

Application to register land at Ursuline Drive at Westgate-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 26th February 2013.

Recommendation: I recommend that a non-statutory Public Inquiry be held into the case to clarify the issues.

Local Member: Mr. R. Burgess

Unrestricted item

Introduction

1. The County Council has received an application to register land at Ursuline Drive at Westgate-on-Sea as a new Town or Village Green from local resident Mr. G. Rickett ("the applicant"). The application, made on 28th November 2011, was allocated reference number VGA641. 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(1) of the Commons Act 2006 enables any person to apply to a Commons Registration Authority to register land as a Town or 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).
5. As a standard procedure set out in the Regulations, the Applicant must notify the landowner of the application and the County Council must notify every local authority. The County Council must also publicise the application in a newspaper circulating in the local area and place a copy of the notice on the County Council's website. In addition, as a matter of best practice rather than legal requirement, the County Council also places copies of the notice on site to provide local people with the opportunity to comment on the application. The publicity must state a period of at least six weeks during which objections and representations can be made.

The application site

6. The area of land subject to this application ("the application site") consists of a field of approximately 2.4 acres (0.9 hectares) in size situated to the rear of property numbers 1 to 21 Ursuline Drive at Westgate-on-Sea. A plan showing the application site is attached at **Appendix A**.
7. Access to the application site is currently via a gap in the hedge along Public Footpath TM26 which connects Ursuline Drive with Canterbury Road.

The case

8. The application has been made on the grounds that the application site has become a Town or Village Green by virtue of the actual use of the land by the local inhabitants for a range of recreational activities 'as of right' for more than 20 years.
9. The applicant states that the land has been in existence as an open space since the Second World War and has been a popular venue for local residents. The land has been used by the nearby King Ethelbert School for sports, but it is mostly used by local residents for recreational activities throughout the year. According to the applicant, the land was owned by Kent County Council who disposed of it to the governing body of King Ethelbert School in February 2010. He explains that no part of the land has ever had any notices to indicate that the public use was restricted. The land has been regularly used for walking and dog walking, as well as families playing ball games. Older people have used the land to sit and relax whilst families have picnicked and camped there.
10. In support of the application, 71 user evidence questionnaires were submitted detailing the recreational use of the application site. Also included were various plans and photographs of the application site, correspondence with KCC's Property Group confirming the disposal of the site in February 2010, details of previous planning applications relation to the site, an email of support from the Kent Wildlife Trust, a newspaper cutting from 2005 regarding proposed development of the site, a petition containing 177 signatures in support of Village Green registration and a letter of support from the Westgate and Westbrook Residents Association confirming use by local people for at least 20 years.
11. A summary of the user evidence questionnaires submitted in support of the application (prepared by the applicant) is attached at **Appendix C**.

Consultations

12. Consultations have been carried out as required.
13. Mr. S. Thomas, Planning Manager at Thanet District Council, wrote to confirm that his Council has no objection to the application. He added that 'it is understood that the land has been well used by local people, including for football, cycling and dog walking and also occasional events. The area also contains significant wildlife and as such positively contributes to the quality of the local environment'.
14. District Councillor J. Hibbert also wrote to confirm her full support for the application. She stated that 'for many, many years the residents of Westgate-on-

Sea have used this area for recreational purposes, many of them having grown up in the area and played there as children, while others use it for walking their dogs or simply for family outings (walks, picnics etc). It is a safe and enclosed area, away from traffic'. She added that the land was home to many species of wildlife and as such it was essential that the area be preserved as an open space.

Landowner

15. The application site is owned by the Dane Court Grammar and King Ethelbert School Trust ("the landowner") and is registered with the Land Registry under title number K924217.
16. An objection to the application has been received from Winckworth Sherwood LLP, solicitors acting on behalf of the landowner. The objection is made on the following grounds:
- That use of the application site has not been 'as of right' as there have been verbal challenges made to use of the site by dog walkers;
 - That use of the application site has not been such to indicate to a reasonable landowner that the local residents have been asserting a continuous right;
 - That the evidence in support of the application is skeletal and deficient, with little information as to frequency or intensity of use;
 - That the overgrown state of the application site supports the contention that recreational use has been minimal;
 - That the neighbourhood relied upon by the applicant does not possess the degree of cohesiveness required to make it a qualifying neighbourhood; and
 - That before any decision is taken the matter should be referred to Public Inquiry for further consideration.

Legal tests

17. 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 is continuing up until the date of application or within two years from when use 'as of right' ceased?*
 - (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'?*

18. 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.

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

19. The evidence submitted in support of the application suggests that recreational use of the application site has taken place without any challenge from the landowner throughout the relevant twenty year period. None of the witnesses refer to any challenge (verbal, physical or otherwise) to their use of the application site. The applicant's position is that no part of the application site has ever had any prohibitive notices in place, nor has access to it ever been restricted in any way to the public. It has been used for recreational activities 'as of right' since as far back as the Second World War.
20. The landowner does not consider that use of the application site has taken place 'as of right' for several reasons. Firstly, it is submitted that any use of the application site by students of the school would be by implied licence, that specific permission has been granted for use of the application site for certain events and that there is evidence to demonstrate that on occasion where dog walkers attempted to use the application, they were asked to leave and not walk their dogs on the application site.
21. In support of this, the school has provided statements from three members of staff. One recalls various permissions granted for groups and organisations to use the school fields (including the application site) during school holidays. The effect of this would have been to interrupt any informal recreational use of the application site. The other two members of staff refer to regular visits to the application site and occasional challenges made to dog walkers using the application site. They also add that, other than the occasional dog walker, they have never witnessed any of the alleged recreational activities taking place on the application site.
22. Therefore, on the issue of whether use of the application site has been 'as of right', although the evidence as a whole suggests that use has taken place 'as of right', further investigation of the alleged challenges is required before it is possible to reach an informed conclusion.

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

23. 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.
24. 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.
25. In this case, the evidence suggests that the land has been used for a wide range of recreational activities, including dog walking, bird watching picnics, playing with

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

children and ball games. Many of the users refer to the fact that the application site provides a safe place away from traffic to engage in recreational pursuits. The summary of the user evidence questionnaires from local residents at **Appendix C** shows the full range of activities claimed to have taken place.

26. However, the landowner challenges the nature of such use and alleges that the recreational use of the application site by the local residents has not been of such character, degree and frequency as to indicate an assertion of a continuous right. In the landowner's view, the evidence of use is skeletal and deficient, and it is not clear whether the evidence relates specifically to the application site itself or applies more generally to the wider area within which the application site is situated.
27. The landowner further adds that the long grass and lack of physical evidence of use on the ground is strongly indicative that the area has not been used for lawful sports and pastimes to any material degree. Any recreational use that has taken place has been minimal in nature and is more consistent with the exercise of a defined route (i.e. a public rights of way type use) rather than a general right to recreation.
28. The applicant refutes this suggestion and states that the volume of evidence submitted in support of the application strongly suggests that the application site has been in frequent use by the local community for recreational activities. He adds that the overgrown nature of the application site can be explained by the fact that last year's unusually wet conditions did lead to an increase in vegetation which dissuaded many of the recreational activities that would normally have taken place on the application site and led to walkers instead using a pathway around the perimeter of the application site. As such, the conditions experienced last year (which is outside of the relevant period) are not to be taken as being representative of the condition of the land during the twenty year period.
29. Therefore, whilst the applicant contends that the evidence of use submitted in support of the application shows that the application site has been used for a range of recreational activities, the landowner challenges the nature of the recreational use and suggests that it has not taken place as frequently as is suggested by the users. This is an area of clear conflict between the applicant's evidence and the landowner's position which requires further investigation.

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

30. 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.
31. The definition of locality for the purposes of a village green application has been the subject of much debate in the courts and there is still no definite rule to be applied. In the *Cheltenham Builders*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

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

suggest that this might mean that locality should normally constitute 'some legally recognised administrative division of the county'.

32. 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'*⁵.
33. In this case, the applicant states, at part 6 of the application form, that he relies upon the 'the area of housing as 'neighbourhood' within the 'locality' of Westgate-on-Sea ward'. The neighbourhood is defined by reference to a plan (see **Appendix D**) and includes a small network of residential streets in the vicinity of Ursuline Drive. The applicant's case is that this area can be considered a neighbourhood by virtue of the fact that there is only one access point to it (via Lymington Road).
34. The landowner does not dispute that the electoral ward of Westgate-on-Sea is capable of constituting a qualifying locality; it is clearly a legally recognised administrative unit as is required by the legislation.
35. However, the landowner does challenge the proposition that the area of housing in the vicinity of Ursuline Drive is a qualifying neighbourhood on the basis that it does not possess the required degree of cohesiveness and has no associated facilities, nor any other factors that would specifically identify the area as such.
36. The applicant disputes the landowner's position; he produces an extract from an encyclopaedic definition of neighbourhood, which defines the concept of 'neighbourhood' as a geographically localised community with considerable face-to-face interaction between members. The applicant's position is that the residents of the locality associate themselves with this definition and consider themselves to be part of a neighbourhood. He adds that the neighbourhood does need to be an area known to the law and there is no precise definition of what features it should include within the legislation.
37. Aside from the fact that the area of housing has a common access point, the applicant has not provided any further evidence as to why the area is a qualifying neighbourhood. Although the concept of neighbourhood carries some fluidity and has never been precisely defined, it is still necessary to be able to demonstrate that the area has a number of unifying elements (e.g. communal facilities or services, similar type and style of housing etc) so as to achieve the required element of cohesiveness. Case law confirms that the neighbourhood must be capable of definition (rather than merely being a line drawn on a map) and, although the applicant refers to it as the 'Ursuline Drive neighbourhood' there is no evidence as to whether it is known locally as such or whether the area is more widely recognised as being a distinct and identifiable community within the wider locality of Westgate-on-Sea.

⁵ *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at page 92

38. There is therefore insufficient evidence currently available to determine whether or not the neighbourhood test has been met and this is an area that requires further examination.

“a significant number”

39. 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’⁶. Thus, what is a ‘significant number’ will depend upon the local environment and will vary in each case depending upon the location of the application site.

40. The applicant’s position is that the use of the application site by 71 local residents, 32 of whom have used it throughout the twenty year period, demonstrates that the application site has been used by a significant number of the local residents.

41. The landowner, on the other hand, disputes that the application site has been of sufficient quantity to signify that the land has been in general use by the local community or to suggest that a right to recreate was being asserted by the residents of the locality. Rather, it is suggested by the landowner that general recreational use of the site for lawful sports and pastimes has been infrequent and of low-level intensity.

42. As is noted above, it difficult to reconcile the differences in the landowner’s recollections and the user evidence adduced in support of the application by the applicant. The fact that the application is supported by 71 user evidence questionnaires, many from people asserting use on a daily or weekly basis, means that, on balance, it seems probable that the land has been used by a significant number of the residents of the locality, but it is not possible to conclude definitively on this issue on the basis of the information currently available.

(d) Whether use of the land by the inhabitants is continuing up until the date of application or within two years from when use ‘as of right’ ceased?

43. The Commons Act 2006 requires use of the land to have taken place ‘as of right’ either up until the date of application or, if such use has ceased prior to the making of the application, that the application be made within two years of recreational use ceasing to be ‘as of right’.

44. In this case, there is no evidence of any challenge to the use of the application site for the purposes of lawful sports and pastimes by the local community. Therefore, it can be concluded that the use of the application site has continued up to, and in this case beyond, the date of the application.

⁶ *R (Alfred McAlpine Homes Ltd.) v Staffordshire County Council* [2002] EWHC 76 at paragraph 71

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

45. 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.
46. The user evidence summarised at **Appendix C** suggests that there has been use of the application site in excess of the last twenty years. However, this is to be considered in context with the landowner's comments (above) that such use has been limited and sporadic in nature. On balance, it appears that the application site has been used by the local community for recreational purposes for a period of at least twenty years, but further consideration is required regarding the nature of such use.

Conclusion

47. Although the relevant Regulations⁷ provide a framework for the initial stages of processing the application (e.g. advertising the application, dealing with objections etc), they provide little guidance with regard to the procedure that a Commons Registration Authority should follow in considering and determining the application. In recent times it has become relatively commonplace, in cases which are particularly emotive or where the application turns on disputed issues of fact, for Registration Authorities to conduct a Public Inquiry. This involves appointing an independent Inspector to hear the relevant evidence and report his/her findings back to the Registration Authority.
48. Such an approach has received positive approval by the Courts, most notably in the *Whitney*⁸ case in which Waller LJ said this: *'the registration authority has to consider both the interests of the landowner and the possible interest of the local inhabitants. That means that there should not be any presumption in favour of registration or any presumption against registration. It will mean that, in any case where there is a serious dispute, a registration authority will almost invariably need to appoint an independent expert to hold a public inquiry, and find the requisite facts, in order to obtain the proper advice before registration'*.
49. It is important to remember, as was famously quoted by the Judge in another High Court case⁹, that *'it is no trivial matter for a landowner to have land, whether in public or private ownership, registered as a town green... [the relevant legal tests] must be 'properly and strictly proved'*. This means that it is of paramount importance for a Registration Authority to ensure that, before taking a decision, it has all of the relevant facts available upon which to base a sound decision. It should be recalled that the only means of appeal against the Registration Authority's decision is by way of a Judicial Review in the High Court.
50. In this case, it is clear that the Village Green application is a matter of significant local importance, as evidenced by the petition submitted in support of the

⁷ Commons Registration (England) Regulations 2008

⁸ *R (Whitney) v Commons Commissioners* [2004] EWCA Civ 951 at paragraph 66

⁹ *R v Suffolk County Council, ex parte Steed* [1997] 1EGLR 131 at 134

application. Equally, registration of the land as a Village Green could potentially have serious implications on the future use of it by the school. The applicant has put forward a good case in support of the registration of the land as a Village Green, but the landowner has raised several issues which require further clarification to enable the County Council to take a fully informed decision on the application.

51. In particular, it is necessary to resolve the conflict regarding the alleged challenges to recreational use, to confirm the nature and extent of recreational use by the local residents, and to consider further evidence as to whether the neighbourhood relied upon by the application is acceptable for this purpose. As such, on the basis of the evidence currently available, it would appear that it is not possible to determine this matter on paper and the most appropriate course of action would be for the matter to be referred to a Public Inquiry.

Recommendations

52. I recommend that a non-statutory Public Inquiry be held into the case to clarify the issues.

Accountable Officer:

Mr. Mike Overbeke – Tel: 01622 221513 or Email: melanie.mcneir@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 PROW and 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 – Summary of user evidence

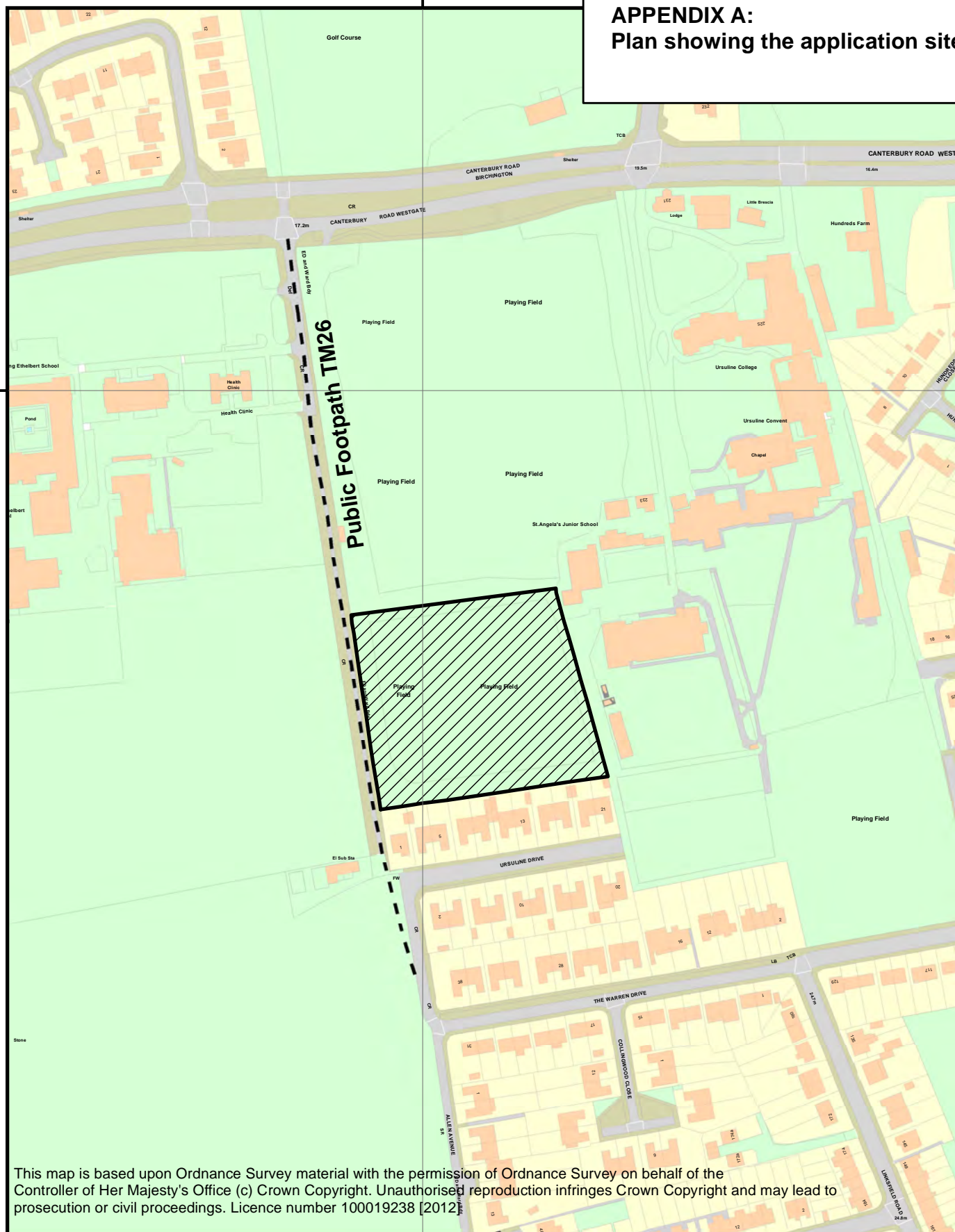
APPENDIX D – Plan showing neighbourhood

631500.000000

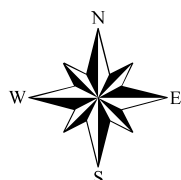
APPENDIX A: Plan showing the application site

169500.000000

169500.000000

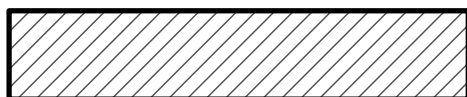


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Scale 1:2500

**Land subject to Village Green application
at Ursuline Drive, Westgate-on-Sea**

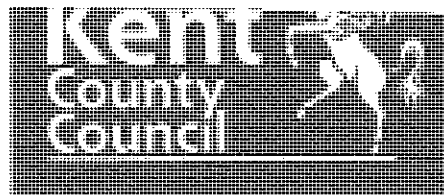


FORM CA9

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
28 NOV 2011

Application number:

VGA641

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
COUNTRYSIDE ACCESS SERVICE
INVICTA HOUSE
COUNTY HALL
MAIDSTONE 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: GRAHAM RICKETT

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: ☐

****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.***

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.

Name by which usually known: RECREATION GROUND (EXHIBIT 2)
ADJACENT AND TO THE NORTH OF URSULINE DRIVE

Location: LAT 51.376010 N 631464 169863
LONG 1.3254620 E

TR 31530 69355

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

$$z/A$$

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

EXHIBITS 1 & 2 (+4)

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.

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 AREA OF HOUSING AS 'NEIGHBOURHOOD'
WITHIN THE 'LOCALITY' WESTGATE-ON-SEA WARD

[WOULD LIKE TO INCLUDE KING ETHELBERT'S BUT THIS IS OUTSIDE THE LOCALITY [IS IN BIRCHINGTON]]

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

EXHIBITS 3 & 4

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

PLEASE SEE ATTACHED

EVIDENCE SHEET

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

SINCE FEBRUARY 2010

THE GOVERNING BODY,

KING ETHELBERT SCHOOL,

CANTERBURY ROAD,

BIRCHINGTON,

KENT CT7 9BL

(see exhibit 5 - email KCC Terrier Team)

Application for Village/Town Green Registration

Commons Act 2006 Section 15

Evidence

Location

The land which it is hoped to be registered is a plot of recreation ground and surrounding trees adjacent to the north (rear) of Ursuline Drive. Please see exhibits 1(a/b), 2, 3 and 4 for exact location.

Reason for Application

The area of land has been in existence as an open area stretching back to the Second World War and has been a popular venue for the local Westgate-On-Sea residents where they would play as children. The field has been used in the past by King Ethelbert School for sport recreation but this area throughout the year is mostly used by the local residents and has been for well over 20 years for a variety of recreational uses. Exhibit 3 is a recent ordnance survey of the area indicating this area of land as recreation ground and also shows the extent of use by the 'Ursuline Drive neighbourhood' and beyond. This is a small area (the field including the surrounding trees) that the residents cherish and this application is based on trying to preserve a wildlife area and recreational area for all our future generations.

Evidence

Kent County Council owned the land and disposed of this land in February 2010 to the Governing Body of King Ethelbert School and therefore the school has only recently owned the land and the land is still recorded by the ordnance survey maps (2011) as recreational ground (exhibit 5 – land ownership). The green wedge area and its surrounding trees has access through a gated (no gate) area between walls and between trees where the wall no longer exists with residents gaining access this way for over 20 years (exhibit 6). No part of this green site has ever had site notices or signs during this long period to indicate that the public was in any way restricted. No part of this site has been restricted to the public and has been used for lawful recreational pursuits *as of right* for as long back as the Second World War. All of the residents within Ursuline Drive and a substantial number of the local residents regard this green wedge area as a recreational asset that has been used for recreational use by successive generations and should not be lost (see summary of user evidence – exhibit 7).

I have lived in this area for 23 years and have seen daily visits to this area of land. The land has been used regularly for walking, dog walking, children and parents playing football, cricket and golf practise just a few. The older generation have used this just to sit and relax in the sun whilst families have picnicked and even camped here. This has been described by our

residents as a safe area as it is enclosed and away from traffic and therefore people have been taking their children/grandchildren and dogs (to train) to this area for this reason. It provides a safe environment for the slightly older local children to organise their own sports activities and put parents' minds at ease that they are in a safe environment. This area is used every day up to the time of this evidence submission.

This area also has a wealth of wildlife due to being an enclosed space. The area is totally enclosed by an area of woodland containing substantial mature sycamore trees which have tree preservation orders on them. This area also houses a plethora of bird life – I have, myself, recorded over 28 species of bird either as indigenous or visitors to this area. Some of these include green and greater spotted woodpecker (some residents say they may have seen lesser spotted woodpecker), a large population of Jay, 4 or 5 different types of tit and blackcap, fieldfare, mistle thrush as visitors. This area has a diverse wildlife from urban mammals and rodents such as foxes and squirrels and extensive insect life which the birds rely on. The butterfly population is also high in particular this year large numbers of red admiral, comma and gatekeeper but I guess more importantly the summer visits of large numbers of painted ladies and the humming bird moth has also been seen in this area. The butterfly conservation group are closely monitoring these 2 species due to loss of habitat and decrease in numbers. A letter of support is included from Kent Wildlife (exhibit 8).

This area was in July 2005 threatened with urban development (Applicant: The Governors, King Ethelbert School) and the application withdrawn (exhibit 9a) on the advice of the council due to the determination of this area as green wedge area and should not be used for development (exhibit 9b). At this time the green wedge area was not owned by the school (letter from KCC see exhibit 5). A second development of this area was again sought in May 2010 (withdrawn May 22 2011) and a new planning application for development resubmitted July 2011. This recreational area is under the threat of development once again by the purchase of the land and the neighbourhood is looking to ensure that contravention of policy CL6 of the Isle of Thanet Local Plan (green wedge) is not possible by village green status. It would be good to safeguard this very small area for the local residents of the neighbourhood within Westgate-On-Sea as well as for the benefit of the locality for all residents of Westgate-On-Sea as a safe environment for their leisure pursuits and to safeguard the wealth of wildlife that this area supports – as a village/town green.

Please also find included:

Exhibit 10 – petition support from local Westgate-On-Sea residents (177)

Exhibit 11 – email user evidence

Exhibit 12 - letter of support from Westgate and Westbrook Residents Association

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

EXHIBITS 1-4 MAPS OF AREA

EXHIBIT 3 INCLUDES HABITUAL USERS AND BOUNDARIES OF 'URSULINE DRIVE NEIGHBOURHOOD' WITHIN WESTGATE-ON-SEA WARD (LOCALITY).

EXHIBITS 5-6

LAND OWNERSHIP
ENTRY POINTS TO APPLICATION SITE

EXHIBIT 7 - SUMMARY OF USER EVIDENCE

EXHIBIT 8 - KENT WILDLIFE LETTER

EXHIBIT 9a/b - PLANNING DOCUMENTATION 2005
EVIDENCE THANET COUNCIL OUTCOME

EXHIBIT 10 - PETITION SUPPORT FOR TOWN/VILLAGE
GREEN STATUS - WESTGATE-ON-SEA LOCALS (177 RESIDENTS)

EXHIBIT 11 - EMAIL USER EVIDENCE

71 EVIDENCE QUESTIONNAIRES

EXHIBIT 12 - SUPPORT LETTER WESTGATE + WESTBROOK RESIDENTS ASSOCIATION

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

KING ÆTHELBERT SCHOOL HAVE
APPLIED FOR PLANNING PERMISSION IN THIS
AREA (WITHDRAWN MAY 2010), RESUBMITTED
JULY 2011 ICC/TH/0257/2011

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:

27/11/11

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.

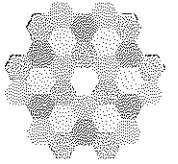
A copy of this form and any accompanying documents may be disclosed upon receipt of a request for information under the Environmental Information Regulations 2004 and the Freedom of Information Act 2000.

Land Registry Index map plan

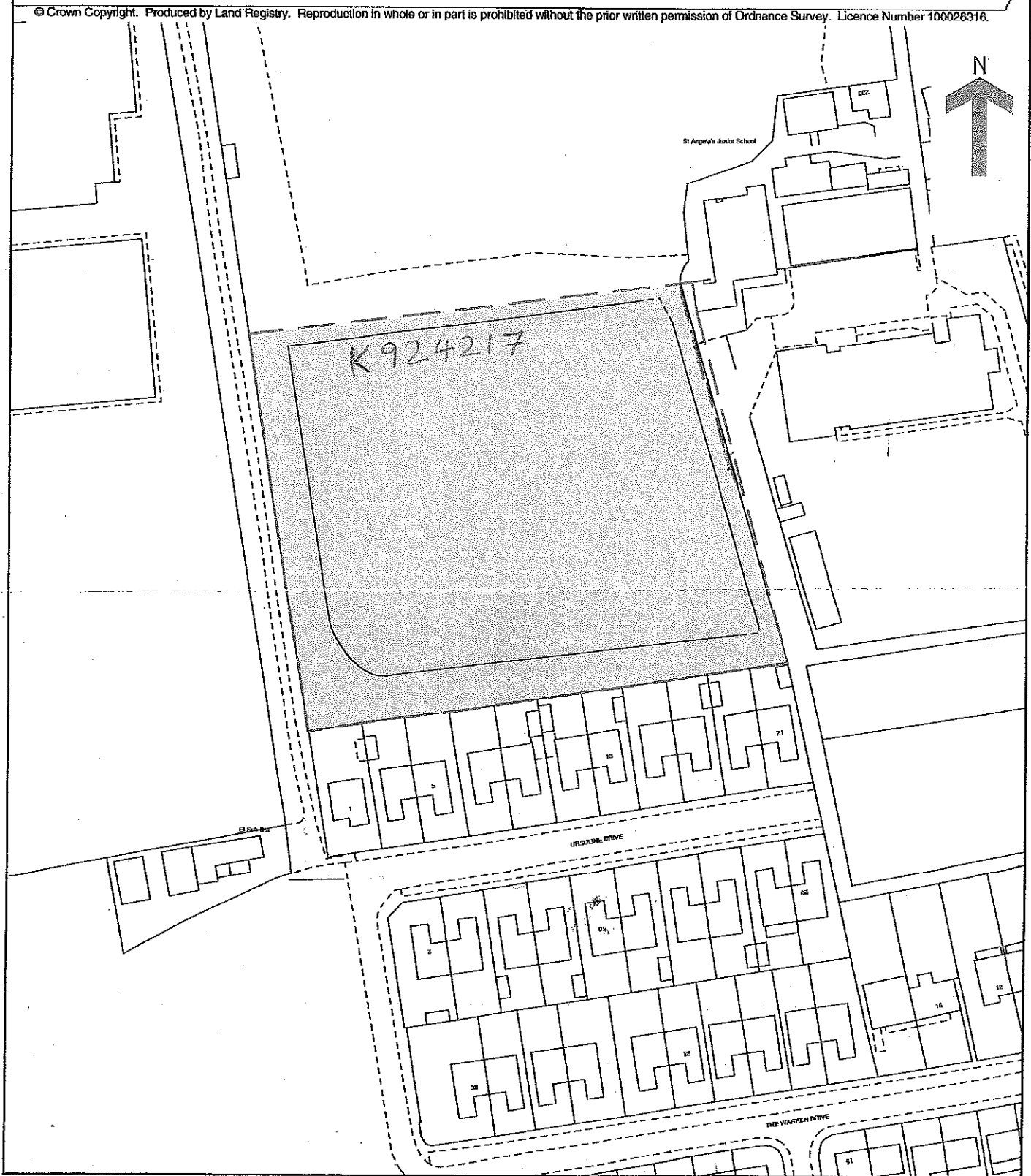
Ordnance Survey map reference **TR3169SE**

Scale **1:1250** enlarged from 1:2500

Plan prepared on **21/10/2011** at **00:00:01**



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This plan should be read in conjunction with result R57XDKB.

This 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.



APPENDIX C: Summary of user evidence (prepared by the applicant)

Exhibit 7 - SUMMARY OF USER EVIDENCE IN SUPPORT OF APPLICATION

Name	Period of Use	Frequency	Activities	Other Comments
Mrs.S. Banning	1990 - present	Monthly	Playing with children, ball games, bikes	Dog walking
Mrs. J. Barrett	1999 - recently (mobility)	Daily when mobile	Dog walking, walking	"Will use again if back treatment successful" Observed walking, nature watching, dog walking, children playing with parents
Mrs. H. Bartlett	1979 - present	Monthly	Bird watching, walking	"Land used by local residents since late 70s for recreational purposes"
Mr. A. Beard	1970 - present	Most days	Played as a child, dog walking	"It's a safe area and quiet" Observed dog walking, children playing, elderly people sitting quietly
Miss. J. M. Beard	1942 - recently (mobility)	Daily when mobile	Played as a child here during the war every day	Observed dog walking, children playing
Mrs. E. Bedford	1981 - 2007	Daily/weekly quite often	Watch cricket, bird/nature watching, walking, play with children	Observed dog walking/training, bird watchers, children playing, walkers
Mr. & Mrs. L. and D. Burlace	1999 - present	Varied	Photography, blackberrying, children's games, hide & seek	Observed dog walking, children playing
Mr. R. Chaplin	1980 - present	Weekly	Dog walking, enjoying the peaceful environment	Observed dog walking, sports and recreation, picnics, bird watching, nature study
Mr. R. Christman	2009 - present	Daily	Walking, sunbathing, relaxing, nature observing	Observed dog walking, footballers, sunbathers, nature observers
Mr. & Mrs. T. Caldwell	2006 - present	Daily/weekly	Dog walking, playing football, walking, picnics	Observed dog walking, walking
Mrs. R. Cowell	1955 - present	Daily (dog)/now monthly	Dog walking, walking, short cut to town	Observed dog walking, children playing, nature watching, short cuts to town
Mrs. S. Cruikshank	1979 - present	Daily	Dog walking, playing football, walking, picnics	"A safe place to be away from road traffic and not disturbing other people with noise". Observed dog walking, walking

Name	Period of Use	Frequency	Activities	Other Comments
Mrs. E. Crump	1969 - present	Daily	Walking, school sports days, childrens play	Observed dog walking
Mr. & Mrs. D. Davis	2003 - present	Daily	Dog walking, running	Observed dog walking, children playing, people walking
Mrs. R. D'Cruze	1988 - present	Daily	Dog walking, playing tennis/football with children/grandchildren	Observed camping , parties
Mr. & Mrs. B. And L. Dennis	1982 - present	Weekly	Walking, bird watching, picnics	Observed bird watching, picnics, walking, dog walking & ball games
Mr.T.Denham	1994 - present	Daily	Walking, dog walking	Terry has Parkinson's and as such this area is close enough for him to walk
Mr. & Mrs. P. Dyer	1986 - present	All school holidays	Ball games, walking with grandchildren, bird spotting and picnics	Observed dog walkers and school sports day
Ms. T. Edwards	2003 - present	Daily	Games with children, dog walking	"this piece of land is valued strongly by the community as well as wildlife" Observed dog walkers, children playing, family picnics, bird watching, campers
Mr. & Mrs. A. Field	1994 - present	Daily/weekly	Games with grandchildren, walking and training dog	Observed dog walkers and children playing ball games
Mr. & Mrs. D. Figgess	2000 - present	Weekly	Dog Walking, relaxing	Observed dog walking
Mr. G. Fisher	1980 - present	Weekly	Dog walking	Observed dog walking, cricket, camping
Mrs. J. George	1986 - ? health	Daily when mobile	Walking	Observed dog walking and football
Mr. M. Gill	1987 - present	Occasionally	dog walking, playing with family	Observed dog walking, football, cricket
Mrs. G. Gooding	1996 - present	Weekly/monthly	Dog walking, children's picnic	"If this application is successful, it (green) can be used to celebrate queen's 60th anniversary". Observed dog walking, children playing
Mr. J. Goodwin	2005 - 2010	Occasionally	Games with grandchildren, walking	Observed dog walking, young lovers

Name	Period of Use	Frequency	Activities	Other Comments
Mrs. E. Hironima Lutesco	1987 - present	Occasionally	Walking, picnicking	As visitor - Observed walking, picnicking, subathing
Mr. & Mrs. N. Hall	2007 - present	Daily/weekly	Games with grandchildren, dog walking	
Mrs. E. Holland	1989 - present	Daily when mobile	Walking, dog walking, bird watching	Observed camping and football playing. Recalls 2005 council meeting stating plot was to remain unused as a green sward area
Ms. E. James	2003 - present	Weekly	Walking dog and walking with children	Observed dog walkers and children playing games
Mr. D. Jarvis	1971 - present	Occasionally	Dog walking	Dog walking, children, walkers
Ms. J. Jenkins	1982 - present	Daily/weekly/occasionally	Dog walking, playing with children/grandchildren, picnics	Observed walking dogs, game playing, camping
Mr. & Mrs. R. and S. Jezard	1999 - present	Daily/weekly	Walking, dog walking, bird watching, nature in general, playing with grandchildren	Observed dog walking, nature watching and playing games
Mrs. C. Johnson	2006 - present	Daily (twice a day)	Dog walking, bird watching	Observed dog walking, children playing, campers
Mr. K. Jones	1990 - present	Weekly	Dog walking, meetings	Observed dog walking, meetings, children playing
Mr. & Mrs. S. Law	2009 - present	Monthly	Walking, meeting friends to sit and relax	Observed dog walking, walking, picnics and children's' games
Ms. L. Lee	2010 - present	Weekly	Dog walking, playing with children	Observed dog walking
Mrs. J. Light	1951 - 2006	Daily/weekly/monthly/occasionally	free parkland, nature (birds)	Usage changed with age. Observed dog walking, children playing, chatting
Mr. W. Littlechild	1984 - present	Weekly	Dog walking, nature (birds), cricket	Observed dog walking, football, dog walking, nature watching, children playing
Mrs. B. Ludlow	2001 - present	Daily	Dog walking, meeting friends	Observed dog walking, bird watching
Mr. & Mrs. E. and L. Macey	1975 - present	Occasionally	Walking, sponsored walking, picnic	Dog walking, ball games, picnics, camping

Name	Period of Use	Frequency	Activities	Other Comments
Mr. V. Macey	1975 - present	Daily/weekly	Walking, games, flying remote controlled aircraft, wildlife watching	Dog walking, meeting area, camping
Mrs. M. Manning	2004 - present	Occasionally	Dog walking	Observed dog walking, walkers, children playing, people with tents
Ms. A. Marshall	2011 - present (3 months - just moved here)	Daily	Dog walking, games with grandchildren	"the previous owner used this area daily for walking their dogs" Observed dog walkers, children playing, bird watching
Mr. D. May	1968 - present	Monthly	Walking, exercise, wildlife watching	Observed dog walking, ball games, blackberrying
Mr. J. Midgley	1991 - 2008	Daily	Dog walking	Observed dog walking, football, camping
Mrs. M. Newing	2001 - present	Occasionally	Walking, grandchildren activities	Observed children playing, dog walking
Mr. & Mrs. M. O'Connell	1991 - present	Daily/weekly	Dog walking, picnics, general games	Observed dog walking, picnics, general games
Ms. D. Packer	1987 - present	Daily	Dog walking, bird watching, games	Observed dog walking, recreation, school children at lunchtime
Mrs. P. Pateman	1991 - present	Daily	Dog walking	Observed walking, dog walking
Mr. M. Quintal & Ms. V. Pullen	2000 - present	Weekly	Dog walking, fruit picking, games with children	Observed dog walking, ball games, nature watching
Mrs. G. Ratcliff	2000 - present	Monthly	Walking dog with grandchildren, playing football	Observed dog walking, children playing
Mr. & Mrs. G. and M. Rickett	1989 - present	Daily/weekly	Bird/butterfly watching, walking, playing with children and grandchildren	Observed dog walking, nature watching, walking
Mr. D. Riley	2005 - present	Occasionally	Walking, watching birds	Observed dog walking with children
Ms. J. Roberts	2001 - present	Daily	Walking dogs, camping, kids to play man hunt	"Don't close the pavilion it's the only land we have to walk our dogs safely" Observed dog walking, playing football, children playing
Mr. J. Saunders	1991 - 2010	Daily	Walking dog	Observed dog walkers, football

Name	Period of Use	Frequency	Activities	Other Comments
Mr. J. Scamp	1995 - present	Daily	Walking dog and playing with children	Observed dog walkers and children playing
Mr. J. Sheldon	1997 - present	Daily	Wildlife watching (birds/squirrels/foxes), dog walking, blackberrying and playing with grandchildren	Observed dog walking, camping, picnicking pupil at school from 1954-58 and used tennis courts in this area
Mr. A. Siddle	2003 - present	Weekly	Walking dog	Observed dog walking
Mr. & Mrs. R. And V. Silver	2000 - present	Daily	Dog Walking, grand children playing	Observed dog walking, playing, camping, berry picking
Mr. & Mrs. J. Skinner	2006 - present	Daily	Dog Walking	Observed dog walking, jogging, camping
Mr. M. Slack	2006 - present	Occasionally	Walking	Observed dog walking, walking, picnics
Mr. & Mrs. S. Solly	1997 - present	Daily	Dog walking	Observed dog walking
Mr. & Mrs. J. and P. Taylor	2009 - present	Daily	Dog walking	Observed dog walking, cycling
Miss. D. Thomas	2011 - present	Daily/weekly/monthly	Dog walking	Observed dog walking
Mr. I. Usmar	2010 - present	weekly	Walking , football with son, nature watching	Observed dog walking, ball games, picnics
Ms. G. Verstraete	2010 - present	Daily (three times a day)	Dog walking	Observed dog walking, walking
Ms. L. Wager	2009 - present	Weekly	Dog walking	Observed dog walking, sports activities, shortcuts
Ms. J. Wales	2009 - present	Daily (twice a day)	Dog walking, bird watching	"Safe area for children to enjoy the nature, bird watching, etc" Observed dog walking, children playing, camping
Mr. & Mrs. D. Williams	2006 - present	Monthly	Walking	Observed dog walking, children playing
Ms. J. Wright	1953 - present	Occasionally	Walking, picnicking, sun bathing, playing	Observed dog walking

20+ years users (32 households)

total user questionnaires received (71 households)

user questionnaires awaited (4 households)

1 user evidence from email

APPENDIX D:

Plan showing the neighbourhood

