



AGENDA

Kent County Council

REGULATION COMMITTEE MEMBER PANEL

Tuesday, 19th February, 2013, at 11.00 am Ask for: **Andrew Tait**
Assembly Rooms, New Romney Town Hall, Telephone **01622 694342**
New Romney TN28 8BT

Tea/Coffee will be available 15 minutes before the meeting

Membership

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

UNRESTRICTED ITEMS

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

1. Membership and Substitutes
2. Declarations of Interest by members for items on the agenda
3. Application to register land at Cockreed Lane at New Romney as a new Village Green (Pages 1 - 24)
4. Other items which the Chairman decides are Urgent

EXEMPT ITEMS

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

Peter Sass
Head of Democratic Services
(01622) 694002

Monday, 11 February 2013

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Application to register land at Cockreed Lane at New Romney as a new Village Green

A report by the Head of Countryside Access Service to Kent County Council's Regulation Committee Member Panel on Tuesday 19th February 2013.

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

Local Member: Mrs. C. Waters

Unrestricted item

Introduction

1. The County Council has received an application to register land at Cockreed Lane at New Romney as a new Town or Village Green from a group of local residents led by Mrs. A. Jeffery ("the applicant"). The application, made on 27th October 2011, was allocated reference number VGA638. 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 of a field of approximately 13.6 acres (5.5 hectares) in size situated at the junction of Cockreed Lane and Rolfe Lane on the northern fringe of the town of New Romney. A plan showing the application site is attached at **Appendix A**.
7. Access to the application site is currently via a stile in the fencing bordering Cockreed Lane and giving access to Public Footpath HM124, which runs across the application site and leads to Rolfe Lane. The applicant’s evidence is that the fence currently enclosing the application site was erected in 2009 and, prior to that time, access could be gained to the application site directly from Cockreed Lane and Rolfe Lane.

The case

8. The application has been made on the grounds that the application site has become a Town or Village Green by virtue of the actual use of the land by the local inhabitants for a range of recreational activities ‘as of right’ for more than 20 years.
9. In support of the application, 40 user evidence questionnaires¹ were submitted detailing the recreational use of the application site, some of which included photographs demonstrating use of the application site. A summary of the user evidence questionnaires submitted in support of the application is attached at **Appendix C**.

Consultations

10. Consultations have been carried out as required.
11. New Romney Town Council did not have any comments to make in respect of the application.
12. Cllr. E. Gould and three members of the public wrote to express their support for the application and to confirm that the land has always been used for recreational activities.
13. County Member Mrs. C. Waters also wrote in support of the application. She explained that the site was an open grass area with no fencing and has been used for the past 50 years, mainly for dog walking. Mrs. Waters added that the residents had evidence to demonstrate that the application site has historic community status.

Landowner

14. The application site is owned by Mr. and Mrs. B. Frith (“the landowners”) and is registered with the Land Registry under title numbers K303180 and K306229. An objection to the application has been received, initially from the landowners and supplemented by a further submission from Icen Projects (acting on behalf of the landowners).

¹ NB further evidence questionnaires and statements were submitted in response to an objection received from the landowner.

The objection is made on the following grounds:

- That the applicant has not complied with the relevant statutory requirements in relation to the service of notice on the landowner;
- That any recreational use has been interrupted for extensive periods by intensive agricultural use;
- That any use was made contentious by the presence of signs which prohibited any use of the application site other than the footpath;
- That it is not clear that there is a qualifying locality; and
- That use has not been by a significant number of the residents of the locality for the whole of the twenty-year period.

15. The objection is supported by an opinion from Counsel and a witness statement from Mr. B. Frith regarding the history and use of the application site.

16. Mr. Frith explains that he has had an interest in the application site since 1966. During the 1970s, permission was granted to the Romney Marsh Potato Company (whose premises are situated adjacent to the application site) to use the land as a football pitch for staff. In 1986, the application site was ploughed and planted for potatoes, and was subsequently used for arable purposes (which included the planting of oil seed rape) until 1992. Between 1992 and 2009, the application site has been in constant agricultural use for either sheep grazing or set aside. Mr. Frith's evidence is that he has rarely seen the land being used for recreational activities and that any use of it has been confined to the Public Footpath which crosses the land. He adds that in late 1992, when the field was in set aside, four signs were erected stating 'private property keep to footpath' which would have been clearly visible to anyone entering the application site.

Preliminary issues

17. Before considering the application in the context of the relevant legal tests, it is necessary to deal with the issue raised by the landowners relating to the applicant's alleged failure to comply with the statutory requirements with regard to the service of notice on the landowner.

18. Regulation 20(1) of the Commons Registration (England) Regulations 2008 requires that an applicant serve notice of the application on the landowner '*as soon as reasonably practicable after receiving an acknowledgement of an application*' from the County Council. Under Regulation 21, the County Council is under a similar obligation to undertake a public consultation '*as soon as reasonably practicable*'.

19. As Members will be aware, due to the time-consuming and complex nature of Village Green applications, as well as the relatively high volume of such applications received in this county, there is a backlog which means that once an application is received there will inevitably be a period of inaction until an Officer becomes available to progress the application.

20. The County Council's standard procedure has therefore been to acknowledge an application, advising of the delay, and asking the applicant informally to notify the landowner of the application. Only once work begins on the application is the applicant asked to serve a formal notice of the application on the landowner in accordance with the Regulations.

21. Although the backlog of applications is now much reduced, this particular application was made in late October 2011 but the County Council was not able to begin working on it until April 2012. The applicant states that she wrote to the landowners, following acknowledgement of the application, in November 2011 and formal notice of the application was served, in accordance with the County Council's standard procedure, in May 2012.
22. The landowners' position is that this delay of approximately six months means that the applicant has failed to serve the required notice on the landowner 'as soon as reasonably practicable' and, as a result, the application should be treated as abandoned².
23. The problem faced by the County Council in dealing with such applications is that the Regulations appear to be drafted with the assumption that a Commons Registration Authority can immediately begin working on any application that is received. In reality, however, this is not often the case and there will inevitably be a delay between receipt of an application and work commencing on it.
24. The landowners have placed significant weight on the words 'as soon as reasonably practicable'. However, it is arguable that the term 'as soon as reasonably practicable' is intentionally loose and can be construed as being very wide. Indeed, there is nothing to suggest that any stronger or more restrictive interpretation should be attached to it. In context, given the backlog of applications, there is no reason why the period of six months cannot be deemed to be as soon as reasonably practicable when it is put into context.
25. Furthermore, DEFRA's guidance³ appears to envisage that in practice the landowner's objection period should run roughly in tandem with the public consultation period. It states that '*the applicant may serve notice [on the landowner] at any time after receiving an acknowledgement of application even where the registration authority has not yet published a notice [of the application]. It is for this reason that the registration authority is advised to withhold acknowledging receipt of an application until after it has published the notice*'.
26. On a strict interpretation of the guidance, therefore, the County Council should not have acknowledged the application until it was ready to commence the public consultation in April 2012. However, this is not entirely satisfactory as the application is effectively left in limbo for an undefined period and the preferred approach is therefore to accept the application and add it to the official schedule (which is published on the County Council's website) whilst also asking the applicant informally to bring it to the attention of the landowner.
27. For these reasons, it is not considered that the application should be treated as being abandoned. In any event, should Members agree with the recommendation, the landowners could pursue this point and ask an Inspector to deal with it as a preliminary issue prior to any Public Inquiry.

² Regulation 20(5) of the 2008 Regulations provides that if the applicant fails to comply with regulation 22, the County Council may either treat the application as abandoned, direct the applicant to remedy the non-compliance or waive the non-compliance.

³ See paragraph 7.11.26 of DEFRA's 'Guidance to commons registration authorities and PINS for the pioneer implementation.'

Legal tests

28. 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'?*

29. The definition of the phrase 'as of right' has been considered by the House of Lords. Following the judgement in the *Sunningwell*⁴ case, it is considered that if a person uses the land for a required period of time without force, secrecy or permission ("*nec vi, nec clam, nec precario*"), and the landowner does not stop him or advertise the fact that he has no right to be there, then rights are acquired.

30. In this case, there is no evidence that use of the application site has taken place in secrecy or with permission. However, there is a question as to whether use has taken place with force. Force in this context refers not only to physical force (i.e. breaking down fencing to gain entry), but applies equally to non-physical force where, for example, users have ignored notices or other challenges to use⁵.

31. In this case, the landowners refer to various verbal challenges to use and also to notices erected on the application site in about 1992. The notices read 'private property keep to footpath' and were erected at four locations around the application site: one at either end of the footpath, one along the Cockreed Lane boundary and another along the Rolfe Lane boundary. The landowners' case is that these were in position for a period of approximately three years.

32. However, the applicant's case is that the recreational use of the application site has never been challenged. None of the users refers to having seen any prohibitive notices on the application site during the relevant period and some specifically state that they have never seen any such notices on the land or otherwise been challenged whilst on the application site.

33. In the absence of any supporting evidence (e.g. photographs of the notice on site), it is difficult to establish whether in fact the alleged notices would have come to the attention of the users. There is a conflict in the evidence in this regard that is difficult to resolve on paper. Therefore, on the issue of whether use of the application site has been 'as of right', the user evidence suggests that use has taken place 'as of right', but further investigation of the alleged challenges is required before it is possible to reach an informed conclusion.

⁴ *R v. Oxfordshire County Council and another, Sunningwell Parish Council* [1999] 3 All ER 385

⁵ *Dalton v Angus* (1881) 6 App Cas 740 (HL)

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

34. Lawful sports and pastimes can be commonplace activities including dog walking, children playing, picnicking and kite-flying. 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 activities⁶.
35. Legal principle does not require that rights of this nature be limited to certain ancient pastimes (such as maypole dancing) or for organised sports or communal activities to have taken place. The Courts have held that '*dog walking and playing with children [are], in modern life, the kind of informal recreation which may be the main function of a village green*'⁷.
36. In this case, the evidence submitted in support of the application suggests that the application site has been used for a range of recreational activities, including walking, ball games, picnics and blackberry picking. The summary of user evidence questionnaires from local residents at **Appendix C** shows the full range of activities claimed to have taken place.
37. However, the landowners assert that they have not witnessed any significant recreational use of the application site by local residents and state that the agricultural use of the application site is inconsistent with its use for recreational activities. Their case is that between 1989 and 1992, the application site was used for intensive arable crops which would have severely restricted the ability of local inhabitants to engage in recreational activities on the land. They add that between 1993 and 2000, there was a three month period each year during which there were approximately 65 sheep grazing on the land (enclosed by an electric fence) and, for the remainder of the year, the application site was heavily overgrown and incapable of being used for recreational activities. During this period, any use of the application site would necessarily have been restricted to the footpath.

Public Footpath HM124

38. The majority of the use of the application site has been for the purposes of walking and this raises questions in relation to the existence of Public Footpath HM124 which crosses the application site. The issue was considered by the Courts in *Laing Homes*⁸, in which the judge said that: '*it is important to distinguish between use that would suggest to a reasonable landowner that the users believed they were exercising a public right of way to walk, with or without dogs... and use that would suggest to such a landowner that the users believed that they were exercising a right to indulge in lawful sports and pastimes across the whole of the fields*'. Thus, use that is in exercise of an existing right, or has the appearance of a rights of way type of use along a defined linear route, is not capable of giving rise to a general right to recreate over the whole of the land.

⁶ *R v. Oxfordshire County Council and another, ex parte Sunningwell Parish Council* [1999] 3 All ER 385

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

⁸ *R (Laing Homes) v Buckinghamshire County Council* [2003] 3 EGLR 70 at 79 per Sullivan J.

39. In this case, there is a dispute as to the extent of footpath-related use. The landowners assert that the overwhelming majority of the recreational use of the application site consists of walking along the Public Footpath, whilst the applicant's evidence is that the application site has been used for a range of recreational activities during the relevant period and such use has not been limited to the footpath. Inevitably, the exercise of distinguishing between types of use is something that is very difficult to achieve on paper; it is a matter of factual evidence that requires more detailed scrutiny, which can be best achieved by way of the cross examination of witnesses in a public forum.

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

40. 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.

41. 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*⁹ 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*'.

42. On the subject of neighbourhood, the Courts have held that '*it is common ground that a neighbourhood need not be a recognised administrative unit. A housing estate might well be described in ordinary language as a neighbourhood... The Registration Authority has to be satisfied that the area alleged to be a neighbourhood has a sufficient degree of cohesiveness; otherwise the word "neighbourhood" would be stripped of any real meaning*'¹⁰.

43. The applicant originally specified the relevant locality by reference to a map upon which was marked a boundary line which, broadly speaking, included the north-eastern part of the town of New Romney. However, it was unclear as to whether the applicant was seeking to rely on this area as a qualifying locality, or as a neighbourhood within a locality. Certainly, the area highlighted by the applicant did not constitute a legally recognised administrative use and would not have been capable of meeting the test for a qualifying locality, although it might instead have been a qualifying neighbourhood. However, no information was provided by the applicant as to why it was considered that the area in question bore the characteristics of a qualifying neighbourhood within a locality.

44. In response to criticisms advanced by the landowners, the applicant sought to amend her application to rely upon a revised construction of the locality issue, instead specifying the neighbourhood of 'Craythorne Manor' within the locality of the town of 'New Romney'.

⁹ *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at page 90

¹⁰ *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at page 92

45. There can be no doubt that the town of New Romney is a legally recognised administrative unit (and thus a qualifying locality), but there is insufficient evidence to determine whether Craythorne Manor is a cohesive entity such that would fall within the scope of being a qualifying neighbourhood. The applicant does not state specifically why Craythorne Manor is a qualifying neighbourhood and, although the landowners reject this proposition, they do not give specific reasons.
46. There is therefore insufficient evidence before the County Council to determine whether or not the neighbourhood test has been met and this is an area which requires further examination.

“a significant number”

47. 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’*¹¹. 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.
48. On the basis of the evidence forms submitted by the applicant, there would appear to have been use by a significant number of local residents. The evidence submitted in support of the application suggests that a significant number of local residents have used the application site on a regular or daily basis. However, as stated above, there is a dispute between the applicant and the landowners as to nature and frequency of recreational use of the application site.
49. Further consideration of this aspect is also made difficult by the fact that it is not possible to establish whether the neighbourhood relied up by the applicant is in fact a qualifying neighbourhood within the meaning of the 2006 Act. Until this issue has been clarified, it is not possible to conclude whether or not a significant number of the inhabitants of the qualifying neighbourhood have engaged in recreational activities on the application site. This is therefore a question which requires further consideration.

(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?

50. 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’.
51. In this case, it is common ground between the parties that the application site was fenced in December 2009. The application for Village Green status was made in October 2011. The application was originally made on the basis that ‘as of right’ use was continuing until the date of the application (i.e. section 15(2)). However, the

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

applicant later sought to amend her application to rely on section 15(3) on the basis that use of the application site ceased to be 'as of right' in December 2009, but that the application has been made within the two year period of grace provided for within the legislation.

52. There is a question, which is not addressed by any of the parties, as to whether use did in fact cease to be 'as of right' in December 2009. Although fencing was erected to enclose the application site, access to it was still freely available from the Public Footpath. There is no suggestion that users attempted to breach the fencing or that any general recreational use took place in breach of notices seeking to restrict use to the footpath.
53. It is clear from the evidence (see **Appendix C**) that the fencing of the land did have an effect on use, particularly amongst those who were not able to negotiate the stile, but it is unclear as to whether the fencing, of itself, caused use of the application site to cease to be 'as of right' (because there is no evidence that any residual use took place with force).
54. In any event, even if it is considered that use of the application site did cease to be 'as of right' in December 2009, the application has been made within the two-year period of grace prescribed by Parliament, and this test is therefore met.

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

55. In order to qualify for registration, it must be shown that the land in question has been used for a full period of twenty years. The twenty year period is calculated retrospectively from either the date of the application or, where use of the application site ceased to be as of right prior to the making of the application, the date upon which use of the application site ceased to be 'as of right'.
56. In this case, as noted above, it is not clear as to whether the use of the application site ceased to be 'as of right' (by virtue of the erection of the fencing in December 2009) prior to the application being made in October 2011. Hence, at the very latest, the material period will end in 2011 and, at the earliest, it will start in 1989.
57. The evidence of use submitted by the applicant and summarised at **Appendix C** suggests that use of the application site has taken place well in excess of this period with, in several cases, recreational use extending as far back as the 1950s. There is, however, an issue as to whether recreational use has taken place continuously throughout this period.
58. The landowners dispute that recreational use of the application site has taken place for a full and uninterrupted period of twenty years. This is due to the fact that, according to the landowners, the field has been used during the relevant period to take a crop of oil seed rape and to graze sheep, both of which would have prevented use of the application site for recreational activities. It is further alleged that there were also long periods of time, when the land was in set aside, during which the application site was heavily overgrown with thistles, nettles and weeds.
59. The applicant's evidence, on the other hand, is that there has been no such break in the recreational use of the application and there is no reference in any of the user evidence questionnaires to any restrictions to the use of the application site.

60. There is also a passing reference in the landowners' submission to the foot and mouth outbreak. During the outbreak, public rights of way in Kent were closed¹² between February and May 2001. The implication is the outbreak may have prevented access to the land during this time (because such access would have been illegal)
61. Section 15(6) of the Commons Act 2006 provides that in determining the twenty year period, "*there is to be disregarded any period during which access to the land was prohibited to members of the public by reason of any enactment*". In practice, this requires that the relevant twenty-year period to be extended by an additional period to take into account the time that the land was statutorily closed.
62. However, no evidence has been provided by either of the parties as to the effect of the foot and mouth outbreak on recreational use of the application site and this is a further area that requires investigation.
63. Therefore, for the reasons stated above, it is not possible to determine, on the basis of the evidence currently available, whether use has taken place for a full period of twenty years.

Conclusion

64. As has been noted above, there have been various disputes regarding the nature and factual basis of the evidence. The applicant's case is that the application site has been used in the requisite manner during the relevant period, whilst the landowners' case is that such use has been both challenged and necessarily restricted by virtue of the agricultural operations on the land.
65. Although the relevant Regulations¹³ 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.
66. Such an approach has received positive approval by the Courts, most notably in the *Whitney*¹⁴ 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*'.

¹² under emergency powers granted to the County Council under the Foot and Mouth Disease Order 1983

¹³ Commons Registration (England) Regulations 2008

¹⁴ *R (Whitney) v Commons Commissioners* [2004] EWCA Civ 951 at paragraph 66

67. It is important to remember, as was famously quoted by the Judge in another High Court case¹⁵, that *'it is no trivial matter for a landowner to have land, whether in public or private ownership, registered as a town green... [the relevant legal tests] must be 'properly and strictly proved'*. This means that it is of paramount importance for a Registration Authority to ensure that, before taking a decision, it has all of the relevant facts available upon which to base a sound decision. It should be recalled that the only means of appeal against the Registration Authority's decision is by way of a Judicial Review in the High Court.

68. A decision to hold a Public Inquiry is not one which the County Council should take lightly; such a decision imposes significant burdens on all parties involved in terms of the preparation for and attendance at the Inquiry. Officers will, in the first instance, always seek to resolve an application without the need to resort to a Public Inquiry if at all possible. However, there are occasions, of which this appears to be one, where there is a conflict in the evidence which cannot be resolved on paper and the County Council has little option other than to refer the matter to a Public Inquiry for the matters to be clarified before a final decision is made.

69. Therefore, it would appear that it is not possible to determine this matter on paper and the most appropriate course of action would be for the matter to be referred to a Public Inquiry.

Recommendations

70. 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

Case Officer:

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

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

Background documents

APPENDIX A – Plan showing application site

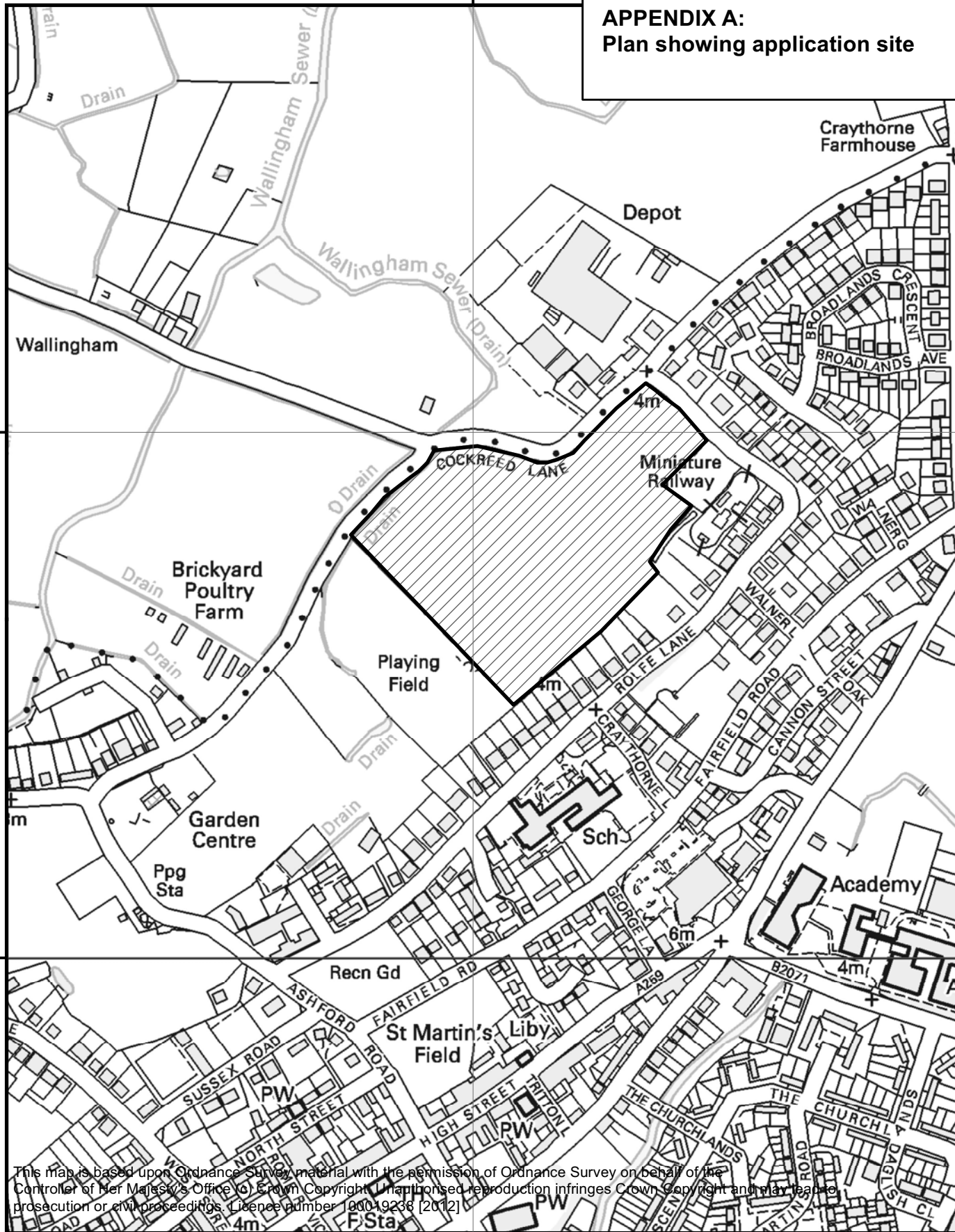
APPENDIX B – Copy of application form

APPENDIX C – Summary of user evidence questionnaires

¹⁵ *R v Suffolk County Council, ex parte Steed* [1997] 1EGLR 131 at 134

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APPENDIX A:
Plan showing application site



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**Land subject to Village Green application
at Cockreed Lane, New Romney**



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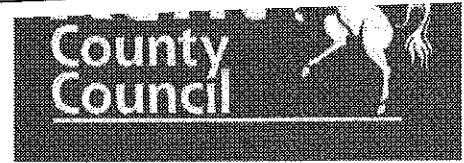


FORM CA9

APPENDIX B:
Copy of the application form

Commons Act 2006: section 15

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



This section is for office use only

Official stamp of the Registration Authority
indicating date of receipt:

Application number:

COMMONS ACT 2006
KENT COUNTY COUNCIL
REGISTRATION AUTHORITY
27 OCT 2011

VGA638

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

Note to applicants

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

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

Note 1
Insert name of Commons
Registration Authority

1. Commons Registration Authority

To the: KENT COUNTY COUNCIL

Note 2

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

2. Name and address of the applicant

Name: ALISON JEFFERY

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

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

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

E-mail address: [REDACTED]
PLEASE SEE SEPERATE SCHEDULE FOR ADDITIONAL APPLICANTS

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: EDWARD MARK SKILBECK

Firm: RETIRED SOLICITOR

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

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

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

E-mail address: [REDACTED]

PLEASE SEND ALL COMMUNICATIONS TO A. JEFFERY ABOVE ADDRESS

Note 4

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

4. Basis of application for registration and qualifying criteria

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

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

Section 15(2) applies:

Section 15(3) applies:

Section 15(4) applies:

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

N/A

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

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

N/A

Note 5

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

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

Name by which usually known: VARIOUS NAMES - INCLUDING THE FIELD, THE DOGGIE FIELD, PINCE FIELD CRAYTHORNE MANOR, LOFTUS FIELD POTATO FIELD,

Location: ROLFE LANE / COCKREED LANE. NEW ROMNEY (OPPOSITE ROMNEY MARSH POTATO COMPANY)

Common Land register unit number (only if the land is already registered Common Land): N/A

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:

SEE MAP A. LOCALITY OUTLINED IN PINK.

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

Note 7

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

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

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

INDULGENCE OF RIGHT BY A SIGNIFICANT NUMBER OF LOCAL INHABITANTS IN LAWFUL SPORTS & PASTTIMES FOR A PERIOD DATING BACK FOR MORE THAN 20 YEARS UNDER SECTION 15(2) OF THE COMMONS ACT, AS WITNESSED BY THE 38+ ENCLOSED STATEMENTS, SHOWING USE FOR ACTIVITIES, CRICKET, FOOTBALL, FLYING MODEL AIRCRAFT, KITES, DOG WALKING, BALL GAMES, ORCHID OBSERVATION, BIRD WATCHING, RELAXATION, PLAYING, BLACKBERRY PICKING, WALKING, PICNICS, MAKING CAMPS, TREE CLIMBING, HORSE RIDING, GYMKHANAS, DOG SHOWS, LOOKING FOR NEWTS & SLOW WORMS, WATCHING WILDLIFE, INCLUDING OWLS, DOG TRAINING, GOLF PRACTICE, PHOTOGRAPHY & BUG HUNTING, PLEASE SEE MAP C, WHICH STATES PLAYING FIELD ON THE LAND. THE USE OF THIS FIELD OF THE ABOVE ACTIVITIES DATES BACK TO THE 1960s ~~1960s~~

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 BRIAN FRITH



<p>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.</p>	<p>9. Voluntary registration – declarations of consent from any relevant leaseholder of, and of the proprietor of any relevant charge over, the land</p> <p>N/A</p>
<p>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.</p>	<p>10. Supporting documentation</p> <p>N/A</p>
<p>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.</p>	<p>11. Any other information relating to the application</p> <p>2002 PLANNING APPLICATION - Y02/1291/SH-</p> <p>SEE QUESTION 10, STATING BY LANDOWNER LAND HAS NOT BEEN USED FOR AGRICULTURE FOR THE 12 PREVIOUS YEARS (SINCE 1990).</p> <p>A FENCE WAS PUT AROUND THE FIELD IN DECEMBER 2009 & SHEEP GRAZED PERIODICALLY</p> <p>THE FARMER BY FARMER BALCOMB. WHO LEASES LAND</p> <p>THE FIELD IS PART OF THE PROPOSED SHERWAY DISTRICT COUNCIL LDF FOR UP TO 150 HOUSES,</p>

Note 12

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

12. Signature A. Seaby.

Signature(s) of applicant(s):

[Redacted Signature]

on behalf, with consent of all applicants

Date:

27-10-11

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.

JOINT APPLICANTS FOR VILLAGE GREEN APPLICATION NEW ROMNEY

David Alderton
Sheila Ashdown
Joan Gray
Cheree Hill
Megan Jeffery.
Michael Jeffery
Amanda Jones
Maureen Kirkham
Sarah Kirkham
Elizabeth Pallister
Sandra Pallister
Bryn Roberts
Nicholas Smith – Recently Deceased.
Mark Skilbeck.
P. Sprague.
Amanda J. Taylor
G.L. Reed.

VILLAGE GREEN APPLICATION NEW ROMNEY

INDEX

APPLICATION FORM

JOINT APPLICANTS LIST – A. Jeffery authorised to sign.

COMMONS ACT 2006-SECTION 15: EVIDENCE QUESTIONNAIRS IN SUPPORT OF VILLAGE GREEN APPLICATION AS FOLLOWS;

DAVID ALDERTON	I MCCARTER
PATRICIA ARNOTT	CHRISTINE MCKENZIE
SHEILA ASHDOWN	SAMANTH NEWING
NELLIE AVERY	S.A. NORRIS
S.J BEST	ELIZABETH PALLISTER
L. CAMPBELL	SANDRA PALLISTER (PHOTOS)
MRS/MRS D.T. EDWARDS	H.A. PARKES
TIMOTHY HUGH EVANS	R.PARKES
JOAN GRAY (INC PHOTOS)	L PEARCE
CHEREE HILL	B. ROBERTS
ALISON JEFFERY	J AND S PHIPPS
MEGAN JEFFERY	G.L. REED
MICHAEL JEFFERY	M. SHARP
AMANDA JONES	MARK SKILBECK
DENNIS KING	MARY SMITH
MR/MRS KING	EDWARD SMITH (DECEASED)
MAUREEN KIRKHAM	P. SPRAGUE
SARAH KIRKHAM	AMANDA J. TAYLOR
NATASHA MACMAHON	JOHN WIMBLE (INC PHOTOS)
S. MACMAHON	

A) MAP OF AREA – (Neighbourhood Outlined in pink)

B) MAP INCLUDING PLAN OF FIELD AT A SCAL 1:2500

C DRAINAGE MAP (Playing field clearly marked on field)

D) 2002 PLANNING APPLICATION Y02/1291/SH (see Q10 existing uses)

Name	Period of use	Frequency of use	Type of use	Access to the site	Comments
Mr. D. ALDERTON	1976 – 1985, 1995 – 2010	Daily	Dog walking around the field. When children were young they played there and made camps.	From the Public Footpath crossing the land	Stopped using when field fenced off and use for sheep grazing. Did not use between 1985 and 1995. Often see dog walkers and children playing
Mrs. P. ARNOTT	1993 – 2009	Daily	Walking	Small path between property in Rolfe Lane	Stopped using as unable to climb over stile.
Mrs. S. ASHDOWN	1952 – present	Daily and weekly	Picnics and making camps when younger. Now used for dog walking and nature observation.	Footpath, also when unfenced we just walk in from anywhere.	
Mrs. N. AVERY	1962 – 2009	Daily or 3/4 times per week	Dog walking all over field, blackberry picking	Just walked on from both Cockreed Lane and Rolfe Lane as no fences.	Stopped using as unable to climb over stile. Observed use by others for dog walking on a daily basis.
Mrs. S. BEST	1956 – 2009	Weekly	Playing as a child, dog walking, short cut to Cockreed Lane	Right of way path from Rolfe Lane	Stopped using as land now fenced and has grazing sheep in it.
Mrs. L. CAMPBELL	1985 – ?	Daily when younger, then occasionally	Dog walking and playing when younger, picking blackberries.	Side entrance in Rolfe Lane	Stopped using when moved away (date not stated). Observed use by others on a daily basis.
Mr. J. CLAYSON	1994 – 2009	Daily	Dog walking	Access from road	Observed use by others on a daily basis.
Mr. and Mrs. D. EDWARDS	1978 - ?	Daily	Dog walking	Through slip road from Rolfe Lane and over stile	Stopped using when children grew up (date not stated). Use restricted in 2010 when sheep grazed on the land
Mr. T. EVANS	1984 – present	Monthly	Dog walking, playing with children.	There was no fence so just walked onto it.	Use more restricted now due to fence and stile. Observed use for horse riding, dog walking, kite flying and ball games. Land has been unfenced until recently which has prevented a lot of people using it as frequently as previously.

Summary of user evidence questionnaires

APPENDIX C:

Cllr. E. GOULD	2002 – ?	Weekly	Kite flying, watching football, nature observation, bike riding	Open land, no fence.	Now fenced so just use pathway. Never seen any notices prohibiting use.
Mr. R. GOULD	2002 – ?	Weekly	Walking, observing wildlife, playing with children, cycling, building snowmen	It was open field with no boundary fence	Stopped using as land fenced off and contains sheep. Never seen any signs or restrictions to use prior to 2009.
Miss. J. GRAY	1970 – ?	Occasionally	Horse riding	Rolfe Lane and Cockreed Lane	Stopped using when fenced. Was note by stile saying 'dogs killed'. Observed use by others on a daily basis.
Ms. R. HANDLEY	2002 – ?	Daily	Walking, horse riding	There was no fencing along road boundaries.	Now use footpath as access not as freely available as previously due to fencing and sheep. Now warnings re: sheep and dogs running free.
Miss. C. HILL	1993 – ?	Weekly	Horse riding, dog walking	Off the road	Stopped using when fenced.
Mrs. A. JEFFERY	1972 – 1980, 1994 – 2010	Daily or weekly	Dog walking and training, kite flying, ball games with children, making camps	Until 2009, from Cockreed Lane as not fenced, now over stile.	Stopped using when dog died. Lived elsewhere between 1980 and 1994. Observed use by others on a daily basis for walking, horse riding, children playing, football.
Miss. M. JEFFERY	1994 – 1998, 2004 – 2009	Weekly	Playing with family, football, socializing with friends	From road in Cockreed Lane	Moved away 1998 – 2004
Mr. M. JEFFERY	1994 – 1998, 2004 – 2010	Daily or weekly	Dog walking, kite flying, playing with family, football	From the road in Cockreed Lane	Moved away 1998 – 2004. Fence was erected in 2009.
Ms. A. JONES	1995 – present	Monthly	Walking and playing with children (incl. ball games and hide and seek)	Via the Public Footpath	New stile is now difficult to navigate
Mr. D. KING	1986 – present	Daily	Dog walking and short cut to town	By the stiles	
Mr. and Mrs. F. KING	1974 – present	Weekly	Dog walking	Over stile	
Mrs. M. KIRKHAM	2004 - ?	Weekly	Dog walking	The land was unfenced so could gain access in many places	Stopped using as no longer able to let dog run loose. In 2009, fence and stile erected.

					Sign stating 'dogs will be shot'
Ms. S. KIRKHAM	2003 – 2009	Weekly	Dog walking	The land was not fenced so you could walk in anywhere.	Stopped using as land fenced in December 2009. Not resident in locality. Observed use by others on a daily basis.
Ms. N. MACMAHON	2000 – present	Weekly	Dog walking, horse riding, walking, playing as a child	Straight off the road when there wasn't a fence	Observed use by others on a daily basis.
Mr. S. MACMAHON	1970 – present	Weekly	Tree climbing, horse riding, gymkhanas, dog walking, walking, football	Footpath	Was used for football matches and gymkhanas in the 1970s and 1980s. Observed use by others on a daily basis.
Ms. L. MARCHANT	2002 – present	Weekly	Dog walking, horse riding, cycling	No fencing, could enter wherever	Now fenced off completely due to sheep grazing, only stile for walkers to access.
I. McCARTER	1978 - ?	Weekly	Dog walking and playing with children.	Right of way in Rolfe Lane	Stopped using land when fenced, although still use footpath. Many years ago there was a horse show (c1976). Observed use by others whenever using land.
Mrs. C. McKENZIE	2000 – present	Daily	Orchid observation, bird watching, dog walking, relaxation	Across a small stile	Observed regular use by others.
Miss. S. NEWING	2006 – ?	Weekly	Dog walking, picnics with friends	Walked on from road	Stopped using when fencing erected.
Mrs. S. NORRIS	1987 - ?	Weekly	Dog walking around perimeter and across	Via right of way off Rolfe Lane	Stopped using due to fence and sheep
Miss. E. PALLISTER	1995 - ?	Weekly	Horse riding	From road	Had to stop using due to fencing
Mrs. S. PALLISTER	1966 - ?	Daily, monthly	Playing as a child, horse riding	Straight off the road as there was no fence	Stopped when fence erected around the field. Took part in gymkhana in 1974.
Mrs. H. PARKES	1979 – present	Daily	Dog walking and obedience exercises, playing with children, nature observation	Side entrance in Rolfe Lane	Since the field has been fenced off for sheep grazing, dogs kept on leads and away from sheep. There is now a stile to access the field.
Mr. R. PARKES	1979 – present	Daily	Dog walking, playing with children, nature observation	Walked in from Rolfe Lane, no gates.	Dog walkers now walk around the field with dogs on leads away from sheep.
Mr. L.	2000 – ?	Daily	Dog walking, bird watching	Until 2010, it was a fallow	Fenced off 2010, with stile

PEARCE				field with no fence.	provided for footpath. Signage states livestock, dogs will be shot.
Mr. B. ROBERTS	1995 – present	Monthly	Photography, taking children for walks, nature observation	Using footpath	Can no longer access the land due to stile. Before stile, observed use on a daily basis, still observe casual walkers daily/weekly.
Mr. and Mrs. J. PHIPPS	2007 – present	Daily	Walking, exercising dog, shortcut to Cockreed Lane, nature observation	Over stiles	Observed use by others on a daily basis for a variety of activities.
Mrs. G. REED	1993 – present	Occasionally	Playing with children (ball games, kite flying)	Via path from Rolfe Lane	Sheep only in field latterly. Observed use by others several times per week for a variety of activities.
Mr. J. RUDDOCK	2009	Occasionally	Walking	On foot, no boundaries	Area fenced off and sheep grazing. Observed use by others on a daily basis.
Mrs. M. SHARP	1951 – present	Daily	Walking and playing as a child		
Mrs. M. SMITH	1968/70 – present	Variable	Waling for pleasure, dog walking, using footpath, formal events (e.g. gymkhana)	Via stile on Rolfe Lane or Cockreed Lane	Observed use by others on a daily basis. Recall fence being erected in 1960s/70s.
Mr. E. SMITH	1970 – ?	Variable depending on dogs	Walking, dog exercising, bird watching, golf practice, gymkhana	Stiles on Cockreed Lane and Rolfe Lane	Use now restricted to footpath. Observed use by others for a variety of activities on a daily basis.
Mr. P. STRAGUE	1989 – 2000	Weekly	Dog walking	Gaps in fence and between ditches and earth mounds	Signs warning of dogs and sheep worrying.
Mrs. A. TAYLOR	2007 - 2009	Daily	Dog walking, children playing	Just walked on, there was no fence.	Stopped using in December 2009 when fence erected around field.
Mr. J. WIMBLE	1945 – present	Daily or weekly over last 35 years	Playing cricket and football, flying model aircraft and kites, dog walking	Just walked on, no fence	