

# Application to register land at Broadstairs Cricket Ground and surrounding woodland as a new Town or Village Green

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A report by the Director of Environment and Waste to Kent County Council's Regulation Committee Member Panel on Tuesday 8<sup>th</sup> February 2011.

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

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Local Members: Mr. R. Bayford and Mr. B. Hayton

Unrestricted item

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## Introduction

1. The County Council has received an application to register land at Broadstairs Cricket Ground (and surrounding woodland) at Broadstairs as a new Town or Village Green from local resident Mr. T. Herron ("the Applicant"). The application was allocated reference number VGA597 on receipt. Although the application was originally received on 20<sup>th</sup> August 2007, the supporting evidence was not received until February 2010 and formal work did not commence on the application until that time. A plan of the site is shown at **Appendix A** to this report and a copy of the application form is attached at **Appendix B**.

## Procedure

2. The application has been made under section 15 of the Commons Act 2006 and Regulation 3 of the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007. These Regulations have, since 1<sup>st</sup> October 2008, been superseded by the Commons Registration (England) Regulations 2008 which apply in relation to seven 'pilot implementation areas' only in England (of which Kent is one). The legal tests and process for determining applications remain substantially the same.
3. Section 15(1) of the Commons Act 2006 enables any person to apply to a Commons Registration Authority to register land as a Town or 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 two years prior to the date of application**, e.g. by way of the erection of fencing or a notice (section 15(3) of the Act); or
  - **Use of the land 'as of right' ended before 6<sup>th</sup> April 2007** and the application has been made within five years of the date the use 'as of right' ended (section 15(4) of the Act).

5. As a standard procedure set out in the Regulations, the Applicant must notify the landowner of the application and the County Council must notify every local authority. The County Council must also publicise the application in a newspaper circulating in the local area and place a copy of the notice on the County Council's website. In addition, as a matter of best practice rather than legal requirement, the County Council also places copies of the notice on site to provide local people with the opportunity to comment on the application. The publicity must state a period of at least six weeks during which objections and representations can be made.

### **The application site**

6. The area of land subject to this application ("the application site") is situated at Park Avenue, on the boundary between the towns of Broadstairs and Ramsgate. It is an irregular shape, which is best described by reference to the plan at **Appendix A**, and consists of a cricket ground (including a large cricket pavilion) and surrounding woodlands which total approximately 3.6 hectares (9 acres) in size.
7. When the application was originally submitted, the application site was unfenced, except where its outer boundaries abutted neighbouring properties. However, since the application has been made, the two southern limbs of the application site (i.e. the south-eastern section opposite Binnie Close and the south-western section south of the private driveway leading to the properties known as the Cricketers) have been cleared and fenced off using post and wire fencing to delineate land ownership boundaries.
8. Nonetheless, access to the unfenced parts of the application site is easily gained via the footways of Park Avenue, Grange Way and Park Gate. The new fencing has also been penetrated in places to create unofficial access. The application site is crossed by a Public Footpath (TB48) which runs along its south-eastern fringe.

### **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 actual use of the land by the local inhabitants for a range of recreational activities 'as of right' for more than 20 years.
10. Despite requests being sent to the applicant, no actual evidence of use (other than the applicant's statement in support of the application) was supplied until February 2010 when a total of 31 user evidence questionnaires were received from local residents. A summary of this evidence is attached at **Appendix C**.

### **Consultations**

11. Consultations have been carried out as required. The Broadstairs and St. Peter's Town Council and the Broadstairs Society both wrote to express their support for the application.
12. Letters of support were also received from 68 local residents (both current and former) setting out their knowledge and use of the application site.
13. An objection was received from local resident Mr. P. Robinson. Mr. Robinson disputes the claim that the application site has been used by a significant number of

local residents 'as of right' for lawful sports and pastimes. He has, however, observed use of the site for dog walking and has watched cricket matches taking place. Mr. Robinson also expresses concerns about the dumping of garden refuse and litter on the land.

## **Landowners**

14. The situation with regard to the ownership of the application site is complex in that there are seven separate landowners and one leaseholder. The ownership of the application site is shown on the plan at **Appendix D**.
15. Out of the seven landowners, three have objected ("the Objectors") and one has made a representation. A representation has also been received from the leaseholder.

### Thanet District Council

16. The District Council owns a section of the application site which largely comprises the cricket field and pavilion. This area of land is registered with the Land Registry under title number K838998. The District Council's Asset Manager, Mr. J. Thomson, has written to confirm that the Council has no evidence to offer either in support of or in opposition to the application.

### Broadstairs Cricket Club

17. The part of the application site that is owned by Thanet District Council is let on a 100-year lease to the Broadstairs Cricket Club.
18. The Cricket Club has made a representation on the basis that it has concerns regarding the future use of the land and the potential restrictions imposed were it to be registered as a Town Green. The Club believes that were the land to be granted Town Green status, the local community would have a right to use the cricket ground whenever they want and for whatever purposes. The Cricket Club has played on the land for nearly 70 years and has successful junior and senior teams which play cricket there on a regular basis at weekends and on some week days. If the granting of Town Green status were to in any way interfere with the Cricket Club's use of the land, this could ultimately lead to the demise of the Club.

### Mr. and Mrs. Kenyon

19. Mr. and Mrs. Kenyon are the owners of a strip of land forming a private access road known as 'The Cricketers'. This area of land is registered with the Land Registry under title number K915349.
20. The roadway was made up approximately three years ago (2007) with a tarmac surface and speed bumps at the considerable expense of the owners of properties to which the roadway leads. Mr. and Mrs. Kenyon have made a representation on the basis that any use of this land has not been 'as of right', because use has been challenged by the landowners and a sign has been in place since 2007 stating that it is a private road.

### Mr. and Mrs. Brazil

21. An objection to the application has been received from Barnes Marsland Solicitors on behalf of Mr. and Mrs. Brazil who own a piece of land on the western edge of the application site. This area of land is registered with the Land Registry under title number K401090. Mr. and Mrs. Brazil completed the purchase of this land in 2002, but have had an interest in it for approximately 12 years.
22. The objection is made on the following grounds:
- There is evidence that this part of the application site was originally fenced with a chestnut fence fronting Park Avenue and the cricket field, and a chain link fence on the southern boundary separating it from the land owned by Probeport Ltd. Although the fencing has deteriorated, it is still visible on the site.
  - On 24<sup>th</sup> March 2010, a new fence was erected around the perimeter of Mr. and Mrs. Brazil's land which had the effect of preventing access to it.
  - Parts of the land are physically distinct and have different characteristics, but the evidence questionnaires submitted in support of the application do not differentiate between the uses of these different areas. The evidence does not demonstrate 20 years' use of the whole of the land and the questionnaires fail to identify which parts of the woodland have been used.
  - The land is far from accessible and consists of dense scrubland; it is not suitable for walking or recreational pursuits.

### Probeport Ltd

23. An objection to the application has also been received from Clark Holt Solicitors on behalf of Probeport Ltd which owns a piece of land on the south-western limb of the application site. This area of land is registered with the Land Registry under title number K962796. Probeport Ltd purchased the land from the Greatex Investment Company Ltd. in 2009.
24. The objection is made on the following grounds:
- The land was cleared in late 2009, but prior to that it was highly impenetrable and unsuitable for recreational use.
  - On 12<sup>th</sup> January 2010, post and wire fencing was erected along with signs stating that the land was private property.
  - The evidence questionnaires do not differentiate between different parts of the application site and it is difficult to establish with any certainty that any of the activities claimed to have taken place actually did take place on this part of the application site.

### Greatex Investment Company Ltd

25. Clark Holt Solicitors also act on behalf of the Greatex Investment Company Ltd. which owns the south-eastern limb of the application site. This area of land is registered with the Land Registry under title number K61934. The Greatex Investment Company Ltd. has owned the land in excess of 50 years. It formerly owned a much larger area of land on the southern part of the application site, but part of this land was developed for housing (now Parkwood Close) in the 1970s and 1980s.

26. An objection from the Greatex Investment Company Ltd. (via its solicitor) has been received. The objection is made on the basis that the Company is not aware of any use of the land for lawful sports and pastimes. It is, however, used as a short cut to reach the cricket ground or adjacent streets, or to reach the Brown Jug Public House and Ramsgate Road from Park Avenue. Any use of the land has therefore been of a Public Rights of Way type user and does not amount to general use for lawful sports and pastimes.

#### Kent County Council

27. Kent County Council owns a strip of land abutting Grange Way on the eastern part of the application site. This area of land is registered with the Land Registry under title number K684424. Notice has been served on the County Council as required but no response has been received.

#### DS Property Developments

28. A triangle of land on the north-eastern part of the application site is registered with the Land Registry under title number K386365. The registered owner is stated to be Clayform Developments Ltd, but a search of the Companies House database has revealed that this company is now trading as DS Property Developments. Notice has been served on this company as required but no response has been received.

### **Legal tests**

29. 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 has taken place over period of twenty years or more?*
- (e) *Whether use of the land 'as of right' by the inhabitants has continued up until the date of application or meets one of the criteria set out in sections 15(3) or (4)?*

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

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

30. The definition of the phrase 'as of right' has been considered by the House of Lords. Following the judgement in the Sunningwell<sup>1</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.

31. In this case, there is no suggestion that the informal recreational use of the application site has been with permission or with any secrecy. However, there is some debate as to the existence of fencing and notices on parts of the application

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<sup>1</sup> *R v. Oxfordshire County Council and another, Sunningwell Parish Council [1999] 3 All ER 385*

site which have the potential to render any use of it with force, and thus not 'as of right'.

### *Fencing*

32. It is the applicant's case, supported by the user evidence, that there has been no physical hindrance to the actual use of the whole of the application site throughout the twenty year period preceding the date of the application. The Objectors refer to the erection of post and rail fencing around parts of the application site, accompanied by 'private land' notices, in early 2010. There is some disagreement as to the exact date that the fencing was erected<sup>2</sup>, but, in any event the fencing was erected after the application was made and thus would be outside the relevant twenty-year period<sup>3</sup>.
33. In addition to the recent erection of fencing on part of the application site, Mr. and Mrs. Brazil refer to the remains of fencing on the part of the application site which is within their ownership. They say that there is evidence (in the way of remains of old fencing) to indicate that their plot was originally fenced with chestnut fencing fronting Park Avenue and the cricket field, and a chain link fence running adjacent to the boundary with the land owned by Probeport Ltd.
34. The applicant, who has known the site since 1982, states that he is unaware of any fence, boundary or other impediment to use, either along the frontage of Park Avenue or separating the land internally. He adds that enquiries of long-term residents have not drawn any recollection of the existence of fences.
35. The situation with regard to fencing is therefore far from clear. It is based almost exclusively on the recollections of those who have visited the site (both landowners and recreational users) and requires further investigation before a proper conclusion can be reached.

### *Notices*

36. Any use of the application site which has involved breaking down barriers to gain entry is a clear example of use that is with force and not 'as of right'. However, the definition of force in the context of Town or Village Green registration is not restricted to physical force<sup>4</sup>. So, if a landowner erects a notice prohibiting use of the land and that notice is ignored by the users, then such use becomes contentious and is not 'as of right'.
37. A representation has been received from the owners of the private road known as 'The Cricketers', who say that a notice has been in place stating 'private road' since 2007. As such, their view is that the use of the roadway has not been 'as of right'.

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<sup>2</sup> In relation to the parts of the application site owned by Probeport Ltd and the Greatex Investment Company (see **Appendix D**). The Objectors assert that the fencing around the land owned by Probeport Ltd and the Greatex Investment Company was erected in January 2010, whereas the applicant states that the fencing was not erected until after 8<sup>th</sup> March 2010 (the date upon which Notice of the application was served on the affected landowners).

<sup>3</sup> See paragraphs 63 to 65 for conclusions regarding the relevant twenty-year period.

<sup>4</sup> *R (Lewis) v Redcar and Cleveland Borough Council (No 2)* [2010] 2 AC 70 (see particularly Lord Rodger at paragraph 88)

38. When looking at the effect of notices erected on the application site, it is important to consider the message conveyed to the users of the land: indeed, “*the aim is to let the reasonable user know that the owner objects to and contests his user*”<sup>5</sup>. It is arguable in this instance that a ‘private road’ notice could be interpreted by the users as referring only to the passage of vehicular traffic and not to the general use of the land for recreational purposes. It is therefore debatable as to whether the ‘private road’ notices had the effect of contesting recreational user.

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

39. Lawful sports and pastimes can be commonplace activities including dog walking, children playing, picnicking and kite-flying. It is not necessary to demonstrate that both sporting activities *and* pastimes have taken place since the phrase ‘lawful sports and pastimes’ has been interpreted by the Courts as being a single composite group rather than two separate classes of activities<sup>6</sup>.

40. 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>7</sup>.

41. In this case, the evidence demonstrates that the land has been used for a wide range of recreational activities, including walking (with or without dogs), watching cricket matches and playing with children. The summary of evidence of use by local residents at **Appendix C** shows the full range of activities claimed to have taken place.

*Distinct areas and physical inaccessibility*

42. The Objectors do not seek to argue that no part of the application site has been used for the purposes of lawful sports and pastimes. Rather, their position is that the application site is divided into several physically distinct areas which require separate analysis. The user evidence questionnaires do not distinguish between different areas of the application site, and some activities referred to in the user evidence (e.g. kite flying and watching cricket), of necessity, can only have taken place on the cricket field itself rather than in the neighbouring woodland. Where reference is made to recreational use of the woodland, the questionnaires do not specifically identify which pieces of woodland have been used. As such, it is the Objectors contention that the user evidence is not sufficient to demonstrate recreational use of the whole of the application site.

43. The Objectors also argue that parts of the application site were not capable of being used by virtue of their physical inaccessibility. These areas (which have now been cleared) are described as having been ‘barely penetrable scrubland’ covered with

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<sup>5</sup> *R (Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust) v Oxfordshire County Council* [2010] EWHC 530 (Admin) at paragraph 22 per Waksman J

<sup>6</sup> *R v. Oxfordshire County Council and another, ex parte Sunningwell Parish Council* [1999] 3 All ER 385

<sup>7</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 and another, ex parte Sunningwell Parish Council* [1999] 3 All ER 385

bushes, shrubs, trees and other vegetation which would have made these areas unsuitable for walking or playing. Access to these areas would, in the Objectors view, have been very difficult.

44. The applicant, on the other hand, argues that it is wrong to attempt to differentiate between the different areas of ownership of the application site. As far as the users were concerned, there was no distinction between the different areas of ownership or indeed the recreational use to which they was put by local residents. Those using the application site undertook their activities on the site as a whole, without any thought as to the ownership boundaries, and as such the issues of land ownership are irrelevant in determining whether, as a matter of fact, the land has been used in the requisite manner.
45. The applicant also disputes the assertion that parts of the application site were inaccessible. He states that all parts of the woodland have provided opportunities for several generations of children to play, climb trees and build dens. Whilst some parts of the woodland were denser in terms of vegetation than others, these areas were penetrated by informal pathways through the trees, regularly used by both adults and children.
46. As with the fencing issue above, it is very difficult to reconcile the very stark contrast between the recollections of the users and those of the landowners. This vast difference is not something which it appears possible to resolve on paper; rather, it is a question of evidence that requires more detailed scrutiny, preferably by way of the cross examination of witnesses in a structured public forum.

#### *Public Footpath TB48*

47. There is also a further question arising from the existence of a Public Footpath running along the south-eastern part the application site. Use of a defined route that constitutes a recorded Public Footpath is a Public Rights of Way type user which is in exercise of an existing right and cannot give rise to any new rights<sup>8</sup>.
48. The Greatex Investment Company argues that such use as has taken place of their land has only been for the purpose of passage along the Public Footpath. However, the applicant states that it would be wrong to assume that the presence of a Public Footpath indicates only linear usage of one part of the application site, since all parts of the site have been regularly used and this is evidenced by the number of informal pathways that lead through the area and connect to the main Public Footpath.
49. Once again, the degree of use of the Public Footpath is of material relevance to the wider question of whether recreational use has taken place over the whole of the application site, and requires more detailed investigation.

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

50. 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

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<sup>8</sup> *R (Laing Homes) v Buckinghamshire County Council* [2003] 3 EGLR 70



define this area with a degree of accuracy so that the group of people to whom the recreational rights are attached can be identified. Identifying the relevant “locality” or “neighbourhood within a locality” can be problematic but it does not matter if the applicant fails to precisely defined the correct locality in his application; the burden is not on the applicant to establish the correct locality at the time of application, but rather on the Registration Authority to satisfy itself that there is a relevant locality (or neighbourhood) at the time of registration<sup>9</sup>.

“locality”

51. The definition of locality for the purposes of a village green application has been the subject of much debate in the courts and there is still no definite rule to be applied. In the *Cheltenham Builders*<sup>10</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’.
52. At part 6 of the application form, the Applicant specifies the locality as ‘the area of housing surrounding the green but also for the wider area of Upton ward Broadstairs’. The Upton ward is shown on the plan at **Appendix E**.
53. The Objectors argue that the District Council electoral ward of Upton has not existed since 2002 (when it was largely subsumed into the new electoral ward of Viking) and, since it is not an administrative division currently known to the law, it cannot be a qualifying locality for the purposes of Town or Village Green registration.
54. The Courts have recently considered this issue in the *Leeds*<sup>11</sup> case. In that case, the electoral ward relied upon had not existed since 1937. It was held that provided that the boundaries of the ward could be defined, the fact that it ceased to be an administrative unit in 1937 did not prevent it from being a locality for the purposes of Town or Village Green registration.
55. The same principle can be applied in the current case. The fact that Upton has not existed as an electoral ward since 2002 does not, contrary to the assertion of the Objector, automatically preclude it from being a relevant locality. It would therefore appear that the former District Council ward of Upton would be capable of constituting a relevant locality in this case.
56. In cases where the “locality” is so large that it is difficult to show that the application site has been used by a significant number of people from that locality (as often the case in urban areas), it will be necessary to consider whether there is a relevant “neighbourhood” within the wider locality.

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<sup>9</sup> *Oxfordshire County Council v Oxford City Council* [2006] 4 All ER 817

<sup>10</sup> *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at page 90

<sup>11</sup> *Leeds Group plc v Leeds City Council* [2010] EWHC 810 (Ch). Note that the High Court’s decision in this case was appealed but the specific issue of whether the electoral ward in question could be a qualifying locality was not considered by the Court of Appeal. See *Leeds Group plc v Leeds City Council* [2010] EWCA Civ 1438

*“neighbourhood within a locality”*

57. 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>12</sup>.
58. Although it is accepted that, in all probability, only those living closest to a piece of land are likely to use it for recreational purposes, there is still a requirement for the purposes of Village Green registration to show that the land has been used by the residents of a defined area or, as suggested by LJ Pill in a case known as *Steed*<sup>13</sup>, *‘something more than a place or geographical area – rather a distinct and identifiable community such as might lay reasonable claim to a town or village green’*.
59. The applicant contends that the relevant neighbourhood in this case is Park Avenue. The neighbourhood as defined by the applicant is shown on the plan at **Appendix E**. He explains that Park Avenue is a long residential cul-de-sac, including a number of separate cul-de-sacs that feed into Park Avenue, thereby creating a self-contained residential area. The whole neighbourhood is accessed by a junction at Ramsgate Road or a Public Footpath from West Dumpton Lane. It also has a very distinct character and appearance that is easily distinguishable from surrounding residential areas. In the applicant’s view, Park Avenue, as a neighbourhood, therefore has the sufficient degree of cohesiveness required for the purposes of Town or Village Green registration.

*“a significant number”*

60. 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’*<sup>14</sup>. Thus, what is a ‘significant number’ will depend upon the local environment and will vary in each case depending upon the location of the application site.
61. In this case, representations and evidence of use have been received from 67 households in the Park Avenue neighbourhood as defined by the applicant which is a not insignificant amount. The frequency of use claimed by the witnesses is also high, with 22 of the 31 user evidence questionnaires referring to use of the application site on a weekly basis and half of those asserting use on a daily basis.
62. In addition, nearly all of the user evidence questionnaires refer to having observed use of the application site on a daily basis. It is not clear how much of this has been

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<sup>12</sup> *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at page 92

<sup>13</sup> *R v Suffolk County Council, ex parte Steed and another* (1995)

<sup>14</sup> *R (Alfred McAlpine Homes Ltd.) v Staffordshire County Council* [2002] EWHC 76 at paragraph 71

informal recreational use as opposed to more formal activities by the cricket club (which would be by virtue of a permission from the landowner). However, on balance, it would appear that the volume of use of the application site has been such that a reasonable landowner would have been aware of the recreational use of the land by local residents.

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

63. 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. Where there has been no challenge to the use of the land and use 'as of right' is continuing, the twenty-year period is to be calculated retrospectively from the date that the application was made.

64. In this case, there has been some debate as to when the application was duly made. An application is duly made when all of the necessary requirements in making the application (e.g. a requirement to provide a map at a specified scale) have been complied with. Although the application form itself is dated August 2007, user evidence in support of the application was not received until February 2010.

65. The Objectors argue that the application was not treated as being duly made until the submission of the user evidence forms in 2010 and that the relevant twenty-year period is therefore 1990 to 2010. The relevant Regulations<sup>15</sup> say that an application is duly made when it is submitted on the relevant application form, signed by the applicant and accompanied by a map showing the application site, a statutory declaration and every document which the applicant has in his possession relating to the matter. There is no specific requirement for the applicant to supply evidence of use and indeed the user evidence questionnaires which were supplied by other local residents have never been in the applicant's possession.

66. The County Council therefore takes the view that the application was duly made in August 2007. Hence, the relevant twenty-year period ("the material period") is 1987 to 2007.

67. In terms of the actual evidence of use, it matters not if only some (or even none) of the witnesses have used the application site for twenty years, provided that the evidence as a whole demonstrates that the land has been used by the local community for a full period of twenty years<sup>16</sup>.

68. In this case, as can be seen from the table at **Appendix C**, 22 of the 31 witnesses who supplied user evidence questionnaires in support of the application have used the application site for a full period of twenty years. In addition to the user evidence questionnaires, there is a significant volume of evidence contained in the letters of support, many from longstanding residents of the area, attesting to recreational use of the application site.

69. Overall, the evidence suggests that the application site has been used for a full period of twenty years. However, the Objectors' criticisms in relation to the vague nature of the user evidence (insofar as it does not specify which areas of the

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<sup>15</sup> At the time that the application was made, the relevant Regulations were the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007. However, these have now been superseded in the pilot areas by the Commons Registration (England) Regulations 2008.

<sup>16</sup> *Davis v Whitby* [1974] 1 All ER 806

application site have been used) and the overgrown state of parts of the applications site would be relevant to the question of whether the application site as a whole has been used throughout the relevant period. These criticisms require further clarification and, in light of the recommendation, it is not necessary to conclude either way on this point.

***(e) Whether use of the land by the inhabitants is continuing up until the date of application or meets one of the criteria set out in sections 15(3) or (4)?***

70. 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, to fulfil one of the alternative criterion set out in sections 15(3) and 15(4) of the 2006 Act (as set out at paragraph 4 above).

71. If, for the reasons set out above, the date of the application is accepted as being 2007, then use of the application site, according to the user evidence, has continued up until that date (and indeed beyond).

72. Even if it is considered that the application was not duly made until February 2010 and that use 'as of right' ceased prior to the application (as is asserted by the Objectors), this is inconsequential since section 15(2) the Commons Act 2006 provides a two-year period of grace during which applications can be made once use the application site has ceased to be 'as of right'.

**Conclusion**

73. As has been noted above, there have been various disputes regarding the nature and factual basis of the evidence. In summary, the applicant's case is that the whole of the application site has been used by the local residents for the purposes of lawful sports and pastimes for a full period of twenty years. The Objector's case is that parts of the application site would have been inaccessible due to impenetrable vegetation and as such these areas were not capable of being used for recreation pursuits. The evidence on both sides relies almost entirely upon the recollections of those involved and there is little, if any, documentary evidence to support the case for either side.

74. Although the relevant Regulations<sup>17</sup> provide a framework for the initial stages of processing the application (e.g. advertising the application, dealing with objections etc), they provide little guidance with regard to the procedure that a Commons Registration Authority should follow in considering and determining the application. In recent times it has become relatively commonplace, in cases which are particularly emotive or where the application turns on disputed issues of fact, for Registration Authorities to conduct a non-statutory Public Inquiry<sup>18</sup>. This involves appointing an independent Inspector to hear the relevant evidence and report his/her findings back to the Registration Authority.

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<sup>17</sup> Commons Registration (England) Regulations 2008

<sup>18</sup> The Public Inquiry is referred to as being 'non-statutory' because the Commons Act 2006 does not expressly confer any powers on the Commons Registration Authority to hold a Public Inquiry. However, Local Authorities do have a general power to do any thing to facilitate the discharge of any of their functions and this is contained in section 111 of the Local Government Act 1972.

75. Such an approach has received positive approval by the Courts, most notably in the *Whitmey*<sup>19</sup> case in which Waller LJ said this: '*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*'.
76. A decision to hold a Public Inquiry is not one which the County Council should take lightly; such a decision imposes significant burdens on all parties involved in terms of the preparation for and attendance at the Inquiry. Officers will, in the first instance, always seek to resolve an application without the need to resort to a Public Inquiry if at all possible. In this case, further information has been sought from the parties in an attempt to reconcile differences in the factual evidence provided<sup>20</sup>. However, there are occasions, of which this appears to be one, where there is a serious conflict in the evidence which cannot be resolved on paper and the County Council has little option other than to refer the matter to a Public Inquiry for the matters to be clarified before a final decision is made.
77. It is important to remember, as was famously quoted by the Judge in another High Court case<sup>21</sup>, that '*it is no trivial matter for a landowner to have land, whether in public or private ownership, registered as a town green... [the relevant legal tests] must be 'properly and strictly proved'*'. This means that it is of paramount importance for a Registration Authority to ensure that, before taking a decision, it has all of the relevant facts available upon which to base a sound decision. It should be recalled that the only means of appeal against the Registration Authority's decision is by way of a Judicial Review in the High Court.
78. The volume of unanswered questions relating to the evidence in this case means that it appears that a Public Inquiry would be the most appropriate way forward.

## Recommendations

79. I recommend that a non-statutory Public Inquiry be held into the case to clarify the issues.

Accountable Officer: Dr. Linda Davies – Tel: 01622 221500 or Email: linda.davies@kent.gov.uk Case Officer: Miss. Melanie McNeir – Tel: 01622 221511 or Email: melanie.mcneir@kent.gov.uk
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The main file is available for viewing on request at the Countryside Access Service, Invicta House, County Hall, Maidstone. Please contact the case officer for further details.
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<sup>19</sup> *R (Whitmey) v Commons Commissioners* [2004] EWCA Civ 951 at paragraph 66

<sup>20</sup> In exercise of the County Council's powers to invite further written representations contained in Regulation 28 of the Commons Registration (England) Regulations 2008

<sup>21</sup> *R v Suffolk County Council, ex parte Steed* [1997] 1EGLR 131 at 134

## **Background documents**

APPENDIX A – Plan showing application site

APPENDIX B – Copy of application form

APPENDIX C – Summary of user evidence

APPENDIX D – Plan showing ownership of the application site

APPENDIX E – Plan showing the relevant locality, neighbourhood and spread of users

638500.000000

# APPENDIX A: Plan showing application site

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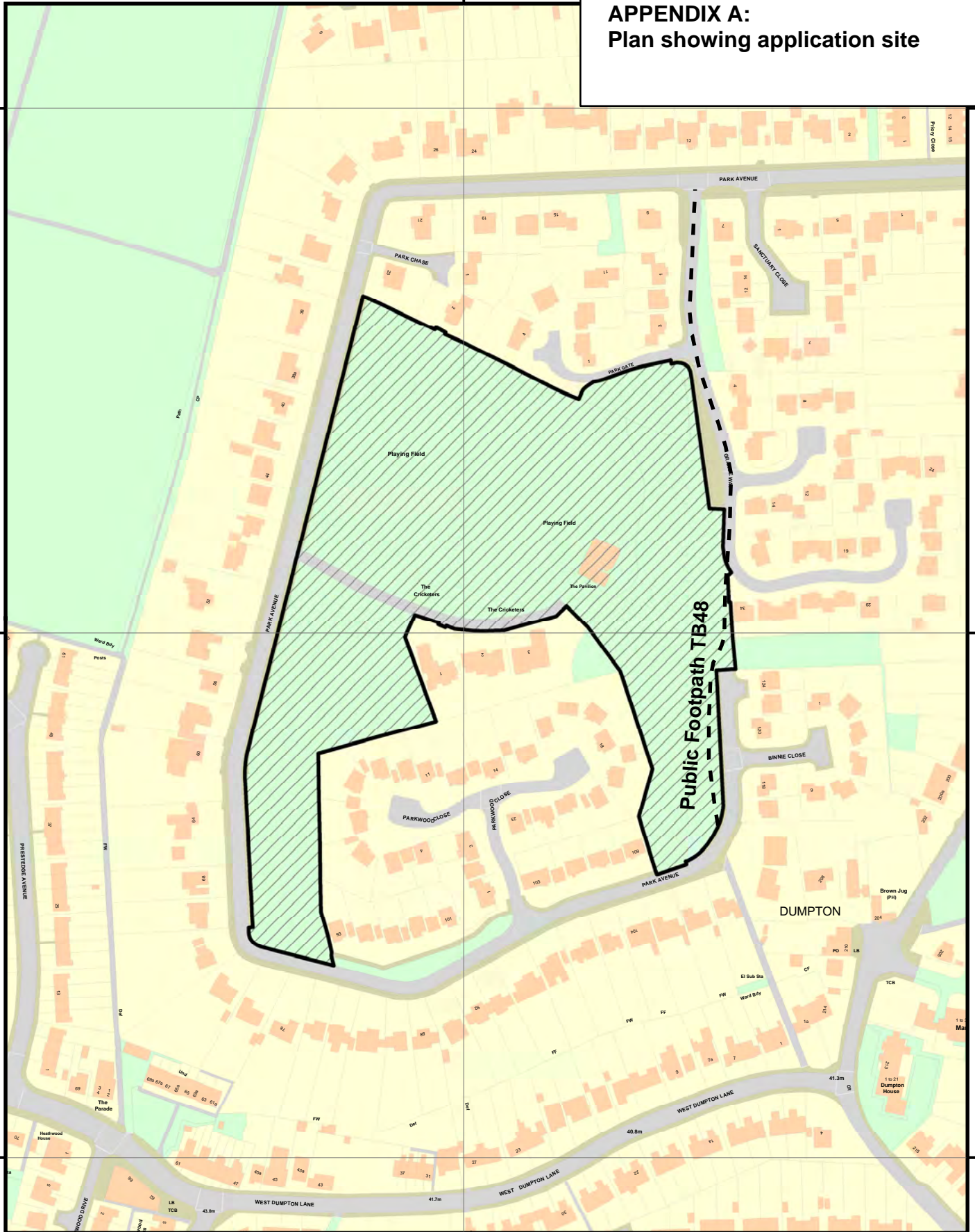
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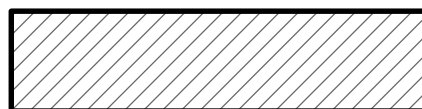
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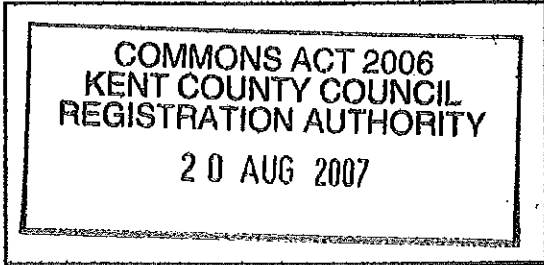


Land subject to Village Green application  
at Broadstairs Cricket Ground



**Commons Act 2006: Section 15**  
**Application for the registration of**  
**Village Green**

Official stamp of registration authority  
indicating valid date of receipt:



Application number:

Register unit No(s):

VG number allocated at registration:

(CRA to complete only if application is successful)

Applicants are advised to read the 'Guidance Notes for the completion of an Application for the Registration of land as a Town or Village Green' and to note the following:

- All applicants should complete questions 1-6 and 10-11.
- Applicants applying for registration under section 15(1) of the 2006 Act should, in addition, complete questions 7-8. Section 15(1) enables any person to apply to register land as a green where the criteria for registration in section 15(2), (3) or (4) apply.
- Applicants applying for voluntary registration under section 15(8) should, in addition, complete question 9.

**Note 1**  
Full name of  
registration  
authority.

**1. Registration Authority**

To the

KENT COUNTY COUNCIL  
COUNTY HALL, Maidstone, Kent.



**Note 2**

If there is more than one applicant, list all names. Please use a separate sheet if necessary. State the full title of the organisation if a body corporate or unincorporate.

If question 3 is not completed all correspondence and notices will be sent to the first named applicant.

**Note 3**

This question should be completed if a solicitor is instructed for the purposes of the application. If so all correspondence and notices will be sent to the person or firm named here.

**2. Name and address of the applicant**

Name:

Full postal address:

Telephone number: (incl. national dialling code)

Fax number: (incl. national dialling code)

E-mail address:

**3. Name and address of solicitor, if any**

Name:

Firm:

Full postal address:  
  
Post code

Telephone number: (incl. national dialling code)

Fax number: (incl. national dialling code)

E-mail address:

*Merron*

**Note 4**

For further advice on the criteria and qualifying dates for registration please see section 4 of the Guidance Notes.

\* Section 15(6) enables any period of statutory closure where access to the land is denied to be disregarded in determining the 20 year period.

**4. Basis of application for registration and qualifying criteria**

If you are the landowner and are seeking voluntarily to register your land please tick this box and move to question 5.

Application made under **section 15(8)**:

If the application is made under **section 15(1)** of the Act, please **tick one** of the following boxes to indicate which particular subsection and qualifying criterion applies to the case.

**Section 15(2)** applies:

**Section 15(3)** applies:

**Section 15(4)** applies:

If **section 15(3) or (4)** applies please indicate the date on which you consider that use as of right ended.

If **section 15(6)\*** applies please indicate the period of statutory closure (if any) which needs to be disregarded.

**5. Description and particulars of the area of land in respect of which application for registration is made**

Name by which usually known:

BROADSTAIRS CRICKET GROUND, AND SURROUNDING  
WOODLAND AREA

Location:

PARK AVENUE, BROADSTAIRS, KENT.

Shown in colour on the map which is marked and attached to the statutory declaration.

Common land register unit number (if relevant) \*

**6. Locality or neighbourhood within a locality in respect of which the application is made**

Please show the locality or neighbourhood within the locality to which the claimed green relates, either by writing the administrative area or geographical area by name below, or by attaching a map on which the area is clearly marked:

THE AREA OF HOUSING SURROUNDING THE GREEN  
AS SHOWN ON THE ATTACHED PLAN  
BUT ALSO FOR THE WIDER AREA OF UPTON  
WARD, BROADSTAIRS

Tick here if map attached:

**Note 5**

The accompanying map must be at a scale of at least 1:2,500 and show the land by distinctive colouring to enable it to be clearly identified.

\* Only complete if the land is already registered as common land.

**Note 6**

It may be possible to indicate the locality of the green by reference to an administrative area, such as a parish or electoral ward, or other area sufficiently defined by name (such as a village or street). If this is not possible a map should be provided on which a locality or neighbourhood is marked clearly.

**7. Justification for application to register the land as a town or village green**

**Note 7**

*Applicants should provide a summary of the case for registration here and enclose a separate full statement and all other evidence including any witness statements in support of the application.*

*This information is not needed if a landowner is applying to register the land as a green under section 15(8).*

SEE ATTACHED SHEET

*Munro*

# Application to register Broadstairs Cricket Ground and surrounding woodland as a town or village green

## Justification for application

The land, which it is hoped to have registered as a village or town green, is located in Park Avenue, Broadstairs. Originally all of the land was part of the extensive grounds of Dumpton House, a substantial mansion house that was located to the east of the application site, which was subsequently demolished and the site redeveloped for housing.

The area of open land occupied by Broadstairs Cricket Club has been in existence for a substantial period of time, [well beyond 25 years]. It is thought that the original owner of Dumpton House sold the land, tenanted by the Cricket Club, to Wellington House School to use as an overflow sports field. Either by formal, or informal, arrangement, the owners permitted the Cricket Club the use of the field as their home ground. A pavilion/changing room building of solid construction has been present on the site to the best of my knowledge, for in excess of 25 years.

Occasionally during the school year, the school would use the playing field for sports activities. Throughout most of the year the land was used only by local people, and even in the summer, when events such as cricket matches were being played, a general tolerance and respect for the playing surface enabled local people to continue to use the park.

The cricket outfield is surrounded by an area of woodland containing substantial mature trees, many of which are covered by Tree Preservation Orders. This area is an integral part of the character and setting of the ground, and of Park Avenue, as the name implies, and extends on the eastern side of the cricket pavilion to include the woodland area at the rear of the pavilion, and the land either side of the statutory public footpath that crosses the site from south to north. Part of this land is in private ownership being the residue of a residential building site completed during the early 1980's that was also part of the original Dumpton Estate, and which was left undeveloped in view of the location of the footpath and the presence of substantial trees.



No part of the green site has been enclosed, nor has there been any indication by way of site notices or signs during the period that would indicate that the public use of the land was in any way restricted. For a period well in excess of 20 years, the public has not been excluded from any part of the site. The area has been used *as of right* for lawful sports and pastimes of a recreational nature throughout this period

Throughout all of this period the land has remained open to local people to use for leisure and recreational activities. Every day for all of this period local people have walked the area for recreation. At any time of the day within the green, local people can be found walking their dogs, or taking infants to play on the grass, or enjoying the wooded area. Local children have self-organised cricket matches, football kick-arounds and other sporting semi-formal sports activities, unencumbered by restraint from the land owners, and away from traffic. The whole area of the cricket outfield, and surrounding woodland, has been an adventure playground for young and old for well in excess of a period of 20 years. Almost at no time during the day is there not someone availing themselves of the pleasures of access to such an attractive parkland area.

All of the residents of Park Avenue, and surrounding local residential areas as defined on the attached O.S. plan regard the Cricket Ground and surrounding woodland as a recreational asset for the local area that has been used unencumbered by successive generations of local residents for well in excess of 20 years, and hope to continue to do so in the future. In addition the area attracts more occasional users from a much wider area encompassing the whole of the electoral ward of Upton. These users, though not perhaps habitual users, do avail themselves of the opportunity to walk and play within the area on a more infrequent basis than locals.

As a permanent resident of the area since 1980, I can personally confirm that the green has been so used throughout that period. If necessary, many other local people, some of whom have lived in the area longer, can verify a use in excess of 20 years, and would be willing to provide such statements



**Note 8**

Please use a separate sheet if necessary.

Where relevant include reference to title numbers in the register of title held by the Land Registry.

If no one has been identified in this section you should write "none"

This information is not needed if a landowner is applying to register the land as a green under section 15(8).

**8. Name and address of every person whom the applicant believes to be an owner, lessee, tenant or occupier of any part of the land claimed to be a town or village green**

- 1) BROADSTAIR CRICKET CLUB, PARK AVENUE, BROADSTAIRS
- 2) THAPET DISTRICT COUNCIL, P.O BOX 9, CECIL STREET, MARGATE
- 3) MR. M. BENN, ADDRESS NOT KNOWN
- 4) MR. BRAZIL, THE LODGE, SACKETTS HILL, BROADSTAIRS

**9. Voluntary registration – declarations of consent from 'relevant leaseholder', and of the proprietor of any 'relevant charge' over the land**

H/A

**Note 9**

List all such declarations that accompany the application. If none is required, write "none".

This information is not needed if an application is being made to register the land as a green under section 15(1).

**10. Supporting documentation**

1:1250 O.S. BASE IDENTIFYING THE EXTENT OF THE GREEN, EDGED RED. EXHIBIT A

AERIAL PHOTOGRAPH OF GREEN AND SURROUNDING AREA SHOWING HOUSES OF HABITUAL USERS OF THE GREEN EXHIBIT B

**Note 10**

List all supporting documents and maps accompanying the application. If none, write "none"

Please use a separate sheet if necessary.

**11. Any other information relating to the application**

**Note 11**

If there are any other matters which should be brought to the attention of the registration authority (in particular if a person interested in the land is expected to challenge the application for registration). Full details should be given here or on a separate sheet if necessary.

LAND OWNERS OF SOME OF THE SITE WOULD BE EXPECTED TO CHALLENGE DESIGNATION AS THEY HAVE LONG TERM ASPIRATIONS TO DEVELOPE

**Note 12**

The application must be signed by each individual applicant, or by the authorised officer of an applicant which is a body corporate or unincorporate.

Date:

15 AUGUST 2007

Signatures:



**REMINDER TO APPLICANT**

You are advised to keep a copy of the application and all associated documentation. Applicants should be aware that signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence. The making of a false statement for the purposes of this application may render the maker liable to prosecution.

**Data Protection Act 1998**

The application and any representations made cannot be treated as confidential. To determine the application it will be necessary for the registration authority to disclose information received from you to others, which may include other local authorities, Government Departments, public bodies, other organisations and members of the public.





## Statutory Declaration In Support

To be made by the applicant, or by one of the applicants, or by his or their solicitor, or, if the applicant is a body corporate or unincorporate, by its solicitor, or by the person who signed the application.

<sup>1</sup> Insert full name (and address if not given in the application form).

I, ROBERT TREVOR HERRON,<sup>1</sup> solemnly and sincerely declare as follows:—

<sup>2</sup> Delete and adapt as necessary.

1.<sup>2</sup> I am ((the person (one of the persons) who (has) (have) signed the foregoing application)) ((the solicitor to (the applicant) (<sup>3</sup> one of the applicants))).

<sup>3</sup> Insert name if applicable

2. The facts set out in the application form are to the best of my knowledge and belief fully and truly stated and I am not aware of any other fact which should be brought to the attention of the registration authority as likely to affect its decision on this application, nor of any document relating to the matter other than those (if any) mentioned in parts 10 and 11 of the application.

3. The map now produced as part of this declaration is the map referred to in part 5 of the application.

<sup>4</sup> Complete only in the case of voluntary registration (strike through if this is not relevant)

4.<sup>4</sup> I hereby apply under section 15(8) of the Commons Act 2006 to register as a green the land indicated on the map and that is in my ownership. I have provided the following necessary declarations of consent:

- (i) a declaration of ownership of the land;
- (ii) a declaration that all necessary consents from the relevant leaseholder or proprietor of any relevant charge over the land have

Cont/



4 *Continued*

been received and are exhibited with this declaration; or  
(iii) where no such consents are required, a declaration to that effect.

And I make this solemn declaration, conscientiously believing the  
same to be true, and by virtue of the Statutory Declarations Act 1835.

Declared by the said

) TREVOR HERRON

at

)  
)  
)   
)

) Signature of Declarant

this 15<sup>th</sup> day of AUGUST, 2007 )

Before me \* AT. 107, PARK AVENUE, BROADSTAIRS

Signature:



Address:

MICHAEL HERRON  
FLAT 8 SOMERSET HOUSE  
31 DARTMOUTH PARK HILL  
LONDON NW5 1HR

Qualification:

SOLICITOR

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\* The statutory declaration must be made before a Justice of the peace, practising solicitor, commissioner for oaths or notary public.

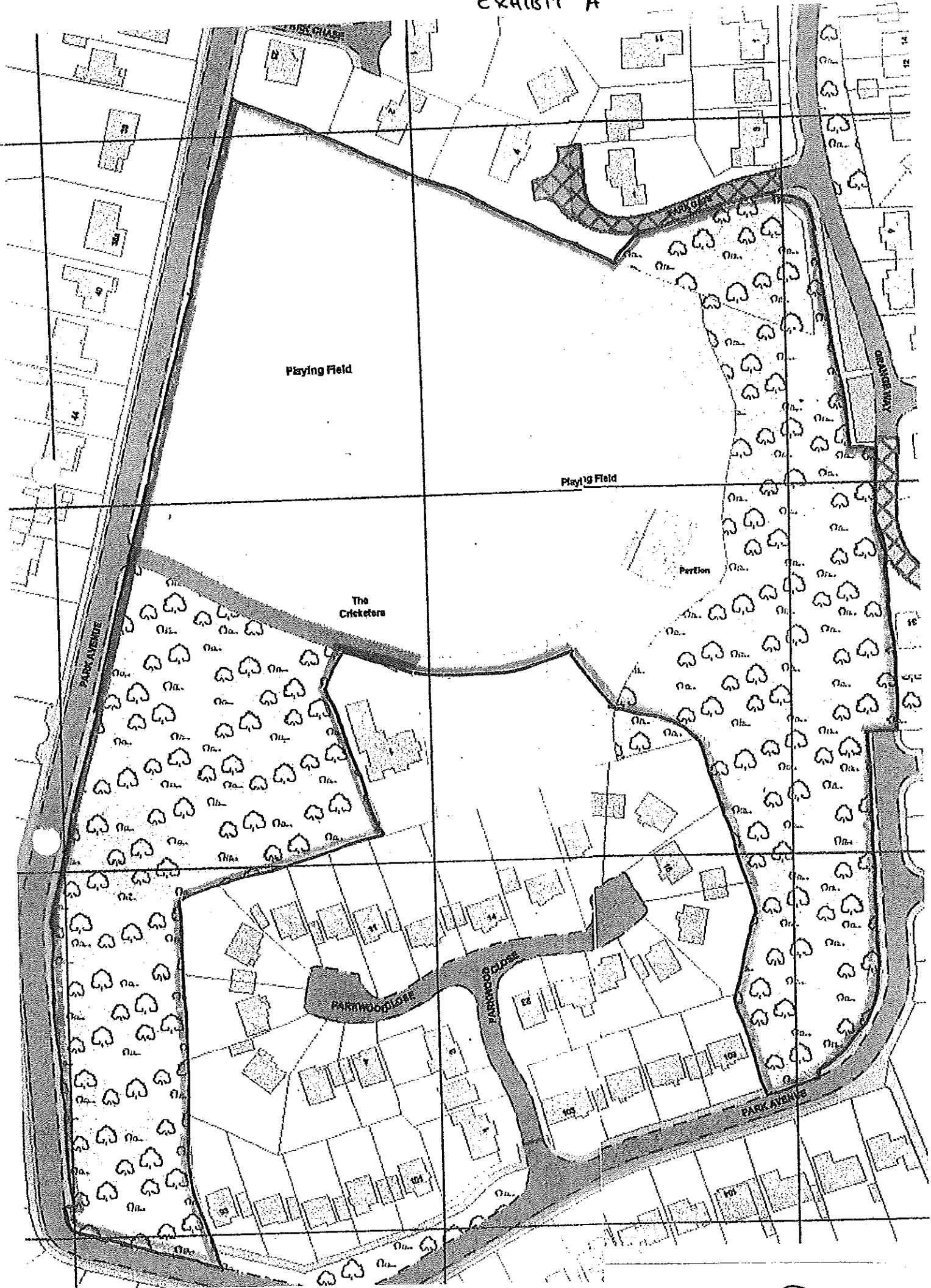
Signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence.

**REMINDER TO OFFICER TAKING DECLARATION:**

*Please initial all alterations and mark any map as an exhibit*

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EXHIBIT A



**APPENDIX C:  
Summary of user evidence submitted  
in support of the application**

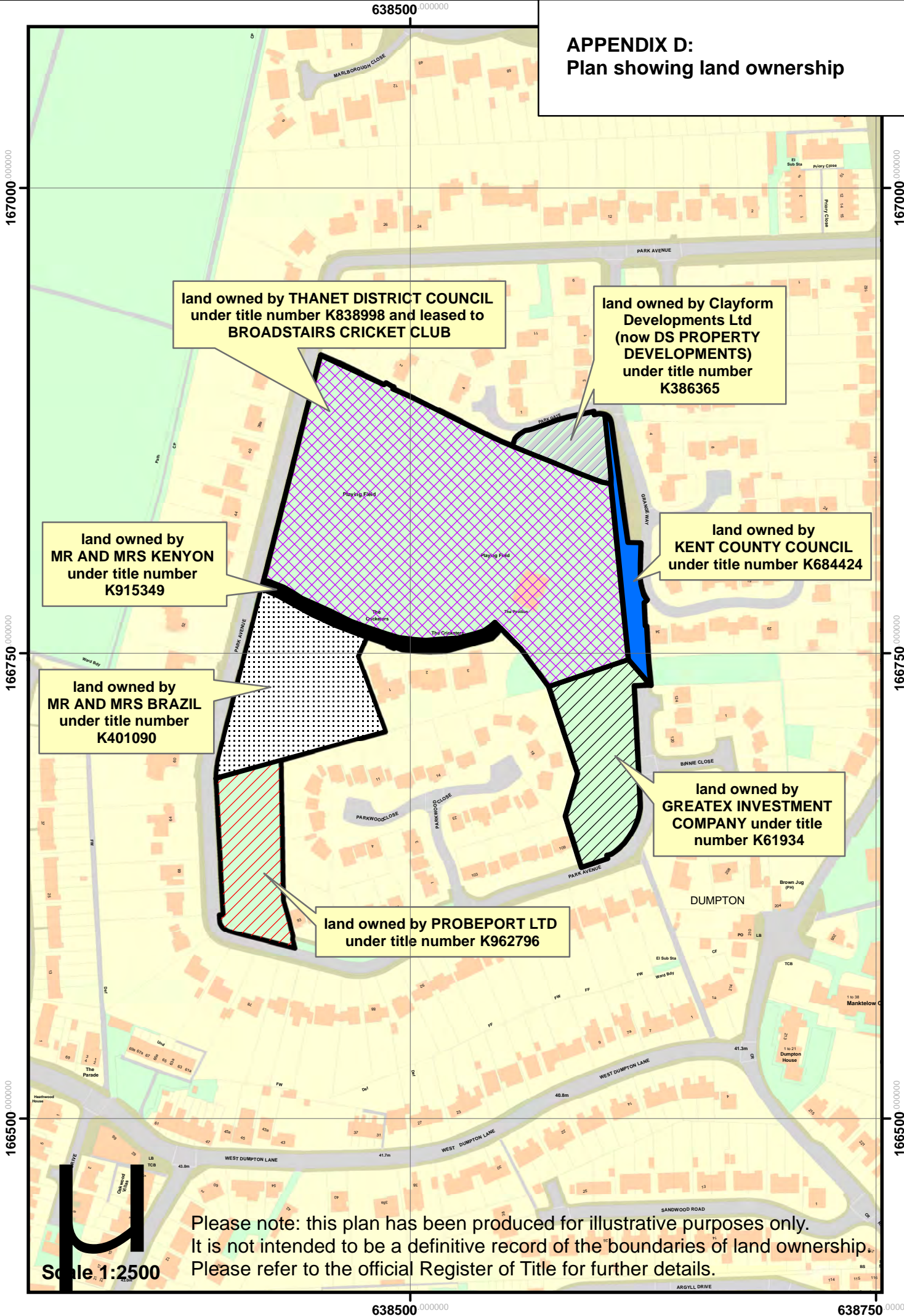
Household name	Period of use	Frequency	Activities	Other comments
ALI	1973 – present	Almost daily	Walking, cricket, kite flying, bike riding, playing with remote control cars	
BENEDICT	1989 – present	Not stated	Jogging, football, kite flying	Children used for sports and general playing in woodland. Use never challenged until recently by men clearing vegetation
BLACKWELL	1990 – present	Weekly	Golf, cricket matches, dog walking	
BRIERY	1984 – present	Weekly	Walking, nature observation	
CLANCY	2007 – present	Mostly summer months	Flying model aircraft, picnics, walking, playing games, watching sports	
DAVIES	1984 – present	Daily	Dog walking, walking, playing with children	“the wooded areas adjacent to the cricket ground have been defacto common land as long as I can remember... the owners of the wooded land have taken no interest in their property at all in the time I have been here”
DICKERSON	1988 – present	Daily	Watching sports, sitting on seats, ball games, kite flying, dog walking, running and other exercises	Use was interrupted when developers churned up the surface to fir drainage for The Cricketers
DIFFLEY	1983 – present	Several times per week	Dog walking, playing with children, blackberry and elderberry picking, jogging, nature observation	
DUFF	1986 – present	Monthly	Dog walking, enjoying the woodland	
HALLAM	1995 – present	Weekly	Walking	
HERRON	1983 – present	Daily	Dog walking, playing ball games, playing hide and seek in woods, kite flying, snowball fights	“the circular nature of the road and the fact it is a cul-de-sac create a specific locality/neighbourhood”
HISLOP	1983 – present	Monthly	Walking, running	
HOOPER	1961 – present	Daily	Dog walking, children’s games, football, cycling	
JONES	1983 – present	Daily until 1997, now regularly	Dog walking, family games, kite flying	“The land has been available for about 100 years and I believe it is the only area of natural woodland freely open to the public”
LEWIS	1985 – present	Occasionally	Playing with children both on field and in woods, watching cricket, walking with friends	
McCARTHY	1973 – present	Daily	Dog walking	
McKELLAR	2000 – present	not stated	Walking, playing with children, watching cricket	
MEASDAY	1953 – present	Daily	Dog walking, family recreation	Employed by former landowner as a groundsman: “the land has always been used by local people for recreation”
PALMER	1974 – present	Weekly	Games, kite flying, playing with children, sporting	

			events with friends	
PALMER	1974 – present	Daily	Ball games, picnics, dog walking, socialising, kite flying	
PARKIN	1987 – present	Weekly	Walking, watching cricket, ball games	
PARNELL	1991 – present	Daily	Watching sports, kite flying, ball games, sunbathing, picnics, walking, wildlife observation	
PETT	1987 – present	Weekly	Watching cricket, walking dog around cricket pitch and through woodlands	
PRICE	1975 – present	Daily	Playing cricket, dog walking, bird watching	
RANDOLPH	1982 – present	Daily/weekly	Ball games, walking, birdwatching in the woodland, watching cricket matches	
TAYLOR	2001 – present	Weekly	Dog walking	
THRONSDEN	1986 – present	Weekly	Walking, watching cricket	
UPTON	1965 – present	Regularly, previously daily	Walking, dog walking, children's games, bike riding, watching cricket	"my children spent every evening and weekend playing in the wooded area, they had swings and tree houses..."
WELLER	1986 – present	Daily	Dog walking, walking through woods, children's play, watching cricket, observing wildlife	
WILLIAMS	1990 – present	Occasionally	Playing with children	
WILSON	1998 – present	Daily	Dog walking, watching cricket, playing with children	

**Notes:**

- Shaded entries indicate over twenty years' use by that household
- The two references to 'Palmer' are separate households
- User evidence questionnaires were completed in 2010 so the references to 'present' under period of use indicate that use took place until at least 2010 and may or may not be continuing.
- The evidence of use summarised above does not include any evidence which is contained within the 68 letters of support received.

**APPENDIX D:  
Plan showing land ownership**



land owned by **THANET DISTRICT COUNCIL**  
under title number **K838998** and leased to  
**BROADSTAIRS CRICKET CLUB**

land owned by **Clayform  
Developments Ltd  
(now DS PROPERTY  
DEVELOPMENTS)**  
under title number  
**K386365**

land owned by  
**MR AND MRS KENYON**  
under title number  
**K915349**

land owned by  
**KENT COUNTY COUNCIL**  
under title number **K684424**

land owned by  
**MR AND MRS BRAZIL**  
under title number  
**K401090**

land owned by  
**GREATEX INVESTMENT  
COMPANY** under title  
number **K61934**

land owned by **PROBEPORT LTD**  
under title number **K962796**

**Scale 1:2500**

Please note: this plan has been produced for illustrative purposes only.  
It is not intended to be a definitive record of the boundaries of land ownership.  
Please refer to the official Register of Title for further details.