IN THE MATTER OF AN APPLICATION TO REGISTER LAND AT BEECH GROVE TROWBRIDGE AS A TOWN OR VILLAGE GREEN.

RESPONSE TO THE OBJECTION S PRESENTED TO WILTSHIRE COUNTY COUNCIL BY SOLICITORS (WOOD & AWDRY ON THE 27 DAY OF SEPTEMBER 2007) ACTING ON BEHALF OF WEST WILTSHIRE DISTRICT COUNCIL.

1.

The Commons Act does not contain a definition of a village green neither does it contain any provision of land to 'become' a green. It says that, if certain conditions are satisfied, land can be registered as a green. So the closest we get to a statutory definition of a green is that it is land in respect of which, the necessary conditions have been satisfied registration of a green has taken place
[Commons Act 2006 section 3(2). & GGR Para 131]
(GGR = Getting Greens Registered, published by the Open Spaces society)

2.

The Objector refers to legislation in Section15 of the Commons Act 2006 on the Registration of greens.
Section 15, which enables land to be registered as a green, is now operational in England and Wales. Even where use of Lawful sports and pastimes has been challenged, the land may still be elegable for registration as a green.

Section 15 of the Act states.
(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 the application.

(3) This subsection applies 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 time of the application but after the commencement of this section; and

(c) the application is made within the period of two years beginning with the cessation referred to in paragraph (b).

(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.

3.

The CROW Act also states

Land... on which for not less than twenty years a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged in lawful sports and pastimes as of right and either-

Continue to do so, or

Have ceased to do so for not more than such a period as may be prescribed, or determined in accordance with prescribed provisions.

4.

The applicant maintains his application is in accordance with the above regulations.

5.

The objector has no understanding of the present status of the application site, please see paragraph 3.7 of THE FACTS. The

submission is correct that the site is NOT part of the district councils Private Finance Initiative (PFI), however the council has been trying to sell the site to West Wiltshire Housing Society and one of their officers has indicated that they have been offered the site for social housing.

6.

Submitted with the application were comments by the former Leader of the Council and ward member that assurances were given over the future of the site. See Appendix C in the application

7.

Appendix 1 attached to this submissions is a letter dated 25 September 2007 from the Properties and Commercial Services Manager at WWDC (The Objector) to Derek Adams Char of the College Residents Association (The application site is in this locality) requesting the applicant withdraws this application and suggests that the application will threaten a proposed spend of £10,000 on an alternative site.

8.

The applicant is aware that the objector is requesting £110,000 for the application site.

9.

1. Paragraph 4.2 pf the objectors submissions are offensive and a total misinterpretation of reality.

2. It is not a desperate attempt to prevent a future development site. The residents maintain assurances were given over the future of the site, promises were broken and a cash starved council (WWDC) is looking to obtain revenue for the site by reneging on promises given to local people, and earn £110, 000. by selling the land. See Appendix 1 and Appendix C with the application.

10.

The objector in his analysis has shown he has no understanding of the evidence and the analysis is flawed. An appropriate description of the analysis provided in the objectors submission 'SECTION 5' can be described in the words of Edgar Allen Poe writing in Marginalia "We can at any time change the true beauty of an actual landscape by half closing our eyes to look at it."

11.

1.A more appropriate analysis is included Appendix 2 and goes into more specific details and clearly shows 24 people have used the facility for a period of 20 years, an adequate number of people

2. In the objector's analysis two people did not specify the length of time they used the land; this can be resolved through a non statutory public enquiry and at this stage because it is lay people making this application this evidence cannot be discounted

3. The conclusion arrived in Section 5 of the objectors submission are incorrect because an adequate number of people within the locality have provided evidence of use.

12.

1. Clearly the site has been used by a significant number of residents from the locality for a period of over 20 years.

2. The meaning of the word 'significant' in the definition of a green was considered in a High Court Case R(Alfred McAlpine Homes) v Stafford County Council [2002] EWHC 76 (Admin); [2—2] 2 PLR1

It was decided that this did not mean 'a substantial or considerable number' since a neighbourhood might have a very small population. What matters, the court said, is the number of people using the land has to be sufficient that the land is in general use, by the local community, for informal recreation, rather than just occasional use by individuals.
Para 14 GGR

Para 15 –18 GGR also states.

The application…. '*15. provides evidence of significant use of the land by people who live within the locality or a neighbourhood within the locality as explained below.*
16. The locality, or any neighbourhood within a locality, is the area inhabited by the people on whose evidence you (we) are relying for your application.. If your application to register the land as a green is successful, the people who live within this area will have legal rights of recreation on the land. You (we) need to be able to define this area on a map which you submit with your application.

17 The courts have defined a 'locality' as being an area capable of being defined by reference to some division of the country known to *the law, for example a parish or other local government unit. Ministry of defence v Wiltshire county Council [1995] 4 ALL ER 931. Harman J cited as examples manors, boroughs and parishes,. civil and ecclesiastical.*

18. The words 'all of any neighbourhood within a locality' have also been considered by the courts. In the Cheltenham Builders case, the High Court held that a neighbourhood has to have 'a sufficient degree of cohesiveness...If Parliament had wished to enable the inhabitants of any area (as defined on a plan accompanying an application) to apply to register land as a village green, it would have said so' (our emphasis) . See R(Cheltenham Builders Ltd) v South Gloucestershire District Council, [2003] EWHC 2803 (Admin); [2004] JPL,975 and [2004] EWHC 2392 (Admin0 (unreported).

13.

The spreadsheets attached (Appendix 2) provide enough **detailed** evidence to show use of the site by residents from the locality, shown in the map submitted with the application without force, without secrecy and without permission.

14.

1. The objector has clearly demonstrated in the submissions that he has no idea of the meaning of the word significant.

2. The applicant maintains that his application is in accord with the regulations.

15.

The issue relating to use of the land for legitimate of sports and pastimes is an area where the objector has conceded that the supporting statements are correct.

16.

1. What is unacceptable is to use information from the Clerk to Corsham Parish Council who was also a parks officer at West Wiltshire District council suggesting that the land is waste ground.. Just because he describes it as waste ground does not mean that a appropriate number of people have not used it for recreation.

2. One of the major pastimes quoted by the claimants is blackberry picking, a legitimate activity, and one that can take place on so called waste ground!

17

Here I will quote the regulations on legal sports and pastimes (GGR Para 43)

'.....activities can vary according to changing tastes or wishes....'

18

1.The best way to resolve the different views by both parties would be to appoint an independent legal expert to hold a non-statutory public enquiry, and only proceed to a decision after receiving his report.

2. The Registration Authority will then to be seen to act fairly, follow the rules of natural justice and satisfy the requirements of the European Convention on Human Rights (as translated into domestic law by the Human Rights Act 1998).

3. In the judgement of the Court of Appeal I R (Whitmey) v Commons Commissioners [2004] EWCA Civ 951, decided on 21 21 July 2004, Arden LJ said at Paragraph 29

"If the dispute is serious in nature, I agree with Waller LJ that if the registration authority has itself to make a decision on the application (c.f. paragraphs 30 and 31 below), it should proceed only after receiving the report of an independent expert (by which I mean a legal expert) who has at the registration authority's request held a non-statutory public enquiry".

And at paragraph 30

"The authority might indeed consider that it owes an obligation to have an inquiry if the matter is of great local interest".

Waller LJ said at paragraph 62

" Where there is a serious dispute that will normally under present procedures be by conducting a non-statutory public enquiry through an independent expert, and having regard to what I say below should I suggest I suggest almost invariably be so".

And at paragraph 66

"It will mean that, in any case where there is a serious dispute, a registration authority will almost invariably need to appoint an independent expert to hold a public enquiry, and find the requisite facts, in order to obtain the proper advice before registration".

The earlier cases on this point are:- R v Suffolk County Council *ex parte* Steed (1995) 70 P&CR 487, 500-501 (Carnwath J.); R(Cheltenham Builders Ltd) v South Gloucestershire District Council [2003] EWHC 2803 (Admin), paragraphs 34-40 (Sullivan J., decided on 10 November 2003; and Oxfordshire County Council v Oxford City Council [2004] EWHC 12 (Ch), paragraphs 15, ix and x (Lightman J., decided on 22 January 2004).

19.

1. The council has failed in its responsibility by not erecting appropriate signage at the application site so the public would not be aware that the land in question was anything other than open ground .

2. The council has not put up any notices which identify the criteria to prevent registration and are inviting an application.

3. Unless a site notices coveys a clear prohibitory message it will not prevent the use *being as of right*

4. A site notice is of no effect unless it is seen or ought to have been seen by any person proposing to enter the land a prudent landowner should use abundant signing, to preclude the argument

that user s did not, and could not be expected to, see any prohibitary notices.

5. If the owner does nothing, as in this case, and allows continual entry and use of the land then the continuing use is likely to be perceived as being as of right.

6. The failure by the authority to provide any site notices or signage denying the use of land as of right adds credibility to the argument that the land was used by a significant number for a period of over twenty years as of right.

20.

1.The council is suggesting that because it issued a licence to maintain the site it removes the 'as of right' status of use of the land and suggests that the users therefore had permission to use the land.

2.This is an unreasonable assertion, keeping the place tidy is an invitation to use the land and as pointed out in Paragraph 19 (Para 1- 6) no notices were placed on the site to inform residents that use of the land was not as of right.

3. In a decision of the High Court R (Lang Homes Ltd) v Buckinghamshire County Council [2004] 1 P& CR 573.
"that the annual gathering of a hay crop, entailing 'mowing, bobbing, wind rowing, baling, stacking, loading and collection' was incompatible with use of land as a village green, with the result that the decision to register the land was quashed. However,

Lord Hoffman has commented on that decision by saying 'I do not agree that the low level agricultural activities must be regarded as inconsistent with use for sports and pastimes.." (Oxfordshire County Council v Oxford City Council [2006] 2AC 647 at paragraph57.) (quoted from GGR Para 54).

E. Manasseh

28 November 2007