

# Application to register land at Snowdown as a new Town or Village Green

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

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

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Local Member: Mr. S. Manion

Unrestricted item

## Introduction

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

## Procedure

2. The application has been made under section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2014.
3. Section 15 of the Commons Act 2006 enables any person to apply to a Commons Registration Authority to register land as a Village Green where it can be shown that:  
*'a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years'*
4. In addition to the above, the application must meet one of the following tests:
  - **Use of the land has continued** 'as of right' until at least the date of application (section 15(2) of the Act); or
  - **Use of the land 'as of right' ended no more than one year prior to the date of application**<sup>1</sup>, e.g. by way of the erection of fencing or a notice (section 15(3) of the Act).
5. As a standard procedure set out in the 2014 Regulations, the County Council must publicise the application by way of a copy of the notice on the County Council's website and by placing copies of the notice on site to provide local people with the opportunity to comment on the application. Copies of that notice must also be served on any landowner(s) (where they can be reasonably identified) as well as the relevant local authorities. The publicity must state a period of at least six weeks during which objections and representations can be made.

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

## **The application site**

6. The land subject to this application ("the application site") consists of a roughly L-shaped area of land of approximately 10.3 acres (4.17 hectares) comprising wooded areas (covering a large part of the northern section of the site as well as along its boundary with Sandwich Road) with a central, grassed open space that includes children's play equipment and football goals.
7. The application site is crossed by two Public Footpaths - EE301 and EE302 - which provide access to it from Aylesham Road (on the northern side of the site), Sandwich Road (on the southern side of the site) and South Avenue, the latter providing easy access to the site from the residential properties comprising the Snowdown settlement.
8. The application site is shown in more detail on the plan at **Appendix A**, and photographs are attached at **Appendix B**.

## **The case**

9. The application has been made on the grounds that the application site has become a Town or Village Green by virtue of the recreational use of the land by local residents for a period in excess of twenty years.
10. Included with the application was a statement of support from the applicant, photographs of the application site, as well as 29 user evidence questionnaires demonstrating recreational use of the application site. A summary of the user evidence submitted in support of the application is attached at **Appendix C**.

## **Consultations**

11. Consultations have been carried out as required.
12. Aylesham Parish Council wrote in support of the application, noting that it wished to keep the amenity available for children to use in the future.
13. A representation was received from Mr. T. Johnstone noting that the application site was the subject of a lease in favour of Aylesham Parish Council which provides for recreational use of the land, such that it cannot be registered as a Village Green.
14. Southern Water objected to the application on the basis that the application site includes existing wastewater network assets contained within a permanently fenced compound which has not been accessible for recreational use. Access is also required to the underground infrastructure in the vicinity for maintenance purposes, which may trigger a criminal offence if the land were to be registered as a Village Green. At the time of its objection (in July 2019), the site was being developed by Southern Water as a pumping station and essential sewerage infrastructure for the village.

## **Landowner**

15. The vast majority of the application site, with the exception only of a roughly triangular area of approximately 0.2 acres where the application site abuts The Crescent, is owned by the Plumptre Children's Trust ("the Trust") and is registered with the Land Registry under title number K388942. The entirety of the land owned by the Trust is subject to a lease dated 3<sup>rd</sup> May 1983 in favour of the National Coal Board (now the Coal Authority). Additionally, the central (non-wooded) part of the application site is subject to a sub-lease in favour of Aylesham Parish Council dated 1<sup>st</sup> October 1974. The leases are discussed in further detail below.
16. The remaining small section of land abutting The Crescent is registered to The Coal Authority under land Registry Title number K478885.
17. Objection to the application has been received from the Trust (as landowner) on the following grounds:
  - The application site is leased to the Coal Authority and described in the lease as a Recreation Ground, such that use of it cannot be considered 'as of right';
  - Part of the land is sub-leased to the Aylesham Parish Council for recreational purposes;
  - The remainder of the land consists of woodland scrub and many of the claimed uses could not have taken place due to the nature of the site, such that any use of the woodland areas was necessarily confined to the Public Footpaths; and
  - Of the 46 dwellings at Snowdown, only a small number of local inhabitants have used the land for the full twenty-year period, such that use was not by a significant number of the local inhabitants throughout the relevant period.
18. An objection to the application has also been received from the Coal Authority (as lessee) on the following grounds:
  - The applicant has failed to show that use of the application site has taken place by a significant number of the local residents, and the claimed usage was not sufficient to demonstrate to a reasonable landowner that Village Green rights were being asserted;
  - The applicant has failed to show that recreational use took place over the whole of the application site, with much of the claimed usage referable to the Public Footpaths that cross the site or defined tracks through the woodland;
  - Use of the application site has been permissive by reference to the leases which exist in respect of the land.

## **Legal tests**

19. In dealing with an application to register a new Town or Village Green the County Council must consider the following criteria:
  - (a) *Whether use of the land has been 'as of right'?*
  - (b) *Whether use of the land has been for the purposes of lawful sports and pastimes?*
  - (c) *Whether use has been by a significant number of inhabitants of a particular locality, or a neighbourhood within a locality?*
  - (d) *Whether use of the land 'as of right' by the inhabitants has continued up*

*until the date of application or, if not, has ceased no more than one year prior to the making of the application?*

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

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

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

20. The definition of the phrase 'as of right' has been considered by the House of Lords. Following the judgement in the Sunningwell<sup>2</sup> case, it is considered that if a person uses the land for a required period of time without force, secrecy or permission ("nec vi, nec clam, nec precario"), and the landowner does not stop him or advertise the fact that he has no right to be there, then rights are acquired.
21. In this case, there is no suggestion that any of the use of the application site has taken place in exercise of force or in a secretive manner. Although the presence of the Public Footpaths crossing the site might make it difficult for a landowner to fully secure the site (in order to prevent trespass), the availability of children's play equipment, football goals and benches on the site very much suggests in this case that the local residents were actively encouraged to use it for recreational purposes.
22. However, there is a question as to whether the use of the application site has taken place by virtue of some form of permission. Permission, in the context of Village Green applications, can take various forms: it can be express (e.g. by way of a notice on site) or implied from the actions of the landowner (for example, by preventing access on certain days) and, whilst in some cases, such permission will be communicated to the users of the land (as in the case of a notice on site), in others it may not. The latter situation may arise where there is a lease in place which specifically provides for recreational use of the land, albeit that the users of the land may not be aware of the specific provisions, or even existence, of the lease.
23. In this case, in order to establish whether such recreational use has taken place 'without permission', it is necessary to examine the leases in further detail.

**Lease dated 3<sup>rd</sup> May 1983 ("the 1983 Lease")**

24. The 1983 Lease between the landowning Trust and the now Coal Authority extends for a period of 60 years, expiring on 31<sup>st</sup> December 2042. It covers the vast majority of the application site (with the exception of the small triangle already owned by the Coal Authority), plus other areas comprising the former Snowdown Colliery.
25. Clause 13 of the lease provides that '*the Tenant shall not without the prior written consent of the Landlords... use or permit to be used [the former Pit Head Baths Restaurant] or the Recreation Ground (coloured blue on the Plan)... for any purposes other than those for which they are respectively currently used*'.

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

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

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

Sub-lease dated 1<sup>st</sup> October 1974 ("the 1974 sub-lease")

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

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

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

Conclusion in respect of 'as of right'

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

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

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

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<sup>3</sup> ibid

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

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

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

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

37. The summary of evidence of use by local residents at **Appendix C** shows the activities claimed to have taken place on the application site. These include walking, ball games, and playing with children. As such, it would appear that the land has been used for a range of recreational activities.

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

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

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

<sup>5</sup> *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at 89

<sup>6</sup> *R (Laing Homes) v Buckinghamshire County Council* [2003] 3 EGLR 70

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

40. The right to use a Town or Village Green is restricted to the inhabitants of a locality, or of a neighbourhood within a locality, and it is therefore important to be able to define this area with a degree of accuracy so that the group of people to whom the recreational rights are attached can be identified.
41. The definition of 'locality' for the purposes of a Town or Village Green application has been the subject of much debate in the Courts. In the Cheltenham Builders<sup>7</sup> case, it was considered that '*...at the very least, Parliament required the users of the land to be the inhabitants of somewhere that could sensibly be described as a locality... there has to be, in my judgement, a sufficiently cohesive entity which is capable of definition*'. The judge later went on to suggest that this might mean that locality should normally constitute '*some legally recognised administrative division of the county*'.
42. In cases where the locality is so large that it would be impossible to meet the 'significant number' test (see below), it will also necessary to identify a neighbourhood within the locality. The concept of a 'neighbourhood' is more flexible than that of a locality, and need not be a legally recognised administrative unit. On the subject of 'neighbourhood', the Courts have held that '*it is common ground that a neighbourhood need not be a recognised administrative unit. A housing estate might well be described in ordinary language as a neighbourhood... The Registration Authority has to be satisfied that the area alleged to be a neighbourhood has a sufficient degree of cohesiveness; otherwise the word "neighbourhood" would be stripped of any real meaning*'<sup>8</sup>.
43. In this case, the applicant specifies the relevant 'locality or neighbourhood with a locality' on the application form as 'Snowdown' and all of the users reside within the residential streets comprising the settlement of Snowdown.
44. As Snowdown is not a legally recognised administrative unit, it cannot be a 'locality' for the purposes of section 15 of the Commons Act 2006. However, as a collection of properties forming a discrete settlement with its own identity (linked to the former colliery), and with a railway station of the same name, it is considered that Snowdown could quite legitimately fall within the definition of a 'neighbourhood'.
45. The neighbourhood of Snowdown falls within the parish of Aylesham, itself a legally recognised administrative unit capable of constituting a qualifying locality for the purposes of Village Green registration.
- "a significant number"*
46. The County Council also needs to be satisfied that the application site has been used by a 'significant number' of the residents of the 'neighbourhood within a locality'. The word "significant" in this context does not mean considerable or substantial: '*a neighbourhood may have a very limited population and a significant*

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

<sup>8</sup> *ibid* at 92

*number of the inhabitants of such a neighbourhood might not be so great as to properly be described as a considerable or a substantial number... what matters is that the number of people using the land in question has to be sufficient to indicate that the land is in general use by the community for informal recreation rather than occasional use by individuals as trespassers*<sup>9</sup>. Thus, what constitutes a 'significant number' will depend upon the local environment and will vary in each case depending upon the location of the application site.

47. In this case, the evidence submitted in support of the application demonstrates that use of the application site has taken place on a regular basis by a sufficiently large number of residents to indicate that the application site was in general use by the community. Of the 46 properties comprising the Snowdown settlement, over half (29) have returned evidence questionnaires and, of those, the vast majority attest to use of the application site on an at least a daily or weekly basis. The vast majority also refer to observing use by others on a daily basis and reference is also made to community events, such as picnics and bonfire night celebrations, which supports the contention that the application site has been a well-used local amenity.
48. It is suggested by the Landowning Trust that only a small number of local inhabitants have used the land for the full twenty-year period, such that use has not been by a 'significant number'. However, there is no requirement within the legislation for each and every user to have used the application site for the minimum twenty-year period; what matters is whether the evidence of use, when taken together and viewed as a whole, signifies that the application site has been used for a full period of twenty years<sup>10</sup>.

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

49. The Commons Act 2006 requires use of the land to have taken place 'as of right' up until the date of application or, if such use has ceased prior to the making of the application, section 15(3) of the 2006 Act provides that an application must be made within one year from the date upon which use 'as of right' ceased.
50. In this case, the application is made under section 15(2) of the 2006 Act and there is no evidence that actual use of the application site for recreational purposes ceased prior to the making of the application. As such, this test is met.

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

51. In order to qualify for registration, it must be shown that the land in question has been used for a full period of twenty years. In this case, use 'as of right' did not cease prior to the making of the application in 2019. The relevant twenty-year period ("the material period") is calculated retrospectively from this date and is therefore 1999 to 2019.

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

<sup>10</sup> ibid at paragraph 73 in which Sullivan J notes that it is difficult to obtain first-hand evidence of events over a period as long as 20 years and not unusual for an Inspector to be left with a 'patchwork of evidence, trying to piece together evidence from individuals who can deal with various parts of the 20-year period'.

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

## Conclusion

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

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

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

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

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

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

## Recommendation

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

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<sup>11</sup> Ibid at paragraph 82

**Accountable Officer:**

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**Case Officer:**

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

## **Appendices**

APPENDIX A – Plan showing application site

APPENDIX B – Photographs of the application site

APPENDIX C – Table summarising user evidence

APPENDIX D – Extract from the 1983 Lease

APPENDIX E – Extract from the 1974 sub-lease

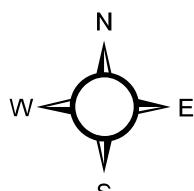
APPENDIX F – Photograph of land abutting The Crescent

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**APPENDIX A:**  
**Plan showing application site**



Scale 1:2500

**Land subject to Village Green  
application at Snowdown**



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



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



Aerial photograph dated 2009





Photograph showing woodland areas (provided by applicant)

**APPENDIX C:**  
**Summary of user evidence**

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

**APPENDIX C:**  
**Summary of user evidence**

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

APPENDIX D:  
Copy of 1983 Lease

Handwritten note: "merely copy this to be a true  
complete copy of the original."

J.C. Lynwell.

Eastwood.

24-6-83.

DATED

3rd May

1983

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

- and -

J.H. PLUMPTRE, ESQ. (2)

- to -

NATIONAL COAL BOARD (3)

L E A S E

- of -

Snowdown Colliery, Nonington,  
Kent.

From : 1st January 1982

Term : Years 60

Expires : 31st December 2042



K553190



SEQ77

Photo  
COPY

Hallett & Co.,  
ASHFORD.

APPENDIX D:  
Copy of 1983 Lease

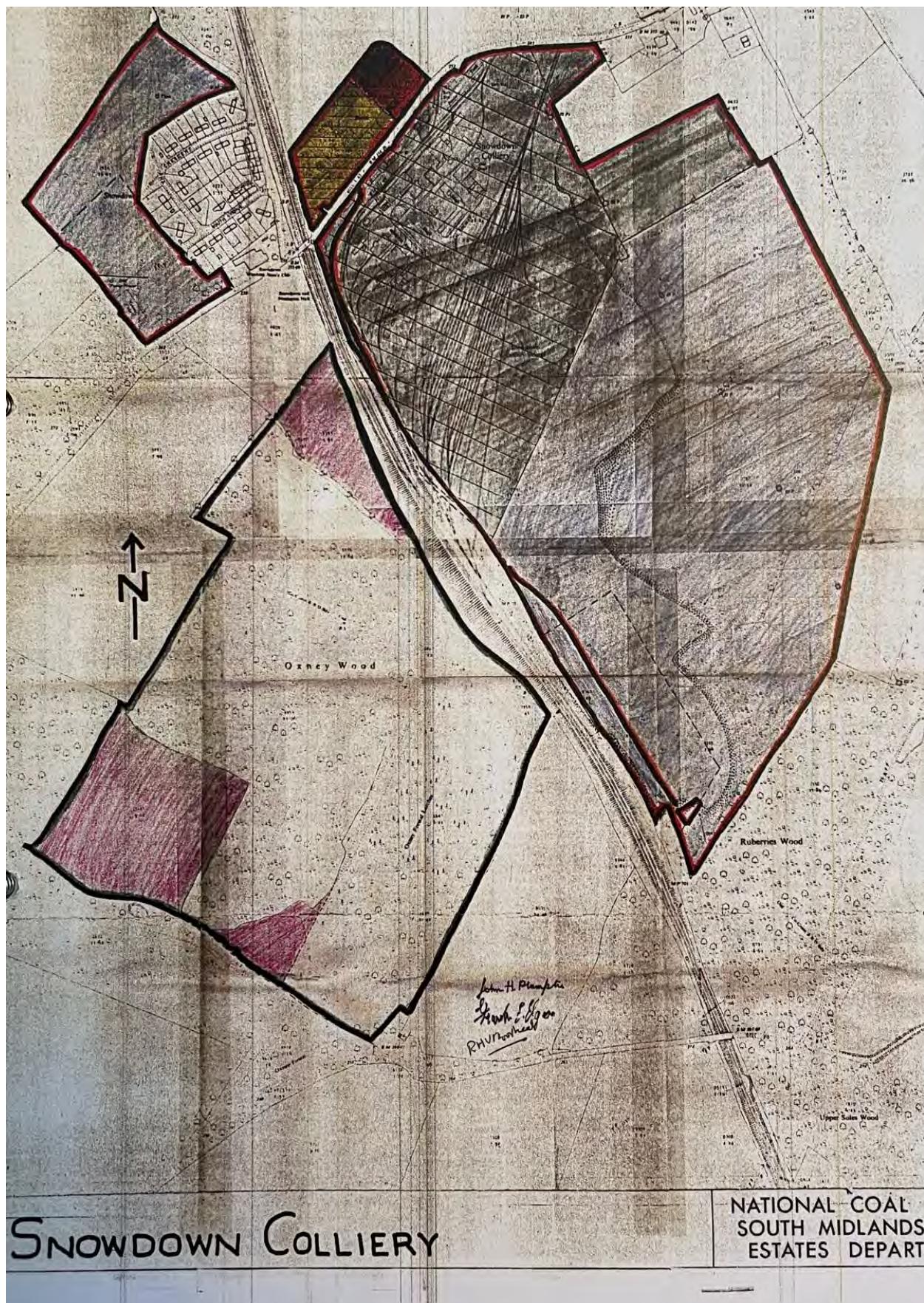
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| <p>the<br/>g<br/>sal<br/>lly<br/>on<br/>rds<br/>use<br/>may<br/>se</p> | <p><u>To permit Landlords to enter to repair adjoining premises.</u></p> <p>(11) (i) To permit the Landlords or their respective agents or workmen and the tenants and occupiers of any adjoining or neighbouring property now or at any time hereafter belonging to the Landlords at all convenient hours in the daytime on reasonable prior written notice to the Tenant to enter upon the described lands for executing repairs or alterations to or upon or to maintain cleanse or rebuild such adjoining or neighbouring property or to maintain cleanse empty renew or repair any of the sewers drains gutters pipes cables wires or other services belonging to or serving such adjoining or neighbouring property the person so entering making good to the reasonable satisfaction of the Tenant all damage to the described lands thereby occasioned</p> <p>(ii) To permit the Landlords or their agents or workmen at all convenient hours in the daytime on reasonable prior written notice to the Tenant to enter upon the described lands for the purpose of executing any works thereon which the Landlords may be statutorily liable to carry out to the exclusion of the Tenant notwithstanding any contract to the contrary the person so entering making good to the reasonable satisfaction of the Tenant all damage to the described lands thereby occasioned</p> <p><u>To pay costs of notices under S.146 of the Law of Property Act 1925.</u></p> <p>User.</p> |
|  | <p>(12) To pay to the Landlords all reasonable costs charges and expenses (including legal costs and fees payable to a surveyor) which may properly and reasonably be incurred by the Landlords in reference to any breach giving rise to a right of re-entry under the provisions in that behalf hereinafter contained notwithstanding that forfeiture is avoided otherwise than by Order of the Court and also to pay the like costs and expenses of any proper notice and schedule relating to repair of the premises in connection with the delivery up thereof at the expiration or sooner determination of the said term.</p> <p>(13) Not to use the described lands or any part thereof or permit the same to be used for any purpose other than that of a Colliery and mineral producing unit and all other purposes ancillary thereto including but without prejudice to the generality of this sub-clause the tipping storing processing and carrying away of coal shale sandstone and all other mine products and waste or for such other purposes as may be from time to time approved in writing by the Landlords (such approval not to be unreasonably withheld) <u>PROVIDED THAT</u> the Tenant shall not without the prior written consent of the Landlords (such consent not to be unreasonably withheld) use or permit</p>   |

APPENDIX D:  
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|--|--|
|  | <p>to be used the Pit Head Baths Restaurant (coloured yellow and orange on the Plan) or the Recreation Ground (coloured blue on the Plan) or any part thereof for any purposes other than those for which they are respectively currently used—</p>  |
| <u>Not to commit a nuisance.</u>             | <p>(14) (i) Generally not to do or permit or suffer to be done upon or in connection with the described lands anything which shall be a nuisance to the Landlords or other adjoining or neighbouring land owners or occupiers and in particular to prevent a nuisance to adjoining owners or occupiers from dust—</p> <p>(ii) To indemnify and keep indemnified the Landlords from and against all claims and actions that may be brought by adjoining or neighbouring owners or occupiers arising out of the activities of the Tenant on the described lands <u>PROVIDED THAT</u> the Landlords shall forthwith upon the receipt or service of each such claim or action notify and fully appraise the Tenant in writing of the same and permit (should the Tenant so elect) the Tenant to have full control and conduct of the claim or action in so far as the Tenant may have any liability in respect thereof to the Landlords hereunder—</p> |
| <u>Assignments and registration thereof.</u> | <p>(15) (a) Not to assign or underlet or part with possession of the whole or any part of the described lands without the previous written consent of the Landlords which consent shall not be unreasonably withheld <u>PROVIDED THAT</u> nothing herein shall prevent or hinder the continuance of the subletting of the whole or part or parts of the Recreation land coloured blue on the Plan—</p> <p>(b) Within one month of any such underletting of the described lands or any part thereof to give notice thereof in writing with particulars thereof to the Landlords and produce to the Landlords or their Solicitors a copy of any such Underlease and to pay the Landlords or their Solicitors an appropriate registration fee in respect of each such instrument</p>  |
| <u>To insure.</u>                            | <p>(16) To keep insured in the joint names of the Landlords and the</p>  |

To f

APPENDIX D:  
Copy of 1983 Lease



**APPENDIX E:**  
**Copy of 1974 Sub-lease**

MJB/GA.12228

DATED 1<sup>st</sup> October 1974

COAL INDUSTRY ESTATES LIMITED

- and -

NATIONAL COAL BOARD

- to -

AYLESHAM PARISH COUNCIL

L E A S E

- of -

Land at Snowdown Village in the County  
of Kent

MASTER

APPENDIX E:  
Copy of 1974 Sub-lease

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

As to user

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

Not to commit a nuisance

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

Not to contravene planning Acts

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

Not to assign or underlet

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

To maintain land etc.

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

Not to cut trees

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

## APPENDIX E:



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



Google