# Application to register land on the south side of Quantock Drive at Ashford

A report by the Head of PROW and Access Service to Kent County Council's Regulation Committee Member Panel on Monday 1st December 2025.

**Recommendation: I recommend that a Public Inquiry be held into the case to clarify the issues**

Local Member: Ms. P. Williams Unrestricted item

## Introduction

1. The County Council has received an application ("the Application") to register an area of land on the south side of Quantock Drive at Ashford as a new Town or Village Green from Mr. P. Bartlett ("the Applicant"). The Application, made on 4th March 2025, was allocated the application number VGA700.

2. It is to be noted that the current application is not to be confused with a previous application made in 2022 in respect of land to the north of Quantock Drive, which was successful and resulted in the registration of that land as a Village Green with reference number VG296.

## Procedure

3. The Application has been made under section 15 of the Commons Act 2006 ("the 2006 Act") and the Commons Registration (England) Regulations 2014 ("the 2014 Regulations").

4. Section 15 of the 2006 Act enables any person to apply to a Commons Registration Authority to register land as a Village Green where it can be shown that:

   *'a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years'*

5. In addition to the above, the application must meet one of the following tests:

   • **Use of the land has continued** 'as of right' until at least the date of application (section 15(2) of the Act); or

   • **Use of the land 'as of right' ended no more than one year prior to the date of application**, e.g. by way of the erection of fencing or a notice (section 15(3) of the Act).

6. As a standard procedure set out in the 2014 Regulations, the County Council must publicise the application by way of a copy of the notice on the County Council's website and by placing copies of the notice on site to provide local people with the opportunity to comment on the application. Copies of that notice must also be served on any landowner(s) (where they can be reasonably identified) as well as the relevant local authorities. The publicity must state a

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

**The application site**

7. The land subject to the Application ("the Application Site") consists primarily of an area of grassed open space of approximately a quarter of an acre (0.1 hectare) situated opposite properties 75 to 91 Quantock Drive. Access to the land is via the footway of Quantock Drive which abuts the northern side of the application site, and a tarmac path fronting the properties and abutting the eastern edge of the application site.

8. The Application Site is shown in more detail on the plan at **Appendix A**. Photographs of the site (taken in early June 2025) are attached at **Appendix B**.

9. Members should be aware – for information only – that the entirety of the Application Site was fenced off utilising Heras fencing on 27th June 2025 (shortly after advertisement of the Village Green application). However, that enclosure took place after the Village Green application was made, and has no bearing upon the consideration of the Village Green application by the County Council.

**The case**

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

11. Included with the application were 75 user evidence questionnaires setting out the use of the land by local residents. A further 7 evidence questionnaires have been received more recently. A summary of the user evidence submitted in support of the Application is attached at **Appendix C**.

12. The Application is made under section 15(2) of the 2006 Act (i.e. on the basis that recreational use of the Application Site has continued up until the date of the application). The application was made on 4th March 2025 such that the relevant twenty-year period ("the material period") for the purposes of the Application is 4th March 2005 to 4th March 2025.

**Consultations**

13. Consultations have been carried out as required; 18 messages of support have been received from local residents and a further letter of support has been received from the Headteacher of nearby Highworth Grammar School.

**Landowner**

14. At the time of the consultation (in June 2025), the ownership of the entirety of the Application Site was registered at the Land Registry to Blue Sky Estates Ltd., comprising part of a larger area of land included within Title number K86324, and notice of application was served accordingly. However, following advertisement of the application, Mr. H. Ahmad wrote in objection to the application as the new

owner of the land ("the Landowner"), having purchased it at auction on 13th February 2025[1].

15. The objection is made on the basis that the Application Site was purchased to provide a safe outdoor space for the Landowner's family and it is alleged that the application to register the land as a Village Green is opportunistic, lacks the evidential foundation to satisfy the statutory requirements for village green registration and constitutes a misuse of the legislation in order to override the legitimate interests of the private ownership of the land. In particular, it is submitted that:
    - The Applicant has failed to define a legally recognisable locality, the user evidence spanning a vague and inconsistent area that does not meet the statutory requirement for the identification of a qualifying community unit;
    - The user evidence submitted in support of the Application is vague, formulaic, and lacks specificity, with much of the evidence referring to generic activities such as dog walking or walking to shops without clarifying whether such use took place on the Application Site versus surrounding areas;
    - Use of the Application Site has been by virtue of an implied permission, and not 'as of right', on the basis that numerous residents have made statements to the effect that they believed the land to be Council-owned and/or maintained;
    - A 'trigger event' has occurred on the basis that the land has been publicly marketed, discussed in the local media and may have been considered under local planning processes;
    - Since its purchase, the Landowner has made consistent and lawful efforts to assert private ownership, including installing private property signs (which were repeatedly torn down) and the erection of fencing to terminate 'as of right' use; and
    - Any use of the Application Site has been incidental, sporadic and informal, and the evidence relies heavily upon generic statements, often repeated word for word across different witnesses and frequently referencing activities (e.g. walking to shops) which do not constitute recreational use of the land at all.

16. These issues are considered further in the discussion regarding legal tests below. In respect of the Landowner's comment regarding the alleged 'trigger event', it is to be noted that the marketing of land for sale, or any associated discussions in the local media or with the local planning authority, do not constitute one of the formal 'trigger events' set out in Schedule 1A of the Commons Act 2006 (which disengage the right to apply for Village Green status). That list includes events such as the publication of an application for planning permission in relation to the land and the publication of a draft development plan (or neighbourhood development plan) document which identifies the land for potential development. None of the events set out in Schedule 1A of the Commons Act 2006 are understood to apply in this case.

[1] Searches undertaken with the Land Registry on 11/11/2025 indicate that the land is still in the process of being transferred into new ownership with title number TT178198.

**Legal tests**

17. 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'?***

18. 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 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.

19. 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 protest[2]: "*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]. As such, if a landowner takes steps to indicate that he objects to informal use of his land (thus disproving any acquiescence to the use), then that use will not be considered 'as of right'.

20. In this case, there is no suggestion that general recreational use of the application site took place secretively or in exercise of any physical force, and Google Streetview images confirm that, until the more recent erection of Heras fencing, unrestricted access to the Application Site has been available (and this is consistent with the user evidence submitted in support of the application).

21. The Landowner suggests that any recreational use of the Application Site has taken place by virtue of an implied permission on the basis that local residents believed the land to be Council-owned and/or maintained. However, the Courts have confirmed that the subjective state of mind of users is not relevant for the purposes of establishing whether use has taken place 'as of right'[4]; thus, it

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[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
[4] *R v. Oxfordshire County Council, ex parte Sunningwell Parish Council* [1999] 3 All ER 385: '*user which is apparently as of right cannot be discounted merely because, as will often be the case, many of the users over a long period were subjectively indifferent as to whether a right existed, or even had private knowledge that it did not*'

matters not who the users believed to be the owner of the land, or whether they believed they had the right to be there.

22. The Landowner also refers to the repeated erection of 'private land' signs on the Application Site, but there is no information as to the precise dates or locations of these notices, and it is likely that these appeared after the submission of the Village Green application (such that they are not relevant to the determination of the application). Even if the notices appeared immediately following the Landowner's purchase of the land on 13th February 2025 - and prior to the submission of the Application on 4th March 2025 - this challenge to use would still be within the one year period of grace permitted for Village Green applications to be made (discussed further below).

23. On the evidence available, therefore, it appears that informal recreational use on the Application Site is likely to have taken place 'as of right'.

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

24. 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].

25. The summary of evidence of use by local residents at **Appendix C** shows the activities claimed to have taken place on the Application Site. Those activities comprise primarily of dog walking and playing with children, but there are also examples of the land being used for picnics and ball games. The Applicant notes that local residents went to great lengths to complete a large volume of evidence questionnaires, which reflects the depth of local feeling regarding this piece of land. It is submitted that the activities that are said to have taken place on the land are exactly those that are typical of a Village Green, and the fact that the land lies adjacent to a children's playground makes it naturally more attractive as a place for recreational use.

26. However, the Landowner suggests that the user evidence is vague and formulaic, with much of the evidence referring to generic activities such as dog walking or walking to shops without clarifying whether such use took place on the Application Site versus surrounding areas.

27. It is true that, when considering applications to register land as a Village Green, it will be, as established in the Laing Homes[6] case, '*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*

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

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

*of the fields*'. Thus, references to 'walking to shops' are more likely to constitute a 'right of way' type of use, as opposed to qualifying use for the purposes of Village Green registration, and the size of the land (combined with the availability of larger recreational spaces nearby) means that it arguably might have been difficult for activities such as dog walking to take place on the Application Site itself in any meaningful way.

28. Ultimately, it is very difficult to ascertain the precise nature of the use - and differentiate between different kinds of use - on the paper evidence available. For this reason, it is considered that this is an issue that would benefit from further consideration by way of oral testimony by witnesses to clarify more precisely the nature and extent of the recreational use that has taken place on the Application Site.

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

29. 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.

30. 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*'.

31. In cases where the locality is so large that it would be impossible to meet the 'significant number' test (see below), it will also necessary to identify a neighbourhood within the locality. The concept of a 'neighbourhood' is more flexible than that of a locality, and need not be a legally recognised administrative unit. On the subject of 'neighbourhood', the Courts have held that '*it is common ground that a neighbourhood need not be a recognised administrative unit. A housing estate might well be described in ordinary language as a neighbourhood… The Registration Authority has to be satisfied that the area alleged to be a neighbourhood has a sufficient degree of cohesiveness; otherwise the word "neighbourhood" would be stripped of any real meaning*'[8].

32. In this case, the application has been made in reliance upon 'the Quantock Estate within Furley Ward and Ashford Central Division'[9].

33. In opposition to this, the Landowner submits that the Applicant has failed to define a legally recognisable locality, with the user evidence spanning a vague and

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[7] *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at 90
[8] ibid at 92
[9] Specified by the Applicant at part 6 of the application form.

inconsistent area that does not meet the statutory requirement for the identification of a qualifying community unit.

34. However, there can be no dispute that both the Ashford Borough Council electoral ward of Furley and the Kent County Council electoral division of Ashford Central (both identified by the Applicant) are legally recognised administrative divisions[10] of the county, such that either would be capable of constituting a qualifying locality for the purposes of Village Green registration.

35. In terms of the neighbourhood relied upon, there is no evidence to indicate that the Quantock Drive estate is not a qualifying community unit. Those that have completed user evidence forms in support of the application are all residents of the Quantock Drive estate, with many positively identifying themselves as residents of 'the estate' or living 'on Quantock'. The fact that area as a whole comprises a housing estate primarily developed during the early 1970s with only two entrance/exit points (thereby indicating a self-contained area) means that the area is likely to have the features of a qualifying neighbourhood.

36. As such, and despite the Landowner's assertion to the contrary, there appears to be no reason on the information available why the Quantock Estate would not constitute a qualifying neighbourhood for the purposes of Village Green registration.

*"a significant number"*

37. 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 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.

38. In this case, the summary of user evidence at **Appendix C** indicates that the Application Site has been in regular usage by a large number of local residents, with over half of those submitting evidence questionnaires attesting to either daily (22 users) or weekly (24 users) use of the land. Even in an urban area, this volume of use is, on the face of it, likely to be sufficient to indicate that the land was in general use by the community.

39. The Landowner's position is that any informal recreational use of the Application Site has been on an incidental and sporadic basis, and some of the activities referred to (e.g. walking to shops) do not constitute recreational use of the land at all.

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[10] The judgement in *Leeds Group plc v Leeds City Council* [2010] EWHC 810 confirmed that an electoral ward was capable of being a qualifying locality for the purposes of Village Green registration

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

40. As discussed above, it is correct to say that some of the evidence of use almost certainly fails to qualify as recreational 'village green' use as several witnesses refer to using the land solely to access local shops and amenities, which would be considered a 'rights of way' type of use instead. As such, although there is a very large body of user evidence which suggests (on the face of it) that use has taken place by a 'significant number' of local residents, that test has to be judged in the context of *qualifying* recreational use and, in the absence of more detailed consideration of the precise nature of the user evidence, it is difficult to assess the degree to which some (if any) of the evidence falls to be discounted.

***(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?***

41. 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.

42. In this case, the Application is made under section 15(2) of the 2006 Act on the basis that use of the application site continued 'as of right' until the date of the application on 4th March 2025 (such that the relevant twenty-year period is 4th March 2005 to 4th March 2025).

43. Fencing was erected around the Application Site on 27th June 2025 which had the effect of physically excluding users from the land, but this event took place *after* the application was made and is therefore outside of the relevant twenty year period.

44. The Landowner submits that 'private' notices have been erected around the Application Site, but there is no information as to precise dates or locations. However, even supposing that such notices had been erected immediately following the Landowner's purchase of the site on 13th February 2025, the application has still been made well within the one year period of grace set out in section 15(3) of the 2006 Act

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

45. 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, it is not currently considered that use 'as of right' ceased prior to the making of the application in March 2025 (subject to further evidence as to the notices) and the material period is considered to be March 2005 to March 2025.

46. The user evidence submitted in support of the Application (and summarised at **Appendix C**) demonstrates that the recreational use is alleged to have taken place for a period in excess of twenty years. Of the 82 witnesses, just under two-thirds claim to have used the Application Site for the full twenty-year period. The majority of those who have submitted evidence in support of the Application are longstanding – and in a number of cases original – residents of the estate. The open nature of the site, along with its location adjoining a playground in the centre

of a residential area, make it likely that it has been used for a period well in access of twenty years.

**Conclusion**

47. The impact of Village Green registration is far reaching for the landowner and, in practical terms, has the effect of severely restricting the use to which the land can be put and sterilising it against any future development. As the Courts[12] have held, it is 'no trivial matter' for land to be registered as a Village Green and, as such, it is important that the necessary legal tests are 'properly and strictly proved'. To this end, 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.

48. As set out above, although the Applicant has put forward a good case in favour of registration of the land as a Village Green, there are some elements of the evidence that require more detailed analysis and some legal tests that have not been sufficiently proven at this stage. Similarly, although a number of the objections raised by the Landowner are not relevant to the determination of the Application (such as those in respect of the possible motive(s) behind the application), the Landowner has raised legitimate concerns as to the precise nature and extent of the evidence. A local Public Inquiry would enable such issues to be clarified.

49. Indeed, there is judicial support for the holding of a local Public Inquiry in such cases: '*the registration authority has to consider both the interests of the landowner and the possible interest of the local inhabitants. That means that there should not be any presumption in favour of registration or any presumption against registration. It will mean that, in any case where there is a serious dispute, a registration authority will almost invariably need to appoint an independent expert to hold a public inquiry, and find the requisite facts, in order to obtain the proper advice before registration*'[13]. Lady Justice Arden, in the same judgement, also indicated[14] that the registration authority '*may indeed consider that they owe an obligation to have an inquiry if the matter is of great local interest*'.

50. Provision for holding a Public Inquiry is made in the 2014 Regulations: the process involves the County Council appointing an independent Inspector (normally a Barrister) to hear the relevant evidence both in support of and in opposition to the application, and report his/her findings back to the County Council. The final decision regarding the application nonetheless remains with the County Council in its capacity as the Commons Registration Authority.

51. Accordingly, it is considered that the most appropriate course of action in this case is for the matter to be referred to a Public Inquiry.

**Financial implications**

52. The determination of Village Green applications is a quasi-judicial function of the

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[12] *R v Suffolk County Council, Ex p Steed* (1996) 75 P & CR 102 at 111
[13] *R (Whitmey) v Commons Commissioners* [2004] EWCA Civ 951 at paragraph 66
[14] Ibid at paragraph 30

County Council and, accordingly, any financial implications can have no bearing whatsoever on the Member Panel's decision. However, Members should be aware that the only right of appeal open to the parties against the Panel's decision is an application to the High Court for Judicial Review, which potentially carries significant legal costs for all concerned.

53. As such, if Members are minded to depart from the recommendation set out below, full reasons should be provided for doing so.

**Recommendation**

54. I recommend that a Public Inquiry be held into the case to clarify the issues.

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**Appendices**

APPENDIX A – Plan showing application site
APPENDIX B – Photographs of the application site
APPENDIX C – Summary of the user evidence