From: [redacted]
Sent: 30 November 2021 10:43
To: Green, Janice
Subject: Winsley TVG Application

Follow Up Flag: Follow up
Flag Status: Flagged

Hello

I do NOT support Winsley Parish Council's application for the small amount of land at the end of Northfield to be registered as a TVG.
I have lived in Winsley for over 35 years and have only ever seen this small area (a left-over piece of land following the completion of the eastern end of Winsley bypass - B3108) used by small boys kicking balls around on an irregular basis. This has been observed by myself and/or my wife on our almost daily walks in and around the village.
It certainly could not be described as a playing field, much less a 'village green', since it is too small and too close to the bypass and other houses for this purpose. Indeed I believe it's best use would be for the building of a few additional houses (preferably low cost/social housing)
A much better description and location for the village TGV would be the field opposite the entrance to Dorothy House, which has been and continues to be used as a playing field and could be used for the other activities associated with a TGV. Unfortunately I believe it is owned by Dorothy House, even if it is not now used by them as a overflow carpark since their council approved additional parking arrangements have been completed.

Many regards

Brian Cooper

[redacted]The Mead
Winsley
BA15 2[redacted]

Sent from Samsung Mobile on O2

From:	Murali Bandaru
Sent:	30 December 2021 22:11
To:	Green, Janice
Cc:	[redacted]
Subject:	Re: Application to Register Land as TVG - Northfield Playing Field, Winsley
Attachments:	Letter to Council from BK Land and Estates Limited.doc

Follow Up Flag:	Follow up
Flag Status:	Completed

Dear Ms Green,

Commons Act 2006 – Sections 15(1) and (2)
Application to Register Land as Town or Village Green – Northfield Playing Field, Winsley
Ref: 2021/01TVG

I refer to your email of 8th November attaching formal Notice of the above detailed application in Form 45.

I write to confirm that it is my intention to object to this application and do not agree to my land being registered as a town or village green.

From my initial review of the application, I do believe that there may be a possibility that one of the 'trigger' events in the legislation may apply, thereby preventing the application from being submitted.

I am in the process of seeking further professional advice on the applicant's case and on the planning designation of the land and will then revert to you with my written submissions and supporting evidence.

Thank you for agreeing the extension of time for me to prepare my written submissions. I note the new deadline is 5pm on Tuesday 15th February 2022.

P.S: please find the same in an attachment for your reference.

Yours sincerely
Murali Bandaru
BK Land and Estates Limited

On Mon, Nov 8, 2021 at 8:42 AM Green, Janice <janice.green@wiltshire.gov.uk> wrote:

> Dear Mr Bandaru,

Commons Act 2006 – Sections 15(1) & (2)
Application to Register Land as Town/Village Green – Northfield Playing Field, Winsley - Ref: 2021/01TVG

Wiltshire Council are in receipt of an application to register land at Northfield Playing Field, Winsley, as a town or village Green, as shown on the enclosed plan. It is claimed that the land has qualified for registration as a town or village green on 1st March 2021 by virtue of the playing field at the end of Northfield, Winsley, having been used by a significant number of local people in lawful sports and pastimes 'as of right' on the land for well over 20 years and continual use as a recreational field since the 1960's and which continues to be well used and valued by Winsley residents.

Please find enclosed notice of the application for your attention. Notice of the application will also be placed in the Wiltshire Times on Friday 12th November and posted on site. The application in full will be made available for public inspection at Wiltshire Council's Offices at County Hall, Trowbridge, between 9am and 5pm, (please ask at reception to view a copy).

If you would like to make any representations or objections regarding the proposals, I would be very grateful if you could forward them to me in writing, at the above address, not later than 5:00pm on Friday 31st December 2021.

Yours sincerely

Janice Green
Senior Definitive Map Officer
Rights of Way and Countryside
Wiltshire Council
County Hall
Trowbridge
BA14 8JN

Wiltshire Council

Telephone: Internal 13345 External: +44 (0)1225 713345
Email: janice.green@wiltshire.gov.uk

Information relating to the way Wiltshire Council will manage your data can be found at:
http://www.wiltshire.gov.uk/recreation-rights-of-way

[redacted] Walker Road
Maidenhead
SL6 2[redacted]

Ms Janice Green
Senior Definitive Map Officer
Rights of Way and Countryside
Wiltshire Council
County Hall
Trowbridge
BA14 8JN

By Post & Email: janice.green@wiltshire.gov.uk

29 December 2021

Dear Ms Green

Commons Act 2006 – Sections 15(1) and (2)

Application to Register Land as Town or Village Green – Northfield Playing Field, Winsley

Ref: 2021/01TVG

I refer to your email of 8th November attaching formal Notice of the above detailed application in Form 45.

I write to confirm that it is my intention to object to this application and do not agree to my land being registered as a town or village green.

From my initial review of the application, I do believe that there may be a possibility that one of the 'trigger' events in the legislation may apply, thereby preventing the application from being submitted.

I am in the process of seeking further professional advice on the applicant's case and on the planning designation of the land and will then revert to you with my written submissions and supporting evidence.

Thank you for agreeing the extension of time for me to prepare my written submissions. I note the new deadline is 5pm on Tuesday 15th February 2022.

Yours sincerely
Murali Bandaru
BK Land and Estates Limited

From:	Murali Bandaru
Sent:	15 February 2022 11:28
To:	Green, Janice
Cc:	Hannah Taylor
Subject:	Northfield Playing Field Ref: 2021/01TVG Ref MFG Solicitors:MA:BKL00001.0001
Attachments:	10758937 NorthfieldPFTVGObjectionStmt.pdf

Dear Ms Green

Commons Act 2006 – Sections 15(1) and (2)
Application to Register Land as Town or Village Green – Northfield Playing Field, Winsley
Ref: 2021/01TVG

I refer to your email of 15th December 2021 confirming the extension of time for us to lodge our formal submissions in respect of the above application.

Please now find attached Objection Statement.

I should be grateful if you would acknowledge safe receipt by return, please, and confirm whether you would like a hard copy to be sent by post.

Yours sincerely,

Murali Bandaru
BK Land and Estates Limited

Application No: 2021/01TVG

IN THE MATTER OF:

AN APPLICATION TO REGISTER LAND KNOWN AS NORTHFIELD PLAYING FIELD AT NORTHFIELD, WINSLEY, WILTSHIRE, BA15 2JS, AS A TOWN OR VILLAGE GREEN PURSUANT TO SECTION 15 OF THE COMMONS ACT 2006

OBJECTION STATEMENT ON BEHALF OF BK LAND & ESTATES LIMITED

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1. This Objection Statement ("OS") is made in response to an application dated 1 March 2021 ("the Application") by Winsley Parish Council ("the Applicant") to register land known as Northfield Playing Field ("the Application Land") as a new town or village green ("TVG") pursuant to section 15(2) of the Commons Act 2006 ("the 2006 Act"). This OS is made on behalf of BK Land and Estates Limited ("BKLE"), the registered freehold proprietor of the Application Land which is registered at HM Land Registry under Title No WT6674.

Statutory Criteria for Registration

2. The Application is made pursuant to section 15(2) of the 2006 Act which means the Applicant must establish that "*a significant number of the inhabitants of any locality, or 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 they continued to do so at the time of the application*".

… a significant number …

3. The "significant number" component has never been formally defined but in *R (McAlpine) v Staffordshire County Council* [2002] EWHC 76 (Admin) ("*McAlpine*") Sullivan J said "… *'significant', although imprecise, is an ordinary word in the English language and little help is to be gained from trying to define it in other language …*". What matters "*… is that 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 individual trespassers*", para [71].

4. More recently, in *R (on the application of Lewis) v Redcar and Cleveland Borough Council* [2010] UKSC 11 ("*Redcar*"), at para [75] Lord Hope, very much echoing what Sullivan J said in *McAlpine*, said "… *The question is whether the user by the public was of such amount and in such manner as would reasonably be regarded as being the assertion of a public right …*".

5. However, only recreational use by members of the public from the claimed locality, or neighbourhood within a locality, will contribute to the "*significant number*" test given that the test is "*a significant number of the inhabitants of any locality or neighbourhood within a locality*". In other words, use by people that do not come from the claimed locality or neighbourhood will not contribute to the "*significant number*" test and to the extent that evidence of such use is adduced, it must be discounted for the purposes of determining an application to register land as a new TVG.

… of the inhabitants of any locality or of any neighbourhood within a locality …

6. A "*locality*" must be an area known to the law such as a borough, parish or manor, *Ministry of Defence v Wiltshire County Council* [1995] 4 All ER 931, 937. In contrast, a "*neighbourhood within a locality*" need not be a recognised

administrative unit or an area that is known to the law (in other words it does not have to meet the same stringent criteria that applies to establishing a locality). A housing estate can be a neighbourhood, *McAlpine*, as can a single road, *R (on the application of Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust) v Oxford County Council* [2010] EWHC 530 ("*Warneford Meadow*"). However, a neighbourhood cannot be just any area drawn on a map. It must have some degree of cohesiveness, *McAlpine*. That cohesiveness must be established by evidence. Furthermore, if an applicant relies upon a neighbourhood, they must also identify the locality within which the neighbourhood is located.

… have indulged as of right …

7. For user to be "*as of right*" it must be user that has been without force, without secrecy and without permission (traditionally referred to as *nec vi, nec clam, nec precario*). In *Redcar*, referring to the three criteria that must be met for user to be "*as of right*", Lord Rodger said "*… their sense might be best captured by putting the point more positively: the user must be peaceable, open and not based on any licence from the owner of the land*", para [87].

8. In *R (Beresford) v Sunderland City Council* [2004] 1 AC 889, at para [72], Lord Walker observed that "*as of right*" has sometimes been likened to "*as if of right*". Since the House of Lords' decision in *R v Oxfordshire County Council, ex parte Sunningwell* [2000] 1 AC 335 ("*Sunningwell*") it has been settled that the subjective belief of the users as to whether they were permitted to use the land in question is irrelevant.

9. The basis for the creation of rights through user "*as of right*" is that the landowner has acquiesced in the exercise of the right claimed (in the case of applications to register a new TVG the period of user required is twenty years,

Dalton v Angus & Co (1881) 6 App Cas 740, 773) and the user can rely upon their long use to support a claim to the right enjoyed.

10. "*Force*" is not limited to physical force. User is by force not only if it involves the breaking down of fences or gates but also if it is user that is contentious or persisted in under protest (including in the face of prohibitory signage) from the landowner, *Smith v Brudenell-Bruce* [2002] 2 P & CR 4.

11. "*Stealth*" is user that is deliberately secretive. Such use will not satisfy the "*as of right*" test because such use would not come to the attention of the landowner and he could not, therefore, be said to have acquiesced in such use.

12. "*Permissive*" use is use 'by right' and is, therefore, incapable of being use "*as of right*". The Supreme Court's decision in *R (on the application of Barkas) v North Yorkshire County Council and Another* [2014] UKSC 31 is the most recent authority at the highest judicial level on the question whether user is 'by right'.

… in lawful sports and pastimes …

13. The term "*lawful sports and pastimes*" ("LSPs") is a composite phrase that includes informal recreation such as walking, with or without dogs, and children playing and, indeed, any activity that can properly be called a sport or pastime. Lord Hoffmann in *Sunningwell* expressly agreed with what had been said in *R (Steed) v Suffolk County Council* (1995) 70 P & CR 487 about dog walking and playing with children being in modern life the kind of informal recreation which may be the main function of a village green. However, in *Warneford Meadow* the court interpreted the word lawful as excluding any activity that would constitute a criminal offence.

… on the land …

14. It is not necessary for the whole of the land to have been used for LSPs; only that the land has been used generally in that manner. There may be land, for example, that has a pond on it or, as in *Oxfordshire County Council v Oxford City Council* [2004] Ch 253 ("*Trap Grounds*"), that is not wholly accessible for recreational use. The fact that some of the application land might have been inaccessible for use for LSPs does not preclude registration. It is not necessary for a registration authority to be satisfied that every square inch of a piece of land the subject of an application has been used.

… for a period of at least twenty years …

15. In the case of an application made pursuant to section 15(2) of the 2006 Act the relevant twenty year period during which qualifying use must be established is the twenty years immediately preceding the date of the application. In this case that is the twenty year period from 1 March 2001 to 1 March 2021. Use must be continuous throughout the whole of the relevant twenty year period, *Hollins v Verney* (1884) 13 QBD 304.

Burden and Standard of Proof

16. The burden of proving that the statutory test is met lies firmly with the Applicant. It is no trivial matter for a landowner to have land registered as a TVG and all the statutory elements required to establish a new TVG must be "*properly and strictly proved*", *R (v Suffolk County Council, ex parte Steed* (1996) 75 P & CR 102, 111, *per* Pill LJ, approved by Lord Bingham in *Beresford* at para [2]. That means that if any part of the statutory test is not satisfied an application must fail as a matter of law. The standard of proof is the usual civil standard; the balance of probabilities.

Objection

17. BKLE objects to the Application on the following grounds:

(i) The Application is not duly made as it does not adequately identify the locality or neighbourhood within a locality that is relied upon;

(ii) User has not been as of right;

(iii) The evidence provided in support of the Application (largely in the form of evidence questionnaires ("EQs"), whilst voluminous, is wholly inadequate to satisfy the test under section 15(2) of the 2006 Act.

(i) <u>Locality / neighbourhood not adequately identified and Application not duly made</u>

18. The Application, as originally made, was clearly defective, as recognised by the Commons Registration Authority, Wiltshire Council ("the Council"), as amongst other things the original version of it described the locality or neighbourhood within the locality on whose behalf the Application was made as Winsley Parish, but attached two plans, one identifying the boundaries of the Parish and the other identifying the settlement boundary of Winsley.

19. As is permitted under regulation 5(4) of The Commons (Registration of Town or Village Green) (Interim Arrangements) (England) Regulations 2007 ("the 2007 Regulations"), the Council provided the Applicant with an opportunity to put its Application in order. The Applicant is entitled to a "*reasonable opportunity*" to do so. That, according to Arden LJ in *R (Church Commissioners for England) v Hampshire County Council* [2014] EWCA Civ 634; [2014] 1 WLR 4555, at paragraph [60] means "*… only … a short opportunity to put matters right*".

20. On the Applicant's second attempt, submitted to the Council under cover of correspondence dated 8 August 2021 (more than 5 months after the Application was originally received by the Council), in the Application the locality or neighbourhood within a locality was described as "*Exhibit C: Neighbourhood within the locality to which the claimed green relates*". That is not a description of a

locality or a neighbourhood within a locality. Exhibit C is a plan that describes itself as "*locality of the claimed green*". Even if the word locality is referable to the locality on whose behalf the application is made (rather than the locality – or location – of the Application Land) that is inconsistent with the entry in the application form wherein it indicates the Application is made on behalf of a neighbourhood.

21. Furthermore, even a cursory examination of the plan at "*Exhibit C*" reveals that the claimed neighbourhood or locality (if that is what it is said to depict) is insufficiently defined thereon. It appears to simply be a line drawn on a map (it does not follow the precise boundaries of the Winsley Settlement Boundary plan, for example). The map is of such poor quality that it is impossible to understand the exact boundaries of the claimed neighbourhood or locality if that is what it is meant to illustrate and it has not been identified by any meaningful name or description. The Applicant was permitted a period of in excess of 5 months to put its Application in order and it is still defective, almost a year after its receipt by the Council.

22. It is a part of the statutory test that the Application be made on behalf of a locality or neighbourhood within a locality. None has been properly identified. If a neighbourhood is relied upon it is noteworthy that the Applicant has adduced no evidence regarding the existence of any such neighbourhood and its cohesiveness. If a locality is relied upon the Applicant has failed to state by what name the area identified in Exhibit C is known to the law. Accordingly, the Application should now be rejected.

(ii) ***<u>User not 'as of right'</u>***

23. Without prejudice to the foregoing point that the Application is defective and should be rejected, it is submitted that the user relied upon was not 'as of right'. Lord Walker, in the Supreme Court in *R (Lewis) v Redcar and Cleveland Borough*

Council (No 2) [2010] 2 AC 70 ("*Lewis*") accepted as a general proposition that if a right is to be obtained by prescription the persons claiming that right "*must by their conduct bring home to the landowner that a right is being asserted against him so that the landowner has to choose between warning trespassers off, or eventually finding out that they have established the asserted right against him*" (emphasis added).

24. It cannot genuinely be said that the users of the Application Land (and no admission is made regarding the nature and extent of any of the claimed use) were asserting a right as against the owner of the land such that the owner had to choose between warning them off or them establishing a right.

25. It is understood that the Application Land was, at around the time the Tyning Estate was built in the 1960s, dedicated to Wiltshire Council for 'highway purposes'. For a time the land was temporarily used as a play area with a view to that use continuing until such time as the Application Land was required for highway purposes. As it happens, the Application Land was never needed or used for highway purposes and the Council has essentially licensed the Applicant to use the Application Land for the provision of community recreation space.

26. The owner of the Application Land (whose land it thought had been forever lost to 'highway purposes') only became aware that its ownership subsisted in 2020 (the owner at that time and since it had developed the estate in the 1960s was Alfred Robinson (Builders and Contractors) Limited). The Oldham Estate Company Limited (who purchased the assets of Alfred Robinson (Builders and Contractors) Limited, including the Application Land, on 13 January 2021), sold the Application Land at auction to BKLE, days after the defective application had been submitted to the Council (but not yet advertised).

27. The Council (who had effective control over the Application Land given its dedication to highway purposes) had assumed authority to permit the

Applicant to use the Application Land for the provision of recreational space to local people. According to Parish Council minutes relating to a meeting on 26 March 1991 notification was provided that the Application Land was no longer needed and that it would be returned to the 'control' of the original developer (clearly demonstrating that the Council was in control of it to that point). The Parish Council minutes record that the clerk was to write to the Council to express its interest in the Application Land and to ensure that the Parish Council would be consulted before any decision in respect of the Application Land was made.

28. There is no evidence that the Council ever did return the Application Land to the 'control' of the original owner. The fact of its continuing ownership only came to the owner's attention when the Applicant contacted the owner regarding a separate piece of land in 2020. The Parish Council had continued to deal with the maintenance of the Application Land, holding itself out as having the authority to do so and as having the authority to permit members of the public to use the land. Many of the EQs state belief that the Applicant owned the Application Land. It is inconceivable in those circumstances that the landowner, who thought the Application Land had been dedicated to highway purposes and considered itself to have been divested of the obligations and opportunities of ownership, would have had any reason to object to use of the Application Land by local inhabitants.

29. In the circumstances it cannot possibly be concluded that any use of the Application Land by members of the community amounted to an assertion of any right as against the landowner that required the landowner to elect to either ignore its continuance or object to such use. The use relied upon by the Applicant cannot be properly described as use as of right.

(iii) <u>Evidence inadequate to satisfy statutory test</u>

30. This point is also advanced without prejudice to the preceding points which ought to each and both be fatal to this Application. On the whole the evidence contained in EQs is wholly inadequate to amount to sufficient evidence of use to justify registration of any piece of land as a new TVG. The evidence contained therein, such as it is, is so general and unspecific as to be of little probative value.

31. By way of just a few examples, the EQ of Suzanne Stark says she used the land between 1992 and 2007. She says in reply to a question about frequency of use "*many times when our children were young*". As evidence of use within the relevant application period that EQ is worthless because it does not give any information about whether that claimed activity actually occurred during the application period. The EQ of Richard and Pam Cornforth does not constitute evidence of qualifying use because their claimed use ceased in 1986. The same is true of Lucy Allison whose use ceased in 1993. The EQ of Mr and Mrs GV and JM Connor claims use between 1989 and 2021 yet in terms of frequency it says "*very often from 1989 with children and now with grandchildren*". Given the nature of that use it seems highly improbable that such use has been continuous from 1989 to 2021. There has inevitably been a period between children getting older and grandchildren coming along during which no use of the type claimed was made of the Application Land with either children or grandchildren within the period during which use has been claimed. That detail, as is almost always the case with EQ evidence, is absent and the exact nature and frequency of such use can only be established following cross examination at a public inquiry.

32. The aforementioned EQs are just a few examples (and there are many more) that speak to the wider point. The evidence so far produced by the Applicant, notwithstanding its first appearance as being extensive, in fact says very little as to the detail of the use actually made of the Application Land during the application period, any use outside that period being totally irrelevant to meeting the statutory test for registration.

Conclusion

33. For the reasons set out above the Application should be rejected. As presently made it is clearly defective and does not adequately address or satisfy that aspect of the statutory test relating to locality or neighbourhood. The Applicant has already had more than a reasonable period in which to put its Application in order and has failed to do so. That should be an end to this Application.

34. Furthermore, for the reasons set out above, this is clearly not an example of circumstances where the landowner could possibly have understood that in order to prevent prescriptive rights being acquired it needed to object to use of the Application Land. The Council was essentially custodian of the Application Land during the period it was dedicated to 'highway purposes'. It is not known whether the Council did ever 'return' the Application Land to the owner, as it should have done, although it appears that it did not. It permitted the Applicant to maintain the Application Land for public recreational use and give the public permission to use it. There can have been no reason for the landowner to object to such use if it was not aware of its entitlement to do so.

35. The EQ evidence is wholly insufficient to amount to adequate evidence of qualifying use. As was recognised in *R (v Suffolk County Council, ex parte Steed* (1996) 75 P & CR 102, the burden of proving that the statutory test is met lies firmly with the Applicant. It is no trivial matter for a landowner to have land registered as a TVG and all the statutory elements required to establish a new TVG must be "*properly and strictly proved*", *per* Pill LJ. The evidence so far produced falls a long way short of what is required.

36. The Council is invited to now reject the Application for any or all of the above stated reasons.

ROWENA MEAGER

No 5 Chambers

12 February 2022

Application No: 2021/01TVG

IN THE MATTER OF:

AN APPLICATION TO REGISTER LAND KNOWN AS NORTHFIELD PLAYING FIELD AT NORTHFIELD, WINSLEY, WILTSHIRE, BA15 2JS, AS A TOWN OR VILLAGE GREEN PURSUANT TO SECTION 15 OF THE COMMONS ACT 2006

OBJECTION STATEMENT ON BEHALF OF BK LAND & ESTATES LIMITED

ROWENA MEAGER

No 5 Chambers

12 February 2022