



Date of Meeting: 22 November 2021

Lead Member: Cllr Dave Bolwell, Cllr Kelvin Clayton and Cllr Sarah Williams – Dorset Council members for Bridport

Lead Officer: Matthew Piles, Corporate Director for Economic Growth and Infrastructure

Executive Summary: This report considers an application to amend the Register of Town and Village Greens by the addition of an area of land at Happy Island, Bridport as shown on Drawing 15/05 attached as Appendix 1.

Equalities Impact Assessment: An Equalities Impact Assessment is not a material consideration in considering this application

Use of Evidence: The applicant submitted user evidence forms from users of the claimed green in support of the application. The landowner has submitted evidence in objection. Notices explaining the application were erected on site. Any relevant evidence provided has been discussed in this report.

Budget: A decision whether or not to accept the application to register the identified area as town or village green may result in a challenge through the Courts by way of judicial review

Risk Assessment: As the subject matter of this report is the determination of a Town or Village Green application the Council's approved Risk Assessment Methodology has not been applied.

Other Implications: None

Recommendations:

That:

The application VG1/2014 to register land at Happy Island, Bridport as a Town or Village Green is refused.

Reasons for Recommendation:

The evidence presented to the Council demonstrates that application VG1/2014 does not meet the criteria set out in the Commons Act 2006 and should therefore be refused.

Appendices:

1. Drawing 15/05 – Area of land which is the subject of the application
2. Drawing 15/06 – Showing addresses of users
3. User evidence table and matrix showing activities in which users participated.
4. Charts to show periods and level of use
5. Drawing 21/VGAP1/2014 – Location plan
6. Photograph of notice on the Land

Background Papers:

The file of the Executive Director, Place (ref. VG1/2014).

Officer Contact

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## 1 Background

- 1.1 Dorset Council (“the Council”) is the Commons Registration Authority for the purpose of exercising functions under the Commons Act 2006. An application has been made on behalf of ‘King Charles Estate Residents Association’ for the registration of land at Happy Island, Bridport as a town or village green.

## 2 Description of the land

- 2.1 The area of land, which is the subject of the application (“the Land”), is shown in red on Drawing 15/05 attached as Appendix 1. It consists of approximately 2.3 hectares of land, which forms an open grassy area known as Happy Island Field on the King Charles Estate in the parish of Bradpole. Bounded to the south west by Happy Island Way, to the south east by Jessopp Avenue, to the north west by Footpath 8 adjacent the River Asker and to the north east by open fields.
- 2.2 The Land consists of one section, crossed from north west to south east by Footpath 9, Bradpole.

## 3 Law

### Commons Act 2006

- 3.1 Under Section 15(1) of the Commons Act 2006 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 (according to whether the use continued at the date of the application or not).
- 3.2 This application was made under Section 15(2) which requires that:
- (a) a significant number of the inhabitants of any locality, or of any neighbourhood in 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.

### The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007

- 3.3 These Regulations set out the procedure to be followed by the Council on receipt of an application:
- (a) The Regulations require that the application is publicised, giving at least 6 weeks for any objections to be made. Following the end of the objection period, the Council is required to proceed to the further consideration of the application as soon as possible and the consideration of statements (if any) objecting to that application.
  - (b) The Regulations also require that the Council:

- (i) 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; and
  - (ii) May consider any such statement which it receives on or after that date before the authority finally disposes of the application.
- (c) The Council must not reject the application without giving the applicant a reasonable opportunity of dealing with –
- (i) The matters contained in any statement of which copies are sent to him...; and
  - (ii) Any other matter in relation to the application which appears to the authority to afford possible grounds for rejecting the application.

### Human Rights Act 1998

3.4 The Human Rights Act 1998 incorporates into UK law certain provisions of the European Convention on Human Rights. Under Section 6(1) of the Act, it is unlawful for a public authority to act in a way which is incompatible with a convention right. A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by Section 6(1) and that he is (or would be) a victim of the unlawful act, may bring proceedings against the authority under the Act in the appropriate court or tribunal, or may rely on the convention right or rights concerned in any legal proceedings.

- (a) Article 8 of the European Convention, the Right to Respect for Private and Family Life provides that:
- (i) Everyone has the right to respect for his private and family life, his home and his correspondence.
  - (ii) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

- (b) Article 1 of the First Protocol provides that:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

## 4 **General Issues**

- 4.1 The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 set out the procedures to be followed in respect of such applications. In accordance with those Regulations, advertisements on site and in the local press invited objections to the application within the period specified in the Regulations: in this case the objection period expired on 8 May 2015. Objections were received from a local resident and the Farmers Club Charitable Trust as landowner. The Applicant has made comments on those objections.
- 4.2 In its capacity as Registration Authority, the Council is required to adjudicate on the application and to register the application land if there are sound reasons for doing so or, if not, to reject the application. It is for the applicant to prove his or her case and there is no requirement for the Registration Authority to instigate its own research into the application. Nonetheless, there may be disputes of fact and/or issues of law to be resolved or considered before a decision can properly be made. Further, the Council has discretion to deal with the application on the basis of the evidence available to it and not necessarily solely on the basis applied for.
- 4.3 The decision to accept or reject an application rests with the Council alone and can only be challenged through the Courts by way of judicial review. It is therefore particularly important that the Registration Authority's scrutiny of the application and any objections is thorough and that this Committee is well informed and advised before the application is finally determined.

## 5 **The application**

- 5.1 The application was initially received on 22 February 2013. The applicant was given opportunity to make corrections and a revised application was submitted on 4 June 2013. The application was formally acknowledged by the Council on 17 December 2014. The application states that the Land should be registered as a town or village green because it has been used "...for many types of lawful leisure activities over a period of many years by local residents...well in excess of the minimum period of 20 years...without any objection by the Land Owner(s) or Occupiers...". The application is "duly made" for the purposes of the Commons Act 2006.
- 5.2 The application was accompanied by a map showing Happy Island Field, an aerial photograph of the field and the King Charles Estate and 14 forms of evidence detailing use of the Land by 16 witnesses. Drawing 15/06 illustrates the addresses of users who completed evidence forms and statements in relation to the Land and is attached as Appendix 2.

5.3 The user evidence is summarised together with a matrix showing the activities in which people participated at Appendix 3 and charts showing periods and level of use from Appendix 4. Typical uses described by witnesses are walking, picking blackberries, picnicking, sledging and kite flying most of which are certainly lawful sports, pastimes and activities capable of supporting registration of land as a town or village green; there is debate about whether picking berries is a lawful pastime.

## 6 **Objections to the application**

6.1 An objection was received from a resident of Bradpole on 17 April 2015. He states that:

- (a) The field may have been previously regarded as a recreational area, but this is no longer the case since the island in the river changed.
- (b) The top eastern portion of the field was never regarded as a public recreational area.
- (c) If the top eastern part of the field is developed, the landowner may allow the bottom western portion to go into local government ownership as a public area.

6.2 Nantes Solicitors Ltd made a submission objecting to the application on behalf of the owner of the Land, The Farmers Club Charitable Trust, on 7 May 2015. They raise a series of points:

- (a) The quantity of user evidence is insufficient – significant user is not made out for the locality
- (b) There is not evidence of 20 years use up to the date of the application in 2014.
- (c) The user evidence is predominantly of linear user
- (d) Use for lawful sports and pastimes is wholly anecdotal. No photographic evidence of qualifying user has been produced.
- (e) Use of the Land was not raised when the Parish objected to the development of the Land.
- (f) Since at least 17 April 1997 and continuing, the land has been in agricultural use.
- (g) The Parish of Bradpole has been identified as the locality. There is no evidence suggestive of user Parish wide.
- (h) The pro forma user evidence forms do not provide a proper basis for this application.

- (i) The user evidence dates to around February 2013, whereas the application was made on 17 December 2014. Therefore, user to the date of application is not evidenced.
- (j) The Farmers Club became owners of the Land in approximately 1996. Since that time the Land has been let to various individuals for agricultural use which included grazing and growing crops. The agricultural activities would have interrupted any public use of the Land save for the use of the public footpath.
- (k) In 2008 signs were erected on site stating "PRIVATE LAND This land is privately owned by the Farmers Club Charitable Trust. There is no public access to this land other than along the route of the Public Footpaths. For any enquiries please contact the owners' agents: Faulkners Tel: 01923 264264". They were subsequently torn down but were replaced and some still remain. (See Appendix 6.)

6.3 The objection is accompanied by paperwork relating to Footpath 9 and a deposit under Section 31(6) of the Highways Act 1980, photographs of the Land and a copy of the West Dorset, Weymouth and Portland Draft Local Plan. The Land was initially included in the Draft Local Plan but was subsequently removed.

## **7 Response to objections (dated June 2015)**

7.1 The applicants' response to the objection raised by the local resident is summarised below:

- (a) The objection has no substance in law and is merely opinion.
- (b) The river is not part of the application.
- (c) The field has not been included in the West Dorset District Council Development Plan and therefore cannot be developed.
- (d) No evidence has been provided to support the objection and it should therefore be dismissed.

7.2 The applicants' response to the objections raised by the landowner is summarised below:

- (a) The application was made on 4 June 2013 which should be used a reference point. The letter from Dorset County Council confirming receipt was 17 December 2014.
- (b) There is no requirement to produce a proportional number of evidence forms and witness statements are not required.
- (c) The dates the evidence forms were signed are the relevant ones showing that the land was used in the preceding 20 years.
- (d) Evidence does not have to be photographic.

- (e) There has been no 'Trigger Event'. Objections to the land being included in the development plan had to be based on planning considerations.
- (f) They object to the inclusion of one of the photographs as it is of a private property and the owner did not give consent to its inclusion.
- (g) The inclusion of the draft Local Plan is irrelevant and out of date. The site is outside the development boundary and is included in an Area of Outstanding Natural Beauty.

## 8 Issues to be considered

8.1 The objector has raised a number of points which need to be addressed. The main issue is whether the test in section 15(2) of the Commons Act set out in paragraph 3.2 has been satisfied: that the Land has been used by a significant number of inhabitants of the locality (or neighbourhood within the locality) as of right for sports and pastimes for at least 20 years. The constituent parts of the test are considered in more detail below.

### Locality or neighbourhood within a locality

- 8.2 The locality or neighbourhood within a locality should be identified by reference to a recognised administrative area or an obvious geographical characteristic. For example, a particular parish or a housing estate.
- (a) The applicant has identified the locality in respect of which the application is made as the Parish of Bradpole. A location plan of Bradpole is attached at Appendix 5.
  - (b) Objectors consider that "it appears likely that "Bradpole Parish" will represent an administrative area". However, they also state that no argument is put forward for there being a "neighbourhood within a locality" and that this is fatal to the application.
  - (c) Officers consider that the applicant has adequately identified a locality. The application form requires that a locality or neighbourhood within a locality is identified. It is not a requirement to identify both, one is sufficient.

### Significant number of inhabitants

- 8.3 A significant number does not need to be a considerable or substantial number. The number of people using the Land has to be sufficient to signify that the Land is in general use by the local community; in this case by those within the identified locality.
- (a) The objectors have determined that according to the census records for 2011, the population of Bradpole Parish then was 2,339. The 14 user evidence forms submitted is not even close to a significant number of the Parish and this too is fatal to the application.

- (b) They also state that the user evidence is from a much narrower geographic area than the locality claimed and is limited to a few roads near the application Land.
- (c) Officers consider that the evidence of use from 16 people is not sufficient to demonstrate that the Land is in general use by the local community. Case law suggests “one in two hundred would not be significant”, which is a similar proportion to the evidence of use under consideration here.

#### Use as of right

- 8.4 Use is as of right if it is without force, without secrecy and without permission.
- (a) Access to the land must be free. Use by force could be by breaking down fences, climbing over gates or by ignoring effectively worded signs prohibiting access.
  - (b) The objectors have provided written and photographic evidence that notices were erected on site in 2008 stating “PRIVATE LAND This land is privately owned by the Farmers Club Charitable Trust. There is no public access to this land other than along the route of the Public Footpaths. For any enquiries please contact the owners’ agents: Faulkners Tel: 01923 264264” which demonstrate that use of the Land by the public was effectively by force. Seven of the witnesses have mentioned in their forms that they saw signs on site in recent years.
  - (c) Officers consider therefore that the use evidenced in support of the application indicates that use was not as of right.
  - (d) A deposit was made by the landowners in 2001 under Section 31(6) of the Highways Act 1980 demonstrating that they acknowledge the presence of the existing public right of way across the Land, and no other ways over the land have been dedicated as highways. This has no effect on the use of the Land for the purposes of accruing town or village green rights.

#### Lawful sports and pastimes

- 8.5 The use evidenced in support of the application indicates that the activities qualify as lawful sports and pastimes. One objector states that use of the Land for lawful sports and pastimes is “wholly anecdotal” but concedes that dog walking is a qualifying activity and is the predominant activity alleged by the witnesses.

#### For a period of 20 years

- 8.6 The test for a continuous period of use over 20 years appears to be satisfied on the basis of the applicant’s evidence.

### Use continued at the date of application

- 8.7 The user evidence forms were completed in January and February 2013 and the application was first received on 22 February 2013. In accordance with the Regulations, the applicant was given the opportunity to make corrections and an amended version was received on 4 June 2013. The Council acknowledged receipt on 17 December 2014. Case law has held that corrections have retrospective effect, therefore the official date of the application is 22 February 2013 and the evidence indicates that use was continuing.

### Trigger Event

- 8.8 One of the objectors raised the issue of the Draft West Dorset, Weymouth and Portland Local Plan and the potential effect on the Land. The Draft Local Plan was published for consultation in March 2012 and initially the Land was put forward to be considered as an “alternative site” for housing development but following a consultation process was removed from the Draft Plan later in 2012. At the time of the application for the Green, the Land was not included in the Draft Local Plan and therefore no trigger event was in effect.
- 8.9 The final Local Plan was adopted in 2015. The application Land is not included within any area allocated for residential development or employment uses.

## **9 Discussion**

- 9.1 There are three main options available to the Committee:

- To accept the application;
- To refuse the application;
- To defer a decision pending a public inquiry.

- 9.2 Conflicts in personal evidence should be tested at a public inquiry where witnesses may attend to give evidence and be available for cross-examination. The Committee is not in a position to hear evidence in this way. This will ensure that a decision is made in the knowledge that the evidence has been fully tested and both the applicant and the objector have had the opportunity of exploring the evidence in public.

- 9.3 If a public inquiry is held, the Inspector will hear all of the evidence from the applicant and objector and prepare a report setting out his or her conclusions on the evidence and whether the test for registration is satisfied. The Inspector’s report will recommend to the Committee how the application should be determined. The ultimate decision remains with the Committee and so a further report would be made to the Committee following receipt of the Inspector’s recommendation.

- 9.4 As discussed in section 8 above, there are two instances where the evidence does not meet the legal tests required for the successful registration of a town or village green. It is considered that there is insufficient evidence of use to demonstrate that a significant number of inhabitants have used the Land. Also, the landowner has taken action by putting up effective signs in previous years which means that use of the Land was by right not as of right. Several of the witnesses of use state that they saw the signs and so officers do not consider that there is a conflict of evidence on this point.
- 9.5 As a result, officers do not consider that there are conflicts of evidence which need to be resolved at a public inquiry before the Committee is in a position to reach a decision.

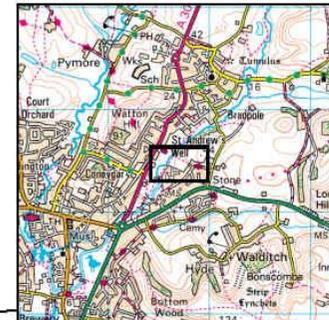
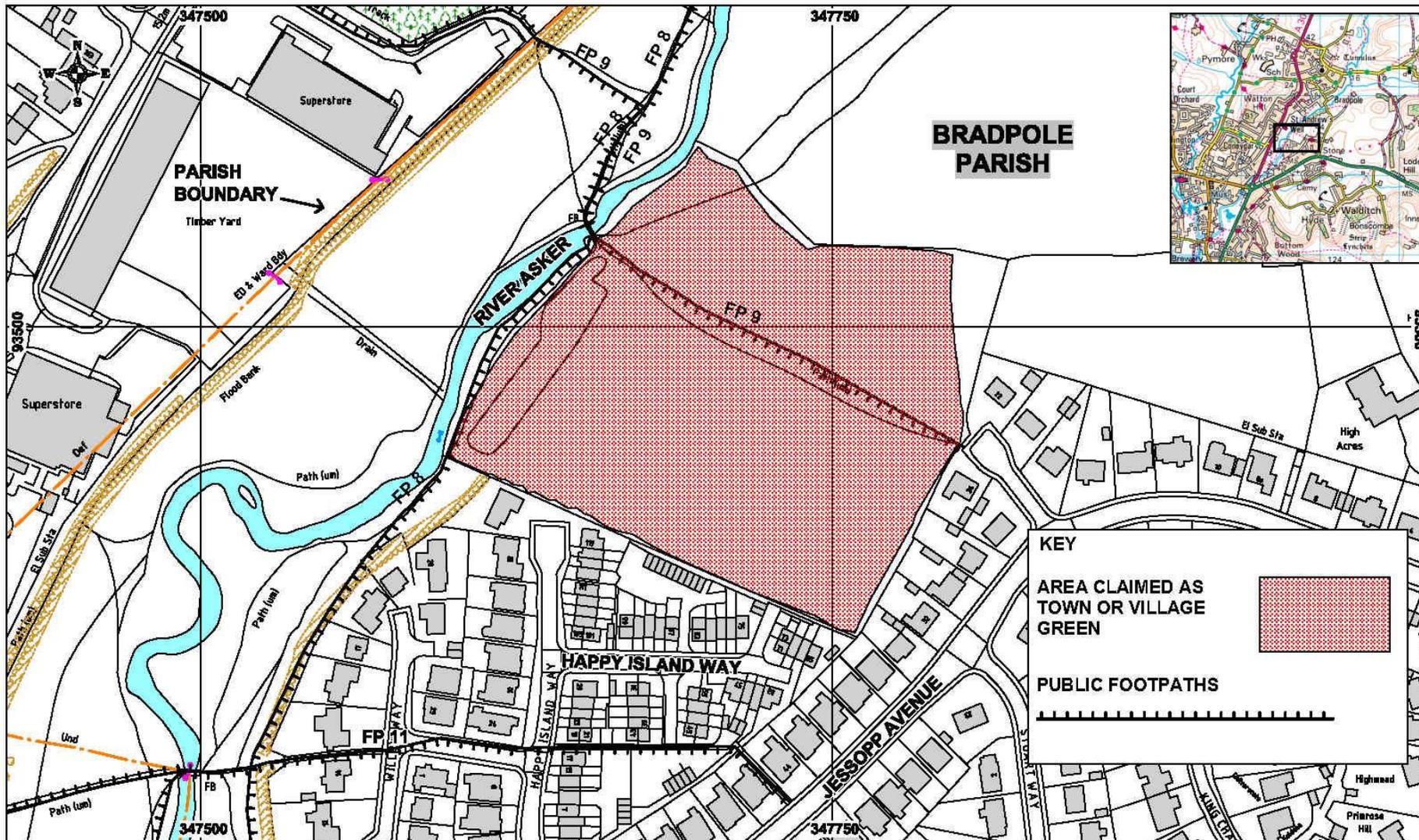
## 10 **Conclusion**

- 10.1 The evidence indicates that signs erected on the Land by the landowner in 2008 demonstrate that use of the Land was not as of right. It is also considered that the evidence of use of the Land does not represent a significant number of inhabitants. As such, the legal tests for the registration of a new town or village green are not met and it is therefore recommended that the application is refused.

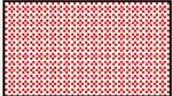
**Matthew Piles**

Corporate Director for Economic Growth and Infrastructure

**November 2021**



**KEY**

**AREA CLAIMED AS TOWN OR VILLAGE GREEN** 

**PUBLIC FOOTPATHS** 

**SECTION 15, COMMONS ACT 2006**

APPLICATION FOR THE REGISTRATION OF LAND AS A TOWN OR VILLAGE GREEN AT HAPPY ISLAND/ KING CHARLES ESTATE, BRIDPORT (BRADPOLE PARISH)

**THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS**

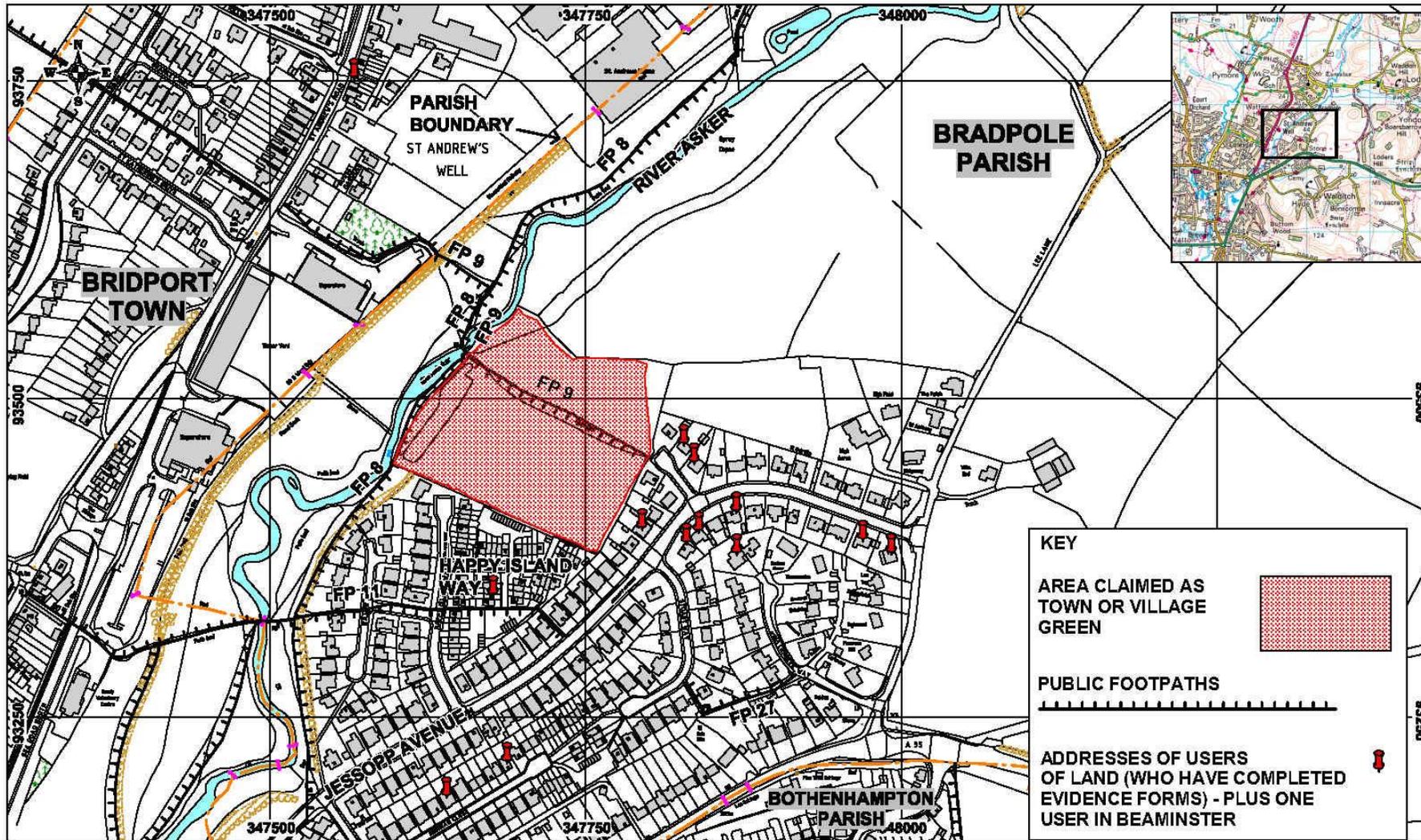
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 Date: 14/01/2015  
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 Cent X: 347706  
 Cent Y: 93462

GEOGRAPHICAL INFORMATION SYSTEMS



**Dorset County Council**

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**SECTION 15, COMMONS ACT 2006**

APPLICATION FOR THE REGISTRATION OF LAND AS A TOWN OR VILLAGE GREEN AT HAPPY ISLAND/ KING CHARLES ESTATE, BRIDPORT (BRADPOLE PARISH) - LOCATION PLAN OF USERS

**THIS MAP IS NOT DEFINITIVE AND HAS NO LEGAL STATUS**

Ref: 15/06

Date: 15/01/2015

Scale 1:4000

Drawn By: AP

Cent X: 347857

Cent Y: 93481

GEOGRAPHICAL INFORMATION SYSTEMS



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**APPLICATION FOR THE REGISTRATION OF LAND AS A TOWN OR VILLAGE GREEN  
– HAPPY ISLAND, BRIDPORT.**

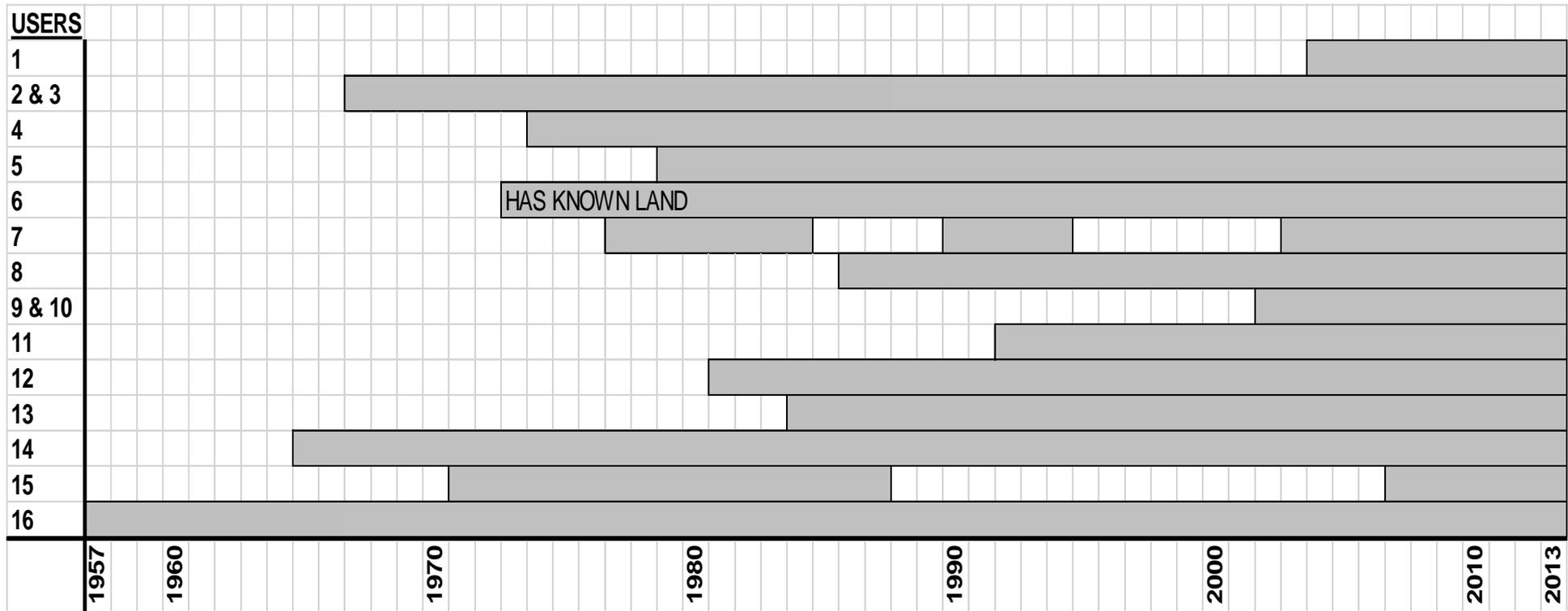
**Table of user evidence – Forms completed in 2013**

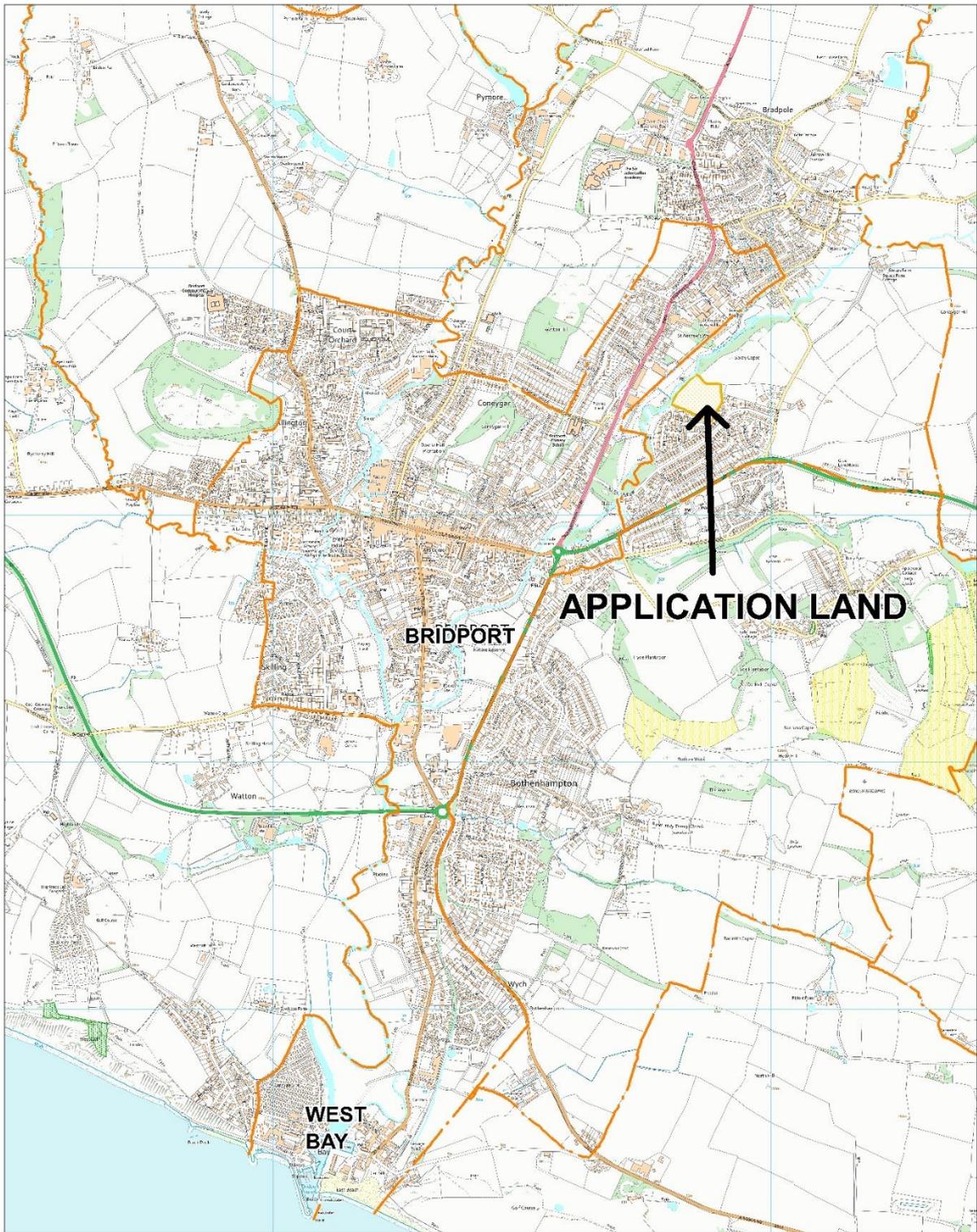
<b>USERS</b>	<b>DATES OF USE</b>	<b>DETAILS OF USE</b>
1. (Applicant)	2004 – 2013	Land used quarterly on average to use the footpath, bird watch, fly kites, play football and pick fruit. Other activities include sledging in winter snow. Notice to keep to paths erected in recent years.
2. & 3.	1967 – 2013	Gained access to land for many years over a stile. Land used two or three times a day walking to and from work.
4.	1974 – present	Land used twice daily to walk to local shops and to walk dogs. Family uses the land for cross country and charity runs. Sledging also takes place there.
5.	1979 – 2013	Land used between 2-3 times a week and twice a month for walking and recreational use. Took part in general family games.
6.	Has known the land from 1973 – 2013	In 1970s and early 1980s cattle were grazed on the land. He used land for walking. Also used to exercise dog 1972-1976 and for his children to play 1973 – 1980. Notice present regarding footpath.
7.	1977 – 1984 1990 - 1994 2003 – 2013	Land used almost daily for walking, dog walking and bird watching. Also on nature rambles with children, blackberry picking, children's games, flying kites, sledging in snow and model aircraft. Notices state 'Private Land Access to Public Footpaths Only'.
8.	1986 – 2013	Access from road. Land used daily for social activities and dog walking. Land is also used by a running club. Schools use land for nature study and field studies. Seasonal activity – sledging also takes place on the land. Notice and fencing used to prevent / discourage use.
9. & 10.	2002 – 2013	Land used every day for dog walking. There are well used footpaths across land in addition to the official footpath.

USERS	DATES OF USE	DETAILS OF USE
11.	1992 – Present (form completed in 2013)	“A welcome green, breathing space to all on the estate, fine views.” Land used to get to supermarket, to exercise dogs and to enjoy a walk in only local green space. Used more often in summer than winter as sometimes looked after other people’s dogs every day. There are many dogs on the estate, all of which are exercised on this land. Picnics in summer. Motor cyclists club rarely used the land. In recent years, only since the Farmers Trust took it over, “it has been made more explicit that we keep to the footpaths”. The owners gave him permission to go onto the land, latterly the Famers’ Trust.
12.	1981 – 2013	Land used 4-5 days a week for exercise, walking dog, enjoying the view and flying kites. Now uses land with grandchildren to watch birds and play in the snow. Seasonal activities take place here such as sledging and building snowmen. Spoke to other dog walkers whilst using land. When the Farmers Trust acquired the land they put up a notice saying the right of way was confined to the public footpath and put a gate near the bridge. Prior to that there was no restriction on use. Must have been using land by tractor drivers. Other paths on land in addition to public footpath.
13.	1984 – 2013	Used land quite often walking for pleasure. Has copies of postcards showing evidence of use of the land. Has been told by one of their members of the Postcard Club that the field has been the same for over 70 years.
14.	1965 – 2013	Land used regularly for dog walking and for going to the shops. Also used land for sledging and general recreation. Notice present.
15.	1971 – 1987 2007 - 2013	Land used several times a week for dog walking. Also used taking children/ grand children to play in river at Happy Island. Stated he was given permission to go onto the land. Also says that if owner/occupier saw him using it nothing was said by anyone.
16.	1957 to date (form completed in 2013)	Used land weekly for recreational walks. Cub and Scout activities took place here such as picnics, barbeques and fishing.

ACTIVITY	USERS															
	1.	2. & 3.	4.	5.	6.	7.	8.	9. & 10.	11.	12.	13.	14.	15.	16.	TOTAL	
CHILDREN PLAYING	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	16
ROUNDERS		✓					✓					✓				4
FISHING		✓	✓						✓					✓		5
DRAWING AND PAINTING		✓	✓			✓			✓			✓				6
DOG WALKING	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	16
TEAM GAMES		✓	✓				✓					✓				5
PICKING BLACKBERRIES	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	16
COMMUNITY CELEBRATIONS																0
FETES																0
FOOTBALL	✓	✓		✓		✓	✓		✓		✓	✓				9
CRICKET							✓					✓				2
BIRD WATCHING	✓	✓	✓		✓	✓	✓		✓	✓	✓	✓		✓	✓	13
PICNICKING		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓			✓	14
KITE FLYING	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓				12
PEOPLE WALKING	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	16
BONFIRE PARTIES																0
BICYCLE RIDING	✓					✓	✓					✓				4
CAROL SINGING																0
OTHER	Picking sloes											Picking sloes & hazelnuts, golf practice				2

Chart showing periods of use





**Location Plan - Bradpole**

**Ref:**  
21/VGAP1/2014  
**Date:** 17/09/2021  
**Scale:** 1:20000  
**Drawn By:**  
**Cent X:** 346874  
**Cent Y:** 92577



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