Application to register land known as Coldblow Woods and Sports Ground at Ripple as a new Town or Village Green

A report by the Head of Public Protection to Kent County Council's Regulation Committee Member Panel on Tuesday 19th May 2015.

Recommendation: I recommend, for the reasons set out in the Inspector's report dated 30th March 2015, that the applicant be informed that the application to register land known as Coldblow Woods and Sports Ground at Ripple has not been accepted.

Local Member: Mr. S. Manion Unrestricted item

Introduction

1. The County Council has received an application to register land known as Coldblow Woods and Sports Ground at Ripple as a new Town or Village Green from local resident Mr. R. Chatfield ("the applicant"). The application, made on 27th November 2012, was allocated reference number VGA652. A plan of the site is shown at **Appendix A** to this report.

Procedure

2. The application has been made under section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2008[1].

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**[2], 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 2008 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

[1] Note that the 2008 Regulations have now been replaced by the Commons Registration (England) Regulations 2014 ("the 2014 Regulations") and the application falls to be determined under the 2014 Regulations.

[2] Note that from 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), but this only applies to applications received after that date.

website. The publicity must state a period of at least six weeks during which objections and representations can be made.

The application site

6. The area of land subject to this application ("the application site") consists of woodland and an area of grassland (formerly used as a sports field) of approximately 23 acres (9.3 hectare) in size, that is situated to the east of Coldblow Road, between its junction with Ripple Road and the Coldblow railway crossing, in the parish of Ripple, near Deal. There are no recorded Public Rights of Way over the application site, although Footpaths and a Bridleway run along three sides of the application site. The application site is shown in more detail on the plan at **Appendix A**.

7. The woodland swathe comprising the northern section of the application site is owned by Ledger Farms Ltd., whilst the southern half of the application site (consisting of both the sports field and its woodland edge) is owned by TG Claymore (UK) Ltd (hereinafter collectively referred to as "the landowners").

Previous resolution of the Regulation Committee Member Panel

8. The consultation period generated a considerable volume of responses in relation to the application, with over 100 letters and email in support as well as a petition containing over 1700 signatures requesting that the land be preserved as a 'wildlife haven/village green'.

9. However, the landowners submitted a joint objection to the application which was made on the basis that (amongst other things) any informal recreational use of the application site had been contentious and forcible, intermittent and sporadic, not by a significant number of the residents of the locality, and interrupted by the occupation of the land by travellers in 1999/2000.

10. The matter was considered at a Regulation Committee Member Panel meeting on 26th November 2013, at which Members accepted the recommendation that the matter be referred to a Public Inquiry for further consideration. A copy of the minutes of that meeting is attached for reference at **Appendix B**.

11. As a result of this decision, Officers instructed a Barrister experienced in this area of law to hold a Public Inquiry, acting as an independent Inspector, and to report her findings back to the County Council.

The Public Inquiry

12. A pre-Inquiry meeting, for the purpose of determining the matters to be addressed and the procedure to be followed at the Inquiry, was held at Deal Town Hall on 17th March 2014. Written directions to all parties confirming the format of the Inquiry and procedure for the submission of evidence were circulated shortly thereafter.

13. The Public Inquiry took place at Deal Town Hall commencing on Monday 9th June 2014 and continuing until Friday 13th June 2014, during which time the Inspector heard a considerable amount of evidence from witnesses both in support of and in opposition to the application. The Inspector also returned to the area on 30th June 2014 to undertake an accompanied site visit with representatives of both parties.

14. At the Public Inquiry, the applicant was represented by members of the Kent Law Clinic as well as (then) pupil barrister Ms. Rachel Jones, and the landowner was represented by Ms. Morag Ellis QC of Counsel.

15. The Inspector subsequently produced a detailed written report dated 24th October 2014 which, following comments received from the parties, was revised and reissued as a final version on 30th March 2015 ("the Inspector's report"). Her findings and conclusions are summarised below.

Legal tests and Inspector's findings

16. 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 in accordance with the Inspector's findings.

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

17. In order to qualify for registration as a Village Green, recreational use of the application site must have taken place 'as of right' through the period of use relied upon. This means that use must have taken place without force, without secrecy and without permission ('*nec vi, nec clam, nec precario*'). As explained by Lord Hoffman in the Sunningwell[3] case:

> *"the unifying element in these three vitiating circumstances… was that each constituted a reason why it would not have been reasonable to expect the owner to resist the exercise of the right – in the first case, because rights should not be acquired by the use of force, in the second, because the owner would not have known of the user and in the third, because he had consented to the user, but for a limited period".*

18. The main issue in this case, in respect of the 'as of right' test, was whether use of the application site had taken place in exercise of force[4]. It will be noted that force, in this context, refers not only to physical force, but to any use which is contentious or exercised under protest[5]: "*if, then, the inhabitants' use of the land is to give rise*

[3] *R v. Oxfordshire County Council and another, ex parte Sunningwell Parish Council* [1999] 3 All ER 385 at 391

[4] The Inspector also considered whether any of the recreational use had been secretive in nature (following representations by the landowner in respect of 'hide and seek' games) but did not consider this to be the case – see paragraph 220 of the Inspector's report. Nor did she consider that any of the use had been permissive in nature – see paragraph 218 of the Inspector's report.

[5] *Dalton v Angus* (1881) 6 App Cas 740 (HL)

to the possibility of an application being made for registration of a village green, it must have been peaceable and non-contentious"[6].

19. The Inquiry heard evidence from the previous landowner[7], that he had made some attempts to repair fencing around the southern part of the application site following his purchase of the land in 1992 but, as a result of repeated vandalism, he gave up several years later. However, at no point did he make any attempt to prevent access to the site through the woodland. He also stated that, in late 2011, he had instructed a friend to erect six notices around the woodland asking member of the public to report to him any instances of felling/damaging trees, removing wood, shooting, riding motorbikes, lighting fires, camping or dumping rubbish without the landowner's permission.

20. In this regard, the Inspector found[8] that, whilst some attempts had been made by the previous landowner to fence the site and put up notices, those attempts were, in her view, 'feeble' and insufficient to indicate that the landowner was doing everything consistent with his means and proportionate to the user to discourage, or altogether prevent, recreational use of the application site Furthermore, no attempt was ever made to secure the main pedestrian access to the southern part of the application site (in the woodland). Her view that the previous landowner's efforts were directed primarily at preventing vehicular trespass, but had little (if any) effect on walkers and others recreating on the application site, and were insufficient to communicate to those users that the landowner was opposing such use.

21. Overall, the Inspector did not consider that the applicant had failed to demonstrate that recreational use of the application site had taken place 'as of right[9].

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

22. Lawful sports and pastimes can be commonplace activities and 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*'[10].

23. The evidence submitted in support of the application suggests that the application site has been used for a wide range of recreational activities. At the Inquiry, the Inspector heard evidence of the application site being used for activities, including walking, running, playing with children and blackberrying.

24. However, the landowners submitted that a number of the activities relied upon by the applicant were not capable of constituting 'lawful sports and pastimes' and ought therefore to be disregarded. In particular, the landowners pointed in particular towards parties with loud music (where that music was sufficiently loud to constitute

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[6] *R (Lewis) v Redcar and Cleveland Borough Council* [2010] UKSC 11 at paragraph 92 per Lord Rodger
[7] Summarised at paragraphs 144 to 151 of the Inspector's report
[8] Paragraphs 215, 216 and 217 of the Inspector's report
[9] Paragraph 221 of the Inspector's report
[10] *R v Suffolk County Council, ex parte Steed* [1995] 70 P&CR 487 at 508 and approved by Lord Hoffman in *R v. Oxfordshire County Council and another, ex parte Sunningwell Parish Council* [1999] 3 All ER 385

a ‘rave-style’ event), driving onto the land (an offence under section 34 of the Road Traffic Act 1988 without the lawful authority of the landowner) or any activity facilitated by driving onto the land, activities undertaken in the course of employment (because they are not ‘pastimes’), ‘air-soft’ games (which could cause someone to fear for their safety and therefore potentially an offence) and any blackberrying or foraging that was for commercial gain (which would be an offence under section 4(3) of the Theft Act 1968).

25. The Inspector agreed that certain activities (such as driving on the land or work-related activities) should be disregarded by virtue of the fact that they could not be considered ‘lawful sports and pastimes’. In respect of blackberrying, the Inspector found that, although those who gave oral evidence at the Inquiry made clear that the fruit was picked for personal use, she could not be sure that the same applied in respect of the written evidence[11]: “*this might seem an unusual submission to make given how common fruit picking/foraging are relied on as a lawful pastime in village green applications, without more. However, I am of the view that it is technically correct if one applies a strict burden on the applicant. I therefore discount evidence of fruit picking and foraging, unless the applicant has expressly stated that it was not for commercial purposes*”.

26. However, she refused to accept that all of the activities cited by the landowners as having to be disregarded ought to be so. Her impression of the social gatherings on the land (relied upon as evidence of use) was they were not unlawful and, in respect of any activity facilitated by driving onto the land, she considered that whilst someone might be prosecuted for driving onto the land, any activities which followed would not be unlawful[12]: “*it is inconceivable they would be similarly be prosecuted for flying a kite or having a picnic etc., having brought the equipment in their car*”. In respect of the ‘air-soft’ games, the Inspector did not consider that these in any way reached the threshold of unlawful violence that would cause a person to fear for their personal safety.

27. As such, the Inspector accepted that, generally speaking, lawful sports and pastimes had taken place on the application site to some degree. However, for the reasons discussed below, she was required to consider in more detail the issue of people walking on the application site.

Rights of way type use

28. As is noted above, walking has been cited as one of the activities said to have taken place, and reference has been made, both in the written evidence submitted in support of the application and as part of the oral evidence given at the Inquiry, to the existence of various paths and tracks on the application site. In cases where public rights of way cross or abut the application site, or where use involves walking along a defined track, it will be important to be able to distinguish between use that involves wandering at will over a wide area and use that involves walking a defined linear route from A to B. The latter will generally be regarded as a ‘rights of way type’ use and, following the decision in the Laing Homes[13] case, falls to be discounted. In that case, the judge said: ‘*it is important to distinguish between use that would suggest to a reasonable landowner that the users believed they were exercising a public right of way to walk, with or without dogs... and use that would*

[11] See paragraph 176 (h) of the Inspector’s report
[12] See paragraph 176 (c) of the Inspector’s report
[13] *R (Laing Homes) v Buckinghamshire County Council* [2003] 3 EGLR 70 at 79 per Sullivan J

suggest to such a landowner that the users believed that they were exercising a right to indulge in lawful sports and pastimes across the whole of the fields'. If the position is ambiguous, then the inference should generally be drawn of exercise of the less onerous right (the public right of way) rather than the more onerous (the village green right)[14].

29. At the Inquiry, the landowners submitted that the vast majority of the recreational activities undertaken on the application site had taken place on the defined paths and tracks and, as such, all references to walking (with or without dogs), jogging, cycling and horse riding ought to be discounted unless the applicant was able to show that such activities had specifically taken place off any paths or tracks.

30. In analysing this use, the Inspector identified three separate categories of path[15]:
    (a) a defined path running through the woodland along the inside boundary of the northern and eastern edges of the application site;
    (b) other more informal paths leading off of the main path within the woodland; and
    (c) the tracks visible on aerial photographs on the sports field part of the application site.

31. In respect of the first category, the Inspector agreed with the evidence of some of the witnesses that the principal path in the woodland had all of the characteristics of a public right of way: "*it is clearly defined, could be marked on a map, having a clear beginning, end and route. Use of this path, whether to access other land, the field in [the southern half of the application site], or generally, would in my view bring home to a landowner the assertion of a public right of way, and not a village green right. I therefore consider it appropriate to discount evidence of use of [this] path*".

32. However, in respect of the second category, the Inspector considered that these smaller paths would not appear to a landowner to be characteristic of public rights of way: *"[they] have not specific defined route or routes through the woodland that could be plotted on a plan, or any such exercise would be extremely difficult in my view. They have been created as a natural consequence of people navigating the easiest way through the dense tree cover… thus the nature of the use of these subsidiary paths is akin to non-linear recreation rather than use of a path running from a theoretical A to B"*.

33. Similarly, in respect of the third category, the Inspector did not consider that use of the tracks visible on aerial photographs showing the sports field could be discounted: "*given the terrain, the fact that these tracks do not go anywhere other than circumnavigate the application land (even if some people may have walked elsewhere in addition), and the nature of the activities that took place on the meadow, the applicant has shown that there is no ambiguity and a reasonable landowner should have viewed these tracks on the field as leading to the acquisition of a village green right*".

34. The Inspector's view, therefore, was that use of the principal path running through the woodland consisted of a 'rights of way' type of use that would not be qualifying use for the purposes of Village Green registration and ought to be discounted. However, in principle, the remaining use could be considered qualifying use for the

[14] Oxfordshire County Council v Oxfordshire City Council and Robinson (2004) Ch 253 at [102]
[15] See paragraph 180 of the Inspector's report

purposes of Village Green registration (subject to it being sufficient in nature and extent, which is discussed further below).

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

35. The right to use a Town or Village Green is restricted to the inhabitants of a locality, or of a neighbourhood within a locality, and it is therefore important to be able to define this area with a degree of accuracy so that the group of people to whom the recreational rights are attached can be identified.

"locality"

36. The definition of locality for the purposes of a Town or Village Green application has been considered by the Courts. In the Cheltenham Builders[16] 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*'.

37. In this case, the applicant originally specified the locality in his application form as being 'the parish of Ripple, adjacent to the parish of Walmer and close to the parishes of Deal and Mill Hill'. However, on further consideration the applicant subsequently requested an amendment to this locality and chose to rely upon the ecclesiastical parish of Walmer as the qualifying locality in support of the application.

38. In the Laing Homes[17] case, it was accepted that: *"ecclesiastical parishes are entities known to the law; they have defined boundaries and, since they have frequently been used in the past as qualifying localities for customary village greens, it is difficult to see on what basis parliament could have intended that they should not be so used for the purpose of establishing the existence of new class C village greens".*

39. There can be no dispute that the ecclesiastical parish of Walmer is a legally recognised administrative unit and is therefore a qualifying locality for the purposes of Village Green registration.

"a significant number"

40. The word "significant" in this context does not mean considerable or substantial: '*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*'[18]. Thus, the test is a qualitative, not quantitative one, and what constitutes a 'significant number' will depend upon the individual circumstances of each case.

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[16] *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at 90
[17] at 83 per Sullivan J
[18] *R (Alfred McAlpine Homes Ltd.) v Staffordshire County Council* [2002] EWHC 76 at paragraph 71

41. Although a considerable amount of evidence of use had been presented in support of the application, the landowners submitted that there had been a substantial dip in the number of local inhabitants using the land for part of the relevant period due to the occupation of the land by travellers.

42. The Inquiry heard evidence[19] that, in the late 1990s, the previous landowner had permitted a very small number of 'new age travellers' to reside, with vehicles, on the southern section of the application site; there was no dispute that these travellers were friendly, did not engage in anti-social behaviour, and did not deter recreational use of that part of the application site.

43. However, in 1999, other travellers moved onto the application site without the (then) landowner's permission. A letter dated April 1999 from the Parish Council suggests that, at that time, there were 8 or 9 caravans stationed on site, although there is a dispute as to the precise number during the period of occupation. There is evidence, during 1999, of anti-social behaviour associated with the encampment and records of complaints made to the Parish Council regarding the 'appalling state of the woods and adjacent fields at Coldblow' (which included abandoned and burnt out cars, illegal; raves, scrambler bikes, human waste and household rubbish). The situation resulted in Dover District Council issuing notices to the landowner requiring clean-up of the land and prohibiting the stationing of caravans on it. Contemporaneous newspaper articles and correspondence describe the application site as 'a rubbish tip' and suggest that people had stopped going to the area. Records indicate that, by August 2000, there were no longer any travellers on the application site, although there were significant quantities of household, builders and garden waste. Invoices produced by the landowners relating to the clear-up operation in 2001 show that some 38 flattened cars were later removed from the application site and a 'ditch and bund' were constructed on the northern and western sides of the field.

44. The Inspector found[20], generally speaking, that those using the application site during the time of the traveller encampment kept a wide berth, not only of the field area of the southern part of the application site (on which vehicles were stationed) but also of the woodland generally (to avoid the rubbish). She further noted that many people appear to have avoided the application site entirely and accepted the landowners' submission that the presence of the travellers, and the associated waste, would have had a disruptive and discouraging effect upon the use of the application site by local people for recreational activities, such that the pattern of use undoubtedly changed. In this regard, she concluded[21] that:

> "*in my view, there was an inevitable dip in the number of people using the application land during the 1999/2000 traveller encampment, or successive encampments, and subsequent resulting mess lasting until summer 2001. This is supported by the fact that only two of the applicant's witnesses recalled the construction operation of the 'ditch and bund' at the end of the clean-up… suggesting that user was not particularly extensive at the end of the worst period of environmental problems [on the southern part of the application site]. Therefore, when considering the amount of user evidence of the application land in general, I am of the view that caution should be applied to the numbers using the woodland (as well as the field part of [the application site] if it is necessary to consider it) during that 1999 – 2000*

[19] Summarised at paragraphs 15 onwards of the Inspector's report
[20] See paragraph 193 of the Inspector's report
[21] See paragraph 194 of the Inspector's report

period as a result of the general unpleasantness of [the southern part of the application site] at the time".

45. Having concluded that the use of the field part of the southern section of the application site had been interrupted by the traveller encampment in 1999/2000 (see below), and that use of the defined path running through the woodland was more akin to the establishment of a public right of way (as set out above), the only potentially 'as of right' user left to consider, in the Inspector's view, was use of the woodland which took place off the main path. Following an analysis of the evidence of use, she found little, if any, use of the subsidiary paths during the traveller encampment in 1999/2000:

> *"I am bound to say that my impression is that there was a distinct change in the nature and frequency of user during the part of the relevant period when the traveller encampment (or successive encampments) that began around summer 1999 and ended with eviction in around summer 2000 was on the field [on the southern part of the application site] in respect of the use of the application land as a whole (including [the northern section]). Whilst I accept that a few resilient users persisted to use the woodland (off paths)… and even the field… instances of this are very sporadic (and any use during this time was far more likely, in my view, to have taken the form of use of the main path in the woodland). I have not seen sufficient evidence from the applicant to indicate general use of the woodland, off the main path, by the community during this time such that it could be said to be by a 'significant number' of local inhabitants and clear to a reasonable landowner that a TVG right was being asserted… All of the witnesses [with one exception] concurred that the 1999/2000 [travellers] were hostile, or at least sufficiently intimidating so that a wide berth was desirable… The only activities that took place off the main path in the woodland were child-focussed activities, which were unlikely to be compatible with potentially hostile neighbours with untethered fierce dogs. This supports my view that these activities were no more than sporadic and de minimus during the period 1999 – 2000".*

46. As such, the Inspector's conclusion on this point was that use of the application site had not been by a 'significant number' of the residents of the locality throughout the relevant period (due to the effect on use of the traveller encampment in 1999/2000) and that the application should fail in respect of the whole of the land on this basis.

(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?

47. 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 provided (at the time that this application was made) that an application must be made within two years from the date upon which use 'as of right' ceased.

48. In this case, the application was made under section 15(3) of the 2006 Act, on the basis that use of the application site had ceased to be 'as of right' prior to the making of the application. The applicant's position was that use had ceased to be 'as of right' on the northern section of the application site in late October 2012 when a walker was challenged and the landowner erected posts and a bund in an

attempt to inhibit access to the site. In respect of the southern section of the application site, the applicant suggested that use had ceased to be 'as of right' on 27th August 2012 when barbed wire was erected across the access points and 'no trespassing' notices were erected.

49. The Inspector took the view[22] that:

> *"as a matter of literal statutory construction, it is not permissible within a single application to register a unit of 'land' to rely on different dates for the cessation of 'as of right' use in respect of different parts of that land. If 'as of right' use is accepted to have ceased in respect of part of the land, then it has ceased in respect of the whole of the land. I therefore consider that the application is bound to proceed under s15(3) on the basis of the accepted cessation of 'as of right' use for [the southern half of the application site] when TG Claymore erected barb wire and signs on 27th August 2012. This was ultimately agreed by the parties by the close of the Inquiry. The relevant period is therefore 27th August 1992 to 27th August 2012".*

50. Since the application was made on 27th November 2012 (i.e. within 2 years from the date upon which 'as of right' use ceased) this test is met.

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

51. 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. The relevant twenty-year period is calculated retrospectively either from the date upon which use ceased to be 'as of right' or, where informal recreational use is continuing, from the date of the application.

52. As is noted above, it is considered that use of the application site as a whole ceased to be 'as of right' from 27th August 2012 and the relevant twenty-year period ("the relevant period") is therefore August 1992 to August 2012.

53. The landowners' position is that use of the application site did not take place throughout the relevant period, recreational use of the application site by local inhabitants during that time having been interrupted by the presence of the traveller encampment on the southern part of the application site during 1999/2000 (as described above).

54. Whilst there is no express requirement within the 2006 Act for recreational use to have taken place 'without interruption' throughout the relevant period, a physical disruption to the continuing use of land for such activities is generally considered to be sufficient to cause time to cease to run for the purposes of an application to register the land as a Village Green. In order for there to be an interruption to use, '*…there must be a physical ouster of local inhabitants from the land and the disruption must be inconsistent with the continued use of the land as a village green'*[23].

55. The Inspector was satisfied that the encampment was of a sufficient duration potentially to interrupt the recreational use of the application site, but went on to

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[22] See paragraph 32 of the Inspector's report

[23] *Taylor v Betterment Properties (Weymouth) Ltd. and Dorset County Council* [2012] EWCA Civ 250 at [71] per Patten LJ

consider whether the nature of the interruption was such as to cause a material exclusion of the public. She found[24]:

> *"it is clear that local inhabitants would have been physically unable to use those parts of [the southern section of the application site] upon which the vehicles themselves were stationed. Within this, I would also include the areas between the caravans… However, apart from the vehicles and the spaces between them, there was nothing physically stopping people from using other areas [of the application site]. Many may have avoided the area entirely due to the hostility of the travellers and the rubbish, but I do not consider that the behaviour choice of local inhabitants is properly seen in the context of interruption. In light of my opinion as to the requirement for physical exclusion, I find that use of [the southern section of the application site] was interrupted for a period of at least a year in those (undefined) areas where the caravans themselves were stationed (and of course the numbers and positioning of the caravans changed during that period). In all other respects, I do not consider that the travellers caused a material exclusion of the public…"*.

56. As such, the Inspector found that the occupation of the field/meadow part of the southern section of the application site by the traveller encampment had resulted in a material interruption to the recreational use of that part of the application site by local inhabitants.

Inspector's overall conclusion

57. The Inspector's overall conclusion was that the application should fail in full on the grounds that[25]:

> *"the applicant has failed to show that:*
> *(a) Qualifying use was by a significant number of local inhabitants throughout the relevant period because the number was not significant between summer 1999 – summer 2000 during the traveller encampment;*
> *(b) Qualifying use was sufficient to assert a town or village green right between summer 1999 – summer 2000;*
> *[and]*
> *in relation to the field part [of the southern section of the application site] only, the objectors have shown that:*
> *(c) Qualifying use was interrupted during the period summer 1999 – summer 2000 during the traveller encampment".*

58. She adds[26] that:

> *"My conclusions… must be seen in the context of my finding that user of the main path which runs through the woodland… would bring home to a landowner the assertion of a public right of way, and not a village green right".*

Conclusion

59. The Inspector has suggested[27] that, if the County Council were to disagree with her assessment in respect of any part of the application site, it would be open to the County Council, if it so desired, to effect registration of a small part of the

[24] Paragraph 190 of the Inspector's report
[25] Paragraph 223 of the Inspector's report
[26] Paragraph 224 of the Inspector's report
[27] Paragraph 222 of the Inspector's report

application site. However, in light of the Inspector's conclusions that, as a matter of fact, much of the use of the woodland part of the application site was attributable to walking on a defined path (i.e. a 'rights of way' type use), the recreational use of the field area was materially interrupted by its occupation by travellers, and use of the site as a whole was not by a significant number of local people during the period 1999/2000, it is difficult to see how any part of the application site (even it if were possible to identify a defined area to which none of these issues applied) could be registrable.

60. The Inspector also notes[28] the applicant's suggestion (made in respect of her report as originally published) that prejudice arose from the applicant being asked to reduce the number of witnesses called at the Inquiry. Whilst noting that, if the County Council were minded to do so, it might be possible to arrange a supplementary day to hear evidence dealing specifically with the 1999/2000 period, the Inspector confirmed that she was satisfied both that no prejudice had been caused (no suggestion of this was made at the Inquiry itself) and she had sufficiently understood the general picture of the different levels of use throughout the relevant period. Indeed, it is easy, in hindsight, to suggest that a different outcome might be obtained if further evidence were to be sought but there is no guarantee that such evidence would stand up to the scrutiny of cross examination. More importantly, there is also a very real danger that any further evidence in this matter might well be influenced by the findings already set out in the Inspector's detailed report, thereby potentially resulting in a distorted image of the situation. The Inspector heard oral evidence from some twenty witnesses in support of the application, in addition to the large volume of written evidence, and it is therefore considered that the applicant was given sufficient opportunity to present his case and hence it is not necessary (or appropriate) to hear any further oral evidence.

61. Having carefully considered all of the relevant evidence and having regard to the Inspector's analysis of that evidence (contained in her report), it would appear that the legal tests in relation to the registration of the application site as a new Town or Village Green have not been met.

Recommendation

62. I recommend, for the reasons set out in the Inspector's report dated 30th March 2015, that the applicant be informed that the application to register land known as Coldblow Woods and Sports Ground at Ripple has not been accepted.

Accountable Officer:
Mr. Mike Overbeke – Tel: 03000 413427 or Email: mike.overbeke@kent.gov.uk
Case Officer:
Ms. Melanie McNeir – Tel: 03000 413421 or Email: melanie.mcneir@kent.gov.uk

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

Appendices

APPENDIX A – Plan showing application site

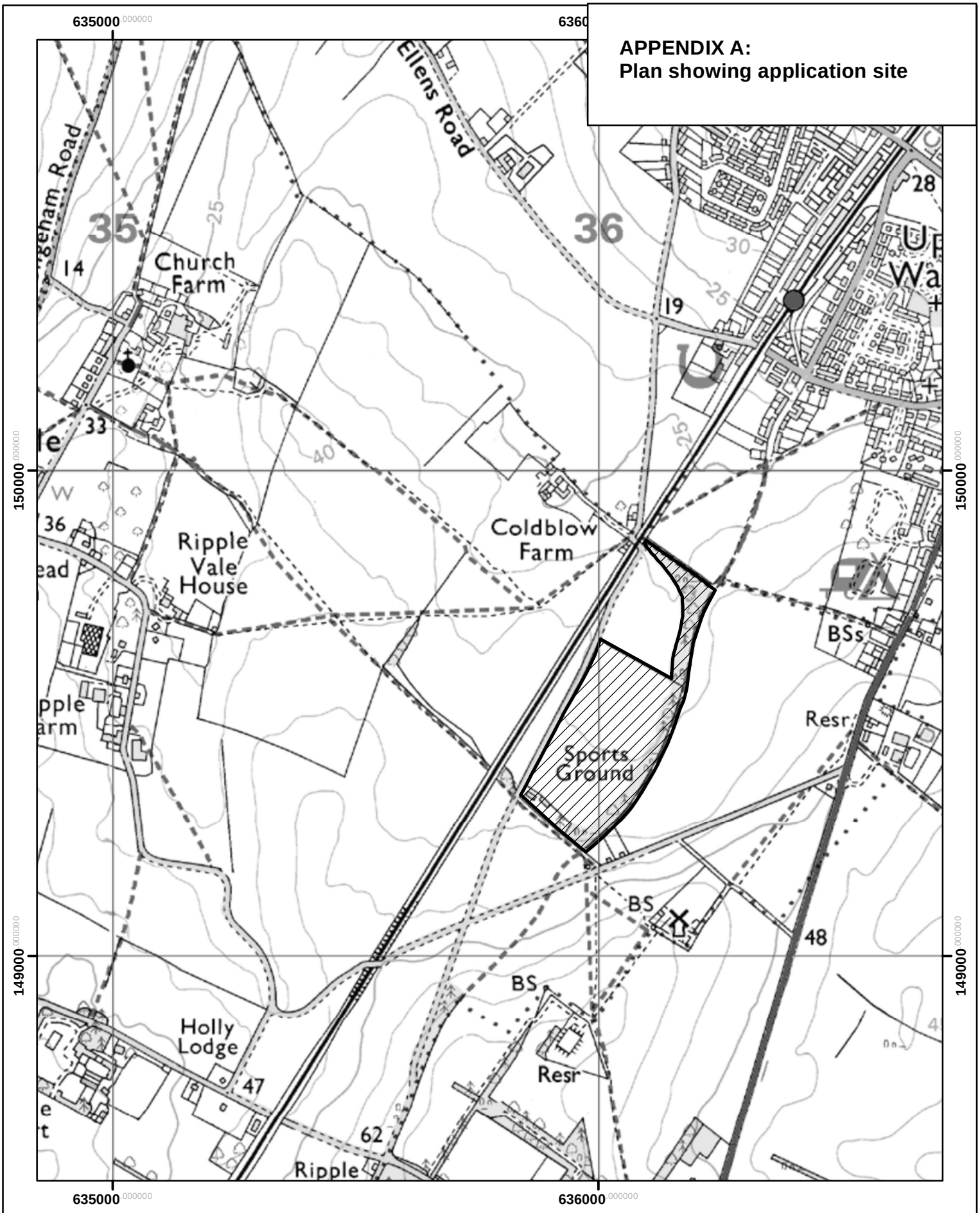
[28] Paragraph 226 of the Inspector's report (postscript)

APPENDIX B – Minutes from the meeting of the Regulation Committee Member Panel on 24th September 2013.

Background documents

Inspector's final report dated 30th March 2015

APPENDIX A:
Plan showing application site



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Land subject to Village Green application at Coldblow Woods at Ripple

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REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the Ripple Village Hall, Pommeus Road, Ripple CT14 8JA on Tuesday, 26 November 2013.

PRESENT: Mr M J Harrison (Chairman), Mr S C Manion (Vice-Chairman), Mr M Baldock and Mr C W Caller

IN ATTENDANCE: Ms M McNeir (Public Rights Of Way and Commons Registration Officer) and Mr A Tait (Democratic Services Officer)

UNRESTRICTED ITEMS

19. Application to register land known as Coldblow Woods in the parish of Ripple as a new Town or Village Green
(Item 3)

(1) Members of the Panel visited the application site before the meeting. This visit was attended by Mr R Chatfield (applicant), the landowner, Mr N Fielding (with Rhodri Price-Lewis QC and Ms J Laver - Fuller Long Planning Consultants) and some 20 members of the public.

(2) The Commons Registration Officer began her presentation by saying that the application had been made by Mr R Chatfield under section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2008. The application had been accompanied by 124 user evidence forms and other evidence (including Land Registry searches, a detailed history and use of the site, photographs showing various activities taking place on the site and a letter from Ringwould Cricket Club). A further 202 user evidence forms had subsequently been submitted.

(3) The Commons Registration Officer went on to set out the case put forward by the applicant. This was that the site consisted of two plots of land. The northern section had been owned by the MoD until it was sold to Ledger Farms in the 1970s. The southern section had also been owned by the MoD until being sold to a local family in 1992. The current owner of the southern section, TG Claymore had erected barbed wire and taken other action to restrict access in August 2012. Up to this point, the applicants claimed that residents had enjoyed unrestricted access and use of the site for more than 30 years.

(4) The Commons Registration Officer then described the responses from consultees. Ripple PC had indicated that it neither supported nor opposed the application. Deal TC has written in support, stating that the local population had made continued use of the land for lawful sports and pastimes for many years and that this activity had remained unchallenged until very recently. A petition containing over 1700 signatures in support of the application had also been received (although this was of little value as evidence of use). The Local Member, Mr S C Manion had given a neutral response. There had also been over 100 e.mails and letters of support as well as a letter of objection from a member of the public.

(5) The Commons Registration Officer continued by saying that the landowners were represented by Fuller Long Planning Consultants who had objected to the application on the grounds that informal use of the site had been sporadic and insufficient to notify a reasonable landowner that a public right was being asserted; that there had been a break in the twenty year period of use in 1999/2000 when the land had been occupied by travellers; that the alleged use had only been attested by some 2% of the local population, which was not a significant number; that use of the land had been by stealth to a significant degree; and that any use had been contentious and therefore by force as the landowners had done everything that was reasonably possible to stop unauthorised use through fencing, signage and challenges.

(6) The landowners' objections had been supported by six statutory declarations. The Commons Registration Officer summarised this evidence which was that the southern section had been owned by the MoD until it was sold to Mr Luckhurst in November 1992, three months into the material period. Whilst in the ownership of the MoD the land had been securely fenced with locked gates and "No Admittance" signs along the boundary. The land had actually been advertised as "fenced" for the purposes of the auction when Mr Luckhurst had purchased it. From 1993, openings had started to appear in the fencing and chains and padlocks had been stolen. Replacement fencing and padlocks had been provided up to 1996 when Dover DC had issued a direction prohibiting fencing of the land. The land had then been occupied by travellers in 1999/2000 which would have provided a disincentive to informal recreation.

(7) The statutory declarations had also given evidence in respect of the northern section of the land. This was that Mr Ledger, the landowner had made regular visits to the area. He had become aware of the use of the woodland and had attempted to discourage use by spreading slurry in the woodland on numerous occasions and by closing gaps in fencing and erecting earth banks. This was because he had been concerned about possible damage to crops on the adjacent field (which he also owned).

(8) The Commons Registration Officer moved on to consideration of the individual tests for registration to take place. The first of these was whether use of the land had been "as of right". She said that the landowners' position and supporting evidence was that the land had been securely fenced in the early 1990s with no public access being permitted. After acquiring the land, the landowners had attempted to prevent use by erecting fences, spreading slurry, using tree trunks and earth banks to bar access and by challenging people who used the land. Dover DC had prohibited fencing on the land in 1996. This had led to anti-social behaviour and the occupation of the site by travellers in 1999. In the early 21st century, a ditch and bund had been constructed to restrict access. The landowners' contention was therefore that they had taken every reasonable step to deter access to the site but that their efforts had been met with vandalism.

(9) The Commons Registration Officer then said that the applicant's evidence differed in many ways from that of the landowners. He said that the site was bordered on all sides by public rights of way or by Coldblow Road, and that this had led to a significant number of residents entering the land through an easy access. Furthermore, there was a lack of fencing between the northern and southern sections

of the land, permitting people to pass unobstructed between them. There had never been any fencing around the northern plot, whilst the chain link fencing around the southern section had been broken down or had fallen down well before the MoD had vacated the land in 1992. Access had been free and easy until late 2012 when barbed wire and earth ramparts had been erected by the owner of the southern section.

(10) The applicant had provided two pieces of evidence to support his contention of general usage. An aerial photograph dated 2008 showed well-defined tracks across the whole grassland area, whist the Dover DC "Statement of Reasons" of 1996 (which prohibited the erection of fencing) described the land as "*mainly neglected grassland and, apparently used by the general public informally*."

(11) The applicant had also refuted the landowners' evidence of challenges to use having been made. He stated that the gap described by the applicant had only been barricaded to prevent access and damage to crops. This had not prevented access to or within the woodland. He also stated that although slurry had been spread on the adjacent field, this had not happened in the woodland and that it would not have been possible for a tractor or slurry tanker to access it.

(12) The applicant had also commented on the landowners' contention that the land had been secured by fencing and notices during the period when it was MoD property. He noted that the landowners' witnesses had provided various versions of the alleged wording on the signs and considered it unlikely that they would have been maintained after the MoD had ceased to actively use the site in the late 1970s. A number of user evidence questionnaires had referred to notices on the site but none of them had forbidden entry. Meanwhile, contemporaneous evidence from the 1990s strongly suggested that the fencing had not been at all secure during this period. It seemed highly improbable to him that the fencing could have deteriorated during the period 1992 to 1996 when Dover DC's Statement of Reasons had described the state of the land as "neglected."

(13) The Commons Registration Officer concluded her analysis of the "as of right" test by explaining that when a serious conflict of factual evidence of this nature occurred, the officers did not have the powers to undertake any further investigation themselves. It was therefore not possible at this stage to conclude whether use of the site had taken place "as of right."

(14) The Commons Registration Officer turned to the question of whether use of the land had been for the purposes of lawful sports and pastimes. She said that although some of the use had been associated with the public right of way, there was sufficient evidence for her to conclude that, due to the range of recreational activities, this test appeared to have been met.

(15) The next test was whether use had been by a significant number of inhabitants of a particular locality, or a neighbourhood within a locality. The Commons Registration Officer said that this test had been met because the administrative parish of Walmer was a qualifying locality and the volume of evidence submitted strongly suggested that the land was in general use by the local community during the relevant period.

(16) The Commons Registration Officer briefly explained that the application had been made in November 2012 which was well within the period when use had been challenged in August of that year by prohibitive notices and the erection of barbed wire fencing. The application had therefore been made within the two year grace period set out in the Commons Registration Act. The land had also been in use for longer than the required period of 20 years. This meant that the final two tests had been met, subject to the question of whether this use had been "as of right."

(17) The Commons Registration Officer concluded her presentation by saying that the ability of the land to be registered as a Village Green hinged on the question of whether the use of the site had been "as of right." The most effective way of establishing the answer to this question was through the mechanism of a Public Inquiry, enabling the evidence to be tested by an independent Inspector who would produce a report on his or her findings to the Registration Authority. She therefore recommended accordingly.

(18) Mr Baldock asked whether the Panel was entitled to register part of the land. He suggested that the Panel could decide to register the northern section. The Commons Registration Officer replied that it was open to the Panel to register only part of the application site, but she considered that there was a sufficient level of confusion in respect of the entire application site to make a Public Inquiry into the application as a whole the safest option.

(19) The Chairman asked whether, in the light of the recommendation, any of the parties wished to address the Panel. The applicant, Mr Chatfield said that he did not wish to speak beyond confirming that the records he would be relying on were held by Dover DC.

(20) Rhodri Price-Lewis QC addressed the Panel on behalf of the landowners. He said that he did not believe that the applicant had been able to prove his contention that use of the land had been "as of right." The existence of signs and fencing demonstrated that use had been contentious and therefore by force. This was underlined by the acceptance by all parties that signs had been broken down over time. He then referred to the three months at the beginning of the twenty year period in 1992 when the land had been owned by the MoD. He said that when Mr Ledger had participated in the auction, he had been informed in writing that the land was fenced. He added that he did not accept that a significant number of residents of the locality of Walmer had used the site.

(21) On being put to the vote, the recommendations of the Head of Regulatory Services were carried unanimously.

(22) RESOLVED that a Public Inquiry be held into the case to clarify the outstanding issues.