



AGENDA

Kent County Council

REGULATION COMMITTEE MEMBER PANEL

Tuesday, 17th July, 2012, at 1.00 pm
Hythe Town Hall, High Street, Hythe CT21
5AJ

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 I S Chittenden,
Mr H J Craske and Mr R A Pascoe

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 known as The Former Airfield at Aldington Road in the parish of Lympne as a new Village Green (Pages 1 - 30)
4. Application to register land known as Fisherman's Beach at Hythe as a new Town Green (Pages 31 - 56)
5. Application to register land known as Round Wood in the parish of Boxley as a new Village Green (Pages 57 - 62)
6. Application to register a new Right of Common at Southborough Common (Pages 63 - 74)
7. Other Items which the Chairman decides are Urgent

EXEMPT ITEMS

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

Peter Sass
Head of Democratic Services
(01622) 694002

Monday, 9 July 2012

Application to register land known as the former airfield at Aldington Road in the parish of Lympne as a new Village Green

A report by the Head of Regulatory Services to Kent County Council's Regulation Committee Member Panel on Tuesday 17th July 2012.

Recommendation: I recommend that the applicant be informed that the application to register land known as the former airfield at Aldington Road in the parish of Lympne as a Village Green has not been accepted.

Local Member: Ms. S. Carey

Unrestricted item

Introduction

1. The County Council has received an application to register land known as the former airfield at Aldington Road in the parish of Lympne as a new Town or Village Green from Mr. D. Plumstead on behalf of the Shepway Environment and Community Network ("the applicant"). The application, made on 16th February 2011 was allocated the application number VGA633. 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 (formerly an airfield) of approximately 120 acres (50 hectares) in size situated between the Lympne Industrial Park and the residential development to the west of Stone Street in the parish of Lympne. There are no recorded Public Rights of Way on or abutting the application site. The application site is shown in more detail on the plan at **Appendix A**.

The case

7. 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.
8. The applicant’s evidence is that the application site began to be used as an airfield prior to the First World War and was a frontline operational airfield during the Second World War (it is shown on some maps as RAF Lympne). The land continued to be used, according to the applicant, as a civilian airfield until the mid-1970s. During this time, and until November 2010, access to the application site has remained freely available to local residents, without challenge, for recreational purposes.
9. Included in support of the application were 104 user evidence questionnaires, various maps and plans, and a letter of support from Lympne Parish Council. A summary of this evidence in support of the application is attached at **Appendix C**.

Consultations

10. Consultations have been carried out as required. In response, 21 letters of support were received from local residents¹. A letter was also received from Lympne Parish Council, restating its earlier support for the application.
11. In addition, District Councillor Shirley Newlands wrote in support of the application and provided a detailed account of her knowledge and use of the application site. In her letter, Cllr. Newlands referred to evidence adduced from local residents in relation to the application site and provided a number of further letters of support from local residents as well as photographs of wildlife and people using the application site. Any new evidence² contained in those letters of support has been incorporated into the summary at **Appendix C**.

¹ 13 of these letters confirmed support and evidence already provided in user questionnaires, and a further 8 were from ‘new’ correspondents providing support for the application.

² i.e. from people who had not already provided evidence by way of a user evidence questionnaire submitted with the application

Landowner

12. The application site is owned by Phides Estates (Overseas) Ltd. (“the landowner”) and is registered with HM Land Registry under title numbers K712970 and K704464. The current landowner acquired the site in 1987.
13. An objection to the application was received from McGrigors LLP, solicitors acting on behalf of the landowner. The objection has been made on the following grounds:
 - Any informal recreational use of the application site has not take place ‘as of right’ because, during the material period and until 2006, the landowner erected and maintained notices and fencing precluding use and, after 2006 and until 2010, access was provided on a permissive basis only. Additionally, between 1995 and 2010, express revocable permission was granted to certain local residents whose properties backed onto the application site.
 - Evidence of use provided in support of the application is overwhelmingly by walkers; such use should be discounted as it is not a lawful sport or pastime for the purposes of village green registration.
 - There have been substantive interruptions to recreational use; extensive engineering and infrastructure works have taken place on the land on several occasions, which would have had the effect of precluding recreational use during those periods.
 - The applicant has not sufficiently described the qualifying locality, or whether use has been by a significant number of the residents of the specified locality.
14. In support of the objection, six statutory declarations from people employed by the landowner in relation to the management of the application site have been provided. The evidence contained in these statutory declarations is that until 1990, the application site was actively used as an airfield, with regular flights during the summer months for jockeys attending meeting at the nearby Folkestone Racecourse. During this time, the application site and adjoining industrial estate were the subject of daily security patrols which involved checking the boundaries of the site and ensuring that there were no unauthorised persons on the land. Trespassers were seldom found but, when there were, they would always be asked to leave and repairs in fencing were also effected promptly when reported.
15. After 1990, when flights to and from the application site were discontinued, security patrols ceased. Repairs to fencing continued, mainly along the Aldington Road boundary, albeit less immediately than before. Shortly thereafter, the land was let for grazing for a number of years. In 1994, ‘no trespassing’ notices were erected and, in 1995, express permission to access the application site was granted to residents of Harman Avenue whose properties back onto the application site and who were able to gain access by way of a gate onto the site.
16. In about 2000, the application site was the subject of a contested planning application. At the ensuing public inquiry, various statements were made regarding residents and/or dog walkers following a linear, defined route across the application site, but there was no reference made to any significant wider recreational usage of the application site.

17. During 2005/06, the frequency of damage to the fencing accelerated and it became apparent that repair was a self-defeating exercise. In response to this, a stile was installed to facilitate access and a notice was erected indicating that access to the application site was on a permissive basis. During the 2000s, the application site was also the subject of a number of engineering works which would have impeded access. These included sewer construction works (2001), bore hole construction (2007), gas main installation (2008) and the creation of a new landscape bund (2009). In particular, the gas main installation in 2008 involved the closure of the whole of the application site.
18. In 2009, discussions took place with the Parish Council regarding a proposal to build a skateboard park on the application site. Those discussions were abandoned and shortly thereafter the landowner became aware of a proposal to apply for village green status for the application site. As a result, it was decided that the site should be re-secured and, on 10th November 2010, the stile was removed and new notices were erected to terminate the permissive use of the application site. Letters were also sent to the residents of Harman Avenue withdrawing consent to use the application site.

Legal tests

19. 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'?*

20. The statutory scheme in relation to Village Green applications is based upon the English law of prescription, whereby certain rights can be acquired on the basis of a presumed dedication by the landowner. This presumption of dedication arises primarily as a result of acquiescence (i.e. inaction by the landowner) and, as such, long use by the public is merely evidence from which a dedication can be inferred.
21. In order to infer a dedication, use must have been 'as of right'. This means that use must have taken place without force, without secrecy and without permission ('*nec vi, nec clam, nec precario*'). In this context, force refers not only to physical force, but to any use which is contentious or exercised under protest³: "*if, then, the inhabitants' use of the land is to give rise to the possibility of an application*

³ *Dalton v Angus* (1881) 6 App Cas 740 (HL)

being made for registration of a village green, it must have been peaceable and non-contentious"⁴.

22. The test for determining whether use has been contentious is to ask whether the owner of the land has taken reasonable steps to bring to the attention of the users his objection to the use of the land⁵. The law does not require the landowner to have taken every possible step; he need only have taken reasonable steps that are commensurate to the scale of the problem facing him⁶.
23. In this case, the landowner contests the assertion that any recreational use of the application site has taken place 'as of right'. The landowner's case is that, during the relevant period (1990 to 2010), fencing has been in place along the boundaries of the application site and various notices have been displayed such that any recreational use of the application site has not been 'as of right'. In addition, permission has been granted to certain residents to use the application site.

Fencing

24. The applicant's case is that until November 2010, the recreational use of the application site by local residents was subject to neighbourly toleration by the landowner, consistent with the landowner's relaxed attitude to the maintenance of the fencing. The applicant asserts that there is no evidence that any use has been in exercise of force and, such fencing as there was prior to 2010 contained many missing sections at all times throughout the period, there being no time when a continuous, unbroken fence line existed and no time when the local residents were not able to access the land with ease.
25. This is in stark contrast to the landowner's position, which is that the application site was at all times during the material period fenced along its perimeter so as to exclude any recreational users. The landowner does, however, accept that the fencing was the subject of repeated vandalism which resulted in the fencing along Aldington Road being broken down or deliberately cut to provide access onto the application site.
26. The contention that access was being gained unlawfully via damage caused to the fencing is supported by various contemporaneous documents. A letter dated 14th November 1995 from the landowner's agent to the farmer (to whom the field was being let for grazing) refers to the 'continuing problem in the south east corner of the site where members of the public break down the fence to gain access to walk their dogs'; the letter advises that the farmer should check this area before releasing his animals onto the application site to ensure it is secure. A statutory declaration dated 24th January 2002 also refers to the existence of notices stating 'no trespassing' and the fact that the fencing along the Aldington Road boundary of the application site had been 'intermittently torn down or otherwise damaged'. These documents suggest that there were repeated attempts and an ongoing struggle to secure the application site and, indeed, in 2006 the problem

⁴ *R (Lewis) v Redcar and Cleveland Borough Council* [2010] UKSC 11 at paragraph 92 per Lord Rodger

⁵ *Smith v Brudenell-Bruce* [2002] P&CR 51

⁶ *Taylor v Betterment Properties Ltd and Dorset County Council* [2012] EWCA Civ 250

became so acute that it caused the landowner to install a stile to regulate access and prevent further damage to the fencing.

27. It is difficult to reconcile these opposing, and quite extreme, positions. There is credible evidence to suggest there was a recurring problem with vandalism (indicating that the land was fenced), but there is equally a large volume of evidence supporting recreational use of the application site. It cannot be correct, from the evidence available, that either public access was entirely precluded until 2006 (as asserted by the landowner) or that there was no impediment whatsoever to access until 2010 (as asserted by the applicant). The most credible explanation, from the evidence available, is that despite the landowner's best efforts to repair the fencing, there must have been periods when the repairs were not effected expeditiously with access to the application site during those times being freely available via the gaps in the fencing.

Notices and permission

28. As noted above, notices were installed in 2010 at the same time as the site was secured. Those notices clearly stated that access to any part of the application site was prohibited and any person wishing to access the site should seek the express permission of the landowner. They were a clear expression of the landowner's intention with regard to public access to the application site and there can be no doubt that the wording of those notices was sufficient to challenge and deter recreational use.
29. There is also evidence that earlier notices were in place on the application site. In support of the landowner's objection, photographs have been provided showing notices reading "no trespassing" at various points on the application site in 1994. In 2006, when the stile was installed to regulate access, a further notice was erected reading *"To whom it may concern. It has been necessary to secure this boundary. A stile has been incorporated to the south east corner of the site for the convenience of dog walkers. No public rights of way are granted. Your assistance in preserving the new fence and stile are appreciated. The owners reserve the right to remove the stile and secure the site from public access at any time in the future"*.
30. In addition to the notices, the landowner's case is that express permission was granted to certain residents of Harman Avenue (properties 12 to 20) to access and use the application site via gates at the rear of their properties. Letters were sent to these residents on 23rd June 1995 stating that the landowner had become aware of the gates giving access from the gardens onto the application site and was *"happy to give their consent for the personal gates to remain in position although they reserve their right to terminate this consent at any time in the future and request that the boundary fence in question be reinstated to its original condition"*. This permission was revoked by way of a further letter dated 10th November 2010.
31. The applicant states that the notion that use of the application site by adjoining householders took place with permission is absurd as such use was never restricted; direct access to the application site by adjoining householders had taken place for decades prior to 1995 and continues to occur.

Conclusions on 'as of right'

32. As stated above, the law of prescription relies upon acquiescence on behalf of the landowner. This is not case where there has been inaction on behalf of the landowner: steps have been taken at various points during the material period, either to secure the land or to challenge use by way of notices. Whilst it may be that the landowner has overstated the impenetrability of the fencing during the relevant period (bearing in mind the alleged persistent vandalism), there would nonetheless have been times when the fencing was complete and access to the site closed. As such, there is evidence to suggest that use of the application site has been contentious, against the landowner's wishes, and therefore not 'as of right'.
33. There is also evidence that use of the application site has been by virtue of revocable permissions; firstly, express permission was granted in 1995 to neighbouring residents to use the land for recreational purposes (and withdrawn in 2010) and, secondly, the notice erected alongside the stile in 2006 also expressed the landowner's intention that access was being provided but could be withdrawn at any time. Therefore, during a substantial part of the material period, recreational use of the application site was referable to permission granted by the landowner.

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

34. 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*'⁷.
35. 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 overwhelming majority use of the application site has been for walking (with or without dogs), but there is also evidence of use of the application site for other informal recreational activities, including dog walking, bird watching and playing with children.
36. The evidence submitted in support of the application therefore suggests that the application site has been used for the purposes of lawful sports and pastimes. However, this is to be considered in the context of the objector's comments with regard to fencing on the application site and challenges to use.

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

37. 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

⁷ *R v Suffolk County Council, ex parte Steed* [1995] 70 P&CR 487 at 508 and approved by Lord Hoffman in *R v. Oxfordshire County Council, ex parte Sunningwell Parish Council* [1999] 3 All ER 385

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.

38. 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*⁸ 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'*.

39. In this case, the applicant has specified the locality as being 'the village and parish of Lymgne'. The parish of Lymgne is a legally recognised administrative unit and thus would constitute a qualifying locality.

"a significant number"

40. 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'*⁹. 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.

41. In this case, over half of the witnesses claim to have used the application site on a daily or weekly basis. On the face of it, such use would have been sufficient to indicate to a reasonable landowner that the application site was in general use by the community. Certainly, in the latter part of the material period, it was the persistent attempts to access the application site (via vandalism to fencing) which led to the installation of a stile to facilitate such access. At this point, the landowner was well aware of recreational usage but, as noted above, such use was being regulated by virtue of revocable permission granted by the landowner.

42. However, it is less clear whether the landowner would have been aware of general recreational usage of the application site during the early part of the material period. The volume of usage, according to the user evidence, was much less (at least by half) and the landowner contends that the continued repair to fencing, erection of notices and security patrols would have precluded any such use.

43. Therefore, whilst the user evidence suggests that the application site has been used by a significant number of the local residents, such use has, generally speaking, been either contentious use (resulting from vandalism to the fencing) or by virtue of the landowner's permission.

⁸ *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at 90

⁹ *R (Alfred McAlpine Homes Ltd.) v Staffordshire County Council* [2002] EWHC 76 at paragraph 71

(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. Section 15(3) of the 2006 Act provides that an application must be made within two years from the date upon which use ‘as of right’ ceased.
45. In this case, although the applicant alleges that use of the application site is continuing, he acknowledges that use of the application site was challenged in November 2010 by the erection of the stile and notice. These actions were in his view sufficient to cause the alleged use of the application site to cease to be ‘as of right’. The landowner does not dispute that this is the date upon which use ceased to be ‘as of right’.
46. Therefore, since the application was made in February 2011, it is well within the two-year period of grace provided for by the legislation.

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

47. In order to qualify for registration, it must be shown that the land in question has been used for a full period of twenty years. In this case, use ‘as of right’ ceased in 2010 and, as such, the relevant twenty-year period (“the material period”) is calculated retrospectively from this date, i.e. 1990 to 2010.
48. The user evidence summarised at **Appendix C** appears to suggest that there has been use of the application site throughout the material period. However, the objector’s evidence is that any recreational use of the application site would have been interrupted on several occasions due to various works taking place on the application site. In particular, the objector states that the gas main installation in 2008 involved the closure of the whole of the site. This is supported by evidence from several of the witnesses, one of whom suggests that their use of the application site ceased for approximately two months as a result of these works¹⁰.
49. In a recent case known as *Betterment Properties*¹¹, the Court of Appeal held that the closure of the application site in that case for a period of four months to facilitate drainage works was sufficient to interrupt use of the land for lawful sports and pastimes during that period (and thereby defeat the claim for Village Green status) because the use of the land for the drainage scheme, to the exclusion of local residents, was not compatible with it remaining in use as a Village Green.
50. In this case, there is evidence that, on occasion, the landowner’s use of the application site materially conflicted with the use of the site for recreational purposes, resulting in interruptions to recreational use. Thus, use of the application site has not taken place throughout the relevant twenty-year period.

¹⁰ See evidence questionnaire of Mr. J. Griffiths

¹¹ *Taylor v Betterment Properties and Dorset County Council* [2012] EWCA Civ 250

Conclusion

51. It is clear in this case that there is a substantial amount of evidence of use of the application site by the inhabitants of Lympne for recreational purposes; but there is a significant conflict with the evidence of the landowner's witnesses that access to the application site has not been 'as of right'. On the face of it, it is difficult to reconcile these very opposing positions and, in the absence of any other evidence, it might otherwise be appropriate to refer the matter to a Public Inquiry for further consideration.

52. However, in this case there is other contemporaneous documentary evidence available which is helpful in providing a picture of the management of the land and that evidence unequivocally tilts the balance in favour of the landowner:

- During the 1990s, grazing agreements provided for the land to be used by the local farmer for grazing sheep. Evidence from the users suggests that the grazing did in fact take place. Common sense dictates that whilst the land was in use for grazing, the site would have been secure to prevent the egress of animals onto Aldington Road.
- In 1994, according to the landowner, 'no trespassing signs' were erected along the Aldington Road boundary (photographs have been supplied showing the signs in place). The fact that signs were erected is supported by a statutory declaration dated 2002 (made in relation to an entirely separate matter) which suggests that the signs were the subject of repeated vandalism.
- In 1995, a letter was sent to residents of Harman Avenue granting express permission to use the application site¹². That permission was revoked in 2010.
- In 2000, a Public Inquiry was held into the proposed development of the application site following a strongly contested planning application. Both the Parish Council and the local District Councillor gave detailed written evidence to that Inquiry. The only recorded reference to recreational usage of the application site (included in closing submissions) refers to the use of a defined and well trodden diagonal path across the airfield.
- During the 2000s, the site was the subject of various works, including the installation of a gas main in 2008 which would have materially interrupted recreational use of the application site.
- In 2006, the landowner provided a stile in the south-western corner of the application site¹³ to provide access onto it and erected notices stating that the stile had been erected to facilitate access but that use of the application site could be terminated at any time. The effect of these notices was therefore to render any subsequent use of the application site permissive.

53. As noted above, the law of prescription and the ability to acquire recreational rights over land relies upon acquiescence by the landowner. Although there is evidence of repeated vandalism to notices and fencing, which is consistent with

¹² Although this only affects a very small number of those who have provided evidence in support of the application, it nonetheless demonstrates active management of access to the application site on the part of the landowner.

¹³ There is evidence that there were other entrance points onto the application site, however, the user evidence summarised at Appendix C shows that the overwhelming majority of users accessed the site from the south-eastern boundary and, as such, there can be little doubt that this notice would have been brought to the attention of the users.

the high volume of usage recorded in the user evidence questionnaires¹⁴, and the landowners admit that maintenance of the fencing took place less frequently in more recent years, this is simply not a case where the landowner can be said to have sat back and done nothing; rather the evidence points to an ongoing battle to secure the land and suggests that the landowner has taken several steps to try to challenge use. The recreational usage of the application site was therefore contentious during the relevant period and, as such, was not 'as of right'.

Recommendation

54. I recommend that the applicant be informed that the application to register land known as the former airfield at Aldington Road in the parish of Lympe 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

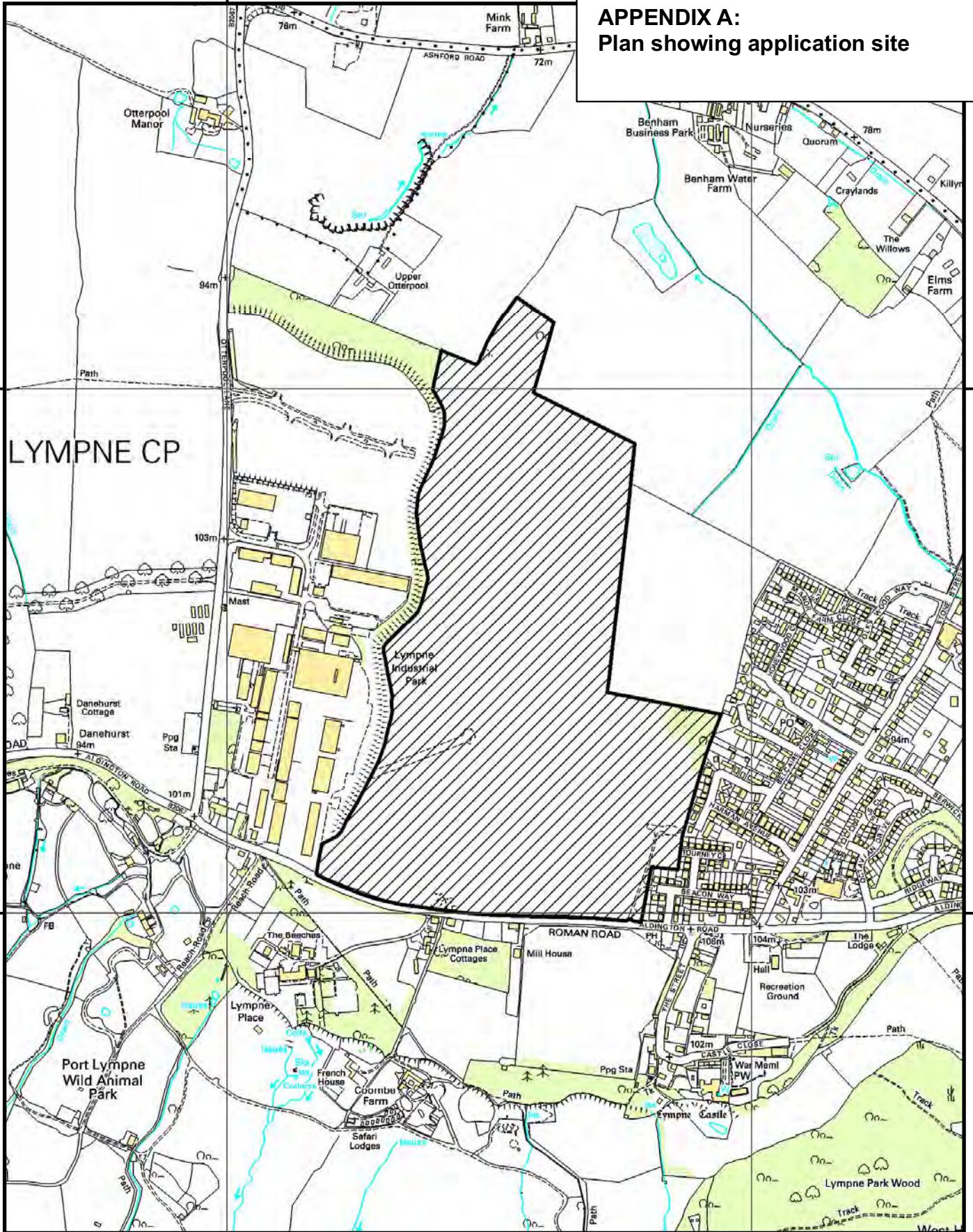
APPENDIX B – Copy of application form

APPENDIX C – Table summarising evidence in support of the application

¹⁴ In the sense that recreational users would have had free access onto the land by virtue of existing gaps that had been created in the fencing; there is no suggestion that it was the users themselves that were the cause of the vandalism.

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**APPENDIX A:
Plan showing application site**



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**Land subject to Village Green application,
known as the former Lymyne airfield at
Aldington Road, Lymyne**



Scale 1:10,000



Commons Act 2006: section 15

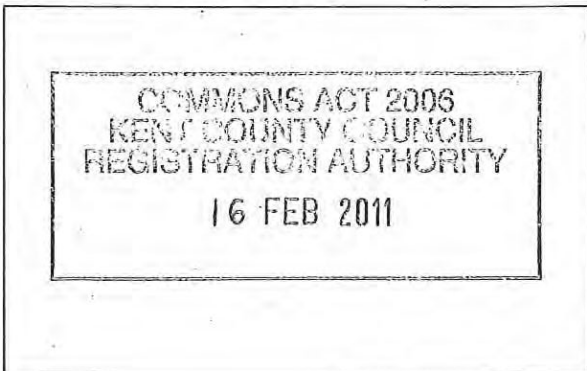
Application for the registration of land
as a new Town or Village Green



This section is for office use only

Official stamp of the Registration Authority
indicating date of receipt:

Application number:



VCA633

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
SESSIONS HOUSE
COUNTY HALL
MAIDSTONE
KENT ME14

Note 2

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

2. Name and address of the applicant

Name: DAVID ROWSTEAD

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

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

Fax number: (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:

Full postal address: (incl. Postcode) *N/A*

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:

10th November 2010
Access stile removed and notices erected

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

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

Note 5

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

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

Name by which usually known:

LYMPNE AIRFIELD

Location:

PARISH and Village of LYMPNE
See enclosed maps.

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:

Lympne Airfield within the Parish and Village of Lympne in Kent
post code CT21
L/R Title No. K704464

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

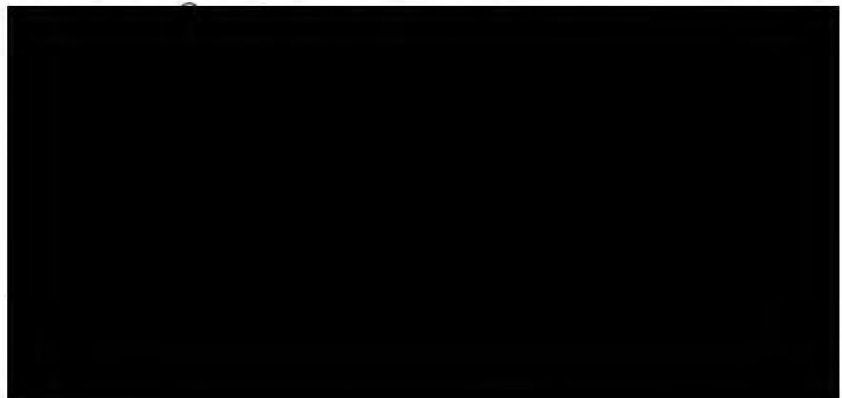
See attached Statement

Note 8

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

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

Phides Estates (Overseas) Ltd



Application Statement January 2011:

Application for the Registration of part of Lympne Airfield, Lympne, Kent, Post Code CT21 as a Village Green under Section 15 (3) of the Commons Act 2006.

The application site, the 'Green Area', is located within Lympne Airfield in the Parish of Lympne (**Map 2**) in the District of Shepway in Kent and is situated immediately north of and adjacent to the continuation of the C564 'Roman Road' which crosses 'The Roughs' on the Lympne Escarpment to the Shepway Cross at the top/northern end of 'Lympne Hill' from which point it is also known as the 'Aldington Road'.

At its' junction with 'Otterpool Lane' the C564 becomes the B2064 turning north as 'Otterpool Lane' to meet the A20 'Ashford Road' between Newingreen and Sellindge. The B2064 as 'Otterpool Lane' forms the western boundary of Lympne Airfield, the A20 'Ashford Road' between Newingreen and Sellindge forming the northern boundary. The C563 'Stone Street' marks the eastern side of the central part of the village of Lympne.

These details are set out in **Map 1**, which clearly shows the position of the Green Area in relation to the locality of Lympne village where the gardens of houses form its' eastern boundary and the roads listed above form the box enclosing the Airfield and the western/central part of the village.

A map showing the location of the Green Area within the locality and marking each resident's property with an 'x' was attached to each of the Questionnaires submitted with this application.

A detailed 1:2500 site plan (**Plan 1**) is also enclosed delineating the extent of the Green Area within the Airfield by way of a dotted green line. The north-eastern part of the Airfield not included in this application is agricultural land and is marked as such.

The Green Area application site immediately abuts the northern edge of the southern section of the North Downs Area of Outstanding Beauty (AONB) a map of which (**Map 3**) attaches to this application.

The Airfield and the Green Area lie over the 'Hythe Beds' which form part of the Eastern Kent Greensand aquifer, groundwater from which flows north-east feeding the public water supply extraction points around Stanford, Saltwood and Hythe shown on the Environment Agency's 'Source Protection Zones' 1:200,000 map (**Fig 4**) accompanying this application.

The same groundwater body also flows through the Lympne Scarp emerging as a series of issues along the south face of the Scarp Slope providing pure water to the streams descending through the Scarp SSSI and Port Lympne Wildlife Park situated immediately south of the Green Area application site and the 'Aldington Road'.

Lympne Airfield began life as such before the First World War and was a frontline operational airfield during WW2, playing a vital role during the Battle of Britain.

It continued as a civilian airfield until 1975/6 and is now the sole surviving frontline WW2 Airfield in Kent. As such it is held in great affection by the villagers of Lympne and many thousands of ex-service men and women.

For over a hundred years the main grassed area of the Airfield which is the subject of this application has remained freely accessible to the villagers of Lympne and the adjoining communities for recreational purposes, that situation continuing throughout its period as a civilian airfield after WW2.

The documentary evidence accompanying this application shows that the land has been used continuously for over 20 years for lawful sports and pastimes by residents of the locality without challenge until the 10th November 2010 following which that use by villagers has continued.

In addition to its' recreational importance the Green Area also provides a vital green buffer between the main residential part of the village and the industrial estate which lies on the western side of the Airfield along the B2064 'Otterpool Lane'.

The Green Area is the only remaining uncultivated acreage in the Parish and the locality of the village large enough to sustain the viable and diverse wildlife habitat that forms a vital element of the quality of life of the village and a vital part of its recreational facilities.

Village residents state that it is the presence of the Green Area and free access to it that decided them to live in Lympne.

The range of recreational activities enjoyed by residents is noted in over one hundred completed Evidence Questionnaires accompanying this application. In summary they include:

Walking with/without dogs, village children playing ball games, picknicking, horse riding, biking, kiteflying and bird and nature watching, and villagers taking exercise and running.

The Green Area, being encircled by the North Downs AONB forms a most important part of the landscape viewed south from the North Downs Escarpment.

**Shepway Environment and Community Network
Lympne Parish Council**

Addendum to Application Statement in respect of:

Registration of part of Lympne Airfield, Lympne, Kent CT21 as a Village Green under Section 15 (3) of the Commons Act 2006.

Open access by residents of Lympne to the Airfield generally and the Application Site in particular has existed for more years than most can remember, well in excess of fifty years, saving certain limitations during WW1 and WW2.

Large stretches of the Airfield's boundary have remained unfenced from time immemorial. Where fencing has been erected over the years it has presented no obstacle to anyone wishing to enter due to poor maintenance.

Houses whose gardens back onto the Airfield have traditionally made direct access from their properties to the application site and the area generally, some erecting permanent gated entrances which remain today. Stiles in boundary fences have existed for as long as local residents can remember and that close to the 'County Members' public house on the Aldington Road (C564) only being dismantled at the time when the first public notice denying access was erected on 10th November 2010.

As stated in the main Application Statement most residents used to walking the Airfield over the years continue to do so.

Note 9

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

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

N / A

Note 10

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

10. Supporting documentation

MAP 1 - Location of Application Site within the village of Lymington

MAP 2. Lymington Parish boundary enclosing Village and AIRFIELD

MAP 3. North Downs AONB

PLAN 1. Detailed Application Site Plan

FIG. 4. Kent Greensand Aquifer and Groundwater extraction sites map (Environment Agency)

Note 11

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

11. Any other information relating to the application

I expect this application to be challenged by both the owner of the Application Site and Shepway District Council.

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 applica



Date: 9th February 2011

David Runsteads

REMINDER TO APPLICANT

You are responsible for telling the truth in presenting the application and accompanying evidence. You may commit a criminal offence if you deliberately provide misleading or untrue evidence and if you do so you may be prosecuted. You are advised to keep a copy of the application and all associated documentation.

Please send your completed application form to:

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

Data Protection Act 1998

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

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

**APPENDIX C:
Table summarising evidence of use**

Name	Period of use	Frequency of use	Type of use	Access to the site	Comments
Mr. and Mrs. ALLEN	2008 – 2010	Daily	Dog walking, bird watching, running	Via stile	
Mrs. D. APPLETON	1984 – 2010	Daily	Walking, kite flying	Through open space then over stile.	
Mrs. S. ARNETT	1980s – 2010	Daily, now weekly	Dog walking, exercise, photography, playing with children, blackberrying and picking sloes, watching parachutists	At corner of airfield at Aldington Road or through hedge on Aldington Road by industrial estate	
Mr. P. BARRETT	1984 – 2010	Daily/weekly	Dog walking, walking with grandchildren	Opposite pub	
Mrs. A. BEESLEY	2001 – 2010	Monthly	Walking with friends,	Opposite pub on Aldington Road	
Mr. P. BLAMIRE	1990 – 2010	Daily	Dog walking	From Aldington Road	Briefly unable to use land due to gas works 2008 - 09
Mr. J. BOOTH	2004 – 2010	Daily	Dog walking, cycling, occasional ball games	Via stile at Aldington Road or lower path	
Ms. K. BROADBRIDGE	1999 – 2010	Daily	Dog walking, children playing, ball games, nature observation, blackberrying, model aircraft flying, camping, kite flying, cycling	Via gate at the rear of garden.	Use interrupted during laying of gas pipes in summer 2008.
Mr. and Mrs. BROOKER	2006 – 2010	Daily/weekly	Running, dog walking, kite flying, sloe berry collecting	Via stile from Addington Road next to pub	
Mr. R. BROWN	1995 – 2010	At least weekly	Walking, exercising, sketching/painting, dog walking	Stile (more recently)	
Mr. J. BURROWS	1991 – 2010	Weekly	Walking, blackberrying, teaching children cycle riding	Via stile opposite house.	Moved away from the area 1996 – 2001.
Mr. and Mrs. R. BUTCHER	1970 – 2010	Occasionally	Walking	Main entrance when airfield, then stile	
Mr. G. BUTLER	1990 – 2010	Daily	Dog walking	Over stile	
Mrs. L. BUTLER	1990 – 2010	Several times per week	Dog walking	By stile, before that entrance where stile now is.	When stile erected (no date given) notice erected stating that it was private land but could be used.

					Rubble was dumped at the old entrance more than 10 years ago.
Mr. M. CALLAWAY	1997 – 2010	Daily	Walking with friends, dog walking, kite flying, bird watching		
Mr. M. CARDEN	1998 – 2010	Weekly	Dog walking, wildlife observation, photography	Via stile	
Mrs. A. CARTWRIGHT	1991 – 2010	Daily	Ball games, flying kites, dog walking	From Aldington Road	
Mr. and Mrs. A. CHAMPION	1975 – 2010	Daily	Walking for exercise and dog walking	Through opening next to sub station	Dozens of people exercise dogs there every day and also used for other purposes incl. kite flying, golf, camping, runners etc. At one time field managed for several seasons by farmer for grazing sheep.
Mrs. A. CHAPMAN	1999 – 2010	Daily	Walking dogs, playing with children, kite flying, bird watching	Via stile	
Mrs. J. CLARKE	2004 – 2010	Daily, now 4/5 times per week	Walking	From Aldington Road	
Mr. J. COLEY	1976 - 2010	Weekly	Cycling as a child, jogging as an adult	Access via stile.	In 2008, notices erected on the stile
Mrs. K. CUNNINGHAM	1993 – 2010	Weekly	Walking (with and without dog), enjoying views and wildlife.	Stile	
Ms. E. CYSTER	2009 – 2010	Occasionally	Walking	Via stile near main road	
Mrs. J. DE'ATH	2001 – 2010	Occasionally	Sunday afternoon walk	Stile on Aldington Road	
Mr. E. DE BARR	2002 – 2010	Occasionally	Dog walking	From the gate	
Mr. K. DEMPSTER	1993 – 2010	Occasionally	Walking	Over stile	
Mr. and Mrs. C. DONALDSON	2007 – 2010	Daily	Dog walking, occasional field studies	Via stile on Aldington Road	
Mr. E. EAST	2002 – 2010	Daily	Dog walking	Stile in south east corner.	Stile built by owner in 2005 with a notice to exclude motorbikes and travellers
Mrs. C. EDWARDS	1984 – 2010	Daily	Dog walking	Via stile	
Mr. P. EDWARDS	1984 – 2010	Daily	Dog walking	Via stile	
Mr. R. ELLIS	1995 – 2010	Daily	Dog walking, exploring airfield features	Through entrance in the fence	
Ms. C. FIRTH	1983 – 2010	Weekly	Walking	Over the stile	
Mr. T. FRENCH	1981 - ?	Occasionally	Dog walking	Through fence	No longer use the

		y		at pub.	land.
Mr. and Mrs. FRIEND	2003 – 2010	Monthly	Walking, kite flying, fruit picking	Via stile on Aldington Road	
Mr. and Mrs. G. GANDY	1986 – 1989	Not stated	Walking, exercise	Via access on Aldington Road	
Mr. J. GARNER	2000 – 2010	Daily	Dog walking, bird watching, watching the view	Stile at Aldington Road.	Notice was erected before stile but it was not a prohibitive notice.
Mr. W. GARRARD	1975 – 2010	Daily	Walking	Entrance opposite Lypne Place.	In 2008, notice requesting walkers to access field via stile erected.
Mr. and Mrs. P. GASTON	1991 – 2010	Weekly	Walking	Over the stiles	
Mrs. B. GOWER	1999 – 2010	Occasionally	Walking	Aldington Road	
Mrs. K. GRAHAM	1991 – 2010	Daily/weekly for 7 years, monthly before that	Dog walking, rambling	In recent years via a stile on Aldington Road	
Mr. T. GRAHAM	1991 – 2010	Daily	Walking, exercise	Accessed from Aldington Road.	It became more difficult to use the land when it was fenced off and there was just one entry point in Aldington Road
Mr. J. GRIFFITHS	2005 – 2010	Daily	Exercising dogs	Via stile on Aldington Road.	Use interrupted by gas pipelines being laid in 2008/9 for 2 months
Mr. and Mrs. HARE	1997 – 2010	Daily	Bird watching, dog walking, photography	By 2 entrances on Aldington Road	
Mr. G. HARRIS	1988 – 2010	Weekly	Dog walking, playing with children	Via Aldington Road	
Mr. and Mrs. M. HARRIS	2006 – 2010	Daily	Dog walking, kite flying, picnics		Used land prior to 2006 when not resident in locality. Use interrupted during 6 month period in 2008 whilst gas main laid across field.
Mr. R. HAYNES	2005 – 2010	Weekly	Dog walking	Path from Aldington Road	
Mr. J. HIGGINS	1965 – 2010	Weekly	Family walks, exploring airfield features	Aldington Road or end of Manor Farm Close	
Mrs. E. HOLDBROOK	1997 – 2010	Regularly	Playing with children, walking, nature observation, relaxation	Access from Roman Road	
Mr. N. HOLLANDS	1975 – 2010	Occasionally	Watching model aircraft, bird watching, wildlife photography	Access via access road, gaps in fence, over stile	
Mr. E. HOYLE	1978 – 2007	Monthly	Walking, attending village fairs	From Harman Avenue or	

				entrance to parachute club.	
Mr. and Mrs. D. HUMPHREY	1990 – 2010	Daily	Recreational walking	From Aldington Road	
Mr. C. HUNTER	Late 1980s – 2010	Monthly	Walking	Gateway, then stile.	Gateway was blocked (date unknown) then gate installed by landowner
Mr. F. JACKSON	2005 – 2010	Monthly	Walking, wildlife spotting, kite flying	From Aldington Road	
Mr. G. JEANS and Ms. A. HAMMERTON	2004 – 2010	Weekly for 4 years, now occasionally	Dog walking, exercise	Over stile or opposite Home Farm Lane.	During pipe laying activity, there was no access.
Mrs. J. JELLEY	2000 – 2010	Weekly	Walking, playing ball, flying kites	From Aldington Road	
Mr. L. JELLEY	1983 – 2010	Weekly	Walking	Access from Aldington Road	Lived abroad 1983 – 1990.
Mrs. B. JOHNSON	1983 – 2010	Daily	Dog walking		Stopped using in 2010 when dog died.
Ms. E. JONES	1995 – 2010	Weekly	Walking, jogging	Stile	
Mrs. J. KELLY	2000 – 2010	Weekly	Dog walking	Access through fencing	
KING family	2001 – 2010	Daily	Walking, running, cycling	Access via gateway	
Mr. and Mrs. J. LAMB	2006 – 2010	Monthly	Walking, wildlife observation, watching the view	Access via stile in Aldington Road	
Mrs. J. LAVENDER	1976 – 2004	Daily	Rode horses during the 1990s until access closed, then walked dogs almost daily for 10 years		Still use land but not resident in locality. Vehicular and pedestrian access closed and mound of soil deposited in early 2000s
Mr. S. LAVENDER	1990 – 2004	2 – 3 times per week	Dog walking, running	Via opening on Aldington Road	
Mr. and Mrs. D. LEE	1984 – 2010	Daily	Walking	Access via stile	
Mrs. A. LEEDS	2003 – 2010	Weekly	Dog waking, flying kites, picnics, school history projects	Through gap/gate in the fence	
Ms. A. LOCKYER	1990 – 2010	Daily, now monthly	Walking	Various entrances via Aldington Road	
Mr. C. LONGSTAFF	1980 – 2010	Daily	Walking, kite flying	Access via gaps in fence	
Mr. J. MACKENZIE-MAIR	1986 – 2010	Almost daily	Dog walking, blackberrying	Through gaps in wire and over the stile.	Use prevented when fencing repaired
Mr. and Mrs. S. MANSELL	2002 – 2010	Weekly	Dog walking	By sub-station on Aldington Road	
Mrs. A. MATTERSON	1964 – 2010	Daily, now occasionally	Dog walking	Via neighbour's gap in fence.	Moved away from the area (date not stated) but still use occasionally
Mrs. H.	1980 –	Not stated	Walking with family,		

McKILLIAM	2008		watching parachute jumps		
Mr. J. McLEAN	1995 – 2010	Daily	Walking	Along the front by the pub	
Mr. and Mrs. M. MILES	2003 – 2010	Occasionally	Exercising dogs	From Aldington Road	
Mr. and Mrs. R. MILLER	1977 – 2010	Daily	Attending fetes, dog walking, kite flying, nature observation	Access across stile, recently erected.	Prior to that there was vehicular access blocked in.
Mrs. C. MILLS	1980 – 2010	Daily	Dog walking		Use prevented during laying of gas pipes.
Mr. R. MORGAN	2000 – 2010	Occasionally	Walking	In latter years by a stile provided by owner	
Mrs. J. MUNDY	2000 – 2010	Occasionally	Walking	Over stile from Aldington Road	
Mr. and Mrs. P. MURPHY	1972 – 2010	Variable	Walking, enjoying views, jogging, dog walking	Public access via B2067	
Mr. and Mrs. S. PIKE	1996 – 2010	Daily	Dog walking, taking grandchildren to see animals and birds.	Aldington Road gap.	A new gas pipe was laid across the field at one point restricting access.
Mr. R. RATCLIFF	1999 – 2010	Weekly	Leisure and recreation	Via provided gate	
Mrs. S. ROBINSON	1998 – 2010	Daily	Dog walking	Stile	
Mrs. S. SEAMARK	2007 – 2010	Occasionally	Walking, blackberrying	Via stile	
Ms. P. SEMADENI	2002 – 2010	Weekly	Dog walking, kite flying	Entrance from Aldington Road	
Mr. and Mrs. S. SHERMAN	2009 – 2010	Daily	Wildlife observation, bird watching, dog walking, jogging, walking, kite flying	Access via Aldington Road or rear garden	Used land since 1990 when living in Ashford.
Mr. J. SIMPSON	1999 – 2010	Monthly	Walking, exploring airfield remains	Stile or opening in fence at Addington Road.	Some signs erected a couple of years ago to restrict access.
Mr. P. SNELGROVE	1998 – 2010	Not stated	Bird watching	Access not stated	
Mrs. S. SOUTH	1990 – 1997	Occasionally	Walking	Climb over fence off Aldington Road	
Mr. and Mrs. G. STICKELS	Not stated	Occasionally	Helping and supporting village fetes in the 1970s and 1980s	Access via entrance near pub	
Ms. S. STICKELS	1963/4 – 2010	Occasionally	Fetes held in 1970s and 1980s, walking since 2000	Via stile near Beacon Way.	Approx 3 yrs ago notice appeared stating field would be closed if users persisted in breaking through fences instead of using newly created stile.
Mr. P. STONE	1982 – 2010	Occasionally	Fly model aircraft, playing with children	Entrance Aldington Road	
Mrs. K. STROUD	2006 – 2010	Weekly	Walking, running, flying kites, dog	Via stile	

			walking		
Mr. G. TELLES	1991 – 2010	Daily	Dog walking, running	Entrance via sub station, Lypne Place, by pub.	Only notices on site related to excavation due to drainage/ gas mains.
Mr. and Mrs. K. THOMPSON	1994 – 2010	Occasionally	Walking, blackberry picking	Access over stile	
Mr. D. UDEN	1976 – 2010	Daily	Dog walking, kite flying, hot air balloon watching, bird watching, watching parachute jumping	Access via old entrance and stile at Otterpool Lane	
Mrs. R. UDEN	1976 – 2010	Daily	Dog walking, bird watching, cross country running, kite flying, cycling, recreation	Entrance opposite pub, then 2008 stile.	
Mr. A. VAGGS	1990 – 2010	Weekly	Walking	Over the stile	
Mrs. I. WRIGHT	1989 – 1991	Not stated	Dog walking	Aldington Road entrance	
Mrs. M. WILLIAMS	1995 – 2010	Daily until 2001, now occasionally	Dog walking, ball games, kite flying, cycling	Access via pathway from Aldington Road until blocked by mound in about 2000, then by adjacent stile.	
Mr. D. WILLMOTT	2000 – 2010	Twice weekly	Dog walking, exercise	Via stile in Aldington Road	
Mr. and Mrs. A. WOOD	2009 – 2010	Weekly	Dog walking	Stile on Aldington Road or Beacon Way	
Mrs. E. WOOD	1983 – 2010	Daily	Dog walking, training for walking events	Access from B2067.	
Mr. J. WOOD	1983 – 2010	Daily	Dog walking	Access via B2067.	
Mrs. L. WOODSFORD	1996 – 2010	Weekly	Walking, running, kite flying	Entrance on main road near pub	
Mrs. V. WREN	1967 – 2010	Occasionally	Dog walking, taking children to ride bicycles	Access via opening off Aldington Road	
Mrs. S. WRIGHT	2006 – 2010	Daily	Dog walking	Stile at Aldington Road	

Additional evidence submitted in the form of letters (via Cllr. Newlands):

Mr. M. SETTERFIELD

Has been resident in Lypne for the past 34 years, during which time he has been able to roam freely over the old airfield. When the airfield first closed down, villagers used to go and watch the activities of the parachute club. In the early 1980s, village summer fairs were held on the airfield. Picking blackberries is a popular pastime on the airfield and many local residents walk their dogs there also as it is more relaxing and safer than walking along Aldington Road.

Mr. J. BROWNING

First connection with the airfield was in the 1960s when working there cutting and gathering the grass to make into silage for local farm. In the early 1990s, also worked there reinstating grass after a turf company had removed the turf and taking it away to make silage. The land has also been used for grazing sheep. Has walked the airfield many times for pleasure and work, and seen many dog walkers, other walkers and children there.

Ms. A. DAISEY

Letter written to SDC re: objection to planning states that she has walked there for many years.

Mr. T. BATES

Letter written to SDC re: objection to planning states that he has lived in Lymgne for 30 years and walked dog and played with children on the land.

Mrs. D. HEDGECOCK

Father's family have lived in Lymgne since 1890. As a child in 1960s/1970s, frequently roamed the fields surrounding the village, including the airfield where many hours were spent playing freely without hindrance. Throughout 1980s and to the present day, still enjoy freedom to roam the airfield.

Mr. M. WHEELER

Has lived in Lymgne since 1960s and has enjoyed free access onto the airfield since childhood. In the 1980s, purchased property in Harman Avenue and enjoyed direct access onto the airfield. Now regularly walk dog with family on the field without hindrance.

Mr. A. BROWN

Uses the airfield for running and wife uses the land for dog walking.

Mr. and Mrs. PIERROT

Family has used airfield twice daily to walk dogs and regularly jog around the perimeter (4-5 times per week) where it is safer than on the roads. Have also used the land to fly kites.

Mr. W. MILLAR

Has lived in the village for over 12 years and used the airfield to walk dogs.

Mr. M. FROW and Ms. A. METTAM

Have been residents of Lymgne since 1998 and have walked dogs daily on the field. The field is also used for recreational purposes by children.

Mr. and Mrs. R. BEALE

Have been residents of Lymgne for over 10 years and use the airfield on average more than 4 times per week. Also take daughter for walks on the airfield, picking blackberries and bird watching. In the last two summers (2009/10) have seen teenagers camping on the field on at least 4 occasions.

Mr. S. BONOMY

Has lived in the village since 2000 and since that time has enjoyed the right to roam and walk dog on the airfield. This has been at least 5-7 times per week and access has been via the stile.

Mr. P. McINTOSH

Moved to Lymgne 14 years ago and visit airfield regularly (normally daily) to exercise dog. The field is currently well used and regularly see half a dozen or more people out exercising dogs, jogging or walking and enjoying the views. On occasion, have also seen people camping overnight on the field. Regularly use three main access points along Aldington road; stile near village, gap in the fence opposite Lymgne Place and a gap in the hedge near the zoo. Have met people on the airfield who come from much wider afield to use it for recreational purposes as there is no other comparable open space locally.

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Application to register land known as Fisherman's Beach at Hythe as a new Town Green

A report by the Head of Regulatory Services to Kent County Council's Regulation Committee Member Panel on Tuesday 17th July 2012.

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

Local Members: Mr. C. Capon

Unrestricted item

Introduction

1. The County Council has received an application to register land known as Fisherman's Beach at Hythe as a new Town or Village Green from Mr. D. Plumstead on behalf of the Shepway Environment and Community Network ("the applicant"). The application, made on 12th August 2010, was allocated reference number VGA629. 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(1) of the Commons Act 2006 enables any person to apply to a Commons Registration Authority to register land as a Town or Village Green where it can be shown that:
 - 'a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;*
4. In addition to the above, the application must meet one of the following tests:
 - **Use of the land has continued** 'as of right' until at least the date of application (section 15(2) of the Act); or
 - **Use of the land 'as of right' ended no more than two years prior to the date of application**, e.g. by way of the erection of fencing or a notice (section 15(3) of the Act); or
 - **Use of the land 'as of right' ended before 6th April 2007** and the application has been made within five years of the date the use 'as of right' ended (section 15(4) of the Act).
5. As a standard procedure set out in the Regulations, the Applicant must notify the landowner of the application and the County Council must notify every local authority. The County Council must also publicise the application in a newspaper circulating in the local area and place a copy of the notice on the County Council's website. In addition, as a matter of best practice rather than legal requirement, the County Council also places copies of the notice on site to provide local people with

the opportunity to comment on the application. The publicity must state a period of at least six weeks during which objections and representations can be made.

The application site

6. The area of land subject to this application (“the application site”) is known locally as Fisherman’s Beach and is situated at Range Road in the town of Hythe. The application site consists of approximately 1.2 hectares (3 acres) of shingle beach which is bounded on its western side by the Hythe Ranges, to its northern edge by sewage works and various other buildings, and by the high water mark along its southern boundary. The application site has a long history as a working beach that has been actively used by fishermen, both commercially and privately.
7. Access to the application site is via a vehicular entrance from Range Road, a set of steps at the junction of West Parade and St. Leonard’s Road or along the recorded Public Footpath (HB82) at the western end of the application site. A plan showing the application site is attached at **Appendix A**.

The case

8. The application has been made on the grounds that the application site has become a Town or Village Green by virtue of the actual use of the land by the local inhabitants for a range of recreational activities ‘as of right’ for more than 20 years.
9. In support of the application, 88 user evidence questionnaires were submitted detailing the recreational use of the application site by local inhabitants. A summary of the evidence submitted in support of the application is attached at **Appendix C**.

Consultations

10. Consultations have been carried out as required.
11. Hythe Town Council responded to the effect that it neither supports nor opposes the application, but hopes that, whatever the outcome, the District Council will preserve the land for leisure activities. The Town Council also expressed a desire that a Public Inquiry be held in order that the residents of Hythe have the opportunity to make their views known.
12. A large volume of letters in support of the application (65 in total) have been received from local residents and a local primary school. The letters add substantial further evidence of recreational use in addition to the existing questionnaires submitted in support of the application and, collectively, demonstrate that the future of Fisherman’s Beach is a matter of great local interest.
13. This is supported by the local County Member, Mr. C. Capon, who responded stating that the application has created more public interest than anything else in Hythe during his 40 years as a Councillor. In the main, local opinion is generally one of support for the application and, as such, Mr. Capon wished to also add his support to the application.

14. The Hythe Neighbourhood Forum also wrote to express its support for the application; the matter had been considered at a recent meeting at which the forum had unanimously voted in favour of the application.

Landowner

15. The application site forms part of a larger area of land which is registered with the Land Registry under title numbers K568856 and K596617 to Shepway District Council ("the Council").

16. The Council acquired the site in 1984, but prior to that time it had been used as a fishing beach for the Hythe commercial fishing fleet and other boat users. Following the Council's acquisition of the land, there were 30 fishermen's huts located within the site and 45 boat berths. Since 1984, although various huts have been demolished, a large proportion of the site has continued to be used as a working beach for tenants of the Council under formal tenancy agreements. Under these tenancy agreements, the fishermen have not only occupied the huts and boat berths, but have also stored large fishing nets and equipment in the vicinity. None of the non-commercial boat users had their tenancies renewed from 31st March 2010 due to development proposals being advanced for the site.

17. The Council has objected to the application on the following grounds:

- That there has been no continuous use of the application site for twenty years because some parts of the application site have been permanently occupied by huts and boat berths during the relevant period whilst other parts have not been available for the full twenty-year period due to the presence of other huts, boat berths, equipment and nets that have now been removed;
- That any recreational use of the application site has been by less than a significant number of the local residents; and
- That use of the application site has not been 'as of right' due to the significant and intensive use of it by the Council for other purposes.

18. Included in support of the Council's objection were three statutory declarations from Council employees; one setting out a schedule of tenants for the fishermen's huts, a second providing a detailed topographical survey of the application as at 2011 and a third from the Council's Estate Management Officer (Mr. P. Marshall) setting out his knowledge of the application site.

19. Mr. Marshall's evidence is that since 2000, he has made many visits to the application site for the purpose of carrying out site inspections. Part of his role has also included issuing works orders for the demolition and clearance of fishermen's huts as well as the installation of notices on the application site. He recalls that in 2002, a heavy duty metal gate with padlock was installed adjacent to Griggs fishmongers on Range Road. Keys were provided to the Council's tenants and a notice was erected on the gate stating '*no unauthorised access*'. In 2003, three further notices were erected at the entrances to the application site (which are still in place) reading '*caution – working beach beyond this point – be warned of possible dangers surrounding boat winching operations – this beach is not recommended for bathing*'.

20. Mr. Marshall adds that, since his earliest visit in 2000, he has seen very few members of the public using the application site, a large proportion of which has

been heavily used by the Council's tenants as a working commercial fishing beach together with some pleasure boating. The fishing operations have included extensive storage on the beach of equipment as well as the berthing, launching and recovery of boats (including large fishing boats) and has resulted in winch cables frequently being left taught and suspended in mid-air creating obstructions. The use of the application site by Council tenants would have been sufficient to significantly interrupt any public use of the site and create considerable obstructions to recreational use. As a result, the application site is unattractive for bathing and recreation, particularly given the availability of far more attractive beaches nearby.

Legal tests

21. 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'?*

22. The definition of the phrase 'as of right' has been considered by the House of Lords. Following the judgement in the *Sunningwell*¹ case, it is considered that if a person uses the land for a required period of time without force, secrecy or permission ("*nec vi, nec clam, nec precario*"), and the landowner does not stop him or advertise the fact that he has no right to be there, then rights are acquired.
23. In this case, there is no suggestion that use of the application site has taken place in secrecy or, other than by fishermen in accordance with the tenancy agreements, with the permission of the Council. Nor is there any suggestion that the site has ever been fenced off (which might otherwise raise questions as to whether access to the site had ever been in exercise of force).
24. Notices erected on an application site can sometimes be relevant to the question of whether recreational use of the site has been 'as of right' depending upon the wording used. If the notices convey to the user that an express and revocable permission is being granted for recreational use of the application site, then use will of course be permissive². Similarly, if notices are erected suggesting that access to the application site is prohibited, then any use of the application site is considered to be against the landowner's wishes and in exercise of force (albeit non-physical force). In both cases, use will not be 'as of right'.

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

² *R v. City of Sunderland ex parte Beresford* [2003] UKHL 60

25. In this case, it does not appear that the notices erected on the application have had any impact upon the recreational use of the application site. The wording of the three notices erected on the application site in 2003 is cautionary in nature (rather than prohibitive), and the earlier notice erected on the vehicular access gate in 2002 appears to have been an attempt to deter unauthorised vehicular use rather than to prevent pedestrian access to the beach. Thus, the notices referred to by the Council would not have had the effect of rendering use permissive or by force.
26. Therefore, it would appear that recreational use of the application site has taken place 'as of right'.

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

27. Lawful sports and pastimes can be commonplace activities including dog walking, children playing, picnicking and kite-flying. It is not necessary to demonstrate that both sporting activities *and* pastimes have taken place since the phrase 'lawful sports and pastimes' has been interpreted by the Courts as being a single composite group rather than two separate classes of activities³.
28. 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.
29. In this case, the evidence demonstrates that the land has been used for a range of recreational activities, including walking (with or without dogs), picnics, fishing, painting and photography. A summary of the evidence of use submitted in support of the application (at **Appendix C**) shows the full range of activities claimed to have taken place.
30. The applicant's evidence is that the application site has been particularly popular with artists and, far from preventing an obstacle to access, the presence of fishing boats and equipment has provided a major attraction. In addition, the beach is also popular with dog walkers because, according to several users, it is the only beach in the locality where dog owners can exercise their dogs during the summer months.
31. Notwithstanding the Council's assertion that very few members of the public use the application site, the evidence submitted in support of the application suggests that the application site has been used for a range of recreational activities during the recreational period.

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

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

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

32. 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.
33. 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*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’.
34. At part 6 of the application form, the applicant specifies the relevant locality as “Fisherman’s Beach, Hythe, postcode area CT21”. In later correspondence, the applicant suggests that the locality should in fact properly be the electoral ward of Hythe Central in the District of Shepway.
35. The District Council makes no comment on the subject of locality as originally specified in the application form, but it is clear that the locality specified in the application form refers to more a description of the area rather than a legally recognised administrative unit⁶. It is more likely that the electoral ward suggested by the application would constitute a qualifying locality for the purposes of Village Green registration but, failing that, there is no reason why the town of Hythe could not be used for this purpose. In any event, there is a qualifying locality for the purposes of this application.

“a significant number”

36. 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 is a ‘significant number’ will depend upon the local environment and will vary in each case depending upon the location of the application site.
37. The District Council’s position is that use of the application site has not been by a significant number of the residents of the locality and any use (which the Council asserts is minimal) would have been insufficient to demonstrate to the landowner that the recreational users were asserting a right over the land.

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

⁶ A postcode area is arguably a defined area but there does not appear to be any case law as to whether this would constitute a legally recognised administrative unit for the purposes of Village Green registration.

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

38. This is strongly refuted by the applicant who states that this proposition is entirely at odds with the evidence of 88 local residents and the large number of letters received in support of the application.
39. Despite the Council's assertions to the contrary, the evidence submitted in support of the application demonstrates that the land has been used by a not insignificant number of local residents on a regular basis. The Council has offered no evidence, other than the fact that the application site is a working beach used by fishermen, to suggest that access to the application site has ever been physically restricted (e.g. by fencing) so that the public would have been denied access and the Council would have had no reason to suspect that the beach was in use by members of the public. Nor has the Council offered any evidence to suggest that it has taken any steps to deter use; indeed, far from indication a prohibition on use, the signs erected in 2003 (warning users that the application site was a working beach not suitable for bathing), by implication, suggest that the Council was well aware that the application site was in use by the public. Ultimately, the nature of the application site, a beach situated on the edge of an urban area, as well as its popularity with local artists and dog walkers, should have been sufficient to indicate the Council that it was reasonably likely to be in use by the public.
40. Therefore, it is reasonable to conclude that the evidence of use and the nature of the site itself should have been sufficient to indicate to a reasonable landowner that the application site was in general use by the community rather than by individuals as trespassers.

(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)?

41. The Commons Act 2006 requires use of the land to have taken place 'as of right' up until the date of application or, if such use has ceased prior to the making of the application, to fulfil one of the alternative criterion set out in sections 15(3) and 15(4) of the 2006 Act (as set out at paragraph 4 above).
42. In this case, use of part of the application site was challenged in May 2010 by the erection of fencing, thereby preventing access to a large proportion of the beach, albeit that use of the remainder of the beach has continued until the date of application. It is the erection of the fencing, and proposals published in relation to the future proposed development of the application site, which appear to have triggered the application. Viewing the application as a whole, it can therefore be said that the use of the land for recreational purposes became contentious (and therefore not 'as of right') in May 2010.
43. If the recreational use of a piece of land ceases to be 'as of right' before an application for the registration of the land as a new Village Green is made, the applicant has a two year period of grace during which to make such an application (see section 15(3)). In this case, use of the land ceased to be 'as of right' in May 2010, and the Village Green application was made in August 2010. Therefore, the application has been made well within the prescribed two-year period of grace, and this test is therefore met.

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

44. In order to qualify for registration, it must be shown that the land in question has been used for a full period of twenty years. The twenty year period is calculated retrospectively from either the date of the application or, where use of the application site ceased to be as of right prior to the making of the application, the date upon which use of the application site ceased to be 'as of right'.
45. In this case, it has been established that the recreational use of the application site as a whole ceased to be 'as of right' in May 2010. The relevant twenty-year period is therefore 1990 to 2010.
46. The issue of whether the application site has been used throughout the full period of twenty years, and the degree of interruption to such use as a result of the landowner's activities, is essentially (on the evidence currently available) the question upon which this case turns.
47. The Council's position is that, since 1984, significant areas of the beach have been used by the Council's tenants for fishing activities and this use has made those areas of the application site inaccessible to the public. Apart from the areas made permanently inaccessible for the purposes of public recreation due to the presence of structures (i.e. the fishermen's huts), large portions of the remainder of the application site have intermittently been temporarily unavailable for recreational use due to the launching of boats and storage of fishing equipment, thereby creating numerous interruptions to use throughout the relevant period.
48. In contrast, the applicant's case is that there has always been recreational use of those areas occupied by boat berths, fishing nets and equipment, and aerial photographs show that the nets and equipment are continually on the move; they do not remain in the same position for long or return to the same spot on the beach after each landing. Boat launching areas are walked over with ease and do not present obstacles to recreational use, whilst larger commercial boats are beached below the medium high water mark (i.e. outside of the application site). Winch cables are not, as the Council suggests, suspended in mid-air, but rather a maximum of 3-4 inches above the shingle and they are only taught when a boat is going out to or in from the sea.
49. It is therefore not possible, on the evidence currently available, to determine whether this test has been met.

Conclusion

50. As has been noted above, there is a serious dispute in this case as to whether the application site has been used in the prescribed manner throughout the relevant period. The applicant's case is that the weight of evidence submitted in support of the application demonstrates that the application site has been in regular use for recreational purposes throughout the relevant period. The objector's case, on the other hand, is that the use of the land as a working beach has created significant impediment to any recreational use which may have taken place on the application site.

51. One of the inherent limitations of the user evidence questionnaires is that they merely offer basic information about the recreational use of the local inhabitants and, when a case turns on more detailed information as to the precise nature of that use (particularly when this involves further examination of the interrelationship with the landowner's use of the land), they are of limited assistance in determining the true position. Indeed, it is extremely difficult to determine cases which turn on matters of fact and degree (of which this is one) on paper and, in many respects, these are best dealt with by way of more detailed examination of the evidence in a public forum.
52. Although the relevant Regulations⁸ provide a framework for the initial stages of processing the application (e.g. advertising the application, dealing with objections etc), they provide little guidance with regard to the procedure that a Commons Registration Authority should follow in considering and determining the application. In recent times it has become relatively commonplace, in cases which are particularly emotive or where the application turns on disputed issues of fact, for Registration Authorities to conduct a non-statutory Public Inquiry⁹. This involves appointing an independent Inspector to hear the relevant evidence and report his/her findings back to the Registration Authority.
53. Such an approach has received positive approval by the Courts, most notably in the *Whitmey*¹⁰ case in which Waller LJ said this: *'the registration authority has to consider both the interests of the landowner and the possible interest of the local inhabitants. That means that there should not be any presumption in favour of registration or any presumption against registration. It will mean that, in any case where there is a serious dispute, a registration authority will almost invariably need to appoint an independent expert to hold a public inquiry, and find the requisite facts, in order to obtain the proper advice before registration'*.
54. It is important to remember, as was famously quoted by the Judge in another High Court case¹¹, that *'it is no trivial matter for a landowner to have land, whether in public or private ownership, registered as a town green... [the relevant legal tests] must be 'properly and strictly proved'*. This means that it is of paramount importance for a Registration Authority to ensure that, before taking a decision, it has all of the relevant facts available upon which to base a sound decision. It should be recalled that the only means of appeal against the Registration Authority's decision is by way of a Judicial Review in the High Court.
55. In addition to factual disputes in the evidence outlined above, it is clear from the user evidence questionnaires and the content of the letters received from local residents during the consultation period that the future use of this land is a very emotive issue which has generated a great deal of local debate and has become a matter of significant local importance. In this respect, there is also a strong public

⁸ Commons Registration (England) Regulations 2008

⁹ The Public Inquiry is referred to as being 'non-statutory' because the Commons Act 2006 does not expressly confer any powers on the Commons Registration Authority to hold a Public Inquiry. However, Local Authorities do have a general power to do any thing to facilitate the discharge of any of their functions and this is contained in section 111 of the Local Government Act 1972.

¹⁰ *R (Whitmey) v Commons Commissioners* [2004] EWCA Civ 951 at paragraph 66

¹¹ *R v Suffolk County Council, ex parte Steed* [1997] 1 EGLR 131 at 134

interest in the matter being heard in public forum so that all members of the community may participate and make their views known.

56. Therefore, for the reasons given above, it would appear that the most appropriate course of action would be for this matter to be referred to a Public Inquiry.

Recommendations

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

Accountable Officer:

Mr. Mike Overbeke – Tel: 01622 221513 or Email: melanie.mcneir@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 – Summary of user evidence

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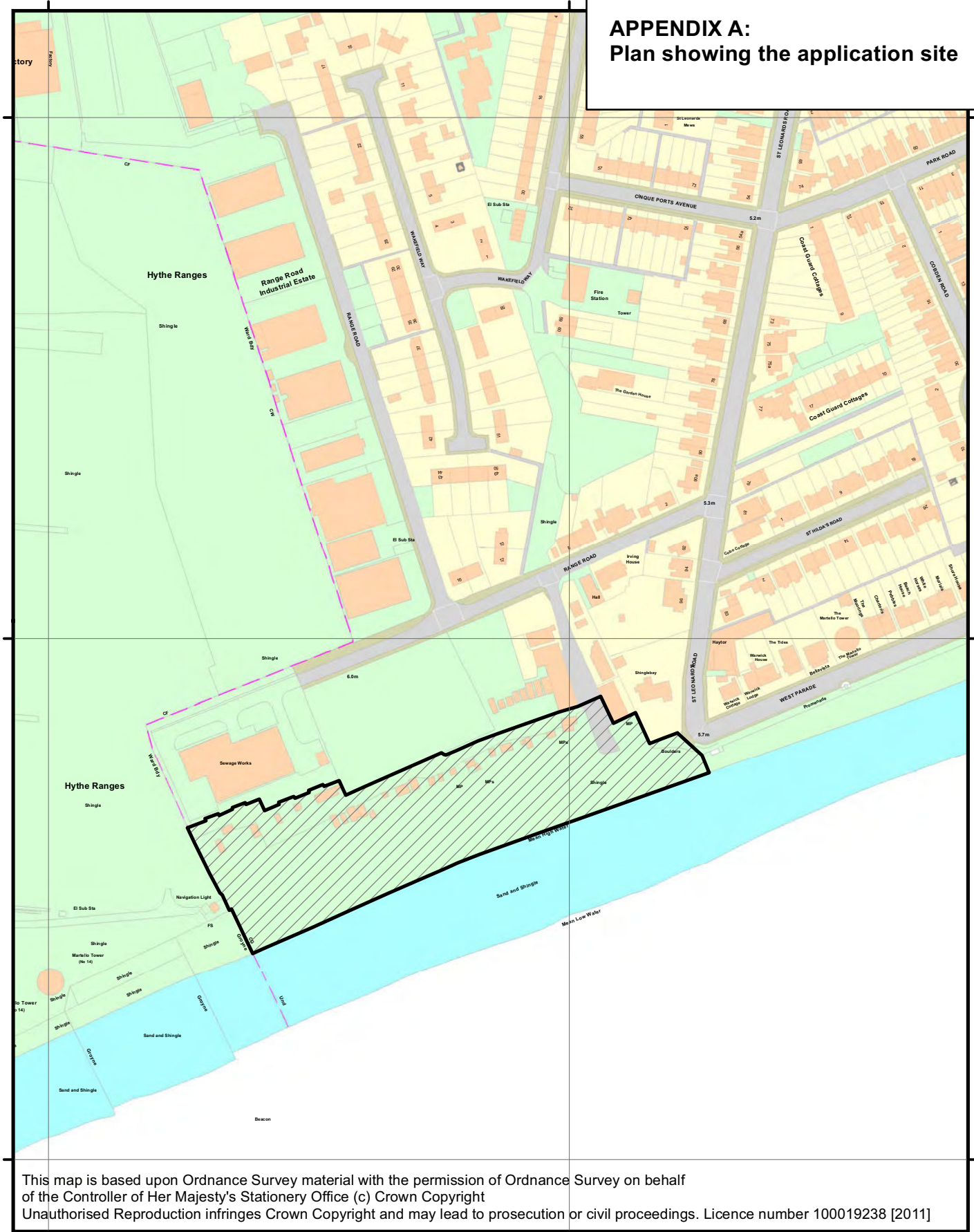
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**APPENDIX A:
Plan showing the application site**

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Scale 1:2500

**Land subject to Town Green application at
Fisherman's Beach at Hythe**



Page 41



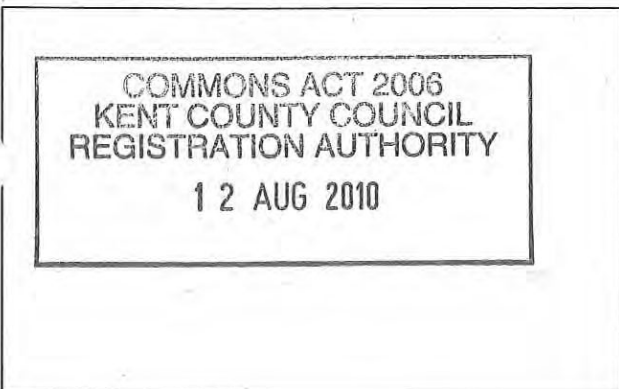
Commons Act 2006: section 15

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

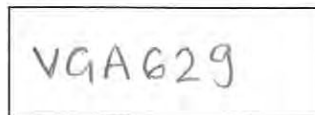


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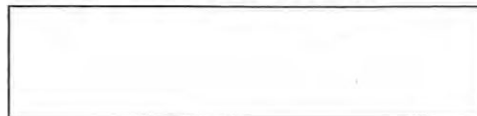
Official stamp of the Registration Authority
indicating date of receipt:



Application number:



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



Note to applicants

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

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

Note 1
Insert name of Commons
Registration Authority

1. Commons Registration Authority

To the:

Kent County Council
Invicta House
County Hall
Maidstone
Kent ME14 1XX

Note 2

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

2. Name and address of the applicant

Name: *Shepway Environment and Community Network (SECN)*

Full postal address:
(incl. Postcode)



Telephone number:
(incl. national dialling code)

Fax number:
(incl. national dialling code)

E-mail address:



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: *DAVID PLUMSTEAD*

Firm: *SECN*

Full postal address:
(incl. Postcode)

AS ABOVE

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:

VILLAGE GREEN APPLICATION, FISHERMAN'S BEACH,
RANGE ROAD, HYTHE

Fisherman's Beach is a 230 metre stretch of south-facing coastal beach in Hythe, Kent. A plan attached shows the area, which is described below.

Fisherman's Beach starts at the end of West Parade, where the road turns inland and becomes St Leonard's Road. A flight of steps from the promenade leads to the beach. The far western end of the beach is marked by the security fence for the M.O.D. Hythe Ranges. The northern boundary of the beach, starting from the Ranges has an opening for a public footpath, which follows the Ranges boundary fence northwards around the back of the sewage works to Range Road. The beach boundary is marked by the sewage works brick wall and when the wall ends it is marked by a chain link fence. This fence turns in a southerly direction for a few metres, and then continues in a straight line eastwards all the way to a concreted compound around which fishing huts are located. There is a track alongside this chain link fence which allows vehicular access from the fishing huts to the ranges fence and also access to a road alongside the fishmongers which runs north to south from Range Road to the beach. The public use this road to the fishmongers and also the beach.

The Fisherman's Beach Village Green Application therefore covers all land south of the sewage works boundary wall and the chain link fence erected by Shepway Council after they purchased the former South Eastern Gasworks site "for amenity purposes" in 1983/84. Before that date, there was public access over the gasworks site too. The Village Green application also covers the land on the seaward side of the fishing huts, which are defined on the attached plan.

During the high Spring Tides, gales can cause the sea to wash above average mean high tide levels and the whole area of Fisherman's beach is subject to flooding, hence the proliferation of seaside shingle flora and fauna. Also, several metres depth of pebbles on the seaward side can be washed away in a single storm. This is why, historically, the only structures built south of the gasworks/sewage farm boundary have been fishing huts.

We think the land may be in local authority ownership as the fishermen using the beach obtain Shepway Council licences to keep their boats there. However, we do not know the extent of their land holding. The area has not been held as public open space under the Open Spaces Act 1906 or the Public Health Act 1925.

Cont'd overleaf

Most people previously assumed that the area was 'beach' with Shepway Council responsible for it in the way that they are responsible for all the other coastline in the area, but not necessarily owning it. In the past 20 years, apart from relocating shingle moved by tides, the Council appear to have done very little to maintain the area. The beach has become naturalised with shingle species and amphibians in a way that would not have been possible if the council had been cutting or spraying the vegetation.

Apart from the fishermen, there are a large number of other types or categories of users of the beach. Although the application process only includes people considered to be "locals", the area is a magnet for visiting British and International tourists. Families from Kent and Essex regularly drive to this beach at weekends and public holidays to enjoy views of the fishing boats, the vernacular buildings and wild plants. The most common regular activities for local users are dog walking, exercise, ball games, metal detecting, beach combing, wildlife study, picnicking, barbequing, fishing, sun bathing, swimming, photography and painting. Many of these activities take place both on the shingle and the vegetated parts of the beach i.e. the whole area outlined in the attached plan. This is the only area in Hythe where dogs are allowed on the beach all year round – they are banned from May to September on all the other beaches. A large number of local artists have and still use the area as a subject for their work. Pictures painted at Fisherman's Beach hang in homes both here and far and wide.

Fisherman's beach is also used at times as an educational area for Hythe Junior School (nature walks to see the plants/wildlife and to watch the working fishing boats). Wateringbury Angling Club, Seabrook Angling Association and the Channel Divers Club use buildings directly off the beach. Hythe Town Band and the Scouts also have headquarters in the vicinity. The Hythe community greatly value this piece of land and it is particularly unusual to have such depth of beach without a man made sea wall interrupting the foreshore. This factor makes it ideal for boating activities and access to the sea. Many people are drawn to the area to regularly watch the fishing catch being brought in and observe the fishing paraphernalia, nets and winches etc.

In May 2010, temporary 7 ft fencing with orange bases was erected on a large area of Fisherman's Beach, with a signs stating "Transforming Hythe's Beach".

There is a planning application currently under review with Shepway Planning Department ref Y10/0436/SH. This application may be considered at a Development Control Committee meeting on 24 August 2010 and we would urge you to accept this application and add it to your schedule of applications as soon as possible, before that date.

Shepway Environment and Community Network
On behalf of the People of Hythe
2nd August 2010

Note 7

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

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

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

PLEASE SEE ATTACHED PAPER

Note 8

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

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

SHEPWAY DISTRICT COUNCIL
CIVIC CENTRE
FOLKESTONE
KENT CT20 2QY

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

Part of the area was fenced with temporary (moveable) fencing in May 2010, the rest of the area remains open.

**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:

Vote 5

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

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

Name by which usually known:

FISHERMAN'S BEACH

Location:

RANSE ROAD

HYTHE, KENT

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:

FISHERMAN'S BEACH, HYTHE

POST CODE AREA CT21

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



Note 9

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

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

N/A

Note 10

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

10. Supporting documentation

1. Set of residents' application forms comprising 4 (four) folios including a map of the area and the site subject of this application

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

SHEPWAY DISTRICT COUNCIL (SDC)
MAY CHALLENGE THIS APPLICATION
WE UNDERSTAND THAT SDC OWNS
80% OF THE LAND WITH 20%
BEING IN PRIVATE OWNERSHIP

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: *2nd August 2010*

REMINDER TO APPLICANT

You are responsible for telling the truth in presenting the application and accompanying evidence. You may commit a criminal offence if you deliberately provide misleading or untrue evidence and if you do so you may be prosecuted. You are advised to keep a copy of the application and all associated documentation.

Please send your completed application form to:

**The Commons Registration Team
Kent County Council
Countryside Access Service
Invicta House
County Hall
Maidstone
Kent ME14 1XX**

Data Protection Act 1998

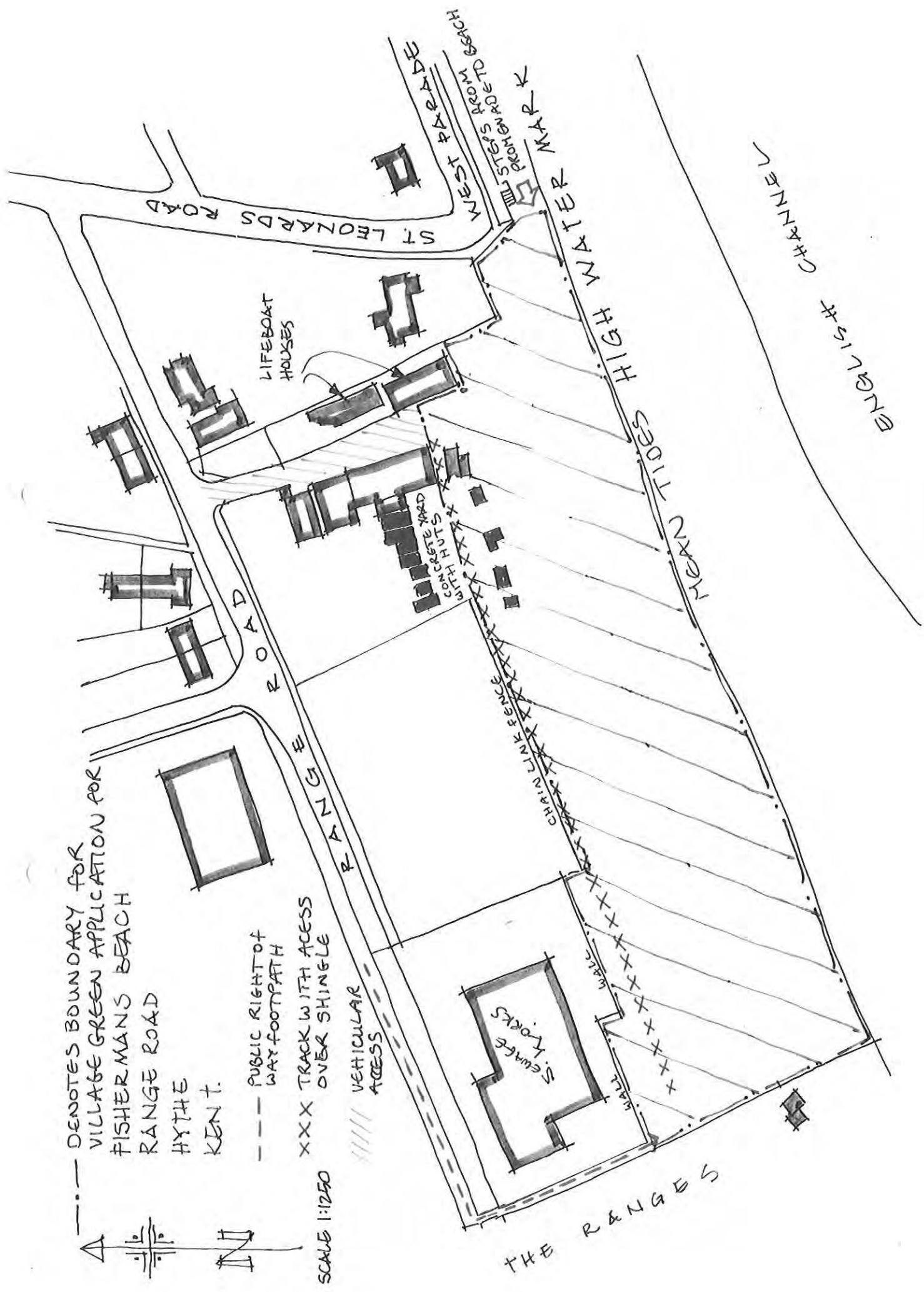
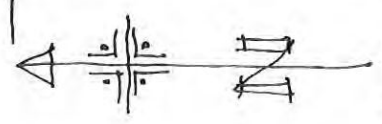
The application and any representations made cannot be treated as confidential. To determine the application it will be necessary for the Commons Registration Authority to disclose information received from you to others, which may include other local authorities, Government Departments, public bodies,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

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

--- DENOTES BOUNDARY FOR VILLAGE GREEN APPLICATION FOR FISHERMANS BEACH RANGE ROAD HYTHE KENT.

--- PUBLIC RIGHT OF WAY FOOTPATH
 XXX TRACK WITH ACCESS OVER SHINGLE
 VERTICAL ACCESS

SCALE 1:1250



APPENDIX C:
Table summarising evidence of use

Name	Period of use	Frequency of use	Type of use	Comments
Ms. A. ADAMS	1996 – present	Twice weekly	Walking, picnicking, wildlife observation	
Mr. and Mrs. T. ABERCROMBIE	1988 – present	Daily	Dog walking, family picnics, community BBQs and picnics	Access from Range Road
Ms. S. AUSTIN	1980 – present	Daily	Walking, fishing, swimming, dog walking	
Ms. P. BAKER	1960 – present	Monthly	Taking children to the beach and dog, sit and look at the view, walking along seafront	Fences have been erected on the land for development.
Mrs. S. BARLOW	1957 – present	Weekly, now occasionally	Playing, swimming, picking wheelks, walking, visiting friends	Access from Range Road or seafront corner of St. Leonard's Road. During last few weeks (July 2010) area has been fenced off. Family had shed and boat berth (dates not stated). This beach has always been open and accessible for all the people of Hythe. Whilst it is a working beach, general public have always used it for recreational purposes.
Mr. E. BARNES	2007 – present	Daily	Dog walking, swimming, picnics, kayaking	Currently still using but part fenced off by Council in May 2010. Access on foot via Range Road.
Ms. L. BELL	2006 – present	Daily	Mostly dog walking but also painting	Access via steps or fish shop off Range Road.
Mrs. S. BEST	1975 – present	Monthly	Walking, picnicking, sunbathing	
Mrs. M. BIRCH	2001 – present	Occasionally	Sitting on beach painting	
Mr. P. BLOXOM	1988 – present	Most days	Walking	Access via steps at West Parade
Ms. A. BROADLEY	2003 – present	Weekly, but less in winter	Walking, swimming, sitting meditating, reading, socialising	
Mr. A. BROOKS	2000 – present	Monthly	Painting	
Mr. M. CALVER	2007 – present	Occasionally	Walking, sketching, photography, picnicking	
Ms. S. CARTER	2000 – present	Weekly	Family walks, playing, educating children	
Mrs. A. CHARLIER	1958 – present	At least monthly	Walking, sitting and enjoying the beach/boats	From May 2010, fences erected and notices fixed to fencing relating to beach improvement.
Dr. P.	2009 – present	Daily	Dog walking	Fencing erected late May 2010 with notices stating

CHIPPING	2010					closure due to transformation of the beach.
Mr. S. CLARK	1970 – present	Weekly	Walking, swimming, photography, fishing			Lived away from the area between 1994 and 2000. Access via steps onto beach from St. Leonard's Road. Fence erected on part of the land in mid-May 2010. Throughout living memory the general pattern of use of the beach by the people of Hythe has remained the same.
Mrs. B. CLOAKE	1975 – present	Variable	Walking with children and dog, painting, drawing, photography,			
Mrs. M. COLLEY	1980 – present	Daily	Walking swimming, picnics, social gatherings, wildlife observation			
Mrs. V. COLLINS	2008 – present	Weekly	Painting with art class			Access via Range Road.
Mrs. J. COMBER	1996 – present	Weekly	Dog walking, family walks, photography, swimming			Access via steps or past Griggs fishmongers. Use undeterred until a few weeks ago when fence went up. Dogs are banned from the rest of the beach so this area is great for dog owners
Mrs. P. COOPER	1998 – present	Weekly	Walking			Access via the beach
Ms. P. DUGDALE	1960 – 2010	Monthly	Walking			No longer using the beach due to fencing erected by Shepway DC recently.
Mrs. G. DUNN	1994 – present	Weekly	Walking along ranges			Access via West Parade
Mrs. J. ELAM	1972 – present	Twice monthly	Walking, relaxing on beach and enjoying views			Notices erected in June/July 2012 by Shepway DC about transforming Hythe beach.
Mr. P. FASSBENDER	Not stated	Occasionally	walking			
Mr. A. FRIEND	1990 – present	Weekly	Fishing, sailing, dog walking, walking in general, photography			Access from Range Road or beach.
Mrs. E. FULFORD	2008 – present	Weekly	Walking, swimming, sitting on beach, picnicking, enjoying the view			
Mr. and Mrs. F. GARVIN	1986 – present	Weekly	Walking and painting wild plant life			From about 2007, a notice stating 'working beach take care' was fitted.
Ms. R. GOODWIN	1988 – present	Monthly	Walking, sunbathing, dog walking, BBQ, socializing			Access via beach and road.
Mr. and Mrs. N. GOWER	1977 – present	Occasionally	Walking, swimming, picnicking			Access from St. Leonard's Road and/or Range Road. Only notices on the land refer to the firing ranges which border the land.
Mrs. T. GRAHAM	1955 – present	Weekly	Sunbathing, swimming, dog walking			
Ms. B. HALES	2010 –	Weekly	Painting			Has used occasionally over the last 45 years for picnics,

	present				dog walking and swimming. Large portion of the land has been fenced off with notices attached stating no unauthorized access.
Mrs. J. HANNAH	1994 – present	Daily	Dog walking, swimming, sitting and enjoying the view		
Mr. C. HARDY	1968 – present	Weekly	Picnicking, general beach enjoyment, watching fishermen, dog walking		Not resident in locality between 1968 and 1975. Access via a path from Range Road. No prohibitive notices apart from MOD notices on adjoining land.
Ms. J. JEFFRESON	1999 – present	Occasionally, now daily	Dog walking, access to ranges, swimming, canoeing		Access via West Parade or Range Road. Land has been fenced off since May 2010 with Shepway DC notices on the fence.
Mr. and Mrs. K. JONES	1986 – 2010	Weekly	Walking, plant observation, picnicking, swimming, playing ball with grandchildren		Access via beach or access road. Fencing erected in June 2012. Application site is the only area where dog owners can exercise their dogs off the lead from May to October.
M. JUDI and S. SPRINKS	2009 – present	3-4 times per week	Cycling, dog walking, running		(questionnaire not signed)
Mr. A. KELLOND	1972 – present	Weekly	Walking, fishing, picnicking, artist venue		The beach area has been used for decades by artists as a venue for their pictures and their work can be seen in all the local art shops and galleries.
Mrs. H. KELLY	1984 – present	Weekly	Observe wildlife, sketching, picnics		
Mr. P. KELLY	1984 – present	Weekly	Observe wildlife, sketching, picnics		
Mrs. A. KENWORTHY	1973 – present	Weekly	Walking, picnics, look at boats coming in and sunsets, dog walking		Access via beach and Range Road. The land is an area of local and visitor interest and is used by locals and visitors on a daily basis.
Mr. T. KNOWLES	1988 – present	Almost daily, less often before 1995	Walking, swimming, picnicking, BBQs, firework parties		Access via Range Road or beach
Ms. M. LENOIR	1988 – present	Almost daily	Walking, enjoying nature, swimming, picnicking, BBQs and fireworks		Access via Range Road or beach. Fencing recently erected.
Mr. S. LOATS	1999 – present	Daily	Walking, dog walking, fishing, kayaking		Access via beach steps on West Parade or Range Road. Sought permission to moor boat on the beach in 2006 – refused. Notices erected in May 2010 by Shepway DC.
Mrs. G. LONG	1989 – 2008	Monthly	Walking for pleasure		Access via Range Road and past Griggs fish shop.
Mr. R. LEIGHTON	2007 – present	Weekly	Walking, access to footpath, picnicking, enjoying scenery		Access via beach or West Parade
Mrs. J. LLOYD-PREST	2001 – present	Daily	Dog walking, walking, swimming		Part of the land has been fenced off so there is now only partial access. The beach is accessible year round for

					dog walking, unlike the rest of the beach which has restrictions.
Mr. M. LOWE	1987 – present	Weekly	Walking children/dogs, fishing, general leisure and relaxation		
Mr. J. MARSH	1995 – present	Weekly	Recreation, exercise, socializing, photography, fresh air and fun		Access from the beach, Marine Parade or Range Road. No notices until recently due to proposed development.
Mrs. M. McCOOMBE	2008 – present	Occasionally	Painting, sketching, photography		The beach is a much valued area and the views over the beach are frequently painted.
Mrs. J. MILLNS	1991 – present	Weekly	Picnics, painting, birdwatching, plane spotting		Access via beach. The land is a much used amenity by local residents.
Ms. H. MUNRO	1985 – present	Weekly	Swimming, picnics, family days out, dog walking		A fence was recently put up by the Council.
D. NORMAN	1975 – present	Weekly	Recreation		
Mr. and Mrs. P. NORMAN	1943 – present	Not stated	Sunbathing, swimming		Only permanent notice is that the beach is not suitable for swimmers.
Mr. B. OXLEY	1970 – present	Monthly	Painting		(pages 3 and 4 missing from questionnaire)
Ms. E. PAGE	2006 – present	Monthly on average	Wildlife and bird watching, picnicking		Use the land on a seasonal basis – occasionally in spring/winter and weekly in summer. Access via St. Leonard's Road.
W. G. PARK	1998 – present	Very frequent since March 2004.	Walking, dog walking		Access via the promenade, Range Road or around sewage works.
Ms. C. PARTRIDGE	1970 – present	Occasionally	Sketching, beachcombing, walking, swimming		
Mr. A. PETER	1995 – present	Monthly	Walking, wildlife observation, photography		Access from Range Road, Hythe beach or ranges.
Mr. H. PREST	2001 – present	Daily	Mainly dog walking, some swimming and sunbathing.		Part of the land was fenced off in May 2010. Access on foot along the beach. This part of the beach is available 24/7 for dog walking with no restrictions.
Mrs. H. PRICHARD	Over 20 years	Twice weekly	Barbeques, picnics, breakfast with grandchildren, walking, dog walking, general relaxation, metal detecting, sunbathing, reading.		
Mrs. P. REDINGTON	1998 – present	Weekly	Walking, picnicking		
Mrs. J. ROBERTSON	1988 – 2000	Occasionally	Walking with grandchildren		Land fenced off in June 2010 with notices stating no unauthorized access.
Mr. and Mrs. M. ROSS	1987 – present	Weekly	Access to Dymchurch along ranges, dog walking, kite flying, occasional		Access from ranges or most often along Range Road or beach steps. Recently the Council has blocked off part of

				picnics, stone scimming, sitting in sun	the area. Only notice refers to 'working beach'.
Mr. C. RUSSELL	1971 – 1973	Monthly	Walking sitting on beach, collecting seakale	Walking sitting on beach, collecting seakale	Access via Range Road.
Mr. R. SAUNDERS	1986 – present	Weekly	Walking, photography, swimming	Walking, photography, swimming	No obstructions to use apart from fencing recently erected.
Mr. B. SHARP	1975 – present	Weekly	Reading, writing, drawing, contemplation, nature study	Reading, writing, drawing, contemplation, nature study	
Mr. G. SHARP	2002 – present	Weekly	Swimming, fishing, walking, kite flying, occasional BBQs	Swimming, fishing, walking, kite flying, occasional BBQs	Access via West Parade
Mr. D. SHOARD	1938 – present	Weekly	Walking, beachcombing, recreation with children	Walking, beachcombing, recreation with children	Between 1950 and 2000 family moved away to London but were regular visitors to the land.
Mr. and Mrs. R. SMITH	1993 - ?	Daily	Picnics, fishing, dog walking, bathing, kite flying, nature watching	Picnics, fishing, dog walking, bathing, kite flying, nature watching	Use has now become difficult due to recent erection of fencing. Notices on the fencing relate to building a better Hythe/ beach or something similar. Access via Range Road or seafront.
Mrs. K. STANDISH	1984 – present	Weekly	Walking, bird watching, sunbathing, swimming	Walking, bird watching, sunbathing, swimming	Access from beach steps at West Parade. Shepway DC recently erected fence.
Mrs. C. STEWART	2000 – present	Occasionally	Walking, swimming, picnicking	Walking, swimming, picnicking	
Mrs. J. SUMMERFIELD	2005 – present	Weekly	Dog walking, bird watching, painting/art	Dog walking, bird watching, painting/art	Access via the beach. Within the last month (July 2010) Shepway DC have erected fencing and notices prohibiting entry.
Mr. and Mrs. P. TAYLOR	2000 – present	Occasionally	Walking, sketching, watching seagulls and fishing boats	Walking, sketching, watching seagulls and fishing boats	
C. THEMISTOCLEOUS	2002 – present	Weekly	Swimming, relaxation	Swimming, relaxation	Use the land more in summer than in winter.
Mr. P. TINSLEY	1987 – present	Occasionally	Dog walking, swimming, fishing	Dog walking, swimming, fishing	
Mr. E. TOMS	2004 – present	Daily	Walking, relaxing, exercising, reading, enjoying the views	Walking, relaxing, exercising, reading, enjoying the views	
Mr. and Mrs. E. TRIGG	1956 – present	Daily	Taking visitors and children, walking dogs	Taking visitors and children, walking dogs	Access via lane leading from Range Road. The land has been boarded up for some months.
Mr. B. TWIST	1976 – present	Occasionally, but more in summer	Barbeques, swimming, access to Hythe Ranges	Barbeques, swimming, access to Hythe Ranges	
Mrs. J. TWIST	1970 – present	Occasionally	Walking, swimming, beach fishing, picnicking, photography	Walking, swimming, beach fishing, picnicking, photography	
Ms. T. UNCWOOD	1996 – present	Weekly	Swimming, picnics, walking	Swimming, picnics, walking	The top part of the beach is currently closed off by metal fences erected by Shepway DC.

Ms. R. UNEY	2007 – present	Weekly	Swimming, picnics, photography, dog walking, kayaking	Part of the land has been fenced off since May 2010
Mr. D. WARMAN	1960 – present	Weekly	Had a boat on the beach until it became too expensive.	Did not use the land between 1976 and 1980. Had permission from 1969 to 1976 to moor a boat on the land.
Ms. A. WIGHAM	1960 – present	Weekly	Sunbathing, swimming, socializing, picnics	Fences have been recently erected on the beach to keep the public out.
Mr. G. WEYMOUTH	1965 – present	Daily	Walking, fishing, swimming, dog walking	
Mrs. L. WHYBROW	1995 – present	Occasionally	Walking, beachcombing	Access via West Parade
Mr. M. WHYBROW	1995 – present	Occasionally	Walking, birdwatching, beachcombing	Access via West Parade

Application to register land known as Round Wood in the parish of Boxley as a new Village Green

A report by the Head of Regulatory Services to Kent County Council's Regulation Committee Member Panel on Tuesday 17th July 2012.

Recommendation: I recommend that the County Council accedes to the applicant's request to withdraw this application.

Local Member: Mr. P. Carter

Unrestricted item

Introduction

1. The County Council has received an application ("the original application") to register land known as Round Wood in the parish of Boxley as a new Town or Village Green from the Boxley Parish Council ("the applicant"). The application, made on 11th September 2006 was allocated the application number VGA591.

The application site

2. The area of land subject to the original application ("the application site") consists of a roughly square area of woodland of approximately 33 acres (13 hectares) in size situated between Boxley Road, Wildfell Close, Walderslade Woods (A2045) and Forestdale Road. The application site is shown in more detail on the plan at **Appendix A**.
3. There are no recorded Public Rights of Way on or abutting the application site, but access to it is easily gained via several access points from the footways of Boxley Road, Saracen Fields, Wildfell Close and Walderslade Woods, and there are a number of informal pathways crossing the site.
4. The application site is owned by Kent County Council and is registered with the Land Registry under title number K370575.

Background

5. 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. In support of the application, a number of user evidence questionnaires demonstrating use of the application site by local residents were provided.
6. Shortly after the application was made, and prior to work commencing on it, the Parish Council (as applicant) requested that the application be put on hold pending the outcome of negotiations between the Parish Council and the County Council's Property Section regarding the future of the land and alternative options for its use. In particular, the two Councils were considering a proposal to develop a small area of the application site, adjacent to Wildfell Close, for residential purposes.

Request to withdraw the application

7. As a result of these negotiations, the County Council's Property Section has made an application under section 15(8) of the Commons Act 2006 to voluntarily dedicate a large area of land, which includes a substantial part of the original application site. This new application ("the new application"), made on 22nd May 2012 was allocated the application number VGA646. The application site in respect of the new application not only includes Round Wood but also extends to neighbouring Turnberry Wood and part of Impton Wood. The total area of woodland subject to the new application amounts to approximately 90.5 acres (36.6 hectares), which is nearly three times the size of the original application site. A plan showing the site is attached at **Appendix B**.
8. The new application has led to the Parish Council making a formal request for the withdrawal of its original application. The request is made on the basis that the new application is superior as it includes a vast tract of woodland that was missing from the Parish Council's original application. The Parish Council fully supports the new application as not only does it include a greater area of woodland, but it also excludes a small site which leaves the possibility of some enabling development thereby releasing funds for future management of the woodlands.

Discussion

9. It should be noted from the outset that there is no specific provision within the legislation for an application for Village Green status to be withdrawn once made and, as such, an applicant has no absolute right to withdraw his application once made.
10. DEFRA's advice on this issue is that the County Council has a discretion as to whether or not to allow an application to be withdrawn; however, any request to withdraw an application should be considered in context and the County Council will have to have regard to whether it is fair, in all the circumstances, to allow the withdrawal.
11. This approach is supported by case law; in the *Oxfordshire*¹ case, the House of Lords, in considering a request to amend an application, concluded that "*the Registration Authority should be guided by the general principle of being fair to those whose interests may be affected by its decision*". The Court of Appeal judgement in the same case quoted and endorsed a passage from the Inspector's report² which suggested that "*a Registration Authority does not have to proceed with an application that the applicant does not wish to pursue (whether wholly or in part) where it is reasonable that it should not be pursued. It would be a pointless waste of resources for a Registration Authority fully to process an application that the applicant did not wish to pursue whether wholly or in part unless there were some good reason to do so*".

¹ *Oxfordshire County Council v Oxford City Council and another* [2006] UKHL 25 at [111] per Lord Scott. Note that these comments were made in respect of a proposed amendment to the application, but the same principle can be applied in relation to the withdrawal of an application.

² *Oxfordshire County Council v Oxford City Council and another* [2005] EWCA Civ 175 at [104] per Carnwath LJ

12. In considering a request for withdrawal, the County Council will also need to consider whether it is reasonable to permit the withdrawal. In this regard, DEFRA's guidance³ is that *"it may be reasonable to permit the withdrawal of applications, where this is considered to be the most reasonable course of action in the particular circumstances. There might be cases where an authority's persisting with an application in which all interest had fallen away, or perhaps been replaced by hostility to it, might be depicted as more unreasonable than allowing its withdrawal, but the exercise of such reasonableness is an extra-statutory concession. An authority might also permit a withdrawal where the application is of no interest or benefit to anyone but the applicant, and to proceed with the application in the face of the applicant's desire to withdraw would be perverse..."*.
13. In situations where the applicant is an individual, it may be appropriate to advertise the proposed withdrawal of the application to see whether any other person in the locality would wish to take the application forward; it may be that although the applicant wishes to relinquish his/her role, there is demand locally for the application to be determined and another individual will be prepared to see the application through to its conclusion.
14. However, in this case, the original application has been made by the local Parish Council acting on behalf the local community. It is implicit that the role of a Parish Council involves securing the best possible outcome for the local community and, as such, the Parish Council has undertaken wide public consultations regarding the future use of the woodlands. Having carefully considered all of the circumstances, the Parish Council has now decided that it would be in the interests of the community for the original application to be withdrawn so that the new application can be determined.
15. In the Parish Council's view, the new application offers far greater benefit to the local community since it would result in a much wider area being registered as a Village Green, thereby affording the strongest possible protection against any future development to a larger proportion of the woodland. The new application would also secure future access by local residents for recreational purposes to a considerably larger expanse of land. In terms of the public interest, therefore, the new application offers an increased benefit compared to the Parish Council's original application.
16. The new application does exclude a relatively small parcel of land adjacent to Wildfell Close which has formed part of the original application. However, any potential prejudice caused by the exclusion of this parcel of land is compensated for by the fact that many more residents will benefit from the outcome offered by the new application.
17. On balance, therefore, it would appear that the new application is substantially better than the original application submitted by the Parish Council, both in terms of what is proposed and the potential benefit to the community. As such, it would be futile to proceed with an application which the applicant no longer wishes to support (and where there is no guarantee of success), particularly where the vast majority of the application site is included in a superior application which can deliver a wider

³ DEFRA publication 'Guidance to commons registration authorities and the Planning Inspectorate for the pioneer implementation' (see in particular paragraph 7.13.6).

benefit to the community and, given that it is made with the landowner's consent, carries a much improved chance of success.

18. it is therefore considered that it would be fair and reasonable, under the circumstances to allow the Parish Council's original application to be withdrawn in favour of the determination of the new application.

Process

19. It is important to note that at this stage Members are being asked to consider the withdrawal of the original application by Boxley Parish Council but not to determine the more recent application by the County Council's Property Section. There are a number of statutory consultation requirements to be fulfilled before the County Council is able to determine the latter application.

20. Accordingly, if the recommendation below is approved, then these consultation processes will be commenced in relation to the latest application and the matter will be referred back to the Regulation Committee Member Panel for decision in due course.

Recommendation

21. I recommend that the County Council accedes to the applicant's request to withdraw this application.

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 2006 application site as applied for by Boxley Parish Council

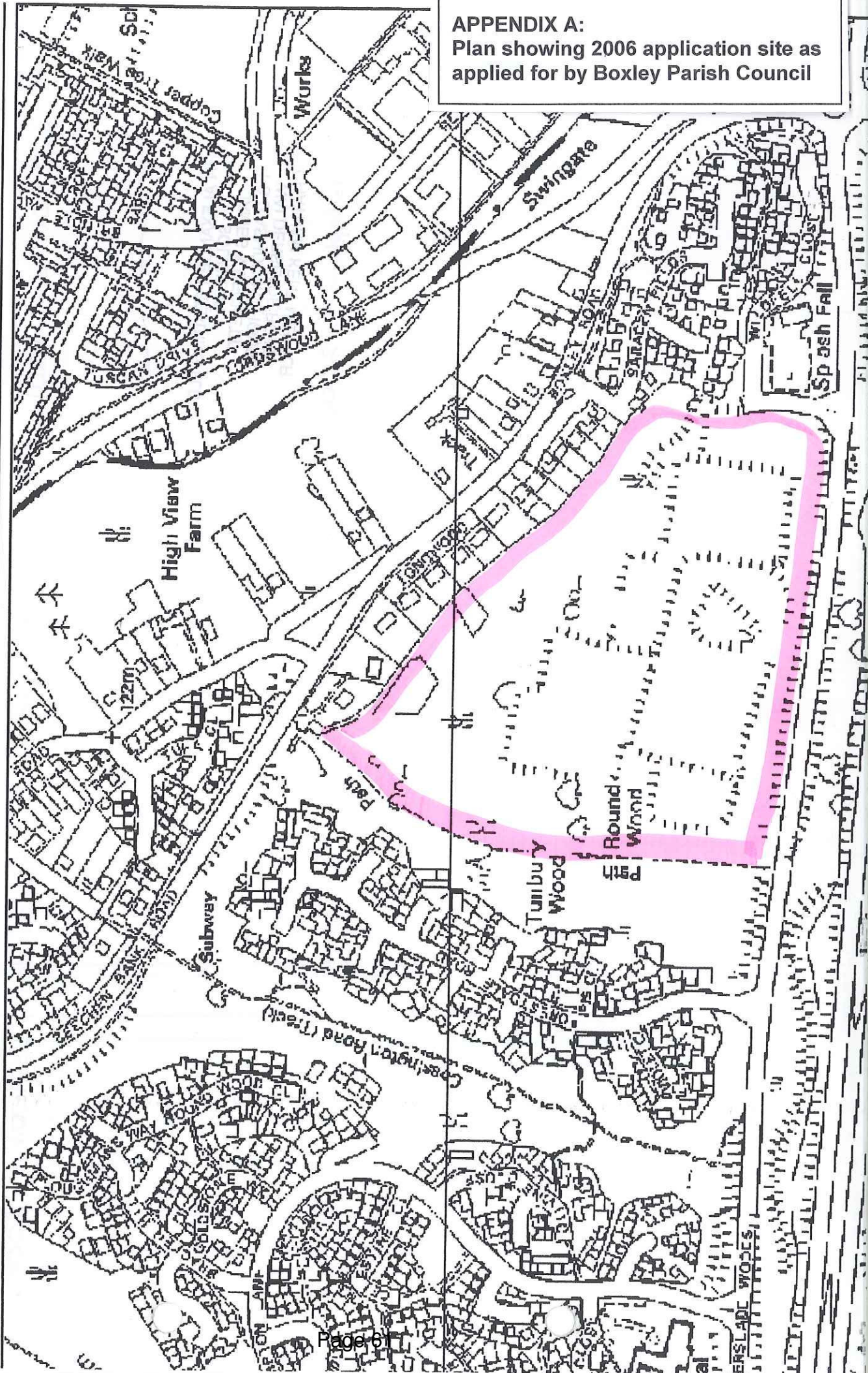
APPENDIX B –

Plan showing 2012 application site as applied for by Kent County Council's Property Section

SCALE
6 INCHES TO ONE
MILE.

EXHIBIT A.

APPENDIX A:
Plan showing 2006 application site as
applied for by Boxley Parish Council





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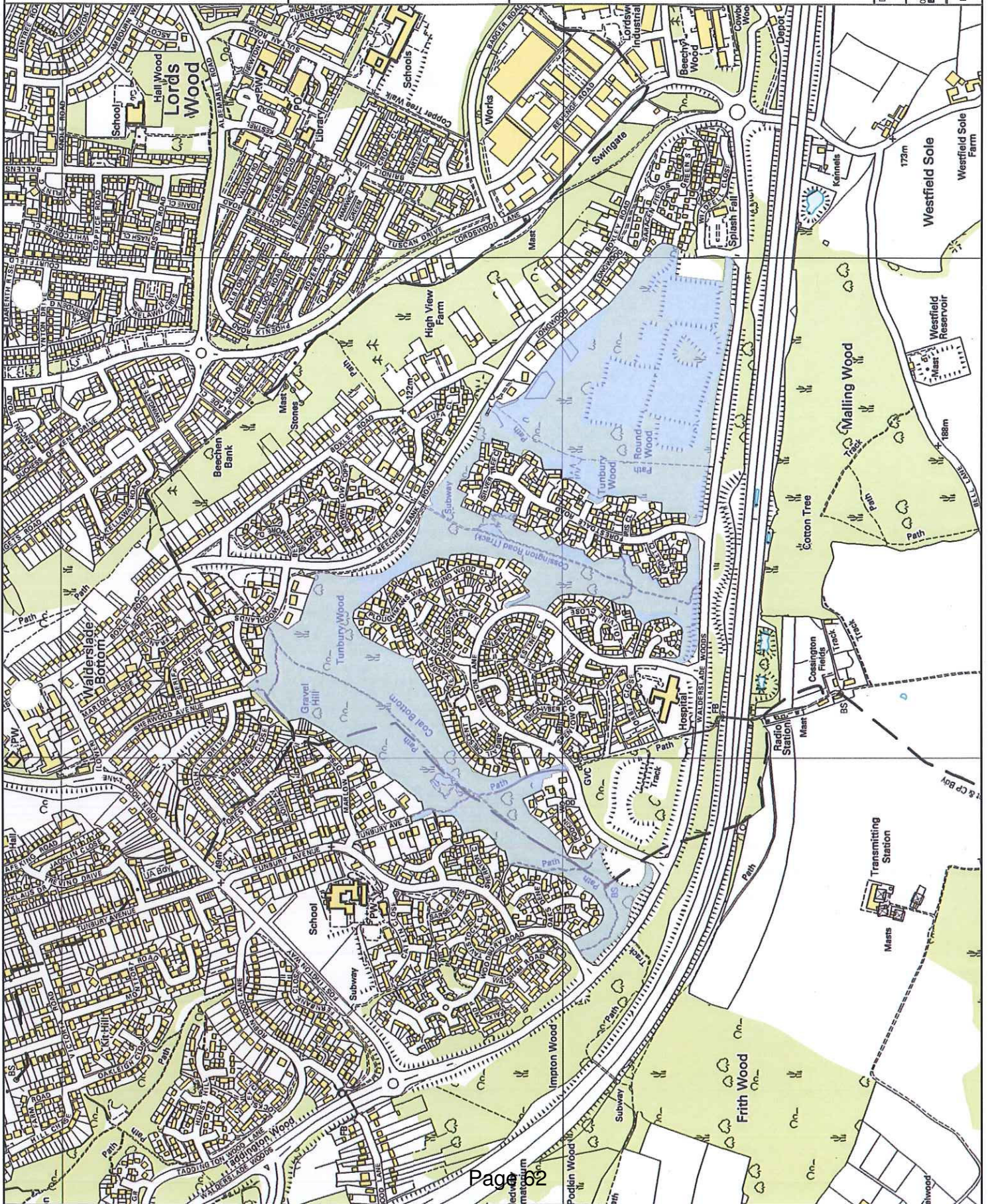
PROPERTY AND
INFRASTRUCTURE SUPPORT
County Hall, Maidstone
Kent ME14 1XQ
Tel:08458 247247

Drawing Title

APPENDIX B: Plan showing 2012 application site as applied for by KCC Property Section

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Drawing No. TQ7



Application to register a new right of common at Southborough Common (CL35)

A report by the Head of Regulatory Services to Kent County Council's Regulation Committee Member Panel on Tuesday 17th July 2012.

Recommendation: I recommend that the County Council informs the applicant that the application to amend the Register of Common Land to register a new right of common has been accepted and that the Register of Common Land for unit number CL35 be amended accordingly.

Local Members: Mr. R. Bullock MBE

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 Dr. P. Stookes ("the applicant"). The application, made on 18th July 2011, has been made under section 6 of the Commons Act 2006 and seeks to amend unit number CL35 of the Register of Common Land to record a new right of common. A copy of the Register of Common Land for unit CL35 is attached at **Appendix A** to this report.

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. Rights of common are normally attached to a particular property, but in some cases they are held by an individual.
5. 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.

Procedure

6. Section 6 of the Commons Act 2006 enables the creation of a new right 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. The purpose of the application under section 6 is to record the creation of the new right on the Register of Common Land. The importance of this is that the right will have no legal effect unless and until the application is granted and the new right is recorded on the Register of Common Land.
8. 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 owner of the common and the owner(s) of any other rights of common exercisable over the land.
9. In determining the application, the County Council must be satisfied that:
 - the applicant is entitled to make an application under section 6; and
 - the owner has consented to the creation of the new right of common.

The Case

Description of the right of common to be recorded on the register

10. The new right of common has been created by virtue of a deed of grant dated 14th July 2011 between the applicant and the Southborough Town Council (as owners of Southborough Common). A copy of the deed is attached at **Appendix B** to this report.
11. The deed provides that a new right of estover (a right to collect firewood) will be exercisable over the whole of Southborough Common. The right of common will be attached to the applicant’s property.

Capacity to apply

12. The County Council must be satisfied that the person making the application under section 6 of the Commons Act 2006 has the capacity to apply. Those eligible to apply for such applications are the registered owner of the land over which the right will be exercisable or the owner of the land to which the right will be attached.
13. A Land Registry search has confirmed that the applicant in this case is the owner of the land to which the right will be attached and, as such, the applicant is able to make the application to amend the Register under the Commons Act 2006.

Landowner’s consent

14. The County Council must also be satisfied that the owner of the Common Land consents to the application.

15. In this case, the new right of common was created by way of a deed of grant signed by Southborough Town Council (owner of Southborough Common). As such, the Town Council consents to the new right of common being created.

Notice of Application

16. As required by the 2008 Regulations, notice of the application was published on the County Council's website. No objections have been received.

17. The applicant has also, as required by the Regulations, served a copy of the notice on all of the other existing owners of rights of common listed in the Register of Common Land for CL35. No objections have been received.

Conclusion

18. It can therefore be concluded that the necessary criteria concerning the amendment of the Register of Common Land for unit number CL35 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 register a new right of common has been accepted and that the Register of Common Land for unit number CL35 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 CL35

APPENDIX B – Copy of the deed of transfer

**APPENDIX A:
Copy of the Register of Common Land
for Southborough Common (CL35)**

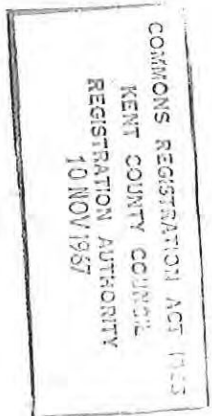
COMMON LAND REGISTRATION ACT 1965

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

Registration authority KENT COUNTY COUNCIL

Register of

COMMON LAND



Register unit No. CL 35
Edition No.

See Overleaf
for Notes

LAND SECTION—Sheet No.

No. and date of entry	Description of the land, reference to the register map, registration particulars etc.
1. CL.103 9.11.67	The tract of land of approximately 71 acres in extent known as Southborough Common in the Urban District of Southborough as marked with green wavy lines inside the boundary on Sheet 23 of the register map (but excluding the areas coloured red on the said map) and distinguished by the number of this register unit. Registered pursuant to application No. CL.103 made on 18th October, 1967 by the Southborough Urban District Council. (Registration provisional.)
2. 30.11.70	The registration entry above, being undisputed, became final on 1st October, 1970
3. 3.4.87	The part of land comprised in this Register Unit which is situated between London Road, Southborough and the forgotten kennel on Birchwood Garage and White Edge, London Road, Southborough, Turbidge Wells, Kent ceased to be Common land on 5 December 1986 and is removed from the Register pursuant to the Department of the Environment Order of Exchange dated 15 October 1985.

No. and date of note	Notes
25 12.1.70	"Mr. Norman George Gunner of Kintore, Church Road, The Common, Southborough claims a right of access from the public highway over land comprised in this register unit to Kintore, Church Road and a right of access to the boundary of the property where contiguous with the Common".
26 12.1.70	"Mr. Leslie Frederick Stroud and Mrs. Olive Stroud of 9 Holden Road, Southborough, claim a right of access from the public highway over land comprised in this register unit to 9 Holden Road, and a right of access to the boundary of the property where contiguous with the Common".
27 12.1.70	"Mr. Charles Henry Pentecost of 15 Modest Corner, Southborough and Spencer Percy Pentecost of Bentham Hill Farm, Southborough claim rights of way for all purposes over land comprised in this register unit to Aching Fields, Southborough."
28 27.1.70	"Mr. Hugh Joseph Crosley claims the right of access from the public highway over land comprised in this register unit to nos. 17, 18 and 19 Modest Corner, Southborough and a right of access to the boundaries of those properties, where contiguous with the common."
29 13.2.70	"The South Eastern Electricity Board claim the right to maintain underground electricity cables across the land comprised in this register unit."
30 7.9.70	"The Post Office claims the right to maintain the main telegraphic route laid under the land comprised in this register unit."
31 30.1.73	"Mrs. Margaret Burchett of 9 Holden Road, Southborough, claims a right of access from the public highway over land comprised in this register unit to 9 Holden Road, and a right of access to the boundary of the property where contiguous with the Common".
32 2-7-82	Ian Grabon Short and Sheila Ann Short claim a right of way at all times with or without vehicles or animals from the public highway to Woodleigh Hall, (formerly known as "Wood Lea") (See entry 23 above)
33. 8-5-84.	Richard Paul Hawkes and Susan Jane Hawkes claim a right of access from the highway known as Holden Road over land comprised in

No. and date of note	Notes
34 5.7.87	"Mr Michael John Pether and Mrs Esther Maud Arthur, both of 12 Victoria Road, Southborough, claim a right of vehicular and pedestrian access from the public highway known as Victoria Road over land comprised in the register to the property known as 12, Victoria Road."

Register of COMMON LAND

Register Unit No. Edition No.

See Overleaf for Notes

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
1 23.12.68	339 24.6.68	Geoffrey Hampton Deeley, The Old House, 22, Modest Corner, Southborough. (Owner)	(a) To graze two oxen; two pigs, two sheep, two goats, four geese, twelve fowls, one horse and one donkey, together with the followers of any of the said animals, and (b) rights of estovers, turbery, piscary and pannage; all such rights held over the whole of the land comprised in this register unit. (Registration-provisional)	The Old House, 22, Modest Corner, Southborough (formerly described and known as "Cheynes Court") being the land shown edged red on the supplemental map bearing the number of this registration.
2 23.12.68	340 12.6.68	Miss Gertrude Altham Collins, 8, Modest Corner, Southborough. (Owner)	(a) To graze one horse, one donkey and one goat, and (b) a right of estovers, being a right to gather wood or furze, over the whole of the land comprised in this register unit. (Registration-provisional)	8, Modest Corner, Southborough being the land shown edged red on the supplemental map bearing the number of this registration.
3 24.11.69	516 20.11.69	Montague Paul Way, Holden Cottage, Holden Road, Southborough. (Owner)	Rights of estovers, turbery and piscary over the whole of the land comprised in this register unit. (Registration-provisional)	Holden Cottage (formerly known as "Roseville" and earlier called "Hayard Farm"), Holden Road, Southborough being the land edged red on the supplemental map bearing the number of this registration.
4 12.12.69	524 9.12.69	Merrilee Ernest Martin, 8, Oak End Close, Southborough. (Owner)	Rights of estovers, turbery, and piscary over the whole of the land comprised in this register unit. (Registration-provisional)	16, Church Road, Southborough, being the land edged black on the supplemental map bearing the number of this registration.
5 15.12.69	525 6.12.69	Mrs. Maude Elsie Davies, 14, Victoria Road, Southborough. (Owner)	Rights of piscary and turbery over the whole of 14&15, Victoria Road, Southborough, being the land edged red on the supplemental map bearing the number of this registration.	14&15, Victoria Road, Southborough, being the land edged red on the supplemental map bearing the number of this registration.
6 16.12.69	532 13.12.69	Baron Victor and Baroness Joan Frances de Styroes, The Pink House, 19 Holden Road, Southborough Common. (Owners)	(a) The right to use pasture for 12 bonyard fowls, 12 ducks and six geese; and (b) Rights of piscary, turbery and estovers over the whole of the land comprised in this register unit. (Registration-provisional)	The Pink House, 19 Holden Road, Southborough Common, being the land edged blue on the supplemental map bearing the number of this registration.
7 22.12.69	543 19.12.69	Mrs. Blanche Lawson, 18, Victoria Road, Southborough. (Owner)	(a) The right to use pasture for 6 geese, 12 ducks and 12 hens; and (b) Rights of piscary, turbery and estovers over the whole of the land comprised in this register unit. (Registration-provisional)	18, Victoria Road, Southborough, being the land edged green on the supplemental map bearing the number of this registration.

10.8.72

The register entries at

Nos. 1 to 7 above, being underlined, became final on

Register of COMMON LAND

RIGHTS SECTION—Sheet No.



Register unit No. 00000
Edition No.

See Overleaf
for Notes

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
8 12.1.70	566 29.12.69	Leslie Frederick Stroud and Olive Stroud, 9 Holden Road, Southborough. (Owners)	(a) To graze two horses and one donkey; and (b) rights of piscary, turbery and estovers over the whole of the land comprised in this register unit. (Registration-provisional)	9 Holden Road, Southborough, being the land edged red on the supplemental map bearing the number of this registration.
9 12.1.70	569 29.12.69	Frederick Douglas Buttivant and Jean Marion Buttivant, 14 Modest Corner, Southborough. (Owners)	Rights of estovers, turbery and piscary over the whole of the land comprised in this register unit. (Registration-provisional)	14 Modest Corner, Southborough being the land edged in blue on the supplemental map bearing the number of this registration.
10 12.1.70	579 29.12.69	Kathleen Mary Thomas, Cats Castle, Church Road, Southborough. (Owner)	- do -	Cats Castle and The Oak Cottage, Church Road, Southborough, being the land edged in red on the supplemental map bearing the number of this registration.
11 12.1.70	536 15.12.69	Norman George Cunner, "Kintore", Church Road, The Common, Southborough. (Owner)	- do -	"Kintore", Church Road, Southborough being the land edged in blue on the supplemental plan bearing the number of this registration.
12 12.1.70	587 30.12.69	Ian Barclay Leslie and Joyce Barbara Mary Leslie, Valley House, 78 Fenington Road, Southborough. (Owners)	To graze six horses and six donkeys over the whole of the land comprised in this register unit. (Registration-provisional)	Valley House, 78 Fenington Road, Southborough, being the land edged in red on the supplemental map bearing the number of this registration.
13 12.1.70	608 1.1.70	Charles Henry Penticoat, 15 Modest Corner, Southborough Spencer Percy Penticoat, Dentham Hill Farm, Southborough. (Joint owners)	(a) To graze 40 head of cattle and (b) rights of estovers over the whole of the land comprised in this register unit. (Registration-provisional)	Alchins Fields, Southborough, being the land edged in blue on the supplemental map bearing the number of this registration.
14 27.1.70	605 30.12.69	Hugh Joseph Crosloy, Briar Cottage, 18 Modest Corner, Southborough.	(i) To graze 4 head of cattle, 6 goats and 2 horses and (ii) rights of estovers, turbery and piscary over the whole of the land comprised in this register unit. (Registration-provisional)	17, 18 and 19 Modest Corner, Southborough, being the properties edged in blue on the supplemental map bearing the number of this registration.

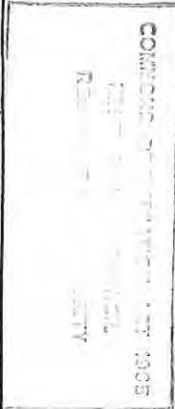
is. 8.72
The registers entries at
Nos. 8 to 14 above, being void, being void, because found on 1st August, 1972

Register of COMMON LAND

Note: This section contains the registration of every person registered under the Act as owner of any of the land described in the land section of this register unit. It does not contain any registration 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 section does not necessarily indicate that the freehold of that land is registered under those Acts.

Register unit No. **CL 35**
Edition No.

OWNERSHIP SECTION—Sheet No.



See Overleaf for Notes

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
4 1-4-70	533 16-12-69	Southborough Urban District Council, Council Offices, Southborough, Dorchester, Dorset. (Registration provision preserved)	The whole of the land contained in this register unit.
2 10.8.72		The registration at entry No. 1 above, being withdrawn, became final on 31st August, 1972.	
3 03/09/2009		The registration at entry no. 1. above was deleted. See notes to entry No. 1. overleaf.	The whole of the land contained in this register unit.

No. and date of note	Notes	No. and date of note	Notes
5/09/2009	<p>The registration at entry No. 1. overlaid has been deleted under Paragraph 8(2) of Schedule 3 to the Commons Act 2006, the freehold estate in the land to which it applied having been registered under the Land Registration Act 2002, with title number K 944260 in favour of Southborough Town Council.</p>		

This DEED OF GRANT is made the 14th day of July 2011

**APPENDIX B:
Copy of the deed
of grant dated
14th July 2011**

BETWEEN:

- (1) Southborough Town Council of 137 London Road, Southborough, Tunbridge Wells TN4 0ND ('the Grantor') and
- (2) Paul Anthony Stookes and Helen Margaret Stookes of [REDACTED] ('the Grantee')

NOW THIS DEED WITNESSES as follows:

- 1 That the Grantor grants to the Grantee the Rights of Common attached to and for the Dominant Land over the Common.
- 2 Definitions and interpretation. In this deed:
 - 2.1 'the Common' means the land known as Southborough Common, Southborough, Tunbridge Wells, Kent and each and every part of it;
 - 2.2 'the Dominant Land' means the land described as [REDACTED] and shown [for the purposes of identification only] edged red on the Plan, and each and every part of it;
 - 2.3 'the Plan' means the plan annexed to this deed;
 - 2.4 'the Rights of Common' means the right of estovers (the right to collect dropped wood) for the benefit of the Dominant Land; and
 - 2.5 where the context so admits the expressions 'the Grantor' [and 'the Grantee'] include their respective successors in title.

Signed as a deed and on behalf of Southborough Town Council by BRENDA J. WICKENS being a person who is acting under the authority of the Town Council.

Signature [REDACTED]

in the presence of:
[signature, name and address of witness]

Signed as a deed by Paul Anthony Stookes

in the presence of:
[signature, name and address of witness]

Signed as a deed by Helen Margaret Stooke

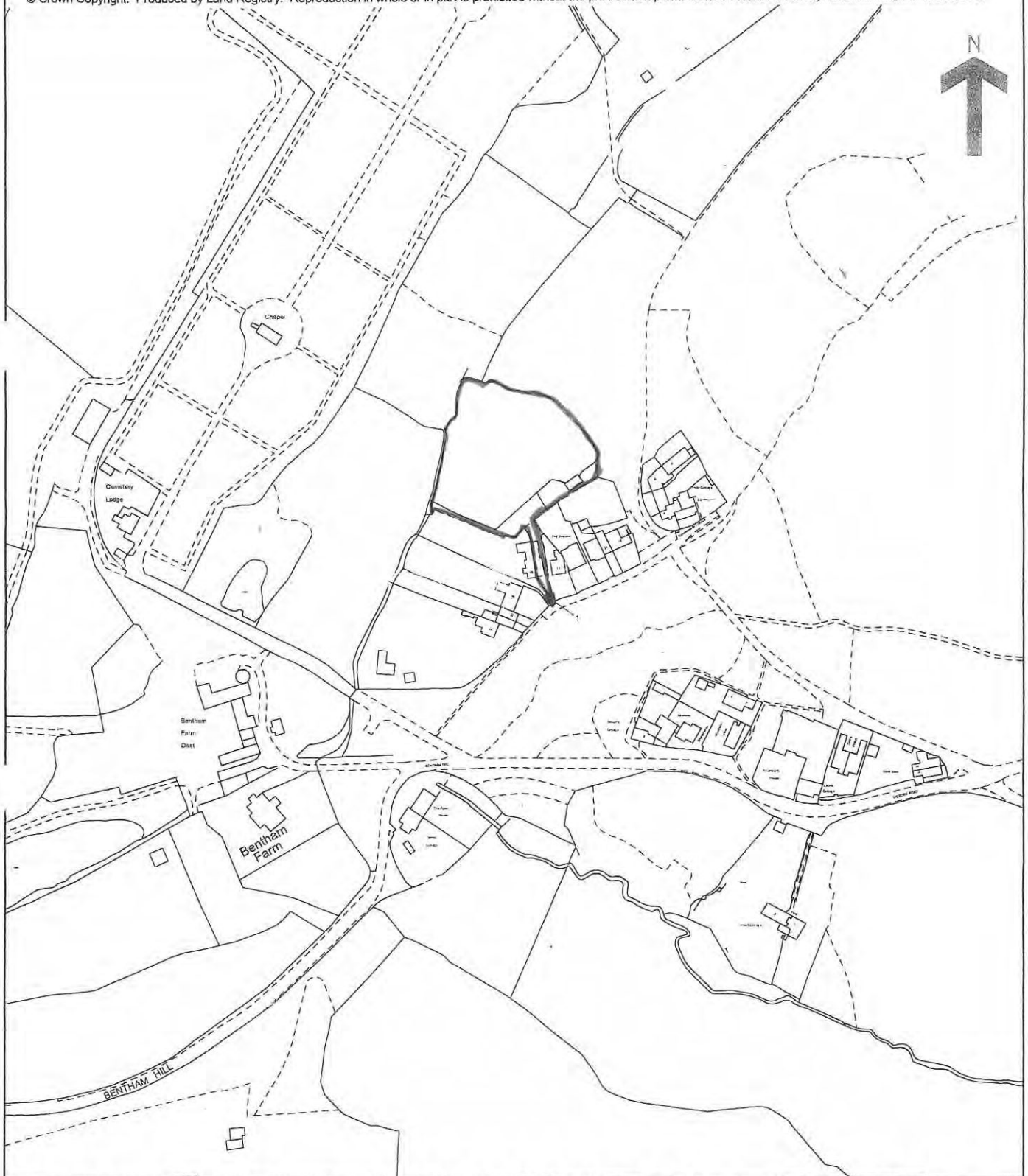
in the presence of:
[signature, name and address of witness]

Land Registry Official copy of title plan

Title number **K562696**
Ordnance Survey map reference **TQ5742SW**
Scale **1:2500**
Administrative area **Kent: Tunbridge Wells**



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This official copy issued on 26 August 2010 shows the state of this title plan on 26 August 2010 at 10:56:59. It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002).
This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. See Land Registry Public Guide 19 - Title Plans and Boundaries.
This title is dealt with by Land Registry, Tunbridge Wells Office.