

## Application to register land known as Hillminster Green at Minster-in-Thanel 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 Tuesday 3<sup>rd</sup> December 2019.

**Recommendation: I recommend that the County Council informs the applicant that the application to register the land known as Hillminster Green at Minster-in-Thanel as a new Village Green has been accepted, and that the land subject to the application be formally registered as a Village Green.**

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Local Members: Ms. E. Dawson and Ms. E. Hurst

Unrestricted item

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### Introduction

1. The County Council has received an application to register land known as Hillminster Green at Minster-in-Thanel as a new Village Green from the Minster Parish Council ("the applicant"). The application, made on 11<sup>th</sup> October 2017, was allocated the application number VGA675. A plan of the site is shown at **Appendix A** to this report.

### 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 period of at least six weeks during which objections and representations can be made.
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### **The application site**

6. The area of land subject to this application (“the application site”) consists of a grass area of open space of approximately 0.19 acres (0.076 hectares) in size situated at the junction of Hill House Drive and Burgess Close in the village of Minster in Thanet. Access to the site is unrestricted via the footway of Hill House Drive on the western side of the application site.
7. The site is shown on the plan at **Appendix A**.

### **The case**

8. The application has been made on the grounds that the application site has been freely used by local residents for a variety of recreational activities, without challenge, and for a period in excess of twenty years.
9. Provided in support of the application were 25 user evidence questionnaires from local residents, a supporting statement by the applicant as well as various maps showing the application site. A summary of the evidence in support of the application is attached at **Appendix B**.

### **Consultations**

10. Consultations have been carried out as required and no objections have been received.
11. One email response has been received from a local resident in support of the application.

### **Landowner**

12. At the time of the submission of the application, the application site was owned by Sunley Estates PLC and registered with the Land Registry under title number K666461. The registered landowner was contacted but no response was received.
13. During the processing of the application, on 6<sup>th</sup> September 2018, the ownership of the land was transferred to the local Parish Council (also the applicant for Village Green status).
14. It is to be noted that this change of ownership has no bearing on the Village Green application; had the ownership been transferred prior to the submission of the Village Green application, the applicant would have been advised to submit a voluntary dedication application under section 15(8) of the Commons Act 2006 which would have avoided the need to produce evidence of use. However, provided that the evidential tests set out in section 15(2) of the 2006 Act are met, the fact that the applicant is now also the landowner presents no bar to the registration of the land as a Village Green under this latter section.

### **Legal tests**

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

- (a) *Whether use of the land has been 'as of right'?*
- (b) *Whether use of the land has been for the purposes of lawful sports and pastimes?*
- (c) *Whether use has been by a significant number of inhabitants of a particular locality, or a neighbourhood within a locality?*
- (d) *Whether use of the land 'as of right' by the inhabitants has continued up until the date of application or, if not, ceased no more than 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'?**

16. 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.
17. In this case, there is no evidence to indicate that use of the application site has been in any way in exercise of force, in secrecy or undertaken on a permissive basis. None of the witnesses refer to any hindrance to informal recreational use of the application site and there is no evidence on the ground (e.g. old fencing) to suggest that access to the application site has ever been restricted in any way.
18. Therefore, in the absence of evidence of any challenges to recreational use of the application site, such use would appear to have taken place 'as of right'.

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

19. 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>.
20. In this case, the evidence submitted in support of the application (summarised at **Appendix B**) indicates that local residents have engaged in various recreational activities on the land.
21. In particular, the majority of witnesses refer to the use of the application site on a daily basis by local children for ball games and general play. This is due to the fact that the application site is located away from main roads and offers a safe place for children to play away from the dangers of vehicular traffic. The evidence also suggests that the application site has been an area for neighbourhood socialising or

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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

occasionally for informal community events, such as cake sales and organised activities.

22. The nature of the application site and its location within a housing estate both support the applicant's evidence that it has been used for the activities cited above. As such, it would appear that the application site 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?***

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 cases where the locality is so large that it would be impossible to meet the 'significant number' test (see below), it will also be necessary to identify a neighbourhood within the locality. The concept of a 'neighbourhood' is more flexible than that of a locality, and need not be a legally recognised administrative unit. On the subject of 'neighbourhood', the Courts have held that *'it is common ground that a neighbourhood need not be a recognised administrative unit. A housing estate might well be described in ordinary language as a neighbourhood... The Registration Authority has to be satisfied that the area alleged to be a neighbourhood has a sufficient degree of cohesiveness; otherwise the word "neighbourhood" would be stripped of any real meaning'*<sup>5</sup>.

*The 'neighbourhood within a locality'*

25. In this case, the applicant specifies the locality (on the application form) as "Hillhouse Drive, Minster-in-Thamet, CT12 4BE within the civil parish of Minster".
26. Hill House Drive, relied upon by the applicant is merely a road name and clearly not, of itself, a legally recognised administrative unit; however, the civil parish of Minster-in-Thamet would be a qualifying locality for the purposes of the Village Green application.
27. The application site itself is situated within a housing estate comprising 4 roads and approximately 90 properties, all accessed via Hill House Drive. The properties are similar in both age (mid-1990s) and character, and appear to have been built largely as part of the same development, known locally as 'Hillminster'. In that respect, it would appear to be a sufficiently cohesive and identifiable community within the wider parish of Minster.

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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> *ibid* at 92

28. Of the 25 user evidence statements submitted in support of the application, all but 3 are from residents of the Hillminster development which indicates that the land is almost predominantly used by the residents of the Hillminster community, rather than people living within the wider parish.
29. As such, it can be concluded that use of the application site in this case has been by the residents of the neighbourhood of 'Hillminster' within the locality of the parish of Minster-in -Thanet.

*Significant number*

30. The County Council also needs to be satisfied that the application site has been used by a 'significant number' of the residents of the locality. 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>6</sup>. Thus, 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.
31. In this case, the applicant has provided evidence of use from 25 witnesses. A large number of those who completed evidence questionnaires, in addition to their own evidence of use, referred to having observed use of the application site by others on a daily basis.
32. As noted above, the image presented of the application site by the user evidence is one of a community focal point that is used on a daily basis, particularly by local children. As such, it would have been obvious to a reasonable landowner that the application site was in general use by local residents.
33. Therefore, it can be concluded that the application site has been used by a significant number of the residents of the Parish of Minster.

***(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?***

34. 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 two years from the date upon which use 'as of right' ceased.
35. In this case, the application was made on 11<sup>th</sup> October 2017. Given the open nature of the application site and the ease of access onto it, there is no evidence to suggest that use has not continued until (and beyond) the date of the application.

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<sup>6</sup> R (Alfred McAlpine Homes Ltd.) v Staffordshire County Council [2002] EWHC 76 at paragraph 71

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

36. 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 of the application site 'as of right' is continuing and, as such, the relevant twenty-year period ("the material period") is calculated retrospectively from the date of the application, i.e. 1997 to 2017.
37. The user evidence summarised at **Appendix B** demonstrates that there has been use of the application site throughout the last twenty years, with 11 users (out of the 25 in total) covering the full twenty years.
38. Therefore, it can be concluded that there has been use of the application site for a full period of twenty years.

**Conclusion**

39. Although this application is unopposed, the County Council must still be satisfied that all of the requisite legal tests have been met.
40. In this case, the evidence submitted in support of the application would appear to confirm that the application site has been used by local residents for a period of over twenty years for the purposes of lawful sports and pastimes, such that the legal tests set out in section 15 of the Commons Act 2006 have been met.

**Recommendation**

41. I recommend that the County Council informs the applicant that the application to register the land known as Hillminster Green at Minster-in-Thamet as a new Village Green has been accepted, and that the land subject to the application be formally registered as a Village Green.

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
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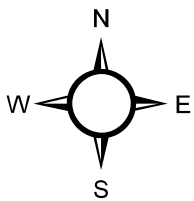
**Appendices**

APPENDIX A – Plan showing application site  
APPENDIX B – Table summarising user evidence

**Background documents**

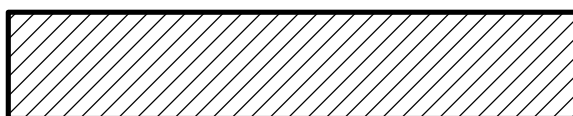
The main file is available for viewing on request at the offices of the PROW and Access Service at Invicta House, County Hall, Maidstone. Please contact the Case Officer for further details.

**APPENDIX A:  
Plan showing application site**



Scale 1:1250

**Land subject to Village Green  
application at Hill House Drive  
in Minster-in-Thamet**



Name	Period of use	Frequency of use	Type of use	Access	Comments
ANDREWS, I & K	2010-present	Occasionally	Play games inc. football & socialize with neighbours	Open access from Burgess Close	Never been challenged using the land or prevented from doing so; seen local residents playing & pick-nicing
BAILEY, T	2012-2017	Most days	Children playing with friends, socializing with neighbours, community activities ie. Halloween, charity cake sales	From Burgess Close	Seen children playing sports & bike riding. Community base for Halloween & games in summer. Never challenged or prevented from using land
BUCKLEY K & D	1995 – present	Daily	Safe play space for children	(Not said)	Seen others playing / walking /exercise dogs . No notice, fencing or challenge or prevention from use
BURGESS, O.	1995-2017	Whenever wanted / now twice a week	Dog Walking, playing with grandchildren	From both sides	Given permission by Sunleys. Seen other local children playing, community cake sales for charity, bike riding, rounders
CHAPMAN Mr & Mrs R	1994-present	Not stated	Walking, talking with neighbours	Not stated	Never challenged or prevented from use, seen kids playing football, rounders, cricket, dog walking, picnics
EDWARDS, T	2008-2017	Not stated	Not stated	Not stated	No gates/stiles. Seen others bike riding, children playing, sports
ETHERINGTON Mr & Mrs T	1995-2017	Weekly or fortnightly	Play with grandchildren, family football, climbing tree	Not stated	No gates/stiles, never prevented from using.Seen other children playing & sports, dog walking, Salvation Army carol singing
GEOGHEGAN, M & C	1998-2017	Occasionally	Walking in summer, family socializing	Not stated	Others playing, walking, sports, community gatherings
HARDING, D & W	2002-2017	Daily	Walking dog, meeting neighbours. Small summer community fete, children play if not old enough to go to Rec	Walk over road (Burgess close)	Other children playing, picnics, sport, community events. Not challenged or prevented
HOCKEY, D	1998-2017	Once a week	Exercise and safe play area for young children	Not stated	Not challenged or prevented from use. Children playing football & cricket, dog walking, built snowmen in winter
HUGHES S & J	1993-2017	Regularly when children young, now occasionally	Ball games with children, safe for young children & family time. Community Games by locals. Now for own exercise and socializing	Walk from Burgess Close	Not challenged or prevented from use. Other children playing, rounders, football, cricket. Local events for community
HYDE, D	2016-2017	Daily	Children play – football, skipping. Charity cake sale	From junction of Hill House Drive & Burgess Close	No challenge or prevented from use. Local children and families play there, dog walking
MILLs, D	2009-2017	Once a month	Play with grandchildren, own recreation	Not stated	No challenge or prevented from use.Local children play, walking



MALAMIS, D	2006-2017	2-3 times per week, now 1-2	Children playing when younger and to meet up with other local families	Not stated	No challenge or prevented from use. Children playing, picnics, walking
MARSHALL	2005-present	Daily	Dog walking, family playing	From Hill House Drive	Local children playing, walking, picnics when weather good
MILNES, K	2007-present	Daily	Children play safely with friends, can be seen from home. Dog walking	Lives next to land	No challenge or prevented from use. Local young children play here as Rec is along main road and not safe on their own, Dog walking
PADFIELD, K & M	2006-2017	Daily	Childrens play area	Not stated	Local children playing games, dog walking. Not challenged
PORTANIER, B & J	1992-2017	Weekly	Play with children and then granddaughter	Not stated	Local use – children & games. Street parties
PORTANIER, L TAYLOR, C	1992 – present	Weekly or daily	Play with child, relax, meet neighbours, dog exercise	Not stated	Not challenged or use prevented. Others playing football, childrens games, picnics, community celebrations for royal weddings, cake sales, snowmen building in winter
RAMUS, A	Not stated	No personal use of land	N/A	Not stated	Local children use for play
SEALE, P & C	2000 - 2017	Regular family visits	Childrens games, grandchildrens visits – safe play area	Not stated	Not challenged or use prevented. Mainly safe area for young children to play
SELF, K & ALMOND, J	1995 – present	2-3 times per week	Play with grandchildren & family; maintain trees; general safe area to play and be outside	From Burgess Close	Not challenged or use prevented. Local children games, picnics, dog walking; charity cake sales, summer activities organized by local parents for families
SHERRINGTON, L	2000 – 2017	Daily	Played with children and walking	Not stated	Children playing games, sports, dog walking, bike riding
SIMPKIN, T	2004 – present	Weekly, daily in summer	Children meet friends and play, Football, lego, cycling. Socialise with neighbours	Not stated	Not challenged or use prevented. Children playing, team games, picnics, kite flying. Local families use it
TOMCZAK, MR & MRS	1996 – 2017	2/3 times per week	Green space to enjoy close to home	From Burgess Close	Not challenged or use prevented. Local children playing and enjoying themselves on bikes, scooters ed. Local children playing and enjoying themselves on bikes, scooters