

## Application to register land at Montefiore Avenue, Ramsgate as a new Town Green

---

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

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

---

Local Members: Mr. J. Fullarton and Mr. B. Hayton

Unrestricted item

---

### Introduction

1. The County Council has received an application to register land at Montefiore Avenue, Ramsgate as a new Town Green from local resident Mr. M. Matthews ("the applicant"). The application, dated 9<sup>th</sup> August 2007, was allocated the application number 596. 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 1<sup>st</sup> October 2008, been superseded by the Commons Registration (England) Regulations 2008 which apply in relation to seven 'pilot implementation areas' only in England (of which Kent is one).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 6<sup>th</sup> 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 persons. It must also publicise the application in a newspaper circulating in the

## **The application site**

6. The area of land subject to this application (“the application site”) is known locally as ‘the old bowling green’ and is situated adjacent to Montefiore Avenue at Ramsgate. The application site is an irregular shape that is best described by reference to the plan at **Appendix A**. It consists of a grass surface and is bounded on three sides by hedges, boundary fencing and tennis courts. A Public Footpath abuts the eastern edge of the application site (but does not form part of it) and is delineated by way of very old post and rail fencing which is in a severe state of disrepair. Access to the site is through the dilapidated fencing (which is non-existent in some sections) and via a large, well-established gap at Montefiore Avenue.

## **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 17 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 the user evidence is attached at **Appendix C**. In addition, a further four statements were submitted from people who have witnessed use of the site from neighbouring properties but who themselves may not necessarily have used it.
9. Also submitted in support of the application are various items of correspondence from Thanet District Council employees, which refer to the history and current status of the site. These include a letter from Mr. B. White (Head of Development Services) confirming that the application site has not been used as a putting green since before 1984.

## **Consultations**

10. Consultations have been carried out as required and the following comments have been received.
11. Local Councillors Mr. A. Poole and Mrs. M. Fenner wrote in support of the application. They state that the application site is in regular usage by local residents and has been used for informal leisure activities for a very long time, without any hindrance of access to the site.
12. Four local residents also wrote in support of the application. They added their own evidence of use and stated that the application site is well used by the local community for activities such as dog walking and ball games.

## Landowner

13. The application site is owned by Thanet District Council. Mr. P. Verrall, Parks Manager, has objected to the application on behalf of the District Council.
14. The objection is made primarily on the grounds that, until the mid-1990s, the entire site was run as a games centre (with a defined and fenced boundary) open to the public but requiring them to pay for use of the facilities. Regular access to the site by local residents has only been due to repeated vandalism of the fencing and this has only been since the mid-1990s. Prior to that time, access to the site was with formal permission as part of a paid recreational use of the tennis, putting, croquet or bowls facilities.
15. The objection is supported by an internal email from the District Council's Senior Leisure Officer, Mr. C. Tull. He explains that the site was originally a putting green that, in 1983, was converted to a croquet lawn to enable a group of local residents to establish a croquet club; by 1987, the club had outgrown the site and moved to an alternative venue. He adds that until recent years, the site has always been fenced with designated opening hours for the public to pay to use the facilities on the site but, due to a phase of vandalism, the original fence was damaged beyond repair and this was replaced by new fencing (using the existing concrete posts) in the mid-1990s. This new fencing was also stolen shortly after installation and, despite being replaced on three separate occasions, it became impossible to maintain. The District Council have, however, continuously maintained the area by cutting the grass throughout this period.

## Legal tests

16. 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'?***

17. The definition of the phrase 'as of right' has been considered in recent High Court case law. Following the judgement in the *Sunningwell*<sup>1</sup> 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

---

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

him or advertise the fact that he has no right to be there, then rights are acquired and further use becomes 'as of right'.

18. In this case, there is no suggestion that the use of the application site by the local residents took place in secrecy and, although those paying to use specific facilities on the site would have had an implied permission to use the rest of the site (for example, it could be said that someone paying to use the tennis courts might have an implied licence to also use the other facilities on the site for which no actual payment was required), there is no evidence that those using the site for informal recreational activities were given formal permission to use it - be it by way of a notice erected on the site, verbally by an employee of the District Council, or otherwise.
19. There is, however, a question as to whether the use of the application site for informal recreation has been by force and in this respect there is a dispute of fact between the evidence of the applicant and that of the objector.
20. The evidence of the recreational users submitted in support of the application suggests that there has been uninterrupted use of the application site without any hindrance to access over a period well in excess of 20 years. In the majority of cases, access to the application site has been via the Public Footpath which abuts the site and when asked in the user evidence questionnaire how they gained access to the application site, the recreational users gave answers such as '*open access from the public right of way*', '*walk in off pavement*' and '*walked on from the footpath which runs adjacent*'.
21. This evidence is supported by the applicant, who has lived opposite the site since 1979 and explains that when he first moved to the property the site was no longer used as a bowling green. He states that '*there has been unimpeded access from both the public right of way and from the [footway] of Montefiore Avenue since approximately that date*' and also makes the point that there must have been gaps in the fencing because otherwise the gang mowers used to cut the grass on the application site would not have been able to access the land.
22. However, the objector refers to the presence of fencing along the edge of the site which would have precluded access to it during the relevant 20 year period. Although the District Council accepts that the fencing has been vandalised on a number of occasions, it states that it has repeatedly made attempts to repair this damage.
23. This appears to conflict with the objector's own admission that no gates exist from the tennis courts onto the application site and thus, when tennis balls have been hit over the tennis court fencing (and on to the application site), the only means of access to retrieve the lost tennis balls has been to exit the tennis courts onto Montefiore Avenue and take the easiest route onto the application site. This would seem to suggest that access onto the application site was not restricted, although it does not conclusively prove the non-existence of the fencing around the application site (as tennis players may have climbed over the fencing to gain access).

24. There is therefore a degree of uncertainty regarding the status of the fencing around the perimeter of the site and the ease with which non-paying recreational users gained access to the application site. The fact that access to the application site was required for gang mowers to carry out routine maintenance and for tennis players retrieving lost tennis balls suggests that the fencing was not as continuous or permanent as the District Council suggests. However, the user evidence also requires more detailed clarification to confirm that there were no periods during which the fencing was completely continuous, as is suggested by the District Council.

***(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 range of recreational activities have taken place on the land, including dog-walking and training, nature-watching and playing with children. The table summarising evidence of use by local residents at Appendix C shows the full range of activities claimed to have taken place.

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

27. 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*<sup>2</sup> 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’.

28. Although it is accepted that, in all probability, only those living closest to a piece of land are likely to use it for recreational purposes, there is still a requirement for the purposes of Village Green registration to show that the land has been used by the residents of a defined locality (or neighbourhood) or, as suggested by LJ Pill in a case known as *Steed*<sup>3</sup>, ‘something more than a place or geographical area – rather a distinct and identifiable community such as might lay reasonable claim to a town or village green’.

29. At part 6 of the application form, the applicant specifies the locality as ‘East Cliff/Dumpton’. In a subsequent letter, the applicant suggests that the application site might better be described by way of being situated in a ‘neighbourhood’ (i.e. ‘East Cliff/Dumpton’ or ‘King George VI park area’) within a ‘locality’ (i.e.

---

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

<sup>3</sup> *R v Suffolk County Council, ex parte Steed and another* (1996) 75 P&CR 102

Ramsgate). In either case, it does not matter that the applicant has not precisely defined the correct locality in his application; the burden is not on the applicant to establish the correct locality at the time of application, but rather on the Registration Authority to satisfy itself that there is a relevant locality (or neighbourhood) at the time of registration<sup>4</sup>. The right to use a Village Green is restricted to the inhabitants of a locality or neighbourhood 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.

30. The application site lies within the District Council ward of Sir Moses Montefiore. This is the sort of legally recognised administrative unit that is entirely capable of being used to define the surrounding locality. However, the ward covers a large area and in this case there may be a need to identify a smaller area which would more accurately describe the immediate neighbourhood in which users of the applications site reside. It is unclear as to whether the 'King George VI park area' is a locally recognised entity that would be sufficiently descriptive to identify those with a right to use the application site.
31. Given the proposed recommendation, it is not necessary to conclude on this issue as this is a point which could easily be clarified at a Public Inquiry and the exact locality (or neighbourhood) would become clear during the course of hearing the witness evidence. It is evident that there is defined locality but there is a question as to whether there is a need to establish a sufficiently 'distinct and identifiable community' that would form a neighbourhood. This latter point requires further clarification.

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

32. 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.
33. From the user evidence submitted, there appears to have been use of the land over a considerable period dating back far beyond 1987. Most of the witnesses have known the land in question for well over 20 years, with at least two having lived in the area for over 40 years. 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.
34. However, due to the questions regarding the fencing of the land, it is not possible to conclude with any certainty (on the evidence currently available) that the use has been for a *full and uninterrupted* period of 20 years. There is no specific reference in the user evidence regarding whether use of the land has been uninterrupted and this is a point which requires further clarification.

---

<sup>4</sup> *Oxfordshire County Council v Oxford City Council* [2006] UKHL 25

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

35. 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.
36. In this case, there is no suggestion that the use of the land by those who have submitted user evidence statements ceased prior to the making of the application. The application appears to have been prompted by concerns regarding the future development of the site rather than any recent attempts to deny access to the site. There is no evidence that use of the application site by the local residents had ceased 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**

37. Although the relevant regulations<sup>5</sup> 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 of where the application turns on disputed issues of fact, for Registration Authorities to conduct a non-statutory Public Inquiry, which would involve appointing an independent Inspector to hear the relevant evidence and report his/her findings back to the Registration Authority.
38. Such an approach has received positive approval by the Courts, most notably in the *Whitmey*<sup>6</sup> 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'*.
39. As was famously quoted by the judge in another High Court case<sup>7</sup>, *'it is no trivial matter for a landowner to have land, whether in public or private ownership, registered as a town green...'*. 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.

---

<sup>5</sup> Commons Registration (England) Regulations 2008

<sup>6</sup> *R (Whitmey) v Commons Commissioners* [2004] EWCA Civ 951

<sup>7</sup> *R v Suffolk County Council, ex parte Steed* (1996) 75 P & CR 102

40. In this case, there is a serious dispute of fact with regard to the existence and condition of the fencing around the perimeter of the application site. This is a point which is key to the case and has a significant impact on whether use of the application site has been continuous and 'as of right' over the material period. There is also an issue to be addressed with regard to establishing the relevant locality or neighbourhood. A Public Inquiry would allow witnesses to give more detailed evidence that could be subject to relevant questions from the Inspector. This would provide a greater clarity to the user evidence than is currently available in paper form and enable the Registration Authority to come to a more informed decision on the case.

### **Recommendations**

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

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
---

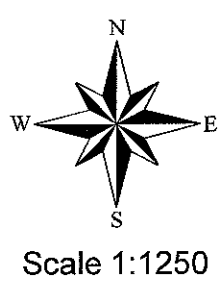
The main file is available for viewing on request at the Environment and Waste Division, Environment and Regeneration Directorate, Invicta House, County Hall, Maidstone. Please contact the case officer for further details.
--

### **Background documents**

APPENDIX A – Plan showing application site  
APPENDIX B – Copy of application form  
APPENDIX C – Table summarising user evidence

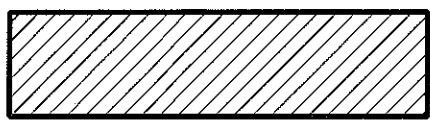


**APPENDIX A:**  
**Plan showing application site**  
**(land known locally as 'the old bowling green' at Montefiore Avenue at Ramsgate)**



Scale 1:1250

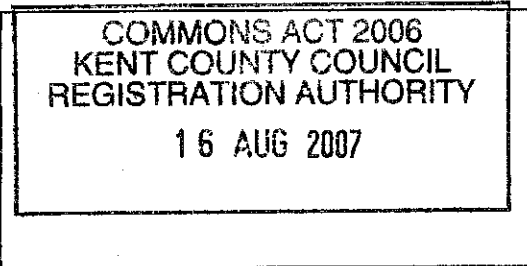
Land subject to village green application  
 at Montefiore Avenue, Ramsgate



**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.

**Note 1**  
Insert name of  
registration  
authority.

**1. Registration Authority**

To the

**KENT COUNTY COUNCIL.  
ENVIRONMENT & ECONOMY.  
INVICTA HOUSE, COUNTY HALL.  
MAIDSTONE. ME14 1XX.**

**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:

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 Old putting green Montefiore Avenue  
Bowling green site. MAP "B."

Location:

MONTEFIORE AVE RAMSGATE.

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:

Since the site is on the Ramsgate/Broadstairs border it is described as East Cliff /Dumpton. It is more accurately defined by reference to the map attached.

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 attached statement.*

**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).*

**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).*

**Note 10**

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

*Please use a separate sheet if necessary.*

**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**

THANET DISTRICT COUNCIL.

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

**10. Supporting documentation**

See Separate sheet.

**11. Any other information relating to the application**

**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.*

**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:

9/8/2007.

Signatures:

M.G.F. Matthews

**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.

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

I.....<sup>1</sup> solemnly and sincerely declare as follows:—  
**MICHAEL GEORGE FREDERICK MATTHEWS**

<sup>2</sup> Delete and adapt as necessary.

1.<sup>2</sup> I am ((the person (one of the persons) who (has) (have) signed the foregoing application)) ((the solicitor to (the applicant) (<sup>3</sup>one of the applicants))).

<sup>3</sup> 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.

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

4.<sup>4</sup> 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/

<sup>4</sup> Continued

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 *Michael George  
Frederic Matthews*

*M.G.F. Matthews.*

at *44/46 Queen Street,  
Ramsgate*

Signature of Declarant

this *9<sup>th</sup>* day of *August 2007*

Before me \*

Signature:

*[Signature]*

Address:

*44-46 Queen St. Ramsgate*  
**M. R. M. DANIEL**  
SOLICITOR, NOTARY PUBLIC  
and COMMISSIONER FOR OATHS  
RAMSGATE, KENT

Qualification:

\* 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*

This is the exhibit marked 'B' referred to in the statement accompanying the Statutory Declaration of Michael George Freeman Matthews made on 9<sup>th</sup> August 2007

M.A.M. DANIEL  
Commissioner for Ombudsman

**Part of Holy Trinity School  
Nature Reserve.**

TR 3866 SE

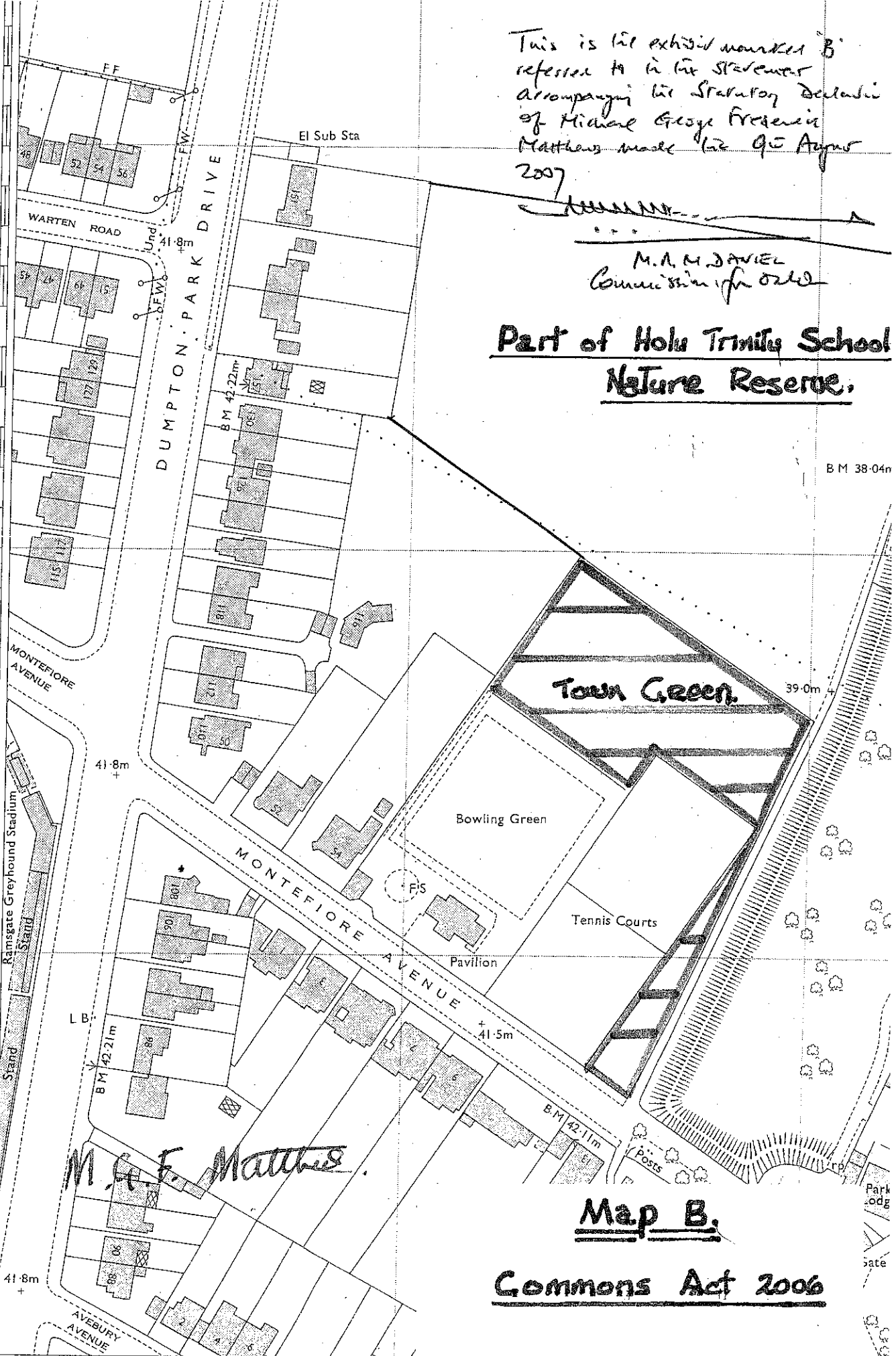
663

662

661

41.8m

166000m



*M. G. F. Matthews*

**Map B.**

**Commons Act 2006**

RAMSGATE  
RAMSGATE MB & CP

SIR MOSES MONTEFIORE WARD

0000659

**Continuation sheet Form 44 Section 7. (Justification of application to register land  
as a Town Green) Montefiore Avenue Ramsgate**

**Background**

The site that is the subject of this registration application was originally acquired by the Ramsgate Bowling Club Ltd in 1913 and was used as a putting green. Ramsgate Borough Council purchased the whole site including the bowling green and tennis courts in 1948, following the insolvency of the bowling club. Land Registry details show this site to be held as normal freehold land. Ramsgate Borough Council and subsequently Thanet District Council operated this site along with the adjacent leisure facilities until probably the late 70's when the putting green ceased to be used. Possibly around that time portions of the fence and hedges were removed to allow council workers access to the site with self propelled gang mowers from the adjacent public footpaths which run down one side of the site, as there are no gates to this site. There has been unimpeded access from both the public right of way and from the footpath of Montefiore Avenue since approximately that date. It is still referred to as "the old putting green" by some users. It is now bordered on the Northerly side by a nature reserve created by the local primary school.

It is worth pointing out that in many cases witness statements have been made by one member of a household, the answers however apply equally to the spouse. In this submission it is not intended to summarise all of the evidence since it is contained in the witness statements but hopefully to demonstrate that care has been taken to address the requirements of the law relating to registration.

Evidence statements have been witnessed where practicable by a Justice of the Peace. However in cases where this has not been possible the applicant has witnessed them using his status as a Chartered Engineer.

**List of Witness Statements Appendix 2.**

The following submissions fall into the category of individuals who have used this site for more than 20 years and who still use it. *The number in brackets refers to the evidence questionnaire reference number.*

Mrs Christine Sackett (1)  
Mrs Lorna Farley (2)  
Mr Peter Flint (3)  
Mrs Rhoda Kahl (5)  
Mr James Carey (6)  
Mr John Challinor (8)  
Mrs Pat Haywood (9)  
Mrs Rita Smith (10)  
Mr Gary Easton (12)  
Mr D. W. Bellingham. (14)  
Mr William McKnight (15)  
Mr Dave Welch (16)  
Mr Michael Matthews (20) *Applicant.*

### List of Witness Statements Appendix 3.

The following submissions fall into the category of individuals who have either used this site for less than 20 years and who still use it or whose use of the site is not continuous. *The number in brackets refers to the evidence questionnaire reference number.*

Mrs Barbara Ford (4)  
Mr Melvyn Robinson (7)  
Mr Robert Hopkins (13)  
Mr Hall (17) *evidence to follow.*

### List of Witness Statements Appendix 4.

The following submissions fall into the category of individuals who have observed that others have used the site for 20 years or more but who have not themselves used it to any appreciable degree. *The number in brackets refers to the submission reference number.*

Mrs Angela Band (18)  
Mrs Fiona Wefare (11)  
Tom & Sally Band (19)

### General remarks on the witness statements

The act requires that it is demonstrated that a significant number of people "of any locality" or "of any neighbourhood within a locality". Many of the local residents who have supplied evidence have lived within several hundred metres of this site for very substantial periods of time and have used the site well in excess of the 20 years demanded by the act. It is anticipated that more witnesses will come forward during the formal consultation process.

The statements show that there is a stable and substantial community of people living close to this site who use it for "lawful sports and pastimes". This in turn reinforces the concept of a stable and identifiable local community who are served by this piece of open space and who value their open spaces and enjoy living in the locality. The community boundary shown on the map shows the neighbourhood that is served by this site that is about 600 metres radially from the site. It includes many of the features of an identifiable community (Doctors surgery, pub etc. etc.) In reality most of the evidence from users comes from people living closer than the boundary drawn on the map. It is also clear that the cohort of people who use this site is being added to as people move into the area and choose to use it.

The Act requires users to have indulged in using this site "as of right" and just a small sample of the answers show that the users felt entitled to walk onto the land from the footpath.

For example an answer from Mrs Kahl to question 19 (Did you ever ask permission) reply "No I did not need to" another answer to the same question Mrs Farley, "No because its all open ground" and so on.

The requirements of use "without force" and "without secrecy" are fairly self evident given the age profile of many of the witnesses. I do not imagine many of them would scale fences (if there were any) in the middle of the night to use this site. In addition the site is in full view of users of the bowling green, and public footpaths.

However it would be misleading to assume that the only "lawful sport and pastime" that occur on the site is dog walking. It has proven much more difficult in the time available to identify the children who play on the site, as they tend to be more transitory than the more established retired users. They play, they grow up and move on but many of the witnesses refer to taking children and grandchildren onto the site.

It may be worthwhile also explaining why many users choose to use this site given the proximity of the local park. Whilst this is not technically relevant to the registration process I think the reasons show that leisure users are quite sophisticated in their choices. Some explanations are in the questionnaire but not all.

Typical answers as to why they used this site were:-

"It's enclosed on 3 sides so my dog can't run away"

"Its peaceful without the hurly-burly of the main park as my dog is old"

"It's flat, out of the wind so I am not frightened to fall over in wet weather as the park gets very slippery"

"I like to sit, it's so peaceful"

It is clear that users adjust their usage according to the time of day weather and so on.

#### **List of Evidence Appendix 5.**

A further class of evidence has been derived using direct information supplied by Thanet District Council as a result of direct enquiry and secondary sources based on research using the Freedom of Information Act.

In the first category is a letter from Mr Brian White (Head of Development Services at TDC) who confirms that the site has not been a putting green since before 1984. Similarly an Email from Mr Paul Verrall (Parks & Open Spaces Development Manager) is the source of this information as 1984 was the date when he became responsible for this site. He confirms it was "not in use in 1984". This suggests the evidence supplied in the questionnaires by local residents who date the closure of the putting green as mid to late seventies is trustworthy.

Emails from Mr Doug Brown describe this site as "Open Space" and add that because of this fact development of this site would be a departure from the local plan and it would require full council approval. As TDC's Development Control Manager it is reasonable to assume Mr Brown clearly understands what constitutes "Open Space". Reference to the local plan refers to policy CC5 that includes this site as a "green wedge"; this policy is reproduced in full in Appendix 5. It is also worth noting that TDC have rigorously enforced this policy in numerous planning decisions over the years.

This evidence supports the view that within senior TDC officers this site is clearly regarded as open space. This is a considered view by planning professionals and consistent with the lay evidence contained in the registration application.

**APPENDIX C:**  
**Table summarising user evidence**

NAME	ADDRESS	PERIOD OF USE	ACTIVITIES	FREQUENCY OF USE	ACCESS	CHALLENGES/ DETERRENENTS TO USE AND OTHER COMMENTS
<b>Mr. D. Bellingham</b>	Wickham Avenue	1976 – 2007 (21 years)	Picnic, play area	Not stated	Access from the Public Footpath	None. Assumed land was a public green and part of the park
<b>Mr. J. Carey</b>	Dumpton Park Drive	1978 – 2007 (29 years)	Playing with children, dog walking	Not stated	Open access from footpath	Never been challenged or asked permission to use the land
<b>Mr. J. Challinor</b>	Dumpton Park Drive	1962 – 2007 (45 years)	Dog walking, playing as a child	Variable depending on season	Montefiore Avenue	None. Has regularly seen other people using the land.
<b>Mr. G. Easton</b>	Wallwood Road	1990 – 2007 (17 years)	Relaxing	Not stated	From footpath	Never been challenged or asked permission to use the land
<b>Mrs. L. Farley</b>	Montefiore Avenue	1982 – 2007 (25 years)	Dog walking	Variable – more frequently now	Along footpath	Never been challenged or asked permission to use the land
<b>Mr. P. Flint</b>	Hereson Road	1977 – 2007 (30 years)	Watching tennis and football, dog walking	Quite regularly	From footpath	Never been challenged or asked permission to use the land
<b>Mrs. B. Ford</b>	Wickham Avenue	1996 – 2007 (9 years)	Dog walking, picnics, relaxation	Daily	Not stated	Never been challenged or asked permission to use the land
<b>Mr. S. Hall</b>	Hereson Road	2000 – 2007 (7 years)	Dog exercising and training	4 times per week	Public alleyway	Never been challenged or asked permission to use the land
<b>Mrs. P. Hayward</b>	Wickham Avenue	1982 – 2007 (25 years)	Walking dog, exercise and recreation	Variable	Walk onto land from footpath	None. Seen other people using the land since the putting green closed.
<b>Mr. R. Hopkins</b>	Wallwood Road	1997 – 2007 (10 years)	Walking with grandchildren	Not stated	From alleyway	Never been challenged or asked permission to use the land
<b>Mrs. R. Kahl</b>	Wickham Avenue	1984 – 2007 (23 years)	Dog training and walking, enjoying wildlife	Almost daily	Through entrance by footpath	Never been challenged or asked permission to use the land
<b>Mr. M. Matthews</b>	Montefiore Avenue	1957 – 2007 (50 years)	Dog walking, kite flying	At least once per week	Montefiore Avenue or footpath	Never been challenged or asked permission to use the land
<b>Mr. W. McKnight</b>	Dumpton Park Drive	1985 – 2007 (22 years)	Nature watching	Not stated	From footpath	Never been challenged or asked permission to use the land
<b>Mr. M. Robinson</b>	Dumpton Park Drive	1975 – 2007 (32 years)	Family games and recreation	Not stated	From footpath	Never been challenged or asked permission to use the land
<b>Mrs. C. Sackett</b>	Montefiore Avenue	1957 – 2007 (50 years)	Dog walking, relaxing, playing with children, watching tennis	Several times a week	Montefiore Avenue along the side of tennis courts	Never been challenged or asked permission to use the land
<b>Mrs. R. Smith</b>	Muir Road	1970 – 2007 (37 years)	Dog walking, relaxing	Daily	Montefiore Avenue	Never been challenged or asked permission to use the land.
<b>Mr. D. Welch</b>	Wickham Avenue	1986 – 2007 (28 years)	Dog walking, football, nature watching	2 – 3 times per day	Not stated	Never been challenged or asked permission to use the land