

Application to register land known as Scrapsgate Open Space and Playing Field at Minster-on-Sea as a new Village Green

A report by the Head of Regulatory Services to Kent County Council's Regulation Committee Member Panel on Tuesday 11th September 2012.

Recommendation: I recommend that the County Council informs the applicant that the application to register the land known as Scrapsgate Open Space and Playing Field at Minster-on-sea 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. A. Crowther

Unrestricted item

Introduction

1. The County Council has received an application to register land known as Scrapsgate Open Space and Playing Field at Minster-on-Sea on the Isle of Sheppey as a new Village Green from the Minster-on-Sea Parish Council ("the applicant"). The application, made on 8th November 2010, was allocated the application number VGA632. 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).

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. The publicity must state a period of at least six weeks during which objections and representations can be made.

The application site

5. The area of land subject to this application (“the application site”) consists of an area of land of approximately 0.4 hectares (1.2 acres) in size which is situated to the west of Scrapsgate Road and occupies an area between the sewage pumping station, the Minster Marshes and Ripney Hill Farm in the parish of Minster-on-Sea. The application site is shown in more detail on the plan at **Appendix A**.
6. Part of the application site is known as ‘Scrapsgate Road Playing Field’ and is accessed via a gap from Scrapsgate Road in the south-eastern part of the application site, and the remainder of the application site is known as ‘Scrapsgate Field’ and accessed via a small car park situated off Scrapsgate Road adjacent to the sewage pumping station.

The case

7. 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.
8. In support of the application, 86 standard-form witness statements from local residents were provided, all attesting to use of the application site for lawful sports and pastimes ‘as of right’ for a period of over twenty years. A summary of the evidence in support of the application is attached at **Appendix C**. Also included in the application were several photographs showing use of the application site in 1974 and a newspaper article dated 28th June 1974 reporting an annual gymkhana that took place on the application site.

Consultations

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

Landowner

10. The application site (with the exception of a small tract of land to the north of the sewage pumping station) is owned by Swale Borough Council (“the Borough Council”) and is registered with the Land Registry under title numbers K247077 and K921207. The small tract of land referred to above has no registered landowner.
11. The Borough Council has been contacted and has no objection to the application. The Borough Council confirmed that the land was registered to it on 12th January 1967 and drew attention to a reference to the Physical Training and Recreation Act 1937 contained in the Land Registry title which suggests that the land may be held for recreational purposes. However, the Borough Council has not been able to provide a copy of the original conveyance, nor has it been able to provide any

Legal tests

12. 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'?*

13. 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.
14. In this case, there is nothing within the user evidence to suggest that use of the application site has been in exercise of any force or has taken place subversively. The notion that users have had free and unrestricted access to the application site is supported by the ease with which it is possible to access the application site and the lack of any evidence on the ground of fencing or gates to restrict or impede pedestrian access.
15. There are several notices on the application site, but none of these appear to seek to prohibit general recreation on the land. There are some notices erected by the Environment Agency in relation to the drainage ditch on the western edge of the site warning of a sudden drop, flash flooding and uneven ground. There is a notice at the entrance to the Scrapsgate Field warning pedestrians that the land is a horse riding area and warning riders of ground conditions. Finally, there is also a notice at the entrance to Scrapsgate Road Playing Field which does prohibit golf and camping but which does not seek to restrict any other form of access. As such, none of the notices would have had the effect of suggesting to a reasonable user that s/he their use was under protest by the landowner.
16. Nor is there any suggestion within the user evidence that use has taken place by virtue of any express permission from the landowner. The reference to the Physical Training and Recreation Act 1937 ("the 1937 Act") in the Land Registry title documentation implies that the land may be held for recreational purposes and therefore that use may have taken place by virtue of an existing right.

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

However, the Borough Council has not been able to provide any documentation to support this proposition and, in the absence of any such evidence, it is not possible to conclude definitively that the land is held under the 1937 Act.

17. Therefore, in the absence of any evidence to the contrary, use of the application site would appear to have taken place 'as of right'.

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

18. 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 activities².

19. 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*'³.

20. In this case, the user evidence statements refer to the use of the land for 'lawful sports and pastimes' as a generic category and do not make reference to specific categories. However, some users have added their own comments and suggest that the land has been used for activities including walking, playing with children and horse riding. A selection of these comments is included at **Appendix C**.

21. Therefore, it can be concluded that the application site has been used for the purposes of lawful sports and pastimes.

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

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*⁴ 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*

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

³ *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

⁴ *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at 90

*the land is in general use by the community for informal recreation rather than occasional use by individuals as trespassers*⁵. 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. On the application form, the applicant has provided a description of the location of the land rather than specifying a legally recognised administrative unit as per the legal requirements. The fact that the applicant has not specified a qualifying locality is not, of itself, fatal to the application provided that the County Council is satisfied that there exists a qualifying locality prior to the registration of the land as a Town or Village Green.

25. In this case, the application site falls within the administrative parish of Minster-on-Sea which is a legally recognised unit and thus would constitute a qualifying locality for the purposes of section 15 of the Commons Act 2006.

'significant number'

26. Having established the relevant locality, it is also necessary to consider whether use of the application site has taken place by a significant number of the residents of the locality. In this case, the application is supported by evidence questionnaires from 86 local residents living throughout the parish of Minster-on-Sea (as shown on the plan at **Appendix D**).

27. As such, it can be concluded that use has taken place by the community as a whole (rather than individuals as trespassers) and this test is therefore met.

(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)?

28. 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).

29. In this case, there is no evidence of any challenge to recreational use of the application site and such use has continued up to (and indeed beyond) the date of the application in November 2010.

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

30. 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. 1990 to 2010.

⁵ *R (Alfred McAlpine Homes Ltd.) v Staffordshire County Council* [2002] EWHC 76 at paragraph 71

31. The standard format of the user evidence questionnaires makes it difficult to establish precise periods of use for each individual witness. However, the wording of the statements suggests that all of the users have used the land for a period of at least 20 years and, taking into account the Borough Council's confirmation that it acquired the land in 1967 and the newspaper article reporting the gymkhana that took place on the land in 1974, it would appear that the application site has been available for recreational use well beyond the requisite twenty year period.

Conclusion

32. Although this application is unopposed, it is still necessary for the County Council to consider the application on its merits and to be satisfied that all of the requisite legal tests have been met. Indeed, DEFRA's guidance states that '*an application should be granted only if it is made in accordance with the criteria in the legislation, and the absence of opposition to its being granted must not be taken as suggestive that those criteria are met and need not be considered*'⁶.

33. In this case, the evidence demonstrates (for the reasons set out above) that the application site has been used by local residents without challenge for recreational purposes for a period in excess of 20 years. There is no evidence to suggest that such use has not been 'as of right' or that it has been challenged in any way. It can therefore be concluded that the legal tests concerning the registration of the land as a Village Green have been met.

Recommendation

34. I recommend that the County Council informs the applicant that the application to register the land known as Scrapsgate Open Space and Playing Field at Minster-on-sea 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:

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

Case Officer:

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

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

Background documents

APPENDIX A – Plan showing application site

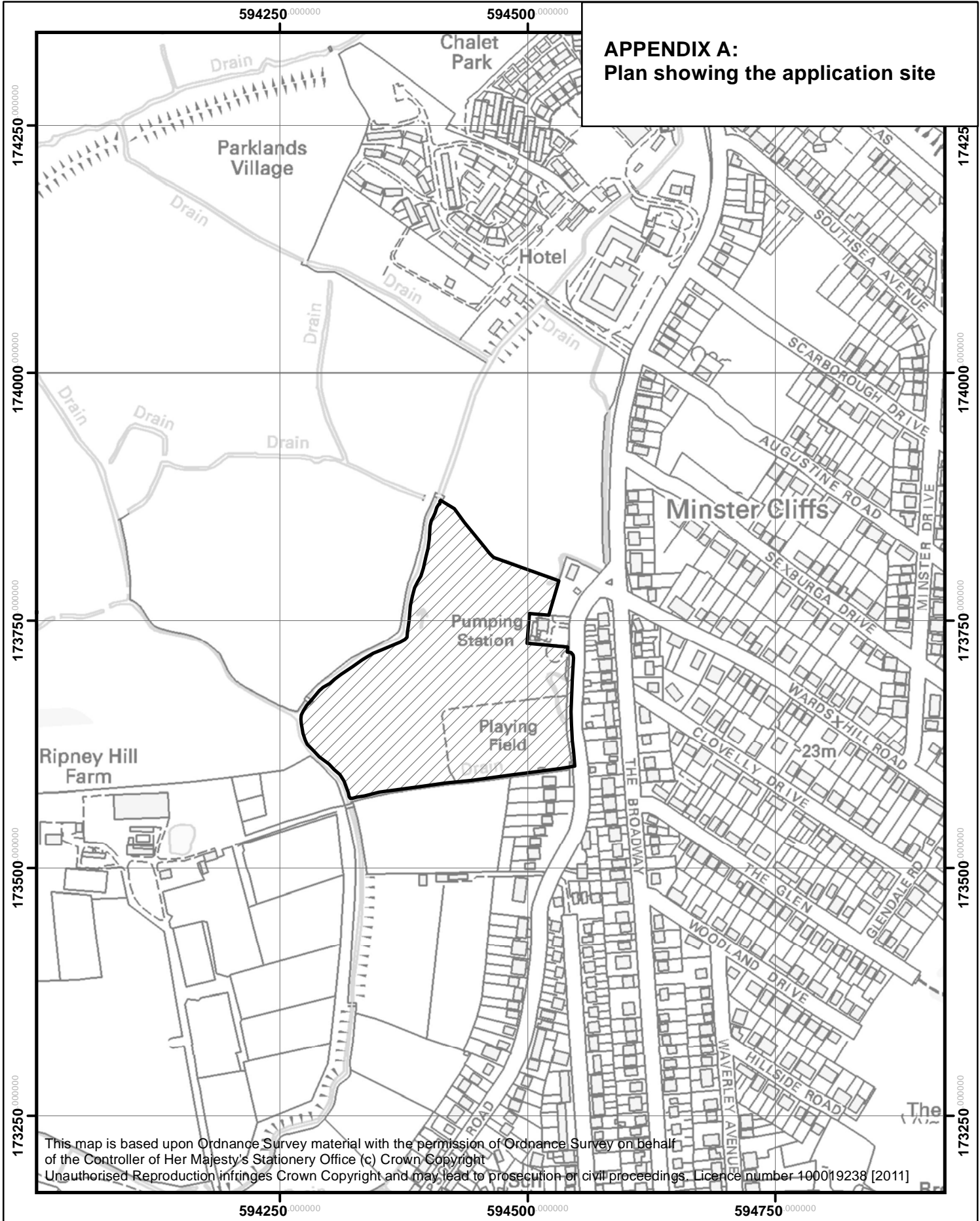
APPENDIX B – Copy of application form

APPENDIX C – Table summarising user evidence

APPENDIX D – Plan showing locality

⁶ See section 7.17 of DEFRA's 'Guidance to commons registration authorities and PINS for the pioneer implementation' (Version 1.43, September 2011)

**APPENDIX A:
Plan showing the application site**

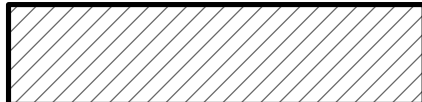


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Scale 1:5000

**Land subject to Village Green application at
Scrapsgate Road, Minster-on-Sea**

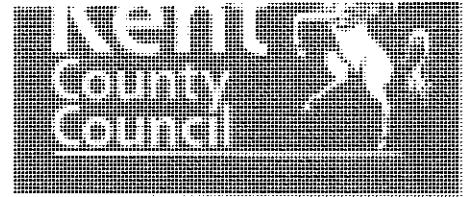


FORM CA9

APPENDIX B:
Copy of the application form

Commons Act 2006: section 15

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



This section is for office use only

Official stamp of the Registration Authority
indicating date of receipt:

COMMONS ACT 2006
KENT COUNTY COUNCIL
REGISTRATION AUTHORITY
08 NOV 2010

Application number:

VQA632

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

Note to applicants

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

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

Note 1

*Insert name of Commons
Registration Authority*

1. Commons Registration Authority

To the: COMMONS REGISTRATION TEAM
KENT COUNTY COUNCIL
COUNTYSIDE ACCESS SERVICE
INVICTA HOUSE
COUNTY HALL
MARLBORNE
KENT
ME14 1XX

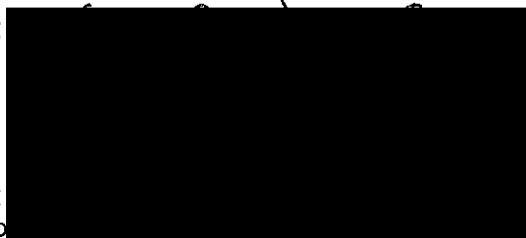
Note 2

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: MINSTER-IN-SEA PARISH COUNCIL

Full postal address:
(incl. Postcode)



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:

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:

**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:

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: **SCRAPSGATE OPEN SPACE AND PLAYING FIELD**

Location: **MINSTER-ON-SEA, ISLE OF SHEPPEY, KENT.**

Common Land register unit number (only if the land is already registered Common Land):

Please tick the box to confirm that you have attached a map of the land (at a scale of at least 1:2,500):

Note 6

It may be possible to indicate the locality of the green by reference to an administrative area, such as a parish or electoral ward, or other area sufficiently defined by name (such as a village). If this is not possible a map should be provided on which a locality or neighbourhood is marked clearly at a scale of 1:10,000.

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

Indicate the locality (or neighbourhood within the locality) to which the claimed green relates by writing the administrative area or geographical area by name below and/or by attaching a map on which the area is clearly marked: **THE PARCEL OF LAND KNOWN AS 'SCRAPSGATE OPEN SPACE + PLAYING FIELD' IN MINSTER-ON-SEA, SHEPPEY, KENT SURROUNDED BY THE MINSTER MARSHES, SCRAPSGATE ROAD AND RIDNEY HILL FARM.**

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

A SIGNIFICANT NUMBER OF THE RESIDENTS OF MINSTER-UW-SEA HAVE INDULGED AS OF RIGHT IN LAWFUL SPORTS AND PASTIMES ON THE LAND KNOWN AS THE 'SCRAPSGATE OPEN SPACE AND PLAYING FIELD' IN MINSTER-UW-SEA FOR A PERIOD OF MORE THAN TWENTY YEARS AND THEY CONTINUE TO DO SO AT THE TIME OF APPLICATION.

THESE RESIDENTS HAVE DONE SO WITHOUT PERMISSION, WITHOUT BEING STOPPED OR SEEING NOTICES TO STOP THEM, WITHOUT BEING SECRETIVE ABOUT IT. THEY HAVE DONE THIS FOR A CONTINUOUS PERIOD OF MORE THAN TWENTY YEARS.

THIS APPLICATION SEES AN INCLUSION IN THE REGISTER OF TOWNS AND VILLAGE GREENS OF THE LAND KNOWN AS THE 'SCRAPSGATE OPEN SPACE AND PLAYING FIELD' WHICH IS QUALIFIED FOR REGISTRATION BY VIRTUE OF THE USE OF THE LAND FOR THE PURPOSES OF LAWFUL SPORTS AND PASTIMES (AS OF RIGHT) AND WITHOUT CHALLENGE FROM THE LANDOWNER FOR A PERIOD OF MORE THAN TWENTY YEARS.

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

LEN MAYATT
LANDSCAPE OFFICER PARKS + OPEN SPACES
COMMUNITY ENVIRONMENTAL SERVICES
SWALE BROUGH COUNCIL
SWALE HOUSE
EAST STREET
SPRINGBOWNE
KENT
ME10 3HT

<p>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.</p>	<p>9. Voluntary registration – declarations of consent from any relevant leaseholder of, and of the proprietor of any relevant charge over, the land</p> <p style="text-align: center;">NOT APPLICABLE</p>
<p>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.</p>	<p>10. Supporting documentation</p> <ul style="list-style-type: none"> - 86 Supporting Witness Statements - Photographic Evidence From 1971 onwards - Press Article DATED 28 JUNE 1974.
<p>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.</p>	<p>11. Any other information relating to the application</p> <p>THIS INCLUDES ONE OF THE BEST FOOTBALL PITCHES ON THE ISLAND. THE REST OF THE LAND IS ALLOCATED FOR THE USE OF THE PONY CLUB, DOG WALKERS AND OUTDOOR PURSUITS.</p>

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):  TRISH COORINGTON (PARISH CLERK)
ON BEHALF OF MINSTER-ON-SEA PARISH COUNCIL

Date: 2/11/10.

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.

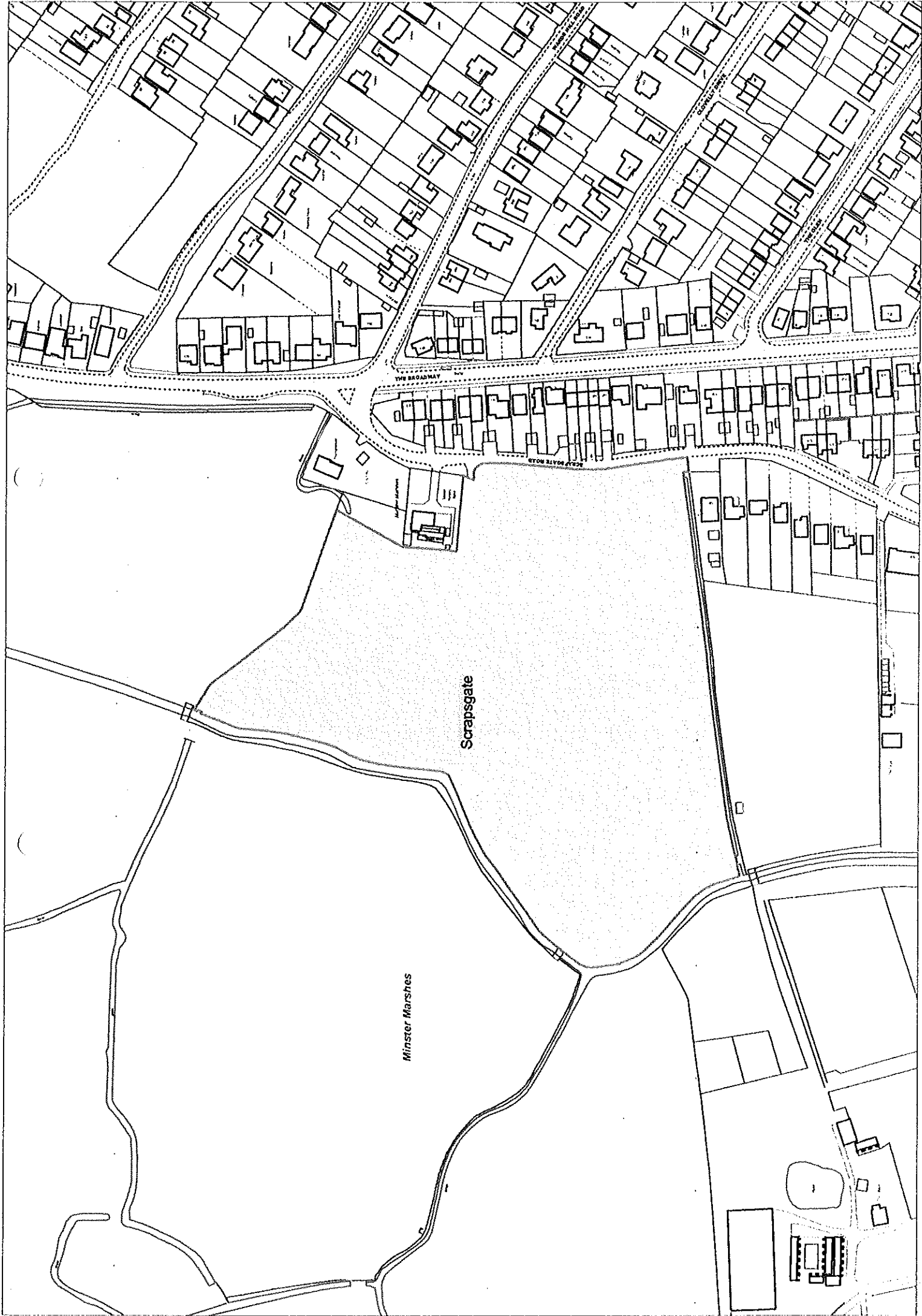
Please send your completed application form to:

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: Summary of user evidence

The user evidence submitted in support of this application consists of identical 'standard form' statements which have been individually signed by local residents.

The statements all read: *"As a resident of Minster on Sea, I have indulged as right in lawful sports and pastimes on the land known as 'Scrapsgate Open Space and Playing Field' in Minster-on-Sea, Sheerness, Kent for a period of more than twenty years and I continue to do so at the current time. I have done this without permission, without force or seeing notices to stop me and without being secretive about this".*

In addition, a number of people added their own comments in a space at the bottom of the form setting out their own observations and evidence of use in greater detail. A sample of these comments is reproduced below.

Mrs. L. Barton – "I have used Scrapsgate Open Space and Playing field all my life... [my children] played and rode ponies plus walked our dogs. Now their children are using this lovely open space..."

Mrs. S. Christie – "I have used this field for many years and would find it a great shame to see it used for anything other than recreational activities"

Mrs. S. Crane – "it is also a good place to walk the dog"

Mrs. M. Oates – "I use this area for dog walking and horse riding"

Mrs. R. Growsell – "This is one of the local places we use, my son has taken many nature photographs there"

Mrs. J. Harland – "I often go for a walk along there"

Mr. P. Houghton – "I have used this area for at least 40 years"

Mrs. J. Ingleton – "This has always been a place for football and sports"

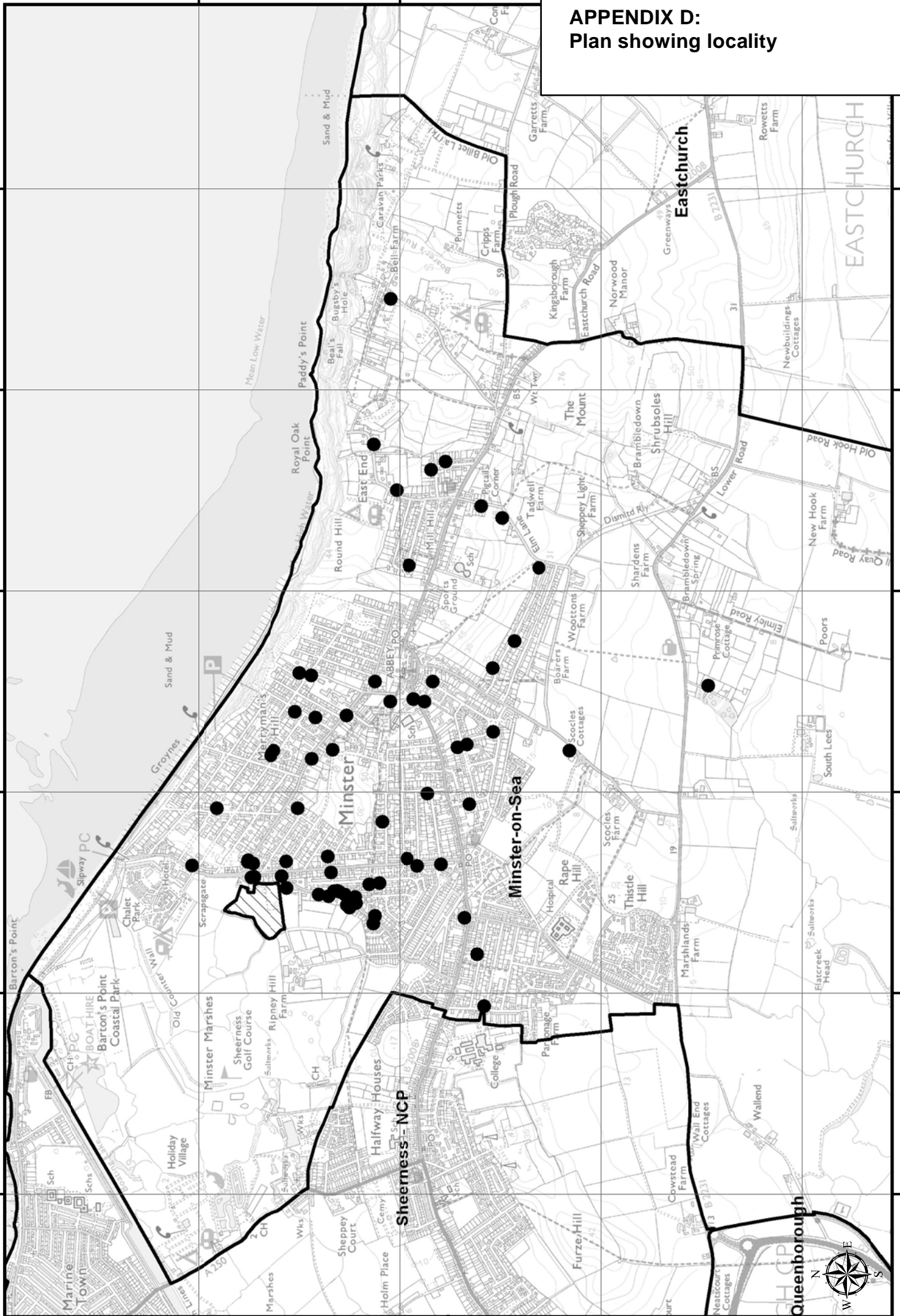
Mr. M. Ingleton – "As a local resident I have ridden across and around this field for the last 60 years... I also take my dogs there on a regular basis and enjoy the wildlife"

Mrs. A. Lawrence – "I have been using the area stated for the past 30 years for dog walking and horse riding... I use this area on a regular basis"

Mrs. B. Robinson – "This is a lovely play field. Even if lots of boys are playing football there is still plenty of space to do other things. Young children love walking round the field, to see all the horses and sometimes the ducks and the rabbits. It is also used to walk dogs."

Mrs. S. Strong – "Over 20 years ago, until 2004, my son and I rode our horses in this field (one of the few off road sites available for horse riding in this area). My children and now grandchildren played football and other games here, as well as fishing for tadpoles and newts in the ditches. I continue to use it regularly for walking my dog."

**APPENDIX D:
Plan showing locality**



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