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11 May 2012

Dear Madam

**Village Green Application pursuant to Section 15(1) and 15(2) Commons Act  
2006**

**Land at the corner of Harley Shute Road and Edinburgh Road, St Leonards on  
Sea (the "Land")**

**Statement on behalf of the Objector**

We wish to make the following points in relation to the application to register the Land as a new town or village green.

We are the freehold owner of the Land which is coloured yellow on the plan at Appendix 1. The Land is the subject of the current Application to register it as a Town or Village Green, and we object to the Application on the following grounds.

Ultimately we do not consider that the Application establishes the facts necessary to support a successful Application. Section 15(1) and (2) of The Commons Act 2006 state as follows:

*"(1) Any person may apply to the commons registration authority to register land 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."*

Section 15(2) sets out the criteria that an applicant must prove before a piece of land can be registered as a town or village green. The onus of proof lies on the Applicant and all the elements required to establish a new green must be properly and strictly proved. It is only the criteria set out in section 15(2) which are relevant to a town and village green application and any other information should not be taken in to account when making the final decision.

The Application itself states as justification for the registration of the Land that it has been used by the inhabitants of the locality for lawful sports and pastimes as of right and in the belief that the Land was and is a village green for a period of 41 years from 2 June 1950 until the current date. Primarily we do not accept that the Land has been used "as of right" and we do not think that the Applicant has shown on the balance of probabilities that the Land has been used for the past 20 years "as of right".

Before getting into the detail surround use "as of right" we would like to set out the reasons why we object to the evidence produced in support of the Application to prove and satisfy the other criteria in section 15(2) of The Commons Act 2006. The Application relies heavily, both on the application form itself and in the questionnaires completed by local residents, on the fact that the local residents believe the Land to be a public green space or a village green. The belief and understanding of the local residents or the public at large is irrelevant to a town and village green application and is not a criteria that should be considered when making the decision to register the Land. Public green space is a planning concept and is irrelevant to a town and village green application.

The Application is also justified by reference to a restrictive covenant over the Land which was introduced by a Transfer dated 2 June 1950 between Ethel Maud Kite and Alfred Nugent Kite (1) and Hastings Corporation (2). The Applicant suggests that the covenant was made by the Kite family with the intention of the Land being maintained for use as a public open space or park free from any buildings or erections. The Applicant further states that this covenant has been respected by Hastings Borough Council and East Sussex County Council. As evidence of this the Applicant has appended a letter dated 1980 from East Sussex County Council to the executors of the Kite family asking for permission to extend and alter the footpaths across the Land. Although the covenant may have been upheld by the owners of the Land since 1950 the fact that there is a covenant is completely irrelevant to the Application for registration of the Land as a town or village green. The Commons Act 2006 does not make it a criteria to registration that the land can never be built upon (although we reserve our rights as to whether the restrictive covenant has this affect). Further the Application makes reference to us, AmicusHorizon Housing Association, advising local residents in November 2011 of its intention to develop the Land for housing but that we have now confirmed that the Land is no longer within our 3-5 year development plan. Again, the fact that we may have intended previously to develop the Land (we reserve our rights in relation to the restrictive covenant over the Land) and may have now indicated otherwise is irrelevant to an Application to register land as a town or village green as it is not set out as a criteria in section 15(2) of The Commons Act 2006.

The Applicant has provided 42 questionnaires, all of which are formulaic and generic, in support of the Application. It is clear that Mr Peter Colin Jones of 85 Harley Shute Road is vehemently opposed to any potential development of the Land in the future. When we began a public consultation in November 2011 about the potential future development of the Land we were met with significant opposition. Although we have not yet applied for planning permission for the Land it appears to us that the local residents may constitute a group of people whose primary purpose is to object to any future development on this Land. It appears that they will oppose, in any way they can, the potential for development of the Land and the registration of a village green is one such way of achieving this objective. Accordingly, the evidence supplied in support of the Application should be carefully scrutinised.

In relation to the evidence submitted in support of the Application it is not accepted by the Objector that the evidence shows anything other than casual and sporadic use. In particular the questionnaires completed in support of the Application were all signed and dated December 2011 or January 2012. The Application was made on 9 March 2012. At the time that the questionnaires were signed our consultation for development of the Land was in place and the local residents would have considered it our intention to develop the Land. It may therefore have been the case that the local residents who signed the questionnaires were incentivised to do so by the thought that the Land would be developed. Again there is potentially an ulterior motive for those filling in the questionnaires as they wished to object to and prevent any potential future development of the Land.

Of the uses of the Land alleged, there are a number of questionnaires which allege dog walking, meeting friends, riding bikes and playing ball games. Although the questionnaires set out the time period over which the person filling out the questionnaires has used the land they do not give detail of the dates over which the specific activities took place. Further, frequency of use is not specified in the questionnaires. Other alleged uses have been kit flying and picnics and a public meeting place. Although the Land is large it is bordered by roads and we don't consider that it would be safe to fly kites and Frisbees so close to regularly used roads. We therefore question the frequency of these uses.

Another alleged use is a place to hold Police Neighbourhood Meetings. We do not consider this to be evidence of use for lawful sports and pastimes as required by section 15(2) of The Commons Act 2006. It would seem that this alleged use is more in line with public neighbourhood watch rather than lawful sports and pastimes.

5 One questionnaire states that *"every other bit of green land around here has been built on or is used for parents of School children to park on and ruin while they collect their children from school."* This shows the opposition of the local people to development of any type in the area. Many if not all of the questionnaires refer to there being no other green open space in the area, even though there are three Schools in the area. We do not agree with this. Harley Wood is only a short distance away, and is all open space. It is therefore simply not true that all open spaces in the area have been built upon. Although we do not agree with this statement, we wish to reiterate again that it is not at all relevant whether there are any other spaces in the area of people to use as amenity land. Further, the fact that previously open space has been built upon is not a relevant criteria and should not be considered when making the decision about registration as a village green.

The only photographic evidence is provided by one local resident and all four photographs show use of the children's play area which used to be located on the Land but which has been removed for health & safety reasons. Although the photographs are dated it is not noted the time period over which the Land has been used in that way. Further, there is no photographic evidence of any other use of the Land other than the children's play area which is no longer on the Land.

There is a "Warning" Notice erected on the Land, which shows the AmicusHorizon logo. It is clear from the sign that AmicusHorizon, as the landowner (we would like to note here that almost every person who filled in a questionnaire confirmed that they were aware that AmicusHorizon were the landowner), erected the notice and would be the organisation enforcing it. The notice warns people to clear up after their dogs thus setting out conditions of use for the Land. The notice also states that there are regular patrols of the area by dog wardens. This shows that we, as landowner, control the Land and arrange for patrols to be carried out regularly to ensure people

are using the Land in a permitted way. This sign is one example of the fact that we control the Land and permit residents to use it within the boundaries of certain conditions we enforce from time to time. This means the local residents have not been using the Land "as of right" but rather "with a right" or permission granted by us. This notice clearly evidences the control and maintenance we have over the Land and that we are willing to punish people who do not use the Land within the rules that we have set out.

As set out above, the Objector does not consider the Application to have shown all of the relevant criteria set out in section 15(2) of The Commons Act 2006. However we also have reviewed documentation relating to the Land which we feel sheds a considerable amount of light on the nature of the use of the various open spaces in the locality. It is not accepted by the Objector that any of the use of the Land described by the Applicant is "as of right". The documents, set out in detail below, demonstrate that such use by inhabitants of the estate and their visitors is permissory or by right as follows.

The acquisition of this estate was originally made by 1066 Housing Association from Hasting Borough Council pursuant to the Stock Transfer Agreement dated 22 February 1996 ("Transfer Agreement"). 1066 Housing Association was taken over by AmicusHorizon Housing Association subsequently and thus AmicusHorizon took over the obligations under the Transfer Agreement.

Prior to the Transfer Agreement being entered into with 1066 Housing Association, Hastings Borough Council ("the Council") maintained the Land and continued to hold it, with the rest of the estate, pursuant to the Council's powers under various Housing Acts until it was transferred with many other properties to 1066 Housing Association pursuant the Transfer Agreement. The Council has confirmed to the Objector that as the Land was designated as Amenity Land prior to the Transfer Agreement with 1066 Housing Association. The Council has further confirmed that it maintained the Land as open space/play area for use by the local residents.

This estate includes some open spaces and car parking areas which are described as "Amenity Areas" in the Transfer Agreement. The "Property" to be transferred is defined in the Transfer Agreement as including "*and all amenity areas, unadopted roads and car parking areas...comprised in the various pieces or parcels of land more particularly delineated and hown edged red on the Plans...*". These areas are edged red on plans attached at Annex 3 to the Transfer Agreement. Schedule 1 of the Transfer Agreement further describes the garden land, amenity areas, play areas and unadopted roads as "*The garden land, amenity areas, play areas, communal parking areas and unadopted roads owned by the Council and adjacent to or adjoining the Residential Property or Garages and Garage Plots....*".

Schedule D of the Transfer to 1066 Housing Trust sets out conditions to be imposed upon any tenant purchasing a property from 1066 Housing Trust. Some important conditions for our purposes are as follows:

"5. Not to do or omit to do or suffer to be done or omitted to be done anything on in under or over the property which may cause nuisance or annoyance to any adjoining or neighbouring land whether or not such land is occupied by tenants of the Association."

"8. To contribute a fair share towards the cost of repairing and maintaining any joint or shared access ways and open spaces whether grassed or not together with their

perimeter walls fences or hedges (if any) which have been provided for the use or benefit of the property and other premises in the vicinity such share to be assessed in the proportion which the property bears to the other premises benefitted or enjoying the use of the facilities and amenity aforementioned. In this Schedule the words "open spaces" shall be interpreted to include forecourts parking areas and drying areas as well as areas of amenity and public recreation."

These obligations show that the Council held the Land for the benefit of the residents and this was passed to 1066 Housing Trust (and subsequently AmicusHorizon) and in turn to its residents. It also shows that the owner of the Land has always imposed, and continues to impose, conditions on the use of the Land by residents.

The Council can provide open spaces on an estate for the residents and their visitors pursuant to their powers in successive Housing Acts. The Council acquired the Land in 1950 from local landowners and since then use of the Land, during the Council's ownership, will have either been permissive or by right. The Council as the local authority would have exercised rights under various Housing Acts to lay out and construct public streets or roads and open spaces on land acquired for housing purposes (Section 13 (1) Housing Act 1985, Section 107 Housing Act 1957 and earlier and similar provisions in Housing Act 1936) or Section 164 Public Health Act 1876 (power to maintain lands for the purpose of being used as public walks or pleasure grounds) or Open Spaces Act 1906 (power to hold and administer open space to allow and with a view to the enjoyment thereof by the public as an open space and maintain and keep the open space in good and decent state).

On the transfer to 1066 Housing Association in 1996, 1066 took over the role previously fulfilled by the Council of providing open spaces for the recreation of tenants of the estate, their families and visitors. The Transfer Agreement required, in clause 10, 1066 Housing Association to adopt an agreed form of Tenancy Agreement for secure tenants in the form set out in the Eighth Schedule. The form of tenancy agreement contains references to tenants' obligations in relation to communal areas and facilities as follows:

"13a The tenant and any person living on the premises whether permanently or temporarily and any visitor to the premises must not cause damage to any property owned by the Council and must not deface or damage any wall, door, fence or other part of any premises owned or within the control of the Council, by graffiti or other means."

"13.c Not to permit, incite or allow any person living on the premises nor any visitor to commit any act amounting to a nuisance, annoyance, disturbance or "harassment" as set out in clause 13a, nor to cause damage to property owned by the Council or within the control of the Council."

"13.d The tenant shall be responsible for the behaviour of any person living permanently or temporarily on the premises including any visitors to the premises.....Tenants shall be held responsible for the behaviour of such persons whilst they are present in the premises and while they enter or leave the premises and/or common parts and/or the common areas."

"14. Not to make noise so as to cause annoyance or nuisance to neighbours or adjoining occupiers, nor to permit or allow any person living in the premises nor any visitor to make such noise. Tenants, those living with them and their visitors should have consideration towards neighbours and adjoining occupiers when playing radios,

records or C.D players, tape recorders, instruments, or when using DIY tools and other equipment.”

“29 Not to park motor cars or motorcycles or any other vehicles...where they could obstruct emergency access or exit points, or where they could cause inconvenience, nuisance or potential danger.”

It is submitted by the Objector that the above clauses would be meaningless if the tenants and their visitors were not permitted to use the communal facilities and areas.

The Right To Buy form of lease does not contain a definition of “communal areas” but it does include the following obligations:

“3.18 Not to do or permit to be done upon or in connection with the Flat or the Building anything which shall be or tend to be a nuisance annoyance or cause of damage to the Landlord or its tenants or any of them or to any neighbouring adjoining or adjacent property or the Estate or neighbourhood or the owner or occupiers thereof.”

“Schedule 2: Easement Rights and Privileges: paragraph 2. Full right and liberty for the Tenant and all persons authorised by him....at all times by day or night to go pass or repass on foot only over the common pathways on the Estate and by motor vehicle over the common roadways on the Estate.”

“Schedule 3: Rights Excepted and Reservations: paragraph 2. The right at any time hereafter to rebuild alter or change the use of any of the adjoining or neighbouring buildings in any manner whatsoever together with the right to erect further buildings or structures on the Estate and to enlarge the Estate by the addition of further land with or without buildings.....”.

These provisions clearly show that we, as landowner, exert control over the Land giving the residents right to use the Land and other areas and by reserving our rights to change the estate if necessary.

The various forms of lease annexed to the Transfer Agreement as referred to above are evidence of the forms of lease used by the Council at the relevant time. Consistency was also guaranteed in respect of Tenancy Agreements. Exercise by a tenant of the right to buy will have carried with it such rights, subject to such conditions, as were pertinent to the tenancy prior to the exercise of the right to buy. Transfers from the Council effected other than pursuant to the Housing Act 1985 will similarly have carried with them such rights and privileges as were appurtenant to the land pursuant to Section 62 Law of Property Act 1925, the operation of which is not excluded by the pro forma Transfer annexed to the Transfer Agreement so anyone who is a successor in title to the Council will have acquired the rights and privileges afforded to residents of the Estate.

Relevant provisions of Section 62 law of property Act 1925 are as follows:

62(1) A Conveyance of land shall be deemed to include and shall by virtue of this Act operate to convey, with the land, all buildings, erections, fixtures, commons, hedges, ditches, fences, ways, waters, water-courses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, or any part thereof, or, at the time of conveyance, demised, occupied or

enjoyed with, or reputed or known as part or parcel of or appurtenant to the land or any part thereof.

62(2) A conveyance of land, having houses or other buildings thereon, shall be deemed to include and shall by virtue of this Act operate to convey with the land, houses, or other buildings, all outhouses, erections, fixtures, cellars, areas, courts, courtyards, cisterns, sewers, gutters, drains, ways passages, lights, watercourses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, houses, or other buildings conveyed, or any of them, or any part thereof, or, at the time of conveyance, demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to, the land, houses or other buildings conveyed, or any of them, or any part thereof.

The evidence submitted on behalf of the Applicant makes many formulaic references to the use of the land being open and without secrecy or permission. It is submitted that it would be a very strange state of affairs indeed if Council or Housing Association tenants were trespassers if they entered on parcels of open space laid out on their estate. It is the Objector's case that any use of the Application Land is consistent with the provision of open spaces by the landlord of a housing estate for recreational purposes with the permission of the landlord, and not as of right, as evidenced by the Right To Buy and the Tenancy Agreement. The evidence submitted by the Applicant to the effect that no one challenged the use of the open spaces by local residents is entirely consistent with such use being by permission, as is evidence by the "warning notice". If the owner of the Application Land had not permitted use of the application land for recreational purposes, it would have more likely been fenced and the signs would say "trespassers keep out" not "no dog fouling", which actually clearly shows that the owner intends for people to use the Land to walk their dogs. The object of the "warning notice" is clearly to ensure that the Land can be enjoyed by residents of the estate and their guests without being concerned about dog fouling.

The Objector, for the reasons shown above, does not accept that any of the evidence adduced by the Applicant does anything to support the Applicant's claim that the use of the green is "as of right", and submits that instead such evidence supports that use by residents was by permission.

The use described by the Applicant is entirely consistent with the permissive use of open spaces within the Council and latterly Housing Association's estate. The documents set out and referenced above demonstrate any use of the Application Land for recreational purposes will have been wholly consistent with the provision of these amenities by the owner of the estate from time to time for the residents and their visitors and with permission. The Applicant's belief in the capacity in which the Application Land was used is mistaken as these documents clearly demonstrate. Further, the fact that the "warning notice" states that a patrol happens regularly on the site and shows AmicusHorizon's logo shows that any non-permitted use the Land will be monitored and dealt with by the landowner. It is submitted that the lack of fences preventing use is consistent with permission granted by the landlord rather than the assertion of rights by the Applicant against the owners.

We consider that the primary motivation of the Applicant is to prevent any future development on the Land.

Finally we do not accept that the Applicant has shown that the Land has been used by a significant number of people within a locality, or within a neighbourhood in a locality and we reserve our right to expand upon this point at any Hearing.

We also reserve our right to submit an amended objection statement in the light of our further research and generally.

We have not appended the documents referred to in this Statement due to their size. We will arrange for copies of the documentation to be sent to you shortly under separate cover.

On the basis of the above grounds we request that the Application be refused. Should you feel that you are not able to refuse the Application, we request that the evidence produced by the Application in relation to user of the application site should be tested by cross-examination at a non-statutory public enquiry.

Yours faithfully



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## Appendix 1

Plan showing the Land