



AGENDA

Kent County Council

REGULATION COMMITTEE MEMBER PANEL

Tuesday, 3rd December, 2013, at 2.30 pm
Lympne Village Hall, Aldington Road,
Lympne CT21 4LE

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 J Dagger and Mrs E D Rowbotham

UNRESTRICTED ITEMS

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

1. Membership and Substitutes
2. Declarations of Interest by Members for items on the agenda
3. Application to register land at Folkestone Racecourse in the parish of Stanford as a new Town or Village Green (Pages 3 - 26)
4. Other items which the Chairman decides are Urgent

EXEMPT ITEMS

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

Peter Sass
Head of Democratic Services
(01622) 694002

Monday, 25 November 2013

Application to register land at Folkestone Racecourse in the parish of Stanford as a new Village Green

A report by the Head of Regulatory Services to Kent County Council's Regulation Committee Member Panel on Tuesday 3rd December 2013.

Recommendation: I recommend that the applicant be informed that the application to register land at Folkestone Racecourse in the parish of Stanford as a Village Green has not been accepted.

Local Member: Ms. S. Carey

Unrestricted item

Introduction

1. The County Council has received an application to register land at Folkestone Racecourse in the parish of Stanford as a new Town or Village Green from Mr. D. Plumstead on behalf of the Shepway Environment and Community Network ("the applicant"). The application, made on 6th June 2012 was allocated the application number VGA647. 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

¹ Note that for applications made after 1st October 2013, the period of grace is reduced from two years to one year (due to the coming into effect of section 14 of the Growth and Infrastructure Act 2013). This only applies to applications received after that date.

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 a grassed area of land of approximately 8.7 acres (3.5 hectares) in size situated on the western side of Stone Street (south of the M20 motorway) and forming part of Folkestone Racecourse at Westenhangar in the parish of Stanford.
7. Access to the application site is via the main entrance to the racecourse on Stone Street. The site is bounded on its northern side by Public Footpath HE227 which also provides access onto it.
8. The application site is shown on the plan at **Appendix A**.

The case

9. The application has been made on the grounds that the application site has become a Town or Village Green by virtue of the actual use of the land by the local inhabitants for a range of recreational activities 'as of right' for more than 20 years.
10. The applicant's position is that residents have customarily accessed the grassed open area around the north-eastern part of the racecourse 'as of right' for leisure and recreation for over a hundred years (since the construction of the racecourse) and continue to do so.
11. Included in support of the application were a statement of support by the applicant, 30 user evidence questionnaires and various plans and photographs showing the application site.
12. A summary of the user evidence in support of the application is attached at **Appendix C**.

Consultations

13. Consultations have been carried out as required.
14. Stanford Parish Council wrote in support of the application and confirmed that the application site has been used for recreation by many residents 'as of right' for as long as anyone living the parish can recall and certainly well in excess of the required twenty year period.
15. Shepway District Council has objected to the application. The District Council's Head of Strategic Projects explained that horse racing had now ceased and the District Council would like to see the racecourse brought back into use in the future; registration of the access and car park will mean that the racecourse cannot re-open. The District Council further considers that the application is without merit and supports the landowner's opposition to it.

16. Whilst the District Council's concerns are noted, Members are reminded that issues relating to the future use of the application site (and any associated planning proposals) are irrelevant for the purposes of determining the Village Green application. The County Council is duty-bound to consider the application solely in the context of the legal tests set out in section 15 of the Commons Act 2006 and is not able to have regard to any ancillary matters, regardless of their potential merit.

Landowner

17. The application site is wholly owned by Folkestone Racecourse Ltd. ("the landowner") and is registered with HM Land Registry under title number K981992.

18. An objection to the application has been received from K&L Gates LLP, acting on behalf of the landowner. The objection has been made on the following grounds:

- ☐ Use of the application site has not been by a significant number of the residents of the locality;
- ☐ A number of the recreational activities referred to by the users have not taken place on the application site and, in some cases, such use would have been impossible due to the use of the land for car parking;
- ☐ Use consisting of attendance at formal events has taken place with the permission of the landowner;
- ☐ Use has been contentious by virtue of various challenges; and
- ☐ Use has taken place at evenings and weekends when the landowner would not have had the opportunity to challenge such use.

19. The landowner explains that the racecourse opened in 1898 but closed at the end of 2012 as it was much in need of modernisation and was no longer economically viable. The landowner would like to be able to re-open the racecourse, but only as part of a mixed-use development of the site. Village Green status would have a significant impact on this proposal (although this is not something which the County Council is able to take into consideration in determining the Village Green application).

20. In support of the objection, the landowner produces a statutory declaration from his surveyor, Mr. R. Longstaff-Tyrrell, who was responsible for the maintenance of the racecourse site and visited on a monthly basis between 1997 and 2005 (continuing on a less frequent basis thereafter until 2012). Mr. Longstaff-Tyrrell recalls challenging access to the racecourse made by adjoining residents via rear access gates from their properties in 2009, and recalls challenging a jogger on the grandstand steps in the mid-2000s. He adds that gates at the entrance of the racecourse (and onto the application site) were erected in 2006, with signs prohibiting dog walking in order to provide a deterrent to such use.

21. A further statement in support of the objection was also provided by the landowner purporting to be from a former employee. However, this statement is unsigned and is therefore of little evidential value.

Legal tests

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

- (a) *Whether use of the land has been 'as of right'?*
- (b) *Whether use of the land has been for the purposes of lawful sports and pastimes?*
- (c) *Whether use has been by a significant number of inhabitants of a particular locality, or a neighbourhood within a locality?*
- (d) *Whether use of the land 'as of right' by the inhabitants has continued up until the date of application or, 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'?*

23. The statutory scheme in relation to Village Green applications is based upon the English law of prescription, whereby certain rights can be acquired on the basis of a presumed dedication by the landowner. This presumption of dedication arises primarily as a result of acquiescence (i.e. inaction by the landowner) and, as such, long use by the public is merely evidence from which a dedication can be inferred.
24. In order to infer a dedication, use must have been 'as of right'. This means that use must have taken place without force, without secrecy and without permission (*'nec vi, nec clam, nec precario'*). In this context, force refers not only to physical force, but to any use which is contentious or exercised under 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.
25. The test for determining whether use has been contentious is to ask whether the owner of the land has taken reasonable steps to bring to the attention of the users his objection to the use of the 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.
26. In this case, the landowner's position is that the informal use of the application site has not taken place 'as of right'.
27. The landowner submits that use of the application site that consisted of attending formal (including non-racing) events would have been permissive; the applicant agrees, but notes that the application does not rely on such use. There is evidence of one user⁶ being granted permission for the purpose of 'walking the course' in 1989, but this would appear to be a reference to walking on the racecourse itself rather than the application site. Therefore, there is no evidence to suggest that the landowner granted permission to anyone to engage in informal recreational activities generally on the application site.

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

⁶ See evidence form of M De Wolf

28. The landowner also submits that informal recreational use of the application site took place secretly, on the basis that it largely took place at evenings and weekends when the landowner would not have been on site to challenge such use. However, there is nothing peculiar about the fact that informal recreational use of the application site took place mainly during evenings and at weekends; indeed, this is to be expected given that these are the times when employed persons are most likely to engage in recreational activities. It is also inconceivable that a venue such as Folkestone Racecourse would not have been in operation at any time during evenings or at weekends and that there would not have been any opportunity for members of staff to challenge informal recreational use. Furthermore, for use to be '*clandestine*' (in stealth) it must have taken place in a deliberately covert or furtive manner, which does not appear to have been the case in this instance. As such there appears to be little merit in the argument that use took place secretly.
29. The landowner acknowledges that, although gates were erected at the main racecourse entrance in 2006, it has never been possible to fully secure the application site (or restrict access to it in any way) due to the need to maintain constant access to Westenhanger Castle and residential properties on the racecourse site. Thus, there is no suggestion that use has taken place in exercise of physical force.
30. However, it is the landowner's case that, for many years, employees of the racecourse have made verbal challenges to recreational users. Indeed, the user evidence refers to at least two instances of verbal challenges; one to a jogger in 2009 who was advised that the landowner did not carry public liability insurance if he injured himself and another to a lady picking blackberries with her dog in 2008 who was told that no dogs were allowed on the racecourse. Additionally, in 2009 the landowner became aware of gates leading onto the racecourse from the rear gardens of adjoining properties and this resulted in letters being sent to the property owners challenging their access onto the racecourse.
31. The landowner also specifically challenged dog walking by way of the erection of notices on the application site. The landowner alleges that these notices were erected in 2006, but none of the users recall seeing any such notice until 2008. Either way, it is not entirely clear whether these notices served to challenge informal recreation as a whole, or merely prohibit the walking of dogs on the application site. The likely effect is that they rendered dog walking contentious from the date of their erection (because any use thereafter took place against the landowner's express wishes) but were not necessarily sufficient to challenge other informal recreational activities taking place on the application site.
32. In any event, the Parish Council's December 2009 newsletter (copy extract of which is provided at **Appendix D**) confirms that there was an unequivocal change in attitude on the part of the landowner towards informal recreational users during 2009. It notes that '*the racecourse has for many years been used by residents, to walk, jog or exercise their dogs but in recent months this informal use has been prevented*' and refers to a meeting at which the racecourse management '*agreed that the change had been badly handled and apologised for the offence caused but was unable to change the new policy which has arisen because of professional concerns to protect the safety of horses and jockeys, and the increasing fear of litigation from casual users who might have accidents whilst*

using the site... health and safety complicates all our lives and we have had to accept the new regime'.

33. On the basis of this extract from the local newsletter (a community publication prepared by the Parish Council) there can be no dispute that, by late 2009, the landowner had adopted a 'new policy' in relation to informal recreational use of the application site and had communicated his clear resistance to such use.
34. Therefore, it would appear from the evidence that use of the application site did take place 'as of right' up until approximately mid-2009, but undoubtedly became contentious (and therefore no longer 'as of right') after that time.

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

35. Lawful sports and pastimes can be commonplace activities including dog walking, children playing, picnicking and kite-flying. Legal principle does not require that rights of this nature be limited to certain ancient pastimes (such as maypole dancing) or for organised sports or communal activities to have taken place. The Courts have held that *'dog walking and playing with children [are], in modern life, the kind of informal recreation which may be the main function of a village green'*⁷.
36. 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 majority use of the application site has been for walking (with and without dogs), but there is also evidence of use for jogging, bird watching and ball games.
37. The landowner's position is that the application site forms only a small part of the racecourse and many of the witnesses appear unclear as to the boundary of the application site on the basis that there are various references within the evidence to activities which, for various reasons, could not possibly have taken place on the application site itself (although may well have taken place elsewhere on the racecourse).
38. The applicant contests this proposition and asserts that, whilst it is true that other parts of the racecourse have been used by the local residents for recreational purposes, the application site forms the focus of such use due its physical nature and ability to accommodate ball games and picnics.
39. Some of the evidence referred to relates to attendance at formal events, such as boot fairs. The applicant accepts that such use would not constitute qualifying informal recreational use for the purposes of the Village Green application.
40. Overall, there is evidence to indicate that the application site has been used by local residents for the purposes of lawful sports and pastimes.

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

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

41. 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.
42. The definition of locality for the purposes of a Town or Village Green application has been the subject of much debate in the Courts. In the *Cheltenham Builders*⁸ case, it was considered that ‘...at the very least, Parliament required the users of the land to be the inhabitants of somewhere that could sensibly be described as a locality... there has to be, in my judgement, a sufficiently cohesive entity which is capable of definition’. The judge later went on to suggest that this might mean that locality should normally constitute ‘some legally recognised administrative division of the county’.
43. In this case, the applicant has specified the locality as being ‘Westenhanger in the parish of Stanford’.
44. The parish of Stanford is clearly a legally recognised administrative unit and thus would constitute a qualifying locality.
45. The plan at **Appendix E** shows that all of the users reside within the Westenhanger area of the parish. The applicant explains that the construction of the M20 motorway bisected the parish, thereby creating the discrete neighbourhoods of Westenhanger (comprising the part of the parish situated to the south of the motorway) and Stanford North (comprising the part of the parish situated to the north of the motorway). A number of the witnesses also describe themselves as living within the parish of Stanford but belonging to the community of Westenhanger (as a smaller village within the wider parish). As such, Westenhanger would appear to be a cohesive entity capable of definition.
46. Therefore, the qualifying neighbourhood within a locality in this case is the neighbourhood of Westenhanger in the locality of the parish of Stanford.

“a significant number”

47. The word “significant” in this context does not mean considerable or substantial: ‘what matters is that the number of people using the land in question has to be sufficient to indicate that the land is in general use by the community for informal recreation rather than occasional use by individuals as trespassers’⁹. Thus, the test is a qualitative, not quantitative one, and what constitutes a ‘significant number’ will depend upon the individual circumstances of each case.
48. In this case, the landowner’s position is that use of the application site has not been by a significant number of local residents. It is suggested that of the 30 user evidence forms, at least nine should be discounted because those people have since moved away or no longer use the land. As such, any use that has taken

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

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

place has been in the form of individual trespassers rather than by the community at large.

49. The neighbourhood of Westenhanger is, in effect, a hamlet consisting only of some 60 houses. It is in this context that the question of 'significant number' must be considered because, clearly, the answer will depend very much on the local environment and circumstances; so, for example, the level of use to be expected in a more urban area where the population is greater would be far more than that in a rural hamlet.
50. In this case, there is evidence of use from 30 local residents. Whilst not all of those people have used the application site for the full twenty-year period (some having since moved away), the evidence nonetheless, when considered as a whole, is sufficient to indicate that the application site was being used by local residents for recreational purposes. Several users refer to using the application site on a daily basis and the Parish Council was well aware that the application site was being used for recreational purposes.
51. As such, it is considered that the application site has been used by a significant number of the residents of the neighbourhood of Westenhanger.

(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?

52. 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.
53. In this case, as discussed above, it is well documented that use of the application site became contentious (and therefore no longer 'as of right') in late 2009 as a result of a change of attitude towards recreational users on the part of the landowner. This began with the erection of 'no dog walking' notices, probably in 2008 (according to the user evidence), which clearly constituted a challenge to dog walking, although this of itself may not have been sufficient to challenge recreational use as a whole (i.e. there was no attempt to challenge jogging or other activities at this time).
54. However, in 2009 recreational users were increasingly being challenged whilst making use of the application site, to the point where the Parish Council arranged a meeting with the landowner in November 2009 to try to agree what the Parish Council itself describes as 'a more accommodating regime'¹⁰. In its December 2009 newsletter (see **Appendix E**), the Parish Council clearly records that informal recreational use was no longer the subject of neighbourly toleration by the landowner and was being actively challenged by the landowner. As such, it is clear that recreational use of the application site by local residents ceased to be 'as of right' (because it became contentious) in mid-2009.

55. The application form is dated 1st June 2012 and it was received by the County Council on 6th June 2012 (as per the date stamp on the front page of the

¹⁰ See letter dated 29th April 2013 from Stanford Parish Council

application form at **Appendix B**). Thus, the application was made some three years after informal recreational use of the application site ceased to be 'as of right'.

56. As the application was made outside of the two-year period of grace set out in section 15(3) of the Commons Act 2006, this test is not met.

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

57. In order to qualify for registration, it must be shown that the land in question has been used for a full period of twenty years. The twenty-year period in this case is calculated retrospectively from the date upon which use of the application site ceased to be 'as of right'. As such, the relevant twenty-year period ("the material period") in this case is 1989 to 2009.

58. The user evidence summarised at **Appendix C** suggests that all of the users have used the application site at some point during the relevant period, with at least 10 of the witnesses having used the application site throughout the relevant twenty-year period.

59. Thus, the evidence submitted in support of the application is sufficient to demonstrate that use of the application site has taken place throughout the relevant twenty-year period.

Conclusion

60. As Members will be aware, in order for a village green application to be successful, the County Council must be satisfied that each and every one of the legal tests set out above is met.

61. It is clear that the local residents had enjoyed a long history of usage of the application site for informal recreation until the racecourse changed its position in respect of such usage in approximately 2009; prior to that time, it would appear that informal recreational use had taken place without challenge or objection from the landowner.

62. However, the main issue in this case relates to the timing of the application. Parliament has been very specific in setting out a period of grace during which applications may be made under section 15 of the Commons Act 2006. The fact that the application has not been made within the required time frame is, in itself, an automatic 'knock out blow' to the application. Unlike other matters (e.g. deficiencies regarding the user evidence) this issue is not something that can be remedied in any way by the applicant.

63. Accordingly, the application site does not meet all of the relevant legal tests and the application site is therefore not capable of registration as a Village Green.

Recommendation

64. I recommend that the applicant be informed that the application to register land at Folkestone Racecourse in the parish of Stanford as a Village Green has not been accepted.

Accountable Officer:

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

Case Officer:

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

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

Background documents

APPENDIX A – Plan showing the application site

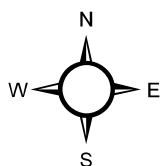
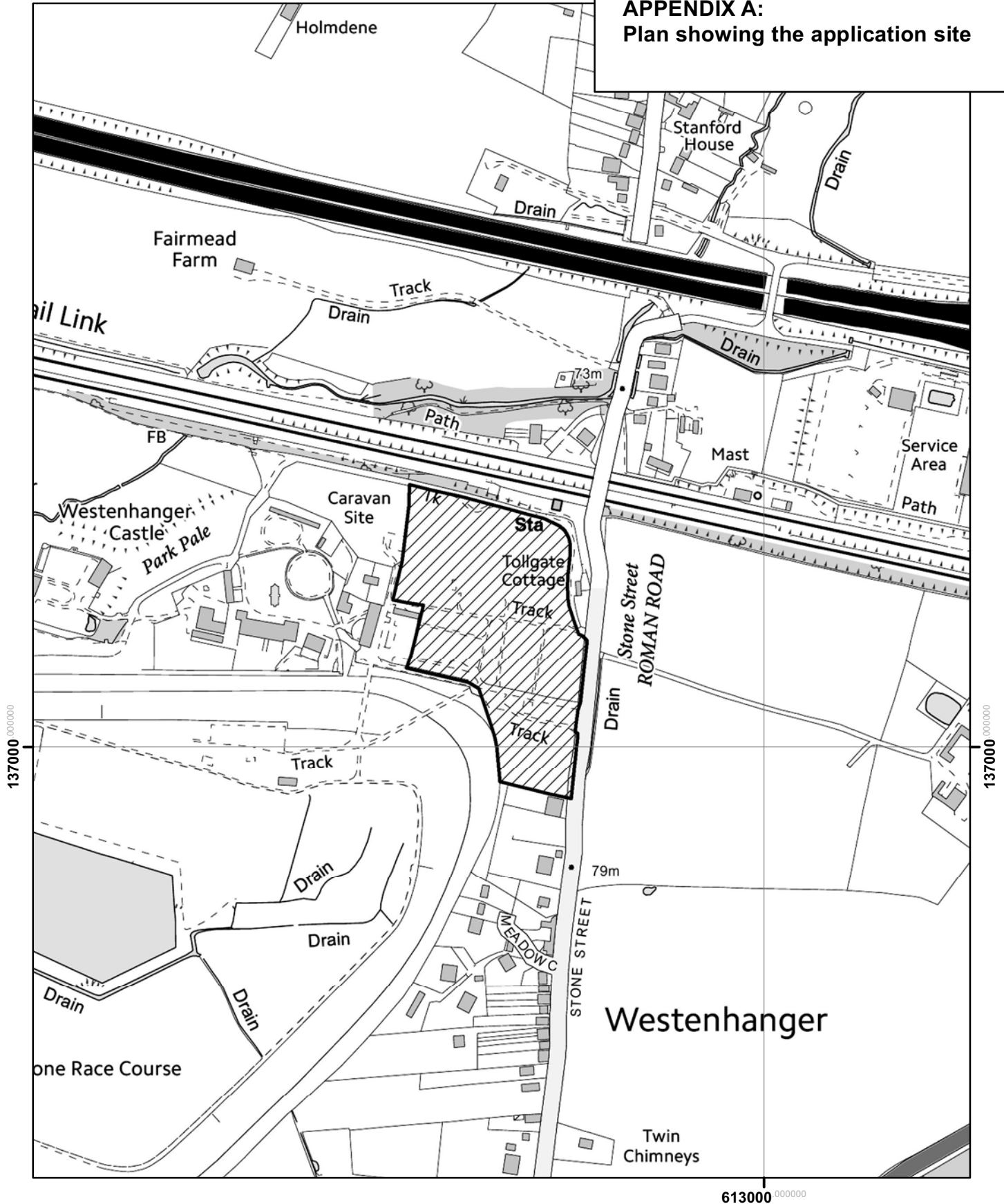
APPENDIX B – Copy of the application form

APPENDIX C – Summary of user evidence submitted in support of the application

APPENDIX D – Extract from the Parish Council's newsletter dated December 2009

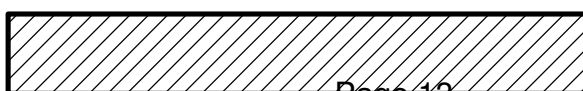
APPENDIX E – Plan showing the relevant locality

APPENDIX A:
Plan showing the application site



Scale 1:5000

**Land subject to Village Green application
at Folkestone Racecourse at Stanford**



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**Kent
County
Council**
kent.gov.uk



Commons Act 2006: section 15

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



This section is for office use only

Official stamp of the Registration Authority
indicating date of receipt:

COMMONS ACT 2006
KENT COUNTY COUNCIL
REGISTRATION AUTHORITY
- 6 JUN 2012

Application number:

VGA647

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

Note to applicants

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

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

Note 1

Insert name of Commons
Registration Authority

1. Commons Registration Authority

To the:

KENT COUNTY COUNCIL
SESSIONS HOUSE
COUNTY HALL
MAIDSTONE
KENT ME14

Note 2

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

2. Name and address of the applicant

Name: DAVID RUMSTEAD

Full postal address: SHERWAY ENVIRONMENT & Community NETWORK
(incl. Postcode)

Telephone number:
(incl. national dialling code)

Fax number:
(incl. national dialling code)

E-mail address:

Note 3

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

3. Name and address of representative, if any

Name:

Firm:

Full postal address:
(incl. Postcode)

N / A

Telephone number:
(incl. national dialling code)

Fax number:
(incl. national dialling code)

E-mail address:

Note 4

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

4. Basis of application for registration and qualifying criteria

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

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

Section 15(2) applies: ☒

Section 15(3) applies: ☐

Section 15(4) applies: ☐

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

**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:

FOLKESTONE RACECOURSE

Location:

PARISH OF STANFORD AND
WESTENHANGER

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:

WESTENHANGER IN THE PARISH
OF STANFORD IN KENT CT21

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

Note 7

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

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

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

See attached Statement

Note 8

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

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

ARENA LEISURE PLC
FALKESTONE RACECOURSE
STONE STREET
WESTENHANGER
NR HYTHE
KENT CT21 4HX

Note 9

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

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

N/A

Note 10

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

10. Supporting documentation

Doc. 1 Race Course Circa 1896

Doc. 2. Old Grandstand

~~PLAN~~ ~~Doc. 3~~ 1:10000 Site Plan.

PLAN 2. 1:2500 MAP

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

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

Note 12

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

12. Signature

Signature(s) of applicant(s):

Date: 1st June 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 in support of this Application for the Registration of part of Folkestone Racecourse, Westenhanger in Kent as a Village Green under the 2006 Commons Act.

The Village Green Application site is located within the northeastern corner of Folkestone Racecourse indicated by a plan (plan 1.) attached to each of thirty (30) Questionnaires completed by residents of the neighbourhood of Westenhanger within the locality of the Parish of Stanford. This plan also indicates each resident's property marked 'x'.

Folkestone Racecourse lies immediately south of the North Downs Area of Outstanding Natural Beauty (AONB) and north of the A20 running east to west from Newingreen to Ashford. A 1:2500 map of the Racecourse attaches to this application (Plan 2.)

The application site is bounded to the north by the main rail line running between Folkestone and Ashford, to the east by Stone Street which runs north from the A20 at Newingreen to Canterbury and to the west by the paddock cottages.

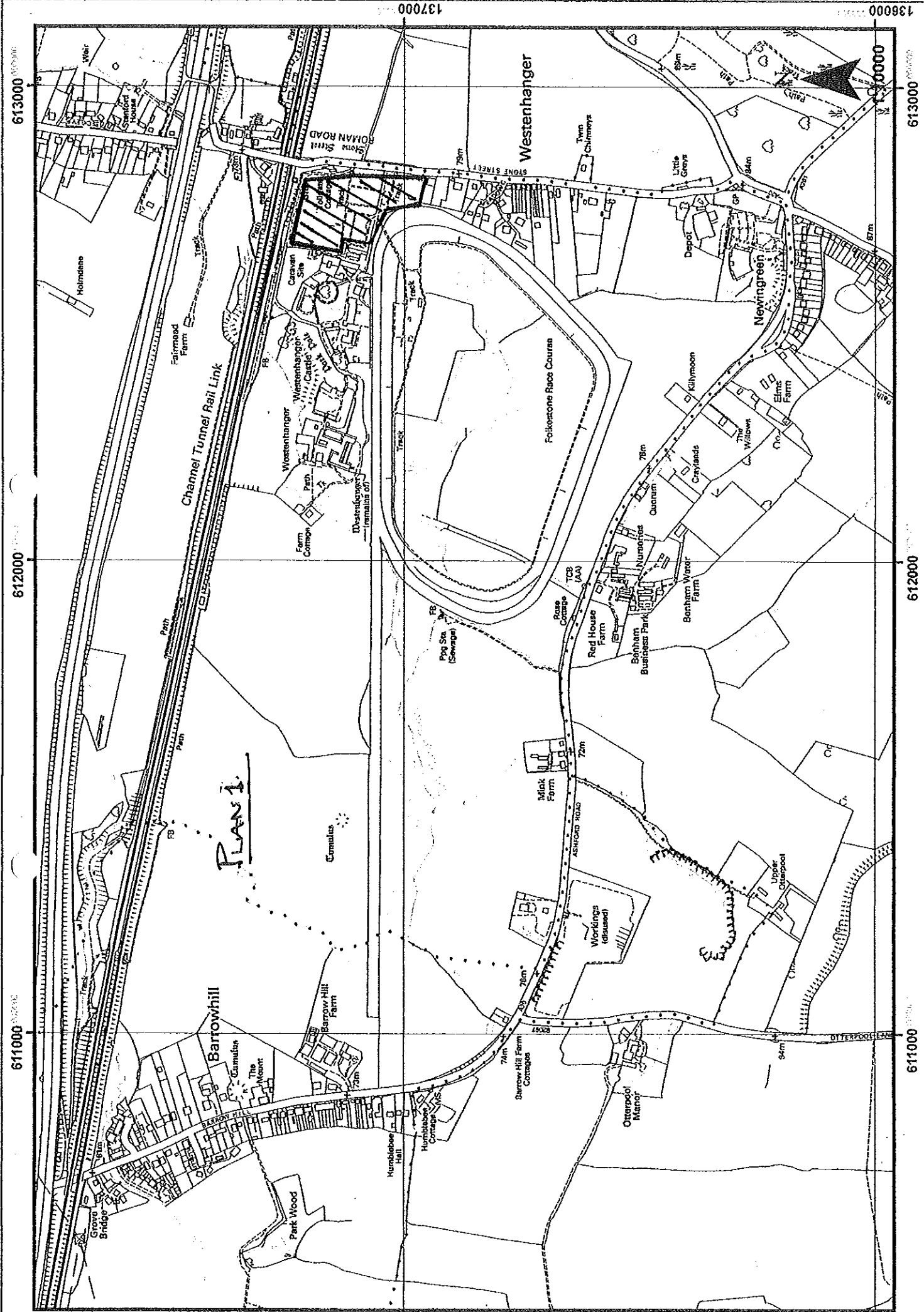
The history of the Westenhanger estate dates from 1035 when ownership passed from King Canute to the de Criol family who were granted a licence by Edward III in 1343 to fortify the then Hall House. Folkestone Racecourse was established in 1898, a document (doc. 1) showing the proposed layout of the course and stands with Westenhanger Castle in the background is enclosed as is a picture (doc. 2) of the Victorian Grandstand that remains to date.

The hamlet of Westenhanger has for over one hundred years been established alongside the Racecourse, the advent of the M20 Motorway dissecting the Parish over twenty years ago resulting *force majeure*, in the development of the neighbourhood of Westenhanger within the Parish of Stanford to which it provides several Parish Councillors.

That part of the Parish lying north of the M20 is known locally as Stanford North containing the local pub, 'The Drum', and the Village Hall.

Residents have customarily accessed the grassed open area around the northeastern part of the Racecourse as of right for leisure and recreation for over a hundred years and continue so to do.

Completed Questionnaires accompanying this application demonstrate that the subject area has been used as of right continuously by residents of the locality for over twenty (20) years for lawful recreation and pastimes.



APPENDIX C:
Summary of user evidence

Name	Period of use	Frequency of use	Type of use	Comments
BEBBINGTON, M	1996 – present	Daily	Watching cricket and pony club, kite flying, playing with children, walking	Access through open gate. Notice re: dog walking erected in 2008.
BEBBINGTON, P	1996 – present	Daily	Walking, dog walking, playing with children, kite flying, cycling, ball games	Access via Stone Street. Notice re: dog walking erected in 2008.
COOK, B	2000 – present	Monthly	Walking	Notices regarding dog walking erected (no date)
COOK, J	2000 – present	Weekly	Walking	Access from Stone Street
DADSWELL, H	1981 – 1994	Daily	Walking	Access from road.
DE WOLF, M	1995 - present	Virtually daily	Mainly dog walking, but also blackberrying, watching cricket, pigeon release, photography, socialising	Challenged in 2008 when picking blackberries, use has been occasional since then. Accessed from Stone Street. Dog walking notices erected in 2008. Witnessed another resident (jogging) being challenged in 2009. Dog and ordinary waling took place on daily basis until the dog ban notices.
EARL, E	1977 – present	Daily	Dog walking, jogging, children's games, cycling, picnicking, general recreation	Access from Stone Street and from footpath at bottom of garden.
EARL, L	1977 – 2001	Weekly	Playing as a child, dog walking	Access from Stone Street and from footpath at the end of our garden.
EARL, R	1977 – 2005	Daily	Dog walking	Access from Stone Street and from footpath at bottom of garden.
EARL, V	1977 – 2005	Daily	Boot fairs, dog walking, cricket practice, children playing, cycling, picnics, walking	
GETCLIFFE, C	1996 – 2003	Occasionally	Walking, cricket	Moved away in 2003 but continued to take part in annual cricket matches until 2007. Notice for no dog walking erected (no date).
GETCLIFFE, E	1996 – 2003	Occasionally	Walking, cricket	Moved away in 2003 but continued to take part in annual cricket matches until 2007. Notice for no dog walking erected (no date).
GOODWIN, G	1983 – present	Occasionally	Walking, running, picnics, playing with children, cricket	Access through gates.
GOODWIN, L	1983 – present	Previously daily, now less frequently	Walking, playing with children, cricket, rounder's, football, cycling, picnics, conker collecting	Access through gates. No dogs sign erected in 2008.

GRIFFITHS, P	1964 – ?	Daily, then occasionally	Walking, dog exercising, ball games	No longer use the land. Access from bottom of garden through gate.
ING, M	1992 – present	Weekly	Dog walking, jogging	Access from main road. Notice banning dog walking (no date).
ING, N	1992 – present	Daily until 2008, now weekly	Dog walking, jogging, cricket, rounder's, picnics, walking	
LOFT, P	1987 – present	2 or 3 times per week	Dog walking, playing with children, family walks	Access via main entrance. Challenged when access from garden blocked off (no date). Dog walking notices erected 'in last 2 years' (statement dated Aug 2011). Permission granted for dog walking in 1989.
LOFT, R	1987 – present	2 or 3 times per week	Family walks, playing with children, cycling, kite flying, ball games, cricket	Access via main entrance. Use reduced when gates fitted to main entrance and signs appeared.
LOFT, S	1990 – present	Daily	Cycling, dog walking, cricket, jogging	Access via main entrance. 'no dogs' notice erected in last 2 years (statement dated August 2011).
MAVITY, B	1994 – present	Daily	Dog walking	Notice stating 'dogs not allowed on racecourse...' (no date)
MAVITY, I	1994 – present	Daily	Dog walking	No dog walking notices (no date)
MAXWELL, J	1979 – present	Variable - daily or weekly	Walking, bird watching, football, cricket, rugby, cricket, kite flying, cycling, picnics, snow plan	Access from public highway and through neighbours' gardens. Only notices were in regard to dogs. Observed use by others at all times, winter and summer, for a range of recreational activities.
MAXWELL, J	1979 – present	Frequently all year round	Air and exercise, bird watching, walking, running, ball games, cycling, kite flying	Stopped in July 2009 whilst running and advised that use was at own risk but continued as usual. Only notices on site related to dogs.
MAXWELL, P	1979 - ?	Weekly	Cricket, football, rugby, cycling, kite flying, using recreational space	Moved away (no date), no longer use.
NEEDHAM, J	1997 – present	Daily	Walking, dog walking, running, cycling	Access through gates. Notices banning dog walking erected (no date)
NEEDHAM, R	1995 – present	Three times per week	Dog walking, jogging, watching cricket, socializing, sunbathing	Access via open gate from Stone Street. In 2008, notices banning dogs were erected by the gate. Observed dog and ordinary walking approx. 3 times per week, other activities were occasional and seasonal.
ROBINSON, C	2005 – present	Occasionally	Walking, dog walking	Use changed as a result of signs saying no dog walking in 2008.
ROBINSON, P	2005 – present	Daily or weekly	Walking, dog walking	Use changed as a result of signs saying no dog walking in 2008. Employed by landowner as race day cashier.
WOOLFORD	1988 – not stated	Occasionally	Walking	Access through gate.

Non-Racing Events at the Racecourse

The Racecourse has 'Events' Licence' which enables it to hold events for up to 5000 people with alcohol, music and dancing, using the area close to the grandstand, with up to three events per year catering for up to 10,000. There are restrictions on the hours and the regulation of the noise levels. During the summer additions were made to this licence in that the hours for broadcasting music were increased (now starting at 10am rather than noon) and the use of an area in front of the grandstand is permitted for five events per year. We objected to these changes in writing and in person (as did some of you as individuals) but the SDC Licensing Subcommittee approved them.

The first event to be held under this new licence was the East Kent County Show which was a disappointment to the organisers and a noisy experience for some residents as the management conditions seem not to have been met. We had discussions about this with the SDC Licensing Team and it should not happen again. We were very concerned about traffic management through Westenhangar as the previous weekend, a racing event which attracted many visitors, had resulted in a terrible traffic jam, extending as far as the motorway along the A20 and completely blocking access to the village.

We made representations to the racecourse management, the Fire and Rescue Service and the Kent Police, and traffic

management for the East Kent County Show was more successful – aided no doubt by the lower-than-expected numbers. The Parish Council has now arranged to be a member of the Safety Advisory Group that must meet before every event held under the racecourse licence. We have also asked that the racecourse management should have a key to the lock on the Farmers' Bridge to provide an alternative access in emergency.

The racecourse has for many years been used by residents, to walk, jog or exercise their dogs but in recent months this informal use had been prevented. What had seemed to be innocent enjoyment was interrupted, sometimes abruptly, even rudely. We made a number of contacts with the management and recently met the CEO of the parent company. He agreed that the change had been badly handled and apologised for the offence caused but was unable to change the new policy which has arisen because of professional concerns to protect the safety of horses and jockeys, and the increasing fear of litigation from casual users who might have accidents while using the site. This is an arena for professional sport and, just as you would not expect to exercise your dog at Twickenham or jog around the courts at Wimbledon, so the racecourse needs to restrict access. Health and Safety complicates all our lives and we have had to accept the new regime.

Finally.....

SPC meets seven times a year in the function Room at The Drum and we are very grateful to the landlords for making us so welcome. We take decisions on these occasions (and every registered voter can come to listen) but much of the preparation is done between meetings. We operate on a shoestring, having a precept (annual grant) of £3700 from SDC – this is about £10 per year per resident which you pay as part of your Council Tax. We take no expenses and are not paid (the clerk has an annual salary based on 70% of the National scale for parish clerks). We hope that we provide a good service and well deserve our Quality status – we think we do.

Lastly we are very grateful again to our sponsor, **Holiday Extras**, who pay for two editions of this Newsletter per year.
Ken Bultitude Chair, 17th November 2009

Your Parish Councillors are:

Cllr Ken Bultitude (Chair)
Cllr Mrs Marian Bebbington (Vice Chair)
Cllr Martin de Wolf (Editor & Webmaster)
Cllr Bill Eggleton
Cllr Graham Goodwin

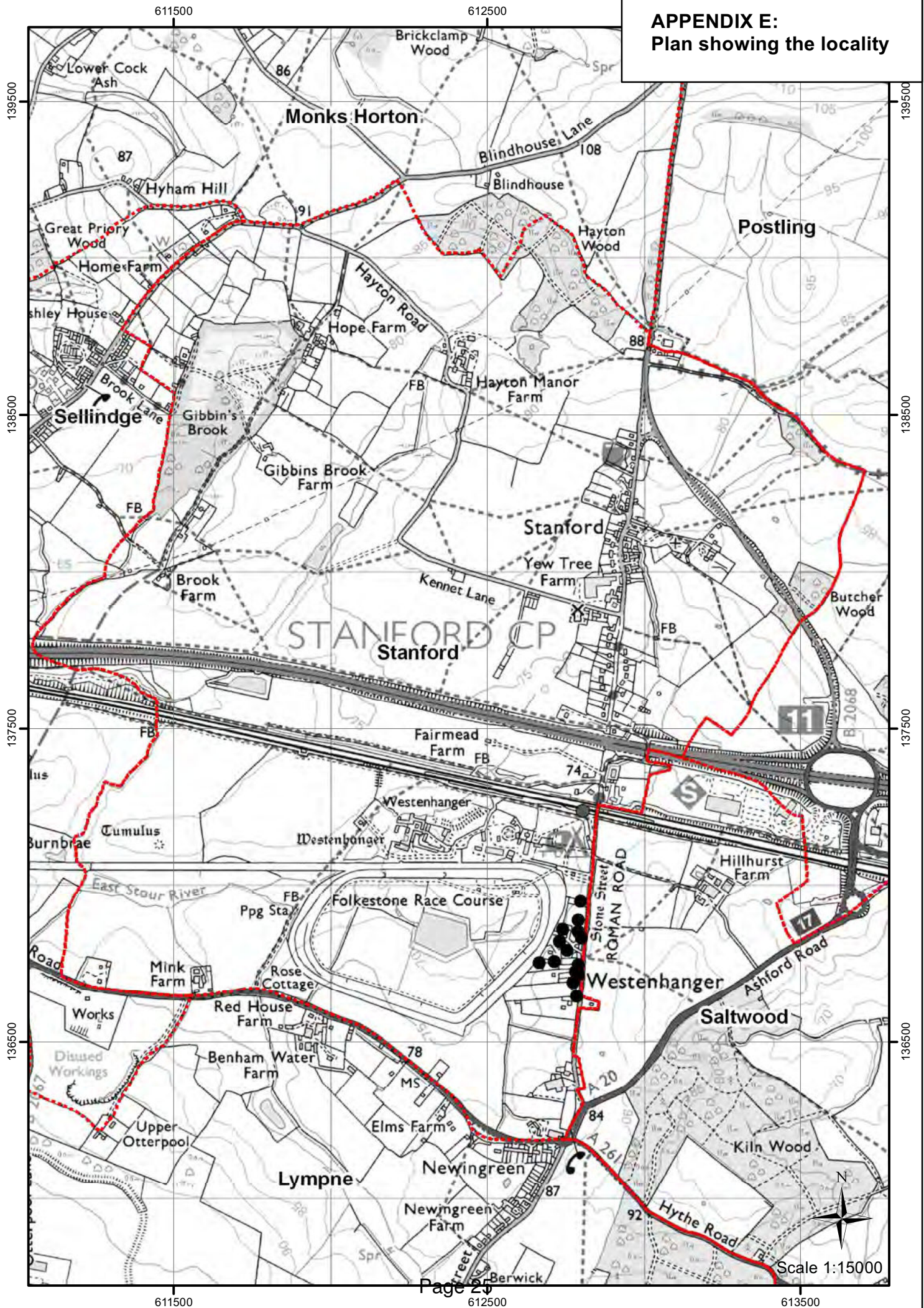
Tudor Cottage, Stanford North
Connaught Lodge, Westenhangar
The White Lodge, Westenhangar
The Old School House, Stanford North
Lyvedenhurst, Westenhangar

Parish Clerk: Mrs Dorothy Bultitude

Tudor Cottage, Stanford North. ☎01303 813810



APPENDIX E: Plan showing the locality



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