Application to register land known as Church Street Playing Fields at Whitstable as a new Town or Village Green

A report by the PROW and Access Manager to Kent County Council's Planning and Regulation Committee Member Panel on Wednesday 11th November 2026.

Recommendation: I recommend that, for the reasons set out in the Inspector's report dated 15th April 2026, the Applicants be informed that the application to register the land known as Church Street Playing Fields as a Town or Village Green has not been accepted.

Local Member: Mr. A. Ricketts (Canterbury North) Unrestricted item

Introduction

1. The County Council has received an application to register an area of land known as Church Street Playing Fields at Whitstable as a new Town or Village Green from the Friends of Church Street Fields ("the Applicants"). The application, made on 27th November 2023, was allocated the application number VGA693.

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**, 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.

The Application Site

6. The land subject to this application ("the Application Site") comprises a parcel of grassed open space of approximately 13 acres (5.22 hectares) in size, known as Church Street Playing Fields, situated on the western side of Church Street (opposite its junction with Ham Shades Lane) at Whitstable. The Application Site is shown on the plan at **Appendix A**.

7. The site is fenced (with palisade and chain link fencing) along its eastern boundary with Church Street, although access has been available via gates, and access is also possible via a number of gaps in the western boundary alongside the Crab and Winkle Way.

The County Council's role

8. Members should note that, in addition to being the 'Commons Registration Authority' ("CRA") responsible for determining this application – a function undertaken by the PROW and Access Service – the County Council is also both the landowner and the Local Education Authority ("LEA"). In respect of the latter, there are proposals for a Special Educational Needs School to potentially be built on the Application Site.

9. Throughout the process, the PROW and Access Service (as the CRA) has remained entirely independent from the Estates and Education Teams, including having completely separate legal representation. Although the County Council has opposed the application in its capacity as the landowner (and LEA), the PROW and Access Service (as the CRA) has maintained a strictly neutral stance at all times, as required by the quasi-judicial nature of this function.

10. It is also important for Members to note that the future use to which the land might be put is irrelevant for the purposes of determining whether the legal tests have been met for Village Green registration, and must be disregarded for the purposes of reaching a decision on the current application. Indeed, Members are required by law to consider this application purely from the perspective of discharging its functions (as the CRA) under the Commons Act 2006, and cannot have regard to any other interests that the County Council may have arising.

The case

11. The application has been made on the basis that the Application Site has been in regular use by the local residents for a range of recreational and sporting activities for a period well in excess of twenty years, with many residents using it on a daily basis throughout this time. It is submitted that use has taken place openly, without permission and not in exercise of any force, and no signs have ever been erected on the land either restricting, prohibiting or permitting access to it. The land has also been used by a number of local schools (but formal educational sports use has coexisted with informal recreational use over several decades) and for various community events (e.g. boot fairs and training for local sports clubs).

12. Included with application were a supporting statement, photographs of the access points and recreational use of the site, newspaper cuttings referring to use of the

site for sports activities for school and local groups, and Canterbury City Council documents relating to a previous (rejected) planning application in 2001.

13. Also submitted in support of the application were 54 user evidence questionnaires from local residents detailing their recreational use of the land.

14. 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 27th November 2003 to 27th November 2023 ("the material period").

Consultations

15. Consultations have been carried out as required.

16. Messages of support have been received from three local residents as well as Canterbury City Councillors Turnbull and Wheeler.

Landowners

17. The Application Site is wholly registered to Kent County Council under title number K924243, which also includes the nearby site of The Whitstable School (previously known as Whitstable Community College).

18. The County Council's Estates Team ("the Landowner") opposed the application on the basis that:
    - The site was acquired by the County Council in the early 20th century and was laid out and thereafter maintained as playing fields;
    - The land has been used for community events (e.g. boot fairs) with the express permission of the Landowner, and whilst those events took place the land was unavailable for informal recreational use by local residents;
    - It is not accepted that the use of the land for informal recreational by local people was sufficient to justify registration of the land as a Village Green;
    - The land is held for educational purposes such that the principle of statutory incompatibility applies – which represents a 'knockout blow' – and the application therefore falls to be rejected.

19. The Landowner submits that the application should be rejected on the principle of statutory incompatibility (explained below) without further consideration of the facts. Failing that, the issue of statutory incompatibility should be determined as a preliminary point.

The principle of 'statutory incompatibility'

20. As is noted in paragraph 3 above, section 15 of the 2006 Act sets out a number of criterion in respect of the nature and quality of use required in order for Village Green rights to arise (i.e. use must be 'as of right' for 'lawful sports and pastimes' by the residents of the locality etc.). However, following recent changes in case law, the County Council is now also required to consider whether the issue of 'statutory incompatibility' applies; it is this issue upon which the current application turns.

21. The concept of 'statutory incompatibility' arose as a result of a case (known as the Newhaven[1] case) involving registration of a tidal beach at Newhaven in East Sussex, where the landowner challenged a decision to register the beach as a Village Green on the grounds that such registration would be incompatible with the landowner's statutory role as a Port Authority (which included powers to govern the area and develop the land for use as a port).

22. The Supreme Court held[2] that:

> *"The question of incompatibility is one of statutory construction… The question is: "does section 15 of the 2006 Act apply to land which has been acquired by a statutory undertaker (whether by voluntary agreement or by powers of compulsory purchase) and which is held for statutory purposes that are inconsistent with its registration as a town or village green?" In our view it does not. Where Parliament has conferred on a statutory undertaker powers to acquire land compulsorily and to hold and use that land for defined statutory purposes, the 2006 Act does not enable the public to acquire by user rights which are incompatible with the continuing use of the land for those statutory purposes."*

23. In respect of the land that had been acquired by the Port Authority, the Court determined that *"there is a clear incompatibility between [the landowner's] statutory functions in relation to the Harbour, which it continues to operate as a working harbour, and the registration of the Beach as a town or village green".*

24. The conjoined appeals in the Lancashire[3] and NHS Property[4] cases took this concept further, and the Supreme Court allowed the appeals of both landowners. The former case involved land adjoining a Primary School for which Lancashire County Council (in its capacity as the Local Education Authority) was the landowner, whilst the latter involved land adjoining Leatherhead Hospital which was under the control of NHS Property Services Ltd. The Supreme Court found[5] that:

> *"In our view, applying section 15 of the 2006 Act as interpreted in the majority judgment in Newhaven, [the landowners] can show that there is statutory incompatibility in each of their respective cases. As regards the land held by [Lancashire County Council] pursuant to statutory powers for use for education purposes, two points may be made. First, so far as concerns the use of [part of the Application Site] as a school playing field, that use engages the statutory duties of LCC in relation to safeguarding children on land used for education purposes. LCC has to ensure that children can play safely, protected from strangers and from risks to health from dog mess. The rights claimed pursuant to the registration of the land as a town or village green are incompatible with the statutory regime under which such use… takes place. Secondly, however, and more generally, such rights are incompatible with the use of [any part of the Application Site] for education purposes, including for example*

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[1] R (Newhaven Port and Properties Ltd.) v East Sussex County Council and another [2015] UKSC 7
[2] Paragraph 93 of the Newhaven judgement
[3] R (Lancashire County Council) v Secretary of State for the Environment, Food and Rural Affairs and another [2019] UKSC 58
[4] R (NHS Property Services Ltd.) v Surrey County Council and another [2019] UKSC 58
[5] At paragraph 65

construction of new school buildings or playing fields. It is not necessary for LCC to show that they are currently being used for such purposes, only that they are held for such statutory purposes (see Newhaven, para 96). The 2006 Act was not intended to foreclose future use of the land for education purposes to which it is already dedicated as a matter of law."

25. The effect of this evolution of the case law is that if 'statutory incompatibility' applies, then the land is not capable of registration as a Village Green, regardless of whether the other legal tests set out in section 15 of the Commons Act 2006 are met.

Legal advice

26. In response to the representations received from the Applicant and the Landowner in respect of this matter, advice was sought from Counsel as to how the County Council (in its capacity as the CRA) should proceed. Mr. David Forsdick KC, a Barrister specialising in planning, environmental and local government law, was appointed in this regard.

27. The initial advice received (copy attached at **Appendix B**) was that the historic conveyances make clear that the land was acquired for educational purposes and there appeared to be no evidence that the land had ever been appropriated for use for any other statutory purposes, such that the only possible inference to be drawn was that the land had at all times been held for educational purposes. Thus, there appeared to be no relevant basis to distinguish the Lancashire case, and accordingly, there was a bar to registration – that of statutory incompatibility – and the application should be refused.

28. Following a lengthy exchange of submissions between the parties regarding that advice, including considerable research by the Landowner in the archives adducing new material in the form of Committee Minutes, Mr. Forsdick invited the parties to participate in an oral hearing to assist him in finalising his view on the matter and informing his recommendation as to how the CRA should proceed. The hearing was primarily concerned with whether any statutory incompatibility arises in this case and proceeded on the basis that Mr. Forsdick considered it appropriate to address that matter as a preliminary issue prior to undertaking any detailed assessment as to whether the statutory requirements for registration (set out in Section 15 of the Commons Act 2006) might be met.

29. A hearing was held at County Hall on 23rd February 2026, at which the Applicants were represented by Ms. Claire Nevin (a Barrister) and KCC's Estates Team were represented by Mr. Douglas Edwards KC. Mr. Forsdick assumed the role of the Inspector. The hearing lasted for one day, during which all parties were offered ample opportunity to make their submissions and respond to any questions raised by the Inspector. At the conclusion of the hearing, Mr. Forsdick was keen to ensure that all parties felt that they had had a fair hearing, and all parties agreed that had been the case.

30. Following the hearing, Mr. Forsdick issued a report setting out his advice to the CRA. A copy of that report is attached at **Appendix C** and summarised below.

The Inspector's report

31. Mr. Forsdick considered[6] that, in light of the Lancashire case, it was fundamental to understand:
    (a) the statutory purpose for which the land was acquired and held at the outset;
    (b) whether there has been any appropriation of the land since (to another purpose); and
    (c) how the land was held during the material period (2003 to 2023).

    Once that statutory purpose was identified, the issue of statutory incompatibility could then be considered as a matter of principle by comparing that purpose with the rights claimed under the Commons Act 2006.

32. In order to assist in reaching a view on those questions, Mr. Forsdick considered in detail the history of the land, which can be summarised as follows:

    In the mid-1920s, the LEA decided to establish the Whitstable Secondary School for Girls and the Application Site was identified as the site for the proposed new school. Following negotiations with the relevant landowners, the LEA acquired part of the land on 7th October 1927, it being conveyed to KCC '*as the local education authority and being desirous of acquiring the said property for education purposes*'. The remaining part of the land was acquired by the LEA on 20th December 1927, for the same 'education purposes'.

    The relevant statutory provision in force at that time enabling the LEA to acquire land for education purposes was section 109 of the Education Act 1921 ("the 1921 Act"), which provided that '*a local education authority may for the purposes of their powers and duties under this Act purchase or take on lease any land or any right over land*'.

    Pending delivery of the new secondary school, the minutes of the KCC Education Committee (from 17th April 1928 and 21st August 1928) indicate that the LEA resolved to use the Application Site as a playing field for local elementary (primary) school children.

    However, by January 1930, it was no longer proposed to build a secondary school on the land, and the Committee instead considered proposals for the provision of a 'Central School for Whitstable' (which fell within the remit of the 'elementary' rather than 'secondary' school system) and the appropriation of the land to that purpose. On 27th January 1930, it was recommended by the Education Committee that the land be used for Central School purposes, and the required approval of the then Department for Education is recorded by the LEA in a letter dated 13th November 1936. However, in the event, no Central School was ever built on the land (although it is not clear why from the evidence available) and it appears that the land continued to be used for the temporary uses previously approved.

    There followed the passing of the Education Act 1944 ("the 1944 Act"), which introduced fundamental changes to the system of education in England and

[6] Paragraph 29

required (under section 11) every LEA to prepare a 'development plan' showing the action which the authority proposed should be taken for securing sufficient primary and secondary schools in their area. KCC's plan, prepared in around 1947, showed the Application Site labelled 'SS7', with the relevant key noting that the 'SS' meant that: (i) the land was held for education purposes; and (ii) in existing use for secondary school purposes.

33. Thus, as to the first question set out at paragraph 31 above, Mr. Forsdick was satisfied that the land was acquired and held for education purposes. He noted[7] that the evidence relating to the acquisition of the land was 'direct and clear' and 'does not require any inferences to be drawn': it was undertaken under the auspices of the Education Committee, carried out by KCC as LEA, and expressly for education purposes.

34. In respect of the second question set out at paragraph 31 above – i.e. whether there was any subsequent appropriation of the land to a different purpose – Mr. Forsdick could find no evidence, despite the extensive research undertaken by the parties, that had been the case[8]. The discussions in the late 1920s regarding the temporary use of the land for primary school playing field was still an educational purpose within the scope of section 109 of the 1921 Act and cannot be read as any indication of an appropriation to non-education purposes, to general purposes, or to public open space purposes. There was no documentary evidential basis to infer that the land was subsequently appropriated to non-education purposes following the apparent abandonment of the 1930 Central School proposal[9], and the plan prepared under the 1944 Act was entirely consistent with the land still being held for education purposes[10]. In 1966, a small part of the land originally acquired to build the proposed secondary school was appropriated to highway purposes – that appropriation being approved by KCC's Education Committee, whose involvement would only be explicable if the land remained held for education purposes at that time[11]. Although subsequent records, comprising non-statutory registers held by the Landowner and the Department for Education, do not explicitly record the land as held for educational purposes, Mr. Forsdick did not consider that to be sufficient to lead to a conclusion that the land had been formally appropriated out of education purposes[12].

35. During the material period (and in respect of the third question above), it appears that the land as a whole continued to be used intermittently by nearby Whitstable Community College and local primary schools. In 2018, the College became an academy known as Whitstable School and the Application Site was not included in the scheme made by the Secretary of State in respect of the transfer of property to the academy trust. The Applicants argued that this exclusion demonstrated that the land was not held for the purposes of college use. However, Mr. Forsdick concluded[13] on this point that the land appeared to be held for education more generally and was not 'wholly or mainly' used by the

[7] Paragraph 48
[8] Paragraphs 64 to 72
[9] Paragraph 90
[10] Paragraph 101
[11] Paragraph 102
[12] Paragraph 105
[13] Paragraph 111

College[14], such that was not possible to infer from the exclusion of the land from the scheme that it had somehow ceased to be held for education purposes. Although it appears that school use may have reduced over the years and other uses (including informal public use and occasional events with the consent of KCC) became more prevalent, it was not possible (on the basis of usage alone) to infer an appropriation away from education to more general purposes[15].

36. Ultimately, Mr. Forsdick concluded that the land had been acquired for education purposes pursuant to section 109 of the 1921 Act and that there was no evidence of any subsequent appropriation away from those purposes, such that it continues to be so held.

37. Having reached that conclusion, it was then necessary to consider the position regarding statutory incompatibility. Mr. Forsdick noted[16] that registration would bring with it the right for local inhabitants to use the land for recreation, thus preventing both the construction of any buildings (or a new school, as is proposed here) and the exclusion of the public from parts of it when in use for educational purposes. He further noted[17] that, in the Lancashire case, the inability to exclude members of the public and their dogs was held to give rise to statutory incompatibility on safeguarding and on health and safety grounds; thus, regardless of the practical ability for uses to co-exist and notwithstanding the land had been used for recreational purposes by many people over may years, the issue '*has to be approached as a matter of principle and of legal rights – and my clear conclusion (dictated by Lancashire) is that there is a clear statutory incompatibility between the purpose for which the land is held and the claimed rights which would arise on TVG registration*'[18].

38. Ultimately, Mr. Forsdick recommended[19] that the application be refused '*on the grounds of registration being incompatible with the statutory education purposes for which the land is held*'.

The parties comments on the Inspector's report

39. Following receipt of Mr. Forsdick's report, it was circulated to the parties for their comments.

40. The County Council (in its capacity as the Landowner and LEA) did not offer any comments on the report, but requested that the CRA move promptly to reject the application.

41. The Applicants responded to the effect that they rejected the conclusions made in the report on the grounds that:
    i. Although it is not disputed that the land was purchased under section 109 of the 1921 Act, it is not logical to infer that the land remains appropriated

[14] A requirement for making the scheme (under Schedule 1 of the Academies Act 2010) was that the land was used 'wholly or mainly' for the purposes of the previous school.
[15] Paragraph 117
[16] Paragraph 120
[17] Paragraph 121
[18] Paragraph 122
[19] Paragraph 127

to this purpose in the face of subsequent recreational use showing that the land has been used as a playing field for by the wider community; and

ii. The Lancashire case can be distinguished on the basis that it involved fenced playing fields in constant curricular use that were integral to an existing school with a live proposal to expand onto the land, whereas the land in the current case is unsecured, sees constant public recreational use and does not form part of any school estate, such that it is not in active educational use.

42. In respect of the latter point, there is no requirement for the land to be in active educational use in order for statutory incompatibility to arise; the issue of statutory incompatibility falls to be determined by reference to the manner in which the land is held, rather than the particular use to which the land is being put.

43. In that regard, and in respect of the former point, it is not in dispute that the Application Site was originally acquired for educational purposes (as confirmed by the conveyances). However, a formal process, or at the very least some sort of formal recognition, would be required to transfer the land from educational purposes to a different purpose and, despite extensive enquiries and research (including the relevant KCC Minutes), no such evidence has been adduced. The only reasonable conclusion, therefore, is that the land continues to be formally held for education purposes, notwithstanding in practice it is now also used for the purposes of informal recreation by the community.

Conclusion

44. The application turns (at this stage) on whether or not the Application Site is held for education purposes; if so, then registration of the land as a Village Green is clearly incompatible with the purposes for which the land is held by the County Council as Landowner.

45. Having carefully considered the Inspector's report and for the reasons set out above, it is considered (by the PROW and Access Service as CRA) that the land was originally acquired for education purposes, continues to be so held, and, that being the case, the principle of statutory incompatibility applies.

46. 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.

Financial implications

47. 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 the only right of appeal open to an aggrieved party following a final decision by the County Council is an application to the High Court for Judicial Review, which potentially carries significant legal costs for all concerned.

Recommendation

48. I recommend that, for the reasons set out in the Inspector's report dated 15th April 2026, the Applicants be informed that the application to register the land at Church Street Playing Fields at Whitstable as a Town or Village Green has not been accepted.

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Appendices

APPENDIX A – Plan showing the Application Site
APPENDIX B – Legal advice dated 10th September 2024
APPENDIX C – Inspector's report dated 15th April 2026