



AGENDA

Kent County Council

REGULATION COMMITTEE MEMBER PANEL

Tuesday, 26th November, 2013, at 10.30 am
Kingsmead Leisure Centre, Kingsmead
Road, Canterbury CT2 7PH

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 and Mrs V J Dagger

UNRESTRICTED ITEMS

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

1. Membership and Substitutes
2. Declarations of Interest for items on the agenda
3. Application to register land known as Kingsmead Field in Canterbury as a new Town or Village Green (Pages 3 - 28)
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, 18 November 2013

Application to register land known as Kingsmead Field in the city of Canterbury 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 26th November 2013.

Recommendation: I recommend that the applicant be informed that the application to register land known as Kingsmead Field at Canterbury as a Town or Village Green has not been accepted.

Local Member: Mr. G. Gibbens

Unrestricted item

Introduction

1. The County Council has received an application to register land known as Kingsmead Field in the city of Canterbury as a new Town or Village Green from local residents Ms. A. Bradley, Ms. S. Langdon and Mr. M. Denyer ("the applicants"). The application, made on 16th July 2012 was allocated the application number VGA650. 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 from 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 and does not affect any existing applications.

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

The application site

6. The area of land subject to this application (“the application site”) consists of a recreation ground of approximately 3.6 acres (1.5 hectares) in size, known as Kingsmead Field and situated on Kingsmead Road (opposite the Kingsmead Leisure Centre) in the city of Canterbury.
7. The application is bounded on its north-western side by the River Stour, to the south-east by the Riverside Children’s Centre and along its south-western boundary by the footway of Kingsmead Road. The north-eastern boundary does not correspond with any physical features on the ground but runs roughly parallel with the boundary of the residential development at Stonebridge Road. The application site is shown in more detail on the plan at **Appendix A**.
8. Access to the application site is via a gap in the hedge on the footway of Kingsmead Road, the vehicular entrance and parking area off Kingsmead Road and there is also an entrance adjacent to the new housing development at Stonebridge Road. There are no recorded public rights of way crossing the application site.

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 a period well in excess of 20 years.
10. Included in support of the application were an explanatory statement, 335 user evidence questionnaires, various maps showing the application site and the relevant localities, Land Registry documentation, open space profiles for the neighbourhoods relied upon, various photographs and images of the application site, extracts from the City Council’s register of Council-owned land, various Ordnance Survey maps (ranging between 1955 and 1994), a wikipedia extract regarding the former Kingsmead Stadium, statements from local students and various documents relating to the City Council’s proposal to dispose of the land for development purposes.
11. Members should be aware that the application appears to have been prompted by a proposal by the local Council to sell the application site for development, which has been the subject of substantial local opposition. It is important to stress from the outset that the future use of the application site (including any perceived threat of development) is not a matter that the County Council is able to take into consideration in determining the Village Green application; the County Council is concerned solely with the legal tests set out in section 15 of the Commons Act 2006.

Consultations

12. Consultations have been carried out as required.
13. Over 100 responses in support of the application were received from local residents. A number of these letters consist of objections to the proposed development of the application site, but a very large number of the responses also refer to regular usage of the land by local residents for a range of recreational activities and offer further evidence of use in addition to the user evidence questionnaires already submitted in support of the application.
14. The local County Councillor, Mr. G. Gibbens, also wrote in support of the application. He noted that local residents with whom he had spoken had confirmed their open and unchallenged use of the application site for a range of recreational activities for well in excess of twenty years.

Landowners

15. The vast majority of the application site is owned by Canterbury City Council ("the Council") and is registered with the Land Registry under title number K809686. A small section of the application site (comprising a strip of land situated on the northern boundary adjacent to Stonebridge Road) is registered to Berkeley Homes PLC under title number K917461.
16. The Council has objected to the application on the grounds that the land has been held by it for the purpose of public recreation and, accordingly, any such use of the application site has not taken place 'as of right'.
17. The Council's case is that it acquired the land on 9th December 1936. By letter dated 10th March 1967, the Ministry of Housing and Local Government gave consent '*to the appropriation by your Council under section 163 of the Local Government Act 1933 of certain land containing an approximate area of 10 acres situate adjoining Kingsmead Road, Canterbury, for use as a playing field*'. The plan attached to the letter confirms that the application site was wholly included with the area of land subject to the appropriation.
18. The Local Government Act 1933 referred to in the appropriation was eventually replaced by Local Government (Miscellaneous Provisions) Act 1976. Throughout the material period, therefore, the application site was held by the Council under section 19 of the Local Government (Miscellaneous Provisions) Act 1976.
19. The Council contends that the fact that the land has been held specifically for recreational purposes means that informal recreational users of the application site cannot be regarded as trespassers; they were there by virtue of an existing right which arose from the Council's power to provide recreational facilities for local residents. The Council's position is that, for this reason, the application cannot succeed and is therefore bound to 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, 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'?*

- 21. In order to qualify for registration as a Village Green, recreational use of the application site must have taken place 'as of right'. This means that use must have taken place without force, without secrecy and without permission (*'nec vi, nec clam, nec precario'*).
- 22. In this case, the application site forms part of an established recreation ground and, as such, there is no suggestion that any use of the land has been with force or in secrecy. However, there is an issue relating to whether use of the application site has taken place with permission.

Appropriation of the land

- 23. The granting of permission can take many forms; it can be direct and communicated (e.g. by way of a prominent notice placed on the site), or it can also be indirect and uncommunicated (e.g. by way of a private deed). In some cases, it is quite possible that recreational users will be using a piece of land without being aware that their use is with some sort of permission; this can often be the case where the land is owned by a local authority.
- 24. Local authorities have various powers to acquire and hold land for a number of different purposes to assist in the discharge of their statutory functions. For example, a local authority can acquire land specifically for the purposes of providing housing or constructing a new road. The mere fact that a local authority owns land therefore does not automatically mean that the local inhabitants are entitled to conduct informal recreation on it. However, local authorities do also have powers to acquire land for the purposes of public recreation, such as playing fields and parks. In those cases, the land is provided specifically for the purposes of public recreation and those using it are doing so by invitation of the Council.
- 25. In considering a Village Green application in relation to local authority owned land, it will therefore be important to identify the powers under which the land is held by the local authority: if the local authority already holds the land specifically for the purposes of public recreation, then use of the application site is generally considered to be by virtue of an existing permission and, hence, is not 'as of right'.

26. The issue was considered in the Beresford² case, in which Lord Walker noted that *“where land is vested in a local authority on a statutory trust under section 10 of the Open Spaces Act 1906, inhabitants of the locality are beneficiaries of a statutory trust of a public nature, and it would be very difficult to regard those who use the park or other open space as trespassers... the position would be the same if there were no statutory trust in the strictest sense, but land had been appropriated for the purpose of public recreation”*. The suggestion is, therefore, that use of land that is held by a local authority specifically for recreational purposes is ‘by right’ and not ‘as of right’ since the use of the land is no more than the use to which the public is already entitled.
27. More recently, in the Barkas³ case, Sullivan LJ agreed that *‘while they are not binding... Lord Walker’s observations are highly persuasive, and I can see no sensible reason for drawing a distinction between land held under section 10 [of the Open Spaces Act 1906] and land which has been appropriated for recreational purposes under some other enactment’*. He went on to conclude, in that case, that the application site had been appropriated for the purpose of public recreation under an express statutory power and, as such, the local inhabitants indulged in lawful sports and pastimes on that land ‘by right’ and not ‘as of right’.
28. In the case of Kingsmead Field, the Council has provided evidence that the application site was appropriated in 1967 for the purpose of public recreation (i.e. ‘for use as a playing field’) under section 163 of the Local Government Act 1933 (“the 1933 Act”).
29. The 1933 Act was repealed in its entirety and replaced by the Local Government Act 1972 (“the 1972 Act”): section 144 of the 1972 Act provided local authorities with a power to provide facilities for recreation. That power was also subsequently repealed and replaced by an equivalent power contained in section 19 of the Local Government (Miscellaneous Provisions) Act 1976 (“the 1976 Act”), which enables a local authority to provide *‘such recreational facilities as it thinks fit’*.
30. Thus, throughout the relevant twenty-year period, the application site has been held by the Council under section 19 of the 1976 Act specifically for the purposes of public recreation. This is confirmed by the extracts from the ‘Register of Council-owned land’ provided by the applicants. The land has therefore been made available and used in a manner that is entirely consistent with the statutory power under which it is held – i.e. for general informal recreational use. Accordingly, the recreational users of that land cannot be regarded as trespassers and their use cannot give rise to a right of recreation.
31. Therefore, by virtue of the fact that the application site has been held by the Council for recreational purposes, any informal recreational use of it has taken place ‘by right’ and not ‘as of right’.

Use of the land for formal events

32. In light of the conclusion above, it is not necessary to consider this issue in detail, but it is included here for the sake of completeness.

² *R v City of Sunderland ex parte Beresford* [2003] UKHL 60 at paragraph 87 per Lord Walker

³ *R (Barkas) v North Yorkshire County Council* [2012] EWCA Civ 1373 at paragraph

33. The issue of organised events was recently considered by the courts in the Mann⁴ 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. 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.
34. The Council asserts that, in this case, there have been long periods during which the application site has not been available for informal recreational use due to the hiring out of the land for the purposes of circuses, funfairs and other activities on an at least annual basis since at least 2002. These events have been the subject of formal agreements with the City Council (copies of which have been provided). When the field was let out for these purposes, the majority of the application site was occupied for between four and six days, during which time a fee was charged for entry onto the land. The Council's position is therefore that the hiring out of the land for formal events, during which time informal recreational use was largely excluded, constituted a manifest act of exclusion and brings the matter squarely within the context of the decision in the Mann case.
35. However, the applicants' case is that the issue relating to formal events on the land is one of fact and degree that requires further scrutiny of all of the circumstances of the case. In any event, at no time did the Council attempt to exclude local residents from the land; on the contrary, there is a sign in place stating that the application site is available for public use. No charges have been made for entry to the funfair and, although a charge was made for the circus, this was for the performance and not for entry onto the land itself. The use of the application site for formal events operated by third parties coexisted peacefully with the concurrent use of the application site for lawful sports and pastimes.
36. As is noted above, given the position in respect of the appropriation of the land, it is not necessary to conclude on this particular issue. In some respects, this case (where the land is in public ownership) can be distinguished from the situation in Mann (which involved the actions of a private landowner) on the basis that the land in this case was already provided by the Council for recreational purposes and its hiring out for circuses and funfairs formed part of the Council's powers to provide such facilities, rather than a commercial act designed to communicate the landowner's control of the land.
37. The issue is arguably open to interpretation and, were it not for the appropriation issue, then it may be appropriate to further investigate the position in respect of the formal use of the land.

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

38. 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

⁴ *R (Mann) v Somerset County Council* [2012] EWHC B14 (Admin)

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'*⁵.

39. The significant body of evidence of use submitted by local residents indicates that the application site has been used on a regular basis for a range of recreational activities. These include dog walking, children playing, picnics, kite flying and ball games (e.g. rounders, football and cricket).
40. The contention that the land has been used for recreational activities is not in dispute, and the Council has not sought to challenge the evidence of use submitted in support of the application.
41. Accordingly, it appears to be common ground between the parties 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?

42. 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.
43. 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*⁶ 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'*.
44. 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'*⁷.
45. In this case, the applicants have specified (at part 6 of the application form) that the application site is located 'within the neighbourhood of Northgate, on the boundary with the neighbourhood of St. Stephen's. Both neighbourhoods are situated within the locality of the city of Canterbury'.

⁵ *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

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

46. There can be no dispute that the city of Canterbury is a legally recognised administrative unit and would undoubtedly be a qualifying locality.
47. In terms of the qualifying neighbourhoods, the applicants rely on 'Northgate' and 'St. Stephen's'. Both are established electoral wards of Canterbury City Council and the applicants' contend that both are cohesive entities that are identifiable areas within the wider locality. The 'Northgate' neighbourhood comprises a mix of light industry and residential development, with a high proportion of social housing and student accommodation, and a number of community facilities (including a community centre and local shops) centred on Kingsmead Road. The second neighbourhood, 'St. Stephen's', is primarily a residential neighbourhood, united by a Residents Association, and also with its own community facilities (including St. Stephen's Church and St. Stephen's Infant and Junior Schools).
48. There is therefore nothing to indicate that the neighbourhoods and the locality identified by the applicants are not qualifying entities for the purpose of Village Green registration.

"a significant number"

49. 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'*⁸. Thus, what constitutes a 'significant number' will depend upon the local environment and will vary in each case depending upon the location of the application site.
50. In this case, the application is supported by 335 user evidence questionnaires from local residents, with many of these attesting to use of the application site on a daily basis. In addition, a large number of the 100 respondents to the consultation also refer to their own recreational use of the application site. Once again, the proposition that the application site is used by the local residents is not contested by the Council and this issue is therefore not in dispute.
51. From the evidence available, it would therefore appear that the application site has been used by a significant number of the residents of the neighbourhoods of 'Northgate' and 'St. Stephen's' within the locality of the city of Canterbury.

(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.

⁸ *R (Alfred McAlpine Homes Ltd.) v Staffordshire County Council* [2002] EWHC 76 at paragraph 71

53. In this case, there is no evidence to suggest that informal recreational use of the application site was challenged by the Council prior to the making of the Village Green application in July 2012. The application appears to have been prompted by a proposal (advertised in the Kent on Sunday on 8th April 2012) on the part of the Council to appropriate the application site to planning purposes. However, no attempt was made by the Council at this stage (or even before) either to restrict or prevent use of the application site for informal recreational purposes.
54. Therefore, use of the application site has continued up to (and indeed beyond) the date of the application and this test is met.

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

55. In order to qualify for registration, it must be shown that the land in question has been used for a full period of twenty years. In this case, as discussed above, there is no evidence to suggest that use of the application ceased prior to the making of the application. The application was made in July 2012 and, as such, the relevant twenty-year period ("the material period") is to be calculated retrospectively from this date, i.e. 1992 to 2012.
56. The user evidence suggests that recreational use of the application site has taken place well in excess of the required twenty-year period. Other than the fairs and funfairs discussed above, there is nothing to suggest that there have been any substantive periods between 1992 and 2012 when the application site was inaccessible to local residents or unavailable for informal recreational use.
57. Therefore, it would appear that the use of the application site has taken place for a period of twenty years.

Conclusion

58. As Members will be aware, in order for an application to register a new Village Green to be successful, the County Council must be satisfied that each and every one of the relevant legal tests is met in full; if one test fails, then the application as a whole must be rejected. It is also relevant, as is noted above, that the County Council cannot consider issues relating to amenity, desirability or suitability in relation to the registration of the land as a Village Green.
59. In this case, the applicants assert that the matter is not clear-cut and ought to be referred to a Public Inquiry for further consideration on the basis that the legal and factual issues require more detailed evaluation. The Council's position is that the application must, as a matter of law, be refused and there is no need for an inquiry (or any other further fact finding) unless the applicant is able to put forward a credible case that the application site has not been held by the Council for recreational purposes.
60. The fact that the application site has been used for informal recreational by the local residents during the relevant period does not appear to be in dispute; rather, the case turns upon the manner in which the application site was held by the Council during the relevant period and whether, as a result, the informal recreational use by local inhabitants can be considered trespassory in nature, thereby giving rise to an established right.

61. The applicants' position in this respect is that the Council's opposition to the application is made without any evidential basis, and the documents provided (relating to ownership and the 1967 appropriation) '*merely serve to illustrate points which would appear to be accepted by the parties*' but neither go to the actual use of the application site during the relevant period. Thus, it would appear from this statement that the applicants accept that the land was appropriated in 1967 for recreational purposes and (it must follow) that it has been held by the Council for such purposes under section 19 of the Local Government (Miscellaneous Provisions) Act 1976.
62. That being the case, the evidence of use of the application site merely serves to confirm that it has been used by the local inhabitants in the manner for which it is provided by the Council; in many respects, it is immaterial to the case because it appears that such use has taken place by virtue of a power which enables the Council to '*provide such recreational activities as it thinks fit*'. Such use has therefore been 'by right' in exercise of an existing right to use the land.
63. For this reason, regardless of whether any (or even all) of the other relevant tests are met, the fact that the application site is held for the purposes of public recreation presents a knock-out blow to the possibility of registering the land as a Village Green. This is central and insurmountable issue that cannot be addressed through the provision of further user evidence on the part of the applicants and, for this reason, it would be a futile exercise to hold a Public Inquiry as per the applicants' request. Accordingly, for the reasons set out in above, the unavoidable conclusion is that the land is not capable of registration as a Village Green.

Recommendation

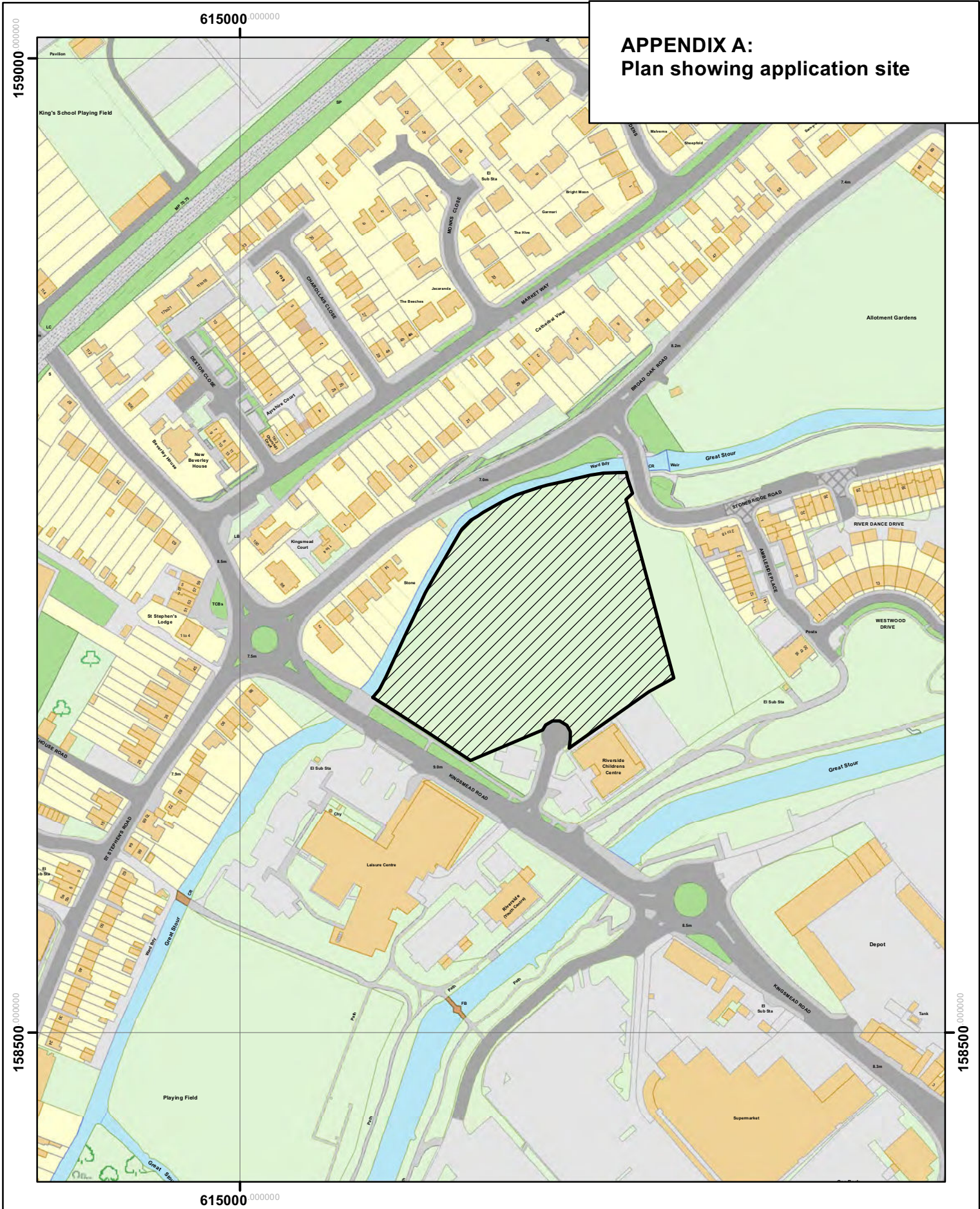
64. I recommend that the applicant be informed that the application to register land known as Kingsmead Field at Canterbury as a Town or Village Green has not been accepted.

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

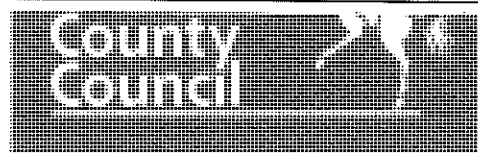
Background documents

APPENDIX A – Plan showing application site
APPENDIX B – Copy of the application form



Commons Act 2006: section 15

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



This section is for office use only

Official stamp of the Registration Authority
indicating date of receipt:

COMMONS ACT 2006
KENT COUNTY COUNCIL
REGISTRATION AUTHORITY
16 JUL 2012

Application number:

VGAG50

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
County Hall
Maidstone
Kent
ME14 1XX

Note 2

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

2.1 Name and address of the first applicant**Name:**

Ann Bradley

Position:

Community Centre Manager

Full postal address:

Northgate Ward Community Centre
Military Road
Canterbury
CT1 1YX

Telephone number:

[REDACTED]

Fax number:

[REDACTED]

E-mail address:

[REDACTED]

2.2 Name and address of the second applicant**Name:**

Sue Langdown

Position:

Neighbourhood Watch Coordinator for St Stephen's
Committee member of St Stephen's Residents Association

Full postal address:

[REDACTED]

Telephone number:

[REDACTED]

Fax number:

N/A

E-mail address:

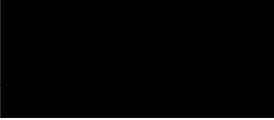
[REDACTED]

2.3 Name and address of the third applicant**Name:**

Malcolm Denyer

Position:
Chair of Market Way Residents Association

Full postal address:



Telephone number:



Fax number:
N/A

E-mail address:



Note 3

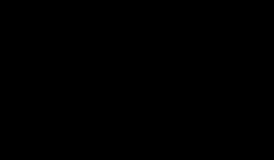
This part should be completed if a representative, e.g. a solicitor, is instructed for the purposes of the application. If so all correspondence and notices will be sent to the person or firm named here. If you supply an email address in the box provided, you may receive communications from the Registration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

3. Name and address of representative, if any

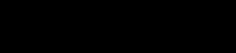
Name:
Sian Pettman

Position:
Secretary of the Save Kingsmead Field Campaign

Full postal address:



Telephone number:



Fax number:
N/A

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:

N/A

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:

**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.*

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:

Kingsmead Field

Location:

Ordnance Survey map reference: TR152588 NW

The land bounded by Kingsmead Road; the river Stour running parallel to Broad Oak Road; Stonebridge Road and Ambleside Place (see area marked with a dashed line on annex 3 – Map A).

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:

Kingsmead Field is located within the neighbourhood of Northgate, on the boundary with the neighbourhood of St Stephen's. Both neighbourhoods are situated within the locality of the city of Canterbury. The two neighbourhoods are distinct entities, separated

by a boundary running to the south of the London to Margate railway line (see annex 5).

This application is being submitted by three applicants: one from each of the two neighbourhoods and the third from the Market Way Area Residents Association (which represents a large number of residents from the area at the interface of the two neighbourhoods).

For more information about the two neighbourhoods, please see the Explanatory Statement which accompanies this application (annex 1).

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

Kingsmead Field has been used for well over 20 years by a significant number of inhabitants of the neighbourhoods of Northgate and St Stephen's in the city of Canterbury for a wide range of lawful sports and pastimes. This use has been 'as of right' and continues to the present day.

Greater detail is given in the attached Explanatory Statement (annex 1) and in the accompanying evidence questionnaires (annex 2) which have been completed by 335 local residents.

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

Canterbury City Council
Military Road
Canterbury
CT1 1YW

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

- Annex 1: Explanatory Statement
- Annex 2: 335 Evidence Questionnaires
- Annex 3: Map A: Map of the land (scale of 1:2,500)
- Annex 4: Map B: Map of the land (scale of 1:10,000)
- Annex 5: Map showing the neighbourhoods of Northgate and St Stephen's
- Annex 6: Land Registry: Index Map Plan for Kingsmead Field
- Annex 7: Land Registry: Official Copy of Register of Title
- Annex 8: Open space profile for Northgate
- Annex 9: Open space profile for St Stephen's
- Annex 10: Old images of Kingsmead pastures and water meadows (2 pages)
- Annex 11: Extract from register of Council-owned Land - 141/3
- Annex 12: Extract from register of Council-owned Land - 141/2
- Annex 13: OS Map of Kingsmead, 1955
- Annex 14: OS Map of Kingsmead, 1962
- Annex 15: OS Map of Kingsmead, 1979
- Annex 16: OS Map of Kingsmead, 1989
- Annex 17: OS Map of Kingsmead, 1994
- Annex 18: Wikipedia extract re Kingsmead Stadium
- Annex 19: Photos of the river Stour and Kingsmead Field (The top photo shows Canterbury Cathedral and Kingsmead Leisure Centre in the background)
- Annex 20: Photo of field, taken from Market Way in the mid-1990s, showing the cricket pavilion and Canterbury Cathedral in the background
- Annex 21: Extract from the report by the Chief Executive of Canterbury City Council to the Council Overview Committee, 13/6/12

- Annex 22: Aerial photo of Kingsmead dating from circa 2002 showing the imprint left by the circus on the grass
- Annex 23: Examples of recent usage (2 pages)
- Annex 24: Statement by Alan Clarke, current student
- Annex 25: Statement by Helen Parkhurst, former student
- Annex 26: Photos of entry points (3 pages)
- Annex 27: Photos of sign on the field
- Annex 28: Public notice from Kent on Sunday, 8/04/12

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

Canterbury City Council is proposing to appropriate the field for development purposes (see annex 28 – Public Notice). This proposal is strongly opposed by local people for the following reasons:

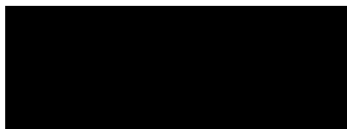
- 1) The public identified the retention and enhancement of public open space as their top priority in the 2003 Kingsmead consultation. This is clearly stated in the 2004 Kingsmead Development Brief.
- 2) There has been considerable residential development in the immediate vicinity over the last few years, with the addition of approximately 1500 new residents.
- 3) There are two neighbouring brownfield sites available for development and local residents feel that these sites should be developed first.
- 4) Kingsmead Field is the only area of public open space at the western end of Northgate and in the southern part of St Stephen's which is large enough for local residents to conduct a wide range of lawful sports and pastimes.

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.

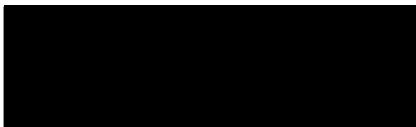
12. Signature

Signature of first applicant:



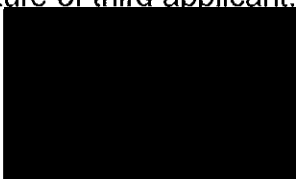
Date: 10.7.2012

Signature of second applicant:



Date: 10.7.2012

Signature of third applicant:



Date: 10.7.2012

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.

Annex 1

Explanatory Statement to support the application for the registration of Kingsmead Field in the locality of the city of Canterbury as a Town Green

1. Background history of the Kingsmead Field

Kingsmead Field, in the city of Canterbury, was originally part of the Stour water meadows which were famous in the nineteenth century for the views which they provided of Canterbury Cathedral. They were a well-known beauty spot and were painted by many artists (see annex 10 – old images of Kingsmead).

In 1936, Canterbury City Council bought an area of land in Kingsmead from various private landowners. It would appear that it was all designated for 'refuse disposal' (see annexes 11 and 12 – extracts from the register of Council-owned Land). However, it is difficult to ascertain how much of the land was actually used for this purpose (and for the disposal of debris from the Blitz), and for how long.

In the late 1940s, the area of land which is now known as Kingsmead Field was restored to grass and converted into a playing field. At some point, much of the adjacent land was converted into playing fields too. A copy of an Ordnance Survey map from 1955 is attached (see annex 13) which shows the extent of the area covered by playing fields at that time. Additional maps (annexes 14, 15, 16 and 17 – maps from 1962, 1979, 1989 and 1994) show the evolution of land usage in the Kingsmead area.

A sports stadium was built on part of the Kingsmead land in 1958, adjacent to the Kingsmead Field. It was used for football, athletics, speedway and greyhound racing (see Annex 18 – Wikipedia extract) until 1999. On 10 March, 1967, ten acres of land in Kingsmead were appropriated to playing field under S. 163 of Local Government Act 1933 (see annexes 11 and 12).

An extensive consultation on the future redevelopment of the Kingsmead area was held in 2003. Local residents in the neighbourhoods of St Stephen's and Northgate identified the retention and enhancement of public open space as their top priority. The results of the consultation were incorporated into the 2004 Kingsmead Development Brief¹.

Particular attention should be given to section 2.4 of the Development Brief regarding public open space. This states that: *'The importance of the open space within Kingsmead is underpinned by the results of the community consultation on the future of Kingsmead which place a high priority on the retention and improvement of public open space.'*

From 2005 onwards, high-density residential development has taken place on the former stadium site and the adjoining field to the east of the stadium, known as Barton Field. Kingsmead Field is the only publicly accessible area which has remained as green open space.

2. Location of Kingsmead Field

The Kingsmead Field is located in the neighbourhood of Northgate in the locality of the city of Canterbury. It is situated on the border of the neighbourhood of St Stephen's and provides an extremely valuable recreational area for both communities. Although the two neighbourhoods are distinct entities, they share a common middle ground – the Kingsmead area. The Kingsmead Field lies at the heart of this area and is the only substantial green open space which is accessible to the public.

2.1 The Northgate Neighbourhood

Northgate is classified as one of the most highly deprived areas of Kent. According to a report published in January 2012 by the Campaign to End Child Poverty², Northgate has the highest level of child poverty in Kent (44%) along with Margate Central. By comparison, the highest level of child poverty nationally is in Tower Hamlets (51%) and the average for the Canterbury area is 17%.

Historically, Northgate has been characterised by military barracks, light industry, wasteland and refuse disposal sites. Today it is becoming more residential, with a high proportion of social housing and student accommodation. It suffers badly from traffic congestion and poor air quality.

Northgate's facilities are concentrated on two lines of axis – the Kingsmead Road / Tourtel Road and the Sturry Road / Northgate road. These lines of axis intersect at the Sturry Road roundabout, close to the Kingsmead Field. Many of the neighbourhood's key community facilities are located on the Kingsmead Road in proximity to the Kingsmead Field - notably the Kingsmead Leisure Centre, the Sure Start Centre, the Riverside Youth Centre, the Northgate Medical Centre and one of the neighbourhood's two supermarkets (Sainsburys).

Other facilities in the neighbourhood include: a church (All Saints), three primary schools, the Northgate Ward Community Centre, an Early Years Centre, the Prince of Wales Youth Centre, a women's refuge, a cluster of superstores on the Sturry Road and a row of small independent shops, hairdressers, charity shops, pubs and cafés on Northgate. Community activities (such as Guides / Scouts) usually take place in the church hall or in the community centre. Parts of Northgate are covered by Neighbourhood Watch and residents associations. Canterbury Christ Church University is located in Northgate, and the neighbourhood has a growing student population which is placing increasing demands on local facilities.

Most of Northgate's open space is located at the eastern end of the Sturry Road at the outer most edge of the neighbourhood (see annex 8 – open space profile of Northgate). The Kingsmead Field is the only area of public open space at the western end of Northgate which is large enough for ball games and the pursuit of a wide range of other sports and pastimes. It is highly valued by local residents, many of whom cannot afford to pay for indoor leisure activities. A particular feature of the field is its riverside location which considerably enhances its attraction and its recreational value.

2.2 The St Stephen's Neighbourhood

St Stephen's is primarily a residential neighbourhood with an increasingly high proportion of student dwellings. It is generally considered to be more affluent than Northgate, although it has a number of deprived estates. In the recent report by the Campaign to End Child Poverty, St Stephen's is recorded as having the second highest level of child poverty in the district of Canterbury (26%).

St Stephen's is divided into two parts by the London to Margate railway line. There are only three vehicular crossing points between the northern and southern parts of the neighbourhood, with the Kingsmead Field close to the central crossing point. This central location ensures its value to both parts of the St Stephen's community.

The area to the south of the railway line was traditionally an area of water meadows prior to its use for refuse disposal and light industry. It is now largely residential. The focal point of this area is the Kingsmead roundabout which has a newsagent, a hairdresser and a locksmith shop. These facilities are located diagonally opposite the Kingsmead Field. The field is the only public open space in the vicinity which is large enough for ball games, dog walking, kite flying etc.

The area north of the railway line is characterised by a 13th century church (St Stephen's), 16th century almshouses, a manor house, a number of large residences, an old pub and sizeable residential estates. Local facilities are clustered around St Stephen's Church and St Stephen's Infant and Junior Schools. They include a post office, chemist, newsagent and dentist. Elsewhere in the neighbourhood are corner stores, a hairdressers and a farmers' market. Community activities (such as Guides and Scouts, the WI and St Stephen's Horticultural Society), usually take place in the church hall. The neighbourhood also has a secondary school and has an increasing student population due to its proximity to the University of Kent.

The two parts of St Stephen's are united by a joint residents association (St Stephen's Residents Association), an active Neighbourhood Watch and by a number of shared facilities and community organisations. Although there is green open space near to St Stephen's Church, the Kingsmead Field is of value to all residents of the neighbourhood because of its size and its riverside location (see annex 9 – open space profile for St Stephen's). It is also of high amenity value due to its position next to the Sure Start centre and opposite the Leisure Centre and the Riverside Youth Centre.

3. Description of Kingsmead Field

Kingsmead Field has two key assets: a riverside corridor, along the smaller branch of the Great Stour, and a playing field (see annex 19 – photographs of the river and field). Together, these provide a pleasant environment for recreation and sport.

The riverside corridor on the northern edge of the field is a designated Green Corridor. It contains an attractive row of old weeping willow trees which are reminiscent of the field's former role as a water meadow. One of the willows classifies as a veteran tree, with a girth of over four metres. The vegetation along the river is dense, and wildlife (notably

birds, insects and mammals, including the occasional water vole) abounds. Many users of the field have commented that they like to sit and relax by the river, or take their children or grandchildren down to the river to watch the fish and the ducks. It provides an 'untamed' environment in which to explore and experience the natural world.

South of the river is the playing field. This was once more extensive than it is now, with pitches marked out for hockey, football or cricket. In recent years, the size of the field has been eroded by neighbouring developments and the field has not been maintained as a playing field. Part of the grass is mown by the Council and part is left as long grass for wildlife (including slow worms). Although the field no longer serves as a formal playing field, it is still used for a wide range of informal sports and pastimes (see below), and valued for the recreational space which it provides.

The main users of the field are local residents from the neighbourhoods of Northgate and St Stephen's; students from Christ Church University; parents and young children from the Sure Start Centre (which is located in one corner of the field); groups of teenagers from the Riverside Youth Centre (across the Kingsmead Road) and families visiting the Kingsmead Leisure Centre (also across the road). Some of the many hundreds of visitors who come to Canterbury by coach each year have also used the field as an area to relax and picnic because of its location a few hundred metres from the city's coach park.

4. Usage of the field for Lawful Sports and Pastimes

Kingsmead Field has been used extensively for over 60 years for sport and recreation, both formally and informally. This has been verified by the 335 questionnaires (see annex 2) which have been submitted by local residents.

4.1 Formal Use

From the late 1940s until 1998, the Kingsmead Field was used as a playing field for local schools and sports clubs with the permission of Canterbury City Council. From 1951 to 1981, Kingsmead Field was the home of Canterbury Hockey Club. It was then used by various football teams and cricket clubs (see annex 20 – photo of field from mid-1990s, showing cricket pavilion). It seems that the use of the field for formal sporting events ceased in 1998. The use of the field for circuses and fairs has continued up until the present day for limited periods of time – usually for a few days, a couple of times a year (see annex 21 – extract from the report by the Chief Executive of Canterbury City Council to the Overview Committee, 13/6/12³).

4.2 Customary Use

Although the formal use of the field was by permission, informal use 'as of right', without any request or need for permission, has been continuous and extensive throughout the last sixty years (late 1940s – 2012) for the purposes of lawful sports and pastimes. Customary use of the field has included walking and jogging, dog walking, picnicking, ball-games (such as rounders, cricket and football), kite-flying, frisbee, wildlife watching by the river, fishing, blackberry picking, relaxing, sun-bathing, playing in the snow,

cycling, painting etc. A number of local football groups have used the field for training on an informal basis. Scout and beaver groups have also used it for group events and informal sporting activities.

The public has not been prevented from using the field when the circus or the fair have been held, but the amount of land available for informal recreation has obviously been reduced on such occasions (see, for example, annex 22 – aerial photo of Kingsmead, dating from circa 2002, showing the imprint on the grass left behind by the circus).

The supporting evidence provided with this application from over 335 witnesses (see annex 2 – completed questionnaires) shows that the field has been used by a significant number of inhabitants of the neighbourhoods of Northgate and St Stephen's over the last 20 years. As the Kingsmead Field is the only large green open space in the whole of Kingsmead which is publicly accessible, it provides an invaluable area for informal recreation in a densely developed urban environment.

Analysis of the 335 completed questionnaires shows that at least 155 individuals (or families) have regularly used the field for keeping fit (jogging, walking, exercises etc); 152 for ball games; 111 for dog walking; 84 for playing with children; 65 for picnics; 55 for wildlife watching; 32 for flying kites or model planes; 14 for cycling and 5 for painting / photography.

Since the construction of the Parham Road Student Village in 2005 (a few hundred metres to the east of the Kingsmead Field), the field is also increasingly used by Northgate's growing student population for informal sports, recreation and relaxation. The Parham Road Student Village houses 573 students from Christ Church University, but has no recreational open space of its own. Outline planning permission has been given for the construction of a further 633 study bedrooms within the student village, making a total of 1,206. The student village is due to link up to the Kingsmead Road (and the Kingsmead Field) via a riverside walk.

Kingsmead Field is within easy walking distance of the student village (c. 0.5 miles) whereas the University sports field on the Stodmarsh Road above Fordwich is several miles away and requires minibus hire for students to access it. Many students have consequently used the Kingsmead Field for informal sports and relaxation, especially football. It has also been used for an inter-university men's lacrosse match (see annex 23 – examples of recent usage).

At the time of submitting this application (July 2012), most Christ Church students have left Canterbury at the close of the academic year, so the evidence questionnaires are not able to reflect the full extent to which the student population has used the field. Students do, however, value the field highly (see, for example, the statements attached as annexes 24 and 25 by a current student and a former student).

Two other high-density residential developments have been built in the last few years in Kingsmead: the Barton Mill Road development and the Kingsbrook Park. Together, these provide homes for up to 1000 new residents. As these new residents become familiar with the area, their use of the field generally increases. Further residential development in Kingsmead (which is likely to take place on the adjacent brownfield sites of the old coach park and the SERCO depot) will increase usage still further.

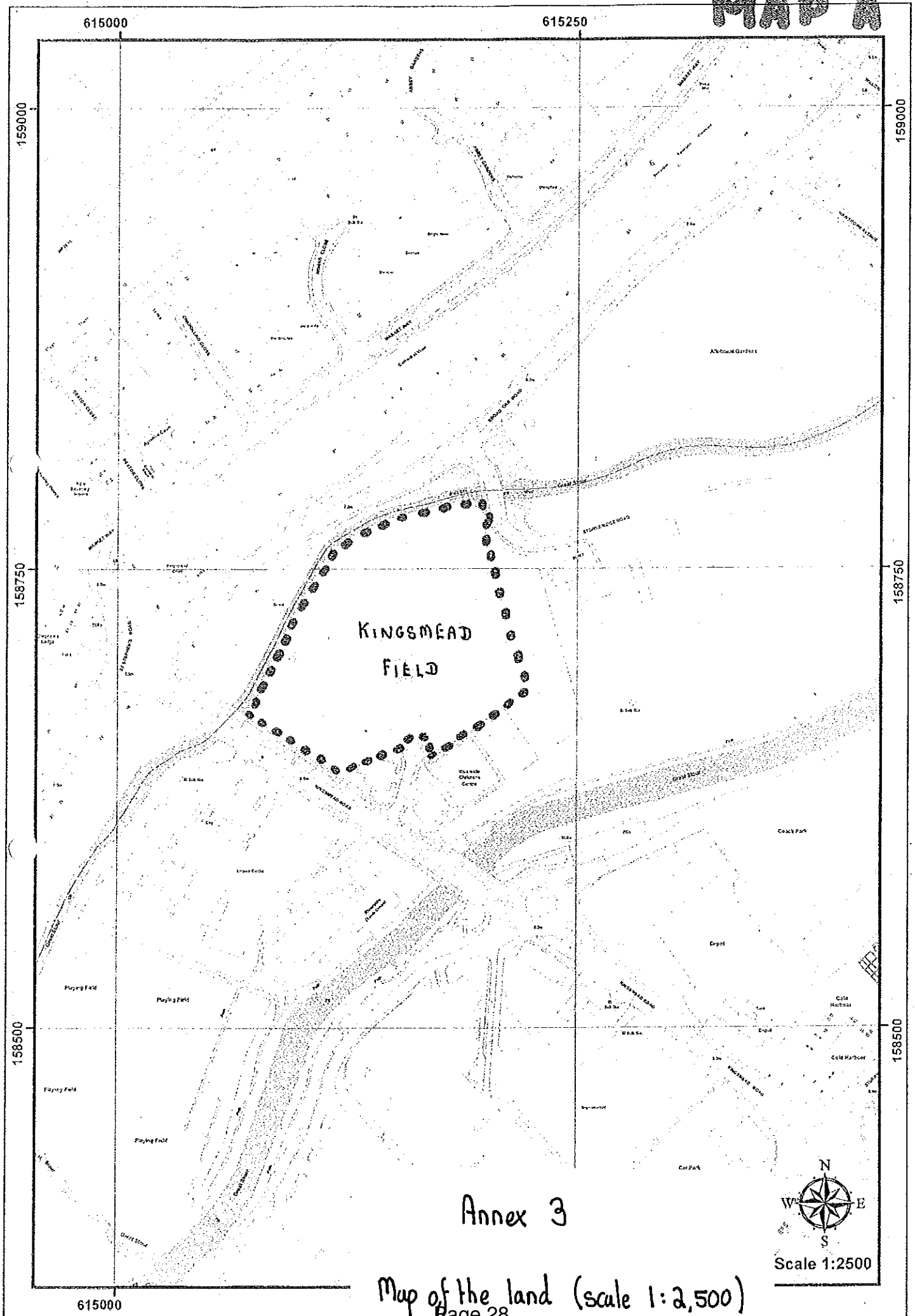
Access to the Kingsmead field has traditionally been via two points on the Kingsmead Road (the steps by the river and the car park for the Sure Start Centre – see annexes 26.1 and 26.2 – photos of entry points) and via the riverside path on the eastern side of the field. This path was blocked off at the Stonebridge Road by the developer of the Kingsbrook Park about a year ago (see annex 26.3), hampering immediate access to the Kingsmead Field by residents of the Kingsbrook Park. This blockage is noted by a number of users in their evidence questionnaires.

In addition to the 335 witness statements, it should be noted that members of the public wrote 246 letters and emails to Canterbury City Council in April 2012 in response to the public notice (see annex 28) about the proposed appropriation of the field for planning purposes. Many of these letters are relevant to this application as they have been written by residents from the two neighbourhoods and include descriptions of their use of the field. They will be forwarded as an annex as soon as they are in the public domain. A written petition with over 650 signatures and an E-Petition with 1690 E-signatures were also presented to Canterbury City Council, both calling for the protection of Kingsmead Field as public open space.

We believe that this application demonstrates that for over 20 years (indeed, for over 60 years), local residents of the neighbourhoods of Northgate and St Stephen's have used Kingsmead Field 'as of right' for the pursuit of lawful sports and pastimes, and that the registration of this field as a Town Green would preserve this right for current residents and for future generations.

Footnotes

- ¹ Kingsmead Development Brief, 2004:
[www.canterbury.gov.uk/authority/assets/localplan/Kingsmead%20-%20Development%20Brief%20\(compressed\)%20Nov04.pdf](http://www.canterbury.gov.uk/authority/assets/localplan/Kingsmead%20-%20Development%20Brief%20(compressed)%20Nov04.pdf)
- ² Report by the Campaign to End Child Poverty, January 2012:
endchildpoverty.org.uk/files/childpovertymap2011.pdf
- ³ Report by the Chief Executive of Canterbury City Council to the Council Overview Committee, 13/6/12:
[www2.canterbury.gov.uk/committee/Published/C00000120/M00008457/\\$\\$ADocPackPublic.pdf](http://www2.canterbury.gov.uk/committee/Published/C00000120/M00008457/$$ADocPackPublic.pdf)



Annex 3

Map of the land (scale 1:2,500)