

Committee: Commons & Village Green Registration Panel

Date: 17 October 2012

By: Assistant Director, Legal and Democratic Services

Title: Application for land at Wannock Road, Polegate to be registered as a town or village green

Applicant: Mr Paul Woolmer

Application No: 1356

Contact Officer: Christopher Wilkinson, Tel. 01273 335744

Local Member: Councillor Daniel Shing and Councillor Stephen Shing

Recommendation

To reject the application, pursuant to section 15 of the Commons Act 2006, of Mr P. Woolmer to register land at Wannock Road, Polegate as a town or village green.

The Site

1. The application land (as shown on the plan below) is roughly rectangular in shape and is located to the south east of Wannock Road, Polegate ("the Land"). Along the north western boundary (and within the boundary of the Land), where the Land borders Wannock Road, there is a car park, a hall and a playground for children. There is a metal fence marking the boundary of the Land and the public footway. A hedge demarcates the remaining three boundaries; beyond this hedge, are the gardens of adjoining landowners.



2. The Land is owned by Polegate Town Council, Council Office, 49 High Street, Polegate, East Sussex, BN26 6AL. The Land was first registered on 13 October 2009 under title number ESX 325 663. The Parish Council of the Parish of Hailsham acquired the Land by way of Conveyance from Clement Knight and Alfred Wiggins in 1926. Polegate Town Council is the successor in title to the Parish Council of Hailsham.
3. The evidence shows that three of the perimeters of the Land are naturally hedged with thick shrubbery. The fourth, that abuts the road, has a metal fence with a gate to access the play park and a wide entrance for vehicle access to the car park. This side is used as the entrance to the Land.
4. Members are referred to the plan and application. Mr Paul Woolmer (“the Applicant”) was prompted to make such application after he became aware that Polegate Town Council was considering granting permission to a commercial undertaking to build on the Land, namely a doctors surgery.
5. The Applicant subsequently formed a local interest group, Keep Our Recreation Ground Intact (“KORGI”) in March 2009.

The Law

6. The Application was made pursuant to the Commons Act 2006. That Act requires each registration authority to maintain a register of town and village greens within its area. Section 15 provides for the registration of land as a town or village green where the relevant statutory criteria are established in relation to such land.
7. The Application seeks the registration of the Land by virtue of the operation of Section 15 (2) of the 2006 Act. Under that provision, land is to be registered as a town or village green 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.
8. The application is subject to subsection (6) which provides that in the determination of the relevant 20 year period, any period during which access to the land was prohibited to members of the public by reason of any enactment must be disregarded.
9. Therefore, for the Application to succeed, it must be established that:-
 - (i) the Application Land comprises “land” within the meaning of the 2006 Act;
 - (ii) the Land has been used for lawful sports and pastimes;
 - (iii) such use has been for a period of not less than 20 years;
 - (iv) and that use is continued at the date of the application;
 - (iv) such use has been by a significant number of the inhabitants of a locality or of a neighbourhood within a locality;
 - (v) such use has been as of right, i.e. without force, without secrecy, and without permission (*nec vi, nec clam, nec precario*).
10. There is no distinction in law between a ‘town’ or ‘village’ green. The term ‘town’ green simply tends to be used where the green is physically situated in a town or other urban area.

The Burden and Standard of Proof

11. The burden of proving that the Land has become a town or village green rests with the Applicant for registration. The standard of proof is the balance of probabilities.
12. Further, when considering whether or not the Applicant has discharged the evidential burden of proving that the Land has become a town or village green, it is important to have regard to the guidance given by Lord Bingham in ***R. v Sunderland City Council ex parte Beresford***¹ where, at paragraph 2, he noted as follows:-

As Pill LJ. rightly pointed out in *R v Suffolk County Council ex parte Steed* (1996) 75 P&CR 102, 111 “it is no trivial matter for a landowner to have land, whether in public or private ownership, registered as a town green ...”. It is accordingly necessary that all ingredients of this definition should be met before land is registered, and decision makers must consider carefully whether the land in question has been used by inhabitants of a locality for indulgence in what are properly to be regarded as lawful sports and pastimes and whether the temporal limit of 20 years’ indulgence or more is met.

13. Hence, all the elements required to establish that land has become a town or village green must be properly and strictly proved by the Applicant on the balance of probabilities.

Statutory Criteria

14. Caselaw has provided helpful rulings and guidance on the various elements of the statutory criteria required to be established for land to be registered as a town or village green which I shall refer to in turn below.

Land

15. Any land that is registered as a village green must be clearly defined so that it is clear what area of land is subject to the rights that flow from village green registration.
16. It was stated by way of *obiter dictum* by the majority of the House of Lords in ***Oxfordshire County Council v. Oxford City Council***² that there is no requirement that a piece of land must have any particular characteristics consistent with the concept of a village green in order to be registered. In that case, the Trap Grounds application site did not fit the traditional image of a village green. Part of it comprised reed beds and a significant part of the remainder consisted of scrubland. It was thus “*not idyllic*” in the words of Lord Hoffmann. The majority view given by Lord Hoffmann was that the physical characteristics of land could not in themselves preclude it from being a village green. In justifying that view, he noted in particular that there was no authority, either at common law or in statute, which supported the proposition that the definition of a village green should be so restricted, and further, that any test to that effect would be inherently uncertain and too vague.³ It is also relevant to note that the Commons Act 2006 passed subsequently did not seek to further restrict the definition of a village green in that regard.
17. An alternative minority view was expressed in ***Oxfordshire County Council v Oxford City Council*** by Lord Scott who noted that some new village greens registered did appear to be stretching the concept of a village green beyond the limits which Parliament intended. He noted the ordinary dictionary meaning of a “*green*” as being “*a piece of public or common grassy land*” which ought to be applied in constructing section 22(1) of the Commons Registration Act 1965, the predecessor to Section 15 of the 2006 Act,

¹ [2004] 1 AC 889.

² [2006] 2 AC 674 per Lord Hoffmann at paragraphs 37 to 39.

³ *Ibid* at paragraph 39.

rather than land being registered that no one would recognise as a town or village green.⁴

Lawful Sports and Pastimes

18. It was made clear in **R. v. Oxfordshire County Council ex parte Sunningwell Parish Council**⁵ that “*lawful sports and pastimes*” is a composite expression and so it is sufficient for a use to be either a lawful sport or a lawful pastime. Moreover, it includes present day sports and pastimes and the activities can be informal in nature. Hence, it includes recreational walking, with or without dogs, and children’s play.

19. However, this element does not include walking of such a character as would give rise to a presumption of dedication as a public right of way.⁶

Continuity and Sufficiency of Use over 20 Year Period

20. The qualifying use for lawful sports and pastimes must be continuous throughout the relevant 20 year period: **Hollins v. Verney**⁷.

21. Further, the use has to be of such a nature and frequency as to show the landowner that a right is being asserted and it must be more than sporadic intrusion onto the land. It must give the landowner the appearance that rights of a continuous nature are being asserted. The fundamental issue is to assess how the matters would have appeared to the landowner: **R. (on the application of Lewis) v. Redcar and Cleveland Borough Council**.⁸

Locality or Neighbourhood within a Locality

22. A “*locality*” must be a division of the County known to the law, such as a borough, parish or manor: **MoD v Wiltshire CC**;⁹ **R. (on the application of Cheltenham Builders Limited) v. South Gloucestershire DC**;¹⁰ and **R. (Laing Homes Limited) v. Buckinghamshire CC**.¹¹ A locality cannot be created simply by drawing a line on a plan: **Cheltenham Builders** case.¹²

23. In contrast, a “*neighbourhood*” need not be a recognised administrative unit. A housing estate can be a neighbourhood: **R. (McAlpine) v. Staffordshire County Council**.¹³ However, a neighbourhood cannot be any area drawn on a map. Instead, it must have a sufficient degree of cohesiveness: **Cheltenham Builders** case.¹⁴

24. Neighbourhood may include one or more neighbourhoods, provided that they are neighbourhoods within a locality.¹⁵

Significant Number

25. “*Significant*” does not mean considerable or substantial. 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 used by the local community for lawful sports and

⁴ See paragraphs 71 to 83.

⁵ [2000] 1 AC 335 at 356F to 357E.

⁶ See Sullivan J. in *R. (Laing Homes Limited) v. Buckinghamshire County Council* [2004] 1 P & CR 573 at 598.

⁷ (1884) 13 QBD 304.

⁸ [2010] UKSC 11 at paragraph 36.

⁹ [1995] 4 All ER 931 at page 937b-e.

¹⁰ [2003] EWHC 2803 (Admin) at paragraphs 72 to 84.

¹¹ [2004] 1 P & CR 573 at paragraph 133.

¹² [2003] EWHC 2803 (Admin) at paragraphs 41 to 48.

¹³ [2002] EWHC 76 (Admin).

¹⁴ At paragraph 85.

¹⁵ *Leeds Group Plc v Leeds City Council* [2010] EWCA Civ 1438

pastimes, rather than occasional use by individuals as trespassers: ***R. (McAlpine) v. Staffordshire County Council***.¹⁶

As of Right

26. Use of land “*as of right*” is a use without force, without secrecy and without permission. It was made clear in ***R. v. Oxfordshire County Council ex parte Sunningwell Parish Council***¹⁷ that the issue does not turn on the subjective intention, knowledge or belief of users of the land.
27. “Force” may mean physical force to gain access to land, for example by breaking a padlock or cutting down a fence. In ***Cheltenham Builders*** it was also confirmed that force may not just mean violent acts, but also use of the land subsequent to the landowner signifying his objection to use of it.¹⁸
28. There has been no judicial comment on the meaning of use “without secrecy” and accordingly it should be interpreted in its ordinary meaning: open use which is capable of being noticed by the landowner.¹⁹
29. “Permission” can be expressly given or be implied from the landowner’s conduct, but it cannot be implied from the mere inaction or acts of encouragement of the landowner: ***R. v. Sunderland City Council ex parte Beresford***.²⁰ Tolerance does not imply permission.

The Application

30. The County Council received the Application on 7 December 2009. The Application was made pursuant to Section 15(2). This section permits an application to be submitted to the Commons Registration Authority (“the County Council”).

Consultations and Representations

31. The Application was advertised on site and in the Eastbourne Gazette on 30 December 2009. All interested parties, Wealden District Council and Polegate Town Council were sent copies of the notice, and copies were available to view by members of the public at County Hall, Lewes and Wealden District Council offices in Hailsham. The Local Members, Councillor D. Shing and Councillor S. Shing were informed of the Application by way of letter dated 21 December 2009.
32. The Council has received a response to the Application from Polegate Town Council, who is also the landowner, they contest the Application.
33. Wealden District Council did not respond to the Application.
34. Councillor D. Shing responded by way of email stating he was in full support of the application to register the land.
35. Councillor S. Shing did not comment on the application but requested that he be kept informed of the progress of the application.

¹⁶ [2002] EWHC 76 (Admin) at 77.

¹⁷ [2000] 1 AC 335.

¹⁸ [2003] EWHC 2803 (Admin) at paragraph 91.

¹⁹ J. Riddall, paragraph 29

²⁰ [2004] 1 AC 889.

30. Copies of all submissions and evidence can be found in the background papers in the Members Room.

The merits of the Application

36. The Applicant asserts that the land has become a village green on the basis that the land has been used by a significant number of the local 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 December 2009.

37. The Applicant, to support their application, has also produced 44 Open Spaces Society evidence questionnaires, a letter and an email. Further evidence disclosed was in the form of site photographs; land registry documents, extracts from minutes of Polegate Town Council meetings, minutes from a KORGI meeting, two Conveyances of 1922 and 1926 respectively, a copy of byelaws made in 1955 and a souvenir programme of Queen Elizabeth's coronation.

38. The Applicant, in the background information supplied in support of the application, states that a fete took place on the land annually until the mid 1980's. The Applicant also submits that a plaque commemorating the war dead was provided by KORGI and installed by Polegate Town Council in November 2009.

39. An objection to the Application was received on 23 February 2010 from Hedleys Solicitors LLP. Hedleys Solicitors have been instructed by Polegate Town Council ("the Objector"). They contest the claim and assert, in summary, that the statutory criteria have not been met for the following reasons:

- (i) The Conveyances are indicative that the public's use of the land is by right and not as of right.
- (ii) The statutory purpose for which the land was to be, and is, held is not specified in the conveyance nor on the registered title.
- (iii) The owner, by placing football goalposts, a fenced cricket square and public seats, shows their ability to exclude members of the local community when they so wish.
- (iv) The building on part of the claimed land is inconsistent with a village green.

40. In support of their submissions the Objector submitted byelaws of 1955 made under the Local Government Act 1894, a letting agreement with the Cricket Club, service level agreement with Youth Club, letting agreement with the Football Club, papers relating to the grounds maintenance, an Invoice for Cricket, an approach to use the ground by a pre-school group, public toilets maintenance agreement and an invoice for the playing of football on the Land.

41. The Applicant submitted a comment on the Objector's response in which he replied to each point of their objection.

42. In light of the Supreme Court decision in *Redcar*²¹ the Objector submitted additional comments regarding their previous submissions. The Objector concludes that all previous submissions remain correct.

Conveyances of 1922 and 1926

43. The Applicant submitted two conveyances one from 1922 and one from 1926. The key provisions are extracted below.

²¹ *R (on the application of Lewis) v Redcar and Cleveland Borough Council and Another* [2010] UKSC 11

44. The conveyance of 1922 (“1922 Conveyance”) is entitled ‘conveyance of 5 acres or thereabouts of freehold land within the parish of Jevington, Sussex’. It was made between Mr H.B. Marchant and Mr Rupert Gwynne and others.

45. The first page states the cost to be paid, establishes the new owners shall hold the Land under joint tenancy and also,

[that] the covenants hereinafter contained shall be binding on the land and hereditaments hereby conveyed into whosoever hands the same shall come.

46. For informative purposes hereditaments are ‘historically, any real property capable of being passed to an heir.’²²

47. The second paragraph of the schedule states that,

The hereditaments hereby conveyed and any building erected thereon shall not at any time be used for any purpose whatsoever other than that of a recreation ground or purpose ancillary thereto.

48. The conveyance of 1926 between Clement Knight and another and Hailsham Parish Council (“the 1926 Conveyance”) with respect to the Polegate Recreation Ground in the Parish of Jevington in the County of Sussex intended to transfer ‘the said hereditaments to the [Parish] Council.’

49. There is no reference in the 1926 Conveyance to the statutory power under which the Land was thereby transferred. The particularly relevant part of that Conveyance states that the Land is conveyed to the Parish Council:-

To hold the same unto the Council subject so far as thereby affected to the covenants on the part of the said Rupert Sackville Gwynne and the Trustees in the purchase deed contained upon trust to permit the same to be used as a public recreation ground for the benefit of the inhabitants of the Village of Polegate in the Parish of Hailsham.

Application of section 15(2)

a) Land

50. The Objector has raised a challenge to the extent of the area being claimed because of the existence of buildings on part of the land, and also because organised sports and pastimes have been carried out.

51. In relation to the existence of buildings, the Objector has stated that (without prejudice to their argument that the land should not be registered at all), if the registration is granted such registration should exclude the buildings currently in existence on the land since lawful sports and pastimes could not have been carried out on that area. The Applicant also states in his further submissions that the buildings are not registrable as part of any village green claim.

52. If the Committee is minded to grant this application and allow registration, it is suggested that the buildings should be excluded from registration.

53. As detailed above, the Objector considers that the areas used for organised games should be excluded from the registration (should registration be granted). This issue is dealt with below at paragraphs 76-83.

²² -- Oxford Dictionary of Law, E. Martin and J. Law (eds) (6edn 2006)

b) Local inhabitants of any locality or neighbourhood within a locality

54. The user evidence questionnaires contained a question which attempts to illustrate 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 is stated including school catchment area, community centre, place of worship and shops. There is also a box inviting any other facilities that are available.
55. The Parish of Polegate is identified as the claimed neighbourhood. A Parish is capable of amounting to a locality. 34 out of 44 users are resident in Polegate Ward, and it is considered that, on the balance of probabilities, the Land is enjoyed by the inhabitants of a locality.

c) Lawful sports and pastimes on the land

56. 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'²³ 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]'.²⁴
57. Question 23 of the 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.
58. Upon reviewing the questionnaires the users have witnessed a variety of activities including walking, kite flying, picnicking and carol singing. The three most frequently witnessed lawful sports and pastimes were children playing (41), cricket (40) and football (39). The cumulative total of all activities witnessed was 325. Other activities listed include kite flying, children playing, fetes and walking. This information is illustrated in graph form in the background documents.
59. Question 16 of the same questionnaire asks the user to detail what activities they have taken part in. The cumulative total is 85. It is noted that this question does not have the same tick boxes as question 23, and one of the responses noted was observing (6).
60. The most frequent responses to question 16 were: children playing (12), football (11) and cricket (11). General play (8), sport (6) and stoolball (6) were also recorded. This information is illustrated in graph form in the background documents.
61. Polegate Town Council stated in their letter of 24 June 2011 that the football club has been using and paying for the field once to twice per week during the football season, as has the cricket club. Both have used and paid for the use of the field for approximately twenty six sessions per season. In addition stool ball has been played six times per season. Subsequently the use of the Land by the football, cricket and stool ball clubs would need to be discounted from the lawful sports and pastimes undertaken in determining whether the statutory criteria have been met because such use would have been by permission. However, this would not mean that stoolball, football or cricket that had been played by groups without such payment would need to be discounted, since these activities may have been 'as of right'. However, no distinction is made on this point in the user evidence questionnaires.

²³ *R v Oxfordshire County Council and Another, Ex parte Sunningwell Parish Council* [2000] 1 A.C. 335

²⁴ J. Riddall, 'Getting Greens Registered: A guide to law and procedure for town and village greens' (2007) paragraph 43

62. Even taking into account use of the land with permission as discussed at paragraph 61 above, the Land has been used, on the balance of probabilities, for lawful sports and pastimes given the level of use for the other activities.

d) For a period of at least 20 years

63. The Application was received by the Council in 2009. The period of use must, therefore date from, at least, 1989. It must be shown that use within this period is continual and regular. Of the 44 people to have completed questionnaires 22 users have used the land within this twenty year period, with some using it back to the 1940's (U32, U17).

64. The users who are still using the Land (35) state their use to be between a couple of times a week to monthly. Some state they use the Land less often than when they were children.

65. There are several users (6) who have used the Land for a period of twenty years which is outside of the time identified above. There is one user (U19) whose use is recorded back to 1926.

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

e) Have indulged as of right

67. For use to have been 'as of right', three particular conditions must be satisfied; use without force, without secrecy and without permission.

(i) Not by force

68. Access to the Land is freely gained along its north western boundary. There is a metal fence roughly three feet high with two gates in it. None of the user evidence questionnaires record ever having to use force to gain access to the Land.

69. The Objector, in their response of 23 February 2010 at paragraph nine state that, "the public and in particular local inhabitants have used part of the land without force."

70. Accordingly, use has not been by force and this part of the test has been satisfied.

(ii) Not by stealth

71. The Land has not been enjoyed in secrecy, with the Objector stating in their response, again at paragraph nine, that the "local inhabitants have used part of the land... openly (i.e. not secretly)."

72. None of the user evidence records use of the Land in secrecy. Therefore, this part of the test has been satisfied.

(iii) Not by Permission

73. The user evidence questionnaire, at question 28, specifically asks if permission was ever sought for activities on the land. Whilst the majority of users state no (with U6, U30, U36 and U43 stating it not to be necessary) three users were aware of permission being needed (U10, U15, U28) from Polegate Town Council. U15 states that a payment was made for an annual term. No evidence has been offered as to what this payment was or what type of use was permitted in return.

74. The Objector submits, at paragraph nine of their response, that they have “not sought to prevent public access and [have] not erected signs indicating [their] ownership or control”.
75. The Objector submits that if they make known to the users of the land that their use is by permission then it cannot be said that use of the land is without permission. This is correct and is an interpretation of the opinion of Patteson J in *Finnis*,²⁵
- “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.”²⁶
76. Accordingly, the challenge, or intention to grant permission, on the part of the Objector must be by way of an obvious and overt act. In the case of *Godmanchester*²⁷ Lord Scott was of the opinion that overt acts should, ‘demonstrate to the public that the landowner had no intention to dedicate’²⁸. In the absence of any obvious and overt act and the Objector’s acknowledgement that they have not sought to prevent public access, it would appear that use has been without permission.
77. The Objector submits the opinion of the Court of Appeal in the case of *Redcar*²⁹. The *Redcar* case was subsequently appealed to the Supreme Court, but judgment had not been handed down at the date of the Objector’s submissions.
78. The Objector submits the opinion of Dyson LJ, from the Court of Appeal, who was of the opinion that when the landowner’s use was inconsistent with the use of the local inhabitants;
- “The inconsistency will manifest itself where the recreational users adjust their behaviour to accommodate the competing activities of the owner. By adjusting their behaviour, they give the impression to the owner that they are not claiming a right to do what they are doing. That leads the owner not to regard the users as acting as of right.”³⁰
79. The Objector seeks to rely on this opinion because they have entered into agreements with the football and cricket club allowing them to use the Land as their home ground (noted at tab 4 of the Objector’s objection). The cricket club have installed and maintained a rope fence around their square to the exclusion of the public. Accordingly, the public have adjusted their behaviour to accommodate the competing wishes of the Objector.
80. The Applicant in response states that the rope fence around the cricket square does not always prevent people from using that piece of the land; thereby the public continue to assert their right. The Applicant also submits the opinion of the Supreme Court in *Redcar*. The Objector was aware of this decision but maintains that their submissions were still correct.³¹
81. The Supreme Court overturned the decision of the Court of Appeal with Lord Walker having;

²⁵ *Trustees of the British Museum v Finnis* (1833) 5 C & P 460

²⁶ *Ibid* at 465

²⁷ *R (Godmanchester Town Council) v Secretary of State for the Environment, Food and Rural Affairs* [2007] UKHL 28

²⁸ *Ibid* at paragraph 69

²⁹ *R (on the application of Lewis) v Redcar and Cleveland Borough Council and Another* [2010] UKSC 11

³⁰ *R (on the application of Lewis) v Redcar and Cleveland Borough Council and another* [2009]

EWCA Civ 3

³¹ letter dated 15 March 2010

“...great difficulty in seeing how a reasonable owner would have concluded that the residents were not asserting a right to take recreation on the disputed land, simply because they normally showed civility... towards members of the golf club who were out playing golf. They simply acted (as all the members of the Court agree, in much the same terms) with courtesy and common sense.”³²

82. In **Redcar** the users’ deference did not prevent the application to register the land as a town or village green from being successful. The users of the Land in Polegate may show an equal amount of ‘courtesy and common sense’³³ and not infringe on the land being fenced off for use by cricketers. The Applicant, at “reply 13” of his response to Polegate Town Council’s Objections, states that the cricket club are responsible for erecting and maintaining the fence, not the Objector.
83. The Objector is of the opinion that the Supreme Court’s decision is compatible with that of Dyson LJ in the Court of Appeal. However, Lord Walker states that the judgements delivered in the Court of Appeal ‘put the decision squarely on the ground of deference, excluding user as of right’. Accordingly, Dyson’s LJ judgement would be incompatible with the Supreme Court’s opinion because ‘the fact remains that they were regularly, in large numbers, [enjoying the land]’³⁴. As in **Redcar**, ‘golfers [organised activities] and local residents can co-exist without much friction even when the latter have established legal rights.’³⁵
84. It is considered that deference to use of organised games would not prevent registration and that, on the balance of probabilities, it is likely that lawful sports and pastimes have been carried on in those areas of land when organised games were not being conducted.
85. The Objector has submitted specimen agreements for the letting of the Land for cricket, football and stoolball. The Objector, at paragraph 14 of their response, submits that they are evidently “controlling and exercising the rights of the owner.” The decision of the Supreme Court in *Redcar* illustrates that excluding part of the Land does not prevent the application from succeeding, nor would it result in part of the Land being excluded from the application.
86. In his late submissions, the Applicant states that the fact that organised cricket and football took place at certain times, which denied the public the ability to engage ‘as of right’ in lawfully sports and pastimes, could not prevent registration on the basis of the Judgment in *Newhaven Port and Properties Limited v East Sussex County Council* [2012] EWHC 647 (Admin). The Applicant quotes part of the Judgment in which Mr Justice Ouseley stated ‘*the fact that lawful sports and pastimes cannot be engaged in over the whole of the registered land all the time is not a reason for refusing to register all the land over which at times of the day, depending on the state of the tide, the public can and do engage as of right in lawful sports and pastimes...*’. However, this statement concerned whether prevention of as of right use by natural forces, rather than prevention by the landowner. It is therefore considered that this argument is not relevant here.
87. The Polegate Parish Council Byelaws of 1955³⁶ permit the Council to ‘set apart any such part of the ground as may be fixed by the Council.’³⁷ However, these byelaws ‘must be described in a notice board and affixed... in some conspicuous position.’³⁸

³² *Ibid* (n28) at paragraph 36

³³ *Ibid* (n28) at paragraph 36

³⁴ *Ibid* (n28) at paragraph 36

³⁵ *Ibid* (n28) at paragraph 47

³⁶ made under s.8(1)(d) Local Government Act 1894, by the Parish Council of Polegate with respect to a Recreation Ground

³⁷ s.8 Polegate Parish Council Byelaws 1955

88. The Applicant submits that the Objector has been unaware of the existence of the byelaws and that they have not been displayed anywhere on site. Accordingly, he is of the opinion that the Objector would be acting ultra vires if they were to enforce byelaws that were unsigned (and not on display).
89. It was made clear in *Newhaven Port and Properties Limited v East Sussex County Council* that unless the byelaws were brought to the attention of the public or enforced that their existence alone would not be a bar to registration. In this instance the evidence suggests that they have not been on placed on site, nor enforced.
90. However, the purpose of the byelaws does raise another issue. Whilst the procedural requirements of the byelaws have not been adhered to³⁹ they were made pursuant to section 8(1)(d) of the Local Government Act 1894. This, as the Objector states at paragraph 3 of their response, applies additional powers to parish councils as detailed in the Public Health Act 1875 specifically on the power and confirmation of byelaws.⁴⁰
91. The Objector seeks to rely on section 164 of the Public Health Act 1875 which is stated in full;
- Any urban authority may purchase or take on lease lay out plant improve and maintain lands for the purpose of being used as public walks or pleasure grounds, and may support or contribute to the support of public walks or pleasure grounds provided by any person whomsoever. Any urban authority may make byelaws for the regulation of any such public walk or pleasure ground, and may by such byelaws provide for the removal from such public walk or pleasure ground of any person infringing any such byelaw by any officer of the urban authority or constable.⁴¹
92. The Applicant questions the meaning of public recreation (in “reply 4” of his response to Polegate Town Council’s Objections) and that it does not fit with the definition of public walk or pleasure ground as stated in the above section. There has been piecemeal development of this legislation in the courts.
93. Initially, in *Brockwell*⁴² the House of Lords were of the opinion that occupation by a local authority was in reality occupation by the public because ‘the county council [were] merely custodians and trustees for the public.’⁴³
94. In *Hall v Beckenham Corporation*⁴⁴ Finnemore J was of the opinion that, ‘if land is bought under s.164 of the Act of 1875 for that purpose it is dedicated to the use of the public for the purpose of a park.’⁴⁵ The Objector acknowledges, at paragraph 3 of their response, that the statutory purpose for which the land was to be (and is) held is not specified in the 1922 Conveyance, the 1926 Conveyance nor on the registered title. The Conveyances merely state that “[the land shall] be used as a public recreation ground.”
95. In *Tranter*⁴⁶ Morris LJ was of the opinion that ‘the real occupiers of the park are the public’⁴⁷ in a situation when the local authority has, by virtue of a deed, acquired a

³⁸ *Ibid*

³⁹ they have not been signed, they have not been displayed on site and no user can recall seeing a copy

⁴⁰ s.183-s.184 Public Health Act 1875

⁴¹ s.164 Public Health Act 1875

⁴² *Lambeth overseers v London county council* [1897] AC 625

⁴³ *Ibid* at 630

⁴⁴ *Hall v Beckenham* [1949] 1 KB 716

⁴⁵ *Ibid* at 726

⁴⁶ *Sheffield Corporation v Tranter* [1957] 1 WLR 843

⁴⁷ *Ibid* at 857

park in accordance with the Act of 1875. This, in the opinion of Devlin LJ in *Blake*,⁴⁸ 'is sufficient material from which to infer that beneficial ownership has passed to the public and to negative occupation by the local authority.'⁴⁹

96. Lord Roger and Lord Bingham held, in *Beresford*⁵⁰ that indulging in lawful sports and pastimes pursuant to a statutory right would be 'inconsistent with use as of right'⁵¹ with 'their use being "of right."⁵² This is in accordance with DEFRA's guidance of August 2010 to commons registration authorities and the Planning Inspectorate, provided by the Objector at paragraph 6 of their response;

The public must be allowed to use the land for recreational purposes, and the authority cannot lawfully prevent such use.⁵³

97. If the Land was acquired under section 164 of the Act of 1875 it would appear appropriate to conclude that use was *by* right because the beneficial ownership has effectively passed to the public. Accordingly, the application would fail because it could not be shown that the public have indulged in use of the land as *of* right.

98. However, the Public Health Act 1875 permits local authorities to maintain lands for the purpose of public walks or pleasure grounds that have been *purchased or leased*. The Applicant, in "reply 4" notes that the land was not purchased and is not leased. The Applicant submits that the wording of this section would appear not to apply in this instance because the land was gifted to the Council by virtue of the 1926 conveyance.

99. The Open Spaces Act 1906 may be applicable when land has been obtained by a local authority where payment has not been made. The Open Spaces Act permits a local authority to;

acquire by agreement⁵⁴... and undertake the entire or partial care, management, and control of any such open space... whether any interest in the soil is transferred to the local authority or not.⁵⁵

100. At section 10 the 1906 Act goes on to state that;

[a] local authority who have acquired any estate or interest in or control over any open space... under this Act shall... hold and administer the open space... in trust to allow, and with a view to, the enjoyment thereof by the public as an open space.⁵⁶

101. The Town Council is the owner of the Land. It was acquired by the Town Council's predecessor in title, Hailsham Parish Council, by virtue of a Conveyance dated 16 April 1926 ("the 1926 Conveyance").

102. There is no reference in the Conveyance to the statutory power under which the Land was thereby transferred. The relevant part of that Conveyance states that the Land is conveyed to the Parish Council:-

⁴⁸ *Blake v Hendon Corporation* [1962] 1 Q.B. 283

⁴⁹ *Ibid* at 301

⁵⁰ *R (on the application of Beresford) v Sunderland City Council* (2004) 1 AC 889

⁵¹ *Ibid* 889

⁵² *Ibid* 889

⁵³ DEFRA document relied on by the landowner at paragraph 6 of their response which has subsequently become unavailable. The document that supersedes this can be found at

<<http://www.defra.gov.uk/rural/documents/protected/common-land/craguide.pdf>> particularly part 8.10

⁵⁴ s.9(a) Open Spaces Act 1906

⁵⁵ s.9(b) Open Spaces Act 1906

⁵⁶ s.10(a) Open Spaces Act 1906

“To hold the same unto the Council subject so far as thereby affected to the covenants on the part of the said Rupert Sackville Gwynne and the Trustees in the purchase deed contained upon trust to permit the same to be used as a public recreation ground for the benefit of the inhabitants of the Village of Polegate in the Parish of Hailsham”.

103. There is no dispute that the Land has, as a matter of fact, been used by local inhabitants as a recreation ground for many years. Instead, the fundamental issue arising is whether the Land has been used by those local inhabitants “*as of right*” so as to establish that particular element of the statutory criteria to justify the land’s registration as a town or village green or, rather, whether it has been so used by the inhabitants “*by right*” so that such statutory requirement has not been established and the land could not be registered as a town or village green.
104. The Applicant contends in his submissions that the absence in the conveyance of the statutory provision under which the land was acquired negates the fact that the land is held under any such provision, and that use was not ‘by right’.

Case Law – ‘As of right’

105. Turning to the caselaw in relation to that issue, it was considered in some depth, albeit on an *obiter* basis, by the House of Lords in **Beresford**.⁵⁷ Lord Scott made express reference to section 10 of the Open Spaces Act 1906 which provides that a local authority who have acquired any interest in or control over any open space under the 1906 Act shall thereafter hold and administer that open space in trust for the general public and allow the public to use it and enjoy it as an area of open space.⁵⁸
106. He went on to state that as the local inhabitants’ use of such open space would have been pursuant to the trust imposed by section 10, that use “*would have been subject to regulation by the council and would not have been a use “as of right”*”.⁵⁹ However, and significantly, he further noted that although section 10 which imposes such a trust only applies where the open space is acquired by a local authority **under the 1906 Act**, it was arguably unnecessary for it to be expressly stated in the deed of transfer or in a council minute that the land was so acquired under that Act for that to be the case. Instead, he stated *obiter*:-

“It would be, in my view, an arguable proposition that if the current use of land acquired by a local authority were use for the purposes of recreation and if the land had not been purchased for some other inconsistent use and the local authority had the intention that the land should continue to be used for the purposes of recreation, the provisions of section 10 would apply”.⁶⁰

107. Again, at the end of his Judgment, Lord Scott noted:-

“Where “open space” land comes into the ownership of a “principal council”, I think there to be strong arguments for contending that the statutory scheme under the Local Government Act 1972, whether or not the Open Spaces Act 1906 or Section 21(1) of the New Towns Act 1981 are applicable, excludes the operation of section 22(1) of the Commons Registration Act 1965.”⁶¹

⁵⁷ [2004] 1 AC 889.

⁵⁸ At paragraph 29.

⁵⁹ At paragraph 30.

⁶⁰ At paragraph 30.

⁶¹ At paragraph 52.

108. He thereby indicated that when a local authority owns land that has been acquired or appropriated as public open space and is used as such, there is a strong argument that such land could not be registered as a town or village green.
109. Similar observations were made by Lord Walker who stated, again *obiter*, that:-
- “Where land is vested in a local authority on a statutory trust under section 10 of the Open Spaces Act 1906, inhabitants of the locality are beneficiaries of a statutory trust of a public nature, and it would be very difficult to regard those who use the park or other open space as trespassers (even if that expression is toned down to tolerated trespassers). The position would be the same if there were no statutory trust in the strict sense, but land had been appropriated for the purpose of public recreation.”⁶²
110. Hence, although that issue has not been definitively determined by the Courts, there is strong *obiter dicta* from the House of Lords, which is clearly highly persuasive authority albeit not binding, that land owned by a local authority for the very purposes of public recreation, and which is used for such purposes, is not used as of right by the public, but rather is used pursuant to the right the public have to use the land under the statutory trust or otherwise.
111. Moreover, it seems that the view held is that where land is specifically held by a local authority as public open space and is used as such, then it cannot be used by local inhabitants as of right.
112. Use as of right is effectively use as a tolerated trespasser where the landowner chooses to take no steps to prevent such use but, rather, acquiesces in that use. Local inhabitants thereby ultimately gain a right to use the land for recreational purposes after having used it for qualifying purposes as of right for the relevant 20 year period if all the other statutory criteria are met. Yet, where land is held as public open space, users are not tolerated trespassers at all, and so are not using the land as of right.
113. Instead, they are **entitled** to use the land for recreational purposes, either pursuant to a statutory trust if the land has been acquired pursuant to the Open Spaces Act 1906 or pursuant to alternative statutory provisions such as the Public Health Acts or merely by virtue of the fact that the land is publicly held as public open space. It is pursuant to that substantive right which the public already have, that they enter onto the land and use it.
114. Further, and significantly, the landowner cannot preclude such use in such circumstances. He has no option but to allow users to use land as public open space provided they are using it lawfully.

Application of Legal Principles to the Facts of the Application

115. Applying those *obiter* statements to the Land, it is apparent that there is no indication as to the statutory power under which it was acquired by the Town Council's predecessor in 1926. It is also unclear as to whether any enforceable trust was ever created. Nonetheless, the one specific purpose referred to in the 1926 Conveyance for its acquisition was “*to permit the same to be used as a public recreation ground for the benefit of the inhabitants of the Village of Polegate*”.
116. This suggests that the purpose for the Land's acquisition was to use it as a public recreation ground for those inhabitants. No other potential purpose for its acquisition is referred to in the 1926 Conveyance nor has any other purpose been suggested. Moreover, it is of note that, as a matter of fact, the Land has been so used. It is laid

⁶² At paragraph 87.

out and maintained as a public recreation ground and it has been used as such by the local inhabitants for many years. Byelaws were made in this regard, which also shows the intention of the Objector (whether or not they were displayed is not relevant). Further, the Land does not appear to have been used for any other purpose.

117. Given those circumstances, on the balance of probabilities it is concluded that the Land was acquired and is held by the Town Council as a recreation ground for the local inhabitants of Polegate. Consequently, the local inhabitants had a right to use the Land, so have used it by right rather than 'as of right'. The statutory criteria for registration of the Land as a town or village green under s15(2) have, therefore, not been satisfied.

Considerations into the feasibility of holding a Public Inquiry

118. 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 as detailed at paragraph 31.

119. The Registration 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.

120. 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.

121. 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.
- It can reject the recommendation and determine that the land should be regarded as a town or village green.
- As set out above, the Panel can request that a public inquiry be held.

122. As to whether a public inquiry ought to be held, it does not seem that such is required in these circumstances for the following reasons. In ***R. (on the application of Whitmey) v. Commons Commissioners***,⁶³ the Court of Appeal held that although the decision as to whether to hold an inquiry was one for the Registration Authority's discretion, an inquiry was *necessary* in two types of cases.

- a. The first of those is where the registration authority itself has an interest in the land subject to the application as that would then give rise to a conflict of interest. That is not the case in this instance.
- b. The second is where there is a dispute which is "*serious in nature*". Although there is a clear dispute in this instance, the facts are not particularly in dispute in relation to whether the Land has been held as recreational public open space.

⁶³ [2005] QB 282.

123. Instead, the real dispute is a legal one and little would be served in holding a public inquiry for such legal submissions to be made as ample opportunity has already been given by the Registration Authority to both Parties to express all their observations in relation to that issue. Moreover, although there are other matters which are factually in dispute, such as the extent to which the Land was available to local inhabitants when it was being used by others who had hired it, the nature and extent of such disputes do not seem to be sufficient to require an inquiry.
124. It was also pointed out in *Whitney* that a registration authority might consider it appropriate to hold an inquiry in circumstances where an application is of particular local interest. However, it appears that the interest in the present Application is typical for such applications and not of any general wider local interest above that which would ordinarily be expected.

Conclusion and Reasons for Recommendation

125. After careful consideration of all the evidence submitted to the County Council it is submitted that the Applicant has not, on the balance of probabilities, satisfied each element of the statutory criteria for registration, and thus the Application ought to be rejected on that ground.
126. There is insufficient evidence to show that the local residents of Wannock Road Memorial Ground have indulged in lawful sports and pastimes, 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 not been satisfied.
127. The objection received by the County Council does counter the evidence to support the application.

Recommendation

Upon consideration of this report it is recommended that the application to register Wannock Road Memorial Ground as a town or village green be rejected for the reasons given above.

Philip Baker
Assistant Director
Legal and Democratic Services

Contact Officer: Christopher Wilkinson 01273 335744
Senior Solicitor: Joanna Hauge

Local Members: Councillor D. Shing
Councillor S. Shing

Appendix 1: Application received 7 December 2009

Appendix 2: Application plan

Appendix 3: Photographs of the Land taken by the Applicant 12 August 209

Appendix 4: Objector's initial response to the Application (dated 23 February 2010)

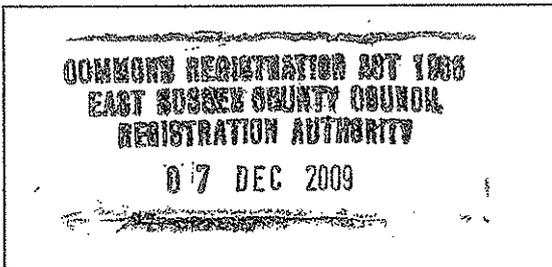
Background Documents

Further submissions and all supporting documents will be made available to Members from 9th October 2012.

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

VILLAGE / TOWN GREEN REGISTRATION
 LEGAL SERVICES
 EAST SUSSEX COUNTY COUNCIL
 COUNTY HALL
 LEWES
 EAST SUSSEX

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.

Note 3

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

2. Name and address of the applicant

Name:

Full postal address:

Telephone number:
(incl. national dialling code)

Fax number:
(incl. national dialling code)

E-mail address:

3. Name and address of solicitor, if any

Name:

Firm:

Full postal address:

Post code

Telephone number:
(incl. national dialling code)

Fax number:
(incl. national dialling code)

E-mail address:

Note 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.

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 to 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.

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

Name by which usually known:

POLEGATE REC'
FULL AND CORRECT TITLE
"WAR MEMORIAL RECREATION GROUNDS"

Location:

USANNOCK ROAD
POLEGATE
EAST SUSSEX
BN26 5JK

Shown in colour on the map which is marked and attached to the statutory declaration.

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:

PARISH OF POLEGATE

Tick here if map attached:

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).

THE FIVE ACRES OF LAND KNOWN AS "WAR MEMORIAL RECREATION GROUND" WAS PURCHASED ON 30th JANUARY 1922 WITH A COVENANT IN PLACE STATING "THE LAND AND BUILDINGS ERECTED CAN ONLY BE USED FOR RECREATION". ON 16th APRIL 1926 THE LAND WAS GIVEN TO THE COUNCIL REQUIRING THEM TO ADHERE TO THE 1922 COVENANT AND TO "PERMIT THE LAND TO BE USED AS A PUBLIC RECREATION GROUND BY THE INHABITANTS OF POLESATE. WITNESS QUESTIONNAIRES SHOW THAT RESIDENTS OF POLESATE HAVE ENJOYED THIS RIGHT WITHOUT RESTRICTION SINCE 1926 THOUGH TO THE DATE OF 3rd DECEMBER 2009, NO PERSON HAS EVER HAD TO OBTAIN PERMISSION OR BEEN PREVENTED FROM USING THIS LAND AS A CASUAL USER. POLESATE FOOTBALL, CRICKET AND STOOBALL CLUBS DO NEGOTIATE A FEE TO USE THE LAND SEASONALLY AS ORGANISED EVENTS. WE BELIEVE THIS IS STANDARD PRACTICE THROUGHOUT THE UK AND DOES NOTHING TO AFFECT THE PRINCIPLE OF UNRESTRICTED USE.

WITHOUT QUESTION THE LARGEST GROUP OF USERS ARE AGED 10 YEARS TO 15 YEARS. DUE TO THEIR AGE THEY WERE NOT APPROACHED TO COMPLETE QUESTIONNAIRES. THIS AGE GROUP OF USERS ENGAGE IN IMPROMPTU FOOTBALL, CRICKET, RUNNING AROUND AND GENERALLY LOUDEST. THERE IS A HIGH VOLUME OF USE DURING HOLIDAY PERIODS, AFTER SCHOOL AND BY VISITING FOREIGN STUDENTS. IT WOULD BE TRUE TO STATE THAT THERE IS DAILY USE EXCEPTING SERIOUSLY UNPLEASANT WEATHER.

ONE AREA IS ARRANGED AS A PLANSION WITH EQUIPMENT AIMED AT THE 3 YEAR TO 10 YEAR AGE GROUP. THIS AREA WAS REBUILT IN 2009. THE RECREATIONAL ACTIVITIES THAT HAVE BEEN WITNESSED INCLUDE - FOOTBALL - CRICKET - ROUNDERS - RUNNING - VOLLEYBALL - CHESS - GOLF PRACTICE - DOG WALKING - BLACKBERRING - KITE FLYING - MODEL AIRCRAFT AND CARS - PLANNING - YOUTH GATHERING FOR SOCIAL INTERCOURSE. IN YEARS PAST AND ANNUAL KITE AND CARNIVAL WAS HELD ON THIS LAND, THIS CAME TO THE MID/LATE 1980'S.

THE CONSIDERATION TO PERMIT BUILDING ON THIS LAND BY A COMMERCIAL UNDERSTANDING IN 2008/2009 BROUGHT PUBLIC ATTENTION TO IT. POLESATE IS ALREADY CONSIDERED TO BE WELL SERVED OF OUTDOOR RECREATIONAL FACILITIES AS REVENUED IN AN ADOPTED 2002 (NATIONAL PLANNING FIELD ASSOCIATION).

THE RESTRICTIONS THAT ARE PLACED ON THE OWNERS BY REGISTRATION AS A TOWN GREEN IS SEEN AS VITAL IN PRESERVING ITS CONTINUED USE OF RIGHT.


LANDOWNER

Note 8

Please use a separate sheet if necessary.

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

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

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

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

TOWN COUNCIL
42, HILL STREET
POLEGATE
EAST SUSSEX
BN26 6AL

LAND REGISTRY TITLE ESX325663
FIRST REGISTERED 13-10-2009

Note 9

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

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

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

10. Supporting documentation**Note 10**

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

Please use a separate sheet if necessary.

- 1) MAP OF CLAIMED LAND (EXHIBIT A).
- 2) CONSENT TO APPLY FOR REGISTRATION (TOWN MINUTES).
- 3) SERIES OF PHOTOGRAPHS OF LAND.
- 4) BACKGROUND DOCUMENT.
- 5) 44 UNDE SIGNED QUESTIONNAIRES + 2 LETTERS.
- 6) COPY OF 1926 CONVEYANCE.
- 7) COPY OF 1926 CONVEYANCE.
- 8) COPY OF 1955 BYLAWS.
- 9) COPY OF LAND REGISTRY 'CAUTION', ESX321985.
- 10) COPY OF LAND REGISTRY 'REMOVAL OF CAUTION'.
- 11) COPY OF LAND REGISTRY 'FIRST REGISTRATION ESX325663.
- 12) EXTRACT OF POLEGATE TOWN COUNCIL MINUTES.
- 13) COPY OF 1955 CONVICTION PROGRAMME.
- 14) COPY OF PUBLIC PLANS TO BUILD ON LAND

11. Any other information relating to the application

Note 11

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

IT IS POSSIBLE THAT POLEGATE TOWN COUNCIL MAY CHALLENGE THIS APPLICATION IN VIEW OF THE FACT THAT THEY DECIDED AGAINST VOLUNTARY REGISTRATION.

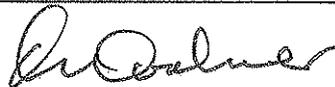
Note 12

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:

3rd December 2009

Signatures:


P WOOLMER

AUTHORISED BY 'HOREKI' TO APPLY
KEEP OUR RECREATION GREEN AND INSTANT

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).*

I PAUL WOOLMER,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) (³one of the applicants))~~).

³ *Insert name if Applicable*

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

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

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 Paul Woolmer)
at 10 Wannock Drive, Polegate,)
East Sussex BN26 5DY)
this third day of December 2009)



Signature of Declarant

Before me *

Signature: Stephen J. Sullivan
(STEPHEN JOHN SULLIVAN)

Address: High Pastures, Wannock Road,
Polegate, East Sussex BN26 5EA

Qualification: Solicitor
(Roll Number 114195)

* 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:

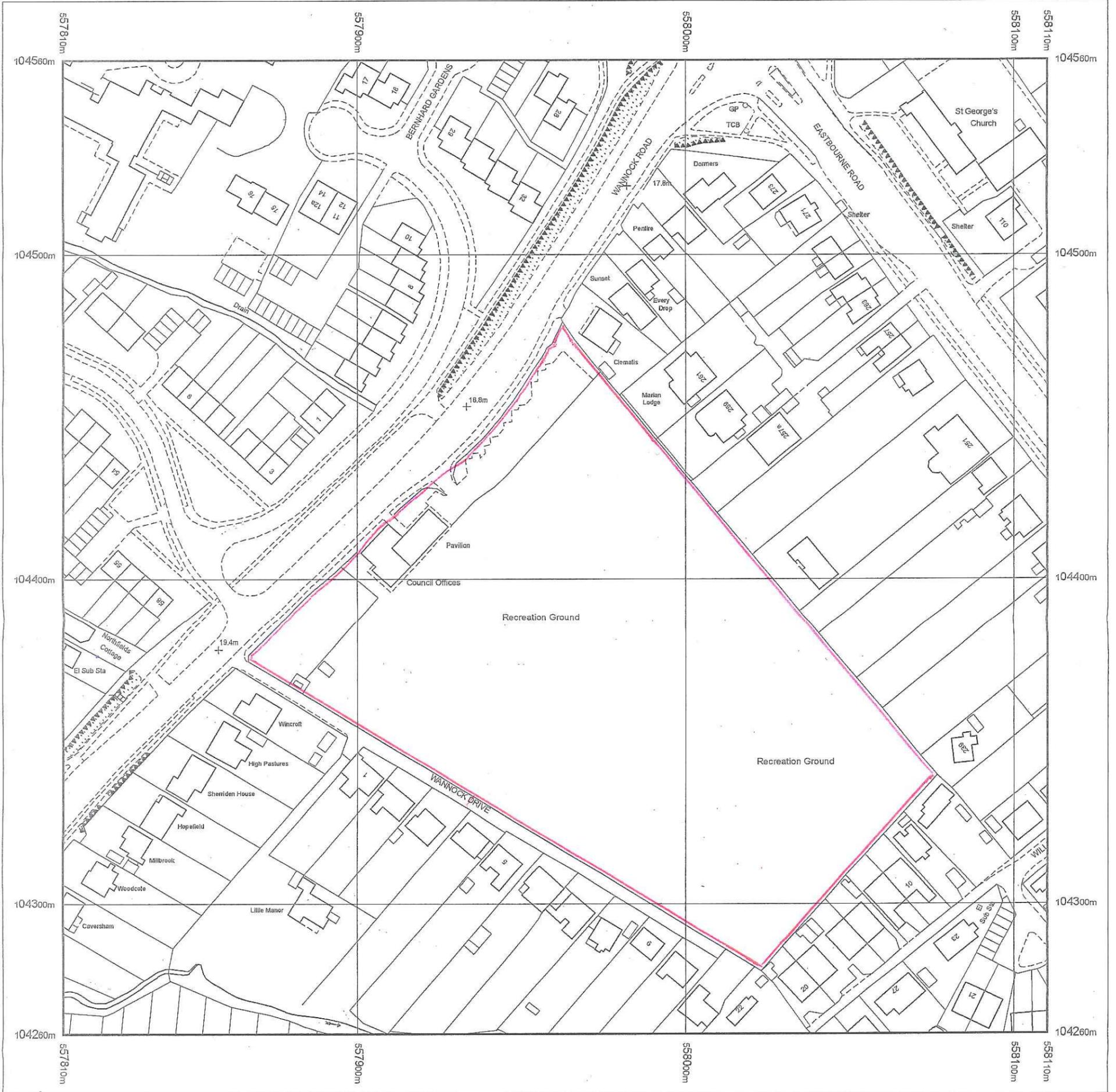
Please initial all alterations and mark any map as an exhibit

This is Exhibit 'A' referred to in the
 Statutory declaration of Paul Woolmer
 sworn before me on the third day of
 December 2009.
 Stephen J. Sullivan
 Solicitor

EXHIBIT 'A'
 REC: K0261 / WMR6
 POLEGATE BN26 5JK



OS Sitemap®



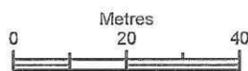
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The representation of a road, track or path is no evidence of a right of way.

The representation of features as lines is no evidence of a property boundary.



Scale 1:1250

Supplied by: **Centremaps@Aworth**
 Serial number: 00763000
 Centre coordinates: 557960.25 104410

Further information can be found on the OS Sitemap Information leaflet or the Ordnance Survey web site: www.ordnancesurvey.co.uk

The War Memorial Recreation Ground
Wannock Road
Polegate

APPENDIX 2

Shelton Koff
J. P. Poy
D. Poy
J. Huxley

PS WOODWARD
RJ BATTLES
RA BATTLES
A. E. LICHT
B. L. CARTER
B. HEATHER

B. L. CARTER
B. HEATHER
B. L. CARTER
D. L. E. HUGHES
J. HUGHES
D. HUGHES

AMORSON
S A BATTLES
S. J. WYATT
J A GRIFFIN
S. D. FIBEL

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S. J. WYATT
J A GRIFFIN
S. D. FIBEL

J. A. WILLIAMS
W. A. RAVEN
P. A. RAVEN

J. A. WILLIAMS
W. A. RAVEN
P. A. RAVEN

A. H. RAVEN
Alistair Parker
GLORIA GLENISTER
MICHAEL COWLEY

A. H. RAVEN
Alistair Parker
GLORIA GLENISTER
MICHAEL COWLEY

1



View from West to East (12-08-2009) Taken Paul Woolmer

2



View from North to South (12-08-2009) Taken Paul Woolmer

3



View from East to West (12-08-2009) Taken Paul Woolmer

4



View from South to North (12-08-2009) Taken Paul Woolmer

5



View from Bottom to Top (12-08-2009) Taken Paul Woolmer

6



View from Top to Bottom (12-08-2009) Taken Paul Woolmer

7



Organised Team Cricket (15-08-2009) Taken Paul Woolmer

8



Youngsters Playing (20-08-2009) Taken Paul Woolmer

9



Various Games (12-09-2009) Taken Paul Woolmer
10



Organised Team Football (26-09-2009) Taken Paul Woolmer

11



General Leisure (29-09-2009) Taken Paul Woolmer

12



After School Play (22-10-2009) Taken Paul Woolmer

Simon Bailey
Legal Services
East Sussex County Council
County Hall
St. Anne's Crescent
Lewes
BN7 1SW

Date: 23 February 2010
Our ref: IRD/POL0061
Your ref: 1356

Dear Mr Bailey,

**APPLICATION FOR REGISTRATION OF LAND AS A TOWN OR VILLAGE GREEN
POLEGATE WAR MEMORIAL RECREATION GROUND WANNOCK ROAD
POLEGATE BY PAUL WOOLMER**

We have been instructed by Polegate Town Council.

I enclose the following documents;

Document	Date	Description
1.	17.10.1955	Byelaws made under s 8 of the Local Government Act 1894
2.	27.4.2001	Letting agreement with Cricket Club
3.	9.3.2009	Service level agreement with Youth Club (renewed annually)
4.	1.9.2009	Letting agreement with Football Club
5.	4.9.2009	Papers relating to grounds maintenance
6.	7.9.2009	Invoice re cricket
7.	27.9.2009	Approach by pre-school group
8.	10.2009	Public toilets maintenance arrangement
9.	1.12.2009	Invoice re football

Offices at Bookham and Croydon

Members/Partners: Roger S Taylor (Notary Public) Christopher Hughes (Notary Public) Sarah E Christmas
Consultant: Ole H Lav Associates: Anne Bott Ian Davison Lewis J Hulatt Kate Jackson Conveyancer: Sonia Gould (FILEX)

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A member of the International Practice Group

The Town Council objects to the above application for the following reasons:

The Transferors' intention

- 1 The whole of the land was acquired by the Council's predecessor in 1926. The conveyance of 16 April 1926 purported to permit the land to be used as a public recreation ground for the benefit of the inhabitants of the village of Polegate. The conveyance was expressed to be on trust and was subject to restrictive covenants contained in a deed of 30 January 1922 confining the use to a recreation ground or purposes ancillary thereto and to prevent nuisances. The nature of the trusts was not specified. I do not consider that any trust was properly created and is not enforceable. Nevertheless it is indicative of the public's being granted the use of the land by right.
- 2 The land is bound by restrictive covenants. They are private law devices enforceable between the original parties in contract and they can be enforceable by successors of covenantee (the person having the benefit of the obligation) if there is land to be benefited. The Town Council is to be regarded as the original covenantor (the person subject to the obligation) as, statutorily, it stands in the shoes of the original parish council. It is not clear to me if there is land to be benefited by the covenant. The enforceability of the restrictive covenants must therefore be in doubt. Nevertheless they are indicative of the public's right to use the land by right.

The statutory purpose

- 3 The statutory purpose for which the land was to be (and is) held is not specified in the conveyance nor on the registered title. However, the 1955 byelaws were made pursuant to s 8(1)(d) of the Local Government Act 1894 which in turn relates to land held under s 164 of the Public Health Act 1875¹. The 1875 Act remains one of the four principal powers under which land is held for recreational purposes and empowers a local authority, including a parish council, to lay out, improve, manage and make byelaws to regulate open spaces.
- 4 S 164 provides as follows:

Any urban authority may purchase or take on lease lay out plant improve and maintain lands for the purpose of being used as public walks or pleasure grounds, and may support or contribute to the support of public walks or pleasure grounds provided by any person whomsoever. Any urban authority may make byelaws for the regulation of any such public walk or pleasure ground, and may by such byelaws provide for the removal from such public walk or pleasure ground of any person infringing any such byelaw by any officer of the urban authority or constable.
- 5 Unlike the Open Spaces Act 1906, the 1875 Act does not impose any trusts. It follows that the full range of open space powers under the 1875 Act, the Public Health Acts Amendment Acts 1890 and 1907, the Public Health Act 1961², ss 144 (encouragement of visitors) and 145 (provision of entertainment including temporary closure of and charging for entertainments on recreation grounds) of the Local Government Act 1972 and s 19 of the Local Government (Miscellaneous Provisions)

¹ See e.g. Chitty's statutes vol VIII 1912 edn

² The Public Health Act provisions were extended to parish councils by sch 14 to the Local Government Act 1972

Act 1976 (provision of recreational facilities) applies and is available to the Town Council. The byelaws (Doc 1) permit land to be set aside from general public use for organised team games. It is clear that those open space powers have been used in the past and could be employed in the future (see e.g. Docs 2, 4-6, 9). The extensive powers are clearly inconsistent with village green status.

6 DEFRA has advised³:

Local authority owned land may be the subject of an application for registration. Depending on the powers under which the land is held, use of such land may not be as of right. In the Beresford⁴ case, Lord Scott took the view that use of land held by a local authority under the Open Spaces Act 1906 could not have been as of right, since the Act conferred an obligation on the authority to keep the land available for public use. In Defra's view, similar principles would apply to land held under the Public Health Acts or other legislation which requires the authority to make available parks or other open spaces for public use. This is because such use is 'by right' — that is, the public must be allowed to use the land for recreational purposes, and the authority cannot lawfully prevent such use.

7 The Town Council agrees with DEFRA's view that the land has been used by statutory right pursuant to statute and not as of right within the meaning of s 15 of the 2006 Act.

8 The registration of the land as a village green would be inconsistent with the exercise of the Council's powers to date and severely compromise and prevent the Council's being able to exercise its open space powers.

The Council's permission

9 — Notwithstanding the Council's submissions above, the Council, while it agrees that the public and in particular local inhabitants have used part of the land without force and openly (i.e. not secretly) and the Council has not sought to prevent public access and has not erected signs indicating its ownership or control, it and they have done so with the Council's permission.

10 The term without permission refers to use which has neither express nor implied permission. This applies where land has been in long usage by other people and the landowner did nothing to prevent that use. The lack of any attempt by the landowner to end the use is taken as though the landowner intended to give the users rights to use the land. However, if the landowner makes known to the users of the land that their use of the land is by permission then the use of the land cannot be said to be 'without permission'. In the *Beresford* case, Lord Bingham said, when considering how a landowner may end use as of right:

"A landowner may so conduct himself as to make clear, even in the absence of any express statement, notice or record, that the inhabitants' use of the land is pursuant to his permission. This may be done, for example, by excluding the inhabitants when the landowner wishes to use the land for his own purposes, or by excluding the inhabitants on occasional days: the landowner in this way asserts his right to

³ <http://www.defra.gov.uk/rural/documents/protected/common-land/pilot-craguid.pdf>

⁴ *R v City of Sunderland ex parte Beresford* [2004] AC 889

exclude, and so makes plain that the inhabitants' use on other occasions occurs because he does not choose on those occasions to exercise his right to exclude and so permits such use."

- 11 In the *Redcar*⁵ case the Court of Appeal held that sports and pastimes which had taken place on a golf course for 20 years were not undertaken as of right. This was because the users had overwhelmingly deferred to the golfers. Dyson LJ said:
- "...there are cases where, in practice, the activities of the owner will be inconsistent with user by the local inhabitants of the land for sports and pastimes for the purposes of section 22 of the 1965 Act (and section 15 of the 2006 Act). The inconsistency will manifest itself where the recreational users adjust their behaviour to accommodate the competing activities of the owner (or his lessees or licensees). By adjusting their behaviour, they give the impression to the owner that they are not claiming a right to do what they are doing. That leads the owner not to regard the users as acting as of right."*
- 12 In the *Laing Homes*⁶ case the High Court considered that the preparation, management and cropping of a field for hay was an interruption to use as of right as users deferred to the farmer at the times during which the agricultural work was taking place.
- 13 In this case, I am instructed that while there may have been a pavilion building on the land at the date of acquisition, this has been replaced. Public toilets have been erected or provided within the buildings for users of the recreation ground, the car park and for the general public (see Doc 8). The buildings have been used as council offices (for 10 years or thereabouts from 1985) (denoted on application plan) and when the offices were moved the offices were leased for commercial purposes, although they are now empty. A youth club has used the buildings for seven or eight years (see Doc 3). Negotiations for the use of the buildings by a pre-school are under way (see Doc 7). A garage for the storage of equipment has been erected and a shed for use of the cricket club. A car park has been laid out, surfaced and lined. An equipped children's play area has been provided and recently refurbished at a cost of £40,000. Fencing has been erected, although there is no control over access for pedestrians. Netting, football goalposts, a fenced cricket square and public seats have been provided. See the photographs forming part of the application. These steps are clearly indicative of the owner's exercising ownership rights to the exclusion of an unfettered ability of local inhabitants to access and use the field. These facilities can be seen from the plan and photographs forming part of the application.
- 14 The open areas of the land have been used by the public for informal recreation. However, the use for organised sport has been regulated by letting agreements for cricket, football and stoolball (see specimen agreements appended: Docs 2, 4, 6, 9). The agreements, which I have seen, amount to licences (so far as I can ascertain) and they allow the hirers to use an undefined area of the land for the purposes of their sports and shared use of the pavilion, subject to conditions and the payment of a fee

⁵ *R (on the application of Lewis) v Redcar and Cleveland Borough Council and Persimmon Homes (Teesside) Ltd* [2009] All ER (D) 70 (subject to appeal to the Supreme Court)

⁶ *R (on the application of Laing Homes Ltd.) v Buckinghamshire County Council* [2003] All ER (D) 117

(see Docs 2, 4, 6, 9). The Town Council is evidently controlling such use and exercising the rights of an owner. It can expect (as can the hirers and the public) that the use to be made by the hirers will exclude the public from those areas when in use.

- 15 The whole site has been subject to byelaws regulating public use.

The nature of the land

- 16 While the nature of the land used as village green has not been conclusively settled, although the House of Lords did consider the question in the *Trap Grounds* case⁷, it appears that the land must have an open appearance and be predominantly accessible to the public. Buildings and hard areas and areas from which the public is excluded are likely to be incompatible with a village green. DEFRA in its guidance gives as an example the use of part of the site as a sub-station and by analogy (though not necessarily in force) paragraphs 6 and 8 of sch 2 to the 2006 Act and the guidance specifically envisage that buildings are generally incompatible with a village green. The hard development described above is inconsistent with a village green.

Conclusion

- 17 The original transferor's intention does not envisage the use of the land as a village green but rather as public open space.
- 18 The statutory purpose envisages the use of land as public open space and empowers the Council to exercise a wide range of development and management powers inconsistent with use as a village green.
- 19 The private law and public law confer on the public an ability to use the site by right.
- 20 The Council has exercised its functions under the open spaces legislation and presumably under s 111 of the Local Government Act 1972 in such a way that is inconsistent with use as a village green and intends to do so e.g. through a letting to the pre-school.
- 21 The Council has exercised its rights as owner to the exclusion of the public in its development of the site and its management of the facilities.
- 22 In particular with respect to the developed areas it has erected buildings for public and private use and laid out a car park and has entered into arrangements which exclude the public.
- 23 In particular with respect to the open areas it has permitted and regulated the activities for a fee to the exclusion of the public.
- 24 Without prejudice to the Council's submission that the application should be rejected in its entirety, if the registration authority were minded to grant the application in part, it should exclude all the areas which have buildings, are fenced off or used for organised games.

⁷ *Oxfordshire County Council v Oxford City Council* [2007] 2 AC 674

Comments on the application

The application proceeds on the basis that the land has been used by local inhabitants since 1926 for the purposes of public recreation. It states that there has been no restriction on casual use. It concedes that there has been regulated use for organised sport. It assumes that because casual use has not been prevented that use has been as of right sufficient to engage the provision of s 15 of the 2006 Act.

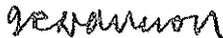
However, the application does not acknowledge or deal with the buildings or their uses, the various means of enclosure, the erection of fences, the layout of the car park and the exclusion of the public from certain areas. It does not deal with the express and implied permission point. Generally, the application does not acknowledge that the Council's wide powers in respect of public open space and recreation and ancillary powers under the Local Government Act 1972 have been and are being exercised.

Further points

The Council reserves the right to amend its submissions in the light of decision of the Supreme Court in the *Redcar* case and other changes in the law (if any) before the determination of the application.

If you require any further information, please let me know.

Yours sincerely



Ian Davison
Hedleys Solicitors LLP
Email: i.davison@hedleys-solicitors.co.uk

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Charles J. P. Varmon

Department of the Forest Service

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POLKCAVE PARISH COUNCIL

I hereby confirm the foregoing bylaws and fix the date on which they are to come into operation as follows:

February, 1956

C. L. LINDO, CHAIRMAN

One of the Trustees of the Parish Council



WILMINGTON

20th December, 1955.

BYLAWS made under Section 8 (1) (b) of the Local Government Act, 1954, by the Parish Council of Polkcave with respect to a RECREATION GROUND.

1. In this bylaw the expression "the Council" means the Parish Council of Polkcave and the expression "the ground" means the War Memorial Recreation Ground, Wainock Road, Polkcave.

2. Any person who is in possession of the ground shall be deemed to be in possession of the ground on behalf of the Council.

3. No person shall be allowed to use the ground for any purpose other than for the recreation of the public.

4. No person shall be allowed to use the ground for any purpose other than for the recreation of the public.

5. No person shall be allowed to use the ground for any purpose other than for the recreation of the public.

6. No person shall be allowed to use the ground for any purpose other than for the recreation of the public.

7. No person shall be allowed to use the ground for any purpose other than for the recreation of the public.

Agreement made

between

Polegate Town Council

and

Polegate and Stone Cross Cricket Club

for the use of

Wannock Road Recreation Ground

LETTING AGREEMENT

This AGREEMENT is made the 27th day of April two thousand and one
BETWEEN POLEGATE TOWN COUNCIL of Council Offices 49 High Street Polegate
East Sussex BN26 6AL (hereinafter called "the Council") of the one part and Polegate
& Stone Cross Cricket Club of 40 Launceston Avenue
Stone Cross, Lewes BN24 5PQ (hereinafter called "the hirer") of the other part

NOW IT IS AGREED as follows: -

1. Definitions and Interpretation

In this agreement

- 1.1 "the premises" means the whole of the Pavilion, Wannock Road, Polegate, with the exception of the outside toilets, and any relevant part of the recreation ground reasonably required for the purpose for which it is hired.
- 1.2 the "charge" means the charge fixed from time to time by the Council
- 1.3 words importing one gender shall be construed as importing the other gender
- 1.4 words importing the singular shall be construed as importing the plural and vice versa

2. Agreement

2.1 The Council gives the hirer the right (in common with the Council and all others authorised by the Council so far as it is not inconsistent with the rights given) for the hirer and persons authorised by him to use the premises for the purpose agreed in the acceptance of letting form (which forms part of this agreement and is appended to this agreement)

3. Hirer's Undertakings

The hirer agrees and undertakes:

- 3.1 to use the premises for use as authorised in the acceptance of letting form and for no other purpose
- 3.2 to pay to the Council the charge as soon as it is demanded without any deductions

3.3 to keep the premises in good condition and repair and to report immediately to the Town Clerk, any damage found and suspected to have been caused by any other user of the premises

3.4 to make good and repair any damage caused by the agreed use of the premises

3.5 to inspect the premises before leaving to ensure that all convector, fan and radiant heaters are turned off (leaving all storage heaters switched on) all shutters are closed and locked and that all doors are locked and secure and that all security alarms are properly set and activated

3.6 to keep the pavilion locked when unoccupied to ensure the complete security of the premises

3.7 not to give or otherwise allow unauthorised persons to have access to the keys of the pavilion and not to use the pavilion or any of the premises other than on days and times previously agreed with the Town Clerk

3.8 to indemnify the Council and keep the Council indemnified against all losses claims and demands actions proceedings costs or expenses or other liability arising in any way from this Agreement any breach of any undertakings on the part of the hirer contained in this clause or the exercise of the rights given in Clause 2

3.9 to enter into a public liability insurance policy for a minimum of £2m cover and to give sight of current insurance certificates to the Town Clerk

3.10 not to impede in any way the Council or its servants or agents in the exercise of the Council's right of possession of the premises

3.11 to leave the premises clean and tidy

4. General

4.1 The rights granted in Clause 2 shall determine immediately on notice served by the Council at any time following any breach by the hirer of his undertakings contained in Clause 3

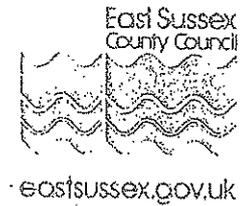
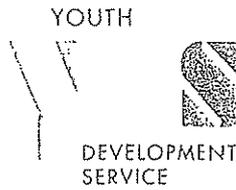
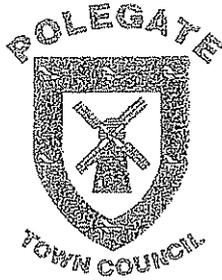
4.2 The benefit of this Agreement is personal to the hirer and not assignable and the rights given in Clause 2 may only be exercised by the person specified in that Clause

APPENDIX

ACCEPTANCE OF LETTING FORM

In accordance with clause 2 of this agreement the authorised use is for playing cricket on the Recreation Ground and the use of the pavilion for changing, refreshments, showers etc. as normally expected to be allowed.

This acceptance is for pre-booked use of the Recreation Ground in accordance with clause 3.7



TERMS OF AGREEMENT

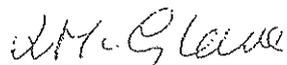
This agreement is made between East Sussex County Council (Children's Services Department), Youth Development Service (West) and Polegate Town Council – and is effective from 01 April 2009 until 31 March 2010.

The first contact person in respect of this agreement is the Service Manager of the Youth Development Service (West)

SIGNED ON BEHALF OF YOUTH DEVELOPMENT SERVICE (WEST)

NAME..... 05/03/09DATE
Dan Murphy

SIGNED ON BEHALF OF POLEGATE TOWN COUNCIL

NAME..... 9-3-09DATE

INTRODUCTION

This Agreement provides a framework in which to develop a range of good quality provision of youth work for the benefit of young people aged 11 – 19 years (up to 25 years for young people with Special Educational Needs or Disability) living in Polegate and the surrounding area. It sets out what the Youth Development Service (hereinafter referred to as YDS) and Polegate Town Council will provide in order to achieve this work.

1 Consultation and Development

- 1.1 The YDS will undertake needs analysis in relation to work with young people within Polegate and the surrounding area and review the effectiveness of the service provided. This will include the needs of young people with special educational needs and disabilities and those from black and minority ethnic groups
- 1.2 The YDS will ensure that consultation takes place with other relevant agencies and organisations on the provision of services to young people in the area and in order to ensure that good practice is shared and resources fully utilised
- 1.3 The YDS will enable the development of collaborative provision

2 Strategy

- 2.1 YDS will prepare an annual Development Plan for work with young people in Polegate and the surrounding area. The Development Plan will reflect the Annual Plans of the YDS and the East Sussex County Council Children and Young People's Plan
- 2.2 The YDS will provide a broad and balanced curriculum that supports young people in their personal development and reflects the East Sussex Youth Development Service Curriculum
- 2.3 The YDS and Polegate Town Council will collaboratively apply for funding for youth work projects within Polegate and the surrounding area

3 Staffing

- 3.1 The YDS will provide qualified Youth Workers for three sessions a week (9 hours) to work face to face with young people for two of the sessions and utilise a third session to develop further work and links with Willingdon School and other organisations working with young people in Wealden District

- 3.2 Polegate Town Council will provide funding for youth workers, for two sessions a week (total 12 hours), which will be recharged up to a maximum of £7800, including on costs).
- 3.3 Polegate Town Council, if they withdraw funding, will be responsible for any redundancy payment to the youth workers funded by them
- 3.4 The YDS will employ and manage the youth workers on behalf of Polegate Town Council. This will include professional supervision and annual performance management review
- 3.5 The YDS will advertise vacancies and appoint staff in accordance with the policies and procedures laid down by the County Council and ensure that staff are provided with a Contract of Employment and current job description.
- 3.6 The YDS will be responsible for the conduct, discipline and grievance procedures of staff in consultation with Children's Services Personnel Department.
- 3.7 The YDS will appoint staff who are appropriately qualified and / or experienced for the tasks required of them
- 3.8 The YDS will provide a manager to attend appropriate meetings of Polegate Town Council
- 3.9 Polegate Town Council will provide a named Town Councillor to support the work

4 Premises

- 4.1 Polegate Town Council will provide free of charge Wannock Pavilion for the use of YDS staff in their work with young people for two sessions a week in the first instance
- 4.2 YDS staff will carry out risk analysis in respect of all buildings used by workers employed by the YDS in their work with young people in Polegate and surrounding area

5 Statutory Duties

- 5.1 The YDS will be responsible for operational policies and procedures. These policies will include: Equal Opportunities; Health and Safety; Disability Discrimination Act./SENDA; Data Protection Act; Confidentiality; Information Sharing Protocol
- 5.2 All staff employed and volunteering with the YDS will be subject to an enhanced CRB check

6 Monitoring

- 6.1 The YDS will ensure that comprehensive statistics are kept which will inform future service provision
- 6.2 The YDS will provide Polegate Town Council with a quarterly report detailing the level of activity of youth work in Polegate and surrounding areas

7 Termination of Agreement

- 7.1 This agreement will terminate on 31 March 2010 and YDS and Polegate Town Council will negotiate an agreement beyond 31 March 2010 by the end of December 2009. Future Agreements will be dependent upon sustainable funding being available to the YDS and Polegate Town Council
- 7.2 During the term of the Agreement either party may terminate the Agreement on giving three months written notice to the other partner

8 Disputes between the Parties

- 8.1 If any disagreement arises between the parties concerned as a result of their respective obligations under this Agreement, upon any matter, which cannot be resolved through routine discussion and review, the matter shall be referred to Service Manager of the YDS and the Leader of Polegate Town Council

LETTING AGREEMENT

This agreement is made the 25 SEP 2004 between POLEGATE TOWN COUNCIL of 49 High Street, Polegate BN26 6AL (hereinafter called 'the Council') of the one part and The Officers on behalf of Polegate Town Football Club (hereinafter called 'the hirer') of the other part.

It is agreed as follows:

1. Definitions and Interpretation

1.1 'the premises' means the whole of the Pavilion, Wannock Road, Polegate with the exception of the outside toilets and the cooker, and any relevant part of the recreation ground reasonably required for the purpose for which it is hired.

1.2 the 'charge' means the charge fixed from time to time by the Council.

1.3 words importing one gender shall be construed as importing the other gender.

1.4 words importing the singular shall be construed as importing the plural and vice versa.

2. Agreement

2.1 the Council gives the hirer the right (in common with the Council and all others authorised by the Council so far as it is not inconsistent with the rights given) for the hirer to use the premises for the purpose agreed in the acceptance of letting form (which forms part of and is appended to this agreement).

3. Hirer's Undertakings

3.1 to use the premises for use as authorised in the acceptance of letting form and for no other purpose.

3.2 to pay to the Council the charge as soon as it is demanded without any deductions. The charge will be payable in advance intervals of 6 months (1 September and 1st March) on receipt of the seasons fixture list.

3.3 to keep the premises in good condition and repair and to report any damage immediately to the Council office.

3.4 to make good and repair any damage caused by the agreed use of the premises.

3.5 to inspect the premises before leaving to ensure that all convector, fan and radiant heaters are turned off, all shutters are closed and locked and that all doors are locked and the building secured.

3.6 to keep the Pavilion locked when unoccupied to ensure the complete security of the premises.

3.7 not to give or otherwise allow unauthorised persons to have access to the Pavilion and not to use the Pavilion or any of the premises other than on days and times previously agreed with the Council Office administration.

3.8 to indemnify the Council and keep the Council indemnified against all losses, claims and demands, actions, proceedings, costs or expenses or other liability arising in any way from this Agreement, any breach of any undertakings on the part of the hirer contained in this clause or the exercise of the rights given in clause 2.

3.9 to enter into a public liability insurance policy for a minimum of £5 million cover and to provide sight of the original and a copy of the policy to the Council Office administration.

3.10 not to impede in any way the Council or its servants or agents in the exercise of the Council's right of possession of the premises.

3.11 to leave the premises clean and tidy.

3.12 two set of keys will be collected and signed for at the beginning of September and a deposit of £100 will be paid which will be repaid on the return of the keys.

3.13 no copies of any keys to be made.

4. General

4.1 The rights granted in Clause 2 shall determine immediately on notice served by the Council at any time following any breach by the hirer of his undertakings contained in Clause 3.

4.2 The benefit of this Agreement is personal to the hirer and not assignable and the rights given in Clause 2 may only be exercised by the person specified in that Clause.

4.3 The Council shall not be liable for the death of or injury to or for damage to any property of or for any losses, claims, demands, actions, proceedings, damages, costs or expenses or other liability incurred by the hirer or any person referred to in Clause 2 in the exercise or purported exercise of the rights granted in Clause 2.

5. Termination

Either party may terminate the agreement by submitting one season's prior notice in writing to the other party with the exception if any clause of this agreement is broken the Council may terminate the agreement immediately.

IN WITNESS whereof the Council and the hirer have signed this Agreement the day and year first before written.

Signed on behalf of:

POLEGATE TOWN COUNCIL

Authorised Signatory *(Signature)*

In the presence of.....

Signed on behalf of:

POLEGATE TOWN FOOTBALL CLUB

Authorised Signatory: Chairperson
In the presence of: Secretary.....

ACCEPTANCE OF LETTING

This acceptance forms part of the agreement with Polegate Town Football Club dated 11/11/00

The purpose agreed is for the playing of football matches by Polegate Town Football Club on dates previously advised by the club in advance.

The Council has appointed an independent arbiter to confirm whether or not a game may or may not be played. If the ground is deemed to be unfit for play notification will be given to the Club on Fridays if at all possible and will be notified to the person identified in the agreement, or other agreed nominated person.

The person identified in the agreement, or other agreed nominated person, is to liaise with the independent arbiter on each match day, and prior to play, to confirm that the ground is fit for play and the arbiter's decision is final.

If the ground becomes unfit just before a game commences or during a game it is the responsibility of the club to make good any damage caused by using the pitch when clearly unfit, even if the match referee decides that the match may proceed.

Football may not be played on the recreation ground after the third Saturday in April.

All keys to the pavilion to be returned at the end of the season.

Sept 2009

POLEGATE TOWN COUNCIL

CONTRACT SPECIFICATION

Grounds Maintenance

Wannock Road Recreation Ground

Spring

At the end of the football season - weedkill, re-seed and fertilise as necessary, especially on the football pitch, but not the cricket square.

Spring/Summer/Autumn (from the end of the football season until the end of October - subject to the condition of the grass)

Cut the whole playing field - gang mowed - (except the cricket square) once a week at the end of the week - Thursday or Friday - suitable as a cricket outfield

Strim ditches and keep clear as required (minimum 4 times a year)

Strim and Mow the inside of the play area and around the car park

Cut all hedges at least once a year by the end of June, but not before the birds have raised their young. This includes both sides of the hedges fronting Wannock Road and Wannock Drive.

(Allow PC sum for a second cut if required later in the summer or in the autumn)

Winter

Cut playing field as often as required for football and general public requirements (please note that this requires a wide wheeled machine so as not to leave ruts in the ground)

Brightling Road Open Space

Summer

Entrance field

A - 7 cuts (rotary mower - arisings left on site) during the growing season and strim at the boundary of the properties in Heron Ridge 4 times in the season.

Main Field

B - 10 cuts (rotary mower - arisings left on site) during the growing season over whole field

Cut hedgerows all round in October.

Barcombe Landscapes Ltd.
Landscape and Amenity Contractors

Sportsground and Amenity Services
Garden Construction, Renovation and Maintenance
Paddock Maintenance, Agriculture and Trees



Springlands
Town Littleworth
Cooksbridge
Nr. Lewes
Sussex
BN9 4TH
Tel: 01273 400259

Directors
Mr B. M. H. Cooper
Mr D. Cooper
VAT No. 730 2213 901
Registered No. 292507

Polegate Town Council,
49 High Street,
Polegate, BN26 6AL

4th September 2009.

Dear Carol,

Further to your recent enquiry, we have pleasure in submitting the following estimate for your council's consideration: (prices largely the same as last year)

Wannock Road Recreation Ground;

To re-seed goalmouth areas of football pitch, spring,	£ 420-00
To fertilise whole field with 20-10-10 fertiliser, spring,	£ 150-00
To mow playing field weekly, (24 cuts p.a.)	£ 49pr cut, £ 1176 p.a.
To strim ditches (4 cuts p.a.)	£ 80pr cut, £ 320 p.a.
To mow and strim inside play area (12 cuts p.a.)	£ 50pr cut, £ 600 p.a.
To cut all hedges, after end of June.	£ 226 per cut,

Brightling Open Space;

To cut entrance field 7 cuts p.a.	£ 70 pr cut, £ 490 p.a.
To strim beside same, next to houses (4 cuts p.a.)	£ 30 pr cut, £ 120 p.a.
To cut main field as per last year (10 cuts p.a.)	£ 500 per annum
To cut hedgerows around main field in October	£ 150
To short cut 2m path around meadow (10 cuts pa)	£ 80 per annum
To mow and strim inside skatepark (12 cuts pa.)	£ 35 pr cut, £ 420 p.a.
To cut centre part of meadow 2 cuts p.a.	£ 50 pr cut, £ 100 p.a.
To cut hedges around meadow October	£ 50

Cophall Allotments;

To paths/ grass areas between allotments 3 cuts p.a.	£ 100 pr cut, £ 300 pa.
To cut roadside hedge in October	£ 50

Oakleaf Play area, to cut and strim (12 cuts p.a.)	£ 45 pr cut, £ 540 p.a.
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All Prices are plus VAT. For contracts of a longer period please add 2% for each subsequent year. Should you have any queries do not hesitate in contacting me. We trust you were happy with last year and look forward to being of service again.

Yours sincerely,
Mark Cooper



8 Brook Street
Polegate
East Sussex
BN26 6BQ

(01323) 489231

27th September 2009

To whom it may concern,

It has come to our attention that the Wannock Pavilion has become available for rent.

As chair of Polegate Pre-School I would like to put us forward as an interested party in this building.

We currently reside at the Community Centre in Polegate this has been the pre-schools residence for many years, however due to circumstances beyond our control and with the current financial difficulties that the centre seem to be facing they are putting up our rent by 20% this is our second increase we have faced this year and one we are just not able to meet.

The pre-school is gaining more and more interest as time goes on and we have a waiting list which sees us in to 2011.

With numbers so high and, being the only pre-school for our community we are finding it hard to keep up with the demands that are put upon us.

Currently we open for five morning sessions a week and we would like to increase this to the afternoons, which would allow us to cater for more children and in turn provide more income to the pre-school.

We have approached the Community Centre with reference to opening every afternoon but as you can appreciate they are there for the whole community and have various clubs which run during the afternoons and so sadly this is not an option.

With our own building we would be able to achieve so much more.

Due to the Community Centre being hired to the public we are not allowed to display children's pictures on the walls and any equipment has to be taken out and put away at each session.

We can't even make a suitable outdoor play area as it not a building we can call our own.

Polegate Pre-School is a charity group run by a voluntary committee of seven parents we have to fundraise to employ staff and also use this money to place staff on the relevant courses required by Ofsted in order to keep up to date with children's needs.

Government funding gives children over 3 years of age vouchers to access free pre-school places these effectively act as cash which is returned to the pre-school.

We have children who pay for their place up until the age of 3, however we feel we are unable to charge more than the current value of that voucher for a non funded child, and so therefore have exhausted every option of making more money to cover our increased rent costs.

We believe that opening up everyday will bring in more money for the pre-school and therefore provide Polegate with a fantastic facility which in turn will feed the local school.

At our most recent committee meeting we had to inform our supervisor that the increase in rent will take us to a situation where the pre-school will have to close at Christmas as our funds will run out.

The committee have arranged for four fundraising events before Christmas to try and help our situation but with the parents feeling the pinch of the economic state this country is in at the moment and Christmas approaching rapidly I am afraid to say that like many other local business we too will fold leaving children without a pre-school and 14 staff without jobs.

With our own building we believe we could turn our pre-school around and we would be able to carry on the excellent care and education we are already providing.

A building which the children and staff could proudly call their own would be a dream come true.

With thanks,
Courtney Cassell
Polegate Pre-School Chair

Wetton
Established in 1999

10/2009.

Quotation

~~To provide an unlocking service and one full clean to Polegate toilets including consumables on a 5 day basis at a calendar monthly charge of;~~

~~£364.68 plus VAT.~~

To provide an unlocking service and one full clean to Polegate toilets including consumables on a 7 day per week basis at a calendar monthly charge of

£454.48 plus VAT.

Wetton Cleaning Services Ltd

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276-280 St James's Road
London SE1 5JX

Tel 020 7237 2007
Fax 020 7252 3277

E-mail wcs@wetton.co.uk
Website www.wetton.co.uk

Regional Office: 2-4 West House Rotherham Brighton BN7 7HP Tel: 01273 553627 Fax: 01273 254227
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