To: Richard Lumley, Assistant Director, Highways Service
From: Tom Ruszala, Asset Information Definitive Map Officer
Ref: CR190
Date: 21 August 2019

Report on an application to register land known as The Green and Little Hill, Eaton Ford as a Town or Village Green

1 Purpose

1.1 To determine an application to register land known as The Green and Little Hill, Eaton Ford (‘the Application Land’) as a Town or Village Green.

2 Introduction

2.1 Cambridgeshire County Council (‘CCC’) is the Commons Registration Authority (‘CRA’) for the purposes of the Commons Registration Act 1965 (‘the 1965 Act’) and the Commons Act 2006 (‘the 2006 Act’).

2.2 Section 15 of the 2006 Act provides a mechanism for any person to apply to the CRA to register land as Town or Village Green where certain criteria are met. CCC determines applications for registration purely upon their legal merits and the factual basis of the supporting evidence and any evidence submitted by the objectors. Under CCC’s scheme of authorisation for determining applications under the 2006 Act, the Assistant Director of Highways will make a determination on applications (Appendix 1).

2.3 Where there are cases which present conflicting evidence or the facts are in dispute, the Assistant Director of Highways may, where necessary, seek to engage counsel to advise the authority. This may involve the holding of a non-statutory public inquiry, where evidence both for and against registration of the Application Land will be heard before an independent Inspector, usually a barrister specialising in this area of law. Following the conclusion of the inquiry, the Inspector’s report would form the basis of the determination report made by the case officer as to whether or not the Application Land should be registered.

3 Site Description

3.1 The application comprises of two separate parcels of land, ‘Little Hill’ and ‘The Green’, both located within the Poets and Painters Estate in Eaton Ford which is within the town of St. Neots (‘the Application Land’). A plan of the Application Land, made up by CCC, is attached to this report at Appendix 2. This shows the Application Land coloured in green.
3.2 Little Hill is a linear parcel of land between Tennyson Place and Kipling Place containing a tarmac footpath, grass verges and hedges. The Green is a large open parcel of land containing several tarmac footpaths, grass verges and trees located between Kipling Place, Reynolds Court, Hogarth Place and Constable Avenue. Labelled photographs of the Application Land are attached at Appendix 3.

4 Background

4.1 The application, submitted by Mr Barry Chapman (‘the Applicant’), was received by CCC on 24 October 2018 (attached at Appendix 4). It seeks to register two plots of land in the Poets & Painters Estate, Eaton Ford as a Town or Village Green as it is claimed by the Applicant that the Application Land has been used for 20 years or more, as of right, by members of the locality (the Eatons electoral division of CCC) for lawful sports and pastimes.

4.2 The application was prompted by the advertising and subsequent sale of the Application Land which was sold as part of 10 parcels of land by auction in October 2018. This sparked local interest in the land, led by a district councillor for the area, Barry Chapman, as there was a general concern that the land may have been purchased with a view for development.

4.3 Following receipt of the application, CCC carried out a consultation, with the relevant planning authorities, in November and December 2018 to check whether or not the Application Land had been excluded from the right to apply under section 15 of the 2006 Act. Following responses received from Huntingdonshire District Council, Cambridgeshire County Council’s Planning and Development team and the Planning Inspectorate at the Department for Environment and Rural Affairs, the application was accepted as duly made by the CRA on 3 January 2019.

4.4 The application was advertised on site and in the local newspaper from 23 January 2019 until 6 March 2019, in accordance with The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007. Representations were received from 64 people including one objection from Ashfords, the agent of an owner of part of the Application Land.

5 Legal Framework

5.1 The 1965 Act first introduced a system of registration of Common Land and Town and Village Greens in England and Wales. This was intended to establish a definitive register of all Common Land and Town or Village Greens in England and Wales. The 2006 Act provides a replacement system to the 1965 Act. To date, the 2006 Act is only in force across nine Commons Registration Authorities
in England and Wales, referred to as the Pilot Authorities. CCC is still considered to be a ‘1965 Registration Authority’ and as such only limited sections of the 2006 Act apply to Cambridgeshire, until such time as Part 1 of the 2006 Act is fully brought into force. The limited sections of the 2006 Act which apply to CCC include section 15 which concerns the registration of Town and Village Greens.

5.2 Under Section 15A(1) of the 2006 Act a landowner can protect their land from claims to register land as Town or Village Green by depositing a map and statement with the CRA. The statement brings an end to any period during which persons may have indulged in, as of right, lawful sports and pastimes on the land. It should be noted that when such a statement is accepted as duly made by the CRA this starts off a period of one year where members of the locality are able to apply to register a Town or Village Green under Section 15(3) of the 2006 Act. After the end of the one year period, no such applications can be accepted by the CRA. As of the writing of this report on 21 August 2019, no landowner deposits and statements concerning the Application Land had been received by CCC under section 15(A) of the 2006 Act.

5.3 Section 15(2) of the 2006 Act allows for any person to apply to the CRA to register land as a Town or Village Green where-

(a) a significant number of the inhabitants of any locality, or 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; and

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

6 The Application

6.1 The application relies upon the twenty-year user ground set out in section 15(2) of the 2006 Act, claiming use of the Application Land prior to the application made on 24 October 2018. As the application was made under section 15(2) of the 2006 Act, evidence must be provided that a significant number of the inhabitants of the locality have indulged, as of right, in lawful sports and pastimes on the land for a period of at least 20 years and continue to do so at the time of the application. As the application was made in 2018, the evidence therefore must show use of the Application Land, as of right, for the period between 1998 and 2018 (‘the qualifying period’).

6.2 The claimed locality, within which users of the claimed Town or Village Green reside for the purposes of this application, is the Eatons Electoral Division of CCC. A plan of the locality, made up by CCC, is attached at Appendix 5.

6.3 The application was accompanied by 136 User Evidence forms providing evidence of use of the Application Land for lawful sports and pastimes in a period spanning from the mid-1960s to 2018 when the application was submitted to the CRA.
The application was advertised and displayed in accordance with relevant regulations on 23 January 2019, with a closing date for representations of 6 March 2019.

Representations were received from 64 people during the consultation period from January to March 2019. 63 of the 64 representations received were in support of the Application. An objection was received from Ashfords (‘the objector’), acting for the joint landowner of part of the Application Land. This is included at Appendix 6.

Representations were received from 64 people during the consultation period from January to March 2019. 63 of the 64 representations received were in support of the Application. An objection was received from Ashfords (‘the objector’), acting for the joint landowner of part of the Application Land. This is included at Appendix 6.

Following the expiry of the advertising of the application, CCC sought the advice of counsel on the points raised within the objection. A copy of the advice provided by Alan Evans of Kings Chambers is attached at Appendix 9. The advice of April 2019 contained a number of areas which required further investigation by the CRA. These were:

i. The clarification of ownership of the Application Land
ii. The clarification of the public highway status of the Application Land
iii. The clarification of the current and historic maintenance arrangements of the Application Land

On 18 April 2018 CCC sent a copy of the objection of Ashfords and the advice of counsel to the applicant and the objector for their information. The letter stated that the CRA were investigating the matters raised by counsel and would provide the applicant with an opportunity to comment upon the representations once the information had been obtained and provided by the CRA. A summary of the CRA’s investigation, including an appendix, is available at Appendix 10.

On 24 May 2019 a copy of all the representations received during the consultation period, including the objection and information contained in the CRA’s investigation were sent to the applicant with a letter informing them that they may respond to the representations by 14 June 2019.

On 28 June 2019 the applicant submitted his response to the representations (Appendix 11). The applicant was provided with a two-week extension to respond due to unforeseen personal circumstances.

7 Analysis of Evidence

This report considers the Application Land in relation to the legislative tests set out in section 5 of this report. They have been broken down into the following headings to assist in the consideration of whether each element of the tests has been met in this case:

1. The activity must have been on the relevant land
2. For a period of at least 20 years
3. A significant number of the inhabitants of any locality or of any
   neighbourhood within a locality
4. The inhabitants must have indulged in lawful sports and pastimes to
   constitute qualifying activity
5. They must have undertaken the activity as of right, without force,
   secrecy or permission

On The Land

7.2 The area of land being claimed as Town or Village Green as defined in the
application is shown consistently throughout the user evidence forms submitted.
The users have attached a plan produced by the Applicant showing the
Application Land in full at ‘The Green’ and ‘Little Hill’ in Eaton Ford.

7.3 The CRA’s follow-up investigation, attached at Appendix 10, provides detail of
the ownership of the Application Land. Document A of Appendix 10
demonstrates that approximately half of the Application Land is owned privately
by John Dean and Raymond Gill (coloured in blue) and the other half by
Huntingdonshire District Council (coloured in red).

7.4 The Land Registry records available at Document B of Appendix 10 provide
evidence that the land coloured in blue, at Little Hill and approximately half of
the Green, was purchased by Galliford Developments Ltd on 1 September 1971.
The land was later sold to Cleveland Finance Ltd on 15 February 1972. Galliford
Developments Ltd were the developer of Phase 2 of the Crosshall Road
development which was granted permission by the Huntingdon and
Peterborough County Council on 10 August 1972. Cleveland Finance Ltd became
insolvent in December 2018 and consequently the land was sold twice by
auction, first to BEM Builders and Decorators Ltd on 20 July 2018 and later to
John Dean and Raymond Gill on 11 December 2018.

7.5 The Land Registry records available at pages Document C of Appendix 10
provides evidence that the land coloured in red, at the Green, was conveyed to
Huntingdonshire District Council on 15 August 1983 from Cleveland Finance Ltd.

7.6 Case Officer Comment: It is considered that the evidence provided by witness
questionnaires is consistent with the Application Land. The whole of
the Application land was owned by Cleveland Finance Ltd between 1972 and 1983.
After 1983 the Application Land was split in two between Cleveland Finance Ltd
and Huntingdonshire District Council. The origin of Cleveland Finance Ltd is not
known, although it is considered likely that they were closely associated with the
developers of the Poets and Painters Estate (Galliford Developments Ltd).
For a period of at least 20 years

7.7 136 user evidence forms were provided with the application. These show that the Application Land has been used extensively by the public since the mid-1960s at the earliest. The vast majority of the user evidence relates to the period after the estate was built in the early 1970s and continues up to the date of the application in October 2018.

7.8 Case Officer Comment: It is considered that the user evidence provided with the application clearly demonstrates that the Application Land has been extensively used by members of the locality from the early 1970s onwards. As the application was submitted in October 2018, the qualifying period over which use of the Application Land must be considered is 1998 to 2018 in line with section 15(2) of the 2006 Act.

A significant number of the inhabitants of any locality or of any neighbourhood within a locality

7.9 The Applicant specified that the application relates to the locality of the Eatons Electoral Division of Cambridgeshire County Council. A map depicting the relevant locality is attached at Appendix 5. This covers a large proportion of the town of St. Neots located to the west of the River Great Ouse.

7.10 In the case of Paddico Ltd v Kirklees Metropolitan Council [2011] EWHC 1606 (Ch) the judge concluded that a ‘locality’ means an administrative district or an area with legally significant boundaries.

7.11 The judgement of Sullivan J [para 71] R (Alfred McAlpine Homes) v Staffordshire County Council [2002] EWHC 76 (Admin) shows that the law is clear that the term ‘significant’ does not mean ‘a considerable or substantial number’. In this judgement, Sullivan J stated:

“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 use by the local community for informal recreation, rather than occasional use by individuals as trespassers”.

7.12 Case Officer Comments: The vast majority of the user evidence submitted with the application was supplied by residents located within the area of The Eatons Division of Cambridgeshire County Council or former residents of the locality. The exact population of The Eatons Division is not known although it is estimated to be approximately 12,500. It is considered that the 136 user evidence forms submitted with the application demonstrates a substantial level of public use throughout the qualifying period. It is considered that it is clear that the

1 https://cambridgeshireinsight.org.uk/
Application Land was in general use by the local community for informal recreation, rather than occasional use by individuals.

**Indulged in Lawful Sports and Pastimes**

7.13 The 136 user evidence forms submitted with the application provided evidence of use of the Application Land for many different types of activities such as dog walking, playing football, playing rounders, riding a bike and going for a walk.

7.14 **Case Officer Comment:** It is clear from the user evidence provided that the Application Land has been available and has been used by the public for a variety lawful sports and pastimes since the estate was built in the early 1970s.

**Use ‘as of right’ without force, secrecy or permission**

7.15 For an application for a Town or Village Green to succeed it is necessary that the use by the public has been ‘as of right’. For use to qualify as ‘as of right’ it must be without force, without secrecy and without permission.

7.16 The objector stated in their letter of 28 February 2019 that the application cannot be successful as it is claimed that the public’s use of the land has not been ‘as of right’ throughout the qualifying period (Appendix 6). This is based on the judgement of the Barkas v North Yorkshire County Council [2014] (‘Barkas’) case (Appendix 12) which provides guidance on the legal meaning of ‘as of right’ where use of land has been without permission. More specifically in the judgement, Neuberger LJ states:

> “it is, I think, helpful to explain that the legal meaning of the expression ‘as of right’ is, somewhat counterintuitively, almost the converse of ‘of right’ or ‘by right’. Thus, if a person uses privately owned land ‘of right’ or ‘by right’, the use will have been permitted by the landowner – hence the use is rightful. However, if the use of such land is ‘as of right’, it is without the permission of the landowner, and therefore is not ‘of right’ or ‘by right’, but is actually carried on as if it were by right – hence ‘as of right’. The significance of the little word ‘as’ is therefore crucial, and renders the expression ‘as of right’ effectively the antithesis of ‘of right’ or ‘by right’.”

Further at paragraph 27, Neuberger LJ goes on to say:

> “[...] third parties on the land either have the right to be there and to do what they are doing, or they do not. If they have a right in some shape or form (whether in private or public law), then they are permitted to be there, and if they have no right to be there, then they are trespassers”.

---

2 R (on the application of Barkas) v North Yorkshire County Council and another [2014] UKSC 31
7.17 The objector, in their letter of 28 February 2019, therefore considers that the public’s use of the Application Land has not been ‘as of right’. This is due to condition 3 of the planning permission of August 1972 (Appendices 7 & 8), which stated that the Application Land should be maintained as ‘open space’. It is considered by the objector that the public’s use of the Application Land therefore cannot have been as ‘trespassers’ as the planning condition and subsequent maintenance of the land provided them with a right to be there.

7.18 Case Officer Comment: It is clear from the user evidence submitted that the public’s use of the Application Land was not forcible or secretive. The vast majority of activities undertaken on the Application Land would have been highly visible from the public footways running through the land and the surrounding dwellings. Furthermore, it is clear from the user evidence that the public’s use of the Application Land was significant.

7.19 The follow-up investigation of CCC (Documents B and C of Appendix 10) has established that half of the Application Land has been owned privately and half by Huntingdonshire District Council during the 20 years leading up to the application (1998 – 2018 – the qualifying period). The Application Land has been maintained by various public authorities including Huntingdonshire District Council, Cambridgeshire County Council and St Neots Town Council during the qualifying period (Document K of Appendix 10).

7.20 Additionally the follow-up investigation established that approximately half of the Application Land has been recorded as highway maintainable at public expense since the creation of the Poets and Painters estate in the 1970s (see Documents D to H of Appendix 10). The advice of Counsel states that this provides a complication to establishing that use of the Application Land by the public had been “as of right”. This is because it raises the prospect that ‘use of this part of The Green for recreational activity which would otherwise sustain a claim to register a new green might nevertheless fail the test of use “as of right” by virtue of being a reasonable use of the highway and thus use “by right”’ (page 14 – Appendix 9).

7.21 Furthermore the advice of Counsel (Appendix 9) at paragraphs 32 - 35 states that the application is likely to “face real difficulties in establishing that use has been ‘as of right’ and that it is therefore unlikely to succeed (...) when it is finally evaluated and determined.” This is because of the planning condition of 1972 coupled with the legal principles established within the cases of Barkas [2014] (Appendix 12) and Naylor v Essex County Council [2014] ³ (‘Naylor’) (Appendix 13) and the significant part of the Application Land being recorded as highway maintainable at public expense.

³ R (Naylor) v Essex County Council [2014] EWHC 2560 (Admin)
8 Representations and Objections received during the advertising period

8.1 During the advertising of the application from 23 January 2019 to 6 March 2019 a total of 64 representations were received. 63 were supportive of the application and 1 was objecting.

8.2 In summary the representations received, which were in favour of the application, were either from current or former residents of the locality. These generally contained statements opposed to any development of the Application Land and general evidence of historic use of the Application Land for activities such as children playing.

8.3 The objector’s letter, dated 28 February 2019, raised two points concerning the application. The first stated that the CRA should reject the application as it was claimed that a trigger event had occurred under 15C(1) of the 2006 Act. This was claimed to be the granting of planning permission to develop the application land (reference F.109.72) in 1972 by the Huntingdon and Peterborough County Council for the erection of 170 houses – phase II Crosshall Road, Eaton Ford for Galliford Estates Limited (Appendices 7 and 8).

8.4 The second point stated that use of the Application Land cannot have been ‘as of right’ as it was pursuant to condition 3 of the 1972 planning permission which stated:

“The areas shown as open space on the submitted plans shall be turfed and trees/or shrubs shall be planted thereon before the dwellings are occupied in accordance with a scheme to be submitted to and approved by the Local Planning Authority and such areas, trees and/or shrubs shall be maintained to the satisfaction of that Authority”.

8.5 On 24 May 2019, the 64 representations were sent to the applicant along with the follow-up investigation carried out by CCC following the advice of Counsel, previously disclosed to the applicant in April 2019. On 27 June 2019, the applicant submitted his response to the representations to the CRA (Appendix 11). The applicant’s letter stated that the CRA should reject the objector’s request for the application to be rejected on the basis of the advice he received from a case officer at the Open Spaces Society and the advice obtained by the CRA from Counsel. Secondly the applicant stated that he believed the use of the Application Land to be ‘as of right’ as before the development in 1972, the land consisted of occasional cattle grazed meadow and members of the public routinely used the meadow for recreation without obtaining the consent of the landowner. The applicant also stated that there was no evidence that the planning condition referred to above was ever complied with by the owner of the land.
8.6 **Case Officer Comment:** It is clear from the number of supporting representations received that the Application Land is well-used and valued in the local community.

8.7 The CRA took advice of Counsel in April 2019 on the first point contained within the letter of the objector. In summary the advice of Counsel contained in paragraphs 16 – 26 of Appendix 9 states that it is his opinion that the application should not be rejected as a ‘trigger event’ under paragraph 1 of Schedule 1A had not occurred. More specifically, paragraph 22 outlines that a trigger event occurs when a planning application has been ‘publicised in accordance with the requirements of a development order’. Prior to the Town and Country Planning (General Development Procedure) Order 1995 there was no requirement to publicise planning applications generally unless they were certain designated types of development. The designated classes did not cover housing developments. Therefore in conclusion a trigger event had not occurred in this case as the objector states, because it was not possible for a development taking place in 1972 to have been ‘publicised in accordance with the requirements of a development order’.

8.8 The second point of the letter of the Objector concerned whether the use of the Application Land has been ‘as of right’. It has been established by the CCC investigation (Appendix 10) that the Application Land was subject to a planning condition from August 1972 which stated that the land should be maintained as open space to the satisfaction of the planning authority. The advice of Counsel at paragraph 27, expresses a view that the question of whether or not the planning condition is unenforceable or has not been enforced does not affect whether or not the public’s use of the Application Land has been ‘as of right’. Whether or not the condition has been enforced is irrelevant as it is clear that the Application Land has been available for use by local residents as a piece of amenity open space throughout the qualifying period.

8.9 Counsel’s advice goes on to state at paragraph 32 that the “application is likely to face real difficulties in establishing that use has been ‘as of right’ and therefore unlikely to succeed”. This is due to the legal principles established in **Barkas** and **Naylor** in 2014. **Barkas** concerned a field which was owned by Scarborough Borough Council who maintained the land as ‘recreation grounds’ pursuant to the Housing Act 1936 S80(1). The land has been extensively and openly used by local inhabitants for informal recreation for over 50 years. The Supreme Court rejected an appeal against the Court of Appeal’s decision to dismiss the application. Lord Neuberger in the judgment as paragraph 24 stated:

“where the owner of the land is a local, or other public, authority which has lawfully allocated the land for public use (…), it is impossible to see how, at least in the absence of unusual additional facts, it could be appropriate to infer that members of the public had been using the land “as of right”, simply because the authority has not objected to their using the land.”
It is considered that there are very strong parallels between the principle established in the judgement in Barkas and the section of the Application Land which has been owned by Huntingdonshire District Council since 1983. Notwithstanding condition 3 of the 1972 Planning Application, it is clear that Huntingdonshire District Council have managed the land as part of their statutory functions and have more than merely acquiesced in the public’s use of the land. Their management of the land as open space is demonstrated by a sign on the land to the rear of properties at Longfellows Place (Appendix 14). The sign states “ball games by persons over 10 years old not permitted – no golf or cricket practise – HDC”. It is unclear under what exact powers Huntingdonshire District Council manage this sign as it hasn’t been possible to obtain the deeds relating to the land. It is considered that the sign provides further evidence that the public’s use of the Application Land cannot have been ‘as of right’ as Huntingdonshire District Council exercise power over what activities they permit on the land.

8.10 Naylor concerned land in Walton-on-the-Naze which the district council did not own but had maintained as an informal publicly open space or recreational area near to the sea wall under powers vested in it by section 9 of the Open Spaces Act 1906. Essex County Council had made a determination to reject the application as the public’s use of the land had been “by right”. The County Council’s claim was reviewed at the High Court but dismissed. John Howell QC in his judgement at paragraph 39 stated:

“In my judgement, therefore, it makes no difference to the right which the public has to use the land that it is made available for public recreational use by a local authority by virtue of an arrangement it has with the landowner which does not give the authority itself any estate or legal interest in that land. While such an arrangement subsists, the landowner has permitted (or has at least authorised the local authority to permit) the public to use the relevant land for recreational purposes. The local authority is empowered to permit such use by virtue of the enactment under which it acquires its rights for that purposes is communicated to the public (if that is required) by the local authority making the land available for use for such recreational purposes. While such an arrangement subsists and the land is made available for use by the public for recreational purposes by the local authority pursuant to it, neither the landowner nor the authority could assert that a member of the public using it for such purposes was a trespasser. Members of the public would not be using it ‘as of right’; they would be using it ‘by right’ for a purpose for which they had been lawfully invited to use it. Use by members of the public would be ‘precario’ in the narrower sense of permission from the landowner (or from a person the landowner had authorised to give it) and ‘by right’ to the extent that that term may be wider.”

8.11 It is considered that there are strong parallels between the principle established in the judgement in Naylor and the section of the Application Land which is owned privately. This is because, whilst the land has never been owned by a local authority, it has been maintained as open space by a combination of Huntingdonshire District Council and St Neots Town Council most probably since
the completion of the development in the 1970s pursuant to condition 3 of the 1972 Planning Permission for the erection of 170 houses at Crosshall Road, Eaton Ford (reference F.109.72).

8.12 The applicant, in their letter of 27 June 2019, stated that he believed that the public’s use of the land had been ‘as of right’ for a considerable amount of time prior to the 1972 development. It is considered that under section 15(2) of the 2006 Act, it is not possible to consider any separate periods of use prior to the making of the application and therefore any use which pre-dates the Planning Application of 1972 is irrelevant. This is because section 15(2) of the 2006 Act states:

(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.

9 Comments – determination of Town or Village Green Applications

9.1 The matter of whether or not the Application Land should be registered as a Town or Village Green will be decided on the evidence available and is not dependent on the support or objection.

9.2 In Cambridgeshire, the specific statutory duties which the CRA must follow are outlined in The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 (‘The 2007 Regulations’). Section 6 of the 2007 Regulations states:

6.(1) Where an application is made under section 15(1) of the 2006 Act to register land as town or village green, as soon as possible after the date by which statements in objection to an application have been required to be submitted, the registration authority must proceed to the further consideration of the application, and the consideration of statements (if any) in objection to that application, in accordance with the following provisions of this regulation.

   (2) The registration authority-
       (a) must consider every written statement in objection to an application which it receives before the date on which it proceeds to the further consideration of the application under paragraph (1); and
       (b) may consider any such statement which it receives on or after that date and before the authority finally disposes of the application.

   (3) The registration authority must send the applicant a copy of every statement which it is required under paragraph (2) to consider, and of every statement which it is permitted to consider and intends to consider.
(4) The registration authority must not reject the application without giving the applicant a reasonable opportunity of dealing with-
(a) The matters contained in any statement of which copies are sent to him under paragraph (3); and
(b) Any other matter in relation to the application which appears to the authority to afford possible grounds for rejecting the application.

9.3 It is therefore open to CCC to determine the application without a non-statutory public inquiry as long as the applicant has been provided with a reasonable opportunity of dealing with matters contained in any statements of objection or any other matter in relation to the application which appears to afford possible grounds for rejecting the application. It is considered that the CRA has complied with its statutory duties outlined above as the applicant was sent a copy of all the representations, including the objection, the advice of Counsel and further information obtained by the CRA on 24 May 2019. The applicant provided a response to these, including specific comments on the issues raised in the objection.

10 Conclusion

10.1 It is considered that the evidence outlined above demonstrates that use of the Application Land as amenity open space by the public has been overt and significant since at least the 1970s when the Poets and Painters estate was built. It cannot, however, be considered to be sufficient to meet the test contained in section 15 of the 2006 Act. This is because it is considered that the evidence demonstrates that, on the balance of probabilities, during the qualifying period from 1998 to 2018, the public made use of the land pursuant to the permission of the landowners. More specifically the Application Land was held, and has since been maintained, as open space by public authorities in accordance with condition 3 of the 1972 Planning Permission for Phase 2 of Crosshall Road, Eaton Ford planning permission. The application therefore fails the test of use being ‘as of right’ by virtue of the principles outlined in Barkas and Naylor.

10.2 Additionally it has been established in the investigation that a significant proportion of the Application Land is recorded as highway maintainable at public expense. This causes an additional difficulty in establishing that use of this part of the Application Land had been ‘as of right’. This is because it may be considered that use of the land by the public was by virtue of legitimate use of a public highway and therefore not ‘as of right’. The public’s rights are currently protected under the statutory highway rights, and the user evidence provided with this application clearly indicates that the land is required for public use. Although it is possible that an application could be made to stop up the public highway, such an application would be highly likely to attract objections, and therefore could prove difficult.
11 Recommendation

11.1 It is recommended that the application is rejected as it is considered that use of the Application Land has not been ‘as of right’ during the qualifying period.
## Appendix

<table>
<thead>
<tr>
<th>No.</th>
<th>Description</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Cambridgeshire County Council - Place and Economy Scheme of Authorisation to Officers – updated 11 June 2019</td>
<td>1 - 10</td>
</tr>
<tr>
<td>2</td>
<td>Cambridgeshire County Council Plan of Application Land</td>
<td>11</td>
</tr>
<tr>
<td>3</td>
<td>Photographs of Application Land taken 8 August 2019</td>
<td>12 - 15</td>
</tr>
<tr>
<td>4</td>
<td>Application under section 15(2) of the 2006 Act received 24 October 2019</td>
<td>16 - 32</td>
</tr>
<tr>
<td>5</td>
<td>Plan of the Eatons Electoral Division of Cambridgeshire County Council</td>
<td>33</td>
</tr>
<tr>
<td>6</td>
<td>Objection of Ashfords – 28 February 2019</td>
<td>34 - 36</td>
</tr>
<tr>
<td>8</td>
<td>Submitted plan - Permission of Huntingdon and Peterborough County Council - F.109.72 – 10 August 1972</td>
<td>39</td>
</tr>
<tr>
<td>9</td>
<td>Advice of Counsel - Alan Evans, Kings Chambers – 8 April 2019</td>
<td>40 - 55</td>
</tr>
<tr>
<td>10</td>
<td>Cambridgeshire County Council Investigation and appendix following advice of Alan Evans – May 2019</td>
<td>56 – 117</td>
</tr>
<tr>
<td></td>
<td>Document A – CCC Landownership Plan</td>
<td>59</td>
</tr>
<tr>
<td></td>
<td>Document B – Land Registry Records HN5038</td>
<td>60 – 73</td>
</tr>
<tr>
<td></td>
<td>Document C – Land Registry Records CB52862</td>
<td>74 – 78</td>
</tr>
<tr>
<td></td>
<td>Document D – CCC Public Highway Plan</td>
<td>79</td>
</tr>
<tr>
<td></td>
<td>Document E – Section 40 of the Highways Act 1959 Adoption Agreement made between the Cleveland Finance Limited and the Council of the Urban District of St Neots - 7 February 1973</td>
<td>80 – 95</td>
</tr>
<tr>
<td></td>
<td>Document F – Section 40 of the Highways Act 1959 Adoption Agreement made between the Cleveland Finance Limited and the Council of the Urban District of St Neots - 7 February 1973 – Coloured up working plan</td>
<td>96 – 99</td>
</tr>
<tr>
<td></td>
<td>Document G – Section 40 of the Highways Act 1959 Adoption Agreement made between the Cleveland Finance Limited and the Council of the Urban District of St Neots - 23 May 1973</td>
<td>100 – 109</td>
</tr>
<tr>
<td></td>
<td>Document H – Plan showing routes maintained at public expense by St Neots Urban District Council following the Local Government Act 1972</td>
<td>110</td>
</tr>
<tr>
<td></td>
<td>Document J – Layout for Planning Permission F.109.72</td>
<td>113</td>
</tr>
<tr>
<td></td>
<td>Document K – HDC Verge Maintenance Information</td>
<td>114 – 115</td>
</tr>
<tr>
<td></td>
<td>Document L – CCC Verge Maintenance Plan</td>
<td>116</td>
</tr>
<tr>
<td></td>
<td>Document M - Document concerning date of adoption inspections for part of Eaton Meadows Estate, Eaton Ford</td>
<td>117</td>
</tr>
<tr>
<td>---</td>
<td>-------------------------------------------------------------------------------------------------</td>
<td>-----</td>
</tr>
<tr>
<td><strong>11</strong></td>
<td>Applicant’s response to representations, advice of counsel &amp; follow up investigation – 27 June 2019</td>
<td>118 - 120</td>
</tr>
<tr>
<td><strong>12</strong></td>
<td>R (on the application of Barkas) v North Yorkshire County Council and another [2014] UKSC 31</td>
<td>121 – 149</td>
</tr>
<tr>
<td><strong>13</strong></td>
<td>R (Naylor) v Essex County Council [2014] EWHC 2560 (Admin)</td>
<td>150 – 171</td>
</tr>
<tr>
<td><strong>14</strong></td>
<td>Photograph and plan – HDC Ball Games sign</td>
<td>172 - 173</td>
</tr>
</tbody>
</table>