Application to register land known as St. Andrew's Gardens at Gravesend 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 Tuesday 19th July 2011.

Recommendation: I recommend, for the reasons set out in the Inspector's report dated 28th July 2010, that the Applicant be informed that the application to register land known as St. Andrew's Gardens at Gravesend has been accepted in part, and that the areas shown edged in black at Appendix D to this report be registered as a Town Green.

Local Members: Mr. J. Cubitt and Mr. B. Sweetland Unrestricted item

Introduction

1. The County Council has received an application to register land known as St. Andrew's Gardens in Gravesend as a new Town or Village Green from local civic society, Urban Gravesham ("the Applicant"). The application, dated 26th July 2008, was allocated the application number VGA603. A plan of the site is shown at **Appendix A** to this report.

Procedure

2. The application has been made under section 15(1) of the Commons Act 2006 and Regulation 3 of the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007. These Regulations have, since 1st October 2008, been superseded by the Commons Registration (England) Regulations 2008 which apply only in relation to seven 'pilot implementation areas' in England (of which Kent is one). The legal tests and process for determining applications remain substantially the same.

3. Section 15(1) of the Commons Act 2006 enables any person to apply to a Commons Registration Authority to register land as a 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 County Council must notify the owners of the land, every local authority and any other known interested persons. It 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 to the north of Crooked Lane and The Terrace (A226) in the town of Gravesend. The application site is an irregular shaped piece of land of approximately 0.65 hectares (1.6 acres) which extends roughly from Town Pier in the west to the Clarendon Hotel in the east.

7. The western section of the application site, which fronts the River Thames, consists of formal landscaped gardens with a grass area, paved paths, planting and benches. The eastern section of the site, which lies to the rear of Royal Pier Mews, is less formally landscaped and consists largely of an open space with a grass surface.

8. Access to the site is from the footways of Crooked Lane, The Terrace and Royal Pier Road. The application site is shown in more detail on the plan at **Appendix A**.

Previous resolution of the Regulation Committee Member Panel

9. As a result of the consultation, an objection to the application was received by Gravesham Borough Council ("the Objector"), which claimed to own the whole of the land subject to the application.

10. The matter was considered at a Regulation Committee Member Panel meeting on Monday 16th November 2009, where Members accepted the recommendation that the matter be referred to a non-statutory Public Inquiry for further consideration.

11. As a result of this decision, Officers instructed Counsel experienced in this area of law to hold a Public Inquiry, acting as an independent Inspector, and to report her findings back to the County Council.

The Public Inquiry

12. The Public Inquiry took place at the Riverside Centre at Gravesend commencing on Monday 10th May 2010 and continuing until Thursday 13th May 2010, during which time the Inspector heard evidence from all interested parties. Both the Applicant and the Objector were represented by Counsel at the Inquiry.

13. The Inspector subsequently produced a detailed written report of her findings dated 28th July 2010. The Inspector's findings and conclusions are summarised below, but a full copy of the Inspector's report is available from the Case Officer on request.

Legal tests and Inspector's findings

14. 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 the 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 by the inhabitants is continuing up until the date of application?*

I shall now take each of these points and elaborate on them individually in accordance with the Inspector's findings:

(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*[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 and further use becomes 'as of right'.

16. As explained in the previous Committee report, there is no suggestion that the use of the application site has been with force or in secrecy. However, the main issue in this case is whether use of the application site has been with any form of permission throughout the relevant period.

17. The granting of permission can take many forms; it can be direct and communicated (e.g. by way of a prominent notice placed on the site), or it can also be indirect and uncommunicated (e.g. by way of a private deed). In some case, it is quite possible that recreational users will be using a piece of land without being aware that their use is with permission. In particular, this can often be the case in relation to Local Authority owned land which is provided and held by the Local Authority specifically for the purposes of public recreation. There have been several legislative provisions which have enabled Local Authorities to acquire land for recreational purposes, including the Open Spaces Act 1906, the Public Health Act 1875 and the Physical Training and Recreation Act 1937.

18. In this case, the main statutory provision with which the Inspector was concerned was section 164 of the Public Health Act 1875 ("the 1875 Act"), which provides a power to acquire land for the purposes of 'public paths and pleasure grounds'. There is no direct judicial authority in relation to whether land held under this provision is capable of registration as a Town of Village Green, but there is strong persuasive authority to suggest that the use of such land by the public for recreational purposes is 'by right' and not 'as of right'.

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

19. In *Beresford*[2], the House of Lords considered the effect of a similar provision contained in the Open Spaces Act 1906 on an application to register land as a Town or Village Green. It was held that *"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"*. The suggestion is therefore that use of the land which is held by a local authority under a public statutory trust is 'by right' and not 'as of right' since the use of the land is no more than the use to which the public is entitled (in their capacity as beneficiaries of the trust).

20. The Applicant argued at the Inquiry that, even if it could be proven that the land in question was held for the purpose of public walks and pleasure grounds, this would not necessarily have the effect of 'trumping' the Town Green application because there was no binding judicial authority on this point and the issue has never fully been tested before the Courts.

21. In her report, the Inspector has given detailed consideration to the submissions made in relation to whether use of land held for the purpose of public recreation can be said to be 'as of right'. She concludes that:

> "In my view where a local authority holds land under statutory powers contained in section 164 of the Public Health Act 1875 on trust for the free and unrestricted use of the public, it would be entirely wrong and unrealistic to characterise as "acquiescence" the fact that the Council did not seek to treat members of the public using the land as trespassers. The correct analysis must be that by withholding any claim in trespass, the Council was observing its duty to admit the public to the land for the purposes of recreation. That duty might be observed, in appropriate circumstances, by imposing restrictions on public access, either by means of byelaws or under the general law. Where the public use land for a purpose which it is the duty of the landowner to permit, the user in my judgment is not as of right, rather any use of that land by any member of the public is use which he is entitled to make of the land i.e. use by right, rather than use as of right.
>
> In my judgment therefore, if it can be shown in relation to a piece of land the subject of a town or village green application that the land was acquired or appropriated to use under the powers in section 164 of the Public Health Act 1875, either by express reference to those powers, or by implication, the use by the public of the land is not qualifying user for town or village green purposes"[3].

22. One of the main difficulties in this case is the fact that the land has been acquired by the Borough Council in a piecemeal basis over a long period, and developed in stages. There are some parts of the application site to which the Council is unable to show paper title, but all parts have nonetheless been incorporated into the site and dealt with in the same manner as the adjacent plots to which the Council can

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[2] *R v City of Sunderland ex parte Beresford* [2003] UKHL 60 at paragraph 87 per Lord Walker
[3] Paragraphs 9.50 and 9.51 of the Inspector's report dated 28th July 2010

prove ownership. Whilst in relation to some plots the Council was able to provide clear records of the purpose of acquisition and appropriation, the situation was further complicated by the fact that the Council's records were incomplete in relation to some of the other individual plots. This meant that the Inspector had to consider from other documentation whether it was possible to infer that an appropriation had taken place.

23. The Inspector heard and considered a great deal of evidence in relation to each of the individual plots of land which make up the application site. She was able to differentiate the different parts of the application site in to four categories:
    i. Plots acquired by the Council and held for the purposes of public walks and pleasure grounds under section 164 of the Public Health Act 1875;
    ii. Plots acquired by the Council for other purposes (e.g. housing or road widening), but formally appropriated to public walks and pleasure grounds under section 164 of the Public Health Act 1875;
    iii. Plots acquired by the Council for non-recreational purposes (i.e. street improvement) but not formally appropriated to any recreational purpose and therefore continue to be held for non-recreational purposes;
    iv. Plots acquired by the Council for which there is no evidence of the purpose of the original acquisition, or of any subsequent appropriation to recreational purposes; and
    v. Plots for which there is no evidence of acquisition by the Council at all (and no known landowner).

    These plots are shown on the plan at **Appendix B** to this report.

24. Having adopted the view that land which is held for the purpose of public walks and pleasure grounds is not capable of registration as a Town or Village Green (because use of it would be in exercise of an existing right), the Inspector's analysis of the evidence as summarised above, led to the conclusion that significant parts of the application site were not used 'as of right'.

25. This conclusion, however, leaves a number of areas that were not held for the purposes of public recreation and for which it is not possible to conclude that use was not 'as of right'. The Inspector's approach in relation to these smaller areas is set out later in this report.

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

26. 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[4].

27. 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*

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

with children [are], in modern life, the kind of informal recreation which may be the main function of a village green'[5].

28. In respect of the use of the application site for lawful sports and pastimes, the Inspector found:

> "There was a substantial amount of evidence to support the Applicant's case that the application land is a well-used and valued recreational resource for the people of Gravesend. The site is well-situated in the centre of town with attractive views of the river and it seemed to me obvious that it would attract residents and visitors to the town centre. The Objector did not contend otherwise. I am satisfied that the application land has been used extensively throughout the relevant period by adults for activities including river watching, relaxing and eating and by children for activities including play, particularly when the playground equipment was on the site, and latterly for ball and other games"[6].

29. The Inspector concluded that the application site had been used for the purposes of lawful sports and pastimes throughout the relevant period.

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

30. 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*[7] 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*'.

31. Use of the application site must also have been by a significant number of local inhabitants. 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*'[8].

32. At the Public Inquiry, the Applicant sought to rely on the town of Gravesend as the relevant locality. The Objector accepted that this was a qualifying locality for the purpose of section 15 of the Commons Act 2006. The Inspector also agreed that

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[5] *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 at 397

[6] Paragraph 13.4 of the Inspector's report dated 28th July 2010

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

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

the town of Gravesend was capable of constituting a relevant locality for the purposes of the legal tests.

33. The Inspector also considered whether use had taken place by a significant number of the residents of the locality. She concluded that:

> "No survey of people using the application land had been carried out to determine where the users on any given day or sample of days had come from. The only evidence therefore as to where users came from was the evidence of the witnesses in support of the application... Counsel for the Objector and the Applicant helpfully agreed between them a map showing the past and present addresses of all witnesses who provided both written and oral evidence to the Inquiry. That map showed a fair sprinkling of witnesses throughout Gravesend as a whole, with a concentration of users living in the vicinity of the land, as one might expect. I was satisfied that the application land was used by a significant number of the inhabitants of the town of Gravesend"[9].

34. Therefore, the Inspector agreed that the legal tests in relation to the use of the land by the residents of the locality were met.

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

35. 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 up until the date of application. In this case, the application was submitted in 2008 and therefore the relevant twenty-year period ("the material period") is 1988 to 2008.

36. At the Inquiry, the Inspector heard evidence that recreational use of parts of the application land had been interrupted for short periods during the relevant period to allow various works to take place (such as the installation of playground equipment and replacement of paving slabs). However, she concluded:

> "There was no evidence to suggest that the whole or substantially the whole of the land had been shut at any time during the relevant period. The most substantial interruption was during the construction of the steps to the viewing platform in 2000... I do not consider that these incidents were sufficient to interrupt the user of the site as a whole: in my judgement following the decision of the Supreme Court in *Redcar*[10] the correct approach would be to characterise such incidents as part of the expected give and take between landowner and user"[11].

37. Therefore, the Inspector was satisfied that use of the application site had taken place for a full period of twenty years.

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[9] Paragraph 12.19 of the Inspector's report dated 28th July 2010
[10] *R (Lewis) v Redcar and Cleveland Borough Council* [2010] UKSC 11
[11] Paragraph 13.8 of the Inspector's report dated 28th July 2010

(e) *Whether use of the land by the inhabitants is continuing up until the date of application?*

38. Section 15(2) of the Commons Act 2006 requires that use of the application site continues up until the date of application.

39. The Inspector accepted that use of the application had continued until the date of the application, and indeed was continuing at the time of the Inquiry.

Inspector's conclusions

40. Having heard and carefully considered the evidence presented by both parties at the Public Inquiry, the Inspector concluded that the application to register the application site as a whole should fail on the basis that use of parts of the application site (i.e. those parts already held by the Council for the purposes of public recreation) had not been 'as of right' throughout the relevant period.

41. The Inspector found that approximately 75% of the application site was held for the purposes of public walks and pleasure grounds. However, this left an area of approximately 25% of the application site upon which there was no evidence of any appropriation for recreational purposes. It was submitted that those areas would be capable of registration as a Town Green.

42. Hence, the Inspector then went on to consider whether it would be appropriate for the County Council to register a lesser area. In *Oxfordshire*[12], it was held that a Registration Authority is entitled to register only those parts of the application site for which the Applicant has been able to demonstrate that all of the legal tests are met. It was further held that the lesser area need not be substantially the same or bear any particular relationship to the area originally claimed.

43. In considering whether to register a smaller area, the Inspector's approach was to look at each area individually and to evaluate whether there was actual evidence of use of those areas. She said:

> "I do not consider it appropriate to recommend registration of these parts on the basis of the evidence of some witnesses who said that they used the whole of the application land, without considering carefully the nature of these areas and the extent to which the evidence supports a claim that these areas themselves have been used for lawful sports and pastimes"[13]

44. The Inspector considered that some parts of the land not held for public walks and pleasure grounds comprise discrete areas in relation to which there was no specific evidence of use for lawful sports and pastimes, and are unlikely to have been used as such. These areas (shown on the plan at **Appendix C**) include embankments (which the Inspector considered were steep and unsuitable for recreation), the flowerbeds and areas covered with vegetation (which were physically inaccessible for recreation), and the hard-surfaced paths (which were used as rights of way rather than for the purposes of general recreation). These parts of the application site, in the Inspector's view, would not be capable of registration as a Town Green.

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[12] *Oxfordshire County Council v Oxford City Council* [2006] UKHL 25
[13] Paragraph 13.11 of the Inspector's report dated 28th July 2010

45. However, in relation to the remaining areas of the site, which consist of grassed areas that are freely accessible from the surfaced paths, the Inspector considered that the character of use of these parts mirrored that of the remainder of the site. The only barrier to the registration of the remainder of the site was that use had not been 'as of right'. However, in relation to those pieces of land which were not held by the Council for the purposes of public walks and pleasure grounds, there was no evidence to suggest that their use had not been 'as of right'.

46. The Inspector concluded:

> "As a matter of fact these areas do not exist separately from the remainder of St Andrew's Gardens, and as a matter of common sense, it is difficult to see that they do not take the character of their use from the character of the use of the gardens as a whole: a layman would be amazed by the inherent absurdity of the proposition that he could hop between one part of the paved square and another, and in part be there "by right" and in part "as of right".
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> However, in the light of the decision of the Supreme Court in *Redcar*[14], it seems to me that the approach I must take is clear: what I have to look at is the quality of user. I must consider whether the quality of user of the application land was such as to give the outward appearance of an assertion of a right. Here the quality of the user clearly did give the outward assertion of a right: local people used the whole of St Andrew's Gardens as if they had a right to do so. Therefore, unless the landowner can show that one of the vitiating circumstances exists, the test is satisfied in relation to these sections. The landowner has shown a vitiating circumstance in relation to part of the land, that use was not as of right, but has not shown, in respect of these particular areas, any vitiating circumstance. In my judgment these areas should therefore be registered as town green"[15].

47. Therefore, the Inspector's overall conclusion was that the application in relation to the majority of the site failed on the basis that use of it had not been 'as of right'. However, she considered, for the reasons provided above, that some small areas were capable of registration as a Town Green and should be registered as such. These areas are shown on the plan at **Appendix D** to this report.

Subsequent correspondence

48. On receipt, the Inspector's report was forwarded to the Applicant and the Objector for their information and further comment.

49. The Objector was content to accept the findings of the report and did not have any further points to make.

50. The Applicant, whilst agreeing that the areas recommended by the Inspector for registration as a Town Green should be so registered, did not agree with the Inspector's approach in relation to the other parts of the application site. The

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[14] *R (Lewis) v Redcar and Cleveland Borough Council* [2010] UKSC 11

[15] Paragraphs 13.23 and 13.24 of the Inspector's report dated 28th July 2011

Applicant submits that the process of 'chopping up' the application site and considering each piece individually is wrong and creates unnecessary fragmentation.

51. The Applicant disagrees with the Inspector's conclusions in relation to those parts of the application site that were not acquired for public walks and pleasure grounds and states that these areas should be considered for registration. For example, the Applicant says that the surfaced paths should not be excluded on the basis that their use was akin to a public right of way when in fact they were used as part of the site and provided access to and around it. In relation to the flowerbeds, the Applicant states that these areas should not be excluded merely because there is no actual evidence of use for lawful sports and pastimes; it is, in the Applicant's view, too literal an interpretation to say that 'used' means direct physical access to these areas when in fact they formed part of the application site.

52. The applicant also takes issue with the Inspector's decision to infer an appropriation for public walks and pleasure grounds when some key records are missing. In particular, a letter giving Ministerial consent for an appropriation of part of the application site in 1960 has been lost and without this document it is not possible to conclude definitively whether the necessary consent was obtained.

53. The Applicant also remains of the general view, despite the Inspector's conclusions to the contrary, that there is no binding authority to the effect that land which is held for the purposes of public walks and pleasure grounds is not capable of registration as a Town or Village Green.

Further advice from the Inspector

54. In light of the comments received from the Applicant, further advice has been sought from the Inspector. The Inspector, on seeing the Applicant's comments, invited the Objector to comment further on her approach. She then carefully considered all the points that were made to her, and produced a short second report dated 4th April 2011. A copy of this second report is attached at **Appendix E**.

55. In her second report, the Inspector rejects the points made by the Applicant in relation to her decision to infer an appropriation of the land to public walks and pleasure grounds. She states that her decision to infer an appropriation was based upon other supporting evidence, notably formal records of the Council's decision to apply for consent and the actions of the Council in proceeding with the scheme once that consent was received. This supporting evidence indicated, in the absence of the actual letter of consent, that it is more probable than not that the necessary appropriation did take place.

56. In relation to the Applicant's submissions regarding her approach in considering individual parcels of land, she concluded:

> "Having read both the Applicant and the Objector's submissions on the point [of whether the correct approach was to examine each parcel of land individually], I am satisfied that the approach I took, having reached the conclusion that the application to register whole of the application land failed, in considering whether part or parts of the application land should be

recommended for registration was in accordance with the authorities. The Applicant urged that I should instead, following my conclusion that the application land as a whole had been used for lawful sports and pastimes, have recommended the registration of any part of the application land in relation to which I was not satisfied that use had been by right rather than as of right during the qualifying period. I do not consider that this approach would have been correct. I accept the Objector's submission that such an approach would lead to unfairness, in that it would permit the Applicant to rely on non-qualifying user in order to support its case in relation to parts of the site. I am satisfied that my approach of looking at each area individually was correct"[16]

Conclusion

57. Having considered the Inspector's through and detailed analysis of the evidence (contained within her report), it would appear that the legal tests in relation to the registration of the land as a new Town Green have been met, but only in relation to those parts of the land marked at **Appendix D** to this report. The other parts of the application site are not capable of registration as a new Town Green and the application in relation to those parts of the application site should be rejected.

Recommendation

58. I recommend, for the reasons set out in the Inspector's report dated 28th July 2010, that the Applicant be informed that the application to register land known as St. Andrew's Gardens at Gravesend has been accepted in part, and that the areas shown edged in black at Appendix D to this report be registered as a Town Green.

Accountable Officer:
Mr. Mike Overbeke – Tel: 01622 221513 or Email: mike.overbeke@kent.gov.uk
Case Officer:
Miss. Melanie McNeir – Tel: 01622 221628 or Email: melanie.mcneir@kent.gov.uk

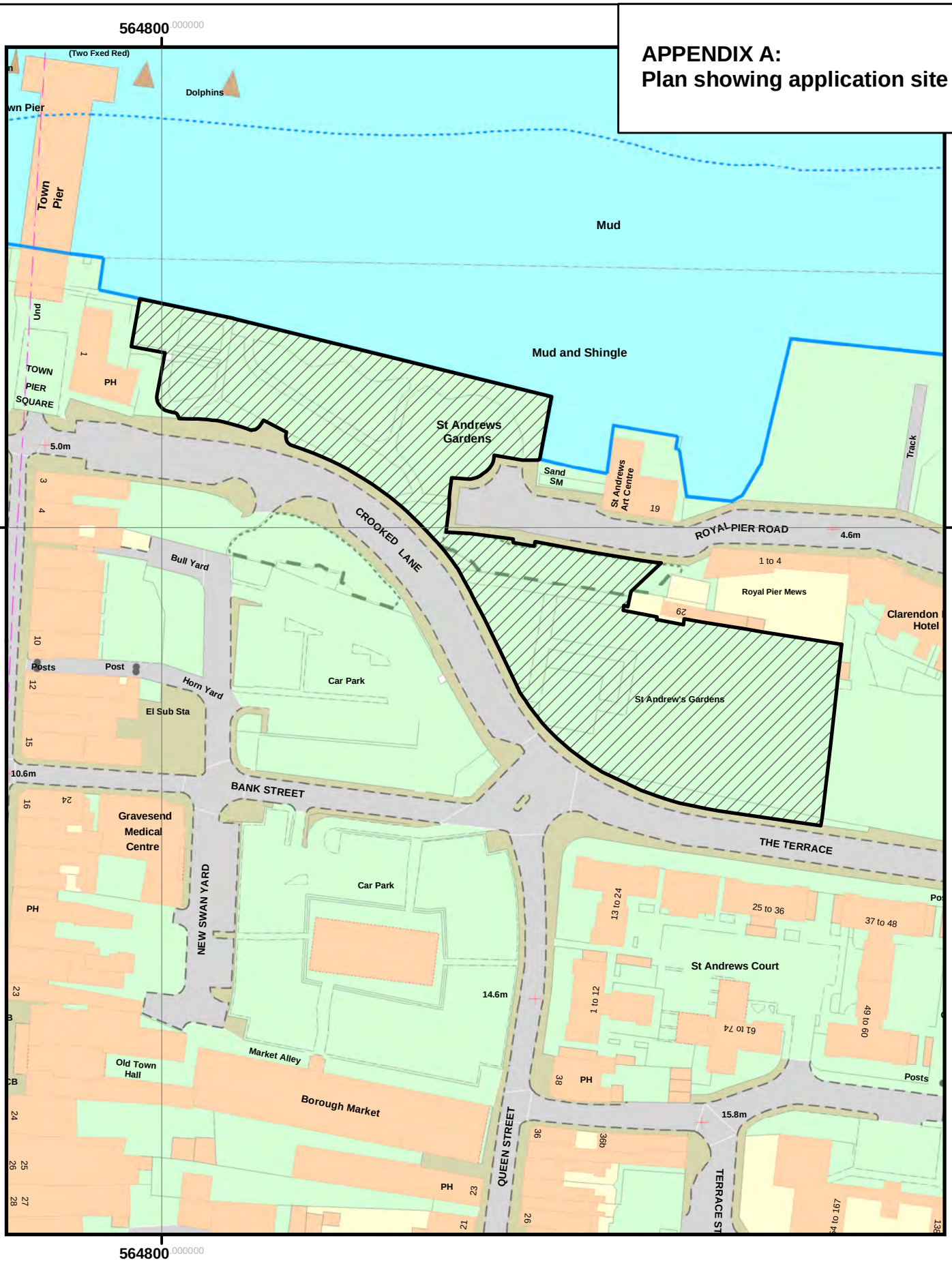
The main file is available for viewing on request at the Environment and Waste Division, Environment and Regeneration Directorate, Invicta House, County Hall, Maidstone. Please contact the case officer for further details.

Background documents

APPENDIX A – Plan showing application site
APPENDIX B – Plan showing the manner in which the different parts of the application site are held by Gravesham Borough Council
APPENDIX C – Plan showing areas not held for public walks and pleasure grounds
APPENDIX D – Plan showing areas which the Inspector recommends for registration as a Town Green
APPENDIX E – Copy of the Inspector's second report dated 4th April 2011

[16] Paragraph 5 of the Inspector's second report dated 4th April 2011

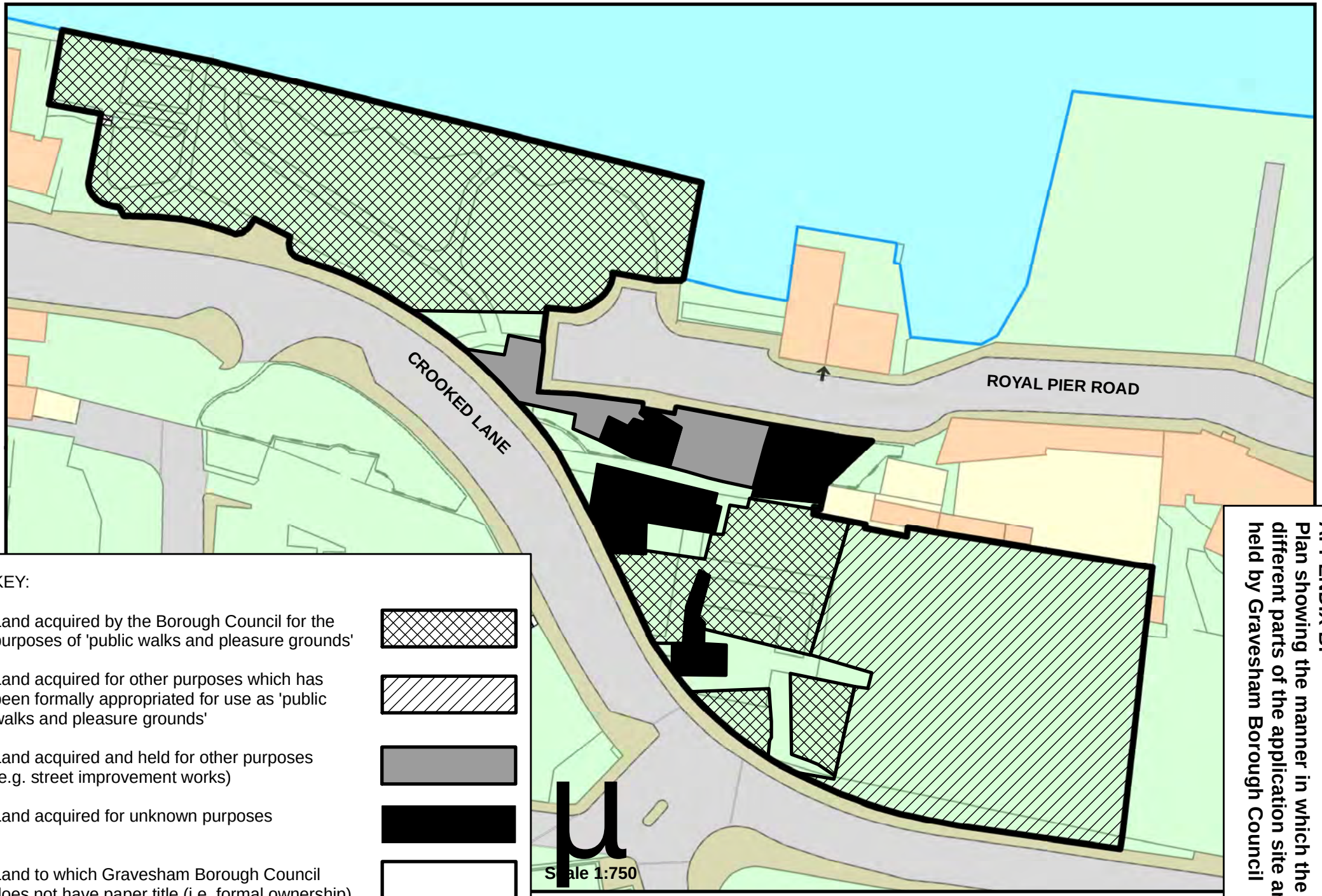
APPENDIX A:
Plan showing application site



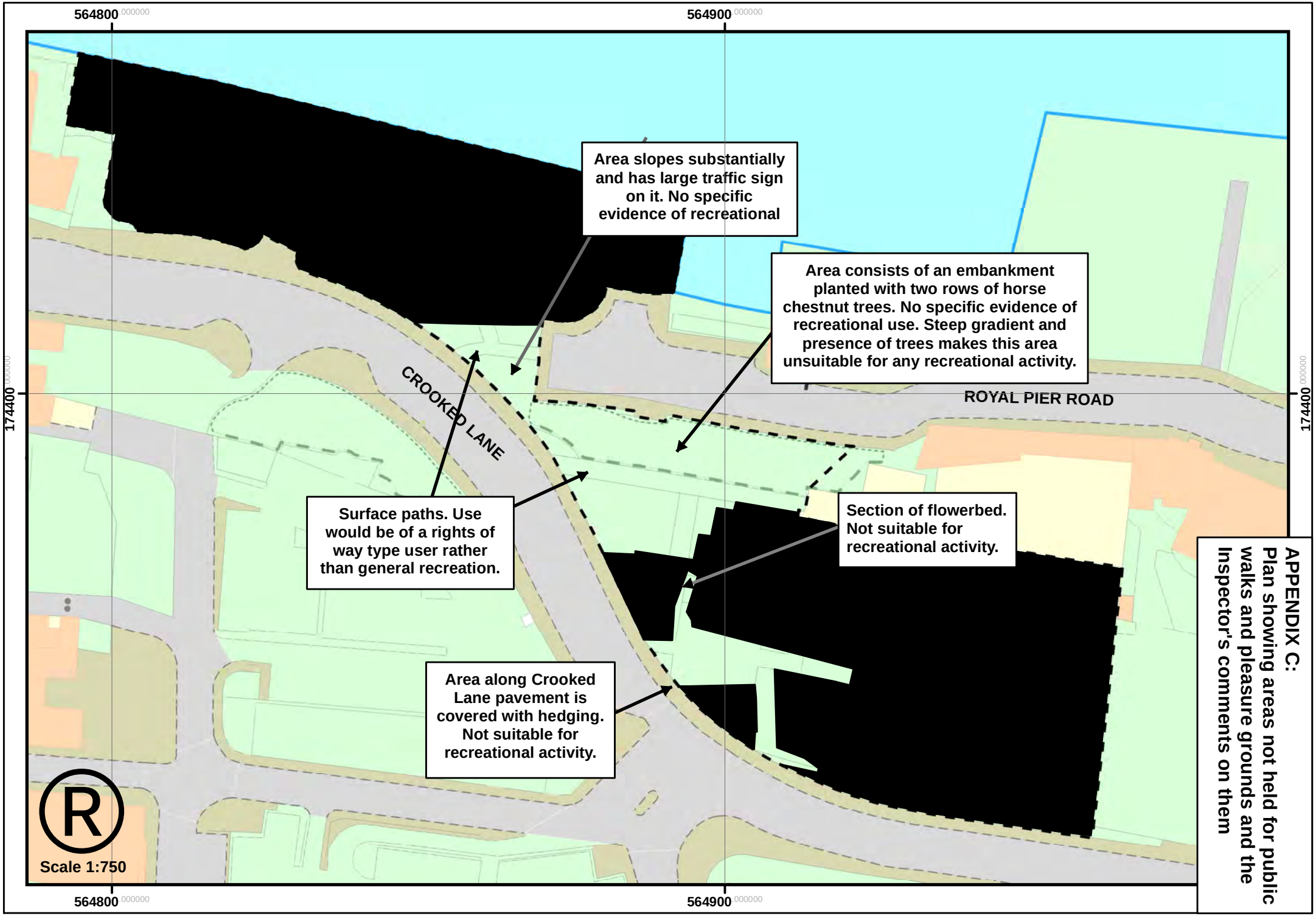
Land subject to Village Green application at St. Andrew's Gardens, Gravesend

Scale 1:1250

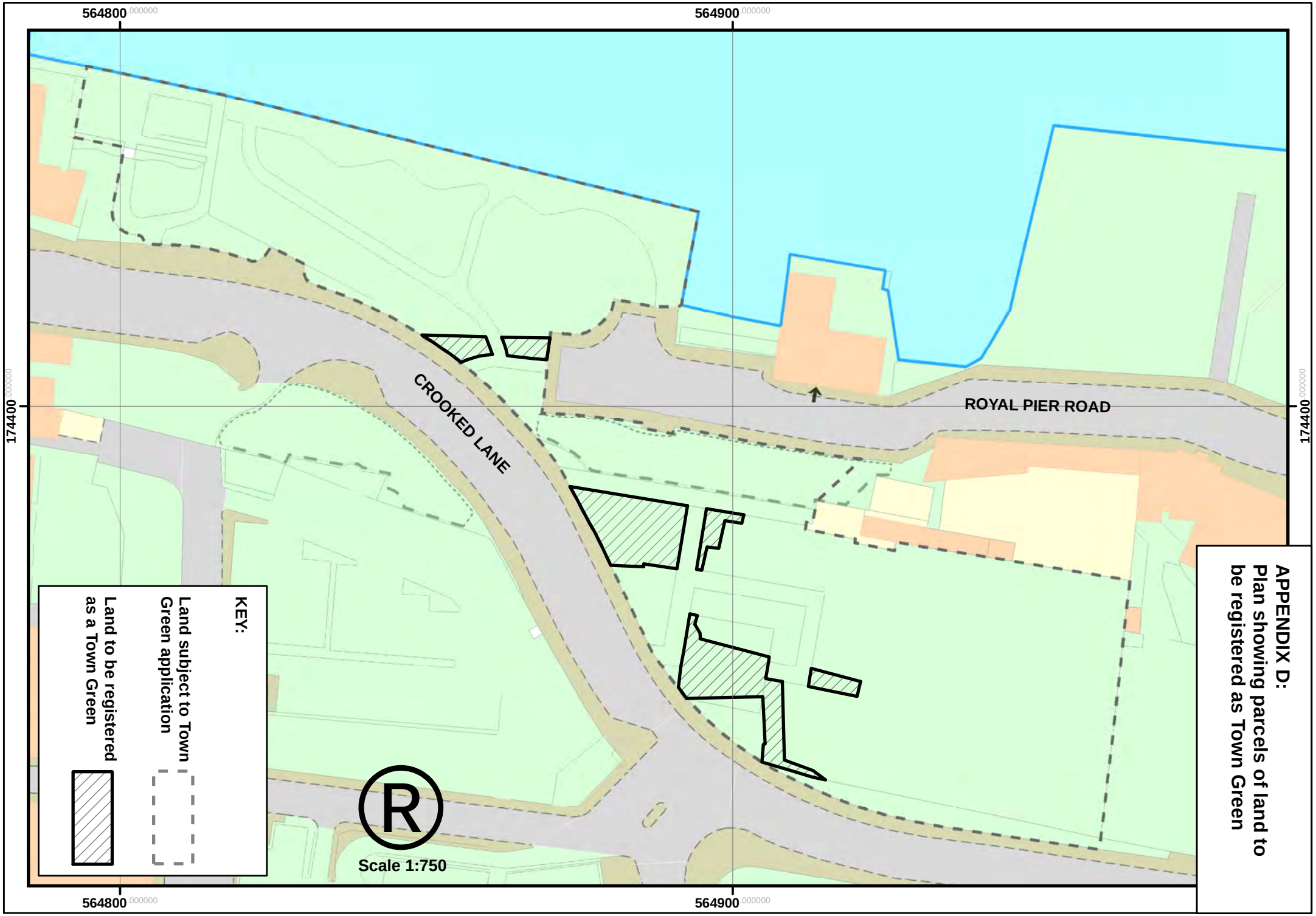
Kent County Council



APPENDIX B:
Plan showing the manner in which the different parts of the application site are held by Gravesham Borough Council



APPENDIX C:
Plan showing areas not held for public walks and pleasure grounds and the Inspector's comments on them



APPENDIX D:
Plan showing parcels of land to be registered as Town Green

APPENDIX E:
Inspector's second report dated 4th April 2011

In the Matter of

an Application to Register land

at St Andrew's Gardens, Gravesend, Kent

as a Town or Village Green

SECOND REPORT OF THE INSPECTOR

Miss LANA WOOD

4th April 2011

Kent County Council

County Hall

Maidstone

Kent

ME14 1XX

Ref: Chris Wade/ Melanie McNeir

SECOND REPORT OF THE INSPECTOR

Miss LANA WOOD

4th April 2011

1. I have been asked to advise the Registration Authority in relation to the Applicant's comments and submissions made following receipt of my Report under cover of a letter dated 28th October 2010.

2. I am satisfied, having read the Applicant's submissions on the point, that my reasoning and decision in relation to plots 373, 417, 343, 246, 306, 243, 364, 377, 371 and 378 are correct and I recommend that the Registration Authority should follow my recommendation in relation to these plots. I inferred a decision to appropriate conditional on the consent of the Minister being received from the recorded decisions of the Council to approve the scheme to lay out the upper part of the Gardens, to seek consent to the appropriation, and from the fact that, having received the consent, the Council proceeded to implement the scheme. In my judgment the decision to appropriate on receipt of the Minister's consent was implicit in those express decisions. The submissions of the Applicant in relation to the Council's inability to delegate the decision to appropriate do not affect these findings.

3. I am satisfied, having read the Applicant's submissions on the point, that there was sufficient evidence before the inquiry to support my inference of fact that a letter of consent from the Minister was received in relation to plots 243 and 246, although that letter could not be found in GBC's records. That inference of fact was drawn not only from the note on the Terrier, but also from the pink colouring of this area on the plans to the two Ministerial consent letters which do survive and from the reference in the Works Committee minutes to the Committee having recommended that consent should be sought in respect of the appropriation of land held for road widening purposes to public open space purposes.

4. I invited further submissions from the Objector on the question of whether, as the Applicant suggested, the approach I took of examining each parcel of the application land and each part of a parcel for evidence that that part of the land was used for lawful sports and pastimes was wrong in law.

5. Having read both the Applicant and the Objector's submissions on the point, I am satisfied that the approach I took, having reached the conclusion that the application to register whole of the application land failed, in considering whether part or parts of the application land should be recommended for registration was in accordance with the authorities. The Applicant urged that I should instead, following my conclusion that the application land as a whole had been used for lawful sports and pastimes, have recommended the registration of any part of the application land in relation to which I was not satisfied that use had been by right rather than as of right during the qualifying period. I do not consider that this approach would have been correct. I accept the Objector's submission that such an approach would lead to unfairness, in

that it would permit the Applicant to rely on non-qualifying user in order to support its case in relation to parts of the site. I am satisfied that my approach of looking at each area individually was correct.

6. I have read the additional statements of fact of Ms Claire Brown and Mr Andrew Maxted submitted by the Applicant. I accept the Objector's submission that the evidence presented at the inquiry must carry substantially more weight than the evidence contained in those statements. I am not persuaded that the factual conclusions recorded in my report should be altered in the light of the information contained in those statements.

LANA WOOD
4th April 2011