



## AGENDA

### Kent County Council

## REGULATION COMMITTEE MEMBER PANEL

**Monday, 23rd October, 2017, at 2.00 pm**      Ask for:      **Andrew Tait**  
**Council Chamber, Sessions House, County**      Telephone      **03000 416749**  
**Hall, Maidstone**

*Tea/Coffee will be available 15 minutes before the meeting*

### **Membership**

Mr A H T Bowles (Chairman), Mr I S Chittenden, Mr P J Homewood, Mr R A Pascoe and Mr A M Ridgers

### **UNRESTRICTED ITEMS**

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

1. Substitutes
2. Declarations of Interest by Members for items on the agenda
3. Application to register land at Cryalls Lane at Sittingbourne as a new Village Green (Pages 3 - 32)
4. Application to register land at Grove Park Avenue at Sittingbourne as a new Village Green (Pages 33 - 54)
5. Application to register land known as Church Green at Westwell as a new Village Green (Pages 55 - 70)
6. Application to register land known as Rocks Close Green at East Malling as a Village Green (Pages 71 - 84)
7. Application to register land known as Riverhead Parkland at Riverhead as a new Village Green (Pages 85 - 98)
8. 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)*

John Lynch  
Head of Democratic Services  
03000 410466

**Friday, 13 October 2017**

## Applications to register land at Cryalls Lane at Sittingbourne as a new Town or Village Green

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A report by the PROW and Access Manager to Kent County Council's Regulation Committee Member Panel on 23<sup>rd</sup> October 2017.

### Recommendations:

#### I recommend that:

- (a) the original application (made on 25<sup>th</sup> March 2015) be rejected; and
  - (b) a Public Inquiry be held into the resubmitted application (made on 30<sup>th</sup> October 2015) to clarify the issues
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Local Member: Mr. M. Whiting (Swale West)

Unrestricted item

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### Introduction

1. The County Council has received two applications to register land at Cryalls Lane at Sittingbourne as a new Town or Village Green from local resident Mr. M. Baldock ("the applicant"). The first application ("the original application") was made on 25<sup>th</sup> March 2015 and allocated the application number VGA665, whilst the second application ("the resubmitted application") was made on 30<sup>th</sup> October 2015 and allocated the application number VGA666. A plan of the site is shown at **Appendix A** to this report and copies of the relevant application forms are attached at **Appendix B** (the original application) and **Appendix C** (the resubmitted application).

### Procedure

2. The applications have been made under section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2014.
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 one year prior to the date of application**<sup>1</sup>, e.g. by way of the erection of fencing or a notice (section 15(3) of the Act).
5. As a standard procedure set out in the 2014 Regulations, the County Council must publicise the application by way of a copy of the notice on the County

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<sup>1</sup> Reduced from two years to one year for applications made after 1<sup>st</sup> October 2013, due to the coming into effect of section 14 of the Growth and Infrastructure Act 2013.

Council's website and by placing copies of the notice on site to provide local people with the opportunity to comment on the application. Copies of that notice must also be served on any landowner(s) (where they can be reasonably identified) as well as the relevant local authorities. 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 situated on the western side of Cryalls Lane, opposite its junction with Brisbane Avenue, at Sittingbourne. It comprises approximately 9.1 acres (3.7 hectares) of former orchards, accessed via an opening opposite Brisbane Avenue. There are no recorded Public Rights of Way crossing or abutting the application site.
7. The application site is shown in more detail on the plan at **Appendix A**.

### **The original application**

8. As a result of the Growth and Infrastructure Act 2013, when a Village Green application is received (and prior to accepting it for consideration), the County Council is required to write to the relevant planning authorities to ascertain whether the application site is affected by development and, more specifically, one of the 'trigger events' set out in Schedule 1A of the Commons Act 2006<sup>2</sup>. If the land is affected by a 'trigger event' (and there has been no corresponding 'terminating event'), then the right to apply for Village Green status ceases to exist and the County Council is unable to entertain the application (which will be returned to the applicant).
9. In this case, the relevant planning authorities were consulted (including Swale Borough Council), and all confirmed that the land was not subject to any 'trigger events'. On the basis of this advice, the County Council proceeded to publish notice of the application for consultation.
10. However, during the consultation process, the landowners' representative noted that the application site had been identified in the draft Local Plan published for consultation by Swale Borough Council on 19<sup>th</sup> August 2013. As such, it was subject to a 'trigger event', namely that '*a draft of a development plan document which identifies the land for potential development is published for consultation...*'. None of the corresponding 'terminating events' – namely that the plan is withdrawn, the plan is adopted, or a period of two years from publication date had expired – applied and, therefore, the landowners position was that right to make the Village Green application was suspended, such that the County Council should not have accepted the application for consideration, and ought to reject it.
11. In light of the original advice provided (that the land was not affected by any 'trigger events'), further information was sought from the Borough Council on this point. Having reviewed its records, the Borough Council confirmed that the

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<sup>2</sup> See <http://www.legislation.gov.uk/ukpga/2006/26/schedule/1A> and subsequent amendments at <http://www.legislation.gov.uk/ukxi/2014/257/article/3/made>. An example of a 'trigger event' is the publication of an application for planning permission in respect of the land; a corresponding 'terminating event' may include the withdrawal of such an application, or a decision by the planning authority to decline it.

application site had indeed been identified in the draft Local Plan, but that the allocation had been subsequently deleted at a Panel meeting on 20<sup>th</sup> February 2014.

12. Advice was sought from Kent Legal Services on this issue and the advice obtained was that the County Council ought to reject the application on the basis that there was a 'trigger event' affecting the application site as at the date of the application.

### **The resubmitted application**

13. Prior to the applicant being notified of the advice received in respect of the original application, a fresh application was submitted by him on 30<sup>th</sup> October 2015. The resubmitted application was almost identical to the original application, and relied upon largely the same user evidence.
14. As required, the planning authorities were contacted to see whether the resubmitted application was subject to any 'trigger events'. Swale Borough Council confirmed that it had not been allocated in the (by then) published version of the Swale Borough Local Plan, and although an application for planning permission had been received for a change of use of the land for the keeping of horses and associated stable block, the planning application had not been publicised until 27<sup>th</sup> November 2015 – i.e. after the making of the Village Green application.
15. As such, as at the date of the resubmitted Village Green application on 30<sup>th</sup> October 2015, there were no 'trigger events' affecting the land in question and the County Council was therefore able to proceed with the consideration of the resubmitted application.

### **The case**

16. The application has been made on the grounds that the land has been in use for various recreational activities for over 20 years without either permission or obstruction, and without any break in that usage.
17. Included in support of the application were 13 user evidence questionnaires and a further 22 letters of support from local residents. A summary of the user evidence submitted in support of the application is attached at **Appendix D**.

### **Consultations**

18. Consultations have been carried out as required.
19. Sixty-two letters and emails of support were received from local residents, including an email of support from Mr. Truelove in his capacity as former KCC Member for Swale Central and the local Borough Councillor.

### **Landowners**

20. The majority of the application site registered with the Land Registry (under title number K492436) to Ward Homes Ltd. (now part of BDW Trading Ltd.). A parcel

of land in the north-eastern corner of the application site is registered to South Eastern Power Networks PLC under title number TT7600. Both landowners have made representations in objection to the application.

South East Power Networks PLC (“SEPN”)

21. SEPN is responsible for the Sittingbourne West Substation situated in the north-western corner of the application site (but excluded from it). Following a review of the electricity network in the area, additional land was acquired on the southern and western boundaries of the substation in order to increase its size and capacity. Planning permission for this purpose was granted by Swale Borough Council in 2011 (reference SW/11/0750). At the time of the objection, preliminary site works had taken place and a new security fence installed around the electrical extension area, whilst ground investigations in connection with new underground cables were underway and a further fence (to define ownership boundary) was due to be erected later on in the project. SEPN objected to the Village Green application on the basis that the completion of the substation extension, and the subsequent supply enhancement it will provide, is vital to ensure that electricity distribution requirements for the area can be met.
22. The objection from SEPN has highlighted the existence of the 2011 planning consent in respect of that part of the application site, which the Borough Council had not noted in its response to the ‘trigger events’ enquiry. The effect of the 2011 planning consent would appear to be that the right to apply for Village Green status is suspended in respect of the parcel of land owned by SEPN, such that this section is not capable of consideration for Village Green status<sup>3</sup>. The applicant accepts this to be the case.

Ward Homes Ltd (“the main objector”)

23. Ward Homes Ltd. (which is now a group company of BDW Trading Ltd.) acquired the application site in its entirety on 3<sup>rd</sup> September 2003. On 21<sup>st</sup> September 2012, a parcel of that land was transferred to SEPN for the purposes of expanding their sub-station site at the north-eastern corner of the application site.
24. The main objector submits that it filed a planning application with Swale Borough Council on 21<sup>st</sup> October 2015, but its publication was unduly delayed until November 2015. Accordingly, the land ought to have been subject to a trigger event had normal planning procedures been followed and in the absence of any unusual delay. In this regard, the delay in publicising the planning application is a matter between the main objector and the Borough Council; the County Council is only able to consider what *actually* happened (regardless of the reasoning) and in this case the planning application was publicised after the submission of the Village Green application, such that no trigger event can be said to apply in respect of the resubmitted application (as set out above).
25. The main objector has also advanced the following grounds of objection:

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<sup>3</sup> It is to be noted (for completeness) that there was some debate as to whether the 2011 planning consent had been implemented within the required three-year period, but following further enquiries of SEPN by the Borough Council’s planning team, the Borough Council was satisfied that works had commenced on site in 2013 and accordingly there had been no breach of planning control.

- Use of the application site has not taken place 'as of right' by virtue of notices and physical obstructions on the application site;
- Much of the evidence relied upon involves walking largely linear or circular routes which is more akin to rights of way usage (and indeed the existence of thick vegetation on the application site precludes use other than walking linear routes);
- Much of the use relied upon by the applicant falls to be discounted as it comes from people living outside of the neighbourhood;
- The applicant himself does not live in the claimed neighbourhood and cannot prove from his own evidence that the application site should be registered; and
- The number of witnesses is insufficient to conclude that use has been by a 'significant number' of local residents.

26. The main objector's firm view is that unless the County Council is minded to summarily reject the application then, in light of the scale of the application and the plain disputes as to fact, a Public Inquiry is the only reasonable and proper method of determining the matter.

### Legal tests

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

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

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

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

28. 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.

29. 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 protest<sup>4</sup>: *"if, then, the inhabitants' use of the land is to give rise to the possibility of an application*

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<sup>4</sup> *Dalton v Angus* (1881) 6 App Cas 740 (HL)

*being made for registration of a village green, it must have been peaceable and non-contentious*<sup>5</sup>.

30. In this case, the main objector asserts that a variety of works were undertaken on the application site in 2003/2004, namely:

- A ditch was constructed along Cryalls Lane in 2004 to prevent vehicular access; and
- At least 2 notices were erected along Cryalls Lane in late 2003 (and replaced in 2006) stating that the land was private property and those using it did so with the consent of the landowner.

That evidence is supported by written statements from two former employees of the main objector who were involved with the site during this time, although it has not been possible to locate any photographs or confirm the precise location or date of erection of the notices.

31. Additionally, the main objector's evidence is at odds with the applicant's witnesses' recollections in this regard, the vast majority of whom have no knowledge whatsoever of any signage or other barrier to use. One recalls that '*a ditch was dug along the boundary with Cryalls Lane to keep travellers out but pedestrian access was retained by way of two small footbridges*', whilst another states that although the land was cleared and a ditch dug there were still four places where the field was '*easily accessible from Cryalls Lane*'.

32. There is very clearly a conflict in this regard which is difficult to resolve on paper. In the absence of any dated photographs of the signage or other incontrovertible documentary evidence, it is impossible to conclude definitively that use has not been 'as of right'. Similarly, the main objector's submission that permissive notices were in place, albeit contrary to the user evidence, cannot simply be ignored. The only way in which this conflict can sensibly be resolved is therefore by way of further oral testimony from witnesses on both sides of the dispute.

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

33. 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*'<sup>6</sup>.

34. The summary of evidence of use by local residents at **Appendix D** shows the activities claimed to have taken place on the application site. These include walking (with or without dogs), fruit picking, picnics and playing with children.

35. In cases (such as this) where the majority of the evidence relied upon comprises walking, it will be important to be able to distinguish between use that involves wandering at will over a wide area and use that involves walking a defined linear

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

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



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 Homes<sup>7</sup> 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'*.

36. The main objector's position in this regard is that, save for a period in 2004, the application site has been overgrown with thick vegetation such that use of it would necessarily have been restricted to worn paths or tracks; this is shown in photographs taken in August 2013 and March 2014, and such tracks are also visible on aerial photographs.
37. That applicant's position is that the fact that the land has been more overgrown at some points does not negate the possibility of usage, and such overgrowth is entirely compatible with (if not essential to) some of the activities relied upon (e.g. playing hide and seek or nature observation). The suggestion that the land was inaccessible is simply not accurate, and the worn paths referred to by the main objector have evolved over time as walkers meander around the land, varying their routes over time.
38. It is always difficult, when dealing with evidence presented on paper, to ascertain the precise nature of such use. The term 'walking' may connote a variety of different uses, not all of which (as noted above) may be qualifying use for the purposes of the Village Green application, and it is impossible to conclude on this point without any further, more detailed examination of the witness evidence.

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

39. 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.
40. 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<sup>8</sup> case, it was considered that *'...at the very least, Parliament required the users of the land to be the inhabitants of somewhere that could sensibly be described as a locality... there has to be, in my judgement, a sufficiently cohesive entity which is capable of definition'*. The judge later went on to suggest that this might mean that locality should normally constitute *'some legally recognised administrative division of the county'*.
41. In cases where the locality is so large that it would be impossible to meet the 'significant number' test (see below), it will also necessary to identify a neighbourhood within the locality. The concept of a 'neighbourhood' is more flexible than that of a locality, and need not be a legally recognised administrative

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

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

unit. On the subject of 'neighbourhood', the Courts have held that *'it is common ground that a neighbourhood need not be a recognised administrative unit. A housing estate might well be described in ordinary language as a neighbourhood... The Registration Authority has to be satisfied that the area alleged to be a neighbourhood has a sufficient degree of cohesiveness; otherwise the word "neighbourhood" would be stripped of any real meaning'*<sup>9</sup>.

42. In this case, the applicant relies (at part 6 of the application form) on the neighbourhood of 'New Zealand Estate' within the ecclesiastical parish of Borden.

43. There can be no dispute that the ecclesiastical parish of Borden constitutes a legally recognised unit and in the Laing Homes<sup>10</sup> case the Court expressly accepted that an ecclesiastical parish was capable of constituting a locality for the purposes of this legislation.

44. The main objector takes issue with the applicant's chosen neighbourhood, although has not offered any evidence to indicate why the New Zealand Estate might not be capable of constituting a qualifying neighbourhood for the purposes of this application. The applicant, in response, notes that the New Zealand Estate (whose roads apparently all bear New Zealand place names) is well known locally and was designed and envisaged as a self-contained entity with a single vehicular access.

45. On the face of it, and in the absence of any submissions on this point from the main objector, there would appear to be no reason why the New Zealand estate could not be a qualifying neighbourhood.

*"a significant number"*

46. 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'*<sup>11</sup>. Thus, it is not a case of simply proving that 51% of the local population has used the application site; what constitutes a 'significant number' will depend upon the local environment and will vary in each case depending upon the location of the application site.

47. The main objector's position is that a large number of the users live outside of the applicant's chosen neighbourhood. Of itself, this is not fatal to the application; as was noted in the Warneford Meadows<sup>12</sup> case, *'provided that a significant number of the inhabitants of the locality or neighbourhood are among the users, it matters not that many or even most come from elsewhere'*. Generally speaking, such evidence of use will fall to be discounted as it not 'qualifying use', but that is not to

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<sup>9</sup> *ibid* at page 92

<sup>10</sup> *R (Laing Homes) v Buckinghamshire County Council* [2003] 3 EGLR 70

<sup>11</sup> *R (Alfred McAlpine Homes Ltd.) v Staffordshire County Council* [2002] EWHC 76 at paragraph 71

<sup>12</sup> *R (Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust and Oxford Radcliffe Hospitals NHS Trust) v Oxfordshire County Council and others* [2010] EWHC 530 (Admin) at para 71 per Waksman J

say that it is entirely without merit because it does provide corroborating evidence of the applicant's overall case that the land has been used for recreational purposes.

48. As is noted above, the 'significant number' test is a qualitative, rather than a quantitative, one. Of the 35 users listed on the summary of evidence of use by local residents at **Appendix D**, 22 live within the New Zealand Estate (i.e. the applicant's chosen neighbourhood), of which at least 6 report using the land on an at least weekly basis. A number of the users also refer to having seen others using the land on a daily basis and it is described as having been '*extensively used by local people for leisure purposes*'. Indeed, it must have come to the main objector's attention that the application site was being used in *some way* by local residents as in 2008 (i.e. some five years after the acquisition of the land) a deposit was made under section 31(6) of the Highways Act 1980 to prevent the acquisition of any public rights of way on the land.
49. However, as is noted above, what is not clear from the evidence available is whether the nature of that use would have been sufficient to indicate to the landowner that the application site was in general use by the community for wider recreational purposes, rather than merely a rights of way type of use. Without further investigation into the nature of the use taking place on the application site, and the degree to which the user evidence (if any) can be discounted, it is difficult to reach any conclusion on the 'significant number' test.

***(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 one year prior to the making of the application?***

50. 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 one year from the date upon which use 'as of right' ceased.
51. In this case, the application is made under section 15(3) of the 2006 Act on the basis that use of the application site ceased to be 'as of right' as of 31<sup>st</sup> July 2015. No explanation is provided by the applicant regarding this choice of date, but it is presumed to have been taken from the date of the main objector's representation to the original application.
52. As is noted above, the resubmitted application was made on 30<sup>th</sup> October 2015, which is well within one year from the date upon which use 'as of right' ceased (according to the applicant).

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

53. In order to qualify for registration, it must be shown that the land in question has been used for a full period of twenty years. In this case, use 'as of right' is said to have ceased on 31<sup>st</sup> July 2015. The relevant twenty-year period ("the material period") is calculated retrospectively from this date and is therefore 1995 to 2015.

54. The user evidence submitted in support of the application (and summarised at **Appendix D**) indicates that use of the application site has taken place throughout the required twenty-year period.
55. The main objector's position is that only 10 of the witnesses claim to have used the application site for the full twenty-year period, which is insufficient to constitute a 'significant number' and, if any conclusion is to be drawn from the applicant's evidence, it is that the application site has not been used for the relevant period in the requisite manner.
56. However, there is no requirement within the legislation for each and every user to have used the application site for the minimum twenty-year period; what matters is whether the evidence of use, when taken together and viewed as a whole, signifies that the application site has been used for a full period of twenty years<sup>13</sup>.
57. In this case, the evidence submitted by the applicant indicates on the face of it that the land has been used (subject to any conclusions regarding the nature of that use) for at least twenty years and, indeed, this evidence would appear to be supported by the large volume of consultation responses received from many other local residents purporting to have used, or witnessed use of, the application site.

## Conclusion

58. As can be seen from the summary of this case presented above, despite detailed consideration of the evidence submitted both by the applicant and the main objector, there remain many unanswered questions in respect of the legal tests. There are factual and evidence conflicts in terms of both whether use has been 'as of right' and the precise nature of the recreational use, which in turn make it difficult to conclude whether the land has been used (as required) by a 'significant number' of the residents of the neighbourhood.
59. In cases which are particularly emotive or where the application turns on disputed issues of fact, it has become commonplace for Registration Authorities to conduct a Public Inquiry into the application; there is no legal requirement to do so, but provision for such Inquiries is made in the 2014 Regulations. The holding of a Public Inquiry involves the County Council appointing an independent Inspector to hear the relevant evidence both in support of and in opposition to the application, and report his/her findings back to the County Council. The final decision regarding the application nonetheless remains with the County Council in its capacity as the Commons Registration Authority.
60. Such an approach has received positive approval by the Courts, most notably in the Whitmey<sup>14</sup> case in which Waller LJ said this: '*the registration authority has to consider both the interests of the landowner and the possible interest of the local inhabitants. That means that there should not be any presumption in favour of registration or any presumption against registration. It will mean that, in any case*

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<sup>13</sup> See *R (Alfred McAlpine Homes Ltd.) v Staffordshire County Council* [2002] EWHC 76 at paragraph 73 in which Sullivan J notes that it is difficult to obtain first-hand evidence of events over a period as long as 20 years and not unusual for an Inspector to be left with a 'patchwork of evidence, trying to piece together evidence from individuals who can deal with various parts of the 20-year period'.

<sup>14</sup> *R (Whitmey) v Commons Commissioners* [2004] EWCA Civ 951 at paragraph 66

*where there is a serious dispute, a registration authority will almost invariably need to appoint an independent expert to hold a public inquiry, and find the requisite facts, in order to obtain the proper advice before registration’.*

61. It is important to remember, as was famously quoted by the Judge in another High Court case<sup>15</sup>, that *‘it is no trivial matter for a landowner to have land, whether in public or private ownership, registered as a town green... [the relevant legal tests] must be ‘properly and strictly proved’.* This means that it is of paramount importance for a Registration Authority to ensure that, before taking a decision, it has all of the relevant facts available upon which to base a sound decision. It should be recalled that the only means of appeal against the Registration Authority’s decision is by way of a Judicial Review in the High Court.

62. In addition to the potentially restrictive impact of Village Green registration on the landowner, there are equally significant impacts on the local community if the land is not registered as a Village Green and is consequently lost for recreational use. The large volume of consultation responses received indicates that the matter is one of great local importance and therefore, as well as the legal issues to be resolved, there is a strong public interest in holding a Public Inquiry.

## **Recommendations**

63. I recommend that

- (a) the original application be rejected; and
- (b) a Public Inquiry be held into the resubmitted application (made on 30<sup>th</sup> October 2015) to clarify the issues.

Accountable Officer:

Mr. Graham Rusling – Tel: 03000 413449 or Email: [graham.rusling@kent.gov.uk](mailto:graham.rusling@kent.gov.uk)

Case Officer:

Ms. Melanie McNeir – Tel: 03000 413421 or Email: [melanie.mcneir@kent.gov.uk](mailto:melanie.mcneir@kent.gov.uk)

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

## **Background documents**

APPENDIX A – Plan showing application site

APPENDIX B – Copy of the original application form

APPENDIX C – Copy of the resubmitted application form

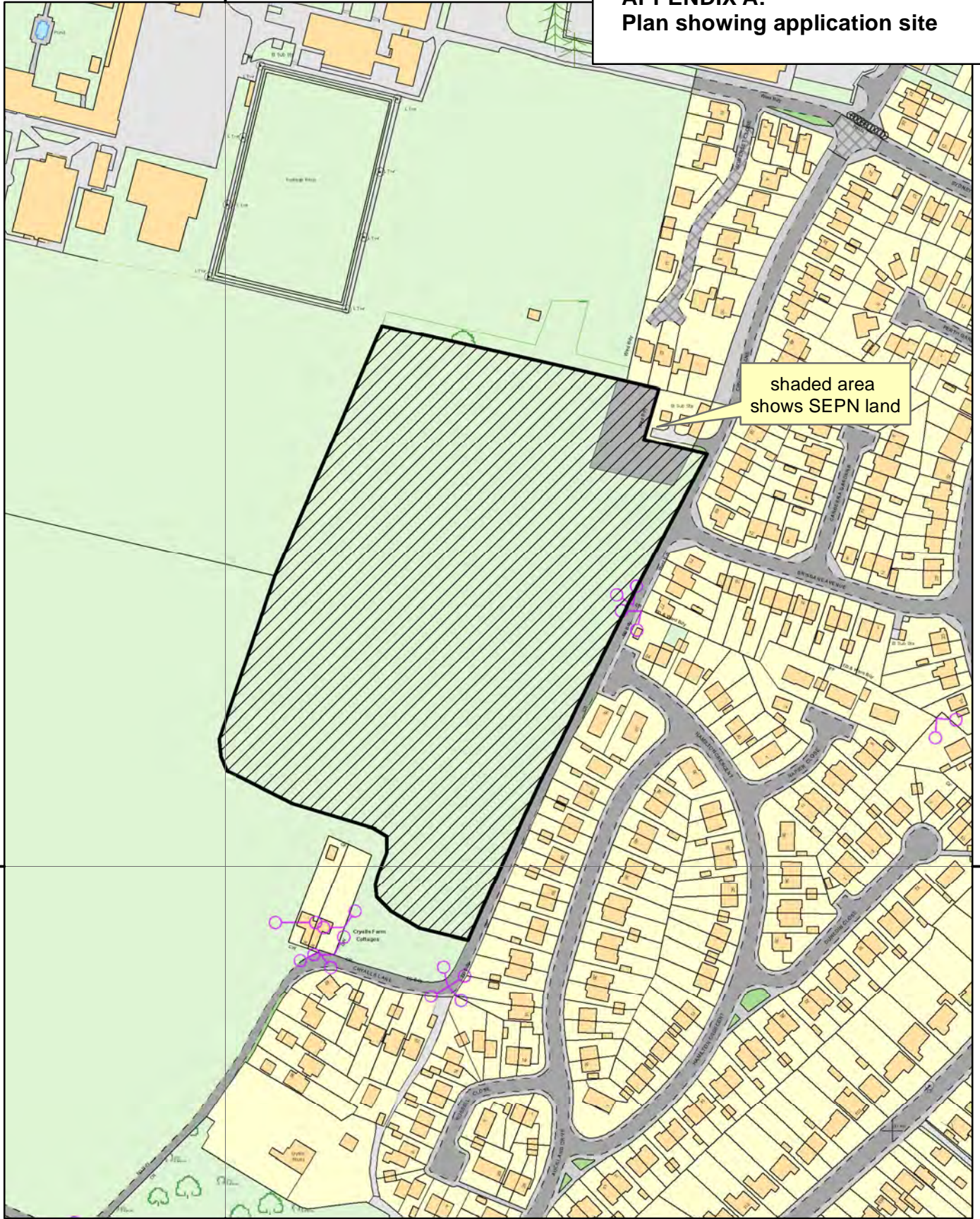
APPENDIX D – Table summarising user evidence

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<sup>15</sup> *R v Suffolk County Council, ex parte Steed* [1997] 1EGLR 131 at 134

589000 000000

# APPENDIX A: Plan showing application site

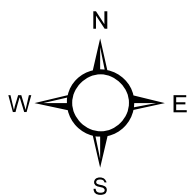


shaded area  
shows SEPN land

163500 000000

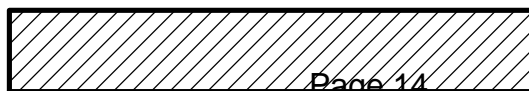
163500 000000

589000 000000



Scale 1:2500

Land subject to Village Green application  
at Cryalls Lane in Sittingbourne

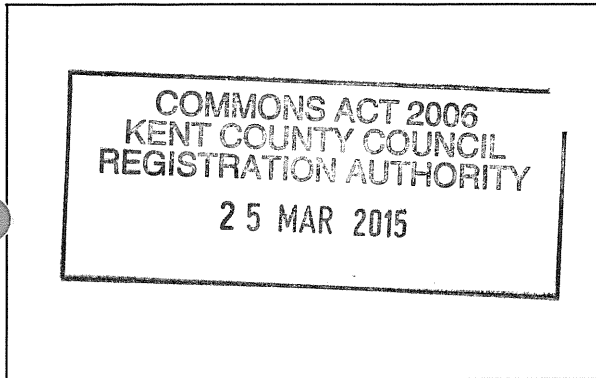


**Commons Act 2006: section 15**

**Application for the registration of a town or village green**

This section is for office use only

Official stamp



Application number

VGA665

VG number allocated at registration

Applicants are advised to read 'Part 1 of the Commons Act 2006: Guidance to applicants' and to note:

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

**Note 1**

*Insert name of commons registration authority.*

**1. Commons Registration Authority**

To the:

Kent County Council

Tick the box to confirm that you have enclosed the appropriate fee for this application:

**Note 2**

If there is more than one applicant, list all their names and addresses in full. Use a separate sheet if necessary. State the full title of the organisation if the applicant is a body corporate or an unincorporated association. 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 box 3 is not completed all correspondence and notices will be sent to the first named applicant.

**Note 3**

This box 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, the representative may receive communications from the registration authority or other persons (e.g. objectors) via email.

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

Name:

Postal address:

Telephone number:

Fax number:

E-mail address:

**3. Name and address of representative, if any**

Name:

Firm:

Postal address:

Telephone number:

Fax number:

E-mail address:



**Note 4**

For further details of the requirements of an application refer to Schedule 4, paragraph 9 or 10 to the Commons Registration (England) Regulations 2014. Section 15(6) enables any period of statutory closure where access to the land is denied to be disregarded in determining the 20 year period.

**Note 5**

This box is to identify the new green. The accompanying Ordnance map must be at a scale of at least 1:2,500, or 1:10,560 if the land is wholly or predominantly moorland, and show the land by means of distinctive colouring within an accurately identified boundary. State the Land Registry title number where if known.

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

If you are the landowner and are seeking voluntarily to register your land tick the following box and move to box 5:

If the application is made under section 15(1) of the Act, 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:

If section 15(3) applies indicate the date on which you consider that use as of right ended:

[Empty box for date]

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:

[Empty box for period of statutory closure]

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

Name by which the land usually known:

[Empty box for name]

Location:

Cryalls Lane, Sittingbourne

Common land register unit number (only if the land is registered common land):

[Empty box for unit number]

Tick the box to confirm that you have attached an Ordnance map of the land:

**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 an Ordnance map should be provided on which a locality or neighbourhood is marked clearly at a scale of 1:10,560.*

**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).*

**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).*

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

Show the locality or neighbourhood within the locality to which the claimed green relates, either by writing the administrative area or geographical area by name below, or by attaching an Ordnance map on which the area is clearly marked:

New Zealand Estate - neighbourhood in the locality of Borden Ecclesiastical Parish

Tick here if a map is attached:

**7. Justification for application to register the land as a town or village green**

This land has been used as an area for various recreational activities for over 20 years without either permission or obstruction, and without a break in that usage.

**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**

**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 (e.g. 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**

[Empty box for declarations of consent]

**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**

20+ Forms & letters from New Zealand Estate  
Others supporting letters of use (in separate wallet)

**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**

[Empty box for other information]

**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 an unincorporated association.*

**12. Signature**

Date:

24th March 2015

Signatures:

**REMINDER TO APPLICANT**

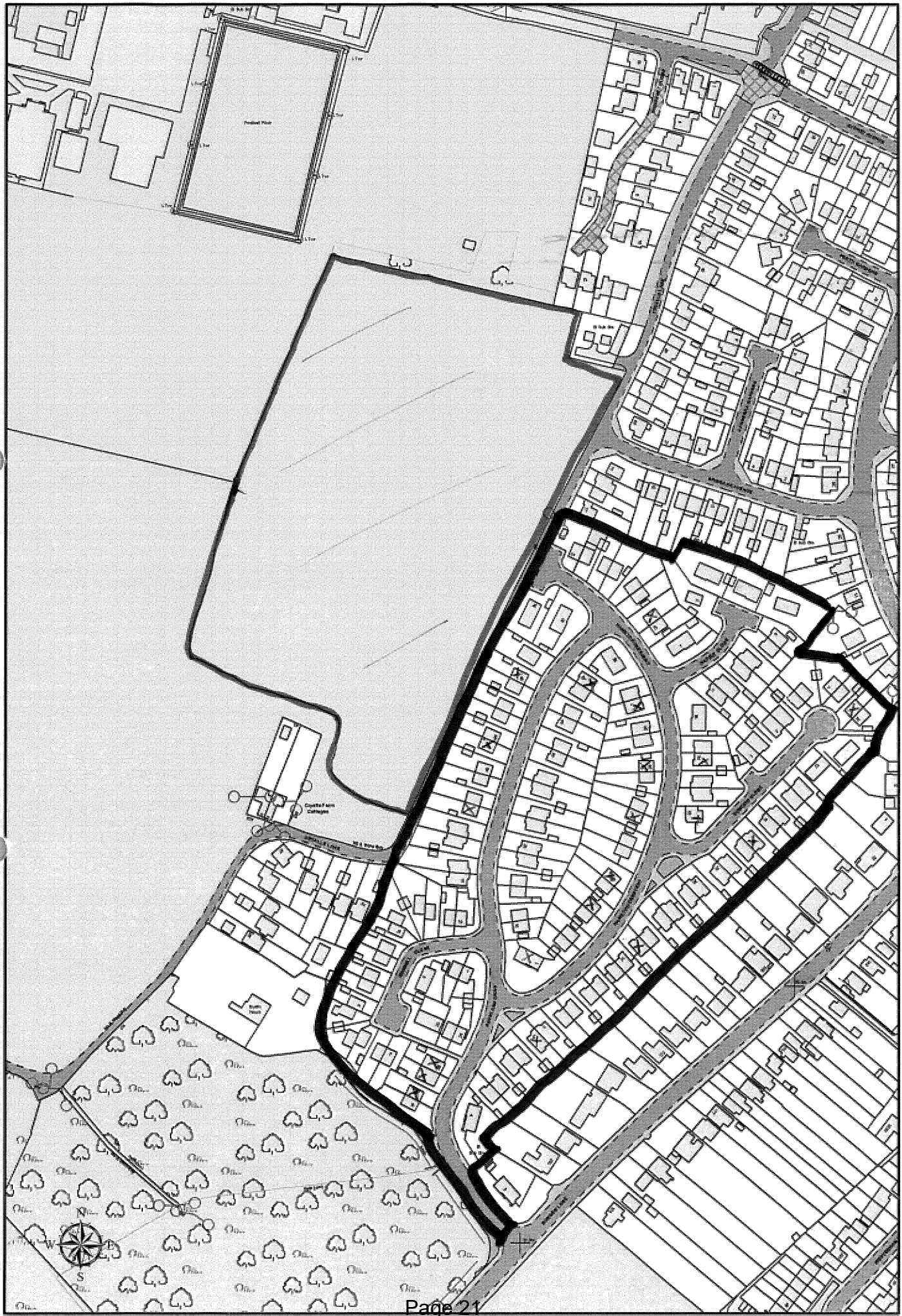
**You are responsible for telling the truth in presenting the application and accompanying evidence. You may commit a criminal offence if you deliberately provide misleading or untrue evidence and if you do so you may be prosecuted.**

**You are advised to keep a copy of the application and all associated documentation.**

**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 or the Freedom of Information Act 2000.*

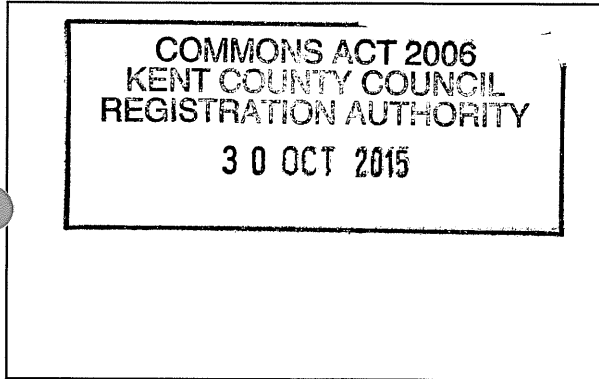


**Commons Act 2006: section 15**

**Application for the registration of a town or village green**

**This section is for office use only**

Official stamp



Application number

VUA666 .

VG number allocated at registration

Applicants are advised to read 'Part 1 of the Commons Act 2006: Guidance to applicants' and to note:

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

**Note 1**

*Insert name of commons registration authority.*

**1. Commons Registration Authority**

To the:

KENT COUNTY COUNCIL

Tick the box to confirm that you have enclosed the appropriate fee for this application:



**Note 2**

If there is more than one applicant, list all their names and addresses in full. Use a separate sheet if necessary. State the full title of the organisation if the applicant is a body corporate or an unincorporated association. 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 box 3 is not completed all correspondence and notices will be sent to the first named applicant.

**Note 3**

This box 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, the representative may receive communications from the registration authority or other persons (e.g. objectors) via email.

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

Name:

MIKE BALDOCK

Postal address:

8 WISES LANE  
SITTINGBOURNE  
KENT  
ME10 1YN

Postcode ME10 1YN

Telephone number:

[Redacted telephone number]

Fax number:

[Empty fax number box]

E-mail address:

[Redacted email address]

**3. Name and address of representative, if any**

Name:

[Empty name box]

Firm:

[Empty firm box]

Postal address:

[Empty postal address box]

Postcode

Telephone number:

[Empty telephone number box]

Fax number:

[Empty fax number box]

E-mail address:

[Empty email address box]

**Note 4**

For further details of the requirements of an application refer to Schedule 4, paragraph 9 or 10 to the Commons Registration (England) Regulations 2014. Section 15(6) enables any period of statutory closure where access to the land is denied to be disregarded in determining the 20 year period.

**Note 5**

This box is to identify the new green. The accompanying Ordnance map must be at a scale of at least 1:2,500, or 1:10,560 if the land is wholly or predominantly moorland, and show the land by means of distinctive colouring within an accurately identified boundary. State the Land Registry title number where if known.

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

If you are the landowner and are seeking voluntarily to register your land tick the following box and move to box 5:

If the application is made under section 15(1) of the Act, 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:

If section 15(3) applies indicate the date on which you consider that use as of right ended:

31 July 2015

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:

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

Name by which the land usually known:

Location:

Cryalls Lane, Sittingbourne

Common land register unit number (only if the land is registered common land):

Tick the box to confirm that you have attached an Ordnance map of the land:



**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 an Ordnance map should be provided on which a locality or neighbourhood is marked clearly at a scale of 1:10,560.*

**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).*

**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).*

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

Show the locality or neighbourhood within the locality to which the claimed green relates, either by writing the administrative area or geographical area by name below, or by attaching an Ordnance map on which the area is clearly marked:

New Zealand Estate - neighbourhood  
in the locality of Borden  
Ecclesiastical Parish

Tick here if a map is attached:

**7. Justification for application to register the land as a town or village green**

This land has been in use as an area for various recreational activities for over 20 years without either permission or obstruction, and without a break in that usage.

**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**

**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 (e.g. 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**

[Empty box for voluntary registration declarations]

**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**

Over 20 forms and letters from the New Zealand Estate plus other supporting letters of use.

**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**

[Empty box for other information relating to the application]

**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 an unincorporated association.*

**12. Signature**

Date:

28th October 2015

Signatures:

**REMINDER TO APPLICANT**

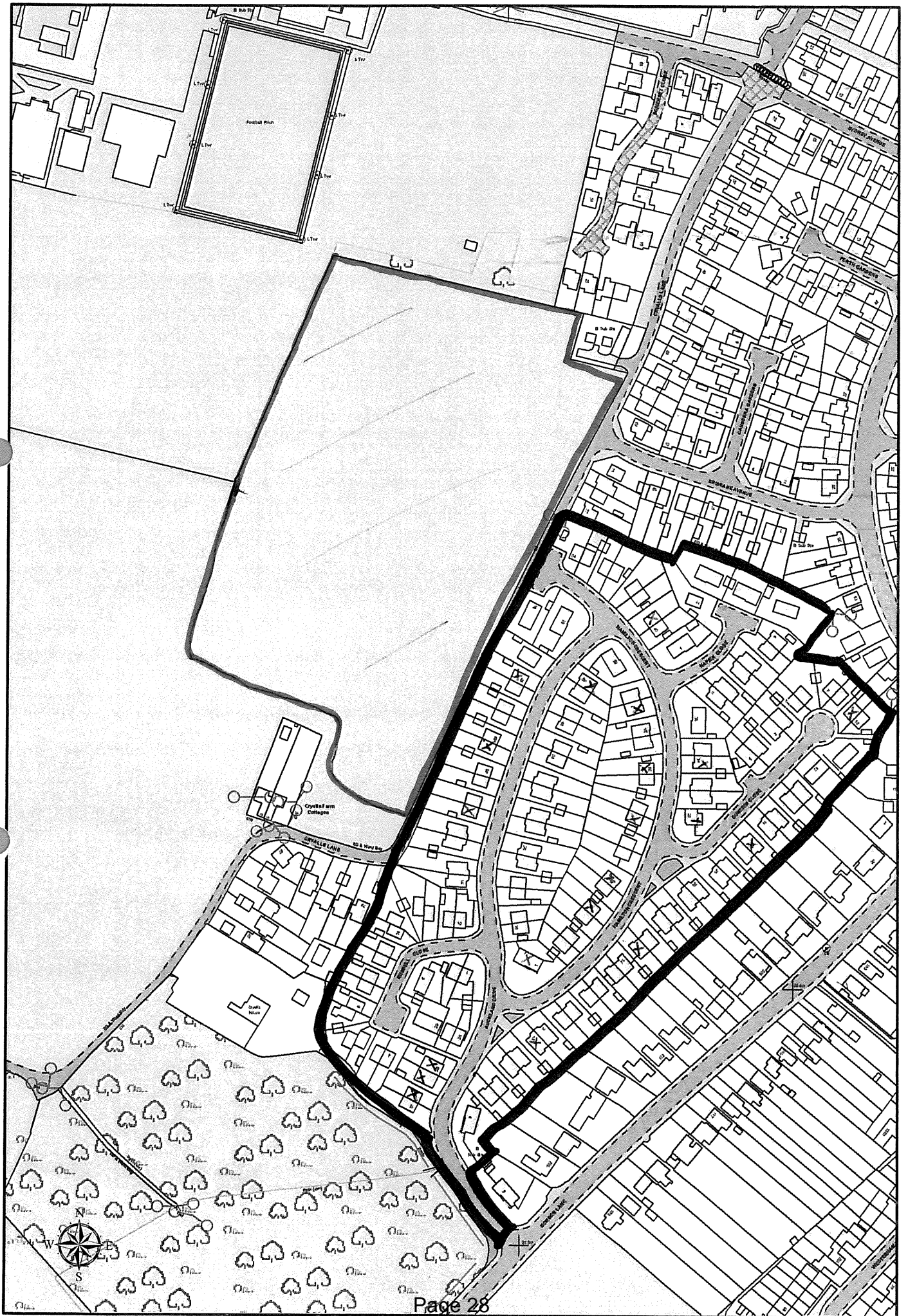
**You are responsible for telling the truth in presenting the application and accompanying evidence. You may commit a criminal offence if you deliberately provide misleading or untrue evidence and if you do so you may be prosecuted.**

**You are advised to keep a copy of the application and all associated documentation.**

**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 or the Freedom of Information Act 2000.*



Name	Period of use	Frequency of use	Type of use	Access to site	Considered resident of neighbourhood?	Comments
<b>Mr. L. CHAPPELL</b>	1976 – present	Previously daily, now occasionally	Dog walking, children playing in summer	Via Cryalls Lane	Yes – ‘live a few hundred yards away’	Observed daily use in summer by dog walkers and children playing.
<b>M/s. P. CHRISTIAN</b>	1994 – present	Monthly	Walking, playing with children	Walk in off Cryalls Lane	Yes – ‘New Zealand estate’	Observed use by dog walkers on a daily basis
<b>Mr. W. FRENCH</b>	1976 – present	Daily	Exercising, walking, shortcut to Wises Lane	Walked across road	Yes - ‘Borden, Sittingbourne’	There are many paths across the land caused by dog walkers etc.
<b>Mr. R. GIBSON</b>	1993 – 2012	Weekly	Walking, taking grandchildren out	Cryalls Lane	Yes – ‘New Zealand estate’	Observed use by others for dog walking on a daily basis.
<b>Mrs. J. HUMPHREYS</b>	2012 – present	Occasionally	Walking	Cryalls Lane	No	
<b>Mr. D. JARRETT</b>	2001 – present	2 or 3 times each week	Dog walking	Across Cryalls Lane and onto one of the paths that cross the land.	Yes – ‘New Zealand estate’	
<b>Mrs. M. JARRETT</b>	2001 – present	Daily when dry, several times per week in winter	Walking, enjoying flora and fauna, picking blackberries, quiet enjoyment	Earth footpath on land from end of Hamilton Crescent	Yes – ‘New Zealand estate, in the parish of Borden’	Observed others using the land on a daily basis. The area is a small quiet space loved by those close by, and much appreciated and respected by those who use it.
<b>Mrs. P. KEEL</b>	2004 – present	Not stated	Not stated	Not stated	Yes – ‘New Zealand estate’	Observed use of the land for dog walking and horse riding on a daily basis
<b>Mr/s. R. McCARTEN</b>	2004 – present	Several times weekly until recently, now occasionally	Walking, dog walking	Via Cryalls Lane	Yes – ‘New Zealand estate, a close knit community’	Moved to current address in New Zealand estate in 2010, previously resident in Adelaide Drive. Observed use by others on a daily basis.
<b>Mr/s. K. MEARS</b>	1980 – present	Occasionally	Walking	Cryalls Lane	Yes – ‘New Zealand estate’	Occasionally observed walkers on the land.
<b>Mr. and Mrs. A. PAYNE</b>	2003 – present	A few times per week	Dog walking	Cryalls Lane	Yes – ‘we live on the New Zealand estate’	Observed use by others for dog walking, children taking part in nature studies, ramble walkers and joggers.
<b>Mr. and Mrs. J. RAYFIELD</b>	2012 – present	Occasionally	Dog walking	Cryalls Lane	Yes – New Zealand estate’	
<b>Mr. M. SCOTT</b>	1990 – present	Monthly	Walking with grandchildren	Opposite end of Hamilton Crescent	Yes - ‘Newland estate, off Borden Lane’	

In addition to the user evidence questionnaires summarised above, the following letters of support were also submitted with the application:

**Mr. and Mrs. R. BAILEY** moved to the Australia estate in 1996 and were delighted to find a mature cherry orchard nearby which was freely accessible for dog walkers, children and families to enjoy. They have used the land for dog walking and have observed many others exercising their pets. They have also seen local children using the land to let off steam, play hide and seek, and take part in family picnics. Approximately 10 years ago, the orchard was razed to the ground but walkers continued to use it and over the years a wild and less structured orchard has sprung up, with walkers quickly establishing new routes.

**Mr. C. BARNES** has lived on the New Zealand Estate since 1976 and confirms the land has been used mainly for dog exercising. The land was previously a cherry orchard until it was grubbed out a year or two ago [letter dated 2015].

**Mr. and Mrs. BOAKES** moved to the Australia estate in 2007 and frequently use the land for walking, playing with children and fruit picking.

**Mr. C. BROWN** is a resident of the New Zealand estate and has used the land for dog walking in the early morning between 2002 and 2004/5. He accessed the land via Cryalls Lane, but does not recall any fence or restriction to prevent access.

**Mrs. J. BROWN** moved the area in the immediate vicinity of the application site in 2001, the land being one of the deciding factors, it being apparent that it was a well-used local area ideal for dog walking. She has observed many children of varying ages playing there. There has never been a problem with access to the land as it has always been open along Cryalls Lane.

**Mr. J. CARTER** has lived on the Australia Estate for most of his life and recalls using it as a child for climbing the cherry trees, building camps, bike riding, playing 'man hunt' and daily dog walks; he now uses it occasionally for walking to Borden. He has mainly accessed the site via Cryalls Lane opposite Brisbane Avenue and has never been barred from it.

**Mr. J. CLINCH** has family living in Adelaide Drive and has happy memories of using the land for cycling, hiding in the ditches and climbing the cherry trees. He has recently started taking his dog there for walking and it has become significantly overgrown.

**Mr. J. COPE** moved to the New Zealand estate in 1993 and has used the application site as a recreational facility since then. He has used the land for exercising dogs and his children used it for childhood games as well as bird watching and nature trails and observation. Son has used the circular trackway for cross-country running as well as Frisbee throwing, rugby practice and off-road cycling when he was younger.

**Mr. and Mrs. C. DRURY** moved to the New Zealand estate 14 years ago [letter dated 2015]. At that time the field was a very pretty area with many cherry trees, but it was not many years before the owners decided to cut back the trees and dig a ditch running along the side of Cryalls Lane, although there were still four places where the field was 'easily accessible from Cryalls Lane'. Worn pathways appeared where dog walkers walked varying circuits and the area has slowly re-established itself with fruit trees and berry bushes. Until last year, used the land three times per day for walking and also used it for picking blackberries and sloe berries.

**Mrs. S. FIELD** moved to the area in 1985 and her children rode their bikes and made dens on the land. The land was stripped of the trees at one point but children continued to play on the land.

**Mr. W. FRENCH** moved to the New Zealand estate in 1976 and has used the adjacent open land to walk dogs and enjoy the blossom from the cherry trees that thrived there. The land was always accessible from Cryalls Lane and Wises Lane and there has never been a fence or obstruction.

**Mrs J. HOWARD** has lived on the New Zealand estate since 1998 and frequently walks on the land, viewing it as a place for relaxation and an opportunity to enjoy local wildlife. When children were younger, they regularly used the land to play cricket/football.

**Mr. J. KNIGHT**, resident of the Australia estate, has used the land since 1988 for walking, bird watching and fruit picking.

**Mrs. K. LONGLEY** has lived in Cryalls Lane for 17 years [letter dated 2015] and has observed and used the land on a daily basis. Her family has used the land for walking, nature exploration and teaching children to cycle. As their skills improved it was used for mountain-biking and many other children continue to enjoy it in this way all through the year (but particularly in summer). Dog walkers use the land continuously and several years ago some infra-red cameras were used to observe badgers. In the summer of 2002 the family spent many hours launching water rockets. Often watch birds in the trees and have seen the land being used as a meeting place for groups of friends. The land is a remarkable asset to the area and is used and valued by so many.

**Mr. S. LONGLEY** has lived in Cryalls Lane for 17 years [letter dated 2015]. His children have enjoyed the use the land for recreational purposes

**Mr. N. MEARS** is currently resident of the New Zealand estate and has been a resident of Sittingbourne on and off for many years. He recalls using the application site as a schoolboy in the 1960s and in recent years has used it for walking, both alone and with children.

**Mr. and Mrs. G. PEARSON** live locally [outside the New Zealand estate] and have regularly walked their dog over the land over the last 10 years. It is a small piece of serenity after a day at work where one can enjoy birds signing and where we frequently meet other dog walkers. Have never known of any restriction in accessing the area, even when the electricity substation was being re-fenced it was always possible to walk around.

**Mrs. V. PEPPER** has lived on the Australia estate for the past 48 years [letter dated 2015] and has walked her dogs there for the last 26 years. During this time, one owner erected an iron gate along with signs to prevent public access, but there were always places still accessible for dog walkers to continue to use the land. After complaints the grass was cut back and walkers were able to freely use the walks. Recently, however, the land has once again been left overgrown to prevent local residents from using it.

**Mr. and Mrs. R. SHARMAN** have used the land on a daily basis for dog walking, without challenge, since moving to the area 18 years ago [letter dated 2015]. Approximately 12 years ago, a ditch was dug along the boundary with Cryalls Lane to keep travellers out but pedestrian access was retained by way of two small footbridges across the ditch at either end of the site.

**Ms. J. TAYLOR** notes that the land was once a cherry orchard that was originally destroyed sometime between 1983 and 1989. After that time, there were five mature trees left in the centre of the land that were subsequently scrubbed out. The land has been in daily use by dog walkers via three well defined access points (two on Cryalls Lane).

**Mr. and Mrs. H. THATCHER** have been resident at their current house in the New Zealand estate since 1976 (when it was newly built). At that time, the application site was an old orchard that was used to graze sheep, but in around 1988 the fence was taken down and the old fruit trees grubbed out, making the land open for all. Consequently, the land has been extensively used by local people since that time for leisure purposes such as walking, exercising dogs and generally enjoying the nature and wildlife. Have used the land personally for walking and as a pleasant short cut through to the A2 and The Grove.

**Mr. and Mrs. S. WOOTTON** have lived in their property on the New Zealand estate since it was built in 1976. They have used the field for dog walking, bird watching, observation of bats and owls and walking/running.

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## Application to register land at Grove Park Avenue in the parish of Borden as a new Town or Village Green

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A report by the PROW and Access Manager to Kent County Council's Regulation Committee Member Panel on Monday 23<sup>rd</sup> October 2017.

**Recommendation: I recommend that a Public Inquiry be held into the case to clarify the issues**

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Local Member: Mr. M. Whiting (Swale West)

Unrestricted item

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### Introduction

1. The County Council has received an application to register land at Grove Park Avenue at Borden, near Sittingbourne, as a new Town or Village Green from local resident Mr. M. Baldock ("the applicant"). The application, made on 31<sup>st</sup> May 2016 was allocated the application number VGA668. 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 2014.
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 one year prior to the date of application**<sup>1</sup>, e.g. by way of the erection of fencing or a notice (section 15(3) of the Act).
5. As a standard procedure set out in the 2014 Regulations, the County Council must publicise the application by way of a copy of the notice on the County Council's website and by placing copies of the notice on site to provide local people with the opportunity to comment on the application. Copies of that notice must also be served on any landowner(s) (where they can be reasonably identified) as well as the relevant local authorities. The publicity must state a period of at least six weeks during which objections and representations can be made.

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<sup>1</sup> Reduced from two years to one year for applications made after 1<sup>st</sup> October 2013, due to the coming into effect of section 14 of the Growth and Infrastructure Act 2013.

## The application site

6. The piece of land subject to this application (“the application site”) is officially situated within the parish of Borden, although it is also commonly referred to as part of Sittingbourne. It consists of a strip of grassed open space of approximately 0.57 acres (0.23 hectares) in size situated at the junction of Wises Lane and London Road (A2) and extending east along a corridor between the northern side of Grove Park Avenue and the southern side of fencing abutting the London Road (A2). Access to the application site is unrestricted via the footways of Wises Lane and Grove Park Avenue.
7. The application site is shown in more detail on the plan at **Appendix A**.

## Preliminary issues

8. As a result of the Growth and Infrastructure Act 2013, when a Village Green application is received (and prior to accepting it for consideration), the County Council is required to write to the relevant planning authorities to ascertain whether the application site is affected by development and, more specifically, one of the ‘trigger events’ set out in Schedule 1A of the Commons Act 2006<sup>2</sup>. If the land is affected by a ‘trigger event’ (and there has been no corresponding ‘terminating event’), then the right to apply for Village Green status ceases to exist and the County Council is unable to entertain the application (which will be returned to the applicant).
9. One such ‘trigger event’ is the publication for consultation of a draft development plan document “*which identifies the land for potential development*”.
10. In this case, Swale Borough Council advised that the application site was affected by a ‘trigger event’ on the basis that it was situated at a junction that had been identified in the emerging Swale Local Plan (by way of a diamond symbol on the accompanying map) as ‘transport issue requiring further consideration’ in connection with the proposed housing development to the south-west of Sittingbourne. A plan was subsequently provided showing potential highway improvements proposed by the developer affecting a strip of land on the western edge of the application site bordering Wises Lane. However, the Borough Council noted that it had not been the subject of any transport assessment and nor had it been agreed with either the Borough Council or Kent Highways.
11. Given that the question of whether ‘transport issue requiring further consideration’ (outside of the ‘red line’ area proposed for development) amounts to the land *actually* being ‘identified for potential development’ is clearly open to debate, further advice on this issue was sought from Kent Legal Services.
12. The advice received was that the draft development plan did not specifically identify the application site for development, but rather noted that the application site abutted an area that may require further assessment for improvements to the highway. The plan provided had not been formally agreed and therefore the

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<sup>2</sup> See <http://www.legislation.gov.uk/ukpga/2006/26/schedule/1A> and subsequent amendments at <http://www.legislation.gov.uk/uksi/2014/257/article/3/made>. An example of a ‘trigger event’ is the publication of an application for planning permission in respect of the land; a corresponding ‘terminating event’ may include the withdrawal of such an application, or a decision by the planning authority to decline it.

information available was too uncertain to positively conclude that the land had been identified for development, such that the trigger event was not engaged.

13. On the basis of this advice, the Village Green application was accepted for consideration.

### **The case**

14. 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.

15. Included in support of the application were 13 user evidence questionnaires, comprising 12 from current residents of Grove Park Avenue and one former resident. A summary of the user evidence submitted in support of the application is attached at **Appendix C**.

### **Consultations**

16. Consultations have been carried out as required.
17. Borden Parish Council wrote to confirm its support for the application on the basis that the land had been used for recreational purposes over the past 40 years (and possibly longer).

#### Swale Borough Council

18. Swale Borough Council ("the Borough Council") has objected to the application. The Borough Council reiterated its earlier comments regarding 'trigger events' (set out above) and expressed concern regarding the impact of the application on planning for future development.
19. The Borough Council explained that following the Examination in Public of its Local Plan, the Inspector had suggested that the Borough's dwelling targets should be increased with additional sites allocated to meet this. One of those sites is land to the south-west of Sittingbourne (policy MUX1), for which the junction of Wises Lane and the London Road (A2) is key to achieving access to the development site and egress from it onto the A2.
20. The Borough Council's view is that it would be inappropriate to designate Village Green status for the application site as it could prejudice proper planning for development needs and supporting infrastructure. The application site, although a pleasant amenity space, does not make a significant contribution to actively used public space and is situated directly opposite the Grove Park Recreation Ground and Community Woodland, which provides a substantial alternative public open space for recreational use.
21. Whilst the Borough Council's position is noted, Members will be aware that the Village Green legislation requires the County Council to consider only the legal tests set out in section 15 of the Commons Act 2006. Issues relating to amenity, desirability, suitability or even possible future use are not relevant to the question

of whether the application site has become a Village Green by virtue of its recreational usage by local residents. Such issues ought therefore necessarily to be disregarded when considering the application for Village Green status.

### Montagu Evans LLP

22. An objection to the application has also been received from Montagu Evans LLP on behalf of Mulberry Estates Sittingbourne Ltd. ("the objector"), which has no direct interest in the land in question but is the promoter of development on land to the south of Wises Lane which may require part of the application site for highway improvements.
23. The objection was originally made on the basis that the application site was subject to a 'trigger event', such that the right to apply for Village Green status ceased to apply. This point is dealt with above.
24. A further ground of objection was subsequently advanced by the objector, namely that the application site had been identified as highway land that was not capable of registration as a Village Green. In support of this assertion, an untitled plan (albeit bearing the KCC logo) was provided, purporting to show the highway network shaded in blue. This issue is considered further below.

### **Landowner**

25. The majority of the application site is owned by Taylor Wimpey UK Ltd. and is registered with the Land Registry under title number K91230. A rectangle of land in the north-western corner of the application site is registered to the Highways England Company Ltd under title number K937957.
26. Both landowners have been contacted in respect of the application, but neither has responded.

### **Legal tests**

27. 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, has ceased no more than one year 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'?**

28. 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.
29. 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 protest<sup>3</sup>: "*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*"<sup>4</sup>.
30. In this case, there is no evidence of any attempt by the landowners (or by anyone else) to prevent or impede access to the application site, such that any recreational use would have taken place 'with force'; nor is there any suggestion that the recreational use relied upon took place 'with secrecy'. However, there is a suggestion that use of the application site might have been 'with permission' by virtue of the alleged highway status of the land.
31. As is noted above, the objector's position is that the application site comprises highway land, which renders it incapable of registration as a Village Green. The objector was invited to submit further evidence on this point on the basis that the plan originally provided was untitled, and without any further information on its provenance and evidential basis, it would be difficult to know what weight ought to be attributed to it. In response, the objector provided a covering letter (which had accompanied the map) from Kent Highway Services confirming that the blue shading corresponded to 'the extent of publicly maintainable highway as far as can be ascertained from the County Council's existing records'. However, the letter also includes a lengthy disclaimer to the effect that the Council does not warrant the accuracy of any of the replies. A copy of the letter and plan are attached at **Appendix D**.
32. The applicant's position is that the private ownership of the land would appear to conflict with the alleged highway designation, indicating that there must be some ambiguity regarding the status of the land, particularly as the objector relies only upon a map indicating maintenance by the County Council. The applicant also suggests that the recreational use relied upon exceeds that which would normally be lawfully allowed on a highway (essentially a right to pass and repass) and it would be difficult for a reasonable landowner to assume that the recreational use was associated only with the exercise of a right of passage.
33. The issue to be determined, therefore, is two-fold: firstly, the status of the land as highway land and, secondly, if it is highway land, the nature of the recreational use taking place thereon.

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<sup>3</sup> *Dalton v Angus* (1881) 6 App Cas 740 (HL)

<sup>4</sup> *R (Lewis) v Redcar and Cleveland Borough Council* [2010] UKSC 11 at paragraph 92 per Lord Rodger

34. In respect of the first issue, it is not at all clear whether the plan provided by Kent Highway Services officially forms part of the 'list of streets' required to be kept by the Highway Authority under section 36(6) of the Highways Act 1980; that section is silent with regard to the form in which the 'list of streets' is to be kept, but the terminology suggests (at the very least) some form of written list such as the one on the County Council's website<sup>5</sup>. If the plan does form part of the 'list of streets', defined in section 36(6) as "*a list of the street within [the] area which are highways maintainable at public expense*", there is an argument that this list deals only with maintenance and is not conclusive evidence of the public status of any of the highways shown therein (or indeed the extent of the public's rights over them).
35. The issue of highway land was considered in the Cheshire East<sup>6</sup> case, which concerned an application to register two verges between the tarmaced surface of the public highway and adjoining land as a Village Green. The judge accepted that the plan showing the 'list of streets' was strong evidence that the land in question was highway land, though not determinative and *[the applicant] should be entitled to explore the question of what, if any, evidence supports it*<sup>7</sup>. The Court went on to conclude that a Public Inquiry ought to have been held to determine the issues.
36. With regard to the second issue, even if the land is proven to be highway land, there appears to be nothing in law to prevent highway land being registrable as a Village Green. However, the status of the land as highway land will result in many of the activities relied upon being discounted on the basis that they took place by virtue of an existing right (i.e. permission); in DPP v Jones<sup>8</sup>, it was held that the scope of the public's rights over a highway was wide, provided that such use did not interfere with the fundamental right to pass and re-pass. Applying this logic, it is arguable that activities such as dog-walking ought to be discounted (as this is a highway-type of use), but the playing of ball games or holding of picnics would not fall within the scope of any existing highway rights. In this case, as can be seen from the summary at **Appendix C**, there is evidence of activities such as ball games (including football, cricket and golf), obstacle courses and picnics.
37. Accordingly, it is not possible on the information currently available to reach a conclusion on whether all or any of the recreational use of the application site has taken place 'as of right'.

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

38. Lawful sports and pastimes can be commonplace activities including dog walking, children playing, picnicking and kite-flying. Legal principle does not require that rights of this nature be limited to certain ancient pastimes (such as maypole dancing) or for organised sports or communal activities to have taken place. The

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<sup>5</sup> See the Kent County Council Highways Gazetteer at: <http://www.kent.gov.uk/roads-and-travel/what-we-look-after/roads/public-and-private-roads>

<sup>6</sup> *Somerford Parish Council v Cheshire East Borough Council* [2016] EWHC 619 (Admin)

<sup>7</sup> See para 68(i)

<sup>8</sup> [1999] UKHL 5

Courts have held that '*dog walking and playing with children [are], in modern life, the kind of informal recreation which may be the main function of a village green*'<sup>9</sup>.

39. The summary of evidence of use by local residents at **Appendix C** shows the activities claimed to have taken place on the application site. These include dog walking, children playing, ball games, picnics and bird watching.
40. Subject to the possibly highway status of the land and the comments at paragraph 35 above, the recreational use relied upon by the applicant would appear to constitute qualifying use 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?**

41. The right to use a Town or Village Green is restricted to the inhabitants of a locality, or of a neighbourhood within a locality, and it is therefore important to be able to define this area with a degree of accuracy so that the group of people to whom the recreational rights are attached can be identified.
42. The definition of 'locality' for the purposes of a Town or Village Green application has been the subject of much debate in the Courts. In the *Cheltenham Builders*<sup>10</sup> case, it was considered that '*...at the very least, Parliament required the users of the land to be the inhabitants of somewhere that could sensibly be described as a locality... there has to be, in my judgement, a sufficiently cohesive entity which is capable of definition*'. The judge later went on to suggest that this might mean that locality should normally constitute '*some legally recognised administrative division of the county*'.
43. In cases where the locality is so large that it would be impossible to meet the 'significant number' test (see below), it will also necessary to identify a neighbourhood within the locality. The concept of a 'neighbourhood' is more flexible than that of a locality, and need not be a legally recognised administrative unit. On the subject of 'neighbourhood', the Courts have held that '*it is common ground that a neighbourhood need not be a recognised administrative unit. A housing estate might well be described in ordinary language as a neighbourhood... The Registration Authority has to be satisfied that the area alleged to be a neighbourhood has a sufficient degree of cohesiveness; otherwise the word "neighbourhood" would be stripped of any real meaning*'<sup>11</sup>.
44. In this case, the applicant relies (at part 6 of the application form) on the neighbourhood of 'Grove Park Avenue in the locality of the parish of Borden'.
45. There can be little debate that the parish of Borden is a legally recognised administrative division and therefore capable of constituting a qualifying locality for the purposes of Village Green registration.
46. However, the question of whether 'Grove Park Avenue' (i.e. a single street) is capable of constituting a qualifying neighbourhood is more subjective, although

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<sup>9</sup> *R v Suffolk County Council, ex parte Steed* [1995] 70 P&CR 487 at 508 and approved by Lord Hoffman in *R v. Oxfordshire County Council, ex parte Sunningwell Parish Council* [1999] 3 All ER 385

<sup>10</sup> *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at 90

<sup>11</sup> *ibid* at page 92

neither the Borough Council nor the objector has offered any comments on this issue.

47. In light of the proposed recommendation, it is not necessary to conclude on this point but further consideration of this test would be required before the land could be registered as a Village Green.

*“a significant number”*

48. 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’*<sup>12</sup>. Thus, it is not a case of simply proving that 51% of the local population has used the application site; what constitutes a ‘significant number’ will depend upon the local environment and will vary in each case depending upon the location of the application site.

49. In this case, of the twelve users, seven attest to having used the application site, and/or having observed use of it by others, on a daily basis. A further three witnesses refer to use on a weekly basis. On the face of it, such use is likely to have been sufficient to indicate that the land was in general use by the community, although this test is to be viewed in the context of the comments at paragraph 36 above (i.e. the nature of recreational use taking place and whether or not such use falls to be discounted if the land comprises highway land).

***(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 one year prior to the making of the application?***

50. 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 one year from the date upon which use ‘as of right’ ceased.

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

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

52. In order to qualify for registration, it must be shown that the land in question has been used for a full period of twenty years. In this case, use ‘as of right’ did not cease prior to the making of the application in 2016. The relevant twenty-year period (“the material period”) is calculated retrospectively from this date and is therefore 1996 to 2016.

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



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

## Conclusion

54. As has been noted above, there is clearly some uncertainty regarding the status of the land as highway land and, if it is highway land, the extent to which the evidence of use relied upon by the applicant ought to be discounted as a result. Further investigation is required into the former issue<sup>13</sup>, whilst the latter can only reasonably be resolved by way of oral testimony thereby allowing much more detailed accounts of use to be provided.

55. In cases which are particularly emotive or where the application turns on disputed issues of fact, it has become commonplace for Registration Authorities to conduct a Public Inquiry into the application; there is no legal requirement to do so, but provision for such Inquiries is made in the 2014 Regulations. The holding of a Public Inquiry involves the County Council appointing an independent Inspector to hear the relevant evidence both in support of and in opposition to the application, and report his/her findings back to the County Council. The final decision regarding the application nonetheless remains with the County Council in its capacity as the Commons Registration Authority.

56. Such an approach has received positive approval by the Courts, most notably in the Whitney<sup>14</sup> case in which Waller LJ said this: *'the registration authority has to consider both the interests of the landowner and the possible interest of the local inhabitants. That means that there should not be any presumption in favour of registration or any presumption against registration. It will mean that, in any case where there is a serious dispute, a registration authority will almost invariably need to appoint an independent expert to hold a public inquiry, and find the requisite facts, in order to obtain the proper advice before registration'*.

57. It is important to remember, as was famously quoted by the Judge in another High Court case<sup>15</sup>, that *'it is no trivial matter for a landowner to have land, whether in public or private ownership, registered as a town green... [the relevant legal tests] must be 'properly and strictly proved'*. This means that it is of paramount importance for a Registration Authority to ensure that, before taking a decision, it has all of the relevant facts available upon which to base a sound decision. It should be recalled that the only means of appeal against the Registration Authority's decision is by way of a Judicial Review in the High Court.

58. In light of the issues raised above, and having regard to the judgement in the Cheshire East case, it is considered that a Public Inquiry is the most appropriate course of action in this case.

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<sup>13</sup> In its capacity as the 'Commons Registration Authority' the County Council itself has no investigative powers in respect of Village Green applications and is reliant solely on the information provided to it by the parties. Indeed, given that the determination of such applications is a quasi-judicial function of the Council, it is imperative that a neutral stance is retained until a final decision is taken and, as such, it would be entirely inappropriate for Officers to undertake such research of their own accord.

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

<sup>15</sup> *R v Suffolk County Council, ex parte Steed* [1997] 1EGLR 131 at 134

## **Recommendation**

59. I recommend that a Public Inquiry be held into the case to clarify the issues

Accountable Officer:

Mr. Graham Rusling – Tel: 03000 413449 or Email: [graham.rusling@kent.gov.uk](mailto:graham.rusling@kent.gov.uk)

Case Officer:

Ms. Melanie McNeir – Tel: 03000 413421 or Email: [melanie.mcneir@kent.gov.uk](mailto:melanie.mcneir@kent.gov.uk)

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

## **Background documents**

APPENDIX A – Plan showing application site

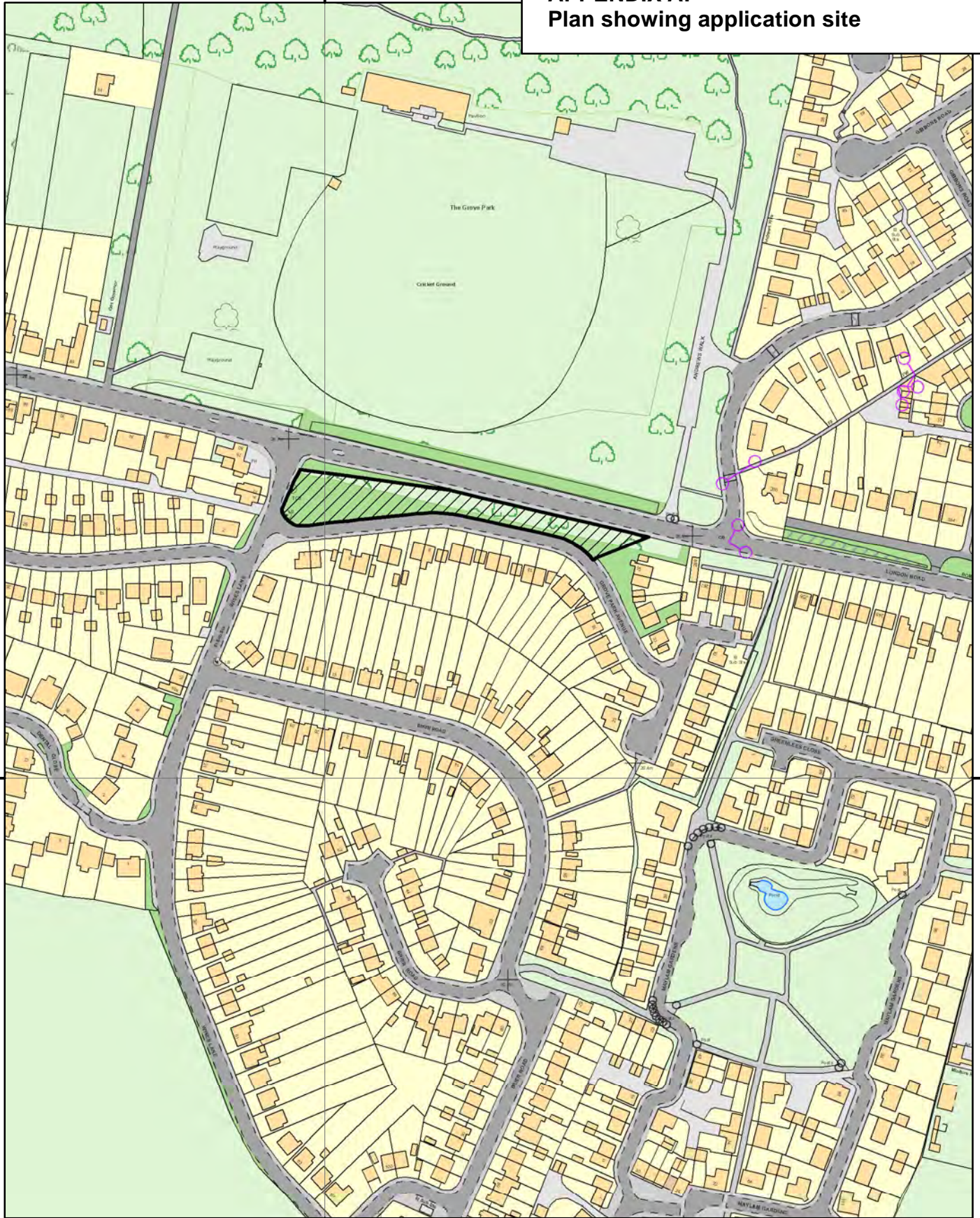
APPENDIX B – Copy of application form

APPENDIX C – Table summarising user evidence

APPENDIX D – Letter from Kent Highway Services dated 27<sup>th</sup> November 2015 and accompanying plan

**APPENDIX A:  
Plan showing application site**

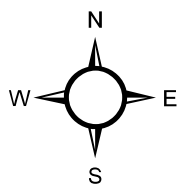
588500 000000



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Scale 1:2500

**Land subject to Village Green application  
at Grove Park Avenue at Sittingbourne**



Page 43

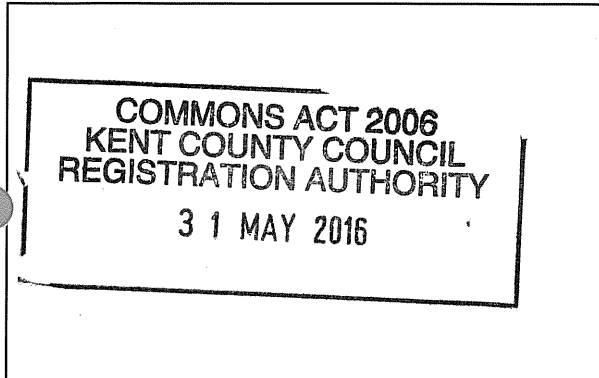


**Commons Act 2006: section 15**

**Application for the registration of a town or village green**

**This section is for office use only**

Official stamp



Application number

VG1A668

VG number allocated at registration

Applicants are advised to read 'Part 1 of the Commons Act 2006: Guidance to applicants' and to note:

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

**Note 1**

*Insert name of commons registration authority.*

**1. Commons Registration Authority**

To the:

Kent County Council

Tick the box to confirm that you have enclosed the appropriate fee for this application:

**Note 2**

If there is more than one applicant, list all their names and addresses in full. Use a separate sheet if necessary. State the full title of the organisation if the applicant is a body corporate or an unincorporated association. 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 box 3 is not completed all correspondence and notices will be sent to the first named applicant.

**Note 3**

This box 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, the representative may receive communications from the registration authority or other persons (e.g. objectors) via email.

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

Name:

Postal address:

Telephone number:

Fax number:

E-mail address:

**3. Name and address of representative, if any**

Name:

Firm:

Postal address:   
Postcode

Telephone number:

Fax number:

E-mail address:

**Note 4**

For further details of the requirements of an application refer to Schedule 4, paragraph 9 or 10 to the Commons Registration (England) Regulations 2014. Section 15(6) enables any period of statutory closure where access to the land is denied to be disregarded in determining the 20 year period.

**Note 5**

This box is to identify the new green. The accompanying Ordnance map must be at a scale of at least 1:2,500, or 1:10,560 if the land is wholly or predominantly moorland, and show the land by means of distinctive colouring within an accurately identified boundary. State the Land Registry title number where if known.

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

If you are the landowner and are seeking voluntarily to register your land tick the following box and move to box 5:

If the application is made under section 15(1) of the Act, 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:

If section 15(3) applies indicate the date on which you consider that use as of right ended:

[Empty box for date]

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:

[Empty box for period of statutory closure]

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

Name by which the land usually known:

The Green

Location:

Grove Park Avenue

Common land register unit number (only if the land is registered common land):

[Empty box for common land register unit number]

Tick the box to confirm that you have attached an Ordnance map of the land:

**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 an Ordnance map should be provided on which a locality or neighbourhood is marked clearly at a scale of 1:10,560.*

**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).*

**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).*

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

Show the locality or neighbourhood within the locality to which the claimed green relates, either by writing the administrative area or geographical area by name below, or by attaching an Ordnance map on which the area is clearly marked:

Grove Park Avenue in the locality of the Parish of Borden.  
'Grove Park Avenue' is the neighbourhood.

Tick here if a map is attached:

**7. Justification for application to register the land as a town or village green**

Unfettered access to residents for sports & past-times over a period exceeding 20 years.

**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**

[Empty box for names and addresses]

**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 (e.g. 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**

[Empty box for voluntary registration declarations]

**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**

12 resident user evidence questionnaires  
& one supporting eq from a currently non-resident.

**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**

[Empty box for other information relating to the application]



**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 an unincorporated association.

**12. Signature**

Date:

31st May 2016

Signatures:

**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.

**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 or the Freedom of Information Act 2000.

164200

164000



588600

588600

scale 1:1250

164200

164000

Name	Period of use	Frequency of use	Type of use	Comments (incl. any challenges)
<b>Mr. S. AVERY</b>	1998 – present	Daily	Children’s play area, walking	Observed use by local children playing and for dog walking daily.
<b>Mr. C. DELLER</b>	1967 – present	Weekly	Playing with children, dog walking, bird watching	
<b>Mr. A. FISHER</b>	2014 – present	Daily	Children’s play area, dog walking	Observed use by others on a daily basis for dog walking and children playing
<b>Mr. J. GOWER</b>	2008 – present	Weekly	General leisure, dog walking, ball games	Observed use by others for general leisure activities on a daily basis. Local children can use the land to play safely.
<b>Mr. A. HAWES</b>	1994 – present	Occasionally	Playing	Previously lived nearby before moving to Grove Park Avenue in 2010.
<b>Mr. and Mrs. HORSFORD</b>	1970 – present	Daily	Not stated	Observed children playing on a daily basis.
<b>Mr. P. HUDSON</b>	2012 – present	Daily	Walking	
<b>Mr. B. JEMMETT</b>	1985 – present	Daily	Children playing, football, dog walking	Observed use by others for dog walking and children playing on a daily basis.
<b>Mr. and Mrs. JOHNSTONE</b>	1980 – present	Daily	Dog walking	Observed use by others on a daily basis, incl. dog walking and cricket/football for children
<b>Mr. and Mrs. T. KINDRED</b>	2016 – present	Daily	Playing with child, walking, children playing games and riding scooters, birdwatching	Observed use by others on a daily basis, incl. people sitting down and relaxing.
<b>Mrs. M. NORMAN</b>	1985 – 1999	Daily	Playing as a child, cricket, hide and seek, chase, obstacle courses, socialising with friends	Moved away from the area in 1999 but still use the land for walking when visiting relatives in the area.
<b>Mr. D. TITTERTON</b>	2012 – present	Weekly	Walking, running and exercise	
<b>Ms. H. TUMBLER</b>	1986 – present	Most weeks	As a child played many games (eg football, cricket, hide and seek) with other local children. Now do the same with own children.	Moved away in 1997 and returned to the area in 2008. Used daily when children were younger. Observed use by others on a daily basis. It is a safe place for children to play fenced off from the main road.



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Consulting Engineers Ltd  
Office 17, Wealden Place  
Bradbourne Vale Road  
Sevenoaks  
Kent TN13 3QQ

**Highway Definition Team**

Ashford Highway Depot  
Javelin Way  
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TN24 8AD

Phone: 03000 418181  
Email: [highwaydefinitionsearches@kent.gov.uk](mailto:highwaydefinitionsearches@kent.gov.uk)  
Your Ref: 13-042-001  
Our Ref: SMS/47800012  
Date 27 November 2015

Dear Sir

**Highway Definition Search- Wises Lane, Sittingbourne**

Thank you for your e-mail 12 October 2015 with attached plan and letter of 28 October 2015 with enclosed cheque for the sum of £680.00.

I enclose a fresh plan which shows by blue shading in the vicinity of the areas of your enquiry the considered extent of the publicly maintainable highway as far as can be ascertained from the County Council's existing records.

You will see that there are additional areas shaded blue that are not within the vicinity of your sites. These areas have already been researched for other enquiries and this is the reason they are also shown shaded blue on my plan. There will also be areas that have not yet been researched for the Sittingbourne area and therefore there will be areas that have not yet been shaded, but of course this will depend upon the status of the area and if it is considered to form part of the publicly maintainable highway.

Please be advised that the A249 is a Trunk Road and therefore in the immediate vicinity of this particular site I have only shaded those areas considered to be under the County Council's control. Should you wish to have information regarding the areas managed by Highway England, I would advise you to contact H.E direct.

Information relating to Public Rights of Way (PROW) and details of registered Common Lane/Village Green is held by the Council's Countryside Access Service, please direct your enquiry to Invicta House, County Hall, Maidstone, Kent, ME14 1XX. Information about the service can be found via the following link:  
<http://www.kent.gov.uk/waste-planning-and-land/public-rights-of-way>.

Fees may be applicable and will be advised accordingly by the PROW team.

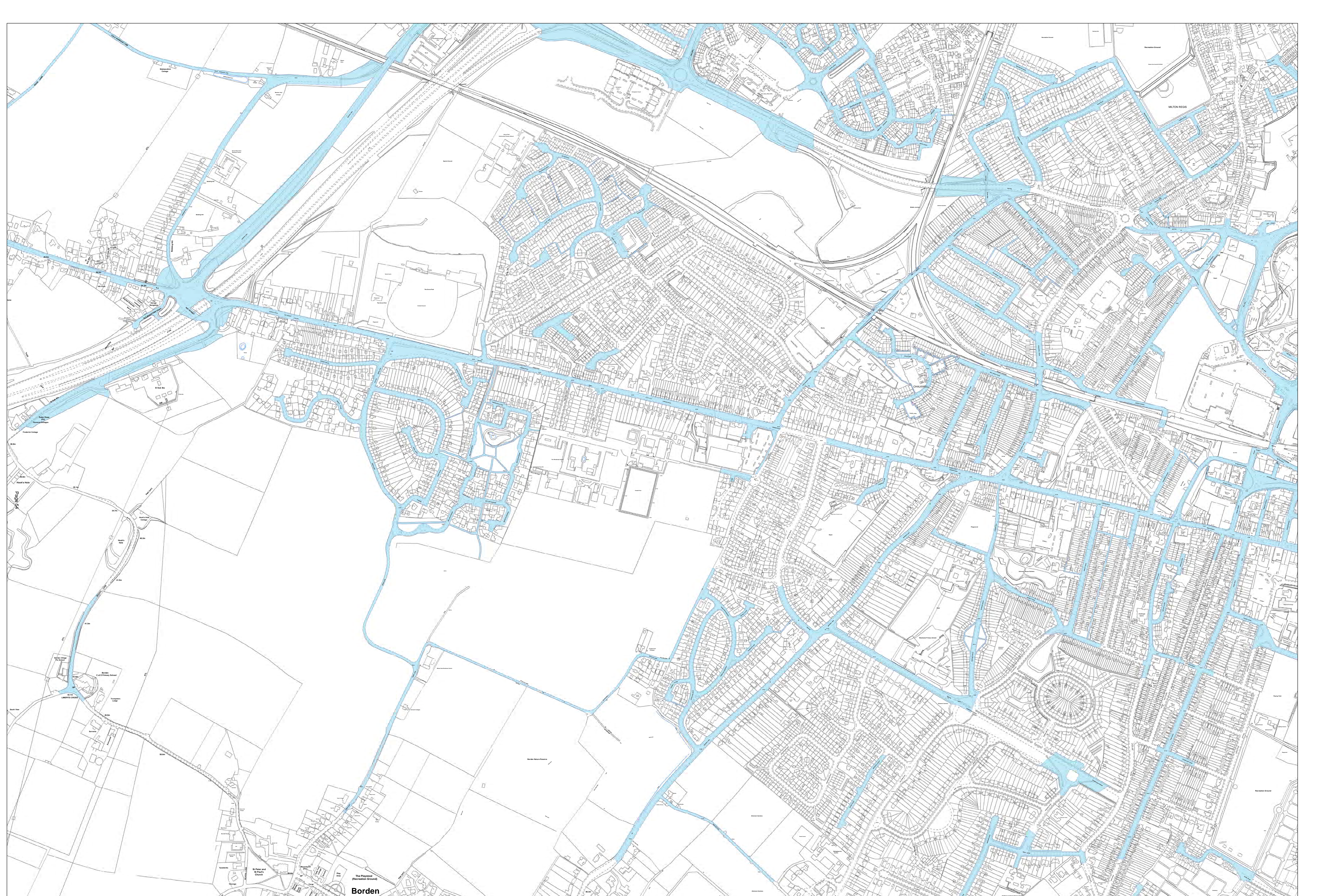
I trust this information proves helpful.

The replies are given on the understanding that the council does not warrant the accuracy of any of the replies and on the basis that neither the council nor any officer, servant or agent of the council is legally responsible, either in contract or tort; with the exception of negligence, for any inaccuracies, errors or omissions herein contained. Any liability for negligence will extend to the person who raised the enquiries and the person on whose behalf they were raised

Yours faithfully

Sara Stevens  
Highway Definition Officer

*KCC Highways, Transportation and Waste welcome feedback from our customers and we have designed our fault reporting tool so that you can quickly and easily let us know about any problems on the roads and footways or about any of our equipment such as streetlights that may not be working. You can do this by visiting [www.kent.gov.uk/highwayfaults](http://www.kent.gov.uk/highwayfaults) From here you can see all known issues, view any planned works, report multiple issues, upload photos as well as track any existing enquiries. It's really important that you provide us with all of the information requested so that we can provide the right response quickly and efficiently. We no longer offer a generic email service as the improved online fault reporting tool has been designed to ensure we capture all of the information that we need to quickly respond to any faults. You can still call us with any complex or urgent matters on 03000 418181 and speak to one of our trained highway specialists.*



## Application to register land known as Church Green at Westwell as a new Town or Village Green

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A report by the PROW and Access Manager to Kent County Council's Regulation Committee Member Panel on 23<sup>rd</sup> October 2017.

**Recommendation: I recommend that the applicant be informed that the application to register land known as Church Green at Westwell as a new Town or Village Green has been accepted, and that the land subject to the application (as shown at Appendix A) be registered as a Village Green.**

---

Local Member: Mr. C. Simkins (Ashford Rural West)

Unrestricted item

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### Introduction

1. The County Council has received an application to register land known as Church Green at Westwell as a new Town or Village Green from the Westwell Parish Council ("the applicant"). The application, made on 9<sup>th</sup> September 2016 was allocated the application number VGA672. 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 2014.
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 one year prior to the date of application**<sup>1</sup>, e.g. by way of the erection of fencing or a notice (section 15(3) of the Act).
5. As a standard procedure set out in the 2014 Regulations, the County Council must publicise the application by way of a copy of the notice on the County Council's website and by placing copies of the notice on site to provide local people with the opportunity to comment on the application. Copies of that notice must also be served on any landowner(s) (where they can be reasonably identified) as well as the relevant local authorities. The publicity must state a

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<sup>1</sup> Reduced from two years to one year for applications made after 1<sup>st</sup> October 2013, due to the coming into effect of section 14 of the Growth and Infrastructure Act 2013.

period of at least six weeks during which objections and representations can be made.

### **The application site**

6. The area of land subject to this application (“the application site”) consists of an area of grassed open space of approximately 0.26 acres (0.1 hectares) in size situated in front of St. Mary’s Church at The Street in the village of Westwell. The application site is shown in more detail on the plan at **Appendix A**.
7. Access to the application site is via the unfenced boundary of the land with The Street. There are no recorded Public Rights of Way on or abutting the application site, although there is a surfaced trackway leading to the entrance of the church.

### **The case**

8. The application has been made on the grounds that the application site has become a Town or Village Green by virtue of the actual use of the land by the local inhabitants for a range of recreational activities ‘as of right’ for more than 20 years.
9. Included in support of the application were 11 user evidence questionnaires and statements in support of the application. 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; no responses have been received.

### **Landowner**

11. The application site is unregistered with the Land Registry and no communication has been received from anyone purporting to be the landowner in response to the notice placed on site during the consultation period.
12. Members should be aware that the absence of any objection to the application does not automatically guarantee its success. In determining whether or not the land is capable of registration as a Village Green, the County Council must be still satisfied that each and every one of the legal tests (set out below) have been met. If one of the legal tests is not met, then the application as whole must fail.

### **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, has ceased no more than one year 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*<sup>2</sup> 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 of any challenge, either by physical or verbal means, to the recreational use of the application site. Indeed, access to the site is open and unrestricted along a large part of its southern boundary, and it forms the only means of access to the church from its nearest public highway.
16. As such, it would appear that the recreational use of the application site has been '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*'<sup>3</sup>.
18. The summary of evidence of use by local residents at **Appendix C** shows the activities claimed to have taken place on the application site.
19. Some of the evidence relied upon refers to 'access to' or 'walking to' the church; such linear usage along a defined route to a specific destination is unlikely to be qualifying use for the purposes of Village Green registration.
20. However, there is evidence of the use of the land for other activities (e.g. conker collection and dog walking) and, when viewed as a whole, the general impression given from the user evidence is that the application site has been used as a local amenity, in the manner that one would expect a Village Green to be used. The annual Christmas tree and occasional Christmas carols referred to by several witnesses is a good example, as is the planting of community bulbs and trees on the land. The land is also a natural extension of the church grounds, being used for socialising before/after Sunday worship or church events, and also for photography related to those events.

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

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

21. As such, it would appear that the land 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?***

22. 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.

23. 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*<sup>4</sup> case, it was considered that '*...at the very least, Parliament required the users of the land to be the inhabitants of somewhere that could sensibly be described as a locality... there has to be, in my judgement, a sufficiently cohesive entity which is capable of definition*'. The judge later went on to suggest that this might mean that locality should normally constitute '*some legally recognised administrative division of the county*'.

24. In this case, the application is made by the Westwell Parish Council on behalf of its residents, whose usage is relied upon in support of the application. It seems appropriate that the relevant locality in this case is the civil parish of Westwell.

*"a significant number"*

25. 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*'<sup>5</sup>. Thus, it is not a case of simply proving that 51% of the local population has used the application site; what constitutes a 'significant number' will depend upon the local environment and will vary in each case depending upon the location of the application site.

26. In this case, the kind of activities that have been taking place on the land, in addition to individual activities such as dog walking and conker collection, are closely connected to the community (e.g. annual Christmas tree and the extension of Church-related gatherings). In this sense, it is clear that the application site has been very much regarded as a community facility and used as such. Therefore, this test would appear to be met.

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

<sup>5</sup> *R (Alfred McAlpine Homes Ltd.) v Staffordshire County Council* [2002] EWHC 76 at paragraph 71

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

27. 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 one year from the date upon which use ‘as of right’ ceased.

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

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

29. In order to qualify for registration, it must be shown that the land in question has been used for a full period of twenty years. In this case, use ‘as of right’ did not cease prior to the making of the application in 2016. The relevant twenty-year period (“the material period”) is calculated retrospectively from this date and is therefore 1996 to 2016.

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

**Conclusion**

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

32. In this case, there is evidence of unchallenged recreational use of the application site for a period in excess of twenty years. Such use - in particular the erection of the annual Christmas tree and the use of the land for socialising and photography in connection with Church services - would have been sufficient to indicate to a landowner (had there been one) that the application site was in general use by the community as a whole.

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

**Recommendation**

34. I recommend that the applicant be informed that the application to register land known as Church Green at Westwell as a new Town or Village Green has been accepted, and that the land subject to the application (as shown at **Appendix A**) be registered as a Village Green.

Accountable Officer:

Mr. Graham Rusling – Tel: 03000 413449 or Email: graham.rusling@kent.gov.uk

Case Officer:

Ms. Melanie McNeir – Tel: 03000 413421 or Email: melanie.mcneir@kent.gov.uk

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

### **Background documents**

APPENDIX A – Plan showing application site

APPENDIX B – Copy of application form

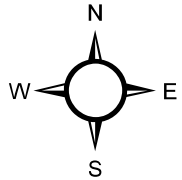
APPENDIX C – Table summarising user evidence

APPENDIX D – Photographs of the application site

**APPENDIX A:  
Plan showing application site**



**Land subject to Village Green application,  
known as Church Green at Westwell**



Scale 1:1250



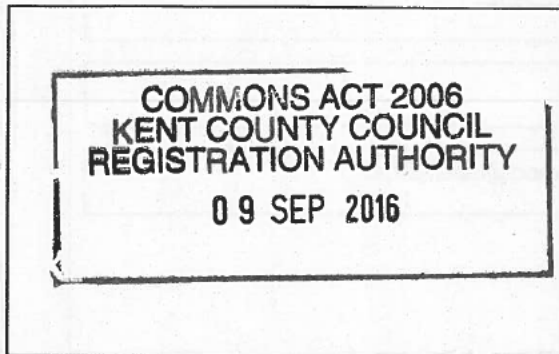
FORM CA9

**Commons Act 2006: section 15**

**Application for the registration of a town or village green**

**This section is for office use only**

Official stamp



Application number

VCA672

VG number allocated at registration

Applicants are advised to read 'Part 1 of the Commons Act 2006: Guidance to applicants' and to note:

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

**Note 1**

*Insert name of commons registration authority.*

**1. Commons Registration Authority**

To the:

Kent County Council  
Countryside Access Service

Tick the box to confirm that you have enclosed the appropriate fee for this application:

**Note 2**

If there is more than one applicant, list all their names and addresses in full. Use a separate sheet if necessary. State the full title of the organisation if the applicant is a body corporate or an unincorporated association. 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 box 3 is not completed all correspondence and notices will be sent to the first named applicant.

**Note 3**

This box 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, the representative may receive communications from the registration authority or other persons (e.g. objectors) via email.

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

Name:

WESTWELL PARISH COUNCIL

Postal address:

14 SANDYHURST LANE  
ASHFORD  
KENT  
TN25 4NS

Postcode

Telephone number:

Fax number:

E-mail address:

**3. Name and address of representative, if any**

Name:

MICHAEL JOHN THORNELOE

Firm:

THORNELOE & CO

Postal address:

ST MARY'S HOUSE  
THE SQUARE  
LENHAM  
MAIDSTONE  
KENT

Postcode ME17 2PH

Telephone number:

Fax number:

E-mail address:

**Note 4**

For further details of the requirements of an application refer to Schedule 4, paragraph 9 or 10 to the Commons Registration (England) Regulations 2014. 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.

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

If you are the landowner and are seeking voluntarily to register your land tick the following box and move to box 5:

If the application is made under section 15(1) of the Act, 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:

If section 15(3) applies indicate the date on which you consider that use as of right ended:

[Empty box for date]

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:

[Empty box for period of statutory closure]

**Note 5**

This box is to identify the new green. The accompanying Ordnance map must be at a scale of at least 1:2,500, or 1:10,560 if the land is wholly or predominantly moorland, and show the land by means of distinctive colouring within an accurately identified boundary. State the Land Registry title number where if known.

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

Name by which the land usually known:

LAND FRONT OF ST MARY'S CHURCH

Location:

WESTWELL  
ASHFORD  
KENT

Common land register unit number (only if the land is registered common land):

[Empty box for common land register unit number]

Tick the box to confirm that you have attached an Ordnance map of the land:



**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 an Ordnance map should be provided on which a locality or neighbourhood is marked clearly at a scale of 1:10,560.*

**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).*

**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).*

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

Show the locality or neighbourhood within the locality to which the claimed green relates, either by writing the administrative area or geographical area by name below, or by attaching an Ordnance map on which the area is clearly marked:

PLEASE SEE ATTACHED PLAN

Tick here if a map is attached:

**7. Justification for application to register the land as a town or village green**

PLEASE SEE WITNESS STATEMENT HEREWITH. THE LAND HAS BEEN AN AMENITY OF THE VILLAGE SINCE TIME IMMORIUUM

**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**

NONE KNOWN

**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 (e.g. 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**

NOT APPLICABLE

**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**

WITNESS STATEMENT<sup>s</sup> attached. CJ. 26

**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

**Note 12**

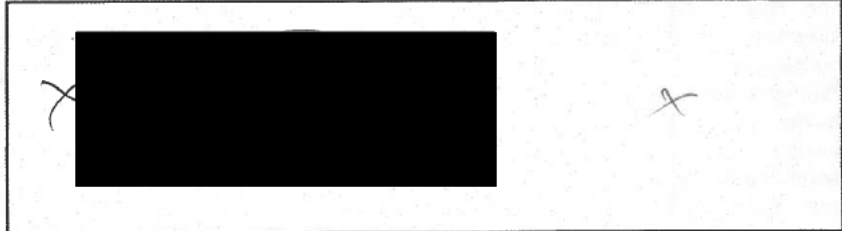
*The application must be signed by each individual applicant, or by the authorised officer of an applicant which is a body corporate or an unincorporated association.*

**12. Signature**

Date:

14th July 2016.

Signatures:



**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.**

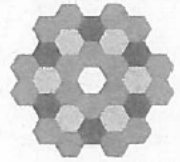
**Data Protection Act 1998**

*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 or the Freedom of Information Act 2000.*

# Land Registry Illustrative plan

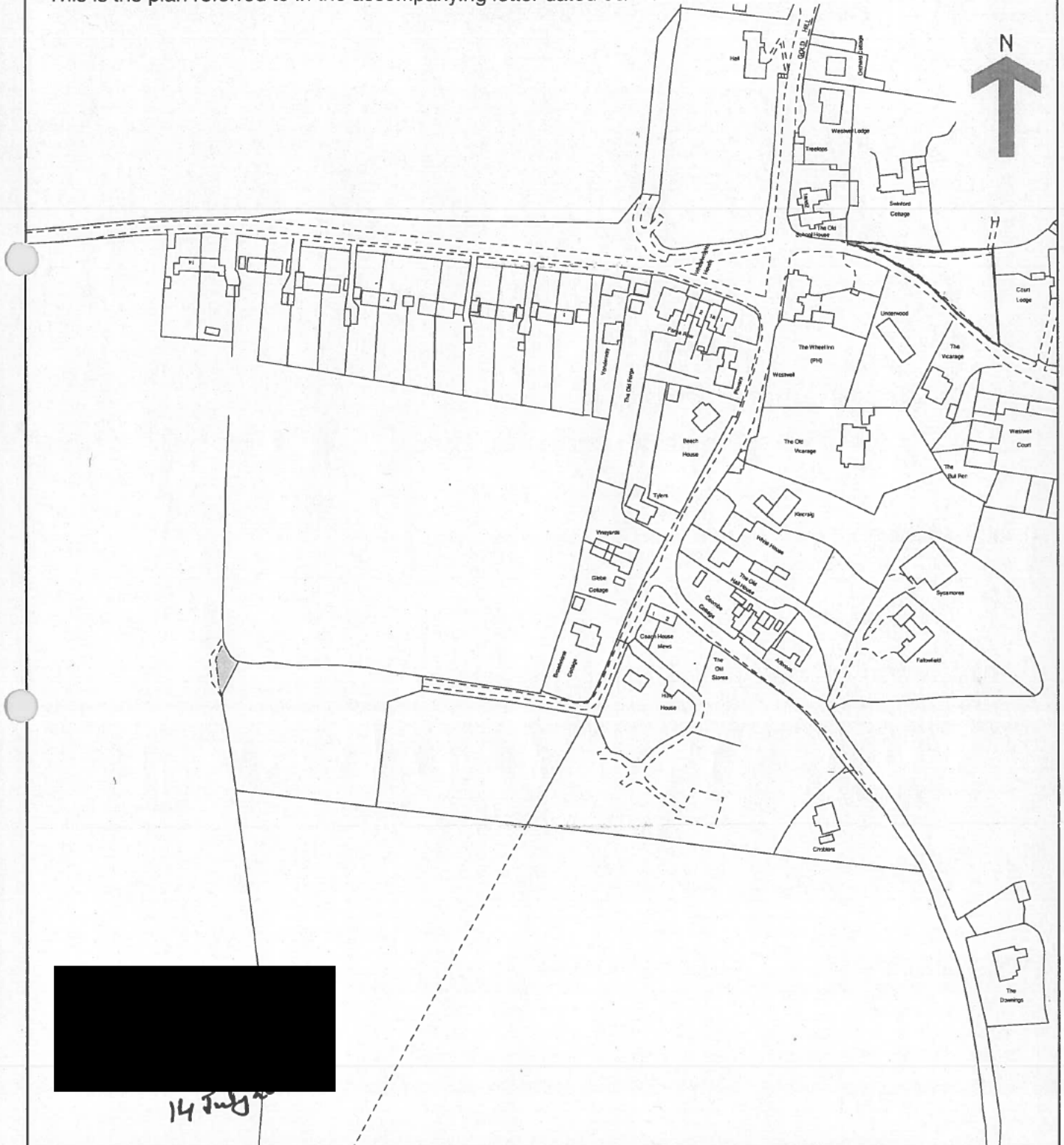
Title number **TT38361**  
Ordnance Survey map reference **TQ9847SE**  
Scale **1:2500**  
Administrative area **Kent: Ashford**



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You are not permitted to copy, sub-license, distribute or sell any of this data to third parties in any form.

This is the plan referred to in the accompanying letter dated 03/11/2015 Title no. TT38361



This 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.

Name	Period of use	Frequency of use	Type of use	Comments (incl. any challenges)
<b>Mr. D. CACKETT</b>	1965 – present	Occasionally	Collecting conkers, attending church events	
<b>Mr. N. CACKETT</b>	1980 – present	Occasionally	Collecting conkers, attending weddings, putting up Christmas tree lights	
<b>Ms. T. CACKETT</b>	1976 – present	Occasionally	Collecting conkers, children playing, watching or attending church events	
<b>Mr. J. DRURY</b>	1983 – present	Monthly	Access to church	Aware of several villagers walking dogs on the land for the last 34 years. The land also makes valuable contribution to church events and for meeting friends. Christmas tree has been on the land for at least 34 years and on occasions used as a focus for Christmas carols
<b>Mr. D. HOOPER</b>	1980 – present	Monthly	Wedding photography	Observed use by others for dog walking, bulb planting, picnics and conker collection
<b>Mrs. K. HOOPER</b>	1980 – present	Weekly	Bulb planting, raking leaves, photographs	Observed use by others for picnics, cyclists resting, conker collection and photography.
<b>Mr. M. JAMIESON</b>	1980 – present	Weekly	Access to church, village activities	Lived abroad 1992 – 2000. Land has been used for village Christmas tree. Regularly observed people collecting conkers in autumn, and also used for photography as part of special services at the church. The land is used for socialising and picnics, as well as frequent dog-walking.
<b>Mrs. J. RICHARDS</b>	1946 – present	Not stated	Collecting conkers	Land has been used for annual community Christmas tree and trees/bulbs have been planted on the land by the community
<b>Mr. and Mrs. J. STUART-SMITH</b>	1965 – present	Monthly	Walking to church, collecting conkers with children	Aware of use of the land by dog-walkers and annual Christmas tree, as well as a gathering place in connection with church events. There has also been bulb and tree-planting on the land.
<b>Mr. M. WYATT</b>	1980 – present	Weekly	Not stated	Observed use by villagers walking and walking dogs.
<b>Mrs. S. WOOD</b>	1990 – present	Weekly	Access to church, observing wild flowers and trees on the land, dog walking, collecting conkers	Green is used for annual Christmas tree and as a gathering place for worshippers.

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



*From western end of application site looking east*



*From Church entrance looking west*

## **Application to register land known as Rocks Close Green at East Malling as a new Town or Village Green**

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A report by the PROW and Access Service Manager to Kent County Council's Regulation Committee Member Panel on Monday 23<sup>rd</sup> October 2017.

**Recommendation: I recommend that the County Council informs the applicant that the application to register the land known as Rocks Close Green at East Malling has been accepted, and that the land subject to the application be formally registered as a Town or Village Green.**

---

Local Member: Mrs. T. Dean MBE (Malling Central)

Unrestricted item

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### **Introduction**

1. The County Council has received an application to register a piece of land known as Rocks Close Green in the village of East Malling as a new Town or Village Green from the East Malling and Larkfield Parish Council ("the applicant"). The application, made on 4<sup>th</sup> July 2017, was allocated the application number VGA674. 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 the application (“the application site”) consists of an area of grassed open space of approximately 0.78 acres (0.31 hectares) in size situated between The Rocks Road and Rocks Close at East Malling. The land is physically separated from the footway of The Rocks Road by way of a stone wall and access to the land is therefore from the unfenced boundary of the southernmost spur of Rocks Close.
7. A plan showing the application site is attached at **Appendix A**, with photographs of it at **Appendix D**.

### Notice of Application

8. As required by the regulations, notice of the application was published on the County Council’s website. The local County Member was also informed of the application.
9. No responses have been received.

### 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 K709528. A copy of the relevant Register of Title is attached at **Appendix C**.
11. There are no other interested parties (e.g. leaseholders or owners of relevant charges) named on the Registers 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 has been made by the local Parish Council. 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 civil parish of East Malling and Larkfield.

### **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.

### **Recommendation**

17. I recommend that the County Council informs the applicant that the application to register the application to register the land known as Rocks Close Green at East Malling has been accepted, and that the land subject to the application be formally registered as a Town or Village Green.

Accountable Officer:

Mr. Graham Rusling – Tel: 03000 413449 or Email: [graham.rusling@kent.gov.uk](mailto:graham.rusling@kent.gov.uk)

Case Officer:

Ms. Melanie McNeir – Tel: 03000 413421 or Email: [melanie.mcneir@kent.gov.uk](mailto:melanie.mcneir@kent.gov.uk)

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

### **Background documents**

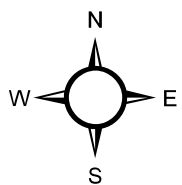
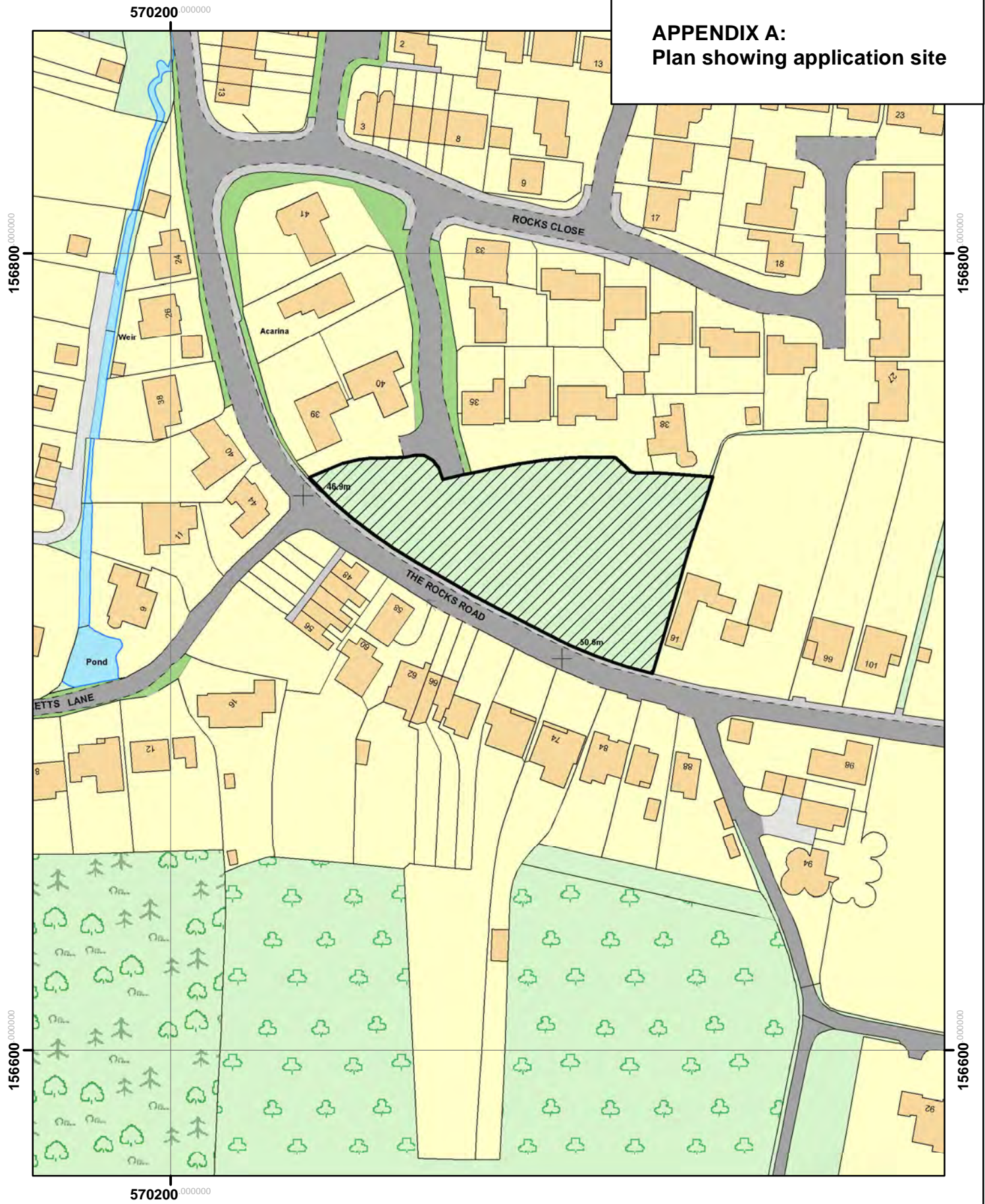
APPENDIX A – Plan showing application site

APPENDIX B – Copy of application form

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

APPENDIX D – Photographs of the application site

**APPENDIX A:  
Plan showing application site**



Scale 1:1250

**Land subject to Village Green application,  
known as Rocks Close Green at East Malling**



FORM CA9

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:

<p>COMMONS ACT 2006 KENT COUNTY COUNCIL REGISTRATION AUTHORITY</p> <p>04 JUL 2017</p>
---

Application number:

<p>VG1674</p>
---------------

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

**Note 2**

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

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

Name: EAST MALLING & LARKFIELD PARISH COUNCIL  
Full postal address: (incl. Postcode) PARISH COUNCIL OFFICE CHURCH FARM, 198 NEW HYTHE LANE, LARKFIELD ME20 6ST  
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:

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:

ROCKS CLOSE GREEN AS EDGED RED  
ON PLAN ATTACHED.

Location:

ROCKS CLOSE, EAST MALLING

Common Land register unit number (only if the land is already registered Common Land):

N/A

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:

EAST MALLING

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**

LANDOWNER APPLICATION

**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.

**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**

NONE

**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**

Copy of APPLICANTS  
LAND CERTIFICATE

**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.

**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:

3.7.2017

**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.*





# Official copy of register of title

Title number K709528

Edition date 07.02.1995

- This official copy shows the entries on the register of title on 17 SEP 2013 at 11:38:24.
- This date must be quoted as the "search from date" in any official search application based on this copy.
- The date at the beginning of an entry is the date on which the entry was made in the register.
- Issued on 17 Sep 2013.
- Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.
- For information about the register of title see Land Registry website [www.landregistry.gov.uk](http://www.landregistry.gov.uk) or Land Registry Public Guide 1-A *guide to the information we keep and how you can obtain it*.
- This title is dealt with by Land Registry, Nottingham Office.

## A: Property Register

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

KENT : TONBRIDGE AND MALLING

- 1 (05.09.1961) The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being land on the north side of The Rocks Road, East Malling.

## 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 (02.12.1991) Proprietor: EAST MALLING and LARKFIELD PARISH COUNCIL of Church Farm, 198 New Hythe Lane, Larkfield, Maidstone, Kent, ME20 6ST.

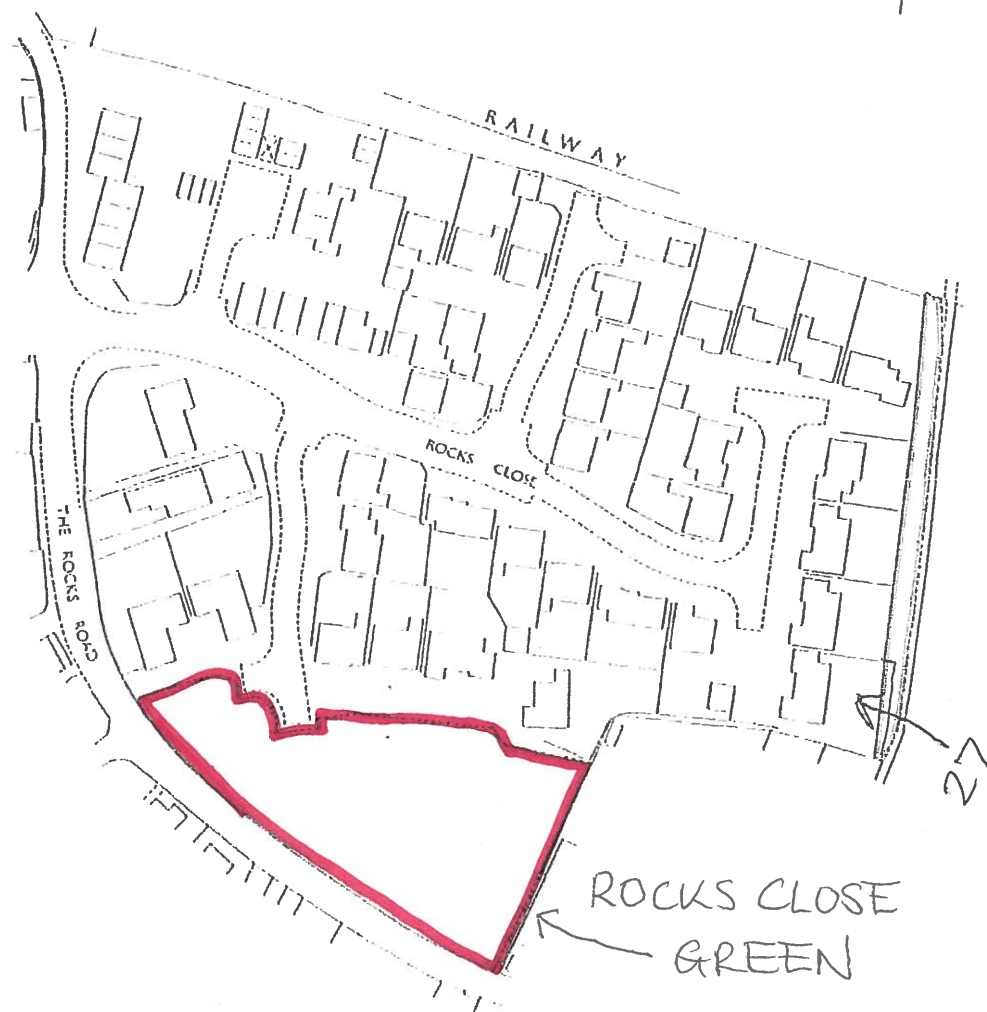
## C: Charges Register

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

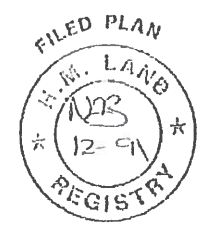
- 1 The land is subject to rights of way.
- 2 The land is subject to rights of drainage and rights in respect of water, gas, electricity and other services.

End of register

H.M. LAND REGISTRY		TITLE NUMBER <b>K709528</b>	
ORDNANCE SURVEY PLAN REFERENCE	TQ 7056	SECTION . E	Scale 1/1250
COUNTY	KENT	DISTRICT	TONBRIDGE AND MALLING
			© Crown copyright 1989



ROCKS CLOSE GREEN  
 Only this to be registered as Village Green.



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



*2012 aerial photograph*



*Google Streetview image*

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## Application to register land known as Riverhead Parkland at Riverhead as a new Town or Village Green

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A report by the PROW and Access Service Manager to Kent County Council's Regulation Committee Member Panel on Monday 23<sup>rd</sup> October 2017.

**Recommendation: I recommend that the County Council informs the applicant that the application to register the land known as Riverhead Parkland at Riverhead has been accepted, and that the land subject to the application (as amended and shown at Appendix A) be formally registered as a Town or Village Green.**

---

Local Member: Mr. N. Chard (Sevenoaks West)

Unrestricted item

---

### Introduction

1. The County Council has received an application to register a piece of land known as Riverhead Parkland at Riverhead, near Sevenoaks as a new Town or Village Green from the Riverhead Parish Council ("the applicant"). The application, made on 14<sup>th</sup> December 2016, was allocated the application number VGA670. A plan of the site (as amended) 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 original application included the whole of the land running from the junction of Amherst Hill and Brittain's Lane and extending east towards the rear of Riverhead Infants School and north to the rear of properties in St. Mary's Drive and Montreal Road.
7. However, during initial checks it came to light that two strips of land did not fall within the Parish Council's ownership. Due to difficulties in contacting the registered landowners, it was agreed that this land should be excluded from the application site.
8. A further (minor) amendment to the application site was subsequently made in the vicinity of St. Mary's Drive as a result of a consultation response (set out below).
9. A plan showing the areas of land to be considered for Village Green status ("the application site (as amended)"), which consist of approximately 11.2 acres (4.52 hectares) of mixed woodland and parkland, is attached at **Appendix A**. An aerial photograph is available at **Appendix D**.

### Notice of Application

10. As required by the regulations, notice of the application was published on the County Council's website. The local County Member was also informed of the application.
11. One response was received in support of the application.
12. A further response was received from the owner of one of the properties in St. Mary's Drive querying the boundary of the proposed Village Green in the vicinity of his property. As a result of that response, the Parish Council agreed to amend the boundary of the application so as to exclude the driveways of the properties in St. Mary's Drive.

### Ownership of the land

13. A Land Registry search has been undertaken which confirms that the application site (as amended) is wholly owned by the applicant under title numbers K608775, K583562 and K884976. Copies of the relevant Registers of Title are attached at **Appendix C**.
14. There are no other interested parties (e.g. leaseholders or owners of relevant charges) named on the Registers of Title.

### The 'locality'

15. DEFRA's view is that once land is registered as a Town or Village Green, only the residents of the locality have the legal right to use the land for the purposes of lawful sports and pastimes. It is therefore necessary to identify the locality in which the users of the land reside.
16. A locality for these purposes normally consists of a recognised administrative area (e.g. civil parish or electoral ward) or a cohesive entity (such as a village or housing estate).
17. In this case, the application has been made by the local Parish Council. 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 civil parish of Riverhead.

### **Conclusion**

18. 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.
19. It can be concluded that all the necessary criteria concerning the voluntary registration of the land as a Village Green have been met.

### **Recommendation**

20. I recommend that the County Council informs the applicant that the application to register the land known as Riverhead Parkland at Riverhead has been accepted, and that the land subject to the application (as amended and shown at **Appendix A**) be formally registered as a Town or Village Green.

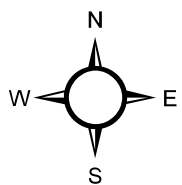
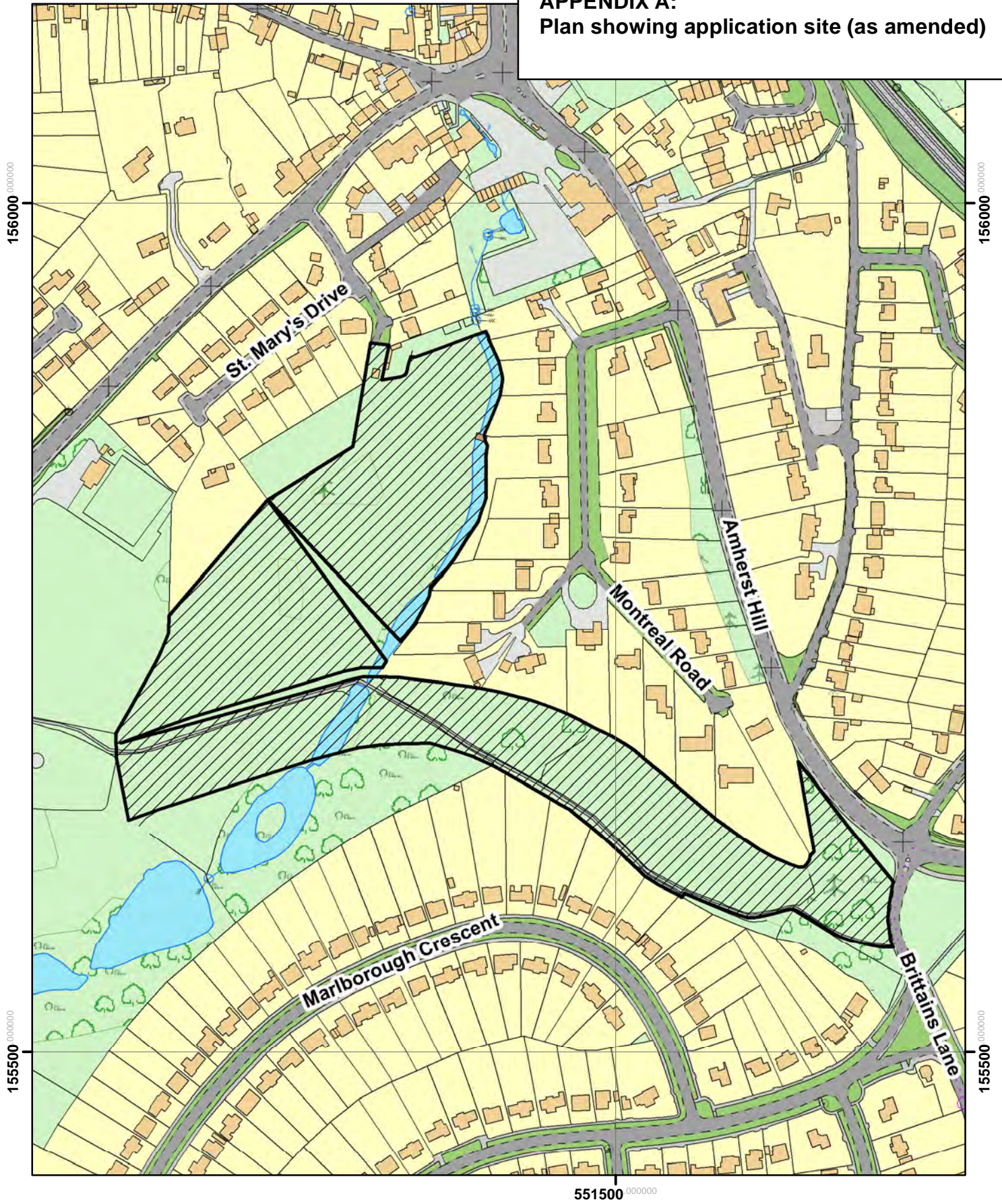
Accountable Officer: Mr. Graham Rusling – Tel: 03000 413449 or Email: graham.rusling@kent.gov.uk Case Officer: Ms. Melanie McNeir – Tel: 03000 413421 or Email: melanie.mcneir@kent.gov.uk
---

The main file is available for viewing on request at the PROW and 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 (as amended)
- APPENDIX B – Copy of application form
- APPENDIX C – Copy of the Registers of Title from Land Registry
- APPENDIX D – Aerial photograph showing the application site

**APPENDIX A:**  
**Plan showing application site (as amended)**



Scale 1:3000

**Land subject to Village Green application,  
known as Riverhead Parkland, at Riverhead**



Page 88





Commons Act 2006: section 15

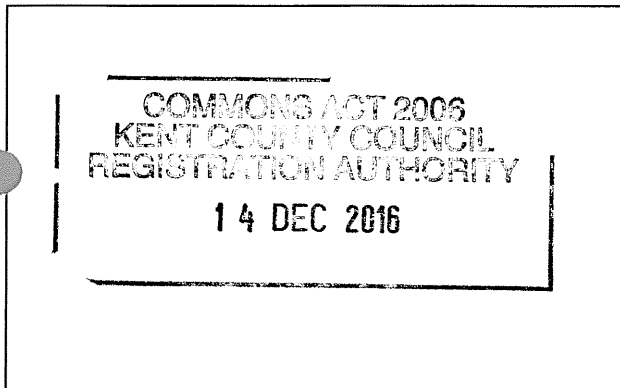
Application for the registration of land  
as a new Town or Village Green



*This section is for office use only*

Official stamp of the Registration Authority  
indicating date of receipt:

Application number:



VGA670

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: THE COMMONS REGISTRATION TEAM  
KENT COUNTY COUNCIL  
COUNTRYSIDE ACCESS SERVICE  
INVICTA HOUSE  
COUNTY HALL  
MADSTONE  
KENT ME14 1XX

**Note 2**

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

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

Name: RIVERHEAD PARISH COUNCIL

Full postal address: RIVERHEAD VILLAGE HALL  
(incl. Postcode) AMHERST HILL  
RIVERHEAD  
SEVENOAKS TN13 2EL

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

Fax number: N/A  
(incl. national dialling code)

E-mail address: [REDACTED]

**Note 3**

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

**3. Name and address of representative, if any**

Name: 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:

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: RIVERHEAD PARKLAND

Location: 11 ACRES OF LAND BETWEEN BRITAINS LANE, WORSHIPS HILL and ST MARY'S DRIVE, RIVERHEAD

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:

RIVERHEAD PARISH

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

**Note 7**

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

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

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

N/A applying 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 applying 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**

MOTION PASSED AT FULL COUNCIL MEETING  
21 NOVEMBER 2016 TO REGISTER RIVERHEAD  
PARKLAND 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**

LAND REGISTRY TITLE NUMBERS:

K 583 562

K 608 775

K 884 976

**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 OWNER OF RIVERHEAD PARKLAND, RIVERHEAD PARISH COUNCIL IS NOT AWARE OF ANY PERSON WHO WOULD CHALLENGE THE REGISTRATION.
- SO FAR, RIVERHEAD PARKLAND HAS NOT BEEN SPECIFICALLY HELD FOR THE PURPOSES OF PUBLIC RECREATION UNDER THE PUBLIC HEALTH ACT, THE OPEN SPACES ACT OR ANY OTHER ACT.
- THE AREA IS MAINTAINED BY VOLUNTEERS

**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: 12.12.16

CAROLINE PENOCUM  
PARISH CLERK

**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.*

THIS IS A PRINT OF THE VIEW OF THE REGISTER OBTAINED FROM HM LAND REGISTRY SHOWING THE ENTRIES SUBSISTING IN THE REGISTER ON 26 JAN 2017 AT 15:57:00. BUT PLEASE NOTE THAT THIS REGISTER VIEW IS NOT ADMISSIBLE IN A COURT IN THE SAME WAY AS AN OFFICIAL COPY WITHIN THE MEANING OF S.67 LAND REGISTRATION ACT 2002. UNLIKE AN OFFICIAL COPY, IT MAY NOT ENTITLE A PERSON TO BE INDEMNIFIED BY THE REGISTRAR IF HE OR SHE SUFFERS LOSS BY REASON OF A MISTAKE CONTAINED WITHIN IT. THE ENTRIES SHOWN DO NOT TAKE ACCOUNT OF ANY APPLICATIONS PENDING IN THE REGISTRY. FOR SEARCH PURPOSES THE ABOVE DATE SHOULD BE USED AS THE SEARCH FROM DATE.

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

TITLE NUMBER: K583562

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 : SEVENOAKS

- 1 The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being Land lying to the south east of St Mary's Drive, Riverhead, Sevenoaks,

## 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 (06.02.1985) PROPRIETOR: RIVERHEAD PARISH COUNCIL of 1 Worships Hill, Riverhead, Sevenoaks.
- 2 (06.02.1985) RESTRICTION:-Except under an Order of the Registrar no disposition by the proprietor of the land is to be registered unless made in accordance with the Local Government Act 1972 and the Public Health Act 1875 or some other Act or authority.

## C: Charges Register

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

- 1 A Conveyance dated 25 July 1936 made between (1) Norah Cecil Runge Peter Francis Runge and Edward Henry Herbert (Vendors) and (2) Bernard Thorpe (Purchaser) contains covenants details of which are set out in the schedule of restrictive covenants hereto.

NOTE 1:-By a Deed dated 1 October 1936 made between (1) Norah Cecil Runge Peter Francis Runge and Edward Henry Herbert (Vendors) and (2) Bernard Thorpe (Purchaser) the stipulation Nod. 3 in the third Schedule to the Conveyance dated 25 July 1936 referred to above was expressed to be varied as to part of the land in accordance with provisions details of which are set out in the Schedule hereto.

NOTE 2:-By a Deed dated 21 July 1937 made between (1) Norah Cecil Runge Peter Francis Runge and Edward Henry Herbert (Covenantees) and (2) Bernard Thorpe (Covenantor) it was provided that the words "Surveyor of the Vendors" or "Surveyor" wherever used in the above mentioned Conveyance dated 25 July 1936 or in the above-mentioned Deed dated 1 October 1936 should be read and construed as if they referred to the Covenantor or his Surveyor.

- 2 A Conveyance of the land tinted ~~Page 95~~ on the filed plan dated 29

THIS IS A PRINT OF THE VIEW OF THE REGISTER OBTAINED FROM HM LAND REGISTRY SHOWING THE ENTRIES SUBSISTING IN THE REGISTER ON 26 JAN 2017 AT 15:55:00. BUT PLEASE NOTE THAT THIS REGISTER VIEW IS NOT ADMISSIBLE IN A COURT IN THE SAME WAY AS AN OFFICIAL COPY WITHIN THE MEANING OF S.67 LAND REGISTRATION ACT 2002. UNLIKE AN OFFICIAL COPY, IT MAY NOT ENTITLE A PERSON TO BE INDEMNIFIED BY THE REGISTRAR IF HE OR SHE SUFFERS LOSS BY REASON OF A MISTAKE CONTAINED WITHIN IT. THE ENTRIES SHOWN DO NOT TAKE ACCOUNT OF ANY APPLICATIONS PENDING IN THE REGISTRY. FOR SEARCH PURPOSES THE ABOVE DATE SHOULD BE USED AS THE SEARCH FROM DATE.

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

TITLE NUMBER: K608775

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 : SEVENOAKS

- 1 The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being land lying to the south east of St Mary's Drive, Riverhead, Sevenoaks.

## 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 (01.07.1986) PROPRIETOR: RIVERHEAD PARISH COUNCIL of 1 Worships Hill, Riverhead, Sevenoaks, Kent.

## C: Charges Register

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

- 1 The roads on the land edged and numbered 14 in blue on the filed plan are subject to rights of way and the footpaths on the land edged and numbered 14 in blue on the filed plan are subject to rights of way on foot.
- 2 The land is subject to rights of drainage and to rights in respect of other services.
- 3 The land is subject to the rights of Bernard Thorpe and his successors in title owner or owners for the time being of Montreal Park to lay a nine inch sewer and storm water pipes in approximately the respective positions indicated by the blue and brown broken lines on the filed plan with a right of deviation in each case to the extent of ten feet and to enter upon the property for the purpose of repairing enlarging and renewing the said sewer and storm water pipes doing as little damage as possible and making good all damage thereby occasioned.
- 4 A Conveyance dated 25 July 1936 made between (1) Norah Cecile Runge and Others (Vendors) and (2) Bernard Thorpe (Purchaser) contains covenants details of which are set out in the schedule of restrictive covenants hereto.

By a Deed dated 1 October 1936 made between (1) Norah Cecil Runge, Peter Francis Runge and Edward Henry Herbert (Vendors) and (2) Bernard Thorpe (Purchaser) the stipulation Nod.3 in the Third Schedule to the Conveyance dated 25 July 1936 referred to above was expressed to be



THIS IS A PRINT OF THE VIEW OF THE REGISTER OBTAINED FROM HM LAND REGISTRY SHOWING THE ENTRIES SUBSISTING IN THE REGISTER ON 26 JAN 2017 AT 15:54:18. BUT PLEASE NOTE THAT THIS REGISTER VIEW IS NOT ADMISSIBLE IN A COURT IN THE SAME WAY AS AN OFFICIAL COPY WITHIN THE MEANING OF S.67 LAND REGISTRATION ACT 2002. UNLIKE AN OFFICIAL COPY, IT MAY NOT ENTITLE A PERSON TO BE INDEMNIFIED BY THE REGISTRAR IF HE OR SHE SUFFERS LOSS BY REASON OF A MISTAKE CONTAINED WITHIN IT. THE ENTRIES SHOWN DO NOT TAKE ACCOUNT OF ANY APPLICATIONS PENDING IN THE REGISTRY. FOR SEARCH PURPOSES THE ABOVE DATE SHOULD BE USED AS THE SEARCH FROM DATE.

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

TITLE NUMBER: K884976

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 : SEVENOAKS

- 1 (11.05.2005) The Freehold land shown edged with red on the plan of the above title filed at the Registry and being Land at Montreal Park, Montreal Road, Sevenoaks.
- 2 (11.05.2005) The land has the benefit of the rights reserved by but is subject to the rights granted by a Transfer of the land edged blue on the title plan dated 16 September 2004 made between (1) The Kent County Council and (2) Mark Ashby Newnham and Sian Katherine Newnham.  
*NOTE: Copy filed.*
- 3 (11.05.2005) The land has the benefit of the rights granted by but is subject to the rights reserved by the Transfer dated 3 May 2005 referred to in the Charges Register.
- 4 (11.05.2005) The Transfer dated 3 May 2005 referred to above contains a provision as to light or air and a provision excluding the operation of Section 62 of the Law of Property Act 1925 as therein mentioned.

## 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 (11.05.2005) PROPRIETOR: RIVERHEAD PARISH COUNCIL of Riverhead Parish Hall, Amherst Hill, Sevenoaks, Kent TN13 2EL.
- 2 (11.05.2005) The price stated to have been paid on 3 May 2005 was £40,000.
- 3 (11.05.2005) RESTRICTION: No disposition of the registered estate by the proprietor of the registered estate is to be registered without a certificate signed by or on behalf of Kent County Council of Sessions House, County Hall, Maidstone, Kent ME14 1XQ that the provisions of the First Schedule of the Transfer dated 3 May 2005 referred to in the Charges Register have been complied with.

## C: Charges Register

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

- 1 (11.05.2005) A Conveyance of the land in this title and other land dated 14 July 1938 made between Page 97 Bernard Thorpe (2) Burrough De

**APPENDIX D:  
Aerial photograph of the application site**

