

CHAPTER 3, PART 5 OF THE LOCALISM ACT 2011
ASSETS OF COMMUNITY VALUE (ENGLAND) REGULATIONS 2012

NOMINATION OF BUILDING OR LAND TO BE INCLUDED IN
LIST OF ASSETS OF COMMUNITY VALUE

DELEGATED REPORT

Reference: PR86-037

Case Officer: Darren McBride

Site Address: Rolvenden Working Men's Club and Car Park, Maytham Road, Rolvenden, Cranbrook, Kent TN17 4NE

Title Number(s): K560143 (FREEHOLD) and K368311 (FREEHOLD)

Nominating Body: Rolvenden Parish Council

Nomination Validated: 15 June 2022

Deadline Date: 10 August 2022

*

Introduction

Under the Localism Act 2011 ('the Act'), the Council must maintain a list of buildings or other land in its area that are of community value, known as its 'List of Assets of Community Value.'

There are some categories of assets that are excluded from listing, the principal one being a residential property. There is, however, an exception to this general exclusion where an asset which could otherwise be listed contains integral residential quarters, such as accommodation as part of a pub or a caretaker's flat.

Generally, buildings or land are of community value if, in the opinion of the Council:

- an actual current use of the building or other land that is not an ancillary use furthers the social wellbeing or social interests of the local community, and
- it is realistic to think that there can continue to be non-ancillary use of the building or other land which will further (whether or not in the same way) the social wellbeing or social interests of the local community¹.

Buildings or land may also be of community value if in the opinion of the Council:

¹ Subsection 88(1) of the Act.

- there is a time in the recent past when an actual use of the building or other land that was not an ancillary use furthered the social wellbeing or social² interests of the local community, and
- it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the building or other land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community³.

Buildings or land which are of community value may only be included in the 'List of Assets of Community Value' in response to a community nomination by certain specified bodies such as parish councils or voluntary or community organisations with a local connection.

A valid community nomination must contain certain information, including:

- a description of the nominated building or land including its proposed boundaries
- a statement of all the information which the nominator has with regard to the names of the current occupants of the land, and the names and current last-known addresses of all those holding a freehold or leasehold estate in the land
- the reasons for thinking that the Council should conclude that the building or land is of community value
- evidence that the nominator is eligible to make the community nomination

A valid community nomination must be determined within eight weeks. In this instance, the nomination was validated by the Council on 15 June 2022 and so must be determined by 10 August 2022.

If the Council accepts a valid nomination then it must be included on the 'List of Assets of Community Value.' If the Council does not accept that the asset nominated meets the statutory definition, or if it is one of the excluded categories, then the valid nomination must be placed on a 'List of Assets Nominated Unsuccessfully by Community Nomination.'

Procedure

Information about this community nomination has been sent to the following:

- Rolvenden Parish Council (Nominating Body)
- Freehold Owner(s)

² Note: the wording of this condition is different to all the other conditions in that it refers to furthering 'the social wellbeing or interest of the local community' rather than 'the social wellbeing or *social* interests of the local community.' However, in *St. Gabriel Properties Limited v London Borough of Lewisham and another (2015)*, Judge Warren held that the word 'social' should be read in here (para. 27).

³ Subsection 88(2) of the Act.

- Occupier(s)
- Mortgagee(s)
- Cllr G Clarkson (Leader of the Council)
- Cllr P Feacey (Portfolio Holder for Community Safety and Wellbeing)
- Cllr K Howard-Smith (Deputy Portfolio Holder for Community Safety and Wellbeing)
- Cllr K Walder

If the Solicitor to the Council and Monitoring Officer includes the asset on the Council's 'List of Assets of Community Value' then the owner has the right to request, within eight weeks from the date when written notice of listing is given, the Chief Executive to review the decision.

If the owner is not satisfied with the outcome of the internal listing review then they have the right to appeal to the General Regulatory Chamber of the First-Tier Tribunal against the review decision.

The property will remain listed during the review and appeal processes.

Consequences of Listing

If an asset is listed nothing further happens unless and until the owner decides to dispose of it. If the owner does decide to dispose of the asset then, unless an exemption applies, the owner must first notify the Council in writing.

Interim Moratorium

There is then a six week interim period from the point the owner notifies the Council. The Council must then inform the nominating community group who may then make a written request to be treated as a potential bidder. If they do not do so in this period then the owner is free to sell their asset at the end of the six week period.

Full Moratorium

If a community interest group does make a request during this interim period, then a full six month moratorium will operate. The community group does not need to provide any evidence of intention or financial resources to make such a bid.

During this full moratorium period the owner may continue to market the asset and negotiate sales, but they may not exchange contracts (or enter into a binding contract to do so later). There is one exception: the owner may sell to a community interest group during the moratorium period.

After the moratorium – either the interim or full period, as appropriate – the owner is free to sell to whomever they choose and at whatever price, and no further moratorium will apply for the remainder of a protected period lasting 18 months (running from the same start date of when the owner notified the Council of the intention to dispose of the asset).

Compensation

Private owners (not public bodies) may claim compensation for loss and expense incurred through the asset being listed. This may include a claim arising from a period of delay in entering into a binding agreement to sell which is wholly caused by the interim or full moratorium period; or for legal expenses incurred in a successful appeal to the First-Tier Tribunal. The assumption is that most claims will arise from a moratorium period being applied; however, the wording of the legislation does allow for claims for loss or expense arising simply as a result of the asset being listed.

The Council is responsible for administering the compensation scheme, including assessing and determining compensation awards.

As with the listing itself, an owner may request an internal review of the Council's compensation decision. If the owner remains unsatisfied then they may appeal to the General Regulatory Chamber of the First-Tier Tribunal against the review decision.

Assessment

The nominating body is 'a voluntary or community body' with 'a local connection,' as defined in Regulations 4 and 5 the Assets of Community Value (England) Regulations 2012 ('the Regs').

The community nomination contains the information required by Regulation 6 of the Regs for it to be considered by the Council.

The community nomination form asked the nominating body to provide their reasons for thinking that the Council should conclude that the building/land is of community value. The questions and answers state as follows:

Q1. What is the current main use of the land/building(s)?

A1. 'The current use of the building is a club house with alcohol licence that is also used for christenings, wedding receptions and funeral wakes. The land to the roadside is utilised as a car park to the club.'

Q2. How does the current main use of the land/building(s) further the social wellbeing or social interests of the local community...?

A2. 'The current use of the building provides an alternative venue to the Village Hall with the additional benefit of an alcohol licence with ample parking on site.'

Q3. Why do you consider that this, or some other main use to which the land/building(s) will be put which will further the social wellbeing or social interests of the local community, will continue and over what period...?

A3. 'The club and its associated land are situated within the historic Great Maytham Park, registered parkland number 1000221, and are designated within the Rolvenden Neighbourhood Plan as community assets. It would be in the social wellbeing and interests of the local community to retain

the venue for use as an alternative to the village hall. The land currently is subject to restrictive covenants as to its usage.'

The Council cannot list buildings or land on its own initiative – they must be nominated. Therefore, the onus is on the nominating body to give their reasons for thinking that the Council should conclude that the building/land is of community value.

There is little guidance on the criteria a local authority should consider when deciding whether an asset is of community value. When the Act was at the Bill stage, the Minister stated that:

"...We have suggested that one of the criteria for assessing what is an asset of community value could be evidence of the strength of community feeling about supporting the asset's being maintained for community use"

In this case, the nominating body is a parish council and so, although there is no evidence of the strength of community feeling, it is reasonable to assume that the Parish Council is representing the views, or is expressing the general wishes, of a reasonable percentage of their local community.

When this nomination was validated I notified the individuals and bodies mentioned under the heading *Procedure* (above). In response, the Freehold Owner sent me a letter dated 23 June 2022 which states as follows:

'In relation to this nomination we would like to make a few points to be considered when determining this application:

1. Rolvenden Club Membership – 44 paid members 5 Life members – of these only 15 are resident in Rolvenden.
2. The club is very poorly supported by local people and as such we are only open on a Friday evening and a Saturday evening, over recent weeks the total numbers have been only 5 customers on a Friday and no customers on a Saturday.
3. The club is run by a Committee of aging members – no new younger members!
4. The bar is run by volunteers to reduce outgoings.
5. The rising prices of all commodities, i.e. electricity, means that our outgoings will be exceeding our income.
6. The situation is becoming not financially viable in the long term.
7. Rolvenden has a relatively modern village hall that is available to the community to hire.
8. Attached is a list of our income from the beginning of 2022.

'Given all these points we do not see how this property could be termed as an Asset of Community Value.'

Regarding point 8, the letter is accompanied by a document setting out the customer numbers and bar takings for the period: January 2022 to 18 June 2022.

I will not reveal the potentially confidential financial information relating to bar takings other than to acknowledge that they are modest. However, the details relating to customer numbers reveal that the highest single evening's attendance during the said period was ten customers (on three separate occasions). The lowest single evening's attendance was zero customers (on nineteen separate occasions).

Strictly speaking, the process does not provide for a consultation or for an invitation for the submission of representations. Nevertheless, I have taken on board the comments of the Freehold Owner.

The building is currently open and operating as a licenced club. No evidence has been submitted which demonstrates that the business is viable and therefore likely to continue to remain open⁴. However, there is no requirement for the nominating body to demonstrate future viability. The test is simply that it is 'realistic to think that there can continue to be non-ancillary use of the building...' The fact that the building is currently open and operating would, in my view, suggest that it is realistic to think that its current use can continue.

For a building or land in current use to be included on the 'List of Assets of Community Value' its actual current use – not 'an ancillary use' – must further the social wellbeing or social interests of the local community.

In this case, the nominating body claims that the club is used by the local community for hosting christenings, wedding receptions and funeral wakes. Also, naturally, the club is a place where the local community can meet and socialise.

I acknowledge the owner's evidence that the club does not appear to receive much support from the local community. This is unfortunate but it should be noted that the use would not need to be as a club and it would not even necessarily need to be economically viable in the sense that it would have to make a profit for its operator. This is because it could be run as a not-for-profit co-operative by local community volunteers as either a club or for some other non-ancillary community use.

In my view, a local meeting place of this type would be considered as furthering the social wellbeing or social interests of the local community and, in this case, the car park is clearly intrinsically linked to the club and so it too is considered to have a usage consistent with that of the club itself.

Conclusions

In my view, on balance, it is reasonable to conclude that the actual current use of the building/land as a club does further the social wellbeing or social interests of the local community.

I have taken into consideration the potentially adverse impact that listing could have on the owner(s) of the building/land (as summarised above under the sub-

⁴ Although the Freehold Owner's representations do suggest that the long term financial viability of the current use is uncertain.

heading *Consequences of Listing*) but the internal listing review process and appeal do allow the owner(s) the opportunity to challenge the decision to list.

Accordingly, in my view, this building/land should be included in the Council's 'List of Assets of Community Value.'

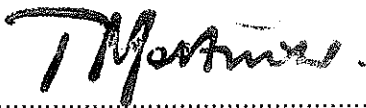
Recommendation

That the Solicitor to the Council and Monitoring Officer accept the nomination for this building/land to be included in the Council's 'List of Assets of Community Value.'

*

AUTHORITY

In accordance with the functions delegated to me, I hereby accept the nomination for this building/land to be included in the Council's 'List of Assets of Community Value', for the reasons set out above.

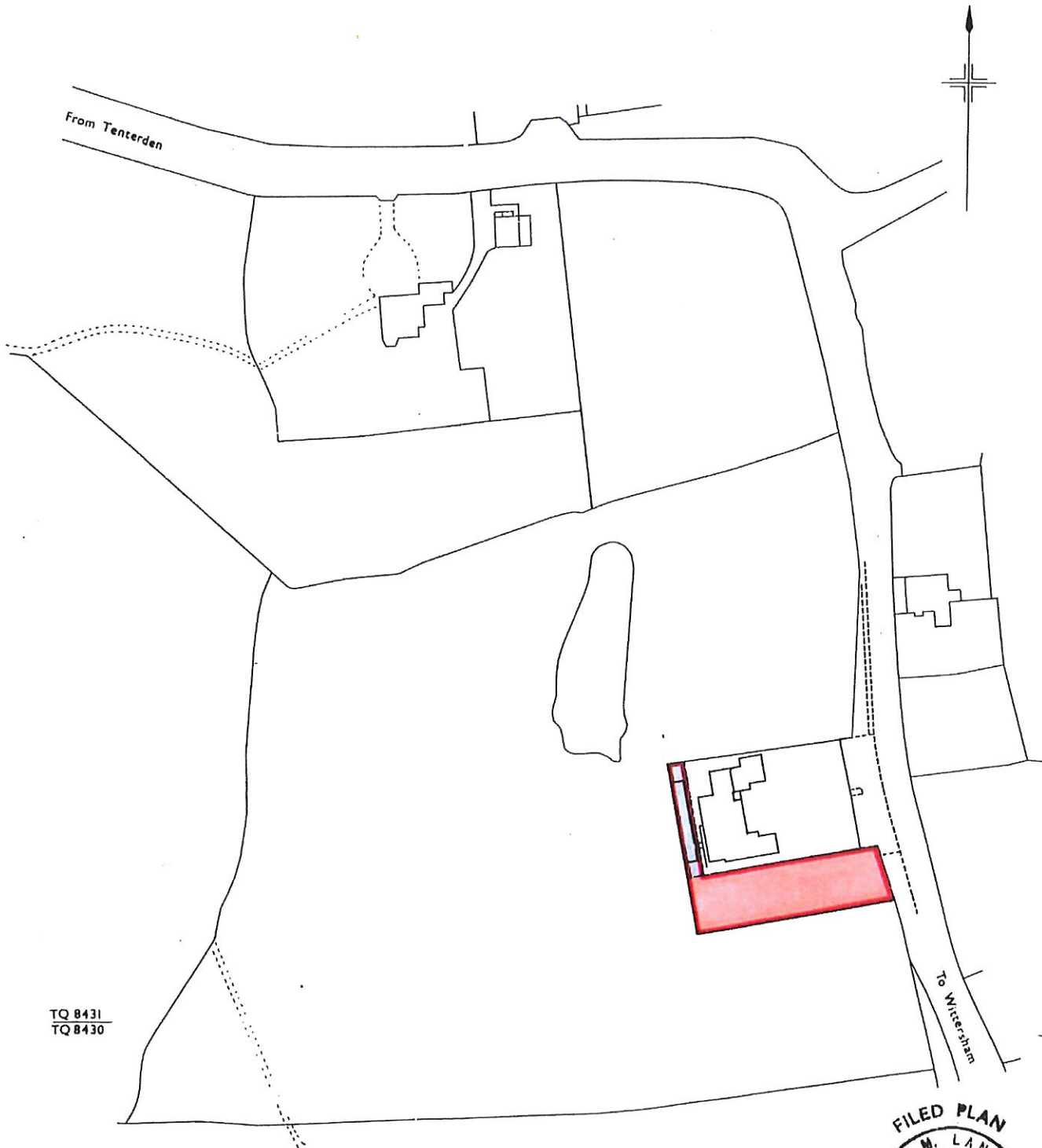


.....
Solicitor to the Council and Monitoring Officer

Date: 26/7/22

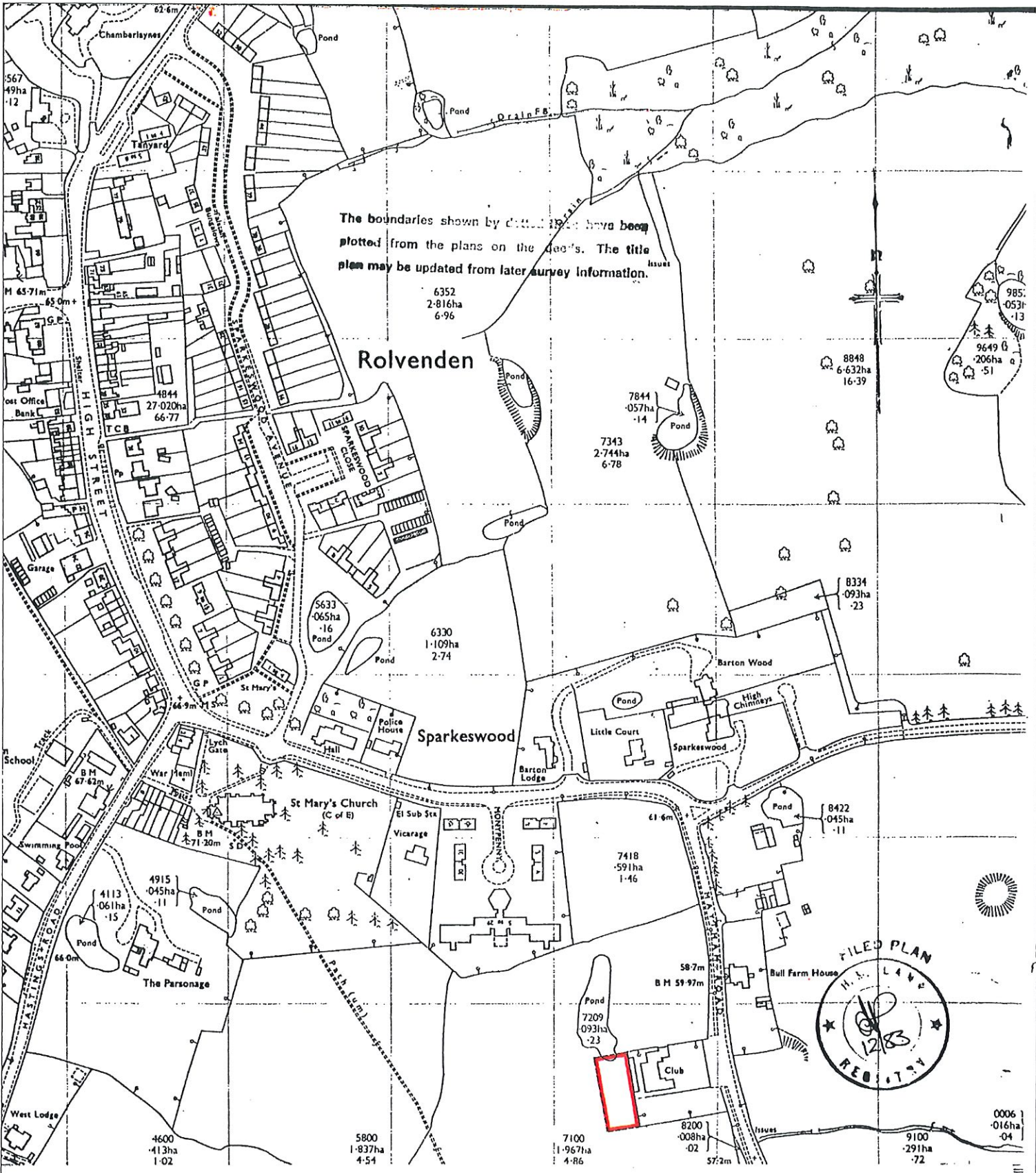
H.M. LAND REGISTRY		TITLE NUMBER	
		K368311	
ORDNANCE SURVEY PLAN REFERENCE	COUNTY	SHEET	NATIONAL GRID
	KENT		TQ 843I
Scale: 1/1250 Enlarged from 1 2500			© Crown copyright 1971

ROLVENDEN PARISH



TQ 843I
TQ 8430





The boundaries shown by dotted lines have been plotted from the plans on the deeds. The title plan may be updated from later survey information.



H.M. LAND REGISTRY		TITLE NUMBER	
		K560143	
ORDNANCE SURVEY PLAN REFERENCE	TQ 8431	Scale 1/2500	
COUNTY KENT	DISTRICT ASHFORD	© Crown copyright	

