

LICENSING SUB-COMMITTEE OF THE LICENSING AND SAFETY COMMITTEE

8 JUNE 2018

APPLICATION FOR THE REGISTRATION OF LAND AS A VILLAGE GREEN – THE OLD CRICKET GROUND FRINSBURY HILL FRINSBURY ROCHESTER

Report from: Perry Holmes - Chief Legal Officer

Author: Vicky Nutley – Assistant Head of Legal Services

Summary

The purpose of this report is for the Sub-Committee to determine the application received for a Old Cricket Ground Frinsbury, Frinsbury Hill, Rochester to be registered as a Village Green.

1. Budget and Policy Framework

1.1 Chapter 3, Part 2 of the Council's Constitution sets out the functions of the Licensing Sub-Committee which include the determination of applications for the registration of land as a town or village green, where representations have been received and not withdrawn.

2. Background:

2.1 Commons Registration Application No. 578/A was received on the 5th September 2007 from Mrs Anne Wade on behalf of the Wainscott Community Association for the registration of land as a town or village green under section 15 of the Commons Act 2006, for the Old Cricket Ground Frinsbury, Frinsbury Hill Rochester. The application form and map is included at Appendix A to this report. This was the third of three applications for the same site, the first being submitted on the 30th March 2001 and withdrawn on the 29th May 2002 and the second being submitted on the 14th August 2002. The second and third applications remain to be decided.

2.2 Paragraph 16 of the Commons Registration Regulations 2014 requires an application to be made in accordance with, amongst other things, Schedule 4

of the Regulations. Section 9 of Schedule 4 of the Regulations refers to applications made under Section 15(1) of the 2006 Act.

- 2.3 It is for the applicant to show 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 twenty years, and have continued to do so at the time of the application, or have ceased to do so before the time of the application but the application is made within one year of the cessation.
- 2.4 The application is objected to by the owners and former owner of the land, Heritage Design and Development Team Ltd and Church Commissioners, through the corporate vehicle of the Church Commissioners Trading Ltd respectively.
- 2.5 The Application was the subject of a Public Inquiry held on the 26th and 27th February 2018. Following that Inquiry the Inspector examined the evidence for and against whether the application meets the legislative requirement for registration as a town or village green. His report has been prepared to be presented to this Sub-Committee for decision. The Inspector's Report is appended in full at Appendix B of this report.

3. Options:

- 3.1 The options available to the registration authority are to:
 - i approve the application;
 - ii reject the application; or
 - iii refer the application to an independent inspector to recommend accepting or refusing the application.
- 3.2 In this case the application was referred to an independent inspector and it is recommended that the Sub-Committee has due regard to the conclusions of his report in determining the application on behalf of the Council as the registration authority.

4. Advice and analysis:

- 4.1 Medway Council has a duty under Section 4 of the Commons Act 2006 to keep a register of common land and a register of town and village greens. Medway Council also has a duty under paragraph 26 of the Commons Registration (England) Regulations 2014 to determine applications to amend the registers of common land and town and village greens, unless the registration authority has an interest in the outcome of the application such that there is unlikely to be confidence in the authority's ability impartially to determine it.
- 4.2 The Inspector's Report at Appendix B sets out the legislative requirements for an application and his conclusions on whether or not the application has met them.

5. Method of Determining Application

5.1 The Commons Regulations (England) Regulations 2014 states that:

27(1) The determining authority must, in determining any application or proposal, take into account:

(d) any oral representations made by any person in accordance with paragraph (7)

27(6) Paragraph (7) applies in relation to any application which the determining authority decides to determine without holding a public inquiry or hearing in accordance with regulation 32.

27(7) the determining authority:

(a) May not refuse an application without first offering the applicant an opportunity to make oral representations; and

(b) May not grant or refuse an application without first offering any person (other than the applicant) for whom the grant or refusal would represent a determination of that person's civil rights an opportunity to make oral representations.

5.2 All parties were able to make representations at the Inquiry and a number chose to give oral evidence, including Mrs Wade.

6. Risk Management

6.1 Should the Council make a decision which is opposed there may be a risk of judicial review. These costs can be significant and can represent a financial risk to the Council, though this should not be allowed to influence the decision about whether the application should be accepted or refused, as the decision should be based on the evidence before it.

7. Financial Implications

7.1 There are no specific financial implications arising from the determining of this application.

8. Legal Implications

8.1 Medway Council has a statutory duty set out in paragraph 26 of the Commons Registration (England) Regulations 2014 to determine applications to amend the registers of common land and town and village greens.

8.2 Other detailed legal considerations are set out in the body of the report.

9. Conclusion

9.1 For an application to succeed it must satisfy all of the legislative criteria for registration as a town or village green. An assessment of the evidence leads to the conclusion that the criteria have not been met on a number of points as set out in the Inspectors report, and therefore the application should be refused.

10. Recommendation

10.1 That the Old Cricket Field Frinsbury, not be registered as a town or village green because the criteria for registration have not been met.

Lead officer contact

Vicky Nutley – Assistant Head of Legal Services.

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Appendices

Appendix A – Application for registration of land as a town or village green.

Appendix B – Inspector's report following Public Inquiry

Background Papers

The Commons Act 2006:

<http://www.legislation.gov.uk/ukpga/2006/26/contents>

The Commons Registration (England) Regulations 2014:

<http://www.legislation.gov.uk/uksi/2014/3038/contents/made>

Full Application for Registration with supporting documents supplied to Public Inquiry

Commons Act 2006: Section 15

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

Official stamp of registration authority indicating valid date of receipt:



Application number:

578/B

Register unit No(s):

VG number allocated at registration:

(CRA to complete only if application is successful)

Applicants are advised to read the 'Guidance Notes for the completion of an Application for the Registration of land as a Town or Village Green' and to note the following:

- All applicants should complete questions 1-6 and 10-11.
- Applicants applying for registration under section 15(1) of the 2006 Act should, in addition, complete questions 7-8. Section 15(1) enables any person to apply to register land as a green where the criteria for registration in section 15(2), (3) or (4) apply.
- Applicants applying for voluntary registration under section 15(8) should, in addition, complete question 9.

1. Registration Authority

To the MEDWAY UNITARY COUNCIL

Note 1
Insert name of registration authority.

MEDWAY UNITARY COUNCIL

Note 2

If there is more than one applicant, list all names. Please use a separate sheet if necessary. State the full title of the organisation if a body corporate or unincorporate.

If question 3 is not completed all correspondence and notices will be sent to the first named applicant.

2. Name and address of the applicant

Name:

ANNE ELIZABETH WADE

Full postal address:

Telephone number:
(incl. national dialling code)
Fax number:
(incl. national dialling code)

E-mail address:

3. Name and address of solicitor, if any

Name:

Firm:

Full postal address:

Post code

Telephone number:
(incl. national dialling code)
Fax number:
(incl. national dialling code)

E-mail address:

Note 3

This question should be completed if a solicitor is instructed for the purposes of the application. If so all correspondence and notices will be sent to the person or firm named here.

Note 4

For further advice on the criteria and qualifying dates for registration please see section 4 of the Guidance Notes.

* Section 15(6) enables any period of statutory closure where access to the land is denied to be disregarded in determining the 20 year period.

4. Basis of application for registration and qualifying criteria

If you are the landowner and are seeking voluntarily to register your land please tick this box and move to question 5.

Application made under section 15(8):

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

Section 15(2) applies:

Section 15(3) applies:

Section 15(4) applies:

If section 15(3) or (4) applies please indicate the date on which you consider that use as of right ended.

If section 15(6)* applies please indicate the period of statutory closure (if any) which needs to be disregarded.

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

Name by which usually known:

THE OLD CRICKET FIELD

Location: FRINDSBURY

BOUNDED BY FRINDSBURY HILL - TO THE NORTHWEST AND PARSONAGE LANE TO THE SOUTHWEST

Shown in colour on the map which is marked and attached to the statutory declaration. *has been previously supplied*

Common land register unit number (if relevant) *

Note 5

The accompanying map must be at a scale of at least 1:2,500 and show the land by distinctive colouring to enable it to be clearly identified.

* Only complete if the land is already registered as common land.

Note 6

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

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

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

THE NEIGHBOURHOOD OF FRINDSBURY AND WAINSCOTT WITHIN THE ECCLESIASTICAL PARISH OF FRINDSBURY WITH UPNOR ROCHESTER DIOCESE.

Tick here if map attached: *previously supplied*

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

Note 7

Applicants should provide a summary of the case for registration here and enclose a separate full statement and all other evidence including any witness statements in support of the application.

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

I make this statement under sub section 15(2) of the Commons Act 2006, to claim this land as a village green on behalf of the Frintsbury & Manscote Community Assen, on the basis of evidence of 20 years of use, as of Right between 21st July 1981 and the 21st July 2001 by a significant number of inhabitants of the neighbourhood indulging in lawful sports and pastimes

Supporting documents are already lodged with the Council's legal Officers MR C. SACRE.

Also included a summary of varied sports and activities up to the present time

(More detailed information is included in the Evidence Sheets and Affidavits)



Section 7.

Also included a summary of varied sports and pastimes up to the present time (detailed information is included in the Evidence Sheets and Affidavits).

- Ball Games
- Kite Flying
- Bike riding with children and grandchildren
- Exercising by walking with dogs
- Jogging
- Scouts – Craft and Wide Games
- Wildlife Study, eg birds, voles, foxes, slow worms.
- Nature Study, eg barn owls, kestrels, lizards.
- Picnics
- Football
- Sledging (video available)
- Ball games
- Walking for pleasure
- Wild Flowers Study
- Cubs & Scouts, wildlife projects
- School Parties
- Enjoying scenery, clouds, birds, views.
- Baby in Pram on the field – Tithe Barn in background (photograph).
- Scouts camped overnight, nature study, navigational exercises, tent erection, day/night exercises.
- Hide and Seek
- Rounders
- Cricket
- Meeting place for local children
- Recreational walking with family and friends.
- Partridges and pheasants seen whilst walking
- Picking damsons, blackberries and walnuts.
- Star gazing
- Parachute games
- Tree recognition
- Meeting place for local people

All these sports and pastimes are the experience of local people from the surrounding neighbourhood, taking part as of right without any hindrance from the Landowners.

Note 8

Please use a separate sheet if necessary.

Where relevant include reference to title numbers in the register of title held by the Land Registry.

If no one has been identified in this section you should write "none"

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

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

C.C.T. TRADING LTD (C.C.T.) is the owner of the Application site.
C.C.T. is a company wholly owned by the Church Commissioners of England.

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

Note 9

List all such declarations that accompany the application. If none is required, write "none".

This information is not needed if an application is being made to register the land as a green under section 15(1).

10. Supporting documentation *previously supplied*

Note 10

List all supporting documents and maps accompanying the application. If none, write "none"

Please use a separate sheet if necessary.

1. Map A. showing claimed land in green outline and hatched
2. Map B. Locality Map of Ecclesiastical Parish of Frindsbury with upref, Diocese of Rochester. A166
3. Map C. 4 Copies endorsed with signatures of all those completing Street Maps and Evidence Questionnaires
4. 18 Affidavits and Exhibits 16/18 and 17 Evidence Questionnaires
5. 34 Evidence Questionnaires including 1 deceased.
6. Neighbourhood Map showing residences of witnesses

11. Any other information relating to the application

Note 11

If there are any other matters which should be brought to the attention of the registration authority (in particular if a person interested in the land is expected to challenge the application for registration). Full details should be given here or on a separate sheet if necessary.

The Assoc firm submitted an application to register the 'old cricket field' on the 20th April 2001. The details of that application are to be found on the separate sheet attached

Note 12

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

Date:

July 23rd 07

Signatures:

**REMINDER TO APPLICANT**

You are advised to keep a copy of the application and all associated documentation. Applicants should be aware that signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence. The making of a false statement for the purposes of this application may render the maker liable to prosecution.

Data Protection Act 1998

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



Item 11.

The Association first submitted an application to register The Old Cricket Field on 30th April 2001. However we wrongly included three plots of land claimed by three local residents as being "predecessors in title for in excess of 12 years". (CCT proposed to investigate this claim "adverse to the Company's title").

CCT objected to our claim and in October 2001 we asked Medway Council whether they would consider "withdrawal or amendment of the above area" and they replied that provided consent from all interested parties is forthcoming, "a form of consent agreement may be prepared in so far as yourselves and the Church Commissioners are concerned and a similar consent agreement between yourselves and the residents in occupation".

The Commissioners replied: "I should make it clear that if a fresh application were submitted excluding (for example) the land the subject of objections from the owners of 168, 170 & 172 Frindsbury Hill, CCT would take the view that following our letter dated 27th July 2001 objection to registering any use of the land by local inhabitants was not as of right. I here reiterate that any use of the land is not with CCT's permission."

We replied 13/3/02 "We note that CCT is not willing to agree to any amendment whereby we could proceed on our current application subject to alteration of the claimed land boundary. We are therefore considering the matter of a claim based on the map.....supplied by you." This the Association consequently did, completing Application Form CR30 on 29/7/02 – Application received by Medway Council on 30/7/02.

In a letter of 6/12/01 to the Council, CCT wrote that "any use by local inhabitants was not of right.....any use of the land is not with CCT's permission. However thereafter CCT took no further steps to publicise their intention to deny access; no notices were seen by frequent users of the land which indicated "Private Land" or "Keep Out", and none of the claimed land was ever fenced off or access barred in any way. Neither to our knowledge were any notices published in the local press to make known CCT's intent either expressly to deny access to the land or indeed, expressly to permit it.

Finally, on 12/7/07 CCT did erect notices saying: "CCT Trading Ltd., grants permission for the recreational use of this land within the area edged red on the plan until further notice", with map appended. (But see Commons Act 2006 section 15, referring to granting of permission.)

Statutory Declaration In Support

To be made by the applicant, or by one of the applicants, or by his or their solicitor, or, if the applicant is a body corporate or unincorporate, by its solicitor, or by the person who signed the application.

¹ Insert full name
(and address if not
given in the
application form).

I, Paul Elizabeth Wasy solemnly and sincerely declare as follows:—

² Delete and adapt
as necessary.

1. ² I am ((the person (one of the persons) who ^{has} (have) signed the foregoing application)) ((the solicitor to (the applicant) (³ one of the applicants)).

³ Insert name if
Applicable

2. The facts set out in the application form are to the best of my knowledge and belief fully and truly stated and I am not aware of any other fact which should be brought to the attention of the registration authority as likely to affect its decision on this application, nor of any document relating to the matter other than those (if any) mentioned in parts 10 and 11 of the application.

3. The map now produced as part of this declaration is the map referred to in part 5 of the application. previously supplied

⁴ Complete only in
the case of
voluntary
registration (strike
through if this is not
relevant)

4. ⁴ ~~I hereby apply under section 15(8) of the Commons Act 2006 to register as a green the land indicated on the map and that is in my ownership. I have provided the following necessary declarations of consent:~~

- ~~(i) a declaration of ownership of the land;~~
- ~~(ii) a declaration that all necessary consents from the relevant leaseholder or proprietor of any relevant charge over the land have~~

Cont/

Continued

been received and are exhibited with this declaration; or
(iii) where no such consents are required, a declaration to that effect.

And I make this solemn declaration, conscientiously believing the
same to be true, and by virtue of the Statutory Declarations Act 1835.

Declared by the said

ANNE ELIZABETH WADE

at

[REDACTED]

this *23rd* day of *July 2007*)

[REDACTED]

Signature of Declarant

Before me *

Signature:

[REDACTED]

J. A. SPIRELLINA

Address:

[REDACTED]

Qualification:

SOLICITOR

* The statutory declaration must be made before a justice of the peace, practising
sollicitor, commissioner for oaths or notary public.

Signature of the statutory declaration is a sworn statement of truth in presenting the
application and accompanying evidence.

REMINDER TO OFFICER TAKING DECLARATION:

Please initial all alterations and mark any map as an exhibit

**SECTION 13 OF THE COMMONS REGISTRATION ACT 1965
SECTION 15 OF THE COMMONS ACT 2006**

MEDWAY COUNCIL

**APPLICATIONS TO REGISTER LAND KNOWN AS
THE OLD CRICKET FIELD, FRINSBURY, ROCHESTER
AS A TOWN OR VILLAGE GREEN**

INSPECTOR'S REPORT

Following a Public Inquiry held on 26 AND 27 February 2018

INTRODUCTION

1. Three applications have been made to register the Old Cricket Field, Frinsbury Hill, Frinsbury, Rochester, Kent (hereafter "the Applicant Land", or simply "the Land") as a TVG:
 - a. the First Application was made on 30 March 2001, under section 13 of the Commons Registration Act 1965 ("CRA 1965"). Objection was made to the First Application on 17 July 2001. The First Application was withdrawn on 29 May 2002;
 - b. the Second Application was made on 14 August 2002, under section 13 of the Commons Registration Act 1965. That application remains extant; and
 - c. the Third Application was made on 5 September 2007, under section 15 of the Commons Act 2006 ("CA 2006"). That application remains extant.

2. The Applicant in relation to all three applications was Mrs Anne Wade, of 9 Murray Road, Frinsbury. I understand that she made the three applications on behalf of the Frinsbury and Wainscott Community Association (“the Community Association”). It appears that ‘Frinsbury’ is also spelt ‘Frindsbury’ by many people, but that the two names refer to the same area. I have used the former spelling in this report, but I do not suggest that is more correct than the latter spelling of the name.
3. Objections to the applications were made by the Church Commissioners, through the corporate vehicle of the Church Commissioners Trading Ltd (“CC Trading”); and the Heritage Design and Development Team Ltd (“HDDT”).
4. I was instructed by the Registration Authority to hold a public inquiry to consider the extant applications, and to write a report and recommendation to the authority, as to whether the applications should be accepted or rejected.
5. **My recommendation is that the Second and Third Applications should be rejected.**
6. The public inquiry sat on 26 and 27 February 2018. There was a notable quantity of snowfall in the Medway area on those days; I return to that matter below.
7. The Applicant was not formally represented. Mrs Anne Wade, writing as Chairman of the Community Association, informed the Registration Authority by letter dated 19 February 2018 that the Community Association would not be appearing at the public inquiry as a party, or calling witnesses.
8. One objector, the Heritage Design and Development Team (“HDDT”) appeared as a party to the public inquiry, represented by Mr Philip Petchey of counsel. As noted above CC Trading had also objected to the applications, but it did not participate in the public inquiry. I was informed by Mr Petchey on behalf of HDDT that prior to the public inquiry HDDT had acquired all of CC Trading’s relevant interests in the Application Land.

9. At the beginning of the public inquiry several members of the public told me that they wished to make representations to the inquiry:

- Mrs Anne Wade;
- Mrs Judith Masey of 8 Charwell Close, Frinsbury;
- Mrs Stuart of 11 Parsonage Lane, Frinsbury;
- Mr Derrick King of 11 Rolvenden Road, Frinsbury;
- Mr Andrew Crear of 8 Larking Close, Frinsbury; and
- Mr Paul Thorpe of 174 Frinsbury Hill, Frinsbury.

10. When I adjourned the public inquiry in the late afternoon of 26 February snow was beginning to fall in Rochester. Mr King had finished making the oral representations he wished to make, but his questioning by Mr Petchey for HDDT had not finished. It was due to resume the next day. When the inquiry resumed the next morning, there had been quite heavy snow in places overnight. Mr King, who was contacted by telephone by an officer of the Registration Authority, was not able to attend the public inquiry on 27 February. Unfortunately therefore his questioning by HDDT was not completed. I decided to close the public inquiry on 27 February, as I had heard from all of those members of the public who were in attendance and who wished to make representation. It seemed to me that any potential prejudice arising from that state of affairs was more likely to affect HDDT, rather than Mr King. In any event the Registration Authority subsequently wrote to Mr King, giving him an opportunity to make further written representations, including representations as to why the public inquiry should be reopened at a later date so that he could finish answering questions. Mr King did make further representations, but the Registration Authority took the view that it would be disproportionate, and was not necessary as a matter of fairness and natural justice, to reopen the public inquiry in order that Mr King could finish answering questions from the Objector. The Objector did not ask for the public inquiry to be reopened. The Registration Authority wrote to Mr King, informing him of its decision, on 6th April 2018.

11. Similarly, Mrs Masey was unable to return to the public inquiry on 27 February ,and therefore I did not hear her oral representations, although on 26 February she did hand to me a further written representation, with supporting documents, including an evidence questionnaire which she had made in January 2018. I have taken that written material into account. Mrs Masey was also given an opportunity to make further representations in writing after the close of the public inquiry. She did not ask for the public inquiry to be reopened.
12. On several occasions during the public inquiry I raised the fact that the Registration Authority no longer had copies of certain which had been included with the First Application. HDDT did not have copies of those plans. Several members of the public who were present kindly offered to look for the plans and if they were found, to send them to the Registration Authority.
13. For HDDT Mr Petchey sought clarification as to which applications were to be determined by the Registration Authority. I confirmed to him that the Registration Authority regarded the First Application as having been withdrawn by the Applicant, but that the Second and Third Applications were extant and would be determined. Mrs Wade, who had made all three applications, did not suggest that the First Application should still be treated as extant.
14. I am grateful to Mr Petchey, and to the members of the public who made oral representations in support of the applications, for their representations and submissions. I also express my gratitude to HDDT for providing bundles of the written evidence in support of the applications, and the submissions and documentary evidence of the objectors.

The requirements of section 13 of the CRA 1965, and section 15 of the CA 2006

15. Both section 13 of the CRA 1965 as amended, and section 15 of the CA 2006, require certain matters to be demonstrated in order that a parcel of land may be registered as a town or village green. These requirements are as follows:

- a significant number,
- of inhabitants of a locality or neighbourhood within a locality,
- have indulged in lawful sports and pastimes,
- as of right,
- throughout a period of at least 20 years,
- and that use continues at the date of the application.

16. Section 15 of the CA 2006 also contains certain provisions which may be engaged where qualifying use has continued for at least 20 years but has ceased before the date of the application. The Third Application has the potential to engage those provisions, and I address that matter further below.

The Application Land

17. I conducted an inspection of the Land, accompanied by Mr Petchey and his clients, and several members of the public, during the afternoon of 26 February 2018.

18. We gained access to the Land from the entrance on Parsonage Lane. That access involves leaving the public highway on foot and walking along a fairly lengthy pathway, in a 'dogleg' configuration, between the rear gardens of residential

properties on the north west side, and a wooden board fence along the edge of a disused quarry on the south east side. Eventually the path widens and descends a relatively steep incline, and the land opens out. The disused quarry remains to the south east.

19. The south western boundary of the Land runs along the rear boundaries of residential properties on Parsonage Land; the north western boundary runs along the rear boundaries of properties on Frinsbury Hill. A further access to the Land can be gained from the public right of way which runs from the public highway of Frinsbury Hill to the north west, continuing in a broadly south easterly direction until it meets the boundary with the disused quarry to the south east. That right of way then continues, off the Application Land. Further to the south east, on the other side of the disused quarry, is the tithe barn which was mentioned on occasions in the written and oral evidence. The north eastern boundary of the Land was itself rather difficult to locate on the ground because it was obscured in places by thick vegetation, and did not obviously follow any particular landform. The land immediately to the north east of the Application Land appeared to be in agricultural use. Within the north eastern boundary of the Application Land was a large area that was excluded from the application, and I understand that excluded land represented the footprint of former tennis courts, and a cricket pavilion.
20. In general terms the Land sloped downwards from the north to the south. Considerable areas within the northern portion of the Land, adjacent to the rear boundaries of residential properties, were overgrown, sometimes heavily, and appeared fairly impenetrable. My site inspection took place towards the end of winter, when vegetation was likely to be at its least dense. It is a matter for informed speculation as to how the present condition of the Land compared to its condition at the end of the periods of 20 years relevant to the Second and Third Applications (2002, and 2007, respectively).

The Applications

21. The Second and Third Applications were made on the basis that a significant number of the inhabitants of a relevant neighbourhood or locality had indulged in lawful sports and pastimes, as of right, for a period of a least 20 years, and that such use continued at the date of each application.
22. The relevant neighbourhood and locality were said to be “the neighbourhood of Frindsbury and Wainscott within the ecclesiastical parish of Frindsbury with Upnor Rochester Diocese”. At the time of the public inquiry the Registration Authority was not able to provide me with any maps or plans that the Applicant relied upon to show the extent of the neighbourhood or the locality. None of the members of the public who made oral representations referred me to the geographic extent, or nature, of the ‘neighbourhood of Frindsbury and Wainscott’. Through Mr Petchey, HDDT provided me with a map showing the current boundaries of the ecclesiastical parish of Frindsbury with Upnor, Rochester Diocese.
23. The periods of time relevant to the two applications are:
- 15 August 1982 to 14 August 2002, in the case of the Second Application; and
 - 6 September 1987 to 5 September 2007, in the case of the Second Application.

The Objection

24. The Objection advanced by HDDT, drawing on the Objections made by CC Trading to the applications, was particularised in the Statement of Case of HDDT (undated) placed at the front of the Objector’s file. That objection took the following points, in summary:

- use of the Land by a significant number of local inhabitants, continually throughout the relevant 20 year period(s), had not been demonstrated;
- most of the claimed public use of the Land would be attributable, in the eyes of a reasonable landowner, to use of an existing public right of way, or use which might give rise to a new claim for a public right of way; or at least it would be unclear whether such use was in the manner of the assertion of a public right of recreation rather than a right of way; and therefore significant use for lawful sports and pastimes throughout the relevant 20 year period(s) could not be demonstrated;
- use could not be as of right in relation to either the Second or Third Applications because (i) objection had been made to the First Application, causing any further use after the date of the First Application to be contentious and therefore vi and not 'as of right'; (ii) various notices were in place on the Land for at least some of the relevant 20 year period, making clear that public use of the Land was contentious, and therefore such was vi and not 'as of right'; and (iii) notices erected on the Land in July 2002, after the First Application was made and before the Second Application was made, granted a revocable permission to the public to use the Land, and therefore any such use after that time was precario and not 'as of right';
- there were material interruptions to use of the Land by members of the public, by virtue of the Parsonage Lane access being blocked off for at least one day on at least one occasions; and also by virtue of the works to clear vegetation on the Land in 1996. These interruptions meant that a use for a continuous period of 20 years could not be demonstrated; and
- a relevant, coherent neighbourhood within the claimed locality has not been demonstrated.

EVIDENCE**The Objector's documentary evidence**

25. The Objector's Statements of Objection, and the Statements of Objection made by CC Trading Ltd, were helpfully compiled in one file for the public inquiry. I have taken all of that material into account.
26. Within Tab 3 of that file the written Objection by CC Trading Ltd, to the Second Application, was presented. That written objection and the documents appended to it formed a central part of HDDT's case at the public inquiry.
27. Annex C to that Objection contained copies of correspondence from August and September 1996 between the local authority, a local amenity society, and the agents for the Church Commissioners. That annex also included photographs of works undertaken on the Land in August 1996.
28. At Annex E to that Objection was a map which showed, according to HDDT, the positions of Notices placed on the Land in 2002. Those Notices were intended to communicate to the public a grant of permission to go on the Land. At Annex F the wording of those 'permissive' notices was reproduced. As I note below in summarising the oral representations made at the public inquiry by members of the public, there did not appear to be any substantial dispute as to (i) the fact that such notices were erected on the Land, (ii) that those notices were erected in July 2002, and (iii) the nature of the wording on the notices.
29. Within tab 7 of the Objector's file was a plan identifying the location of certain other notices which the Objector contended were placed on the Land at various times. Those notices were numbered 1-8, and photographs were presented showing which notice was said to have been placed at each location. Again, there did not appear to be any substantial dispute as to the location of those notices, and what wording was

displayed upon them, although the members of the public who spoke in support of the applications did not necessarily accept the Objector's case as to when those notices had been displayed.

30. No witnesses were called by the Objector HDDT at the public inquiry.

The evidence and oral representations in support of the applications

31. The Third Application form, the evidence questionnaires and the affidavits made in support of the applications were helpfully compiled by HDDT into one file. I have taken all of that written material into account.

32. In addition to that written material, five members of the public made oral representations in support of the applications.

(1) Mrs Anne Wade

33. Mrs Wade had made all three applications, on behalf of the Community Association. Mr Petchey submitted that it was odd, and potentially unfair to HDDT, that the Applicant had chosen not to appear as a party to the public inquiry and yet Mrs Wade was to make representations as a member of the public. I understood the point Mr Petchey made, but at the same time I considered that I should hear representations from any person who wished to make them, as long as HDDT had a fair opportunity to ask questions in cross-examination of any person making representations if it wished to. Mr Petchey did in fact cross-examine those members of the public who made oral representations, and it was entirely proper, as a matter of fairness, that he had the opportunity to do so.

34. Mrs Wade told me that the Application Land had been "given" to Frinsbury by the Vicar of Frinsbury in 1887, as open space. The Application Land had been "open" for all her life. She recalled going to the Land as a child and mingling with local resident.

She had watched air battles overhead during World War II, from the Land. The Land was an important chalk grassland with several notable species of fauna.

35. In answer to questions from Mr Petchey, Mrs Wade said that she had lived at her address on Murray Road since 1966, although she had lived at other addresses in Frinsbury prior to that. Her children were born between 1952 and 1964, and the youngest child had left home in the 1980s. She last had a pet dog in the 1960s.
36. Mrs Wade recalled that the Community Association had complained to the local authority about the state of the Land, because it had become overgrown, in recent years. As she recalled, when the land was owned or managed by the Church Commissioners (possibly CC Trading Ltd) it had been mowed twice a year, and kept in a “reasonable” condition.
37. Mr Petchey referred Mrs Wade to a letter from the then local authority (the City of Rochester) to Cluttons, the agents for the Church Commissioners, in August 1996. He also referred her to a letter from the Dickens County Protection Society, also written in August 1996. Both letters concerned works undertaken on the Land at that time. The Church Commissioners replied to the local authority in September 1996. This correspondence was produced in the Objector’s Bundle (HDDT) tab 3, annex C. Mr Petchey suggested to Mrs Wade that on the basis of this correspondence in 1996, at least, it did not appear that the Church Commissioners were in fact mowing or clearing the Land before 1996. Mrs Wade did not really agree or disagree with the proposition, stating instead that this correspondence demonstrated that the Community Association had taken an active role in monitoring the state of the Land.
38. In relation to the clearance works on the Land which were referred to in the City of Rochester letter in August 1996, Mrs Wade accepted that those works may have taken several days. She could not remember how long they went on, or what they involved.

39. It was common ground that there had been a cricket pitch and regular cricket played on the Land at some point in the past. Mr Petchey suggested to Mrs Wade that the cricket club had relocated to another site when quarrying began adjacent to the Land. Mrs Wade accepted this was the case, saying that as she recalled matters the cricket club had been located at the expense of the Church Commissioners. In answer to a question from me, Mrs Wade said that she thought the cricket club had relocated before 1991. Mr Petchey suggested that the relocation had in fact taken place in 1962, but Mrs Wade could not remember when that event occurred and thought that others would know more.
40. In answer to questions from Mr Petchey concerning her evidence questionnaire, which she had completed in May 2002, Mrs Wade said that she was using the Land almost daily in 2002, despite not having a dog to walk. Her use was mainly for recreational walking.
41. In relation to notices displayed on the Land, Mr Wade said that she had last walked on the Land in mid or late January 2018. She had not seen a sign at the Parsonage Lane access to the Land, but had been told by other people of a notice at that access. Mrs Wade said that there were similar notices on the Land when it was in the ownership of the Church Commissioners, but that local people generally ignored signs or notices and went on to the Land. People, including her children, also ignored notices which were worded along the lines of “Warning: use of this area is at your own risk”, and went down into the quarry area to walk or play. Mrs Wade was referred to the wording of Notice 6, but she said she did not remember such lengthy wording on a notice. She thought that notices on the Land were mainly to give a warning or potential risks. Mr Petchey put it to Mrs Wade that all of the notices shown on the Objector’s plan were in place in 1996. Mrs Wade said that she recalled there were some notices on the Land, but did not think they bore the wording which the Objector’s evidence suggested.

42. Mrs Wade accepted that there had not been any community events on the Land, such as Silver Jubilee celebrations, or November bonfires. The land had been used for informal games of football or cricket, but not formal games.
43. Mrs Wade accepted that the Parsonage Lane access to the Land was probably blocked for a period on one occasion by contractors, and that this event was probably in 1996. She did not recall having been prevented from going on the Land on any occasion.
44. By reference to her answer to question 39 on her evidence questionnaire, Mrs Wade could not now recall where or when there had been any fencing on the Land, although Mrs Stuart's evidence referred to such fencing, and the Affidavit of Mr Moss referred to fencing at the Parsonage Lane access which was in place for "a few days". Mr Vizard's questionnaire also referred to a chain link fence at the Parsonage Lane access, which had been "cut down by a third party". The remnants of such a fence were still visible next to that access, as I saw on my site visit. Mrs Wade did not recall such fence. Despite this, Mrs Wade maintained that she did use the Land regularly during the relevant period of time.
45. Mrs Wade accepted that notices giving permission to use the Land had been erected in July 2012. She thought that was after the Third Application was made. She could only remember seeing one such notice, and could not recall where it was located. She said that the Church Commissioners were "hedging their bets" and that she and other local residents were in no doubt that the notice was erected on the basis of legal advice.
46. Following the conclusion of Mrs Wade's evidence, I conducted an accompanied site visit on the Land.

(2) Andrew Crear

47. Mr Crear was born in 1947 and had lived at Larkin Close since 1971. His parents had a shop on Frinsbury Hill and he would have walked the family dogs on the Land. Between 1982 and 2007 he would have walked dogs on the Land about twice a week, and enjoyed blackberrying on occasion.
48. Mr Crear had not completed an evidence questionnaire. He was not aware of any evidence-gathering exercise in support of the First Application in 2002, and although he had been given a blank questionnaire in the weeks before the public inquiry began, he had forgotten to complete it.
49. Mr Crear remembered watching cricket matches on the Land in around 1959 or 1960. He also played tennis on the tennis courts then present adjacent to the Land. The site of the former tennis courts, and the former cricket pavilion, were not included with the Application Land. Mr Crear recalled that the cricket club relocated to a place known as Frog Island in about 1961 or 1962, and he remembered going to that cricket pitch to watch games being played.
50. Mr Crear's dog-walking route was likely to have involved going on to the Land from Frinsbury Hill via the public right of way.
51. Mr Crear said that he had a vague recollection of clearance works on the Land in 1996, and that he would have avoided going on to the Land with his dogs if such work was going on. He did not recall seeing the Parsonage Lane entrance blocked at any point, whether by a temporary gate or fence, or a chain link fence. He recalled that the Frinsbury Hill access was used by people to drive vehicles on to the Land, in association with cricket and, later, tennis. Eventually it became too overgrown and narrow to be used by vehicles.

52. He accepted that the wooden board fence between the Land and the quarry site was erected in November 2017. He agreed that Notice 6 was likely to be in the same form, present on the wooden board fence, as the previous notice on the old wire fence surrounding the quarry. He recalled Notice 4 having previously been sited on old gates which allowed access into the quarry. He did not recall seeing Notice 1.
53. When shown photographs of the clearance works in 1996, Mr Crear accepted that the notice visible in photograph 3 appeared to be in the same format as the current Notice 1. Although it was not possible to see precisely what the notice in photograph 3 said, I considered that it appeared to be very similar to Notice 1 and that it was likely to be the same Notice.
54. Mr Crear did not remember seeing the 'permissive' Notices being erected in July 2002 but he had been aware of their presence for a number of years since.
55. Like Mrs Wade, Mr Crear was not aware of any organised or community activities taking place on the Land. In recent years the Land was not in a condition which make it suitable for informal games or sports, Mr Crear accepted, but he did think that it would have been suitable for such games in the years immediately after the clearance works in 1996.
56. Mr Crear had seen occasional kite flying on the Land, although he had not indulged in that pastime himself. His daughters had picked blackberries on the Land, with the Girl Guides.

(3) Derrick King

57. Mr King had lived at Rolvenden Road since 1986. He walked dogs on the Land twice a day between 1980 and 2007. He had either two or three dogs at any given time, and sometimes he also walked dogs belonging to his neighbours. Between 1982 and 2018 he had been a warranted Boy Scout group leader.

58. He recalled that the Land was less overgrown in 1996. Between 1962 and 1977 he would come home on leave from the armed forces from time to time, and when home he would mow the Land using a tractor. He did this to help his father in law, who farmed adjacent land and wanted to minimise the spread of weeds from the Application Land to the farmland.
59. Mr King recalled tennis courts on the Land until the late 1980s. He thought that someone had been mowing the Land, with a small tractor, after 1996 but after 2009. The tractor would have gained access from Frinsbury Hill. In 2007 there was a proposal for a scout group day on the Land, and the vegetation was short enough to allow that, but in the end the event was held elsewhere.
60. Mr King recalled seeing some works undertaken by contractors near the tithe barn. He could not remember precisely what, or when. He also recalled some other works, to do with drainage, near the corner of the Land where the public right of way enters the Land. He could not say whether those works were partially within the Land, or not.
61. When shown photographs of the works undertaken in 1996, which HDDT regarded as having been land clearance works, Mr King was of the opinion that those works were to do with drainage. This was despite the correspondence from 1996 in which land clearance was mentioned.
62. As noted above, when I adjourned the public inquiry in the late afternoon of 26 February snow was beginning to fall in Rochester. Mr King had finished making the oral representations he wished to make, but his questioning by Mr Petchey for HDDT had not finished. It was due to resume the next day. When the inquiry resumed the next morning, there had been quite heavy snow in places overnight. Mr King was not able to attend the public inquiry on that day. Unfortunately therefore his questioning by HDDT was not completed. As I have mentioned above, it seemed to

me that any potential prejudice arising from that state of affairs was more likely to affect HDDT, rather than Mr King.

(4) Paul Thorpe

63. Mr Thorpe had lived at 174 Frinsbury Hill since 2007. Between 1985 and 2007 Mr Thorpe lived either at Jarrett Avenue in Frinsbury, or at 217 Frinsbury Hill. Before 1985 Mr Thorpe lived outside the locality.

64. Mr Thorpe used the Land because of its wildlife interest. In particular, he had undertaken bird counts for the British Trust for Ornithology monthly, on average, between 1985 and 1996.

65. His wife was a scout leader for a local Boy Scout troop, and she would take the scouts over the Land as part of a longer walk.

66. Mr Thorpe recalled the 1996 clearance works, and said that he was “a bit worried” at the time that they would affect the wildlife.

67. He thought that the Land had been mowed by the Church Commissioners after 1996, up to about 2008. He recalled seeing a vehicle with two people inside, who had driven on to the land and cut it with petrol strimmers. The men said they were contracted by the Church Commissioners. Cutting the vegetation would take them about 2 days. This would happen twice yearly. Mr Thorpe accepted it was unlikely there was regular mowing or clearance before 1996, because of the particular effort which was then made in 1996.

68. Although he was on holiday when the works took place in 1996 he understood that they had taken between 3 and 5 days, and he saw the aftermath of the works.

69. Regarding notices on the Land, he did not remember what Notices 1 and 7 said or how long they had been there. He had not taken much notice. Mr Thorpe also thought that the notice visible on Objector's photograph 3 (from 1996) was likely to be the same as Notice 1; and that Notice 4 had previously been displayed on or near the former quarry gates. Mr Thorpe was aware of Notice 2, which was a 'permissive' notice, but not any other permissive notices.

70. Mr Thorpe had not seen any 'community' events on the Land. He had seen the odd 'kickabout' with a football, and games of hide and seek. He was aware of nature walks on the Land, including a glow worm hunt and a night hike for the cub scouts, or boy scout.

71. Mr Thorpe thought it likely that Boy Scouts and Cub Scouts would have sought permission to go onto the Land initially. As far as he was aware, the District Commissioner for the Boy Scouts was supposed to be informed of any instance of the scouts leaving the scout hall for any particular activity. He also remembered that a trailer used by the scouts was stored in the tithe barn for a period.

(5) Mrs Stuart

72. Mrs Stuart had lived at 11 Parsonage Lane since 1987. It had previously been her childhood home. She did not live in the locality between 1982 and 1987. Number 11 Parsonage Lane had an access from its rear garden onto the Land. In the past the cricket club had paid rent to her father to use the bottom of the garden at 11 Parsonage Lane for cricket nets. That use ceased well before she inherited the house in 1987.

73. Between 1987 and 2001 Mrs Stuart used the Land every day. She had six dogs during that period, and the ashes of those dogs are scattered on the Land. Her daily use continued from 2002 to 2007, albeit without dogs.

74. She could gain access to the Land directly from her own garden, initially, but the surface of the Land behind her house began to slip and the slope increased – possibly because of the quarrying – to the point whereby she could not or would not attempt to scramble down the slope. That was likely to have been after 2007.
75. Concerning notices on the Land, Mrs Stuart agreed that Notice 4 used to be on the quarry gate, and that it had only been moved in the last year or so. Notice 6 had been on the wooden fence since November 2017, but she did not recall seeing it in that general area before November 2017. She had not used the Land since 2016. I pointed out to Mrs Stuart that Notice 6 showed considerable signs of mildew or some other green growth, and was likely to be several years old at least. She accepted that was probably correct. Mrs Stuart accepted that Notice 1 can be seen in photograph 3 from 1996.
76. She had also seen a sign which had the same ‘permissive’ wording as Notice 2, but she did not recall seeing such a sign at the position of Notice 2. She had not entered the Land via Frinsbury Hill often, or indeed at all. Mrs Stuart accepted that one or more ‘permissive’ signs had probably been erected in July 2002.
77. Mrs Stuart was aware of a fence erected at the Parsonage Lane entrance, although it was only a vague memory. She accepted that the fence had probably appeared in 1996. Mrs Stuart accepted that the remnant of such a fence was visible now. She thought that the fence had been in place for more than one day. However, she also said, during cross-examination, that the fence did not entirely block the entrance and that one could get through the trees or undergrowth to the side of it, if one wished to.
78. The last occasion on which she recalled seeing any mowing or clearing on the Land was in 2011.

79. She recalled flying her kite, and also a family remote-controlled helicopter being flown in the field. Other local inhabitants did similar things.

80. Mrs Stuart was the final member of the public to make oral representations to the public inquiry.

Evidence – principal findings

81. In reaching findings on the evidence I have applied the civil standard of proof, namely ‘the balance of probabilities’.

82. All of those who made oral representations appeared to me to be attempting to recall, truthfully, what they knew of the Land and its use. Mrs Ward had a tendency to be somewhat defensive in some of her answers, but I did not consider her evidence to be unreliable. Mr King was rather dogmatic as to the purpose of the works in 1996, suggesting rather forcefully that they were drainage works rather than land clearance works, despite all the other evidence supporting the latter explanation for the works. This I found rather curious, and I did not accept that element of his evidence, but otherwise he appeared to me to be reliable in his recollection of matters.

83. It seemed to me that local inhabitants had used the Land for lawful sports and pastimes throughout the relevant 20 year periods. There was considerable written evidence to that effect, and the written evidence was consistent with the oral representations which I heard.

84. However, I heard relatively little oral evidence as to the nature, extent, and frequency of use. It was difficult to be satisfied, on the limited evidence that I heard, that there had been use of the whole of the Land, or any particular part of it, continuously throughout the whole of the relevant 20 year periods. Moreover, it was difficult for me to be satisfied that any such use of all or part of the Land had been

enjoyed by a significant number of inhabitants of the locality, throughout the relevant 20 year periods.

85. It appeared that the condition of the Land had varied throughout the relevant periods. Several of those who made oral representations accepted that there had been, or that it was likely there had been, land clearance works in August 1996. The contemporaneous correspondence produced by HDDT appeared to me to demonstrate that such clearance works occurred at that time, because the City of Rochester Council expressed concerns about the works the Church Commissioners' agents (9 August 1996), those concerns were echoed by the Dickens' Country Protection Society (21 August 1996), and the Church Commissioners replied confirming that "some management worked on the land...in order to tidy the area" had been carried out. Those works were "part of an ongoing and active management process...". The photographs of the works (Objector File tab 3 Annex C) show fairly extensive vegetation clearance was undertaken, using heavy plant and machinery. As a matter of logic, the Land must have been fairly overgrown by 1996 in order to require such extensive works, although I cannot tell for how many years before 1996 the Land became overgrown. It appears that there was some regular maintenance of the Land by the Church Commissioners after 1996, possibly until 2008 (after the end of the relevant 20 year period for the purposes of the Third Application). When I view the Land in February 2018 it was very overgrown in places.

86. I am satisfied that in August 1996 works were undertaken to clear vegetation from the Land. Those works involved heavy plant and machinery, and lasted perhaps 2-3 days, and possibly as many as 5 days. The works took place over the majority of the Application Land, and would have had the effect of excluding members of the public where works were going on. It appears likely that the works prevented public use of the Land for recreation whilst they were under way.

87. Various written evidence in support of the applications referred to access to the Land having been blocked or obstructed, for a short period of time, by means of a

barrier or fencing. Considering the oral representations I heard, alongside that written evidence, it would appear that the blocking off of access to the Land occurred at the Parsonage Lane entrance, and that it was probably only on one occasion. It is likely to have been at the same time that the substantial clearance works were undertaken, in 1996. It seems logical that contractors bringing heavy plant and machinery on to the Land, to do works on it, would seek to prevent public access to the Land for the duration of those works, at least, in as much as they were able to do so. There was of course a public right of way running broadly north west-south east across the Land, between Frinsbury Hill, and the boundary of the quarry; that access would be more difficult to obstruct even on a temporary basis. It also seems likely, although there was relatively little evidence on the point, that the chain link fence which was referred to in written evidence was erected at the same time, in August 1996. The remnant of that fence is still visible at the Parsonage Lane entrance. It may be that the Church Commissioners attempted to permanently block the Parsonage Lane entrance, which was not a public right of way, at that time. If that was the intention it was not successful, because the fence was cut and/or removed, and public access continued from Parsonage Lane thereafter.

88. It seems likely that at least some of the notices shown on the plan and photographs in the Objector's File at tab 7 were in place before 2002, and certainly before 2007. Notice 1 (which appears to be shown in some of the 1996 photographs), is located close to the public right of way, on the boundary of the quarry. It says, amongst other things, "keep to the footpath; do not enter this quarry or the surrounding land which are private and dangerous". The notice also refers to persons who trespass doing so at their own risk, and that "trespassers are liable to process of law".
89. Notice 4 carried the same wording as Notice 1. Notice 4 is located within the Land, along the route of the path coming in from Parsonage Lane. Notice 6 also carried the same wording as 1 and 4. It was also located next to the path from Parsonage Lane, closer to Parsonage Lane. Both Notices 4 and 6 appeared to have been place for several years, but whether they were there in 2007, let alone 2002, is not clear.

90. Notice 7 also carried the same wording as 1, 4 and 6. However it is located on the other side of the quarry area, near to the tithe barn, and well away from the Application Land. It appears to have been in place for several year, judging by its condition, but I cannot conclude it was in place before 2007 or 2002. In any event it is relatively far from the Application Land, in an area which is close to the quarry and 'other land', and I do not consider that it communicated anything to members of the public vis a vis the Application Land itself.
91. Notices 2 and 3 refer to CC Trading Ltd, stating that CC Trading grants permission for the recreational use of the land edged red on the plan on that notice. That permission, it states, "may be withdrawn at any time". The area shown red on the plan on that Notice is clearly the same as the Application Land. It did not appear to be in dispute that Notice 2 (at the Frinsbury Hill entrance to the Land, by the public right of way) and Notice 3 (close to the position of Notice 4) were erected in July 2002, before the Second Application was made.
92. Notices 5 and 8 bear the same wording as 2 and 3, except that they state that HDDT gives permission to use the Land, rather than CC Trading. As I understand it, HDDT had not acquired any of CC Trading's interests in the Land before 2007, and therefore those signs must be more recent than 2007.
93. However, the Objection submitted by CC Trading (Objector File tab 3) to the Second Application states at paragraph 12 onwards that notices granting permission to use the Land were placed at various locations on or near the Land on 12 July 2002. That objection includes at Annex E a plan showing the location of the 'permissive' notices (indicated as locations A to E), and a copy of the wording and the plan which was said to have been displayed on the notices. It was not suggested to me by any person that what was said at the time by CC Trading, as regards those permissive notices, was not correct. I conclude therefore that in July 2002 'permissive' notices were erected at those five locations.

CONCLUSIONS**Significant use by inhabitants of a neighbourhood or locality, for a continuous period of 20 years**

94. It appeared that the condition of the Land had varied throughout the relevant periods. Several of those who made oral representations accepted that there had been, or that it was likely there had been, land clearance works in August 1996. The contemporaneous correspondence produced by HDDT appeared to me to demonstrate that such clearance works occurred at that time, because the City of Rochester Council expressed concerns about the works the Church Commissioners' agents (9 August 1996), those concerns were echoed by the Dickens' Country Protection Society (21 August 1996), and the Church Commissioners replied confirming that "some management worked on the land...in order to tidy the area" had been carried out. Those works were "part of an ongoing and active management process...". The photographs of the works (Objector File tab 3 Annex C) show fairly extensive vegetation clearance was undertaken, using heavy plant and machinery. As a matter of logic, the Land must have been fairly overgrown by 1996 in order to require such extensive works, although I cannot tell for how many years before 1996 the Land became overgrown. It appears that there was some regular maintenance of the Land by the Church Commissioners after 1996, possibly until 2008 (after the end of the relevant 20 year period for the purposes of the Third Application). When I viewed the Land in February 2018 it was very overgrown in places.

95. There must, therefore, be doubt as to whether all of the Land was in a condition which permitted recreational use, for the whole of the 20 year period(s). It would appear that there were periods when parts of the Land were overgrown, and perhaps heavily overgrown.

96. As noted above, I conclude that that local inhabitants had used the Land for lawful sports and pastimes throughout the relevant 20 year periods. However I cannot be

satisfied, on the balance of probabilities, that there had been use of the whole of the Land, or any particular part of it, continuously throughout the whole of the relevant 20 year periods.

97. The oral evidence I did hear was mainly concerned with use of the Land for linear walking with or without dogs. The Land is accessed, principally, from a public right of way to the north west and the south east, and a footpath (albeit not a public right of way) from the south west. I did not hear evidence of any access to the land from any other access point or location.
98. The written evidence, although it is substantial in volume, does not take the matter any further because I am unable to be satisfied that any particular individual did use the Land other than the public right of way, and the path coming in from Parsonage Lane, for general recreation rather than simply walking. That being so, I cannot conclude on the evidence available to me that a reasonable landowner should have been aware that local inhabitants were asserting a right to general recreation, as opposed to simply using an existing right of way, or asserting a new right of way .
99. I consider that the Parsonage Lane access to the Land was blocked off for at least a day, and possibly several days, whilst the clearance works were ongoing in August 1996. However the Parsonage Lane access is only one access to the Land, and there is not suggestion that the public could not go on to the Land via the public right of way. I do not consider that any obstruction of the Parsonage Lane access at that time gave rise to a material interruption in public use of the Land during the relevant 20 year period(s).
100. However, for the reasons I have set out above, I do consider that the works to clear vegetation on the Land in August 1996 did give rise to a material interruption in use of the Land by the public, including local inhabitants, during the relevant 20 year period(s). For that reason it has not been demonstrated that there

was continuous use of the Land for lawful sports and pastimes for a period of 20 years.

101. Furthermore I cannot be satisfied that any recreational use of all or part of the Land had been enjoyed by a significant number of inhabitants of the locality, or a neighbourhood within the locality, throughout the relevant 20 year periods.

102. I heard no evidence whatsoever as to the claimed neighbourhood, and therefore I could not conclude that there was a relevant neighbourhood. The claimed locality is an ecclesiastical parish which sizeable, and in relation to that locality I heard oral evidence from only 5 people who had lived within it and had used the Land for recreation. I cannot be satisfied that the Land was continually in use by the local community – vis a vis the claimed locality – rather than merely in use by a handful of trespassers.

103. For these reasons I am not satisfied that, on the balance of probabilities, the Application Land or any particular part of it was in use for lawful sports and pastimes, continuously throughout the relevant 20 year periods. Furthermore I am not satisfied that the Land was used for recreation by a significant number of inhabitants of the claimed locality, or a neighbourhood within that locality.

104. The Second and Third Applications must therefore fail, for these reasons.

As of right

105. 103. Concerning notices which were placed on the Land, I use the numbering system employed by the Objector on the plan at photographs at tab 7 of the Objector's file (signs generally), and also the lettering system used on the plan at tab 3, Annex E in the Objector's file (signs erected in July 2002).

106. Notice 1, which on the balance of probabilities was in place as early as 1996, was clearly informing the public that any use of the Land away from the public right of way was prohibited, because it was trespass. Notices 4, 6 and 7 had the same effect. Whether they were also present between 1996 and 2002 (or 2007) is less clear: they have the same wording as Notice 1, but there is no contemporaneous evidence demonstrating that they were in place before 2007 or 2002.
107. I consider that, on the balance of probabilities, Notices 2 and 3 were in place in July 2002. They both predated the Second and Third Applications. Notices 2 and 3 were clearly conveying to the public a revocable permission to use the Application Land; the land to which the permission related was displayed on a plan on those notices, and that land was clearly the Application Land. Those notices were erected following identification of the Application Land in the First Application.
108. In relation to Notices 5 and 8, that numbering in Objector File Tab 7 corresponds to Notices A and E as shown on the plan in Objector File tab 3 Annex E. Again I conclude that Notices A and E were put in place in July 2002, because of what is said in the Objection by CC Trading to the Second Objection, at Tab 3 of the Objector file, and which has not been challenged.
109. Accordingly I conclude that in 1996 a Notice conveying to the public that their use of the surrounding land, including the Application Land, other than the public right of way, was trespass, and contentious. That Notice appears to have remained in place since 1996. Its effect was to prevent use of the Land, after 1996, from being as of right.
110. I also conclude that Notices 2, 3, 5 and 8 were erected in July 2002, prior to the Second Application, and the effect of those two notices was to communicate to the public that their use of the Land was by revocable permission thereafter, and not as of right.

111. CC Trading objected to the First Application. Its two letters of objection (27 July 2001, and 6 December 2001) to that application are found in Tab 1 and Tab 2 of the Objector's file. The first letter raises several arguments as to why use of the whole of the Land, by a significant number of local inhabitants, for a full period of 20 years, had not been demonstrated by the applicant. However that objection does not convey to the world at large, or indeed the registration authority, that public use of the Land thereafter is resisted, or is by permission, and therefore is not as of right. I reach the same conclusion in relation to the second letter. I accept that on page 2 of that letter, at paragraph 2, the following is stated: "CCT would take the point that, following our letter dated 27 July 2001 objecting to registration, any use of the land by local inhabitants is not as of right. I here re-iterate that any use of the land is not with CCT's permission". I have my doubts, however, that a letter stating that public use is not with the landowner's permission, and that use is not as of right, is of itself capable of conveying to the general public that use of the land is contentious, and resisted, and therefore vi. I do not therefore consider that those two objection letters had the effect of preventing public use of the Land thereafter from being as of right. Those letters predated the Second Application.
112. Following the making of the Second Application, CC Trading submitted an objection to that application. That objection is undated, but it clearly relates to the Second Application because amongst other things it refers (page 4, paragraph 12 onwards) to the erection of the permissive signs at locations A to E. I consider that this objection made it clear to the world at large that use of the Application Land thereafter was with permission, and therefore not as of right.
113. For completeness I address the question of whether section 15(3) or section 15(7) of the CA 2006 might be engaged in relation to the Third Application. Those provisions were not in force when the Second Application was made. The Applicant has not relied upon them, but they are considered by HDDT in its written submissions.

114. Section 15(3) provides, in summary, that where there has been qualifying use of land for a period of at least 20 years, but that period of use has ended before an application is made, the application must still be determined by the registration authority if the period of qualifying use ended after section 15(3) came into force and no more than 1 year before the application was made. Section 15(3) does not apply to the Third Application because any period of qualifying use ended in July 2002, when the permissive notices were erected, some 5 years before the Third Application was made.
115. Section 15(7) provides, in summary, that where there has been 20 years of qualifying use, if there is a subsequent grant of permission which prevents use thereafter from being as of right *before* an application is made, that grant of permission is to be disregarded, in considering whether qualifying use continued at the date of the application. However, for the reasons set out in paragraphs 8-21 of the Objector's "*Note...as to the status of the three applications and the effect of the permission given on 12 July 2002*" (provided by the Objector on 26 February 2018), section 15(7) will only have that effect where any permission granted by the landowner was granted after section 15(7) came into effect. The permission in the present case, communicated by the erection of notice, was granted on 12 July 2002, several years before section 15(7) of the CA 2006 came into force.
116. In any event, for section 15(7) to apply, it is a necessary condition that at the time the permission was granted by the landowner, the applicant had already demonstrated 20 years of qualifying use. That state of affairs does not arise in relation to the Third Application, because of my conclusions that the applicant has failed to demonstrate use of the whole of the Land for lawful sports and pastimes, continuously for a period of 20 years, by a significant number of inhabitants of a locality.
117. The Second and Third Applications must therefore fail, for these reasons.

RECOMMENDATION

118. My overall conclusions are as follows

119. I am satisfied that, in relation to both the Second and Third Applications, it has been demonstrated that inhabitants of a relevant locality used the Application Land for lawful sports and pastimes for a period lasting at least 20 years, ending on the dates on which those applications were made.

120. However, for the reasons set out above, I am not satisfied that:

- a significant number of inhabitants of that locality used all or part of the Land for sports and pastimes during the relevant 20 year periods; or
- there was continuous use of the Land throughout the relevant 20 year periods, and that such period(s) of use was not interrupted; and
- use of the Land by local inhabitants was as of right.

121. It follows that, in addition, qualifying use of the Land did not continue up to the date of each application. For the reasons set out above, in relation to the Third Application, sections 15(3) and 15(7) of the CA 2006 are not engaged.

122. Accordingly, **I recommend that the Second Application and the Third Application to register the Application Land as a town or village green should be rejected.**

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