

# Application to register land known as Church Green at Westwell as a new Town or Village Green

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

**Recommendation: I recommend that the applicant be informed that the application to register land known as Church Green at Westwell as a new Town or Village Green has been accepted, and that the land subject to the application (as shown at Appendix A) be registered as a Village Green.**

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Local Member: Mr. C. Simkins (Ashford Rural West)

Unrestricted item

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## Introduction

1. The County Council has received an application to register land known as Church Green at Westwell as a new Town or Village Green from the Westwell Parish Council ("the applicant"). The application, made on 9<sup>th</sup> September 2016 was allocated the application number VGA672. A plan of the site is shown at **Appendix A** to this report and a copy of the application form is attached at **Appendix B**.

## Procedure

2. The application has been made under section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 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**<sup>1</sup>, 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 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

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

period of at least six weeks during which objections and representations can be made.

### **The application site**

6. The area of land subject to this application (“the application site”) consists of an area of grassed open space of approximately 0.26 acres (0.1 hectares) in size situated in front of St. Mary’s Church at The Street in the village of Westwell. The application site is shown in more detail on the plan at **Appendix A**.
7. Access to the application site is via the unfenced boundary of the land with The Street. There are no recorded Public Rights of Way on or abutting the application site, although there is a surfaced trackway leading to the entrance of the church.

### **The case**

8. The application has been made on the grounds that the application site has become a Town or Village Green by virtue of the actual use of the land by the local inhabitants for a range of recreational activities ‘as of right’ for more than 20 years.
9. Included in support of the application were 11 user evidence questionnaires and statements in support of the application. A summary of the user evidence submitted in support of the application is attached at **Appendix C**.

### **Consultations**

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

### **Landowner**

11. The application site is unregistered with the Land Registry and no communication has been received from anyone purporting to be the landowner in response to the notice placed on site during the consultation period.
12. Members should be aware that the absence of any objection to the application does not automatically guarantee its success. In determining whether or not the land is capable of registration as a Village Green, the County Council must be still satisfied that each and every one of the legal tests (set out below) have been met. If one of the legal tests is not met, then the application as whole must fail.

### **Legal tests**

13. In dealing with an application to register a new Town or Village Green the County Council must consider the following criteria:
  - (a) *Whether use of the land has been 'as of right'?*
  - (b) *Whether use of the land has been for the purposes of lawful sports and pastimes?*
  - (c) *Whether use has been by a significant number of inhabitants of a particular locality, or a neighbourhood within a locality?*
  - (d) *Whether use of the land ‘as of right’ by the inhabitants has continued up*

*until the date of application or, if not, has ceased no more than one year prior to the making of the application?*  
(e) *Whether use has taken place over period of twenty years or more?*

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

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

14. The definition of the phrase 'as of right' has been considered by the House of Lords. Following the judgement in the *Sunningwell*<sup>2</sup> case, it is considered that if a person uses the land for a required period of time without force, secrecy or permission ("*nec vi, nec clam, nec precario*"), and the landowner does not stop him or advertise the fact that he has no right to be there, then rights are acquired.
15. In this case, there is no evidence of any challenge, either by physical or verbal means, to the recreational use of the application site. Indeed, access to the site is open and unrestricted along a large part of its southern boundary, and it forms the only means of access to the church from its nearest public highway.
16. As such, it would appear that the recreational use of the application site has been 'as of right'.

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

17. Lawful sports and pastimes can be commonplace activities including dog walking, children playing, picnicking and kite-flying. Legal principle does not require that rights of this nature be limited to certain ancient pastimes (such as maypole dancing) or for organised sports or communal activities to have taken place. The Courts have held that '*dog walking and playing with children [are], in modern life, the kind of informal recreation which may be the main function of a village green*'<sup>3</sup>.
18. The summary of evidence of use by local residents at **Appendix C** shows the activities claimed to have taken place on the application site.
19. Some of the evidence relied upon refers to 'access to' or 'walking to' the church; such linear usage along a defined route to a specific destination is unlikely to be qualifying use for the purposes of Village Green registration.
20. However, there is evidence of the use of the land for other activities (e.g. conker collection and dog walking) and, when viewed as a whole, the general impression given from the user evidence is that the application site has been used as a local amenity, in the manner that one would expect a Village Green to be used. The annual Christmas tree and occasional Christmas carols referred to by several witnesses is a good example, as is the planting of community bulbs and trees on the land. The land is also a natural extension of the church grounds, being used for socialising before/after Sunday worship or church events, and also for photography related to those events.

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

<sup>3</sup> *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

21. As such, it would appear that the land has been used for lawful sports and pastimes.

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

22. 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.

23. The definition of 'locality' for the purposes of a Town or Village Green application has been the subject of much debate in the Courts. In the *Cheltenham Builders*<sup>4</sup> 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*'.

24. In this case, the application is made by the Westwell Parish Council on behalf of its residents, whose usage is relied upon in support of the application. It seems appropriate that the relevant locality in this case is the civil parish of Westwell.

*"a significant number"*

25. 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*'<sup>5</sup>. 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.

26. In this case, the kind of activities that have been taking place on the land, in addition to individual activities such as dog walking and conker collection, are closely connected to the community (e.g. annual Christmas tree and the extension of Church-related gatherings). In this sense, it is clear that the application site has been very much regarded as a community facility and used as such. Therefore, this test would appear to be met.

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

<sup>5</sup> *R (Alfred McAlpine Homes Ltd.) v Staffordshire County Council* [2002] EWHC 76 at paragraph 71

***(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?***

27. 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.

28. In this case, the application is made under section 15(2) of the 2006 Act and there is no evidence that actual use of the application site for recreational purposes ceased prior to the making of the application. As such, this test is met.

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

29. 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’ did not cease prior to the making of the application in 2016. The relevant twenty-year period (“the material period”) is calculated retrospectively from this date and is therefore 1996 to 2016.

30. The user evidence submitted in support of the application (and summarised at **Appendix C**) demonstrates that use of the application site has taken place in excess of the required twenty-year period. Accordingly, this test is also met.

**Conclusion**

31. As is noted above, regardless of the absence of any objection to this application, Members must be satisfied that each of the legal tests is met if the land is to be capable of registration as a Village Green.

32. In this case, there is evidence of unchallenged recreational use of the application site for a period in excess of twenty years. Such use - in particular the erection of the annual Christmas tree and the use of the land for socialising and photography in connection with Church services - would have been sufficient to indicate to a landowner (had there been one) that the application site was in general use by the community as a whole.

33. Therefore, from close consideration of the evidence submitted, it would appear that the legal tests concerning the registration of the land as a Village Green (as set out above) have been met.

**Recommendation**

34. I recommend that the applicant be informed that the application to register land known as Church Green at Westwell as a new Town or Village Green has been accepted, and that the land subject to the application (as shown at **Appendix A**) be registered as a Village Green.

Accountable Officer:

Mr. Graham Rusling – Tel: 03000 413449 or Email: [graham.rusling@kent.gov.uk](mailto:graham.rusling@kent.gov.uk)

Case Officer:

Ms. Melanie McNeir – Tel: 03000 413421 or Email: [melanie.mcneir@kent.gov.uk](mailto:melanie.mcneir@kent.gov.uk)

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

### **Background documents**

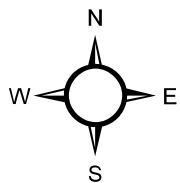
APPENDIX A – Plan showing application site

APPENDIX B – Copy of application form

APPENDIX C – Table summarising user evidence

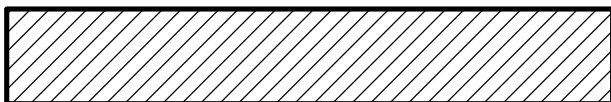
APPENDIX D – Photographs of the application site

**APPENDIX A:**  
Plan showing application site



Scale 1:1250

Land subject to Village Green application,  
known as Church Green at Westwell





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 09 SEP 2016</p>
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Application number

VCA672
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VG number allocated at registration

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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 Countryside Access Service
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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:

WESTWELL PARISH COUNCIL

Postal address:

14 SANDYHURST LANE  
ASHFORD  
KENT  
TN25 4NS

Postcode

Telephone number:

Fax number:

E-mail address:

**3. Name and address of representative, if any**

Name:

MICHAEL JOHN THORNELOE

Firm:

THORNELOE &amp; CO

Postal address:

ST MARY'S HOUSE  
THE SQUARE  
LENHAM  
MAIDSTONE  
KENT

Postcode ME17 2PH

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:

LAND FRONT OF ST MARY'S CHURCH

Location:

WESTWELL  
ASHFORD  
KENT

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

[Empty box for common land register 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:

PLEASE SEE ATTACHED PLAN

Tick here if a map is attached:

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

PLEASE SEE WITNESS STATEMENT HEREWITH. THE LAND HAS BEEN AN AMENITY OF THE VILLAGE SINCE TIME IMMORIUUM

**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**

NONE KNOWN

**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**

NOT APPLICABLE

**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**

WITNESS STATEMENT<sup>s</sup> attached. 05. 20

**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**

NONE

**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:

14th July 2016.

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.**

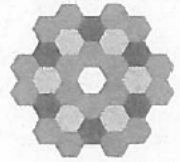
**Data Protection Act 1998**

*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.*

# Land Registry Illustrative plan

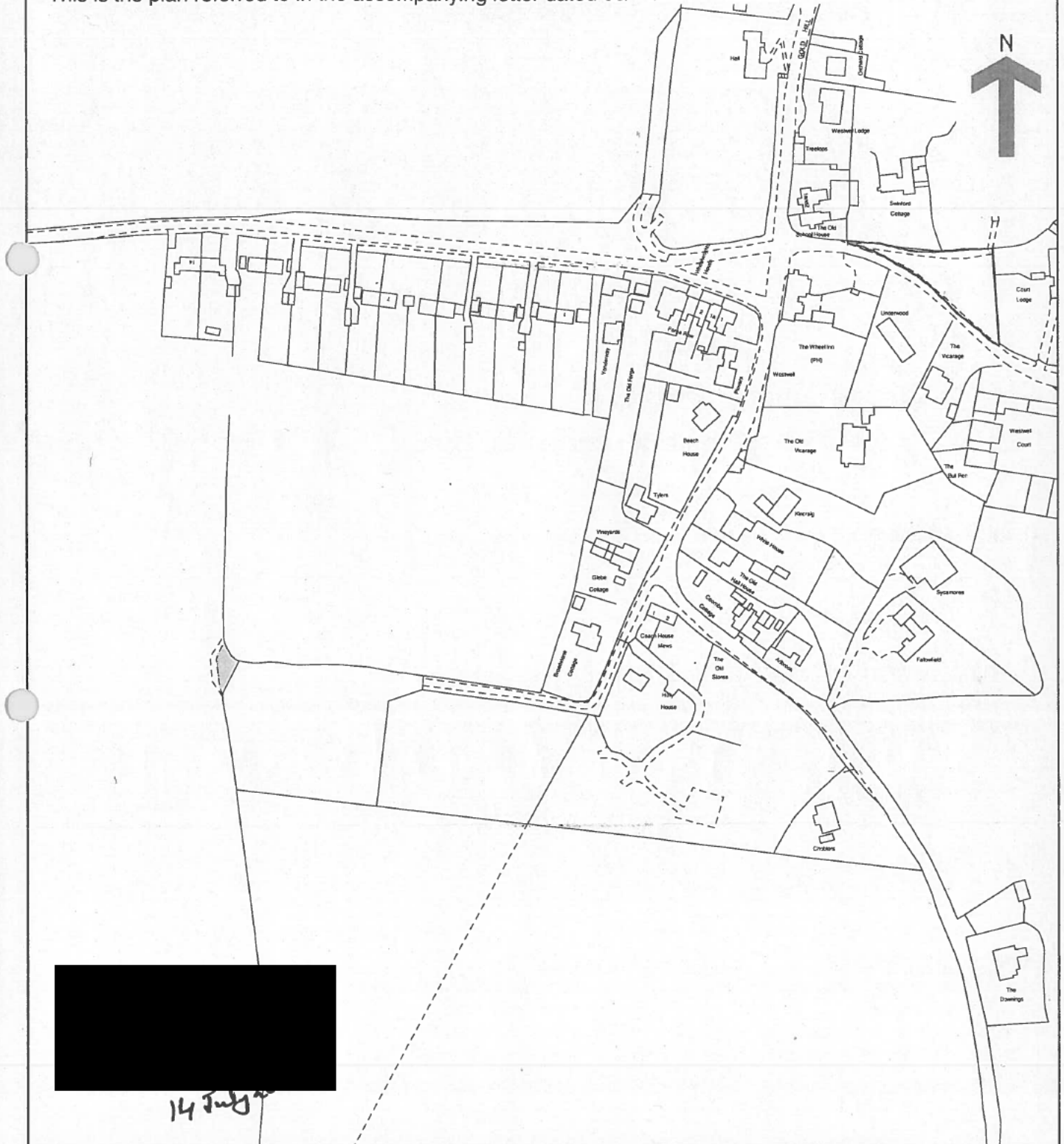
Title number **TT38361**  
Ordnance Survey map reference **TQ9847SE**  
Scale **1:2500**  
Administrative area **Kent: Ashford**



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This is the plan referred to in the accompanying letter dated 03/11/2015 Title no. TT38361



14 Feb 11

This plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground.

Name	Period of use	Frequency of use	Type of use	Comments (incl. any challenges)
<b>Mr. D. CACKETT</b>	1965 – present	Occasionally	Collecting conkers, attending church events	
<b>Mr. N. CACKETT</b>	1980 – present	Occasionally	Collecting conkers, attending weddings, putting up Christmas tree lights	
<b>Ms. T. CACKETT</b>	1976 – present	Occasionally	Collecting conkers, children playing, watching or attending church events	
<b>Mr. J. DRURY</b>	1983 – present	Monthly	Access to church	Aware of several villagers walking dogs on the land for the last 34 years. The land also makes valuable contribution to church events and for meeting friends. Christmas tree has been on the land for at least 34 years and on occasions used as a focus for Christmas carols
<b>Mr. D. HOOPER</b>	1980 – present	Monthly	Wedding photography	Observed use by others for dog walking, bulb planting, picnics and conker collection
<b>Mrs. K. HOOPER</b>	1980 – present	Weekly	Bulb planting, raking leaves, photographs	Observed use by others for picnics, cyclists resting, conker collection and photography.
<b>Mr. M. JAMIESON</b>	1980 – present	Weekly	Access to church, village activities	Lived abroad 1992 – 2000. Land has been used for village Christmas tree. Regularly observed people collecting conkers in autumn, and also used for photography as part of special services at the church. The land is used for socialising and picnics, as well as frequent dog-walking.
<b>Mrs. J. RICHARDS</b>	1946 – present	Not stated	Collecting conkers	Land has been used for annual community Christmas tree and trees/bulbs have been planted on the land by the community
<b>Mr. and Mrs. J. STUART-SMITH</b>	1965 – present	Monthly	Walking to church, collecting conkers with children	Aware of use of the land by dog-walkers and annual Christmas tree, as well as a gathering place in connection with church events. There has also been bulb and tree-planting on the land.
<b>Mr. M. WYATT</b>	1980 – present	Weekly	Not stated	Observed use by villagers walking and walking dogs.
<b>Mrs. S. WOOD</b>	1990 – present	Weekly	Access to church, observing wild flowers and trees on the land, dog walking, collecting conkers	Green is used for annual Christmas tree and as a gathering place for worshippers.



**APPENDIX D:  
Photographs of the application site**



*From western end of application site looking east*



*From Church entrance looking west*