



## AGENDA

### Kent County Council

## REGULATION COMMITTEE MEMBER PANEL

**Monday, 21st January, 2013, at 2.30 pm**  
**Church Farm Hall, 198 New Hythe Lane,**  
**Larkfield ME20 6ST**

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 H T Bowles, Mr I S Chittenden, Mr H J Craske and Mrs V J Dagger

### **UNRESTRICTED ITEMS**

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

1. Membership and Substitutes
2. Declarations of Interest by Members for Items on the agenda
3. Application to register land known as Walderslade Woods in the parishes of Boxley and Aylesford as a new Village Green (Pages 1 - 18)
4. Application to register land at Willow Road in Larkfield as a new Village Green (Pages 19 - 32)
5. Application to register land at Four Acres in East Malling as a new Village Green (Pages 33 - 50)
6. Other Items which the Chairman decides are Urgent

### **EXEMPT ITEMS**

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

Peter Sass  
Head of Democratic Services  
(01622) 694002  
**Friday, 11 January 2013**



## **Application to register land known as Walderslade Woods in the parishes of Boxley and Aylesford as a new Village Green**

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A report by the Head of Regulatory Services to Kent County Council's Regulation Committee Member Panel on Monday 21<sup>st</sup> January 2013.

**Recommendation: I recommend that the County Council informs the applicant that the application to register the land known as Walderslade Woods in the parishes of Boxley and Aylesford has been accepted (with the exception of the small parcel of land situated in Medway Council's administrative area and the land falling within Land Registry title number K703174), and that the land (excluding the Medway section and title K703174) be formally registered as a Village Green.**

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Local Member: Mr. P. Carter and Mr. P. Homewood

Unrestricted item

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### **Introduction**

1. The County Council's Countryside Access Service has received an application to register land known as Walderslade Woods in the parishes of Boxley and Aylesford as a new Village Green from the County Council's Estates Section ("the applicant"). The application, dated 22<sup>nd</sup> May 2012, was allocated the application number VGA646. A plan of the site is shown at **Appendix A** to this report and a copy of the application form is attached at **Appendix B**.

### **Background**

2. Members may recall that, on 17<sup>th</sup> July 2012, a meeting of the Regulation Committee Member Panel considered a report in relation to an application to register land known as Round Wood in the parish of Boxley as a Village Green. That application had been made by Boxley Parish Council and concerned an area of land that forms part of the current application. At the Parish Council's request, Members agreed to allow the previous application to be withdrawn on the basis that the current application is superior as it includes a vast tract of woodland that was missing from the Parish Council's original application.

### **Procedure**

3. Traditionally, Town and Village Greens have derived from customary law and until recently it was only possible to register land as a new Town or Village Green where certain qualifying criteria were met: i.e. where it could be shown that the land in question had been used 'as of right' for recreational purposes by the local residents for a period of at least 20 years.
4. However, a new provision has been introduced by the Commons Act 2006 which enables the owner of any land to apply to voluntarily register the land as a new Village Green without having to meet the qualifying criteria. Section 15 states:
 

*"(8) The owner of any land may apply to the Commons Registration Authority to register the land as a town or village green.*

*(9) An application under subsection (8) may only be made with the consent of any relevant leaseholder of, and the proprietor of any relevant charge over, the land."*

5. Land which is voluntarily registered as a Town or Village Green under section 15(8) of the Commons Act 2006 enjoys the same level of statutory protection as that of all other registered greens and local people will have a guaranteed right to use the land for informal recreational purposes in perpetuity. This means that once the land is registered it cannot be removed from the formal Register of Town or Village Greens (other than by statutory process) and must be kept free of development or other encroachments.
6. In determining the application, the County Council must consider very carefully the relevant legal tests. In the present case, it must be satisfied that the applicant is the owner of the land and that any necessary consents have been obtained (e.g. from a tenant or the owner of a relevant charge). Provided that these tests are met, then the County Council is under a duty to grant the application and register the land as a Town or Village Green.

## **The Case**

### Description of the land

7. The area of land subject to this application ("the application site") consists of an area largely of woodland (with some open areas) in Walderslade which is approximately 90.5 acres (36.6 hectares) in size. The application site includes land known as Round Wood, Turnberry Wood and part of Impton Wood. It is roughly bounded to the north by Beechen Bank Road and to the south by the road known as Walderslade Woods, but excludes the residential developments in the vicinity of Forestdale Road and Impton Lane. The application site is an irregular shape that is best described by reference to the map at **Appendix A**.
8. Access to the application site is via several formal entrance points situated around the perimeter of the application site, as well as various recorded Public Rights of Way crossing the application site (as shown at **Appendix A**)
9. An aerial photograph of the application site is attached at **Appendix C**.

### Notice of Application

10. As required by the regulations, Notice of the application was published on the County Council's website. In addition, copies of the notice were displayed on the application site itself. The local County Member was also informed of the application.
11. No responses to the consultation have been received.

### Ownership of the land

12. A Land Registry search has been undertaken which confirms that the application site is wholly owned by the County Council. The vast majority of the site is held



under title number K370575, with a number of small pieces of land registered under title numbers K475300, K4888285 and K556778. A copy of the relevant Registers of Title are attached at **Appendix D** and a plan showing the ownership (which is too large to copy) will be available at the meeting.

13. The original application site also included a small section of land (Land Registry Title Number K703174). This land is registered under the County Council's ownership, but there is a registered caution contained in the title in favour of Hillreed Homes Ltd. This would require Hillreed Homes Ltd to be contacted and their consent obtained to the Village Green application being obtained. In light of the fact that this area represents only a very small part of the application site (approximately 0.2 acres or 0.09 hectares), and in order to prevent any further delay in processing the application, it has been agreed that this area should be excluded from any final registration of the land as a Village Green.
14. There are no other interested parties (e.g. leaseholders or owners of relevant charges) named on the other Registers of Title.

#### Exclusion of part of the application site

15. A small part of the application site situated at the northernmost point of the site and consisting of approximately 0.25 acres (0.1 hectares) is situated within Medway Council's administrative area.
16. The County Council does not have any power to register land situated within another Council's administrative area as a Village Green and as such this part of the application site would need to be excluded if the land were to be registered as a Village Green.

#### The 'locality'

17. DEFRA's view is that once land is registered as a Town or Village Green, only the residents of the locality have the legal right to use the land for the purposes of lawful sports and pastimes. It is therefore necessary to identify the locality in which the users of the land reside.
18. A locality for these purposes normally consists of a recognised administrative area (e.g. civil parish or electoral ward) or a cohesive entity (such as a village or housing estate).
19. In this case, the application site falls within the parishes of Boxley and Aylesford. Both are recognised administrative units however, following the decision in the *Oxfordshire*<sup>1</sup> case, a locality for the purposes of Village Green registration must be a single locality. Although it would be possible to specify one of the parishes as the relevant locality, the effect of this would effectively be to deprive residents of the other parish the legal right to use the land for recreational purposes. This would result in an unsatisfactory outcome.
20. The whole of the application site, and the neighbouring residential estates where the majority of the users are likely to reside, does however fall within the

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<sup>1</sup> *Oxfordshire County Council v Oxfordshire City Council and another* [2006] UKHL 25 at [27] per Lord Hoffman

ecclesiastical parish of Holy Trinity South Chatham. It has been held that an ecclesiastical parish is a qualifying locality for the purposes of Village Green registration<sup>2</sup>.

21. The relevant locality in this case is thus the ecclesiastical parish of Holy Trinity South Chatham.

### **Conclusion**

22. As stated at paragraph 4 above, the relevant criteria for the voluntary registration of land as a new Town or Village Green under section 15(8) of the Commons Act 2006 requires only that the County Council is satisfied that the land is owned by the applicant. There is no need for the applicant to demonstrate use of the land 'as of right' for the purposes of lawful sports and pastimes over a particular period.

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

### **Recommendations**

24. I recommend that the County Council informs the applicant that the application to register the land known as Walderslade Woods in the parishes of Boxley and Aylesford has been accepted (with the exception of the small parcel of land situated in Medway Council's administrative area and the land falling within Land Registry title number K703174), and that the land (excluding the Medway section and title K703174) be formally registered as a Village Green.

Accountable Officer:

Mr. Mike Overbeke – Tel: 01622 221513 or Email: [mike.overbeke@kent.gov.uk](mailto:mike.overbeke@kent.gov.uk)

Case Officer:

Ms. Melanie McNeir – Tel: 01622 221628 or Email: [melanie.mcneir@kent.gov.uk](mailto:melanie.mcneir@kent.gov.uk)

The main file is available for viewing on request at the Countryside Access Service based at 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 – Aerial photograph of the application site

APPENDIX D – Copy of the Register of Title from Land Registry

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<sup>2</sup> *R (Laing Homes Ltd) v Buckinghamshire County Council* [2003] EWHC 1578 (Admin) at [151] per Sullivan J



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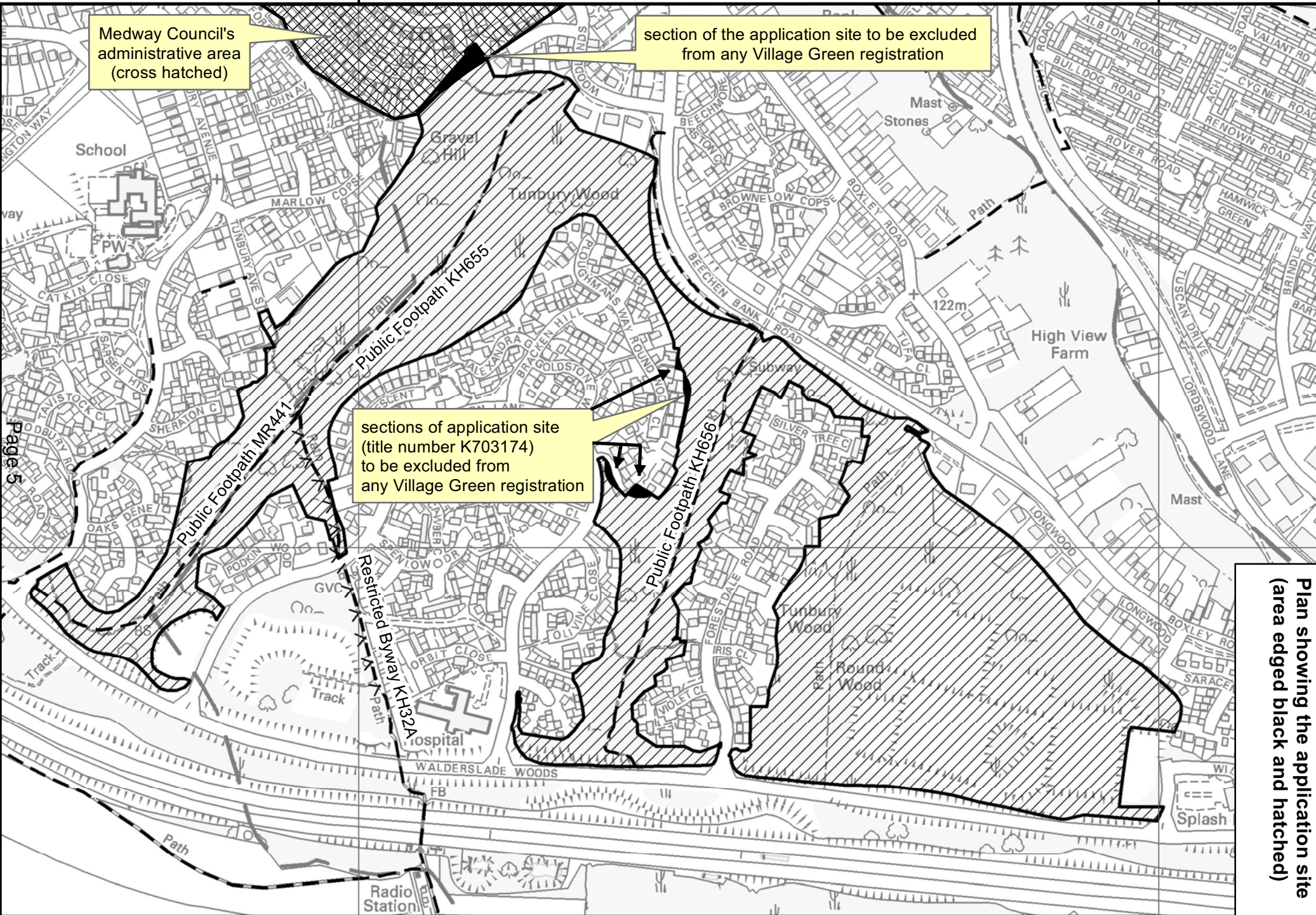
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Medway Council's administrative area (cross hatched)

section of the application site to be excluded from any Village Green registration

sections of application site (title number K703174) to be excluded from any Village Green registration

APPENDIX A:  
Plan showing the application site (area edged black and hatched)



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FORM CA9

APPENDIX B:  
Copy of the application form

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:

VC1A646

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

[Empty box for VG number]

**Note to applicants**

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

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

**Note 1**  
Insert name of Commons  
Registration Authority

**1. Commons Registration Authority**

To the: KENT COUNTY COUNCIL

**Note 2**

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

**2. Name and address of the applicant**

Name: KENT COUNTY COUNCIL

Full postal address:  
(incl. Postcode) SESSIONS HOUSE  
COUNTY ROAD  
MAIDSTONE ME14 1XQ

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

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

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: HENRY CLARK

Firm: KENT COUNTY COUNCIL (PROPERTY & INFRASTRUCTURE SUPPORT - ESTATES)

Full postal address: SH1.49  
(incl. Postcode) SESSIONS HOUSE  
COUNTY HALL  
MAIDSTONE ME14 1XQ

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

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

E-mail address: [REDACTED]

**Note 4**

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

**4. Basis of application for registration and qualifying criteria**

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

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

Section 15(2) applies:

Section 15(3) applies:

Section 15(4) applies:

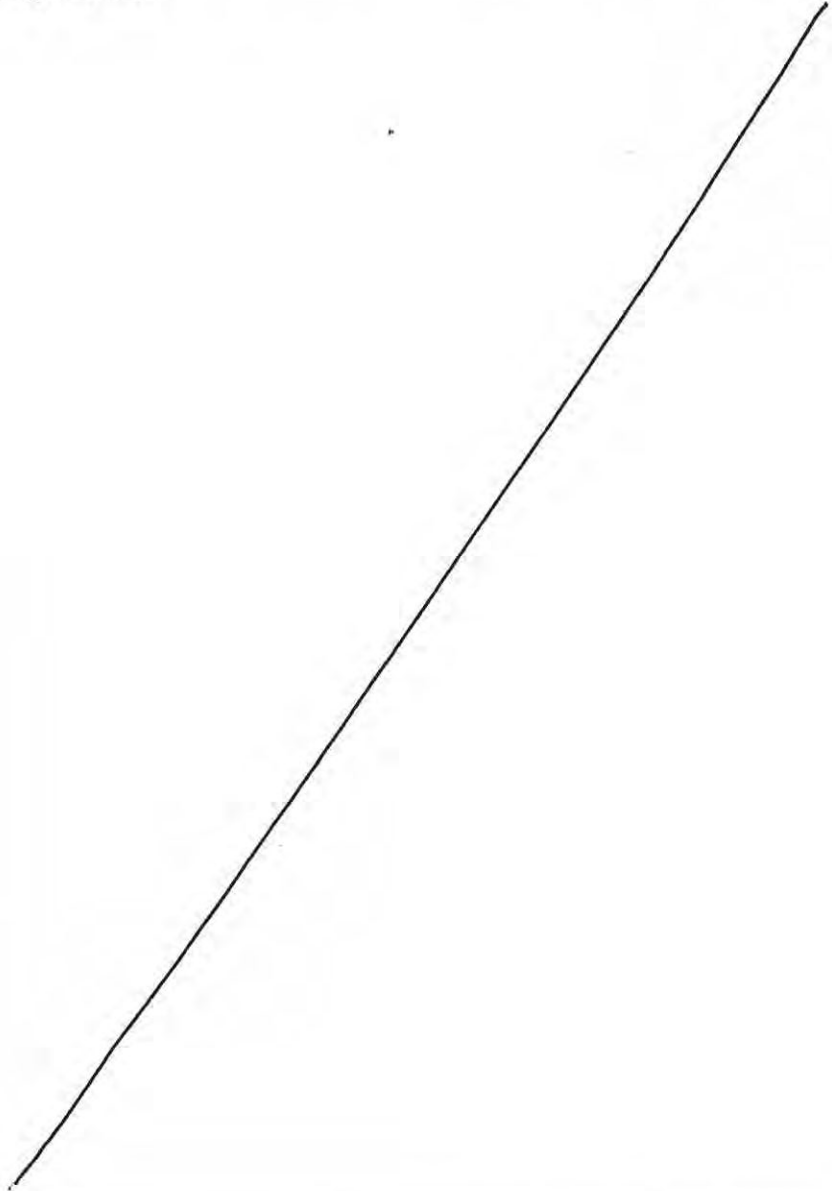


**Note 7**

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

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

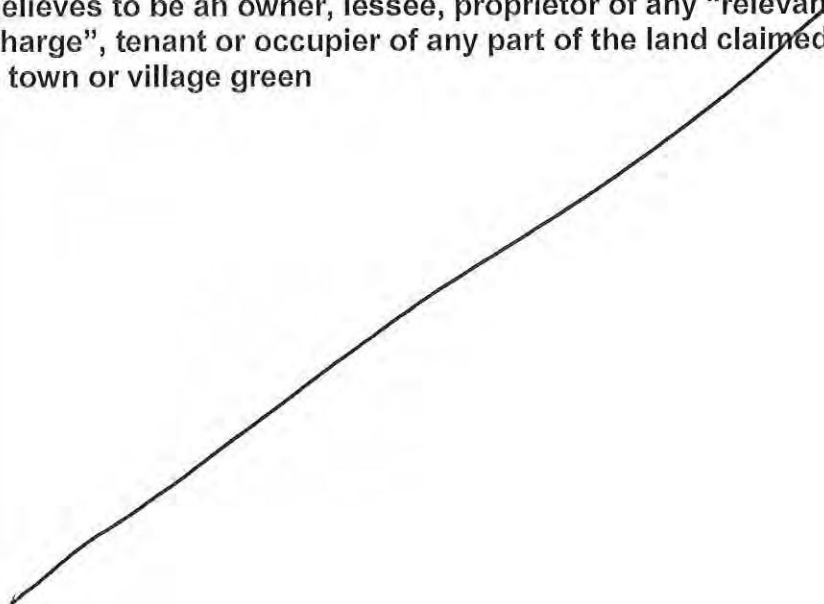
**7. Justification for application to register the land as a Town or Village Green**



**Note 8**

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

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



**Note 9**

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

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

THERE ARE NO LEASES OR RELEVANT CHARGES OVER THE LAND.

**Note 10**

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

**10. Supporting documentation**

PROPRIETORSHIP REGISTER FOR TITLE No. 370575 RELATING TO THE MOST PART OF THE LAND ATTACHED.

PLAN TQ7562/42 INDICATES OTHER TITLES WITHIN THE BOUNDARY OF THE APPLICATION ALSO IN KCC OWNERSHIP. THESE ARE SMALL SLIVERS HOWEVER LEFT OVER WHEN LAND AROUND WAS DEVELOPED THAT WILL BE RETAINED IN THE BOUNDARY TOO AS THEY NOW FORM PART OF THE WOOD.

**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**

NONE.



**Note 12**

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

**12. Signature**

Signature(s) of applicant(s):



Date:

**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.*



Based upon the Ordnance Survey map with the permission of the Controller of Her Majesty's Stationery Office.  
(C) Crown Copyright & database right 2011.  
Ordnance Survey 100019238.  
Additional information copyright Kent County Council

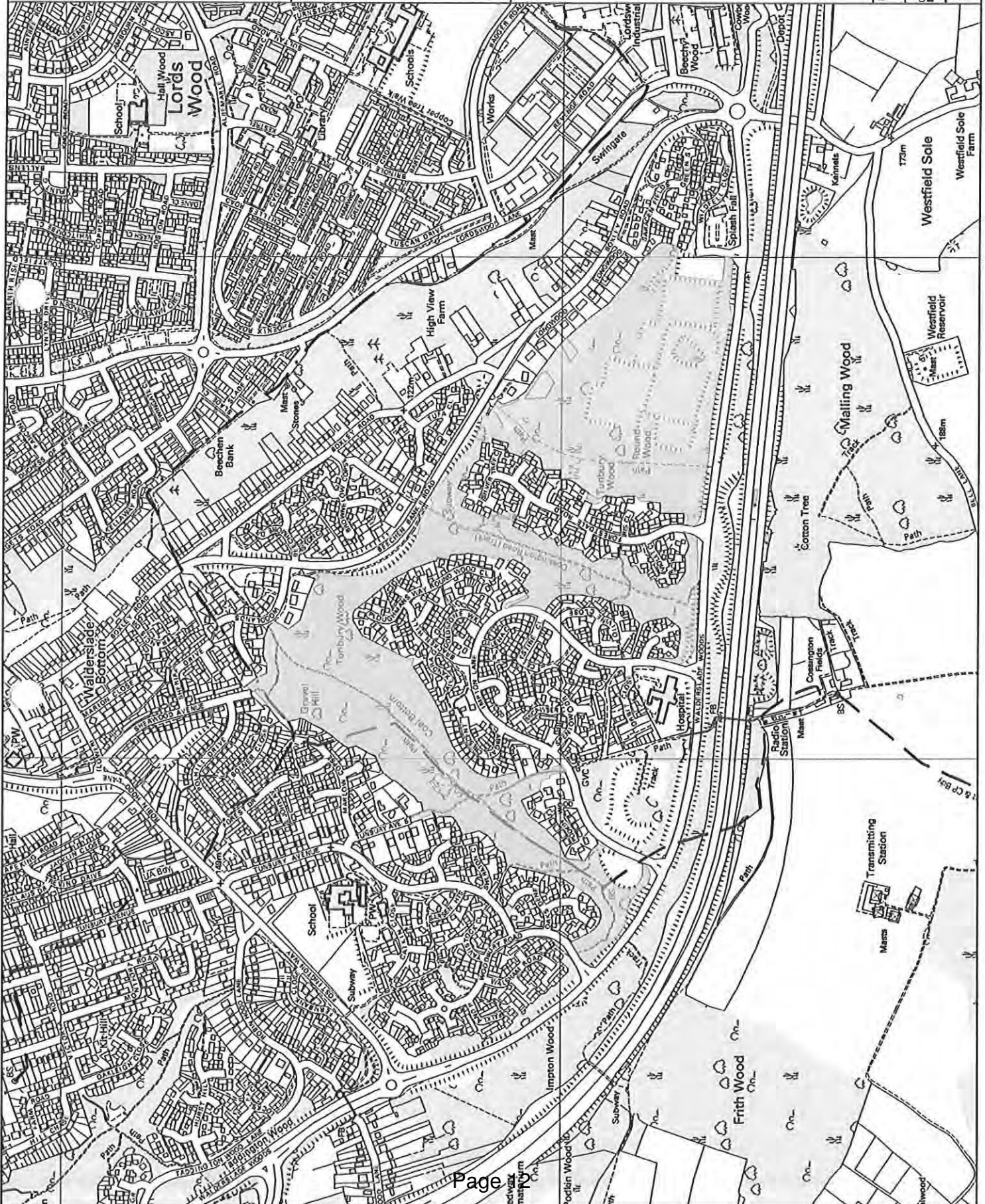


PROPERTY AND  
INFRASTRUCTURE SUPPORT  
County Hall, Maidstone  
Kent ME14 1XQ  
Tel:08458 247247

Drawing Title

# WALDESLADE WOODS LOCATION PLAN

Drawn By	JTN	Date	MAY 2012
	100	Meters	200
			400
		Scale	1:10000
		Drawing No.	TQ7562/42A
			@ A4





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**APPENDIX C:**  
Aerial photograph of the application site (edged in red dashed line)



## A: Property Register continu

use of water soil gas electricity and telephone services by and through those sewers drains watercourses pipes wires cables and other service conduits which now or shall within the period of 80 years from the date hereof (which shall be the perpetuity period applicable thereto) serve the Retained Land and which now or shall within the said period of 80 years run under along or over the Property with full right and liberty for the Transferor and its successors in title to the Retained Land at all reasonable times and upon giving prior notice in writing except in cases of emergency to enter upon the Property with or without workmen and appliances for the purpose of constructing connecting to inspecting repairing cleansing maintaining renewing relaying or removing the said sewers drains watercourses pipes wires cables and other service conduits or removing therefrom any obstruction the Transferor and its successors in title making good at its or their own expense and to the reasonable satisfaction of the Transferee and the Transferee's successors in title to the Property all damage and disturbance caused by the exercise of such rights as aforesaid and also paying a fair proportion in common with all other persons having the like right to use the said sewers drains watercourses pipes wires cables and other service conduits of the expense of repairing cleansing maintaining and renewing the same"

- 34 (19.05.1999) The land edged and lettered X in green on the filed plan has been removed from the title.
- 35 (06.02.2003) The land has the benefit of the rights of way, drainage and other services reserved by the Transfer dated 23 December 2002 referred to in the Charges Register.
- 36 (04.02.2004) The land has the benefit of the rights reserved by but is subject to the rights granted by a Transfer of the land edged and numbered K865478 in green on the filed plan dated 17 December 2003 made between (1) The Kent County Council and (2) Kitewood Estates Limited.

*NOTE: Copy filed under K865478*

- 37 (19.03.2004) The edged and numbered 27 in blue on the title plan is no longer of any significance and should be ignored since the entry in the register which gave rise to this reference has been cancelled.
- 38 (06.03.2007) The land has the benefit of the rights reserved by but is subject to the rights granted by a Transfer of the land edged and numbered K918145 in green on the title plan dated 26 January 2007 made between (1) The Kent County Council and (2) William Harold Letley and Jean Patricia Letley.

*NOTE: Copy filed under K918145.*

- 39 (17.06.2011) The land has the benefit of the rights reserved by a Transfer of the land edged and numbered K981266 in green on the title plan dated 20 May 2011 made between (1) The Kent County Council and (2) Helen June Bell-Robinson.

*NOTE: Copy filed under K981266.*

## B: Proprietorship Register

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

## Title absolute

- 1 PROPRIETOR: THE KENT COUNTY COUNCIL of County Hall, Maidstone, Kent ME14 1XQ.
- 2 The Transfers to the Proprietor of the land edged and numbered 14, 16, 17, 19, 40, 53, 54, 57, 58, 62 to 89, 91 to 101, 103 to 119, 121 to 130 1 on the filed plan contain Purchasers' personal covenants.

*NOTE: Copies filed.*

## A: Property Register continued

any of them or entitled thereto including the Local Authority and Statutory Undertakers:-

(a) the free and uninterrupted right of passage and running of water and soil gas electricity and other services into and through the service installations now constructed in or under the land hereby transferred or any part thereof with full rights of entry with or without workmen and appliances at all reasonable times and upon giving reasonable notice (except in the case of emergency) for the purpose of inspecting relaying cleansing renewing enlarging repairing removing maintaining and using such service installations the County Council or other the person exercising such rights causing as little damage as possible to the land hereby transferred and forthwith making good any damage thereby occasioned.

(b) a right of way for all purposes over upon and across the land hereby transferred for the purpose of maintaining any plant or other conducting media or service installation as may be in such land together with a right of support for the adjoining footpaths and the adjoining highways at Walderslade aforesaid."

- 10 (20.12.1995) The land has the benefit of the rights granted by a Deed dated 14 December 1995 made between (1) Maurice James Price and Marie Lynn Price (2) Nationwide Building Society and (3) The Kent County Council.

*NOTE: Copy in Certificate. Original filed under K714882.*

- 11 (01.03.1996) The land has the benefit of the rights granted by a Deed dated 27 February 1996 made between (1) Peter Ledger and Jocelyn Ledger (2) Abbey National Plc and (3) The Kent County Council.

*NOTE: Copy in Certificate. Original filed under K706610.*

- 12 (18.03.1996) The land has the benefit of the rights granted by a Deed dated 12 March 1996 made between (1) Angus Andrew Donald McDowall and Alison Jane McDowall (2) Halifax Building Society and (3) The Kent County Council.

*NOTE: Copy in Certificate. Original filed under K690290.*

## B: Proprietorship Register

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

### Title absolute

- 1 Proprietor: THE KENT COUNTY COUNCIL of County Hall, Maidstone, Kent ME14 1XQ.
- 2 The Transfer of the land edged and numbered 4, 5, 6, 7, 9, 10, 11, 12 and 13 in yellow on the filed plan contains purchasers personal covenants.

*NOTE: Copy covenants filed under K370575.*

- 3 The Transfer to the proprietor of the land edged and numbered 1 in yellow and edged and numbered 2 in yellow on the filed plan contains purchasers personal covenants.

*NOTE: Copy covenants filed under K370575.*

## C: Charges Register

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

THIS IS A PRINT OF THE VIEW OF THE REGISTER OBTAINED FROM HM LAND REGISTRY SHOWING THE ENTRIES SUBSISTING IN THE REGISTER ON 11 DEC 2012 AT 13:52:18. BUT PLEASE NOTE THAT THIS REGISTER VIEW IS NOT ADMISSIBLE IN A COURT IN THE SAME WAY AS AN OFFICIAL COPY WITHIN THE MEANING OF S.67 LAND REGISTRATION ACT 2002. UNLIKE AN OFFICIAL COPY, IT MAY NOT ENTITLE A PERSON TO BE INDEMNIFIED BY THE REGISTRAR IF HE SUFFERS A LOSS BY REASON OF A MISTAKE CONTAINED WITHIN IT. THE ENTRIES SHOWN DO NOT TAKE ACCOUNT OF ANY APPLICATIONS PENDING IN THE REGISTRY. FOR SEARCH PURPOSES THE ABOVE DATE SHOULD BE USED AS THE SEARCH FROM DATE.

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

TITLE NUMBER: K488285

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

## A: Property Register

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

KENT : MAIDSTONE

- 1 The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being Housing Area 8C Tunbury Avenue, Walderslade, Chatham.
- 2 The filed plan has been amended.
- 3 The land edged and numbered in green on the filed plan has been removed from this title and registered under the title number or numbers shown in green on the said plan.
- 4 The land edged yellow on the filed plan is the area covered by a building scheme constituted under the provisions of transfers by The Kent County Council.

The first Transfer from this title was dated 13 September 1982 in favour of John Leonard Osborne and Janet Glenis Osborne and once was of the part edged and numbered K540502 in green on the filed plan.

A copy of the covenants and of an agreement and declaration contained in the said transfer is set out in the Schedule of restrictive covenants hereto.

## B: Proprietorship Register

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

### Title absolute

- 1 PROPRIETOR: THEKENTCOUNTY COUNCIL of County Hall, Maidstone, Kent.
- 2 The Transfer of the land tinted brown on the filed plan contains Purchasers personal covenants.

*NOTE:-Copy of covenants in Certificate.*

- 3 The Transfer of the land tinted mauve on the filed plan contains a Purchasers personal covenant.

*NOTE:-Copy of covenant in Certificate.*

## C: Charges Register

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



## B: Proprietorship Register

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

### Title absolute

- 1 (03.06.1991) Proprietor(s): THEKENTCOUNTY COUNCIL of County Hall, Maidstone, Kent, ME14 1XQ.
- 2 (10.03.1993) CAUTION in favour of Hillreed Homes Limited of Hillreed House, 60 College Road, Maidstone, Kent, ME15 6SJ.

## C: Charges Register

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

- 1 The land edged and numbered 9 in yellow on the filed plan became vested in The Kent County Council by a general vesting declaration dated 30 May 1975 executed pursuant to the provisions of The Town and County Planning Act 1968 and no documents of the earlier title have been produced to the Land Registry. The land is accordingly subject to such restrictive covenants and easements as may have been imposed thereon prior to 8 July 1975 and are still subsisting and enforceable.
- 2 The land is subject to rights in respect of Post Office Services.
- 3 (26.05.1995) The deeds and documents, particulars of which are set out in the schedule of deeds and documents hereto, contain restrictive covenants relating to the parts of the land therein specified.
- 4 (12.04.1996) The land is subject to the following rights granted by a Deed dated 1 April 1996 made between (1) Hillreed Homes Limited (2) The Kent County Council (Owner) and (3) Southern Water Services Limited (Southern Water):-

"the Owner with full title guarantee from the date that the sewers constructed under the Agreement are adopted as public sewers pursuant to the Agreement or otherwise hereby grants and confirms unto Southern Water :-

(a) full right and liberty for Southern Water its servants and agents at all times and with or without vehicles plant machinery and apparatus upon giving twenty-four hours prior notice to the Owner except in an emergency when no prior notice need be given to enter upon the land six metres in width shown coloured pink on the attached plan (hereinafter called "the pink land") as required for the purpose of maintaining altering renewing inspecting cleansing and repairing the said sewer with all necessary manholes valves surface boxes marker posts pillars fittings and apparatus and a cable or cable duct along the line of the sewer (which sewer and ancillary fixtures and cables are hereinafter collectively called "the works") and

(b) full right at all times to the uninterrupted passage and running of water and soil through the said sewer

TO HOLD the said rights and liberties unto Southern Water in fee simple"

The said Deed also contains the following covenants by the grantor:-

"The Owner hereby covenants with Southern Water from the date that the sewers constructed under the Agreement are adopted as public sewers pursuant to the Agreement or otherwise for the benefit and protection of the works and Southern Water's undertaking and so as to bind the pink land into whosoever hands the same may come not to do or suffer or permit to be done upon the pink land any act or thing which might cause or is likely to cause damage or injury to the works or prevent hinder or obstruct access by Southern Water to the works in accordance with the terms of this grant and the Owner will take all reasonable

## A: Property Register continued

- plan.
- 6 The land has the benefit of the following rights reserved by a Transfer of the land edged and numbered K581492 in green on the filed plan dated 22 November 1984 made between (1) The Kent County Council (Council) and (2) John Terence William Necker and Pauline Rita Necker (Purchasers):-  
  
"Except and reserving unto the Council and its successors in title and Statutory Undertakers a right of way for all purposes over under and across the land hereby transferred for the purpose of maintaining any plant or such other conducting media as may be in such land together with a right of support for the adjoining footpaths and the adjoining highways at Walderslade aforesaid."
  - 7 The land has the benefit of the rights reserved by a Transfer of the land edged and numbered K590149 in green on the filed plan dated 5 June 1985 made between (1) The Kent County Council (Council) and (2) Robert John Boorer and Pearl Dorothy Boorer (Purchasers) in identical terms to those reserved by the Transfer dated 22 November 1984 referred to above.
  - 8 The land has the benefit of the rights reserved by a Transfer of the land edged and numbered K612337 in green on the filed plan dated 29 April 1986 made between (1) The Kent County Council (Council) and (2) Denis Charles Mayne and Sandra Lesley Mayne which are identical to those reserved by the Transfer dated 22 November 1984 referred to above.
  - 9 (19.05.1999) The land edged and lettered X in green on the filed plan has been removed from the title.
  - 10 (12.12.2000) The land edged and lettered Y in green on the filed plan has been removed from the title.
  - 11 (06.02.2003) The land has the benefit of the rights of running and use of water soil gas electricity and telephone services through the sewers watercourses pipes wires cables and other service conduits, and ancillary rights of entry, and other rights and easements or quasi-rights and quasi-easements, reserved by the Transfer dated 23 December 2002 referred to in the Charges Register.

## B: Proprietorship Register

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

### Title absolute

- 1 PROPRIETOR: KENT COUNTY COUNCIL of County Hall, Maidstone, Kent.
- 2 A Transfer of the land edged and numbered 1, 4, 5, 6, 7 and 8 in yellow on the filed plan dated 18 December 1974 made between (1) Walderslade Development Company Limited and (2) Kent County Council contains purchasers personal covenant(s) details of which are set out in the schedule of personal covenants hereto.
- 3 RESTRICTION:-Except under an order of the registrar no disposition by the proprietor of the land is to be registered unless authorised by statute.

### Schedule of personal covenants

- 1 The following are details of the personal covenants contained in the Transfer dated 18 December 1974 referred to in the Proprietorship Register:-

The Council hereby covenants with WDC Miller Parham Wards and W.R.F. respectively to keep them the said WDC Miller Parham Wards and W.R.F. and each of them respectively indemnified from and against all claims



## Application to register land at Willow Road in Larkfield as a new Village Green

---

A report by the Head of Regulatory Services to Kent County Council's Regulation Committee Member Panel on Monday 21<sup>st</sup> January 2013.

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

---

Local Member: Mrs. T. Dean

Unrestricted item

---

### Introduction

1. The County Council has received an application to register land at Willow Road in the parish of East Malling and Larkfield as a new Village Green from the East Malling and Larkfield Parish Council ("the applicant"). The application, dated 1<sup>st</sup> May 2012, was allocated the application number VGA645. A plan of the site is shown at **Appendix A** to this report and a copy of the application form is attached at **Appendix B**.

### Procedure

2. Traditionally, Town and Village Greens have derived from customary law and until recently it was only possible to register land as a new Town or Village Green where certain qualifying criteria were met: i.e. where it could be shown that the land in question had been used 'as of right' for recreational purposes by the local residents for a period of at least 20 years.
3. However, a new provision has been introduced by the Commons Act 2006 which enables the owner of any land to apply to voluntarily register the land as a new Village Green without having to meet the qualifying criteria. Section 15 states:
 

*"(8) The owner of any land may apply to the Commons Registration Authority to register the land as a town or village green.*

*(9) An application under subsection (8) may only be made with the consent of any relevant leaseholder of, and the proprietor of any relevant charge over, the land."*
4. Land which is voluntarily registered as a Town or Village Green under section 15(8) of the Commons Act 2006 enjoys the same level of statutory protection as that of all other registered greens and local people will have a guaranteed right to use the land for informal recreational purposes in perpetuity. This means that once the land is registered it cannot be removed from the formal Register of Town or Village Greens (other than by statutory process) and must be kept free of development or other encroachments.

5. In determining the application, the County Council must consider very carefully the relevant legal tests. In the present case, it must be satisfied that the applicant is the owner of the land and that any necessary consents have been obtained (e.g. from a tenant or the owner of a relevant charge). Provided that these tests are met, then the County Council is under a duty to grant the application and register the land as a Town or Village Green.

## **The Case**

### Description of the land

6. The area of land subject to this application (“the application site”) consists of an area of grass on the edge of Castle Lake which is approximately 0.82 acres (0.33 hectares) in size. The application site abuts residential properties at the western end of the cul-de-sac known as Willow Road. Photographs of the application site are attached at **Appendix C**.

### Notice of Application

7. As required by the regulations, Notice of the application was published on the County Council’s website. In addition, copies of the notice were displayed on the application site itself. The local County Member was also informed of the application.
8. The local County Member, Mrs. T. Dean wrote to confirm her support for the application.
9. During the consultation period, a number of telephone calls were received from residents of Willow Road who were concerned that the designation of the land as a Village Green would lead to the area becoming a formal recreational area, with the provision of play equipment and other facilities, and causing it to become a haven for anti-social behaviour. None of the local residents wrote to formally object to the application (because the County Council does not have the power to take into consideration such objections), but expressed a strong desire for the application site to remain unchanged.
10. The County Council does not have the power to take such concerns into account when determining the Village Green application because, as is noted above, the County Council is under a duty to register the land if the legal tests relating to ownership are met. However, it is hoped that the Parish Council would engage with local residents if any changes are to be made to the land in the future.

### Ownership of the land

11. A Land Registry search has been undertaken which confirms that the application site is wholly owned by the applicant under title number K777461. A copy of the Register of Title is attached at **Appendix D**.
12. There are no other interested parties (e.g. leaseholders or owners of relevant charges) named on the Register of Title.

## The 'locality'

13. DEFRA's view is that once land is registered as a Town or Village Green, only the residents of the locality have the legal right to use the land for the purposes of lawful sports and pastimes. It is therefore necessary to identify the locality in which the users of the land reside.
14. A locality for these purposes normally consists of a recognised administrative area (e.g. civil parish or electoral ward) or a cohesive entity (such as a village or housing estate).

In this case, the application is made by the local Parish Council and the relevant locality is stated in the application form as being 'East Malling and Larkfield parish'. As noted above, a civil parish is a qualifying locality for the purposes of Village Green registration and, as such, it seems appropriate that the relevant locality in this case should be the parish of East Malling and Larkfield.

## **Conclusion**

15. As stated at paragraph 3 above, the relevant criteria for the voluntary registration of land as a new Town or Village Green under section 15(8) of the Commons Act 2006 requires only that the County Council is satisfied that the land is owned by the applicant. There is no need for the applicant to demonstrate use of the land 'as of right' for the purposes of lawful sports and pastimes over a particular period.
16. It can be concluded that all the necessary criteria concerning the voluntary registration of the land as a Village Green have been met.

## **Recommendations**

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

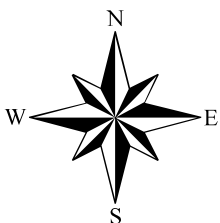
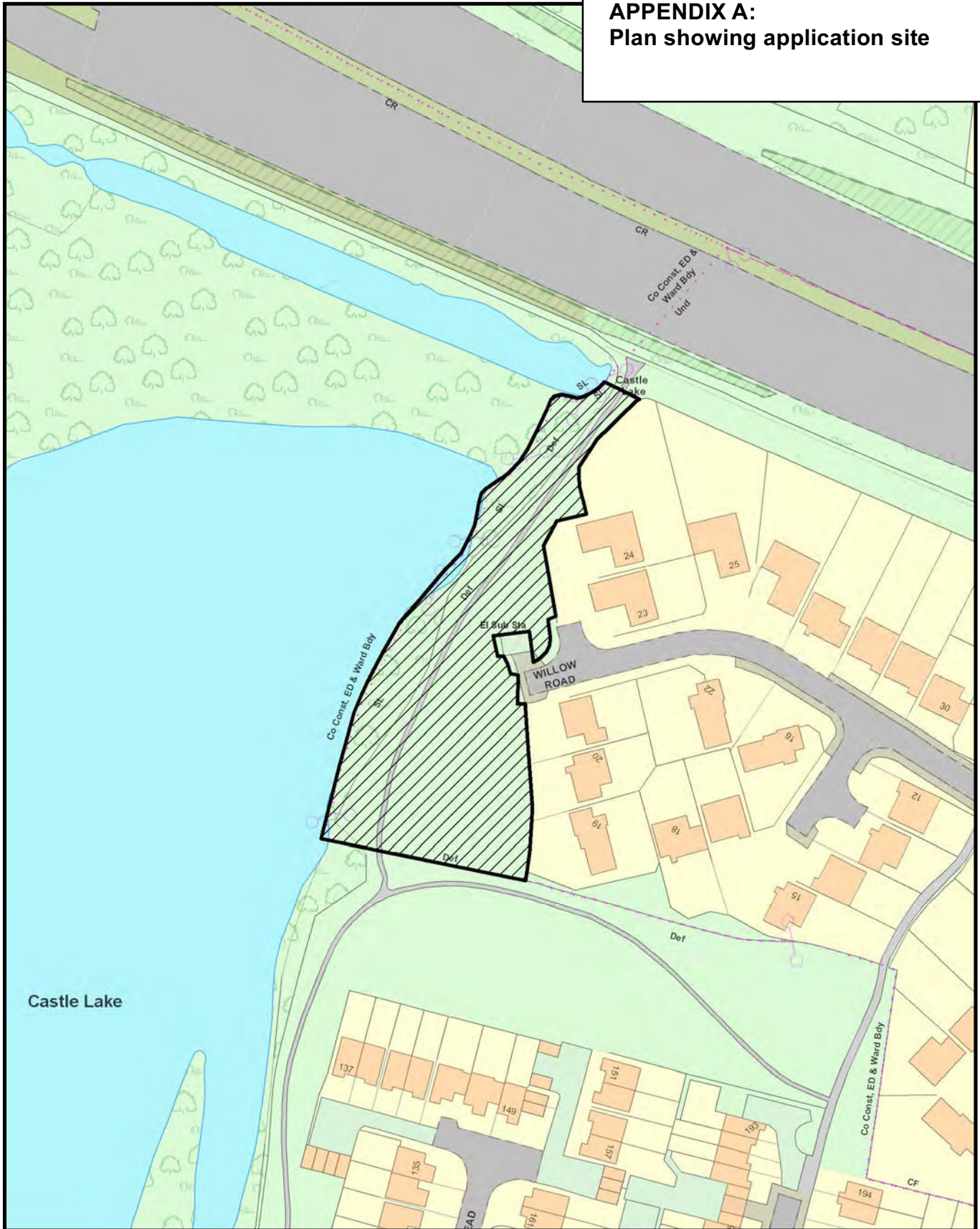
Accountable Officer: Mr. Mike Overbeke – Tel: 01622 221513 or Email: <a href="mailto:mike.overbeke@kent.gov.uk">mike.overbeke@kent.gov.uk</a> Case Officer: Miss. Melanie McNeir – Tel: 01622 221628 or Email: <a href="mailto:melanie.mcneir@kent.gov.uk">melanie.mcneir@kent.gov.uk</a>
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The main file is available for viewing on request at the Countryside Access Service based at Invicta House, County Hall, Maidstone. Please contact the Case Officer for further details.
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## **Background documents**

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

**APPENDIX A:  
Plan showing application site**



Scale 1:1250

**Land subject to Village Green  
application at Willow Road in the  
parish of East Malling and Larkfield**



FORM CA9

Commons Act 2006: section 15

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

**APPENDIX B:  
Copy of the application form**



*This section is for office use only*

Official stamp of the Registration Authority  
indicating date of receipt:



Application number:

VAAG45

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

**Note to applicants**

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

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

**Note 1**  
*Insert name of Commons  
Registration Authority*

**1. Commons Registration Authority**

To the:

*Kent County Council*



**Note 2**

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

**2. Name and address of the applicant**

Name: EAST MALLING and LARKFIELD PARISH COUNCIL

Full postal address: (incl. Postcode) PARISH COUNCIL OFFICE CHURCH FARM, 198, NEWHYTHE LANE, LARKFIELD AYLESFORD ME20 6ST

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

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

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)  
Telephone number: (incl. national dialling code)  
Fax number: (incl. national dialling code)  
E-mail address:

**Note 4**

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

**4. Basis of application for registration and qualifying criteria**

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

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

- Section 15(2) applies:
- Section 15(3) applies:
- Section 15(4) applies:

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

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

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

**Note 5**

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

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

Name by which usually known:

WILLOW ROAD GREEN

Location:

WILLOW ROAD, LARKFIELD  
AYLESFORD, 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:

East Mallinge hantfield  
parish.

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

**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:

27.4.2012

**REMINDER TO APPLICANT**

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

**Please send your completed application form to:**

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

***Data Protection Act 1998***

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

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



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



**Above:** photograph taken from Willow Road looking south-west across the site

**Below:** photograph taken from the electricity sub-station adjacent to Willow Road looking south across the application site







**Above:** photograph taken from electricity sub-station looking north-east across the site

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





**APPENDIX D:  
Land Registry Documents**

THIS IS A PRINT OF THE VIEW OF THE REGISTER OBTAIN THE ENTRIES SUBSISTING IN THE REGISTER ON 26 NOV 2 THAT THIS REGISTER VIEW IS NOT ADMISSIBLE IN A COPY WITHIN THE MEANING OF S.67 LAND REGISTRATION

IT MAY NOT ENTITLE A PERSON TO BE INDEMNIFIED BY THE REGISTRAR IF HE SUFFERS A LOSS BY REASON OF A MISTAKE CONTAINED WITHIN IT. THE ENTRIES SHOWN DO NOT TAKE ACCOUNT OF ANY APPLICATIONS PENDING IN THE REGISTRY. FOR SEARCH PURPOSES THE ABOVE DATE SHOULD BE USED AS THE SEARCH FROM DATE.

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

TITLE NUMBER: K777461

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

## A: Property Register

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

KENT : TONBRIDGE AND MALLING

- 1 (23.07.1986) The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being land on the west side of Willow Road, Larkfield, Aylesford.
- 2 (16.12.1996) The land has the benefit of the following rights granted by the Transfer dated 29 November 1996 referred to in the Charges Register:-

"The rights of foul and surface water drainage benefiting the properties previously comprised within Title Number K609986 through the foul and surface water sewers drains and pipes on the Property together with associated rights of entry for the purposes of maintenance cleansing repair and reinstatement of the same.

## B: Proprietorship Register

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

Title absolute

- 1 (29.09.1997) Proprietor: EAST MALLING AND LARKFIELD PARISH COUNCIL of Church Farm, 198 New Hythe Lane, Larkfield, Maidstone, Kent, ME20 6ST.
- 2 (29.09.1997) The Transfer to the proprietor contains a covenant to observe and perform the covenants referred to in the Charges Register and of indemnity in respect thereof.

## C: Charges Register

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

- 1 A Deed dated 3 June 1987 made between (1) Crest Homes (Westerham) Limited (Grantor) and (2) The South Eastern Electricity Board (Board) contains the following covenants by the Grantor:-

"WITH the intent and so as to bind the yellow land and every part thereof and every part of the Property which lies within 1.5 metres of the yellow land into whosoever hands the same respectively may come and to benefit and protect the rights and liberties hereby granted the Grantor hereby covenants with the Board.

- (i) not to do or permit or suffer to be done any act which would in any

## C: Charges Register continued

way interfere with or damage any electric line retained or laid by the Board in the exercise of the rights and liberties hereby granted

(ii) not to alter or permit or suffer to be altered the existing level of nor (subject as hereinafter provided) to cover or permit or suffer to cover or permit or suffer to be covered the surface of the yellow land in such a manner as to render the laying of an electric line or access to any electric line retained or laid thereunder impracticable or more difficult than it is at the date hereof PROVIDED ALWAYS and it is hereby agreed and declared that (without prejudice to the proviso to Clause 2 hereof) nothing in this covenant contained shall prevent the laying of appropriate surfaces on any part of the yellow land as forms the site of an intended road or footpath or other way after the initial laying of electric lines thereunder pursuant to the rights and liberties hereby granted

(iii) without prejudice to the generality of the foregoing not to erect or permit to suffer to be erected any building or structure (other than such as are shown on the said plan) nor to plant or permit or suffer to be planted any trees on or within a distance of 1.5 metres of the yellow land."

NOTE:-The yellow land referred to is hatched blue on the filed plan so far as it affects the land in this title.

- 2 The land is subject to rights of way.
- 3 The land is subject to rights of drainage and rights in respect of water, gas, electricity and other services.
- 4 The land is subject to rights of overhang, protrusion support and protection for any building or other structure erected on adjoining land as far as it affects.
- 5 The land is subject to rights of entry for the purposes of inspecting, maintaining, repairing and renewing the building or other structures erected on adjoining land as far as it affects.

End of register

H.M. LAND REGISTRY		TITLE NUMBER	
		K777461	
ORDNANCE SURVEY PLAN REFERENCE	TQ 6959	SECTION E	Scale 1/1250
COUNTY KENT	DISTRICT TONBRIDGE AND MALLING		© Crown copyright 1988



This is a print of the view of the title plan obtained from Land Registry showing the state of the title plan on 26 November 2012 at 15:56:39. 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, Nottingham Office.

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## Application to register land at Four Acres at East Malling as a new Village Green

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A report by the Head of Regulatory Services to Kent County Council's Regulation Committee Member Panel on Monday 21<sup>st</sup> January 2013.

**Recommendation: I recommend that the County Council informs the applicant that the application to register the land at Four Acres at East Malling as a new Village Green has been accepted, and that the land subject to the application be formally registered as a Village Green.**

---

Local Members: Mrs. T. Dean

Unrestricted item

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### Introduction

1. The County Council has received an application to register land at Four Acres in the parish of East Malling as a new Village Green from local resident Mrs. J. Kollnberger ("the Applicant"). The application, made on 13<sup>th</sup> February 2012, was allocated the application number VGA643. 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 6<sup>th</sup> April 2007** and the application has been made within five years of the date the use 'as of right' ended (section 15(4) of the Act).
5. As a standard procedure set out in the regulations, the Applicant must notify the landowner of the application and the County Council must notify every local authority. The County Council must also publicise the application in a newspaper circulating in the local area and place a copy of the notice on the County Council's website. In addition, as a matter of best practice rather than legal requirement, the County Council also places copies of the notice on site to provide local people with

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

### **The application site**

6. The area of land subject to this application (“the application site”) consists of a roughly triangular area of land of approximately 0.1 hectares (0.4 acres) in size situated on the northern-western corner of the housing estate known as Four Acres in the parish of East Malling and Larkfield. The site is shown on the plan at **Appendix A**.
7. The application site consists of an open area with grassed surface which is bounded by hedges and fencing from neighbouring properties. Access to the site is via the garage block serving properties on the estate or via Public Footpath MR105 which runs along the northern boundary of the site.

### **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. Provided in support of the application were 38 user evidence questionnaires from local residents, a supporting statement, photographs showing use of the application site, a location map. A summary of the evidence in support of the application is attached at **Appendix C**.

### **Consultations**

10. Consultations have been carried out as required and the following responses have been received.
11. East Malling and Larkfield Parish Council wrote in support of the application and confirmed that the application site had been used for recreation since the housing estate was built by Tonbridge and Malling Borough Council more than 20 years ago.
12. Cllr. L. Simpson also wrote in support of the application and stated that she had played on the application site as a child whilst living on the estate and that her children had played there too.
13. Mrs. T. Dean, the local County Member, also wrote to confirm her support for the application.

### **Landowner**

14. The application site is owned by Russet Homes Ltd. (“the landowner”) and is registered with the Land Registry under title number K699962.
15. The landowner is aware of the application and a representative has visited the County Council's offices to view the application, however, no objection was received from the landowner during the consultation period.



## Legal tests

16. 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'?***

17. The definition of the phrase 'as of right' has been considered by the House of Lords. Following the judgement in the *Sunningwell*<sup>1</sup> 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.
18. In this case, there is no evidence to indicate that use of the application site has been in any way with force, in secrecy or undertaken on a permissive basis. The evidence submitted in support of the application refers to free and unrestricted use throughout the relevant period and there is no evidence on the ground (e.g. old fencing) to suggest that access to the application site has been restricted in any way.
19. Therefore, in the absence of evidence of any challenges to use, use of the application site would appear to have taken place 'as of right'.

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

20. 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 activities<sup>2</sup>.
21. 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*'<sup>3</sup>.

---

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

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

<sup>3</sup> *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

22. In this case, the evidence demonstrates that the land has been used for a range of recreational activities, as summarised at **Appendix C**. The majority of use is related to playing in children and, in particular, ball games. Other activities include family picnics, dog exercise and teaching children how to ride bicycles.
23. The nature and location of the Four Acres estate also suggests that this area lends itself to being used for recreational activities by local residents. For example, some of the witnesses state that the gardens of many properties on the estate are too small for activities such as football, cricket and rounders to take place. Other witnesses state that the application site is the only area locally where children are able to gather and play safely, as the estate is isolated from the village centre of East Malling and surrounded by farmland which is not available for recreation.
24. Some of the witnesses refer to the use of the application site as a short cut to access the Public Footpath (MR105) leading to the village centre and local amenities. Such use is a public rights of way type use and must be discounted when considering the Village Green application.
25. There is, nonetheless, sufficient evidence of use for other recreational activities to indicate that the land has been used for 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?***

26. When considering a Town or Village Green application, the County Council must be satisfied that the application site has been used by the residents of a specific 'locality' or of a 'neighbourhood within a locality'. This is because the right to use a Town or Village Green is restricted to the inhabitants of a locality, or of a neighbourhood within a locality. 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.
27. 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*<sup>4</sup> 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*'.
28. In cases where the 'locality' is so large that it is difficult to show that the application site has been used by a significant number of people from that locality, it will be necessary to consider whether there is a relevant 'neighbourhood' within the wider locality. On the subject of neighbourhood, the Courts have held that '*it is common ground that a neighbourhood need not be a recognised administrative unit. A housing estate might well be described in ordinary language as a neighbourhood... The Registration Authority has to be satisfied that the area alleged to be a*

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

*neighbourhood has a sufficient degree of cohesiveness; otherwise the word “neighbourhood” would be stripped of any real meaning’<sup>5</sup>.*

29. The County Council also needs to be satisfied that the application site has been used by a ‘significant number’ of the residents of the locality. 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*’<sup>6</sup>. Thus, what constitutes a ‘significant number’ will depend upon the local environment and will vary in each case depending upon the location of the application site.

*The ‘neighbourhood within a locality’*

30. In this case, the Applicant specifies the locality at Part 6 of the application form as ‘East Malling and Larkfield Parish Council [in the] Borough of Tonbridge and Malling’.

31. The administrative parish of East Malling and Larkfield is a legally recognised locality with defined boundaries. However, the evidence of use is concentrated in a very small part of the parish and it cannot be said that a significant number of the residents of the parish as a whole have used the application site. It is therefore necessary to consider whether there is a qualifying neighbourhood within the locality of East Malling and Larkfield parish.

32. Many of the witnesses, when responding to the locality question on the user evidence questionnaire, state that they consider themselves to be resident of Four Acres, which is the name of the housing estate within which the application site is situated. Certainly, the evidence of use is concentrated from within the estate: of the 40 witnesses, 39 live on the Four Acres estate.

33. The estate was originally developed by Tonbridge and Malling Borough Council and today the communal areas are managed by Russet Homes, with some properties now being in private ownership. Four Acres therefore has the unifying characteristics of a housing estate or neighbourhood. Furthermore, the location of the estate (see **Appendix D**), away from the main village centre and surrounded entirely by farmland, also suggest that it is a distinct and identifiable community that would be capable of constituting a neighbourhood for the purposes of Village Green registration.

*‘significant number’*

34. In this case, only 7 of the 46 households on the Four Acres estate did not provide evidence of use in support of the application. Three quarters of the households that did provide evidence refer to use of the application site on a daily or weekly basis throughout their period of use.

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<sup>5</sup> *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at page 92

<sup>6</sup> *R (Alfred McAlpine Homes Ltd.) v Staffordshire County Council* [2002] EWHC 76 at paragraph 71

35. Such use would have been sufficient to indicate to the landowner (who in this case is also responsible for managing other areas on the estate and would have made regular visits) that the application site was in general use by the estate community.
36. Therefore, it can be concluded that the application site has been used by a significant number of the residents of the neighbourhood of Four Acres within the locality of East Malling and Larkfield parish.

***(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)?***

37. 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).
38. In this case, the application was made in 2012. All of the evidence questionnaires are dated within two weeks of the date of the application. Given the open nature of the application site and the ease of access onto it, there is no evidence to suggest that use has not continued until (and beyond) the date of the application.

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

39. In order to qualify for registration, it must be shown that the land in question has been used for a full period of twenty years. In this case, use of the application site 'as of right' is continuing and, as such, the relevant twenty-year period ("the material period") is calculated retrospectively from the date of the application, i.e. 1992 to 2012.
40. The user evidence summarised at **Appendix C** demonstrates that there has been use of the application site in excess of the last twenty years.
41. Therefore, it can be concluded that there has been use of the application site for a full period of twenty years.

**Conclusion**

42. Although this application is unopposed, it is still necessary for the County Council to be satisfied that all of the requisite legal tests have been met. In this case, the evidence demonstrates that the application site has been used by local residents for a period of over 20 years for the purposes of lawful sports and pastimes.
43. From close consideration of the evidence submitted, it can therefore be concluded that the legal tests concerning the registration of the land as a Village Green (as set out above) have been met.

## **Recommendation**

44. I recommend that the County Council informs the applicant that the application to register the land at Four Acres at East Malling as a new Village Green has been accepted, and that the land subject to the application be formally registered as a Village Green.

Accountable Officer:

Mr. Mike Overbeke – Tel: 01622 221500 or Email: [mike.overbeke@kent.gov.uk](mailto:mike.overbeke@kent.gov.uk)

Case Officer:

Ms. Melanie McNeir – Tel: 01622 221511 or Email: [melanie.mcneir@kent.gov.uk](mailto:melanie.mcneir@kent.gov.uk)

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

## **Background documents**

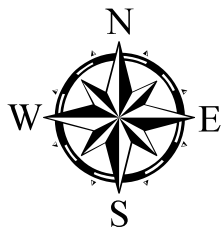
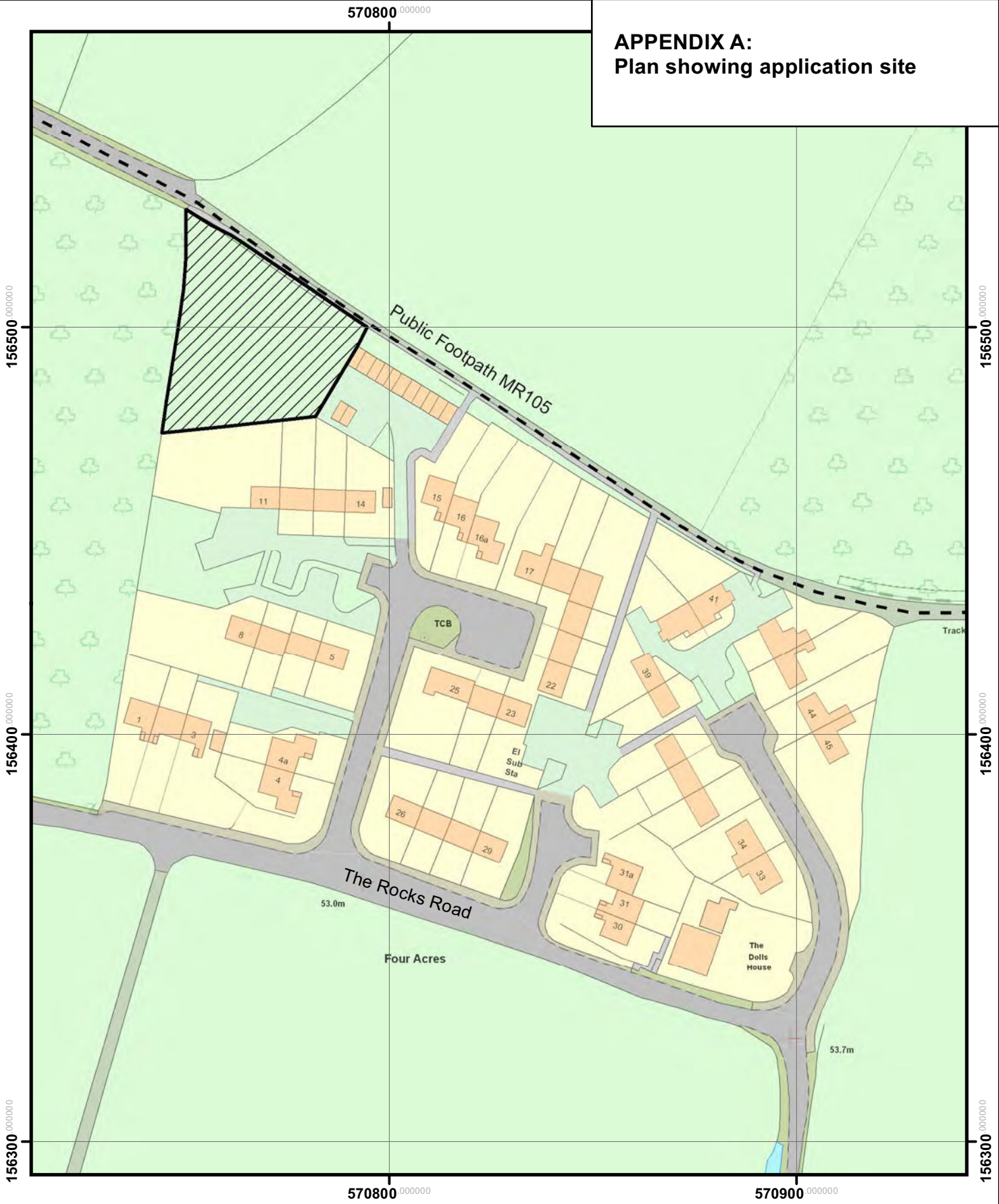
APPENDIX A – Plan showing application site

APPENDIX B – Copy of application form

APPENDIX C – Table summarising user evidence

APPENDIX D – Plan showing the locality

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



Scale 1:1250

**Land subject to Village Green application  
at Four Acres in the parish of  
East Malling and Larkfield**



Page 40



FORM CA9

Commons Act 2006: section 15

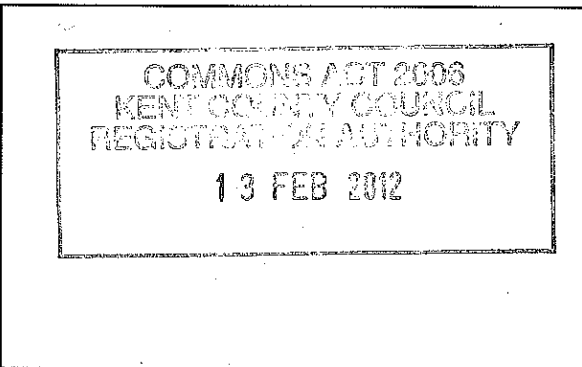
**Application for the registration of land  
as a new Town or Village Green**

**APPENDIX B:  
Copy of the application form**



*This section is for office use only*

Official stamp of the Registration Authority  
indicating date of receipt:



Application number:

VGA673

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  
THE COMMONS REGISTRATION TEAM  
COUNTRYSIDE ACCESS SERVICES  
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: JOANNA KOLLNBERGER  
(ON BEHALF OF THE FOUR ACRES RESIDENTS )  
Full postal address: SEE APPENDIX 4  
(incl. Postcode)

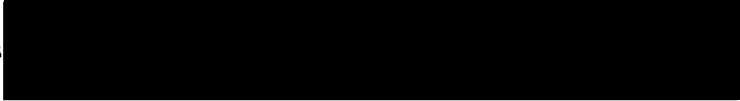


Telephone number:  
(incl. national dialling code)



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:

Firm:

Full postal address:  
(incl. Postcode)

Telephone number:  
(incl. national dialling code)

Fax number:  
(incl. national dialling code)

E-mail address:

**Note 4**

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

**4. Basis of application for registration and qualifying criteria**

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

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

Section 15(2) applies:

Section 15(3) applies:

Section 15(4) applies:



**Note 7**

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

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

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

PLEASE SEE APPENDIX 4.

**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**

RUSSET HOMES  
1-3 MARTIN SQUARE  
LARKFIELD  
AYLESFORD, KENT  
ME20 6QL  
TEL: 01732 780 999

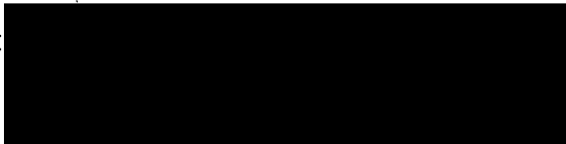
<p><b>Note 9</b> List or enter in the form all such declarations that accompany the application. This can include any written declarations sent to the applicant (i.e. a letter), and also any such declarations made on the form itself.</p>	<p><b>9. Voluntary registration – declarations of consent from any relevant leaseholder of, and of the proprietor of any relevant charge over, the land</b></p>
<p><b>Note 10</b> List all supporting consents, documents and maps accompanying the application. Evidence of ownership of the land must be included for voluntarily registration applications. There is no need to submit copies of documents issued by the Registration Authority or to which it was a party but they should still be listed. Use a separate sheet if necessary.</p>	<p><b>10. Supporting documentation</b></p> <p>APPENDIX 1 - List of local residents  APPENDIX 2 - Location map  APPENDIX 3 - Background information  APPENDIX 4 - Justification for application  APPENDIX 5 - Photographs  APPENDIX 6 - 38 copies of the completed evidence questionnaire (list of the residents is attached in appendix 1)</p>
<p><b>Note 11</b> List any other matters which should be brought to the attention of the Registration Authority (in particular if a person interested in the land is expected to challenge the application for registration). Full details should be given here or on a separate sheet if necessary.</p>	<p><b>11. Any other information relating to the application</b></p> <p>RUSSET HOUSING WHO OWN THE LAND ARE CURRENTLY LOOKING TO REDEVELOP "THE GREEN" AREA.  THE PLANNING APPLICATION HAS NOT BEEN SUBMITTED,  THE CONSULTATION PROCESS WILL LAST UNTIL THE END OF MARCH 2012 AND ANY PLANNING APPLICATION WOULD BE MADE THEREAFTER TO TONBRIDGE &amp; MALLING BC.</p>

**Note 12**

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

**12. Signature**

Signature(s) of applicant(s):



Date: 12/02/2012

**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**

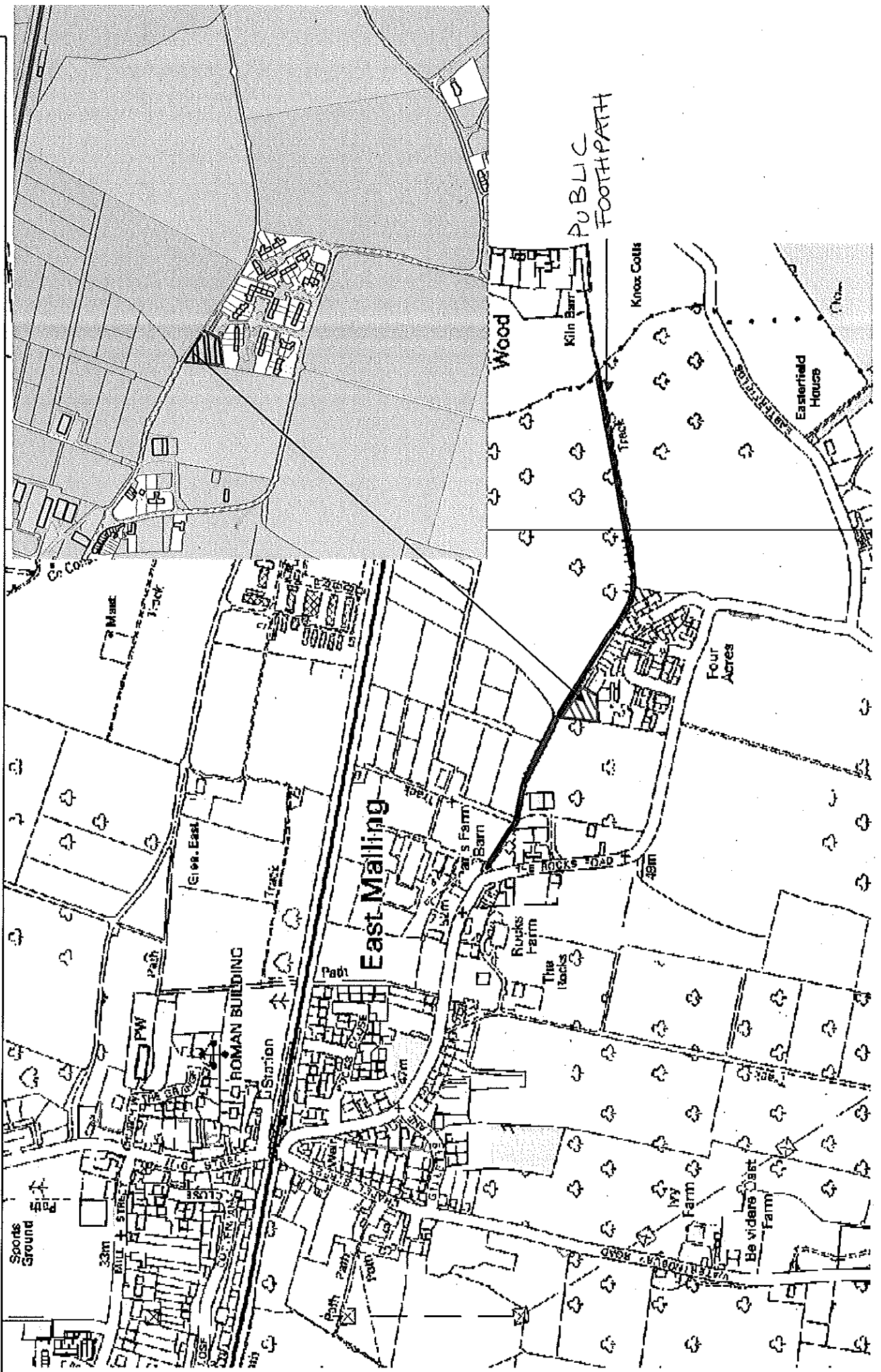
***Data Protection Act 1998***

*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 2 - LOCATION MAP  
The Green, Four Acres, East Malling ME19 6AY  
TQ7076656499



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

Name	Period of use	Frequency	Activities	Other comments
<b>Mr. M. AUSTEN</b>	1984 – present	Weekly	Football, playing with children	Have used land as a cut through to shops
<b>Mr. D. BALSDON</b>	1989 – present	Daily	Dog walking in summer months	Observed use by others on a daily basis. The land is important as it is the only public place for use of estate residents.
<b>Ms. J. BOORMAN</b>	1965 – present	Daily	Children played on it	Observed use by others on a daily basis
<b>Mr. R. BOXALL</b>	1990 – present	Occasionally	Pet exercise, playing with children	Land is the only local area where children can play safely.
<b>Mr. P. BUDD</b>	1970 – present	Occasionally	Ball games	Used daily when children were young, now occasionally with grandson. Resident of Four Acres.
<b>Ms. P. CLEMENTS</b>	2000 – present	Daily, now occasionally	Dog exercise, playing with children	
<b>Ms. T. COLES &amp; Mr. K. KEMP</b>	2002 – present	Daily	Football, cricket, teaching children to ride bikes, summer walks	The land is the only open space in the area that young children can play and exercise; the next nearest open space is too far away for younger children.
<b>Mr. and Mrs. COLLINS</b>	2007 – present	Daily	Playing with grandchildren	Observed use by others on a daily basis.
<b>Mr. and Mrs. J. COOK</b>	1963 – present	Daily	Taking children to play, picnics and gathering with friends	
<b>Mr. and Mrs. L. CORETTE</b>	2004 – present	Weekly	Riding bikes, ball games, building snow men	
<b>Ms. W. DRAYTON</b>	1997 – present	Occasionally	Walking animals	Observed use by others on a daily basis for picnics, children playing (mainly ball games) and walking animals. Locality is Four Acres.
<b>Mr. J. FLISHER</b>	1985 – present	Daily	Football, tennis, cricket, picnic	Land is the only safe area for children and families to be and have fun.
<b>Mr. and Mrs. K. GILLARD</b>	1990 – 2010	Daily	Ball games	Only grass area for children to play on and serves the whole of Four Acres.
<b>Ms. N. GOLDING</b>	2010 – present	Weekly	Family picnics, playing with children.	Own children play there on bikes, scooters and with footballs.
<b>Mrs. A. GOODSSELL</b>	1988 – present	Fortnightly	Playing with children	Often see other using the land. Four Acres is a small housing estate isolated from other amenities in the village.
<b>Ms. K. GREGORY</b>	2011 – present	Weekly	Playing with children, dog walking	Land is a safe, flat and clean area which is big enough to play ball games.
<b>Mrs. K. HARCOURT</b>	1970 – present	Daily	Played there as a child and more recently with own children. Family picnics	It is a safe place of children to play and the only place where families can play on the estate.
<b>Ms. R. HARRINGTON</b>	2002 – present	Weekly	Short cut to footpath	Have seen use by children playing football and riding bikes. It is a safe play area for children; the gardens of many houses on Four Acres are small and unsuitable for ball games.

<b>Ms. S. HOUSMAN</b>	1992 – present	Daily	Dog walking, playing with children	Observed use by others on a daily basis for football, rounders, picnics and dog walking.
<b>Mr. R. HUMPHREYS</b>	1995 – present	Daily when children visit	Ball games, cricket, football	See others using the land on most days depending on weather.
<b>Mr. R. HUGHES and Ms. C. KEEGAN</b>	2003 – present	Monthly	Play area for children	Locality is Four Acres estate, East Malling.
<b>Mrs. D. JAMES</b>	1990 – present	Daily	Playing with grandchildren	
<b>Mr. and Mrs. D. KOLLNBERGER</b>	2002 – present	Daily	Dog walking, playing football, snow games, riding bikes, picnics, reading	Resident of Four Acres estate
<b>Ms. T. MAGINNIS</b>	2006 – present	Daily	Safe place for children to play	
<b>Mrs. J. MARTIN</b>	2003 – present	Daily	Not stated	
<b>Ms. C. MASON</b>	2006 – present	Weekly	Games, incl. football, Frisbee etc.	Locality is Four Acres, part of East malling village.
<b>Ms. D. MCCLELLAND</b>	2000 – present	Daily	Dog walking, playing football, bike riding, making camps, playing rounders	
<b>Ms. K. McDEVITT</b>	2011 – present	Weekly	Playing with children, outdoor games	
<b>Mr. B. MCGAWLEY and Mrs. C. SCALES</b>	2003 – present	Weekly/daily	Dog walking, playing with children	Observed daily use by others for recreational purposes.
<b>Mr. D. MILLS</b>	1957 – present	Daily	Football, cricket	The green is the only place for children to play safely.
<b>Ms. J. MORLEY</b>	1993 – ?	Daily	Playing with children	No longer use the land as children have grown up.
<b>Mr. M. NOAKES</b>	2002 – present	Weekly, more often in holidays	Playing with children, incl learning to ride a bike	Locality is Four Acres. No other open area for children in the neighbourhood.
<b>Mr. and Mrs. PAYNE</b>	1990 – ?	Daily	Playing with children, football, cricket, bike riding	No longer use as children have grown up. Land has always been used as a safe play area for children and is the only area available.
<b>Mr. L. PETERS</b>	2006 – present	Occasionally	Playing football and cricket with children	Children and adults play ball games on the land. It is the only playing area locally for the community.
<b>Mrs. J. PHILLIPS</b>	2001 – present	Daily, now monthly or weekly	Ball games, rounders, cricket, football.	Small localised housing estate with only this small area of land for children to play.
<b>Mr. D. ROSIER</b>	2005 – present	Weekly	Ball games, recreational activities, walking	
<b>Mr. M. RUDDY</b>	2004 – present	Several times per week	Play area for kids	Resident of Four Acres. All local kids play in this area.
<b>Ms. A. SHEWARD</b>	2009 – present	Daily	Exercise and dog training	
<b>Mr. T. WARRENER</b>	1966 – present	Occasionally	Played football and cricket as a child, now used for dog walking	Resident of an identifiable locality known as Four Acres
<b>Mrs. C. WEBB</b>	2002 – present	Daily	Dog walking, using it as bridlepath	Locality is Four Acres, East Malling. Land is used every day for recreational purposes.



**APPENDIX D:  
Plan showing neighbourhood  
of Four Acres**

