

Committee: Commons and Village Green Registration Panel

Date: 6 April 2009

By: Director of Law and Personnel

Title: Application for land at Sandrock Park, The Ridge, Hastings to be registered as a town or village green

Purpose: To consider the application

RECOMMENDATION: To reject the application pursuant to section 13 of the Commons Registration Act 1965 of Mr A Potterton to have land at Sandrock Park, The Ridge, Hastings registered as a town or village green.

1. The Site

1.1 The site is a triangle of land between The Ridge where it forms a right-angle and Sandrock Park in Hastings. On the north side the land is screened from The Ridge by a thick belt of trees. On the south side the land is bounded by a public footpath and on the east side the land is fenced off from playing fields adjacent to St Helen's Church and Parish Room. According to the Land Registry the north part of the land is owned by Hastings Borough Council and the south part by Tangofield Ltd. A plan of the area is attached together with the application at Appendix 1.

2. The Law

2.1 For land to be accepted as being a town or village green it must satisfy one of the following definitions found in the Commons Registration Act 1965:

- i. land which has been allotted by or under any Act for the exercise or recreation of the inhabitants of any locality
- ii. land on which the inhabitants of any locality have a customary right to indulge in lawful sports or pastimes
- iii. land on which for not less than twenty years a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged in lawful sports or pastimes as of right, and either - a. continue to do so, or b. have ceased to do so for not more than such period as may be prescribed, or determined in accordance with prescribed provisions.

The land the subject of this application has not been allotted by any Act, nor is it subject to customary rights, so it is the third definition that the applicant is relying on and each part of the definition is examined in the report.

3. The Application

3.1 The application was duly made by Mr A Potterton, Dr R Wray and Mr A Gaffney on 6 February 2007.

4. Consultation and representations

4.1 The application was duly advertised in accordance with the Commons Registration (New Land) Regulations 1969 in the Hastings and St Leonards Observer on 16 March 2007. The interested Council, the Hastings Borough Council, and the landowners were notified and notices put on site. A copy of the application was kept on deposit at County Hall and at the Town Hall, Hastings for public consultation for a period of six weeks.

4.2 There was no response from the registered owners Tangofield Ltd, the notification letter being returned as 'Gone Away'.

5. The merits of the Application

5.1 The applicants were three local residents who asserted that the land had become a village green on the basis that the land had been used by the local inhabitants for lawful sports and pastimes as of right for not less than 20 years, and that this use had been continuous up to 3

January 2005. In order for the application to succeed the applicant must provide evidence of use dating back to 1985.

5.2 With the application the applicant provided 25 letters and two petitions expressing support for the application; one petition contained 23 names the other 35. A summary of the evidence contained within the letters is provided at Appendix 2 and the letters are available in the Members' Room.

20 years use

5.3 Eleven letters provide some indication of how long the land has been used from [1, 3, 4, 6, 10, 11, 12, 13 and 14, 23, 24 and 25]. These range from 50 years to 4 years with two correspondents specifying when their use of the land started [1,13, 24 and 25].

Local inhabitants

5.4 The land must be used by 'local inhabitants', however one letter states that the area is used by "people from a wide area, not just those living close by" [20], which is supported by the addresses of the letters provided with the application. It is recommended that the applicant should specify the 'locality' from which the users of the green come by way of an area recognized by the law. This can mean an ecclesiastical or civil parish or an electoral division. In this application the locality is not defined.

5.5 In such cases the applicant may rely on 'a neighbourhood within a locality', provided that the 'neighbourhood' has a measure of cohesion. On the application form it is stated that the local area has the benefit of a church, public house, football and cricket pitches, petrol station and car park. Little indication of whether the area is considered to be a neighbourhood is provided in the letters, although some mention a newly found "Community Spirit" [3, 11 and 18].

5.6 As there is no locality or neighbourhood identified within the application or the supporting evidence, this part of the statutory test has not been met.

Lawful sports and pastimes

5.7 Of the 22 letters 13 mention the correspondent actively taking part in any form of activity on the land [2, 4, 8, 10, 11, 13, 14, 15, 16, 19, 23, 24 and 25]. The activities mentioned in connection with the land include dog walking, berry picking, recreation, nature rambles, ball games, drawing, watching wildlife and family games which are all lawful sports and pastimes, and as such qualifying activities. It should be noted that the application does not include the footpath that adjoins the application land.

As of right

5.8 The use of the land must also be 'as of right'. This has been defined by case law in terms of "without force, without secrecy and without permission". There is nothing in the letters to suggest that this is not the case and the landowner has not suggested that the use of the land was with their permission.

5.9 One of the landowners, Hastings Borough Council, did make a formal objection. They objected to the application on the grounds that the land was inaccessible for lawful sports and pastimes as it was overgrown by Japanese Knotweed and covered with fallen trees. The Amenities Manager of the Borough Council stated that the land had been cleared in 2001-2 and that his view was that the land was unusable. One letter of support mentioned the area being overgrown, but the dog not minding. In rebuttal to the objection the applicant pointed out that the land, even though overgrown, was accessible to dog-walkers and bird-watchers.

5.10 Case law indicates that these matters should be approached from the point of view of the landowner: does the use of the land by the local people indicate to the landowner that a public right is being exercised, or would the local people defer to use of the land by the landowner that would conflict with their exercise of that claimed public right. Neither the Borough Council nor Tangofield Ltd appears to have asserted any right of ownership over the land other than the clearance of the land in 2001.

Significant number

5.11 The qualifying use of the land must be by a 'significant number' of the local inhabitants. What is classed as significant is to be determined on a case-by-case basis. Mr Justice Sullivan put the test this way in *MacAlpine Homes v Staffordshire County Council*:

"I do not accept the proposition that significant in the context of section 22(1) as amended means 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 their use of the land signifies that it is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers."

The applicant has provided 22 letters with the application from addresses ranging from Hillside Road to Elphinstone Road and Shining Cliff. A plan showing the location of the residents is provided at Appendix 3.

5.12 The petitions provided carry the following declarations: "We, the undersigned residents of Sandrock Park, request that you accept the attached letter as a statement of our complete support for the application for the land under application EL/CR02/SB to be registered as a Village Green" and "We the undersigned wish it to be known that we SUPPORT the above application. And many of us have similarly enjoyed the use of the above land for lawful recreation for varying amounts of time over the last 25 years." Many of the signatories of the second petition live in Parkwood Road to the north of The Ridge.

5.13 As has been addressed at points 5.6, 5.8 and 5.9 of the Report, the evidence provided and analysed in Appendix 2 is not sufficient to fulfil the statutory criteria of a "significant number". Some of those providing evidence live outside of the locality, some have not provided any evidence of either their or anyone else's use of the land.

6. Consideration of whether to hold a Public Inquiry

6.1 The Commons Registration (New Land) Regulations 1969 require that the Local Authority consults on the proposed Green before making a determination. This process has been completed and objections have been received.

6.2 The Authority retains discretion as to whether to hold an Inquiry, and must give consideration as to whether or not one should be held. An inquiry would be conducted by an independent Inspector or expert and would enable members of the public to put their view across in adversarial proceedings. The Inspector would make recommendations and it would then be for the Authority to decide whether or not to accept any or all of those recommendations.

6.3 Those in favour or against the application have had the opportunity to put their representations and these have been made available to the Panel, in full, for Members to read in the usual way and are analysed in this report.

6.4 There has been extensive opportunity for people to make representations. There has been no request for a public inquiry in relation to this case.

6.5 The cost implications and the further delay which would be introduced into the process in holding a public inquiry would also be considerable. In view of the nature and extent of representations, the issues raised and the extent of public debate that has already occurred so far, I am of the view that an objective and impartial consideration of the representations raised will be given by this Committee and do not consider that it is necessary or in the public interest to hold a public inquiry.

6.6 The Panel has discretion as to how to proceed. It can accept the officer recommendation put forward. It can adjourn the matter and seek further information. As set out above, the Panel can request that a public inquiry be held, although in this instance it is not thought necessary.

7. Conclusion and reason for Recommendation

7.1 The Panel is recommended to reject the application on the grounds that: the application does not define a locality, and moreover there is also insufficient supporting evidence of qualifying use by a significant number of local inhabitants.

7.2 The community should, however, be encouraged to develop their community spirit, with a recommendation to the Borough Council that they try and find a use for the land in their ownership that will support this.

ANDREW OGDEN
Director of Law and Personnel

Contact Officer: Simon Bailey x82683

Local Member: Councillor Matthew Lock

BACKGROUND DOCUMENTS: Letters of Support

East Sussex County Council



Commons Registration Act 1965, Section 13

Application for the registration of land which became a town or village green after 2nd January 1970

For the use of the registration authority	Application number 1341
Official stamp of registration authority indicating date of receipt	Register unit number/s
COMMONS REGISTRATION ACT 1965 EAST SUSSEX COUNTY COUNCIL REGISTRATION AUTHORITY 06 FEB 2007	VG
	VG

To East Sussex County Council

Application is hereby made for the registration as a town or village green of the land described below, which became so registrable after 2nd January 1970.

Before completing this form, read carefully the guidance notes below. An incorrectly completed application form may have to be rejected.

Part 1: Name and address of the applicant or (if more than one) of every applicant

Give first name/s and surname/s or, in the case of a body corporate or unincorporate, the full title of the body. If part 2 is not completed all correspondence and notices will be sent to the first named applicant.

Name of applicant	M. A. POTTERTON
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Address	[REDACTED]
---------	------------

Name of applicant	DR. R. WRAY
-------------------	-------------

Address	[REDACTED]
---------	------------

Name of applicant	MR A. GAFFNEY
Address	[REDACTED] [REDACTED] [REDACTED] [REDACTED]

Part 2: Name and address of solicitor, if any

This part should be completed only if a solicitor has been instructed for the purposes of the application. If it is completed, all correspondence and notices will be sent to the solicitor)

Name of applicant	
Address	- N/A -

Part 3: Particulars of the land to be registered, i.e. the land claimed to have become a town or village green

Name by which usually known	THE PLAYING FIELD
Locality	O.S. REF: TQ8112 NE-SE ADJACENT TO "THE RIDGE" (B2003)
Colour on plan herewith	PINK & YELLOW SHADING BOUNDED BY RED LINE

Part 4: On what date did the land become a town or village green?

Please type in dd/mm/yyyy format eg 13/12/2000	03/01/2005
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Part 5: How did the land become a town or village green?

BY THE ACTUAL USE OF THE LAND BY THE LOCAL INHABITANTS FOR LAWFUL SPORTS AND PASTIMES AS OF RIGHT FOR NOT LESS THAN 20 YEARS.

Part 6: Name and address of every person whom the applicant believed to be an owner, lessee, tenant or occupier of any part of the land

Give the name and address of every person whom the applicant believed to be an owner, lessee, tenant or occupier of any part of the land claimed to have become a town or village green.

If none known, indicate with a 'x' in this box:

None known	X	SHADED YELLOW ON PLAN - EXHIBIT A.
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Name	—
------	---

Relationship to land (please indicate if owner, lessee, tenant or occupier)	—
--	---

Address	- N/A -
---------	---------

Name	HASTINGS BOROUGH COUNCIL
------	--------------------------

Relationship to land (please indicate if owner, lessee, tenant or occupier)	(SHADED PINK ON EXHIBIT A) OWNER
--	-------------------------------------

Address	THE TOWN HALL QUEENS ROAD HASTINGS EAST SUSSEX TN34 1QR
---------	---

Name	—
------	---

Relationship to land (please indicate if owner, lessee, tenant or occupier)	—
--	---

Address	- N/A -
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Part 7: For applications to register substituted land (see guidance note 5); to be disregarded in other cases.

Particulars of the "taken land", i.e. the land which ceased to be a town or village green (or part thereof) when the land described in part 3 became a town or village green (or part).

Name by which usually known	- N/A -
Locality	-
Colour on plan herewith (if any)	-
If registered under the 1965 Act, register unit No(s).	-

Part 8: List of supporting documents sent herewith, if any.

If none are sent, write "none".)

EXHIBIT. A. - MAIN DESCRIPTION OF THE LAND
EXHIBIT. B. - MAP LOCAL USER OF LAND COME FROM
EXHIBIT. C. - SUPPORT LETTER, RESIDENT: A. TOTTERTON
EXHIBIT. D. - SUPPORT LETTER, RESIDENT: R. WRAY
EXHIBIT. E. - SUPPORT LETTER, RESIDENT: A. GAFFNEY

Part 9: Additional information

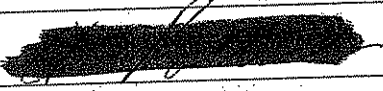
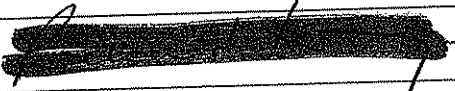
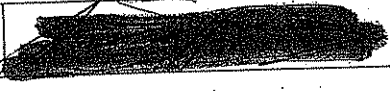
If there are any other facts relating to the application which ought to be brought to the attention of the registration authority (in particular if any person interested in the land is believed to dispute the claim that it has become a town or village green) full particulars should be given here.

TRADITIONAL VILLAGE GREEN FACILITIES NEARBY:
CHURCH, PUBLIC HOUSE, FOOTBALL PITCH, CRICKET
PITCH, PETROL STATION, CAR PARK, PUBLIC
FOOTPATH ALONG ONE SIDE.
NO KNOWN DISPUTE OVER USE TO DATE.

Applicants' signatures

The application must be signed by or on behalf of each individual applicant, and by the secretary or other duly authorised officer of any applicant which is a body corporate or unincorporate.

Please type date in dd/mm/yyyy format eg 13/12/2005.

Signature		Date	4.2.07
Signature		Date	4.2.07
Signature		Date	4.2.07
Signature	—	Date	—

Statutory declaration in support


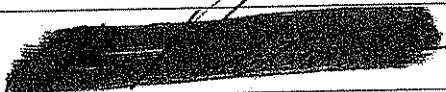
Please refer to guidance note 9

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.

1a. Insert full name <i>ALAN POTTERTON</i>	1, solemnly and sincerely declare as follows:
1b. Insert your address if not given in the application form.	
1c. Delete and adapt as necessary and insert name if applicable.	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)). <i>per</i>
2.	I have read the guidance notes in the application form.

3.	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 8 and 9 of the application.
4. Insert "marking" as on plan.	The plan now produced and shown to me marked 4" <i>A</i> " is the plan referred to in part 3 of the application. <i>per</i>
5. Delete this paragraph if there is no plan referred to in part 7.	The plan now produced and shown to me marked 4" " is the plan referred to in part 7 of the application. <i>per</i>

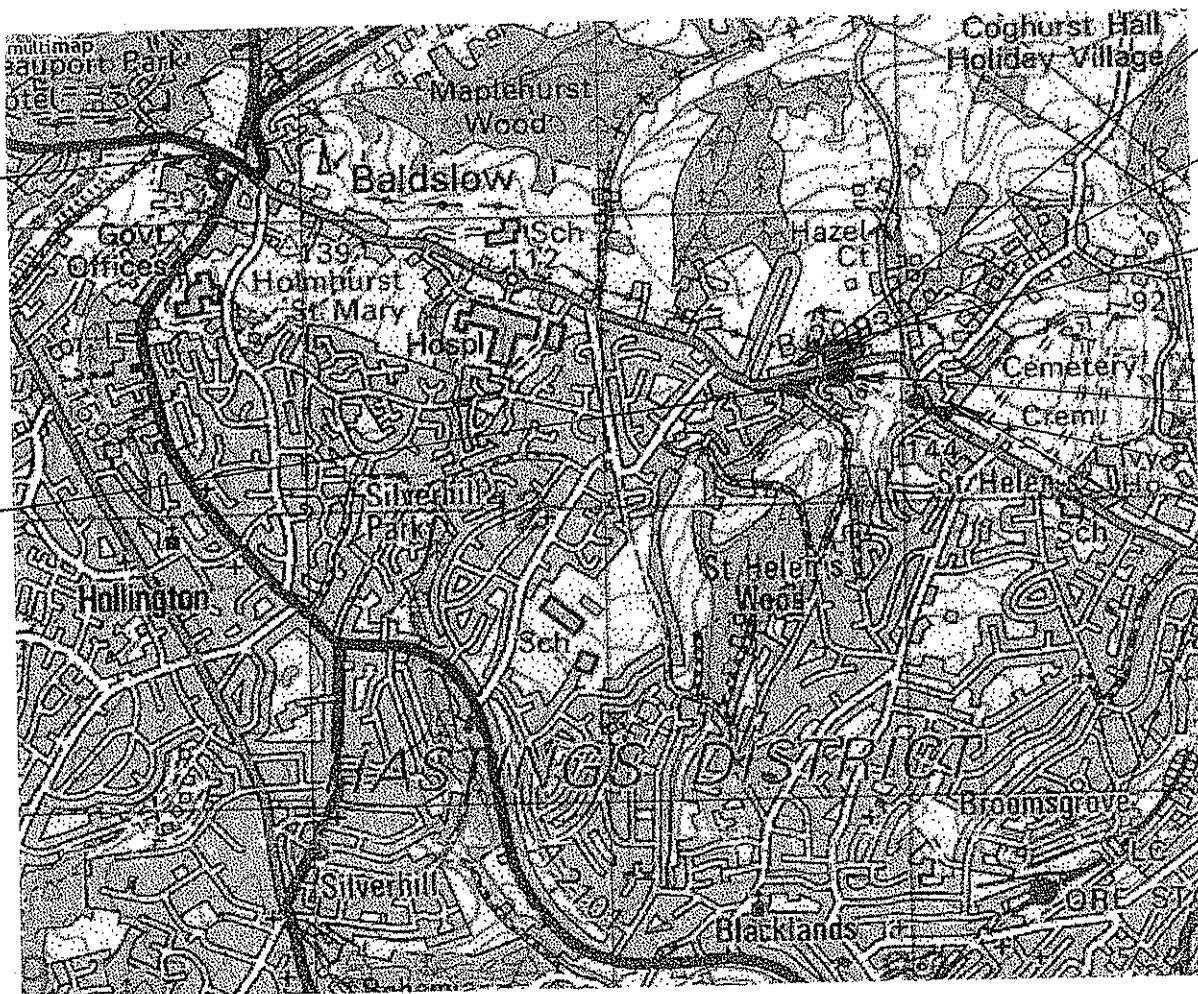
And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act 1835.

Declared by the said	<i>ALAN POTTERTON</i>	Signature of Declarant	
at	<i>151 Old Pear Road St. Leonards-on-Sea East Sussex</i>		
on date	<i>4th February 2005</i>		
Signature	<i>R. C. Lee</i>		
Address	<i>151 Old Pear Road St. Leonards-on-Sea East Sussex</i>		
Qualification	<i>Solicitor</i>		
Signature of declarant			

Reminder to officer taking declaration

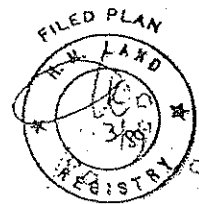
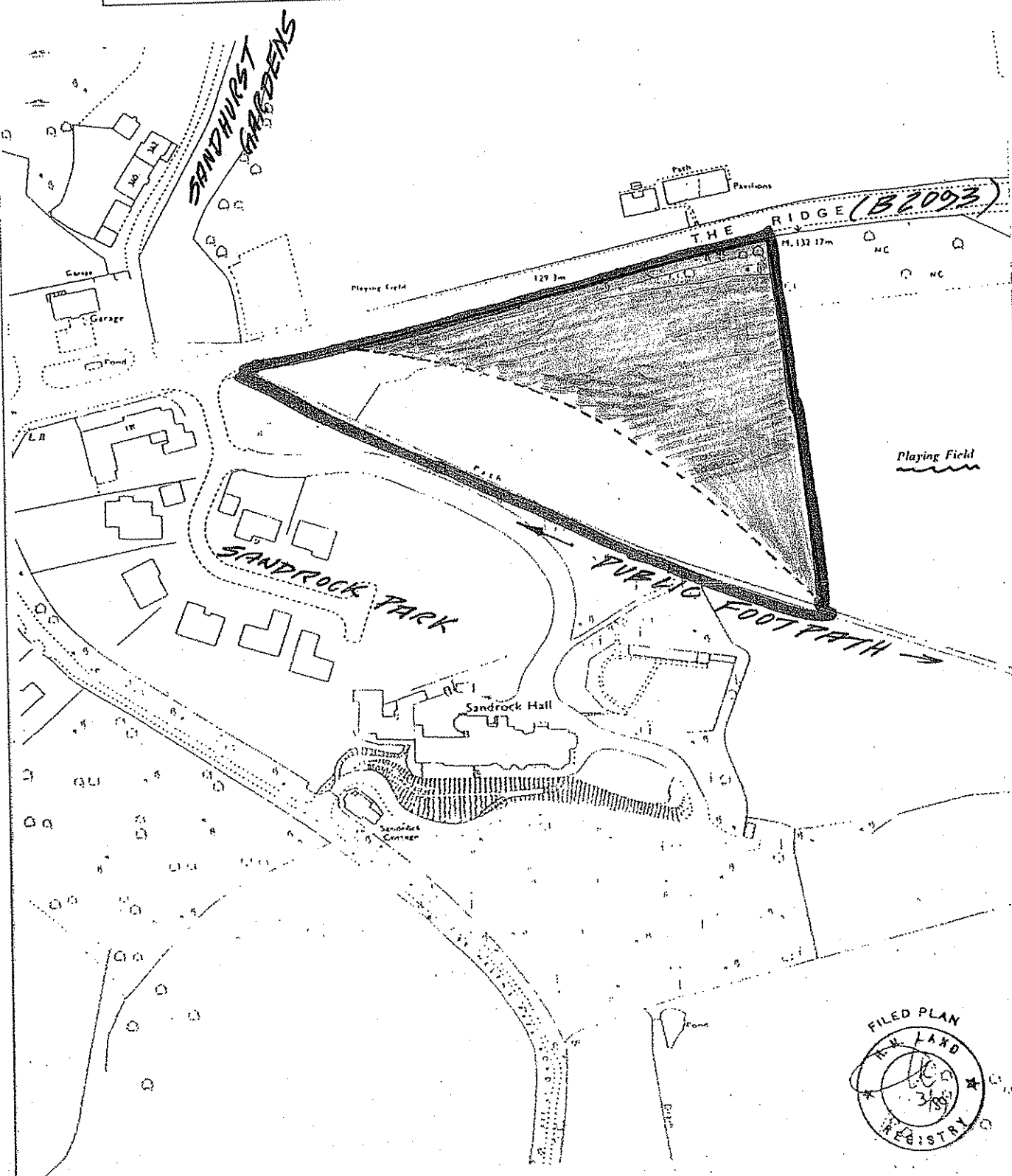
Please initial all alterations and mark any plan as an exhibit.

VILLAGE GREEN APPLICATION
O.S. REF. TQ 8112 NE-SE (ESX 144057)



1. LOCATION OF PROPOSED VILLAGE GREEN
2. LOCAL USERS MR. A. POTTERTON & MR. A. GAFFNEY
3. LOCAL USER DR. R. WRAY
4. LOCAL USER MR. A. POTTERTON PRIOR TO 1994
5. CHURCH
6. PUBLIC HOUSE
7. PETROL STATION
8. FOOTBALL & CRICKET PITCHES

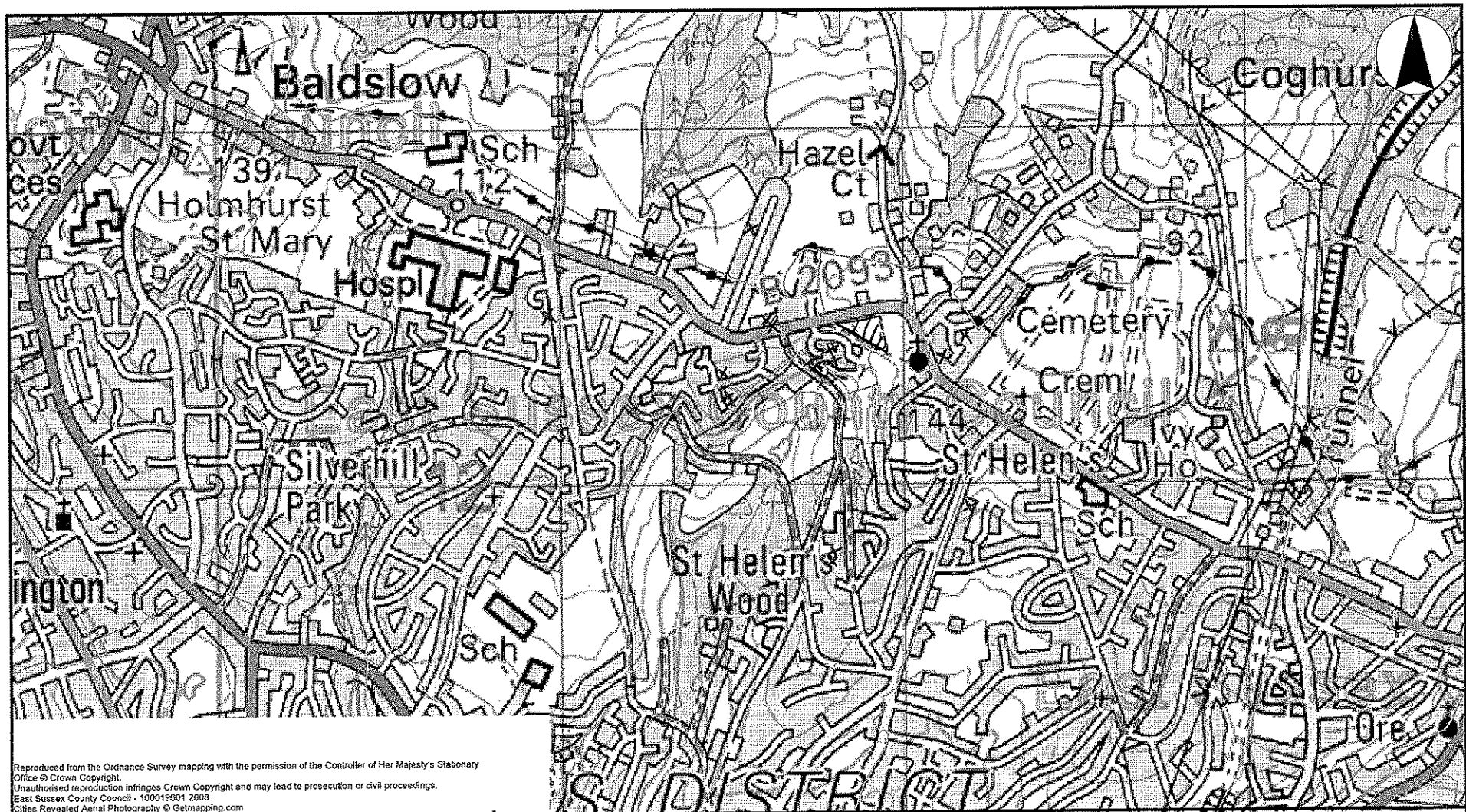
H.M. LAND REGISTRY		TITLE NUMBER	
		ESX144057	
ORDNANCE SURVEY PLAN REFERENCE	TQ 8112 NE-SE	Scale 1/1250	
COUNTY EAST SUSSEX	DISTRICT HASTINGS	©Crown Copyright	



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EXHIBIT. A

No.	Name	Activities enjoyed/seen	Dates	Comments
1	Mr DG Tomblin	lawful sports and pastimes	since 1985	local enthusiasm
2	Dr JJJ Van Rensburg	dog walking, berry picking		
3	Mr LR Parr	berry picking	for 34 years	new community spirit
4	GD & SM Leach	made frequent use of the amenities	for 4 years	
5	A Willis			objection - prejudice to possible realignment of The Ridge
6	M Keesing	dog walking, berry picking	for 50 years	used the path, dog used the land; overgrown
7	Rev C Key			general letter of support
8	Mr & Mrs Lloyd	dog walking;		concerns about prejudice to possibility of realigning The Ridge
9	Mrs JR Green			general letter of support
10	Mr J Bunday	leisure, recreation, dog walking	for 11 years	report from RIDGE group with action plan for the future
11	Mr AC Mulligan	dog walking	for 29 years	unkempt and neglected 80s-90s; cohesive community
12	KR Jackson		for 45 years	
13	JFM Tooke	walks, mini-nature rambles, ball games	since 1996	
14	Mrs J Schilcher	walking, playing games	for 36 years	
15	Mr D Milton			interesting wildlife
16	Master J White	drawing		mentions activities "that could be going on"
17	Master D White	watching wildlife, drawing		
18	Mrs WL Bailey	walking, dog walking, family games		community spirit
19	D Milton			interesting wildlife
20	Mr J Bunday	dog walking, recreation		used by people from a wide area - petition provided 23 signatures (some of which appear above)
21	R & S Thompson			general letter of support
22	Mr AC Mulligan			petition with 35 signatures



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East Sussex County Council	Enter a map title here	
County Hall St Anne's Crescent Lewes	Date : 1 Apr 2008	Map No :
	Scale : 1: 16895	Author :

Two respondents off the map.