



AGENDA

Kent County Council

REGULATION COMMITTEE MEMBER PANEL

Tuesday, 24th September, 2013, at 2.00 pm
Palmer Room, Langton Green Village Hall,
Winstone Scott Avenue, Langton Green,
Tunbridge Wells TN3 0JJ

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

Tea/Coffee will be available 15 minutes before the meeting

Membership

Mr M J Harrison (Chairman), Mr S C Manion (Vice-Chairman), Mr M Baldock, Mrs V Dagger and Mr T A Maddison

UNRESTRICTED ITEMS

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

1. Membership and Substitutes
2. Declarations of Interest for items on the agenda
3. Application to amend the Register of Common Land for land known as "The Lees" at Yalding (CL14) (Pages 3 - 24)
4. Application to register land known as Glebe Field in the parish of Goudhurst as a new Town or Village Green (Pages 25 - 56)
5. Application to register land at South View Road in Tunbridge Wells as a new Town or Village Green (Pages 57 - 82)
6. Application to register land at Showfields in Tunbridge Wells as a new Town or Village Green (Pages 83 - 106)
7. 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, 16 September 2013

Application to amend the Register of Common Land for land known as 'The Lees' at Yalding (CL41)

A report by the Head of Regulatory Services to Kent County Council's Regulation Committee Member Panel on Tuesday 24th September 2013.

Recommendation: I recommend that the County Council informs the applicant that the application to amend the Register of Common Land to register additional areas of Common Land (as shown at Appendix D) has been accepted and that the Register of Common Land for unit number CL41 be amended accordingly.

Local Member: Mrs. P. Stockell

Unrestricted item

Introduction

1. Kent County Council is the 'Commons Registration Authority' for the purposes of the Commons Act 2006 (and, previously, the Commons Registration Act 1965). In this capacity, it is responsible for holding the legal record of Common Land and Town or Village Greens for the county, known as the Registers of Common Land and Town or Village Greens, and for making any necessary amendments to the Registers using the requisite legal processes.
2. The County Council has received an application to amend the Register of Common Land from Mr. H. Craddock ("the applicant"). The application, received on 6th March 2013, has been made under paragraph 2 of Schedule 2 of the Commons Act 2006 and seeks to amend unit number CL41 of the Register of Common Land to register additional areas of Common Land. A copy of the Register of Common Land for unit CL41 is attached at **Appendix A** to this report and a copy of the application form is attached at **Appendix B**.

Background

3. Common Land was defined in the Commons Registration Act 1965 as land subject to certain traditional rights (known as 'rights of common') or waste land of a manor not subject to rights of common. The most widely exercised right of common remaining today is the common of pasture (a right to graze animals), but other examples of rights of common include pannage (a right to turn out pigs in woodland to graze on acorns), piscary (a right to fish), turbary (a right to dig peat or turf) and estovers (a right to collect firewood).
4. In some parts of the country, particularly in moorland areas, rights of common are widely exercised and form an important asset to the local farming community. In lowland counties, such as Kent, they are far less prevalent because Common Land here consists mainly of manorial waste. Nonetheless, there are still several areas of Common Land in the county over which these rights are exercisable.

5. Until relatively recently, there was no public right of access to registered Common Land. However, under the Countryside and Rights of Way Act 2000, registered Common Land was included within the definition of 'Open Access Land', which now provides for a public right of access on foot only.

Procedure

6. Paragraph 2 of Schedule 2 of the Commons Act 2006 enables anyone to apply to the County Council to amend the Register of Common Land in cases where it can be shown that that common land has been omitted from inclusion on the Register. The application must be made in accordance with the provisions of the Commons Registration (England) Regulations 2008 ("the 2008 Regulations").
7. In determining the application, the County Council must be satisfied that:
 - the land is not currently registered as Common Land or Town or Village Green;
 - the land has never been finally registered as Common Land or Town or Village Green;
 - the land is either:
 - regulated by an Act made under the Commons Act 1876, or
 - subject to a scheme under the Metropolitan Commons Act 1866 or the Commons Act 1899, or
 - regulated as common land under a local or personal Act, or
 - otherwise recognised or designated as common land by or under an enactment.
8. As a standard procedure set out in the 2008 Regulations, the County Council must put a copy of the Notice of Application on its own website and send a copy of the notice to interested parties. The publicity must state a period of at least six weeks during which objections and representations can be made. In addition, the applicant must serve notice on any owner(s) and/or occupier(s) of the land.

The Case

9. The applicant's case is made on the basis that the land that is subject to this application was included in a scheme of regulation and management made under the Commons Act 1899 ("the scheme of management").
10. The Commons Act 1899 enabled District Councils to make schemes of management for common land in order to formalise public access to the land¹, to provide for the management of the land, and to regulate the activities taking place thereon.
11. In this case, a scheme of management was made in relation to the land known as 'The Lees' in the parish of Yalding by the Maidstone Rural District Council on 24th May 1949 and approved by Order of the Minister of Agriculture and Fisheries on 27th May 1949. The scheme of management provided that the District Council could undertake any works 'for the protection and improvement of the common' (clause

¹ As noted above, prior to the Countryside and Rights of Way Act 2000 there was no public right of access to Common Land.

3), that the 'inhabitants of the district and neighbourhood shall have a right of free access... and a privilege of playing games and enjoying other species of recreation' (clause 5) and that the District Council could also make byelaws 'for the prevention of nuisances and the preservation of order on the common' (clause 9). A full copy of the scheme of management, including the plan, is attached at **Appendix C**.

12. The reason for the current application is that the applicant contends that certain parts of the land included within the scheme of management (and shown on the accompanying map) were omitted from the formal registration of the land as common land and the Register of Common Land should therefore be amended accordingly.

Land to be added to the Register of Common Land

13. The area of land that is the subject of this application ("the application site") consists of a number of small parcels of land situated on the peripheries of the registered Common Land, with a more substantial piece of land at the southern end of the existing registration, and includes parts of the public highways known as The Lees and Hampstead Lane. The total area of land to be registered is roughly 2.8 acres (1.13 hectares).

14. The application site is not currently registered as Village Green, nor has it ever been finally registered as Common Land or Town or Village Green.

15. A plan showing the areas of common land which the applicant contends should be added to the Register of Common Land for unit number CL41 is attached at **Appendix D**. A coloured, A3-sized version will be available at the meeting.

Consultation

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

17. The applicant has also, as required, served notice of the application on the Maidstone Borough Council (as the council in which management and regulation of the land is vested), Yalding Parish Council (as landowner) and Kent County Council (as highway authority in which management of the highway parts of the land is vested).

18. No responses have been received from either Maidstone Borough Council or Yalding Parish Council.

Objection

19. One objection to the application has been received from the Governance and Law department of Kent County Council, on behalf of the County Council's Highways and Transportation team ("the objector").

20. The objection is made on the grounds that the definition of 'common land' under the Commons Registration Act 1965 does not include land that forms part of the public

highway and therefore the sections of the application site that form part of the public highway should not be included within any subsequent registration.

21. The objector also raised concerns on the impact of the application, if successful, on the County Council's statutory duty to assert and protect the rights of the public in relation to the public highway.

Applicant's comments on the objection

22. As required, a copy of the objection was referred to the applicant for comment.

23. The applicant's view is that the objection is irrelevant because if the application site is shown as included within the Scheme of Management (regardless of whether or not it is highway land) then it is registrable as common land under paragraph 2 of Schedule 2 of the Commons Act 2006. The definition of common land set out in the Commons Registration Act 1965 applied only for the purposes of registering common land under that Act and does not apply in relation to this application.

24. The applicant adds that, in any event, both sets of rights (i.e. rights of common and highway rights) are probably rooted in the medieval period, during which commoners animals would have grazed on the highway land as part of the available grazing area. The exclusion of highway land from being registrable as common land under the 1965 Act was a political compromise and did not mean that highway land did not, as a matter of fact, form part of the common land.

25. The applicant also states that there would be little adverse impact on the discharge of highway functions as highway maintenance would not require special consent² unless it involved fencing or widening schemes.

Discussion

26. Section 22(1) of the Commons Registration Act 1965 provides that, 'in this Act' the definition of Common Land includes land subject to rights of common and waste land of a manor not subject to rights of common, 'but does not include a town or village green or any land which forms part of a highway'. The term 'common land' is not defined in the Commons Act 2006, perhaps in part because it is no longer possible to register new common land unless rights of common are exercisable over that land.

27. In any event, the test to be applied in relation to applications made under paragraph 2 of Schedule 2 of the 2006 Act is not whether the land falls within the definition of common land; rather, the test to be applied is whether any of the circumstances set out in paragraph 2(2) applies. Accordingly, the County Council is concerned only with whether the land is regulated by an Act made under the Commons Act 1876, subject to a scheme under the Metropolitan Commons Act 1866 or the Commons Act 1899, regulated as common land under a local or

² Section 38 of the Commons Act 2006 makes it an offence to undertake 'restricted works' (i.e. works which have the effect of impeding access or resurfacing the land other than repair of an existing surface) on any common land without first obtaining the consent of the Secretary of State for such works.

personal Act, or otherwise recognised or designated as common land by or under an enactment.

28. In this case, it is clear that the land subject to this application is subject to a scheme of management made under the Commons Act 1899. The description given in the scheme of management for the land to which it applies reads: ‘the piece of land with the ponds, streams, paths and roads thereon, commonly known as The Lees, situate in the parish of Yalding... [and] delineated in a plan sealed and deposited at the offices of the Rural District Council of Maidstone’ (emphasis added). There can be no dispute that the scheme of management clearly intended the inclusion of the roads, regardless of whether or not they would have been subsequently capable of formal registration as common land under the Commons Registration Act 1965.

29. Furthermore, the concerns raised regarding the future maintenance of the land are not a material consideration under paragraph 2 of the Schedule 2 of the 2006 Act and therefore not a matter that the County Council is able to take into account in determining this particular application.

Conclusion

30. As is noted above, the only issue which the County Council needs to be satisfied of in this case is that the land is subject to a Scheme of Management under the Commons Act 1899. The plan accompanying the Scheme of Management (at Appendix C) shows that the application site has been missed off from the formal Register of Common Land. It would therefore appear that the necessary criteria concerning the amendment of the Register of Common Land for unit number CL41 have been met.

Recommendation

31. I recommend that the County Council informs the applicant that the application to amend the Register of Common Land to register additional areas of Common Land (as shown at **Appendix D**) has been accepted and that the Register of Common Land for unit number CL41 be amended accordingly.

Accountable Officer:

Mr. Mike Overbeke – Tel: 01622 221500 or Email: mike.overbeke@kent.gov.uk

Case Officer:

Ms. Melanie McNeir – Tel: 01622 221628 or Email: melanie.mcneir@kent.gov.uk

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

Background documents

APPENDIX A – Copy of the Register of Common Land for CL41

APPENDIX B – Copy of application form

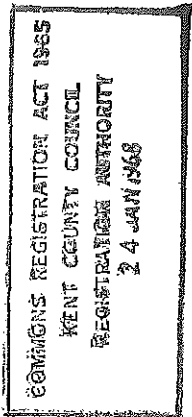
APPENDIX C – Copy of the scheme of management relating to The Lees at Yalding

APPENDIX D – Plan showing land to be added to the Register of Common Land

Register unit No. CL41

Edition No.

See Overleaf
for Notes



COMMON LAND

Register of

LAND SECTION—Sheet No.

| No. and date of entry | Description of the land, reference to the register map, registration particulars, etc. |
|-----------------------------------|---|
| 1. 22.12.63 24.1.68 | An area of land of approximately 74 acres in extent known as the Lee in the Parish of Yalding in the Rural District of Maidstone, so marked with a broken verge line inside the boundary on Sheet 27 of the register map and distinguished by the number of this register unit. Registered pursuant to application No.153 made on 8th December, 1967 by the Yalding Parish Council. (Registered Provisionally) |
| 31.12.70 | The registration entry above, being undisputed, became final on 1st October, 1970 |

APPENDIX A:
Copy of the Register of Common
Land for CL41 at Yalding

| No. and date of note | Notes | No. and date of note | Notes |
|----------------------|--|----------------------|-------|
| 1 19.11.68 | <p>The Trustees of the late Mrs. M.A. Shepherd, c/o Messrs. Gregory, Rowcliffe and Co., 1, Bedford Row, London, W.C.1. claim the right of access from the public highway across land comprised in this register unit to O.S. Parcel 140 (Parish of Yalding).</p> | | |

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

Register of COMMON LAND

Register unit No. CL.41
Edition No.

See Overleaf
for Notes

OWNERSHIP SECTION—Sheet No.

| 1 No. and date of entry | 2 No. and date of application | 3 Name and Address of person registered as owner | 4 Particulars of the land to which the registration applies |
|----------------------------|----------------------------------|--|--|
| 1 23.3.74 | | <p>As directed by the Chief Commons Commissioner in pursuance of Section 8(2) of the Commons Registration Act 1965, Maidstone Rural District Council is hereby registered as owner of the land known as The Lees, Yalding comprised in the Land Section of Register Unit No. CL.41. <i>See entry below</i></p> | |
| 2 18.6.74 | | <p>The registration at entry No. 1 above has been deleted under (4) Section 12 of the Act, the land to which it applied having been registered under the Land Registration Acts 1925 to 1966. (K.4.13596)</p> | <p>All the land comprised in the registration on Unit</p> |

1:10,560 or 6 Inches to 1 Mile

160

240 Chains

KENT

Nettlestead Green 1/2 Mile

NETTLESTEAD PH 68

Nettlestead Green 1 Mile

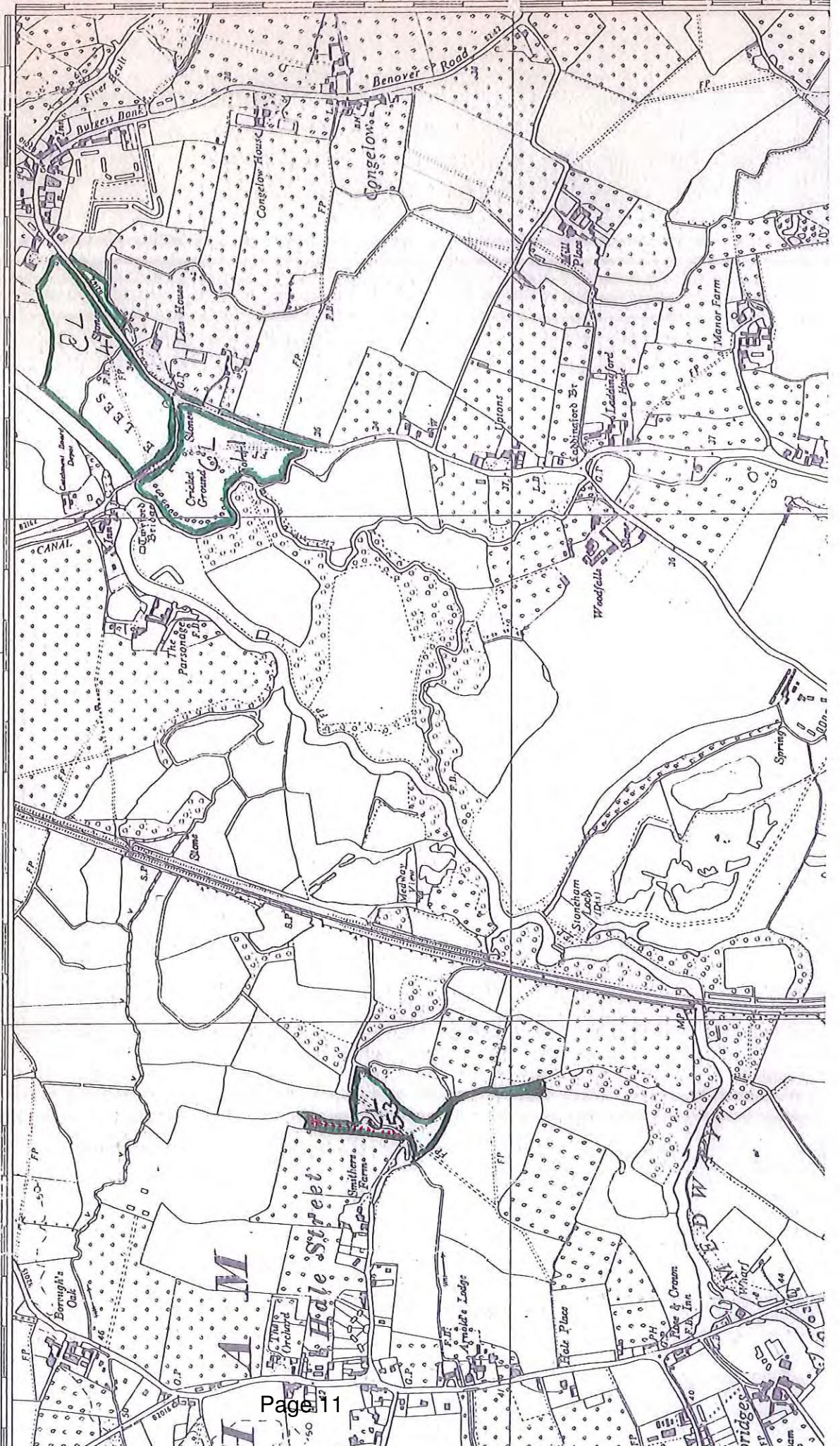
25

69

Yalding LONG 0° 20' E

570 000

50 000



Commons Act 2006: Schedule 2

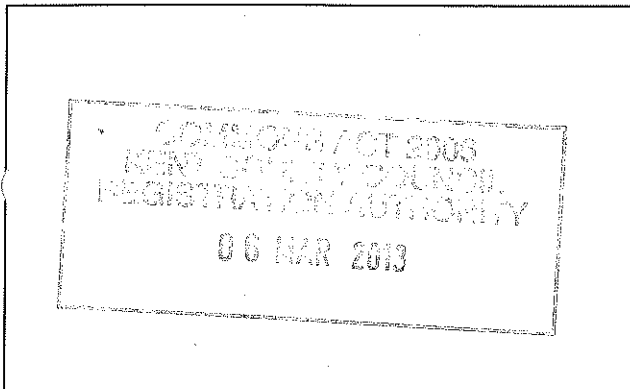
APPENDIX B:
Copy of the application form

Application to correct non-registration or
mistaken registration of Common Land
or a Town or Village Green



This section is for office use only

Official stamp of the Registration Authority
indicating date of receipt:



Application number:

CAA18/CL41

Register unit number allocated at registration
(for missed commons only):

[Empty box for register unit number]

Note to applicants

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

- All applicants should complete parts 1–10
- Any person can apply under Schedule 2
- Applications must be submitted on or before 31st December 2020 – from that date onwards no further applications can be submitted
- The application must be accompanied by a fee except for applications under Schedule 2, paragraphs 2, 3, 4 or 5. Ask the Registration Authority for details of the fee.

Note 1
Insert name of Commons
Registration Authority

1. Commons Registration Authority

To the:

Please tick the box to confirm that you have:

enclosed the appropriate fee for this application

or

have applied under paragraphs 2 to 5,
so no fee has been enclosed

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: Hugh Craddock

Full postal address:

(incl. Postcode)

[Redacted address]

Telephone number:

(incl. national dialling code)

[Redacted telephone number]

Fax number:

(incl. national dialling code)

E-mail address:

[Redacted email 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 14 to the Commons Registration (England) Regulations 2008.

4. Basis of application for registration and qualifying criteria

Please tick one of the following boxes to indicate the purpose for which you are applying under Schedule 2.

To register land not registered as common land (paragraph 2):

To register land not registered as town or village green (paragraph 3):

To register waste land of the manor not registered as common land (paragraph 4):

To register a town or village green wrongly registered as a common (paragraph 5):

To deregister a building wrongly registered as common land (paragraph 6):

To deregister any other land wrongly registered as common land (paragraph 7):

To deregister a building wrongly registered as town or village green (paragraph 8):

To deregister any other land wrongly registered as town or village green (paragraph 9):

If your application is to deregister land, please specify the register unit number to which this application relates:

Note 5
Explain why the register must be amended to take account of either land and buildings that were wrongly registered or land that was not registered.

5. Reason(s) for the application

Please describe the reason(s) for applying to correct the register

To secure the registration of land as common land, which is subject to a scheme of regulation and management under Part I of the Commons Act 1899, but which was omitted from the registration of land as register unit CL41 in the register of common land prepared by Kent County Council under the Commons Registration Act 1965.

The omitted land qualifies for registration as common land under paragraph 2 of Schedule 2 to the Commons Act 2006, being land which meets the criteria in sub-paragraph (2)(a), (2)(b)(ii) and 2 (c) of that paragraph, and which meets the further condition specified under subparagraph (2)(d), viz, that it is not land covered by a building or within the curtilage of a building for the purposes of paragraph 14(3) of Schedule 4 to the Commons Registration (England) Regulations 2008.

Note 6
The accompanying map must be at a scale of at least 1:2,500 and shows the land by distinctive colouring to enable to it to be clearly identified. Give a grid reference or other identifying detail.

6. Description of the land

Name by which the land is usually known:

The Lees [part of]

Location:

Lees Road, Yalding

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 7

The only applications which require consent under Schedule 2 to the Commons Act 2006 are those submitted under paragraphs 2 or 3 to register land as common land or town or village green which includes land covered by a building or which is within the curtilage of a building; such applications must have the consent of the owner of that land. This can include any written declarations sent to the applicant (i.e. a letter), and any such declaration made on the form itself.

7. Declarations of consent

No consent is required.

Note 8

List all supporting consents, documents and maps accompanying the application. This will include a copy of any relevant enactment referred to in paragraphs 2(2)(b) or 3(2)(a) of Schedule 2 to the Commons Act 2006. 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.

8. Supporting documentation

1. Copy of scheme for the regulation and management of The Lees made by Maidstone Rural District Council on 24 May 1949 and confirmed by the Minister of Agriculture and Fisheries on 27 May 1949.
2. Copy of plan of the common regulated under the scheme, and referred to in paragraph 1 of the scheme.
3. Ordnance Survey application map of common: the several parcels of omitted land referred to in Section 5 above are marked on the map edged red; land already registered as common land is included for reference purposes only and edged green.
4. Copy of register of title and title plan for The Lees, showing ownership of the land subject to the scheme.
5. Map contained in register unit CL41 (The Lees) of the register of common land held by Kent County Council, showing extent of registration of The Lees as registered common land (not submitted by virtue of r.16(3)).

Note 9

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.

9. Any other information relating to the application

Note 10

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

10. Signature

Signature(s) of applicant(s):



Date: 1st March 2013

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**

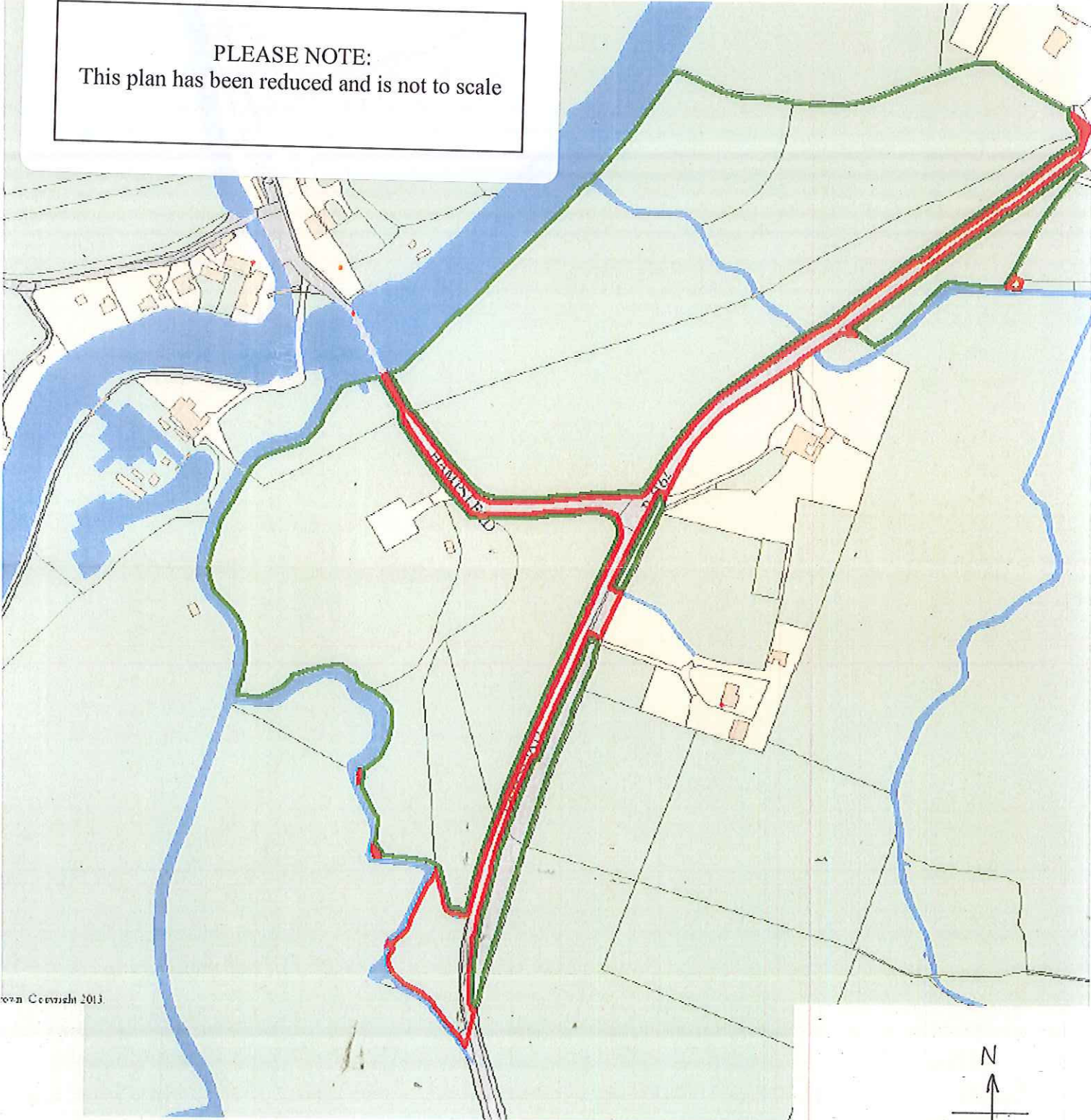
Where a fee is enclosed, please make the cheque payable to "Kent County Council"

Data Protection Act 1998

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

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

PLEASE NOTE:
This plan has been reduced and is not to scale



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Centred on TQ692496

100m

MAIDSTONE RURAL DISTRICT COUNCIL

APPENDIX C:
Copy of the Scheme of Management
for The Lees at Yalding

COMMONS ACT, 1899

Scheme for the Regulation and Management of

"THE LEES" COMMON IN THE PARISH OF YALDING IN THE COUNTY OF KENT

Description of
Common and
Management
by District
Council.

1.—The piece of land with the ponds, streams, paths and roads thereon, commonly known as "THE LEES," situate in the Parish of Yalding in the County of Kent, and hereinafter referred to as "The Common," as the same is delineated in a plan sealed by and deposited at the Office of the Rural District Council of Maidstone, hereinafter called "The Council" and thereon coloured green, being a "Common" within the meaning of the Commons Act, 1899, shall henceforth be regulated by this scheme, and the management thereof shall by resolution of the Council be vested in the Council.

Appointment
of Officers.

2.—The powers of the Council generally as to appointing or employing officers and servants and paying them under the general Acts applicable to the Council shall apply to all such persons as in the judgment of the Council may be necessary and proper for the preservation of order on and the enforcement of byelaws with respect to the Common and otherwise for the purposes of this scheme, and the Council may make rules for regulating the duties and conduct of the several officers and servants so appointed and employed and may alter such rules as occasion may require.

Protection and
Improvement
of Common.

3.—The Council may execute any necessary works of drainage, raising, levelling or other works for the protection and improvement of the Common and may for the prevention of accidents, fence any quarry pit pond stream or other like place on the common, and shall preserve the turf, shrubs, trees, plants and grass thereon and for this purpose may, for short periods, enclose by fences such portions as may require rest to revive the same, and may plant trees and shrubs for shelter or ornament, and may place seats upon and light the Common and otherwise improve the Common as a place for exercise and recreation. Save as hereinafter provided, the Council shall do nothing that may otherwise vary or alter the natural features or aspects of the Common or interfere with free access to any part thereof, and shall not erect upon the

Common any shelter, pavilion, drinking fountain, convenience or other building without the previous consent of the Minister of Agriculture and Fisheries (in this Scheme referred to as "the Minister"). The Minister, in giving or withholding his consent, shall have regard to the same considerations and shall, if necessary, hold the same enquiries as are directed by the Commons Act, 1876, to be taken into consideration and held by the Minister before forming an opinion whether an application under the Inclosure Acts, 1845 to 1882, shall be acceded to or not.

Against
Encroachments. 4.—The Council shall maintain the Common free from all encroachments, and shall not permit any trespass on or partial or other enclosure of any part thereof.

Public Right of
Access and
Recreation. 5.—The inhabitants of the district and neighbourhood shall have a right of free access to every part of the Common and a privilege of playing games and of enjoying other species of recreation thereon, subject to any byelaws made by the Council under this scheme.

Maintenance and
Construction of
Paths and
Roads. 6.—The Council shall have power to repair and maintain the existing paths and roads on the Common other than highways repairable by the inhabitants at large, and to set out, construct and maintain, or authorise the construction and maintenance of such new paths and roads on the Common as appear to the Council to be necessary or expedient, and to take any proceedings necessary for the stopping or diversion of any highway over the Common.

Games, etc. 7.—The Council may set apart for games any portion or portions of the Common as they may consider expedient, and may form grounds thereon for cricket, football, tennis, bowls, and other games, and may allow such grounds to be temporarily enclosed with any open fence, so as to prevent cattle and horses straying thereon; but such grounds shall not be so numerous or extensive as to affect prejudicially the enjoyment of the Common as an open space or the lawful exercise of any right of common, and shall not be so near to any dwelling house or road as to create a nuisance or an annoyance to the inhabitants of the house or to persons using the road.

Parking Places. 8.—The Council may with the consent of the Minister temporarily set apart and fence such portion or portions of the Common as they may consider expedient for the parking of motor and other vehicles, and may make such charges for the use of such part as they may deem necessary and reasonable provided that any area so set apart shall not be so near to any dwelling house as to create a nuisance or be an annoyance to the inhabitants of the house. The Minister, in giving or withholding his consent, shall have regard to the same considerations and shall, if necessary, hold the same enquiries as are directed by the Commons Act, 1876, to be taken into consideration and held by the Minister before forming an opinion whether an application under the Inclosure Acts, 1845 to 1882, shall be acceded to or not.

Byelaws. 9.—The Council may, for the prevention of nuisances and the preservation of order on the Common, and subject to the provisions of Section 10 of the Commons Act, 1899, make, revoke and alter byelaws for any of the following purposes, viz. :—

(a) For prohibiting the placing or depositing and leaving on the Common, without lawful authority of road-sand, materials for repair of roads, wood, glass, china, earthenware, tin, carton, paper or other rubbish so as to create or tend to create a litter.

(b) For prohibiting any person without lawful authority from digging, cutting or taking turf, sods, gravel, sand, clay or other substance on or from the Common, and from cutting, felling or injuring any gorse, heather, timber, or other tree, shrub, brushwood or other plant growing on the Common.

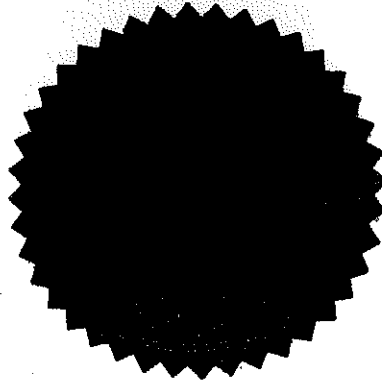
- (c) For regulating the place and mode of digging and taking turf, sods, gravel, sand, clay, or other substance, and cutting, felling, and taking trees or underwood on or from the Common in exercise of any right of common or other right over the Common.
- (d) For prohibiting the injury, defacement or removal of seats, shelters, pavilions, drinking fountains, fences, notice-boards, rubbish receptacles or any works erected or maintained by the Council on the Common.
- (e) For prohibiting or regulating the posting or painting of bills, placards, advertisements, or notices, on trees or fences, erections or notice-boards on the Common.
- (f) For prohibiting any person without lawful authority from bird catching, setting traps or nets, or laying snares for birds or other animals, taking birds' eggs or nests, and shooting or chasing game or other animals on the Common.
- (g) For prohibiting the drawing, driving or placing without lawful authority upon the Common of any carriage, cart, caravan, truck, motor cycle or other vehicle, or any aircraft (except in the case of accident or other sufficient cause): or camping or the lighting of any fire thereon.
- (h) For prohibiting or in the case of a fair lawfully held for regulating, the placing on the Common of any show, exhibition, swing, roundabout, or other like thing.
- (i) For prohibiting or regulating the firing or discharge of firearms or the throwing or discharge of missiles on the Common
- (j) For regulating games to be played and other means of recreation to be exercised on the Common and assemblages of persons thereon.
- (k) For regulating the use of any portion of the Common temporarily enclosed or set apart under this scheme for any purpose.
- (l) For prohibiting or regulating the driving exercising or breaking in of horses without lawful authority on any part of the Common.
- (m) For prohibiting any person without lawful authority from turning out or permitting to remain on the Common any cattle, sheep, or other animals.
- (n) For prohibiting any person from bathing in any pond or stream on or from the Common save in accordance with the byelaws.
- (o) Generally, for prohibiting or regulating any act or thing tending to injury or disfigurement of the Common or to interference with the use thereof by the public for the purposes of exercise and recreation.
- (p) For authorising any officer of the Council, after due warning, to remove from the Common any vehicle or animal drawn, driven or placed, or any structure erected or placed thereon, in contravention of this Scheme or of any byelaw made under this Scheme, or to exclude from the Common any person who within his view commits or whom he reasonably suspects of committing, an offence against any such byelaw or against the Vagrancy Acts.
- (q) For prohibiting the hindrance or obstruction of an officer of the Council in the exercise of his powers or duties under this Scheme or under any byelaw made thereunder.

Saving of Rights,
etc., in the
Soil and
Highways.

11.—Nothing in this Scheme or any byelaw made thereunder shall prejudice or affect any right of the person entitled as lord of the manor or otherwise to the soil of the Common or of any person claiming under him which is lawfully exercisable in, over, under, or on the soil or surface of the Common in connection with game, or with mines, minerals, or other substrata or otherwise, or prejudice or affect any rights of the commoners in or over the Common or the lawful use of any highway or thoroughfare on the Common, or affect any power or obligation to repair any such highway or thoroughfare.

12.—Printed copies of this Scheme shall at all times be sold at the Office of the Council to all persons desiring to buy the same at a price not exceeding sixpence each.

THE COMMON SEAL OF THE MAIDSTONE
RURAL DISTRICT COUNCIL was hereunto
affixed at a meeting of the Council held on the
24th day of MAY
1949, by direction of the Council in the
presence of



A. Weaver

Presiding Chairman.

Geo. G. Lettichford
Clerk of the Council.

Approved by Order of the Minister
of Agriculture and Fisheries this
twenty-seventh day of May, 1949.

W. Morrison

AUTHORISED BY THE MINISTER.

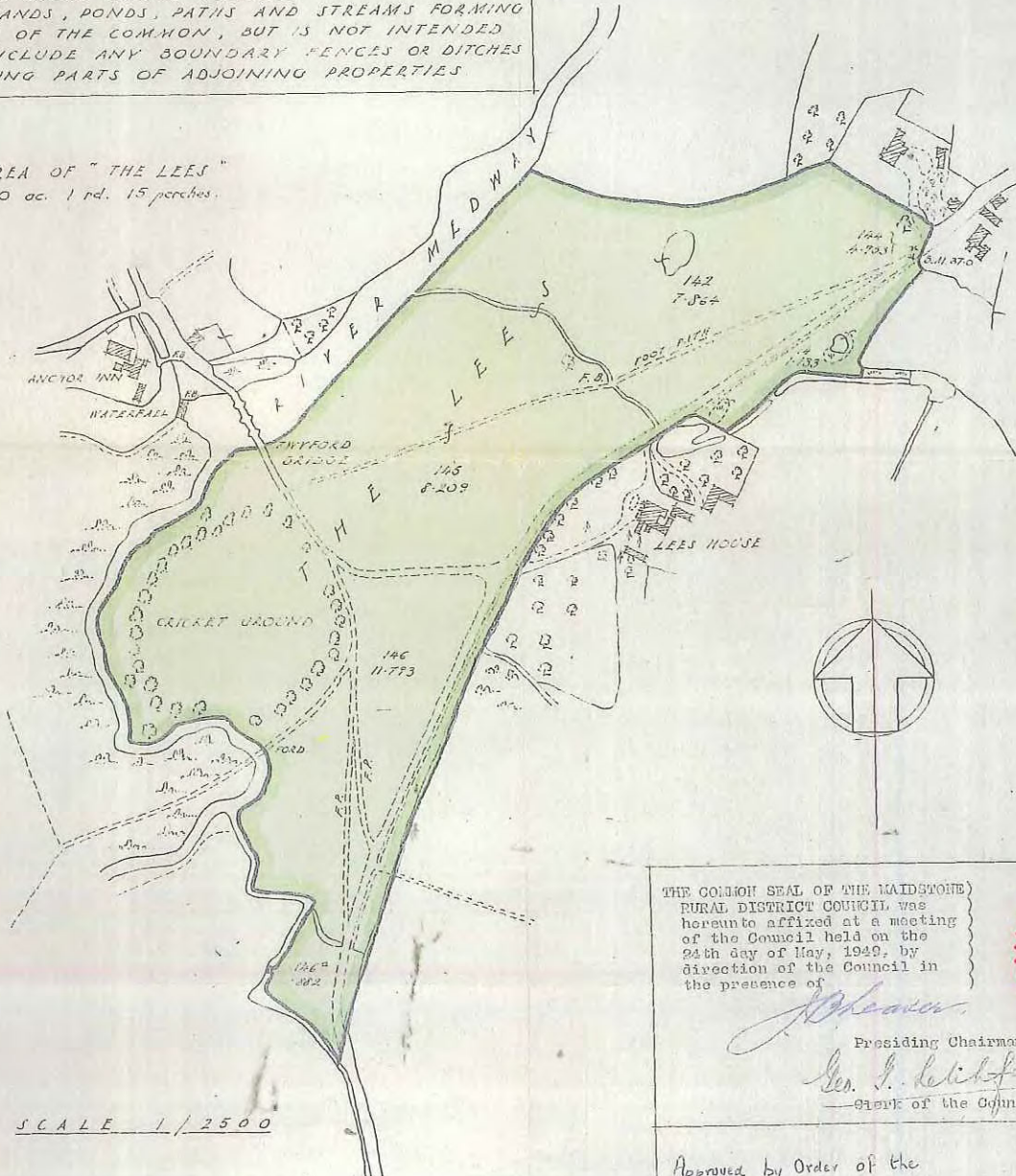
al.

MAIDSTONE RURAL DISTRICT COUNCIL COMMONS ACT 1899

THIS IS THE PLAN REFERRED TO IN THE REGULATION SCHEME FOR
"THE LEES" IN THE PARISH OF YALDING IN THE COUNTY OF KENT
DATED THE TWENTY-SEVENTH DAY OF MAY 1949

THE GREEN COLOUR INCLUDES THE WHOLE OF THE LANDS, PONDS, PATHS AND STREAMS FORMING PARTS OF THE COMMON, BUT IS NOT INTENDED TO INCLUDE ANY BOUNDARY FENCES OR DITCHES FORMING PARTS OF ADJOINING PROPERTIES

AREA OF "THE LEES"
30 ac. 1 rd. 15 perches.



SCALE 1/2500

THE COMMON SEAL OF THE MAIDSTONE RURAL DISTRICT COUNCIL was hereunto affixed at a meeting of the Council held on the 24th day of May, 1949, by direction of the Council in the presence of



J. Shearer
Presiding Chairman.
Geo. J. Delibford
Clerk of the Council.

Approved by Order of the Minister of Agriculture and Fisheries this twenty-seventh day of May, 1949.

[Signature]
AUTHORISED BY THE MINISTER.

al.

PLEASE NOTE:
This plan has been reduced and is not to scale

569000 000000

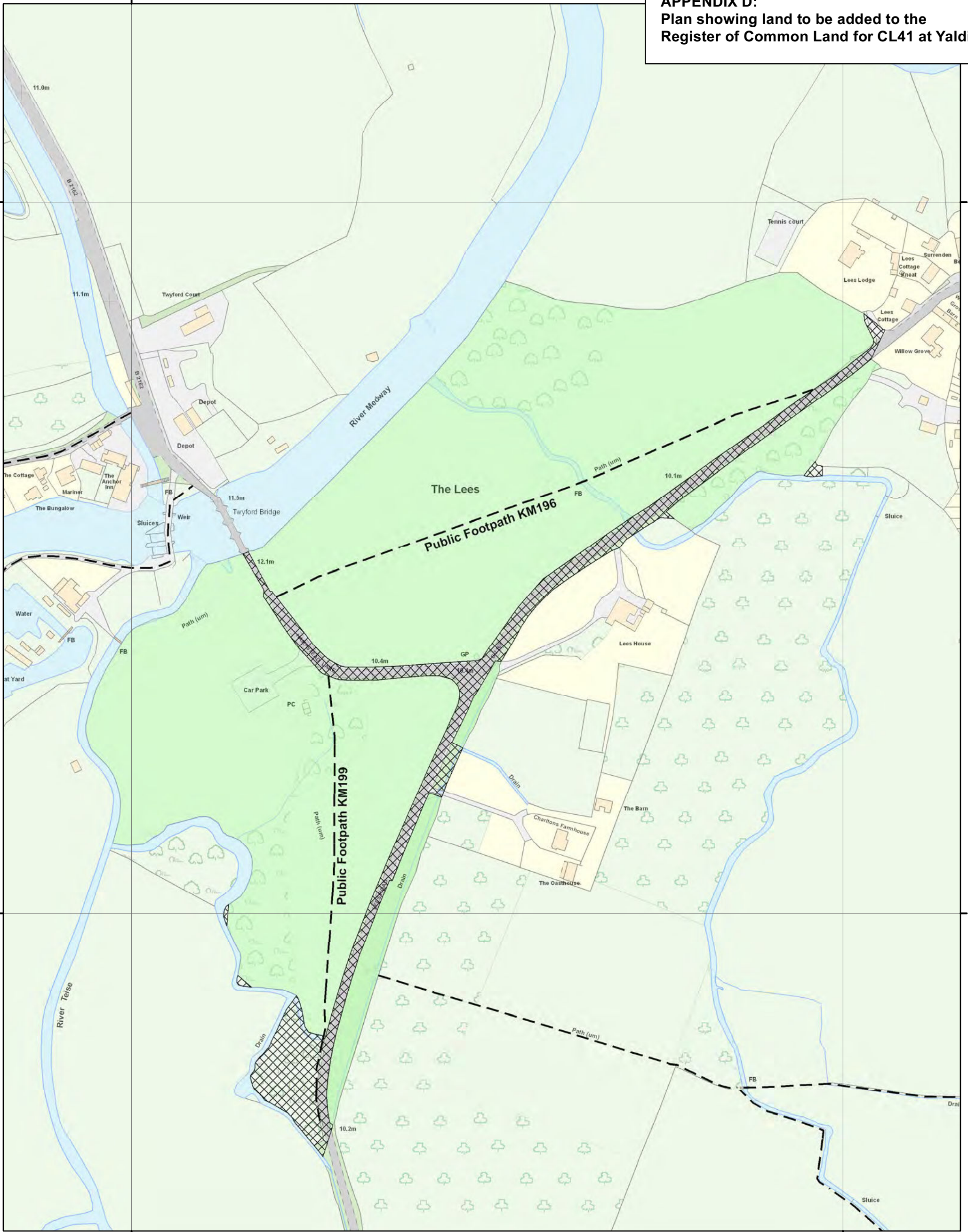
APPENDIX D:
Plan showing land to be added to the
Register of Common Land for CL41 at Yalding

150000 000000

150000 000000

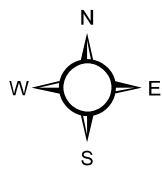
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Scale = 1:2500 @ A3

Application to amend the Register of Common Land for The Lees at Yalding (CL41)



= existing extent of registered Common Land



= land to be added to Common Land registration



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Application to register land known as Glebe Field in the parish of Goudhurst as a new Town or Village Green

A report by the Head of Regulatory Services to Kent County Council's Regulation Committee Member Panel on Tuesday 24th September 2013.

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

Local Member: Mr. A. King

Unrestricted item

Introduction

1. The County Council has received an application to register land known as Glebe Field in the parish of Goudhurst as a new Town or Village Green from local resident Mr. E. Bates ("the applicant"). The application, made on 18th November 2011 was allocated the application number VGA639. 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**¹, 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 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

¹ Note that after 1st October 2013, the period of grace will be reduced from two years to one year (due to the coming into effect of section 14 of the Growth and Infrastructure Act 2013). This will only apply to applications received after that date and does not affect any existing applications.

publicity must state a period of at least six weeks during which objections and representations can be made.

The application site

6. The area of land subject to this application (“the application site”) consists of an area of grass of approximately 2.5 acres (1 hectare) in size situated at the junction of Church Road and Back Lane in the parish of Goudhurst. The application site is shown in more detail on the plan at **Appendix A**.
7. There are no recorded Public Rights of Way on or abutting the application site, although there is a surfaced path running inside the northern boundary of the application site. It is understood that this was constructed in approximately 1998 to facilitate the safe passage of children between the village centre and the new primary school situated to the east of the application site.

The case

8. The application has been made on the grounds that the application site has become a Town or Village Green by virtue of the actual use of the land by the local inhabitants for a range of recreational activities ‘as of right’ for more than 20 years.
9. Included in support of the application were 112 user evidence questionnaires, a statement detailing the history and use of the application site, a copy of leases between Kent County Council (as Local Education Authority) and the Canterbury Diocesan Board of Finance (as landowner), correspondence with the landowner, notes of a meeting between the Parish Council and the landowner regarding the future of the application site, a summary of the activities cited by users, a timeline of relevant dates, various photographs showing organised activities taking place on the land (e.g. fetes) a programme from the 1997 fete and sample flyers from the ‘save the glebe field’ campaign. A summary of the user evidence submitted in support of the application is attached at **Appendix C**.
10. The applicant’s evidence is that the application site is an extremely popular public meeting place that has been used for generations on a daily basis by a significant number of local people for a variety of recreational purposes. Permission has not been sought to use the land for informal recreation and access has never been denied. Goudhurst and Kilndown Primary School had a lease that allowed its pupils to play sports on the field, but local residents continued their recreational use of the application site whilst ensuring that such use did not interfere with school use.
11. After the lease expired, the Parish Council approached the landowner with a request to buy or lease the land, but there has been no response to this request. The end of the lease raised significant concern amongst local residents that continued access could not be taken for granted. At a public meeting in March 2011, residents expressed a clear wish for use to continue and, as this has not been achievable through negotiation with the landowner, a group of residents set up the save Glebe Field campaign to prepare a Village Green application.

Consultations

12. Consultations have been carried out as required.
13. Tunbridge Wells Borough Council responded to the effect that ‘although [the application site] does not have any specific use allocation in the Local Plan, officers can confirm that it is used for recreational purposes. The field is clearly used for sports, with short mown grass and goal posts at eastern end of the site. There is a public footpath across the site from north-east to south-west in addition to a number of accesses from both Church Road and Back Lane to the site. However, aerial photographs taken in 1999, 2003, 2006 and 2009 do not show any evidence of use of the field for more extensive recreational use by the wider public in the locality. From the information available it is therefore not possible for the Local Planning Authority to confirm that a significant number of any inhabitants of the locality or of any neighbourhood within the locality have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years’.
14. Local resident Mr. P. Glyde also wrote in support of the application. He said that the land was used on a daily basis for dog walking and socialising, and that football was played there during most winter weekends. During the summer, the application site becomes a venue for well-attended local fetes and shows.

Landowner

15. The application site is owned by the Canterbury Diocesan Board of Finance (“the landowner”). The land was vested in the landowner by virtue of section 15 of the Endowments and Glebe Measure 1976. Under this provision, the landowner has a statutory duty to manage the land for the benefit of the Clergy Stipends Fund.
16. The land was leased to Kent County Council (“KCC”) as a school playing field. There were a succession of leases between 1966 and 2010, when KCC ceased occupation of the land. In 1996, KCC sought permission from the landowner to construct a footpath along the edge of the Glebe in connection with the construction of a new primary school nearby. The path was constructed in 1998 and two new pedestrian gates were installed at either end of the pathway. Prior to this period access was limited to one gateway only. The creation of the footpath opened up access to the land for use by the general public in a way that had not taken place previously.
17. An objection to the application was received from Graham Boulden and Co, land agents acting on behalf of the landowner. The objection has been made on the following grounds:
 - That the application is invalid because the application plan includes land not owned by the landowner and the requisite notices have not been served².
 - The applicant only moved to Goudhurst in 1996 and therefore cannot assert from his own knowledge that the land has been used for generations.

² It should be noted that none of the application site is registered with the Land Registry. Regulation 22(3) of the Commons Registration (England) Regulations 2008 provides that the applicant is not required to serve notice on a landowner if that person cannot be reasonably identified.

- Despite the applicant's assertions to the contrary, permission was granted for certain events to take place on the field; indeed, the fete programme from 1994 states 'by kind permission of the headteacher'. In any event, the fete is organised on the basis that four local organisations benefit (the church, the school, the village hall and the scouts) and, since both the church and the school are represented at the fete, use of the land for the fete was by virtue of an implied permission.
- It is unclear whether some of the recreational use is ancillary to the main purpose of walking along the footpath.
- Part of the land is used for parking in connection with the church on a weekly basis and, for weddings and funerals, as much as half of the land is used for parking.
- The Newhaven case stated that registration as a Village Green cannot take place where it would be inconsistent with the statutory purpose for which the land is held. The land is held for the benefit of the Diocesan Stipends Fund under section 19 of the Endowments and Glebe Measure 1976 and Village Green status would be incompatible for this purpose³.

Legal tests

18. In dealing with an application to register a new Town or Village Green the County Council must consider the following criteria:

- Whether use of the land has been 'as of right'?*
- Whether use of the land has been for the purposes of lawful sports and pastimes?*
- Whether use has been by a significant number of inhabitants of a particular locality, or a neighbourhood within a locality?*
- Whether use of the land 'as of right' by the inhabitants has continued up until the date of application or, if not, ceased no more than two years prior to the making of the application?*
- 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 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.

20. 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 protest⁴: "*if, then,*

³ This statement refers to the High Court's decision in the case of *Newhaven Port and Properties Ltd v East Sussex County Council* [2012] EWHC 647 (Admin). However, that element of the decision has been overturned in the subsequent Court of Appeal judgement in the same case: [2013] EWCA Civ 276.

⁴ *Dalton v Angus* (1881) 6 App Cas 740 (HL)

*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*⁵.

21. In this case, there is no question of the land being used in secrecy or in exercise of any force; all users refer to entry to the application site being through open gates and many refer to having seen other people engaging in recreational activities on the land.
22. However, there is a question as to whether use of the application site has taken place by virtue of an implied permission. The question arises from the use of the application site for organised events and, more particularly, village fetes. Included in support of the application was a copy of a flyer advertising the 1994 village fete (see **Appendix D**), which included the statements '*by kind permission of the headteacher*' and '*entry by programme*'.
23. The landowner contends that this demonstrates that use of the application site took place by the permission of the landowner; the head teacher was entrusted by the landowner with de facto control over the application site and, so far as the public was concerned, their attendance at the fete was by virtue of his consent to the use of the land for holding the fete.
24. However, the applicant's position is that the headteacher was not in a position to grant such permission as the lease between the landowner and the County Council specifically restricted use to primary school children; the headteacher's consent was therefore only sought to ensure that the fete would not conflict with any school activities. In any event, the landowner was not aware that formal activities were taking place on the application site.
25. The issue of organised events was recently considered by the courts in the Mann⁶ 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.
26. The judge considered the previous case of Beresford⁷ 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 that⁸ '*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.

⁵ *R (Lewis) v Redcar and Cleveland Borough Council* [2010] UKSC 11 at paragraph 92 per Lord Rodger

⁶ *R (Mann) v Somerset County Council* [2012] EWHC B14 (Admin)

⁷ *R v City of Sunderland ex parte Beresford* [2003] UKHL 60

⁸ at paragraph 77 per Judge Owen QC

27. The parties have been invited to comment on the effect of the judgement in the Mann case.
28. The landowner's position is that entry to the fete was generally by programme which, effectively, amounts to the charging of a fee. This contention is supported by a statement from the local vicar confirming that printed programmes would be produced prior the fete and sold in local shops 'for the relevant entry fee'; on the day of the fete, the three entrances would be manned and those not in possession of a programme would be invited to purchase one prior to entry onto the field. The landowner asserts that this puts the application on all fours with the situation in the Mann case and gave rise to an implied permission in 1994 for local inhabitants to recreate on the land. As a result, the applicant cannot prove twenty years qualifying use.
29. The applicant's case, on the other hand, is that this case can be distinguished from the situation in the Mann case on the basis that the application site at Goudhurst is not secure and accessible via multiple entrances, as well as various holes in boundary vegetation. The path along the inside boundary of the application site, which avoids a busy main road, is used at all times regardless of any events taking place on the application site. The applicant concedes that the fete does take up a large part of the application site but does not prevent access for other users. Indeed, access to the field has not been controlled or restricted and it has been perfectly possible to access the field for recreational activities that are totally separate from the fete. In respect of the fee, the applicant states that this was not for entry to the land, but rather was a means of raising funds towards the cost of the fete; it cannot be interpreted as a 'manifest act of exclusion'.
30. In this case, there is therefore a conflict of fact as to what the position was on days when the application site was used for fetes and other organised events, and it is not possible to conclude that use of the application site has taken place 'as of right'.

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

31. Lawful sports and pastimes can be commonplace activities including dog walking, children playing, picnicking and kite-flying. Legal principle does not require that rights of this nature be limited to certain ancient pastimes (such as maypole dancing) or for organised sports or communal activities to have taken place. The Courts have held that '*dog walking and playing with children [are], in modern life, the kind of informal recreation which may be the main function of a village green*'⁹.
32. The summary of evidence of use by local residents at **Appendix C** shows the activities claimed to have taken place on the application site. The overwhelming majority use of the application site has been for walking (with or without dogs), but there is also evidence of use of the application for other informal recreational activities, including dog walking, bird watching and playing with children.

⁹ *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

33. A number of people refer to use of the path along the inside northern boundary of the application site as a safe route of passage between the village centre and the primary school. Such use will generally be regarded as a 'rights of way type' use and, following the decision in the Laing Homes¹⁰ case, falls to be discounted. In that case, the judge said: *'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'*.
34. However, even discounting the linear path use, the user evidence summarised at **Appendix C** demonstrates that the application site has been used on a regular basis for a wide range 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?

35. 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.
36. 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 Builders¹¹ 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'*.
37. In this case, the applicant has specified the locality as being 'Goudhurst parish'. The plan at **Appendix E** shows the area within which the users reside and confirms that the application site is used by people living across the parish of Goudhurst.
38. The parish of Goudhurst is a legally recognised administrative unit and thus would constitute a qualifying locality.

"a significant number"

39. 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'*¹². Thus, what constitutes a

¹⁰ *R (Laing Homes) v Buckinghamshire County Council* [2003] 3 EGLR 70 at 79 per Sullivan J

¹¹ *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at 90

¹² *R (Alfred McAlpine Homes Ltd.) v Staffordshire County Council* [2002] EWHC 76 at paragraph 71

'significant number' will depend upon the local environment and will vary in each case depending upon the location of the application site.

40. In this case, the application is supported by 112 user evidence questionnaires from various people living across the parish of Goudhurst, many of whom claim to have used the application site for informal recreation on an at least daily or weekly basis. Furthermore, many of the users also refer to having observed use by others on a regular basis.

41. The overall impression given by the user evidence is that the volume and frequency of such use is likely to have been sufficient to indicate that the land was in general use not only by a significant number of local residents but also the community in general throughout the material period.

(d) Whether use of the land 'as of right' by the inhabitants has continued up until the date of application or, if not, ceased no more than two years prior to the making of the application?

42. The Commons Act 2006 requires use of the land to have taken place 'as of right' up until the date of application or, if such use has ceased prior to the making of the application, section 15(3) of the 2006 Act provides that an application must be made within two years from the date upon which use 'as of right' ceased.

43. In this case, there is no evidence to suggest that use of the application site for recreational purposes ceased prior to the making of the application and it would therefore appear that the application has been correctly made under section 15(2) of the Commons Act 2006.

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

44. In order to qualify for registration, it must be shown that the land in question has been used for a full period of twenty years. In this case, 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.

45. Notwithstanding the debate as to whether such use has taken place 'as of right' (above), the user evidence (summarised at **Appendix C**) suggests that recreational use of the application site has taken place well in excess of the required 20 year period.

Conclusion

46. 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

¹³ Commons Registration (England) Regulations 2008

an independent Inspector to hear the relevant evidence and report his/her findings back to the Registration Authority.

47. 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'*.

48. In this case, it is clear that the application site has been a focus for informal recreational use by the local community. However, there is a serious conflict of fact in relation to the annual fete, which is central to the question of whether such recreational use took place 'as of right'. Both parties offer conflicting views on this key issue and it has not been possible to determine, on the basis of the available paperwork, what the correct position actually was in relation to the fetes. This is a question of fact which would be better resolved by way of oral testimony and which requires further, more detailed consideration before the application can be determined. Accordingly, it would appear that the most appropriate course of action would be for the matter to be referred to a Public Inquiry.

Recommendation

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

Accountable Officer:

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

Case Officer:

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

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

Background documents

APPENDIX A – Plan showing application site

APPENDIX B – Copy of application form

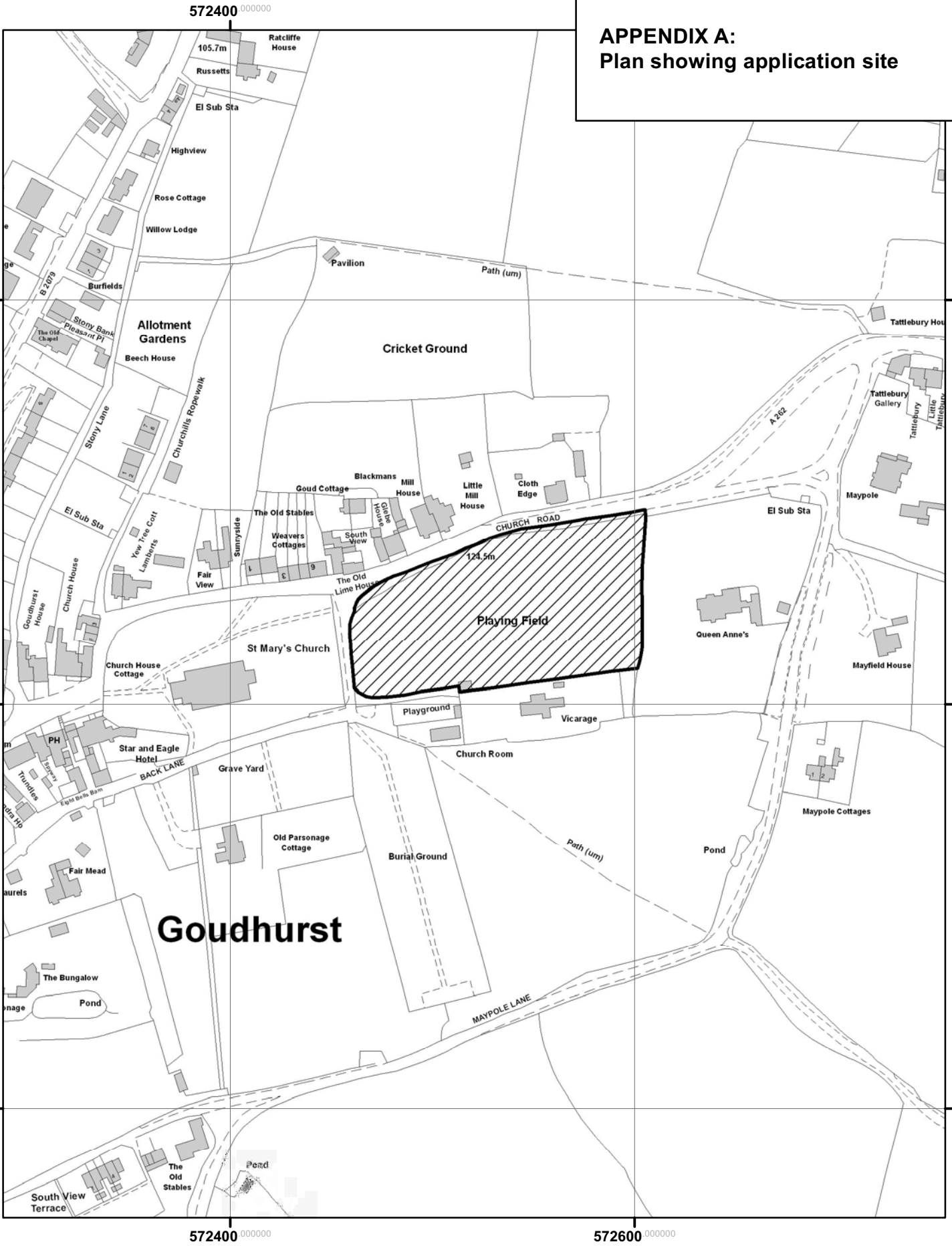
APPENDIX C – Table summarising user evidence

APPENDIX D – Copy of 1994 village fete flyer

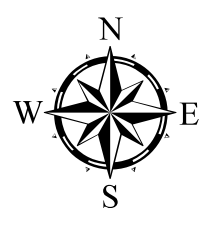
APPENDIX E – Plan showing area within which users reside

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

**APPENDIX A:
Plan showing application site**



Goudhurst

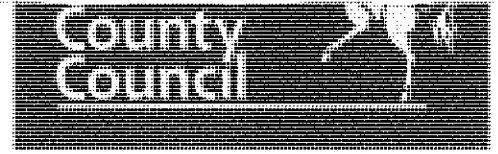


**Land subject to Village Green application
at The Glebe at Goudhurst**



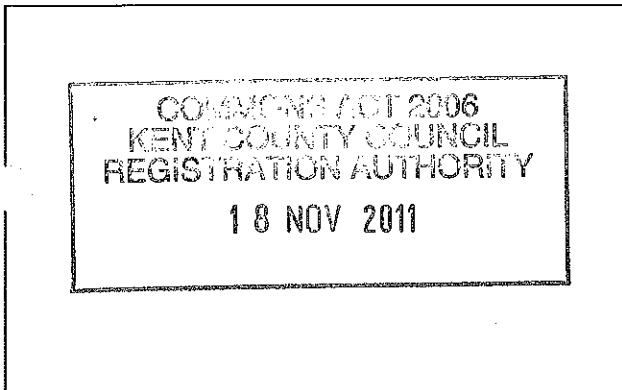
Commons Act 2006: section 15

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:

VGA639

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

[Empty box for VG number]

Note to applicants

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

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

Note 1
Insert name of Commons
Registration Authority

1. Commons Registration Authority

To the: *KENT COUNTY COUNCIL*

Note 2

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

2. Name and address of the applicant

Name: *E. BATES*

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

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

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

E-mail address: [redacted]

Note 3

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

3. Name and address of representative, if any

Name:

Firm:

Full postal address:
(incl. Postcode)

Telephone number:
(incl. national dialling code)

Fax number:
(incl. national dialling code)

E-mail address:

Note 4

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

4. Basis of application for registration and qualifying criteria

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

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

Section 15(2) applies:

Section 15(3) applies:

Section 15(4) applies:

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

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

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

Note 5

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

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

Name by which usually known:

THE GLEBE FIELD

Location:

THE FIELD BORDERED BY BACK LANE AND CHURCH ROAD IN GOUDHURST.

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:

GOUDHURST PARISH

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

PLEASE SEE "SUMMARY" IN ENCLOSED.

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

OWNER : - DIOCESE OF CANTERBURY

THE MOST REVEREND AND RIGHT
HONOURABLE THE LORD
ARCHBISHOP OF CANTERBURY

LAMBETH PALACE
LONDON, SE1 7JU

OR c/o:-

DIRECTOR AND DIOCESAN SURVEYOR
OLD PALACE
CANTERBURY
KENT, CT1 2EE

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

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

PLEASE SEE ENCLOSED DOCUMENTS.

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: 17th NOVEMBER 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.

Glebe Field, Goudhurst: Village Green Application

Summary; The Glebe Field is situated within of the village of Goudhurst, adjacent to the medieval church of St Mary's. It is used on a daily basis by a significant number of local people for a variety of recreational purposes. It is the most significant area of accessible, flat open space within the village. The Glebe Field has been used by local residents for generations, with their use regarded as of right. This application is being made to secure that right for perpetuity.

The Glebe Field has been used by Goudhurst residents for a variety of sports and pastimes. It has also been used as the site for the celebration of major social and historic events which bring the local community together, for example: to witness the lighting of the beacon; special royal anniversaries such as Silver and Diamond Jubilees; to welcome the millennium; bonfire night celebrations. It has also been used by various village clubs and societies for their outdoor activities. (See appendix 5).

Permission has not been sought from the landowner for these uses and use has never been denied. Many local people have been eager to complete the Evidence Questionnaires which comprehensively cover the required period of twenty years of use, and these are attached.

Goudhurst & Kilndown Primary School had a lease which allowed its pupils to play sports on the Glebe Field. However, local residents continued their informal use of the land while ensuring that this use did not interfere with the school's occasional use of a part of the Field for sports activities.

The Glebe Field and the recreational activities that take place on it form part of and contribute to the character of the village. This application aims to confirm its village green status in the terms of section 15 of the Commons Act 2006.

History; In the Anglican Church tradition, glebe was land and property in the parish owned by the Church of England and held by the incumbent clergyman as part of the endowment of his benefice. Glebe provided the means by which the vicar could support himself and his church. Typically, glebe would comprise the vicarage or rectory, fields and the church building itself, its contents and its graveyard.

Each church was entitled to a house and glebe land. In short, clergymen's pay came not from the church but from rents and tithes, with rental income from glebe land being significant.

Glebe associated with the Church of England ceased to belong to individual clergy as from 1 April 1978, by virtue of the Endowments and Glebe Measure 1976; instead, it became vested on that date, "without any conveyance or other assurance," in the Diocesan Board of Finance of the diocese to which the benefice owning the glebe belonged.

Background; The land which is the subject of this application is owned by the Diocese of Canterbury and situated within Goudhurst village centre, to the West of St Marys Church. It is the northern section of the original glebe field which was divided by the construction of the Church Room and vicarage with associated driveway long before the period of this application.

The last recorded agricultural use was grazing on at least part of the Glebe Field, which ended in 1965. From here on the term "The Glebe Field", only refers to the northern part of the original field which is the subject of this application.

Kent County Council held two consecutive leases with the Diocese, for Goudhurst and Kildown Church of England Primary School's use of the Glebe Field. The first was from 9th September 1986, and the second from 10th June 1998. We believe the second lease was ended in October 2008. Both leases allowed use of the field under clause 2.(a), "Not to use the said premises or any part thereof for any purpose other than a playing field for Primary School children." The many other recorded activities were therefore carried out as though of right. Both leases and supporting information contained in emails are contained in appendix 1.

Planning permission was granted for the construction of a new, replacement school building in 1997, subject to a number of conditions. Condition 6 required that prior to the building being "occupied or brought into use a footway shall be providedfrom Maypole lane to the Glebe Field, and around the Glebe field to Back Lane," "to enable children to walk to and from school in safety from and to the village centre." See appendix 2.

This requirement was met by the construction of a pathway parallel to the northern and western boundaries of the Glebe Field, parallel to Church Road and Back Lane respectively, and was granted planning permission in November 1997 under reference 97/1127 (see appendix 2.1). The path remains in frequent and regular use though is not believed to be a public footpath. It is clearly visible from the Google satellite photograph of the Glebe Field in appendix 3, printed in October 2011 (<http://maps.google.co.uk/maps?hl=en&tab=wl>).

The new school was built on Goudhurst United Football Club's pitch, with the terms of the planning permission obliging the developers to provide an alternative pitch. After a delay of approximately ten years, a new pitch was opened adjacent to the new school parking. Access to this new facility is significantly more convenient for the school's sports, making their use of the Glebe Field superfluous for other than access, and hence the end of the KCC lease of the Glebe Field in October 2010 as already detailed above. The markings of the school running lanes can still be seen in appendix 3, parallel to Church Road.

Without KCC maintenance, the field quickly became overgrown with the Parish Council arranging occasional cuts to enable the long accepted and established access for sports and pastimes such as the village fete to continue.

It was perhaps inevitable that children crossing the Glebe Field to access both the old and new school buildings took advantage of the opportunity to play. Two football goals set permanently in concrete were installed by Goudhurst Parish Council (GPC) for casual, unauthorised football more than fourteen years ago, verified by the author who moved to the Parish in November 1996. Record of the exact date of the installation has been lost, but the goals remain the property of GPC, who has straightened the crossbar and repainted at least twice during the last five years. Again this is verified by the author who helped with this maintenance on both occasions. The goal posts and wear associated with play can be seen in appendix 3.

After the KCC lease ceased, GPC approached the Diocese with a request to buy or lease the field and take on responsibility for ground maintenance. The Diocese confirmed in writing 1st February 2011, "that the Diocese was unaware that use was being made of the field by the Parish and by the Fete Committee", (See appendix 4). At the time of writing the Diocese has indicated no inclination to take up either offer, leaving continued access and the condition of the field of great concern to local residents (see appendix 4.1 and 4.2 for GPC reports of meetings with Diocese).

Description; the northern boundary is along Church Road, the A262 main road, with a dividing hedgerow.

The eastern end is wooded, showing signs of camps and other games by local children. A dilapidated metal rail fence marks the boundary with the adjoining residential property garden.

The southern border is marked by hedge and undergrowth.

The western boundary is along Back Lane, and marked by an attractive old, low stone wall.

Maintenance of the grounds by KCC under the terms of their lease, has now given way to an unkempt field with mole and rabbit earthworks becoming a hazard to footballers. Ragwort has become common; with residents including the author removing it manually to safeguard children playing to whom it represents a health hazard.

Approximately midway along the southern boundary there are concrete foundations and some steel framework from a small pavilion that was used long ago as changing rooms for children from the primary school. It is now entirely derelict and only used in the village fete, when with a tarpaulin draped over it makes one of the stalls. This is obscured from view in appendix 3, by the tree midway along the southern boundary.

Method; The end of KCC's lease of the Glebe field in October 2010 raised significant concern among residents of the parish that their continued access could not be taken for granted. At a well attended public meeting called by GPC in March 2011, residents gave a clear message that they wished their long established access and use to be continued and the field to be maintained. To date this has not been achievable through GPC's negotiations with the Diocese, and a group of residents set up the Save the Glebe Field Committee in July 2011 to prepare a Village Green application. In August 2011 committee members hand delivered a letter to the majority of households in Goudhurst Parish (See appendix 8). Commercial premises in the centre of Goudhurst Village were also approached, with the majority agreeing to display a poster (See appendix 8.1). Readers of the letter and poster were invited to help by passing on the message and by contacting the Chairman of the Save the Glebe Field Committee by dedicated email or telephone for a questionnaire to record their use of the field.

A specimen Evidence Questionnaire and map noting the Glebe Field as "playing field" (scale 1:1250), supplied by KCC, were used. Goudhurst Parish boundary does not fit within A4 format at this scale, and it was subsequently agreed with KCC staff by phone that it would not be possible to fulfil

question 2 or the last part of question 3 on the Evidence Questionnaire, requiring addresses to be marked on the map.

A small number of Evidence Questionnaires were handed out at meetings by prior invitation, such as at the Goudhurst and Kildown History Society. The majority were delivered by hand on demand following receipt of an email or telephone message.

Several elderly residents asked to dictate their answers for the questionnaires. In these cases Ed Bates, Chairman of the Committee, visited these people at their homes. Care was taken not to ask leading questions or place any pressure for a particular answer. The answers were all read out to those dictating prior to signature, and questionnaires completed in this way are clearly marked as such.

Susan Shannon, responsible for Evidence Questionnaire 86, was elderly and in failing physical health, but was very determined to help by completing the questionnaire. Sections left blank were later that day completed by Ed Bates during a telephone conversation with Susan's adult daughter, who was able to converse with Susan. It is accepted that this complicated situation may be imperfect, but the circumstances compel her questionnaire to be included.

Where a section or page was left blank or where the response meaning was unclear or appeared contradictory, the resident was approached for clarification at the point of collection by the collecting committee member. Where there was no contact at collection, questionnaires have been reviewed by two committee members and some who completed were then approached by telephone. This was most common where the answer to question 6 was given as a number of years rather than the date as required. Some also seemed to find answering question 8 confusing. Questionnaires with information altered by anyone other than by the original completing resident, such as following a telephone conversation, are clearly indicated and signed by the person making the addition. No amendments were made without asking the completing resident first if that was what they intended, wished to happen and had their complete approval.

Use; The Glebe Field has therefore been used by residents for sports and pastimes as though of right for significantly longer than the Village Green twenty year qualifying period. It has been treated as a public recreational ground without challenge. The diversity of use recorded in answer to question 13 of the completed Evidence Questionnaires with this application are indicative of full and long use (See appendix 5). The usage dates covered by the questionnaires are summarised in appendix 6.

The annual Church Fete became known as the Village Fete more than twenty years ago. The author has been unable to trace permission for the Village fete during the last twenty year Village Green qualifying period, except for 2011, when following the end of the KCC lease permission was obtained from the Diocese.

There is inadequate parking available in the village for big events held in St Marys' Church such as weddings and funerals. The Glebe Field has long been occasionally but regularly used for parking. During the period of the KCC lease this was arranged by St Marys Church Wardens in direct liaison with the school. As far as the author is aware this was without reference to the Diocese. Although

not a qualifying Village Green activity, it should be recorded in any Village Green status as a long established practice managed by St Marys' Church Wardens to be continued as of right.

Regular events such as the annual village fete and one off events such as a meeting place for cycling fixtures as well as the popular casual daily use take place on the field as it is the only accessible flat area in the village centre of sufficient size. See appendix 7, of photographs kindly made available Goudhurst and Kilndown Local History Society, recognisably of the Glebe Field with their dates (http://www.goudhurst.co.uk/Pages/local_history_society.html)

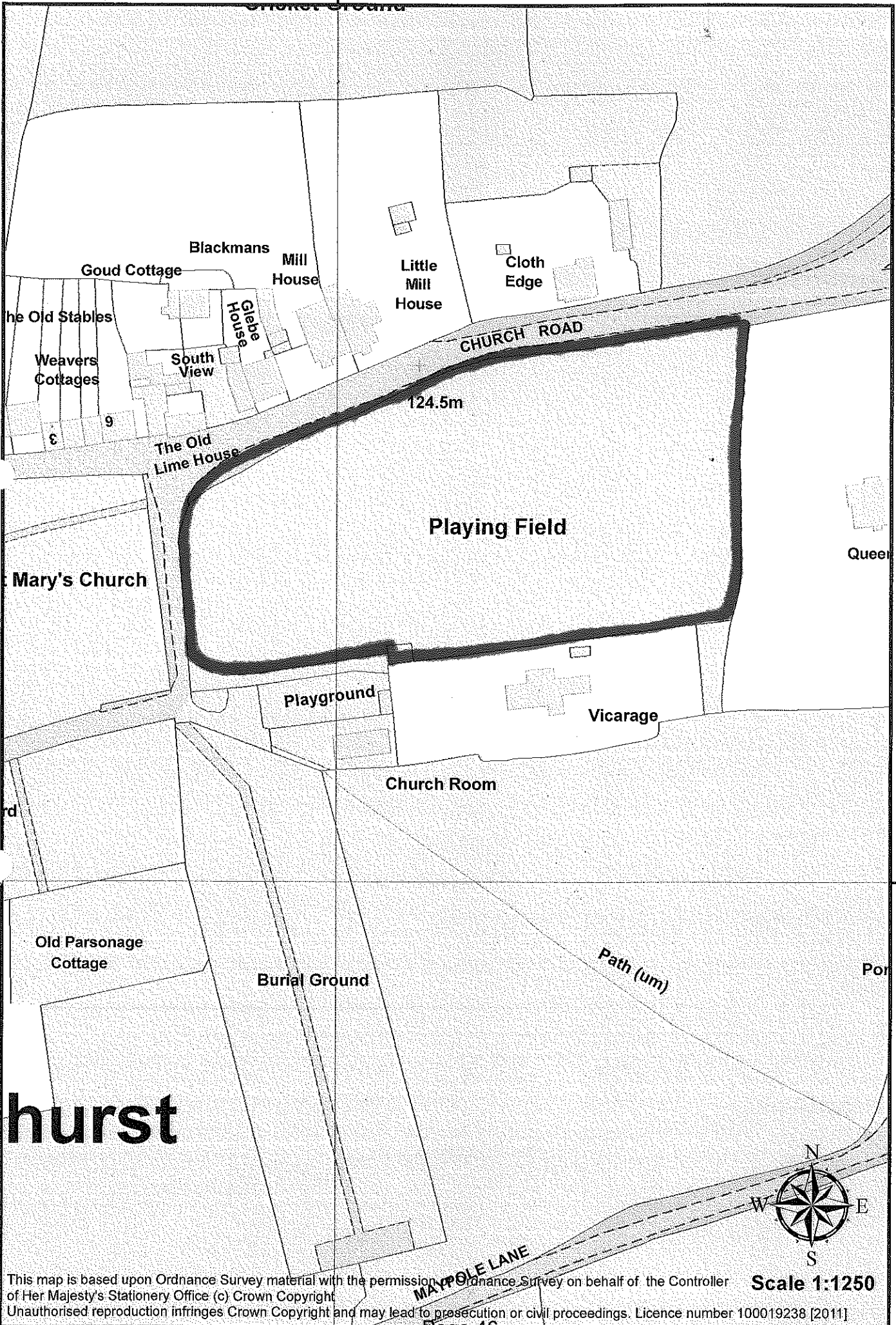
The Glebe Field is an extremely popular public meeting place where local people and visitors, young and old meet, gather, stroll and play. The Church Room on the southern boundary acts as a village hall and is home to a preschool nursery. It is normal for parents to spend time at the playground and on the Glebe Field outside the nursery school's operating times. The field links many elements of the village – High Street shops, St Mary's Church, several pubs and a restaurant, Parish Hall and village pond to the west, with the primary school, nursery school, graveyards and housing to the east. It is surrounded by many significant and old buildings situated at the heart of the village and at the heart of the community, which is why its protection is so important.

The purpose of this Village Green application is therefore to protect the long established general access and use, and prevent the possibility of development.

Access; The Glebe Field is very approximately a tapered rectangle (see appendix 3). There are three points of entry;

- A pedestrian gate in approximately the South West corner, which is permanently unlocked, links to the pathway.
- A pedestrian gate in the North East corner, which is permanently unlocked and links to the pathway.
- The only vehicular access is in approximately the North West corner. There is on occasion a low chain across this entrance which allows pedestrians to step over with ease. The chain can be secured by padlock at the Western side of the entrance to a wooden post, with the key held by St Marys Church Wardens. However, the Eastern end of the chain is placed over a metal hook which is all that remains of an original loop fixed to another wooden post. In its present state it is therefore not possible to secure this entrance. (This entrance is clearly visible between cars parked on Church Road in appendix 3.)

Conclusion; The Glebe Field is a green area in the middle of Goudhurst, linking a number of key village facilities. It is demonstrably special to the community and holds a particular role because of the beauty and historic importance of its surroundings. It forms part of, and contributes to the character of the village. It also has considerable recreational value and yet at many times it can also be a valuable area of tranquillity within pedestrian access for many village residents. As the village expands the green heart becomes all the more valuable to preserve.



hurst

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Scale 1:1250

137750 000000

137750 000000

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

| Name | Period of use | Frequency of use | Type of use | Access to the site | Comments |
|----------------|----------------------|----------------------------------|--|---|--|
| ALDEN-SMITH, J | A986 – present | Regularly, sometimes twice daily | Annual fete, football matches, picnics, dog walking and training | Originally gaps at either end of field, replaced with gates | |
| ALDEN-SMITH, R | 1986 – present | Daily | Dog walking, ball games | Through the gate | |
| ARMSTRONG, A | 1984 – present | Occasionally | Village fetes and car boot sales, bonfires | Through gate/ opening in hedge | |
| BARRY, N & E | 2006 – present | Daily | Walking on path to playground, playing with children, attending fete, parking | Entrance on Church Road and gate next to playground | |
| BISHOP, J | 1993 – present | 2/3 times per week | Dog walking, attending fetes and other activities | Via Church Road | |
| BOURNE, A | 1986 – present | Monthly | Playing and cycling with children, wildlife observation, kite flying, family picnics, attending fete | | |
| BUSHROD, L | 1989 – present | Daily, weekly and monthly | Bike riding, playing as a child, football, dog walking | Entrance on Back lane | No longer resident in parish |
| BUSHROD, R & S | 1985 – present | Occasionally | Playing with children, walking to school, events, sports days | Entrances at Church Road and Back Lane | |
| CLARKE, G | 1983 – present | Weekly | Village fete, church fund raising, school sports, pancake race | Gate off A262 near Maypole Triangle | A much needed amenity for the village and safe environment |
| CLARKE, T | 2005 – present | Twice daily | Dog walking, picking blackberries and mushrooms, village fete, car parking | Through entrance gate on Church Road | Used every day - you always see other people walking walking dogs and using the field. |
| COLLINS, A | 1990 – present | 5 days per week | Dog walking, picnics, village events, sports days, ball games, walking to village | Through access gate at either end of the field | It is rare for me to walk through the field and not see other people |
| COBURN, Ph | 1988 – present | Weekly | Playing with children, games, fetes | Gate off Church Road | |
| COBURN, Pt | 1995 – present | Weekly | Football, running, cycling | Entrance opposite church | |
| COLLINS, I | 1990 – present | Weekly | Playing with children, football, dog walking | Gated entrances at each end | Local children have always used the land for football etc. |
| COOPER, A | 2010 – present | Daily | Walk to village, attending fete | Entrance near church | |
| CROSS, A | 2008 – present | Weekly | Walking, football | From Church Road | |

| | | | | | |
|-----------------------|----------------|-----------------------------------|---|---|--|
| CROSS, K | 2008 – present | Weekly | Playing with children, frisbee, ball games | From Church Road | |
| CURD, R | 1998 – present | Monthly | Football, Frisbee, ball games, kite flying, snow games, cycling, fete, sports days, sitting in park | Gate by road | |
| CURD, Te | 1998 – present | Daily or weekly | Football, walking, sports activities, socializing, fete, parking, kite flying cycling | By playground or vehicular access gate | Land has been in constant use by residents for years |
| CURD, Th | 1970 – present | Occasionally | Football, kite flying, walking, Frisbee, car parking, walking through | By playground or main gate | Land has been used continuously by villagers as a public space |
| DALLEYWATER, R | 1971 – present | Daily/ weekly | Observer of fetes, games etc | Through gates on Cranbrook Road | |
| DAVIDSON, J & M | 1996 – present | Occasionally | Walking, fetes, events | | |
| DAWES, V | 2009 – present | Occasionally | Village fete and events, childrens' play space | Via footpath or gate or from playground or graveyard | The land is centrally located and central to the community. It also provides a safe route to school for many local families. |
| DEENEY, D | 2005 – present | Twice weekly | Jogging, walking, playing football, cricket, rounders, family picnics | Gate at Maypole Green end or gate closest to church | The field is a very important space for the village, lots of people use it. |
| DEENEY, V | 2005 – present | About four times per week | Family activities and games, exercise with children, blackberrying | Gate at one end or gap in hedge at the village end | It is an area we all use informally for relaxation, exercise and socialising |
| DESFORGES-SHEARMAN, L | 1987 – present | Daily | Playing with children, fetes, use pathway to exercise dog, walking | Via village hall and Church Street | This is the only public open space available to be used for recreational purposes and the hub for community activities. |
| DIGNAN, L | 2006 – present | Occasionally | Playing with children, attending sports days, fetes, church parking | Path/gate | |
| DOWNES, M | 1944 – present | Occasionally | Village fete, boot fair | Through gate | |
| DRUMMOND, E | 1993 – present | Occasionally (previously monthly) | Playing with children, village fetes, Drama Club plays, picnics | | |
| EDWARDS, D | 1992 – present | Occasionally | Village events, walking dogs | Opening opposite cottages or single gateway by play field | |
| EDWARDS, L | 1992 – present | Occasionally | Village events, walking across | Opening opposite cottages or single gateway by play field | |

| | | | | | |
|---------------|----------------|---|---|--|---|
| ENGLAND, A | 1998 – present | Weekly | Pathway to village, playing with children, ball games, cycling, events | By gates at either end | On every occasion I use the land I have seen others enjoying this facility |
| FERDINANDO, B | 1996 – present | Occasionally | Village fete, walking on footpath, church activities and car parking | By main gate or either pedestrian entrance | |
| GARDINER, S | 1978 – present | Weekly to monthly | Dog walking, shortcut to village, fetes, events, picnics | Entrance ways from Church Road and the back of the field | |
| GEAREY, D | 1996 – present | Daily | Dog walking, playing with children | Through public gateway | |
| GRAY, M | 2000 – present | 3/4 times per week, less often latterly | Dog walking, village events, picnics/ BBQs, attending drama productions, watching sport | Openings at Queen Annes, Church Road and near playground | I thought it was a village green until this year, it has certainly been treated as such |
| GREENHILL, A | 1998 – present | 3 times per week | Walking, running, snowman making, footpath/rugby, village fetes, informal gatherings/ celebrations, picnics | 'through the open gates' | Used 5 times per week between 2000 and 2006 to walk children to school. |
| HADDON, P | 1997 – present | Daily | Running, dog walking, attending fetes | Either through small side gate or main car entrance on Church Road | |
| HAMILL, P | 1998 – present | At least weekly | Walking, fete, football, school sports days | Via gate at junction with Church Road and Back Lane | |
| HENLEY, B & B | 1951 - present | Occasionally | Parking for church functions, fete, jubilee functions | Through the gate | Only restriction to use has been when gate blocked by parked cars |
| HILLIER, R | 1985 – present | Occasionally | Dog walking, attending annual fetes and village events | Through the gate opposite The Old Lime House or pedestrian access in north-east corner | |
| HILLIER, Ro | 1981 – present | Three times per year | Village fetes/ events, football | Through entrances | |
| HODGES, J | 1957 – present | Occasionally | Walking, parking, fetes, celebrations | Through the gate | |
| HUME, M & H | 2001 – present | Monthly | Walking, fetes, playing with children | From Church Road | |
| HUMPHREY, J | 1983 – present | Monthly, more during holidays | Village fete, car parking, sports days, dog walking, picnics, family games | Via footpath through green | |
| JEFFERY, G | 1999 – present | At least weekly, often daily | Walking to village and church, attending fetes, playing with grandchildren | From the 2 entrances on Church Road and from entrances between playground and vicarage | During time as caretaker of local school, have told people that they could not park on the land and padlocked the chain to prevent others |

| | | | | | |
|----------------------|----------------|-------------------------|--|---|---|
| | | | | | doing so. |
| JONES, L | 2008 – present | Weekly | Playing with children, dog walking, attend fete | From the playground | The size of the field enables it to be of good use for larger community gatherings |
| JOYE, G | 1999 – present | Weekly | Drama production, chestnut collecting, walking | Three entrances to field | Used by others on a daily basis. |
| KANE, D | 1997 – present | Daily | Dog walking, walking to/from village, fetes, local events, socializing, games, enjoying views | Through gates/ entrances at either end | The land has been fully used by the village communally and villagers individually – an essential part of village life |
| KIRWAN, L | 1999 – present | Daily/ weekly | Picnics, wildlife observation, conker hunting, ball games, cycling, reading, walking, running, fetes, sports days | Via any of the gates | |
| KLOPPER, S | 1960 – present | Frequently | Activities with local pre-school, informal and organised football, group church picnics, village events, car parking | Through the field gate or the little gate on the south side | |
| LETHAM, T | 2007 – present | Weekly, sometimes daily | Dog walking, exercise | Via Back Lane | |
| MANTLE, J | 1992 – present | Occasionally | Watching formal games of football, village events, dog walking | Either of the entrances | |
| MANTLE, P | 1976 – present | Occasionally | Village events, dog walking, children playing | Through one of three gates | |
| MASCALL, M | 1987 – present | Monthly | Village fete and other events, walking, kite flying, ball games, enjoying green space | Playground entrance and Church Road entrance | |
| MARTIN, S | 1995 – present | Daily/ weekly | Walking children to school, exercising dog, attending village fetes, playing with children | 'through open gateways' | |
| MASON, B | 2005 – present | Weekly | Walking | Entry points of Church Road (2) and opposite playground | |
| MASON, G | 1997 – present | Weekly/ monthly | Dog walking, playing with children, attending school fete and sports day | Public footpath | |
| MAXWELL-JONES, J & E | 1995 – present | Weekly | Walking, visiting community events | Via gateways | |

| | | | | | |
|-----------------|----------------|-----------------------------|---|--|--|
| McLOUGHLIN, D | 1998 – present | Weekly | Dog walking, attend fair, play football with children, keep fit, nature observation walking to village/church | Main gate, south stile, upper gate and playground gate | The field is a focal point of our community and access to an area of beauty where I spent many hours. |
| McLOUGHLIN, G | 1998 – present | Weekly (daily for 10 years) | Dog walking, walking to village, attending fetes, watching events | Various accesses off A21 and opposite playground | Always considered the land to be an important part of our local community for meeting other villagers and enjoying events |
| McKENZIE, V & J | 1998 – present | Weekly | Through gates | Use the footpath to walk to village, village events, school sports | |
| MEYER, J | 1976 – present | Occasionally | Footpath used to walk children to school and play on way home, casual play/football with family, drama club performances and village events | Open gates from main road | |
| MITCHELL, L | 1996 – present | Monthly | Dog walking, playing football, village events, church parking, blackberry picking | By walking through gates/entrances | |
| MOLE, K & M | 1967 – present | Daily | Fetes, school sports, dog walking | Back Lane | |
| NEWELL, M | 1996 – present | Weekly | Access to village, dog walking, village fairs, school sports days, parking for weddings, amateur dramatics | Back Lane or Church Road | |
| NEWELL, R | 1996 – present | Weekly | Dog walking, access to village, village fetes, school sports, church parking | Back Lane, Church Road or via the church | |
| NICHOL, D | 1995 – present | Occasionally | Village fetes, church parking, relaxation, passage from school to village | Through access adjacent to vicarage and two accesses adjacent to Church Road | |
| NUTT, M | 1984 – present | Daily | Walking, supporting local events | Walking through the gates | |
| PARRIS, C | 1982 – present | 2 or 3 times per week | Exercising the dog, gathering fruits and chestnuts | Via three gateways | Many others use this land to walk their dogs, children use it as a route to school. Children and adults use it for ball games and other recreation. Additionally, a useful car park for major church services. |

| | | | | | |
|-------------|----------------|--------------------------|--|---|--|
| PAUL, D | 1966 – present | Not stated | Village fetes and celebrations, blackberrying, walking, picnics | Through gate which fell down about 10/15 years ago. | |
| PHIPPS, M | 1950 – present | Occasionally | Football, village fetes, bonfires | Gateway on Church Road | |
| PRENTIS, E | 1999 – present | Between daily and weekly | Playing with children, dog walking, picnics, village events | | |
| PRENTIS, M | 1999 – present | Weekly | Jogging, village fetes | Gate near playground | Has always been one of the key social points of the village |
| PRESTON, A | 2010 – present | Weekly | As part of a running circuit, attending fetes, playing with children | Via footpath access from Church Road | |
| RATHMELL, F | 1985 – present | Daily | Village fetes, dog walking, playing with children, picnics, school sports days, football, cycling | Main gate, gate near playground or near triangle | |
| RATHMELL, J | 1985 – present | Weekly | Cycling, football, socializing, dog walking, fetes | Playground gate, main entrance or triangle opening | |
| RATHMELL, R | 1985 – present | Monthly | Village fetes, dog walking, game playing, picnics, football matches, riding bikes, sports days | Through the main gate | |
| RATHMELL, S | 1990 – present | Weekly, now monthly | Village events, football, socializing, walking, playing, sporting events, dog walking, tree climbing, kite flying, parking | Park entry, road entry, path entry | |
| REID, C | 2006 – present | At least daily | Dog walking, walking with children to village shops and play area, ball games, bike riding, socializing, running | Opening along Church Road | The land is used by others for a range of activities on a daily basis. Also used for village events. |
| RELF, F | 1929 – present | 3 or 4 times per week | Football (both formal and informal), walking, fetes and shows, dog walking | 'through open gate' | |
| REOCH, D | 1986 – present | Daily | Dog walking, attending annual church fete | Through small gate set in hedge by children's play area | |
| RICHARDS, A | 1991 – present | Daily | Walking, sitting, reading, playing with children, attending village events, | Via footpath entrance which runs parallel with Church Road and gate from playground | The land has been used so widely and for so long by local residents that was surprised to learn it was privately owned |
| RICHARDS, C | 1991 – present | Weekly | Village fetes, celebrations | Via all entrances usually on foot or on bike | |

| | | | | | |
|-----------------|----------------|-----------------------|--|---|---|
| RICHARDS, J | 1990 – present | Weekly | Walking, playing games, parties, fetes | Through gates/gap in hedge on Church Road | Regular football matches are played there as there are goal posts in place |
| RICHARDS, M | 1990 – present | Weekly | Football, rounders, games, walking, blackberrying | gates | Whenever I have been there other people have been using it as well |
| RICHARDS, O | 1994 – present | Weekly | Walking, playing with family, football, fetes, sports days and millennium celebrations | Gate at east end, gap in hedge at west end and to south | |
| ROW, A | 2001 - present | Weekly | School activities, walking with family | | |
| ROWE, N | 1961 – present | Daily in fine weather | Attending fetes and events, scouts | From the vicarage end and main road | Entry from main road is prohibited by padlock and chain at times |
| RUSSELL, J | 2005 – present | Daily | Playing with children, picnics, football, holiday fun days | Gates at either end of pathway | The land is an integral part of the community being the only open green field within the village – used daily |
| RUSSELL, B | 1987 – present | Daily | Football, firework displays, dog walking, fetes, picnics, rounders | Gates | |
| SANTINI, J | 1999 – present | Occasionally | Walking, village fetes | | |
| SAWYER, M | 2001 – present | Monthly | Walking, visiting fete, jogging, watching sports, entertaining family and friends | | |
| SEGALLER, A & A | 1987 – 2004 | Daily/weekly | Dog walking, ball games with children | Through opening on Church Road | Local residents consider the land as a village green. |
| SHANNON, S | 1981 – present | Occasionally | Parking, village fete | Through gate | |
| SHARP, J | 1993 – present | Weekly, then daily | Dog walking, fete, school events, activity days, football club | Both ends of field and main gate | Land in constant use by local residents and primary school |
| SMITH, S | 1994 – present | Monthly | Walking to shops, taking granddaughter to swings, meeting people on the green | Crossing over Church Road near 'Cloth Edge' | The path on the inside of the hedge is the only safe way for people to walk to get to school. |
| STAFFORD, B | 1993 – present | Monthly on average | Walking | Any of the three entrances | Parish Council has installed goal posts, mowed field and pruned trees |
| STONEMAN, C | 1983 – present | Daily | Dog walking, attending fetes | Gates | |
| STROUD, L | 1959 – present | occasionally | Church/village fete, walking around the field | either through parking gate or through little gate at end | Was on church fete committee. Stopped using recently (2011) as cannot walk across rough grass |

| | | | | | |
|---------------|----------------|------------------------|--|--|--|
| STUBBS, P & R | 1986 – present | Occasionally | Village fete, millennium celebrations, car parking for church events, start of 10k race | 'Lime House', playground, gate off church Road | |
| TAYLOR, S | 1998 – 2008 | Daily | Dog walking, attending fetes and village events, football, holiday activities | Open entrances on three sides | |
| TURNER, H | 1989 – present | Weekly | Village events, watching football, walking, photography, running/fitness | Using entrances (x2) on Church Road or entrance next to playground | Glebe field has been a recognized part of village life for many years. It is used regularly and frequently by villagers and visitors |
| VELLINO, GI | 1979 – present | Variable | Picnics, football, sports days, kite flying, fetes, bonfires, access to amenities | Through one of the two, latterly three, openings | Did not use between 1996 and 1999. |
| VELLINO, Go | 1970 – present | Weekly | Playing with children, football, kite flying, access to village facilities, village fete | Through two gates and one opening in hedge | This is the only area in Goudhurst which is available for unrestricted use by residents and village activities |
| VELLINO, M | 1970 – present | Weekly | Walking, playing with children, cut through to amenities | Three openings around the field | Only green area central to the village for all age groups to use for informal activities and organized events |
| VINCENT, C | 1987 – present | Daily since 2006 | Attending annual fete, running a junior football club (matches and training) | | |
| WEEKS, G | 2001 – present | Weekly | Picnics, national celebrations, local fetes, play area for children | Through gates and access road | The Glebe Field is used for and by the village frequently throughout the year |
| WILLIS, C | 1993 – present | Occasionally | Village fete, drama club performance | Open gates | |
| WINDSOR, D | 2003 – present | Weekly | Playing football and frisbee with grandchildren, running, walking to/from village | Gates at north-east and south-west corners | The land also serves as an invaluable path to reach the Church/ village centre without having to walk along busy roads |
| WRIGHT, D | 1980 – present | About 4 times per year | Village fetes, parking for funerals, dog walking | Through gate and footpath entrance | |

GOUDHURST VILLAGE FETE

Saturday 23rd July
Opening at 2 pm

In aid of
GOUDHURST PARISH HALL
IMPROVEMENT FUND

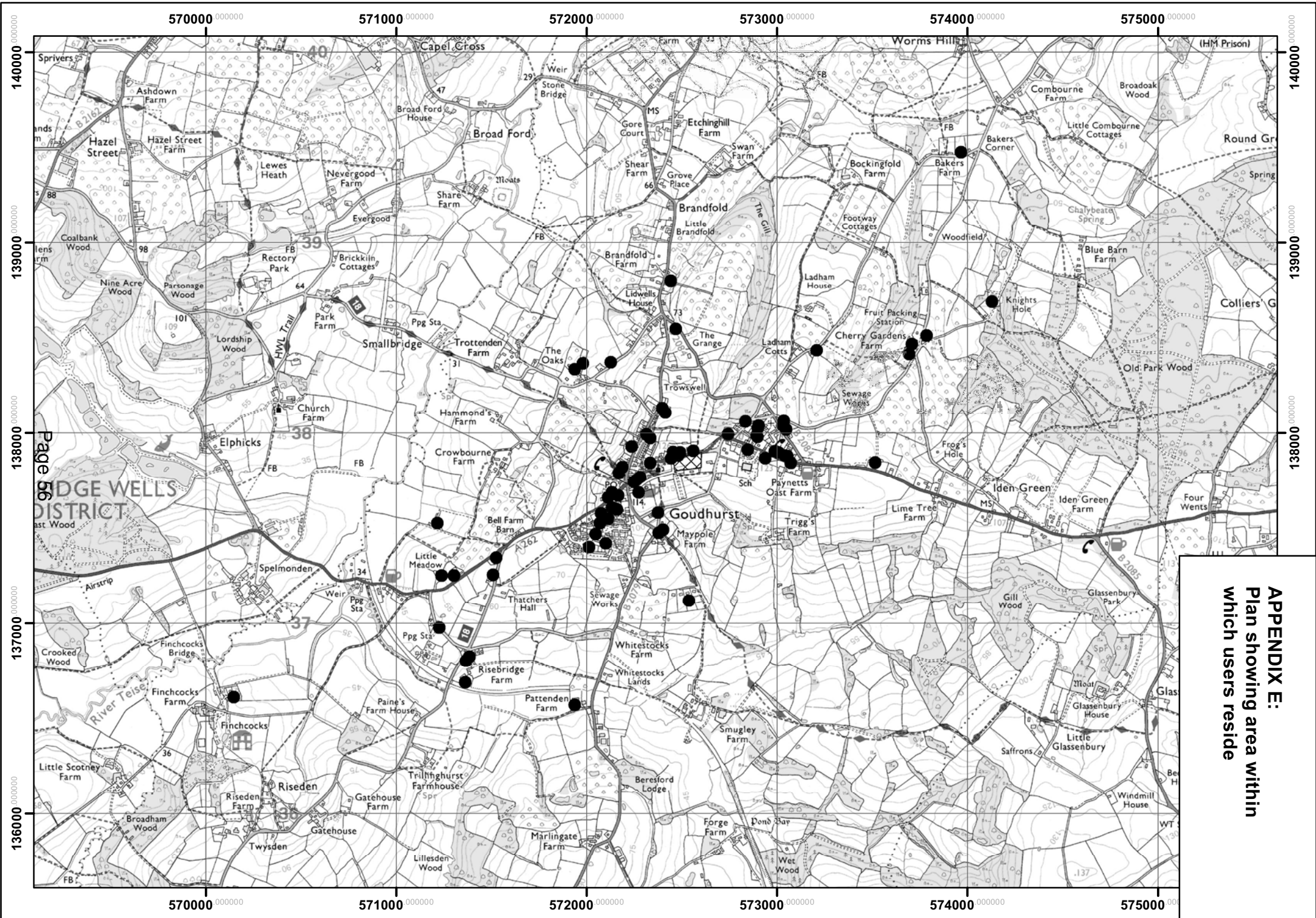


Celebrity Opening
by
GOUDHURST "ROYAL FAMILY"
(Arrival in a 1927 4½ Litre Bentley)
Come and see who??

On the School Field
(by kind permission of the Headteacher)

Entry by Programme
Adults 50p
14 - 18 30p
Under 14 Free

DON'T FORGET THE COWPAT COMPETITION
TICKETS £1 FROM THE GOUDHURST
NEWSAGENTS
£200 PRIZE



APPENDIX E:
Plan showing area within
which users reside

Application to register land at South View Road in Tunbridge Wells as a new Town or Village Green

A report by the Head of Regulatory Services to Kent County Council's Regulation Committee Member Panel on Tuesday 24th September 2013.

Recommendation: I recommend that the applicant be informed that the application to register land at South View Road in Tunbridge Wells as a new Town or Village Green has been accepted, and that the land subject to the application (as shown at Appendix A) be registered as a Village Green.

Local Member: Mr. P. Oakford

Unrestricted item

Introduction

1. The County Council has received an application to register land at South View Road at Tunbridge Wells as a new Town or Village Green from local resident Mrs. M. Heasman ("the applicant"). The application, made on 26th November 2011 was allocated the application number VGA651. 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**¹, 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 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

¹ Note that after 1st October 2013, the period of grace will be reduced from two years to one year (due to the coming into effect of section 14 of the Growth and Infrastructure Act 2013). This will only apply to applications received after that date and does not affect any existing applications.

legal requirement, the County Council also places copies of the notice on site to provide local people with the opportunity to comment on the application. The publicity must state a period of at least six weeks during which objections and representations can be made.

The application site

6. The area of land subject to this application (“the application site”) consists of an area of grassed open space of approximately 1.67 acres (0.67 hectares) in size situated at the junction of South View Road and Colebrook Road in the High Brooms area of the town of Tunbridge Wells. The application site is shown in more detail on the plan at **Appendix A**.
7. Access to the application site is via the unfenced boundaries of the land with South View Road, Colebrook Road and Holmewood Road, or via alleys leading from/to Montgomery Road and Tedder Road. There are no recorded Public Rights of Way on or abutting the application site, although there are two surfaced paths crossing the site.

Preliminary issues

8. It should be noted that the application originally included what is currently a tarmac parking area on the north-eastern part of the application site (accessed via Montgomery Road).
9. At the consultation stage, Mr Colin Lissenden of the Town and Country Housing Group (“TCHG”) raised objection to the inclusion of this piece of land within the application site. Although the land was registered with the Land Registry as being within the ownership of Tunbridge Wells Borough Council, this was due to an administrative error and the land was in fact in the ownership of TCHG.
10. The objection was made on the basis that, until approximately five years ago, the land in question had consisted of a garage block that had been demolished due to anti-social behaviour issues. For this reason, Mr. Lissenden contended that that part of the application site was not capable of being registered as a Village Green.
11. Having considered this issue, the applicant confirmed that she wished to exclude this part of the application site from her application. The extent of the application site to be considered by the Panel is therefore as shown at **Appendix A**.

The case

12. 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.
13. Included in support of the application were 54 user evidence questionnaires and nine statements in support of the application. A summary of the user evidence submitted in support of the application is attached at **Appendix C**.

14. The application also included a statement of support for the application confirming that the land has been used by local residents for at least 65 years for a range of recreational activities, including ball games, playing with children, socialising and blackberrying.

Consultations

15. Consultations have been carried out as required.

16. Local resident Mr. D. Marsh wrote in support of the application. He said that, along with his family, he had used the land on a daily basis as a recreational facility and for dog walking. The nature of the housing and small size of gardens in the locality meant that this was a valuable piece of open space, where local events had been held which adds to the sense of community in High Brooms.

17. Tunbridge Wells Borough Council, in its capacity as the local planning authority, responded to the effect that from the information available it was not possible for it to confirm that the application site had been used 'as of right' by a significant number of local residents for the purposes of lawful sports and pastimes.

Landowner

18. The application site is owned by the Tunbridge Wells Borough Council ("the landowner") and is registered with the Land Registry under title number K943777. The landowner has been contacted, and has also been provided with a copy of the application, but, having considered the information, has decided not to make any representations in respect of the application.

19. Members should be aware that the absence of any objection to the application does not automatically guarantee its success. In determining whether or not the land is capable of registration as a Village Green, the County Council must be still satisfied that each and every one of the legal tests have been met. If one of the legal tests is not met, then the application as whole must fail.

Legal tests

20. In dealing with an application to register a new Town or Village Green the County Council must consider the following criteria:

- (a) *Whether use of the land has been 'as of right'?*
- (b) *Whether use of the land has been for the purposes of lawful sports and pastimes?*
- (c) *Whether use has been by a significant number of inhabitants of a particular locality, or a neighbourhood within a locality?*
- (d) *Whether use of the land 'as of right' by the inhabitants has continued up until the date of application or meets one of the criteria set out in sections 15(3) or (4)?*
- (e) *Whether use has taken place over period of twenty years or more?*

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

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

21. 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.
22. 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 protest²: "*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*"³.
23. 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 land⁴. 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 him⁵.
24. In this case, there is no evidence of any attempt by the landowner (or by anyone else) to prevent or impede access to the application site. None of the witnesses refer to any barriers to use or any prohibitive notices on the application site. Indeed, it is clear from visiting the application site that access to it is free and unrestricted, both from the adjacent roads and from the alleyways that provide access to it from the neighbouring residential areas and there is no physical evidence on the ground to suggest that the application site has ever been fenced.
25. Although reference is made in the application to local events being held on the application site (notably fetes and jubilee celebrations), and there is no indication as to which, if any, of these events was held with the permission of the landowner, attendance at these formal events is not relied upon by the applicant as qualifying use in support of the application. Nor is there any evidence that the use of the application site for these events had the effect of precluding co-existing informal recreational use taking part on any part of the application site (e.g. by fencing off a particular area and making a specific charge for entry to that area).
26. In the absence of any evidence to the contrary, it can be concluded that use of the application site for recreational purposes has taken place 'as of right'.

² *Dalton v Angus* (1881) 6 App Cas 740 (HL)

³ *R (Lewis) v Redcar and Cleveland Borough Council* [2010] UKSC 11 at paragraph 92 per Lord Rodger

⁴ *Smith v Brudenell-Bruce* [2002] P&CR 51

⁵ *Taylor v Betterment Properties Ltd and Dorset County Council* [2012] EWCA Civ 250

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

27. Lawful sports and pastimes can be commonplace activities including dog walking, children playing, picnicking and kite-flying. 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'*⁶.
28. The summary of evidence of use by local residents at **Appendix C** shows the activities claimed to have taken place on the application site. These include dog walking, children playing, ball and frisbee games, picnics and fruit picking.
29. Although there are no recorded public rights of way over the application site, there is evidence that some local residents used the application site as a short cut to reach various local facilities such as the school, shops, allotments etc. Use of a particular piece of land merely as a thoroughfare is a 'public right of way type use (because it is by nature linear use of a defined route as opposed to wandering at will over a wider area) and such use will not be qualifying use for the purposes of Village Green registration.
30. The issue was considered by the Courts in *Laing Homes*⁷, 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'*. Accordingly, where reference is made to use of the application site as a shortcut, such use must be disregarded in considering the user evidence as a whole.
31. Notwithstanding the references to 'footpath-type use', the evidence submitted in support of the application contains a wide range of sports and pastimes that would count as qualifying activities 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?

32. The right to use a Town or Village Green is restricted to the inhabitants of a locality, or of a neighbourhood within a locality, and it is therefore important to be able to define this area with a degree of accuracy so that the group of people to whom the recreational rights are attached can be identified.
33. The definition of 'locality' for the purposes of a Town or Village Green application has been the subject of much debate in the Courts. In the *Cheltenham Builders*⁸ case, it was considered that *'...at the very least, Parliament required the users of the land to be the inhabitants of somewhere that could sensibly be described as a*

⁶ *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

⁷ *R (Laing Homes) v Buckinghamshire County Council* [2003] 3 EGLR 70 at 79 per Sullivan J.

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

locality... there has to be, in my judgement, a sufficiently cohesive entity which is capable of definition'. The judge later went on to suggest that this might mean that locality should normally constitute 'some legally recognised administrative division of the county'.

34. In cases where the locality is so large that it would be impossible to meet the 'significant number' test (see below), it will also be necessary to identify a neighbourhood within the locality. The concept of a 'neighbourhood' is more flexible than that of a locality, and need not be a legally recognised administrative unit. 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'*⁹.
35. In this case, the applicant has specified the relevant locality (at part 6 of the application form) as being 'High Brooms and part of the Borough of Tunbridge Wells to the west and south of The Green'.
36. The description provided by the applicant, of itself, does not constitute a single legally recognised administrative area¹⁰. The reason for this is that the application site is situated on the boundary of the town of Tunbridge Wells and the neighbouring parish of Southborough¹¹, and users of the site are fairly evenly split between the two localities.
37. However, the majority of the users state that they are residents of High Brooms. Although 'High Brooms' is normally included within the parish of Southborough¹², the evidence here suggests that the community of High Brooms extends beyond the formal parish boundaries, with a number of residents living in Cambrian Road, Cunningham Road and Woodland Close (all officially within the town of Tunbridge Wells) identify themselves as being residents of the community of 'High Brooms'.
38. The community of High Brooms can be considered a cohesive entity with its own community facilities (including a railway station, post office and a primary school) and would clearly fall within the definition of a neighbourhood (which need not be a legally recognised administrative unit).
39. Having identified the relevant neighbourhood, it is then necessary to identify the locality or localities within which it is located. As can be seen from the plan at **Appendix D**, the community of High Brooms straddles the boundaries of the parish of Southborough and the town of Tunbridge Wells (both of which are legally recognised administrative units).

⁹ *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at page 92

¹⁰ If the case is to rely on a locality, rather than a neighbourhood within a locality, then the application will only succeed where the recreational users are residents of a single locality (per Lord Hoffman in *Oxfordshire* and affirmed in the *Paddico* case). However, if the case relies upon a neighbourhood within a locality, that neighbourhood may sit within one or more localities (per Lord Hoffman in *Oxfordshire* and affirmed by Arden LJ in the *Leeds* Case).

¹¹ The boundary runs along South View Road and continues to the rear of properties in Holmewood Road.

¹² For example, the local Borough Council Ward is called 'Southborough and High Brooms'

40. Therefore, the relevant 'neighbourhood within a locality' in this case is the neighbourhood of High Brooms within the localities of the parish of Southborough and the town of Tunbridge Wells.

"a significant number"

41. The word "significant" in this context does not mean considerable or substantial: *'a neighbourhood may have a very limited population and a significant number of the inhabitants of such a neighbourhood might not be so great as to properly be described as a considerable or a substantial number... what matters is that the number of people using the land in question has to be sufficient to indicate that the land is in general use by the community for informal recreation rather than occasional use by individuals as trespassers'*¹³. Thus, it is not a case of simply proving that 51% of the local population has used the application site; what constitutes a 'significant number' will depend upon the local environment and will vary in each case depending upon the location of the application site.

42. In this case, the application is supported by evidence forms and statements from over 60 local residents. Almost all of these witnesses recall having observed use of the application site by others for a range of activities on a daily basis.

43. It is therefore fair to conclude that use of the application site has not taken place merely by a few individuals as trespassers but, rather, by a significant number of local residents, and in manner such that the landowner would have been aware of the recreational use and had the opportunity to challenge such use.

(d) Whether use of the land 'as of right' by the inhabitants has continued up until the date of application or, if not, ceased no more than two years prior to the making of the application?

44. The Commons Act 2006 requires use of the land to have taken place 'as of right' up until the date of application or, if such use has ceased prior to the making of the application, section 15(3) of the 2006 Act provides that an application must be made within two years from the date upon which use 'as of right' ceased.

45. In this case, the application is made under section 15(2) of the 2006 Act and there is no evidence that actual use of the application site for recreational purposes ceased prior to the making of the application. As such, this test is met.

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

46. In order to qualify for registration, it must be shown that the land in question has been used for a full period of twenty years. In this case, use 'as of right' did not cease prior to the making of the application in 2011. The relevant twenty-year period ("the material period") is calculated retrospectively from this date and is therefore 1991 to 2011.

¹³ *R (Alfred McAlpine Homes Ltd.) v Staffordshire County Council* [2002] EWHC 76 at paragraph 71

47. The user evidence submitted in support of the application (and summarised at Appendix C) demonstrates that use of the application site has taken place well in excess of the required twenty-year period. Accordingly, this test is also met.

Conclusion

48. As is noted above, regardless of the absence of any objection to this application, Members must be satisfied that each of the legal tests is met if the land is to be capable of registration as a Village Green.

49. In this case, the evidence suggests that the application site has been used for informal recreation without any challenge or restriction by a significant number of the residents of High Brooms. No evidence has been provided to indicate anything to the contrary and there is no physical evidence on the ground of any (recent) attempt to interfere with the recreational use.

50. Therefore, from close consideration of the evidence submitted, it would appear that the legal tests concerning the registration of the land as a Village Green (as set out above) have been met.

Recommendation

51. I recommend that the applicant be informed that the application to register land at South View Road in Tunbridge Wells as a new Town or Village Green has been accepted, and that the land subject to the application (as shown at **Appendix A**) be registered as a Village Green.

Accountable Officer:

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

Case Officer:

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

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

Background documents

APPENDIX A – Plan showing application site

APPENDIX B – Copy of application form

APPENDIX C – Table summarising user evidence

APPENDIX D – Plan showing area within which users reside

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**APPENDIX A:
Plan showing application site**

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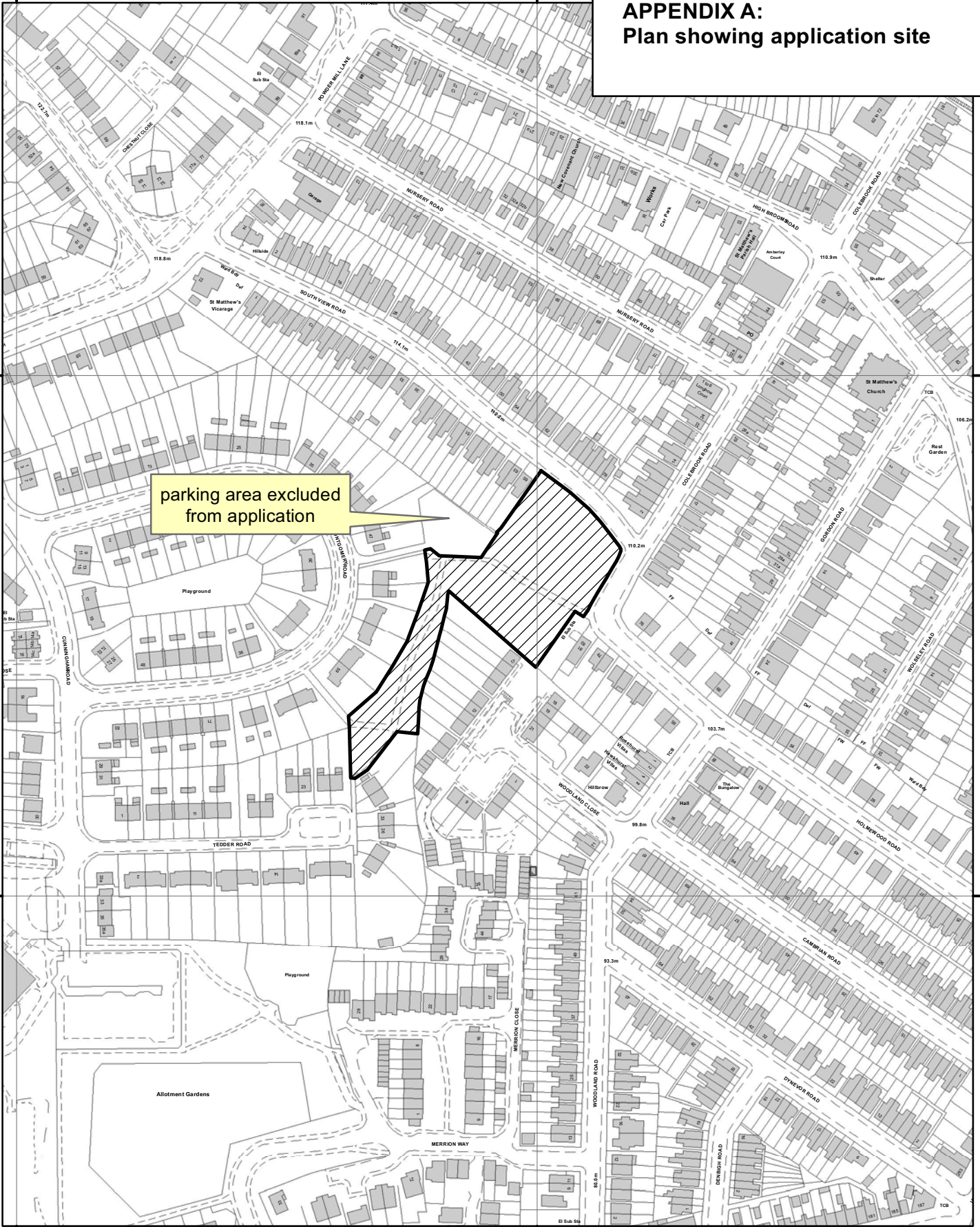
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parking area excluded
from application



Scale 1:2500

**Land subject to Village Green application
at South View Road in Tunbridge Wells**

Page 65



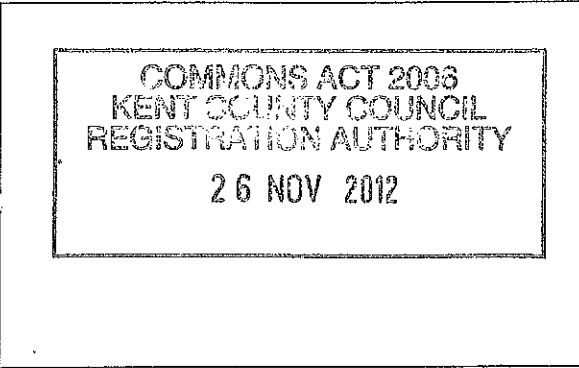
Commons Act 2006: section 15

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:

VQA651

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

[Empty box for VG number]

Note to applicants

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

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

Note 1
Insert name of Commons
Registration Authority

1. Commons Registration Authority

To the: KENT COUNTY COUNCIL

Note 2

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

2. Name and address of the applicant

Name: MARGARET HEASMAN

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

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

Fax number:
(incl. national dialling code)

E-mail address: [REDACTED]

Note 3

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

3. Name and address of representative, if any

Name:

Firm:

Full postal address:
(incl. Postcode)

Telephone number:
(incl. national dialling code)

Fax number:
(incl. national dialling code)

E-mail address:

Note 4

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

4. Basis of application for registration and qualifying criteria

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

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

Section 15(2) applies:

Section 15(3) applies:

Section 15(4) applies:

Note 7

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

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

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

The Green has been used;

As of right - it is completely open and anyone may enter it freely

For at least 20 years - it has been used for at least 65 years

For lawful sports and pastimes by a significant number of the local inhabitants - as evidenced by the enclosed questionnaires and statements

and the use continues to now.

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

TUNBRIDGE WELLS BOROUGH COUNCIL
TOWN HALL
CIVIC WAY
TUNBRIDGE WELLS
KENT
TN1 1RS

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

Map to the scale of 1:2500 showing the land by green colouring

Map to the scale of 1:10000 showing the locality by red edging

54 questionnaires

9 statements

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

Tunbridge Wells Borough Council made an application for planning permission to build houses on part of The Green (Application no. 12/02692) in October, 2012. The application has now been withdrawn.

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: 20.11.2012

REMINDER TO APPLICANT

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

Please send your completed application form to:

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

Data Protection Act 1998

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

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

Statement to accompany an application for the registration of The Green at High Brooms as a village green

The open space at Southview Road and Colebrook Road, High Brooms (commonly known as The Green) has been used as prescribed by section 15 of the Commons Act 2006, as evidenced by the enclosed questionnaires and statements, as follows:

As of right

The Green is open on its boundaries with Colebrook Road and Southview Road and is approached by tarmac footpaths from Holmewood Road, Montgomery Road and Tedder Road and therefore anyone may freely enter it. No-one who has completed a questionnaire or statement has ever been stopped from using The Green and the only requests for permission were from St Matthew's Church to use The Green for annual community fun days which they held from 2007 to 2010 and from the organisers of a Jubilee fete which was held on 12 June 2012.

For at least 20 years

The enclosed questionnaires and statements are made by people who have lived in the High Brooms area for varying amounts of time, the longest time being 65 years. They show that The Green has been used and cherished by local people continuously for at least 65 years.

By a substantial number of the local inhabitants

The writers of the enclosed 54 questionnaires and 9 statements show that The Green has been used by them and their families and also by other local people whom they have seen using the land.

For lawful sports and pastimes

The enclosed questionnaires and statements show that The Green has been used:

Daily for exercising dogs (the Council provide dog waste bags and a bin to put them in and the bin is emptied every day, including Sundays).

When the weather permits, and according to the time of year and the current craze, for:

Playing football, cricket, tennis and rounders

Parents and grandparents playing with their children and grandchildren

Chatting to friends and taking exercise

Flying kites and playing with radio-controlled planes and cars

Skate-boarding, roller-skating, riding scooters, skipping, playing ball and for young children learning to ride bikes

Sunbathing and having picnics

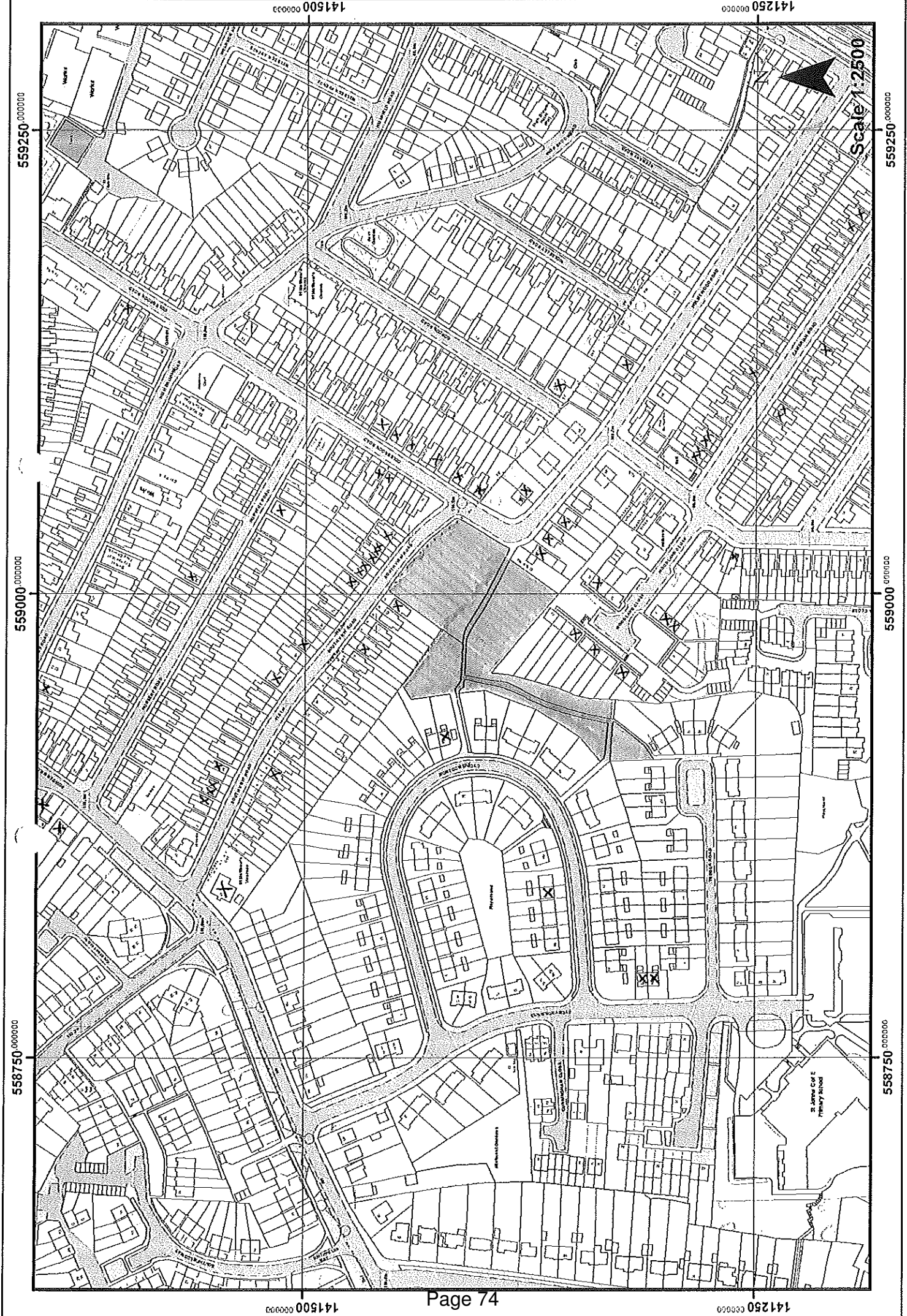
Tobogganing, making snowmen and having snowball fights

Stargazing and bug spotting

Picking blackberries, cobnuts and foliage

Weekly football club for children run by St Matthew's Church from 2007 to 2010

Fetes and jubilee celebrations and recently for Morris dancing



Scale 1:2500

St. John's C of E
Primary School

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141500 000000

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559250 000000

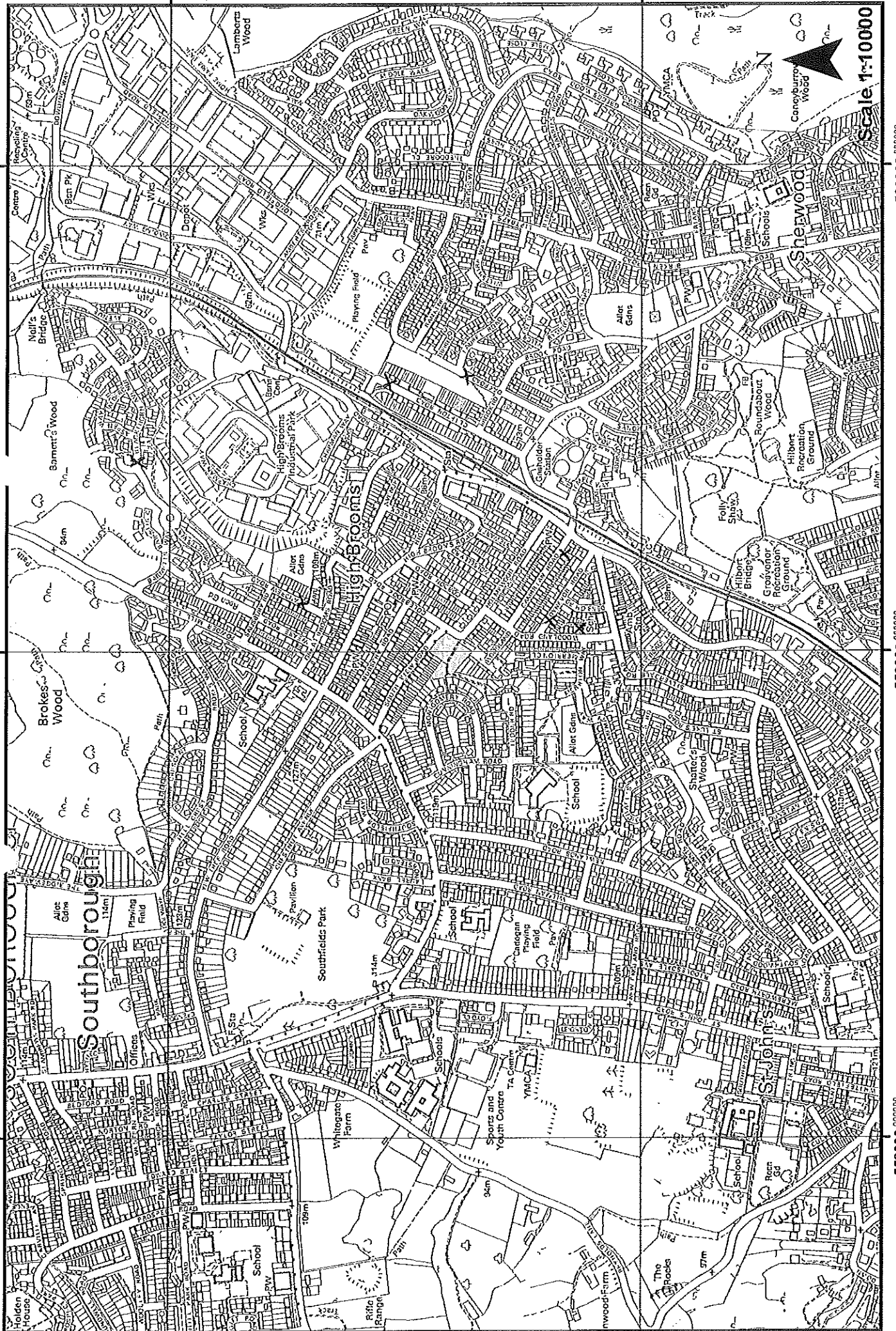
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559000 000000

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Scale 1:10000

**APPENDIX C:
Summary of user evidence**

| Name | Period of use | Frequency of use | Type of use | Comments |
|---------------------|----------------------|-------------------------|--|---|
| BEST, J | 1960 – present | Daily, now weekly | Playing with children, dog walking, children played football. | Did not use between 1990 and 1995. Used daily when children were younger, now use weekly. Observed use by others on a daily basis. Site has also been used for a range of community events. |
| BLAKE, J | 1987 – present | Weekly | Dog walking, playing games with children | Observed daily use by others. |
| BRADFORD, A+K | 2007 – present | Occasionally | Walking to sports centre or shops, jubilee fete, cycling to work | Observed daily use by others. |
| BOYD, K | 2006 – present | Daily | Walking, sunbathing, children's games, picking blackberries | Observed daily use by others. |
| BURCHETT, M | 1982 – present | Daily | Playing with children | The land is a meeting place for friends and an integral part of bringing the High Brooms community together. |
| CAIRNEY, P | 1988 – present | Weekly | Sports as a child, walk through, general relaxation | The land has been used for many sporting activities and is a safe place for youngsters |
| CAIRNEY, R | 1988 – present | Monthly | Used as shortcut, played sports with children | The pathway across the land has been used as a shortcut for at least 24 years. |
| CLEGG, J | 1987 – present | Weekly | Walking, both land itself and as access | Observed daily use by others. |
| COOPER, J | 1948 – present | Not stated | Bonfires, sports, litter picking, football, play space, fetes | Frequently observe use by others. Used many times as a child. |
| CROFT, P | 1992 – present | Daily | Children playing | Observed daily use by others |
| CROSS, A | 1989 – present | Weekly | Attending fetes, dog walking | Used the land daily when younger. Observed use by other son a daily basis. |
| CROSS, S | 1989 – present | Twice daily | Dog walking, ball games, Frisbee and other games, fete | Observed use by others on a daily basis |
| DUBOIS-WHITTAKER, N | 2004 – present | Weekly | Walking | Observed use by others on a daily basis |

| | | | | |
|----------------|----------------|-------------------------|---|---|
| EALLETT, L | 1989 – present | Daily | Walking to school, dog walking, playing ball games with children, fetes | Local resident since 2003 only. Land is a valuable amenity used by many local people on a daily basis. |
| EVANS/HILL | 2009 – present | Monthly | Waling for exercise, attending local events, reading, socialising | Observed use by others on a daily basis |
| FOX, M | 1948 – present | Monthly | Dog walking, bonfire celebrations (1949-55), boys played football, jubilee celebrations. | Observed use by others on a daily basis |
| GIFFORD family | 2005 – present | Daily | Dog walking, taking children to school, attending fairs and children playing | |
| HARRIS, T | 1950 – present | Occasionally | Ball games, running, learning to ride a bike, dog walking, snow play, sunbathing | Used daily as a child, less often as an adult. Family has lived locally for several generations and the land has always been a green space enjoyed by thousands of local residents. |
| HAZELDINE, H | 2008 – present | Weekly | Fetes, jubilee celebration, family rounders | Observed use by others on a daily basis. |
| HAZELDINE, S | 2008 – present | Weekly | Fetes, dog walking, family activities, cricket and rounder's | Observed use by others on a daily basis. |
| HEAD, L | 1989 – present | Daily | Dog walking, ball games, relaxation | Observed use by others on a daily basis. |
| HEASMAN, M | 1986 – present | Daily, now occasionally | Dog exercising several times per day, walking, playing with children, picking cobnuts and holly | Used daily between 1987 and 2002. |
| INGLIS, J | 1973 – present | Weekly | Walking through, attending fetes, playing with grandchildren. | Observed use by others on a daily basis. |
| JOHNSON, L+S | 2004 – present | Daily | Walking, picking blackberry picking, church fun days, football, fetes, playing games | Live adjacent to the site and it is used every day by a large number of people for a variety of activities. |
| KELLY, A | 2006 – present | Monthly | Walking, playing with children, traffic-free walk to allotment and playground, collecting sticks and elderberries | Observed use by others on a daily basis. The land adds huge value to High Brooms. |

| | | | | |
|--------------|-----------------|-----------------------------|---|--|
| KNELLER, D | 2008 – present | Weekly | Dog walking, taking children to school, attending fetes, playing rounders, practiced morris dancing | Observed daily use by others. Local people have been using the green for a long time; it is a place where people meet and important to local pensioners who walk their dogs there. |
| KNELLER, J | 1978 – present | Daily | Local events, dog training/ exercise, playing football with children, snow play. | Observed use by others on a daily basis. |
| KNIGHT, S | 2004 – present | Daily | Playing football with children, walking to school, attending fete, meeting with neighbours | Do not use during school holidays. Land is the only large green space in the local vicinity and used by so many residents. |
| LAW, N | 1977 – present | Monthly (more when younger) | Playing as a child, dog walking | Observed use by others on a daily basis. |
| LEROY, D | 1993 – present | Daily | Dog walking | This is historically a public facility and considered to be 'common land' |
| LINDUP, J | 1961 – present | Daily | Organising jubilee celebrations, family play area, dog walking | The application site is the only one for public use in the area |
| LOCK, G | 1996 – present | Weekly during summer | Football, cricket, kite flying, street party | |
| MARSH, D | 1980s – present | Daily | Dog walking, child bike riding, ball games, kite flying, community events | Did not live in locality 1990s to 2005. Observed daily use by others. |
| MARSHALL, C | 2007 – present | Daily | Children played ball, walking with or without dog | The land is there for the benefit of the local people who place great value on this space |
| MESSENGER, C | 1992 – present | Weekly | Fetes | Observed use by others on a daily basis. |
| MITCHELL, J | 1974 – present | Daily, now monthly | Dog walking, playing with children, collecting Christmas foliage, sunbathing | Used daily until 1995. Observed use by others on a daily basis. |
| MORLEY, L | 1999 – present | Daily | Playing for children, walking | |
| NIMMO, S | 2004 – present | Daily | Dog walking, community events, playing with children, football, Frisbee | This land is a very special place in the heart of the community and is well used by many local residents |
| OUTRAM, J | 2002 – present | Most weeks | Playing with children, ball games, kite flying, family events organised by local church | Used daily for access to school/work, but most weeks for informal recreation |

| | | | | |
|----------------|----------------|----------------------|---|---|
| POWELL, D+B | 2008 – present | Daily | Dog walking, playing football with grandchildren, socialising with families | |
| ROBERTS, S | 1951 – present | Weekly | Playing as a child, playing with own children and grandchildren, jubilee celebrations. | |
| ROSS, T | 1986 – present | Daily | Dog walking, socialising, sunbathing, attending events | Observed use by others on a daily basis. |
| SOLANKY, A+B | 2005 – present | Daily | Playing with children | Local church used for fairs and football. |
| STEVENS, L | 2004 - present | Daily | Picnics, fetes, walking, football, riding bikes, skateboarding, meeting friends, blackberrying, sunbathing, playing with children | Land is used daily by many people for a variety of reasons and serves the local community. |
| THORNTON, D | 1988 – present | Weekly | Dog walking | Observed use by others on a daily basis. |
| WAKELY family | 2002 – present | At least twice daily | Dog walking, playing with children, football, blackberry picking, walking to/from school, community events | Observed use by others on a daily basis. Land is always used by the community for stopping to socialise together. |
| WHITE, N | 2003 – present | Weekly | Dog walking, football, bug hunting, star gazing, relaxation, picnics, playing with children | Observed use by others on a daily basis. |
| WHITLOCK, E | 1969 – present | Daily | Fetes, dog walking, play with children | |
| WICKS, C | 1982 – present | Weekly | Personal exercise, taking children to play games, church football club | Land used for community fun days with Council permission (2007-10). Observed use by others on a daily basis. |
| WILES, F | 1952 – present | Daily/weekly | Fete, walking across it | |
| WOOD, C | 1989 – present | Weekly | Dog walking, playing with children, fair, local childrens games | Observe use by others on every visit. |
| WOOD, D | 1989 – present | Weekly | Community fair, litter pick, walking, playing with children | Permission sought for community fete in 2012. |
| WORTHINGTON, S | 1987 – present | Daily/weekly | Dog walking, playing rounders, playing with children, snow play, shortcut to visit friends, local events, morris dancing | Observed use by others on a daily basis. Land is in constant use and of great value to local people |
| ZEALEY, B | 1988 – present | Occasionally | Football, rounder's, cricket and street parties | Observed use by others on a daily basis |

Summary of statements submitted in support of the application:

BOUGHTON, I+R – Lived in the area for 61 years and own children played there. The land is occasionally used by the church and dogs are walked there.

BURNS, B+M – The green has served High Brooms very well for many years. It has allowed children space to run and play away from traffic and has accommodated many local functions, fetes and church celebrations. Many people walk their dogs and the pathway across the green is used daily by children attending local schools.

BARBER-MALTBY, J – Lived in the area for 30 years. For the last 10 years, have used the land on a daily basis for dog walking and the land is a good place to meet and chat with other dog walkers. Many community events are held on the land, young people play football during the summer and it is a safe place for children to play. Never sought permission to use the land.

CHATFIELD, J – Family used the green regularly to walk dog and have also attended fundraising functions. The land is a great place to meet with friends and to play snow games.

COOPER, D – The land is a safe haven for children to play on, a meeting place, somewhere to walk a dog and a place to share community events.

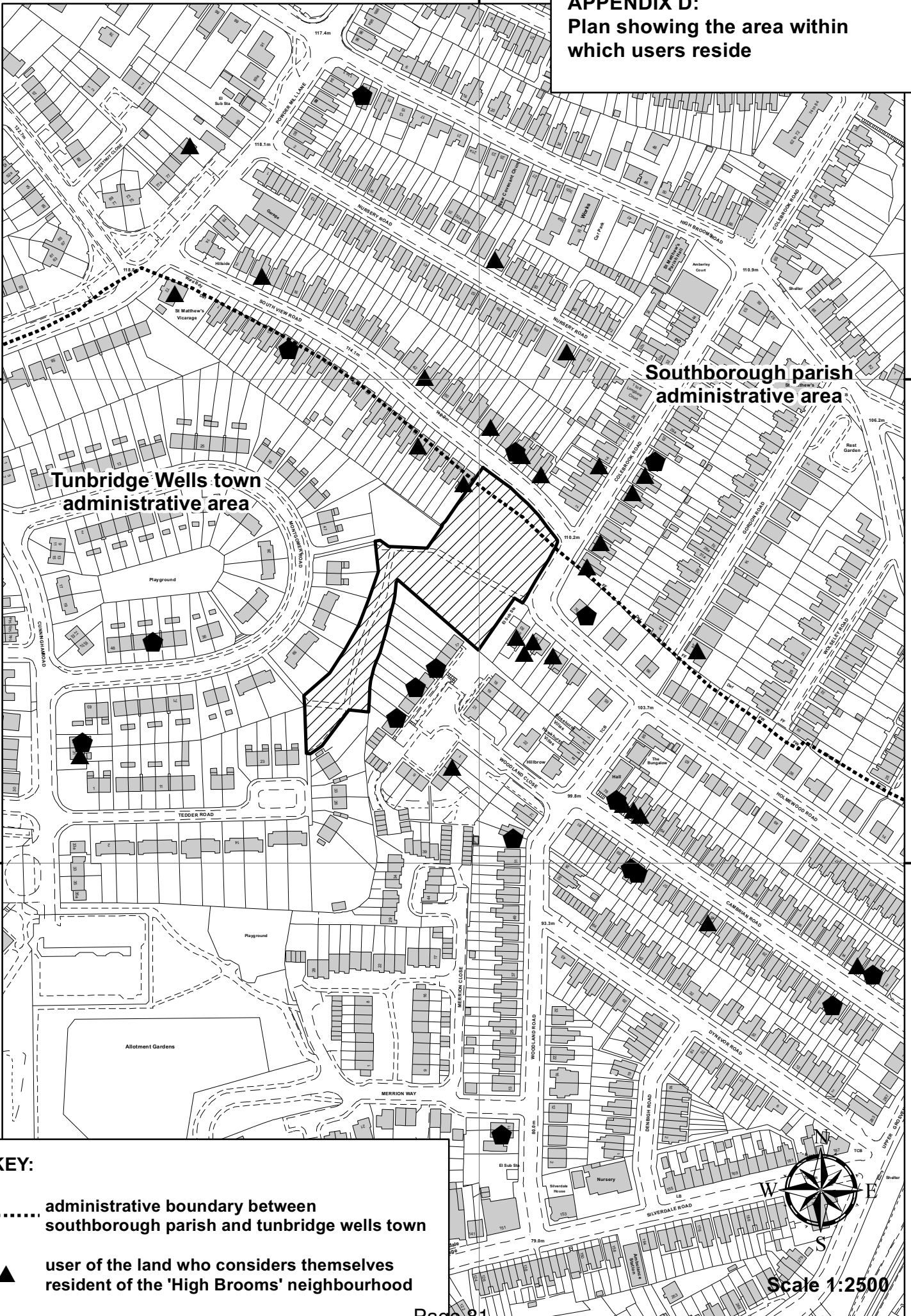
ELLEN, A – The green is a valued area for the community with many annual events, it is a perfect meeting place for people walking their dogs and children feel safe playing there.

HEAD, P+T – Lived locally for 20 years and own children have played on the land, with rounders being one of the games played. Annual events are also held there, use the land for dog walking, as well as meeting and socialising with neighbours.

MATHEWICK, P – Lived in South View Road for more than 50 years and use the green for walking. The land is a valuable asset to the local community and has been used for local events, children paying games and football coaching.

OSBORNE, S – The land has always been known and used as a Village Green. In recent years, functions have been held there and several generations of children still play there. Use the land for dog walking and to meet and chat with other people out for a stroll with their pets.

**APPENDIX D:
Plan showing the area within
which users reside**



**Tunbridge Wells town
administrative area**

**Southborough parish
administrative area**

KEY:

- administrative boundary between southborough parish and tunbridge wells town
- ▲ user of the land who considers themselves resident of the 'High Brooms' neighbourhood
- ⬠ other user



Scale 1:2500

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Application to register land at Showfields in Tunbridge Wells as a new Town or Village Green

A report by the Head of Regulatory Services to Kent County Council's Regulation Committee Member Panel on Tuesday 24th September 2013.

Recommendation: I recommend that the applicant be informed that the application to register land at Showfields in Tunbridge Wells as a new Town or Village Green has been accepted, and that the land subject to the application (as shown at Appendix D) be registered as a Village Green.

Local Member: Mr. J. Scholes

Unrestricted item

Introduction

1. The County Council has received an application to register land at Showfields in Tunbridge Wells as a new Town or Village Green from local resident Mr. R. Fitzpatrick ("the applicant"). The application, made on 29th June 2012 was allocated the application number VGA649. A plan of the site (as originally applied for) 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**¹, 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 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

¹ Note that after 1st October 2013, the period of grace will be reduced from two years to one year (due to the coming into effect of section 14 of the Growth and Infrastructure Act 2013). This will only apply to applications received after that date and does not affect any existing applications.

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 consists of an area of open space of approximately 1.1 acres (0.45 hectares) in size that is bounded by the rear of properties in Cherry Tree Road, Rowan Tree Road and Showfields Road in the Showfields area of the town of Tunbridge Wells. In the main, the application site has a grass surface but it also includes a paved area in the north-eastern corner adjacent to the library and part of a car park situated on its eastern boundary. The area of land subject to the application (as originally made and subject to the amendments described below) is shown in more detail on the plan at **Appendix A**.
7. Access to the application site is via a car park situated adjacent to the Community Centre on Showfields Road, or by a number of surfaced paths leading onto the application site. There are no recorded Public Rights of Way on or abutting the application site.

The case

8. The application has been made on the grounds that the application site has become a Town or Village Green by virtue of the actual use of the land by the local inhabitants for a range of recreational activities 'as of right' for over 20 years.
9. Included in support of the application were 38 user evidence forms, a letter in support of the application, various maps showing the application site and the relevant locality, a statement of residents' utilisation history, as well as photographs showing the application site. A summary of the user evidence submitted in support of the application is attached at **Appendix C**.
10. The applicant's case is that the application site has been used as a recreational area and community hub since its construction by Tunbridge Wells Borough Council, as part of the Showfields Estate, in 1968. The land has provided a venue for many community events since its construction, including the annual Showfields Fun Day, and is the subject of year-round use by walkers (with or without dogs), exercisers, children playing games and other sports activities.

Consultations

11. Consultations have been carried out as required.
12. Borough Councillor Mr. C. Woodward responded on behalf of himself, Borough Councillor Mrs. B. Cobbold and County Member Mr. J. Scholes, to advise that they were generally happy to support the application but that they had concerns that parts of the application site were required for the redevelopment of community facilities and Village Green status might prevent such redevelopment from taking place.

13. Tunbridge Wells Borough Council's Planning Department, in its capacity as the local planning authority, stated that it had no objection to the application on the basis that Village Green status would not conflict with the designation of the site in the Tunbridge Wells Local Plan 2006 as a 'neighbourhood centre' and 'important local space'. The response is accompanied by an Officer report setting out in more detail the reasoning behind these comments.
14. Mr. Colin Lissenden, on behalf of the Town and Country Housing Group ("TCHG"), objected to the application on the basis that part of the application site was in the ownership of TCHG and is located behind fences enclosing private gardens. He added that the application included a car park area used by residents and noted that, if successful, the application would not only severely affect any future regeneration plans that may come forward but also detract any future investment to improve the land to serve the best interests of the community.

Amendment to the application

15. Having considered the consultation responses, the applicant sought to amend his application to exclude various small parcels of land forming part of the application site.
16. In response to the objection by TCHG, the applicant confirmed that it was not his intention for the application to encroach upon neighbouring properties that did not form part of the application site and explained that this land had been included by surveying error. Accordingly, the applicant wished to amend his application by excluding a slither of land abutting Lavender Court on the southern boundary of the application site.
17. In response to the comments made by Borough Councillor Woodward, the applicant advised that he did not wish to jeopardise any future enhancements to the community centre and, as such, it was his intention to amend his application by withdrawing from it an area of land abutting the community centre (which includes part of the car park).
18. The applicant also withdrew a small area of land on the northern boundary of the application site, adjacent to the doctor's surgery, which had also been included by surveying error.
19. Strictly speaking, there is no statutory right for an applicant to amend his/her application once it has been made. However, DEFRA's guidance is that the registration authority should be guided by the principle of fairness; if the amendment is so significant that a new notice ought to be published, then it may be appropriate to refuse the amendment on the grounds of possible prejudice to other parties.
20. In this case, the amendments to the application site sought by the applicant are de minimus and it is not considered that any prejudice would be caused to any of the parties were they to be allowed.
21. The amended application ("the application site"), and the area to be considered by the Panel, is therefore as shown at **Appendix D**.

Landowner

22. The remainder of the application site is owned by the Tunbridge Wells Borough Council (“the landowner”) and is registered with the Land Registry under title number K278538.
23. The landowner has objected to the application on the following grounds:
- That registration of a car park, footpaths, circulation areas and walkways of a building complex is manifestly outside the scope and intention of the Commons Act 2006;
 - That 62% of users have not used the application site for the full twenty-year period;
 - That several users refer to the use of the site to access community facilities, which consists of a ‘right of way type use’;
 - That the use of the land for organised events is by virtue of permission granted by the landowner; and
 - That only 12 of the 2200 local residents have used the land for the full qualifying period, which does not constitute a ‘significant number’.

Legal tests

24. 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, if not, ceased no more than two years prior to the making of 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'?

25. The definition of the phrase ‘as of right’ has been considered by the House of Lords. Following the judgement in the Sunningwell² 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.
26. In this case, there is no evidence that any use of the application site has taken place in secrecy or in exercise of any force. It is clear from a visit to the site that access to it is free and unhindered; indeed, it would be very difficult in practice to secure the application site due to the various entrances on to it.
27. The landowner contends that it has granted permission for specific community events to take place on the land, and has produced a copy of an agreement with

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

the Number One Community Trust for the hire of the land for a fun day in 2009. The landowner's case is therefore that use of the application site for organised events, such as fun days and fetes, has been by virtue of an implied permission from the landowner.

28. Where formal events are held with the landowner's permission people entering the land to attend those events are, in effect, 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, attendance at fun days and fetes will not be qualifying use for the purposes of Village Green registration (because it will not be 'as of right') and such use should be disregarded when evaluating the user evidence.
29. It should be noted, for completeness, that there is no evidence that the fun days or fetes involved fencing off the land, otherwise restricting access or payment of a fee for entry. As such, the recent decision in the Mann³ case does not apply here.
30. There is no evidence that the landowner has granted any permission to any individual for the purpose of engaging in informal recreational use of the application site. As such, any use that was not related to attending the fun days or fetes will have taken place 'as of right'.

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

31. Lawful sports and pastimes can be commonplace activities including dog walking, children playing, picnicking and kite-flying. Legal principle does not require that rights of this nature be limited to certain ancient pastimes (such as maypole dancing) or for organised sports or communal activities to have taken place. The Courts have held that '*dog walking and playing with children [are], in modern life, the kind of informal recreation which may be the main function of a village green*'⁴.
32. The landowner refers to 'rights of way' type use not being qualifying use of the purposes of Village Green registration. It is quite correct that any use of a linear defined route (i.e. walking from A to B across the land) must, as a general principle, be disregarded for the purposes of a Village Green application. This was confirmed in the case of Laing Homes⁵ in which it was noted 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.

³ *R (Mann) v Somerset County Council* [2012] EWHC B14 (Admin)

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

⁵ *R (Laing Homes) v Buckinghamshire County Council* [2003] 3 EGLR 70 at 79 per Sullivan J

33. The summary of evidence of use by local residents at **Appendix C** shows the activities claimed to have taken place on the application site. It shows that, of the 38 user evidence forms submitted in support of the application, one person admitted to using the application site very infrequently over the last 40 years, three people are not resident in the qualifying locality, and a further 10 people have used the application site but not for qualifying activities (i.e. their use consisted only of attending fetes or a rights of way type use).
34. In this case, therefore, there is qualifying evidence of use from 24 local residents. That use consists, as one might expect given the location, predominantly of walking (with or without dogs) and playing with children. Accordingly, it can be said that the application site has been used 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?

35. 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.
36. 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 Builders⁶ 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*'.
37. In cases where the locality is so large that it would be impossible to meet the 'significant number' test (see below), it will also necessary to identify a neighbourhood within the locality. The concept of a 'neighbourhood' is more flexible than that of a locality, and need not be a legally recognised administrative unit. 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*'⁷.
38. In this case, the applicant has specified the relevant locality (at part 6 of the application form) as being 'Showfields Estate, Tunbridge Wells and Ramslye Estate, Tunbridge Wells'. A plan showing the area within which users reside, and the neighbourhood as defined by the applicant, is attached at **Appendix E**.

⁶ *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at 90

⁷ *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at page 92

39. Showfields and Ramslye are both residential housing estates constructed by Tunbridge Wells Borough Council, the former in 1968 and the latter in the post-war era. Each has its own unifying features (e.g. housing age and style) and facilities that serve the local community; for example, in Ramslye there is a primary school and a post office, and in Showfields there is a library, a doctor's surgery and a community centre. In some cases, these facilities are shared between the two communities. As such, it is considered that both Showfields and Ramslye comprise distinct and identifiable communities within the town of Tunbridge Wells, both of which would be capable of being qualifying 'neighbourhoods' for the purposes of Village Green registration⁸.
40. However, having considered the evidence in more detail, it is evident that a number of the witnesses do not live within the applicant's specified locality. It has therefore been necessary to consider whether there is an alternative qualifying locality⁹.
41. The Regulations¹⁰ provide that an application must be made in reliance of any parish, electoral ward or other local administrative area. In this case, there is no parish but the majority of the users reside within the Broadwater ward of Tunbridge Wells Borough Council (as shown at **Appendix F**). An electoral ward is a legally recognised administrative unit and DEFRA's advice is that an electoral ward will be a qualifying locality for the purposes of a Village Green application¹¹.
42. Therefore, the relevant locality in this case is the Tunbridge Wells Borough Council electoral ward of Broadwater.

"a significant number"

43. 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'*¹². Thus, it is not a case of simply proving that 51% of the local population has used the application site; 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.

⁸ In *Leeds Group plc v Leeds City Council* [2010] EWCA Civ 1438, the Court of Appeal confirmed that more than one neighbourhood within a specified locality could be relied upon in support of a Village Green application.

⁹ In *R (Laing Homes) v Buckinghamshire County Council* [2003] 3 EGLR 70, Sullivan J held that the application form does not require an applicant to commit to a particular locality was *'not to be treated as though it is a pleading in private litigation'*. He added: *'the Registration Authority should, subject to considerations of fairness... be able to determine the extent of the locality within which inhabitants are entitled to exercise the right on the light of all the available evidence'*.

¹⁰ See paragraph 9(c)(i) of Schedule 4 of the Commons Registration (England) Regulations 2008

¹¹ See paragraph 8.10.28 of the DEFRA guidance entitled: Part 1 of the Commons Act 2006 - Guidance to commons registration authorities and the Planning Inspectorate for the pioneer implementation

¹² *R (Alfred McAlpine Homes Ltd.) v Staffordshire County Council* [2002] EWHC 76 at paragraph 71

44. In this case, one of the objections raised by the landowner is that only 12 of the 2200 local residents have used for the full qualifying period, which does not constitute a 'significant number'. However, as is noted above, the test is qualitative, rather than quantitative; what matters is whether use of the application site has been sufficient to indicate that it has been general use by the community.
45. The applicant has provided a helpful summary of the use of the land made by local residents in support of his application. He states that local inhabitants using the green, while seasonably variable, are more or less continually visible. He adds that dog walkers use the land approximately half a dozen times per day, the play area is used daily and year-round, by the local children's groups and boys playing football, riding bikes and occasionally skateboards can be seen on the green on a daily basis outside of school hours.
46. Even taking into account the fact that some of the use is transitory in nature (e.g. jogging and walking to shops) and therefore not qualifying use for the purposes of Village Green registration, it is clear that the application site has been in general recreational use by the community. This is supported by the Borough Council's Planning Department's comments that "*it is clear that the land does get used by the local community for a variety of reasons and this is reflected to some extent by the designation of the site within the Tunbridge Wells Borough Local Plan 2006 as a neighbourhood centre and in its designation as an important open space*".
47. Despite the landowner's assertions to the contrary, it would appear that the application site has been used by a significant number of the residents of the qualifying neighbourhoods within a locality.

(d) Whether use of the land 'as of right' by the inhabitants has continued up until the date of application or, if not, ceased no more than two years prior to the making of the application?

48. The Commons Act 2006 requires use of the land to have taken place 'as of right' up until the date of application or, if such use has ceased prior to the making of the application, section 15(3) of the 2006 Act provides that an application must be made within two years from the date upon which use 'as of right' ceased.
49. In this case, the application is made under section 15(2) of the 2006 Act and there is no evidence that actual use of the application site for recreational purposes ceased prior to the making of the application. As such, this test is met.

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

50. In order to qualify for registration, it must be shown that the land in question has been used for a full period of twenty years. In this case, use 'as of right' did not cease prior to the making of the application in 2012. The relevant twenty-year period ("the material period") is calculated retrospectively from this date and is therefore 1992 to 2012.
51. One of the Borough Council's objections is that 62% of users have not used the application site for the full twenty-year period. However, it is a well-established principle of this area of the law that not every user need have used the application

site throughout the full twenty-year period¹³; provided that the user evidence as a whole demonstrates that the application site has been in general use by the community, this will be sufficient to meet the test.

52. In this case, there is evidence of use throughout the period 1992 to 2012, albeit that not all of the users have used the application site throughout the relevant twenty-year period.

Conclusion

53. The landowner asserts that the registration of parts of the application site (namely the car park, footpaths, circulation areas and walkways of a building complex) is 'manifestly outside the scope and intention of the Commons Act 2006'. However, whilst the Commons Act 2006 sets out the legal tests that must be met for land to be registered as a Village Green, it does not prescribe any conditions in terms of the nature or appearance of the land. Indeed, some of the most famous Village Green court cases relate to land which are entirely inconsistent with the traditional image of a Village Green¹⁴. The appearance and physical features of the land are therefore largely irrelevant.

54. Some of the other issues raised by the landowner are also not relevant considerations. In particular, the criticisms relating to the length of use by some residents and the question of whether the land has been used by a 'significant number' of the local residents. Ultimately, the fact that the majority of the land is shown in the Borough Council's Local Plan as being an 'important open space' confirms that the landowner is well aware of its amenity value and the recreational use made of it by local residents.

55. The landowner has raised legitimate concerns regarding 'rights of way' type use. However, as set out above, the evidence provided in support of the application does not rely solely on use of this kind and there is evidence of alternative activities that would constitute 'qualifying use' for the purposes of Village Green registration.

56. Considering the evidence as a whole, the overall image presented of the application site is one of a community focal point that has been used by the residents of the Showfields and Ramslye Estates for a range of recreational activities on a regular basis for well in excess of twenty years. The County Council can only consider the evidence placed before it by the parties, and the landowner has not been able to provide sufficient grounds for rejection of the application, or indeed any significant conflicts of fact that might require further examination of the evidence.

57. Accordingly, for the reasons set out in this report and from close consideration of the evidence submitted, it would therefore appear that the legal tests concerning the registration of the land as a Village Green (as set out above) have been met.

¹³ *Davis v Whitby* [1974] 1 All ER 806 (CA)

¹⁴ For example, in *Oxfordshire County Council v Oxford City Council* [2006] UKHL 25 (also known as the 'Trap Grounds' case), one third of the land consisted of reed beds that were permanently underwater and inaccessible to ordinary walkers whilst the remaining two-thirds was largely impenetrable by virtue of thick scrub and builders' rubble. It was estimated that only approximately 25% of the surface area of the land was reasonably accessible to the hardy walker.

Recommendation

58. I recommend that the applicant be informed that the application to register land at Showfields in Tunbridge Wells as a new Town or Village Green has been accepted, and that the land subject to the application (as shown at **Appendix D**) be registered as a Village Green.

Accountable Officer:

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

Case Officer:

Ms. 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 land subject to application (as originally made)

APPENDIX B – Copy of application form

APPENDIX C – Table summarising user evidence

APPENDIX D – Plan showing amended application site (i.e. land to be registered)

APPENDIX E – Plan showing area within which users reside and neighbourhoods as defined by the applicant

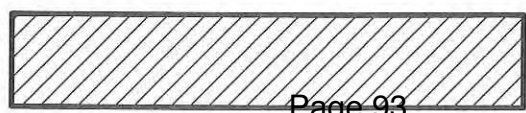
APPENDIX F – Plan showing area within which users reside and qualifying locality of Broadwater ward

APPENDIX A:
Plan showing application site (as originally applied for)



Scale 1:1250

Land subject to Village Green application
 at Showfields in Tunbridge Wells



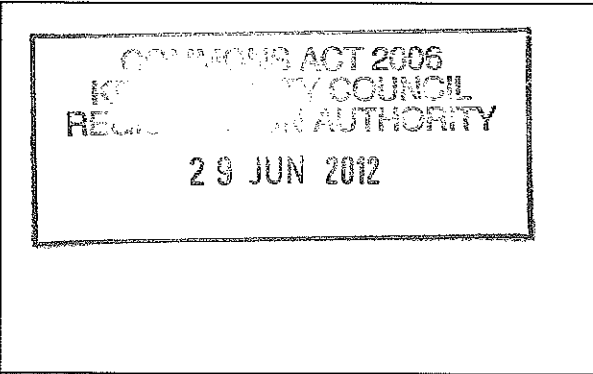
Commons Act 2006: section 15

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:

VG1649

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

[Empty box for VG number]

Note to applicants

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

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

Note 1
Insert name of Commons
Registration Authority

1. Commons Registration Authority

To the:

KENT COUNTY COUNCIL

| | |
|---|---|
| <p>Note 2 <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>2. Name and address of the applicant</p> <p>Name: [REDACTED]</p> <p>Full postal address: (incl. Postcode) [REDACTED]</p> <p>Telephone number: (incl. national dialling code) [REDACTED]</p> <p>Fax number: (incl. national dialling code) [REDACTED]</p> <p>E-mail address: [REDACTED]</p> |
| <p>Note 3 <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>3. Name and address of representative, if any</p> <p>Name: (none)</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>Note 4 <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>4. Basis of application for registration and qualifying criteria</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> |

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

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

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

Note 5
This part is to identify the new green. The accompanying map must be at a scale of at least 1:2,500 and shows the land by means of distinctive colouring within an accurately identified boundary. State the Land Registry title number where known.

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

Name by which usually known:
 SHOWFIELDS GREEN

Location: FRONTING NO.1 COMMUNITY CENTRE
 SHOWFIELDS ROAD
 TUNBRIDGE WELLS

Common Land register unit number (only if the land is already registered Common Land):
 (not registered as Common Land. see Doc.3)

Please tick the box to confirm that you have attached a map of the land (at a scale of at least 1:2,500): Map (8)

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:

SHOWFIELDS ESTATE, TUNBRIDGE WELLS
 AND RAMSLYE ESTATE, TUNBRIDGE WELLS

Please tick here if a map is attached (at a scale of 1:10,000): Map (11)

Note 7

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

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

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

THE PIAZZA AND GREEN FRONTING THE COMMUNITY CENTRE, COMMUNITY HALL, LIBRARY AND SURGERY IN THE CENTRE OF SHOWFIELDS ESTATE HAS BEEN USED AS A COMMON, A RECREATION AREA, AS A WALK-TO-SCHOOL ROUTE, AS A BETWEEN-HOUSES TRANSIT AREA, DOG WALKING, EXERCISE AND PERAMBULATION AREA, AS A CHILDREN'S PLAY AREA, AND AS THE PLACE IN THE VILLAGE WHERE FETES, FAIRS AND BRING-AND-BUY SALES HAVE BEEN HELD SINCE THE PROPERTIES THERE WERE CONSTRUCTED IT IS BELIEVED IN 1968, A PART OF WHICH CONSTRUCTION WAS THE LAYING OUT OF THE GREEN AND PIAZZA FOR THOSE PURPOSES.

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

TUNBRIDGE WELLS BOROUGH COUNCIL
TOWN HALL
ROYAL TUNBRIDGE WELLS
KENT
TN1 1RS

(see Doc.4)

| | |
|---|---|
| <p>Note 9 <i>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.</i></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>Note 10 <i>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.</i></p> | <p>10. Supporting documentation</p> <p style="text-align: center;">SEE ATTACHED LIST (Doc.2)</p> |
| <p>Note 11 <i>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.</i></p> | <p>11. Any other information relating to the application</p> <p style="text-align: center;">(none known)</p> |

Note 12

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

12. Signature

Signature(s) of applicant(s):



Date:

15th January 2012

REMINDER TO APPLICANT

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

Please send your completed application form to:

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

Data Protection Act 1998

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

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

SUPPORTING DOCUMENTS

- Doc (1) - Covering letter including photo 18. (R FitzPatrick) 15 January 2012.
- Doc (2) - [Part 10] Supporting Documents list (this list).
- Doc (3) - KCC letter. (Not Registered Common Land) 21 Sep 2011.
- Doc (4) - TWBC letter. (Tunbridge Wells Borough Council owns the land) 05 Nov 2011.
[with Map 6 attached]
- Doc (5) - TWBC letter. (not land acquired under the Open Spaces Act 1906
or under the Public Health Act 1875) 14 Nov 2011.
- Map (6) - 1 : 3,000 TWBC map (attachment to Doc (4) showing the Showfields Amenity
Area land owned by Tunbridge Wells Borough Council).
- Map (7) - [Part 5] 1 : 1,000 O/S map marked showing the land for which application is
made outlined in pink.
- Map (8) - [Part 5] 1 : 2500 KCC map marked showing the land for which application is
made outlined in pink.
- Map (9) - [Part 5] 1 : 625 O/S map showing in more detail the same land outlined in pink.
- Map (10) - 1 : 15,000 O/S map showing the overall location of the Green in Tunbridge Wells.
- Map (11) - [Part 6] 1 : 10,000 O/S map showing the locality to which the Green relates:
Showfields estate coloured pink;
Ramslye estate coloured green.
- Doc (12) - Residents' Utilisation History: plus 38 resident attestations of use of the land for
qualifying purposes over the past twenty years (total 40).
- Doc (13) - Supporting Letter. (H Miller) 20-9-2011.
- Map (14) - 1 : 750 KCC www.kent.gov.uk website O/S map annotated to show the locations
from which the Doc(15)(16)(17)photographs were taken.
- Doc (15) - Showfields Green location photographs 1 – 5.
- Doc (16) - Showfields Green location photographs 6 – 12.
- Doc (17) - Showfields Green location photographs 13 – 17.

SHOWFIELDS GREEN – RESIDENTS' UTILISATION HISTORY

[The Showfields Green catchment area might be represented as comprising 489 residential units (marked in pink on Map (11)). At 2.5 persons assumed occupancy the catchment population would be in the order of 1,200 persons. The adjacent Ramsley estate (green on Map (11)) additionally comprises an assumed 411 residential units, adding 1,025 persons, for a total catchment population of 2,225 persons (all ages).]

- Local inhabitants' using the Green, while seasonably variable, are more or less continuously visible during daylight hours. It takes about a minute to cross the Green on foot. At any time of year such a transit is seldom completed without seeing another walker (say fifty percent of the time) :- taking an average day of eight hours 9am to 5pm at an average of 30 users per hour = in the order of at least 250 walkers per day have used the Green since its creation in the 1960s. [The proportion who are recreational walkers rather than pedestrians, or who have chosen to walk the Green route rather than an adjacent street because of the Green's more pleasant ambience are presumed subject to agreed analysis. When the option is appropriate the applicant and those in his circle choose to walk that way, and have done so in the 25 to 50 years of living in the locality, because it is pleasant. They would not preferentially do so if the route were urban and paved.]
- The Green is too small to have become a practical jogging venue since that activity rose to popularity in the past 20 years, but joggers can be seen occasionally transiting its nicely manicured grass.
- Dog walkers and dog-ball-throwers use the Green intermittently. Maybe half a dozen a day. And have done so of course since it became available in the 1960s. There are three litter bins on the Green, one of them just outside the boundary applied, for regularly emptied by it is believed the land owner Tunbridge Wells Borough Council.
- The childrens groups in the play area, about a dozen junior members strong plus three or four supervisors, spend at least an hour a day there, year round, happily and noisily playing on the swings and frames, and have done so for at least the ten years that the nursery function has been active in the adjacent Community Centre. The play area's equipment is installed and maintained it is believed by the land owner Tunbridge Wells Borough Council.
- Boys playing football (despite the unfriendly sign reading no ball games), riding bikes and occasionally skate boards on the unrewardingly flat paved area, can be seen on the Green, briefly, more or less daily, out of school hours, doing what boys do, kicking a ball around, and have done so since the local housing was populated in the 1960s. The grass is year-round regularly cut to a much appreciated recreation ground standard by it is believed the land owner Tunbridge Wells Borough Council as a part of their Parks & Recreational maintenance activities.
- Mothers with children and toddlers, who pass without stopping through the Green during the damp cold winter months, stop and sit on the grass and play games and answer impromptu nature trail enquiries during the more welcoming summer days.
- The amateur bring-and-buy and garden produce fairs that have been held on the Green by the local inhabitants, at convenient intervals of say a few months since the 1970s rather than according to a formal schedule, attract maybe up to a dozen local stall/table displays each time, with maybe twice that number of sellers. The adjacency of the Community Centre helps with convenient facilities, refreshments and shelter. Visitors attending to browse or buy may average twenty in number at any one time – so that over the course of a day, each visitor spending between a half an hour and an hour there, possibly the total attendance at each such event, weather permitting, would be 250.
- The larger but less predictably scheduled summer festival occasions held on the Green such as RASYAG or a themed carnival such as 'Caribbean', publicised maybe once or twice a year, are usually the outcome of joint local, council and associated-charity organisational work. With bouncy-castle style attractions, loud music, and activities such as face-painting they draw larger numbers of people and have done so since the Green became available as a venue for such events in the 1960s.
- As in 1977 for the Queen's Silver Jubilee, it is expected that a larger more organised outdoor event will be held on Showfields Green for the Queen's Diamond Jubilee celebrations in 2012.
- No one to the knowledge of the applicant has ever been excluded from recreational use of the subject land by any party claiming ownership rights over that land.

APPENDIX C: Table summarising evidence of use

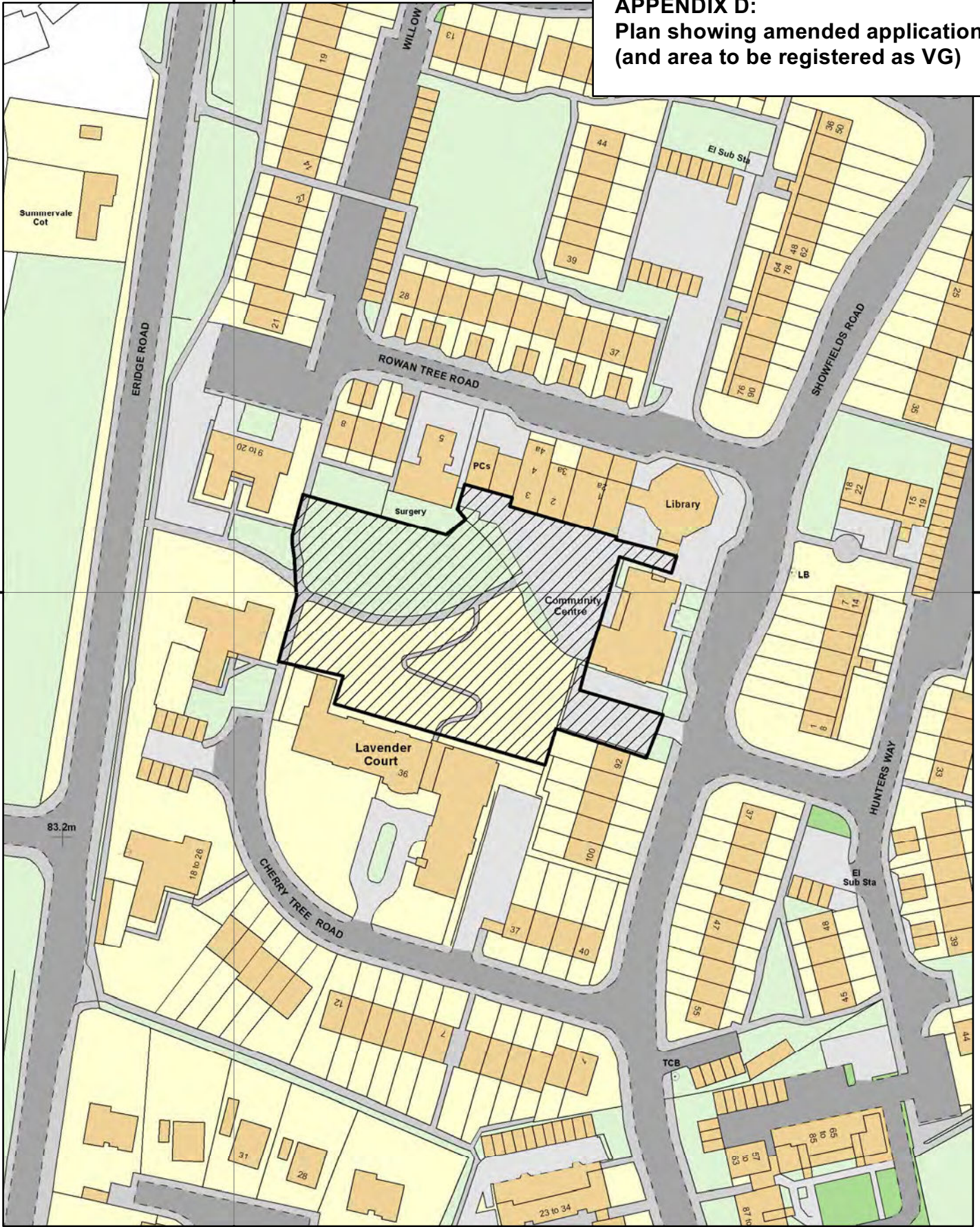
| Name | Period of use | Type of use |
|---------------|----------------------|--|
| BAIN, L | 2007 – present | Fun days, dog walking, playing with children |
| BARNES, L | 1991 – present | Fetes and fun days |
| BARROW | 1996 – present | Fun days and activities |
| BROWN, W* | 1992 – present | Fun days, access to cafe |
| CHAMPNEYS, A* | 2002 – present | Recreational area |
| CHURCHMAN, S | 1991 – present | Community fun days, RASYAG |
| COSTER, J* | 1991 – present | Attending community events and library |
| COURT, H | 1970 – present | Dog walking, exercise, fun days, fete |
| CUSDIN, R* | 1995 – present | Fetes, walking and recreation |
| CUSDIN, W | 1990 – present | Community events |
| DOBSON, A | 2011 – present | Walking |
| DRAPER, E | 1994 – present | Dog walking, children play football there |
| FARNES, C | c 2000 – present | Fun days, table sales, ball games, jubilee party |
| FORTNUM, B* | 2005 – present | Fun days |
| FRADD, J | 1996 – present | Fun days and fetes |
| GALLON, M | 1999 – present | Walking, exercise, dog walking, attending fete |
| HARFORD, G | 2002 – present | Recreation |
| HEYWOOD, J | 2002 – present | Recreation |
| HOLLINS, J | 2000 – present | Community events, summertime activities, picnics |
| JOHNSON, J | 1970 – present | Football |
| KERWIN, C | 2004 – present | Fun days, dog walking, playing with siblings |
| KERWIN, M | 2008 – present | Fetes, playing with children, walking dogs, walking with children |
| LEYBOURNE, J | c 2000 - present | Fun days, table sales, ball games, jubilee party |
| LONG, P | 1982 – present | Exercise |
| MARTIN, M | 2008 – present | Fun days, bring and buy sales |
| MATTHEWS, C | 1997 – present | Playing football, playing games, attending community fun days |
| MILLER, H & D | 1985 – present | Fun days, table sales, BBQs, playing with children |
| PILBEAM, P | 1995 – present | Cut through to Ramslye |
| POWELL, L | 2002 – present | Recreation |
| RAYNES, B | 2002 – present | Fetes, community events |
| RICKABY, S | 2008 – present | Fun days, bring and buy sales |
| SAUNDERS, F | 1975 – present | Exercising dog, walking, attending fun days |
| SILBERT, R | 1992 – present | Walking, exercise and dog walking |
| SKILTON, Y | 1991 – present | Fetes and fun days |
| SMITH, N | 2011 – present | Access to library and community centre, using children's play area |
| STAPPLE, A | 1986 – present | Playing with children |
| WALBER, E | 1970 – present | 'I have not used it much myself' |
| WORT, K | 1998 – present | Walking, using play area |

*Not resident in the neighbourhood

Shading indicates non-qualifying use

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**APPENDIX D:
Plan showing amended application
(and area to be registered as VG)**



**Land subject to Village Green application
at Showfields, Tunbridge Wells
(total area = 1 acre or 0.4 hectares)**



Scale 1:1250



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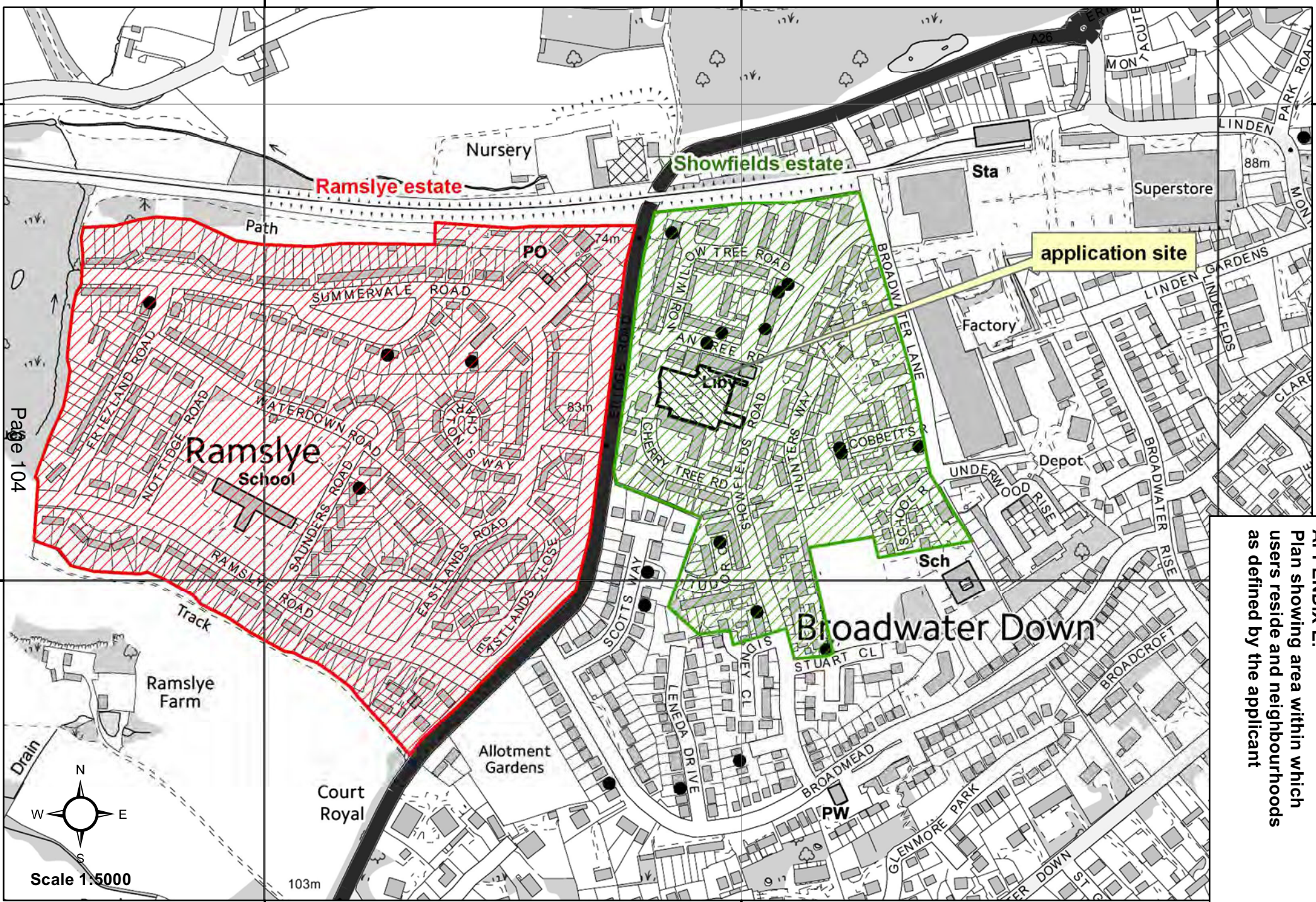
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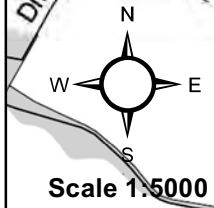
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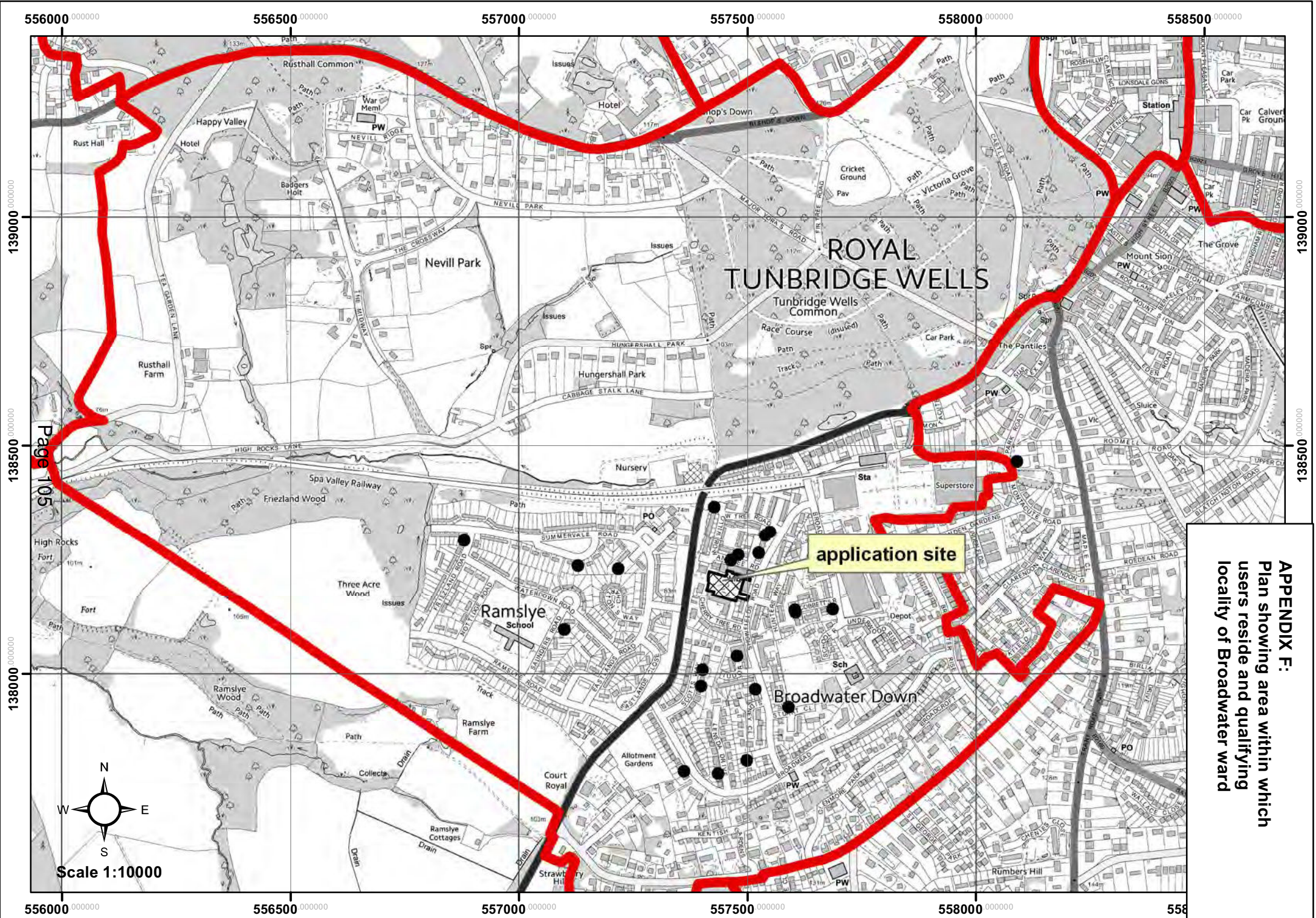
application site

APPENDIX E:
 Plan showing area within which
 users reside and neighbourhoods
 as defined by the applicant

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APPENDIX F:
 Plan showing area within which
 users reside and qualifying
 locality of Broadwater ward

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