

North Yorkshire County Council

Planning and Regulatory Functions Sub-Committee

12 October 2018

Land between Westway and Ryefield Road,
Eastfield, Scarborough

Application to Register Land as a Town or Village Green

Report of the Corporate Director Business and Environmental Services

1.0 Purpose of Report

- 1.1 To report on an application (“the Application”) for the registration of two areas of land at Eastfield, Scarborough identified on the plan at **Appendix 1** (“the Application Site”) as a Town or Village Green.

2.0 Legal Criteria

- 2.1 Under the provisions of the Commons Act 2006 (“the Act”) the County Council is a Commons Registration Authority and so responsible for maintaining the Register of Town and Village Greens for North Yorkshire.
- 2.2 Section 15(1) of the Act sets out that:
Any person may apply to the Commons Registration Authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies
- 2.3 Section 15(2) of the Act provides for land to be registered as a town or village green where it is shown that:-
(a) *a significant number of the inhabitants of a 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*
- 2.4 A Commons Registration Authority needs to be satisfied on the balance of probabilities that all the elements of section 15(2) have been demonstrated to have been met by an application relying on that provision for it to be approved. The onus of proof rests with an applicant.

3.0 Application Site

- 3.1 The Application Site is shown hatched on the plan at **Appendix 1**.
- 3.2 The Application Site is two pieces of irregular shaped land which fall between Westway and Ryefield Road, they are both areas of grassland. Both pieces of land are separated by a footpath leading from Westway to Ryefield Road. The footpath is not publically maintainable. The overall area of the two parcels of land comprising the site is approximately 0.33 hectares.

4.0 Application

- 4.1 The Application submitted by Eastfield Parish Council (“the Applicant”) was received by the County Council on 1 November 2010 and was accepted as “duly made” on 15 December 2010 after it had used the opportunity to take corrective action by making minor amendments to the application. This is something that the relevant Regulations allow. The Application relies on the criteria contained in section 15(2) of the Act as having been met.
- 4.2 Submitted with the Application were 12 letters of support by Eastfield residents giving reasons why they feel the Application should be upheld.
- 4.3 A full copy of the Application comprises **Appendix 2**.
- 4.4 Your officers regret the delay there has been seeking a determination of this application which has been caused in part by waiting for court decisions and by staff changes and other administrative reorganisation at the County Council.

5.0 Objections

- 5.1 The objection from Scarborough Borough Council (SBC) relies largely on the legal point that use of the Application Site has been “by right” and not “as of right” and so the test set out in section 15(2)(a) has not been met as any use relied on to accord with that provision must have been a use “as of right”.
- 5.2 SBC’s case is that the public already had a right to use the Application Site and so any use which took place was “by right”. The Application Site, which forms part of the Eastfield housing estate, is currently maintained by the Borough Council as open space and that the Application Site is surrounded by what was, originally housing owned by the Borough Council. The Borough Council purchased the Application Site as part of a larger parcel of land under its Housing Act powers and in exercise of those powers it was permitted to provide open space.
- 5.3 Scarborough Borough Council no longer owns the housing and whilst some of the properties have been sold into private ownership the remainder of the properties were transferred to a registered provider of social housing on 15 December 2003.
- 5.4 Although the properties on the estate have been sold off Scarborough Borough Council has retained ownership of the Application Site.
- 5.5 The County Council followed due procedure by offering the Applicant the opportunity to comment on the objections.
- 5.6 The Applicant pointed out that previous applications by it to register similar land Town or Village Green (TVG) were successful with no objection lodged against them and that the application which is the subject of this report is no different.
- 5.7 Full copies of the representations received from both parties are contained in the background documents.

6.0 Assessment

- 6.1 The decision made by the Supreme Court in the case of R(on the application of Barkas) v North Yorkshire County Council (2014) UKSC 31 is key in determining this application.

- 6.2 In line with Commons Registration Authorities across the country the County Council put on hold decisions on TVG applications affecting publicly owned land pending a decision by the courts of the Barkas case. It proceeded to the highest court in the land.
- 6.3 The Supreme Court determined that where land is used by the public in exercise of a statutory right to do so then that use is “by right”. Lord Neuberger described such use to be the antithesis of a use “as of right”.
- 6.4 In this case the land is owned by Scarborough Borough Council and must have been acquired in exercise of a statutory power. Unfortunately the Borough Council has been unable to trace documentation recording its purchase of the land but it is fair and appropriate to adopt a legal presumption that it will have been purchased in exercise of powers contained in the Housing Acts (to build the housing that was subsequently constructed) and that in turn the open areas that are now the subject of this report were provided as either recreational land or open space under those Acts – most likely the latter. This is the approach that was adopted by leading barrister Vivian Chapman Q.C in considering the application which was the subject of Barkas. Whether it was provided as recreational land or open space the public will have had a right to access the lands concerned.
- 6.5. Consequently any public use of the land must have been “by right” and not “as of right” as is required by the Act and consequently the application should be refused.
- 6.6. As the above point is so fundamental it is not necessary to occupy the committee with assessment of those other evidential matters that can commonly be relevant to such applications where they affect land held by private owners.
- 6.7 It is correct, as the Parish Council has pointed out, that a previous application to register similar types of areas was approved by the County Council. However the legal position at that time was different in that Barkas did not exist as a legal precedent. Indeed somewhat unusually as part of its decision on Barkas the Supreme Court overturned a previously leading judgement of the House of Lords on the issue. Further no objection was raised to that previous application by SBC or anybody else. The County Council’s duty was to determine the application based on the law and the evidence before it at that time.

7.0 Decision Making

- 7.1 The decision whether or not to approve the Application rests with the County Council in its role as a Commons Registration Authority. In doing so it must act impartially and fairly.
- 7.2 It is not relevant to consider the merits or otherwise of the land being, or not being, registered. Consequently, any representation that other open space does not exist locally is immaterial and should be ignored. The County Council must direct itself only to whether or not all the relevant criteria set out in section 15 have been met.

8.0 Financial Implications

- 8.1 There are no financial implications to Council in respect of the Application to refuse the creation of a new village green.

9.0 Legal Implications

- 9.1 The mechanism for challenge by an aggrieved party of any decision covered by this report would be Judicial Review.

10.0 Equalities Implications

10.1 Consideration has been given to the potential for any adverse equality impacts arising from the recommendation and an Equality Impact Assessment screening form is attached at **Appendix 3**.

11.0 Conclusions

11.1 Given that any public use of the Application Land will have been “by right” rather than “as of right” the application should be refused.

12.0 Recommendation

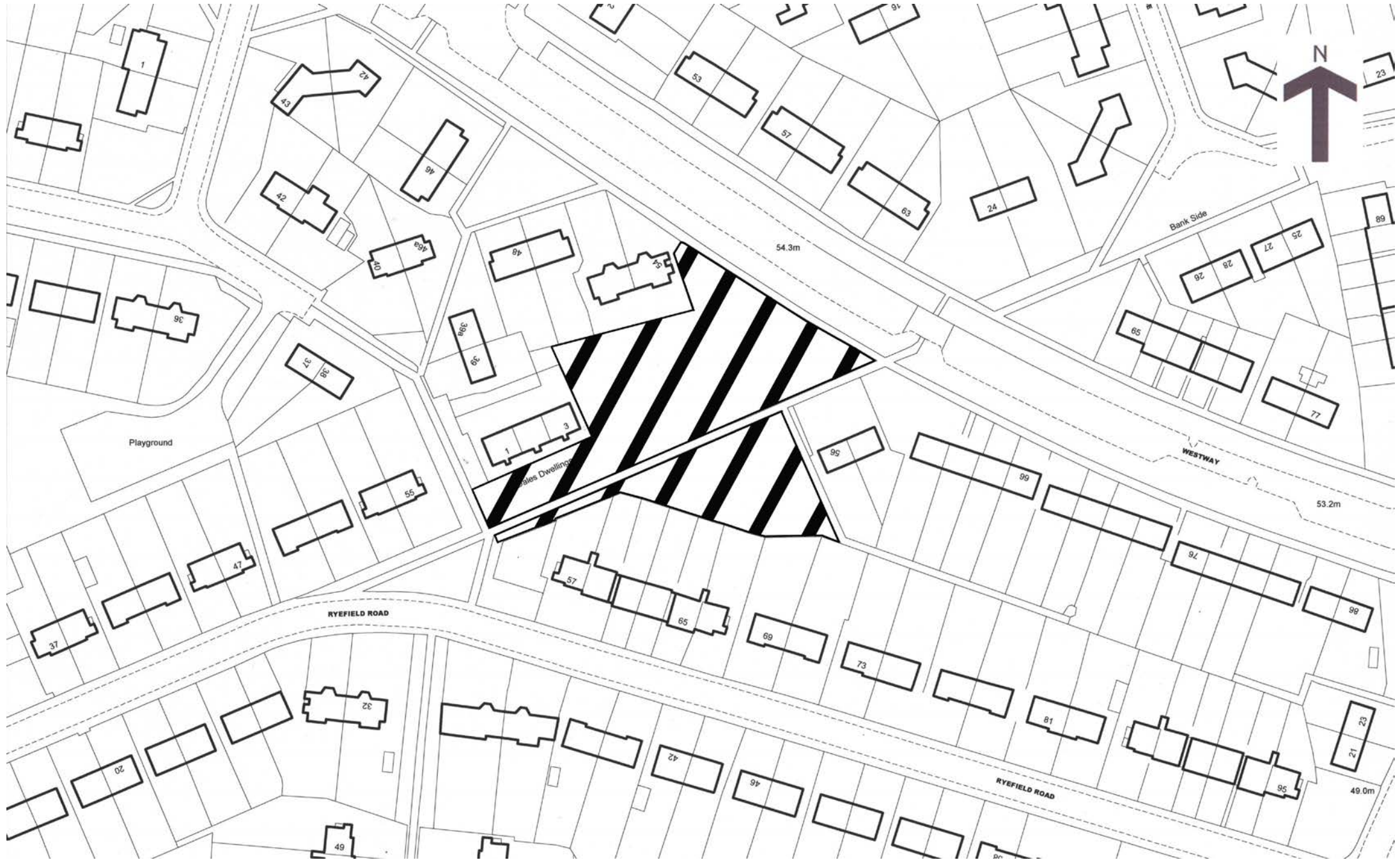
12.1 That the Committee resolves to refuse the Application on the grounds that it is not satisfied that all the relevant criteria of section 15(2) of the Act are evidenced by the application for the reasons set out in this report.

DAVID BOWE
Corporate Director Business & Environmental Services

Author of Report: Jayne Applegarth

Background Documents: Application case file held in County Searches Information -
Business & Environmental Services

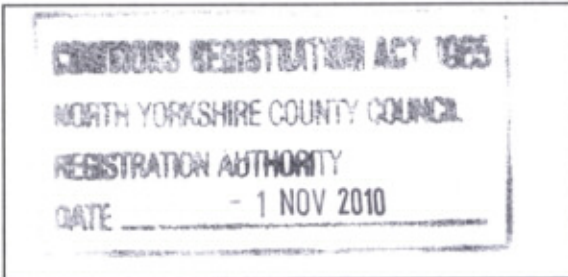
APPENDIX 1



Commons Act 2006: Section 15

Application for the registration of land as a Town or Village Green

Official stamp of registration authority indicating valid date of receipt:



Application number:

NEW VG53

Register unit No(s):

VG number allocated at registration:

(CRA to complete only if application is successful)

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

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

1. Registration Authority

To the

NORTH YORKSHIRE COUNTY COUNCIL

Note 1

Insert name of registration authority.

Note 2

If there is more than one applicant, list all names. Please use a separate sheet if necessary. State the full title of the organisation if a body corporate or unincorporate.

If question 3 is not completed all correspondence and notices will be sent to the first named applicant.

Note 3

This question should be completed if a solicitor is instructed for the purposes of the application. If so all correspondence and notices will be sent to the person or firm named here.

2. Name and address of the applicant

Name:

Full postal address:

Postcode

Telephone number: (incl. national dialling code)

Fax number: (incl. national dialling code)

E-mail address:

3. Name and address of solicitor, if any

Name:

Firm:

Full postal address:

Post code

Telephone number: (incl. national dialling code)

Fax number: (incl. national dialling code)

E-mail address:

Note 4

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

* Section 15(6) enables any period of statutory closure where access to the land is denied to be disregarded in determining the 20 year period.

4. Basis of application for registration and qualifying criteria

If you are the landowner and are seeking voluntarily to register your land please tick this box and move to question 5.

Application made under **section 15(8)**:

If the application is made under **section 15(1)** of the Act, please **tick one** of the following boxes to indicate which particular subsection and qualifying criterion applies to the case.

Section 15(2) applies:

Section 15(3) applies:

Section 15(4) applies:

If **section 15(3) or (4)** applies please indicate the date on which you consider that use as of right ended.

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

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

Name by which usually known:

Location:

BETWEEN 54 AND 56 WESTWAY. EXTENDS DOWN TO BETWEEN 55 AND 57 RYEFIELD ROAD. MAP 1 (A)

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

Common land register unit number (if relevant) *

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

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

WITHIN THE PARISH OF EASTFIELD, WESTWAY WARD IN THE BOROUGH OF SCARBOROUGH.

Tick here if map attached:

Note 5

The accompanying map must be at a scale of at least 1:2,500 and show the land by distinctive colouring to enable it to be clearly identified.

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

Note 6

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

7. Justification for application to register the land as a town or village green

Note 7

Applicants should provide a summary of the case for registration here and enclose a separate full statement and all other evidence including any witness statements in support of the application.

This information is not needed if a landowner is applying to register the land as a green under section 15(8).

THIS AREA HAS BEEN USED IN EXCESS OF TWENTY YEARS BY RESIDENTS, BOTH LOCALLY AND WITHIN THE PARISH FOR VARIOUS RECREATIONAL PURPOSES INCLUDING DOG WALKING, PICNICS, PLAYING GAMES

Note 8

Please use a separate sheet if necessary.

Where relevant include reference to title numbers in the register of title held by the Land Registry.

If no one has been identified in this section you should write "none"

This information is not needed if a landowner is applying to register the land as a green under section 15(8).

Note 9

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

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

Note 10

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

Please use a separate sheet if necessary.

8. Name and address of every person whom the applicant believes to be an owner, lessee, tenant or occupier of any part of the land claimed to be a town or village green

SCARBOROUGH BOROUGH COUNCIL

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

N/A

10. Supporting documentation

ATTACHED LIST OF RESIDENTS USING THE AREA FOR RECREATIONAL PURPOSES FOR OVER 20 YEARS ALONG WITH MAP SHOWING THEIR RESIDENCE IN RELATION TO THE OPEN SPACE (MAP 2). (B)

Note 11

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

11. Any other information relating to the application

AREA ON LIST FOR POSSIBLE HOUSING IN FUTURE.

Note 12

The application must be signed by each individual applicant, or by the authorised officer of an applicant which is a body corporate or unincorporate.

Date:

27/10/10

Signatures:

REMINDER TO APPLICANT

You are advised to keep a copy of the application and all associated documentation. Applicants should be aware that signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence. The making of a false statement for the purposes of this application may render the maker liable to prosecution.

Data Protection Act 1998

The application and any representations made cannot be treated as confidential. To determine the application it will be necessary for the registration authority to disclose information received from you to others, which may include other local authorities, Government Departments, public bodies, other organisations and members of the public.

Statutory Declaration In Support

To be made by the applicant, or by one of the applicants, or by his or their solicitor, or, if the applicant is a body corporate or unincorporate, by its solicitor, or by the person who signed the application.

¹ Insert full name (and address if not given in the application form).

STEVEN CLIVE
I, SIMPSON,¹ solemnly and sincerely declare as follows:—
EASTFIELD PARISH CARE
COMMUNITY CENTRE, HILL ST,
EASTFIELD, SCARBOROUGH
YO11 3LS

² Delete and adapt as necessary.

1.² I am ((the person (~~one of the persons~~) who (has) (~~have~~) signed the foregoing application)) ((~~the solicitor to (the applicant) (³one of the applicants)~~)).

³ Insert name if Applicable

2. The facts set out in the application form are to the best of my knowledge and belief fully and truly stated and I am not aware of any other fact which should be brought to the attention of the registration authority as likely to affect its decision on this application, nor of any document relating to the matter other than those (if any) mentioned in parts 10 and 11 of the application.

3. The map now produced as part of this declaration is the map referred to in part 5 of the application.

⁴ Complete only in the case of voluntary registration (strike through if this is not relevant)

~~4. ⁴ I hereby apply under section 15(8) of the Commons Act 2006 to register as a green the land indicated on the map and that is in my ownership. I have provided the following necessary declarations of consent:~~

- ~~(i) a declaration of ownership of the land;~~
- ~~(ii) a declaration that all necessary consents from the relevant leaseholder or proprietor of any relevant charge over the land have~~

Cont/

4 Continued

been received and are exhibited with this declaration; or
(iii) where no such consents are required, a declaration to that effect.

And I make this solemn declaration, conscientiously believing the
same to be true, and by virtue of the Statutory Declarations Act 1835.

Declared by the said
Steven Clive Simpson
at Jepson + Co Solicitors
58 High Street, Snainton,
YO13 9AL
this 27th day of October
2010

Signature of Declarant

Before me *

Signature:

Address: MAYLEY GARTON
58 HIGH STREET
SNAINTON
SCARBOROUGH



Qualification: SOLICITOR

* The statutory declaration must be made before a justice of the peace, practising solicitor, commissioner for oaths or notary public.

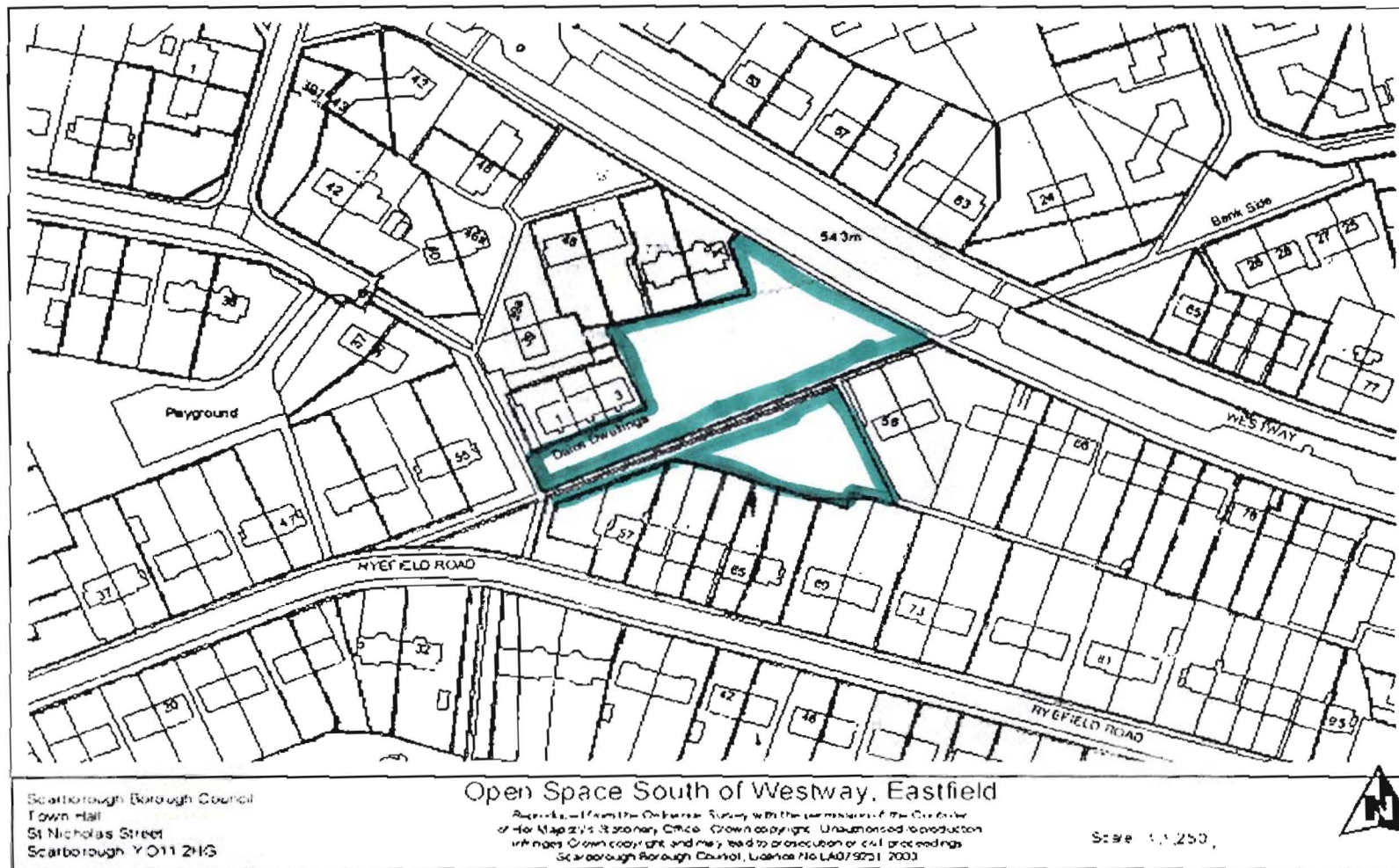
Signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence.

REMINDER TO OFFICER TAKING DECLARATION:

Please initial all alterations and mark any map as an exhibit

(A)

MAP 1

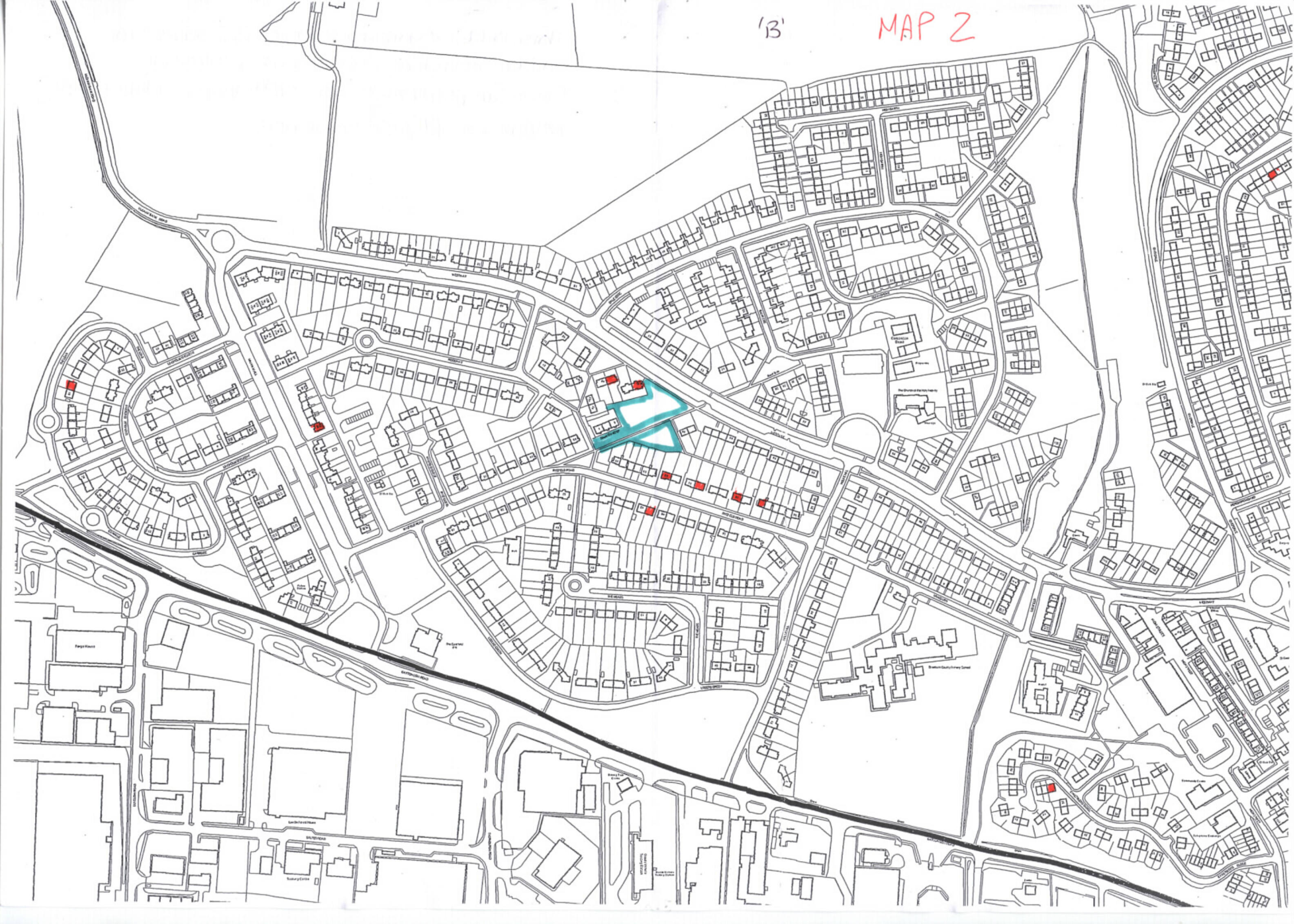


This is the exhibit marked 'A'
referred to in the Statutory
Declaration of Steven Clive
Simpson made this 27th day of October 2010
before [^] Solicitor.



'13'

MAP 2



This is the exhibit marked 'B' referred to
in the Statutory Declaration of Steven
Clive Simpson made this 27th day of October 2010
before

Solicitor



Appendix 3

Initial equality impact assessment screening form

(As of October 2015 this form replaces 'Record of decision not to carry out an EIA')

This form records an equality screening process to determine the relevance of equality to a proposal, and a decision whether or not a full EIA would be appropriate or proportionate.

Directorate	BES
Service area	H&T
Proposal being screened	The refusal of an application to register a new village green for land at Eastfield Scarborough
Officer(s) carrying out screening	Jayne Applegarth
What are you proposing to do?	To not register land as village green.
Why are you proposing this? What are the desired outcomes?	It is a statutory duty of the County Council as Registration Authority under the Commons Act 2006 to consider the application submitted. The land will be not be registered as village green.
Does the proposal involve a significant commitment or removal of resources? Please give details.	A statutory duty to maintain the village green register.

Is there likely to be an adverse impact on people with any of the following protected characteristics as defined by the Equality Act 2010, or NYCC's additional agreed characteristics?

As part of this assessment, please consider the following questions:

- To what extent is this service used by particular groups of people with protected characteristics?
- Does the proposal relate to functions that previous consultation has identified as important?
- Do different groups have different needs or experiences in the area the proposal relates to?

If for any characteristic it is considered that there is likely to be a significant adverse impact or you have ticked 'Don't know/no info available', then a full EIA should be carried out where this is proportionate. You are advised to speak to your [Equality rep](#) for advice if you are in any doubt.

Protected characteristic	Yes	No	Don't know/No info available
Age		✓	
Disability		✓	
Sex (Gender)		✓	
Race		✓	
Sexual orientation		✓	
Gender reassignment		✓	
Religion or belief		✓	
Pregnancy or maternity		✓	
Marriage or civil partnership		✓	
NYCC additional characteristic			
People in rural areas		✓	
People on a low income		✓	
Carer (unpaid family or friend)		✓	
Does the proposal relate to an area where there are known inequalities/probable impacts (e.g. disabled people's access to public transport)? Please give details.	No		
Will the proposal have a significant effect on how other organisations operate? (e.g. partners, funding criteria, etc.). Do any of these organisations support people with protected characteristics? Please explain	No		

why you have reached this conclusion.				
Decision (Please tick one option)	EIA not relevant or proportionate:	<input checked="" type="checkbox"/>	Continue to full EIA:	<input type="checkbox"/>
Reason for decision	The application has not met the criteria contained in the Commons Act 2006 and the Commons Registration (England) Regulations 2014.			
Signed (Assistant Director or equivalent)	Barrie Mason			
Date				