

AGENDA

Kent County Council

REGULATION COMMITTEE MEMBER PANEL

Monday, 11th February, 2008, at 12.00 pm
Darent Room - Sessions House, County
Hall, Maidstone

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: Mr M J Harrison (Chairman), Mr A D Crowther (Vice-Chairman), Mr I S Chittenden, Mr T Gates and Mr I T N Jones.
2. Declarations of Interest by Members for items on the agenda for this meeting
3. Application to register land at Valley Road, Barham as a new Village Green.
(Pages 1 - 18)
4. Application to register land at Huntington Road, Coxheath as a new Village Green.
(Pages 19 - 38)
5. Other Items which the Chairman decides are urgent

Peter Sass
Head of Democratic Services and Local Leadership
(01622) 694002

Friday, 1 February 2008

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Application to register land at Valley Road, Barham (Nr. Canterbury) as a new Village Green

A report by Divisional Director, Environment and Waste to the Kent County Council's Regulation Committee Member Panel on Monday 11th February 2008.

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

Local Members: Mr. M. Northey

Unrestricted item

Introduction

1. The County Council has received an application to register land at Valley Road, Barham as a new Village Green from the Barham Parish Council ("the applicant") who own the land in question. The application, dated 28th August 2007, was allocated the application number 593. A plan of the site is shown on Appendix A to this report and a copy of the application form is attached at Appendix B.

Procedure

2. Since 6th April 2007, applications to register new Village Greens are made under section 15 of the Commons Act 2006: applications prior to this date were made under section 13 of the Commons Registration Act 1965, which has now been repealed (except for outstanding applications that were made under the 1965 Act).
3. Traditionally, village greens derive from customary law and until recently it was only possible to register land as a new village green where certain qualifying criteria were met: i.e. where it could be shown that the land in question had been used 'as of right' for recreational purposes by the local residents for a period of at least 20 years.
4. However, a new provision has been introduced by the Commons Act 2006 which enables the owner of any land to apply to voluntarily register the land as a new Village Green without having to meet the qualifying criteria. Section 15 states:

*"(8) The owner of any land may apply to the Commons Registration Authority to register the land as a town or village green.
(9) An application under subsection (8) may only be made with the consent of any relevant leaseholder of, and the proprietor of any relevant charge over, the land."*
5. Land which is voluntarily registered as a Village Green under section 15(8) of the Commons Act 2006 enjoys the same level of statutory protection as that of all other registered greens and local people will have a guaranteed right to use the

land for informal recreational purposes in perpetuity. This means that once the land is registered it cannot be removed from the Register (other than by statutory process) and must be kept free of development or other encroachments.

6. The procedure for such applications is very simple. Once the application has been made, there is no requirement for the County Council to undertake a public consultation exercise, to advertise the proposal or even to consider the merits of the application. Provided that the County Council is satisfied that the applicant is the owner of the land and that any necessary consents have been obtained (e.g. from a tenant or the owner of a relevant charge), then it is under a duty to grant the application and register the land as a Village Green.

The Case

Description of the land

7. The area of land subject to this application (“the application site”) consists of an area of grassy, unenclosed open space approximately 1.3 acres (0.5 ha) in size situated in the centre of the village of Barham. The land is equipped with a number of benches and litter bins, a parish sign as well as an informal football pitch complete with goal posts, which all indicate that the land is already in general recreational use. Photographs of the site are attached at Appendix C.

Ownership of the land

8. The Parish Council has owned the land since 1956 when it was bequeathed to the Council by way of a Deed of Gift from the previous owner, Mr. Louis Charles Groombridge *‘in consideration of his desire to provide land for the recreation of the children in particular and also the residents in the parish of Barham’*.
9. On receipt of the application, a Land Registry search was undertaken which confirmed the registered ownership of the land by the Barham Parish Council (copy attached at Appendix D).
10. The search also revealed a relevant charge relating to a private right of way with a width of 20ft running from Barham Street to a field along the easternmost edge of the land. The owner of the charge has been contacted and is in agreement with the proposal (letter of consent attached at Appendix E).

The ‘locality’

11. DEFRA’s view is that once land is registered as a Village Green, only the residents of the locality have the legal right to use the land for the purposes of lawful sports and pastimes. It is therefore necessary to identify the locality in which the users of the land reside. At Part 6 of the application, the locality is defined as ‘opposite school, Valley Road, Barham, Canterbury, Kent’. This appears to be more of a description of the location of the land rather than of ‘locality’ in the sense intended by the Commons Act 2006.

12. A locality for these purposes normally consists of a recognised administrative area (e.g. civil parish or electoral ward) or a cohesive entity (such as a village or housing estate). Since the application has been made by Barham Parish Council, it seems appropriate that the locality should therefore be the parish of Barham so that all of the residents of the village have the legal right to use the land. This certainly appears to be what was intended by the 1956 Deed of Gift.

Conclusion

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

Recommendations

14. I recommend that the County Council informs the applicant that the application to register the land at Valley Road, Barham has been accepted, and that the land subject to the application be formally registered as a Village Green.

Accountable Officer:

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

Case Officer:

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

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

Background documents

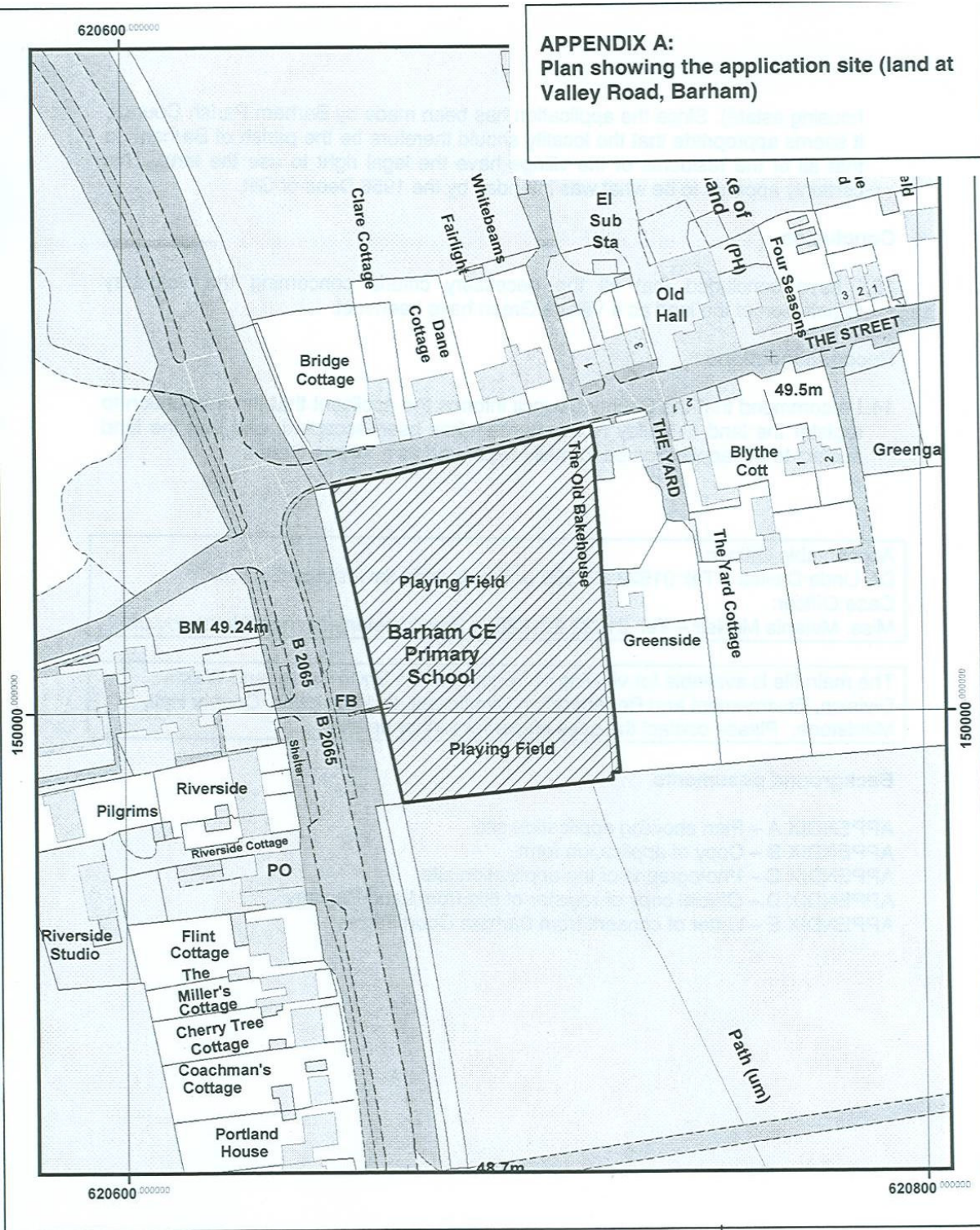
APPENDIX A – Plan showing application site

APPENDIX B – Copy of application form

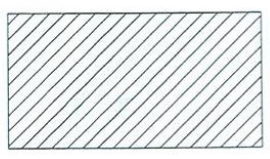
APPENDIX C – Photographs of the application site

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

APPENDIX E – Letter of consent from Barham Court Farms

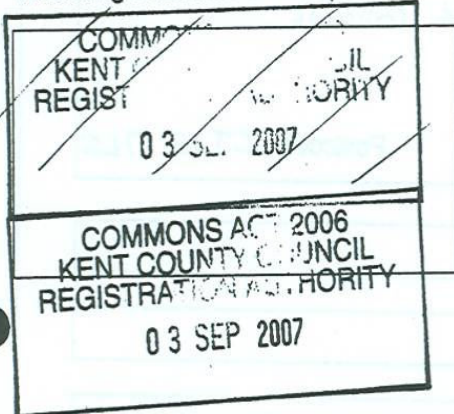


Land subject to
Village Green application
at Valley Road, Barham
(Nr. Canterbury)




Commons Act 2006: Section 15
Application for the registration of land as a Town or Village Green

Official stamp of registration authority indicating valid date of receipt:



Application number:

Register unit No(s):

VG number allocated at registration:

(CRA to complete only if application is successful)

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

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

Note 1
Insert name of registration authority.

1. Registration Authority

To the

Note 2

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

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

Note 3

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

2. Name and address of the applicant

Name:

Full postal address:

 Postcode

Telephone number:
(incl. national dialling code)

Fax number:
(incl. national dialling code)

E-mail address:

3. Name and address of solicitor, if any

Name:

Firm:

Full postal address:

 Post code

Telephone number:
(incl. national dialling code)

Fax number:
(incl. national dialling code)

E-mail address:

Note 4

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

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

4. Basis of application for registration and qualifying criteria

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

Application made under section 15(8):

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

Section 15(2) applies:

Section 15(3) applies:

Section 15(4) applies:

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

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

Note 5

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

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

Note 6

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

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

Name by which usually known:

THE VILLAGE GREEN
BARHAM

Location:

EAST SIDE OF VALLEY ROAD, BARHAM,
CANTERBURY, KENT

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

Common land register unit number (if relevant) *

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

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

OPPOSITE SCHOOL
VALLEY ROAD
BARHAM, CANTERBURY
KENT

Tick here if map attached:

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

Note 7

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

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

A large, empty rectangular box with a black border, intended for the applicant to provide a summary of their case for registering the land as a town or village green. The box is currently blank.

Note 8

Please use a separate sheet if necessary.

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

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

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

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

N/A

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

N/A

Note 9

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

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

10. Supporting documentation

Note 10

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

Please use a separate sheet if necessary.

Copy Land Registry title entries and plan

Note 11

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

11. Any other information relating to the application

NONE


Note 12

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

Date:

28/08/07

Signatures:



REMINDER TO APPLICANT

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

Data Protection Act 1998

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

I, **LINDA JOAN DAVIES**, of 16 The Grove, Barham, Canterbury, Kent, do solemnly and sincerely declare as follows:

1. I am Chairman of Barham Parish Council and I am the person who has signed the foregoing application.
2. The facts set out in the application form are to the best of my knowledge and belief fully and truly stated and I am not aware of any other fact which should be brought to the attention of the Registration Authority as likely to affect its decision on this application, nor of any document relating to the matter other than those (if any) mentioned in parts 10 and 11 of the application.
3. The map now produced as part of this declaration, marked LJD1, is the map referred to in part 5 of the application.
4. I hereby apply under Section 15 (8) of the Commons Act 2006 to register as a green the land indicated on the map. I declare that the land is in the ownership of Barham Parish Council and registered at the Land Registry under title number K896798 and I declare that no consents are required from any other party.

And, I make this solemn declaration conscientiously believing the same to be true and by virtue of the Statutory Declarations Act 1835.

Declared by the said **Linda Joan Davies** at

On the 28th day of *August* 2007

Before me:

BRADLEYS
SOLICITORS

Jayne Sweeney LL.B
Solicitor

19 Castle Street, Dover, Kent CT16 1PU

Solicitor/Commissioner for Oaths



TITLE NUMBER
K896798



KENT : CANTERBURY

ORDNANCE SURVEY MAP REFERENCE:

TR2050SE

SCALE 1:1250 Enlarged from 1:2500

CROWN COPYRIGHT. Produced by HM.L.R. Further reproduction in whole or in part is prohibited without the prior written permission of Ordnance Survey. Licence Number GD 272728.



This title plan shows the general position of the boundaries: it does not show the exact line of the boundaries. Measurements scaled from this plan may not match measurements between the same points on the ground. For more information see Land Registry Public Guide 7 - Title Plans.

This official copy shows the state of the title plan on 6 February 2006 at 11:45:42. It may be subject to distortions in scale. Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original. Issued on 6 February 2006.

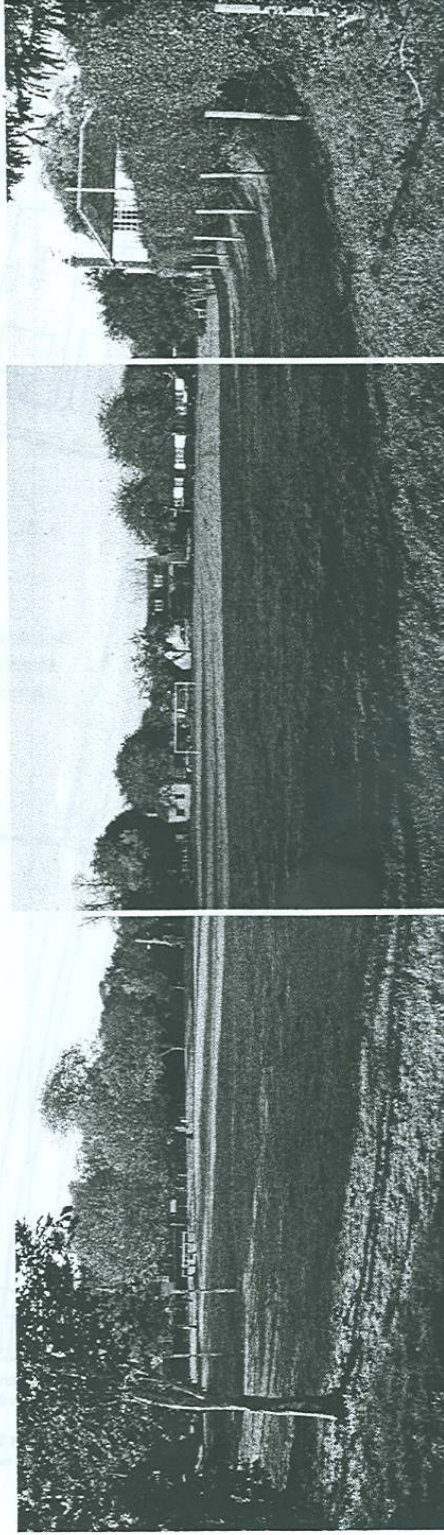
This title is dealt with by the Tunbridge Wells District Land Registry.



**APPENDIX C:
Photographs of application site**



View from Bridge Cottage looking towards the south-east



View from south-eastern corner looking back towards Bridge Cottage

Official copy of register of title

Title number K896798

Edition date 06.02.2006

- This official copy shows the entries in the register of title on 20 September 2007 at 12:09:20.
- This date must be quoted as the "search from date" in any official search application based on this copy.
- The date at the beginning of an entry is the date on which the entry was made in the register.
- Issued on 20 September 2007.
- Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.
- For information about the register of title see Land Registry website www.landregistry.gov.uk or Land Registry Public Guide 1 - *A guide to the information we keep and how you can obtain it.*
- This title is dealt with by Land Registry Tunbridge Wells Office.

A: Property register

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

KENT : CANTERBURY

- 1 (06.02.2006) The Freehold land shown edged with red on the plan of the above title filed at the Registry and being Land on the east side of Valley Road, Barham, Canterbury.

B: Proprietorship register

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

Title absolute

- 1 (06.02.2006) PROPRIETOR: BARHAM PARISH COUNCIL of 8 Hazling Dane, Shepherdswell, Dover, Kent CT15 7LS.
- 2 (06.02.2006) The value stated as at 6 February 2006 was £20,000.

C: Charges register

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

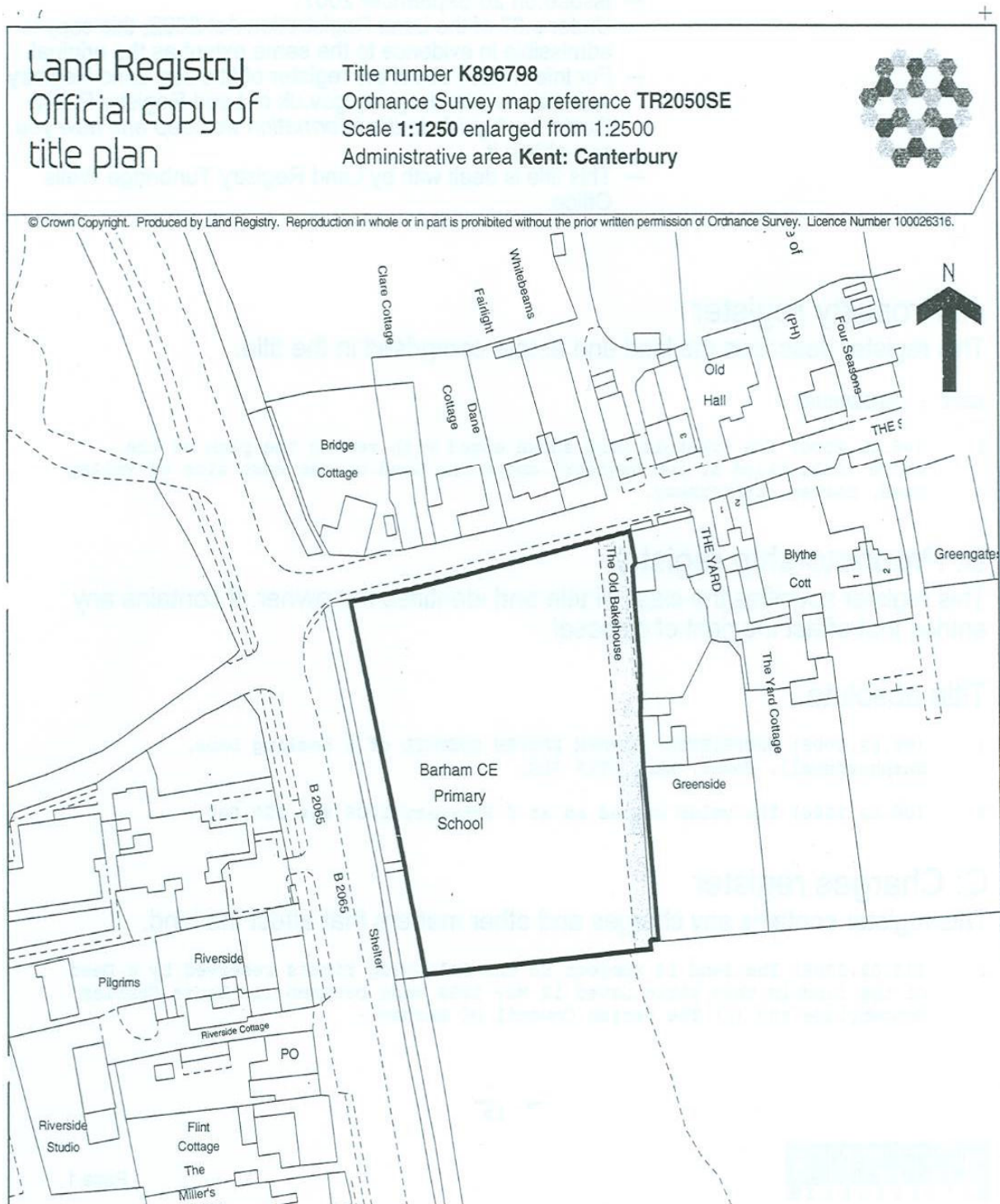
- 1 (06.02.2006) The land is subject to the following rights reserved by a Deed of the land in this title dated 12 May 1956 made between (1) Louis Charles Groombridge and (2) The Parish Council Of Barham:-



"Except and reserved unto the Donor a right of way for all purposes twenty feet in width along the eastern boundary of the said piece of land and coloured brown on the said plan and connecting with Barham Street"

NOTE: The brown land referred to above is tinted blue on the title plan.

End of register



BARHAM COURT

CHURCH LANE, BARHAM, CANTE
TELEPHONE 01227

APPENDIX E:
Letter of consent from Barham Court
Farms

7th December 2007

Barham Parish Council
Mrs.L.J.Davies
Chair Parish Council
16 The Grove
BARHAM
Canterbury
Kent CT4 6PP

Dear Linda

Ref: Right of Way on Village Green

Thank you for your letter of 30th November 2007 regarding the above subject.

We have no objection for our consent to be given to include the Right of Way in the registration of the Village Green, which we donated to the village in 1956, assuming that this is no way detracts from our right of way too.

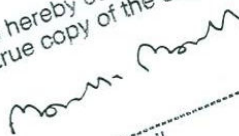
Please get back to us if we have overlooked anything in your letter. We are glad to continue to do something for the village.

Yours sincerely



Keith Groombridge
Partner

We hereby certify this to be
a true copy of the original



Mowl & Mowl
Solicitors

VAT REG. No. 201 2301 51

K.G., D.J. & R.T.GROOMBRIDGE

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Application to register land at Huntington Road, Coxheath as a new Village Green

A report by the Director of Environment and Waste to Kent County Council's Regulation Committee Member Panel on Monday 11th February 2008.

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

Local Members: Mrs. P. Stockell

Unrestricted item

Introduction

1. The County Council has received an application to register land at Huntington Road, Coxheath as a new Village Green from local resident Ms. K. Hodgkiss ("the applicant"). The application, dated 29th March 2006, was allocated the application number 590. A plan of the site is shown on Appendix A to this report and a copy of the application form is attached at Appendix B.

Procedure

2. This application has been made under section 13 of the Commons Registration Act 1965 and regulation 3 of the Common Registration (New Land) Regulations 1969. These regulations came into force on the 3rd January 1970, and regulation 3 enables the making of an application where, in accordance with section 22 of the 1965 Act, after the 2nd January 1970 any land becomes a Town or Village Green.
3. Although the Commons Registration Act 1965 has now been replaced by the Commons Act 2006, because this application was received prior to the coming into effect of the new 2006 Act, it must be dealt with under the former legislation.
4. For the purpose of this application, therefore, section 22 of the 1965 Act (as amended by section 98 of the Countryside and Rights of Way Act 2000) applies. It defines a Village Green as:
'land on which for not less than twenty years a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged in lawful sports and pastimes as of right, and either:
 - (a) *continue to do so, or*
 - (b) *have ceased to do so for not more than such period as may be prescribed, or determined in accordance with prescribed provisions'.*
5. As a standard procedure set out in the regulations, the County Council must notify the owners of the land, every local authority and any other known interested persons. It must also publicise the application in the press and put up a site notice. The publicity must state a period of at least six weeks during which objections and representations can be made.

The Case

6. The area of land subject to this application (“the application site”) consists of a rectangular area of grassed open space situated within a residential housing estate. It is surrounded on three sides by Huntington Road and on the fourth side by a tarmaced path which serves property numbers 11 to 27 (odd numbers only) Huntington Road. However, the electricity sub-station located on the north-eastern corner of the site does not form part from the application and would have to be excluded from any potential registration of the land as a Village Green.
7. The application has been made on the grounds that the application site has become a village green by virtue of the actual use of the land by the local inhabitants for lawful sports and pastimes ‘as of right’ for more than 20 years.
8. Included in the application were 11 user evidence questionnaires from local residents asserting that the application site has been available for free and uninhibited use by local residents for lawful sports and pastimes over the last twenty years and beyond. Also included as part of the application was a copy of a recent planning application concerning the land as well as photographs showing use of the application site. A further 15 statements of use were also submitted by the applicant during the course of the investigation process.

Consultations

9. Consultations have been carried out as required and no objections to the proposal have been received. As a result of the consultation, 13 letters of support were received from local residents describing their knowledge of the application site and further adding to the evidence of use which was submitted with the original application. The Coxheath Parish Council also wrote to express its strong support for the application on the grounds that the land in question has been used by local residents for many years.

Landowner

10. The application site is owned by the Maidstone Housing Trust, which has been contacted as part of the consultation process. In February 2006 (prior to the Village Green application being submitted), the Trust applied for planning permission for the erection of 6 terraced houses with a new access road. However, this application was refused by Maidstone Borough Council in April 2006 on the grounds that the proposal would be detrimental to the character of the area, that it would result in the loss of an important green space used for recreation and that the design of the properties was not appropriate for the area.
11. A copy of the application and relevant documentation has been sent to the Maidstone Housing Trust and, after careful consideration, the Trust has confirmed that it has decided not to oppose the application.

Legal tests

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

- (a) *Whether use of the land has been 'as of right'?*
- (b) *Whether use of the land has been for the purposes of lawful sports and pastimes?*
- (c) *Whether use has been by a significant number of inhabitants of a particular locality, neighbourhood or a neighbourhood within a locality?*
- (d) *Whether use has taken place over period of twenty years or more?*
- (e) *Whether use of the land by the inhabitants is continuing up until the date of registration?*

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

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

13. The definition of the phrase 'as of right' has been considered in recent High Court case law. Following the judgement in the *Sunningwell*¹ case, it is now considered that if a person uses the land for a required period of time without force, secrecy or permission (*nec vi, nec clam, nec precario*), and the landowner does not stop him or advertise the fact that he has no right to be there, then rights are acquired and further use becomes 'as of right'.

14. In this case, there is no evidence of any of the witnesses ever having been verbally challenged or physically prevented from gaining access to the land. Nor is there any suggestion that the use of the land has been secretive or could have gone unnoticed. From the user evidence submitted, the land appears to have been in regular usage since the housing estate was first built in the 1950s; indeed, the fact that the land in question serves as a focal point for the surrounding houses makes it an obvious place for local residents to congregate and recreate.

15. In the absence of any information to the contrary from the landowner, I am satisfied that the use of the land has not been with force, with secrecy or with permission during the requisite 20 year period (1986 to 2006).

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

16. Lawful sports and pastimes can be commonplace activities including dog walking, children playing, picnicking and kite-flying. 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; solitary and informal kinds of recreation are equally as valid.

17. In this case, the evidence demonstrates that a wide range of recreational activities have taken place on the land (such as picnics, dog-walking and ball-games). Included at Appendix C is a table summarising evidence of use by local residents which shows the full range of activities claimed to have taken place.

18. In addition to the large number of adults who have used the land, a number of statements of use have been received from children (under the age of 18) who have used the land as a meeting place to socialise with friends, play games or

¹ *R v. Oxfordshire County Council, ex p. Sunningwell Parish Council (2001)*

engage in sporting activities. This evidence supports the general use of the land as a Village Green by the whole community.

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

19. The Countryside and Rights of Way Act 2000 inserted a new section dealing with locality into section 22 of the 1965 Act. It should now be shown that the use made of the land has been and continues to be by inhabitants of any locality, or of a neighbourhood within a locality. The use need not be exclusively by local inhabitants, but they should be the significant number.
20. In this case, the applicant has helpfully provided a plan showing the area within which users of the land reside (attached at Appendix D) and, at Part 3 the application form, has defined the locality as 'Huntington Road, Coxheath'.
21. The definition of locality for the purposes of a village green application has been the subject of much debate in the courts and there is still no definite rule to be applied. In the *Cheltenham Builders*² 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*'. He later went on to indicate that this could mean that the locality should constitute '*some legally recognised administrative division of the county*'.
22. In this case, I consider that Huntington Road is too narrow a definition to accurately reflect the threshold of use. Indeed, if the entirety of the users of the land only resided in Huntington Road, then this may be insufficient to constitute a locality in the sense in which Parliament intended it to apply. However, in this case, although use is generally from those whose homes are situated immediately opposite the land, there is evidence from people living in surrounding roads. There is also evidence to suggest that the land is used (albeit perhaps occasionally) by those living in the wider Coxheath area. I therefore consider that the correct locality is the administrative parish of Coxheath.
23. In terms of the 'significant number' issue, this was considered in the *McAlpine Homes*³ case, in which it was held that significant did not necessarily mean considerable or substantial: Sullivan J stated that what matters is that the number of users has to be sufficient to indicate that "*their use of the land signifies that it is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers*".
24. It is clear from the summary provided at Appendix C that use of the land has not been insignificant. Although some of the users have not stated their frequency of use, it is clear from the accounts provided by others that the land has been in general use by local on a regular basis. This is supported by the 11 user evidence forms and 15 statements of use and is further supplemented by the letters of support which indicate general use by the community for informal recreation: one letter described how '*on summer evenings, as many as 30 children would be*

² *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council (2003)*

³ *R (Alfred McAlpine Homes Ltd.) v Staffordshire County Council (2002)*

seen playing on the green [which] included many children from other parts of Coxheath', whilst another confirms that use has been observed 'on a daily basis'. I am therefore satisfied that use of the land in this case has been by a significant number of inhabitants of a particular locality.

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

25. The 'usergram' at Appendix E shows that there is evidence of use from the witness statements dating back as far as 1951 (when the housing estate was built). Twelve of the witnesses have used the land for at least 20 years, with another asserting nineteen years' use. A further 23 witnesses have also used the land during the requisite period but for a period of less than 20 years. It does not matter that some people have used the land for less than 20 years provided that the user evidence, when considered as a whole, shows general use over a 20 year period. This is clearly the case here, as illustrated by the usergram.

26. It is therefore evident that use has taken place for a full period of at least twenty years, with some witnesses attesting to use over a far longer period.

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

27. The recent amendment made by the Countryside and Rights of Way Act 2000 required that use of the claimed green continues up until the date of registration 'as of right'. However, partly in response to the large number of village green applications which were being defeated simply because landowners were erecting fences or notices at the last minute prior to the determination of applications affecting their land, this requirement was overturned by the House of Lords in the *Oxfordshire*⁴ case. It is now held that use need only take place up until the date of application and not necessarily continue to the date of registration.

28. In this case, the open nature of the site means that people need only step onto the application site from a public highway without meeting any barriers or obstructions. The only way in which access could be prevented is to fence the site in its entirety: no mention is made of this ever having happened by any of the witnesses and there is no evidence of the remains of any fencing visible on the site itself. I am therefore satisfied that use of the land by the local inhabitants did continue up until (and beyond) the date of application.

Conclusion

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

⁴ *Oxfordshire County Council v Oxford City Council and Catherine Mary Robinson* (2006)

Recommendations

30. I recommend that the County Council informs the applicant that the application to register the land at Huntington Road, Coxheath has been accepted, and that the land subject to the application be formally registered as a Village Green.

Accountable Officer:

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

Case Officer:

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

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

Background documents

APPENDIX A – Plan showing application site

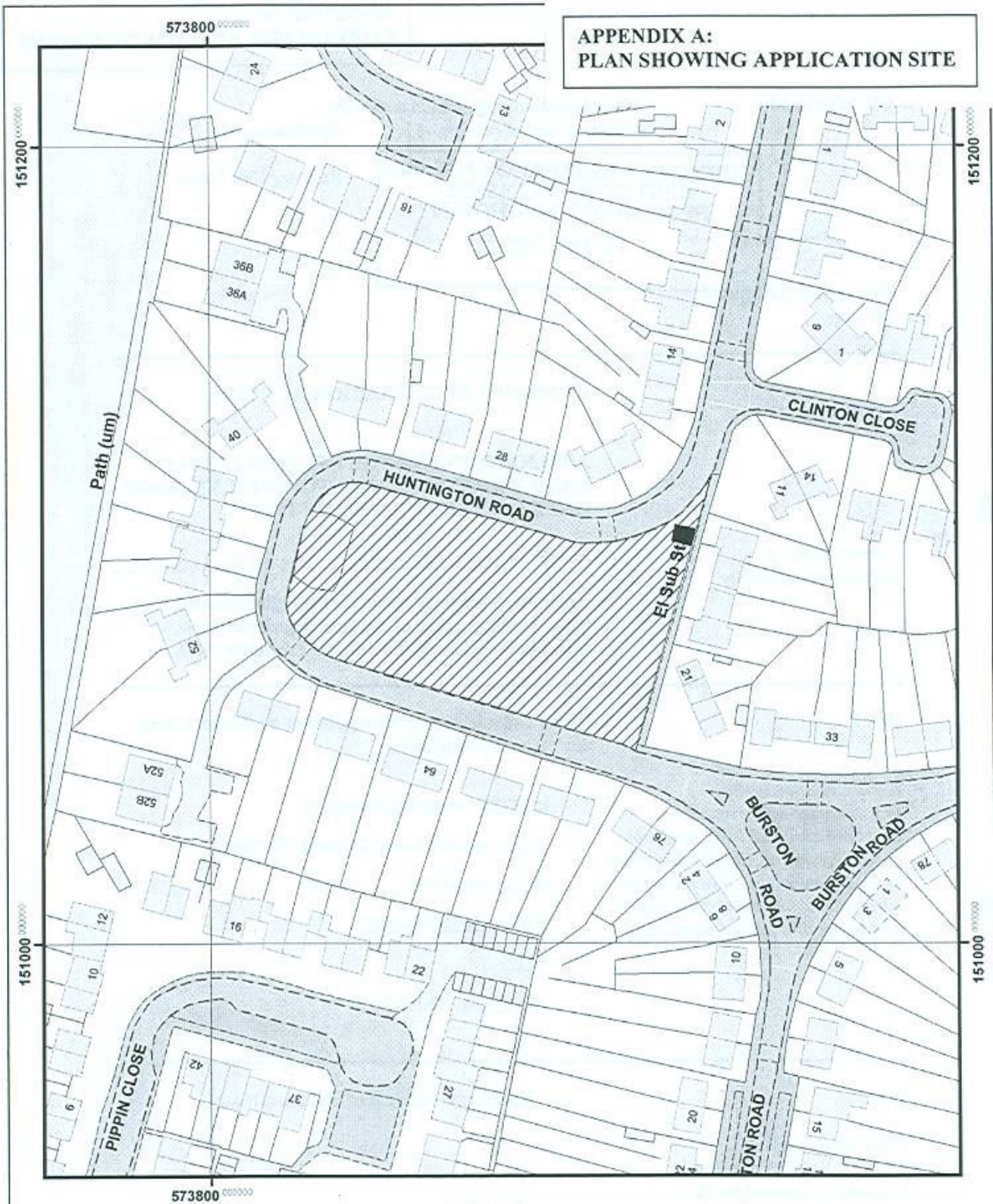
APPENDIX B – Copy of application form

APPENDIX C – Table summarising user evidence

APPENDIX D – Map showing the locality

APPENDIX E – ‘Usergram’ showing period of use

**APPENDIX A:
PLAN SHOWING APPLICATION SITE**



Land subject to
Village Green application
at Huntington Road,
Coxheath





Register Unit No(s)

VG

VG

This section for official use only

SECTION 13

COMMONS REGISTRATION ACT 1965

APPLICATION FOR THE REGISTRATION OF
LAND WHICH BECAME A TOWN OR VILLAGE
GREEN AFTER 2ND JANUARY 1970

¹ insert name of
registration authority

To the ¹ KENT COUNTY COUNCIL

Application is hereby made for the registration as a
town or village green of the land described below,
which became so registrable after 2 January 1970.

Part 1

Name and address of the applicant or (if more than
one) of every applicant

*(Give Christian names
or forenames and surname
or, in the case of a body corporate
or unincorporate, the full title of the
body. If part 2 is not completed all
correspondence and notices will be
sent to the first named applicant).*

KATE HODGKISS
72 HUNTINGTON ROAD
COXHEATH
MAIDSTONE
KENT
ME17 4DY

Part 2

Name and address of solicitor, if any.

*(This part should be
completed only if a solicitor
has been instructed for the
purposes of the application.
If it is completed, all correspondence
and notices will be sent to the
solicitor)*

N/A.

Part 3

Particulars of the land to be registered, i.e. the land claimed to have become a town or village green

Name by which usually known THE GREEN

Locality HUNTINGTON ROAD, COXHEATH,
MAIDSTONE, KENT ME17

Colour on plan herewith
HATCHED BLUE

Part 4

On what date did the land become a town or village green?

15 MARCH 2006.

Part 5

How did the land become a town or village green?

BY THE ACTUAL USE OF THE LAND TO BE REGISTERED BY THE LOCAL INHABITANTS FOR LAWFUL SPORTS AND PASTIMES AS OF RIGHT FOR MORE THAN TWENTY YEARS.

Part 6

Name and address of every person whom the applicant believes to be an owner, leasee, tenant or occupier of any part of the land claimed to have become a town or village green (if none are known, write 'none')

MAIDSTONE HOUSING TRUST LIMITED
WHATMAN HOUSE, ST LEONARD'S ROAD
ALLINGTON, MAIDSTONE, KENT ME16 0LS

Part 7

For applications to register substituted land (see Note 5); to be disregarded in other cases.

Particulars of the "taken land" i.e. the land which ceased to be a town or village green (or part thereof) when the land described in part 3 became a town or village green (or part)

Name by which usually known

Locality

N/A

Colour on plan herewith (if any)

If registered under the 1965 Act, register unit No(s)

Part 8

List of supporting documents sent herewith, if any.
(If none are sent, write "none")

- EVIDENCE QUESTIONNAIRES + SIGNED MAP A
- PHOTOGRAPHS
- SUPPORTING LETTERS / NOTES
- PLAN B

Part 9

If there are any other facts relating to the application which ought to be brought to the attention of the registration authority (in particular if any person interested in the land is believed to dispute the claim that it has become a town or village green) full particulars should be given here. (Continue on the back if necessary)

- AN APPLICATION FOR PLANNING PERMISSION HAS BEEN MADE BY MAIDSTONE HOUSING TRUST TO DEVELOP PART OF THE LAND TO BE REGISTERED A COPY OF PLANNING APPLICATION NUMBER MA/06/03125 IS ENCLOSED.
- PLEASE SEE ENCLOSED COVERING LETTER.

²If the application must be signed

Date 29 MARCH 2006

by or on behalf of each individual applicant, and by the secretary or some

Signatures ² Kate Hodgkiss

other duly authorised officer of any applicant which is a body corporate

or unincorporate

(See Note 9)

STATUTORY DECLARATION IN SUPPORT

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

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

I, ¹ KATE HODGKISS solemnly and sincerely declare as follows:-

²Delete and adapt as necessary
³Insert name if applicable

1. ² I am [(the person ~~(one of the persons)~~ who (has) ~~(have)~~ signed the foregoing application) ~~(the solicitor to (the applicant) (one of the applicants))~~]

2. I have read the Notes to the application form.

3. The facts set out in the application form are to the best of my knowledge and belief fully and truly stated and I am not aware of any other fact which should be brought to the attention of the registration authority as likely to affect its decision on this application, not of any document relating to the matter other than those (if any) mentioned in parts 8 and 9 of the application.

⁴Insert "marking" as on plan

4. The plan now produced and shown to me marked ⁴ PLAN C is the plan referred to in Part 3 of the application.

⁵Delete this paragraph if there is no plan referred to in Part 7

~~5. ⁵ The plan now produced and shown to me marked ⁴ _____ is the plan referred to in Part 7 of the application.~~

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act 1835.

BERRY & BERRY
SLENCREST HOUSE
3 TONBRIDGE ROAD
MAIDSTONE
KENT ME16 9EL

Declared by the said KATE HODSKISS)

72 HUNTINGTON RD, COXHEATH
MAIDSTONE, KENT ME17 4DY
at SLENCREST HOUSE, 3 TONBRIDGE
ROAD, MAIDSTONE
in the COUNTY of KENT.....)

Kate Hodkiss
Signature of Declarant

this 29TH day of MARCH 2006

Before me

Signature ANTONY HARDEN.....

Address SLENCREST HOUSE.....

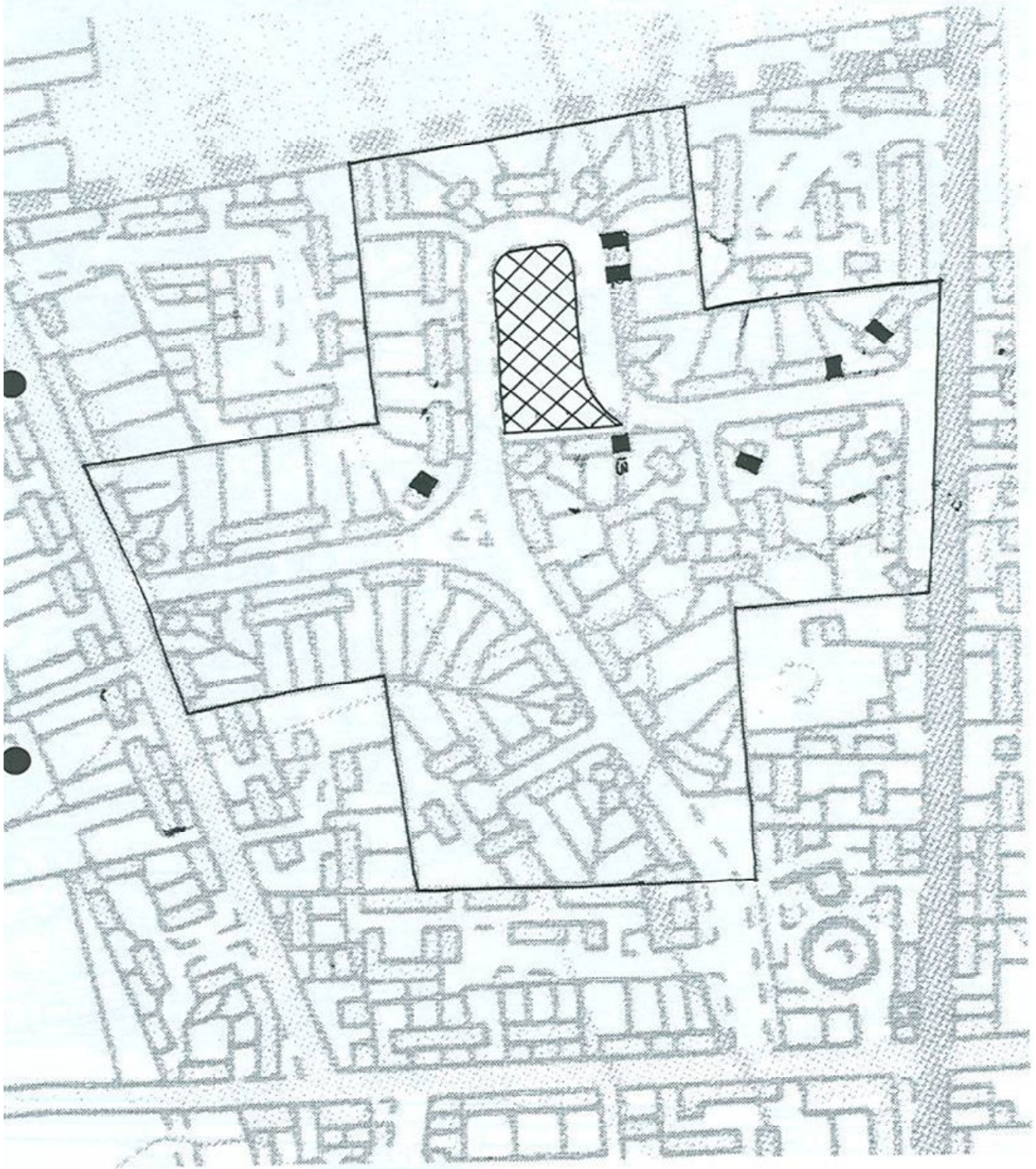
3 TONBRIDGE RD MAIDSTONE KENT.....

Qualification SOLICITOR.....

BERRY & BERRY
SLENCREST HOUSE
3 TONBRIDGE ROAD
MAIDSTONE
KENT ME16 8PL

REMINDER TO OFFICER TAKING DECLARATION:
Please initial all alterations and mark any plan as an exhibit.

Map A





Firing and test ranges in the area. Danger! Observe warning notices
 Champs de tir et d'essai. Danger! Se conformer aux avertissements
 Schiess- und Erprobungsgebiete. Gefahr! Warnschilder beachten

PLAN B

GENERAL FEATURES

- ▬ Current or former place of worship with tower
- ▬ Current or former place of worship with spire, minaret or dome
- Place of worship

- Gravel pit
- Other pit or quarry

- Sand pit
- Landfill site or slag heap

ARCHAEOLOGICAL

- + Site
- ⊕ 1066 Site

See over

Scale 1:25 000



PLAN C

TITLE NUMBER
K868106

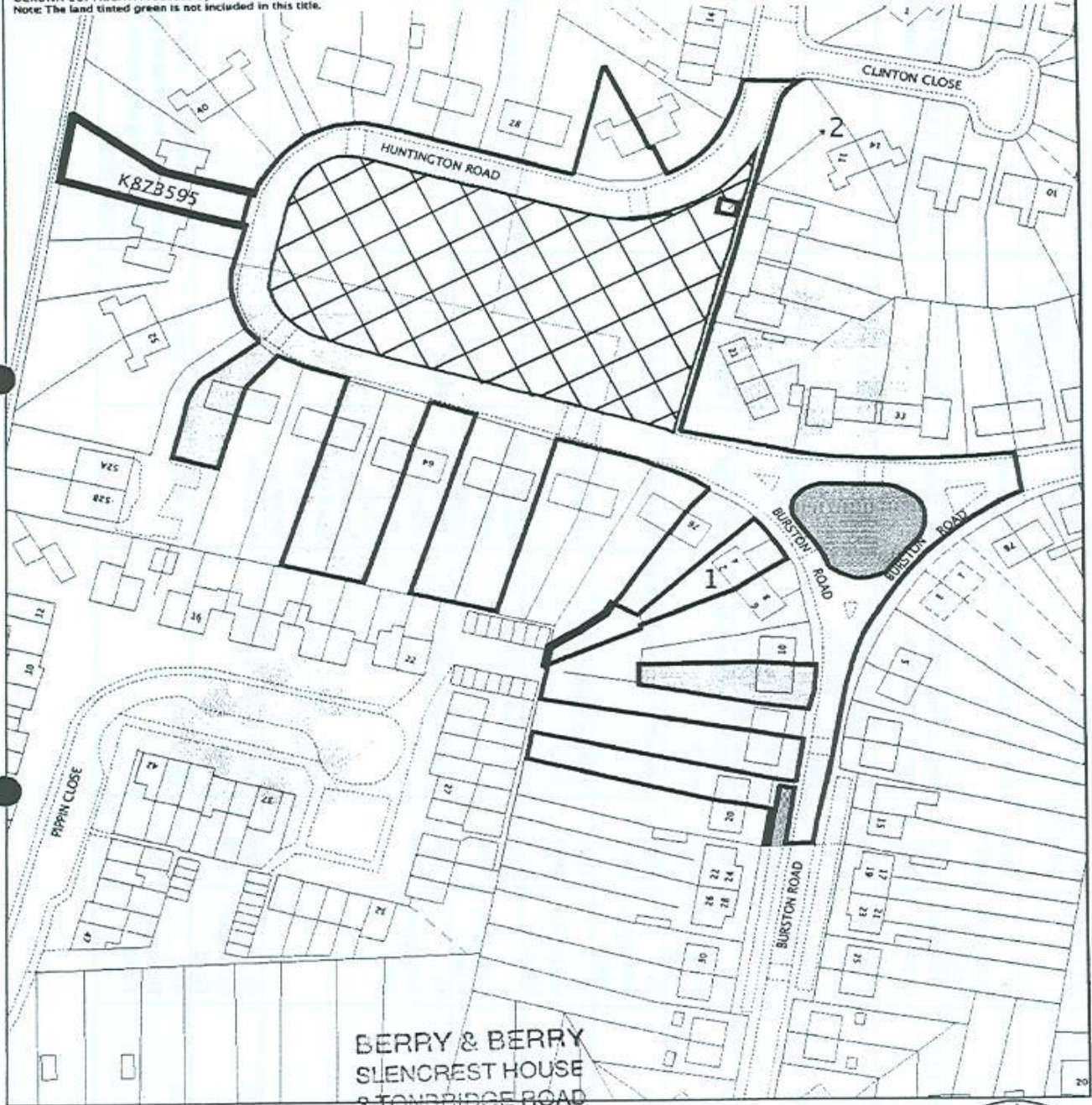
KENT : MAIDSTONE



ORDNANCE SURVEY MAP REFERENCE: **TQ7351SE**

SCALE: **1:1250**

CCROWN COPYRIGHT. Produced by HMLR. Further reproduction in whole or in part is prohibited without the prior written permission of Ordnance Survey. Licence Number GD272728.
Note: The land tinted green is not included in this title.



**BERRY & BERRY
SLENCREST HOUSE
3 TONBRIDGE ROAD
MAIDSTONE
KENT ME16 8RL**



This is the exhibit marked "Plan C" referred to in the Statutory Declaration of KATE HODGKISS made the 29th Day of March 2006

This Official Copy is incomplete without the preceding notes page.

Appendix C: Table summarising user evidence

NAME	TYPE OF EVIDENCE	ADDRESS	PERIOD OF USE	ACTIVITIES	FREQUENCY OF USE	CHALLENGES/ DETERRENTS TO USE?	COMMENTS
Mrs. K. Brook-child	ST	12 Huntington Road	2001 – 2007	Football, rounders, cricket	Not stated	None	
Mr. and Mrs. J. Collins	ST + LS	13 Burston Road	1974 – 2007	Dog-walking, children's games, walking etc.	Not stated	None	Has observed wide range of activities taking place. Land is widely used by local children.
Mr. N. Collins	ST	13 Burston Road	1974 – 2007	Dog-walking, childrens games, recreational purposes	Not stated	None	
Mr. T. Collins	ST	13 Clinton Close	1987 – 2006	Ball games, meeting friends, general recreation and relaxation	Not stated	None	
Ms. C. Denton	ST	19 Huntington Road	2003 – 2007	Football, cricket and other sports	Not stated	None	
Miss. J. Duncan	ST	26 Huntington Road	1992 – 2007	Bike-riding, football, walking	Not stated	None	
Mr. P. Duncan	ST	26 Huntington Road	1992 – 2007	Walking, cycle-riding, football	Not stated	None	
Mrs. J. Dunk	UEF	6 Culpepper Road	1958 – 1964	Playing with children	Mainly during school holidays		Silver jubilee celebrations took place on the land
Mr. and Mrs. W. Dunn	UEF + LS	10 Culpepper Road	1971 – 2006	Walking for exercise	Weekly with children, more often during school holidays. Now use it twice weekly for walking	None	
Mr. C. Falcus	ST	84 Huntington Road	2000 – 2006	Mainly to play football	Not stated	None	
Mr. and Mrs. G. Foster	LS	44 Huntington Road	1977 – 2007	Not stated	Not stated	Not stated	Have observed use of the land on a daily basis. Own children played on the land along with approx. 30 foster children

Mr. K. Fox	ST	45 Huntington Road	1961 – 2006	Playing with children, exercising dogs	Most days	None	Own children used land for football in the winter and cricket in the summer. On summer evening shave observed as many as 30 children playing on the green, incl. those form other parts of Coxheath. Grandchildren and great- grandchildren have used the land.
Mr. P. Fox	ST	45 Huntington Road	1985 – 2000	Athletics, football	Not stated	None	
Mr. and Mrs. Genn	UEF	32 Huntington Road	1965 – 1973, then 1998 – 2006	Games, dog-walking, tennis (summer only)	Daily	None	Silver jubilee celebrations took place on the land
Ms. H. Hickes	ST	28 Huntington Road	1998 – 2007	Dog-training, ball games with children	Not stated	None	
Ms. K. Hodgkiss	ST	72 Huntington Road	2005 – 2007	Walking, playing Frisbee, dog-walking	Not stated	None	
Miss. H. Jopson	ST	9 Clinton Close	2007	Walking, football, bike- riding, meeting friends	Not stated	None	
Mrs. G. Landa	UEF	36 Huntington Road	1951 – 2006	walking	Constantly	None	
Mr. A. Letherby	ST	10 Clinton Close	2000 – 2006	'lawful sports and pastimes'	Not stated	None	
Ms. S. Letherby	ST	10 Clinton Close	2000 – 2006	'lawful sports and pastimes'	Not stated	None	
Mr. and Mrs. D. Mann	LS	41 Huntington Road	1989 – 2007	Recreation, playing with children	Not stated	Not stated	The land is an important and valued amenity in our local area and is in almost constant use, especially during summer months.
Mr. P. McMaster	ST	28 Huntington Road	1998 – 2007	Exercising dogs, meeting friends, football, general recreation	Not stated	None	
Ms. J. Pronger	UEF	Former resident of Huntington Road	1953 – 1991	Street parties, picking dandelions (for wine making), playing with children	Most days	None	Celebrations took place on the silver jubilee and for the wedding Charles and Diana

**APPENDIX E:
USERGRAM SHOWING PERIOD
OF USE BY WITNESSES**

User	86	87	88	89	90	91	92	93	94	95	96	97	98	99	00	01	02	03	04	05	06	Dates		
Mrs. K. Brook-child																							2001 - 2007	
Mr. + Mrs. J. Collins																								1974 - 2007
Mr. N. Collins																								1974 - 2007
Mr. T. Collins																								1987 - 2006
Ms. C. Denton																								2003 - 2007
Miss. J. Duncan																								1992 - 2007
Mr. P. Duncan																								1992 - 2007
Mrs. J. Dunk																								1958 - 1964
Mr. + Mrs. W. Dunn																								1971 - 2006
Mr. C. Falous																								2000 - 2006
Mr. K. Fox																								1961 - 2006
Mr. P. Fox																								1985 - 2000
Mr. and Mrs. Genn																								1998 - 2006
Ms. H. Hickes																								1998 - 2007
Ms. K. Hodgkiss																								2005 - 2007
Miss. H. Jopson																								2007 only
Mrs. G. Landia																								1951 - 2006
Mr. A. Letherby																								2000 - 2006
Ms. S. Letherby																								2000 - 2006
Mr. and Mrs. D. Mann																								1989 - 2007
Mr. P. McMaster																								1998 - 2007
Ms. J. Pronger																								1953 - 1991
Mrs. E. Roberts																								1951 - 2006
Mr + Mrs. A. Towner																								1976 - 2006
Mr. + Mrs. F. Towner																								1950 - 2006
Mrs. K. Tuffin																								1951 - 2006
Mr. G. Woollett																								1951 - 2006

Notes:
The date of application is 2006 and thus the twenty year 'material period' is 1986 - 2006. Use by witnesses is stated to be up until 2006 (the date their evidence forms were signed) or 2007 (the date their statements were signed). However, it is acknowledged that it most cases they may well still be using the application site for lawful sports and pastimes.