

Application to register land known as Dawbourne Wood at Tenterden as a new Village Green

A report by the Head of Countryside Access to Kent County Council's Regulation Committee Member Panel on Friday 11th November 2011.

Recommendation: I recommend that the applicant be informed that the application to register land known as Dawbourne Wood at Tenterden as a Village Green has not been accepted.

Local Members: Mr. M. Hill OBE

Unrestricted item

Introduction

1. The County Council has received an application to register land known as Dawbourne Wood in the St Michael's area of the town of Tenterden as a new Town or Village Green from Dr. R. Crawford on behalf of the St. Michael's Village Community Group ("the Applicant"). The application, made on 11th January 2010¹, was allocated the application number VGA623. 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).

¹ The application itself is dated 9th November 2009 and was originally received by the County Council on 17th November 2009. However, due to deficiencies in the application, it was returned to the applicant and the County Council was not in a position to formally accept the application until it was resubmitted in the current format on 11th January 2010. This is the date upon which, for the purposes of the legislation, the application was legally made.

5. As a standard procedure set out in the 2008 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 large area of woodland of approximately 3 hectares (7.4 acres) in size situated on the Ashford Road, roughly opposite the St. Michael's Primary School, in the St. Michael's area of the town of Tenterden. The eastern end of the application site also extends into the neighbouring parish of High Halden. The application site is shown in more detail on the plan at **Appendix A**.
7. Formal access to the application site is via a gate (now locked) on the frontage of the application site with the A28².
8. There are no recorded Public Rights of Way on or abutting the application site, although the land was subject to an application to record certain routes as Public Rights of Way made by the applicant in 2005 ("the PROW application"). The PROW application led to a Definitive Map Modification Order being made in 2007 to formally record four routes across the land as Public Rights of Way but, following a Public Inquiry, the Order was not confirmed³.

The case

9. The application has been made on the grounds that the application site has become a Town or Village Green by virtue of the actual use of the land by the local inhabitants for a range of recreational activities 'as of right' for more than 20 years.
10. It has been made under section 15(4) of the 2006 Act, i.e. on the basis that use of the application site 'as of right' ended prior to 6th April 2007, but that the application has been made within five years from the date upon which use as of right ceased. The application was made on 11th January 2010 and therefore, in order for the application to qualify under this legal test, it will be necessary for the applicant to demonstrate that recreational use of the land 'as of right' continued until at least the 11th January 2005. This issue will be considered in further detail later in this report.
11. Included in the application were 26 letters of support detailing the recreational use of the land by current and former residents. A summary of this evidence in support of the application is attached at **Appendix C**.

² But note that the user evidence refers to access being gained to the site from other 'unofficial' access points, including Heather Drive and Swain Road.

³ See Planning Inspectorate decision letter dated 4th March 2008 (case reference FPS/W2275/7/44)

12. In addition, a copy of the decision notice in relation to the PROW application and the statement of Ms. H. Whitehead, presented as evidence to the Public Inquiry into the PROW application, were also produced. Whilst recognising that the PROW application was considered under a separate statutory scheme⁴, the applicant states that some of the evidence produced in relation to the PROW application will be relevant to the Village Green application. To this end, the applicant requested that the evidence already submitted in relation to the PROW application also now be taken into account in the context of the current Village Green.

Consultations

13. Consultations have been carried out as required and the following comments have been received.

14. The High Halden Parish Council wrote to express support for the application.

15. The Tenterden Town Council did not wish to express any opinion either in support of or in opposition to the application.

16. A letter of support was also received from former resident Mrs. M. Wadley. Her parents moved to the area in 1969 and purchased a property backing onto the application site. She recalls her family's use of the application site for recreational purposes and states that she often met other people enjoying the land for recreational purposes. She also adds that, after the land was sold in 2004, it became more difficult to access due to tree-felling within the wood and access points being blocked off.

Landowner

17. The application site is owned by Lakehurst Developments Ltd ("the landowner") and is registered with the HM Land Registry under title number K674394.

18. An objection to the application has been received from ET Landnet Ltd, who act on behalf of the landowner. The objection is made on the following grounds:

- That the application has not been made within the necessary five year period of grace set out in section 15(4) of the Act because use 'as of right' ceased on or before January 2005;
- That the use of the land has not been by a significant number of the residents of the locality;
- That use of the application site has been challenged and thus has not been 'as of right' throughout the relevant twenty-year period; and
- That it is not clear that all of the user evidence relates only to the application site itself because an adjacent area of woodland under different ownership would have been used where access to the application site was gained from properties in Heather Drive.

19. Included in support of the objection is a statement (produced in relation to the Public Inquiry into the PROW application) from Mr. P. Verrall, who was instructed

⁴ Applications to record new Public Rights of Way are made under the Wildlife and Countryside Act 1981

by the landowner's agent to undertake forestry work on the application site in 2004. Mr. Verrall's evidence is that there was a gate in place on the application site in 2004 and that although he was aware of use of the application site by members of the public, he challenged such use on the instruction of the landowner's agent.

20. Also produced in support of the objection were copies of newspaper articles dated 16th December 2004 (regarding tree felling) and 29th May 1997 (referring to the existence of a locked gate), photographs showing the woodland as well as the gates and notices erected in Spring 2004, aerial photographs showing the woodland density and copies of invoices for fencing works (January 2004) and signs (July 2004).

Legal tests

21. 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'?*

22. The statutory scheme in relation to Village Green applications is based upon the English law of prescription, whereby certain rights can be acquired on the basis of a presumed dedication by the landowner. This presumption of dedication arises primarily as a result of acquiescence (i.e. inaction by the landowner) and, as such, long use by the public is merely evidence from which a dedication can be inferred.

23. In order to infer a dedication, use must have been 'as of right'. This means that use must have taken place without force, without secrecy and without permission (*'nec vi, nec clam, nec precario'*).

24. In this context, force refers not only to physical force, but to any use which is contentious or exercised under protest⁵: *"if, then, the inhabitants' use of the land is to give rise to the possibility of an application being made for registration of a village green, it must have been peaceable and non-contentious"*⁶.

⁵ *Dalton v Angus* (1881) 6 App Cas 740 (HL)

⁶ *R (Lewis) v Redcar and Cleveland Borough Council* [2010] UKSC 11 at paragraph 92 per Lord Rodger

25. In this case, whilst there is no evidence to suggest that use of the application site has been either secretive or by virtue of any permission, it is the landowner's position that various steps have been taken to secure the application site and prevent unauthorised access.
26. In 1997, the wooden gates providing access onto the application site from the A28 were locked. This is evidenced by photographs supplied by one of the users of the land, Mr. Edmonds (as shown at **Appendix D**). In addition, a headline newspaper article that appeared in the Kentish Express newspaper on 29th May 1997 refers to the landowner intending to lock the gates, and this intention is confirmed by a further article on the comments page of the same newspaper which records that "*the new owner has also locked the gate leading to Dawbourne Wood, which is his right, but has upset the many walkers and riders who have been used to using it for many years*". A copy of this newspaper article is attached at **Appendix D**.
27. According to the decision notice produced in relation to the PROW application, access to the application site apparently continued via a gap at the side of the gates. It is unclear as to how this gap was created; at the Public Inquiry into the PROW application, the landowner alleged that it had been created through vandalism, but this was denied by the user witnesses who gave evidence. In any event, it would have been obvious that this was not an official or intended entrance to the land and consisted of an unintended hole in a dilapidated fence.
28. Later, in 2004, there appear to have been several further challenges to use. These challenges began with the installation of padlocked metal gates (in replacement of the wooden gates) on the A28 entrance to the application site. The installation of these metal gates, along with the repair of adjacent side fencing, took place on 16th and 17th January 2004. At about the same time, a notice stating 'private woodland keep out' was erected. Copies of invoices relating to these works are provided in support of the objection.
29. In the latter part of 2004, coppicing operations took place in the woodland and the forester, Mr. P. Verall, recalls challenging people using the woodland; indeed, it was a condition of the timber extraction agreement that he did so. Another newspaper article, appearing in the Kentish Express newspaper dated 16th December 2004 (see **Appendix D**), includes an interview with Mr. Verall in which he advertises the fact that there is no public right of access to the woodland. Use of the application site must have become contentious by this time, because it was in December 2004 that a meeting was held to discuss the possibility of making the PROW application.
30. The applicant asserts that there were other entrances to the application site which continued to be used. However, the evidence submitted with the application suggests that the entrance from the A28 was generally considered to be the main entrance to the application site. The other entrances to the application site are unofficial access points and they are not linked to any public rights of way immediately abutting the application site. The landowner would have had no reason to be aware of these other 'back' entrances to the application site.
31. The gate erected at the A28 entrance was clearly placed with a view to preventing public access to the site. If the purpose of the gate was only to prevent access by

vehicles, and it was intention for pedestrian access to continue, then the landowner would have erected a pedestrian gate to facilitate such access. It was clearly the landowner's wish that the public be excluded from the site, and his actions indeed served to achieve this (albeit perhaps for a limited period until gaps were created by persons unknown to gain access). This is recorded in the user evidence and newspaper articles.

32. As stated above, the law of prescription relies upon acquiescence on behalf of the landowner. This is not case where there has been inaction on behalf of the landowner: steps have been taken in 1997 and again in 2004 to secure the land. There would, therefore, have been days when the fencing was complete and the main access to the site (from the A28) closed. A reasonable user would have understood from this that the landowner was seeking to resist entry. As such, there is evidence to suggest that use of the application site has been with force, against the landowner's wishes, and therefore not 'as of right'.

(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 activities⁷.

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*'⁸.

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 use of the application site has been for walking (with or without dogs), but there is also evidence of use for nature observation and the collection of mushrooms and chestnuts.

36. It is not disputed by the objector that there has been some use of the application site by the local community. Indeed, this is well documented in the evidence presented to the Public Inquiry into the PROW application at which Ms. Whitehead (the landowner's agent) accepted that "*it appears tracks weave all over the woodland, and people walk wherever the wish*" and Mr. Verrall (the forester) recalled that "*when we first started [coppicing], I was aware of people coming into the woodland three or four times a day*". In the decision notice in relation to the PROW application, the Inspector agrees that "*the overall picture presented by the user evidence is that the woodland was used for a variety of recreational activities and that the paths within the woodland were a means of*

⁷ *R v. Oxfordshire County Council and another, Sunningwell Parish Council* [1999] 3 All ER 385

⁸ *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

walking around it". The fact that the land was used by local people is also expressed in the various newspaper articles relating to the land.

37. Therefore, there can be no dispute that there has been use of the application site for recreational purposes. However, as noted above, there is a question as to whether such use has been in the requisite manner (i.e. 'as of right') and throughout the required period.

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

38. The right to use a Town or Village Green is restricted to the inhabitants of a locality, or of a neighbourhood within a locality, and it is therefore important to be able to define this area with a degree of accuracy so that the group of people to whom the recreational rights are attached can be identified.

"locality"

39. 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*⁹ 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*'.

40. The Applicant specifies the locality at Part 6 of the application form as "St. Michael's, Tenterden". St. Michael's is not a separate administrative parish, instead comprising a suburb of the town of Tenterden and falling within the administrative area of Tenterden Town Council. It is, perhaps, more akin to a neighbourhood rather than a locality.

41. The qualifying locality for the purposes of Village Green registration is therefore the administrative area of Tenterden Town Council.

42. It should be noted that part of the application site falls within the neighbouring administrative parish of High Halden. The evidence is that the application site has been used predominantly, if not exclusively, from the residents of the St. Michael's area of Tenterden. As such, High Halden would not be a relevant locality in this case.

43. In cases where the 'locality' is so large that it is difficult to show that the application site has been used by a significant number of people from that locality (as is the case here), it will be necessary to consider whether there is a relevant 'neighbourhood' within the wider locality.

⁹ *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at 90

“neighbourhood within a locality”

44. On the subject of neighbourhood, the Courts have held that *‘it is common ground that a neighbourhood need not be a recognised administrative unit. A housing estate might well be described in ordinary language as a neighbourhood... The Registration Authority has to be satisfied that the area alleged to be a neighbourhood has a sufficient degree of cohesiveness; otherwise the word “neighbourhood” would be stripped of any real meaning’*¹⁰.
45. As noted above, the applicant refers in the application form to the area of St. Michael’s in Tenterden. Whilst not being a qualifying ‘locality’ for the purposes of Village Green registration, St. Michael’s would be capable of constituting a qualifying ‘neighbourhood’ for this purpose. This contention is supported by the fact that there exists a St. Michael’s Village Community Group, there is a village sign identifying the area, a St. Michael’s village hall and a primary school serving the St. Michael’s area.
46. The majority of the users reside in the St. Michael’s area (as shown on the plan at **Appendix E**) and this would appear to be a qualifying neighbourhood within the context of the Village Green legislation.

“a significant number”

47. 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’*¹¹. 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.
48. In this case, the evidence demonstrates that there has been regular use of the application site by a number of local residents. In some cases, use of the application site, according to the user evidence, has been on a daily or twice daily basis.
49. The publicity attracted by the locking of gates in 1997 and 2004 serves to demonstrate not only that public access to the application site was a matter of interest to the local community as a whole (so that use is likely to have been by a significant number of local residents) but also that those with an interest in the land are likely to have been made aware that the land was in general use by the community (as opposed to a few individuals as trespassers).
50. Therefore, it can be concluded that use of the application site has been by a significant number of the residents of the neighbourhood of St. Michael’s in the wider locality of Tenterden.

¹⁰ *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at page 92

¹¹ *R (Alfred McAlpine Homes Ltd.) v Staffordshire County Council* [2002] EWHC 76 at paragraph 71

(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)?

51. 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.
52. The application, in this case, has been made under the provisions contained in section 15(4) of the Commons Act 2006, which allow applications to be made in cases where use 'as of right' ceased prior to April 2007, provided that such applications are made within five years from the date upon which use 'as of right' ceased.
53. As explained above, the application was made¹² on 11th January 2010 and, in order for the application to be successful, the applicant must therefore be able to demonstrate that use of the application site 'as of right' continued until at least 11th January 2005.
54. On the evidence presented by both parties, this did not happen. Use of the application was challenged in 1997 by the erection of locked wooden gates. Even if use of the application site continued beyond this date by way of a gap adjacent to the gate and the use of other entrances providing access to the site, there were further, more substantial, challenges to use in 2004 which undoubtedly had the effect of rendering the recreational use of the application site contentious. Use of the application site 'as of right' therefore ceased in 2004 (if not before), and the application to register the land as a Village Green has therefore not been made within the required deadline.

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

55. 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' ceased in 2004 and, as such, the relevant twenty-year period ("the material period") is calculated retrospectively from this date, i.e. 1984 to 2004.
56. The user evidence summarised at **Appendix C** demonstrates that there has been use of the application site during the material period and therefore this test is met.

Conclusion

57. It is clear from the evidence submitted both in support of and in opposition to the application that the application site has been used for recreational purposes by the local community for a considerable period.
58. However, the applicant has failed to demonstrate that the use of the application site has been 'as of right' throughout the material period, because the evidence

¹² An application is considered to have been made on the date upon which the County Council formally accepts and date-stamps the application. The County Council will not accept an application as being duly made until all of the relevant requirements governing the making of an application (as set out in Schedule 4 of the 2008 Regulations) have been fulfilled.

shows that from at least 1997, when the landowner erected locked wooden gates at the A28 entrance, use of the application site became contentious.

59. Even if use of the application site 'as of right' had continued until 2004, the application to register the land as a new Village Green would need to have been made within the five-year period of grace set out in the legislation – i.e. by 2009. In this case, the application was not made until 11th January 2010. Even though this is just outside of the five-year period of grace, the County Council has no power to consider an application made outside of the required five year period.

60. Therefore, regardless of whether any, or even all, of the other relevant tests are met, the fact that the application has been made 'out of time' presents a knock-out blow to the possibility of registering the land as a Village Green under the current legislative provisions. As such, it should be concluded that the land is not capable of registration as a Village Green.

Recommendation

61. I recommend that the applicant be informed that the application to register land known as Dawbourne Wood at Tenterden as a Village Green has not been accepted.

Accountable Officer:

Mr. Mike Overbeke – Tel: 01622 221568 or Email: mike.overbeke@kent.gov.uk

Case Officer:

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

The main file is available for viewing on request at the 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 – Evidence supplied by the landowner

APPENDIX E – Plan showing the area within which users reside

588500.000000

588750

APPENDIX A: Plan showing the application site

135500.000000

135500

135250.000000

135250

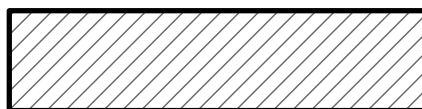
588500.000000

588750.000000



Scale 1:2500

Land subject to Village Green application at
Dawbourne Wood, St. Michael's, near Tenterden



FORM CA9

Commons Act 2006: section 15

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



APPENDIX B:
Copy of 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
11 JAN 2010

Application number:

VGAB23

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

Note to applicants

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

- All applicants should complete parts 1–6 and 10–12.
- Applicants applying for registration under section 15(1) of the 2006 Act should, in addition, complete parts 7 and 8. Any person can apply to register land as a green where the criteria for registration in section 15(2), (3) or (4) apply.
- Applicants applying for voluntary registration under section 15(8) should, in addition, complete part 9. Only the owner of the land can apply under section 15(8).
- There is no fee for applications under section 15.

Note 1

*Insert name of Commons
Registration Authority*

1. Commons Registration Authority

To the: *Commons Registration Authority
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: *S^t Michael's Village Community Group.*
Full postal address: *(for correspondence)*
(incl. Postcode) *Dr. Raymond Crawford,*
SEYMOUR HOUSE, SHOREHAM LANE,
ST MICHAEL'S, TENTERDEN, KENT. TN306EH
Telephone number: *01580 762967*
(incl. national dialling code)
Fax number: *01580 762967*
(incl. national dialling code)
E-mail address: *raymond@crawford.plus.com*

Note 3

This part should be completed if a representative, e.g. a solicitor, is instructed for the purposes of the application. If so all correspondence and notices will be sent to the person or firm named here. If you supply an email address in the box provided, you may receive communications from the Registration Authority or other persons (e.g. objectors) via email.

3. Name and address of representative, if any

Name:
Firm:
Full postal address:
(incl. Postcode)
Telephone number:
(incl. national dialling code)
Fax number:
(incl. national dialling code)
E-mail address:

Note 4

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

4. Basis of application for registration and qualifying criteria

If you are the landowner and are seeking voluntarily to register your land please tick this box and move to question 5. Application made under section 15(8):

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

Section 15(2) applies:

Section 15(3) applies:

Section 15(4) applies:

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

December 2004 / January 2005.
See Order Decision Ref: FPS/W2275/7/44 by
Planning Inspector Helen Slade M.A., FIPROW
Page 6, para 28.

*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: **DAWBOURNE WOOD**

Location: **LAND REGISTRY TITLE K762503, THIS APPLICATION REFERS ONLY TO THIS PART OF DAWBOURNE WOOD. FURTHER DETAILS IN REPORT BY STEWART BIGGS (KCC) 6. Feb 2007**

Common Land register unit number (only if the land is already registered Common Land): **N/A**

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:

ST Michael's, Tennerden

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

See attached notes for full detail

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).

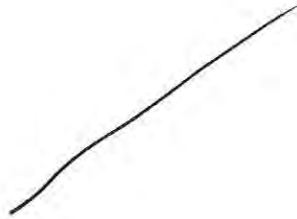
8. Name and address of every person whom the applicant believes to be an owner, lessee, proprietor of any "relevant charge", tenant or occupier of any part of the land claimed to be a town or village green

LAKE HURST DEVELOPMENTS LTD
LAKE HURST HOUSE
94c HIGH STREET
TENTERDEN
KENT TN 30 6JB.

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

See attached notes

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

See attached notes

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):

Leung Mulholland
St Michaels Village
Community Group

Date:

11/11/2009

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.

APPENDIX C:
Table summarising evidence of use

Name	Period of use	Frequency	Activities	Comments
Mrs. G. Barnes	Since 1975	'many times'	Dog walking	Own children played there in 1960s
Mrs. J. Bennett	1974 – mid 2000s	<i>Not stated</i>	Recreational purposes	
Mr. M. Blik	1982 – 2004	<i>Not stated</i>	Exercise dogs, nature walking, playing with children	Used until 2004 when present owner barred access.
Mr. S. Brown	1983 – 2004	Regular use	Recreational walking	Wood has been widely regarded as a local amenity with free access. Local residents have made extensive and unchallenged use of the system of footpaths through it.
Mr. and Mrs. C. Chapman	1996 – 2004	'often'	Walking	Used until 2004 when access from A28 closed.
Mr. L. Cheeseman	1991 – 2009*	<i>Not stated</i>	Dog walking, nature surveys	Aware of use by others. Since land purchased by Lakehurst Developments, access from A28 is closed, but have continued to visit by accessing from footpath and orchard at Swain Road.
Mrs. A. Cooper	1968 – 2005	<i>Not stated</i>	Walking	
Dr. R. Crawford	1971 – 2004	Occasional since 1990s		Never saw any prohibitive notices or obstructions until 2004. Used without hindrance until main entrance at A28 blocked. Other entrances remained open after this time.
Mr. I. Crosser	1985 – 2009*	<i>Not stated</i>	Exercising dog, socialising, relaxation, nature watching	
Mr. and Mrs. D. Davies	1985 -	Regularly	Recreational walking	Would frequently meet other local residents
Mr. M. Davies	1984 – 2004?	Daily	Dog walking	Used until access blocked (but date not stated)
Mr. C. Emmerich	1967 -	Several times per year	Walking	There is now a gate at the A28 entrance and a 'private' notice
Mr. J. Edmonds	1976 – 2004	Daily until 1989, then weekly	Walking	There was a padlock and chain fitted to the gate in 1997, but access was obtained via a gap in the adjacent fence and various other places around the perimeter. Sought permission (refused) but continued to use without challenge until 2004.
Mrs. G.	1960 – 1997	<i>Not stated</i>	Exercise dogs	Used in common with other local residents

Edwards						
Mr. and Mrs. J. Farthing	Not stated	Not stated	Not stated	Walking along path to High Halden, birdwatching	Walking along path to High Halden, birdwatching	Son played there as a teenager in 1980s
Mrs. S. Gooch	Not stated	Not stated	Not stated	Used as a child for building camps, playing, pond-dipping	Used as a child for building camps, playing, pond-dipping	Would always see others using the wood
Mrs. J. Harper	1984 – 2009*	Daily until 2002	Daily until 2002	Dog walking	Dog walking	Still frequently walk in the wood and meet other walkers there.
Mrs. S. Luxmoore	Not stated	Not stated	Not stated	Used as a child for walking and playing. No longer local resident, but return for walks on visits.	Used as a child for walking and playing. No longer local resident, but return for walks on visits.	On recent visit it was much less easy to access, with new fences and a locked gate
Mrs. S. Marshall	1970 – 2004	Not stated	Not stated	Walking, dog walking, playing with children	Walking, dog walking, playing with children	
Mrs. M. Melville-Cross	1930s – 2005	Not stated	Not stated	Playing as a child, dog walking	Playing as a child, dog walking	Only stopped using when it became physically difficult to traverse rough terrain
Mr. H. Newman	1968 - ?	Not stated	Not stated	Children playing, dog walking, walking, mushrooming	Children playing, dog walking, walking, mushrooming	Gates on A28 chained and locked to stop vehicular traffic but always large gap for pedestrian access. Have seen and heard others using (as house backs onto wood) since 1968.
Mr. C. Nicholls	1960s	Not stated	Not stated	Used as a child for playing	Used as a child for playing	
Mrs. S. Saunders	1964 – 2007	Daily	Daily	Walking with children and dog	Walking with children and dog	Used until 2007 when pathways were closed and access could not be obtained. Many people regularly used woods.
Mrs. D. Southcott	1966 - ?	Twice daily	Twice daily	Dog walking, nature walks with children	Dog walking, nature walks with children	Access from gate at bottom of garden. Often meet other walkers.
Mrs. V. Strange	1980 – 2004?	Twice daily from 1987, occasionally before.	Twice daily from 1987, occasionally before.	Running, dog walking, recreational walking with family, birdwatching, collecting chestnuts	Running, dog walking, recreational walking with family, birdwatching, collecting chestnuts	Used until routes closed (date not stated).
Mr. and Mrs. Wilson	1978 – 2009*	Daily	Daily	Dog exercise, nature study, playing with children	Dog exercise, nature study, playing with children	Used to access via unmade road off Heather Drive but new owner blocked off (date not specified). In 2004, told by forester that woodland would become private and access prohibited. Subsequently found entrance fenced off with keep out notice.

'I am no ogre... these trees have to be felled'



Woodsman Phil Verrall felling a sweet chestnut
Ref: pd 720072

WOODSMAN Phil Verrall is the man tasked with felling trees as part of the coppicing scheme in Dawbourne Wood, St Michael's.

And he is not a happy man as he goes about working the two acres.

"I've been doing this job for 15 years and my father's been doing it for more than 50 but this is the worst experience I've ever had," he said.

"People come up daily and complain to me about what I'm doing but the squirrels are doing more damage than I am."

The Kentish Express told last week how feelings were running high after felling work started. Housebuilder John Mills authorised the work, with the go-ahead from the Forestry Commission.

Mr Verrall said: "The trouble is this wood has not been coppiced for 25 years or more and it was slowly dying.

"Of course I've cut down trees, some of them 150 years old, but these were two oaks that needed to be felled. Sweet chestnut is cut in order for it to regenerate because this is the coppicing season.

"Normally I get one visit from a Forestry Commission officer at a site I'm working on. This time I've had visits from the Forestry Commission, Ashford Borough Council and even an environmental officer because there was a complaint about the noise.

"This is the 21st century, the days of using an axe are long gone.

"There is no public footpath or right of way through here but this week a man was walking towards a tree I was cutting. I shouted at him in warning but he

just kept on walking and it was only his good luck it did not come down on him.

"At no other estate I've coppiced have I had this kind of difficulty. I know that in a year's time the woods will have grown back with their bluebells, which would otherwise have died.

"I'm certain the people who complain have got wood fires - where do they think the logs come from? What about the roof timbers and beams in their houses. All the chestnut that is cut goes for fence panels and the rest to local businesses.

"All I'm doing is letting the sunshine in. I am not some sort of ogre like some people are making me out to be!"

Extract from the Kentish Express
newspaper on 16th December 2004

...brings results

KENTISH

TENTERDEN AND DISTRICT



EXPRESS

A Kent Messenger Group Newspaper

Thursday, May 29, 1997

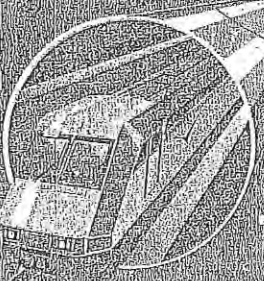
38p

INSIDE BRITAIN'S FASTEST GROWING WEEKLY NEWSPAPER

Newspaper Society Newspaper Sales Awards

FRANCE FROM £19

WITH THE SHUTTLE - SEE PAGE 15



WIN TICKETS TO SEE THE BEAUTIFUL SOUTH

SEE YOUR WHAT'S ON MAGAZINE



PLUS! TWO-FOR-ONE AT TOP DAYS OUT - SEE PAGE 10

Roman road lost to new housing

RESIDENTS of St Michael's have been thwarted in their attempt to buy a piece of woodland with a Roman road running through it.

More than 30 supporters of the St Michael's Woodland Trust had put together £14,000 to buy Dawbourne Wood, which

by Jenni Balow

fronts the Ashford Road.

Retired engineer Les Cheeseman, of Swain Road, headed the group which planned to make a gift of the land to the Woodland Trust and had spent nearly a year negotiating the deal with local builder Jim Cox.

However, Tenterden-based Lakehurst Develop-

ments made a successful bid for the freehold and an outline planning application has now been made to build two detached houses on the front of the site.

Managing director John Mills said: "We are not proposing to develop Dawbourne Wood. If the houses are built, they will block access to the rest of the land."

For more than 20 years, the woods have been open for dog-walking and recreation. Mr Mills says the gateway will be locked until development of the site is resolved.

The land is opposite St Michael's Church and the primary school and has an established access to the A28.

Mr Mills said that he

would have no objection to an archaeological dig on the line of the Roman road.

Mr Cheeseman said local families were very disappointed at losing the contract race to buy and upset that they had lost access to what had become a recreation site.

Ⓞ The Roman road was built when iron ore was extracted in the Weald and waste material from smelting was used for the base.

The road ran from the old Mill Ponds, crossing what is now the A28, close to St Michael's Church in the Ashford direction. Roman coins found in the area can be seen at the Tenterden museum.

See comment - page 6.

6 Kentish Express, Thursday, May 29, 1997

Comment

NEWS that a consortium of St Michael's families has lost a bid to buy and preserve woodland crossed by a Roman road is certainly disappointing.

The new owner has also locked the gate leading to Dawbourne Wood, which is his right, but has upset the many walkers and riders who have been used to using it for many years.

But all is not lost. The potential developer recognises the historical significance of the site and will allow an archaeological dig.

He also states that the greater part of the woods will not be touched by development and he is willing to discuss future use.

The possibility of access to two new houses on a dangerous stretch of the A28 also leads to thoughts about improving safety.

For years, the governors of St Michael's Primary School have pleaded for a reduction in the speed limit past the school opposite the site.

An improved access with traffic islands down the road outside the new London Beach golf course promises to slow traffic.

Major re-surfacing work is also scheduled for another part of the Ashford Road, so the time is right for a safety campaign.

Extract from the Kentish Express newspaper on 29th May 1997

Photographs showing the gate at the A28 entrance to the application site



Summer 1997 – The original gate on the A28. This had never been locked prior to this time.



16th and 17th January 2004 – Removal of wooden gate and re-siting and renewing with metal gate and new side fencing



January 2004