



AGENDA

Kent County Council

REGULATION COMMITTEE MEMBER PANEL

Tuesday, 10th December, 2024, at 10.00 am
Council Chamber, Sessions House, County
Hall, Maidstone

Ask for: **Hayley Savage**
Telephone **03000 414286**

Membership

Mr S C Manion (Chair), Mr M Baldock, Mr T Bond, Miss S J Carey and Mr P Cole

UNRESTRICTED ITEMS

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

1. Membership and substitutes
2. Declarations of interest for items on the agenda
3. Application to register land known as Bunyards Farm at Allington as a new Town or Village Green (Pages 1 - 18)
4. Application to register land known as Beacon Road in Herne Bay as a new Town or Village Green (Pages 19 - 36)
5. Application to register land known as Upper Castle Field at Tonbridge as a new Town or Village Green (Pages 37 - 56)
6. Application to register land known as Burton Down Park at Herne Bay as a new Town or Village Green (Pages 57 - 62)
7. Application to register land at Marley Fields at Hoath as a new Town or Village Green (Pages 63 - 70)
8. Other items which the Chairman decides are urgent

EXEMPT ITEMS

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

Benjamin Watts
General Counsel

Monday, 2 December 2024

Please note that any background documents referred to in the accompanying papers maybe inspected by arrangement with the officer responsible for preparing the relevant report.

Application to register land at Bunyards Farm, Allington 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 Tuesday 10th December 2024.

Recommendation: I recommend, for the reasons set out in the Inspector's report dated 12th September 2024, that the Applicants be informed that the application to register the land at Bunyards Farm, Allington as a new Village Green has not been accepted.

Local Member: Mr. A. Kennedy

Unrestricted item

Introduction

1. The County Council has received an application ("the Application") to register land at Bunyards Farm at Allington as a new Town or Village Green from Mr. C. Passmore, Mr. J. Willis, Mr. T. Wilkinson, Cllr. P. Harper, Mr. T. Walker and Mr. D. Edwards ("the Applicants").
2. The Application has been made under section 15 of the Commons Act 2006, which 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;
3. The Application was initially supported by 10 user evidence questionnaires, with a further 53 questionnaires in support of the Application subsequently being provided by the Applicants. The Application was 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 under consideration is 8th June 2001 to 8th June 2021.

The Application Site

4. The land subject to the Application ("the Application Site") consists of an area of land of approximately 37.5 acres (15 hectares), comprising formerly arable farmland, situated between Beaver Road at Allington and the Maidstone railway line. The Application Site is shown on the plan at **Appendix A**.
5. There are no public rights of way crossing the Application Site, but the Applicants' case is that access to it has been available from a number of points around the site. Those points are shown on the plan attached at **Appendix B** (along with other notable features), and can be described as follows:
 - **Access A** is a historical field gateway on the north-eastern side of the Application Site that is no longer accessible due to development on the neighbouring land;

- **Access B** comprises the open and unrestricted boundary of the land with the Godwin Road development, which has been available since around 2017 (but was part of the working farmyard, and not accessible, prior to that);
 - **Access C** is situated on Beaver Road, roughly opposite its junction with Juniper Close, between a line of hedgerow and a green mesh fencing which is believed to have been installed by the developers of Corben Close (to secure the development site);
 - **Access D** is located at the other end of the green mesh fencing, on the southernmost corner of the Application Site, and is an open gap between that fencing and the adjoining treeline that has been available since around the completion of the Corben Close development in late 2001 or 2002;
 - **Access E** is a path running through a gap between mature trees between the Application Site and the neighbouring pear orchard;
 - **Access F** was historically located in a natural break in the mature tree line but has been obstructed by makeshift fencing; and
 - **Access G**, located towards the railway line on the south-western boundary of the Application Site, comprises a (currently overgrown) break in the tree line where there are remnants of old fencing.
6. The nature of the Application Site has varied considerably over the last few decades. Historically, it has long been in agricultural use and, for many years until 1998 it was used for holding cattle as lairage (where animals are held prior to being taken to slaughter). After 1998, there was some sporadic use of the land for the grazing of horses and, in 2003, 25 to 30 cows were moved onto the site at short notice as a result of a fire at another farm (staying at Bunyards Farm for a period of four weeks). No further livestock was kept on the land after this time, although a hay crop was taken from the land in 2006, and fertilizer applied and mulch spread in 2017. Since that time, the lack of grazing and maintenance on the land has meant that nature has taken its course, such that the grass has become overgrown and self-seeded trees and clumps of brambles have appeared.
7. Finally, it is to be noted that the entirety of the Application Site is the subject of a separate outline planning application for a residential development comprising some 400 homes (reference 22/00409/OEAO). That application is currently under consideration by the Tonbridge and Malling Borough Council (in its capacity as the Local Planning Authority), but has no bearing whatsoever upon the outcome of the Village Green application.

Background

8. The entirety of the Application Site is registered to the Trustees of the Andrew Cheale Will Trust under Land Registry Title number K436532 (“the Landowners”). BDW Trading Ltd. have a legal interest in the land in the form of an option to purchase (“the Objectors”).
9. At the consultation stage, a joint objection to the Application was received from the Landowners and the Objectors on the basis that the application fails to meet the requirements of section 15 of the 2006 Act for a number of reasons, and therefore should be refused. In particular, it was suggested that, throughout much of the relevant period, the Application Site was fenced and in active agricultural use (for the grazing of cattle, taking of a hay crop and grazing by horses) such

that the land was securely fenced and any use of it has been in exercise of force, and, since agricultural use ceased, the land has become overgrown to the extent of making it unsuitable for recreational purposes.

Previous resolution of the Regulation Committee Member Panel

10. The matter was previously considered at a Regulation Committee Member Panel meeting on 15th September 2023¹, at which Members accepted the recommendation that the matter be referred to a Public Inquiry.
11. Accordingly, Officers instructed a Barrister (“the Inspector”) experienced in this area of law to hold a Public Inquiry and to report her findings back to the County Council. A Public Inquiry took place over four days in March 2024 at which the Inspector heard evidence from witnesses both in support of and in opposition to the application. The Applicants were ably represented at the Inquiry by Mr. Passmore and Mr. Duncan Edwards, whilst the Landowners and Objectors were represented by Mr. Douglas Edwards of Kings Counsel.
12. The Inspector published her report (“the Inspector’s report”) on 12th September 2024, and her findings are discussed below.

Legal tests and Inspector’s findings

13. In dealing with an application to register a new Town or Village Green, the County Council must consider the following criteria:
 - (a) *Whether use of the land has been 'as of right'?*
 - (b) *Whether use of the land has been for the purposes of lawful sports and pastimes?*
 - (c) *Whether use has been by a significant number of inhabitants of a particular locality, or a neighbourhood within a locality?*
 - (d) *Whether use of the land 'as of right' by the inhabitants has continued up until the date of application or, if not, has ceased no more than one year prior to the making of the application?*
 - (e) *Whether use has taken place over period of twenty years or more?*

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

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

14. In order to qualify for registration as a Village Green, recreational use of the Application Site needs to have taken place ‘as of right’ throughout the relevant twenty year period. This means that use must have taken place without force, without secrecy and without permission (*‘nec vi, nec clam, nec precario’*). In this regard, the concept of ‘force’ is not limited solely to physical force, but instead applies to any use which is contentious or exercised under protest²: *“if, then, the inhabitants’ use of the land is to give rise to the possibility of an application being made for registration of a village green, it must have been peaceable and non-*

¹ The minutes of that meeting are available at: [Agenda for Regulation Committee Member Panel on Friday, 15th September, 2023, 10.00 am](#)

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

*contentious*³. As such, if a landowner takes steps to indicate that he objects to informal use of his land, then that use will not be considered 'as of right'.

15. In this case, there was no indication that informal recreational use of the Application Site had taken place in a secretive or permissive manner, but one of the key issues before the Inspector was the degree to which access to the Application Site had taken place in exercise of force, and there was much debate at the Inquiry as to the state of the fencing around the Application Site during the relevant period (2001 to 2021) and the various access points used to gain entry to the site.

16. At the start of the material period, the Application Site was no longer used for commercial livestock farming, although there was some sporadic use of the site for grazing horses, and the Inspector considered⁴ that the fencing must have been in "generally good enough condition to contain the horses" (albeit that it is unclear whether any internal electric fencing was used). This time also coincided with the construction of new homes at Juniper Close and Beaver Road, and the arrival of new families to the area, such that there may well have been some attraction to seek to access the land for recreation via Access C. However, in this respect, she noted⁵:

"at this time, notwithstanding there was no livestock on the land, I consider it must have been clear that it was private property and had recently been farmed. The haulage yard and farmhouse were still occupied and the livestock proof fencing must have still been in some kind of decent condition given the very short passage of time since farming ceased. Anyone climbing over a fence or through it would know that they were entering the land by force. If fencing was broken, either at Access C or along the south-western boundary, then it would have been apparent that this had been done by others in order to gain access to the land unlawfully."

17. The Inspector also found that, prior to the construction of Corben Close (at the very start of the material period), the developers erected a very secure green mesh fence around the perimeter of the construction site (presumably to secure it and prevent public access), which was contiguous with the boundary of the Application Site between Access C and the southernmost corner of the Application Site. This would have prevented access to the site via Access D, and would also have necessitated a very circuitous walk for the residents of Juniper Close and Beaver Road to reach access points E, F and G (which was unlikely in practice).

18. It was not possible to identify, on the evidence available, the precise date upon which access to the Application Site via Access D first became available, but the Inspector concluded that:

"Access D was therefore non-existent throughout the period of the Corben Close development's construction. This period of construction straddled the start of the relevant period. [One witness] said that she was the first family to move into the Corben Close development in March 2002 and some of the houses were still being built then... I do not know the exact date when the

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

⁴ At paragraph 151 of the Inspector's report

⁵ At paragraph 152 of the Inspector's report

majority of the green fence was taken down but I find that it was most likely to have been after July 2001 [i.e. the start of the material period].”

19. Insofar as Access B was concerned, prior to the Godwin Road development, the Inspector found⁶ that *“there was no access at all from this point as it was part of the working farmyard which was gated”*. However, the effect of the Goodwin Road development, completed in around 2017, was to demolish the yard and open up the Application Site to the public: *“since that event, the land has been free and open to the public with no suggestion that users are trespassers”*⁷.
20. Finally, Access A comprised an internal boundary between fields and appeared to the Inspector⁸ *“to have been used mainly to enter the northern field from the application land to go to the pillbox... and go back again rather than as a route into the application land from a public road or footpath”*, whilst there was evidence that fencing had, in the early years, been in place at Access G but, in any event, that access appeared to have largely fallen into disuse following the completion of the Corben Close development and the creation of other accesses nearer to the residential properties⁹.
21. It is clear from the user evidence that the overwhelming majority of users were accessing the Application Site via access point C. Although the Inspector accepted¹⁰ that the repairs to the fence at Access C were ‘pretty elementary’ and undertaken only on a ‘very ad hoc and infrequent basis’, she ultimately concluded¹¹ that, at the start of the material period (when the scale of informal recreational use was less than it was towards the latter stages):
“[those responsible for the land] were clearly aware that the Access C fencing was being broken and they took some steps to repair it. They were therefore not acquiescent in my view and, although I consider it would have been open to them to have done more at that time, I consider that, on the balance of probabilities, they did do enough to indicate to users of the land that they should not be entering it via Access C. Anyone stepping over or through the fencing would have been aware that their use was contentious and anyone walking through broken or cut fencing would have (or ought to have) seen the remains of it on the ground... and also ought to have been aware that they were entering forcibly.”
22. In respect of the other access points along the south-western boundary at that time (E, F, G), she concluded¹² that there had been stock-proof fencing in place (comprising three strands of barbed wire) and that:
“This was not a case where a fence simply fell down. It would have been obvious that the wire had been broken and it was private land where users were trespassing against the will of the landowner. I therefore consider that, despite the lack of active repairs, it was enough for the landowner to assume that the existence of that fencing, which had been stock proof only

⁶ Paragraph 12 of the Inspector’s report

⁷ Paragraph 166 of the Inspector’s report

⁸ Paragraph 188 of the Inspector’s report

⁹ Paragraph 157 of the Inspector’s report

¹⁰ Paragraph 159 of the Inspector’s report

¹¹ Paragraph 177 of the Inspector’s report

¹² Paragraph 179 of the Inspector’s report

two years previously, was still at that time a clear indication to users that they should not be accessing the land.”

23. Accordingly, the Inspector’s view¹³ was that, on balance of probabilities, all use of the Application Site at the start of the relevant period was by force. She further found¹⁴ that use continued to be by force *“until the Corben Close development was completed [in late 2001 or 2002] and the green mesh fence was partially removed and Access D was opened up. After that, use of the application land has at all times been ‘as of right’”*.

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

24. The term ‘lawful sports and pastimes’ comprises (for the purpose of Village Green registration) a composite class that can include commonplace activities such as 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. Indeed, 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’*¹⁵.

25. In this case, as mentioned above, the nature of the Application Site has changed considerably over the material period, it having long been used as a field for regular cattle grazing (shortly prior to the start of the material period), to use by the landowner practically ceasing (towards the middle of the material period), and then it gradually becoming overgrown and unkempt (as it is today). That in turn has affected the manner in which the Application Site is capable of being used for recreational purposes.

26. Whilst there was evidence of the use of the Application Site for activities such as blackberry picking, children playing, cycling and wildlife observation, the overwhelming majority of the evidence in support of the Application refers to walking. This is highly relevant because, in cases where the use comprises predominantly of walking, it will be necessary to differentiate between use that involves wandering at will over a wide area and use that involves walking a defined linear route from A to B. The latter will generally be regarded as a ‘rights of way type’ use and, following the decision in the Laing Homes¹⁶ case, falls to be discounted. In that case, the judge said: *‘it is important to distinguish between use that would suggest to a reasonable landowner that the users believed they were exercising a public right of way to walk, with or without dogs... and use that would suggest to such a landowner that the users believed that they were exercising a right to indulge in lawful sports and pastimes across the whole of the fields’*.

27. As noted¹⁷ by the Inspector in this case, the changing nature of the Application Site has meant that, latterly, it has become *“far, far more difficult to walk on the*

¹³ Paragraph 179 of the Inspector’s report

¹⁴ Paragraph 189 of the Inspector’s report

¹⁵ 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

¹⁶ R (Laing Homes) v Buckinghamshire County Council [2003] 3 EGLR 70 at 79 per Sullivan J

¹⁷ At paragraph 192 of the Inspector’s report

land other than on defined paths”, which users are forced to stick to “because the grass/ shrub/ brambles/ self-seeded trees etc. are so extensive elsewhere”. The Inspector identified a number of ‘main paths’, including a circular route around the field, a clear path between Accesses D and E, and two paths entering the wooded area which converged into one as it exited into the field, and overall considered that the use of the land was of a path-type use rather than the assertion of a more general right of recreation across the whole site.

28. In support of this view, the Inspector said¹⁸:

“In general, people are using the main routes around the land I have identified above (the paths from the entrances and in the woodland and the circular walk in the field part). There are a number of smaller additional paths on the land, some more dominant than others, however all of the paths are strongly defined and they themselves are the facilitator, creating the various walks over the application land and connecting up the various accesses, rather than the application land being a space to use recreationally as a whole. That is not to say that some users would not stick to the main routes and I accept the evidence that some users, wearing wellies and perhaps with dogs, would go off-path and push further through the undergrowth, for example when following a dog or to get to a clump of brambles to pick blackberries. However, I am not convinced that the majority of users would be attracted to doing this given the hostile nature of the vegetation growth, even if it were physically possible... The nature of the land simply does not lend itself to off-path activity such that the use of the routes might fall to be considered ancillary, or part of, the totality of the use. The possible exception might be within the woodland where people have gone off the paths to construct rope swings or carry out other activities, such as den building or building camp fires, but this is a very minor part of the whole application land. The question is not whether anybody ever walks off a path but whether it is done with sufficient intensity and frequency to assert a village green right.

...
In my view... it is evident that people were using the land on defined worn paths created by regular usage along defined routes before the end of the relevant period in a manner consistent with how I witnessed the use of the land on my site visit. Accordingly, the Applicants have failed to establish the assertion of the village green right throughout the relevant period because the assertion of a village green right changed organically to the assertion of public rights of way before the end of the relevant period as a result of nature taking over and forcing users of the land to stick to defined routes.

29. Accordingly, whilst the Inspector agreed that there had been use of the Application Site by local residents, she considered that the nature of that use, latterly, was a ‘public rights of way type of user’ and not of a quality to assert Village Green rights.

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

¹⁸ At paragraphs 193 and 194 of the Inspector’s report

30. The right to use a Town or Village Green is restricted to the inhabitants of a locality, or of a neighbourhood within a locality, and it is therefore important to be able to define this area with a degree of accuracy so that the group of people to whom the recreational rights are attached can be identified.
31. The definition of 'locality' for the purposes of a Town or Village Green application has been the subject of much debate in the Courts. In the Cheltenham Builders¹⁹ case, it was considered that '*...at the very least, Parliament required the users of the land to be the inhabitants of somewhere that could sensibly be described as a locality... there has to be, in my judgement, a sufficiently cohesive entity which is capable of definition*'. The judge later went on to suggest that this might mean that locality should normally constitute '*some legally recognised administrative division of the county*'.
32. The word "significant" in this context does not mean considerable or substantial: '*a neighbourhood may have a very limited population and a significant number of the inhabitants of such a neighbourhood might not be so great as to properly be described as a considerable or a substantial number... what matters is that the number of people using the land in question has to be sufficient to indicate that the land is in general use by the community for informal recreation rather than occasional use by individuals as trespassers*'²⁰. Thus, it is not a case of simply proving that 51% of the local population has used the Application Site; what constitutes a 'significant number' will depend upon the local environment and will vary in each case depending upon the location of the Application Site.
33. In this case the Applicants originally relied upon the "*Allington neighbourhood in the parish of Aylesford south of the railway line*" as the relevant 'neighbourhood within a locality'. However, an amendment was subsequently sought by the Applicants so as to rely instead upon the "*Allington ward within the borough of Maidstone*". There was no dispute between the parties that the electoral ward of Allington was a qualifying locality for the purposes of this legislation.
34. The Inspector agreed and further noted²¹ that "*if all of the use had been qualifying, contrary to my findings, then it would have been by a significant number of local inhabitants of Allington.*"

(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?

35. The Commons Act 2006 requires use of the land to have taken place 'as of right' up until the date of application or, if such use has ceased prior to the making of the application, section 15(3) of the 2006 Act provides that an application must be made within one year from the date upon which use 'as of right' ceased.
36. In this case, the Application was made on reliance upon section 15(2) of the 2006 Act – i.e. on the basis that use of the Application Site had not ceased at the time of making the Application on 8th June 2021.

¹⁹ R (Cheltenham Builders Ltd.) v South Gloucestershire District Council [2004] 1 EGLR 85 at 90

²⁰ R (Alfred McAlpine Homes Ltd.) v Staffordshire County Council [2002] EWHC 76 at paragraph 71

²¹ Paragraph 195 of the Inspector's report

37. There has been no suggestion that use of the site ceased prior to that date, and indeed the open boundary with the Godwin Road development means that – in the absence of a fence – it would have been impossible to prevent access to the Application Site in any event.

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

38. In order to qualify for registration, it must be shown that the land in question has been used for a full period of twenty years. In this case, the relevant twenty-year period (“the material period”) is to be calculated retrospectively from the date of the application, and is therefore 8th June 2001 to 8th June 2021.

39. There was no dispute that the Application Site had been used for recreational purposes during the material period (subject to the comments above as to the nature of that use) and a number of the witnesses attested to use of the Application Site throughout the relevant twenty-year period.

The Inspector’s conclusion

40. Having carefully considered the evidence, the Inspector’s overall conclusion²² was that *“the application should fail in full for the following reasons:*

- (i) The applicant has failed to show that the use of the application land for lawful sports and pastimes was ‘as of right’ throughout the relevant period because use was ‘by force’ from the start of the relevant period in June 2001 until the creation of Access D when the Corben Close development was completed after the start of the relevant period in June 2001;*
- (ii) The applicant has failed to show that the use of the application land was in the nature of the assertion of a town or village green right throughout the relevant period because the use of the application land was in the nature of the assertion of public rights of way only, by the end of the relevant period in June 2021.”*

Subsequent correspondence

41. On receipt, the Inspector’s report was circulated to the Applicants, the Landowners and the Objectors for their comments.

42. The Applicants noted that the outcome was disappointing, but had come following a very detailed Public Inquiry to get to the facts, and they did not wish to make any submissions in respect of the Inspector’s report.

43. The Landowners did not have any further comments to make, and the Objectors confirmed, in light of the Inspector’s report, that there was nothing further they wished to add, other than to invite the County Council to reject the Application in light with the Inspector’s recommendations.

²² Paragraph 197 of the Inspector’s report

Conclusion

44. The main reason for recommending a Public Inquiry in this matter, as set out in the previous report to the Member Panel, was that there was a serious dispute as to the nature of the access to the Application Site (which was further complicated by the number of alleged entry points). There were also questions as to the quality of recreational use (and the degree to which it was 'path-type use'), and also whether the landowner's activities had in any way interrupted or interfered with the recreational use of the Application Site. The holding of a Public Inquiry has enabled considerably more detailed examination of these issues of fact and degree (compared with the written evidence), and has allowed a much clearer picture of the usage of the Application Site to emerge.
45. The matter continues to turn primarily on the issue of access, and it is now evident that entry to the Application Site during the very early part of the material period was not 'as of right' on account of the presence of fencing (including stepping across broken fencing) that would have made it clear to any users that the land was private and any use of it was contentious, i.e. against the landowner's wishes. It has also now been established that, during the latter part of the material period, the overgrown state of the Application Site made it difficult for users to do anything on the land other than follow the well defined paths across and around it; such use is not qualifying use for the purposes of Village Green registration.
46. The Officer's view is that the parties' evidence and submissions have been carefully examined by the Inspector, and the matter has been thoroughly scrutinised. It is considered that the Inspector's report accurately represents both the evidence and submissions made, and the law as it currently stands.
47. Accordingly, it is considered that the legal tests in relation to the registration of the land as a new Town or Village Green have not been met, such that the land subject to the Application (shown at **Appendix A**) should not be registered as a new Village Green.
48. It is to be noted that, if Members were to approve the recommendation set out below, and the Applicants remained aggrieved, it is open to the Applicants to apply for a Judicial Review of the decision in the High Court.

Recommendation

49. I recommend, for the reasons set out in the Inspector's report dated 12th September 2024, that the Applicants be informed that the Application to register the land at Bunyards Farm, Allington as a new 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

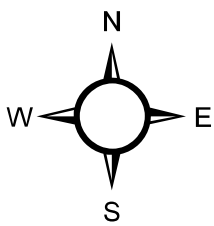
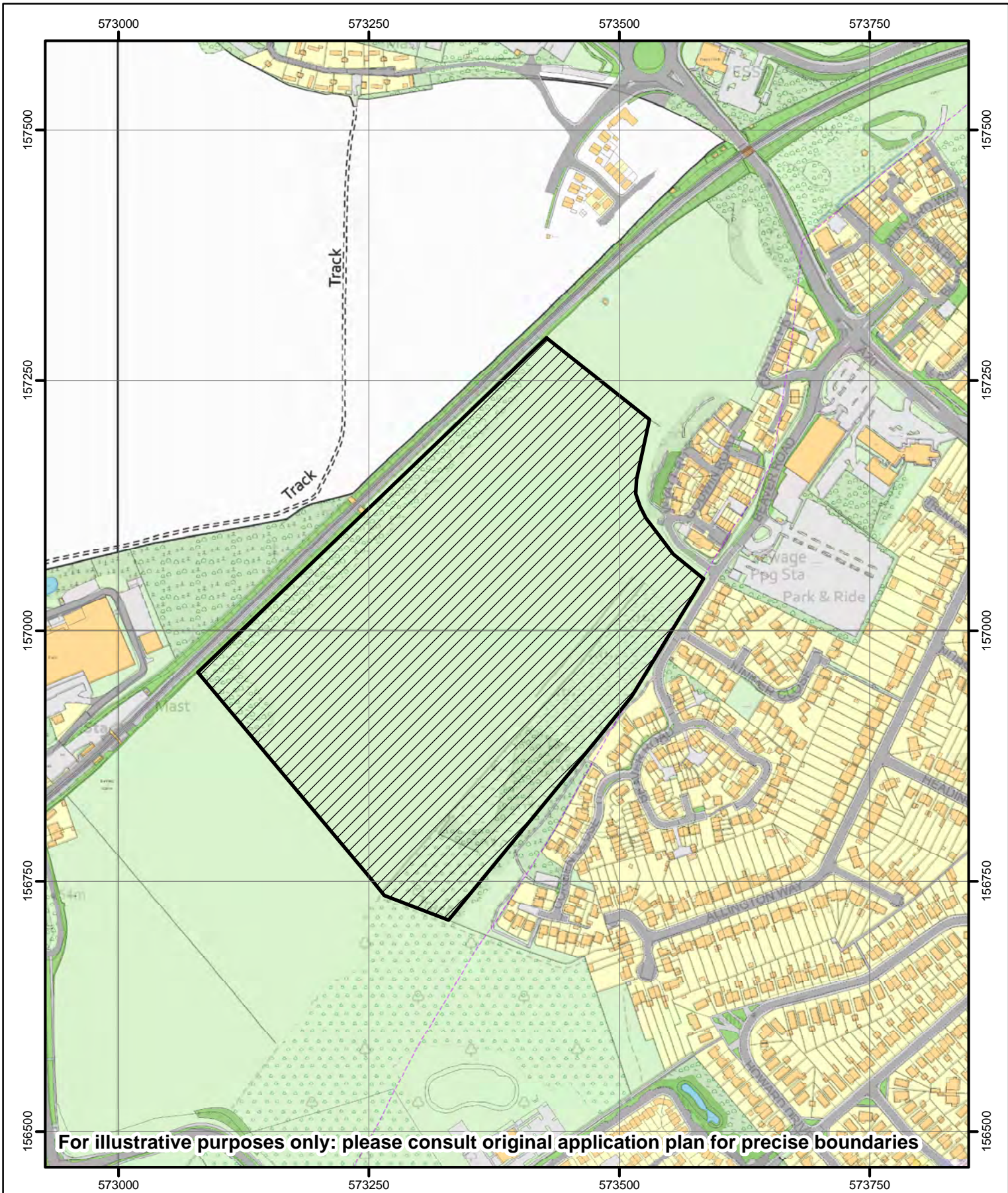
APPENDIX A – Plan showing Application Site

APPENDIX B – Plan showing access points and other notable features

Background documents

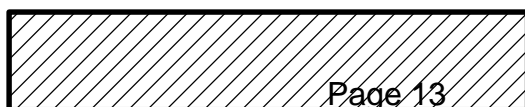
Inspector's report dated 12th September 2024

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@ A4

Land subject to Village Green application
at Bunyards Farm, Allington
(VGA687)







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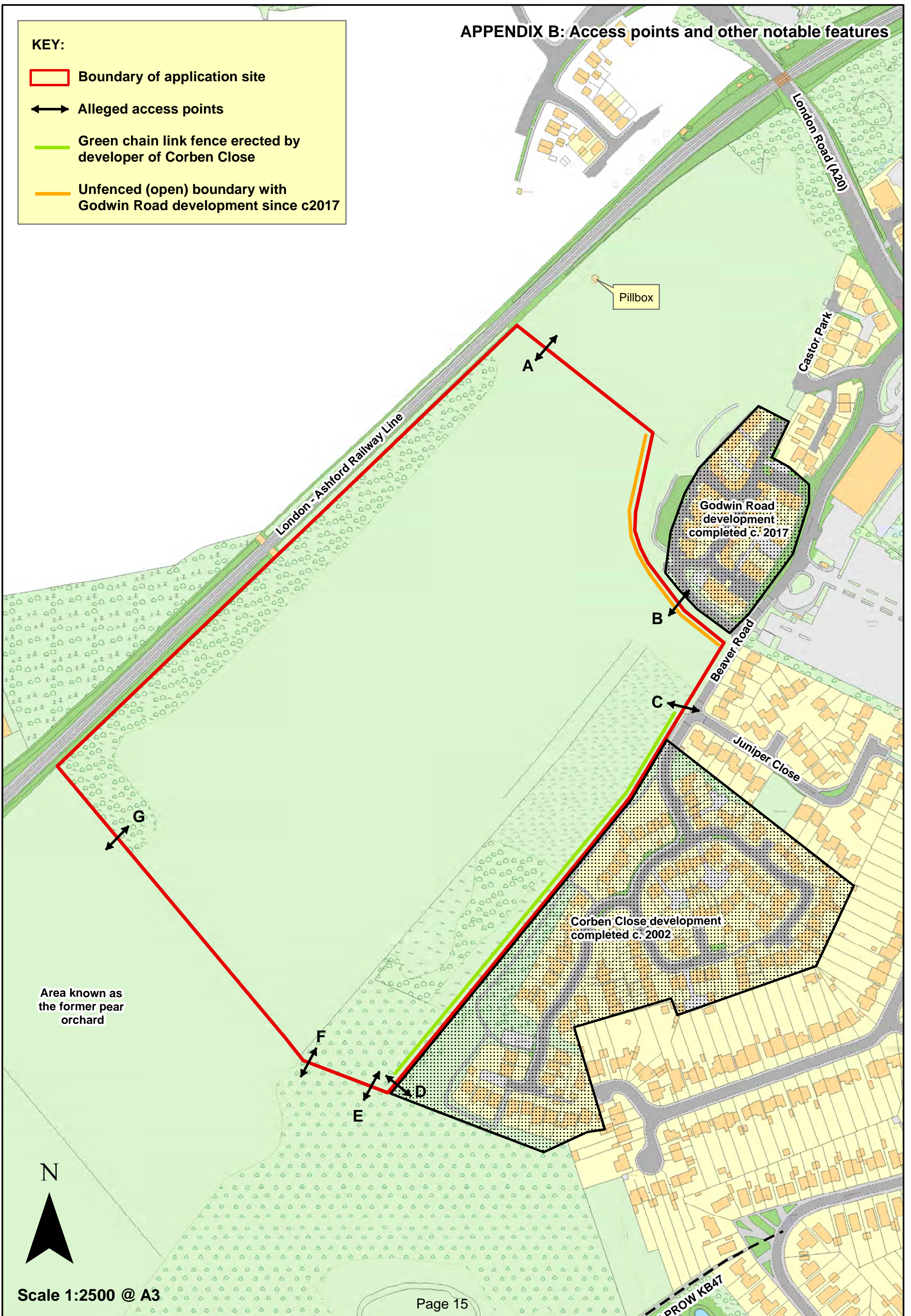


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APPENDIX B: Access points and other notable features

KEY:

-  Boundary of application site
-  Alleged access points
-  Green chain link fence erected by developer of Corben Close
-  Unfenced (open) boundary with Godwin Road development since c2017



Area known as the former pear orchard

N

Scale 1:2500 @ A3

PROW KB47

APPENDIX B: Access points



Above: Access Point D (in foreground by green fence) with Access E in background (wooden fence)

Below: Access Point C (on Beaver Road)



APPENDIX B: Access points



Above: Wire and wooden post visible on the ground at point C

Below: Open frontage of Godwin Road to the site (point B on the plan)



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Application to register land at Beacon Road in Herne Bay 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 Tuesday 10th December 2024.

Recommendation: I recommend that the Applicant be informed that the application to register the land at Beacon Road at Herne Bay as a Town or Village Green has not been accepted.

Local Member: Mr. D. Watkins (Herne Bay East)

Unrestricted item

Introduction

1. The County Council has received an application to register an area of land at Beacon Road in Herne Bay as a new Town or Village Green from the Save the Beacon Road Community Land Committee ("the Applicant"). The application, made on 26th February 2024, was allocated the application number VGA696.

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”) comprises a parcel of land of approximately 2.8 acres (1.14 hectares) in size bounded on all sides by the rear gardens of properties in Beacon Road, Cecil Park, Canterbury Road and Beltinge Road. It was formerly used as a hockey and tennis club and, as such, includes a parking area, four tennis courts, several synthetic turf hockey pitches and a large club house.
7. The only official access to the Application Site is via an entrance on Beacon Road that is also wide enough to accommodate vehicular access.
8. The Application Site is shown on the plan at **Appendix A**.

The case

9. The application has been made on the basis that the Application Site has been used *‘for over 100 years as a public open space for use by the local community for leisure and recreational purposes without objection or permission from anybody and as of right, without force or secrecy and without payment of any kind’*.
10. Included with application were various photographs showing use of the Application Site for various activities and community events, seven letters of support from local residents and 31 questionnaires or statements setting out evidence of use of the Application Site for a number activities, including dog exercising, bike riding, ball games and community gatherings. The user evidence is summarised in the table at **Appendix B**.
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 February 2004 to February 2024. The Applicant submits that the recent erection of a fence and locked gate at the main entrance to the Application Site *‘should be disregarded’* on the basis of it being illegal and that use of the site has, in any event, continued *‘via access from adjoining properties’*.

Consultations

12. Consultations have been carried out as required.
13. Twenty-four letters and emails from local residents in support of the application have been received.
14. District Councillor Mellish also wrote in support of the application, noting that until 2020 when the clubs were offered new facilities on the outskirts of the town, the site had been a prime sports and leisure facility for the local community for nearly 50 years. The land has since been sealed off with large steel padlocked gates, although some residents continue to access the land via gates from their gardens that back onto the site. If the land were to be registered as a Village Green, this would also assist in delivering Canterbury City Council’s plans to improve biodiversity in the district.

15. County Councillor Mr. Watkins responded to the consultation in neutral terms, stating that although there appeared to be a broad consensus amongst the local community that the land is not suitable for housing, there was equally a desire for it to be put to good use (either for sport or some other recreational purpose) but the works needed to achieve this might be prevented by Village Green status. Accordingly, whilst the principle of protecting the land from intensive development is sound, there is some concern that registration as a Village Green might have the unintended consequence of the land remaining abandoned and unused.

Landowners

16. The Application Site is registered to Canterbury City Council (“the City Council”) under title number K926545.

17. The City Council has opposed the application on the basis that:

- The evidence provided in support of the application is unreliable on the basis that the statements have been pre-drafted and are materially the same, with the exception of a few blanks;
- It is unlikely that large sections of the land could have been used for recreational activities since they comprise a car park, a club house and an embankment, as well as tennis courts that were intermittently locked;
- The Application Site was held under a lease by the Herne Bay Lawn Tennis Club and Hockey Club until 18th December 2020, at which point Heras fencing was erected across the only entrance to the site (replaced with a spike-topped palisade fence in April 2023), such that any use of the land after 18th December 2020 was contentious and/or could not have occurred in sufficiently high quantities to justify registration as a Village Green;
- In order to benefit from the one year period of grace specified in the legislation, the application would have had to be made before 18th December 2021 (but it was not and is therefore out of time);
- Any users who were also members of the tennis and hockey club would have been on the site by virtue of an implied or express permission (and their use would not therefore be ‘as of right’); and,
- It appears that the land was originally held under section 4 of the Physical Training and Recreation Act 1937, such that it is not capable of registration as a Village Green.

18. In support of the objection, the City Council provided a statement from their Head of Property and Regeneration, along with various appendices (including photographs of the fencing and copies of emails relating to access). The Head of Property and regeneration confirms, in that statement, that:

- The City Council purchased the site in 1938;
- The lease in respect of the Application Site granted exclusive possession of it to the Herne Bay Hockey and Lawn Tennis Club for use as a *‘private tennis, hockey and football ground and club pavilion and bar only or for such other games or recreations’*;
- The lease was surrendered on 18th December 2020 and works were undertaken to secure the site (by way of Heras fencing) on that day;
- Correspondence with an adjoining property owner resulted in a key being provided specifically and only for the purpose of property maintenance; and

- A locked palisade fence was erected at the entrance to the Application Site on 17th April 2023 in response to anti-social behaviour, vandalism and arson on the site.

Legal tests

19. In dealing with an application to register a new Town or Village Green the County Council must consider the following criteria:
- Whether use of the land has been 'as of right'?*
 - Whether use of the land has been for the purposes of lawful sports and pastimes?*
 - Whether use has been by a significant number of inhabitants of a particular locality, or a neighbourhood within a locality?*
 - Whether use of the land 'as of right' by the inhabitants has continued up until the date of application or, if not, has ceased no more than one year prior to the making of the application?*
 - Whether use has taken place over period of twenty years or more?*

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

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

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

Force

23. As is noted above, the City Council's position is that the only access to the Application Site was initially secured by way of locked Heras fencing on 18th December 2020 (following the surrender of the lease in respect of the site), and that security was bolstered by way of the erection of a locked, spike-topped palisade fence on 17th April 2023. Thus, it is suggested that any use of the

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

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

Application Site after 18th December 2020 cannot have taken place 'as of right'. Photographs of the fencing are attached at **Appendix C** for reference.

24. The Applicant's submission is that the Heras fencing was '*assumed to be for the purpose of preventing cars*' and that it '*did not, however, stop the local community from continuing to use the application land as there was a clear gap at the end through which access could be obtained*'.
25. However, the difficulty with that submission is that Google Streetview images as far back as 2009⁴ confirm the existence of a metal five-bar gate at the entrance to the site (which remains in place today), such that if the City Council had merely wished to prevent vehicular access, it could have done so at considerably less effort and cost. The erection of the Heras fencing across the whole of the only access to the Application Site can only, in any reasonable sense, lead to the conclusion that the landowner was seeking to prevent all forms of access to the site at that time. The photograph of the Heras fencing at **Appendix C** certainly appears to show the fencing across the whole of the entrance to the Application Site on the date of its erection in December 2020, albeit that it is quite possible that it was forced open at some point subsequently (and that proposition is supported by the need to reinforce the fencing in April 2023).
26. However, this does not appear to have been the case immediately because, in support of its objection, the City Council has provided copies of email correspondence with a neighbouring property owner (adjoining the entrance to the Application Site) which confirms that all access to the Application Site was completely prohibited. In that correspondence, the neighbouring homeowner initially made a complaint (on 19th December 2020 – i.e. the day after the fence was installed) to the City Council in respect of '*a fence which blocks all access to the side and back of my house which is essential for maintenance*', and further correspondence (in July 2022) noted that the homeowner '*still cannot access the side and rear of our property*'. In August 2022, a key was provided to the homeowner by the City Council with a request that it only be used '*for providing access to service and maintain your own property*' and that the gate be immediately locked after use.
27. These are not, on the face of it, the actions of a landowner simply seeking to restrict parking, and the correspondence with the adjoining homeowner confirms that access to the site was not reasonably or sensibly possible for a period of at least 18 months following the erection of the Heras fence in December 2020. If, during that period (and afterwards), users were squeezing through a forced gap along the side of the Heras fence, that use would clearly have been contentious – i.e. in clear defiance of the landowner's desire to secure the site – and therefore not 'as of right'.
28. Accordingly, it is considered that any informal recreational use of the Application Site ceased to be 'as of right' from 18th December 2020.

⁴ [4 Beacon Rd - Google Maps](#)

Permission

29. The fact that the Application Site was subject to a lease to the Herne Bay Hockey and Lawn Tennis Club (“the HLTC”) during the relevant twenty-year period raises a question as to whether any use of the application site has been by virtue of an implied or express permission.
30. A number of those who have provided evidence in support of the application refer to membership of the HLTC, in which case their use of the Application Site, even for non-HLTC purposes, would arguably have been associated with (and in exercise of) that membership; the HLTC would simply not have turned away its own members from the Application Site since its members would have its permission to be there. Where use is by virtue of an existing permission, it is considered to be ‘by right’ and not ‘as of right’.
31. As such, use of the Application Site by any members of the HLTC would need to be discounted for the purposes of this application.

Secrecy

32. Finally, it is suggested by the Applicant that access to the Application Site continued following the erection of the more substantial palisade fence in April 2023, via the rear gates of properties that back onto the site, to the extent that a fun day was held on the site in September 2023 and an Easter egg hunt in 2024 (at which some 200 people attended).
33. In order for use to be considered ‘as of right’ it has to have taken place in an open manner that would have been brought to the attention of the landowner. In this case, the landowner, having erected substantial fencing to prevent access from the main entrance, would have no reason to suspect that informal recreational use of the site was continuing by other means – and particularly in a subversive manner using the rear gates of adjoining properties – so there is potentially an argument that this kind of use might be considered secretive.
34. In any event, use after the erection of the palisade fence in April 2023 (and likely well before) was undoubtedly against the landowner’s wishes, such that it cannot be considered qualifying use for the purposes of Village Green registration.

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

35. Lawful sports and pastimes can be commonplace activities including dog walking, children playing, picnicking and kite-flying. Legal principle does not require that rights of this nature be limited to certain ancient pastimes (such as maypole dancing) or for organised sports or communal activities to have taken place. The Courts have held that ‘*dog walking and playing with children [are], in modern life, the kind of informal recreation which may be the main function of a village green*’⁵.

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

36. The summary of evidence of use by local residents at **Appendix B** shows the activities that are claimed to have taken place on the Application Site. The evidence refers to use of the site for a range of activities, including picnics, ball games, cycling, dog exercise and blackberry picking.
37. One of the criticisms made by the City Council of the user evidence is that it largely comprises a standardised format that requires the users only to complete the occasional blank. Whilst no doubt making it easier for local residents to contribute to the evidence-gathering process, the disadvantage of this method is that it makes it difficult to fully assess the quality of the evidence. For example, there is no information provided as to exactly which activities took place on what part of the site, the frequency of those activities, and the degree to which they (if at all) were associated with the use of the land by the HLTC⁶.
38. The City Council has also suggested that large parts of the Application Site would not have been available for informal recreational use (such as the car park, clubhouse, embankment and tennis courts). Whilst the Applicant accepts that the tennis courts and clubhouse were not used for recreational purposes, it is submitted that the large majority of the Application Site has been used for informal recreational purposes. Once again, the format of the user evidence makes it difficult to determine the precise nature and extent of the informal recreational use of the Application Site, and it is not possible to conclude either way on this point without further, more detailed evidence from the users.

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

39. The right to use a Town or Village Green is restricted to the inhabitants of a locality, or of a neighbourhood within a locality, and it is therefore important to be able to define this area with a degree of accuracy so that the group of people to whom the recreational rights are attached can be identified.
40. The definition of 'locality' for the purposes of a Town or Village Green application has been the subject of much debate in the Courts. In the *Cheltenham Builders*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*'.
41. The County Council also needs to be satisfied that the Application Site has been used by a 'significant number' of the residents of the locality. The word "significant" in this context does not mean considerable or substantial: '*a neighbourhood may have a very limited population and a significant number of the inhabitants of such a neighbourhood might not be so great as to properly be described as a considerable or a substantial number... what matters is that the number of people using the land in question has to be sufficient to indicate that*

⁶ Some users refer to 'playing tennis' or 'hockey' and it is unclear as to whether they were doing so in an entirely informal manner or in conjunction with HLTC activities.

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

*the land is in general use by the community for informal recreation rather than occasional use by individuals as trespassers*⁸. 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.

42. In this case, the Applicant relies upon Canterbury City Council's Heron ward as the qualifying locality. **Appendix D** shows the area within which users of the Application Site reside.
43. There is no doubt that the electoral ward is a legally recognised administrative unit, and therefore a qualifying locality for the purposes of section 15 of the Commons Act 2006. However, the difficulty in this case is that the ward boundary runs along Beacon Road, such that the Application Site itself falls within Heron Ward, but the users living on the eastern side of Beacon Road fall within neighbouring Beltinge ward, and are therefore not 'the inhabitants of the locality' relied upon for the purposes of the application.
44. Strictly speaking, the evidence of those living outside of the 'locality' ought to be discounted when considering the 'significant number test', which amounts to roughly half of the user evidence in this case.
45. As well as the volume of users, another important factor in considering whether the evidence is sufficient to indicate that the land is in general use by the community is the frequency of use. So, for example, the evidence of a handful of users that recreate on the site daily is arguably more likely to demonstrate community use than that of a larger number of individuals that have each only used the site very occasionally during the material period. In the current case, the standard statements used to collect the evidence make no mention at all of the frequency of use by local residents, such that it is not possible to make a judgement in respect of how the matter might have appeared to the landowner.
46. As such, it is not possible to determine whether the Application Site has been used by a significant number of the residents of the locality.

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

47. 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.
48. In this case, the application was originally made under section 15(2) of the 2006 Act (on the basis that use 'as of right' was continuing as at the date of the application on 16th February 2024), although the Applicant subsequently conceded that the erection of the palisade fence in April 2023 had the effect of preventing any form of access to the site, via the main entrance, from that date. Supposing that use had only ceased to be 'as of right' from April 2023, then the

⁸ *R (Alfred McAlpine Homes Ltd.) v Staffordshire County Council* [2002] EWHC 76 at paragraph 71

making of the application in February 2024 would have been within the one year period of grace provided by section 15(3) of the 2006 Act.

49. However, as is noted above, it is considered that use ceased to be 'as of right' from the date of the erection of the Heras fence on 18th December 2020, from which point any use of the Application Site became contentious. Since this is outside the period of grace provided by section 15(3), this test is not met.

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

50. 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. That twenty year period ("the material period") is calculated retrospectively from either the date of the application if use 'as of right' is continuing or, if not, from the date upon which use 'as of right' ceased.

51. In this case, it is considered that use 'as of right' ceased on 18th December 2020, so the material period in this case would be December 2000 to December 2020.

52. The user evidence submitted in support of the application (and summarised at **Appendix C**) indicates, on the face of it, that recreational use of the Application Site has taken place in excess of the required twenty-year period. However, for the reasons previously discussed, some of that use falls to be discounted on the basis of it having been by virtue of an implied permission in respect of those witnesses that were also members of the HLTC.

53. In any event, the material period is outside of the period of grace (such that the application must fail) and it is not necessary to consider this issue in more detail.

Conclusion

54. When making an application under section 15 of the Commons Act 2006, the burden of proof is on the applicant to demonstrate that, on a balance of probabilities, the legal tests have been met. As has been noted in the Courts⁹, it is 'no trivial matter' for a landowner to have land registered as a Village Green, such that the relevant legal tests must be 'properly and strictly proved'. Therefore, 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.

55. In this case, the evidence available indicates that the City Council took steps to secure the site by way of the erection of the Heras fencing across the entrance (to coincide with the surrender of the lease by the HLTC) on 18th December 2020. The effect of that action was to render any subsequent use of the site contentious – i.e. against the landowner's wishes – and, consequently, not 'as of right'.

56. Whilst, of itself, use of an application site ceasing to be 'as of right' prior to the making of an application under section 15 of the 2006 Act is not necessarily fatal, the timing is of critical importance; where use 'as of right' ceases more than one year prior to the making of the application – as is the case here – the application is bound to fail.

⁹ R v *Suffolk County Council ex p Steed* (1996) 75 P&CR 102 at 111

57. Notwithstanding, there are also concerns regarding the quality, nature and extent of the user evidence that cannot be resolved on the information currently available, and also a question as to what the qualifying locality should be. These are matters which may be surmountable given further consideration, but the finding that use of the Application Site ceased to be 'as of right' more than one year prior to the making of the application is simply not a matter that can be addressed in the Applicant's favour.

58. Accordingly, it is not considered that the Application Site meets the tests for registration as a Village Green as set out in section 15 of the Commons Act 2006.

Financial implications

59. The determination of Village Green applications is a quasi-judicial function of the County Council and, accordingly, any financial implications can have no bearing whatsoever on the Member Panel's decision. However, Members should be aware that, whatever decision is reached, the only right of appeal open to the parties is an application to the High Court for Judicial Review, which potentially carries significant legal costs for all concerned.

60. If Members are not satisfied with the recommendation, the Panel may refer the matter to a Public Inquiry for further consideration of the evidence. However, that approach also carries significant costs to all parties and should only be adopted where it is considered that there are material conflicts within the evidence that are irreconcilable on paper.

Recommendation

61. I recommend that the Applicant be informed that the application to register the land at Beacon Road at Herne Bay 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 the Application Site

APPENDIX B – Table summarising user evidence

APPENDIX C – Photographs of fencing erected in 2020 and 2023

APPENDIX D – Plan showing area within which users reside

**APPENDIX A:
Plan showing application site (edged red)**



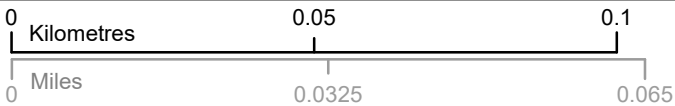
**Land subject to Village Green application at
Beacon Road, Herne Bay (edged red)**

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User	Period of use	Type of use	Comments
1	1999 – present	Picnics, exercising, teaching children to ride bikes, ball games, kite flying, children’s play area, community activities, e.g. parties, camps, fetes	Continue to use land from rear garden gate. Members of HBTHC and during the period of the lease, local community used the land in addition to the Club’s activities.
2*	1999 – present	Picnics, dog walking, football, children’s play area. Playing tennis, riding bikes	Still using the land. Not a member of HBTHC.
3*	1999 - present	Picnics, dog walking, football, children’s play area. Stargazing, meditating, blackberrying, wildlife observation	Still using the land. Not a member of HBTHC.
4*	1999 – present	Picnics, dog walking, football, children’s play area. Snow play, speed walking.	Still using the land. Not a member of HBTHC.
5*	1986 – present	Picnics, dog walking, football. Hockey games and training.	Still using the land. Member of HBTHC 1986 – 2000.
6*	1999 – present	Picnics, dog walking, football. Snow play, recreation.	Still using the land. Not a member of HBTHC.
7*	1998 – present	Picnics, dog walking, football. Blackberrying.	Currently prevented from access except via neighbour’s gate. Not a member of HBTHC.
8*	2016 – present	Picnics, dog walking, football. Bike riding.	Access now only with neighbour’s permission. Not a member of HBTHC.
9*	2019 – present	Picnics, dog walking, football. Running and exercise.	Not a member of HBTHC.
10	1998 – present	Dog walking	Entry to the site has always been open to the community, until the erection of the gates at the main entrance. Access to the site has continued ‘by those with gates to the grounds’. Never challenged, even whilst the clubs were there.
11	2001 – ?	Playing with children, learning to ride bikes, tennis lessons	
12*	2014 – ?	Picnics, dog walking, football, children’s play area.	Not a member of HBTHC. Stopped using the land.
13	1962 – ?	Playing as a child, dog walking, flying model aircraft.	Land was known as Kent Close and was left for public use by a local landowner. Ground was used by many people and clubs. Dog Training classes were held on the land. Land used freely by the public for very many years for multiple activities.
14	2021 – present	Dog walking	Have been aware of use for recreational purposes including children playing, picnics, sports activities and dog walking since moving into property in 2019.
15*	2018 – present	Picnics, dog walking, football. Children’s play area, children cycling.	Still using the land.
16*	1990 – ?	Picnics, dog walking, football. Cycling, tennis and running.	Member of HBTHC 1990 – 1991. No longer able to access the land.
17*	1978 – present	Picnics, dog walking, football.	Have been aware of use of the land since 1964. Still using the land.
18*	1978 – present	Picnics, dog walking, football.	Member of HBTHC 1978 – 1980. Still using the land.
19*	2017 – present	Picnics, dog walking, football.	

20*	2004 – present	Picnics, dog walking, football. Play area, birthdays, children playing, street parties, camping	Still using the land.
21*	2004 – present	Picnics, dog walking, football. Children's play area, street parties, family play, sports with neighbours	
22*	1990 – present	Picnics, dog walking, football, children's play area	Member of HBTHC (dates not given)
23*	2004 – present	Picnics, dog walking, football, children's play area, tennis	
24*	2004 – present	Picnics, dog walking, football, children's play area	
25*	1998 – present	Picnics, dog walking, football, children's play area, tennis/hockey lessons	Still using the land.
26*	1999 – present	Picnics, dog walking, football, children's play area, dog walking, sports	Land has also been used for blackberry picking, collecting conkers. Still using the land.
27*	2008 – present	Picnics, dog walking, football, children's play area, walking with children	Land was attractive to use as there is no traffic to worry about. Not a member of HBTHC. Still using the land.
28*	2017 – present	Picnics, dog walking, football, children's play area	
29*	1997 – ?	Picnics, dog walking, football, children's play area, cycle riding and hopscotch	Not a member of HBTHC. Not still using the land.
30*	2018 – present	Picnics, dog walking, football, children's play area	
31*	2008 – ?	Picnics, dog walking, football, children's play area	Land provided a safe environment for recreation. No longer able to access the land.
32*	2005 – present	Picnics, dog walking, football, children's play area, cricket	
33	2018 – ?	Playing tennis, dog training, children played there on bikes and with footballs.	Used the land 'until it was locked up'
34*	2014 – present	Picnics, dog walking, football, children's play area, dog walking	Still using the land.
35*	2017 – present	Picnics, dog walking, football, children's play area, dog walking	
36*	2004 – present	Picnics, dog walking, football, children's play area, learning to ride bikes, cricket, hockey	Still using the land.

**APPENDIX C:
Photographs showing fencing at
the entrance to the Application Site**



Above: Heras fencing erected on 18th December 2020

Below: Palisade fence erected on 17th April 2023



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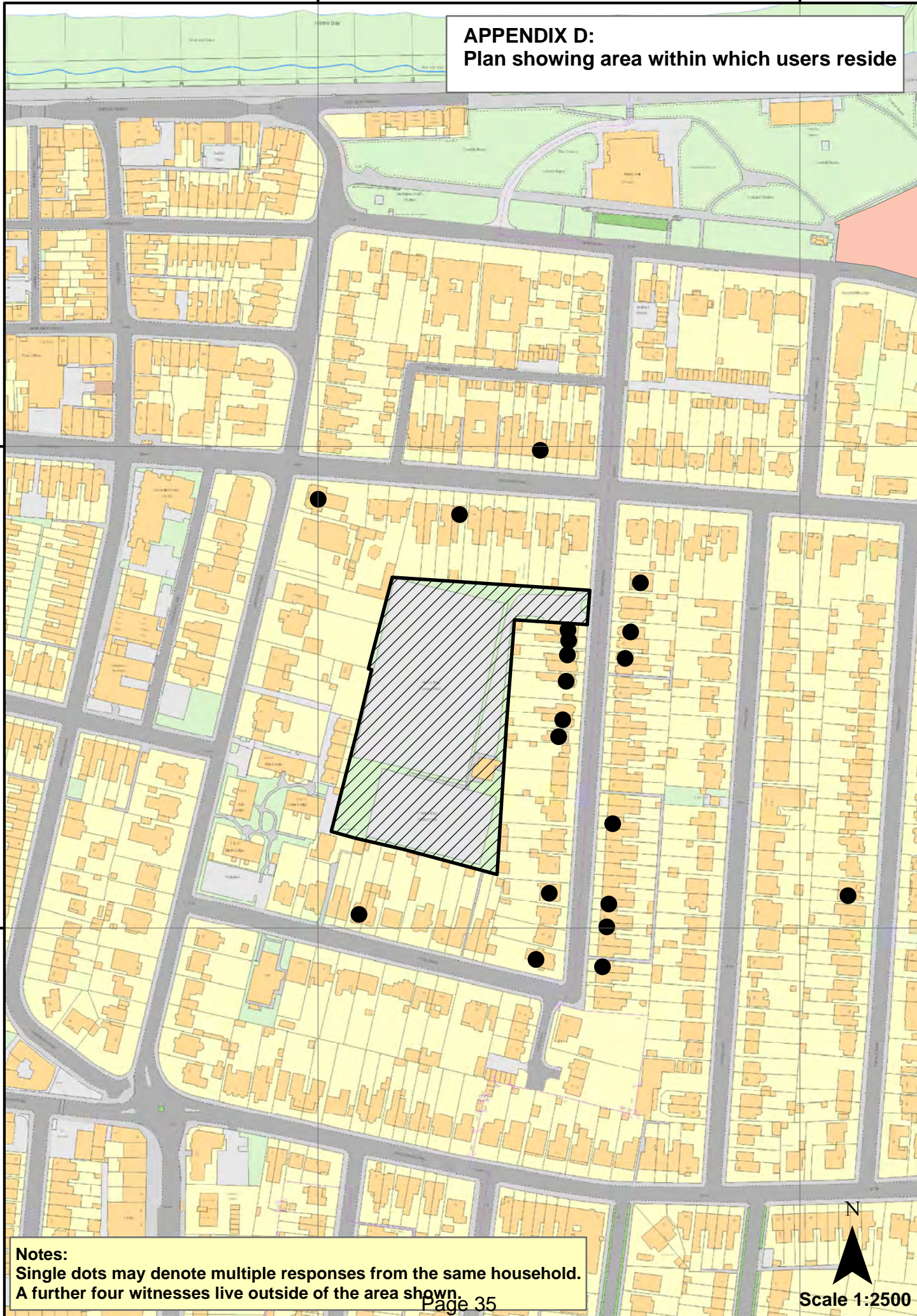
**APPENDIX D:
Plan showing area within which users reside**

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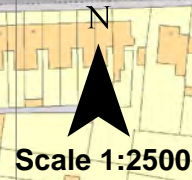
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Notes:
 Single dots may denote multiple responses from the same household.
 A further four witnesses live outside of the area shown.



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Application to register land known as Upper Castle Field at Tonbridge 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 Tuesday 10th December 2024.

Recommendation: I recommend that the County Council informs the Applicant that the application to register the land known as Upper Castle Field at Tonbridge as a new Town or Village Green has been accepted (per the amended plan shown at Appendix D), and that the land subject to the application be formally registered as a Town or Village Green.

Local Members: Mr. M. Hood and Mr. P. Steptoe (Tonbridge) Unrestricted item

Introduction

1. The County Council has received an application to register land known as Upper Castle Field at Tonbridge as a new Town or Village Green from Ms. J. Wyatt ("the Applicant"). The application, made on 9th July 2024, was allocated the application number VGA697.

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.

¹Reduced 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 area of land subject to this application (“the Application Site”) consists of a grassed area of open space of approximately 1.1 acre (0.45 hectares) in size, known as Upper Castle Field and situated at The Slade in Tonbridge. Access to the site is via a gap in the fence along the frontage with The Slade (opposite Slade Primary School) and it is also possible to access the site via the entrance to the car park which forms an open boundary with the Application Site, as well as from the castle grounds to the south of the site.
7. The site is shown on the plan at **Appendix A** and photographs are attached at **Appendix B**.

The case

8. The application has been made on the grounds that the Application Site has been freely used by local residents for a variety of recreational activities, without challenge, and for a period in excess of twenty years.
9. Included in support of the application were 34 user evidence questionnaires from local residents, and an extract from a local history book referring to play equipment on the land in the 1930s. A summary of the evidence in support of the application is attached at **Appendix C**.
10. 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 July 2004 to July 2024.

Consultations

11. Consultations have been carried out as required and no objections have been received.
12. County Councillor Mr. M. Hood (who is also the local Borough Councillor) wrote in support of the application, on the basis that the site is a valuable open space which contributes to the amenity of the local area and is very well used by both local residents and pupils/parents of the nearby Slade Primary School for recreational activities.
13. County Councillor Mr. P. Steptoe also wrote in support of the application, noting that the green space provided by the Application Site is very important for the people of Tonbridge and its visitors, not only as a recreational area but also for the vital ‘lung’ provided by the trees and vegetation on the site.

Landowner

14. The land owned by the Tonbridge and Malling Borough Council (TMBC) under Land Registry Title number K891820.
15. TMBC has confirmed that it has no objection to the registration of this land as a Village Green.

Legal tests

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

- (a) *Whether use of the land has been 'as of right'?*
- (b) *Whether use of the land has been for the purposes of lawful sports and pastimes?*
- (c) *Whether use has been by a significant number of inhabitants of a particular locality, or a neighbourhood within a locality?*
- (d) *Whether use of the land 'as of right' by the inhabitants has continued up until the date of application or, if not, ceased no more than 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'?

17. The definition of the phrase 'as of right' has been considered by the House of Lords. Following the judgement in the Sunningwell² 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.

18. In this case, there is no evidence to indicate that use of the land has ever been challenged or restricted in any way; none of the users refer to any impediments to use and the nature of the site means that it would be very difficult to secure it against any public access. Nor has any evidence been provided by the landowning Borough Council as to the manner in which the Application Site is held by it, and for what purposes it is made available to the public³.

19. Therefore, the evidence available to the County Council indicates that the Application Site has been used 'as of right'.

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

20. 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.

21. In this case, the evidence submitted in support of the application (summarised at **Appendix C**) indicates that local residents have engaged in various recreational activities on the land.

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

³ Where land is made available to the public for recreational purposes, use will normally be 'by right' (by virtue of an implied or express permission)

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

22. There are, however, two issues to note. Firstly, a number of the user evidence questionnaires refer to use of the Application Site as ‘access’ or a ‘cut through’ to the town or castle. This kind of use – which involves walking a defined, linear route to a destination outside of the Application Site – is attributable to a public rights of way type of use (as opposed to the exercise of a general right to recreate) and is therefore not ‘qualifying use’ for the purpose of considering the Village Green application⁵, such that it falls to be discounted. Notwithstanding, even disregarding the references at **Appendix C** to the use of the land as a short cut, there is ample evidence of other kinds of use that would amount to ‘lawful sports and pastimes’ – such as picnics, playing with children, socialising etc.
23. The second issue relates to the extent of the Application Site which has been imprecisely drafted on the original application plan. As can be noted from **Appendix A**, the original application plan includes section of the roadway comprising The Slade and also a strip of land (comprising eight parking spaces) along the northern edge of the car park. Evidently, those areas would, most of the time, have been unavailable for the purposes of informal recreational use. As such, it is proposed that the Application Site be amended⁶ to exclude those areas and, in the event that the application is successful, that the registration be effected in accordance with the plan at **Appendix D**.

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

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

Locality

25. 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 Builders⁷ 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’.
26. 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

⁵ See R (Laing Homes) v Buckinghamshire County Council [2003] 3 EGLR 70 at 79 per Sullivan J: ‘it is important to distinguish between use that would suggest to a reasonable landowner that the users believed they were exercising a public right of way to walk, with or without dogs... and use that would suggest to such a landowner that the users believed that they were exercising a right to indulge in lawful sports and pastimes across the whole of the fields’.

⁶ In Oxfordshire County Council v Oxford City Council [2006] UKHL 25, it was agreed (at paragraph 62) that “the registration authority is entitled, without any amendment of the application, to register only that part of the subject premises which the applicant has proved to have been used for the necessary period.”

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

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.

27. In this case, the Applicant has not specified a locality as such, instead relying upon a description of the land as 'Upper Castle Field'. Clearly this is not a qualifying locality for the purposes of Village Green registration in the terms described above.
28. However, a number of those that have completed user evidence questionnaires describe themselves as living within 'The Slade' area of Tonbridge town. Indeed, the 'Slade Area' is recognised as a sub-area of the Tonbridge Conservation Area and is described in the Tonbridge and Malling Borough Council's Conservation Area Appraisal⁹ as *'strongly cohesive, compact Victorian neighbourhood with a quiet residential character'* and a *'sense of place and self-contained community'*. The area is characterised by narrow streets comprising mainly Victorian terraced houses of a similar style, and has only two vehicular access points to/from the High Street. Historically, it was served by its own public house and also some corner shops (now converted to houses). Today, there is a Slade Area Residents Association, a Facebook community page, and the local primary school, known as Slade School, also bears a strong neighbourhood connection. Thus, the Slade area is clearly a recognised neighbourhood within the town of Tonbridge. The Slade conservation sub-area¹⁰ is shown edged in red on the plan at **Appendix E**.
29. Strictly speaking, the town of Tonbridge is not, of itself, a legally recognised administrative unit (it not being a civil parish in its own right). However, the neighbourhood and Application Site both sit within the wider Borough Council electoral ward known as Judd, which clearly is a qualifying locality.

Significant number

30. In addition to the above, the County Council also needs to be satisfied that the application site has been used by a 'significant number' of the residents of the locality. The word "significant" in this context does not mean considerable or substantial: *'a neighbourhood may have a very limited population and a significant number of the inhabitants of such a neighbourhood might not be so great as to properly be described as a considerable or a substantial number... what matters is that the number of people using the land in question has to be sufficient to indicate that the land is in general use by the community for informal recreation rather than occasional use by individuals as trespassers'*¹¹. 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.
31. In this case, a large number of the users of the land refer to daily use of it for recreational activities. Although, as can be seen from **Appendix E**, some of the users live outside of the Slade neighbourhood (such that their use must be discounted for the purposes of the Village Green application) the vast majority do

⁸ *ibid* at 92

⁹ <https://www.tmbc.gov.uk/downloads/download/82/tonbridge-conservation-area>

¹⁰ Boundaries shown are approximate, please consult TMBC's documents for precise CA boundaries

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

reside within the neighbourhood, and they are significant in number. The number of users, combined with the high frequency of use, would have been more than sufficient to bring to the attention of the landowner that the land was in general use by the local community. Indeed, acts of encouragement by the landowner (the provision of play equipment and maintenance of the land) would appear to confirm that this was the case.

32. Accordingly, it can be said that the Application Site has been used by a significant number of the residents of the neighbourhood known as The Slade, within the Borough Council electoral ward of Judd.

(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?

33. The Commons Act 2006 requires use of the land to have taken place ‘as of right’ up until the date of application or, if such use has ceased prior to the making of the application, section 15(3) of the 2006 Act provides that an application must be made within two years from the date upon which use ‘as of right’ ceased.

34. In this case, the application is made under section 15(2) of the 2006 Act and there is no evidence that 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?

35. 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 July 2024; the relevant twenty-year period (“the material period”) is calculated retrospectively from this date and is therefore 2004 to 2024.

36. The user evidence summarised at **Appendix C** demonstrates that there has been use of the Application Site both throughout, and well in excess of, the material period. Furthermore, a number of those users attest to use on a daily basis during the whole of the material period.

37. Therefore, it can be concluded that there has been use of the application site for a full period of twenty years.

Conclusion

38. Although this application is unopposed, the County Council must still be satisfied that all of the requisite legal tests have been met. Members will need to be mindful that it is ‘no trivial matter’ for a landowner to have land registered as a Village Green, such that the relevant legal tests must be ‘properly and strictly proved’. Thus, if one test fails, then the application as a whole must fail (regardless of the lack of opposition).

39. In this case, the evidence submitted in support of the application would appear to confirm that the application site has been used by local residents for a period of

over twenty years for the purposes of lawful sports and pastimes, such that the legal tests set out in section 15 of the Commons Act 2006 have been met.

40. However, as is noted above, the plan accompanying the application has not been accurately produced and requires amendment to reflect the area that was capable of being used for informal recreation during the material period. The amended plan, showing the area to be registered as a Village Green, is attached at **Appendix D**.

Financial implications

41. The determination of Village Green applications is a quasi-judicial function of the County Council and, accordingly, any financial implications can have no bearing whatsoever on the Member Panel's decision. However, Members should be aware that, whatever decision is reached, the only right of appeal open to the parties is an application to the High Court for Judicial Review, which potentially carries significant legal costs for all concerned.

Recommendation

42. I recommend that the County Council informs the Applicant that the application to register the land known as Upper Castle Field at Tonbridge as a new Town or Village Green has been accepted (per the amended plan shown at **Appendix D**), 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

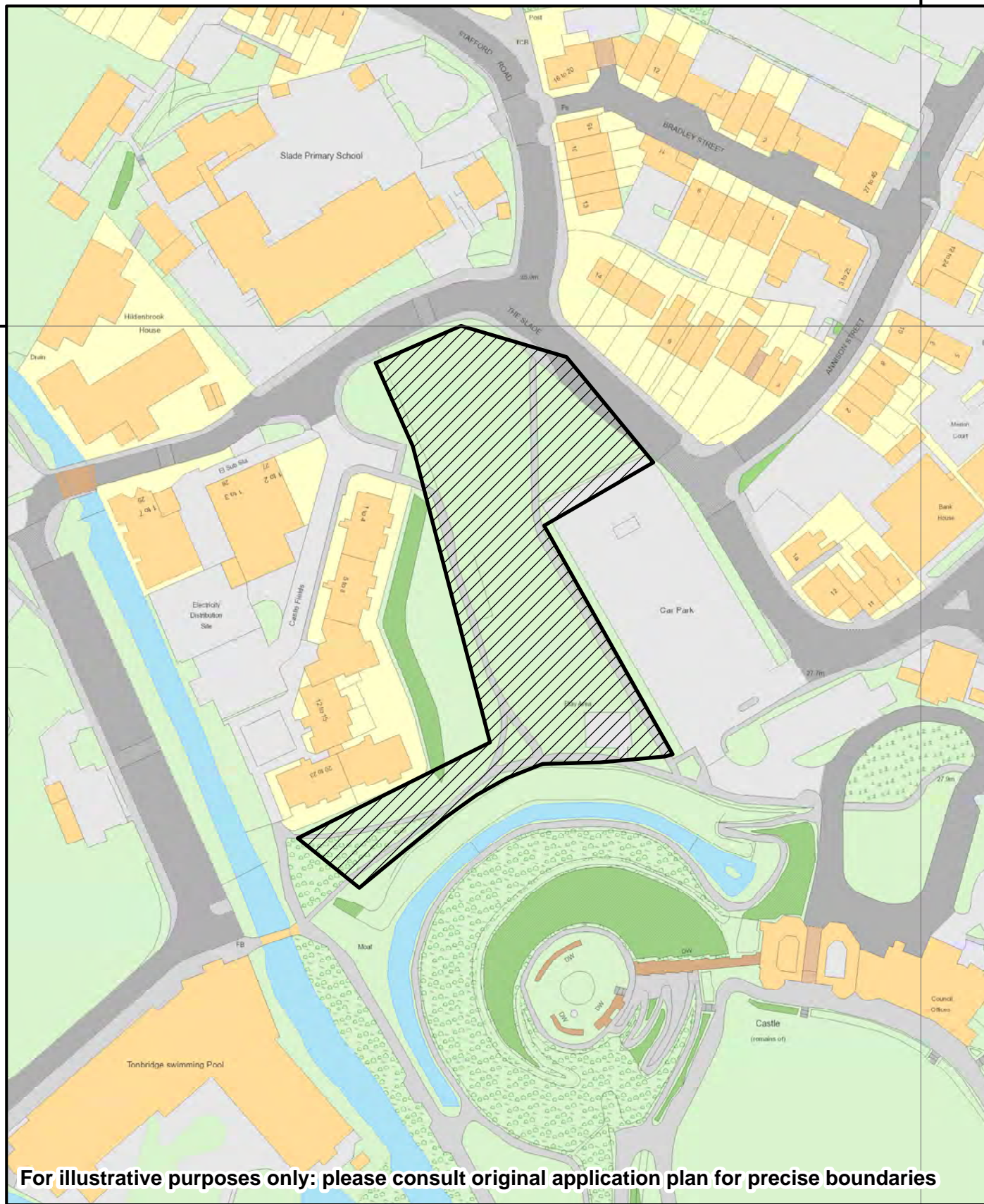
APPENDIX B – Photographs of the Application Site

APPENDIX C – Table summarising user evidence

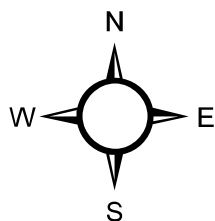
APPENDIX D – Amended plan showing land to be registered

APPENDIX E – Plan showing neighbourhood

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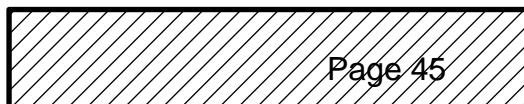


For illustrative purposes only: please consult original application plan for precise boundaries



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Land subject to Village Green application
at Upper Castle Fields, Tonbridge
(reference VGA697)



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



Above: View of the land looking towards Slade School
Below: View of the land looking towards Tonbridge Castle



Above: Google Streetview image of swings area

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User	Period of use	Frequency of use	Type of use	Comments
1	1946 – present	Monthly	Walking through it	Access via gate opposite Slade School
2	1982 – present	3-4 times per week	Meeting friends, picnics, using play equipment	Observed use by others on a daily basis for various recreational activities
3	1991 – present	Daily	Dog walking, sitting down to listen to nature	Observed use by others on a daily basis by children playing and for picnics and dog walking
4	1967 – present	Weekly	Exercise, access to town, relaxation and socialising	Only sign I have seen on the land is not to play ball games. Observed use by others on a daily basis.
5	1984 – present	Daily since 2016, occasionally prior	Dog walking	This is the only local green area that is well lit in the evenings. Observed use by others on a daily basis.
6	2014 – present	Daily	Dog walking, picnics, sitting on bench to read	This is the only green space in the historic Slade neighbourhood and is in regular use by local residents.
7	2001 – present	Daily	Children's play equipment, ball games, picnics	Observed use by others on a daily basis. This is the closest open green space to the Slade residential area, being well used and much needed.
8	1948 – present	Several times per week	Community events, socialising	Area extensively used by residents, providing a place to meet and play, and a safe route to town.
9	1978 – present	Regularly	Waling across, sitting on bench admiring surroundings, playing with grandchildren, sitting on the grass	People use this green space regularly. I live in the Slade area and am a member of the Residents Association. This is a much loved and used area, many homes in the Slade area have tiny gardens so this space is vital.
10	2013 – present	Weekly	Walking	Have known and used the area since 1963, but moved into neighbourhood in 2013.
11	2007 – present	Weekly	Play equipment, meeting friends, spotting and feeding squirrels, playing with children, picnics	I am a resident of the Slade area of Tonbridge. This patch of land is part of our community and used daily.
12	1994 – present	Weekly	Cut through to town, place to sit	This is the only area of grass locally that does not flood and is highly used by local residents on a daily basis.
13	2016 – present	Monthly	Picnics, playing with children, litter picking	Resident of Slade area. Observed use by others regularly – lots of children use the area before/after school
14	1987 – present	Several times per week	Using play equipment, walking to town and other local facilities, sitting on bench to chat with friends	This land is a central village green used by all the local residents. Observed use by others daily.
15	2000 – present	Twice daily	Dog exercise, picnics, ball games, coffee group get togethers	Slade resident. This is a valuable local green space used daily by local residents and school pupils.
16	1985 – present	Daily (weekly pre-	Taking children to swings, sitting	Observed use by others daily. I live in the Slade area

		2004)	on the bench, dog walking, walking to town/castle	of Tonbridge.
17	1998 – present	Daily	Picnics, use of swings	Moved back to Slade area in 1998, also lived there pre-1990. I have used and seen the area used for the whole of my life for recreation. Can be used during any season as the Sportsground is regularly flooded.
18	1980 – present	Daily (less frequently pre-2007)	Dog walking, commuting to/from work, exercising, games with friends	Moved to neighbourhood in 2007. I can see the land from home and enjoy seeing families and groups utilising the green space for picnics and playing etc.
19	2007 – present	Daily	Dog walking, exercise	Observed use by others daily.
20	1998 – present	4x daily	Dog walks, picnics, leisure, communal green space	Observed use by others daily.
21	2012 – present	2-3 times per week	Picnics, meeting friends, walk through to town/castle, use of swings with children	Observed use by others daily.
22	2007 – present	Daily	Meeting family/friends, walk to town, using swings with children	Observed use by others daily.
23	2014 – present	Several times per week	Dog walking, picnic, socialising, using swings	This is an iconic area within the Slade neighbourhood.
24	2016 – present	Daily	Picnics, games, dog walking	This land is used by children pre and post school, visiting families use it as a picnic and play area along with many dog walkers.
25	1976 – present	Daily	Using play equipment, benches	Observed use by other daily.
26	2021 – present	Daily	Using swings with children, picnics, walks, playing around the trees, sitting on bench	The land is in close proximity to the castle and local primary school and is used by people of all ages.
27	1977 – present	At least weekly	Children's games, picnics, swings	There were always people using the land any time we were there. This is a much loved and used stretch of greenery.
28	1994 – present	Daily	Children using swings, picnics, relaxing on the bench, playing football with children	Resident in the Slade area of Tonbridge. This piece of land is used on a daily basis and is an area of grass not affected by flooding.
29	1986 – present	Daily	Using path to town, sitting on grass in summer to read, meeting friends, dog walking	I live in the Slade. The land is valued by everyone and a precious space for families without access to a garden.
30	1976 – present	Daily	Access to castle/town, swings for grandchildren	Observed use by others daily.
31	1998 – present	Daily	Children using swings, dog walking, socializing, picnics	Live in the residential area known as The Slade. In a built up area of the town, this land is the only green space we have, providing a safe area for parents and children to wait for school children at Slade school. It

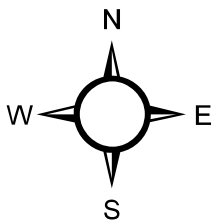
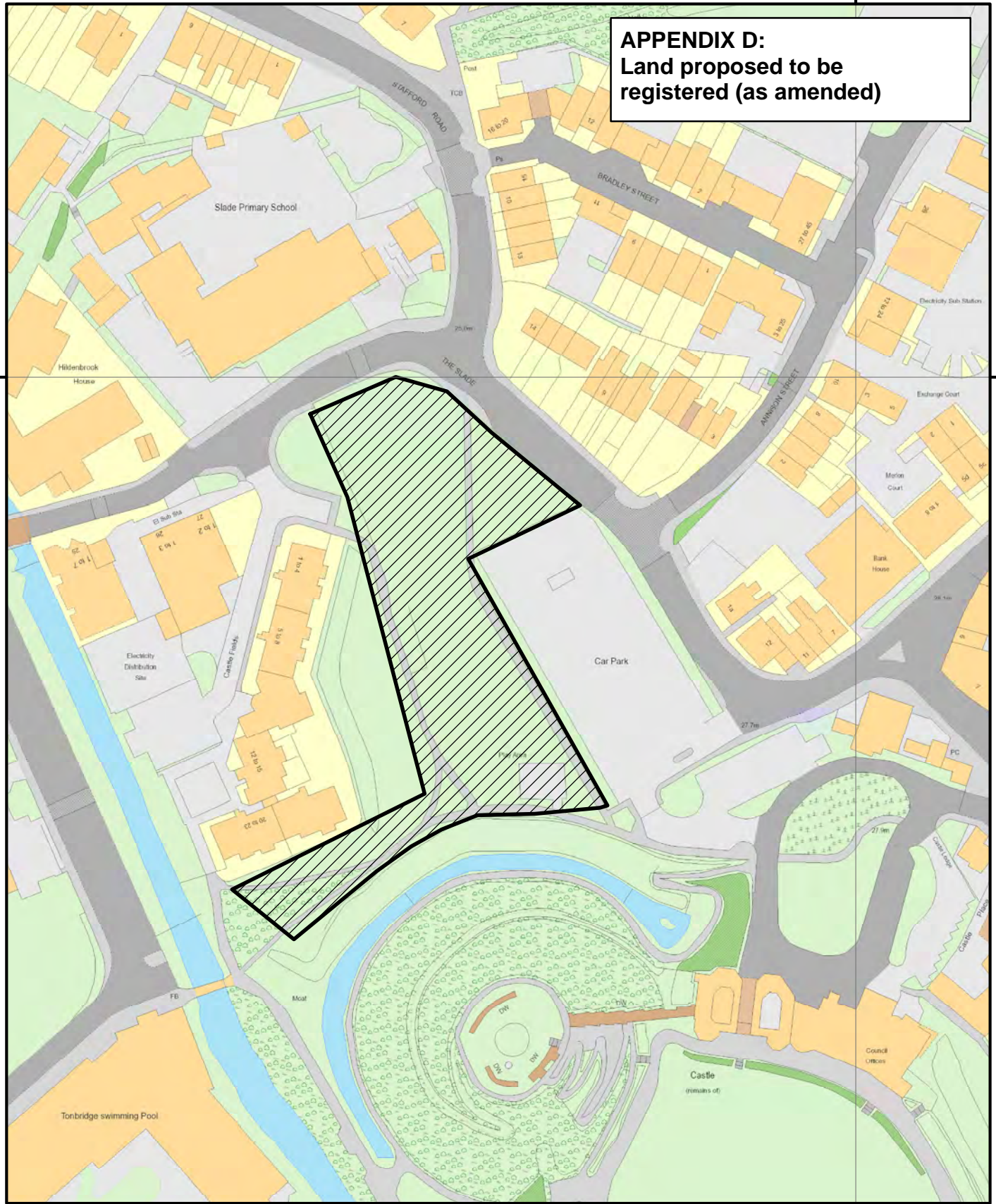
				is a well used and appreciated
32	1999 – present	Daily, now weekly	Children using swings, dog walk, picnics, sit on grass, general play area	Moved outside of the neighbourhood in 2008. This space is in constant use and enjoyed in a variety of ways by a multi-generational audience.
33	1998 – present	3-4 times per week	Walking	Observed use by others daily.
34	2015 – present	Three times daily	Dog walking, using swings, meeting friends/family	Have known the land for 70 years. Observed use by others on a daily basis.

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**APPENDIX D:
Land proposed to be
registered (as amended)**

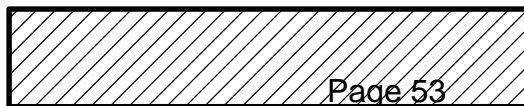
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**Land proposed to be registered
as Village Green (as amended)**



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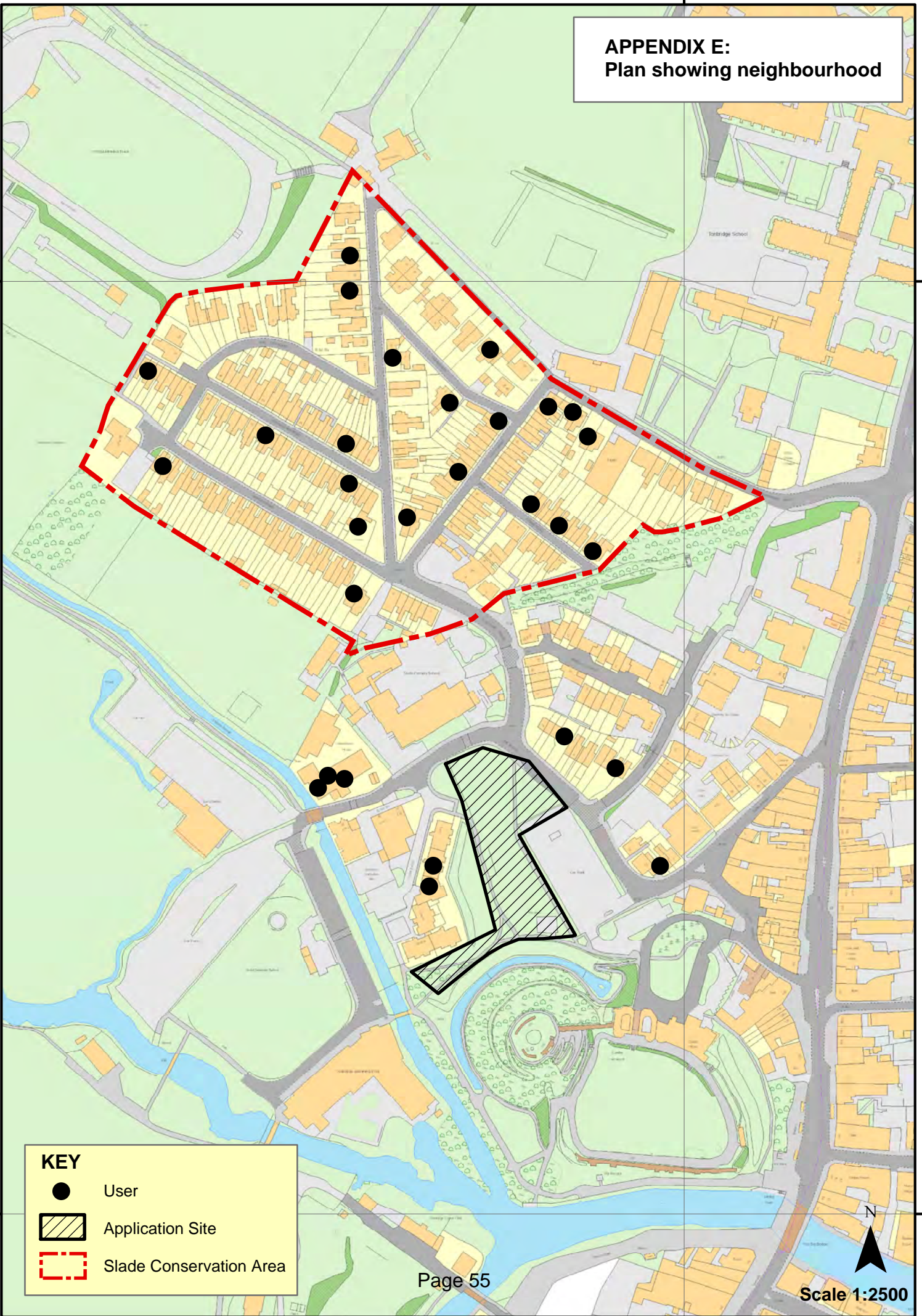
APPENDIX E:
Plan showing neighbourhood

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KEY

- User
- ▨ Application Site
- ⋯ Slade Conservation Area

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Application to register land known as Burton Down Park at Herne Bay 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 Tuesday 10th December 2024.

Recommendation: I recommend that the Applicant be informed that the application to register the land known as Burton Down Park at Herne Bay has been accepted, and that the land subject to the application (as shown at Appendix A) be formally registered as a Town or Village Green.

Local Member: Mr. D. Watkins (Herne Bay East)

Unrestricted item

Introduction

1. The County Council has received an application to register land known as Burton Down Park at Herne Bay as a new Town or Village Green from the Canterbury City Council ("the Applicant"). The application, made on 26th January 2024, was allocated the application number VGA695.

Procedure

2. Traditionally, Town and Village Greens have derived from customary law and until recently it was only possible to register land as a new Town or Village Green where certain qualifying criteria were met: i.e. where it could be shown that the land in question had been used 'as of right' for recreational purposes by the local residents for a period of at least 20 years.
3. However, a new provision has been introduced by the Commons Act 2006 which enables the owner of any land to apply to voluntarily register the land as a new Village Green without having to meet the qualifying criteria. Section 15 states:

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

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

is the owner of the land and that any necessary consents have been obtained (e.g. from a tenant or the owner of a relevant charge). Provided that these tests are met, then the County Council is under a duty to grant the application and register the land as a Town or Village Green.

The Case

Description of the land

6. The area of land subject to this application (“the Application Site”) consists of an area of approximately 4.9 acres (2 hectares) in size, known as Burton Down Park, that is situated at Thundersland Road at Herne Bay. The site comprises a recreation ground that is mainly laid to grass and includes a children’s play area. Access to the site is available from Thundersland Road (also recorded as Bridleway CH50) which runs along the southern boundary of the site.
7. A plan of the Application Site is attached at **Appendix A**.

Notice of Application

8. As required by the regulations, Notice of the application was published on the County Council’s website.
9. The local County Member, Mr. D. Watkins, was also informed of the application and wrote to confirm his full support for it. He noted that the site was a highly valued community space that was used for a wide range of recreational activities.
10. No other responses to the consultation 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 K924379.
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 application has been made by the City Council. As noted above, an electoral ward is a qualifying locality for the purposes of Village Green registration and therefore it seems appropriate for the relevant locality to be the electoral ward within which the Application Site is located, namely Beltinge Ward.

Conclusion

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

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

Recommendation

18. I recommend that the Applicant be informed that the application to register the land known as Burton Down Park at Herne Bay has been accepted, and that the land subject to the application (as shown at **Appendix A**) be formally registered as a Town or Village Green.

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

Appendices

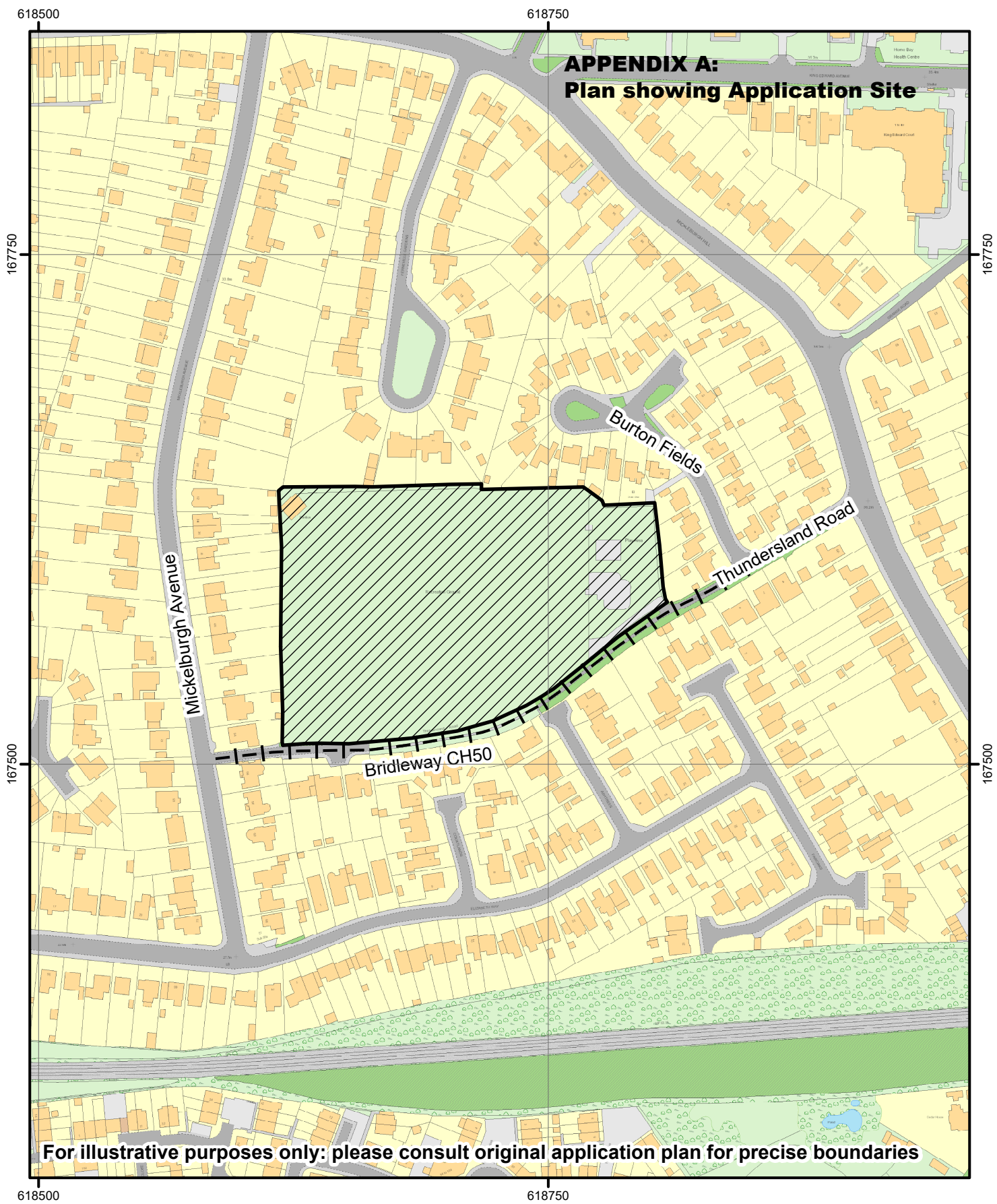
APPENDIX A – Plan showing application site

Background documents

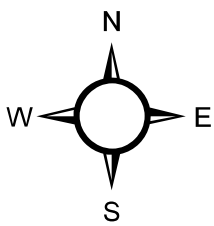
The main file is available for viewing on request at the PROW and Access Service based at Invicta House, County Hall, Maidstone. Please contact the Case Officer for further details.

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**APPENDIX A:
Plan showing Application Site**

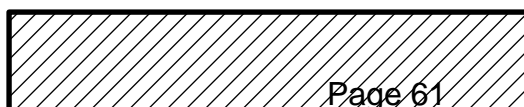


For illustrative purposes only: please consult original application plan for precise boundaries



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Land subject to Village Green application
at Burton Down Park at Herne Bay
(VGA695)



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Application to register land at Marley Fields at Hoath 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 Tuesday 10th December 2024.

Recommendation: I recommend that the Applicant be informed that the application to register the land at Marley Fields at Hoath has been accepted, and that the land subject to the application (as shown at Appendix A) be formally registered as a Town or Village Green.

Local Member: Mr. A. Marsh (Herne Village & Sturry)

Unrestricted item

Introduction

1. The County Council has received an application to register land at Marley Fields at Hoath as a new Town or Village Green from the Hoath Parish Council ("the Applicant"). The application, made on 19th August 2024, was allocated the application number VGA698.

Procedure

2. Traditionally, Town and Village Greens have derived from customary law and until recently it was only possible to register land as a new Town or Village Green where certain qualifying criteria were met: i.e. where it could be shown that the land in question had been used 'as of right' for recreational purposes by the local residents for a period of at least 20 years.
3. However, a new provision has been introduced by the Commons Act 2006 which enables the owner of any land to apply to voluntarily register the land as a new Village Green without having to meet the qualifying criteria. Section 15 states:

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

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

is the owner of the land and that any necessary consents have been obtained (e.g. from a tenant or the owner of a relevant charge). Provided that these tests are met, then the County Council is under a duty to grant the application and register the land as a Town or Village Green.

The Case

Description of the land

6. The land subject to this application (“the Application Site”) consists of an area of grassed open space, of approximately 0.8 acre (0.32 hectares) in size, situated opposite Hoath Primary School (and on the northern side of Marley Fields) in the village of Hoath, near Canterbury. Access to the site is unrestricted along the frontages of Mill Lane and Marley Fields.
7. A plan of the Application Site is attached at **Appendix A**, with photographs of it at **Appendix B**.

Notice of Application

8. As required by the regulations, Notice of the application was published on the County Council’s website.
9. The local County Member, Mr. A. Marsh, was also informed of the application.
10. No responses to the consultation have been received.

Ownership of the land

11. The site forms part of a wider area that has recently been gifted to the Parish Council in connection with the nearby development of Marley Fields. A Land Registry search confirms that the transfer has now taken place and that the Application Site is wholly owned by the Applicant under title number TT140215.
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 application has been made by the Hoath Parish Council. As noted above, a civil parish is a qualifying locality for the purposes of Village Green

registration and therefore it seems appropriate for the relevant locality to be the parish of Hoath.

Conclusion

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

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

Recommendation

18. I recommend that the Applicant be informed that the application to register the land at Marley Fields at Hoath has been accepted, and that the land subject to the application (as shown at **Appendix A**) be formally registered as a Town or Village Green.

Accountable Officer:

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

Case Officer:

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

Appendices

APPENDIX A – Plan showing application site

APPENDIX B – Photographs of the application site

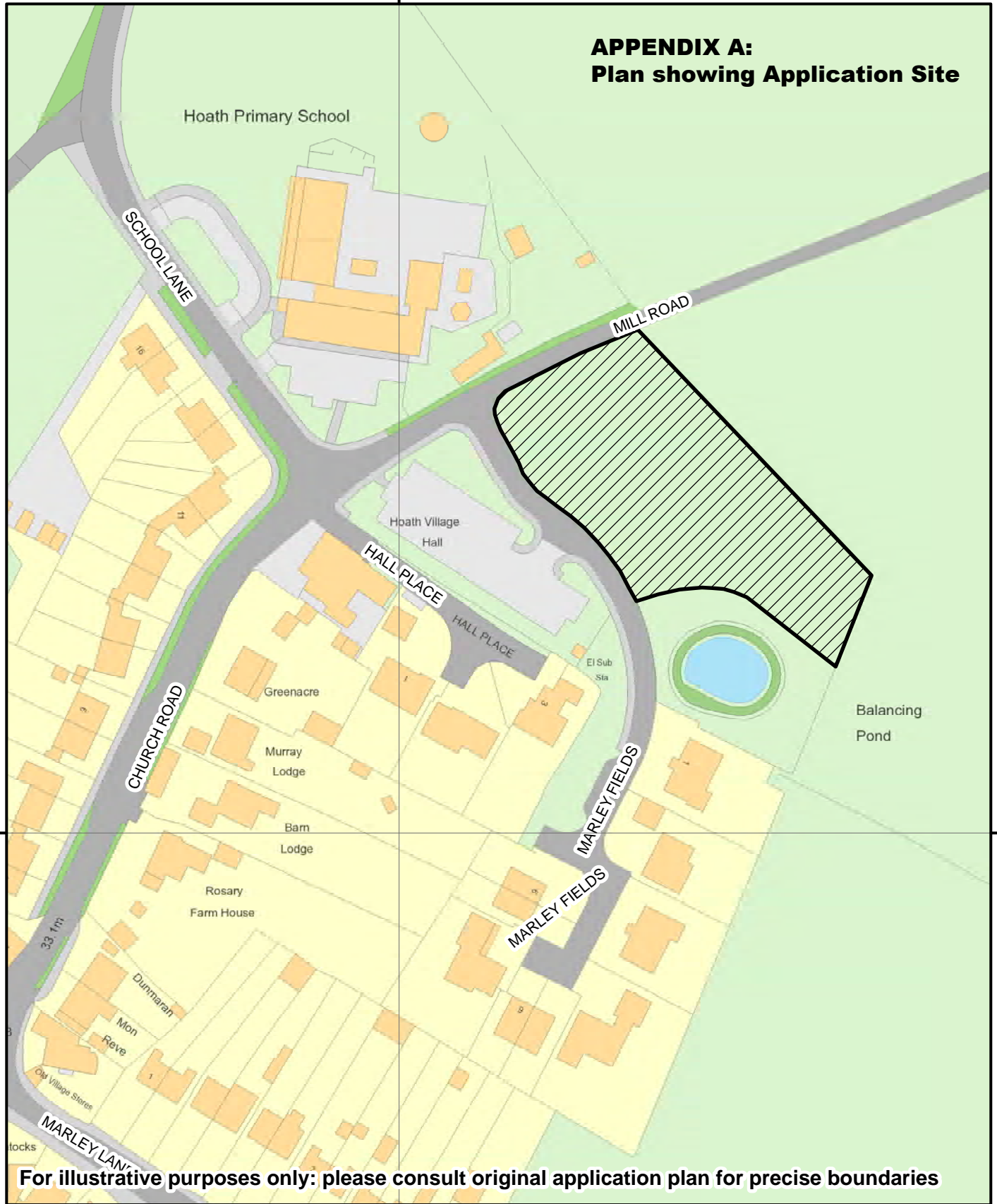
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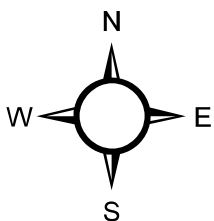
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APPENDIX A: Plan showing Application Site



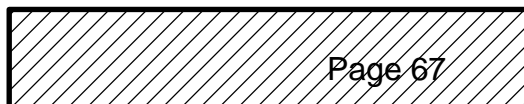
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Land subject to application
for Village Green status
at Marley Fields, Hoath
(reference VGA698)



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



Above: Latest available aerial photograph

Below: Google Streetview image (July 2021)



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