

Application to register land at Beecholme Drive, Ashford as a new Village Green

A report by the Director of Environment and Waste to Kent County Council's Regulation Committee Member Panel on Friday 7th August 2009.

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

Local Members: Mrs. E. Tweed

Unrestricted item

Introduction

1. The County Council has received an application to register land at Beecholme Drive, Ashford as a new Village Green from local resident Mrs. P. Boorman ("the applicant"). The application, dated 15th February 2008, was allocated the application number VGA599. A plan of the site is shown at **Appendix A** to this report and a copy of the application form is attached at **Appendix B**.

Procedure

2. The application has been made under section 15(1) of the Commons Act 2006 and regulation 3 of the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007. These regulations have, since 1st October 2008, been superseded by the Commons Registration (England) Regulations 2008 which apply only in relation to seven 'pilot implementation areas' in England (of which Kent is one). The legal tests and process for determining applications remain substantially the same.
3. Section 15(1) of the Commons Act 2006 enables any person to apply to a Commons Registration Authority to register land as a Village Green where it can be shown that:
'a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;
4. In addition to the above, the application must meet one of the following tests:
 - **Use of the land has continued** 'as of right' until at least the date of application (section 15(2) of the Act); or
 - **Use of the land 'as of right' ended no more than two years prior to the date of application**, e.g. by way of the erection of fencing or a notice (section 15(3) of the Act); or
 - **Use of the land 'as of right' ended before 6th April 2007** and the application has been made within five years of the date the use 'as of right' ended (section 15(4) of the Act).
5. As a standard procedure set out in the regulations, the County Council must notify the owners of the land, every local authority and any other known interested persons. It must also publicise the application in a newspaper circulating in the

local area and place a copy of the notice on the County Council's website. In addition, as a matter of best practice rather than legal requirement, the County Council also places copies of the notice on site to provide local people with the opportunity to comment on the application. 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") is situated in the Bybrook area of the town of Ashford. It is a roughly L-shaped site that is bounded along its longest side (to the north-west) by Beecholme Drive, to the north-east by Grasmere Road and on the remaining sides by the rear of properties in Bybrook Road and Beecholme Drive, as shown on the plan at **Appendix A**.
7. The application site consists of a largely unenclosed grass open space and includes a fenced children's play area, as shown on the aerial photograph at **Appendix C**.

The case

8. The application has been made on the grounds that the application site has become a village green by virtue of the actual use of the land by the local inhabitants for a range of recreational activities 'as of right' for well in excess of 20 years.
9. Included in the application were 10 user evidence questionnaires from local residents demonstrating use of the application site over a period in excess of 20 years. A summary of the user evidence is attached at **Appendix D**.
10. Also submitted in support of the application are a number of photographs showing the application site and use of it by local children, as well as a petition containing approximately 330 signatures and a copy of a report by Ashford Borough Council's Research and Development Manager concerning the proposed disposal of the land to enable the development of 19 environmentally sustainable homes.

Consultations

11. Consultations have been carried out as required and the following comments have been received.
12. The Kennington Community Forum wrote in support of the application. It described the application site as a small parcel of land in a high density housing estate that was used for informal recreation by local children for many years. The Forum highlighted the fact that Bybrook has been identified in Ashford Borough Council's draft Open Space Strategy as having significant deprivation with regard to open space provision, and expressed concern that the deprivation of open space in the area may be contributing to an increase in anti-social behaviour in the area.
13. The Campaign to Protect Rural England also wrote in support of the application on the basis that the area in which the application site is situated has an

acknowledged lack of public open space and the loss of the application site to future development would have a detrimental impact on the local environment.

14. Three local residents also wrote in support of the application. They added their own evidence of use and stated that the application site is well used by the local children for playing games and by local dog-walkers. One objection was received from a local resident on the basis that he did not consider that the land had been used in the requisite manner (although this was received after the formal consultation period had ended).

Landowner

15. The application site is owned by Ashford Borough Council. Mrs. S. Smith, of the Council's Legal and Democratic Services, has objected to the application on the Borough Council's behalf.
16. The objection is made on the grounds that it is considered by the Borough Council that the land is open space falling within the definition contained in section 20 of the Open Spaces Act 1906: i.e. "*land, whether inclosed or not, on which there are no buildings... and the whole or remainder of which is laid out as a garden or is used for the purposes of recreation...*". Thus, it is the Borough Council's contention that the application site is held by the Borough Council under a statutory trust thus rendering use of the land by the local residents 'by right' (because, in the Borough Council's view, they have the right to use it by virtue of it being held as open space) and not 'as of right'.
17. The Borough Council also helpfully sets out a brief history of the land and explains that it was originally acquired by the Borough Council's predecessor (the Ashford Urban District Council) in 1962, with the majority of the site being acquired under the provisions of the Housing Act 1957. The blocks of flats in Bybrook Road were built in the mid-1960s with the development of Beecholme Drive taking place in the early 1980s.
18. The objection is supported by a number of photographs showing the application site and a copy of the Borough Council's Research and Development Manager's report dated 18th October 2007 entitled 'Disposal of land off Beecholme Drive, Kennington to enable the development of an exemplar zero-carbon, mixed-tenure housing scheme' (also supplied by the applicant, see paragraph 10 above). The report refers to only part of the application site; a section of 0.47 acres abutting Beecholme Drive. It describes the application site as 'poor grade open space' and 'a grassed area, which Housing Managers report is regularly used for dumping rubbish and occasionally abandoned cars'. The report makes a recommendation that the Executive agree the disposal of the land subject to (amongst other things) obtaining the necessary consent from the Secretary of State under Section 32 of the Housing Act 1985 for disposal of housing land and the consideration and resolution of any objections received under the Open Spaces Act 1906.
19. At the time of writing this report, it was understood that although the necessary consent from the Secretary of State had been obtained, the submission of the planning application was on hold pending the outcome of the Village Green application.

Legal tests

20. In dealing with an application to register a new Village Green the County Council must consider the following criteria:

- (a) *Whether use of the land has been 'as of right'?*
- (b) *Whether use of the land has been for the purposes of lawful sports and pastimes?*
- (c) *Whether use has been by a significant number of inhabitants of a particular locality, neighbourhood or a neighbourhood within a locality?*
- (d) *Whether use has taken place over period of twenty years or more?*
- (e) *Whether use of the land 'as of right' by the inhabitants has continued up until the date of application or meets one of the criteria set out in sections 15(3) or 15(4)?*

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

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

21. The definition of the phrase 'as of right' has been considered in recent High Court case law. Following the judgement in the Sunningwell¹ case, it is now considered that if a person uses the land for a required period of time without force, secrecy or permission (*nec vi, nec clam, nec precario*), and the landowner does not stop him or advertise the fact that he has no right to be there, then rights are acquired and further use becomes 'as of right'.

22. In this case, there is no suggestion that the use of the application site by the local residents took place by force or with secrecy. It is clear from a visit to the site that it is not and does not appear to have ever been fenced off. Access is easily achieved via the footways of Beecholme Drive and Grasmere Road.

23. There is, however, a question as to whether the use of the application site for informal recreation has been by virtue of an implied permission. Where land is held by a local authority, it is important to determine the powers under which that authority originally acquired and now holds the land in order to establish whether the use of the land by the local residents has been 'as of right'.

24. It is the Borough Council's contention that the land is held under the Open Spaces Act 1906. Section 9 of this Act enables local authorities to acquire open space. Section 10 provides that '*a local authority who have acquired... any open space... shall... hold and administer the open space... in trust to allow, and with a view to, the enjoyment thereof by the public as an open space within the meaning of this Act... [and] maintain and keep the open space... in a good a decent state*'. Section 15 allows the local authority to make byelaws to regulate the use of the open space.

25. The effect of these provisions is that if land is held under the Open Spaces Act 1906, it is held under a public statutory trust and the public have a statutory right

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

to use the land for recreational purposes. Their use of the land is 'by right' rather than 'as of right' and thus they cannot acquire a right which they already have.

26. This was confirmed in a House of Lords case known as Beresford², in which Lord Walker said "*where land is vested in a local authority on a statutory trust under section 10 of the Open Spaces Act 1906, inhabitants of the locality are beneficiaries of a statutory trust of a public nature, and it would be very difficult to regard those who use the park or other open space as trespassers... the position would be the same if there were no statutory trust in the strictest sense, but land had been appropriated for the purpose of public recreation*".
27. Despite the Borough Council's position, there is evidence to suggest that the land is not held under the Open Spaces Act 1906. It cannot be disputed that the land does fall within the definition of 'open space' referred to in paragraph 16 above. This definition, however, could apply to any piece of land and to say that land is formally held as open space simply on the basis of this definition (in the absence of any evidence of a formal appropriation as open space) is too simplistic.
28. The assertion that the land is formally held as public open space is also in direct contrast with the fact that the land was acquired under the Housing Act 1957 and that the Borough Council has found it necessary to seek consent from the Secretary of State under section 32 of the Housing Act 1985 for the disposal of 'housing land' in relation to the proposed development of part of the application site.
29. In the Beresford case, Lord Scott commented that "*it would be, in my view, an arguable proposition that if the current use of land acquired by a local authority were use for the purposes of recreation and **if the land had not been purchased for some other inconsistent use and the local authority had the intention that the land should continue to be used for the purposes of recreation, the provisions of section 10 [of the Open Spaces Act 1906] would apply***" (emphasis added in bold)³. Hence, it could be argued that the acquisition of land for housing purposes is not consistent with the land being held as a public open space and therefore the provisions of section 10 of the Open Spaces Act 1910 do not apply. This being the case, then it can be concluded that use of the application site is likely to have been 'as of right'.

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

30. Legal principle does not require that recreational activities of this nature be limited to certain ancient pastimes (such as maypole dancing); indeed, '*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*'⁴.
31. In this case, the evidence demonstrates that a range of recreational activities have taken place on the land, including dog-walking and training, nature-watching and playing with children. The table summarising evidence of use by local

² *R(Beresford) v Sunderland City Council* [2003] UKHL 60 at paragraph 87 (Lord Rodger)

³ *R(Beresford) v Sunderland City Council* [2003] UKHL 60 at paragraph 30

⁴ *R v Suffolk County Council ex parte Steed* (1995) 70 P&CR 487 at page 503

residents at **Appendix D** shows the full range of activities claimed to have taken place.

32. Reference is also made to community events, and in particular annual bonfire and fireworks celebrations. However, it is not clear as to whether this has taken place over the whole of the requisite 20 year period or whether any special permission was ever sought from the Borough Council regarding this event.

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

33. The right to use a 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. Identifying the relevant “locality” or “neighbourhood within a locality” can be problematic but it does not matter if the applicant fails to precisely defined the correct locality in his application; the burden is not on the applicant to establish the correct locality at the time of application, but rather on the Registration Authority to satisfy itself that there is a relevant locality (or neighbourhood) at the time of registration⁵.

“locality”

34. The definition of locality for the purposes of a village green application has been the subject of much debate in the courts and there is still no definite rule to be applied. In the Cheltenham Builders⁶ 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’.
35. At part 6 of the application form, the applicant specifies the locality as ‘Bybrook ward and Bockhanger’. As shown on the plan at **Appendix E**, the application site is situated on the boundary of the two Borough Council wards, with some users residing in Bybrook ward and some residing in Bockhanger ward. Although it has been argued that, on a strict interpretation of section 15, ‘locality’ means a single administrative unit⁷, in the Oxfordshire case, Lord Hoffman said this: ‘The fact that the word “locality” when it first appears... must mean a single locality is no reason why the context of “neighbourhood within a locality” should not lead to the conclusion that it means “within a locality or localities”⁸’.
36. Alternatively, it has also been held by the Courts that an ecclesiastical parish could form a recognised locality since they are known to the law and have defined

⁵ *Oxfordshire County Council v Oxford City Council* [2006] 4 All ER 817

⁶ *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at page 90

⁷ *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85

⁸ *Oxfordshire County Council v Oxford City Council* [2006] 4 All ER 817 at page 830

boundaries⁹. The application site falls within the ecclesiastical parish of St Mary's Kennington and it could be that this would form the relevant locality in this case.

“a significant number”

37. The word “significant” in this context does not mean considerable or substantial: *‘a neighbourhood may have a very limited population and a significant number of the inhabitants of such a neighbourhood might not be so great as to properly be described as a considerable or a substantial number... what matters is that the number of people using the land in question has to be sufficient to indicate that the land is in general use by the community for informal recreation rather than occasional use by individuals as trespassers’*¹⁰. Thus, what is a ‘significant number’ will depend upon the local environment and will vary in each case depending upon the location of the application site.

38. In this case, the application has been accompanied by 10 user evidence forms from local residents. Taking the combined Bybrook and Bockhanger Borough Council wards as the “locality”, it could be argued that use by 10 people out of an urban population of approximately 5100¹¹ does not represent a ‘significant number’ to demonstrate that the land was in general use by local residents. However, it is recognised that those completing the forms provide only a representative sample and it is also important to note that a petition containing approximately 330 names has also been submitted in support of the application. If those signing the petition are also using the application site, then this may be sufficient to satisfy the ‘significant number’ test.

39. In cases where the “locality” is so large that it is difficult to show that the application site has been used by a significant number of people from that locality (as is the case here), it will be necessary to consider whether there is a relevant “neighbourhood” within the wider locality.

“neighbourhood within a locality”

40. 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’*¹².

41. In this case, it is difficult to identify the relevant neighbourhood as this is a very subjective concept (given that it need not be a recognised administrative unit) and one which is best identified by those who live in the area.

42. Given the proposed recommendation, it is not necessary to conclude on this issue as this is a point which could easily be clarified at a Public Inquiry and the exact “neighbourhood within a locality” would become clear during the course of hearing

⁹ *R (Laing Homes Ltd.) v Buckinghamshire County Council* [2003] 3 EGLR 70

¹⁰ *R (Alfred McAlipne Homes Ltd.) v Staffordshire County Council* [2002] EWHC 76 at paragraph 71

¹¹ As at the 2001 census

¹² *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at page 92

the witness evidence. It is evident that there is a defined locality (be that the combined Borough Council wards of Bybrook and Bockhanger or the ecclesiastical parish of St. Mary's, Kennington) but there is a question as to whether there is a need to establish a sufficiently 'distinct and identifiable community' that would form a neighbourhood. This latter point requires further clarification.

43. In relation to the 'significant number' test, the evidence as currently produced is unlikely to be sufficient to meet this test given that the application site is located in an urban area. However, there is evidence from the petition that the application site is potentially used by a far greater number of people who have not provided evidence of use in relation to the application site. A Public Inquiry would allow this evidence to be heard and a more informed conclusion to be reached with regard to whether the land has been used by a 'significant number' of local residents.

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

44. In order to qualify for registration, it must be shown that the land in question has been used for a full period of twenty years up until the date of application. In this case, the application was submitted in 2008 and therefore the relevant twenty-year period ("the material period") is 1988 to 2008.

45. From the user evidence submitted, there appears to have been use of the land over a considerable period dating back far beyond 1988. Four of the witnesses have used the land for over 20 years, with some use dating back to the early 1970s. In addition, all of the users state in their questionnaires that they have witnessed other people using the land for a range of recreational activities.

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

46. The Commons Act 2006 introduces a number of transitional arrangements regarding the actual use of the land in relation to the making of the application to register it as a Village Green. These are set out at paragraph 4 above.

47. In this case, there is no suggestion that the use of the land has ceased prior to the making of the application. The application appears to have been prompted by concerns regarding the future development of the site rather than any recent attempts to deny access to the site. The open nature of the site means that people need only step onto the application site from a public highway without meeting any barriers or obstructions. The only way in which access could be prevented is to fence the site in its entirety: no mention is made of this ever having happened by any of the witnesses and there is no evidence of the remains of any fencing visible on the site itself.

48. Therefore, it appears that use of the land has continued up until the date of application and as such it is not necessary to consider the other tests set out in sections 15(3) and 15(4) of the Act.

Conclusion

49. Although the relevant regulations¹³ provide a framework for the initial stages of processing the application (e.g. advertising the application, dealing with objections etc), they provide little guidance with regard to the procedure that a Commons Registration Authority should follow in considering and determining the application. In recent times it has become relatively commonplace, in cases which are particularly emotive of where the application turns on disputed issues of fact, for Registration Authorities to conduct a non-statutory Public Inquiry. This involves appointing an independent Inspector to hear the relevant evidence and report his/her findings back to the Registration Authority.
50. Such an approach has received positive approval by the Courts, most notably in the Whitney¹⁴ case in which Waller LJ said this: *'the registration authority has to consider both the interests of the landowner and the possible interest of the local inhabitants. That means that there should not be any presumption in favour of registration or any presumption against registration. It will mean that, in any case where there is a serious dispute, a registration authority will almost invariably need to appoint an independent expert to hold a public inquiry, and find the requisite facts, in order to obtain the proper advice before registration'*.
51. It is important to remember, as was famously quoted by the judge in another High Court case¹⁵, that *'it is no trivial matter for a landowner to have land, whether in public or private ownership, registered as a town green... [the relevant legal tests] must be 'properly and strictly proved'*. This means that it is of paramount importance for a Registration Authority to ensure that, before taking a decision, it has all of the relevant facts available upon which to base a sound decision. It should be recalled that the only means of appeal against the Registration Authority's decision is by way of a Judicial Review in the High Court.
52. In this case, there are a number of grey areas which require further clarification, in particular the relevant neighbourhood and establishing whether a 'significant number' of the local residents have used the land. Although it can be said that there are no major deficiencies in the evidence or any significant knock-out blows presented by the objector so as to recommend complete rejection of the application, the evidence (as currently available) is not sufficient to warrant the registration of the land as a Village Green.
53. A Public Inquiry would allow witnesses to give more detailed evidence that could be subject to relevant questions from the Inspector. This would provide a greater clarity to the user evidence than is currently available in paper form and enable the Registration Authority to come to a more informed decision on the case.

Recommendations

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

¹³ Commons Registration (England) Regulations 2008

¹⁴ *R (Whitney) v Commons Commissioners* [2004] EWCA Civ 951 at paragraph 66

¹⁵ *R v Suffolk County Council, ex parte Steed* [1997] 1EGLR 131 at page 134

Accountable Officer:

Dr. Linda Davies – Tel: 01622 221500 or Email: linda.davies@kent.gov.uk

Case Officer:

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

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

Background documents

APPENDIX A – Plan showing application site

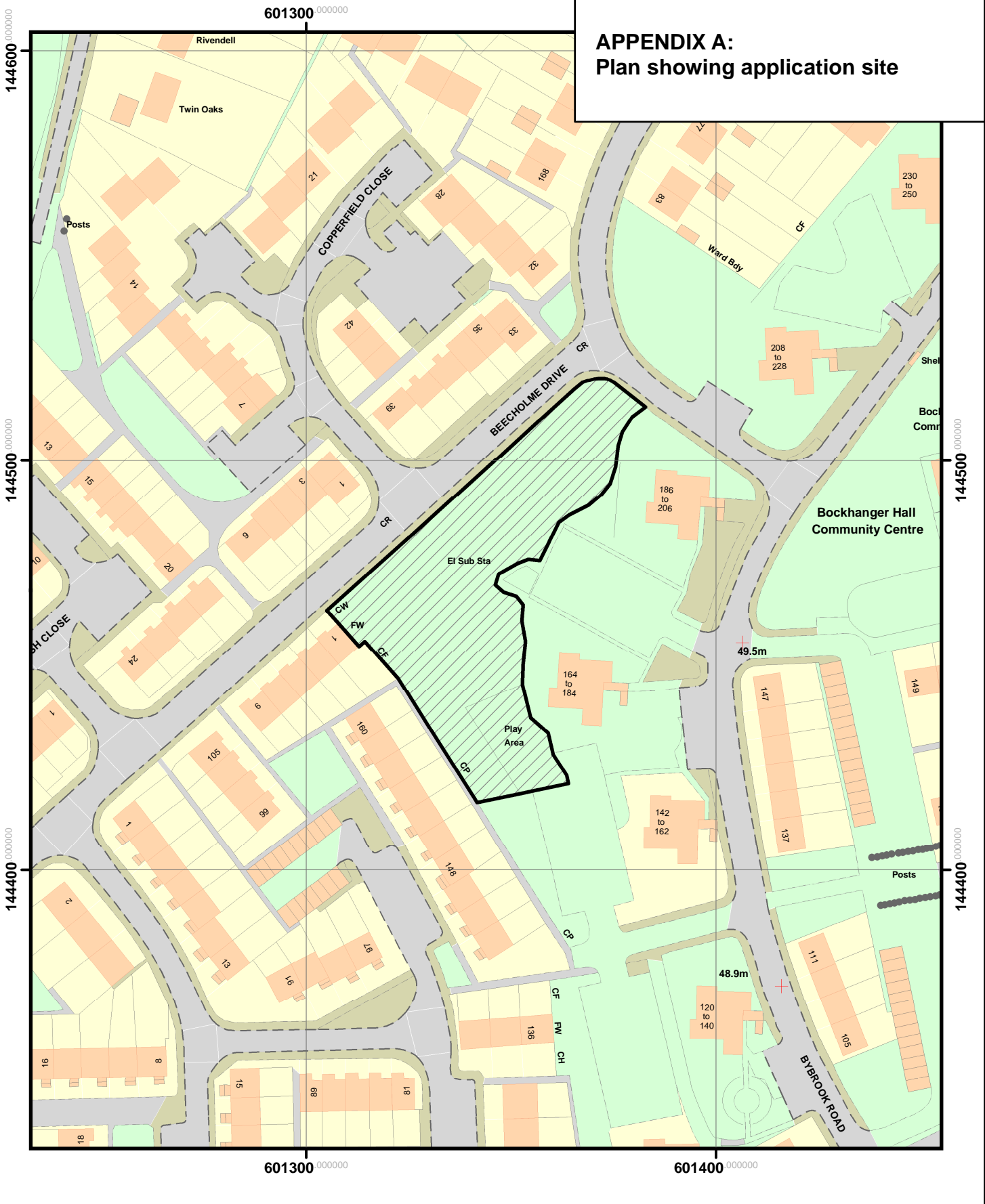
APPENDIX B – Copy of application form

APPENDIX C – Aerial photograph showing the application site

APPENDIX D – Table summarising user evidence

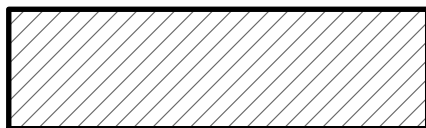
APPENDIX E – Plan showing the locality within which users reside

**APPENDIX A:
Plan showing application site**



Scale 1:1250

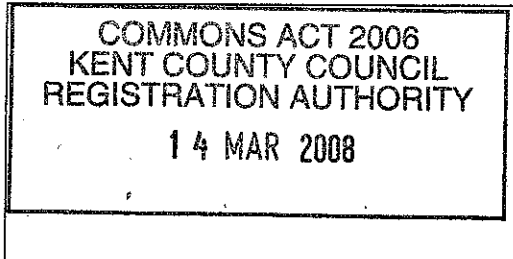
Land subject to Village Green
application at Beecholme Drive,
Bybrook, near Ashford



Commons Act 2006: Section 15

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

Official stamp of registration authority indicating valid date of receipt:



Application number:

Register unit No(s):

VG number allocated at registration:

(CRA to complete only if application is successful)

Applicants are advised to read the 'Guidance Notes for the completion of an Application for the Registration of land as a Town or Village Green' and to note the following:

- All applicants should complete questions 1–6 and 10–11.
- Applicants applying for registration under section 15(1) of the 2006 Act should, in addition, complete questions 7–8. Section 15(1) enables any person to apply to register land as a green where the criteria for registration in section 15(2), (3) or (4) apply.
- Applicants applying for voluntary registration under section 15(8) should, in addition, complete question 9.

1. Registration Authority

To the

KENT COUNTY COUNCIL
INVICTA HOUSE
COUNTY HALL
MAIDSTONE
ME 14 1XX

Note 1
Insert name of registration authority.

Note 2

If there is more than one applicant, list all names. Please use a separate sheet if necessary. State the full title of the organisation if a body corporate or unincorporate.

If question 3 is not completed all correspondence and notices will be sent to the first named applicant.

2. Name and address of the applicant

Name:

Full postal address:

Telephone number: (incl. national dialling code)

Fax number: (incl. national dialling code)

E-mail address:

3. Name and address of solicitor, if any

Name:

Firm:

Full postal address:

Post code

Telephone number: (incl. national dialling code)

Fax number: (incl. national dialling code)

E-mail address:

Note 3

This question should be completed if a solicitor is instructed for the purposes of the application. If so all correspondence and notices will be sent to the person or firm named here.

Note 4

For further advice on the criteria and qualifying dates for registration please see section 4 of the Guidance Notes.

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

4. Basis of application for registration and qualifying criteria

If you are the landowner and are seeking voluntarily to register your land please tick this box and move to question 5.

Application made under **section 15(8)**:

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

Section 15(2) applies:

Section 15(3) applies:

Section 15(4) applies:

If **section 15(3) or (4)** applies please indicate the date on which you consider that use as of right ended.

If **section 15(6)*** applies please indicate the period of statutory closure (if any) which needs to be disregarded.

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

Name by which usually known:

ONLY CORNER OF BEECHOLME DRIVE
and GRASMERE

Location:

BEECHOLME DRIVE,
BYBROOK,
KENNINGTON, ASHFORD, KENT, TN 24

Shown in colour on the map which is marked and attached to the statutory declaration.

Common land register unit number (if relevant) *

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

Please show the locality or neighbourhood within the locality to which the claimed green relates, either by writing the administrative area or geographical area by name below, or by attaching a map on which the area is clearly marked:

BYBROOK WARD
AND BOCKHANGER

Tick here if map attached:

Note 5

The accompanying map must be at a scale of at least 1:2,500 and show the land by distinctive colouring to enable it to be clearly identified.

* Only complete if the land is already registered as common land.

Note 6

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

7. Justification for application to register the land as a town or village green

Note 7

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

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

As this land has been used for well over twenty years without objection from the owner, Ashford Borough Council.

But now believe this is now under threat of being developed.

As it ~~is~~ is only 0.47 acre and Bybrook and Bockhenger is considered to have deprivation with regard to open space, having less than half the optimum amount of open space.

We have been told 19 homes could be built, taking up all the land, with no space for play left. We agree with 100 homes being built, but not at the expense of using only the last piece of green, where the young can have a multi use games area placed.

Note 8

Please use a separate sheet if necessary.

Where relevant include reference to title numbers in the register of title held by the Land Registry.

If no one has been identified in this section you should write "none"

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

Note 9

List all such declarations that accompany the application. If none is required, write "none".

This information is not needed if an application is being made to register the land as a green under section 15(1).

Note 10

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

Please use a separate sheet if necessary.

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

ASHFORD BOROUGH COUNCIL
CIVIC CENTRE
TANNERY LANE
ASHFORD
KENT
TN23 1PL

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

10. Supporting documentation

Site Plan Scale 1:1250
Area Plan Bybrook Road
and small overall map. TN24

Note 11

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

11. Any other information relating to the application

Asford Borough Council
Hyde Housing
See notes in 7

Note 12

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

Date:

15th February 2008

Signatures:

P A Boorman

REMINDER TO APPLICANT

You are advised to keep a copy of the application and all associated documentation. Applicants should be aware that signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence. The making of a false statement for the purposes of this application may render the maker liable to prosecution.

Data Protection Act 1998

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

Statutory Declaration In Support

To be made by the applicant, or by one of the applicants, or by his or their solicitor, or, if the applicant is a body corporate or unincorporate, by its solicitor, or by the person who signed the application.

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

P.A. Boorman...¹ solemnly and sincerely declare as follows:—

² Delete and adapt as necessary.

1.² I am ((the person (~~one of the persons~~) who (has) (~~have~~) signed the foregoing application))-(~~the solicitor to (the applicant) (³ one of the applicants~~)).

³ Insert name if Applicable

2. The facts set out in the application form are to the best of my knowledge and belief fully and truly stated and I am not aware of any other fact which should be brought to the attention of the registration authority as likely to affect its decision on this application, nor of any document relating to the matter other than those (if any) mentioned in parts 10 and 11 of the application.

3. The map now produced as part of this declaration is the map referred to in part 5 of the application.

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

~~4.⁴ I hereby apply under section 15(8) of the Commons Act 2006 to register as a green the land indicated on the map and that is in my ownership. I have provided the following necessary declarations of consent:~~

- ~~(i) a declaration of ownership of the land;~~
- ~~(ii) a declaration that all necessary consents from the relevant leaseholder or proprietor of any relevant charge over the land have~~

Cont/

⁴ Continued

been received and are exhibited with this declaration; or
(iii) where no such consents are required, a declaration to that effect.

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act 1835.

Declared by the said

PATRICIA A BOORMAN

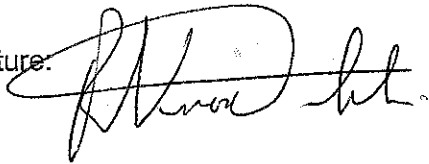
at Smeeth

this 15th day of February 2008

P A Boorman
Signature of Declarant

Before me * RICHARD KNOX-JOHNSTON
JUSTICE OF THE PEACE

Signature:



Address: Old Well House, THE STREET, HARTLIP
SITTINGBOURNE, KENT ME9 7TG.

Qualification: JUSTICE OF THE PEACE

* The statutory declaration must be made before a justice of the peace, practising solicitor, commissioner for oaths or notary public.

Signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence.

REMINDER TO OFFICER TAKING DECLARATION:

Please initial all alterations and mark any map as an exhibit



Site Plan Scale: 1:1250 @A3



Bybrook Environmental Project

Extend to existing pattern existing car park between 120 & 142.

By keep one from new access along front of 98-118 instead of existing to new parking. High X may show 106

Estate:

- ⑦ Lower estate area 1.22ha
- ⑧ Upper estate area 0.72ha

Modification	Date
Project: Bybrook Environmental Project, Bybrook Road, Kerlington	



Drawing
Site Plan
Details
FOOTPATHS THROUGH THE SITE

601300.000000

Appendix C:
Aerial photograph showing the
application site (dated 2003)



144500.000000

144500.000000

144400.000000

144400.000000



Scale 1:750

601300.000000

601400.000000

APPENDIX D:
Table summarising user evidence

NAME	PERIOD OF USE	ACTIVITIES	FREQUENCY OF USE	CHALLENGES/DETERRENTS TO USE AND OTHER COMMENTS
Mrs. P. Boorman	1987 – 2008 (21 years)	Walking to cross to other parts of the estate, taking children to play area	Twice weekly	None. Saw other people using the land for a range of activities on a regular basis, including football games and bonfire on 5 th November.
Mrs. P. Colvin	1971 – 2008 (37 years)	Walking, playing with children, building snowmen in winter, watching others play football	Daily	None. Saw other people using the land for activities including fireworks, football, kite flying, cycling, picnics and BBQs
Mr. D. Colvin	1995 – 2008 (13 years)	Playing football, exercise, using remote control cars, playing with siblings	Daily	None. Saw other people using the land for a range of activities.
Mr. H. Dear	2003 – 2008 (5 years)	Walking across	Occasionally	None. Have seen the land being used for football, games and other activities.
Ms. M. Goodwin	1993 – 2008 (15 years)	Playing with children, cycling, football, frisbee	Summer months	None – the land has never been fenced off. The land is also used for an annual bonfire party
Mr. and Mrs. Hover	1960 – 2008 (48 years)	Walking across to get to shops and playing with children	Daily	None. Saw the land being used for dog walking and football playing.
Mrs. E. Morrison	1986 – 2008 (22 years)	Walking across it, socialising, watching football, snowballing in winter	Daily	None. The land is used by the local football club and for bonfire night.
Ms. C. Oram	2004 – 2008 (7 years)	Walking dog, playing football, taking children to the park	Daily	None. Land is used for a range of activities, including fireworks, team games, picnicking, kite flying, cycling.
Mrs. D. Peswani	1996 – 2008 (12 years)	Walking socialising, playing with children	Regularly – several times per week	None – no boundaries or hedges to impede access. Regular community football games take place and a bouncy castle in the summer.
Mrs. M. Relf	1998 – 2008 (10 years)	Playing with children	Twice weekly	None. The land has been used for a range of activities, including bonfire night celebrations.

Appendix E:
Plan showing Borough Council ward boundaries and ecclesiastical parish

