

Application to register land known as St. Andrew's Gardens at Gravesend as a new Town or Village Green

A report by the Director of Environment and Waste to Kent County Council's Regulation Committee Member Panel on Monday 16th November 2009.

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

Local Members: Mr. J. Cubitt and Mr. B. Sweetland

Unrestricted item

Introduction

1. The County Council has received an application to register land known as St. Andrew's Gardens in Gravesend as a new Town or Village Green from local civic society, Urban Gravesham ("the applicant"). The application, dated 26th July 2008, was allocated the application number VGA603. 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 These regulations have, since 1st October 2008, been superseded by the Commons Registration (England) Regulations 2008 which apply only in relation to seven 'pilot implementation areas' in England (of which Kent is one).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 of the Commons Act 2006 enables any person to apply to a Commons Registration Authority to register land as a Town or 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 to the north of Crooked Lane and The Terrace (A226) in the town of Gravesend. The application site is an irregular shaped piece of land of approximately 0.65 hectares (1.6 acres) which extends roughly from Town Pier in the west to the Clarendon Hotel in the east.
7. The western section of the application site, which fronts the River Thames, consists of formal landscaped gardens with a grass area, paved paths, planting and benches. The eastern section of the site, which lies to the rear of Royal Pier Mews, is less formally landscaped and consists largely of an open space with a grass surface.
8. Access to the site is from the footways of Crooked Lane, The Terrace and Royal Pier Road. The application site is shown in more detail on the plan at **Appendix A**.

The case

9. The application has been made on the grounds that the application site has become a Town or Village Green by virtue of the use of the land by the local inhabitants for a range of recreational activities 'as of right' since the 1940s.
10. Included in the application were 22 statements from local residents detailing their knowledge and use of the application site. A summary of these statements is attached at **Appendix C**.
11. Also submitted in support of the application were a number of photographs showing the application site and use of it by local people, several articles from the local newspaper (the Gravesend Reporter) concerning the site, various planning documents relating to the site or to neighbouring properties and a number of relevant extracts from the Gravesend Corporation minute books (dates ranging between 1951 and 1966) relating to the acquisition and management of the site.

Consultations

12. Consultations have been carried out as required and the following comments have been received.
13. County Councillor for Gravesham East, Mrs. M. Newell, wrote in support of the application on the basis that she had lived in Gravesend for nearly 40 years during which time St. Andrew's Gardens had always been an open space available for recreational use by local residents. She states that the land is of particular attraction to people who come to shop and enjoy the river, and is also a point where walkers start their journey along the Saxon Shore Way. The Borough Council has

responsibility for the upkeep of the gardens and ensuring that it is kept clean and litter free.

14. Borough Councillor Lyn Miller also wrote to express her support for the application.

Objections

15. An objection to the application has been made by Gravesham Borough Council (“the Objector”). There has also been a second objection from Edinburgh House Estates Ltd, who are developers with an interest in the land, but this simply expresses support for Gravesham Borough Council’s objection and makes no further submissions in relation to the merits of the application.

16. The Objector claims to own the entirety of the application site, although it is the applicant’s case that parts of the site have never been acquired by the Objector. The situation is complicated by the fact that historically the land comprised of a number of smaller, separate parcels which have been acquired on a piecemeal basis by the Borough Council over a period of many years (between 1914 and 1988).

17. The objection is supported by extracts from the Borough Council’s terrier and copies of Conveyances for various parts of the site. Although the Objector has been able to prove paper title to some parts of the site, other parts remain unaccounted for. There is therefore an unresolved question regarding ownership but, of itself, this does not preclude the registration of the land as a Town or Village Green.

18. It is the Objector’s case that the application site is held (both expressly and impliedly) for the purposes of ‘*public walks and pleasure grounds*’ under section 164 of the Public Health Act 1875. The Objector has conceded that not all of the contemporaneous documentation can be found, but the evidence that is available ‘*clearly points to the use of this power [i.e. section 164 of the Public Health Act 1875] and the treatment of the land as a public open space by GBC and its predecessors for many years*’.

19. The effect of section 164 of the Public Health Act 1875 is discussed in further detail below, but, in essence, the Objector’s argument is that the use of this power renders use of the land by the local residents ‘by right’ (because, in the Objector’s view, they have the right to use it by virtue of it being held as for the purposes of public walks and pleasure grounds) and not ‘as of right’.

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 by the House of Lords. Following the judgement in the *Sunningwell*¹ 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 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 the evidence submitted in support of the application and a visit to the site that access to the application site has never been denied. Access is easily achieved via the footways of Crooked Lane, The Terrace and Royal Pier Road.
23. There is, however, a question as to whether the use of the application site for 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 Objector's case that the land is held under the Public Health Act 1875 ("the 1875 Act"). Section 164 of the 1875 Act provides that '*any urban authority may purchase or take on lease, lay out, plant, improve and maintain lands for the purpose of being used as public walks and pleasure grounds...*'. This section also provides powers for the use of such lands to be regulated by byelaws and, later legislation provided for such lands to be closed for limited periods² and for the provision of any play equipment and benches³.
25. The effect of the 1875 Act has been considered in general terms by the Courts (albeit not specifically in relation to the acquisition of Town or Village Green status). In *Hall v Beckenham Corporation*⁴, the land concerned was held under the 1875 Act and the judge found in that case that "*as far as the local authority is concerned, if the land is purchased under their statutory powers, it is dedicated to the use of the public for the purpose of a park*"⁵. He added later in his judgement "*I think that the Beckenham Corporation are the trustees and the guardians of the park...*"⁶.
26. In *Blake v Hendon*⁷, it was considered that "*the purpose of section 164 of the Act of 1875 is to provide the public with public walks and pleasure grounds. The public are not a legal entity and cannot be vested with the legal ownership of the walks and pleasure grounds which they are to enjoy. But if they could be given the beneficial ownership, that is what they should have...*".

¹ *R v. Oxfordshire County Council and another, ex parte Sunningwell Parish Council* [1999] 3 All ER 385

² Section 44(1) of the Public Health Amendments Act 1890, as amended by section 53 of the Public Health Act 1961

³ Section 76(1) of the Public Health Acts Amendment Act 1907

⁴ *Hall v Beckenham Corporation* [1949] 1 All ER 423

⁵ *Hall v Beckenham Corporation* [1949] 1 All ER 423 at 426

⁶ *Hall v Beckenham Corporation* [1949] 1 All ER 423 at 427

⁷ *Blake (Valuation Officer) v Hendon Corporation* [1961] 3 All ER 601 at 607

27. There is therefore judicial support for the proposition that land held under section 164 of the Public Health Act 1875 is the subject of a statutory trust, with members of the public being the beneficiaries of the trust.
28. The specific issue of the effect of section 164 of the 1875 Act on an application to register land as a Town or Village Green has never been before the Courts. However, the House of Lords have considered the effect of similar provisions (namely the Open Spaces Act 1906) on such an application.
29. In *Beresford*⁸, Lord Walker said this: “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”. The suggestion is therefore that use of the land which is held by a local authority under a public statutory trust is ‘by right’ and not ‘as of right’ since the use of the land is no more than the use to which the public is entitled (in their capacity as beneficiaries of the trust).
30. It is the Applicant’s case that the chaotic and incomplete state of the Objector’s records in relation to the acquisition and ownership of the application site mean that it is not possible to conclude definitely that the whole of the application site is held for the purposes of section 164 of the 1875 Act. During the relevant period, significant parts of the application site have not been in the Objector’s legal ownership and as such could not have been formally appropriated for the purposes of public walks and pleasure grounds under the 1875 Act.
31. Even if it can be shown that parts of the site have been acquired for the purposes of the 1875 Act, the Applicant’s position is that there is no decided authority which states conclusively that land held under section 164 of the Public Health Act 1875 is not capable of registration as a Town or Village Green. The Applicant contends that the views expressed by the House of Lords in *Beresford* (see paragraph 29 above) did not form part of the main judgement (which was not concerned with and did not address the effect of the 1875 Act) and the House of Lords expressly reserved their position on that point.
32. Were it the case that there was clear documentary evidence to suggest that the whole of the application site had been formally appropriated under the provisions of the 1875 Act then it is arguable that this would present a ‘knock-out blow’ to the application. However, that is not the case here. The Objector has produced evidence that small parts of the land have been expressly acquired for the purposes of public walks and pleasure grounds under the 1875 Act. In relation to other parts, the relevant documentation is missing and the Objector places reliance on hand-written entries into its own records of land purchases and odd extracts from Committee minutes.

⁸ *R(Beresford) v Sunderland City Council* [2003] UKHL 60 at paragraph 87

33. In effect, the County Council is being asked by the Objector to draw inferences from the evidence available that the whole of the application site has been acquired specifically for the purposes of the 1875 Act. It would seem unsatisfactory to proceed on this basis where the County Council's decision in relation to this application has such a significant bearing on the future of the application site. In order for a decision to be taken in relation to the application, the County Council needs to be clear, as a finding of fact, as to the basis of the use of the land and, in particular, whether such use was 'as of right'. It is not, on the evidence currently available, possible for the County Council to draw such conclusions.

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

34. Lawful sports and pastimes can be commonplace activities including dog walking, children playing, picnicking and kite-flying. It is not necessary to demonstrate that both sporting activities *and* pastimes have taken place since the phrase 'lawful sports and pastimes' has been interpreted by the Courts as being a single composite group rather than two separate classes of activities⁹.

35. Legal principle does not require that rights of this nature be limited to certain ancient pastimes (such as maypole dancing) or for organised sports or communal activities to have taken place. The Courts have held that '*dog walking and playing with children [are], in modern life, the kind of informal recreation which may be the main function of a village green*'¹⁰.

36. In this case, the statements provided by local residents demonstrate that the land has been used as a place to visit, to meet friends and socialise, to sit and read or watch the boats on the river, to sunbathe, to have lunch and as a play area for children. **Appendix C** shows the full range of activities claimed to have taken place.

37. In addition to the evidence of use, those providing statement have also detailed the use by others that they have seen taking place on the application site. This includes fishing, socialising, cycling, ball games, dog-walking and people eating their lunch.

38. The Objector does not dispute that most of the activities (with the exception of people walking through the site from A to B on the footpaths) are capable of falling within the scope 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?

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.

⁹ *R v. Oxfordshire County Council and another, ex parte Sunningwell Parish Council* [1999] 3 All ER 385

¹⁰ *R v Suffolk County Council, ex parte Steed* [1995] 70 P&CR 487 at 508 and approved by Lord Hoffman in *R v. Oxfordshire County Council and another, ex parte Sunningwell Parish Council* [1999] 3 All ER 385

“locality”

40. 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 Builders*¹¹ 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. At part 6 of the application form, the Applicant specifies the locality as ‘Gravesend’. The Objector accepts that Gravesend would be capable of constituting a locality, but denies that use of the land has been confined to the inhabitants of Gravesend.
42. The Courts have found that use need not be exclusively by the residents of the locality, although there is a need to demonstrate that use has been predominantly by the residents of the locality¹². There is certainly evidence to suggest that use is not exclusively by the residents of the locality, but this is a matter of fact and degree that cannot be resolved on the evidence currently available and requires further clarification. A Public Inquiry would allow evidence to be heard and a more informed conclusion to be reached with regard to this issue.

“a significant number”

43. 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’¹³. 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.
44. In this case, the application has been accompanied by 22 statements of use. These statements are but a representative sample of the type of use that has taken place on the land and they provide useful evidence regarding the use of the land by other people.
45. In any case, it is clear that the Objector has been fully aware of the use of the land by local people and as such it is not necessary to consider this point in detail.

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

46. In order to qualify for registration, it must be shown that the land in question has been used for a full period of twenty years up until the date of application. In this

¹¹ *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at page 90

¹² *R v. Oxfordshire County Council and another, ex parte Sunningwell Parish Council* [1999] 3 All ER 385

¹³ *R (Alfred McAlipne Homes Ltd.) v Staffordshire County Council* [2002] EWHC 76 at paragraph 71

case, the application was submitted in 2008 and therefore the relevant twenty-year period (“the material period”) is 1988 to 2008.

47. It is clear from the statements of use provided by the Applicant and the Objector’s assertions regarding the acquisition of the land for the purposes of public walks and pleasure grounds that the land has been available for use for a considerable period. Newspaper articles record that part of the gardens were officially opened by the Mayor of Gravesend in June 1952¹⁴.
48. However, there are deficiencies in the user evidence insofar as many of the statements provided are vague in their description of the duration, regularity and type of use. For example, several of those people completing statements state that they have lived in the area and known the land for a long period, but do not provide specific information as to their *actual* use of the land (dates, frequency etc) during that time. It is also unclear as to whether those who used the application site to play as children prior to the material period have continued to use the application site for other activities during the material period.
49. There is also a question as to whether use of the application site has been without interruption throughout the material period. The Objector asserts that the application site has, at various points during the material period, been closed for the purpose of undertaking various works such as the removal of play equipment, the reinstatement of the river wall and the creation of a riverside walk. On the other hand, the Applicant contends that access to the site has never been restricted.
50. Once again, this is an area which requires further investigation and cannot be resolved on the evidence currently available.

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

51. 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.
52. 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.
53. 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.

¹⁴ See article entitled ‘*Will be focal point of re-planned town*’ in the Gravesend Reporter, 21st June 1952

Conclusion

54. Although the relevant regulations¹⁵ provide a framework for the initial stages of processing the application (e.g. advertising the application, dealing with objections etc), they provide little specific 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.
55. Such an approach has received positive approval by the Courts, most notably in the *Whitmey*¹⁶ case in which the judge 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'*.
56. In determining an application to register land as a new Town or Village Green, the County Council must be satisfied that each of the legal tests relating to registration have been "*properly and strictly proved*"¹⁷. 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.
57. Clearly, in this case there is a significant issue with regard to whether the use of the application site has been 'as of right'. Although there is strong evidence that parts of the site are held under section 164 of the 1875 Act, the Objector has not been able to produce all of the necessary documentation in respect of the remaining sections, and key parts of the evidence (such as records of decisions to appropriate land for public walks and pleasure grounds) are incomplete or missing. Whilst it is arguable that an inference could be drawn that the whole of the land is held under the 1875 Act, it is an entirely different matter for the County Council to draw legal conclusions without the evidence being tested in full and being subject of cross-examination by the parties.
58. Putting the effect of the 1875 Act aside, there are issues with the evidence of use that has been presented in support of the application and there are many questions of fact arising from the statements submitted in support of the application. There are also further disputes regarding the closure of the application site and any resulting interruption to use during the material period.

¹⁵ Commons Registration (England) Regulations 2008

¹⁶ *R (Whitmey) v Commons Commissioners* [2005] QB 282 at 302

¹⁷ *R v Suffolk County Council, ex parte Steed* [1997] 1EGLR 131 at 134

59. The County Council is required to take a decision based upon the facts presented to it by the parties; it has no investigative duty in respect of an application to register land as a Town or Village Green and nor has it any general power to inquire into shortfalls in the evidence. This is a case where there is no clear evidence of a 'knock-out blow', but where there is also some uncertainty regarding whether or not the legal tests required for registration have been met. It is a case where further information is required to clarify the issues and overcome the factual disputes in the evidence.

60. As such, it seems appropriate that the matter be referred to a Public Inquiry where the main issues can be explored in further detail.

Recommendations

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

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.

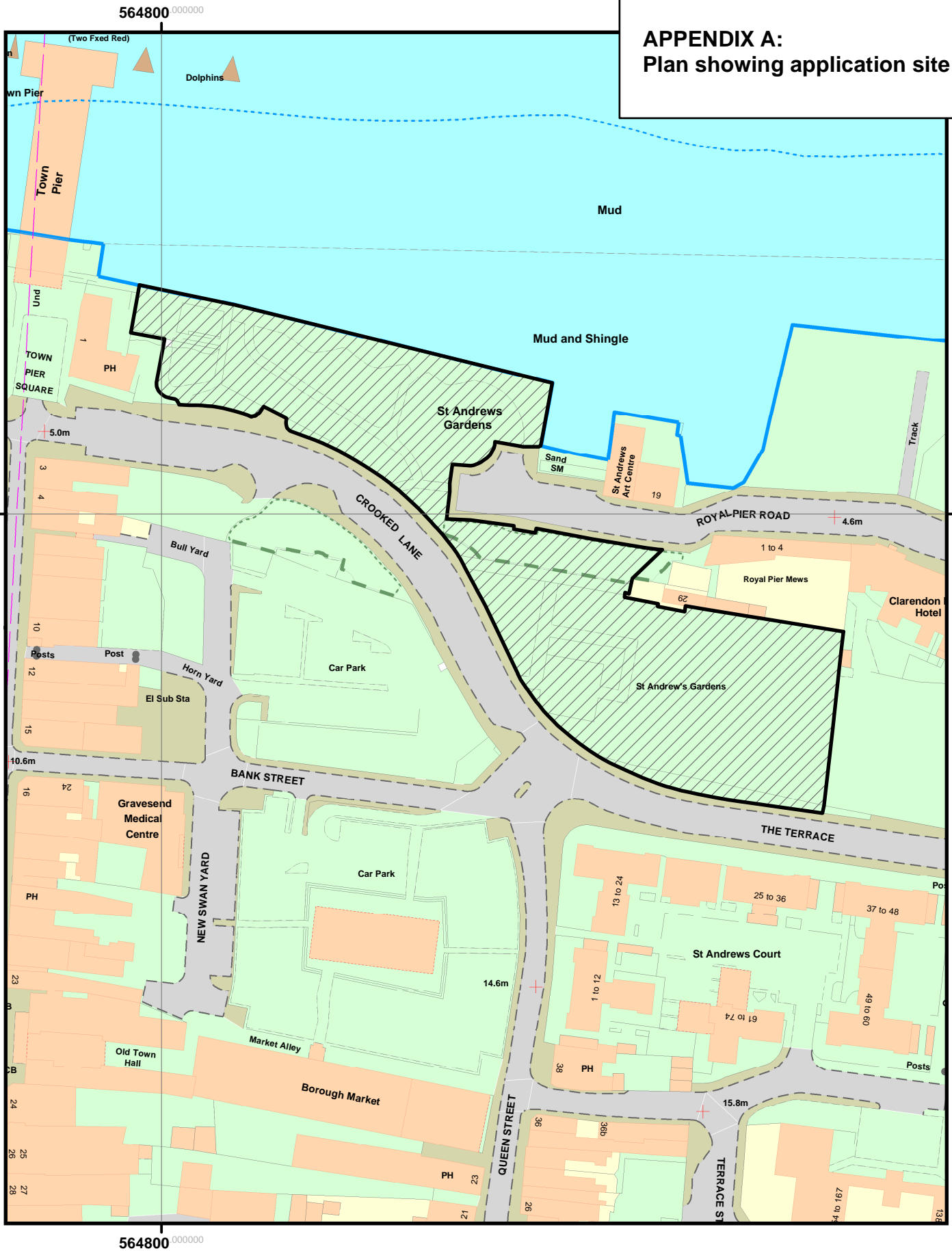
Background documents

APPENDIX A – Plan showing application site

APPENDIX B – Copy of application form

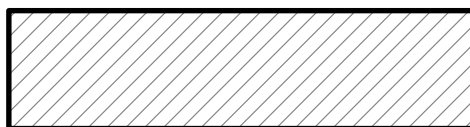
APPENDIX C – Summary of statements submitted in support of the application

**APPENDIX A:
Plan showing application site**



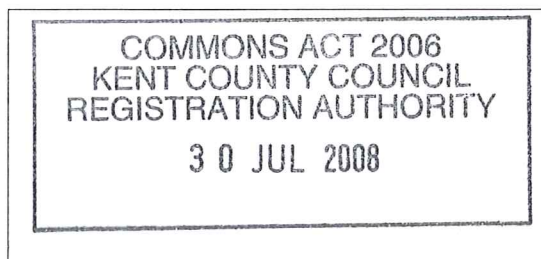
Scale 1:1250

**Land subject to Village Green application
at St. Andrew's Gardens, Gravesend**



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.

Note 1
Insert name of registration authority.

1. Registration Authority

To the Kent County Council.

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:

Postcode

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.

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.

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

Name by which usually known:

St Andrew's Gardens.

Location:

Gravesend, Kent.

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:

Gravesend, Kent

Tick here if map attached:

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).

St. Andrew's Gardens (as outlined in exhibit A) is land on which for more than twenty years a significant number of the habitants of Gravesend, have indulged in lawful sports and pastimes as of right and continue to do so.

Please see:

Exhibit A, Location Map, St. Andrew's Gardens

Exhibit B, Statement Suzanne Couves

Exhibit C, Statement. Robert Victor Couves.

Exhibit D, Statement. Kulbinder Dio.

Exhibit E, Statement. Jonathan Roger Clay

Exhibit F, Statement. Martin McKay

Exhibit G, Statement. Claire Brown

Exhibit H, Statement Andrew Moxted.

Exhibit I, A Brief History

Exhibit J Recognition in Planning Application.

Exhibit. K Recognition in Planning Application Appeal.

Exhibit. L Green and Protection Site.

Exhibit M Statement M.A. Larkin.

Exhibit N Gravesham Borough Local Plan and Review statement outlined in red.

Exhibit O photograph - young people enjoying the open space.

Exhibit P photograph - Andy Dausley + friend playing guitars.

Exhibit Q photograph - views across St. Andrew's Gardens towards the Thames at the PHA.

Exhibit R photograph - ladies enjoying the upper area St Andrew's Gardens.

Exhibit S photograph - views from upper area St Andrew's Gardens.

Exhibit T photograph - St Andrew's Gardens, walking the dog.

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

Graresham Borough Council.
Civic Centre
Windmill Street
Graesend
Kent.

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

10. Supporting documentation

Exhibit A - Location map St. Andrew's Gardens Graesend
Exhibit B - Statement, Suzanne Couves.
Exhibit C - Statement, Robert Victor Couves
Exhibit D - Statement, Kulbinder Dio
Exhibit E - Statement, Jonathan Roger Clay
Exhibit F - Statement, Martin McKay
Exhibit G - Statement Claire Brown
Exhibit H - Statement Andrew Marted

Exhibit I - A Brief History
Exhibit J - Recognition in Planning Application.
Exhibit K - Recognition in Planning Application Appeal.
Exhibit L - Green Grid Protection Site.
Exhibit M - Statement M A Larkin.
Exhibit N - Graresham Borough Local Plan and Review

10. Supporting documentation cont. . . .

cont exhibit N - statement outlined in red.

Exhibit O - photograph - young people enjoying the open space

P - photograph - Andy Daisley & friend playing guitars.

Exhibit Q - photograph - views across St Andrews Gardens towards the Thames & the PLA.

Exhibit R - photograph - ladies enjoying the upper area St Andrews Gardens.

Exhibit S - photograph - views from upper area St. Andrews Gardens.

Exhibit T - photograph - St Andrews Gardens & walking the dog

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


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:

26-07-08.

Signatures:



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).*

I...CLAIRE BROWN...,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) (³one 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)
CLAIRE BROWN.)
at Gravesend Kent)
this 28th day of July 2008)



Signature of Declarant

Before me *

Signature:



Address:

F. S. ROTHWELL LL.B.
SOLICITOR & NOTARY PUBLIC
7 WROTHAM ROAD
GRAVESEND, KENT.

Qualification:

* 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.

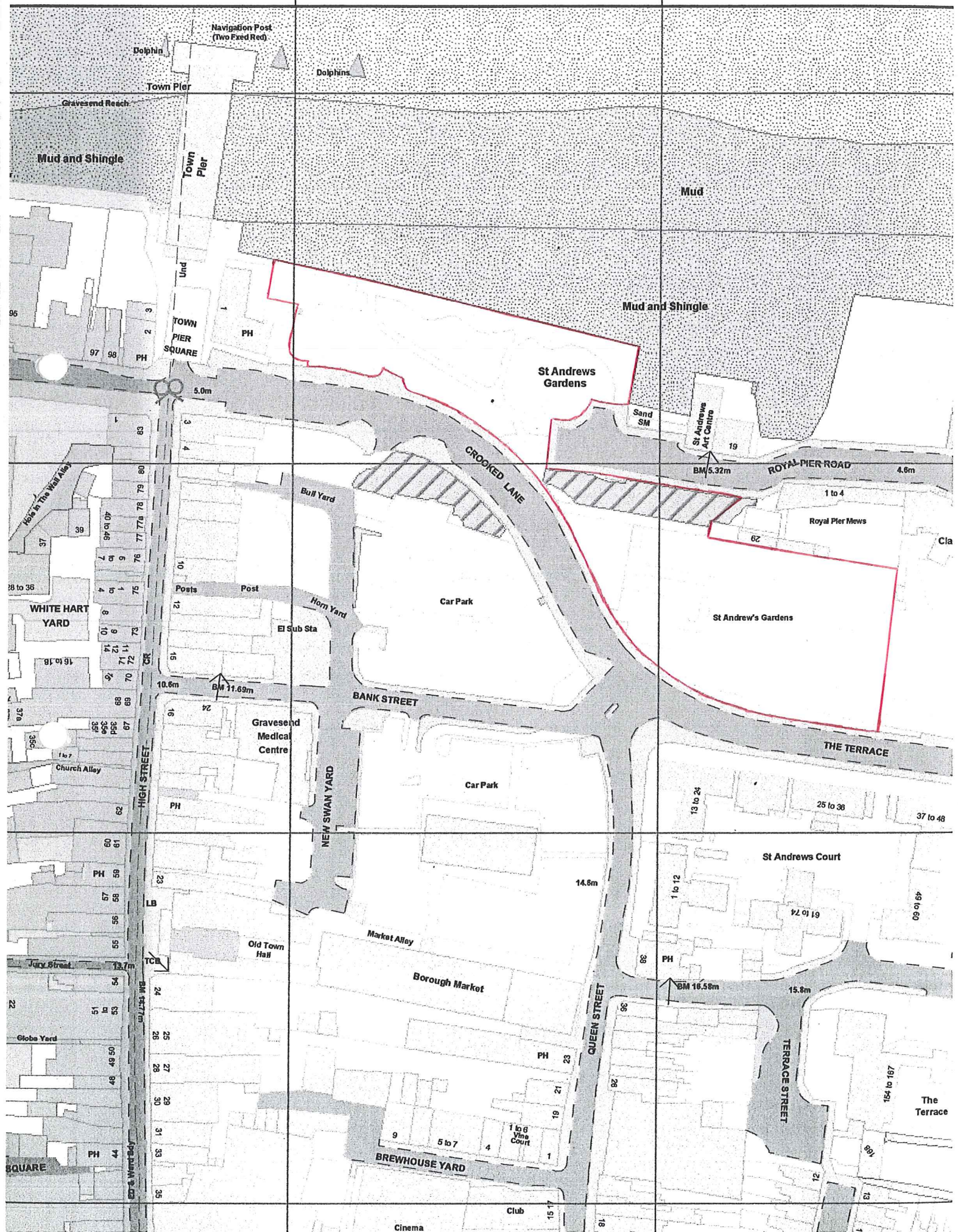
REMINDER TO OFFICER TAKING DECLARATION:

Please initial all alterations and mark any map as an exhibit

Exhibit A.

564800

564900



**APPENDIX C:
Summary of statements submitted in
support of the application**

Suzanne Couves (Exhibit B)

- Has known the application site since moving to Gravesend area in 1976.
- Father-in-law (and later his granddaughter) lived in Royal Pier Road and would often walk through gardens to visit them.
- when daughter was young (1980s and 1990s), would often sit in the garden area: *“the grass was a well-used play area where people of all ages would picnic and sunbathe. Children would fly kites and play ball games. Children would fly kites and play ball games.”*
- *“local people and visitors have always used this open area, close to the High Street and shops, as it is the only area where one can sit and enjoy the river because the promenade open space is quite a long walk from the centre of the town...”*

Robert Couves (Exhibit C)

- Born in 1940 in Royal Pier Road. Recalls playing on open wasteland long before the formal gardens and play areas were officially opened.
- Always played and walked through the application site to and from school, town and to the station. There was a playground that was well used by local children, but this was removed and the area became an open space for ball games.
- There were benches set out and many people would sit out and eat their sandwiches at lunchtime.
- *“I have always remembered these gardens as a well used public space enjoyed by local residents and visitors alike”.*

Kulbinder Dio (Exhibit D)

- Has known the application site as a recreation area used by many local people for in excess of 35 years.
- Used to play there was a child along with other siblings. There used to be a play area which had climbing frames and a roundabout (now removed).
- Often go past this area and see children kicking a ball around or playing chase or people walking their dogs.

Jonathan Clay (Exhibit E)

- Has lived in Gravesend since 1993 and has used the application site as a place to visit, meeting friends as well as watching boats and other activities on the river.
- *“The Gardens are used by a significant number of people from the locality for sports and pastimes, and I am told and I believe that this has taken place for more than twenty years”.*
- Has personally observed a range of other activities taking place on the land, including fishing, people meeting friends, cycling, ball games, dancing, singing, eating and drinking, dog-walking.
- Use of the land has at all times been open, without force and without permission.

Martin McKay (Exhibit F)

- Has lived in Gravesend since 1996 and has know the application site as a place to visit during that time. Has used the land for meeting friends, reading, walking as well as watching boats and other activities on the river.
- Has personally observed a range of other activities taking place on the land, including fishing, people meeting friends, cycling, ball games, dancing, singing, eating and drinking, dog-walking.

Claire Brown (Exhibit G)

- Has lived in Gravesend since 1987 (in Royal Pier Road since 2002). Has used the land to exercise with dog, meeting friends and watching the boats and other activities on the river.
- Has personally observed a range of other activities taking place on the land, including football, picnics, playing musical instruments, dog-walking, sunbathing, exercising pets, cycling, children playing, reading and people having their lunch breaks.

Andrew Maxted (Exhibit H)

- Has lived in Gravesend since 2002.
- *“St Andrews Gardens are in constant use by local people who benefit from the open space, river front access, open play area and a place to rest and relax at all times of day”.*
- Has personally observed a range of other activities taking place on the land, including fishing, ball games, picnics, dog-walking, and socialising.

Mr. M. Larkin (Exhibit M)

- Has lived in Gravesend since 1945. Gravesend Corporation laid out the land with a garden and play area in 1952 and improved it in later years.
- More recently, the application site has become neglected and the play areas and seating removed, but the area is still used by local people for fishing, ball games, children playing, and socialising. It is also an area that attracts local amateur artists.
- Use the area as part of a riverside walk for the Gravesend Heritage Association for both adults and children. It is a safe place for children to play and for adults to rest.

Lynsey Alston (Exhibit BB)

- Has lived in Gravesend since 1978 (opposite the application site for the last 2 years). Used the application site as a place to meet friends and play when younger and, more recently, as a place to sit and read.
- Has personally observed a range of activities taking place on the land, including socialising, cycling, football, dog-walking as well as eating and drinking.
- Use has been open, without force and without permission at all times.

Maureen Martin (Exhibit CC)

- Has lived in Gravesend since 1994. During that time, has used the application site as a place to take grandchildren to picnic and play, and as a place to visit with friends and family to watch the activity on the river.
- Has personally observed a range of activities taking place on the land, including socialising, cycling, football, dog-walking as well as eating and drinking.
- Use has been open, without force and without permission at all times.

Helen Aspinal (Exhibit EE)

- Has lived in Gravesend since 1999, but played on the site as a child when visiting aunt (1967 to 1975).
- Use has been open, without force and without permission at all times.

Raymond Bardoe (Exhibit FF)

- Has lived in Gravesend since 1971. During that time, has used the application site as a place to take visiting friends from outside the area and to play with own children when they were young.
- Has personally observed a range of activities taking place on the land, including fishing, socialising, cycling, football, dog-walking as well as eating and drinking.
- Use has been open, without force and without permission at all times.

Jennifer Bardoe (Exhibit GG)

- Has lived in Gravesend since 1965. During that time, has used the application site as a place to meet and enjoy time with elderly father, read, eat lunch, and play with children when they were younger.
- Has personally observed a range of activities taking place on the land, including fishing, socialising, cycling, football, dog-walking as well as eating and drinking.
- Use has been open, without force and without permission at all times.

Daniel Bardoe (Exhibit HH)

- Has lived in Gravesend since 1974. During that time, has used the application site as a place to play as a child and in later years to enjoy time with friends.
- Has personally observed a range of activities taking place on the land, including fishing, socialising, cycling, football, dog-walking as well as eating and drinking.
- Use has been open, without force and without permission at all times.

Mrs. J. Jaques (Exhibit MM)

- Has lived in Gravesend since 1970. During that time has used the application site as a place to sit and look at the river and to eat lunch.
- Has personally observed many games and activities taking place on the land.
- Use has been open, without force and without permission at all times.

Mr. P. Jaques (Exhibit NN)

- Has lived in Gravesend since 1970. During that time has used the application site as a place to sit and look at the river.
- Has personally observed many games and activities taking place on the land.
- Use has been open, without force and without permission at all times.

F. Jaques (Exhibit OO)

- Has lived in Gravesend since 1985. During that time has used the application site as a place to sunbathe, socialise and eat lunch.
- Has personally observed many games and activities taking place on the land.
- Use has been open, without force and without permission at all times.

Alida Christensen (Exhibit PP)

- Has lived in Gravesend since 1988. Has used the application site to meet friends and play there as a teenager.
- Has personally observed a range of other activities taking place on the land including fishing, socialising, cycling, football, dog-walking and eating and drinking.
- Use has been open, without force and without permission at all times.

Mr. J. Howell (Exhibit QQ)

- Has lived in Northfleet since 1946. Was working for Gravesham Borough Council when St. Andrew's Gardens was created in the early 1960s for use as a leisure area for the general public. Made regular visits to view the river scene.
- Has personally observed a range of other activities taking place on the land, including fishing, picnics, socialising, dog-walking and football. Know from personal experience that these activities have taken place since at least the mid-1960s.
- Use has been open, without force and without permission at all times.

Alan King (Exhibit RR)

- Has lived in Gravesend since 2003 and has used application site to meet friends, visit, read and sunbathe.
- Has personally observed a range of other activities taking place on the land, including fishing, socialising, football, dog-walking, eating and drinking.