

Application to register land at Masefield Way at Tonbridge as a new Village Green

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

Recommendation: I recommend that the County Council informs the applicant that the application to register the land at Masefield Way at Tonbridge as a new Village Green has been accepted, and that the land subject to the application be formally registered as a Village Green.

Local Members: Mr. R. Long and Mr. C. Smith

Unrestricted item

Introduction

1. The County Council has received an application to register land at Masefield Way in the town of Tonbridge as a new Village Green from local resident Mr. R. Hewitt ("the Applicant"). The application, made on 10th June 2013, was allocated the application number VGA656. A plan of the site is shown at **Appendix A** to this report and a copy of the application form is attached at **Appendix B**.

Procedure

2. The application has been made under section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2008.
3. Section 15 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**¹, e.g. by way of the erection of fencing or a notice (section 15(3) of the Act).
5. As a standard procedure set out in the regulations, the Applicant must notify the landowner of the application and the County Council must notify every local authority. The County Council must also publicise the application in a newspaper circulating in the local area and place a copy of the notice on the County Council's website. The publicity must state a period of at least six weeks during which objections and representations can be made.

¹ Note that after 1st October 2013, the period of grace was reduced from two years to one year (due to the coming into effect of section 14 of the Growth and Infrastructure Act 2013). This will only apply to applications received after that date and does not affect any existing applications.

The application site

6. The area of land subject to this application ("the application site") consists of a rectangular area of land of approximately 0.16 hectares (0.4 acres) in size situated to the rear of property numbers 28 to 35 Masfield Way at Tonbridge. The site is shown on the plan at **Appendix A**.
7. The application site consists of an open area with grassed surface, access to which is provided by surfaced pathways (which are estate paths rather than recorded public rights of way).

The case

8. The application has been made on the grounds that the application site has become a Town or Village Green by virtue of the actual use of the land by the local inhabitants for a range of recreational activities 'as of right' for more than 20 years.
9. Provided in support of the application were 18 user evidence questionnaires from local residents, a supporting statement by the applicant as well as various maps and aerial photographs showing the application site. A summary of the evidence in support of the application is attached at **Appendix C**.

Consultations

10. Consultations have been carried out as required and no responses have been received.

Landowner

11. The application site is owned by Russet Homes Ltd. ("the landowner") and is registered with the Land Registry under title number K699911.
12. The landowner has been informed of the application, however, no representations regarding the application have been received from the landowner.

Legal tests

13. In dealing with an application to register a new Town or Village Green the County Council must consider the following criteria:
 - (a) *Whether use of the land has been 'as of right'?*
 - (b) *Whether use of the land has been for the purposes of lawful sports and pastimes?*
 - (c) *Whether use has been by a significant number of inhabitants of a particular locality, or a neighbourhood within a locality?*
 - (d) *Whether use of the land 'as of right' by the inhabitants has continued up until the date of application or, if not, ceased no more than two years prior to the making of the application?*
 - (e) *Whether use has taken place over period of twenty years or more?*

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

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

14. The definition of the phrase 'as of right' has been considered by the House of Lords. Following the judgement in the *Sunningwell*² case, it is considered that if a person uses the land for a required period of time without force, secrecy or permission ("*nec vi, nec clam, nec precario*"), and the landowner does not stop him or advertise the fact that he has no right to be there, then rights are acquired.
15. In this case, there is no evidence to indicate that use of the application site has been in any way in exercise of force, in secrecy or undertaken on a permissive basis. None of the witnesses refer to any hindrance to informal recreational use of the application site and there is no evidence on the ground (e.g. old fencing) to suggest that access to the application site has ever been restricted in any way.
16. Therefore, in the absence of evidence of any challenges to recreational use of the application site, such use would appear to have taken place 'as of right'.

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

17. 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. The Courts have held that '*dog walking and playing with children [are], in modern life, the kind of informal recreation which may be the main function of a village green*'³.
18. In this case, the evidence submitted in support of the application (summarised at **Appendix C**) indicates that local residents have engaged in various recreational activities on the land.
19. In particular, a number of witnesses refer to the use of the application site on a daily basis by local children for ball games and general play. This is due to the fact that the application site is located away from main roads and offers a safe place of children to play away from the dangers of vehicular traffic. The evidence also suggests that the application site has been a focal point for informal community events, such as barbeques and street parties.
20. The nature of the application site and its location within a relatively high-density area of housing both support the applicant's evidence that it has been used for the activities cited above. As such, it can be said that the application site has been used for lawful sports and pastimes.

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

21. The definition of locality for the purposes of a Town or Village Green application has been the subject of much debate in the Courts. In the *Cheltenham Builders*⁴ case, it

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

³ *R v Suffolk County Council, ex parte Steed* [1995] 70 P&CR 487 at 508 and approved by Lord Hoffman in *R v. Oxfordshire County Council, ex parte Sunningwell Parish Council* [1999] 3 All ER 385

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

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’.

22. In cases where the ‘locality’ is so large that it is difficult to show that the application site has been used by a significant number of people from that locality, it will be necessary to consider whether there is a relevant ‘neighbourhood’ within the wider locality. On the subject of neighbourhood, the Courts have held that ‘it is common ground that a neighbourhood need not be a recognised administrative unit. A housing estate might well be described in ordinary language as a neighbourhood... The Registration Authority has to be satisfied that the area alleged to be a neighbourhood has a sufficient degree of cohesiveness; otherwise the word “neighbourhood” would be stripped of any real meaning’⁵.
23. The County Council also needs to be satisfied that the application site has been used by a ‘significant number’ of the residents of the locality. The word “significant” in this context does not mean considerable or substantial: ‘a neighbourhood may have a very limited population and a significant number of the inhabitants of such a neighbourhood might not be so great as to properly be described as a considerable or a substantial number... what matters is that the number of people using the land in question has to be sufficient to indicate that the land is in general use by the community for informal recreation rather than occasional use by individuals as trespassers’⁶. Thus, what constitutes a ‘significant number’ will depend upon the local environment and will vary in each case depending upon the location of the application site.

The ‘neighbourhood within a locality’

24. In this case, the Applicant specifies the locality at Part 6 of the application form as ‘Judd Ward, Tonbridge’.
25. The electoral ward relied upon by the application is clearly a legally recognised locality with defined boundaries and it is accepted that an electoral ward can be a qualifying locality for the purpose of this legislation. However, the evidence of use is concentrated in a very small part of the electoral ward (see plan at **Appendix D**) and, on the basis of the evidence submitted, it does not appear that a significant number of the residents of the ward as a whole have used the application site. It is therefore necessary to consider whether there is a qualifying neighbourhood within the Borough Council electoral ward of Judd.
26. A number of the witnesses refer to living within the Brook Street Estate area of Tonbridge. This is a residential estate that was originally developed by Tonbridge and Malling Borough Council and is today managed by Russet Homes; it therefore has the unifying characteristics of a housing estate or neighbourhood.

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

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

'significant number'

27. In this case, the applicant has provided evidence of use from 18 witnesses. A large number of those who completed evidence questionnaires, in addition to their own evidence of use, referred to having observed use of the application site by others on a daily basis.
28. As noted above, the image presented of the application site by the user evidence is one of a community focal point that used on a daily basis, particularly by local children. As such, it would have been obvious to a reasonable landowner that the application site was in general use by local residents.
29. Therefore, it can be concluded that the application site has been used by a significant number of the residents of the Brook Street Estate within the locality of the Judd ward of Tonbridge and Malling Borough Council.

(d) Whether use of the land 'as of right' by the inhabitants has continued up until the date of application or, if not, ceased no more than two years prior to the making of the application?

30. The Commons Act 2006 requires use of the land to have taken place 'as of right' up until the date of application or, if such use has ceased prior to the making of the application, section 15(3) of the 2006 Act provides that an application must be made within two years from the date upon which use 'as of right' ceased.
31. In this case, the application was made in 2013. Given the open nature of the application site and the ease of access onto it, there is no evidence to suggest that use has not continued until (and beyond) the date of the application.

(e) Whether use has taken place over a 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. In this case, use of the application site 'as of right' is continuing and, as such, the relevant twenty-year period ("the material period") is calculated retrospectively from the date of the application, i.e. 1993 to 2013.
33. The user evidence summarised at **Appendix C** demonstrates that there has been use of the application site well in excess of the last twenty years and, in one case, as far back as 1953.
34. Therefore, it can be concluded that there has been use of the application site for a full period of twenty years.

Conclusion

35. Although this application is unopposed, the County Council must still be satisfied that all of the requisite legal tests have been met. In this case, the evidence demonstrates that the application site has been used by local residents for a period of over twenty years for the purposes of lawful sports and pastimes.

36. From close consideration of the evidence submitted, it can therefore be concluded that the legal tests concerning the registration of the land as a Village Green (as set out above) have been met.

Recommendation

37. I recommend that the County Council informs the applicant that the application to register the land at Masefield Way at Tonbridge as a new Village Green 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 221500 or Email: mike.overbeke@kent.gov.uk

Case Officer:

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

The main file is available for viewing on request at the offices of the Countryside Access Service at Invicta House, County Hall, Maidstone. Please contact the Case Officer for further details.

Appendices

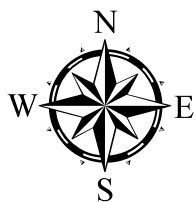
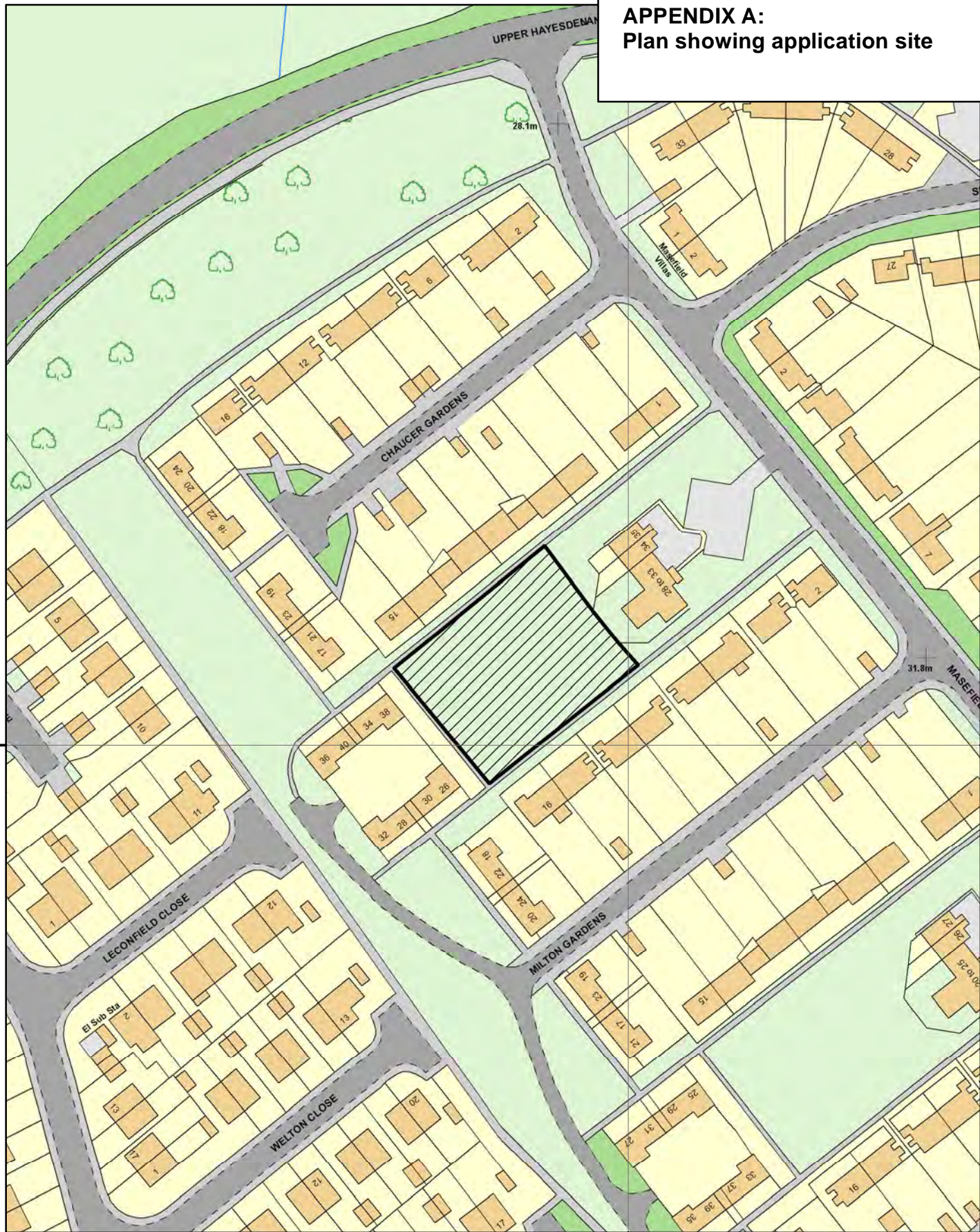
APPENDIX A – Plan showing application site

APPENDIX B – Copy of application form

APPENDIX C – Table summarising user evidence

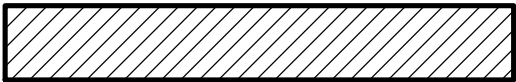
APPENDIX D – Plan showing the locality

APPENDIX A:
Plan showing application site



Scale 1:1250

**Land subject to Village Green application
at Masefield Way at Tonbridge**

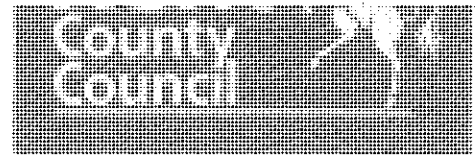


FORM CA9

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
10 JUN 2013

Application number:

VGA656

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:

Full postal address:
(incl. Postcode)Telephone number:
(incl. national dialling code)Fax number:
(incl. national dialling code)

E-mail address:

Note 3

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

3. Name and address of representative, if any

Name:

Firm:

Full postal address:
(incl. Postcode)Telephone number:
(incl. national dialling code)Fax number:
(incl. national dialling code)

E-mail address:

Note 4

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

4. Basis of application for registration and qualifying criteria

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

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

Section 15(2) applies:



Section 15(3) applies:



Section 15(4) applies:



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

Vote 5

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

1/2 Green

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

Note 6

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

Town ward Tonbridge.

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**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

<p>Note 9 <i>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.</i></p>	<p>9. Voluntary registration – declarations of consent from any relevant leaseholder of, and of the proprietor of any relevant charge over, the land</p>
<p>Note 10 <i>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.</i></p>	<p>10. Supporting documentation</p>
<p>Note 11 <i>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.</i></p>	<p>11. Any other information relating to the application</p>

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. SignatureSignature(s) of applicant(s): 

Date:

22 May 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.

The Green behind 28 – 35 Masefield Way Tonbridge

The green has been an enjoyable part of our involvement for the last thirty years, the time I have lived at number 35. In that time it has been used all most everyday for playing

Cricket

Football

Ball games and other children games

Leaning to ride bikes

Dog walkers that clean up

Walkers

Joggers

Family fun days

Partys and b.q. for children

Local anniversary partys

Residents have always clean up litter etc from the green to make it nice area to play

All the resident have enjoy making the green the heart of our community. The lost of which will make a big inpack on our lifes

We I have always worried over the last thirty years of losing the green to builders.

So by granting a village green states you will give all residents peace of mind and that they still have a safe place for childen and parents to play and enjoy family life. As all communitys should be appy to do

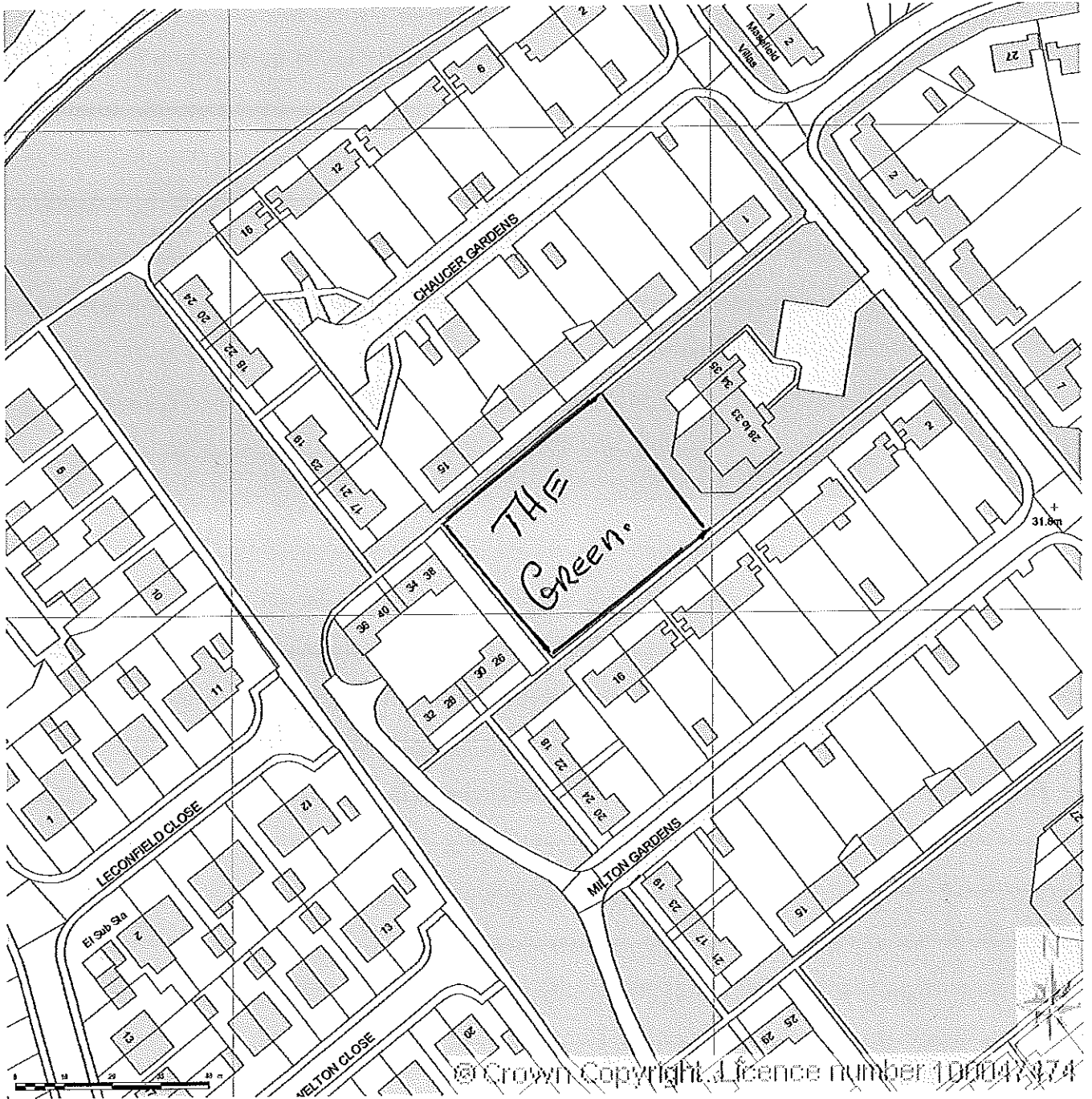
I have enclosed nineteen questionnaire that where returned

SITE LOCATION PLAN

AREA 5 HA

SCALE 1:1250

CENTRE COORDINATES: 557765, 145413



Supplied by Streetwise Maps Ltd

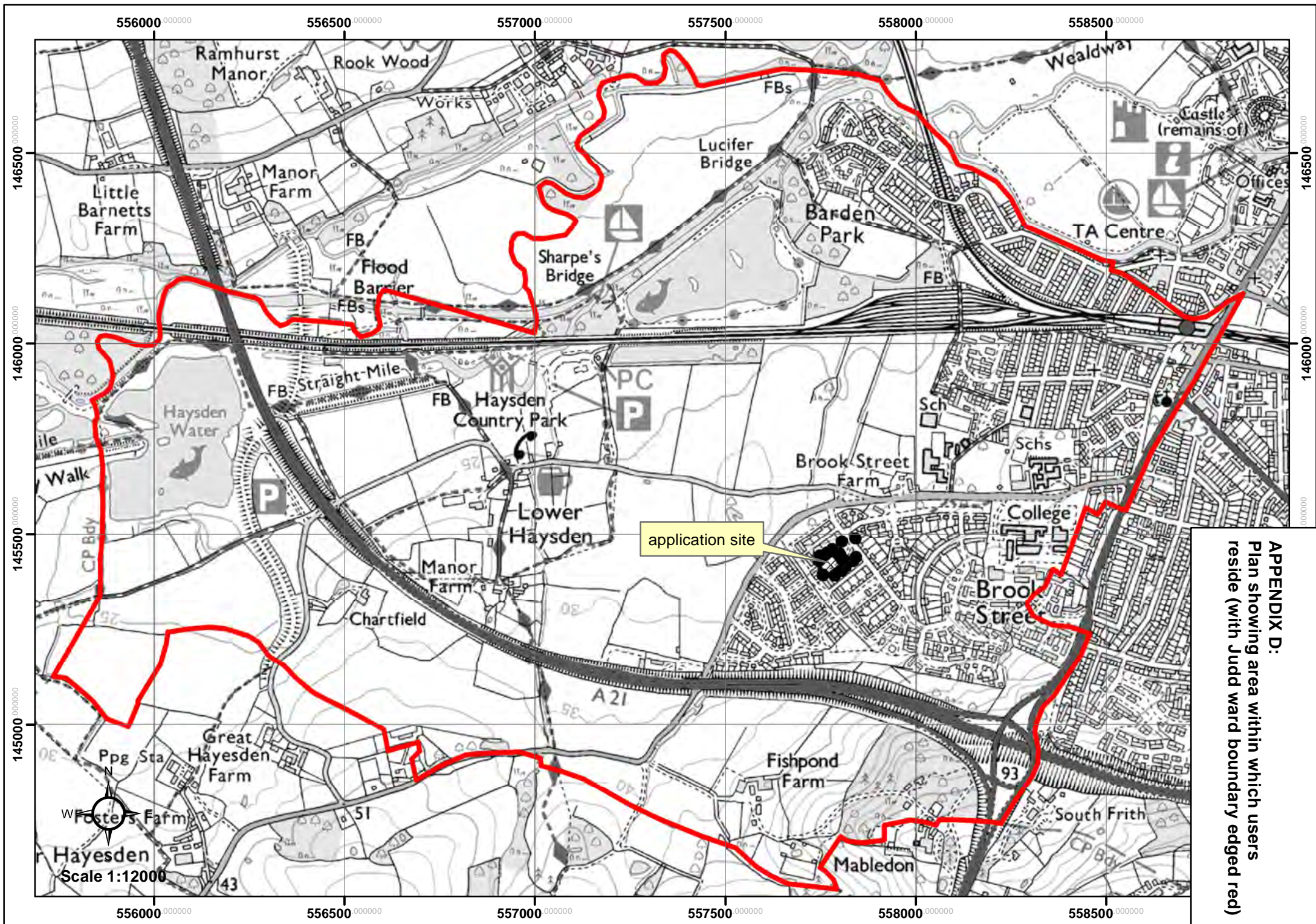
www.streetwise.net

Licence No: 100047474

26/03/2013 11:02:10

APPENDIX C:
Summary of user evidence submitted
in support of the application

Name	Period of use	Frequency	Activities	Other comments
Mr. & Mrs. J. BARLTROP	2006 – present	Most days	Children's games, football, cricket, informal community events	Observed use by others on a daily basis.
Mrs. M. BARLTROP	2010 – present	Daily	All communal activities	Observed use by others on a daily basis for children's games
Ms. R. BELCHER	1997 – present	Daily	Walking	Land is used daily depending on weather; there is a bald patch through continuous use for football by local boys
Ms. L. DONOGHUE	2001 – present	Weekly	Children playing, informal community activities, football, cricket and water fights	Observed use by others on a daily basis for cricket, football, games and picnics.
Mrs. M. GALLOWAY	2002 – present	Daily	Football, rounders, cricket, communal BBQs, socialising	Observed use by others on a daily basis.
Mr. M. HAYDEN	1986 – present	Occasionally	Not stated	
Ms. S. HEALY	1993 – present	Children use it daily	Playing with children, summer BBQs, water fights, snow games, informal community events	Observed use by children playing football occasionally. It is a safe place for children to play, which they often do.
Ms. K. HERRIOTT-SADLER	2012 – present	In use most days by children	Cricket, tag, football, tennis, socialising, parties	This green space is important to the local community as it gives the children somewhere to play.
Mr. R. HEWITT	1984 – present	Daily	Dog walking, football, street parties, children's games	Observed use by others on a daily basis for ball games, street parties and children playing.
Mr. L. HOWARD	1995 – present	Frequently	Football, cricket, games, parties	Observed use by others (including own children) on a daily basis
Mr. & Mrs. I. KIRBY	1978 – present	Weekly	Family activities (incl rounder's, cricket and football), street parties	Land is used daily by local children.
Mr. & Mrs. K. MACRO	1993 – present	Daily	Street parties, children playing	Land is used daily by children playing; it is a safe place for children to play together.
Mr. and Mrs. S. MATTHEWS	1983 – present	Daily	Play with children and grandchildren	Observed use by others on a daily basis.
Mr. D. McDONALD	2004 – present	Daily	Dog walking, walking, nature observation, playing with children	Observed use by others on a daily basis. The land is constantly used for a communal recreational space and is a real community focal point.
Ms. E. SANCHEZ	2011 – present	Occasionally	Wandering	Observe use by others on a daily basis in summer (weekly in winter) by children playing and people having BBQs
Mrs. S. SKETCHLEY	1973 – present	Occasionally	Childhood games, family parties	Used daily as a child.
Mr. C. STEPHENS	1953 – present	Daily	Football, cricket, street parties and all forms of children's games	Observed use by others on a daily basis, especially parents and children playing.
Ms. C. WADE	1992 – present	Occasionally	Dog walking	Observed use by others (walkers and children playing) on a daily basis



APPENDIX D:
Plan showing area within which users
reside (with Judd ward boundary edged red)