

Application to register land at Willow Road in Larkfield as a new Village Green

A report by the Head of Regulatory Services to Kent County Council's Regulation Committee Member Panel on Monday 21st January 2013.

Recommendation: I recommend that the County Council informs the applicant that the application to register the land at Willow Lane in Larkfield has been accepted, and that the land subject to the application be formally registered as a Village Green.

Local Member: Mrs. T. Dean

Unrestricted item

Introduction

1. The County Council has received an application to register land at Willow Road in the parish of East Malling and Larkfield as a new Village Green from the East Malling and Larkfield Parish Council ("the applicant"). The application, dated 1st May 2012, was allocated the application number VGA645. 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. Traditionally, Town and Village Greens have derived from customary law and until recently it was only possible to register land as a new Town or Village Green where certain qualifying criteria were met: i.e. where it could be shown that the land in question had been used 'as of right' for recreational purposes by the local residents for a period of at least 20 years.
3. However, a new provision has been introduced by the Commons Act 2006 which enables the owner of any land to apply to voluntarily register the land as a new Village Green without having to meet the qualifying criteria. Section 15 states:
*"(8) The owner of any land may apply to the Commons Registration Authority to register the land as a town or village green.
(9) An application under subsection (8) may only be made with the consent of any relevant leaseholder of, and the proprietor of any relevant charge over, the land."*
4. Land which is voluntarily registered as a Town or Village Green under section 15(8) of the Commons Act 2006 enjoys the same level of statutory protection as that of all other registered greens and local people will have a guaranteed right to use the land for informal recreational purposes in perpetuity. This means that once the land is registered it cannot be removed from the formal Register of Town or Village Greens (other than by statutory process) and must be kept free of development or other encroachments.

5. In determining the application, the County Council must consider very carefully the relevant legal tests. In the present case, it must be satisfied that the applicant is the owner of the land and that any necessary consents have been obtained (e.g. from a tenant or the owner of a relevant charge). Provided that these tests are met, then the County Council is under a duty to grant the application and register the land as a Town or Village Green.

The Case

Description of the land

6. The area of land subject to this application (“the application site”) consists of an area of grass on the edge of Castle Lake which is approximately 0.82 acres (0.33 hectares) in size. The application site abuts residential properties at the western end of the cul-de-sac known as Willow Road. Photographs of the application site are attached at **Appendix C**.

Notice of Application

7. As required by the regulations, Notice of the application was published on the County Council’s website. In addition, copies of the notice were displayed on the application site itself. The local County Member was also informed of the application.
8. The local County Member, Mrs. T. Dean wrote to confirm her support for the application.
9. During the consultation period, a number of telephone calls were received from residents of Willow Road who were concerned that the designation of the land as a Village Green would lead to the area becoming a formal recreational area, with the provision of play equipment and other facilities, and causing it to become a haven for anti-social behaviour. None of the local residents wrote to formally object to the application (because the County Council does not have the power to take into consideration such objections), but expressed a strong desire for the application site to remain unchanged.
10. The County Council does not have the power to take such concerns into account when determining the Village Green application because, as is noted above, the County Council is under a duty to register the land if the legal tests relating to ownership are met. However, it is hoped that the Parish Council would engage with local residents if any changes are to be made to the land in the future.

Ownership of the land

11. A Land Registry search has been undertaken which confirms that the application site is wholly owned by the applicant under title number K777461. A copy of the Register of Title is attached at **Appendix D**.
12. There are no other interested parties (e.g. leaseholders or owners of relevant charges) named on the Register of Title.

The 'locality'

13. DEFRA's view is that once land is registered as a Town or Village Green, only the residents of the locality have the legal right to use the land for the purposes of lawful sports and pastimes. It is therefore necessary to identify the locality in which the users of the land reside.
14. A locality for these purposes normally consists of a recognised administrative area (e.g. civil parish or electoral ward) or a cohesive entity (such as a village or housing estate).

In this case, the application is made by the local Parish Council and the relevant locality is stated in the application form as being 'East Malling and Larkfield parish'. As noted above, a civil parish is a qualifying locality for the purposes of Village Green registration and, as such, it seems appropriate that the relevant locality in this case should be the parish of East Malling and Larkfield.

Conclusion

15. As stated at paragraph 3 above, the relevant criteria for the voluntary registration of land as a new Town or Village Green under section 15(8) of the Commons Act 2006 requires only that the County Council is satisfied that the land is owned by the applicant. There is no need for the applicant to demonstrate use of the land 'as of right' for the purposes of lawful sports and pastimes over a particular period.
16. It can be concluded that all the necessary criteria concerning the voluntary registration of the land as a Village Green have been met.

Recommendations

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

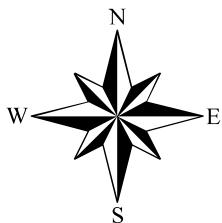
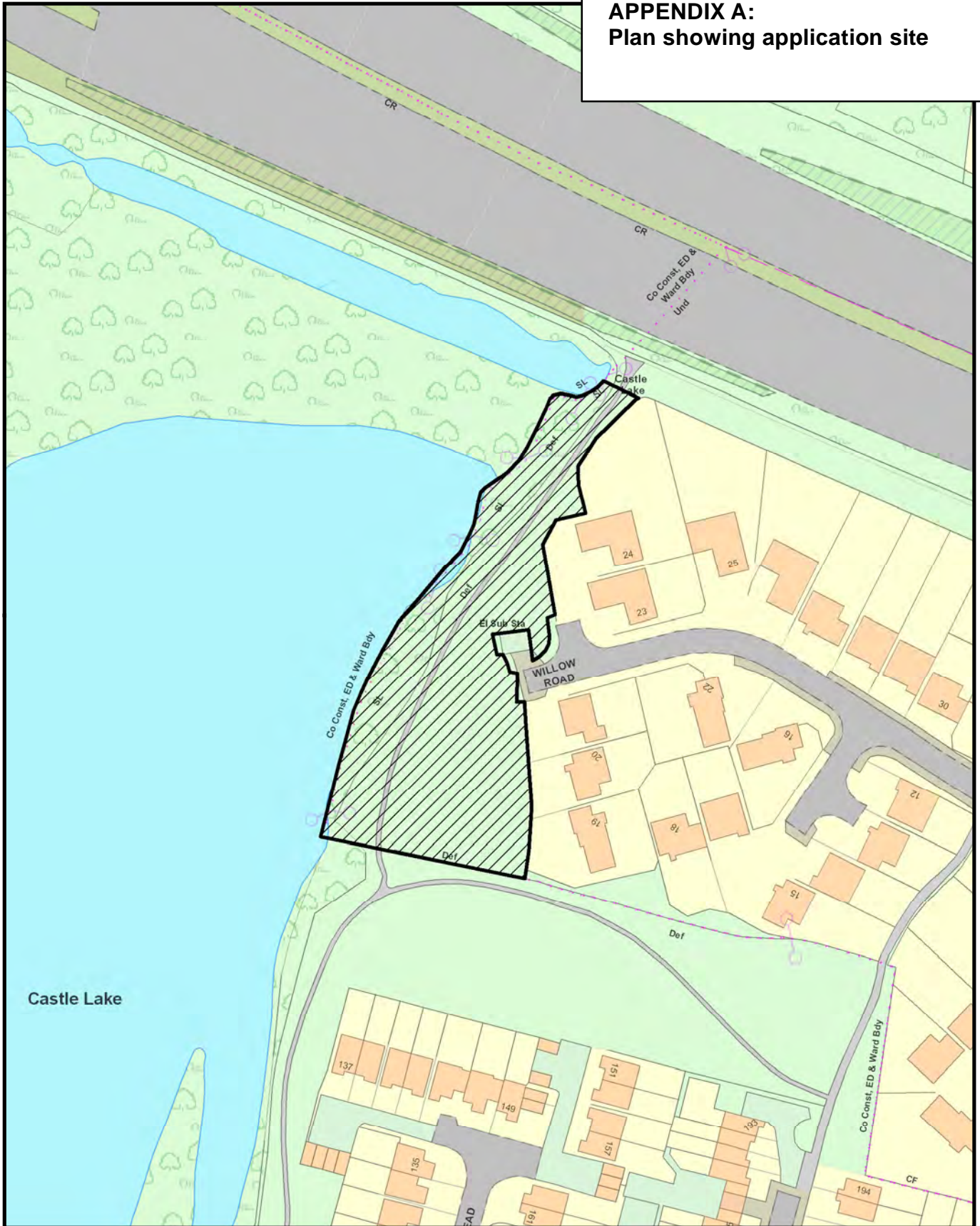
Accountable Officer: Mr. Mike Overbeke – Tel: 01622 221513 or Email: mike.overbeke@kent.gov.uk Case Officer: Miss. Melanie McNeir – Tel: 01622 221628 or Email: melanie.mcneir@kent.gov.uk
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The main file is available for viewing on request at the Countryside Access Service based at Invicta House, County Hall, Maidstone. Please contact the Case Officer for further details.
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Background documents

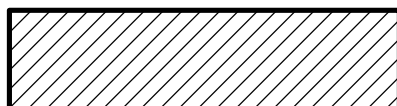
- APPENDIX A – Plan showing application site
- APPENDIX B – Copy of application form
- APPENDIX C – Photographs of the application site
- APPENDIX D – Copy of the Register of Title from Land Registry

**APPENDIX A:
Plan showing application site**



Scale 1:1250

**Land subject to Village Green
application at Willow Road in the
parish of East Malling and Larkfield**



FORM CA9

Commons Act 2006: section 15

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

**APPENDIX B:
Copy of the application form**



This section is for office use only

Official stamp of the Registration Authority
indicating date of receipt:



Application number:

VA645

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

Note to applicants

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

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

Note 1
*Insert name of Commons
Registration Authority*

1. Commons Registration Authority

To the:

Kent County Council

Note 2

If there is more than one applicant, list all names. Use a separate sheet if necessary. State the full title of the organisation if the applicant is a body corporate or unincorporate. If you supply an email address in the box provided, you may receive communications from the Registration Authority or other persons (e.g. objectors) via email. If part 3 is not completed all correspondence and notices will be sent to the first named applicant.

2. Name and address of the applicant

Name: EAST MALLING and LARKFIELD PARISH COUNCIL

Full postal address: (incl. Postcode) PARISH COUNCIL OFFICE CHURCH FARM, 198, NEWHYTHE LANE, LARKFIELD AYLESFORD ME20 6ST

Telephone number: (incl. national dialling code) [REDACTED]

Fax number: (incl. national dialling code) [REDACTED]

E-mail address: [REDACTED]

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: [REDACTED]

Firm: [REDACTED]

Full postal address: (incl. Postcode) [REDACTED]

Telephone number: (incl. national dialling code) [REDACTED]

Fax number: (incl. national dialling code) [REDACTED]

E-mail address: [REDACTED]

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:

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

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:

WILLOW ROAD GREEN

Location:

WILLOW ROAD, LARKFIELD
AYLESFORD, 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:

East Mallinge hantfield
parish.

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

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):



Date:

27. 4. 2012

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:
Photographs showing the
application site**



Above: photograph taken from Willow Road looking south-west across the site

Below: photograph taken from the electricity sub-station adjacent to Willow Road looking south across the application site





Above: photograph taken from electricity sub-station looking north-east across the site

Below: aerial photograph (2008) showing application site edged in red



**APPENDIX D:
Land Registry Documents**

THIS IS A PRINT OF THE VIEW OF THE REGISTER OBTAIN THE ENTRIES SUBSISTING IN THE REGISTER ON 26 NOV 2 THAT THIS REGISTER VIEW IS NOT ADMISSIBLE IN A COPY WITHIN THE MEANING OF S.67 LAND REGISTRATION

IT MAY NOT ENTITLE A PERSON TO BE INDEMNIFIED BY THE REGISTRAR IF HE SUFFERS A LOSS BY REASON OF A MISTAKE CONTAINED WITHIN IT. THE ENTRIES SHOWN DO NOT TAKE ACCOUNT OF ANY APPLICATIONS PENDING IN THE REGISTRY. FOR SEARCH PURPOSES THE ABOVE DATE SHOULD BE USED AS THE SEARCH FROM DATE.

THIS TITLE IS DEALT WITH BY LAND REGISTRY, NOTTINGHAM OFFICE.

TITLE NUMBER: K777461

There is no application or official search pending against this title.

A: Property Register

This register describes the land and estate comprised in the title.

KENT : TONBRIDGE AND MALLING

- 1 (23.07.1986) The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being land on the west side of Willow Road, Larkfield, Aylesford.
- 2 (16.12.1996) The land has the benefit of the following rights granted by the Transfer dated 29 November 1996 referred to in the Charges Register:-

"The rights of foul and surface water drainage benefiting the properties previously comprised within Title Number K609986 through the foul and surface water sewers drains and pipes on the Property together with associated rights of entry for the purposes of maintenance cleansing repair and reinstatement of the same.

B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute

- 1 (29.09.1997) Proprietor: EAST MALLING AND LARKFIELD PARISH COUNCIL of Church Farm, 198 New Hythe Lane, Larkfield, Maidstone, Kent, ME20 6ST.
- 2 (29.09.1997) The Transfer to the proprietor contains a covenant to observe and perform the covenants referred to in the Charges Register and of indemnity in respect thereof.

C: Charges Register

This register contains any charges and other matters that affect the land.

- 1 A Deed dated 3 June 1987 made between (1) Crest Homes (Westerham) Limited (Grantor) and (2) The South Eastern Electricity Board (Board) contains the following covenants by the Grantor:-

"WITH the intent and so as to bind the yellow land and every part thereof and every part of the Property which lies within 1.5 metres of the yellow land into whosoever hands the same respectively may come and to benefit and protect the rights and liberties hereby granted the Grantor hereby covenants with the Board.

(i) not to do or permit or suffer to be done any act which would in any

C: Charges Register continued

way interfere with or damage any electric line retained or laid by the Board in the exercise of the rights and liberties hereby granted

(ii) not to alter or permit or suffer to be altered the existing level of nor (subject as hereinafter provided) to cover or permit or suffer to cover or permit or suffer to be covered the surface of the yellow land in such a manner as to render the laying of an electric line or access to any electric line retained or laid thereunder impracticable or more difficult than it is at the date hereof PROVIDED ALWAYS and it is hereby agreed and declared that (without prejudice to the proviso to Clause 2 hereof) nothing in this covenant contained shall prevent the laying of appropriate surfaces on any part of the yellow land as forms the site of an intended road or footpath or other way after the initial laying of electric lines thereunder pursuant to the rights and liberties hereby granted

(iii) without prejudice to the generality of the foregoing not to erect or permit to suffer to be erected any building or structure (other than such as are shown on the said plan) nor to plant or permit or suffer to be planted any trees on or within a distance of 1.5 metres of the yellow land."

NOTE:-The yellow land referred to is hatched blue on the filed plan so far as it affects the land in this title.

- 2 The land is subject to rights of way.
- 3 The land is subject to rights of drainage and rights in respect of water, gas, electricity and other services.
- 4 The land is subject to rights of overhang, protrusion support and protection for any building or other structure erected on adjoining land as far as it affects.
- 5 The land is subject to rights of entry for the purposes of inspecting, maintaining, repairing and renewing the building or other structures erected on adjoining land as far as it affects.

End of register

H.M. LAND REGISTRY		TITLE NUMBER	
		K777461	
ORDNANCE SURVEY PLAN REFERENCE	TQ 6959	SECTION E	Scale 1/1250
COUNTY KENT	DISTRICT TONBRIDGE AND MALLING		© Crown copyright 1998



This is a print of the view of the title plan obtained from Land Registry showing the state of the title plan on 26 November 2012 at 15:56:39. This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. See Land Registry Public Guide 19 - Title plans and boundaries.

This title is dealt with by Land Registry, Nottingham Office.

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