Village Green Hannington

April 15

2016

This document is primarily addressed to the current Hannington Parish Council members. It is a formal summary record of historical research documents and the outcome which has led to the legal process to take possession of the "Village Green" by the Parish Council. The document also covers the current understanding with regard to the Parish Council responsibilities relating to the unadopted roads to the South and West of the Village Green. However, legal advice should be sought prior to any action being taken. The content of this document has been reviewed by our legal team in Winchester.

Current ownership position

I. Introduction

This document has been compiled at the suggestion of Hannington Parish Councillors to identify our current understanding of the ownership status and Parish Council responsibilities relating to the Village Green and the unadopted roads to the South and West of the Village Green.

The document does not explore the possibility that the Parish Council may have acquired property or rights as a result of actions taken in the past that are in addition to the registered area of the Village Green.

II. Background

- Recent planning applications by residents on the Southern side of the Village Green posed the question to the Hannington Parish Council as to who actually owns the verge on the Southern road adjacent to the Village Green. Subsequent research revealed that the Village Green itself was owned by Kingsclere Parish Council. This situation was unexpected by the incumbent parish council as it was to Kingsclere Parish Council.
- A previous Hannington Parish Council, according to correspondence of 20th March 2000 had foreknowledge of what exactly constitutes the Village Green in Hannington. See correspondence in Appendix B. However, it appears that the associated knowledge and documentation somehow had not been passed on to the more recent parish council members. Hence, the parish council continued to do what it thought it was obliged to do on behalf of the community until very recently.
- 3. In November 2001, further enquiries were made to HCC by the then parish council with regard to powers and responsibilities of the current registered owners Kingsclere Parish Council over the Village Green see Appendix A. With the enquiries finally leading to Hannington Parish Council potentially applying for possessory title (Appendix C). However, the possessory title approach did not come to fruition.
- 4. Today, there remains a general belief within Hannington and the parish community, that the registered Village Green encompasses the verges of the 'frontagers' on the roads surrounding the Village Green.
- 5. Although this is clearly not the case according to the final Town and Village Greens Register held by HCC Winchester. It is clear from the Register and previous Parish Council correspondence with HCC as to what actually constitutes the Village Green it does not include the unadopted roads to the South and West nor the associated grass verges. The roads to the North and East are adopted by the HCC Highways.

"The green comprises an area of approximately 1970.06 m² or 0.197006 hectares, bounded by, but excluding, tracks on all sides."

Source: March 2000 correspondence and TVG Register

- 6. It is unfortunate that this general belief has been perpetuated historically by various Hannington Parish Councils, unknowingly or unwittingly by maintaining the grass verges (at times) and more recently installing anti-parking wooden pegs on one or more verges.
- 7. This leaves Hannington Parish Council in a somewhat invidious position of having been seen to carry out activities on land that is not registered as the Village Green, thus having no legal standing to carry out those activities however well intentioned.

III. In Brief - Responsibilities

- 1. With the knowledge of Kingsclere Parish Council, Hannington Parish Council continues to be responsible for the repair and maintenance for the Village Green as registered and defined in the Register of Town and Village Greens registration number VG60. The Village Green does not include the grassed verges adjacent to the surrounding roads or the roads themselves.
- 2. Application for registration of possessory title of the Village Green is in progress but is yet to be submitted to the Land Registry. Possessory title will be upgraded to absolute title after an elapsed time of 12 years.¹
- 3. Hannington Parish Council as a frontager on the unadopted South and West roads (see Appendix E) is responsible for the costs of maintenance and repair of the road surface from the Village Green up to the centreline of these roads in the event the Highways authority undertake any works.² Even though the HPC is not obliged to carry out any maintenance or repair work.
- 4. As HCC Highways are not responsible for the unadopted roads, each frontager would be advised to have third party indemnity insurance in place to cover their portion of the unadopted road.
- 5. The frontagers can take on the management of the unadopted roads and regulate parking with the protection of the law.
- 6. Parking on the Village Green is a criminal offence i.e. to drive over, or park on the green not forming part of a road without having lawful authority to do so.

IV. Transference of Village Green ownership

- 1. With the wholehearted agreement of Kingsclere Parish council, the present Hannington Parish Council commissioned the HCC Legal Department to transfer the Village Green registered ownership from the Kingsclere Parish to the Hannington Parish.
- 2. It was thought at the time that this would be a relatively simple exercise associated with a normal conveyance process, however, Kingsclere Parish Council could not produce the essential title deeds that are required by Land Registry to complete the transaction. Notably, Kingsclere PC did not have the Village Green entered on their asset register.
- 3. Enquiries of Land Registry could not identify the ownership of the Village Green or surrounding unadopted roads see Appendix D. An explanation of this scenario was made clear in the January 2002 HPC/HCC correspondence item 6 in Appendix C as follows,

"The Owner of a Green cannot be registered under the [Commons Registration Act] 1965 AND at the Land Registry. Where the land is registered in both places the details of the owner will appear only on the Register at HM Land Registry and the 1965 Register will contain a note to that effect."

- 4. There is no note entered in the 1965 TVG Register against the registered Village Green VG60. Therefore, it would be expected that an entry for the Village Green would not be found in the HM Land Register.
- 5. On the 16th February 2016, the legal team confirmed to the Hannington Parish Council that Kingsclere Parish Council *"are only able to offer possessory title to Hannington Parish Council"* as a result, outright possessory title registration has been applied for by Hannington Parish Council.

¹ Open Spaces Society, Informatio9n Sheet No. C4, March 2014, *Unclaimed land and adverse possession:* . . .www.oss.org.uk ² <u>http://researchbriefings.files.parliament.uk/documents/SN00402/SN00402.pdf</u>, *Roads: unadopted* updated, 18th October 2010

- 6. The possessory title can be upgraded to an absolute title after 12 years from registration. Note that possessory title is for the land that is registered as VG60 in the 1965 TVG Register.
- 7. Parking on the Village Green: Section 34 of the Road Traffic Act 1988 makes it a criminal offence to drive over, or park on land (including a green) not forming part of a road without lawful authority to do so.³

V. Unadopted Roads to the South and West of the Village Green

- 1. In the event of pot-holes becoming a danger to traffic, Hannington Parish Council is concerned with regard to the responsibilities for the repair and maintenance of the South and West unadopted highways (See Appendix E) around the Village Green.
- 2. An unadopted highway is a highway which is not maintainable at public expense. A highway is a way over which all members of the public have the right to pass and repass.
- 3. In August 2015, Hannington Parish Council submitted a request to Steve Pellatt, Highways Manager, HCC Highways North & East on the likelihood and procedural guidance for the adoption of the South and West roads should the Parish Council subsequently decide this was a course of action they would want to consider.
- 4. The email response dated 25th August 2015 Ref 7015453 was as follows:

"... we do not know the makeup of the road but it is likely to be a thin layer of bituminous material over consolidated natural ground. Therefore it is unlikely it meets any known construction standard that would meet our adoption criteria. The southern and western roads in effect serve a very small number of private properties and as such would not be of general public benefit.

... it is possible that the properties surrounding the two roads are responsible for them up to the centreline of the road with the party owing or responsible for the Village Green being responsible for the other half of these roads.

Given the southern and western roads do not serve a general public benefit, are of an unknown standard and in light of the severe financial pressures all Local Authorities are under I do not feel I can agree to take on further future liabilities. We will continue to consider any requests for maintenance on a case by case basis and if undertaken will be done as a 'gesture of good will' using affordable materials. However such decisions will have to be made in relation to the financial situation at the time."

5. Given that the South and West roads remain unadopted , the Hannington Parish Council has been briefed with reference to the House of Commons Library, *Roads Unadopted*, Standard Note: SN/BT/402 last updated 18th October 2010. The note explains what unadopted roads are and the problems and issues associated with them. The following is an extract from that note:

Maintenance S3, "The highway authority is not responsible for maintaining an unadopted road although it can intervene under existing legislation to repair it. Responsibility for the cost of maintenance of a private road rests with the frontagers; that is, the owners of properties with frontages on such roads. Even if it is not the frontagers who 'own' the road but a third party such as a property company, it is the frontagers who are referred to in the legislation. The highway authority

³ Management and protection of registered town and village greens, DEFRA January 2010. S3, Can vehicles drive over or park on greens? <u>https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/477980/tvg-faq.pdf</u> accessed March 2016

may therefore only deal with them and is not concerned with the owners of the road . . . Responsibility for the road's upkeep therefore lies with the frontagers, not the local authority. . .

... Even if there is no information about the owner, the frontagers can take over the management of the road and will be protected by law from all but the true owner. For example, they will be able to maintain the road and regulate parking."

Urgent Repairs S3.1," Section 230 of the 1980 Act empowers the highway authority to order the frontagers to carry out repairs to a private road which are "needed to obviate danger to traffic". The legislation also allows the authority to carry out the work itself if the order is ignored and to recover the expenses incurred from the frontagers:..."

6. With reference to the Highways Act 1980 Section 205 (1), Street works in private streets:

"Where a private street is not, to the satisfaction of the street works authority, sewered, levelled, paved, metalled, flagged, channelled, made good and lighted, the authority may from time to time resolve with respect to the street to execute street works and, subject to the private street works code, the expenses incurred by the authority in executing those works shall be apportioned between the premises fronting the street."

- 7. From the House of Commons Library note and the Highways Act 1980 with regard to unadopted roads, it appears that the HCC Highways observation is correct with respect to the maintenance and repair of the unadopted roads, i.e. it is the direct responsibility of each of the frontagers for the costs in the event the highways authority maintain and repair their portion of the unadopted road. However, the frontagers are not automatically obliged to repair the road in the first instance. Hence, that is why many unadopted roads are in such disrepair.
- 8. Even though there is no absolute liability for the frontager to do the work, the Highways authority can take it upon themselves to do the repair and then charge the frontagers only if it is likely that the public have access to the unadopted road. The way of avoiding that is to put up signs and gate the 'private' unadopted road. Once the highways authority carry out the repairs, they have taken "control" and they are then responsible for any subsequent injury as a result of those repairs and the maintenance of them. The frontager has the liability and normally a claimant would issue proceedings against the occupier the liability would then pass onto the highways authority who actually carried out the repair work.
- 9. Where no-one is able to show title to a highway the presumption *ad medium filum* applies: the middleof-the-highway presumption is that the owners of land that adjoins the public highway are presumed, subject to any evidence to the contrary, to own the subsoil and the airspace above the subsoil (subject only to a right of passage over the highway and the rights of the highway authority) up to the middle of the highway, for the length of their frontage. If the highway were to be stopped up then that piece of land would be owned outright by that frontager.
- 10. Any presumption is capable of being rebutted and in the context of ownership of the unadopted unregistered road evidence that someone is or was entitled to that land should be sufficient.
- 11. According to the Land Registry details all the properties surrounding the village green are registered and it would be fairly easy to check whether any of those properties have rights of access over the roads at issue as none of them abut a public highway and without an express right of access such properties are effectively land-locked. It is possible that none of the properties have such express rights and the owners rely on a defective title indemnity insurance but it would be unusual.
- 12. Grant of an express right means that at some point someone was entitled to the land over which the right had been granted which, of course, rebuts the assumption that the owner cannot be traced. This also raises a question of maintenance contributions the basic premise being that one cannot obtain the

benefit (i.e. the right of way) without accepting the burden (i.e. maintenance obligation or contribution towards maintenance).

- 13. The Land Registry filed plan shows the boundaries of the registered title and any transfer is limited to the extent of such registered title but no further.
- 14. In the event of the highway being unadopted then the Highways authority does not own either the surface of the highway or the surface of the verge. In the absence of an identifiable title, the highway *would be in unidentified ownership*.
- 12. As the unadopted road is private land, unwanted parking can be prevented by suitable 'private road no parking' signs using specific wording which would allow the recovery of time costs of £18 per hour for the Small Claims Court. A fee (fine) of £85 has been found by the courts to be reasonable. It would be a civil matter therefore the police would not get involved.⁴
- 13. Hannington Parish Council may wish to suggest that each of the frontagers obtain legal advice as to their particular situation and responsibilities with respect to the unadopted roads to the South and West of the Village Green. Particularly pertaining to the potential costs of maintenance and repair, and third party indemnity insurance covering their portion of the unadopted road.
- 14. It should be noted that the sale of properties adjacent to unadopted roads can be problematic. Some Solicitors advise clients, because the road is unadopted and because there is no timescale for adoption, not to proceed with the purchase. However, the seller can take out an indemnity policy to cover the mortgage lender for the liability of legal costs associated with road adoption.
- 15. The Hannington Parish Council third party indemnity insurance, covering its responsibility as a frontager, may need to be reviewed each year. In addition, it will need to undertake a review of the financial strategy for meeting the increasing costs of road repair and maintenance of the South and West highways.

VI. Acknowledgements

My thanks to the following persons who have contributed to the research and provided the source material for the compilation of this document.

Harry Goodchild, Map Review Officer, Countryside Access Team, Hampshire County Council.
Steve Arnold, Senior Administrative Assistant, Countryside Access Team, Hampshire County Council.
Mark Housby, Highway Asset Information Manager, Highways Operation Centre, Hampshire County Council.
Ian Austin, Principal Solicitor (Environment Team), For Head of Legal Services, Hampshire County Council.
The team at the Hampshire Records Office, Winchester, Hampshire County Council.

Office Management, Open Spaces Society, www.oss.org.uk



Hannington Tithe Map 1842 – Winchester Records Office

APPENDIX A

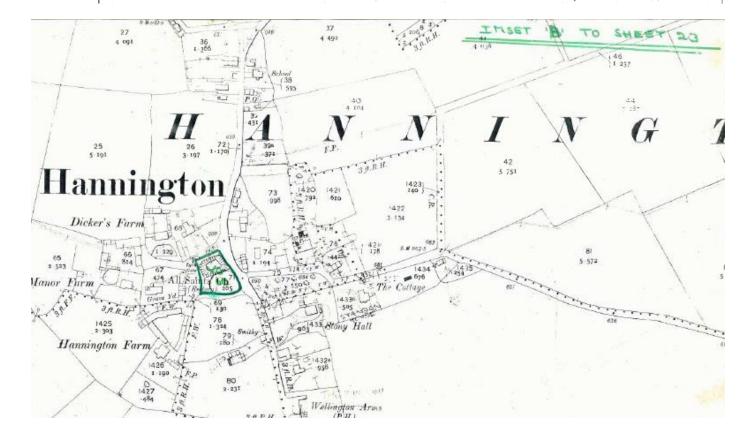
COMMONS REGISTRATION ACT 1965, Register of Town and Village Green, held by HCC Winchester

Copy of the Register Entry for VG 60 called the "Village Green"

COMPLETE REDUCTION ACTION ACTION PROFESSION			This section contains the registration of error registration authority RAMPISHEE COUNTY CO error registered under the Act as owner of the land Registration authority RAMPISHEE COUNTY CO why. It does not contain any registration in the Land Registration Acts and 1956, absence from this section of a registration in a recensarily indicate that the frankold of 0 is registered under those Acts.	
OWNE	ISHIP SECTION	Sheet No. 1		See Oresteaf for Notes
No. and date of entry	2 No. and date of application	3 Name and Address of person regitaered as owner	4 Particulars of the land to which the registratio	n applies
1	214/0/1	The Kingsolere Parish Council	The whole of the land compri	sed in this register unit.
5th. May	By directio	a Clerk:-		
1978	of the Chief	N.R.D.Smith Mog.,		
	Conmissions Conmissions	24, Swan Street,	and the medical	
		Kingsolere,		
		Beebury,		
	1.1	Barks.		
	19.1		1	
	1.1.1.41	The above entry has been made at the direction of the		
		Chief Commons Commissioner on the 22nd. day of July,1977		

C.R. Fam J	COMMONS REGISTRATION ACT 1965			Note: This section contail every right of common se exercisable over the whole described in the land secti	Norm: This section contains the registration of every right of common registered under the Act as exercisable over the whole or any part of the land described in the land section of this register unit.		Registration authority MAMPSHIRE COUNTY COUNCIL	
	Re	gister	of yomen or village greens			Register unit No. V Edition No. 1	660	
	RIGHT	S SECTION-SI	eet No. (See Overlaaf Sat Notes		
	RIGHT I No. and date of entry	S SECTION—SI	eet No. { 3 Name and address of every applicant for registration, and the capacity in which he applied	4 Particulars of the right of common, and of the land over which it is exercisable	5 Particulars of the the right is attacks			
	1 No. and date	2 No. and date	14			far Noim		
	1 No. and date	2 No. and date	14			far Noim		
	1 No. and date	2 No. and date	14			far Noim		

сомм	NORS REGISTRATION ACT 1965 Norm: This section contains the registration of the land comprised in this register unit.
Re	gister of town or village greens
LAND S	SECTION—Sheet No. 1
No. and date of entry	Description of the land, reference to the register map, registration particulars, etc.
1	The piece of land of about 0.6 acres called the Village Creen in the perich of Kingsolers, Hampshirs, as marked with a green vares
21 February	line inside the boundary on sheet 23 of the register map and distinguished by the number of this register unit. Registered pursuant to application
1968	No. 184 made 25th January 1968 by Mr. W. E. D. Smith, Clerk of Kingselers Parish Council, Trevaney, Spring Lane, Burghelers, Newbury, Berks.
	(Registration Provisional)
· · · ·	
2	
17.12.1971	The entry at No. 1 above was amended in accordance with Objection No. OB 76.
1. 1. 1. 	
3	
17.12.1971.	The piece of land of about 0.5 acre called The Village Green in the parish of Kingsclere, Hampshire, as marked
(See_Entry	with a green verge line inside the boundary on Sheet 23 of the register map and distinguished by the number of this register
No. 4 below).	unit. Registered pursuant to application No. 184, made 25th. January, 1968 by the Clerk of the Kingsolere Parish Council.
	(Registration Provisional)
4 20th.July	
1973	The registration at Entry No. 3 above, being undisputed, became final on the 17th. December, 1971.



APPENDIX B

Hannington Parish Council Correspondence March 2000.

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				Pinewood Hannington TADLEY Hants RG26 5TW	
	14 March 2000				
	Mr M Austin Chief Executive's Department Hampshire County Council The Castle WINCHESTER SO23 8UJ				
	Dear Mr Austin				
	Re: Village Green at Hanningt	on			
	Further to our recent telephone legal position regarding the ow	e conversation, I mership of the V	would be gratef ïllage Green an	ful if you could confi d its perimeter tracks	rm the /roads.
	I understand that at one time the Parish Council, but this was be Kingsclere; I have no informat Green is SU 538 555.	fore Hannington	was established	d as a parish separate	from
	An early reply would be greatly	y appreciated.			
	Yours sincerely				
	Gilly + Sait -				
	G P POYNTER SMITH Parish Councillor.			CHEF EXECU	TIVES
				CHIEF ERECO	i in

ŝ

Mr. G.P. Poynter Smith, Pinewood, Hannington, TADLEY, Hampshire. RG26 5TW.

Mr. Mike Austin

VG60/MA/HB

01962 847340

20 March 2000

cxcdma@hants.gov.uk

Dear Mr. Poynter Smith,

VILLAGE GREEN AT HANNINGTON (VG 60)

Further to your letter of 14 March 2000, I can confirm that the registered owner of Hannington Village Green is Kingsclere Parish Council.

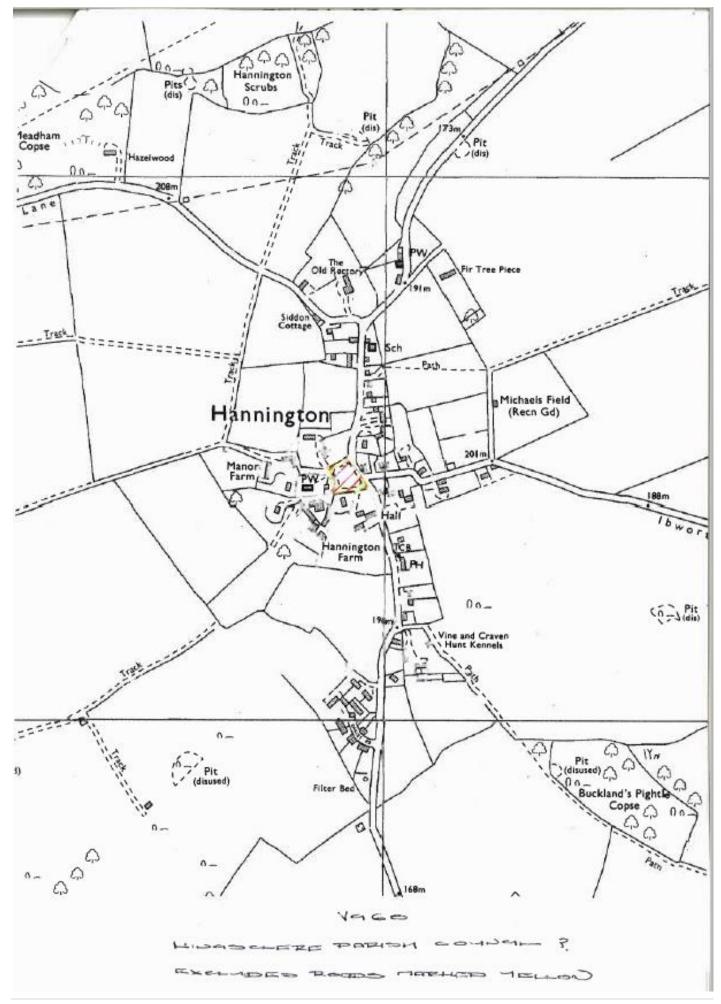
The green comprises an area of approximately 1970.06 m² or 0.197006 hectares, bounded by, but excluding, tracks on all sides.

Please let me know if I can be of any further assistance in this matter.

Yours sincerely,

Ma.

Mike Austin Committee Division



APPENDIX C

Hannington Parish Council Correspondence November 2001/2002.

20440

HANNINGTON PARISH COUNCIL

Clerk: Mrs P S Sarsfield-Hall

Hannington Farm Hannington Tadley, Hants. RG26 5TZ Tel. 01635 298350 Fax 01635 297679

28 November 2001

Dear Sirs

Hannington Village Green Commons Registration Act

I have been asked to write to you in connection with Hannington Village Green. There is the possibility of development to the south of the Green and my Council is concerned about possible damage to the Green.

Could you please clarify for us the exact status of the Green which we understand has been registered as 'Unclaimed land' under The Commons Registration Act.

- 1. Could we please have a copy of the Registration?

2. Under what section of the Act is the Green registered?

- -3. We understand that as Kingsclere Parish Council was the relevant Parish Council at the time of registration, it has been registered as the 'owner' Is this correct?
- 4. What powers and responsibilities do Kingsclere have for our Green. Are they the same as a freehold owner? We understand that there is no provision in the Act for transfer of the registration. Is this correct.? If so, would the County Council be prepared to make representations to the relevant government department for a change in the law?
- 5. If Kingsclere is the registered owner, does Hannington Parish Council have any legal responsibility for accidents etc. to third parties?

6. Does the registration under the Act preclude Hannington Parish Council applying to the Land Registration for Possessory Title? It has maintained the Green since our Council came into being more than twelve years ago.

I am sorry to have posed such detailed questions, but it is vital we know exactly what the position is. Thank you for your help.

Yours Faithfully,

shell - Hall

Mrs P Sarsfield Hall, Clerk Hannington Parish Council

Hampshire County Council The Castle, Winchester.



Mrs P Sarsfield Hall Clerk to Hannington Parish Council Hannington Farm Hannington Tadley Hampshire RG26 5TZ

Mrs C Blunt

VG 60/CB

(01962) 845751

4 January 2002

christine.blunt@hants.gov.uk

Dear Mrs Sarsfield Hall,

COMMONS REGISTRATION ACT 1965 HANNINGTON VILLAGE GREEN (VG 60)

I refer to your letter of 28 November 2001.

I have answered your queries as fully as possible on the information provided by you.

- 1. Copy of Registration attached.
- Section 1 Commons Registration Act 1965. Re ownership section 8(3)
- Yes.
- 4. The owner of a Green cannot do anything which interferes with the lawful recreational activities of the local inhabitants, but he is not obliged to maintain the green in a suitable state for recreation, although he could prevent appropriate maintenance (e.g. grass cutting) by local inhabitants. The Council has powers under the Open Spaces Act 1906 to manage the Green, which include the making of Byelaws. You do not say what happened to Kingsclere Parish Council. Was it dissolved or grouped with another Parish Council? If the latter, this would need to be done under an Order by the District Council, and any such Order may contain provision as to transfer of ownership etc. If you wish further advice on this matter, I would be grateful if you provide the necessary information.
- 5. As the owner of the Green is not obliged to maintain it in a suitable state for recreation, it is arguable that any claim in respect of accidents etc. would be unsuccessful. However, this is a complex area of law and one on which the Parish might wish to take its own independent legal advice.

 The Owner of a Green cannot be registered under the 1965 AND at the Land Registry. Where the land is registered in both places the details of the owner will appear only on the Register at HM Land Registry and the 1965 Register will contain a note to that effect.

Yours sincerely,

Christine Blunt Committee Division

Enc.

HANNINGTON PARISH COUNCIL

Clerk: Mrs P S Sarsfield-Hall

Hannington Farm Hannington Tadley, Hants. RG26 5TZ Tel. 01635 298350 Fax 01635 297679

CHIEF EXECUTIVES DEPARTMENT FEB LUUZ 14 MINT COUN

4 February 2002

VG 60/CB

Dear Mrs Blunt

Hannington Village Green Commons Registration Act 1965 (VG 60)

Thank you for your letter of 4 January and for the very helpful information. With regard to para 3, Kingsclere Parish Council still exists. Hannington split off from it some 12 years ago - hence the problem of ownership of the Green.

I am not quiet clear which Council has powers under the Open Spaces Act 1906 to make Byelaws. Is it Hampshire County Council or Basingstoke and Deane? As Kingsclere still exists, does the Borough have the power to transfer ownership of the Green to Hannington Parish Council?

Thank you once again for your advice and I look forward to hearing from you.

Yours Sincerely

what fall

Mrs P Sarsfield-Hall

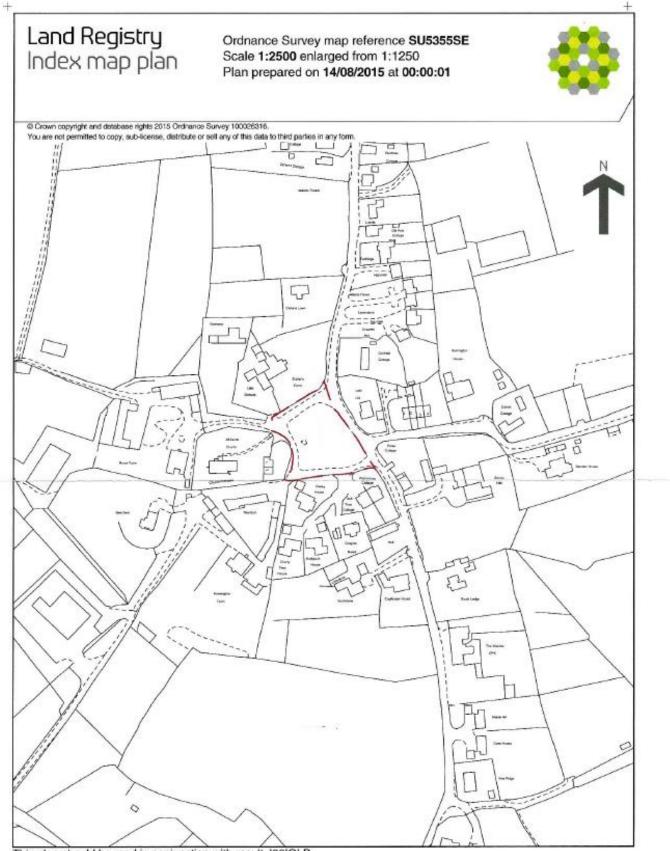
Mrs C Blunt, Chief Executive's Office, Hampshire County Council

Village Green ownership enquiry to HM Land Registry.

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Continued on page 2

Your Reference: CITIZEN/HERTZ	Key Number:	Any enquiries concerning this certificate to be addressed to: CITIZEN
Janusz Hertz 12 Oakley Road Hannington Tadley		Weymouth Office PO Box 6344 Coventry CV3 9LL
RG26 5TU		Tel. No: (0300) 006 0014
		0369003002



This plan should be read in conjunction with result J86IQLB.

APPENDIX E

