



AGENDA

Kent County Council

REGULATION COMMITTEE MEMBER PANEL

Tuesday, 20th March, 2012, at 1.00 pm
Culverstone Community Hall, White Post
Lane, Gravesend DA13 0TN

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

Tea/Coffee will be available 15 minutes before the meeting

Membership

Mr M J Harrison (Chairman), Mr A D Crowther (Vice-Chairman), Mr J A Davies,
Mr S J G Koowaree and Mr T Gates

UNRESTRICTED ITEMS

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

1. Membership and Substitutes
2. Declarations of Interest for items on the agenda
3. Application to register land at Culverstone Green, Mountfield Close at Meopham as a new Village Green (Pages 1 - 20)
4. Transfer of Rights of Common at Higham Common (CL86) (Pages 21 - 36)
5. Other Items which the Chairman decides are Urgent

EXEMPT ITEMS

(At the time of preparing the agenda there were no exempt items. During any such items which may arise the meeting is likely NOT to be open to the public)

Peter Sass
Head of Democratic Services
(01622) 694002

Monday, 12 March 2012

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Application to register land at Mountfield Close at Culverstone Green as a new Village Green

A report by the Head of Regulatory Services to Kent County Council's Regulation Committee Member Panel on Tuesday 20th March 2012.

Recommendation: I recommend that the applicant be informed that the application to register land at Mountfield Close at Culverstone Green as a Village Green has not been accepted.

Local Member: Mr. M. Snelling

Unrestricted item

Introduction

1. The County Council has received an application to register land at Mountfield Close at Culverstone Green in the parish of Meopham as a new Town or Village Green from local resident Mrs. B. Field ("the applicant"). The application, made on 18th August 2010 was allocated the application number VGA630. 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 2008 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 grass and woodland of approximately 1.3 acres (0.5 hectares) in size situated adjacent to Mountfield Close at Culverstone Green, in the parish of Meopham. The application site is shown in more detail on the plan at **Appendix A**.
7. As will be noted from the plan, the application site forms a distinct part of a wider area known as Culverstone Recreation Ground. The greater part of the recreation ground (i.e. the part not subject to the Village Green application) comprises a community centre, a car park, playgrounds, and a large grass open space laid out as football pitches and edged with woodland areas.
8. There are no recorded Public Rights of Way on or abutting the application site, but access is available to it from the unfenced boundary with Mountfield Close or via a pedestrian gate leading from the neighbouring Village Green (VG6) adjacent to Wrotham Road (A227).

The case

9. The application has been made on the grounds that the application site has become a Town or Village Green by virtue of the actual use of the land by the local inhabitants for a range of recreational activities ‘as of right’ for more than 20 years.
10. Included in the application were 17 user evidence questionnaires detailing the recreational use of the land by current and former local residents, as well as photographs showing the application site. A summary of this evidence in support of the application is attached at **Appendix C**.

Consultations

11. Consultations have been carried out as required but no comments (other than the landowner’s response detailed below) have been received.

Landowner

12. As noted above, the application site forms part of a wider area known as Culverstone Recreation Ground, which is owned by Gravesham Borough Council (“the Borough Council”) and is registered with HM Land Registry under title number K414288.
13. The land was originally acquired by the former Strood Rural District Council by deed of transfer dated 29th March 1974, but became vested in Gravesham Borough Council upon local government reorganisation under the Local Government Act 1972. It is not known under what specific powers the Strood Rural District Council acquired the application site (because the deed of transfer

does not specify the powers of acquisition used), but there is evidence to suggest that the land was acquired in exercise of powers contained in the Physical Training and Recreation Act 1937.

14. The Borough Council, as landowner, has objected to the application on the basis that the land was originally acquired, and remains held by the Borough Council, specifically for the purposes of public recreation. As such, any recreational use of the application site as may have taken place has been, as far as the Borough Council is concerned, 'by right' in exercise of an existing right and not 'as of right'.

Legal tests

15. In dealing with an application to register a new Town or Village Green the County Council must consider the following criteria:
- (a) *Whether use of the land has been 'as of right'?*
 - (b) *Whether use of the land has been for the purposes of lawful sports and pastimes?*
 - (c) *Whether use has been by a significant number of inhabitants of a particular locality, or a neighbourhood within a locality?*
 - (d) *Whether use of the land 'as of right' by the inhabitants has continued up until the date of application or meets one of the criteria set out in sections 15(3) or (4)?*
 - (e) *Whether use has taken place over period of twenty years or more?*

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

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

16. In order to qualify for registration as a Village Green, recreational use of the application site must have taken place 'as of right'. This means that use must have taken place without force, without secrecy and without permission (*'nec vi, nec clam, nec precario'*).
17. In this case, the application site forms part of an established recreation ground and, as such, there is no suggestion that any use of the land has been with force or in secrecy. However, in cases where land is owned by the local authority, it will be important to determine whether or not recreation use of the application site by the local inhabitants has been by virtue of any form of permission. Use which is in exercise of any permission (express or implied) will not be 'as of right'.
18. Local authorities have various powers to acquire and hold land for a number of different purposes to assist in the discharge of their statutory functions. For example, a local authority can acquire land specifically for the purposes of providing housing or constructing a new road. The mere fact that a local authority owns land therefore does not automatically mean that the local inhabitants are entitled to conduct informal recreation on it. However, local authorities do also have powers to acquire land for the purposes of public recreation, such as playing fields and parks. In those cases, the land is provided specifically for the purposes of public recreation.
19. In considering a Village Green application in relation to local authority owned land, it will therefore be important to identify the powers under which the land is

held by the local authority: if the local authority already holds the land specifically for the purposes of public recreation, then use of the application site is generally considered to be by virtue of an existing permission and, hence, is not 'as of right'.

Is the application site held for the purposes for public recreation?

20. As noted above, the application site was originally acquired by the former Strood Rural District Council ("Strood RDC") before becoming vested in the Borough Council. The deed of transfer is silent as to the powers used to acquire the land and, as such, it has therefore not been possible to establish with any certainty the power of acquisition used by the former Strood RDC.
21. There is, however, evidence available from other sources to suggest that the land was acquired under the Physical Training and Recreation Act 1937 ("the 1937 Act"). The Borough Council's 'terrier of property' recording the Council's landholdings notes that the land was acquired under the 1937 Act and a letter from the Borough Council's solicitors to the Land Registry dated 5th August 1974 states that *'the purchase was under the Physical Training and Recreation Act 1937'*. Furthermore, the minutes from a meeting of the Borough Council's Policy and Resources Committee on 2nd December 1975 record that *'the Borough Secretary reported that in March 1974, the former Strood Council and the trustees of the Culverstone Community Association had purchased land off Whitepost Lane, Culverstone, the Council's area being for use under the Physical Training and Recreation Acts and the Association's for the erection of a community centre'*.
22. In the absence of any express reference in the deed of transfer, it is therefore necessary to consider whether it is possible to infer an acquisition under the 1937 Act in light of the documents referred to above. Case law suggests that where there is material from which it can be inferred that the application site was acquired (or subsequently appropriated) to specific statutory provision, such an inference may properly be drawn notwithstanding the absence of any express reference within a contemporaneous document¹.
23. In this case, there is consistent reference, not only in formal documents but also throughout Council minutes, of the land being acquired and used for recreational purposes. The former Strood RDC's Sports Facilities Working Party, in their first report dated 13th July 1971, make specific reference to there being various statutory powers available to acquire land for recreational purposes *'which in the main were contained in the Physical Training and Recreation Act 1937'*. At the time that the application site was acquired by the former Strood RDC, the Council was therefore fully aware of the provisions contained in the 1937 Act.
24. The fact that there are a number of documents pointing towards the land being held under the 1937 Act is good evidence to support the proposition that the land is held by the Borough Council for the purposes of public recreation.

¹ *AG v Poole Corporation* [1938] Ch 23

Has use of the application site been 'as of right'?

25. There is no specific legal authority for the proposition that land that is held by a local authority under the Physical Training and Recreation Act 1937 is not capable of registration as a Village Green. However, there exist strong judicial precedents to suggest that this is the case.
26. In *Beresford*², the House of Lords considered the effect of a similar provision (namely the Open Spaces Act 1906) on an application to register land as a Town or Village Green and Lord Walker said this: *"where land is vested in a local authority on a statutory trust under section 10 of the Open Spaces Act 1906, inhabitants of the locality are beneficiaries of a statutory trust of a public nature, and it would be very difficult to regard those who use the park or other open space as trespassers... the position would be the same if there were no statutory trust in the strictest sense, but land had been appropriated for the purpose of public recreation"*.
27. More recently, in *Barkas*³, the High Court considered the effect of land that was laid out as a recreation ground by a local authority under section 80 of the Housing Act 1936. The judge held that the local authority had a power to provide a recreation ground and, if it did so, the public were legally entitled to use the land; it would be absurd to regard the public as trespassers on the recreation ground under those circumstances.
28. In this case, the documents refer to the land having been acquired under the Physical Training and Recreation Act 1937 ("the 1937 Act"). Section 4 of the 1937 Act provided that:
"A local authority may acquire, lay out, provide with suitable buildings and otherwise equip, and maintain lands, whether situated within or without their area, for the purposes of gymnasiums, playing fields, holiday camps or camping sites..."
29. Following the enactment of the Local Government (Miscellaneous Provisions) Act 1976 ("the 1976 Act"), the Physical Training and Recreation Act 1937 was repealed, and all land that had been previously held under section 4 of the 1937 Act became held under section 19 of the 1976 Act. Section 19 of the 1976 Act contained very similar, albeit more wide ranging, provisions:
"A local authority may provide, inside or outside its area, such recreational facilities as it thinks fit...".
30. Throughout the relevant twenty-year period (see below), the land has been held by the Borough Council specifically for the purposes of public recreation. The land has been made available and used in a manner that is entirely consistent with the statutory powers under which it is held – i.e. for unrestricted general recreational use. Therefore, any recreational use of the land as has taken place has been 'by right' and not 'as of right'.

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

³ *R (Barkas) v North Yorkshire County Council* [2011] EWHC 3653 (Admin)

(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. Legal principle does not require that rights of this nature be limited to certain ancient pastimes (such as maypole dancing) or for organised sports or communal activities to have taken place. The Courts have held that *'dog walking and playing with children [are], in modern life, the kind of informal recreation which may be the main function of a village green'*⁴.
32. The summary of evidence of use by local residents at **Appendix C** shows the activities claimed to have taken place on the application site. The majority use of the application site has been for walking (with or without dogs), but there is also evidence of use by children playing and for blackberrying.
33. It is, however, unclear as to whether all of the witnesses were aware of the extent of the application site as some refer to dog shows and football taking place on the land. Dog shows and organised games of football are more likely to have taken place on the main part of Culverstone Recreation Ground and, as such, this casts some doubt on the evidence of some of the witnesses because the recreational use listed in their user evidence questionnaires may not be confined purely to the application site.

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

34. 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.
35. 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*⁵ 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'*.
36. In cases where the 'locality' is so large that it is difficult to show that the application site has been used by a significant number of people from that locality (as is the case here), it will be necessary to consider whether there is a relevant 'neighbourhood' within the wider locality.

⁴ *R v Suffolk County Council, ex parte Steed* [1995] 70 P&CR 487 at 508 and approved by Lord Hoffman in *R v. Oxfordshire County Council, ex parte Sunningwell Parish Council* [1999] 3 All ER 385

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

37. On the subject of neighbourhood, the Courts have held that *'it is common ground that a neighbourhood need not be a recognised administrative unit. A housing estate might well be described in ordinary language as a neighbourhood... The Registration Authority has to be satisfied that the area alleged to be a neighbourhood has a sufficient degree of cohesiveness; otherwise the word "neighbourhood" would be stripped of any real meaning'*⁶.
38. In this case, the application site falls in the Culverstone Green area of the parish of Meopham. The parish of Meopham is a legally recognised administrative unit and thus would be a qualifying locality.
39. The parish itself is geographically large and made up of several smaller villages, including Meopham Green, Hook Green, Harvel and Culverstone Green. Culverstone Green can be considered a identifiable neighbourhood within the wider parish and indeed possesses many of the characteristics of a distinct community: these include both a primary school and a community centre, as well as the Culverstone Community Association.
40. Therefore, the application site is located in an identifiable neighbourhood (Culverstone Green) within a qualifying locality (the parish of Meopham).

"a significant number"

41. The word "significant" in this context does not mean considerable or substantial: *'a neighbourhood may have a very limited population and a significant number of the inhabitants of such a neighbourhood might not be so great as to properly be described as a considerable or a substantial number... what matters is that the number of people using the land in question has to be sufficient to indicate that the land is in general use by the community for informal recreation rather than occasional use by individuals as trespassers'*⁷. Thus, what constitutes a 'significant number' will depend upon the local environment and will vary in each case depending upon the location of the application site.
42. In this case, although there are 17 user evidence questionnaires in support of the application, further analysis of this evidence shows that these questionnaires represent only 9 households⁸. One of the households⁹ is not situated in the qualifying neighbourhood. Of those witnesses living in the qualifying neighbourhood, all but two households are located in Mountfield Close. Those witnesses are unlikely to constitute a significant number of the residents of the neighbourhood (see plan at **Appendix D**) and the nature of their use is more akin to a limited number of individuals using the land as perhaps an extension to their gardens, rather than recreational use by the community at large. Furthermore, it is not evident (as discussed above) that all of the witnesses are clear about the precise extent of the application site.

⁶ *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at page 92

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

⁸ These are: the Brammer family (incl. Mrs. F Bryce), Mr. and Mrs. Blythe, Mr. and Mrs. Buttivant, Mr. Hellings, Mr. and Mrs. Chipperfield, Mr. and Mrs. Crouch, Mr. and Mrs. Osborne, Mrs. Loyshton and D. Wilson.

⁹ See user evidence questionnaire of D. Wilson

43. Therefore, it is not possible to conclude that the use of the application site has been by a significant number of the residents of the 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)?

44. 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.

45. In this case, there is no evidence that use of the application site had ceased prior to the making of the application and as such use of the application site appears to have continued up to (and indeed beyond) the date of the application.

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

46. 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, the application was made in 2010 and, as such, the relevant twenty-year period ("the material period") is calculated retrospectively from this date, i.e. 1990 to 2010.

47. The user evidence summarised at **Appendix C** appears to show that there has been use of the application site throughout the material period. However, this needs to be considered in the context of the comments expressed above regarding the reliability of the evidence (i.e. whether the evidence relates to the application site or the adjacent recreation ground).

Conclusion

48. There is evidence to suggest that the application site has been used for limited informal recreational purposes over a considerable period. However, it is not clear from the evidence questionnaires whether the witnesses have been using the application site itself or whether their evidence refers to the use of the wider Culverstone Recreation Ground. This has left many unanswered questions with regard to the nature and extent of the informal recreational use of the application site.

49. Under normal circumstances, it may be that this would be a case that would benefit from the holding of a Public Inquiry so that the evidence can be tested in more detail in a public forum. However, there would be little point in pursuing the matter further because, even if the County Council was able to be satisfied with regard to the quality of the user evidence, the land would not be capable of registration as a Village Green because it would appear that it is already held by the Borough Council for recreational purposes under the Physical Training and Recreation Act 1937. As a result, any recreational use of the application site is 'by right' and not 'as of right'.

50. Therefore, regardless of whether any, or even all, of the other relevant tests are met, the fact that the application site appears to be held for the purposes of public recreation presents a knock-out blow to the possibility of registering the land as a Village Green under the current legislative provisions.

Recommendation

51. I recommend that the applicant be informed that the application to register land at Mountfield Close at Culverstone Green in the parish of Meopham as a Village Green has not been accepted.

Accountable Officer:

Mr. Mike Overbeke – Tel: 01622 221568 or Email: mike.overbeke@kent.gov.uk

Case Officer:

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

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

Background documents

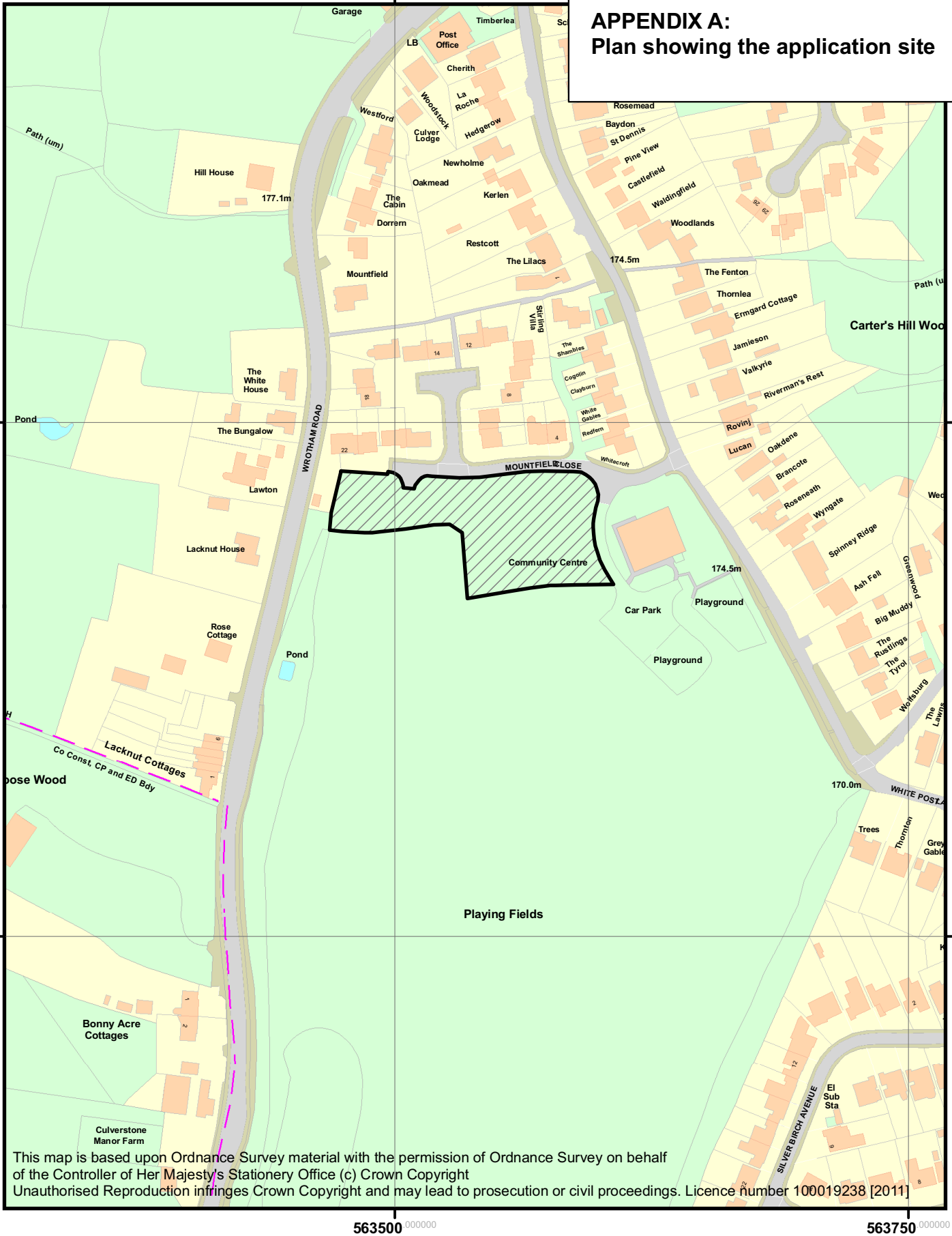
APPENDIX A – Plan showing application site

APPENDIX B – Copy of application form

APPENDIX C – Table summarising user evidence

APPENDIX D – Plan showing area within which users reside

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



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Scale 1:2500

**Land subject to Village Green application at
 Mountfield Close, Culverstone Green**



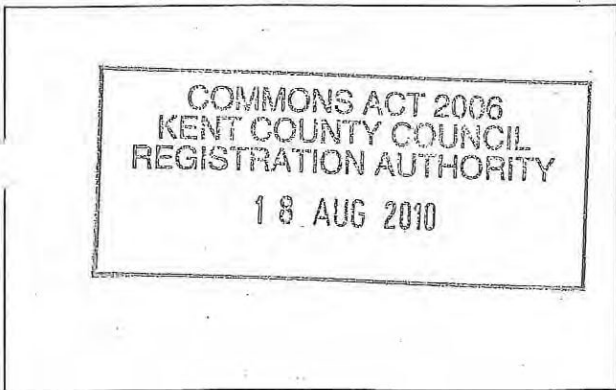
Commons Act 2006: section 15

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



This section is for office use only

Official stamp of the Registration Authority
indicating date of receipt:



Application number:

VC1A630

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

[Empty box for VG number]

Note to applicants

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

- All applicants should complete parts 1-6 and 10-12.
- Applicants applying for registration under section 15(1) of the 2006 Act should, in addition, complete parts 7 and 8. Any person can apply to register land as a green where the criteria for registration in section 15(2), (3) or (4) apply.
- Applicants applying for voluntary registration under section 15(8) should, in addition, complete part 9. Only the owner of the land can apply under section 15(8).
- There is no fee for applications under section 15.

Note 1
Insert name of Commons
Registration Authority

1. Commons Registration Authority

To the:

Kent County Council

Note 2

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

2. Name and address of the applicant

Name: *Barbara FIELD (Mrs)*

Full postal address: [redacted]
(incl. Postcode)

[redacted]

Telephone number: [redacted]
(incl. national dialling code)

Fax number:
(incl. national dialling code)

E-mail address: [redacted]

Note 3

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

3. Name and address of representative, if any

Name:

Firm:

Full postal address:
(incl. Postcode)

Telephone number:
(incl. national dialling code)

Fax number:
(incl. national dialling code)

E-mail address:

Note 4

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

4. Basis of application for registration and qualifying criteria

If you are the landowner and are seeking voluntarily to register your land please tick this box and move to question 5. Application made under section 15(8):

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

Section 15(2) applies:

Section 15(3) applies:

Section 15(4) applies:

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

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

If section 15(6)* is being relied upon in determining the period of 20 years, indicate the period of statutory closure (if any) which needs to be disregarded:

Note 5

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

Map ?

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

Name by which usually known:

Culverstone Green

Location:

Culverstone, only A227 Whitepost Lane

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:

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

The land has been used by the local inhabitants for approx 35 years. For various recreational use. It is next to a Village Hall and therefore would add to a feeling of belonging / ^{community} a locality context.

The land at the moment has a great many beautiful and old trees and has the added benefit of hundreds of claff pods in spring, and many wild flowers. It is adjacent to a large recreation area but is situated nearer houses and therefore young children can play and feel safe. The recreation area has the disadvantage that it cannot be seen unless you are on the field due to many trees and bushes as shown by photos.

Also it is access to recreation area.

Note 8 Used for 40 yrs
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

Gravesham Council. (Problem arises however that they have not got back to me despite frequent requests, or my local councillor, who has tried on my behalf.) Approx. one month.

Note 9

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

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

Note 10

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

10. Supporting documentation

Gravesham Council

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

Possible developers, but denied by Gravesham and Parish Councils, also Chief Planning Officer.

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: 6 . 0 8 . 1 0 .

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.

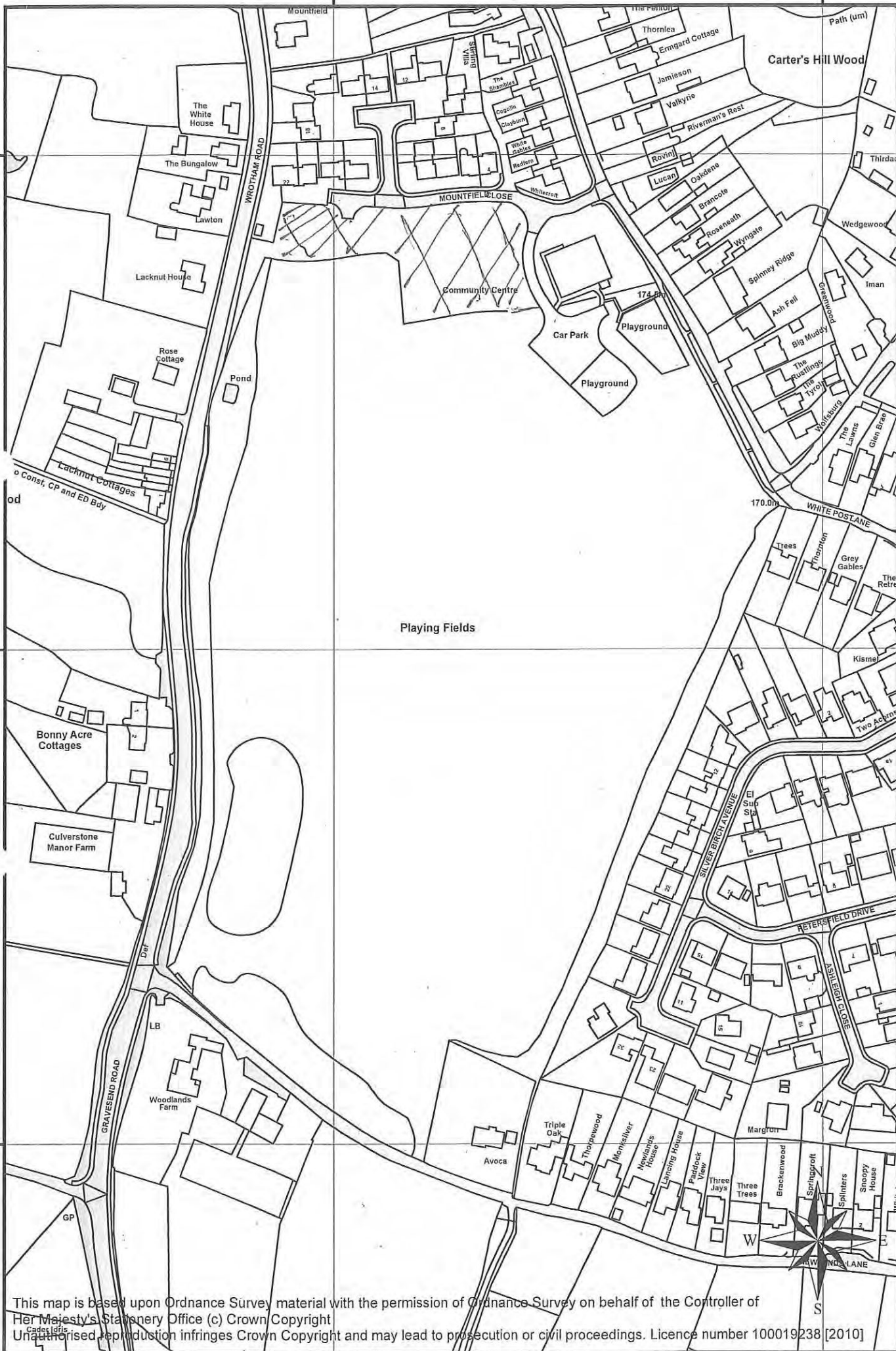
Please send your completed application form to:

**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.



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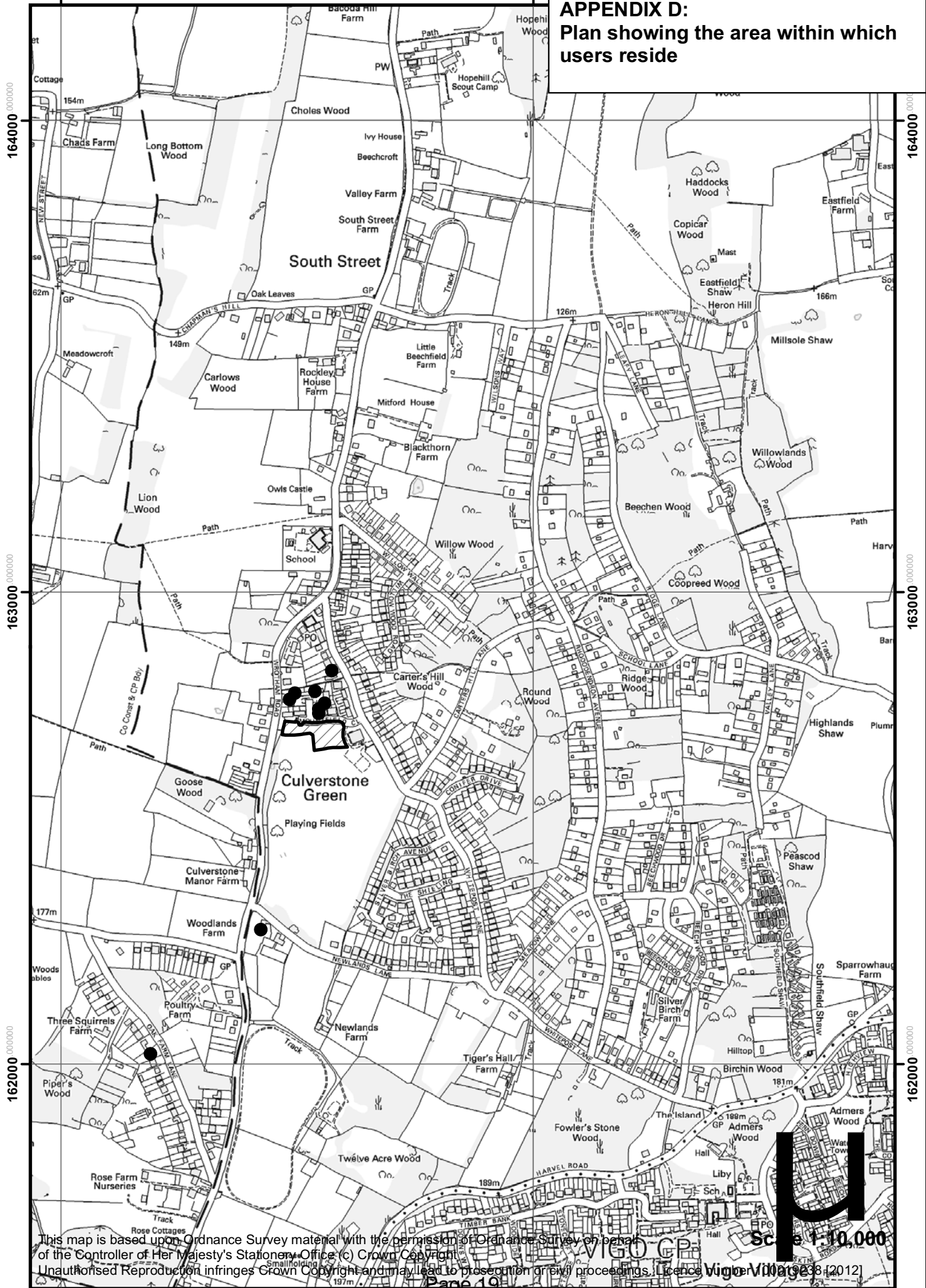
**APPENDIX C:
Summary of user evidence**

Name	Period of use	Frequency of use	Type of use	Comments
Mrs. H. BLYTHE	1977 – present	Daily	Dog walking, playing games	
Mr. R. BLYTHE	1977 – present	Daily	Dog walking, playing games with other families	
Miss. B. BRAMMER	1990 – 2001	Regularly	Playing with friends, sunbathing, ball games, socialising, building dens, tree climbing	
Mr. G. BRAMMER	1990 – present	Monthly	Dog walking, running, playing as a child	
Mr. and Mrs. BRAMMER	1985 – present	Daily until 2007, now occasionally	Dog walking until 2007, now for other purposes, access to A227	
Mrs. F. BRYCE	1985 – 2007	Regularly	Playing as a child, dog walking, socialising	
Mrs. C. BUTTIVANT	1976 – present	Weekly	Walking, playing football and other family games, picnics, photography	
Mr. R. BUTTIVANT	1976 – present	Monthly	Walking, family games, sitting, picnics, fireworks display	
Mrs. J. CHIPPERFIELD	1976 – present	Weekly	Dog walking, playing with children, picking flowers, sledging, picnics	Land also used for dog shows and football matches
Mr. P. CHIPPERFIELD	1976 – present	Weekly	Dog walking, picnics, playing football	Land used for football matches and dog shows
Mrs. B. CROUCH	1986 – present	Daily (variable)	Playing with children, ball games, picking flowers, picnics	
Mr. R. CROUCH	1986 – present	Daily use (variable)	Playing with children, ball games, picking flowers	
Mr. C. HELLINGS	1969 – present	Daily	Dog walking, watching football, playing with children, blackberrying	Meopham FC use the land for formal sports and dog shows take place there.
Mrs. T. LOYSHON	1987 – present	Weekly	Dog walking and blackberry picking	
Mr. F. OSBORNE	1982 – present	Daily	Dog walking, children's games, riding ponies	Land used for football and dog shows. Known as Culverstone Recreation Ground
Mrs. M. OSBORNE	1982 – present	Daily	Dog walking, dog/horse shows, children's games and picnics.	Land used for football and dog shows. Known as Culverstone Recreation Ground
D. WILSON	1984 – present	Weekly	Dog walking	Land used by various football clubs and dog obedience clubs

563000 000000

564000 000000

APPENDIX D: Plan showing the area within which users reside



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Scale 1:10,000

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Transfer of Rights of Common at Higham Common (CL86)

A report by the Head of Regulatory Services to Kent County Council's Regulation Committee Member Panel on Tuesday 20th March 2011.

Recommendation: I recommend that the County Council informs the applicant that the application to amend the Register of Common Land to reflect the recent transfer of rights of common has been accepted and that the Register of Common Land for unit number CL86 be amended accordingly.

Local Members: Mr. M. Snelling

Unrestricted item

Introduction

1. Kent County Council is the 'Commons Registration Authority' for the purposes of the Commons Act 2006 (and, previously, the Commons Registration Act 1965). In this capacity, it is responsible for holding the legal record of Common Land and Town or Village Greens for the county, known as the Registers of Common Land and Town or Village Greens, and for making any necessary amendments to the Registers using the requisite legal processes.
2. The County Council has received an application to amend the Register of Common Land from ET Ledger and Son Ltd. ("the applicant"). The application, received on 11th April 2011, has been made under section 12 of the Commons Act 2006 and seeks to amend unit number CL86 of the Register of Common Land to reflect a recent transfer of rights of common. A copy of the Register of Common Land for unit CL86 is attached at **Appendix A** to this report and a copy of the application form is attached at **Appendix B**.

Background

3. Common Land was defined in the Commons Registration Act 1965 as land subject to certain traditional rights (known as 'rights of common') or waste land of a manor not subject to rights of common. The most widely exercised right of common remaining today is the common of pasture (a right to graze animals), but other examples of rights of common include pannage (a right to turn out pigs in woodland to graze on acorns), piscary (a right to fish), turbary (a right to dig peat or turf) and estovers (a right to collect firewood).
4. In some parts of the country, particularly in moorland areas, rights of common are widely exercised and form an important asset to the local farming community. In lowland counties, such as Kent, they are far less prevalent (because Common Land here consists mainly of manorial waste) but these traditional rights are nonetheless still exercised in certain areas.
5. Rights of common are normally attached to a particular property, but in some cases they are held by an individual. In the latter case, the rights may be sold on to other individuals and, in these circumstances, it will be necessary to record the change of

ownership in the Register of Common Land. Note that the transfer does not take legal effect unless and until it is recorded in the Register of Common Land.

Procedure

6. Section 12 of the Commons Act 2006 enables the transfer of ownership of any rights of common to be recorded in the Register of Common Land. The application must be made in accordance with the provisions of the Commons Registration (England) Regulations 2008 (“the 2008 Regulations”).
7. As a standard procedure set out in the 2008 Regulations, the County Council must put a copy of the Notice of Application on its own website. The publicity must state a period of at least six weeks during which objections and representations can be made. In addition, the applicant should serve notice on the existing holder of the right of common (if this is not the applicant) and the owner(s) of any other rights of common exercisable over the land.
8. In determining the application, the County Council must be satisfied that:
 - the applicant is entitled to make an application under section 12; and
 - where the applicant is not currently the registered owner of the rights of common, there is evidence that the registered owner consents to the application.

The Case

Description of the rights of common affected by the application

9. The rights of common affected by this application are set out at entry number 6 on the Rights section of the Register of Common Land for unit number CL86. They are: “16 rights of common pasture being rights to graze a total of 16 bullocks, 32 calves, 12 horses or 80 sheep over the whole of the land comprised in this Register unit during the period from 25th March to 25th December in each year”.
10. The rights are currently registered to the Master, Fellows and Scholars of the College of St. John the Evangelist in the University of Cambridge (“the University of Cambridge”). By deed of transfer dated 27th November 2008 (copy attached at **Appendix C**), the ownership of these rights of common was transferred to the applicant.

Notice of Application

11. As required by the 2008 Regulations, notice of the application was published on the County Council’s website. No objections have been received.
12. Normally, the applicant is expected to serve notice of the application on the existing registered holder of the affected rights of common and the owner of any other rights of common exercisable over the land. However, in this case the existing registered holder of the affected rights of common is a party to the deed transferring ownership (from which it is implicit that the existing owner consents to the transfer).

13. The Register also refers to another right of common being registered to a company known as Dartnall Bros which, it transpires, was dissolved in 1996 and cannot be contacted at the address shown in the Register.

Capacity to apply

14. The County Council must be satisfied that the person making the application under section 12 of the Commons Act 2006 has the capacity to apply. Those eligible to apply for such applications are the registered owner of the right of common or the transferee of that right.

15. The applicant in this case is the transferee and, as such, the applicant is able to make the application to amend the register under the Commons Act 2006.

Evidence that the registered owner of the rights of common consents to the application

16. The County Council must also be satisfied that the current registered owner of the rights of common consents to the application.

17. In this case, the transfer is the subject of a formal deed between the existing registered owner (the University of Cambridge) and the applicant.

Conclusion

18. It can therefore be concluded that the necessary criteria concerning the amendment of the Register of Common Land for unit number CL86 have been met.

Recommendations

19. I recommend that the County Council informs the applicant that the application to amend the Register of Common Land to reflect the recent transfer of rights of common has been accepted and that the Register of Common Land for unit number CL86 be amended accordingly.

Accountable Officer:

Mr. Mike Overbeke – Tel: 01622 221500 or Email: mike.overbeke@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 Countryside Access Service, Invicta House, County Hall, Maidstone. Please contact the case officer for further details.

Background documents

APPENDIX A – Copy of the Register of Common Land for CL86

APPENDIX B – Copy of application form

APPENDIX C – Copy of the deed of transfer

Note: This section contains the registration of the land comprised in this register unit.

Register unit No. CL.86

Edition No.

See Overleaf for Notes

COMMONS REGISTRATION ACT 1965
KENT COUNTY COUNCIL
REGISTRATION AUTHORITY
10 JUL 1968

Register of

COMMON LAND

LAND SECTION—Sheet No.

No. and date of entry	Description of the land, reference to the register map, registration particulars etc.
10.7.68	An area of land of approximately 32 acres in extent known as Higham Common in the Parish of Higham in the Rural District of Strood as marked with green verge lines inside the boundary on sheets 39 and 43 of the register map and distinguished by the number of this register unit. Registered by the registration authority in pursuance of section 4.(2)(b) of the Commons Registration Act, 1965. (Registration-provisional)
16.8.72	<i>The registration at entry No.1 above, being revoked, became final on 1st August, 1972.</i>

APPENDIX A: Copy of the Register of Common Land for CL86

COMMONS REGISTRATION ACT 1965

KENT COUNTY COUNCIL

Register of COMMON LAND

Register unit No. C C 86
Edition No.

Note: This section contains the registration of every person who is entered in the Land Register of this register unit. A person is not necessarily registered in respect of land of which the freehold is registered under the Land Registration Acts 1925 and 1936, but the absence from this section of a registration in respect of any land described in the Land Register does not necessarily indicate that the freehold of that land is registered under those Acts.

See Overleaf for Notes

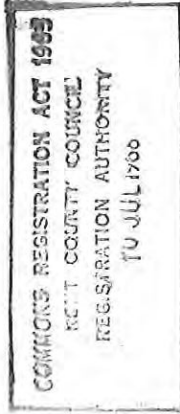
OWNERSHIP SECTION—Sheet No.

1 No. and date of entry	2 No. and date of application	3 Name and Address of person registered as owner	4 Particulars of the land to which the registration applies
		<p>Extract from Chief Commons Commissioners report of 12 March 1979 "In the absence of any evidence I am not satisfied that any person is the owner of the land and it will therefore remain subject to protection under Section 9 of the Act of 1965."</p>	

Register of

COMMON LAND

Register unit No. **CL.86**
Edition No.



See Overleaf for Notes

NOTE: This section contains the registration of every right of common registered under the Act as exercisable over the whole or any part of the land described in the land section of this register unit.

RIGHTS SECTION—Sheet No.

1 No. and date of entry	2 No. and date of application	3 Name and address of every applicant for registration, and the capacity in which he applied	4 Particulars of the right of common, and of the land over which it is exercisable	5 Particulars of the land (if any) to which the right is attached
4 10.7.68	344 25.6.68	Ray George Batchelor, Frances Batchelor, Joyce Light, Frederick Leslie Duck, as Trustees of H.H. Batchelor, deceased, White House Farm, Higham, Rochester.	16 rights of common pasture being rights to graze a total of 16 bullocks, 32 calves, 12 horses or 80 sheep over the whole of the land comprised in this register unit during the period from 25th March to 25th December in each year. (Registration provisional)	None
2 10.7.68	345 25.6.68	Sidney Dartnall and Phyllis Dartnall (Trading as Dartnell Bros) 1, Bull Lane, Lower Higham, Rochester.	A right to graze one bullock, two calves, one horse or five sheep over the whole of the land comprised in this register unit during the period from 25th March to 25th December in each year. (Registration provisional)	None
16.8.72.		The registrars at entries Nos. 1 and 2 above, being unduly seized, became formal on 1st August 1972.		
3 18.7.78	12.12.77	Registration amendment: entry No. 1 above is replaced by entry No. 4 below.		
4 18.7.78	12.12.77	R. & R. Batchelor Ltd., Whitehouse Farm, Higham, Kent.	16 rights of common pasture being rights to graze a total of 16 bullocks, 32 calves, 12 horses or 80 sheep over the whole of the land comprised in this register unit during the period from 25th March to 25 December in each year.	None
5 06.06.2008	01.04.2008	Registration amendment: Entry No. 4 above is replaced by entry No. 6 below.		
6 06.06.2008	01.04.2008	Master Fellows and Scholars of the College of St. John the Evangelist in the University of Cambridge c/o Mills & Reeve Francis House, 17 Silk Lane, Cambridge	16 rights of common pasture being rights to graze a total of 16 bullocks, 32 calves, 12 horses or 80 sheep over the whole of the land comprised in this register unit during the period from 25th March to 25 December in each year.	None



Low Water Mark of Medium Tides

Saltings

Mud

Clay Workings

Highest Point to which Medium Tides flow

Saltings

High Water Mark of Medium Tides

Sheepfold

Sheepfold

Roman Remains found AD 1953

Higham Marshes

Sheepfold

H i g h a m M a r s h e s

Barrow Hill

Beckley Hill

St. Mary's Church

Remains of Priory Benedictine Nuns

Alley Farm Higham

Church Street

Works

Halt

Bronze Age Hoard Roman and Saxon Burials found

Obelisk

Stone 28

H I G H

Stone

LAT 51° 26'

Commons Act 2006: section 12

Application to transfer a
Right of Common in gross



This section is for office use only

Official stamp of the Registration Authority
indicating date of receipt:

Application number:

COMMONS ACT 2006
KENT COUNTY COUNCIL
REGISTRATION AUTHORITY
11 APR 2011

CAA12 / CLR6

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 – 4 and 6 – 8. Where the applicant is the person to whom the right will be transferred, part 5 should also be completed.
- Only the following can apply under section 12: the registered owner of the right of common in gross or the person to whom the right will be transferred.
- The application must be accompanied by a fee. Ask the Registration Authority for details of the fee

Note 1
Insert name of Commons
Registration Authority

1. Commons Registration Authority

To the: THE COMMONS REGISTRATION TEAM
KENT COUNTY COUNCIL, COUNTRYSIDE
ACCESS SERVICE, INVICTA HOUSE,
COUNTY HALL, MAIDSTONE
KENT ME14 1XX

Please tick the box to confirm that you have enclosed the appropriate
fee for this application:



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: ET LEDGER & SON LIMITED

Full postal address: WORMDALE FARM
(incl. Postcode) WORMDALE HILL
SITTINGBOURNE
KENT ME9 7PX

Telephone number: [REDACTED]
(incl. national dialling code)

Fax number: [REDACTED]
(incl. national dialling code)

E-mail address: [REDACTED]

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: KINGSLY SMITH SOLICITORS LLP

Full postal address: 81 HIGH STREET
(incl. Postcode) CHATHAM
KENT
MELL LEE

Telephone number: [REDACTED]
(incl. national dialling code)

Fax number: [REDACTED]
(incl. national dialling code)

E-mail address: [REDACTED]

Note 4

For further details of the requirements of an application refer to Schedule 4, paragraph 6 to the Commons Registration (England) Regulations 2008.

4. Basis of application for registration and qualifying criteria

Please specify the register unit number to which this application relates: CL86

Please specify the registered rights entry number to which this application relates:

Please tick one of the following boxes to indicate your capacity to apply.

I am the registered owner of the right:
(if so, omit part 5 and go to part 6)
or

I am the person to whom the right will be transferred:

Note 5

This part should be completed only where the applicant is the person to whom the right will be transferred. This can include a written declaration sent to the applicant (i.e. a letter), and also any such declaration made on the form itself.

5. Declarations of consent from the registered owner of the right in gross

NONE

Note 6

List all supporting consents, documents and maps accompanying the application, including evidence of ownership of the dominant tenement.

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.

6. Supporting documentation

CONVEYANCE OF COMMON RIGHTS
DATED 27th NOVEMBER 2008
AND CERTIFIED COPY

Note 7

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.


7. Any other information relating to the application

NONE

Note 8

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

8. Signature

Signature(s) of applicant(s):  Director

Date: 7/8/2011

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

Please make the cheque payable to "Kent County Council"

Data Protection Act 1998

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

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

THIS CONVEYANCE is made on *27 November* 2008 BETWEEN:

- (1) THE MASTER FELLOWS AND SCHOLARS OF THE COLLEGE OF SAINT JOHN THE EVANGELIST IN THE UNIVERSITY OF CAMBRIDGE ("the Vendor")
- (2) E T LEDGER & SON LIMITED incorporated in England with registered number 00493582 and whose registered office is at Wormdale Farm Wormdale Hill Sittingbourne Kent ME9 7PX ("the Purchaser")

WHEREAS

(A) Title to Right of Common

The Register of Common Land held by Kent County Council (Register Unit No CL.86) records that 16 rights of common pasture are registered to the Vendor.

(B) Right of common

The Vendor is entitled to 16 rights of common of pasture each right being for 16 bullocks, 32 calves, 12 horses, or 80 sheep on Higham Common at Rochester in the County of Kent ('the Common') at all times during the period from 25 March to 25 December in each year in gross

(C) The Common

The Common is shown edged red on the plan annexed to this conveyance.

(D) Agreement

The Vendor has agreed to sell the 16 rights of common to the Purchaser for the total sum of Sixteen Thousand Pounds (£16,000) (£1,000 per right)

NOW THIS DEED WITNESSES as follows:

1 Conveyance

In consideration of the sum of £16,000 paid by the Purchaser to the Vendor (the receipt of which is acknowledged) the Vendor with full title guarantee conveys to the Purchaser the

16 rights of common to which the Vendor is entitled in gross TO HOLD to the Purchaser in fee simple

2 Statements

The Property is held by the Transferor which is an exempt charity and transfers in exercise of the powers conferred upon the Transferor by the Universities and College Estates Acts 1925 and 1964.

3 Execution

This instrument:

is executed as a deed and by its execution the parties authorise Mills & Reeve LLP to deliver it for them when it is dated

was delivered when it was dated

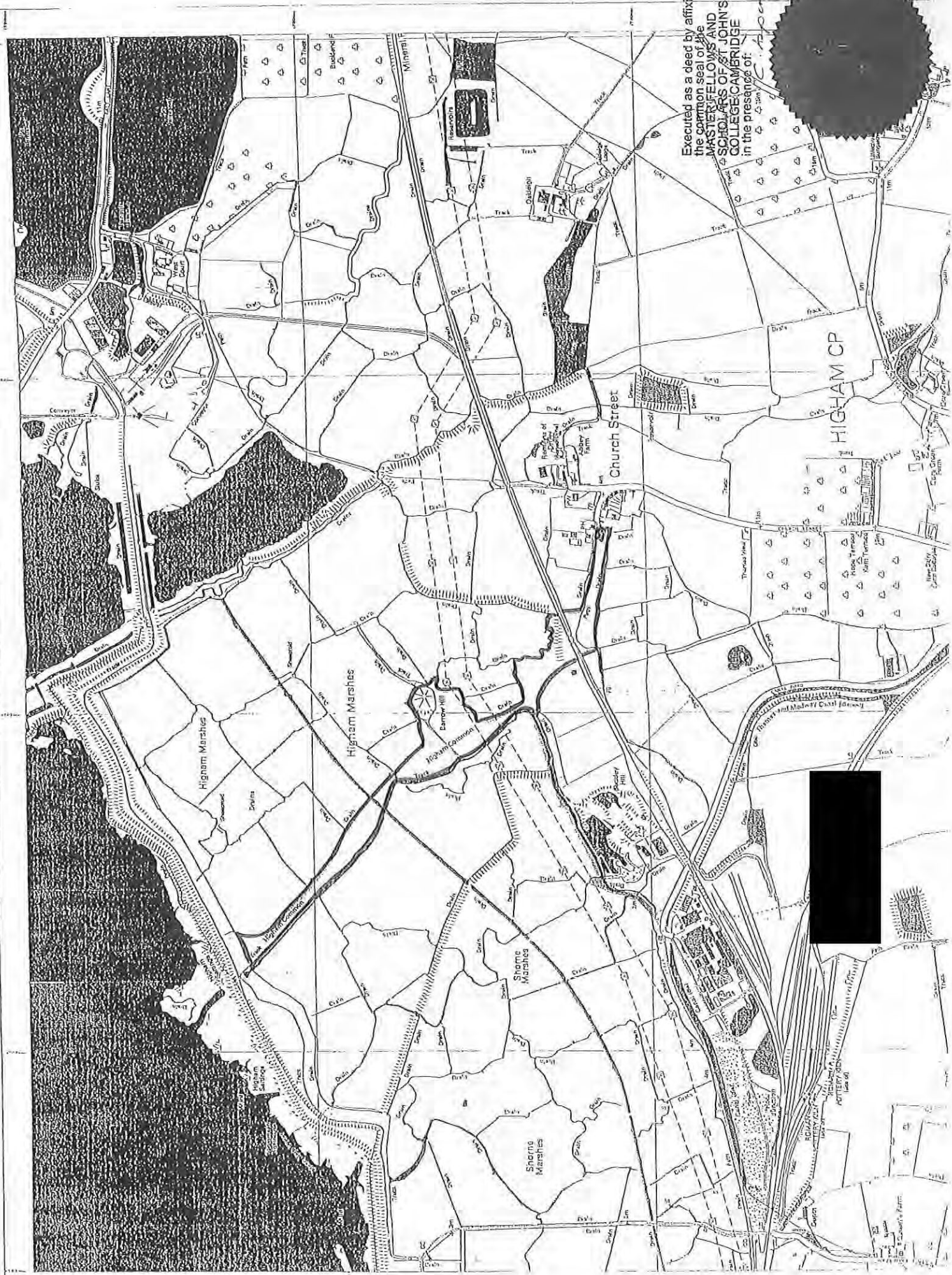
Executed as a deed by affixing the common)
seal of **THE MASTER FELLOWS AND**)
SCHOLARS OF ST JOHN'S COLLEGE)
CAMBRIDGE in the presence of:)



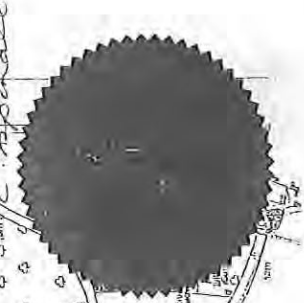
Signed as a deed by **E T LEDGER & SON**)
LIMITED acting by a director and its secretary/two)
directors

..... [REDACTED]
Director

..... [REDACTED]
Director/Secretary



Executed as a deed by affixing
the common seal of the
MASTER FELLOWS AND
SCHOLARS OF ST JOHN'S
COLLEGE, CAMBRIDGE
in the presence of:



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