

Application to register land known as 'The Market Square' at Aylesham as a new Village Green

A report by the Director of Environment and Waste to Kent County Council's Regulation Committee Member Panel on Friday 6th February 2009.

Recommendation: I recommend that the County Council informs the applicant that the application to register the land known as 'The Market Square' at Aylesham as a new Village Green has not been accepted.

Local Members: Mrs. E. Rowbotham

Unrestricted item

Introduction

1. The County Council has received an application to register land known as 'The Market Square' at Aylesham as a new Village Green from local resident Mrs. E. Madden ("the applicant"). The application, dated 27th November 2007, was allocated the application number 598. 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 regulation 3 of the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007. These regulations have, since 1st October 2008, been superseded by the Commons Registration (England) Regulations 2008 which apply in relation to seven 'pilot implementation areas' only in England (of which Kent is one). The legal tests and process for determining applications remain substantially the same.
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).
5. As a standard procedure set out in the regulations, the County Council must notify the owners of the land, every local authority and any other known interested

The application site

6. The area of land subject to this application (“the application site”) is known locally as ‘the Market Square’ and consists of a rectangular area of grassed open space that is surrounded on all sides by a road known as Market Square and situated in the centre of the village of Aylesham.

The case

7. The application has been made on the grounds that the application site has become a 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 well in excess of 20 years.
8. Included in the application were 10 user evidence questionnaires from local residents asserting that the application site has been available for free and uninhibited use for lawful sports and pastimes over the last twenty years and beyond. A summary of this user evidence is attached at **Appendix C**.
9. In addition, a number of photographs dating back to 1947 were submitted in support of the application (demonstrating the historical use of the land by the people of Aylesham) as well as several newspaper cuttings from the 1950s which refer to the application site as ‘the village green’.
10. Fifteen letters of support, many from longstanding residents of the village, were also included with the application. These letters confirm use of the land by local residents for a range of recreational activities over a long period.

Consultations

11. Consultations have been carried out as required and the following comments have been received.
12. Aylesham Parish Council has written in support of the application on the basis that registration of the land would protect the green for future generations to use.
13. Cllr. Keen also wrote in support of the application. She explains that the application has been made to preserve the green space in perpetuity because local residents have recently had to fight to save the land from being turned into a car park. Cllr. Keen is of the view that the application site has been the centrepiece of the historic village form many years and it is essential to preserve it as a public open space.
14. One local resident also wrote in support of the application. In his view, the application for village green status must be granted on the basis that the application site has been in public use for over 70 years.

Landowner

15. The application site is owned by Dover District Council. Mr. G. Mandry (Principal Solicitor) has objected to the application on behalf of the District Council.

16. The objection is made on the following grounds:

- Any activities which have taken place on the land have been with the express or implied permission of the landowner by virtue of a series of short-term leases granted to the Parish Council since at least the mid-1970s. Such use has therefore not been 'as of right' and is incapable of giving rise to any rights.
- The land is held in the housing portfolio and the public have been permitted to use it by way of licence with byelaws having been made to regulate use of the application site.
- The user evidence is unclear and not sufficient to show that the relevant legal tests have been met.

17. In support of the objection, the District Council has supplied copies of leases dating back to 1977 as well as associated correspondence.

Legal tests

18. In dealing with an application to register a new 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, neighbourhood or a neighbourhood within a locality?*
- (d) Whether use has taken place over period of twenty years or more?*
- (e) Whether use of the land '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 15(4)?*

I shall now take each of these points and elaborate on them individually:

(a) Whether use of the land has been 'as of right'?

19. The definition of the phrase 'as of right' has been considered in recent High Court case law. Following the judgement in the *Sunningwell*¹ case, it is now considered that if a person uses the land for a required period of time without force, secrecy or permission (*nec vi, nec clam, nec precario*), and the landowner does not stop him or advertise the fact that he has no right to be there, then rights are acquired and further use becomes 'as of right'.

20. In this case, there is no evidence that use of the application site has been with force or in secrecy. Although there are hedges bordering the site, there is a Public Footpath crossing the centre of the site and access via four designated points. None of the witnesses refer to any specific fences or barriers to prevent access.

¹ *R v. Oxfordshire County Council, ex p. Sunningwell Parish Council* [1999] 3 WLR 160

In fact, the District and Parish Councils have actively promoted use of the land by entering into formal leases for the purpose of public recreation.

21. However, there is a central issue concerning whether or not permission (in any form) was ever granted to local residents for the use of the land. Permission (in the context of a Village Green application) can take four forms:

- (i) *Express permission which is communicated to users* – for example a notice posted on site expressly permitting use of it for recreational purposes or other express permission being given by words or in writing.
- (ii) *Express permission which is not communicated to users* – for example in circumstances where there existed an express licence between landowner and local authority making the land available as recreational open space.
- (iii) *No express permission but overt actions taken by the landowner* – for example, where the owner takes sufficient positive and unequivocal steps to inform the users that use is impliedly permitted and may in due course be terminated.
- (iv) *No express permission and not communicated to the public* – for example, where land is held by a public authority under certain statutory powers for the provision of land for public recreation.

22. In the case of Market Square, the Parish Council has entered into a series of short leases with the landowner (the District Council) since at least the 1970s. The relevant 20 year period for the purposes of the Village Green application is 1987 to 2007. This period is covered by four separate five-year leases dated 1983, 1989, 1992 and 1998. In each lease, there is a clause which restricts the use of the land to 'recreational and amenity purposes'. A copy of the 1998 lease is attached for reference at **Appendix D** (the relevant clause is 4.7).

23. The use of the land for recreational purposes by the local residents has therefore been by virtue of the relevant clause in the lease granted to the Parish Council by the District Council (as landowner). Although the existence of the lease has not been communicated to users, this nonetheless amounts to an express permission and falls within the second category of permission listed at paragraph 21 above.

24. Since the effect of the lease is to grant permission to the local Parish Council to make the land available to the local residents for recreational purposes, this is sufficient to render use of the application site by the local inhabitants '*by right*' and not '*as of right*'. Therefore, it is not possible to conclude that 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?

25. Lawful sports and pastimes can be commonplace activities including dog walking, children playing, picnicking and kite-flying. 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; solitary and informal kinds of recreation are equally as valid.

26. In this case, the evidence demonstrates that a number of recreational activities have taken place on the land, including nature-watching and playing with children.

27. However, several of the user evidence forms refer to use of the land 'to cross the village' or as a thoroughfare to reach village shops. Such use would be consistent with the use of a Public Right of Way and the exercise of existing rights associated with the recorded Public Footpath running across the centre of the site but would not be sufficient to give rise to general rights of recreation for Village Green usage.
28. It is unclear from the user evidence submitted on paper as to what percentage of use has been attributable to local residents exercising a linear right of passage on foot (i.e. associated with the Public Footpath) and what percentage has been use associated with a general right of recreation (i.e. as a Village Green). There is also reference amongst the user evidence to attending fetes, boot fairs and other community events. Such formal events are likely to have been arranged with the permission of the Parish Council and therefore attendance at these events would have been by implied permission and could not give rise to Village Green rights.
29. Therefore, although it is clear that the application site has been used by local residents generally, on the evidence available it has not been possible to conclude that the application site has been used for the types of activities that would give rise to Village Green rights.

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

30. The definition of locality for the purposes of a village green application has been the subject of much debate in the courts and there is still no definite rule to be applied. In the *Cheltenham Builders*² case, it was considered that '*...at the very least, Parliament required the users of the land to be the inhabitants of somewhere that could sensibly be described as a locality... there has to be, in my judgement, a sufficiently cohesive entity which is capable of definition*'. The judge later went on to suggest that this might mean that locality should normally constitute '*some legally recognised administrative division of the county*'.
31. In this case, the applicant has specified the locality at Part 6 of the application form as being 'Aylesham Market Square and surrounding shops and houses' and has helpfully marked on the plan accompanying the application the addresses of those having provided user evidence.
32. As stated above, the locality for the purposes of Village Green registration should be some recognised administrative unit; the definition of locality requires a degree of precision and it is not sufficient to simply specify a collection of roads or a local community that is not formally recognised. Although the user evidence demonstrates use of the application site from those whose homes are situated immediately opposite the land, there is also evidence from people living further afield within the village. This is consistent with the Parish Council leasing the land for 'recreational and amenity purposes' for the benefit of the village residents as a

² *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* (2003) EWHC 2803

whole and not simply those living in the immediate proximity. I therefore consider that the correct locality is the administrative parish of Aylesham.

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

33. In order to qualify for registration, it must be shown that the land in question has been used for a full period of twenty years up until the date of application. In this case, the application was submitted in 2007 and therefore the relevant twenty-year period ("the material period") is 1987 to 2007.

34. From the user evidence submitted, there appears to have been use of the land over a considerable period dating back far beyond 1987, and in some cases as far back as the 1930s. There is little doubt from the evidence presented (including the old photographs and newspaper cuttings) that the application site has been a focal point for the village and used as an open space for a considerable period. In addition, all of the users state in their questionnaires that they have witnessed other people using the land for a range of recreational activities.

35. Therefore, the application site has been used for a period of over 20 years.

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

36. The Commons Act 2006 introduces a number of transitional arrangements regarding the actual use of the land in relation to the making of the application to register it as a Village Green. These are set out at paragraph 4 above.

37. In this case, use of the applications site has not ceased, nor is there any suggestion of any interruption to use prior to the making of the application. Therefore, it appears that use of the land has continued up until the date of application and as such it is not necessary to consider the other tests set out in sections 15(3) and 15(4) of the Act.

Conclusion

38. In order for the application site to be registered as a Village Green, the Registration Authority has to be satisfied that each and every one of the legal tests set out above is met. It is not sufficient that merely some of the tests have been met or that the land has always been considered locally to have the attributes of a Village Green.

39. In this case there are several problems which lead to the conclusion that the necessary tests have not been met. The most significant of these is that use of the land is not considered to have been 'as of right' during the material period due to the existence of the lease between the Parish Council and the landowner which makes express provision for the use of the land for recreational purposes.

40. Even if further user evidence were produced to support the application (and overcome the deficiencies with regard to the type and quantity of use), the existence of the leases would, by itself, present a 'knock-out blow' to the application. Therefore, it would appear that the relevant legal tests cannot be met

Recommendations

41.I therefore recommend that the County Council informs the applicant that the application to register the land known as 'The Market Square' at Aylesham as a new Village Green has not been accepted.

Accountable Officer:

Dr. Linda Davies – Tel: 01622 221500 or Email: linda.davies@kent.gov.uk

Case Officer:

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

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

Background documents

APPENDIX A – Plan showing application site

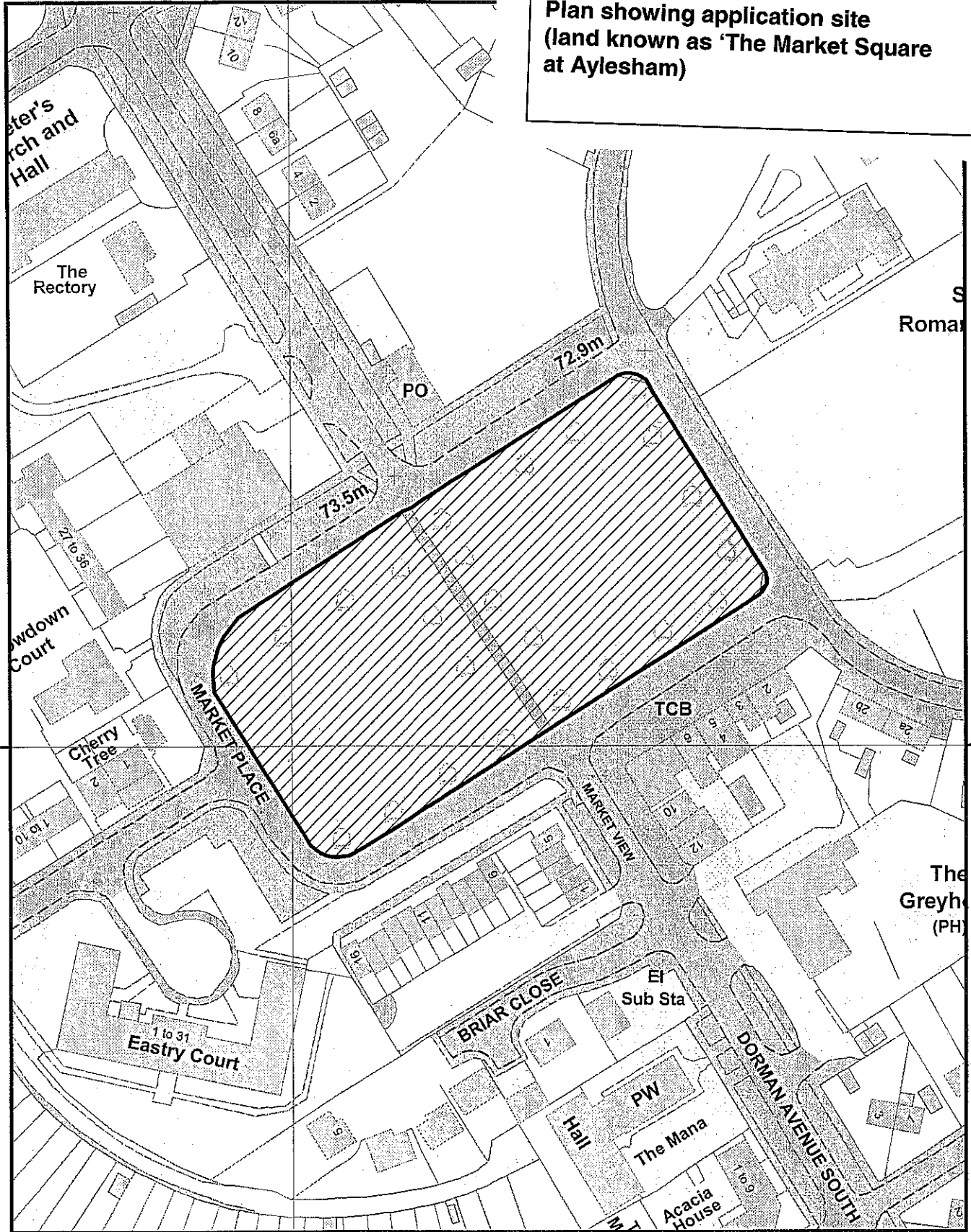
APPENDIX B – Copy of application form

APPENDIX C – Table summarising user evidence

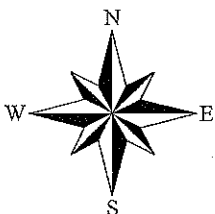
APPENDIX D – Copy of 1998 lease relating to the application site

623600.000000

APPENDIX A:
Plan showing application site
(land known as 'The Market Square
at Aylesham')



623600.000000



Scale 1:1250

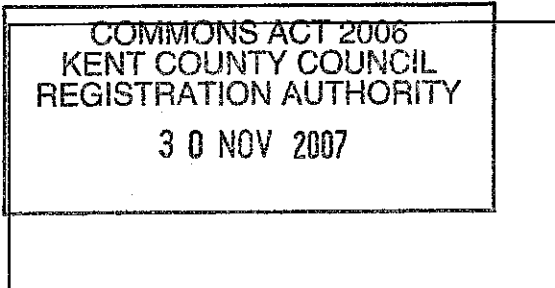
Land subject to village green application
at 'The Market Square', Aylesham



**APPENDIX B:
Copy of application form**

**Commons Act 2006: Section 15
Application for the registration
Village Green**

Official stamp of registration authority
indicating valid date of receipt:



Application number:

Register unit No(s):

VG number allocated at registration:

(CRA to complete only if application is successful)

Applicants are advised to read the 'Guidance Notes for the completion of an Application for the Registration of land as a Town or Village Green' and to note the following:

- All applicants should complete questions 1-6 and 10-11.
- Applicants applying for registration under section 15(1) of the 2006 Act should, in addition, complete questions 7-8. Section 15(1) enables any person to 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 question 9.

1. Registration Authority

To the

Kent County Council

Note 1
*Insert name of
registration
authority.*

Note 2

If there is more than one applicant, list all names. Please use a separate sheet if necessary. State the full title of the organisation if a body corporate or unincorporate.

If question 3 is not completed all correspondence and notices will be sent to the first named applicant.

Note 3

This question should be completed if 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.

2. Name and address of the applicant

Name:

Full postal address:

Telephone number: (incl. national dialling code)

Fax number: (incl. national dialling code)

E-mail address:

3. Name and address of solicitor, if any

Name:

Firm:

Full postal address:
Post code

Telephone number: (incl. national dialling code)

Fax number: (incl. national dialling code)

E-mail address:

Note 4

For further advice on the criteria and qualifying dates for registration please see section 4 of the Guidance Notes.

** 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.*

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.

If **section 15(6)*** applies please indicate the period of statutory closure (if any) which needs to be disregarded.

Note 5

The accompanying map must be at a scale of at least 1:2,500 and show the land by distinctive colouring to enable it to be clearly identified.

* Only complete if the land is already registered as common land.

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 or street). If this is not possible a map should be provided on which a locality or neighbourhood is marked clearly.

5. Description and particulars of the area of land in respect of which application for registration is made

Name by which usually known:

The Market Square Aylesham

Location:

Centre of DORMAN AVE NORTH & SOUTH
AYLESHAM

Shown in colour on the map which is marked and attached to the statutory declaration.

Common land register unit number (if relevant) *

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

Please show the locality or neighbourhood within the locality to which the claimed green relates, either by writing the administrative area or geographical area by name below, or by attaching a map on which the area is clearly marked:

map included.
Aylesham Market Square and
surrounding shops & houses.

Tick here if map attached:

7. Justification for application to register the land as a town or village green

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).

(See full statement enclosed.)

The Market Square Oylesham has been used over the years as the evidence proves, as a village green and social area.

The developers Hill Reed have not taken our history or heritage into consideration they plan to develop the area as a parking place for cars
Dover District Local Plan 3.38

Feb 2002

- a Creating a balanced sustainable community
- b Encouraging transport other than the car, walking and cycling.
- c Meeting the accessibility needs of all children and older people

Our village wants and needs this green area our heart of the village our village green.

Note 8

Please use a separate sheet if necessary.

Where relevant include reference to title numbers in the register of title held by the Land Registry.

If no one has been identified in this section you should write "none"

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, tenant or occupier of any part of the land claimed to be a town or village green

Dover District Council

9. Voluntary registration – declarations of consent from 'relevant leaseholder', and of the proprietor of any 'relevant charge' over the land

Note 9

List all such declarations that accompany the application. If none is required, write "none".

This information is not needed if an application is being made to register the land as a green under section 15(1).

10. Supporting documentation

Note 10

List all supporting documents and maps accompanying the application. If none, write "none"

Please use a separate sheet if necessary.

1 of 1 Map of the market square Aylesham Exhibit A
Photograph of the Market Square Aylesham
x 7
letters of support x 13
Evidence Questionnaire in support x 10

Note 11

If there are 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

Permission of course needs to be applied for on the road of holding a permit from the British Council because of the safety issues involved and police traffic management.

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.

Date:

1st November 2007

Signatures:

E Mackden

REMINDER TO APPLICANT

You are advised to keep a copy of the application and all associated documentation. Applicants should be aware that signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence. The making of a false statement for the purposes of this application may render the maker liable to prosecution.

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 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.

Statutory Declaration In Support

To be made by the applicant, or by one of the applicants, or by his or their solicitor, or, if the applicant is a body corporate or unincorporate, by its solicitor, or by the person who signed the application.

¹ Insert full name (and address if not given in the application form).

I, E. Madden,¹ solemnly and sincerely declare as follows:—

² Delete and adapt as necessary.

1.² I am ((the person (one of the persons) who (has) (have) signed the foregoing application)) ((the solicitor to (the applicant) (³ one of the applicants))).

³ Insert name if Applicable

2. The facts set out in the application form are to the best of my knowledge and belief fully and truly stated and I am not aware of any other fact which should be brought to the attention of the registration authority as likely to affect its decision on this application, nor of any document relating to the matter other than those (if any) mentioned in parts 10 and 11 of the application.

3. The map now produced as part of this declaration is the map referred to in part 5 of the application.

⁴ Complete only in the case of voluntary registration (strike through if this is not relevant)

4.⁴ I hereby apply under section 15(8) of the Commons Act 2006 to register as a green the land indicated on the map and that is in my ownership. I have provided the following necessary declarations of consent:

- (i) a declaration of ownership of the land;
- (ii) a declaration that all necessary consents from the relevant leaseholder or proprietor of any relevant charge over the land have

Cont/

been received and are exhibited with this declaration; or (iii) where no such consents are required, a declaration to that effect.

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act 1835.

Declared by the said E Madden
at 33 ~~Canterbury Drive~~
2 Castle Street Canterbury Kent
this 27th day of Nov 2007

E Madden
Signature of Declarant

Before me * [Signature]

Signature:
MRS S. SELSBY
F. INST. L. EX.
GARDNER CROFT
Address: 2 CASTLE STREET
CANTERBURY
KENT CT1 2QH

Qualification: Commissioner for Oaths.

* The statutory declaration must be made before a justice of the peace, practising solicitor, commissioner for oaths or notary public.

Signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence.

REMINDER TO OFFICER TAKING DECLARATION:

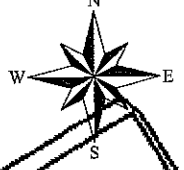
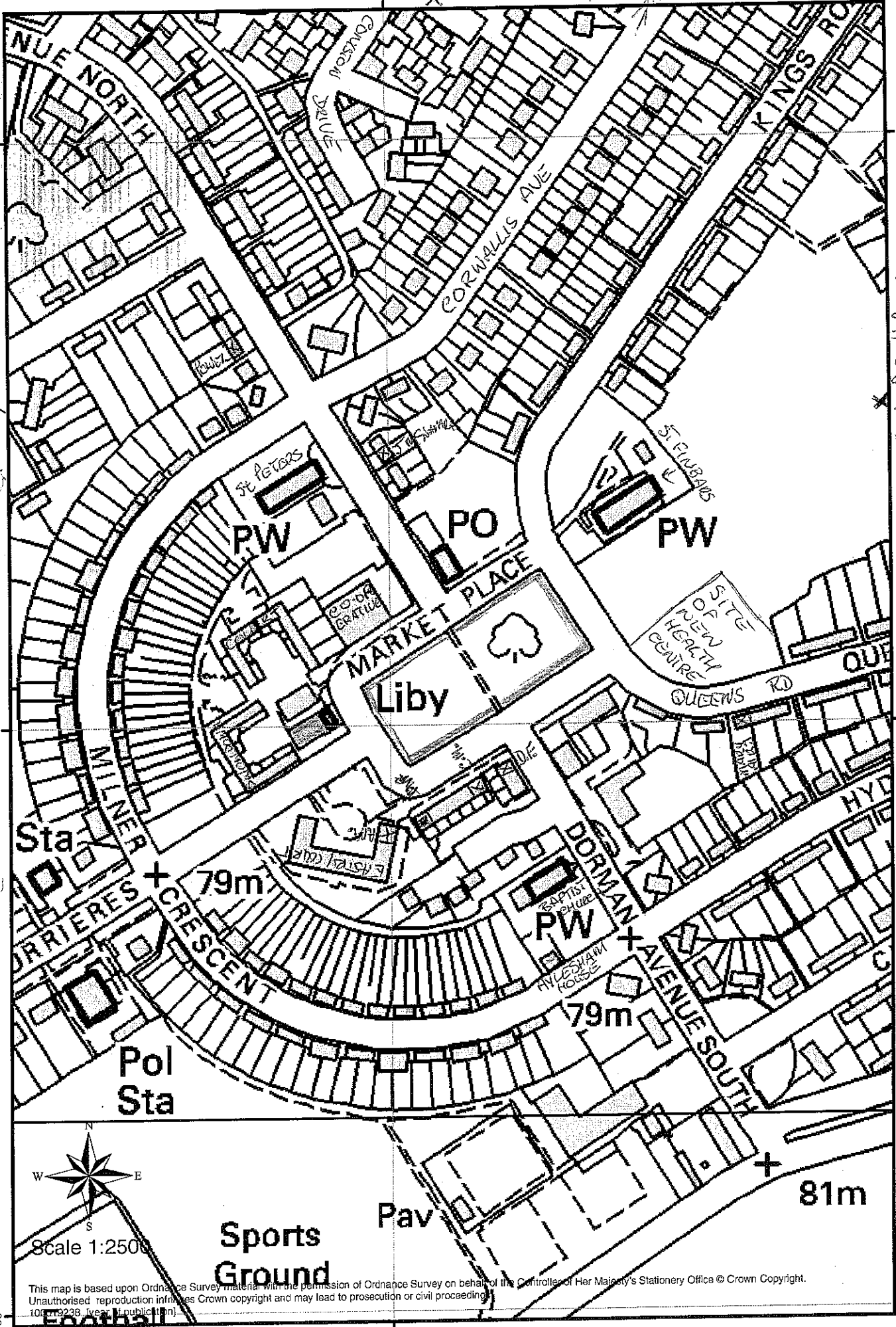
Please initial all alterations and mark any map as an exhibit

Will you please take into consideration that in a village like Aylesham we do not have solicitors or even a Justice of the Peace or a commissioner of oaths. Mrs & Josie and her husband are successful business people who live in the village and therefore have the same interest in making Aylesham a good place to live.
E Madden (applicant)

of Cornwall is
MARGHERIT
623600

152500
152200
151900
WICK BUCKLE
125 MILES

152500
152200
151900
End of Bell Grove
ISABEL MESSITER



Scale 1:2500

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100 019238 (year of publication)

DISABLED HOUSING

7. JUSTIFICATION FOR APPLICATION TO REGISTER THE LAND AS A TOWN OR VILLAGE GREEN

The Market Square in Aylesham is not large enough to be used for sports, and so our claim for village green status lies in pastimes, in the past as the submitted evidence will prove and also to the present day. At the heart of the Village the market square has been used over the years for fetes, carnival, church activities, religious groups, children playing, a meeting place for teenagers most are non-disruptive a few of course are not, the planting of commemorative trees by school children, some of these children are now forty years of age, the twinning society have also planted a tree with their French visitors, and also individuals to remember loved ones. When Snowdown Colliery was closed in 1987 a wheel from the head gear was presented to the village and installed in the square it is a reminder of all the villagers who made Aylesham their home through good and bad times a reminder of why the village came into existence part of our history and heritage. At the western end of the square there are two areas of sheltered accommodation for the elderly, and families with handicapped children, the market square gives them an enjoyable green area beautiful in the spring when the cherry trees and horsechestnut trees are in blossom, a safe place for the village people to stroll and enjoy. It is an area to meet up with other people while out shopping or walking the dog, to say hallo how are you and of course to exchange the goings on of village life, to linger a while on a good day, or sit on a bench and watch the world go by, the surrounding hedge gives the area an enclosed feeling of safety away from the traffic, as you can see the market square is appreciated by all. We would like to submit the market square Aylesham to be given village green status to protect it from being developed now or in the future. Aylesham is to be enlarged and developed in the near future the people are not generally against the development but the green areas are to be built on, the market square itself has been chosen in the outline plan for an area of parking once this lovely site has been breached it will be lost for ever.

**APPENDIX C:
Table summarising user evidence**

NAME	ADDRESS	PERIOD OF USE	ACTIVITIES	FREQUENCY OF USE	CHALLENGES/ DETERRENENTS TO USE AND OTHER COMMENTS
Mrs. M. Ayres	Queens Road	1948 – 2007 (60 years)	Walking dog, attending fetes, access to other parts of village	Daily	None. Saw other people using the land on a daily basis.
Mr. E. Buckle	Vale View Road	1932 – 2007 (75 years)	To go to work and access shops	Most days	None. Saw other people using the land on a daily basis.
Mr. D. Falconer	Dorman Avenue	1953 – 2007 (54 years)	Playing football, meeting friends, daily walk to shops	Weekly (but daily for last two years)	None. Market Square is used on a daily basis by about 40% of the village people.
Mrs. E. Madden	Coniston Drive	1947 – 2007 (60 years)	Meeting friends and socialising, daily walk to shops, playing as a child	Weekly	None. Market square is very much an active place in the village – it is not large enough to hold sporting activities but people do play with children and it is a meeting place.
Mr. C. McCarthy	Market Place	1991 – 2007 (16 years)	Fete, boot fairs, exercise	Daily	None. The land should be kept for the use of the village school for exercise.
Mrs. C. McNamara	Dorman Avenue North	1969 – 2007 (71 years)	Dog walking, access to shops, socialising, relaxing	Daily	None. Did not use land between 1967 to 1995.
Mrs. I. Messiter	Cornwallis Avenue	1950 – 2007 (57 years)	Village fetes, armistice service, to cross village	2-3 times per week	None. The land has always been used as a thoroughfare and is an integral part of village life.
Mr. A. Morgan	Easty Court	2000 – 2007 (7 years)	Socialising, nature watching, sunbathing	Daily	None. Land has been used for community events, e.g. carnivals, fetes etc.
Mr. and Mrs. A. Moses	Vale View	1952 – 2007 (55 years)	Walking and playing with children	Weekly	None.
Mr. and Mrs. B. Powell	Dorman Avenue North	1953 – 2007 (58 years)	Playing games, attending fairs and fetes	Daily	None. The land is the heart of the village and has been for children and grandchildren.

In addition to the user evidence above, 15 letters of support were received. Comments made included:

- Mr. D. Falconer has lived in Aylesham since 1953 and recalls the Market Square being seeded and planted. He supports the application for village green status as he the land forms a unique heart of the village and should not be destroyed.
- Mrs. J. Armstrong supports the application because in her view the village needs a focal point. It should not be turned into a car park
- Mr. L. Edwards states that the Market Square has been a meeting area for a long time. The materials used to build it came from the Snowdon colliery in memory of those who worked there. It should be left for the people of Aylesham to use for activities in the future.
- Mrs. B. Morgan protests against the alterations being proposed by Dover DC. She uses Market Square daily to feed the birds and the land provides great enjoyment for many people.
- Mr. L. Reynolds states that the green has been used for recreational activities for many years and has concerns that the planning proposals may leave the land open to misuse.
- Mrs. S. Field is the President of the Carnival Committee and explains that the Square has been used for fetes and fund-raising activities over the last 30 – 40 years. It would be a great shame to lose the village green.
- Mrs. E. Buckle is a former Parish Council clerk. She explains the history of the land (regarding the planting of trees and maintenance) and states that the area is enjoyed by all the community and provides a sense of pride.

**APPENDIX D:
Copy of lease with Dover District Council
(dated 14th July 1998)**

DATED 14 July

DOVER DISTRICT COUNCIL

- and -

THE PARISH COUNCIL OF AYLESHAM

LEASE

- of -

Market Square Aylesham
in the County of Kent

J.W. Horne BA
Solicitor, Head of Legal Services
Dover District Council
White Cliffs Business Park
Dover
Kent
CT16 3PJ

LDOCLAYLEPC-L

LEASE dated

14 July

1998 between

- (1) The Landlords: **DOVER DISTRICT COUNCIL** of White Cliffs Business Park Dover Kent CT16 3PJ and whoever for the time being owns the interest in the property which gives the right to possession of it when this Lease ends
- (2) The Tenants: **THE PARISH COUNCIL OF AYLESHAM** and whoever for the time being is entitled to the property under this Lease:-

1. IN this Lease:

- 1.1 A reference to an Act of Parliament refers to that Act as it applies at the date of this Lease and any later amendment or re-enactment of it from time to time in force
- 1.2 A right given to the Landlords to enter the property extends to anyone the Landlords authorise or allow to enter and includes the right to bring workmen and appliances onto the property for the stated purpose
- 1.3 AUTHORITY given to enter the property after giving notice extends in case of emergency to entry after giving less notice than specified or without giving any notice
- 1.4 WHENEVER there is more than one tenant all their obligations can be enforced against all of the tenants jointly and against each individually
- 1.5 ANY agreement or obligation on the part of the Tenants not to do any act or thing (however expressed) shall be construed as including an agreement or obligation on the part of the Tenants not to allow or suffer that act or thing to be done or to take place
- 1.6 ANY obligation to pay money refers to a sum exclusive of value added tax ("VAT") and any VAT chargeable on it is payable in addition
- 1.7 THE Plan is the plan attached to this Lease

2. IN exchange for the obligations undertaken by the Tenants:
 - 2.1 THE Landlords let the property described below ("the property") to the Tenants for five years starting on 19 September 1998 and ending on 18 September 2003 ("lease period") on the Tenants agreeing to pay rent calculated in accordance with the First Schedule
 - 2.2 THE property is the two plots of land situate at the Market Square Aylesham Kent as shown edged red and marked Plot 1 and Plot 2 on the plan
3. THE property is let subject to the rights contained in the Second Schedule
4. THE Tenants agree with the Landlords:-
 - 4.1 TO pay the rent by equal quarterly instalments in advance on the 19th day of March June September and December in each year of the lease period
 - 4.2 NOT to reduce any payment of rent by making any deduction from it or by setting any sum off against it
 - 4.3 TO pay promptly to the authorities to whom they are due all rates taxes and outgoings (if any) relating to the property including any which are imposed after the date of this Lease (even if of a novel nature)
 - 4.4 TO allow the Landlords to enter the property at any time to inspect the state of it
 - 4.5 TO allow anyone who reasonably needs access in order to exercise the rights contained in the Second Schedule
 - 4.6
 - (a) In this clause "to deal with" means to assign, sublet, mortgage, charge, part with possession of or share
 - (b) Not to deal with the whole property nor with any part of it separately from the rest

- 4.7 TO use the property only for recreational and amenity purposes ("the use allowed")
- 4.8 TO keep the property clean and tidy at all times and for this purpose only to use grass cutting and cultivation machinery on the property
- 4.9 NOT unnecessarily to fell cut down or destroy any trees on any part of the property
- 4.10 TO maintain and manage the trees on the property to the requirements of the Landlords
- 4.11 NOT to remove any soil or mineral from the property without the Landlords' consent
- 4.12 NOT unless the Landlords give consent in writing to build anything on the property
- 4.13 NOT to hold an auction sale on the property
- 4.14 TO comply with the terms of any Act of Parliament regulation licence or registration authorising or regulating how the property is used
- 4.15 TO do everything necessary to obtain continue and renew any licence or registration required by law for using the property for the use allowed
- 4.16 IN respect of Clauses 4.14 and 4.15 at all times to keep the Landlords indemnified against all claims demands and liability in respect thereof
- 4.17 TO use the property only for the use allowed
- 4.18 TO allow the Landlords on giving at least seven days notice to enter the property to inspect the state of it
- 4.19 TO give the Landlords promptly a copy of any notice received concerning the property and at their expense to comply with the requirements of the notice as it affects the property

- 4.20 IF the Landlords give the Tenants notice of any failure to do repairs or works of maintenance required by this Lease to start the work within two months (or immediately in case of emergency) and to proceed with it diligently
- 4.21 TO insure for not less than Two Million Pounds against liability in respect of personal injury to or the death of any person and damage to real and personal property arising out of the Tenants occupation and use of the property under a policy which satisfied the conditions set out in Clause 4.22
- 4.22 THE conditions with which an insurance policy must comply are:-
- (a) the insured persons shall be the Tenants and the interest of the Landlords shall be noted on the policy
 - (b) the policy is issued by a reputable insurance office or at Lloyds
- 4.23 TO show the Landlords on demand the insurance policy required to be maintained by Clause 4.21 together with the receipt for the last premium and every endorsement varying the terms of the policy. Additionally to deliver up to the Landlords at the start of this Lease and each year on the anniversary date of this Lease a copy of such insurance policy receipts and demands
- 4.24 TO indemnify the Landlords against any expenses, liabilities, claims, demands, proceedings and costs in respect of:-
- (a) personal injury to or the death of any person
 - (b) damage to any real or personal property
 - (c) any nuisance
- resulting from anything done or omitted to be done on the property and wherever the injury damage or nuisance is suffered except to the extent

that the same is due to any act or neglect or omission of the Landlords or of any person for whom the Landlords are responsible

4.25 IN this clause "the Planning Acts" means the Town and Country Planning Act 1990 and the Planning (Listed Buildings and Conservation Areas) Act 1990 and the rules, regulations and orders which are either made under them or are continued by the Planning (Consequential Provisions) Act 1990, as they apply from time to time

4.25.1 to comply with the Planning Acts as they affect the property

4.25.2 not to carry out any development of the property which requires permission

4.25.3 if the Landlords require and at the Landlords' expense to join the Landlords in making representations about any proposed development on the property or neighbouring property

4.25.4 to allow the Landlords to enter the property to comply with any lawful requirement under the Planning Acts, even if that restricts the enjoyment of the property

4.26 TO pay the Landlords' costs incurred as a result of the Tenants applying for the Landlords' consent or approval whether or not it is granted

4.27 NOT to use the property or any part of it for any of the following:- activities which are dangerous offensive noxious illegal or immoral or which are or may become a nuisance or annoyance to the Landlords or to the Owner or Occupier of any neighbouring property

4.28 TO pay all expenses (including solicitors and surveyors fees) which the Landlords incur in preparing and serving

4.28.1 a notice under Section 146 of the Law of Property Act 1925, even if forfeiture is avoided without a Court Order

4.28.2 a schedule of dilapidation recording failure to give up possession of the property in the appropriate state of repair when this Lease ends

4.29 THAT whenever rent or other sums payable by the Tenants to the Landlords remain unpaid after they are due for payment then such rent or other sums shall bear interest at the rate of four per centum per annum above the base lending rate from time to time of National Westminster Bank plc from the date on which such payments are due until paid and the amount of such interest shall be deemed to be part of the rent reserved and recoverable as rent in arrear

4.30 TO yield up the property at the determination of the lease period (however it ends) in the condition required by this Lease

4.31 TO pay the Landlords' legal costs and expenses incurred in preparing and granting this Lease including stamp duty charged on the Counterpart of this Lease

5. THE Landlords agree with the Tenants:-

5.1 SO long as the Tenants do not contravene any term of this Lease to allow the Tenants to possess and use the property without interference from the Landlords anyone who derives title from or any Trustees for the Landlords

6. THE parties agree:-

6.1 THE Landlords are entitled to forfeit this Lease by entering any part of the property whenever the Tenants

6.1.1 are twenty one days late in paying rent even if it was not formally demanded

6.1.2 have not complied with any obligation in this Lease

6.1.3 when a company: it or one of them goes into liquidation, unless that is solely for the purposes of amalgamation or reconstruction when solvent, an administrative receiver of it is appointed or an administration order is made in respect of it

6.1.4 when one or more individuals is are or one is adjudicated bankrupt or an interim receiver is appointed of the Tenant Tenants or one of them

6.2 THE Landlords will continue to maintain only those parts of the property which are so maintained at the date of this Lease future maintenance due to further planting to be carried out by the Tenants

6.3 THE forfeiture of this Lease does not cancel any outstanding obligation which the Tenants owe the Landlords

6.4 NOTHING contained in this Lease affects the powers of the Landlords as Local Authority or Planning Authority or relieves the Tenants from the necessity to obtain all consents and approvals that may from time to time be required from the Landlords as Local Authority or Planning Authority and no consent or approval given by the Landlords in that capacity shall relieve the Tenants from any necessity to obtain any consents or approvals from the Landlords as Landlords which may from time to time be required under this Lease

6.5 THE rules as to the service of notices in Section 196 of the Law of Property Act 1925 apply to any notice to be given under this Lease

7. IT is hereby certified there is no Agreement for lease to which this Lease gives effect

IN WITNESS whereof the parties have executed this Lease as their deed

THE FIRST SCHEDULE

(Determination of Rent)

Throughout the lease period the yearly rent will be £150.00

THE SECOND SCHEDULE

(Rights to which the property is let subject)

1. As to Plot 1

A Deed of Grant dated 13 March 1985 made between Dover District Council (1) The Folkestone and District Water Company ("the Company") (2) being an easement in perpetuity for the Company its successors in title and its and their respective servants and licensees at any time or times thereafter to construct place lay and at all times thereafter to use inspect maintain cleanse repair replace relay conduct and manage a main water pipe the approximate position of which is shown by a green line of the plan attached to this Lease

2. As to Plot 2

A Wayleave Consent dated 21 June 1955 made between Eastry Rural District Council (1) The South Eastern Electricity Board ("the Board") (2) consenting to the Board placing or laying one or more underground electric lines and any necessary ancillary apparatus along a route the approximate position of which is shown by a black line on the plan attached to this Lease and also to the entry by the Board from time to time by their servants agents contractors and workpeople for the purpose of inspecting maintaining repairing and replacing or removing the works or any of them

THE COMMON SEAL of **DOVER**)
)
DISTRICT COUNCIL was hereunto)
)
affixed in the presence of:)

12, 213

R. C. Bowditch

Authorised Chief Officer

SIGNED AS A DEED on behalf)
)
of The Parish Council of)
)
Aylesham named above by its)
)
Chairman **PERCY THOMAS WILSON**)
)
in the presence of:)

P. J. Wilson

NAME:

ADDRESS:

DESCRIPTION OR OCCUPATION:

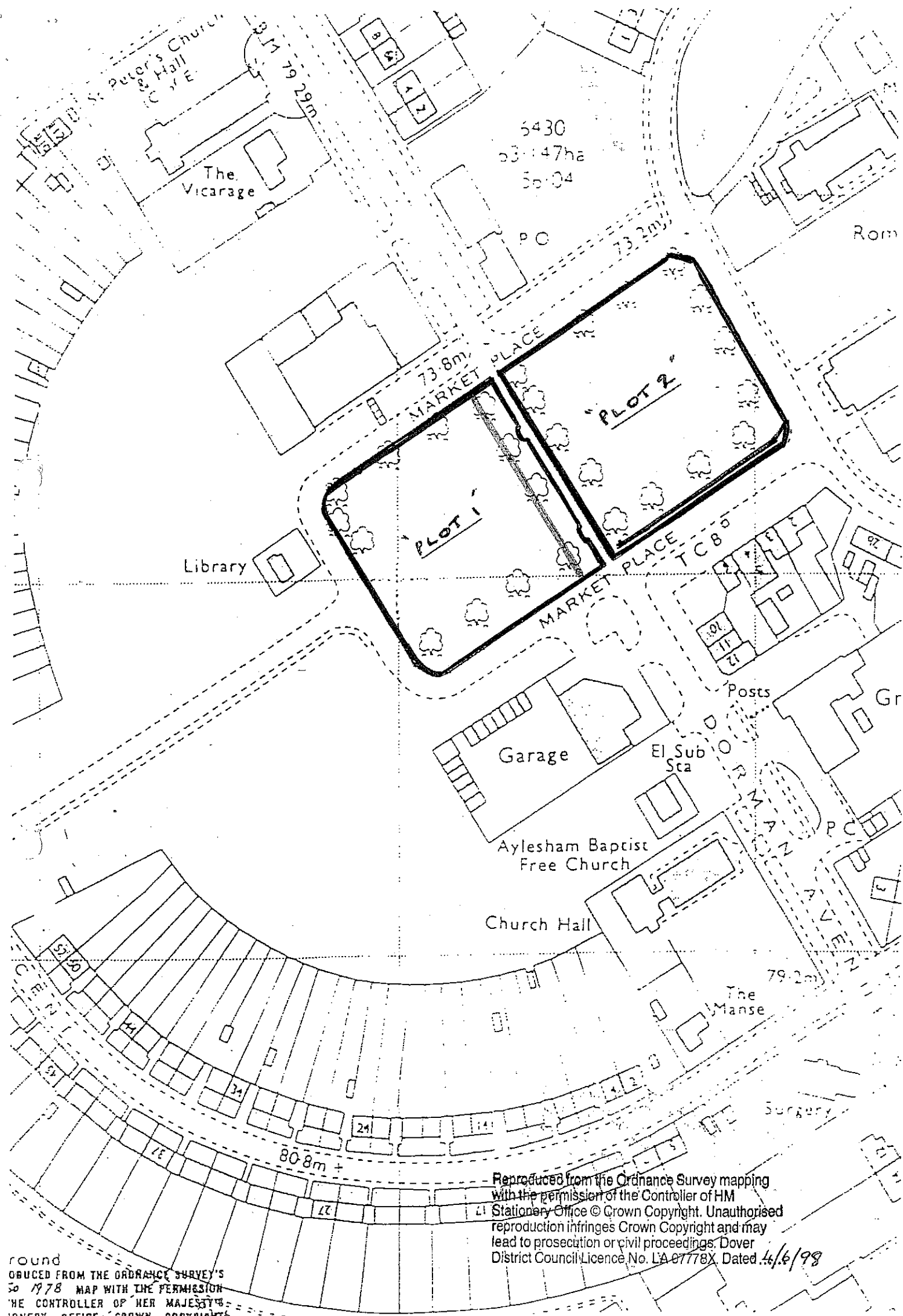
SIGNED AS A DEED on behalf)
)
of The Parish Council of)
)
Aylesham named above by its)
)
Clerk **ERIC BUCKLE**)
)
in the presence of:)

Eric Buckle

NAME: *William Olives*

ADDRESS: *61 Wilkes Crescent Aylesham*

DESCRIPTION OR OCCUPATION: *Support Worker*



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