



AGENDA

Kent County Council

REGULATION COMMITTEE MEMBER PANEL

Tuesday, 8th February, 2011, at 12.30 pm
Thanet District Council, Cecil Street,
Margate

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

Tea/Coffee will be available 15 minutes before the meeting

Membership

Mr M J Harrison (Chair), Mr A D Crowther (Vice-Chairman), Mr J A Davies,
Mr S J G Koowaree and Mr R A Pascoe

UNRESTRICTED ITEMS

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

1. Declarations of Interest by Members for items on the agenda
2. Application to register land at Mill Lane, Preston as a new Village Green (Pages 1 - 14)
3. Application to register land at the High Street, Chiddingstone as a new Village Green (Pages 15 - 30)
4. Application to register land known as Gighill Green, Larkfield as a new Village Green (Pages 31 - 44)
5. Application to register land at Park Avenue, Broadstairs as a new Town Green (Pages 45 - 76)
6. Application to register land adjacent to Barnes Car Park, Westbrook as a new Town Green (Pages 77 - 104)
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, 31 January 2011

Application to register land at Mill Lane in the parish of Preston 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 8th February 2011.

Recommendation: I recommend that the County Council informs the applicant that the application to register the land at Mill Lane in Preston has been accepted, and that the land subject to the application be formally registered as a Village Green.

Local Member: Mr. L. Ridings

Unrestricted item

Introduction

1. The County Council has received an application to register land at Mill Lane in Preston, near Canterbury as a new Village Green from Mrs. E. Robinson ("the applicant"). The application, dated 1st April 2010, was allocated the application number VGA626. 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 a grassy meadow of approximately 1.2 acres (0.5 hectares) in size situated opposite Hardacre House on Mill Lane in the parish of Preston. The application site is bordered by fencing and hedges, and includes a small pond. 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. The local County Member, Mr. L. Ridings wrote to confirm that he, along with the Parish Council, were both fully supportive of the application.

Ownership of the land

9. A Land Registry search has been undertaken which confirms that the application site is wholly owned by the applicant under title number K174149. 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).
13. In this case, the reason for the application is that the applicant is a former resident of the village of Preston and wishes to present the land as a gift to the villagers on the understanding that it is used as a place of peace and relaxation in perpetuity.

It is her also wish that the land be kept as a natural open space in order to continue to give pleasure to and benefit future generations of Preston villagers. The intention is to transfer the ownership of the land to the Preston Parish Council once the relevant procedures in relation to the Village Green application have been completed.

14. As such, it seems appropriate that the relevant locality in this case should be defined as the civil parish of Preston.

Conclusion

15. 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.

16. It can be concluded that all the necessary criteria concerning the voluntary registration of the land as a Village Green have been met.

Recommendations

17. I recommend that the County Council informs the applicant that the application to register the land at Mill Lane in Preston 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 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 – Copy of the Register of Title from Land Registry

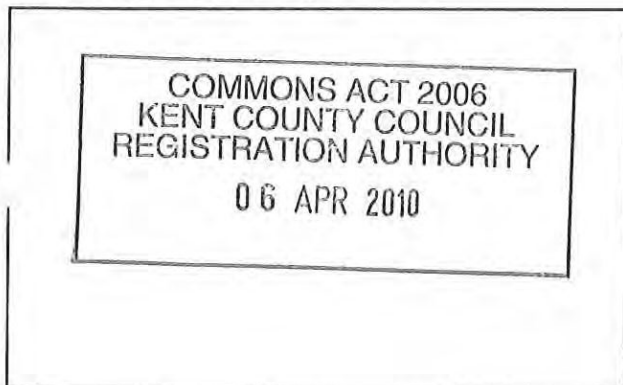
Commons Act 2006: section 15

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:

VGA626

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
COUNTRYSIDE 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: Mrs. E.J. ROBINSON

Full postal address: (incl. Postcode) Apt. 26, CLOS DES MARGUERITES

38 RUE DE LA MARGUERITE

81600 GAILLAC FRANCE.

Telephone number:

(incl. national dialling code) 0033 (0) 5 63 53 96 48

Fax number:

(incl. national dialling code)

E-mail address:

Note 3

This part should be completed if 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: Mrs. SHEILA GOSLING (DAUGHTER)

Firm:

Full postal address:

(incl. Postcode)

LA BONNETTE

10 RUE DES PAVILLONS

81600 SÉNOUILLAC FRANCE

Telephone number:

(incl. national dialling code)

0033 (0) 5 63 53 96 47

Fax number:

(incl. national dialling code)

E-mail address:

sheila.gosling@orange.fr

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:

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

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

Note 9

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

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

N/A

Note 10

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

10. Supporting documentation

DOCUMENTS ISSUED BY LAND
REGISTRATION AUTHORITY.

Note 11

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

11. Any other information relating to the application

I ATTACH A COPY OF MY LETTER TO
PRESTON PARISH COUNCIL TOGETHER WITH
THEIR RESPONSE.

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:

1/4/10

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.

NATIONAL GRID PLAN

TR 2560

KENT

Scale 1/1250

Enlarged from 1/2500

PRESTON PARISH



Made and printed by the Director
General of the Ordnance Survey,
Chessington, Surrey. 1967 for HMLR
© Crown Copyright 1967

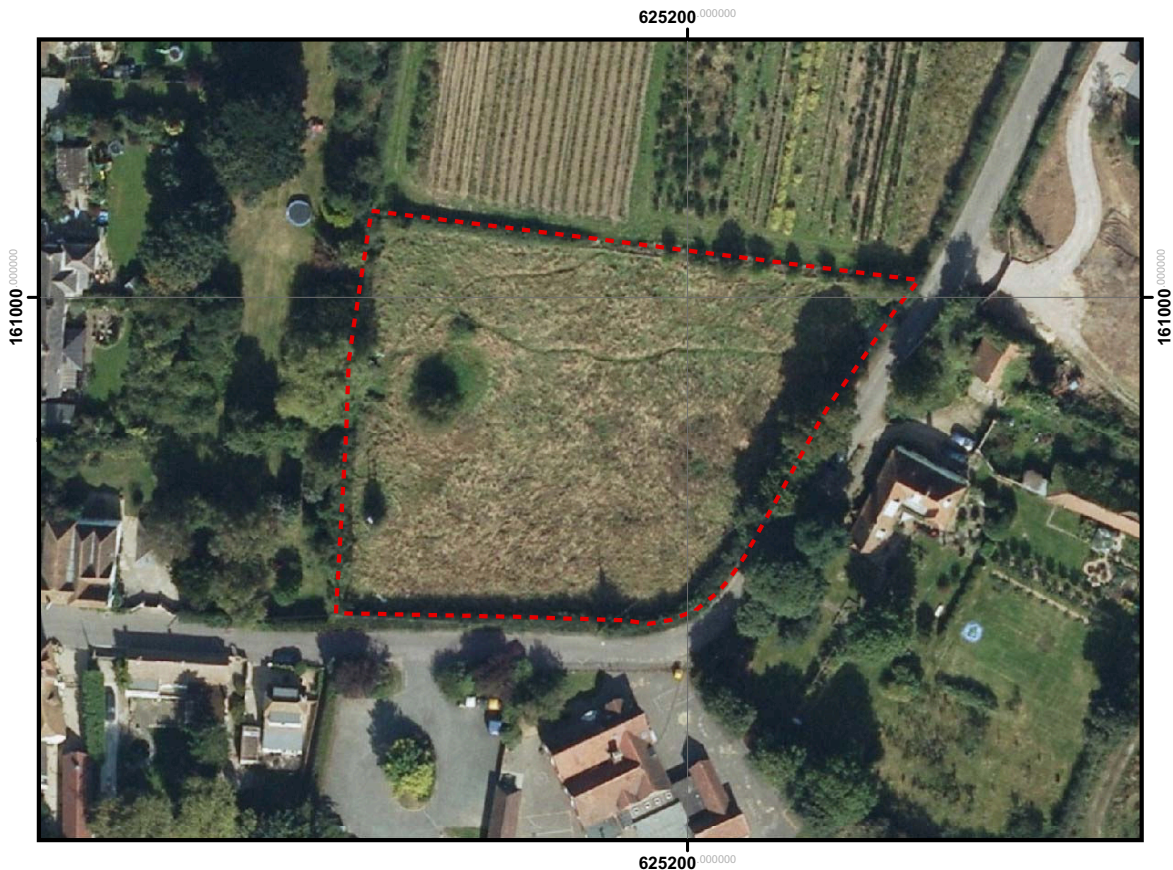
TITLE No. K 174 149

**APPENDIX C:
Photographs showing the
application site**



Above: photograph taken opposite Hardwick House looking west across the site

Below: aerial photograph (2008) showing the application site edged in red



Above: aerial photograph (2008) showing the application site edged in red

**APPENDIX D:
Copy of Register of Title**

THIS IS A PRINT OF THE VIEW OF THE REGISTER OBTAIN THE ENTRIES SUBSISTING IN THE REGISTER ON 21 OCT 2 THAT THIS REGISTER VIEW IS NOT ADMISSIBLE IN A COPY WITHIN THE MEANING OF S.67 LAND REGISTRATION IT MAY NOT ENTITLE A PERSON TO BE INDEMNIFIED BY THE REGISTRAR IF HE SUFFERS A LOSS BY REASON OF A MISTAKE CONTAINED WITHIN IT. THE ENTRIES SHOWN DO NOT TAKE ACCOUNT OF ANY APPLICATIONS PENDING IN THE REGISTRY. FOR SEARCH PURPOSES THE ABOVE DATE SHOULD BE USED AS THE SEARCH FROM DATE.

THIS TITLE IS DEALT WITH BY LAND REGISTRY, NOTTINGHAM OFFICE.

TITLE NUMBER: K174149

There is no application or official search pending against this title.

A: Property Register

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

KENT : DOVER

- 1 (08.12.1934) The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being Land on the north side of Mill Lane, Preston, Canterbury.
- 2 (04.09.1995) The land edged and numbered in green on the title plan has been removed from this title and registered under the title number or numbers shown in green on the said plan.

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 (06.05.1971) PROPRIETOR: EVA JOAN ROBINSON of Hardacre House, Mill Lane, Preston, Canterbury, Kent, CT3 1HB.

C: Charges Register

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

- 1 The land tinted yellow on the filed plan is subject to the following rights reserved by a Transfer dated 22 September 1937 made between (1) The County Council of the Administrative County of Kent and (2) Peter Charlton and Catherine Charlton:-

"EXCEPT and RESERVED to the Transferors and their successors the right to enter on the said land for the purpose of maintaining renewing or removing the water pipe running from the road adjoining the land hereby transferred to the stables standing on adjoining land retained by the Transferors the Transferors making good any damage thereby caused to the land hereby transferred And also the right to drain surface water from the pond on adjoining land belonging to the Transferors through the strip behind the Granary belonging to the Transferees."

End of register

H. M. LAND REGISTRY

NATIONAL GRID PLAN TR 2560

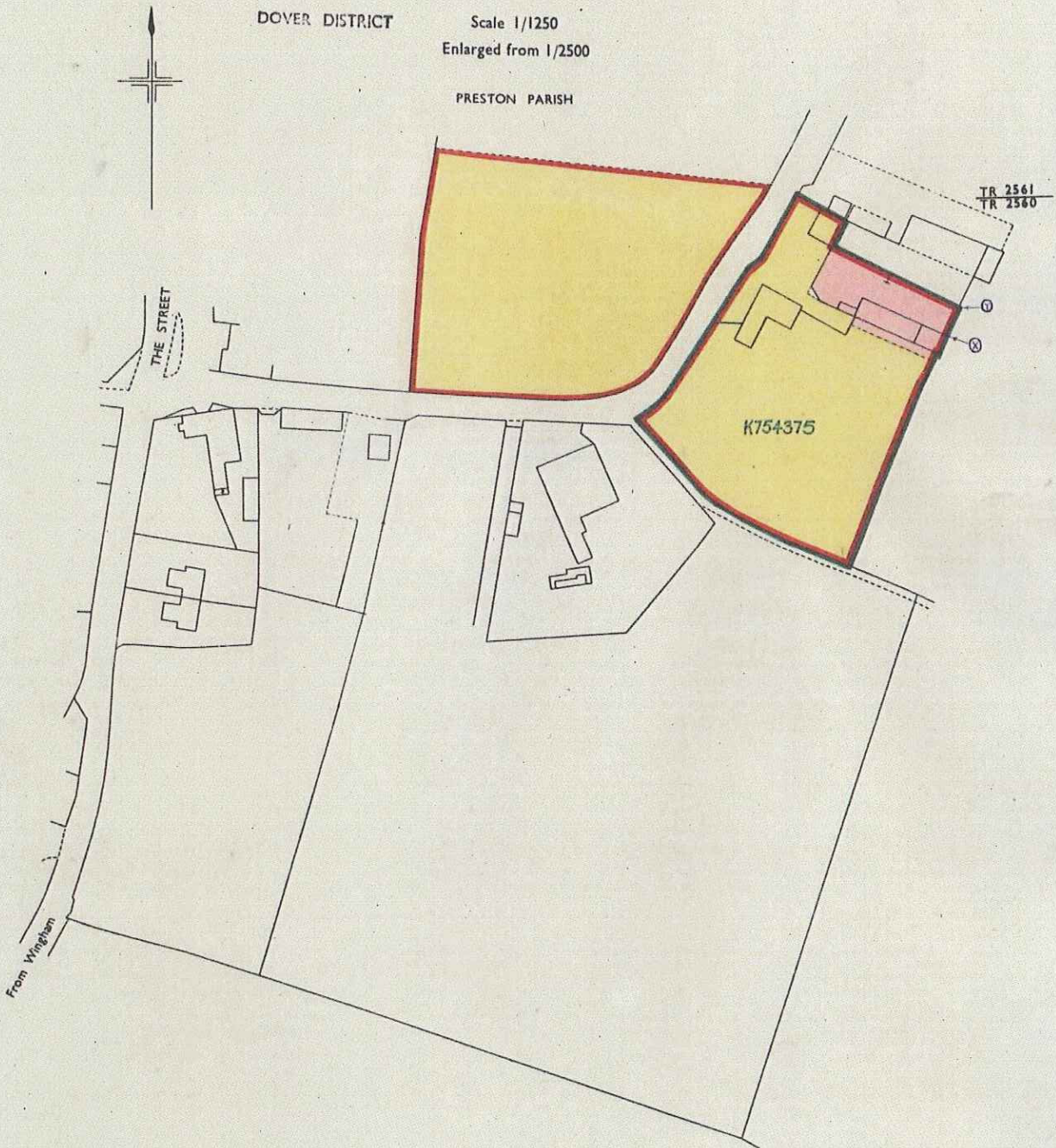
KENT

DOVER DISTRICT

Scale 1/1250

Enlarged from 1/2500

PRESTON PARISH



Made and printed by the Director
General of the Ordnance Survey,
Chessington, Surrey, 1967 for HMLR
© Crown Copyright 1967

TITLE No. K 174 149

This is a print of the view of the title plan obtained from Land Registry showing the state of the title plan on 21 October 2010 at 13:24:15. 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 7 - Title Plans.

This title is dealt with by Land Registry, Nottingham Office.

Page 13

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Application to register land at High Street in the parish of Chiddingstone 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 8th February 2011.

Recommendation: I recommend that the County Council informs the applicant that the application to register the land at the High Street in Chiddingstone has been accepted, and that the land subject to the application be formally registered as a Village Green.

Local Member: Mr. P. Lake

Unrestricted item

Introduction

1. The County Council has received an application to register land at the High Street in Chiddingstone, near Sevenoaks as a new Village Green from the Chiddingstone Parish Council ("the applicant"). The application, dated 28th September 2009, was allocated the application number VGA618. 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 a small area of grassed open space of approximately 260 square metres in size situated in front of the Rectory on the High Street in the parish of Chiddingstone. 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.

Ownership of the land

8. A Land Registry search has been undertaken which confirms that the application site is wholly owned by the applicant under title number K725597. A copy of the Register of Title is attached at **Appendix D**.
9. There are no other interested parties (e.g. leaseholders or owners of relevant charges) named on the Register of Title.

The ‘locality’

10. 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.
11. 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).
12. In this case, the application has been made by the local Parish Council in order that the land be preserved against any future development. As such, it seems appropriate that the relevant locality in this case should be defined as the civil parish of Chiddingstone.

Conclusion

13. 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.
14. It can be concluded that all the necessary criteria concerning the voluntary registration of the land as a Village Green have been met.

Recommendations

15. I recommend that the County Council informs the applicant that the application to register the land at the High Street in Chiddingstone has been accepted, and that the land subject to the application be formally registered as a Village Green.

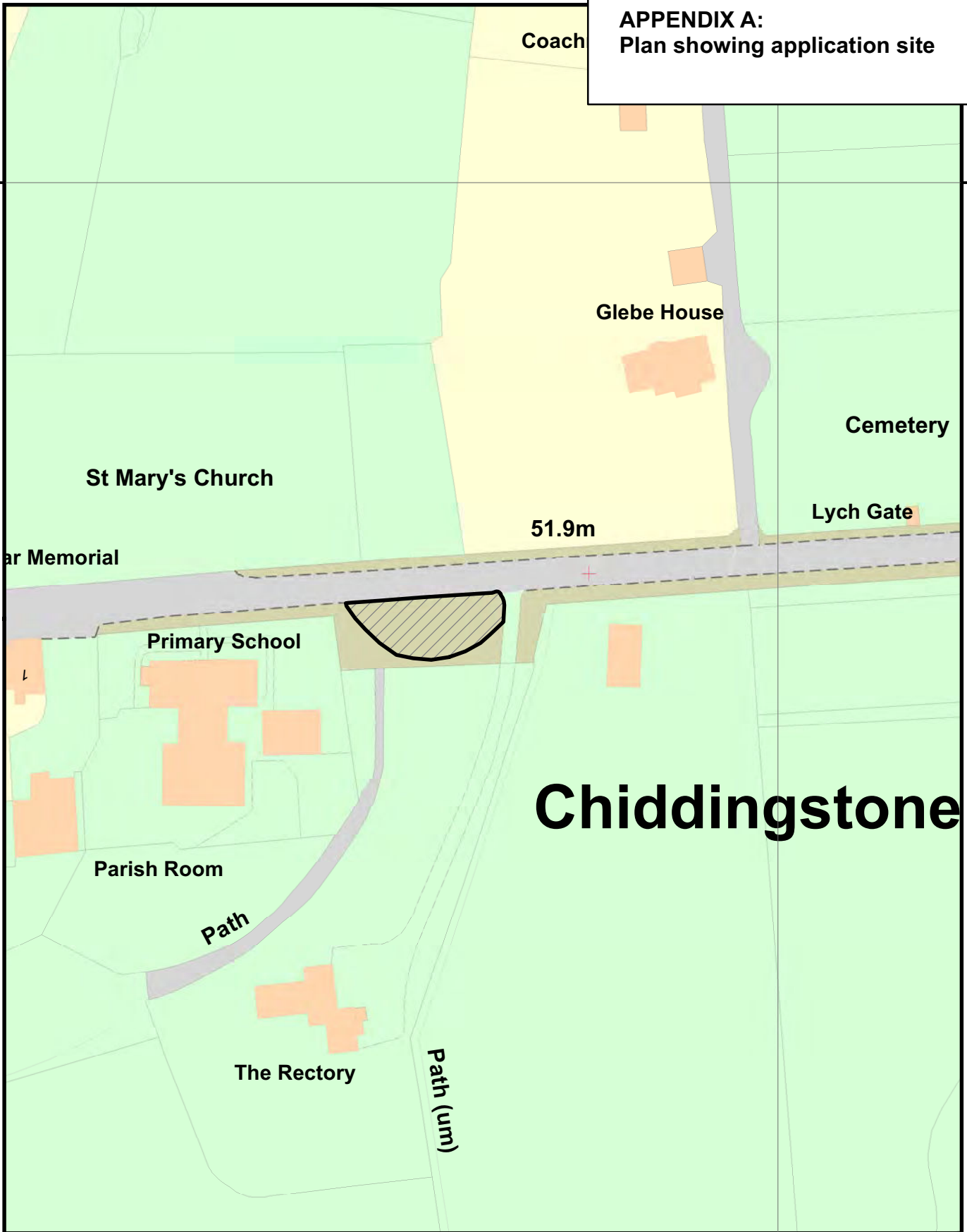
Accountable Officer: Dr. Linda Davies – Tel: 01622 221500 or Email: linda.davies@kent.gov.uk Case Officer: Miss. Melanie McNeir – Tel: 01622 221628 or Email: melanie.mcneir@kent.gov.uk

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

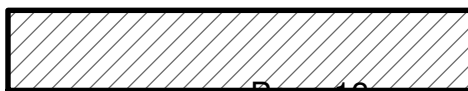
- APPENDIX A – Plan showing application site
- APPENDIX B – Copy of application form
- APPENDIX C – Photographs of the application site
- APPENDIX D – Copy of the Register of Title from Land Registry

**APPENDIX A:
Plan showing application site**



Scale 1:1000

**Land subject to Village Green application
at the High Street, Chiddingstone**



Page 18



FORM CA9

Commons Act 2006: section 15

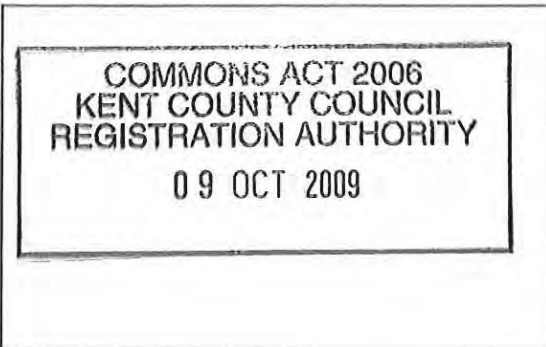
**Application for the registration of land
as a new Town or Village Green**

**APPENDIX B:
Copy of application form**



This section is for office use only

Official stamp of the Registration Authority
indicating date of receipt:



Application number:

VG1A618

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: CHIDDINGSTONE PARISH COUNCIL

Full postal address: (incl. Postcode) 2 BOTHY COTTAGES

THRESHOLD FIELDS
CHIDDINGSTONE, KENT. TN8 7NE

Telephone number: (incl. national dialling code) 01892-871651

Fax number: (incl. national dialling code)

E-mail address: house.clerk@chiddingstone.org

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 voluntary registration of 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:

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

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

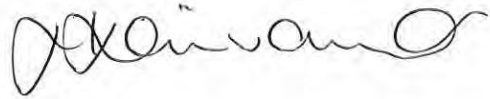
<p>Note 9 List or enter in the form all such declarations that accompany the application. This can include any written declarations sent to the applicant (i.e. a letter), and also any such declarations made on the form itself.</p>	<p>9. Voluntary registration – declarations of consent from any relevant leaseholder of, and of the proprietor of any relevant charge over, the land</p> <p>CHIDDINGSTONE PARISH COUNCIL MINUTES 17 JUNE 2009</p> <p>ITEM 28</p> <p>COPY ATTACHED.</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> <ol style="list-style-type: none"> 1. Map 1:10,000 2. Enlarged map 1:5,000 3. Land Registry map K 365559. 1:2500 4. Copy conveyance 24/08/1971 Sale of land to Chiddingstone Parish Council
<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>

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:

28-09-2009

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.

H.M. LAND REGISTRY

K365559

PLANANCE SURVEY
PLAN REFERENCE

COUNTY

SHEET

NATIONAL GRID

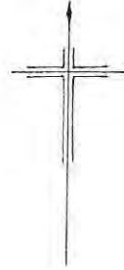
KENT

TQ 5045

Scale: 1/2500

© Crown Copyright

CHIDDINGSTONE PARISH



**APPENDIX C:
Photographs showing application site**



Above: View from High Street looking SOUTH-WEST towards Primary School

Below: View from High Street looking SOUTH-EAST



APPENDIX D:
Official copy of Register from Land
Registry

THIS IS A PRINT OF THE VIEW OF THE REGISTER OBTAIN THE ENTRIES SUBSISTING IN THE REGISTER ON 7 JAN 2 THAT THIS REGISTER VIEW IS NOT ADMISSIBLE IN A COURT IN THE SAME WAY AS AN OFFICIAL COPY WITHIN THE MEANING OF S.67 LAND REGISTRATION ACT 2002. UNLIKE AN OFFICIAL COPY, IT MAY NOT ENTITLE A PERSON TO BE INDEMNIFIED BY THE REGISTRAR IF HE SUFFERS A LOSS BY REASON OF A MISTAKE CONTAINED WITHIN IT. THE ENTRIES SHOWN DO NOT TAKE ACCOUNT OF ANY APPLICATIONS PENDING IN THE REGISTRY. FOR SEARCH PURPOSES THE ABOVE DATE SHOULD BE USED AS THE SEARCH FROM DATE.

THIS TITLE IS DEALT WITH BY LAND REGISTRY, NOTTINGHAM OFFICE.

TITLE NUMBER: K725597

There is no application or official search pending against this title.

A: Property Register

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

KENT : SEVENOAKS

- 1 (16.09.1971) The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being land lying to the east of Chiddingstone Primary School, Chiddingstone, Edenbridge.

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 (16.09.1971) Proprietor(s): THE PARISH COUNCIL OF CHIDDINGSTONE care of The Clerk To The Council, Mrs D Evans, 31 The Middlings, Sevenoaks, Kent TN13 2NW.

C: Charges Register

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

- 1 A Conveyance dated 4 August 1939 made between (1) Henry Sidney John Streatfeild (Vendor) (2) Henry Daniel David Streatfeild and Henry William Holland (Trustees) and (3) The National Trust for places of Historic Interest or Natural Beauty (National Trust) contains the following covenants by the Vendor:-

"THE Vendor with intent and so as to bind so far as practicable the lands on the West South and East sides of the property hereby conveyed and shown by the colour green on the said plan into whosoever hands the same may come and to benefit and protect the land hereby conveyed (but not so as to render the Vendor personally liable in damages for any breach of covenant committed after he shall have parted with all interest in the property in respect of which such breach shall occur) hereby covenants with the National Trust

(a) that no house building shed erection or structure of any kind whatsoever (except boundary walls and fences not more than six feet high) shall at any time hereafter be erected placed or built on the fields or pieces of land Nod 931 and part 935 on the said plan or any part thereof within Three hundred feet from the public road adjoining such fields as shown by the colour green on the said plan

(b) That no house building shed erection or obstruction whatsoever (except boundary walls or fences not more than Six feet high) shall at any time hereafter be erected placed or built in the field or piece of

Title number K725597

C: Charges Register continued

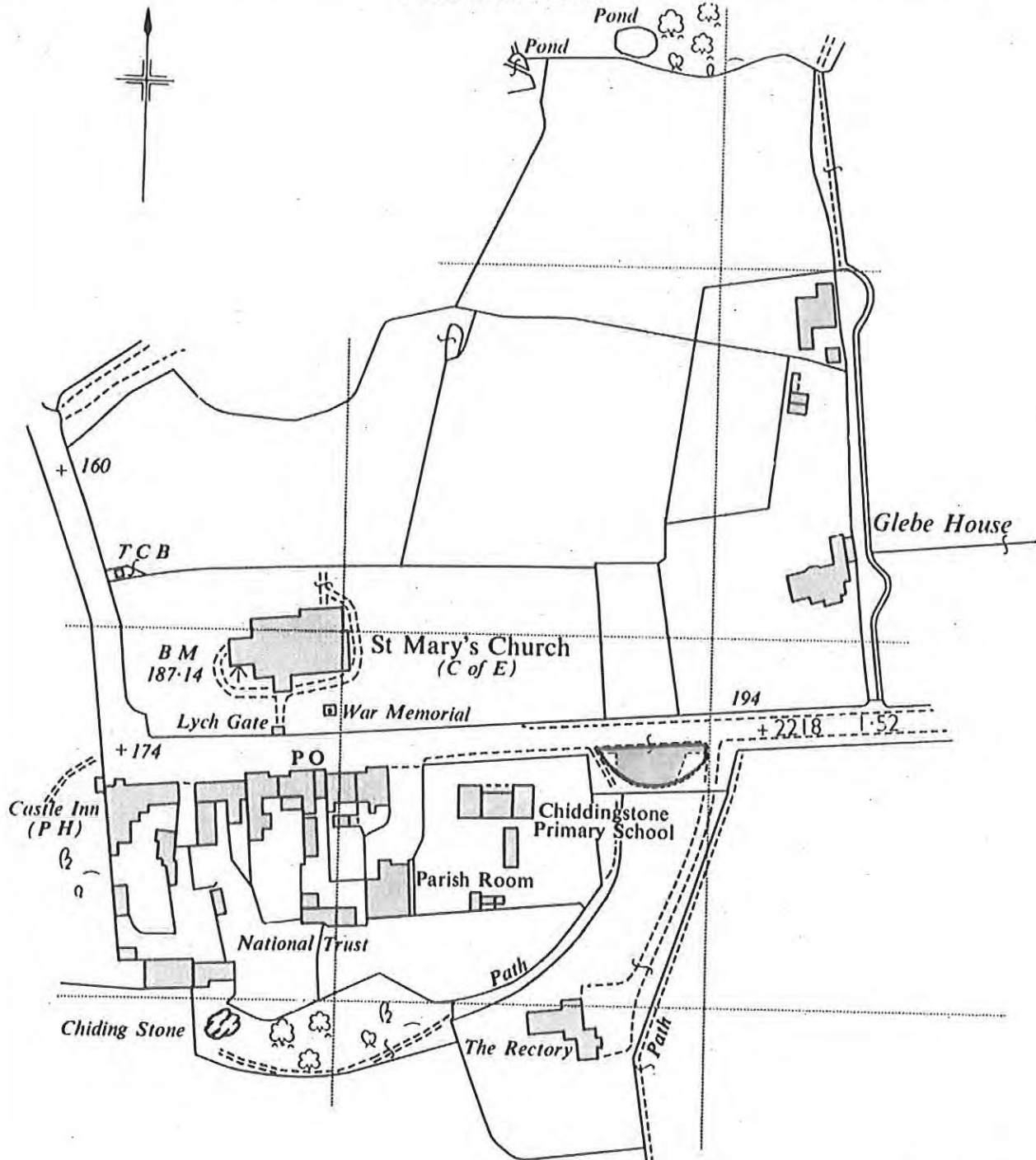
land Nod 850 and also coloured green on the said plan or on any part thereof."

NOTE:-The land tinted pink on the filed plan forms part of the land coloured green referred to.

End of register

H.M. LAND REGISTRY		TITLE NUMBER	
		K725597	
ORDNANCE SURVEY PLAN REFERENCE	TQ 5045	SECTION A	Scale 1/1250 Enlarged from 1/2500
COUNTY KENT	DISTRICT SEVENOAKS	© Crown copyright 1976	

CHIDDINGSTONE PARISH



This is a print of the view of the title plan obtained from Land Registry showing the state of the title plan on 07 January 2011 at 11:20:07. 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 7 - Title Plans.

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Application to register land known as Gighill Green in the parish of East Malling and Larkfield 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 8th February 2011.

Recommendation: I recommend that the County Council informs the applicant that the application to register the land known as Gighill Green at Larkfield has been accepted, and that the land subject to the application be formally registered as a Village Green.

Local Member: Mrs. T. Dean

Unrestricted item

Introduction

1. The County Council has received an application to register land known as Gighill Green at Larkfield as a new Village Green from the East Malling and Larkfield Parish Council ("the applicant"). The application, dated 9th March 2010, was allocated the application number VGA624. 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 a playing field of approximately 0.86 hectares (2.1 acres) in size which is situated on Lunsford Lane in the parish of East Malling and Larkfield. 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 and wrote to confirm her support for the application.

Ownership of the land

8. A Land Registry search has been undertaken which confirms that the application site is wholly owned by the applicant under title number K463905. A copy of the Register of Title is attached at **Appendix D**.
9. There are no other interested parties (e.g. leaseholders or owners of relevant charges) named on the Register of Title.

The ‘locality’

10. 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.
11. 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).
12. In this case, the application has been made by the local Parish Council. As such, it seems appropriate that the relevant locality in this case should be defined as the civil parish of East Malling and Larkfield.

Conclusion

13. 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.
14. It can be concluded that all the necessary criteria concerning the voluntary registration of the land as a Village Green have been met.

Recommendations

15. I recommend that the County Council informs the applicant that the application to register the land known as Gighill Green at Larkfield has been accepted, and that the land subject to the application be formally registered as a Village Green.

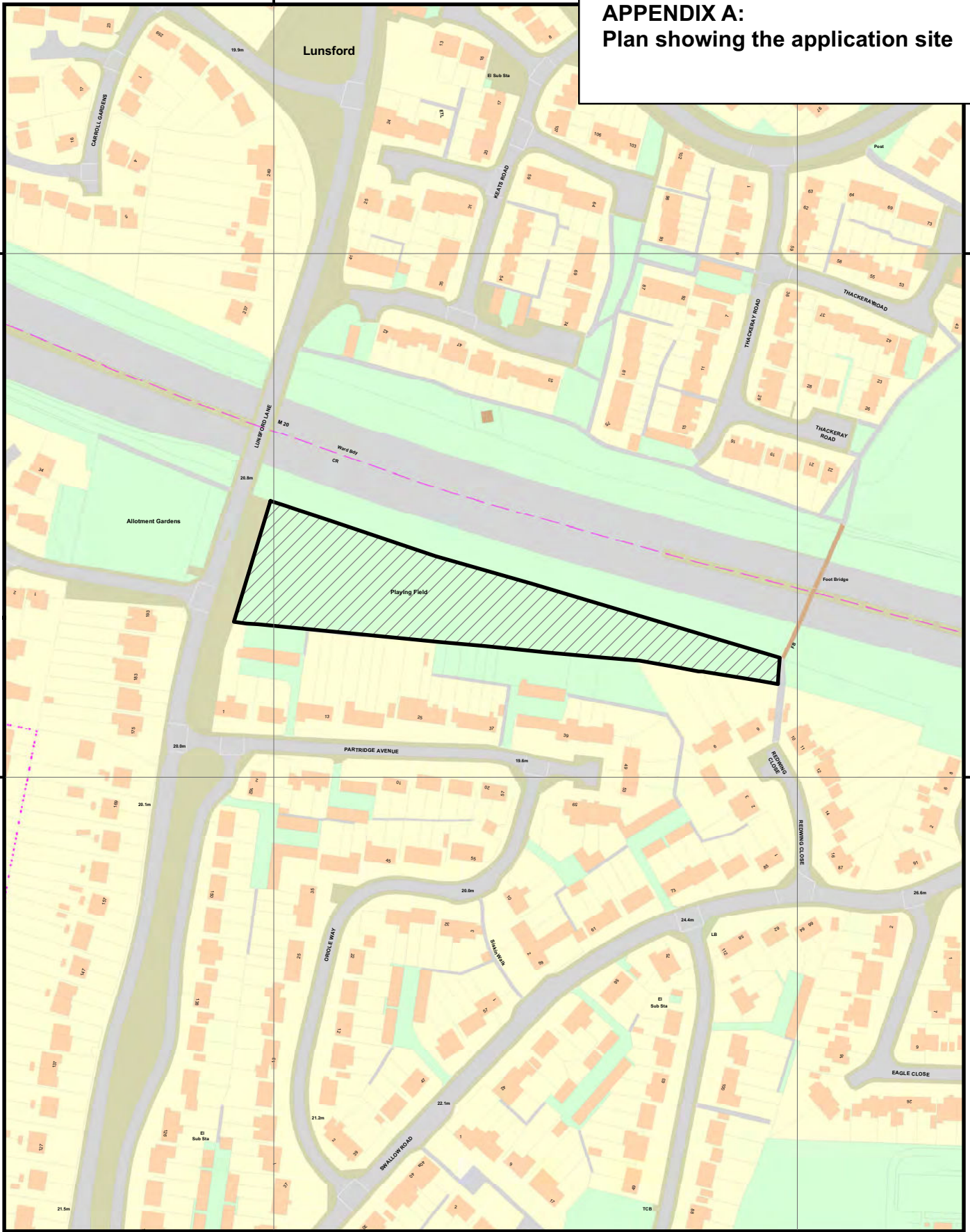
Accountable Officer: Dr. Linda Davies – Tel: 01622 221500 or Email: linda.davies@kent.gov.uk Case Officer: Miss. Melanie McNeir – Tel: 01622 221628 or Email: melanie.mcneir@kent.gov.uk

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 – Copy of the Register of Title from Land Registry

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



Scale 1:2500

**Land subject to Village Green application at
Lunsford Lane at Larkfield**

Page 34



FORM CA9

Commons Act 2006: section 15

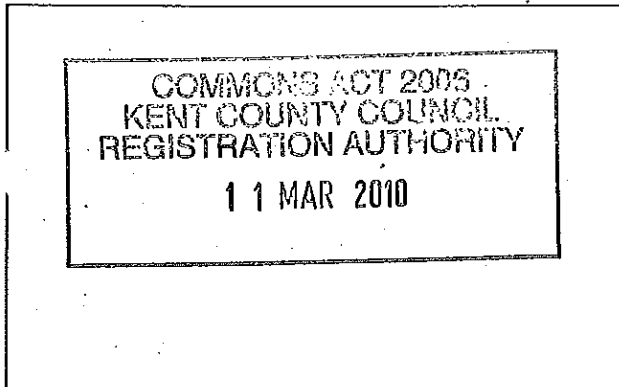
**Application for the registration of land
as a new Town or Village Green**

APPENDIX B:
Copy of the application form



This section is for office use only

Official stamp of the Registration Authority
indicating date of receipt:



Application number:

VGA624

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

[Empty box for VG number]

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: EAST MALLING and LARKFIELD

Full postal address: PARISH COUNCIL
(incl. Postcode)PARISH COUNCIL OFFICE, CHURCH FARM,
198, NEW HYTHE LANE, LARKFIELD, ME20 6GT.Telephone number: 01732 - 844546.
(incl. national dialling code)Fax number: 01732 875857
(incl. national dialling code)

E-mail address: office@emandlpc.co.uk

Note 3

This part should be completed if 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:

N/A

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:

If section 15(3) or (4) applies, please indicate the date on which you consider that use 'as of right' ended and why:

**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.*

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:

Note 5

This part is to identify the new green. The accompanying map must be at a scale of at least 1:2,500 and shows the land by means of distinctive colouring within an accurately identified boundary. State the Land Registry title number where known.

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

Name by which usually known:

GIGHILL GREEN as edged red
on attached plan - K463905 only

Location:

LUNSFORD LANE, LARKFIELD

Common Land register unit number (only if the land is already registered Common Land):

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

Note 6

It may be possible to indicate the locality of the green by reference to an administrative area, such as a parish or electoral ward, or other area sufficiently defined by name (such as a village). If this is not possible a map should be provided on which a locality or neighbourhood is marked clearly at a scale of 1:10,000.

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

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:

EAST MALLING and LARKFIELD
PARISH.

Please tick here if a map is attached (at a scale of 1:10,000):

<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;">N/A</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> <ol style="list-style-type: none"> 1. Copy Land Registry Plan. 2. Land Registry Entries showing Parish Council Ownership.
<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>The parish council solely owns the land and no other person is in occupation of it and there are no charges.</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:

9th March 2010

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.

**APPENDIX C:
Photographs showing application site**



Above: View from Lunsford Lane looking SOUTH-EAST

Below: Entrance to playing field from Lunsford Lane end



**APPENDIX D:
Copy of Register of Title**

THIS IS A PRINT OF THE VIEW OF THE REGISTER OBTAINED THE ENTRIES SUBSISTING IN THE REGISTER ON 21 OCT 20 THAT THIS REGISTER VIEW IS NOT ADMISSIBLE IN A COURT COPY WITHIN THE MEANING OF S.67 LAND REGISTRATION ACT IT MAY NOT ENTITLE A PERSON TO BE INDEMNIFIED BY THEM BY REASON OF A MISTAKE CONTAINED WITHIN IT. THE ENTRIES SHOWN DO NOT TAKE ACCOUNT OF ANY APPLICATIONS PENDING IN THE REGISTRY. FOR SEARCH PURPOSES THE ABOVE DATE SHOULD BE USED AS THE SEARCH FROM DATE.

THIS TITLE IS DEALT WITH BY LAND REGISTRY, NOTTINGHAM OFFICE.

TITLE NUMBER: K463905

There is no application or official search pending against this title.

A: Property Register

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

KENT : TONBRIDGE AND MALLING

- 1 (26.08.1963) The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being land on south side of M20 Motorway, East Malling and Larkfield.
- 2 The Transfer dated 15 November 1977 referred to in the Charges Register contains the following provision:-

Notwithstanding anything in the Transfer hereinbefore contained the Transferor or other the owner or owners for the time being of the retained land or any part thereof shall be at liberty to erect such buildings or erections on any part of the retained land and to alter or add to or use the same or any existing buildings or erections on the retained land in such manner as he or they may think fit notwithstanding that the access and use of light and air now or at any time hereafter enjoyed by the Transferee or its successors in title from and over the retained land may be thereby obstructed diminished or destroyed and any such access and use of light and air as aforesaid shall notwithstanding this Transfer be deemed henceforth to be enjoyed by the Transferee and its successors in title with the consent of the owner or owners of the retained land subject to the provisions of this clause and not otherwise.

- 3 The land edged and numbered in green on the filed plan has been removed from this title and registered under the title number or numbers shown in green on the said plan.

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 (24.11.1977) Proprietor: EAST MALLING AND LARKFIELD PARISH COUNCIL of Council Offices, Larkfield Village Hall, New Hythe Lane, Larkfield, Maidstone, Kent.
- 2 The Transfer to the proprietor(s) contains a purchasers' personal covenant.

NOTE:-Copy of covenant in Certificate.

- 3 (24.11.1977) RESTRICTION:- Except under an Order of the Registrar no disposition by the proprietor of the land is to be registered unless made in accordance with the Open Spaces Act 1906 or some other Act or Authority.

Title number K463905.

C: Charges Register

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

- 1 A Wayleave Consent dated 26 September 1938 relates to an electric line in a position indicated by a black broken line on the filed plan.

NOTE:- Copy Consent filed under K190816.

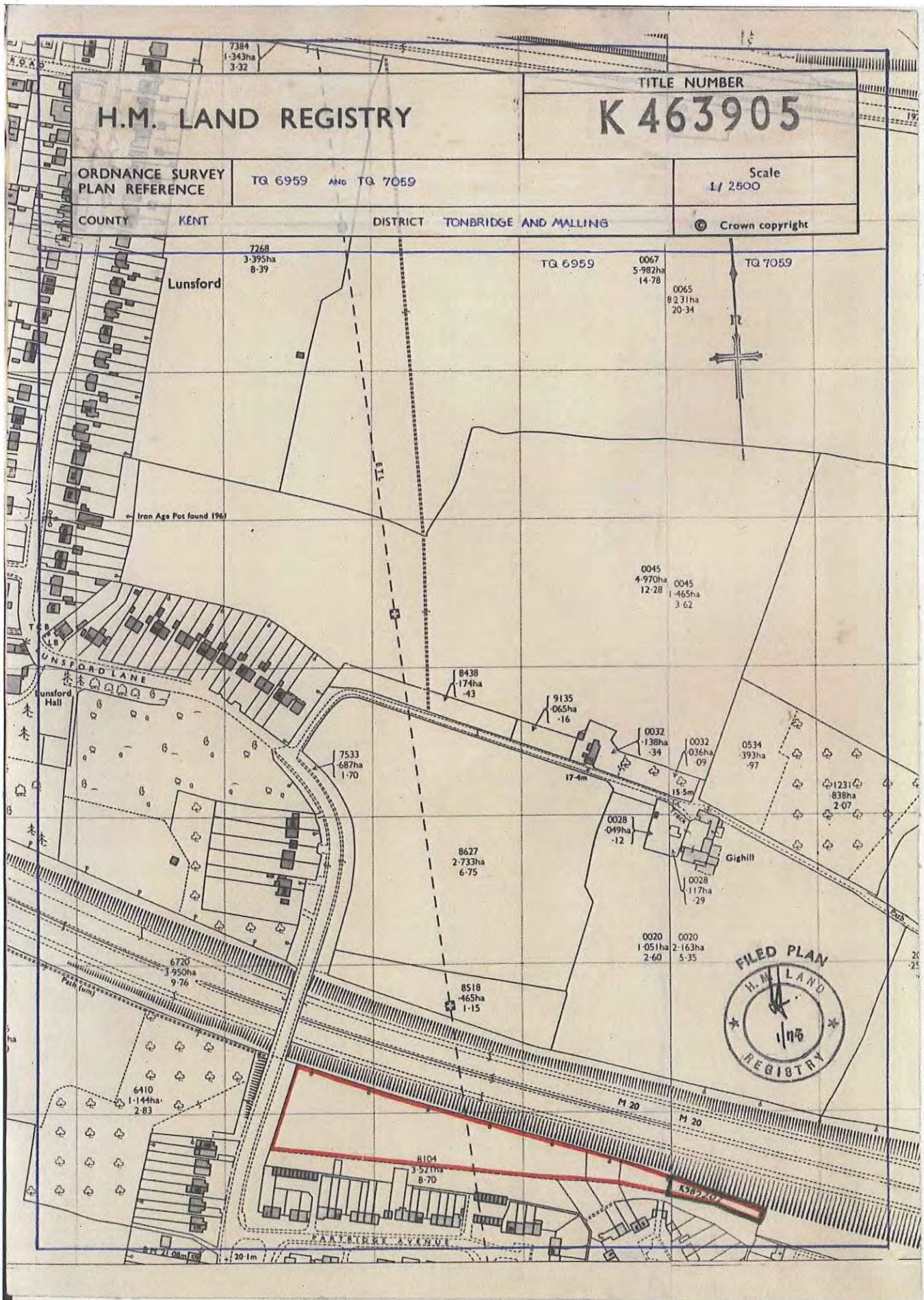
- 2 A Transfer of the land in this title dated 15 November 1977 made between (1) The Secretary of State For Transport (Transferor) and (2) East Malling and Larkfield Parish Council contains the following covenants:-

The Transferee hereby covenants with the Transferor so as to benefit the remainder of the land (hereinafter called "the retained land") comprised in title number K190816 and every part thereof and to bind the land hereby transferred and every part thereof into whosoever hands the same may come but not so as to render the Transferee personally liable in damages for any breach of a restrictive covenant after it shall have parted with all interest in the land hereby transferred Not to use the property hereby transferred nor any part thereof or permit the use of the same for any noisy noxious or offensive trade or business for any purpose which may be or become a damage or nuisance to the Transferor or other the owners or occupiers for the time being of the retained land.

- 3 The land is subject to the following rights reserved by the Transferor dated 15 November 1977 referred to above:-

There is excepted and reserved unto the Transferor in fee simple all cables wires pipes drains and channels (if any) in over or under the property hereby transferred and serving the retained land and the right to the free passage of electricity gas water and soil through the same to and from the retained land TOGETHER WITH all appropriate easements rights and privileges for repairing maintaining renewing and removing the same and without prejudice to the generality of the foregoing the right for the Transferor at all times hereafter to enter on to the land hereby transferred or any part thereof with or without plant equipment and vehicles and by itself its servants or agents to repair the motorway fence bounding the land hereby transferred on the northern side thereof the Transferor or its successors in title making good all damage occasioned by the exercise of such right.

End of register



This is a print of the view of the title plan obtained from Land Registry showing the state of the title plan on 21 October 2010 at 13:23:00. 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 7 - Title Plans.

This title is dealt with by Land Registry, Nottingham Office.

Application to register land at Broadstairs Cricket Ground and surrounding woodland as a new Town or Village Green

A report by the Director of Environment and Waste to Kent County Council's Regulation Committee Member Panel on Tuesday 8th February 2011.

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

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

Unrestricted item

Introduction

1. The County Council has received an application to register land at Broadstairs Cricket Ground (and surrounding woodland) at Broadstairs as a new Town or Village Green from local resident Mr. T. Herron ("the Applicant"). The application was allocated reference number VGA597 on receipt. Although the application was originally received on 20th August 2007, the supporting evidence was not received until February 2010 and formal work did not commence on the application until that time. A plan of the site is shown at **Appendix A** to this report and a copy of the application form is attached at **Appendix B**.

Procedure

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

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

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

The application site

6. The area of land subject to this application ("the application site") is situated at Park Avenue, on the boundary between the towns of Broadstairs and Ramsgate. It is an irregular shape, which is best described by reference to the plan at **Appendix A**, and consists of a cricket ground (including a large cricket pavilion) and surrounding woodlands which total approximately 3.6 hectares (9 acres) in size.
7. When the application was originally submitted, the application site was unfenced, except where its outer boundaries abutted neighbouring properties. However, since the application has been made, the two southern limbs of the application site (i.e. the south-eastern section opposite Binnie Close and the south-western section south of the private driveway leading to the properties known as the Cricketers) have been cleared and fenced off using post and wire fencing to delineate land ownership boundaries.
8. Nonetheless, access to the unfenced parts of the application site is easily gained via the footways of Park Avenue, Grange Way and Park Gate. The new fencing has also been penetrated in places to create unofficial access. The application site is crossed by a Public Footpath (TB48) which runs along its south-eastern fringe.

The case

9. The application has been made on the grounds that the application site has become a Town or Village Green by virtue of the actual use of the land by the local inhabitants for a range of recreational activities 'as of right' for more than 20 years.
10. Despite requests being sent to the applicant, no actual evidence of use (other than the applicant's statement in support of the application) was supplied until February 2010 when a total of 31 user evidence questionnaires were received from local residents. A summary of this evidence is attached at **Appendix C**.

Consultations

11. Consultations have been carried out as required. The Broadstairs and St. Peter's Town Council and the Broadstairs Society both wrote to express their support for the application.
12. Letters of support were also received from 68 local residents (both current and former) setting out their knowledge and use of the application site.
13. An objection was received from local resident Mr. P. Robinson. Mr. Robinson disputes the claim that the application site has been used by a significant number of

local residents 'as of right' for lawful sports and pastimes. He has, however, observed use of the site for dog walking and has watched cricket matches taking place. Mr. Robinson also expresses concerns about the dumping of garden refuse and litter on the land.

Landowners

14. The situation with regard to the ownership of the application site is complex in that there are seven separate landowners and one leaseholder. The ownership of the application site is shown on the plan at **Appendix D**.
15. Out of the seven landowners, three have objected ("the Objectors") and one has made a representation. A representation has also been received from the leaseholder.

Thanet District Council

16. The District Council owns a section of the application site which largely comprises the cricket field and pavilion. This area of land is registered with the Land Registry under title number K838998. The District Council's Asset Manager, Mr. J. Thomson, has written to confirm that the Council has no evidence to offer either in support of or in opposition to the application.

Broadstairs Cricket Club

17. The part of the application site that is owned by Thanet District Council is let on a 100-year lease to the Broadstairs Cricket Club.
18. The Cricket Club has made a representation on the basis that it has concerns regarding the future use of the land and the potential restrictions imposed were it to be registered as a Town Green. The Club believes that were the land to be granted Town Green status, the local community would have a right to use the cricket ground whenever they want and for whatever purposes. The Cricket Club has played on the land for nearly 70 years and has successful junior and senior teams which play cricket there on a regular basis at weekends and on some week days. If the granting of Town Green status were to in any way interfere with the Cricket Club's use of the land, this could ultimately lead to the demise of the Club.

Mr. and Mrs. Kenyon

19. Mr. and Mrs. Kenyon are the owners of a strip of land forming a private access road known as 'The Cricketers'. This area of land is registered with the Land Registry under title number K915349.
20. The roadway was made up approximately three years ago (2007) with a tarmac surface and speed bumps at the considerable expense of the owners of properties to which the roadway leads. Mr. and Mrs. Kenyon have made a representation on the basis that any use of this land has not been 'as of right', because use has been challenged by the landowners and a sign has been in place since 2007 stating that it is a private road.

Mr. and Mrs. Brazil

21. An objection to the application has been received from Barnes Marsland Solicitors on behalf of Mr. and Mrs. Brazil who own a piece of land on the western edge of the application site. This area of land is registered with the Land Registry under title number K401090. Mr. and Mrs. Brazil completed the purchase of this land in 2002, but have had an interest in it for approximately 12 years.
22. The objection is made on the following grounds:
- There is evidence that this part of the application site was originally fenced with a chestnut fence fronting Park Avenue and the cricket field, and a chain link fence on the southern boundary separating it from the land owned by Probeport Ltd. Although the fencing has deteriorated, it is still visible on the site.
 - On 24th March 2010, a new fence was erected around the perimeter of Mr. and Mrs. Brazil's land which had the effect of preventing access to it.
 - Parts of the land are physically distinct and have different characteristics, but the evidence questionnaires submitted in support of the application do not differentiate between the uses of these different areas. The evidence does not demonstrate 20 years' use of the whole of the land and the questionnaires fail to identify which parts of the woodland have been used.
 - The land is far from accessible and consists of dense scrubland; it is not suitable for walking or recreational pursuits.

Probeport Ltd

23. An objection to the application has also been received from Clark Holt Solicitors on behalf of Probeport Ltd which owns a piece of land on the south-western limb of the application site. This area of land is registered with the Land Registry under title number K962796. Probeport Ltd purchased the land from the Greatex Investment Company Ltd. in 2009.
24. The objection is made on the following grounds:
- The land was cleared in late 2009, but prior to that it was highly impenetrable and unsuitable for recreational use.
 - On 12th January 2010, post and wire fencing was erected along with signs stating that the land was private property.
 - The evidence questionnaires do not differentiate between different parts of the application site and it is difficult to establish with any certainty that any of the activities claimed to have taken place actually did take place on this part of the application site.

Greatex Investment Company Ltd

25. Clark Holt Solicitors also act on behalf of the Greatex Investment Company Ltd. which owns the south-eastern limb of the application site. This area of land is registered with the Land Registry under title number K61934. The Greatex Investment Company Ltd. has owned the land in excess of 50 years. It formerly owned a much larger area of land on the southern part of the application site, but part of this land was developed for housing (now Parkwood Close) in the 1970s and 1980s.

26. An objection from the Greatex Investment Company Ltd. (via its solicitor) has been received. The objection is made on the basis that the Company is not aware of any use of the land for lawful sports and pastimes. It is, however, used as a short cut to reach the cricket ground or adjacent streets, or to reach the Brown Jug Public House and Ramsgate Road from Park Avenue. Any use of the land has therefore been of a Public Rights of Way type user and does not amount to general use for lawful sports and pastimes.

Kent County Council

27. Kent County Council owns a strip of land abutting Grange Way on the eastern part of the application site. This area of land is registered with the Land Registry under title number K684424. Notice has been served on the County Council as required but no response has been received.

DS Property Developments

28. A triangle of land on the north-eastern part of the application site is registered with the Land Registry under title number K386365. The registered owner is stated to be Clayform Developments Ltd, but a search of the Companies House database has revealed that this company is now trading as DS Property Developments. Notice has been served on this company as required but no response has been received.

Legal tests

29. 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'?*

30. The definition of the phrase 'as of right' has been considered by the House of Lords. Following the judgement in the Sunningwell¹ 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.

31. In this case, there is no suggestion that the informal recreational use of the application site has been with permission or with any secrecy. However, there is some debate as to the existence of fencing and notices on parts of the application

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

site which have the potential to render any use of it with force, and thus not 'as of right'.

Fencing

32. It is the applicant's case, supported by the user evidence, that there has been no physical hindrance to the actual use of the whole of the application site throughout the twenty year period preceding the date of the application. The Objectors refer to the erection of post and rail fencing around parts of the application site, accompanied by 'private land' notices, in early 2010. There is some disagreement as to the exact date that the fencing was erected², but, in any event the fencing was erected after the application was made and thus would be outside the relevant twenty-year period³.
33. In addition to the recent erection of fencing on part of the application site, Mr. and Mrs. Brazil refer to the remains of fencing on the part of the application site which is within their ownership. They say that there is evidence (in the way of remains of old fencing) to indicate that their plot was originally fenced with chestnut fencing fronting Park Avenue and the cricket field, and a chain link fence running adjacent to the boundary with the land owned by Probeport Ltd.
34. The applicant, who has known the site since 1982, states that he is unaware of any fence, boundary or other impediment to use, either along the frontage of Park Avenue or separating the land internally. He adds that enquiries of long-term residents have not drawn any recollection of the existence of fences.
35. The situation with regard to fencing is therefore far from clear. It is based almost exclusively on the recollections of those who have visited the site (both landowners and recreational users) and requires further investigation before a proper conclusion can be reached.

Notices

36. Any use of the application site which has involved breaking down barriers to gain entry is a clear example of use that is with force and not 'as of right'. However, the definition of force in the context of Town or Village Green registration is not restricted to physical force⁴. So, if a landowner erects a notice prohibiting use of the land and that notice is ignored by the users, then such use becomes contentious and is not 'as of right'.
37. A representation has been received from the owners of the private road known as 'The Cricketers', who say that a notice has been in place stating 'private road' since 2007. As such, their view is that the use of the roadway has not been 'as of right'.

² In relation to the parts of the application site owned by Probeport Ltd and the Greatex Investment Company (see **Appendix D**). The Objectors assert that the fencing around the land owned by Probeport Ltd and the Greatex Investment Company was erected in January 2010, whereas the applicant states that the fencing was not erected until after 8th March 2010 (the date upon which Notice of the application was served on the affected landowners).

³ See paragraphs 63 to 65 for conclusions regarding the relevant twenty-year period.

⁴ *R (Lewis) v Redcar and Cleveland Borough Council (No 2)* [2010] 2 AC 70 (see particularly Lord Rodger at paragraph 88)

38. When looking at the effect of notices erected on the application site, it is important to consider the message conveyed to the users of the land: indeed, “*the aim is to let the reasonable user know that the owner objects to and contests his user*”⁵. It is arguable in this instance that a ‘private road’ notice could be interpreted by the users as referring only to the passage of vehicular traffic and not to the general use of the land for recreational purposes. It is therefore debatable as to whether the ‘private road’ notices had the effect of contesting recreational user.

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

39. 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.

40. 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.

41. In this case, the evidence demonstrates that the land has been used for a wide range of recreational activities, including walking (with or without dogs), watching cricket matches and playing with children. The summary of evidence of use by local residents at **Appendix C** shows the full range of activities claimed to have taken place.

Distinct areas and physical inaccessibility

42. The Objectors do not seek to argue that no part of the application site has been used for the purposes of lawful sports and pastimes. Rather, their position is that the application site is divided into several physically distinct areas which require separate analysis. The user evidence questionnaires do not distinguish between different areas of the application site, and some activities referred to in the user evidence (e.g. kite flying and watching cricket), of necessity, can only have taken place on the cricket field itself rather than in the neighbouring woodland. Where reference is made to recreational use of the woodland, the questionnaires do not specifically identify which pieces of woodland have been used. As such, it is the Objectors contention that the user evidence is not sufficient to demonstrate recreational use of the whole of the application site.

43. The Objectors also argue that parts of the application site were not capable of being used by virtue of their physical inaccessibility. These areas (which have now been cleared) are described as having been ‘barely penetrable scrubland’ covered with

⁵ *R (Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust) v Oxfordshire County Council* [2010] EWHC 530 (Admin) at paragraph 22 per Waksman J

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

bushes, shrubs, trees and other vegetation which would have made these areas unsuitable for walking or playing. Access to these areas would, in the Objectors view, have been very difficult.

44. The applicant, on the other hand, argues that it is wrong to attempt to differentiate between the different areas of ownership of the application site. As far as the users were concerned, there was no distinction between the different areas of ownership or indeed the recreational use to which they was put by local residents. Those using the application site undertook their activities on the site as a whole, without any thought as to the ownership boundaries, and as such the issues of land ownership are irrelevant in determining whether, as a matter of fact, the land has been used in the requisite manner.
45. The applicant also disputes the assertion that parts of the application site were inaccessible. He states that all parts of the woodland have provided opportunities for several generations of children to play, climb trees and build dens. Whilst some parts of the woodland were denser in terms of vegetation than others, these areas were penetrated by informal pathways through the trees, regularly used by both adults and children.
46. As with the fencing issue above, it is very difficult to reconcile the very stark contrast between the recollections of the users and those of the landowners. This vast difference is not something which it appears possible to resolve on paper; rather, it is a question of evidence that requires more detailed scrutiny, preferably by way of the cross examination of witnesses in a structured public forum.

Public Footpath TB48

47. There is also a further question arising from the existence of a Public Footpath running along the south-eastern part the application site. Use of a defined route that constitutes a recorded Public Footpath is a Public Rights of Way type user which is in exercise of an existing right and cannot give rise to any new rights⁸.
48. The Greatex Investment Company argues that such use as has taken place of their land has only been for the purpose of passage along the Public Footpath. However, the applicant states that it would be wrong to assume that the presence of a Public Footpath indicates only linear usage of one part of the application site, since all parts of the site have been regularly used and this is evidenced by the number of informal pathways that lead through the area and connect to the main Public Footpath.
49. Once again, the degree of use of the Public Footpath is of material relevance to the wider question of whether recreational use has taken place over the whole of the application site, and requires more detailed investigation.

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

50. The right to use a Town or Village Green is restricted to the inhabitants of a locality or of a neighbourhood within a locality and it is therefore important to be able to

⁸ *R (Laing Homes) v Buckinghamshire County Council* [2003] 3 EGLR 70

define this area with a degree of accuracy so that the group of people to whom the recreational rights are attached can be identified. Identifying the relevant “locality” or “neighbourhood within a locality” can be problematic but it does not matter if the applicant fails to precisely defined the correct locality in his application; the burden is not on the applicant to establish the correct locality at the time of application, but rather on the Registration Authority to satisfy itself that there is a relevant locality (or neighbourhood) at the time of registration⁹.

“locality”

51. 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*¹⁰ 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’.
52. At part 6 of the application form, the Applicant specifies the locality as ‘the area of housing surrounding the green but also for the wider area of Upton ward Broadstairs’. The Upton ward is shown on the plan at **Appendix E**.
53. The Objectors argue that the District Council electoral ward of Upton has not existed since 2002 (when it was largely subsumed into the new electoral ward of Viking) and, since it is not an administrative division currently known to the law, it cannot be a qualifying locality for the purposes of Town or Village Green registration.
54. The Courts have recently considered this issue in the *Leeds*¹¹ case. In that case, the electoral ward relied upon had not existed since 1937. It was held that provided that the boundaries of the ward could be defined, the fact that it ceased to be an administrative unit in 1937 did not prevent it from being a locality for the purposes of Town or Village Green registration.
55. The same principle can be applied in the current case. The fact that Upton has not existed as an electoral ward since 2002 does not, contrary to the assertion of the Objector, automatically preclude it from being a relevant locality. It would therefore appear that the former District Council ward of Upton would be capable of constituting a relevant locality in this case.
56. In cases where the “locality” is so large that it is difficult to show that the application site has been used by a significant number of people from that locality (as often the case in urban areas), it will be necessary to consider whether there is a relevant “neighbourhood” within the wider locality.

⁹ *Oxfordshire County Council v Oxford City Council* [2006] 4 All ER 817

¹⁰ *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at page 90

¹¹ *Leeds Group plc v Leeds City Council* [2010] EWHC 810 (Ch). Note that the High Court’s decision in this case was appealed but the specific issue of whether the electoral ward in question could be a qualifying locality was not considered by the Court of Appeal. See *Leeds Group plc v Leeds City Council* [2010] EWCA Civ 1438

“neighbourhood within a locality”

57. 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’*¹².
58. Although it is accepted that, in all probability, only those living closest to a piece of land are likely to use it for recreational purposes, there is still a requirement for the purposes of Village Green registration to show that the land has been used by the residents of a defined area or, as suggested by LJ Pill in a case known as Steed¹³, *‘something more than a place or geographical area – rather a distinct and identifiable community such as might lay reasonable claim to a town or village green’*.
59. The applicant contends that the relevant neighbourhood in this case is Park Avenue. The neighbourhood as defined by the applicant is shown on the plan at **Appendix E**. He explains that Park Avenue is a long residential cul-de-sac, including a number of separate cul-de-sacs that feed into Park Avenue, thereby creating a self-contained residential area. The whole neighbourhood is accessed by a junction at Ramsgate Road or a Public Footpath from West Dumpton Lane. It also has a very distinct character and appearance that is easily distinguishable from surrounding residential areas. In the applicant’s view, Park Avenue, as a neighbourhood, therefore has the sufficient degree of cohesiveness required for the purposes of Town or Village Green registration.

“a significant number”

60. 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’*¹⁴. 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.
61. In this case, representations and evidence of use have been received from 67 households in the Park Avenue neighbourhood as defined by the applicant which is a not insignificant amount. The frequency of use claimed by the witnesses is also high, with 22 of the 31 user evidence questionnaires referring to use of the application site on a weekly basis and half of those asserting use on a daily basis.
62. In addition, nearly all of the user evidence questionnaires refer to having observed use of the application site on a daily basis. It is not clear how much of this has been

¹² *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at page 92

¹³ *R v Suffolk County Council, ex parte Steed and another* (1995)

¹⁴ *R (Alfred McAlpine Homes Ltd.) v Staffordshire County Council* [2002] EWHC 76 at paragraph 71

informal recreational use as opposed to more formal activities by the cricket club (which would be by virtue of a permission from the landowner). However, on balance, it would appear that the volume of use of the application site has been such that a reasonable landowner would have been aware of the recreational use of the land by local residents.

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

63. 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.

64. In this case, there has been some debate as to when the application was duly made. An application is duly made when all of the necessary requirements in making the application (e.g. a requirement to provide a map at a specified scale) have been complied with. Although the application form itself is dated August 2007, user evidence in support of the application was not received until February 2010.

65. The Objectors argue that the application was not treated as being duly made until the submission of the user evidence forms in 2010 and that the relevant twenty-year period is therefore 1990 to 2010. The relevant Regulations¹⁵ say that an application is duly made when it is submitted on the relevant application form, signed by the applicant and accompanied by a map showing the application site, a statutory declaration and every document which the applicant has in his possession relating to the matter. There is no specific requirement for the applicant to supply evidence of use and indeed the user evidence questionnaires which were supplied by other local residents have never been in the applicant's possession.

66. The County Council therefore takes the view that the application was duly made in August 2007. Hence, the relevant twenty-year period ("the material period") is 1987 to 2007.

67. In terms of the actual evidence of use, it matters not if only some (or even none) of the witnesses have used the application site for twenty years, provided that the evidence as a whole demonstrates that the land has been used by the local community for a full period of twenty years¹⁶.

68. In this case, as can be seen from the table at **Appendix C**, 22 of the 31 witnesses who supplied user evidence questionnaires in support of the application have used the application site for a full period of twenty years. In addition to the user evidence questionnaires, there is a significant volume of evidence contained in the letters of support, many from longstanding residents of the area, attesting to recreational use of the application site.

69. Overall, the evidence suggests that the application site has been used for a full period of twenty years. However, the Objectors' criticisms in relation to the vague nature of the user evidence (insofar as it does not specify which areas of the

¹⁵ At the time that the application was made, the relevant Regulations were the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007. However, these have now been superseded in the pilot areas by the Commons Registration (England) Regulations 2008.

¹⁶ *Davis v Whitby* [1974] 1 All ER 806

application site have been used) and the overgrown state of parts of the applications site would be relevant to the question of whether the application site as a whole has been used throughout the relevant period. These criticisms require further clarification and, in light of the recommendation, it is not necessary to conclude either way on this point.

(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)?

70. 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).

71. If, for the reasons set out above, the date of the application is accepted as being 2007, then use of the application site, according to the user evidence, has continued up until that date (and indeed beyond).

72. Even if it is considered that the application was not duly made until February 2010 and that use 'as of right' ceased prior to the application (as is asserted by the Objectors), this is inconsequential since section 15(2) the Commons Act 2006 provides a two-year period of grace during which applications can be made once use the application site has ceased to be 'as of right'.

Conclusion

73. As has been noted above, there have been various disputes regarding the nature and factual basis of the evidence. In summary, the applicant's case is that the whole of the application site has been used by the local residents for the purposes of lawful sports and pastimes for a full period of twenty years. The Objector's case is that parts of the application site would have been inaccessible due to impenetrable vegetation and as such these areas were not capable of being used for recreation pursuits. The evidence on both sides relies almost entirely upon the recollections of those involved and there is little, if any, documentary evidence to support the case for either side.

74. Although the relevant Regulations¹⁷ provide a framework for the initial stages of processing the application (e.g. advertising the application, dealing with objections etc), they provide little guidance with regard to the procedure that a Commons Registration Authority should follow in considering and determining the application. In recent times it has become relatively commonplace, in cases which are particularly emotive or where the application turns on disputed issues of fact, for Registration Authorities to conduct a non-statutory Public Inquiry¹⁸. This involves appointing an independent Inspector to hear the relevant evidence and report his/her findings back to the Registration Authority.

¹⁷ Commons Registration (England) Regulations 2008

¹⁸ The Public Inquiry is referred to as being 'non-statutory' because the Commons Act 2006 does not expressly confer any powers on the Commons Registration Authority to hold a Public Inquiry. However, Local Authorities do have a general power to do any thing to facilitate the discharge of any of their functions and this is contained in section 111 of the Local Government Act 1972.

75. Such an approach has received positive approval by the Courts, most notably in the *Whitney*¹⁹ case in which Waller LJ said this: *'the registration authority has to consider both the interests of the landowner and the possible interest of the local inhabitants. That means that there should not be any presumption in favour of registration or any presumption against registration. It will mean that, in any case where there is a serious dispute, a registration authority will almost invariably need to appoint an independent expert to hold a public inquiry, and find the requisite facts, in order to obtain the proper advice before registration'*.

76. A decision to hold a Public Inquiry is not one which the County Council should take lightly; such a decision imposes significant burdens on all parties involved in terms of the preparation for and attendance at the Inquiry. Officers will, in the first instance, always seek to resolve an application without the need to resort to a Public Inquiry if at all possible. In this case, further information has been sought from the parties in an attempt to reconcile differences in the factual evidence provided²⁰. However, there are occasions, of which this appears to be one, where there is a serious conflict in the evidence which cannot be resolved on paper and the County Council has little option other than to refer the matter to a Public Inquiry for the matters to be clarified before a final decision is made.

77. It is important to remember, as was famously quoted by the Judge in another High Court case²¹, that *'it is no trivial matter for a landowner to have land, whether in public or private ownership, registered as a town green... [the relevant legal tests] must be 'properly and strictly proved'*. This means that it is of paramount importance for a Registration Authority to ensure that, before taking a decision, it has all of the relevant facts available upon which to base a sound decision. It should be recalled that the only means of appeal against the Registration Authority's decision is by way of a Judicial Review in the High Court.

78. The volume of unanswered questions relating to the evidence in this case means that it appears that a Public Inquiry would be the most appropriate way forward.

Recommendations

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

Accountable Officer:

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

Case Officer:

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

The main file is available for viewing on request at the Countryside Access Service, Invicta House, County Hall, Maidstone. Please contact the case officer for further details.

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

²⁰ In exercise of the County Council's powers to invite further written representations contained in Regulation 28 of the Commons Registration (England) Regulations 2008

²¹ *R v Suffolk County Council, ex parte Steed* [1997] 1EGLR 131 at 134

Background documents

APPENDIX A – Plan showing application site

APPENDIX B – Copy of application form

APPENDIX C – Summary of user evidence

APPENDIX D – Plan showing ownership of the application site

APPENDIX E – Plan showing the relevant locality, neighbourhood and spread of users

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**APPENDIX A:
Plan showing application site**

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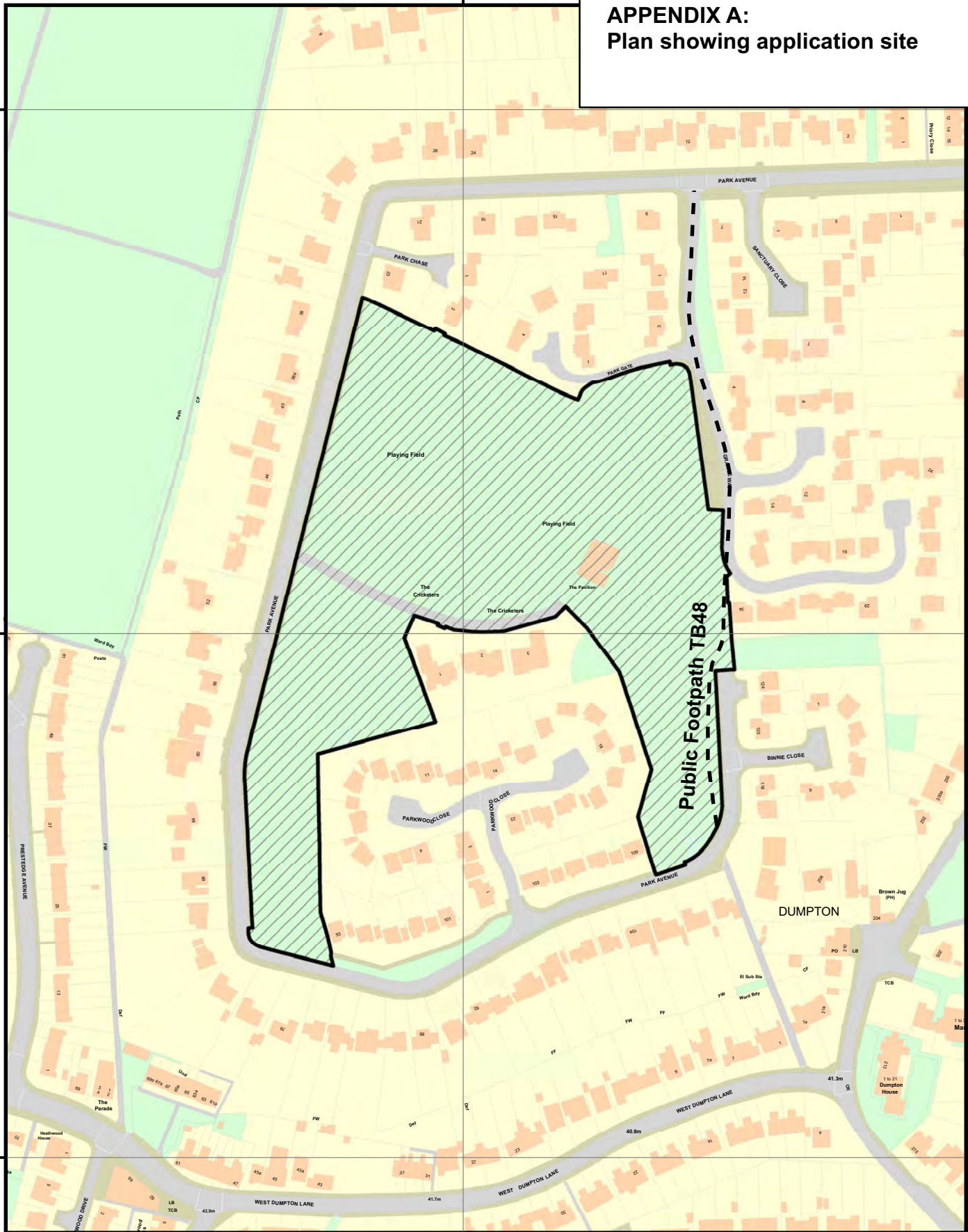
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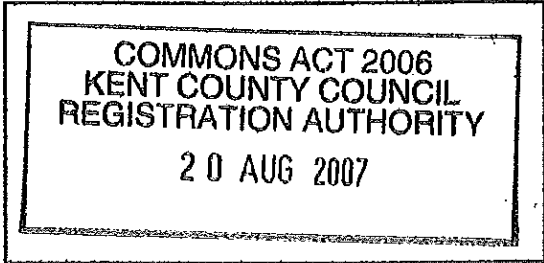
**Land subject to Village Green application
at Broadstairs Cricket Ground**

Page 59



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

Official stamp of registration authority
indicating valid date of receipt:



Application number: 597

Register unit No(s):

VG number allocated at registration:

(CRA to complete only if application is successful)

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

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

1. Registration Authority

To the

KENT COUNTY COUNCIL
COUNTY HALL, Maidstone, Kent.

Note 1
Print name of
registration
authority.

Note 2

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

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

Note 3

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

2. Name and address of the applicant

Name:

Full postal address:

Telephone number: (incl. national dialling code)

Fax number: (incl. national dialling code)

E-mail address:

3. Name and address of solicitor, if any

Name:

Firm:

Full postal address:

Telephone number: (incl. national dialling code)

Fax number: (incl. national dialling code)

E-mail address:

Note 4

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

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

4. Basis of application for registration and qualifying criteria

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

Application made under section 15(8):

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

Section 15(2) applies:

Section 15(3) applies:

Section 15(4) applies:

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

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

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

Name by which usually known:

BROADSTAIRS CRICKET GROUND, AND SURROUNDING WOODLAND AREA

Location:

PARK AVENUE, BROADSTAIRS, KENT.

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

Common land register unit number (if relevant) *

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

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

THE AREA OF HOUSING SURROUNDING THE GREEN AS SHOWN ON THE ATTACHED PLAN BUT ALSO FOR THE WIDER AREA OF UPTON WARD, BROADSTAIRS

Tick here if map attached:

Note 5

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

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

Note 6

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

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

Note 7

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

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

SEE ATTACHED SHEET

Application to register Broadstairs Cricket Ground and surrounding woodland as a town or village green

Justification for application

The land, which it is hoped to have registered as a village or town green, is located in Park Avenue, Broadstairs. Originally all of the land was part of the extensive grounds of Dumpton House, a substantial mansion house that was located to the east of the application site, which was subsequently demolished and the site redeveloped for housing.

The area of open land occupied by Broadstairs Cricket Club has been in existence for a substantial period of time, [well beyond 25 years]. It is thought that the original owner of Dumpton House sold the land, tenanted by the Cricket Club, to Wellington House School to use as an overflow sports field. Either by formal, or informal, arrangement, the owners permitted the Cricket Club the use of the field as their home ground. A pavilion/changing room building of solid construction has been present on the site to the best of my knowledge, for in excess of 25 years.

Occasionally during the school year, the school would use the playing field for sports activities. Throughout most of the year the land was used only by local people, and even in the summer, when events such as cricket matches were being played, a general tolerance and respect for the playing surface enabled local people to continue to use the park.

The cricket outfield is surrounded by an area of woodland containing substantial mature trees, many of which are covered by Tree Preservation Orders. This area is an integral part of the character and setting of the ground, and of Park Avenue, as the name implies, and extends on the eastern side of the cricket pavilion to include the woodland area at the rear of the pavilion, and the land either side of the statutory public footpath that crosses the site from south to north. Part of this land is in private ownership being the residue of a residential building site completed during the early 1980's that was also part of the original Dumpton Estate, and which was left undeveloped in view of the location of the footpath and the presence of substantial trees.

No part of the green site has been enclosed, nor has there been any indication by way of site notices or signs during the period that would indicate that the public use of the land was in any way restricted. For a period well in excess of 20 years, the public has not been excluded from any part of the site. The area has been used *as of right* for lawful sports and pastimes of a recreational nature throughout this period

Throughout all of this period the land has remained open to local people to use for leisure and recreational activities. Every day for all of this period local people have walked the area for recreation. At any time of the day within the green, local people can be found walking their dogs, or taking infants to play on the grass, or enjoying the wooded area. Local children have self-organised cricket matches, football kick-arounds and other sporting semi-formal sports activities, unencumbered by restraint from the land owners, and away from traffic. The whole area of the cricket outfield, and surrounding woodland, has been an adventure playground for young and old for well in excess of a period of 20 years. Almost at no time during the day is there not someone availing themselves of the pleasures of access to such an attractive parkland area.

All of the residents of Park Avenue, and surrounding local residential areas as defined on the attached O.S. plan regard the Cricket Ground and surrounding woodland as a recreational asset for the local area that has been used unencumbered by successive generations of local residents for well in excess of 20 years, and hope to continue to do so in the future. In addition the area attracts more occasional users from a much wider area encompassing the whole of the electoral ward of Upton. These users, though not perhaps habitual users, do avail themselves of the opportunity to walk and play within the area on a more infrequent basis than locals.

As a permanent resident of the area since 1980, I can personally confirm that the green has been so used throughout that period. If necessary, many other local people, some of whom have lived in the area longer, can verify a use in excess of 20 years, and would be willing to provide such statements

Note 8

Please use a separate sheet if necessary.

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

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

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

Note 9

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

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

Note 10

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

Please use a separate sheet if necessary.

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

- 1) BROADSTAIR CRICKET CLUB, PARK AVENUE, BROADSTAIRS
- 2) THAKET DISTRICT COUNCIL, P.O BOX 9, REEIL STREET, MARBOTE
- 3) MR. M. BENN, ADDRESS NOT KNOWN
- 4) MR. BRAZIL, THE LODGE, SACKETTS HILL, BROADSTAIRS

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

H/A

10. Supporting documentation

- 1:1250 O.S. BASE IDENTIFYING THE EXTENT OF THE GREEN, EDGED RED. EXHIBIT A
- AERIAL PHOTOGRAPH OF GREEN AND SURROUNDING AREA SHOWING HOUSES OF HABITUAL USES OF THE GREEN EXHIBIT B



11. Any other information relating to the application

Note 11

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

LAND OWNERS OF SOME OF THE SITE WOULD BE EXPECTED TO CHALLENGE DESIGNATION AS THEY HAVE LONG TERM ASPIRATIONS TO DEVELOPE

Note 12

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

Date:

15 AUGUST 2007

Signatures:



REMINDER TO APPLICANT

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

Data Protection Act 1998

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

Statutory Declaration In Support

To be made by the applicant, or by one of the applicants, or by his or their solicitor, or, if the applicant is a body corporate or unincorporate, by its solicitor, or by the person who signed the application.

¹ Insert full name (and address if not given in the application form).

I. ROBERT TREVOR.....¹ solemnly and sincerely declare as follows:—
HERRON

² Delete and adapt as necessary.

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

³ Insert name if applicable

2. The facts set out in the application form are to the best of my knowledge and belief fully and truly stated and I am not aware of any other fact which should be brought to the attention of the registration authority as likely to affect its decision on this application, nor of any document relating to the matter other than those (if any) mentioned in parts 10 and 11 of the application.

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

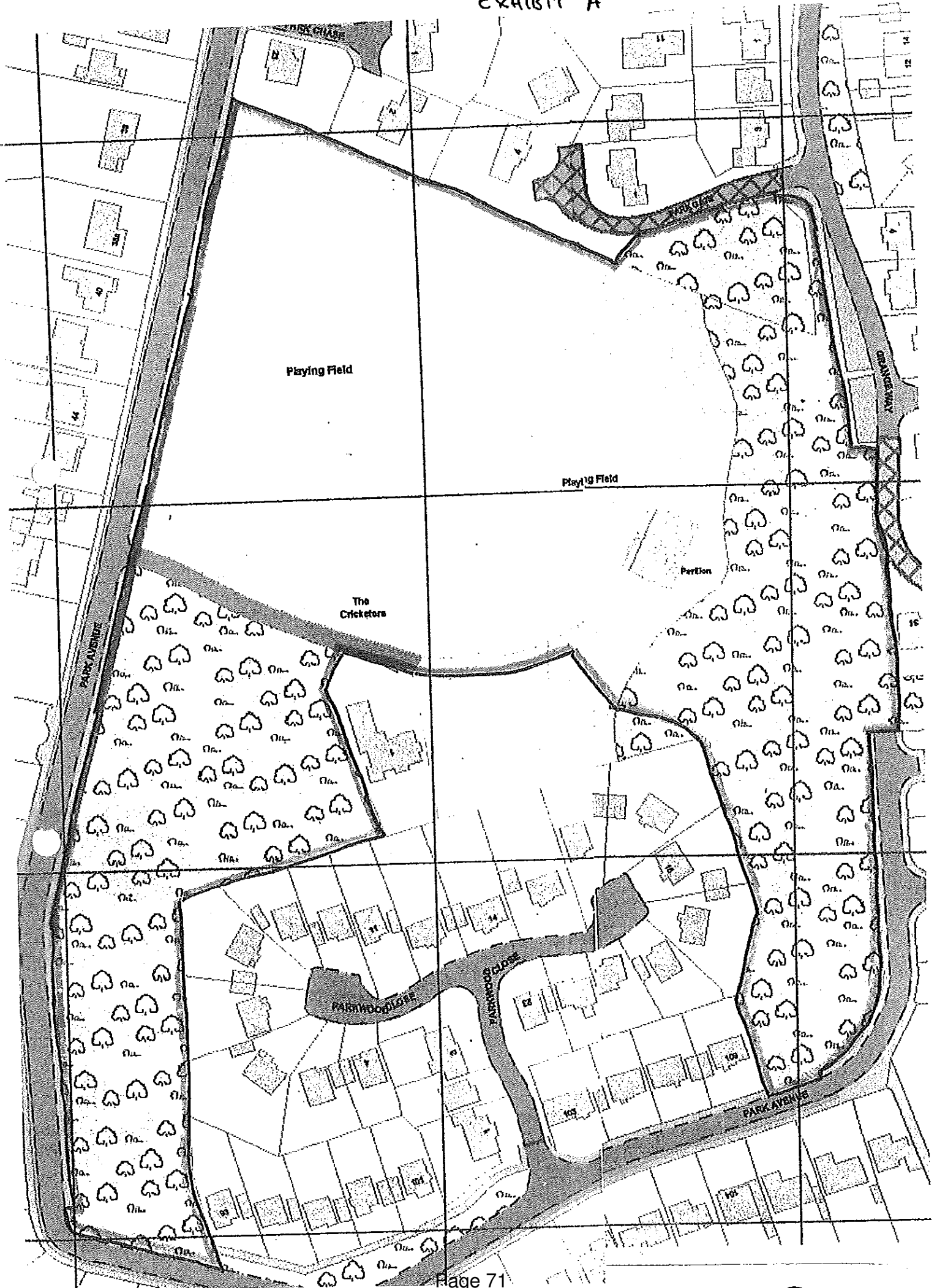
⁴ Complete only in the case of voluntary registration (strike through if this is not relevant)

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

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

Cont/

EXHIBIT A



**APPENDIX C:
Summary of user evidence submitted
in support of the application**

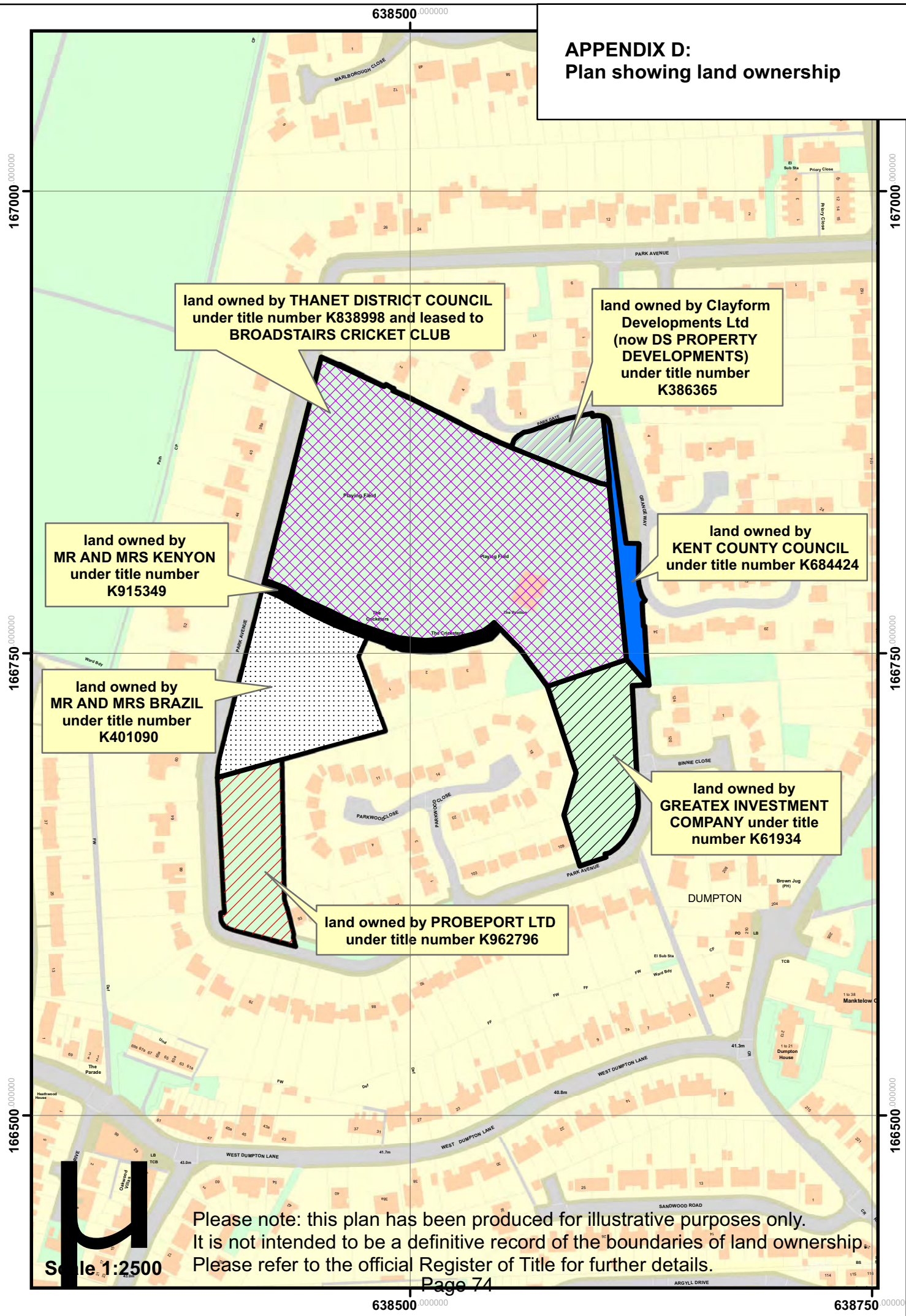
Household name	Period of use	Frequency	Activities	Other comments
ALI	1973 – present	Almost daily	Walking, cricket, kite flying, bike riding, playing with remote control cars	
BENEDICT	1989 – present	Not stated	Jogging, football, kite flying	Children used for sports and general playing in woodland. Use never challenged until recently by men clearing vegetation
BLACKWELL	1990 – present	Weekly	Golf, cricket matches, dog walking	
BRIERY	1984 – present	Weekly	Walking, nature observation	
CLANCY	2007 – present	Mostly summer months	Flying model aircraft, picnics, walking, playing games, watching sports	
DAVIES	1984 – present	Daily	Dog walking, walking, playing with children	“the wooded areas adjacent to the cricket ground have been defacto common land as long as I can remember... the owners of the wooded land have taken no interest in their property at all in the time I have been here”
DICKERSON	1988 – present	Daily	Watching sports, sitting on seats, ball games, kite flying, dog walking, running and other exercises	Use was interrupted when developers churned up the surface to fir drainage for The Cricketers
DIFFLEY	1983 – present	Several times per week	Dog walking, playing with children, blackberry and elderberry picking, jogging, nature observation	
DUFF	1986 – present	Monthly	Dog walking, enjoying the woodland	
HALLAM	1995 – present	Weekly	Walking	
HERRON	1983 – present	Daily	Dog walking, playing ball games, playing hide and seek in woods, kite flying, snowball fights	“the circular nature of the road and the fact it is a cul-de-sac create a specific locality/neighbourhood”
HISLOP	1983 – present	Monthly	Walking, running	
HOOPER	1961 – present	Daily	Dog walking, children’s games, football, cycling	
JONES	1983 – present	Daily until 1997, now regularly	Dog walking, family games, kite flying	“The land has been available for about 100 years and I believe it is the only area of natural woodland freely open to the public”
LEWIS	1985 – present	Occasionally	Playing with children both on field and in woods, watching cricket, walking with friends	
McCARTHY	1973 – present	Daily	Dog walking	
McKELLAR	2000 – present	not stated	Walking, playing with children, watching cricket	
MEASDAY	1953 – present	Daily	Dog walking, family recreation	Employed by former landowner as a groundsman: “the land has always been used by local people for recreation”
PALMER	1974 – present	Weekly	Games, kite flying, playing with children, sporting	

			events with friends	
PALMER	1974 – present	Daily	Ball games, picnics, dog walking, socialising, kite flying	
PARKIN	1987 – present	Weekly	Walking, watching cricket, ball games	
PARNELL	1991 – present	Daily	Watching sports, kite flying, ball games, sunbathing, picnics, walking, wildlife observation	
PETT	1987 – present	Weekly	Watching cricket, walking dog around cricket pitch and through woodlands	
PRICE	1975 – present	Daily	Playing cricket, dog walking, bird watching	
RANDOLPH	1982 – present	Daily/weekly	Ball games, walking, birdwatching in the woodland, watching cricket matches	
TAYLOR	2001 – present	Weekly	Dog walking	
THRONSDEN	1986 – present	Weekly	Walking, watching cricket	
UPTON	1965 – present	Regularly, previously daily	Walking, dog walking, children's games, bike riding, watching cricket	"my children spent every evening and weekend playing in the wooded area, they had swings and tree houses..."
WELLER	1986 – present	Daily	Dog walking, walking through woods, children's play, watching cricket, observing wildlife	
WILLIAMS	1990 – present	Occasionally	Playing with children	
WILSON	1998 – present	Daily	Dog walking, watching cricket, playing with children	

Notes:

- Shaded entries indicate over twenty years' use by that household
- The two references to 'Palmer' are separate households
- User evidence questionnaires were completed in 2010 so the references to 'present' under period of use indicate that use took place until at least 2010 and may or may not be continuing.
- The evidence of use summarised above does not include any evidence which is contained within the 68 letters of support received.

**APPENDIX D:
Plan showing land ownership**



land owned by **THANET DISTRICT COUNCIL**
under title number **K838998** and leased to
BROADSTAIRS CRICKET CLUB

land owned by **Clayform
Developments Ltd
(now DS PROPERTY
DEVELOPMENTS)**
under title number
K386365

land owned by
KENT COUNTY COUNCIL
under title number **K684424**

land owned by
**GREATEX INVESTMENT
COMPANY** under title
number **K61934**

land owned by **PROBEPORT LTD**
under title number **K962796**

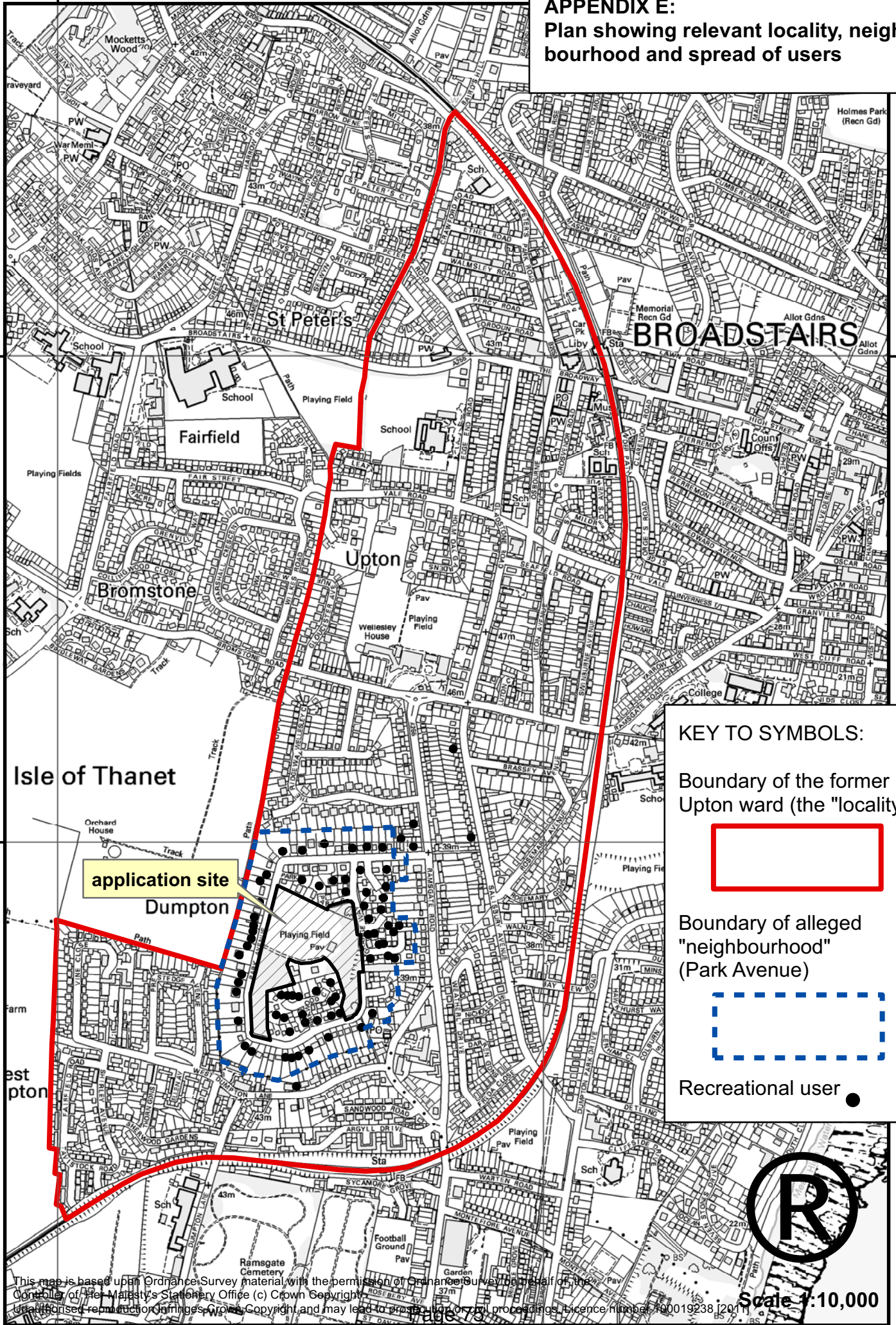
land owned by
MR AND MRS KENYON
under title number
K915349

land owned by
MR AND MRS BRAZIL
under title number
K401090

Please note: this plan has been produced for illustrative purposes only.
It is not intended to be a definitive record of the boundaries of land ownership.
Please refer to the official Register of Title for further details.

Scale 1:2500

APPENDIX E: Plan showing relevant locality, neigh- bourhood and spread of users



KEY TO SYMBOLS:

- Boundary of the former Upton ward (the "locality")
- Boundary of alleged "neighbourhood" (Park Avenue)
- Recreational user



Scale 1:10,000

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Application to register land adjacent to Barnes Car Park at Westbrook, near Margate 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 8th February 2011.

Recommendation: I recommend that the County Council informs the applicant that the application to register the land adjacent to Barnes Car Park at Westbrook has been accepted, and that the land subject to the application be formally registered as a Town Green.

Local Member: Mr. R. Burgess

Unrestricted item

Introduction

1. The County Council has received an application to register land adjacent to Barnes Car Park at Westbrook as a new Town Green from local resident Mr. A. Sykes ("the Applicant"). The application, dated 2nd March 2009, was allocated the application number VGA611. A plan of the site is shown at **Appendix A** to this report and a copy of the application form is attached at **Appendix B**.

Procedure

2. The application has been made under section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2008.
3. Section 15 of the Commons Act 2006 enables any person to apply to a Commons Registration Authority to register land as a Village Green where it can be shown that:
 - 'a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;*
4. In addition to the above, the application must meet one of the following tests:
 - **Use of the land has continued** 'as of right' until at least the date of application (section 15(2) of the Act); or
 - **Use of the land 'as of right' ended no more than two years prior to the date of application**, e.g. by way of the erection of fencing or a notice (section 15(3) of the Act); or
 - **Use of the land 'as of right' ended before 6th April 2007** and the application has been made within five years of the date the use 'as of right' ended (section 15(4) of the Act).
5. As a standard procedure set out in the regulations, the Applicant must notify the landowner of the application and the County Council must notify every local authority. The County Council must also publicise the application in a newspaper circulating in the local area and place a copy of the notice on the County Council's website. In addition, as a matter of best practice rather than legal requirement, the

County Council also places copies of the notice on site to provide local people with the opportunity to comment on the application. The publicity must state a period of at least six weeks during which objections and representations can be made.

The application site

6. The area of land subject to this application (“the application site”) consists of an area of grassed open space of approximately one hectare (2.5 acres) in size situated at the base of the cliffs adjacent to the Westbrook Promenade. The site is bounded on its northern and western edges by the Westbrook Promenade, on its eastern edge by the Barnes Car Park and along its southern boundary by the cliff face. Access to the site is via the unfenced boundaries along the Westbrook Promenade and from Barnes Car Park.
7. The application site is shown in more detail on the plan at **Appendix A**.

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 115 user evidence questionnaires from local residents demonstrating use of the application site for a range of recreational activities for a period dating back to the 1940s. A summary of the evidence in support of the application is attached at **Appendix C**.

Consultations

10. Consultations have been carried out as required and the following comments have been received.
11. Nine letters were received from local residents, although in the main these were concerned with the impact of future development proposals for the site rather than providing any specific evidence in relation to the Village Green application.

Landowner

12. The application site is owned by Thanet District Council and registered with the HM Land Registry under title number K902000. An objection to the application has been received from Mr. J. Thomson who is the Asset Manager at Thanet District Council.
13. The District Council states that the application to register the land as a Town or Village Green has come about because the application site was put on the Council’s 2008/2009 Asset Disposal list. Although the Council’s Cabinet has approved the site for disposal, it is not, at this stage, the Council’s intention to dispose of the freehold of the site.

14. The District Council is aware of the leisure use of the application site and does not seek to restrict public access or lawful use of the site. However, the Council claims that the site is not capable of registration as a new Town or Village Green because it is held by the Council specifically for the purposes of public recreation under powers contained in the Public Health Act 1875.

Legal tests

15. 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 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)?*
- (e) *Whether use has taken place over period of twenty years or more?*

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

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

16. The definition of the phrase 'as of right' has been considered by the House of Lords. Following the judgement in the Sunningwell¹ 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.

Powers under which the land is held

17. One of the key principles behind the concept of 'as of right' is that for a right to be acquired, the users must effectively begin as trespassers. If the users are not trespassers (i.e. they are there by virtue of an existing right or with the permission of the landowner), then their use is not 'as of right' and it will not count towards the acquisition of new rights. This point is particularly important where land is owned by a local authority and, as such, where the application site is held by a local authority, it is important to determine the powers under which that authority originally acquired and now holds the land in order to establish whether the use of the land by the local residents has been 'as of right'.

18. As noted above, it is the District Council's position that the application site is held under the Public Health Act 1875. Section 164 of this Act provides that '*any urban authority may purchase or take on lease, lay out, plant, improve and maintain lands for the purpose of being used as public walks or pleasure grounds...*'. It is the District Council's case that land which is held under this provision is not capable of registration as a Town or Village Green.

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

19. There is strong judicial support for the proposition that land which is held by a local authority for the purposes of public recreation is the subject of a statutory trust, with members of the public being the beneficiaries of the trust. In *Beresford*², the House of Lords considered that “*where land is vested in a local authority on a statutory trust... inhabitants of the locality are beneficiaries of a statutory trust of a public nature, and it would be very difficult to regard those who use the park or other open space as trespassers... the position would be the same if there were no statutory trust in the strictest sense, but land had been appropriated for the purpose of public recreation*”.
20. This means that, as beneficiaries of a public trust, those using the land are not considered to be trespassers; their use is in exercise of an existing right (whether or not they are aware of the existence of that right). Such use will therefore be ‘by right’ and not ‘as of right’. It is therefore essential to determine whether, in fact, the application site, is held by the District Council under such powers.

The 1923 Conveyance

21. In support of the assertion that the land is held under the Public Health Act 1875 (“the 1875 Act”), the District Council has provided a copy of the original Conveyance dated 1923 which provides for the transfer of land in the area (including the application site) from the original landowner to the then Corporation of Margate (predecessor of Thanet District Council).
22. However, the Conveyance is not explicit in setting out the powers under which the Corporation of Margate acquired the land and there is no direct reference to the 1875 Act. Nonetheless, there are oblique references to section 44 of the Public Health Acts Amendment Act 1890 (“the 1890 Act”) and section 71 of the Margate Corporation Act 1900 (“the 1900 Act”).
23. The map accompanying the Conveyance (copy attached at **Appendix D**) shows an area of land coloured green (which is referred to in the Conveyance as “the Green land”) and the foreshore to the north is shown white. Although the Conveyance transfers ownership of both the Green land and the foreshore to the Corporation of Margate, these two areas are treated very differently in terms of the provisions that apply. For example, in the Conveyance, the references to the 1890 Act and the 1900 Act (discussed above) apply only to the land shown coloured green.
24. The applicant’s case is that the application site actually relates to a piece of land below the cliffs, forming part of what was then foreshore, and which does not form part of the Green land on the map accompanying the Conveyance. The situation is somewhat confused by the fact that the geography of the area has changed considerably since the 1923 Conveyance due to the construction of the sea wall and the lower Promenade (circa 1930). The applicant asserts that the land consisting of the application site was created at the same time as the construction of the sea wall and the Promenade and therefore would not have been in existence at the time that the District Council asserts that it was acquired by its predecessor under the Public Health Act 1875. If the applicant is correct in this

² *R(Beresford) v Sunderland City Council* [2003] UKHL 60 at paragraph 87 per Lord Walker

assertion, then there is no definitive evidence, one way or the other, as to how the land is held by the District Council.

25. The District Council's position is that the land is already held for the purposes of public recreation. However, despite extensive research, the District Council been unable to find any further documentation to assist on the question of appropriation. Their records include a note to the effect that the land was acquired under the Public Health Act 1875, but no further information is provided (such as the section of the 1875 Act used or the actual date of appropriation).
26. By using electronic mapping technology to superimpose a modern base map onto the 1923 Conveyance map, it would appear that the applicant is correct in his assertion that the vast majority application site consists of what was then foreshore and not 'the Green land' referred to in the Conveyance (see plan at **Appendix E**). This means the Conveyance does not assist in determining the powers of appropriation used. The application site almost certainly, as the applicant suggests, came into existence as a result of the construction of the sea wall, at least seven years after the Conveyance was completed. If the land had been appropriated post-construction, one would expect to see Council minutes or formal records to this effect, but no such evidence has been located.
27. Even supposing that the above logic is wrong, the Conveyance alone is unclear in its intentions. The two references to statutes are conflicting; section 44 of the Public Health Acts Amendment Act 1890 applies to parks or pleasure grounds whilst section 71 of the Margate Corporation Act 1900 applies to recreation grounds. Furthermore, the powers referred to are powers of general management (e.g. to close the land for a period of days) rather than formal powers or acquisition or appropriation.

Actual use of the application site

28. Having established the view that the land is not held by the District Council under any specific power for the purposes of public recreation, it is important to consider whether the actual use of the application site has been 'as of right'.
29. In this case, it is clear that local residents have had unhindered access to the site within living memory and continue to do so. There is no evidence of any attempt to exclude recreational users. Some of the witnesses refer to the fact that there were occasions when they could not access the whole of the site, but this was due to informal camping (i.e. other recreational users) rather than any overt action by the landowner to prevent use.
30. Indeed, as stated above, the landowner is well aware of the recreational usage of the land and has, in the past, actively encouraged use of the application site by installing picnic tables and a bench. There is therefore no suggestion that the actual use of the application site has not been 'as of right'.

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

31. Lawful sports and pastimes can be commonplace activities including dog walking, children playing, picnicking and kite-flying. It is not necessary to demonstrate that

both sporting activities *and* pastimes have taken place since the phrase 'lawful sports and pastimes' has been interpreted by the Courts as being a single composite group rather than two separate classes of activities³.

32. Legal principle does not require that rights of this nature be limited to certain ancient pastimes (such as maypole dancing) or for organised sports or communal activities to have taken place. The Courts have held that '*dog walking and playing with children [are], in modern life, the kind of informal recreation which may be the main function of a village green*'⁴.
33. In this case, the evidence demonstrates that the land has been used for a number of recreational activities. The summary of evidence of use by local residents at **Appendix C** shows the full range of activities claimed to have taken place. The majority of use consists of walking (with or without dogs), but there is also significant evidence of the use of the land for nature observation, playing with children or simply stopping to admire the view. In addition, several of the witnesses refer to observing use for camping (mentioned above), kite flying and ball games.
34. Reference is made by several witnesses to picnicking on the site, although it is not clear whether this has taken place throughout the material period. The evidence suggests that there were picnic tables installed on the site, but these were only there for a relatively short period. The 2003 aerial photograph at **Appendix F** shows the remains of concrete bases upon which picnic tables were once sited. It also shows the location of the bench on the application site, as well as a number of informal worn pathways created by recreational walkers and, coincidentally, what appears to be camping on the application site.

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

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

"locality"

36. The definition of locality for the purposes of a Town or Village Green application has been the subject of much debate in the Courts. In the Cheltenham Builders⁵ case, it was considered that '*...at the very least, Parliament required the users of the land to be the inhabitants of somewhere that could sensibly be described as a locality... there has to be, in my judgement, a sufficiently cohesive entity which is capable of definition*'. The judge later went on to suggest that this might mean that locality should normally constitute '*some legally recognised administrative division of the county*'.

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

⁴ *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, ex parte Sunningwell Parish Council* [1999] 3 All ER 385

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

37. The Applicant specifies the locality at Part 6 of the application form as “Westbrook/Garlinge/Westgate”. This is not a legally recognised administrative unit and would not constitute a valid locality for the purposes of Town or Village Green registration.

38. However, when plotting the location of the users on a map it is clear that the vast majority reside in the District Council electoral ward of Westbrook. This is shown on the plan at **Appendix F**. An electoral ward is a legally recognised administrative unit for the purposes of Village Green registration⁶. It therefore seems appropriate that this should be the relevant locality.

“a significant number”

39. 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’*⁷. Thus, what constitutes a ‘significant number’ will depend upon the local environment and will vary in each case depending upon the location of the application site.

40. In this case, there appears to have been regular use of the land by a large number of local residents and this is evidenced by the large number of user evidence forms submitted in support of the application. The application is supported by 115 user evidence questionnaires from persons living in the locality, demonstrating use of the application site over a considerable period. This is not an insignificant number and it is considered that the volume of use would have been sufficient to indicate that the land in question was in general use by the local community. Indeed, as stated above, the District Council has been well aware of the use of the land by local residents.

41. It should be noted that the fact that not all of the users live within the locality is not fatal to the application and the Courts have accepted that the legal test does not require the applicant to demonstrate use merely by the residents of the locality: *“provided that a significant number of the inhabitants of the locality or neighbourhood are among the users, it matters not that many or even most come from elsewhere”*⁸.

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

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

⁶ *Leeds Group plc v Leeds City Council* [2010] EWHC 810 (Ch)

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

⁸ *R (Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust) v Oxfordshire County Council* [2010] EWHC 530 (Admin)

43. In this case, use of the application site 'as of right' has continued unhindered until the date of the application. Therefore, this test is met.

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

44. In order to qualify for registration, it must be shown that the land in question has been used for a full period of twenty years. In this case, use of the applications site as of right is continuing and, as such, the relevant twenty-year period ("the material period") is calculated retrospectively from the date of the application, i.e. 1989 to 2009.

45. The user evidence summarised at **Appendix C** demonstrates that there has been use of the application site in excess of the last twenty years. Therefore, it can be concluded that there has been use of the application site for a full period of twenty years.

Conclusion

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

Recommendation

47. I recommend that the County Council informs the applicant that the application to register the land adjacent to Barnes Car Park at Westbrook has been accepted, and that the land subject to the application 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 221511 or Email: melanie.mcneir@kent.gov.uk

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

Background documents

APPENDIX A – Plan showing application site

APPENDIX B – Copy of application form

APPENDIX C – Table summarising user evidence

APPENDIX D – Extract of plan accompanying 1923 Conveyance

APPENDIX E – Modern base map overlaying 1923 Conveyance

APPENDIX F – Aerial photograph of the application site (dated 2003)

APPENDIX G – Plan showing the area within which users reside

633250 000000

170750 000000

APPENDIX A: Plan showing application site

Rock

Sand

Shingle

Marine High Water

Westbrook Promenade

Picnic Site

Car Park

Sunken Garden

14.3m

ROYAL ESPLADE

14.6m

EDMUNDSON AVENUE

FITZMAURY AVENUE

GRESHAM AVENUE

BOWES AVENUE

12.5m

WESTBROOK AVENUE

14.6m

15.9m

633250 000000

633500 000000

170250 000000

170250 000000

Scale 1:2500

Land subject to Village Green application
at Westgate, near Margate

Page 85



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:

Application number:

COMMONS ACT 2006
KENT COUNTY COUNCIL
REGISTRATION AUTHORITY
06 APR 2009

VGA611

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
INVICTA HOUSE
COUNTY HALL
MAIDSTONE
KENT ME 14 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: ANTHONY SYKES

Full postal address:
(incl. Postcode) 52 WESTBROOK AVE.
MARGATE
KENT CT9 5HB

Telephone number:
(incl. national dialling code) 01843 - 223841

Fax number:
(incl. national dialling code)

E-mail address:
TONYSYKES@TALKTALK.NET (CALL 1258)

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:

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

PLEASE SEE ATTACHED
EVIDENCE SHEET

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

THANET DISTRICT COUNCIL
ARE I UNDERSTAND OWNERS.

Note 9

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

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

Note 10

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

10. Supporting documentation

Note 11

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

11. Any other information relating to the application

Note 12

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

12. Signature

Signature(s) of applicant(s):

Date:

2/3/2009

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.

Application for Village/Town Green registration
Commons Act 2006 section 15
Evidence

Location

This is a parcel of land adjacent to the Barnes Car Park to which it lies to its West. Please see exhibit 1, 2, 3 and 4 for location.

Reason for application

This land has been used for over 50 years as an amenity by local residents and visitors alike. It lies under the cliff and between the promenade and the cliff. It has never been fenced and is believed to have been in existence since the building of the sea wall in the late 18 hundreds. It was at one time known as "Sea Walk". The parcel of land gives a natural relief from the busy bays of Westbrook and St Mildred's which lie to the east and west respectively. The promenade forms part of the Viking Coastal Trail.

Thanet District Council, after a misleading consultation, have voted to dispose of a major part of this land and sell it to "preferred developers" with likely use as a coach park or beach huts. This would be totally inappropriate and a great loss to both wildlife and the residents that use and enjoy it. The Thanet coast is quite unique for both its chalk and wildlife as born out by the fact it has been designated as of special scientific interest.

The coastline has been built up and developed over the years and there has been a continuing loss of open spaces on the coast. This application is made in the hope of preserving a small part of it for the benefit of future generations.

Evidence

I have lived in Westbrook since 1971 and in the area generally since 1951. To the best of my knowledge this land has been unfenced with public access for well over 20 years. Please see exhibit 5 which is a copy of postcards probably over 50 years old showing the existence of the promenade and parcel of land available for public access. This land has been used regularly by dog walkers, picnickers, walkers, bird watchers and at one stage had picnic tables. See exhibit 8 there are concrete stands where I understand they were located. You will also see well trodden paths on this land.

A request was made last year for the council not to cut the grass as it had several wild grasses, plants and shrubs frequented by seed eating birds and is used at night in winter for roosting by Turnstones when the weather is bad.

Many dog walkers use this piece of land to exercise their dogs throughout the year and especially so when they are banned from the beach in both the adjoining bays during the summer months.

There is a public bench located on this land and this is often used by cyclists for a break on the Viking Cycle Way and walkers to sit and enjoy the sea views and interesting wildlife to been seen on this stretch of Chalk reef.

Exhibit 5 shows the land as it is at present and I have also enclosed other exhibits showing old postcards of the surrounding area as evidence as to the age of the promenade in general.

I also enclose a copy of press cutting which explains why I feel strongly that this land should be preserved both for wildlife and residents.

A handwritten signature in black ink, appearing to read 'Anthony Sykes', with a long horizontal stroke extending to the right.

Anthony Sykes
02 March 2009

**APPENDIX C:
Summary of user evidence submitted
in support of the application**

Name	Period of use	Frequency	Activities	Other comments
Mr. and Mrs. M. ADAMS	1966 – present	Not stated	Walking, sitting, bird watching, kite flying, playing with children	
Mr. J. ASHMORE	1964 – present	Monthly	Not stated	
Mrs. J. ATKINSON	1999 – present	Daily	Dog walking	Prevented from using the land by campers
Mrs. B. BALSOM		Weekly	Dog walking	
Mr. A. BEACH	1985 – 2007	Very frequently	Watching ships, bird watching, walking, wild flour observation	“used to be a very pleasant picnic area maintained by Thanet DC until they removed the tables and chairs for renovation”
Mr. S. BIRD	1980 – present	Daily	Dog walking, playing with children	Observed children playing football and cricket
Mr. and Mrs. N. BLAKE	1986 – present	Daily	Walking	
Mr. and Mrs. C. BOARER	1981 – present	Daily	Dog walking and walking	
Mrs. S. BRIDGER	2006 – present	Daily	Dog walking, playing with children, bike riding, watching boats	
Mr. S. BRIGGS	2004 – present	Weekly	Dog walking	
Mrs. E. BROWN	1959 – present	Variable	Dog walking, bird watching, played as a child	Observed occasional camping
Mrs. J. BROWN	1991 – present	Daily	Dog walking, cycling, playing ball, picnics	
Ms. P. CALVER	1991 – present	Weekly	Walking	
Mr. L. CARLTON	1998 – present	Daily	Dog walking, sitting at picnic tables	“when the seats were there, a nice spot to rest and take in the view...”
Mrs. M. CARLTON	20+ years	Almost daily	Dog walking, walking, cycling	
Mrs. A. CLEMINSON	1971 – present	Not stated	Walking, picnicking, watching ships and sea sports, enjoying cliffs	Observed walking, picnicking, fishing, cycling, bird watching. There is a narrow path formed by frequent use.
Mr. N. CLEMINSON	1970 – present	Daily or weekly	Hockey, cricket, summer club for kids. Now use for dog walking and bird watching	
Mr. G. COLYER	1949 – present	Daily	Walking, picnics, children’s games	
Mr. and Mrs. DARBY	1986 – present	Twice daily	Dog walking, picnicking, nature studies, playing with children	
Ms. L. DEAKIN	2005 – present	Daily	Dog walking	
Mrs. M. DENNISON	1972 – present	Daily, sometimes weekly	Walking	Often see use by others
Mr. K. DENT	2005 – present	Daily	Walking, dog walking, sea views	
Mr. G. DIXON	2000 – present	Daily	Walking, dog walking, nature observation	

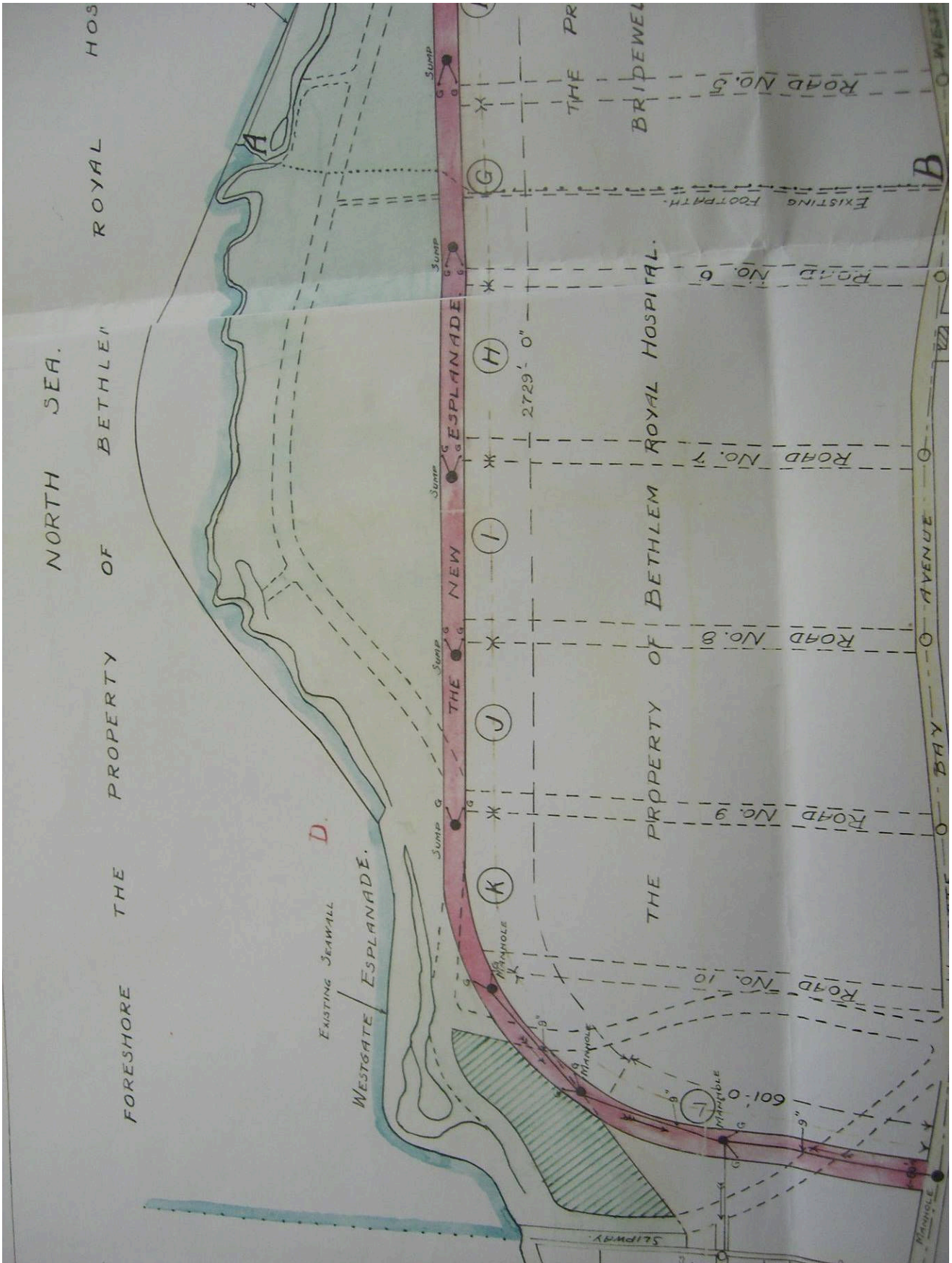
Mr. and Mrs. J. DOBSON	1999 – present	Daily	Dog walking, bird watching, picnics, views of sea	
Mr. and Mrs. DUNGEY	2000 – present	Daily	Walking (with and without dogs)	
Mr. and Mrs. B. FARRELL	1974 – present	Weekly	Nature observation	“I usually make a detour from the promenade...”
Mr. P. FARRELL	1957 – present	Weekly, more in summer	Dog walking, relaxing sea views	Used as a child for picnics, football and bike riding.
Mr. and Mrs. S. FAURE	1985 – present	Daily	Dog walking, bird watching	
Miss. V. FETISSOVA	2000 – present	Daily	Dog walking, playing with children	“local teenagers use the space for BMX sports activities”
Mr. and Mrs. D. FULLER	1976 – present	Weekly	Dog exercising, bird watching, nature observation	Picnic tables were cited there by the Council at one time
Mr. and Mrs. J. GAMBRILL	1949 – present	Daily	Dog walking	
Mrs. C. GARDNER	1969 – present	Not stated	Sitting on bench to enjoy views	
Mr. J. GARDNER	Since 1930s	Not stated	Walking along seaside	
Mr. R. GEORGE	1989 – present	Weekly	Dog walking	
Mr. R. GIFFORD	1976 – present	Almost daily until 1994, occasionally since	Dog walking, walking, bird watching	Observed horse riding and occasional tent camping
Mr. and Mrs. P. GILBERT	1972 – present	Daily	Dog walking, jogging, walking, bird watching, playing with children	Observed kite flying, yoga and exercise
Mrs. V. GRANTHAM	2006 – present	Daily	Walking, exercising dog, bird watching, relaxing	
Commodore. G. GREENFIELD	1994 – present	Daily	Dog walking, bird watching, general exercise	
Mrs. J. GRIGG	1960 – present	Weekly	Walking, sitting on bench, nature observation	
Mrs. J. HAM	1969 – present	Daily	Meeting friends, dog walking	
Mr. M. HEIGHAM	1968 – present	Daily	Dog walking	Observed other activities “in substantial numbers”
Mrs. P. HEIGHAM	1968 – present	Twice weekly	Dog walking	
Mrs. P. HERMITAGE	1951 – present	Occasionally (daily until 2004)	Walking, bird watching, relaxing	
Mr. H. HEWETT	2003 – present	Weekly	Sitting looking at beach, sometimes having lunch	
Mr. R. HOLDEN	1954 – 1968	Weekly	Ball games, kite flying, cycling, nature observation	Observed use for sunbathing, ball games and kite flying
Ms. J. HODGE	1998 – present	Weekly, sometimes daily	Walking, bird watching	
Mr. R. HODGES	1974 – present	Daily	Playing with children, picnics, dog walking	
Mr. D. HOWES	1950 – present	Occasionally	Played there as a child	
Mrs. J. INGRAM	1986 – present	Daily	Walking, bird watching, observing wildlife and flora, sitting	
Mrs. D. JAMES	1980 – present	Weekly/daily	Walking, family games, picnics, relaxation	Observed recreational activities on a daily basis, including kite flying
Mr. A. JOHNSON	2006 – present	Three times per week	Walking dog and grandchildren	Occasionally observed camping
Mr. and Mrs. J.	1964 –	Weekly	Walking, sitting	

JOHNSON	present			
Dr. R. KELSEY	1982 – present	Daily	Dog walking, playing with children	
Mr. and Mrs. D. KEMBER	1960 – present	Daily, now weekly	Dog walking and recreational walking	
Mr. C. KEMEKKI	1972 – present	Occasionally	Walking, wildlife observing	
Mrs. M. KENEHAN	1986 – present	Weekly	Sitting, playing with children, picnics, walking	Observed use for sunbathing, horseriding, ball games
Mrs. S. KENEHAN	1963 – present	Frequently	Picnics, ball games, playing with children.	Also used for picking mushrooms and meeting friends when younger
Mrs. J. KESTERTON	1988 – present	Not stated	Walking	
Mr. and Mrs. D. LAWRENCE	1979 – present	Weekly or daily	Walking, bird watching, sitting	
Mr. and Mrs. LONG	1979 – present	Daily	Walking, dog exercise	
Mr. A. LORIMER	1980 – present	Daily	Walking, bird watching	
Mr. J. MAHARRY	1979 – present	Daily	Walking	
Mrs. S. MARSLAND	1952 – present	Daily, or weekly	Walking, bird and sea watching, relaxing	
Mrs. J. MARSH	2006 – present	Twice weekly	Dog walking, ball games, sitting	
Mr. P. MARTIN	1967 – present	Daily, sometimes weekly	Dog walking, wildlife watching, picnics	
Mrs. L. MAYES	1970 – present	Weekly	Walking, bird watching	Observed camping in summer
Mr. A. McCALL	1993 – present	Daily	Dog walking	
Mrs. N. McCALL	1993 – present	Daily	Dog walking	
Mr. and Mrs. W. MERRY	1976 – present	Monthly	Walking, cycling, fishing, observation	
Mr. and Mrs. MONAGHAN	2004 – present	Daily	Recreational purposes with dog and children	Occasionally observed camping. Daily use by others.
Ms. G. MOORES	1960 – present	Daily	Dog walking, walking children, cycling	
Mrs. Y. MURPHY	1956 – present	Weekly	Walking, picnics, children's games	
Mr. C. NURTHEN	1998 – present	Daily	Dog walking, playing with children	
Mr. and Mrs. G. OWEN	1988 – present	Not stated	Dog walking, reading	
Mr. N. PALSER	1969 – present	Weekly	Playing with children, walking with dog or family	
Mr. and Mrs. C. PATRICK	1977 – present	Daily	Dog walking, playing with children	
Mr. and Mrs. P. PIPER	Not stated	Weekly, previously daily	Walking	
Mr. J. POCOCK	1958 – present	Twice daily		“easterly part of the land was used as picnic area and games field (children). Tables fixed and supplied by Council and grass kept short, but only for a few years”
Mr. J. POCOCK	1978 – present	Weekly	Dog walking, walking	
Mrs. D. POCOCK	Not stated	Often, daily in summer	Playing games with children, dog walking	
Mr. P. RALPH	1985 – 2007	Occasionally	Walking	

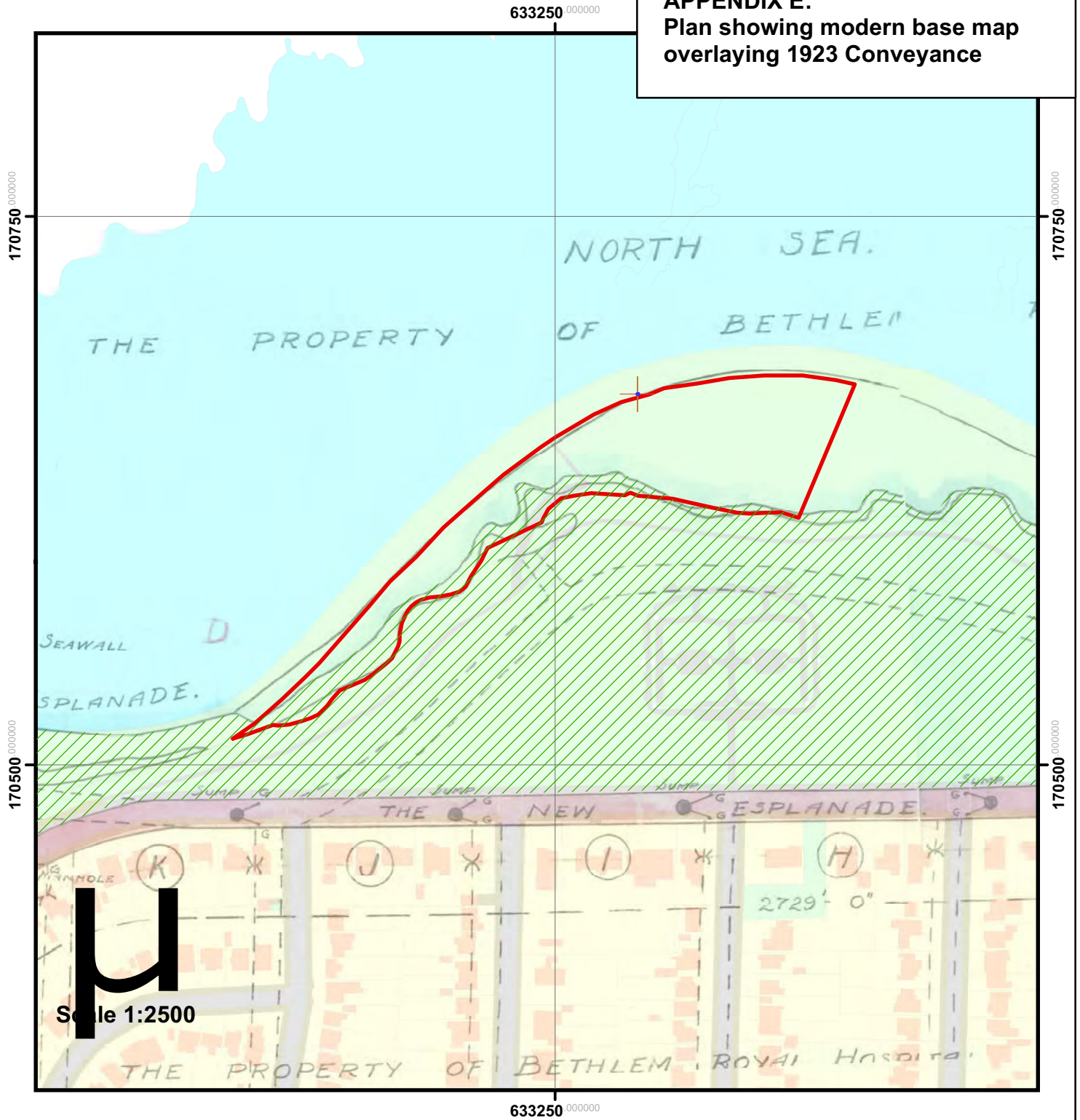
Mrs. L. RAYNER	1986 – present	Weekly or monthly	Ball games, dog walking, picnics, cycling	
Mrs. C. READ	1988 – present	Daily	Walking, dog walking	Observed kite flying
Mr. and Mrs. P. REED	1974 – present	Almost daily	Dog walking, relaxing at picnic tables, ball games	
Mrs. M. REEVES	1967 – present	Not stated	Children playing, dog walking, picnicking	
Mr. and Mrs. ROBERTS	1968 – present	Weekly in summer, monthly in winter	Football, picnics, bike riding, kite flying, dog walking, cricket	
Ms. L. ROBERTS	1953 – present	Daily	Dog walking, bird watching, cycling, playing games, picnics, walking	
Mr. R. ROBERTS	1946 – present	Summer months	Playing with children, sitting in deckchairs	
Mrs. S. ROBERTS	1985 – present	Weekly	“the land was once used for picnics... we picnicked there. The land is next to the sea promenade and is enjoyed by people who appreciate nature. We like walking on this land which we have done for several years and many people walk their dogs. In the summer, garden chairs can be placed there to enjoy the environment and wildlife and birds”	
Mrs. G. ROSS	2000 – present	Not stated	Not stated	
Miss. B. SHEPHERD	1959 – present	Weekly	Walking, sitting on bench, nature observation	
Mr. and Mrs. SIMPSON	1989 – present	Daily in summer, less in winter	Walking, sitting	“when the tide is in this is a great place to sit and watch ships, water sports etc as the proms get quite crowded with the beach huts”
Mr. M. SKERRATT	1997 – present	Weekly, less in winter	Walking, kite flying, roller blading, wildlife watching	
Mr. and Mrs. D. SMITH	1949 – present	Not stated	Walking, relaxation	
Mr. and Mrs. L. SMITH	1945 – present	Weekly	Picnics and playing with children when young, now walking	
Mr. A. SNOW	1973 – present	Daily	Walking, cycling, bird watching, sitting	
Ms. G. SPICKETT	1990 – present	Twice daily	Dog walking	Observed football, kite flying, picnics, bike riding
Mrs. S. STEVENS	1984 – present	Daily	Walking, exercising dogs, sitting in picnic area when table there, enjoying views	
Mrs. M. STILL	1988 – present	Daily	Dog walking	
Mr. S. SOUTHGATE	1958 – present	Weekly	Walking, bird watching	
Mr. R. SUTHERLAND	1999 – present	Weekly	Walking along front to see sea	
Mr. A. SYKES	2000 – present	Weekly	Walking, bird watching	
Ms. TAYLOR	1994 – present	Daily	Dog walking	
Mr. R. TELFORD	1984 – present	At least weekly	Bird watching, dog walking	
Ms. D. THOMAS	1958 – present	Not stated	Walking, sitting	Observed ball games and BBQs
Mr. and Mrs. B. TITMUS	1955 – present	Daily	Dog walking, bird watching, playing with grandchildren	
Ms. V. VAJANA	2006 – present	2-3 times per day	Dog exercising	Observed dog walking, exercising, children playing, ball games

Mrs. V. WARRILOW	1972 – present	Daily	Children’s cycling, walking, kite flying, playing	Observed ball games and camping
Mr. T. WATSON	1986 – present	Regularly until 2000, now monthly	Picnics, dog walking	
Mr. and Mrs. D. WEBB	1947 – present	Frequently	Playing as a child, leisure walks and picnics as an adult	
Mr. C. WHITTINGHAM	1968 – present	Several times per week	Walking, bird watching	
Mr. and Mrs. A. WILSON	1979 – present	Daily	Dog walking	
Mr. J. WILSON	1959 – present	Weekly or daily	Dog walking, picnics, BBQs, sunbathing	Camping took place on the land in summer 1998 and spring 2002
Mrs. L. WOOLMER	1976 – present	Weekly	Dog walking, sitting, reading	
Mrs. B. YOUNG	1987 – present	Occasionally	Dog walking, playing with children, cycling	

**APPENDIX D:
Extract of plan accompanying 1923
Conveyance**



APPENDIX E:
Plan showing modern base map
overlying 1923 Conveyance



KEY:

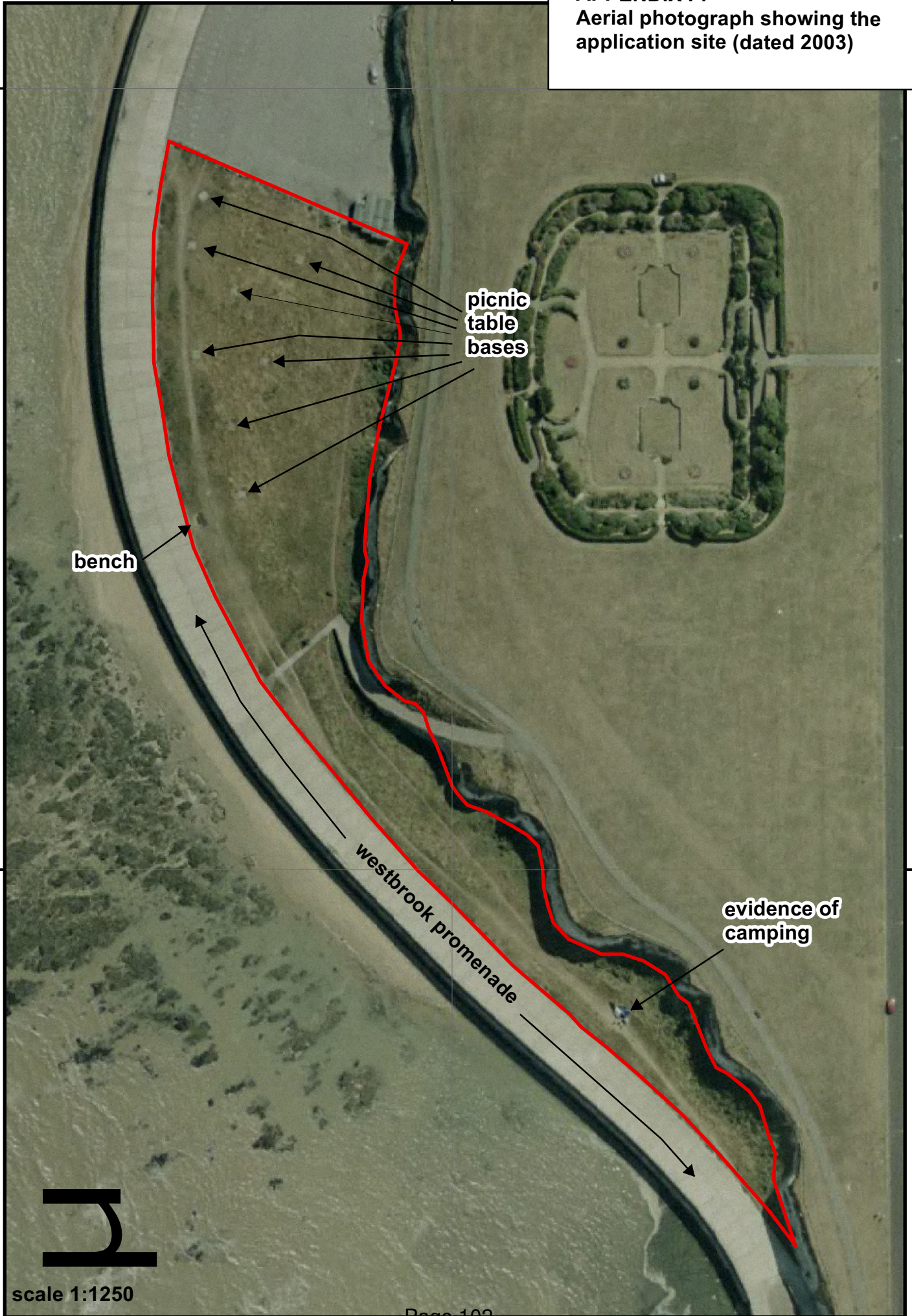
Application site



Area coloured green on the 1923 Conveyance ("the Green land")



APPENDIX F:
Aerial photograph showing the
application site (dated 2003)



633400 000000

633200 000000

scale 1:1250

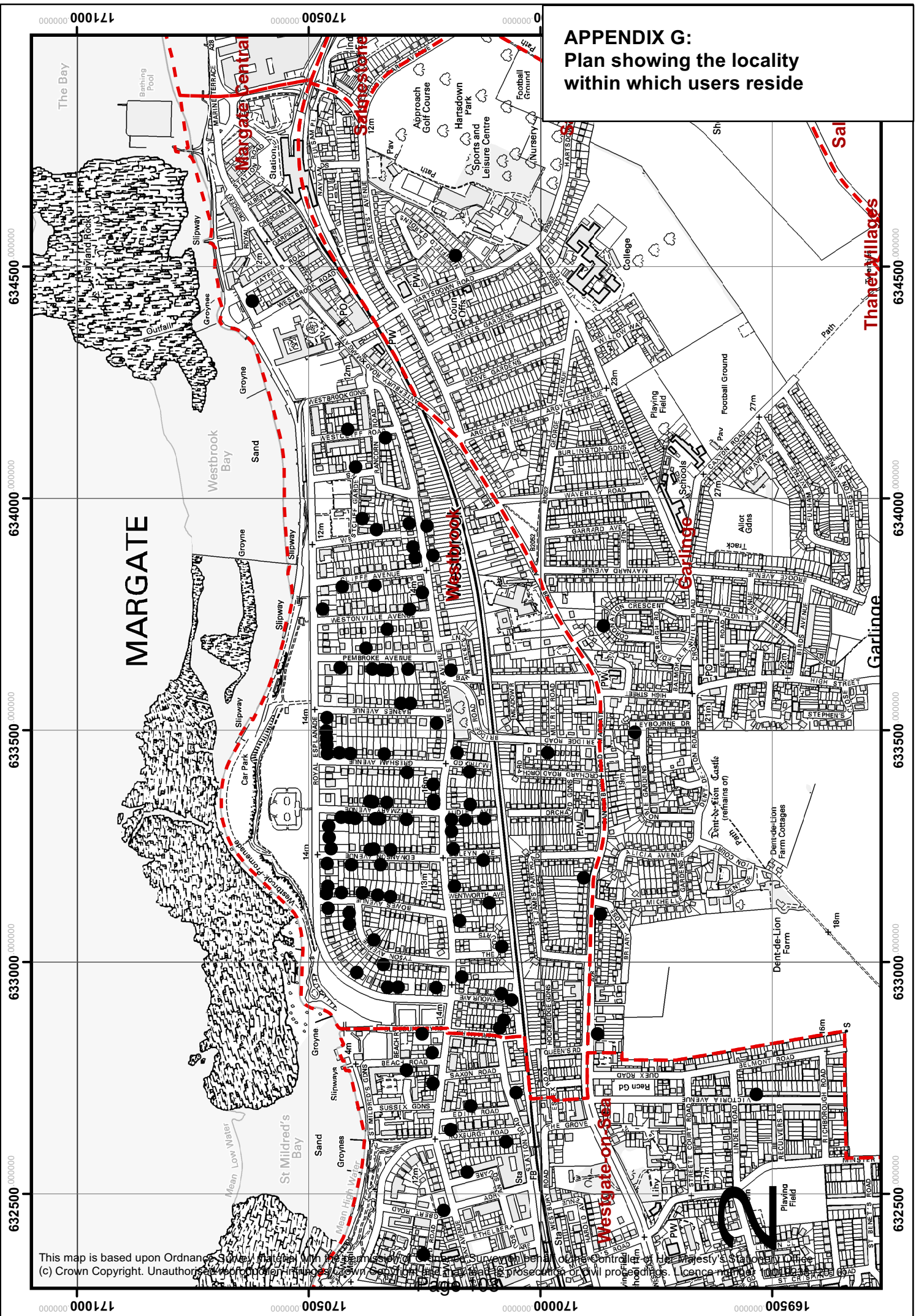
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**APPENDIX G:
Plan showing the locality
within which users reside**



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