

Committee: Commons and Village Green Registration Panel

Date: 15 May 2024

By: Director of Communities, Economy and Transport

Title: Application for land at Land and buildings lying to the east of Valebridge Road, Burgess Hill, Lewes, to be registered as a town or village green.

Applicant: Ms Katy Downton

Application No: RWO/CRCG1363

Contact Officer: Mr Stephen Kisko, 07795 237425

Local Member: Councillor Matthew Milligan

Recommendation: The Panel is recommended to:

- 1) Accept the part of the Application pursuant to section 15 of the Commons Act 2006 to register that part of the Land at ‘Land and buildings lying to the east of Valebridge Road, Burgess Hill, Lewes’, and now known as ‘land at Charlwood Gardens Burgess Hill’ (referred to as the Green) as town or village green and the register of town and village greens held by the Council be amended accordingly; and**
- 2) Reject the part of the Application pursuant to section 15 of the Commons Act 2006 to register that part of the Land at ‘Land and buildings lying to the east of Valebridge Road, Burgess Hill, Lewes’ (referred to as the Wood) as town or village green.**

This report contains three parts as follows:

Part A: Summary of the Relevant Law

Part B: Details of the Application

Part C: Application of the Relevant Law to the Evidence

PART A – SUMMARY OF THE RELEVANT LAW

Statutory Criteria - the Commons Act 2006

1. The application to register the land known as Charlwood Gardens as Town or Village Green (“the Application”) was made pursuant to the Commons Act 2006. That Act requires each registration authority to maintain a register of town and village greens within its area. Section 15 provides for the registration of land as a town or village green where the relevant statutory criteria are established in relation to such land.

2. The Application seeks the registration of the land which is the subject of the Application (“the Land”) by virtue of the operation of Section 15(2) of the 2006 Act. Under that provision, land is to be registered as a town or village green where:
 - (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years.
 - (b) they continue to do so at the time of the application
3. The Application is subject to subsection (6) which provides that in the determination of the relevant 20-year period, any period during which access to the land was prohibited to members of the public by reason of any enactment must be disregarded.
4. Therefore, for the Application to succeed, it must be established that:
 - (i) the Application Land comprises “land” within the meaning of the 2006 Act
 - (ii) the Land has been used for lawful sports and pastimes
 - (iii) such use has been for a period of not less than 20 years
 - (iv) such use has been by a significant number of the inhabitants of a locality or of a neighbourhood within a locality
 - (v) such use has been as of right, i.e. without force, without secrecy, and without permission (*nec vi, nec clam, nec precario*).
5. There is no distinction in law between a ‘town’ or ‘village’ green. The term ‘town’ green simply tends to be used where the green is physically situated in a town or other urban area.

The Burden and Standard of Proof

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

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

Relevant Caselaw on the Statutory Criteria

9. Caselaw has provided helpful rulings and guidance on the various elements of the statutory criteria required to be established for land to be registered as a town or village green which are referred to below.

¹ [2004] 1 AC 889.

i) Land:

10. Any land that is registered as a village green must be clearly defined so that it is clear what area of land is subject to the rights that flow from village green registration.
11. It was stated by way of *obiter dictum* by the majority of the House of Lords in ***Oxfordshire County Council v Oxford City Council***² that there is no requirement that a piece of land must have any particular characteristics consistent with the concept of a village green in order to be registered. In that case, the Trap Grounds application site did not fit the traditional image of a village green. Part of it comprised reed beds and a significant part of the remainder consisted of scrubland. It was thus “*not idyllic*” in the words of Lord Hoffmann. The majority view given by Lord Hoffmann was that the physical characteristics of land could not in themselves preclude it from being a village green. In justifying that view, he noted in particular that there was no authority, either at common law or in statute, which supported the proposition that the definition of a village green should be so restricted, and further, that any test to that effect would be inherently uncertain and too vague.³ It is also relevant to note that the Commons Act 2006 passed subsequently did not seek to further restrict the definition of a village green in that regard.
12. An alternative minority view was expressed in ***Oxfordshire County Council v Oxfordshire City Council*** by Lord Scott who noted that some new village greens registered did appear to be stretching the concept of a village green beyond the limits which Parliament intended. He noted the ordinary dictionary meaning of a “*green*” as being “*a piece of public or common grassy land*” which ought to be applied in constructing section 22(1) of the Commons Registration Act 1965, the predecessor to Section 15 of the 2006 Act, rather than land being registered that no one would recognise as a town or village green.⁴
13. In the case of ***R (Newhaven Port and Properties Ltd) v East Sussex County Council***⁵ it was established that the ordinary words used by Parliament to define a town or village green were broad enough not to preclude a tidal beach as constituting land for the purposes of the Commons Act 2006. In addition, it was established that use did not have to be continuous, or the main use of the land, providing that the level and nature of use had to be that which, judged objectively, would make a landowner aware that the public were asserting a right.

ii) Lawful Sports and Pastimes:

14. It was made clear in ***R. v Oxfordshire County Council ex parte Sunningwell Parish Council***⁶ that “*lawful sports and pastimes*” is a composite expression and so it is sufficient for a use to be either a lawful sport or a lawful pastime. Moreover, it includes present day sports and pastimes, and the activities can be informal in nature. Hence, it includes recreational walking, with or without dogs, and children’s play. These activities can vary depending on the time of year or ‘according to changing tastes or wishes [of the user]’.⁶
15. However, this element does not include walking of such a character as would give rise to a presumption of dedication as a public right of way.⁷

iii) Continuity and Sufficiency of Use over 20 Year Period:

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

³ *Ibid* at paragraph 39.

⁴ *Ibid* at paragraphs 71 to 83.

⁵ 2013] EWCA Civ 276

⁶ [2000] 1 AC 335 at 356F to 357E.

⁷ J. Riddall, ‘Getting Greens Registered: A guide to law and procedure for town and village greens’ (2007), paragraph 43

16. The qualifying use for lawful sports and pastimes must be continuous throughout the relevant 20-year period: **Hollins v Verney**⁸.
17. It is required that the user evidence illustrates that the land subject to the application has been enjoyed for a period of at least twenty years. This period is calculated retrospectively from the date of first challenge. In the absence of a challenge the submission of the application is sufficient to bring use of the land into question. Therefore, initially it will be necessary to show use from 1999-2019. If there is any challenge to use within this period then the relevant 20 year period shall be altered to reflect the challenge.
18. It is not vital for every user to have used the land for a period of twenty years rather it is 'necessary... that all the evidence taken cumulatively shows that there has been use by the local inhabitants for twenty years.'⁹
19. Further, the use has to be of such a nature and frequency as to show the landowner that a right is being asserted and it must be more than sporadic intrusion onto the land. It must give the landowner the appearance that rights of a continuous nature are being asserted. The fundamental issue is to assess how the matters would have appeared to the landowner: **R. (on the application of Lewis) v Redcar and Cleveland Borough Council**.¹⁰

iv) Locality or Neighbourhood within a Locality:

20. A "locality" must be a division of the County known to the law, such as a borough, parish or manor: **MoD v Wiltshire CC**;¹¹ **R. (on the application of Cheltenham Builders Limited) v South Gloucestershire DC**;¹² and **R. (Laing Homes Limited) v Buckinghamshire CC**.¹³ A locality cannot be created simply by drawing a line on a plan: **Cheltenham Builders** case.¹⁴
21. In contrast, a "neighbourhood" need not be a recognised administrative unit. A housing estate can be a neighbourhood: **R. (McAlpine) v Staffordshire County Council**.¹⁵ However, a neighbourhood cannot be any area drawn on a map. Instead, it must have a sufficient degree of cohesiveness: **Cheltenham Builders** case.¹⁶
22. Neighbourhood may include one or more neighbourhoods, provided that they are neighbourhoods within a locality.¹⁷

v) Significant Number:

23. "Significant" does not mean considerable or substantial. What matters is that the number of people using the land in question has to be sufficient to indicate that their use of the land signifies that it is in general used by the local community for lawful sports and pastimes, rather than occasional use by individuals as trespassers: **R. (McAlpine) v Staffordshire County Council**.¹⁸

⁸ See Sullivan J. in **R. (Laing Homes Limited) v. Buckinghamshire County Council** [2004] 1 P & CR 573 at 598.

⁹ (1884) 13 QBD 304.

¹⁰ J. Riddall, paragraph 51

¹¹ [2010] UKSC 11 at paragraph 36.

¹² [1995] 4 All ER 931 at page 937b-e.

¹³ [2003] EWHC 2803 (Admin) at paragraphs 72 to 84.

¹⁴ [2004] 1 P & CR 573 at paragraph 133.

¹⁵ [2003] EWHC 2803 (Admin) at paragraphs 41 to 48.

¹⁶ [2002] EWHC 76 (Admin).

¹⁷ [2003] EWHC 2803 (Admin) at paragraph 85.

¹⁸ **Leeds Group Plc v Leeds City Council** [2010] EWCA Civ 1438

vi) As of Right

24. Use of land “*as of right*” is a use without force, without secrecy and without permission. It was made clear in ***R. v Oxfordshire County Council ex parte Sunningwell Parish Council***¹⁹ that the issue does not turn on the subjective intention, knowledge or belief of users of the land.
25. “Force” may mean physical force to gain access to land, for example by breaking a padlock or cutting down a fence. In ***Cheltenham Builders*** it was also confirmed that force may not just mean violent acts, but also use of the land subsequent to the landowner signifying his objection to use of it.²⁰
26. There has been no judicial comment on the meaning of use “without secrecy” and accordingly it should be interpreted in its ordinary meaning: open use which is capable of being noticed by the landowner.²¹
27. “Permission” can be expressly given or be implied from the landowner’s conduct, but it cannot be implied from the mere inaction or acts of encouragement of the landowner: ***R. v Sunderland City Council ex parte Beresford***.²² Tolerance does not imply consent.

PART B – DETAILS OF THE APPLICATION

Receipt of a completed Application

28. The County Council received the Application on 25 September 2019. It was originally processed by a Legal Order Officer before being passed to the Contact Officer. The Application was made pursuant to section 15(1) of the Commons Act 2006. This section permits an application for the registration of a town or village to be made to the County Council. The qualifying criteria to be applied is set out in section 15(2) of the Commons Act 2006 which states that the land has been enjoyed in accordance with the statutory criteria.
29. In October 2019 the Council wrote to the Applicant to confirm receipt of the application.
30. Members are referred to the plan and Application at Appendix A.

The Site

31. The Land is polygon in shape and is located adjacent to Charlwood Gardens, bordered by Charlwood Gardens to the east and woodland to the west.

¹⁹ [2002] EWHC 76 (Admin) at 77.

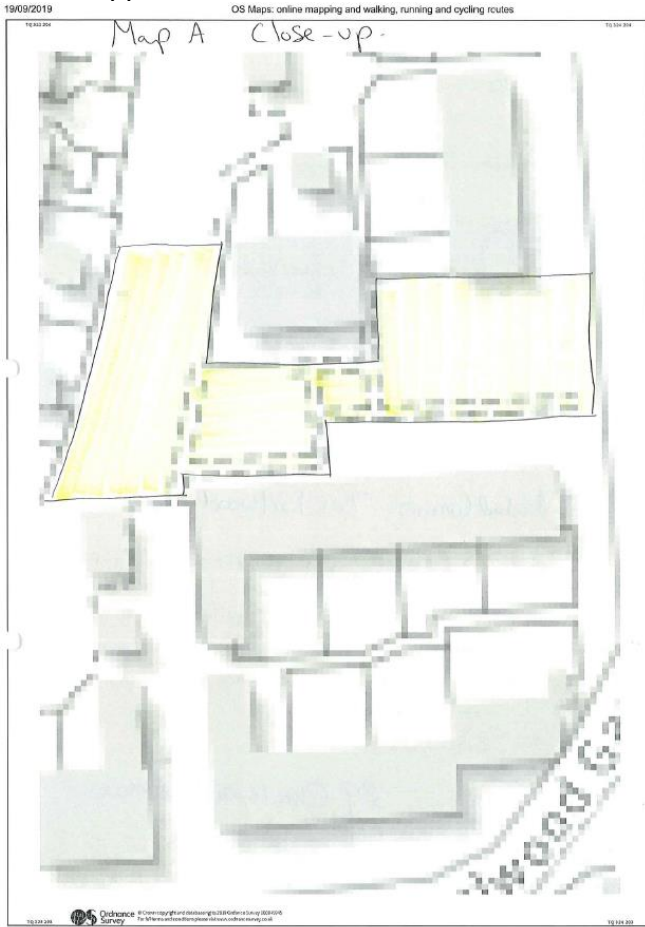
²⁰ [2000] 1 AC 335.

²¹ [2003] EWHC 2803 (Admin) at paragraph 91.

²² J. Riddall, paragraph 29

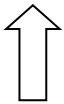
²³ [2004] 1 AC 889.

32. The Applicant's Plan is shown below:



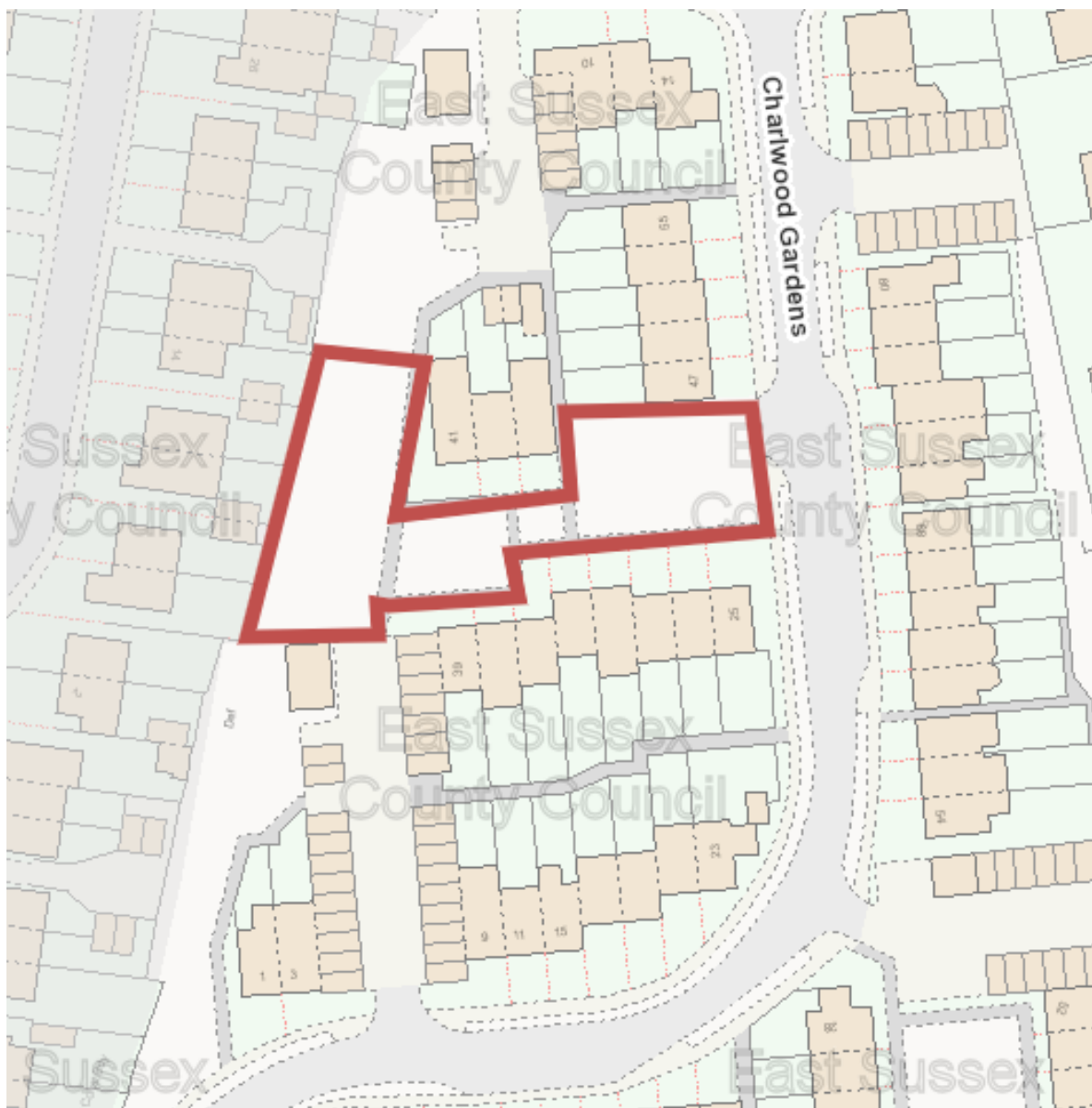
<https://osmaps.ordnancesurvey.co.uk/50.96721,-0.11780,18/pin>

1/1

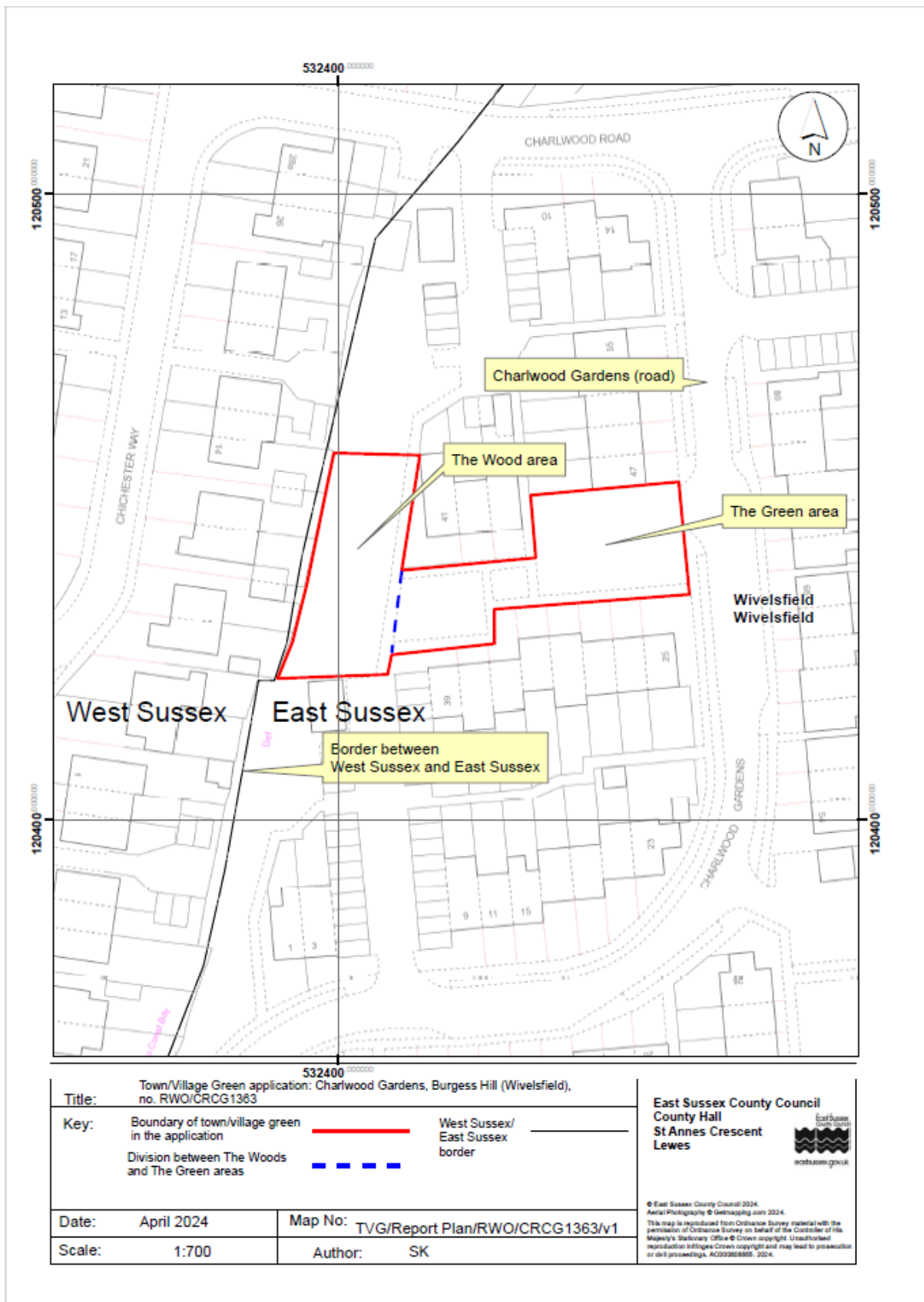


North

33. The Council's Plan is shown below:

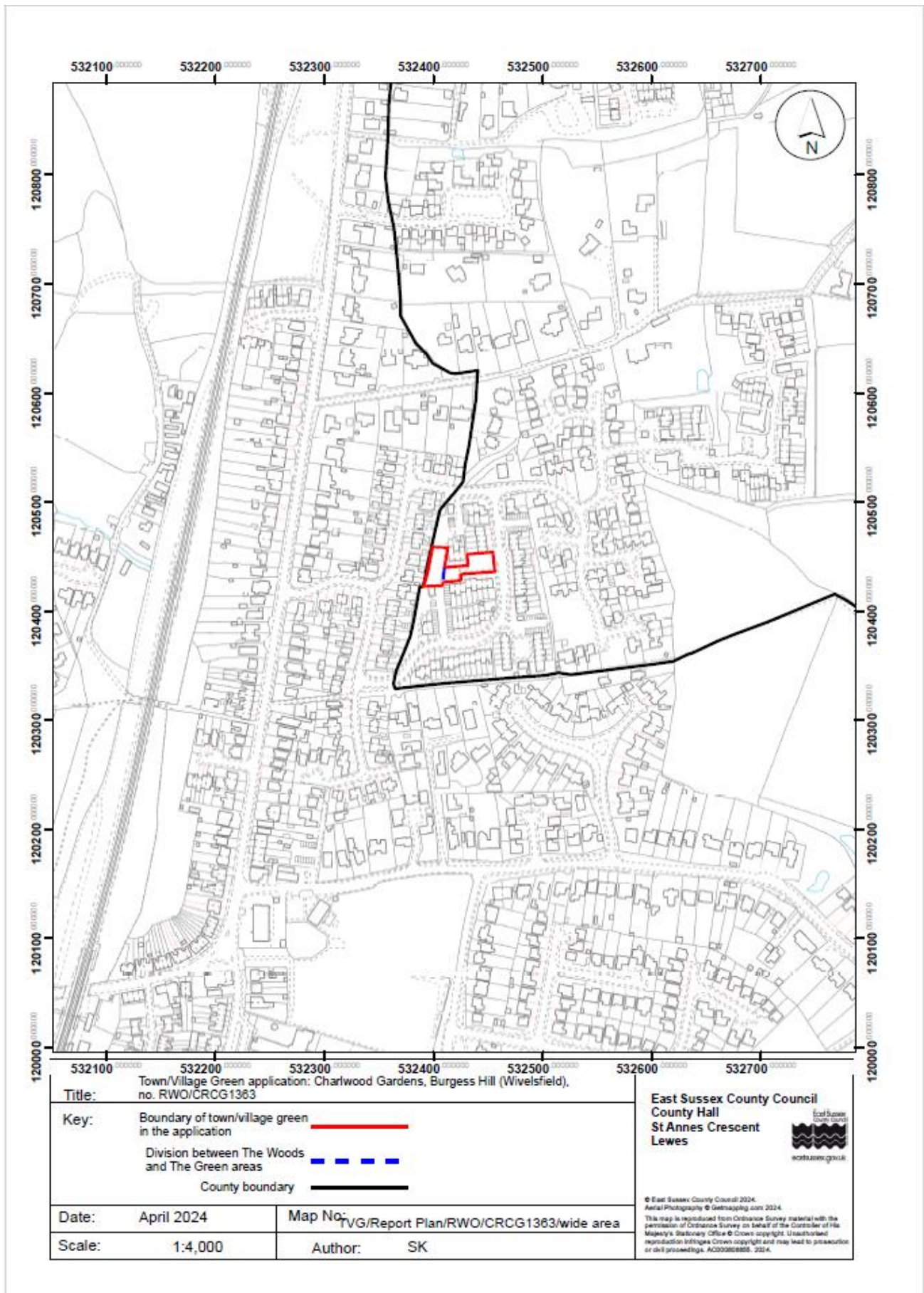


34a. The Council's Area plan is shown below:



During the investigation, it became apparent that the application area was made up of two distinct areas, the eastern and central grassy area (which is referred to as 'the Green'), and the western wooded area that runs close to the County boundary (which is referred to as 'the Wood').

34b. The Council's wide area Plan is shown below:



Applicant's evidence (Appendix A)

35. Along with the application form and plan, various documents have been submitted by the Applicant and are listed below along with the Council's comments.

a) Map A - A location map of where the residents who have provided user evidence forms live

b) Map B – A coloured map showing the outline of the parish of Wivelsfield

c) Map C – 'Neighbourhood map' - A map from googlemaps.com showing the local area of Charlwood Gardens and the surrounding streets.

d) 8 pages of coloured photographs showing the local residents using the land for sports, events and past times.

e) 2 pages called 'Additional Testimonies from the children' giving statements about what activities they did on the land with their first name and ages.

f) 18 Council forms called 'Evidence questionnaire supporting registration of land as a town or village green', each completed by a local resident (one of whom is the Applicant). Also included were 2 pages called 'Additional notes for application' in which the Applicant explained more about how people had responded to the question 'Features about the land'

g) A letter from Miss Farrell dated 24 September 2019 to accompany her user evidence form.

Land Ownership (Appendix B)

36. The Land is registered at the Land Registry under title number ESX22536. A copy of the registered title is at Appendix B.

37. The original developer of the surrounding residential estate, I Ross Estates Ltd, owned the land until 2011.

38. A Mr. Richard Bunning then acquired the Land in 2011.

39. The Green was then transferred to Bluesky Properties Estates Limited on the 5 April 2022, under title number ESX408380 and the Land was known as land at Charlwood Gardens, Burgess Hill.

Trigger Event (Appendix C)

40. On 9 October 2019 the Council wrote to the Planning Inspectorate to find out if they were aware of any prescribed planning-related events (trigger events) had occurred in relation to the Land, which due to an amendment of the Commons Act 2006 by the Growth and Infrastructure Act 2013 would exclude any right to apply for the town or village green (TVG) registration and to find out if any corresponding terminating events had occurred which would make the right to apply exercisable again.

41. On 18 October 2019 the Council also wrote in the same way to Lewes District Council ("LDC"). On the same day LDC replied to say that there were no trigger events or termination events affecting the Land.

42. On 24 October 2019 the Inspectorate replied to say on a form dated 21 October 2019 that a trigger event had occurred, but no corresponding terminating event had occurred on the Land.
43. On 25 October 2019 the Council referred this back to LDC as the Inspectorate had said there was a trigger event in the Lewes Local Plan Part 2. LDC were asked for any revised notification or comments. On 11 November 2019 an Officer from LDC replied to say that he had spoken with both his planning and policy departments regarding this matter and had been informed that the Lewes Local Plan Part 2 had no effect on this application to register a village green. He added, the Lewes Local Plan Part 2 has no allocations and no policy affecting the Land and therefore did not constitute a trigger event.
44. On 12 November 2019 the Council referred the conflicting results to its legal team, who suggested that both LDC and the Inspectorate be contacted again and asked to confirm if their previous responses were correct. LDC confirmed the land was not subject to a trigger event as it is not in the Lewes Local Plan and on 16 December 2019 the Council received a reply from the Inspectorate amending their response with a new form saying that no trigger or terminating event had occurred on the Land.

Possible voluntary registration of TVG (Appendix D)

45. On 11 February 2020 the Council wrote to the landowner, then Mr Bunning, outlining the details of the Application and the procedure that would be followed to investigate the claim for TVG status. The Council asked the landowner if he would like to voluntarily register the land as a TVG as an alternative. As no response was received, the application to register the land as a TVG as applied for was progressed.

Consultations and representations (Appendix E)

46. The Application was advertised on site and in the Mid Sussex Times on 13 March 2020.
47. All interested parties, the landowner, Lewes District Council, and Wivelsfield Parish Council were sent copies of the notice, and copies were made available to view by members of the public at County Hall, Lewes, and at Lewes District Council offices, Southover House Southover Road Lewes.
48. The Application has received 1 objection, from the landowner Mr R Bunning. The landowner sent 2 emails setting out his objection.

Landowner Response (Appendix F)

49. The landowner objected to the Application on 1 April 2020 on the grounds;

“In terms of the application, I dispute that the westerly part of the land (hatched in the attached plan) has only relatively recently been made into a cycle track. This woodland was overgrown with brambles and on the orders of the local authority tree officer I had some dead branches removed. The tree surgeons cleared an area around the tree and I believe some local residents may have further cleared it for use as a cycle track (bumps). This was less than 2 years ago and therefore I believe does not qualify the land to be considered as a Village Green.

I wanted to sell the remainder of the land that is part of the application along with some alleyways and other strips on the estate. I put the property into auction but the auction was cancelled due to the Coronavirus outbreak.

Wivelsfield Parish Council made some noises to the auctioneer about possibly buying the land but so far nothing has become of that. I have also spoken to Katy about the local residents

buying the land but the current Coronavirus situation has made all of this take 2nd place. There is also the uncertainty about responsibility of maintenance.

When originally built in 1980 the common areas of the estate were to be maintained by "The Charlwood Gardens Residents Association Ltd". Each owner was to have one share. The company was struck off at Companies House after a year, and there is little evidence of any formal agreements in respect of the land but several residents I have spoken to were aware of the existence of the company in the past.

I am writing to request that either the application is rejected on the basis of the paragraph 4 of this letter, and a new application made when the current crisis has passed. Failing that I suggest the hearing is postponed until times return to normal."

50. The landowner objected to the Application on 23 April 2020 on the following grounds;

"Thank you for your helpful email sent on 1st April.

I have been trying to sell the land concerned but the application for a TVG has thwarted that.

I have been trying to reconcile trying to acknowledge that the residents have used the land for many years and the feeling that the application has essentially snatched away a plot that perhaps had a value of £15,000 to £20,000. The application would probably have never been made if I had not offered it to the residents in the first place.

There has been various suggestions that I might give the land to the residents or the local council, but there seems to be a reluctance to take on the other parts of the land that I want to sell, principally some alleyways and back garden strips. It has been suggested I wouldn't be required to maintain any land that became a TVG but I don't read that into the Act, maintenance seems to be silent in the Commons Registration Act although I am happy to be corrected on that if I'm wrong.

I have registered my objection to part of the land being considered as a TVG on the basis of the short timescale it has been used as a cycle track. I am also aware that any objections to the children using the woodlands for such a purpose or for making dens would seem very mean.

I mentioned in a previous email the fact that there was a "Charlwood Gardens Residents Association Ltd" that was set up on completion of the estate and all residents were supposed to have a shareholding and the company was responsible for maintaining the estate. I don't know a lot about the arrangements but I notice that one of the comments about the use of the land mentioned the company. I somewhat tongue in cheek query whether because of the existence of this company that the residents did in fact have permission to use the land. The land being owned by the original developer I Ross Estates Ltd until about 2011 when my company bought the land. The key seems to be use without permission, whereas I would consider it use with deemed permission.

I have read the enquiry into the land at East Chilton and I shudder at the complexity of the enquiry and I also fail to understand the decision of why the TVG was rejected.

However returning to matters more relevant. If it was agreed that the woodland cycle track has not been used for the required 20 years, it raises the question - can the panel decide that part of the land is a TVG and part of it is not, or does the panel reject the application on the basis that not all the land has been used as required by the Act, therefore the application should fail. I have no experience in this but perhaps you do?

I have never had any direct communication with Wivelsfield Parish Council although I understand they looked into purchasing the land, but it came to nothing.

The ideal position from my point of view is that the application be withdrawn, it would seem perfectly possible to re-apply at a later date. The other possibility is that there is some agreement between my Company and Wivelsfield Parish Council whereby I gift the land to them but have their support to develop the area where most of the trees are. I am not talking about any outrageous development but maybe for one house in the "cycle track area" whereby that house could maintain the trees which I know are a source of both pleasure and concern to local residents.

I haven't spoken to Katy (the Applicant), last time I spoke to her was as lockdown was just beginning and I think this application was not on her priority list at the time.

As things stand I can see that we are in for a very long period before any decision is made, and I want to try and sell the land, the price seems secondary at the moment.

Sorry for a somewhat long email. I wanted to send something and I wanted to stop thinking about what I might say. So here it is."

51. On 29 June 2023 the Council wrote to Bluesky Properties Estates Ltd advising them of the application enclosing a copy of the application form and map, referring them to the Council's website to find all the evidence and asking for their comments within 28 days. No response was received. (Appendix H)

52. **Officer Investigations**

Members of the Rights of Way team had sight of information as to the management of the Land and the Management Company.

Sale particulars dated 2011 offered land for sale subject to freehold titles. Included the green areas and large strip covered in trees that had tree preservation orders on them. Particulars included "no maintenance agreements "
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Letter dated April 2015 from Norman Baker MP to local resident explaining he looked into the green area and comments as follows: Lewes District Council (LDC) told him area was set aside for car parking but then changed to green area, LDC do not own the land. The green area not under immediate threat.

Other documents- Articles of association off Charlwood Gardens Management Company Limited.
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Directors report for the year ended 31 of March 1985. Principal activity of the company is the maintenance of the common parts of the childhood gardens housing estate attached all the accounts in detail it should be noted although demands were issued annually for the maintenance charge a large amount remains uncollected and has been treated as a bad debt in the account the directors do not recommend the payment of a dividend.

Document memorandum and articles of association of Charlwood Gardens Management Company Limited dated 15 of July 1977. The document has points listed from 1-19. paragraph 3.1 states the object for which the company is established to regulate control the use of maintained certain lands forming part of Charlwood Gardens estate and for that purpose to acquire hold manage maintain administer and deal in every way with lands on the estate and to layout and provide services with all the necessary buildings and other facilities
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for and manage administer maintain in good order on the estate gardens amenity areas recreational other buildings facilities parking spaces roads access ways and footpaths.

Document dated 5th of July 1989 from residents of Charlwood Gardens Mr and Mrs Burrell 2 Fitzhugh Gates solicitors on behalf of the Charlwood Gardens maintenance association. We propose to pay the maintenance charge of 15 pounds and includes a cheque for this we understand some other residents will do the same, while we're happy to payout for maintenance contribution we strongly resent having to pay double because some residents have not paid.

Reply from Fitzhugh Gates dated 6th of July 1989 thanking for the payment of 15 pound with regard to those residents who have not paid we are in a dilemma to issues proceedings to recover small sums of money would in fact increase the financial burden on the company and we have had some success in getting payment of arrears when we residents have moved.

53. Various residents submitted statements of their own knowledge but removed their names.

Resident 1 dated 20.08.2020 - bought house in 1978 not all of the estate was built and were told that when finished it was intended to set up Management company to look after any repairs and maintenance of green area and the trees and householders would be the company yearly/monthly. Although they paid very little was done and they maintained it themselves.

Resident 2 01/08/2020 confirm there is Residents Association I don t have shareholding nor responsibility for maintaining estate

Resident 3 had a meeting with solicitor representing Charlwood Gardens Association and was told no funds had been collected to maintain the Association and nothing could be done to keep it. A neighbour and I carried on mowing the lawns and clearing the land the side of the house and we continue to maintain the land. The greens have been used by the residents since the houses were built if you can prove continuous use of the land for 12 years you have some sort of legal possession or right to use. The builder was negligent in the way he set things up we continue to frequently mow the front and rear of our property.

Resident 4 with husband moved into the house in 1980 and immediately joined the neighbour gardens management Co limited paying the usual fee until it was obvious the management company wasn't doing anything once the management company had been dissolved some people refused to pay the fee. The residents had always cut the grass and cleared debris rubbish from the garage block near their homes. the current owner Mr Bunning not long after purchasing the land made an application to build in a house on they agree this was refused. Apparently there's a lot of pipe work under the green.

Resident 5 bought the house in 1983 from an existing owner was informed about the Charlwood gardens management company limited and that membership of the same had to be transferred and a fee would be paid yearly to the managing company. When moved in was told part of the land in front of the tree line had been put aside by the developers as a childrens play area and would be built by the developers although this never happened generations of children continued to play on the land. Latest landowner has put a block of three garages on this land a management company had liability insurance and was set up as a local authority did not want to take on the responsibility. The management company doesn't appear on the Land Registry deed. The managing company was operating at a loss and dissolved in 1987 over the years very little was done to maintain the maintain the trees in

1991 some of the residents got together to obtain permission to cut back overhanging dangerous limbs this proved to be a problem as no one wanted to take on responsibility as a tree preservation order was in place between 1983 and 2010 I find a few other residents regularly cut the grass and clear the woodland up to the tree line of all the rubbish that had been dumped there including shopping trolleys batteries and other rubbish over the years they also dealt with the steps. a direct debit just stopped. I confirm from 1983 all children have played on the green, barbecues as well as Christmas and other communal events were regularly held on the green over the years and has continued to the present day.

Resident 6 the president association was dissolved before I came to live here but my parents had bought when the houses were first built so I knew some of the background. Residents were told to pay an annual fee of £15 to the owners of the site and imagined they would see that the area was kept clean neat and tidy. When the neighbours found this did not happen they refused to pay the fee. Apart from the regular grass cutting residents had to clear debris that was left on the site. In later years of the last owner tree surgery took place biannually it does not happen with the current owner. Authorities now clear children now tcome from the surrounding area and the wooded area gives them scope of their imagination of playing.

I had spent 24 years living in vale bridge which backs on to the wooded area of the western side of Charlewood Gardens behind the garage. These houses were built by the same builder. When I first moved into the trees at the rear of the property seemed fairly well looked after, but by early 1990s the area had very much been abandoned brambles are taken over encourage in the dumping of unwanted and dangerous rubbish. I thought it was no-man's-land. The residents of Charlewood Gardens have continued to keep the grassed areas mowed and the wooded area as clear as possible of rubbish in order to keep the area safe and well maintained from themselves children and friends in local area. Games made amongst the trees also tree swings and the usual running and hiding games. A friend of mine who at the time was in charge of the grounds at wickhurst place looked at the trees confirmed there were too many trees in a small area during my time at the houses I only know a few tree cutting sessions one of which Lewes District Council did as one of the trees in danger of damage in the local street light and they got rid of a very large Wasps nest.

54. Contact from Tracey Taylor (Appendix G)

Email from resident Tracey Taylor, on 21 September 2020, and also from residents Gillian and John.

"We have attached a few of the documents we have obtained so far and look forward to hearing from you with possible dates of a site meeting. We are available from the 28th September onwards.

- a) Companies Search showing dissolution of the management company & copy treasury Solicitors letter.
- b) Pages from a report on Title
- c) Timeline of the estate and Management company

We do have some statements from long standing residents. If you feel they could be of use, you can go through them at site meeting".

PART C – APPLICATION OF THE RELEVANT LAW TO THE EVIDENCE:

Application of the Commons Act 2006 and Caselaw

a) Land

55. The Application has identified a sufficiently defined area of land for registration.

b) Lawful sports and pastimes on the land

56. The user evidence questionnaires ask the user to tick boxes for all the activities they have seen taking place on the land. There were 18 user evidence forms received from 18 users. The Applicant did not provide a user evidence form but did provide information about her use on the application form which has been added to the user information.

57. Activities participated in on the Land

Activity Reported	No. of Users reporting this
Charity Events	17
Children Playing	17
Parties/Bouncy Castles/Slides	17
Cycling	12
Maintenance	12
Football	10
Picnic	10
Ball games	9
Community celebrations	7
BBQs	4
Dog walking	4
Fireworks	4
Gymnastics/running/exercise	4
Wildlife	4
Den building	3
Meetings	3
Bat watching	1
Playing with snow	1
Reading	1
Rehearsals	1

58. It is understood that these activities, given that they usually require open space and a grassy area, took place primarily on the Green, particularly as 15 of the User evidence forms state the land is known by the name of 'the Green'. Three of the eighteen user evidence forms mentioned the Green and the Wood in their naming of the land. The Applicant referred to the land as 'the green' and 'the woods' on the application form.

59. The 3 most frequent activities witnessed on the Green area are charity events, children playing and parties.

60. The Wood area of the Application

Activity in Wood	No. of Users reporting this
Children playing	2
Den building	2
Planting	2
Wildlife	2
Bird watching	1

Blackberry Picking	1
Cycling	1
Maintenance	1

It is understood that these activities took place in the Wood as this is stated as such on the application form and in the user evidence forms.

61. The Council does not consider that the lawful sports and pastimes listed above are evidence of the Wood being used as Town or Village Green. It is for the Applicant to prove the Land has been used for lawful sports and pastimes. The recorded use in the Wood is deemed to be insufficient for it to be recorded as a Town or Village Green.
62. The Physical characteristics of the land, comprising overgrown grassland, trees and shrubbery with no specific boundaries do not lend themselves to general town or village green use by local residents on a regular basis. The nature of this unmaintained land would constrain the frequent use of it for recreational purposes. It is only in recent years the wooded area was maintained to some degree and the evidence does not support this having been for a period of 20 years (ending at the time the claim was made).
63. Evidence for the use of the Wood for lawful sports and pastimes is not sufficient to satisfy the statutory test.

The Green

64. The recorded use of activities such as ball games, parties, community gatherings etc, on part of the Land known as the green area does, on the balance of probabilities, provide sufficient evidence to illustrate that lawful sports and pastimes have been enjoyed on this part of the Land. Accordingly, this element of the test has been satisfied.

c) For a period of at least 20 years

65. 10 of the user evidence forms submitted record use of the land for a period of in excess of twenty years with use continuing on the date the Application was made. There is not a requirement to show use occurred at such a rate, rather the Land “must have been used and available when needed”. A considerable amount of user evidence states the land to be enjoyed weekly and daily. Upon examination of the user evidence forms it is submitted that, on the balance of probabilities, use of the claimed land has been enjoyed for a period of at least twenty years prior to the date of the Application.

Name of User	Number of Years Area Used	Frequency of Use
Aveyards, Tina	41	Weekly
Bailey, Charlotte	21	Weekly
Bailey, Christopher	21	Weekly
Bailey, Lynn	21	Weekly
Beck-Slinn, Grace	40	Weekly
Cherriman, Theresa	13	Weekly
Connors, Anna	?	Weekly
Downton, Katy	?	?
Farrell, Pamela	23	Daily
Harmes, Rick	33	Weekly
Harmsworth, Abigail	15	Daily

Hopkins, John	16	Weekly
Millard, Marion	25	Weekly
Schmocker, Daphne	28	Monthly/Annually
Solari, Deborah	10	Daily
Stephenson, Gayle	15	Weekly
Taylor, Tracey	10	Weekly
Waldman, Ann	39	Weekly
Watkins, Gemma	1	Daily

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

66. Table 2 Recognisable facilities available to inhabitants in the local community.

Features	School catchment area	Church	Shops	Public House	Sports Facility	Community Hall
	5 mins away	15 mins away	5 mins away	5 mins away	5 mins away	5 mins away

67. At point 6 of the Application the Applicant is asked to identify the locality or neighbourhood to which the land relates. The Applicant identified the Land as falling within Wivelsfield parish. A plan was submitted highlighting the boundaries of this area. Please see Appendix A.

68. Whilst in the user evidence forms only a few users have listed the above features within their neighbourhood the Applicant has confirmed that there are the features within the neighbourhood.

69. The plan (at Appendix A) also records the residence of many of those who completed a user evidence form. The plan is an Ordnance Survey map at a scale thought to be of 1:5,000.

70. It is also of note that it is not necessary for the Land to only be enjoyed by local residents rather it 'is sufficient that the land is used predominantly by inhabitants of the locality.'²³ The plans illustrate this to be the case.

71. On the balance of probabilities, the locality marked by the Applicant as being within the Wivelsfield parish and forming a neighbourhood satisfies the statutory test.

Significant number

72. Based on the user evidence forms the Council believes the number of people using the Land in question is sufficient to evidence that it is in general used by the local community for lawful sports and pastimes, rather than occasional use by individuals as trespassers.

e) Have indulged 'as of right'

73. Once it has been established that those who have used the land are of a locality it must be asserted that they have enjoyed the land as of right. The meaning of 'as of right' has received legal clarification from Lord Hoffmann, who was of the opinion that it should be construed to mean, 'not by force, nor stealth, nor the licence of the owner.'²⁴ It has taken this meaning because it is not reasonable for the owner to resist actions of user because:

²³Ibid at paragraph 335

²⁴ *R v Oxfordshire County Council and Another, Ex parte Sunningwell Parish Council* [2000] 1 A.C. 335

“rights should not be acquired by the use of force, in the second, because the owner would not have known of the user and in the third, because he had consented to the user”²⁵

74. The decision of the Supreme Court in *Redcar*²⁶ further clarified the law with Lord Brown being of the opinion that there is ‘no good reason to superimpose upon the conventional tripartite test’²⁷ for the registration of land as a town or village green. Accordingly, each arm of the test shall be identified and analysed individually. For use to be as of right each part must be satisfied.

(i) Not by force

75. The parcel of land in question does not have any fences or obstructions preventing access to it from members of the public and is in effect open land - thus it would be impossible to gain access via physical force. In addition, there is no evidence of the landowner signifying their objection to use of the land. Accordingly, use has not been by force and this part of the test has been satisfied.

(ii) Not in secrecy

76. The land has been used frequently and openly by members of the public and we have no reason to believe this has been performed in secrecy. Therefore, this part of the test has also been satisfied.

(iii) Not with permission

77. The user evidence questionnaire specifically asks if permission was ever sought for activities on the land. The users consistently responded that no permission was ever obtained.

One of the arguments put forward by the objector is that use is by permission, therefore by right and not as of right, due to the existence of Charlwood Gardens Management Company Limited that was formed when the houses were built. This company was dissolved in 1987 so was not in existence within the relevant 20-year period. In addition, the Company was formed with the purpose of enabling the residents to pay contributions towards the maintenance of the Land. There is no evidence of the Company having rights of ownership of the Land or powers to permit or not permit use of the Land.

The Council has found no evidence of permission being granted for use of the Land during the 20-year period 1999-2019.

78. Upon consideration of the user evidence and the response submitted by the objector it would appear, on the balance of probabilities that use has been as of right. Therefore, this part of the test has also been satisfied.

Considerations into the feasibility of holding a Public Inquiry

79. The Commons (Registration of Town or Village Greens) (England) Regulations 2014 require that the Local Authority consults on the proposed Town or Village Green before making a determination. This process has been completed.

80. The Council, as Registration Authority retains discretion as to whether to hold an Inquiry and must give consideration as to whether one should be held. An Inquiry would be conducted by an independent Inspector or expert and would enable members of the public to put their view across in adversarial proceedings. The Inspector or expert would make recommendations and it would then be for the Authority to decide whether to accept any or all of those recommendations.

²⁵ *Ibid*

²⁶ *R (on the application of Lewis) (Appellant) v Redcar and Cleveland Borough Council and Another* [2010] 2 A.C. 70

²⁷ *Ibid* at para. 107

81. Those in favour or against the application have had the opportunity to submit their representations and these have been made available to the Panel, in full, for Members to read in the usual way and have been analysed in this report.
82. The cost implications and the further delay which would be introduced into the process in holding a public inquiry would also be considerable. It is submitted that a public inquiry would not be necessary or in the public's interest with this Panel being able to provide an objective and impartial view of all the evidence submitted.
83. The Panel is permitted to use its discretion when determining what course of action to follow; it can accept the officer recommendation put forward, it can adjourn the matter and seek further information, or as set out above, the Panel can request that a public inquiry be held.

Conclusion

The Green

84. After careful consideration of all the evidence submitted to the Council regarding the area of the Land identified as the Green, it is recommended that, on the balance of probabilities, there is sufficient evidence to show that the residents of Wivelsfield have indulged in lawful sports and pastimes, as of right, for a period of 20 years and they continued to do so on the date that the Application was made. Accordingly, section 15(2) of the Commons Act has been satisfied.
85. The objection received is not considered to counter the evidence to support the application for the Green to be added to the register of Town or Village Green.

The Wood

86. After careful consideration of all the evidence provided to the Council with regard to the area of the Land identified as the Wood, it is recommended that, on the balance of probabilities, there is insufficient evidence to show that the residents of Wivelsfield have indulged in lawful sports and pastimes, as of right, for a period of twenty years, up to the date that the Application was made. Accordingly, section 15(2) of the Commons Act has not been satisfied.

Recommendation

87. It is recommended that:

- 1) The Application to register that part of the Land at 'Land and buildings lying to the east of Valebridge Road, Burgess Hill, Lewes', and now known as 'land at Charlwood Gardens Burgess Hill' (referred to as the Green) as town or village green be accepted and the register of town and village greens held at the County Council be amended accordingly.
- 2) The Application to register that part of the Land at 'Land and buildings lying to the east of Valebridge Road, Burgess Hill, Lewes' (referred to as the Wood) as town or village green be rejected and the register of the town and village greens held at the County Council not be amended.

RUPERT CLUBB

Director of Communities, Economy and Transport

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