

**APPENDIX 2 – Objections from Blake Morgan LLP, 18<sup>th</sup> November 2016  
(including Opinion of Gregory Jones QC) on behalf of Cooper Estates Ltd**

**Sent:** 18 November 2016 16:20  
**To:** Green, Janice  
**Cc:** david@cooperestates.co.uk; gill@cooperestates.co.uk;  
gregory.jones@ftbchambers.co.uk; Paul Watson; McGruer, Guthrie  
**Subject:** Commons Act 2006 - Section 15(1) and (3) : Notice of Application to Register Land as a  
Town or Village Green - Land Adjacent to Vowley View and Highfold, Royal Wootton  
Bassett - Reference No 2016/01 [BMG-Legal.FID38930313]  
**Attachments:** 201611181624.pdf; OPINION.DOC; image26b02b.JPG  
**Importance:** High

Dear Madam

Please see attached letter and Opinion.

Yours faithfully

Blake Morgan LLP



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18 November 2016

Our ref: 014237/000200

Your ref: JG/PC/258 2016/01

**SENT BY EMAIL**

Dear Madam


**Commons Act 2006 – Section 15(1) and (3)  
Notice of Application to Register Land as a Town or Village Green  
Land Adjacent to Vowley View and Highfold, Royal Wootton Bassett  
Reference No 2016/01**

We act for Cooper Estates Limited and our clients have passed to us your letter of 30 September 2016 and enclosed Notice of the application to register the above land as a Town or Village Green.

By way of objection to the proposals we submit the attached Opinion of Gregory Jones QC. In Leading Counsel's opinion the application is not valid and should be rejected without further steps and costs being incurred. This is without prejudice to any further submissions our clients might have on the merits of the application.

Kindly acknowledge receipt.

Yours faithfully



Blake Morgan LLP

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## OPINION

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### **Re: Validity of Village Green application made against land at Vowley View**

#### **Introduction**

1. I refer to the letter received from Wiltshire Council, notifying Cooper Estates that a Village Green claim has been made against land at Vowley View which is owned by Cooper Estates (“the site”). The letter is dated 30 September 2016. The letter was received on 3 October 2016. It relates to an application to register land as a village green. The covering letter and notice of application refers to a claim of use by local residents for sports and pastimes since 1975 and possibly since 1969 and last used in May 2015. The letter does not state when the application was made nor explain the reason for the long delay notifying the owners of the land. However, the application itself is dated 30 March 2016 is date stamped by the registration authority as 12 April 2016.
2. I do note that application form has amendments dated 11 September 2016 and the plan accompanying the letter has also been modified and dated both 13 and 14 September 2016.
3. I pause to observe that it is unsatisfactory that Wiltshire Council’s letter does not state the date upon which it considers the application validity to have been made. The date of a valid application for a village green is highly relevant for a number of reasons.

4. Since 1 October 2013 s.14 of the Growth and Infrastructure Act 2013 amended s.15(3) of the Commons Act 2006 so that an application for a village green had to be validly made one year after the last date the land was used for recognised sports and pastimes. In this case, no specified date is given as the end date in May 2015 and the letter and notice does not record when the application was validly made and whether that is only when the application was amended in September 2016. Thus, this application may well be out of time for this reason alone.
5. However, the exact date of the application is largely of academic importance in this particular case for the reasons set out below.

### Trigger Events

6. One of the fundamental changes made by the Growth and Infrastructure Act 2013 to the Commons Act 2006 was to exclude the right for anyone to apply for registration of land in certain specified circumstances.
7. Section 16, which came into force on 25 April 2013, inserted section 15C and Schedule 1A into the 2006 Act to exclude the right to apply for registration of land under section 15 when a “*trigger event*” has occurred in relation to that land. Such trigger events all relate to events within the planning system. When such a trigger event has occurred, then unless and until a corresponding “*terminating event*” has occurred in relation to the land, a commons registration authority cannot accept any application to register that land as a town or village green and is bound to refuse to consider it.
8. The full list of 14 trigger events is set out in the first column in schedule 1A. They include:-
  - a. the publication for consultation in accordance with regulations by the local planning authority of a draft local plan or neighbourhood plan proposal which identifies the land for potential development; and
  - b. the adoption or making by the local planning authority of a local plan or neighbourhood plan which “*identifies the land for potential development*”.

9. For each trigger event, there are a number of corresponding terminating events, specified in the second column of schedule 1A. Where the right to apply for registration has been excluded because a trigger event has occurred, if and when one of the corresponding terminating events occurs, the right to apply again becomes exercisable. The right to apply to register a new green is not lost for all time by such provisions. Hence, for example, the corresponding terminating events in relation to the inclusion of the land for potential development in a draft plan, terminating events include the withdrawal of the plan, the adoption of the plan (but that triggers a new trigger event if the land is identified for development in the adopted plan), and the expiry of a two year period beginning with the day on which the document is first published for consultation.
10. In the present case, the site in question is subject to the adopted Wiltshire Core Strategy (“CS”). The CS was adopted in January 2015<sup>1</sup>. Policy CP 1 of the CS provides:

**“Core Policy 1  
Settlement Strategy**

The Settlement Strategy identifies the settlements where sustainable development will take place to improve the lives of all those who live and work in Wiltshire.

The area strategies in Chapter 5 list the specific settlements which fall within each category.

**Principal Settlements**

Wiltshire’s Principal Settlements are strategically important centres and the primary focus for development. This will safeguard and enhance their strategic roles as employment and service centres. They will provide significant levels of jobs and homes, together with supporting community facilities and infrastructure, meeting their economic potential in the most sustainable way to support better self containment.

The Principal Settlements are: Chippenham, Trowbridge and Salisbury.

**Market Towns**

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<sup>1</sup> <https://pages.wiltshire.gov.uk/wiltshire-core-strategy-web-version-new-june.pdf>

Outside the Principal Settlements, Market Towns are defined as settlements that have the ability to support sustainable patterns of living in Wiltshire through their current levels of facilities, services and employment opportunities. Market Towns have the potential for significant development that will increase the jobs and homes in each town in order to help sustain and where necessary enhance their services and facilities and promote better levels of self containment and viable sustainable communities.

The Market Towns are: Amesbury, Bradford on Avon, Calne, Corsham, Devizes, Malmesbury, Marlborough, Melksham, Tidworth and Ludgershall, Warminster, Westbury, and Royal Wootton Bassett." [Underling added]

CP2 states *inter alia*

"Within the limits of development, as defined on the policies map, there is a presumption in favour of sustainable development at the Principal Settlements, Market Towns, Local Service Centres and Large Villages." [Underlining added]

11. The current site is within the limits for development of Royal Wootton Bassett.<sup>2</sup> Wiltshire Council having considered these policies has previously accepted that the "location of the site is therefore considered appropriate for development in principle..."<sup>3</sup>

## Conclusion

12. It is clear from the wording of the policy that the site in question was identified as land for "potential development" before the application to register the site as a village green was made. The trigger event had thus been triggered before the application was made. Accordingly, the application is invalid and must be rejected.

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<sup>2</sup> This confirmed for example in the Wiltshire Council officer's report in respect of application reference 14/12039/FUL.

<sup>3</sup> Ibid.

**GREGORY JONES QC**

**FTB**

**Francis Taylor Building**

**Temple**

18 November 2016

Within the limits of development, as defined on the policies map, there is a presumption in favour of sustainable development at the Principal Settlements, Market Towns, Local Service Centres and Large Villages.