Committee: Common and Village Green Registration Panel

Date: 11 February 2009

By: Director of Law and Personnel

Title: Application for land at the former Royal Oak Public House, Beckley to be registered as a town or village green

Purpose: To consider the application

RECOMMENDATION: To reject the application pursuant to section 15 of the Commons Act 2006 of Mr Baverstock on behalf of the Beckley Parish Council to have land at the former Royal Oak Public House, Beckley registered as a town or village green.

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1. The Site

1.1 The site is a triangle of land in Beckley between Main Street, Kings Bank Lane and a byway open to all traffic recorded on the Definitive Map of Public Rights of Way as Beckley 45. It lies to the east of the former Royal Oak Public House which was closed in 2001. The Royal Oak and the application land are owned by Central and Provincial Developments. A copy of the application with the plan of the area is attached at Appendix 1.

2. The Law

2.1 For land to be accepted as being a town or village green it must satisfy the criteria set out in the Commons Act 2006. A guide to the law is attached at Appendix 2. In short the applicant must prove that the land has been used by a significant number of local inhabitants for lawful sports and pastimes as of right for a period of twenty years.

3. The Application

3.1 The application was made by "Mr Bernard Baverstock for and on behalf of the Beckley Parish Council" on 12 April 2007.

3.2 The application was made under section 15(4) of the Commons Act 2006 as the use of the land had ceased before 6 April 2007. The significance of this is that for some years it used to be the case that use of the land had to continue to the date of the application. However this created problems and so the law was changed, in the form of the Commons Act 2006. The law effectively adds a grace period within which a claim must be brought. Where the cessation of use occurs before 6 April 2007, such as in this case, the application must be made within five years of the date when the land ceased to be used in a qualifying manner, ie as of right for lawful sports and pastimes for at least twenty years.

4. Consultation and representations

4.1 The application was duly advertised in the Rye and Battle Observer on 20 April 2007. The interested Council, the Rother District Council, and landowners were notified and notices put on site. A copy of the Application was kept on deposit for public consultation at County Hall and The Town Hall, Bexhill.

4.2 The landowner, Central and Provincial Developments, objected to the application through their representatives, Eversheds, Solicitors.

5. The merits of the Application

5.1 The applicant asserted that the land had become a village green on the basis that the land had been used by a significant number of the local inhabitants for lawful sports and pastimes as of right for not less than 20 years, and that this use had been continuous up to August 2002. In order for the application to succeed the applicant must provide evidence of use dating back to 1982 and continuing to 2002.

5.2 With the application the applicant provided a 'Proof of Evidence' containing historic evidence and 47 Witness Questionnaires. In August 2007 a document entitled 'Further Supporting Documentary Evidence' was provided by the applicant. In April and May 2008 three further documents were provided by the applicant: 'Additional Supporting Documentary Evidence', 'Further Documents Required by the Inspector' and 'Plans and Photographs of Fencing'. The Proof, Questionnaires and further documents are available in the Members' Room.

5.3 The landowner, Central and Provincial Developments, objected to the application principally on the basis that the applicant had failed to prove twenty years use as of right up to 2002. The evidence to support this contention was statutory declarations from the last landlords of the Royal Oak, Mr and Mrs Simmons, who closed the public house and converted it into a private dwelling. Copies of the Statement of Objection and the Statutory Declarations are at Appendix 3.

5.4 Given the clear conflict in the evidence provided it was decided that the best way to determine the application was by means of a non-statutory public hearing. The Planning Inspectorate was contacted and a Hearing convened at the Beckley Village Centre on 4-6 June 2008. The Inspector was provided with all the background documents which have been set out above, and are available in the Members' Room. Evidence was given before Mrs Slade of the Planning Inspectorate by witnesses on behalf of both sides who were cross examined.

5.5 The Inspector provided the County Council with a report into the application, together with a recommendation. In summary her conclusion was that "although a significant number of the inhabitants of Beckley have indulged as of right in lawful sports and pastimes on the application land, they have not done so, to the required level, throughout the period of 20-years on which the application must rely." She recommended that the application be rejected and a copy of her Report is at Appendix 4.

5.6 The Applicant has made observations on the Inspector's findings and these are attached at Appendix 5. The principal thrust of these is that the Inspector had insufficient evidence from which to conclude that use of the land had declined to the extent that the application should be refused, and that greater weight should have been attached to the questionnaires. The Objector has commented on these observations, also appended. The Panel is referred to paragraph 12 and paragraphs 110 to 120 of the Report with regard to the Inspector's consideration of the evidence.

5.7 The Applicant has made further observations on the Inspector's findings, providing an analysis of the oral evidence presented at the three day hearing with particular regard to use "as of right" and the closure of the village shop, Norringtons. The Applicant contends that the Inspector did not have the evidence before her to make such a finding and that the Objector did not raise the point as part of their case. These observations have been included at Appendix 5.

5.8 The legal test to be applied is how the use of the land appeared to the landowner: whether the reasonable landowner could be expected to conclude from observing the use of the land that people were asserting a public right. The Inspector sets out between paragraphs 76 and 105 her findings on use "as of right" and at paragraphs 127 to 133 her observations on the nature of that use. She concluded that "It therefore appears for the last 3-4 years of the relevant period [ie between 1998 and 2002], although there was residual use that use was not indulged in by a significant number of local inhabitants, but a much smaller and insignificant number", and therefore does not satisfy the necessary test.

5.9 The applicant concludes by stating "It's not fair, we've used this green for as long as anyone can remember, the Inspector agrees it's been a Green for 17 years, just because a nearby shop closed it did not bring an end to the use of the Green, people may not have used it so much since there is all this disagreement about the pub and all this bad feeling has been stirred up, but the fact is it was and is a village green in Beckley and everyone accepts that even the Inspector."

5.10 There has been a statutory process for registering land as a village green in place since the Commons Registration Act 1965. It would have been open to the Applicant to make an application at any point to register the land as a village green. The criteria for registering land changed with the Commons Act 2006 and the Applicant chose to make an application. The criteria are set out in the guide to the law at Appendix 2 and all the criteria must be met for land to

be registered. The Applicant has failed to meet all the criteria, as set out in the Inspector's Report.

6. Conclusion and reason for Recommendation

The Panel is recommended to reject the application for the reasons set out in the Inspector's report: that the level of use of the land was not sufficient throughout the twenty year qualification period to justify registration. The application has been subject to a public hearing and that is the conclusion of the Inspector. The Applicant has not advanced any convincing reason why the recommendation should not be followed.

ANDREW OGDEN
Director of Law and Personnel

Contact Officer: Simon Bailey x82683

Local Member: Peter Jones

BACKGROUND DOCUMENTS: Application, Applicant's Proof of Evidence and further documents, Objector's statement and statutory declarations, Inspector's Report, Beckley Parish Council observations, Objector's observations, Beckley Parish Council's further observations

FORM 44

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:

COMMONS REGISTRATION ACT 1965
EAST SUSSEX COUNTY COUNCIL
REGISTRATION AUTHORITY
12 APR 2007

Application number: 1344

Register unit No(s):

VG number allocated at registration:

(CRA to complete only if application is successful)

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

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

1. Registration Authority

Note 1
Insert name of registration authority.

To the

East Sussex County Council
County Hall
Lewes E. Sussex

2. Name and address of the applicant

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.

Name: Bernard Baverstock for and on behalf of BECKLEY PARISH COUNCIL

Full postal address:

Bernard Baverstock
Two Hovens Farm,
Bixley Lane,
Beckley,
Nr. Rye, E. Sussex
TN31 6TH

BECKLEY PARISH COUNCIL
GLASS EYE FARM,
FURNACE LANE,
BECKLEY, NR. RYE
E. SUSSEX
Postcode TN31 6SB

Telephone number: (incl. national dialling code) Beckley Parish Council Clerk 01424 882384
Bernard Baverstock 01797 260416

Fax number: (incl. national dialling code)

E-mail address: Bernard Baverstock — thebavs@tiscali.co.uk

3. Name and address of solicitor, if any

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.

Name:

Firm:

Full postal address:

Post code

Telephone number: (incl. national dialling code)

Fax number: (incl. national dialling code)

E-mail address:

4. Basis of application for registration and qualifying criteria

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

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

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.

AUGUST 2002

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

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

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.

Name by which usually known:

ROYAL OAK GREEN

Location:

See accompanying map.
Parish of Beckley, at junction of Main Street (B2088) and Kings Bank Lane.

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

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

Common land register unit number (if relevant) *

Note 6
It may be possible to indicate the locality of the green by reference to an administrative area, such as a parish or electoral ward, or other area sufficiently defined by name (such as a village or street). If this is not possible a map should be provided on which a locality or neighbourhood is marked clearly.

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

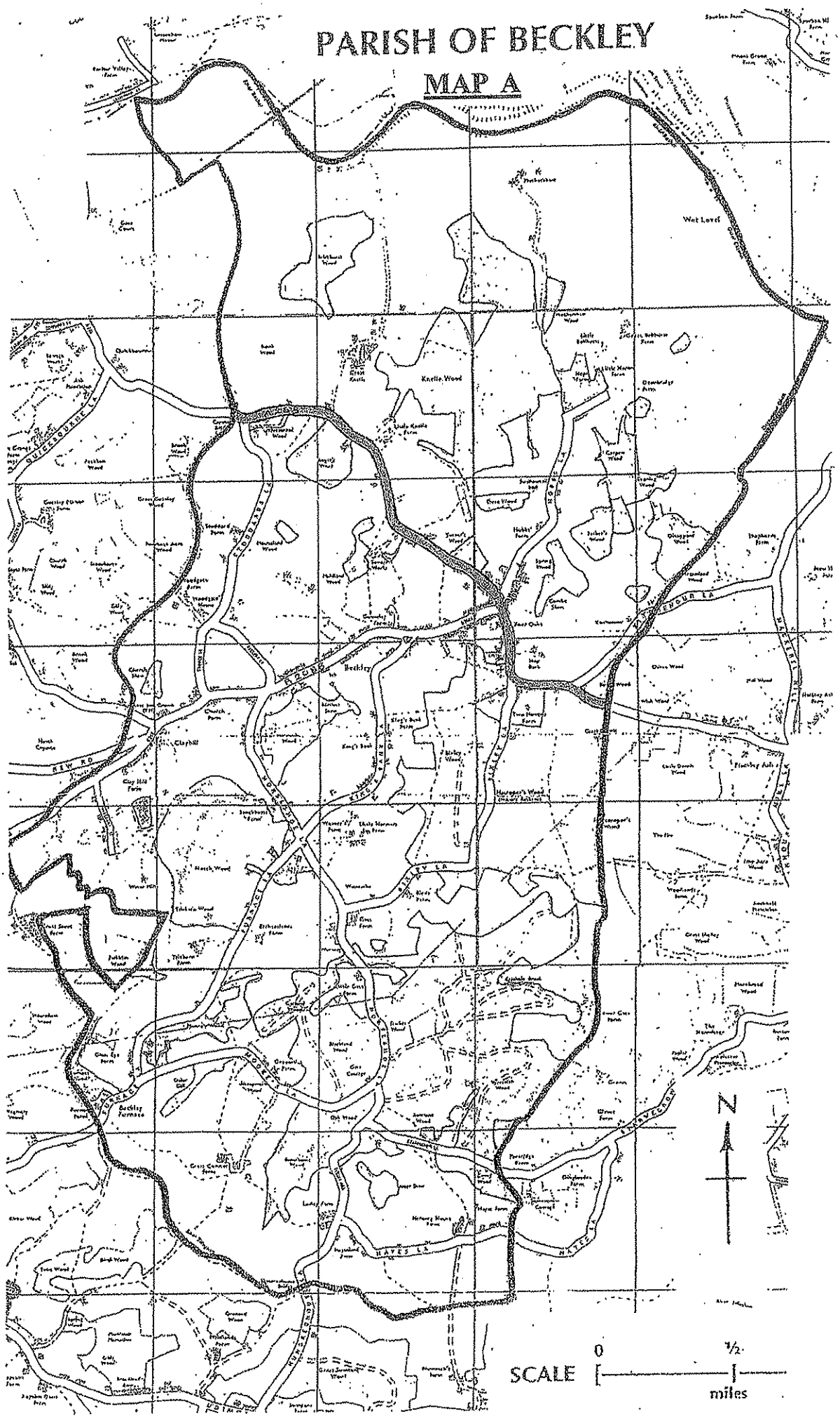
Please show the locality or neighbourhood within the locality to which the claimed green relates, either by writing the administrative area or geographical area by name below, or by attaching a map on which the area is clearly marked:

See attached map (MAP A)
Parish of Beckley
Electoral Ward BB – Rother District
Royal Oak Green at the junction of Main Street (B 2088) & Kings Bank Lane TN31 6RJ
Claimed land forms part of Land Registry Title No SX88693 first registered 12.05.1907

Tick here if map attached: ☑

PARISH OF BECKLEY

MAP A



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).

Beckley Parish Council proof of evidence ~ ROYAL OAK GREEN is included with this application form together with forty seven witness evidence forms completed by villagers.

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

James Roger Parker
Les Houblons.
Three Chimneys,
Biddenden, KENT TN27 8EZ

Robin Andrew Archer
Prawles Court,
Ewhurst Green,
E. Sussex TW32 5RG

Central & Provincial Developments Ltd (Co. Reg. No. 03150362)
1 Windmill Oast, Benenden Rd., Rolvenden, KENT TN17 4PF

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

Note 9
List all such declarations that accompany the application. If none is required, write "none".

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

10. Supporting documentation

Note 10
List all supporting documents and maps accompanying the application. If none, write "none"

Please use a separate sheet if necessary.

BECKLEY PARISH COUNCIL proof of evidence, ROYAL OAK GREEN accompanies this application together with the completed forty seven witness statements.

Note 11
If there are any other matters which should be brought to the attention of the registration authority (in particular if a person interested in the land is expected to challenge the application for registration). Full details should be given here or on a separate sheet if necessary.

11. Any other information relating to the application

We expect the owners of the land to challenge this application.

The land is subject to a planning application RR/2003/3300/P.

A complete copy of Appeal Decision (dated 03 Sept 04) is contained within Beckley Parish Council's proof of evidence.
Appeal Ref: APP/U1430/A/04/1142696

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: 11th April 2007

Signatures: Bernard Barnestock for and on behalf of BECKLEY PARISH COUNCIL

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).*

BERNARD GEORGE BAVERSTOCK
I……,[1] solemnly and sincerely declare as follows:—
TWO HOVENS FARM, BIXLEY LANE, BECKLEY, NeRYE, E.SUSSEX

[2] *Delete and adapt as necessary.*

[3] *Insert name if Applicable*

1.[2] I am ((the person ~~(one of the persons)~~ who (has) (~~have~~) signed the foregoing application)) ((~~the solicitor to (the applicant)~~ (~~[3] one of the applicants~~)). for and on behalf of BECKLEY PARISH COUNCIL

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
BERNARD GEORGE BAVERSTOCK

at CRANBROOK, KENT

this 17th day of APRIL 2007

Bernard Baverstock
Signature of Declarant

Before me *

Signature:

Address: JUSTIN NELSON SOLICITOR
MERIDIAN HOUSE
ST DAVID'S BRIDGE
CRANBROOK
KENT
TN17 3HL

Qualification:

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* **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

Ordnance Survey®

OS Sitemap™

This is the map referred to in the declaration of Bernard George Ravenbrick made before me on 11 April 2007

Metres
0 20 40

Scale 1:1250

Supplied by: **Outlet User**
Serial number: 00004900
Centre coordinates: 585570 124016

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

JUSTIN NELSON SOLICITOR
MERIDIAN HOUSE
ST DAVID'S BRIDGE
CRANBROOK
KENT
TN17 3HL

Appendix 2

Village Green Applications

Guide to the law

The purpose of this Appendix is to provide a guide to the legislation regarding the registration of land as a town or village green (referred to throughout the rest of this Appendix as 'village green'). The law changed in 2006 with the introduction of the Commons Act 2006. This was partly in response to a line of cases in the upper courts concerning village green applications and their use in challenging development.

A registered village green has the benefit of the protection of two Victorian statutes: the Inclosure Act 1857 and the Commons Act 1876[1]. The Inclosure Act 1857 s12 prevents nuisances on the land, such as the deposit of matter on the land or injury being caused, by giving power to the parish council to bring prosecutions. The Commons Act 1876 s29 sets out that any interference with the soil of a village green will be deemed a public nuisance, unless it is provided for the better enjoyment of the green. It is this section that effectively prevents development on the land.

The County Council's involvement is that we have a statutory duty to maintain a register of village greens as the commons registration authority. This duty was imposed by virtue of the Commons Registration Act 1965 and continues through the provisions of the 2006 Act. This duty includes determining applications into whether land should be included on the register

The registration of land as a village green is now governed by the Commons Act 2006 s15. It states:

15 Registration of greens

(1) Any person may apply to the commons registration authority to register land to which this part applies as a town or village green in a case where subsection (2), (3) or (4) applies.

(2) This subsection applies where-

(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and

(b) they continue to do so at the time of the application.

(3) This subsection applies where-

(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and

(b) they ceased to do so before the time of the application but after the commencement of this section; and

(c) the application is made within the period of two years beginning with the cessation referred to in paragraph (b).

(4) This subsection applies (subject to subsection (5)) where-

[1] Oxfordshire County Council v Oxford City Council and anor [2006] UKHL 25 – 'The Trap Grounds'

(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and
(b) they ceased to do so before the commencement of this section; and
(c) the application is made within the period of five years beginning with the cessation referred to in paragraph (b).

(5) Subsection (4) does not apply in relation to any land where-
(a) planning permission was granted before 23 June 2006 in respect of the land;
(b) construction works were commenced before that date in accordance with that planning permission on the land or any other land in respect of which the permission was granted; and
(c) the land-
(i) has by reason of any works carried out in accordance with that planning permission become permanently unusable by members of the public for the purposes of lawful sports and pastimes; or
(ii) will by reason of any works proposed to be carried out in accordance with that planning permission become permanently unusable by members of the public for those purposes.

(6) In determining the period of 20 years referred to in subsections (2)(a), (3)(a), (4)(a), there is to be disregarded any period during which access to the land was prohibited to members of the public by reason of any enactment.

(7) For the purposes of subsection (2)(b) in a case where the condition in subsection (2)(a) is satisfied-
(a) where persons indulge as of right in lawful sports and pastimes immediately before access to the land is prohibited as specified in subsection (6), those persons are to be regarded as continuing so to indulge; and
(b) where permission is granted in respect of use of the land for the purposes of lawful sports and pastimes, the permission is to be disregarded in determining whether persons continue to indulge in lawful sports and pastimes on the land “as of right”.

(8) The owner of any land may apply to the commons registration authority to register the land as a village green.

(9) An application under subsection (8) may only be made with the consent of any relevant leaseholder of, and the proprietor of any relevant charge over, the land.

(10) In subsection (9)-
“relevant charge” means-
(a) in relation to land which is registered in the register of tite, a registered charge within the meaning of the Land Registration Act 2002 (c.9);
(b) in relation to land not so registered-
(i) a chare registered under the Land Charges Act 1972 (c61); or
(ii) a legal mortgage, within the meaning of the Law of Property Act 1925 (c.20), which is not registered under the Land Charges Act 1972;
“relevant leaseholder” means a leaseholder under a lease for a term of more than seven years from the date on which the lease was granted.

The Act does not provide a definition of a village green, but does provide that land meeting the criteria above can be registered as a village green. An analysis of the criteria is provided below.

Land

The 2006 Act applies to all land in England other than the New Forest, Epping Forest and the Forest of Dean (s15(1)). It states that it applies to land covered by water (Interpretation s61(1)), so an application that included a pond could be entertained.

Significant Number

What is a significant number is to be judged on a case by case basis, following the decision in McAlpine Homes v Staffordshire County Council (2002)[2]. It does not have to be considerable or substantial. The evidence provided in support of the application should show that the land is in general use by the local population rather than sporadic use by trespassers.

Locality, or neighbourhood within a locality

This is a concept that can be hard to grasp. It is not enough to say that the land is used; the land has to be used by people living near the land. The presence of people from outside the locality is not fatal to an application, but the predominant use should be by the local inhabitants[3].

A locality has been defined as an area known to the law, such as a parish or an electoral ward[4]. This may lead to evidential problems as the area may be quite large and the question of what is a 'significant number' of that area may be raised.

For this reason the idea of the 'neighbourhood within a locality' has been introduced to the criteria. What the applicant should not do is draw an arbitrary line around all the addresses of the people who gave evidence to delineate a 'neighbourhood'[5]. If the neighbourhood is to be relied on then it must have a certain degree of cohesion, have recognizable features. A small village within a large parish, or a distinct part of a built-up area that has retained such features as local shops, a pub or two, a church or such other features of a settled community could be considered to be a 'neighbourhood'.

As of right

This criteria used to be referred to by the Latin phrase Nec vi, nec clam, nec precario or Without force, without secrecy, without permission.

An early case in the line of recent litigation examined the phrase "as of right". In the Sunningwell case it was decided that the phrase did not mean that each user has to use the land with the belief that he is entitled to do so[6]. The court held that what was important was how the use appeared to the owner, not what the users were thinking.

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[2] [2002] EWHC 76 (Admin)
[3] R v Oxfordshire County Council ex parte Sunningwell Parish Council [1999] 2 EGLR 94
[4] MoD v Wiltshire County Council [1995] 4 All ER 931
[5] Cheltenham Builders Ltd v South Gloucestershire District Council [2003] EWHC 2803
[6] see note 3

As to the elements: without force – if the land is only accessible through the use of force, by breaking a gate or climbing a fence then the use will not be 'as of right'. Without secrecy – the use should be open and overt to the landowner. Without permission – the use of the land must be without the permission of the landowner, which does not need to be a written permission. Signs on the land stating that the use was with the permission of the landowner would be enough to negate an application. Signs forbidding entry might be sufficient as the use could be considered to be with force and therefore not 'as of right'[7].

A case in Sunderland examined the position whereby a local authority who provided sports facilities and seating and kept the grass mown. It was held that this was not sufficient to imply that permission was being granted, and that the land could be registered[8].

The test, as set out in another case, is how things appear to the landowner and his reactions[9].

The 2006 legislation has a built in safeguard for situations where use of the land is challenged, by either fencing or notices. S15(3) allows a period of two years from the cessation of use of the land as of right for an application to be made. S15(7) covers the situation whereby a landowner seeks to frustrate an application by granting permission for the lawful sports and pastimes to continue once the land has already been used as of right for twenty years; the subsection states that such use is to be regarded as continuing to be 'as of right'.

Lawful sports and pastimes

What qualifies as a lawful sport or pastime has been the subject of many Court and Commons Commissioner decisions. Organised sports such as football and cricket qualify, as do informal leisure activities such as dog walking, kite flying and community events such as fetes. There is no need for the same activities to continue throughout the year and again it is how the pattern of use appears to the landowner that is important to determine whether the users appear to be exercising a right.

For a period of twenty years

It is not the case that each user must have used the land for twenty years. The use over that time-period can be made up of as many users as is needed to present a picture of continuous use of the land by local residents for at least twenty years.

The application process

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

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

[7] see note 5
[8] R(Beresford) v Sunderland City Council [2002] QB 874
[9] R (Laing Homes Ltd) v Buckinghamshire County Council [2003] EWHC 1578 (Admin)

address such a defect should be afforded to the applicant if the defect is easily remedied.

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

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

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

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

Rights of Appeal

When the County Council decides to accept an application the land is entered on the Council's register of town or village greens. It is then open to the landowner to make an application to the Secretary of State under s16 Commons Act 2006 to have the land de-registered, provided the land is under 200 square metres. If the land is over 200 square metres the application to the Secretary of State must include a proposal that alternative land is registered in its place. The County Council is not involved in this process.

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

Outline

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

Step No.	Event	Action to be taken
1	Application received	Stamp/Date it
2	Preliminary matters	o Give it an application number o Letter to applicant stating application number

		o Open file o Land Registry search
3	Preliminary examination of Application	o Ensure Application is “duly made” o If “no” then go to step 4 o If “yes” then go to step 6
4	Return Application to applicant	Letter explaining why Application is not duly made, giving time-period for remedying defect
5	Rejection of Application	Letter to applicant rejecting Application
6	Secondary examination of Application	o Prepare Notification to: o Site Notice o Interested councils o Local newspaper o Owners o Potential objectors o Local ESCC Member
7	Statutory six week objection period	
8	Receipt of objections	o Acknowledge receipt o Forward objection to applicant for comment/rebuttal evidence
9	Receipt of rebuttal comments	Acknowledge receipt
10	Consideration of Application	o Consider evidence provided by applicant and objections o Determine best way to proceed o If evidence is finely balanced go to step 11 o If evidence is obvious go to step 12
11	Set up a public hearing	o Contact either PINS or a barrister to hear the evidence in person o Hold hearing o Consider report
12	Report to Committee	o Write report in draft o Submit for approval o Write final report with recommendation o Send report to applicant
13	Determination by Committee	May accept or reject recommendation
14	Notify applicant of outcome	
15	If successful amend the register of town or village greens	

APPLICATION TO REGISTER LAND AT MAIN STREET, BECKLEY, EAST SUSSEX AS A TOWN OR VILLAGE GREEN UNDER SECTION 15(1) COMMONS ACT 2006

STATEMENT OF OBJECTION

1. INTRODUCTION

1.1 This objection is made on behalf of Central and Provincial Developments Limited (CPDL).

2. THE APPLICATION

2.1 We raise three important points regarding the form of the objection.

2.2 The application is stated to be by Mr Bernard Baverstock on behalf of Beckley Parish Council. This formulation is legally defective. The application should either be by Mr Baverstock or by the Parish Council, which has its own legal personality and which can lawfully make this type of application. The application should be withdrawn (or disregarded as invalid) and resubmitted on a legally correct basis.

2.3 The application does not give a precise date for when the claimed use of the application land came to an end. The date given is "August 2002". The law requires a precise date. The operation of section 15 of the Commons Act 2006 is unworkable without a precise date. We reserve our position on this question, pending re-submission.

2.4 The application does not identify a single locality, as the legislation (and the question on the form) requires. Instead it answers the question by reference to Beckley Parish and to the electoral ward of Rother. Only one locality should be stated. We reserve our position on this question, pending re-submission.

2.5 The application should be withdrawn and re-submitted with these points addressed.

2.6 The remainder of this objection demonstrates that the even if it is resubmitted for a period ending in August 2002, in respect of a single locality recognised at law, it must fail given the evidence which is submitted with this objection. The alternative to withdrawal and re-submission would be for the application to be rejected on this basis, with the legal points noted in any event.

3. THE LAND

3.1 The application land is owned by CPDL. A copy of the registered title with plan is attached to this objection. This is the land which was purchased by CPDL from Mr and Mrs Simmons (nee Creedy) on 9 August 2002.

3.2 Part of the edge of the application land is public highway. A copy of a plan showing, in green, the public highway is enclosed. Under the Highways Act 1980 the surface of the public highway is vested in the County Council as highway authority (even though the subsoil is owned by CPDL). Accordingly, the Council should have been served as landowner with notice of the application. It is our understanding from Simon Bailey, solicitor at the Council, that this has not taken place.

4. MOTIVATION BEHIND THE APPLICATION

4.1 When assessing the credibility of the evidence supporting the application, it is important to bear in the mind the wider context. As Mr Archer sets out in his statutory declaration, there has been a long running campaign to prevent development of the application land, and neighbouring land, for housing. We have been involved in previous village green applications where the inspector has acknowledged that this is a legitimate point for registration authorities to bear in mind.

5. THE LEGAL TEST

5.1 The application is required to meet each of the elements of the test laid down in section 15.

5.2 The courts have repeatedly recognised the serious nature of village green applications. If land is registered, the legal fetter on its use is so extreme, as to mean that it cannot be developed.

5.3 The burden of proof falls on the applicant to show that all the necessary elements of the legal test have been met. The evidence in support of an application must be clear and credible, and outweigh counter-evidence. The core evidence in this case is the 47 so-called witness questionnaires. We have dealt with numerous village green cases in the past involving these questionnaires, which are produced by the Open Spaces Society. They are deeply unsatisfactory as a form of evidence, because of the lack of precision generally, and particularly when dealing with long periods of time, as is inevitable with village green matters. They should only be used, if at all, as a starting point in the preparation of proper witness statements or statutory declarations, and not as evidence in their own right. This has not happened in this case. In our experience, the evidence which is given at an inquiry is often seriously at odds with the apparent evidence one might expect from reading a given completed questionnaire, not least because questions are misunderstood. In addition, in our experience, it is often the case that people completing the forms feel themselves to be under pressure to claim a greater range of uses, and a greater frequency of use, than is actually the case.

5.4 It should not be assumed that by referring to the contents of the witness questionnaires in this objection that these criticisms of them as a form of evidence are being resiled from.

5.5 The remainder of this section considers the different elements of the legal test set out in Section 15.

5.6 Locality: as already noted, it is not clear which locality the application is based on. It is impossible to formulate an objection properly without knowing this. We reserve our position on this.

5.7 Local inhabitants: again, without knowing which locality the application is based on, it is not possible to assess the evidence regarding whether the claimed users of the application land are inhabitants of that locality. Nor is it possible to assess whether the "significant number" element of the legal test has been met. We reserve our position on this.

5.8 Lawful sports and pastimes: the nature of the claimed uses is noted. We reserve the right to challenge some of these uses as regards whether or not they fall within the scope of the phrase "lawful sports and pastimes" and whether or not they took place on the application land, as opposed to the car park land. For example, we would challenge the claimed use in connection with a local hunt on both counts. The fundamental inadequacy of the witness questionnaires mean that it is hard to be clear exactly what the evidence is for a variety of the claimed uses. Ticking a box from a list of possible claimed uses is simply not evidence that can be taken seriously in relation to the precise legal test laid down in the Act, unless that evidence is tested.

5.9 20 years continuous use: the application completely fails this element of the test.

5.10 It has already been noted that the application is technically defective by not naming an actual date (i.e. not just "August 2002"), prior to which the 20 years use is claimed to have taken place. This objection by CPDL has been prepared on the assumption that the date is 9 August 2002, being the date which CPDL bought the application land. CPDL put up fencing (in addition to that erected by the former owners, Mr and Mrs Simmons in June 2001) on or shortly after this date. This 2002 fencing is referred to in a number of the witness questionnaires.

5.11 The witness questionnaires do not present a clear picture of when the claimed use of the land stopped. Twenty one (out of 47) of them refer to the fencing erected in 2001 by the then pub owners (Mr and Mrs Simmons) as stopping the use of the application land for sports and pastimes. If this is right (i.e. the use stopped in 2001), then clearly the application must fail because the five year

"grace period" under section 15(4) cannot apply, as the use would have stopped for more than five years.

5.12 The overarching statement supporting the application glosses over this fact and chooses to emphasise references to the 2002 fencing.

5.13 This issue of the fencing is, however, completely overshadowed by the fact that it is clear from the evidence of Mr and Mrs Simmons that there was no qualifying use (i.e. use satisfying the legal test) at all of the application land for the 4 years and 4 months between April 1998 to 9 August 2002. Mr and Mrs Simmons evidence is considered further below.

5.14 The period since August 2002 is not at issue as the application itself makes no claim of use since August 2002. This is reinforced by Mr Archer's statutory declaration, which confirms there has been no use for lawful sports and pastimes since CPDL bought the application land.

5.15 As of right: the evidence of Mr and Mrs Simmons demonstrates first, that the use of the application land for any purpose whatsoever between April 1998 and 9 August 2002 was extremely limited and, second, that any use of the application land was by paying customers of the pub - the pub's own boule team, informal boule playing by paying customers, use of the pub's picnic benches by paying customers and their children. Such use is clearly by permission and not "as of right". Incidental use of the application land for the start and finish of the annual fun run was also by permission. Participants bought drinks at the pub and others used the pub toilets by permission.

5.16 We would like to emphasise the importance and quality of the evidence of Mr and Mrs Simmons. The application land was part of the pub garden, in front of the pub, on the other side of the car park area. It is clearly visible to anyone using the pub. Mr and Mrs Simmons lived there from April 1998 to 9 August 2002 (the pub having ceased operating as a pub in October 2001). They sold the land over 4 years ago and have no stake in the outcome of this application. In other words, they are able to provide the most powerful and credible evidence one could wish for in a case such as this, with day to day knowledge over an extended period (4 years and 4 months).

5.17 As regards the period prior to April 1998, it is not accepted that there was qualifying use of the land. We question how much of the claimed use was by permission of the owner of the pub at the relevant time. If the application proceeds to an inquiry (which we think is unnecessary, for reasons set out below) then it is essential that the applicant is put to proof on this score.

5.18 Even if there had been continuous qualifying use up to the time the Simmons' bought the pub and the application land in April 1998, the gap of 4 years and 4

months up to the claimed "end date" of qualifying use is so large as to mean that a 20 year continuous period of qualifying use simply cannot be demonstrated.

6. COMMENTS ON EVIDENCE SUPPORTING APPLICATION

6.1 The historical information which the application includes is largely irrelevant. The application must demonstrate 20 years continuous use up to the date of the application or the date when use as of right ceased prior to 6 April 2007, such cessation date not be more than 5 years prior to the date of the application. On any analysis of the chronology, events in the 1970s, and earlier, are not relevant unless the necessary 20 years up to the date of cessation can be shown. They cannot, in the light of Mr and Mrs Simmons' evidence.

6.2 It should be noted that a number of the photographs included show people on the application land with drinks in their hands which have been bought from the pub. This cannot be qualifying use - where a person uses land owned by the pub to enjoy a drink bought at the pub, sitting at benches owned and provided by the pub. This is use by permission.

7. PROCESS OF DETERMINING APPLICATION

7.1 The case against the application is overwhelming. Unless the applicant is able to produce statutory declarations which credibly contradict the evidence of Mr and Mrs Simmons (which we say simply cannot be done), as regards their period of ownership, then there is no reason for this matter to go to a public inquiry. It should be rejected on paper alone.

7.2 The evidence is clear that the statutory test on the question of 20 years use simply cannot be met. First, because there was no qualifying use between April 1998 and 9 August 2002 and/or second, because - on the admission of 17 of the witness questionnaires - the use stopped in 2001 when the fences were erected by the Simmons', meaning that the 5 year grace period has been exceeded.

7.3 We have emphasised the 20 year point because it is the most straightforward means of disposing of this application, which is part of a wider campaign to seek to prevent CPDL from developing this site. (The irony is that the vast majority of the application land will remain as open space in accordance with the planning permission, though this is not relevant to this application.)

7.4 CPDL should not be put to the considerable expense and trouble of a public inquiry without good reason.

7.5 If, for some reason, this point is not accepted, then we stand by all the other points raised in this objection, and reserve the right to develop them and add to them. If the Council is not prepared to accept our case and reject the

application on paper on the basis of the evidence we have submitted (assuming that the applicant produces no material new information) then it is essential that the matter is considered at a public inquiry to ensure that the facts of the case, and the relevant legal arguments, are tested thoroughly.

Eversheds LLP

31 May 2007

Land Registry Direct: Register View

Date: 24 MAY 2007

THIS IS A PRINT OF THE VIEW OF THE REGISTER OBTAINED THROUGH LAND REGISTRY DIRECT SHOWING THE ENTRIES SUBSISTING IN THE REGISTER ON 24 MAY 2007 AT 10:59:52. THE ENTRIES SHOWN DO NOT TAKE ACCOUNT OF ANY APPLICATIONS PENDING IN THE REGISTRY. FOR SEARCH PURPOSES, THE ABOVE DATE SHOULD BE USED AS THE SEARCH FROM DATE.
THIS TITLE IS DEALT WITH BY PORTSMOUTH DISTRICT LAND REGISTRY.

TITLE NO: SX88693
REGISTER LAST UPDATED ON : 27 AUG 2002 AT 09:37:56

A: Property Register
This register describes the land and estate comprised in the title.

EAST SUSSEX : ROTHER

1. (12.05.1967) The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being The Royal Oak, Main Street, Beckley, Rye, (TN31 6RJ).

B: Proprietorship Register
This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title Absolute

1. (21.08.2002) PROPRIETOR: #CENTRAL AND PROVINCIAL DEVELOPMENTS LIMITED# (Co. Reg. No. 03150362) of Unit 1, Windmill Oast, Benenden Road, Rolvendon, Cranbrook, Kent TN17 4PF.

2. (21.08.2002) The price stated to have been paid on 9 August 2002 was £322,500.

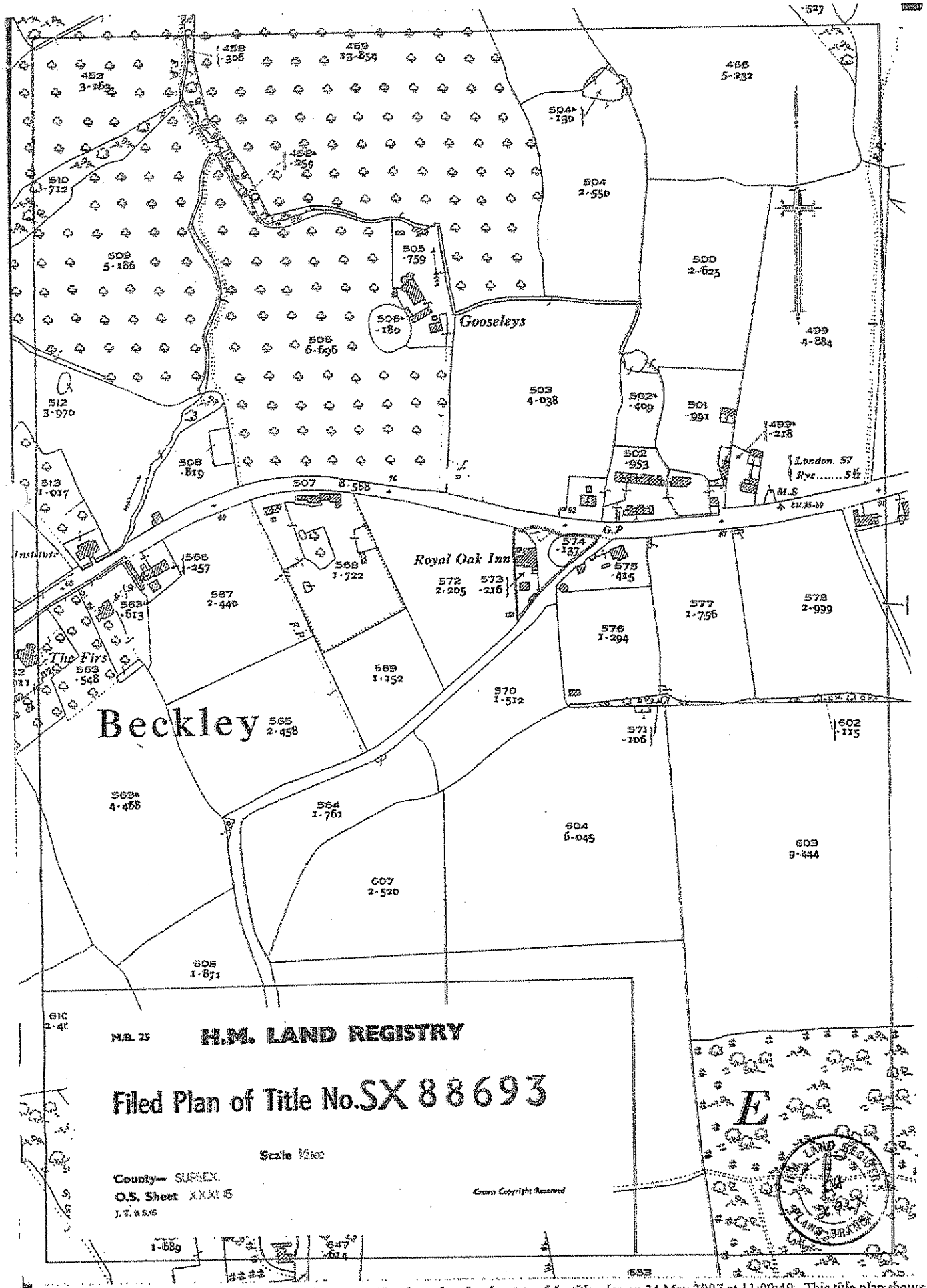
C: Charges Register
This register contains any charges and other matters that affect the land.

1. (21.08.2002) REGISTERED CHARGE dated 9 August 2002 to secure the moneys including the further advances therein mentioned.

2. (21.08.2002) Proprietor: >COUTTS AND CO.> of Loan Securities Centre, 440 Strand, London, WC2R 0QS

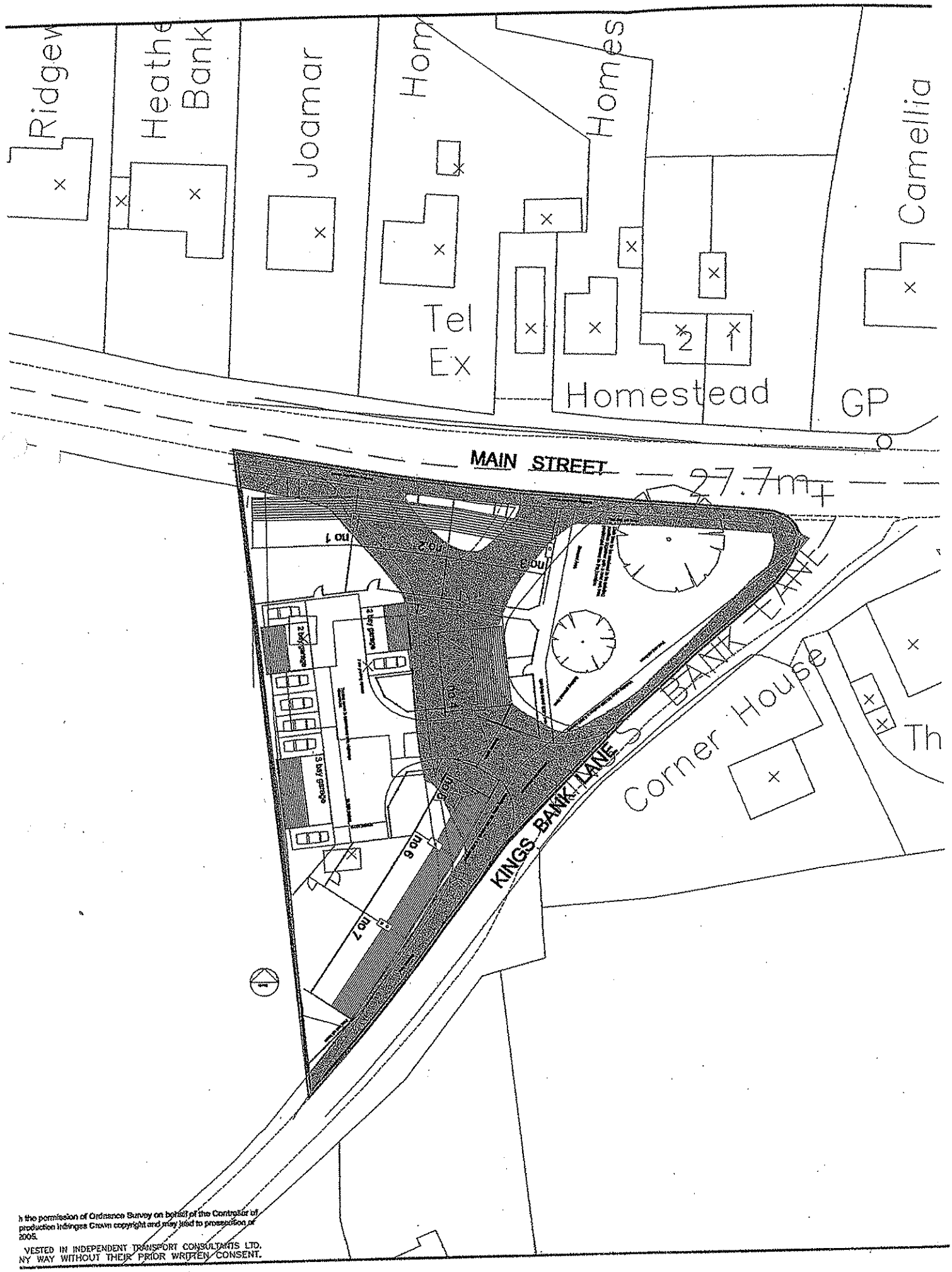
END OF REGISTER

NOTE 1: The date at the beginning of an entry is the date on which the entry was made in the Register.
NOTE 2: Symbols included in register entries do not form part of the register and are used by Land Registry for internal purposes only.



This is a print of the view of the title plan obtained from Land Registry showing the state of the title plan on 24 May 2007 at 11:00:49. This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. See Land Registry Public Guide 7 - Title Plans.

This title is dealt with by Land Registry, Portsmouth Office.



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STATUTORY DECLARATIONS ACT 1835

IN THE MATTER OF
A VILLAGE GREEN APPLICATION
FOR LAND
AT BECKLEY, EAST SUSSEX

STATUTORY DECLARATION

OF MAUREEN SIMMONS

STATUTORY DECLARATION

I Maureen Ann Simmons of Polar Cottage, Amberstone, Hailsham, East Sussex BN27 1PQ do solemnly and sincerely declare as follows:-

1. Between April 1998 and August 2002 I lived at the Royal Oak pub, Kings Bank Lane, Beckley TN31 6RJ with my (then partner, now) huspand Marting Raymond Simmons.

2. Having bought it from Enterprise Inns, we owned the Royal Oak public house during that period until we sold it to Central & Provincial Developments Limited in August 2002, after which we moved away from the area.

3. The pub garden area included a rough "triangle" of land which is the subject of an application to be registered as a town or village green. I have seen a copy of the application and the plan. I refer to this land as the "application land" in this declaration. I believe that the registered title of the property which we owned included all of this land, and was included in what we sold to Central & Provincial.

4. I should explain that my evidence in this declaration is exactly the same as my huspand's because we lived at the Royal Oak and ran the pub together, day in, day out. We had exactly the same experience during that period in relation to the application land. Hence it would be artificial for us to set out the same history in different words.

5. We were the landlords of the pub from April 1998 until October 2001 when we closed it. We continued to live there until August 2002.

6. In this declaration I set out my knowledge as to the use of the application land during the period we lived at the Royal Oak.

7. The application land is highly visible from the pub, as the main front of the pub faces towards the application land, and overlooks the application land. It is separated by an area which was used as a car park for the pub. I used to park my own car in this area every day. Throughout my period living at

the Royal Oak I was fully aware of the use to which the application land was put on a day to day basis.

8. I have seen a copy of the application and am aware that the village green application claims that the application land was used for sports and pastimes by local inhabitants "as of right" during the period April 1998 and August 2002 (as part of a longer prior period of such use).

9. This is not correct in respect of the period April 1998 to August 2002. While we owned the Royal Oak, the application land was used as a pub garden until the pub closed in October 2001. From October 2001 until we sold the property in August 2002 to Central and Provincial Developments Limited, it was used as a private garden.

10. After we bought the pub, we blocked off the Kings Bank Lane end of the area immediately in front of the pub to vehicular access, between the application land and the pub building. As far as we were aware this area had been used as the pub car park, with entrances on to both Kings Bank Lane and onto Main Street. We blocked this entrance to the car park off, because people would sometimes drive dangerously through the car park area (using it as a short cut), and we wanted it to be safe, by only allowing one entrance and exit into the car park. We had telephoned the Council about this, which had confirmed in a letter that there was no public right of way. I am aware that this area has since been registered as a Bylaw Open to All Traffic. I make no comment on this, as I understand the status of this land is not relevant to the village green application.

11. When we bought the Royal Oak, the land had substantial shrubs and bushes on a significant part of it. We removed all of the bushes, leaving only the tree, so that the pub would be more clearly visible from the road.

12. People buying a drink at the pub would sometimes cross the car park to use the application land, as an alternative to the other part of the pub garden to the side of the pub. We owned picnic benches which we moved from time to time from a location just in front of the pub onto the application land. We did this to make it more appealing for our customers to sit out on the grassed application land, but relatively few people did so.

13. The Royal Oak boule team would use the boule pitch on the application land to play home matches in a local league. I do not know when the boule pitch was installed. The other pub in the village, the Rose & Crown also had a boule team. Our boule team was organised by Maggie Thrush (who died in 2007). She would liaise with us about the fixture list and other matters. The two teams (i.e. the home team from the Royal Oak and the visiting team) using the boule pitch would invariably buy drinks at the pub. The boule pitch was principally used by the Royal Oak boule team (and their given opposition) for matches or practice. Up to twenty people in total would be involved in boule matches. In addition for formal games, we encouraged customers to use the boule pitch informally, and a set of boules were kept in the pub for this purpose. Apart from the formal matches (and practice) and the ad hoc use by customers, noone else used the boule pitch.

14. The Royal Oak struggled financially stuggled the entire period we ran the pub. There had been a succession of landlords in the years before we bought it. It became very apparent to us that the pub had been going downhill for many years, that the area could not sustain two pubs and that the support and loyalty of the local community was to the other pub in the village – the Rose & Crown. For this reason, for example, Maggie Thrush would often struggle to raise the necessary numbers for the Royal Oak boule team.

15. There was an annual fun run which started and finished at the Royal Oak. This had been going on for some years before we bought the pub. I do not recall who organised the fun run, as there did not seem to be a single lead individual. I recall liaising with Steve Bowler, on the Parish Council, in relation to the fun run, though he was one of a number of people involved. We would open our toilets early, for people involved in the fun run and spectators to use, and help out in other ways, as well as serving drinks on a normal charging basis. The fun run involved use of the pub car park area and the application land. I recall being thanked from time to time for supporting the event.

16. In about June 2001, we put up fences on two sides of the application land, being those next to the roadways (Kings Bank Lane and Main Street). After a discussion with the highways authority, the position of part of these fences was relocated. These changes to the fences were carried out in December 2001 and January 2002. We were prompted to put up the fences because

there was an occasion where a customer's child playing on the triangle had wandered towards the road after a ball, and we were concerned over the safety position.

17. I am aware that various claims have been made in support of the village green application, and I address these below. My comments in paragraphs 18 to 23 below relate to the approximately 4 years and 4 months, starting in April 1998, when we lived at the Royal Oak. I have no direct knowledge of any time prior to this.

18. The application land was not a local meeting place. I would have been delighted if it were, as those meeting up might have come into the pub for a drink as well. The only people using the land to meet were those relatively few of our customers, sometimes with their children, using the benches or the grass in fine weather, having bought a drink in the pub.

19. Local people and local children did not play informal games on the application land, ride bicycles, eat sweets bought at the nearby shop (which closed in about 2000) or anything of the sort. The only exception to this was the pub's own boule team, customers playing boule informally and the annual fun run, which I have already referred to. The only children playing would have been with their parents who had bought a drink.

20. There were no bonfires on the application land, and no firework displays. I understand that this happened in the past, but I believe this was well before we bought the pub.

21. There were never any Morris dancers using the application land. We did once consider organising an event on the application land to attract custom to the pub, but we were unable to find a Morris dancing troupe willing to come.

22. There was never a Maypole on the application land.

23. There was never a meeting of any local hunt at the application land or at the pub at all.

24. We tried very hard to turn the pub around, but we were unsuccessful and we had no choice but to close it. When we applied to change the use of the pub,

to use as a dwelling house, it was refused. We appealed against that refusal and the inspector granted planning permission. The inspector agreed with our evidence that the low level of trade at the Royal Oak reflected the fact that most local people chose to use the other pub in the village, the Rose & Crown. The inspector agreed that the loss of the Royal Oak as a pub would not involve the loss of a local amenity, which was the reason for refusal by the District Council.

25. The hey day of the Royal Oak was a long time before we bought it. I do not know if at some time in the past the application land was - as the village green application claims - a local meeting place, with regular community events, annual bonfires, hunt meetings, with families picnicking and children playing and riding bicycles etc. Nothing, however, could be further from the truth during the period we owned and lived at the Royal Oak. While we lived there, the community life of the village was elsewhere - particularly at the other pub, the Rose & Crown, which had numerous community events.

26. The application land was used very little overall while we lived at the Royal Oak. Such use as it was put to was by customers of the pub as a pub garden in fine weather and/or as part of the pub's boule team. The only community event was the one day per year that the fun run started and finished at the car park and application land, which was done with the support and cooperation of us as landlords. Many of those participating used the pub to buy a drink or use the toilet.

27. While I can only speak with complete confidence for the period we lived there, the state of the application land when we bought it (i.e. the bushes and shrubs plus a general lack of care), strongly suggests to me that the application land had not been used in any meaningful way (apart from the pub boule team, and incidentally at the time of the annual fun run) for any purpose, for a significant period of time prior to April 1998.

28. I am very surprised by the suggestion in the application that the application land was used by local inhabitants for sports and pastimes up until August 2002. Putting aside the use by customers and annual fun run, this is not true and is completely at odds with my direct knowledge of the use of the application land, as joint owner of the land, and as someone living next to and

overlooking the application land for the 4 years 4 months between April 1998 and August 2002

Declared at 9:30 this 30th day of May 2007.

Signature of Declarant

Before me

Signature _____

A Commissioner for Oaths/Solicitor

STATUTORY DECLARATIONS ACT 1835

IN THE MATTER OF
A VILLAGE GREEN APPLICATION
FOR LAND
AT BECKLEY, EAST SUSSEX

STATUTORY DECLARATION

OF MARTIN SIMMONS

STATUTORY DECLARATION

I Martin Raymond Simmons of Polar Cottage, Amberstone, Hailsham, East Sussex BN27 1PQ do solemnly and sincerely declare as follows:-

1. Between April 1998 and August 2002 I lived at the Royal Oak pub, Kings Bank Lane, Beckley TN31 6RJ with my (then partner, now) wife Maureen Ann Simmons.

2. Having bought it from Enterprise Inns, we owned the Royal Oak public house during that period until we sold it to Central & Provincial Developments Limited in August 2002, after which we moved away from the area.

3. The pub garden area included a rough "triangle" of land which is the subject of an application to be registered as a town or village green. I have seen a copy of the application and the plan. I refer to this land as the "application land" in this declaraion. I believe that the registered title of the property which we owned included all of this land, and was included in what we sold to Central & Provincial.

4. I should explain that my evidence in this declaration is exactly the same as my wife's because we lived at the Royal Oak and ran the pub together, day in, day out. We had exactly the same experience during that period in relation to the application land. Hence it would be artificial for us to set out the same history in different words.

5. We were the landlords of the pub from April 1998 until October 2001 when we closed it. We continued to live there until August 2002.

6. In this declaration I set out my knowledge as to the use of the application land during the period we lived at the Royal Oak.

7. The application land is highly visible from the pub, as the main front of the pub faces towards the application land, and overlooks the application land. It is separated by an area which was used as a car park for the pub. I used to park my own car in this area every day. Throughout my period living at

the Royal Oak I was fully aware of the use to which the application land was put on a day to day basis.

8. I have seen a copy of the application and am aware that the village green application claims that the application land was used for sports and pastimes by local inhabitants "as of right" during the period April 1998 and August 2002 (as part of a longer prior period of such use).

9. This is not correct in respect of the period April 1998 to August 2002. While we owned the Royal Oak, the application land was used as a pub garden until the pub closed in October 2001. From October 2001 until we sold the property in August 2002 to Central and Provincial Developments Limited, it was used as a private garden.

10. After we bought the pub, we blocked off the Kings Bank Lane end of the area immediately in front of the pub to vehicular access, between the application land and the pub building. As far as we were aware this area had been used as the pub car park, with entrances on to both Kings Bank Lane and onto Main Street. We blocked this entrance to the car park off, because people would sometimes drive dangerously through the car park area (using it as a short cut), and we wanted it to be safe, by only allowing one entrance and exit into the car park. We had telephoned the Council about this, which had confirmed in a letter that there was no public right of way. I am aware that this area has since been registered as a Bylaw Open to All Traffic. I make no comment on this, as I understand the status of this land is not relevant to the village green application.

11. When we bought the Royal Oak, the land had substantial shrubs and bushes on a significant part of it. We removed all of the bushes, leaving only the tree, so that the pub would be more clearly visible from the road.

12. People buying a drink at the pub would sometimes cross the car park to use the application land, as an alternative to the other part of the pub garden to the side of the pub. We owned picnic benches which we moved from time to time from a location just in front of the pub onto the application land. We did this to make it more appealing for our customers to sit out on the grassed application land, but relatively few people did so.

13. The Royal Oak boule team would use the boule pitch on the application land to play home matches in a local league. I do not know when the boule pitch was installed. The other pub in the village, the Rose & Crown also had a boule team. Our boule team was organised by Maggie Thrush (who died in 2007). She would liaise with us about the fixture list and other matters. The two teams (i.e. the home team from the Royal Oak and the visiting team) using the boule pitch would invariably buy drinks at the pub. The boule pitch was principally used by the Royal Oak boule team (and their given opposition) for matches or practice. Up to twenty people in total would be involved in boule matches. In addition for formal games, we encouraged customers to use the boule pitch informally, and a set of boules were kept in the pub for this purpose. Apart from the formal matches (and practice) and the ad hoc use by customers, noone else used the boule pitch.

14. The Royal Oak struggled financially stuggled the entire period we ran the pub. There had been a succession of landlords in the years before we bought it. It became very apparent to us that the pub had been going downhill for many years, that the area could not sustain two pubs and that the support and loyalty of the local community was to the other pub in the village – the Rose & Crown. For this reason, for example, Maggie Thrush would often struggle to raise the necessary numbers for the Royal Oak boule team.

15. There was an annual fun run which started and finished at the Royal Oak. This had been going on for some years before we bought the pub. I do not recall who organised the fun run, as there did not seem to be a single lead individual. I recall liaising with Steve Bowler, on the Parish Council, in relation to the fun run, though he was one of a number of people involved. We would open our toilets early, for people involved in the fun run and spectators to use, and help out in other ways, as well as serving drinks on a normal charging basis. The fun run involved use of the pub car park area and the application land. I recall being thanked from time to time for supporting the event.

16. In about June 2001, we put up fences on two sides of the application land, being those next to the roadways (Kings Bank Lane and Main Street). After a discussion with the highways authority, the position of part of these fences was relocated. These changes to the fences were carried out in December 2001 and January 2002. We were prompted to put up the fences because

there was an occasion where a customer's child playing on the triangle had wandered towards the road after a ball, and we were concerned over the safety position.

17. I am aware that various claims have been made in support of the village green application, and I address these below. My comments in paragraphs 18 to 23 below relate to the approximately 4 years and 4 months, starting in April 1998, when we lived at the Royal Oak. I have no direct knowledge of any time prior to this.

18. The application land was not a local meeting place. I would have been delighted if it were, as those meeting up might have come into the pub for a drink as well. The only people using the land to meet were those relatively few of our customers, sometimes with their children, using the benches or the grass in fine weather, having bought a drink in the pub.

19. Local people and local children did not play informal games on the application land, ride bicycles, eat sweets bought at the nearby shop (which closed in about 2000) or anything of the sort. The only exception to this was the pub's own boule team, customers playing boule informally and the annual fun run, which I have already referred to. The only children playing would have been with their parents who had bought a drink.

20. There were no bonfires on the application land, and no firework displays. I understand that this happened in the past, but I believe this was well before we bought the pub.

21. There were never any Morris dancers using the application land. We did once consider organising an event on the application land to attract custom to the pub, but we were unable to find a Morris dancing troupe willing to come.

22. There was never a Maypole on the application land.

23. There was never a meeting of any local hunt at the application land or at the pub at all.

24. We tried very hard to turn the pub around, but we were unsuccessful and we had no choice but to close it. When we applied to change the use of the pub,

to use as a dwelling house, it was refused. We appealed against that refusal and the inspector granted planning permission. The inspector agreed with our evidence that the low level of trade at the Royal Oak reflected the fact that most local people chose to use the other pub in the village, the Rose & Crown. The inspector agreed that the loss of the Royal Oak as a pub would not involve the loss of a local amenity, which was the reason for refusal by the District Council.

25. The hey day of the Royal Oak was a long time before we bought it. I do not know if at some time in the past the application land was – as the village green application claims - a local meeting place, with regular community events, annual bonfires, hunt meetings, with families picnicking and children playing and riding bicycles etc. Nothing, however, could be further from the truth during the period we owned and lived at the Royal Oak. While we lived there, the community life of the village was elsewhere – particularly at the other pub, the Rose & Crown, which had numerous community events.

26. The application land was used very little overall while we lived at the Royal Oak. Such use as it was put to was by customers of the pub as a pub garden in fine weather and/or as part of the pub's boule team. The only community event was the one day per year that the fun run started and finished at the car park and application land, which was done with the support and cooperation of us as landlords. Many of those participating used the pub to buy a drink or use the toilet.

27. While I can only speak with complete confidence for the period we lived there, the state of the application land when we bought it (i.e. the bushes and shrubs plus a general lack of care), strongly suggests to me that the application land had not been used in any meaningful way (apart from the pub boule team, and incidentally at the time of the annual fun run) for any purpose, for a significant period of time prior to April 1998.

28. I am very surprised by the suggestion in the application that the application land was used by local inhabitants for sports and pastimes up until August 2002. Putting aside the use by customers and annual fun run, this is not true and is completely at odds with my direct knowledge of the use of the application land, as joint owner of the land, and as someone living next to and

overlooking the application land for the 4 years 4 months between April 1998 and August 2002

Declared at 9.30 this 30th day of May 2007

Signature of Declarant

Before me

Signature _____

A Commissioner for Oaths/Solicitor

COMMONS ACT 2006

REPORT

IN RESPECT OF VILLAGE GREEN APPLICATION

RELATING TO LAND AT ROYAL OAK, BECKLEY

HELEN SLADE MA. FIPROW

(An Inspector with the Planning Inspectorate)

East Sussex County Council Reference: EE/CRO3/SB

Planning Inspectorate Reference: DPI/25/4/14

Date of Report: 23 July 2008

Case details

- The application was made by Mr Bernard Baverstock, on behalf of Beckley Parish Council, and is dated 11 April 2007.
- The application has been made under the provisions of Section 15 of the Commons Act 2006.
- The application is for land at the site of the former Royal Oak public house (now called Oak Tree House) to be registered as a village green.

Summary of Recommendation: That the application be refused.

BACKGROUND AND PROCEDURAL MATTERS

1. I have been appointed by East Sussex County Council, the Registration Authority (hereinafter referred to as the County Council, or the Registration Authority), to hold a non-statutory public inquiry and to write a report containing my recommendation in respect of an application to register land at Beckley as a village green. I have been asked to advise on whether or not the application itself is valid, and also to recommend whether or not the application should be upheld.

2. I held a pre-inquiry meeting at County Hall, Lewes, on 13 May 2008 to clarify a number of issues and on which I have prepared a separate report, appended to this report as Document HS1. The public inquiry itself was held at Beckley Village Centre over three full days on 4-6 June 2008. I visited the site and the surrounding area on my own during the afternoon of 3 June, and made an accompanied site visit at the end of the second day of the inquiry (5 June).

3. The application was made on 11 April 2006 by Mr Bernard Baverstock, on behalf of Beckley Parish Council ('the Parish Council'). One objection was received to the application from the current landowner, Central and Provincial Developments Limited ('CPDL').

4. At the inquiry Mr Baverstock presented the case in support of the application, calling a number of witnesses and providing evidence himself. CPDL was represented by Mr Julian Boswall of Eversheds.

5. Mr Boswall had previously indicated his intention to request that evidence at the inquiry be taken on oath. Following the pre-inquiry meeting, where the issue was raised, I invited the parties to address me on this matter at the opening of the inquiry. I deal with these submissions below.

LEGAL SUBMISSIONS

6. On behalf of CPDL Mr Boswall submitted that because designation as a village green effectively fetters land completely, there are serious human rights implications. He considered that the seriousness of the issue warranted the giving of evidence on oath. He was concerned

that the witnesses for the applicant needed to be aware of the implications for his client, and that giving evidence on oath would provide that degree of gravity. He gave an example of an inquiry held by Anthony Porten QC, at which Mr Boswall had been present, where the inspector heard evidence on oath which was administered by the Council's solicitor.

7. Mr Baverstock, although not legally qualified, had researched the issue quite thoroughly and contended that, for a non-statutory inquiry, I was not empowered to administer the oath and that an independent solicitor would be necessary. Since that would delay the inquiry and add considerably to the cost, and since the actual application for registration of a village green was a statutory declaration in itself, he argued that it was not necessary for witnesses to give evidence on oath, but that if I decided to do so they would be happy to comply. There was no question in his view of the truthfulness of his witnesses, and he did not consider that taking an oath would affect the nature of the evidence they gave. His was of the opinion that if Defra had considered it necessary for evidence to be given on oath, provision would have been made for it as part of the application process.

8. After a short adjournment, Mr Boswall responded by saying that that he had not appreciated that the member of staff from the County Council (Mr Simon Bailey) who had been dealing with the matter, and who was observing the inquiry, was not a solicitor and he acknowledged that it would seriously delay the inquiry if he were to insist on people taking an oath. His clients were minded to withdraw their request, but asked that I rule anyway.

9. I have received no indication from the County Council to the effect that it would be necessary for me to take evidence under oath, and at the inquiry Mr Bailey was able to confirm that no instructions had been issued to that effect. I agree with Mr Baverstock that, although I may administer an oath at a statutory public inquiry, such as that for planning appeals or public rights of way orders, I am not empowered to administer the oath at non-statutory inquiries. Village green inquiries are not (at present) covered by any enabling statute and are consequently non-statutory. I have some doubt that a solicitor from the Registration Authority could be classed as independent from the inquiry and consequently, in my view, it would not have been appropriate for a solicitor from the County Council to attend the inquiry to administer the oath. It would have been necessary to have adjourned the inquiry to allow time for other arrangements to be made. Both parties agreed that it was not in their interests to delay the inquiry.

10. Whilst I acknowledge the adverse effect of village green registration on the ability of the landowner to develop the land, I am not persuaded that the process contravenes the European Convention on Human Rights in any way. The registration process is governed by legislation which has been through the proper parliamentary procedure. Furthermore, my report is a recommendation and not a

decision; the Registration Authority makes the final decision and there is ultimately recourse to the courts to judicially challenge that decision if necessary. The matter has been considered by the courts, most recently in the *Trap Grounds*[1] case, and although there was some dissent from Lord Scott on certain aspects, on the fundamental basis of registration it was the view of their Lordships that there was no infringement of Human Rights: firstly because there was no deprivation of title to the land, and secondly because there was a public benefit to registration which justified the procedure.

11. I am satisfied that the registration application procedure is rigorous and that witnesses at a public inquiry can be in no doubt of the seriousness of the issues at stake. I am also confident that the opportunity for cross-examination provides an appropriate mechanism for testing the oral evidence given. In preparing this report I have given more weight to the oral evidence given at the inquiry for this reason. The evidence in statutory declarations carries a little more weight than other written evidence, but is not immune from error, as was apparent during the cross-examination of the objector's witnesses. As with any written testimony, such evidence is more valuable having been cross-examined.

12. I have approached the evidence provided by the user evidence forms with a great deal of caution; not because I believe people have been untruthful but because cross-examination of some of the user witnesses highlighted inconsistencies in their forms, or a general lack of clarity and detail. Not all the user witnesses who provided written evidence were able to attend the inquiry to confirm their testimony. Where it has not been possible to expand on the detail given in the forms I have had to give that evidence much less weight. I share Mr Boswall's concern that the printed witness forms which appear to be standard issue[2] are not up to the task of providing more than a starting point in terms of evidence of use. This is not a criticism of the applicant; the use of similar forms is recommended by DEFRA.[3] In my view it is essential to hear oral evidence from the witnesses concerned to flesh out the detail given in the forms.

13. I declined to adjourn the inquiry to make arrangements to hear evidence on oath on the basis that I did not see any advantage to be gained. At the inquiry I explained that in coming to my conclusions and recommendations, I would be taking the nature of the evidence into account, and the manner in which it had been given or submitted, apportioning due weight accordingly. Both parties were content to proceed on that basis and the inquiry progressed smoothly.

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

[2] The forms appear to conform to the design issued by the Open Spaces Society

[3] Paragraph 7 of Guidance Notes for the completion of an Application for the Registration of land as a Town or Village Green, published in February 2007 by DEFRA

THE APPLICATION LAND

14. The application refers to the application land as 'Royal Oak Green' and describes its location as the junction of Main Street (B2088) and Kings Bank Lane, Beckley. The copy of the 1929 edition of the Ordnance Survey map included in the application bundle shows the application land to be a roughly triangular area of 0.137 of an acre (approximately 0.05 of a hectare). It forms part of the property now called Oak Tree House and carrying Land Registry Title Number SX88693.

15. Oak Tree House was formerly a public house known as The Royal Oak. It is now boarded up, awaiting re-development in line with planning permission which has been granted. The application land is separated from the dwelling by an area of rough tarmacadam previously used as the public house car park. This area is now recorded on the Definitive Map and Statement as a Byway Open to All Traffic ('BOAT'), following a confirmed Modification Order made by the County Council (as Surveying Authority) in 2005. The application site is consequently bounded on each of its three sides by highway land.

16. The application land is currently fenced on two sides by a rustic-style post and 2-rail fence. It is unfenced where it lies adjacent to the BOAT. It is a grassed area which has not been mown recently, lending it a rather unkempt appearance at present. Photographs submitted by both the applicant and the objector indicate that in the past the land has been mown regularly and kept tidy. There is a small oak tree situated towards its southern extremity and a wooden pole carrying a power line adjacent to Kings Bank Lane. At its north-eastern apex are two traffic signs: a speed restriction sign and a 'give way' sign.

17. Beckley parish extends approximately 6.5 km (4 miles) north to south, and 2.8 km (1.5 to 2.0 miles) east to west. Beckley village itself is a linear village, lying predominantly on either side of the B2088 which roughly bisects the parish. The southern part of the parish lies within the High Weald and is crossed by several minor roads and lanes. The village encompasses the hamlet of Four Oaks which lies at the eastern end of the B2088 at the junction with the A268; the parish church lies towards the western end of Main Street, just less than 1.6 km (1 mile) from the application site, and at the extreme western edge of the parish lies the Rose and Crown public house, about 1.6 km (1 mile) from the application site. A number of other dwellings and farmsteads are contained within the parish, but it has the general appearance of a relatively thinly populated rural area. I have not been provided with actual population figures.

18. The application land lies in the centre of the parish geographically, but towards the eastern end of the main residential area of Beckley village. This is balanced to some extent by the presence of the community at Four Oaks a short distance further to the east.

BOUNDARIES OF THE LAND

19. There was some debate at the inquiry as to the precise extent of the application land, particularly in relation to the plans prepared in connection with the 2003 planning application. I have not been specifically requested to adjudicate on the extent of the application land but there was clearly some anxiety on the part of the applicant and his witnesses that there was a disparity between the Land Registry title plan and the planning application 'red-line' plan.

20. The fence line adjacent to Kings Bank Lane and Main Street appears to me to have been re-positioned for highway safety purposes rather than because of any disagreement over ownership. Any dispute about the claimed ownership of the extremities of the land does not seem to me to have a significant bearing on the boundary of the application land.

21. I do not consider that there is an issue over the extent of the application land. It is bounded on three sides by highway land[4], and extends to that boundary in each case. The Registration Authority is also the Highway Authority and is clearly in a position to determine the extent of the highway. What remains within that triangular boundary is thus the application land by default.

STATUTORY PROVISIONS

22. Section 15(1) of the Commons Act 2006 ('the 2006 Act') provides that any person may apply to the Registration Authority to register land as a town or village green if certain specified circumstances pertain. The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007[5] ('the 2007 Regulations') brought these provisions into force on 6 April 2007 and set out the procedures to be followed.

23. The application was made on 11 April 2007 and therefore falls to be determined in accordance with the provisions of the 2006 Act. The application form indicates that it has been made in accordance with the provisions of Section 15(4) of the 2006 Act which provides that an application can be made where:

    (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;

    (b) they ceased to do so before the 6 April 2007 (the commencement of this section of the Act); and

[4] Kings Bank Lane, Main Street and the Byway Open to all Traffic
[5] Statutory Instrument 2007 No. 457

(c) the application is made within the period of five years beginning with the cessation of use referred to in paragraph (b).

24. However, sub-section (4) does not apply[6] in relation to any land where:

(a) planning permission was granted before 23 June 2006 in respect of the land;

(b) construction works were commenced before that date in accordance with that planning permission on the land or any other land in respect of which the permission was granted; and

(c) the land—

(i) has by reason of any works carried out in accordance with that planning permission become permanently unusable by members of the public for the purposes of lawful sports and pastimes; or

(ii) will by reason of any works proposed to be carried out in accordance with that planning permission become permanently unusable by members of the public for those purposes.

25. In determining the period of 20 years use, Section 15(6) states that any period during which access to the land was prohibited to members of the public by reason of any enactment is to be disregarded and treated as though use was continuing. This is intended to allow for situations such as that experienced during outbreaks of Foot and Mouth Disease, where access to land is temporarily prevented. However, no-one has suggested that this is an issue; it was not raised in the documentary evidence or at the inquiry and I have therefore not given it any further consideration.

26. An application must be made in accordance with the 2007 Regulations. These are set out at paragraph 3 and state that an application must:

(a) be made in Form 44;

(b) be signed by every applicant who is an individual, and by the secretary or some other duly authorised officer of every applicant which is a body corporate or unincorporated;

(c) be accompanied by, or by a copy or sufficient abstract of, every document relating to the matter which the applicant has in his possession or under his control, or to which he has a right to production;

(d) be supported:

[6] See Section 15(5) of the 2006 Act

(i) by a statutory declaration as set out in form 44, with such adaptations as the case may require; and

(ii) by such further evidence as, at any time before finally disposing of the application, the registration authority may reasonably require.

27. The statutory declaration made in support of the application must be made by either:

(a) the applicant, or one of the applicants if there is more than one;

(b) the person who signed the application on behalf of an applicant which is a body corporate or unincorporated; or

(c) a solicitor acting on behalf of the applicant.

28. Paragraph 5(4) of the 2007 Regulations state that:

Where an application appears to the registration authority after preliminary consideration not to be duly made, the authority may reject it..... but where it appears to the authority that any action by the applicant might put the application in order, the authority must not reject the application under this paragraph without first giving the applicant a reasonable opportunity of taking that action.

29. The task of proving the case in support of registration of the land as village green rests with the person making the application, and the burden of proof is the normal, civil standard: the balance of probabilities.

30. Section 15(8) of the 2006 Act provides for a landowner of any land to apply to the commons registration authority to register the land as a town or village green.

REASONING

THE VALIDITY OF THE APPLICATION

THE FORM ITSELF

31. The application was made on Form 44 and the statutory declaration was signed by Mr Bernard Baverstock before a solicitor[7]. Mr Baverstock has submitted a copy of the minutes of the Parish Council recording his authorisation to act for that body. Mr Baverstock confirmed at the public inquiry that he is currently the Chairman of the Parish Council.

32. The application was accompanied by a bound bundle of documents, and 47 forms completed by local people who claim to have used the application land. The application land is clearly identified on an accompanying map.

[7] Justin Nelson, Solicitor, Meridian House, Cranbrook, Kent, TN17 3HL

33. Part 4 of Form 44 requires the date on which the use of the land is considered to have ended to be identified by the applicant. The original application indicates that use of the land was brought to an end in August 2002.

34. Part 6 of Form 44 requires the locality or the neighbourhood within a locality relevant to the application to be identified. The original Form 44 submitted by Mr Baverstock names two such administrative districts: the Parish of Beckley and the Electoral Ward BB – Rother District. Appended to the application form is a map showing the extent of the parish of Beckley.

35. Mr Boswall challenged the validity of the application during the initial objection period on the grounds that the date on which the use of the land ended was not sufficiently precise, and the relevant locality was not clearly identified. The County Council, having given initial consideration to the matter, allowed Mr Baverstock to amend his application, in accordance with the provisions of the 2007 Regulations.

36. On 3 August 2007, Mr Baverstock made two amendments to Form 44 to address these points. With respect to the date in Part 4, he added the following clarification:

    'That day on which the fencing was erected being between 9.08.2002 (C & P purchase date) and 11/08/2002 (BPC Minutes reference to fencing).'

37. With respect to Part 6 of Form 44, he deleted the reference to the Electoral Ward BB of Rother District, relying on the Parish of Beckley as the relevant locality.

38. I consider that the applicant has made every effort to provide information on Form 44 that is as accurate as possible, and that the County Council was entitled to give Mr Baverstock an opportunity to amend the form. The amendments do not fundamentally alter the application, but merely attempt to provide clarification. The existence of the amended Form 44 appears not to have been communicated to the objector until the pre-inquiry meeting which I held on 13 May 2008. This is regrettable, but has nevertheless allowed time prior to the inquiry for the objector to consider the alterations and for Mr Boswall to fully explore any possible implications before and during the inquiry itself.

39. Under the circumstances I am satisfied that no prejudice has been caused to any party as a result of the amended application, and that the application fulfils the statutory requirements in all respects.

THE EFFECT OF THE EXISTENCE OF THE PLANNING PERMISSIONS

40. The application land is subject to two separate planning permissions, both of which were initially refused and then subsequently allowed on appeal.

41. The first of these relates to the change of use from a public house to a private dwelling, and was granted in December 2001[8]. The owners and occupiers of the property at that time were Mr Martyn Simmons and Mrs Maureen Creedy[9]. Mr Robin Archer, of CPDL, submitted a letter dated 1 July 2002 from Mr Simmons confirming that the property had been used for residential purposes since December 2001. Mr Simmons confirmed at the inquiry that the majority of the bar fittings to the ground floor had been removed, but none of the works necessary to implement the permission would have prevented the use of the application land for lawful sports and pastimes. This planning permission therefore has no effect on the application for village green status.

42. The second permission was granted on appeal on 3 September 2003 and relates to the demolition of the existing dwelling, and the construction of seven cottages with garages[10]. No construction works have been commenced in connection with this permission. Mr Boswall confirmed in a letter dated 23 May 2008 that his client had not yet implemented the permission and that, accordingly, he did not seek to rely on the existence of this permission to defeat the village green application, in whole or in part.

43. Consequently although the permission, if implemented, would result in part of the application land becoming permanently unusable by members of the public for lawful sports and pastimes, by virtue of the fact that no construction works have commenced it also has no effect on the village green application.

THE LOCALITY OR NEIGHBOURHOOD WITHIN A LOCALITY

44. There is no statutory definition contained within the 2006 Act of what is meant by a locality. The case law on the subject relates to the registration of village greens under the Commons Registration Act 1965 as amended by Section 98 of the Countryside and Rights of Way Act 2000. However, the definition of a village green in the 2006 Act is in substantially the same form as the wording contained in the 2000 Act. It has been determined that a locality must be a recognisable division of an area known to the law, such as a parish, borough or electoral ward.[11] It cannot be a line arbitrarily drawn on a map, but must be an administrative unit.[12] Some flexibility is provided by the inclusion in the relevant criteria of the term 'a neighbourhood within a locality' but in this case it does not appear to be necessary to consider that possibility.

45. Mr Baverstock has clearly outlined that the area on which he is relying in terms of use by the inhabitants is the entire parish of Beckley, which is an administrative unit recognised by the law. The objector does not seek to challenge the locality relied upon by the applicant,

[8] APP/U1430/A/01/1072958
[9] Now Mrs Maureen Simmons
[10] APP/U1430/A/04/1142696
[11] R (Laing Homes Ltd) v Buckinhamshire County Council and SSEFRA [2003] EWHC 1578 (Admin)
[12] R (Cheltenham Builders) v South Gloucestershire District Council [2003] EWHC 2803 (Admin)

and I consider that the parish of Beckley is an appropriate unit which satisfies the criteria for the 2006 Act.

46. I consider that the application is therefore duly made, and is a valid application.

THE EVIDENCE SUBMITTED IN SUPPORT OF THE APPLICATION

47. Mr Baverstock submitted user evidence forms from 47 people in support of the application. He also submitted some historical evidence in the form of maps, photographs, extracts from newspapers and other publications, details of the recent history of the site and information relating to the 2003 planning application. There were also two graphs giving a rudimentary summary of the types of claimed use of the area, compiled from an analysis of the user evidence forms. This documentation forms the document bundle BB1.

48. In response to queries raised by the landowner in objection, the County Council wrote to some of the applicant's witnesses asking for clarification of the date that their claimed use of the land ceased, particularly in relation to fencing of the application land mentioned in their evidence. This exchange took place in June, July and August 2007, and is evidenced by letters from the County Council (documents ESCC5 and ESCC6) and the responses attached to some of the user evidence forms in bundle BB1.

49. In August 2007, Mr Baverstock submitted further supporting documentary evidence (document bundle BB5) which consisted of further documentary evidence of recent use of the application land, and more extracts from documents connected with the 2003 planning application.

50. In April 2008, in preparation for the inquiry, these two bundles were re-presented together with additional supporting documentary evidence, including statutory declarations from three witnesses unable to attend the inquiry[13], and one further witness who subsequently spoke at the inquiry in support of his statement.[14] More documents associated with the 2003 planning application were also submitted, and these all form bundle BB7.

51. Following the pre-inquiry meeting, Mr Baverstock submitted some information which I had requested which included details of the 2005 modification order for the BOAT; details of the proposed stopping up order, and a bundle of plans and photos relating to the fencing erected on the application land. These form bundle BB8.

52. Although I requested that any further documentation be kept to an absolute minimum, it can be seen from the document list at the end of this report that a number of other documents were handed in at the inquiry. These are identified in the table.

[13] Luke Kilpatrick; Joshua Sparks; and Heather Lambert
[14] Stephen Bowler

53. I have taken all of these documents into consideration in addition to the oral evidence given at the inquiry, apportioning weight as appropriate.

EVIDENCE SUBMITTED OPPOSING THE APPLICATION

54. I have already dealt with the principal submissions in respect of the validity of the application which formed the primary basis for the objection.[15] The objector's case relies mainly on three statutory declarations made by Mr R Archer, Mr M Simmons and Mrs M Simmons, and a criticism of the standard of evidence in respect of claimed use.

55. Mr Boswall submits that the evidence of claimed use falls well below the standard required to meet the legal test and, furthermore, that there was no qualifying use of the application land during the period when the property was owned by Mr and Mrs Simmons (3 April 1998 to 9 August 2002) nor at any time since then. In addition it is alleged that any use of the land was prevented in 2001 when the original fencing was erected, and not in 2002 as claimed by the applicant, thus invalidating the application due to the length of time between the cessation of use and the date of the application.

56. It is also postulated, and I put it no more strongly than that, that there was no qualifying use in the period prior to 1998 (when The Royal Oak was purchased by Mr and Mrs Simmons) because any use of the land that took place was incidental to the operation of the public house by previous tenants. These documents are contained principally within bundles CPD1 to CPD4.

57. In his closing submission (at CPD14) Mr Boswall returns to the issue of the locality and argues that the applicant's witnesses come predominantly from an area in close proximity to the application land and not from a reasonable 'spread' throughout the relevant locality relied upon by the applicant. Consequently he asserted that it had not been shown that the claimed use of the site had been by the inhabitants of the locality as a whole; a fundamental requirement for the application to succeed.

58. Evidence of ownership was submitted by the objector, and evidence relating to the erection of the fencing of the site, together with photographs. Details of the two extant planning permissions for the site were submitted at my request following the pre-inquiry meeting. During the inquiry, a local resident who had been a former tenant of The Royal Oak provided a letter for submission in support of the objector's case.[16] The documentation submitted on behalf of the objector can be found in the appendices CPD1 to CPD14 and I have taken it all into consideration in reaching a recommendation.

[15] The authority of Mr Baverstock to make the application; the date on which claimed usage ceased; and the identification of the locality
[16] Letter from Mrs M Reed; to be found at CPD 13

THE DATE ON WHICH THE CLAIMED USE OF THE APPLICATION LAND CEASED

59. Since the application is made under Section 15(4) of the 2006 Act it is necessary to identify the date on which the claimed usage ceased, so that a period of 20 years can be isolated for the purposes of examining the nature of that use. The application was made on 11 April 2007, and any claimed usage of the land must therefore have ceased no earlier than 11 April 2002, in order to comply with the requirements of the 2006 Act.

60. The application land was partially fenced by Mr and Mrs Simmons in 2001. A fence was erected on two sides of the application land adjacent to both Kings Bank Lane and Main Street. It was moved from its original position at the request of the highway authority, and at the inquiry Mrs Simmons acknowledged that it was most likely erected in August, and re-positioned over the New Year 2001/2. This is confirmed by copies of bills for the fencing work to be carried out (in bundle CPD7), and by a letter dated 23 January 2002 from the County Council Highways Management Officer (in bundle BB7).

61. Following the sale of the property by Mr and Mrs Simmons on 9 August 2002, further fencing was erected. Mr Archer stated at the inquiry that it was normal practice when purchasing a development property to immediately secure the site boundary by fencing. The fence erected at that time was of similar construction to the earlier fencing (rustic two-post and rail fencing) and it extended across both ends of the hard-standing to the front of the former public house. It was the erection of this fencing which prompted an application for part of the land to be recognised as a BOAT and, following the successful modification order made in 2005, some of the fencing was removed again. Nevertheless, it was the erection of the extended fencing in August 2002 which the applicant identifies as the event which brought the alleged use of the application land to an end, for the purposes of Section 15(4) of the 2006 Act.

62. At the inquiry, there was no significant disagreement between the parties about the fencing history, although Mr Boswall argued that usage of the land had ceased at an earlier time – when Mr and Mrs Simmons had taken over the public house in 1998 – or, in the alternative, when the partial fencing had been erected in 2001; if indeed qualifying use had ever taken place as claimed.[17]

63. Neither was there any significant disagreement about the nature of the partial fencing, erected in 2001. The applicant's witnesses who referred to it considered that it had been erected for the safety of people using the application land, particularly children, and that it did not prevent continuing use of the land concerned. For the objector, Mrs Simmons confirmed that an incident with a customer's child had prompted them to arrange for it to be erected, and that it had been

[17] I deal with this argument when considering the nature of the claimed use

done very soon after the danger had been highlighted. The public house was still operating at that time, and there was clearly no intention on the part of the owners to prevent continued use of the application land, at least by their own customers. It would not have been in their commercial interests to have done so.

64. Mr Boswall sought to show that the erection of the 2001 fencing was a clear demonstration by Mr and Mrs Simmons of their ownership of the land, and thus a clear message to members of the public that they were not entitled to use it unless they were customers of the public house. The applicant's witnesses were unanimous in expressing surprise at this notion, and although some of them acknowledged that the fencing may have indicated that the land was owned by Mr and Mrs Simmons, no-one accepted that they had taken it to mean that access to the land was generally being barred. It was common ground that at no time had any notices been erected (by Mr and Mrs Simmons or any previous tenant or occupier) indicating that use of the land was not allowed.

65. Taking all the evidence into account, I conclude that the 2001 fencing was not capable of completely preventing continued access to the land and therefore 2001 is unlikely to be the date on which claimed use of the land ceased (whether or not it was actually taking place by that time, which I deal with below at paragraph 127 onwards).

66. Mr Boswall attempted to show that use of the application land by the public had ceased well before that time, suggesting that throughout the period of ownership by Mr and Mrs Simmons there had been no use of the nature claimed by the applicant. However, two previous tenants for earlier periods during the 1990s (Peter Hobson and Tracey Barnes) gave evidence in support of the application and testified that the application land was in regular use by members of the public. Mr and Mrs Simmons acknowledged that they had no knowledge of the application land prior to their purchase of the public house. I accept that usage may have diminished by that time, and may have continued to decline, but I consider it unlikely that usage ended abruptly at that point in 1998 simply because new owners took over. There was no evidence of a physical barrier at that time and Mr and Mrs Simmons accepted under cross-examination that they had never put up any prohibitory notices.

67. What appears to have stuck in peoples' minds, and what clearly caused many of the user witnesses to question their right or ability to go onto the application was the fencing erected on behalf of the new owners – CPDL – in August 2002. Almost all the people who gave oral evidence, and those people who clearly recalled the 2002 fencing in their evidence forms (or their responses to the letters sent out by the County Council – see paragraph 48 above) attributed their reluctance to enter the land to that fencing. In this respect the written evidence largely concurs with that given orally at the inquiry and I have no reason to doubt its sincerity.

68. On the balance of probabilities I prefer the applicant's arguments that use of the application land, whatever form it took, came to an end on or immediately after 9 August 2002 when the property was sold again resulting in the erection of the fence on behalf of the new owners. Since this date is just within five years of the application it complies with the requirements of Section 15(4) of the 2006 Act. It is therefore necessary to examine the nature of the claimed use of the site for the 20 year period between 1982 and 2002 to determine whether or not the application should be accepted.

THE NATURE OF THE CLAIMED USE:

Lawful sports and pastimes

69. The question of what constitutes lawful sports and pastimes has been considered by the courts, and in particular in the *Sunningwell* case.[18] Lord Hoffman expressed the view that the term 'sports and pastimes' was a composite phrase which covered any activity that could properly be described as a sport or a pastime. The term was relative; the definition of what is a sport or pastime alters through time such that modern informal pastimes such as dog walking and playing with children are just as applicable as more formal sports or pastimes such as cricket or maypole dancing may have been in the past.

70. Several activities have been identified in the user evidence provided by the applicant's witnesses, ranging from formal team games to children playing informally, and including dog walking, picnicking and annual events such as bonfires and fun-runs. All of these activities would seem to me to be capable of being legitimately described as 'sports or pastimes'. It is submitted by the objectors that these activities never took place at all, or certainly not to the degree claimed by the applicant.

71. It is necessary to examine the nature of that use in terms of whether or not it was exercised 'as of right', whether the use has been of the area as a whole, and whether or not it was exercised by a significant number of the local inhabitants; or whether it took place at all.

Whether the use involved the whole area of the application land

72. The application land is currently largely devoid of vegetation other than grass and the one oak tree, but has in the past supported, in addition, a cherry tree and other shrubs and bushes. Most of these were removed by Mr and Mrs Simmons to make the public house more obvious to potential passing trade. However, the existence of the bushes was credited by several of the user witnesses as providing good cover for games of hide and seek with children. In *Trap Grounds,* it was not held to be detrimental to the registration that only 25% of the area was actually available for use for lawful sports and pastimes, the remainder being bushes or scrub, or marshy land. The nature of the land in itself was held to be the reason for its use for

[18] R v Oxfordshire County Council and Osford Diocesan Board of Finance *ex parte* Sunningwell Parish Council [1999] UKHL 28

such activity. I can see no reason why the existence of the shrubs ought to be taken as preventing the registration of the application land as village green. The evidence suggests that some of the claimed activities took place precisely because the shrubs were there.

73. The objector asserts that some of the pastimes alluded to by the user witnesses cannot be classed as lawful sports or pastimes because they did not involve the use of the whole of the application land. Mr Boswall referred particularly to the claimed use described as pupils 'larking about' while waiting for the school bus, or on their return to the village in the evening.

74. I do not think that it can be a requirement for each sport or pastime to involve use of the whole area of the application land. 'Larking about' covers a multitude of possible pastimes which are routinely indulged in by youngsters. There may be a bit of rough and tumble or they may kick a ball around, for example. Alternatively they may, as some witnesses described, stand about talking for a while. Assuming that none of the activity was unlawful in any way, and there is no suggestion that it was, I conclude that such behaviour is capable of being described as lawful sports or pastimes. It is not disqualified from being relevant activity for the purposes of registration of a village green merely because it may habitually have involved the use of only a small part of the application land.

75. I consider that it is the use of the application land as a whole (as far as it is available for such use) over a period of time and in a variety of appropriate ways which is the qualifying factor, and not that each activity undertaken must occupy the whole of the land concerned.

Use as of right

76. The judgement in *Sunningwell* set out clearly the definition of what is to be considered usage 'as of right': use must have been exercised without force, without secrecy and without permission. The question of use by permission was thoroughly explored in the *Beresford* judgement[19] which I consider to be very relevant to this particular case. For the purposes of examining use as of right, I have assumed that at least some use of the land did take place. I consider the question of whether or not any use of the land took place at all when considering whether the use was exercised by a significant number of the inhabitants of the locality.

Without force

77. Until the middle of 2001, the application land appears to have been open on all sides and freely accessible. Mrs Reed states in her letter (CPD13) that it was surrounded by a hawthorn hedge when she and her husband took the tenancy of the public house but which they progressively removed so as to provide a sunny seating area for their customers. Although this was contested by Mr Baverstock it is immaterial to my examination of the evidence because Mr and Mrs

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

Reed left the property in 1977, well before the 20-year period under consideration. Any hedge which had existed was long gone by 1982.

78. Even after the erection of the fence to two sides of the application land in 2001 it was still possible to access the area from the third side. The minor re-positioning of this fence which took place at Christmas/New Year 2001/2 did not affect the situation: access to the application land was still freely available. I do not consider that any incidental damage which may have been caused to the fence as a result of adults or children climbing on or through them would constitute access by force under the circumstances.

79. Any forced access or damage to the fencing which was erected in August 2002 would have occurred after the date on which use of the application land is claimed to have ceased, and would therefore not be material to the period of time that I am considering.

80. There is no evidence that any of the former tenants of The Royal Oak, or Mr and Mrs Simmons themselves, actually erected notices discouraging use of the application land, or turned people off it. Consequently there is no evidence of usage by force.

Without secrecy

81. The application land is surrounded by highways, and is overlooked by a number of properties on all sides, including the property which was formerly the public house and is now known as Oak Tree House. During the 20 year period between 1982 and 2002 that property was in continuous occupation, apart perhaps from occasional short spells between tenancies in more recent years.

82. It was suggested by Mr Mills that the application land was the 'hub of the village' during his time of residence (1984 onwards) but this was disputed by Mrs Reed. She has lived opposite the application land since 1990, and stated in her letter that the only activity that she had witnessed with any regularity was some boule matches. She claims to be one of the oldest residents of the village, in addition to having been a former tenant of The Royal Oak.

83. Mrs Reed declined to give oral evidence and consequently her testimony has not been cross examined. However, even allowing for the possibility that the activity claimed by the applicant's witnesses may be a little overstated, Mrs Reed's evidence is in sharp contrast to the majority of evidence given by other witnesses familiar with the land during the relevant period. Only Mr and Mrs Simmons evidence is similar, and their knowledge of the land is restricted to the four years between 1998 and 2002.

84. Prior to 1998 or thereabouts, there was a newsagent's shop on one side of the application land, opposite to the public house. There was some difference of opinion over the year in which the shop closed, but it had previously been a general store when Miss Chantler had worked there. She left shortly after the shop had been sold by a Mr Impey: she was a little vague about the date she left, but from the

circumstances she described (her son being at least 16 years of age or so at the time) it would seem to have been in about 1984/5. She stated that she had lived in Beckley all her life (at Four Oaks) and that the application land had been used frequently as a meeting place, although mostly in the summer.

85. Many of the applicant's witnesses spoke about going to the shop to buy newspapers, ice cream and sweets, and then spending time on the application land chatting or eating. Given the proximity of the shop until about 1998, I consider that the use of the application land in connection with visits to the shop is more likely than not. Mr Hobson's evidence was consistent with this view (see paragraph 88 below).

86. I am reluctant to dismiss Mrs Reed's evidence out of hand, given her experience of the application land, but in the absence of any cross-examination of her evidence I must prefer that of the user witnesses who spoke at the inquiry. I can only surmise that her very recent experience of the land has clouded her memory, or that she has a different perception of the use from that of other people. There is no serious dispute that at least once a year for several years during the period Mrs Reed has lived in her present house, the application land was used for charity fun-runs attended by large numbers of people, and yet she does not refer to them.

87. Clearly the existence of bushes and shrubs may have disguised or obscured some of the users from view at times, but I find it difficult to believe that no-one used it at all (I return to this issue in paragraph 107 below). Whilst it may be somewhat of an overstatement to describe the application land as the 'hub' of the village, any use that has been made of the land cannot realistically have been exercised secretively.

Without permission

88. No evidence of express permission to use the land was presented by the objector. It was acknowledged by Mr and Mrs Simmons that there had been no notices on the application land except one advertising the services of the public house. Previous tenants of The Royal Oak (Mr Hobson and Ms Barnes) acknowledged that use of the land had taken place. Mr Hobson, who was the tenant between 1992 and 1994, commented that the use of the land had been mostly in connection with the shop and that people had tended to use the tables and chairs he had put out even when not using the facilities of the public house. He said he had seen no reason to ask them to leave, and had never discouraged people. He also stated that when a charity fun-run was organised he was told when it was taking place; no permission had been sought from him.

89. He confirmed that he had originally constructed the boule pitch, and although provided mainly for the pub customers, other people also used it. However he did mention that if customers wished to use it, they took preference. He acknowledged that he had cut the grass, and that it was his responsibility to do that. Miss Chantler had also

confirmed that a gentleman used to cut the grass for Mrs Reed when she was the licensee, and Mr and Mrs Simmons confirmed that when they owned the pub they had been responsible for cutting the grass. Mr Hobson was of the view that it would not have been obvious to the public, whether locals or not, that the application land belonged to the pub. He referred to other pubs in the general area which had village greens adjacent to them, and this was confirmed by Mr Thompson, who had been closely involved with letting public house tenancies in the area, including The Royal Oak.

90. One question to be addressed is whether or not the use of the application land, in particular the boule pitch and the tables and chairs, could be said to have been with the benefit of implied permission. In looking at this issue I am guided by the decision in *Beresford*, where an area of land owned by the local council and set out as a small sports arena was successfully registered as a village green. In that case, neither the existence of the seating nor the mowing of the grass was accepted as implying that permission to use the area was being given. Rather, the view was taken that such facilities were an encouragement and were to be expected if the land was a village green. There was no indication that the public's ability or right to use the land in question was precarious, or likely to be rescinded.

91. In this case the land is not owned by the local authority, but the invitation to use the application land appears similar. The provision of seating (at times but not continuously) and the mowing of the grass both invite usage in the absence of any indication to the contrary. None of the user witnesses acknowledged that they considered that they could, at any time, have been asked to leave or not to enter the application land. Without exception, those witnesses who gave oral evidence of use expressed astonishment at the suggestion.

92. The principal exception to this relates to the use of the boule pitch; it was generally accepted by the witnesses that use by the pub team, or other customers, took preference over use by others. By extension, it would appear that any other use of the application land would also have given way to the use of the boule pitch by pub customers if it would otherwise have impinged on the pitch. However, there remains other land on which to sit or to play, apart from the boule pitch.

93. For assistance with this issue I look to the judgement in *Trap Grounds.* Lord Hoffman took the view that registration as a village green did not mean that the owner is altogether excluded from the land. He considered that the owner still had the right to use it in any way which does not interfere with the recreational rights of the inhabitants. He felt that there had to be some give and take.

94. I have considered the question of the boule pitch, and its effect on whether or not its existence would preclude registration of the application land as a village green, by virtue of the use of it by customers taking precedence over the use of it by other people. I conclude that the use of the boule pitch would not have prevented

other sports and pastimes taking place elsewhere on the application land, small though it is. By applying the principle of give and take approved by Lord Hoffman, I do not consider that the mere presence of the boule pitch implies use of the application land as a whole is by permission.

95. It may however be taken to imply that the use of the boule pitch itself by non-pub customers was by permission, since the users of the boule pitch clearly acknowledged that pub customers took preference. I therefore consider that any use of the boule pitch was not as of right, but by permission, and that reliance on such use as qualifying use for registration of the application land as a village green is not appropriate.

96. The provision of tables and chairs on the application land itself seems to have been spasmodic and rather *ad hoc.* They were not present all the time, but moved onto it for certain events: for example, when a boule match was being played, or the fun-run was taking place. Mr Hobson's evidence suggests that the less substantial chairs and tables which he provided on the grass during the early 1990s were used by people other than customers, and at all times, whereas the more robust picnic-style tables and benches provided by Mr and Mrs Simmons seem to have been positioned mainly on the hard-standing, being moved to the application land only occasionally, and usually for specific purposes.

97. Many people in the photographs submitted by the applicant of people using the application land are sitting on the grass, in addition to using the benches, but a common factor is that they appear to be taking refreshment. A significant number of the adults pictured are drinking from glasses which almost certainly must have belonged to the public house. I agree with the objector that this type of use ought to be considered to be use by implied permission, since the land was effectively being used as the trade garden in those circumstances. Nevertheless, such use by some people would not have prevented use of the remaining area by other people who were not purchasing refreshments from the pub, and who may have brought their own food and drink.

98. A similar situation therefore pertains in relation to the use of the application land for consuming products bought from the pub as does with the playing of boule. Such permissive use is not incompatible with the use of the area by others and therefore, by applying the same principle of give and take propounded by Lord Hoffman (see paragraph 93 above) I conclude that use of the application land as part of the trade garden for the pub does not preclude the registration of the application land as village green. It is, however, necessary to exclude such permissive use from any claimed qualifying use when considering the extent of use by inhabitants of the locality.

99. The evidence relating to the use of the area for the organisation of the charity fun-run needs to be examined carefully. The event appears to have been organised by one or two different people over the years,

and have taken slightly different forms, or been for different charities. The applicant's witnesses were consistent in claiming that it was arranged without specific reference to the public house. Mr Hobson confirmed that he was not asked for permission, and Mr Bowler explained that prior to Mr Hobson's tenancy the lavatories were outside the public house; consequently access to them had been freely available. The event took place on a Sunday and Mr Hobson took advantage of it for trade purposes, but he had not given specific permission for the use of the application land. He took the view that it would have been un-neighbourly to have prevented it in any way, and he co-operated by making the pub toilets available to participants.

100. Mrs Simmons claimed at first that her permission to use the application land for the administration of the event had been sought, but under cross examination, and in the face of oral evidence from Mr Stephen Bowler, she acknowledged that she may have misinterpreted the situation. She also accepted that the public house had opened the pub toilets for the occasion, but provided refreshments on a normal paying basis.

101. The event now seems to have lapsed, but evidence was given by Mr Bowler that this was more to do with the fact that the main organiser had moved away than for any other reason. The last event for which any evidence was submitted was in 2001 and Mrs Simmons confirmed that tickets for the event were not available from the public house. This would support the evidence of the applicant's witnesses that the event operated independently of the public house. By the September of 2002, when the next event would have been due to be held, the fencing erected by the new owners of the property had completely surrounded the application land and would consequently have prevented its use for the purpose.

102. I have therefore formed the view that, although the various publicans may have taken advantage of the staging of the event for commercial reasons, no permission to use the application land was sought or given. Consequently the use of the application land over the years for the fun-run can be considered to have been use as of right.

103. There is no evidence that alleged use of the land in general for any of the other claimed sports or pastimes was precarious or subject to permission of any sort.

Conclusion on use as of right

104. Mr Boswall considered that for any use to have been as of right there had to be sufficient use of the area such that the owner of the land would recognise that such a right was being asserted. Evidence was given that at least two of the former landlords of The Royal Oak (Mr Hobson and Ms Barnes) acknowledged that the general public did use the application land for the types of qualifying sports and pastimes to which I have referred above and which I examine in greater detail below.

105. Consequently, with the exception of the use of the boule pitch the use of the application land as a trade garden in connection with visiting the public house, I consider that any use of the application land which has taken place for qualifying lawful sports and pastimes has been exercised as of right, at least for the period up to 1998, when Mr and Mrs Simmons took over the property.

106. I now turn to the issue of qualifying use in more detail, and I return to the issue of continuous use in paragraph 127 below.

Whether there has been use by a significant number of inhabitants of the locality

107. A number of different activities are alleged by the applicant and his witnesses to have taken place on the land over the relevant period. It is necessary to look at each one in turn to determine whether or such activity did indeed take place. It is not necessary for each activity to have been undertaken by a significant number of the inhabitants of the locality, but overall the use of the land for such activities as a whole must be capable of demonstrating that level of usage.

108. The question of what constitutes a 'significant' number of the inhabitants has been considered in the *McAlpine* judgement in the High Court.[20] Sullivan J accepted that the word ought to be given its normal meaning and that it did not mean 'substantial or 'considerable'. What was required was that sufficient people had used the area for informal recreation to indicate that it was in general use by the local community for such purposes, rather than occasional use by individuals as trespassers.

109. Of the 47 user witnesses, I heard oral evidence of use from nine people: eight in support of their original written statements and one in support of a statutory declaration made more recently.

110. Ms Barnes has known the area since 1994 and was, for a short time in that year a joint tenant of The Royal Oak, living on the premises. She was told at the time that the land did not belong to the pub even though they paid to have the grass cut, and she often saw people sitting on the land when the pub was shut. People were using the shop, or waiting for a bus and she was advised by the locals that the land was the 'village green'; she accepted the situation and she never turned anyone off, even though she saw people eating picnics there when the pub was open and she was selling food herself. She assumed that it must have been like that for other pub tenants. In the autumn of that year she gave up her tenancy and moved to Great Knells Farm (within the parish of Beckley) for four years, subsequently moving back into the village proper (opposite the school). Whilst her children were young she had used the application land in the same way as she saw other people using it. She would let her toddler run around on the grass when they used the application land as part of a circular walk round the village, along with other people doing the same. In

[20] R (Alfred McAlpine Homes Ltd) v Staffordshire County Council [2002] EWHC 76

addition to her own use of the land she has witnessed people using it as part of a dog walk.

111. Mrs Chantler is 66 years old and has lived in Beckley all her life, always in Hobbs Lane at Four Oaks. She attended the primary school. She was employed by Mr Impey at the former newsagent's shop (to which she referred as 'Norringtons'). At weekends young boys would come into the shop and then sit on the application land. One of them was her son, and she could keep an eye on him. He was about 9 or 10 years old at that time. It was the meeting place for children up and down the village. In summer, there was a lot of use by local adults because the men used to come and collect the Sunday papers. The papers were only delivered to houses during the week and on Saturdays. Having collected their papers they would sit on the bank opposite the shop (on the application land) and talk. She left the shop shortly after Mr Impey had sold it. She was a little unclear about the dates of her time there, but she said her son was now forty years old. Given that he was about 16 at the time she left, that would place her evidence of the use of the application land to a period ending early in the relevant 20 years. However, it does give a picture of continuing use extending back before the period relevant to the application.

112. Mr Hobson was tenant of The Royal Oak between September 1992 and June 1994, immediately prior to Ms Barnes. He had paid to have the application land mown as it was part of his tenancy agreement. He made a garden to the north side of the pub, not on the application land which was just open land. He was aware of the use made of the land, and that much of it was connected to use of the shop. He said that people used to meet there for a chat because Beckley is a long, straggling village and the application land is in the middle. In summer, there were tables and chairs on the application land and they were used by people in general, not just those at the pub. People would sit there after visiting the shop. He never discouraged them; he saw no reason to ask people to leave, but customers of the pub did take preference. He had constructed the boule pitch and said that there was some use of the pitch by children when it was not in use by pub customers. There was much less use of the land in winter. He confirmed that the carol singers who attended at Christmas did meet on the grass area, and that the fund raising fun-run was organised by people from the village. No-one ever asked his permission and although he was aware that he could have prevented it, it would not have been a very sensible or neighbourly thing to do. The pub was not open at the start of the event, but people might buy a drink at the end before dispersing. The toilets were available to them, and it was all part of having a village pub. The hunt had met at the pub once, but at his invitation; and although he did not hold a bonfire he was aware of one being held in 1991 because the grass and the oak tree were scorched. As far as he was aware it was a one-off. Under cross-examination he acknowledged that his knowledge of the land extended principally to the period of his tenancy. After the end of his tenancy, he had not revisited the land until Mr and Mrs Simmons owned it.

113. Mr Knight moved to Beckley in 1996 and lives directly opposite the application land on Main Road. The application land had a cherry tree on it and several other shrubs. It reminded him of other locations where there were village greens, and assumed that was the case in Beckley. He has a clear view of the application land and was aware of use by local children and teenagers, especially whilst waiting for the school buses. He would see them shortly before setting off for work himself, although he retired about three or four years ago. He said that there might be a group of 12-15 people, and that the buses also dropped them off in the same place. There were buses in both directions, and the pupils hung about and chatted, or played ball on the application land. He had seen Morris Dancers two or three times and submitted photographs dating from 1997, although he presumed such events were organised by the publicans. He would take his own grandchildren over to the shop and they would spend some time chasing round the shrubs. He acknowledged that most of the use of the application land appeared to be in connection with the use of the shop, but when the shop closed the children nevertheless still used the land to wait for the bus, talking and 'larking' about. He has also witnessed early-morning dog-walkers on the application land and along the adjacent roads, and children and young teenagers riding about on bicycles. Occasionally he had witnessed ponies grazing whilst their riders were using the shop, and that very occasionally he still saw riders on the land.

114. Mr Mills, a local veterinary surgeon specialising in horses, stated that he had lived at his present address since 1984, and in Beckley itself since 1982. He also gave evidence that he had used the application land with his children in conjunction with the use of the shop. They would buy ice creams or lollies and eat them on the grass. His children would be on their bicycles and it was therefore not feasible to eat them otherwise. His children were born at his present address but he could not recall when the shop had actually closed. He claimed to have seen ponies grazing on there whilst being exercised, explaining that there are a couple of liveries in the area. He asserted that the parents allowed the children to ride down to the application land along the quiet lane, but they were not happy to let them go onto the main road. There might be two or three ponies there at any one time, for up to 20 minutes. He considered that such use had continued throughout the time he has lived here, until the fencing was erected in 2002. His own use of the site was latterly restricted to occasional walks with the dog; he was an infrequent user of the public house, having visited it only four or five times in 20 years or so. He indicated that he viewed the application land as the 'hub of the village' but under cross examination was unable to be very specific about much of the evidence of use he had alluded to, including use of the land by children playing; the party of carol singers who had called at his property; alleged maypole dancing etc. He was also vague about having seen other groups of people meeting up on the land before going elsewhere (cyclists and runners for example) but he did concede that after the fence was erected in 2001 the use of the land decreased significantly

(perhaps by half) and declined even further in 2002. Since the partial removal of the fence there has been some continued use of the land.

115. Mr Thomson moved to Beckley in about 1975 and also knew The Royal Oak on a professional basis as he is a licensed-property valuer. Even so, he acknowledged that until recently he had not known that the application land was part of the pub's land. It had never been part of any of the tenancy agreements which he had dealt with. He himself had taken part in tug-of-war competitions and trained on the application land; he had attended two bonfire nights staged there, and also taken part in the fun run. He had seen children playing on there at weekends, including his own children and thought that the fencing had been erected in 2001 for safety reasons. He also stated that the centre of attraction was the newsagent's shop where, because everyone had to collect their papers on a Sunday, people met outside on the application land. He considered that the shop had closed in about 1998, but that closure had not had a substantial effect on the use of the application land. People still walked across it. He was able to give quite detailed information about the activities he had taken part in which encompassed the 1980s and 1990s. He considered that although the erection of the fence in 2001 reduced adult use, children continued to use it. He acknowledged that sometimes children may have been playing outside on the application land whilst their parents were in the pub, but also considered that describing the application land as the 'hub' of the village was a reasonable epithet.

116. Mr Bowler was prompted to make a statutory declaration in April 2008 in response to comments made by Mr and Mrs Simmons in their respective declarations. He wished to make it clear that he had not been involved with the organisation of the annual fun run, and had never therefore asked permission from Mr and Mrs Simmons, as they had claimed. It was a village event and although he had taken part on some occasions he had not had anything to do with it. He had organised one event only – a 10-kilometre road-race – but that was in 2005. The last fun run had been in 2001. When the runs had started in the early 1980s, the pub toilets had been outside and therefore freely available. When they were moved inside (during the late 1980s/early 1990s) the pub was open by the time the run finished and so the toilets were accessible then. He also claimed that the school buses stopped at the application land and that in the 1980s and 1990s he had regularly seen boys 'skylarking' there. He was able to name some of the children he had seen, and said he had never heard of anyone being discouraged from using the application land. He acknowledged that he had been a customer of the pub, and had occasionally used the application land in that context, but that he considered that the land had been freely available for use by anyone whenever they felt like it. His own use of the land was limited: he had used it when collecting Sunday papers in the early 1980s when there would be people milling about having a 'natter'. Since 1998 the land was used mainly by young boys on bicycles; particularly Luke Kilpatrick, Joshua Sparks and Blaise Baverstock. He acknowledged that people were annoyed when the fence was erected in 2001 but

they considered that it was for safety purposes; nevertheless he accepted that it had prevented people walking across the land to some extent.

117. Mrs Whymark has known the village since 1979 although she moved from Beckley in 2006 to her present address. In 1979, her family lived just over the parish boundary in Northiam, but her children attended Beckley Primary School and she herself had worked there. She had also formed a play group in the village and had been on Beckley Parish Council at some point. In November 1999 her family bought the former newsagent shop and moved into the village itself. She described how, between 1986 and about 1994/5, she had walked almost every day from her house in Northiam to the village, with a pushchair, taking one child to school and going to the shop. Mr Boswall expressed scepticism at the distance involved, but Mrs Whymark could not be dissuaded from her evidence. She stated that they would have a rest on the application land before returning home. She had seen other children playing on the application land, some on bicycles, and witnessed people picnicking. She remembered two bonfire nights, which she placed at about 10-12 years ago, and also the Morris Dancing, which she assumed had been organised by the pub. She recalled being a marshal one year for the fun run and since 1999 had used the application land for walking her small dog and for picnics and barbecues. She acknowledged that her family had also used the application land as customers of the pub, but could not recall seats on the land itself; the seats tended to be on the hard-standing.

118. Murray Whymark is Mrs Whymark's son and he provided evidence of his own use and experience of the application site. He was born in 1980 and attended Beckley Primary School from 1984-1992. He used to play hide and seek on the application land and later for playing boule. He also caught the bus there to get to school when he was older and played there with other local friends. When he was at school he spent much time at a friend's house along Kings Bank Lane while his parents were still at work. The application land was easily accessible and no-one ever told them to leave. He went to a bonfire with his parents when he was about 8-12 years old which he recalled as being a very busy village event. Individual families brought their own fireworks. He thought that the last bonfire had been some time ago (about 1991/2). From the age of about 13/14 he would meet his friends on the green on his own and they would then go for walks etc. Sometime they bought food from the shop and sit on the application land and have a picnic. Although it was quite a long way from his own house at that time (Oaklands in Northiam) he often cycled or got a lift, but he sometimes walked down. He recalled the new oak tree being planted on the application land after the 1987 hurricane had blown down a nearby oak tree. He was 18 when the family moved to the former newsagent's shop, then renamed 'Gables', and he used to frequent The Royal Oak. At that time, he got to know the Simmons' family and spent some time with the children: James, Lindsay and Ian. He used to play boule with his own set, sometimes with the Simmons' and sometimes with others. He could see the application land from his

house easily and often saw people on the application land even when the pub was shut. He had seen children that he recognised playing on there and also some people painting pictures of the pub, but he did not know who they were. Sometimes local people parked cars there and went for a walk, and that still happened after the pub was shut in 2001.

119. Both Luke Kilpatrick and Joshua Sparks made statutory declarations detailing their knowledge and use of the land. Neither of them was able to attend the inquiry as they are working or studying away from the home. Only Joshua provided any details of his age but I presume that both are a similar age as they were close friends. Consequently I have assumed that both were born in or around 1990. They are therefore considerably younger than other witnesses, and include details of more recent use of the land. Joshua has lived in the village since 1997 but Luke was born in the village. Prior to 2002, when they would have been about 12 years of age, they describe usage mostly on BMX-type bicycles, or of kicking a ball around on the grass. Luke states that he and his friends mostly used the application land on summer evenings, and were never told to leave; had that happened they would not have gone back. Both were regular supporters of the fun run, and Joshua supplied a photograph dating from about 1998 showing his family on the application land.

120. As I have already stated, the written evidence forms must be treated with caution with respect to detail, but where they are consistent with the tested, oral evidence I have no reason to doubt the information they contain, particularly in respect to the range of activities undertaken. Mrs Lambert also made a statutory declaration confirming the use of the land by her family although, without the opportunity to clarify the dates of some events to which she refers, the value of it is limited.

121. Prior to 1998, Mr and Mrs Simmons had no knowledge of the area and consequently of what activities may or may not have taken place on the application land. Although the extensive cross-examination undertaken by Mr Boswall resulted in modification to some of the user evidence, mainly in relation to dates, he was unable to dislodge most of the evidence in relation to the nature of the activities themselves. I have already discounted some activities by virtue of their permissive nature, but in the main I must prefer the evidence of users for the period prior to 1998. I consider that the evidence overall shows a number of consistencies and draw the following conclusions from it:

(a) Much of the use of the application land was influenced by the presence of the shop. The evidence is consistent with the main activity being during the summer and particularly at weekends, and connected with buying confectionary and newspapers. This is not an unreasonable picture and the evidence indicates that the people involved were local people from Beckley. This type of activity would qualify as a lawful pastime and I am satisfied that it was a regular occurrence throughout the 1980s and 1990s. However, when the shop

closed in 1998 there was a substantial drop in the amount of use by adults, and significantly less use by children.

(b) The annual fun run took place over a number of years between at least the late 1980s and 2001. It may not have spanned the entire 20-year period, but it is nevertheless an activity which qualifies as a lawful sport or pastime as I am satisfied that it was not held with the specific permission of the pub, although clearly the various publicans co-operated. The numbers of participants varied – on some occasions there were as many as 150 – but it was plainly a village event. The publicity and news reports confirm this, as does the list of participants submitted by Mr Baverstock (document BB17). As an annual event it is unlikely that, on its own, this use would provide sufficient evidence to support a village green application, but in conjunction with other types of use it provides supportive evidence of a variety of qualifying sports and pastimes.

(c) The land was occasionally used by the village for a bonfire party during the late 1980s and early 1990s; an event also attended by significant numbers of local inhabitants. Like the fun run, on its own I would not consider this annual activity to be capable of providing enough evidence to support a village green application, but in conjunction with other types of use it provides further evidence of qualifying pastimes.

(d) The evidence of carol singing is also another annual activity supportive of use of the application land for qualifying pastimes; insufficient on its own but contributing to the overall picture of the use of the application land.

(e) Children 'larking about' or playing on the application land in a variety of ways would qualify as a lawful pastime whether they were waiting for a school bus, just hanging around, or had been to the shop and were chatting to friends. Such activities in the evenings and weekends may have coincided with times when the pub was open, but equally may have been at times when it was closed, particularly weekends when opening times used to be more restricted. Any such activity which took place <u>because</u> parents were in the pub might be considered to be use by permission, and there was some evidence of that which I have therefore disregarded. Some use of the application land by pub customers themselves obviously did take place, and must also be disregarded, but since there was also a separate trade garden it would have been quite possible for unrelated children's activities to be going on at the same time on the application land.

(f) There is insufficient evidence of maypole dancing, meets of the hunt or morris dancing to demonstrate that these were events which took place either by local inhabitants or as of

right. I have discounted such use, even for spectators, as the events are likely to have been arranged by the publicans, and therefore be permissive activities.

(g) Walking dogs across and around the site was frequently mentioned. Walking across the site on any regular route would not be an activity which would necessarily give rise to the acquisition of village green rights; this would be more akin to the use of a path. The area of land is rather small and, if used extensively for this purpose, I agree with the objector that dog fouling would have been an obvious problem. The absence of reports of such problems despite the regular mowing of the land suggests to me that any dog walking which took place was largely incidental to other use, and not a major activity. I do not consider that there is likely to have been use of the application land for this purpose by sufficient of the local inhabitants to be capable of giving rise to village green rights in its own right. It does however contribute to evidence of use of the application land in general by local inhabitants.

(h) Likewise, the occasional grazing of ponies on the land, as part of a longer ride, by a few children from the local liveries, would not be sufficient in itself, but contributes to the overall picture of use of the area.

(i) Evidence of picnics is sparse, and some witnesses at the inquiry accepted that these activities, when seen, were undertaken by walkers or ramblers, and not by local inhabitants. Those picnics which were attributable to local inhabitants (children for example) would qualify as a lawful pastime, but would perhaps be better described as eating crisps or confectionary bought at the shop.

(j) There is no evidence of formal team games except for boule, and I have already concluded that this activity was largely permissive. The tug-of-war practice referred to by Mr Thomas does seem to have been quite independent of the pub, but I have insufficient detail about other team members to place much weight on it in terms of local inhabitants.

(k) Other activities such as painting, snowball fights, bird watching, provide evidence of some use of the area, but the details are too vague for me to place any reliance on them.

122. I do not have population figures for the parish of Beckley available to me, so it is not possible to give an objective percentage of the number of local inhabitants who have made use of the application land for such lawful sports and pastimes. Nevertheless, the decision in *McAlpine* suggests that to be so specific is inappropriate: what is required is an impression of the situation, rather than a mathematical calculation.

123. I consider that the 47 user evidence forms submitted represent a significant number of the local inhabitants of this rural area, providing evidence not only of use by those individuals who completed the forms but also of anecdotal evidence of use by others. The written evidence which has not been tested provides similar evidence of usage in terms of the variety of activities to that give orally, and therefore bolsters the evidence tested at the inquiry in that respect. I am satisfied that such use as has taken place over the years has been exercised by a significant number of the inhabitants of Beckley parish for most of the time.

'Fit' and 'Spread' of inhabitants

124. Mr Boswall considered that it was necessary to demonstrate that the inhabitants of the locality came from a reasonably widespread area within that locality and not from a small area. He considered that most of the user witnesses lived close to the application land and thus did not comprise a sufficient 'spread' throughout the parish. He did not seek to claim that the witnesses did not come from the parish itself, and thus he appeared to accept that the inhabitants 'fitted' the parish area.

125. The addresses of the witnesses who gave evidence at the inquiry, for the periods during which they used the application land, were not confined to properties in immediate proximity to it. Mrs Chantler lives at Four Oaks – at the extreme east of the parish, and Mrs Whymark lived from much of the period of her use at the extreme west of the parish. Although she lived technically just a few hundred yards outside of Beckley parish itself, I consider her family's connection with the Primary School, and her daily use of village facilities ought not to disqualify her as a local inhabitant.

126. There is no legal guidance or precedent for the concept of 'fit' or 'spread' to assist me on this issue, but it seems to me that other addresses on the user witness forms appear to be spread around the village in such a manner that I can give no credence to the argument that there is insufficient 'fit' or 'spread' of local inhabitants.

Whether there has been 20 years continuous use

127. Although Mr and Mrs Simmons consider that little or no qualifying use took place at all, their knowledge of the land is restricted to the period after 1998. Mr Boswall contended that there had been no qualifying use of the application land at all during the years that The Royal Oak was owned and occupied by Mr and Mrs Simmons. Mr and Mrs Simmons had taken only a few days holiday during their time at the property, and towards the end of their tenure, Mr Simmons was at home all the time, due to illness. They were adamant that there had been no use of the land other than use connected to existence of the pub, and consequently all such use was permissive.

128. If they are correct, then I agree with the Mr Boswall that, whatever took place before 1998, the application cannot succeed because usage as of right would have ceased more than five years prior to the

application being made, contrary to the requirements of the 2006 Act.[21] However, I have already indicated that it is unlikely that any use which was taking place prior to Mr and Mrs Simmons time would have ceased abruptly in 1998, because there was no obvious barrier in place.

129. Nevertheless, I have concluded that the closure of the shop, shortly after Mr and Mrs Simmons arrived at the Royal Oak, was likely to have had quite a significant effect on the amount of use of the application land. I accept that after that date, it is feasible that the use of the application land reduced to such an extent that it passed virtually unnoticed by Mr and Mrs Simmons.

130. I consider that the use by the children catching the buses to school would be likely to have continued, but that after the partial fencing was erected in 2001, this use would probably have transferred itself to the hard-standing area, adjacent to Main Street, which now forms part of the BOAT. When the 2002 fencing was erected, it seems to have been positioned to provide a 'bell-mouth at that point, which would have allowed the buses to pull in and the children to stand there. Mr and Mrs Simmons claimed that the children had always caught the bus from that point, but their knowledge can only apply to the post-1998 situation.

131. The evidence shows that the newsagent's shop was in existence prior to 1982. I have already concluded that much of the qualifying use of the application land was connected to the presence of the shop, and therefore I am satisfied that such use was taking place by the beginning of the relevant 20-year period, and continued into the relevant period.

132. However, I consider that the evidence does show a significant decline in use after 1998, when the shop closed, and a further decline after 2001, when the partial fencing was erected. The fun run which took place in 2001 was the last to be staged, and there is little evidence of use in general after that time. I think it unlikely that all usage stopped but it seems to have become restricted to use by children or the occasional dog-walker.

133. It therefore appears that for the last 3-4 years of the relevant period, although there was residual use that use was not indulged in by a significant number of local inhabitants, but a much smaller and insignificant number.

CONCLUSION

134. I conclude that, although a significant number of the inhabitants of Beckley have indulged as of right in lawful sports and pastimes on the application land, they have not done so, to the required level, throughout the period of 20-years on which the application must rely.

[21] Section 15(4)(c) of the 2006 Act.

RECOMMENDATION

135. That the application be refused.

ALTERNATIVE OPTION

DEDICATION BY THE LANDOWNER

136. The 2006 Act contains a provision not previously available in connection with the registration of village greens. Section 15(8) provides a mechanism for the dedication of land as a town or village green by a landowner.

137. The extant planning permission which affects the application land[22] contains proposals to retain much of the application land in a form resembling a traditional 'village green'. Several references are made in the planning documents prepared by or on behalf of CPDL to this area of land as a 'green' or 'village green'. The landscaping proposals which relate to this feature are covered by planning conditions which have yet to be discharged.

138. At the inquiry Mr Archer, appearing in his capacity as director of the company which currently owns the land and which is actively seeking the discharge of the planning conditions, stated that he was unaware of the new provision for landowners to dedicate village greens. When I brought the possibility to his attention, he indicated that he would have no objection to such a course of action.

139. If my recommendation regarding the outcome of the application by Mr Baverstock is accepted, the Registration Authority may wish to consider approaching the landowner to discuss the possibility of formally dedicating as a village green the land to be retained as amenity space in the proposed development.

Helen Slade

INSPECTOR

Planning Inspectorate
Commons and Village Greens
Temple Quay House
2 The Square
BRISTOL
BS1 6PN

23 July 2008

[22] APP/U1430/A/04/1142696

APPEARANCES

For the Applicant:

Mr Bernard Baverstock	*Applicant,* Two Hovens Farm, Bixley Lane, Beckley, Rye, TN31 7TH

Who called:

Himself	As above
Mr Nicholas Mills	Kingsbank Farmhouse, Beckley, Rye TN31 6RU
Mr Peter Hobson	The Bull Pen, Great Knelle Farm, Beckley, Rye, TN31 6UB
Mr Roger Thomson	Braeside House, Four Oaks, Beckley, Rye, TN31 6RG
Mr Robert Knight	Camellia, Main Street, Beckley, Rye, TN31 6RH
Mr Stephen Bowler	Woodview, Main Street, Beckley, Rye, TN31 6RG
Ms Tracey Barnes	Scotsdale, Main Street, Beckley, Rye, TN31 6RN
Mrs Linda Whymark	Four Corners, Old River Way, Winchelsea Beach, Rye, TN36 4LJ
Miss Sylvia Chantler	2 Turners Cottages, Hobbs Lane, Beckley, Rye, TN31 6TS
Mr Murray Whymark	Four Corners, Old River Way, Winchelsea Beach, Rye, TN36 4LJ

For the Objectors:

Mr Julian Boswall	Eversheds LLP., 1 Callaghan Square, Cardiff, CF10 5BT

Who called:

Mr Robin Archer	*Director,* Central and Provincial Developments Limited, Oaklands Manor, Sedlescombe, East Sussex, TN33 0GR
Mrs Maureen Simmons	Poplar Cottage, Amberstone, Hailsham, East Sussex, BN27 1PQ
Mr Martyn Simmons	Poplar Cottage, Amberstone, Hailsham, East Sussex, BN27 1PQ

DOCUMENTS SUBMITTED BY APPLICANT

DATE	DOCUMENT/LETTER SUBJECT	SUBMITTED BY	SUBMITTED TO	Inquiry reference
11/4/2007	Original application and amended application with user evidence and bound bundle of supporting documents	Mr Baverstock	ESCC	**BB1**
4/6/2007	Letter with evidence of authority and comments on the Statement of objection	Mr Baverstock	ESCC	**BB2**
13/7/2007	Response to letter from Eversheds regarding application	Mr Baverstock (obo Parish Council)	ESCC	**BB3**
1/8/07	Letter regarding Cllr Jones and amendments to application	Mr Baverstock	ESCC	**BB4**
August 2007	Bound bundle of Further Supporting Evidence	Mr Baverstock	ESCC	**BB5**
13/5/08	Letter acknowledging receipt of fencing quotations and registered title etc	Mr Baverstock	Eversheds	**BB6**
April/May 2008	Proof of Evidence, including original bundles; additional supporting bundle (August 2007); Further supporting bundle (April 2008); Planning statement (CPP) and Critical Design appraisal (CPP) for 2003 planning application	Mr Baverstock	ESCC	**BB7**
17/5/08	Further documentation: 2005 DMMO order and related documents; Proposed stopping up order and related documents;	Mr Baverstock	ESCC (for inspector)	**BB8**
17/5/08	Legal submission regarding evidence on oath	Mr Baverstock	ESCC (for inspector)	**BB9**
24/5/08	Comments on statement of common ground	Mr Baverstock	ESCC	**BB10**
26/5/08	Letter regarding details of witnesses	Mr Baverstock	ESCC	**BB11**
4/6/08	List of Witnesses	Mr	Inquiry	**BB12**

		Baverstock		
DATE	**DOCUMENT/LETTER SUBJECT**	**SUBMITTED BY**	**SUBMITTED TO**	**Inquiry reference**
4/6/08	Opening Announcement	Mr Baverstock	Inquiry	**BB13**
5/6/08	Highway boundary and Title Plan and notes dated 6 June 2007	Mr Baverstock	Inquiry	**BB14**
5/6/08	Copy letters from Rother District Council regarding discharge of planning conditions	Mr Baverstock	Inquiry	**BB15**
6/6/08	Extract from ADAS report on Towns and Village Greens dated April 2006	Mr Baverstock	Inquiry	**BB16**
6/6/08	Beckley Fun Run 1992 Control Sheet	Mr Baverstock	Inquiry	**BB17**
6/6/08	Photograph of extrapolated claimed CPDL site boundary taken 19 April 2007	Mr Baverstock	Inquiry	**BB18**
6/6/08	Enlargement of Filed Plan of Title SX88693	Mr Baverstock	Inquiry	**BB19**
6/6/08	Awards For All grant details (Recreation Field)	Mr Baverstock	Inquiry	**BB20**
6/6/08	Closing Submission	Mr Baverstock	Inquiry	**BB21**

DOCUMENTS SUBMITTED ON BEHALF OF OBJECTOR

DATE	**DOCUMENT/LETTER SUBJECT**	**SUBMITTED BY**	**SUBMITTED TO**	**Inquiry reference**
31/5/07	Letter with Statement of objection and statutory declaration of Mr Robin Archer	Eversheds	ESCC	**CPD1**
8/6/07	Letter with statutory declarations of Mr Martin and Mrs Maureen Simmons	Eversheds	ESCC	**CPD2**
20/6/07	Letter regarding application	Eversheds	Mr Baverstock	**CPD3**
20/6/07	Letter regarding application, including copy of letter to Mr Baverstock	Eversheds	ESCC	**CPD4**
24/7/07	Letter with extract of PC minutes regarding Cllr Jones	Eversheds	ESCC	**CPD5**
11/9/07	Letter regarding application and need for inquiry	Eversheds	ESCC	**CPD6**

DATE	DOCUMENT/LETTER SUBJECT	SUBMITTED BY	SUBMITTED TO	Inquiry reference
6/5/08	Letter and enclosures: registered title of the land; 1998 letter and map regarding highway status; fencing quotes/receipts; colour photographs of site from 1998, 1999, 2000; 2001 planning appeal decision; applicants rebuttal comments	Eversheds	ESCC	**CPD7**
12/5/08	Letter containing five letters of support for 2001 planning application	Eversheds	Mr Baverstock and ESCC	**CPD8**
23/5/08	Letter and documents relating to 2004 planning application/permission including red-line plan and request for discharge of conditions	Eversheds	ESCC (for inspector)	**CPD9**
4/6/08	Opening statement	Mr Boswall	Inquiry	**CPD10**
5/6/08	Copy of statement made by Mr Kenneth Higgs for 2001 planning appeal	Mr Boswall	Inquiry	**CPD11**
5/6/08	Copy of letter from Mr M Simmons to Robin Archer dated 1 July 2002	Mr Boswall	Inquiry	**CPD12**
5/6/08	Letter dated 4/6/08 from Mrs Reed, Homeland, Beckley	Mr Boswall	Inquiry	**CPD13**
6/6/08	Closing submission	Mr Boswall	Inquiry	**CPD14**

DATE	DOCUMENT/LETTER SUBJECT	SUBMITTED BY	SUBMITTED TO	Inquiry reference
11/5/07	Letter advising of application and forwarding bound proof of evidence	ESCC	Mr Archer	**ESCC1**
16/5/07	Letter enclosing witness questionnaires	ESCC	Eversheds (Mr Boswall)	**ESCC2**
12/6/07	Letter forwarding comments of applicant on Statement of objection	ESCC	Eversheds	**ESCC3**
20/7/07	Letter returning application for amendment	ESCC	Mr Baverstock	**ESCC4**

DATE	DOCUMENT/LETTER SUBJECT	SUBMITTED BY	SUBMITTED TO	Inquiry reference
25/7/07 (ACTUALLY DATED 25/6/07 IN ERROR?)	Letter forwarding further submissions of applicant and advising of investigation re. Cllr Jones	ESCC	Eversheds	**ESCC5**
25/7/07	Letter query regarding Cllr Jones identity and advising letter sent to witnesses for clarification	ESCC	Mr Baverstock	**ESCC6**
10/8/07	Forwarding further documentary evidence bundle and confirmation re. identity of Cllr Jones	ESCC	Eversheds	**ESCC7**

OTHER DOCUMENTS

14/5/08	Pre-inquiry meeting agenda and report	Inspector	ESCC	**HS1**

BECKLEY PARISH COUNCIL
A REQUEST FOR REGISTRATION

Observations made by Bernard Baverstock in regard to the findings of fact by Inspector Helen Slade in arriving at a recommendation concerning the Royal OakVillage Green Registration Application 1344

In arriving at her recommendation Helen Slade, as required, considered all of the evidential matters which were relevant to the recommendations she had been engaged to make in regard to whether all of the qualifying criteria had been met and satisfied.

The evidential matters to be considered under section 15(4) of the Commons Act 2006 are:-

A That a significant number of

B The inhabitants of any locality or of

C Any neighbourhood within a locality

D Indulged in lawful sports and pastimes on the land

E As of right

F For a period of at least 20 years

G And that notwithstanding that they ceased to do so before the commencement of section 15 the application is made within 5 years beginning with the date they ceased to do so.

In each of the matters B to G above an objective analysis of the evidence led the inspector Helen Slade to the conclusion that every one of the six matters identified above fully satisfied the criteria for green registration.

However while all of the above matters B to G inclusive were appropriately considered and conclusions reached on a fair analysis of the evidence which was fully consistent with the Wednesbury principles in the case of one fatally significant element of the crucial matter A we submit that was not the case.

In paragraph 123 of her report the Inspector states that ***"I consider that the 47 user evidence forms submitted represent a significant number of the local inhabitants of this rural area, providing evidence not only of use by those individuals who completed the forms but also of anecdotal evidence of use by others.***

in the last sentence of paragraph 123 the Inspector Helen Slade states, ***"I am satisfied that such use as has taken place over the years has been exercised by a significant number of the inhabitants of Beckley parish for most of the time".***

The fatally significant element of concern arises from of the opinion of Helen Slade expressed at the end of her paragraph 123 which involves a quasi caveat phrase ***"for most of the time"*** which on an objective assessment of the evidence we believe to have been an evidentially flawed caveat.

The observations by Helen Slade which relate to our challenge are recorded in her decision letter and are reproduced below in enlarged italicized text.

131. The evidence shows that the newsagent's shop was in existence prior to 1982. I have already concluded that much of the qualifying use of the application land was connected to the presence of the shop, and therefore I am satisfied that such use was taking place by the beginning of the relevant 20-year period, and continued into the relevant period.

132. However, I consider that the evidence does show a significant decline in use after 1998, when the shop closed, and a further decline after 2001, when the partial fencing was erected. The fun run which took place in 2001 was the last to be staged, and there is little evidence of use in general after that time. I think it unlikely that all usage stopped but it seems to have become restricted to use by children or the occasional dog-walker.

133. It therefore appears that for the last 3-4 years of the relevant period, although there was residual use that use was not indulged inby a significant number of local inhabitants, but a much smaller and insignificant number.

In addition Helen Slades conclusion was:-

CONCLUSION

134. I conclude that, although a significant number of the inhabitants of Beckley have indulged as of right in lawful sports and pastimes on the application land, they have not done so, to the required level, throughout the period of 20-years on which the application must rely.

The conclusion by Helen Slade obviously makes clear that qualifying use was demonstrated by the evidence to have taken place up to 1998.

However the key issue upon which the recommendation that the green should not be registered was that use after 1998 declined significantly following the closure of the shop and it is this conclusion which we believe not to be evidentially supportable and therefore fails to satisfy the principles established in Associated Provincial Picture Houses Ltd v Wednesbury Corporation (1947).

We hold this to be the case because not one of the 47 witness statements, which Helen Slade considered to be of such great and fully valid evidential value and upon which she placed such reliance, mentions the closure of the shop as their reason for ceasing to use the green most refer to the fencing erected by Mr Archer in August 2002 as bringing to an end their as of right use of the green.

Following the submission of evidence the Registration Authority wrote to those Beckley residents who completed witness statements asking them to clarify what act had brought to an end their as of right use of Royal Oak Green.

Although I have not seen all the reply letters nor the telephone attendance notes I am given to believe not one mentioned the closure of Norringtons as the reason that the as of right use ceased.

I submit that the heyday of newspaper/tobacconists shop was long before its closure in 1999. Falling population figures support an earlier decline, change of ownership and ill health caused the sale of the shop and its reversion to a house as the shop had little trade by the end.

None of the 47 witness statements refer to the closure of the shop as bring to an end their as of right use of the application land.

In addition 43(or however many) of the witness statements declared that their use of the land continued up to the cessation date consistent with this claim.

The last charity fun run took place at the application land after the partial fencing was erected in 2001.

The 2001 fun run was immensely successful being attended by in excess of 100 local people and was as usual well publicised in the local press.

This very popular and well patronised activity, alone without the additional and continuing use of the green fully demonstrates that the green was being used for informal recreation, and was in general use by the villagers of Beckley.

These we submit are facts which can not be argued to have escaped the notice of Mr and Mrs Simmons.

CONCLUSION

We submit that the element of the decision made by Helen Slade which concerns her conclusion that the use of the green fell off significantly after 1998 when the shop closed is not supported by any objective analysis of the evidence.

We further believe that any reasonable decision maker acting upon the evidence before them could not on the balance of probability have reached the conclusion which guided Helen Slade.

We therefore believe that this element of the conclusion by Helen Slade is not Wednesbury reasonable and in the light of this assertion we request that the registration authority re-examine the evidence concerned with this particular and specific point and, presuming that a conclusion will be reached as herein asserted and contrary to the recommendation by Helen Slade register the land as a green.

Director of Law
East Sussex County Council
P.O. Box 2714
County Hall
Lewes
East Sussex BN7 1AL

Date 31 October 2008
Your ref EE/CR03/SB
Our ref BOSWALJ/159907-000001
Direct dial 0845 498 87171
julianboswall@eversheds.com

Dear Sir

Commons Act 2006
Application to register land at Main Street Beckley as a town or village green

I refer to Mr Bailey's email of 29 October 2008 to us enclosing representations by Mr Baverstock on the inspector's report recommending refusal of the registration application.

Just before the close of the inquiry, Mr Baverstock said to the inspector, Mrs Slade, that he would accept her recommendation, whether favourable or unfavourable to his application. While he is, of course, entitled to make further representations, we are disappointed to note that Mr Baverstock is seeking to extend still further the timescale taken for the determination of this long running matter.

Mr Baverstock's representations

Mr Baverstock's argument is that Mrs Slade's conclusion that use after 1998 declined significantly following the closure of the shop is "not to be evidentially supportable ... because not one of the 47 witness statements, which Helen Slade considered to be such great and full valid evidential value and upon which she placed such reliance, mentions the closure of the shop as their reason for ceasing to use the green ..."

Mr Baverstock, strangely, does not quote the paragraph in which Mrs Slade explained very clearly her approach to the witness questionnaires. We set this out in full (paragraph 12; emphasis added):

> *"I have approached the evidence provided by the user evidence forms with a great deal of caution; not because I believe people have been untruthful but because cross-examination of some of the user witnesses highlighted inconsistencies in their forms, or a general lack of clarity and detail. Not all the user witnesses who provided written evidence were able to attend the inquiry to confirm their testimony.*

Where it has not been possible to expand on the detail given in the forms I have had to give that evidence much less weight. I share Mr Boswall's concern that the printed witness forms which appear to be standard issue are not up to the task of providing more than a starting point in terms of evidence of use. This is not a criticism of the applicant; the use of similar forms is recommended by DEFRA. In my view it is essential to hear oral evidence from the witnesses concerned to flesh out the detail given in the forms."

Mr Baverstock has misread Mrs Slade's report. It is very clear from paragraph 12 that Mrs Slade was not placing "such reliance" on these questionnaires, as Mr Baverstock suggests.

As Mr Baverstock knows, and as is recorded in numerous places in Mrs Slade's careful and detailed report, much of the oral evidence at the inquiry was taken up with the relationship between the shop and the use of the application land. Mrs Slade has reached clear and reasoned conclusions regarding this as set out in her report.

There is no basis whatsoever for suggesting that Mrs Slade's approach to the evidence in relation to this matter has been irrational or perverse (being the test in the *Wednesbury* case). Instead, Mrs Slade has followed an entirely lawful and proper approach to assessing the content of the witness questionnaires whose authors did not give oral evidence, and the weight to be given to them.

There is, accordingly, no basis for a reconsideration of this aspect of the matter by the Council, whether by means of re-opening the inquiry or otherwise.

The decision by the Council

The public inquiry lasted three full days. All the relevant issues were tested at some length. Mrs Slade, an experienced planning inspector, has provided a detailed report, with reasoned findings as to fact and a reasoned overall recommendation in the light of the application of the relevant law to those findings of fact.

While it is the Council which decides the application under section 15 Commons Act 2006, the Council would need a very cogent reason not to accept Mrs Slade's recommendation. None has been provided by Mr Baverstock and we are aware of none.

We look forward to learning of the Council's decision in this matter.

Yours faithfully

Julian Boswall
Partner
for Eversheds LLP

BECKLEY PARISH COUNCIL

Reply to Mr Boswall's letter dated 31st October 2008.

VILLAGE GREEN BECKLEY 1344

In Mr Boswall's letter to East Sussex County Council (ESCC) dated 31st Oct 2008 he argues that the Inspector Helen Slade has approached the witness questionnaires with a great deal of caution (Mr Boswalls emphasis of part of para 12) and in this way Mr Boswall reasons that little account should be taken of the 47 completed witness questionnaires.

Strangely after three full days of the hearing in which Mr Boswall cross examined the nine witnesses who supported the applicant, Beckley Parish Council to register Royal Oak Green Beckley as a village green, Mr Boswall neither mentions the closure of the Norringtons shop or suggests that its demise brought to an end the "as of right" use of the application land (a typed transcript of Mr Boswall's closing statement is appended to this letter).

It was abundantly clear to all who attended the hearing that very little of the oral evidence tested in front of Helen Slade or that of the 47 witness statements nor the wealth of other supporting documentary evidence provided any clue that the "as of right" use of the green significantly ended when the Norringtons shop closed in the spring of 1999.

In her comprehensive report Helen Slade considers in turn the oral evidence of each of the nine witnesses supporting the applicant.

At para 110 Helen Slade refers to the oral evidence of Ms Barnes, no mention is made of the shop or of its closure in 1999.

In para 111 the Inspector details the evidence given by Sylvia Chantler and quite naturally considerable reference is made of Norringtons, at which Sylvia worked. In describing the use of the green by villages Helen Slade completes paragraph 111 with this sentence *"However, it does give a picture of continuing use extending back before the period relevant to the application"*.

Mr Hobsons evidence was reported at paragraph 112 by the Inspector. In the forth sentence Helen Slade writes *"He was aware of the use made of the land, and that much of it was connected to the use of the shop"*.

Mr Knight lives directly opposite the application land and his evidence is recorded at paragraph 113. At sentence nine the Inspector writes *"He acknowledged that most of the use of the application land appeared to be in connection with the use of the shop, but when the shop closed the children nevertheless still used the land to wait for the bus, talking and "larking" about"*. At paragraph 121 (e) Helen Slade refers to children "*larking about*" as a qualifying lawful pastime.

The late Mr Nicholas Mills (he died suddenly at his home on the afternoon 8th November 08) lived at Kings Bank Farm, Kings Bank Lane and was the first witness to give evidence at the hearing. Helen Slade writes that he and his children would buy ice creams or lollies and eat them on the grass. At the third sentence the Inspector states, *"His children were born at his present address but he could not recall when the shop closed"*. In the penultimate sentence of paragraph 114 concerning the late Mr Mills evidence, the Inspector writes *".....but he did concede that after the fence was erected in 2001 the use of the land decreased significantly (perhaps by half) and declined even further in 2002"*.

The Inspector considers Mr Thomson's evidence at paragraph 115. At the fifth sentence Helen Slade writes *"He also stated that the centre of attraction was the newsagent's shop where, because everyone had to collect their papers on a Sunday, people met outside on the application land. He considered that the shop had closed in about 1998, but that closure had not had a substantial effect on the use of the application land"*.

At paragraph 116 the Inspector reports on the evidence of Mr Bowler who made a statutory declaration rather than complete a witness statement, no reference is made to the closure of the shop bringing to an end the "as of right" use of the application land by local inhabitants. Referring to Mr Bowler's use of the land Helen Slade writes *"His own use of the land was limited: he had used it when collecting Sunday papers in the early 1980's when there would be people milling about having a "natter"*.

In paragraph 117 Helen Slade reports on the oral evidence of Mrs Whymark and then in paragraph 118 the evidence of Murray Whymark, Mrs Whymark's son. The evidence of neither the mother nor son give any support that the closure of the shop in the spring of 1999 (Lynda & Barry Whymark bought the shop in Nov 1999 and re-named it the Gables) brought to an end the "as of right" use of the application land by Beckley villagers.

Continuing on in paragraph 119 the Inspector writes about the two statutory declarations made by Luke Kilpatrick and Joshua Sparks neither of whom were able to attend the hearing. Again no reference is recorded of the closure of Norringtons shop bringing to an end the use of Royal Oak Green.

At paragraph 120 the Inspector writes:

"As I have already stated, the written evidence forms must be treated with caution with respect to detail, but where they are consistent with the tested, oral evidence I have no doubt the information they contain, particularly in respect of the range of activities undertaken"

The witnesses were fully tested in cross examination by Mr Boswall particularly the late Mr Mills. The Inspector has stated in para. 120 that she has no doubt of the oral evidence when put to the test is consistent with the written evidence forms.

Simon Bailey (ESCC) wrote to twenty one of the witnesses on the 25th July 2007 and considered the main question was the erection of which fence brought to an end their "as of right" use of the application land. The respondents were asked to reply either that the fence erected at the end of 2001 stopped their use or that the complete fencing of the site by CPDL in August 2002 brought to an end their use of the application land. Simon Bailey assessed the evidence as reflecting the fact that the August 2002 fencing was the principal reason for people's diminished use of the Green.

Conclusion

Very little evidence is offered in the 47 witness statements that the closure of the Norringtons shop brought to an end the "as of right" use of Royal Oak Green. The applicant provided nine witnesses to give oral evidence over a three day hearing. Each witness' evidence was tested, and all were cross examined by the objectors solicitor Mr Boswall. It is asserted that no overwhelming evidence was given in support of the closure of the shop as being so significant that it brought an end the "as of right" use by the inhabitants of Beckley of the Royal Oak Green.

Beckley Parish Councillors were unanimous in the support of this final reply to rebut the comments made by Mr Boswall regarding the Royal Oak Green, application. Parish Councillors would like to make this further comment:

It's not fair, we've used this green for as long as anyone can remember, the Inspector agrees it's been a Green for 17 years, just because a nearby shop closed it did not bring to an end the use of the Green, people may have not used it so much since there is all this disagreement about the pub and all this bad feeling has been stirred up, but the fact is it was and is a village green in Beckley and everyone accepts that even the Inspector. The pub may open again the shop may re-open no one knows, everyone accepted and knew that the area outside the Royal Oak in Beckley was the village green.

CLOSING SUBMISSIONS 6 June 2008

JULIAN BOSWALL for Central &Provincial Developments Ltd.

Beckley Inquiry

In these submissions the "***Site***" is the application land.

The application in this case was registered on 12th April 2007. Under Section 15(4) Commons Act 2006 this means that the use must have ceased (if there was qualifying use at all) no earlier than 12th April 2002. i.e. five years earlier.

It has been agreed that the ***Site*** was completely fenced off from 11 August 2002 until September 2004. It has been agreed that there has been no qualifying use between these dates. While Mr. B has asked questions about the period since 11th August 2002 we understand that he accepts that there has been no qualifying use from 11th August 2002 until the date the application was registered.

For the avoidance of doubt, Mr. Archers's evidence is that there has been no qualifying use of the ***Site*** since 11th August 2002, and this has not been challenged by Mr. B in cross examination. Any use whilst the fencing was around the entire ***Site*** (i.e. 11th August 2002 until September 2004) would represent use by force, and not use as of right. Luke Kilpatric admits he had to toss his BMX bike (assuming this happened) over the fence to gain access. This , use by force.

The effect of this is that if there has been no qualifying use for the period 12th April 2002 until 10th August 2002 (a period of four months) the application must fail on the "five year" rule alone.

Our case, however, goes much further that this. Namely that there has been no qualifying user from 3rd April 1998 when Mr & Mrs Simmons bought the Royal Oak, including the application land, until they sold it to Central & Provincial Developments on 9th August 2002.

Mr. & Mrs. Simmons owners and publicans of the Royal Oak from 3rd April 1998 until 19th October 2001 when it ceased trading. From then until December 2001

they lived at the Royal Oak. Planning permission was granted for change of use to a private dwelling house on December 2001 after which they occupied the entire property, including the ***Site***, as a dwelling.

Mr. & Mrs Simmions evidence showed that the ***Site*** is highly visible from the pub. This was corroborated by Mr. Hobson and Ms. Barnes, both former pub tenants'. Mr & Mrs Simmons took 8 days holiday in the 3 years 6 months they were running the pub. As Ms. Barnes explained, when you are running a pub you do not spend much time off site. Outside opening hours there are many things to be done, which require you to be at or around the property. This means that Mr.& Mrs Simmions are, without question, the best informed people about the use of the ***Site*** during their period of ownership. They overlooked the ***Site***, they owned e ***Site***, they had a vested interest in its appearance as the window onto the pub, they maintained the ***Site***.

Madam, you would need a very persuasive reason not to prefer the evidence of Mr & Mrs Simmons over that of any other witness or witnesses in this case. This is reinforced by the fact that Mr & Mrs Simmons have no stake in the outcome of this case. They have moved away from the area and have agreed to assist Central & Provincial Developments Ltd., voluntarily in telling what they know about the use of the ***Site*** (and also in relation to the separate BOAT matter).

Mr & Mrs Simmons evidence clearly demonstrates that there was no qualifying user from 3rd April 1998 until 9th August 2002, their period of ownership.

Considering the different categories of use:

Boule: The Royal Oak had a boule team which played matches on a Sunday and practised on a Thursday. It was organised by a regular customer, Maggie Thrush. Those playing boule would have a drink from the pub. Mr & Mrs Simmons provided sandwiches for matches. This clearly use by permission.

Any other use of the boule pitch was extremely limited and sporadic, and from informal games by customers. Mr & Mrs Simmons and their family would sometimes play boule. Three children lived at the property with Mr & Mrs Simmons: James Creedy, Lindsay Creedy and Ian Holmes. They often had friends over and would spend time on the ***Site*** including playing boule. This was corroborated by Murray Whymark. Clearly, use by friends of the owners

children, with those children, of land owned by the parent is not use "as of right"! It is use by invitation and therefore use by permission.

Customers drinking on Site: Where customers have bought a drink and taken it outside to drink on the grass comprising the ***Site***, sitting in benches provided by the pub owners, this is not use "as of right". The customer (and his family, where relevant) have paid to be there. From the perspective of the land owner (Mr & Mrs Simmons) there is nothing in this situation to alert them that a legal right is being asserted by use of the ***Site***. Where parents are drinking in the pub and their children are playing outside on the grass, the same point applies. I consider the Beresford case later on. Mr & Mrs Simmons evidence was clear and persuasive as to the lack of sports and pastimes carried out during their period of ownership.

Bonfires: There were none. They looked onto it, but the small size of the ***Site***, coupled with safety and insurance issues meant it did not happen. No one suggested otherwise in oral evidence. Mr Hobson gave convincing evidence of a bonfire in 1991. This would appear to be the last bonfire on the ***Site*** (or using a combination of the ***Site*** and the hard-standing).

Maypole dancing: There was none. They looked onto it, but no dance troupe would come this far out. Only Mr Knight suggested otherwise. Mr & Mrs Simmons evidence as owners must be preferred.

The Hunt: No hunt met at the pub on the ***Site*** in any event, a hunt going to a pub would invariable be there for a drink, thereby being customers, rather than there as of right".

Picnics: Mr. & Mrs Simmons did not permit picnics during opening hours or outside them. As a struggling pub which sold food, they explained it would be commercially very damaging to do otherwise.

Football Club: Mr B included a photograph of the children's football club (The Beckley Rangers) having a prize giving on the **Site** in 1998. Mrs Simmons explained that this was done with the express permission of the teams organisers, and that Mr & Mrs Simmons gave other support to the football team.

Team Games; Save for boule, no other team games were played on the ***Site***, Mr & Mrs Simmons explained the ***Site*** was too small.

Dog Walking: Mrs Simmons son mowed the grass on the ***Site*** weekly. There was no dog mess. If the **Site** had been used for regular dog walking there would have been dog mess. Witness the current problem with the Recreation Ground which Mr B gave evidence on. Furthermore, with the exception of dogs brought to the pub by customers, Mr & Mrs Simmons explained there was very little use of the land by dog walkers. In practice any such use would have been to walk across the ***Site*** as part of a longer walk. On normal village green law principals "transit" use (i.e. getting from A to B) does not count as qualifying village green user.

Drawing and Painting: Mr.& Mrs Simmons had no recollection, or virtually no recollection, of this taking place on the ***Site***. Mr B's witnesses did not claim this was anything other than extremely rare.

Walking: Mr & Mrs Simmons saw none using the ***Site*** as a walk in its own right. Anyone walking across the ***Site*** would be going to or from the pub or crossing the ***Site*** to go somewhere else. Again, this is "transit" use and not village green use.

Bird Watching: Mr & Mrs Simmons saw none of this, there was no serious evidence to the contrary from Mr B's witnesses.

Ponies: Mr & Mrs Simmons saw no ponies on the ***Site***. Mrs Simmons explained that they would not have permitted this, as it would have made maintenance of the land more difficult. Some customers arrived on horse and there was a tching rail to the left of the pub for this purpose. These horses were not allowed on the ***Site***.

Children Playing: Aside from their own children & their friends and the children of customers buying a drink, Mr & Mrs Simmons saw virtually no children playing on the ***Site***. In particular, while the shop was still open they rarely saw any children using the ***Site*** at all. In fact they have no specific recollection at all of seeing this, but accept it might have happened to a very limited extent. In any event such use would have been on only part of the ***Site*** nearest the shop.

Bus Stop: Waiting for a bus is not a sport or pastime in the sense intended under the Commons Act 2006. Mr & Mrs Simmons saw very few children waiting for a bus on the ***Site***, in any event. Mrs Simmons own daughter did not, for example, use the grass but used the hard standing where the (now) BOAT joins Main Street.

Cricket: Mr & Mrs Simmons saw no one playing cricket, formal or informal on the ***Site***.

Bicycling: Apart from occasional customers with small children & tricycles Mr & Mrs Simmons did not see bicycles used on the land. In particular they did not BMX bikes on the land. This would have damaged the grass and they would have not allowed this.

Carol Singing: Mr & Mrs Simmons did not see carol singers on the ***Site***, or at all coming to the pub.

Snowball/water fights: Mr & Mrs Simmons did not see any of this activity on the ***Site***. There was no oral evidence from Mr B's witnesses of this during there time.

Climbing trees: Again, they saw none of this, and none of Mr B's witnesses related to Mr & Mrs Simmons period of ownership.

ncing: The August 2001 fencing discouraged use and had that effect and was a clear sign of ownership.

The following section which I have under lined regarding The Annual Fun Run was crossed out by Mr Boswall during his oral delivery of his closing statement.

The annual fun run : Mr & Mrs Simmons evidence was that the fun run had been explained to them by Roger Thomson/Steve Bowler when they first arrived, and that each or most years he had spoken to them a few days before to check that they were agreeable to opening the pub toilets early on a Sunday. Mr & Mrs

Simmons had every reason to thank Mr Bowler was part of the organisation because of his conduct, though they agree he was not the only person involved.

The following section remained in the closing statement.

The fun run pre-dated Mr & Mrs Simmons arrival and there was an expectation they would support it, which they were happy to do.
It took place on their car park in front of the pub (remembering) the Kings Bank Lane entrance had been closed off, and also the ***Site***.
Afterwards many people bought a drink and sat outside on the benches on the ***Site*** or in the front of the pub.
Afterwards Mr & Mrs Simmons were thanked for their cooperation.

It must have been very clear that the tarmac was owned by the pub. And we say it was clear from acts by Mr & Mrs Simmons(removing large trees & shrubs which were highly visible, and maintaining the grass and ***Site*** generally, and putting benches and a pub sign on the grass) that the **Site** was owned by the pub.

Our case is that this event was done by permission. In any event the event did not continue after September 2001 and cannot therefore contribute to the crucial 4 month period between 12th April 2002 and 10th August 2002.

In the alternative, we say that on the principals in **Laing** there was nothing in the event which conflicted with the pub use to put the landowner on notice that a legal right was being assented. In practice the event because merged with the pub use as the pub opened early to provide tea and coffee, and open its toilets. And many of the participants at the end used the pub, including the ***Site***, sitting on the pub's benches, as Mr B's photographs at BB1 helpfully illustrate.

Lastly, and annual event – even if it were "as of right" – falls far short of the regularity of overall use which is necessary for a village green application to succeed.

If the fun run took place as of right why was there no attempt to hold it after when Central and Provincial owned the **Site**?

Hub of the Village: Mr Mrs Simmons explained that it is simply not the case that the application land was the hub of the village while they owned the pub and the **Site**. Nothing could be further from the truth. This is supported by the letter of 4th June by Mrs Mary Reed who over looks the ***Site***. She also says the **Site** was not the hub of the village (And she says this for the period since 1990, not just the period since April 1998).

Mr & Mrs Simmons evidence, as reviewed at some length in this closing, is that the overall level of use was very low, and that the vast majority of that use was by pub customers, or the children living at the pub and their friends.

Further more the fencing erected in August 2001 would have discouraged use of t **Site** by non customers in any event.

Applicant's witnesses
will not take time to comment on all witnesses, but do comment on:

Mr Mills: I do not consider that Mr Mills was a very convincing witness. he was too keen to assert again and again the conclusion that he desires "this is a village green" then he was to answer my question as to fact. his many flippant answerers forced me to remind him of the seriousness of the proceedings, which was disappointing since we had spent a significant time just before his evidence on the question of giving evidence under oath in the light of the seriousness of a village green application to a Landowner.
Considering how often he claimed to have visited the ***Site*** he had a very poor mory for many things. He couldn't remember at all when the shop closed, for example, he knew nothing about how the boule pitch operated (the existence of a team etc.), he knew nothing of why the pub closed and so on.
Given that he asserted the ***Site*** was the "hub of Beckley" this seems very surprising. Furthermore - and contrary to other witnesses – he did not recall the fence going up in August 2001 being a local talking point.
Focussing on the period since April 1998, his evidence is in clear contradiction to Mr & Mrs Simmons evidence. To take one example – if Mr Mills claimed he saw ponies regularly on the grass after April 1998, and Mr & Mrs Simmons who maintained it , saw no ponies nor any evidence of ponies, they cannot both be right.
Given their daily knowledge of the **Site**, Mr & Mrs Simmons evidence should be preferred.

Mr Knight: Mr Knight did not seem very sure of his evidence when pressed on various points. The Morris dancing was clearly not after April 1998. Mr Knight was out of the house working for much of the week. The evidence of Mr & Mrs Simmons should be preferred to that of Mr Knight.

Locality: With the exception of the Whymarks when they lived at their previous address, all of the witnesses who say they have used the land live close to it. Certainly within 10 minutes or so walk. The Whymarks and Mr Knight were right next door.
It was notable that Mr. Hobson, once he left the pub and moved a mile away has not ever since used the land. The same was true for Miss Chantler when she stopped working at Norringtons.
As explained in my opening, Mr B must show that the use of the ***Site*** is by the inhabitants of the locality as a whole. That is the bases of his application.
Furthermore, the burden of proof is on him to show this.

Beckley is a large and elongated parish. We have had no oral evidence of use by witnesses other that those a short distance from the ***Site***, nor has Mr B presented any evidence from his oral witnesses of residents coming from any distance away.

The weight to be given to the witness questionnaires on their own is very limited. Mr Hobson's evidence alone made that point clear.
Accordingly the applicant has clearly failed to satisfy one of the essential requirements of section 15. In making this point, I am putting to one side that we do not accept the use claimed for 1998 onwards. But it is important to write that this point gives to the entire period which Mr B is claming i.e. from 11th April 1982. As I explained in opening the link between use and locality gives to the heart of these applications.

Beresford;

1. There was no use at all after October 2001 except for family and friends. This is enough to defeat the application in its own in the five year rule. No fun run was held or attempted.

2. Use prior to October 2001 was overwhelmingly use by paying customers, and the owners family and friends. The fact that the customers were paying is a crucial distinction from Beresford, where no payment was involved. The ***Site*** is in front of the pub, next to an exclusive pub car park, with a pub sign on it(see under cherry tree) with benches provide by the pub. Mrs Simmons explained she had controlled inappropriate behaviour when it arose – giving the example of the child being asked to get down from the cherry tree. It was clear to local people that the pub owned the ***Site***, or it certainly ought to have been, by a reasonable standard. If paying customers used the side garden with play equipment provided – which they did – there would be no suggestion that a legal right was being asserted. The same must apply to the application land.
3. After August 2001 the fence reinforced the fact that the ***Site*** was owned by and part of the pub, which reinforces the point just made.
4. There is clear evidence in front of the enquiry that use of the pub by local people was limited. This was accepted by the planning inspector, on the evidence (before this enquiry of Mr & Mrs Simmons written and detailed submission) and the letters in support referring to local people not supporting the pub. This lack of local use was conceded in a demonstrable fashion by Stephen Bowler. He said that there was in effect a local boycott of the Royal Oak in the hope the landlord would change. His phrase was that after Mr Simmons had spoken at a particular Parish Council meeting "That was the end of the Pub" because exception was taken (fairly of unfairly) to what Mr Simmons had asked or said. Accordingly, use by inhabitants of the locality would not satisfy the "significant number" test even if they are discounted by having paid. In any event Mr & Mrs Simmons evidence is that the overall level of use by customers was small, and it is clear such use was mainly in fine weather. A small percentage of local in a small number of users, using only part of the ***Site***(that nearest the pub and the boule area) is simply not enough to satisfy the test, even if customers are not discounted by payment.
5. The benches were used by permission, and moved onto the grass with express permission, 90% of the time the benches were on the hard standing to stop customers parking right in front of the pub.

Final Points:

The use after October 2001 was nil. Our evidence is compelling on this. Application fails on this alone.

The use between April 1998 and October 2001 was low per se. Again Mr & Mrs Simmons evidence is compelling. There were there every day. They have no stake in the outcome of this enquiry.

Use by customers is use by permission. In any event use was low. And most customers were not local inhabitants. Beresford is distinguished,

Even on Mr B's evidence he hasn't shown a spread of residents throughout Beckley. Hence the locality test has not been satisfied.

Completely reject notion of "hub of village". If so, why did it not revive (a least in part) after fencing taken down in September 2004? Why is there no use now?

Any use is not of whole **Site**.

Before April 1998

It is for Mr B to prove his case. We say no obvious reason for pattern of use to have changed. Various issues are inherently unlikely.

- It is not and obvious picnic spot. Far nicer places around.
- Unusual for people not to buy a paper and just head home.
- Children disperse after leaving a bus.

Evidence in witness questionnaires is of little value. Very hard to understand the evidence without amplification.

Name by which ***Site*** is known is not relevant, what counts is the use.

Conflict of Evidence;

There is a significant conflict of evidence in this case about the period after April 1998.

This particularly stark in relation to the period after October 2001 when the pub was closed. It is obvious that Mr & Mr Simmons took a close interest in the ***Site*** and it was very visible. They were there all time. And Mr Simmons was there all the time after October 2001. Their evidence should be preferred in relation to any conflict.

I submit that the case against the application is very clear and compelling. And I respectfully ask that you recommend it is refused,