



AGENDA

Kent County Council

REGULATION COMMITTEE MEMBER PANEL

Tuesday, 8th April, 2014, at 10.30 am
Council Chamber, Sessions House, County
Hall, Maidstone

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 for items on the agenda
3. Application to register land known as The List at Littlebourne as a new Village Green (Pages 3 - 30)
4. Application to register land known as Fisherman's Beach at Hythe as a new Town or Village Green (Pages 31 - 52)
5. Application to register land known as The Warren at Brabourne as a new Village Green (Pages 53 - 68)
6. Application to register land known as Masefield Way at Tonbridge as a new Village Green (Pages 69 - 86)
7. 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, 31 March 2014

Application to register land at The List in the parish of Littlebourne 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 8th April 2014.

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

Local Member: Mr. M. Northey

Unrestricted item

Introduction

1. The County Council has received an application to register land known as The List in the parish of Littlebourne as a new Town or Village Green from the Littlebourne Parish Council ("the applicant"). The application, made on 16th April 2013, was allocated the application number VGA655. 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 after 1st 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 will only apply 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") is an irregular shaped piece of land known locally as The List and is situated to the rear of properties at The Hill, Evenhill Road, Jubilee Road, Court Meadows and St. Vincent's Close. The application site consists of approximately 22.5 acres (9.1 hectares) of grassland. Public Footpath CB147 crosses the application site, and access to the site is also available from Public Footpaths CB154 and CB143 which abut the site. There is also evidence that access to the land has been gained via an unofficial path leading from Evenhill Road, and also from the rear gardens of properties abutting the application site.
7. The application site is shown in more detail on the plan at **Appendix A**.

The case

8. The application has been made on the grounds that the application site has become a Town or Village Green by virtue of the actual use of the land by the local inhabitants for a range of recreational activities 'as of right' for a period in excess of 20 years. The application is made on the basis that such use has continued until (and beyond) the date of the application.
9. Included in support of the application were 45 user evidence questionnaires, with a further 36 forms subsequently submitted, thereby taking the total number of witness forms to 81. A summary of the user evidence submitted in support of the application is attached at **Appendix C**.

Consultations

10. Consultations have been carried out as required and no responses have been received.

Landowner

11. The application site falls within three different ownerships.
12. The majority of the application site, comprising the section south of (but not including) Public Footpath CB184, is registered with the Land Registry under title number K772071. This section is owned by members of the Newing family and Rydon Homes Ltd. hold a option to purchase the land.
13. A strip of land approximately two metres wide immediately abutting Public Footpath CB154 is registered with the Land Registry under title number K909646 to Canterbury City Council. Notice of the application has been served on the City Council but no response has been received.
14. Finally, the parcel of land to the north of (and including) Public Footpath CB147 (with the exception of the strip owned by the City Council) is not registered with

the Land Registry but is believed to be owned by the Littlebourne Parish Council. The Parish Council is also the applicant in this case.

15. An objection to the application has been made by Rydon Homes Ltd. ("the objectors"). The objection relates only to the section of land in which Rydon Homes Ltd. have an interest, i.e. the section to the south of Public Footpath CB147 ("the objection land"), and is made on the following grounds:
- That the objection land was in continuous arable use until 2005 and was therefore not capable of being used for lawful sports and pastimes;
 - That the land has not been used for lawful sports and pastimes by a significant number of local residents;
 - That there is no evidence that Littlebourne is and has during the relevant period been a locality or neighbourhood within a locality; and
 - That a prohibitory notice was erected on the objection land in 2006 which had the effect of bringing any 'as of right' use to an end.

Legal tests

16. 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'?*

17. The statutory scheme in relation to Village Green applications is based upon the English law of prescription, whereby certain rights can be acquired on the basis of a presumed dedication by the landowner. This presumption of dedication arises primarily as a result of acquiescence (i.e. inaction by the landowner) and, as such, long use by the public is merely evidence from which a dedication can be inferred.
18. In order to infer a dedication, use must have been 'as of right'. This means that use must have taken place without force, without secrecy and without permission ('*nec vi, nec clam, nec precario*'). In this context, force refers not only to physical force, but to any use which is contentious or exercised under protest²: "*if, then, the inhabitants' use of the land is to give rise to the possibility of an application being made for registration of a village green, it must have been peaceable and non-contentious*"³.

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

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

19. In this case, there is no suggestion that informal recreational use has taken place secretly or in exercise of any specific permission granted by the landowners. Nor is there any evidence that access to the application site has been obtained through physical force; indeed, access to the site is easily gained by one of the public rights of way crossing or abutting the application site.
20. However, the objectors rely on a notice that is said to have been erected at various points around the application site in or around 2006. Photographs of the notice, which read 'PRIVATE PROPERTY – NO PUBLIC RIGHT OF WAY' have been provided by the objector as well as a plan showing the seven points at which it was erected around the application site. The objector's position is that this notice would have been sufficient to render use of the application site contentious as from the date of their erection in around 2006.
21. The applicant's view is that none of the user evidence questionnaires refer to the presence of these signs on the application and none of the current members of the Parish Council recall their existence. It is suggested that, if indeed they were erected on the site, their duration was very short-lived and the signs were never replaced.
22. On the one hand, the timing of the signs is consistent with the change of use of the application site from arable crops to set aside; prior to that time, the presence of arable crops on the land would of itself have acted as a deterrent to people straying off of the main Public Footpath crossing the site, but once the growing of crops ceased it would have been necessary for the landowner to employ more direct means of challenging use. However, on the other hand, the alleged signs are inconsistent with the evidence of use submitted in support of the application; of the 71 witnesses who attest to use of the application site in 2006 (half of whom refer to use of it on an at least daily basis), not one person makes any reference to any prohibitive notices on the application site.
23. By the objector's own admission, the signs were torn down by persons unknown within a few days. Under these circumstances (and given that they were never replaced), it is quite possible that the overwhelming majority of users would not have seen the signs and thus the prohibition would not have been communicated to them (which may well explain the lack of any mention of the signs in the user evidence).
24. Nonetheless, on balance, the fact that the landowner has provided photographs of the sign (taken during daylight hours during a time when a significant number of the applicant's witnesses attest to daily use), and the fact that they were erected at numerous locations around the application site, does demonstrate conclusively that a reasonable attempt was made by the landowner to challenge general informal recreational use of the application site. Indeed, this is not a case where it can be said that the landowner simply sat back and acquiesced to such use (by not doing anything about it) but, rather, it is one where the landowner did take positive steps (albeit unsuccessfully) to try to prevent it.
25. In that respect, use of the application site following the erection of the signs in around 2006 is likely to have been contentious and therefore informal recreational use thereafter would not 'as of right'.

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

26. Lawful sports and pastimes can be commonplace activities including dog walking, children playing, picnicking and kite-flying. Legal principle does not require that rights of this nature be limited to certain ancient pastimes (such as maypole dancing) or for organised sports or communal activities to have taken place. The Courts have held that *'dog walking and playing with children [are], in modern life, the kind of informal recreation which may be the main function of a village green'*⁴.
27. The summary of evidence of use by local residents at **Appendix C** shows the activities claimed to have taken place on the application site. The majority of use of the application site has been for walking (with or without dogs), but there is also evidence of use for blackberrying, flying kites, ball games and birdwatching.
28. A number of the witnesses refer to the existence of well-defined tracks through the woodland and others allude to use of the application site as a short cut to local shops, the primary school or to visit relatives elsewhere in the village. In cases where public rights of way cross or abut the application site, or where use involves walking along defined tracks, it will be important to distinguish between use that involves wandering at will over a wide area and use that involves walking a defined linear route from A to B. The latter will generally be regarded as a 'rights of way type' use and, following the decision in the Laing Homes⁵ case, falls to be discounted. In that case, the judge said: *'it is important to distinguish between use that would suggest to a reasonable landowner that the users believed they were exercising a public right of way to walk, with or without dogs... and use that would suggest to such a landowner that the users believed that they were exercising a right to indulge in lawful sports and pastimes across the whole of the fields'*.
29. In this case, the objector's position is that the majority of the recreational use of the application site is referable to either to the use of Public Footpath CB147 crossing the application site or to defined tracks created by linear pedestrian use. The applicant accepts that the Public Footpath crossing the application site is well used but disputes that the remaining use is merely trivial and sporadic in nature; he states that the evidence contained within the 81 user evidence questionnaires submitted in support of the application make it abundantly clear that use of the application site has not been confined to the public right of way, but covered the whole of the application site.
30. The extent to which use of the application site has been associated with a 'public rights of way type' use is a matter of fact and degree which would otherwise (were it not for the recommendation set out below) require further examination by way of hearing more detailed oral evidence from the parties involved. It is not possible, on the basis of the evidence currently available, to reach a definitive conclusion on this point but it is not necessary to do so given the other deficiencies with the application discussed in this report.

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

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

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

31. 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.
32. The definition of locality for the purposes of a Town or Village Green application has been the subject of much debate in the Courts. In the Cheltenham Builders⁶ case, it was considered that ‘...at the very least, Parliament required the users of the land to be the inhabitants of somewhere that could sensibly be described as a locality... there has to be, in my judgement, a sufficiently cohesive entity which is capable of definition’. The judge later went on to suggest that this might mean that locality should normally constitute ‘some legally recognised administrative division of the county’.
33. In this case, the locality relied upon by the applicant is the civil parish of Littlebourne. The plan at **Appendix D** shows the area within which the users of the application site reside.
34. There can be no dispute (and the objectors accept) that this is a legally recognised administrative unit and this would be a qualifying locality for the purposes of Village Green registration.
35. The objectors do raise the issue of whether the qualifying locality relied upon by the applicant has existed with unchanged boundaries throughout the relevant period, but provide no evidence to bring this into question or to suggest that this has not been the case.

“a significant number”

36. 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’⁷. 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.
37. In this case, the application is supported by 81 user evidence questionnaires from various people living across the parish. A substantial number of these refer to use of the application site on a daily basis. On the face of this, this frequency of use would have been sufficient to indicate that the application was in general use for recreation.

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

⁷ *R (Alfred McAlpine Homes Ltd.) v Staffordshire County Council* [2002] EWHC 76 at paragraph 71

38. However, closer consideration of the evidence and the pattern of use, particularly during the early 1990s when the land was in use for arable crops and access to it would necessarily have been restricted, suggests that this is unlikely to have been sufficient to communicate the landowner that the application site *as a whole* was being used in the requisite manner by a significant number of the residents of Littlebourne parish.

(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?

39. 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.

40. In this case, the application was made on 16th April 2013 under section 15(2) of the Commons Act 2006 – i.e. on the basis that use of the application site was continuing at the date of application.

41. However, as discussed above, it is arguable that informal recreational use of the application site ceased to be ‘as of right’ in 2006 when the ‘private property’ notices were erected. If this is the case, then the application must fail on this test alone on the basis that the application was not made within the prescribed two year period of grace.

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

42. 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, the application has been submitted under section 15(2) on the basis that recreational use of the application site is continuing and the twenty year period relied upon by the applicant is 1993 to 2013. However, on the basis that use of the application site became contentious in 2006, the twenty year period would therefore be 1986 to 2006.

43. The user evidence (summarised at **Appendix C**) suggests that recreational use of the application site has taken place well in excess of the required twenty-year period and much of it also pre-dates the start of the relevant period in 1986.

44. There is, however, a disagreement between the parties as to the precise impact of the agricultural use of the land upon informal recreational use.

45. The objector’s position is that between 1993 and 2005, the application site was in regular use for arable farming, during which time crops such as oil seed rape, barley and wheat were all grown on the land. That assertion is supported by photographs of the site at various points during the 1990s provided by the objectors, copies of which are attached at **Appendix E**. The objector contends that whilst the land was actively used for farming, it cannot in practice have been used by local people, particularly during the period between ploughing and harvest.

46. The applicant does not dispute that the land has, from time to time, been used for arable farming, but notes that such use was seasonal (not continuous) and only covered the land for the growing period until harvest. He adds that such use is not incompatible with Village Green status being granted and draws an analogy with the situation in the Newhaven Beach⁸ case in which the application site was entirely covered by the sea 42% of the time.
47. Despite the applicant's comments to the contrary, it is clear that the use of the application site did, as a matter of fact, have an impact on informal recreational use. This is recorded in some of the user evidence submitted in support of the application. One witness⁹ notes that the extent of his use of the land "*varies with whether crops are grown on part of the land*". Another witness¹⁰ notes on his evidence questionnaire, in response to the question 'have you ever been deterred, or prevented, from using the land because of obstructions?', "*only when crops were growing or ploughing was taking place*". A further witness¹¹ also adds, in response to the question 'has your pattern of use remained the same throughout your use of the land?', "*the land has until recently been planted with a rotation of crops with access to a wide central track*", whilst another response¹² noted that "*footpaths unchanged but land used for growing crops many years ago*".
48. Whilst it is quite likely on the evidence available (particularly given the nature and location of the application site) that, outside of arable use, the application site was widely used by local residents for informal recreation, it is inconceivable that when the land was planted with crops such as oil seed rape, such informal recreational use continued in the same manner. Even if local residents had trampled over or damaged the crops in pursuit of recreational activities, such use may well have constituted criminal damage and would not be a qualifying *lawful* sport or pastime.
49. It is not considered that the applicant's analogy with the situation at Newhaven Beach is appropriate here, because the situation in this case can be distinguished from the circumstances in that case. The Commons Act 2006 specifically provides that a Village Green may include 'land covered by water' and, in the case of land covered by water, it is still possible for local people to engage in lawful sports and pastimes such as swimming and paddling. This is in contrast to a situation where crops are planted, thereby creating a physical restriction to recreational use.
50. As such, it appears that the agricultural use of the land during the period 1993 to 2005 necessarily meant that substantial parts of the application site would have been inaccessible for the purposes of informal recreation for significant periods during the relevant twenty-year period. Accordingly, the application site was not used throughout the relevant twenty-year period.

⁸ *R (Newhaven Port and Properties Ltd.) v East Sussex County Council* [2013] EWCA Civ 276

⁹ See evidence questionnaire of Mr. A. Legge. Note that Mr. Legge also adds, in response to a different question that '*if crops are growing less space available but large areas are still usable...*'.

¹⁰ See evidence questionnaire of Mr. and Mrs. Prior, and also that of Mrs. V. Prior who states that '*annual crops in the past*' did impact on her use

¹¹ See evidence questionnaire of Mr. and Mrs. M. Norris, and also that of Mrs. M. Garnett who suggests that her pattern of use changed due to '*agriculture*'.

¹² See evidence questionnaire of Mr. N. Chandler

Conclusion

51. The evidence submitted in support of the application indicates that the application site has been a well-used local amenity for some considerable time. However, the use of the land for agricultural purposes (which is confirmed by the photographs submitted by the objector) suggests very strongly that, when crops were being grown, the pattern and nature of the recreational use taking place on the application site would not have been such as to give rise to a right of general recreation over the whole of the land in question. When in agricultural use, significant areas of the application site were not physically capable of being used for recreational purposes and, during these times, any recreational use would necessarily have been confined to linear defined routes across the land (i.e. akin to a 'rights of way type' use rather than a general right to recreate over the whole of the land).
52. Additionally, the erection of the 'private property' notices in 2006 (again supported by photographic evidence) indicates that use of the application site after that time was contentious and against the landowners express wish for people to keep off the land.
53. It should be noted that the objection by Rydon Homes Ltd. relates only to the part of the application site owned by the Newing family (i.e the land to the south of the Public Footpath); no objection has been raised to the application in respect of the part of the application site owned by the Parish Council. As the County Council has the power to accede to an application in part only¹³, this raises the question of whether this section of the application site should be registered as a Village Green given that there is no apparent opposition to its registration.
54. No information has been provided regarding the state or use of this part of the application site (other than the general evidence of informal recreation submitted in support of the application). Although there is no suggestion that any prohibitive notices have been erected on this part of the land, aerial photographs suggest that it was in agricultural use and, as such, the same arguments regarding inaccessibility apply equally to this part of the application site.
55. In any event, should the Parish Council wish to register the land as a Village Green, it would still be open to it to do so by way of a voluntary dedication application under section 15(8) of the Commons Act 2006.
56. Having carefully considered all of the evidence submitted (both in support of and in opposition to the application), it would appear that the relevant legal tests for the registration of the application site as a new Village Green have not been met.

Recommendation

57. I recommend that the applicant be informed that the application to register land at The List in the parish of Littlebourne as a Village Green has not been accepted.

¹³ *Oxfordshire County Council v Oxford City Council and another* [2006] UKHL 25

Accountable Officer:

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

Case Officer:

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

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

List of appendices

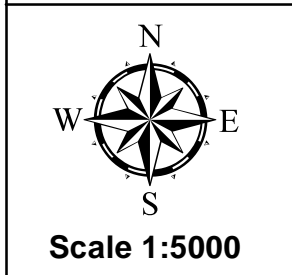
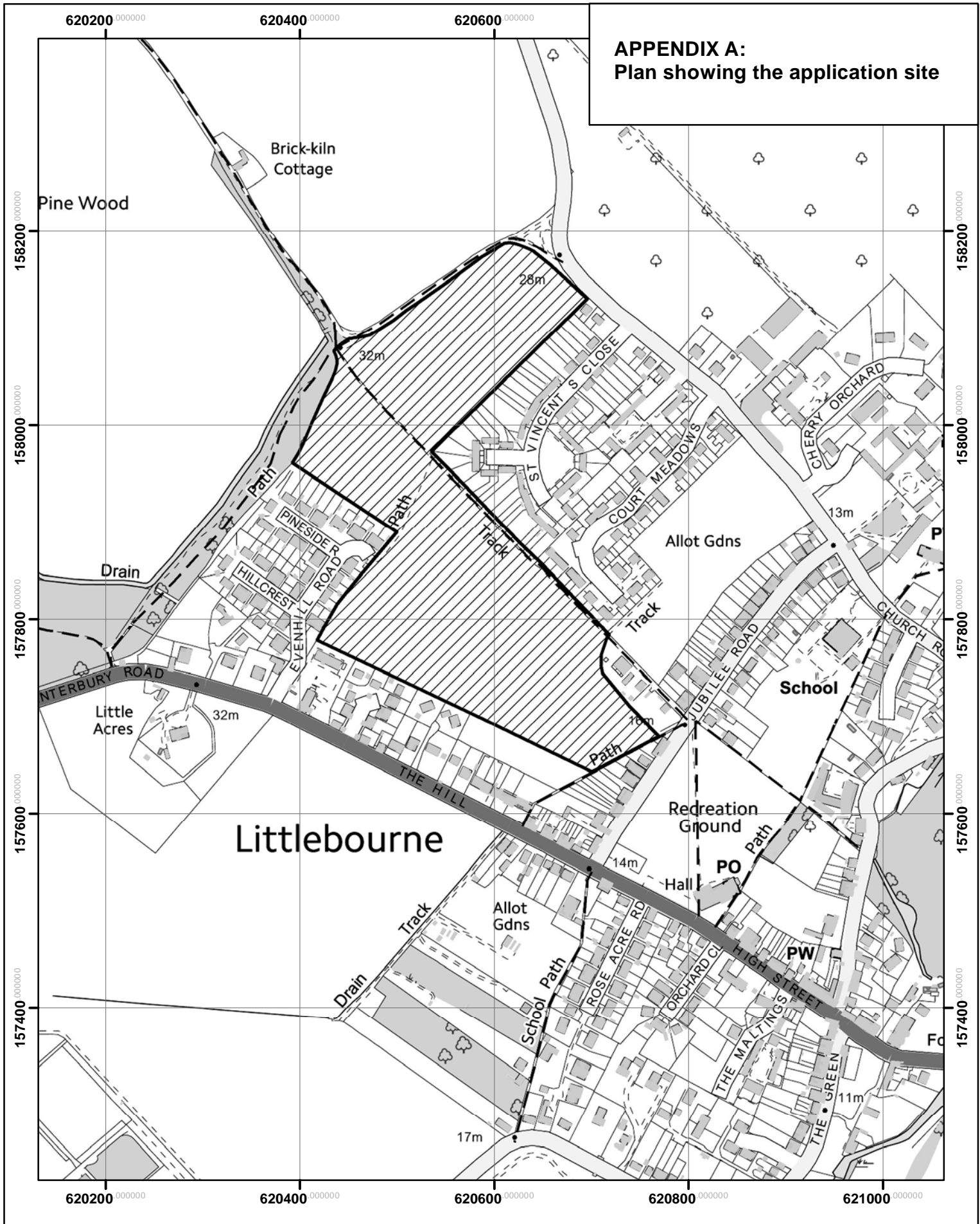
APPENDIX A – Plan showing application site

APPENDIX B – Copy of application form

APPENDIX C – Table summarising user evidence

APPENDIX D – Plan showing area within which users reside

APPENDIX E – Photographs showing crops on the application site



**Land subject to Village Green application
at The List at Littlebourne**

Page 13



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 APR 2013

Application number:

VGA655

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

Note to applicants

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

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

Note 1
Insert name of Commons
Registration Authority

1. Commons Registration Authority

To the: KENT COUNTY COUNCIL.

Note 2

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

2. Name and address of the applicant

Name: LITTLEBOURNE PARISH COUNCIL

Full postal address: PARISH CLERK
(incl. Postcode) GAIL HUBBARD
7 BIFRONS ROAD
BEKESTBOURNE
CANTERBURY CT4 5DE.

Telephone number:
(incl. national dialling code) CLERK 01227 831197

Fax number:
(incl. national dialling code)

E-mail address: CLERK@LITTLEBOURNEPC.ORG

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: W.D. MILNE, SOLICITOR, ACTING
PRO BONO FOR THE PARISH COUNCIL

Firm:

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

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

Fax number:
(incl. national dialling code)

E-mail address: [REDACTED]

Note 4

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

4. Basis of application for registration and qualifying criteria

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

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

Section 15(2) applies: ☒

Section 15(3) applies: ☐

Section 15(4) applies: ☐

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

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

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

Note 5

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

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

Name by which usually known:

LAND ADJOINING THE LIST LITTLEBOURNE.

Location:

SHOWN CROSS HATCHED ON THE PLAN ATTACHED HERETO.

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:

THE VILLAGE OF LITTLEBOURNE.

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

THIS APPLICATION MEETS ALL THE RELEVANT CRITERIA SPECIFIED IN SECTION 15(1) OF THE COMMONS ACT 2006 IN THAT IT DEMONSTRATES THAT THE LAND HAS BEEN USED

- AS OF RIGHT
- FOR A PERIOD OF AT LEAST 20 YEARS
- FOR THE PURPOSE OF LAWFUL SPORTS AND PASTIMES
- BY A SIGNIFICANT NUMBER OF INHABITANTS OF THE LOCALITY I.E. THE VILLAGE OF LITTLEBOURNE
- USE HAS CONTINUED UP UNTIL THE DATE OF THIS APPLICATION AND IS STILL CONTINUING.

THE EVIDENCE TO SUPPORT THE APPLICATION IS CONTAINED IN THE COMPLETED QUESTIONNAIRE'S, IN THE FORMAT PRESCRIBED BY THE REGULATION AUTHORITY AND ATTACHED TO THIS APPLICATION.

THE LAWFUL SPORT AND PASTIMES COVERED ARE MANY AND VARIED, BUT INCLUDE, INTER ALIA, WALKING AND GENERAL RECREATION, JOG WALKING AND EXERCISING, INFORMAL PLAY, BIRD AND NATURE WATCHING, KITE FLYING, ~~AND~~ AND BERRY PICKING ETC.

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

- (1) MR NEWING OF 30 JUBILEE ROAD, LITTLEBOURNE, KENT, CT3 1TF.
- (2) RYDON HOMES ARE BELIEVED TO HAVE AN OPTION ON THE LAND AT (1). ABOVE. RYDON HOMES LIMITED, MEAD HOUSE, CANTERLOPE ROAD, EAST GRINSTEAD, WEST SUSSEX RH19 3BJ.
- (3) LITTLEBOURNE PARISH COUNCIL, CLEAVE-GAIL HUBBARD, 7 BIFRONS ROAD, BEKESBOURNE, CANTERBURY, CT4 5DE.

Note 9

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

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

Note 10

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

10. Supporting documentation

COMPLETED QUESTIONNAIRE'S

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

AS SPECIFIED AT 8. ABOVE
IT IS BELIEVED THAT RYDON
HOMES LIMITED OF MEAD HOUSE,
CANTELOPE ROAD, EAST GRINSTEAD,
WEST SURREY, RH19 3BJ, HAVE
AN OPTION ON THE LAND IN
MR. NEWING'S OWNERSHIP.

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: 15/04/2013.

M. BE
Chairman Littlebourne Parish Council.

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.

620600

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ttlebourne

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Name	Period of use	Frequency of use	Type of use	Access	Comments
ARMAN, R	1961 – present	Monthly	Access to other parts of the village, children used to play there	Jubilee Road, St Vincent's Close or Court Hill	Observed use by others on a daily basis.
BARTLETT, J	2008 – present	Daily	Dog walking, jogging	Gate from garden (St. Vincents Close)	Observed use by others on a daily basis
BEACHAM, R	1961 – present	Daily	Picking blackberries, dog walking, played as a child, pet farm animals	Jubilee Road, Court Hill, pine woods, Evenhill Road, St Vincents Close	The area is a valued part of the community and it used daily by a vast majority of villagers
BELLINGER, P	1963 – present	Occasionally	Blackberrying, exercise dog, used for children's games, ball games, picnics	End of Evenhill Road, entry off woods, from Jubilee Road	Observed use by others on a daily basis. Over the years the field has provided hours of fun, felt safe taking children there away from traffic
BLOFIELD, T	1993 – present	Daily	Dog walking, children playing, access to woods	Not stated	Commonly know that land is privately owned, but the owner has never prevented use
BRERETON, J&J	1995 – present	Weekly	Family walks, dog walking, nature observation	Jubilee Road and The List	Observed use by others on a daily basis
CHANDLER, N	1982 – present	Several times daily	Dog walking/training, access to village and school, berry picking	From Evenhill Road	Regular access to the land by many for dog walking and access to village. Land used for growing crops many years ago.
COATES, J	1996 – present	3 or 4 times per week	Walking, exercising dog, bird watching, blackberry picking	Path between the Hill and Jubilee Road	Seen others whenever I have been there. It is an important village resource for recreation.
CRACKLE, V	1973 – present	Daily	Dog walking, kite flying, bird watching	From wood end of the List	Observed many people using the land.
CROCKER, V&L	1987 – present	Daily	Dog walking, playing (as a child or with children as an adult), wildlife observation, running/jogging, berry picking	Via Court Hill or The List	Observed use by others on a daily basis. Space provides a safe and secure informal play environment for local children.
DALTON, G	1972 – present	Daily	Blackberrying, walking, bird watching	Woods, back garden and The List	Observed use by others
DALTON, R	1972 – present	Daily	Berry picking, walks, bird watching	Woods, back garden, The List	Observed daily use by others
DAVIS, D	1973 – present	Weekly	Dog walking, children playing, access to woods, nature walks	Jubilee Road	Area has always been used as an access route from Jubilee Road to the top of Evenhill to avoid traffic on the main road.
DOLAN, A	2009 – present	Daily	Dog walking, picking berries, family games	Not stated	Observed use by others on a daily basis
DOLAN, K	2008 – present	Daily	Dog walking, cycling, walking, berry picking, nature studies	The List	Observed use by others on a daily basis
EDGEWAY, S	2004 – present	Not stated	Dog walking	Not stated	
ELLISON-SMITH, S	1986 – present	Weekly since 2009	Walking, jogging, cycling	Jubilee Road or pine wood	Used regularly over last 4 years for jogging, but sporadically before that.

APPENDIX C:
Table summarising evidence of use

GAFFNEY, D	1994 – present	Most weeks	Walking, nature rambles with children, dog walking, cycling, kite flying, flying model aircraft	Jubilee Road, entrance from woods, access from rear gardens	Observed use by others on daily basis
GALLAGHER, M	1988 – present	Weekly	Walking, children playing, blackberrying	Jubilee Road, pine woods	Observed use by others on a daily basis. Land is a safe, landlocked open space without traffic used by villages for their recreation
GARNER, R&M	1960–69, 1971–88, 1995 – present	Regularly	Mainly dog walking, also access to family in village, blackberrying, and nature walks with children		Have spoken to farmers whilst harvesting the land, no objection has ever been raised by them to mine. Seen others every time we use walk there.
GARNETT, M	1970 – present	Weekly	Blackberry picking, dog walking, children playing, incl running, riding, kite flying, nature lessons	Jubilee Road, St Vincents Close, Evenhill Road	This land has remained the same and is used by all the village residents. Pattern of use changed due to agriculture.
GREEN, S	1996 – present	Weekly	Dog walking, walking with children	Jubilee Road	
HARRISON, A	2009 – present	Daily	Walking, children playing, dog walking, kite flying, berry picking, cycling, short cuts	Road or Court Hill	Observed daily use by others
HEADON, R	1993 – ?	Weekly, now occasionally	Walking, dog walking, children's games, cycling	Via woods, Evenhill Road, Jubilee Road and top of Court Hill	No longer using the land on a regular basis. The land is used by others on a daily basis.
HEATHCOTE, N	Not stated	Occasionally	Not stated	Not stated	Observed use by others on a daily basis. Use the land to let my dogs run around.
HEWER, E&G	1953 – present	2/3 times per day	Dog walking, berry picking, short cut to village, bird watching, playing as a child	Jubilee Road, Evenhill Road, pine woods	The area has always been well used by local people
HOWELL, S	1977 – present	Daily	Children playing, dog walking, commuting to local services	Garden gate (St. Vincents Close)	Observed use by others on a daily basis
HOY, R	1986 – present	Daily	Walking, dog walking, berry picking, ball games	The List	Land has always been a lovely place to walk and relax; have spent many hours walking and playing games on the land.
HUNTER, A	1963 – present	Daily	Walking to primary school, playing with children (bike riding, kite flying), safer access to woods	Access via Jubilee Road, path from woods and path at Evenhill Road.	Always met other people when using it. Using field is a safer option when walking children to school or park avoiding main road.
HUNTER, K	1970 – present	Daily	Safe walk to village school, cycling, blackberrying, trail finding, dog exercise/training, socializing, snow play, wildlife education for children, ball games, picnics	Path at Evenhill Road, from Jubilee Road, entrance from woods	Never been challenged whilst using the land; no gates or blockades have ever been present. See local residents using the land on a daily basis.
JEFFRIES, E	1964 –	Various	Walking	From Public Footpaths	Originally the land was cropped but then became

	2012				set aside
JONES, M	1997 – present	Daily	Walking, blackberrying, dog walking, bird watching	Gate from garden (St. Vincents Close)	Observed use by others on a daily basis
JONES, C&M	1973 – present	Daily	Walking, berry picking, watching the wildlife	Jubilee Road, woods, Evenhill Road	Observed use by others on a daily basis. Land is extremely well used by 75% of residents.
KELK, D	1983 – present	Occasionally	Originally employed by farm, later for walking or exercise	From rear of property	Observed use on a daily basis (property backs on to application site)
KENNARD, M	1973 – present	Weekly	Walking on the footpath and rear entry to house at List Meadows	The List	For the last 10 years this field has been agricultural set aside.
KIRK, J	1968 – present	Daily	Dog walking, berry picking, bird watching, nature observation, children playing	Jubilee Road, Pineside Road	Observed use every day
LANE, S&R	1952 – present	Daily	Walking, nature studies, play area for children	Court Road, Jubilee Road, Evenhill Road, St. Vincents Close	Pattern of use varied due to agriculture. The area is widely used by the local community.
LEGGE, A	1974 – present	Weekly or more	Walking, dog exercising, blackberrying, fruit picking, nature excursions, playing with children		It is a very safe place for children to exercise a long way from traffic. Extent of use varies depending on whether crops are grown on part of the land; less space available when crops are growing but large areas still usable. See people there whenever I use the land
LINDSAY, C	2004 – present	Three times daily	Dog walking, nature study, wildlife observation, bird watching	Garden gate (St Vincents Close)	Observed daily use by others
LINDSAY, T	2004 – present	Daily	Berry picking, dog walking, nature observation, kite flying, children playing, cycling, short cut	Back gate or The List	Observed daily use by others
LOWE, Z	2007 – present	Daily	Walking, cycling, den making, picnics, ball games, dog walking	The List	Land is used regularly throughout the seasons, children enjoy this secure space
MACNALLY, S	1993 – present	Weekly or more	Dog walking or general walking	Jubilee Road	Observed others using the land most times I have used it.
MADDOCKS, W	1966 – present	Occasionally	Dog walking, blackberrying	Via The List	
MANNING-PRESS, O	1995 – present	Weekly	Running, kite flying, picnics, blackberrying, bird watching, cycling, playing children's games	From woods or Jubilee Road	Observed daily use by others
MATHIAS-WILLIAMS, J&A	1987 – present	Daily	Dog walking, walking, blackberrying	Evenhill Road, Jubilee Road, from the woods	Observed use by others on a daily basis
MILNE, W	2001 – present	Daily	Walking, dog walking, blackberrying, playing Frisbee	Evenhill Road, Jubilee Road or the woods	Observed use by others on a daily basis. Many children play on the land as it is a safe place to do so.
MOBBS, S	2004 – present	Daily	Dog walking	Road to field	Observed daily use by others
MOUNT, K	1974-87,	Daily	Dog walking, children walk/cycle	Jubilee Road	Observed use by others on a daily basis. Land is

	1994 - present		there		used by a wide range of local people on an hourly basis; we always pass several people.
MUIRHEAD, M	1991 – present	Three times per day	Dog walking, jogging, socializing, star gazing, bird watching, berry picking, cycling, access to allotments	Evenhill Road	Can see the field from rear of property; most of the time there are people there.
MURPHY, L	1983 – present	Occasionally (now)	Walking, playing, kite flying, blackberrying	From Jubilee Road, path from woods, path from Evenhill Road	Always came across others when using the land.
NORRIS, M&W	1969 – present	Weekly	Exercising dogs and children	Jubilee Road, Church Road, The Hill and pine wood	The land has until recently been planted with a rotation of crops with access to a wide central track. The land is in use on a daily basis.
OXTOPY, J	1924 – present	Daily	Blackberry picking, petting farm animals, walking, cycling	Jubilee Road, Court Hill, St. Vincents Close	Observed daily use by others
PALMER, N	1986 - ?	Occasionally	Not stated	From Evenhill Road	No longer use the land (date not stated). Many people would take walks over the land.
PREECE, B	1992 – present	Daily	Dog walking, walking, running, photography, kite flying, meditation	Back garden (St. Vincents Close)	Observed use by others on daily (hourly) basis
PREECE, L	1993 – present	Daily	Dog walking, nature observation	From garden (St. Vincents Close)	Many people use the fields to exercise their animals and themselves
POLLARD, J	1945 – present	Several times per day	Worked on land when it was farmed, now use as access to allotments	Jubilee Road, Court Meadow footpath	The fields have been set aside agricultural land for about 15 years; they are a safe place for local children to play unattended.
PRIOR, A	1984 – present	Weekly	Walking, berry picking, bird watching	Evenhill Road, Jubilee Road	Can see most of the area from our lounge; observed use by others on a daily basis. It is a very well used open space by local people
PRIOR, V	1972 – present	Weekly or daily	Bird watching, cycling, walking, kite flying, children's den making, blackberrying	Via the List from St. Vincents	Annual crops in the past, including wheat. Observed use by others on a daily basis.
RICE, W	1985 – present	Occasionally	Rambling, cycling, blackberrying	Jubilee Road	Have usually been others there when I have used the land. Area is a well used walking route to neighbouring villages.
RIGDEN, G	1978 – present	Weekly	Walking, ball games, berry picking, nature trail with children, bird watching	Jubilee Road, top of Church Road	See others using the land whenever we are there. Has always been public access to this land; it enables access to various parts of the village via the footpaths.
ROGERS, J	1996 – present	Occasionally	Country walks, visiting List meadows	Jubilee Road	
SAYER, J	2001 – present	Daily	Dog walking, walking to shops or local facilities	Evenhill Road, Court Hill, Jubilee Road	Observed use by others on a daily basis
SHAW, K	1977 – present	Monthly	Dog walking, bird watching, berry picking, rambling, cycling	Track	
SMITH, M	2010 –	Daily	Riding bike, walking	Back gate (St. Vincents	Observed use by others on a daily basis

	present			Close)	
SOMER, K&G	1973 – present	Weekly or daily	Dog walking, berry picking, short cut to avoid main road	Evenhill Road, Jubilee Road	
STARR, C	1985 – present	Daily	Dog walking, berry picking, children's activities, cycling	Woods, The List, shortcut from Court Hill	Observed daily use by others
STARR, D	1983 – present	Daily	Dog walking, walking children, berry picking, bird watching	Woods of The List	
STARR, J	1983 – present	Daily	Dog walking, walking	Back garden (St. Vincents Close)	Observed daily use by others
STARR, J	1953 – present	Daily	Dog walking, children walks, berry picking, bird watching	Woods or The List	
STARR, L	1983 – present	Daily	Walking, children playing, nature study, kite flying	The list, Court Hill	Observed dog walking on a daily basis
STARR, R	1969 – present	Daily	Dog walking	The List	Observed daily use by others
SULLIVAN, J	1960 – present	Occasionally	Walking, bird watching	Jubilee Road or woods	Observed use by walkers, bird watchers, cycling and children.
VALE, D	2002 – present	Daily	Rambling, dog walking, playing with children, access to woods	The List or Evenhill Road	Until 2005 it was agricultural land used for growing wheat. Used by others on a daily basis.
WALKER, C	1995 – present	Occasionally	Walking	Church Road	
WALL, R	1973 – present	Weekly	Dog walking, rambling with friends and family	Jubilee Road, Church Road	Observed use by others on a daily basis. Land has always been used by village residents for recreation purposes
WARNER, M	1980 – present	Daily	Walking	The List	Observed use by others on a daily basis
WARREN, P	1968 – present	Weekly or daily	Dog walking, keeping fit, playing with grandchildren	From woods or Jubilee Road	See people using it daily from property. Have seen people use and enjoy the area for many years.
WARD, C&J	1993 – present	Weekly	Walking, flying kites, occasionally playing group games	Jubilee Road, Court Meadows	
WEALLEANS, L	1981 – present	Daily	Dog walking, short cuts, berry picking, children played there	Back garden (St. Vincents Close)	Observed daily use by others
WEAVER, K	1993 – present	Weekly	Walking, picnics, kite flying, treasure hunts	Entrance from Jubilee Road	Observed use by others on a daily basis for dog walking and ball games.
WOOLISCROFT S&N	2006 – present	Daily	Walking, kite flying, ball games, dog training and walking, running, bird watching, nature trails, cycling	Evenhill Road, woods, allotments	

APPENDIX E:
Photographs showing agricultural
use of the application site



1993



1995



1996



1996



2000

Question.

① Prior to 1992 we cannot find any details from then. The crops are as follows.

93-94. OS Rape,	94-95 wheat,	95-96 w. Barley
96-97 Peas	97-98 wheat,	98-99 w Barley
99-00 wheat	00-01 wheat	01-02 S. Barley
02-03 wheat,	03-04 OS Rape	04-05 wheat
05-06 Set aside	06-07 S.A.S.	07-08 S.A.S
08-09 S.A.S	09-10 E.H.S.	10-11 E.H.S. Keword.
11-12. E.H.S.S.	12-13 E.H.S.	

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Application to register land known as Fisherman's Beach at Hythe 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 8th April 2014.

Recommendation: I recommend, for the reasons set out in the Inspector's report dated 21st February 2014, that the applicant be informed that the application to register land known as Fisherman's Beach at Hythe has been accepted (with the exception of the fishermen's huts and winch casings) and that the land shown at Appendix D to this report be registered as a new Village Green.

Local Members: Mr. M. Whybrow

Unrestricted item

Introduction

1. The County Council has received an application to register land known as Fishermans Beach at Hythe as a new Town or Village Green from Mr. D. Plumstead on behalf of the Shepway Environment and Community Network ("the applicant"). The application, made on 12th August 2010, was allocated reference number VGA629. 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**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

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.

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

The application site

6. The area of land subject to this application ("the application site") is known locally as Fisherman's Beach and is situated at Range Road in the town of Hythe. The application site consists of approximately 1.2 hectares (3 acres) of shingle beach lying above the high water mark between the Hythe Ranges and West Parade. The application site has a long history as a working beach that has been actively used by fishermen, both commercially and privately.
7. Access to the application site is via a vehicular entrance from Range Road, a set of steps at the junction of West Parade and St. Leonard's Road or along the recorded Public Footpath (HB82) at the eastern end of the application site. A plan showing the application site is attached at **Appendix A** and photographs of the application site are attached at **Appendix B**.
8. The application site forms part of a larger area owned by Shepway District Council ("the landowner") and is registered with the Land Registry under title numbers K568856 and K596617.

Previous resolution of the Regulation Committee Member Panel

9. As a result of the consultation, an objection to the application was received from Shepway District Council (as landowner). The objection was made on the basis that a considerable majority of the application site had been unavailable for recreational use by local residents during the relevant period due both to the existence of various structures on the land (e.g. fishermen's huts, boat berths, fishing equipment etc) and also to the intensive use of the land for fishing-related operations. The District Council invited the County Council to dismiss the application as misconceived and noted that, should the County Council consider that there be any merit to the application, *"it would be irrational for the County Council to allow the application without at least holding an inquiry at which the Applicant's evidence and that of his supporters can be tested properly"*.
10. The matter was considered at a Regulation Committee Member Panel meeting on Tuesday 17th July 2012, 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 C**.
11. 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

12. A pre-Inquiry meeting, for the purpose of determining the matters to be addressed and the procedure to be followed at the Inquiry, was arranged and due to be held on 29th April 2013. However, shortly prior to the meeting, the landowner (Shepway District Council) notified the County Council that whilst it wished to maintain its

objection to the application, it did not intend to attend, or indeed participate in, either the pre-Inquiry meeting or the Public Inquiry itself.

13. As a result of the landowner's insistence on maintaining its objection to the application² despite not wishing to have any active role in the Inquiry itself, the County Council's legal advice was that there was no option but to proceed with the Public Inquiry in order to hear oral evidence from the applicant's witnesses and satisfy itself that the issues raised by the landowner presented no bar to the registration of the application site as a Village Green.
14. Written directions confirming the format of the Inquiry and procedure for the submission of evidence (including an opportunity for the District Council to take an active role in the Inquiry were it to change its position) were therefore circulated. The Public Inquiry took place at the Hythe Town Hall on Monday 23rd and Tuesday 24th July 2013, during which time the Inspector heard evidence from the applicant's witnesses and undertook an accompanied site visit. The District Council chose not to attend the Inquiry or offer any oral evidence in opposition to the application.
15. The Inspector subsequently produced a detailed written report of her findings dated 21st February 2014 ("the Inspector's report"). The report itself is a lengthy document but the Inspector's findings and conclusions are summarised below.

Legal tests and Inspector's findings

16. 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'?*

17. In order to qualify for registration as a Village Green, recreational use of the application site must have taken place 'as of right' throughout 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'*).
18. In this case, there was no suggestion that informal recreational use of the application site had taken place in a contentious, secretive or permissive manner. Indeed, given the volume of use, any reasonable landowner would have been well aware of the informal recreational use of the land by local residents and there is no evidence that the landowner ever expressly or impliedly gave permission for such use.

² Had the landowner withdrawn its objection (the only outstanding opposition to the application), then it would have been possible to determine the application without the need for a public inquiry.

19. The landowner did refer to the presence of notices on the application site; one erected on a vehicular barrier in 2002 stating 'no unauthorised access – it is an offence to deposit rubbish on this land – offenders will be prosecuted' and others, erected in 2003, stating 'caution – working beach' (see photographs at **Appendix B**). However, it was not suggested that the presence of these signs was sufficient to cause informal recreational use of the application site to become contentious and the Inspector's view was that they were insufficient to communicate a prohibition on access to the application site. She said³:

"When members of the public could freely walk on to the Application Land down the steps from West Parade, down the concrete track leading straight into the Application Land from Range Road, and from Range Road along what became public footpath HB82 – not to mention the open frontage along the foreshore – without seeing any signage before 2003, and seeing only the "caution" signs after that, I do not consider that any reasonable user would have understood the landowner to be making it known that it objected to use – or that any reasonable landowner could possibly have adjudged that it done enough to make that known".

20. As such, the Inspector was satisfied that use of the application site had taken place 'as of right'.

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

21. Lawful sports and pastimes can be commonplace activities including dog walking, children playing, picnicking and kite flying. It is not necessary to demonstrate that both sporting activities *and* pastimes have taken place since the phrase 'lawful sports and pastimes' has been interpreted by the Courts as being a single composite group rather than two separate classes of activities⁴.

22. In this case, the Inspector was satisfied that the application site had been used for a wide range of recreational activities. She heard evidence relating to the use of the application site for, amongst other things, walking (with or without dogs), sunbathing, reading, angling, beachcombing, kite flying, observing the fishermen and bird watching.

23. Whilst there was some evidence that people walked across the beach to continue along the coast when there was no shooting at the Hythe Ranges (such use being a rights of way type use rather than qualifying use for the purposes of Village Green registration), there was very little evidence that walking generally was confined to particular defined routes between access points. She noted⁵ that the general tenor of the evidence was that:

"the Application Land was a destination in itself and used for lawful sports and pastimes all over, from the boulders in the east right up to the western end [with the exception of the areas where the huts and boats were]. This is not one of those cases where walking (with or without dogs) was the principal activity; it was but one (albeit an important one) of a matrix of activities which are typically associated with a beach".

³ See paragraph 235 of the Inspector's report

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

⁵ See paragraph 233 of the Inspector's report

24. Accordingly, the Inspector was satisfied that the application site had been used for 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?

25. 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.

26. The definition of locality for the purposes of a Town or Village Green application has been the subject of much debate in the Courts. In the Cheltenham Builders⁶ case, it was considered that ‘...at the very least, Parliament required the users of the land to be the inhabitants of somewhere that could sensibly be described as a locality... there has to be, in my judgement, a sufficiently cohesive entity which is capable of definition’. The judge later went on to suggest that this might mean that locality should normally constitute ‘some legally recognised administrative division of the county’.

27. In this case, the applicant originally noted the locality in the application form as ‘Fisherman’s Beach, Hythe Postcode Area CT21’ but, in recognition that this was not a qualifying locality, he subsequently amended the application (prior to the Public Inquiry) to rely on the South Ward of Hythe Town Council as the relevant locality. The Town Council confirmed the existence of this locality, unchanged, throughout the relevant twenty-year period.

28. The landowner was given the opportunity to comment on the amended locality, but did not dispute that this electoral ward could be a qualifying locality for the purposes of Village Green registration.

29. The Inspector concluded that the South Ward of Hythe Town Council was a legally recognised administrative unit and therefore a qualifying locality for the purposes of this application.

“a significant number”

30. 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’⁷. Thus, the test is a qualitative, not quantitative one, and what constitutes a ‘significant number’ will depend upon the individual circumstances of each case.

31. In this respect, the Inspector rejected the landowner’s suggestion that informal recreational use of the application site had been trivial and sporadic, and instead found that⁸:

“it is my clear impression on the totality of the evidence that there were throughout [the relevant period] a sufficient number of South Ward

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

⁷ *R (Alfred McAlpine Homes Ltd.) v Staffordshire County Council* [2002] EWHC 76 at paragraph 71

⁸ See paragraph 221 of the Inspector’s report

inhabitants using the Application Land for lawful sports and pastimes... to give the appearance to a reasonable landowner that a continuous right for inhabitants of the area to use the land for recreation was being asserted”.

32. The Inspector noted that there was a considerable amount of evidence of use by the families of witnesses, and also about use by other, unidentified persons (who may or may not have been resident within the qualifying locality). She considered that this added indirect support to the application in the sense that that if the land was regularly being frequented by residents from other parts of Hythe and by visitors from further afield, then it would be entirely consistent with the fact that those living closest to the application site (i.e. within the South Ward) would also have been using it in the same manner.

33. The Inspector rejected the landowner's claims that the application site was little used by local residents due to the fact that the beach was unattractive for recreation given its intensive use by fishermen and the availability of more attractive beaches nearby. She heard evidence from the applicant's witnesses that the application site was the only local beach where dogs could lawfully be taken during summer months⁹ and that it was of more interest to some people, such as local artists for whom the presence of fishermen was an attraction rather than a deterrent.

34. The Inspector's overall conclusion in this respect¹⁰ was:

“I find that that the Application Land was extensively used by inhabitants of the South Ward throughout the [relevant period] for informal recreation”.

(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?

35. 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 provided (at the time that this application was made) that an application must be made within two years from the date upon which use ‘as of right’ ceased.

36. In this case, the application was made under section 15(3) of the Commons Act 2006 on the basis that use of the application site became contentious in May 2010 when the landowner enclosed a large part of the application site with temporary fencing. Although use of the remainder of the application site continued, the Inspector considered that it was reasonable for the conduct of the landowner to be viewed as a challenge to informal recreational use of the application site as a whole. She agreed that use ceased to be ‘as of right’ from May 2010.

37. The application was made in August 2010, well within the two-year period of grace.

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

38. In order to qualify for registration, it must be shown that the land in question has

⁹ Due to the existence of byelaws banning dogs from other local beaches from 1st May to 30th September each year

¹⁰ See paragraph 230 of the Inspector's report

been used for a full period of twenty years. In this case, use of the application site ceased to be 'as of right' in 2010 and, as such, the relevant twenty-year period ("the material period") is calculated retrospectively from the date of the application, i.e. 1990 to 2010.

39. The Inspector was satisfied, on the basis of the evidence, that there had been use of the application site for lawful sports and pastimes throughout a period of at least 20 years until May 2010¹¹.

Whether the whole of the application site is capable of registration

40. It was common ground between the parties that there were, throughout the relevant period, huts on the application site mainly occupied by fishermen; some have since been demolished or removed.

41. As noted above, the District Council's case was that significant parts of the application site were physically unavailable for recreational purposes, leaving only minimal areas within which it would have been possible for local residents to engage in lawful sports and pastimes. The applicant's position in this regard was that the entirety of the application site should be regarded as having been in recreational use as a whole; it was suggested that the position was akin to that of a public park consisting of flower beds on which the public are not able to walk.

42. In respect of the fishermen's huts and winch casings, the Inspector found¹² that they were permanent fixtures that had been constructed and were used for other purposes (storage and winching) which were not compatible with recreational use and offered no recreational opportunities. As such, her advice was that no part of the application site upon which a hut or a winch casing stood at any time during the twenty year period to May 2010 would qualify for registration.

43. The Inspectors' conclusion¹³ regarding the other features referred to by the landowner (including the boat berths and 'launch and recovery areas') was that they are not permanent fixtures and can therefore be distinguished from the huts and winch casings on the basis that there was nothing on the beach to mark the alleged berths or to keep people out of them unless a boat happened to be there; when the boats were not there, they were used for recreational activities and, when they were, they were conducive to the recreational enjoyment of the land (particularly for activities such as painting or photography).

44. Similarly, the Inspector considered that the boat 'launch and recovery' areas were only used intermittently for relatively short periods and decreasingly over the relevant period as the number of licences dwindled. She noted¹⁴ that whilst these operations were ongoing, and the catches were being unloaded, recreational users kept a safe distance but resumed their recreational use as soon as the fishermen had finished.

¹¹ See paragraph 246 of the Inspector's report

¹² See paragraph 239 of the Inspector's report

¹³ See paragraph 241 of the Inspector's report

¹⁴ See paragraph 242 of the Inspector's report

45. All in all, she found¹⁵ that:

"The vast majority of the application land was physically available for recreational use at any time during the 20 year period. The berthing of boats and storage of nets and other equipment at varying locations on it did not leave only minimal areas available for public use. The aerial photographs appended by the Objector to its objection illustrate that and completely undermine its case".

46. She added¹⁶:

"It is not a prerequisite of registration that lawful recreation be physically possible all over the land, or that the qualifying recreational use be the sole or dominant use... Where and to the extent that lawful recreational use was possible on the application land (excluding the huts and winch casings) – which was the vast majority of it, boats, nets, other equipment, and debris coming and going and probably never occupying even as much as 20% of the whole during the critical 20 years – there was in my judgement a sufficient degree of it to satisfy the section 15 criteria"

Inspector's conclusions

47. The Inspector's overall conclusion was that the applicant had satisfactorily demonstrated that all of the requisite legal tests had been met, and the application site should (with the exception of the areas discussed above) be registered as a Village Green. She said¹⁷:

"My overall conclusion on the totality of the evidence tendered to the inquiry is that (with the exception of the footprints of the fisherman's huts (both existing and removed) and the winch casings shown on the Objector's Masterplan) the Application Land qualifies for registration as a town or village green under section 15(3) of the Commons Act 2006, as being land on which a significant number of the inhabitants of a locality indulged in lawful sports and pastimes as of right for a period of at least twenty years, ceasing in May 2010 (less than two years before the date of the application).

My recommendation is accordingly that, for the reasons given in this Report, the Registration Authority should grant the application and register the Application Land as a town or village green, with the exception of the footprints of the fishermen's huts (both existing and removed) and the winch casings shown on the Objector's Masterplan".

Subsequent correspondence

48. On receipt, the Inspector's report was forwarded to the applicant and to the District Council for information and further comment.

49. The applicant responded to record his satisfaction with the Inspector's detailed report and overall recommendation.

50. The District Council responded to confirm that it acknowledged the Inspector's recommendation and had no objection to it.

¹⁵ See paragraphs 243 of the Inspector's report

¹⁶ See paragraph 245 of the Inspector's report

¹⁷ see paragraphs 249 and 250 of the Inspector's report

Conclusion

51. 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 Village Green have been met. As such, the application should be accepted and the land to which it relates (with the exception of the fishermen's huts and winch casings) should be registered as a Village Green. The area to be registered, subject to approval of the recommendation below, is shown on the plan at **Appendix D**.

Recommendation

52. I recommend, for the reasons set out in the Inspector's report dated 21st February 2014, that the applicant be informed that the application to register land known as Fisherman's Beach at Hythe has been accepted (with the exception of the fishermen's huts and winch casings) and that the land shown at **Appendix D** to this report be registered as a new Village Green.

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 of the meeting of the Regulation Committee Member Panel held on 17th July 2012

APPENDIX C – Photographs showing the application site

APPENDIX D – Plan showing area of land to be registered as a Village Green (subject to approval of the recommendation)

Background documents

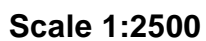
Inspector's report dated 21st February 2014

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**APPENDIX B:
Photographs of the application site**



One of three identical notices around the application site, erected in 2003



Notice erected near Range Road entrance to the application site in 2002



Application site viewed from junction of West Parade and St Leonard's Road looking west



Application site from Hythe Ranges end looking east



Fishermen's huts and equipment on the application site



Boats berthed on the application site



Photograph showing some of the huts and winch casings to be excluded from registration



Dog control notice banning dogs during summer months from adjacent beaches

9. Application to register land known as Fisherman's Beach at Hythe as a new Town Green
(Item 4)

- (1) Members of the Panel visited the application site before the meeting. The visit was attended by Mr D Plumstead (the applicant), Councillors Mrs R Griffith and A Mayne accompanied by the Clerk, Mrs M McCormick from Hythe TC, Mr C J Capon (Local Member) and some 10 local residents.
- (2) The Commons Registration Officer introduced the application which had been made under Section 15 of the Commons Act 2006. She confirmed that it was possible in Law to register a beach as a new Town Green, provided that the application passed all of the legislative tests. She confirmed that the Registration Authority could not take amenity or desirability criteria into account when deciding whether to register.
- (3) The Commons Registration Officer confirmed that the consultation arrangements had been correctly carried out. Hythe TC had stated that it neither supported nor opposed the application but that it wished for a non-statutory Public Inquiry to be held in order to give the residents the opportunity to make their views known. Mr C J Capon (Local Member) had expressed his support for the application, as had the Hythe Neighbourhood Forum.
- (4) The Commons Registration Officer went on to describe the application site. The land had been acquired by Shepway DC in 1984 and had been used as a working beach for local fishermen. The site was now set out differently to the way it had been before. Formerly there had been 30 huts, but the beach was now used less intensively.
- (5) At this point, Mr J Chambers from Shepway replied to questions by the Chairman and other Members by saying that an area of the site had been fenced off to enable Channel contractors to deal with cyanide contamination on the beach. The area in question would be capped and have its shingle levels raised. A number of huts had been demolished and tenancies had not been renewed since March 2010. This was because the District Council intended to develop the land north of the track. This meant that they could only provide huts for 9 fishermen and the Seabrook Sea Angling Association.
- (6) The Commons Registration Officer resumed her presentation by outlining the objections from Shepway DC. These were that the site had not been in continuous use for twenty years as some parts of it had been permanently occupied by huts and boat berths for all or part of the qualifying period; that use had not been by a significant number of local residents; and that use had not been "as of right" as the Council had made intensive use of the land for other purposes.

(7) Shepway DC had included 3 statutory declarations in support of its objections. These included the District Council's Estate Management Officer (Mr P Marshall) who had made many visits to the beach to carry out site inspections. He had stated that a heavy duty metal gate (with padlock) had been installed in 2002 next to Griggs Fishmongers on Range Road. This had been accompanied by a notice reading "No Unauthorised Access". Three further notices had been erected in 2003. These read "Caution – Working Beach Beyond This Point – Be Warned of Possible Dangers Surrounding Boat Winching Operations – This Beach is not Recommended for Bathing."

(8) The Commons Registration Officer moved on to consider the legal tests. The first of these was whether use of the land had been "as of right." She considered that this test had been met because the area of land had not been fenced off and the wording of the signs neither contested recreational use nor signified that such use was permissive.

(9) The Commons Registration Officer briefly set out that the evidence submitted in support of the application suggested that the land had been used for the purposes of lawful sports and pastimes; that it had been used by a significant number of inhabitants of the electoral ward of Hythe Central in Hythe; and that application date of August 2010 was well within the two year grace period prescribed by Law after use of the land became contentious in May of that year.

(10) The Commons Registration Officer then turned to the question of whether use had taken place over a period of twenty years or more. The qualifying period was 1990 to 2010. Shepway DC claimed that since 1984, significant areas of the beach had been used by its tenants for fishing activities. The fishermen's huts would have prevented public access to those portions of land on which they were sited. Shepway DC also believed that large portions of the rest of the site had often been temporarily unavailable for recreational use due to the launching of boats and storage of fishing equipment. These activities had created numerous interruptions to use throughout the relevant period.

(11) The applicants, however, maintained that there had always been recreational use of those areas occupied by boat berths, fishing nets and equipment. This was because they were continually on the move and did not remain in the same position for long or return to the same spot on the beach after each landing.

(12) The Commons Registration Officer summed up her presentation by saying that due to the conflicting nature of the evidence before her, she was unable to determine whether recreational use had continued uninterrupted throughout the relevant twenty year period. For this reason, she was recommending the setting up of a non-statutory Public Inquiry to clarify the issues.

(13) Councillor A Mayne from Hythe TC said that there was overwhelming support for the application in the Town. Councillor Mrs R Griffith said that in her view all the legal tests had been met and the application should be accepted.

(14) Mrs M McCormack (Clerk to Hythe TC) said that the Town Council believed that most of the tests had been met. However, as there was an element of doubt in respect of the 20 year period, the best way to proceed was through the holding of a

Public Inquiry. This would give everyone the opportunity to give their evidence and make their views known.

(15) Mr D Plumstead (applicant) began his presentation by saying that Fisherman's Beach had been home to the Lifeboat Service in the 1800s. The Wakefield family had replaced the original self-righting lifeboat shortly before the Second World War. The beach was an important part of Hythe's heritage and local people felt very protective about their long-established rights to it.

(16) Mr Plumstead then said that the local residents placed far greater value on Fisherman's Beach for its history and ability to attract visitors than on the returns from any future development. Local people enjoyed the disparate collection of pots and nets. This was particularly true of the school children who loved to draw the interesting shape and colours.

(17) Mr Plumstead drew attention to the gradual whittling down of the number of fishing licences issued by Shepway DC, before saying that nobody paid any attention to the notices put up by the District Council as they were not sure what their purpose was supposed to be.

(18) Mrs C Chivers (Head Teacher of Hythe Bay CEP School) said that her school was no more than 50 metres from Fisherman's Beach. The children had no play spaces apart from the Beach and needed the opportunity to visit it as often as possible. KCC's Outdoor Education Unit encouraged the School's pupils to visit Fisherman's Beach and it had become the hub of its curriculum delivery (particularly in respect of artwork). If the Town Green application succeeded, it would enable many more generations of pupils to learn to understand the heritage, beauty and heart of Hythe.

(19) Mrs Z Kerrigan (local resident) said that she had lived in Hythe since 1959 and visited Fisherman's Beach at least once a month. This was true of a number of her friends.

(20) Mr K Jones (local resident) said that he was able to confirm that the fencing that Members had noted before the meeting had been put up 2 ½ years earlier. He also said that Shepway DC had proposed moving the fishermen towards the Rifle Ranges and that they had been threatened with losing their licences if they objected.

(21) Timothy Morshead QC spoke on behalf of Shepway DC. He said that it was Shepway DC's ambition to preserve Fisherman's Beach in order to maintain the certainty of continuing fishing in Hythe. He then asked the applicant to consider whether he had fully realised the potential consequences of registration. For example, there would be no possibility of preventing exercise and recreation in any lawful form, whilst erecting a building or disturbing the beach would be an offence under the Victorian statutes which protected Village Greens.

(22) Mr Morshead asked whether the applicant would be prepared to withdraw his application and produce a revised version which only included the area of shingle and the beach. This was because the application as it stood was too ambitious and could also put fishing at risk.

(23) The Chairman asked Mr Plumstead whether he wished to withdraw the application. Mr Plumstead replied that he wished to continue with it.

(24) Mr Chambers (Shepway DC) said that the District Council's plans for Fisherman's Beach had involved relocating the fishermen and Griggs Fishmongers to the west end of the site. To achieve this they had offered them the western huts which had stood empty. They had been happy with the new arrangement.

(25) Mr C J Capon (Local Member) said that he was the Chairman of the Hythe Neighbourhood Forum, which fully supported the application. He had on numerous occasions invited Shepway DC to send representatives to these meetings, but so far no one had come. If they had done so, they would have realised the strength of feeling in support of registering the application site as a Village Green.

(26) Mr Capon then said that he was very disappointed that rather than come to the Neighbourhood Forum to discuss local concerns, the District Council had chosen to come to the Panel meeting accompanied by a Barrister. Mr Morshead's contribution had possibly put doubts in the applicants' minds, whilst making them an offer (that should have been made much earlier) to enter into discussions.

(27) Mr Capon concluded his remarks by repeating his invitation for Shepway DC to come to meetings of the Hythe Neighbourhood Forum and to listen to its views and those of the Town Council.

(28) Mr Pascoe said that he had personally used Fisherman's Beach as a photographer. He had not been prevented from doing so. He then asked Mr Morshead for clarification of his remarks regarding the future of the fishing activities on the land.

(29) Mr Morshead replied that if Fisherman's Beach were registered as a Town Green, there was a risk of moving from a position of certainty about the site's future to a position of quite considerable uncertainty.

(30) Mr Craske said that the Panel's only consideration had to be the application itself, rather than any possible consequences. He believed that four of the legal tests had been passed but that the fifth test needed further examination. He therefore moved the recommendations, seconded by Mr I S Chittenden.

(31) On being put to the vote, the recommendation set out in paragraph 57 of the report was carried unanimously.

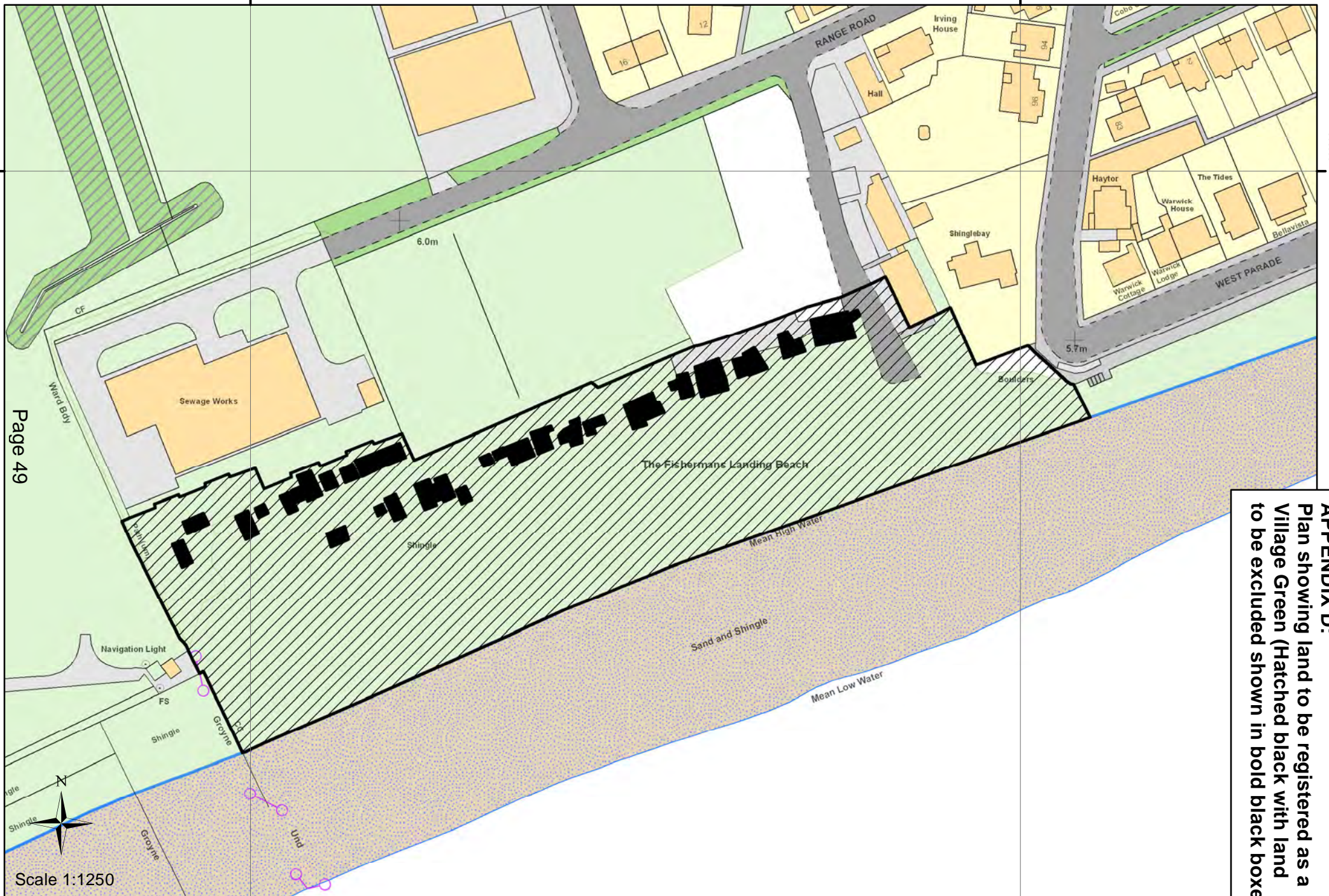
(32) **RESOLVED** that a non-statutory Public Inquiry be held into the case to clarify the issues.

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APPENDIX D:
 Plan showing land to be registered as a
 Village Green (Hatched black with land
 to be excluded shown in bold black boxes)

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Plan showing land to be registered as a Village Green (Hatched black with land to be excluded shown in bold black boxes)



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Application to register land known as The Warren at Brabourne Lees as a new Village Green

A report by the Head of Regulatory Services to Kent County Council's Regulation Committee Member Panel on Tuesday 8th April 2014.

Recommendation: I recommend that the County Council informs the applicant that the application to register the land known as The Warren at Brabourne Lees has been accepted, and that the land subject to the application be formally registered as a Village Green.

Local Member: Mr. A. Wickham

Unrestricted item

Introduction

1. The County Council has received an application to register land at The Warren in the parish of Brabourne as a new Village Green from the Brabourne Parish Council ("the applicant"). The application, dated 13th June 2013, was allocated the application number VGA657. 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 open area of land with a grass surface approximately 1.73 acres (0.7 hectares) in size. The application site is situated at Brabourne Lees in the parish of Brabourne, and is roughly bounded by the roads known as The Warren, Manse Field, Bridge Road and Plain Hill Road.
7. A plan of the application site is attached at **Appendix A** and photographs of the application site can be found at **Appendix C**.

Notice of Application

8. As required by the regulations, 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 Member was also informed of the application.
9. Ashford Borough Council wrote to advise that it had recently transferred the land in question to Brabourne Parish Council and has no objection to the application.

Ownership of the land

10. A Land Registry search has been undertaken which confirms that the application site is wholly owned by the applicant under title number TT11702. A copy of the Register of Title is attached at **Appendix D**.
11. There are no other interested parties (e.g. leaseholders or owners of relevant charges) named on the Register of Title.

The 'locality'

12. 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.
13. 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).

14. In this case, the application is made by the local Parish Council and the relevant locality is stated in the application form as being 'Brabourne parish'. As noted above, a civil parish 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 parish of Brabourne.

Conclusion

15. 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.

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

Recommendations

17. I recommend that the County Council informs the applicant that the application to register the land known as The Warren at Brabourne Lees 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: mike.overbeke@kent.gov.uk

Case Officer:

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

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

Background documents

APPENDIX A – Plan showing application site

APPENDIX B – Copy of application form

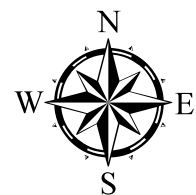
APPENDIX C – Photographs of the application site

APPENDIX D – Copy of the Register of Title from Land Registry

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APPENDIX A: Plan showing application site



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Land subject to Village Green application
at The Warren, Brabourne Lees



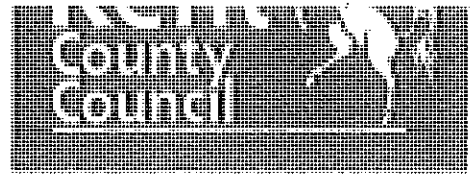
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**Kent
County
Council**
kent.gov.uk



Commons Act 2006: section 15

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



This section is for office use only

Official stamp of the Registration Authority
indicating date of receipt:

COMMONS ACT 2006
KENT COUNTY COUNCIL
REGISTRATION AUTHORITY
13 JUN 2013

Application number:

VG A657

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

Note to applicants

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

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

Note 1
*Insert name of Commons
Registration Authority*

1. Commons Registration Authority

To the: Kent County Council

Note 2

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

2. Name and address of the applicant

Name: Brabourne Parish Council

Full postal address: 14 Sandhurst Lane
(incl. Postcode) Ashford
Kent
TN25 4NS

Telephone number: 01233 623902
(incl. national dialling code)

Fax number:
(incl. national dialling code)

E-mail address: clerk@brabournepc.kentparishes.gov.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: n/a

Firm:

Full postal address:
(incl. Postcode)

Telephone number:
(incl. national dialling code)

Fax number:
(incl. national dialling code)

E-mail address:

Note 4

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

4. Basis of application for registration and qualifying criteria

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

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

Section 15(2) applies: ☐

Section 15(3) applies: ☐

Section 15(4) applies: ☐

<p><i>*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.</i></p>	<p>If section 15(3) or (4) applies, please indicate the date on which you consider that use 'as of right' ended and why:</p> <p>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:</p>
<p>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.</p>	<p>5. Description and particulars of the area of land in respect of which application for registration is made</p> <p>Name by which usually known: The Warren</p> <p>Location: Land on the west side of The Warren, Brabourne Lees Ashford Land Registry Title number TT11702</p> <p>Common Land register unit number (only if the land is already registered Common Land):</p> <p>Please tick the box to confirm that you have attached a map of the land (at a scale of at least 1:2,500): <input checked="" type="checkbox"/></p>
<p>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.</p>	<p>6. Locality or neighbourhood within a locality in respect of which the application is made</p> <p>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: Brabourne Parish</p> <p>Please tick here if a map is attached (at a scale of 1:10,000): <input type="checkbox"/></p>

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

n/a, application is being made under Section 15(8)

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

n/a application is being made under Section 15(8)

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

Copy of Minutes of a meeting of Brabourne Parish Council dated 13th May 2013, resolving to apply for registration of land on the west side of The Warren as a village green

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

See attached sheet

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

None

Application for the Registration of land as a new Village Green

Applicant: Brabourne Parish Council

Section 10 Supporting documentation

1. Initial email correspondence trail, dated 7th October 2010 – 1st November 2010, between Brabourne Parish Council and Ashford Borough Council regarding land at The Warren (held by the Borough Council as part of its land housing bank)
2. Email from Brabourne Parish Council, dated 23rd November 2010, to Ashford Borough Council giving the Parish Council's request to take over the land
3. Email from Ashford Borough Council, dated 24th February 2011, advising that the proposed transfer would be delayed until after the May 2011 elections
4. Letter from Ashford Borough Council, dated 20th March 2012, to Brabourne Parish Council regarding the proposed transfer
5. Email acknowledgement from Brabourne Parish Council, dated 25th March 2012
6. Instruction from Brabourne Parish Council, email dated 17th July 2012, to Ashford Borough Council to proceed with the transfer
7. Letter from Ashford Borough Council, dated 12th September 2012, confirming that there had been no objections to the transfer
8. Letter from Brabourne Parish Council, dated 29th January 2013, which accompanied the signed draft transfer form (TP1)
9. Signed draft transfer form (TP1)
10. Letter from Ashford Borough Council, dated 7th February 2013, which accompanied the Transfer, duly executed
11. Official copy of the register of title, dated 6th March 2013, Title number TT11702

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):**

Chairman

Vice-chairman

Date:

6th June 2013

REMINDER TO APPLICANT

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

Please send your completed application form to:

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

Data Protection Act 1998

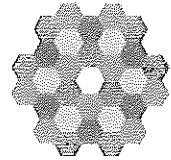
The application and any representations made cannot be treated as confidential. To determine the application it will be necessary for the Commons Registration Authority to disclose information received from you to others, which may include other local authorities, Government Departments, public bodies,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

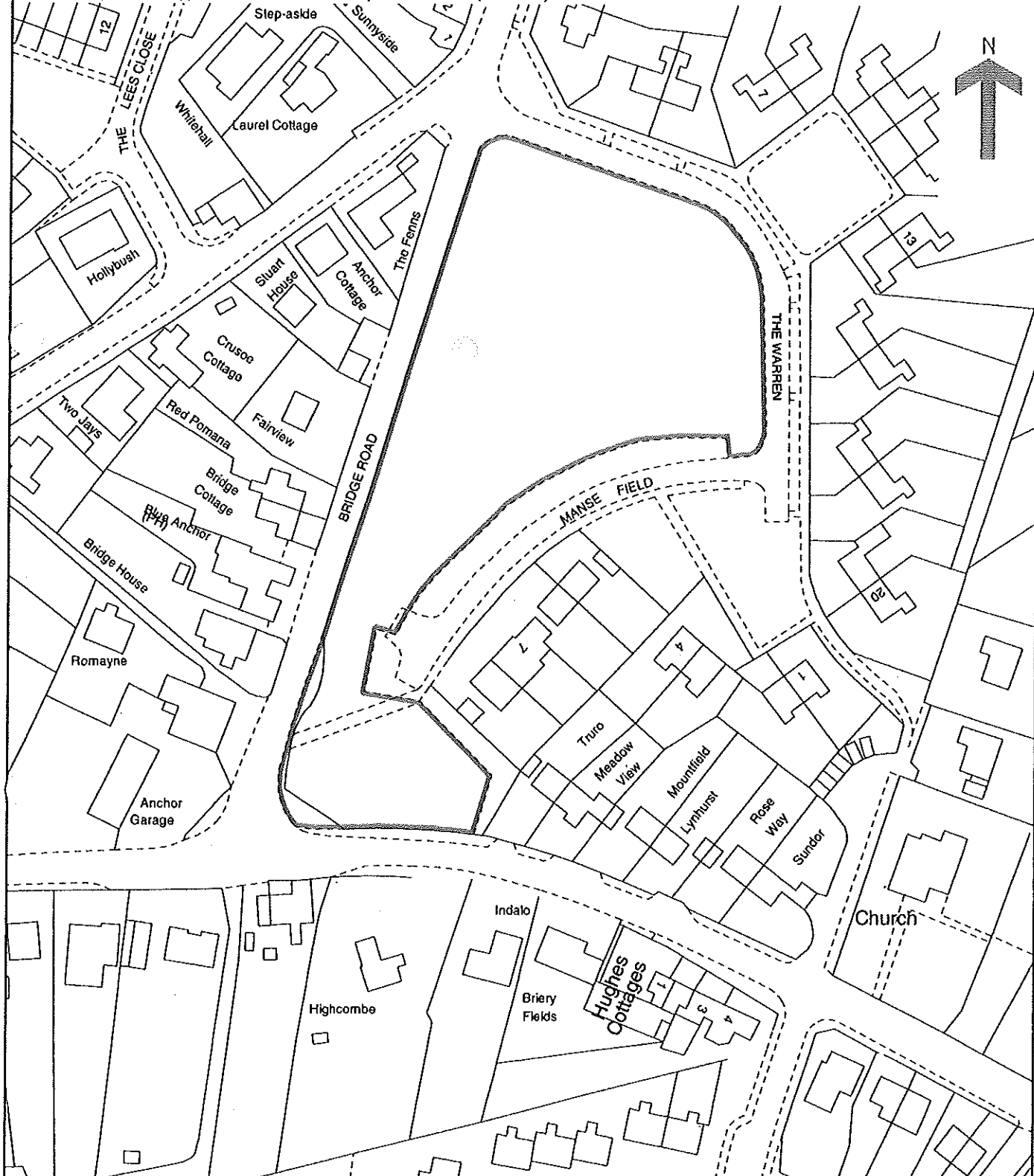
Land Registry

Official copy of title plan

Title number **TT11702**
Ordnance Survey map reference **TR0840SW**
Scale **1:1250** enlarged from 1:2500
Administrative area **Kent: Ashford**



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This official copy issued on 6 March 2013 shows the state of this title plan on 6 March 2013 at 10:05:15. It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002).

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.

This title is dealt with by Land Registry, Nottingham Office.

APPENDIX C:
Photographs showing the application
site (taken from Google streetview)





APPENDIX D: Land Registry Documents

THIS IS A PRINT OF THE VIEW OF THE REGISTER THE ENTRIES SUBSISTING IN THE REGISTER ON 11 THAT THIS REGISTER VIEW IS NOT ADMISSIBLE IN COPY WITHIN THE MEANING OF S.67 LAND REGISTRY IT MAY NOT ENTITLE A PERSON TO BE INDEMNIFIED FOR 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: TT11702

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 : ASHFORD

- 1 The Freehold land shown edged with red on the plan of the above title filed at the Registry and being Land on the west side of The Warren, Brabourne Lees, Ashford.

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 (18.02.2013) PROPRIETOR: BRABOURNE PARISH COUNCIL of 14 Sandyhurst Lane, Ashford, Kent TN25 4NS.

C: Charges Register

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

- 1 (06.02.2008) The land is subject to the rights, easements or quasi-easements including rights of support appurtenant to or enjoyed by adjoining or neighbouring properties.
- 2 (06.02.2008) The land is subject to rights to use the drains, channels, sewers, pipes, wires, cables, watercourses, gutters and other conducting media therein, thereunder and thereover and ancillary rights of entry.
- 3 (18.02.2013) A Transfer of the land in this title dated 7 February 2013 made between (1) Ashford Borough Council and (2) Brabourne Parish Council contains the following restrictive stipulations :-

"Restrictive covenants by the transferee

Not to use the land other than as open space as defined in the Open Spaces Act 1906"

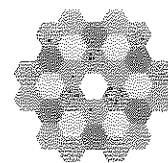
NOTE: The transfer did not contain a covenant to observe the said restrictive stipulations.

End of register

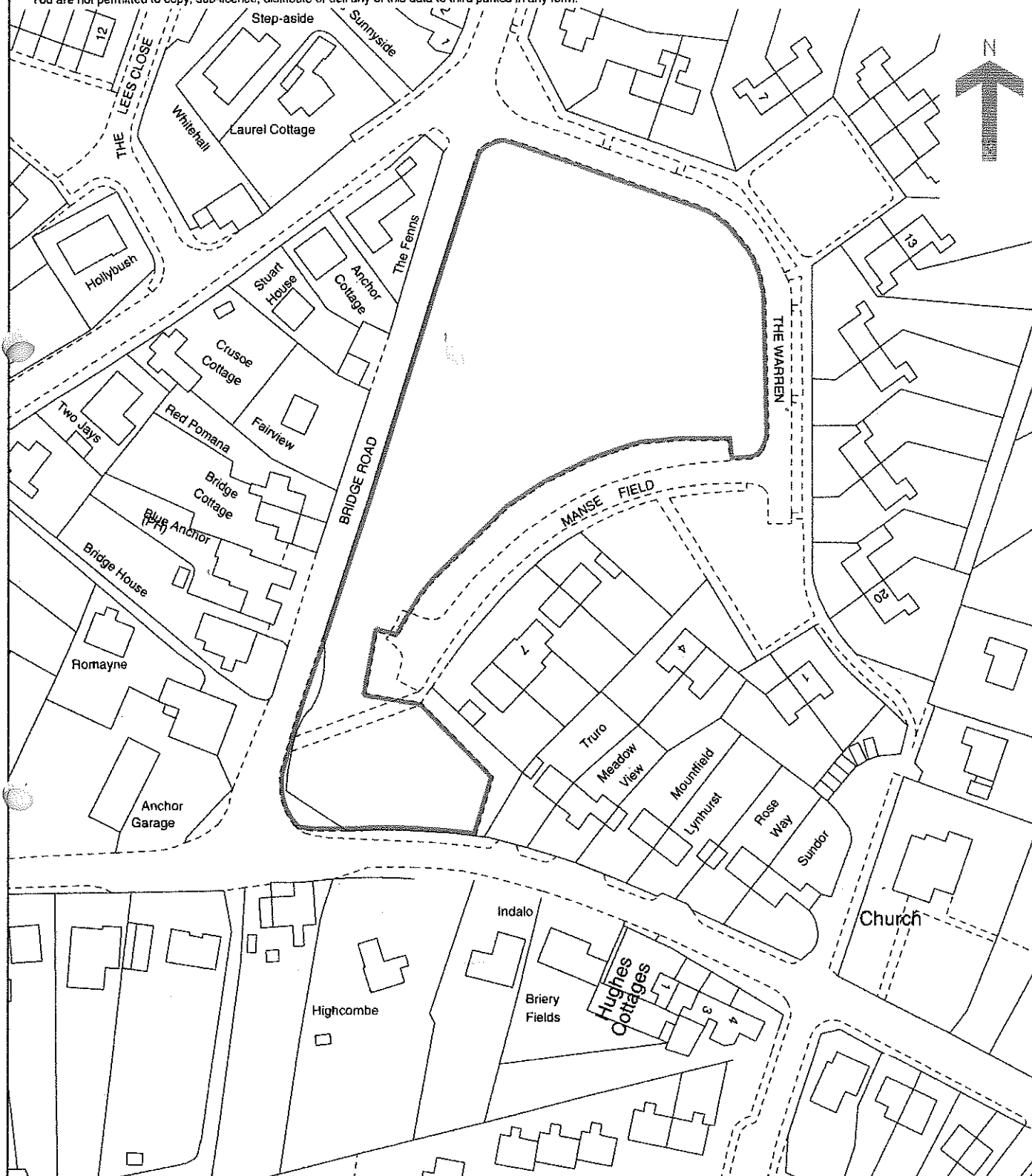
Land Registry

Official copy of
title plan

Title number **TT11702**
Ordnance Survey map reference **TR0840SW**
Scale **1:1250** enlarged from 1:2500
Administrative area **Kent: Ashford**



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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.

This title is dealt with by Land Registry, Nottingham Office.

Application to register land at Masefield Way at Tonbridge as a new Village Green

A report by the Head of Regulatory Services to Kent County Council's Regulation Committee Member Panel on Tuesday 8th April 2014.

Recommendation: I recommend that the County Council informs the applicant that the application to register the land at Masefield Way at Tonbridge as a new Village Green has been accepted, and that the land subject to the application be formally registered as a Village Green.

Local Members: Mr. R. Long and Mr. C. Smith

Unrestricted item

Introduction

1. The County Council has received an application to register land at Masefield Way in the town of Tonbridge as a new Village Green from local resident Mr. R. Hewitt ("the Applicant"). The application, made on 10th June 2013, was allocated the application number VGA656. 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 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. The publicity must state a period of at least six weeks during which objections and representations can be made.

¹ Note that after 1st 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 will only apply to applications received after that date and does not affect any existing applications.

The application site

6. The area of land subject to this application ("the application site") consists of a rectangular area of land of approximately 0.16 hectares (0.4 acres) in size situated to the rear of property numbers 28 to 35 Masfield Way at Tonbridge. The site is shown on the plan at **Appendix A**.
7. The application site consists of an open area with grassed surface, access to which is provided by surfaced pathways (which are estate paths rather than recorded public rights of way).

The case

8. The application has been made on the grounds that the application site has become a Town or Village Green by virtue of the actual use of the land by the local inhabitants for a range of recreational activities 'as of right' for more than 20 years.
9. Provided in support of the application were 18 user evidence questionnaires from local residents, a supporting statement by the applicant as well as various maps and aerial photographs showing the application site. A summary of the evidence in support of the application is attached at **Appendix C**.

Consultations

10. Consultations have been carried out as required and no responses have been received.

Landowner

11. The application site is owned by Russet Homes Ltd. ("the landowner") and is registered with the Land Registry under title number K699911.
12. The landowner has been informed of the application, however, no representations regarding the application have been received from the landowner.

Legal tests

13. 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'?

14. The definition of the phrase 'as of right' has been considered by the House of Lords. Following the judgement in the *Sunningwell*² case, it is considered that if a person uses the land for a required period of time without force, secrecy or permission ("*nec vi, nec clam, nec precario*"), and the landowner does not stop him or advertise the fact that he has no right to be there, then rights are acquired.
15. In this case, there is no evidence to indicate that use of the application site has been in any way in exercise of force, in secrecy or undertaken on a permissive basis. None of the witnesses refer to any hindrance to informal recreational use of the application site and there is no evidence on the ground (e.g. old fencing) to suggest that access to the application site has ever been restricted in any way.
16. Therefore, in the absence of evidence of any challenges to recreational use of the application site, such use would appear to have taken place 'as of right'.

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

17. Lawful sports and pastimes can be commonplace activities including dog walking, children playing, picnicking and kite-flying. Legal principle does not require that rights of this nature be limited to certain ancient pastimes (such as maypole dancing) or for organised sports or communal activities to have taken place. The Courts have held that '*dog walking and playing with children [are], in modern life, the kind of informal recreation which may be the main function of a village green*'³.
18. In this case, the evidence submitted in support of the application (summarised at **Appendix C**) indicates that local residents have engaged in various recreational activities on the land.
19. In particular, a number of witnesses refer to the use of the application site on a daily basis by local children for ball games and general play. This is due to the fact that the application site is located away from main roads and offers a safe place of children to play away from the dangers of vehicular traffic. The evidence also suggests that the application site has been a focal point for informal community events, such as barbeques and street parties.
20. The nature of the application site and its location within a relatively high-density area of housing both support the applicant's evidence that it has been used for the activities cited above. As such, it can be said that the application site has been used for 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?

21. 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*⁴ case, it

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

³ *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

⁴ *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at 90

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’.

22. In cases where the ‘locality’ is so large that it is difficult to show that the application site has been used by a significant number of people from that locality, it will be necessary to consider whether there is a relevant ‘neighbourhood’ within the wider locality. 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’⁵.
23. The County Council also needs to be satisfied that the application site has been used by a ‘significant number’ of the residents of the locality. 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’⁶. 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.

The ‘neighbourhood within a locality’

24. In this case, the Applicant specifies the locality at Part 6 of the application form as ‘Judd Ward, Tonbridge’.
25. The electoral ward relied upon by the application is clearly a legally recognised locality with defined boundaries and it is accepted that an electoral ward can be a qualifying locality for the purpose of this legislation. However, the evidence of use is concentrated in a very small part of the electoral ward (see plan at **Appendix D**) and, on the basis of the evidence submitted, it does not appear that a significant number of the residents of the ward as a whole have used the application site. It is therefore necessary to consider whether there is a qualifying neighbourhood within the Borough Council electoral ward of Judd.
26. A number of the witnesses refer to living within the Brook Street Estate area of Tonbridge. This is a residential estate that was originally developed by Tonbridge and Malling Borough Council and is today managed by Russet Homes; it therefore has the unifying characteristics of a housing estate or neighbourhood.

⁵ *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at page 92

⁶ *R (Alfred McAlpine Homes Ltd.) v Staffordshire County Council* [2002] EWHC 76 at paragraph 71

'significant number'

27. In this case, the applicant has provided evidence of use from 18 witnesses. A large number of those who completed evidence questionnaires, in addition to their own evidence of use, referred to having observed use of the application site by others on a daily basis.
28. As noted above, the image presented of the application site by the user evidence is one of a community focal point that used on a daily basis, particularly by local children. As such, it would have been obvious to a reasonable landowner that the application site was in general use by local residents.
29. Therefore, it can be concluded that the application site has been used by a significant number of the residents of the Brook Street Estate within the locality of the Judd ward of Tonbridge and Malling Borough Council.

(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?

30. 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.
31. In this case, the application was made in 2013. Given the open nature of the application site and the ease of access onto it, there is no evidence to suggest that use has not continued until (and beyond) the date of the application.

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

32. In order to qualify for registration, it must be shown that the land in question has been used for a full period of twenty years. In this case, use of the application site 'as of right' is continuing and, as such, the relevant twenty-year period ("the material period") is calculated retrospectively from the date of the application, i.e. 1993 to 2013.
33. The user evidence summarised at **Appendix C** demonstrates that there has been use of the application site well in excess of the last twenty years and, in one case, as far back as 1953.
34. Therefore, it can be concluded that there has been use of the application site for a full period of twenty years.

Conclusion

35. Although this application is unopposed, the County Council must still be satisfied that all of the requisite legal tests have been met. In this case, the evidence demonstrates that the application site has been used by local residents for a period of over twenty years for the purposes of lawful sports and pastimes.

36. From close consideration of the evidence submitted, it can therefore be concluded that the legal tests concerning the registration of the land as a Village Green (as set out above) have been met.

Recommendation

37. I recommend that the County Council informs the applicant that the application to register the land at Masefield Way at Tonbridge as a new Village Green 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 221500 or Email: mike.overbeke@kent.gov.uk

Case Officer:

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

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

Appendices

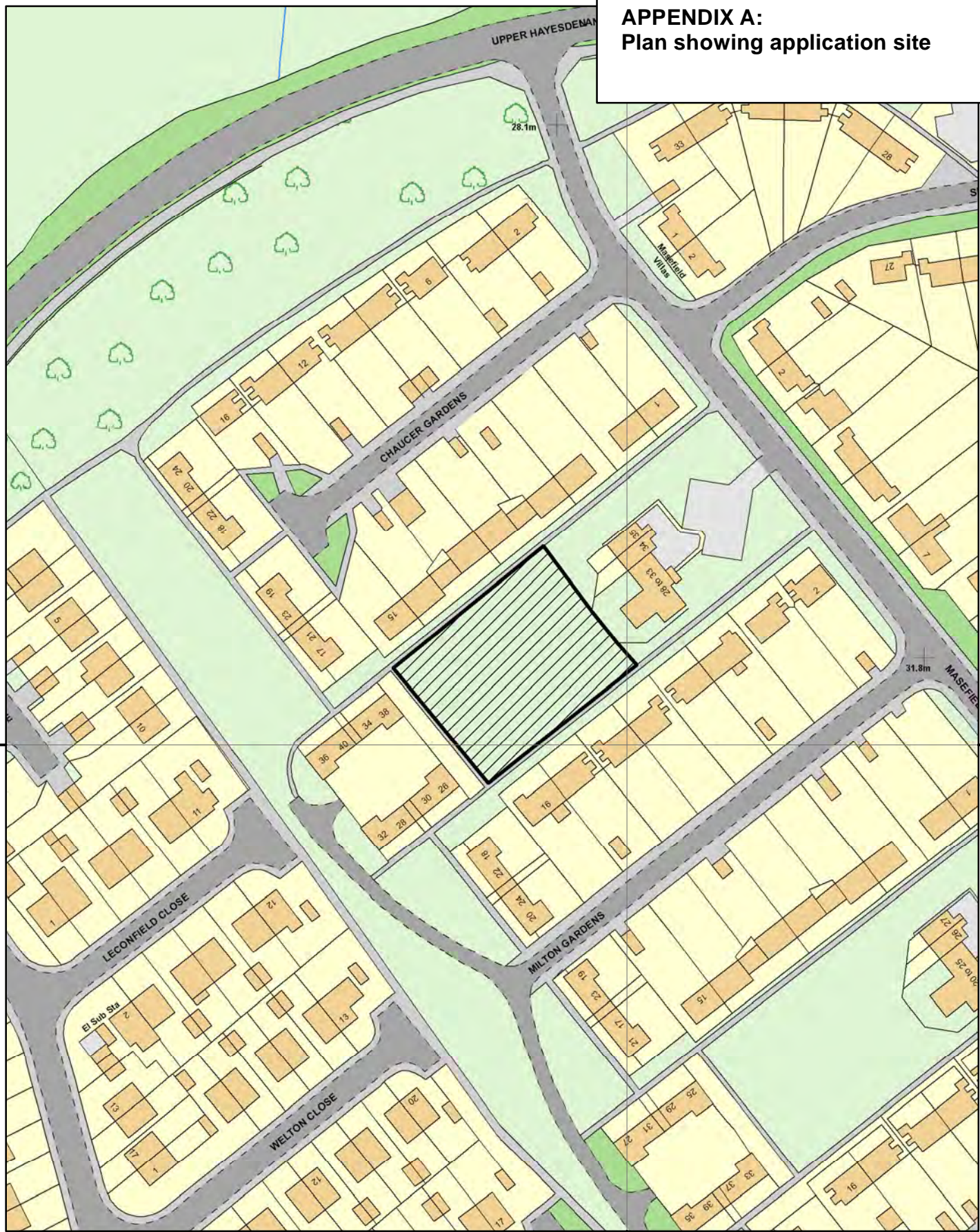
APPENDIX A – Plan showing application site

APPENDIX B – Copy of application form

APPENDIX C – Table summarising user evidence

APPENDIX D – Plan showing the locality

APPENDIX A:
Plan showing application site



Scale 1:1250

**Land subject to Village Green application
at Masefield Way at Tonbridge**



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
10 JUN 2013

Application number:

VGA656

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

Note to applicants

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

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

Note 1

Insert name of Commons
Registration Authority

1. Commons Registration Authority

To the: Kent County Council

Note 2

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

2. Name and address of the applicant

Name: [REDACTED]

Full postal address:
(incl. Postcode) [REDACTED]Telephone number:
(incl. national dialling code) [REDACTED]Fax number:
(incl. national dialling code) [REDACTED]

E-mail address: [REDACTED]

Note 3

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

3. Name and address of representative, if any

Name:

Firm:

Full postal address:
(incl. Postcode)Telephone number:
(incl. national dialling code)Fax number:
(incl. national dialling code)

E-mail address:

Note 4

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

4. Basis of application for registration and qualifying criteria

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

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

Section 15(2) applies:



Section 15(3) applies:



Section 15(4) applies:



**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.*

Vote 5

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

1/2 Green

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

6. Locality or neighbourhood within a locality in respect of which the application is made

John Warrs Tonbridge

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**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

<p>Note 9 <i>List or enter in the form all such declarations that accompany the application. This can include any written declarations sent to the applicant (i.e. a letter), and also any such declarations made on the form itself.</i></p>	<p>9. Voluntary registration – declarations of consent from any relevant leaseholder of, and of the proprietor of any relevant charge over, the land</p>
<p>Note 10 <i>List all supporting consents, documents and maps accompanying the application. Evidence of ownership of the land must be included for voluntarily registration applications. There is no need to submit copies of documents issued by the Registration Authority or to which it was a party but they should still be listed. Use a separate sheet if necessary.</i></p>	<p>10. Supporting documentation</p>
<p>Note 11 <i>List any other matters which should be brought to the attention of the Registration Authority (in particular if a person interested in the land is expected to challenge the application for registration). Full details should be given here or on a separate sheet if necessary.</i></p>	<p>11. Any other information relating to the application</p>

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. SignatureSignature(s) of applicant(s): 

Date:

22 May 2013.

REMINDER TO APPLICANT

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

Please send your completed application form to:

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

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.

The Green behind 28 – 35 Masefield Way Tonbridge

The green has been an enjoyable part of our involvement for the last thirty years, the time I have lived at number 35. In that time it has been used all most everyday for playing

Cricket

Football

Ball games and other children games

Leaning to ride bikes

Dog walkers that clean up

Walkers

Joggers

Family fun days

Partys and b.q. for children

Local anniversary partys

Residents have always clean up litter etc from the green to make it nice area to play

All the resident have enjoy making the green the heart of our community. The lost of which will make a big inpack on our lifes

We I have always worried over the last thirty years of losing the green to builders.

So by granting a village green states you will give all residents peace of mind and that they still have a safe place for childen and parents to play and enjoy family life. As all communitys should be appy to do

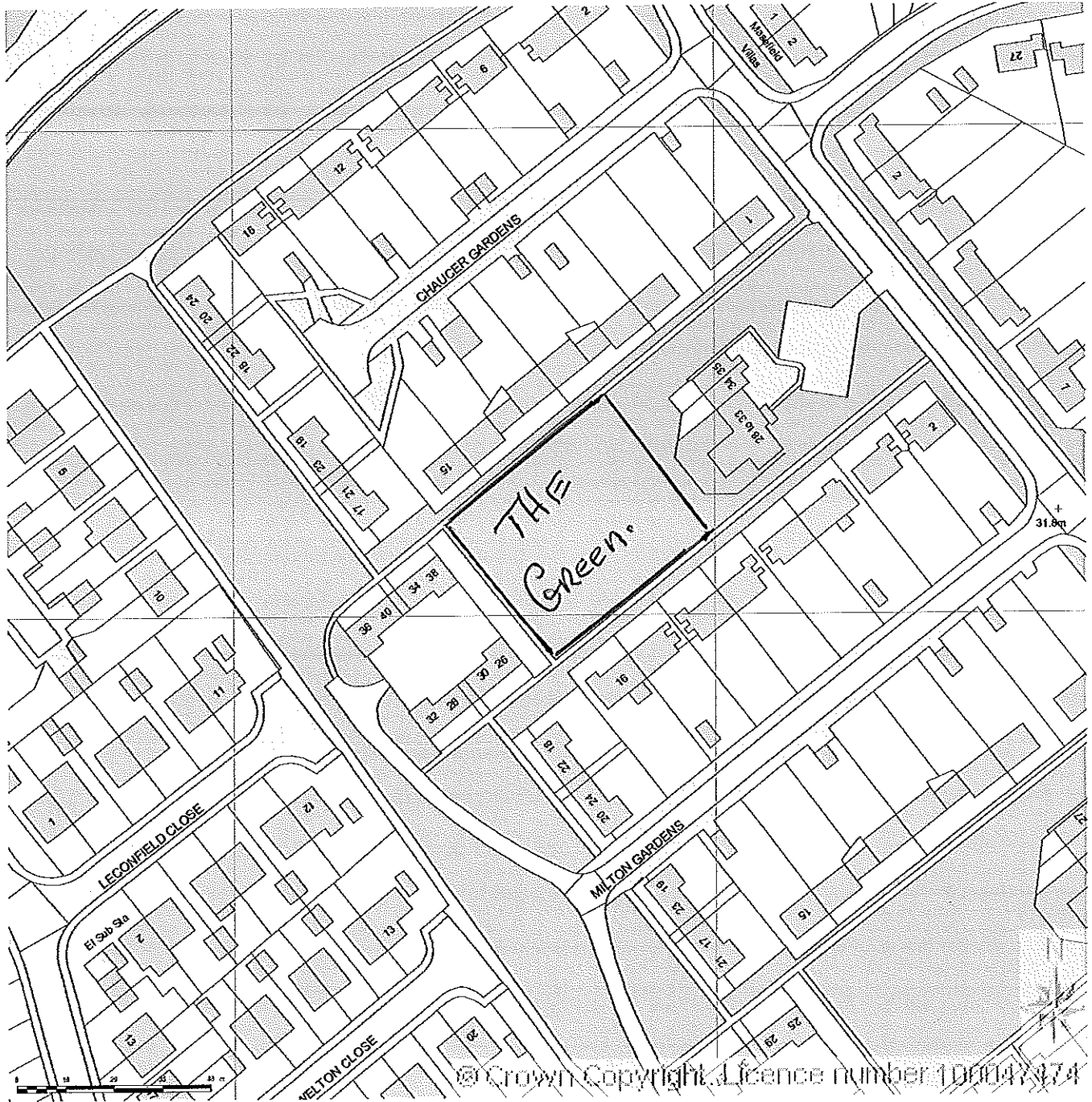
I have enclosed nineteen questionnaire that where returned

SITE LOCATION PLAN

AREA 5 HA

SCALE 1:1250

CENTRE COORDINATES: 557765, 145413



Supplied by Streetwise Maps Ltd

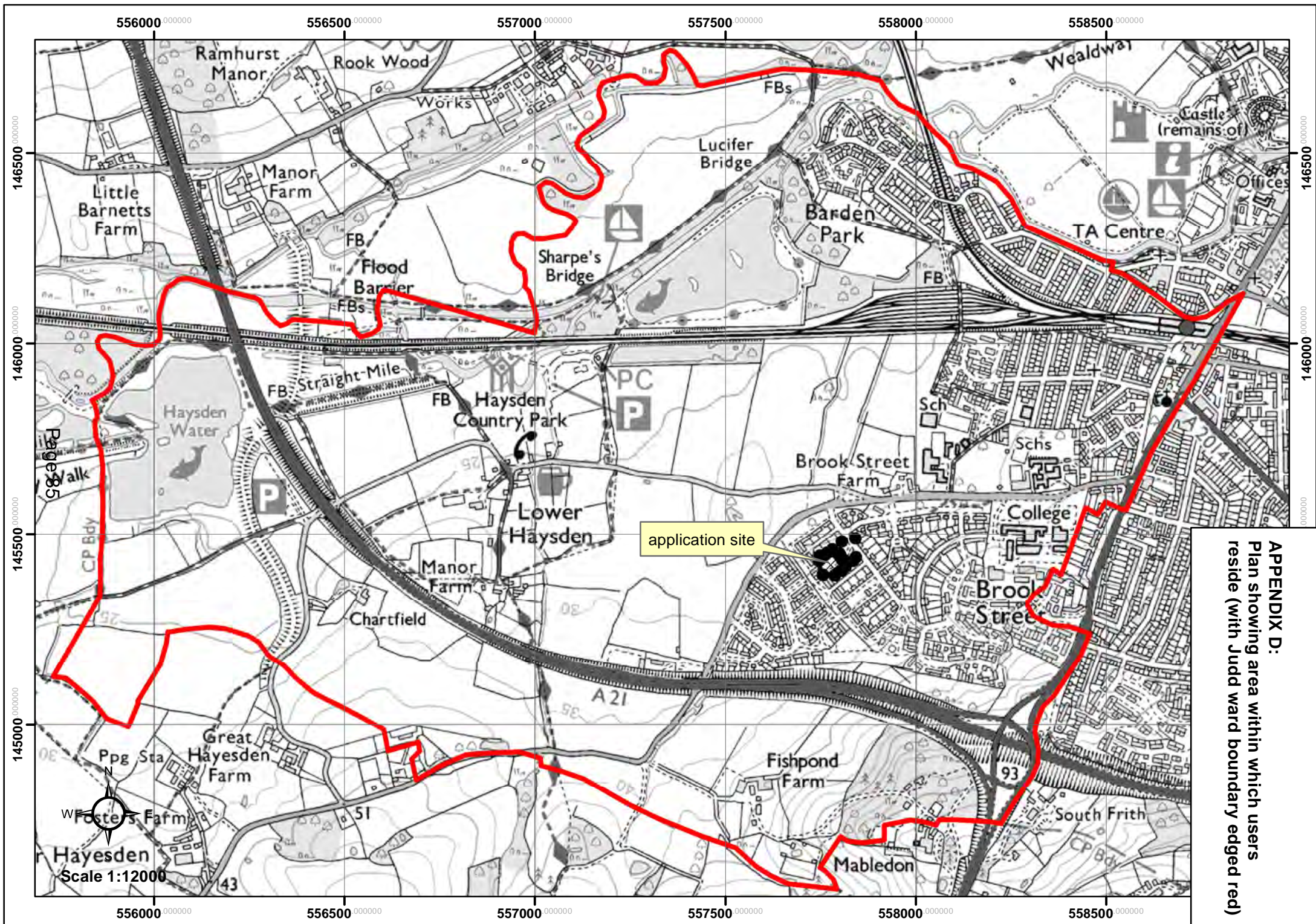
www.streetwise.net

Licence No: 100047474

26/03/2013 11:02:10

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

Name	Period of use	Frequency	Activities	Other comments
Mr. & Mrs. J. BARLTROP	2006 – present	Most days	Children's games, football, cricket, informal community events	Observed use by others on a daily basis.
Mrs. M. BARLTROP	2010 – present	Daily	All communal activities	Observed use by others on a daily basis for children's games
Ms. R. BELCHER	1997 – present	Daily	Walking	Land is used daily depending on weather; there is a bald patch through continuous use for football by local boys
Ms. L. DONOGHUE	2001 – present	Weekly	Children playing, informal community activities, football, cricket and water fights	Observed use by others on a daily basis for cricket, football, games and picnics.
Mrs. M. GALLOWAY	2002 – present	Daily	Football, rounders, cricket, communal BBQs, socialising	Observed use by others on a daily basis.
Mr. M. HAYDEN	1986 – present	Occasionally	Not stated	
Ms. S. HEALY	1993 – present	Children use it daily	Playing with children, summer BBQs, water fights, snow games, informal community events	Observed use by children playing football occasionally. It is a safe place for children to play, which they often do.
Ms. K. HERRIOTT-SADLER	2012 – present	In use most days by children	Cricket, tag, football, tennis, socialising, parties	This green space is important to the local community as it gives the children somewhere to play.
Mr. R. HEWITT	1984 – present	Daily	Dog walking, football, street parties, children's games	Observed use by others on a daily basis for ball games, street parties and children playing.
Mr. L. HOWARD	1995 – present	Frequently	Football, cricket, games, parties	Observed use by others (including own children) on a daily basis
Mr. & Mrs. I. KIRBY	1978 – present	Weekly	Family activities (incl rounder's, cricket and football), street parties	Land is used daily by local children.
Mr. & Mrs. K. MACRO	1993 – present	Daily	Street parties, children playing	Land is used daily by children playing; it is a safe place for children to play together.
Mr. and Mrs. S. MATTHEWS	1983 – present	Daily	Play with children and grandchildren	Observed use by others on a daily basis.
Mr. D. McDONALD	2004 – present	Daily	Dog walking, walking, nature observation, playing with children	Observed use by others on a daily basis. The land is constantly used for a communal recreational space and is a real community focal point.
Ms. E. SANCHEZ	2011 – present	Occasionally	Wandering	Observe use by others on a daily basis in summer (weekly in winter) by children playing and people having BBQs
Mrs. S. SKETCHLEY	1973 – present	Occasionally	Childhood games, family parties	Used daily as a child.
Mr. C. STEPHENS	1953 – present	Daily	Football, cricket, street parties and all forms of children's games	Observed use by others on a daily basis, especially parents and children playing.
Ms. C. WADE	1992 – present	Occasionally	Dog walking	Observed use by others (walkers and children playing) on a daily basis



APPENDIX D:
Plan showing area within which users
reside (with Judd ward boundary edged red)

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