



AGENDA

Kent County Council

REGULATION COMMITTEE MEMBER PANEL

**Wednesday, 27th February, 2019, at 10.30
am**

**Hythe Sports Pavilion, South Road, Hythe
CT21 6AR**

Ask for: **Andrew Tait**

Telephone **03000 416749**

Membership

Mr A H T Bowles (Chairman), Mr S C Manion (Chairman), Mr J M Ozog, Mr R A Pascoe and Mr P M Harman

UNRESTRICTED ITEMS

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

1. Membership and Substitutes
2. Declarations of Interest for items on the agenda
3. Application to register land known as Hythe Green at Hythe as a new Town or Village Green (Pages 3 - 24)
4. Application to register land known as Oakwood Park at Maidstone as a new Town or Village Green (Pages 25 - 34)
5. Other items which the Chairman decides are Urgent

EXEMPT ITEMS

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

**Benjamin Watts
General Counsel
Tuesday, 19 February 2019**

Application to register land known as Hythe Green at Hythe as a new Town or Village Green

A report by the PROW and Access Manager to Kent County Council's Regulation Committee Member Panel on 27th February 2019.

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

Local Member: Mr. M. Whybrow (Hythe West)

Unrestricted item

Introduction

1. The County Council has received an application to register land known as Hythe Green at Hythe as a new Town or Village Green from Mr. D. Plumstead ("the applicant") on behalf of the Shepway Environment and Community Network. The application made on 11th March 2016 was allocated the application number VGA667. 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**¹, e.g. by way of the erection of fencing or a notice (section 15(3) of the Act).
5. As a standard procedure set out in the 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

¹ Reduced from two years to one year for applications made after 1st 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, as the name suggests, of a recreation ground of 16.5 acres (6.7 hectares) in size situated immediately north of Hythe Bay Primary School, extending between its eastern boundary with St Leonard’s Road and its western boundary with St Nicholas Road in the town of Hythe. The land is an area of open space, fenced (partly by stone wall) around its perimeter with paths crossing through its centre installed by Hythe Town Council in the early 2000’s. It is predominantly grassed save for:
 - a. a fenced children’s play area to the north west;
 - b. a tarmacked area to the north which is used for public car parking (since 1966); and
 - c. an asphalt all-weather floodlit play area (installed in 2001) to the west.
7. The application site is shown in more detail on the plan at **Appendix A**.

The case

8. The application has been made on the grounds that the application site has become a Town or Village Green by virtue of the recreational use of the land by local residents for a period in excess of twenty years.
9. Included were 44 user evidence questionnaires 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.
11. The local KCC member, Martin Whybrow, wholly supports the application and believes that the site meets the statutory requirement by virtue of having been used for in excess of twenty years by a significant number of inhabitants as of right in lawful sports and pastimes. Mr Whybrow further states he has lived in Hythe for more than twenty years and this land has been in continuous use, to the best of his knowledge, for all this time and for many decades before that.

Landowner

12. The application site is owned by the Hythe Town Council (“the Town Council”) and is registered with the Land Registry under title number K945878. The Town Council inherited local governance from Hythe Borough Council as part of Local Government reorganisation in 1972.
13. The Town Council has objected to the application for the reasons set out below.

Legal tests

14. 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'?*

15. The definition of the phrase 'as of right' has been considered by the House of Lords. Following the judgement in the *Sunningwell*² case, it is considered that if a person uses the land for a required period of time without force, secrecy or permission ("*nec vi, nec clam, nec precario*"), and the landowner does not stop him or advertise the fact that he has no right to be there, then rights are acquired.
16. In this case, the application site forms part of an established recreation ground and, as such, there is no suggestion that any use of the land has been with force or in secrecy. However, in cases where land is owned by the local authority, it will be important to determine whether or not recreation use of the application site by the local inhabitants has been by virtue of any form of permission. Use which is in exercise of any permission (express or implied) will not be 'as of right'.
17. Local authorities have various powers to acquire and hold land for a number of different purposes to assist in the discharge of their statutory functions. For example, a local authority can acquire land specifically for the purposes of providing housing or constructing a new road. The mere fact that a local authority owns land therefore does not automatically mean that the local inhabitants are entitled to conduct informal recreation on it. However, local authorities do also have powers to acquire land for the purposes of public recreation, such as playing fields and parks. In those cases, the land is provided specifically for the purposes of public recreation.
18. In considering a Village Green application in relation to local authority owned land, it will therefore be important to identify the powers under which the land is held by the local authority: if the local authority already holds the land specifically for the purposes of public recreation, then use of the application site is generally considered to be by virtue of an existing permission and, hence, is not 'as of right'.
19. In this case The Town Council, as well as providing detailed reasoning for opposing the application, which is included within the main case file, has

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

summarised its objection, as being made on the basis that users of the application site have not indulged in lawful sports and pastimes as of right but instead by right, by virtue of an historical covenant. Additionally, or alternatively, the Town Council considers that by hosting events (which it has detailed and described) on the application site and asserting a right to exclude the public from the land or parts thereof, it has interrupted user of the application site and evidenced an intention not to dedicate the application site for use as a Town or Village Green.

20. The application site was originally sea, then silted up and became beach. It has historically been owned by the Town Council and its predecessors (being known then as the Corporation). In 1853, plots of land adjoining the application site were sold to several private individuals. As part of that sale individuals were subject to a Covenant ensuring observation and compliance with conditions. One such condition stated *“The piece of land marked on the plan as Archery Arboretum cricket ground and Bowling Green is reserved by the Corporation for those purposes or for other similar uses for the amusement recreation or benefit of the public I perpetuity – the same will be forthwith enclosed..... No part of that piece of land is to be hereafter applied to building purposes”*
21. By further Deed dated 1862, this condition was strengthened by specific covenant.
22. Thus, it seems clear that the application site has been historically owned by the Town Council and both it and its predecessors have ensured recreational use by the public for that time. The application site continues to be provided by the Town Council as a recreation ground, and used as such by local residents, and there is nothing to suggest that it is no longer held by the Council for such purposes.
23. In *Beresford*³, the House of Lords considered the effect of local authority ownership on an application to register land as a Town or Village Green and Lord Walker said this: *“where land is vested in a local authority on a statutory trust under section 10 of the Open Spaces Act 1906, inhabitants of the locality are beneficiaries of a statutory trust of a public nature, and it would be very difficult to regard those who use the park or other open space as trespassers... the position would be the same if there were no statutory trust in the strictest sense, but land had been appropriated for the purpose of public recreation”*.
24. More recently, in *Barkas*⁴, the High Court considered the effect of land that was laid out as a recreation ground by a local authority under section 80 of the Housing Act 1936. The judge held that the local authority had a power to provide a recreation ground and, if it did so, the public were legally entitled to use the land; it would be absurd to regard the public as trespassers on the recreation ground under those circumstances.
25. In this case, there is little doubt that the application site was originally acquired, and indeed continues to be held, by the Town Council specifically for the purposes of public recreation. Thirty-three of the witnesses attest to knowledge of a cast iron plaque erected in the northern boundary of the site which details the

³ *R(Beresford) v Sunderland City Council* [2003] UKHL 60 at paragraph 87

⁴ *R (Barkas) v North Yorkshire County Council* [2011] EWHC 3653 (Admin)

gift of the land by covenant in 1862 to the Town Council and the fact that by this gift the land is reserved for public recreation. Therefore, any recreational use of the land as has taken place has been 'by right' and not 'as of right'.

26. The fact also that the evidence presented shows the existence of relevant Byelaws is also strong evidence to support the fact the land has been held for the purposes of open space. In this respect, the Corporation of Hythe made specific Byelaws on the 18 April 1883 which were allowed (formalised) by the Local Government Board in May 1883; these Byelaws were made under Section 59 of the Hythe Improvements and Waterworks Act 1874 with respect to Public Pleasure Grounds of which grounds the green in question today forms part.

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

27. 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*'⁵.

28. 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, playing with children, kite flying, ball games, cycling, picnics and jogging.

29. As such, it would appear that the land has been used for a range of recreational activities.

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

30. 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.

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

32. In this case, the applicant has stated on the application form the locality or neighbourhood relied upon in support of the application is South Ward, Hythe and

⁵ *R v Suffolk County Council, ex parte Steed* [1995] 70 P&CR 487 at 508 and approved by Lord Hoffman in *R v. Oxfordshire County Council, ex parte Sunningwell Parish Council* [1999] 3 All ER 385

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

the applicant has attached a map to his application showing that area. A copy of this map is attached at **Appendix B**.

33. In light of the other issues arising in this case, it is not necessary to consider this point in detail, but it would not be unreasonable to assume that the relevant area in this case was the electoral South Ward of Hythe. An electoral Ward has been found acceptable in these circumstances and the majority of witnesses, who have submitted statements, appear to come from this area. In addition, the land is provided by the Town Council for its residents and all the user evidence questionnaires all come from residents of Hythe.

“a significant number”

34. The word “significant” in this context does not mean considerable or substantial: *‘a neighbourhood may have a very limited population and a significant number of the inhabitants of such a neighbourhood might not be so great as to properly be described as a considerable or a substantial number... what matters is that the number of people using the land in question has to be sufficient to indicate that the land is in general use by the community for informal recreation rather than occasional use by individuals as trespassers’*⁷. Thus, 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.

35. In this case, the evidence of use summarised at **Appendix C** indicates that the land has been in regular usage for recreational purposes. 35 of the users attest to having used the land on a daily basis, with several others (including those whose properties overlook the land) referring to having observed use by others on a daily basis. Statements such as *‘there was always someone else there when we visited’* appear on a number of occasions within the user evidence questionnaires and the general impression from the evidence as a whole is that the land has been used in a manner entirely consistent with its status as a recreation ground.

36. As such, there is little doubt that the land has been used by a significant number of the residents from within Hythe and/or the electoral Ward of South Hythe.

(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?

37. 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.

38. 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?

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

39. 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 2017; the relevant twenty-year period ("the material period") is calculated retrospectively from this date and is therefore 1996 to 2016.

40. 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

41. In order for the application to succeed, all five of the legal tests set out above must be met; if one test fails, then the application as whole falls to be rejected.

42. There appears to be no dispute that the application site has been used for recreational purposes, without challenge, for a period in excess of twenty years continuing until (and beyond) the date of the application.

43. However, the crux of the matter is whether that use amounted to trespass by local residents (i.e. 'as of right') or whether it took place in exercise of an established right (i.e. 'by right'); the distinction between the two is critical to the success or otherwise of the Village Green application. In this case, the evidence very much suggests that the application site is under the ownership of Hythe Town Council and is reserved for the purpose of public open space. Deeds of 1853 and 1862 both refer to the land being reserved for public recreation and a relevant covenant (1862) was provided to ensure the provision of recreational use by the landowner. The current Registered Title shows that Hythe Town Council owns the land (although there is no current reference to the covenant within that document). The provision of Byelaws is further strong evidence to prove that the land has been held for the purpose of public open space as the byelaws would only be able to apply against and be enforceable in relation to the public open space land.

44. That being the case, regardless of whether any, or even all, of the other relevant tests are met, the fact that the application site appears to be held for the purposes of public recreation, both during the material period and for that matter for a very long time preceding that, presents a knock-out blow to the possibility of registering the land as a Village Green.

Recommendation

45. I recommend that the applicant be informed that the application to register the land known as Hythe Green as a Town or Village Green has not been accepted.

Accountable Officer:

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

Case Officer:

Mr. Chris Wade – Tel: 03000 413421 or Email: chris.wade@kent.gov.uk

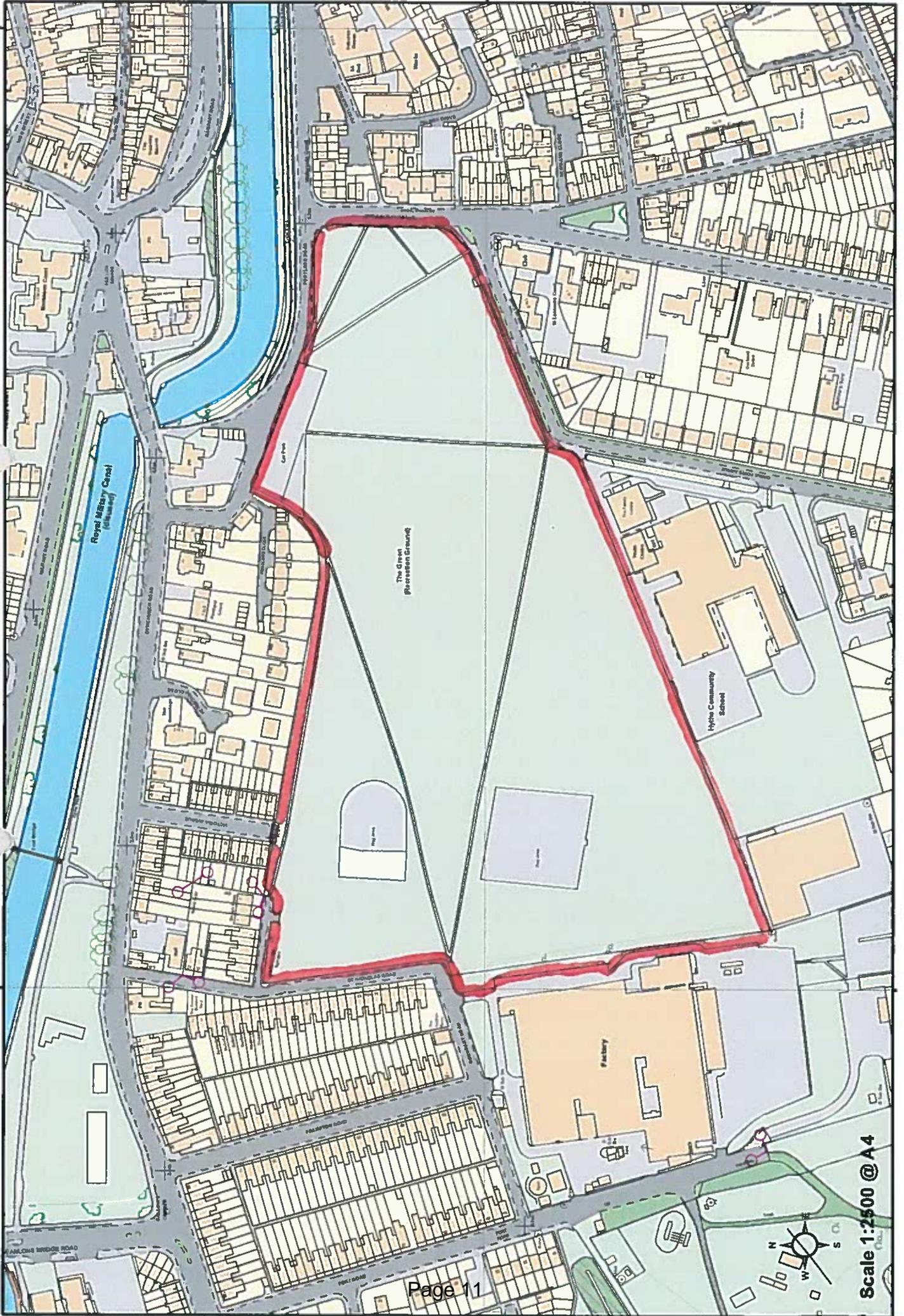
The main file is available for viewing on request at the PROW and Access Service, Invicta House, County Hall, Maidstone. Please contact the Case Officer for further details.

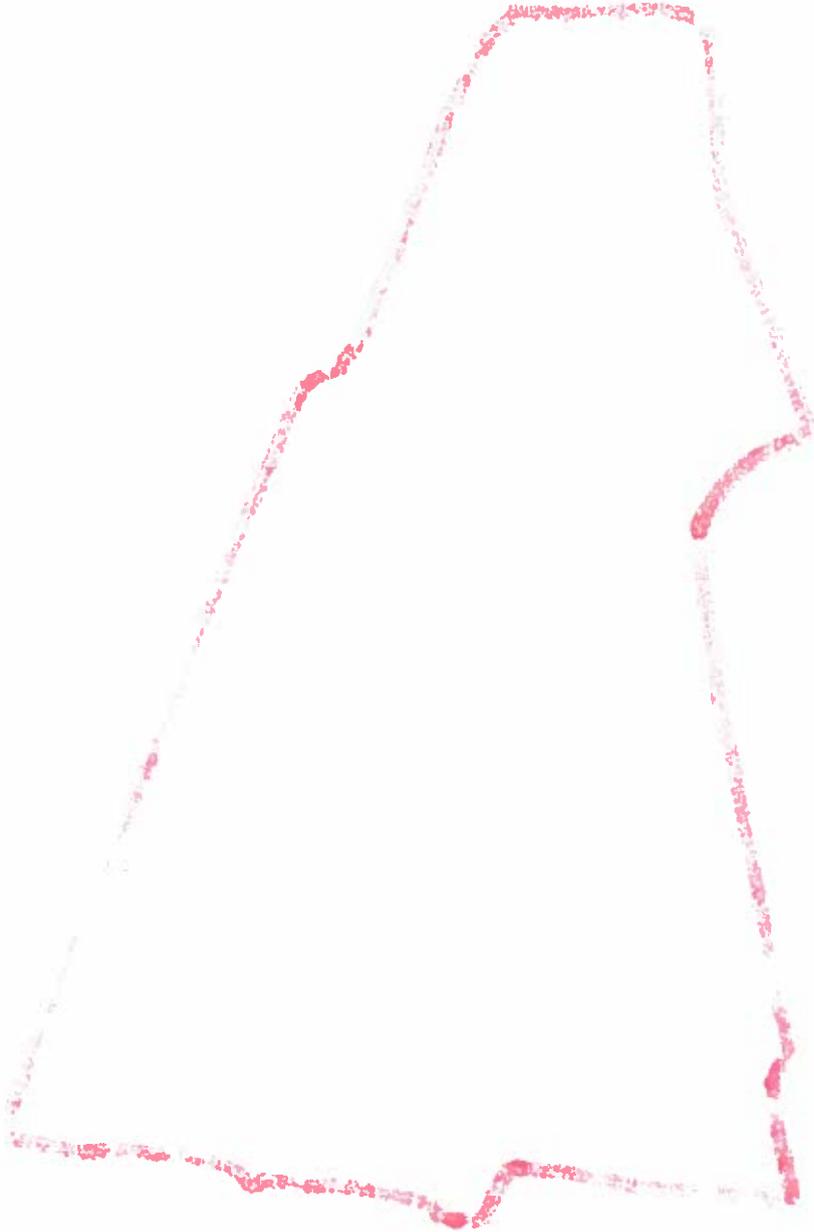
Background documents

APPENDIX A – Plan showing application site

APPENDIX B – Copy of application form

APPENDIX C – Table summarising user evidence





Commons Act 2006: section 15

Application for the registration of a town or village green

This section is for office use only

Official stamp ^a

Application number

<p>COMMONS ACT 2006 KENT COUNTY COUNCIL REGISTRATION AUTHORITY</p> <p>11 MAR 2016</p>

<p>VG667</p>

VG number allocated at registration

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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:

<p>KENT COUNTY COUNCIL</p>

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:

DAVID PLUMSTEAD
THE BITERWAY ENVIRONMENT AND COMMUNITY NETWORK

Postal address:

[Redacted]
[Redacted]
KENT
Postcode [Redacted]

Telephone number:

[Redacted]

Fax number:

[Redacted]

E-mail address:

[Redacted]

3. Name and address of representative, if any

Name:

[Redacted]

Firm:

[Redacted]

Postal address:

[Redacted]
Postcode

Telephone number:

[Redacted]

Fax number:

[Redacted]

E-mail address:

[Redacted]

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:

HYTHE GREEN

Location:

HYTHE 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:

SOUTH WARD
HYTHE
KENT

Tick here if a map is attached:

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

The land having been used by the residents of the locality for lawful sports and pastimes for over one hundred and fifty years

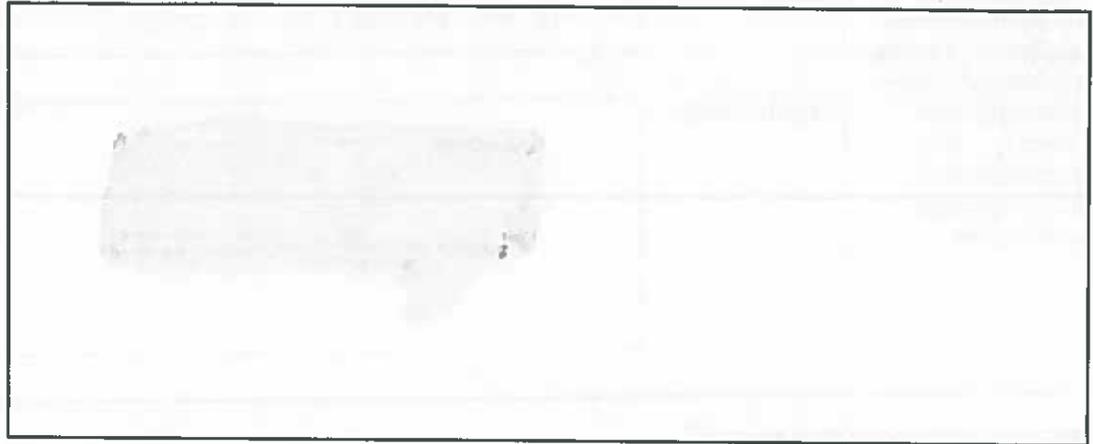
8. Name and address of every person whom the applicant believes to be an owner, lessee, proprietor of any "relevant charge", tenant or occupier of any part of the land claimed to be a town or village green

HYTHE TOWN COUNCIL

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

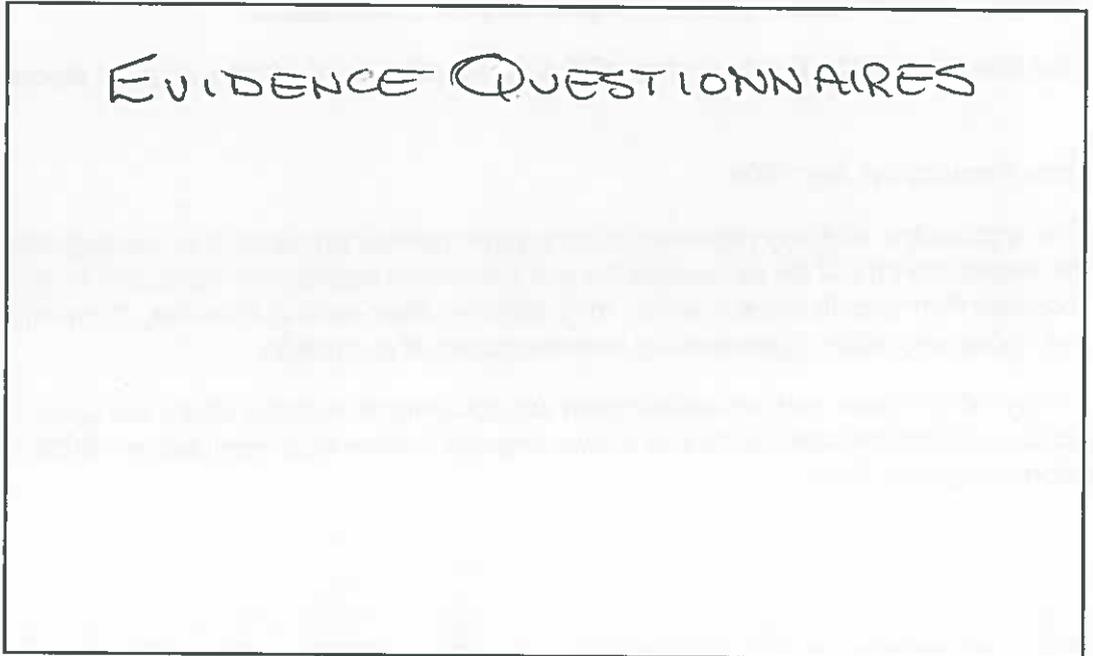


Note 10

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

EVIDENCE QUESTIONNAIRES

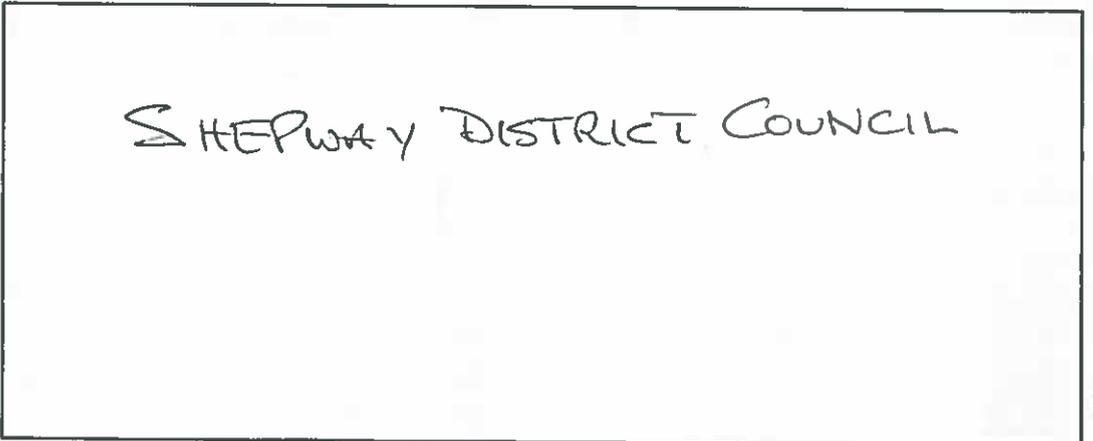


Note 11

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

SHEPWAY DISTRICT COUNCIL



Note 12

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

12. Signature

Date:

11th MARCH 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.

User Evidence summary

Name	Period of use	Frequency of use	Type of use	Comments
R.F. Alder	1981 -present (34 years)	Daily	Walking, attending events held on the land, dog walking, playing with children	I believe the land should be left as a public amenity area to all residents. If developed on it will create traffic chaos in an already difficult area for traffic. Development will take away yet another green space for our children and future generations.
Mrs Frances Burgess	1952 – present (63 years)	Four days a week	Children's climbing frame, walking, cycling, kite flying, playing with grandchildren, go to funfairs, circuses during Hythe Festival week	Open green space for children to play on. People come and have picnics.
Nigel Ian Carey	1978 – present (30 years)	Daily	Football, rugby, running, cycling, dog walking, boot fairs, fun fairs, dog shows, charity fund raising events	This land is worth a lot to the local people for its wide-open space. Boot fairs, football, rugby, circuses, fairground, charity uses. Mother and Baby to enjoy.
Peter John Cloake	1955 – present (60 years)	Daily	Exercise, cycling, football, playing with children	Since I was born I have lived in Hythe except for four years. The green has always been a recreational area for the people of Hythe and visitors. It has been used for circuses, funfairs and different good cause fund raising events. There have been several attempts to build on this land, there has been several challenges and no building except for a car-park. It would be the nail in the coffin if the swimming pool is built then the council want to build more, and no recreational space will remain. Also, access will be a problem!
Mrs Josephine Coleman	1960 – present (59 years)	Daily	Bonfire night, football, tennis, golf, remote cars, fair, circus, big foot, stunt riders, kite flying, grass fights, picnic's, daisy chaining, rounders, skipping, walking, boot fairs, Hythe festival.	I was born and bred in Hythe and the green has always been in my life. It has part of my growing up with my sisters and cousin, from grass fights to climbing the bushes, to playing on the 'old' swings. Bonfire, collecting branches, anything that would burn. And now I go to the Green with my grandchildren to use the park, play sports and games. This should be kept as the Green for future generations.
Mr B J Cox	2011 – present (4 years)	Daily	Walking, Boot fairs, Circus, Funfair etc, Children play area, basketball area, flying kites	This land is protected by deed of covenant dating back to 12 February 1862. Even if you should manipulate your way around this, it would still be immoral, and you could no longer any covenant good or bad.
Mrs Kay Cox	2011 – present (4 years)	Daily	Running, Children's play area, basketball court, kite flying, picnics, football with children, enjoy the green quietly, boot fairs, circus, monster truck shows, dog training days, fun fairs.	This open space is a focal point for the town of Hythe. It is used by young and old alike. It would be shameful and immoral to build on it. It is protected by deed of covenant dating back to Feb 1862.
Martin Astley Crosby – Emery	1950 – present (65 years)	Daily	Football, cricket, boot fairs, fairs, circus, running club, fun run	This land is well used by the community and is highly valued! Used by lots of different organisations and would be a terrible loss should it be built on!! It's our Green!
Richard Down	1964 – present	Daily		The 'Green' was given as a piece of land to the people of Hythe, to

(51 years)				be enjoyed as such. In this way the land is totally flexible for use as indicated on page 3, 'use of the land by other people' it is important that it remains so not just because this was the original intention of the gift, but also because this area of Hythe is becoming increasingly built up and breathing spaces such as this are more vital for the decreasing areas available to wildlife. Before the intensive mowing used now this area sported many wild meadow like flowers, which could be encouraged in some areas again, to the advantage of all.
Veronica Down	1986 – present (29 years)	Sometimes daily, sometimes weekly	Walking, picking fruit, going to boot fair & fairs, playing with family.	It would be a great loss if this open space was no longer freely accessible to the residents & visitors of Hythe. This space is well used and plays an important part in many people's lives. It would be a great insult to the Hurton family who gave this ground to the people of Hythe to be enjoyed and not to be built on.
Mrs Betty M Garfield	1990 – present (25 years)	Daily (3-4 times)	Dog Walking, crossing to go shopping, taking grandchildren and great grandchildren to the play park. Visiting the boot fairs, circus, fun fair and Hythe festival activities.	This is one of the few open spaces for people to enjoy left. Our Children deserve for it to be kept them. It is their inheritance.
Celia German	2001 – present (14 years)	Daily	Walking, running, cycling, taking grandchildren to the park, teaching grandchildren to ride their bikes, made daisy chains and explored hedgerow. Attended boot fairs, circuses, fairs and other community events.	Hythe Green is a vital, uncontaminated green space that is used constantly by the people of Hythe for Social and recreational purposes. It is FREE to all people of all ages and allows our children an opportunity to explore and play creatively with minimal adult supervision – a vital activity for child development, mental health and wellbeing. It also allows people of all ages to meet, socialise and interact freely. I am very concerned that the character and nature will be fundamentally changed if part of it is built on and that by establishing permanent commercial use will exclude our less advantaged citizens.
Geoffrey T German	2001 – present (14 years)	Daily	Walking, football, talking my children to the playground, basketball, birdwatching, visiting boot fairs or the circus	The Green is vital for Hythe. It is the heart and lungs of this town. It is a social space that people of all ages use. A community space for boot fairs, circuses, Folkestone rugby training area. It is uncontaminated open and green.
Mrs T A Graham	65 Years	Daily	Dog walking, play area, kite flying and cycling	I have used an enjoyed using the Green all my life. I wish to continue to do so for the rest of my life.
Mrs Barbara Hatton	62 years	Daily	Playing with children and grandchildren, rounders and other games	Boot fairs, fairs, dogs show. If you look at night-time boys are playing football. It is in use all the time from dog walkers.
Robert Jacques-Bartlett	1995 – present (20 years)	Daily	Dog walking, playing and walking with Grandchildren	
Marilyn Jeffrey	1951 – present	Daily	Sports, my children playing, football, tennis,	I feel very passionate about our Green I've had this facility all my

	(64 years)		golf, remote cars, swings, fairs, circuses, games, picnics, walking to school and work, Hythe festival, camping	life, such an open space that is free to Hythe. Since I can remember past residence of Hythe always told us look after it, we need more open space now than we did 50 years ago as Hythe has been so built up in the last 10 years and new plans for future, I've used the Green since birth also my children and now my grandchildren so I feel very strong that this should be kept for future generations.
Sean Peter Jeffrey	1986 – present (29 years)	Daily	Walking the dog, football, cricket, rounders, sunbathing, bonfire nights, firework displays, kite flying	Hythe Green has been a major part of my life and my family, this should remain open land for many more generations to enjoy as we have over so many users. Please please consider thus application form to prevent any building on 'our' the people of Hythe's green.
Stuart Jeffrey	31 years	Daily	Walking the dog, playing football, cricket, flying kites.	I feel disgusted that Shepway District Council want to build on the Green. It has been a major part of my life growing from playing sports when I was a kid to now walking my dog and now taking my nephew and nieces over there, so they can play their sports.
Kelly A.E Kelly	1995 – present (20 years)	Daily	Walking, taking children and grandchildren to the playground, family picnics, dog walking, dog shows, funfairs, circuses, big trucks, Hythe festival fairs, socialising	Circus, funfairs, boot fairs, dog shows, Hythe Festival, fun run, big trucks, Hythe Festival, fun run, big trucks, travelling theatres, children playground, cycling, football.
Peter Knight	1980 – present (35 years)	Daily	Cricket, football, boot fairs, firework displays	As a keen sports person before moving to Hythe the thing that attracts me is the open spaces. With the amount of people who are obese now, I feel so strongly that we should keep Green open for exercise and walking. I feel very strongly against this proposal, this should remain the Green – free open space.
Patricia F Lancaster	40 years approx.	Three times daily	Walk around, sit on seat in summer, attend boot fairs, look around boot fairs.	This is the place you can walk anyway from cars etc for one you feel freedom without thinking about traffic. People in wheelchairs also use it daily. There is hardly anywhere left that's free and green. Kent is supposed to be the garden of England I do not see that anymore. The grass is kept lovely by the council, don't see why it should allowed to change. There are plenty of clubs here for people who can afford it, what about those who are poor, or don't they count?
Dawn Lloyd	1975 – present (41 years)	Occasionally	Walking for exercise and relaxation. Together with neighbours have helped to clear the undergrowth on the south side of the boundary wall separating houses 3, 4 & 5 hermitage close and the Green.	I believe that it is essential that open spaces are retained and maintained for the benefit of the community.
Mr R J Marie	1976 – present (39 years)	Daily	Dog walking, cycling, access to other parts of Hythe, boot fairs, fun fairs, circus, fireworks, dog shows, Hythe festival week	I strongly object to a leisure centre being built on the Hythe Green, when there is a suitable land at Nicholls quarry.

D E Muers	1963 – present (50 years)	Daily	Attended dog shows, circus, fairs, boor fairs, school fairs, Army TA shows, summer fairs and Hythe Bay school	Dogs shows, boot fairs, circus, fairs. The Folkestone rugby club when own ground is flooded. This ground is an asset to the people of Hythe. I do not wish the land to be built on.
Mrs Carol Parker	42 years	Daily	Walking to school, walking children to school, dog walking, parks for myself, children and now my grandchildren. Rounders with family gatherings, picnics, kit flying, my children learning to ride their bikes, walking safely to the town for shopping, sitting just for relaxing. Dog walking	The community space will be lost if the residents of Hythe will lose a lot of history, especially memories from old to young. The space is of high value for keeping our community as a community and this building will break our community and spirits. We need the Hythe Green especially for the young, for gatherings for exercise and friendship.
Elizabeth Porter	2008 – present (7 years)	Daily	Dog walking	It would be a great shame if used for building a swimming pool etc. We are gradually losing all our open green places there's too much building going on in Hythe as it is.
Howard Prest	42 years	Weekly	Dog walking, playing games with my children i.e. football and cricket, kite flying	I have enjoyed unimpeded access to the whole Green and wish it to remain so.
Mandy Ricket	1952 – present (56 years)	Daily	Walking, dog walking, dog shows, taking grand children to playground, boot fairs, Hythe Festival, circus, fun fairs, big trucks, used to have fireworks	Played as a child. My children played, my grandchildren now play. Walked to children to school over the Green. Fun fairs, boot fairs, dog shows, dog walking, socialising.
Mrs Linda Rudd	2003 – present (12 years)	Daily	Walking across Green to reach different parts of Hythe i.e. High Street, Sea front etc. Dog walking meeting other dog owners. Grandchildren constantly use the Green to play football, cricket, kit flying, picnics. Also use the children's play area and it is a safe area for small children to cycle or use scooters under supervision.	'The Green' as it is known is a very special open green space for the benefit of all local residents. It is used daily by both young and old alike young children walking to local school, people walking their dogs & meeting up with fellow dog walker, people being active. The main reason we bought out house was that it overlooked 'the Green' we therefore are able to see how important this land is to the local community. Hythe is a very special are and allowing it to gain a village green status will truly enhance Hythe.
Mr Michael Rudd	2003 – present (12 years)	Daily	Walking, dog walking, gaining access to other area of Hythe town by the use of various footpaths across the green, playing games including football, basketball, cricket, kite flying, games and children's play area with my grandchildren	The Green in Hythe has been used by local residents and day trippers for many years, this for many reasons it is an untouched open space for everyone to enjoy at leisure. It is also covered by a long-standing covenant and as such has never been built on and this must remain the same for years to come for the sake of our children's children.
Eric R Scott	1974 – present (41 years)	Weekly	Dog walking, ball games with children, kite flying. Have also cleared rubbish and overgrown tree suckers adjacent to our property.	The Green is an open space used by residents and visitors of all ages for recreational purposes in line with the terms of the deed if covenant, the covenant precludes any part of it being used for building purposes.
Lynne Sims	1965 – present	Daily	Dog walking, grandchildren to use play park,	As a resident of Hythe the Green has been a joy for every man,

	(50 years)		boot fairs, dog shows, Hythe Festival.	woman and child. It is safe to allow your children to play. The community as a whole know where the safe havens are and the green in one. There are a very few areas where this can be said.
Mrs Christine Ann Smith	1973 – present (42 years)	Weekly	Used for walking my dog, supporting boot fairs and the occasional dog shows and other charity events.	
Jill Stewart	1975 – present (40 years)	Daily	Dog walking, picnic, outdoor sports, remote controlled cars, sunbathing.	The Green is for the people of Hythe to use not for building on. We are losing our open spaces & feel this particular area of Hythe should be left as the Green as it was intended to by the covenant. Once you build on it you will build all over it and ruin the lovely open space.
John Stewart	1964 – present (56 years)	Daily	Swings, slides, fun fairs, circuses, boot fairs, grass fights, dog walking, kite flying, cricket, rounders, walking to work, walking to bus/town/shops/ rotary club/ running club.	Ever since I was able to walk I have been using this site, from swings to slides, grass fights, bonfire parties. I have worked at Portex/ Smiths Medical since 1977 and have used this access every day. My work place has changed to Ashford, but I still use this route daily as I do not drive. I walk/ bus everywhere – this is my main route – be it to work/doctors/ shopping or social. I am appalled at this proposal and feel very strongly against it – the thought of manoeuvring around traffic is frightening.
Lind Ruth Stiling	2006 – present (9 years)	Daily	Dog walking, walking into town/ bus stop, taking grandchild to circus and fair, visiting boor fairs and playing ball games with family.	I do not believe this land should be developed. In the years since I have lived here there has been considerable development in the land between Twiss Road and St Leonards Road and south road to the canal with most of the land being used for organised sports at the weekends and a lot of car used on the canal bank. I also consider it an insult to the memory of the benefactor who left this land in good faith to the people of Hythe.
John Stiling	2006- present (9 years)	Daily	Dog walking, visiting circus, fair etc	There is already too much development in Hythe. Building on the Green would result in the loss of Hythe's unique attraction.
Mrs Jillian Summerfield	2005 – present (10 years)	Daily	Walking dogs, walk alone, play with my children & family, circus, fairs, boot fairs. Sit on benches and chat with friends, enjoy the green peace there.	Lovely Hythe Green is effectively our village green already – much loved and valued by resident's past, present and future. Protected by statute – the benefactors state clearly "this land is reserved for public recreation and no part of it is to be applied for building purposes" our town council and district council with to override the terms of the request. Granting it official village green status will protect it as it deserves to be!
Mr Ashley Tanton	1986 – present (29 years)	Weekly	Dog walking, solo exercise, football, cricket (all informal sports)	I appreciate that the land is available to the people of Hythe and the surrounds in an entirely unimpeded manner and without cost. The land is a valuable amenity space which offers opportunities for free

Susan Terry	2007 – present (8 years)	Occasionally	Walking	leisure.
Reginald Harry Timblich	1946 – present (43 years ago)	Weekly	Walking dog, playing with grandchildren, picnics	Available space for fresh air, away from traffic on A259.
David John Tunnage	1948 – present (65 years)	Daily	Some sports and leisure walks.	I firmly believe the Green at Hythe is much loved and used often by the local people and should be left for the future generations to enjoy as has always been.
Maureen Young	1960 – present (55 years)	Weekly	Recreational walking, attending boot fairs.	The Green is a vital recreation and access area for the local community.

Application to register land known as Oakwood Park at Maidstone as a new Town or Village Green

A report by the PROW and Access Service Manager to Kent County Council's Regulation Committee Member Panel on 27th February 2019

Recommendation: I recommend that the County Council refers the application to the Planning Inspectorate for determination.

Local Members: Mr. R. Bird and Mr. D. Daley (Maidstone Central) Unrestricted item

Introduction

1. The County Council has received an application to register land known as Oakwood Park at Maidstone as a new Town or Village Green from Mr. I. Cooper, Mr. P. Harper, Mrs. M. Lakeland, Mr. J. Lakeland and Mrs. J. Kehily ("the applicants"). The application, received on 25th January 2017, was allocated the application number VGA671. A plan of the site is shown at **Appendix A** to this report.
2. Members should be aware from the outset that the purpose of this report is not to determine this application, but rather to consider whether the County Council is in a position to determine this application, for the reasons which are set out in more detail below.

Procedure

3. The application has been made under section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2014.
4. 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;*
5. 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**¹, e.g. by way of the erection of fencing or a notice (section 15(3) of the Act).
6. 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

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

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

7. The area of land subject to this application (“the application site”) comprises playing fields of approximately 32 acres (13 hectares) in size, situated between Queen’s Road and Oakwood Road in the town of Maidstone. The application site is shown in more detail on the plan at **Appendix A**.
8. The application site has recently been secured by way of palisade fencing along its southern and western boundaries, thereby precluding public access (the northern and eastern boundaries already being secured by way of a stone wall and neighbouring properties). Prior to the erection of the palisade fencing, access to the site was freely available from the footway of the road crossing the Oakwood Park site.
9. Members may be wondering whether the nature of the application, as a school playing field, makes it capable of registration as a Village Green. There is some case law in this regard, notably in *R (Cotham School) v Bristol City Council* [2018] EWHC 1022 in which Judge Sir Wyn Williams decided that registration of the land as a Town or Village Green would not have precluded the carrying out of the School’s duties to provide suitable outdoor space for P.E, albeit more inconveniently. The judge rejected the contention that registration of the land was precluded by virtue of the fact that it was a school playing field (on the basis that there was no statutory incompatibility between the two uses).

The case

10. 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.
11. Included with the application were 32 user evidence questionnaires and statements from local residents detailing their use of the application site over a period in excess of twenty years, as well as photographs of recreational activities taking place on the site. A further 61 evidence questionnaires were subsequently submitted in support of the application. The evidence refers to use of the application site for a number of recreational activities, including dog walking, blackberrying, photography and nature observation.

Consultations

12. Consultations have been carried out as required and the following responses have been received.
13. Twenty-eight local residents wrote in support of the application, with many adding to the evidence of use already submitted in support and/or confirming wider community use of it for recreational purposes over many years.

14. Three members of staff from the St. Augustine Academy (including the Principal) and local Member Mr. D. Daley wrote in objection to the application

Landowners

15. The western part of the application site is owned by the Kent County Council (as registered with the Land Registry under title number K942821) and leased to the St. Augustine Academy. The eastern part of the application site is owned by the Oakwood Park Grammar School (under title number K982273), the land having been transferred to it in 2011 by Kent County Council.

16. An objection to the application has been received from Invicta Law, representing all three of the above organisations (“the objectors”), and is made on the grounds summarised below:

- The material provided by the applicants is nowhere near sufficient to demonstrate that the relevant legal tests have been met;
- Access to the application site was via limited points which would necessarily have restricted the walking routes used on site to linear ‘rights of way’ type of use (as opposed to a wider right to recreate on the land);
- Any recreational use has predominantly been concentrated around the perimeter of the application site and has not taken place on the parts of the application site laid out as sports pitches;
- The majority of those using the site live in the immediate vicinity of it such that use has not taken place by a significant number of the inhabitants of Maidstone and, in any event, Maidstone is not a qualifying locality;
- There has not been a sufficient quantity or quality of recreational use to justify registration;
- Use of the application site has not been ‘as of right’ due to the existence of signs stating that the land is private property during the relevant period, and some use has been by virtue of implied permission (e.g. by school pupils outside of school hours);
- Village Green status is incompatible with the use of the application site as a school playing field (and would prevent it from being used as such); and
- The construction of a car park on an area excluded from the application site, which was subject to planning permission, means that the whole of the application site ought to be considered as being affected by a ‘trigger event’ for the purposes of Schedule 1A of the Commons Act 2006.

Applicant’s response to the objection

17. As required by Regulation 25(3) of the 2014 Regulations, copies of all of the representations received were sent to the applicant for comment.

18. The applicant’s position is:

- The application is soundly based on the requirements of the legislation;
- There is substantial evidence to support the application; sufficient for a registration to be made and accepted;
- The whole of the application site has been used for well over a twenty-year period for lawful sports and pastimes as shown by the submitted evidence;
- The locality is amended to Fant and Heath Wards of Maidstone Borough Council. There is considerable evidence from people within that area and areas immediately adjoining;

- When reading all of the evidence in support of the application, it is clear it covers quality and quantity in respect of lawful sports and pastimes;
- The use of the site over a long period back to the 1960's and beyond has been continually "as of right" and in no way can it be considered contentious. Nobody has ever been asked to leave the site or challenged on their use of the site; and
- There is nothing in the fact that the land is owned by the Oakwood Park Grammar School and Kent County Council, leased to St Augustine Academy which precludes a valid application for a TVG application under Section 15 of The Commons Act 2006.

Legal tests and discussion

19. The responsibility for determining applications under section 15 of the Commons Act 2006 normally rests with the County Council in its capacity as the Commons Registration Authority. However, more recently, it has been recognised that there may be circumstances in which it is not appropriate for the County Council to determine an application. Under those circumstances, the application must be referred to the Planning Inspectorate who will take on the responsibility for considering the application (including by the holding of a Public Inquiry where necessary) and issuing a decision.
20. The circumstances referred to above are set out in Regulation 26(3) of the Commons Registration (England) Regulations 2014 which states that an application must be referred to the Planning Inspectorate in cases where:
'the registration authority has an interest in the outcome of the application or proposal such that there is unlikely to be confidence in the authority's ability impartially to determine it...'
21. Critically, it is to be noted that the requirement to refer the application to the Planning Inspectorate is not a discretionary one and the County Council is under a legal duty to refer an application if the 'confidence test' (set out above) is met; Regulation 26(2) states that *'in the cases specified in paragraphs (3) [i.e. the confidence test] and (4), a registration authority **must** refer to the Planning Inspectorate for determination by it – (a) any application made to the registration authority in accordance with these Regulations...'* (emphasis added).
22. DEFRA's guidance² to Commons Registration Authorities in this respect states that:
'the registration authority should not refer a case simply because it has an interest in the outcome, but where the interest would seriously call into question the registration authority's ability to determine it impartially. An application relating to land owned by the registration authority should not qualify as the authority's role is to determine the application in accordance with the objective criteria in the 2006 Act. Nor should a registration authority refer a case simply because it (whether an officer, Member, committee or executive) has discharged a function or expressed views on a related matter in a different context. For

² Available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/477907/cra-guidance-201504.pdf

example, an application to register land as a new village green where the registration authority grants planning permission for development of the land or expressed support for the development. If the registration authority owns the land, there might not be confidence in its ability to impartially determine the application, but if an independent inspector is appointed to determine the application then the decision will be impartial'.

23. It is not the first time that such an issue has arisen in this county. On 22nd February 2011, the Regulation Committee Member Panel considered a case involving land known as The Long Field at Cranbrook where the application site was owned by the County Council and had been the subject of a planning application for the construction of a new care home. At the time of the meeting, the planning application had been withdrawn pending the outcome of the Village Green application, but members nonetheless agreed, on the basis of the County Council's significant interest in the outcome of that case, that the Village Green application ought to be referred to the Planning Inspectorate for determination.
24. Similarly, on 5th March 2013, the Regulation Committee Member Panel considered an application in respect of a piece of land at Bishops Green in Ashford, where the County Council (as landowner) had applied for residential development of the site. Once again, Members agreed that the County Council's significant interest in the outcome of the application made it appropriate for it to be referred to the Planning Inspectorate for determination.
25. In the current case, although no planning permission has been sought to develop the land, the erection of the fencing has, in practice, the same effect as any proposal to develop the land – i.e. to permanently exclude recreational users from the application site. The exclusion of the public benefits the County Council's use of the land for other purposes and there is therefore a clear conflict between the County Council's position as landowner and its position as the Commons Registration Authority. The fact that the local County Councillor has strongly opposed the application also adds weight to the argument that any determination by the County Council could not be viewed as entirely impartial.
26. There is an additional issue in that the objectors (including the County Council's Property Team) have been actively engaging with the applicants in an effort to seek an alternative arrangement with regard to access; the fact that these discussions have been taking place very much suggest that it is in the interests of the County Council for the Village Green application not to succeed.
27. The difficulty for the County Council in its capacity as Commons Registration Authority is that even if the applicants were to agree to withdraw the application, there is no absolute right to do so and the Regulations do not explicitly accommodate such a scenario. Based upon previous advice, the County Council would need to advertise the proposed withdrawal of the application and Members would then be faced with a difficult decision of whether or not to allow the withdrawal of an application which, if withdrawn, would be substantially to the County Council's advantage. It would arguably be very difficult for any decision by the County Council to withdraw an application

in which it had a vested interest to be viewed externally as an entirely neutral and unbiased one (as would otherwise be the case if the County Council had no interest in the land in question).

28. Finally, there is some precedent in this regard, notably in the case of land known as Moorside Fields at Lancaster³. In that case, Lancashire County Council, in its capacity as landowner, had opposed an application to register land comprising a school playing field and three adjacent plots of land as a Village Green. Part of the Village Green application site was proposed for use as an extension to the school building. The Village Green application was referred to the Planning Inspectorate, who went on to determine the application; by inference, the Inspectorate agreed that there was a sufficiently serious conflict between the Authority's function as the Commons Registration Authority and its capacity as landowner (and indeed Local Education Authority).

29. As is noted in paragraph 24 above, whilst no imminent development appears to be proposed on the application site, the erection of the fencing (at no doubt substantial cost to the landowner) has the same effect as developing the land in that it results in the permanent exclusion of public access. Any discussions with a view to restoring such access merely add weight to the proposition that the County Council could not be seen as determining the application in the entirely impartial manner required.

Conclusion

30. The options available to the Member Panel at this stage are as follows:

- To refer the matter to the Planning Inspectorate for determination (on the basis of the conflict of interest); or
- To decide that the application should be determined by the County Council in due course.

31. The Officer's firm view is that, considering the comments expressed above, it would not be appropriate under the circumstances for this application to be determined by the County Council. Indeed, the circumstances of this application appear to fall squarely within the provisions of Regulation 26(3), where the Commons Registration Authority has a significant interest in the outcome of the application, and the correct course of action in this case would be for the application to be referred to the Planning Inspectorate for determination.

32. If, however, Members are not minded to agree with the Officer's recommendation, then a further report will be put to a future meeting of the Regulation Committee Member Panel with a view to the determination of the application.

Recommendation

33. I recommend that the County Council refers the application to the Planning Inspectorate for determination.

³ *Lancashire County Council, R (on the application of) v Secretary of State for Environment, Food and Rural Affairs & Anor* [2018] EWCA Civ 721

Accountable Officer:

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

Case Officer:

Mr Chris Wade – Tel: 03000 413475 or Email: chris.wade@kent.gov.uk

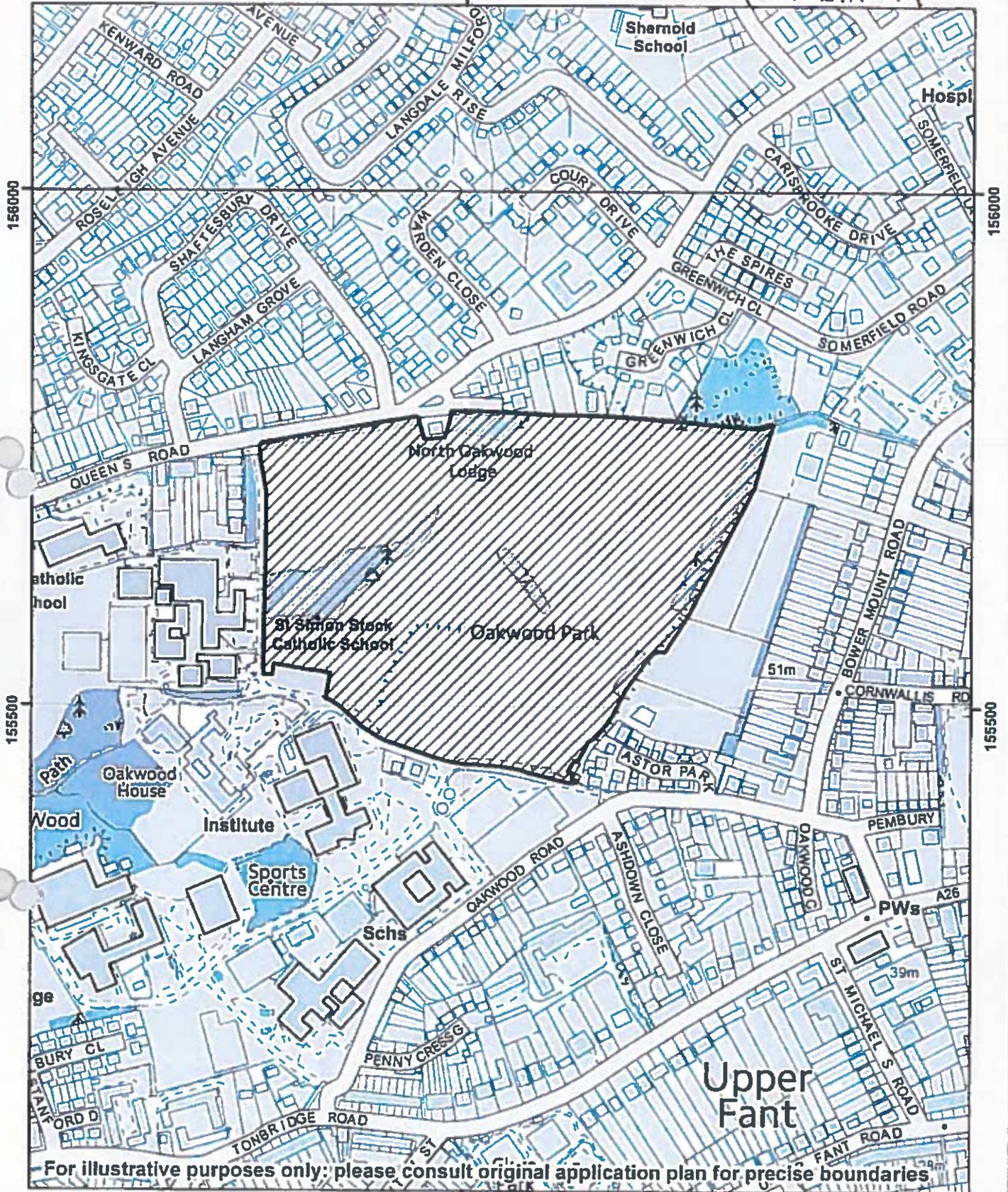
The main file is available for viewing on request at the PROW and Access Service based at Invicta House, County Hall, Maidstone. Please contact the case officer for further details.

Appendices

APPENDIX A – Plan showing application site

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574500



For illustrative purposes only: please consult original application plan for precise boundaries

574500



Scale 1:5000

Land subject to Village Green application, known as Oakwood Park at Maidstone



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