 'deferred' to the landowner. This was known as the 'deference principle'.
41. In his report, the Inspector applied the deference principle and referred to the fact that when parts of the application site were in use by the schools, the vast majority of recreational users actively avoided those areas so as not to interfere with school activities. This, in the Inspector's view, afforded a further reason, in addition to the fencing issues referred to earlier in this report, why the application should be rejected.

¹³ [2009] 4 All ER 1232 (CA)

42. However, in its judgement delivered on 3rd March 2010¹⁴ the Supreme Court overruled the Court of Appeal's decision. The Supreme Court took the view that it was a matter of 'common sense and courtesy' and that it was immaterial that there may have been concurrent usage of the land both by the landowner and by recreational users. The Court held the additional requirement imported into the law by the deference principle was not correct, and that the definition of use 'as of right' should be restricted simply to use which was without force, secrecy or permission.

Comments on the Inspector's report and the *Lewis* decision in the Supreme Court

43. As stated above, the main parties were provided with the opportunity to comment on the Inspector's report and the *Lewis* decision.

44. The landowning objectors' position is that the decision in *Lewis* makes no difference to the outcome of this application. The Inspector's recommendation was that the application should be rejected on the basis that the applicant had failed to demonstrate that use of the application site had been 'as of right' because the landowners had not tolerated or acquiesced to the recreational use of the site (i.e. due to the repeated attempts to secure the site). The issue of 'deference' was very much, in the objectors' view, subsidiary to the principal finding that use had not been 'as of right'. Therefore, any change in the law in relation to 'deference' is immaterial to the applicant's failure to satisfy one of the legal tests for registration of the land as a new Town Green.

45. The applicant's position is that following the decision in *Lewis*, the elements of the Inspectors report which deal with deference should now be ignored due to the change in the law. Whilst the applicant accepts that the test to be considered is how the recreational use would have appeared to a reasonable landowner (i.e. did the landowner have the opportunity to resist such use), he argues that the Inspector has misinterpreted the law by failing to consider whether or not the landowners' actions made it sufficiently clear to the recreational users that the landowners were not acquiescing to such use.

Further legal advice

46. As suggested by the applicant, further legal advice was sought from independent Counsel who had no previous involvement with the case. However, Counsel did not feel that it was appropriate to advise on the matter and that it was for the Inspector, who had had the benefit of hearing the evidence first hand at the Inquiry, to provide further advice on his report following the comments received from the parties and in light of the change in the law.

47. The Inspector issued a supplementary report and recommendation dated 15th July 2010. In that advice, he sets out the main principles deriving from the decision in *Lewis* and confirms that following the change in the law, it is no longer necessary to address the requirement for use as of right beyond considering whether the use indulged in was without force, secrecy or permission.

¹⁴ [2010] 2 All ER 613 (SC)

48. Having applied the facts of the case to the new legal position, the Inspector concludes:

“...I consider it plain that, through the repair and replacement of fencing during the qualifying period and through the policy and practice of locking gates, the Landowners were making considerable efforts to interrupt and prevent trespassory use of the application site by local residents and by reason thereof use by local inhabitants was forcible or *vi* and therefore was not as of right. It is, of course, well established that the question of use as of right falls to be considered from the perspective of the landowner... Moreover, as I conclude in the main report a number of local inhabitants who stated that they had used the application site were, unsurprisingly, well aware of the repairs and replacement of the fencing... I consider that the use of the application site by local inhabitants in the context of the fencing works commissioned and carried out by the landowners and the practice of locking gates is a clear example of use which is not to be regarded as “as of right”... The substance of my conclusions at paragraphs 205 to 209 of the main report [quoted at paragraph 23 of this report] therefore remain valid having regard to *Lewis* albeit in respect of the test as to whether the fencing works and the locking of gates rendered use by inhabitants forcible or *vi* rather than in the context of a more generalised test as to whether the Landowners were tolerating or acquiescing in trespassory use. I recommend therefore that application 595 be rejected on this basis”

Conclusion

49. Having heard the evidence presented by both parties at the non-statutory Public Inquiry and having considered the Inspector’s thorough and detailed analysis of the evidence (contained within his report), I conclude that the requirements of the Commons Act 2006 have not been met in this case.

Recommendation

50. I recommend, for the reasons set out in the Inspector’s report dated 27th November 2009 and his supplementary report dated 15th July 2010, that the applicant be informed that the application to register the land known as Barton Playing Field at Canterbury has not been accepted.

Accountable Officer:

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

Case Officer:

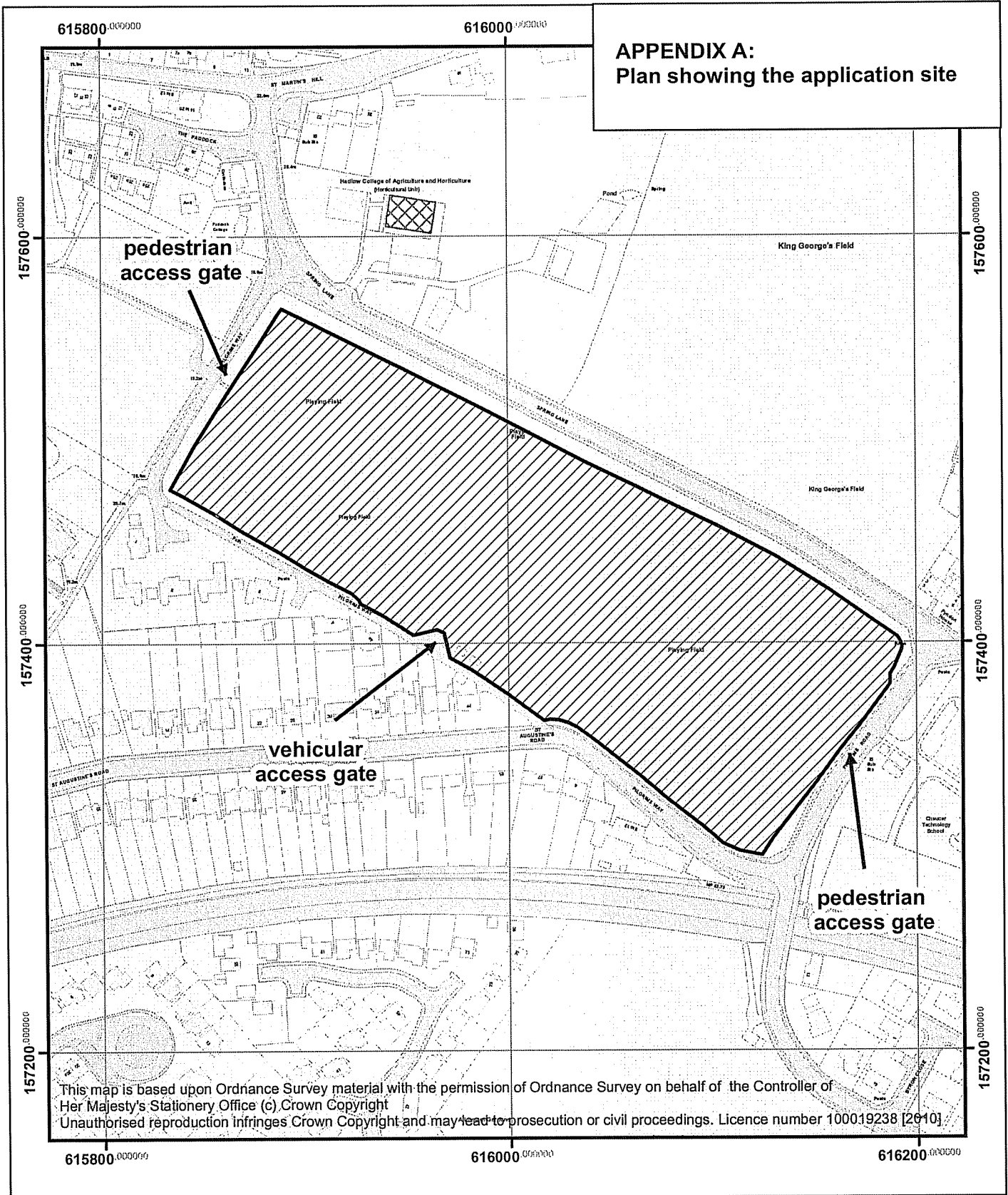
Miss. Melanie McNeir – Tel: 01622 221628 or Email: melanie.mcneir@kent.gov.uk

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

Background documents

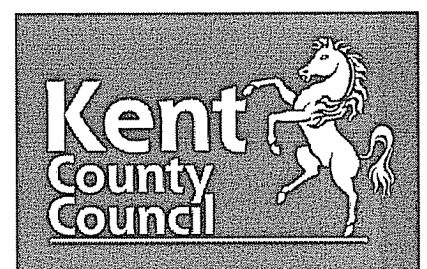
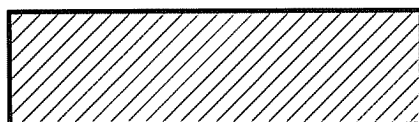
APPENDIX A – Plan showing application site

**APPENDIX A:
Plan showing the application site**



Scale 1:2500

Land subject to Town Green application
at Barton Court Field, Canterbury



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