



## **AGENDA**

### **Kent County Council**

### **REGULATION COMMITTEE MEMBER PANEL**

**Tuesday, 5th March, 2013, at 12.30 pm**  
**Staplehurst Village Centre, High Street,**  
**Staplehurst TN12 0BJ**

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

*Tea/Coffee will be available 15 minutes before the meeting*

#### **Membership**

Mr M J Harrison (Chairman), Mr R A Pascoe (Vice-Chairman), Mr I S Chittenden and Mr H J Craske

#### **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 The Cricket Field at Marden as a new Village Green (Pages 1 - 22)
4. Item 04 Application to register land known as Rammell Field at Cranbrook as a new Village Green (Pages 23 - 60)
5. Application to register land at Bishops Field at Great Chart as a new Village Green (Pages 61 - 76)
6. Other items that 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, 25 February 2013**

## Application to register land known as the Cricket Field at Marden 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 Tuesday 5<sup>th</sup> March 2013.

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

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Local Member: Mrs. P. Stockell

Unrestricted item

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### Introduction

1. The County Council has received an application to register land known as the Cricket Field at Marden as a new Town or Village Green from local resident Mr. T. Simmons ("the applicant"). The application, made on 23<sup>rd</sup> November 2011, was allocated reference number VGA640. 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).
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, as the name suggests, of a cricket field of approximately 3.7 acres (1.5 hectares) in size situated at the junction of Stanley Road and Albion Road in the parish of Marden. The application site excludes the pavilion and its immediate surrounds, the tennis courts and other outbuildings on the site.
7. 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. The applicant states that the land has been Marden’s cricket ground since the early 20<sup>th</sup> century and has been in continuous use for cricket since the early 1920s. It has subsequently also been used for hockey. The evidence submitted in support of the application (which represents a fraction of total overall usage) shows that since 1991 the land has very much been enjoyed by the community for a range of activities.
10. In support of the application, 30 user evidence questionnaires were submitted detailing the recreational use of the application site, along with a statement of justification and Land Registry documents. A summary of the user evidence questionnaires submitted in support of the application (prepared by the applicant) is attached at **Appendix C**.

## **Consultations**

11. Consultations have been carried out as required.
12. The Marden History Group and the Marden Society (which sent individual but identical letters) wrote in support of the application on the basis that the land has been used as a cricket club since the early 1920s and has also provided a green where children and adults have played and walked ‘as of right’.
13. Marden Parish Council considered the application and although the Council believed that the land had been used by local residents ‘as of right’ (including some members of the Parish Council), it did not have any evidence to support this.
14. The public response to the consultation was mixed: 19 local residents wrote in support of the application and confirmed that the application site had been used for recreational activities, whilst 11 local residents wrote in objection to the application and stated that the land had always been private with notices to that effect.

## **Landowner**

15. Throughout the relevant period, the application site has been owned by Mr. R. Day and leased to the Marden Hockey and Cricket Club (“the objectors”).

16. The Club began to occupy the application site in 1962 and has gradually expanded and developed the facilities since that time. In 1962, there were two field gates on Albion Road forming entrances onto the application site, one of which had a notice stating 'private ground', and two stiles were later provided for the convenience of the players and spectators. The existing clubhouse was built in 1963 and has a notice on the exterior wall stating 'Private Ground'; the notice has been replaced on several occasions since that time but has always had the same wording. The clubhouse was extended in the late 1970s, at which time the existing Stanley Road gateway was created with the provision of a heavy metal gate. Following that, in the early 1980s, a substantial fence (two metres high and topped with barbed wire) was erected along the Stanley Road boundary of the application site. In 1997, the gate at the Stanley Road entrance was replaced by a metal barrier and the stile along the Stanley Road Boundary was removed.
17. An objection to the application has been received from Bircham Dyson Bell LLP, solicitors acting on behalf of the landowner and the Club. The objection is made on the following grounds:
- That the evidence of use of the application site reveals only trivial and sporadic recreational use;
  - That use of the application site has been by right and no 'as of right' because many people will have been members or guests of the club and a significant number of the recreational activities alleged to have taken place are the same as those undertaken by the club;
  - That the applicant has not sufficiently defined the relevant locality or demonstrated that a significant number of the residents of the locality have used the application site for recreational activities;
  - That the land has been fenced and access to it regulated by stiles and gateways which have been locked when not in use with private notices visible; and
  - That there is evidence that informal recreational users were challenged.

### Legal tests

18. In dealing with an application to register a new Town or Village Green the County Council must consider the following criteria:
- (a) *Whether use of the land has been 'as of right'?*
  - (b) *Whether use of the land has been for the purposes of lawful sports and pastimes?*
  - (c) *Whether use has been by a significant number of inhabitants of a particular locality, or a neighbourhood within a locality?*
  - (d) *Whether use of the land 'as of right' by the inhabitants is continuing up until the date of application or within two years from when use 'as of right' ceased?*
  - (e) *Whether use has taken place over period of twenty years or more?*

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

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

19. The definition of the phrase 'as of right' has been considered by the House of Lords. Following the judgement in the *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

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

permission (“*nec vi, nec clam, nec precario*”), and the landowner does not stop him or advertise the fact that he has no right to be there, then rights are acquired.

20. In this case, there is no evidence that use has taken place in secrecy or in exercise of any physical force (e.g. breaking down barriers to gain entry). The landowner refers to various entrances, some of which have been closed or fenced off over the years, but it is not apparent that the application site has ever been fully secured in its entirety so as to prevent any access by the public.
21. The landowner's case is that there has always been a sign on the clubhouse indicating that the application site is a private ground and that any use of the application site has been in defiance of this notice. However, the evidence of the users is that they have never seen any prohibitive notices, with the exception of one user who recalls a private notice but does not provide further details (e.g. of dates or location etc.). It is not clear whether the notice on the clubhouse has been in place throughout the relevant period, nor whether it would have been sufficiently clear to come to the attention of those users who gained entry to the application site from other access points.
22. The landowner also cites an example of a dog walker apparently being challenged, but it is not clear what the circumstances of this incident were, where it took place and whether the challenge related specifically to dog walking or some other undesired behaviour.
23. There is also an issue, which is not addressed by the parties, as to whether any of the recreational use relied upon was by virtue of an implied permission. If, for example, members of the club were using the application site for informal recreation, then the landowner would have no reason to challenge such use as such use might have the outward appearance of an extension of club membership rather than the assertion of a public right to recreate on the application site.
24. Similarly, much of the user evidence refers to the use of the application site for cricket. Before determining whether such use has taken place ‘as of right’, it will be necessary to establish whether such use has been in connection with the club (in which case it will be by virtue of an implied permission) or whether it has taken place entirely independently of the club's activities.
25. It is not possible, for these reasons, to distinguish on the basis of the evidence currently available whether use has taken place ‘as of right’ or by virtue of an implied permission. Further and more detailed examination of the evidence of use is required to establish the precise nature of the use and whether it has, as a matter of fact, taken place ‘as of right’.

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

26. 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>.

27. 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>.

28. In this case, the evidence suggests that the land has been used for a range of recreational activities, including dog walking, jogging, playing with children and ball games. The summary of the user evidence questionnaires from local residents at **Appendix C** shows the full range of activities claimed to have taken place.

29. The evidence suggests that the application site has been a popular place for children's play and nearly all of the witnesses refer to observing recreational activities taking place on the application site on a regular basis.

30. However, the issue discussed above in relation to the exercise of distinguishing between formal and informal cricket use applies equally to this test. Furthermore, it is not clear whether tennis activities referred to in the user evidence relate to the application site itself or the tennis courts adjacent to it. As such, the evidence requires further examination to determine whether the activities cited constitute qualifying use for the purposes of Village Green registration.

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

31. 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.

32. 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*<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'*.

33. 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>2</sup> *R v. Oxfordshire County Council and another, ex parte 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 and another, ex parte Sunningwell Parish Council* [1999] 3 All ER 385

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

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

34. In this case, at part 6 of the application form, the applicant describes the locality as being ‘within the boundaries of Stanley Road TN12 9EL, Albion Road TN12 9EB’.
35. One of the objections raised by the landowner is that this does not constitute a qualifying locality or neighbourhood for the purposes of Village Green registration. It is correct that the description given by the applicant does not constitute a legally recognised administrative unit but, despite the applicant not having fully grasped the legal concept of locality in relation to Village Green registration, that is not to say that there does not exist a qualifying locality or neighbourhood within a locality.
36. A parish is a legally recognised administrative unit that would constitute a qualifying locality and, as such, there is no reason why the parish of Marden would not suffice for this purpose.

*“a significant number”*

37. 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 is a ‘significant number’ will depend upon the local environment and will vary in each case depending upon the location of the application site.
38. Although the landowner’s position is that any informal recreational use of the application site has taken place on a trivial or sporadic basis, the user evidence submitted in support of the application, on the face of it, indicates that the application site has been in regular use by the community. Many of the users refer to using the application site on a daily or weekly basis, and nearly all refer to observing use of the application site by others for the purposes of informal recreation on a regular basis.
39. There is a need, as is noted above, to distinguish between use that is related to the club and use that is entirely independent of it. Until that exercise is undertaken, and irrelevant use discounted, it is difficult to conclude with any degree of certainty whether the application site has been used by a significant number of the residents of the locality.

***(d) Whether use of the land by the inhabitants is continuing up until the date of application or within two years from when use ‘as of right’ ceased?***

40. The Commons Act 2006 requires use of the land to have taken place ‘as of right’ either up until the date of application or, if such use has ceased prior to the making

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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



of the application, that the application be made within two years of recreational use ceasing to be 'as of right'.

41. In this case, aside from the issue of whether notices have been in place on the clubhouse, there is no evidence of any recent overt challenge to the use of the application site for the purposes of lawful sports and pastimes by the local community. Therefore, it can be concluded that the use of the application site has continued up to, and in this case beyond, the date of the application.

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

42. 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. 1991 to 2011.
43. The user evidence summarised at **Appendix C** suggests that there has been use of the application site in excess of the last twenty years.

**Conclusion**

44. Although the relevant Regulations<sup>7</sup> 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 Public Inquiry. This involves appointing an independent Inspector to hear the relevant evidence and report his/her findings back to the Registration Authority.
45. Such an approach has received positive approval by the Courts, most notably in the *Whitmey*<sup>8</sup> 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'*.
46. It is important to remember, as was famously quoted by the Judge in another High Court case<sup>9</sup>, 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

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<sup>7</sup> Commons Registration (England) Regulations 2008

<sup>8</sup> *R (Whitmey) v Commons Commissioners* [2004] EWCA Civ 951 at paragraph 66

<sup>9</sup> *R v Suffolk County Council, ex parte Steed* [1997] 1EGLR 131 at 134

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.

47. In this case, the evidence provided by the parties (both in support of an objection to the application) is insufficient to determine whether the legal tests have been met. The applicant has made a case for registration of the land and the evidence in support is not so lacking that the application should be rejected outright. However, the landowner has raised various issues relating to whether use has taken place 'as of right' which need to be considered in further detail. There are also issues, discussed above, which neither party has addressed and that require clarification before the County Council is able to take a final decision in respect of this matter.

48. As such, it is considered that the most appropriate way forward would be to hold a Public Inquiry into this matter. This would allow witnesses to give more detailed evidence that could be subject to relevant questions from the Inspector. This would provide a greater clarity to the user evidence than is currently available in paper form and enable the Registration Authority to come to a more informed decision in relation to whether or not the application site is capable of registration as a Village Green

### **Recommendations**

49. I recommend that a 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](mailto:melanie.mcneir@kent.gov.uk)

Case Officer:

Miss. 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 PROW and Access Service, Invicta House, County Hall, Maidstone. Please contact the case officer for further details.

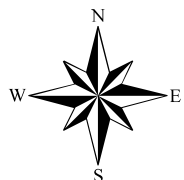
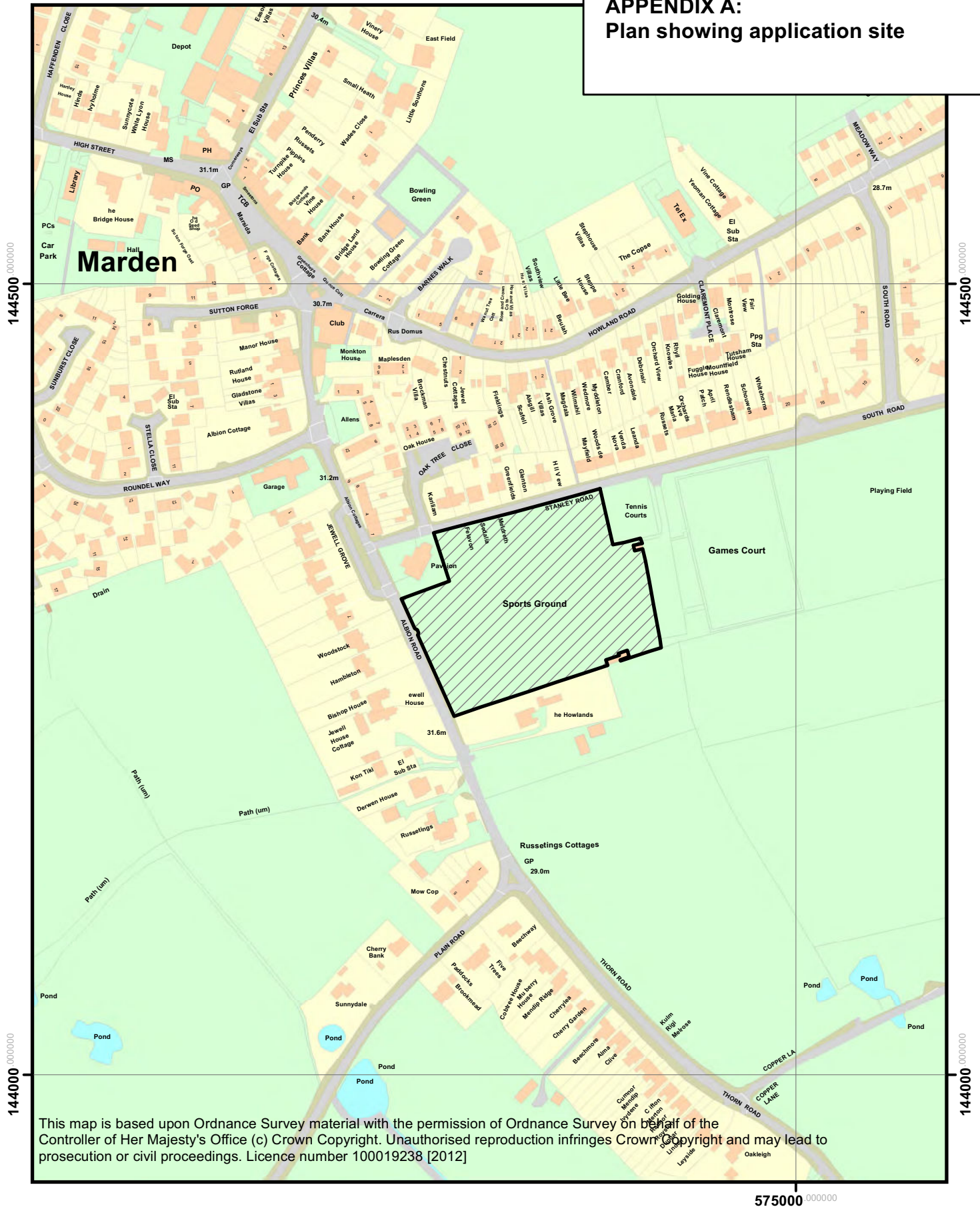
### **Background documents**

APPENDIX A – Plan showing application site

APPENDIX B – Copy of application form

APPENDIX C – Summary of user evidence

## APPENDIX A: Plan showing application site



Scale 1:2500

Land subject to Village Green application  
known as the Cricket Field at Marden



Page 9



## 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:

COMMONS ACT 2006  
KENT COUNTY COUNCIL  
REGISTRATION AUTHORITY  
23 NOV 2011

Application number:

VGA640

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  
COUNTRYSIDE ACCESS SERVICE  
INVICTA HOUSE  
COUNTY HALL  
MAIDSTONE  
KENT  
ME14 1XX

**Note 2**

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

**2. Name and address of the applicant**Name: **TREVOR R. SIMMONS**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:

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**

H.M. LAND REGISTRY FIELD PLAN OF TITLE N°K134956

Name by which usually known:

MARDEN CRICKET FIELD

Location: EAST OF ALBION ROAD } MARDEN  
SOUTH OF STANLEY ROAD } 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:

WITHIN THE BOUNDARIES OF  
STANLEY ROAD TN12 9EL  
ALBION ROAD TN12 9EB

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

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

The land that is the subject of the Village Green application is outlined in red on the accompanying map Exhibit 'A'

This area has been Mardes cricket ground since the early 20th century. It has been in continuous formal use for cricket since the early 1920s and subsequently for Hockey.

During this period of almost 100 years, the cricket ground has been used 'as of right' by significant numbers of both adults and children indulging in any number of individual or general village lawful sports and pastimes including Rounders, Painting, Dog Walking, Team Games, Picking Blackberries, Football, Cricket, Bird Watching, Kite Flying, Walking, Bicycle Riding; in the snows of winter 2010/11, a full size igloo and accompanying snowmen were built on the outfield.

The attached 31 Questionnaires demonstrate that since 1991 the cricket ground has very much been enjoyed by the community for a range of activities; these represent a fraction of the overall usage as on any day of the year, someone will be enjoying this wonderful open space in the centre of our village, and on a summers evening the area is a hive of activity.

Sadly the status quo has now been upset.

An application has been submitted to Maidstone Borough Council (MA/11/0361) for a large site outside the village to be granted permission for development as a new cricket and Hockey club.

This in itself is not a problem but, as the planning statement accompanying MA/11/0361 makes abundantly clear, the proposed source of funding for this development wholly relies on the sale of the existing cricket ground for housing.

A private club, few of whose members actually come from

Marden, situated outside the village, can never fully replace the current cricket ground situated at the heart of the community. The security required to protect the new 'out of town' site, and the protracted pedestrian access routes will, by their very nature, exclude the majority of the community from informal recreational activity and could represent a significant safety risk to children walking there unsupervised.

Maidstone Borough Council has already identified four other sites within the village to accommodate significant future village housing requirements. These sites are far less intrusive and disruptive to established village life than the development of the current cricket ground and would leave a major part of Marden's heritage undisturbed for the enjoyment of generations to come.

Registration of the cricket ground as a village green is considered the only option in order to protect this open space for the village community in perpetuity.



**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**

~~to~~ SUPPRESS ANY FUTURE  
REDEVELOPMENT

MY EARLIER APPLICATION IN JUNE  
2011, WRONGLY SUBMITTED ON FORM  
44, DID SHOW THIS SITE TO BE  
IN USE 'AS OF RIGHT' GOING BACK  
TO 1936 AS A ESTABLISHED RECR-  
EATIONAL FIELD.

FULL STATEMENT ATTACHED

**Note 8**

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

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

MR ROGER DAY  
DOURNE FARM,  
MARDEN THORN,  
STAPLEHURST,  
KENT,  
TN12 9LT.

**Note 9**

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

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

**Note 10**

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

10. Supporting documentation

1/ ~~A~~ LAND REGISTRY FILED PLAN OF TITLE  
NUMBER K134956

2/ OFFICIAL COPY OF REGISTER OF TITLE

3/ MAP OF PROPOSED VILLAGE GREEN SITE  
MARKED IN RED 1:2500  
EXHIBIT MARKED 'A'

4/ FULL STATEMENT SUPPORTING NOTE 7

5/ 31 EVIDENCE QUESTIONNAIRES.

6/ STATUTORY DECLARATION IN SUPPORT.

**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

— THE SPORTS GROUND MARKED IN RED, "A"  
WILL BE PUT UP FOR REDEVELOPMENT  
TO FUND THE SUBMITTED APPLICATION  
MA/11/0361 WITH MAIDSTONE BOROUGH  
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 applicant(

Date: *June 24<sup>th</sup> 2011***REMINDER TO APPLICANT**

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

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

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

***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.*

EXHIBIT  
"A"



Name	Period of use	Frequency of use	Type of use	Comments
Ms. R. BENNETT	2007 – present	2 or 3 times per week	Dog walking, running, walking	Access via the main gates. Observed use by others on a daily basis for activities including dog walking, running, kite flying, ball games, picnics and cycling.
Mr. and Mrs. P. BIRD	1943 – present	Mostly daily	Playing as a child, children's games, football, cricket, tennis, dog walking.	Access through gates on Albion Road (as a child), more recently also over stile in Stanley Road and gates/stile next to tennis courts. Observed use by others on a daily basis for a range of recreational activities.
Mr. and Mrs. P. BOARDMAN	2010 – present	Weekly	Socialising, watching cricket, dog walking	Access by side of pavilion or through side gate. Observed use by others on a daily basis.
S. BOWDEN	1997 – present	Daily	Dog walking	Access via gateway. Observed use by children on a daily basis.
Mr. N. BOWDEN	2010 – present	Weekly	Walking, jogging	Access through gates on Stanley Road. Saw 'private' sign on clubhouse (no date stated). Observed use by others on a daily basis for various sports and children playing/cycling.
Mr. P. BUTCHERS	1958 – present	Occasionally	Sports	Access via stile and gateways. Observed use by others for football, cricket and dog walking on a weekly basis.
Mrs. E. BUTCHERS	1997 – present	Occasionally	Walking, ball games	Access via gateway. Observed use by others for football snow play and picnics on a weekly basis.
Mr. and Mrs. I. CARRUTHERS	1960 – present	Daily	Dog walking/training, playing and watching hockey, cricket, jogging	Access via stile or gate. Saw a sign on the land banning fly tipping. Observed use by others on a daily basis of a range of activities.
Mr. R. CASS	2003 – present	Weekly	Football, cricket	Access via club gate. Observed use by others for kite flying, rounders and picnics.
Mr. B. CLAYTON	1996 – present	Occasionally	Walking, watching sports	Access via Stanley Road. Observed use by others on a daily basis for walking and sports. A footpath is shown on Ordnance Survey maps running along Stanley Road.
Mrs. M. CLAYTON	1996 – present	Weekly	Walking, watching cricket	Access via Albion Road or Stanley Road.
P. FINCH	2005 – present	Occasionally	Not stated	Access through gate on Stanley Road.
M. LANE	1954 – present	Not stated	Played there as a child, now take grandchildren there to play	Access through gate or stile. Observed children playing on many occasions.
Mr. and Mrs. D. LEAPER	1996 – present	Weekly	Cricket, tennis, football	Access by main gate entrance or through gate on Albion Road. Observed use by others on a daily basis.

## APPENDIX C: Summary of user evidence

Mr. P. LERWILL	1987 – present	Weekly	Football, cricket, rugby, kite flying, hockey, cycling, badminton, tennis, watching matches, running, playing with children, blackberrying, picnics	Access via three main gates/entrances and by using the stile and footpath. Own children still use the site on a daily basis. Observed use by others for various activities, incl. running, ball games and kite flying, on a daily basis.
Mr. J. McARRAGHER	1980 – present	Weekly	Watching cricket and hockey, playing with children	Access over or through gate on Albion Road.
NEWTON family	1965 – present	Daily	Dog walking, children playing	Access via stiles. Gradually over the years groundsmen consider it is a private ground but there are no notices to that effect. Gates are chained but a stile has been provided for access. Several access stiles have been fenced over the years. Observed use by others mainly in the summer.
Mr. S. NYE	1959 - ?	Daily as a child, less as an adult	Cricket, football, kite flying, archery, watching cricket and hockey.	Access via one of three gateways onto the land. Observed use by others on a daily basis.
Mr. B. RAYNOR	1980 – present	Not stated	Mainly football	Access via gate. Observed use by others on a weekly basis.
Mrs. B. REGAN	1992 – ?	weekly	Picnics, ball games	No longer use as children have grown up. Access via cricket club.
Mrs. S. RUSSELL	1990 – present	Occasionally	Cricket matches, use of clubhouse for functions, watching hockey matches.	Access via entrance at clubhouse. Observed use by others for football and dog walking on a daily basis.
ROBERTSON/ RANDELL	2003 – present	Monthly	Bird watching, nature watching, relaxation	Access through gate. Observed use by others on a daily basis without fail for a range of activities, including sports, running, walking, children playing, general recreation.
Ms. M. SHARP	1977 – present	Weekly	Football, rounders, snow play	Access via club gate. Observed use by others on a daily basis for football, dog walking and cricket.
Mr. T. SIMMONS	1949 – present	Weekly until 1996, now occasionally	Rounders, football, cricket, cycling, snow play	Access via opening in fence, stile or under vehicle barrier bar. Observed use by others on a daily basis.
Ms. S. SMYTH	2001 – present	Weekly	Tennis, walking, football, cricket, socialising, nature observation, picnics, children's games, snow play and relaxation	Access via cricket club or tennis courts. Observed use by others on a daily basis.
Mr. A. TREE	1987 – present	Monthly	Cricket and football	Access via gate next to cricket pavilion. Use less frequent outside of cricket season. Observed use by others on a daily basis for dog walking, cricket and hockey.
Mr. C. WEBB	2007 –	Weekly/	General recreation, walking	Access via main gate. Observed use by others on a

	present	monthly		daily basis for general sports and recreation, dog walking and family activities.
Mr. K. WICKHAM	1947 – 2005	Daily as a child, weekly as an adult	Football, cricket, tennis, rounders, playing with children, dog walking, running.	Access via main gate on Albion Road. Observed use by others on a weekly or daily basis.
Mr. P. WILLIAMS	1970 – present	Weekly	Cycling and teaching children to ride a bike, walking, football, cricket, snow play, radio cars, general sports	Wife is member of tennis club. Access via open gate (previously no gate). Observed use by others on a daily basis for various activities.
Mr. S. WILLIAMS	2001 – present	Weekly	Walking	Access via gates and other entrances. Observed use by others on a daily basis for walking, cricket, hockey, tennis and dog walking. Permission sought to use the land as a member of the club.

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## Application to register land known as Rammell Field at Cranbrook as a new Town or Village Green

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A report by the Head of Regulatory Services to Kent County Council's Regulation Committee Member Panel on Tuesday 5<sup>th</sup> March 2013.

**Recommendation: I recommend that the applicant be informed that the application to register land known as Rammell Field in the parish of Cranbrook as a new Town or Village Green has not been accepted.**

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Local Member: Mr. R. Manning

Unrestricted item

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### Introduction

1. The County Council has received an application to register land known as Glebe Field at Cranbrook as a new Town or Village Green from local resident Mr. J. Davis ("the applicant"). The application, made on 24<sup>th</sup> March 2011, was allocated the application number VGA634. 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
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 is known locally as Rammell Field or the War Memorial Field but, for the purposes of this report, it is referred to only as “the application site”.
7. The application site consists of fenced sports field of approximately 4.2 acres (1.7 hectares) in size situated at the junction of Frythe Way and Bakers Cross in the village of Cranbrook. The application site is shown in more detail on the plan at **Appendix A**.
8. Formal access to the application site is via a pedestrian gate at the junction of Frythe Way and Bakers Cross, or via a field gate situated along the Bakers Cross boundary. Additionally, there is also evidence that the application site has been accessed via gates from the gardens of abutting properties in Dorothy Avenue and Frythe Close.

## **The case**

9. The application has been made on the grounds that the application site has become a Town or Village Green by virtue of the actual use of the land by the local inhabitants for a range of recreational activities ‘as of right’ for more than 20 years.
10. The applicant’s case is that the application site has been used as an area of recreation since 1766 and was later purchased by subscription as a memorial to those from Cranbrook School who died in the First World War. Since that date, it has been used by the local community for a variety of sports and recreational activities.
11. Included in support of the application were 69 user evidence questionnaires, a letter to the Headmistress of Cranbrook School, an extract from a 1919 issue of the school magazine, various photographs showing events on the field (covering the period 1920 to 2010) and an extract from the Tunbridge Wells Local Plan which designates the application site as an ‘Area of Important Open Space’. A summary of the user evidence questionnaires submitted in support of the application is attached at **Appendix C**.
12. Shortly after the application was made, and prior to the formal consultation, the County Council also received a copy of a petition from a group of local residents known as the ‘Save Rammell Field – The War Memorial Group’. The petition, containing over 1000 signatures, was addressed to various organisations and individuals, and submitted ‘*in aid of our protest against the building of houses on Rammell Field in Cranbrook, Kent*’.
13. Whilst the petition demonstrates the wealth of local opposition in relation to any development of Rammell Field (but note that the County Council is not aware of any such proposed development), it does not add anything to the evidence of use already submitted in support of the application and thus is of little assistance in determining whether the legal tests set out in section 15 of the Commons Act 2006 have been met. It is important to stress that the County Council is strictly bound by those legal tests and is not able to take into any account other factors (including any perceived threat of development) in determining the Village Green application.

## Consultations

14. Consultations have been carried out as required.
15. Tunbridge Wells Borough Council provided the following response: *‘from the information available to the Local Planning Authority, it is not possible for them to confirm 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’.*
16. The Cranbrook and Sissinghurst Parish Council wrote to confirm its support for the application.
17. In addition, the County Council received 27 letters of support from local residents.

## Landowner

18. The application site is owned by the trustees of Cranbrook School (“the landowner”) and is registered with the Land Registry under title number K917868.
19. The landowner confirms that the field was acquired in 1922 using funds raised by an Association known as ‘The Old Cranbrookians Association’ to provide a memorial for those who had attended the school and who fell in the First World War. The Governors of Cranbrook School agreed to take the conveyance of the field and trust was formed enabling the trustees to exercise full powers of management of the field (amongst other things). The land has, since that time, remained under the ownership of the trustees of Cranbrook School.
20. An objection to the application was received from Buss Murton Law LLP, acting on behalf of the landowner. The objection has been made on the following grounds:
- That the use of the field has not been ‘as of right’ for a continuous period of 20 years prior to the date of the application;
  - That use of the field by the public was with permission of the Objectors or if not then by force; and
  - That the applicant has failed to put forward or prove ‘a locality’ or ‘neighbourhood within a locality’ in respect of which the application is made.
21. In support of the objection, the landowner has provided various copies of documents including a letter from the former School Bursar (dated 2011), a letter from the landowner’s planning consultant to Tunbridge Wells Borough Council (dated 1999), letters sent to adjoining landowners (dated 1999 and 2005) as well as copies of letter and invoices relating to the hire of the application site for various formal events (e.g. fun days, circuses etc).

## Legal tests

22. 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 ceased no more than two years prior to the application?*
- (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'?***

23. 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.
24. 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 protest<sup>1</sup>: *"if, then, the inhabitants' use of the land is to give rise to the possibility of an application being made for registration of a village green, it must have been peaceable and non-contentious"*<sup>2</sup>.
25. 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 land<sup>3</sup>. 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 him<sup>4</sup>.
26. The applicant's case is that the rights of the local residents to use the application site had never been challenged until recently when signs appeared and the gates were locked. Prior to this time, the application site had been openly accessed by the community for countless decades.
27. The landowner's case, however, is that there have been various challenges made to the informal recreational use of the application site by local residents. These are considered in more detail below.

*Use of the land for organised events*

28. There is evidence of use of the application site for a number of organised events, including fetes, funfairs, boot fairs and circuses. Indeed, of the 69 witnesses, 23 have used the application site purely for attending formal organised events. The holding of formal organised events raises two significant issues in this regard.
29. Firstly, use that is associated with formal events will generally be by virtue of an implied permission. In this case, the landowner has provided evidence of formal permission granted for events. These events include an annual family fun day, a

<sup>1</sup> *Dalton v Angus* (1881) 6 App Cas 740 (HL)

<sup>2</sup> *R (Lewis) v Redcar and Cleveland Borough Council* [2010] UKSC 11 at paragraph 92 per Lord Rodger

<sup>3</sup> *Smith v Brudenell-Bruce* [2002] P&CR 51

<sup>4</sup> *Taylor v Betterment Properties Ltd and Dorset County Council* [2012] EWCA Civ 250

funfair and regular weekend bookings by Cranbrook Rugby Football Club. Examples of invoices relating to these events are attached at **Appendix D**.

30. The events cited are held with the landowner's permission and, hence, people entering the land to attend those events are doing so by invitation of the landowner (i.e. as an extension of that permission). However, in order for use to be 'as of right', people must be entering the land as trespassers. This is clearly not the case where the landowner has granted specific permission for an event to take place on his land. As such, use that is in relation to formal events is not 'as of right' and must be disregarded for the purposes of the Village Green application.
31. Secondly, where land has been used for organised events (to the exclusion of other informal recreational uses) this may give rise to an implied permission by the landowner. The issue was recently considered by the Courts in the Mann<sup>5</sup> case, which concerned an area of grassland, part of which was used 'occasionally' for the holding of a beer festival and fun fair. During these times, an entrance fee was charged to enter the affected part of the land, although public access to the remainder was not denied.
32. The judge considered that the previous case of Beresford<sup>6</sup> as authority for the proposition that a landowner must make it clear that the public's use of the land is with his permission and that may be shown by excluding the public on occasional days; such conduct need only occur occasionally and perhaps even only once during the relevant period. The Court found that<sup>7</sup> *'the critical point was that the owner had unequivocally exercised his right to exclude and did not have to do more than [he] did to bring it home to the reasonable local inhabitant that this right was being exercised and that the use by the local inhabitants was pursuant to permission'*. Thus, it was held that occasional exclusion from part of the land was sufficient to communicate to users that their use of the whole land at other times was with the landowner's implied permission.
33. As is noted above, the land in this case has been used for organised events to the exclusion of those using the application site for informal recreation. As such, the implication is that use of the application site for the purposes of informal recreation is by virtue of an implied licence and not 'as of right'

#### *Gates and notices*

34. Access to the application site is via two gates (one vehicular and one pedestrian) in the otherwise fenced boundary. There is some dispute in the evidence as to whether these gates have been locked at any point during the relevant period (the relevant period being 1991 to 2011).
35. The applicant's case is that the gates had never been locked prior to 2011 and the application site had been open for respected access by the community for countless decades prior to that time. This appears to be supported by the user evidence questionnaires, none of which refer to any restriction on access to the application site.

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<sup>5</sup> *R (Mann) v Somerset County Council* [2012] EWHC B14 (Admin)

<sup>6</sup> *R v City of Sunderland ex parte Beresford* [2003] UKHL 60

<sup>7</sup> at paragraph 77 per Judge Owen QC

36. The landowner's position, on the other hand, is that the gates have been locked during the relevant period. In particular, the pedestrian gate has been locked during school holidays, which would have prevented access on to the application site. This assertion is supported by a letter (copy at **Appendix E**) from the former Bursar (employed by the landowner between 1989 and 2001) who states that he made regular checks to ensure that the gates were being secured and that the gates were renewed and locked during this time.
37. There is also a dispute regarding notices on the application site. At the time of the Officer's last visit to the site, there was a notice on the pedestrian gate which read "Private Property Cranbrook School No Dogs Allowed" and a separate notice on the vehicular gate reading "Private Property Cranbrook School No Unauthorised Entry". The landowner's case is that the gates have always had signs on them but they have been replaced on numerous occasions and the wording of the signs has varied over the years.
38. The photographic evidence supplied by the applicant in the form of an extract from Google's 'streetview' service (dated March 2009) confirms that an identical notice was in place on the pedestrian gate (but not on the vehicular gate) during the latter part of the relevant period. The image also shows what appears to be a chain on the vehicular gate (suggesting that it was locked), although it is not possible to discern from the image whether the pedestrian gate was also locked.
39. The measures taken by the landowner to resist recreational use of the application site by local inhabitants are documented in a letter dated 1<sup>st</sup> November 1999 from the landowner to Tunbridge Wells Borough Council's Planning Services team. A full copy of this letter is attached at **Appendix F**. The letter records that:
- "So far as use of the site as a recreational area on a day to day basis is concerned the School is not aware of any regular use by the community. The exercising of dogs has always been challenged on all the School playing fields without exception because of the health risks. The use by local residents, with back garden gates, of the field as a short cut to the town has been tolerated albeit reminding them that they have no rights of access.*
- The School policy has been to lock all gates during the holidays between terms and "Private Property, Cranbrook School. No unauthorised entry" signs have been on both gates for many years. "No entry for dogs" signs are also displayed on each gate. Perimeter fencing and hedges are routinely repaired to restrict unauthorised access. Letters were sent to all property owners with garden gates giving access to the field in 1988 and again in August 1999 reminding them that they did not have any right of access"*
40. Overall, the evidence suggests that attempts were made to challenge informal recreational use of the application site during the relevant period. The 1999 letter provides contemporaneous evidence that the gates were locked during school holidays at that time and that notices were in place on the gates. The 2009 Google photograph shows conclusively that there was a notice in place at the pedestrian gate at that time and also appears to show a chain on the vehicular access gate.

### *Other challenges to use*

41. As mentioned in the above extract, and in addition to the other measures taken, the landowner's case is that use of the application site from neighbouring properties was expressly challenged by way of letters dated 30<sup>th</sup> July 1999 and 17<sup>th</sup> January 2005 delivered by hand to residents whose properties abut the application site. Copies of these letters are attached at **Appendix G**.
42. The 1999 letter states that neighbouring properties have no rights of access to or passage across the application site and makes clear that *"the field is private property and I would ask for your co-operation in respecting it as such. The School solicitors have been asked to advise on any further action that should be taken to properly secure the field"*. The 2005 letter is similar in content, but seeks removal of any access gates in the boundary between the properties and the application site.
43. Both letters convey a clear message that the landowner was seeking to resist any use of the application site from neighbouring properties. As such, use of the application site by way of access via garden gates will be contentious and will not be 'as of right'.

### *Conclusion on 'as of right'*

44. 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 to challenge informal recreational use. 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'.
45. Equally, the evidence of specific permissions granted for certain events during the relevant period, to the exclusion of informal recreational users, indicates (in accordance with the recent case law) that such recreational use by local residents as did take place outside of the organised events was by virtue of an implied permission by the landowner.
46. Given the well documented instances of permission being granted and challenges being made to use it is not possible, despite the applicant's assertions to the contrary, to conclude that use of the application site has been 'as of right'. If anything, the contemporaneous evidence provided by the landowner strongly indicates that any informal recreational use has either been contentious or by virtue of an implied permission.

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

47. 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'<sup>8</sup>.

48. The summary of evidence of use by local residents at **Appendix C** shows the activities claimed to have taken place on the application site. A number of evidence questionnaires (13 in total) do not refer to any actual use of the application site (i.e. the relevant questions have been left blank on the forms) and as such that evidence is of no assistance in determining the application.
49. Two of the witnesses refer to use of the application site as a short cut to Dorothy Avenue. Use of the application site as a short cut would constitute a 'rights of way type use' (as it would have the outward appearance of the assertion of a linear right of way rather than a general right to recreate) and as such it would not be qualifying use for the purposes of the Village Green application<sup>9</sup>. Dog walking would have been in defiance of the notices erected at the access points and would, for the reasons noted above, would not be qualifying 'as of right' use.
50. Discounting the evidence of use that relates only to attendance at fetes, funfairs and other organised events (for the reasons set out above), and also the rights of way use, dog walking use and incomplete evidence (as noted in the preceding paragraph), 27 witnesses have used the application site for informal recreational purposes not associated with organised events. These activities include watching rugby, bird watching, kite flying and playing with children.
51. Of these 27 witnesses, the vast majority used the application site only on an occasional basis. Of the 11 regular users (i.e. at least monthly), seven accessed the application site using a garden gate to the rear of their properties. For the reasons noted above, access to the site by this means would have been contentious given the landowner's requests not to do so. Such use would not be 'as of right' and thus is not qualifying use for the purposes of the Village Green application.
52. On closer examination of the evidence, therefore, it would appear that of the 69 user evidence questionnaires submitted in support of the application, only four witnesses used the application site in a qualifying manner on a regular basis with a further 16 witnesses using the application site in a qualifying manner on an occasional basis.
53. From this, it is possible to conclude that there has been some use of the application site for lawful sports and pastimes during the relevant twenty year period, although there is a question of sufficiency of use which falls to be considered in the next section of this report.

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

54. 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.

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<sup>8</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

<sup>9</sup> *R (Laing Homes) v Buckinghamshire County Council* [2003] 3 EGLR 70



55. 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>10</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’.

56. In this case, the applicant has specified the locality as being ‘The Hill, Cranbrook, jct Frythe Way – The Hill, Cranbrook, parish of Cranbrook and Sissinghurst’. This appears to be more of a description of the location of the land rather than a proper specification of the locality on which the application is based in the context of the legal framework.

57. Although the first part of the applicant’s description would not meet the legal tests, the parish of Cranbrook and Sissinghurst is a legally recognised administrative unit and thus would constitute a qualifying locality. The plan at **Appendix H**, showing where the users reside, demonstrates that all of the witnesses live within this locality.

*“a significant number”*

58. 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>11</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.

59. On the face of it, user evidence questionnaires from 69 witnesses would suggest that the application site has been used by a significant number of the residents of the locality. However, when analysed in more detail, the evidence of use is limited and indicates that there have only been four qualifying regular users of the application site (in addition to the 16 occasional users).

60. In that context, it is not possible to conclude on the basis of the evidence submitted in support of the application that the land has been in general ‘as of right’ use by the local community for the purposes of informal recreational activities.

***(d) Whether use of the land ‘as of right’ by the inhabitants has continued up until the date of application or ceased no more than two years prior to the application?***

61. The Commons Act 2006 requires use of the land to have taken place ‘as of right’ either up until the date of application or, if such use has ceased prior to the making of the application, that the application be made within two years of recreational use ceasing to be ‘as of right’.

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<sup>10</sup> *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at 90

<sup>11</sup> *R (Alfred McAlpine Homes Ltd.) v Staffordshire County Council* [2002] EWHC 76 at paragraph 71

62. The application is made on the basis of section 15(2) of the Commons Act 2006 – i.e. that use of the application site has continued ‘as of right’ until the date of the application.
63. However, for the reasons noted above, it would appear that there is convincing evidence to show that use of the application site has not taken place ‘as of right’ during the relevant period. It is not clear from the evidence when use ceased to be ‘as of right’ (i.e. when gates were first locked and notices first appeared) or indeed whether use has ever taken place ‘as of right’ on the application site.

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

64. In order to qualify for registration, it must be shown that the land in question has been used for a full period of twenty years. In this case, the application is made on the basis that use ‘as of right’ did not cease prior to the making of the application in 2011 and, as such, the relevant twenty-year period (“the material period”) is calculated retrospectively from this date, i.e. 1991 to 2011.
65. Although the application site has been used for formal community events (which have been the subject of various consents from the landowner), it is less clear that it has been used for informal recreation in the manner required by the legislation so as to be capable of registration as a Village Green. Once broken down, the qualifying evidence of informal recreational use is limited.
66. Furthermore, the use of the application site for formal events would have necessarily caused an interruption to any informal recreational use by the local residents so that it would not have been possible for the application site to be used continuously for informal recreation for a full period of twenty years.
67. For these reasons, it is not possible to conclude that qualifying informal recreational use of the application site has taken place for a period of twenty years or more.

**Conclusion**

68. It is clear from both the user evidence submitted in support of the application and the evidence provided by the landowner, that the application site has a long history of usage for formal community events. Most, if not all, of the witnesses refer to using the application site for this purpose. However, use which is in relation to a formal event for which consent has been granted by the landowner will be by virtue of an extension of that permission and will not be ‘as of right’. Furthermore, the current law is that where such formal events have been held, use of the application site outside of the formal events will be by virtue of an implied permission from the landowner.
69. Notwithstanding the above, there is also evidence that the landowner has taken reasonable steps to deter use of the application site by local residents. Despite the applicant’s assertion to the contrary, there is photographic and documentary evidence of locked gates and prohibitive notices on the application site. There is also evidence of challenge to those accessing the application site directly from their rear gardens.
70. The law is very clear, as noted at paragraph 25 above, that the correct approach in determining whether use of the application site was contentious is to consider

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 land. The various steps taken by the landowner to prevent use of the application site outside of formal events demonstrate that this is not a case where the landowner has simply sat back and tolerated, or acquiesced in, informal recreational use of the application site by the local community.

71. Moreover, when the user evidence is analysed in more detail, there is very little actual qualifying evidence of informal recreational use of the application site during the relevant period. The image presented by the evidence on both side is that, aside from formal community events, the application site was not in general and regular use by the local community for informal recreational activities.

72. For these reasons, it would appear that the required tests for the registration of the land as a new Village Green have not been met.

### **Recommendation**

73. I recommend that the applicant be informed that the application to register land known as Rammell Field at Cranbrook as a new Town or Village Green has not been accepted.

Accountable Officer:

Mr. Mike Overbeke – Tel: 01622 221568 or Email: [mike.overbeke@kent.gov.uk](mailto:mike.overbeke@kent.gov.uk)

Case Officer:

Miss. 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 PROW and Access Service, Invicta House, County Hall, Maidstone. Please contact the Case Officer for further details.

### **Background documents**

APPENDIX A – Plan showing application site

APPENDIX B – Copy of application form

APPENDIX C – Table summarising user evidence

APPENDIX D – Examples of consent granted for use of the application site for organised events

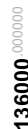
APPENDIX E – Copy of letter from the former Bursar dated 22<sup>ND</sup> October 2011

APPENDIX F – Letter dated 1<sup>st</sup> November 1999 from landowner's representative to Tunbridge Wells Borough Council

APPENDIX G – Copies of letter sent to adjoining residents in 1999 and 2005

APPENDIX H – Plan showing area within which users reside

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Page 34



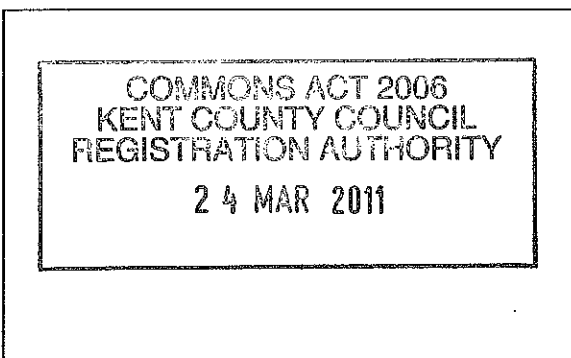
Commons Act 2006: section 15

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:

VGA634

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: ~~TUNBRIDGE WELLS BOROUGH COUNCIL~~  
KENT COUNTY COUNCIL

<p><b>Note 2</b>  <i>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.</i></p>	<p><b>2. Name and address of the applicant</b></p> <p>Name:</p> <p>Full postal address: (incl. Postcode)</p> <p>Telephone number: (incl. national dialling code)</p> <p>Fax number: (incl. national dialling code)</p> <p>E-mail address:</p>
<p><b>Note 3</b>  <i>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.</i></p>	<p><b>3. Name and address of representative, if any</b></p> <p>Name:</p> <p>Firm:</p> <p>Full postal address: (incl. Postcode)</p> <p>Telephone number: (incl. national dialling code)</p> <p>Fax number: (incl. national dialling code)</p> <p>E-mail address:</p>
<p><b>Note 4</b>  <i>For further details of the requirements of an application refer to Schedule 4, paragraph 9 to the Commons Registration (England) Regulations 2008.</i></p>	<p><b>4. Basis of application for registration and qualifying criteria</b></p> <p>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): <input type="checkbox"/></p> <p>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.</p> <p>Section 15(2) applies: <input checked="" type="checkbox"/></p> <p>Section 15(3) applies: <input type="checkbox"/></p> <p>Section 15(4) applies: <input type="checkbox"/></p>





**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**

SITE HAS BEEN USED AS AN AREA OF RECREATION SINCE 1766 AND WAS LATER ~~USED~~ PURCHASED BY SUBSCRIPTION AS A MEMORIAL TO THOSE FROM CRANBROOK SCHOOL WHO DIED IN THE GREAT WAR (WWI) AND NAMED WAR MEMORIAL FIELD. SINCE THAT DATE THE FIELD HAS BEEN USED FOR ALL SORTS OF RECREATION AND SPORT.

MANY HOUSES THAT BACK ONTO THIS FIELD HAVE GATES INTO THE FIELD AND USED THESE TO GAIN ACCESS AND WALK THROUGH THE FIELD.

ALTHOUGH NOW REMOVED, FOR SOME REASON, FROM THE CONSERVATION AREA BUT IS STILL DESIGNATED AS AN "IMPORTANT OPEN SPACE" WITH DESIGNATIONS EN21 & EN22.

**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**

**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 LETTER TO HEAD MISTRESS
- ② DETAIL FROM XMAS ISSUE SCHOOL MAGAZINE DATED 1919
- ③ PHOTO OF 'COLOURS' BEING PRESENTED IN FIELD C1920s
- ④ TROOPING ON FIELD (PHOTO)
- ⑤ MAP FROM TUN. WELLS LOCAL PLAN SHOWING FIELD EDGED IN RED AND INDICATING POLICY NOS EN22 (7) & EN21 (6) (DETAILS AND EXPLANATION ATTACHED)
- ⑥ VARIOUS PHOTOS <sup>(4 OFF)</sup> SHOWING EVENTS ON FIELD FOR 2006, 2008, 2010

**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**

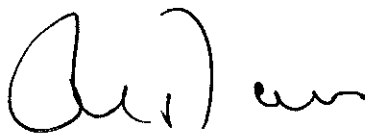
IT IS LIKELY THAT CRANBROOK SCHOOL WILL CHALLENGE THE APPLICATION AS THEY SEE IT AS AN EASY WAY TO RAISE MONEY BY SELLING TO A DEVELOPER EVEN THOUGH THIS FIELD WAS PURCHASED, BY SUBSCRIPTION, IN THE MEMORY OF THOSE EX PUPILS AND TEACHERS WHO GAVE THEIR LIVES IN THE 1ST WORLD WAR.

**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:

22/3/2011

**REMINDER TO APPLICANT**

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

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

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

***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.*

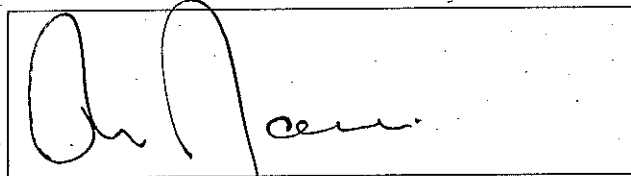
**STATUTORY DECLARATION**  
**verifying the evidence in an application**  
**to register Rammell Field, The Hill, Cranbrook**  
**as a new Town or Village Green**

I, JAMES DAVIS of 5 Kirby Close, Cranbrook, Kent TN17 3DE solemnly and sincerely declare as follows:-

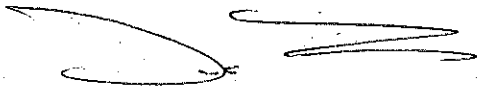
1. I am the Applicant for the registration of Rammell Field, The Hill, Cranbrook, Kent as a new Town or Village Green pursuant to my application dated 22 March 2011.
2. There is now produced and shown to me marked "JD1" a copy of my application with associated documents.
3. I confirm that the evidence contained within my application is true to the best of my information, knowledge and belief.

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

DECLARED by the said JAMES DAVIS  
at Tenterden in the County of Kent  
this 22 day of March 2011



Before me,

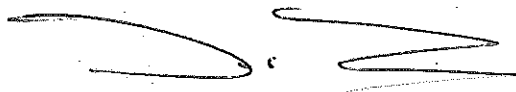


A Solicitor/~~Commissioner for Oaths~~

Justin Nelson, Solicitor  
Tenterden Kent TN30 6ES UK

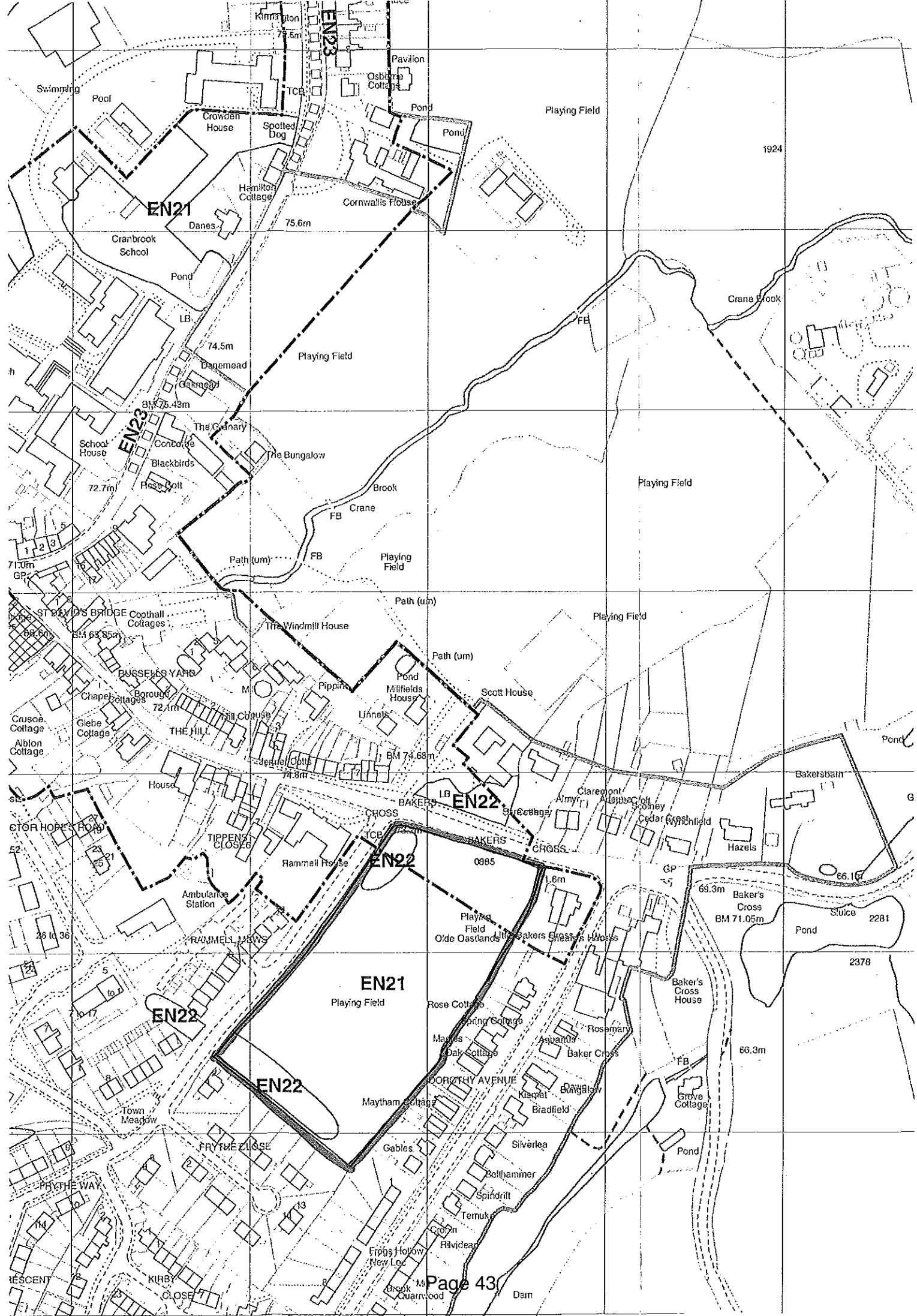
This is the exhibit marked "JD1"  
referred to in the statutory declaration of  
James Davis  
made this 22 day of March 2011

Before me

A handwritten signature in black ink, appearing to read 'Justin Nelson', with a stylized flourish at the end.

A solicitor / ~~Commissioner for Oaths~~

Justin Nelson, Solicitor  
Tenterden Kent TN30 6ES UK



Name	Period of use	Frequency of use	Access to the land	Type of use		Comments
				Events	Informal recreation not associated with organised events	
Witnesses who have used for informal recreation not associated with organised events						
Mrs. P. HINKLEY	1950 – present	Occasionally	Through gate	Fairs, fun days, gala days and other special days	As a gathering place when young	Observed use by others on a weekly basis, including by the school and rugby club.
Mr. and Mrs. J. HOOPER	1958 – present	Occasionally	Farm gate off main road	Attended and took roles in local fairs and fun days	Ball games with family	Has seen Cranbrook School notice on gate (no date stated). Observed use by others for rugby (coaching and formal matches) and casual recreational use (football and cricket practice) weekly
Ms. M. LEAH	1988 – present	Occasionally	Gates	Fetes and events	Sports recreation	Observed use by others for recreation, dog walking, sports, fetes and events on a weekly basis.
Mrs. M. GREEN	1950 – present	Occasionally	Side or main gate	Carnival, fetes and fun days	Walking across to get to Dorothy Avenue	Observed occasional use for carnivals, fetes, fun days, walking and children playing.
Mr. B. CLOUT	1968 – 78, 1994 –present	Monthly	Gates	Fun days, fun fairs	Dog walking, training, football	Observed daily use for fairground, rugby, children playing, golf practice, general child play.
Ms. J. PEARSON	1967 – present	Daily	Gate from garden	Fun day, boot fair	Walking	Observed use for boot fair, children playing, fun day and by Rugby Club.
Miss. S. HARRISSON	1950 – present	Occasionally	Main gate	Fun day, fairs, boot fairs	Play ground	Observed occasional use by others for rugby club, fun days, boot fairs
Mr. R. GOINGS	1971 – present	Occasionally	Not stated		Leisure activities	Observed occasional rugby game.
Ms. H. DYKE	1950 – present	Occasionally	Main gate	Fair, fun days, boot fair	Playing field for rounders (with permission) during holidays	Observed frequent use by others for children playing, fun days, rugby.
Mr. and Mrs. M. ANDREWS	1998 – present	Occasionally	Gate	Fun days, fairs, rugby	Dog walking	Observed occasional use for rugby, fun days, fairs and dog walking.
Mrs. T. BARRETT	1985 – present	Occasionally	Field gate from the road	Fetes, annual fair	Watching matches	Observed use by others for matches, playing games, town festivities, boot fairs, annual fun fairs
Mr. M.	1945 –	Occasionally	Gate and	Fetes, circus,	Access to Dorothy	For many years it was the village
Summary of user evidence						

## APPENDIX C:

### Summary of user evidence

WOODFORD	present		field gate	village events	Avenue	football team's ground. Observed use by others on a weekly basis as short cut, circus, fair and Cranbrook FC
Ms. P. CAVILL	2000 – present	Weekly	Gate, large and small	Fairs, fun day	Dog walking	Occasionally observed use by others for rugby, walking, fun fair and fun day
Ms. J. BELL	2006 – present	Occasionally	Gate	Fairs	Watching rugby, dog walking (until prohibited by the school)	Observed use by others on a weekly basis for children playing rugby and village events.
Ms. D. TUBMAN	1981 – present	Monthly	Gate	Fair, annual fun day and boot sale	Flying kites, playing football, golf practice	Observed use by children playing football and golf, and for annual fair and boot fair.
Mr. P. BRILEY	1995 – present	Occasionally	Side gate	Attend fair and fetes	Walk with dog	Observed use by others on a weekly basis.
Mr. G. PIPER	1958 – 70, 1986 –present	Occasionally	Gate	Attending fetes	Rugby (when at school)	Observed occasional use for sport, fetes and funfairs
Mrs. C. KIRKALDIE	1957 – present	Occasionally	Gates	Attended fairs, fun days, fetes	Played on the field as a child	Occasionally observed use by children and young people playing.
Ms. P. DUXBURY	1975 – present	Occasionally	Main gates	Dog show, boot fair	Walking, bird or wildlife watching, watching rugby and football	Observed use by others for many activities.
Mrs. D. ELGOOD	1980 - present	Daily	Garden gate		Walking	Observed use by others on a daily basis for summer fete, playground, sports field, rugby club.
Ms. B. PARKER	2003 – present	Daily	Back gate	Annual events	Watching rugby, walking, picnics, family games	Observed use by others for annual events, children on bikes and playing, rugby. Has seen sign stating no dogs allowed.
Ms. V. WOODMAN	1955 – present	Weekly (daily when young)	Back gate		Tennis, rounders, children's games, picnics	Observed use by others for a number of activities on a daily basis, including children playing, walkers, sports matches, boot sales, painting
Mr. M. LESTER	1974 – present	Daily	Garden gate	Attending town events	Running, walking, snowmen, kite flying, watching rugby, bird watching	Observed daily use by others for various activities.
Mr. M. TIMMONS	1998 – present	Weekly	Garden gate	Attending fair	Running, walking, watching rugby	Observed use by others on a daily basis for a variety of recreational activities. Sign stated dogs not permitted on the field.
Mrs. J. LESTER	1970 – present	Daily	Garden gate	Attending town events	Running, walking, snowmen, kite flying,	Observed daily use by others for various activities. Sign stated no dogs.

Mr. and Mrs. L. WATSON	1999 – present	Occasionally for events, daily for dog walking	Main gate	Fetes, fun days, fairs, boot fairs, school and club matches	watching rugby, bird watching Dog walking	Observed daily use by others for fetes, sports matches, fun days, children playing, dog walking, and family recreation.
Mr. and Mrs. P. ROWLINSON	2000 – present	Twice monthly	Gate	Fun day, boot sales, fair	Playing football with children, flying kites, running	Observed use by others on a daily basis, including children playing sport, recreational use, jogging and fun days.
Mrs. V. FRY	1980 – present	For annual events		Annual events	Watching rugby	Sign stating dogs prohibited. Land used regularly on Sundays during rugby season, annual fun day and fun fair
Mr. and Mrs. D. COPSEY and family	1989 – present	Weekly in summer	Gate	Fun days, funfairs	Watching rugby matches, family games, snow games	Notice on small gate, currently present (no dates stated). Observed daily use by others for various activities.
Mr. and Mrs. H. COX	1999 – present	Variable	Gate	Fun days, sports competitions	Walking, snowballing	Observed use weekly for events and daily for children playing.
Mr. M. HUXLEY	1984 – present	Occasionally	Gate	Community events	Sport	Frequently observed use by others for community activities, cricket, football, snow activities.
Mrs. S. HUXLEY	1984 – present	Occasionally	Gate	Community events	Leisure	Frequently observed use by others for sport (especially rugby), leisure and community events.
Mr. D. MONTAGUE	1997 – present	Occasionally		Town events	Socialising and recreation	Used by the school and rugby club on a weekly basis and annual fairs and fetes
<i>Witnesses who have only used the land for organised events (e.g. fairs, funfairs, etc)</i>						
Mr. H. DAVIES	2004 – present	Occasionally	Gates	Fairs, fetes etc		
Ms. S. SHARP	1945 – present	Occasionally	Gate	Fetes, fairs etc		Occasionally observed use by others.
Ms. S. WELLER	1995 – present	Occasionally	Gate	Fetes etc		
Ms. N. RODGERS	2004 – present	Occasionally	Via the gate	Fairs, fetes, school sports		Observed use by others on a daily basis, including by Cranbrook School and Rugby Club.
Mr. P. MUMMERY	1980 – present	Occasionally	Double gate and small gate	Attended fairs in 1980s and teddy bear picnics in the 1990s		The family fun day committee have used the field for the last five years at the beginning of June for the big fete due to the ability to parade carnival floats onto the field
Mr. and Mrs.	1979 –	Occasionally	Main gate	Fair, fun day,		Observed occasional use by others for fairs



E. MILBURN	present				boot fair			and boot fairs.
Mr. R. DANN	1960 – present	Occasionally	By its two gates	Fun days, fairs and functions				Observed use by Cranbrook Rugby Club, fairs and fun day on weekly basis
Mrs. J. POPE	1950 – present	Occasionally	Gate entrances	Visiting circus, fun fairs, town fetes				Observed use by others for circus, town fetes, fun fairs and Cranbrook school pupils
Mr. and Mrs. J. SIMMONDS	1960 – present	Occasionally	Main gate	Boot fair, fun day, fair				Observed use by others for fun days, boot fair, children playing, rugby.
Ms. D. NORTH	20 yrs (specific dates not stated)	Occasionally	Open access	Social, do's – town fetes, fun days, funfair				Charitable events are able to charge for entry to their events on this land. Observed use by others on a daily basis for dog walking and also Cranbrook Rugby Club.
Ms. L. SWANN	1980 – present	Once a year on a regular basis	Through an open gate	Helping with and attending fetes/fun days, enjoying the fun fair				On the Committee organising the town fete held 1 <sup>st</sup> weekend in June. In 2010 at least 3000 people attended. Observed use by others on a weekly basis.
Ms. L. SEAL	1974 – present	Not stated	Gate	Fetes etc				
Mrs. P. BOXALL	1970 – present	Occasionally	Gate	Fetes, fun days, carnivals				
Ms. M. KNIGHT	2007 – present	Occasionally	Main gate	Fair, fun day, boot fair				Observed use by others most days by rugby club and school students, and for dog walking and running.
Mrs. G. SHARMAN	1980 – present	Occasionally	Gate	Fair ground, fetes, boot fairs				There is a notice on the gate that it is private property. Not observed use by others since private notice erected.
Mr. J. BROWN	1935 – present	Occasionally	Main gate	Fun day, fairs, boot fair and circus				Observed occasional use by others for fun days and children playing
Mr. P. JEMPSON	1971 – present	Occasionally	Pedestrian gate and field gate	Attend town events such as fetes, fun days, fairs and circuses				Observed occasional use by others for fetes, fun days, fairs and circuses.
Mr. and Mrs. FIRMINGER	1966 – present	Occasionally	Gate at Frythe Way	Attending annual fairs and fun day				Used daily as schoolmaster at Cranbrook School for PE and games (1965 – 1990). Observed weekly use by others.
Ms. A. CONSTABLE	1990 – present	Occasionally	Gate	Attending fetes, family fun days				Observed use by others for fetes, fun days, fairs, sport (rugby, golf) and children playing

Mrs. G. HYDE	2007 – present	Occasionally	Side gate	Community events		Sign stating 'no dogs allowed'. Observed daily and weekly use by others.
Ms. E. HOOPER	1966 – present	Monthly	Gate	Fun day		Observed use on a daily basis for walking, football, rugby, golf, running and fetes
Ms. V. RUSSELL	1975 – present	Occasionally	Entrance gate and garden gate	Fair and family fun day		Observed use by others for school rugby, children's golf practice, fun day and fun fair on a weekly basis.
Mr. I. HATCHER	1960 – present	Yearly	Main gates	Town carnivals and fun fair		Observed use by others for weekly sport, children playing games, fun fair, carnivals, fun days.
<i>Witnesses who do not state type of use</i>						
Mr. L. WARREN	1995 – present	Occasionally	Not stated	Not stated	Not stated	Observed occasional use by others
Ms. R. CHAPMAN	1973 – present	Occasionally	Not stated	Not stated	Not stated	Observed occasional use by others
Mr. and Mrs. P. APPS	1960 – present	Not stated	Gate	Not stated	Not stated	
Mr. and Mrs. D. LOCKYER	1977 – present	Not stated	Not stated	Not stated	Not stated	Observed occasional use by others
Mrs. E. WEBSTER	1960 – present	Not stated	Gate	Not stated	Not stated	Observed occasional use by others
Ms. C. CRESSWELL	1980 – present	Not stated	Not stated	Not stated	Not stated	Observed occasional use by others
Ms. R. WELLSTEAD	1975 – present	Occasionally	Not stated	Not stated	Not stated	Observed occasional use by others
Miss. T. GREEN	1985 – present	Not stated	Not stated	Not stated	Not stated	
Ms. M. MORLEY	Not stated	Not stated	Not stated	Not stated	Not stated	
Ms. C. BRADSHAW	1996 – present	Occasionally	Not stated	Not stated	Not stated	Observed occasional use by others
Mrs. E. LEAH	1976 – present	Not stated	Not stated	Not stated	Not stated	Observed use by others occasionally
Mr. R. GOLDING	2008 – present	Occasionally	Not stated	Not stated	Not stated	Observed use by others for picnicking, playing games (football, cricket etc), remote control cars, running, kite flying, fun fairs and fun days.
Mr. and Mrs. B. COLEMAN	1951 – present	Occasionally	Main gate	Not stated	Not stated	Observed use by Rugby Club and for fun day and fair.



Cranbrook, Kent, TN17 3JD

Telephone: School 01580 – 711800 Bursar 01580 – 711811 Fax 01580 – 711808

## **CONDITIONS AND AGREEMENT FOR HIRE OF RAMMELL FIELD**

Hire Agreement between

"The School": Cranbrook School, Waterloo Road, Cranbrook, Kent TN17 3JD

And

"The Hirer": Mr P Mummery  
Bay Tree Cottage  
The Hill  
Cranbrook  
Kent.  
TN17 3HP

### **LICENCE PERIOD AND CHARGES**

For the hire of Rammell Field on **SUNDAY 11 JUNE 2006**  
From 0830 hours to 1800 hours

The fee for this hire period will be **£40.00**

### **LICENSEE'S OBLIGATIONS**

- a. The Licensee is responsible for the behaviour of member of the public at all times.
- b. To ensure that Rammell Field is left clean and returned to its original state.
- c. To ensure that all litter and rubbish is disposed of in an appropriate manner.
- d. Any damage to be reported in writing to the Bursar's Assistant and any cost resulting in damage caused will be paid for by the hirer.



Waterloo Road  
Cranbrook  
Kent  
TN17 3JD

Tel: 01580 711811  
Fax: 01580 713972  
Email: Facilities@cranbrook.kent.sch.uk  
[www.cranbrookschool.co.uk](http://www.cranbrookschool.co.uk)  
VAT Reg. No 565347618

6838  
FILE COPY

Mr. R. Swallow  
Cranbrook Rugby Club  
20 Joyce Close  
Cranbrook  
Kent TN17 3LZ

Account Number	Invoice Number	Date
CRANBROOK RUGBY	623	25 <sup>th</sup> September 2009

Narrative	Amount
<b>Jaegers, Rammell and Scott Fields plus a maximum of 6 sessions on Big Side – as per attached Conditions of Hire.</b>	
Rugby Training and Matches – as per schedule Saturday 2-5 P.M. and Sunday 10-12 A.M. Period: April 2009 – March 2010	
Jaegers: 35 Sessions @ £21.22      £ 742.70	
Scott: 20 Sessions @ £31.83      £ 636.60	
Rammell: 18 Sessions @ £21.22      £ 381.96	1761.26
Less 10% Discount for 10 or more sessions	-176.13
Less 10% Regular User Discount	-176.13
<b>Total Due</b>	<b>1409.00</b>
VAT	
<b>Total Amount Payable</b>	<b>1409.00</b>

Please make cheques payable to **Cranbrook School Trust Trading**



**CRANBROOK**  
SCHOOL

Waterloo Road  
Cranbrook  
Kent  
TN17 3JD

**FILE COPY**

Tel: 01580 711811  
Fax: 01580 713972  
Email: [Facilities@cranbrook.kent.sch.uk](mailto:Facilities@cranbrook.kent.sch.uk)  
[www.cranbrookschool.co.uk](http://www.cranbrookschool.co.uk)  
VAT Reg. No 565347618

Mr P Mummery  
Bay Tree Cottage  
The Hill  
Cranbrook  
Kent TN17 3HP

Account Number	Invoice Number	Date
MUMMERY	576	08 <sup>th</sup> May 2009

Narrative	Amount
Rammell Field for Fun Day & Scott Field for parking as per Special Conditions of Hire.  Date: Sunday 7 <sup>th</sup> June 2009  Event: Family Fun Day	
Total Due	43.84
VAT	6.58
<b>Total Amount Payable</b>	<b>50.42</b>

Please make cheques payable to **Cranbrook School Trust Trading**

8/7: payment of £350 cash  
received. (If the weather is bad, they won't  
becoming so don't pay in yet).  
plus deposit cheque for £500  
to be kept in safe and given  
back if there is no damage to  
the grounds.

June 2 2004

Nicky Shaw  
Shaws Leisure  
43-45 Camden Road  
Tunbridge Wells  
Kent TN1 2QE

INVOICE

Invoice No. 245

For the use of Rammell field for a Fun Fair  
from 12 July to 18 July 2004 inclusive

Net	£ 350.00
Vat	

Gross	<u>£ 350.00</u>
-------	-----------------

Please make cheques payable to Cranbrook School Trust Trading Account

Enquiries and cheques to:  
The Bursar, Cranbrook School, Waterloo Road, Cranbrook, Kent TN17 3JD

The Red House  
Station Road  
Charing  
Kent TN27 OJA

Tel: 01233 712101

Mrs C Browne  
Buss Murton Law  
31 High Street  
Cranbrook  
Kent TN17 3EE

RECEIVED 2 11 2011

22 October 2011

Dear Mrs Browne,

CRANBROOK SCHOOL – Your Ref: CLB/MEW/C00005/13

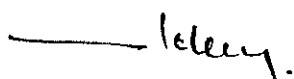
I am surprised that anyone can attempt to register land owned by the school as a village green. Throughout my time at Cranbrook School the field was used for rugby. The only explicit permission for an outsider to use the field was the annual hiring of the field for a circus.

I remember the issue of back gates and garden encroachments being brought to my attention. A letter was drafted, I think with the help of Buss Murton, to make it clear that the householders had no right of access to Rammell Field for any purposes whatsoever. I personally delivered the letter to each of the houses backing onto Rammell Field irrespective of whether the particular house had a back gate. The "no entry" signs on the main vehicular access gate and the small metal gate in the corner closest to Rammell House were renewed and both gates secured by padlock and chain.

I remember there being some objections to the schools action in particular from those who found it easier to walk across the field as a more direct route when going into town. At least one meeting took place on the field. For a long time I made regular checks that the gates were being properly secured. Regretably, I am not able to remember in which year this happened but if it still exists in the School archives any correspondence would be on the Rammell Field file.

Certainly, until my departure I continued to check that the field was being secured and the field was maintained as a sports field for rugby.

Yours sincerely,



A D JOLLEY

1 November 1999

Your Ref: GH/4432/1

Our Ref: ADB/es/346

Tony Fullwood  
Strategy Design and Projects Manager  
Planning Services  
Town Hall  
Tunbridge Wells  
Kent TN1 1RS

For the attention of Gill Harris

Dear Gill Harris

## Tunbridge Wells Borough Local Plan Submissions by Cranbrook School

I refer to your letters of 30 July and 13 August 1999 and am now in a position to respond to your request for further information.

## Rammell Field

The field is commonly referred to as Rammell Field although its official title is The Cranbrook School War Memorial Playing Field. The TWBC Non Domestic Rates refer to the field as Playing Field, The Hill.

Rammell Field was originally conveyed to the Governors of Cranbrook School by a Conveyance dated 31 August 1922 and is currently held as part of Cranbrook School Trust. The Conveyance recites that the Old Cranbrookians Association wished to perpetuate the memory of former boys at the Grammar School who fell in the Great War and they subscribed certain monies to purchase the field from Mr Roland Hubert Rumens. The field was conveyed to the Governors who agreed to accept the Conveyance upon certain terms and conditions. It was not a bequest by Arthur Rammell.

The terms and conditions were that the land was to be held on trust and was to be known as "The Cranbrook School War Memorial Playing Field" and was to continue to be known as that unless and until the field was sold.

The Trust was ultimately a trust for sale so that the field could be sold at such time as the Trustees in their absolute discretion thought fit and they should



then use the proceeds of any such sale "for or towards the purchase of another Playing Field" which was also to be known as "The Cranbrook School War Memorial Playing Field".

Subsequently, in 1947 the then Trustees conveyed to Cranbrook RDC a strip of land along the north-western side of the field which would be, we believe, a sliver of land along the boundary of Rammell Field with Frythe Way. Further enquiries are being made by the School's solicitor on this. We believe that the land which was conveyed to Cranbrook RDC was used as part of the Frythe Way improvements at the time and is now part of the public highway.

Turning to the use of the site by local people, there are a number of points requiring clarification. Formal recreation is restricted to the school's own use for sports which for many years has not exceeded more than 8 hours use in a year. Official community use has been limited but does include renting the field for an annual fair which visits the town for a week and occupies roughly half the site. The School has also approved the use by Cranbrook Business Association, on an occasional basis, for one day events but not in the last two years.

So far as use of the site as a recreational area on a day to day basis is concerned the School is not aware of any regular use by the community. The exercising of dogs has always been challenged on all the School playing fields without exception because of the health risks. The use by local residents, with back garden gates, of the field as a short cut to the town has been tolerated albeit reminding them that they have no rights of access.

The School policy has been to lock all gates during the holidays between terms and "Private Property, Cranbrook School. No unauthorised entry" signs have been on both gates for many years. "No entry for dogs" signs are also displayed on each gate. Perimeter fencing and hedges are routinely repaired to restrict unauthorised access. Letters were sent to all property owners with garden gates giving access to the field in 1988 and again in August 1999 reminding them that they did not have any right of access.

Use of the site informally by local people where it has taken place is tolerated but not a right.

#### **Jaegers Field**

Jaegers Field was transferred to the ownership of the Governing Body, Cranbrook School from Kent County Council on 16 March 1993 as a result of the power vested in the Secretary of State for Education and Science in the Education Reform Act 1988. The land is subject to some covenants, restrictions and stipulations dating from a Conveyance in 1938 when Mr Jaeger purchased the field.

In summary these are:-

No building nearer than 50 feet of Anglely Road

No temporary buildings, huts, sheds, caravans, houses on wheels or other sheds for use as a dwelling were to be erected except as incidental to the erection of permanent properties.

No building other than private dwelling houses or messuages were to be erected on the land.

No trade, manufacture, profession or business was to be carried out on the land, no building was to be erected on the land and used as anything other than as a private dwelling or flat. There were some exclusions for the carrying on the practice or profession of doctor, physician, surgeon or dentist. The houses were not to be used for insane persons or inebriants or for any noisy, noxious or offensive purposes! No nuisances were to be caused. No bricks, tiles, clay or lime was to be burnt; no excavations were to be carried out other than for buildings and drains and no quarrying was to be carried out. No booths, shows, swings, roundabouts or hoardings or advertising stations were to be put on the premises, other than for sale or to let boards! The land was not to be used for the storage of rubbish or building materials.

The School policy for Jaegers Field has been to lock the entrance gate during the holidays between terms and a 'Private Property, Cranbrook School. No unauthorised entry' sign has been on the gate for many years. Perimeter fencing and hedges are routinely repaired to restrict unauthorised access. A natural fallen tree barrier has been created in the North Eastern corner of the property where unknown persons had regularly cut and removed a section of fencing.

Letters have been sent in August 1999 to all property owners with garden gates giving access to the field reminding them that they did not have a right of access.

The School is not aware of any regular use by the community of the field as a recreational area.

The playing field is occasionally used by Cranbrook Rugby Club when their pitches are unfit for use. The School would normally be able to supply an alternative pitch if Jaegers was no longer available. The field was made available for car parking when the 'Tour de France' route passed through the outskirts of Cranbrook.

School use of the playing field for games has declined to the extent that it has not been used over the last five years or so due to its proximity to the road,

distance from the School and changing facilities and the availability of the other School rugby pitches more conveniently located.

#### **School Development**

Reference has been made in my earlier submission on Cranbrook School's continuing commitment to investment in its sports facilities. I confirm that in the medium to long term the School seeks to:

Level and properly drain existing playing fields.

Provide additional changing facilities and pavilions

Provide a second astro turf hockey/tennis pitch preferably with floodlighting.

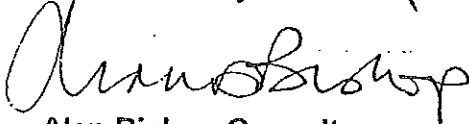
Provide an all weather athletic track.

Capital funding is unlikely to be provided by the Government and hence the Trustees must examine the value of the Trusts assets in implementing the improvement plans.

I trust that the above is of assistance.

If you should wish to discuss any matters I would be happy to arrange to meet with you together with my client.

Yours sincerely



**Alan Bishop Consultancy**

cc: Mr A D Jolley  
Bursar and Clerk to the Governors

## CRANBROOK SCI



Cranbrook, Kent. TN17 3JD

Telephone: School 01580 - 712163 Bursar 01580 - 713334 Fax 01580 - 715365

The Occupant

Ref: 3200

30 July 1999

Dear Occupant,

I am writing to you as the occupant of a house that backs onto Rammell Field. At some time in the past, a gate has been constructed in your fence bordering the field and it is appropriate that I draw to your attention the fact that you have no rights of access to or passage across Rammell Field which is a private sports field owned by the Trustees of Cranbrook School Trust. The exercising of dogs and the consequent fouling of a sports field is also totally unacceptable.

The field is private property and I would ask for your co-operation in respecting it as such. The School solicitors have been asked to advise on any further action that should be taken to properly secure the field.

Yours sincerely,

A D JOLLEY  
Clerk to the Trustees

# CRANBROOK SCHOOL



Cranbrook, Kent. TN17 3JD

Bursar's Dept: 01580 711811

Fax: 01580 711828

Email: [facilities@cranbrook.kent.sch.uk](mailto:facilities@cranbrook.kent.sch.uk)

The Occupant  
1 Dorothy Avenue  
Cranbrook  
Kent  
TN17 3AP

17 January 2005

Dear Occupant,

I am writing to you as the occupant of a house that backs on to Rammell Field.

The Governors and I recently reviewed the School's land and noted that you have an access gate from the back of your property on to the Field.

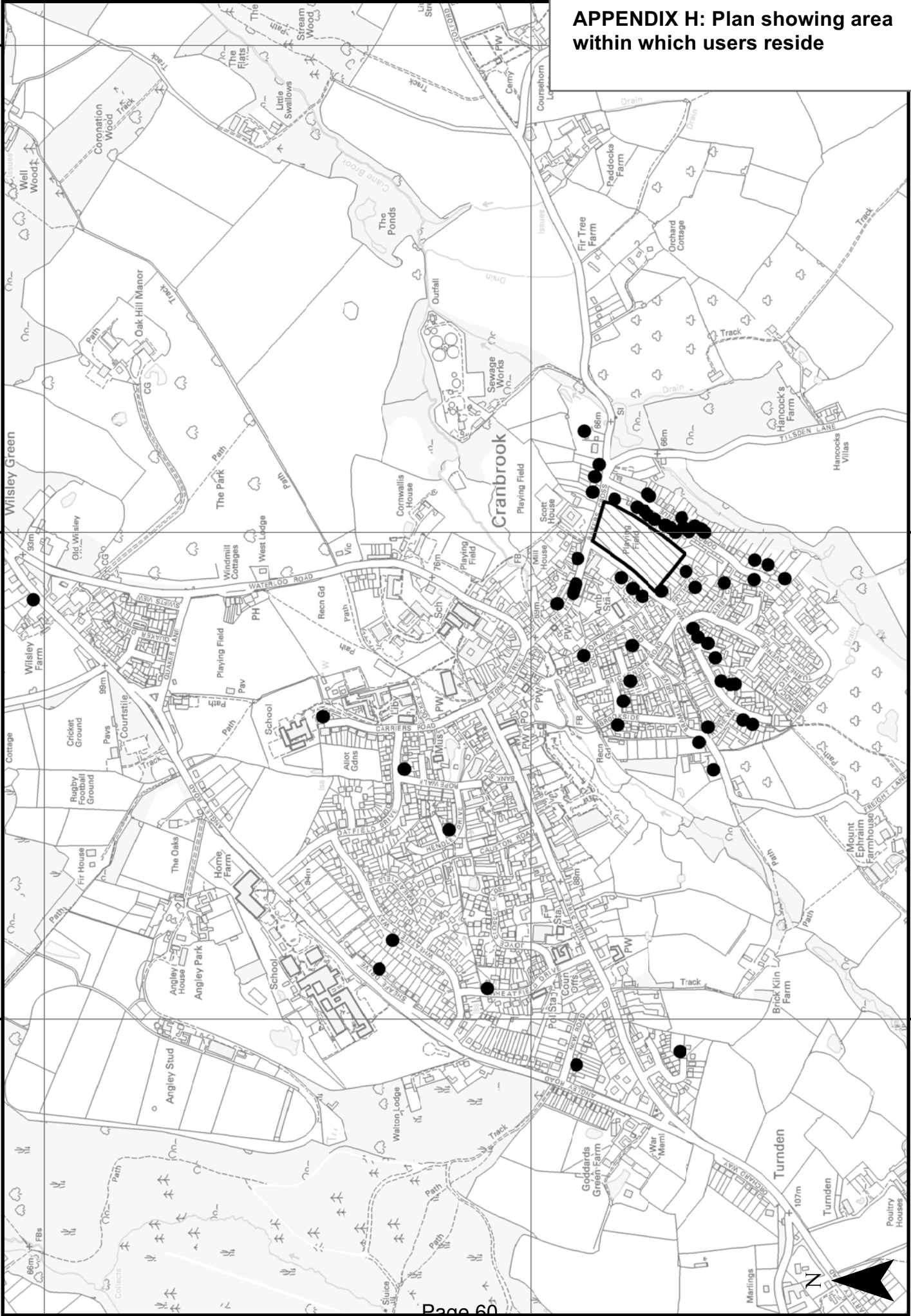
Rammell Field is a private sports field and you have no rights of access to, or passage across it and I would therefore ask for your cooperation in respecting it as such.

Please can you acknowledge receipt of this letter and let me know by which date you intend to reinstate a formal boundary.

Yours sincerely

Karen Radford  
Bursar

APPENDIX H: Plan showing area within which users reside



## Application to register land at Bishops Green at Great Chart as a new Village Green

---

A report by the Head of Regulatory Services to Kent County Council's Regulation Committee Member Panel on Tuesday 5<sup>th</sup> March 2013.

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

---

Local Members: Mr. J. Wedgbury

Unrestricted item

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### Introduction

1. The County Council has received an application to register land Bishops Green in the parish of Great Chart with Singleton as a new Village Green from local resident Ms. S. Williams ("the Applicant"). The application, received on 12<sup>th</sup> January 2012, was allocated the application number VGA642. A plan of the site is shown at **Appendix A** to this report.
2. Members should be aware from the outset that the purpose of this report is not to determine this application, but rather to consider whether the County Council is in a position to determine this application, for the reasons which are set out in more detail below.

### Procedure

3. The application has been made under section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2008.
4. Section 15 of the Commons Act 2006 enables any person to apply to a Commons Registration Authority to register land as a Village Green where it can be shown that:
  - 'a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;*
5. In addition to the above, the application must meet one of the following tests:
  - **Use of the land has continued** 'as of right' until at least the date of application (section 15(2) of the Act); or
  - **Use of the land 'as of right' ended no more than two years prior to the date of application**, e.g. by way of the erection of fencing or a notice (section 15(3) of the Act);
6. As a standard procedure set out in the regulations, the Applicant must notify the landowner of the application and the County Council must notify every local authority. The County Council must also publicise the application in a newspaper circulating in the local area and place a copy of the notice on the County Council's website. In addition, as a matter of best practice rather than legal requirement, the County Council also places copies of the notice on site to provide local people with

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

### **The application site**

7. The area of land subject to this application (“the application site”) consists of a piece of open land of approximately 1.4 acres (0.6 hectares) situated adjacent to a residential cul-de-sac known as Bishops Green in the Singleton area of the parish of Great Chart with Singleton. The application site is shown in more detail on the plan at **Appendix A**.
8. The application site has, since August 2011, been securely fenced with no public access. Prior to that time, access to the site was via a path leading between Knoll Lane and Longacre Road.
9. The application site falls within the ownership of Kent County Council. In August 2011, the County Council submitted a planning application (reference 11/01045/AS) to Ashford Borough Council, as the local Planning Authority, for outline permission for the erection of up to 14 dwellings on the application site. The planning application remains outstanding with the Borough Council and no final decision has been taken in respect of it.

### **The case**

10. The application has been made on the grounds that the application site has become a Town or Village Green by virtue of the actual use of the land by the local inhabitants for a range of recreational activities ‘as of right’ for more than 20 years.
11. Included with the application were eight user evidence questionnaires from local residents detailing their use of the application site over a period in excess of twenty years. The evidence questionnaires refer to use of the application site for a number of recreational activities, including dog walking, blackberrying, photography and nature observation.

### **Consultations**

12. Consultations have been carried out as required. The following responses have been received.
13. The Great Chart with Singleton Parish Council wrote to confirm its support for the application.
14. Additionally, 15 local residents also wrote in response to the consultation. Three residents wrote solely to object to the proposed development of the application, but the remainder wrote to add their evidence of use to that already submitted in support of the application and to confirm that they had engaged in and observed regular usage of the application site for recreational activities until access to it had been prevented by the erection of fencing.



## **Landowner**

15. As stated above, the application site is owned by Kent County Council (“the landowner”) and is registered with the Land Registry under title numbers K35382 and K343551.
16. Objection has been made to the application by the County Council’s Property Group on the following grounds:
- That a notice was erected on the application site in August 2009 stating “Public Notice Kent County Council Property Land off Long Acre Road Ashford The public may access this site for recreational purposes only they do so at their own risk. Permission may be revoked at any time”. The landowner’s case is that the effect of this notice was to cause ‘as of right’ use of the application site to cease. As the application was not made until January 2012, it falls outside of the two year period of grace provided for by the legislation.
  - That the applicant has not sufficiently defined the locality or neighbourhood within a locality. The application form refers to ‘Singleton, Ashford, Kent’ but Singleton would not qualify either as a locality (because it is not a legally recognised administrative unit) or as a neighbourhood (because it lacks the requisite degree of cohesiveness).
  - That the nature of the application site, prior to its clearance in 2010, was such that it would not have been used significantly for lawful sports and pastimes. The vegetation on the application site would have been such that any walking would have been confined to defined routes, whilst other activities (e.g. balckberrying or kite flying) would have been seasonal and infrequent in nature.
  - That the evidence submitted in support of the application is weak and suggests only limited and sporadic recreational use of the application site, which would be insufficient to appear to a reasonable landowner as being the assertion of a public right. There is no evidence to suggest that the application site was in general or regular use by the local community as a whole.

## **Applicant’s response to the objection from KCC’s Property Group**

17. As required by Regulation 26 of the 2008 Regulations, copies of all of the representations received were sent to the applicant for comment.
18. The applicant rejected the landowner’s suggestion that the evidence in support of the application was lacking and, overall, insufficient to register the land as a Village Green. She states that the local community enjoyed use of the application site for many years until the fencing was erected and access denied. A number of residents have submitted evidence forms documenting their use over the relevant period; it was considered that this was sufficient, but if more evidence is required this can be provided.
19. The applicant also challenged the assertion made by the landowner that Singleton could not be a qualifying neighbourhood, and pointed to a number of features, (including two schools, a youth club, an amateur dramatics society, a village hall and the Singleton Environment Centre) that made up the community of Singleton. She therefore was of the view that the community of Singleton is very much a qualifying neighbourhood for the purpose of Village Green registration.

## Legal tests and discussion

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

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

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

22. DEFRA's guidance<sup>1</sup> in this respect states that:

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

*But, in [this] example, if the authority itself owned the land, there might not be confidence in the authority's ability to determine the application having regard to the more subjective nature of the criteria for registration in section 15. However, an authority will need to have regard to all the circumstances: if, for example, its practice is to appoint an independent Inspector to enquire into the application, and to act on the recommendations of the Inspector's report, it may nevertheless be possible for the registration authority to determine the application itself'*

23. It is not the first time that such an issue has arisen in this county. Members will recall a similar case involving land known as The Long Field at Cranbrook which was considered at a meeting of the Regulation Committee Member Panel on Tuesday 22<sup>nd</sup> February 2011. In that case, the application site was owned by the County Council and had been the subject of a planning application for the construction of a new care home. At the time of the meeting, the planning application had been withdrawn pending the outcome of the Village Green application. Members agreed, on the basis of the County Council's significant interest in the outcome of that case, that the Village Green application ought to be referred to the Planning Inspectorate for determination.

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<sup>1</sup> 'Guidance to commons registration authorities and PINS for the pioneer implementation' (version 1.41, September 2010), paragraphs 7.19.4 and 7.19.5 at pages 81 and 82

24. In respect of this case, the views of both parties have been sought on the issue of whether the County Council should determine this particular application.
25. The landowner's response (see letter at **Appendix B**) was that it is not sufficient simply for the County Council merely to have an interest in the outcome of the application and there is a high threshold to be met before the application should be referred to the Planning Inspectorate. The landowner refers to DEFRA's guidance (quoted above) which suggests that an authority may still be able to determine an application if its normal practice would be to refer the matter to a Public Inquiry for consideration.
26. Furthermore, the landowner's position is that the application is bound to fail (for reasons set out in the objection above) and as such the County Council can legitimately take a decision on the application without any accusation of acting unfairly or in a biased manner. The landowner adds that the decision by the Panel in relation to the Long Field at Cranbrook was wrong, and there is nothing binding on the panel to act consistently with its previous decision.
27. However, the applicant's response (see letter at **Appendix C**) was that there would be an obvious conflict of interest if the application were to be determined by the County Council, which has a direct benefit in refusing the application. The tone of the objection is, in the applicant's view, dismissive and one-sided and as such only an independent Inspector appointed by the Planning Inspectorate can provide an impartial and objective decision.
28. The applicant also refers to information which she feels has been deliberately withheld despite requests for its provision and believes that it is not clear whether all of the relevant information has been provided. She and the local residents state that they do not have any confidence that clear and unbiased information can be supplied to an internal Member Panel, and that the application cannot be considered objectively unless it is referred to the Planning Inspectorate.
29. Clearly, the test regarding whether or not there is likely to be confidence in the County Council's ability impartially to determine the application is a subjective one. As DEFRA point out, the nature of a Local Authority is such that it undertakes a variety of roles and functions, some of which will unavoidably involve conflicting interests; indeed, the County Council is quite used to dealing with such issues. There is also a further safeguard in the decision-making process in that the Commons Act 2006 imposes a quasi-judicial function on the County Council and unless that function is discharged in an appropriate manner (i.e. according to the strict legal tests set out in section 15 of the Commons Act 2006), then the County Council leaves itself open to a very costly and time-consuming Judicial Review process.
30. However, it is equally important that the matter is considered from the point of view of the applicant and the local community who may not have such a detailed understanding of the decision-making process. If the applicant is not confident of the County Council's ability to impartially determine the application, then it is important to consider whether such doubts are reasonably founded. If, as DEFRA say, it is simply a matter of the County Council exercising conflicting functions (i.e. as the Planning Authority and Registration Authority), then it may

not be reasonable for the applicant to doubt the County Council's ability to determine the matter impartially.

31. If, however, the County Council has a significant interest in the outcome of the Village Green application because, for example, it owns the land in question and is actively seeking to develop the land for financial gain (as opposed to, for example, providing a community facility such as a school), then it is likely to cause to a reasonable person to doubt the County Council's ability to determine the matter impartially.

## **Conclusion**

32. The options available to the County Council at this stage are as follows:

- To refer the matter to the Planning Inspectorate for determination (on the basis of the conflict of interest); or
- To decide that the application should be determined by the County Council in due course.

33. The Officer's view is that, in light of the comments expressed above, it would be appropriate under the circumstances for this application be referred to the Planning Inspectorate for determination. Indeed, the circumstances of this application appear to fall squarely within the new provisions introduced by DEFRA to deal with applications where the Commons Registration Authority has a significant interest in the outcome of the application.

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

## **Recommendation**

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

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 PROW and Access Service based at Invicta House, County Hall, Maidstone. Please contact the case officer for further details.

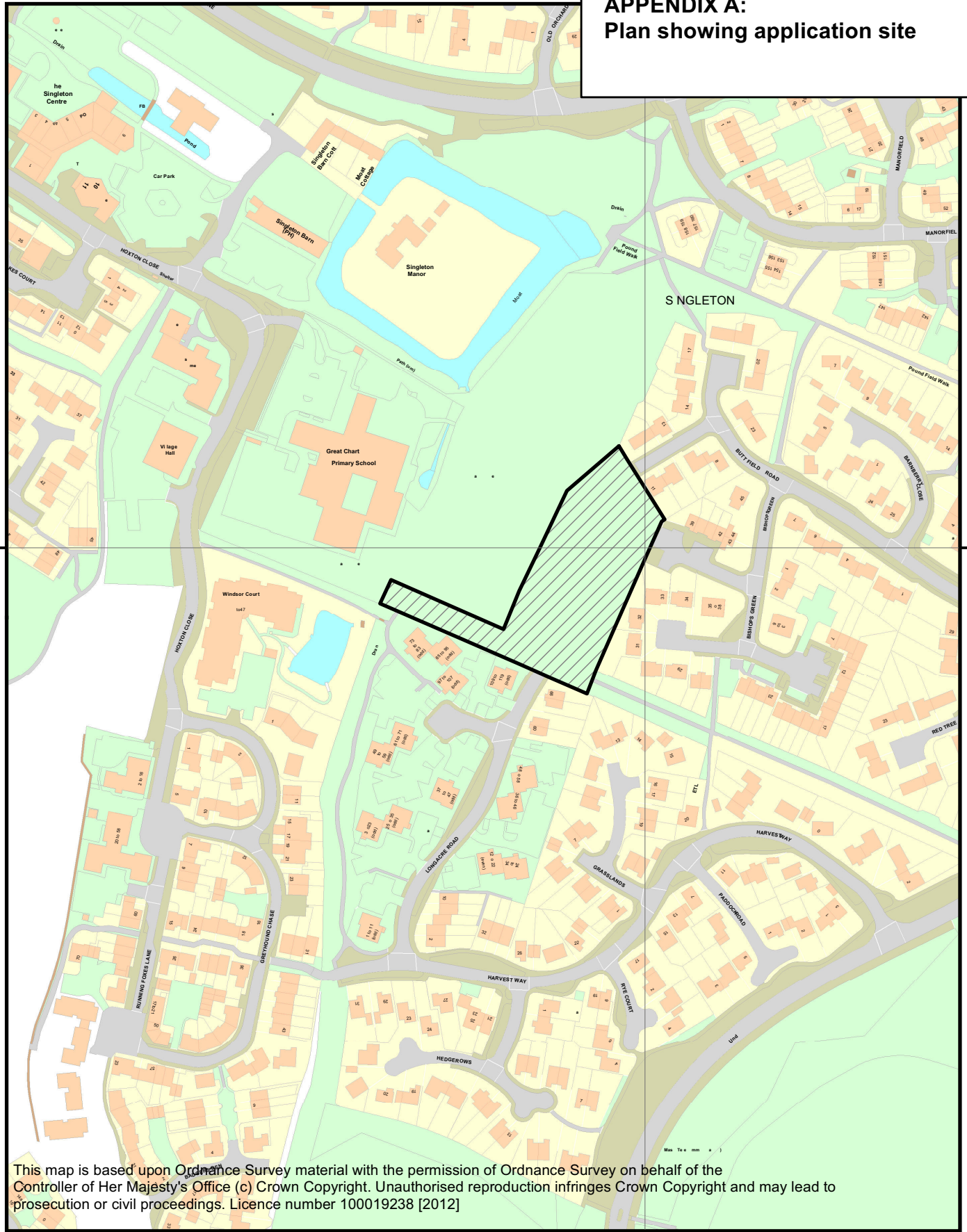
## **Background documents**

APPENDIX A – Plan showing application site

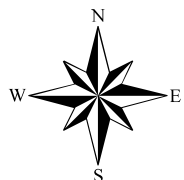
APPENDIX B – Letter from KCC Governance and Law dated 18<sup>th</sup> January 2013

APPENDIX C – Email from the applicant dated 8<sup>th</sup> February 2013

# APPENDIX A: Plan showing application site



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Scale 1:2500

Land subject to Village Green application  
at Bishops Green at Great Chart

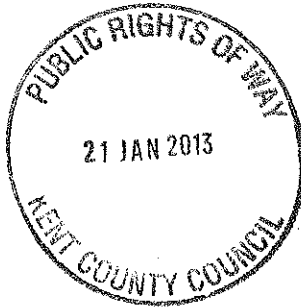


Page 67



✓  
acted  
by email  
21.01.13

**APPENDIX B: Letter from KCC  
Governance and Law dated 18<sup>th</sup>  
January 2013**



Ms M McNeir  
Public Rights of Way  
IH 2  
Invicta House  
Maidstone

**Governance & Law**  
Sessions House  
County Hall  
Maidstone  
Kent ME14 1XQ  
DX: 123693 Maidstone 6  
[www.kent.gov.uk/legal](http://www.kent.gov.uk/legal)

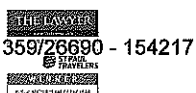
Direct Dial/Ext: 01622 694180  
Fax Number: 01622 694402  
E-mail address: [liezl.emsley@kent.gov.uk](mailto:liezl.emsley@kent.gov.uk)  
Ask for: Liezl Emsley  
Your Ref:  
Our Ref: LS/21/26690/359  
Date: 18 January 2013

Dear Melanie

**Section 15(3) of the Commons Act 2006  
Land behind Great Chart Primary School (ref VGA 642)  
Application by Sharon Williams of 31 Bishops Green, Ashford, Kent TN23 5BQ**

1. Thank you for your letter dated 18 December 2012 which was received in the Governance and Law Department on 27 December 2012. As your request was under Regulation 28(4) of the Commons Registration (England) Regulations 2008 these representations must, in determining the application, be taken into account by the determining authority under Regulation 28(1).
2. In this case you are of course right to note that KCC is both landowner and applicant for planning permission. However, it is not enough to require a reference to the Planning Inspectorate that KCC has an interest in the application. Under Regulation 27(3)(a) it must be an interest which is "such that there is unlikely to be confidence in the authority's ability impartially to determine" the application. This is a high threshold. It means that people generally would have to have such little faith in the ability of KCC as registration authority to behave properly that they thought it was likely that the application would be determined partially, that is (according to the Shorter OED) unfairly, unjustly and in a biased manner.
3. I do not believe that you can seriously consider that the general public would think that it was more likely than not that KCC as registration authority would determine the application unfairly, unjustly and in a biased manner. That is, frankly, unthinkable.
4. That it is a high threshold is confirmed in the DEFRA guidance. Paragraph 7.19.4 of the guidance states that a reference to the Planning Inspectorate is necessary "only where that interest would seriously call into question the authority's ability to determine the matter impartially". Paragraph 7.19.5 states that a registration authority would "need to have regard to all the circumstances". It also states that even where the registration authority is

**Geoff Wild** LL.B, Dip.LG, Solicitor  
Director of Governance & Law



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also the landowner "if, for example, its practice is to appoint an independent inspector to inquire into the application, and to act on the recommendations of the inspector's report, it may nevertheless be possible for the registration authority to determine the application itself". This is of course the normal practice of KCC as registration authority.

5. It is clear therefore that, under the DEFRA guidance, Government considers that KCC would still be able to determine the application, if it dealt with the application in the way that KCC normally deals with new green applications, that is by appointing a barrister to enquire into the application and acting on the recommendations in the barrister's report.
6. As the DEFRA guidance states, KCC as registration authority must have regard to all the circumstances. On the one hand, in her email dated 17 December 2012, the Applicant has pointed to nothing except her desire that the application should be referred to the Inspectorate. No reasons are given as to why this would be justified in terms of the test in Regulation 27(3)(a). There is no case advanced by the Applicant to show that the test in the Regulations is met.
7. On the other hand, as part of the circumstances, it is relevant to have regard to the issues in dispute which would need to be considered by KCC as registration authority in determining the application and the strength of the Applicant's case for registration. Now we have the Applicant's response to the objection of KCC as landowner, it is clear what issues are in dispute.
8. KCC's objection dated 11 October 2012 explained that the application could not succeed for any or all of the following reasons:
  - (1) The application under s15(3) was not made within the two year period of grace from when any use as of right would have ended in August 2009 when the permissive notice was erected.
  - (2) No qualifying neighbourhood and/or locality are identified in the application.
  - (3) The evidence of use for qualifying lawful sports and pastimes, even if taken at face value, would have been no where near enough to show the necessary quality and quantity of use and also wholly inadequate to discharge the burden of proof.
9. Only one of the above reasons would need to be upheld for the application to be rejected summarily. The application has absolutely no prospect of success. The erection of the notice in particular is a single "knock out blow".
10. Further, an application under s15(2) has not been made but could not have been made in any event as use as of right was not continuing at the date of the application due to the permissive notice, the erection of the fence in August 2011, and/or the state of the land. The land was not used at all for lawful sports and pastimes after the erection of the fence.
11. In her letter dated 10 December 2012, the Applicant does not even take issue with the above points. Whilst she makes various complaints about the situation, she provides no answers to counter the landowner's objection whatsoever. There is nothing from the Applicant to contradict the objection. The objection is bound to prevail.



12. The Applicant says that the land has been "used for recreational purposes for several years". It is necessary, however, to show that the land has been used for recreational purposes for at least 20 years (since 1989 in this case) not just "several years". She confirms that those who provided evidence are "obviously... opposed to the development". She confirms that the permissive notice was erected in August 2009 and does not take any issue with the legal effect of the notice. The Applicant accepts that the application was not made within the two year period of grace, but argues instead that additional time beyond the two year period of grace should be given. That, of course, is not accepted. Section 15(3) provides a two year period of grace and nothing more is applicable. If an application is not made within the two year period of grace after qualifying use as of right ceases, then the ability to register the land is lost (see eg *Gasden* 2<sup>nd</sup> edition at 14-05 and 14-06). The notice was erected in August 2009 and the application was stamped January 2012, five months out of time. Even on the Applicant's (erroneous) argument, the application was two months out of time.
13. In her letter dated 10 December 2012 the Applicant effectively confirms the landowner's submissions about the state of the application site, including that it was largely wooded (see also the attached aerial photographs). She says nothing in her letter to show that there is a qualifying locality and provides no material to respond to the landowner's submissions on neighbourhood, or even to demonstrate that "Singleton" would qualify as a neighbourhood for the purposes of s15(3) (and still provides no plan of the alleged neighbourhood). And she says nothing at all in her letter in response to the objection on lawful sports and pastimes and appearance to a reasonable landowner.
14. Overall, once the complaints and the irrelevant points are left out, the Applicant's letter dated 10 December 2012 strongly supports the landowner's objection and demonstrates that the Applicant has no answer to the objection – and no case for registration.
15. Moreover, in any event, the application in this case is bound to fail, for the reasons given in KCC's objection dated 11 October 2012.
16. In short, the Applicant's case for registration is so hopeless that it is obvious what the outcome of the application should be. As the answer is so obvious – the application must be rejected – in KCC rejecting the application there would be no room for any one to think that KCC as registration authority was acting unfairly, unjustly and in a biased manner. As the case is so clear-cut, there is only one answer that could rationally be given to the application. No serious suggestion of partiality could arise in this case, let alone a likelihood of such partiality in the minds of the general public. There is therefore no reason to consider that the test in Regulation 27(3)(a) would be met in this particular case, regardless of KCC's position as landowner and applicant for planning permission.
17. You refer to the registration authority's decision on the Long Field in Cranbrook. KCC wrongly decided to refer that application to the Inspectorate. Just because the wrong decision was taken in that case does not mean that the wrong decision should be taken in this case as well.
18. In your letter you say that you consider that it would be appropriate for the current application to be referred to the Inspectorate because KCC must act consistently. The need for consistency does not feature as part of the test in Regulation 27(3)(a). It is not a consideration which is relevant to this decision under the Regulations. There is no

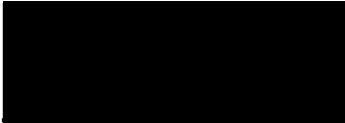


requirement in the Regulations for decisions to be consistent. Rather, each decision should be looked at on its own merits. That is a fundamental principle of decision-making. In particular, where earlier decisions were erroneous they should not be followed. The right decision must be taken in this case regardless of what the decision was in the Long Field case.

19. Returning to the merits of the case, in addition to the erection of the permissive notice in August 2009 (probably 13 or 14 August), the promotion of the site for development from 2006 onwards, and the erection of the fencing in August 2011, the objection mentioned the clearance of the site in 2010. The clearance of the site occurred in two stages:
  - (1) clearance of the site (except the central wooded area) by Clearway over 15 working days from 11 December 2009 to 21 January 2010 (see attached invoice and photograph); and
  - (2) the tree felling and stump grinding by KCC Landscape Services in August 2010 in the central wooded area.
20. The work done in December 2009 to January 2010 by Clearway in clearing the scrub from the un-wooded part of the application site was very substantial, taking 15 working days for gangs using chainsaws, hedge cutters and strimmers. Not only does this demonstrate how unusable the land was for lawful sports and pastimes, but it would also constitute an interruption in the use of the land. Photographs show that – as one would expect for health and safety reasons – the site was fenced off for the period when the clearance works were underway (and would not have been usable then anyway). A similar situation would have prevailed for the tree felling works in the central wooded area in August 2010.
21. So, in addition to the points made in the objection dated 11 October 2010, it is apparent that there was an interruption in any use of the land in December 2009 to January 2010 and/or August 2010. The need for continuous use was highlighted by the Supreme Court in *R (Lewis) v Redcar and Cleveland BC* [2010] 2 AC 70 at eg [33], [47] and [72]. An interruption will occur where activities or works are undertaken which prevent use of the affected land during any material part of the relevant period (see *Betterment Properties v Dorset CC & Taylor* [2010] EWHC 3045 (Ch) at [141]-[151], especially [150], and also *Taylor v Betterment Properties & Dorset CC* [2012] EWCA Civ 250 (CA) at [21], [65]-[66] and [70]-[71]). This will prevent registration of the land.
22. Overall, it is clear that the application is hopeless and is bound to fail. This is relevant to the registration authority's decision under Regulation 27(3)(a). No serious suggestion of partiality could arise in this case, let alone a likelihood of such partiality in the minds of the general public, because the case is so clear-cut that there is only one answer that could rationally be given to the application.
23. The DEFRA guidance at paragraph 7.11.31 also makes it clear that the registration authority must give consideration to not only whether there is an interest in the outcome but also whether that interest is "such that there is unlikely to be confidence in the authority's ability impartially to determine" the application. I am sure that in your report to the Regulation Committee Member Panel you will point out all the courses available to

24. Members and ensure that the submissions of KCC as landowner are fully before the Panel.  
I would be grateful if you could ensure that I am given notice of the Panel meeting so that KCC as landowner can be represented at the Panel's meeting.

Yours sincerely

A black rectangular box redacting the signature of Liezi Emsley.

**Liezi Emsley**  
**Solicitor**

**McNeir, Melanie - CC CS**

**From:** Sharon Williams [REDACTED]  
**Sent:** 08 February 2013 01:55  
**To:** McNeir, Melanie - CC CS  
**Cc:** Barbara Martin; Hodgkinson, Amanda Georgina - Ashford District Councillor; Angus Willson; David Dickinson  
**Subject:** Application to register land at rear of Bishops Green at Singleton, Great Chart as a Village Green Ref PROW/ MM/VGA642  
**Follow Up Flag:** Flag for follow up  
**Flag Status:** Completed

Dear Melanie,

Having considered your letter and enclosures sent around 21st January 2013 but dated 13th December 2012 together with neighbours, our local Councillor and Members of the Parish Council I wish to confirm my request for this application to be considered by the Planning Inspectorate for decision. The reasons for this request are as follows:

1. We believe that there would be an obvious conflict of interest in relation to this case if it were to be decided by KCC members. This is because KCC is the landowner in this case and therefore stands to have a direct benefit in refusing the application. We believe that it may be very difficult for this decision to be made impartially since there is every possibility that the decision may be influenced by the potential financial benefits for KCC arising from the sale / development of this land.

2. It is also my belief that there is evidence that KCC officers have avoided the provision of information thereby obstructing the process. KCC officers did not notify residents of the proposals for this land even when asked. In an FOI request response to me I was advised that there was no information held about the decision to clear the land or of the costs or other aspects of KCC activities regarding this land. I was also told that there were no proposals for the future of this land. Surprisingly however when objections to my application were presented suddenly KCC were able to present information including invoices detailing the work to clear the land and even photographs and evidence that KCC had clearly been planning an alternative use for this site. I believe that this demonstrates that officers will not present the information impartially and objectively since they will try to prove the case for the benefit of KCC.

This raises serious concerns that when a member of the public requests information under a clear legal process it cannot be found, yet clearly it exists and is brought forward when it is to KCC's advantage to do so. It seems that Officers pick and choose information to be made available. This leaves me concerned that if this matter is not considered by the inspector our voice will not be heard and we will not be given due consideration. The tone of the KCC submissions so far are dismissive and one sided and therefore we believe that an Inspector can provide an impartial and objective decision.

3. When the works to fell the trees commenced a neighbour enquired about why this work was proceeding and could not be given any clear information about why so it appears that again we were misled at that time. I believe that the lack of provision of information from KCC officers was an attempt to jeopardise any claim, since officers were not open about what was happening and the issue of timescales and only been provided after the submission of the application. Cllr J Wedgebury (County Councillor) was contacted on the day the tree felling started and a request to register a village green application was made within days. My absolute devastation at the loss of the trees and at the damage to the local wildlife was fully witnessed by the Cllr.

4. I would stongly disagree that I have not taken issue with the points set out in Liezl Emsleys letter of 18/01/13. I may not have the benefit of the use of an expensive Barrister's advice, nor legal training or the type of knowledge and experience tha the KCC Property Services Officers have to enable me to respond to these points quite as forcefully or eloquently as Liezl Emsley, but I did clearly respond to the points raised and have challenged them.

5. The local residents including myself had no option but to accept that the notice and fence were put up and could have done anything about this so I find it bizzare to say that it created a break in the use of the land. In actual fact people did continue to use the land as it is not secure and there are other access points onto the land where there is no fence and no signs or notices.

6. When the fence did go up a neighbour contacted KCC and was advised that it was to protect the land from encampments. Strangely this had never been considered before over a period of 20 years and I would therefore suggest that officers were quite well aware of the timescales connected to the VG process and information was withheld about this so as to attempt to thwart any application by local people. In considering the barrister's advice to KCC it does indicate that KCC officers carefully has calculated the errection of the sign suddenly after 20 years , the clearance of the land out of the blue, and the errection of the fence in the full knowledge of timescales around applying for a VG application and timed these actions to specifically frustrate any application by residents. The information about timescales was not made clear or expalined by KCC even when being asked for information.

7. The letter mentions that we were aware of the promotion of the use of this land for development from 2006. We were NOT aware of this. I presume this relates to the urban sites development plan. This was not adequately consulted upon with local residents affected. The consultation amounted to being on the Council web site. What normal resident who has no other indication or reason to would check a website daily just in case there may be something on it which may affect them? How did residents know that this was being consulted upon if they were not told? The simple answer is that we were not told and not directed to look at the website and there is also evidence that this was not adequately brought to the attention of our local Councillor or our Parish Council. I find it unreasonable then for this to be cited in the objections as it is completed irrelevant.

8. The letter datred 18th January 2013 asserts that there were no lawful sports and pastimes on the land. This is simply not true. The land was used as previously advised for various reasons. In addition the Open Spaces society has advised that there is no reason why woodland may not be considered a village green. Neighbours and I have taken great delight in observing wildlife on this alnd and enjoyed the recreational effect of the open space and the trees were an important part of this and was full of birds and bats.

9. We are making this application as we belive that this land should continue to be used by the community incorporating the school which is adjacent tot he land. Sureely there is more to the KCC strategy for imrpoving the health and wellbeing of residents than selling of every part of land possible and taking away all of our open spaces.

In summary my neighbours and I have enjoyed the use of this open space for many years and we feel passionately that residents health and wellbeing should be a major factor considered by KCC to balance with selling sites for a financial return. We feel that this land should continue to be able to be used by the community.

My neighbours and I strongly feel that this cannot be considered objectively unless it is referred to the planning inspector since we have no confidence that clear and unbiased information can be supplied to an internal member panel. Any information placed before council members is liekly to be biased to the wider interests of KCC.

Could I please ask you to provide me with an electronic copy of your letter and enclosures and if

possible a copy of my original application to you with enclosed plan and proformas from other residents. If you have this electronically this would be very much appreciated but if not a hard copy would be welcome.

Regards

Sharon Williams

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