AGENDA

Kent County Council

REGULATION COMMITTEE MEMBER PANEL

Wednesday, 24th February, 2021, at 10.00 am
Online

Ask for: **Andrew Tait**

Telephone **03000 416749**

Membership

Mr A H T Bowles (Chairman), Mr P M Harman, Mr D Murphy, Mr J M Ozog and Mr R A Pascoe

In response to COVID-19, the Government has legislated to permit remote attendance by Elected Members at formal meetings. This is conditional on other Elected Members and the public being able to hear those participating in the meeting. This meeting of the Cabinet will be streamed live and can be watched via the Media link on the Webpage for this meeting.

The opportunity to make oral representations to the Panel will be afforded to the applicants and landowners. Representations by members of the public will only be accepted in writing. The transcript of representations that would normally be made in person will be provided to the Clerk by 12 Noon two days ahead of the meeting and will be read out by the Clerk of the meeting at the appropriate point in the meeting.

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 Snowdown as a new Village Green (Pages 1 - 24)

4. Application to register land at Two Fields, Westbere as a new Village Green (Pages 25 - 44)

5. Application to voluntarily register land at Grove Green as a Village Green (Pages 45 - 50)

6. Application for the transfer of Rights of Common at Higham Common (CL86) (Pages 51 - 60)

7. Other items which the Chairman decides are Urgent

EXEMPT ITEMS

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

Benjamin Watts
General Counsel

Tuesday, 16 February 2021

Application to register land at Snowdown 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 Wednesday 24th February 2021.

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

Local Member: Mr. S. Manion Unrestricted item

Introduction

1. The County Council has received an application to register an area of land at Snowdown as a new Town or Village Green from Mr. M. Anderson ("the applicant"). The application, made on 24th January 2019, was allocated the application number VGA680.

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

[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.

The application site

6. The land subject to this application ("the application site") consists of a roughly L-shaped area of land of approximately 10.3 acres (4.17 hectares) comprising wooded areas (covering a large part of the northern section of the site as well as along its boundary with Sandwich Road) with a central, grassed open space that includes children's play equipment and football goals.

7. The application site is crossed by two Public Footpaths - EE301 and EE302 - which provide access to it from Aylesham Road (on the northern side of the site), Sandwich Road (on the southern side of the site) and South Avenue, the latter providing easy access to the site from the residential properties comprising the Snowdown settlement.

8. The application site is shown in more detail on the plan at **Appendix A**, and photographs are attached at **Appendix B**.

The case

9. The application has been made on the grounds that the application site has become a Town or Village Green by virtue of the recreational use of the land by local residents for a period in excess of twenty years.

10. Included with the application was a statement of support from the applicant, photographs of the application site, as well as 29 user evidence questionnaires demonstrating recreational use of the application site. A summary of the user evidence submitted in support of the application is attached at **Appendix C**.

Consultations

11. Consultations have been carried out as required.

12. Aylesham Parish Council wrote in support of the application, noting that it wished to keep the amenity available for children to use in the future.

13. A representation was received from Mr. T. Johnstone noting that the application site was the subject of a lease in favour of Aylesham Parish Council which provides for recreational use of the land, such that it cannot be registered as a Village Green.

14. Southern Water objected to the application on the basis that the application site includes existing wastewater network assets contained within a permanently fenced compound which has not been accessible for recreational use. Access is also required to the underground infrastructure in the vicinity for maintenance purposes, which may trigger a criminal offence if the land were to be registered as a Village Green. At the time of its objection (in July 2019), the site was being developed by Southern Water as a pumping station and essential sewerage infrastructure for the village.

Landowner

15. The vast majority of the application site, with the exception only of a roughly triangular area of approximately 0.2 acres where the application site abuts The Crescent, is owned by the Plumptre Children's Trust ("the Trust") and is registered with the Land Registry under title number K388942. The entirety of the land owned by the Trust is subject to a lease dated 3rd May 1983 in favour of the National Coal Board (now the Coal Authority). Additionally, the central (non-wooded) part of the application site is subject to a sub-lease in favour of Aylesham Parish Council dated 1st October 1974. The leases are discussed in further detail below.

16. The remaining small section of land abutting The Crescent is registered to The Coal Authority under land Registry Title number K478885.

17. Objection to the application has been received from the Trust (as landowner) on the following grounds:
    - The application site is leased to the Coal Authority and described in the lease as a Recreation Ground, such that use of it cannot be considered 'as of right';
    - Part of the land is sub-leased to the Aylesham Parish Council for recreational purposes;
    - The remainder of the land consists of woodland scrub and many of the claimed uses could not have taken place due to the nature of the site, such that any use of the woodland areas was necessarily confined to the Public Footpaths; and
    - Of the 46 dwellings at Snowdown, only a small number of local inhabitants have used the land for the full twenty-year period, such that use was not by a significant number of the local inhabitants throughout the relevant period.

18. An objection to the application has also been received from the Coal Authority (as lessee) on the following grounds:
    - The applicant has failed to show that use of the application site has taken place by a significant number of the local residents, and the claimed usage was not sufficient to demonstrate to a reasonable landowner that Village Green rights were being asserted;
    - The applicant has failed to show that recreational use took place over the whole of the application site, with much of the claimed usage referrable to the Public Footpaths that cross the site or defined tracks through the woodland;
    - Use of the application site has been permissive by reference to the leases which exist in respect of the land.

Legal tests

19. 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'?

20. 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.

21. In this case, there is no suggestion that any of the use of the application site has taken place in exercise of force or in a secretive manner. Although the presence of the Public Footpaths crossing the site might make it difficult for a landowner to fully secure the site (in order to prevent trespass), the availability of children's play equipment, football goals and benches on the site very much suggests in this case that the local residents were actively encouraged to use it for recreational purposes.

22. However, there is a question as to whether the use of the application site has taken place by virtue of some form of permission. Permission, in the context of Village Green applications, can take various forms: it can be express (e.g. by way of a notice on site) or implied from the actions of the landowner (for example, by preventing access on certain days) and, whilst it some cases, such permission will be communicated to the users of the land (as in the case of a notice on site), in others it may not. The latter situation may arise where there is a lease in place which specifically provides for recreational use of the land, albeit that the users of the land may not be aware of the specific provisions, or even existence, of the lease.

23. In this case, in order to establish whether such recreational use has taken place 'without permission', it is necessary to examine the leases in further detail.

Lease dated 3rd May 1983 ("the 1983 Lease")

24. The 1983 Lease between the landowning Trust and the now Coal Authority extends for a period of 60 years, expiring on 31st December 2042. It covers the vast majority of the application site (with the exception of the small triangle already owned by the Coal Authority), plus other areas comprising the former Snowdown Colliery.

25. Clause 13 of the lease provides that '*the Tenant shall not without the prior written consent of the Landlords… use or permit to be used [the former Pit Head Baths Restaurant] or the Recreation Ground (coloured blue on the Plan)… for any purposes other than those for which they are respectively currently used*'.

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

26. The 'Recreation Ground' referred to within the lease, and coloured blue on the plan accompanying it, corresponds with the application site (except the small triangle owned by the Coal Authority).

27. A copy of the relevant section of the lease and the accompanying plan is attached at **Appendix D**.

Sub-lease dated 1st October 1974 ("the 1974 sub-lease")

28. On the 1st October 1974, the Coal Authority entered into a sub-lease with the Aylesham Parish Council. The 1974 sub-lease applies only to the central (non-wooded) section of the application site, as shown on the extract from the sub-lease at **Appendix E**.

29. Clause 7 of the 1974 sub-lease provides that the Parish Council will not use the land *'otherwise than for recreational purposes'*.

30. Although the terms of the lease were such that it officially expired on 25th December 2013, it is understood that the Parish Council has continued to maintain the land and in 2017 replaced some of the play equipment at the site.

Conclusion in respect of 'as of right'

31. It is clear from closer examination of the leases that both contain references to the application site being used for recreational purposes, with the 1983 Lease specifically referring to the application site as a 'Recreation Ground'.

32. In the unreported case of R v Hereford and Worcester City Council ex parte Ind Coope (Oxford and West) Ltd., the Court overturned the decision of the City Council to register as a Village Green a piece of land owned by a local brewery and licenced to the local District Council as a children's play area and open area. It was held that *"…if there is an express licence for the use of the land, then the land is used pursuant to that licence. There can be no question of a right being established… I find it impossible to form the view that the public, in some way or other, were capable of acquiring additional rights over and above the rights that the local District Council possessed pursuant to the licence to make the land available for the purposes for which it was used…".*

33. The other issue to be considered when trying to establish whether user has been 'as of right', as identified by Lord Hoffman in the Sunningwell[3] case, is how the matter would have appeared to the owner of the land (or, in this case, his tenant). The presence of local residents engaging in recreational activities on the application site would have been entirely consistent with the terms of the leases; the tenant would have had no reason to challenge such use of the application site, and nor would it have been reasonable to expect him to do so. Accordingly, the absence of any challenge to recreational use by the local residents cannot lead to the conclusion that the tenant was simply acquiescing to use and allowing Village Green rights of be acquired.

[3] ibid

34. As such, despite the absence of any notices on site, the effect of the leases is to convey an express permission to local residents to use the land for recreational purposes; those using the land cannot be regarded as trespassers, but rather were on the land by virtue of a formal arrangement providing for such use.

35. It is to be noted that the small triangle of land abutting The Crescent did not form part of the leases referred to above and therefore the conclusions regarding permission do not apply in respect of this section of the application site.

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

36. Lawful sports and pastimes can be commonplace activities including dog walking, children playing, picnicking and kite-flying. Legal principle does not require that rights of this nature be limited to certain ancient pastimes (such as maypole dancing) or for organised sports or communal activities to have taken place. The Courts have held that '*dog walking and playing with children [are], in modern life, the kind of informal recreation which may be the main function of a village green*'[4].

37. 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 walking, ball games, and playing with children. As such, it would appear that the land has been used for a range or recreational activities.

38. It is to be noted that the Coal Authority suggests that the applicant has failed to demonstrate that recreational use of the application site has taken place over the whole of the application site. However, as noted in the Cheltenham Builders[5] case, '*a Registration Authority would not expect to see evidence of use of every square foot of a site*'; what matters is whether, '*for all practical purposes, it could sensibly be said that the whole of the site had been so used…*'. Although, in this case, there are small sections of the application site that are impenetrable due to vegetation, it is clear from the photographs that even within the wooded areas users are not confined to the paths.

39. It is true, as suggested by both the landowning Trust and the Coal Authority, that any use of the Public Footpaths will not be 'qualifying use' for the purposes of the Village Green application (because it will be in exercise of an existing right) and accordingly falls to be discounted[6]. However, it is clear from the summary at **Appendix C** that recreational use of the application site is not confined to walking, and a number of other activities are cited in support of the application. Users will inevitably have strayed from the paths to access the various amenities on the site, and on the ground there are many instances of informal tracks and paths that do not coincide with the formal Public Rights of Way. As such, it would be wrong to conclude that all – or even most – of the references to walking on the application site are referable to the use of the Public Footpaths crossing it.

[4] *R v Suffolk County Council, ex parte Steed* [1995] 70 P&CR 487 at 508 and approved by Lord Hoffman in *R v. Oxfordshire County Council, ex parte Sunningwell Parish Council* [1999] 3 All ER 385
[5] *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at 89
[6] *R (Laing Homes) v Buckinghamshire County Council* [2003] 3 EGLR 70

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

40. 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.

41. 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[7] 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*'.

42. 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*'[8].

43. In this case, the applicant specifies the relevant 'locality or neighbourhood with a locality' on the application form as 'Snowdown' and all of the users reside within the residential streets comprising the settlement of Snowdown.

44. As Snowdown is not a legally recognised administrative unit, it cannot be a 'locality' for the purposes of section 15 of the Commons Act 2006. However, as a collection of properties forming a discrete settlement with its own identity (linked to the former colliery), and with a railway station of the same name, it is considered that Snowdown could quite legitimately fall within the definition of a 'neighbourhood'.

45. The neighbourhood of Snowdown falls within the parish of Aylesham, itself a legally recognised administrative unit capable of constituting a qualifying locality for the purposes of Village Green registration.

"a significant number"

46. The County Council also needs to be satisfied that the application site has been used by a 'significant number' of the residents of the 'neighbourhood within a locality'. The word "significant" in this context does not mean considerable or substantial: '*a neighbourhood may have a very limited population and a significant*

[7] *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at 90
[8] ibid at 92

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'[9]. Thus, what constitutes a 'significant number' will depend upon the local environment and will vary in each case depending upon the location of the application site.

47. In this case, the evidence submitted in support of the application demonstrates that use of the application site has taken place on a regular basis by a sufficiently large number of residents to indicate that the application site was in general use by the community. Of the 46 properties comprising the Snowdown settlement, over half (29) have returned evidence questionnaires and, of those, the vast majority attest to use of the application site on an at least a daily or weekly basis. The vast majority also refer to observing use by others on a daily basis and reference is also made to community events, such as picnics and bonfire night celebrations, which supports the contention that the application site has been a well-used local amenity.

48. It is suggested by the landowning Trust that only a small number of local inhabitants have used the land for the full twenty-year period, such that use has not been by a 'significant number'. 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[10].

(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?

49. 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.

50. 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?

51. 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 2019. The relevant twenty-year period ("the material period") is calculated retrospectively from this date and is therefore 1999 to 2019.

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

[10] ibid 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*'.

52. 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

53. 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.

54. This particular case involves an application site that has been provided specifically for recreational purposes, such that there can be little doubt that it has been used as such throughout the relevant period by the residents of Snowdown (which is itself a clearly recognisable neighbourhood within the legally recognised administrative unit of the parish of Aylesham).

55. However, the crux of the matter is whether the recreational use of the application site has taken place on a permissive basis. The existence of the leases, which specifically describe the land as a 'Recreation Ground' (in the 1983 Lease) and refer to use for 'recreational purposes' (in the 1974 sub-lease), means that those using the application site were doing so by virtue of an existing right – i.e. 'by right' – and not, as required, 'as of right'.

56. If the application fails on the basis of the 1983 Lease, this of course does leave the question of the small triangle of land abutting The Crescent (which does not form part of that lease) and whether this ought to be registered as a Village Green in its own right.

57. Whilst there is authority for the proposition that a Registration Authority may register a smaller area of land, it is suggested that such an area should not be *'substantially different from that which has been applied for'*[11]. Indeed, registering a smaller area raises evidential difficulties as to how the recreational user relied upon relates to the smaller area.

58. In this case, at 0.2 acres (compared to the total application site area of 10.3 acres), the triangle of land not covered by the lease is substantially smaller than the application site as a whole - such that it is arguably *de minimis* - and, as can be seen from the Google Streetview image at **Appendix F** taken in 2009 (i.e. the middle of the relevant period) the area was thick with vegetation during at least part of the relevant period such that it would have been largely impenetrable. It is therefore not considered, of itself, that this smaller area is capable to registration as a Village Green.

Recommendation

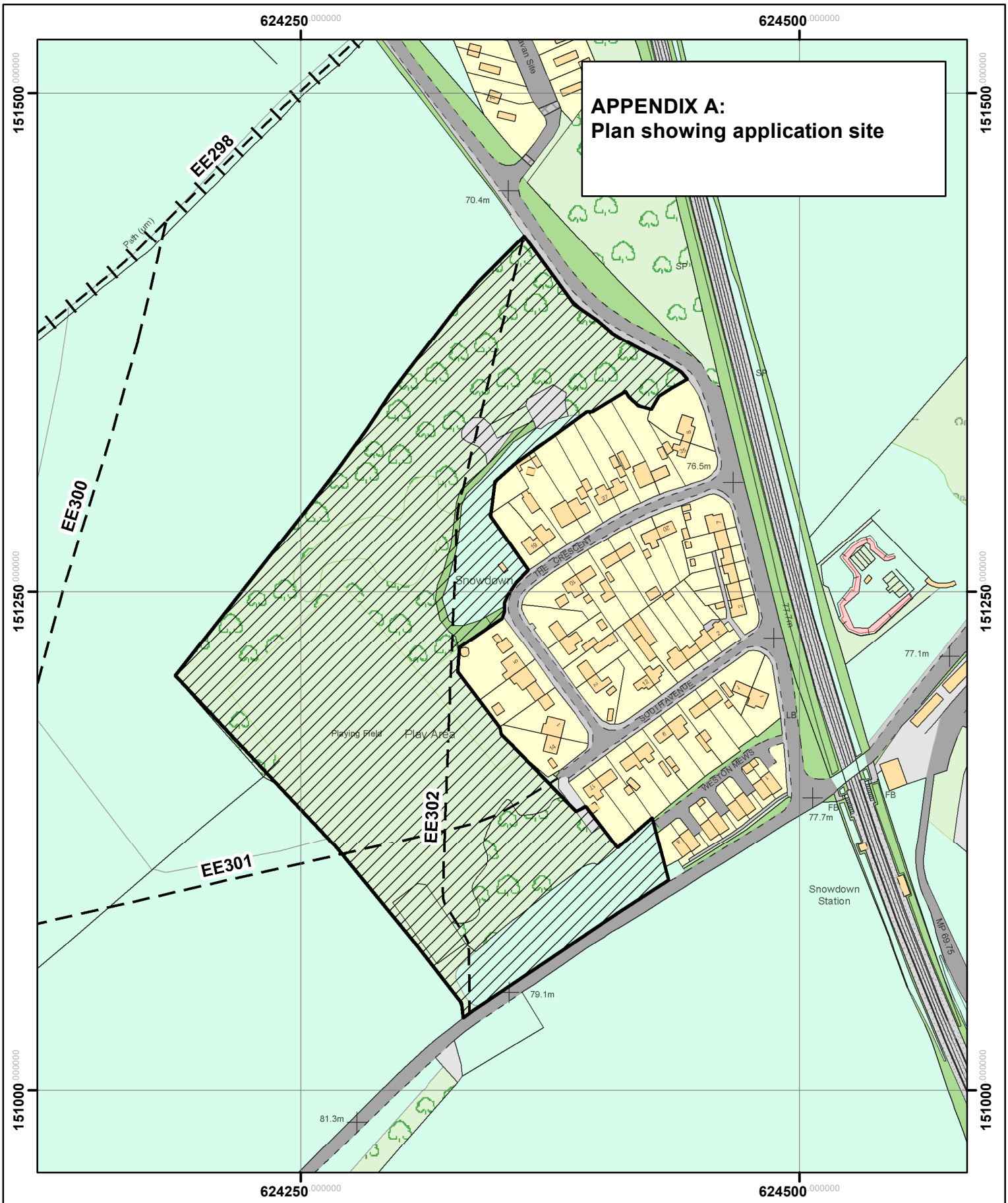
59. I recommend that the applicant be informed that the application to register the land at Snowdown as a Town or Village Green has not been accepted.

[11] Ibid at paragraph 82

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

Appendices

APPENDIX A – Plan showing application site
APPENDIX B – Photographs of the application site
APPENDIX C – Table summarising user evidence
APPENDIX D – Extract from the 1983 Lease
APPENDIX E – Extract from the 1974 sub-lease
APPENDIX F – Photograph of land abutting The Crescent



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Land subject to Village Green application at Snowdown

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APPENDIX B:
Photographs of the application site

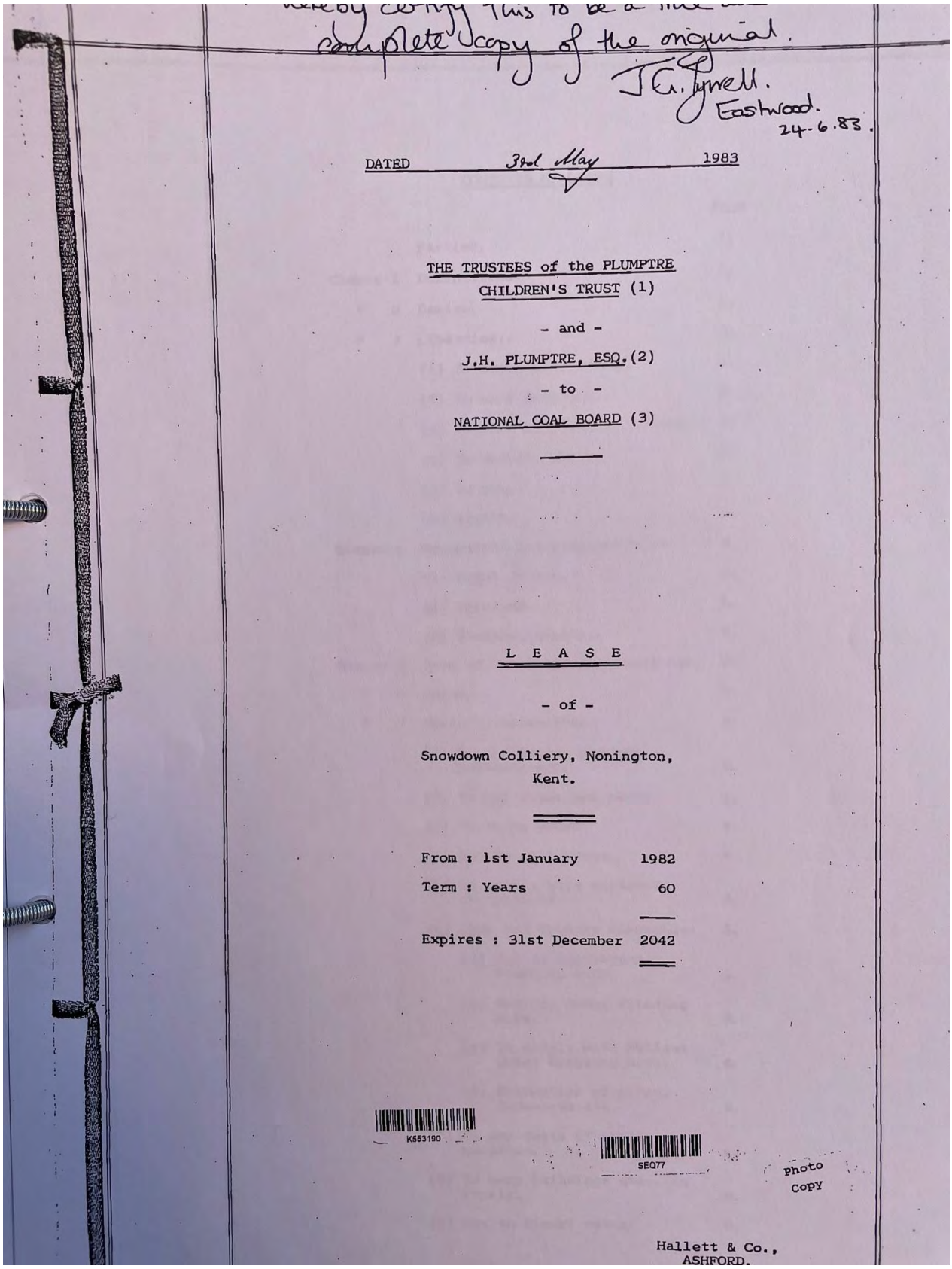
Aerial photograph dated 2009

Photograph showing woodland areas (provided by applicant)

APPENDIX C:
Summary of user evidence

User	Period of use	Frequency of use	Type of use	Comments
1	1978 – present	Daily	Walking, football, cycling	Did not use between 1990 and 2011. Observed use by others on a daily basis for walking, children playing, football, cricket, jogging.
2	1985 – present	Daily	Walking, cycling with children, ball games, blackberrying, apple-picking, attending village events, using play equipment	Observed use by others on a daily basis for dog walking, children playing, golf, football, cricket, kite-flying.
3	2012 – present	Twice daily	Dog walking and exercise, using children's playground, football, picnics, walking/jogging, cycling with children	Every time we use the field others are as well. Observed use for golf, dog walking, playground, cycling, football, picnics, walking/jogging
4	2008 – present	Twice daily	Dog exercise, playing football with children and using the amenity facilities.	Observed use by others on a daily basis
5	1987 – present	Weekly	Walking, dog walking	Observed use on a weekly basis for dog walking and children playing
6	2017 – present	Daily	Football, dog walking, playing with children, playground, frisbee, running, relaxation, family time, walking, kite flying	Observed use by others several times per week for dog walking, football, golf, BBQs, cycling, children using play equipment, relaxation, radio-controlled cars. Recreation ground is a vital part of the community.
7	1974 – present	Daily	Dog walking, exercise, children's play area	Observed us by others on a daily basis
8	2015 – present	Daily	Dog walking, playing with children, riding bikes, playing football, running	Observed use by others every day for dog walking, children playing in the park and in the woodlands, riding bikes and playing sports
9	2017 – present	Every other day	Walking, bird watching, running	Observed us by others weekly for dog walking
10	2014 – present	Daily	Dog walking/training, exercise, playing with children, community picnic	Observed use by others on a daily basis for dog walking/training, exercise, playing with children, community events
11	1984 – present	Occasionally	Taking children and grandchildren to play park, walking, village activities	Occasionally observed use by others.
12	2014 – present	Daily	Dog walking, picnics, football, walking	Observed use by others on a daily basis for football and dog walking
13	2017 – present	Occasionally	Dog walking, taking grandchildren to play, relaxation	Observed use by others on a daily basis.
14	2016 – present	Weekly	Dog walking, playing with grandchildren	Observed use by others on a weekly basis for football and dog walking.
15	1990 – present	Daily/ weekends	Children's play area, fireworks	Was not resident in the area for 18 years. Used less as got older but more now with own child.
16	1964 – present	Occasionally	Played tennis on court now overgrown, used play equipment with own child, community events	Moved away between 1967 and 1979.
17	2016 – present	Daily	Dog walking, relaxing, meeting neighbours, walking, children's play area, radio-controlled toys, kite flying, nature activities with children	Observed use by others on a daily basis for dog walking, socialising, children playing, teenagers gathering.

18	2016 – present	Daily	Picnics, dog walking, football, cricket, tennis, jogging	Observed use by others on a daily basis (same activities as me). Noticed dog fouling notices on site.
19	2005 – present	Daily	Dog walking, playing rounders, football, using play area	Observed use by others on a daily basis for dog walking, football, golf, children playing
20	2014 – present	Daily	Dog walking, daughter plays at park	
21	2007 – present	Daily	Use of park equipment, rounders, cricket, walking around woods and park, cycling in woods	Observed use by others for walking and playing games. We pick litter and maintain the pathways around the wood making it easy for people to walk around. We contact the Council when the park needs cutting.
22	1973 – present	Daily	Used playing field as a child, now use for dog walking/hiking and playing football with own children	Observed use by others on a daily basis for dog walking, walking, children playing, running. The land has been used for many years and by previous generations of my family without restriction.
23	1985 – present	Daily	Children playing, picnics, dog walks, bike riding	Observed use by others on a daily basis for dog walking, children playing, picnics, football games
24	1970 – present	Daily/weekly	Dog walking, walking, berry-picking, cycling, archery, ball games, running, picnics, community events, kite flying, children's play area	Used daily when had dog, now daily/weekly depending on weather/season. It is infrequent that you would be on the land alone. There was once organised cricket on the land, but that was some time ago.
25	2010 – present	Daily/weekly	Dog walking, mountain biking, playground, picking sloes and apples	Observed use by others on a daily basis for dog walking/training, cycling, exercise, children playing
26	2004 – present	Monthly	Bike-riding, walking, playing, using play equipment, kite flying	Use more in summer months. Observed use by others on a daily basis for bike riding, walking, running, cricket, playing, golf, winter activities, football
27	1995 – present	Daily	Dog walking, taking grandchildren to swings, exercise, walking, litter picking	Children are constantly playing on the land, adults use it for exercise, dog walking.
28	2008 – present	Weekly	Taking children to park, football, golf, rugby, cycling, walking, picnics	Observed people using the land several times daily for cycling, jogging, walking, picnics
29	1964 – 2007	Occasionally	Used playground equipment with children, attended community events, walking, blackberry picking	Observed use by others on a daily basis



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J.G. Tyrrell.
Eastwood.
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DATED 3rd May 1983

THE TRUSTEES of the PLUMPTRE CHILDREN'S TRUST (1)

- and -

J.H. PLUMPTRE, ESQ. (2)

- to -

NATIONAL COAL BOARD (3)

L E A S E

- of -

Snowdown Colliery, Nonington, Kent.

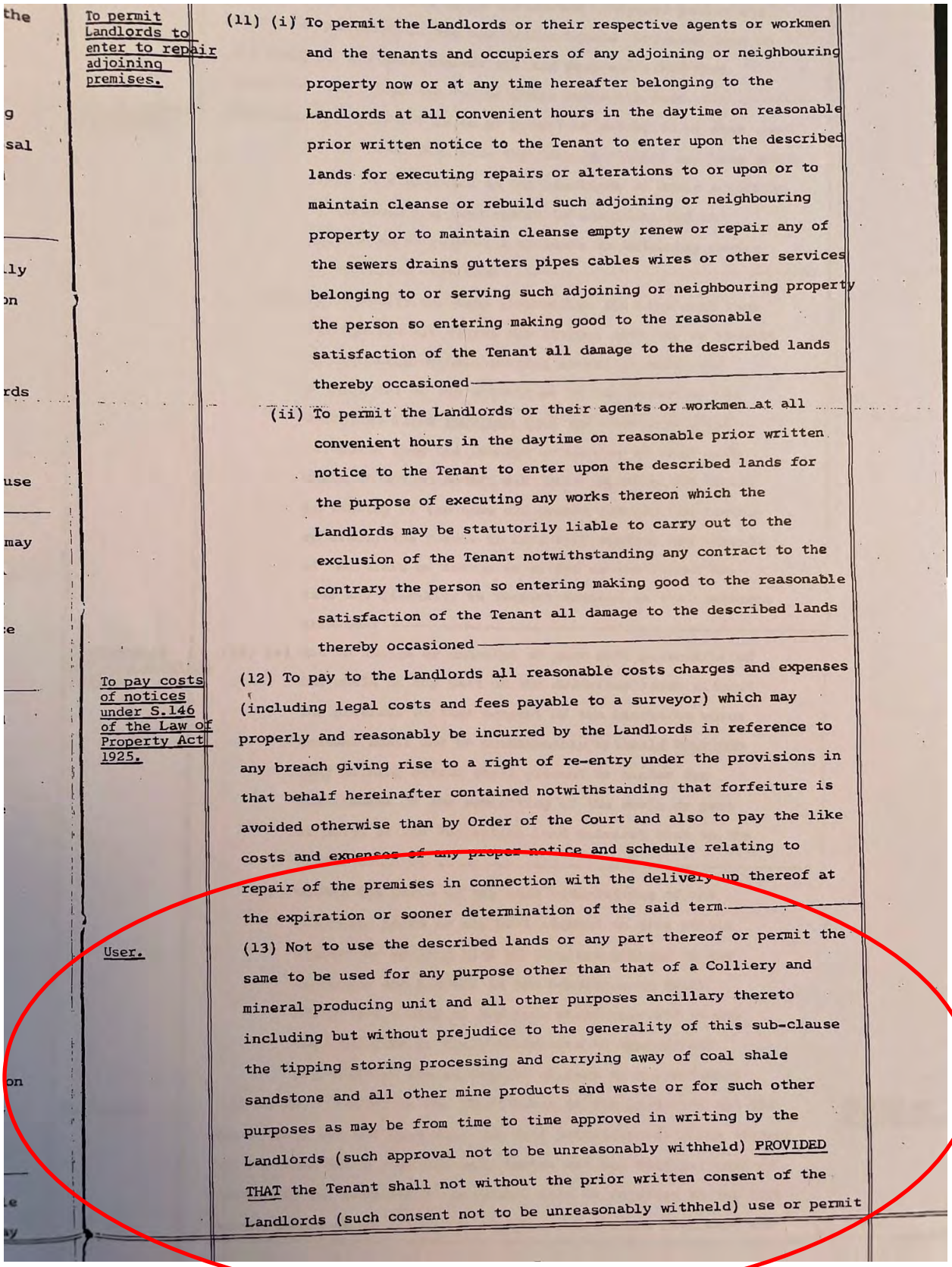
From : 1st January 1982
Term : Years 60
Expires : 31st December 2042

K553190

SEQ77

Photo Copy

Hallett & Co.,
ASHFORD.



To permit Landlords to enter to repair adjoining premises.

(11) (i) To permit the Landlords or their respective agents or workmen and the tenants and occupiers of any adjoining or neighbouring property now or at any time hereafter belonging to the Landlords at all convenient hours in the daytime on reasonable prior written notice to the Tenant to enter upon the described lands for executing repairs or alterations to or upon or to maintain cleanse or rebuild such adjoining or neighbouring property or to maintain cleanse empty renew or repair any of the sewers drains gutters pipes cables wires or other services belonging to or serving such adjoining or neighbouring property the person so entering making good to the reasonable satisfaction of the Tenant all damage to the described lands thereby occasioned

(ii) To permit the Landlords or their agents or workmen at all convenient hours in the daytime on reasonable prior written notice to the Tenant to enter upon the described lands for the purpose of executing any works thereon which the Landlords may be statutorily liable to carry out to the exclusion of the Tenant notwithstanding any contract to the contrary the person so entering making good to the reasonable satisfaction of the Tenant all damage to the described lands thereby occasioned

To pay costs of notices under S.146 of the Law of Property Act 1925.

(12) To pay to the Landlords all reasonable costs charges and expenses (including legal costs and fees payable to a surveyor) which may properly and reasonably be incurred by the Landlords in reference to any breach giving rise to a right of re-entry under the provisions in that behalf hereinafter contained notwithstanding that forfeiture is avoided otherwise than by Order of the Court and also to pay the like costs and expenses of any proper notice and schedule relating to repair of the premises in connection with the delivery up thereof at the expiration or sooner determination of the said term

User.

(13) Not to use the described lands or any part thereof or permit the same to be used for any purpose other than that of a Colliery and mineral producing unit and all other purposes ancillary thereto including but without prejudice to the generality of this sub-clause the tipping storing processing and carrying away of coal shale sandstone and all other mine products and waste or for such other purposes as may be from time to time approved in writing by the Landlords (such approval not to be unreasonably withheld) PROVIDED THAT the Tenant shall not without the prior written consent of the Landlords (such consent not to be unreasonably withheld) use or permit

to be used the Pit Head Baths Restaurant (coloured yellow and orange on the Plan) or the Recreation Ground (coloured blue on the Plan) or any part thereof for any purposes other than those for which they are respectively currently used

Not to commit a nuisance.

(14) (i) Generally not to do or permit or suffer to be done upon or in connection with the described lands anything which shall be a nuisance to the Landlords or other adjoining or neighbouring land owners or occupiers and in particular to prevent a nuisance to adjoining owners or occupiers from dust

(ii) To indemnify and keep indemnified the Landlords from and against all claims and actions that may be brought by adjoining or neighbouring owners or occupiers arising out of the activities of the Tenant on the described lands PROVIDED THAT the Landlords shall forthwith upon the receipt or service of each such claim or action notify and fully appraise the Tenant in writing of the same and permit (should the Tenant so elect) the Tenant to have full control and conduct of the claim or action in so far as the Tenant may have any liability in respect thereof to the Landlords hereunder

Assignments and registration thereof.

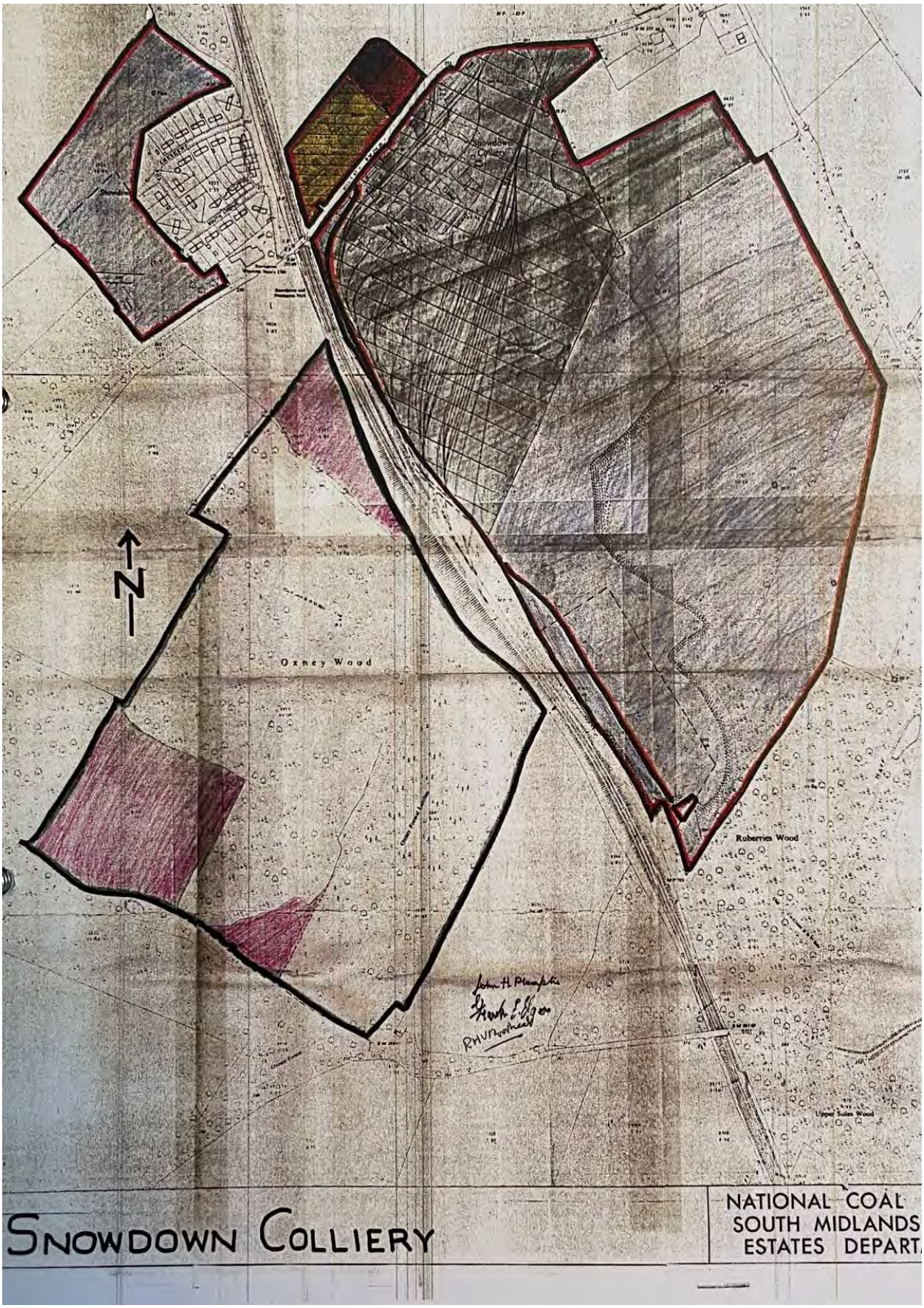
(15) (a) Not to assign or underlet or part with possession of the whole or any part of the described lands without the previous written consent of the Landlords which consent shall not be unreasonably withheld PROVIDED THAT nothing herein shall prevent or hinder the continuance of the subletting of the whole or part or parts of the Recreation land coloured blue on the Plan

(b) Within one month of any such underletting of the described lands or any part thereof to give notice thereof in writing with particulars thereof to the Landlords and produce to the Landlords or their Solicitors a copy of any such Underlease and to pay the Landlords or their Solicitors an appropriate registration fee in respect of each such instrument

To insure.

(16) To keep insured in the joint names of the Landlords and the

To f


N
Oxney Wood
Ruberries Wood
Upper Soles Wood
SNOWDOWN COLLIERY
NATIONAL COAL
SOUTH MIDLANDS
ESTATES DEPART

MJB/GA.12228

DATED 1st October 197[illegible]

COAL INDUSTRY ESTATES LIMITED

- and -

NATIONAL COAL BOARD

- to -

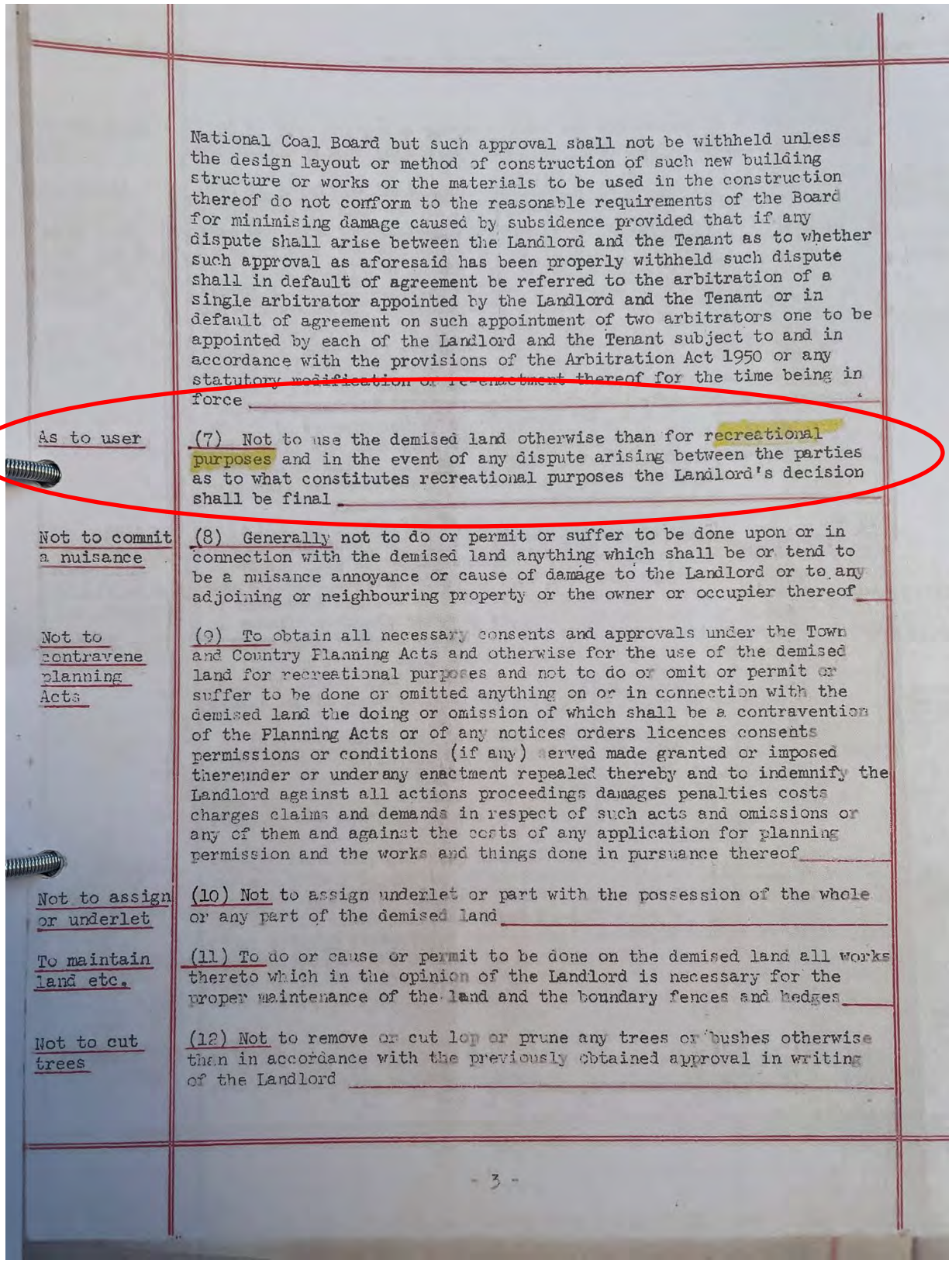
AYLESHAM PARISH COUNCIL

L E A S E

- of -

Land at Snowdown Village in the County of Kent

MASTER



National Coal Board but such approval shall not be withheld unless the design layout or method of construction of such new building structure or works or the materials to be used in the construction thereof do not conform to the reasonable requirements of the Board for minimising damage caused by subsidence provided that if any dispute shall arise between the Landlord and the Tenant as to whether such approval as aforesaid has been properly withheld such dispute shall in default of agreement be referred to the arbitration of a single arbitrator appointed by the Landlord and the Tenant or in default of agreement on such appointment of two arbitrators one to be appointed by each of the Landlord and the Tenant subject to and in accordance with the provisions of the Arbitration Act 1950 or any statutory modification or re-enactment thereof for the time being in force

As to user

(7) Not to use the demised land otherwise than for recreational purposes and in the event of any dispute arising between the parties as to what constitutes recreational purposes the Landlord's decision shall be final

Not to commit a nuisance

(8) Generally not to do or permit or suffer to be done upon or in connection with the demised land anything which shall be or tend to be a nuisance annoyance or cause of damage to the Landlord or to any adjoining or neighbouring property or the owner or occupier thereof

Not to contravene planning Acts

(9) To obtain all necessary consents and approvals under the Town and Country Planning Acts and otherwise for the use of the demised land for recreational purposes and not to do or omit or permit or suffer to be done or omitted anything on or in connection with the demised land the doing or omission of which shall be a contravention of the Planning Acts or of any notices orders licences consents permissions or conditions (if any) served made granted or imposed thereunder or under any enactment repealed thereby and to indemnify the Landlord against all actions proceedings damages penalties costs charges claims and demands in respect of such acts and omissions or any of them and against the costs of any application for planning permission and the works and things done in pursuance thereof

Not to assign or underlet

(10) Not to assign underlet or part with the possession of the whole or any part of the demised land

To maintain land etc.

(11) To do or cause or permit to be done on the demised land all works thereto which in the opinion of the Landlord is necessary for the proper maintenance of the land and the boundary fences and hedges

Not to cut trees

(12) Not to remove or cut lop or prune any trees or bushes otherwise than in accordance with the previously obtained approval in writing of the Landlord

- 3 -

APPENDIX E:
Copy of 1974 Sub-lease

APPENDIX F – Google Streetview image of land abutting The Crescent (dated May 2009)

Application to register land known as Two Fields at Westbere 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 Wednesday 24th February 2021.

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

Local Member: Mr. A. Marsh Unrestricted item

Introduction

1. The County Council has received an application to register an area of land known as Two Fields at Westbere as a new Town or Village Green from Lady L. Laws on behalf of the Two Fields Action Group ("the applicant"). The application, made on 8th November 2019, was allocated the application number VGA681.

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

[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.

The application site

6. The land subject to this application ("the application site") is situated on the Westbere/Sturry parish boundary, south of Staines Hill and Westbere Lane, and consists of a large area of approximately 37 acres (15 hectares) comprising mixed woodland (some of which has been recently cleared) as well as more open areas of grassland and scrub. Access to the application site is via Public Footpath CB91 which, for the most part, runs alongside the railway line abutting the southern edge of the application site and connects Westbere Lane with Fairview Gardens.

7. The application site is shown on the plan at **Appendix A**, and an aerial photograph showing the site taken in 2009 (i.e. the middle of relevant twenty-year period) is attached at **Appendix B**.

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. It has been prompted by the clearance of part of the application site by one of the landowners in August 2019.

9. Included with the application was a statement of support from the applicant, photographs of the application site, detailed summaries of the evidence as well as 70 user evidence questionnaires. An additional 18 evidence questionnaires were submitted subsequently by the applicant in further support of the application.

10. The evidence questionnaires submitted in support of the application refer to the use of the application site for a wide range of activities, including walking, jogging, playing with children, foraging, bird watching and photography. Just over half of the evidence questionnaires refer to use the application site for a period in excess of twenty years, and the vast majority attest to use of the application site on a very regular (at least weekly) basis.

11. The application has been made under section 15(2) of the Commons Act – i.e. on the basis that use of the application site has continued 'as of right' until the date of the application – such that the relevant twenty-year period for the purposes of the application is November 1999 to November 2019. The applicant relies upon the parishes of Westbere and Sturry as the qualifying locality for the purposes of the application.

Landowners

12. The ownership of the application site is sub-divided into five strips of varying width that are registered with the Land Registry to four different landowners.

13. The western half (approximately) of the application site is registered to Bellway Homes Ltd. under title number TT60980. An objection to the application has been received from Winkworth Sherwood LLP on behalf of Bellway Homes Ltd. (further details below).

14. Adjacent to the land owned by Bellway Homes Ltd. is a narrow strip of land registered under Land Registry title number K779440 to Mr. S. Saadat. A further

adjoining narrow strip of land, registered under title number TT65696, is owned by Westbere Green Space Protection Ltd. Notice of the application has been served as required upon Mr. Saadat, but no response has been received. Westbere Green Space Protection Ltd. has, however, confirmed its support for the application.

15. The area of land, comprising approximately the eastern half of the application site is registered to Mr. S. Mahallati under title numbers K779400 and K786421. Mr. Mahallati is represented by Thompson, Snell and Passmore LLP, which has objected to the application on his behalf (further details below).

Objections

16. Two objections have been received to the application on behalf of two of the affected landowners.

17. The objection from Winkworth Sherwood LLP (on behalf of Bellway Homes Ltd.) is made on the basis that:
    - The use of the application site has not been by a significant number of the inhabitants of a single locality, or neighbourhood within a locality;
    - Use of the application site has not been 'as of right' due to the erection of prohibitive notices erected on site in 2018 (replaced in September 2019);
    - The vast majority of the use relied upon consists of walking (which is considered equivalent to the use of a right of way) and not sufficient to establish use of the application site for lawful sports and pastimes; and
    - That use of the application site ceased to be 'as of right' more than one year prior to the submission of the application, such that the tests under sections 15(2) and 15(3) of the Commons Act 2006 are not met.

18. The objection from Thompson, Snell and Passmore LLP (on behalf of Mr. Mahallati) is made on the basis that:
    - A large proportion of the users have not provided evidence of use of the application site for the full twenty-year period;
    - One of the main uses of the application site is for walking and such use falls to be discounted on the basis that it is akin to a right of way usage rather than a general right to recreate;
    - Use was not by a sufficient number to give rise to a general appearance that the land was available for community use;
    - Use of the application site has been the subject of verbal challenges by the landowner, and in January 2020 fencing and prohibitive signage was erected; and
    - Local Plan policy OS6 constitutes a 'trigger event' such as to prevent the registration of the land as a Village Green.

19. The applicant's response to the objections is that (in summary):
    - There is no reason why a locality for this purpose is to be interpreted as a single locality and, in any event, it is only necessary for the applicant to demonstrate evidence of use from one of the localities in order for the application to be successful;
    - The user evidence questionnaires from the residents of Westbere alone represent a significant number of users (as a proportion of the total

population) from that locality, such that the 'significant number' test is met in that regard;

- The character of the site was radically altered by clearance and tree-felling works undertaken in 2019, such that the evidence of activities and access to other parts of the application site was destroyed, and although some parts of the application site are inaccessible during certain periods of the year, the vegetation dies back during other parts of the year;
- A sign was erected in late 2018 on the northern side of the application site but it was neither clear nor specific enough to challenge use, did not specify the land to which it related, and was so short-lived that it would not have come to most people's attention;
- A gate was erected on the northern boundary of the site in 2019 but it was understood to have been provided to prevent the unlawful occupation of the application site following its clearance and correspondence with the landowner at the time indicated that it was not the intention to restrict public (pedestrian) access to the site.

'Trigger events'

20. As noted at paragraph 3 above, the tests to be applied to the evidence when considering an application to register a new Town or Village Green are set out in section 15 of the Commons Act 2006 and require the applicant to be able to demonstrate that use of the application site has taken place 'as of right' for the purposes of 'lawful sports and pastimes' by the residents of 'a locality or a neighbourhood within a locality' for a period of a least twenty years, with such use continuing either to the date of the application or, failing that, ceasing no more than one year prior to the application being made.

21. However, before applying that test, the County Council must be satisfied that it is capable of considering the application for Town or Village Green status. The Growth and Infrastructure Act 2013 introduced a new provision requiring Commons Registration Authorities, on receipt of a Village Green application, to enquire of the relevant planning authorities as to whether the land subject to a Village Green application is affected by any prescribed planning-related events – known as 'trigger events' – which are set out in a new Schedule inserted into the Commons Act 2006 (Schedule 1A). The right to apply for the registration of a Town or Village Green is excluded if any 'trigger event' has occurred in relation to the land and becomes exercisable again only if a corresponding 'terminating event' has occurred in relation to that land.

22. In this case, following receipt of the Village Green application, the local planning authority advised that 'trigger events' had occurred in respect of the land, but that corresponding 'terminating events' had also occurred, such that the right to apply for Village Green status was not disengaged. The 'trigger events' referred to comprised four planning applications made during the late 1970s and the 1980s in respect of the application site, all of which had been refused and all means of challenge exhausted. Since there were no current 'trigger events' affecting the application, there was no reason for the County Council not to proceed with the determination of the application.

23. However, following advertisement of the application, the issue of a possible (and different) 'trigger event' in relation to the application site was raised by the

objectors. It is suggested that the identification of the entirety of the application site as a 'Green Gap' within Canterbury City Council's Local Plan (adopted in July 2017) means that a 'trigger event' has taken place in accordance with paragraph 4 of Schedule 1A of the Commons Act 2006. That paragraph provides specifically that a 'trigger event' takes place where "*a development plan document which identifies the land for potential development is adopted under section 23(2) or (3) of the [Planning and Compulsory Purchase Act 2004]*".

24. In support of this proposition, reliance is placed upon the recent Court of Appeal decision in Wiltshire Council v Cooper Estates Strategic Land Ltd. [2019] EWCA Civ 840 in which it was suggested that the words 'potential' and 'development' are not to be narrowly construed; thus, the 'trigger event' requires only for the land to be identified as having the potential for development, and not for the land to be specifically allocated for development.

25. The applicant's response is that the designation of the land as a 'Green Gap' in the Local Plan is not a designation of the land as being suitable for development, but rather of it being unsuitable for development. In the case of a 'Green Gap' an exception might be made for developments that were compatible with its continued use for recreational purposes and its maintenance as an open space between settlements, but it would be perverse to assume that Parliament intended such a designation to prevent the land in question being afforded the further protection of Village Green status (i.e. to continue being used for the same purposes as the 'Green Gap' designation is intended to allow).

26. It is further suggested that the Cooper Estates case can be distinguished because that decision was reached on the basis that Village Green registration in that case would frustrate the broad objectives of the relevant development plan, from which it was clear that new housing would be required. In the current case, it is clear that the intention of the 'Green Gap' is to preserve the land as open space between settlements.

Legal Advice

27. In light of the dispute on the applicability (or otherwise) of a possible 'trigger event' in relation to the application site, advice on this matter has been sought from Counsel.

28. Counsel's advice, which is attached at **Appendix C**, is that the identification of the application site as a 'Green Gap' in the Canterbury City Council Local Plan operates as a 'trigger event' for the purposes of Schedule 1A of the Commons Act 2006, such that it is not possible for the County Council to consider the Village Green application.

29. In reaching that advice, Counsel paid close attention to Policy OS6 in the Local Plan, relating to 'Green Gaps', which states:

    "Within the Green Gaps identified on the Proposals Map… development will be permitted where it does not:

    (a) Significantly affect the open character of the Green Gap, or lead to coalescence between existing settlements;

    (b) Result in new isolated and obtrusive development within the Green Gap.

Proposals for open sports and recreational uses will be permitted subject to there being no overriding conflict with other policies and the wider objectives of the Plan. Any related built development should satisfy criteria (a) and (b) above and be kept to a minimum necessary to supplement the open sports and recreation uses, and be sensitively located and of a high quality design".

She further noted that the objective of the policy was to retain separate identities of existing settlements and was considered to supplement national policies seeking to restrain built development outside urban areas and address the concern that gradual coalescence between existing built up areas harms the character of the open countryside.

30. The leading authority on the interpretation of paragraph 4 of Schedule 1A of the Commons Act 2006 is the Cooper Estates case, in which the Court of Appeal held that 'identified' has its ordinary English meaning to establish or recognise, that 'potential development' is a very broad concept that is not to be equated with likelihood or probability, and that 'identification' may be contrasted with 'allocation' where a site is allocated for a particular use.

31. Applying the principles of the Cooper Estates case to the current application, Counsel advised (at paragraphs 18 to 20, and 23, of her advice) that:

"The existence of constraints affecting the land is not a reason for ruling out the area from being identified for potential development. The question comes down to the consequences of the land being within a Green Gap, looking at the plan as a whole, and bearing in mind the policy underlying the change in the law, which was that whether or not to protect a piece of recreational land with identified development potential should be achieved through the planning system and not by means of registration of a TVG.

I accept the point that the effect of the 'green gap' designation is essentially restrictive in that development will only be permitted where it does not affect the open character of the gap or lead to coalescence or result in isolated and obtrusive development. Furthermore, the policy is said to supplement national policies restraining built development in the countryside. It seems unlikely there that any significant built development would be in compliance with this policy.

However, the very fact that such a policy exists appears to acknowledge that the area is under development pressure (see supporting text). It therefore could be said that the policy is identifying the land for 'potential development' and seeking to regulate that development in order to preserve the open character of the Green Gap. Proposals for open sports and recreational uses would be in compliance with the policy (provided they met other policies in the plan). Where these involve a material change of use of land, they would also fall within the meaning of 'development'. It could therefore further be argued that the policy is identifying the land for potential sports and recreational development as well as for more general forms of built development (subject to the restrictions imposed).

…

It is therefore my view that Policy OS6 does identify the land within the 'green gaps' for potential development. The likelihood of such development

being permitted in accordance with the policy will, of course, depend on whether the development applied for significantly affects the open character of the gap or leads to coalescence of settlements or not (or otherwise results in new isolated and obtrusive development). It is clear that the development plan envisages the development pressures on these 'green gap' areas being managed through the planning system. Whilst TVG registration may be in accordance with the restrictive nature of the protection for the green gap, that is not always necessarily going to be the case. For example, TVG registration would prevent sympathetic sports buildings and structures being erected on the land or, by way of another example, a utilities mast being erected which would not affect the open character of the gap. The Courts have emphasized the wide scope of the meaning of 'potential' development. In light of this, I consider that a Court would be more likely than not to conclude that Policy OS6 functions as a 'trigger event' in this case".

Applicant's comments

32. In light of Counsel's advice, the applicant has been afforded an opportunity to comment further upon the 'trigger events' issue.

33. The applicant strongly contests Counsel's advice and considers that the Cooper Estates case is plainly and necessarily distinguishable from the current case, and cannot apply to it. The situation in Cooper Estates was that the development envisaged was incompatible with the use of the land in question as a Village Green, which is not the case with the current application site where the designation of the land as a 'Green Gap' is mutually supportive of the Village Green application.

34. The applicant's position is that it is perverse to construe the designation of the land as a 'Green Gap' as identifying the land for development, when the purpose of that policy is in fact the prevent the coalescence of settlements through development. Common sense dictates that the intention of Schedule 1A of the Commons Act 2006 must be to prevent Village Green applications from contradicting and superseding planning applications that have already been made, and not to render impossible the submission of an application under section 15 of the Commons Act 2006 wherever there is a Local Plan in place (which arguably, in effect, abolishes the right of individuals to assert any recreational rights that may have been acquired). The applicant's submission is that it cannot have been Parliament's intention for this to happen, and there must be some land within a local planning authority's area where Village Green applications are still possible (being those areas where the granting of a Village Green application would be compatible with the relevant Local Plan policies).

35. The applicant's comments have been referred back to Counsel for review and, whilst accepting that the matter is not clear-cut and open to interpretation, Counsel has nonetheless confirmed that her original advice remains unchanged.

Conclusion

36. In this case, the issue before the Panel is whether the application site is affected by one of the 'trigger events' set out in Schedule 1A of the Commons Act 2006; if

it is, then the application as a whole falls to be rejected without further consideration.

37. There is no dispute between the parties that Canterbury City Council's Local Plan is a development plan document adopted under the Planning and Compulsory Purchase Act 2004; nor is there any dispute that the entirety of the application site is identified within that plan as a 'Green Gap' under policy OS6.

38. The question is, therefore, whether it can be said that the application site is identified for potential development under that policy. In this regard, 'development' need not be, for example, a large-scale housing estate, but the term would apply equally to (as an example) the development of football pitches or a sports hall on the land. It is clear from the wording of Policy OS6 (at paragraph 29 above) that the policy is not intended to be totally prohibitive in nature but, on the contrary, seeks to regulate the kind of development taking place within the identified 'Green Gaps'. In that regard, it can be said that the policy specifically provides for development – albeit of a restricted nature – to take place within areas identified in the Local Plan as 'Green Gaps'.

39. As noted above, Counsel's advice on this matter is that the 'trigger event' specified in paragraph 4 of Schedule 1A to the Commons Act 2006 is engaged by reference to the identification of the application site as a 'Green Gap' within the Local Plan. Having carefully considered that advice, and revisited all of the submissions made by the parties, it would appear that there are good grounds for concluding that the application site has been identified for potential development, such that the County Council is not able to consider the Village Green application.

40. For the sake of completeness, in the event that the Panel is not minded to approve the recommendation set out below, then it is asked to refer the matter to a Public Inquiry for further consideration on the basis that there is a significant conflict of evidence between the applicant and the objectors. However, such a course should only be considered where the Panel is satisfied that no 'trigger events' apply in respect of the application.

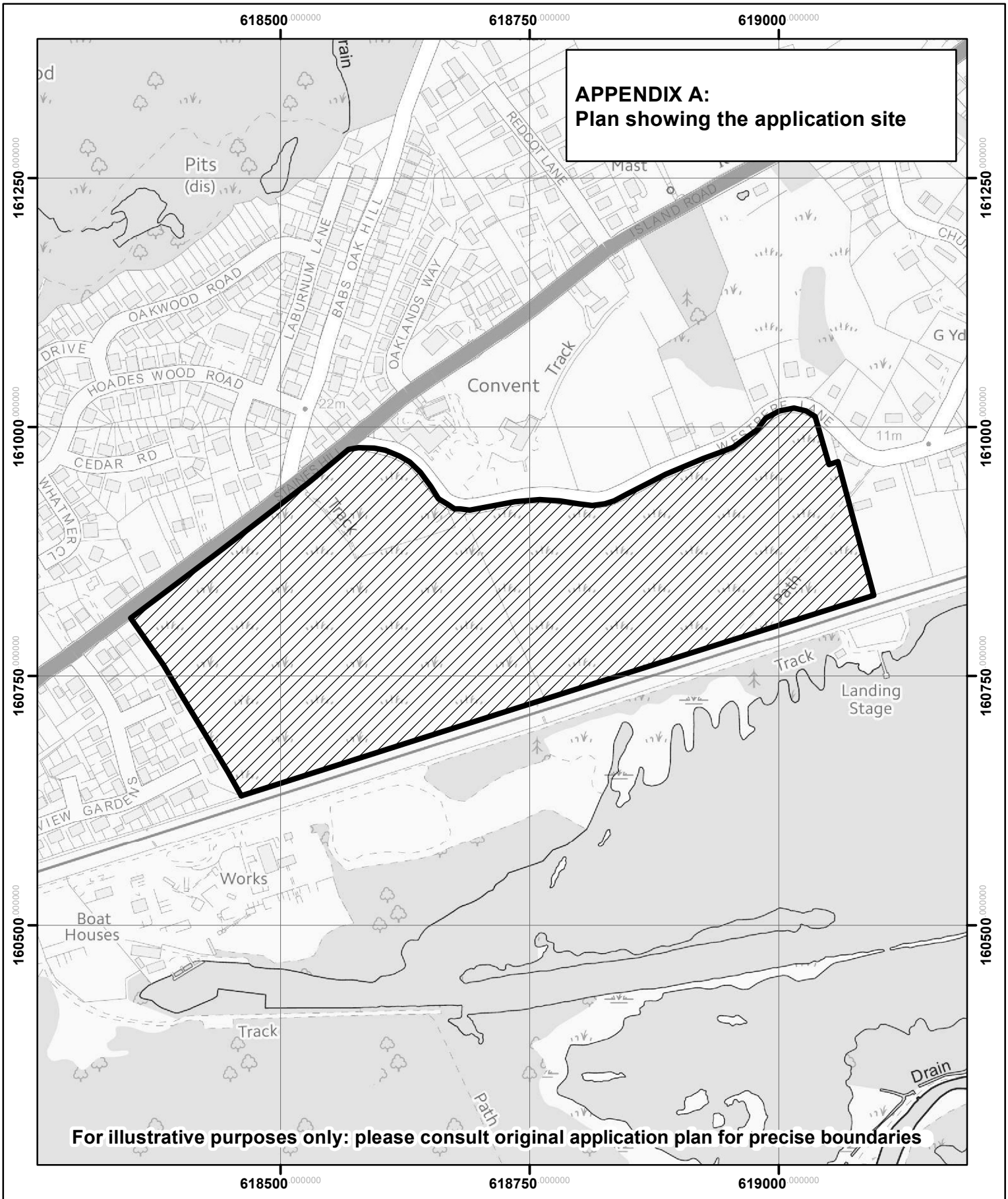
Recommendation

41. I recommend that the applicant be informed that the application to register the land known as Two Fields at Westbere 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:
Ms. Melanie McNeir – Tel: 03000 413421 or Email: melanie.mcneir@kent.gov.uk

Appendices

APPENDIX A – Plan showing application site
APPENDIX B – Photographs of the application site
APPENDIX C – Copy of Counsel's advice dated 20th November 2020



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Land subject to Village Green application, known as Two Fields, in the parish of Westbere (nr. Canterbury)

Page 33

Kent County Council
kent.gov.uk

APPENDIX B:
Aerial photograph of the application site (2009)

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W E
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Scale 1:5000

Land subject to Village Green application, known as Two Fields, in the parish of Westbere (nr. Canterbury)

Kent County Council
kent.gov.uk

Land known as Two Fields, south of Stanes Road and Westbere Lane, near Canterbury

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ADVICE

Introduction

1. I am asked to advise Kent County Council ('the registration authority') in respect of whether a trigger event has occurred which would prevent the registration of the above land known as 'Two Fields' as a town or village green (pursuant to application VGA 681) and, more generally, as to whether there are any other reasons for the application not to proceed to full consideration.

Factual Background

2. The application was made on 8 November 2019 by Two Fields Action Group Sturry and Westbere under s. 15(2) of the Commons Act 2006. It is alleged that the fields (which comprise five parcels of land with different owners and two further strips of land with unclear ownership) have been used by a significant number of the inhabitants of the parishes of Westbere and Sturry as of right for a period of 20 years ending on the date of the application.

3. Objections to the application were received on behalf of owners of two parts of the land: Bellway Homes Ltd. and Mr Jamshid Mavaddat. Bellway Homes did not initially raise an argument concerning a potential trigger event. However, this was raised by Mr Mavaddat in his objection of 9 March 2020 and subsequently seconded by Bellway Homes by way of further submissions on 30 July 2020. The Applicant responded on the trigger event point as well as the other points of objection raised by Bellway Homes and Mr Mavaddat.

Trigger Event:

4. In relation to the potential trigger event, the following is a summary of the arguments.

5. The whole of the land forms part of a number of sites which are identified as 'Green Gaps' in Canterbury City Council's Local Plan on the Proposals Map. Although I am not clear exactly which 'Green Gap' is relevant to this piece of land (as listed in para 11.48 of the Local Plan), the fact that it is so allocated is not disputed by the Applicant. Policy OS6 ('Green Gaps') thus applies to the land. It states as follows:

> Within the Green Gaps identified on the Proposals Map (see also Insets 1,3 and 5) development will be permitted where it does not:
>
> a. Significantly affect the open character of the Green Gap, or lead to coalescence between existing settlements;
>
> b. Result in new isolated and obtrusive development within the Green Gap.
>
> Proposals for open sports and recreational uses will be permitted subject to there being no overriding conflict with other policies and the wider objectives of the Plan. Any related built development should satisfy criteria (a) and (b) above and be kept to a minimum necessary to supplement the open sports and recreation uses, and be sensitively located and of a high quality design.

6. The supporting text to the policy makes clear that "The objective of the green gap policy is to retain separate identifies of existing settlements, by preventing their coalescence through development" (para 11.42). The policy is considered to supplement national policies restraining built development outside the urban areas and in the countryside and address the concern that gradual coalescence between existing built up areas (as a result of some development which has occurred historically outside urban areas) harms the character of the open countryside and is having an adverse impact on the setting and special character of villages (paras 11.43 and 11.44). It is said that the areas selected as 'Green Gaps' have been specifically chosen as being of particular risk of coalescence and are considered critical to the objective of retaining separate identities of settlements, and many of them have come under development pressure in the past and may again in the future. It is noted that

there remain exiting development constraint policies which are the most important means of countryside restraint and this will remain unchanged (paras 11.45 and 11.46).

7. Mr Mavaddat argues in his submissions that, whilst it is accepted that the policy itself "seeks to restrict development", it does allow for certain types of development i.e. proposals for open sports and recreational uses and related built development. It is said to be a permissive policy (with exclusions) rather than a completely restrictive policy, which does not rule out the potential for development on the land. Bellway Homes further point to the words of the policy, that development "will be permitted" and argue that the Green Gap policy provides expressly that land designated as a green gap is suitable for potential development.

8. They also point to the fact that a small section in the north eastern part of the Bellway Land sits within the Conservation Area. The Conservation Area policy (Policy HE6) does not preclude development or imply that any development would be unsuitable in these areas, it simply imposes conditions that any proposed development would need to satisfy to be appropriate.

9. Bellway refer to the Court of Appeal authority of Wiltshire Council v Cooper Estates Strategic Land Ltd [2019] PTSR 1980 in which the Court found that the fact that the land in that case lay within the settlement boundary of a market town was sufficient to create the presumption that the land had potential for development. The words "potential" and "development" are not to be narrowly construed.

10. The Applicant has responded (via Elizabeth Laws, the Secretary of the Group) and has argued that the designation of the land as a 'Green Gap' is in substance a designation of the land as "unsuitable for development". The exception for outdoor recreation would, broadly speaking, be compatible with continued use of the land for purposes which correspond to use of the land for lawful sports and pastimes, and its maintenance as an open space between settlements. The decision in Cooper Estates was reached on the basis that registration would "frustrate the broad objectives of

the development plan, from which it was clear that the planning authority had envisaged that new housing within the settlement boundary would be needed." The opposite is true of the green gap designation, from which it is clear that the planning authority, in its local plan, had envisaged that the land should be preserved as an open space between two settlements.

Other Points of Objection

11. The other points of objection to the application may be summarised as follows:

    (i) Failure to prove a significant number of users of the land for the full 20 year period, Allied to this, allegations that some of the use is referable to public rights of way use and should be discounted;

    (ii) Reliance on two localities – the parishes of Westbere and Sturry – which is not permissible in the context of the statute;

    (iii) Failure to provide that the number of users is significant in the context of the population of the localities;

    (iv) Alleged signage erected by Bellway in October 2018 stating: "This land is Private Property. The routes are not public rights of way. Any access is granted only by permission of the landowner." Identical replacement signs are alleged to have been placed on the land in September 2019. Both sets of signs were removed by persons unknown. Mr Mavaddat also argues that he erected post and wire mesh fencing on the land in January 2020; however, this was after the TVG application was made.

Trigger Event: Relevant Legal Principles

12. Section 15C(1) of the Commons Act 2006 provides that the right under s. 15(1) to apply to register land as a town or village green ceases to apply if an event specified in the first column of the Table set out in the relevant Schedule has occurred in relation to the land ("a trigger event"). The relevant part of the Schedule 1A is para 4 which provides: "A development plan document which identifies the land for potential

development is adopted under section 23(2) or (3) of the 2004 Act." There can be no dispute that Canterbury City Council's Local Plan is a development plan document adopted under the 2004 Act.

13. The Cooper Estates case is the leading authority on the interpretation of para 4. The Court of Appeal upheld the reasoning of Elvin J in the High Court and thus the High Court judgment is informative as well.

14. Elvin J held as follows:

(i) Where land falls within the scope of a development plan, the mere encouragement of certain categories of development is unlikely to be sufficient, as this would unduly restrict rights of applicants to register village greens.

(ii) It is necessary to show a connection between the plan, the policies, and the land in question.

(iii) Allocation would be the paradigm example but identification could be through preferred areas for development, opportunity areas, reserved areas etc.

(iv) The fact that land may be only part of a wider parcel of land which is identified is no bar to the application of paragraph 4.

(v) It is a question of fact on the basis of each plan and, in interpreting an individual plan, it is necessary to consider the language Parliament has used ("identifies" which means to 'establish the identity of') in the context of the mischief which s. 15C and Sch 1A were intended to meet (i.e. the Penfold review).

(vi) The existence of constraints affecting the land or the policies may be relevant, but their mere existence is not a reason for ruling out the area from being identified for potential development, since many if not most sites are subject

to some constraints, even if they are of the more mundane variety such as design and highway capacity.

15. On the facts of the Wiltshire Core Strategy, Elvin J was persuaded that the land was adequately 'identified for development' because there was a clear settlement boundary marked on the plan which encompassed the land (albeit it was greater than it) and the plan identified it for "development" by creating a presumption in favour of development within the settlement boundary (and, by contrast, providing for the refusal of applications that fell outside that boundary).

16. The Court of Appeal (Lewison LJ giving the leading judgment) upheld that reasoning and added the following:

(1) It is not a requirement of the trigger event that only the land in question is identified. It may be part of a larger area.

(2) 'Identified' has its ordinary English meaning to establish the identity of; establish who or what a given person or thing is; recognize.

(3) 'Potential development' is a very broad concept, is not qualified, and is not to be equated with likelihood or probability. It does not mean that the land will be developed and goes beyond allocation or something of essentially the same nature.

(4) Identification may be contrasted with "allocation" where a site is allocated for a *particular* use or development.

(5) The mere fact that land is included within a settlement boundary is not enough to suspend the right to apply to register a TVG. Suspension of the right depends on the consequences, as set out in the development plan document, of land being within a settlement boundary.

(6) It is imperative to interpret the trigger event in accordance with the policy underlying the change in the law. That policy was that whether or not to protect a piece of recreational land with identified development potential should be achieved through the planning system and not by means of registration of a TVG.

(7) In that case, identification of a presumption in favour of sustainable development in respect of the land clearly identified the land as having potential for development.

(8) There may be sites within a settlement boundary where the plan constraints bear directly on the land and might on the facts preclude potential development, but this was not such a case.

Application of Cooper Estate to Policy OS

17. It is clear in this case that there is a connection between the plan, the policies and the land in question since it is expressly allocated as a 'green gap' (it does not matter that it is part of a wider parcel of land so allocated). The first stage in establishing a trigger event is therefore met.

18. The question then arises is whether the allocation is one for "potential development" or not. The existence of constraints affecting the land is not a reason for ruling out the area from being identified for potential development. The question comes down to the consequences of the land being within a Green Gap, looking at the plan as a whole, and bearing in mind the policy underlying the change in the law, which was that whether or not to protect a piece of recreational land with identified development potential should be achieved through the planning system and not by means of registration of a TVG.

19. I accept the point that the effect of the 'green gap' designation is essentially restrictive in that development will only be permitted where it does not affect the open character of the gap or lead to coalescence or result in isolated and obtrusive development.

Furthermore, the policy is said to supplement national policies restraining built development in the countryside. It seems unlikely there that any significant built development would be in compliance with this policy.

20. However, the very fact that such a policy exists appears to acknowledge that the area is under development pressure (see supporting text). It therefore could be said that the policy is identifying the land for 'potential development' and seeking to regulate that development in order to preserve the open character of the Green Gap. Proposals for open sports and recreational uses would be in compliance with the policy (provided they met other policies in the plan). Where these involve a material change of use of land, they would also fall within the meaning of 'development'. It could therefore further be argued that the policy is identifying the land for potential sports and recreational development as well as for more general forms of built development (subject to the restrictions imposed).

21. The High Court and Court of Appeal in Cooper Estates were concerned that TVG registration of the land in question would frustrate the broad objectives of the development plan which had envisaged that new housing within the settlement boundary would be needed. I agree with the Applicant that the same concern is not relevant here. TVG registration of Two Fields would not frustrate the objective of the 'Green Gap' policy to prevent the loss of openness of the gap and coalescence of settlements.

22. Having said that, Lewison LJ made the point that the policy underlying the change in the law and the introduction of 'trigger events' was concerned with whether protection of a particular piece of land identified with development potential should be achieved (or not) through the TVG registration process or through the planning system. It seems to me that the purpose of identifying the land as a 'Green Gap' in the development plan was to ensure that regulation of potential development of it comes about through the planning system.

23. It is therefore my view that Policy OS6 does identify the land within the 'green gaps' for potential development. The likelihood of such development being permitted in accordance with the policy will, of course, depend on whether the development applied for significantly affects the open character of the gap or leads to coalescence of settlements or not (or otherwise results in new isolated and obtrusive development). It is clear that the development plan envisages the development pressures on these 'green gap' areas being managed through the planning system. Whilst TVG registration *may* be in accordance with the restrictive nature of the protection for the green gap, that is not always necessarily going to be the case. For example, TVG registration would prevent sympathetic sports buildings and structures being erected on the land or, by way of another example, a utilities mast being erected which would not affect the open character of the gap. The Courts have emphasized the wide scope of the meaning of 'potential' development. In light of this, I consider that a Court would be more likely than not to conclude that Policy OS6 functions as a 'trigger event' in this case.

Other Points of Objection

24. Given my views on the trigger event, it is not strictly necessary to consider whether there are any other 'knock out blows' to the application. However, for completeness, my views are as follows.

25. I would be reluctant to reach any conclusion about use of the land and whether it is by a significant number of local inhabitants and the extent to which it is footpath use, without hearing evidence. In addition, there seems to be a real dispute of evidence in the written submissions about the signage – where it was located and whether it was actually referable to the footpaths rather than the land as a whole. Thus, again, I would not want to reach a conclusion on the effect of alleged signage without hearing evidence.

26. The localities point is not so dependent on evidence. I am not aware of any authority permitting an applicant to rely on two localities (as opposed to the two

neighbourhoods in Leeds). The statute refers to a single locality in s. 15. However, in the interests of fairness, I consider that – were the registration authority to disagree with my advice on the trigger event and proceed to determine the application – this point should proceed to fuller consideration (and, indeed, whether an amendment could allow two neighbourhoods instead, which has been mooted by the Applicant).

Conclusion

27. In conclusion, my view is that Policy OS6 of the Canterbury City Council Local Plan operates as a 'trigger event' under para 4 of Schedule 1A of the Commons Act 2006. Accordingly, it is not possible to determine an application to register Two Fields as a TVG.

28. I acknowledge, however, that my conclusion stems from a particular interpretation of the policy in light of the comments of the High Court and Court of Appeal in Cooper Estates and it is potentially open to different interpretation and application.

29. If the registration authority disagrees with my conclusion and decides to proceed to determine the application, I consider that the evidence should be tested by means of a public inquiry. There is no 'knock out' blow to cause the application to fail conclusively at this stage.

30. If any questions arise as a consequence of this advice, or if I can be of further assistance, those Instructing should not hesitate to contact me in the usual way.

ANNABEL GRAHAM PAUL

Francis Taylor Building

Inner Temple

EC4Y 7BY

20 November 2020

Application to register land known as Weavering Heath at Grove Green (in the parish of Boxley) 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 Wednesday 24th February 2021

Recommendation: I recommend that the County Council informs the applicant that the application to register the land known as Weavering Heath at Grove Green (in the parish of Boxley) has been accepted, and that the land subject to the application be formally registered as a Town or Village Green.

Local Member: Sir. P. Carter (Maidstone Rural North) Unrestricted item

Introduction

1. The County Council has received an application to register a piece of land known as Weavering Heath at Grove Green in the parish of Boxley as a new Town or Village Green. The application, made on 1st April 2020, was allocated the application number VGA683. A plan of the site is shown at **Appendix A** to this report.

2. The application has been made by Maidstone Borough Council ("the applicant"), to whom the land subject to the application was transferred by the developers of the Grove Green estate in 1982 under the terms of a planning agreement. In 2019, concerned by other development locally, the local residents petitioned the Borough Council to apply to register Weavering Heath as a Village Green in order to protect it as an open space in perpetuity. The current application has therefore come about as a result of a resolution by the Borough Council's Policy and Resources Committee (at its meeting of 22nd January 2020) that the Borough Council should apply, in its capacity as landowner, to register the land as a Village Green as requested by the petitioners.

Procedure

3. 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.

4. 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."

5. 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.

6. 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

7. The area of land subject to this application ("the application site") consists of an irregular shaped piece of land with an area of approximately 19.3 acres (7.8 hectares) in size, known locally as Weavering Heath. The application site is situated on the northern edge of the residential development known as Grove Green and extends roughly northwards from Shepherds Gate Drive to Bearsted Road, and roughly eastwards from New Cut Road to the rear of properties in Exton Gardens.

8. Unrestricted access to the application site is available along its open frontage with Shepherds Gate Drive, with informal access points also available from Henley Fields and Exton Gardens. From Bearsted Road, access to the site is available via Public Footpaths KH46 and KH47 which both cross the site.

9. A plan of the application site is attached at **Appendix A**, with photographs of it at **Appendix B**.

Notice of Application

10. As required by the regulations, Notice of the application was published on the County Council's website, but no representations have been received.

Ownership of the land

11. A Land Registry search has been undertaken which confirms that the application site is wholly owned by the applicant under title number K890499.

12. There are no other interested parties (e.g. leaseholders or owners of relevant charges) named on the Register of Title.

The 'locality'

13. 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.

14. 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).

15. In this case, the entirety of the application site and adjoining properties fall within the civil parish of Boxley and therefore it would seem appropriate for the relevant locality to be Boxley parish.

Conclusion

16. As stated at paragraph 4 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.

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

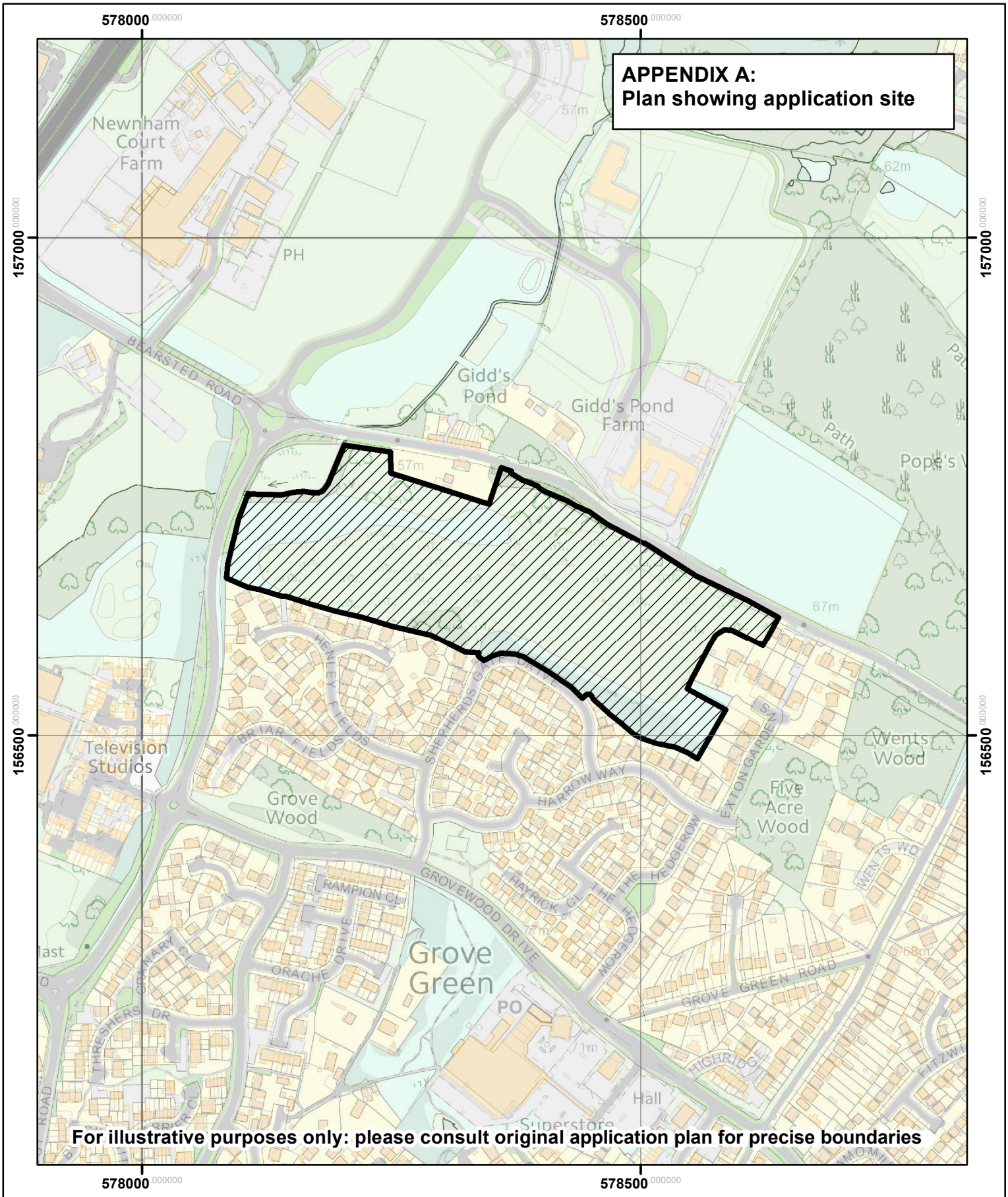
Recommendations

18. I recommend that the County Council informs the applicant that the application to register the land known as Weavering Heath at Grove Green (in the parish of Boxley) 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
Case Officer:
Ms. Melanie McNeir – Tel: 03000 413421 or Email: melanie.mcneir@kent.gov.uk

Appendices

APPENDIX A – Plan showing application site
APPENDIX B – Photographs of the application site



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Land subject to Village Green application at Grove Green, Boxley

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APPENDIX B:
Photographs of the application site

2015 aerial photograph

Google Streetview image from Shepherd's Gate Drive

Transfer of Rights of Common at Higham Common (CL86)

A report by the PROW and Access Manager to Kent County Council's Regulation Committee Member Panel on Wednesday 24th February 2021.

Recommendation: I recommend that the County Council informs the applicant that the application to amend the Register of Common Land to reflect the recent transfer of rights of common has been accepted and that the Register of Common Land for unit number CL86 be amended accordingly.

Local Member: Mr. B. Sweetland Unrestricted item

Introduction

1. The County Council is the 'Commons Registration Authority' for Kent for the purposes of the Commons Act 2006 (and, previously, the Commons Registration Act 1965). In this capacity, it is responsible for holding the legal record of Common Land and Town or Village Greens for the county, known as the Registers of Common Land and Town or Village Greens, and for making any necessary amendments to the Registers using the requisite legal processes.

2. The County Council has received an application to amend the Register of Common Land from the Royal Society for the Protection of Birds ("the applicant"). The application, dated 19th February 2020, has been made under section 12 of the Commons Act 2006 and seeks to amend unit number CL86 of the Register of Common Land to reflect a transfer of rights of common.

Background

3. Common Land was defined in the Commons Registration Act 1965 as land subject to certain traditional rights (known as 'rights of common') or waste land of a manor not subject to rights of common. The most widely exercised right of common remaining today is the common of pasture (a right to graze animals), but other examples of rights of common include pannage (a right to turn out pigs in woodland to graze on acorns), piscary (a right to fish), turbary (a right to dig peat or turf) and estovers (a right to collect firewood).

4. In some parts of the country, particularly in moorland areas, rights of common are widely exercised and form an important asset to the local farming community. In lowland counties, such as Kent, they are far less prevalent (because Common Land here consists mainly of manorial waste) but these traditional rights are nonetheless still exercised in certain areas.

5. Rights of common are normally attached to a particular property, but in some cases they are held by an individual. In the latter case, the rights may be sold on to other individuals and, in these circumstances, it will be necessary to record the change of ownership in the Register of Common Land. Note that the transfer does not take legal effect unless and until it is recorded in the Register of Common Land.

Procedure

6. Section 12 of the Commons Act 2006 enables the transfer of ownership of any rights of common to be recorded in the Register of Common Land. The application must be made in accordance with the provisions of the Commons Registration (England) Regulations 2014 ("the 2014 Regulations").

7. As a standard procedure set out in the 2014 Regulations, the County Council must put a copy of the Notice of Application on its own website and serve notice on the existing holder of the right of common (if this is not the applicant) and the owner(s) of any other rights of common exercisable over the land. The publicity must state a period of at least six weeks during which objections and representations can be made.

8. In determining the application, the County Council must be satisfied that:
   - the applicant is entitled to make an application under section 12; and
   - where the applicant is not currently the registered owner of the rights of common, there is evidence that the registered owner consents to the application.

The Case

Description of the rights of common affected by the application

9. The rights of common affected by this application are set out at entry number 7 on the Rights section of the Register of Common Land for unit number CL86. They are: "16 rights of common pasture being rights to graze a total of 16 bullocks, 32 calves, 12 horses or 80 sheep over the whole of the land comprised in this Register unit during the period from 25th March to 25th December in each year".

10. The rights are currently registered to ET Ledger and Son Ltd. By deed of transfer dated 19th February 2020, the ownership of these rights of common was transferred to the applicant.

Notice of Application

11. As required by the 2008 Regulations, notice of the application was published on the County Council's website. No objections have been received.

Capacity to apply

12. The County Council must be satisfied that the person making the application under section 12 of the Commons Act 2006 has the capacity to apply. Those eligible to apply for such applications are the registered owner of the right of common or the transferee of that right.

13. The applicant in this case is the transferee and, as such, the applicant is able to make the application to amend the register under the Commons Act 2006.

Evidence that the registered owner of the rights of common consents to the application

14. The County Council must also be satisfied that the current registered owner of the rights of common consents to the application.

15. In this case, the application form is considered a formal deed between the two parties and is signed by both the existing owner of the rights and the transferee (the applicant). Notice of the application has also been served on the current registered owner and no objection has been made.

Conclusion

16. It can therefore be concluded that the necessary criteria concerning the amendment of the Register of Common Land for unit number CL86 have been met.

Recommendations

17. I recommend that the County Council informs the applicant that the application to amend the Register of Common Land to reflect the recent transfer of rights of common has been accepted and that the Register of Common Land for unit number CL86 be amended accordingly.

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.

Appendices

APPENDIX A – Copy of the Register of Common Land for CL86

APPENDIX A: Extract of the Register of Common Land (CL86)

Form 2

COMMONS REGISTRATION ACT 1965

NOTE: This section contains the registration of the land comprised in this register unit.

Registration authority KENT COUNTY COUNCIL

COMMONS REGISTRATION ACT 1965
KENT COUNTY COUNCIL
REGISTRATION AUTHORITY
10 JUL 1968

Register unit No. CL.86

Edition No.

See Overleaf for Notes

Register of COMMON LAND

LAND SECTION—Sheet No.

No. and date of entry	*Description of the land, reference to the register map, registration particulars etc.*
1 10.7.68	An area of land of approximately 32 acres in extent known as Higham Common in the Parish of Higham in the Rural District of Strood as marked with green verge lines inside the boundary on sheets 39 and 43 of the register map and distinguished by the number of this register unit. Registered by the registration authority in pursuance of section 4(2)(b) of the Commons Registration Act, 1965. (~~Registration provisional~~)
16.8.72.	The registration at entry No. 1 above, being undisputed, became final on 1st August, 1972.

COMMONS REGISTRATION ACT 1965

NOTE: This section contains the registration of every person registered under the Act as owner of any of the land described in the land section of this register unit. It does not contain any registration in respect of land of which the freehold is registered under the Land Registration Acts 1925 and 1936, but the absence from this section of a registration in respect of any land described in the land section does not necessarily indicate that the freehold of that land is registered under those Acts.

Registration Authority
KENT COUNTY COUNCIL

Register unit No. CL 86

Edition No.

See Overleaf for Notes

Register of COMMON LAND

OWNERSHIP SECTION—Sheet No.

1 *No. and date of entry*	2 *No. and date of application*	3 *Name and Address of person registered as owner*	4 *Particulars of the land to which the registration applies*
		Extract from Chief Commons Commissioners report of 12 March 1979 "In the absence of any evidence I am not satisfied that any person is the owner of the land and it will therefore remain subject to protection under Section 9 of the Act of 1965."	

described in the land section of this register unit.

Register of COMMON LAND

COMMONS REGISTRATION ACT 1965
KENT COUNTY COUNCIL
REGISTRATION AUTHORITY
10 JUL 1968

Register unit No. CL.86

Edition No.

See Overleaf for Notes

RIGHTS SECTION—Sheet No.

1 *No. and date of entry*	2 *No. and date of application*	3 *Name and address of every applicant for registration, and the capacity in which he applied*	4 *Particulars of the right of common, and of the land over which it is exercisable*	5 *Particulars of the land (if any) to which the right is attached*
~~1~~ 10.7.68	~~344~~ 25.6.68	~~Roy George Batchelor,~~ Frances Batchelor, Joyce Light, Frederick Leslie Duck, as Trustees of H.H. Batchelor, deceased, ~~White House Farm,~~ ~~Higham, Rochester.~~	~~16 rights of common pasture being rights to graze~~ a total of 16 bullocks, 32 calves, 12 horses or 80 sheep over the whole of the land ~~comprised in this~~ register unit during the ~~period from~~ 25th March to 25th ~~December in each year.~~ (~~Registration provisional~~)	~~None~~
2 10.7.68	345 25.6.68	Sidney Dartmall and Phyllis Dartmall (Trading as Dartmall Bros) 1, Bull Lane, Lower Higham, Rochester.	A right to graze one bullock, two calves, one horse or five sheep over the whole of the land comprised in this register unit during the period from 25th March to 25th December in each year. (~~Registration provisional~~)	None
16-8-72.		The registrations at entries Nos. 1 and 2 above, being undisputed, became final on 1st August, 1972.		
3 ~~18.7.78~~	~~12.12.77~~	~~Registration amendment: entry No.1 above is replaced by entry No.4 below.~~		
~~4~~ 18.7.78	12.12.77	~~R. & R. Batchelor Ltd.,~~ Whitehouse Farm, Higham, Kent.	~~16 rights of common pasture being rights to~~ graze a total of 16 bullocks, 32 calves, 12 horses or 80 sheep ~~over the whole~~ of the land comprised in this register unit during the period from 25th March to 25 December ~~in each year.~~	~~None~~
5 06-06-2008	01.04.2008	Registration amendment: entry No.4 above is replaced by entry No.6 below.		
6 06-06-2008	01.04.2008	Master Fellows and Scholars of the College of St. John the Evangelist in the University of Cambridge c/o (Mills & Reeve, Francis House, 112 Hills Road Cambridge CB2 1PH)	16 rights of common pasture being rights to graze a total of 16 bullocks, 32 calves, 12 horses or 80 sheep over the whole of the land comprised in this register unit during the period from 25th March to 25 December in each year.	None

COMMONS ACT 2006

Form 3

NOTE: This section contains the registration of every right of common registered under the Act as exercisable over the whole or any part of the land described in the land section of this register unit.

Registration Authority:
KENT COUNTY COUNCIL

Register of Common Land

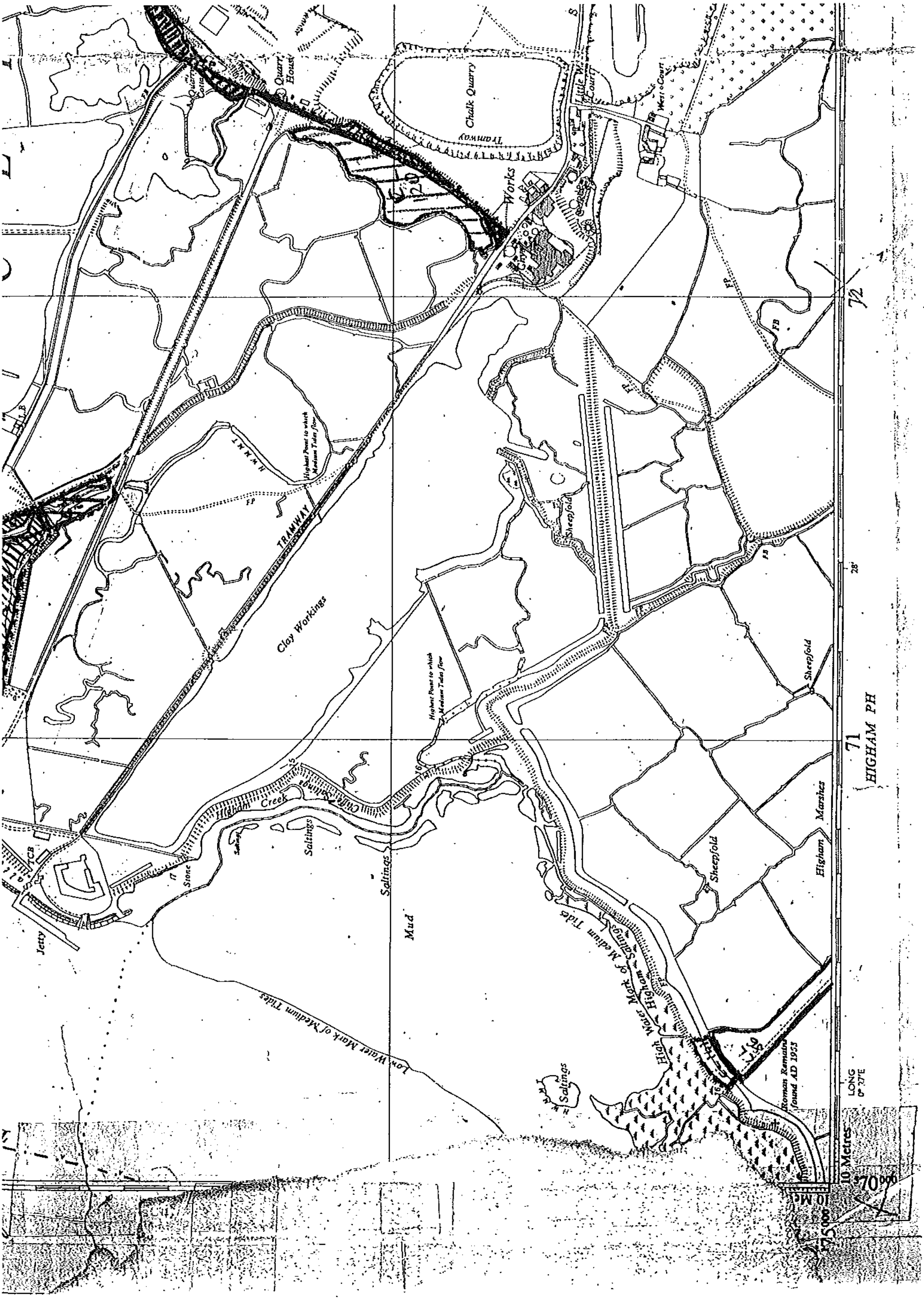
Register unit No. **CL86**

Edition No. 1

See overleaf for notes

RIGHTS SECTION – Sheet No. 2

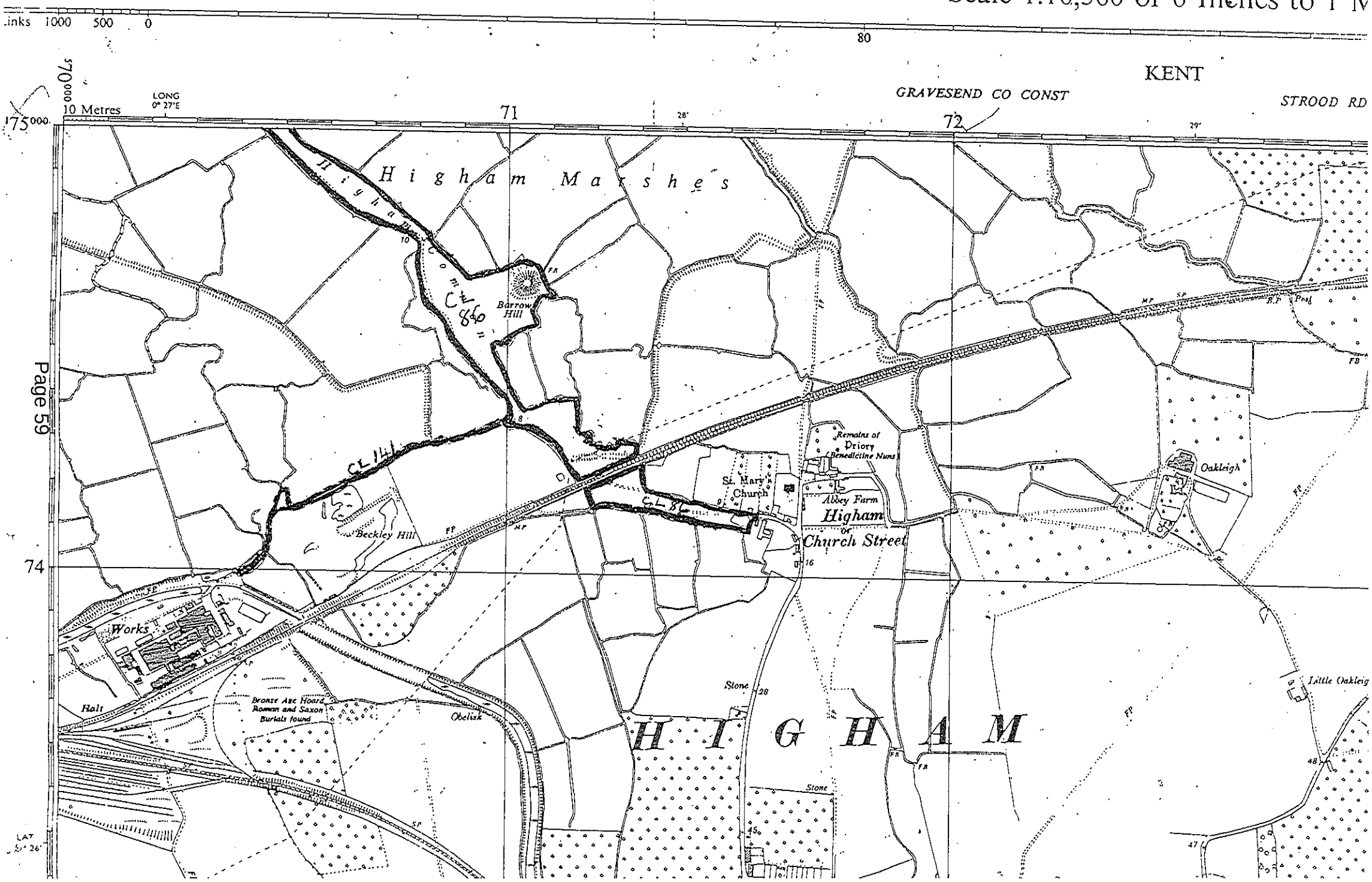
1. *No. and date of entry*	2. *No. and date of application*	3. *Name and address of every applicant for registration, and the capacity in which he applied*	4. *Particulars of the right of common and of the land over which it is exercisable*	5. *Particulars of the land (if any) to which the right is attached or details of the owner of any right held in gross*	6. *Declaration of entitlement to right and details of the right claimed*
7. 20th March 2012 (see entries 1, 4 and 6)	CAA12/CL86 11th April 2011 s12 of the Commons Act 2006	ET Ledger and Son Ltd. Wormdale Farm Wormdale Hill Sittingbourne Kent ME9 7PX (Transferee)	16 rights of common pasture being rights to graze a total of 16 bullocks, 32 calves, 12 horses or 80 sheep over the whole of the land comprised in this register unit during the period from 25th March to 25th December in each year.	Right of common held in gross: ET Ledger and Son Ltd. Wormdale Farm Wormdale Hill Sittingbourne Kent ME9 7PX	


Chalk Quarry
Tramway
Works
Clay Workings
TRAMWAY
Highest Point to which Medium Tides flow
Sheepfold
Higham Creek
Saltings
Mud
Stone
Jetty
Low Water Mark of Medium Tides
High Water Mark of Medium Tides
Higham Saltings
Higham Marshes
HIGHAM PH
Roman Remains found AD 1953
LONG 0°27'E
10 Metres
72
71
28'
FP
FB
CB

ET TQ 77 SW

ORDNANCE SURVE

Scale 1:10,560 or 6 Inches to 1 M



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