

Application to register land at Westwell Lane in the parish of Westwell as a new Village Green

A report by the Head of Countryside Access Service 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 Westwell Lane at Westwell as a new Village Green has been accepted, and that the land subject to the application be formally registered as a Village Green.

Local Members: Mr. R. King

Unrestricted item

Introduction

1. The County Council has received an application to register land at Westwell Lane in the parish of Westwell as a new Village Green from Westwell Parish Council ("the Applicant"). The application, made on 25th March 2010, was allocated the application number VGA625. 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 a strip of land of approximately 0.17 hectares (0.4 acres) in size situated on the northern side of Westwell Lane, adjacent to the recreation ground, in the centre of the village of Westwell. The site is shown on the plan at **Appendix A**.
7. The application site consists of a grass verge interspersed with several trees and bordered along its northern edge by a hedge. The site is open and unfenced along its southern edge and access to it is via Westwell Lane.

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, 11 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**.

Consultations

10. Consultations have been carried out as required. No responses have been received.

Landowner

11. There is no known landowner in relation to this site.
12. As stated above, under the current Regulations, the duty to inform the landowner of the application rests with the applicant. However, the Regulations also specify that that duty does not apply where the landowner cannot be reasonably identified¹.
13. A search with the Land Registry has revealed that the land is not registered. Local enquiries through the Parish Council have been unable to identify the landowner. No landowner has come forward in response to notices being placed on site advertising the application.

Legal tests

14. In dealing with an application to register a new Town or Village Green the County Council must consider the following criteria:

¹ Regulation 22(3) of the Commons Registration (England) Regulations 2008

- (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'?*

15. The definition of the phrase 'as of right' has been considered by the House of Lords. Following the judgement in the *Sunningwell*² 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.

16. In this case, there is no evidence to indicate that use of the application site has been in any way with force, in secrecy or undertaken on a permissive basis.

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

17. 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 activities³.

18. 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*'⁴.

19. In this case, the evidence demonstrates that the land has been used for recreational activities. The summary of evidence of use by local residents at **Appendix C** shows the activities claimed to have taken place.

20. The evidence of use submitted in support of the application refers predominantly to walking. There is also reference to dog exercise and 'childrens activities'.

21. One of the witnesses refers to the use of the land only for parking⁵. Parking is not a lawful sport or pastime and would not be a qualifying activity for the purposes of

² *R v. Oxfordshire County Council and another, Sunningwell Parish Council* [1999] 3 All ER 385

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

⁴ *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

⁵ See user evidence questionnaire of Mr. J. Gibb

Village Green registration. Indeed, the parking of cars is likely to become an unlawful activity should the application to register the land as a Village Green be successful. This use should therefore be disregarded in considering whether the land has been used for 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?

22. 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*⁶ 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’.
23. 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’⁷. 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’

24. The Applicant specifies the locality at Part 6 of the application form as ‘Westwell’, but does not specify whether this refers to the village itself or the administrative parish.
25. The administrative parish of Westwell is a legally recognised locality with defined boundaries. As the application has been made by the Parish Council and the evidence of use is provided by residents of the parish, it would seem appropriate that Westwell should be the qualifying locality for the purposes of this application.

‘significant number’

26. In this case, the application is supported by 11 evidence questionnaires, although three of these do not refer to any use for lawful sports and pastimes (see Appendix c). Disregarding the non-qualifying use, this leaves evidence of use from 8 local residents.
27. Although geographically large, the parish of Westwell is predominantly rural in nature, and has a relatively small population. The village itself comprises only some 60 properties.

⁶ *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at 90

⁷ *R (Alfred McAlpine Homes Ltd.) v Staffordshire County Council* [2002] EWHC 76 at paragraph 71

28. Considered in isolation, evidence of use from eight people would seem to be a small number. However, as stated above, the evidence of use is to be considered in the context of the neighbouring environment and, in a small village such as Westwell, evidence of use by eight people may well be sufficient to demonstrate that the land has been in general use by the community.
29. This contention is supported by the frequency of use (five of the witnesses refer to daily or weekly use) and by the fact that the people providing evidence of use are well spread across the village (rather than simply being the residents of one street).
30. Therefore, on balance, 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)?

31. 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).
32. In this case, the application was made in 2010. Given the open nature of the application site and the ease of access onto it, there is no evidence to suggest that use has not continued until (and beyond) the date of the application.

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

33. 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.
34. The user evidence summarised at **Appendix C** demonstrates that there has been use of the application site in excess of the last twenty years. Therefore, it can be concluded that there has been use of the application site for a full period of twenty years.

Conclusion

35. Although this application is unopposed, it is still necessary for the County Council to be satisfied that all of the requisite legal tests have been met. In this case, the evidence demonstrates that the application site has been used by local residents for a period of over 20 years for the purposes of lawful sports and pastimes.
36. From close consideration of the evidence submitted, it can therefore be concluded that the legal tests concerning the registration of the land as a Village Green (as set out above) have been met.

Recommendation

37. I recommend that the County Council informs the applicant that the application to register the land at Westwell Lane at Westwell as a new Village Green has been accepted, and that the land subject to the application be formally registered as a Village Green.

Accountable Officer:

Dr. Linda Davies – Tel: 01622 221500 or Email: linda.davies@kent.gov.uk

Case Officer:

Miss. Melanie McNeir – Tel: 01622 221511 or Email: melanie.mcneir@kent.gov.uk

The main file is available for viewing on request at the Environment and Waste Division, Environment and Regeneration Directorate, Invicta House, County Hall, Maidstone. 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 – Plan showing the locality

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APPENDIX A: Plan showing the application site

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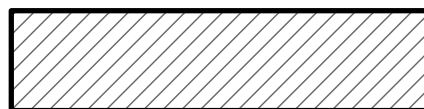
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Land subject to Village Green application at Westwell Lane in Westwell (near Ashford)



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:

Application number:

COMMONS ACT 2006
KENT COUNTY COUNCIL
REGISTRATION AUTHORITY
25 MAR 2010

VQA625

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

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: THE PARISH COUNCIL OF WESTWELL

Full postal address:
(incl. Postcode) ASHFORD
KENT

Telephone number:
(incl. national dialling code)

Fax number:
(incl. national dialling code)

E-mail address:

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: MICHAEL J. THORNELOE

Firm: THORNELOE & CO SOLICITORS

Full postal address:
(incl. Postcode) 22 HIGH STREET
LENHAM
MAIDSTONE
KENT ME17 2QD

Telephone number:
(incl. national dialling code) 01622 859416

Fax number:
(incl. national dialling code) 01622 859406

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:

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

USE OF THE LAND SINCE TIME
IMMEMORIAL FOR THE GENERAL
PURPOSES OF WESTWELL INCLUDING
SPORTS PASTIME AND GENERAL
RECREATION

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

NONE

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

N/A

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

STATEMENTS OF RESIDENTS

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

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):

Randy Blotter (Councillor)
Susan Ward (Clerk to the Council)

Date:

15th November 2010

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

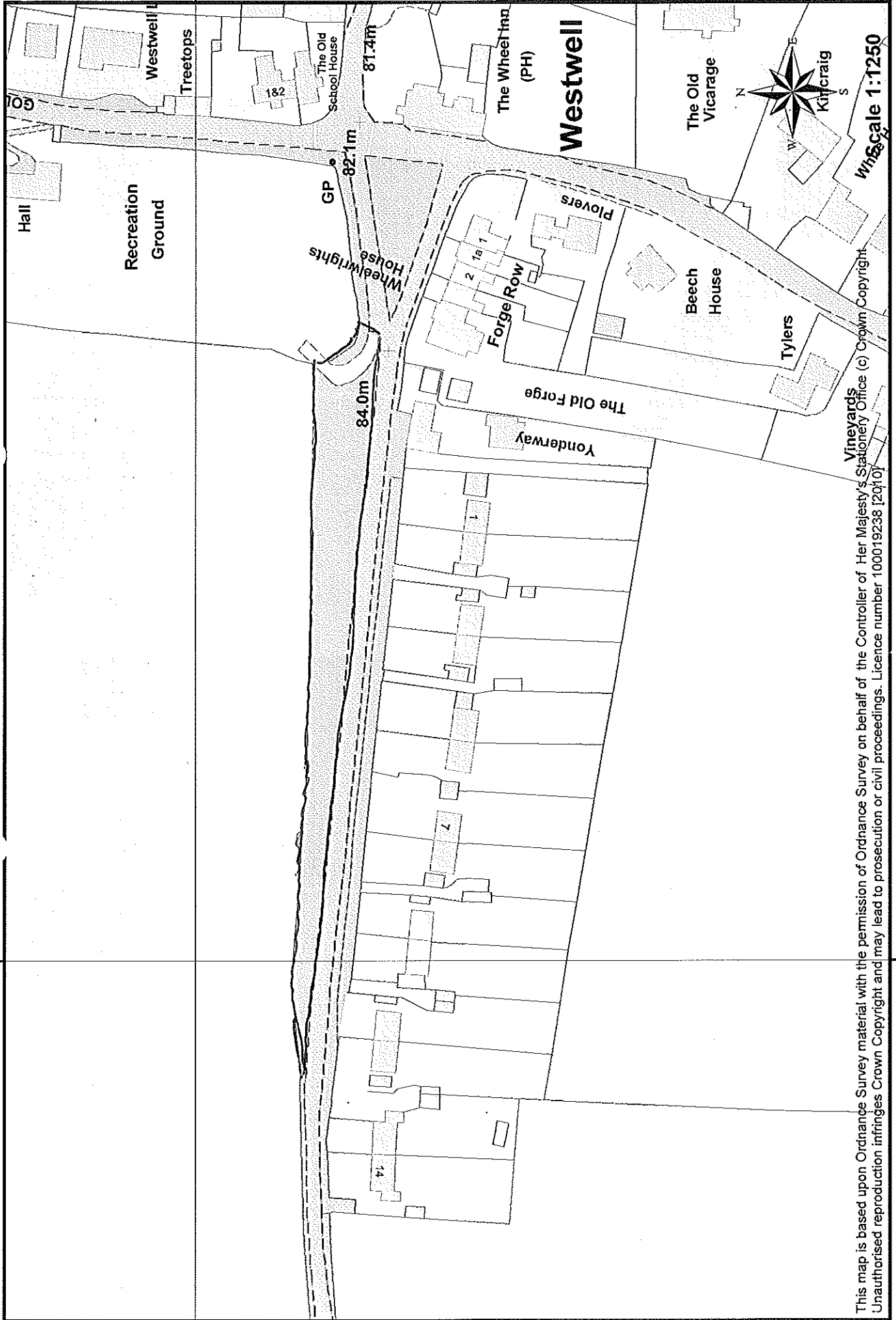
The application and any representations made cannot be treated as confidential. To determine the application it will be necessary for the Commons Registration Authority to disclose information received from you to others, which may include other local authorities, Government Departments, public bodies,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

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Vineyards
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**APPENDIX C:
Table summarising evidence of use**

Name	Period of use	Frequency	Activities
Mr. R. Bellwood	Not stated	Occasionally	Walking
Mr. and Mrs. J. Booty	1984 – present	Occasionally	Walking
Mrs. B. Chapman	1948 – present	Daily	Walking
Mrs. I. Clifton	1954 – present	Daily	Walking
Mr. A. Hollis	1964 – present	Daily	Dog exercise
Mrs. S. Pier	1991 – present	Occasionally	Dog walking
Mr. M. Thorneloe	1978 – present	Weekly	Walking
Mr. R. Wilford	2005 – present	Weekly	Children's activities, dog walking

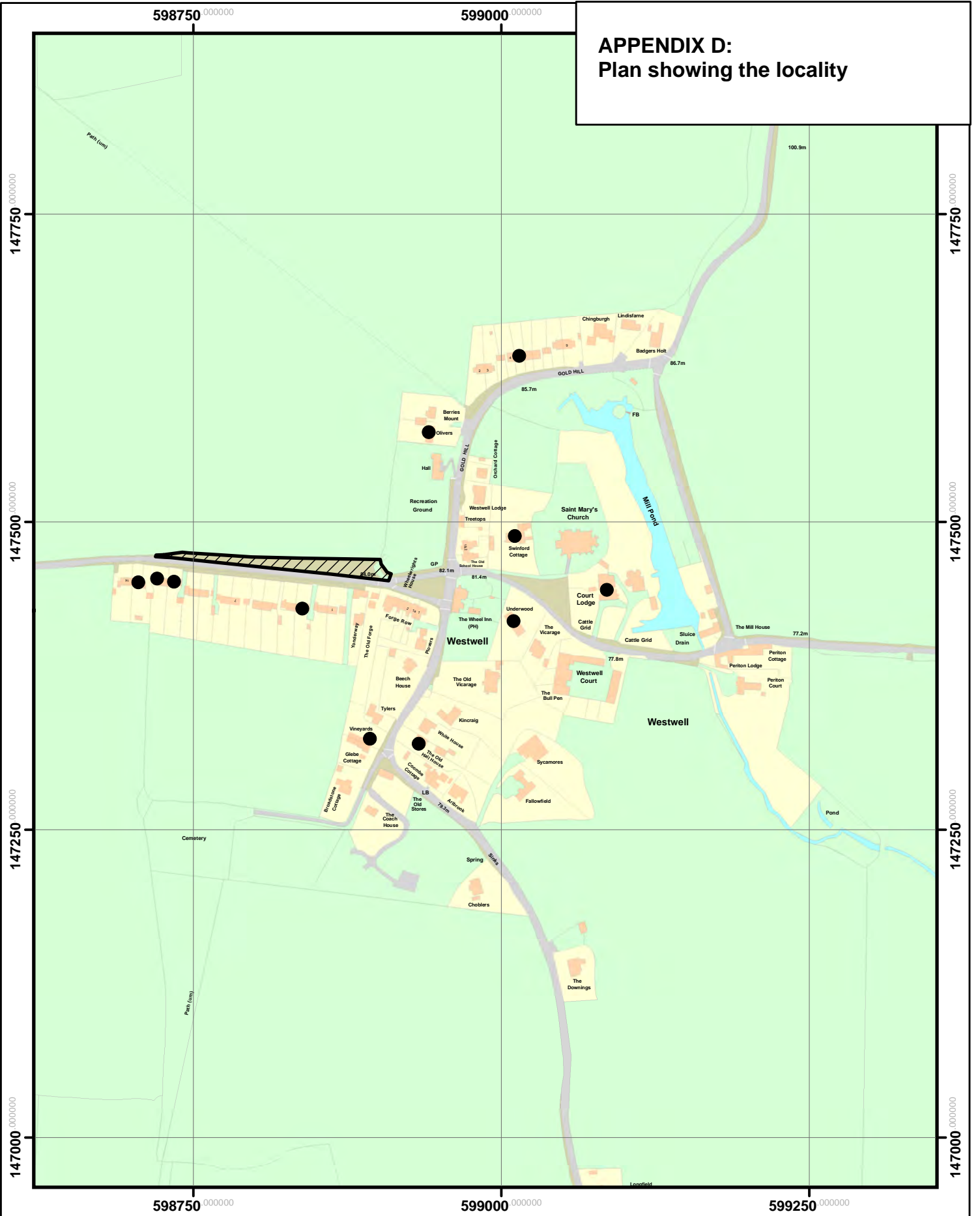
In addition evidence forms were submitted by the following people who did not use the land for the purposes of lawful sports and pastimes:

Mr. J. Gibb: Has known the land since 1999 and used it on a weekly basis for car parking.

Mr. and Mrs. D. Hooper: Have known the land since 1981 but never used it for lawful sports or pastimes. Only used to gain access to recreation ground and observed use of it by others for car parking.

Mr. and Mrs. K. Oliver: Have known the land since 1972 but never used it for lawful sports or pastimes. Observed use of it by others for car parking.

**APPENDIX D:
Plan showing the locality**



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**Land subject to Village Green application at
Westwell Lane in Westwell (near Ashford)**

