



AGENDA

Kent County Council

REGULATION COMMITTEE MEMBER PANEL

Wednesday, 28th March, 2018, at 2.00 pm
Swale 3, Sessions House, County Hall,
Maidstone

Ask for: **Andrew Tait**
Telephone **03000 416749**

Tea/Coffee will be available 15 minutes before the meeting

Membership

Mr A H T Bowles (Chairman), Mr S C Manion (Vice-Chairman), Mr I S Chittenden,
Mr P J Homewood and Mr R A Pascoe

UNRESTRICTED ITEMS

(During these items the meeting is likely to be open to the public)

1. Membership and Substitutes
2. Declarations of Interest by Members for items on the agenda
3. Application to register land known as Hospital Field at Brabourne as a new Town or Village Green (Pages 3 - 30)
4. Other items which the Chairman decides are Urgent

EXEMPT ITEMS

(At the time of preparing the agenda there were no exempt items. During any such items which may arise the meeting is likely NOT to be open to the public)

Benjamin Watts
General Counsel
03000 416814

Tuesday, 20 March 2018

Application to register land known as Hospital Field at Brabourne as a new Town or Village Green

A report by the PROW and Access Manager to Kent County Council's Regulation Committee Member Panel on 28 March 2018.

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

Local Member: Ms. C. Bell (Ashford Rural East)

Unrestricted item

Introduction

1. The County Council has received an application to register land known as Hospital Field at Brabourne as a new Town or Village Green from the Brabourne Parish Council ("the applicant"). The application, made on 1st February 2016 was allocated the application number VGA669. A plan of the site is shown at **Appendix A** to this report and a copy of the application form is attached at **Appendix B**.

Procedure

2. The application has been made under section 15 of the Commons Act 2006 and the Commons Registration (England) Regulations 2014.
3. Section 15 of the Commons Act 2006 enables any person to apply to a Commons Registration Authority to register land as a Village Green where it can be shown that:

'a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;
4. In addition to the above, the application must meet one of the following tests:
 - **Use of the land has continued** 'as of right' until at least the date of application (section 15(2) of the Act); or
 - **Use of the land 'as of right' ended no more than one year prior to the date of application**¹, e.g. by way of the erection of fencing or a notice (section 15(3) of the Act).
5. As a standard procedure set out in the 2014 Regulations, the County Council must publicise the application by way of a copy of the notice on the County 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.

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

The application site

6. The piece of land subject to this application (“the application site”) comprises an arable field of approximately 24 acres (9.7 hectares) in size situated to the north of properties in Mountbatten Way and extending between Lees Road and Canterbury Road. Access to the application site is via three Public Footpaths; two which diagonally cross the site and a third which runs along its southern boundary (to the rear of the properties in Mountbatten Way).
7. The application site is shown in more detail 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. Included in support of the application were 61 user evidence questionnaires. A summary of the user evidence submitted in support of the application is attached at **Appendix C**.

Consultations

10. Consultations have been carried out as required. No responses have been received.

Landowner

11. The vast majority of the application site is owned by Mr. R. Johnson and Ms. C. Johnson (“the landowners”) and is registered with the Land Registry under title number TT40521. It is currently let under an agricultural tenancy to a local farmer.
12. A small slither of land in the south-western corner (abutting Lees Road) is registered under title number K414908 to the Kent County Council; the County Council’s Property Team has been consulted but no response has been received.
13. An objection to the application has been received from Gladman Developments Ltd. (“the objector”) which has a promotion agreement with the landowners and has made an application for planning permission to develop the land for residential development. That application is the subject of a separate process with the Planning Inspectorate and has no bearing upon the determination of the Village Green application.
14. The objection has been made on the following grounds:
 - that the applicant is put to strict proof as to the status of the alleged neighbourhood and the boundaries of the localities relied upon;
 - that use consists primarily of walking the existing Public Footpaths which is not qualifying use for the purposes of the Village Green application, and any wider recreational use is insufficient to demonstrate that the land has been in regular usage by the local community;
 - that the site has been used for the growing of crops on a five-year rotation such that the site as a whole has not been available for recreational use; and

- that some use has been challenged by the tenant farmer or has taken place with the landowners' permission.

15. In support of the objection, the objector has provided 13 witness statements from people familiar with the application site, including both landowners and the tenant farmers. The substance of those statements is that any use observed of the site has been predominantly along the existing Public Footpaths and that any wider recreational use that may have taken place would necessarily have been interrupted by the agricultural use of the site (predominantly for wheat and barley crops). It is also suggested that claims of recreational use have only arisen recently, apparently in response to proposals to develop the land.

16. The objector's position is that there is a serious dispute about the application and the only just way for the application to be dealt with is to hold a Public Inquiry.

Legal tests

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

- Whether use of the land has been 'as of right'?*
- Whether use of the land has been for the purposes of lawful sports and pastimes?*
- Whether use has been by a significant number of inhabitants of a particular locality, or a neighbourhood within a locality?*
- Whether use of the land 'as of right' by the inhabitants has continued up until the date of application or, if not, has ceased no more than one year prior to the making of the application?*
- Whether use has taken place over period of twenty years or more?*

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

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

18. The statutory scheme in relation to Village Green applications is based upon the English law of prescription, whereby certain rights can be acquired on the basis of a presumed dedication by the landowner. This presumption of dedication arises primarily as a result of acquiescence (i.e. inaction by the landowner) and, as such, long use by the public is merely evidence from which a dedication can be inferred.

19. In order to infer a dedication, use must have been 'as of right'. This means that use must have taken place without force, without secrecy and without permission (*'nec vi, nec clam, nec precario'*). In this context, force refers not only to physical force, but to any use which is contentious or exercised under protest²: *"if, then, the inhabitants' use of the land is to give rise to the possibility of an application being made for registration of a village green, it must have been peaceable and non-contentious"*³.

² *Dalton v Angus* (1881) 6 App Cas 740 (HL)

³ *R (Lewis) v Redcar and Cleveland Borough Council* [2010] UKSC 11 at paragraph 92 per Lord Rodger

20. In this case, there is no evidence or suggestion that access to the application site has been gained forcibly and indeed any such assertion would be unsupported given the Public Footpaths crossing the site. Nor is there any suggestion that use of the application site has taken place secretly.
21. The objectors assert that equestrian use of the application site has been challenged by the tenant farmer, whilst metal-detecting has taken place by virtue of express permission. If that is the case, then those uses ought to be discounted as they would not have taken place 'as of right'.
22. There is an issue that arises here with regard to the public rights of way that cross the application site, and the degree to which the 'walking' cited in the user evidence is referable to those rights of way. Walking along a Public Footpath would be use that is in exercise of an existing right – i.e. 'by right – and not 'as of right'. This is because, in order for a right to be acquired, users must initially be using the land as trespassers, only acquiring a right after twenty years' unchallenged use.
23. In this case, there is an unusually dense network of public rights of way on or abutting the application site. The path running along the southern boundary of the application site is recorded on the Definitive Map of Public Rights of Way as Public Footpath AE276, whilst two further Public Footpaths (AE274 and AE275) diagonally cross the site.
24. A large amount of the user evidence summarised at **Appendix C** refers to walking. Whilst a small number of users make reference to unrestricted usage across the whole field, for the remainder it is almost impossible on paper to differentiate between general recreational walking (which involves wandering over a wide area) and walking which involves the public rights of way on and around the application site. It seems likely, on balance, that at least some of the use of the application site for walking (and indeed similar linear activities such as jogging or cycling) was not use that can be described as being 'as of right' and the degree of general recreational use, as opposed to public rights of way type user, is therefore an issue which requires further consideration before any firm conclusion can be reached on the 'as of right' test.

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

25. 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*'⁴.
26. The summary of evidence of use by local residents at **Appendix C** shows the range of activities claimed to have taken place on the application site. These

⁴ *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

include walking, playing with children, fruit picking, nature observation and kite flying.

27. As is noted above, it will be necessary in this case to differentiate between walking which is in exercise of an existing public rights of way and walking which constitutes wandering at will over a wider area; use which comprises the former will need to be discounted. The objector's position, which is disputed by the applicant, is that the majority of use has taken place on the Public Footpaths (and therefore falls to be discounted). However, it is not possible to reach any conclusion on the basis of the evidence currently available.
28. Some of the activities cited are at odds with the objector's evidence regarding the intensive agricultural use of the application site; for example, activities such as kite flying, ball games or frisbee could not have taken place during periods when it is alleged that the land was used for crops such as wheat, barley or oilseed rape. Indeed, the agricultural use of the land, and the resultant impact upon recreational use, is a further issue of dispute between the parties.
29. The objector's evidence in this regard is that the land was used annually for high-density crops which, at their peak during summer months, would reach 1 to 2 metres in height; it would be impossible for anyone to walk through, let alone recreate, on the land without causing substantial damage to the crop and no such damage has been observed. However, the applicant does not accept that the application site has been farmed in the manner described and suggests that the land has been left fallow for many years, with a large area on the western side of the site set aside and uncropped; in any event, case law has established that low-level agricultural use is not inherently incompatible with Village Green registration⁵.
30. As such, it is not possible to conclude, without further investigation, whether the land has been used in the requisite manner.

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

31. 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.
32. 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*⁶ 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*'.

⁵ In this regard, the applicants rely upon the judgement in *R (Lewis) v Redcar and Cleveland Borough Council* [2010] UKSC 11

⁶ *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 at 90

33. In cases where the locality is so large that it would be impossible to meet the 'significant number' test (see below), it will also necessary to identify a neighbourhood within the locality. The concept of a 'neighbourhood' is more flexible than that of a locality, and need not be a legally recognised administrative 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'*⁷.
34. In this case, the applicant relies (at part 6 of the application form) on 'the neighbourhood of Brabourne Lees in the localities of the civil parishes of Brabourne and Smeeth'.
35. There can be little debate that the civil parishes of Brabourne and Smeeth are both legally recognised administrative areas capable of constituting qualifying localities for the purposes of Village Green registration. Case law has established that, in the case of a 'neighbourhood within a locality', the locality need not be a single entity⁸.
36. With regard to the neighbourhood, the objector's position is that the applicant must prove its case with regard to whether Brabourne Lees is a qualifying neighbourhood for the purposes of Village Green registration. However, the objector has not offered any evidence as to why Brabourne Lees could not be a neighbourhood for this purpose.
37. As can be seen from the user evidence summary at **Appendix C**, a large number of the witnesses identify themselves as living in Brabourne Lees, with one describing it as having 'a local reputation for being a close-knit community, good for families with a shop, post office, pubs etc' and several others also referring to community facilities. Furthermore, as can be seen from the plan at **Appendix D**, the village is shown on maps as Brabourne Lees and forms a discrete and identifiable residential area in an otherwise rural location.
38. As such, and in the absence of any evidence as to why Brabourne Lees could not be a qualifying neighbourhood, it would appear that the application site has been used by the residents of a cohesive neighbourhood within two legally recognised localities.
- "a significant number"*
39. 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*

⁷ *ibid* at page 92

⁸ See *Oxfordshire County Council v Oxford City Council* [2006] EWHC 76

*occasional use by individuals as trespassers*⁹. Thus, it is not a case of simply proving that 51% of the local population has used the application site; what constitutes a 'significant number' will depend upon the local environment and will vary in each case depending upon the location of the application site.

40. In this case, a large amount of user evidence has been submitted in support of the application – 61 witnesses in total – of which 25 witnesses use the land on an at least weekly basis.

41. On the face of it, such use is likely to have been sufficient to indicate that the land was in general use by the community, although this test is to be viewed in the context of the comments above regarding the exercise of existing rights (i.e. use of the Public Footpaths) and the extent to which the land was capable of being used for recreational purposes (given the alleged agricultural use).

(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?

42. The Commons Act 2006 requires use of the land to have taken place 'as of right' up until the date of application or, if such use has ceased prior to the making of the application, section 15(3) of the 2006 Act provides that an application must be made within one year from the date upon which use 'as of right' ceased.

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

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

44. In order to qualify for registration, it must be shown that the land in question has been used for a full period of twenty years. In this case, use 'as of right' did not cease prior to the making of the application on 1st February 2016. The relevant twenty-year period ("the material period") is calculated retrospectively from this date and is therefore 1996 to 2016.

45. The user evidence submitted in support of the application (and summarised at **Appendix C**) indicates that 36 of the 61 witnesses have used the application site throughout the material period, with some use going back as far as the early 1970s. As such, it would appear that the application site has been used for a period in excess of the required twenty years (subject to the issues raised above and whether the use can properly be considered qualifying use for the purposes of Village Green registration).

Conclusion

46. As has been noted above, there are serious disputes between the applicant and the objector in this matter, particularly in respect of the degree to which use has been confined to the rights of way crossing the site and in respect of the impact upon recreational use of the agricultural operations taking place on the application

⁹ *R (Alfred McAlpine Homes Ltd.) v Staffordshire County Council* [2002] EWHC 76 at paragraph 71

site. The opposing views can only properly be reconciled by way of a hearing at which both parties can have the opportunity to give oral evidence and challenge each other's evidence in respect of the disputed points.

47. Both the applicant and the objector agree that a Public Inquiry is the most appropriate way to proceed in this case, and it would appear that the County Council is unable to reach a sound decision in this matter on the basis of the information currently available.

48. Provision for holding a Public Inquiry is made in the 2014 Regulations; the process involves the County Council appointing an independent Inspector (normally a Barrister) to hear the relevant evidence both in support of and in opposition to the application, and report his/her findings back to the County Council. The final decision regarding the application nonetheless remains with the County Council in its capacity as the Commons Registration Authority.

49. Such an approach has received positive approval by the Courts, most notably in the *Whitmey*¹⁰ case in which Waller LJ said this: *'the registration authority has to consider both the interests of the landowner and the possible interest of the local inhabitants. That means that there should not be any presumption in favour of registration or any presumption against registration. It will mean that, in any case 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'*.

50. It is important to remember, as was famously quoted by the Judge in another High Court case¹¹, that *'it is no trivial matter for a landowner to have land, whether in public or private ownership, registered as a town green... [the relevant legal tests] must be 'properly and strictly proved'*. This means that it is of paramount importance for a Registration Authority to ensure that, before taking a decision, it has all of the relevant facts available upon which to base a sound decision. It should be recalled that the only means of appeal against the Registration Authority's decision is by way of a Judicial Review in the High Court.

Recommendation

51. I recommend that a Public Inquiry be held into the case to clarify the issues

Accountable Officer: Mr. Graham Rusling – Tel: 03000 413449 or Email: graham.rusling@kent.gov.uk Case Officer: Mr. Chris Wade – Tel: 03000 413475 or Email: chris.wade@kent.gov.uk

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

Background documents

¹⁰ *R (Whitmey) v Commons Commissioners* [2004] EWCA Civ 951 at paragraph 66

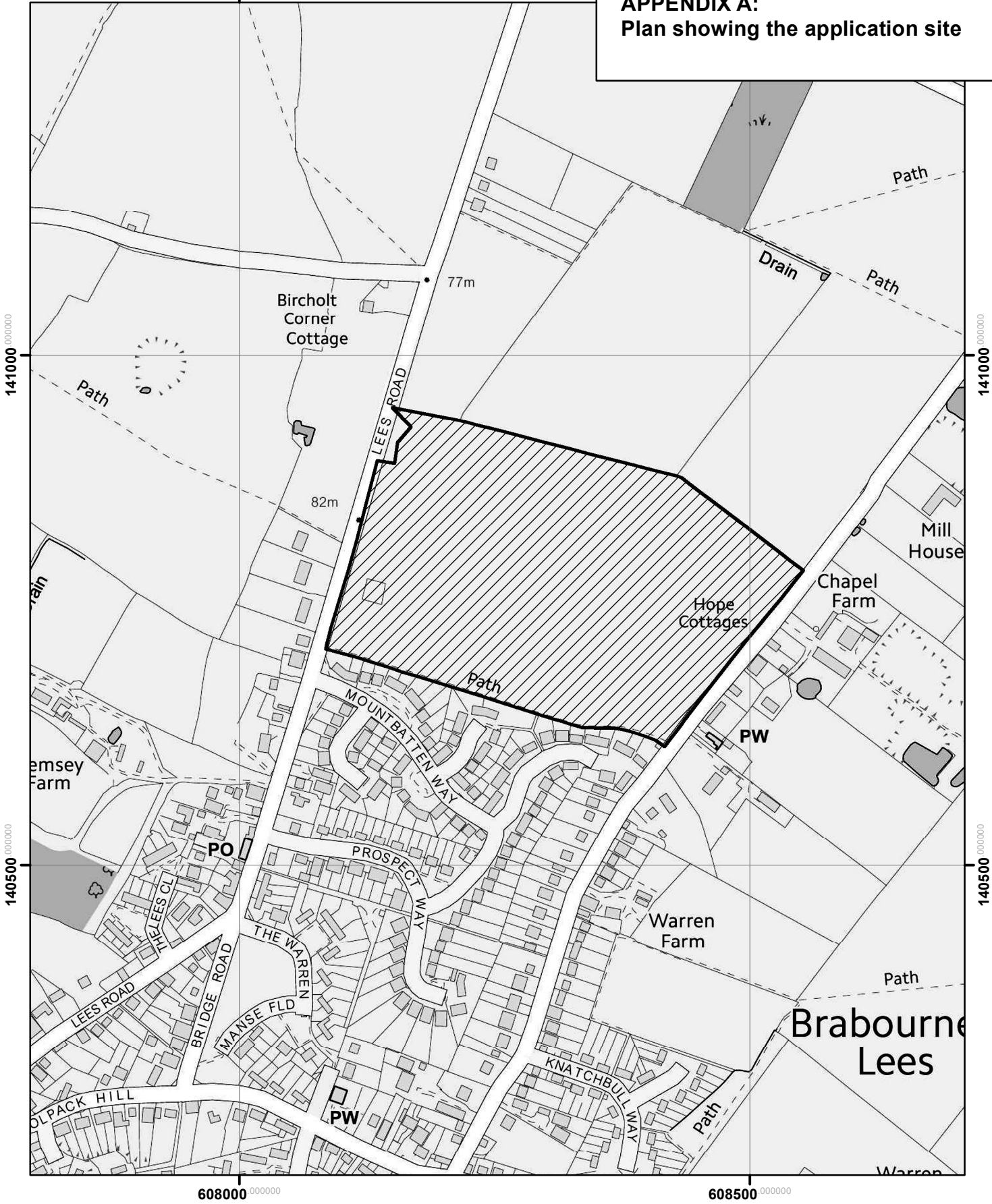
¹¹ *R v Suffolk County Council, ex parte Steed* [1997] 1EGLR 131 at 134

- APPENDIX A – Plan showing application site
- APPENDIX B – Copy of application form
- APPENDIX C – Table summarising user evidence
- APPENDIX D – Plan showing claimed neighbourhood and localities

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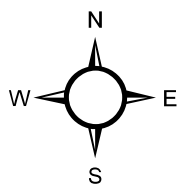
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**APPENDIX A:
Plan showing the application site**



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Scale 1:5000

**Land subject to Village Green application,
known as Hospital Field, at Brabourne**



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Commons Act 2006: section 15

Application for the registration of a town or village green

This section is for office use only

Official stamp

COMMONS ACT 2006
KENT COUNTY COUNCIL
REGISTRATION AUTHORITY
01 FEB 2016

Application number

VGA669

VG number allocated at registration

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

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

Note 1

Insert name of commons registration authority.

1. Commons Registration Authority

To the:

Kent County Council

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

n/a

Note 2

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

Note 3

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

2. Name and address of the applicant

Name: Brabourne Parish Council

Postal address: 14 Sandhurst Lane
Ashford
Postcode TN25 4NS

Telephone number: [Redacted]

Fax number: [Redacted]

E-mail address: [Redacted]

3. Name and address of representative, if any

Name: Susan Wood (Parish Clerk)

Firm: As above

Postal address: As above
Postcode

Telephone number: As above

Fax number: [Redacted]

E-mail address: As above

Note 4

For further details of the requirements of an application refer to Schedule 4, paragraph 9 or 10 to the Commons Registration (England) Regulations 2014. Section 15(6) enables any period of statutory closure where access to the land is denied to be disregarded in determining the 20 year period.

Note 5

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

4. Basis of application for registration and qualifying criteria

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

If the application is made under section 15(1) of the Act, tick one of the following boxes to indicate which particular subsection and qualifying criterion applies to the case.

Section 15(2) applies:

Section 15(3) applies:

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

[Empty box for date]

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

[Empty box for period of statutory closure]

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

Name by which the land usually known:

Hospital Field

Location:

Lees Road, Brabourne Lees, Ashford , Kent

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

[Empty box for common land register unit number]

Tick the box to confirm that you have attached an Ordnance map of the land:

Note 6

It may be possible to indicate the locality of the green by reference to an administrative area, such as a parish or electoral ward, or other area sufficiently defined by name (such as a village). If this is not possible an Ordnance map should be provided on which a locality or neighbourhood is marked clearly at a scale of 1:10,560.

Note 7

Applicants should provide a summary of the case for registration here and enclose a separate full statement and all other evidence including any witness statements in support of the application. This information is not needed if a landowner is applying to register the land as a green under section 15(8).

Note 8

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

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

Show the locality or neighbourhood within the locality to which the claimed green relates, either by writing the administrative area or geographical area by name below, or by attaching an Ordnance map on which the area is clearly marked:

The neighbourhood of Brabourne Lees in the localities of the civil parishes of Brabourne and Smeeth

Tick here if a map is attached:

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

The land has been freely used by residents for a variety of pastimes, as detailed in the accompanying statements, without challenge for over 20 years. This application seeks to protect the site and enable residents to continue enjoying these pursuits.

The site is also of historic interest, having been used as a field hospital for troops during the Napoleonic wars. Amateur historians frequently explore the site and artefacts from the period are often seen

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

Owner: Dr Christine Johnson
[Redacted]
Note: KCC may own a sliver of land at the southwestern corner of the site. Title Nos. K414908 and K583931
Tenant: Mr WE Jeanes
[Redacted]

Note 9

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

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

[Empty box for voluntary registration declarations]

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

Evidence questionnaires from:

1. Dave Ansley	16.Karl Stevenson
2. Anthony Crouch	17.Rebecca Stevenson
3. RC and MC Davison	18.Master Samuel Stevenson
4. Allison Godfrey	19.Patrick Thornby
5. Richard Graham	20.Roger Vining
6. Michael Hickmott	21.Christine Young
7. J and L Hill	22.Benedict O'Looney
8. Mr and Mrs McRoberts	23.Mr TR Rother
9. Terence Mortimer	24.Mrs Barbara Ruck
10. Joanna Mortimer	25.Mr and Mrs Hayes
11.Liz and Chris Ockenden	26.Kay Bellwood, Ashley-Mark Bellwood
12.Andrea Parsons	
13.Steven Reeves	27.Beavers
14.Carolyne Reeves	
15.Liam Smith	

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

The owner is unlikely to agree with registration. As to the relevance of a planning application on the land, see covering letter

Note 12

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

12. Signature

Date:

1st February 2016

Signatures:

**REMINDER TO APPLICANT**

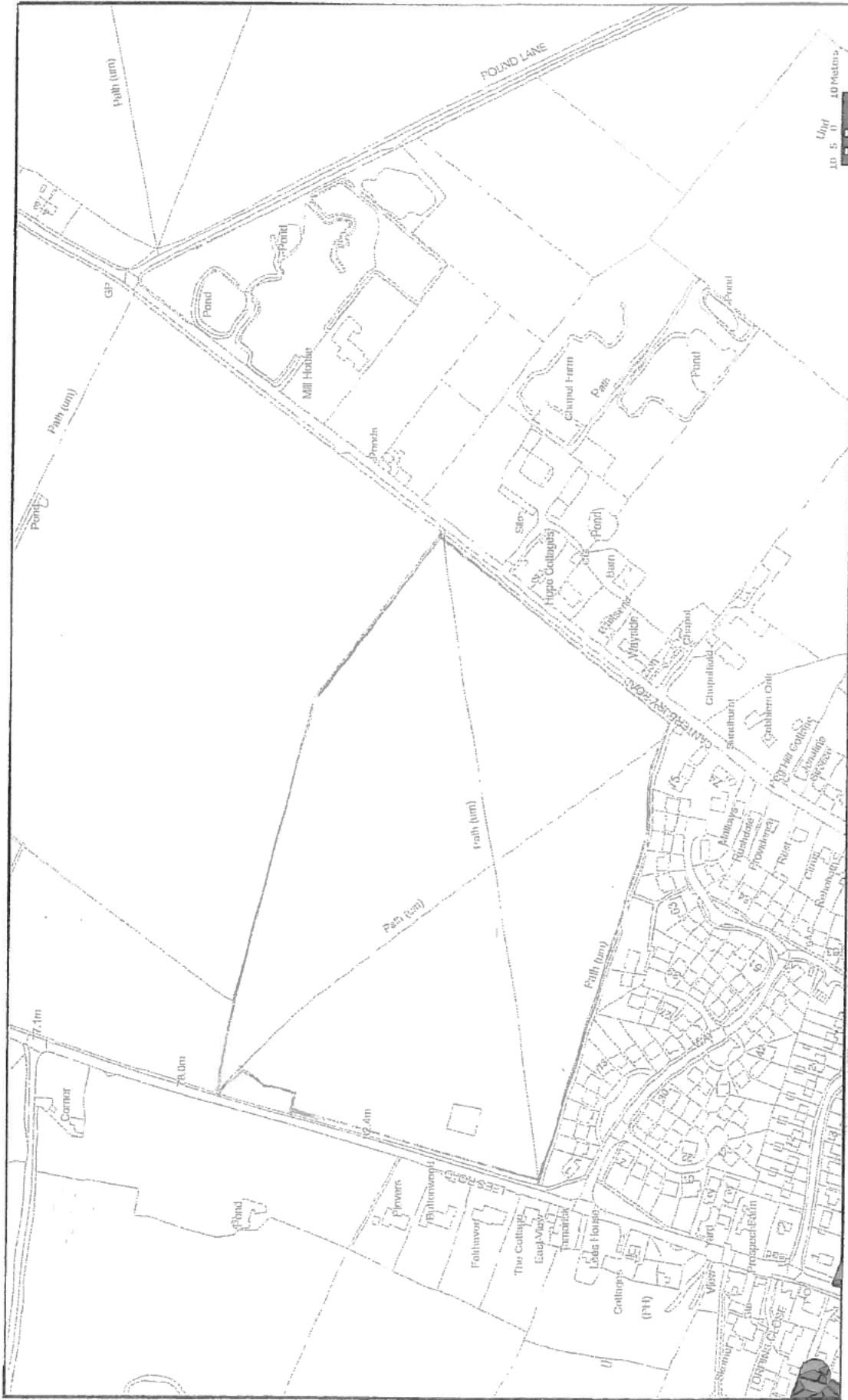
You are responsible for telling the truth in presenting the application and accompanying evidence. You may commit a criminal offence if you deliberately provide misleading or untrue evidence and if you do so you may be prosecuted.

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

Data Protection Act 1998

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

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



"Hospital Field" Brabourne Lees in the parish of Brabourne

**STATEMENT IN SUPPORT OF APPLICATION TO REGISTER
'HOSPITAL FIELD', BRABOURNE LEES
AS A VILLAGE GREEN (QUESTION 7)**

The land which is the subject of this application has been in low level agricultural use (or left fallow at times) for many years, including the last 20 years. Its longer history includes use as a hospital during the Napoleonic Wars, a use which gave the field its local name. The field is understood to have been in the ownership of the Johnson family (resident in Devon) for some generations.

Over the last 20 years and longer the land has been used for a wide range of informal recreation pursuits and pastimes by a significant number of inhabitants of the neighbourhood of Brabourne Lees within the locality of Brabourne and Smeeth parishes. This has been done openly, peaceably and without force and without consent or objection from the owner. The full range of pursuits is described in the statements accompanying the application. It includes dog exercising and walking, family leisure outings with children and pets, ball games, picnics, model aircraft and kite flying, bird-flying, nature observation, horse riding, and also extensive use at times of significant snowfall for a variety of games and activities. The strength and probative value of evidence in this particular case is remarkable, since the source of so much of it is longstanding inhabitants of Brabourne Lees whose own properties overlook the field and have done so for the entire 20-year period. It is patently the case that use by residents of the neighbourhood indicates a general use for informal recreation rather than merely occasional use by trespassers.

The owner has never sought to challenge or restrict the informal recreational use and so no significant interruptions of use have occurred in the past 20 years and more. The nature of many of the recreation uses has also meant that in years when the land has been used for crop-growing, the two uses have continued to co-exist and this is clear from a number of statements/questionnaires.

The site is crossed by three Public Rights of Way (Footpaths AE274, 275 and 276). It is very clear from the statements/questionnaires that virtually all the informal recreation use of the land has been of the field as a whole, way beyond anything which could reasonably be regarded as merely use attributable to use of the footpaths.

Access to the field is available at many points around its perimeter, with footpaths crossing the site, regular gaps in hedgerows also affording access at various other points along Lees Road and Canterbury Road. Direct access is also available from an alleyway off Canterbury Road. The ease of access has doubtless contributed to its attraction to such large numbers of inhabitants.

In the view of Brabourne Parish Council, it is clear that all the relevant requirements of Section 15 of the Commons Act 2006 are met. In so far as the relevant land may be the subject of a current planning application, legal submissions in relation to this are set out in the covering letter sent with the application.

It is intended to provide the registration authority with a table summarising the evidence questionnaires/statements. This will be done as soon as the additional questionnaires currently being assembled are forwarded.

BRABOURNE PARISH COUNCIL

Name	Period of use	Frequency of use	Type of use	Access	Locality/ neighbourhood	Comments
ANSLEY, D	1985 – present	Daily	Kite flying, bird watching, walking, children's picnics, blackberrying	Via FP behind Mountbatten Way on Lees Rd	"Resident Mountbatten Way"	Observed use by others on a daily basis.
ARTER, N	1987 – present	Weekly	Running, walking, kite flying, dog walking	R/o 1 Mountbatten Way and far right of field	Not stated	Observed use by others on a daily basis.
BEAUCHAM P, T	2005 – present	Daily	Dog walking	Canterbury Rd and Lees Rd	Not stated	There are always people using the field, either dog walking, horse riding, kite flying etc
BEAVERS, J	1992 – present	Monthly	Walking with dig and children, snow games, picking fruit	From FPs and gaps in hedge around field.	"Smeeth and Brabourne"	Observed use by others on monthly basis for various activities.
BELLWOOD, A & K	1982 – present	Daily or weekly	Playing as a child, cycling, climbing hay bales, bird spotting, kite flying, ball games, Frisbee, running, using FPs to get to school, snow games, blackberrying	From back garden and various FPs around field	"Mountbatten Way in Brabourne Lees"	Used the whole of the field. Observed use by others every day for various activities.
BUTLER, A	1990 – present	Weekly/ daily	Dog walking, rambling, picking fruit snow games	Several access points	"Resident of Prospect Way"	Have used Hospital Field throughout the year including when crops being grown.
COLMAN, S	25 yrs?	Weekly	Fruit picking, kite flying, walks	FP entrances Lees Rd and Canterbury Rd	"Resident of Canterbury Road"	Evidence questionnaire unsigned and undated.
COUPE, J	1985 – present	Monthly on average	Exercising dog, as playing field for children, walking, fruit picking	Various access points, some of which are FPs	"Resident of Brabourne Lees"	Observed use by others on a daily basis
CROUCH, A	2003 – present	Weekly	Walking, ball games, nature observation, stargazing, bat detecting, snow games, looking for surface archaeological items	Gateways and access points associated with FPs	"Brabourne Lees village"	Observed use daily for walking and dog walking, others more weekly.
DAVISON, S	2000 – present	Several times per week	Dog walking, walking, running, photography, wildlife observation.	Different entrances on roads or alley from M/b Way	"Resident of Brabourne Lees"	I have used all parts of the field and never felt restricted to the footpaths. The field is in constant use. If the field is ploughed, it can be difficult to walk across but normally OK on the FP and edge.
DAVISON, R & M	1986 – present	Daily/weekly	Crossing field via FPs, children played in field when young, cycling along path, walking to allotment, jogging	Through FP btwn 35 and 65 Mountbatten Way	"Mountbatten Way Brabourne Lees"	Observed use by others on a daily basis. Over the past 30 years, field consistently used by walkers, joggers, cyclists, horse riders, children, After harvest-time, people use field for collecting blackberries, plums etc and exercising dogs.

DOLDING, T	1987 – present	Often daily	Dog walking, family walking, fruit picking	From Mountbatten Way		The land is an amenity field that has been freely available without restriction. The usage is every day and throughout the day.
FENNELL, B	1971 – present	Occasionally	Children playing, dog walking, fishing	From Lees Road		I have always believed it is common land.
FITZGERALD, P	1982 – present	Occasionally	General recreation	Over a stile from Lees Road		
FLEMING, F	1999 – present	Variable	Walks, hedgerow picking, ball games, snow games, nature trails, cycling, picnics	Via entry point in hedge	“village of Brabourne Lees”	Observed regular usage by others.
GILBERT, D	2010 – present	Weekly	Dog walking, playing in the pond, picking berries, playing with children	Various – from roads and alley	“resident of Canterbury Road”	Some ploughing close to the hedge made walking difficult.
GODFREY, A	1986 – present	Weekly	Have always used FPs for dog walking	Canterbury Road or Lees Road	“have lived in village all my life”	Observed use by others for walking on daily basis.
GRAHAM, R	1980 – present	Mostly daily	Walking around hedgerows, enjoying countryside, nature observation with children, fruit picking, exercising dogs, playing with children, picnics	FP to rear of 1 Mountbatten Way	“long term resident of Brabourne Lees”	A large amount of local people have used the field in the same way as I have.
PAGE 24 HALL, S & J	1996 – present	Occasionally, was weekly	Walking, fruit collection, snow games, children cycling, playing, ball games and meeting friends	FP from M/b Way or from Canterbury Road	“Brabourne Lees”	
HARDIMAN, T	2011 – present	Daily	Running, walking with children, picnics, bird watching	R/o Mountbatten Way, all FPs	“Brabourne Lees”	Observed use by others on a daily basis.
HARRIS, G	2005 – present	Several times per week, more since 2010	Dog walking, jogging, walking	Several entrances but mainly the 2 from M/b Way	“Brabourne Lees”	In the last 2 years or so the farmer has taken to ploughing the field edges and footpath which can make it difficult to use. Saw others using the route on a daily basis.
HATCHER, V	2010 – present	Weekly	Walking, geocaching, bug hunting over whole field	Footpaths	Not stated	Observed use by others on a daily basis.
HAYES,	1986 – present	Usually daily, monthly in winter	Flying kite and model aircraft, dog walking, walk to shops, blackberrying	Canterbury Road opp Chapel Farm entrance	None stated	Observed daily use by others for horse riding, jogging, kite flying, dog walking, children playing, metal detectors.
HICKMOTT, M	1994 – 2013	At least weekly	Walking on and off footpaths, cycling when young, exercising dogs when young.	Gate, stile or open to road.	“lived in Brabourne for 53 years”	Used since 1962 but moved away from area 1975-80 and 1991-94. Land has been used by villagers for many years; has been poorly farmed on occasional basis but this has not stopped use.

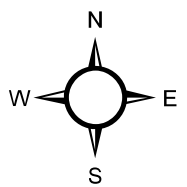
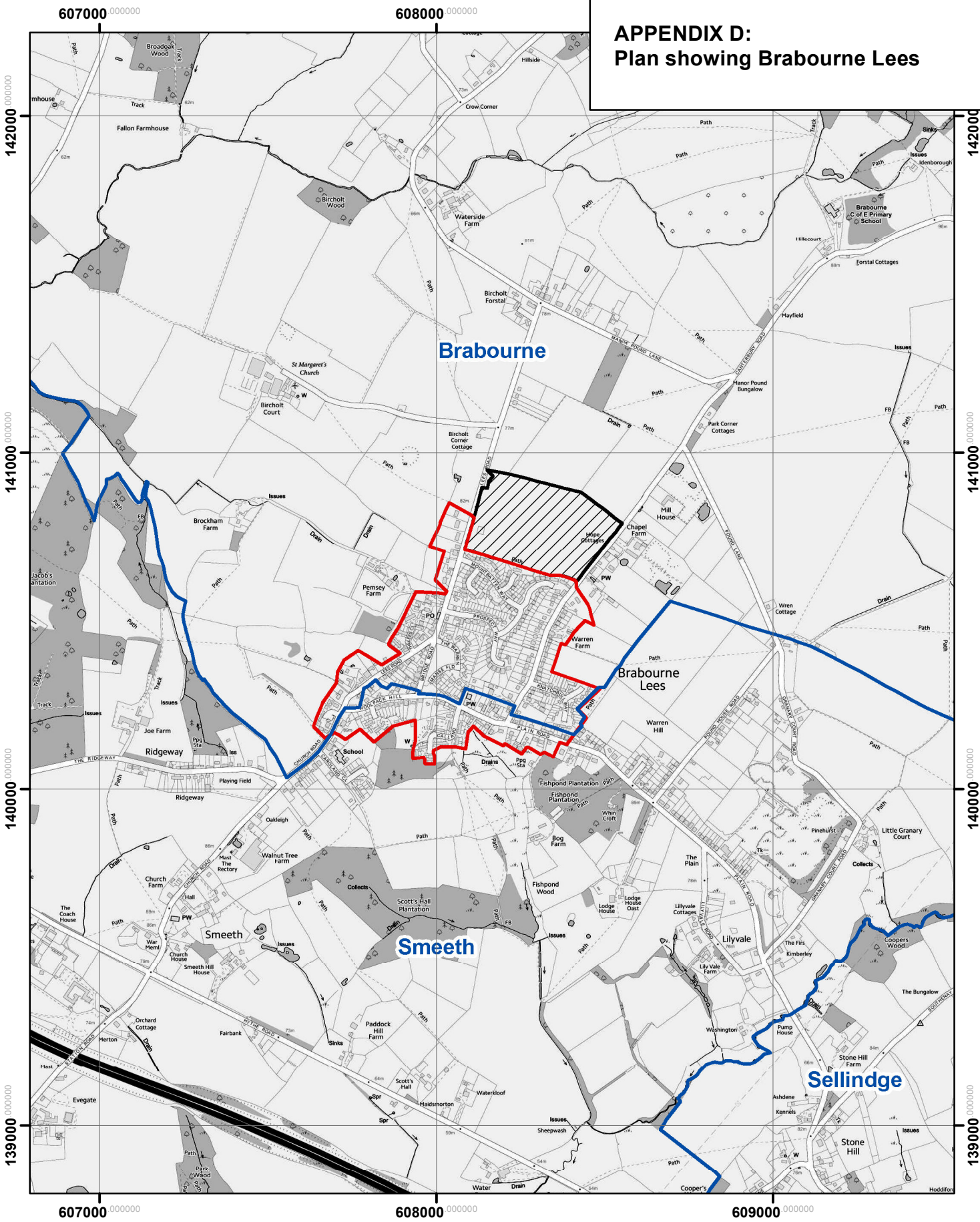
HILL, J & L	2004 – present	Weekly	Walking, cycling, kite flying, bird spotting	Via pathway next to house	“live a very short walk from the land”	Observed use by others on a daily basis.
HOLYOAKE & BEWICK	2001 - present	Daily	Dog walking, fruit picking, enjoying countryside	FP from Lees Road	Not stated	Observed use by others on a daily basis.
HOULT, M & S	2004 – present	Daily	Dog walking	Lees Rd or C’bury Rd	“Smeeth”	Observed daily use by others for dog walking, metal detectors, children playing generally.
JESSOP, S	1981 – present	Weekly	Playing with children, dog walking, ball games	Canterbury Road	“Brabourne Lees”	Observed daily use by others for walking, rambling and football.
JORDAN, P & C	1986 – present	Daily	Kite flying, dog walking, fruit picking, star gazing, bird watching, picnics, snow games, playing with children	Alleyway from Mountbatten Way		Field used daily by dog walkers regardless of weather; dogs run in and out of crop as they follow owners crossing field on tracks left by tractor between rows of crops as well as FPs.
KELSALL, N	1987 – present	2-3 times per week, more in summer	Dog walking and stick/ball chasing on whole field when possible, fruit picking	Canterbury Road or Lees Road	Not stated	Observed use by others regularly.
LLOYD, C	1985 – present	Weekly	Dog walking, running/walking, blackberry picking	From Lees Road	Not stated	Observed use by others on a daily basis.
McROBERTS & T	2014 – present	Daily in summer, otherwise weekly	Dog walking, ball games, kite flying, nature rambles, playing with children,	FPs from Lees Road or Mountbatten Way	“Mountbatten Way”	Some people walk along defined routes but just as many use the field in general without sticking to paths. During crop season use can become limited to the FPs but following harvest in August we were able to gain full use of the field again.
MADINA & SANDOM	2012 – present	Weekly/monthly	Walking, jogging, fruit picking	Canterbury Road	“area adj. Canterbury Rd/ Plain Road”	Observed use by others.
MELLOR, J & P	30+ yrs ago	Monthly, occasionally	Dog walking, rambling with children, fruit picking	FP from Lees Rd or Canterbury Rd	Not stated	Observed use by others.
MORTIMER, T	1989 – present	Weekly or fortnightly, infrequently in winter	Walking (not on FPs) or wandering across the whole field, enjoying countryside, playing with children	Many points of open unrestricted access	“neighbourhood of Brabourne Lees”	A significant number of users pay little or no regard to the path routes other than to gain access to the field. One is rarely alone on the field for long.
MORTIMER, J	2002 – present	Occasionally, more in spring /summer	Walking, cycling, walking to/from school with children	From path by 63 M/b Way or from Canterbury Road	“Brabourne Lees”	Observed use by others on a daily basis
NORCOTT, J	1989 – present	Most weeks	Walking children to school, horse riding, rambling, children playing	Mainly from FP in M/b Way or garden gate		Observed daily use by others

OCKENDON, L & C	2008 – present	Weekly	All of the field for walking, cycling, taking dog out, playing with children	FP from road using steps	“Canterbury Road”	Observed use by others on a daily basis
O’LOONEY, B	1990 – present	Daily	Walking, kite flying, bird watching, games, incl frisbee	Numerous access points	“Brabourne Lees”	We frequently see people walking on the field and exercising their dogs – it is popular with village residents.
PARSONS, A	2001 – present	Now monthly, more frequently prior	Walking (both social and to school with children), snow games, kite flying	Via cutting in Mountbatten Way	Not stated	Observed daily use by others for dog walking, walking and jogging.
REEVES, C	2014 – present	Weekly, daily in spring/summer	Walking, jogging, family rambles and nature walks (incl when crops in field) cycling, bird spotting	Back garden gate, Lees Road and C’bury Road	“live in Brabourne Lees”	Observed daily use by others throughout the year
REEVES, S	2014 – present	Weekly	Walking, running, bird spotting	Via own back gate	“my house backs on to field”	Land is freely accessed, enjoyed and appreciated by adults and children who undertake numerous recreational activities on a frequent basis.
FRIGG, P	1987 – present	Weekly	Dog walking, kite flying, foraging hedgerows, observing wildlife	All FP access	“Brabourne/ Smeeth”	Observed use by others.
RIPLEY, J	1989 – present	Daily	Dog walking, photography, children playing	Canterbury Road	Not stated	Observed use by others on a daily basis
ROTHER, T	1977 – present	Generally daily	Mainly to exercise dogs, but also to enjoy the countryside and for blackberrying	Gap/entrances in the hedges	Not stated	Main constant use is for walking (not confined to the footpaths) by have also observed children playing, jogging, ball games, horses.
RUCK, B	1985 – present	Weekly, more in dry weather	Walking, nature observation, playing family games, fruit picking	Garden gate onto field	“resident in Mountbatten Way”	Use has been over entire field during fallow periods between crops. Roaming at all times the large set-aside area bordering Lees Road.
SANDERS, B	1974 – present	Occasionally	Walking	From Lees Rd and Canterbury Rd	“Brabourne Lees”	
SMITH, L	2006 – present	Daily	Dog walking, playing with children, ball games, flying kites and remote-controlled planes, snow activities, blackberrying	Via back gate	“Brabourne Lees”	Field is in constant use by numerous people for various activities. In the 10 years we have lived here, not one day goes by without observing at least one person using the field, regardless of weather conditions.
SMITHSON, R	2013 – present	Occasionally	Walking, fruit picking, cycling on FP	Via FP at bottom of driveway	“Manor Pound”	Observed use by others.

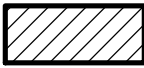
SPOKES, S	1982 – present	Weekly/daily in summer, less in winter	Walking for exercise, dog walking and exercising, snowballing, blackberrying	Canterbury Road or Lees Road		
STOKES, S	1990 – present	Weekly	Dog walking and exercise using whole of field, ball games, kite flying, family walks with children, cycling, fruit picking, hide and seek	From Canterbury Road, road leading to village hall and Mountbatten Wy	“live very centrally in village”	Observed monthly use by horse riders. The field is a space used daily, especially in summer months, by people of all ages.
STANYON, T	1990 – present	Was monthly, now less frequently	Jogging, running, walking	Not stated	“Smeeth/ Brabourne Lees”	Observed regular use by others.
STEVENSON, K	2009 – present	Daily	Walking with family and dogs, playing with children, chipping golf balls, Frisbee, sledging	Via back gate onto field	“Brabourne Lees”	Observed daily use by others.
STEVENSON, R	2009 – present	Daily	Walking, fruit picking, dog walking, running, cycling	Via back gate onto field	“Brabourne Lees”	Have used and watched people use the open field on a daily basis.
STEVENSON, P	2009 – present	Daily	Playing catch, football, tennis, sledging, cycling, dog walking	Via back gate onto field	“Brabourne Lees”	Observed daily use by others.
TANTON, S	1975 – 2008	Occasionally	Walking, ball games	Existing FP		
THORNBY, F & T	1983 – present	Weekly	Walking, bird watching, dog walking, fruit picking, nature observation	FP opposite the cottage on Lees Road.	“Brabourne Lees”	Observed use by others daily, there are always people at various times of day using the land.
THORNBY, P	1958 – present	Weekly	Walking and dog walking	Access points to FPs	“resident of Brabourne”	Observed daily use by others
TUFF, D	1971 – present	Daily	Dog walking, recreational walking, kite flying	Open access via Lees Rd and Canterbury Rd	“Brabourne Lees”	Have been deterred from using by occasional ploughing over of FPs. Land has been used recreationally for many years. Section nearest Lees Road left uncultivated until recently.
VINING, R	1989 – present	Most days	Walking with and without dogs, collecting fruit and nuts, picnics, studying nature	From my garden		This land has been used extensively on most days of the year for various activities all seen from my house.
YOUNG, C	1973 – present	Daily	Walking children to school, dog walking, family walks	Entrances at 1 M/b Way, Bircholt Cottage, Canterbury Rd	Not stated	Four generations of my family have used the field, none has ever been refused access or asked to leave.

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**APPENDIX D:
Plan showing Brabourne Lees**



Scale 1:15000



Land subject to application



Parish Boundaries



**Brabourne Lees neighbourhood
(as identified by applicant)**



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