

Application to register land at Princes Parade at Seabrook as a new Town or Village Green

A report by the Head of Countryside Access to Kent County Council's Regulation Committee Member Panel on Tuesday 28th June 2011.

Recommendation: I recommend that the County Council informs the applicant that the application to register the land at Princes Parade at Seabrook as a new Town or Village Green has been not been accepted.

Local Members: Mr. C. Capon

Unrestricted item

Introduction

1. The County Council has received an application to register land at Princes Parade at Seabrook as a new Town or Village Green from local resident Mrs. D. Maskell ("the Applicant"). The application, made on 9th November 2009, was allocated the application number VGA620. 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 of the Commons Act 2006 enables any person to apply to a Commons Registration Authority to register land as a Village Green where it can be shown that:
'a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;
4. In addition to the above, the application must meet one of the following tests:
 - **Use of the land has continued** 'as of right' until at least the date of application (section 15(2) of the Act); or
 - **Use of the land 'as of right' ended no more than 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”) consists of an area of scrubland of approximately 7.4 hectares (18.4 acres) in size situated between the Royal Military Canal and Princes Parade in the Seabrook area of the town of Hythe. The site itself is a roughly rectangular shape extending from the boundary with the Hythe Imperial Golf Club at the western end of the site (at Seabrook Lodge Bridge) up to and including the car park and playground at the eastern end of the site (where the Canal terminates). The application site is shown in more detail on the plan at **Appendix A**.
7. The northernmost edge of the application site abuts the canal towpath, which is recorded on the Definitive Map of Public Rights of Way as Bridleway HB83. The western edge of the site abuts a path between Seabrook Lodge Bridge and Princes Parade which is recorded in the County Council’s Highways Gazetteer as an ‘adopted path’ (i.e. a highway maintainable at the public expense over which the public have a right on foot). The path which crosses the site between Seaview Bridge and Princes Parade is also recorded as an ‘adopted path’.

The case

8. 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.
9. In support of the application, 57 user evidence questionnaires from local residents were provided, demonstrating use of the application site for a range of recreational activities for a period in excess of twenty years. A summary of the evidence in support of the application is attached at **Appendix C**.
10. Also included in the application were extracts of the Shepway District Local Plan Review (2006), various photographs, newspaper cuttings and book extracts referring to the site, as well as correspondence relating to the proposed development of the site for housing.

Consultations

11. Consultations have been carried out as required. The following responses have been received.
12. Hythe Town Council has written to say that it neither supports nor objects to the application.
13. Nine letters of support were received from local residents confirming the use of the application site for recreational purposes.

Landowner

14. The application site is owned by Shepway District Council and is registered with the HM Land Registry under title number K640682. The site was acquired by the District Council in 1974 as part of local government reorganisation, having previously been owned by the former Hythe Urban District Council.
15. The District Council has objected to the application on the following grounds:
 - There has not been 20 years' continuous use of the application site;
 - There has not been use by a significant number of the local residents (except for the footpaths and the play area);
 - Use of the application site has not been 'as of right'
16. In support of its objection, the District Council has produced a lengthy submission which includes a detailed history of the application site and statutory declarations from a number of current and former employees setting out their individual knowledge and experience of the site. A summary of the information contained in the District Council's objection is attached at **Appendix D**.
17. The District Council's main concern is that throughout the last 30 years, parts of the application site have periodically been used by the Council for various different purposes which would have precluded public use of those parts of the application site at certain times. For example, for approximately 20 years from 1982, the western end of the application site was used for the storage of ground maintenance materials and the burning of waste materials; and the eastern end of the application site was, in 1985/86, used as an enclosed site compound for the Hythe Main Drainage Works programme.
18. The most significant interruption to recreational use of the application site came in 2002/03 when the majority of the application site was fenced to prevent public access during a project of major dredging works on the canal which required silt to be deposited on the application site itself. Further localised deposits of silt were also made in 2003, 2004 and 2007. The District Council's position is therefore that large parts of the application site were not, during the relevant period, capable of being used by the public for recreational purposes.

Legal tests

19. In dealing with an application to register a new Town or Village Green the County Council must consider the following criteria:
 - (a) *Whether use of the land has been 'as of right'?*
 - (b) *Whether use of the land has been for the purposes of lawful sports and pastimes?*
 - (c) *Whether use has been by a significant number of inhabitants of a particular locality, or a neighbourhood within a locality?*
 - (d) *Whether use of the land 'as of right' by the inhabitants has continued up until the date of application or meets one of the criteria set out in sections 15(3) or (4)?*
 - (e) *Whether use has taken place over period of twenty years or more?*

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

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

20. 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.
21. In this case, there is no evidence that the use of the application site has been secretive. The District Council refers to the existence of fencing on the application site at various points during the relevant period (most notably in 2002/03), but does not attempt to suggest that any use of the application site has taken place by means of forced entry². Although one witness refers to having to 'climb through undergrowth' to gain access³, there is no other evidence to suggest that any of the users gained access to the site by force.
22. There is evidence that notices were in place during the dredging operations, but these appear to have been erected in relation to safety requirements rather than a deliberate act by the landowner to rebut any acquiescence in the trespassory use of the land. If a notice is to have the effect of causing use 'as of right' to cease it must communicate to the user that the landowner is actually contesting the use of the land⁴. In this case, the notices read simply 'Danger. Deep Silt. Keep out.' and served to warn of a risk rather than to prohibitively exclude the public.

Permission

23. The District Council's position is that use of part of the application site, namely the play area and car park at the eastern end, has been as a result of an implied permission and not 'as of right'. The Council states that *'it is abundantly clear that these areas have been provided by the Council for use by the general public with the permission of the Council'*⁵.
24. It is well established that acts of encouragement by the landowner to use a particular site for recreational purposes do not have the effect of conferring an implied permission on the user. In *Beresford*⁶, which concerned a Council-owned sports field, it was held that *'the provision of benches for the public and the mowing of the grass were... not indicative of a precatory permission but of a public authority, mindful of its public responsibilities and function, desirous of providing recreational facilities to the inhabitants of the locality... The positive encouragement to the public to enjoy the recreational facilities of the Sports Arena, constituted, in particular, by the provision of benches, seems to me not to undermine but rather to reinforce the impression of members of the public that their use was as of right'*.

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

² The fencing is however relevant to the question of whether use of the application site has taken place for a full period of twenty years, but this is addressed separately later on in this report

³ See evidence questionnaire of Mr. and Mrs. Barker

⁴ *R (Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust) v Oxfordshire County Council* [2010] EWHC 530 (Admin) at paragraph 22 per Waksman J

⁵ See paragraph 12 of the District Council's Statement of Objection

⁶ *R (Beresford) v Sunderland City Council* [2003] UKHL 60 at paragraphs 49 and 50 per Lord Scott

25. As such, in the present case, the provision of play equipment and parking facilities at the eastern end of the application site was not, of itself, sufficient to confer any form of implied permission on the users. Permission must normally be communicated to the user, but in the absence of evidence of any overt communication of permission to enter this part of the application site, it cannot be asserted that the recreational use has taken place on a permissive basis.

Use of existing Public Rights of Way

26. Recreational use which has the outward appearance of being in exercise of an existing Public Right of Way is not qualifying use for the purposes of Village Green registration. The issue was considered by the Courts in *Laing Homes*⁷, in which the judge said that: *'it is important to distinguish between use that would suggest to a reasonable landowner that the users believed they were exercising a public right of way to walk, with or without dogs... and use that would suggest to such a landowner that the users believed that they were exercising a right to indulge in lawful sports and pastimes across the whole of the fields'*.
27. In this case, there are several recorded Public Rights of Way on or abutting the application site. These are shown on the plan at **Appendix A**. The surfaced towpath which runs between the northern boundary of the application site and the Royal Military Canal is recorded as a Bridleway with the reference HB83. A Bridleway provides the public with a right of way on foot, on horseback or leading a horse, or on a bicycle. At the western boundary of the application site, there is a surfaced path which connects Seabrook Lodge Bridge with Princes Parade, and crossing the centre of the application site there is a further surfaced path which connects Seaview Bridge with Princes Parade. These two paths are both recorded in the Highways Gazetteer as 'adopted paths' which are publicly maintainable by Kent Highway Services. The public therefore have a right of passage on foot over these two routes.
28. The vast majority of the user evidence refers to walking. It is difficult on paper to differentiate between general recreational walking which involves wandering over a wide area, and walking which involves walking along a defined route between specific points. During the 1980s, the site was mown several times a year and would have been accessible for recreational walking; indeed, the fact that travellers settled on the site in the late 1980s supports this view. One of the Objectors witnesses⁸ recalls that at one point a worn track used by dog walkers appeared on the site, which suggests that the site was regularly used for this purpose at that time.
29. However, given the overgrown state of the land and the instability caused by the silt deposits in the latter part of the relevant twenty year period (i.e. after 2002), it seems more likely that walking (and jogging) took place on the surfaced paths, possibly as part of a circular route around the application site, rather than general wandering over the site itself. Similarly, it is difficult to see how cycling could have taken place anywhere other than on the surfaced paths which surround and cross the application site during this period.

⁷ *R (Laing Homes) v Buckinghamshire County Council* [2003] 3 EGLR 70 at 79 per Sullivan J.

⁸ See statement of Mr. Christopher McCreedy included in the Council's objection

30. Walking and cycling on the Bridleway would have been in exercise of an existing Public Right of Way, whilst cycling on the adopted paths (which provide a right of way on foot only) would have constituted an offence under the Highways Act 1835⁹ and would not be a lawful activity. The fact that some of the users refer to having used the site for walking on a daily basis throughout the 20 year period without reference to the substantial fencing erected in 2002 is at least suggestive that such use was confined to the paths.

31. Therefore, it is likely that at least some of the use of the application site for walking, jogging and cycling, certainly in the latter part of the relevant period, was not use that can be described as being 'as of right'. In any event, in light of the recommendation and the other issues raised in this report, it is not necessary to conclude definitively on this point.

General conclusion on use 'as of right'

32. Therefore, from the evidence available, it is possible to conclude that such use of the application site as did take place during the relevant twenty year period has, on the whole, been 'as of right'. The question of whether recreational use took place throughout the relevant period is addressed later in this report.

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

33. 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 activities¹⁰.

34. 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*'¹¹.

35. In this case, the evidence demonstrates that the land has been used for a number of recreational activities. The summary of evidence of use by local residents at **Appendix C** shows the full range of activities claimed to have taken place. The majority of use has been for walking (with or without dogs), but reference is also made in the user evidence to activities such as jogging, cycling, photography and bird watching.

36. There is therefore evidence that the land has been used for a variety of recreational purposes. Whilst it is debatable as to whether some of the use has been in exercise of the existing public rights of way, it is clear that some of the activities mentioned (e.g. fishing, feeding ducks) are unquestionably referable to the use of the canal and/or towpath, which do not form part of the application site.

⁹ Section 72.

¹⁰ *R v. Oxfordshire County Council and another, Sunningwell Parish Council* [1999] 3 All ER 385

¹¹ *R v Suffolk County Council, ex parte Steed* [1995] 70 P&CR 487 at 508 and approved by Lord Hoffman in *R v. Oxfordshire County Council, ex parte Sunningwell Parish Council* [1999] 3 All ER 385

One witness also refers to playing golf¹² but this would be referable to the use of the Hythe Imperial golf course situated on adjacent land that is not subject to this application. These latter activities are to be disregarded in assessing the evidence of the use of the application site as a whole.

37. Overall, it can be concluded that the site has been used 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?

38. The definition of locality for the purposes of a Town or Village Green application has been the subject of much debate in the Courts. In the *Cheltenham Builders*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’.

39. 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 constitutes a ‘significant number’ will depend upon the local environment and will vary in each case depending upon the location of the application site.

The ‘locality’

40. The Applicant specifies the locality at Part 6 of the application form as the “East ward of Hythe Town Council administrative area”. Recent case law¹⁵ has confirmed that an electoral ward is capable of being a relevant locality for the purposes of Village Green registration.

41. The plan at **Appendix E** shows where the users of the application site live in relation to the site itself. It can be seen that the majority of the users live within the East ward and therefore it seems appropriate that this should be the relevant ‘locality’ in this case.

‘significant number’

42. In this case, the application is supported by evidence from 57 users living in the locality.

¹² See evidence questionnaire of Mr. R. Trice

¹³ *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at 90

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

¹⁵ *Leeds Group plc v Leeds City Council* [2010] EWHC 810 (Ch)

43. The District Council states that use of the majority of the application site¹⁶ has not been by a significant number of local residents. Since July 2009 (four months prior to the application being made), the District Council has made daily inspections of the application site and these have revealed that there has not been significant use of the application site. Such use as has taken place has been, according to these inspections, confined to the footpaths and the designated play area. Although the inspections only began four months prior to the application being made, the District Council considers them to be a representative indication of the use of the land on the basis that there does not appear to have been any major change in the pattern of use asserted by the local residents.
44. The applicant challenges the validity of the inspections on the basis that there is insufficient information regarding the duration or extent of the inspections. For example, in the summer of 2009, only three visits were undertaken in the evening when most dog walkers would be out. She adds, correctly, that any information gathered after the date of the application is not directly relevant to considering whether the application site has been used in the requisite manner during the relevant twenty-year period.
45. It is clear that the pattern of use has varied according to the availability of different parts of the application site for recreational use. Prior to the dredging operations in 2002, the site was mown at least annually and the maintenance of the site made it more capable of being used for recreational purposes. Since the dredging operations have taken place, the site has become overgrown and less capable of use for leisure activities.
46. The evidence is that when the site was available for use, it was used by local residents on a regular basis. Whilst the recent survey of use by the District Council suggests substantially less use, this cannot be taken as a representative sample of use throughout the 20 year period given the obvious changes in the nature and character of the land.
47. In considering whether use has been by a significant number of local residents, the test to be applied is a qualitative rather than quantitative one; it is concerned with establishing whether a reasonable landowner would have been aware of public use of the land. The mowing of the grass and the later erection of the fencing in relation to the dredging operations (to ensure public safety) are actions which suggest that the District Council was aware, certainly during the early part of the relevant period, of the public use of the land.
48. As a whole, it can be concluded that the application site has been used by a significant number of the residents of a defined locality.

(d) 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

¹⁶ i.e. excluding the footpaths and the play area

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, the application was made in 2009. There is no evidence of any specific challenge to recreational use at the time that the application was made, although the earlier erection of the fencing during 2002 did have the effect of causing the use of the majority of the application site to cease temporarily at that time. This is dealt with in more detail in the next section.

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

51. In order to qualify for registration, it must be shown that the land in question has been used for a full period of twenty years. In this case, use of the application site 'as of right' is continuing and, as such, the relevant twenty-year period ("the material period") is calculated retrospectively from the date of the application, i.e. 1989 to 2009.
52. The District Council's position is that use has not taken place for a full period of twenty years. At various times, parts of the application site have been put to alternative uses, thereby precluding public access. In particular, the secure 5ft high fencing which enclosed the majority of the application site in 2002/03 to allow canal dredging works to take place would have prevented any access to those areas. Furthermore, the deposit of silt on this part of the application site would have made the site wet and unstable and, consequently, the site would have remained inaccessible to recreational users for a considerable period thereafter.
53. The applicant does not dispute that part of the application site was temporarily fenced off during the dredging of the canal. However, this was, in the applicant's view, to enable the District Council to meet its obligations under health and safety legislation and not in an attempt to deliberately preclude the public from using the site for recreational purposes. No permanent fencing has been erected around the application site and parts of the site remained open throughout the dredging operations. The applicant also refutes the District Council's claims that the site remained wet and unstable, since the Council would not have removed the fencing had there been a significant safety risk.

The fenced area

54. The area fenced off during the 2002/03 dredging operations ("the fenced area") is shown on the plan at **Appendix F**. The fenced area constitutes approximately 86% of the application site. According to the District Council's records, the fencing was erected in approximately October 2002 and remained in place until early October 2003.
55. A number of documentary sources exist to support the contention that the fencing did have the effect of precluding the public from this area. For example, the fencing is visible on aerial photographs taken during the dredging operations (see **Appendix G**), it is also referred to in both the method statement and the dredging contract prepared in relation to the works, and photographs taken on the ground show the fencing in place. Furthermore, a Planning Inspector's report in relation to a Public Inquiry held into the Shepway District Local Plan Review (which took

place between June and December 2003) described the application site as *'somewhat untidy and is not open space to which the public have access'*.

56. The effect of the dredging works is also well documented within the user evidence. At least 13 of the 57 witnesses specifically stated on their evidence forms that they had been deterred from using the application site during (and in some cases after) the dredging operations took place. Others refer to their use being restricted by overgrown vegetation, which has presumably been caused through a lack of usage of the land since those operations.

The eastern end of the application site

57. The eastern end of the application site consists of a play area and a parking area which were constructed in 2002. Prior to that time, this area was occupied by a site compound (between 1993 and 1996) in relation to a major coastal protection scheme, during which time it was inaccessible to the public.
58. The Council accepts that the play area is used by the public and it would appear that recreation use in the latter part of the relevant period has been concentrated in this part of the site. One witness states *'we are now restricted to using the land by the climbing frame/play park for picnics etc... the land is too overgrown to use all of the land indicated'*¹⁷.
59. However, recreational users would, by necessity, have been excluded from this part of the land both during the time that it housed the compound in the mid-1990s and again in 2002 when the car park and play area were constructed. Therefore, it would not have been available for recreational use for the full twenty year period.

The remainder of the application site

60. Excluding the fenced area and the eastern end of the application site, this leaves only the formal paths and the grass verges abutting those paths. Any use of the application site which is referable to the use of a recorded right of way is not use which is 'as of right'. It is a user which is exercise of an existing right, from which further rights cannot be acquired. These areas would therefore not be capable of registration as a Village Green.

Conclusions

61. It is clear from the evidence that the application site has been available for public use for a considerable period; indeed, some of the witnesses have known the site for over 60 years. However, as stated above, the relevant period with which the County Council is concerned in relation to this application is 1989 to 2009, and it has been demonstrated that for part of this period (in 2002), the majority of the application site was not available for recreational use by virtue of the dredging operations that took place thereon. Other parts of the application site have also been fenced off and unavailable for recreation use during the relevant period.

¹⁷ See user evidence questionnaire of Mr. C. Doherty

62. The tests in relation to the registration of land as a Town or Village Green require uninterrupted evidence of use over a full twenty-year period. Whilst the legislation does make provision for certain interruptions that were the subject of a formal enactment (e.g. closure due to foot and mouth) to be disregarded, there is no evidence of any such formal statutory closure in this case.
63. In order to qualify for registration as a Town or Village Green, all of the relevant legal tests must be met. As noted above, the part of the application site that was subject to the dredging operations has failed to meet at least one of the tests and, as such, it would not be capable registrable as a Town or Village Green.
64. The case is complicated by the fact that not all of the application site was fenced off in 2002, leaving open the question of whether the County Council could register a lesser area than that applied for. The County Council is not bound to consider the application site as a single entity and does have the power to register a lesser area where appropriate¹⁸. Careful consideration has been given to this possibility, however, as noted above, the remaining areas would not (for varying reasons) be capable of registration as a Town or Village Green.
65. On a procedural note, the applicant has requested that this matter be dealt with by way of a Public Inquiry. Although Registration Authorities are not, under the relevant Regulations¹⁹, required to hold a Public Inquiry, it has in recent times become a useful practice to do so in cases which turn on disputed issues of fact. The Courts have endorsed this approach and refer to the need for such an Inquiry in any case where there is a 'serious dispute'²⁰.
66. However, in this case there is no such dispute to warrant a Public Inquiry being held: both the applicant and the objector's witnesses refer to the existence of the fencing during dredging operations, and the applicant acknowledges that there was a period during which a large part of the site was fenced off. Any dispute as to the existence of the fencing is clarified by the photographs supplied by the objector. It is therefore not considered that a Public Inquiry is appropriate in this case.
67. From close consideration of the evidence submitted, it has been concluded that the legal tests concerning the registration of the land as a Town or Village Green (as set out above) have not been met.

Recommendation

68. I recommend that the County Council informs the applicant that the application to register the land at Princes Parade at Seabrook as a new Town or Village Green has been not been accepted.

Accountable Officer:

Mr. Mike Overbeke – Tel: 01622 221513 or Email: mike.overbeke@kent.gov.uk

Case Officer:

¹⁸ See *Oxfordshire County Council v Oxford City Council* [2006] UKHL 25. There is no rule that the lesser area must be substantially the same as the area originally applied for.

¹⁹ Commons Registration (England) Regulations 2008

²⁰ See *R(Whitney) v Commons Commissioners* [2004] EWCA Civ 951 at paragraph 66 per Waller LJ

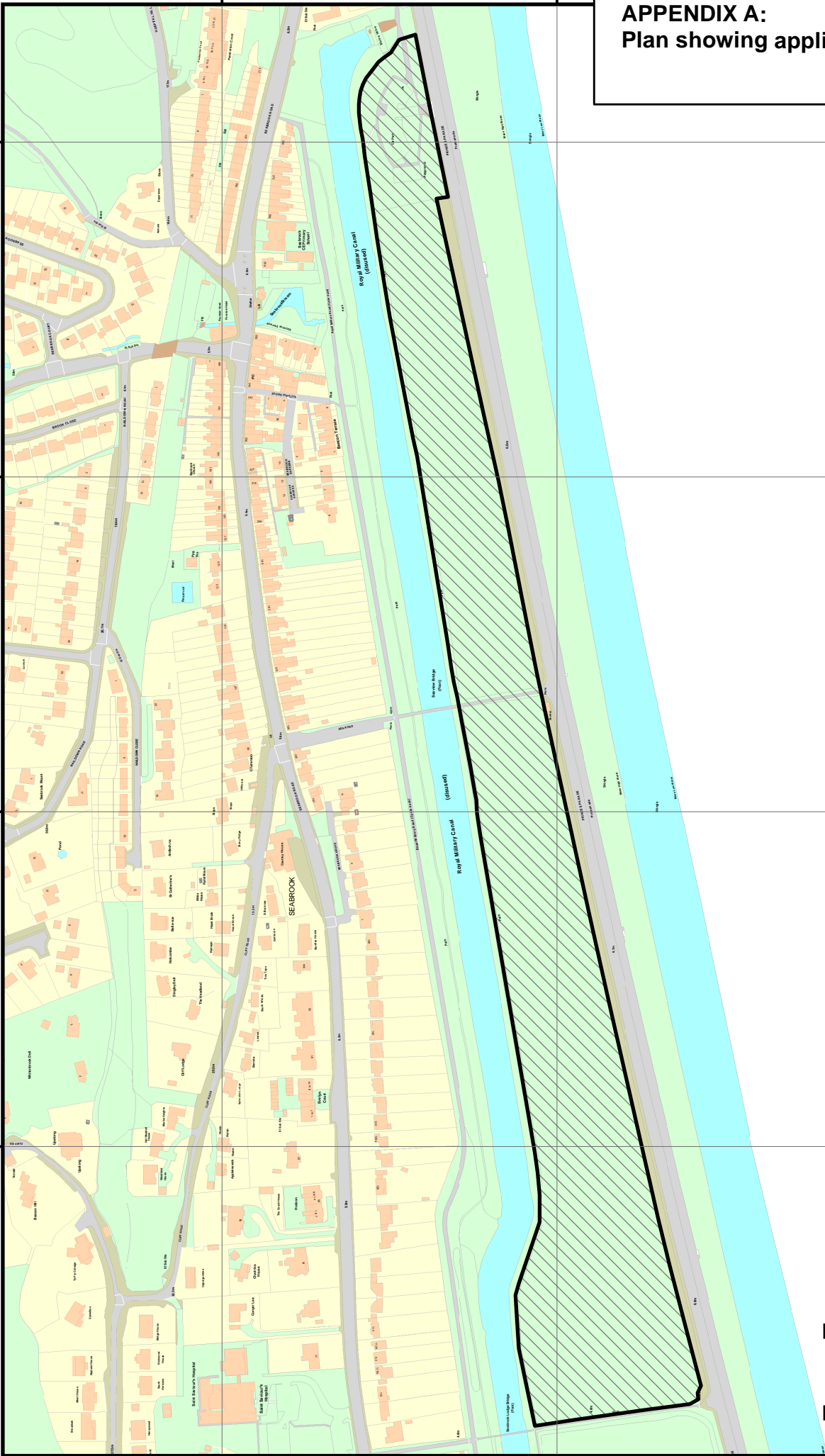
Miss. Melanie McNeir – Tel: 01622 221628 or Email: melanie.mcneir@kent.gov.uk

The main file is available for viewing on request at the Countryside Access Service, Invicta House, County Hall, Maidstone, Kent ME14 1XX. Please contact the case officer for further details.

Background documents

- APPENDIX A – Plan showing application site
- APPENDIX B – Copy of application form
- APPENDIX C – Table summarising user evidence
- APPENDIX D – Summary of objection
- APPENDIX E – Plan showing the locality
- APPENDIX F – Plan showing 2002/03 fencing
- APPENDIX G – Aerial photographs of the application site

APPENDIX A:
Plan showing application site



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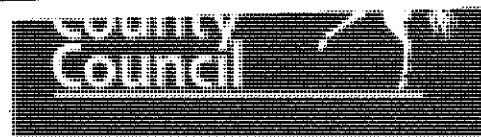
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FORM CA9

Commons Act 2006: section 15

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

APPENDIX B:
Copy of the application form



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
09 NOV 2009

Application number:

VGA620

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: KENT COUNTY COUNCIL
2ND FLOOR
INVICTA HOUSE
COUNTY HALL
MAIDSTONE
KENT ME14 1XX

If section 15(3) or (4) applies, please indicate the date on which you consider that use 'as of right' ended and why:

N/A

**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.*

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:

N/A

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: PRINCES PARADE

Location: LAND LYING BETWEEN THE ROYAL MILITARY CANAL TO THE NORTH AND PRINCES PARADE ROAD TO THE SOUTH. FROM BATTERY POINT EAST TO SEABROOK LODGE BRIDGE TO WEST.
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:

LAND LYING WITHIN EAST WARD OF HYTHE TOWN COUNCIL ADMINISTRATIVE AREA - SHEPWAY DISTRICT COUNCIL.

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

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

PLEASE SEE ATTACHED
STATEMENT.

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

SHEPWAY DISTRICT COUNCIL
CIVIC CENTRE
CASTLE HILL AVENUE
FOLKESTONE, KENT.
CT20 2QY

Paragraph 7 - Justification for Application

The land which is proposed as a Town or Village Green has been as open space area from time immemorial. The application area includes the land to the North of the Hythe Imperial Hotel the Imperial Golf Course and the land eastward to Battery Point.

It has always been available for public use without permission and without force has been used for Lawful Sports and Pastimes without hindrance, without permission and without force for a much longer period than twenty years . The uses have included: part used for Seabrook School's Sports Field before the Second World War, kite flying , regular games (see below), horse riding, dog walking, picnics, bird watching, cycling, organised walking trips by ramblers, casual walking, running, angling use of the bank access to the canal for canoeing.

The current designation for the area is for leisure and recreation (LR9) and tourism (TM8).

There are no signs anywhere to indicate any restriction to any access.

The area is bounded by the Royal Military Canal which is an Ancient Monument- to the north and the Princes Parade roadway to the south. It has Public Rights of Way from Seabrook Road to princes Parade running across from north to south at every bridge across the canal - see map.

Its modern history starts in 1887 when part of it (from Seabrook Battery Point to Seaview Bridge) was used as a recreation ground by Seabrook Primary School - see O/S Map extract 1947.

A photograph taken in 1906 shows the area open and unfenced.

Again the enclosed photograph dated 1937 shows the area to be unfenced and open.

During the Second World War mines were buried in it.

The land in question (excludes the golf course and the area to the north of the Hythe Imperial Hotel) came into the control of Shepway District Council when it was formed in 1974. Before this it was owned by Hythe Borough Council who acquired it by gift and purchase in 1933. There was an agreement within the purchase contract that stated that the land was to be left as open space. A loan was raised from the ecclesiastical commission for the sum of £7, 120 for the purchase. The loan was granted for the sole purpose "for public walks and pleasure grounds" but this was never implemented. Instead between 1947 and 1960 it was used as an open rubbish tip.

Since then it has been left in its present state and openness apart from a period when part of it was used for laying out spoil from the dredging of the Canal.

The towing path which is now a bridleway was used by horses for towing during the construction of the Royal Military Canal in the early part of the 19th century. The towing path can be seen on the plan.

The enclosed copies of the original photographs show that the land was not fenced in the early part of the twentieth century.

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

MAP 1:2500

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

SHEPWAY DISTRICT COUNCIL TRIED ON TWO PREVIOUS OCCASIONS TO DEVELOPE THIS SITE. IN 1987 THEY WANTED TO BREACH THE SEA WALL AND BUILD A MARINA WITH HOTELS ETC. IN 2003 THEY WANTED TO BUILD FLATS ABOVE SHOPS DIRECTLY ONTO THE PROMENADE AS THE METHANE LEVEL WAS TOO HIGH FOR HOUSES AND RE-ROUTE PRINCES PARADE ROAD ACROSS THE SITE. BOTH TIMES IT WENT TO PUBLIC ENQUIRY AND THE INSPECTOR FOUND ON BOTH ACCOUNTS THIS LAND SHOULD ONLY BE USED FOR LEISURE AND RECREATION, ONE OF THE REASONS GIVEN ~~WAS~~ IS THE DEFICIENCY OF OPEN SPACE IN SEABROOK. SOME DOCUMENTATION IS ENCLOSED.

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):

Denise Maskell

Date:

*9/10/2009***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.

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: MRS. DENISE MASKELL

Full postal address: 2 WOODLANDS DRIVE
(incl. Postcode) SEABROOK, HYTHE
KENT

Telephone number: 01303-239159
(incl. national dialling code)

Fax number: 01303-239159
(incl. national dialling code)

E-mail address: dealan.maskell@ntlworld.com

Note 3

This part should be completed if 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: ☐

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

Name	Period of use	Frequency	Activities	Other comments
Mrs. C. ARTHUR	1995 – present	Daily	Walking and cycling	
Mr. and Mrs. D. BARKER	2006 – present	Weekly	Bird watching, photography, dog walking, nature observation	'climbed through undergrowth' to gain access
Mr. D. BARLOW	1968 – present	Daily	Walking	
Mr. R. BARLOW	1968 – present	2-3 times per week	Walking	
Mrs. V. BARLOW	1968 – present	2-3 times per week	Dog walking	
Mrs. Y. BEAZLEY-LONG	1987 – present	Daily	Walking, bird watching, dog walking	
Mrs. S. BILL	1986 – present	Weekly	Jogging, walking with children, cycling	
Mr. J. BIRCH	1972 – present	Daily/weekly	Dog walking, bird watching, enjoying countryside	Deterred from using the site 'when canal was dredged'
Mrs. S. BIRCH	1970 – present	Weekly	Walking, exercising dogs, fishing, bird watching, photography	
Miss. M. BROWN	Not stated	Not stated	Not stated	Prohibitive notices appeared 'when canal sludge was put on top of soil'
Mrs. D. CLARKE	1998 – present	Occasionally	Walking, enjoying the views	
Mr. L. CLARKE	1982 – present	Daily	Walking, nature watching	
Mrs. M. CLARKE	1982 – present	Daily	Recreational walking, dog walking	
Mrs. V. COLLINS	1950 – present	Not stated	Walking, watching wildlife, enjoying sea view	
Mr. L. DAY	2004 – present	Daily	Walking	
Mr. C. DOHERTY	2004 – present	Daily	Regular user of the land since 1979 (when living outside of the locality). 'we are now restricted to using the land by the climbing frame/play park for picnics etc... the land is too overgrown to use all of the land indicated'.	
Mr. G. EARLAND	2007 – present	Weekly	Exercise, observing wildlife, photography	
Mrs. R. ERICSON	1981 – present	Daily	Walking	'part of the land has been allowed to get overgrown for many years'.
Mrs. J. GORE	1978 – present	Occasionally to 1992, then weekly	Walking, picnicking	
Mrs. G. HALLETT	1989 – 2009	Occasionally	Walking	
Mrs. J. HARRIS	1955 – present	Often	Dog walking and playing as a child	
Mrs. A. HAWKINS	1987 – present	Daily	Walking, canoeing, taking children to play area, mushrooming	'land was filled with canal dredge so areas were made unusable'
Mr. B. HAWKINS	1987 – present	Daily	Dog walking, bird watching, playing with grandson	'canal dredged and area obstructed'
Mr. D. HAY	1985 – present	Weekly	Dog walking, walking	

Mrs. N. HILL	1986 – present	Weekly	Walking, cycling	
Mr. P. HOPKINS	1965 – present	Weekly	Nature observation	
Ms. D. HOWAN and Ms. W. DAVIES	2003 – present	Daily	Walking, dog walking	
Mr. W. LEYTON	1998 – present	Several days per week	Walking, dog walking, bird watching	
Mr. J. LITTLEMORE	1978 – present	Every other day	Walking, cycling	See others using the land 'every time I visit'
Mr. A. MASKELL	1988 – present	Several times per week	Dog walking	'some fencing in 2002/2003 for silt from canal'
Mrs. D. MASKELL	1988 – present	Daily	Walking, dog walking, cycling	Prohibitive notices 'for six months between Nov 2002 and April 2003 while spoil from the dredging of the canal was spread on some of the site'
F. T. MOORE	1935 – ?	Daily	Dog walking	Deterred from using the land 'at one time when it was used as a rubbish dump'
Mr. J. MORTIMER	1982 – present	Daily	Walking	
Mrs. L. MORTIMER	1982 – present	Daily	Walking	
Ms. J. MURRAY	2005 – present	Daily	Walking, dog walking, picnics, feeding ducks, bird watching	
33				
Mr. A. McNAUGHTON	1995 – present	Not stated	Walking, cycling	
Mrs. J. NOLAN	1997 – present	3 times weekly	Walking, cycling, drawing/painting scenes of canal	
Mr. D. NOWERS	1957 – ?	Most days	Dog walking	Used until 'land became unusable following and during canal dredging'
Mrs. M. NOWERS	1957 – ?	Weekly	Walking	Used until 'land used for depositing dredging from the canal'. 'when first completed dredging deposit was deep and soft, therefore unsafe. Now overgrown and unsightly'.
Mr. R. PERRIES	2003 – present	Daily	Walking	
Mr. M. PRENTICE	1979 – present	Daily	Jogging, walking	Use deterred 'when the land was being used as a dump for cleaning the canal some years ago'
Mr. R. PROFITT	1980 – present	Weekly, sometimes daily	Walking, cycling, dog walking, wildlife photography, bird watching	'always people there when I use it'
Mrs. R. PROFITT	1959 – present	Often	Dog walking, playing as a child	
Mr. M. ST CLARE	2000 – present	Daily	Walking, jogging, picnicking, bird watching, kite flying, football, badminton	
Mr. G. SMERDON	2008 – present	Daily	Fishing, bird watching, walking	Lived outside of locality prior to 2008 but regular visitor. Land 'in constant use by others'
Mrs. S. SMERDON	2008 – present	Daily	Walking, relaxation, bird watching, socialising	Lived outside of locality prior to 2008 but regular visitor.
Mr. M. STREATFIELD	2003 – present	Weekly, often daily	Walking and nature observation	
Mrs. C. SMITH	1973 –	Daily	Dog walking	

	present			
Mrs. B. THORNE	Not stated	Several times per week	Walking	Has known the land for over 80 years
Mr. R. TRICE	1949 – present	Daily	Golf, walking	
Miss. V. TROTMAN	2006 – present	Weekly	Photography, wildlife watching	
Mrs. S. TUPPER	1972 – present	Weekly/daily	Walking, cycling, nature observation	
Mrs. C. WALKER	1987 – present	Often	Dog walking	
Mr. and Mrs. WEST	1972 – present	Weekly	Dog walking, walking	Deterred from using 'when the Council dredged the canal and the silt was put on the land – 2007?'
Mrs. L. WHYBROW	1995 – present	At least weekly	Walking, cycling	'some of the land was inaccessible during and after the dredging of the canal some years ago but it was still possible to walk on parts of it'
Mr. G. WILLISHER	1964 – present	Occasionally	Walking	
Mrs. C. WRIGHT	1989 – 2009	Daily	Walking	Deterred from using 'only when dredging the canal, twice in my time living in Seabrook'

**APPENDIX D:
Summary of documents submitted in
support of the objection**

The substance of the objection to the application by Shepway District Council is summarised at paragraphs 16 to 18 of the report. Below is a summary of the evidence submitted in support of the objection.

Visual character assessment dated 19th October 2010

This assessment, which includes a photographic survey comprising 75 photographs, serves to demonstrate the varying degree of accessibility on the application site. It asserts that there is no evidence of recent or regular access to the site, except along Seaview path, and concludes that large parts of the application site are generally inaccessible, or accessible with difficulty, due to vegetation.

Statutory Declarations from current and former employees of the Council

Andy Bateman: previously employed by the Council as an engineer on a major coastal protection scheme and was based at a compound on the eastern end of the application site (where the car park and play area currently stands) between 1993 and 1996. During this time, the area occupied by the compound was inaccessible to the public.

Christopher McCreedy: has worked for the Council since 1982, in various roles all involving management responsibility for the application site. Made fortnightly inspections of the site during 1982 and 1994, with monthly inspections since 1994. Recalls that in 1982, site was fairly flat with the western end being used for the storage of materials and as a burning yard. The rest of the site was mown on a frequency of 3-4 times per year and consisted of a rough grass sward. Was aware of use by dog walkers and a worn track appeared at one point. During the late 1980s, the site became occupied by travellers for a period of about 3 months. Once the travellers left, a trench and bund was created to prevent any vehicular access. This also made it difficult for pedestrians to access the site. In 1992, subsidence occurred on the site which resulted in the mowing regime to be reduced to twice a year. In 1993/4, further subsidence occurred and the mowing all but ceased. There was no activity on the site, other than localised grass cutting along the edges of the site, from the late 1990s until 2002. In 2002/3, a large dredging operation took place on the site to remove a vast amount of silt from the Royal Military Canal, with the silt being deposited on the site. The site was fenced off and there was no public access to it, other than the Seaview Bridge footpath and the tow path. Since the dredging works were completed in 2003, there has been minimal, if any, access to the site. The fencing remained in place until at least October 2003. Since the silting deposits, the site has become heavily overgrown and, for the most part, either virtually or completely impregnable by foot.

Don Prebble: previously employed by the Council as Project Supervisor on the dredging contract for the Military Canal. Was based on site and oversaw day-to-day operations. The fencing of the site (with the exception of the Seaview Bridge footpath and the eastern end of the site which was fenced off for the construction of a play area, picnic area and car park) was put in place between 14th and 21st October 2002. Signs were also placed on the fencing warning the public there was no access to the site. The result of the fencing was that there was no access to the site at all. Wrote to a member of the public in July 2003 telling them that the fence would be removed in September or October 2003. No record of the date when the fencing was formally removed.

John Ridley: worked under contract to the Council in 1983/84, 2003/04 and 2007 clearing silt from the Canal and local streams. The silt was deposited on the application site (the section to the east of Sea View bridge). Access to the site was via a locked barrier.

Kate Hayes: employed by the Council in a role which involves the management of the Royal Military Canal. Part of the role includes supervising and inspecting weed treatments which have taken place three times per year (during summer months) for the last 6 years. Has never witnessed any use of the site by the public; due to the overgrown nature of the site and uneven surface, it is not accessible to the public. In 2002, a car park, play area and picnic site were constructed and installed by the Council. During the construction, the area was fenced and closed off to the public for most of 2002. The construction took place at the same time as a substantial dredging operation that prevented public access to the remainder of the site. This is evident from aerial photographs taken at the time which show the fencing in place.

Lucy Sharp: employed by the Council as a Project Engineer. Has reviewed all of the files held by the Council in relation to the 2002 dredging works and attached various documents to her statutory declaration (including letters, reports, aerial photographs and site diary extracts). A photograph held on the file dated 15th October 2003 shows that at least some of the fencing had been removed by that date.

Peter Shaw: employed by the Council as an Asset Engineer. Was involved with arranging the deposition of silt on the site in 2003/04 and 2007. On both occasions entry to the land was via a locked barrier on the site.

Piran Cooper: employed by the Council as Planning Policy Officer. Has reviewed the Planning Inspector's report for the Local Plan Review 2006 for references to the application site and the files held by the Council's Planning Policy team. The Inspector's report refers to the site being 'somewhat untidy and not open space to which the public have access'. The file also contains several photographs of the site (dated 2002) which show the stock proof fencing and warning signs in place.

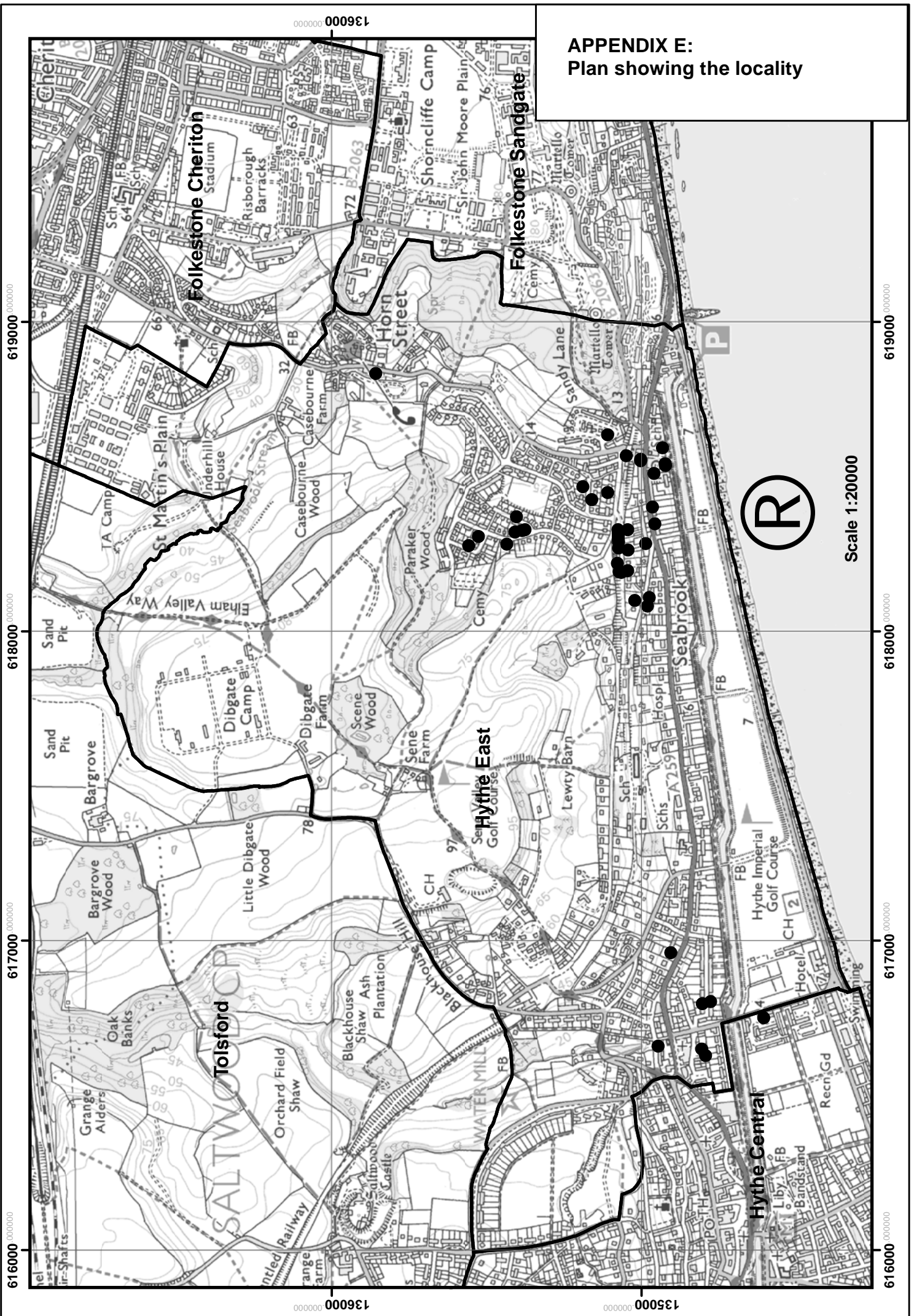
Stephen Holley: employed by the Council as Property Manager. Confirms the Council's ownership of the application site under part of Land Registry title number K640682. The Council's Property Team have, since 20th July 2009, been carrying out daily site inspections to record any use of the site by the general public. The inspections have generally taken place seven days per week between 7am and 6pm. Tables summarising the inspections (covering the period 20th July 2009 until 31st October 2010) are attached to the statutory declaration. Apart from one instance, the Property Team has not witnessed any public presence on the site away from the footpath or tow path.

Steve Carr: previously employed by the Council between 1993 and 1996 working on the coastal protection scheme along with Andrew Bateman (see above). Was based at a temporary site compound situated on the site between 1994 and 1996. Can confirm that the information provided by Andrew Bateman is correct.

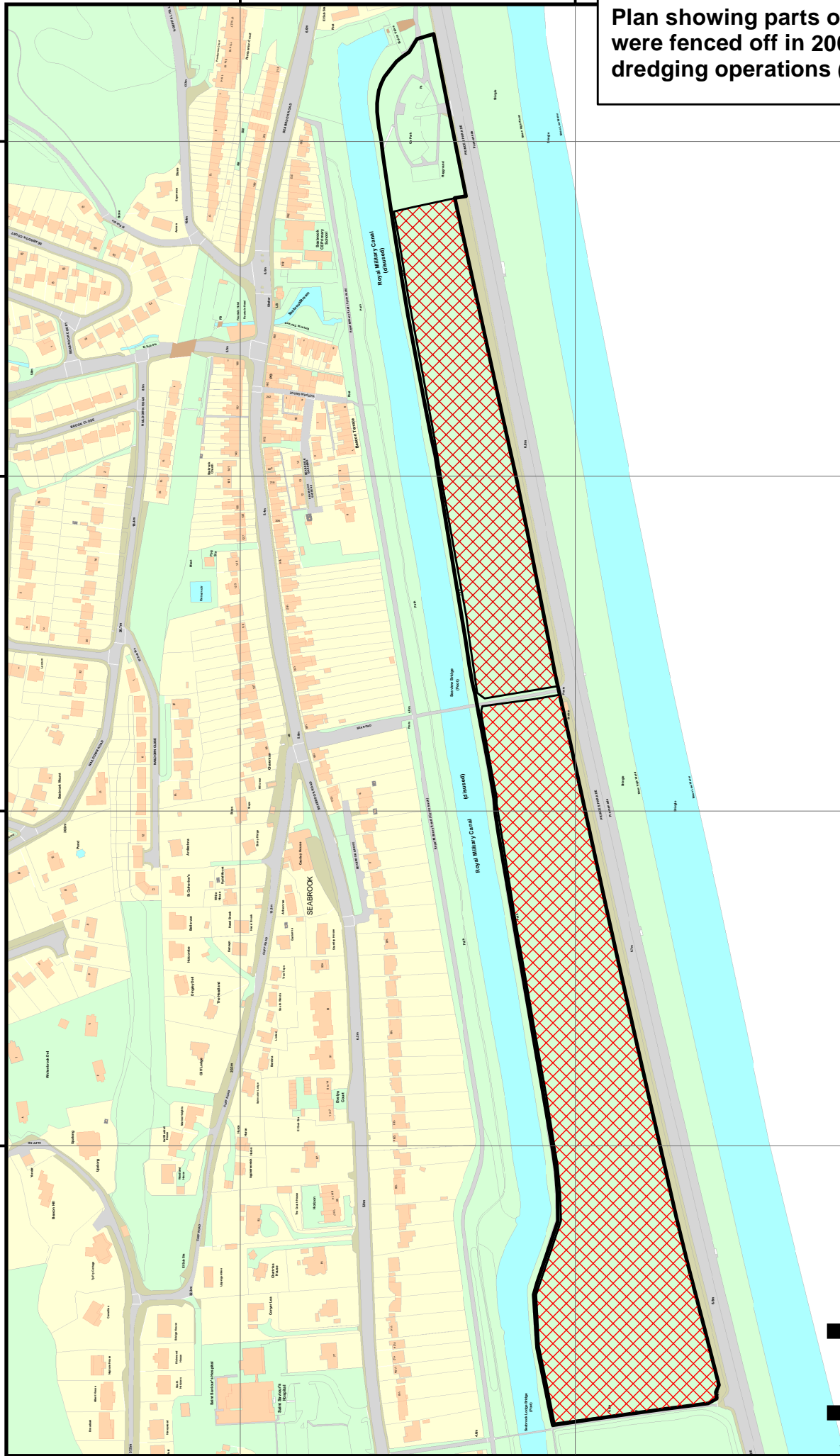
Plan showing alternative open space provision in the area

This plan serves to demonstrate that the application site sits within an area which is already well served by public open space, which includes the canal and towpaths, the beach and promenade and various other open spaces and recreation grounds (at South Road, Eversley Road, Hospital Hill and Eaton Lands).

APPENDIX E:
Plan showing the locality



APPENDIX F:
Plan showing parts of the site that
were fenced off in 2002 to facilitate
dredging operations (cross-hatched)



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APPENDIX G:
Aerial photograph of the application
site (approx 2002)



This aerial photograph was provided by the District Council as part of their objection statement. It is undated, but the Council states that it can be dated by reference to the dredging operations that took place in 2002-03.

The approximate boundary of the application site is shown in a bold red line on the colour version of this appendix. A colour copy of the original photograph will be available at the meeting.