



AGENDA

Kent County Council

REGULATION COMMITTEE MEMBER PANEL

Wednesday, 20th September, 2023, at 10.00 am
Council Chamber, Sessions House, County Hall, Maidstone

Ask for: **Hayley Savage**
Telephone **03000 414286**

Membership

Mr S C Manion (Chairman), Mr M Baldock, Mr I S Chittenden, Mr M C Dance and Mr H Rayner

UNRESTRICTED ITEMS

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

1. Membership and Substitutes
2. Declarations of interest for items on the agenda
3. Application to register land at Bybrook Road/The Pasture at Kennington as a new Town or Village Green (Pages 1 - 22)
4. Application to register land at Quantock Drive at Ashford as a new Town or Village Green (Pages 23 - 44)
5. Application to register land at West Cliff Bank at Whitstable as a new Town or Village Green (Pages 45 - 52)
6. Application to register land at Preston Parade at Whitstable as Common Land (Pages 53 - 60)
7. 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

Tuesday, 12 September 2023

Please note that any background documents referred to in the accompanying papers maybe inspected by arrangement with the officer responsible for preparing the relevant report.

Application to register land at Bybrook Road / The Pasture at Kennington 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 Wednesday 20th September 2023.

Recommendation: I recommend that the Applicant be informed that the application to register the land at Bybrook Road / The Pasture at Kennington as a Town or Village Green has not been accepted.

Local Member: Mr. P. Bartlett (Ashford Central)

Unrestricted item

Introduction

1. The County Council has received an application to register an area of land at Bybrook Road at Kennington as a new Town or Village Green from the Kennington Community Council ("the Applicant"). The application, made on 23rd September 2020, was allocated the application number VGA684.

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 land subject to this application (“the Application Site”) comprises a roughly square area of grassed open space fronting property numbers 50 to 64 The Pasture at Bybrook Road (opposite its junction with Rylands Road) at Kennington, near Ashford. The Application Site is separated from the front gardens of these properties (and from amenity land to the west of it) by a tarmac path, which provides unhindered access to, but does not form part of, the Application Site.
7. The Application Site is shown on the plan at **Appendix A**, and an aerial photograph showing the site taken in 2009 (i.e. the middle of relevant twenty-year period) is attached at **Appendix B**.

The case

8. The application has been made on the grounds that the Application Site has become a Town or Village Green by virtue of the recreational use of the land ‘as of right’ by local residents for a period in excess of twenty years.
9. According to the Applicant, the Application Site was purchased from the liquidators of the original developer of the site by London and Country Housing Ltd. in March 2020. This was brought to the attention of the Applicant in August 2020, following which an extraordinary meeting of the Community Council was held at which it was resolved to apply for Village Green status and to have the land registered as an Asset of Community Value (approved by Ashford Borough Council in December 2020). The land was sold, once again, to the current owner in October 2020 (i.e. following submission of the Village Green application).
10. The Applicant’s case is that the Application Site was laid out as open space when the area was developed for housing in around 1967 and provides a small area of informal green space for local residents to engage in lawful sports and pastimes. Access to the land has never been restricted in any way, and it has been maintained by Ashford Borough Council.
11. Included with application was a statement of support from the Applicant, plans showing the Application Site and consultation area, and 22 user evidence questionnaires.
12. The evidence questionnaires submitted in support of the application refer to the use of the Application Site for a number of activities, including children playing, football and dog walking. The user evidence is summarised in the table at **Appendix C**.
13. The Applicant initially identified the ‘Grosvenor Hall’ ward of Kennington Community Council as the relevant locality, but subsequently requested an amendment to the application to rely upon an area marked on a map and described as ‘Bockhanger’ as the qualifying neighbourhood, within the wider locality of the civil parish of Kennington Community Council.
14. The application has been made under section 15(2) of the Commons Act – i.e. on the basis that use of the Application Site has continued ‘as of right’ until the date

of the application – such that the relevant twenty-year period for the purposes of the application is September 2000 to September 2020.

Consultations

15. Consultations have been carried out as required.
16. Ashford Borough Council confirmed that it had no objections to the application and noted the benefit of providing and securing green space which would add to existing provision.
17. The County Councillor for Ashford Central, Mr Paul Bartlett, confirmed his support for the application in his capacity both as the local Member and also a regular passer-by of the Application Site. He added that he had walked dogs on the land.
18. Three letters of support were also received from local residents who had already submitted evidence in support of the application.

Landowners

19. The Application Site is currently registered to Sibel Ucur (“the Landowner”) under title number TT115872. Ms. Ucur acquired the land in October 2020, with a view to developing the site.
20. An objection to the application has been received from Collyer Bristow LLP on behalf of the Landowner, on the basis that:
 - The locality relied upon by the Applicant comprises a very small area and it is more appropriate to consider the locality as Kennington;
 - Much of the evidence refers to use of the land by children and grandchildren, such that there would necessarily have been a significant gap in use;
 - The situation of the land alongside a busy road makes it an unsuitable place for children to play freely, particularly given the close proximity of a designated play area (in Rylands Road) and other green space nearby away from busy roads;
 - The small size of the Application Site makes it unsuitable for use for activities such as ball games, walking dogs, and fireworks;
 - Several statements refer to the use of the land for VE day celebrations and NHS clapping, but these are both specific to 2020 and do not serve to demonstrate general and/or longstanding use;
 - Reference to riding bikes in the user evidence is more likely to be referable to the tarmac paths abutting the Application Site; and
 - Searches of websites, social media and local newspapers have yielded no results at all relating to the recreational use of Application Site, in contrast to The Ridge Playing Field nearby.
21. The Landowner’s case is that the evidence indicates that the land is used only by a very limited group of people, and that the application has been made with a view to thwarting development proposals, as opposed to being a legitimate attempt to protect a genuine Village Green.

Legal tests

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

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

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

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

23. The definition of the phrase 'as of right' has been considered by the House of Lords. Following the judgement in the Sunningwell² 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.

24. In this case, access to the Application Site is completely unrestricted from all four sides of it (see also photographs at **Appendix B**). There is no evidence on the ground, or in the available documentation, that the site has ever been enclosed, nor are there any notices in place seeking to regulate use in any way.

25. None of the users of the Application Site refer to any permission having been granted and there is no suggestion that any recreational use has taken place secretly.

26. The Landowner has not advanced any submissions to the effect that use of the Application Site has not been 'as of right'.

27. Accordingly, this test appears to have been met.

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

28. 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*'³.

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

³ *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

29. The summary of evidence of use by local residents at **Appendix C** shows the activities that are claimed to have taken place on the Application Site.
30. The Landowner's position is that the small size of the Application Site necessarily restricts the use to which it can be put, and makes the land unsuitable for activities such as ball games or dog walking. In response, the Applicant notes that suitability is subjective and the Landowner's views are not borne out by the evidence.
31. The Application Site measures 20 metres wide and 17 metres long; a game of badminton, as mentioned by one of the users, could feasibly be accommodated, as well as small football 'kickabouts' by children, and it is possible to envisage that small dogs might be exercised on the land (e.g. by throwing a ball). However, it would be difficult to see how activities such as riding a bike (other than by very small children) could take place in any meaningful manner on the grassed area (as opposed to the adjoining tarmac path). Indeed, at least one of the users refers to children roller-skating and scootering '*around the path surrounding it [the Application Site]*', which is not a direct use of the Application Site itself.
32. Reference is made in the user evidence to community events, such as celebrating the 75th Anniversary of VE Day and the 'NHS clapping' which took place in response to the recent pandemic. The Landowner suggests that these activities are specific to 2020 and do not demonstrate general or longstanding use of the Application Site. Perhaps of more relevance is that 2020's VE Day celebrations took place during the first national lockdown, at a time when people were still required to 'stay at home', and such that any gatherings on the Application Site itself would not have been lawful. The NHS clapping referred to took place primarily on people's doorsteps and, again, any community congregation for this purpose on the Application Site is likely to have been unlawful until at least the 'rule of six' was abolished (after the submission of the application). For these reasons, it is more likely that these activities were either not directly associated with the Application Site, or were not, strictly speaking, *lawful*.
33. Reference is also made to other community events such as 'bank holiday get-togethers' and barbecues. However, no dates have been provided in respect of these events and (despite a request) no photographs are available of these social events, which suggests that they are more likely to have taken place on a sporadic basis.
34. There is also some suggestion that the Application Site has been used for bonfire night celebrations and fireworks. The Landowner suggests that such use would be unsafe and indeed, as can be seen from the attached photographs at **Appendix B**, a telegraph pole is situated on the southern side of the site, with cables spanning overhead to the adjoining properties, such that this kind of use is unlikely to have been appropriate. In any event, the setting off of fireworks in a public place without the necessary permission (no copies have been provided) is an offence under section 80 of the Explosives Act 1875 and, therefore, any such use is unlikely to be considered a *lawful* sport or pastime for the purposes of Village Green registration.
35. Therefore, in terms of *qualifying* user for the purposes of the Village Green application, this leaves:

- Children playing;
- Dog walking (although this would be limited by virtue of the size of the site); and
- Social gatherings (which appear to have been sporadic in nature).

36. There are reasons why the land might be an attractive place for local children to play, with one user citing that the use of other recreational land nearby by teenagers/youths could be 'intimidating', and another explaining that this was a convenient place for their children to play whilst 'keeping an eye on them' when gardening. The question, however, is whether use of the land overwhelmingly for the purpose of children playing was sufficient to indicate to a reasonable landowner that the Application Site was in general use by the community as a whole. This matter is addressed further below.

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

37. 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.

Locality

38. 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*⁴ 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*'.

39. In this case, the Applicant originally relied upon the Grosvenor Hill ward of Kennington Community Council as the relevant locality. However, the application was subsequently amended by the Applicant to rely upon the area marked on a plan (at **Appendix D**) and described as 'Bockhanger' as the qualifying neighbourhood, within the locality of the civil parish of Kennington Community Council.

40. There is evidently no doubt that the civil parish of Kennington Community Council is a legally recognised administrative unit, and therefore a qualifying locality for the purposes of section 15 of the Commons Act 2006. However, the civil parish covers a very large area such that it would not be possible to demonstrate (as required) that a 'significant number' of the residents of the parish as a whole had used the Application Site.

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

Neighbourhood

41. In 2001, to deal with such scenarios, the Government introduced the concept of 'neighbourhood' to the legal test relating to Village Green registration. In situations where the locality is so large that it would be impossible to meet the 'significant number' test (see below), it is also necessary to identify a neighbourhood within the locality. The concept of a 'neighbourhood' is more flexible than that of a locality, and 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'*⁵.
42. In the current case, the Applicant has provided a plan showing a 'consultation area', which it is suggested is the qualifying neighbourhood for the purposes of this application (see **Appendix D**). However, the plan does not appear to relate to any recognisable boundaries, and its boundaries appear to be defined by reference to households that have provided evidence of use in support of the application. This is not the correct approach: a neighbourhood must be capable of definition and it cannot simply be any contiguous geographical area that has been delineated, in an arbitrary fashion, on a plan for the purposes of a Village Green application⁶.
43. Moreover, the area defined on the plan does not correspond with the description given of the consultation area 'customarily referred to as being in Bockhanger'. The area of Bockhanger is a much larger area within the wider town of Ashford: it is recognisable in that the name appears on Ordnance Survey base maps (see **Appendix E**) and it also has a number of community facilities that serve the area, including Bockhanger Library, Bockhanger Post Office and (until 2019) the Bockhanger Community Centre. These facilities are all located outside of the 'consultation area' marked on the plan provided by the Applicant, and clearly serve a much wider area.
44. For the reasons stated above, the 'consultation area' marked on the plan cannot be considered a qualifying neighbourhood for the purposes of this legislation. However, the community of Bockhanger would appear to have the sufficient degree of cohesiveness and would therefore be a qualifying neighbourhood for the purposes of this application.

"a significant number"

45. In addition to the above, the County Council also needs to be satisfied that the Application Site has been used by a 'significant number' of the residents of the 'neighbourhood within a 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*

⁵ *ibid* at 92

⁶ *Ibid* at 85 per Sullivan J: *"I do not accept the defendant's submission that a neighbourhood is any area of land that an Applicant for registration chooses to delineate upon a plan"*

*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*⁷. 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.

46. In this case, the evidence submitted in support of the application comes from 22 properties that are all located within a maximum distance of 110 metres (as the crow flies) from the Application Site. Thus, it is concentrated from within a relatively small area, within the wider neighbourhood of Bockhanger. The question to be addressed is, therefore, whether the Application Site has been used by a 'significant number' of the residents of Bockhanger. Although there is no legal requirement for a spread of users across the relevant neighbourhood, the issue falls to be determined on whether it would have appeared to a reasonable landowner that the land was in general use by the community as a whole.
47. In support of the application, 22 user evidence questionnaires were provided. One user did not use the land, other than for a short period of unstated duration for the purposes of walking with a walker following a hip operation (although it is not clear if this activity took place on the land itself or the tarmac path around it), whilst a further four refer only to use by their children (which, although supportive, is not direct evidence of use)⁸.
48. Of the remaining 17 users, only seven have used the land throughout the material period (2000 – 2020). Although it is not a necessary condition that all of the users have used the land for the full period of twenty years, the Applicant needs to be able to establish that recreational use took place *throughout* the required period (i.e. including the early part). Of those seven users:
- User 2 (as numbered in the table at **Appendix C**) refers only to occasional use for socialising and watching children playing;
 - User 11 refers to occasional use for the purpose of playing football with grandchildren, which presumably took part in the latter part of the period;
 - User 12 states 'my children play' which implies current use (as opposed to use at the start of the material period);
 - User 13, who has known the land since 1977, used it for 'playing as a child' which is likely to refer to a time preceding the material period;
 - User 17 has known the land since 1985 and used it with children and grandchildren, which implies there is likely to have been a gap in use that may have coincided with the early part of the material period;
 - User 19 refers to daily use with children and grandchildren, but once again there are no dates and it seems likely there was a gap; and
 - User 20 moved to the area in 1975 and refers to children playing 'when toddlers' which may pre-date the material period.

⁷ *R (Alfred McAlpine Homes Ltd.) v Staffordshire County Council* [2002] EWHC 76 at paragraph 71

⁸ Users 6 and 8 state that their 'children used when younger' (from 2010 (user 6)) and 1992 (user 8)). User 9 (from 2016) states 'my children play' and user 18 (1980-2010) states that 'children and grandchildren used it'

49. Thus, even taking the evidence at its most generous and assuming that it applies throughout the stated period of use, only a maximum of seven users can attest to using the Application Site at the very start of the relevant period in 2000 – and even then there is some ambiguity as to the nature and duration of that use – of which two used the land only occasionally, one used it monthly, one ‘daily/weekly’ and the remaining three on a daily basis. Regular use of the Application site by only three users at the start of the material period is not considered to be “significant” in the context of a large urban and densely-populated neighbourhood such as Bockhanger.

50. Therefore, whilst the use of the Application Site more recently might just be sufficient to indicate that the land was in general use by the community (although there are some doubts about this), on the evidence available, the nature and frequency of the use at the start of the material period certainly was not.

(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?

51. 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.

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

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

53. In order to qualify for registration, it must be shown that the land in question has been used for a full period of twenty years. In this case, use ‘as of right’ did not cease prior to the making of the application in 2020; the relevant twenty-year period (“the material period”) is calculated retrospectively from this date and is therefore 2000 to 2020.

54. The user evidence submitted in support of the application (and summarised at **Appendix C**) indicates, on the face of it, that recreational use of the Application Site has taken place in excess of the required twenty-year period. However, for the reasons previously discussed, some of that use falls to be discounted on the basis of it having been either not ‘lawful’ or too sporadic, and the overall paucity of evidence of recreational use of the Application Site (especially during the early part of the material period) affects other parts of the legal test.

Conclusion

55. When making an application under section 15 of the Commons Act 2006, the burden of proof is on the applicant to demonstrate that, on a balance of probabilities, the legal tests have been met. As has been noted in the Courts⁹, it is ‘no trivial matter’ for a landowner to have land registered as a Village Green, such

⁹ R v *Suffolk County Council ex p Steed* (1996) 75 P&CR 102 at 111

that the relevant legal tests must be 'properly and strictly proved'. Therefore, in order for the application to succeed, all five of the legal tests set out above must be met; if one test fails, then the application as whole falls to be rejected.

56. The evidence in this case suggests that the Application Site has been used primarily by residents of the properties in the immediate vicinity of the site (presumably as an extension of their gardens) and overwhelmingly for the purposes of children playing. Some of the uses cited are not 'qualifying' (either because they were not 'lawful' or did not take place on the land), whilst others (community events) appear to have taken place only sporadically. Due to the size of the land, dog-walking could only have taken place in a limited manner and the evidence in respect of the primary use of the land (for children playing) is arguably vague and ambiguous.

57. There is no dispute as to whether the recreational use of the land has been challenged in any way, and there is no substantive difficulty in terms of identifying a qualifying neighbourhood within the locality. However, the frequency of the recreational use relied upon by the applicant (on the basis of the evidence available) is not sufficient to indicate that the Application Site has been used in a manner sufficient to indicate that the land was in general use by the inhabitants of Bockhanger generally (as opposed to a relatively small number of individuals). This is particularly so at the start of the relevant period, where only three users can attest to regular use of the Application Site.

58. Accordingly, it is not considered that the application meets all of the tests for registration as a Village Green as set out in section 15 of the Commons Act 2006.

Financial implications

59. The determination of Village Green applications is a quasi-judicial function of the County Council and, accordingly, any financial implications can have no bearing whatsoever on the Member Panel's decision. However, Members should be aware that, whatever decision is reached, the only right of appeal open to the parties is an application to the High Court for Judicial Review, which potentially carries significant legal costs for all concerned.

60. If Members are not satisfied with the recommendation, the Panel may refer the matter to a Public Inquiry for further consideration of the evidence. However, that approach also carries significant costs to all parties and should only be adopted where it is considered that there are material conflicts within the evidence that are irreconcilable on paper.

Recommendation

61. I recommend that the Applicant be informed that the application to register the land at Bybrook Road / The Pasture at Kennington as a Town or Village Green has not been accepted.

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

Appendices

APPENDIX A – Plan showing Application Site

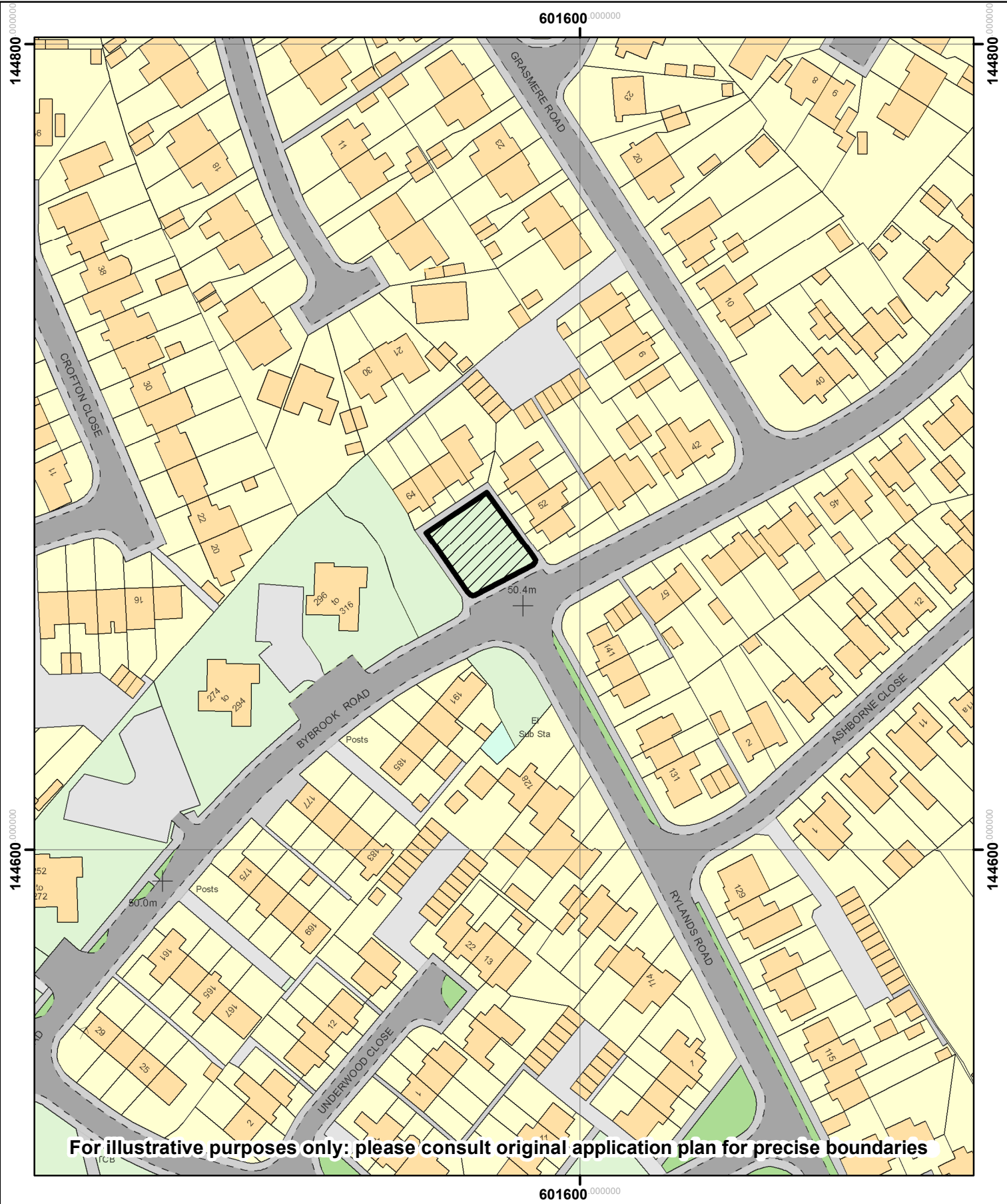
APPENDIX B – Photographs of the Application Site

APPENDIX C – Table summarising user evidence

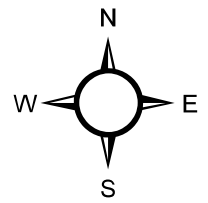
APPENDIX D – Plan showing 'consultation area'

APPENDIX E – Ordnance Survey map showing local place names

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For illustrative purposes only: please consult original application plan for precise boundaries



Scale 1:1250

Land subject to Village Green application
at Bybrook Road, Kennington (VGA684)



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



2015 Aerial photograph



Google Streetview image from July 2015

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**APPENDIX C:
Summary of user evidence**

User	Period of use	Frequency of use	Type of use	Comments
1	2018 – 2020	Weekly	Leisure activities	
2	1968 – 2020	Occasionally	Watching children play, socialising	'Local residents have maintained it to keep it looking nice between Council cuts'
3	2017 – 2020	Daily	Dog walking, walking with children	
4	2007 – 2020	Daily	Dog walking, VE Day celebrations, clapping for NHS	
5	<i>Not used</i>	<i>Not used</i>	<i>Used it with walker following broken hip to aid recovery</i>	
6	2010 – 2020	<i>Occasionally, more in summer</i>	<i>Children used it when younger for football, now they roller skate around it. Lockdown street party for VE Day.</i>	
7	2014 - 2020	Daily	Dog walking, son rides his bike there	Other open space at Bockhanger is used by teenagers/youths and can be intimidating.
8	1992 – ?	<i>Daily</i>	<i>Children used when younger to play with other children but they are now grown up.</i>	<i>Was easy to keep an eye on the children whilst gardening [in Rylands Road]</i>
9	2016 – 2020	<i>Weekly</i>	<i>My children play on the green</i>	<i>Many families use the land as a form of exercise and a place for a community to come together.</i>
10	2017 – 2020	Weekly	Football, street parties, dog walks	
11	1974 – 2020	Occasionally	Football with grandchildren	[NB This use presumably only applies to the latter part of the 20yr period]
12	1986 – 2020	Monthly	Children play on the green frequently and have had gatherings with neighbours	
13	1977 – 2020	Daily	Exercise, playing as a child	[NB Playing as a child presumably took place before the 20yr period]
14	2001 – 2020	Weekly	Children have played and exercised there, charity stall sales, granddaughter plays, clapped every Thursday on there, celebrated VE75 day there	'Even though it's near a road parents feel confident their children are safe on there... it's always been well maintained by local residents'
15	2006 – 2020	Daily when children were younger, now weekly	Children playing, community events e.g. fireworks, bank holiday get-togethers, VE Day street party	'Children of family played out there all the time as only have a small garden'
16	2020	Daily	Playing with children	Started using in June 2020
17	1985 – 2020	Daily/weekly	Used as a children's play area with children and grandchildren, occasional street parties	
18	1980 – 2010	<i>Weekly</i>	<i>Children and grandchildren played on it</i>	<i>'It is the only safe place for local children to play on'</i>
19	1968 – 2020	Daily	Children and grandchildren sports, celebratory occasions, fireworks parties, neighbourhood gatherings, mowing and maintenance	'On occasions over the years maintenance... became sporadic [so myself and a neighbour] have regularly mown the area as required making it suitable for use'

**APPENDIX C:
Summary of user evidence**

20	1975 – 2020	Daily	Children when toddlers played games with friends, grandchildren use it when visiting, social functions	[NB use by grandchildren would not be qualifying use if they do not live locally]
21	2001 – 2020	Daily	Social gatherings (e.g. BBQs), playing with neighbours children and grandchildren, street parties (e.g. VE Day)	
22	2002 – 2020	Not stated	Daughter plays with her friends (incl badminton), during lockdown it was a social area for neighbours to chat and exercise, community gatherings (e.g. BBQs)	'This is a community space used by young children who can play safely whilst being supervised by adults from their homes'

Notes:

Evidence forms were completed in 2020, but this does not necessarily mean that use ceased as of that date.

The material period for the purposes of the application is 2000 – 2020

Text in blue italics refers to users who do not refer to using the land themselves, or do not provide dates.

Text in bold refers to users who used the land throughout the material period.

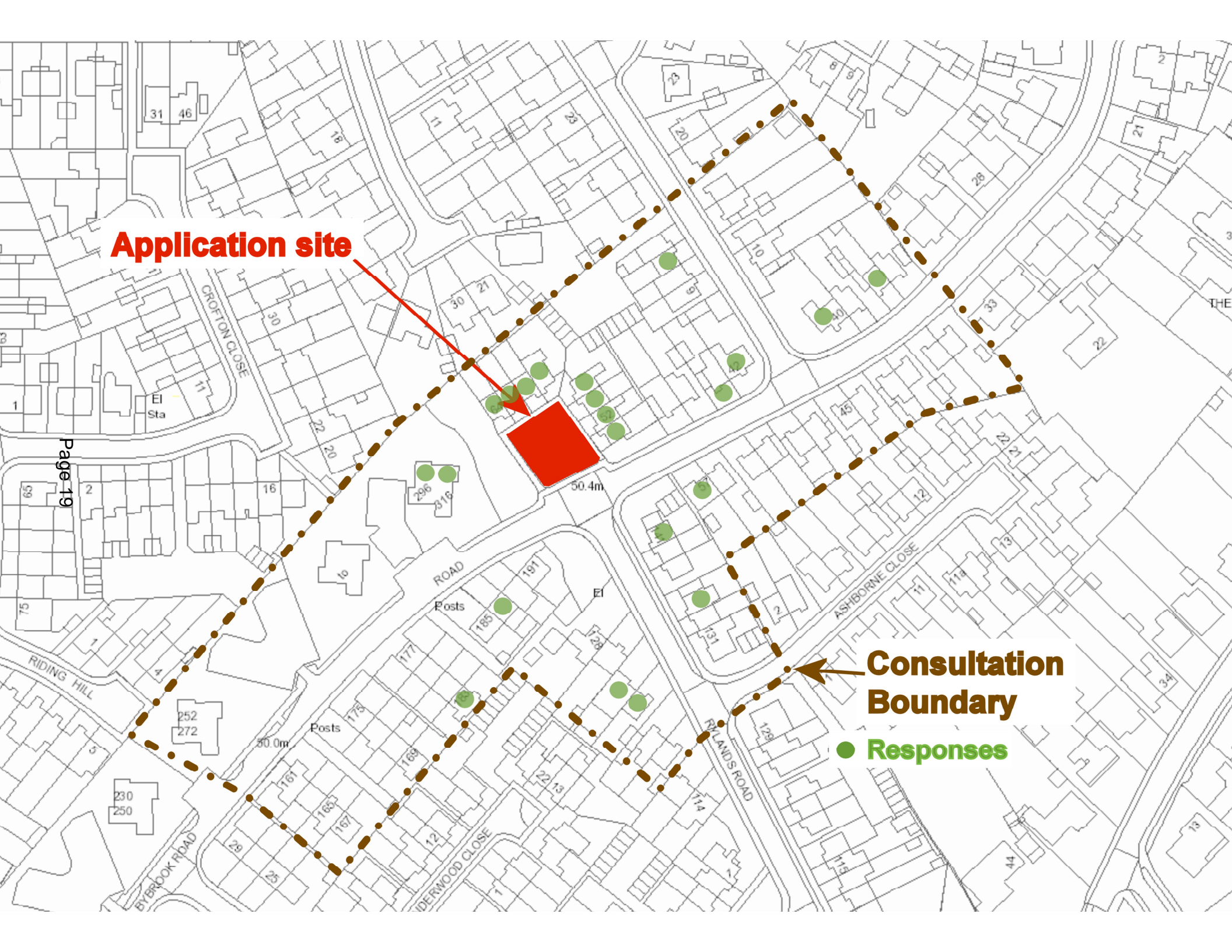
Application site



50.4m

Consultation Boundary

● Responses



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APPENDIX E:
Ordnance survey map showing local place names
(with location of application site indicated with red dot)

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Application to register land at Quantock Drive at Ashford 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 Wednesday 20th September 2022.

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

Local Member: Mr. P. Bartlett (Ashford Central)

Unrestricted item

Introduction

1. The County Council has received an application to register an area of land at Quantock Drive at Ashford as a new Town or Village Green from Mr. P Bartlett ("the Applicant") in his capacity as the local County Councillor and on behalf of the community that he represents. The application, made on 27th June 2022, was allocated the application number VGA688.

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

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.

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

The application site

6. The land subject to this application (“the Application Site”) comprises a strip of land of approximately 1.25 acres (0.5 hectares) in size situated between the northern side of Quantock Drive and the southern side of Simone Weil Avenue at Ashford. The land itself consists of an area of grassed open space that also includes a number of mature trees.
7. The Application 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 become a Town or Village Green by virtue of the recreational use of the land ‘as of right’ by local residents for a period in excess of twenty years.
9. Included with application were 138 evidence questionnaires (from 110 households) detailing the use of the Application Site by local residents for a range of recreational activities. The user evidence is summarised in the table at **Appendix C**.
10. The Applicant has identified the relevant neighbourhood as ‘the Quantock Estate’ within the locality of ‘Furley Ward and Ashford Central Division’.
11. The application has been made under section 15(2) of the Commons Act – i.e. on the basis that use of the Application Site has continued ‘as of right’ until the date of the application – such that the relevant twenty-year period for the purposes of the application is June 2002 to June 2022.

Consultations

12. Consultations have been carried out as required.
13. A letter of support has been received from the Central Ashford Community Forum, stating that the land has been used as a defacto Village Green since the development was completed over 50 years ago. The Forum added that the space has provided residents in the estate, as well as in the greater Central Ashford Community, much needed open and green space amenity and that it forms a critical part of the services provided to residents, such that the land must be protected.

Landowners

14. At the time that the application was made, the land was owned by Greenfurb Ltd. and registered with the Land Registry under title numbers K337290, K349718 and K86324. However, the land was sold at auction very soon after (on 29th June 2022) to Bluesky Properties Estates Ltd. and various attempts to contact the new landowner have been unsuccessful. These have included:
 - Letter sent by recorded delivery to Greenfurb Ltd. in September 2022;

- Letter and email to the solicitors dealing with the transfer of ownership of the land in September and November 2022;
- Email correspondence with the auction house that sold the land in early 2023; and
- Letters sent by recorded delivery and special delivery to Blue Sky Estates Ltd. in February and August 2023 (once the Land Registry information had been updated and their correspondence address became available).

15. These attempts have been in addition to the consultation notice that appeared on site in September 2022, and it is therefore considered that the County Council has taken all reasonable steps to contact the new landowner and advise them of the current application.

Legal tests

16. 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'?

17. The definition of the phrase 'as of right' has been considered by the House of Lords. Following the judgement in the Sunningwell² 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.

18. In this case, there is no indication from the user evidence available that access to the Application Site has ever been restricted in any way and the open nature of the site makes this unlikely in any event. Nor is there any evidence of any prohibitive notices being erected on the site to deter recreational use.

19. Some of the users refer to the land having been provided specifically as open space by the developer of the estate (although it has not been possible to verify this), and a number of others refer to the active maintenance of the land by Ashford Borough Council (albeit not the landowner). The impression overall is therefore that recreational use of the Application Site has been encouraged and at no time has the landowner (or any previous landowner) attempted to prevent such use.

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

20. Accordingly, it would appear that use of the Application Site has taken place 'as of right'.

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

21. 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*'³.

22. The summary of evidence of use by local residents at **Appendix C** shows the activities that are claimed to have taken place on the Application site.

23. Although, as is usual with this kind of application, the majority use appears to have been dog walking, there is also evidence of a range of other activities taking place on the Application site. These include playing with children, ball games, picnics, nature observation, photography and socialising.

24. It is to be noted that some of the user evidence questionnaires refer to the use of the land to walk to the retail park on the opposite site of Simone Weil Avenue. This kind of use – which involved walking a defined, linear route to a destination outside of the Application Site – would be classed as a 'rights of way' type of use, rather than the exercise of a general right to recreate across the land as whole, and would therefore need to be discounted as it would not be 'qualifying use' for the purposes of the Village Green application.

25. However, even discounting this 'right of way type use', there is an abundance of evidence to demonstrate regular use of the Application Site for a range of recreational activities and which confirms that the Application Site was a popular destination for local residents for the purposes of undertaking lawful sports and pastimes on the land.

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

26. 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.

Locality

27. 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 Builders⁴ case, it was considered that '*...at the very least, Parliament required the users of*

³ *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

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

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'.

28. In situations where the locality is so large that it would be impossible to meet the 'significant number' test (see below), it is also necessary to identify a neighbourhood within the locality. The concept of a 'neighbourhood' is more flexible than that of a locality, and 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'*⁵.
29. In the current case, the Applicant has specified the relevant neighbourhood as being 'the Quantock Estate' within the locality of 'Furley Ward and Ashford Central Division'. Furley Ward is the Borough Council electoral ward within which the entirety of the estate is situated (along with other land to the east of it) and Ashford Central Division is the County electoral division within which the estate is situated.
30. It is generally agreed that an electoral ward, which is legally recognised unit with defined boundaries, can be a qualifying 'locality' for the purposes of an application under section 15 of the Commons Act 2006. In this case, the Applicant has cited two localities, but either would be capable of satisfying the legal test.
31. In respect of the Applicant's suggested neighbourhood, the evidence indicates that the 'Quantock Estate' is a locally recognisable cohesive entity. The area comprises a housing estate that was primarily developed during the early 1970s, and access to which is via only two entrances/exits (thereby indicating a self-contained area). One of the users explains that the road names within the estate are all derived from the names of hills around the country (e.g. Chiltern End, Cotswold Close, Pennine Way etc.) which further adds to the degree of cohesiveness.
32. Within the evidence questionnaires, a large number of the users describe themselves as residents of the Quantock Estate, and elsewhere in the forms there are also references to 'we have lived on the estate' and the land being the only green area 'on the estate', such that it is clear that local residents consider themselves to be resident within a defined neighbourhood.
33. It would therefore appear that the Quantock Estate is a qualifying neighbourhood for the purposes of Village Green registration, and it is situated within the qualifying locality of the Borough Council electoral ward of Furley Ward (or, in the alternative, the County electoral division of Ashford Central).

⁵ *ibid* at 92

“a significant number”

34. In addition to the above, the County Council also needs to be satisfied that the application site has been used by a ‘significant number’ of the residents of the ‘neighbourhood within a 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’*⁶. 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.
35. In this case, there is a large body of evidence which has come from all over the claimed neighbourhood: this is shown on the plan at **Appendix D**. The number of user evidence questionnaires submitted is at least what would be expected in an urban area such as this, and a high proportion of those returning questionnaires (over half) attest to use of the Application Site on a daily basis.
36. It is also clear from the evidence that the Application Site has long been regarded as a community facility, to the extent that a number of the users had been under the impression (until recently) that it was owned by the local Council. Moreover, a number of the user evidence questionnaires refer to the land being a place to socialise with their neighbours. The open nature and location of the Application Site, as the main area of green space within a large housing estate, also tends towards it having been in general use by the local community as a whole, rather than by a few individuals as trespassers.
37. Therefore, it is considered that the Application Site has been used by a significant number of the residents of the qualifying neighbourhood of the ‘Quantock Estate’ within the recognised locality of Furley Ward.

(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?

38. 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.
39. In this case, the application is made under section 15(2) of the 2006 Act and there is no evidence that use of the Application Site for recreational purposes ceased prior to the making of the application. As such, this test is met.

⁶ 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?

40. In order to qualify for registration, it must be shown that the land in question has been used for a full period of twenty years. In this case, use 'as of right' did not cease prior to the making of the application in June 2022; the relevant twenty-year period ("the material period") is calculated retrospectively from this date and is therefore 2002 to 2022.
41. The user evidence submitted in support of the application (and summarised at **Appendix C**) indicates that use of the Application Site has taken place well in excess of the required twenty-year period and, in a number of instances, has taken place since the construction of the estate and first occupation of the properties in the 1970s.

Conclusion

42. In making a decision on this application, Members will need to be mindful that it is 'no trivial matter' for a landowner to have land registered as a Village Green, such that the relevant legal tests must be 'properly and strictly proved'. It is not the case that, because there is no opposition to the application, it should automatically succeed; regardless of this position, the County Council still needs to be satisfied that all five of the legal tests set out above have been met and, if one test fails, then the land cannot be registered as a Village Green (regardless of the lack of opposition).
43. In this case, the large volume of evidence submitted in support of the application demonstrates, as a whole, that the Application Site has been in very regular use by the residents of the Quantock Estate as a place for exercise and recreation for a period well in excess of the required twenty years, and almost certainly since the construction of the estate in the early 1970s. There is no suggestion, on the evidence available, that access to the Application Site has ever been challenged or otherwise prevented in any way. Indeed, any physical restriction to use would have necessitated fencing for some considerable distance along the northern footway of Quantock Drive and there is certainly no evidence of this on the ground.
44. Having carefully considered the application and the supporting evidence, it is considered that the legal tests have been met in every respect and that the Application Site ought, therefore, to be registered as a Village Green.

Financial implications

45. The determination of Village Green applications is a quasi-judicial function of the County Council and, accordingly, any financial implications can have no bearing whatsoever on the Member Panel's decision. However, Members should be aware that, whatever decision is reached, the only right of appeal open to the parties is an application to the High Court for Judicial Review, which potentially carries significant legal costs for all concerned.

Recommendation

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

Accountable Officer:

Mr. Graham Rusling – Tel: 03000 413449 or Email: graham.rusling@kent.gov.uk

Case Officer:

Ms. Melanie McNeir – Tel: 03000 413421 or Email: melanie.mcneir@kent.gov.uk

Appendices

APPENDIX A – Plan showing application site

APPENDIX B – Photographs of the application site

APPENDIX C – Table summarising user evidence

APPENDIX D – Plan showing the area within which users reside

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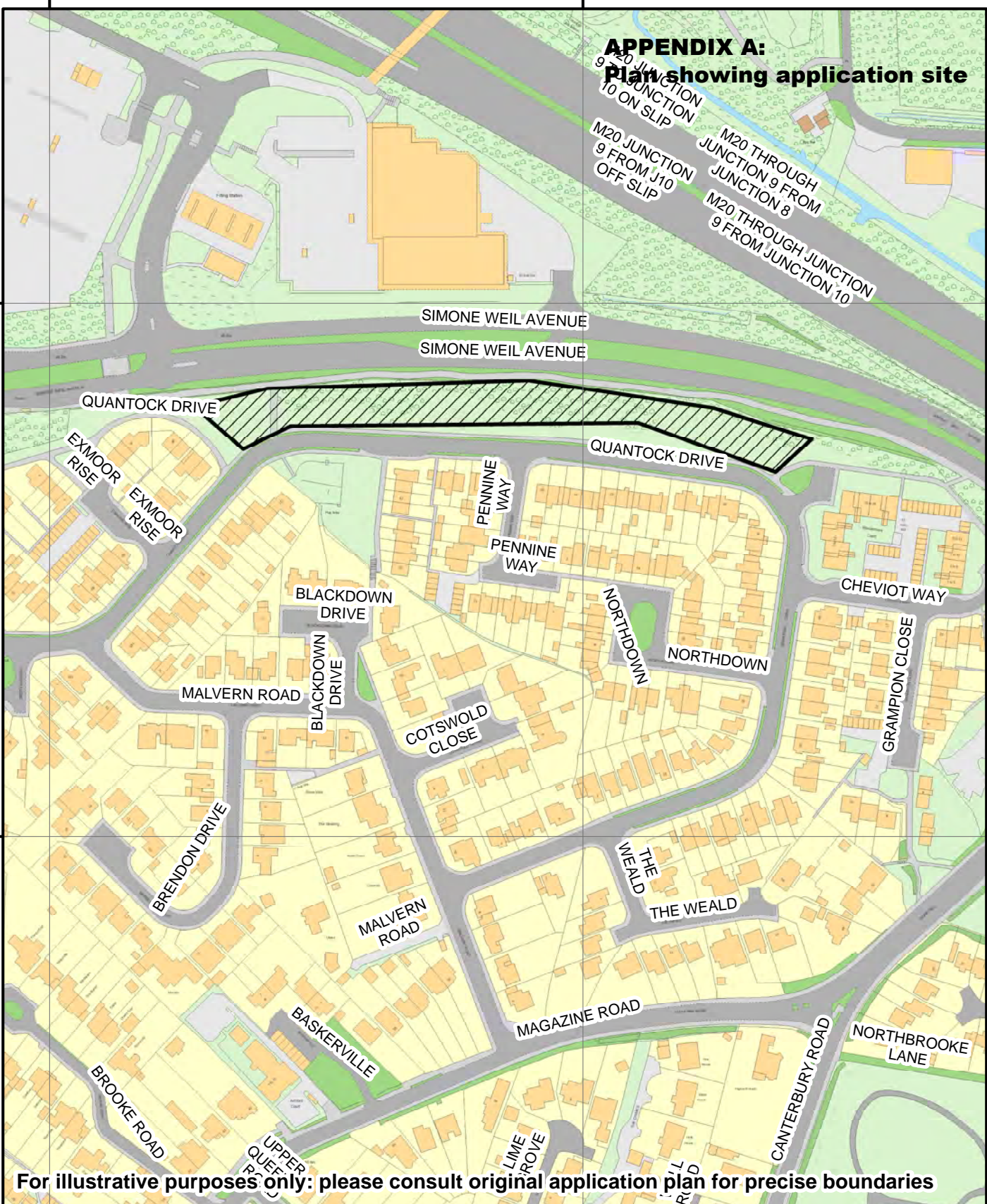
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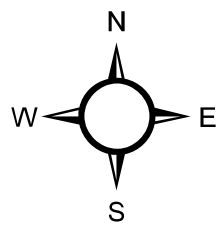
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APPENDIX A: Plan showing application site

M20 JUNCTION 9 THROUGH JUNCTION 10 ON SLIP
 M20 JUNCTION 9 FROM J10 OFF SLIP
 M20 THROUGH JUNCTION 9 FROM JUNCTION 8
 M20 THROUGH JUNCTION 9 FROM JUNCTION 10



For illustrative purposes only: please consult original application plan for precise boundaries



Scale 1:2500
@ A4

Land subject to Village Green application at
Quantock Drive, Ashford (VGA688)



Page 31



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**APPENDIX B:
Photographs of the application site (taken August 2023)**



Photo 1: View from western end of the site looking east



Photo 2: View from eastern end of the site looking west

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**APPENDIX C:
Summary of user evidence**

User	Period of use	Frequency of use	Type of use	Comments
1	1998 – present	Daily	Football when younger, now dog walking	There was a temporary polling station on the land at some point since 2011. The land is very regularly used by local residents. Consider myself resident of the Quantock estate.
2	1998 – present	Daily	Dog walking	Consider myself resident of Quantock estate.
3	2014 – present	Daily	Walking, dog walking	Observed use by others daily.
4	2005 – present	Daily	Dog walking, picnics with grandchildren, access to shops	Consider myself resident of East Trees estate. The land has beautiful trees and is kept tidy by Ashford Borough Council workers.
5	2011 – present	Daily	Dog walking, playing with children, nature observation, picnics, star gazing, relaxation, access to shops.	It is a safe play area for children, I regularly see people on the land.
6	2005 – present	Daily	Playing with grandchildren, walking to shops	This green is the only local space for recreation.
7	2015 – present	Weekly until 2020, then daily	Running, walking, scootering, cycling, collecting fallen twigs/trees for crafting, dog walking	There was an unsafe tree as a result of the 2022 storms, ABC secured the area and made it safe. The Quantock Estate is a defined area/community.
8	2015 – present	Weekly until 2020, then daily	Running, walking, scootering, cycling, collecting fallen twigs/trees for crafting, dog walking	
9	1982 – 2007	Not stated	Dog walking	
10	1987 – present	Weekly	Walking for exercise, walking to shops, nature observation, foraging for walnuts in autumn	
11	1980 – present	Weekly	Walking, socialising	
12	1980 – present	Weekly/ daily	Part of walking route, meeting and socialising with friends	Consider myself resident of Quantock Estate. Observed use by others daily.
13	2018 – present	Weekly	Dog walking, visiting with grandchild	
14	2018 – present	Weekly	Dog walking, visiting with grandchild	
15	2020 – present	Daily	Dog walking, walking to shops	
16	2017 – present	Daily	Dog walking	
17	1970s – present	Daily	Dog walking, walking, playing with children	Unable to use land initially when moved in due to building materials being stored there, but no obstructions to use since then.
18	2000 – present	Daily	Walking, running, dog walking,	

				childrens outdoor games, access to amenities	
19	2005 – present	Daily		Dog walking, walking, nature hunting, games	Consider myself resident of Quantock Estate. Land has been maintained very regularly by the local authority over the last 17 years so assumed they owned the land. At no time has use ever been restricted.
20	1983 – present	'from time to time'		Used land as shortcut	Observed use by others daily in summer holidays.
21	1983 – present	Weekly		Dog walking, exercising, playing with children and grandchildren	This is the only green area this estate has.
22	1983 – present	Weekly		Ball games, children's parties, exercise.	There are no other green areas on this estate.
23	2001 – present	Daily		Dog walking	I am a resident of the Quantock Estate. Understood the land to be owned and maintained by Ashford Borough Council.
24	1998 – present	Daily		Walking with grandchildren, leaf collecting	Observed use by others on a daily basis
25	Not stated	Daily		Dog walking, walking with grandchildren	Observed use by other daily
26	2003 – present	Daily		Photography, nature observation	Observed use by others daily
27	1980 – present	Daily		Family leisure activities	This area was an original designated area of free space for the use of residents living in the Quantock Drive (Eastress Park?) estate.
28	1985 – present	Daily		Walking, nature observation, conversation with neighbours	Most of us on this estate have lived here for long time, we love our green spaces.
29	1986 – present	Daily		Playing with children, jogging	Part of the Quantock Estate.
30	2006 – present	Twice weekly		Walking to shops, occasionally playing with children	Resident of Quantock Estate – all roads are named after hills in the UK
31	1973 – present	Occasionally		Not stated	
32	1995 – present	Weekly		Walking	Always assumed it was Council land as it was maintained by the Council.
33	2016 – present	Daily		My children play daily	
34	2015 – present	Daily		Photography, nature observation, walking, socialising	The green is at the heart of the Quantock Drive community
35	1990 – present	Twice weekly		Playing with grandchildren, socialising with other residents	
36	1988 – present	Daily		Wildlife observation, walking for leisure and exercise	Resident of Quantock Drive neighbourhood
37	1993 – 2012, 2015 – present	Weekly		Tree climbing, football, picnic	Resident of community of Quantock Drive
38	2020 – present	Daily		Dog walking, football with children	Observed use by others daily
39	1984 – present	Weekly		Childrens games, dog exercise,	I live on the Quantock Estate

				walking, socialising, nature observation, conker collecting	
40	2020 – present	Daily	Walking, dog walking, playing sports with children		
41	2008 – present	Twice daily	Picnics, dog walking, football		Resident of Quantock Drive neighbourhood
42	2008 – present	Daily	Dog walking, children playing football, exercise		I have lived on this estate for 14 years. Observed use by others daily.
43	2019 – present	Daily	Dog walking, walking to shops, exercise, picnics, relaxation, playing football with children, photography		
44	1997 – present	Daily	Dog walking, playing with grandchildren		Observed use by others daily.
45	1997 – present	Daily	Dog walking, exercise, socialising, nature observation		Observed use by others daily.
46	1997 – present	Daily	Walking, playing with children, dog walking		
47	1986 – present	Occasionally	Children playing, football		
48	1972 – present	Daily	Walking dogs, playing football, cricket, rounders, picnics		
49	1972 – present	Daily	Dog walking, walking, playing ball games with neighbours, picnics		This green area has always been used by local residents and their children since the estate was built
50	1969 – present	Daily	Dog walking		Observed use by others daily
51	2005 – present	Daily	Walking		
52	1970 – present	Daily	Dog walking, access to shops, playing with children		
53	2018 – present	Regularly	Dog walking		
54	2018 – present	Daily	Dog walking		
55	1974 – present	Daily	Playing, running, tennis, ball games, dog walking		
56	1970 – present	Daily/weekly	Walking, playing with children		Observed use by others daily
57	1972 – present	Daily	Dog walking		
58	2015 – present	Weekly	Football, access to shops, kite flying, collecting conkers		
59	2015 – present	Weekly	Walking, leisure, tree-climbing, hide and seek, walking to shops		Resident of Quantock Drive Estate
60	1987 – present	Daily	Playing with children, ball games, tree climbing, walking, collecting walnuts and chestnuts, access to shops, birdwatching, socialising		Resident of the Quantock Drive Estate
61	1987 – present	Weekly	Sports with children, fireworks		

				party, access to shops, practise fly fishing casting	
62	2019 – present	Weekly		Access to shops	
63	2006 – present	Daily		Picnics, dog walking, walk to school, walking to shops	
64	1972 – present	Daily		Dog walking, walking for health	
65	1983 – present	Weekly		Dog walking, walking and playing with grandchildren	
66	2019 – present	Daily		Walking, dog walking,, walk to shops, litter-picking, nature observation	
67	2010 – present	Monthly, sometimes weekly		Dog exercising, walking, walking to shops	Not resident of locality but regular visitor.
68	2010 – present	Daily		Walking, dog walking, picnics, walk to shops, litter picking	
69	1983 – present	Daily		Picking walnuts, dog walking	
70	1989 – present	Daily		Dog walking, playing with children, general walking and exercise	Observed use by other daily. This is a valuable open space.
71	1989 – present	Daily		Dog walking, playing with children and grandchildren	
72	1987 – present	Daily		Games, dog walking, picnics	
73	1983 – present	Several times per week		Football and other ball games, hide and seek, picnics, socialising, wildlife observation, enjoying the trees	Can see land from window – observed use on daily basis. Resident of Quantock neighbourhood.
74	1983 – present	Several times per week		Ball games, playing with children, picnics, teaching children to ride bikes, socialising with community, nature observation	The neighbourhood is usually referred to as Quantock and West Trees Park Estate.
75	1987 – present	Daily		Dog walking	The land has been treated as a Village Green and a public park.
75	1972 – present	Daily		Picnics, playing with children, walking	
77	1971 – present	Daily		Walk to shops, exercise	My children played various ball games on the green regularly. Observed use by others daily.
78	1971 – present	Daily		Exercise, walking, walk to shops, occasional dog walking	Live opposite the land. Observed use by others daily.
79	1992 – present	Daily		Walking, picnics, dog walking, walk to shops	Observed us by others daily
80	2010 – present	Daily		Walking, dog walking, picnics,	

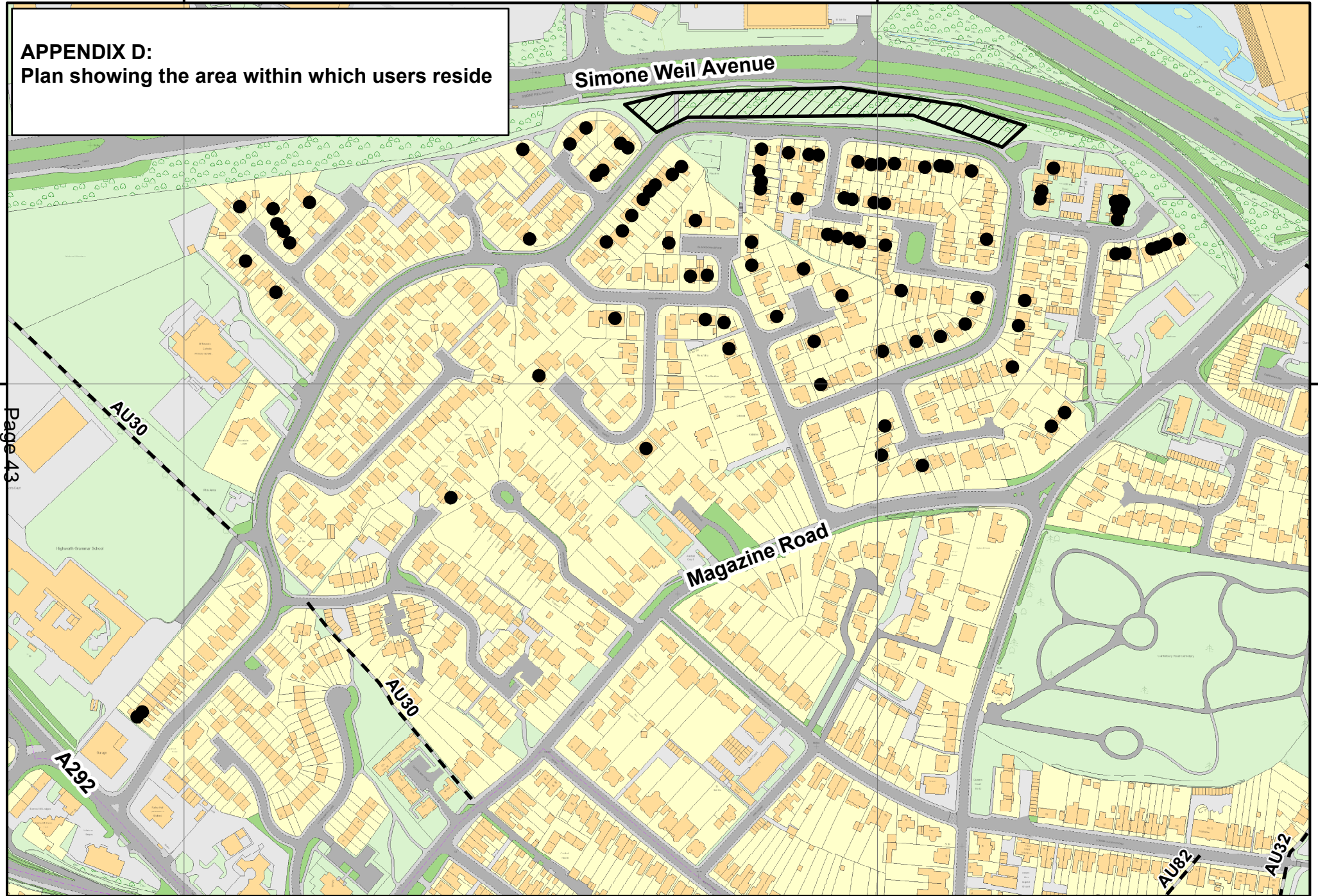
				playing volleyball and football with children, walk to shops, litter picking	
81	2019 – present	Occasionally		Walking, enjoying trees	
82	1990 – present	Daily/weekly		Walking, ball games, picnics	Consider ourselves to be residents of the Quantock Estate
83	1976 – present	Weekly		Walking to shops, playing with children	Grass cut occasionally by Council
84	2016 – present	Not stated		Dog walking, walking	Resident of Quantock area
85	1971 – present	Often		Walking	
86	2004 – present	Not stated (page missing)		Not stated (page missing)	Observed use by others daily.
87	2004 - present	Not stated (page missing)		Not stated (page missing)	Observed use by others daily.
88	2004 – present	Daily		Walking, playing with children	
89	2004 – present	Daily		Walking to shops, socialising with friends, nature observation, jogging, riding bikes	
90	1976 – present	Daily		Walking to shops, walking, playing with children, cycling	This is a lovely green space used by everyone on Quantock.
91	2016 – present	Daily		Dog walking, exercise	
92	1976 – present	Daily		Children playing, walking, cycling	
93	1982 – present	3/4 days per week		Playing with grandchildren, picnics, relaxation, walking	Land is very rarely empty. Neighbourhood is known as the East Trees Estate.
94	2010 – present	Daily		Dog walking, ball games with grandchildren	
95	1970 – present	Monthly		Badminton, football, rounders, picnics, nature observation	The neighbourhood is a close community, most people have lived here a very long time.
96	2010 – present	Daily		Dog walking, exercise, picnics	Observed use by others daily
97	1997 – present	Daily		Access to shops, playing with children	This is a tight-knit community, most of the residents have lived here since the houses were built.
98	1990 – present	Almost daily		Picnics, playing with children, ball games, teaching children to ride bikes.	Always assumed the area was under the control of the Council as they maintained the land. The local area commonly known as the Quantock Drive Estate
99	1990 – present	Almost daily		Picnics, playing with children, ball games, teaching children to ride bikes.	
100	2020 – present	Daily		Dog walking, playing sports on family	Observed use daily
101	2020 – present	Daily		Dog walking, playing with grandchildren, nature trails,	

				picnics, teaching children to ride bikes	
102	1972 – present	Daily/weekly		Walking dogs, picnics, general exercise, football, cricket.	I have lived on the Quantock Drive Estate for 50 years. Always believed the land to be owned by Ashford Borough Council who have maintained it.
103	2004- present	Daily		Walking, dog walking	
104	1972 – present	Daily		Not stated	The land is used as common land by local residents for walking dogs and recreational purposes.
105	1971 – present	Daily		Football, tennis, dog walking	
106	1984 – present	Daily		Dog walking, football, cricket, picnics	
107	2008 – present	Weekly		Dog walking, teaching children to ride bikes.	
108	1992 – present	Daily		Dog walking, leisure, walking	This is the only space for leisure and exercise in the area.
109	1992 – present	Daily		Leisure, walking, children playing	
110	1977 – present	Daily		Dog walking, playing with children	Always thought land belonged to Council
111	1997 – present	Daily		Ball games, frisbee, dog walking, playing with children	See people using land every day
112	1971 – present	Daily		Dog walking, playing football	Observed use by other daily
113	2000 – present	As often as possible		Walking	I live on Quantock
114	1971 – present	Daily		Dog walking	
115	1987 – present	Every couple of days		Dog walking, meeting residents, playing with children	Whenever I am there, there is always someone walking on the land.
116	1971 – present	Occasionally		Not stated	
117	2000 – present	Daily		Playing with children, ball games, picnics, exercise, dog walking	
118	2001 – present	Weekly		Walking	
119	2017 – present	Daily		Dog walking	I live in the Quantock Drive locality.
120	1980 – present	Twice weekly		Children's games, dog walking, picnics, foraging	As part of the development agreement with the Council, part of the land was to be designated as public open space.
121	1980 – present	Several times per week		Children playing, dog walking, picnics	The area is often referred to as the Quantock Drive Estate but was originally known as the East Trees Estate.
122	2015 – present	Not stated		Family use this land a lot.	Land is used all the time and daily by dog walkers.
123	2019 – present	Daily		Dog walking, walk to shops, picnic, football, relaxation, photography	
124	1996 – present	Few days a week		Dog walking, exercise	I always believed that the Council owned it.

125	1995 – present	Daily	Dog walking, access to shops, children used when younger	Many young people use the green for recreation. The green space has been part of the community for decades, since the estate was built. I am a 'Quantock Drive' resident
126	2021 – present	Weekly	Walking to shops, dog walking, ball games, picnics	
127	1973 – present	Occasionally	Dog exercise, picnics and games with children	Observed use by others on a daily basis.
128	1994 – present	Weekly	Dog walking, football, running, wildlife observation	I live on the Quantock Drive estate. Observed use by others on a daily basis.
129	1971 – present	Daily	Playing with children, picnics, ball games, meeting place	On my deeds it says the land would not be built on.
130	2005 – present	Daily	Walking, playing football, dog exercise	I am resident of the Quantock estate.
131	2005 – present	Several times per week	Walking, exercise, leisure and pleasure, dog walking, walking to shops	Resident of the Quantock estate. Every time I am there I see other people.
132	2016 – present	Daily	Dog walking, playing with children, call games, picnics, nature observation	
133	1972 – present	4/5 times per week	Playing with children, dog walking, access to shops, observing wildlife	We have always been under the impression that the land in question was always for the use of the local community as it is the only green space on the estate.
134	2001 – present	Daily	Dog walking, children playing games, picnics	There is no other green space on the estate.
135	2002 – present	Daily/weekly	Playing with children, football, picnics	
136	2002 – present	Daily when children younger	Exercise, playing games, picnics, access to shops	The space is an important part of the community.
137	1993 – present	Daily	Walking	Observed others using on a daily basis for walking, reading etc.
138	1988 – present	Daily	Football, walking, watching wildlife	

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**APPENDIX D:
Plan showing the area within which users reside**



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Application to register land at West Cliff Bank at Whitstable 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 Wednesday 20th September 2023.

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

Local Member: Mr. M. Dance (Whitstable West)

Unrestricted item

Introduction

1. The County Council has received an application to register land at West Cliff Bank at Whitstable as a new Town or Village Green from the Canterbury City Council ("the Applicant"). The application, made on 6th December 2022 was allocated the application number VGA691.

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 Town or 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 Town or 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. 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 Town or Village Green.

The Case

Description of the land

6. The area of land subject to this application (“the Application Site”) comprises a strip of land, approximately 0.5 acres (0.2 hectares) in size, situated in the town of Whitstable, between the public highway known as West Cliff and the Whitstable Seasalter Golf Club. Currently, the land is largely overgrown with vegetation, although it is possible to walk through it along a defined path. Access to the site is available from a point on West Cliff, and it is also open (subject to vegetation growth) from Public Footpath CW51, which continues from the western (cul-de-sac) end of West Cliff, running along the southern and western boundaries of the site.
7. A plan of the Application Site is attached at **Appendix A**, with photographs of it at **Appendix B**.

Notice of Application

8. As required by the regulations, Notice of the application was published on the County Council’s website.
9. The local County Member, Mr. M. Dance, was also informed of the application and wrote to confirm his support for it.
10. Councillor A. Clark (of Canterbury City Council) also wrote to confirm his support for the application.
11. No other responses to the consultation have been received.

Ownership of the land

12. A Land Registry search has been undertaken which confirms that the application site is wholly owned by the Applicant under title number K935240.
13. There are no other interested parties (e.g. leaseholders) named on the Register of Title.

The ‘locality’

14. DEFRA’s view is that once land is registered as a Town or 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.
15. 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).

16. In this case, the application has been made by the City Council and therefore it seems appropriate for the relevant locality to be the electoral ward within which the Application Site is located, namely Gorrell Ward.

Conclusion

17. As stated at paragraph 3 above, the relevant criteria for the voluntary registration of land as a new Town or 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.

18. It can be concluded that all the necessary criteria concerning the voluntary registration of the land as a Village Green have been met.

Recommendations

19. I recommend that the County Council informs the applicant that the application to register the land at West Cliff Bank at Whitstable has been accepted, and that the land subject to the application be formally registered as a Town or Village Green.

Accountable Officer:

Mr. Graham Rusling – Tel: 03000 413449 or Email: graham.rusling@kent.gov.uk

Case Officer:

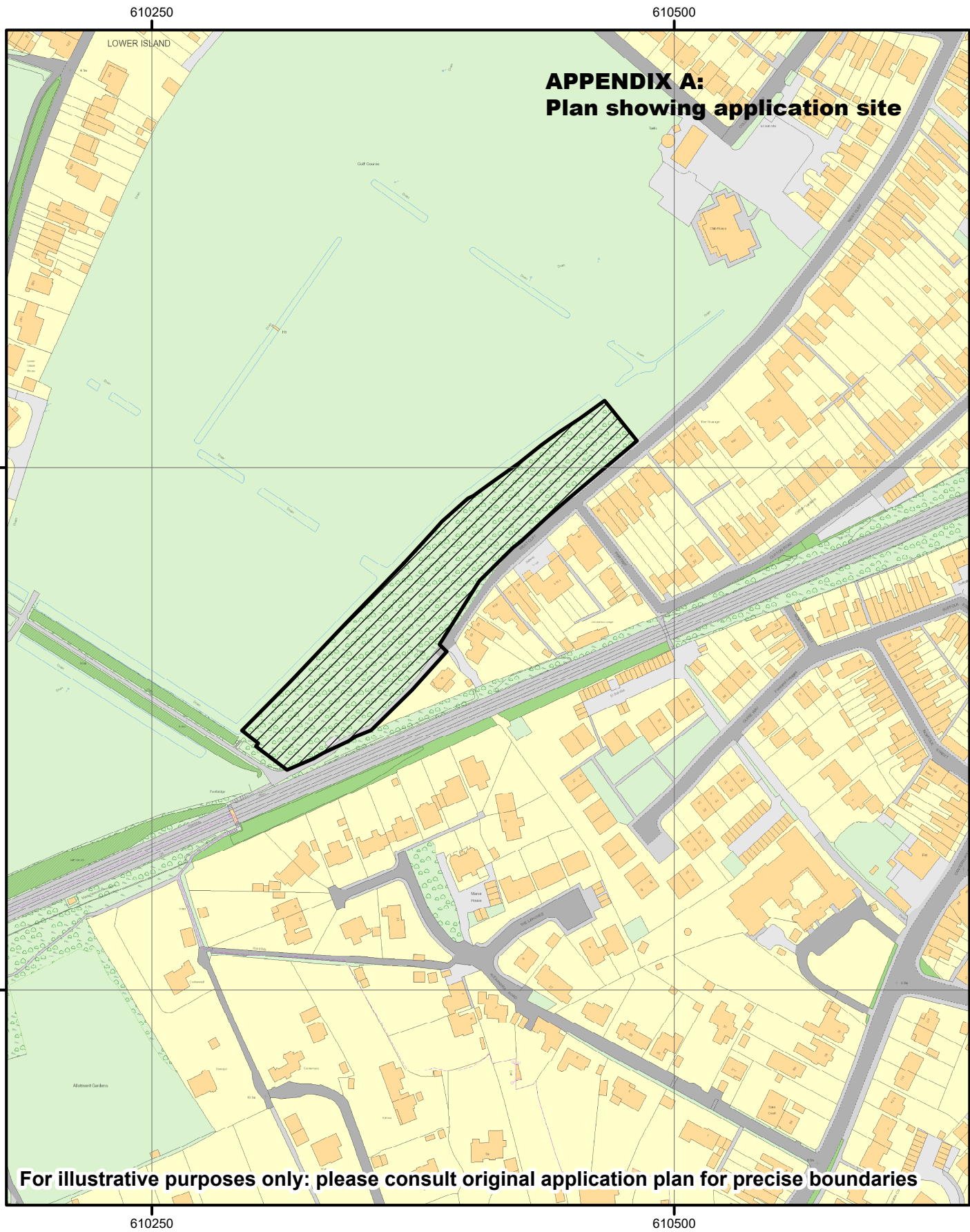
Ms. Melanie McNeir – Tel: 03000 413421 or Email: melanie.mcneir@kent.gov.uk

Appendices

APPENDIX A – Plan showing application site

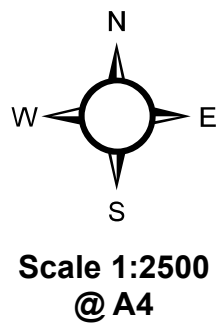
APPENDIX B – Photographs of the application site

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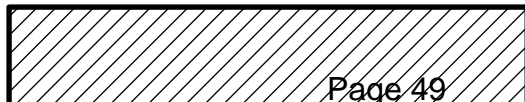


**APPENDIX A:
Plan showing application site**

For illustrative purposes only: please consult original application plan for precise boundaries



**Land subject to Village Green application
at West Cliff Bank, Whitstable
(VGA691)**



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**APPENDIX B:
Photographs of the application site (taken August 2023)**



**APPENDIX B:
Photographs of the application site (taken August 2023)**



Application to register land at Preston Parade at Whitstable as Common Land

A report by the PROW and Access Manager to Kent County Council's Regulation Committee Member Panel on Wednesday 20th September 2023.

Recommendation: I recommend that the County Council agrees to the Applicant's request to withdraw the application.

Local Member: Mr. M. Dance (Whitstable West)

Unrestricted item

Introduction

1. The County Council has received an application to register land at Preston Parade at Whitstable as Common land under Paragraph 4 of Schedule 2 of the Commons Act 2006. The application as been made by the Open Spaces Society ("the Applicant") and was allocated the application number CAA22. Following exchanges of representations with the landowner/objector, the Applicant now agrees that the land subject to the application is not capable of registration as Common Land and has requested that the application be withdrawn.
2. The matter was briefly considered at a meeting of the full Regulation Committee on 24th January 2023. However, at that meeting, concerns were expressed regarding the withdrawal of the application and it was agreed that a decision on the matter should be deferred. The purpose of this report is therefore to provide further information regarding this matter so as to enable a decision to be reached.

Legislation

3. Under Paragraph 4 of Schedule 2 of the Commons Act 2006, anyone may apply to the County Council to register land as Common Land. The relevant legal tests are as follows:

(2) This paragraph applies to land which at the time of the application under sub-paragraph (1) is waste land of a manor and where, before the commencement of this paragraph-

(a) the land was provisionally registered as common land under section 4 of the 1965 Act;

(b) an objection was made in relation to the provisional registration; and

(c) the provisional registration was cancelled in the circumstances specified in sub-paragraph (3), (4) or (5).

(3) The circumstances in this sub-paragraph are that-

(a) the provisional registration was referred to a Commons Commissioner under section 5 of the 1965 Act;

(b) the Commissioner determined that, although the land had been waste land of a manor at some earlier time, it was not such land at the time of the determination because it had ceased to be connected with the manor; and

(c) for that reason only the Commissioner refused to confirm the provisional registration.

(4) The circumstances in this sub-paragraph are that-

(a) the provisional registration was referred to a Commons Commissioner under section 5 of the 1965 Act;

(b) the Commissioner determined that the land was not subject to rights of common and for that reason refused to confirm the provisional registration; and

(c) the Commissioner did not consider whether the land was waste land of a manor.

(5) The circumstances in this sub-paragraph are that the person on whose application the provisional registration was made requested or agreed to its cancellation (whether before or after its referral to a Commons Commissioner).

4. Thus, an application can only be made under this provision in cases where the land in question is considered to be ‘waste land of a manor’ and the land was provisionally registered as Common Land under the Commons Registration Act 1965 (i.e. the predecessor to the Commons Act 2006) and following objection(s) the provisional registration was cancelled because *either* the Commons Commissioner did not consider the land to be waste land of a manor *or* the application was withdrawn at the applicant’s request (before any decision was made).
5. The term ‘waste land of a manor’ is defined¹ as ‘the open, uncultivated and unoccupied lands parcel of the manor’. DEFRA’s view² is that ‘open’ means unenclosed, and occupation requires some form of physical occupation to the exclusion of others. ‘Of the manor’ means³ land that is or was formerly connected to the manor.
6. The process for considering such applications, set out in the Commons Registration (England) Regulations 2014, is that the County Council must advertise notice of the application and provide a six-week period during which objections can be made. Any objections received must then be forwarded to the applicant for comment.

Background

7. The area of land subject to this application (“the Application Site”) comprises a strip of land of approximately 9.3 acres (3.77 hectares) in size situated between the mean high water mark and the private street known as Preston Parade at Seasalter, near Whitstable. The land is roughly split in half by the promenade, with the northern half comprising a private beach and the southern half comprising a mainly grassed bank. A plan of the Application Site is attached at **Appendix A**.

¹ Attorney General v Hanmer (1858) 27 LJ Ch 837

² See paragraphs 7.3.12 onwards of DEFRA’s ‘Guidance to Commons Registration Authorities and the Planning Inspectorate’ (Version 2.0 December 2014)

³ Hampshire County Council and others v Milbur [1990] UKHL J0510-1 (known as the ‘Hazeley Heath’ case)

8. The land was previously provisionally registered as Common Land (with the reference CL100) following an application under the Commons Registration Act 1965 from local resident Mrs. A. Wilks on 24th December 1968. However, Mrs. Wilks subsequently requested withdrawal of her application (on 13th May 1971) and the provisional registration of the land was cancelled without referral to the Commons Commissioner (who would otherwise have determined disputed applications).

The current application

9. The current application sought to re-register the land as Common Land on the basis that various historic maps (e.g. the Seasalter Tithe Map of 1840) appeared to show the land as having been (historically) open and uncultivated land, and that it remained so today.
10. In response to the consultation, an objection was received from the Granville Cliff Estate Company Ltd. (the landowner) as well as from a number of residents of the estate. The objection, prepared by a solicitor on behalf of the estate, was made on the following grounds:
 - The Granville Cliff Estate Company Ltd. owns the common areas within the estate (including the private estate roads); it is run by shareholders (i.e. residents) and is concerned with the maintenance of the roads and general upkeep of the estate.
 - The land on which the estate was developed was originally a single parcel of land (acquired by conveyance dated 9th November 1875) and subsequently divided into building plots and estate roads. A conveyance dated 18th July 1900 relating to one of the plots contains a restrictive covenant (which also appears in conveyances relating to other plots on the estate) to the effect that “No building or other erection will be allowed on the land on the north side of ‘Preston Parade’ marked ‘cliff’ on the plan, and the same will be reserved as an open space for ever for the use of the Purchasers with others [i.e. other residents]”.
 - The Estate Company actively manages the Application Site and undertakes maintenance of the land. It has also previously enforced the restrictive covenant by removing a bench erected on the land.
 - A large number of notices are present on the estate indicating that it is private, such that anyone entering the land will be aware that it is private land. There is a sign where the footpath enters the land stating “the estate, grass bank and beach are private property” and another stating “access for residents, their visitors, service and emergency vehicles only”.
 - In light of the above, the land does not meet the criteria of being ‘open, uncultivated and unoccupied’. It is not ‘open’ because, although the estate cannot obstruct Public Footpath CW1, the signage makes clear that the estate is private and is intended to exclude the public to the benefit of the estate residents. The site is cultivated, in the sense that it is subject to regular maintenance. The site is also occupied by the residents of the estate, by virtue of the restrictive covenant.
11. As required, copies of all of the representations received were sent to the Applicant for comment. Having considered the representations received, and in particular the response from the landowner, the Applicant advised that:

“Our view at the time of the application was that the slope at Preston Parade was open, uncultivated and unoccupied. However, mindful of [the] landscape history and having studied the submissions made by the Granville Cliff Estate Company Ltd., and re-examined our research, we agree that the land is unlikely to be determined to be waste land of the manor and that the application is unlikely to be granted. In these circumstances we request the [County Council’s] agreement to withdraw the application”.

12. As is noted above, the matter was considered by the Regulation Committee at its meeting on 24th January 2024 and concerns were raised regarding the withdrawal of the application. The minutes of that meeting are available here: <https://democracy.kent.gov.uk/ieListDocuments.aspx?CId=140&Mid=9120>.
13. The concerns raised related to the lack of detail contained with the report and to the fact that (at the time of the meeting) a Public Space Protection Order (PSPO) was in the process of being prepared by Canterbury City Council that would apply to the land in question and which, it was suggested, could potentially result in conflict between public access arising as a result of the land being registered as Common Land and the rules of the PSPO. It was proposed that the matter should be held in abeyance until the PSPO had been rolled out (NB the PSPO came into force on 1st April 2023).

Discussion

14. There appears to be some confusion between the possible legal status of the land as Common Land and local debates regarding public access to the site. This application is not primarily concerned with the merits or otherwise of formalising public rights of access over the land but, rather, relates to whether the land was historically considered to be ‘waste land of the manor’. If that is the case, and all of the legal tests set out above are met, then the County Council would be under a legal obligation to register the land as Common Land.
15. The position on the ground is that access to the Application Site is already available along both Public Footpath CW1 that runs along the southern side of the site, and the England Coast Path National Trail that runs along the promenade (between the grass slopes and the beach). The knock-on effect of a successful application to register the land as Common Land would be to bring the whole of the land within the definition of ‘Open Access Land’ created under the Countryside and Rights of Way Act 2000, which provides a public right of way on foot. However, that is not the primary purpose of this application, which has been made by a national organisation (not by any local residents) seeking to preserve the historic status of the land.
16. In any event, the Application Site does not meet the required legal test of being ‘waste land of a manor’ (for the reasons set out in the objection) such that, regardless of the merits or otherwise of public access, the land cannot be registered as Common Land.
17. It is to be noted that there is nothing within the relevant legislation (either the Commons Act 2006 or the associated Regulations) that specifically deals with the issue of withdrawing an application, and therefore there is no absolute right for an

applicant to withdraw an application once it has been made. However, in a situation where the application has no prospect of success, and all parties agree that is the case, then it would seem perverse to insist that the application is pursued.

Conclusion

18. It is clear from the information available that the application does not meet the relevant test under Paragraph 4 of Schedule 2 of the Commons Act 2006 for registration as Common Land, on the basis that it is not considered to be 'waste land of a manor'.

19. The Applicant accepts that this is the case and, accordingly, there appears to be no reason not to accept the request for the application to be withdrawn.

Recommendation

20. I recommend that the County Council agrees to the Applicant's request to withdraw the application.

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

Appendices

APPENDIX A – Plan showing application site

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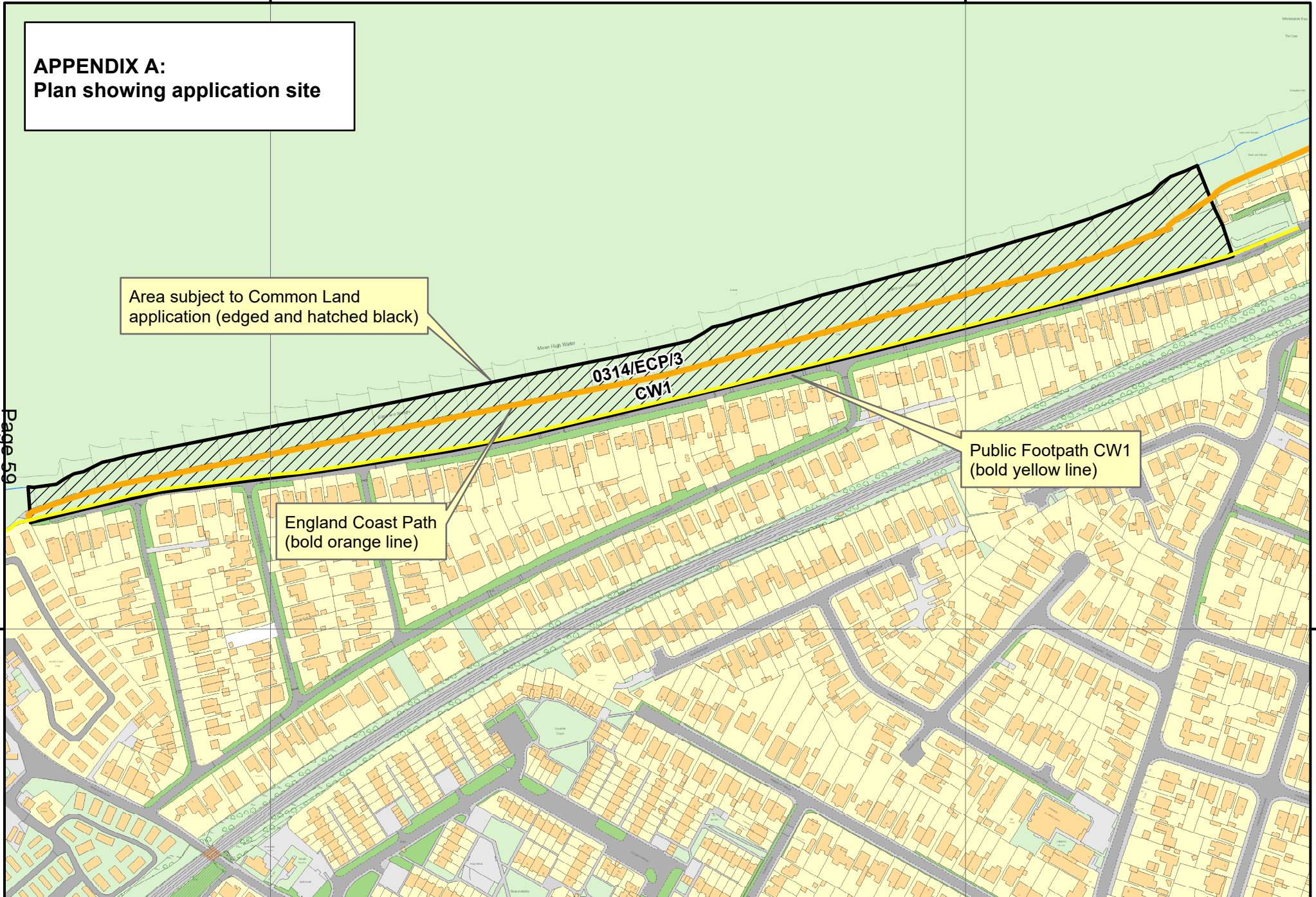
**APPENDIX A:
Plan showing application site**

Area subject to Common Land application (edged and hatched black)

England Coast Path (bold orange line)

Public Footpath CW1 (bold yellow line)

0314/ECPI/3
CW1



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