

Applications to register land at Cryalls Lane at Sittingbourne as a new Town or Village Green

A report by the PROW and Access Manager to Kent County Council's Regulation Committee Member Panel on 23rd October 2017.

Recommendations:

I recommend that:

- (a) the original application (made on 25th March 2015) be rejected; and
 - (b) a Public Inquiry be held into the resubmitted application (made on 30th October 2015) to clarify the issues
-

Local Member: Mr. M. Whiting (Swale West)

Unrestricted item

Introduction

1. The County Council has received two applications to register land at Cryalls Lane at Sittingbourne as a new Town or Village Green from local resident Mr. M. Baldock ("the applicant"). The first application ("the original application") was made on 25th March 2015 and allocated the application number VGA665, whilst the second application ("the resubmitted application") was made on 30th October 2015 and allocated the application number VGA666. A plan of the site is shown at **Appendix A** to this report and copies of the relevant application forms are attached at **Appendix B** (the original application) and **Appendix C** (the resubmitted application).

Procedure

2. The applications have been made under section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2014.
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 one year prior to the date of application**¹, e.g. by way of the erection of fencing or a notice (section 15(3) of the Act).
5. As a standard procedure set out in the 2014 Regulations, the County Council must publicise the application by way of a copy of the notice on the County

¹ Reduced from two years to one year for applications made after 1st October 2013, due to the coming into effect of section 14 of the Growth and Infrastructure Act 2013.

Council's website and by placing copies of the notice on site to provide local people with the opportunity to comment on the application. Copies of that notice must also be served on any landowner(s) (where they can be reasonably identified) as well as the relevant local authorities. 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 on the western side of Cryalls Lane, opposite its junction with Brisbane Avenue, at Sittingbourne. It comprises approximately 9.1 acres (3.7 hectares) of former orchards, accessed via an opening opposite Brisbane Avenue. There are no recorded Public Rights of Way crossing or abutting the application site.
7. The application site is shown in more detail on the plan at **Appendix A**.

The original application

8. As a result of the Growth and Infrastructure Act 2013, when a Village Green application is received (and prior to accepting it for consideration), the County Council is required to write to the relevant planning authorities to ascertain whether the application site is affected by development and, more specifically, one of the 'trigger events' set out in Schedule 1A of the Commons Act 2006². If the land is affected by a 'trigger event' (and there has been no corresponding 'terminating event'), then the right to apply for Village Green status ceases to exist and the County Council is unable to entertain the application (which will be returned to the applicant).
9. In this case, the relevant planning authorities were consulted (including Swale Borough Council), and all confirmed that the land was not subject to any 'trigger events'. On the basis of this advice, the County Council proceeded to publish notice of the application for consultation.
10. However, during the consultation process, the landowners' representative noted that the application site had been identified in the draft Local Plan published for consultation by Swale Borough Council on 19th August 2013. As such, it was subject to a 'trigger event', namely that '*a draft of a development plan document which identifies the land for potential development is published for consultation...*'. None of the corresponding 'terminating events' – namely that the plan is withdrawn, the plan is adopted, or a period of two years from publication date had expired – applied and, therefore, the landowners position was that right to make the Village Green application was suspended, such that the County Council should not have accepted the application for consideration, and ought to reject it.
11. In light of the original advice provided (that the land was not affected by any 'trigger events'), further information was sought from the Borough Council on this point. Having reviewed its records, the Borough Council confirmed that the

² See <http://www.legislation.gov.uk/ukpga/2006/26/schedule/1A> and subsequent amendments at <http://www.legislation.gov.uk/ukxi/2014/257/article/3/made>. An example of a 'trigger event' is the publication of an application for planning permission in respect of the land; a corresponding 'terminating event' may include the withdrawal of such an application, or a decision by the planning authority to decline it.

application site had indeed been identified in the draft Local Plan, but that the allocation had been subsequently deleted at a Panel meeting on 20th February 2014.

12. Advice was sought from Kent Legal Services on this issue and the advice obtained was that the County Council ought to reject the application on the basis that there was a 'trigger event' affecting the application site as at the date of the application.

The resubmitted application

13. Prior to the applicant being notified of the advice received in respect of the original application, a fresh application was submitted by him on 30th October 2015. The resubmitted application was almost identical to the original application, and relied upon largely the same user evidence.
14. As required, the planning authorities were contacted to see whether the resubmitted application was subject to any 'trigger events'. Swale Borough Council confirmed that it had not been allocated in the (by then) published version of the Swale Borough Local Plan, and although an application for planning permission had been received for a change of use of the land for the keeping of horses and associated stable block, the planning application had not been publicised until 27th November 2015 – i.e. after the making of the Village Green application.
15. As such, as at the date of the resubmitted Village Green application on 30th October 2015, there were no 'trigger events' affecting the land in question and the County Council was therefore able to proceed with the consideration of the resubmitted application.

The case

16. The application has been made on the grounds that the land has been in use for various recreational activities for over 20 years without either permission or obstruction, and without any break in that usage.
17. Included in support of the application were 13 user evidence questionnaires and a further 22 letters of support from local residents. A summary of the user evidence submitted in support of the application is attached at **Appendix D**.

Consultations

18. Consultations have been carried out as required.
19. Sixty-two letters and emails of support were received from local residents, including an email of support from Mr. Truelove in his capacity as former KCC Member for Swale Central and the local Borough Councillor.

Landowners

20. The majority of the application site registered with the Land Registry (under title number K492436) to Ward Homes Ltd. (now part of BDW Trading Ltd.). A parcel

of land in the north-eastern corner of the application site is registered to South Eastern Power Networks PLC under title number TT7600. Both landowners have made representations in objection to the application.

South East Power Networks PLC (“SEPN”)

21. SEPN is responsible for the Sittingbourne West Substation situated in the north-western corner of the application site (but excluded from it). Following a review of the electricity network in the area, additional land was acquired on the southern and western boundaries of the substation in order to increase its size and capacity. Planning permission for this purpose was granted by Swale Borough Council in 2011 (reference SW/11/0750). At the time of the objection, preliminary site works had taken place and a new security fence installed around the electrical extension area, whilst ground investigations in connection with new underground cables were underway and a further fence (to define ownership boundary) was due to be erected later on in the project. SEPN objected to the Village Green application on the basis that the completion of the substation extension, and the subsequent supply enhancement it will provide, is vital to ensure that electricity distribution requirements for the area can be met.
22. The objection from SEPN has highlighted the existence of the 2011 planning consent in respect of that part of the application site, which the Borough Council had not noted in its response to the ‘trigger events’ enquiry. The effect of the 2011 planning consent would appear to be that the right to apply for Village Green status is suspended in respect of the parcel of land owned by SEPN, such that this section is not capable of consideration for Village Green status³. The applicant accepts this to be the case.

Ward Homes Ltd (“the main objector”)

23. Ward Homes Ltd. (which is now a group company of BDW Trading Ltd.) acquired the application site in its entirety on 3rd September 2003. On 21st September 2012, a parcel of that land was transferred to SEPN for the purposes of expanding their sub-station site at the north-eastern corner of the application site.
24. The main objector submits that it filed a planning application with Swale Borough Council on 21st October 2015, but its publication was unduly delayed until November 2015. Accordingly, the land ought to have been subject to a trigger event had normal planning procedures been followed and in the absence of any unusual delay. In this regard, the delay in publicising the planning application is a matter between the main objector and the Borough Council; the County Council is only able to consider what *actually* happened (regardless of the reasoning) and in this case the planning application was publicised after the submission of the Village Green application, such that no trigger event can be said to apply in respect of the resubmitted application (as set out above).
25. The main objector has also advanced the following grounds of objection:

³ It is to be noted (for completeness) that there was some debate as to whether the 2011 planning consent had been implemented within the required three-year period, but following further enquiries of SEPN by the Borough Council’s planning team, the Borough Council was satisfied that works had commenced on site in 2013 and accordingly there had been no breach of planning control.

- Use of the application site has not taken place 'as of right' by virtue of notices and physical obstructions on the application site;
- Much of the evidence relied upon involves walking largely linear or circular routes which is more akin to rights of way usage (and indeed the existence of thick vegetation on the application site precludes use other than walking linear routes);
- Much of the use relied upon by the applicant falls to be discounted as it comes from people living outside of the neighbourhood;
- The applicant himself does not live in the claimed neighbourhood and cannot prove from his own evidence that the application site should be registered; and
- The number of witnesses is insufficient to conclude that use has been by a 'significant number' of local residents.

26. The main objector's firm view is that unless the County Council is minded to summarily reject the application then, in light of the scale of the application and the plain disputes as to fact, a Public Inquiry is the only reasonable and proper method of determining the matter.

Legal tests

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

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

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

28. 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.

29. 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'*). In this context, force refers not only to physical force, but to any use which is contentious or exercised under protest⁴: *"if, then, the inhabitants' use of the land is to give rise to the possibility of an application*

⁴ *Dalton v Angus* (1881) 6 App Cas 740 (HL)

*being made for registration of a village green, it must have been peaceable and non-contentious*⁵.

30. In this case, the main objector asserts that a variety of works were undertaken on the application site in 2003/2004, namely:

- A ditch was constructed along Cryalls Lane in 2004 to prevent vehicular access; and
- At least 2 notices were erected along Cryalls Lane in late 2003 (and replaced in 2006) stating that the land was private property and those using it did so with the consent of the landowner.

That evidence is supported by written statements from two former employees of the main objector who were involved with the site during this time, although it has not been possible to locate any photographs or confirm the precise location or date of erection of the notices.

31. Additionally, the main objector's evidence is at odds with the applicant's witnesses' recollections in this regard, the vast majority of whom have no knowledge whatsoever of any signage or other barrier to use. One recalls that '*a ditch was dug along the boundary with Cryalls Lane to keep travellers out but pedestrian access was retained by way of two small footbridges*', whilst another states that although the land was cleared and a ditch dug there were still four places where the field was '*easily accessible from Cryalls Lane*'.

32. There is very clearly a conflict in this regard which is difficult to resolve on paper. In the absence of any dated photographs of the signage or other incontrovertible documentary evidence, it is impossible to conclude definitively that use has not been 'as of right'. Similarly, the main objector's submission that permissive notices were in place, albeit contrary to the user evidence, cannot simply be ignored. The only way in which this conflict can sensibly be resolved is therefore by way of further oral testimony from witnesses on both sides of the dispute.

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

33. Lawful sports and pastimes can be commonplace activities including dog walking, children playing, picnicking and kite-flying. Legal principle does not require that rights of this nature be limited to certain ancient pastimes (such as maypole dancing) or for organised sports or communal activities to have taken place. The Courts have held that '*dog walking and playing with children [are], in modern life, the kind of informal recreation which may be the main function of a village green*'⁶.

34. The summary of evidence of use by local residents at **Appendix D** shows the activities claimed to have taken place on the application site. These include walking (with or without dogs), fruit picking, picnics and playing with children.

35. In cases (such as this) where the majority of the evidence relied upon comprises walking, 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

⁵ *R (Lewis) v Redcar and Cleveland Borough Council* [2010] UKSC 11 at paragraph 92 per Lord Rodger

⁶ *R v Suffolk County Council, ex parte Steed* [1995] 70 P&CR 487 at 508 and approved by Lord Hoffman in *R v. Oxfordshire County Council, ex parte Sunningwell Parish Council* [1999] 3 All ER 385

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 Homes⁷ 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 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'*.

36. The main objector's position in this regard is that, save for a period in 2004, the application site has been overgrown with thick vegetation such that use of it would necessarily have been restricted to worn paths or tracks; this is shown in photographs taken in August 2013 and March 2014, and such tracks are also visible on aerial photographs.
37. That applicant's position is that the fact that the land has been more overgrown at some points does not negate the possibility of usage, and such overgrowth is entirely compatible with (if not essential to) some of the activities relied upon (e.g. playing hide and seek or nature observation). The suggestion that the land was inaccessible is simply not accurate, and the worn paths referred to by the main objector have evolved over time as walkers meander around the land, varying their routes over time.
38. It is always difficult, when dealing with evidence presented on paper, to ascertain the precise nature of such use. The term 'walking' may connote a variety of different uses, not all of which (as noted above) may be qualifying use for the purposes of the Village Green application, and it is impossible to conclude on this point without any further, more detailed examination of the witness evidence.

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

39. 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.
40. The definition of 'locality' for the purposes of a Town or Village Green application has been the subject of much debate in the Courts. In the Cheltenham Builders⁸ 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'*.
41. 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

⁷ *R (Laing Homes) v Buckinghamshire County Council* [2003] 3 EGLR 70 at 79 per Sullivan J

⁸ *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at 90

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'*⁹.

42. In this case, the applicant relies (at part 6 of the application form) on the neighbourhood of 'New Zealand Estate' within the ecclesiastical parish of Borden.
43. There can be no dispute that the ecclesiastical parish of Borden constitutes a legally recognised unit and in the Laing Homes¹⁰ case the Court expressly accepted that an ecclesiastical parish was capable of constituting a locality for the purposes of this legislation.
44. The main objector takes issue with the applicant's chosen neighbourhood, although has not offered any evidence to indicate why the New Zealand Estate might not be capable of constituting a qualifying neighbourhood for the purposes of this application. The applicant, in response, notes that the New Zealand Estate (whose roads apparently all bear New Zealand place names) is well known locally and was designed and envisaged as a self-contained entity with a single vehicular access.
45. On the face of it, and in the absence of any submissions on this point from the main objector, there would appear to be no reason why the New Zealand estate could not be a qualifying neighbourhood.

"a significant number"

46. 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'*¹¹. Thus, it is not a case of simply proving that 51% of the local population has used the application site; what constitutes a 'significant number' will depend upon the local environment and will vary in each case depending upon the location of the application site.
47. The main objector's position is that a large number of the users live outside of the applicant's chosen neighbourhood. Of itself, this is not fatal to the application; as was noted in the Warneford Meadows¹² case, *'provided that a significant number of the inhabitants of the locality or neighbourhood are among the users, it matters not that many or even most come from elsewhere'*. Generally speaking, such evidence of use will fall to be discounted as it not 'qualifying use', but that is not to

⁹ *ibid* at page 92

¹⁰ *R (Laing Homes) v Buckinghamshire County Council* [2003] 3 EGLR 70

¹¹ *R (Alfred McAlpine Homes Ltd.) v Staffordshire County Council* [2002] EWHC 76 at paragraph 71

¹² *R (Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust and Oxford Radcliffe Hospitals NHS Trust) v Oxfordshire County Council and others* [2010] EWHC 530 (Admin) at para 71 per Waksman J

say that it is entirely without merit because it does provide corroborating evidence of the applicant's overall case that the land has been used for recreational purposes.

48. As is noted above, the 'significant number' test is a qualitative, rather than a quantitative, one. Of the 35 users listed on the summary of evidence of use by local residents at **Appendix D**, 22 live within the New Zealand Estate (i.e. the applicant's chosen neighbourhood), of which at least 6 report using the land on an at least weekly basis. A number of the users also refer to having seen others using the land on a daily basis and it is described as having been '*extensively used by local people for leisure purposes*'. Indeed, it must have come to the main objector's attention that the application site was being used in *some* way by local residents as in 2008 (i.e. some five years after the acquisition of the land) a deposit was made under section 31(6) of the Highways Act 1980 to prevent the acquisition of any public rights of way on the land.
49. However, as is noted above, what is not clear from the evidence available is whether the nature of that use would have been sufficient to indicate to the landowner that the application site was in general use by the community for wider recreational purposes, rather than merely a rights of way type of use. Without further investigation into the nature of the use taking place on the application site, and the degree to which the user evidence (if any) can be discounted, it is difficult to reach any conclusion on the 'significant number' test.

(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 one year prior to the making of the application?

50. The Commons Act 2006 requires use of the land to have taken place 'as of right' up until the date of application or, if such use has ceased prior to the making of the application, section 15(3) of the 2006 Act provides that an application must be made within one year from the date upon which use 'as of right' ceased.
51. In this case, the application is made under section 15(3) of the 2006 Act on the basis that use of the application site ceased to be 'as of right' as of 31st July 2015. No explanation is provided by the applicant regarding this choice of date, but it is presumed to have been taken from the date of the main objector's representation to the original application.
52. As is noted above, the resubmitted application was made on 30th October 2015, which is well within one year from the date upon which use 'as of right' ceased (according to the applicant).

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

53. In order to qualify for registration, it must be shown that the land in question has been used for a full period of twenty years. In this case, use 'as of right' is said to have ceased on 31st July 2015. The relevant twenty-year period ("the material period") is calculated retrospectively from this date and is therefore 1995 to 2015.

54. The user evidence submitted in support of the application (and summarised at **Appendix D**) indicates that use of the application site has taken place throughout the required twenty-year period.
55. The main objector's position is that only 10 of the witnesses claim to have used the application site for the full twenty-year period, which is insufficient to constitute a 'significant number' and, if any conclusion is to be drawn from the applicant's evidence, it is that the application site has not been used for the relevant period in the requisite manner.
56. However, there is no requirement within the legislation for each and every user to have used the application site for the minimum twenty-year period; what matters is whether the evidence of use, when taken together and viewed as a whole, signifies that the application site has been used for a full period of twenty years¹³.
57. In this case, the evidence submitted by the applicant indicates on the face of it that the land has been used (subject to any conclusions regarding the nature of that use) for at least twenty years and, indeed, this evidence would appear to be supported by the large volume of consultation responses received from many other local residents purporting to have used, or witnessed use of, the application site.

Conclusion

58. As can be seen from the summary of this case presented above, despite detailed consideration of the evidence submitted both by the applicant and the main objector, there remain many unanswered questions in respect of the legal tests. There are factual and evidence conflicts in terms of both whether use has been 'as of right' and the precise nature of the recreational use, which in turn make it difficult to conclude whether the land has been used (as required) by a 'significant number' of the residents of the neighbourhood.
59. In cases which are particularly emotive or where the application turns on disputed issues of fact, it has become commonplace for Registration Authorities to conduct a Public Inquiry into the application; there is no legal requirement to do so, but provision for such Inquiries is made in the 2014 Regulations. The holding of a Public Inquiry involves the County Council appointing an independent Inspector to hear the relevant evidence both in support of and in opposition to the application, and report his/her findings back to the County Council. The final decision regarding the application nonetheless remains with the County Council in its capacity as the Commons Registration Authority.
60. 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*

¹³ See *R (Alfred McAlpine Homes Ltd.) v Staffordshire County Council* [2002] EWHC 76 at paragraph 73 in which Sullivan J notes that it is difficult to obtain first-hand evidence of events over a period as long as 20 years and not unusual for an Inspector to be left with a 'patchwork of evidence, trying to piece together evidence from individuals who can deal with various parts of the 20-year period'.

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

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’.

61. 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.

62. In addition to the potentially restrictive impact of Village Green registration on the landowner, there are equally significant impacts on the local community if the land is not registered as a Village Green and is consequently lost for recreational use. The large volume of consultation responses received indicates that the matter is one of great local importance and therefore, as well as the legal issues to be resolved, there is a strong public interest in holding a Public Inquiry.

Recommendations

63. I recommend that

- (a) the original application be rejected; and
- (b) a Public Inquiry be held into the resubmitted application (made on 30th October 2015) to clarify the issues.

Accountable Officer: Mr. Graham Rusling – Tel: 03000 413449 or Email: graham.rusling@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.

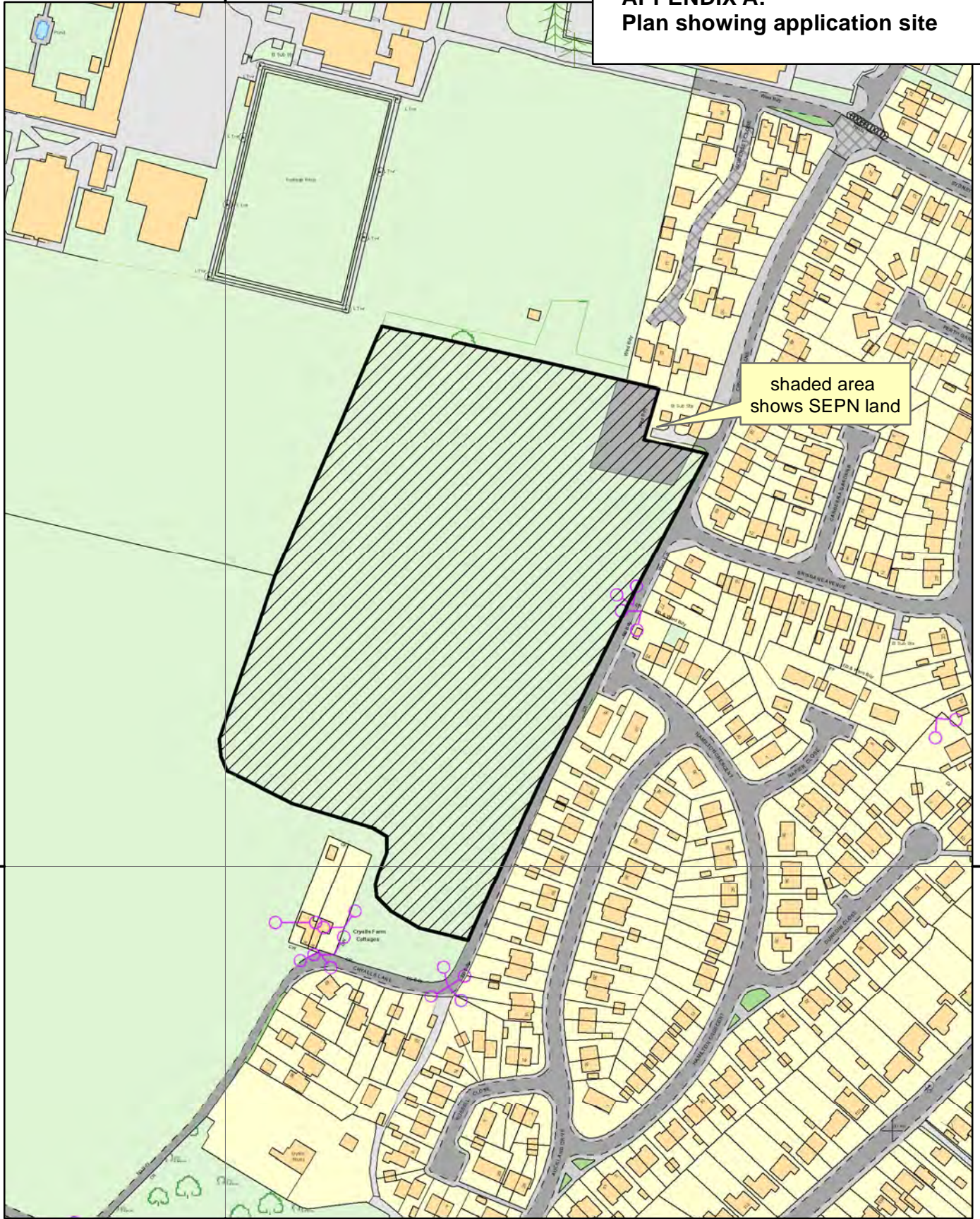
Background documents

- APPENDIX A – Plan showing application site
- APPENDIX B – Copy of the original application form
- APPENDIX C – Copy of the resubmitted application form
- APPENDIX D – Table summarising user evidence

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

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APPENDIX A: Plan showing application site

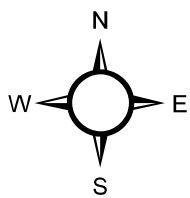


shaded area
shows SEPN land

163500 000000

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Scale 1:2500

Land subject to Village Green application
at Cryalls Lane in Sittingbourne

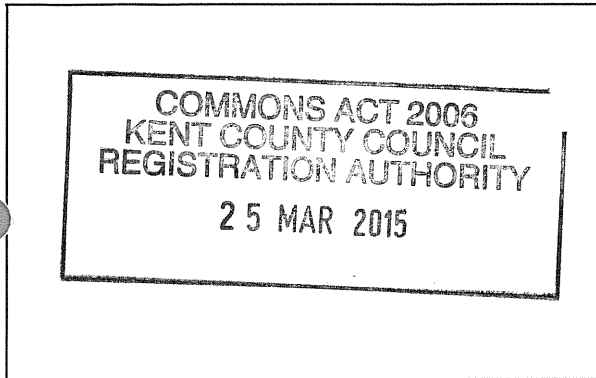


Commons Act 2006: section 15

Application for the registration of a town or village green

This section is for office use only

Official stamp



Application number

VGA665

VG number allocated at registration

Applicants are advised to read 'Part 1 of the Commons Act 2006: Guidance to applicants' and to note:

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

Note 1

Insert name of commons registration authority.

1. Commons Registration Authority

To the:

Kent County Council

Tick the box to confirm that you have enclosed the appropriate fee for this application:



Note 2

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

Note 3

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

2. Name and address of the applicant

Name:

Postal address:

Telephone number:

Fax number:

E-mail address:

3. Name and address of representative, if any

Name:

Firm:

Postal address:

Telephone number:

Fax number:

E-mail address:

Note 4

For further details of the requirements of an application refer to Schedule 4, paragraph 9 or 10 to the Commons Registration (England) Regulations 2014. 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.

Note 5

This box is to identify the new green. The accompanying Ordnance map must be at a scale of at least 1:2,500, or 1:10,560 if the land is wholly or predominantly moorland, and show the land by means of distinctive colouring within an accurately identified boundary. State the Land Registry title number where if known.

4. Basis of application for registration and qualifying criteria

If you are the landowner and are seeking voluntarily to register your land tick the following box and move to box 5:

If the application is made under section 15(1) of the Act, 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:

If section 15(3) applies indicate the date on which you consider that use as of right ended:

[Empty box for date]

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

[Empty box for period of statutory closure]

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

Name by which the land usually known:

[Empty box for name]

Location:

Cryalls Lane, Sittingbourne

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

[Empty box for unit number]

Tick the box to confirm that you have attached an Ordnance map of the 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). If this is not possible an Ordnance map should be provided on which a locality or neighbourhood is marked clearly at a scale of 1:10,560.

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).

Note 8

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

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

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 an Ordnance map on which the area is clearly marked:

New Zealand Estate - neighbourhood in the locality of Borden Ecclesiastical Parish

Tick here if a map is attached:

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

This land has been used as an area for various recreational activities for over 20 years without either permission or obstruction, and without a break in that usage.

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

Note 9

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

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

[Empty box for declarations of consent]

Note 10

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

10. Supporting documentation

20+ Forms & letters from New Zealand Estate
Others supporting letters of use (in separate wallet)

Note 11

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

11. Any other information relating to the application

[Empty box for other information]

Note 12

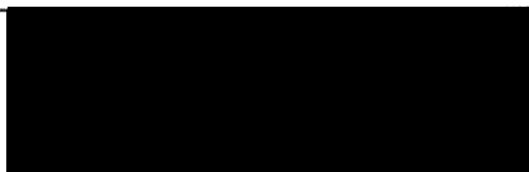
The application must be signed by each individual applicant, or by the authorised officer of an applicant which is a body corporate or an unincorporated association.

12. Signature

Date:

24th March 2015

Signatures:

**REMINDER TO APPLICANT**

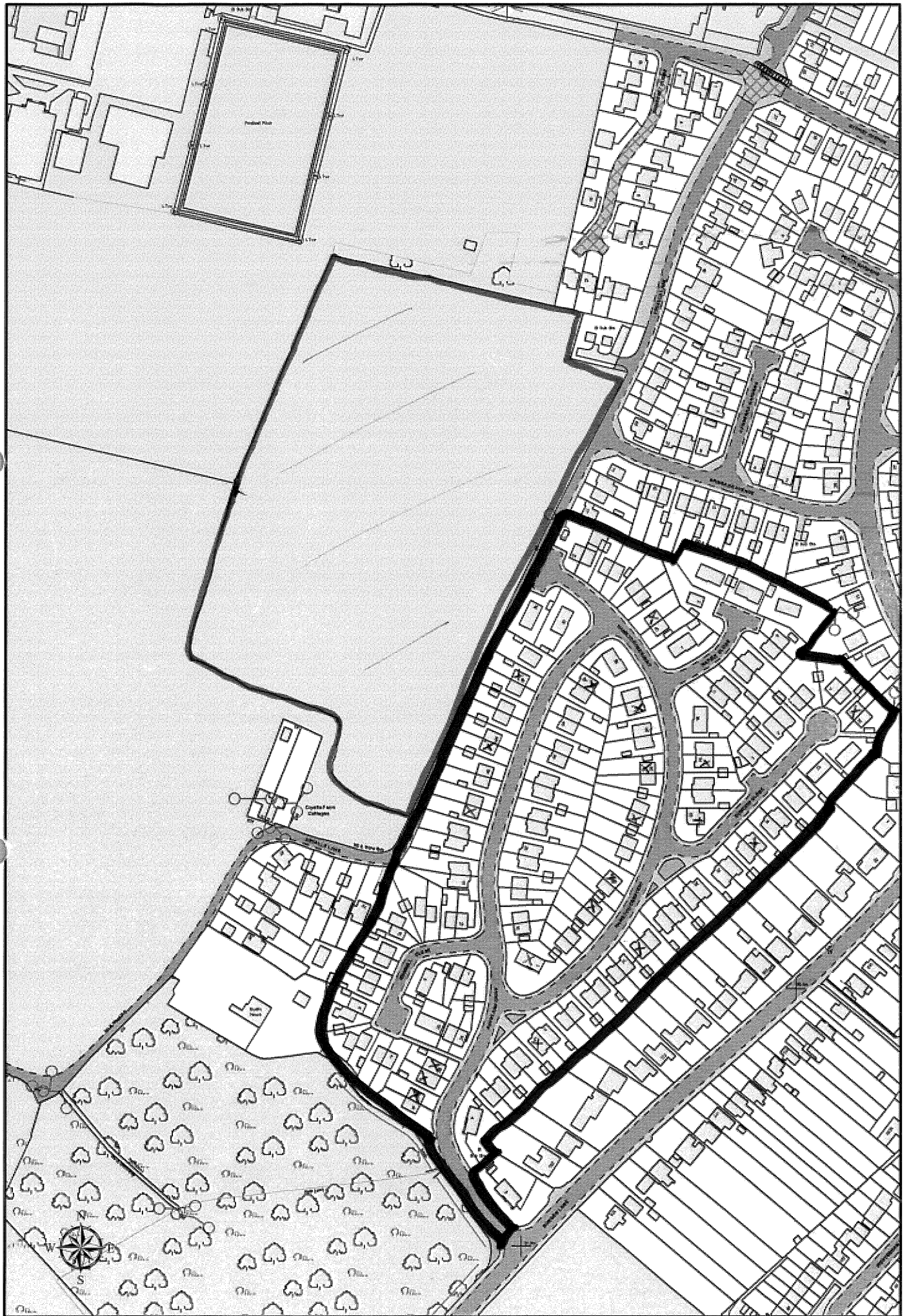
You are responsible for telling the truth in presenting the application and accompanying evidence. You may commit a criminal offence if you deliberately provide misleading or untrue evidence and if you do so you may be prosecuted.

You are advised to keep a copy of the application and all associated documentation.

Data Protection Act 1998

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

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



FORM CA9

Commons Act 2006: section 15

Application for the registration of a town or village green

This section is for office use only

Official stamp

<p>COMMONS ACT 2006 KENT COUNTY COUNCIL REGISTRATION AUTHORITY 30 OCT 2015</p>
--

Application number

VUA666.

VG number allocated at
registration

--

Applicants are advised to read 'Part 1 of the Commons Act 2006: Guidance to applicants' and to note:

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

Note 1

Insert name
of commons
registration
authority.

1. Commons Registration Authority

To the:

KENT COUNTY COUNCIL

Tick the box to confirm that you have enclosed the appropriate fee for this application:



Note 2

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

Note 3

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

2. Name and address of the applicant

Name:

MIKE BALDOCK

Postal address:

8 WISES LANE
SITTINGBOURNE
KENT
ME10 1YN

Postcode ME10 1YN

Telephone number:

[Redacted telephone number]

Fax number:

[Empty fax number box]

E-mail address:

[Redacted email address]

3. Name and address of representative, if any

Name:

[Empty name box]

Firm:

[Empty firm box]

Postal address:

[Empty postal address box]
Postcode

Telephone number:

[Empty telephone number box]

Fax number:

[Empty fax number box]

E-mail address:

[Empty email address box]

Note 4

For further details of the requirements of an application refer to Schedule 4, paragraph 9 or 10 to the Commons Registration (England) Regulations 2014. 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.

Note 5

This box is to identify the new green. The accompanying Ordnance map must be at a scale of at least 1:2,500, or 1:10,560 if the land is wholly or predominantly moorland, and show the land by means of distinctive colouring within an accurately identified boundary. State the Land Registry title number where if known.

4. Basis of application for registration and qualifying criteria

If you are the landowner and are seeking voluntarily to register your land tick the following box and move to box 5:

If the application is made under section 15(1) of the Act, 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:

If section 15(3) applies indicate the date on which you consider that use as of right ended:

31 July 2015

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

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

Name by which the land usually known:

Location:

Cryalls Lane, Sittingbourne

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

Tick the box to confirm that you have attached an Ordnance map of the 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). If this is not possible an Ordnance map should be provided on which a locality or neighbourhood is marked clearly at a scale of 1:10,560.

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).

Note 8

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

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

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 an Ordnance map on which the area is clearly marked:

New Zealand Estate - neighbourhood
in the locality of Borden
Ecclesiastical Parish

Tick here if a map is attached:

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

This land has been in use as an area for various recreational activities for over 20 years without either permission or obstruction, and without a break in that usage.

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

Note 9

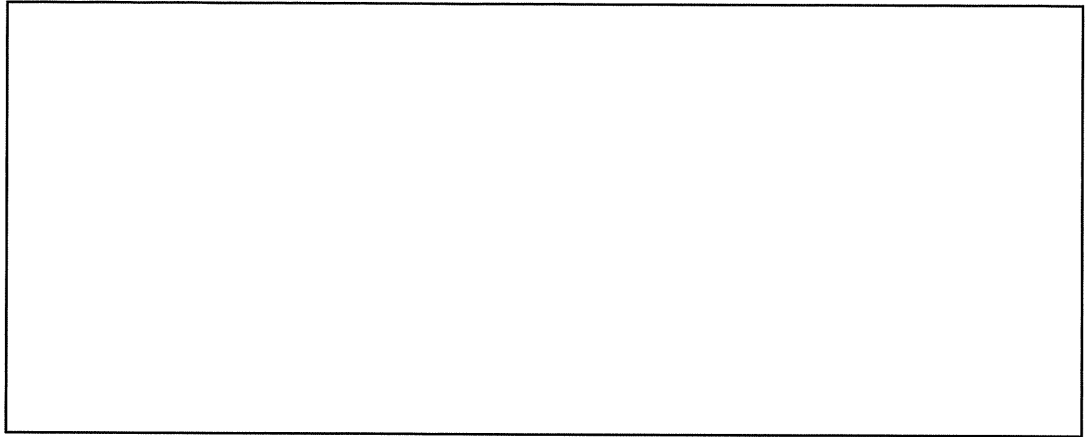
List or enter in the form all such declarations that accompany the application. This can include any written declarations sent to the applicant (e.g. a letter), and also any such declarations made on the form itself.

Note 10

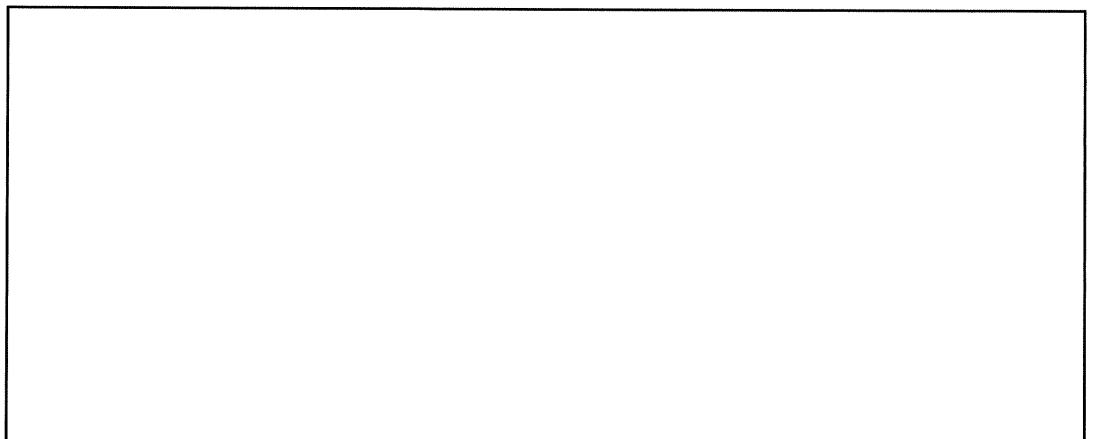
List all supporting consents, documents and maps accompanying the application. Evidence of ownership of the land must be included for voluntarily registration applications. There is no need to submit copies of documents issued by the registration authority or to which it was a party but they should still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

Note 11

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

9. Voluntary registration – declarations of consent from any relevant leaseholder of, and of the proprietor of any relevant charge over, the land**10. Supporting documentation**

Over 20 forms and letters from the New Zealand Estate plus other supporting letters of use.

11. Any other information relating to the application

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 an unincorporated association.

12. Signature

Date:

28th October 2015

Signatures:



REMINDER TO APPLICANT

You are responsible for telling the truth in presenting the application and accompanying evidence. You may commit a criminal offence if you deliberately provide misleading or untrue evidence and if you do so you may be prosecuted.

You are advised to keep a copy of the application and all associated documentation.

Data Protection Act 1998

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

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

Name	Period of use	Frequency of use	Type of use	Access to site	Considered resident of neighbourhood?	Comments
Mr. L. CHAPPELL	1976 – present	Previously daily, now occasionally	Dog walking, children playing in summer	Via Cryalls Lane	Yes – ‘live a few hundred yards away’	Observed daily use in summer by dog walkers and children playing.
M/s. P. CHRISTIAN	1994 – present	Monthly	Walking, playing with children	Walk in off Cryalls Lane	Yes – ‘New Zealand estate’	Observed use by dog walkers on a daily basis
Mr. W. FRENCH	1976 – present	Daily	Exercising, walking, shortcut to Wises Lane	Walked across road	Yes - ‘Borden, Sittingbourne’	There are many paths across the land caused by dog walkers etc.
Mr. R. GIBSON	1993 – 2012	Weekly	Walking, taking grandchildren out	Cryalls Lane	Yes – ‘New Zealand estate’	Observed use by others for dog walking on a daily basis.
Mrs. J. HUMPHREYS	2012 – present	Occasionally	Walking	Cryalls Lane	No	
Mr. D. JARRETT	2001 – present	2 or 3 times each week	Dog walking	Across Cryalls Lane and onto one of the paths that cross the land.	Yes – ‘New Zealand estate’	
Mrs. M. JARRETT	2001 – present	Daily when dry, several times per week in winter	Walking, enjoying flora and fauna, picking blackberries, quiet enjoyment	Earth footpath on land from end of Hamilton Crescent	Yes – ‘New Zealand estate, in the parish of Borden’	Observed others using the land on a daily basis. The area is a small quiet space loved by those close by, and much appreciated and respected by those who use it.
Mrs. P. KEEL	2004 – present	Not stated	Not stated	Not stated	Yes – ‘New Zealand estate’	Observed use of the land for dog walking and horse riding on a daily basis
Mr/s. R. McCARTEN	2004 – present	Several times weekly until recently, now occasionally	Walking, dog walking	Via Cryalls Lane	Yes – ‘New Zealand estate, a close knit community’	Moved to current address in New Zealand estate in 2010, previously resident in Adelaide Drive. Observed use by others on a daily basis.
Mr/s. K. MEARS	1980 – present	Occasionally	Walking	Cryalls Lane	Yes – ‘New Zealand estate’	Occasionally observed walkers on the land.
Mr. and Mrs. A. PAYNE	2003 – present	A few times per week	Dog walking	Cryalls Lane	Yes – ‘we live on the New Zealand estate’	Observed use by others for dog walking, children taking part in nature studies, ramble walkers and joggers.
Mr. and Mrs. J. RAYFIELD	2012 – present	Occasionally	Dog walking	Cryalls Lane	Yes – New Zealand estate’	
Mr. M. SCOTT	1990 – present	Monthly	Walking with grandchildren	Opposite end of Hamilton Crescent	Yes - ‘Newland estate, off Borden Lane’	

In addition to the user evidence questionnaires summarised above, the following letters of support were also submitted with the application:

Mr. and Mrs. R. BAILEY moved to the Australia estate in 1996 and were delighted to find a mature cherry orchard nearby which was freely accessible for dog walkers, children and families to enjoy. They have used the land for dog walking and have observed many others exercising their pets. They have also seen local children using the land to let off steam, play hide and seek, and take part in family picnics. Approximately 10 years ago, the orchard was razed to the ground but walkers continued to use it and over the years a wild and less structured orchard has sprung up, with walkers quickly establishing new routes.

Mr. C. BARNES has lived on the New Zealand Estate since 1976 and confirms the land has been used mainly for dog exercising. The land was previously a cherry orchard until it was grubbed out a year or two ago [letter dated 2015].

Mr. and Mrs. BOAKES moved to the Australia estate in 2007 and frequently use the land for walking, playing with children and fruit picking.

Mr. C. BROWN is a resident of the New Zealand estate and has used the land for dog walking in the early morning between 2002 and 2004/5. He accessed the land via Cryalls Lane, but does not recall any fence or restriction to prevent access.

Mrs. J. BROWN moved the area in the immediate vicinity of the application site in 2001, the land being one of the deciding factors, it being apparent that it was a well-used local area ideal for dog walking. She has observed many children of varying ages playing there. There has never been a problem with access to the land as it has always been open along Cryalls Lane.

Mr. J. CARTER has lived on the Australia Estate for most of his life and recalls using it as a child for climbing the cherry trees, building camps, bike riding, playing 'man hunt' and daily dog walks; he now uses it occasionally for walking to Borden. He has mainly accessed the site via Cryalls Lane opposite Brisbane Avenue and has never been barred from it.

Mr. J. CLINCH has family living in Adelaide Drive and has happy memories of using the land for cycling, hiding in the ditches and climbing the cherry trees. He has recently started taking his dog there for walking and it has become significantly overgrown.

Mr. J. COPE moved to the New Zealand estate in 1993 and has used the application site as a recreational facility since then. He has used the land for exercising dogs and his children used it for childhood games as well as bird watching and nature trails and observation. Son has used the circular trackway for cross-country running as well as Frisbee throwing, rugby practice and off-road cycling when he was younger.

Mr. and Mrs. C. DRURY moved to the New Zealand estate 14 years ago [letter dated 2015]. At that time the field was a very pretty area with many cherry trees, but it was not many years before the owners decided to cut back the trees and dig a ditch running along the side of Cryalls Lane, although there were still four places where the field was 'easily accessible from Cryalls Lane'. Worn pathways appeared where dog walkers walked varying circuits and the area has slowly re-established itself with fruit trees and berry bushes. Until last year, used the land three times per day for walking and also used it for picking blackberries and sloe berries.

Mrs. S. FIELD moved to the area in 1985 and her children rode their bikes and made dens on the land. The land was stripped of the trees at one point but children continued to play on the land.

Mr. W. FRENCH moved to the New Zealand estate in 1976 and has used the adjacent open land to walk dogs and enjoy the blossom from the cherry trees that thrived there. The land was always accessible from Cryalls Lane and Wises Lane and there has never been a fence or obstruction.

Mrs J. HOWARD has lived on the New Zealand estate since 1998 and frequently walks on the land, viewing it as a place for relaxation and an opportunity to enjoy local wildlife. When children were younger, they regularly used the land to play cricket/football.

Mr. J. KNIGHT, resident of the Australia estate, has used the land since 1988 for walking, bird watching and fruit picking.

Mrs. K. LONGLEY has lived in Cryalls Lane for 17 years [letter dated 2015] and has observed and used the land on a daily basis. Her family has used the land for walking, nature exploration and teaching children to cycle. As their skills improved it was used for mountain-biking and many other children continue to enjoy it in this way all through the year (but particularly in summer). Dog walkers use the land continuously and several years ago some infra-red cameras were used to observe badgers. In the summer of 2002 the family spent many hours launching water rockets. Often watch birds in the trees and have seen the land being used as a meeting place for groups of friends. The land is a remarkable asset to the area and is used and valued by so many.

Mr. S. LONGLEY has lived in Cryalls Lane for 17 years [letter dated 2015]. His children have enjoyed the use the land for recreational purposes

Mr. N. MEARS is currently resident of the New Zealand estate and has been a resident of Sittingbourne on and off for many years. He recalls using the application site as a schoolboy in the 1960s and in recent years has used it for walking, both alone and with children.

Mr. and Mrs. G. PEARSON live locally [outside the New Zealand estate] and have regularly walked their dog over the land over the last 10 years. It is a small piece of serenity after a day at work where one can enjoy birds signing and where we frequently meet other dog walkers. Have never known of any restriction in accessing the area, even when the electricity substation was being re-fenced it was always possible to walk around.

Mrs. V. PEPPER has lived on the Australia estate for the past 48 years [letter dated 2015] and has walked her dogs there for the last 26 years. During this time, one owner erected an iron gate along with signs to prevent public access, but there were always places still accessible for dog walkers to continue to use the land. After complaints the grass was cut back and walkers were able to freely use the walks. Recently, however, the land has once again been left overgrown to prevent local residents from using it.

Mr. and Mrs. R. SHARMAN have used the land on a daily basis for dog walking, without challenge, since moving to the area 18 years ago [letter dated 2015]. Approximately 12 years ago, a ditch was dug along the boundary with Cryalls Lane to keep travellers out but pedestrian access was retained by way of two small footbridges across the ditch at either end of the site.

Ms. J. TAYLOR notes that the land was once a cherry orchard that was originally destroyed sometime between 1983 and 1989. After that time, there were five mature trees left in the centre of the land that were subsequently scrubbed out. The land has been in daily use by dog walkers via three well defined access points (two on Cryalls Lane).

Mr. and Mrs. H. THATCHER have been resident at their current house in the New Zealand estate since 1976 (when it was newly built). At that time, the application site was an old orchard that was used to graze sheep, but in around 1988 the fence was taken down and the old fruit trees grubbed out, making the land open for all. Consequently, the land has been extensively used by local people since that time for leisure purposes such as walking, exercising dogs and generally enjoying the nature and wildlife. Have used the land personally for walking and as a pleasant short cut through to the A2 and The Grove.

Mr. and Mrs. S. WOOTTON have lived in their property on the New Zealand estate since it was built in 1976. They have used the field for dog walking, bird watching, observation of bats and owls and walking/running.