

Committee: Commons & Village Green Registration Panel

Date: 22 December 2010

By: Director of Governance and Community Services

Title: Application for land at Herbrand Walk Beach, Cooden, Bexhill-on-Sea to be registered as a town or village green

Applicant: Mr Stephen Atkinson-Jones, Secretary of Herbrand Walk Beach Preservation Society

Application No: 1357

Contact Officer: Chris Wilkinson, Tel. 01273 335744

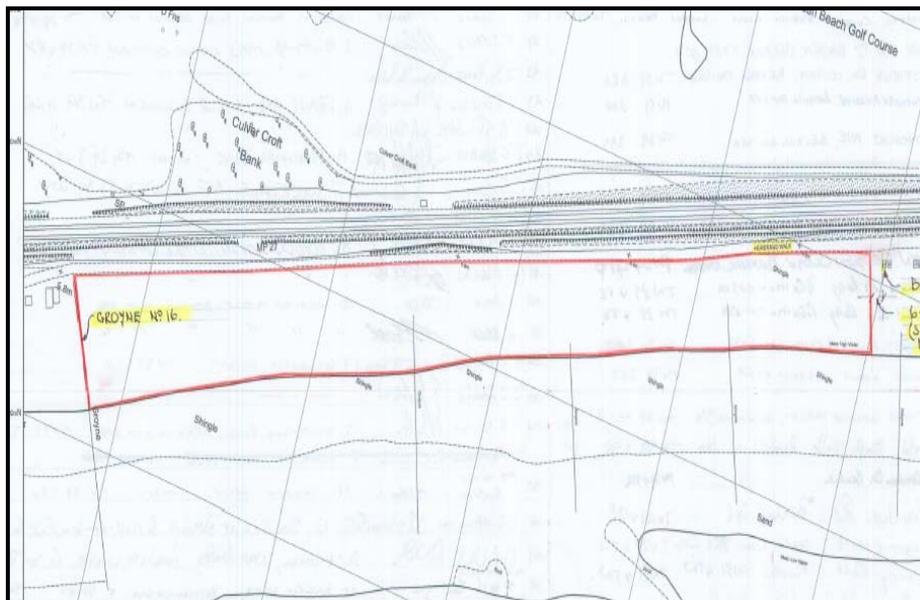
Local Member: Councillor Brian Gadd

Summary of Recommendations

To accept the application, pursuant to section 15 of the Commons Act 2006, of Herbrand Walk Beach Preservation Society to have land at Herbrand Walk Beach, Cooden, Bexhill-on-Sea registered as a town or village green.

1. The Site

1.1 The application land (below) is roughly rectangular in shape and is located adjacent to and south of Herbrand Walk, Cooden. The land subject to the application is bordered by Herbrand Walk Road to the north and the high water mark line to the south. The border in the west is groyne number 16 and in the east beach hut 38.



1.2 The land has three owners and a part is also unregistered. Mr R.S. Peddar owns the far western portion under title number ESX 223763. Mrs J.M. Thompson owns the adjoining plot to the east under title number ESX 223589. Mr S. Hall owns

the land to the east of Mrs Thompson under title ESX 203966. This is less than half of the land subject to the application with the rest being unregistered. Mr S. Hall has taken out a caution against first registration; the title of this document is ESX 204930. A plan of land ownership is contained in the applicants bundle.

1.3 Members are referred to the plan and application at **appendix 1 and 7**.

1.4 A site inspection was conducted on 4 November 2010 by Chris Wilkinson. A set of photographs of the land is available at **appendix 2**.

2. Law

2.1 The law is set out in section 15 Commons Act 2006 ('the Act'). A guide to the law is attached at **appendix 3**, although each element of the statutory test is addressed in this report. In short, the applicant must prove that the land has been used by a significant number of local inhabitants of a locality or neighbourhood within a locality for lawful sports and pastimes 'as of right' for a period of twenty years. The Commons (Registration of Town and Village Green)(Interim Arrangements)(England) Regulations 2007 apply to all applications made under the 2006 Act and govern how village green applications should be processed by Local Authorities.

2.2 The qualifying criteria to be applied is set out in Section 15(2) of the Act which states that the land must have been enjoyed in accordance with the statutory test detailed in paragraph 5 and the local inhabitants must continue to enjoy use of the land at the time of the application.

3. The Application

3.1 East Sussex County Council (ESCC) received the application on 14 May 2010. The application was made pursuant to Section 15(1) of Commons Act 2006 by Mr Stephen Atkinson-Jones, Secretary of Herbrand Walk Beach Preservation Society.

4. Consultations and Representations

4.1 The application was advertised on site and in the Observer group newspapers on 4 June 2010. All interested parties and Rother District Council were sent copies of the notice and application. Copies were available to view by members of the public at County Hall in, Lewes and Rother District Council offices in Bexhill. The Local Member, Councillor Gadd was informed of the application by way of letter dated 26 May 2010. ESCC have received correspondence from Rother District Council who informed them of an appeal against the refusal of a planning permission to develop this strip of land.

5. The merits of the Application

5.1 The applicant asserts that the beach has become a village green on the basis that the land has been used by a significant number of inhabitants of a locality or neighbourhood within a locality for lawful sports and pastimes as of right for not less than twenty years, and that this use has been continuous up to May 2010.

5.2 In support of the application the applicant has produced 79 Open Spaces Society (OSS) evidence questionnaires containing a total of 100 signatures. Further evidence disclosed was in the form of historic photographs, land registry documents, letters and a plan of the locality of Herbrand Walk Beach.

Objection from landowners

5.3 The landowner information obtained from the land registry documents was used to send each landowner a copy of the application and evidence on 26 May 2010. The documents sent to Mr Peddar were returned on 23 June 2010 after the post office was unable to deliver them. Mrs Thompson did not respond. In Mr Hall's response he submitted an email from Mr Peddar which gives "full authority to Steve Hall to act on [his] behalf in any matters of business relative to Cooden Beach."

5.4 Mr Hall submitted his response on 15 July 2010. He contests the application and submits that it does not satisfy the statutory criteria for the following reasons:

- a) The land has been in commercial use since February 1988 and is therefore not enjoyed only by local residents for recreational purposes.
- b) Use of the land has been with permission.
- c) Preventing Mr Hall from carrying out his lawful use of the site would breach his Human Rights (peaceful enjoyment of possessions¹).

Application of s.15(2)

Local inhabitants of any locality or neighbourhood within a locality

5.5 The land must be used by the inhabitants of a locality, or of any neighbourhood within a locality. A 'locality' would be for example a parish or other administrative area known to the law. According to Lord Denning 'so long as the locality is certain, that is enough.'² A neighbourhood is a smaller area but has been identified by case law as having 'a sufficient degree of cohesiveness.'³

5.6 At point 6 of the application the applicant is asked to identify the locality or neighbourhood to which the land relates. The applicant identifies Cooden, Little Common and West Bexhill generally. A plan was submitted (at **appendix 4**) highlighting the boundaries of this area. This area identified by the applicant is within the boundaries of Bexhill. Upon further examination the boundaries drawn by the applicant principally mark the boundary of the ward of St Mark's. Two additional wards of Kewhurst and Collington are also partially incorporated.

5.7 The user evidence questionnaires contained a question which demonstrates the cohesiveness of the local community by asking the user to tick boxes as to what recognisable facilities are available to the inhabitants of the locality. A list of twelve facilities are stated including school catchment area, community centre, place of worship and shops. There is also a box inviting the user to record any other facilities that are available.

5.8 The response of each user to this question was recorded and added to a graph (at **appendix 5**), their responses were also included in a table. Of the 79 user evidence forms submitted the top three responses were; Doctor's Surgery (78), local shops (77) and place of worship (77). Eight other facilities were recorded by over half of the user evidence forms.

5.9 The plan at appendix 1 also records the residence of many of those who completed a user evidence form. The plan is an Ordnance Survey map at a scale of 1:5,000. Upon inspection of this plan two educational facilities, three places of worship, a railway station, wood and golf course are within the locality.

¹ Article 1 of the First Protocol of the European Convention on Human Rights

² *New Windsor Corporation v Mellor* [1975] 1 Ch 380

³ *R (Cheltenham Builders Ltd) v South Gloucestershire District Council* [2003] EWHC 2803 (Admin)

5.10 Mr Hall, on the fourth page of his response, states that 'it is not correct to say that this is an open stretch of beach enjoyed only by local residents for recreation.' Whilst people may have come from outside of the locality to use the claimed land and local facilities all of those who have signed a user evidence form have also signed the back of the above plan (appendix 1) under the title: locality of the beach. Approximately, seventy residences were recorded on this plan.

5.11 The objector submits that it is incorrect to state the land has only been enjoyed by local residents because it has been in commercial use since February 1988. The applicant has responded to the contrary stating that it has never been used for commercial activities. They acknowledge the land was bought in 1988 by McDonald Fish Selling Ltd. but, according to a letter sent to the Bexhill Observer by McDonald, "the site [was]... surplus to that being used by my business." The applicant, in their response, also submits fourteen letters from residents confirming that they have not seen any commercial activity on the foreshore.

5.12 It is also of note that it is not necessary for the land to only be enjoyed by local residents rather it 'is sufficient that the land is used predominantly by inhabitants of the [locality].'⁴ The applicant has illustrated this by producing the plans at appendix 4 (paragraph 5.6)

5.13 On the balance of probabilities it is submitted that the locality marked by the applicant of being Cooden, Little Common and West Bexhill has the requisite qualities of fulfilling this part of the statutory test.

Have indulged as of right

5.14 Once it has been established that those who have used the land are of a locality it must be asserted that they have enjoyed the land as of right. The meaning of 'as of right' has received legal clarification from Lord Hoffmann, who was of the opinion that it should be construed to mean, 'not by force, nor stealth, nor the licence of the owner.'⁵ It has taken this meaning because it is not reasonable for the owner to resist actions of user because;

rights should not be acquired by the use of force, in the second, because the owner would not have known of the user and in the third, because he had consented to the user⁶

5.15 The recent decision of the Supreme Court in *Redcar*⁷ further clarified the law with Lord Brown being of the opinion that there is 'no good reason to superimpose upon the conventional tripartite test'⁸ for the registration of land as a town or village green. Accordingly, each arm of the test shall be identified and analysed individually. For use to be as of right each part must be satisfied.

Not by force

5.16 With the exception of World War Two, when access to all beaches was prohibited, access has been possible along the entire length of the northern boundary. Regardless, this is outside of the relevant twenty year period.

5.17 Due to Herbrand Walk being a very narrow road, double yellow lines have been painted on both sides to ensure the free and easy passage of traffic. The

⁴ *R v Oxfordshire County Council and Another, Ex parte Sunningwell Parish Council* [2000] 1 A.C. 335

⁵ *Ibid*

⁶ *Ibid*

⁷ *R (on the application of Lewis) (Appellant) v Redcar and Cleveland Borough Council and Another* [2010] UKSC 11

⁸ *Ibid* at para. 107

objector has encouraged people to use this beach by making it possible for cars to park on the northern boundary of the beach by removing some of the shingle.

Not by stealth

5.18 The land has not been enjoyed under secrecy with the landowner being aware of use by the public. Mr Hall states that he has “no intention of excluding the public from this area of beach.”

Not with permission

5.19 The user evidence questionnaire, at question 28, specifically asks if permission was ever sought for activities on the land. The user evidence forms consistently responded that no permission was ever obtained.

5.20 The objector, under the heading “as of right” in their response, submit that permission requires some positive act by the landowner. The objector submits that the previous owners of the land confirmed use had been with permission although there is no documentation to substantiate this.

5.21 The applicant, in their response, submits the opinion of Lord Hope in *Beresford*. He was of the opinion that;

On this area of the law it would be quite wrong, in my opinion, to treat a landowner’s silent passive acquiescence in persons using his land as having the same effect as permission communicated to those persons. To do so would be to reward inactivity.⁹

5.22 The objector does not state they have acquiesced to use rather that use has been with permission. This permission has to be communicated to the users. The objector states that he has clearly marked out signs that the beach is in private ownership.

5.23 There is a sign on the beach that states “Private Beach” (photograph available at appendix 2). The sign also states that, ‘vehicles may park here at owners risk between 0800 to 21.00. Outside these hours vehicles will be clamped.’ The landowner states that this sign was erected around 1 June 2009 to prevent travellers from parking on the beach.

5.24 The objectors communication to the users that the beach is private is based upon the legal principle initially suggested by Patteson J in 1833;

If a man opens his land, so that the public pass over it continually, the public... would be entitled to pass over it... and if the party does not mean to dedicate it... but only to give a licence, he should do some act to show that he gives a licence only.¹⁰

5.25 Accordingly, the notice given by the landowner must be obvious and overt. Recently, in the rights of way case of *Godmanchester*¹¹ Lord Scott was of the opinion that overt acts should, ‘demonstrate to the public that the landowner had no intention

⁹ *R (Beresford) v City of Sunderland* [2003] UKHL 60 para. 78

¹⁰ *Trustees of the British Museum v Finnis* (1833) 5 C & P 460 at 465

¹¹ *R (Godmanchester Town Council) v Secretary of State for the Environment, Food and Rural Affairs* [2007] UKHL 28

to dedicate.¹² A sign merely stating private would not be an obvious and overt act by Mr Hall to demonstrate that he had no intention to dedicate.

5.26 The objector has removed some of the shingle to allow cars to park on part of the claimed land (paragraph 5.23). This could suggest that those who have parked their cars on the land would then be using the land under licence of the owner. However, this has not been brought to the users' attention and is restricted to those that have used a car to access the land.

5.27 Upon consideration of the user evidence and the response submitted by the objector it would appear, on the balance of probabilities that use has been as of right.

Lawful sports and pastimes on the land

5.28 The applicant must also demonstrate that the land has been used for lawful sports and pastimes. According to Lord Hoffmann this, 'is not two classes of activities but a single composite class'¹³ in order to cover all lawful activities enjoyed on the land, including the taking of air. These activities can vary depending on the time of year or 'according to changing tastes or wishes [of the user]'¹⁴

5.29 Question 23 of the OSS user evidence questionnaires ask the user to tick boxes for all the activities they have seen taking place on the land. There are eighteen listed activities including football, dog walking, picnicking and children playing. There is also a box inviting any other activities witnessed.

5.30 The three most frequent activities witnessed are dog walking (77), fishing (75) and children playing (75). There are a further five activities that have been witnessed by over half of those who completed questionnaires (drawing and painting, bird watching, picnics, kite flying and walking).

5.31 There are ten activities witnessed by the users which occur on the water. The land subject to the application borders the high water mark. Therefore, these water activities cannot be taken into consideration when ascertaining if lawful sports and pastimes have occurred on the land.

5.32 Question 14 asks the user why they went onto the land and question 16 asks what activities you took part in. Some respond to question 16, with "same as question 14." This question asks the user to list activities, rather than tick boxes. This results in several different answers for the same activities. The graph at **appendix 6** attempts to match the responses of this question to that of question 23 (see paragraph 5.29) where possible (for example, a response of walking with dog and children would be dog walking, walking and children playing).

5.33 The most common response to question 16 was swimming. However, as detailed in paragraph 39, activities that occur in the sea are outside of the application land. The next three most frequent responses are walking (27), picnicking (21) and recreation (16).

5.34 It is noted that there are a lot less responses to question 16 than there were to question 23 with 845 responses to question 23 and 222 to question 16. Seven people also recorded blackberrying but there are no blackberry bushes on the application land.

¹² *Ibid* at para.69

¹³ *Ibid* (n4)

¹⁴ J. Riddall, 'Getting Greens Registered: A guide to law and procedure for town and village greens' (2007) paragraph 43

5.35 Despite the recorded use of activities outside of the application land on the balance of probabilities there is sufficient evidence to illustrate that lawful sports and past times have been enjoyed on the land. Accordingly, this element of the test has been satisfied.

For a period of at least 20 years

5.36 It is required that the user evidence illustrates that the land subject to the application has been enjoyed for a period of at least twenty years. This period is calculated retrospectively from the date of first challenge. In the absence of a challenge the submission of the application is sufficient to bring use of the land into question. Therefore, initially it will be necessary to show use from 1990 – 2010. If there is any challenge to use within this period then the relevant twenty year period shall be altered to reflect the challenge.

5.37 It is not vital for every user to have used the land for a period of twenty years rather it is 'necessary... that all the evidence taken cumulatively shows that there has been use by the local inhabitants for twenty years.'¹⁵

5.38 Every user evidence form submitted records use of the land for a period of time well in excess of twenty years with U66 stating their use back to the 1920's. Whilst a considerable amount of user evidence states the land to be enjoyed frequently, sometimes daily (U1, U27, U28), there is no requirement to show use occurred at such a rate, rather the land 'must have been used and available... when needed.'¹⁶

5.39 U66 notes that her use was interrupted during World War Two. This was in accordance with the relevant defence of the realm legislation. Section 15(6) of the Commons Act 2006 states that,

[when] determining the period of 20 years... there is to be disregarded any period during which access to the land was prohibited... by reason of any enactment.'¹⁷

5.40 The break in use experienced by U66 is the only one recorded by all 100 users and significantly pre-dates the relevant 20 year period.

5.41 Upon examination of the user evidence forms it is submitted that, on the balance of probabilities, use of the claimed land has been enjoyed for a period of at least twenty years.

Effect of Planning Application

5.42 Mr Hall has submitted information regarding an application to construct 28 wooden beach huts, 2 wooden toilet huts and 1 wooden lifeguard hut, including car parking, cycle parking, information signs, waste bins, dog waste bins and sleeper walling/shingle protection. The application number is HW/RR/10/0055.

5.43 Whilst it is an offence to interrupt the use and or enjoyment of a town or village green¹⁸ the planning application shall not prejudice ESCC's investigations as they are being conducted independently of the planning application.

¹⁵ *Ibid* (n14) at paragraph 51

¹⁶ *Ibid* (n14) paragraph 52

¹⁷ s.15(6) Commons Act 2006

¹⁸ s.23 Inclosure Act 1857

Human Rights Consideration

5.44 Mr Hall submits that allowing the town and village green application and rejecting his planning application would be inconsistent with his Convention Rights (incorporated into UK law by the Human Rights Act 1998) particularly article 1 of the first protocol;

[the right to] peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.¹⁹

6. Considerations into the feasibility of holding a Public Inquiry

6.1 The Commons (Registration of Town or Village Greens) (Interim Arrangements)(England) Regulations 2007 require that the Local Authority consults on the proposed Green before making a determination. This process has been completed with an objection being received from Mr S. Hall, a part landowner (paragraphs 5.3-5.4).

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 or expert 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 submit their representations and these have been made available to the Panel, in full, for Members to read in the usual way and have been analysed in this report.

6.4 There have been extensive opportunities for people to make representations. The objector has maintained that if, upon consideration of the evidence the Council were not minded to refuse the application, a public inquiry should be held.

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. Considering that the landowner does not dispute use and all of the statutory criteria have been satisfied, it is submitted that a public inquiry would not be necessary or in the public's interest with this Committee being able to provide an objective and impartial view of all the evidence submitted.

6.6 The Committee is permitted to use its discretion when determining what course of action to follow; it can accept the officer recommendation put forward, it can adjourn the matter and seek further information, or as set out above, the Panel can request that a public inquiry be held.

7. Conclusion and reason for Recommendation

7.1 After careful consideration of all the evidence submitted to ESCC it is submitted that, on the balance of probabilities, there is sufficient evidence to show that the local residents of Herbrand Walk have indulged in lawful sports and past

¹⁹ Article 1 of the First Protocol of the European Convention on Human Rights

times, as of right, for a period of twenty years and they currently continue to do so. Accordingly, section 15(2) of the Commons Act has been satisfied.

7.2 The objection received by ESCC does not counter the evidence to support the application. The objector suggests use has not been as of right because use has been with permission, however, upon analysis the landowner had not conducted an obvious and overt act sufficient to grant such permission.

7.3 Upon consideration of this report it is suggested that the application to register Herbrand Walk as a town or village green be accepted and the register of town and village greens held at ESCC be amended accordingly.

PHILIP BAKER
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Background Documents:

Application bundle
Evidence Questionnaires

Bibliography

J. Riddall, 'Getting Greens Registered: A guide to law and procedure for town and village greens' (The Open Spaces Society, 2007)

Table of Cases

R (Cheltenham Builders Ltd) v South Gloucestershire District Council [2003] EWHC 2803

New Windsor Corporation v Mellor [1975] 1 Ch 380

Oxfordshire County Council v Oxford City Council and another [2006] UKHL 25

Trustees of the British Museum v Finnis (1833) 5 C & P 460

R v Oxfordshire County Council and Another, Ex parte Sunningwell Parish Council [2000] 1 A.C. 335

R (on the application of Lewis) (Appellant) v Redcar and Cleveland Borough Council and Another [2010] UKSC 11

R (Beresford) v City of Sunderland [2003] UKHL 60

R (Godmanchester Town Council) v Secretary of State for the Environment, Food and Rural Affairs [2007] UKHL 28

Table of Statutes

Commons Act 1876

Inclosure Act 1857

Town and Country Planning Act 1990

Commons Act 2006

Other material

European Convention on Human Rights

Appendix 2 – Site visit photographs



Looking east towards the application boundary.



Eastern boundary looking towards the shore.



The double yellow lines on each side of the road and the cars parking on the application land.



Bin on application land looking east from western boundary.



Sign on beach.



Sign on beach.



Sign on beach and view looking west.



Close up of sign in previous photograph.

Appendix 2

Village Green Applications

Guide to the law

East Sussex County Council are under a statutory duty to maintain a register of village greens as the common registration authority. This duty includes determining applications in whether land should be included on the register.

The registration of land as a village green is governed by the Commons Act 2006, section 15. It states:

15 Registration of greens

- (1) Any person may apply to the commons registration authority to register land to which this part applies as a town or village green in a case where subsection (2), (3) or (4) applies.
- (2) This subsection applies where-
 - (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and
 - (b) they continue to do so at the time of the application.
- (3) This subsection applies where-
 - (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and
 - (b) they ceased to do so before the time of the application but after the commencement of this section; and
 - (c) the application is made within the period of two years beginning with the cessation referred to in paragraph (b).
- (4) This subsection applies (subject to subsection (5)) where-
 - (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and
 - (b) they ceased to do so before the commencement of this section; and
 - (c) the application is made within the period of five years beginning with the cessation referred to in paragraph (b).
- (5) Subsection (4) does not apply in relation to any land where-
 - (a) planning permission was granted before 23 June 2006 in respect of the land;
 - (b) construction works were commenced before that date in accordance with that planning permission on the land or any other land in respect of which the permission was granted; and
 - (c) the land-
 - (i) has by reason of any works carried out in accordance with that planning permission become permanently unusable by members of the public for the purposes of lawful sports and pastimes; or
 - (ii) will by reason of any works proposed to be carried out in accordance with that planning permission become permanently unusable by members of the public for those purposes.

- (6) In determining the period of 20 years referred to in subsections (2)(a), (3)(a), (4)(a), there is to be disregarded any period during which access to the land was prohibited to members of the public by reason of any enactment.
- (7) For the purposes of subsection (2)(b) in a case where the condition in subsection (2)(a) is satisfied-
- (a) where persons indulge as of right in lawful sports and pastimes immediately before access to the land is prohibited as specified in subsection (6), those persons are to be regarded as continuing so to indulge; and
 - (b) where permission is granted in respect of use of the land for the purposes of lawful sports and pastimes, the permission is to be disregarded in determining whether persons continue to indulge in lawful sports and pastimes on the land “as of right”.
- (8) The owner of any land may apply to the commons registration authority to register the land as a village green.
- (9) An application under subsection (8) may only be made with the consent of any relevant leaseholder of, and the proprietor of any relevant charge over, the land.
- (10) In subsection (9)-
- “relevant charge” means-
 - (a) in relation to land which is registered in the register of title, a registered charge within the meaning of the Land Registration Act 2002 (c.9);
 - (b) in relation to land not so registered-
 - (i) a charge registered under the Land Charges Act 1972 (c.61); or
 - (ii) a legal mortgage, within the meaning of the Law of Property Act 1925 (c.20), which is not registered under the Land Charges Act 1972;
- “relevant leaseholder” means a leaseholder under a lease for a term of more than seven years from the date on which the lease was granted.

The application process

The process begins with the applicant completing and submitting a CR44 Form and evidence to the County Council. There is a review of the application and then a notification exercise and objection period. The evidence is weighed up and a decision taken.

The determination of the application for a new village green is based on a consideration at the outset of the application form. An application can be rejected if the application is not properly made, or is technically deficient. An opportunity to address such a defect should be afforded to the applicant if the defect is easily remedied.

When an application is submitted it is usually accompanied by user evidence that the applicant has gathered. Sometimes this is in the form of historical research, setting out the history of the land, and sometimes this is in the form of questionnaires completed by users of the land.

If an application is initially accepted then the appropriate District and Parish Councils are notified and the application is advertised by way of notices on the site and public notices in the relevant local newspaper. Anyone identified as a landowner in the application is also notified. This gives an opportunity for objections to the application to be raised and also further support to be submitted during a six week notification period.

All the information is then considered. Often the evidence is overwhelmingly one-sided and the recommendation is an obvious one. If the evidence is finely balanced then a public hearing before an expert or a planning inspector is organised. A report following the hearing is written by the expert/inspector with a recommendation. This forms the basis of the report to the Committee with a recommendation, which is usually accepted by the Committee.

There is no set method by which an application has to be determined. Some authorities use delegated officer powers; others use a Committee or Lead Member resolution. In reaching a decision on the evidence, again there is no set process. Some authorities rely on officer judgement, others will hold a hearing before Members while others will hold a non-statutory public inquiry into the application in order for a planning inspector or an expert to hear the evidence before coming to a conclusion, which the party determining the application can accept or reject.

Rights of Appeal

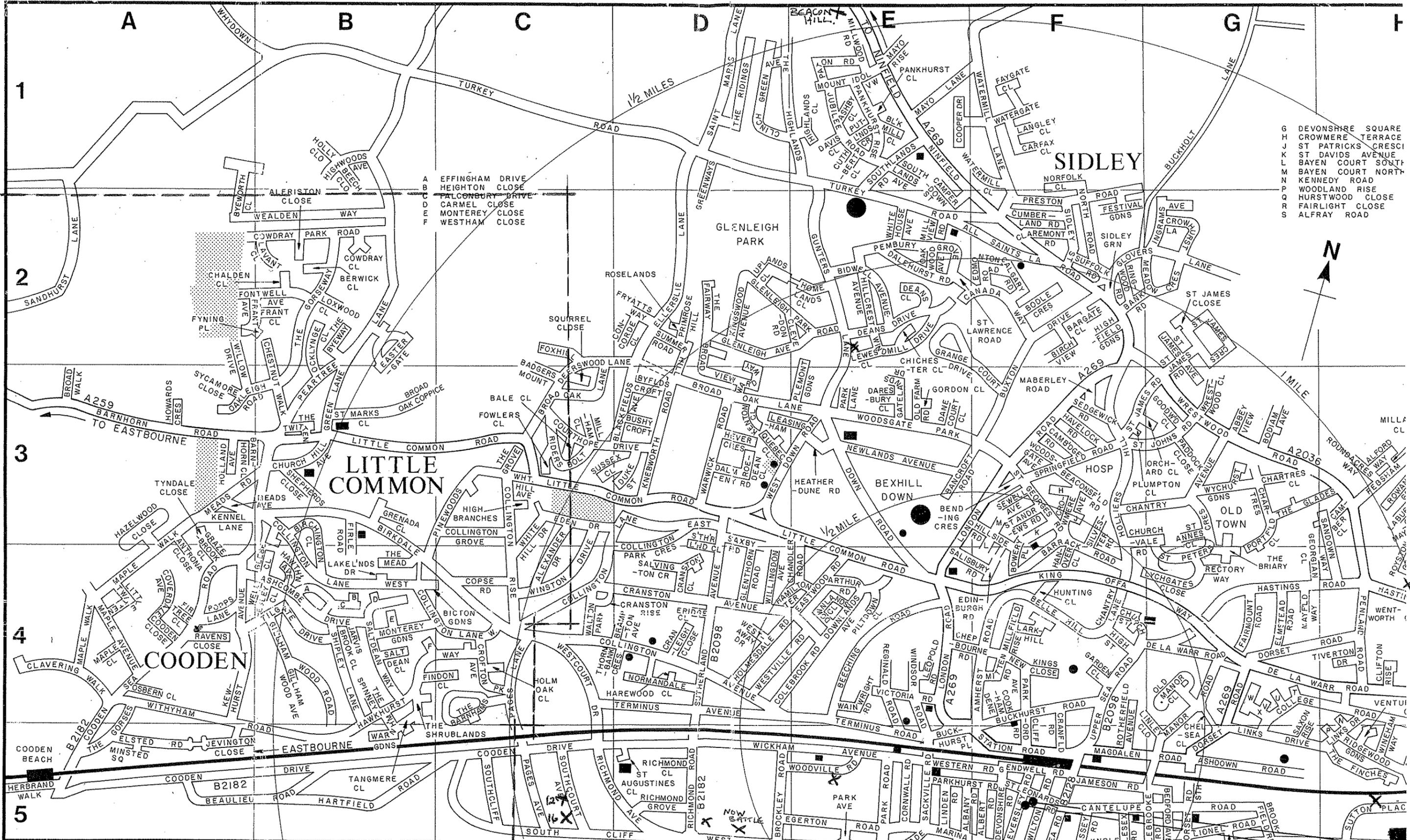
When the County Council decides to accept an application the land is entered on the Council's register of town or village greens. It is then open to the landowner to make an application to the Secretary of State under the Commons Act 2006, section 16 to have the land de-registered, provided the land is less than 200 square metres. If the land is over 200 square metres the application to the Secretary of State must include a proposal that alternative land is registered in its place. The County Council is not involved in this process.

If the County Council declines to accept the application the only right of appeal is a judicial review.

Outline

An outline of the application process as exercised by the County Council at present is set out below.

| Step No. | Event | Action to be taken |
|----------|--|---|
| 1 | Application received | Stamp/Date it |
| 2 | Preliminary matters | <ul style="list-style-type: none"> ○ Give it an application number ○ Letter to applicant stating application number ○ Open file ○ Land Registry search |
| 3 | Preliminary examination of Application | <ul style="list-style-type: none"> ○ Ensure Application is “duly made” ○ If “no” then go to step 4 ○ If “yes” then go to step 6 |
| 4 | Return Application to applicant | Letter explaining why Application is not duly made, giving time-period for remedying defect |
| 5 | Rejection of Application | Letter to applicant rejecting Application |
| 6 | Secondary examination of Application | <ul style="list-style-type: none"> ○ Prepare Notification to: ○ Site Notice ○ Interested councils ○ Local newspaper ○ Owners ○ Potential objectors ○ Local ESCC Member |
| 7 | Statutory six week objection period | |
| 8 | Receipt of objections | <ul style="list-style-type: none"> ○ Acknowledge receipt ○ Forward objection to applicant for comment/rebuttal evidence |
| 9 | Receipt of rebuttal comments | Acknowledge receipt |
| 10 | Consideration of Application | <ul style="list-style-type: none"> ○ Consider evidence provided by applicant and objections ○ Determine best way to proceed ○ If evidence is finely balanced go to step 11 ○ If evidence is obvious go to step 12 |
| 11 | Set up a public hearing | <ul style="list-style-type: none"> ○ Contact either PINS or a barrister to hear the evidence in person ○ Hold hearing ○ Consider report |
| 12 | Report to Committee | <ul style="list-style-type: none"> ○ Write report in draft ○ Submit for approval ○ Write final report with recommendation ○ Send report to applicant |
| 13 | Determination by Committee | May accept or reject recommendation |
| 14 | Notify applicant of outcome | |
| 15 | If successful amend the register of town or village greens | |



- G DEVONSHIRE SQUARE
- H CROWMERE TERRACE
- J ST PATRICKS CRESCI
- K ST DAVIDS AVENUE
- L BAYEN COURT SOUTH
- M BAYEN COURT NORTH
- N KENNEDY ROAD
- P WOODLAND RISE
- Q HURSTWOOD CLOSE
- R FAIRLIGHT CLOSE
- S ALFRAY ROAD

BEXHILL-ON-SEA

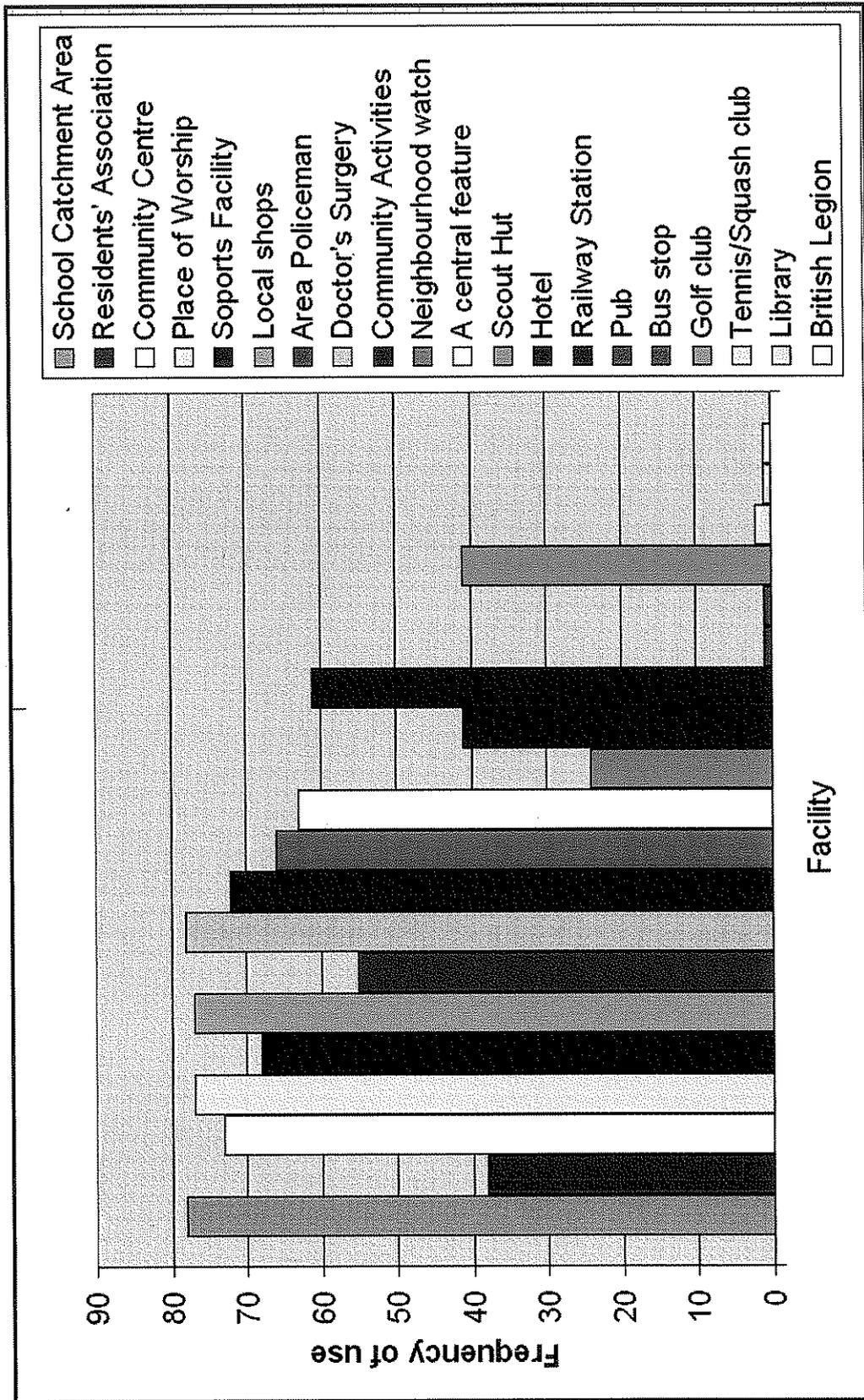
Based upon the Ordnance Survey Map with the sanction of the Controller of Her Majesty's Stationery Office Crown Copyright Reserved. Whilst every effort is made regarding the accuracy of this Map no liability is accepted for errors and omissions.

SCHEMATIC STREET MAP: NOT TO SCALE.

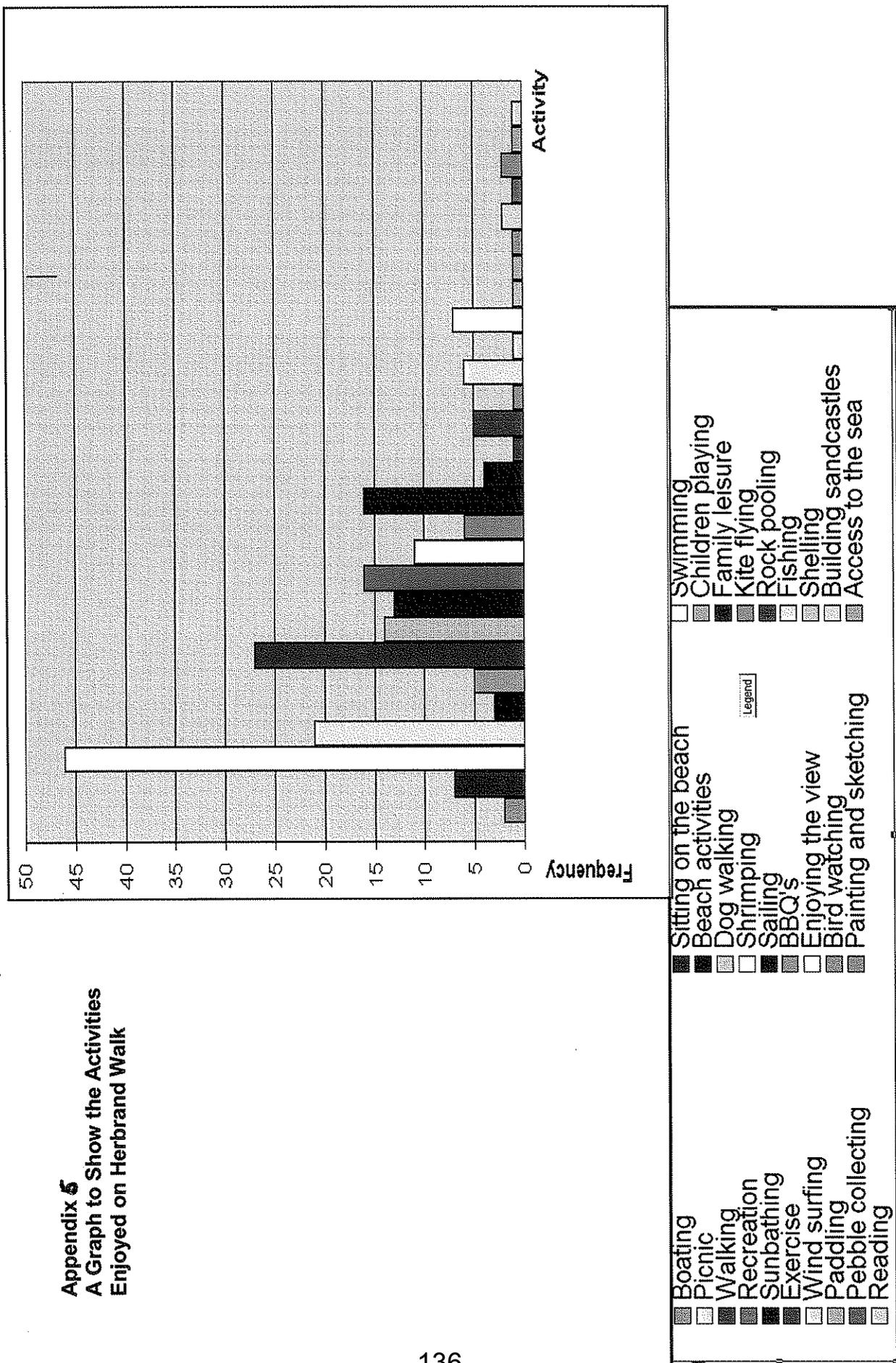
APPROXIMATE BOUNDARIES OF MAP 'B'.

ANNEXE TO MAP 'B'. This is part of Exhibit 2 referred to in the statement of Debra Skand and Stephen Richards Atkinson-Tones.

Appendix 5 - A Graph to Show the Facilities within the Locality



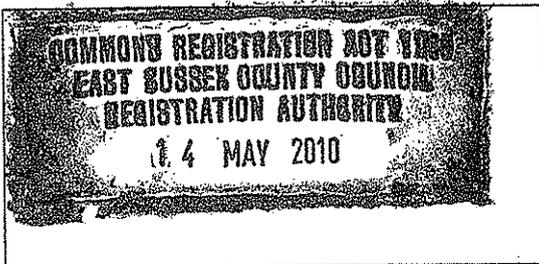
Appendix 5
A Graph to Show the Activities
Enjoyed on Herbrand Walk



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:

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.

Note 1
 Insert name of registration authority.

1. Registration Authority

To the

East Sussex County Council, Legal Services Department,
 County Hall,
 St. Anne's Crescent, Lewes,
 East Sussex BN7 1UE

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:

On behalf of : Herbrand Walk Beach Preservation Society.

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:

Telephone number:
(incl. national dialling code)

Fax number:
(incl. national dialling code)

E-mail address:

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:

Herbrand Walk Beach.

Location:

South of and adjacent to Herbrand Walk,
Cooden,
Bexhill-on-Sea, East Sussex TN39 4TX

Shown in colour on the map which is marked and attached to the statutory declaration: Exhibit No.1 Map A.

Common land register unit number (if relevant) *

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:

Cooden, Little Common and West Bexhill generally, East Sussex,
as indicated on Exhibit No.2, Map B attached.

Tick here if map attached:

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.

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).

Cooden is a residential area located on the western boundary of Bexhill-on-Sea, East Sussex, some 4 kilometres from the main town centre. Herbrand Walk is a narrow road which runs west from Cooden towards Normans Bay and Pevensey Bay beyond.

At Cooden the road runs along the north edge of the beach, between the west boundary of beach hut plot No.38 and Groyne No.16, close to an existing fishing hut of block construction. Here the edge of the shingle foreshore directly abuts the edge of the road, with no intervening fence or upstand kerb. Double yellow lines are painted on both edges of the road surface. This section of the beach is known locally as Herbrand Walk Beach.

Although the foreshore has always been in private ownership, the entire beach has been freely used from time immemorial by the people of Cooden, Little Common and West Bexhill for recreation, with no record of formal or informal permission either being requested of or granted by the current owners. There are residents who have lived in the area for over 80 years who confirm that they played on the beach as children (refer witness statements attached). In view of the double yellow lines visitors' vehicles have always been parked freely on the edge of the beach, close to the edge of the road.

Significant numbers of local residents have enjoyed regular as of right access to the entire beach for more than 20 years under Section 15 (2) of the Commons Act, 2006 as witnessed by the 79 No. attached evidence questionnaires. These confirm continuous public usage for all the usual lawful beach recreation and leisure activities by a total of 100 No. people over a period extending from 1922 to 2010, excepting only the period 1939 to 1947 when the beach was fortified during World War II.

Given such long history of as of right use, and to protect and maintain such usage into the future, it is now considered appropriate to submit this formal application to register Herbrand Walk Beach as a Town Green.

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.

11. Any other information relating to the application

Steven Hall, owner of part of the Beach, submitted two planning applications in 2009 and 2010 for installing additional beach huts and fencing to the road frontage. Both applications were refused by the Planning Committee of Rother District Council on the grounds that "the beach lies outside of the Development Boundary of the Bexhill Local Plan." Local residents presented overwhelming written objections to both applications.

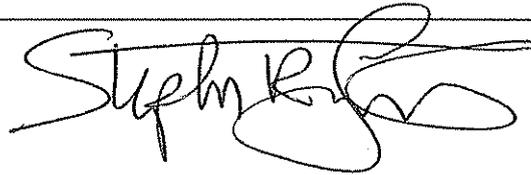
Note 12

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:

13th May 2010

Signatures:



HON SEC.
HERBRAND WALK BEACH PRESERVATION SOCIETY

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.

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).

STEPHEN RICHARD ATKINSON JONES.

I.....¹ 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.a The map now produced as part of this declaration is the map referred to in part 5 of the application. Map A: Exhibit No. 1.

3.b The second map also produced as part of this declaration is the map referred to in part 6 of the application: Map B: Exhibit No.2.

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/

⁴ 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
Stephen Richard Atkinson Tones

at 56, Cooden Sea Road
Bexhill on Sea East Sussex

this 13th day of May 2010



Signature of Declarant

Before me *

Signature:

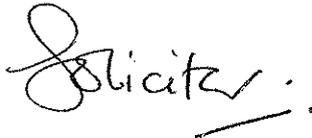

(ANN HOLMAN)

GABY HARDWICKE
56 Cooden Sea Road
Little Common
Bexhill on Sea
East Sussex TN39 4SL

Address:

56 Cooden Sea Road
Bexhill on Sea East Sussex

Qualification:


Solicitor

* The statutory declaration must be made before a justice of the peace, practising solicitor, 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

Steve Hall
Ceylon House
2a Collington Avenue
Bexhill on Sea
East Sussex
TN39 3QA

East Sussex County Council
Governance & Community Services Department
PO Box 2714
County Hall
St Anne's Crescent
Lewes
East Sussex
BN7 1UE

Your reference: EE/CR/013

15th July 2010

Dear Sirs

**Commons Act 2006 – Application to Register Land as a New Town or Village Green
Herbrand Walk Beach, Herbrand Walk, Cooden, East Sussex.**

I refer to Mr Wilkinson's letter dated 26 May advising that the County Council as registration authority has received an application to register land, the majority of which is under my control or owned by me, as a Town Green pursuant to s15 (2) of the Commons Act 2006 and associated Regulations.

Land within my ownership

I confirm that the land contained within title number ESX203966, which is to the north of the site claimed as a Town Green is within my ownership and I am the Registered Proprietor. The adjoining strip of land is unregistered title, and its ownership is unknown. However it is subject to a caution against first registration in favour of John Leonard Walters and Janet Marion Walters, formerly of 15a Herbrand Walk, Cooden. This is registered at the Land

Registry under title number ESX204930. Mr and Mrs Walters have transferred their interest in the land to me on 16 April 2009, and the caution will shortly be registered in my name. I therefore have control of the greater part of the northern strip of land which fronts the highway. In due course I will seek to become registered as the proprietor of the unregistered land.

The land contained within title number ESX203966 was previously owned by McDonald Fish Company Limited. I am in receipt of a Statutory Declaration made by John Leonard Walters dated 8 May 2009 and I can confirm that McDonald Fish Selling Limited previously had the benefit of the caution against first registration against the land registered under title number ESX204930. That caution dated back to 1990 and was based upon a conveyance of the 9 February 1988 which was made between the Right Honourable William Herbrand Sackville, 10th Earl De La Warr and McDonald Fish Selling Limited and it transferred to McDonald Fish Selling Limited all the rights of the De La Warr Estate in relation to that land. In the same Statutory Declaration dated 8 April 2009 John Leonard Walters also confirmed that throughout the period that he had the benefit of the caution against first registration there had been no complaint or claim in relation to the land any other parties purporting to be entitled as owner and that he believed that the property was the absolute property of himself and his wife.

I also have full authority from Mr Ronald Sydney Peddar (ESX 223763) to act on his behalf in this matter.

Planning History

B/60/349 – Erection of Beach Huts Refused

RR/209/686/P

Erection of 20 beach huts, erect bollards along the beach 4 metres from the road edge and car parking. New entrance onto the beach, (access for boats, PWC's etc). Refused 21 May 2009.

RR/2010/55/P

Temporary erection of 28 wooden beach huts, 2 wooden toilet huts and 1 wooden life guard hut including car parking, information signs, waste bins, dog waste bins and sleeper walling/shingle protection.

My planning applications have been in respect of a strip of beach adjacent to Herbrand Walk some 40 metres deep by 360 metres running westwards from the existing beach huts towards the fishing huts. The planning application site roughly coincides with the land subject to the application for a Town Green.

The Planning Committee of Rother District Council where recommended to approve the latest planning application RR/2010/55/P on 18 May 2010. They refused the application and I have appealed that decision mainly on the grounds that the proposal is not a departure from the Council's Development Plan. It does not prejudice the character and qualities of the local environment as the local environment immediately to the east of the site consists of beach huts, and to the immediate west of the site there are a collection of commercial fishing buildings. The beach was previously owned by a commercial fishing company and the site is not within the designated SSS1 or Ramsar site and the officer report confirmed that the proposal both conserved and enhanced the biodiversity of the site, including the protection of the vegetated shingle habitat present on part of the site.

The officer's appraisal of the application at paragraph 6.1 confirms that my planning application was not for the establishment of a water sports centre as many of those making representations seemed to believe. The beach is already used by all types of water sport

activities, and indeed the Council has for several years marked with buoys a 'boat lane' for launching watercraft.

It should also be pointed out that all the statutory consultees, including the Highways Authority had no objection to my application and the Highways Authority in fact supported the plans to assist vehicles parking to enjoy the beach, as currently there is no parking provision and they become stranded in the shingle by the side of Herbrand Walk which is a narrow road with a 60 mph speed limit.

Requirements of Section 15(2) of the Commons Act 2006

Section 15(2) applies where a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years, and they continue to do so at the time of the application to register as a Town Green.

'As of Right'

As of right means "without force, secrecy or permission". On the application of Beresford the city of Sunderland [2003] UK HL60 the House of Lords distinguish between acquiescence as being passive toleration, and 'permission.' Permission requires some positive act by the landowner. The land has been in commercial use since 9 February 1988, so it is not correct to say that this is an open stretch of beach enjoyed only by local residents for recreation. The previous owners of the land have confirmed that the use of this private beach has been with permission, and that they did not merely acquiesce to the use by the local residents. I have clearly marked out by signs that the beach is in private ownership, and it is clear from my applications to the Council that I have had specific plans for the beach for **'lawful sports and pastimes on the land for a period of at least 20 years'**

The officer's report confirms that the Council has for several years marked with buoys a boat lane for launching watercraft. Many of the supporters include jet ski and other activities within the lawful pursuits and pastimes, however these activities have not taken place for 20 years, as confirmed in the officer's report to the planning committee. The Council had the permission of the land owners to mark the buoys and to encourage the public to engage in water sports.

Rights of the Land Owner

As the main land owner affected by this application, I have been carrying out activities on the beach which are to erect signs that it is a private beach, to move the shingle back off the road and put down hardcore to assist vehicle parking. The existing activities are kayaking, water skiing, PWC's, wind surfing, kite surfing, canoeing, kite flying, wake boarding and any other beach activity.

I am advised that my right to carry out existing activities cannot be interfered with, even if the land is registered as a Town Green and the public have the right of access to carry on lawful pursuits. While I may not have the right to exclude the public, to exclude me from carrying out my lawful use of the site would almost certainly be in breach of Article 1 of the First Protocol of the Human Rights Act 1998.

If I am granted planning permission on appeal, it is likely to be before the Town Green application is determined. If that is the case I will erect the temporary beach huts, public conveniences and lifeguard hut and further signs etc permitted by the planning permission, and these cannot be interfered with.

If the land were to be declared a Town Green first, I am advised that I may apply to East Sussex County Council for permission to undertake any further works allowed by any planning permission granted. The County Council are required to be reasonable in any decision that they make, provided that my activities do not interfere with the lawful use and

pastimes that have gone on before. I have no intention of excluding the public from this area of beach as it does not coincide with my plans for the land. The professional opinion of the Planning Officer recognised that my proposals did not affect the site as it is currently enjoyed and some of the facilities that I am providing would improve amenities for those visiting the site.

I am also advised that there is scope for voluntary registration of the land, and that this may form the basis of negotiations with the residents as to what should be allowed on the beach. However I do not own the whole of the site, and if I am excluded it cannot be reasonable to expect me to maintain the beach for the enjoyment of the general public.

The objections to my planning application have largely been on the basis of misinformation from certain residents who have the ear of some of the members of the Planning Committee. I requested that the behaviour of Councillor Mrs Gadd, who sat on the planning committee when my recent planning application was decided to be investigated on the basis of pre-determination. Rother District Council has advised that pre-determination is not a Code issue, but I am advised that it is, and I will raise this at the planning appeal. I note that Councillor Gadd's husband is one of the county councillors who have been elected to the committee that deals with Town Greens on behalf of the county council together with Mrs Joy Hughes a RDC Planning Committee member. As Mr Gadd's wife has been instrumental in getting my planning application refused (Proposed Refusal) together with Mrs Hughes, (Seconded Refusal), I have been advised that Councillors Gadd and Hughes also have a prejudicial interest and should not sit on any committee considering this application.

Summary

I feel this Village Green application was made because certain people had viewed the Planning Officers' recommendation of Approval to my planning application and selfishly thought that this was the only way to stop me doing what I want on my land, but they have not given any thought or consideration to the consequences of their actions against me or what will happen at the beach.

Rother District Council was offered the chance to buy the beach by Mr John Walters (the previous owner) and they refused. The reasons being are that they couldn't afford or be bothered to keep going to court to remove the travellers and as they do not employ any lifeguards, this stretch of beach would require one to be present .

I feel I have been fair to everyone using the beach over the last 16 months it has been in my ownership and the majority of people visiting the beach will agree with me and say how much things have improved.

My objective is to have a safe, clean and happy environment for the public to come and visit and have a good time as they have always done in the past.

If Village Green status is approved, I will have no choice but to put the shingle back to the roads edge, (as per RDC letter) and the parking will become a shambles again as vehicles will have to park on deep shingle and across double yellow lines. (See Police letter)

The parking signs which I have erected in agreement with Bexhill Police, with the aim of discouraging camper vans and travellers staying overnight for too long, will have to be removed (Please call Inspector James Scott at Bexhill Police station to clarify details) as parking etc will become a free for all again.

The boat lane will have to be removed unless the Council are able to put regulations into place (i.e.: lifeguard hut, buoyed areas, insurance checks, parking, etc) as I will not accept liability for anyone launching across my beach or any accidents that may occur to people or vehicles.

If regulations are not put in place, an alternative site for launching motorised craft will have to be found.

I am in weekly contact with Steve Benn the RDC coastal Officer and PC Jason Kemp of Bexhill Police about any safety concerns at the beach. Any problems are always quickly resolved.

There are two alternatives, either the beach will become:

1) If my planning appeal is successful: A safe and controlled environment for all beach and sea users, a clean beach with toilets, changing facilities, a lifeguard and legal parking.

Please view my website, kayakakove.co.uk to see my intentions for the beach.

Or

2) If Village Green status is allowed: More travellers setting up camp, more litter, uncontrolled water activities, no toilets and illegal parking. (See police letter and call them about their monitoring of travellers in the local area).

The area of beach in question will never be able to become overdeveloped, as the De La Warr Estates have restrictive covenants in place on the land/beach, and The Environment Agency have given their consent with certain conditions attached.

If possible, could a meeting be arranged between all parties involved before any decision is made.

Yours faithfully



ITEM 1.

STATEMENT IN COMMENT ON THE CONTENTS OF THE LETTER DATED
15 JULY 2010 FROM MR STEVEN HALL TO EAST SUSSEX COUNTY COUNCIL

1.0 Preamble

1.1 The letter comprises eight pages of narrative, which are not enumerated, together with a considerable number of copies of attached documents which are also not enumerated nor cross referenced to the letter. For ease of reference in this response, the pages both of the letter and the attachments have been enumerated from 1 to 24 (inclusive). One copy of such pages is appended to this response : Appendix Item 2.1.

1.2 We have not responded to Mr Hall's rehearsal of the details and alleged benefits of his planning application, nor to the fifty nine pages of copies of replies to Mr Hall's on-line petition, together with sundry other documents which we consider to be more properly within the province of such application and thus irrelevant to our application for Green registration.

2.0 Response to relevant points in the letter.

2.1 Pages 1 and 2 : Alleged authority to act on behalf of foreshore landowner, Mr RS Peddar, and the copy email alleged to be from Mr Peddar dated 20 April 2010, page 12.

2.1.1. This document is not accepted as adequate proof of authority for Mr Hall to act on behalf of Mr Peddar. Both the date of 20 April 2010 and the content clearly indicate that it refers to a matter prior to the Green application, and the redacted passages confirm a desire to conceal Mr Peddar's business and true location. The Land Registry record of title reference ESX 223763 gives his address as 481 Bexhill Road, St. Leonards-on-Sea, but it is local hearsay that he resides abroad.

2.2 Page 1: "Land within my ownership"

2.2.1 The location of the land title reference ESX203966 is described on page 20 as south of Herbrand Walk, not north as stated by Mr Hall. It forms part of the foreshore, adjacent to and immediately west of land under title reference ESX204930.

2.2.2 As confirmed by Mr Hall, land under title reference.ESX204930 still remains unregistered, despite initially being transferred from William Herbrand Sackville to McDonald Fish Selling Ltd on 9 February 1988 and subsequently to the Walters on 13 January 1995.

3.0 Page 4 : "As of Right"

3.1 Mr Hall's citation of Beresford v City of Sunderland to support his objection is misguided. This case involved an appeal by Mrs Beresford to register a ten acre Council owned sports arena as a Green, after the threat of development.

3.2 Sunderland Council pleaded that the free access allowed to the public over many years was "acquiescence" which amounted to a licence, implying "permission" and thus no "as of right" basis for registration existed.

3.3 At paragraphs 78 and 79 of his judgment, Lord Walker of Gestingthorpe succinctly enunciated the difference between "acquiescence" and "permission".

3.3.1 At paragraph 78 he quoted references by Mr Lawrence QC, for Beresford, to an earlier judgment by Lord Hope which emphasised the need for the landowner to *do something*.

3.3.2 At 79 he stated (quote) " Acquiescence, by contrast, denotes passive inactivity. The law sometimes treats acquiescence as equivalent in its effect to actual consent. In particular, acquiescence may lead to a person losing his right to complain of something just as if he had agreed to it beforehand. In this area of the law it would be quite wrong, in my opinion, to treat a landowner's silent passive acquiescence in persons using his land as having the same effect as permission communicated (whether in writing , by spoken words, or by overt and unequivocal conduct) to those persons. To do so would be to reward inactivity; despite his failing to act, and indeed simply by his failure to act, the landowner would change the quality of the use being made of his land from use as of right which is (in the sense of the Latin maxim) precarious".

3.4 Ultimately the five Lordships were unanimous in their judgments which found in favour of the Appellant, Mrs Beresford, the Green applicant.

4.0 "The land has been in commercial use since 9 February 1988"

4.1 This statement is wholly incorrect. It is fact that land comprised in titles reference ESX203966 and ESX204930 was purchased from the De La Warr estate in 1988 by McDonald Fish Selling Ltd, but this land was never used for commercial fishing activities nor for any other commercial purpose. It was sold in 1995 to John and Janet Walters, resident at "Calahonda" in Herbrand Walk.

4.2 McDonald Fish Selling Ltd is recorded in the Companies Register as a non-trading company, incorporated in 1985 and dissolved on the death of the proprietor, Neil McDonald, in 2009.

4.3 Responding to widespread public indignation aroused by Mr Hall's first planning application reference RR/2009/686/P, Neil McDonald sent to the "Bexhill-on-Sea Observer" a letter published on 8 May 2009 stating that his reason for selling to the Walters was that "the site being surplus then to that being used by my business". He also stated that he had been informed by the Walters' solicitor that John Walters "only wished to preserve his airspace and being in position to prevent change to the then unspoilt site". A copy of this letter is appended hereto: Appendix Item 2.2 There is no evidence of any commercial use of the foreshore during the fourteen year period of the Walters' ownership, between 1995 and 2009.

4.4 Furthermore, there is no physical evidence whatsoever that any part of the foreshore forming part of the Green application has been used for commercial fishing. All commercial fishing from the beach at Herbrand Walk has operated only from the six fishing huts at the extreme west end of the beach, where clear evidence of such activity remains. Due to the steeply shelving shingle beach, powerful mechanical winches are required to haul boats clear of the high tide line.

The heavy reinforced concrete foundations to support such winches may well be based on piles to resist the lateral loading. There are eight number of these mostly derelict winches remaining at the fishing huts, but there is not one on the foreshore, the subject of the application.

Appended hereto are prints of five photographs, three showing the main beach free from obstructions and two showing the south side of the fishing huts and the winches: Appendix Item 2.3.

4.5 Also appended are a sample fourteen letters from twenty five people confirming that the beach has never been used for commercial purposes: Appendix Item 2.4. Mr Hall states that "previous owners of the land have confirmed that the use of this private beach has been with permission", yet he has presented no evidence of such alleged "permission". The negative responses to questions 28, 29, 30 and 31 in the questionnaires completed by 100 people submitted with the application confirm that there is no record of any dialogue between beach users and previous landowners, and the letters appended also confirm that no notices of any description were posted on the beach until Mr Hall erected his notices concerning clamping in 2009.

4.6 With regard to the boat lane, this is marked by buoys from the beach below the mean high tide line, leased by Rother Council from the Crown. This facility was designated by Rother Council in 2001, without reference to or consultation with residents and existing beach hut owners.

5.0 Page 5: "Rights of the Land Owner".

5.1 It is confirmed that this Society has no intention of interfering with Mr Hall's lawful activities on his land. However, the recent attempted construction of hardcore parking bays along the edge of the road was not lawful since no prior planning application had been submitted, and Mr Hall has been instructed by letter from the Rother Council Enforcement Officer dated 19 May 2010, page 9 of his objection, to reinstate the beach to its former condition. This instruction has yet to be implemented, and in the meantime the edge of the road remains in a dangerous condition, with the concrete edge of the carriageway left projecting over 150 mm above beach level. The attention of East Sussex Highways Department and the Sussex Police has been drawn to this danger, but no action has resulted to date.

6.0 Pages 7 and 8: "Summary".

6.1 Mr Hall's predictions of chaos if the Green application is registered are exaggerated and not accepted.

6.2 It is significant that thousands of people have freely accessed and used the beach quite happily for recreation purposes in the eighty seven years prior to Mr Hall's purchase of part of the foreshore in 2009, and none of the problems he predicts have ever interfered with or prevented such use during that period.

6.3 It should be noted that the boat lane was relocated earlier this year to a point close to the fishing huts, and that access to it no longer crosses Mr Hall's land.

6.4 With regard to Mr Hall's reference to "travellers" occupying the beach, it is noted that there are already three vehicles permanently parked on the foreshore, all of which are owned by one vagrant with two aggressive dogs, who has been encamped on land in the ownership of Mr Peddar for well over a year. In that time there has been no perceptible effort made to evict him, neither by Rother Council, Mr Peddar himself, nor even Mr Hall, who is claiming to have authority to act on Mr Peddar's behalf. A photograph of these vehicles is appended hereto: Appendix Item 2.5.

6.5 With reference to restrictive covenants on the land imposed by De La Warr Estates, from examination of the Deed of Modification and associated letter to Batcheller Thacker dated 14 October 2008, on pages 16 to 19 (inclusive), it is clear that Mr Hall was then endeavouring to negotiate a modification of such covenants to permit his first planning application in March 2009 to be implemented. Since such application was refused and this document is not executed it is probably only a draft copy, meaning that the proposed modifications were not concluded, and the covenants remain in force as stated by Mr Hall.

7.0 Page 11: The copy email from Ms Gorman of Rother Council to your Council dated 13 July 2010, confirming her department's past support for Mr Hall's planning application.

7.1 It is clear that such support was, of course, effectively nullified by the refusal decision of the Planning Committee on 18 March 2010.

7.2 You are referred to Rother Council's case against the appeal recently submitted to the Planning Inspector under reference APP/U1430/A/10/2128732 /NWF, which details their reasons for refusal. Paragraphs 4.3 and 4.4 on pages 3 and 4 precisely encapsulate the reasons of this Society in making application for registration of this land as a Town Green. Many of our members submitted written objections to this application, which are published on the Council's website under planning reference RR/2010/55/P. This Society supports these objections and fully endorses the reasons given by Rother Council planners for refusal.

A copy of pages 1 to 5 (inclusive) of the Council's case is appended hereto, omitting the Appendices for reasons of economy of paper: Appendix Item 2.6.

8.0 Conclusion and Summary.

8.1 After careful study of every paragraph in the letter of objection from Mr Hall, it is considered that none of the points raised therein has challenged in any respect the basic evidence submitted by the one hundred respondents who testified in support of our application for registration that they have used the beach on an "as of right" basis for a period in excess of 20 years.

8.2 As stated in paragraph 1.2 foregoing, many of the comments raised in Mr Hall's letter and many of the unreferenced documents attached thereto are considered to be a rehearsal of certain aspects of his planning application and associated appeal, which have no relevance to our Green application and should be disregarded.

8.3 Notwithstanding this approach, in view of Mr Hall's assertions concerning the future intentions of this Society, for the record it is considered necessary to clarify such intentions. In making this application the primary intention is to support and ensure full public access and usage of the entire foreshore, which has pertained since 1922. In this context we confirm that we do object most strongly to the development of the beach with 31 huts and 112 metres of sleeper wall fencing 800 mm high as proposed in his planning application. Such obstructions alongside the road will render a total of 205 metres of foreshore inaccessible from the road edge.

8.4 Mr Hall's arguments against the "as of right" case advanced in the application are not supported by the judgment in the case he has quoted nor by the evidence contained within the questionnaires.

8.5 His claim that the beach has been in commercial use since 1988 can be seen to be unfounded in the letter from the proprietor of the company which owned it, McDonald Fish Selling Ltd., the evidence confirmed in the letters from witnesses and the total absence of any physical evidence of such activity on the beach itself.

8.6 Accordingly, in the absence of valid and substantive challenge from Mr Hall to the evidence submitted by this Society, and no objections submitted from the other two landowners, Mr Peddar and Mrs Thompson, we now see no reason why our application for registration of Herbrand Walk Beach as a Town Green should not proceed to an early and positive conclusion. We sincerely trust that your Council's Registration Panel will concur with this view to preserve this unique local amenity.