Application to register land known as The Downs at Herne Bay as a new Town or Village Green

A report by the Head of Countryside Access Service to Kent County Council's Regulation Committee Member Panel on Monday 13th June 2011.

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

Local Members: Mrs. J. Law and Mr. D. Hirst Unrestricted item

Introduction

1. The County Council has received an application to register land known as The Downs at Herne Bay as a new Town or Village Green from local resident Mr. P. Rose ("the Applicant"). The application was received on 1st September 2009 and was allocated reference number VGA614. 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 the Commons Registration (England) Regulations 2008.

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 6th 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 on the edge of the town of Herne Bay. It consists of a long strip of coastal scrub which slopes steeply from its border with the residential edges of the town down to the sea, and covers an area of approximately 57 acres (23 hectares).

7. The site itself is generally unfenced and access is easily gained via the footways of the surrounding roads and from the Promenade. There are a number of informal paths which criss-cross the site, but there are no recorded Public Rights of Way over the site.

8. The application site is shown on the plan at **Appendix A**.

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. In support of the application, the Applicant has provided 1,119 user evidence questionnaires which describe use of the application site for a wide range of activities including dog walking, bird watching, drawing and painting, blackberry picking, nature walks, picnicking and various sports. It is alleged that these activities have taken place for a period well in excess of twenty years.

11. Also included in the application was a spreadsheet summarising the user evidence, plans showing the relevant locality and various photographs (including aerial photographs) showing the application site.

Consultations

12. Consultations have been carried out as required.

13. In response to the consultation, three letters were received from local residents expressing their support for the application and confirming their use of the application site for recreational purposes.

14. A petition urging the City Council to support the Village Green application (containing 70 signatures) was also received.

Landowner

15. The vast majority of application site is owned by Canterbury City Council ("the City Council") and registered with the Land Registry under various title numbers. There are small sections of the application site for which there is no known landowner. Due to the size of the application site and the large number of different title numbers, it is difficult to show the breakdown of ownership on a small scale plan, however, a large scale plan will be produced at the meeting.

16. The City Council has objected to the application on the basis that the land is held under section 164 of the Public Health Act 1975 for the purposes of 'public walks

and pleasure grounds', the effect of which is to render any use of the land by local residents for recreational purposes 'by right' rather than 'as of right'. In support of this contention, the City Council relies upon the following documents:

- A Commons Commissioner's decision dated 21st February 1980 in relation to a previous application to register part of the application site as a Town or Village Green, which was rejected on the basis that the land was held under the Public Health Act 1875;
- Copies of Byelaws made using powers contained in the Public Health Act 1875;
- Extracts from the City Council's Register of Council-owned land which refer to the land being held under the Public Health Act 1875; and
- A copy of the Extension of Sea Front Pleasure Grounds (Compulsory Purchase) Order 1935, which refers to the land being acquired for the purpose of 'public walks and pleasure grounds'.

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 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'?

18. The definition of the phrase 'as of right' has been considered by the House of Lords. Following the judgement in the Sunningwell[1] 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.

19. In this case, there is no suggestion that the recreational use of the application site has been in exercise of force or with any secrecy. However, there is a dispute as to whether the land is already held by the City Council for the purposes of 'public walks and pleasure grounds' under section 164 the Public Health Act 1875 and, if so, whether the recreational use of the land has taken place by virtue of an existing permission.

The effect of the Public Health Act 1875 provisions

20. Local Authorities have various powers available to them to acquire and hold land for various purposes. Section 164 of the Public Heath Act 1875 ("the 1875 Act") provides that '*any urban authority may purchase or take on lease, lay out, plant,*

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

improve and maintain lands for the purpose of being used as public walks or pleasure grounds...'.

21. The specific issue of the effect of this provision on an application to register land as a Town or Village Green has never been before the Courts. There is, however, judicial support for the proposition that land held under section 164 of the Public Health Act 1875 is the subject of a statutory trust, with members of the public being the beneficiaries of the trust.

22. In *Hall v Beckenham Corporation*[2], the land concerned was held under the 1875 Act and the judge found in that case that "*as far as the local authority is concerned, if the land is purchased under their statutory powers, it is dedicated to the use of the public for the purpose of a park*"[3]. He added later in his judgement "*I think that the Beckenham Corporation are the trustees and the guardians of the park...*"[4].

23. In *Blake v Hendon*[5], it was considered that "*the purpose of section 164 of the Act of 1875 is to provide the public with public walks and pleasure grounds. The public are not a legal entity and cannot be vested with the legal ownership of the walks and pleasure grounds which they are to enjoy. But if they could be given the beneficial ownership, that is what they should have...*".

24. More recently, the House of Lords has considered the effect of a similar provision (namely the Open Spaces Act 1906) on an application to register land as a Town or Village Green. In *Beresford*[6], Lord Walker said this: "*where land is vested in a local authority on a statutory trust under section 10 of the Open Spaces Act 1906, inhabitants of the locality are beneficiaries of a statutory trust of a public nature, and it would be very difficult to regard those who use the park or other open space as trespassers... the position would be the same if there were no statutory trust in the strictest sense, but land had been appropriated for the purpose of public recreation*".

25. The applicant disputes the contention that the effect of the 1875 Act is to act as a barrier to the registration of land as Town of Village Green. He argues that the matter has never been finally decided (or indeed tested) in the Courts, and the remarks made in the *Beresford* case do not constitute a binding legal precedent. In the applicant's view, where land has been made available for public recreation, only overt, temporary and revocable permission to use the land will suffice to defeat use 'as of right'. In this case, the City Council has failed to take any steps to communicate to the recreational users that their use was by virtue of any existing right (i.e. that they already had permission to use the land).

26. In previous cases concerning land held under the 1875 Act, the County Council's position (based upon legal advice which it has received) has been that such land is not capable of registration as a Town or Village Green. Whilst accepting that the comments made in *Beresford* are not legally binding, the County Council's legal advice has always been that they are nonetheless highly persuasive. The principle has been widely accepted by Commons Registration Authorities as being correct

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[2] *Hall v Beckenham Corporation* [1949] 1 All ER 423
[3] *Hall v Beckenham Corporation* [1949] 1 All ER 423 at 426
[4] *Hall v Beckenham Corporation* [1949] 1 All ER 423 at 427
[5] *Blake (Valuation Officer) v Hendon Corporation* [1961] 3 All ER 601 at 607
[6] *R(Beresford) v Sunderland City Council* [2003] UKHL 60 at paragraph 87

and endorsed by DEFRA[7]. A substantive change in the law would be required to justify a departure from the commonly held and accepted interpretation.

Whether the application site is held under the 1875 Act provisions

27. There has been much debate between the Applicant and the City Council as to whether, and if so, what parts of, the application site are held under the 1875 Act provisions. This is not a straightforward exercise and the difficulty is that City Council's records are incomplete.

28. Only on one small part of the application site is the City Council able to positively demonstrate that the land was acquired under section 164 of the Public Health Act 1875 for the purposes of public walks and pleasure grounds[8]. The applicant accepts that this part of the application site is held for those purposes.

29. The remainder of the application site can broadly be divided into two sections, each representing approximately half of the area of the application site. The western section[9] appears to have been acquired in 1901 but there are no formal records as to the manner in which it was acquired or the purpose of the acquisition. The City Council's Register of Council-owned land describes the land as "open space for the use and enjoyment of the public" and refers to the statutory power as "presumably Public Health Act 1875". The City Council also relies upon the Commons Commissioner's decision and the existence of Byelaws to demonstrate that this land is held under the 1875 Act provisions.

30. The eastern part of the application site[10] appears to have been the subject of a Compulsory Purchase Order made by the City Council in 1935 to acquire the land for the purposes of public walks and pleasure grounds. Today, the majority of the land is registered with the Land Registry under various different title numbers, each comprising land of varying sizes.

31. The Applicant disputes (with the exception of the small section referred to at paragraph 27 above) that the application site is held under the 1875 Act provisions and argues that the City Council has not provided sufficient evidence to demonstrate that this is the case. The fact that a small part of the application site was properly acquired under the 1875 Act provisions in 1881 shows, in his opinion, that the City Council would have been aware of the correct procedures for the appropriation of land to recreational purposes, and the fact that the City Council did not follow the same procedures in relation to the neighbouring land acquired in 1901 is evidence that that land was not acquired under the 1875 Act provisions.

32. The Applicant further argues that it is not appropriate to place reliance on the entries in the Register of Council-owned land which refer to "presumably Public Health Act 1875" when there is no supporting evidence to reliably demonstrate how or when those pieces of land were appropriated. In relation to the existence of byelaws on the application site, the Applicant asserts that it is surprising that the

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[7] See DEFRA's 'Guidance to commons registration authorities and the Planning Inspectorate for the pioneer implementation' (version 1.42) at paragraph 8.10.39

[8] Land Registry title number K912449 at the westernmost end of the application site. Acquired by the City Council in 1881.

[9] Comprising Land Registry title numbers K911306, K901348, K912167 and some unregistered land.

[10] Comprising the remainer of the site, i.e. the section lying roughly eastwards from Burlington Drive.

byelaws made in 1906 make no reference to the 1875 Act provisions, even through it is claimed that much of the land was acquired under those provisions just a few years earlier in 1901. Other Byelaws made in 1948 were made under the 1875 Act provisions but refer to 'open space' rather than 'public walks and pleasure grounds'.

33. Regarding the Compulsory Purchase Order made in 1935, the Applicant is of the view that this Order was never fully implemented, because much of this land has either been compulsorily acquired more recently for other purposes (e.g. coastal defence works) or recently registered with the Land Registry 'on the basis of long user' rather than actual proof of ownership. If the land was, as the City Council contends, acquired under the 1935 Order, then there would be no logical reason for the City Council to have to formally acquire it for other purposes, or to have to register it with the Land Registry on the basis of long user. This, according to the applicant, raises significant doubts as to the validity and effect of the Compulsory Purchase Order.

Conclusions regarding 'as of right'

34. As stated above, this application rests upon the third limb of the definition of 'as of right' and, in particular, upon the question of whether the use of the application site has been 'by right' (because the land was already provided for recreational purposes) or whether it can be said that use has taken place 'as of right'.

35. In light of the complications arising in relation to the acquisition of the various parts of the application site by the City Council, Counsel's advice has been sought regarding this point and the advice received is summarised at the end of this report.

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

36. Lawful sports and pastimes can be commonplace activities including dog walking, children playing, picnicking and kite-flying. 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[11].

37. 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*'[12].

38. In this case, there is a considerable amount of evidence of recreational use of the application site. The evidence demonstrates that the land has been used for a wide range of recreational activities, including walking (with or without dogs), playing with children, exercise, enjoying the sea views, kite flying, painting, picnics and ball games.

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[11] *R v. Oxfordshire County Council and another, ex parte Sunningwell Parish Council* [1999] 3 All ER 385

[12] *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

39. The City Council does not dispute that the land has been available for recreational activities and it has made no attempt to limit or discourage such use; indeed, its records show that it has always been the City Council's intention for the land to be available for public use and the existence of the byelaws demonstrate that City Council has actively sought to manage such use in the past.

40. Therefore, all the evidence suggests that the application site as a whole has been available for recreational use, and has actually been used for such purposes, throughout the relevant period.

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

41. 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[13] case, it was considered that *'…at the very least, Parliament required the users of the land to be the inhabitants of somewhere that could sensibly be described as a locality… there has to be, in my judgement, a sufficiently cohesive entity which is capable of definition*'. The judge later went on to suggest that this might mean that locality should normally constitute '*some legally recognised administrative division of the county*'.

42. Use must also have been by a significant number of the residents of the 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*'[14]. 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.

43. At part 6 of the application form, the Applicant specifies the locality as 'the urban boundary of Herne Bay as defined by Canterbury City Council'. As the town of Herne Bay is a recognised administrative area, this would constitute a relevant locality for the purpose of Town Green registration.

44. In relation to whether the application site has been used by a 'significant number' of local residents, over 1100 user evidence questionnaires have been submitted in support of this application. At least 95% of these live in the Herne Bay area. There can be little doubt, therefore, that the land has been used by a significant number of the residents of the locality.

(d) 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. Where there has been no challenge to

[13] *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at page 90
[14] *R (Alfred McAlpine Homes Ltd.) v Staffordshire County Council* [2002] EWHC 76 at paragraph 71

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.

46. In this case, the application was made in 2009, and thus the relevant twenty-year period (“the material period”) is 1989 to 2009.

47. There is no dispute that the application has been used throughout the relevant period. The City Council makes reference in its submission to short periods when the public were excluded from parts of the application site to facilitate various works (e.g. coastal protection works), but does not seek to argue that these had the effect of constituting a substantial interruption to the use of the land.

48. Therefore it can be concluded that use of the application site has taken place over a full period of twenty years.

(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)?

49. The Commons Act 2006 requires use of the land to have taken place ‘as of right’ up until the date of application or, if such use has ceased prior to the making of the application, 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).

50. In this case, it is clear from a visit to the site that recreational use of has continued up to and beyond the date of the application. There is no evidence anywhere that the City Council has ever sought to deny access to the application site as a whole.

Conclusion

51. It can be seen that this case rests almost entirely on the question of the manner in which the land is held by the City Council and the resulting effect on whether the land is capable of registration as a Town or Village Green. There appears to be no dispute that the land has been used for recreational purposes by a significant number of the residents of the locality for a period in excess of twenty years. The only question is whether such use has been by virtue of an existing right (or permission).

Counsel’s advice

52. Due to the complexity of this case, Counsel’s advice has been sought. Counsel was of the view that the City Council has not been able to put forward a watertight case to demonstrate that the whole of the application site is held for the purposes of public walks and pleasure grounds under the provisions of the Public Health Act 1875.

53. In particular, Counsel raised concerns regarding the eastern half of the application site and the validity of the Compulsory Purchase Order and, in relation to the western part of the application site, considered that further information was required to determine whether or not any appropriation of the land to public walks and pleasure grounds could be implied (e.g. by reference to Council minutes or other documents), given that the City Council’s records are incomplete.

54. Counsel's advice was that, given the large number of unanswered questions remaining in relation to how the land is held by the City Council, this is not a case that can properly be determined on paper. The conflicts in the different positions of the Applicant and the City Council in relation to the evidence should, in Counsel's opinion, be heard at a Public Inquiry at which the individual parcels of land can be examined in more detail.

Procedural matters

55. Although the relevant Regulations[15] 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[16]. This involves appointing an independent Inspector to hear the relevant evidence and report his/her findings back to the Registration Authority.

56. Such an approach has received positive approval by the Courts, most notably in the Whitmey[17] 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*'.

57. 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[18]. 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.

58. It is important to remember, as was famously quoted by the Judge in another High Court case[19], 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

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[15] Commons Registration (England) Regulations 2008

[16] 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.

[17] *R (Whitmey) v Commons Commissioners* [2004] EWCA Civ 951 at paragraph 66

[18] In exercise of the County Council's powers to invite further written representations contained in Regulation 28 of the Commons Registration (England) Regulations 2008

[19] *R v Suffolk County Council, ex parte Steed* [1997] 1EGLR 131 at 134

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.

59. In this case, the City Council's records concerning the manner in which the land is held by the Council are incomplete and this leaves many unanswered questions in relation to key elements of the case. Members are therefore asked to endorse Counsel's advice that a Public Inquiry be held to enable these questions to be clarified before a final decision is made.

Recommendations

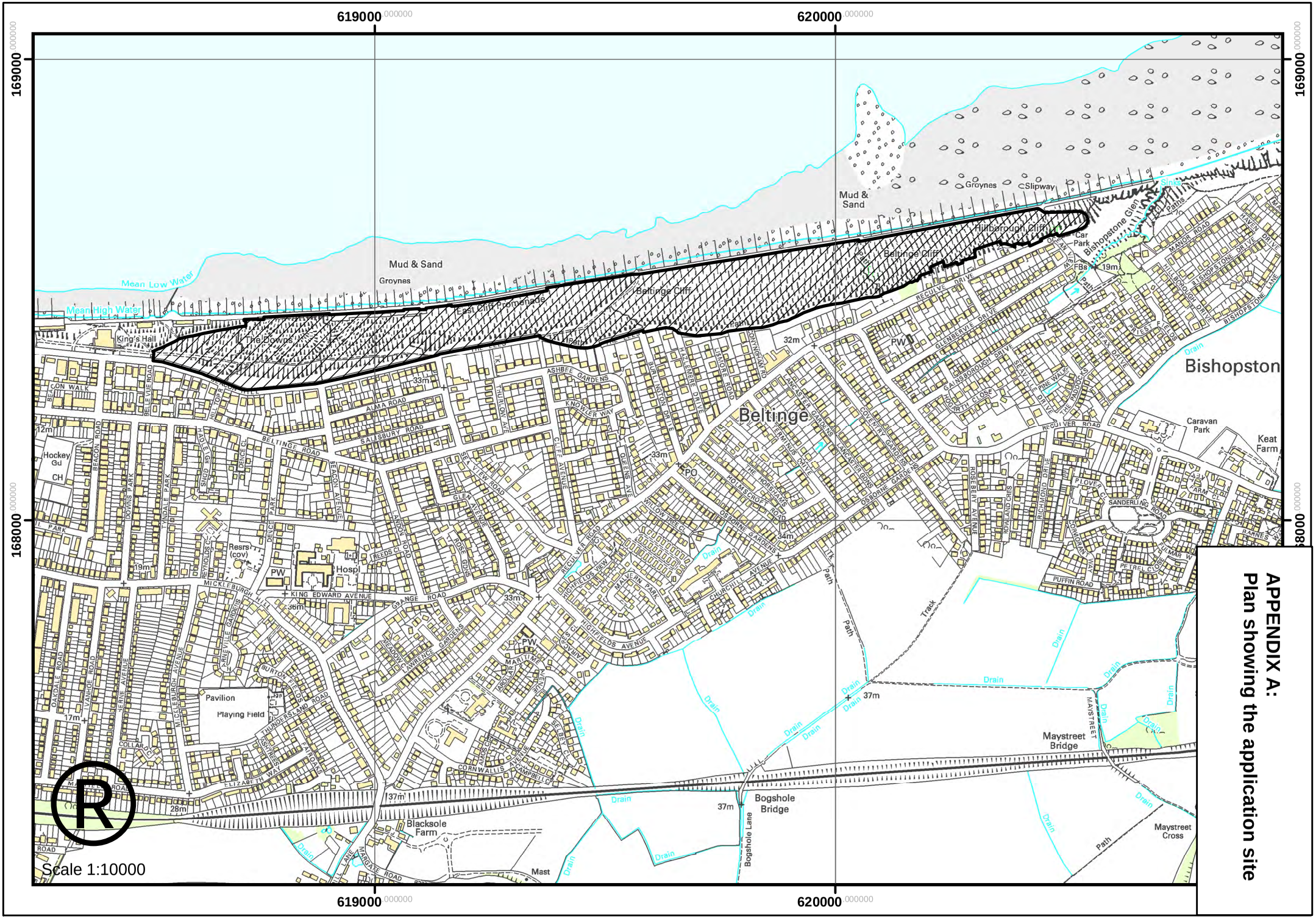
60. I recommend that a non-statutory Public Inquiry be held into the case to clarify the issues.

Accountable Officer:
Mr. Mike Overbeke – Tel: 01622 221513 or Email: mike.overbeke@kent.gov.uk
Case Officer:
Miss. Melanie McNeir – Tel: 01622 221511 or Email: melanie.mcneir@kent.gov.uk

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.

Background documents

APPENDIX A – Plan showing the application site
APPENDIX B – Copy of application form



APPENDIX A:
Plan showing the application site

FORM CA9

APPENDIX B:
Copy of the application form

Commons Act 2006: section 15

Application for the registration of land as a new Town or Village Green

This section is for office use only

Official stamp of the Registration Authority indicating date of receipt:

COMMONS ACT 2006
KENT COUNTY COUNCIL
REGISTRATION AUTHORITY
01 SEP 2009

Application number:

VGA614

VG number allocated at registration (if application is successful):

Note to applicants

Applicants are advised to read the 'Part 1 of the Commons Act 2006 (changes to the commons registers): Guidance to applicants in the pilot implementation areas' and to note the following:

- All applicants should complete parts 1–6 and 10–12.
- Applicants applying for registration under section 15(1) of the 2006 Act should, in addition, complete parts 7 and 8. Any person can 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 part 9. Only the owner of the land can apply under section 15(8).
- There is no fee for applications under section 15.

Note 1
Insert name of Commons Registration Authority

1. Commons Registration Authority

To the: Commons Registration Team, Kent County Council

Note 2
If there is more than one applicant, list all names. Use a separate sheet if necessary. State the full title of the organisation if the applicant is a body corporate or unincorporate. If you supply an email address in the box provided, you may receive communications from the Registration Authority or other persons (e.g. objectors) via email. If part 3 is not completed all correspondence and notices will be sent to the first named applicant.

2. Name and address of the applicant

Name: Mr Philip Rose

Full postal address: 56 Beacon Hill
Herne Bay
Kent CT6 6JN

Telephone number: 07970 405678
(incl. national dialling code)

Fax number:
(incl. national dialling code)

E-mail address: saveourdowns@gmail.com

Note 3
This part should be completed if a representative, e.g. 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. If you supply an email address in the box provided, you may receive communications from the Registration Authority or other persons (e.g. objectors) via email.

3. Name and address of representative, if any

Name:

Firm:

Full postal address:
(incl. Postcode)

Telephone number:
(incl. national dialling code)

Fax number:
(incl. national dialling code)

E-mail address:

Note 4
For further details of the requirements of an application refer to Schedule 4, paragraph 9 to the Commons Registration (England) Regulations 2008.

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 and why: If section 15(6)* is being relied upon in determining the period of 20 years, indicate the period of statutory closure (if any) which needs to be disregarded:
**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.*	
Note 5 *This part is to identify the new green. The accompanying map must be at a scale of at least 1:2,500 and shows the land by means of distinctive colouring within an accurately identified boundary. State the Land Registry title number where known.*	**5. Description and particulars of the area of land in respect of which application for registration is made** Name by which usually known: The Downs Location: Herne Bay – the Downs is a long strip of land that lies north of Beacon Hill, The Lees, Ashbee Gardens, Burlington Drive, Hazlemere Drive, Lismore Road, Conyngham Road, Reculver Road, Beltinge Drive and Reculver Drive. The northern boundary of the proposed green follows the southern edge of the Promenade and includes the concrete hard-standing to the east of the CoastWatch Lookout, and that at the foot of the Hundred Steps at the end of Seaview Road. The eastern boundary of the green follows the U-shaped path that curves from the car park at the end of Reculver Drive down to the Promenade. To the east of this U-shaped path is Reculver Country Park which is owned by Canterbury City Council and managed by Kent Wildlife Trust. The southern boundary of the green follows Beacon Hill and The Lees and the existing paths on the perimeter of The Downs, but at the eastern end follows the boundary of existing back gardens. The western boundary ends more or less in line with Belle Vue Road and runs north-east to the CoastWatch Lookout, thus excluding all the buildings (cottages, King's Hall, HB Sailing Club, pumping station) and the more manicured ground at the western end of The Downs. Common Land register unit number (only if the land is already registered Common Land): Please tick the box to confirm that you have attached a map of the land (at a scale of at least 1:2,500): ☐

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). If this is not possible a map should be provided on which a locality or neighbourhood is marked clearly at a scale of 1:10,000.

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

Indicate the locality (or neighbourhood within the locality) to which the claimed green relates by writing the administrative area or geographical area by name below and/or by attaching a map on which the area is clearly marked:

Our assumption when we began the process of collecting evidence questionnaires was that we would find that this green is used by the inhabitants of Reculver ward and possibly by people living in Heron ward. However, we have discovered that this green is used by the people of the town of Herne Bay as a whole. 96.5% of the 569 evidence questionnaires come from people who live within the urban boundary of Herne Bay as defined by Canterbury City Council and shown on the council's website. Of the remaining 3.5% (20 questionnaires), 7 questionnaires come from people who use the Downs when visiting friends in the town or who have themselves previously lived in Herne Bay. Just 2.5% of the questionnaires come from people who neither live in the town nor have family here (at least, they have not volunteered a family connection in the questionnaire or in a phone call with us). This demonstrates that this land is very clearly a town green used almost exclusively by the people of Herne Bay.

Please tick here if a map is attached (at a scale of 1:10,000):

Attach/specify map

As the locality is a recognised area we have not attached a map with a scale of 1:10,000. However, we have included a Google map of the locality as well as an OS map on which we have drawn the urban boundary. The urban boundary of Herne Bay is also clearly shown on Canterbury City council's website at :

http://www.cartogold.co.uk/canterbury/Canterbury.htm

You may need to scroll northwards to find Herne Bay.

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).

7. Justification for application to register the land as a Town or Village Green

Indulgence by a significant number of inhabitants as of right in lawful sports and pastimes for a period of at least 20 years prior to the submission of this application under section 15 (2) of the Commons Act 2006, as witnessed by the 569 enclosed signed evidence questionnaires showing use for activities including dog walking, bird watching, drawing and painting, sitting to watch the view, team games, picking blackberries, foraging, community celebrations, tobogganing, skiing, football, cricket, walking for pleasure, picnicking, kite flying, running, sports training, nature walks, watching fireworks, camping, bicycle riding and courting.

The attached spreadsheet shows that 609 people have completed these 569 questionnaires. The average period for which each person has used the land is 23.45 years. The longest period of use recorded by any one individual is 86 years. Use of this town green is ongoing and uninterrupted today.

The land is completely unfenced. People access it at any point on its boundary and they do so without secrecy. There are no notices on the land to say who it is owned by, nor are there any indications that local people are being given permission to use the land.

This piece of land is a long (1.75 miles) strip of coastal scrub sloping steeply from its border with the residential edges of the town in the south, to the sea in the north. There are no public rights of way across it. Its length means that it is within easy reach of a significant number of the town's inhabitants. The town itself, like most coastal towns, is long (4 miles of coastal frontage) and relatively narrow. The proposed green therefore runs along 43% of the town's coast. No part of the town is more than 2.5 miles from the proposed green.

Of the 609 people who completed the attached evidence questionnaires, 96.5% of them live within the town of Herne Bay. Evidence questionnaires have been available to people in local shops, clubs, businesses and churches and have been handed out on The Downs themselves. The address on every evidence questionnaire has been marked on a map of Herne Bay that is available on the web. The web address is thedownsmap.tk (no www needed – do pan outwards to get the full picture). That map showing the geographic distribution of those using The Downs demonstrates that this is overwhelmingly an amenity used by the people of the town of Herne Bay.

Note 8 *Use a separate sheet if necessary. 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, proprietor of any "relevant charge", tenant or occupier of any part of the land claimed to be a town or village green** Canterbury City Council
Note 9 *List or enter in the form all such declarations that accompany the application. This can include any written declarations sent to the applicant (i.e. a letter), and also any such declarations made on the form itself.*	**9. Voluntary registration – declarations of consent from any relevant leaseholder of, and of the proprietor of any relevant charge over, the land**
Note 10 *List all supporting consents, documents and maps accompanying the application. Evidence of ownership of the land must be included for voluntarily registration applications. There is no need to submit copies of documents issued by the Registration Authority or to which it was a party but they should still be listed. Use a separate sheet if necessary.*	**10. Supporting documentation** 546 "standalone" signed evidence questionnaires with integral map 23 signed evidence questionnaires that are tied to Map A Map A which shows the extent of the town green Spreadsheet summary of all the evidence questionnaires Maps of the locality – urban district of Herne Bay as delineated on Canterbury City council's website Map showing the geographic distribution of local people who use this town green – available on the web at thedownsmap.tk Copies of photographs of the land Copies of photographs of people using the land for lawful sports and pastimes

Note 11 *List 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.*	**11. Any other information relating to the application** The map demonstrates how accessible this long strip of land is to the entire town. It represents the only land immediately available to the town's inhabitants that is semi wild and therefore a great place for number of informal outdoor activities. It is probably the only place around here where a dog can be safely let off the lead. On any day, no matter what the weather may be like, there will be people on the Downs. There are families who have lived in Herne Bay for generations. You will see from the evidence questionnaires that many people have used this land for lawful sports and pastimes all their life. They describe using the land as a child and then later as a parent and then grandparent. In the collective consciousness of the town, this land is ours and the people of Herne Bay have used it freely for generations. Nobody asks permission to use the land, even if they want to use it for an event. It is the town's asset and we use it whenever we want. We have been overwhelmed by the strength of feeling about this piece of land and the importance it has to local inhabitants. Common to the expressions of support we have received has been the view that this land must be protected; that it must be kept exactly as it is so that it can be handed on intact to the next generation. This green is a well used and well loved piece of life in this town. Herne Bay people use it exactly as if it already had village or town green status. What the town wants now is to afford the Downs the official protection it deserves so that it carries in law the town green status that everyone here already assumes it has.

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.*	**12. Signature** Signature(s) of applicant(s): Paul Rose Date: 31/8/2009

REMINDER TO APPLICANT
You are responsible for telling the truth in presenting the application and accompanying evidence. You may commit a criminal offence if you deliberately provide misleading or untrue evidence and if you do so you may be prosecuted. You are advised to keep a copy of the application and all associated documentation.

Please send your completed application form to:

The Commons Registration Team
Kent County Council
Countryside Access Service
Invicta House
County Hall
Maidstone
Kent ME14 1XX

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 Commons 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.

A copy of this form and any accompanying documents may be disclosed upon receipt of a request for information under the Environmental Information Regulations 2004 and the Freedom of Information Act 2000.