

Update from the Public Rights of Way and Access Service Common Land and Village Greens

A report by the Public Rights of Way and Access Service Manager to Kent County Council's Regulation Committee on Tuesday 24th January 2023.

Recommendation:

I recommend that (1) Members consider this report and note its content; and (2) Members agree to the withdrawal of application CAA22.

Introduction

1. Kent County Council is a 'Commons Registration Authority', which means that it is responsible for holding the legal records of all registered Common Land and Village Green in the county – known as the 'Registers of Common Land and Village Greens' – and for dealing with applications to amend those Registers under the Commons Act 2006 ("the 2006 Act").
 - 1.1 The majority of applications received are made under section 15(1) of the 2006 Act, which allows any person may make an application to the County Council to register land as a new Town or Village Green, where it can be shown that the land has been used:
 - As of right (i.e without force, secrecy, or permission);
 - For a period of at least 20 years;
 - For the purposes of lawful sports and pastimes;
 - By a significant number of the inhabitants of any locality or any neighbourhood within a locality; and
 - Use has continued up to the date of application or, where use has ceased to be as of right, it did so no more than one year prior to the date of application.
 - 1.2 It is also possible for applications to be made by landowners to voluntarily register land in their ownership as a new Village Green under section 15(8) of the 2006 Act (in which case it is not necessary to demonstrate any evidence of use). This can be useful in situations where, for example, local Councils wish to ensure their land is protected against possible future development, or where developers wish to formally dedicate open space within new developments.
 - 1.3 Additionally, the County Council is also responsible for dealing with other kinds of applications made under the 2006 Act to amend the Registers, for example where the extent of the registered Common Land or Village Green was incorrectly recorded on the Registers.
 - 1.4 Note that whilst the County Council is responsible for managing the legal records, it has no powers in terms of management or enforcement issues relating to Common Land or Village Green, which instead fall to either local Councils or landowners to deal with. Enforcement issues can also be raised by individuals by way of application to a Magistrates Court.

Current Applications

2. There are currently 12 outstanding applications to record new Village Greens and these are listed at **Appendix A**. Note that four of those applications (that have been made under section 15(8) seeking voluntary dedication of the land) are the subject of a separate report before this meeting.
- 2.2 Of the remaining applications, these are all at different stages of progression and will be reported to a Member Panel as soon as they are ready for decision in the coming months. Officers are also in the process of considering the two very lengthy Inspector's reports received in relation to the Whitstable and Herne Bay applications, with a view to presenting those to a Member Panel meeting for determination in the Spring.
- 2.3 In addition to the outstanding applications relating to Village Greens, the County Council also has four outstanding applications relating to Common Land. These applications are all made on the basis that the pieces of land in question were historically Common Land, but never made it onto the Registers, and they therefore seek to have the affected pieces of land formally registered as Common Land. Two of those applications are with the Planning Inspectorate (because they are of a type for which the Inspectorate is the 'determining authority'), the third is intended to be reported to a Member Panel in the Spring and the fourth is discussed further below.

Other matters

Bellway Homes Ltd. v Kent County Council

3. Members will be aware of the challenge to the decision by the Regulation Committee Member Panel on 2nd December 2021 to refer the application to register land known as Two Fields at Westbere to a Public Inquiry for further consideration.
- 3.1 The dispute centres around whether the County Council has the capacity to consider the application and, in particular, whether the application site is affected by one of the 'trigger events' set out in Schedule 1A of the 2006 Act. Following changes introduced by the Growth and Infrastructure Act 2006, if an application site is affected by any one of the list of planning-related 'trigger events', then (in most cases) the County Council is not able to entertain an application for Village Green status made under the 2006 Act. One of those 'trigger events' concerns situations where land is identified 'for potential development' within a Local Plan.
- 3.2 The particular circumstances of this case are that the application site is identified in the Canterbury District Local Plan as a 'Green Gap' (Policy OS6). Having taken legal advice, the County Council ultimately concluded that Policy OS6 did not operate as a 'trigger event' because its designation as a 'Green Gap' did not have the effect of identifying the land for potential development. However, Bellway Homes did not agree with this view and challenged the County Council's decision by way of a Judicial Review in the High Court.
- 3.3 Following the two-day hearing, judgement was handed down and the claim for Judicial Review was dismissed. The Court concluded that "*properly understood in the context of its accompanying explanatory text, Policy OS6, whether read as*

part of the [Local Plan] as a whole of in insolation, does not identify land in the Green Gaps for potential development". A copy of the judgement is available online here: <https://www.bailii.org/ew/cases/EWHC/Admin/2022/2593.html>.

- 3.4 The effect of the judgement is that, subject to any appeal, the County Council will proceed with the process of determining the application and, in the first instance, make arrangements for a Public Inquiry to be held to consider the factual matters in dispute between the parties.

Application to record Common Land at Preston Parade Cliff at Whitstable (CAA22)

4. The County Council has received an application from the Open Spaces Society ("the Applicant") to register land at Preston Parade Cliff at Whitstable as Common Land. A plan of the site is attached at **Appendix B**. The application is made under Paragraph 4 of Schedule 2 of the 2006 Act, on the basis that the land was wrongly omitted from the Register of Common Land at the time of its original compilation under the Commons Registration Act 1965.
- 4.1 Advertisement of the application has generated 23 objections from local residents. Having reviewed the objections, the Applicant now agrees that the land in question is not capable of registration as Common Land and has requested withdrawal of the application.
- 4.2 Strictly speaking, there is no absolute right for an application to be withdrawn once made, and indeed both the 2006 Act and the accompanying Regulations are silent as to the process for withdrawing an application. However, in cases where an application is bound to fail, and the applicant no longer wishes to pursue it, it seems sensible and appropriate that the County Council accedes to such a request.
- 4.3 As there are no delegated powers to Officers in this area of work, the Committee's approval is therefore sought for the County Council to approve the request by the Applicant to withdraw the application.

Recommendation

5. I RECOMMEND (1) Members consider this report and note its content; and (2) Members agree to the withdrawal of application CAA22.

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Appendices:

APPENDIX A: List of outstanding Village Green applications

APPENDIX B: Plan showing the land subject to CAA22 at Preston Parade, Whitstable

**APPENDIX A:
Schedule of Commons Act 2006 applications**

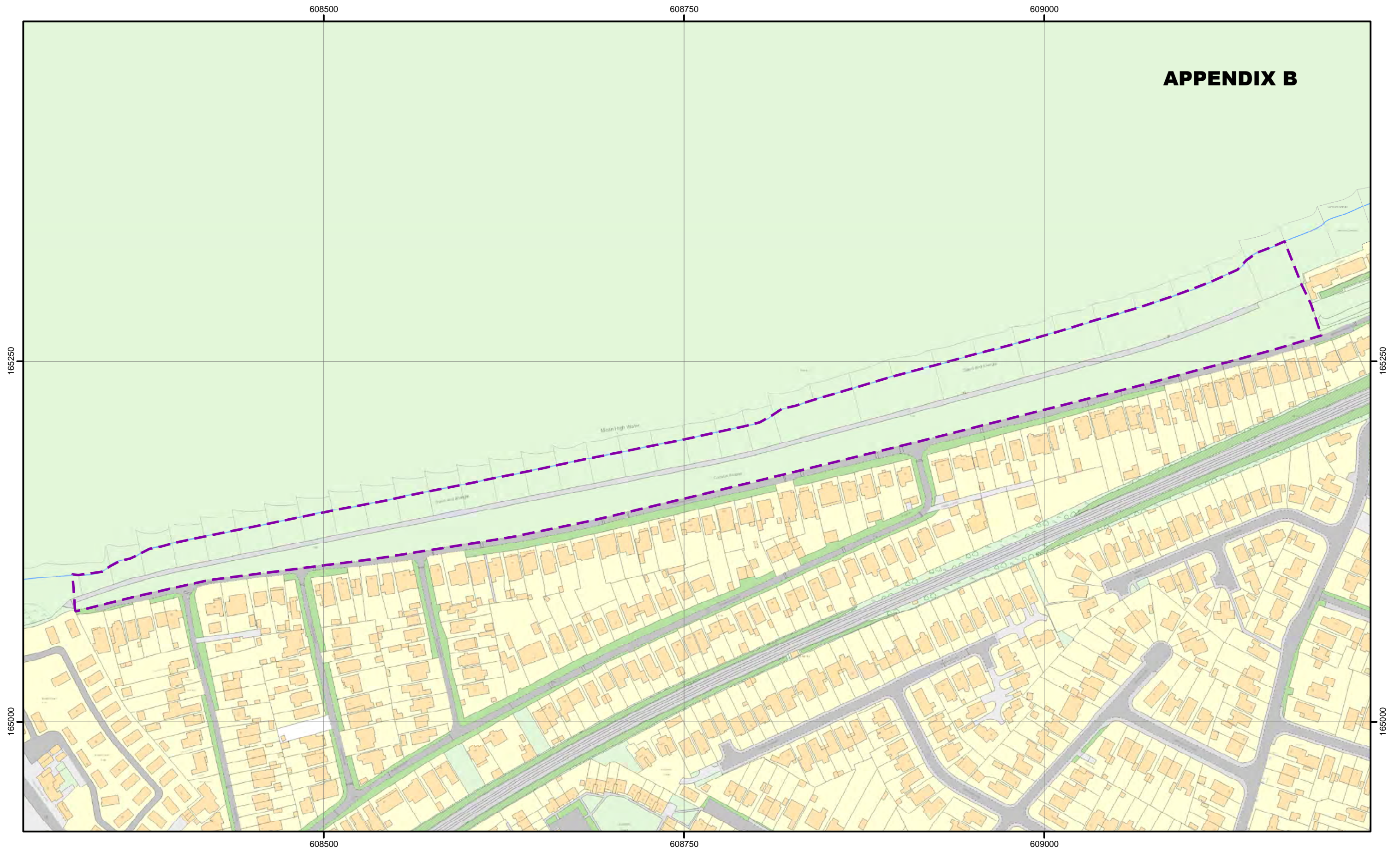
Outstanding Village Green applications (under section 15)

Description	Parish	Member(s)	Status
The Downs (VGA614)	Herne Bay	Mr. D. Watkins	Considering Inspector's report – refer to Member Panel in Spring
Whitstable Beach (VGA658)	Whitstable	Mr. M. Dance	Considering Inspector's report – refer to Member Panel in Spring
Land known as Two Fields (VGA681)	Westbere	Mr. A. Marsh	To be referred to Public Inquiry
Land at Hoplands Farm (<i>voluntary dedication</i>) (VGA682)	Hersden	Mr. A. Marsh	Awaiting information from developer
Land at Bybrook Road (VGA684)	Kennington	Mr. P. Bartlett	To be referred to next panel meeting
Land known as Salts Wood (<i>voluntary dedication</i>) (VGA685)	Loose	Mr. S. Webb	To be considered at Regulation Committee 24/01/2023
Land at Boughton Green (<i>voluntary dedication</i>) (VGA686)	Boughton Monchelsea	Ms. L. Parfitt-Reid	To be considered at Regulation Committee 24/01/2023
Land at Bunyards Farm (VGA687)	Aylesford	Mr. A. Kennedy	Awaiting further comments from parties
Land at Quantock Drive (VG688)	Ashford	Mr. P. Bartlett	Under investigation – trying to trace landowner
Land known as Brooks Field (<i>voluntary dedication</i>) (VGA689)	Loose	Mr. S. Webb	To be considered at Regulation Committee 24/01/2023
Land known as Walk Meadow (<i>voluntary dedication</i>) (VGA690)	Boughton Monchelsea	Ms. L. Parfitt-Reid	To be considered at Regulation Committee 24/01/2023
Land at West Cliff Bank (<i>voluntary dedication</i>) (VGA691)	Whitstable	Mr. M. Dance	Received Dec 2022, awaiting investigation

Other outstanding applications to amend the Registers

Description	Parish	Member(s)	Status
Application to amend 16 pieces of Common Land in the Sevenoaks area (CAA19)	Seal and Sevenoaks Weald	Ms. M. McArthur Mr. R. Gough	Awaiting further comments from parties
Application to register missed Common Land at Greenway Forstal (CAA21)	Harrietsham	Ms. S. Prendergast	With the Planning Inspectorate for decision
Application to register missed Common Land at Preston Parade (CAA22)	Whitstable	Mr. M. Dance	Withdrawal to be considered at Regulation Committee 24/01/2023
Application to register missed Common Land at Radfall Road (CAA23)	Blean	Mr. R. Thomas	With the Planning Inspectorate for decision

APPENDIX B



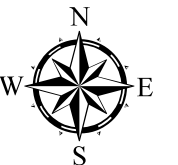
KEY:



Land subject to application

Application to correct non-registration of Common Land (application reference CAA22)

**Land known as Preston Parade Cliffs at Seasalter
(provisionally registered as CL100)**



Scale 1:2500 @ A3