Application to register land known as Chaucer Fields at Canterbury as a new Town Green

A report by the Head of Public Protection to Kent County Council's Regulation Committee Member Panel on Friday 18th March 2016.

Recommendation: I recommend, for the reasons set out in the Inspector's report dated 6th August 2015, that the applicant be informed that the application to register land known as Chaucer Fields at Canterbury has not been accepted.

Local Members: Mr. G. Gibbens Unrestricted item

Introduction

1. The County Council has received an application to register land known as Chaucer Fields in the city of Canterbury as a new Town or Village Green from a group of local residents, namely Mr. J. Barton, Mr. R. Norman, Mrs. P. Cherry, Mrs. S. Power and Mr. A. Pearlman ("the applicants"). The application, made on 21st April 2011, was allocated reference number VGA635.

Procedure

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

3. Section 15 of the 2006 Act 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).

The application site

5. The area of land subject to this application ("the application site") is situated adjacent to Chaucer College on the University of Kent campus in the city of

[1] Note that the application was made, and initially dealt with under the 2008 Regulations, but falls to be determined under the Commons Registration (England) Regulations 2014 which came into force on 15th December 2014 and replaced the 2008 Regulations; the processes set out in the 2014 Regulations are substantially the same as the 2008 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). This only applies to applications received after that date and does not affect any applications received prior to that date.

Canterbury. The application site consists of approximately 17.6 hectares (43.5 acres) of meadow and woodland which forms a green space between the main university buildings off University Road[3] to the north of the application site and the residential estates in the vicinity of Salisbury Road in the St. Stephen's area of the city of Canterbury to the south of the application site). The application site does not have any officially recognised name, although it has latterly become known locally informally as Chaucer Field.

6. Access to the application site from the residential areas to the south of it can be gained via one of several entrances, notably from:
   - Leycroft Close utilising the eastern end of Bridleway CC8;
   - An unrecorded path leading from Lyndhurst Close;
   - Salisbury Road utilising Public Footpath CC5;
   - Whitstable Road (via Harkness Drive) utilising the western end of Bridleway CC8;
   - University Road utilising Public Footpath CC5; and
   - The University Road frontage with the application site.

7. Currently, there are a number of signs erected at the entrances to the application site, consisting of white text on a blue background mounted on a tall metal pole. The effect of the wording of those signs is to indicate that any use of the application site is with the revocable permission of the landowner. The application form indicates that these signs were erected in March 2011.

8. A plan showing the application site, and the entrances to it, is attached at **Appendix A**. Photographs showing the application site will be provided at the meeting.

Background

9. As a result of the consultation, an objection to the application was received from the University of Kent ("the University") in its capacity as landowner. The objection was made on the following grounds:
   - That the documentation submitted in support of the application is not sufficient to prove that a significant number of the inhabitants of the locality have indulged in lawful sports and pastimes on the land between 1991 and 2011;
   - That there is clear evidence that the use of the application site is with the permission of the University, communicated by notices positioned at each entrance to the application site throughout the relevant period; and
   - That use has not been by a significant number of the residents of the locality or neighbourhood and such use as was made was confined to footpaths and desire lines.

10. The matter was considered at a meeting of the Regulation Committee Member Panel on Tuesday 11th September 2012, at which Members accepted the recommendation that the matter be referred to a Public Inquiry for further consideration[4]. As a result of this decision, Officers instructed a Barrister

[3] University Road is a private road insofar as vehicular access is concerned, but Public Footpath CC69 runs along it thereby providing a public right of way on foot only.
[4] A copy of the report and minutes of the meeting are available for reference at: https://democracy.kent.gov.uk/ieListDocuments.aspx?CId=182&MId=4937&Ver=4

experienced in this area of legislation to hold a Public Inquiry, acting as an independent Inspector, and to report her findings back to the County Council.

11. 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 on 13th December 2012 and arrangements were made for the Public Inquiry to commence on 18th March 2013.

12. However, prior to the commencement of the Inquiry, the applicants sought an amendment to the application so as to enable them to rely on evidence of use covering the entire period 1944 to 2011 (rather than just the 20 year period immediately preceding the date of application). Given the potential consequences of allowing such an amendment, it was agreed that the matter ought to be dealt with as a preliminary issue prior to the holding of the full Public Inquiry. A hearing for this purpose took place on 18th March 2013 and the Inspector set out her findings and recommendation, which was to refuse the applicants permission to amend their application, in a report dated 22nd January 2014. On 29th July 2014, that advice was accepted at a meeting of the Regulation Committee Member Panel[5]. The effect of that decision was that the Inquiry was to be concerned solely with evidence relating to the period 1991 to 2011.

13. Having reached a decision regarding the preliminary issue (thus confirming the scope of the matters to be considered at the Inquiry), it was then possible to proceed with the hearing of oral evidence, both in support of and in opposition to the application. The Public Inquiry took place at the Westgate Hall in Canterbury over 9 days from 23rd to 27th February and 16th to 19th March 2015. On the penultimate day of the Inquiry, the Inspector conducted an accompanied visit to the application site. Both parties were represented by Counsel at the Public Inquiry.

14. The Inspector subsequently produced a very detailed written report, running to over 200 pages, dated 6th August 2015 ("the Inspector's report") setting out her findings and conclusions. These are summarised below.

Legal tests and Inspector's findings

15. 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.

[5] A copy of the report and minutes of the meeting are available for reference at: https://democracy.kent.gov.uk/ieListDocuments.aspx?CId=182&MId=5709&Ver=4

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

16. The statutory scheme in relation to Village Green applications is based upon the English law of prescription, whereby certain rights can be acquired on the basis of a presumed dedication by the landowner. This presumption of dedication arises primarily as a result of acquiescence (i.e. inaction by the landowner) and, as such, long use by the public is merely evidence from which a dedication can be inferred.

17. In order to infer a dedication, use must have been 'as of right'. 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[6] 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. In this case, the University did not seek to argue that recreational use of the application site by local people had taken place secretively or in exercise of force. The application site is freely accessible from a number of locations (including public rights of way) and has been for many years, such that a reasonable landowner would have been aware of any recreational use of it. There was no evidence that the University had at any point attempted to prohibit or prevent access or recreational activity, and indeed any suggestion to this effect would have been inconsistent with the University's case that use of the application site was permissive in nature[7]. The University's primary objection to the application was that the informal recreational use relied upon by the applicants had taken place by virtue of an express permission (and therefore such use could not be considered as being 'as of right').

19. The Inquiry heard evidence regarding various signs said to have been erected by the University prior to 1990, but the Inquiry focussed on a set a Polaroid photographs depicting notices (consisting of white text on a dark green background and mainly mounted on two low-level metal posts) at various locations around the campus stating: "This land is private property and any access by members of the public is by licence only and may be revoked at any time". A copy of two of the Polaroid photographs is provided at **Appendix B** for reference.

20. Although the photographs were undated and it was not possible to ascertain the precise date of the erection of the notices, it was accepted by the end of the Inquiry that the notices shown on the photographs had been erected at some point between November 1989 and April 1990[8]. The Inspector considered, taking into account all of the evidence, that the most likely date of erection was between 15th and 22nd February 1990.

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

[7] See paragraph 302 of the Inspector's report

[8] See paragraph 305 of the Inspector's report

21. The Inspector was satisfied that anyone entering the application site from one of the access points described in paragraph 6 above would necessarily have encountered one of the notices from the date upon when they were erected. She further noted[9] that:

> *"It needs to be borne in mind that it was the Applicants' case (substantiated by their witness evidence) that users roamed widely around the Application Land. People doing so were likely to encounter more than just one of the signs… If anyone was in doubt about the message being conveyed by one of those signs in its individual context, or the land to which it applied (although, objectively viewed, I do not consider that there was room for reasonable doubt), its meaning and/or scope would have been confirmed and/or clarified by seeing identical signs elsewhere around the Application Land. In other words, the signs had cumulative as well as individual impact, and an important part of the context in which they fall to be construed is that they were not isolated. Viewed in that way, the Applicants' attempts to limit their applicability to a footpath [or other areas]… appear even more hopeless".*

22. It follows that the Inspector concluded[10] that:

> "*I accordingly find as a fact that the University did enough by erecting the 1990 signs to communicate to the public at large (including local inhabitants) that their access to and use of its estate, including the Application Land, was by revocable licence; and that the effect of such communication was to render their use of the land precario [i.e. permissive]*".

23. Having reached the conclusion that the notices erected in mid-February 1990 were sufficient to render use permissive (and not 'as of right'), the next question for the Inspector was whether those notices had remained in place at the start of the relevant twenty-year period in March 1991. It was common ground between the parties that if those notices had remained in place, for howsoever short a time, the application for Village Green status must fail[11].

24. The University's case in this regard was that it accepted that there had been issues with vandalism, and it did not seek to argue that the signs upon which it relied had always been cleaned, repaired or replaced immediately. It did, however, contend that it had procedures in place for maintaining and repairing its property (including signage) and that there was no credible basis for finding that those procedures had not been followed at all during the entire twenty-year period. In contrast, the applicants' case was (amongst other issues) that vandalism to the signs (especially graffiti) was a longstanding problem in the area, that maintenance issues on the application site were not accorded high priority in comparison with the central campus, that the University had limited resources and insufficient staff for maintenance purposes, that the maintenance system used in the 1990s was ineffective and planned preventative maintenance for the signs had ceased by the early 2000s, and that the reliability of the University's evidence had been tainted by their witnesses having been shown the Polaroid photographs of the 1990 signs.

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[9] Paragraph 310 of the Inspector's report
[10] Paragraph 312 of the Inspector's report
[11] See paragraph 313 of the Inspector's report

25. As a general point[12], the Inspector found it 'simply improbable' that the University would have allowed the notices to go to 'rack and ruin' within 13 months of their erection, particularly given the timing of their erection following a previous Village Green application affecting the University campus (which included part of the current application site) in 1989, that would have brought home to the University the importance of maintaining appropriately-worded signage. She added:

> "*having gone to the trouble and expense of taking legal advice on wording appropriate to negate the potential adverse consequences of its "open campus" policy…, and making up and erecting a new set of boundary signs embodying that wording, the University is hardly likely to have never maintained then at all, as the Applicants ask the Registration Authority to find*".

26. Examining the evidence, the Inspector noted the evidence of the University's witnesses, and also the evidence of a number of the applicant's witnesses, which corroborated the suggestion that notices remained in place during the early part (at least) of the relevant twenty-year period[13]. She went on to make the following findings of fact in respect of the existence of notices at the most commonly-used access points to the application site (listed at paragraph 6 of this report):

- A sign in the form of the 1990 notice was maintained at the Leycroft Close/Bridleway CC8 entrance to the application site until around 2007[14];
- That the sign erected on the unrecorded path leading from Lyndhurst Close was subject to repeated vandalism and, although there was some suggestion of it being in place into the 2000s, it was not possible to make any definite finding; and
- Several signs were maintained at the Salisbury Road/Harkness Drive entrances to the application site throughout the 1990s and until the mid-2000s[15].

27. Following the very detailed consideration of the evidence regarding notices (set out in the report), the Inspector concluded[16] that "*the use of the Application Land for lawful sports and pastimes was precario, and so not as of right, for the majority (at least) of the 20 year period*".

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

28. 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*'[17].

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[12] See paragraph 314 of the Inspector's report
[13] Set out in detail at paragraphs 320 and 321 of the Inspector's report
[14] See paragraph 332 of the Inspector's report
[15] See paragraphs 337 to 341 of the Inspector's report
[16] Paragraph 345 of the Inspector's report
[17] *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

29. Furthermore, it is not necessary to demonstrate that both sporting activities *and* pastimes have taken place and the phrase 'sports and pastimes' has been interpreted by the Courts as being a single composite group rather than two separate classes of activities[18]. In any event, the activities must be 'lawful' in the sense that they must not amount to a criminal offence[19].

30. During the course of the inquiry, the Inspector heard evidence from the applicant's witnesses of the use of the application site for a range of recreational activities. Walking and children playing were the most frequently mentioned, but there was evidence that snow activities had been popular (due to the terrain) and considerable evidence of running/jogging as well as ball games, picnics, picking fruit and nuts and enjoying views of the cathedral and city[20].

31. Although the Inspector considered that some activities fell to be discounted on the basis that they were not 'lawful' in the sense that they caused physical damage (e.g. bonfires), such activities, in her view, formed so small a part of the overall evidence that discounting them made no difference to the evidence as a whole. Use giving the appearance of a 'rights of way' type of use also fell to be discounted, although the Inspector was satisfied that the majority of the recreational use taking place on the application site would not have appeared to the landowner to be a 'rights of way' type of use; in this regard, she said that[21]:

> *"the applicants' oral witnesses gave unchallenged evidence that they had not confined their walking and dog walking to particular routes across the land, but had wandered much more generally. That is unsurprising because the points of interest are spread over the land, and it is necessary to go off-path in order to enjoy aspects of it such as the views of the city and the bluebells in spring which make it an attractive place to walk. Jogging/running and cycling apart, the wide variety of other activities… could not have been pursued on the tracks and paths".*

32. The University conceded that there was evidence of lawful sports and pastimes over the whole of the application site throughout the relevant period, and indeed a number of the University's own witnesses testified to having seen walkers (off-paths) and ball games.

33. As such, the Inspector concluded that the whole of the application site had been used for a range of lawful sports and pastimes throughout the relevant period[22].

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

34. 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.

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[18] *R v Oxfordshire County Council and another, ex parte Sunningwell Parish Council* [1999] 3 All ER 385
[19] *R (Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust) v Oxfordshire County Council* [2010] EWHC 530 Admin)
[20] See paragraph 289 of the Inspectorate report
[21] Paragraph 292 of the Inspector's report
[22] See paragraph 301 of the Inspector's report

35. The definition of locality for the purposes of a Town or Village Green application has been considered by the Courts. In the Cheltenham Builders[23] 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*'.

36. In cases where the locality is so large that it would be impossible to meet the 'significant number' test (see below), it will also necessary to identify a neighbourhood within the locality. The concept of a 'neighbourhood' is more flexible than that of a locality, and need not be a legally recognised administrative unit. 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*'[24].

37. With regard to the word 'significant', that word 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*'[25]. Thus, the test is a qualitative, not quantitative one, and what constitutes a 'significant number' will depend upon the individual circumstances of each case.

38. In this case, the application was initially made in reliance on use by the inhabitants of two claimed neighbourhoods within the city of Canterbury, described as the 'Salisbury Road estate' and the 'Harkness Drive area'. However, the applications subsequently[26] sought to amend the application to rely on four claimed neighbourhoods (shown at **Appendix C**) described as:
    - The St. Michael's Road/ Salisbury Road estate;
    - The Harkness Drive estate;
    - The Whitstable Road/St. Thomas Hill area; and
    - The Roper Road area.

    The applicants also relied in the alternative, as being localities, the ecclesiastical parishes of St. Stephen's and St. Dunstan's.

39. Dealing first with the question of the localities relied upon, the Inspector found that users of the application site came only from the western part of the populated part of St. Stephen's parish, whereas users came from all over the populated area of St. Dunstan's parish. She said[27]:

    > "*It is my impression on the totality of the evidence that there were throughout the 20-year period a sufficient number of the inhabitants of St. Dunstan's parish using the Application Land for lawful sports and pastimes*

[23] *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at 90
[24] *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at 92
[25] *R (Alfred McAlpine Homes Ltd.) v Staffordshire County Council* [2002] EWHC 76 at paragraph 71
[26] By way of a letter dated 13th January 2012
[27] Paragraph 355 of the Inspector's report

to signify that it was in general use by the community for that purpose, and to give the appearance to a reasonable landowner on the spot that a continuous right for members of their community to enjoy sports and pastimes on the land was being asserted, and to satisfy the 'significant number' test".

40. In relation to the various neighbourhoods relied upon, the Inspector's view was that only the Harkness Drive area was capable of constituting a qualifying neighbourhood[28], on the basis that it had been planned and laid out as a self-contained residential estate that was physically distinct from the housing around it (the houses appearing to have been built in the same style by the same developer) and with only one entrance to the neighbourhood from the main road.

41. The Inspector did not consider that any of the other three neighbourhoods relied upon by the applicants possessed the requisite degree of cohesiveness to qualify as such[29]; the neighbourhood described by the applicants as the St. Michael's Road/ Salisbury Road estate is bisected by a disused railway embankment which the Inspector considered formed a natural boundary giving a sense of separation rather than cohesion, whilst each of the remaining alleged neighbourhoods (described as the Whitstable Road/St. Thomas Hill area and the Roper Road area), in the Inspector's view, 'combines too many disparate elements to possess the requisite degree of cohesiveness' (the boundaries of those neighbourhoods apparently being delineated arbitrarily without regard to the age and type of housing, nor any longstanding sense of community).

42. Accordingly, the Inspector's view was that a significant number of the residents of the locality of St. Dunstan's ecclesiastical parish had used the application site for recreational purposes. In the alternative, she also accepted that the neighbourhood described as the Harkness Drive area was a qualifying neighbourhood for the purposes of Village Green registration and that a significant number of its inhabitants had used the application site for recreational purposes.

(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?

43. 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 previously provided that an application must be made within two years from the date upon which use 'as of right' ceased[30].

44. In this case, the application was submitted on 21st April 2011 under section 15(3) of the 2006 Act on the basis that use of the application site 'as of right' ended in March 2011, when the University erected fresh notices indicating that use of the site was by licence. At the Inquiry, it was possible to pinpoint the date of the erection of the notices as 11th March 2011[31].

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[28] See paragraph 357 of the Inspector's report
[29] See paragraphs 359 to 362 of the Inspector's report
[30] Note that the current application was made prior to the reduction of the period of grace from two years to one year.
[31] See paragraph 295 of the Inspector's report

45. Given that the application was made just over a month after use of the application site 'as of right' is said to have ceased, and well within the two-year period of grace provided by the legislation, this test is therefore met.

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

46. 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.

47. As is noted above, the date upon which use 'as of right' is said to have ceased is 11th March 2011 and, accordingly, the relevant twenty-year period is 11th March 1991 to 11th March 2011 ("the material period").

48. The Inspector noted that the applicants has been able to call 17 witnesses at the Inquiry who could attest to personal knowledge and recreational use of the application site throughout the material period, and indicated that[32]:

> *"Between them, they painted a picture of continuous use for lawful sports and pastimes by themselves, their families, and other local inhabitants from long before 11th March 1991 to (and after) 11th March 2011, which was consistent with and corroborated by the Applicants' written evidence. Of the people not giving oral evidence whose completed user evidence questionnaires, statements, letters or emails were before the Inquiry, 146 said that they had used the Application Land throughout the period 11 March 1991 – 11 March 2011".*

49. Whilst there was some evidence at the Inquiry regarding temporary signage warning people to stay away from hedges during spraying, the taking of a hay crop, the siting of a contractors compound in connection with works on University Road in summer 2010 and ground exploration works in early 2011, the Inspector did not consider (and nor was it argued by the University) that such activities were sufficient to amount to any substantive interruption to use.

50. The Inspector was therefore satisfied that the application site had been used for recreational activities throughout the material period[33].

Inspector's conclusions

51. The Inspector concluded that, in her view, the applicant had not demonstrated that all of the requisite legal tests in respect of the registration of the land as a new Village Green had been met. She said[34]:

> *"My overall conclusion on the totality of the evidence presented at the Inquiry is that the Applicants have failed to prove their case and that none of the Application Land qualifies for registration as a town or village green under section 15(3) of the Commons Act 2006… The application fails because use of the Application Land for lawful spots and pastimes by members of the public, including local inhabitants, was not nec precario and*

[32] Paragraph 296 of the Inspector's report
[33] See paragraph 301 of the Inspector's report
[34] Paragraph 364 of the Inspector's report

so not 'as of right' throughout the period March 1991 – March 2011, as claimed by the Applicants (or, for that matter, any 20-year period ending less than two years before the date of the Application)".

52. Accordingly, her recommendation to the County Council was that the application ought to be rejected[35].

Subsequent correspondence

53. On receipt, the Inspector's report was forwarded to the applicant and to the University for their information and further comment.

54. The applicants responded[36] to the effect that whilst they were obviously disappointed with the Inspector's recommendation, her report was extremely thorough and detailed, and assessed all of the evidence very carefully and at great length. The applicants were pleased to note that the Inspector accepted their evidence that the application site had been used for lawful sports and pastimes throughout the relevant 20-year period, and also her finding that use was by a significant number of the residents of the St. Dunstan's locality and the Harkness Drive neighbourhood.

55. However, the applicants wished it to be recorded that the St. Michael's Road area and the Whitstable Road area neighbourhoods relied upon by the applicants had not been artificially constructed simply for the purposes of the application (as was suggested in the Inspector's report), but rather were identified in good faith by the applicants as cohesive neighbourhoods on the basis that each had an active residents' association.

56. The applicants also maintain, as was argued at the Inquiry, that there had been insufficient action by the University in respect of the notices and rather than demonstrating a clear and continuing commitment to their maintenance, the overall picture was one of increasing neglect. They noted that the main evidence before the Inquiry concerning the existence or otherwise of the notices consisted of the memories of the witnesses, and suggested that on matters of detail such as this, memories are notoriously unreliable. The applicants feel that the Inspector has attached too great a weight on the recollections of the University's witnesses, and observe that, given that by March 2011 all of the 1990 notices had either disappeared or were covered by graffiti, it is extremely unlikely that such a deterioration had occurred suddenly in the last few years before 2011 (and more plausible that it was the result of increasing neglect on the part of the University).

57. Finally, the applicants suggest that even if no other part of the application site is found to be registerable, the strip of land to the south-east of the Bridleway ought to be. All of the University's signs were located on the north-west side of the Bridleway and there was nothing to indicate that the message conveyed was referable to the south-eastern strip. As such, even if the County Council is not minded to register the remainder of the land as a Village Green, it ought to consider registering this section.

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[35] Paragraph 365 of the Inspector's report

[36] By cover of letter dated 22nd September 2015 from Mr. D. Smith on behalf of the applicants

58. The University welcomed the Inspector's recommendation and initially advised[37] that did not consider it necessary to make any further comments, other than to say that it considered the report to be an accurate and comprehensive record of the evidence given at the Inquiry and that the Inspector's findings and recommendations were the result of careful consideration of the evidence provided by both parties.

59. However, having had sight of the applicants' comments (above), the University submitted further comments[38] to the effect that the applicants had misunderstood the legal test that had (correctly) been applied by the Inspector that even if use of the land was permissive for one day after the beginning of the twenty-year period, the application must fail. Having considered all of the evidence in some detail, the Inspector had concluded that this was indeed the case, and that use had been permissive for a much longer time, and indeed for the majority of the twenty-year period relied upon.
60. In respect of the suggestion that the south-eastern strip ought to be registered, the University contended that that argument (raised at the Inquiry) had been considered in detail and rejected by the Inspector, who had clearly concluded that the signs were referable to the application land as a whole.

Conclusion

61. There is no dispute in this case (and indeed nor can there be on the basis of the evidence presented to the Inquiry) that the application site has been used for lawful sports and pastimes by local residents for a period in excess of the relevant twenty-years required for Village Green registration; this is not a case that turns on the reliability, nature or frequency of the alleged recreational use.

62. Whilst the University has expressed concerns regarding the neighbourhoods relied upon by the applicants and whether there has been use by a 'significant number' of the residents of any one of those neighbourhoods, the Inspector found in favour of there being both a qualifying locality (in the form of St. Dunstan's ecclesiastical parish) and a qualifying neighbourhood (in the form of the Harkness Drive area). Those findings have not been disputed by either party in their subsequent submissions.

63. The crux of this matter is essentially whether the notices that were erected in February 1990 had either disappeared, or sufficiently deteriorated so as to become illegible, prior to the start of the material period on 11th March 1991. As noted above, the application can only succeed if it is shown, on the balance of probabilities, that the answer to that question is yes.

64. The Inspector heard a considerable volume of evidence regarding the notices and a significant part of her report is concerned with an evaluation of that evidence[39]. She found as a matter of fact on the basis of that evidence that a number of the notices had remained in place at least at the start of the material period and, in some cases, well into the second half of it. Indeed, it is uncontentious that the University's attempts to convey an express permission to use the application site were not limited to just one notice, but rather to a series of notices spread across

[37] See letter dated 22nd September 2015 from Farrer and Co. on behalf of the University
[38] See letter dated 1st October 2015 from Farrer and Co. on behalf of the University
[39] Paragraphs 302 to 345 of the Inspector's report

the application site. Furthermore, it is also clear that the notices were not merely small or flimsy signs of feeble construction, but rather wooden signs mounted on metal posts. The suggestion that the majority of these notices disappeared or became illegible in the space of just over a year is not only (as the Inspector says) improbable, but ultimately it was not borne out at the evidence presented to the Inquiry (even by some of the applicants' own witnesses).

65. With regard to the question of whether a small part of the application site should be registered as a Village Green, namely the strip of land to the south-east of the Bridleway, it seems implausible that users would have considered this section differently to the rest of the application site. The section is not positively segregated from the Bridleway or the remainder of the application site so as to give an impression of separation, and nor is it substantially different in physical appearance. As noted by the Inspector[40], the overwhelming majority of signatories to the user evidence questionnaires answered the question as to their knowledge of the ownership of the land by reference to the University alone, and any reasonable person entering the land would have considered themselves to be entering the application site as whole (and would have understood the notices to refer to the whole). As such, it is not considered that any smaller part of the application site should be registered as a Village Green.

66. Having carefully reviewed the Inspector's analysis of the evidence (contained in her report), the Officer's view is that it represents an accurate and impartial summary of the evidence given at the Inquiry and the Inspector's application of that evidence to the relevant legal tests is both considered and reasonable. Accordingly, it would appear that the legal tests in relation to the registration of the land as a new Town or Village Green have not been met.

Recommendation

67. I recommend, for the reasons set out in the Inspector's report dated 6th August 2015, that the applicant be informed that the application to register land known as Chaucer Fields at Canterbury 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

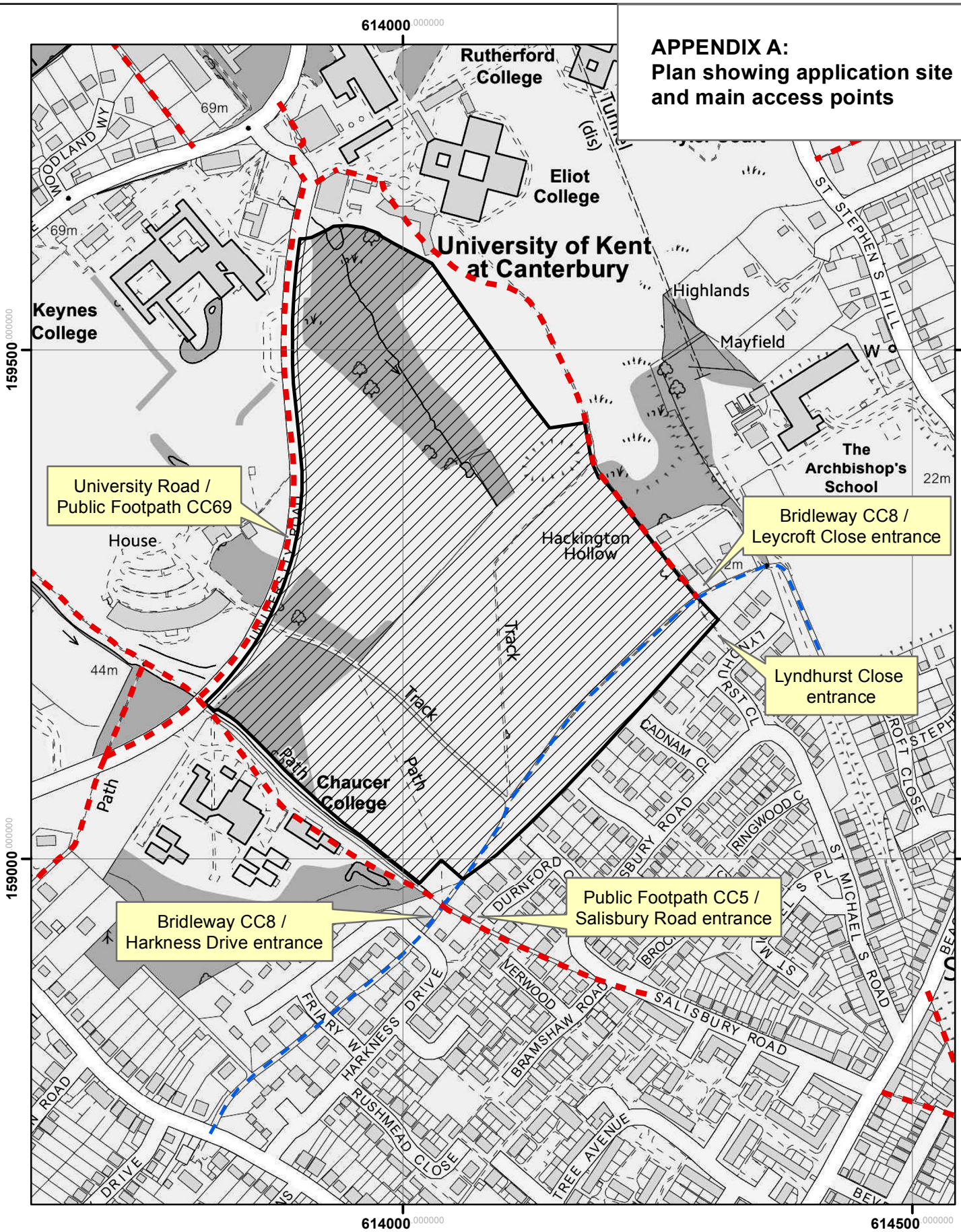
The main file is available for viewing on request at the PROW and Access Service, Invicta House, County Hall, Maidstone. Please contact the Case Officer for details.

Appendices
APPENDIX A – Plan showing application site
APPENDIX B – Photographs showing the 1990 notices erected on site
APPENDIX C – Plan showing neighbourhoods relied upon by the applicants

Background documents
Inspector's report dated 6th August 2015

[40] See paragraph 308 of the Inspector's report

APPENDIX A:
Plan showing application site and main access points



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Land subject to Village Green application known as Chaucer Fields at Canterbury

Kent County Council
kent.gov.uk

APPENDIX B:
Photographs showing notices erected on/around the application site in 1990

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APPENDIX C:
Plan showing neighbourhoods relied upon by the applicants