

## **Application to register land known as The Warren at Brabourne Lees as a new Village Green**

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A report by the Head of Regulatory Services to Kent County Council's Regulation Committee Member Panel on Tuesday 8<sup>th</sup> April 2014.

**Recommendation: I recommend that the County Council informs the applicant that the application to register the land known as The Warren at Brabourne Lees has been accepted, and that the land subject to the application be formally registered as a Village Green.**

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Local Member: Mr. A. Wickham

Unrestricted item

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### **Introduction**

1. The County Council has received an application to register land at The Warren in the parish of Brabourne as a new Village Green from the Brabourne Parish Council ("the applicant"). The application, dated 13<sup>th</sup> June 2013, was allocated the application number VGA657. A plan of the site is shown at **Appendix A** to this report and a copy of the application form is attached at **Appendix B**.

### **Procedure**

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

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

## **The Case**

### Description of the land

6. The area of land subject to this application ("the application site") consists of an open area of land with a grass surface approximately 1.73 acres (0.7 hectares) in size. The application site is situated at Brabourne Lees in the parish of Brabourne, and is roughly bounded by the roads known as The Warren, Manse Field, Bridge Road and Plain Hill Road.
7. A plan of the application site is attached at **Appendix A** and photographs of the application site can be found at **Appendix C**.

### Notice of Application

8. As required by the regulations, Notice of the application was published on the County Council's website. In addition, copies of the notice were displayed on the application site itself. The local County Member was also informed of the application.
9. Ashford Borough Council wrote to advise that it had recently transferred the land in question to Brabourne Parish Council and has no objection to the application.

### Ownership of the land

10. A Land Registry search has been undertaken which confirms that the application site is wholly owned by the applicant under title number TT11702. A copy of the Register of Title is attached at **Appendix D**.
11. There are no other interested parties (e.g. leaseholders or owners of relevant charges) named on the Register of Title.

### The 'locality'

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

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

## **Conclusion**

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

16. It can be concluded that all the necessary criteria concerning the voluntary registration of the land as a Village Green have been met.

## **Recommendations**

17. I recommend that the County Council informs the applicant that the application to register the land known as The Warren at Brabourne Lees has been accepted, and that the land subject to the application be formally registered as a Village Green.

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

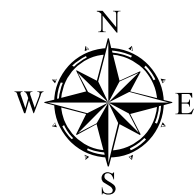
APPENDIX A – Plan showing application site  
APPENDIX B – Copy of application form  
APPENDIX C – Photographs of the application site  
APPENDIX D – Copy of the Register of Title from Land Registry



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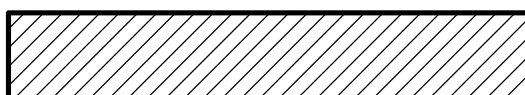
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# APPENDIX A: Plan showing application site



Scale 1:2500

Land subject to Village Green application  
at The Warren, Brabourne Lees



**Kent  
County  
Council**  
kent.gov.uk

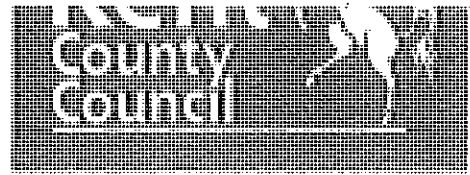


FORM CA9

APPENDIX B:  
Copy of the application form

**Commons Act 2006: section 15**

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



*This section is for office use only*

Official stamp of the Registration Authority  
indicating date of receipt:

COMMONS ACT 2006  
KENT COUNTY COUNCIL  
REGISTRATION AUTHORITY  
13 JUN 2013

Application number:

VG A657

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

**Note to applicants**

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

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

**Note 1**  
*Insert name of Commons  
Registration Authority*

**1. Commons Registration Authority**

To the: Kent County Council

**Note 2**

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

**2. Name and address of the applicant**

Name: Brabourne Parish Council

Full postal address: 14 Sandhurst Lane  
(incl. Postcode) Ashford  
Kent  
TN25 4NS

Telephone number: 01233 623902  
(incl. national dialling code)

Fax number:  
(incl. national dialling code)

E-mail address: clerk@brabournepc.kentparishes.gov.uk

**Note 3**

This part should be completed if a representative, e.g. a solicitor, is instructed for the purposes of the application. If so all correspondence and notices will be sent to the person or firm named here. If you supply an email address in the box provided, you may receive communications from the Registration Authority or other persons (e.g. objectors) via email.

**3. Name and address of representative, if any**

Name: n/a

Firm:

Full postal address:  
(incl. Postcode)

Telephone number:  
(incl. national dialling code)

Fax number:  
(incl. national dialling code)

E-mail address:

**Note 4**

For further details of the requirements of an application refer to Schedule 4, paragraph 9 to the Commons Registration (England) Regulations 2008.

**4. Basis of application for registration and qualifying criteria**

If you are the landowner and are seeking voluntarily to register your land please tick this box and move to question 5. Application made under section 15(8): ☒

If the application is made under section 15(1) of the Act, please tick one of the following boxes to indicate which particular subsection and qualifying criterion applies to the case.

Section 15(2) applies: ☐

Section 15(3) applies: ☐

Section 15(4) applies: ☐



If section 15(3) or (4) applies, please indicate the date on which you consider that use 'as of right' ended and why:

*\*Section 15(6) enables any period of statutory closure where access to the land is denied to be disregarded in determining the 20 year period.*

If section 15(6)\* is being relied upon in determining the period of 20 years, indicate the period of statutory closure (if any) which needs to be disregarded:

### Note 5

*This part is to identify the new green. The accompanying map must be at a scale of at least 1:2,500 and shows the land by means of distinctive colouring within an accurately identified boundary. State the Land Registry title number where known.*

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

Name by which usually known: The Warren

**Location:** Land on the west side of The Warren, Brabourne Lees  
Ashford

Land Registry Title number TT11702

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

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

### Note 6

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

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

Indicate the locality (or neighbourhood within the locality) to which the claimed green relates by writing the administrative area or geographical area by name below and/or by attaching a map on which the area is clearly marked: Brabourne Parish

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

**Note 7**

*Applicants should provide a summary of the case for registration here and enclose a separate full statement and all other evidence including any witness statements in support of the application.*

*This information is not needed if a landowner is applying to register the land as a green under section 15(8).*

**7. Justification for application to register the land as a Town or Village Green**

n/a, application is being made under Section 15(8)

**Note 8**

*Use a separate sheet if necessary. This information is not needed if a landowner is applying to register the land as a green under section 15(8).*

**8. Name and address of every person whom the applicant believes to be an owner, lessee, proprietor of any "relevant charge", tenant or occupier of any part of the land claimed to be a town or village green**

n/a application is being made under Section 15(8)



**Note 9**

List or enter in the form all such declarations that accompany the application. This can include any written declarations sent to the applicant (i.e. a letter), and also any such declarations made on the form itself.

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

Copy of Minutes of a meeting of Brabourne Parish Council dated 13th May 2013, resolving to apply for registration of land on the west side of The Warren as a village green

**Note 10**

List all supporting consents, documents and maps accompanying the application. Evidence of ownership of the land must be included for voluntarily registration applications. There is no need to submit copies of documents issued by the Registration Authority or to which it was a party but they should still be listed. Use a separate sheet if necessary.

**10. Supporting documentation**

See attached sheet

**Note 11**

List any other matters which should be brought to the attention of the Registration Authority (in particular if a person interested in the land is expected to challenge the application for registration). Full details should be given here or on a separate sheet if necessary.

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

None

## **Application for the Registration of land as a new Village Green**

**Applicant: Brabourne Parish Council**

### **Section 10 Supporting documentation**

1. Initial email correspondence trail, dated 7<sup>th</sup> October 2010 – 1<sup>st</sup> November 2010, between Brabourne Parish Council and Ashford Borough Council regarding land at The Warren (held by the Borough Council as part of its land housing bank)
2. Email from Brabourne Parish Council, dated 23<sup>rd</sup> November 2010, to Ashford Borough Council giving the Parish Council's request to take over the land
3. Email from Ashford Borough Council, dated 24<sup>th</sup> February 2011, advising that the proposed transfer would be delayed until after the May 2011 elections
4. Letter from Ashford Borough Council, dated 20<sup>th</sup> March 2012, to Brabourne Parish Council regarding the proposed transfer
5. Email acknowledgement from Brabourne Parish Council, dated 25<sup>th</sup> March 2012
6. Instruction from Brabourne Parish Council, email dated 17<sup>th</sup> July 2012, to Ashford Borough Council to proceed with the transfer
7. Letter from Ashford Borough Council, dated 12<sup>th</sup> September 2012, confirming that there had been no objections to the transfer
8. Letter from Brabourne Parish Council, dated 29<sup>th</sup> January 2013, which accompanied the signed draft transfer form (TP1)
9. Signed draft transfer form (TP1)
10. Letter from Ashford Borough Council, dated 7<sup>th</sup> February 2013, which accompanied the Transfer, duly executed
11. Official copy of the register of title, dated 6<sup>th</sup> March 2013, Title number TT11702

**Note 12**

*The application must be signed by each individual applicant, or by the authorised officer of an applicant which is a body corporate or unincorporate.*

**12. Signature****Signature(s) of applicant(s):**

Chairman

Vice-chairman

**Date:**

6th June 2013

**REMINDER TO APPLICANT**

You are responsible for telling the truth in presenting the application and accompanying evidence. You may commit a criminal offence if you deliberately provide misleading or untrue evidence and if you do so you may be prosecuted. You are advised to keep a copy of the application and all associated documentation.

**Please send your completed application form to:**

**The Commons Registration Team  
Kent County Council  
Countryside Access Service  
Invicta House  
County Hall  
Maidstone  
Kent ME14 1XX**

***Data Protection Act 1998***

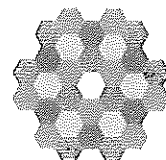
*The application and any representations made cannot be treated as confidential. To determine the application it will be necessary for the Commons Registration Authority to disclose information received from you to others, which may include other local authorities, Government Departments, public bodies, other organisations and members of the public.*

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

# Land Registry

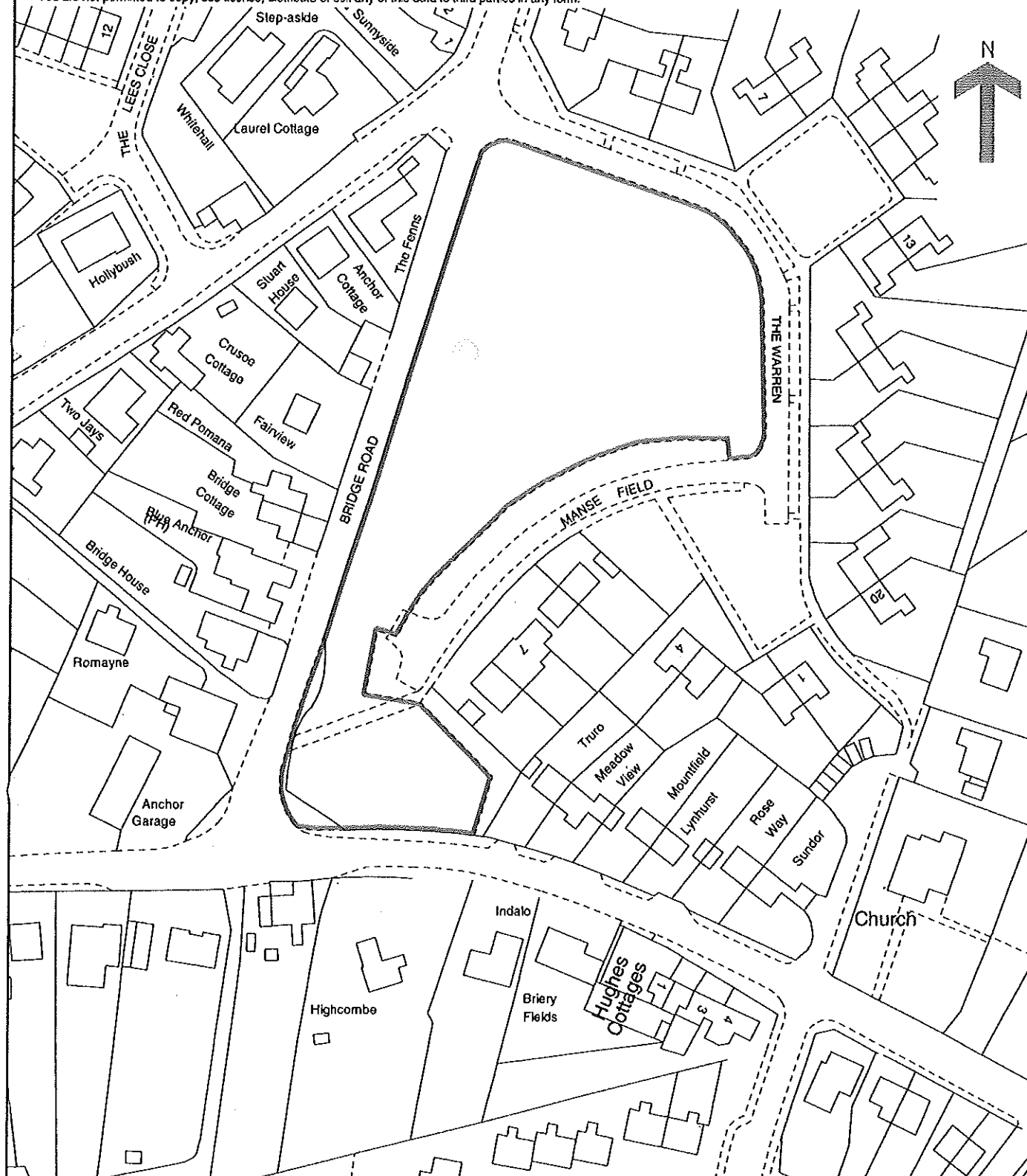
## Official copy of title plan

Title number **TT11702**  
Ordnance Survey map reference **TR0840SW**  
Scale **1:1250** enlarged from 1:2500  
Administrative area **Kent: Ashford**



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**This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. See Land Registry Public Guide 19 - Title Plans and Boundaries.**

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

**APPENDIX C:**  
**Photographs showing the application**  
**site (taken from Google streetview)**









## APPENDIX D: Land Registry Documents

THIS IS A PRINT OF THE VIEW OF THE REGISTER THE ENTRIES SUBSISTING IN THE REGISTER ON 11 THAT THIS REGISTER VIEW IS NOT ADMISSIBLE IN COPY WITHIN THE MEANING OF S.67 LAND REGISTRATION ACT 1925. IT MAY NOT ENTITLE A PERSON TO BE INDEMNIFIED FOR LOSS BY REASON OF A MISTAKE CONTAINED WITHIN IT. THE ENTRIES SHOWN DO NOT TAKE ACCOUNT OF ANY APPLICATIONS PENDING IN THE REGISTRY. FOR SEARCH PURPOSES THE ABOVE DATE SHOULD BE USED AS THE SEARCH FROM DATE.

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

TITLE NUMBER: TT11702

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

### A: Property Register

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

KENT : ASHFORD

- 1 The Freehold land shown edged with red on the plan of the above title filed at the Registry and being Land on the west side of The Warren, Brabourne Lees, Ashford.

### B: Proprietorship Register

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

Title absolute

- 1 (18.02.2013) PROPRIETOR: BRABOURNE PARISH COUNCIL of 14 Sandyhurst Lane, Ashford, Kent TN25 4NS.

### C: Charges Register

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

- 1 (06.02.2008) The land is subject to the rights, easements or quasi-easements including rights of support appurtenant to or enjoyed by adjoining or neighbouring properties.
- 2 (06.02.2008) The land is subject to rights to use the drains, channels, sewers, pipes, wires, cables, watercourses, gutters and other conducting media therein, thereunder and thereover and ancillary rights of entry.
- 3 (18.02.2013) A Transfer of the land in this title dated 7 February 2013 made between (1) Ashford Borough Council and (2) Brabourne Parish Council contains the following restrictive stipulations :-

"Restrictive covenants by the transferee

Not to use the land other than as open space as defined in the Open Spaces Act 1906"

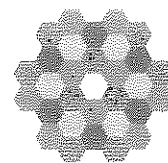
NOTE: The transfer did not contain a covenant to observe the said restrictive stipulations.

End of register

# Land Registry

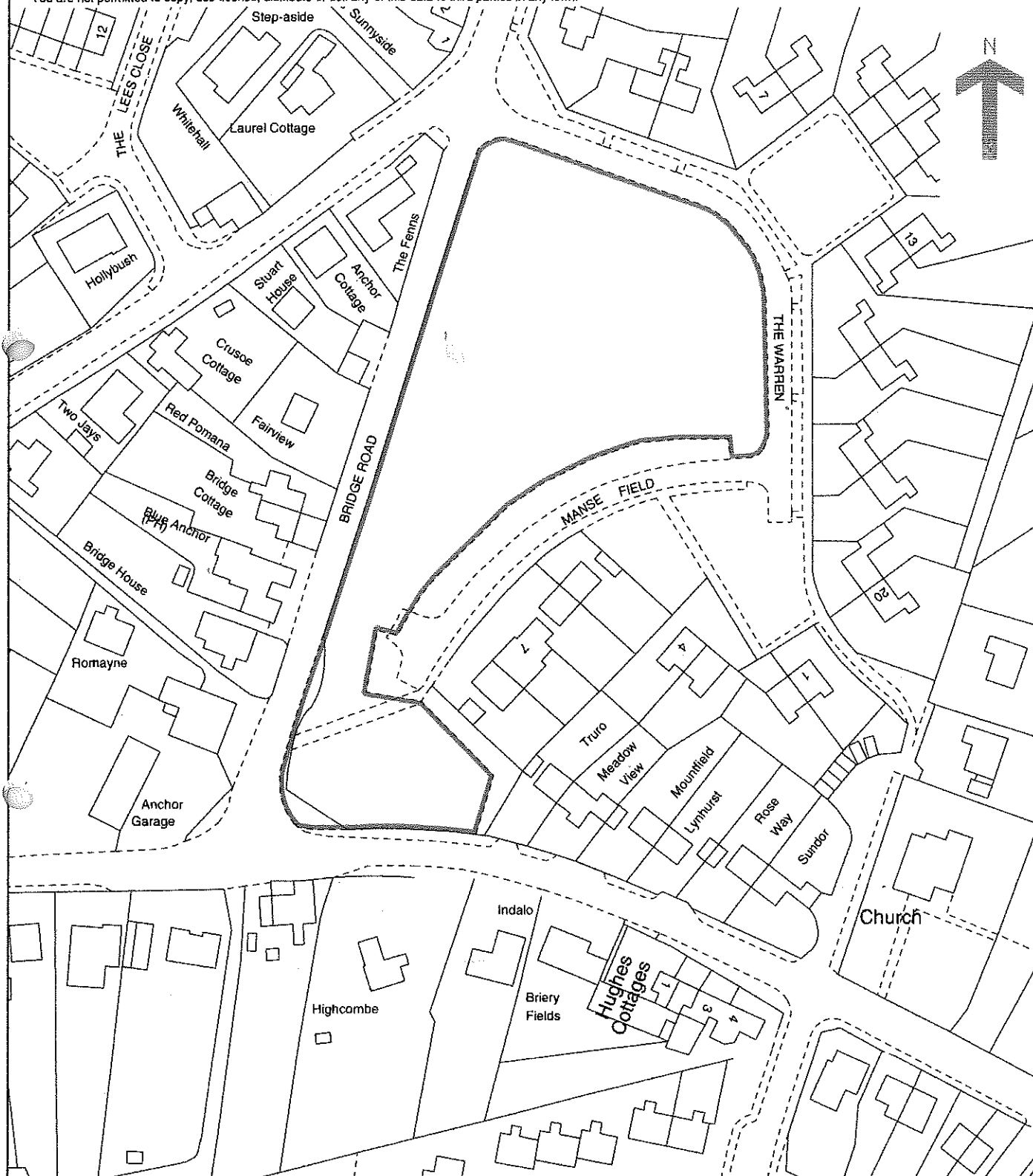
Official copy of  
title plan

Title number **TT11702**  
Ordnance Survey map reference **TR0840SW**  
Scale **1:1250** enlarged from 1:2500  
Administrative area **Kent: Ashford**



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**This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. See Land Registry Public Guide 19 - Title Plans and Boundaries.**

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