

## **Application to register land at Chart Corner in the parish of Chart Sutton as a new Village Green**

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A report by the Director of Environment and Waste to Kent County Council's Regulation Committee Member Panel on Friday 19<sup>th</sup> February 2010

**Recommendation: I recommend that the County Council informs the applicant that the application to register the land at Chart Corner in the parish of Chart Sutton has been accepted, insofar as it relates to land owned by the Parish Council, and that the land shown hatched at Appendix D be formally registered as a Village Green.**

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Local Members: Mr. E. Hotson

Unrestricted item

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### **Introduction**

1. The County Council has received an application to register land at Chart Corner in the parish of Chart Sutton as a new Village Green from the Chart Sutton Parish Council ("the applicant"). The application, dated 12<sup>th</sup> December 2008, was allocated the application number VGA606. 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. Traditionally, town and village greens have derived from customary law and until recently it was only possible to register land as a new village green where certain qualifying criteria were met: i.e. where it could be shown that the land in question had been used 'as of right' for recreational purposes by the local residents for a period of at least 20 years.
3. However, a new provision has been introduced by the Commons Act 2006 which enables the owner of any land to apply to voluntarily register the land as a new Village Green without having to meet the qualifying criteria. Section 15 states:  
*"(8) The owner of any land may apply to the Commons Registration Authority to register the land as a town or village green.  
(9) An application under subsection (8) may only be made with the consent of any relevant leaseholder of, and the proprietor of any relevant charge over, the land."*
4. Land which is voluntarily registered as a Village Green under section 15(8) of the Commons Act 2006 enjoys the same level of statutory protection as that of all other registered greens and local people will have a guaranteed right to use the land for informal recreational purposes in perpetuity. This means that once the land is registered it cannot be removed from the formal Register of Town or Village Greens (other than by statutory process) and must be kept free of development or other encroachments.

5. As a standard procedure set out in the Commons Registration (England Regulations 2008, the County Council must also publicise the application in a newspaper circulating in the local area and put a copy of the Notice on its own website. The publicity must state a period of at least six weeks during which objections and representations can be made. In addition, the County Council is required to notify all local Councils of the application.
6. In determining the application, the County Council must consider very carefully the relevant legal tests. In the present case, it must be satisfied that the applicant is the owner of the land and that any necessary consents have been obtained (e.g. from a tenant or the owner of a relevant charge). Provided that these tests are met, then the County Council is under a duty to grant the application and register the land as a Village Green.

## **The Case**

### Description of the land

7. The area of land subject to this application (“the application site”) consists of a roughly rectangular shaped area of landscaped open space of approximately 0.1 acre in size situated adjacent to Warmlake Road in the village of Chart Sutton. The application site is bounded on its northern side by boundary fencing and on the remaining three sides by a low post and chain fence. It consists of an area of grass with several trees, and it is equipped with several benches and litter bins and the parish sign. Photographs of the site are attached at **Appendix C**.

### Notice of Application

8. As required by the regulations, notice of the application was published in the Kent Messenger on Friday 26<sup>th</sup> June 2009 and placed on the County Council’s website. In addition, copies of the notice were displayed on the application site itself and served on Maidstone Borough Council. The local County Member was also informed of the application.
9. In response to the Notice of Application, one letter of support has been received from Cllr. M. Fitzgerald. Cllr. Fitzgerald states that it is the only communal space in the centre of the village and serves as a focal and meeting point for the residents.

### Ownership of the land

10. A Land Registry search has been undertaken to confirm the ownership of the application site. The search revealed that although the significant majority of the application site is owned by Chart Sutton Parish Council (under title number K341999), a small section of the land does not have any registered owner and two other sections are not within the ownership of the Parish Council. The ownership of the application site is shown on the plan at **Appendix D**.
11. Part of the land (shown dotted on the plan) is unregistered with the Land Registry and has no known landowner. Since there is no landowner capable of dedicating

the land as a new Village Green, it is not possible for the land to be registered as a Village Green under section 15(8) of the Commons Act 2006.

12. Similarly, a strip of land at the northern part of the site, which is approximately 2.5 metres wide, (shown cross-hatched on the plan) is not within the Parish Council's ownership and is owned by two private individuals. Without the consent of these individuals, it is not possible for the land to be registered as a new Village Green. The Parish Council has therefore requested that this area be excluded from the area to be registered as a new Village Green.
13. Therefore, the extent of the area of land which is capable of registration as a new Village Green according to the legal requirements of section 15(8) of the Commons Act 2006 is shown hatched on the plan.
14. The fact that part of the application site is not entirely under the Parish Council's ownership is not detrimental to the application itself. In the *Oxfordshire*<sup>1</sup> case, Lord Hoffman endorsed the Court of Appeal's suggestion that the Registration Authority is entitled to amend an application and register a smaller area than that applied for.

#### The 'locality'

15. DEFRA's view is that once land is registered as a Village Green, only the residents of the locality have the legal right to use the land for the purposes of lawful sports and pastimes. It is therefore necessary to identify the locality in which the users of the land reside. At Part 6 of the application, the locality is defined as 'the parish of Chart Sutton in the Boughton Monchelsea and Chart Sutton ward'.
16. A locality for these purposes normally consists of a recognised administrative area (e.g. civil parish or electoral ward) or a cohesive entity (such as a village or housing estate). Since the application has been made by Chart Sutton Parish Council, it seems appropriate that the locality should therefore be the parish of Chart Sutton so that all the residents of the village have the legal right to use the land.

#### Other matters

17. Members will note from the photographs at **Appendix C** that there is a bus shelter on the application site. It is not considered appropriate for the bus shelter to be registered as part of a new Village Green. Village Greens are heavily protected by Victorian statues which make it an offence to deposit materials on the surface, to encroach or to erect structures upon a Village Green. If the bus shelter were to fall into a state of disrepair in the future, Village Green status would make it difficult for the structure to be rebuilt. Therefore, to avoid any potential problems arising in the future, it is preferable to exclude the bus shelter from the registration of the land as a new Village Green. The Parish Council has agreed that this should be the case.

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<sup>1</sup> *Oxfordshire County Council v Oxford City Council* [2006] UKHL 25 at paragraph 62

## **Conclusion**

18. As stated at paragraph 3 above, the relevant criteria for the voluntary registration of land as a new Village Green under section 15(8) of the Commons Act 2006 requires only that the County Council is satisfied that the land is owned by the applicant. There is no need for the applicant to demonstrate use of the land 'as of right' for the purposes of lawful sports and pastimes over a particular period.
19. I have concluded that all the necessary criteria concerning the voluntary registration of the land as a Village Green have been met in relation to the greater part of the application site that is owned by Chart Sutton Parish Council.
20. If the County Council decides to register the land as a Village Green, in order to comply with the legal requirements, the sections of the application site that are not within the ownership of the Parish Council should be excluded from the registration. As discussed at paragraph 17 above, the bus shelter should also be excluded from registration.

## **Recommendation**

21. I recommend that the County Council informs the applicant that the application to register the land at Chart Corner in the parish of Chart Sutton has been accepted, insofar as it relates to land owned by the Parish Council, and that the land shown hatched at Appendix D be formally registered as a Village Green.

Accountable Officer:

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

Case Officer:

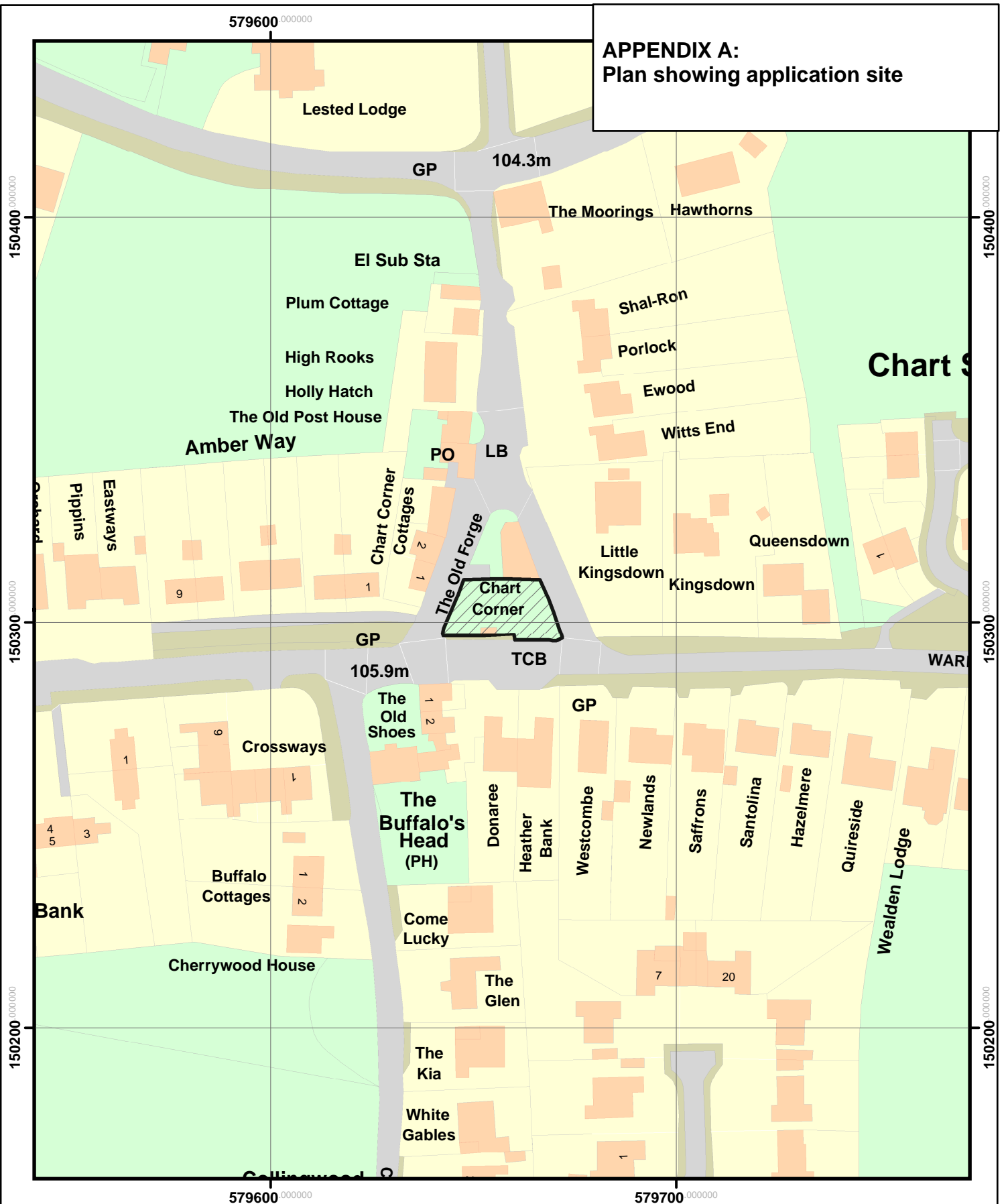
Miss. Melanie McNeir – Tel: 01622 221628 or Email: melanie.mcneir@kent.gov.uk

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 – Photographs of the application site
- APPENDIX D – Plan showing land ownership

**APPENDIX A:  
Plan showing application site**



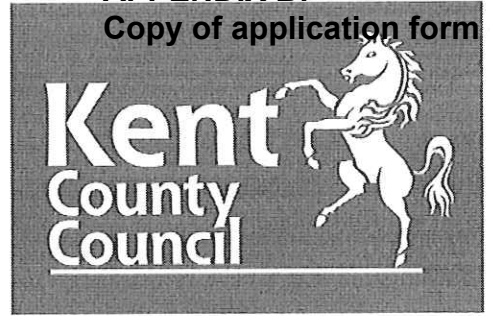
Scale 1:1250

Application to register land at  
Chart Corner in the parish of  
Chart Sutton as a new Village Green



Commons Act 2006: section 15

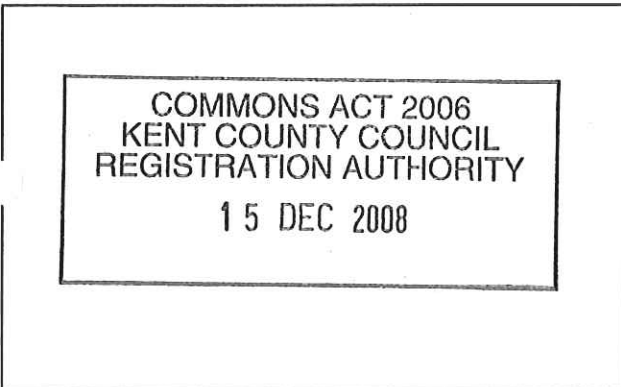
Application for the registration of land  
as a new Town or Village Green



*This section is for office use only*

Official stamp of the Registration Authority  
indicating date of receipt:

Application number:



606

VG number allocated at registration  
(if application is successful):

**Note to applicants**

Applicants are advised to read the 'Part 1 of the Commons Act 2006 (changes to the commons registers):  
Guidance to applicants in the pilot implementation areas' and to note the following:

- All applicants should complete parts 1–6 and 10–12.
- Applicants applying for registration under section 15(1) of the 2006 Act should, in addition, complete parts 7 and 8. Any person can 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 part 9. Only the owner of the land can apply under section 15(8).
- There is no fee for applications under section 15.

**Note 1**

*Insert name of Commons  
Registration Authority*

**1. Commons Registration Authority**

To the: KENT COUNTY COUNCIL

**Note 2**

If there is more than one applicant, list all names. Use a separate sheet if necessary. State the full title of the organisation if the applicant is a body corporate or unincorporate. 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 part 3 is not completed all correspondence and notices will be sent to the first named applicant.

**2. Name and address of the applicant**

Name: CHART SUTTON PARISH COUNCIL

Full postal address: THE FIRS  
(incl. Postcode) CHARTWAY STREET  
SUTTON VALENCE  
ME17 3JA

Telephone number: 01622 842782  
(incl. national dialling code)

Fax number: —  
(incl. national dialling code)

E-mail address: clerk.cspc@btiscale.co.uk

**Note 3**

This part should be completed if 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, you may receive communications from the Registration Authority or other persons (e.g. objectors) via email.

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

Name:

Firm:

Full postal address:  
(incl. Postcode)

Telephone number:  
(incl. national dialling code)

Fax number:  
(incl. national dialling code)

E-mail address:

**Note 4**

For further details of the requirements of an application refer to Schedule 4, paragraph 9 to the Commons Registration (England) Regulations 2008.

**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 and why:

*\*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.*

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:

**Note 5**

*This part is to identify the new green. The accompanying map must be at a scale of at least 1:2,500 and shows the land by means of distinctive colouring within an accurately identified boundary. State the Land Registry title number where known.*

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

Name by which usually known: VILLAGE GREEN

Location: CHART CORNER  
CHART SUTTON  
ME17 3SB

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

Please tick the box to confirm that you have attached a map of the land (at a scale of at least 1:2,500):

**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 a map should be provided on which a locality or neighbourhood is marked clearly at a scale of 1:10,000.*

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

Indicate the locality (or neighbourhood within the locality) to which the claimed green relates by writing the administrative area or geographical area by name below and/or by attaching a map on which the area is clearly marked:

THE PARISH OF CHART SUTTON IN  
BOUGHTON MONCHELSEA AND CHART SUTTON  
WARDS; MAIDSTONE, KENT

Please tick here if a map is attached (at a scale of 1:10,000):



**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).*

**7. Justification for application to register the land as a Town or Village Green**

**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).*

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

**Note 9**

List or enter in the form all such declarations that accompany the application. This can include any written declarations sent to the applicant (i.e. 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****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**

- ① COPY OF OFFICIAL COPY OF LAND REGISTRY DETAILS INCLUDING MAP (EXHIBIT 1)
- ② MAP TO SCALE 1:1250 WITH AREA MARKED RED

**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 unincorporate.*

**12. Signature**

Signature(s) of applicant(s):



Date: 12/12/08

**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.

**Please send your completed application form to:**

**The Commons Registration Team  
Kent County Council  
Countryside Access Service  
Invicta House  
County Hall  
Maidstone  
Kent ME14 1XX**

***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 and the Freedom of Information Act 2000.*



Reproduced from the 1994 Ordnance Survey 1:12,500 map with the permission of the Controller of Her Majesty's Stationery Office, Crown copyright. The Maidstone Borough Council Licence No. LA 078484

I certify that this is a copy of the original.

*[Handwritten signature]*

Mrs M. Ann Rollins, J.P. EXHIBIT 2

**APPENDIX C:**  
**Photographs showing application site**



**ABOVE:** View from Warmlake Road (outside The Buffalo's Head) looking EAST

**BELOW:** View from Warmlake Road (outside 'Little Kingsdown') looking WEST



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**APPENDIX D:  
Plan showing ownership of the  
application site**

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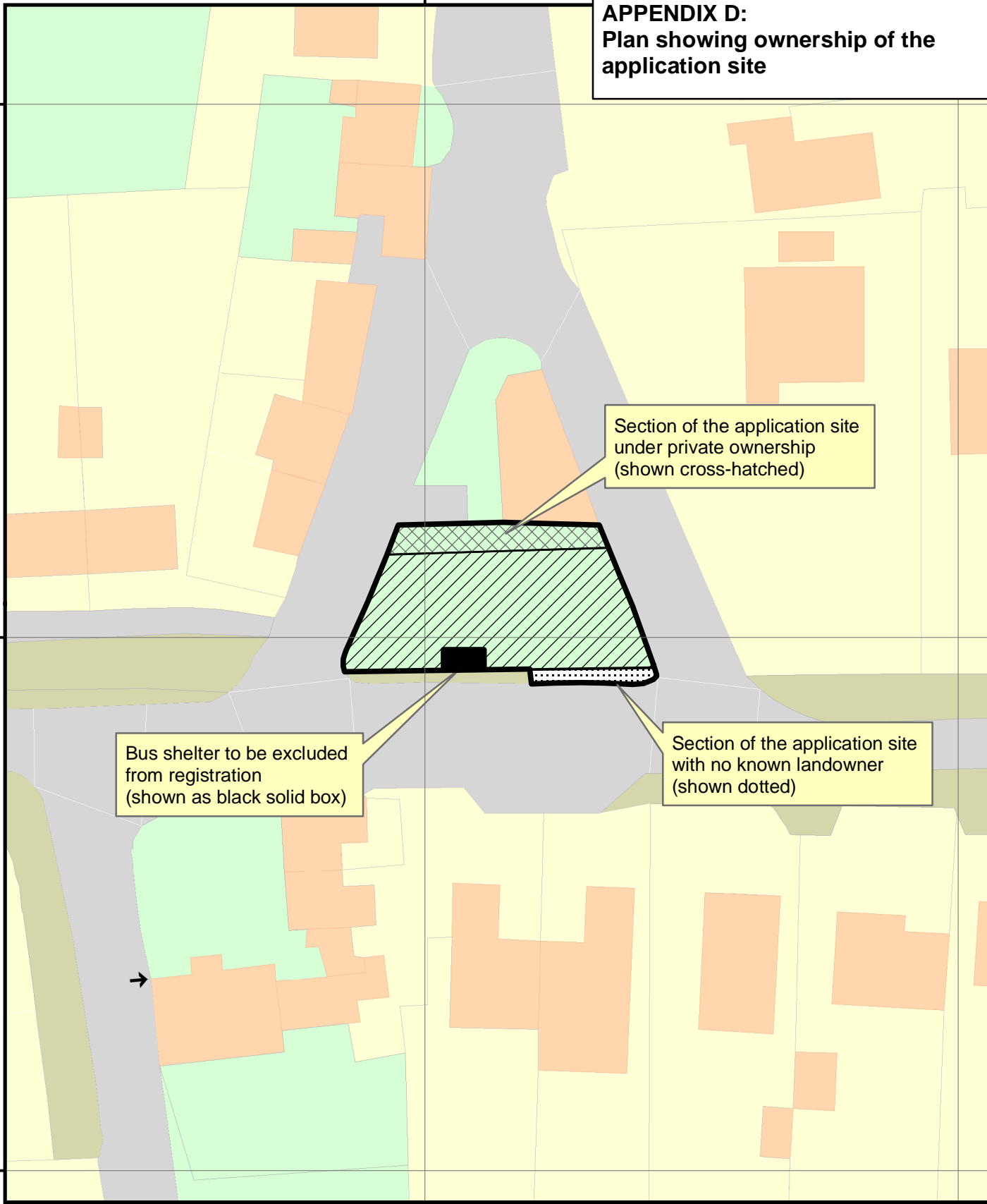
150300 000000

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Bus shelter to be excluded  
from registration  
(shown as black solid box)

Section of the application site  
under private ownership  
(shown cross-hatched)

Section of the application site  
with no known landowner  
(shown dotted)



Scale 1:250

Area of land subject  
to application



Area of land capable  
of registration

