

## Application to register land at Quantock Drive at Ashford as a new Town or Village Green

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A report by the PROW and Access Manager to Kent County Council's Regulation Committee Member Panel on Wednesday 20<sup>th</sup> 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.**

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

Unrestricted item

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### 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 27<sup>th</sup> 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**<sup>1</sup>, e.g. by way of the erection of fencing or a notice (section 15(3) of the Act).
5. As a standard procedure set out in the 2014 Regulations, the County Council must publicise the application by way of a copy of the notice on the County Council's website and by placing copies of the notice on site to provide local people with the opportunity to comment on the application. Copies of that notice must also be served on any landowner(s) (where they can be reasonably identified) as well as the relevant local authorities. The publicity must state a

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<sup>1</sup> Reduced from two years to one year for applications made after 1<sup>st</sup> 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 29<sup>th</sup> 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 Sunningwell<sup>2</sup> case, it is considered that if a person uses the land for a required period of time without force, secrecy or permission ("*nec vi, nec clam, nec precario*"), and the landowner does not stop him or advertise the fact that he has no right to be there, then rights are acquired.

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.

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<sup>2</sup> *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*'<sup>3</sup>.

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 Builders<sup>4</sup> case, it was considered that '*...at the very least, Parliament required the users of*

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

<sup>4</sup> *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'*<sup>5</sup>.
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).

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<sup>5</sup> *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’*<sup>6</sup>. Thus, what constitutes a ‘significant number’ will depend upon the local environment and will vary in each case depending upon the location of the application site.
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.

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

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

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.

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## **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