



## AGENDA

### Kent County Council

### REGULATION COMMITTEE MEMBER PANEL

**Tuesday, 18th March, 2014, at 1.00 pm**  
**Thanington Resource Centre, Thanington**  
**Road, Canterbury CT1 3XE**

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 A D Crowther,  
Mrs V J Dagger and Mr T A Maddison

#### **UNRESTRICTED ITEMS**

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

1. Membership and Substitutes
2. Declarations of Interest by Members for items on the agenda
3. Application to register land known as Montefiore Woodland at Ramsgate as a new Village Green (Pages 3 - 18)
4. Application to register land known as Seaton Meadow at Wickhambreaux as a new Village Green (Pages 19 - 38)
5. 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

**Friday, 7 March 2014**

## **Application to register land known as Montefiore Woodland at Ramsgate as a new Village Green**

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A report by the Head of Regulatory Services to Kent County Council's Regulation Committee Member Panel on Tuesday 18<sup>th</sup> March 2014.

**Recommendation: I recommend that the County Council informs the applicant that the application to register the land known as Montefiore Woodland at Ramsgate has been accepted, and that the land subject to the application be formally registered as a Village Green.**

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Local Members: Mr. A. Terry and Ms. Z. Wiltshire

Unrestricted item

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### **Introduction**

1. The County Council has received an application to register land known as Montefiore Woodland at Dumpton Park Road at Ramsgate as a new Village Green from the Ramsgate Town Council ("the applicant"). The application, dated 3<sup>rd</sup> April 2013, was allocated the application number VGA654. 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. Traditionally, Town and Village Greens have derived from customary law and until recently it was only possible to register land as a new Town or Village Green where certain qualifying criteria were met: i.e. where it could be shown that the land in question had been used 'as of right' for recreational purposes by the local residents for a period of at least 20 years.
3. However, a new provision has been introduced by the Commons Act 2006 which enables the owner of any land to apply to voluntarily register the land as a new Village Green without having to meet the qualifying criteria. Section 15 states:
 

*"(8) The owner of any land may apply to the Commons Registration Authority to register the land as a town or village green.*

*(9) An application under subsection (8) may only be made with the consent of any relevant leaseholder of, and the proprietor of any relevant charge over, the land."*
4. Land which is voluntarily registered as a Town or Village Green under section 15(8) of the Commons Act 2006 enjoys the same level of statutory protection as that of all other registered greens and local people will have a guaranteed right to use the land for informal recreational purposes in perpetuity. This means that once the land is registered it cannot be removed from the formal Register of Town or Village Greens (other than by statutory process) and must be kept free of development or other encroachments.

5. In determining the application, the County Council must consider very carefully the relevant legal tests. In the present case, it must be satisfied that the applicant is the owner of the land and that any necessary consents have been obtained (e.g. from a tenant or the owner of a relevant charge). Provided that these tests are met, then the County Council is under a duty to grant the application and register the land as a Town or Village Green.

## **The Case**

### Description of the land

6. The area of land subject to this application (“the application site”) consists of an area of woodland approximately 1.45 acres (0.59 hectares) in size situated adjacent to the Montefiore Medical Centre at Dumpton Park Drive (opposite its junction with Frances Gardens) in the town of Ramsgate. A plan of the application site is attached at **Appendix A**.

### Ownership of the land

7. A Land Registry search has been undertaken which confirms that the application site is wholly owned by the applicant, Ramsgate Town Council, under title number K962026. A copy of the Register of Title is attached at **Appendix C**.
8. It is understood that Ramsgate Town Council acquired the land in 2009 from Thanet District Council, to whom the land had been sold in 2007 by GP Premises Ltd.
9. There are no other interested parties (e.g. leaseholders or owners of relevant charges) named on the Register of Title.

### Notice of Application

10. As required by the relevant Regulations<sup>1</sup>, notice of the application was published on the County Council’s website. In addition, copies of the notice were displayed on the application site itself. The local County Members were also informed of the application.
11. In response to the notice of application, a representation was received from Mr. S. Berger representing Samber Ltd, a registered charity and owner of land to the north-west of the application site (comprising the Montefiore Synagogue and Mausoleum). A copy of the representation is attached at **Appendix D**.
12. Mr. Berger explains that it has been his charity’s intention to rebuild the theological college which once stood on the application site<sup>2</sup>. He notes that the land was placed in trust by way of an 1866 Indenture by Sir Moses Montefiore

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<sup>1</sup> The Commons Registration (England) Regulations 2008

<sup>2</sup> The college was built on the application site in the late 1960s by Sir Moses Montefiore in memory of his late wife. It is shown on old Ordnance Survey maps of the area. However, it was demolished in 1964 and the land upon which the college once stood has now become the woodland comprising the application site.

with guidelines as to the administration of the college and a strict prohibition on the sale of the land. The charity now wishes to carry forward Sir Moses Montefiore's wishes by rebuilding the college and conforming to the guidelines set out in the trust, in order to enhance and promote the memory of Sir Moses and the local community. Village Green status would clearly conflict with this aim and, as such, the representation includes a request for the application to be amended so as to facilitate the reconstruction of the college whilst also providing for an area of woodland.

13. A copy of the representation was forwarded to the applicant for comment. The applicant's position is that the trust has been superseded by various subsequent transactions involving the land, and Ramsgate Town Council is the current lawful owner of the land. As the landowner, the Town Council strongly wishes to see the application site registered as a Village Green.
14. Legal advice has been sought on the representation received from Samber Ltd. The advice received is that the application site is validly registered to Ramsgate Town Council and there is nothing to suggest that any error has been made in that registration; indeed, Land Registry guarantees title to land. Accordingly, there is no reason why the County Council should not proceed with the registration of the application site as a Village Green, as per the applicant's request.

#### The 'locality'

15. DEFRA's view is that once land is registered as a Town or Village Green, only the residents of the locality have the legal right to use the land for the purposes of lawful sports and pastimes. It is therefore necessary to identify the locality in which the users of the land reside.
16. A locality for these purposes normally consists of a recognised administrative area (e.g. civil parish or electoral ward) or a cohesive entity (such as a village or housing estate).
17. In this case, the application is made by the local Town Council and the relevant locality is stated in the application form as being 'Montefiore Ward, Dumpton Park Drive, Ramsgate'. 'Montefiore Ward' is, presumably, a reference to the Sir Moses Montefiore Ward of Ramsgate Town Council.
18. As noted above, an electoral ward is a qualifying locality for the purposes of Village Green registration and, as such, it seems appropriate that the relevant locality in this case should be the Ramsgate Town Council electoral ward of Sir Moses Montefiore.

#### **Conclusion**

19. As stated at paragraph 3 above, the relevant criteria for the voluntary registration of land as a new Town or Village Green under section 15(8) of the Commons Act 2006 requires only that the County Council is satisfied that the land is owned by the applicant. There is no need for the applicant to demonstrate use of the land

'as of right' for the purposes of lawful sports and pastimes over a particular period.

20. It can be concluded that all the necessary criteria concerning the voluntary registration of the land as a Village Green have been met.

### **Recommendations**

21. I recommend that the County Council informs the applicant that the application to register the land known as Montefiore Woodland at Ramsgate has been accepted, and that the land subject to the application be formally registered as a Village Green.

Accountable Officer: Mr. Mike Overbeke – Tel: 01622 221513 or Email: <a href="mailto:mike.overbeke@kent.gov.uk">mike.overbeke@kent.gov.uk</a> Case Officer: Miss. Melanie McNeir – Tel: 01622 221628 or Email: <a href="mailto:melanie.mcneir@kent.gov.uk">melanie.mcneir@kent.gov.uk</a>
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The main file is available for viewing on request at the Countryside Access Service based at Invicta House, County Hall, Maidstone. Please contact the Case Officer for further details.
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### **Background documents**

- APPENDIX A – Plan showing application site
- APPENDIX B – Copy of application form
- APPENDIX C – Copy of the Register of Title from Land Registry
- APPENDIX D – Representation received from Samber Ltd.

**APPENDIX A:**  
**Plan showing application site**



Scale 1:1250

**Land subject to Village Green application  
at Montefiore Woodland at Ramsgate**

Page 7

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



FORM CA9

Commons Act 2006: section 15

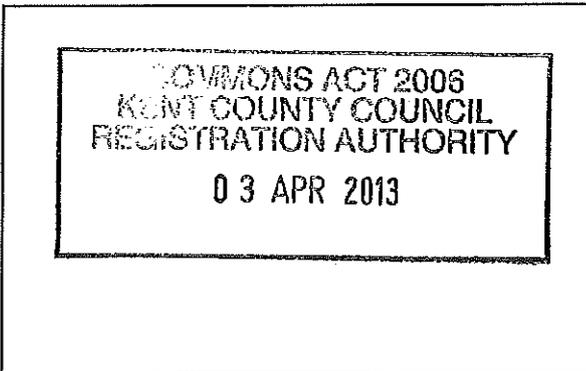
Application for the registration of land  
as a new Town or Village Green

APPENDIX B:  
Copy of the application form



*This section is for office use only*

Official stamp of the Registration Authority  
indicating date of receipt:



Application number:

VCA654

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

[Empty box for VG number]

**Note to applicants**

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

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

**Note 1**  
Insert name of Commons  
Registration Authority

**1. Commons Registration Authority**

To the: VILLAGE GREENS AND COMMONS REGISTRATION  
SERVICE  
KENT COUNTY COUNCIL  
INVICTA HOUSE  
COUNTY HALL  
MAIDSTONE  
KENT, ME14 1XX.

**Note 2**

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

**2. Name and address of the applicant**

Name: RAMSGATE TOWN COUNCIL

Full postal address: THE CUSTOM HOUSE  
(incl. Postcode) HARBOUR PARADE  
RAMSGATE CT11 8LP.

Telephone number: 01843 - 598 751  
(incl. national dialling code)

Fax number: \_\_\_\_\_  
(incl. national dialling code)

E-mail address: richard.styles@ramsgate.tc.org.uk

**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: RICHARD STYLES

Firm: RAMSGATE TOWN COUNCIL

Full postal address: THE CUSTOM HOUSE  
(incl. Postcode) HARBOUR PARADE  
RAMSGATE CT11 8LP.

Telephone number: 01843 - 598 751  
(incl. national dialling code)

Fax number: \_\_\_\_\_  
(incl. national dialling code)

E-mail address: richard.styles@ramsgate.tc.org.uk

**Note 4**

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

**4. Basis of application for registration and qualifying criteria**

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

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

Section 15(2) applies:

Section 15(3) applies:

Section 15(4) applies:



**Note 7**

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

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

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

VOLUNTARY APPLICATION BY LANDOWNER,

**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**

VOLUNTARY APPLICATION BY LANDOWNER,

**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**

MINUTE 163 – RAMSGATE TOWN COUNCIL  
MEETING 7TH NOV 2012.

COPY ATTACHED.

RS

**Note 10**

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

**10. Supporting documentation**

- 1/ COUNCIL MINUTES – 7TH NOV 2012.
- 2/ LAND REGISTRY MAP SCALE 1:1250. IN A4
- 3/ LAND REGISTRY MAP " IN A3
- 4/ COPY OF TRANSFER DOCUMENT FOR LAND.
- 5/ AERIAL PHOTOGRAPHS – VARIOUS OF LAND.
- 6/ HISTORICAL MAP COPIES X2.

**Note 11**

List any other matters which should be brought to the attention of the Registration Authority (in particular if a person interested in the land is expected to challenge the application for registration). Full details should be given here or on a separate sheet if necessary.

**11. Any other information relating to the application**

THE RAMSGATE TOWN COUNCIL WISHES TO PROTECT THE WOODLAND IN PERPETUITY BECAUSE:

- (a) RAMSGATE HAS A DEFICIT OF PUBLICLY OWNED OPEN SPACE OR AMENITY LAND.
- (b) LOCAL FEELING EXPRESSED WITHIN RAMSGATE + THE IMMEDIATE AREA HAS REQUESTED THAT RTC TAKE ACTION OF THIS KIND TO PROTECT THE WOODLAND
- (c) RAMSGATE TOWN COUNCIL ARE HOLDING THE OWNERSHIP OF THIS LAND AS A CONSTRUCTIVE TRUST AND DEEM IT IN THE WIDER INTERESTS OF THE PUBLIC + THE LAND THAT THIS ACTION IS CARRIED OUT.

**Note 12**

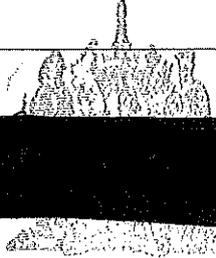
*The application must be signed by each individual applicant, or by the authorised officer of an applicant which is a body corporate or unincorporate.*

**12. Signature**

Signature(s) of applicant(s):



Date: 18<sup>TH</sup> MARCH 2013

  
Ramsgate Town Council  
The Custom House  
Harbour Road  
Ramsgate CT11 5LP  
Tel: 01843 392751

**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.*

**APPENDIX C:  
Copy of the Register of Title**

THIS IS A PRINT OF THE VIEW OF THE REGISTER THE ENTRIES SUBSISTING IN THE REGISTER ON THAT THIS REGISTER VIEW IS NOT ADMISSIBLE IN COPY WITHIN THE MEANING OF S.67 LAND REGISTRATION ACT 2002. UNLIKE AN OFFICIAL COPY, IT MAY NOT ENTITLE A PERSON TO BE INDEMNIFIED BY THE REGISTRAR IF HE OR SHE SUFFERS LOSS BY REASON OF A MISTAKE CONTAINED WITHIN IT. THE ENTRIES SHOWN DO NOT TAKE ACCOUNT OF ANY APPLICATIONS PENDING IN THE REGISTRY. FOR SEARCH PURPOSES THE ABOVE DATE SHOULD BE USED AS THE SEARCH FROM DATE.

THIS TITLE IS DEALT WITH BY LAND REGISTRY, NOTTINGHAM OFFICE.

TITLE NUMBER: K962026

There is no application or official search pending against this title.

## A: Property Register

This register describes the land and estate comprised in the title.

KENT : THANET

- 1 (21.11.1963) The Freehold land shown edged with red on the plan of the above title filed at the Registry and being land to the west of Dumpton Park Drive, Ramsgate.
- 2 The tunnel passing under the land in this title and all rights appurtenant to such tunnel are excepted from this registration.

## B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

### Title absolute

- 1 (15.03.2011) PROPRIETOR: RAMSGATE TOWN COUNCIL of Custom House, Harbour Parade, Ramsgate, Kent CT11 8LP.
- 2 (03.12.2009) RESTRICTION: No disposition of the registered estate by the proprietor of the registered estate is to be registered without a certificate signed his conveyancer that the provisions of Clause 12 of Transfer dated 30 November 2009 between (1) GP Premises Limited and (2) Thanet District Council have been complied with.
- 3 (15.03.2011) The value as at 15 March 2011 was stated to be under £100,000.

## C: Charges Register

This register contains any charges and other matters that affect the land.

- 1 A Conveyance of the land in this title and other land dated 24 October 1963 made between (1) London Sephardi Trust (Custodian Trustees) (2) Neville Jonas Laski and others (Managing Trustees) and (3) The County Council of The Administrative County of Kent (County Council) contains the following covenants:-

"THE County Council hereby covenant with the Custodian Trustees as follows:-

- (i) To maintain at their own expense the surface of the said roadway in the same condition as it is at the date hereof.
- (ii) Forthwith at their own expense to erect to a height of six feet between the points marked C-B on the said plan where the existing iron

## C: Charges Register continued

fence is inadequate to provide privacy to Temple Cottage and the Synagogue either a close boarded fence or a wall or concrete post and panel fencing with a right to put a chain link fence above it except that where the boundary fence runs in front of Mill House aforesaid dwarf retaining walls only shall be erected around the windows with or without a chain link fence above them so that the access of light and air to the said windows shall not be blocked.

(iii) Not to acquire any rights of light or air to the buildings erected or to be erected on the land hereby conveyed or any part thereof which would prevent the Custodian Trustees or their successors in title to the adjoining land to the North-West of the boundary between the points A-B or the Managing Trustees or their successors in office building on their said adjoining land."

NOTE: The points B and C referred to are marked B and C in blue respectively on the title plan. Point A does not affect the land in this title.

- 2 (03.12.2009) A Transfer of the land in this title dated 30 November 2009 made between (1) GP Premises Limited and (2) Thanet District Council contains restrictive covenants.

*NOTE: Copy filed.*

- 3 (03.12.2009) The land is subject to the rights reserved in the Transfer dated 30 November 2009 referred to above.

- 4 (15.03.2011) A Transfer of the land in this title dated 10 March 2011 made between (1) Thanet District Council and (2) Ramsgate Town Council contains restrictive covenants.

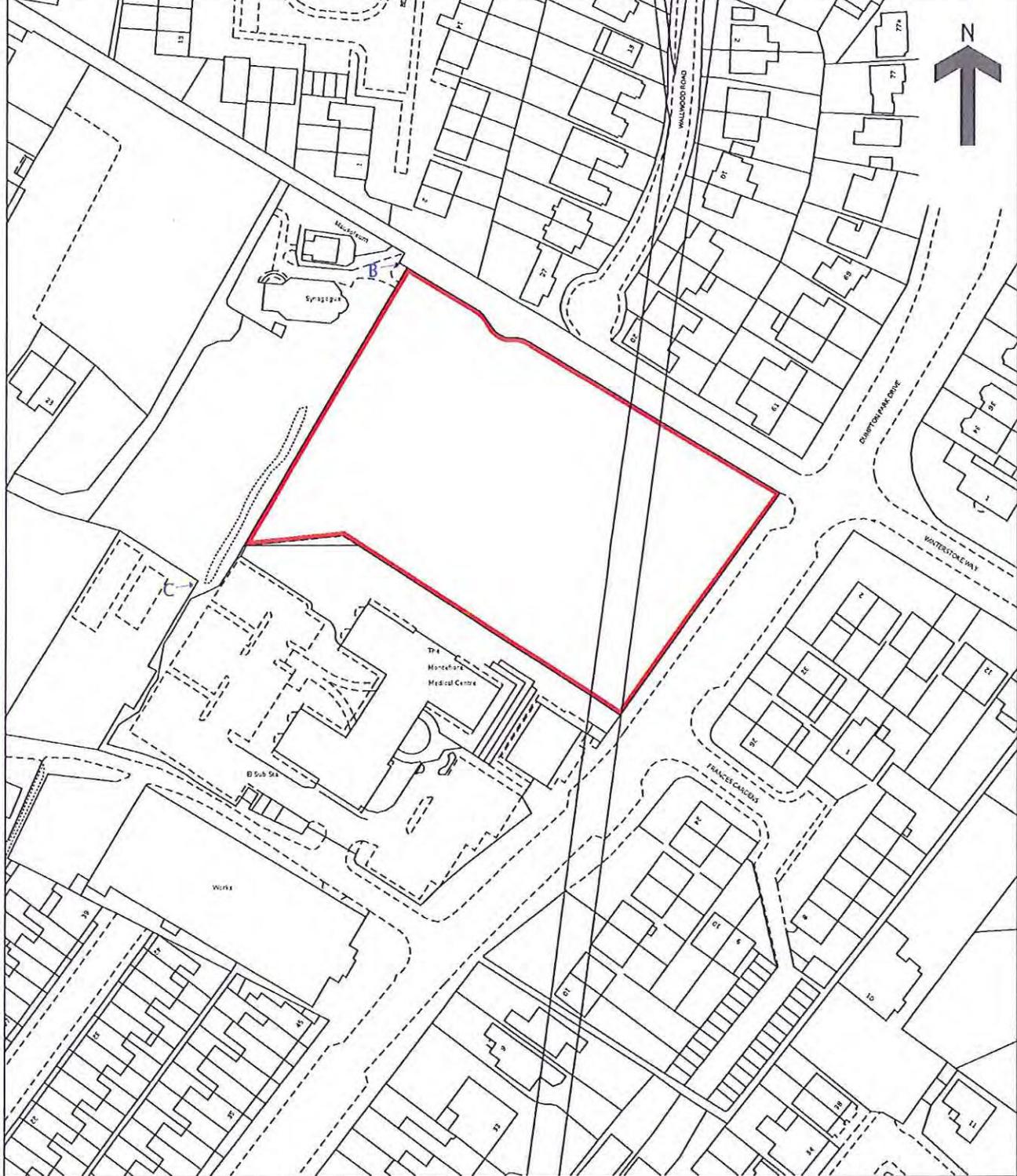
*NOTE: Copy filed.*

- 5 (31.03.2011) The Transfer dated 10 March 2011 referred to above contains a right of pre-emption in favour of Thanet District Council.

End of register



© Crown Copyright. Produced by Land Registry. Reproduction in whole or in part is prohibited without the prior written permission of Ordnance Survey. Licence Number 100026316.



This is a print of the view of the title plan obtained from Land Registry showing the state of the title plan on 05 March 2014 at 15:02:35. This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. See Land Registry Public Guide 19 - Title plans and boundaries.

**SAMBER LIMITED**  
[REDACTED]  
[REDACTED]

Commons Registration Team  
PROW and Access Service  
Kent County Council  
Invicta House  
County Hall  
Maidstone  
Kent  
ME14 1XX

Your ref: VGA654

4 September 2013

Dear Ms McNeir

**Re: Land situate between The Montefiore Medical Centre and Public Footpath  
TRX2 at Dumpton Park Drive in the town of Ramsgate  
Kent County Council  
Commons Act 2006 - Section 14(8)  
Notice of application for the Registration of the Land as a Village Green**

We are a charity registered at the Charity Commissioners under No: 270675, and wish to draw your attention to our observations relating to the above application.

We are the freehold owners of the land to the North West of the subject land and marked on your map TRX3. We purchased this land in or about 2007. One of the objects of our charity includes teaching of Religious education and we were drawn to this area by virtue of the importance that the late Sir Moses Montefiore placed on the study of the Jewish Torah.

Our intention was and still is the reconstruction of the college that was situated on the land that is the subject of this application. Our plans include the rebuilding of a replica of the college on its existing footprint and indeed this campaign is extremely popular and widely supported within the international Jewish Community. We embarked upon this programme almost immediately following the purchase of the land marked TRX3, but regrettably the banking crisis together with the deep recession suffered by all caused the delay in pursuing our aims at that time.

We had initial meetings with the local planning department and instructed Clagues architects to prepare and design a scheme for both the rebuilding of the college on the subject land together with ancillary accommodation on the land we purchased. Moreover, we reimbursed the owners of the Montefiore Medical Centre in respect of the cost of the s.106 agreement

Samber Limited

Reg Office: [REDACTED]

Charity No: 270675

they had with the planners for their agreement that in the event that permission is granted for the reconstruction of the college they would not object. Indeed they would only agree that the said land could only be used for the sole purpose of the rebuilding of the college.

Initially, our scheme was supported which had the effect of bringing back the culture and history of the Town of Ramsgate and would undoubtedly enhance the entire area.

As we are now beginning to exit from the recession, we wish to resurrect our plans and indeed we wish to hold further discussions with all parties concerned to ascertain their views.

We have in our possession a facsimile copy of the Indenture executed by the late Sir Moses dated 24th February 1866 in which Sir Moses conveys the land upon trust and thereby sets out the terms of the said trust. Indeed there was a strict prohibition to mortgage or sell the land.

The Trust provides under the heading of Table of Contents guidelines towards both the administration and procedures in respect of both the day to day observance as well as both management and supervision of the college. We propose to forward to you a copy of the indenture under separate cover.

It is not a coincidence that today is the eve of Rosh Hashana (Jewish New Year). The Indenture provides for certain rituals that the late Sir Moses requested to be observed. The first day of Rosh Hashana (tomorrow) is the anniversary of the passing of the late lamented death of Lady Montefiore and Sir Moses had requested that certain prayers shall be offered up known as the Kaddish during the services on that day.

It is our intention to conform with the wishes of the late Sir Moses, and we believe that the rebuilding of the college and conforming to the guidelines stated in the Indenture would enhance and promote the memory of this great man and the local community.

In the circumstances we would be obliged, if the application could be amended or alternatively include the reconstruction of the theological college whilst at the same time provide for an area of woodland.

We look forward to hearing from you.

Yours sincerely

Shmuel Binyomin Eliezer Berger  
Trustee  
Samber Limited

Samber Limited

Reg Office: [REDACTED]

Charity No: 270675

## Application to register land known as Seaton Meadow at Wickhambreaux as a new Town or Village Green

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A report by the Head of Regulatory Services to Kent County Council's Regulation Committee Member Panel on Tuesday 18<sup>th</sup> March 2014.

**Recommendation: I recommend, for the reasons set out in the Inspector's report dated 13<sup>th</sup> December 2013, that the applicant be informed that the application to register land known as Seaton Meadow at Wickhambreaux has not been accepted.**

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Local Members: Mr. M. Northey

Unrestricted item

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### Introduction

1. The County Council has received an application to register land known as Seaton Meadow at Wickhambreaux as a new Town or Village Green from the Wickhambreaux Parish Council ("the applicant"). The application, made on 28<sup>th</sup> June 2010, was allocated reference number VGA627. A plan of the site is shown at **Appendix A** to this report.

### 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**<sup>1</sup>, e.g. by way of the erection of fencing or a notice (section 15(3) of the Act).
5. As a standard procedure set out in the 2008 Regulations, the applicant must notify the landowner of the application and the County Council must notify every local authority. The County Council must also publicise the application in a newspaper circulating in the local area and place a copy of the notice on the County Council's website. In addition, as a matter of best practice rather than legal requirement, the County Council also places copies of the notice on site to provide local people with

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<sup>1</sup> Note that from 1<sup>st</sup> October 2013, the period of grace was 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.

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”) is known locally as Seaton Meadow and is situated on the south-eastern fringes of the village of Wickhambreaux, although, officially, the land itself falls within the neighbouring parish of Ickham and Well<sup>2</sup>. The application site consists of approximately 8.5 hectares (21 acres) of grazing land, with the Little Stour river running across its centre. Access to the application site is via three stiles in the fencing bordering Seaton Road, giving access to Public Footpath CB184 which is formed of two sections crossing the northern part of the application site. The application site is shown in more detail on the plan at **Appendix A**.
7. The application site was purchased in 2009 from the Church Commissioners by a consortium of individuals (“the landowners”) who divided the land into four plots.

### **Previous resolution of the Regulation Committee Member Panel**

8. As a result of the consultation, a number of representations were received both in support of and in opposition to the application. All four landowners objected to the application, as well as a further three local residents.
9. The matter was considered at a Regulation Committee Member Panel meeting on Tuesday 15<sup>th</sup> November 2011, at which Members accepted the recommendation that the matter be referred to a Public Inquiry for further consideration. A copy of the minutes of that meeting are attached for reference at **Appendix B**.
10. As a result of this decision, Officers instructed a Barrister experienced in this area of legislation to hold a Public Inquiry, acting as an independent Inspector, and to report her findings back to the County Council.

### **The Public Inquiry**

11. A pre-Inquiry meeting, for the purpose of determining the matters to be addressed and the procedure to be followed at the Inquiry, was held at Ickham Village Hall on Tuesday 27<sup>th</sup> March 2012. Written directions to all parties confirming the format of the Inquiry and procedure for the submission of evidence were circulated shortly thereafter.
12. The Public Inquiry took place at Ickham Village Hall commencing on Monday 12<sup>th</sup> November 2012 and continuing until Thursday 15<sup>th</sup> November and resuming on Wednesday 27<sup>th</sup> February 2013 until Friday 1<sup>st</sup> March. The Inspector sat for a total of 12 days, hearing evidence from all interested parties, and she also undertook an accompanied site visit on Tuesday 19<sup>th</sup> March 2013.
13. At the Public Inquiry, the applicant was represented by Mr. Cain Ormondroyd of Counsel (instructed by the Kent Law Clinic on behalf of the applicant) and the landowners were represented by Mr. Richard Ground of Counsel.

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<sup>2</sup> The application has been made by the Wickhambreaux Parish Council, but it has the full support of Ickham and Well Parish Council in whose parish the application site is situated.

14. The Inspector subsequently produced a detailed written report dated 13<sup>th</sup> December 2013 (“the Inspector’s report”). The report itself runs to almost 190 pages, but the Inspector’s findings and conclusions are summarised below.

### **Legal tests and Inspector’s findings**

15. 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 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?*
- (d) *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 in accordance with the Inspector’s findings.

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

16. In order to qualify for registration as a Village Green, recreational use of the application site must have taken place ‘as of right’ through the period of use relied upon. This means that use must have taken place without force, without secrecy and without permission (*‘nec vi, nec clam, nec precario’*). As explained by Lord Hoffman in the Sunningwell<sup>3</sup> case:

*“the unifying element in these three vitiating circumstances... was that each constituted a reason why it would not have been reasonable to expect the owner to resist the exercise of the right – in the first case, because rights should not be acquired by the use of force, in the second, because the owner would not have known of the user and in the third, because he had consented to the user, but for a limited period”.*

17. In this case, there was no suggestion that any informal recreational use of the application site had taken place in a secretive manner. Nor was there any evidence of any attempt by the current landowners or a previous landowner to physically secure the application site (i.e. so as to render use of it by force) prior to the erection of fencing across the site in March 2010. There was, however, a dispute as to whether informal recreational use had taken place by virtue of an implied permission.

18. The landowners’ case was that an implied permission to use the land for informal recreation had been granted through actions (i.e. non-verbal means) by the tenant farmer. They relied on comments expressed by Lord Walker in the Beresford<sup>4</sup> case in which he suggested that “*permission to enter land may be given by a nod or a wave*”.

19. In the current case, it was suggested by the landowners that the some of the actions undertaken by the tenant farmer had had the effect of communicating an

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<sup>3</sup> *R v. Oxfordshire County Council and another, ex parte Sunningwell Parish Council* [1999] 3 All ER 385 at 391

<sup>4</sup> *R (Beresford) v Sunderland City Council* [2004] 1 All ER 160 at 181

implied permission to users of the land; for example, waving and acknowledging people he knew, reminding people he did not know where the footpath was (and letting them carry on), conversations with users about how to control their dogs amongst the cattle, and even giving out his telephone number to people so they could let him know if they saw any problems with his cattle.

20. The Inspector rejected this proposition and she was not satisfied that there was any evidence upon which a blanket permission for local inhabitants to engage in informal recreational activities on the application site could be implied; neither the landowners nor the tenant farmer had done anything to communicate generally with local inhabitants regarding access to the application site during the relevant period.

21. In response to the landowners' submissions regarding the alleged implied permission, the Inspector concluded<sup>5</sup> that:

*"[the tenant farmer] acknowledging someone he knew with a wave or greeting would not necessarily convey any message about being welcome to return on future occasions. In any event such a gesture by itself would be more likely to be construed as acquiescence in, or encouragement to, use [the land]... I would have thought that what Lord Walker had in mind when he said that 'permission to enter land may be given by a nod or a wave' was a nod or a wave before the person entered the land, not when the person was already walking around it, and a permission for a one-off entry rather than a running permission".*

22. As such, the Inspector was satisfied that informal general recreational use of the application site had taken place 'as of right' (subject to her findings in relation to the nature of that use set out below).

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

23. Lawful sports and pastimes can be commonplace activities and legal principle does not require that rights of this nature be limited to certain ancient pastimes (such as maypole dancing) or for organised sports or communal activities to have taken place. The Courts have held that '*dog walking and playing with children [are], in modern life, the kind of informal recreation which may be the main function of a village green*'<sup>6</sup>.

24. Furthermore, it is not necessary to demonstrate that both sporting activities and pastimes have taken place and the phrase 'sports and pastimes' has been interpreted by the Courts as being a single composite group rather than two separate classes of activities<sup>7</sup>. In any event, the activities must be 'lawful' in the sense that they must not amount to a criminal offence<sup>8</sup>.

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<sup>5</sup> Paragraph 448 of the Inspector's report

<sup>6</sup> *R v Suffolk County Council, ex parte Steed* [1995] 70 P&CR 487 at 508 and approved by Lord Hoffman in *R v. Oxfordshire County Council and another, ex parte Sunningwell Parish Council* [1999] 3 All ER 385

<sup>7</sup> *R v Oxfordshire County Council and another, ex parte Sunningwell Parish Council* [1999] 3 All ER 385

<sup>8</sup> *R (Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust) v Oxfordshire County Council* [2010] EWHC 530 Admin)

25. Based on the evidence presented to the Inquiry, the Inspector made a number of findings of fact in respect of the nature of the informal recreational use taking place on the application site<sup>9</sup>. These can be summarised as follows:

- Walking, and in particular dog walking, were by far the most frequent and regular activities carried out on the application land;
- There was little use of the Public Footpaths crossing the land;
- Users entered the field at one of the three stiles but preferred to diverge from the Public Footpaths, making a beeline for the northern river bank and for the most part adhering to a visible track;
- The most popular route for dog walking was along the northern river bank;
- The stepping stones were a particular attraction where people would sometimes pause on their walks to cross over and back or let their children play for a while before moving on;
- A minority of walkers crossed the river to the southern side and, once there, tended to keep to the perimeter of the southern section;
- There was no material amount of wandering or meandering around the application site generally;
- Some of the other activities undertaken (e.g. photography or bird watching) were done in the course of walking;
- Blackberrying and tobogganing were seasonal and confined to small sections of the application site;
- Most other activities were centred on the river itself, or on the river banks, and were particularly concentrated on the stepping stones;
- Children's play of kinds not associated with the river or with the perimeter of the land decreased in amount in and after the 1980s (due in part to the opening of a playing field nearby); and
- Kite flying, ball games, painting/sketching and formal picnics were very rare events during the twenty year period.

26. Having concluded that the vast majority of use consisted of walking (with or without dogs), the Inspector went on to consider whether such use could be considered as 'qualifying use' for the purposes of the Village Green application. She agreed with the landowners' position that, generally speaking,:

*"people took a limited number of routes that led to and along the northern river bank; to the stepping stones/Hookfield House ford, for those wishing to cross to the southern side; and around the perimeter of the southern side. On an area the size of the Application Land I do not think that pattern of use suggests general recreational use of the whole, or that a reasonable landowner observing the use would have regarded it as asserting a right to indulge in lawful sports and pastimes over the whole of his land"*

27. In considering this particular issue, the Inspector had regard to Sullivan J's comments in the Laing Homes<sup>10</sup> case. He said:

*"For obvious reasons, the presence of footpaths or bridleways is often highly relevant in [Village Green applications]: land is more likely to be used for recreational purposes by local inhabitants if there is easy access to it. But it is important to distinguish between use which would suggest to a reasonable landowner that the users believed they were exercising a public right of way – to walk, with or without dogs, around the perimeter of his*

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<sup>9</sup> Set out in full at paragraphs 460 to 472 of the Inspector's report

<sup>10</sup> *R (Laing Homes Ltd.) v Buckinghamshire County Council* [2004] 1 P&CR 573 at [102]

*fields – and use which would suggest to a landowner that the users believed that they were exercising a right to indulge in lawful sports and pastimes across the whole of his fields”.*

28. These comments were reiterated by Lightman J in the Oxfordshire<sup>11</sup> case:

*“Recreational walking upon a defined track may or may not appear to the owner as referable to the exercise of a public right of way or a right to enjoy a lawful sport or pastime depending on the context in which the exercise takes place, which includes the character of the land and the season of the year. Use of a track merely as an access to a potential green will ordinarily be referable only to exercise of a public right of way to the green. But walking a dog, jogging or pushing a pram on a defined track which is situated on or traverses the potential green may be recreational use of land as a green and part of the total such recreational use, if the use in all the circumstances is such as to suggest to a reasonable landowner the exercise of a right to indulge in lawful sports and pastimes across the whole of his land. If the position is ambiguous, the inference should generally be drawn of exercise of the less onerous right (the public right of way) rather than the more onerous (the right to use as a green)”.*

29. Applying the guidance provided by case law, the Inspector concluded that most of the walking (with or without dogs) that took place on the land would have appeared to a reasonable landowner to be referable to use as a public right of way rather than use as a village green<sup>12</sup>. She added that had no doubt that walking along the northern river bank was by far the most popular and prized activity undertaken by local people on the land<sup>13</sup>.

30. Overall, the Inspector’s conclusion<sup>14</sup> in respect of the use of the land for lawful sports and pastimes was that:

*“it follows that walking and dog walking along the routes which I have identified did not qualify as a lawful pastime for the purposes of the application... and should be discounted... together with activities incidental to such walking (such as stopping to admire a view, take a photograph, look at a bird, pick some blackberries, have a drink of Coke or an apple, wait for a dog to have a run round or a child to play, or chat with another walker) which are characteristic of footpath use.*

...

*Once that is done, I find that the residual recreational activities on the application land over the twenty year period (particularly in the latter half of it) were no more than trivial or sporadic”.*

31. Therefore, whilst the Inspector was satisfied that the application site had been used for the purposes of lawful sports and pastimes, she found that the nature of the informal recreational use taking place on the land was such that the majority of it was not qualifying use, and the remaining use was insufficient to give rise to Village Green registration.

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<sup>11</sup> *Oxfordshire County Council v Oxford City Council and another* [2004] EWHC 12 (Ch) at [102]

<sup>12</sup> Paragraph 473 of the Inspector’s report.

<sup>13</sup> Paragraph 474 of the Inspector’s report

<sup>14</sup> Paragraphs 476 and 477 of the Inspector’s report

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

32. The right to use a Town or Village Green is restricted to the inhabitants of a locality, or of a neighbourhood within a locality, and it is therefore important to be able to define this area with a degree of accuracy so that the group of people to whom the recreational rights are attached can be identified.

*“locality”*

33. The definition of locality for the purposes of a Town or Village Green application has been considered by the Courts. In the Cheltenham Builders<sup>15</sup> case, it was considered that ‘...at the very least, Parliament required the users of the land to be the inhabitants of somewhere that could sensibly be described as a locality... there has to be, in my judgement, a sufficiently cohesive entity which is capable of definition’. The judge later went on to suggest that this might mean that locality should normally constitute ‘some legally recognised administrative division of the county’.

34. In this case, the applicant chose to rely on various neighbourhoods, all situated within the wider locality of the two civil parishes of Wickhambreaux and Ickham.

35. There was no dispute at the Inquiry that a civil parish is a legally recognised administrative unit capable of constituting a qualifying locality for the purposes of Village Green registration. Nor was it contentious that the applicant could rely on more than one locality; indeed, in the Oxfordshire<sup>16</sup> case, Lord Hoffman confirmed that the reference to a ‘neighbourhood within a locality’ within the definition was to be read as ‘neighbourhood within a locality or localities’.

*“neighbourhood”*

36. In cases where the locality is so large that it would be impossible to meet the ‘significant number’ test (see below), it will also necessary to identify a neighbourhood within the locality. The concept of a ‘neighbourhood’ is more flexible than that of a locality, and need not be a legally recognised administrative unit. On the subject of ‘neighbourhood’, the Courts have held that ‘it is common ground that a neighbourhood need not be a recognised administrative unit. A housing estate might well be described in ordinary language as a neighbourhood... The Registration Authority has to be satisfied that the area alleged to be a neighbourhood has a sufficient degree of cohesiveness; otherwise the word “neighbourhood” would be stripped of any real meaning’<sup>17</sup>.

37. In this case, the applicant initially specified the neighbourhood (on the original application form) as ‘the neighbourhood of Wickhambreaux village and Seaton hamlet’. The application was subsequently amended, prior to the Inquiry, to rely on two additional alternative neighbourhoods of Wickhambreaux village (within the locality of Wickhambreaux and Ickham parishes) or Seaton hamlet (within the locality of Ickham parish).

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<sup>15</sup> *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at 90

<sup>16</sup> *Oxfordshire County Council v Oxford City Council and another* [2006] UKHL 25 at [27]

<sup>17</sup> *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at 92

38. The Inspector took issue with the applicant's claimed composite neighbourhood of 'Wickhambreaux village and Seaton hamlet', which she considered to be an artificial construct rather than an accurate representation of local circumstances. She noted that none of the witnesses named 'Wickhambreaux village and Seaton hamlet' as the identifiable neighbourhood of which they considered themselves to be residents and found<sup>18</sup> that:

*"the overwhelming majority plumped for either Wickhambreaux (village or parish) or Seaton. That seems to me to be the strongest possible evidence that there is no local perception of a unified neighbourhood. However much social interaction and sharing of facilities there may be between the residents of Wickhambreaux village and Seaton hamlet... and notwithstanding that Seaton is tiny compared to Wickhambreaux in terms of area and population, it has its own separate identity and character"*.

39. The Inspector accepted that either Wickhambreaux village or Seaton hamlet might, individually, be capable of constituting a qualifying neighbourhood in their own right. However, she was puzzled by the applicant's delineation of the boundaries of these two areas which she considered to be without any rational explanation<sup>19</sup>.

40. Overall, the Inspector concluded that none of the neighbourhoods identified by the applicant was sufficient to meet the requirements of the Commons Act 2006 and her advice to the County Council<sup>20</sup> was that it does not have any power to *"reformulate an applicant's case and register land on the basis of some locality or neighbourhood other than one identified and defined by him"*, adding that to do so would not be fair to the landowners once the evidence and the parties' cases were closed.

*"a significant number"*

41. 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'*<sup>21</sup>. Thus, the test is a qualitative, not quantitative one, and what constitutes a 'significant number' will depend upon the individual circumstances of each case.

42. Having concluded that none of the neighbourhood relied upon by the applicant was a qualifying neighbourhood, it was not necessary for the Inspector to consider the issue of whether use had been by a 'significant number' of the residents from any of the applicant's chosen neighbourhoods.

43. However, it is clear from her conclusions in respect of the nature of the recreational use (set out under the 'lawful sports and pastimes' heading above) that, even if she had been satisfied that the applicant had correctly identified a qualifying neighbourhood, any qualifying recreational use was trivial and sporadic, and not capable of giving rise to a general right to recreate over the whole of the land.

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<sup>18</sup> Paragraph 435 of the Inspector's report

<sup>19</sup> Paragraph 438 of the Inspector's report

<sup>20</sup> Paragraph 440 of the Inspector's report

<sup>21</sup> *R (Alfred McAlpine Homes Ltd.) v Staffordshire County Council* [2002] EWHC 76 at paragraph 71

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

44. The Commons Act 2006 requires use of the land to have taken place ‘as of right’ up until the date of application or, if such use has ceased prior to the making of the application, section 15(3) of the 2006 Act provides that an application must be made within two years from the date upon which use ‘as of right’ ceased.
45. In this case, the application was made under section 15(3) of the Act on the basis that use of the application site was challenged by way of the erection in March 2010 of stock-proof fencing topped with barbed wire along the southern boundary of Public Footpath CB184, thereby denying access to the remainder of the application site (including the river).
46. Although the fence did not preclude use of the remaining small section of the application site abutting Seaton Road (access to which remained freely available from the Public Footpaths) it was not disputed that the fencing had served as a challenge to informal recreational use of the application site as a whole and, in doing so, had had the effect of prompting local residents to seek registration of the land as a Village Green so that general access to the whole area could be reinstated.
47. It was not possible at the Inquiry to identify a precise date in March 2010 when the fencing was erected, but the parties were agreed that the relevant works had been undertaken within the first two weeks of that month.
48. The Village Green application was submitted on 28<sup>th</sup> June 2010 and, therefore, was made well within the prescribed two year period of grace.

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

49. 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 relevant twenty-year period is calculated retrospectively either from the date upon which use ceased to be ‘as of right’ or, where informal recreational use is continuing, from the date of the application.
50. In determining the relevant twenty-year period in this case, the applicant placed reliance on section 15(6) of the Commons Act 2006 which provides that “*there is to be disregarded any period during which access to the land was prohibited to members of the public by reason of any enactment*”. It was common ground that access to the application site was the subject of a statutory prohibition as a result of the foot and mouth outbreak during the spring of 2001; the Foot and Mouth Disease Order 1983 meant that public rights of way in the area were closed from 6pm on 27<sup>th</sup> February 2001 to 6am on 12<sup>th</sup> May 2001. Access to the application site was therefore cut off for approximately 74 days during the relevant period, which (as a result of section 15(6)) would fall to be disregarded in the calculation of the twenty year period. Accordingly, it would be necessary for the applicant to demonstrate qualifying use for a period of twenty years and 74 days<sup>22</sup>.

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<sup>22</sup> Paragraph 24 of the Inspector’s report

51. As noted above, informal recreational use of the land in this case ceased to be 'as of right' by virtue of the erection of fencing during the first two weeks of March 2010. The relevant twenty year period ("the material period") is therefore late December 1989 to early March 2010.
52. In this regard, the landowners raised three issues which, in their view, would have been sufficient to constitute a material interruption to the informal recreational use of the land by local residents.
53. The first issue relied upon by the landowners was the grazing of the land by a herd of cattle whose presence, in their view, would inevitably have deterred local residents from using the land for informal recreational activities. However, the Inspector also heard evidence that the presence of cattle did not prevent recreational use of the application site and, in some cases, was an attraction. Overall, the Inspector considered<sup>23</sup> that:
- "the presence of the cattle is a factor to be taken into account when evaluating the evidence as to the amount and pattern of recreational use of the land... but not in itself a bar to registrability. Recreational use can be concurrent with use by an owner or tenant and still qualify for [registration as a Village Green], so long as the users are not actually excluded from any part of the land at any time"*
54. The second issue raised by the landowners was the fencing off of an area at the north-western part of the application site in 1998 whilst the Environment Agency undertook investigations involving borehole drilling works. These works were enclosed by temporary fencing which had the effect of excluding access to that part of the application site for approximately two months in the spring of 1998. The Inspector concluded<sup>24</sup> that *"there was a physical ouster of local inhabitants from the land and the disruption was inconsistent with the use of the land as a village green"*. Accordingly, this section of the application site would not be capable of registration as a Village Green.
55. The final issue which the Inspector was asked to consider was that of an interruption to use caused by the flooding of part of the application site in 2001 during which significant amounts of water lay on the surface for several weeks. In this regard, the Inspector found<sup>25</sup> that whilst this would have made it difficult to access the southern part of the application site or play in the river for much of the year in question, *"temporary inaccessibility due to natural causes (as opposed to ouster by acts of the landowner or a third party) would not preclude registrability"*.
56. In summary, aside from the area fenced off to accommodate the Environment Agency works in 1998, the Inspector did not consider that there had been any other material interruption to the informal recreational use of the remainder of the application site. Subject to her findings in relation to the amount and pattern of recreational use, the evidence suggests that the remainder of the application site was used for informal recreation throughout the relevant twenty-year period.

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<sup>23</sup> Paragraph 453 of the Inspector's report

<sup>24</sup> Paragraph 455 of the Inspector's report

<sup>25</sup> Paragraph 456 of the Inspector's report

## Inspector's conclusions

57. The Inspector concluded that the applicant had failed to demonstrate that all of the requisite legal tests had been met and, as such, no part of the application site was capable of registration as a Village Green. She said<sup>26</sup>:

*"My overall conclusion on the totality of the evidence presented at the inquiry is that the applicant has failed to prove its case and that none of the application land qualifies for registration as a town or village green under section 15(3) of the Commons Act 2006. It has not been shown that a significant number of the inhabitants of any locality or any neighbourhood within a locality indulged in lawful sports and pastimes as of right on the application land or any part of it for a period of at least twenty years (extended pursuant to section 15(6)) ending in March 2010.*

*In particular:*

- (a) I have found that none of the claimed neighbourhoods as defined is a "neighbourhood" within the meaning of the statute;*
- (b) I advise that the Registration Authority has no power to substitute a differently defined neighbourhood or neighbourhoods to the claimed neighbourhoods, alternatively that to do so would be unfair to the objectors;*
- (c) I have found that the predominant recreational user of the application land during the material period was user of particular routes such as to have appeared to a reasonable landowner to be referable to use as public footpaths, and that user did not qualify as lawful sports and pastimes for the purposes of the application;*
- (d) I have found that there was insufficient use of the application land for lawful sports and pastimes".*

58. Accordingly, her advice to the County Council was that the application should be rejected.

## Subsequent correspondence

59. On receipt, the Inspectors' report was forwarded to the applicant and to the landowners for their information and further comment.

60. The Parish Council (as the applicant) wrote to express its disappointment at the Inspector's recommendation and considered that it had presented a strong case comprising of over 160 user evidence questionnaires, 60 witness statements and many photographs showing the use of the application site in all seasons. On the contrary, the objections had come from only a small group of people including the landowners. The Parish Council also made various comments in respect of the application process<sup>27</sup> and a full response to the issues raised has been provided.

61. One of the landowners responded to confirm his full support for the Inspector's conclusions and recommendation; he added that the Inspector's report had been prepared with meticulous attention to detail and demonstrated a thorough understanding of the facts presented to the Inquiry.

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<sup>26</sup> Paragraphs 486 and 487 of the Inspector's report

<sup>27</sup> In relation to the content of the evidence questionnaires and advice to applicants regarding the number of witnesses

62. The remaining landowners did not offer any comments in respect of the report.

### **Conclusion**

63. Having carefully considered the Inspector's analysis of the evidence (contained in her report), it would appear that the legal tests in relation to the registration of the land as a new Town or Village Green have not been met and, accordingly, the application should be rejected.

### **Recommendation**

64. I recommend, for the reasons set out in the Inspector's report dated 13<sup>th</sup> December 2013, that the applicant be informed that the application to register land known as Seaton Meadow at Wickhambreaux has not been accepted.

Accountable Officer:

Mr. Mike Overbeke – Tel: 01622 221513 or Email: melanie.mcneir@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.

### **Appendices**

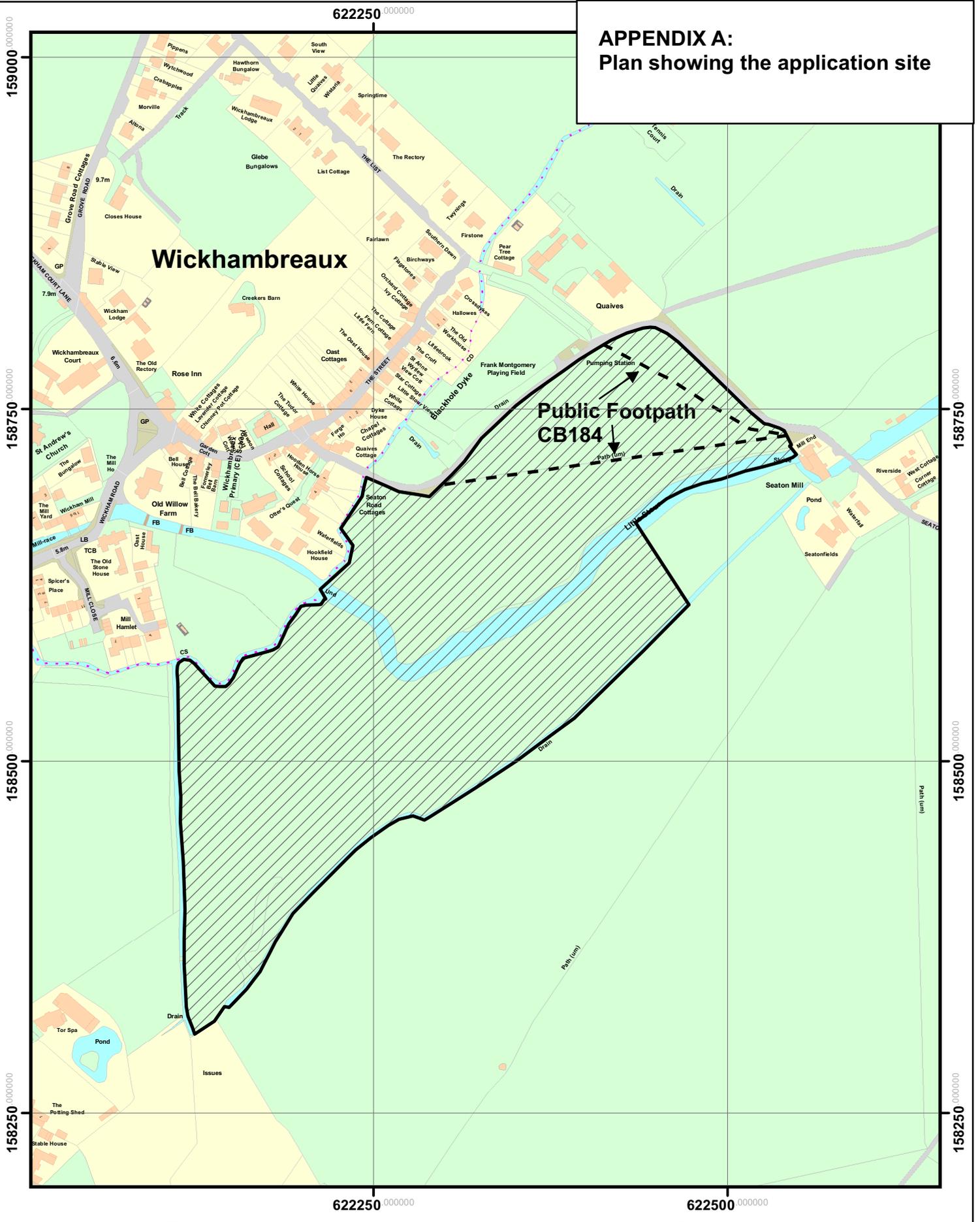
APPENDIX A – Plan showing application site

APPENDIX B – Minutes from the meeting of the Regulation Committee Member Panel on 15<sup>th</sup> November 2011

### **Background documents**

Inspectors' report dated 13<sup>th</sup> December 2013

**APPENDIX A:  
Plan showing the application site**



**M**  
Scale 1:3500

**Land subject to Village Green application at  
Seaton Meadow, Wickhambreaux**

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## KENT COUNTY COUNCIL

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### REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Westgate Hall, Canterbury on Tuesday, 15 November 2011.

PRESENT: Mr M J Harrison (Chairman), Mr A D Crowther (Vice-Chairman), Mr H J Craske, Mr S J G Koowaree and Mr R A Pascoe

ALSO PRESENT: Ms S J Carey and Mr M J Northey

IN ATTENDANCE: Mr C Wade (Countryside Access Principal Case Officer), Miss M McNeir (Public Rights Of Way and Commons Registration Officer) and Mr A Tait (Democratic Services Officer)

### UNRESTRICTED ITEMS

#### **18. Application to register land at Woodland Road at Lyminge as a new Village Green** *(Item 3)*

(1) Members of the Panel and Ms S C Carey (the Local Member) visited the application site shortly before the meeting. Mr S Huntley, the applicant was present as were Ms A Rodgers, the landowner's representative and some 12 members of the public.

(2) Ms S J Carey was present for this item pursuant to Committee Procedure Rule 2.21 and spoke.

(3) Correspondence from Lyminge Parish Council was tabled at the meeting. This set out that although the Parish Council neither supported nor opposed the application, it believed that the criteria for registration had been met.

(4) Mr Huntley and Ms Rodgers were also present at the meeting together with Mrs H Burr (supporter) and some 9 members of the public.

(5) The Public Rights of Way and Commons Registration Officer introduced the application, which had been made under Section 15 of the Commons Act 2006 by Mr S Huntley. She acknowledged that a question had been raised during the site visit about the exact boundary of the southern part of the application site and informed the Panel that this question would be thoroughly addressed at the earliest opportunity.

(6) The Public Rights of Way and Commons Registration Officer said that the application had been accompanied by 85 user evidence questionnaires together with supporting correspondence and the view from Lyminge Parish Council that the application passed all the necessary tests.

(7) Objections had been received from Cripps Harries Hall Solicitors on behalf of the Tory Family Foundation which owned the land. The grounds for objection were that the application had not specified its neighbourhood or locality within the

neighbourhood; that use had been infrequent; that use had been “by right” on the Public Right of Way; that use had been interrupted during the summer of 2010 by the archaeological dig which had resulted in the site being cordoned off; and that there had not been sufficiently general for the landowner to realise that a public right was being asserted.

(8) The Public Rights of Way and Commons Registration Officer then considered the legal tests. The first of these was whether use of the land had been “as of right.” It was clear that neither force nor secrecy had been used to access the site. Although fencing had been erected, this had been a recent development and could not form part of the Panel’s considerations of this particular test. There had, however, been a few occasions when the landowner had stated that permission had been granted for certain specific events. The applicant, on the other hand contended that even though permission had been granted on occasion, this did not apply to informal recreational use and therefore did not negate the general assertion by the public of “as of right” use. The landowner had also contended that much of the use of the land had been “by right” walking of the Public Right of Way.

(9) The Public Rights of Way and Commons Registration Officer said that the use “as of right” question was very difficult to resolve on paper. The best way to do so was to scrutinise the evidence through careful cross-examination.

(10) The Public Rights of Way and Commons Registration Officer then considered the question of whether use of the land had been for the purposes of lawful sports and pastimes. The user forms did include such activities as sledging, cycling and playing. However, most of the responses stressed walking. It was difficult for her to assess on paper whether this activity was something which had occurred through use of the Public Right of Way, and a closer examination of the evidence would be able to clarify this particular question.

(11) The Public Rights of Way and Commons Registration Officer said that, on balance, it was likely that use had been by a significant number of inhabitants of the parish of Lyminge – although there was a dispute on the part of the objector about the actual degree of use.

(12) The Public Rights of Way and Commons Registration Officer said it was clear that use of the site had continued up to the date of the application. The question of whether this use had been for a period of twenty years or more was more complex because the applicant was contending that use had been interrupted by the archaeological dig in 2010, by sheep grazing and car parking. The applicant argued that the application had been made before the archaeological dig, that the sheep grazing had encouraged public use and that the car parking was for such a short duration that it became inconsequential in the context of a period of 20 years.

(13) The Public Rights of Way and Commons Registration Officer concluded her presentation by saying that due to the complexity of the issues involved (particularly in respect of the use of the public right of way) she was recommending that a non-statutory public inquiry should be held to clarify the issues.

(14) The Chairman asked whether permission to use the site had ever been refused by the landowner. Ms Rodgers (on behalf of the landowner) replied that permission had been refused since the application had been made.

(15) Mr Stephen Huntley (applicant) said that he loved and respected the countryside and would never knowingly trespass on someone else's land. He would always stick to rights of way unless he believed that there was open access.

(16) Mr Huntley said that he had lived in Lyminge since 1983 and that he had played as a child on the field. He produced photographs of BMX riding, pointing out that this activity took place on bumpy ground which was not on a public right of way.

(17) Mr Huntley continued by saying that many people of all ages had used the whole field. He highlighted a number of activities including playing, walking, petting the grazing sheep and tobogganing. He showed a photograph of sledging on the site, pointing out that no one in the picture was doing so on a right of way. He said that such activities had continued into his children's generation. He showed a number of other photographs of other activities taking place on the site.

(18) Mr Huntley showed a picture of the site taken from GoogleEarth in 2004. He asked the Panel to note that it was difficult to distinguish the public rights of way because there were other tracks on the site where people had also walked. He said that no one had ever told anyone to not use the field or to stick to the public right of way. The fencing and gates that Members had seen during the site visit had only been installed during the last few months.

(19) Mr Huntley said that his motive for bringing forward the application was to preserve the right for local people to continue to use the land as before whilst also preserving its agricultural and amenity value. He had deliberately chosen not to widely publicise the application. Nevertheless, it had achieved widespread support, with 85 people completing user forms and the Parish Council stating its view that the land met the required legal tests for registration.

(20) Mr Huntley concluded his presentation by saying that the site was a special place for him and for other people. Many people had used the land regularly for lawful sports and pastimes in an open and unchallenged manner; and this use had mainly been on parts of the site which had not been designated as public rights of way. He had personally used the land since 1983, whilst others had used it well before that time.

(21) Mrs Rodgers said that she had a written statement from the landowner, Mr Tory. Because of the recommendation in the report, she did not feel that it would be appropriate to ask the Panel to consider it in detail at this stage.

(22) The Panel agreed unanimously that it would defer consideration of this matter pending a non-statutory Public Inquiry for the reasons set out in the report and explained at the meeting by the Public Rights of Way and Commons Registration Officer.

(23) RESOLVED that a non-statutory Public Inquiry be held into the case to clarify the issues.

**19. Application to register land known as Seaton Meadow at Wickhambreaux as a new Village Green**  
(Item 4)

(1) Members of the Panel visited the site prior to the meeting. The visit was attended by Mrs C Le Jeune (Wickhambreaux Parish Council - applicant), Mr. J. Holdstock (Tenant Farmer) and Mr C Perkins (one of the affected landowners). Some 40 members of the public were also present at the visit.

(2) Mr M J Northey was present for this item pursuant to Committee Procedure Rule 2.21.

(3) Mrs C Le Jeune (Chairman of Wickhambreaux Parish Council - applicant) and Mr C Perkins (landowner) were present for this item together with some 30 members of the public.

(4) The Public Rights of Way and Commons Registration Officer introduced the application which had been made under section 15 of the Commons Act 2006 by Wickhambreaux Parish Council. This application had been accompanied by 115 user evidence forms as well as letters of support from Ickham and Well Parish Council (whose boundaries accommodated some of the site); the Local Member, Mr Northey; the local City Councillor; Ickham, Littlebourne and Wickhambreaux Conservation Society; Wickhambreaux CEP School; and Wickhambreaux Village Hall Management Committee. These letters all stated that use of the application site had been without restriction for many generations by local people.

(5) The Public Rights of Way and Commons Registration Officer then said that the land had originally been owned by the Church Commissioners before being auctioned and sold to 4 separate landowners in 2009. All four landowners had objected to the application. One of them (Mr Locke from the Premier Trust) had stated that the land had not been accessed at the times during the year when it had been used for grazing. Mr and Mrs Perkins had stated that use had been by virtue of permission and that non-permitted access had been challenged by the Tenant farmer during the grazing season. Three local residents had also disputed the user evidence. In addition, Mr J Holdstock (the tenant farmer since 1991) had said that use of the site had not been significant and had mainly consisted of people using the Public Right of Way in the north east corner of the site or the path on the north bank of the River Stour. He had also stated that the site had been closed off during the Foot and Mouth epidemic in 2001.

(6) The Public Rights of Way and Commons Registration Officer went on to consider the legal tests. The first of these was whether use of the land had been "as of right". Whilst it was clear that neither force nor secrecy had been employed to gain access, there was an objection which claimed that use had been with permission. The landowner had claimed that permission had been granted for a number of events. The applicant's response to this was that such permission had not been sought for general recreation. The question for the Panel to consider was whether permission had been communicated to the community as a whole. This did not appear to be the case. Objection had also been raised on the grounds that use had been challenged by the Tenant Farmer. This was disputed by the applicant who said that such challenges had only been made in instances of inconsiderate use of the land and did not amount to a challenge to general recreational use. The Public Rights of Way and Commons Registration Officer said that in the light of these factors, she had come to the view that use had probably been as of right but that a

further investigation of the alleged challenges would be necessary before an informed conclusion could be reached.

(7) The second test was whether use of the land had been for lawful sports and pastimes. The Public Rights of Way and Commons Registration Officer said that many activities had been claimed. These included walking, playing, fishing, kite flying and bird watching. The objectors disputed this, saying that they had seen very few examples of such activities and that, in any case, it would have been difficult to play with balls or to fly kites due to the overhead pylons. There was also a dispute over the type of use. It would be necessary to establish how much of the use claimed had been in exercise of the right to walk along the public footpath. This was a very difficult question to consider on paper, whereas a non-statutory Public Inquiry would be able to provide clarity on this question.

(8) The Public Rights of Way and Commons Registration Officer said that the application had specified “the neighbourhood of Wickhambreaux village with Seaton hamlet within the localities of Wickhambreaux and Ickham parishes. This definition appeared to have satisfied the legal test relating to locality. The question of whether use had been by a significant number of inhabitants within that locality was, however, disputed – particularly in relation to the frequency of recreational use of the site. This was a matter which required further examination.

(9) The Public Rights of Way and Commons Registration Officer confirmed that the application had been made well within the two year period of grace specified by Parliament for an application to be made after the erection of fencing (which constituted a challenge to “as of right” use). The twenty year period in question was therefore 1990 to 2010. She explained that the three month period when the site had been closed off in 2001 due to the Foot and Mouth epidemic did not defeat the application because the Commons Act 2006 had specifically exempted events of this nature from the qualifying period. The evidence in respect of continuous use of the land was disputed. The objectors claimed that use had been interrupted during cattle grazing periods and during periods of flooding (particularly from 2000 to 2001). The applicants, however, considered that there had been no disruption when cattle were grazing and that the River Stour levels had been very low. They did not agree that substantial recreational use had been interrupted by flooding. The Public Rights of Way and Commons Registration Officer said that this too was a question that needed further investigation.

(10) The Public Rights of Way and Commons Registration Officer concluded her presentation by saying that as there were so many issues that were unclear, she was recommending that a non-statutory Public Inquiry should be held in order to clarify them.

(11) Members of the Panel commented that they did not feel that they had sufficient information to determine the application at this stage. The Chairman therefore asked whether those people who had previously indicated that they wished to address the Panel, still wished to do so. As no members of the public now wished to speak, the Chairman put the recommendation for a non-statutory Public Inquiry to the vote. This was carried unanimously.

(12) RESOLVED that a non-statutory Public Inquiry be held into the case to clarify the issues.



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