



AGENDA

Kent County Council

REGULATION COMMITTEE MEMBER PANEL

Tuesday, 22nd February, 2011, at 12.30 pm
Whitstable Rugby Club, Reeves Way,
Chestfield, Whitstable CT5 3QS

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

Tea/Coffee will be available 15 minutes before the meeting

UNRESTRICTED ITEMS

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

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

Liberal Democrat (1) Mr S J G Koowaree
2. Declarations of Interest for Items on the agenda
3. Application to register land at Grasmere Pastures, Whitstable as a new Village Green (Pages 1 - 32)
4. Application to register land at Benacre Wood, Whitstable as a new Village Green (Pages 33 - 50)
5. Application to register land known as the Long Field in Angley Road, Cranbrook as a new Village Green (Pages 51 - 58)
6. 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, 14 February 2011

Application to register land known as Grasmere Pastures at Whitstable 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 22nd February 2011.

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

Local Members: Mr. M. Harrison and Mr. M. Dance

Unrestricted item

Introduction

1. The County Council has received an application to register land known as Grasmere Pastures at Whitstable as a new Village Green from the Grasmere Pastures Residents Action Group ("the Applicant"). The application, dated 14th September 2009, was allocated the application number VGA617. A plan of the site is shown at **Appendix A** to this report and a copy of the application form is attached at **Appendix B**.

Background

2. Members should be aware that this application is a resubmission of a previous application for the same site which was rejected at a meeting of the Regulation Committee Member Panel on 30th April 2007. That application was made under the Common Registration Act 1965 ("the 1965 Act"), which has now been superseded by provisions contained in the Commons Act 2006 ("the 2006 Act").
3. The Commons Act 2006 is silent on the question of whether repeated applications are permissible. DEFRA's view on repeated applications is that, as a general rule, an identical (or near identical) application to one previously made would entitle the County Council to refuse to accept it on the basis that the matter has already been determined¹. However, DEFRA also say that where an application was made under the 1965 Act, which was determined and refused, it is open to the applicant to make a fresh application for the same purpose under the 2006 Act if the applicant believes that the new application would be successful because the statutory criteria had changed².
4. In this case, the applicant has adduced a significant amount of new evidence not previously considered by the County Council. Additionally, there have been substantial changes in the law since the last application was determined which would have a direct bearing on the application. As such, it is considered appropriate that the County Council considers the new application on the basis that it is substantially different to the previous application and that the new evidence needs to be taken into account in the context of the current legal

¹ i.e. the common law grounds of *res judicata*: 'a matter [already] judged'

² See DEFRA's 'Guidance to commons registration authorities and PINS for the pioneer implementation'

position in order to determine whether the County Council's earlier decision remains appropriate.

Procedure

5. The application has been made under section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2008.
6. 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;
7. 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).
8. 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

9. The area of land subject to this application ("the application site") consists of a large area of open uncultivated land of approximately 16.3 hectares (40.3 acres) in size situated between South Tankerton and Chestfield, on the outskirts of Whitstable. The application site is shown in more detail on the plan at **Appendix A**.
10. Access to the application site is via Public Footpaths CW88 (which runs across the application site between Grasmere Road and Ridgeway) and CW89 (which runs between Richmond Road and Public Footpath CW88).

The case

11. The application has been made on the grounds that the application site has become a Town or Village Green by virtue of the actual use of the land by the

local inhabitants for a range of recreational activities 'as of right' for more than 20 years.

12. Included in the application were 152 user evidence questionnaires from local residents demonstrating use of the application site for a range of recreational activities for a period in excess of 20 years. A summary of the evidence in support of the application is attached at **Appendix C**.

Consultations

13. Consultations have been carried out as required and the following comments have been received.
14. The Chestfield Parish Council has written to express its support for the application.
15. The Canterbury City Council has written to confirm that it has no objection to the application.

Landowner

16. The application site is owned by OW Presland Ltd and registered with the HM Land Registry under title number K503254. Kitewood Estates Ltd has an interest in the application site on the basis that it is the sole shareholder of OW Presland Ltd and holds an option to purchase the land.
17. An objection to the application has been received from RadcliffesLeBrasseur, solicitors who act on behalf of OW Presland Ltd and Kitewood Estates Ltd. The objection is made on the following grounds:
- That the locality specified by the applicant is not a qualifying locality for the purposes of Village Green registration;
 - That the principal use of the application site has been in exercise of the Public Footpaths which cross the land and not for the purposes of lawful sports and pastimes;
 - That during the several months where hay crops were growing and being harvested, there was not indulgence in lawful sports and pastimes on the application site by a significant number of the local residents; and
 - That use of the application site was not 'as of right' throughout the relevant period due to the erection of 'private property' notices.

Legal tests

18. 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'?*

19. The definition of the phrase 'as of right' has been considered by the House of Lords. Following the judgement in the Sunningwell³ 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.
20. The application has been made on the basis that use of the application site ceased to be 'as of right' from October 2004 by the erection of fencing along the Ridgeway (the eastern boundary of the application site). Although some of the users say that this fencing lasted only a very short period before it was pulled down by persons unknown and other say that access to the site was still possible via entrances on the northern and western edge of the field, the fencing is strong evidence of the landowner wishing to restrict public access to the site. Many of the user evidence questionnaires refer to the erection of fencing as interrupting or deterring their use and as such we can be satisfied that use of the application site did cease to be 'as of right' from October 2004.
21. For reasons set out later in this report, the fact that the use of the application site ceased to be 'as of right' in October 2004 (i.e. prior to this application being made) is not fatal to the application. The relevant twenty-year period is calculated retrospectively from this date and for the purposes of this application is therefore 1984 to 2004.
22. In this case, there is no suggestion that use of the application site during this period has been with secrecy or that any permission has been granted for the use of the site for the purpose of informal recreation.
23. Some use of the application site would be considered to be 'with force' after the erection of the fencing (but only where they had gained entry at points where the fencing had been vandalised). However, there is no evidence that there was any fencing, or indeed other physical barriers to use, prior to 2004.
24. The objectors argue that use of the application site was contentious during the latter part of the relevant twenty-year period due to the erection of notices. They say that, on 20th May 2004, the farmer signed a tenancy agreement and "shortly thereafter" he erected a sign at the Grasmere Road entrance onto the application site. No information is provided by the objectors as to the nature, wording, date of erection or exact location of this sign. The objectors also say that on 22nd September 2004 the landowner caused to be put up notices contesting use of the application site. Although a copy of the notice has been provided, no information has been provided as to the number or location of the notices on the application site. Additionally, the objectors say that a 'private property – no trespassing notice' has been in existence from at least May 2004 to the present day at the junction of Richmond Road and Ridgeway.

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

25. The applicant disputes that any notices were erected on or around the boundaries of the application site prior to the installation of the fencing in October 2004 and states that there is no evidence to substantiate this. This assertion is supported by the evidence of the users, none of whom recall any sort of notice on the application site prior to 2004. Some of the users do recall a notice at the junction of Richmond Road and Ridgeway, but this refers to a small triangle of land which does not form part of the application.
26. There is, therefore, a conflict regarding the erection of notices on and/or around the application site in September 2004 and there is insufficient evidence to conclude definitively whether in fact the notices were erected at that time.

Public Footpaths CW88 and CW89

27. The objectors' position is that the principal use of the application site has been for the purposes of walking along the designated Public Footpaths. Such use is not considered to be 'as of right' because it is in exercise of an existing right and would not have appeared to a reasonable landowner as the assertion of a right to indulge in lawful sports and pastimes on the application site.
28. The applicant strongly contests this assertion and confirms that the application places no reliance whatsoever on the existence of the Public Footpaths. The applicant says that there is ample evidence from the questionnaires submitted in support of the application that the application site has been used by many residents for a great variety of purposes throughout the whole of the relevant period.
29. In cases where Public Footpaths cross the application site, it is important to be able to differentiate between use which is pursuant to an existing right to walk along a defined route and use which is of a more general recreational nature. The issue was considered by the Courts in *Laing Homes*⁴, in which the judge said that: *'it is important to distinguish between use that would suggest to a reasonable landowner that the users believed they were exercising a public right of way to walk, with or without dogs... and use that would suggest to such a landowner that the users believed that they were exercising a right to indulge in lawful sports and pastimes across the whole of the fields'*
30. The exercise of distinguishing between types of use is something that is very difficult to achieve on paper. It is a question of evidence that requires more detailed scrutiny, preferably by way of the cross examination of witnesses in a public forum.

(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

⁴ *R (Laing Homes) v Buckinghamshire County Council* [2003] 3 EGLR 70 at 79 per Sullivan

sports and pastimes' has been interpreted by the Courts as being a single composite group rather than two separate classes of activities⁵.

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*'⁶.
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, which include kite flying, nature observation, picnics and playing with children.
34. However, by far the majority use of the application site has been for the purposes of walking (with or without dogs). As stated above, there is a question as to the degree of use which has been on the Public Footpaths which requires further clarification before a conclusion can be reached.

(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 Builders⁷ 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*'.
37. The Applicant specifies the locality at Part 6 of the application form as "the Canterbury City Council ward called Chestfield and Swalecliffe".
38. The objectors say that an electoral ward cannot be a relevant locality for the purposes of Village Green registration. However, since the objection was made, the Courts have confirmed that an electoral ward is a qualifying locality for the purposes of Village Green registration⁸.

⁵ *R v. Oxfordshire County Council and another, Sunningwell Parish Council* [1999] 3 All ER 385

⁶ *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

⁷ *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at 90

⁸ *Leeds Group plc v Leeds City Council* [2010] EWHC 810 (Ch)

39. The objectors also argue that the locality relied upon by the applicant cannot be a qualifying locality because it has not been in existence throughout the whole of the relevant twenty year period. The current electoral ward of Chestfield and Swalecliffe did not come into existence until May 2003.
40. The law is silent with regard to whether a locality must have been in existence throughout the whole of the material period. However, the Courts have recently considered a situation in which the locality relied upon by the applicant had ceased to exist in 1937⁹. In that case, the Court held that 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. This would appear to be authority for the proposition that the qualifying locality need not been in existence throughout (or indeed at all) during the relevant twenty year period.
41. Therefore, despite the objectors' assertions to the contrary, it appears that the electoral ward of Chestfield and Swalecliffe could be a qualifying locality.

"a significant number"

42. 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'*¹⁰. 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.
43. In this case, the evidence demonstrates that there has been regular use of the application site 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 152 user evidence questionnaires from persons living in the locality, demonstrating use of the application site over a considerable period.
44. Additionally, there is anecdotal evidence from several users that, when the hay cropping took place, their use was never challenged by the farmer. One of the witnesses¹¹ says "we used the field all year round, even when they harvested the hay the children loved to watch the tractor and the driver waved to them", whilst another¹² recalls "at harvest time I usually had a chat or a friendly wave from the then tenant of the land". This would indicate that those with an interest in the land were aware that it was in general use by the community.

⁹ *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

¹⁰ *R (Alfred McAlpine Homes Ltd.) v Staffordshire County Council* [2002] EWHC 76 at paragraph 71

¹¹ See user evidence questionnaire of Mrs. V. Wiggans

¹² See user evidence questionnaire of Mr. D. Barker

(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)?

45. 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.
46. In this case, as discussed above, use of the application site ‘as of right’ ceased in October 2004. The application has therefore been made under section 15(4) of the Commons Act 2006 which allows applications to be made in cases where use ‘as of right’ ceased prior to April 2007, provided that such applications are made within five years from the date upon which use ‘as of right’ ceased.
47. If use of the application site ceased to be ‘as of right’ in October 2004, then under this provision the applicant would have until October 2009 to make an application. In this case, the application was made on 14th September 2009 and was therefore within the five year period of grace provided for by the legislation.

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

48. 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 application 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. 1984 to 2004.
49. The user evidence summarised at **Appendix C** demonstrates that there has been use of the application site in excess of the last twenty years.
50. However, the objectors’ argue that use of the application site has not taken place for a full twenty year period since, due to the hay cropping activities which took place on the land, recreational use would, by necessity, have been interrupted on an annual basis for several months of the year. They say that there is therefore no continuity of user throughout the relevant period.
51. The applicant states that the objectors attempt to imply that the cutting and gathering of long grass was akin to a form of cultivation of the land is a misrepresentation of the facts. The applicant is of the firm view that no operations such as ploughing, fertilising or weed treatment has ever been undertaken and adds that no one has ever complained about damage to the hay crop by local residents.
52. The evidence of the objectors regarding the effect of the hay cropping is at odds with the evidence submitted in support of the application. According to the users, it did not interfere with their use of the land. For example, one user¹³ states “all children seem to like tractors and were fascinated at hay cropping time watching the man in the tractor working. The speed of the tractor was such that we were not in any danger and the person driving was extremely friendly and stopped to talk to us...”.

¹³ See user evidence questionnaire of Mrs. P. Spencer

53. There is also disagreement regarding the duration of the hay cropping activities. The objectors state that the process took several months. The applicant's witnesses say that the cutting of the hay took no more than 3 or 4 days each year.
54. Clearly there is a question with regard to the continuity of the use throughout the twenty year period which requires further investigation.

Conclusion

55. Although the relevant Regulations¹⁴ 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 Inquiry¹⁵. This involves appointing an independent Inspector to hear the relevant evidence and report his/her findings back to the Registration Authority.
56. Such an approach has received positive approval by the Courts, most notably in the *Whitney*¹⁶ 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'*.
57. It is important to remember, as was famously quoted by the Judge in another High Court case¹⁷, 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.
58. The conflicts between the evidence of the users and that of the objectors in this case means that it appears that a Public Inquiry would be the most appropriate way forward.

¹⁴ Commons Registration (England) Regulations 2008

¹⁵ 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.

¹⁶ *R (Whitney) v Commons Commissioners* [2004] EWCA Civ 951 at paragraph 66

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

Recommendation

59. 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 Environment and Waste Division, Environment and Regeneration Directorate, Invicta House, County Hall, Maidstone. Please contact the case officer for further details.

Background documents

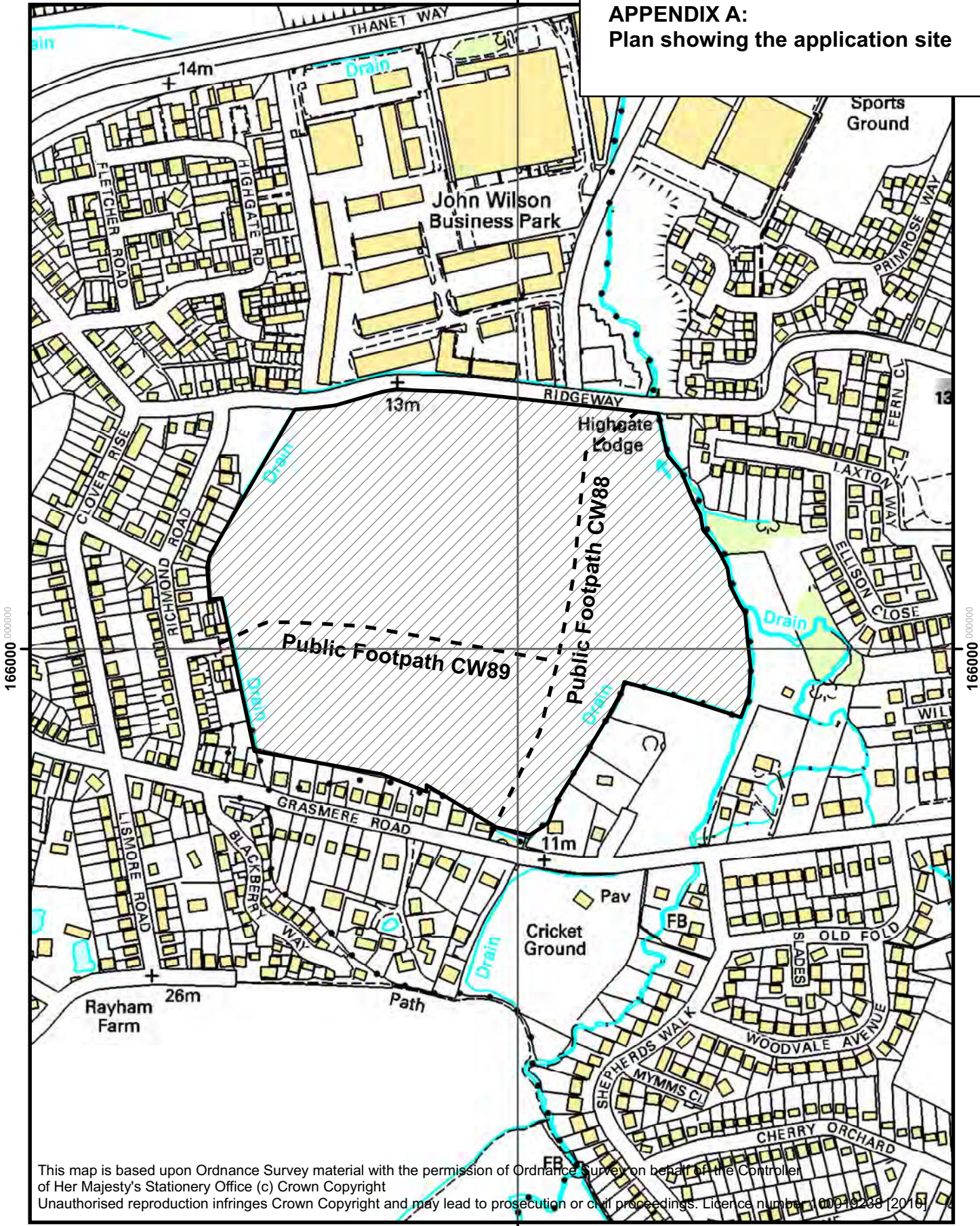
APPENDIX A – Plan showing application site

APPENDIX B – Copy of application form

APPENDIX C – Table summarising user evidence

APPENDIX D – Plan showing the locality

APPENDIX A:
Plan showing the application site



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Scale 1:5000

**Land subject to Village Green application at
Grasmere Pastures, Whitstable**

Page 11



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FORM CA9

Commons Act 2006: section 15

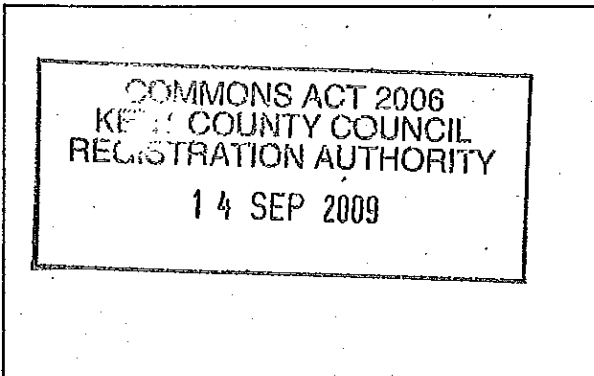
**Application for the registration of land
as a new Town or Village Green**

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:

VGA617

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
COMMONS REGISTRATION TEAM
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: GRASMERE PASTURES RESIDENTS ACTION GROUP

Full postal address: C/O MRS EILEEN WATKINS
(incl. Postcode)

28 RICHMOND ROAD

WHITSTABLE, KENT CT5 3HS

Telephone number: (01227) 262103
(incl. national dialling code)

Fax number: N/A
(incl. national dialling code)

E-mail address: eileen.jay@talktalk.net

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 N/A

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:

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

USE AS OF RIGHT WAS ENDED IN OCTOBER 2004 WHEN THE LANDLORD FIRST OBSTRUCTED USE OF THE LAND BY ERECTING FENCE ALONG ONE SIDE OF THE LAND -ALONG THE RIDGEWAY

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:

N/A

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: GRASMERE PASTURES

Location: THE LAND LIES SOUTH OF THE JOHN WILSON INDUSTRIAL ESTATE, WITH BOUNDARIES MARKED BY THE RIDGEWAY TO THE NORTH, GRASMERE ROAD TO THE SOUTH, RICHMOND ROAD TO THE WEST, & SWALECLIFFE BROOK TO THE EAST
Common Land register unit number (only if the land is already registered Common Land):

N/A

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:

THE LOCALITY IS THE CANTERBURY CITY COUNCIL WARD CALLED CHESTFIELD & SWALECLIFFE (MARKED IN BLACK)
~~THE NEIGHBOURHOOD IS SHOWN IN GREEN ON THE ATTACHED~~

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

Note 7

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

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

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

A FULL STATEMENT IS ATTACHED
THE LAND KNOWN AS GRASMERE PASTURES WAS USED BY LOCAL RESIDENTS LIVING IN THE CANTERBURY CITY COUNCIL WARD OF CHESTFIELD & SWALECLIFFE FOR RECREATIONAL & LEISURE ACTIVITIES FOR MORE THAN 20 YEARS IN THE PERIOD UP TO OCTOBER 2004. NOBODY EVER CHALLENGED THE RIGHT OF RESIDENTS TO USE THE FIELD UNTIL 2004 WHEN THE LANDLORD ERECTED FENCES ALONG ONE PERIMETER. RESIDENTS HAD ENJOYED MANY PURSUITS ACCEPTED BY THE COURTS AS RECREATIONAL ACTIVITIES. FOR A FEW DAYS EACH YEAR, THE HAY CROP WAS HARVESTED. THIS MADE NO DIFFERENCE AT ALL TO THE USE OF THE LAND, WHICH CONTINUED WITHOUT INTERRUPTION. AFTER 1984, THERE WAS NO CULTIVATION OF THE LAND & NO AGRICULTURAL USE OF ANY SIGNIFICANCE. THROUGHOUT THE PERIOD 1984-2004, THERE WAS NO INDICATION AS TO WHO OWNED THE LAND NOR ANY ASSERTION OF TITLE TO THE LAND.

THE APPLICANTS BELIEVE THAT THE CRITERIA FOR REGISTRATION AS A VILLAGE GREEN ARE MET IN FULL, AS EVIDENCED MORE FULLY IN THE ATTACHED STATEMENT AND SUPPORTING EVIDENCE.

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

MR M. LEWER
OW PROSLAND LTD
99 QUEENS DRIVE
LONDON
N4 2BE

**IN THE MATTER OF LAND KNOWN AS GRASMERE PASTURE OR 'THE
FIELD' CHESTFIELD, KENT AND THE REGISTRATION OF THAT LAND
AS A VILLAGE GREEN.**

**SUPPORTING STATEMENT
CONTENTS REFERRED TO IN SUPPORTING STATEMENT
TEXT**

1. **Summary – Of important points of evidence.**
2. **Supporting Statement.**
3. **REF.A - Map 'A'.**
4. **REF.B - Canterbury City Council letter.**
5. **REF.C - C1 C.C.C. –District Local Plan Map.
C2 C.C.C. – Policy Document.**
6. **REF.D. - Extract from – Local Plan Inspector's Report
para. 3.3.21, page 75.**
7. **REF.E - Mr. Goldsmiths letter dated 1.4.1989**
8. **REF.F - Extract from Mr. Watkins' representations to
C.C.C. on The Local Plan Review.**
9. **REF.G - Witness statement of Deborah Merrick dated
23.11.05.**
10. **REF.H - Photographs of flooding – 1987.**
11. **REF.I - Extracts from Mr. B.S. Furneaux's report on
condition of the land.**
12. **REF.J - Witness Statement/supporting letter
Mrs. P.Spencer and Mrs M.Lucke.**
13. **REF.K - Photographs illustrating use of the field -
Children playing, walkers.**
14. **REF.L - Extract from Mr Lewer's witness statement.**
15. **REF.M - Mr. Goldsmith's witness statement.**
16. **REF.N - Map 'B' - the locality.**
17. **REF.O - Map 'C' – Neighbourhood and location of users.**

**COPIES OF COMPLETE OBJECTOR'S WITNESS
STATEMENTS.**

**THESE ARE INCLUDED FOR REFERENCE AND PROOF OF
AUTHENTICITY OF EXTRACTS REFERED TO ABOVE.**

- REF.P - Mr.M.Lewer**
- REF.R - Mr.R.P.Watkins**
- REF.S - Mr.N.W.Strand**
- REF.T - Mr.K.V.Goldsmith**
- REF.U - Mr.N.Sands**
- REF.W - Mr.G.W.J.Sumner**
- REF.X - Mrs Deborah Merrick**

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

- SUPPORTING STATEMENT - CONTENTS AS ATTACHED CONTENTS LIST.
- APPROX 180 USER EVIDENCE QUESTIONNAIRES

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

- PLEASE SEE ATTACHED STATEMENT POSSIBLE CHALLENGES FROM -
- MR. M. LEWER - O.W. PRESLAND LTD
99 QUEENS DRIVE LONDON N4 2BE
 - KITEWOOD ESTATES LTD.
WHITE TREES HOUSE, 3, ASHFORD ROAD,
MAIDSTONE KENT ME14 5BJ.
 - MR. N. SANDS
68 WILLOW FARM WAY, BROOMFIELD, HERNE BAY,
KENT, CT6 7QH

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):

E. J. Watkins

Date:

14th September 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

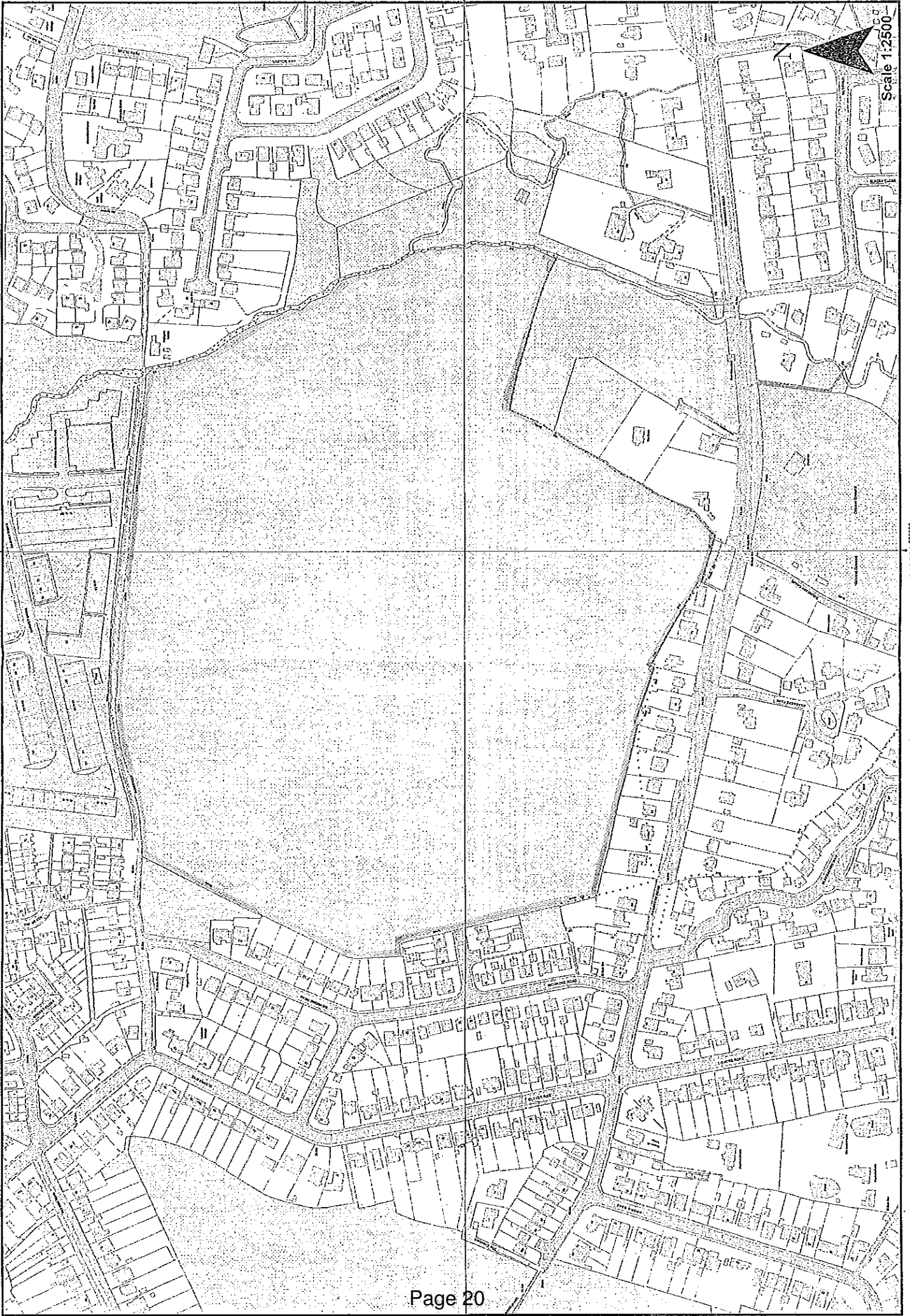
The application and any representations made cannot be treated as confidential. To determine the application it will be necessary for the Commons Registration Authority to disclose information received from you to others, which may include other local authorities, Government Departments, public bodies,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

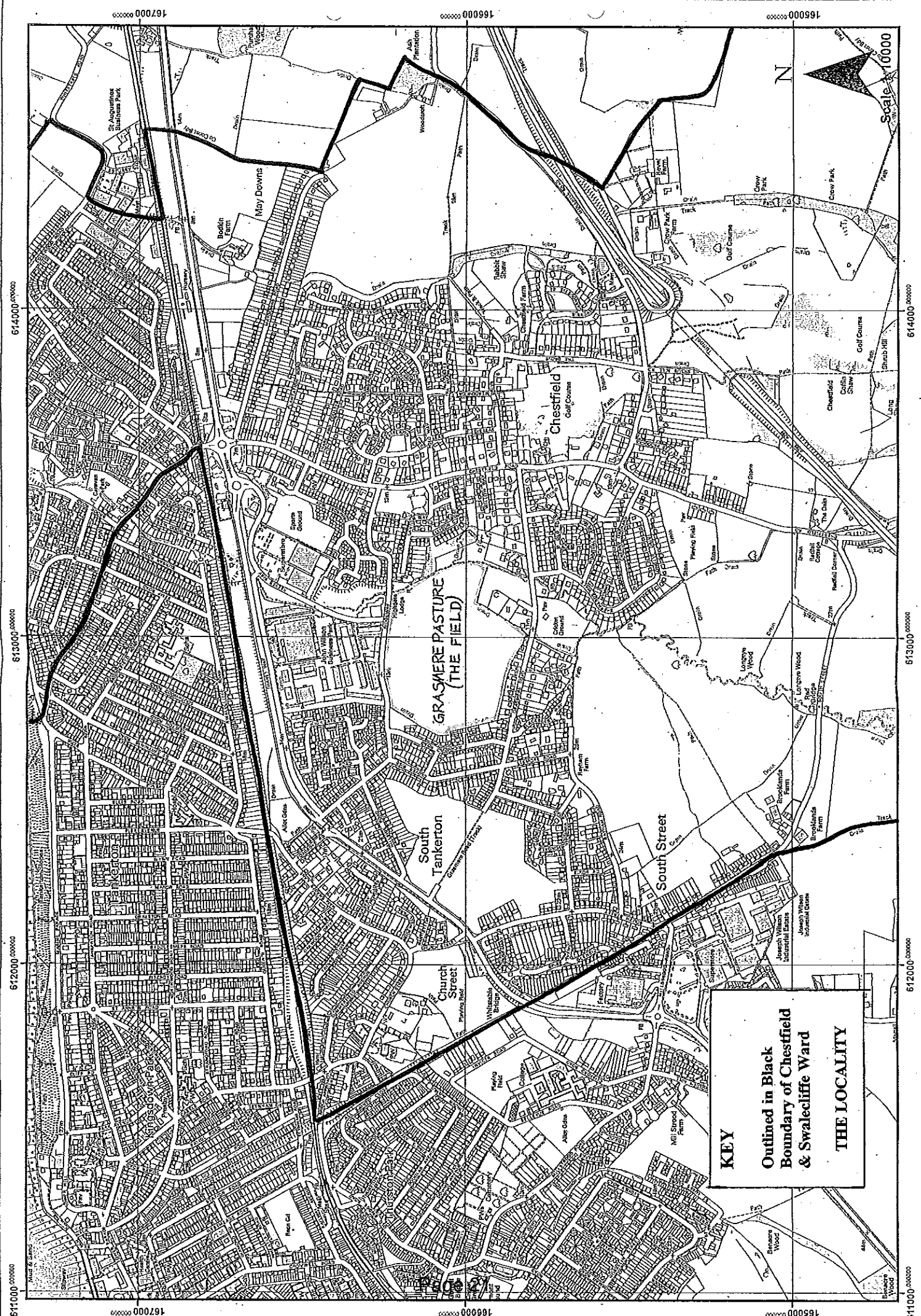
A copy of this form and any accompanying documents may be disclosed upon receipt of a request for information under the Environmental Information Regulations 2004 and the Freedom of Information Act 2000.



613000 000000

613000 000000





KEY
Outlined in Black
Boundary of Chestfield
& Swalecliffe Ward
THE LOCALITY

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

Name	Period of use	Frequency	Activities	Other comments
Mrs. J. ABBEY	1991 – present	Weekly	Ball games with children	Prevented from using the land when fencing erected in 2004. Never challenged by farmer when he was harvesting hay, which took only 2 – 4 days to cut
Mr. and Mrs. J. ALLEN	2002 – present	Weekly	Family walks, blackberry picking, picnics, play football	'my house back onto Grasmere Pastures... I have only ever seen the field being harvested for 2 – 3 days per year'
Mr. R. ALLEN	1998 – present	Occasionally	Walking with children	
Mrs. W. ALLEN	1998 – present	Occasionally	Walking	
Mrs. D. APPLETON	1969 – present	Occasionally now, but used to be daily	Dog walking, picnicking, ball games, kite flying	Fences erected and trenches dug and private notice in 2004/2005
Mr. J. BACON	1979 – present	Twice daily	Dog walking	
Mrs. C. BAGGS	1994 – present	Daily	Walking and playing with dogs, watching birds and wildlife	
Miss. R. BANKS	1994 – present	Monthly	Recreational walks to exercise	'always someone else has been using it when I have'
Mr. D. BARKER	1979 – present	Daily	Dog walking	'at harvest time I usually had a chat or a friendly wave from the then tenant of the land'
Mrs. P. BARKER	1979 – present	Daily	Dog walking	Fences erected and ditched dug in October 2004. Has walked around the field during hay making
Mrs. L. BEASTALL	1982 – 1988	Weekly	Dog walking	
Mrs. J. BOWYER	1997 – present	Daily	Dog walking	
Mrs. G. BREITFELD	1981 – present	Occasionally	Walking	Fencing and notices put up in 2004
Mr. K. BREITFELD	1981 -	Occasionally	Walking, playing with children	
Mrs. J. BRINKLEY	1997 – present	Daily	Dog walking, walking	Use restricted by fencing for a few days in 2004/05
Mrs. V. BROWN	1990 – 2006	Occasionally	Walking	Fence erected in October 2004
Mrs. A. BYRNE	1978 – 1995	Occasionally	Playing, walking, bike riding, kite flying, picking elderflowers	
Mr. J. CAMPBELL	1970 – ?	Occasionally	Playing with children, cricket, rounders, kite flying	
Mr. J. CANAVAN	2001 – present	Daily	Exercise and dog walking	'when the farmer was cutting the field, it did not stop me doing my daily exercise and walking dog'
Mr. R. CLEMENTS	1987 – 1997	Twice daily	Dog walking	
Ms. N. COLLINGS	1988 - ?	Twice a week	Horseriding	
Mrs. C. COOMBE	1988 – present	Weekly	Walking, nature observation, fresh air	The land has never been cultivated. The farmer has only cut the wild grass for hay.

Mr. L. COOMBE	1988 – present	Weekly	Walking, nature observation	The land has never been cultivated. The farmer has only cut the wild grass for hay and then has only taken a matter of days
Mrs. S. CORRIGAN	1980 – present	Daily	Dog walking, playing with children, flying kites and model aircraft	
Mrs. G. COVE	1970 – 2004	Weekly	Exercise, dog walking, to enjoy the space	Use never challenged until October 2004 when fencing erected
Mr. R. COVE	1970 – present	2 – 3 times per week	Walking and fresh air	Fence was erected in 2004. 'every time I used the said land others were always in evidence'
Mr. D. CRABB	1997 – present	Daily	Dog walking, walking	Use restricted by fencing for a couple of days in 2004/05
Mrs. J. CULLEN	1980 – present	Daily	Dog walking, playing with children, flying kites	In October 2004, fences were erected but these were pulled down shortly afterwards.
Mr. P. CULLEN	1980 – present	Daily	Dog walking, playing with children, kite flying, football	Ditches were dug and fences erected along Ridgeway but this did not stop access
Mr. R. CURTIS	1997 – present	2-3 times per week	Jogging, dog walking	Access was more dangerous after October 2004 due to ditches but use continued
Ms. R. DAVIDSON	1987 – present	Weekly	Dog walking, playing with children, walking	
Mrs. E. DAVIES	2001 – present	Almost daily	Dog walking	'mowing on various dates did not stop me using field'
Mr. and Mrs. A. DAVIS	1998 – present	Weekly	Teaching children to ride bikes, dog walking	
Mr. J. DELAHOY	1964 – present	Often	Walking, recreation and exercise	Fencing was erected in 2004 but this was pulled down by children
Mrs. D. DENMAN	2000 – present	Twice daily 2000-02, now occasionally	Dog walking, walking	A fence was erected in 2004
Mrs. A. DIVINE	1984 – present	Daily	Dog walking, playing with children, exercise, nature observation	Fences and wire were put up at about the end of 2004.
Mr. G. DIXON	1992 – present	Weekly	Dog walking	
Mrs. L. DIXON	1991 – 2008	Daily	Dog walking, playing with children	Observed camping and horse riding on the land
Mrs. L. FARRINGTON	1977 – present	Weekly	Dog walking, nature observation, exercise, photography	'Farming activities were usually temporary and involved one section of the field at a time, so could be avoided... There are always people in this field whenever I go there'
Mr. J. FARRINGTON	1977 – present	Daily	Walking, watching wildlife	Notices were erected in 2004
Mr. R. FELTHAM	1978 – 2000	Daily	Dog walking, playing with children	Access prevented by a ditch being dug (no date given)
Mrs. A. FITCHIE	1990 – present	Daily	Dog walking, socialising	Access temporarily prevented by ditches in 2005?
MR. L. FITCHIE	1999 – present	Daily	Dog walking	
Mrs. B. FORTUNE	1976 – present	Daily in summer, weekly in winter	Dog walking, playing with children, kite flying, attended bonfire parties	I have never been prevented or denied access to the land until 2004 when a fence was erected.
Mrs. M. FOSTER	1998 – present	Mostly weekly	Playing with children, watching butterflies, walking and exercise	'we walked across field one week with long grass, the next week it had been cut'

Mrs. D. FREELAND	1989 – present	Occasionally	Playing with children	
Mr. G. GADD	1964 – present	2 – 4 times per week	Walking and dog walking	Use was temporarily restricted in Autumn 2004/5 when fence was erected
Mrs. L. GADD	1996 – present	2-3 times per week	Dog walking, exercise	Use only restricted when fencing erected but this only lasted one day. Never saw any cultivation, just annual grass cut which never prevented use.
Mrs. J. GANDERTON – NEVARD	2002 – present	Daily	Dog walking, exercise, nature walks with children	
Mrs. M. GILLIAT	1930 – present	Occasionally	Dog walking, walking for exercise	
Mrs. E. GREEN	1996 – present	Daily, now twice weekly	Walking with children, picnicking, blackberrying, ball games with children	
Mr. R. GREEN	1996 – present	Daily at times	Walking with children, picnicking, blackberrying, ball games with children	
Mrs. H. HAMNETT	1978 – present	Monthly	Walking for pleasure with friends and family, playing games with children, picking elderflowers	“In the 31 years of living here I have never been denied access – even during the hay making which took no more than three to four days”
Mr. I. HAMNETT	1978 – present	Daily/weekly, but less often since 1994	Playing, fishing climbing trees, picking elderflowers, bike riding, dog walking, walking, making camps, treasure hunts	
Mr. R. HAMNETT	1978 – present	2 or 3 times per month	Playing with children, walking	“In the latter years during the cutting and collecting of hay (which took no more than 3 days at the most) access was not denied and people were still using the land whilst cutting and collection took place – I was one of them – no hostility from the farmer”
Mrs. J. HANSON	1970 – present	Daily or weekly	Dog walking, playing ball, Frisbee, kite flying, jogging, bike riding, picnicking, blackberrying, model aircraft flying, rocket launching	In October 2004, a barbed wire fence was erected along the Ridgeway. Notices were also put up at the Clover Rise end of the Ridgeway in October 2004.
Mrs. C. HARRIS	2003 – present	4 times per week	Walking	
Mr. E. HARRIS	2003 – present	Daily	Walking and recreation	
Miss. H. HAYWARD	1993 – present	Daily	Leisure activities such as rounders, cricket, walking, bike riding, jogging, kite flying	At no point during the grass cutting did the farmer stop us from using the land. He would be gone within a matter of days.
Mrs. J. HAYWARD	1993 – present	Weekly, then daily in last 10 years	Dog walking, kite flying, sledging, bike riding	‘at no time during the years that we have lived in the area has the farmer’s use of the land prevented us from using the land for leisure activities’
Mr. S. HAYWARD	1993 – present	Daily in last 10 years	Dog walking, bike riding, jogging, cricket, sledging	The farmer would often wave and act in a friendly manner
Mr. D. HIBDEN	1986 – present	Almost daily	Recreation and health, including walking, nature observation, family leisure	

Mrs. S. HIBDEN	1986 – present	Daily	Walking for exercise and fresh air	
Mr. B. HILLS	2001 – present	Daily	Dog walking	
Mr. B. HOLNESS	1978 – present	Weekly since 2001, monthly before	Walking with dogs or children, exercise and leisure	
Mr. and Mrs. HOUSE	1985 – present	Daily	Dog walking	Partially fenced along Ridgeway in October 2004. Ditch dug around perimeter in October 2005
Mrs. V. HOWARD	1999 – present	Daily or 2-3 times per week	Dog walking, walking with children	Fence was erected in October 2004
Mrs. D. HUGHES	1989 – present	Daily	Horse riding, dog walking, dog agility training	
Mr. D. HUGHES	2000 – present	Daily	Dog walking and jogging	
Mrs. J. HUGHES	1981 – present	Occasionally	Walking around the local area	
Mr. V. HUGHES	1984 – present	Every couple of months	Recreational walking	In 2004, fences and notices were erected.
Mr. C. HUNT	1987 - ?	Occasionally	Walking dog, playing with children, blackberrying, kite flying	
Mrs. D. HUNT	1987 – 1997	Occasionally	Walking and entertaining children	
Mrs. A. ILES	1988 – present	Daily between 1991 – 2003	Dog walking, observing wildlife	
Mr. D. ILES	1988 – 2006	Daily until 2003, then weekly	Walking for exercise and with dog, nature observation	
Mrs. J. KIRKNESS	1982 – present	Once or twice a week	Recreational walking, nature observation, kite flying, bird watching	
Mrs. G. LENNARD	1988 – present	Weekly	Walking, dog walking, kite flying, ball games, riding bikes, playing with children	Never challenged by those collecting hay
Mr. P. LENNARD	1988 – present	Weekly	dog walking, playing with children, kite flying, general recreation	Tractor driver [when collecting hay] was always very friendly
Miss. R. LENNARD	1987 – present	Daily	Dog walking, kite flying, playing rounders	
Mrs. M. LUCKE	1974 – 2005	Daily	Dog walking and walking for exercise and fresh air and nature observation	'whenever the farmer came to cut the grass which only ever took 3 days... the farmer would always stop and chat'
Mrs. A. MACARTHUR	1964 – 2006	3-4 times per week until 2005, then weekly	Walks with children and dog	
Mr. I. MACARTHUR	1964 – present	Weekly since 1990, previously 2/3 times per week	Dog walking, leisure walks for exercise	'when my children were growing up they frequently played there with their friends'
Mrs. J. MAJOR	1999 – present	2-3 times per week	General exercise and dog walking	'I can confirm that the harvesting only took a few days'
Ms. K. MANNING	1974 – present	Twice daily	Horse riding and dog walking	

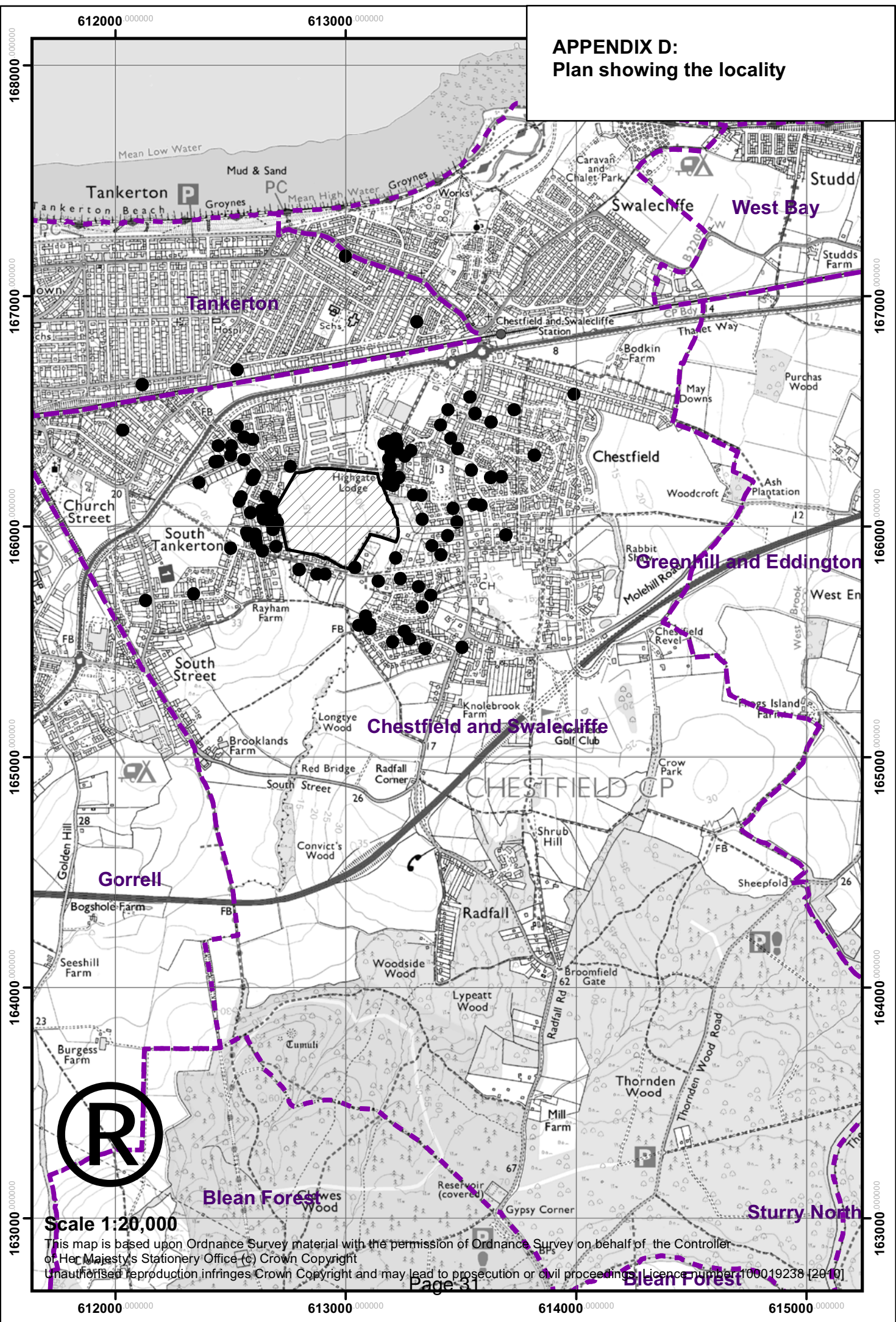
Mr. T. MAY	1982 – present	Weekly	Dog walking and exercise	Use ever challenged, even during hay making. Farmer cut the grass for 2 – 3 days per year at most, but still used the field during harvesting.
Mrs. R. MILLS	1985 – 1999	Occasionally	Walking and taking brownies onto the field for outdoor nature trails and activities	
Mrs. G. MOUNT	1999 – present	Weekly	Recreational walking	A fence was erected in October 2004
Mr. M. MOUNT	1999 – present	Weekly	Recreation	Fence was erected approx 2 years ago and a ditch dug in 2004
Mr. R. OGILVIE	1999 – present	Monthly and occasionally	Riding bike, dog walking, walking	'hay cutting could be heard from our house annually for about 3 or 4 days'
Mrs. T. O'GORMAN	1975 – ?	Very often	Walking and playing as a child	
Mrs. C. OTT	1981 – present	Daily	Picnicking, dog walking	'even when the field was being cut my children made mini hay stacks and little camps out of the hay'
Mr. K. OTT	1981 – present	Daily	Dog waking, picnics, bird watching	
Mrs. A. OWENS	1996 – present	Daily	Dog walking, riding bike, flying kites, football, playing with children	
Mr. S. OWENS	1996 – present	Daily	Riding bike, flying kites, football, playing with children	
Mrs. J. PACKWOOD	1993 – present	2-3 times per week since 1998	Dog walking, walking with children	Use never challenged until October 2004 when fencing erected and ditches dug
Mrs. J. PAPASPYROU	1993 – present	Daily or weekly	Recreational walking and dog walking	Own children used the land from 1979/80. Fence and notice erected in October 2004.
Mr. G. PARKIN – WALKER	1970 – present	Daily	Walking, dog walking, shortcut to Chestfield	
Mrs. P. PARKIN – WALKER	1970 – present	Daily	Walking for exercise and pleasure and dog walking	
Mrs. C. PHILLIPS	1968 – present	Sometimes daily, sometimes weekly	Dog walking, jogging, paying with children	'The area has always been open and accessible and I have never been challenged or stopped from using it. However a fence was erected in October 2004 which hindered use, but it was soon pulled down'
Mr. B. PHILLIPS	1968/9 – present	Daily or weekly	Playing with children, jogging, dog walking	Fence was erected in October 2004
Mrs. J. PIKE	1987 – present	3 times daily	Dog walking	'The field has never been out of use, even when cutting and ploughing farmer was very pleasant'
Mr. R. PIKE	1987 – present	Daily	Dog walking, exercise	
Mr. E. POWELL	1982 – 1996	Weekly	Walking, playing with children	
Mr. S. POWELL	1982 – present	Weekly	General recreational activities and exercise, including kite flying, boomerang throwing, snowball fights, picking blackberries	Accesses were temporarily blocked in 2004 but are now open again

Mrs. T. POWELL	1982 – present	Weekly	Exercise and playing with children when younger	Access temporarily blocked in 2004
Mrs. J. REEVE	1988 – present	Daily	Dog walking, birdwatching, exercise, walking, kite flying, frisbee	A fence was erected in October 2004
Mrs. M. RELPH	1979 – present	Daily	Dog walking	“The grass has been cut but it has not stopped me using the machinery. I simply avoided the machinery”
Ms. H. RIGDEN	1984 – present	2-4 times per week	Horse riding, dog walking	Fences were put up in 2004 but only along one boundary so access was always possible from Richmond Road and Grasmere Road
Mrs. M. ROBERTS	1982 – present	Daily	Dog walking, kite flying and picnicking	Used until it was fenced in 2006, but have started using it again
Mr. S. ROBERTS	1982 – 2006	Weekly, sometimes daily	Picnicking, kite flying, nature observation	‘the land was usually harvested in July time and tractor drivers would give a friendly wave’
Mr. M. SANDERS	1982 – present	Daily, weekly and monthly	Kite flying, dog walking, football, cricket, playing with children	
Mr. P. SELLS	1972 – 1999	Daily	Dog walking, playing rounders, kite flying	
Mrs. C. SHANNON	1966 – present	Daily or several times per week	Horseriding, dog walking, walking, playing	‘I have spent time talking to the farmer when he was haymaking – I was never asked to leave or told I should not be there’
Mr. J. SHANNON	1992 – present	2-3 times per week	Walking, dog walking, playing with children	In October 2004, a fence was erected along Richmond Road, but access was still possible from Richmond Road and Grasmere Road. Even when the grass was being cut annually, the field was open and accessible, and I continued to use the field unimpeded.
Mrs. K. SKINNER	1989 – present	Weekly	Dog walking, playing with children	
Mr. J. SPENCER	1970 – present	3 to 4 times per week	Walking, jogging, bird watching, relaxing, socialising, playing with children, kite flying	Fence was erected in October 2004
Mr. M. SPENCER	1970 – present	Daily until 1990, then monthly, then weekly since 2002	Dog walking, kite flying, observing wildlife, playing ball games and other games with friends and relatives	A fence was erected along Ridgeway in October 2004
Mrs. P. SPENCER	1970 – present	Mainly daily, sometimes weekly	Walking, ball games, kite flying, picnicking, bird watching, fruit picking	A fence was erected in 2004 but did not extend around the whole perimeter. When the fence was put up there was a notice on the large gate in the Ridgeway.
Mrs. F. STEDMAN	1984 – 1994	Occasionally	Walking, playing with children	
Mr. G. STEELE	1981 – present	Daily, now occasionally	Dog walking, blackberrying	A fence was put up at the end of the Ridgeway preventing access but this was only there for a short time.
Mrs. C. STEVENS	1983 – present	Weekly	Dog walking, blackberrying	
Mr. L. STEVENS	1983 – present	Weekly	Dog walking, blackberry picking	Fence erected in 2004.
Mr. J. STREET	1976 – present	Weekly	Walking, nature observation	“When the hay was being cut it never interfered with any of the activities on the field”

Mr. N. SWAIN	2001 – present	Occasionally	Walking	
Mrs. P. SWAIN	2001 – present	Occasionally	Walking	
Mrs. S. SWAIN	1970 – present	Sometimes weekly, sometimes daily	Walking for exercise and fresh air, dog walking	Never any challenge to use until a fence was erected in 2004
Mr. J. SWAIN	1970 – present	Frequently	Recreational walking, dog walking, flying model aircraft	Never deterred or prevented from using the land until 2004 when it was fenced off. Occasionally the grass would be cut but this never prevented my usual pursuits on the land.
Mrs. C. TAVERNER	1975 – present	2/3 times per week 1989 – 1998. Now occasionally	Dog walking, kite flying, playing football and cricket	
Mr. R. TAVENER	1975 – present	Occasionally, 2/3 times per week between 1990 – 2000	Dog walking, playing with children, kite and glider flying	
Mrs. J. THEZE	1965 – present	Daily, now occasionally	Kite flying, walking, playing in the river, exercise, dog walking	Use stopped for a short time when the fence was erected at the end of 2004.
Mr. G. THEZE	1966 – present	Weekly, now occasionally	Playing with children, walking dogs, nature observation, playing on river	Fences were erected in or around 2004. 'Private no trespassing' sign went up in 2004.
Mr. J. TROTT	1986 – present	Occasionally	Walking, dog walking, kite flying	
Mrs. C. VESEY-WELLS	1995 – 2007	Daily	Dog walking with friends and family	
Mrs. S. WALLACE	1989 – present	Several times per week	Playing with children, dog walking, general walking	A deep ditch was dug and fence erected in October 2004
Mrs. E. WATKINS	1998 – present	Daily	Walking for exercise and exercising dog	'the farmer was always very friendly... he never ever interfered or stopped anyone using the field for their leisure'
Mr. J. WATKINS	1998 – present	Daily	Walking for exercise and dog walking	'I walk the field every day, even when the farmer is cutting the grass and have never been stopped from using the land at any time'
Mr. and Mrs. WETHERALL	2000 – present	Weekly	Dog walking, running, bike riding	
Ms. C. WEGENER	1988 – present	Sometimes daily, sometimes weekly	Dog walking	
Mrs. V. WILSON	1980 – present	Dog walking	Fence created temporary obstruction in October 2004	
Mrs. J. WHITTAKER	1967 – present	Monthly	Walks and dog walking	
Mrs. M. WHYTE	1983 – present	Variable – daily or weekly	Dog walking	Fencing erected in October 2004
Mr. T. WHYTE	1983 – 2006	Weekly	Dog walking	Fencing erected in October 2004
Ms. L. WICKINGS	1986/7 – 2007	Daily	Dog walking, exercise, bike riding, communal fireworks	
Mr. J. WIGGANS	1967 – present	Daily	Dog walking, kite flying, playing with children	Use never challenged until fences were put up along the Ridgeway in late 2004. Notice

				was also erected at the end of the Ridgeway.
Mrs. V. WIGGANS	1967 – present	Daily until 1995, then weekly	Dog walking, kite flying, playing with children, boating in the stream	Fences were erected in 2004 but these quickly disappeared and we carried on using the field. A 'private no trespassing' notice was put up at the same time as the fence at the end of the Ridgeway
Mr. J. WOODCOCK	1985 – present	Daily	Dog walking, exercise and fresh air	Gates, notice, fences and ditch deterred use in late 2004/2005
Mr. J. WRIGHT	2000 – present	Twice daily between 2000-02, now occasionally	Dog walking, flying model aircraft	A fence was erected in 2004
Mrs. S. WYLES	2001 – present	3 times per week, less since 2002	Dog walking, walking	
Mrs. L. YOUNG	1978 – 2004	Weekly	Walking with children and dog	"Whenever I walked the dog around the field it was rare not to see other people doing the same"
Mr. P. YOUNG	2001 – present	Weekly	Walking and recreation	
Mr. P. YOUNG	2003 – present	Weekly	Walking and general exercise	Use prevented when fencing erected in 2004
Mr. R. YOUNG	1978 – 2004	Twice weekly	Dog walking	

**APPENDIX D:
Plan showing the locality**



Scale 1:20,000

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Application to register land known as Benacre Wood at Whitstable 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 22nd February 2011.

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

Local Members: Mr. M. Harrison and Mr. M. Dance

Unrestricted item

Introduction

1. The County Council has received an application to register land known as Benacre Wood at Whitstable as a new Village Green from the Friends of Duncan Down ("the Applicant"). The application, made on 19th October 2009, was allocated the application number VGA619. 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 woodland of approximately 2.3 hectares (5.8 acres) in size situated to the north of the old Thanet Way (A2990) at Whitstable. The site itself is an irregular shape which is best described by reference to the plan at **Appendix A**.
7. The northernmost part of the application site is crossed by Public Footpath CW20 which provides access to the remainder of the site. Access is also available via the footway of Thanet Way (A2990) along the southern boundary of the site.
8. It should be noted that the County Council is also dealing with a separate application to determine whether or not public rights of way on foot have been acquired across the site. This is being dealt with under different legislative provisions and, although Members should be aware of its existence, it is not a matter for consideration at this time.

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. In support of the application, 50 user evidence questionnaires from local residents were provided, demonstrating use of the application site for a range of recreational activities for a period in excess of twenty years. A summary of the evidence in support of the application is attached at **Appendix C**.
11. Also included in the application were photographs of the application site, relevant newspaper cuttings and a leaflet about Duncan Down.

Consultations

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

Landowner

13. The application site is jointly owned by Mr. N. Strand, Mrs. T. Lucchesi and Mrs. C. Buchan. It is registered with the HM Land Registry under title number K760160. Notices have been served on the landowners as required.
14. Mrs. T. Lucchesi has objected on the grounds that the woodland is not a public right of way and never has been. Over the last 20 years, the landowners have tried very hard to keep the public out by continually erecting fencing, but this has been cut down. No permission has ever been granted by the landowner for the

use of the woodland and therefore any recreational use has therefore been with force and not 'as of right'.

15. Mrs. C. Buchan has also objected to the application on the basis that the fences that have been constructed around the application site have been repeatedly damaged and people have ventured onto the land illegally.

16. No response has been received from Mr. N. Strand.

Legal tests

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

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

18. 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.

19. In this case, there is no evidence that the use of the application site has been secretive. One of the landowners has also confirmed that no permission has ever been granted for the use of the application site.

20. However, the objectors refer to the existence of fencing and allege that any use of the application site has been with force. The applicant states this account conflicts with the evidence of 50 users of the land and adds that, despite spending hundreds of hours in the woodland, he has never seen any of the landowners there. He says that there is no physical evidence on the application site of any attempt to 'continually' put up fencing: the southern side of the woodland does have an intermittent fence line but all of the posts are well rotted and the wire is extremely corroded. In any event, the applicant asserts that there is no evidence of any fencing on the northern side of the application site which faces the more populated residential area within which the users of the application site reside.

21. In the absence of any physical evidence of fencing (or the remains of it) on the site, and given the wealth of evidence claiming unhindered use of the application

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

site for at least twenty years, it is difficult to conclude that the use of the application site has been with force. Some of the user evidence questionnaires do refer to the erection of fencing and notices in other parts of Duncan Down in 2009, but none recall any challenges to their use of the application site. Therefore, on a balance of probabilities, it can be concluded that use of the application site has been 'as of right'.

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

22. Lawful sports and pastimes can be commonplace activities including dog walking, children playing, picnicking and kite-flying. It is not necessary to demonstrate that both sporting activities *and* pastimes have taken place since the phrase 'lawful sports and pastimes' has been interpreted by the Courts as being a single composite group rather than two separate classes of activities².
23. Legal principle does not require that rights of this nature be limited to certain ancient pastimes (such as maypole dancing) or for organised sports or communal activities to have taken place. The Courts have held that '*dog walking and playing with children [are], in modern life, the kind of informal recreation which may be the main function of a village green*'³.
24. 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 has been for walking (with or without dogs), but reference is also made in the user evidence to fruit picking, jogging, photography and bird watching.

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

25. 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 Builders*⁴ case, it was considered that '*...at the very least, Parliament required the users of the land to be the inhabitants of somewhere that could sensibly be described as a locality... there has to be, in my judgement, a sufficiently cohesive entity which is capable of definition*'. The judge later went on to suggest that this might mean that locality should normally constitute '*some legally recognised administrative division of the county*'.
26. 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*

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

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

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

*occasional use by individuals as trespassers*⁵. 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.

The 'locality'

27. The Applicant specifies the locality at Part 6 of the application form as the Canterbury City Council electoral wards of Gorrell and Seasalter.
28. Whilst the law has recently been clarified to extend the definition of 'locality' to include electoral wards, it is not clear whether two electoral wards are capable of constituting a single locality. The difficulty in this case is that there does not appear to be an identifiable 'neighbourhood' within a locality and, as such, if the 'locality' is too large (both in terms of population and geographical extent), the application will fail on the basis that the land has not been used by a significant number of the residents of the specified locality.
29. The plan at **Appendix D** shows where the users of the application site live in relation to the site itself. It can be seen that the majority of the users live within the Gorrell ward and therefore it seems appropriate that this should be the relevant 'locality' in this case. This would also correlate with the 'locality' defined in the recent registration of another piece of land as a new Village Green at Duncan Down (VG240).

'significant number'

30. In this case, the application is supported by evidence from 50 users, of which 36 live in the Gorrell ward. Many refer to the use of the land on a daily or weekly basis. As such, 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.
31. The fact that not all of the users live within the Gorrell ward is not detrimental to the application and it is irrelevant that some of the users of the application site live outside the locality. 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*"⁶.
32. Therefore, it can be concluded that the application site has been used by a significant number of the residents of a defined locality.

(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)?

33. 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).

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

⁶ *R (Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust) v Oxfordshire County Council* [2010] EWHC 530 (Admin)

34. In this case, the application was made in 2009. There is no evidence of any attempt by the landowners to impede or prevent access to the site prior to (or indeed after) the application being made. Therefore, use has continued until and beyond the date of the application.

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

35. 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 application 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.

36. 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

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

Recommendation

38. I recommend that the County Council informs the applicant that the application to register the land known as Benacre Wood at Whitstable as a new Village Green has been accepted, and that the land subject to the application be formally registered as a Village Green.

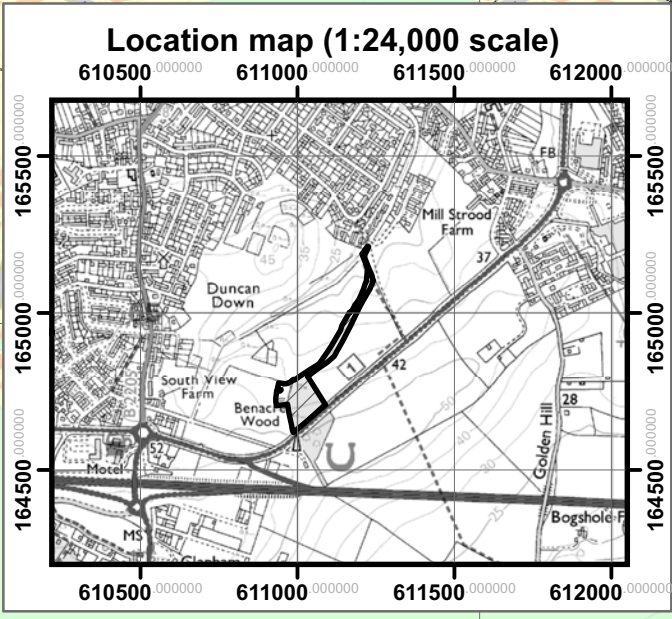
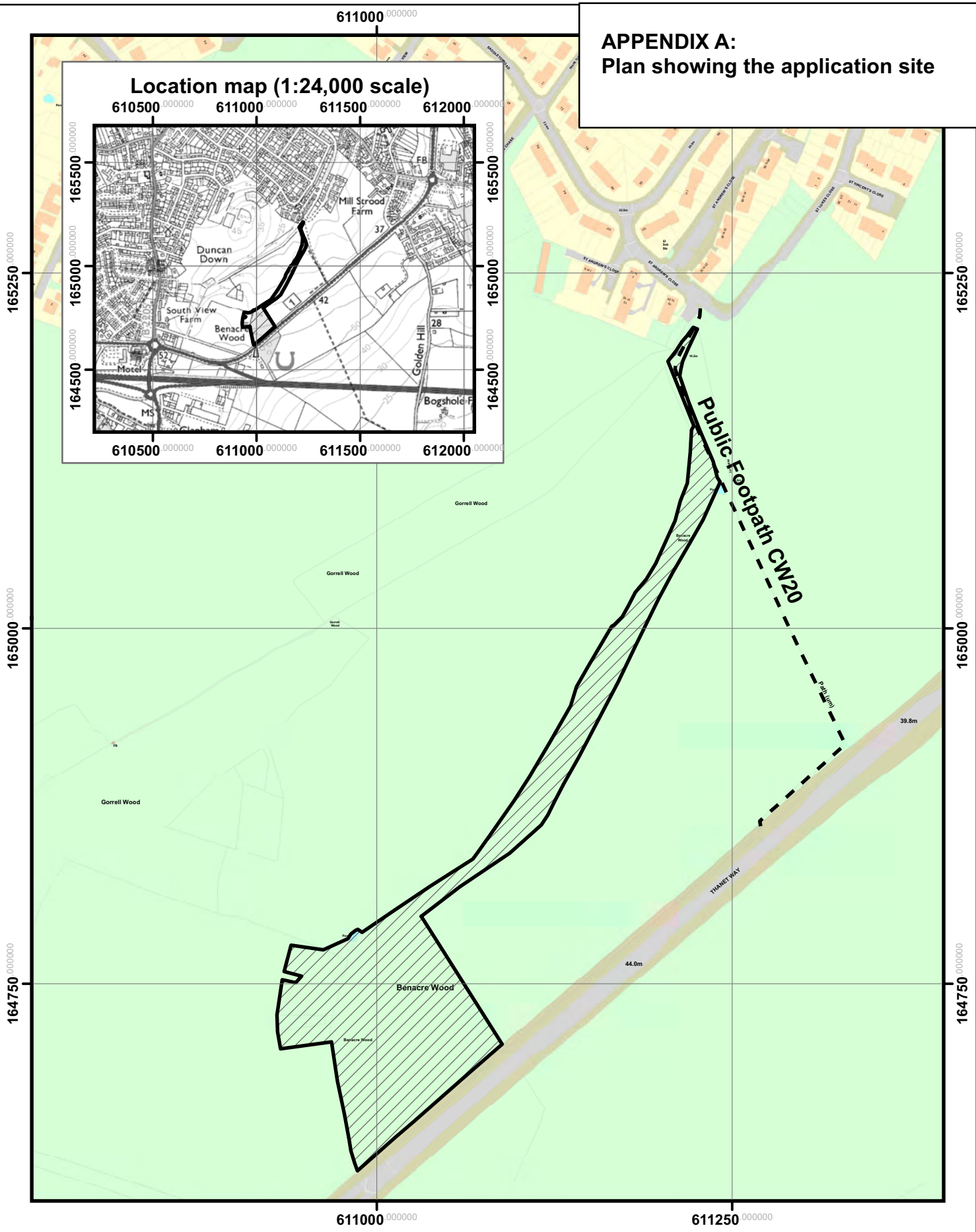
Accountable Officer: Dr. Linda Davies – Tel: 01622 221500 or Email: linda.davies@kent.gov.uk Case Officer: Miss. Melanie McNeir – Tel: 01622 221511 or Email: melanie.mcneir@kent.gov.uk

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

- APPENDIX A – Plan showing application site
- APPENDIX B – Copy of application form
- APPENDIX C – Table summarising user evidence
- APPENDIX D – Plan showing the locality

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



**Land subject to Village Green application
at Benacre Wood (on the north side of
the A2990 Thanet Way) at Whitstable**

Page 39

M
Scale 1:3500

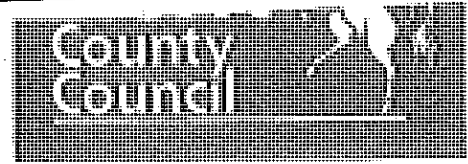


FORM CA9

Commons Act 2006: section 15

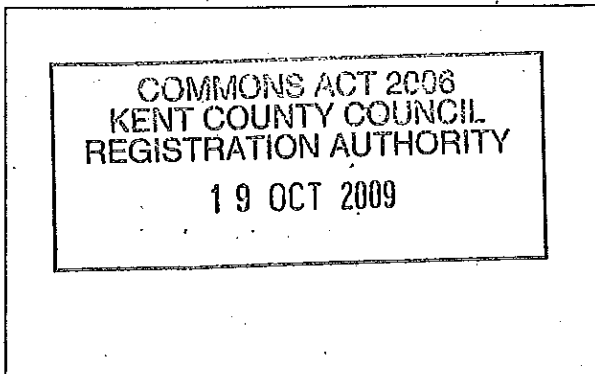
**Application for the registration of land
as a new Town or Village Green**

**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:

VGAB19

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
Public Rights of Way Officer - Definition Team,
Invicta House
County Hall
MAIDSTONE
ME11 4XX

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: Ashley John CLARK - Secretary to the Friends of Duncan Down

Full postal address: (incl. Postcode) c/o 2, Hilltop, Stanley Road, Whitstable, Kent CT5 4QE

Telephone number: (incl. national dialling code) 01227 264063

Fax number: (incl. national dialling code)

E-mail address: CLARKSATSEASIDE@aol.com

Note 3

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

3. Name and address of representative, if any

Name:

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:

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

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: *Benacre Wood, Whitstable*

Location: *land on the north side of Thanet Way, Whitstable*
Title No K760610 (Part of the land Some is unregistered)

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:

*Gorrell and Seasalter Wards
Whitstable*

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

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

Evidence from some 50 witnesses that collectively they and others representing a significant number of inhabitants of the locality have indulged in lawful sports and pastimes on the land for a period in excess of 20 years as of right.

See attached statement, witness forms and exhibits as listed.

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

1. Neil William STRAND
Court Lees Farm, Bleas Hill, Whitstable, Kent.
2. Theresa Julie LUCCHESI
Lincey, Bogshole Lane, Whitstable, Kent
3. Christine Mary BUCHAN
Clowes Farm, Honey Hill, Whitstable, Kent

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

See attached lists of witnesses and exhibits.

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

This matter is linked to a footpath application in 2008

PROW/CC/C313 for which some 20 witness forms were obtained.

The witnesses for this application will also be witnesses in relation to the footpath issue.

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:

15th October 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.

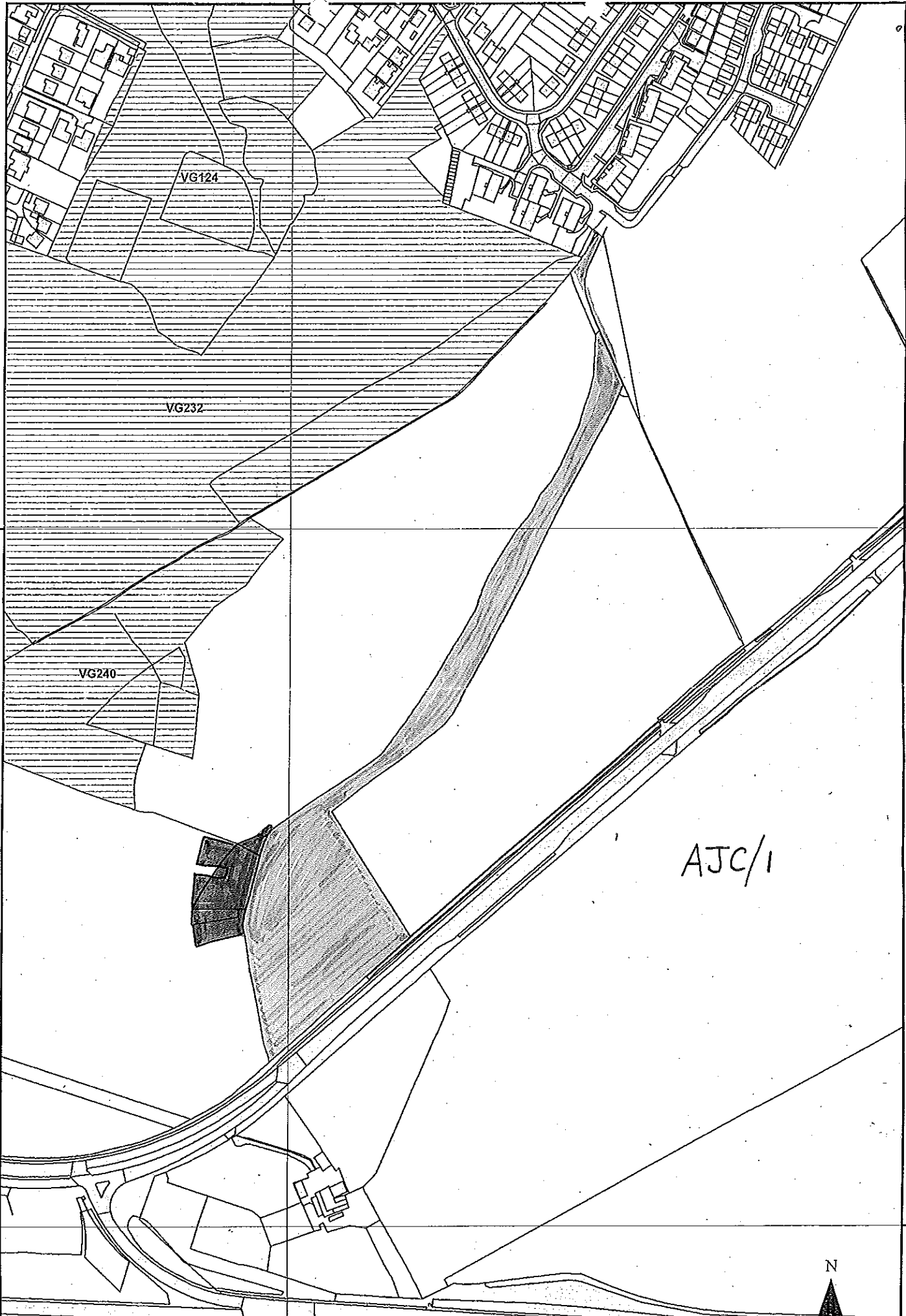
Please send your completed application form to:

**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.



AJC/1

Village Greens shown on this map for illustrative purposes only and may not provide an accurate representation - Please refer to Register plans for details of the recorded boundaries.

Scale 1:2,500



Benacre Wood Village Green Application

List of Exhibits

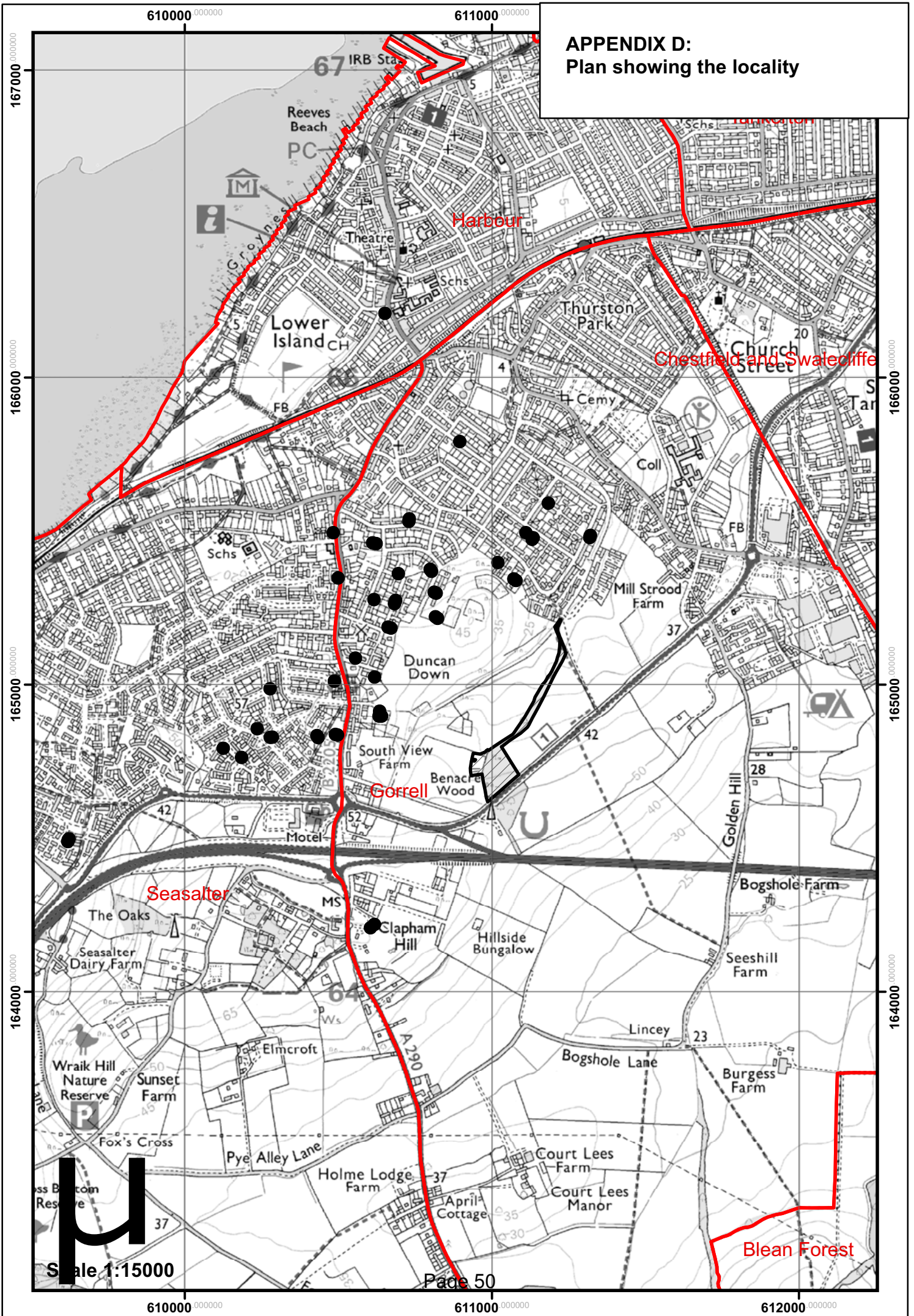
- AJC/1 Plan of the land 1:2,500
- AJC/2 Educational leaflet relating to the area
- AJC/3 Analysis of witness forms
- AJC/4 Map of the locality showing residences of witnesses and ward boundaries
- AJC/5 Aerial photo of the locality
- AJC/6 Map of locality – Medical Centre leaflet
- AJC/7 Collage of photographs of the land
- AJC/8 Kent Wildlife Trust designation document and map
- AJC/9 Route of footpath PROW application
- AJC/10 Press reports relating to footpath application
- AJC/11 Copy of official map of PROW CW20
- AJC/12 Press reports relating to abuse of land in 2009
- AJC/13 Letter to landowners explaining footpath application - August 2008
- AJC/14 Letter to landowners notifying them of application for village green together with
proof of posting receipts

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

Name	Period of use	Frequency	Activities	Other comments
Mr. D. BARRATT	1999 – present	Monthly	Dog walking, blackberrying, nature walks with children	
Mrs. S. BARRATT	1999 – present	Monthly	Dog walking, walking with children	
Mr. A. BAYS	1987 – 2004	Fortnightly	Dog walking, nature observation	
Ms. L. BURTENSHAW	2007 – present	Daily	Dog walking	
Miss. M. CARTER	1975 – present	Occasionally	Dog walking	
Mr. A. CLARK	1955 – present	Regularly, most days in recent years	Blackberrying, nature observation, photography, walking	'I often meet people walking dogs, jogging and children with parents'
Mr. B. CLARK	1975 – present	Monthly	Playing with children, dog walking, exercise	Observed use by others for walking and children playing (building camps)
Ms. C. CLARK	1998 – present	2-3 times per week	Dog walking	
Mr. D. CLARK	1975 – present	Weekly from 1975 to 85, now occasionally	Playing as a child and now playing with own children	Observed use by others for dog walking, fruit picking, children playing
Mrs. M. CLARK	1989 – present	Monthly	Walking, dog walking, playing with children	
Mrs. F. CORNISH	1998 – present	Daily	Dog walking, nature observation, litter picking	
Mr. R. CORNISH	1998 – present	Weekly	Dog walking, nature observation	
Mrs. J. CUMING	1970 – 2003	Daily	Walking, fruit picking, mushroom picking	
Mrs. P. CUMMING	1981 – present	Fortnightly	Nature watching, dog walking	
Mrs. S. DAVIES	2003 – present	4-5 times per week	Dog walking	
Mr. C. EDWARDS	1967 – present	Weekly	Dog walking	Observed use by others for dog walking and camping
Mrs. D. ELLIS	1998 – present	3-4 times per week	Dog walking, fruit picking, mushroom picking	Observed use by others for dog walking and camping
Mr. J. ELLIS	1998 – present	3-4 times per week	Dog walking, fruit picking	Observed use by others for dog walking and camping
Ms. E. GALE	2003 – present	Weekly	Playing, dog walking, ball games	
Mr. R. HILLS	1948 – 2006	Daily	Playing as a child, dog walking as an adult	Saw others 'most times I was up there'
Mr. J. HOUGHTON	1981 – present	6 times per year	Walking for pleasure and exercise	
Mrs. J. ISOM	2008 – present	1-2 times per week	Dog walking, relaxation	
Mr. N. ISOM	2008 – present	1-2 times per week	Dog walking, relaxation	See others 'on most visits'
Mr. J. JENKINS	1999 – present	Daily	Dog walking	
Mr. A. KEAM	1949 – present	Previously monthly, less now	Dog walking	
Ms. M. LERIGO	1964 – present	Weekly	Blackberrying, dog walking, photography, birdwatching	

Ms. V. LERIGO	1964 – 2006	Occasionally	Blackberrying, dog walking, photography, birdwatching	
Mr. B. MACHIN	1958 – present	Previously 2/3 times per week, now daily	Dog walking, relaxation	
Mrs. I. MACHIN	1975 – present	Weekly	Dog walking, relaxation	
Mr. D. MARTIN	1994 – present	Daily	Dog walking, playing as a child	
Mrs. C. MASTERS	1980 – present	Weekly	Dog walking	Observed use by dog walkers, children playing and camping
Mr. P. MASTERS	1980 – present	Twice weekly	Dog walking	
Mrs. K. McLEAN – CARVELL	2004 – present	Twice weekly	Dog walking, relaxation	Observe use by others at every visit, including camping.
Mr. C. OLSEN	2002 – present	Weekly	Dog walking	
Mrs. V. PEARCE	1999 – present	Weekly	Dog walking	
Mr. S. PHILLIPS	1989 – present	Daily	Dog walking, nature observation	
Mrs. S. PHILLIPS	1989 – present	Weekly	Dog walking, nature observation	
Mrs. V. PONSONBY	2008 – present	4 times per week	Dog walking	
Mrs. J. SEWELL	1988 – present	Daily	Dog walking, fruit picking, bird watching	See other dog walkers on a daily basis
Mr. A. STEWARD	2005 – present	Daily	Dog walking, mountain biking, walking with children	See others 'virtually every day'
Mrs. S. STEWARD	2005 – present	Daily	Dog walking, playing with children, nature watching	
Mrs. M. TAYLOR	1970 – present	Weekly	Dog walking, blackberrying	
Mr. C. WALLACE	1971 – present	Weekly, now almost daily	Dog walking, playing with children	
Mr. D. WATTS	1989 – present	Daily	Dog walking, nature observation	
Mr. B. WEBB	1984 – present	4-5 times per week	Dog walking, nature observation	
Mrs. G. WEBB	1984 – present	Monthly	Dog walking, nature observation, exercise, socialising	
Mr. M. WESTRUP	2009 – present	Daily	Dog walking	
Mr. M. WOOD	2007 – present	Daily	Dog walking	
Mr. A. YOUNG	2003 – present	Weekly	Dog walking, walking	
Mrs. J. YOUNG	1999 – present	Twice weekly	Jogging, dog walking, walking with children	Seen others 'on every occasion I have used the woods'

**APPENDIX D:
Plan showing the locality**



Application to register land known as the Long Field at Angley Road in Cranbrook 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 22nd February 2011.

Recommendation: I recommend that the County Council refers the application to the Planning Inspectorate for determination.

Local Members: Mr. R. Manning

Unrestricted item

Introduction

1. The County Council has received an application to register land known as the Long Field at Angley Road in the parish of Cranbrook as a new Village Green from local resident Mr. P. Allen ("the Applicant"). The application, received on 5th January 2010, was allocated the application number VGA622. A plan of the site is shown at **Appendix A** to this report.
2. Members should be aware from the outset that the purpose of this report is not to determine this application, but rather to consider whether the County Council is in a position to determine this application, for the reasons which are set out in more detail below.

Procedure

3. The application has been made under section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2008.
4. 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;*
5. 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).
6. 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

7. The area of land subject to this application ("the application site") is known locally as the Long Field and is situated at the junction of Angley Road (A229) and Quaker Lane in the village of Cranbrook. The site is approximately 2.1 hectares (5.2 acres) in size and consists of a grassed field. Access to the site is via the recorded Public Footpaths (WC97 and WC99) which cross the application site. The application site is shown in more detail on the plan at **Appendix A**.

Background

8. Members should be aware that the application site is owned by Kent County Council. In 2009, the northern half of the application site was the subject of a planning application by Kent County Council's Adult Social Services Public Private Partnership Team for the construction of a two-storey care home, composed of 40 apartments, communal areas and staff facilities¹.
9. The matter was dealt with by the County Council's Planning Applications Group. The Countryside Access Service was invited to comment on the application, and did so, but only insofar as Public Footpath WC99 was affected. However, in April 2010 the application was withdrawn, pending the outcome of the Village Green application.

The case

10. 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.
11. Included in the application were 70 user evidence questionnaires from local residents detailing their use of the application site over a period in excess of twenty years.

Consultations

12. Consultations have been carried out as required. The following responses have been received.
13. The Cranbrook and Sissinghurst Parish Council has responded as follows: "*in light of the documented case proving the current need for homes for local people and in recognition of the need for homes, medical facilities and community spaces*

¹ Planning Application TW/09/977

including a drop-in centre for local elderly, Cranbrook and Sissinghurst Parish Council resolve to object to the application for the Long Field to receive Village Green status currently before Kent County Council". The Parish Council added that the application site has been used for pasture and rented out over the years to local farmers and that local residents have used the land to access the town along registered Public Rights of Way, but that the Parish Council has no evidence that the field has been used for picnics or sport. The Parish Council also states that permissive notices erected by the landowner in 2007 mean that use since that time has not been 'as of right'.

14. Eight local residents also wrote to express their opposition to the application. Their objections have been made on the basis that the application site is not suitable for Village Green status due to the uneven nature of the site and that they have never seen the field being used for lawful sports and pastimes. Some have stated that they believe the application to be vexatious and motivated only by a desire to prevent any future development of the land.
15. In addition to the objections noted above, twenty-four letters of support were received before, during and after the formal consultation period. These letters of support included a range of comments, both in terms of adding to the evidence of use already submitted in support of the application as well as expressing opposition to the loss of a recreational amenity as a result of the proposed planning application.

Landowner

16. As stated above, the application site is owned by Kent County Council. It is registered with the Land Registry under title number K944526.
17. Objection has been made to the application by the County Council's Property Group on the following grounds:
 - That a notice was erected on the application site in around September 2007 stating "this land is owned by Kent County Council, which grants permission for the use of the land by public [sic] for recreational purposes". The effect of this notice, according to the landowner, was to grant a general permission for the recreational use of the land and thus render any subsequent recreational use not 'as of right'.
 - That a fence was erected in June 2009 which split the land in two and entirely enclosed the northern section of the site, thereby creating a substantial interruption to the recreational use of a large part of the application site. Although the fencing was later cut down in places to facilitate access, such use as did take place after this time was with force and not 'as of right'.
 - That evidence questionnaires from 70 people is insufficient to demonstrate that the land has been used by a significant number of the residents of the locality.
 - That the evidence submitted in support of the application demonstrates that the overwhelming majority of the use of the land has been for walking. The evidence does not differentiate between walking on the existing Public Rights of Way (i.e. across the land en route to somewhere else) and walking which is of a more general recreational nature on the land itself (i.e. wandering). It is

the landowner's position that any walking beyond the use of the footpaths is *de minimis* and insufficient to amount to a general right of recreational.

Applicant's response to the objection from KCC's Property Group

18. As required by Regulation 26 of the 2008 Regulations, copies of all of the representations received were sent to the applicant for comment. The applicant's response is focused on the more substantive objection by the landowner, and makes the following points:

- In relation to the notices, the applicant disputes that these were erected in 2007 and states that, according to the local residents' recollections, it was more likely to be 2008. He adds that, in any event, the notices are irrelevant since section 15(7) of the 2006 Act provides that where permission is granted in respect of the use of the land for lawful sports and pastimes, the permission is to be disregarded in determining whether persons continue to indulge in recreational activities on the land 'as of right'.
- The applicant explains that the 2009 fencing was erected on health and safety grounds in relation to the proposed development of the site and not with the specific intention of preventing the recreational use of the land. This was confirmed by KCC representatives at a site meeting. The fencing is irrelevant because it did not prevent access to a large part of the application site and, even if it were relevant, the two year period of grace set out in section 15 means that the application remains valid.
- In terms of use of the land by a significant number of the local residents, the applicant states that the land has been well used by local residents and the 70 user evidence questionnaires submitted in support of the application only represent a small sample of those who have used the land. Only those who have used the land for a period in excess of 20 years have been included in the application, but there are many more who have used the application site, albeit for a lesser period. The applicant adds that the number of letters received in support of the application as a result of the consultation shows the strength of local feeling in relation to the application site.
- Insofar as lawful sports and pastimes are concerned, the applicant accepts that there has been little use of the field for sports, and walking has been the main activity. However, the applicant strongly disputes the landowner's assertion that walking has been confined to the existing Public Rights of Way. In the applicant's view, the fact that well worn tracks cross the field which are not en route to any specific destination, is very strong evidence that walkers have been enjoying the pastime of recreational walking away from the designated Public Footpaths.

Legal tests and discussion

19. The responsibility for determining applications under section 15 of the Commons Act 2006 normally rests with the County Council in its capacity as the Commons Registration Authority. However, more recently, it has been recognised that there may be circumstances in which it is not appropriate for the County Council to determine an application. Under those circumstances, the application must be referred to the Planning Inspectorate who will take on the responsibility for considering the application (including by the holding of a Public Inquiry where necessary) and issuing a decision.

20. The circumstances referred to above are set out in Regulation 27(3)(a) of the Commons Registration (England) Regulations 2008 which states that an application must be referred to the Planning Inspectorate in cases where:

'the registration authority has an interest in the outcome of the application or proposal such that there is unlikely to be confidence in the authority's ability impartially to determine it'

21. DEFRA's guidance² in this respect states that:

'an authority should not refer a case simply because it has an interest in the outcome, but only where that interest would seriously call into question the authority's ability to determine the matter impartially... an authority [should not] refer a case simply because it (whether an officer, Member, committee or executive) has discharged a function or expressed views on a related matter in a different context. So, for example, the test would be unlikely to be satisfied in relation to an application to register land as a new town or village green if the authority had granted planning permission for development of the land or expressed support for the development.'

But, in [this] example, if the authority itself owned the land, there might not be confidence in the authority's ability to determine the application having regard to the more subjective nature of the criteria for registration in section 15'.

22. The Property Group's position is that it is not necessary for the application to be referred to the Planning Inspectorate, although it does not qualify this stance with any reasons.

23. However, the applicant takes a different view. He explains that the recent planning application was a highly contentious issue locally and, as the landowner and promoter of the planning application, the County Council cannot be unbiased about the outcome of a Village Green application which, if successful, would effectively prevent such development. Although the planning application was withdrawn, the County Council's Planning Applications Group has made a public statement to the effect that there may well be a further planning application in the future (see attached letter at **Appendix B**).

24. Clearly, the test regarding whether or not there is likely to be confidence in the County Council's ability impartially to determine the application is a subjective one. As DEFRA point out, the nature of a Local Authority is such that it undertakes a variety of roles and functions, some of which will unavoidably involve conflicting interests; indeed, the County Council is quite used to dealing with such issues. There is also a further safeguard in the decision-making process in that the Commons Act 2006 imposes a quasi-judicial function on the County Council and unless that function is discharged in an appropriate manner (i.e. according to the strict legal tests set out in section 15 of the Commons Act 2006), then the County Council leaves itself open to a very costly and time-consuming Judicial Review process.

² 'Guidance to commons registration authorities and PINS for the pioneer implementation' (version 1.41, September 2010), paragraphs 7.19.4 and 7.19.5 at pages 81 and 82

25. However, it is equally important that the matter is considered from the point of view of the applicant and the local community who may not have such a detailed understanding of the decision-making process. If the applicant is not confident of the County Council's ability to impartially determine the application, then it is important to consider whether such doubts are reasonably founded. If, as DEFRA say, it is simply a matter of the County Council exercising conflicting functions (i.e. as the Planning Authority and Registration Authority), then it may not be reasonable for the applicant to doubt the County Council's ability to determine the matter impartially.

26. If, however, the County Council has a significant interest in the outcome of the Village Green application because, for example, it owns the land in question and proposes to develop it in the future, then this is likely to cause to a reasonable person to doubt the County Council's ability to determine the matter impartially.

27. In the current scenario, where the County Council owns the land, has sought to develop the land in the recent past and has made a public statement that it may pursue development options in the future, it seems reasonable that the local community might lack confidence in the decision-making process.

Conclusion

28. In light of the comments above, it therefore seems appropriate that this application be referred to the Planning Inspectorate for determination.

29. If, however, Members are not in agreement with the Officer's recommendation, then a further report will be put to a future meeting of the Regulation Committee Member Panel with a view the determination of the application.

Recommendation

30. I recommend that the County Council refers the application to the Planning Inspectorate for determination.

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.
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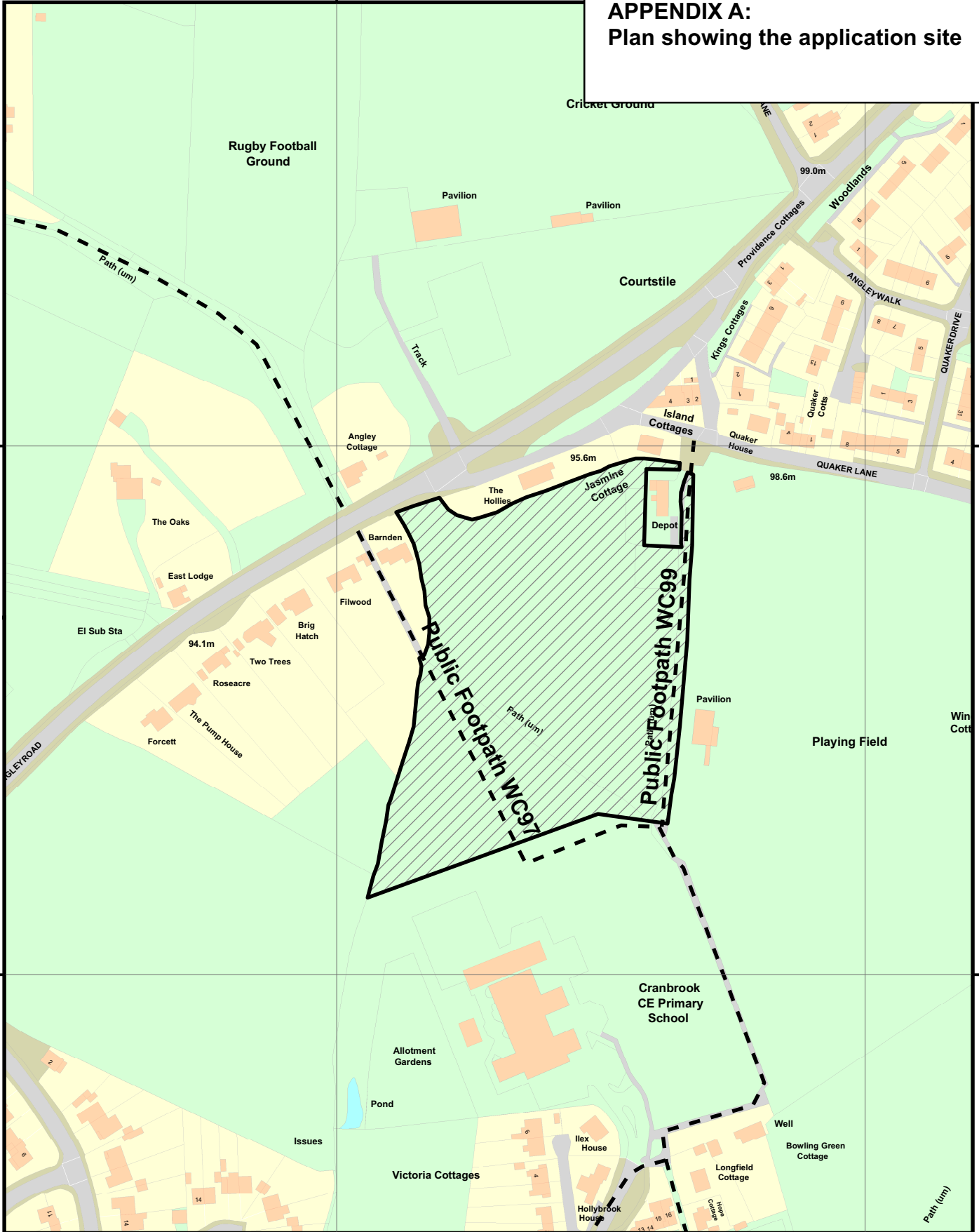
Background documents

APPENDIX A – Plan showing application site

APPENDIX B – Letter from KCC Planning Applications Group dated 06/05/2010

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APPENDIX A:
Plan showing the application site



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**Land subject to Village Green application
at 'Long Field', Angley Road, Cranbrook**



**APPENDIX B:
Letter from KCC Planning
Applications Group dated 06/05/2010**

A Oulton
3 Island Cottages
Quaker Lane
Cranbrook
Kent
TN17 2HF



Planning Applications Group
First Floor, Invicta House
County Hall
Maidstone
Kent ME14 1XX
Fax: 01622 221072
Tel: 08458 247 303

Website: www.kent.gov.uk/planning
Direct Dial/Ext: 01622 221066
Minicom: 08458 247905 (hearing impaired)
Ask for: Miss M Green
Your ref:

Our ref: PAG/TW/09/977
Date: 6th May 2010

Dear Sir/Madam

TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION NO: TW/09/977

PROPOSAL: Application for outline approval for 40 extra care apartments for older people including 20-1 bed apartments and 20-2 bed apartments, residents communal areas and staff facilities

LOCATION: Land off Quaker Lane, Cranbrook, Kent, TN17 2HF

I am writing to notify you that the above planning application has been withdrawn. The applicant has advised that further work is being undertaken with regard to the site, and a second planning application may be submitted in the future.

Yours faithfully,

for Sharon Thompson
Head of Planning Applications Group

DC:05619

