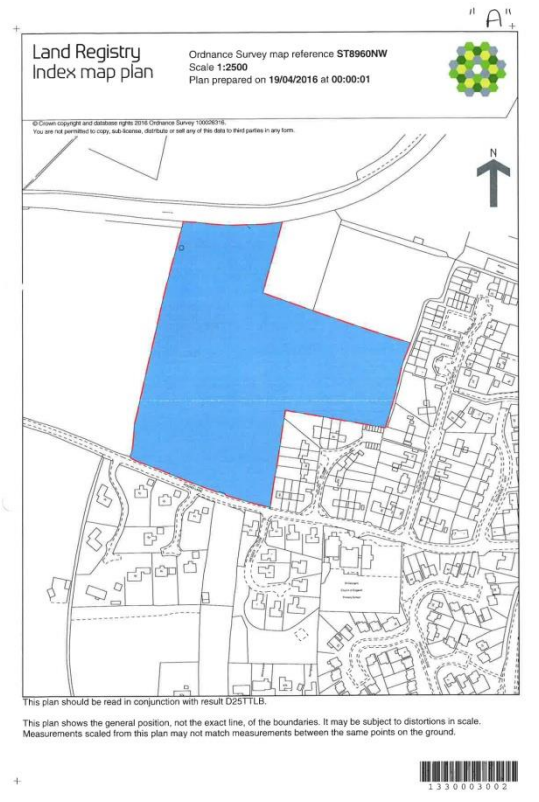




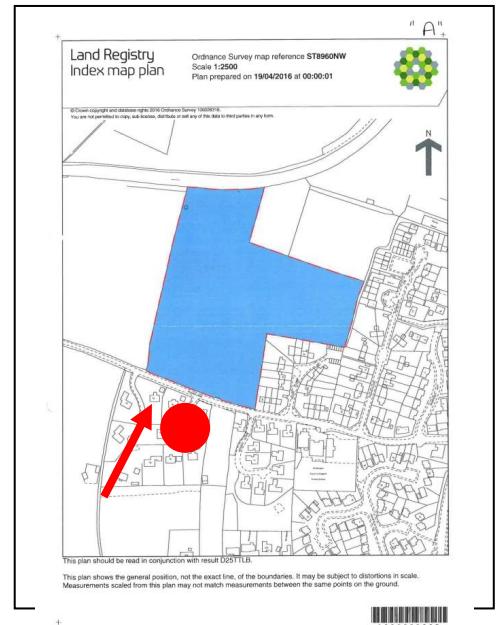
#### 4. Application Plan



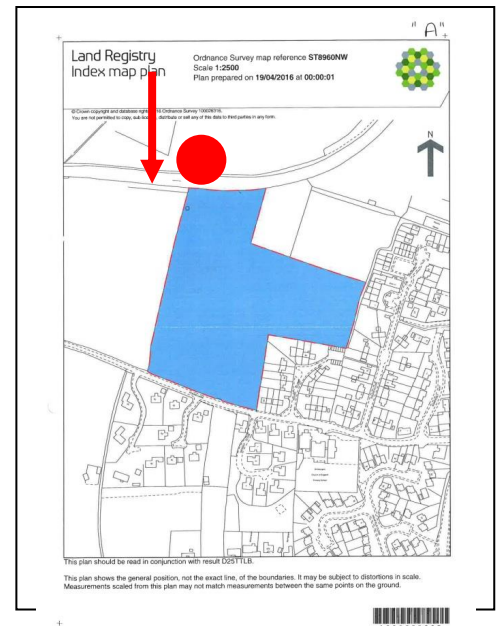
#### 5. Photographs



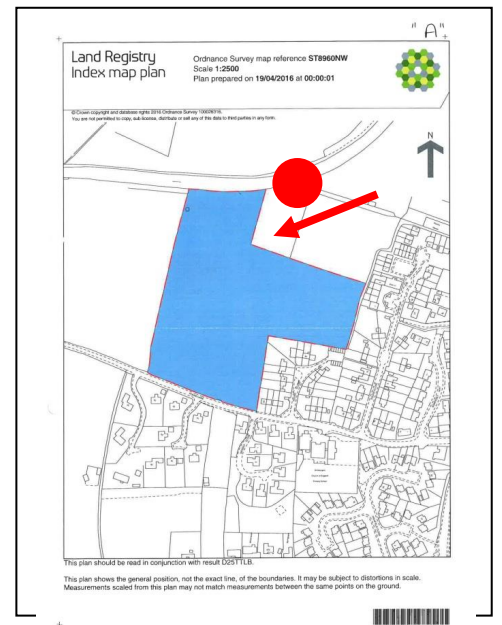
*Pound Lane gate*



Commons Act 2006 – Sections 15(1) and (3) – Application to Register Land as a Town or Village Green – Great Lees Field, Semington

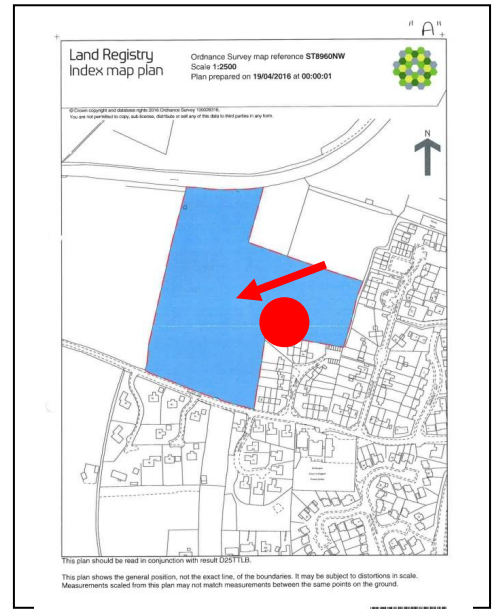
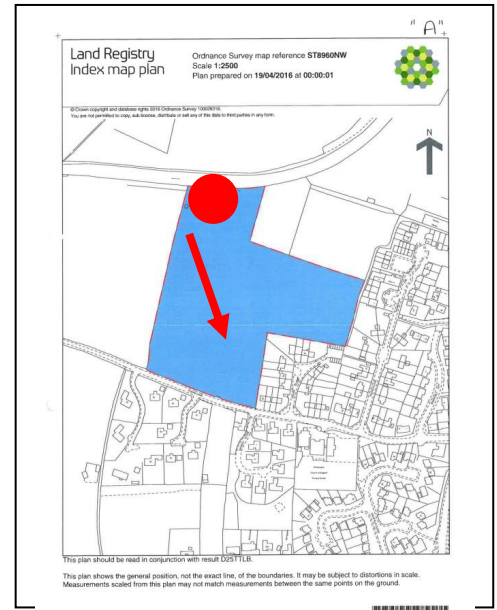


*Stile on Footpath no.1 Semington (north-west corner of Great Lees Field)*

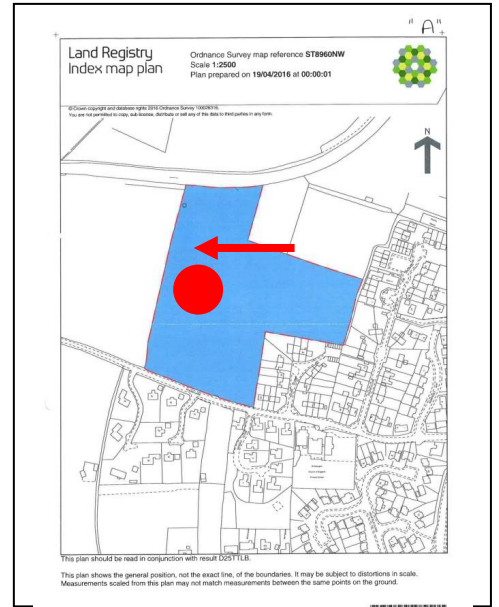


*Stone stile on Footpath no.1 (north-east corner of Great Lees Field)*

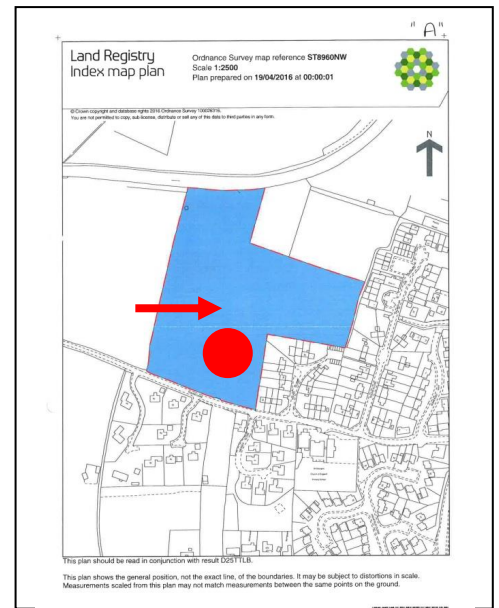
Commons Act 2006 – Sections 15(1) and (3) – Application to Register Land as a Town or Village Green – Great Lees Field, Semington



Commons Act 2006 – Sections 15(1) and (3) – Application to Register Land as a Town or Village Green – Great Lees Field, Semington

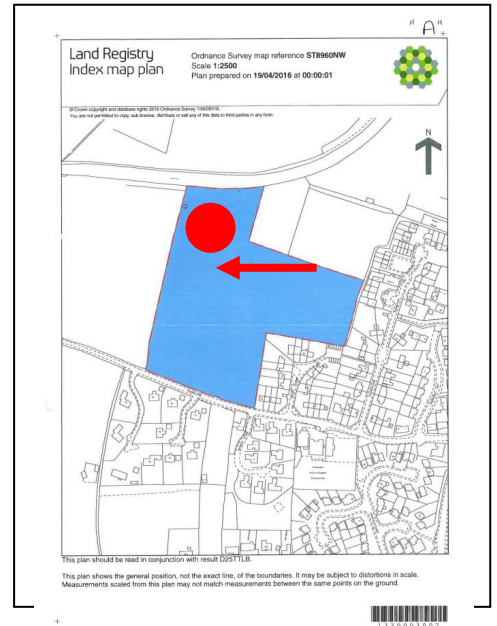


*Access point in western field boundary (now fenced – site visit October 2016)*



*Typical access gate from gardens of properties in Pound Close, to the east of Great Lees Field.*

Commons Act 2006 – Sections 15(1) and (3) – Application to Register Land as a Town or Village Green – Great Lees Field, Semington



*Second World War pillbox located at the western boundary, to the north of the field.*

## 6. Aerial Photographs



*Great Lees Field, Semington  
Aerial view – 2001*



*Great Lees Field, Semington  
Aerial view – 2005/06*

Commons Act 2006 – Sections 15(1) and (3) – Application to Register Land as a Town or Village Green – Great Lees Field, Semington



*Great Lees Field, Semington  
Aerial view - 2014*

## 7. **Applicants**

### 7.1. Friends of Great Lees Field:

Mr Steven Hall  
14 Pound Lane  
Semington  
Trowbridge  
Wiltshire  
BA14 6LP

Mr Jon Jonik  
16 Pound Lane  
Semington  
Trowbridge  
Wiltshire  
BA14 6LP

Dr William Scott  
24 Pound Lane  
Semington  
Trowbridge  
Wiltshire  
BA14 6PL

## 8. **Registered Landowners**

- 8.1. Mr William Peter Stuart–Bruges and Mr Arthur Haythornthwaite  
C/O Mr Matthew Scudamore  
Senior Associate  
Gateley Plc

One Eleven Edmund Street  
Birmingham, B3 2HJ

- 8.2. Wiltshire Council also contacted Wessex Water who, it was believed, owned a part of the application land; however, Mr Daniel Baker, Wessex Water, Legal and Estates Department, wrote on 19 December 2016 as follows:

*“...I can confirm that whilst we own land nearby, Wessex Water does not own the land referred to in your earlier letter of 30 September 2016.”*

## **9. Legal Empowerment**

- 9.1. Under the Commons Registration Act 1965, Wiltshire Council is now charged with maintaining the register of Town and Village Greens and determining applications to register new Greens. The application to register land off Pound Lane, Semington, as a Town or Village Green, has been made under Sections 15(1) and (3) of the Commons Act 2006, which amended the criteria for the registration of greens:

*“15 Registration of greens*

*(1) 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) This subsection applies where-*

- (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and*
- (b) they continue to do so at the time of application.*

*(3) This subsection applies where-*

Commons Act 2006 – Sections 15(1) and (3) – Application to Register Land as a Town or Village Green – Great Lees Field, Semington



- (a) A significant number of inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;*
- (b) they ceased to do so before the time of the application but after the commencement of this section; and*
- (c) the application is made within the relevant period.*

*(3A) In subsection (3), “the relevant period means” –*

- (a) in the case of an application relating to land in England, the period of one year beginning with the cessation mentioned in subsection (3)(b);*
- (b) in the case of an application relating to land in Wales, the period of two years beginning with that cessation.*

*(4) This subsection applies (subject to subsection (5)) where-*

- (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;*
- (b) they ceased to do so before the commencement of this section; and*
- (c) the application is made within the period of five years beginning with the cessation referred to in paragraph (b).*

*(5) Subsection (4) does not apply in relation to any land where-*

- (a) planning permission was granted before 23 June 2006 in respect of the land;*
- (b) construction works were commenced before that date in accordance with that planning permission on the land or any other land in respect of which the permission was granted; and*
- (c) the land-*
  - (i) has by reason of any works carried out in accordance with that planning permission become permanently unusable by*

*members of the public for the purposes of lawful sports and pastimes; or*

- (ii) will by reason of any works proposed to be carried out in accordance with that planning permission become permanently unusable by members of the public for those purposes.*

*(6) In determining the period of 20 years referred to in subsections (2)(a), (3)(a) and (4)(a), there is to be disregarded any period during which access to the land was prohibited to members of the public by reason of any enactment.*

*(7) For the purposes of subsection (2)(b) in a case where the condition in subsection (2)(a) is satisfied-*

- (a) where persons indulge as of right in lawful sports and pastimes immediately before access to the land is prohibited as specified in subsection (6), those persons are to be regarded as continuing so to indulge, and*
- (b) where permission is granted in respect of use of the land for the purposes of lawful sports and pastimes, the permission is to be disregarded in determining whether persons continue to indulge in lawful sports and pastimes on the land “as of right”.*

*(8) The owner of any land may apply to the commons registration authority to register the land as a town or village green.*

*(9) An application under subsection (8) may only be made with the consent of any relevant leaseholder of, and the proprietor of any relevant charge over, the land.*

*(10) In subsection (9)-  
“relevant charge” means-*

- (a) *In relation to land which is registered in the register of title, a registered charge within the meaning of the Land Registration Act 2002 (c. 9);*
- (b) *In relation to land which is not so registered-*
  - (i) *a charge registered under the Land Charges Act 1972 (c. 61); or*
  - (ii) *a legal mortgage, within the meaning of the Law of Property Act 1925 (c. 20); which is not registered under the Land Charges Act 1972;*

*“relevant leaseholder” means a leaseholder under a lease for a term of more than seven years from the date on which the lease was granted.”*

## **10. Background**

- 10.1. Wiltshire Council is in receipt of an application dated 24 June 2016 (received by Wiltshire Council as the Registration Authority, on the same date), made under Section 15(1) of the Commons Act 2006, to register land known as Great Lees Field, Pound Lane, Semington, as a Town or Village Green.
- 10.2. The application is also made under Section 15(3) of the Act, i.e. where use of the land for recreational purposes has ceased and the application is made within one year of the cessation of use.
- 10.3. Part 7 of the application form requires the applicant to provide a summary of the case for registration:

*“Great Lees Field in the village of Semington has been extensively used by villagers in the post-war period ‘as of right’ for a wide range of recreational, sporting and other activities. This use came to an end on April 27<sup>th</sup> 2016, when the field was ploughed as a prelude to maize being planted. This event, which came without warning, was a shock to villagers who lost, overnight, a prized village amenity; that is about 4Ha of green space which could be used*

*for a wide range of activities in and around its normal agricultural usage. The ploughing of the field has prompted this application to establish village green status for the field with the aim of enabling villagers to continue to carry out the activities that they have freely enjoyed for so long.*

*Up to that point there has been no attempt by the field's joint owners (who do not live in the village) to prevent use by village families; nor had any attempt been made to deny complete access to the field by villagers by notices or physical barriers. In the same vein, permission had never been sought from the owners, by individuals or families, to use the field for any purpose.*

*Data on residents' use of Great Lees Field, and access to it, were gathered by questionnaire. There was a 16% return, which represents a significant level of sampling of village opinion. All respondents said that they had used the field during the past 20 years, and many said that it was for much longer than that. All were supportive of this application. The data show that there are at least six ways that people on foot have used to get into Great Lees Field over the years, and there is good evidence both through photographs and on Google maps of this usage.*

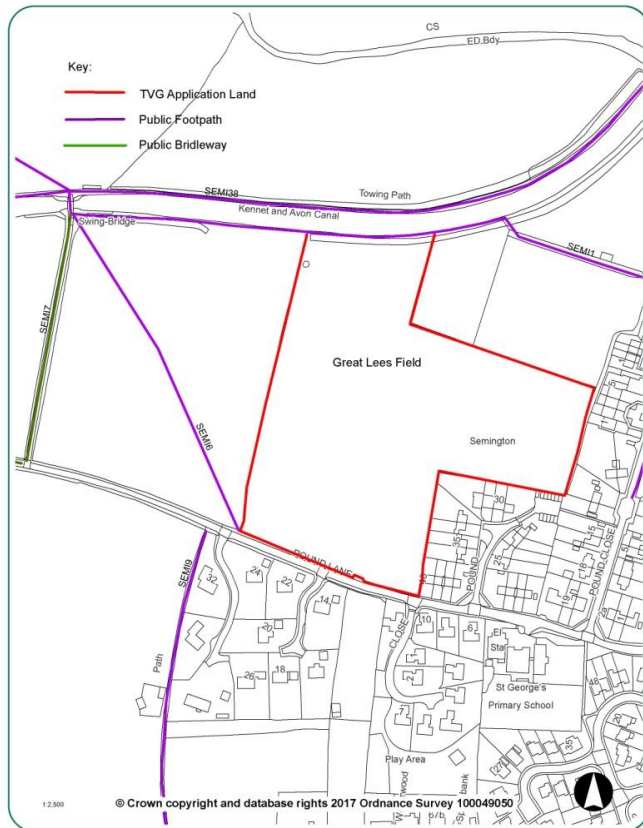
*The data show that the use of Great Lees Field was both regular and frequent. 26% of respondents said they used it every day, 47% every week, and 12% every month. Over 30 different activities were identified. The most frequently cited were walking (with and without dogs), children playing, picking blackberries and kite flying. This use of Great Lees Field by the village is in tune with agricultural practice and the rhythm of the seasons, as there are both seasonal activities, for example, which fit in around grass cutting for silage, and the more frequent activities that people undertake with their families (or on their own) more or less all the time.”*

- 10.4. The application was received by Wiltshire Council on 24 June 2016 and accepted as a complete and correct application on 9 September 2016. The

application was accompanied by 66 completed witness evidence questionnaires. Following notice of the application being posted on site, advertisement in a local newspaper and service upon all landowners, one objection and two representations of support for the application, were received.

- 10.5. The application land is located off Pound Lane in the parish of Semington and occupies an area of approximately 3.86 hectares, presently being ploughed and cropped. It is located between Pound Lane to the south and the Kennet and Avon Canal to the north. The residential development of Pound Close is located to the east and the field to the west is owned by Mr Thomas Masters and his sister Ms Julia Masters. Footpath No.1 Semington leads east-west at the northern boundary of Great Lees Field, south of the canal, leading generally south-east from the Hilperton Parish boundary, (north-west of the swing bridge over the Kennet and Avon Canal, to the west of Great Lees Field), to Semington High Street, adjacent to the Somerset Arms pub.

Great Lees Field Semington  
Public Rights of Way



*Footpath no.1 Semington, leading east-west, at the northern boundary of Great Lees Field, south of the canal.*

10.6. Footpath No.1 was claimed by Semington Parish Council following the National Parks and Access to the Countryside Act 1949, which required all County Councils in England and Wales to compile a definitive map and statement of public rights of way. The path was included within the Bradford and Melksham Rural District Council Area Definitive Map and Statement dated 1952, (conclusive evidence that it was a public right of way at the date the map was prepared). A definitive map modification order was made in 1991, amending the route of Footpath No.1 Semington by adding a section of footpath over the swing bridge and deleting a section of Footpath No.1 which now lies in the parish of Hilperton, adding this section of the path as Footpath No.48 Hilperton, (effectively a re-numbering of the path as a result of a parish boundary change). These changes did not affect the route of the footpath

Commons Act 2006 – Sections 15(1) and (3) – Application to Register Land as a Town or Village Green – Great Lees Field, Semington

through Great Lees Field, which has remained unaltered since its inclusion within the definitive map and statement.

10.7. There is a gate at the southern boundary of the field onto Pound Lane; a stile at the north-west corner of the field on Footpath No.1; stone stile at the north-east corner of the field on Footpath No.1; garden gates leading into the field from properties in Pound Close and a former gap / Wiltshire gate in the western field boundary, (adjoining the land to the west owned by the Masters' family), which has now been fenced. On visiting the site in October 2016, it was noted that the landowner had erected the following notices on the land:

- 1) Pound Lane gate - "*Private Land No Public Right of Way*" notice and "*Private – Please Keep off the Crop*" notices.
- 2) Former Wiltshire gate / gap between Great Lees Field and the field to the west – "*Private Farmland No Public Right of Way*" notice.
- 3) No notices are erected on the stile in the north-west corner of the field on Footpath No.1 Semington. Just inside this stile a notice stating "*Private Farmland No Public Right of Way*" is erected on the land.
- 4) No notices are erected on the stone stile in the north-east corner of the field on Footpath No.1 Semington.
- 5) To the rear of properties in Pound Close – "*Private Land No Public Right of Way*" notice is erected on the land.

10.8. In supporting documentation, "The Case for a Village Green", the applicants give the following details of notices erected on site:

*"Following the ploughing of the field on April 27<sup>th</sup>, printed notices were displayed on the Pound Lane gate saying that the land is 'private' and that there is no right of way. Around June 15<sup>th</sup>, more formal notices were placed on the gate on Pound Lane, and also at other access points to the field, some of which were newly blocked off. The details are:*

- I. *the gateway in the western boundary hedge approximately 90 metres north of Pound Lane has a sign “PRIVATE FARMLAND No Public Right of Way” and wire mesh netting now blocks access through the gap in the hedge.*
- II. *there is a sign “PRIVATE LAND No Public Right of Way” in the middle of the small gap in the hedge 20 metres north of Pound Lane.*
- III. *the wooden stile into Great Lees Field in the north-west corner has a new “PRIVATE FARMLAND No Public Right of Way” sign in the corner of the field...”*

10.9. The landowner’s agent provides the following farming history of Great Lees Field:

- “7. *Great Lees Field has been in the ownership of the Stuart-Bruges family since 1951. Mr Stuart-Bruges himself has been an owner as far back as 1987. Since 1951 Great Lees Field has (up to and including 2015) been in agricultural use by the Masters family. In 1951 the Masters family were granted a tenancy from year to year of Great Lees Field for grazing and mowing. The tenancy endured until 1987. Thereafter, from (and including) 1988 onwards, annual grazing and mowing agreements were entered into with the Masters family each year save for 2000.*
8. *Throughout the period from 1951 to 2016 the Masters family used Great Lees Field for the purposes of silage and hay production. In 2016, after the cessation of the arrangements with the Masters, Great Lees Field was planted with a maize crop. In 2000 (the one year no grazing agreement was concluded with the Masters family) Great Lees Field became overgrown and weed killer had to be applied before the land was reseeded. Great Lees Field was also ploughed at this time.”*



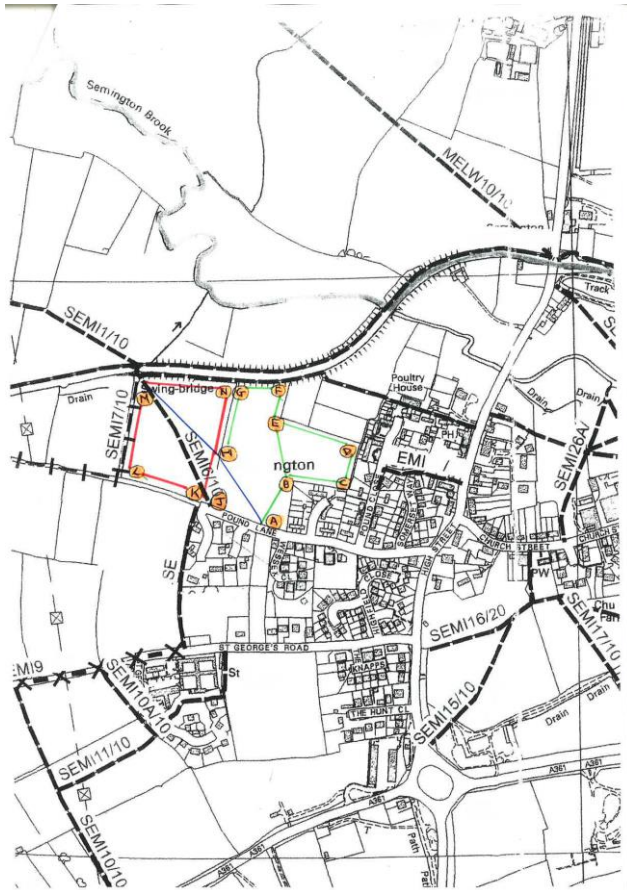
10.10. The grazing licence has been held by the owners of the adjoining land to the west of Great Lees Field, Mr John Masters and his sister Miss Julia Masters. The land was ploughed on 27 April 2016, which it is claimed brought to an end use of the land for the purposes of lawful sports and pastimes, although the landowner contends that the field was ploughed in 2000.

10.11. The land has been subject to 3 planning applications as follows:

- 1) W/89/01008/OUT – Land west of Pound Close, Semington Wiltshire  
Residential and ancillary development including land for community use.  
Application registered – 30 May 1989  
Decision 22 August 1989 – Refused
  
- 2) 16/05783/OUT – Land north of Pound Lane, Semington, Wiltshire  
Erection of 75 dwellings including 30% affordable homes with ancillary public open space and play areas and access from Pound Lane (Outline application relating to access).  
Application registered 14 June 2016  
Decision 7 October 2016 – Refused  
Appeal lodged 6 December 2016
  
- 3) 17/01053/OUT – Land to the north of Pound Lane, Semington, Wiltshire  
Outline Application with some matters reserved (access) erection of 75 dwellings including 30% affordable homes, with ancillary public open space and play areas and access from Pound Lane.  
Application registered 3 February 2017 (Application withdrawn)

10.12. Planning application No.16/05783/OUT is the only valid application on this site, where the decision of Wiltshire Council, as the planning authority, to refuse the application, is presently being appealed.

10.13. The land was subject to an application to amend the definitive map and statement of public rights of way, by order (definitive map modification order (DMMO)), adding footpaths over Great Lees Field and the land to the west (in the ownership of the Masters' family), (please see application plan below). The application dated 26 April 2016 was refused by Wiltshire Council, as the Surveying Authority, on the grounds that the application failed to make a reasonable allegation regarding the acquisition of public rights over the claimed routes, with an insufficiency of user for the Red Route, (please see plan below) and an interruption to user on the Blue and Green routes leading to insufficiency of evidence in the 20 year period before the interruption occurred. It was also concluded that all claimed routes leading from the Pound Lane Gate, were not used "as of right" owing to the locking of the gate and subsequent damage to it. Please note that DMMO and Town/Village Green applications are determined under separate legislation and the evidence is subject to differing legal tests.



*Definitive Map Modification Order application map. The claimed routes are shown Red, Blue and Green.*

## 11. Right to Apply

11.1. The Growth and Infrastructure Act of 2013 introduced a series of provisions to make it more difficult to register land as a Town or Village Green. This included, at Section 16, the removal of the “right to apply” to register land as a Town or Village Green where specified planning “trigger events” have occurred for example, where an application for planning permission in relation to the land, which would be determined under Section 70 of the 1990 Act, is first publicised in accordance with requirements imposed by a development order by virtue of Section 65(1) of that Act.

11.2. The right to apply is revived where a corresponding “terminating event” has taken place, for example, the withdrawal of the planning application; a decision to decline to determine the application is made under Section 70A of

Commons Act 2006 – Sections 15(1) and (3) – Application to Register Land as a Town or Village Green – Great Lees Field, Semington

the 1990 Act; where planning permission is refused and all means of challenging the refusal by legal proceedings in the UK are exhausted and the decision is upheld; or where planning permission is granted and the period within which the development to which the permission relates must be started expires without the development having begun, (a full list of trigger and terminating events is included at Schedule 1A of the Commons Act 2006 as added by Section 16 of the Growth and Infrastructure Act 2013 and amended by the Commons (Town and Village Greens) (Trigger and Terminating Events) Order 2014, which extended the list of trigger and terminating events).

- 11.3. This alters the way in which the Registration Authority deals with new applications to register land as a Town or Village Green. DEFRA has issued Interim Guidance to Registration Authorities and has recommended that on receipt of an application the authority should write to the local planning authority and the Planning Inspectorate, enclosing the application map, to seek confirmation of whether or not there are trigger and terminating events in place in relation to all or part of the application land.
- 11.4. In the Semington case, as per the guidance, the Registration Authority wrote to the Planning Inspectorate; Spatial Planning and Development Control at Wiltshire Council on 27 June 2016, using the template letter as set out within DEFRA guidance and including links to the trigger and terminating events (as amended), to request further details of any planning trigger or terminating events in place over the land. In this case the local planning authority and the Planning Inspectorate confirmed to the Registration Authority that there was no such trigger or terminating events in place over the whole of the application land or any part of it, as follows:

- 1) 5 July 2016 – Wiltshire Council Spatial Planning – *“I confirm that no trigger or terminating event has occurred on the land”*.

The Head of Spatial Planning, Wiltshire Council, confirmed in the reply: *“In the light of the relevant legislation, the document I have considered in my assessment of the Village Green application in relation to Great Lees Field, Semington is the adopted Wiltshire Core Strategy (January 2015).”*

- 2) 15 July 2016 – Wiltshire Council Development Control – *“I confirm that no trigger or terminating event has occurred on the land”*.
- 3) 11 August 2016 – Planning Inspectorate – *“I confirm that no trigger or terminating event has occurred on the land”*.

11.5. When the Town or Village Green application was received by Wiltshire Council as the Registration Authority on 24 June 2016, a planning application had already been lodged with Wiltshire Council as the Planning Authority (application No.16/05783/OUT); however, the list of relevant trigger events clearly states that a planning application is only a valid trigger event where an application for planning permission in relation to the land which would be determined under Section 70 of the 1990 Act (Town and Country Planning Act 1990), is **first published** in accordance with requirements imposed by a development order by virtue of Section 65(1) of that Act. In this case the planning application was received on 14 June 2016, (before receipt of the Town or Village Green application on 24 June 2016), but it was not published until 29 June 2016. Thus no trigger event has occurred on the land.

11.6. The Council, as the Registration Authority, must rely upon the advice given by the Planning Authorities in relation to planning trigger and terminating events over the application land.

## 12. Validity of Application

12.1. The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 at parts 3 and 10, set out the requirements of a valid application. Regulation 5(4) allows the applicant to be given reasonable opportunity to put the application in order. In this case upon examination of the application it was found to be flawed in 5 areas:

- 1) Regulation 3(2)(d) states that the application may be supported by a statutory declaration as set out in form 44, with such adaptations as the case may require. The text of the statutory declaration was not adapted in any way to reflect this application.
- 2) Regulation 10(2)(a) refers to an Ordnance map accompanying the application and referred to in the application. Whilst the map met the requirements of the regulations, there was no reference to the map as “Map A” or “Exhibit A”, within the application form itself and no explanation of how the application land was recorded on this map. The inclusion of this reference would clearly set out that this was the correct map and the extent of the application land.
- 3) Regulation 10(3)(c) states that any Ordnance map accompanying the application must be marked as an exhibit to the statutory declaration. Whilst the map was correctly labelled as “Exhibit A” the map was not referred to within the statutory declaration itself.
- 4) At part 6 of the application, which requires the applicant to identify the locality or neighbourhood within a locality in respect of which the application is made, the applicant ticked to indicate that a map clearly marking this area was attached; however, there was no additional map

included with the application to indicate the locality or neighbourhood within a locality.

- 5) At part 5 of the application, the location description contained a typing error “It is outwith the village settlement boundary.”

12.2. Under Regulation 5(4), where an application is not duly made “...but it appears to the authority that any action by the applicant might put the application in order, the authority must not reject the application under this paragraph without first giving the applicant a reasonable opportunity of taking that action.” The Registration Authority returned Form 44; the statutory declaration and map Exhibit A, to the applicant on 25 August 2016. The application was returned to the Registration Authority on 9 September 2016 and found to be in order. Wiltshire Council, as the Registration Authority, is now placed under a duty to process the application in a fair and reasonable manner.

12.3. Where the application is made under Section 15(3) of the Commons Act 2006, it must be made within one year of the cessation of use. In this case, it is claimed that user of the application land ceased when Great Lees Field was ploughed on 27 April 2016. The application to register the land as a Town or Village Green is received by the Registration Authority on 24 June 2016 and put in order on 9 September 2016; therefore, the application is received and also validly made within the one year period of grace.

### **13. Public Consultation**

13.1. Wiltshire Council served notice of the application upon the landowner, applicant and other interested parties on 30 September 2016. Notice was also posted on site and placed in the Wiltshire Times on Friday 7 October 2016. The application including the supporting evidence was placed on public

deposit at the offices of Wiltshire Council in Trowbridge. All parties were given six weeks to make representations or objections regarding the application, (by Monday 21 November 2016).

- 13.2. Following notice of the application, one objection and two representations of support were received. The consultation replies are summarised below, (please note that full copies of all correspondence are available to be viewed with the Rights of Way and Countryside Team, Ascot Court, White Horse Business Park, Trowbridge, Wiltshire, BA14 0XA):

**1) Representation of support – Mr Steve Hall (joint applicant) – E-mail correspondence dated 16 November 2016:**

Since we submitted the Town or Village Green application to you, we have read the outcome of a separate application to establish rights of way across this field and the adjacent one. The Wiltshire Council report on the application to establish these rights of way [the rights of way report] contained statements that have a bearing to your deliberations about our Town or Village Green application as they relate to access to the field.

1. The first point related to the damage to the Pound Lane gate at Point A which was attributed in Section 17.3 of the rights of way report to the use of force by villagers to gain access to the field. Section 17.3 of that report says: “There is clear evidence of the use of force to gain access at point A over a considerable length of time.” However, our subsequent enquiry amongst villagers has revealed that this damage was caused to the gate by farm vehicles regularly “bumping” into it to push it open. That it was obviously unlocked to allow that to happen strengthens our case that this gate was kept unlocked.



The significant point about this is that we can provide eye-witnesses who confirm that this “bumping” was a normal means of opening the gate to allow vehicular entrance from Pound Lane. Our witnesses are prepared to provide that evidence at any enquiry. Thus, when Section 17.5 of the rights of way report reiterates this point: “Since 1987 there is evidence that use has been by force”, we have evidence that the damage was caused, not by villagers intent on walking across the field, but in order to gain access for agricultural use.

We note that the authors of the rights of way report accepted the assertions of the landowner when coming to its conclusions about who caused the damage to the gate (and why). We trust that Wiltshire Council officers will weigh this against the evidence that we are able to provide when considering this Town or Village Green application.

2. Our second point relates to signage. It is further contended in the rights of way report (Section 10.16.12) that no entry signs were posted round the field and that these were vandalised by villagers; photographs are presented of broken signs on grass. However, none of this is evidence that these signs were in use in Great Lees Field, or that the photographs of the damage were taken in and around this field. There is only assertion of the land-owner to set alongside the assertions of many users of the field that there were no such signs, and no vandalism. This is another example of Wiltshire Council officers accepting the assertions of the landowner. Again, we trust that this time, these will be weighed against the contrary evidence that we provide.
3. The third point is about the ploughing of the field. A core aspect of our case is that Great Lees Field has never been ploughed in living memory. This obviously clashes with the statement by the landowner

(found in Section 10.16.9 of the rights of way report) that the field was ploughed in 2000. Again, this is only an assertion, and we shall provide evidence from people who have lived adjacent to the field since well before the year 2000 that this did not happen. Further, the aerial photograph in Section 6.3 of the rights of way report shows the field in 2001, after it is alleged that it was ploughed. The paths across the field are as clear as they are in the adjacent field. This, we argue, provides clear evidence that it was not ploughed in the previous year and calls into question the accuracy of the landowner's memory.

4. Lastly, there is no mention in the rights of way report of the entrances to Great Lees Field through the gates in people's back gardens along Pound Close. We presume that this is because the landowner acknowledges that this access has never been restricted in any way.

**2) Representation of support from Semington Parish Council (Roger Coleman – Clerk to Semington Parish Council) – E-mail correspondence dated 14 October 2016:**

At its meeting held on 12 October 2016, Semington Parish Council resolved that it fully supported the application and that it had no objections to Great Lees Field being registered as a Town or Village Green.

**3) 21 November 2017 – Submission from Gateley Plc on behalf of the landowners including:**

- Submission of Alan Evans, Counsel at Kings Chambers
- Statement of Mr William Peter Stuart–Bruges (including annotated decision report; statements and Gateley Plc letter, all relating to the recently refused DMMO application)
- E-mail from Mr Arthur Haythornthwaite (joint landowner) confirming his support of the statement submitted by Mr William Stuart-Bruges.

The main points of the submission are summarised below and the full submission is available to be viewed at the Offices of Wiltshire Council (Rights of Way and Countryside, Unit 9 Ascot Court, White Horse Business Park, Trowbridge):

**Submission of Alan Evans, Counsel at Kings Chambers – 17 November 2016:**

**Great Lees Field** - The landowner has a firm conviction that the Town or Village Green application has been motivated by a desire to frustrate the development of Great Lees Field.

The report and witness statements made by Mr Stuart-Bruges in connection with the rights of way claim are highly relevant to the Town or Village Green application and Mr Stuart-Bruges wishes these earlier witness statements in connection with the DMMO application to be considered as evidence in respect of the Town or Village Green application.

**The farming history of Great Lees Field** – The Stuart-Bruges family have owned Great Lees Field since 1951, Mr William Stuart-Bruges himself since as far back as 1987. Since 1951 to 1987 (up to and including 2015) it was in agricultural use by the Masters' family who were granted a tenancy from year to year for grazing and mowing. From 1987 onwards annual grazing and mowing agreements were entered into with the Masters' family, each year save from 2000.

1951 – 2016 the Masters' family mainly used Great Lees Field for silage and hay production. After the cessation of the arrangements with the Masters' the field was planted with maize.

In 2000, where no annual agreement was entered into the field became overgrown and weed killer was applied before the land was reseeded. The field was also ploughed at this time.

**Access to Great Lees Field** – Of critical importance to this case is the access to Great Lees Field from Pound Lane. In the questionnaires 80% of the witnesses claim to access Great Lees Field via a gate at Pound Lane. All the grazing agreements from 1988 onwards provided that the Masters' would not permit any trespass on Great Lees Field. From 2003 onwards the grazing agreements also provided that the Masters' would maintain the gate closed and locked. Several of the evidence questionnaires refer to the locking of the gate (other than in 2016, outside the qualifying user period). Some references associate the locking of the gate with traveller activity in the vicinity, crop spraying and the cutting of silage (or even the presence of cattle) and some suggest no reason for the locking. The general impression conveyed is that the locking of the gate was occasional and for short periods, but it confirms that the gate was locked. The justification for the application to register the field as a Town or Village Green accepts that the Pound Lane gate has *“clearly been locked (as opposed to its being merely closed) on a number of occasions over the years”*.

The gate has been repeatedly unlawfully lifted off its hinges by persons wishing to get onto Great Lees Field. It has also been climbed to gain access as evidenced by damage to the bars. Damage to the gate has resulted in its replacement in 1998 and 2010 as evidenced by Mr Stuart-Bruges' 1998 invoice and a letter from Mr Masters dated 27 May 2010. Mr Stuart-Bruges has provided photographic evidence of the damage to the gate in 2009. This photograph does show the gate open at this time but it must previously have been locked shut otherwise there would be no need for it to be climbed, causing the damage to the gate.

At various times barbed wire has been wound over the top of the gate to prevent or discourage entry. The evidence produced by Mr Stuart-Bruges convinced the Council that entry by the public to Great Lees Field from Pound Lane was incontrovertibly forcible in the DMMO application and there is no good reason for the Council, as the registration authority, to reach a different conclusion in the Town or Village Green application. Jan Jen in user evidence confirms that the Pound Lane gate was padlocked and/or topped with barbed wire and that access was gained by climbing over the gate.

Since 1987 signs have been fixed to the Pound Lane gate indicating that the land was private and/or that there was no right of way. Mr Stuart-Bruges fixed these signs when he became owner in 1987 and again when the gate was replaced in 1998. In 2004 signs stating "Private No Right of Way" were unlawfully removed and cast to the ground (photographic evidence of this is provided).

There is access from Great Lees Field to the Masters' field through a gap in the hedge. That access was formerly secured by a Wiltshire gate, a wire fence which is capable of being removed. In 1998 Mr Stuart-Bruges fixed signs on the same terms as those on the Pound Lane gate. Photographs, taken in 2004, show the sign stating "Private No Right of Way" having been removed and cast to the ground.

**The footpath routes claimed in the DMMO application but rejected by the Council** - Three routes were claimed in respect of Great Lees Field.

**The Law** – Pill LJ in *R v Suffolk County Council ex p Steed*, approved by Lord Bingham in *Beresford v Sunderland City Council* – *"it is no trivial matter for a landowner to have land, whether in public or private ownership, registered as a town green" and that the statutory ingredients for registration must be "properly and strictly proved"*.

“As of right” is clear and well settled in law (Lord Walker – Lewis v Redcar and Cleveland Borough Council 2010). Lifting a gate off its hinges or climbing over a locked gate to access land forcibly is not “as of right”.

Law in relation to forcible use and signs is considered in Taylor v Betterment Properties Ltd 2012. Where the landowner displays opposition to the use of the land by erecting a suitably worded sign, visible to and actually seen by local inhabitants, then subsequent use is contentious and, in that account forcible. If the signs were not seen by many users of the land because they were repeatedly unlawfully removed soon after erection, the landowner would nevertheless have done all that was required to make use contentious.

In accordance with the observations and guidance in Laing Homes Ltd v Buckinghamshire County Council and of Lightman J in Oxfordshire County Council v Oxford City Council, use which was referable to the footpaths in the DMMO application should be discounted. The matter is approached on the basis of how it would have appeared to the landowner. The benefit of the doubt is to be given to the landowner as Lightman J said in the Oxfordshire case *“if the position is ambiguous, the inference should generally be drawn of exercise of the less onerous right (the public right of way) rather than the more onerous (the right to use as a green).”*

“Significant number” – Sullivan J in McAlpine Homes Ltd, Staffordshire County Council - *“the number of people using the land in question has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers.”*

**The law applied to the facts** – The Town or Village Green application has not been properly and strictly proved as required by Steed. Access to Great Lees Field from Pound Lane has been forcible. This was the conclusion of the

surveying authority in the DMMO application and remains the only proper conclusion in the present case.

Use has been in defiance of notices stating “Private No Right of Way” and thus contentious and forcible. That users claim not to have seen notices is not to be explained on the basis that there were none (because photographs show that there were), but can only be explained if the users’ accounts are inaccurate or on the basis that notices were removed by others. In the latter alternative the reasoning in *Taylor v Betterment Properties* defeats the claim by showing that use was still contentious.

Users claim not to have been hindered by the gate; that account (if reliable) is explicable on the basis that it was repeatedly lifted off its hinges so as to circumvent its having been locked and provided open passage. Again applying *Taylor v Betterment Properties*, that repeated unlawful action would not alter the fact that Mr Stuart-Bruges (and the Masters) had done sufficient to render use contentious and thus forcible.

It follows that all claimed activity on Great Lees Field which may have been indulged in after access was obtained to the land via Pound Lane must be discounted. 80% of users accessed the field via Pound Lane. Once this body of claimed use is discounted it is impossible to say there would be sufficient use left to sustain the Town or Village Green application in that use of Great Lees Field after access from other than Pound Lane gate, was, taking the approach adopted in *McAlpine Homes*, by a significant number of the inhabitants of the parish of Semington. The applicants’ reliance on such other access points thus does not assist them.

Such use as is claimed in the Town or Village Green application is dominated by walking and dog walking. In the circumstances, the inference to be drawn (see *Oxfordshire County Council* case), is that what would have been

suggested by it to a reasonable landowner is not the exercise of a right to indulge in lawful sports and pastimes across Great Lees Field, but the exercise of rights of way. Discounting such evidence it is impossible to say that there would be sufficient other use to sustain the Town or Village Green application.

Certain activities such as the gymkhana and bonfires, referenced in the evidence questionnaires, took place with the permission of the Masters’.

### **Statement of William Peter Stuart-Bruges – 17 November 2016**

I own the land jointly with my nephew Mr Arthur William James Haythornthwaite.

I provided evidence against the DMMO application, a statement dated 25 July 2016 and one dated 18 August 2016 (the DMMO Statements). This evidence is equally relevant to the Town or Village Green application.

The main entrance to the field, a gate at Pound Lane, has been damaged and replaced over the years. The footpath rights alleged over Great Lees Field were not “as of right” where the Pound Lane gate had been locked and damaged, suggesting forced entry. The Council accepted this evidence and on 7 October 2016 refused the DMMO application.

Since the Council’s decision, Great Lees Field has continued to be used for the purposes of maize and other crops and the Pound Lane gate and Wiltshire gate which connects to the adjacent private land remain secured.

I wish the DMMO statements and the Council’s decision in the DMMO application to also be considered as part of my evidence in response to the Town or Village Green application (copies annexed accordingly).



Matthew Scudamore of Gateley Plc submitted on my behalf a letter dated 19 August 2016 to the Council concerning the Pound Lane gate and I request that this is also considered (annexed).

Very few witnesses claim to have never entered Great Lees Field from the Pound Lane gate, which means that nearly all of the people claiming to have entered Great Lees Field did not do so “as of right”, given that the Council has already accepted that the Pound Lane gate was secured from at least 1987 and had been persistently damaged since then. Entry was by force.

In evidence Jan Jen expressly confirms that the Pound Lane gate has been secured and she climbed over it and that *“for many years the gate has been illegally [in her erroneous view] padlocked and/or topped with barbed wire”*. This confirms that the Pound Lane gate was locked. The application itself also acknowledges that the Pound Lane Gate has been secured in the “Justification for the application to register Great Lees Field as a Town or Village Green” – see the paragraph of the signature page which states: *“All the other responses were commenting only on the gate on Pound Lane which clearly has been locked (as opposed to its being merely closed) on a number of occasions over the years before the ploughing”*.

There are a few individuals who claim not to have entered Great Lees Field via Pound Lane gate, or at least did not expressly refer to it or identify it on the map as an entrance in their user evidence forms.

Brian and Anne Watts claim to enter Great Lees Field via a gateway at the rear of their property since the 1950s to the present.

Sheralyn Milburn does not expressly identify the Pound Lane gate, referring only to a gateway, but it appears on her map that the entrance point includes Pound Lane gate, I consider that she should be treated in the same way as other persons that entered via the Pound Lane gate.

Alan and Christine Jones claim to enter via the Wiltshire gate from 1987 to the present.

George Godwin simply states that he entered through “*the gate*”. I believe that this is in fact a reference to the Pound Lane gate and thus he should be considered in the same way as Sheralyn Milburn.

Mr and Mrs Tarsnane claim to have entered, since 1970, by the “gate” and “gap in fence”. It is not clear if this is a reference to the Wiltshire gate or the Pound Lane gate, but they have not marked the Pound Lane gate on their map.

Martin and Rose Costello claim to have entered through an “open gate”. Again as with George Godwin and Sheralyn Milburn, I believe this is a reference to the Pound Lane gate (even though it was secured) and their evidence should be treated accordingly.

Mandy Robinson claims use by entry from her garden gate from 1973 to the present.

Philip and Christine Deverall claim use from their garden gate for a period of 28 years.

Paul and Tricia Bowyer claim use from 2004 – 2016, but their entrance was unclear and it is likely to have been the Pound Lane gate.

Bill Scott – one of the applicants for the Town or Village Green application – claims entry from the Wiltshire gate from 1987 to the present. However, Mr Scott submitted evidence for the DMMO application as well. The evidence he submitted for that is not consistent with the evidence he is submitting now. In the DMMO application he claimed to enter Great Lees Field via the Pound Lane gate and to either follow the alleged footpaths, or to walk across the fields or to walk around them. But for this Town or Village Green application, he claims only to enter Great Lees Field from the Wiltshire gate. Given this obvious contradiction, Mr Scott’s evidence should be discounted as not credible.

Of those above, only Mr and Mrs Watts, Alan and Christine Jones, Mr and Mrs Tarsnane, Mandy Robinson and Philip and Christine Deverall can be said, on the evidence they have submitted, to have never entered via the Pound Lane gate.

This is a total of 9 people out of the 66 who have submitted evidence. Of these 9, 5 of them (the Deveralls, Mandy Robinson and the Watts) enter from their private gardens, which back on to Great Lees Field and from which no other member of the public may enter Great Lees Field. Given their residences' proximity to Great Lees Field and the Pound Lane gate, I consider it inconceivable that they would not have known Great Lees Field was secured land, given the history of its use and the history of securing Great Lees Field as set out in the DMMO statements.

Therefore, only 4 people, the Jones' and the Tarsnanes', both couples, have entered from anywhere else, specifically the Wiltshire gate. The Jones' claim to have done so since 1987, but the Council has already accepted that Great Lees Field had been secured by then. The evidence in my DMMO statement demonstrates that I put signage up on the Wiltshire gate and the Pound Lane gate anyway, although it was later torn down. Furthermore, the Tarsnanes' claim use from 1970, but it is not clear whether they may have in fact used the Pound Lane gate given their reference to a "gate".

**Other evidence** – I have also considered the evidence provided by the Council on 19 October in the form of photographs showing people using Great Lees Field. The photograph of the boys playing cricket from the 1950s is in fact, I believe, a photograph of my cousin (centre), Michael Bruges (d.2013), who lived in Semington at that time. I have contacted other family relatives who also believe it to be him (attached photograph of Michael as a boy showing the similarity). If that is correct, then at that time our grandparents or my father were the owners depending upon when the photograph was taken

and the boys would most probably have been there with consent from Michael as grandson/nephew of the owner of the field and not as of right. Even if it is not Michael, it is not possible to say that this photo was even taken on Great Lees Field.

The photograph of children from the 1980s – it cannot be shown to have been taken on Great Lees Field, it could be a field anywhere.

Photographs of the school/nursery children – two of these are taken by the canal on a mown bank and not on Great Lees Field where there is a lot of greenery and no mowing has occurred. In the other two photographs the children are seen to be picking dandelions. Great Lees Field was ploughed in April 2016, before dandelions would have flowered, so these photographs cannot have been taken on Great Lees Field. They are a different location as confirmed by the presence of the pill boxes in the photographs. There is only one concrete structure on Great Lees Field to the left of the stile, not to the right as seen in the photographs.

The photograph of the open gate has been accepted by the Council (in the DMMO application) as being evidence of the gate being damaged and therefore entry was by force and not as of right.

Whenever I have visited Great Lees Field, I have never seen these activities taking place. If I had I would have made clear to people that they were on private land. Arthur Haythornthwaite confirms the same.

I note frequent references to bonfires and a gymkhana. I know from my dealings with the Masters' that these events occurred in the past but were always with permission and were, to the best of my knowledge, events that mainly took place on the Masters' land in the 1960s and 1970s in the case of the bonfire and the 1980s and 1990s in the case of the gymkhana.

Some evidence relates to the “Semington Slog” which I understand is a fun run. The Facebook page records the route and it does not enter Great Lees Field, but goes round it, perhaps making use of the existing footpath which runs along the canal bank.

**Proposed development** – In the DMMO statements I set out that I had always intended to develop Great Lees Field and that this fact was well known in the village and I attach evidence to that effect.

**Conclusion** – The evidence submitted in support of the Town or Village Green application does not establish that Great Lees Field has been used for the purposes of a village green. The evidence I have supplied in the DMMO statements and this statement demonstrates that. It remains my view that certain residents of Semington are using any mechanism they can to prevent the development of my land.

- 13.3. As part of the statutory procedure for determining Town or Village Green applications, where objections are received, they must be forwarded to the applicant allowing reasonable opportunity for dealing with matters raised (Regulation 6(3) and (4)). Therefore, on 15 December 2016, the applicant was forwarded all the above-mentioned correspondence, as set out at 3.2, received within the formal objection period.
- 13.4. Officers allowed the applicant a reasonable opportunity to respond to the objections with comments to be received, in writing, not later than 5:00pm on Monday 23 January 2017. Comments on the objections were received from “The Friends of Great Lees Field” on 22 January 2017. The main points are summarised below and the correspondence in full is available to be viewed at the offices of Wiltshire Council, Ascot Court:

### **Introduction and rationale:**

The landowner asserts that the evidence submitted in the rights of way application over Great Lees Field is equally relevant to the Town and Village Green application. He claims:

- The main entrance, (gate at Pound Lane) has been damaged and replaced over the years.
- Routes over Great Lees Field were not “as of right” where the gate had been locked and damaged, suggesting forced entry.
- The Council accepted the evidence and refused the rights of way application.
- 57 of 66 users have entered via the Pound Lane gate and have thus used force.
- Remaining users must have known Great Lees Field was secured land.

His own evidence in the village green objection is largely reliant on Wiltshire Council’s acceptance of “incontrovertible evidence” over that of Semington villagers.

The landowner’s evidence is far from incontrovertible and is largely unsustainable hearsay.

**1. Two quite separate applications** – We acknowledge that there is some overlap; however, they are separate applications with different purposes. We ask that Wiltshire Council rejects the landowner’s attempts to link the two applications and that the Officers’ judgements on the rights of way case are ignored in its deliberations about this Town and Village Green application.

**2. Inappropriately-focussed legal advice** – The legal advice does not concern this application and does not refer to this application. We ask that Wiltshire Council ignore the legal advice.

**3. A distinction in law** – Comments on the land for the rights of way application should not be used in consideration of the Town and Village Green application and we ask that the Council ignores any legal advice that relates to rights of way.

**4. No evidence of any denial of a right of way** – A sign has been placed on the Pound Lane gate and the Wiltshire gate in the boundary with the field to the west, saying “Private Land No Public Right of Way”, after the Town and Village Green application. We are able to provide witness evidence that the gap between Great Lees and the field to the west is of long standing and has never been closed before, giving easy access between the fields. It is central to our case that such signs were never in place before the application and we are able to provide numerous witnesses to that effect, including people who did not complete our original survey. The landowner did not, before our application set out a clear message to the public that there was no right of way onto the field and the landowner provides no evidence that he did. He states that there were signs, but these were vandalised, but there is no actual evidence, other than assertion, that such signs were on the Pound Lane gate at a particular date and he does not say that he immediately replaced any damaged signs. The landowner has submitted photographic evidence of the dislodged signs; however, these pictures could be signs anywhere, at any time. Nor is there any evidence that the signs were vandalised.

The submission made by Alan Evans of Kings Chambers, refers to the case of *Winterburn v Bennett* [2016] EWCA Civ 482, i.e. *“the continuous presence of signs can render use in defiance of the same contentious and not ‘as of right’.”* However, this case makes clear that notices have to be displayed in a continuous and unmistakable manner to carry weight. In the case of Great Lees Field, such signage was not maintained and the landowner cannot provide evidence that appropriate signage denying a right of access was ever displayed on the Pound Lane gate, let alone at all the many points of entry

and has not tried to assert steps taken to continue signage, because he did not do so. We are content that the landowner did nothing to prevent the village use of Great Lees Field in the many ways and for the long duration that we set out in our submission. We ask that the landowner's comments about the denial of rights of access are treated as lacking a convincing evidential base.

**5. No evidence of vandalism** – It is central to the landowner's case that people have vandalised the Pound Lane Gate on numerous occasions to gain use "by force". Evidence of a new gate being purchased in 1998 is provided, however there is no evidence that this was because vandalism had taken place. There have been no direct accusations or prosecutions because of it. The Council accepted this assertion as "incontrovertible" evidence of forced entry and it was the key reason for refusal of the rights of way claim. Our contention is that there is no evidence of vandalism by villagers in order to gain forced entry to the field; however, there was never any need to force entry through a gate that was routinely left unlocked and open. There is a significant number of people in the village who can say that over time they never saw any signs at Pound Lane, were never made aware of a locked gate or of damage to the gates and never encountered any obstruction. These include people who did not contribute to our original survey.

It is difficult to understand how a robust 7 bar gate would be damaged by people climbing over it, such that replacement is needed. Indeed, there are witnesses who can provide evidence that the damage to the gate was caused by agricultural vehicles routinely being driven into the unlocked gate to nudge it fully open, causing the damage as seen in the photographs submitted by the landowner. For this damage to be possible the gate would need to be unlocked and unfastened. There is another gate in the village with the same damage as the two gates are used by the same agricultural vehicles. We ask that comments regarding vandalism, in order to force entry to the field are



ignored, since the landowner is not able to provide evidence that is “incontrovertible”. We ask that Wiltshire Council sets aside its own officers’ previous judgements in relation to vandalism and forced entry and look in an objective way at the nature of the evidence that exists.

**6. All evidence should be considered** – The landowner requests that most of the witness statements are ignored where they relate only to access through the gate on Pound Lane, where the gate was damaged, the evidence is invalid. Walkers did not vandalise the gate as it was open and prior to 2016 had never been faced with notices denying them a right of way. As such, their evidence must be included and we ask that Wiltshire Council examines all evidence provided by the applicants on its merits and not discount any.

**7. Unsigned grazing agreements** – The objector encloses in evidence a number of grazing agreements from 1951 – 2015. These are important to his case that the Pound Lane gate was locked; however, none of the agreements are signed by the landowners. As such, they are worthless as legal documents and can only show intent, not provide evidence of action. The evidence of witnesses is that use was without force, secrecy or permission (as of right). There were no signs preventing access until April 2016 and any desired denial of entry before that date was not carried out. Also, typically, these agreements covered only part of the year. We ask that all grazing agreements in the landowner’s submission are ignored.

**8. Unfettered access to Great Lees Field** – Access to Great Lees Field was possible at a number of points including the footpath along the southern edge of the canal (which the Land Registry maps show to be part of Great Lees). Access at this point has always been possible and still is. Residents of Pound Close have garden gates leading directly onto the field, since around 1960 when the houses were built. They have never been prevented from using the gates; nor have signs ever been put up denying them a right of way. There is

now a barbed wire fence blocking this access, erected on 18 November 2016, after the Town or Village Green application and we take this as evidence that the landowner understands the importance of this mode of entry to the field. The landowner attempts to downplay the significance of the number of people using these gates because not all provided evidence but there are good reasons for this and it should not be equated with an unwillingness to provide convincing evidence of access over time. We ask that Wiltshire Council gives considerable weight to the evidence of completely open access to Great Lees by those living in Pound Close adjacent to the field.

**9. No evidence of ploughing since WWII** – We argue that the field has never been ploughed since WWII. Where the landowner states that it was ploughed in 2000, there is no evidence to support this contention and numerous villagers have told us that the field was not ploughed at that time. Google Earth evidence indicates that there was no disturbance to the tracks across the field in and around 2000. The landowner understands that the work involved weedkilling, ploughing and reseeding, but he has no direct knowledge of it, despite this, in the legal opinion this understanding becomes a fact “Big Lees was ploughed at this time.” We ask that it is concluded that the field has not been ploughed since at least the end of WWII until 2016.

**10. Disputing photographic evidence** – The landowner disputes the value of the photographs provided in support of the application. Their value as evidence can only be proved by an examination of witnesses. We ask that all the photographic evidence provided by the applicants is considered on its merits.

**11. A reliance on hearsay** – The landowner states that when he has visited Great Lees Field he has never seen these activities taking place. We accept this statement; however, as he does not live in the village, this is unsurprising. In objection to the rights of way claim the states “*I visit Semington at least*

*annually*". He has never seen the activities; or any vandalism or forced entry which is alleged, he therefore has to rely on hearsay evidence for the assertions he makes. We ask Wiltshire Council to ignore all hearsay.

**12. Regular gate replacement** – The landowner implies that in 1998 the gate was replaced because of forced entry and shows a 1998 invoice as evidence of this which is evidence only of a gate replacement, not why it was replaced and no evidence that it is replacement of Pound Lane Gate. Again he notes that the gate was replaced in 2010 by the tenants, but there is nothing in the correspondence about this to suggest it was replaced due to damage caused by people forcing entry. We ask that the invoice is accepted only as evidence of the gate being replaced and not why it was replaced.

**13. Evidence from Google Streetview** – The landowner produces a 2009 Google maps streetview photograph of the Pound Lane entrance gate. He claims it shows damage to lower bars resulting from people climbing over it. We accept that the gate is damaged, but it is also open, so there is no reason for users to damage the gate whilst climbing over it. An open, unlocked gate is consistent with those giving village green evidence. We ask that it is accepted that this image only provides evidence that the gate was open and unlocked.

**14. Conclusion** – Villagers have used Great Lees Field since the end of WWII without force, secrecy or permission and the landowner cannot provide evidence that appropriate signage denying access was continually displayed at all points of access to the field.

13.5. The objectors were then given opportunity to comment on the response from the applicants, giving a deadline of 10 March 2017. Their response dated 10 March 2017, is summarised as follows:

## **Statement of William Peter Stuart-Bruges – 6 March 2017**

**Grazing Agreements** – This is a non-point. The agreements were signed, but usually, for convenience, in counterpart. Signed pages are attached.

**The ploughing of the land in 2000** – My cousin Michael Bruges informed me that he had arranged for the ploughing of Great Lees Field at this time. Unfortunately, he is now deceased so the Council will have to accept that I am accurately reporting what he told me.

**Regular Gate Replacement** – At the time of the gate replacement in 1998 I owned no land in the UK apart from my share in Great Lees Field. I was renting a house at Deane near Basingstoke. I could not have had any conceivable reason to have paid for a different gate. The tenant's letter dated 7 April 2003, previously submitted, alludes to people frequently lifting the gate off its hinges.

**Evidence from Google Streetview (2009)** – The gate is shown damaged and that damage is entirely consistent with people climbing over it, which concurs with the evidence of Jan Jen. The tenant replaced and locked the gate shortly after, as confirmed in their letter of 27 May 2010.

**Support from Parish Council** – It is of no consequence as to the merits of the Town or Village Green application whether the Parish Council supports it or not. The actions of the Parish Council merely underline that the real motives behind the application are to prevent the development taking place on Great Lees Field.

A failure to declare an interest in the application when considering it has occurred (as with the rights of way application), as evidenced by the Parish Council minute for 12 October 2016. I believe certain members should have declared an interest because many of them are either Applicants for the

application or have submitted evidence in support of it, or live in the vicinity of Great Lees Field. The actions of those members in failing to declare their interests suggests to me a co-ordinated attempt to prevent development at any cost on Great Lees Field.

Having considered the minute, I can see that Messrs Rimmer, Wade and Smyth failed to declare an interest, despite having submitted evidence for the application, and Mr Robinson failed to do so, despite living adjacent to Great Lees Field and sharing a household with another person who submitted evidence. Mr Scott, one of the applicants, abstained from the vote but I have already expressed my view that his evidence should be disregarded for lack of credibility.

**Alan Evans, Kings Chambers 9 March 2017 - Comments on behalf of William Peter Stuart-Bruges and Arthur William Fitzjames Haythornthwaite in response to (1) the response of the applicants (the friends of Great Lees Field) 22 January 2017 (2) The email of Steven Hall of 16 November 2016 and (3) Semington Parish Council's email of 14 October 2016**

The objection is maintained in its entirety.

**Two quite separate applications** – This point asks that the previous application to claim rights of way across Great Lees Field and the judgements that were made in respect thereof by officers of the Council (on its behalf in its capacity as surveying authority under the Wildlife and Countryside Act 1981) be ignored when considering the present application. It would be perverse for the registration authority to proceed in this fashion and would amount to an error of law to do so. The question of whether access to Great Lees Field was forcible was a central issue in the rights of way application. It is also a central issue in the present application. The law on this particular issue is the same

whether the context is rights of way or Town or Village Greens. That common issue coupled with identical governing law makes the previous application and the evidence directed to it highly relevant to the present application and Mr Stuart-Bruges in terms relies in his witness statement objecting to the present application on his previous witness statements in the earlier application. The link is inexorable. And, equally, the previous evaluation made by an experienced rights of way officer as to the weight to be attached to the landowner's evidence that entry via the Pound Lane gate was forcible is not something that can be ignored when considering the same issue in the present application. That is particularly so given that the evaluation was not expressed in tentative or provisional terms but in unequivocal fashion: "*an incontrovertible body of evidence*" (paragraph 20.1 of the decision report) of forcible user (a conclusion, it is to be noted, which was based on contemporaneous documentary evidence).

**Inappropriately focussed legal advice** – Unclear what legal advice, identified in the response as "the legal advice set out by the applicant" is being referred to. For the avoidance of doubt, it is here made plain that it is categorically not accepted there was any such inappropriate focus in the legal submissions made in the Objection.

**A distinction in the law** – This point asserts that the law governing Town or Village Green applications and that for rights of way applications are distinct and that the latter should not be applied to the former. The law in relation to the key issue of forcible user is the same in Town or Village Green and rights of way cases. More generally, the Response does not engage with the point made in the Objection (see paragraphs 29 and 34) that, where the evidential position is ambiguous as to supporting a right of way claim or a claim to a new green, the benefit of the doubt should be given to the landowner in that, in such circumstances, as Lightman J said in *Oxfordshire County Council v Oxford City Council* "*the inference should generally be drawn of exercise of*

*the less onerous right (the public right of way) rather than the more onerous (the right to use as a green)*". The fact that use of Great Lees Field first found expression in a rights of way application makes this issue particularly pertinent in the present case and is another reason why the contention that the previous application is to be ignored should be soundly rejected.

**No evidence of denial of a right of way** – It is a bad point that Mr Stuart-Bruges evidence as to signs on the Pound Lane gate and the Wiltshire gate and their unauthorised removal by others should be treated as unsubstantiated assertion. So is the point that the photographs of signs lying on the ground could have been taken anywhere at any time. The account given by Mr Stuart-Bruges is part of a formal witness statement supported by a statement of truth. There is no reason to reject Mr Stuart-Bruges' evidence that there were signs, that they were placed where he says they were and that the photographs (which are dated), are taken when and where he says. Mr Stuart-Bruges' evidence is not falsified by the fact that users claim not to have seen signs; if that claim is correct, the simple explanation is that many would not have seen the signs if they were soon removed.

It is argued that the lack of continuous presence of signs, on the basis of the decision in *Winterburn v Bennett*, such would be required in order to render the user forcible. However, *Winterburn v Bennett* (which was not a village green case) has nothing to say about a case where signs are unlawfully removed. The relevant case here is *Taylor v Betterment Properties Limited*, which establishes that if signs were not seen by many users of the land because they were repeatedly unlawfully removed soon after erection, the landowner would nevertheless have done all that was required to make use contentious.

**No evidence of vandalism** – It is raised that no-one would have needed to vandalise the Pound Lane gate, because it was routinely left unlocked.

However, that point is contradicted by several strands of evidence. The grazing agreements from 1988 onward provided that the Masters' would not permit any trespass on Great Lees Field. From 2003 onwards the grazing agreements also specifically provided that the Masters' would maintain the gate closed and locked. The witness statement of Mr Stuart-Bruges of 25 July 2016 and its accompanying documentary exhibits demonstrate that Mr Stuart-Bruges was careful to ensure that the Masters' kept the gate locked and confirm that the Masters' observed the obligation to do so. Julia Masters' letter to Mr Stuart-Bruges on 7 April 2003 states "*the gate is locked*". John Masters' letter of 27 May 2010 to Mr Stuart-Bruges states that "*the old gate to the field has been replaced by a new one and padlocked.*" Several of the evidence questionnaires in support of the application refer to the locking of the gate (other than in 2016 at which point any potential qualifying use ceased). The justification for the application to register Great Lees Field as a Town or Village Green accepts that the Pound Lane gate has "*clearly been locked (as opposed to its being merely closed) on a number of occasions over the years*". Jan Jen confirms that the Pound Lane gate had, for many years, been padlocked and/or topped with barbed wire. The suggestion made by Jan Jen that the locking of the gate was illegal is totally misconceived.

The point made about vandalism to the gate, is wrong. There is contemporaneous documented evidence of wrongful interference with the Pound Lane gate which should be given considerable weight (rather than, as the Response would have it, ignored). Julia Masters' letter to Mr Stuart-Bruges of 7 April 2003 specifically states that the Pound Lane gate will need to be locked not just where it is fastened but also at its hinged end "*because people keep lifting it off the hinges*". There would have been no need to do this if the gate had not been locked. Moreover, there is no reason not to accept further the evidence of Mr Stuart-Bruges which, although not first hand, relates directly to what he was told by one of the farming licensees, namely, "*Julia Masters told me that it has always been a problem that people*



*lift the Pound Lane gate off its hinges, damage it or climb over it*". The lifting of the gate off its hinges is corroborated by the letter from Julia Masters just referred to above. Moreover, as Mr Stuart-Bruges continues, *"she also said that you could always tell when people had climbed over the Pound Lane gate because the bottom bars always became bent."* And Jan Jen also specifically admits that access was gained by climbing over the gate.

It is a facile point to say that no one has ever been directly accused of vandalism or prosecuted for it. The culprits have never been identified.

The point is made that damage to the gate was caused by agricultural vehicles routinely being driven into the unlocked gate to nudge it fully open. It is said that witnesses can be provided who will attest to this. However, no witness statements are provided and no particular witnesses are identified. This truly is unsubstantiated assertion and cannot be relied upon by the registration authority. The assertion is inherently improbable in any event. Not only does it postulate the farmers consciously damaging what was effectively their own gate, but the occasions when active agricultural operations were taking place in the field involving the entry of agricultural vehicles thereto would have been the very times when it is the most likely that steps would have been taken to lock the gate (so that there would not have been any question of nudging fully open an unlocked gate).

**All evidence should be considered** – Of course it is true that all evidence must be considered, it is not argued otherwise. However, it is one thing to consider evidence but quite another, following such consideration, thereafter to discount the evidence as showing qualifying use on the basis that it has involved forcible access to the land. In reality, point 6 of the Response is nothing more than a plea to reject the analysis of forcible access via the Pound Lane gate as put forward in the objection. For all the reasons put forward in the objection and in this document, it is submitted that the analysis

is compelling. If (as here) a gate is regularly locked being repeatedly lifted off its hinges to provide open access, it is clear from Betterment Properties, that that latter unlawful action does not alter the fact that the landowner has nevertheless done sufficient to render use contentious. In such circumstances the evidence of those who say they were not impeded by a locked gate does not avail the applicants.

**Unsigned grazing agreements** – The applicants here suggest that, as none of the copies of the grazing agreements which were exhibited to Mr Stuart-Bruges' witness statement of 25 July 2016 were signed by the landowners, they are worthless as legal documents. Mr Stuart-Bruges has in his further witness statement of 6 March 2017 exhibited copies of the relevant page of the grazing agreements for the years 1988-1999 and 2001-2015, signed by the landowners (2000 being when the land was ploughed). Mr Stuart-Bruges explains in this statement that he generally did keep a copy of the page of the agreements signed by the landowners and that they were signed in counterpart. The carrying into effect of the requirement (since 2003) in the grazing agreements that the Pound Lane gate be kept locked and closed is abundantly demonstrated in the evidence already adduced by Mr Stuart-Bruges.

**Unfettered access to Great Lees Field** – This point draws attention to the availability of access from the Kennet and Avon Canal and, in particular, via the back gates of houses in Pound Close. No emphasis is given in the Response to the former means of access. In connection with the latter means of access, reference is made to evidence not provided with the application. If not provided, that is not material which the registration authority can act upon. In any event, as pointed out in paragraph 9 of the Objection, it is the Applicants' own assessment (found in the "Justification for the Application to register Great Lees Field as a Town or Village Green" under the heading "Access to the field") that, of the user questionnaire respondents, 80% claim

that access to Great Lees Field was gained via the Pound Lane gate. The further analysis of accesses said to have been used, which is provided by Mr Stuart-Bruges in his witness statement of 17 November 2016, is not challenged in the Response. Any access from back gates in Pound Close was from private property whereas access from Pound Lane was from public highway. The steps taken in respect of Pound Lane access were themselves sufficient to demonstrate to the local public at large (as opposed to directly neighbouring householders), that user of Great Lees Field was contentious.

**No evidence of ploughing since WWII** – The issue of whether Great Lees Field was ploughed in 2000 remains a discrete area of dispute between the parties.

**Disputing photographic evidence** – The points made by Mr Stuart-Bruges in his witness statement of 17 November 2016 in relation to the slender photographic evidence provided in support of the Application remain unaltered in the light of the Response. However, the registration authority is also entitled to regard as significant the fact that there is more or less a complete absence of any photographs demonstrating the indulgence of local residents in sports and pastimes on Great Lees Field.

**Reliance on hearsay** – Asking the registration authority to ignore all hearsay is a surprising submission from Applicants who, at a number of points in their Response, invite the registration authority to act on the basis of material which has not even been placed before the registration authority (and does not therefore attain the status of evidence at all). As a matter of principle, however, hearsay is not simply to be ignored but a rational assessment must be made of the weight of the hearsay evidence in question in the light of all the relevant circumstances. For instance, insofar as Mr Stuart-Bruges relies on what he has been told by Julia Masters (people lifting the gate off its hinges), that evidence can be accorded weight because it comes from a

source (the farming licensee), who can be expected to have direct knowledge of the matters in question and because it is, to a significant degree, corroborated by documentary evidence (her letter of 7 April 2003), as well as being consistent with the evidence questionnaire of Jan Jen. The bulk of Mr Stuart-Bruges' evidence is, in any event, based on documentary material and concerns matters to which he can speak directly.

**Regular gate replacement** – The implicit suggestion in the Response that the 1998 gate replacement might not have been of the Pound Lane gate because the relevant invoice does not identify the same is to clutch at straws. Mr Stuart-Bruges in his witness statement of 25 July 2016 makes it clear that the invoice related to the Pound Lane gate. There is no reason at all why this evidence should not be accepted. The Response accepts that the 2010 gate replacement was of the Pound Lane gate. The thrust of the Response thereafter is that the simple fact that the gates were regularly replaced does not as such evidence the reason for the replacement. That may be so but the very fact that the gate was twice replaced within a relatively short space of time demonstrates both that there was a recurring source of damage necessitating such replacement and that the landowner was taking steps to keep Great Lees Field secure by effectively gating access. The registration authority should plainly prefer the evidenced explanation by Mr Stuart-Bruges that the damage was caused by unauthorised third parties seeking access to Great Lees Field to the unevidenced and improbable assertion on the part of the Applicants of damage by agricultural vehicles.

**Evidence from Google Streetview** – It is submitted that the relevant image, while showing the Pound Lane gate open at the particular point in time when the photograph was taken, clearly shows damage to the lower bars which is entirely consistent with forcible access.

13.6. In summary, in its consideration of the application to register Great Lees Field, Semington as a Town or Village Green, the Registration Authority have considered the following documents:

1. Application dated 24 June 2016 and received by Wiltshire Council on the same date, in the form of “Form 44” and statutory declaration, including:
  - 66 completed witness evidence forms;
  - Supplementary information “The Case for a Village Green”;
  - Photographs.
  
2. Submissions in objection to the application on behalf of the landowner, dated 18 November 2016, including:
  - Submission of Alan Evans, Counsel at Kings Chambers – 17 November 2016;
  - Statement from Mr William Stuart-Bruges (including annotated decision report, statement and Gateley Plc letter relating to the recently refused DMMO application) – 17 November 2016;
  - E-mail from Mr Arthur Haythornthwaite confirming his support of the statement submitted by Mr William Stuart-Bruges – 17 November 2016.
  
3. Representation of support – Semington Parish Council - 14 October 2016.
  
4. Representation of support – Mr S Hall (joint applicant) – 16 November 2016.
  
5. Representation of support – The Friends of Great Lees Field (the applicants) 22 January 2017 (formal response to objections).

6. Submissions in objection to the application on behalf of the landowner (in response to the formal comments on the objections from the applicant), dated 10 March 2017 and including:
- Further statement dated 6 March 2017 from William Peter Stuart-Bruges, with appendix containing grazing agreements;
  - Further comments of Alan Evans, Counsel of Kings Chambers – 9 March 2017.

13.7. It is noted that the tenants of Great Lees Field, TJ and JMK Masters, have not provided any evidence in this case, although they have been sent notice of the application.

#### **14. Main Considerations for the Council**

14.1. Under Section 15(1) of the Commons Act 2006, it is possible, (where the right to apply is not extinguished), to apply for land to be registered as a Town or Village Green where a significant number of inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of 20 years or more and in this particular case, under Section 15(3) of the Act, where use of the land has ceased not more than one year prior to the application date.

14.2. The legal tests set out under Sections 15(1) and (3) of the Commons Act 2006 can be broken down into a number of components, each of which must be satisfied in order for the application to succeed, where it is no trivial matter for a landowner to have land registered as a green. The burden of proving that each of the statutory qualifying requirements are met, lies with the applicant and there is no duty placed upon the Registration Authority to further investigate the claim. The standard of proof lies in the balance of probabilities.

### **Significant number of inhabitants**

- 14.3. The meaning of the word “significant” has never been defined, but was considered at the High Court in *R (McAlpine) v Staffordshire County Council* (2002). It was held that this did not mean a considerable or substantial number, as a small locality or neighbourhood may only have a very small population, but that the number of people using the land must be sufficient to show that the land was in general use, by the local community, for informal recreation, rather than just occasional use by individuals as trespassers.
- 14.4. The requirement is that users should include a significant number of inhabitants of the claimed locality or neighbourhood, in order to establish a clear link between the locality or neighbourhood and the proposed green, even if these inhabitants do not comprise most of the users. In this case the Council has received 66 completed witness evidence questionnaires from individuals who claim to have used the land. 66 of the witnesses are currently residents of Semington as the claimed locality. In evidence, the applicants advise that 385 evidence questionnaires were distributed to village residents on 6 and 7 June 2016, with 66 forms being completed and returned by 13 June 2016, a return rate of 16%.
- 14.5. As well as their own use of the land, all but one of the witnesses have seen others using the land (one witness does not reply to this question). Sheralyn Milburn states *“I have used this field with friends and family for walks/dog walks for 2+ years.”* Graham and Cindy Wyllie claim to have *“observed families playing football, golf, cricket, cycling, kite flying.”* and Mr Godwin claims to have met *“with other village people recreation.”* (Activities observed taking place on the land are included at **Appendix 5** of this report)
- 14.6. Additionally, some of the witnesses refer to community activities taking place on the land, (please see table at **Appendix 1**). Witnesses refer to use of the

land for car parking for the annual village fete at the school, where the road (Pound Lane) became congested. In the cases of Attorney-General v Southampton Corporation (1970) and Attorney-General v Poole Corporation (1938), it was held that car parking was not a qualifying lawful sport or pastime (*Getting Greens Registered – A guide to law and procedure for town and village greens* Second Edition by John Riddall, Open Spaces Society 2007). Additionally, there is evidence that the parking of vehicles on the land for the annual fete was carried out with the permission of the owner/occupier. Mr Colin Wade confirms that: *“With permission of the occupier it has served as a car park for events at the school”* and 5 other witnesses support this use with permission, (please see table at **Appendix 2**). User with permission cannot qualify as user “as of right” (user as of right is fully considered later in this report) therefore the parking of vehicles on the land is not qualifying user and must be discounted.

- 14.7. Additionally, witnesses refer to bonfire night celebrations and gymkhanas on the land. Again, it is likely that these events took place with the permission of the owner/occupier of the land and in evidence the landowner, Mr William Stuart-Bruges, confirms: *“I also note that there are frequent references to bonfires and a gymkhana. I know from my dealings with the Masters’ [the tenants of Great Lees Field and adjoining landowners] that these events occurred in the past but these were always done with permission and were, to the best of my knowledge, events that mainly took place on the Masters’ land in the 1960s and 1970s in the case of the bonfire and the 1980s and 1990s in the case of the gymkhana.”* Again where these activities took place with permission, they are not qualifying user and must be discounted in evidence.
- 14.8. Other witnesses make reference to the Semington Slog taking place on Great Lees Field; however, the landowner provides evidence that the route of this event did not take place on the application land: *“Some of the evidence also refers to the “Semington Slog” (Exhibit 2) which I understand is a fun run. The*



*Facebook page for it shows the route and it is apparent that it does not enter onto Great Lees Field, but goes round it instead, perhaps making use of the existing footpath which runs along the canal bank.”*

14.9. The Semington Slog is an annual 10k run and fun run (1k) combining road and off road surfaces, now its 3<sup>rd</sup> year (2017). The route of the run appears to follow existing and recorded public rights of way and public highway. The 2015 description of the run states: *“The run will start and finish at St Georges School in the village of Semington. The 10k route will take you through the village and onto the Kennet and Avon Canal towpath. From there you will follow leafy lanes and bridle paths before returning to the village.”* Officers would therefore agree with the landowner’s comments and conclude that this event is not qualifying user to support use of the land as a Town or Village Green, where it utilises Footpath No.1 Semington at the northern boundary of Great Lees Field and Footpath No.6 in the adjoining field to the west, in the ownership of the Masters’ family. Therefore, any reference to the Semington Slog must be discounted in evidence.

14.10. It is notable that 33 witnesses claim that there are no community events taking place on the land and some of the witnesses when asked to describe the community events taking place, refer to their own individual use of the land.

**Significant number of inhabitants** - Officers conclude that there is insufficient evidence of community events taking place, “as of right”, over Great Lees Field. However, given the size of the locality identified as Semington, having a population of 930 in 2011, (Semington Census Information 2011 – Wiltshire Council), the number of witnesses giving evidence, 65 of whom have also observed others using the land, is sufficient to suggest use of the land by a significant number of inhabitants of the locality, rather than just occasional use by individuals as trespassers.

The objectors challenge the evidence regarding use of the land by a significant number of inhabitants of the locality, only in their analysis of the points of access, and suggest that it cannot be shown that a significant number of inhabitants have used the land “as of right” for lawful sports and pastimes, where the evidence of those witnesses who used the Pound Lane field gate, is removed, (this matter is examined at paragraphs 14.23 – 14.45 of this report, user without force).

### **Of any locality or of any neighbourhood within a locality**

14.11. A Town or Village Green is subject to the rights of local inhabitants to enjoy general recreational activities over it. The “locality” or “neighbourhood within a locality” is the identified area inhabited by the people on whose evidence the application relies, (although it is acknowledged that there is no requirement for most of the recreational users to inhabit the chosen “locality” or “neighbourhood within a locality”, as long as a “significant number” do, other users may come from other localities and/or neighbourhoods). However, it is the people living within the identified locality or neighbourhood who will have legal rights of recreation over the land if the application is successful.

14.12. The definition of “locality” and “neighbourhood within a locality” were reiterated in the case of *Paddico (267) Ltd. v Kirklees Metropolitan Council* (2011) as follows: a “locality” being an administrative district or an area with legally significant boundaries, such as a borough or parish, whilst a “neighbourhood” does not need to be an area known to law, but must be a cohesive area which is capable of meaningful description, such as a housing estate. So, for example, a housing estate can be a neighbourhood, but not just a line drawn around the addresses of the people who have used the claimed green.

14.13. In the *Semington* case, the applicant has identified the parish of Semington as the relevant “locality”. This meets with the requirements of a locality, as set

out above, as an area with administrative/legally significant boundaries. In “The Case for a Town or Village Green”, the applicant provides the following information regarding the facilities available:

*“...The village school began in 1859. It is still thriving, although in much more modern buildings. The village Hall, built in 1933, and recently refurbished, is the heart of the village, both geographically and socially. It has social club and a skittle alley, and hosts the WI, a bridge club, bingo, a stompers class, two choirs, quizzes, a special needs children’s group, a zumba class, and the parish council. An extensive history of the village was compiled with funding from the Millennium Commission and published in 2002.*

*The Kennet & Avon Canal, and Semington Brook which flows into the River Avon west of Melksham, form the northern boundary of the parish. The Wilts & Berks Canal started at Semington until its closure in 1914, but a new connection with the Kennet & Avon is now planned. Of the many well-used village footpaths, the most popular is the canal towpath.*

*The parish has the following features;*

- *Two small grassy areas; one is opposite the village hall where the Christmas tree stands. The other, the Ragged Smock, is at the south of the village and is named after an old windmill that resembled an old man in a tattered coat.*
- *At the Queen’s Diamond Jubilee, a wood was planted south of the A361 and east of the old A350 road; since then villagers have planted 9,000 daffodil bulbs, scattered 10,000 poppy seeds, and planted an oak to mark the outbreak of the First World War.*
- *A conservation area in the school grounds where children can monitor and encourage wildlife. There are wildlife ponds along the A350 with special crossing points underneath the road to protect the great crested newts and other fauna in the wildlife areas nearby.*

- *A small play area for children with basketball posts and a mini football pitch, a tennis court, and a full-size football pitch located south of the A361. The village has football teams, a cricket club and six skittles teams. A summer fete is held at the school.*
- *A Post Office, a monthly parish magazine sponsored by the church, the parish council and villagers and a website providing information on parish events.*
- *A Neighbourhood Watch scheme works with the neighbourhood police team who attend the Thursday coffee mornings in the village hall.*
- *A range of businesses, including a light industrial estate, a narrow boat hire and repair company, a crematorium, and a charity helping people to live independent lives.*
- *The Somerset Arms provides a range of activities and festivals, such as Christmas and Easter parties for children, live bands, and quiz nights.*
- *Regular buses to Chippenham, Devizes, Melksham, Swindon and Trowbridge, and rail links in Melksham, Trowbridge and Westbury.”*

14.14. This is supported by the witnesses, who in their evidence indicate that the locality benefits from a local school; residents association; village hall; church; local businesses (car sales and farm sales); sports facilities (tennis court and football pitch); community police team; community activities (choir; coffee mornings; bingo); neighbourhood watch; post office (part time); bus stops/bus service; canal; children’s playground; playing field; overflow car park; crematoria; caravan park; public footpaths; bridleways; towpaths and pub, giving the area a cohesiveness and identity.

14.15. The applicants confirm that Great Lees Field lies at the western edge of Semington village wholly within Semington parish but outside the village settlement boundary.

14.16. All of the witnesses are residents of Semington and 18 witnesses confirm that those using the land come from the village, as follows: 11 confirm that users are coming from Semington; 1 Semington village; 1 mainly Semington villagers; 1 mainly villagers; 2 mostly from the village; 1 villagers and friends; 1 Anywhere in village. Others refer to people coming from outside the village: 2 Local; 2 Semington and area; 1 mostly local; 2 village and surrounding area/s; 1 Semington and surrounding area; 1 village and environs; 1 Local (village) and outside; 1 Semington and surrounds; 2 village and local area; 1 in and around Semington. Other descriptions include: 1 lots of villages; 1 local and surrounding villages; 1 Semington and two other; 1 all over; 1 have met people from all over; 1 locally. 2 users refer to their own use as “*above address*” and another witness states “*Warwickshire – 2009*”. 8 users give no description of where those using the land come from.

**Locality** - The witness evidence supports the locality of Semington Parish, as identified within the application form. There appear to be others coming from outside the village and parish, from the surrounding areas and beyond, but this is acceptable where a significant number of inhabitants do come from the identified locality. All of the witnesses who have supplied witness evidence forms are presently residents of Semington. Officers therefore consider that the applicant has successfully discharged the burden of proof with regard to identifying a “locality”. The objectors make no submissions regarding the identified locality.

### **Have indulged as of right**

14.17. Use “as of right” means use without force, without secrecy and without permission. In the Town or Village Green case of *R v Oxfordshire County Council Ex p Sunningwell Parish Council* (2000), Lord Hoffman commented on use as of right:

*“It became established that such user had to be, in the Latin phrase, nec vi, nec clam, nec precario: not by force, nor stealth, nor the licence of the owner...The unifying element in these three vitiating circumstances was that each constituted a reason why it would not have been reasonable to expect the owner to resist the exercise of the right – in the first case, because rights should not be acquired by the use of force, in the second, because the owner would not have known of the user and in the third, because he had consented to the user, but for a limited time.”*

**As of Right** – Officers conclude that user of the field by local inhabitants, has been “as of right”, for the reasons set out in full in the following sections – Without Permission; Without Force; Without Secrecy.

### **Without Permission**

14.18. The witness evidence questionnaire asks users if they have ever been given permission to use the land, or requested permission to use the land during their period of use. The responses given are included at **Appendix 2**.

14.19. Five of the witnesses refer to permission being sought or granted for the parking of cars for the village fete on an annual basis over the last 15 years, or at least since 2013 onwards. In addition to those users, Mr Colin Wade in evidence confirms that car parking was carried out with permission as follows: *“With permission of the occupier it has served as a car park for events at the school”*. Overall, the evidence supports that permission for car parking for the annual fete was sought from and/or granted by the tenants of the land, John and Julia Masters, whose tenancy of Great Lees Field ended in 2015/16. This activity has also been cited as a community event taking place over the land; however, where this activity has taken place with permission, it is not user “as of right” and must be disregarded as qualifying user. Furthermore, case law has found that car parking is not a qualifying sport or pastime.

14.20. The witnesses in their evidence make reference to bonfire parties and a gymkhana taking place on the land. The landowner has confirmed the following: *“I also note that there are frequent references to bonfires and a gymkhana. I know from my dealings with the Masters’ [the tenants of the application land and adjoining landowners] that these events occurred in the past but these were always done with permission and were, to the best of my knowledge, events that mainly took place on the Masters’ land in the 1960s and 1970s in the case of the bonfire and the 1980s and 1990s in the case of the gymkhana.”* Therefore, these events do not form qualifying user where they are not “as of right” and must be disregarded in evidence. Bonfires taking place on the land in the 1960s and 70s and any gymkhanas held on Great Lees Field prior to 1996, are outside the relevant user period identified in this case of 1996 – 2016, (please see paragraphs 14.67 – 14.73 where the relevant user period is examined).

14.21. Two of the witnesses refer to permission being sought/granted to access the rear of their properties in Pound Close, from Great Lees Field. It is noted that 9 properties in Pound Close (Nos 29-36 and 40 Pound Close), abut Great Lees Field and the residents of 29-36 Pound Close all refer to an access gate or accessing the field from their gardens, (the occupant of 40 Pound Close has not provided a witness evidence form, the west elevation of this property faces the field and there does not appear to be access from this property into the field). However, only 2 of these witnesses refer to seeking or being given permission to use this rear access from the owners/occupiers of Great Lees Field, (for access to the back of their property, or for deliveries). 6 residents of Pound Close do not refer to seeking or being granted permission.

14.22. Overall, 60 of the 66 witnesses claim that they have never sought or been given permission to use the land. They comment that permission was: *“Not thought necessary”*; *“Farmer had no objections to dogs”*; *“...nobody said otherwise”*; *“Not needed”* and *“gate always used by villagers no private sign”*.

**Without Permission** - Once car parking for the village fete; bonfire celebrations; gymkhanas and 2 instances of permission being sought for access from private gardens in Pound Close, are removed as qualifying user “as of right”, there is no further evidence of permission being granted or sought for other activities taking place on the land from witnesses, or the objectors and officers must conclude that on the balance of probabilities, the majority of user is likely to have continued on the land without permission.

### **Without force**

14.23. In the Planning Inspectorate Publication “Definitive Map Orders Consistency Guidelines”, it is stated that *“force would include the breaking of locks, cutting of wire or passing over, through or around an intentional blockage such as a locked gate.”*

14.24. The objectors claim that the gate to Great Lees Field off Pound Lane had been locked and had been damaged on several occasions by residents using force to access the land. There are 5 points of access into Great Lees Field:

- 1) The gate off Pound Lane.
- 2) Wiltshire gate/gap in the western boundary of the field, between Great Lees Field and the field to the west in the ownership of the Masters’ family.
- 3) Stile at the north-west corner of the field on Footpath No.1 Semington.
- 4) Stone stile at the north-east corner of the field on Footpath No.1.
- 5) Property owners in Pound Close have rear access gates into the field.

14.25. In evidence the applicants also mention a gap in the hedge in the western field boundary, located approximately 20 metres north of Pound Lane. It is noted that a small number of the witnesses also mark an access point to the field at this point, on maps included with the evidence questionnaires,



however, on site visits in October 2016 and August 2017, officers of the Council were unable to identify a gap still in existence at this location.

14.26. There is clear conflict in the evidence regarding the locking of the gate and damage to the gate. Whilst the landowner claims that the gate has been locked and damaged by users of the land gaining access by force, the supporters claim that the gate has not been locked and damage to the gate has not been carried out by users of the land:

*“...our subsequent enquiry amongst villagers has revealed that this damage was caused to the gate by farm vehicles regularly “bumping” into it to push it open. That it was obviously unlocked to allow that to happen strengthens our case that this gate was kept unlocked.*

*The significant point about this is that we can provide eye-witnesses who confirm that this “bumping” was a normal means of opening the gate to allow vehicular entrance from Pound Lane. Our witnesses are prepared to provide that evidence at any enquiry. Thus, when Section 17.5 of the rights of way report reiterates this point: “Since 1987 there is evidence that use has been by force”, we have evidence that the damage was caused, not by villagers intent on walking across the field, but in order to gain access for agricultural use.”*

14.27. Officers make the following additional observations regarding the locking of the gate: (i) Witnesses mainly refer to the gate being locked and notices appearing on the gate/land when the field was recently ploughed and cropped (April 2016); (ii) Many witnesses who used the land up until it was ploughed make no reference to the locked gate or signage prior to that date, which perhaps suggests that there were no locked gates/signage; the locking of the gate and/or signage did not prevent their user; or they were using other access points without locked gates/signage.

14.28. There is some reference to the gate being previously locked on occasion for short periods of time, Mr Colin Wade confirms that it was only the gate from Pound Lane which was locked and then only occasionally. Reasons for this closure include when the grass (silage crop) was sprayed; when there were cattle on the field; or to prevent access when Travellers were in the area. Witnesses give very few further details on these closures and it is not possible to conclude whether or not they took place within the relevant user period, although there is evidence that these interruptions were occasional and only for a short time as follows: Mr Simon Resball in evidence confirms that he has been prevented from using the land and confirms that there have been attempts occasionally to prevent or discourage user before the annual silage cut, this was only for a few days and possibly just where the grass was sprayed. Also the gate was locked some years back when Travellers were in the area. Mr and Mrs G Callaghan refer to the gate being locked on a few occasions over the years, including a few years back when cows were put in the field for a short period. The gates were never locked for long. Mr E Noad confirms that the gate was locked for short periods a few times, but does not specify the reason for this. The landowner gives further evidence that the land was sprayed in 2000 when it was not tenanted by the Masters family, which may accord with one of these events.

14.29. Jan Jen's evidence is interesting as it confirms that the gate was padlocked for many years (in her view illegally) and/or topped with barbed wire. She confirms that to access the field she climbed the gate, which supports the landowner's evidence that the gate was locked and residents used force to access the field. In the application form, supplementary information, "The Case for a Town or Village Green", as the landowner points out, the applicants make the following comments regarding the Pound Lane gate:

*“...the gate on Pound Lane which clearly has been locked (as opposed to its being merely closed) on a number of occasions over the years before the ploughing...”*

14.30. Although the applicants and objectors have submitted a substantial amount of material and evidence regarding the Pound Lane gate, in the village green case, there are of course, other access points into the field which may be considered, i.e. the Wiltshire gate at the western boundary of Great Lees Field (adjoining the Masters' Field); 2 access points from Footpath No.1 Semington which follows the northern field boundary and access gates in the gardens of properties in Pound Close.

14.31. The landowner, in his objection, carries out an analysis of the supporting evidence regarding access points to the field and concludes that only Mr and Mrs Watts; Alan and Christine Jones; Mr and Mrs Tarsnane; Mandy Robinson and Philip and Christine Deverall, appear not to have entered via the gate off Pound Lane, (including 5 witnesses who enter from their private gardens, from which no other member of the public may enter. The landowner does not mention here whether or not these residents sought permission to enter from the gardens). He considers that this leaves only 4 witnesses, Mr and Mrs Jones and Mr and Mrs Tarsnane who have entered via the Wiltshire gate. The landowner's submission claims that *“of the user questionnaire respondents, 80% claim that access to Great Lees Field was gained via a gate at Pound Lane.”*

14.32. Officers have considered the evidence regarding access points, given as part of the Town or Village Green application (please see table at **Appendix 3**, please note that witnesses are asked to describe and also to mark on a map the access points which they have used). Despite the landowners analysis of the access points and contention that the majority of users have entered the field via the Pound Lane gate, officers in their consideration of the evidence

have concluded that whilst the majority of witnesses have used the Pound Lane gate, 42 witnesses have also used other entrances to access the field, including the gap/Wiltshire gate in the western field boundary; stiles/access points from Footpath No.1 (a recorded public right of way which follows the northern field boundary of Great Lees Field); access gates from the gardens of properties in Pound Close and some reference to access in the south-west corner of Great Lees at the termination point of Footpath No.16 Semington, (although there is now no evidence on site of an access/former access at this location). Within the witness evidence form users are asked “*How do/did you gain access to Great Lees Field?*” and “*How have you accessed the land? Please mark on the map (with an ‘A’) where you access Great Lees Field*”, (underlining added). The witnesses answers to these questions and the accesses shown on the map, will relate to their own user, rather than witnesses just being aware of other access points which they have not necessarily used. Therefore, even if evidence of user via the gate off Pound Lane were found to be by force and not “as of right”, a significant number of users provide evidence of use of alternative access points into Great Lees field.

14.33. There is no evidence of the Wiltshire gate/gap in the western boundary of the field being closed, (please see the effect of signage claimed to be in place at this point since 1987, at paragraphs 14.35 – 14.43) and where Footpath No.1 is a recorded public right of way there is no reason to consider that the access points on this route would be obstructed (illegally) and there is no evidence that the footpath has ever been fenced off from the field. In “The Case for a Town or Village Green” the applicants state that, “*It is important here to note that complete access to the field has never been made impossible by all entry points (or entry discouraged through notices). Even when the Pound Lane gate was shut to prevent vehicles getting into the field, access through other means (the gateway in the western boundary hedge, the stiles at each end of the Right of Way running along the southern boundary of the canal, the canal*

*bank, and the back gardens of the houses along Pound Close) has always been possible.”* On a site visit in October 2016, officers found the Wiltshire gate/gap in the western boundary to be fenced and sealed with signage, which it is believed to have been erected after the ploughing of the land in 2016 (based on the witness evidence submitted); the stiles on Footpath No.1 in the north-west and north-east corners of the field, were available for use, without signage and the access gates from the gardens of properties in Pound Close were unobstructed, (although a barbed wire fence has now been erected on the land against the gates in Pound Close to prevent access to the field from the private gardens, as observed by officers on a site visit dated August 2017).

14.34. Residents of the 8 properties 29-36 Pound Close have provided witness evidence forms and all refer to an access gate, or accessing the field from their gardens; however, only 2 of these witnesses refer to seeking or being granted permission to use this access (to access the back of their property or for deliveries) from the owners/occupiers of Great Lees Field. There remain 6 users who appear to have entered the field from their gardens, without permission, without force and without secrecy, (where these access gates would have been visible to the owners/occupiers of the land). The landowner suggests that *“no other member of the public may enter Great Lees Field”*, via these rear access gates and therefore they cannot be taken into account as an alternative access point; however, in a Town or village Green claim, the Registration Authority is not considering use of the land by the public at large, but by local inhabitants, therefore access by neighbouring properties is highly relevant. There is no evidence that these accesses have been closed at any point during the relevant user period. In evidence, the applicant says of the residents of Pound Close whose back garden gates lead directly into the field: *“They have had that access ever since the houses were built around 1960. They have never been prevented from using the gates; nor have signs ever been put up denying them a right of way. There is now a barbed wire fence*

*blocking this evidence. This was erected on 18 November 2016, only after we made our village green application and we regard it as evidence that the landowner understands the importance of this mode of entry to the field.”*

**Without Force (locking of the Pound Lane gate)** - Officers conclude that where the locking of the Pound Lane gate forms part of the objectors case that user has been by force and is therefore not “as of right”, there is sufficient evidence to suggest, on the balance of probabilities, that where alternative access points have been open and available, users were not required to use force to enter Great Lees Field.

14.35. Use by force does not just refer to physical force, but also where use is deemed contentious, for example by erecting prohibitory notices in relation to the use in question. In the Supreme Court Judgement R (on the application of Lewis) (Appellant) v Redcar and Cleveland Borough Council and another (Respondents) (2010), Lord Rodger commented that:

*“The opposite of “peaceable” user is user which is, to use the Latin expression, vi. But it would be wrong to suppose that user is “vi” only where it is gained by employing some kind of physical force against the owner. In Roman law, where the expression originated, in the relevant context vis was certainly not confined to physical force. It was enough if the person concerned had done something which he was not entitled to do after the owner has told him not to do it. In those circumstances what he did was done vi.”*

14.36. The landowner’s case states that since 1987 signs have been fixed to the Pound Lane gate indicating that Great Lees Field was private and/or that there was no right of way. Mr Stuart-Bruges affixed such signs when he became landowner in 1987 and did so again in 1998 when the gate was replaced. In 2004 signs stating “*Private No Right of Way*” were removed and cast to the ground, the landowner has provided photographic evidence of

these notices lying on the ground. In 1998 Mr Stuart-Bruges also affixed the same notices to the Wiltshire gate between the Masters' land to the west and Great Lees Field. Again the landowner submits photographs taken in 2004, to show signs at this location stating "*Private Land No Right of Way*", having been removed and cast to the ground.

14.37. The landowner's case submits that the law in relation to force was considered in the case of *Taylor v Betterment (Mrs G Taylor (on behalf of the Society for the Protection of Markham and Little Francis) v Betterment Properties (Weymouth) Ltd (1) and Dorset County Council (2) [2010] EWCA Civ 250*), where it was held that if a landowner displays opposition to the use of the land by erecting a suitably worded sign which is visible to, and is actually seen by the local inhabitants then their subsequent use of the land will be contentious and, on that account, forcible. Moreover, if the signs were not seen by many users of the land because they were repeatedly unlawfully removed soon after erection, the landowner would nevertheless have done all that was required to make use contentious.

14.38. The *Taylor Betterment* case, concerns an area of land in Dorset registered as Town or Village Green in 2001 by Dorset County Council, with two public footpaths over the land. Upon receiving notice of the application, the landowner objections included their contention that user had not been "as of right" where the public had either used force to gain access to the land or had done so with stealth or with permission. The Curtis family, as the landowners, submitted evidence that they had at all times strenuously resisted any acts of trespass on the land by maintaining boundaries with local housing and by erecting notices on the land warning people not to trespass and to keep off the land on either side of the footpath. A similar conflict of evidence arises (as with the *Semington* case), where none of the users recalled seeing any signs warning them off the land.

14.39. Lord Justice Patten states:

*“27. The landowners’ case at the inquiry was that fences had been maintained on the boundaries with the housing and that signs had been erected so as to make it clear to the public that they should not trespass on the registered land from the footpaths. The evidence from local inhabitants (as summarised in the Council’s decision letter of 5<sup>th</sup> June 2001) was that they regularly used the land for games and recreation and did not confine themselves to the footpaths. In doing so they had (they said) never been challenged nor did they recall seeing any signs saying that the fields were private property which they should not enter.*

*28. By contrast, the landowners’ witnesses gave evidence that signs were put up at strategic points on the perimeter of the land and at the edge of the footpaths...*

*29. ...The residents who provided evidence to support the s.13 application were all local inhabitants who gained access to the registered land via one or other of the footpaths.*

*30. The issue for the inquiry and for Morgan J was whether the Curtis family had taken sufficient steps so as to effectively indicate that any use by local inhabitants of the registered land beyond the footpath was not acquiesced in. At the inquiry this turned on the presence or visibility of the signs...*

*40. The question of how far the landowner must go was considered by Pumfrey J in Smith v Brudenell-Bruce [2002] 2 P&CR 51 (a case about the acquisition of a private right of way by prescriptive user). He said that:*

*“It seems clear to me a user ceases to be user “as of right” if the circumstances are such as to indicate to the dominant owner or to a*



*reasonable man with the dominant owner's knowledge of the circumstances, that the servient owner actually objects and continues to object and will back his objection either by physical obstruction or by legal action. A user is contentious when the servient owner is doing everything, consistent with his means and proportionality to the user, to contest and to endeavour to interrupt the user."*

*41. ...the last sentence of this dictum suggests a wider test under which the owner who does everything reasonable to contest the user will thereby have made such user contentious regardless of the extent to which his opposition in fact comes to the notice of those who subsequently seek to establish the prescriptive right."*

14.40. In this case there was evidence that the notices in question may have been removed, (as is suggested in the Semington case):

*"47. The evidence of such users that they did not see any signs of the kind described by the landowners' witnesses is, Mr George submits, entirely consistent with the notices not surviving for very long and with any replacements faring no better.*

*48. ...If the landowner erects suitably worded signs and they are seen by would-be peaceable users of the land then it follows that their user will be contentious and not as of right. That is the easy case. The alternative is an objective test based on knowledge being attributed to a reasonable user of the land from what the landowner did in order to make his opposition known.*

*51. The essential criticism, of the judges analysis at paragraph 122 is that it treats the reasonable user of the land as being in possession of knowledge which the actual users who gave evidence in support of the s.13 application said they did not have...*

*52. ...If most peaceable users never see any signs the court has to ask whether that is because none was erected or because any that were erected were too badly positioned to give reasonable notice of the landowner's objection to the continued use of his land.*

*59. It seems to me that the only possible reconciliation between the judge's findings of primary fact and the recollections of Mrs Horne's witnesses is that the signs were vandalised and removed on a regular basis shortly after they were erected..."*

14.41. Lord Justice Patten found:

*"63. If the steps taken would otherwise have been sufficient to notify local inhabitants that they should not trespass on the land then the landowner has, I believe, done all that is required to make users of his land contentious.*

*64. It follows therefore that the Curtis family were not required to take other steps such as advertising their opposition in order to rebut any presumption of acquiescence. In my view, the judge was correct to hold that there was not user as of right for the requisite 20 years."*

14.42. Whilst the landowner's submission correctly interprets the findings of the Betterment case, there are key differences between this case and Semington. The Betterment case provides additional evidence of the signage having been erected:

*"31. The landowners' evidence about the signs was given by a number of witnesses..."*

In the Semington case evidence of signage on the land prior to April 2016, is provided only by the landowner and no other witnesses. Although some witnesses do refer in evidence to previous attempts to prevent/discourage user for occasional and short periods of time, none of the witnesses refer to signage on the access points/land prior to 2016. There is no photographic evidence, or other evidence of the signs “as erected” in 1987 and 1998. Photographs taken in 2004 and provided by the landowner, purport to show the signs removed and cast to the ground, (i) at the Pound Lane gate: “*Private No Right of Way*” and (ii) at the Wiltshire gate/gap in the western field boundary: “*Private Land No Right of Way*”. However, these photographs give no indication that they are located in Great Lees field and do not provide sufficient evidence to support the landowner’s claim that signage was erected in 1987 and 1998. In an e-mail dated 7 November 2017, Mr Stuart-Bruges submits photographs of “*No Footpath*” and “*Footpath*” signs erected in 2016 in the adjoining field to the west, owned by the Masters’ family, having been pulled down and thrown into a hedge by June 2017, to “*confirm that vandalism of signs is normal in Semington*”. However, this evidence does not assist in the objectors claim regarding signage erected over the application land in 1987 and 1998.

14.43. In the Semington case there is an existing right of way, Footpath No.1 Semington, located at the northern boundary of Great Lees Field, leading east-west. The notices in the Betterment case were erected on either side of the footpath accessing the land. At Semington there is no evidence provided of signs being erected on either side of Footpath No.1 at the northern boundary of the field, or near to the Pound Close garden access points, which would bring to the attention of users entering the field from those access points, that wider use of the field was not permitted.

**Without Force (Prohibitory Notices)** - The principles set out within the Betterment caselaw regarding prohibitory notices rendering user “by force”, cannot be applied

in the Semington case where the landowner has provided insufficient evidence to the Registration Authority to show that these signs were erected and removed. Officers cannot conclude that user was made contentious in 1987 and 1998 by the erection of prohibitory notices.

Additionally, there is no evidence that prohibitory notices were erected (and subsequently vandalised/removed), at Footpath No.1, or at the rear of Pound Close and the principles of Betterment cannot be applied where prohibitory notices have never been erected.

In the Semington case, the evidence regarding the erection of prohibitory notices is not sufficient to render user by force and therefore not “as of right”.

14.44. The landowner has submitted copies of grazing agreements for Great Lees Field dated 1988 – 1999 and 2001 – 2015, covering the whole of his period of ownership (there was no grazing agreement entered into in 2000). The agreements are made between the landowners and TJ and JMH Masters, (signed copies were included with the further submission of Mr Stuart-Bruges, dated 6 March 2017). They contain the following condition:

*“(6) The Graziers agree to the following conditions:  
(a) that they will not permit trespass upon the Property”*

From the 2003 agreement onwards, this condition is amended to:

*“(6) The Graziers agree to the following conditions:  
(a) that they will not permit any Trespass on the Property and will maintain the gate closed and locked”*

14.45. In evidence Mr Stuart-Bruges confirms that *“Due to damage that had occurred to the Pound Lane Gate I ensured that the grazing tenancies specifically stipulated the prevention of trespass, and from 2003 onwards the maintenance, closing and locking of the gate (although the Masters had*

*always confirmed they were doing that prior to 2003 anyway).*” Whilst this provides evidence that it was the landowner’s intention for the gates to be locked from 2003 and that they wished to prevent trespass onto the land after 1988, the inclusion of these conditions within a private grazing agreement appears not to be sufficient to convey to local inhabitants that their right to use the land was being challenged. Preventing trespass onto the land would have been very difficult where there was a public footpath with unobstructed access at the northern edge of the field, (there is no evidence provided that the footpath was ever fenced out of the field), and alternative access points in the western field boundary and from the gardens of properties in Pound Close. We have already seen that the locking of the gate at Pound Lane was not sufficient to make user of the land for the purposes of village green user, by force where there are alternative access points were available and there is insufficient evidence of signage erected on the Pound Lane gate and the western access point, to render user contentious and by force. Additionally, these grazing agreements only applied for part of the year, e.g. the agreement made on 10 May 2003 lasted until 25 December 2003; therefore, there would be no obligation upon the Masters’ family to lock the gates and prevent trespass onto the land, outside the grazing agreement periods.

**Without Force (Conclusion)** - When considering a Town or Village Green application, the Registration Authority is asked to determine only whether the lawful sports and pastimes have been carried out without force. In this case there is no evidence to suggest that the activities have been undertaken by force. There is conflict in the evidence regarding access to the field, i.e. the locking and damage to the Pound Lane gate and the erection of prohibitory notices at the Pound Lane gate and the gap/Wiltshire gate in the western field boundary. However, even if user of these two access points was found to be by force, there is alternative access to the field from Footpath No.1 and from the garden gates of properties in Pound Close and significant witness evidence that alternative access points have been used, (42 witnesses refer to access points other than the Pound

Lane gate). Officers therefore cannot conclude that use of the field or access to the field has been by force in the village green case, on the balance of probabilities.

### **Without Secrecy**

14.46. When asked whether they had been seen on the land by the owner/occupier, 7 of the witnesses claimed that they had not been seen on the land; 9 claimed that they had been seen on the land and 50 witnesses did not know if the landowner/occupier had seen them using the land. Of the 9 users who claimed that they had been seen by the owner/occupier, they were asked what the owner/occupier had said to them and when this was, with the following replies: “*said nothing*”; “*A while ago (sorry can’t recall) – Nothing*”; “*said nothing – March 2016*”; “*Just waved*”; “*friendly*”; “*Nothing said seen many times*” and “*Summer most years*”. Witnesses provide no information regarding what activities they were undertaking on the land when seen and whether or not they were seen by the landowner or the tenants. This evidence would suggest that users of the land did so without secrecy and were not challenged when doing so.

14.47. Mr Stuart-Bruges the landowner, confirms that he visited the site “...*at least annually or as and when is necessary.*” The landowner claims that he never saw activities taking place on the land:

*“Taking the user evidence as a whole and the activities that the Town and Village Green application alleges are carried out, I can say that whenever I visited Great Lees Field I have never seen these activities taking place. If I had I would have made clear to people that there were on private land. I have also spoken to Arthur Haythornthwaite and he likewise confirms that he has never seen these activities occur.”*

14.48. However, 8 properties in Pound Close have access to the field; these gates would be visible to the owners/occupiers of the land. Additionally, the landowner entered into grazing agreements which included specific clauses to prevent trespass and maintain the gates closed and locked, which may suggest that the landowner was aware of use.

**Without Secrecy** - In conclusion, officers consider that user of the field has been without secrecy, some witnesses having been seen on the land (perhaps by the tenant farmers), without challenge. None of the witnesses refer to being challenged whilst using the land and the landowner presents no evidence of incidents of users being challenged. Mr Stuart-Bruges contends that he visited Great Lees Field infrequently (at least annually), however officers consider that on those occasions he would have been aware of the access gates into the field from properties in Pound Close, which did not access onto public rights of way, (only 2 users claim to have used these gates with permission). Additionally, the grazing agreements included conditions to prevent trespass on the land, suggesting that the landowner may have been aware of use.

#### **Have indulged in lawful sports and pastimes**

14.49. The activities which witnesses claim to have undertaken on the land are listed at **Appendix 4**. Witnesses also claim to have seen activities taking place over the land, please see **Appendix 5**. The majority of user appears to be walking and dog walking. Walking can be related to establishing linear routes on the land and in this case a definitive map modification order (DMMO) application was made in 2016, to add multiple footpath routes over the land as shown on the plan at paragraph 10.13.

14.50. The DMMO application (to establish linear routes over the land) was based upon user evidence from 18 witnesses who completed witness evidence forms. 13 of those witnesses have also completed Town or Village Green

witness evidence forms (the Town or Village Green witness evidence form is completed jointly by T and V Waylen, whilst the footpath evidence form is completed only by T Waylen; the Town or Village Green witness evidence form is completed jointly by S and J Hall whilst they have individually completed two footpath witness evidence forms; Mr and Mrs G Callaghan have jointly completed a Town or Village Green evidence form whilst the footpath witness evidence form is completed by Mr G Callaghan only and K Clark has completed a Town or Village Green evidence form whilst the footpath evidence form is completed jointly by K and S Clark), although please note that DMMO and Town/Village Green applications are determined under separate legislation and the evidence is subject to differing legal tests.

14.51. In the Town or Village Green case the land is used mainly for the purposes of dog walking and walking. 37 users walk with dogs and 29 users walk on the land, whilst 65 witnesses have seen dog walkers on the land and 64 have seen people walking. Several of the witnesses clarify their own walking on the land as: *“access to canal”*; *“To dog walk either around the edge or on the path diagonally across”*; *“Pleasant walk to canal with grandchildren”*; *“To walk the canal”*; *“Walks to canal”*; *“Canal walks”*; *“To walk to canal”* and *“Path to canal”*, which suggests that users followed paths as direct routes across the field to access the canal. Such use is not consistent with claiming Town or Village Green rights.

14.52. Use associated with rights of way claims is the use of linear routes which cannot then establish user for lawful sports and pastimes, although where a number of different footpath routes are identified and it is obvious that people have been criss-crossing the field, do these many linear routes become use of the whole of the application land for lawful sports and pastimes?, for example where users have strayed from the paths to retrieve dog toys, etc.



14.53. If the evidence of user of foot, i.e. walking and walking with dogs, is removed, there are activities remaining which could give rise to the exercise of lawful sports and pastimes, but are they sufficient in this case?

14.54. The witnesses do not successfully identify community events taking place over the land where: (i) occasional bonfires and gymkhanas held prior to 1996 are outside the qualifying user period (1996 – 2016) and in any case appear to have been undertaken with the permission of the owner/occupier, additionally whilst 12 witnesses claim to have seen bonfire parties taking place on the land, no witnesses give first hand evidence of themselves attending bonfire parties or gymkhanas on the land; (ii) car parking for the village fete is not qualifying user as established in case law and appears to have been undertaken with the permission of the owner/occupier; (iii) the Semington Slog, which in 2017 was only in its 3<sup>rd</sup> year, (so only one of these events may have taken place on the land in May 2015, before close of the relevant user period in April 2016), appears to have utilised existing public rights of way including Semington Footpath No.1 at the northern field boundary. The witnesses do not consider there to be seasonal events taking place over the land, but blackberry picking is identified by some users and officers would consider this to be a seasonal activity. Overall, the lawful sports and pastimes exercised over the land do not appear to be formal and structured.

14.55. After dog walking and walking, blackberry picking is the next most popular activity, with 7 witnesses giving their own evidence and 57 having seen this activity taking place, (officers have observed blackberries growing at the boundaries of the application land). The next most popular activities are playing/children playing - 5 (59 seen); Kite flying - 5 (35 seen); Exercise - 4; Cricket - 3 (14 seen); and Football - 2 (19 seen). 34 witnesses also claim to have seen bird watching taking place over the land but only 1 witness has

undertaken bird watching themselves. There are 49 instances of user other than dog walking/walking upon the land (31 users), not including use seen.

14.56. In the supplementary evidence submitted by the applicants, “The Case for a Town or Village Green” it is stated:

*“Another respondent [43] captured something of the significance of the field to children of all ages:*

*“I have used Great Lees Field regularly over the past 28 years. When my children were young we used the field for flying our kites. During summer holidays, village children would play in the field once the meadow had been harvested. The World War II pill box served as a play den, and has been a regular meeting place for teenagers wanting to be out of sight of adults.”*

*The following extract from respondent [3] shows what has been lost:*

*“We own a children’s day nursery and use the field on a regular basis. We have vulnerable children who live in poor accommodation (ie, flats) with no access to outdoors without an adult being present. Having access to the field [has] given them a chance to run and play with many friends that they would not normally have in a safe environment. Great Lees Field is like another classroom for the nursery [where] they can learn, play and draw with freedom.”*

14.57. Officers would certainly agree that the pill box structure located at the western field boundary in the north of the field would provide an excellent place for children and others to play and investigate etc, but there is limited user evidence to support this activity. Whilst 59 users claim to have seen play in the field, only 5 witnesses give their own direct evidence of play, which would be of greater evidential weight. As an area for learning, one witness refers to undertaking nature walks on the field and another witness claims to have undertaken nature study and wildlife exploration on the land.

- 14.58. The applicants have provided photographs which it is claimed record inhabitants undertaking lawful sports and pastimes on the land:
- 1) Village boys playing cricket in the field in the 1950s,
  - 2) Village girls and boys playing cricket on the field (probably in the late 1980s),
  - 3) Children from a local nursery school being taught in the field in 2016.

The landowner makes the following comments on the photographs:

*“The photograph of the boys playing cricket from the 1950s is in fact, I believe, a photograph of my cousin (centre), Michael Bruges (d.2013), who lived in Semington at that time. I have contacted family relatives and shown them this photograph and they also believe it is him. I attach a photo of Michael as a boy showing the similarity (Exhibit 1). If that is correct, then at the time our grandparents or my father were the owners depending on when the photograph was taken. That means that the boys playing cricket would most probably have been there with consent from Michael, as grandson/nephew of the owners of Great Lees Field, and not as of right. Even if it is not Michael, though, it is not possible to say that this photo was even taken on Great Lees Field.*

*The photograph of the children from the 1980s is not one I recognise, but I can see no way in which this can be shown to have been taken on Great Lees Field at all. It could be anywhere.*

*As for the photographs of the school/nursery children, two of these are taken by the canal on a mown bank, and not on Great Lees Field where there is a lot of greenery present and no mowing has occurred. In the other two photographs, the children are seen to be picking dandelions. Great Lees Field was ploughed in April 2016, before dandelions would have flowered, so those*

*photographs cannot have been taken on Great Lees Field. They must have been taken on a different field and this is confirmed by the presence of the concrete pillboxes in the photographs. There is only one concrete structure on Great Lees Field and any photo would show it to the left of the stile, not to the right as seen in the photographs. It therefore seems that the school/nursery is confused about which land it is using.”*

14.59. Officers would make the following comments regarding the photographs:

- Officers can make no comment on whether or not the boy in the 1950s photograph is Michael Bruges, the landowner’s grandson/nephew. It is therefore not possible to comment on whether or not the children are on the land with permission. Officers would comment that it is not possible to identify the land as Great Lees Field, from the photograph.
- Again in the photograph taken in the 1980s of children playing cricket on the land, there are no identifying features to confirm the location of the photograph as Great Lees Field.
- The first three photographs of children from a local nursery school, taken in 2016 show the children on the towpath, (a recorded public right of way) and perhaps on Footpath No.1 east of Great Lees Field, given the post and rail fencing visible in the background. In the final photograph, which includes the children picking dandelions in a field, three concrete structures and a stile visible are behind them. Officers conclude that these are the three concrete structures located on Footpath No.1 Semington, close to the swing bridge, in the field located to the west of Great Lees Field. Officers consider that, looking at the series of photographs, the children have used public Footpath 1, which leads through Great Lees Field, to reach the swing bridge and none of the photographs of children undertaking lawful sports and pastimes, appear to have been taken in Great Lees Field itself.

- Therefore the photographs included with the application, provide no additional evidence of lawful sports and pastimes being undertaken on Great Lees Field.

**Lawful Sports and Pastimes** - Is the evidence provided sufficient to demonstrate on the balance of probabilities, that the land has been used for the exercise of lawful sports and pastimes, or has the main user been use of linear routes for the purposes of walking and dog walking, including routes to access the canal?  
It is considered that hearing direct evidence from witnesses and the cross-examination of witnesses on this point at a public inquiry would assist the Registration Authority in its determination of this application, where all elements required to establish a new green must be satisfied, on the balance of probabilities.

### On the land

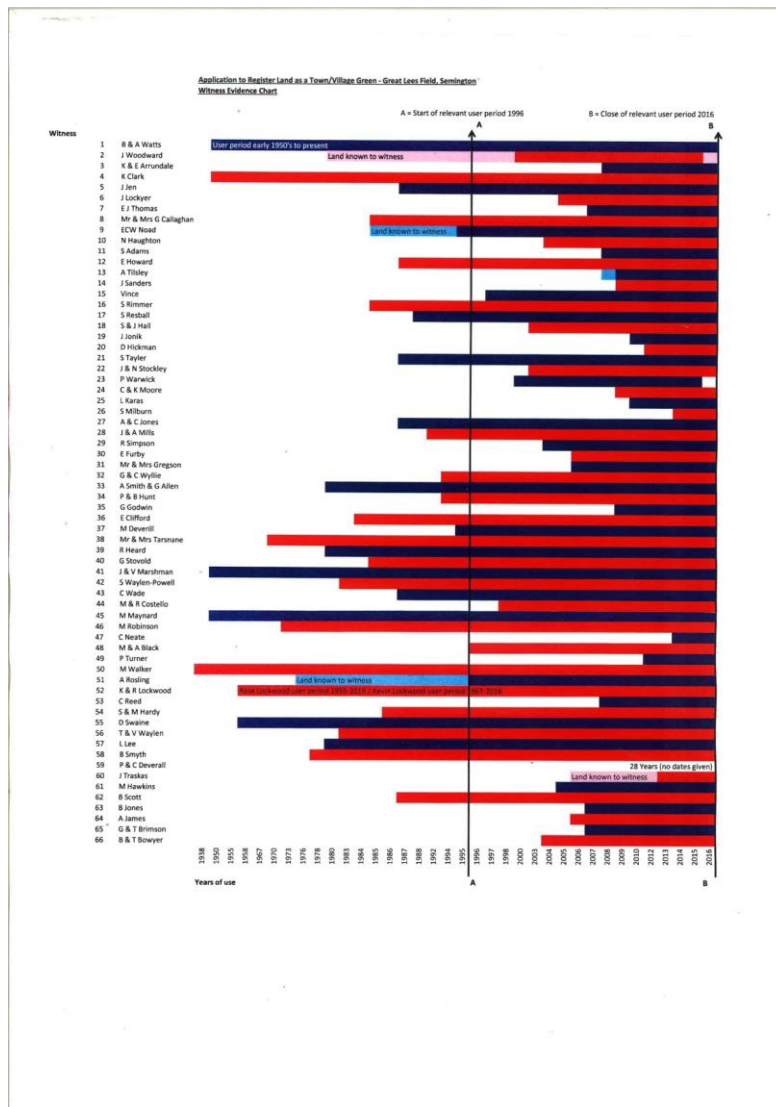
14.60. The map included with the witness evidence forms, already shows the area of Great Lees Field, i.e. the application land highlighted and witnesses have not individually annotated maps to record the area of land which they themselves have used. However, there is no evidence to suggest that any part of the land should be excluded from the application, for example, where it was not possible for local inhabitants to use part of the land and the landowners present no evidence to suggest that only part of the land was used. There is no evidence that activities have taken place on part of the land which would cause substantial interference with the use of that part of the land for lawful sports and pastimes, for example tipping, which would prevent registration of that part of the land. The grazing agreements over the land and the subsequent agricultural activities associated with it do not appear to have caused substantial interference with the use of the land and are transient in their nature.

14.61. There is a question over whether the whole of the application has been used for lawful sports and pastimes where the main user of the field has been for walking and dog walking, perhaps use of linear routes rather than use of the whole of the application land.

**On the Land** - Officers consider that where the application is successful, the whole of the application land should be registered, where there is no evidence that any part of the land has been unavailable for the exercise of lawful sports and pastimes. However, the question of whether or not the whole of the application land has been used for lawful sports and pastimes remains where the main user is walking and dog walking, perhaps utilising only linear routes. It is considered that hearing direct evidence from witnesses and the cross-examination of witnesses on this point at a public inquiry would assist the Registration Authority in its determination of this application, where all elements required to establish a new green must be satisfied, on the balance of probabilities.

**For a period of at least 20 years**

14.62. To satisfy the 20 year user test, with use ending in April 2016, when the land was ploughed and the Pound Lane gate locked, notices erected and the subsequent planting of the land, the user period in question is April 1996 – April 2016, with the application made no more than one year from the cessation of use, (in this case the application is received by the Registration Authority on 24 June 2016). Please see user evidence chart below:



14.63. There is no requirement for all of the witnesses to have used the land for a full period of 20 years, rather the evidence may have a cumulative effect to demonstrate public user for a period of 20 years. In this case 65 witnesses have used the land within the identified user period of 1996-2016. Although P and C Deverall do not give dates of user, they state that they have used the land for a period of 28 years, this is likely to have been within the relevant 20 year user period where they are presently residents of Pound Close and access the field through a gate at the bottom of their garden. 34 of the witnesses have used the land for the full 20 year user period.

- 14.64. There is also a significant amount of evidence of use prior to the relevant 20 year user period, the earliest user evidence being from 1938.
- 14.65. However, 4 witnesses do in evidence make reference to closures of the Pound Lane gate in the past, for short periods, which may interrupt the period of user, for example when there were cattle on the field; spraying of the grass and/or Travellers present in the area. Officers consider that this would not be an effective interruption to user during the relevant user period, where there is no further evidence of when these occasional closures took place, (i.e. did they take place within the relevant user period?), and where there were alternative access points into the field, i.e. from Footpath No.1; the gap/Wiltshire gate in the western field boundary and the gates in the gardens of properties in Pound Close.
- 14.66. The condition of the field from the aerial photograph taken in 2001 and 2005/06 (see part 6), suggests some kind of agricultural practice taking place, perhaps consistent with the grazing agreements in place over the land at that time. The action of producing a hay/silage crop would not form an interruption to use of the land by local inhabitants for lawful sports and pastimes. This point was considered in the case of *R (Laing Homes Ltd) v Buckinghamshire County Council* [2004] where it was held in the High Court that the annual gathering of a hay crop was incompatible with use of the land as a Town or Village Green and as a result the decision to register the green was quashed. However, in *Oxfordshire County Council v Oxford City Council* [2006] UKHL 25, Lord Hoffman commented on that earlier decision saying *“I do not agree that the low-level agricultural activities must be regarded as having been inconsistent with use for sports and pastimes...if in practice they were not.”* Therefore, where there has been use of the land for agricultural purposes throughout or at some time during the relevant user period, each case must be determined on an individual basis on the degree of interruption to user and the extent to which the agricultural activity is consistent with that use. In the



Semington case there are infrequent references to interruption to user caused by the production and gathering of the silage crop, spraying or the keeping of cattle on the land. Where these references are made, they appear to be with reference to the locking of the Pound Lane gate for these purposes, but in the Semington case there are other/alternative access points onto the land and the agricultural activities appear to have had little impact upon user and the two activities have co-existed. The ploughing of the land would not be consistent with user for the purposes of lawful sports and pastimes.

14.67. There is evidence presented in the Landowner's case to suggest that the field was ploughed in 2000, when it was not tenanted by the Masters' family for one year. This action would present a clear interruption to the 20 year user period and the application would be invalid under Section 15(3) of the Commons Act 2006, which requires the Town or Village Green application to be made after the commencement of Section 15 of the Commons Act 2006 and within 1 year of the cessation of user. Neither would it be a valid application under Section 15(4), where user ends before 6 April 2007 and the application is made within 5 years of that date. Prior to the commencement of the Commons Act 2006, which enabled applications for new village greens to be made, where Great Lees Field was not a registered Town or Village Green within the original registration period, i.e. by 31 July 1970 (Commons Registration Act 1965), the 1965 Act also provided for amendment of the register, after that date, where land could be shown to have become a Town or Village Green by prescription.

14.68. The applicants maintain that the field was ploughed for the first time in living memory in 2016 and the witnesses make no reference in the evidence forms, to ploughing of the field in the year 2000. Mr and Mrs Lockwood, who have used the land from 1960 to 2016, state "*...as of 2 weeks ago. Signs on gate, Field Ploughed for the first time in my lifetime 60 yrs.*" There is a clear conflict

of evidence regarding the ploughing of the land in 2000, (this is explored in further detail in the following part of this report “Use has ceased”).

**For a Period of At Least 20 Years** – There is significant evidence of long user of Great Lees Field, before and during the relevant user period of April 1996 – April 2016. The agricultural activities taking place in relation to the grazing agreements in place over the land from 1951 – 2015/16 (excluding 2000), have not presented a substantial interruption to use of the land for lawful sports and pastimes. However, officers consider that there is a conflict in the evidence regarding the 20 year user period, where the landowner claims that the land was ploughed in 2000, thereby creating a significant interruption to the 20 year user period, whilst witnesses make no reference to this event and the applicants claim that the ploughing of the land in April 2016, is the first time the land has been ploughed in living memory. It is considered that hearing direct evidence from witnesses and the cross-examination of witnesses on this point at a public inquiry would assist the Registration Authority in its determination of this application, where all elements required to establish a new green must be satisfied, on the balance of probabilities.

### **Use has ceased**

14.69. The application is made under Sections 15(1) and (3) of the Commons Act 2006, where use has ceased and the application to register the land as a Town or Village Green is made within 1 year of the cessation of use. In the application it is claimed that “...*use came to an end on April 27<sup>th</sup>, 2016, when the field was ploughed as a prelude to maize being planted...The ploughing of this field has prompted this application to establish village green status for the field...*”

14.70. 13 users claim that they have been prevented from using the land, 11 of whom refer to the land being ploughed; cropped; notices erected and/or the gate being closed/locked as follows (user evidence forms completed 2016): In

part because field has been ploughed; last month gate closed and notice; since 27/04/16 – crop planted; Gate locked and field ploughed 27/04/16; Gate locked and field ploughed April 2016; Only recently once padlocked; Recently ploughed otherwise used it all the time; Ploughed 27 April; From May 2016 when field was ploughed; When it was ploughed up and planted; When the field was recently planted with crops. 3 witnesses confirm that they have not been prevented from using the land: Until now with gate closed and sign saying keep off crop; Not until May 2016 – ploughed; Not until it was ploughed. These references appear to apply to the ploughing of the land in 2016 and suggest that witnesses have not been prevented from using the land before that event.

14.71. Witnesses are also asked to confirm whether there has been any attempt made by notice or fencing or by any other means to prevent or discourage the use being made of the land by local people. 30 users confirm “yes” to this question, some of these witnesses refer to this as a recent development and/or refer specifically to the ploughing; planting; notices and/or closing/locking of the gate as follows: Only recently; Recent notice to keep off as being ploughed; Ploughing of field; April 2016 notice on gate field ploughed for 1<sup>st</sup> time; From 27/4/16; May 2016 Please do not walk in field – use for crops; From 27 April when land was ploughed “No footpath sign” up; Approximately April 2016 onwards; Signs placed and field ploughed and seeded May 2016; Last 2-6 weeks field ploughed; Ploughing the field on 27/04/16 discourages use and inference suggests crop production; Crops planted in May 2016; April 2016 The field was ploughed and signs put on gate stating private land please keep off the crops; Recent notices (I have photos) closed gate in Pound Lane; As of 2 weeks ago; Signs on gate, field ploughed for the first time in my lifetime 60 years; Gate was suddenly locked in April 16; Only in last few weeks, since field ploughed; Signs are now on gate stating Private Land Keep off the crops; 27 April 2016 “Private – Please keep off the crop”; May 2016 Notice requesting that people keep off the crop; When it was

ploughed up Spring 2016; It was ploughed on 27/4/16 and notices put up; Only recently notice erected on gate in Pound Lane. One witness confirms that there has been no such attempt until the very recent ploughing.

14.72. Whilst 50 witnesses refer to never being prevented from using the land and 34 witnesses refer to there being no attempt to prevent or discourage user, there is evidence as outlined above, to support the ceasing of user in April 2016, when the field was ploughed, accompanied by the locking of the gate and the present notices on site, followed by the cropping of the land, all of which prevented public user. The applicants confirm that this event has prompted the Town or Village Green application.

14.73. The application to register the land as a Town or Village Green would appear therefore to be correctly made within the period of one year of the cessation of user, ending on 27 April 2016, the application being received by Wiltshire Council as the Registration Authority on 24 June 2016. There is caselaw which supports the date of receipt of the application as the relevant date, rather than the date upon which the application is accepted as a validly made application, in *R (Church Commissioners for England) v Hampshire County Council and Anr and Barbara Guthrie* [2014] EWCA Civ 643. It concerns a case where Mrs Barbara Guthrie filed an application with the registration authority on 30 June 2008; however, the application was defective in several respects, finally complying with all the requirements of the regulations on 20 July 2009. Lady Justice Arden concludes:

*“44. Accordingly, I conclude on this issue that Regulation 5(4) provides a means for curing deficiencies in an application which does not provide all the statutory particulars, and, once an application is so cured, it is treated as duly made on the date on which the original defective application was lodged.”*

14.74. In any event, in the Semington case, the application was put in order on 9 September 2016, which remains within the one year period of grace for making an application to register land as a Town or Village Green, following the cessation of user.

14.75. However, in the landowner's evidence it is claimed that the field was ploughed in 2000, the only year that there was no grazing agreement with the Masters' family (between 1951 and 2015/16): *"Great Lees Field became overgrown and weed killer had to be applied before the land was reseeded. Great Lees Field was also ploughed at this time."* Ploughing the land is not compatible with user for the purposes of lawful sports and pastimes, therefore the ploughing would have been a significant interruption to the 20 year user period in question, i.e. 1996 – 2016. The landowner provides no evidence of ploughing (i.e. photographic or documentary evidence) and states:

*"...my cousin Michael Bruges, informed me that he had arranged for the ploughing of Great Lees Field at that time. Unfortunately Michael is now deceased so obviously the Council will have to accept that I am accurately reporting what he told me."*

14.76. There is a conflict in the evidence, where none of the witnesses refer to the ploughing of the land in 2000. On this point the Town or Village Green applicants comment that:

*"A core aspect of our case is that Great Lees Field has never been ploughed in living memory. This obviously clashes with the statement by the landowner (found in Section 10.16.9 of the rights of way report) that the field was ploughed in 2000. Again, this is only an assertion, and we shall provide evidence from people who have lived adjacent to the field since well before the year 2000, that this did not happen. Further, the aerial photograph in Section 6.3. of the rights of way report shown the field in 2001, after it is*

*alleged that it was ploughed. The paths across the field are as clear as they are in the adjacent field. This, we argue provides clear evidence that it was not ploughed in the previous year and calls into question the accuracy of the landowner's memory."*

*"We argue that the field has never been ploughed since the second world war. The landowner says that it was ploughed in 2000, but provides no evidence to support this contention. Numerous villagers have told us that the field was not ploughed at that time, and evidence from Google Earth indicates that there was no disturbance to the tracks across the field in and around 2000 which would have been the case had the ploughing taken place. In fact, the landowner only actually "understands" that the work to the field involved weedkilling, ploughing and reseeding. He has no direct knowledge of it. Despite this in the statement from King's Chambers (paras 10 to 13 of the submission) the landowner's understanding becomes a fact: "Big Lees was also ploughed at this time".*

*We ask that Wiltshire Council concludes that the field has not been ploughed from (at least) the end of WWII until 2016."*

14.77. Looking at the aerial photograph taken in 2001 (please see part 6), the year after the ploughing is purported to have taken place, there are "tracks" clearly visible over the land and the land does appear to be in cultivation. Mr and Mrs Lockwood support the assertions of the applicant in their evidence stating that *"...as of 2 weeks ago. Signs on gate, Field Ploughed for the first time in my life time 60 years."*

14.78. If the land was ploughed in 2000, this is not compatible with use of the land for lawful sports and pastimes and would present a significant interruption to the 20 year user period, whereby if use resumed after 2000, it would not yet be possible to establish a qualifying 20 year user period. Additionally, the application would not be a valid application under Section 15(3) of the

Commons Act 2006 which applies only where the user has ended after the commencement of Section 15 of the Act and the application is made within one year of the cessation of user. Neither would it be a valid application under Section 15(4) of the Act where user has ended before 6 April 2007 and the application is made within 5 years of that date, even if there was sufficient evidence of use of the land for lawful sports and pastimes for a 20 year period before 2000.

**Use has Ceased** - There is a conflict in the evidence where the landowner claims that the land was ploughed in 2000, which would present a significant interruption to use of the land for lawful sports and pastimes, whilst the applicants contend that, before April 2016, the land has not been ploughed in living memory. If the land was ploughed in 2000, the application to register the land as a Town or Village Green would be fatally flawed. It is considered that hearing direct evidence from witnesses and the cross-examination of witnesses on this point at a public inquiry would assist the Registration Authority in its determination of this application, where all elements required to establish a new green must be satisfied, on the balance of probabilities.

## **15. Overview and Scrutiny Engagement**

15.1. Overview and Scrutiny Engagement is not required in this case. The Council must follow the statutory procedures which are set out under “The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 (2007 SI no.457)”.

## **16. Safeguarding Considerations**

16.1. Considerations relating to safeguarding anyone affected by the registration of the land as a Town or Village Green under Sections 15(1) and (3) of the Commons Act 2006, are not considerations permitted within the Act. The

determination of the application must be based upon the relevant evidence alone.

## **17. Public Health Implications**

17.1. Considerations relating to the public health implications of the registration of the land as a Town or Village Green under Sections 15(1) and (3) of the Commons Act 2006, are not considerations permitted within the Act. The determination of the application must be based upon the relevant evidence alone.

## **18. Corporate Procurement Implications**

18.1. Where land is registered as a Town or Village Green, there are a number of opportunities for expenditure to occur and these are considered at paragraphs 22.1. – 22.3. of this report.

## **19. Environmental and Climate Change Impact of the Proposal**

19.1 Considerations relating to the environmental or climate change impact of the registration of the land as a Town or Village Green under Sections 15(1) and (3) of the Commons Act 2006, are not considerations permitted within the Act. The determination of the application must be based upon the relevant evidence alone.

## **20. Equalities Impact of the Proposal**

20.1. Considerations relating to the equalities impact of the registration of the land as a Town or Village Green under Sections 15(1) and (3) of the Commons Act 2006, are not considerations permitted within the Act. The determination of the application must be based upon the relevant evidence alone.



## 21. Risk Assessment

21.1. Wiltshire Council has duty to process applications made under Section 15(1) of the Commons Act 2006 to register land as a Town or Village Green, in a fair and reasonable manner, as set out in the case of R (on the application of Whitmey) v Commons Commissioners [2004] EWCA Civ 951, where it was held that:

*“28...the registration authority is not empowered by statute to hold a hearing and make findings which are binding on the parties by a judicial process. There is no power to take evidence on oath or to require the disclosure of documents or to make orders as to costs (as the Commons Commissioners are able to do: section 17(4) of the 1965 Act). However, the registration authority must act reasonably. It also has power under section 111 of the Local Government Act 1972 to do acts which are calculated to facilitate, or are incidental or conducive, as to the discharge of their functions. This power would cover the institution of an inquiry in an appropriate case.*

*29. In order to act reasonably, the registration authority must bear in mind that its decision carries legal consequences. If it accepts the application, amendment of the register may have a significant effect on the owner of the land or indeed any person who might be held to have caused damage to a green and thus to have incurred a penalty under section 12 of the Inclosure Act 1857). (There may be other similar provisions imposing liability to offences or penalties). Likewise, if it wrongly rejects the application, the rights of the applicant will not receive the protection intended by Parliament. In cases where it is clear to the registration authority that the application or any objection to it has no substance, the course it should take will be plain. If however, that is not the case, the authority may well properly decide, pursuant to its powers under section 111 of the 1972 Act, to hold an inquiry...”*

21.2. If the Council fails to pursue its duty it is liable to complaints being submitted through the Council's complaints procedure, potentially leading to complaints to the Local Government Ombudsman. Ultimately, a request for judicial review could be made with significant costs against the Council where it is found to have acted unlawfully.

## **22. Financial Implications**

22.1. Presently there is no mechanism by which a Registration Authority may charge the applicant for processing an application to register land as a Town or Village Green and all costs are borne by the Council.

22.2. It is possible for the Registration Authority to hold a non-statutory public inquiry into the evidence, appointing an independent Inspector to produce a report and recommendation to the determining authority. There is no clear guidance available to authorities regarding when it is appropriate to hold an inquiry; however, it is the authority's duty to determine the application in a fair and reasonable manner and its decision is open to legal challenge, therefore a public inquiry should be held in cases where there is serious dispute of fact, or the matter is of great local interest. Even where a non-statutory public inquiry is held, there is no obligation placed upon the authority to follow the recommendation made.

22.3. The cost of a 3 day public inquiry is estimated to be in the region of £8,000 - £10,000, (estimated figures to include a three day inquiry; two days preparation and three days report writing). In the Semington case it is considered that it would assist the Registration Authority in its determination of the application to hear directly from the witnesses and to test the evidence through the process of cross examination, particularly with regard to lawful sports and pastimes undertaken on the land and the alleged ploughing of the field in 2000.

## **23. Legal Implications**

- 23.1. If the land is successfully registered as a Town or Village Green, the landowner is able to challenge the Registration Authority's decision by appeal to the High Court under Section 14(1)(b) of the Commons Registration Act 1965, which applies where Section(1) of the Commons Act 2006 is not yet in place, i.e. outside the pilot areas (Wiltshire is not a pilot area). Importantly, an appeal under Section 14(1)(b) of the 1965 Act is not just an appeal, but enables the High Court to hold a complete re-hearing of the application and the facts of law. There is no time limit in bringing these proceedings following the registration of the land, it may be years after the decision and could lead to the de-registration of the land.
- 23.2. Alternatively, where the Registration Authority determines not to register the land as a Town or Village Green, there is no right of appeal for the applicant, however, the decision of the Council may be challenged through judicial review, for which permission of the court is required and application must be made within three months of the decision. Likewise, judicial review proceedings are also open to a landowner where the land is registered as a Town or Village Green.

## **24. Options Considered**

- 24.1. The options available to the Registration Authority are as follows:
- (i) Based on the available evidence, to grant the application to register the land as a Town or Village Green where it is considered that the legal tests for the registration of land, as set out under Sections 15(1) and (3) of the Commons Act 2006, have been met in full over the whole of the application land, or

- (ii) Based on the available evidence, to grant the application in part, where it is considered that the legal tests for the registration of land, as set out under Sections 15(1) and (3) of the Commons Act 2006, have been met in full over only part of the application land, or
- (iii) Based on the available evidence to refuse the application where it is considered that the legal tests for the registration of land, as set out under Sections 15(1) and (3) of the Commons Act 2006, have not been met in full, or
- (iv) Where, after consideration of the available evidence, it has not been possible for the Registration Authority to determine the application, to hold a non-statutory public inquiry, appointing an independent Inspector to hold the inquiry and examine the evidence, including the oral evidence of witnesses and to provide a report and recommendation to the determining authority.

## **25. Reason for Proposal**

25.1. In the Semington case, the evidence of whether a significant number of inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years, with the application being made not more than 1 year following the cessation of user, is in dispute. Matters of particular conflict within the evidence include:

- (i) Is there sufficient evidence of the exercise of lawful sports and pastimes over the land, where the majority of user undertaken on the land has been walking and dog walking?

- (ii) The alleged ploughing of the land in 2000, which would lead to a cessation of user at that time, where 20 years user after 2000 could not be shown and the application would no longer be valid under Section 15(3) of the Commons Act 2006.

25.2. It is the duty of the Registration Authority to determine the application in a fair and reasonable manner, it is therefore considered appropriate to hold a non-statutory public inquiry where there is substantial dispute of fact, which is likely to be resolved by hearing the oral evidence of the witnesses and through cross-examination, at a public inquiry, particularly where the authority's decision is open to legal challenge. The applicants have indicated on several points that witnesses are prepared to provide evidence at any inquiry, including witnesses who did not complete the original survey (witness evidence forms). It is open to the Registration Authority to appoint an independent Inspector to preside over the inquiry and produce a report with recommendations to the determining Authority. Although it is open to the Registration Authority to reject the Inspector's recommendation it can only lawfully do so if it finds that the Inspector has made a significant error of fact or law. If the Inspector's recommendation is rejected the Registration Authority must give legally valid reasons supported by evidence of the error of fact or law, otherwise the Registration Authority's decision would be open to legal challenge.

## **26. Proposal**

26.1. That Wiltshire Council, as the Commons Registration Authority, appoints an independent Inspector to preside over a non-statutory public inquiry, in order that a recommendation can be made to the Council as the Registration Authority, to assist in its determination of the application to register land off Pound Lane, Semington, as a Town or Village Green, as soon as is reasonably practicable.

Janice Green

Rights of Way Officer, Wiltshire Council

Date of Report: 1 December 2017

Commons Act 2006 – Sections 15(1) and (3) – Application to Register Land as a Town or Village Green – Great Lees Field, Semington

## **Appendix 1 – Community Activities**

<b>Witness</b>	<b>Community events taking place on the land</b>
1	Yes – Children playing ball games, dog walkers (every day), 5 November bonfires (in the past).
2	Yes – Car parking for annual fete (approximately 2005-2015).
3	No reply given.
4	Yes – The children of the village used on bonfire night 5 November and played football and cricket. Semington school fete parked their cars.
5	No – Children playing, walking, running, dog walking – frequently and always. Some years ago I think the field was used for gymkhanas.
6	Yes – parking for fete, fun run for school kids – 2015.
7	No.
8	No – This has been used many times as a car park for the fete at the school.
9	No – Not known – except lots of dog walking and children playing.
10	Yes – Annually – school/village fete parking, Semington fun run, see people walking daily.
11	Yes - Yearly parking for school/village fete, Semington Slog – yearly, daily seeing people walking.
12	No.
13	Yes – Me - walking, dog walking, kite flying, blackberry picking, all of these since August 2009. Walking (most weekends), blackberry picking (summer months), dog walking (most weekends), kite flying as and when. School has used the land.
14	No.
15	Yes – School events field used for parking.
16	Not to my knowledge.
17	Yes – Car park for village fete (once a year for afternoon).
18	Yes – School fete annually, Semington 10k Slog.
19	Yes – School fete – car parking (annually).
20	No.
21	Yes – (No activities specified).
22	School race 5k 2012. Dog walking 3 times a day for 13 years / 5k race 2012.
23	No.

24	No – Kite flying each autumn, two or three times for an hour, walking across the land with children to show them nature once a week for the last 5 years.
25	No – To park.
26	No – Not sure if this field was used for the Semington Slog 2015 / 2016 years. Fete Committee: Fete parking.
27	Yes – Car parking for village fete when held at St G's School, Trowbridge pony club used GL field for parking cars, horse boxes etc during annual gymkhana from June 1988 – 1998.
28	Yes – In the summer children playing there, school fete parking.
29	No.
30	Yes – Village fete parking 1 <sup>st</sup> Sat in July as long as we've lived here.
31	No reply given.
32	Yes – every year field used for school fete, observed families playing football, golf, cycling, kite flying.
33	No.
34	Yes – has been used by school, local people, children for many years.
35	No – Walking about half an hour also meeting with other village people for recreation.
36	No – Exercise, relaxation, recreation, reflection, meditation, blackberrying, mushrooming, nature study and wildlife exploration take place constantly for the last 32 years on a monthly basis for 20-30 minutes.
37	No – Dog walking, walking.
38	Yes – Car parking.
39	No.
40	No.
41	Yes – (no activities specified).
42	No.
43	Yes – With permission of the occupier it has served as a car park for events at the school.
44	Yes – I recall a past resident holding a "lions" charity bonfire party and the field was used for fireworks.
45	Yes – Bonfire parties 1960.
46	Yes – Firework bonfire, parking for school fete.
47	No.
48	No.
49	Not known.
50	Yes – (no activities specified).
51	Yes – Bonfire parties prior to 1976.



52	Yes – In the past the field was used for football, cricket matches, always used for bonfire nights, fancy dress, fairs, carnival floats stored and decorated each year.
53	No.
54	No.
55	Yes – Many years ago village bonfire.
56	No – Apart from parking for village fete as road too congested.
57	No.
58	Yes – Use of field as parking for annual village fete.
59	No.
60	No.
61	No.
62	Yes – Land has been used as a car park on village fete days.
63	No.
64	No – Regular dog walking at least 3 times weekly, play with grandchildren most weekends.
65	No.
66	No.

## **Appendix 2 – Permission**

<b>User</b>	<b>Permission</b>	<b>User</b>	<b>Permission</b>
1	Permission given to deliver to back garden (30 Pound Close).	34	No.
2	Permission sought from the farmers (the Masters' family) 1) for access to back of house and garden (31 Pound Close), 2) parking for village fete. This permission was given over last 15 years.	35	No.
3	No.	36	No.
4	No.	37	No.
5	No.	38	No.
6	No.	39	No.
7	No.	40	No.
8	No.	41	No.
9	Permission given for parking for fete.	42	No.
10	No.	43	No.
11	No.	44	No – but gate always used by villagers no Private sign.
12	No.	45	No.
13	No.	46	No.
14	No.	47	No.
15	No.	48	No.
16	No.	49	No.
17	No.	50	No.
18	No.	51	No.
19	No.	52	No.
20	No.	53	No.
21	No.	54	No.
22	No – not needed.	55	No.
23	No.	56	No – but nobody ever said otherwise.
24	No.	57	No.
25	Permission given for parking for village fete at school.	58	No.

26	Permission sought and given for village fete parking via John/Julia Masters, at least 2013 onwards.	59	No.
27	No.	60	No.
28	No.	61	No.
29	No.	62	No.
30	Permission sought and given from John Masters for village fete parking every year.	63	No.
31	No.	64	No – farmer had no objections to dogs.
32	No.	65	No.
33	No – not thought necessary.	66	No.

### **Appendix 3 – Access to Great Lees Field**

<b>User</b>	<b>Access</b>	<b>Ever prevented from using the land</b>	<b>Attempts to prevent / discourage user</b>	<b>Gates ever locked</b>
1	From back garden	No	No	Not reply given
2	From my garden, map also indicates access gate off Pound Lane	No	Yes – keeping field gate shut	Yes
3	Through our back gate, map also indicates access off Pound Lane	No	No	No
4	Via our back gate, map also indicates access gate off Pound Lane	No	No	Yes – when Travellers were around to stop them parking
5	Climb over gate, through gate off Pound Lane	No	Yes – for many years the gate has been illegally padlocked and/or topped with barbed wire	No reply given
6	Gate, map indicates access gate off Pound Lane	No	No	Yes
7	Through 'OPEN' metalled gate (reference to metalled gate suggests Pound Lane gate)	No	No	No reply given
8	Gateway in Pound Lane, Through the gate, map indicates gate off Pound Lane	Yes – The gate was locked on a few occasions over the years	Yes - and a few years ago cows were put in the field for a short time	Yes – on a few occasions but never for long
9	Through open gate in Pound Lane, Through gate, map indicates Pound Lane gate and access in west field boundary	No	No – gate locked for short periods a few times	Yes
10	Via Pound Lane, map indicates access off Pound Lane	No	Only recently	Yes
11	From Pound Lane, map indicates access off Pound Lane	No	Recent notice to keep off as being	Yes – it is locked at the moment

			ploughed	
12	Via gate/gap in hedge, map indicates access at Pound Lane (gate), access at south-east end of FP SEMI16 at south-east corner of Great Lees, access in west field boundary and access from FP SEMI1 at north-west corner of Great Lees	No	No – as far as I know	Yes – as far as I know, not before mid-May 2016
13	Through open gate, map indicates access off Pound Lane, perhaps also stile at south-east corner of Great Lees?	Yes – in part yes because field has been ploughed	Yes – ploughing of field	No
14	Via open gate, map indicates gate off Pound Lane	No	No	No
15	Field gates, map indicates access gate off Pound Lane	Yes – last month gate closed and notice	Yes – April 2016 notice on gate field ploughed for 1 <sup>st</sup> time	Yes – April 2016
16	Gate off Pound Lane, map indicates gate access off Pound Lane, access in south-west corner of Great Lees, access in western boundary, stile accesses at north-west and north-east corners of Great Lees (FP no.1)	Yes since 27/4/16 crop planted	From 27/4/16	Yes – only since April 2016
17	Main gate and through break in hedge, Through gate and hedge break, map indicates access gate off Pound Lane and access in western field boundary	No	Yes – occasionally before annual silage crop. Only few days, possibly just sprayed grass?	Yes – some years back when Travellers were in the area
18	Field gate, gap in hedge, stile, map indicates gate access off Pound Lane, stile access at north-west corner of Great Lees (FP 1)	Yes – gate locked and field ploughed 27 April 2016	No	Yes – Lock on or around 27 April 2016
19	Via road gate and public footpath stile, map indicates gate off Pound Lane and stile at north-west corner of Great Lees (FP 1)	Yes – gate locked and field ploughed April 2016	No	No reply given

20	Through gate, map indicates gate access off Pound Lane, stile at north-west corner of Great Lees (FP 1)	No	No	No reply given
21	Along lane after school (suggests Pound Lane access given location after the school)	No	No	No reply given
22	Via open gate, map indicates access gate at Pound Lane and access in western field boundary	No – not until May 2016, ploughed	Yes – May 2016 Please do not walk in field – use for crops	Yes – May 2016
23	Through gate or from adjacent field, map indicates access gate off Pound Lane and access in western field boundary	No	No	No
24	Through gate Pound Lane and from Footpath by canal as well as footpath leading from The Orchard, map indicates access gate at Pound Lane, access in western field boundary and access at north-east corner of Great Lees	No	Yes – From 27 April when land was ploughed “No Footpath” sign up	No
25	Entrance near St George’s School (suggests Pound Lane access given location), map indicates Pound Lane access	No	Not that I am aware of	No. Don’t know if gated
26	Through gateway, map indicates Pound Lane access and access in western field boundary	Yes – only recently, recently once padlocked	Yes – Approx April 2016 onwards	Yes recently – April 2016
27	Gate, gap in hedge, stile, map indicates gate off Pound Lane, access in western field boundary and stile at north-west corner of Great Lees (FP 1)	No	No	No reply given
28	Through open gate, map indicates access at Pound Lane	Yes – recently ploughed otherwise used it all the time	No	Only locked very recently
29	Gate Pound Lane, gap west side of	No	Not that I know of	Yes – in recent

	field, stile at bottom, map indicates gate access at Pound Lane, access in western boundary and stile access at north-west corner of Great Lees and stile at north-east corner (both FP 1)			weeks
30	From Pound Lane past the school, map indicates gate access off Pound Lane and gate access in western field boundary	Not until it was ploughed	No	No
31	Through a gate, the gateway on Pound Lane, the map indicates access off Pound Lane and access at north-west corner of Great Lees (FP 1)	No	No	No
32	Through gate / from footpath and other field, map indicates gate access off Pound Lane, access in western field boundary and stile accesses at north-west and north-east corners of the field (both on FP 1)	No	Yes – signs placed and field ploughed and seeded May 2016	Yes – recently May 2016
33	From Pound Lane, map indicates access gate at Pound Lane	No	No	No
34	Gate at Pound Lane, map indicates access gate at Pound Lane	No	Yes – last 4-6 weeks field ploughed	No reply given
35	Through the gate (this reference is likely to refer to gate off Pound Lane, but could also refer to Wiltshire gate in the western field boundary where no access points are indicated on the map)	No	No	No reply given
36	Through open gate, map indicates access off Pound Lane	No	Yes – Ploughing the field on 27 April 2016 discourages use and by inference suggests crop production	No
37	Walk, map indicates access gate off Pound Lane (possible indication of	No	No – Not known	No

	access points in the northern field boundary to access canal and at Palmer Grove – possible rear access to property)?			
38	Via gate, gap in fence, down by canal, map indicates gate off Pound Lane, access in western boundary and access at north of Great Lees (FP 1)	No	No – except for very recent ploughing	No
39	Gate in Pound Lane, map indicates access off Pound Lane	No	Yes – gate locked	Yes
40	Unlocked gate from Pound Lane, map indicates access at Pound Lane	Yes – Ploughed April 27th	Yes – Crops planted in May 2016	Yes – on and off in May 2016
41	Through main gate, map indicates access off Pound Lane, gate in western field boundary, stile accesses in north-west and north-east corners of Great Lees (both on FP 1) and stile at in northern boundary south of horse paddock	No	No	No
42	Through gate on Pound Lane and my parents' garden gate, map indicates gate access off Pound Lane and possible access from Pound Close garden?	No	Yes – April 2016 the field was ploughed and signs put on gate stating private land please keep off the crops	Yes – since April 2016
43	Through either gate off Pound Lane or from field beyond, map indicates gate access off Pound Lane and gate access in western field boundary	No	Yes – Occasionally the gate from Pound Lane was padlocked – when there known Traveller activity locally	Yes – only from Pound Lane and rarely except for Traveller activity
44	Through open gate, map indicates gate off Pound Lane	No	No	No
45	Through main gate and gate in my garden, map indicates gate access at	No	No	No



	Pound Lane and possible access from Pound Close garden?			
46	Gate at the bottom of our garden, map indicates gate access from Pound Close garden	No	No	Yes – when there are cattle and crop spraying
47	Via our garden (The Orchard via FP 1), map indicates gate access off Pound Lane, stile access at north-east corner of Great Lees (FP 1)	No	No	No
48	Gate, map indicates gate access off Pound Lane, gate in western field boundary, stile at north-west corner of Great Lees, gate at north-east corner of Great Lees (both on FP 1)	No	No	No
49	Map indicates access gate off Pound Lane	No	Yes – Recent notices (I have photos), closed gate in Pound Lane	No reply given
50	Gate, map indicates access off Pound Lane, gate in western field boundary, stiles at north-west and north-east corners of Great Lees (FP 1)	No	No	No
51	Through the main gate into the field, through main gate, mother-in-laws back gate into field, map indicates gate access off Pound Close, gate in western field boundary, stile/gate at north-east corner of Great Lees (FP 1) and access from Pound Close garden	No	No	No
52	Gate, map indicates access gate off Pound Lane	No	Yes – as of 2 weeks ago. Signs on gate, field ploughed for the first time in my life time 60 years	Yes - with threat of Travellers using the field
53	Via canal tow path or entrance Pound Lane, map indicates access in western	No	No	Yes

	field boundary			
54	Via unlocked gate and path through hedge in public footpath field, via unlocked gate to Pound Lane and path through hedge to west, map indicates access gate on Pound Lane, access in western field boundary and gate in north-east corner of Great Lees (FP 1)	Yes – occasional locked gate due to spraying	Only in last few weeks, since field ploughed	Yes – When field sprayed
55	Through gate in Pound Lane, map indicates access gate at Pound Lane and access in western field boundary	Yes – Rare occasion years ago when cattle in field or when sprayed	Yes – gate was suddenly locked in April 2016	Yes
56	Through the gate at the bottom of our garden, map indicates access at Pound Lane and possibly gate at north-west corner of Great Lees near Palmer Grove / Pound Close?	No	Yes – Signs are now on the gate stating Private Land Keep off the Crops	No – until now
57	Through the gate, map indicates access off Pound Lane	No	No	No
58	Pound Lane gate, from the field to the west, from footpath along boundary with canal, map indicates access gate off Pound Lane, access in western field boundary, access at south-west corner of the field (at southern end of FP 6) and access stiles at north-west and north-east corners of Great Lees (both on FP 1)	No	Yes – 27 April 2016 “Private – Please Keep off the Crop”	Yes – from 27 April 2016
59	Through gate at the bottom of my garden, map indicates gate off Pound Lane and access from Pound Close garden	No	No	Yes
60	Through the gate on Pound Lane or gap between this field and the next, map indicates access gate at Pound Lane, access in western field boundary and	Yes – From May 2016 when field was ploughed	Yes – May 2016 notice requesting that people kept off the crop	Yes – briefly in May 2016 when survey was taking place

	stile at north-west corner of Great Lees (FP 1)			
61	Through the gate off Pound Lane, map indicates gate off Pound Lane and gate in western field boundary	Yes – When it was ploughed up and planted	Yes – Again when it was ploughed up and planted Spring 2016	Yes – Spring 2016
62	Through a gate between two fields, map indicates gate at Pound Lane and access in western field boundary	No	Yes – it was ploughed on 27-4-16 and notices put up	Yes – since 27.4.16
63	Gate, pathway, map indicates access gate at Pound Lane and access in western field boundary	No	No	No reply given
64	Gateway Pound Lane, map indicates access at Pound Lane and access in western field boundary	No	Only recently notice erected on gate in Pound Lane	No reply given
65	Pound Lane gate or through my back garden, map indicates gate access at Pound Lane and access in western field boundary	Yes – when field was recently planted with crops	Yes	Yes – when crops were planted
66	Gate or stile, map indicates access gate/stile at Pound Lane	No	No	No reply given

#### **Appendix 4 – Lawful Sports and Pastimes undertaken on the land**

<b>Witness</b>	<b>Lawful sports and pastimes undertaken on the land</b>	<b>Seasonal activities</b>
1	To walk – regularly	No
2	Children to play cricket – most years 1988-1998 when grass was cut	Don't know
3	Dog walking - daily	Don't know
4	I played cricket when I was a lad, I walked the dog, picked blackberries – 2 or 3 times a week	The Semington School fete parked their cars
5	Walk – about once a week	Don't know
6	Walk dogs, play football – every day with dogs.	No
7	Walking, exercise - weekly	Don't know
8	Dog walking – at one time everyday	Don't know
9	Dog walking and access to canal – once or twice a month	Don't know
10	Dog walking - weekly	Don't know
11	Walking, children playing - weekly	Don't know
12	Walking - regularly	Don't know
13	Walking, dog walking, blackberry picking, kite flying - weekly	Don't know
14	Dog walking, nature walks – 1 x week	Don't know
15	Walking - monthly	Yes
16	Dog walking – irregular up to 3/4 times per week	Don't know
17	Walk – once every few years	Grass cutting
18	Walking, cycling, blackberry picking - Daily	Grass cutting
19	Dog walking – every other day	Yes
20	To walk my dog - daily	Don't know
21	Walking – every day	No / Don't know
22	Dog walking – every day x 3, school race (5k race 2012)	No
23	To walk my dog – 2-3 times per week	Don't know
24	Walks, kite flying – once a week Kite flying each autumn, 2 or 3 times for an hour, walking across the land with children to show them nature once a week for the land 5 years	No
25	To park – once a year	Don't know
26	Dog walking – 3-4 times weekly	N/A
27	Dog walking - daily	Silage cutting
28	Walking, flying kites, children have camped there – all the time	Yes
29	Dog walking, children walking – approx weekly	Don't know

30	To dog walk either around the edge or on the path diagonally across – 3-4 times a week minimum	Don't know
31	Walking the dog, blackberry picking – at least once a week	Don't know
32	Dog walker, foraging – every day	Don't know
33	Pleasant walk to canal with grandchildren - often	Don't know
34	Dog walking, exercise - daily	Don't know
35	Walking and meeting people doing the same – some days	Don't know
36	Exercise, relaxation, recreation, reflection, meditation, blackberrying, mushrooming, nature study, wildlife exploration – once a month	Don't know
37	Leisure and exercise – 4-6/month	Don't know
38	Walking – 4/5 times a week	Don't know
39	Walking – 2 times per week	Don't know
40	Dog walking – 2-3 times weekly	Don't know
41	Walks, picking berries, elderflower – 3-4 times a year	No
42	To walk the canal, playing when I was young and now with my son – 3-4 times a week	Don't know
43	Walks to canal, in past to fly kite – approx once per week	No
44	Walk, monthly	Don't know
45	Dog walking – most days	Don't know
46	Dog walking – nearly everyday	No
47	Walking – once or twice a week	No
48	Walking - daily	Don't know
49	Exercise self and dogs – almost daily	No reply given
50	Walk dog, pick blackberries, walk - frequent	No reply given
51	Dog walking and jogging – most days	No reply given
52	Walking dog, canal walks, bird watching – 3 times a week	Don't know
53	Dog walks and playing with granddaughter – quite frequent	Don't know
54	Walk the dog - regularly	Don't know
55	Walking the dog - daily	No
56	To walk to canal, playing cricket and football with grandson, to cut weed and grass outside fence – in winter approx 2 times a week and at least 4 times a week in summer	No
57	Have 3 dogs – twice a day	No
58	Dog walking, family walks, Frisbee, games, kite flying – up to 4 times per week	Don't know
59	Walking – about once a week	Don't know

60	Dog walk – daily	Don't know
61	To walk my dog - everyday	No reply given
62	Exercise – at least once a month	Yes
63	Dog – 6 times a day	No reply given
64	Dog walking – at least 3 times weekly, playing with grandchildren – most weekends	Don't know
65	Dog walking, playing with children, picnics, sports - daily	Don't know
66	Path to canal – 1 per month	Don't know

Activities undertaken	No. of witnesses	Activities undertaken	No. of witnesses
Dog walking	37	Children camping	1
People walking	29	Foraging	1
Picking blackberries	7	Meting people	1
Children playing / playing	5	Games	1
Kite flying	5	Bicycle riding	1
Exercise	4	Leisure and exercise	1
Cricket	3	Relaxation	1
Football	2	Recreation	1
Nature walks	1	Reflection	1
Bird watching	1	Meditation	1
School race	1	Frisbee	1
Picnicking	1	Picking Mushrooms	1
Parking	1	Picking Elderflowers	1
Jogging	1	Nature study	1
To cut weed and grass outside fence	1	Wildlife exploration	1
		Sports	1

## **Appendix 5 – Lawful Sports and Pastimes observed taking place on the land**

<b>Activities seen</b>	<b>No. of witnesses</b>	<b>Activities seen</b>	<b>No. of witnesses</b>
Dog walking	65	Team games	7
People walking	64	Rounders	6
Children playing	59	Drawing and painting	6
Picking blackberries	57	Fetes	5
Kite flying	35	Community celebrations	4
Bird watching	30	Pony / horse riding	1 (reported), 3 (seen)
Bicycle riding	19	Car parking	2
Football	19	Running	2
Fishing	14	Picking mushrooms	1
Cricket	14	Picking damsons	1
Bonfire parties	12	Photography	1
Picnicking	10	Carnival floats stored and decorated	1
Fetes (parking)	9		