Wiltshire Council

AGENDA

Meeting: **Western Area Planning Committee**

Place: **Council Chamber - County Hall, Bythesea Road, Trowbridge, BA14 8JN**

Date: **Wednesday 6 November 2024**

Time: **3.00 pm**

Please direct any enquiries on this Agenda to Ellen Ghey of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 718259 or email ellen.ghey@wiltshire.gov.uk

Press enquiries to Communications on direct lines 01225 713114/713115.

This Agenda and all the documents referred to within it are available on the Council's website at www.wiltshire.gov.uk

Membership

Cllr Christopher Newbury (Chairman)
Cllr Bill Parks (Vice-Chairman)
Cllr Trevor Carbin
Cllr Ernie Clark
Cllr Andrew Davis
Cllr Stewart Palmen
Cllr Horace Prickett
Cllr Pip Ridout
Cllr Jonathon Seed
Cllr David Vigar
Cllr Suzanne Wickham

Substitutes

Cllr Matthew Dean
Cllr Jon Hubbard
Cllr Tony Jackson
Cllr Mel Jacob
Cllr George Jeans
Cllr Gordon King
Cllr Tamara Reay
Cllr Bridget Wayman
Cllr Graham Wright
Cllr Nick Holder
Cllr Stuart Wheeler

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Public Participation

Please see the agenda list on following pages for details of deadlines for submission of questions and statements for this meeting.

For extended details on meeting procedure, submission and scope of questions and other matters, please consult Part 4 of the council's constitution.

The full constitution can be found at this link.

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AGENDA

Part I

Items to be considered when the meeting is open to the public

1 **Apologies**

To receive any apologies or substitutions for the meeting.

2 **Minutes of the Previous Meeting** *(Pages 7 - 12)*

To approve and sign as a correct record the minutes of the meeting held on 9 October 2024.

3 **Declarations of Interest**

To receive any declarations of disclosable interests or dispensations granted by the Standards Committee.

4 **Chairman's Announcements**

To receive any announcements through the Chair.

5 **Public Participation**

The Council welcomes contributions from members of the public.

Statements

Members of the public who wish to speak either in favour or against an application or any other item on this agenda are asked to register **no later than 10 minutes before the start of the meeting**. If it is on the day of the meeting registration should be done in person.

The rules on public participation in respect of planning applications are linked to in the Council's Planning Code of Good Practice. The Chairman will allow up to 3 speakers in favour and up to 3 speakers against an application, and up to 3 speakers on any other item on this agenda. Each speaker will be given up to 3 minutes and invited to speak immediately prior to the item being considered.

Members of the public and others will have had the opportunity to make representations on planning applications and other items on the agenda, and to contact and lobby their local elected member and any other members of the planning committee, prior to the meeting.

Those circulating such information prior to the meeting, written or photographic, are advised to also provide a copy to the case officer for the application or item, in order to officially log the material as a representation, which will be verbally summarised at the meeting by the relevant officer, not included within any officer slide presentation if one is made. Circulation of new information which has not been verified by planning officers or case officers is also not permitted during the

meetings.

Questions

To receive any questions from members of the public or members of the Council received in accordance with the constitution which excludes, in particular, questions on non-determined planning applications.

Those wishing to ask questions are required to give notice of any such questions in writing to the officer named on the front of this agenda no later than 5pm on **Wednesday 30 October 2024** in order to be guaranteed of a written response. In order to receive a verbal response, questions must be submitted no later than 5pm on **Friday 1 November 2024.** Please contact the officer named on the front of this agenda for further advice. Questions may be asked without notice if the Chairman decides that the matter is urgent.

Details of any questions received will be circulated to Committee members prior to the meeting and made available at the meeting and on the Council's website.

6 **Planning Appeals and Updates** *(Pages 13 - 18)*

To receive details of completed and pending appeals and other updates as appropriate.

Commons Act 2006 - Sections 15(1) and (2) - Application to Register Land as Town or Village Green

7 **Southwick Court Fields: Southwick and North Bradley - Application No. 2020/02TVG** *(Pages 19 - 118)*

To consider legal advice requested by the Western Area Planning Committee (WAPC) 10th April 2024, to assist in its determination of an application made under s.15(1) and (2) of the Commons Act 2006 to register land as a Town or Village Green (TVG), Southwick Court Fields, in the parishes of Southwick and North Bradley and recommend that the Inspector's Advisory Report be accepted in part, and that the application be rejected on the ground that all the criteria for registration laid down in s.15(2) of the Commons Act 2006 have not been satisfied, for the reasons set out in the Inspector's Advisory Report dated 9 February 2024.

Planning Applications

To consider and determine the following planning applications:

8 **PL/2024/04800: Land South of 92 High Street, Chapmanslade, BA13 4AN**
(Pages 119 - 152)

Demolition of stables and construction of new sustainable self-build dwelling with associated works and change of use of land to C3. (resubmission of PL/2022/09808 and PL/2022/03190).

9 **Urgent Items**

Any other items of business which, in the opinion of the Chairman, should be taken as a matter of urgency.

Part II

Item during whose consideration it is recommended that the public should be excluded because of the likelihood that exempt information would be disclosed

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Wiltshire Council

Western Area Planning Committee

MINUTES OF THE WESTERN AREA PLANNING COMMITTEE MEETING HELD ON 9 OCTOBER 2024 AT COUNCIL CHAMBER - COUNTY HALL, BYTHESEA ROAD, TROWBRIDGE, BA14 8JN.

Present:

Cllr Christopher Newbury (Chairman), Cllr Trevor Carbin, Cllr Ernie Clark, Cllr Andrew Davis, Cllr Stewart Palmen, Cllr Horace Prickett, Cllr Pip Ridout, Cllr Jonathon Seed, Cllr David Vigar, Cllr Suzanne Wickham, and Cllr Mike Sankey (Substitute)

Also Present:

Cllr Bill Parks

67 **Apologies**

Apologies for absence were received from:

- Councillor Bill Parks, who was substituted by Councillor Mike Sankey

68 **Minutes of the Previous Meeting**

The minutes of the previous meeting held on 4 September 2024 were considered. Following which, it was:

Resolved:

The Committee approved and signed the minutes of the previous meeting held on 4 September 2024 as a true and correct record.

69 **Declarations of Interest**

There were no declarations of interest.

70 **Chairman's Announcements**

There were no specific Chairman's announcements.

71 **Public Participation**

The Chairman explained the rules of public participation and the procedure to be followed at the meeting.

There were no questions or statements submitted by Councillors or members of the public.

72 **Planning Appeals and Updates**

The Chairman invited Simon Smith, Development Management Team Leader, to update the Committee on the pending and determined appeals as per the appeals report included within the Agenda Pack.

The two determined appeals were detailed, with Members being informed of the successful defence of application PL/2024/00785 pertaining to a proposed detached 1 bed dwelling on vacant land to the rear of 1 Philip Close, in which it was found that the development would be out of character with the locality and would result in cramped living conditions.

As discussed during the previous meeting of the Committee, application PL/2022/09842, Land off Storridge Road, Westbury, was highlighted with officers reiterating that despite the appeal being successfully defended by the Council and dismissed, the appointed Appeal Inspector had concluded that after examining the Council's Housing Land Supply position, the Council was now in deficit, having 3.85 years supply when tested against the extant 4-year requirement. It was also explained that the issued decision would now be regarded as a significant material consideration for future appeal decisions. During the discussion, Members suggested that Strategic Planning Officers considered publishing the Council's Housing Land Supply Statement more frequently than the current yearly publication in order to have a more up to date understanding of the current housing supply position.

Following which, it was:

Resolved:

The Committee noted the appeals report for the period 23 August 2024 to 27 September 2024.

73 **PL/2024/00596: Temple Farm, Upton Scudamore, Warminster, BA12 0AQ**

Public Participation

- Mr John Spencer, local resident, spoke in objection to the application.
- Mr Gareth Jones, agent, spoke in support of the application.
- Ms Sam Choules, applicant, spoke in support of the application.
- Ms Claire Bates, applicant, spoke in support of the application.

- Councillor Lesley Welch, on behalf of Upton Scudamore Parish Council, spoke in objection to the application.

Verity Giles-Franklin, Senior Planning Officer, presented the report which recommended that the Committee approved the application, subject to conditions, for the change of use from a C3 dwelling house to a C2 residential care home.

It was noted that Members of the Committee had undertaken a site visit on Tuesday 8 October 2024, with the Case Officer being present.

Key material considerations were identified including the principle of development; the impact of the proposal on the setting of nearby Listed Buildings; the impact on the amenity of existing and future neighbouring occupiers; highway safety; and ecology matters.

Attention was drawn to late representations that had been submitted following publication of the agenda, however it was confirmed by officers that the material considerations raised had already been taken into account within the report.

Members of the Committee then had the opportunity to ask technical questions to the officer. Members noted the reliance on private vehicles to and from the site, particularly when considering the different working patterns of staff, and limited public transport options available within the village of Upton Scudamore. Further queries were made with regard to what constituted as exceptional circumstances for the provision of specialist accommodation outside but adjacent to principal settlements, and other aspects such as waste storage, the tenancy arrangements for the property, and the safety of the pond as identified within the location risk assessment.

In response, officers reiterated that the applicants were intending on operating the home as close to a traditional family set-up as possible and would therefore take responsibility for transporting the children to school, after school clubs, and other social or recreational activities. It was further explained that the accessibility of facilities/services from the site, and if these were accessible to the children or the adults caring for them, were considered as one of the criteria when assessing suitable specialist accommodation. However, it was highlighted that Wiltshire's Core Strategy was not prescriptive when identifying what constituted as acceptable or exceptional circumstances to these provisions, yet due to the proximity of the site to Warminster and Westbury and in light of the intensity of scale of the development, officers were satisfied that the proposal met those criteria and therefore did not consider the application site to represent an unsustainable location.

Furthermore, it was explained that the applicants were intending on screening any applications to the site to ensure that any particular child's requirements/needs could be met before they were introduced into the home. It was further explained that the applicants were intending on covering the pond with a meshing to mitigate safety risks, that waste would be classed as residential use, and that the potential granting of permission did not remove any

of the restricted covenants on the property and would be a legal matter to be dealt with outside of the planning process. Finally, it was clarified that the ground floor of the property contained a number of communal rooms which could be converted into a bedroom that would be used by staff during overnight shifts, therefore all four children would have access to their own bedrooms.

The named public speakers as detailed above then had the opportunity to present their views to the Committee.

Councillor Bill Parks, as the Local Unitary Member, then spoke to the application where he thanked all officers for their hard work and acknowledged the role of Members as corporate parents. The opposition to the proposal within the local community was raised, and the suitability of the rural nature of the village was noted in respect of the limited accessibility to immediate social, educational, and recreational opportunities for the children within the home alongside unsuitable and inadequate facilities, transports links, and amenities.

A debate then followed where Members discussed the benefits of living in rural areas alongside some of the risks inherent in living within urban communities, and the importance of having a variety of specialist accommodation locations across the County. The limited accessible services/facilities as raised by local residents were noted, but the statutory duty of the Council to provide suitable accommodation and a range of placement options for looked after children and care leavers was emphasised. Furthermore, the evidenced need for the provision of suitable accommodation within the County particularly for the high proportion of children living in residential care out of County was highlighted, with Members commending the size of both the property and adjoining garden which they felt was a suitable and valuable resource.

Members further discussed the lawful use of the property as a dwelling house, that the proposal was seeking a change of use and not a new development, and the importance of integrating both the residents and applicants into the community and working in tandem with the Upton Scudamore Parish Council to mitigate some of the concerns raised by local residents.

At the conclusion of the debate, Councillor Stewart Palmen moved to approve the application in line with officer recommendations which was seconded by Councillor Jonathon Seed. Following a vote on the motion, it was:

Resolved:

The Committee APPROVED the application subject to the following conditions:

1. **The development hereby permitted shall be begun before the expiration of three years from the date of this permission.**

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. **The development hereby permitted shall be carried out in accordance with the following approved plans and documents:**

Drawing No's: Location Plan; and Site Plan; as received on 22 January 2024; Existing Floor Plans (Not to scale - For information only - No changes to floor plan), as received 13 February 2024; SK01, Existing Car Park Layout Plan; SK02 Rev A, Proposed Widening of Car Park Plan; SK03, Swept Path Analysis Large Car Plan; SK04, Swept Path Analysis Ambulance Plan, as received on 7 May 2024

REASON: For the avoidance of doubt and in the interests of proper planning.

3. **The development hereby approved shall only be used as a children's residential home (C2 use) and for no other purpose (including any other purpose in Class C2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification) without the prior expressed planning permission of the Local Planning Authority.**

REASON: The proposed use is acceptable, but the Local Planning Authority wish to consider any future proposal for a change of use having regard to the circumstances of the case.

4. **The development hereby approved shall not be occupied by more than four children at any one time.**

REASON: In the interests of neighbouring amenity and to define the terms of this permission.

5. **No part of the development hereby permitted shall be first brought into use until the access, turning area and 5 car parking spaces as shown on drawing no. SK03 have been completed in accordance with the details shown on the approved plans. Thereafter, the areas shall be maintained for those purposes at all times for the lifetime of this permission.**

REASON: In the interests of highway safety.

6. **The development hereby approved shall not be first brought into use until an on-site management plan has been submitted to and approved in writing by the Local Planning Authority which shall include:**

    a. **A management plan for the day-to-day operations of the site**

b. **A protocol of how complaints (including from local residents) can be raised with the provider (separate to any corporate /statutory noise nuisance complaint)**
c. **Details of how complaints will be managed by the provider and the respective timescales**
d. **Contact details of named personnel to be contacted to enforce the abovesaid management plan**

REASON: to define the terms of this permission and in the interests of protecting neighbouring amenity

74 **Urgent Items**

There were no urgent items.

(Duration of meeting: 3.00 - 4.30 pm)

The Officer who has produced these minutes is Ellen Ghey of Democratic Services, direct line 01225 718259, e-mail ellen.ghey@wiltshire.gov.uk

Press enquiries to Communications, direct line 01225 713114 or email communications@wiltshire.gov.uk

Wiltshire Council
Western Area Committee
6th November 2024

Planning Appeals Received between 27/09/2024 and 25/10/2024

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Appeal Start Date	Overturn at Cttee
PL/2023/01880	Land rear of 117 High Street, Dilton Marsh, BA13 4DP	Dilton Marsh	Outline application with some matters reserved for proposed development of up to 54 dwellings, including 30% affordable and supporting infrastructure. (access only) (revised scheme)	DEL	Hearing	Refuse	21/10/2024	No
PL/2023/08238	Ludlows Farm, Bradley Road, Warminster, BA12 7JY	Warminster	Change of use of former clinic building to separate residential unit (retrospective)	DEL	Written Representations	Refuse	15/10/2024	No

Planning Appeals Decided between 27/09/2024 and 25/10/2024

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Appeal Decision	Decision Date	Costs Awarded?
PL/2024/01084	14 Frome Road, Bradford On Avon, BA15 1LE	Bradford-on-Avon	Widen door opening within 1no internal masonry wall	DEL	Written Reps	Refuse	Allowed with Conditions	15/10/2024	None

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Appeal Decision

Site visit made on 2 October 2024

by A Dawe BSc (Hons), MSc, MPhil, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 October 2024

Appeal Ref: APP/Y3940/Y/24/3344214
14 Frome Road, Bradford on Avon, Wiltshire BA15 1LE

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) against a refusal to grant listed building consent.
- The appeal is made by Mr Adam Furse against the decision of Wiltshire Council.
- The application Ref is PL/2024/01084.
- The works proposed are to widen door opening within 1no internal masonry wall.

Decision

1. The appeal is allowed and listed building consent is granted to widen door opening within 1no internal masonry wall at 14 Frome Road, Bradford on Avon, Wiltshire BA15 1LE in accordance with the terms of the application Ref PL/2024/01084 and the plans submitted with it, subject to the following condition:

   i) The works authorised by this consent shall commence not later than 3 years from the date of this consent.

Main Issue

2. The main issue is whether the proposed works would preserve the significance of the Grade II listed building known as 14 Frome Road (Ref: 1036052) (the LB), and any of the features of special architectural or historic interest that it possesses.

Reasons

3. The LB derives its significance from being an early 19th century, late Georgian property, including its ashlar front elevation and sash windows and an historically symmetrical and cellular plan form. It also has significance through its association with the adjacent canal, whereby I understand it to have once been a lock keepers house. Works relating to relatively recent extant planning and listed building consents, that are well advanced, have resulted in various alterations and extension to the LB. Nevertheless, it appears to retain a high degree of historic fabric and some remnants of the historical plan form.

4. The consented works that have occurred include the creation of a large open plan space formed following a single storey extension to the rear of the LB. This encompasses one of the original rear ground floor rooms and replaces what I understand was a previously altered wall opening and largely modern and utilitarian structures. That open plan form has also included removal of a similar amount of the associated passageway wall as is now proposed for the wall opposite. The remaining three rooms on the ground floor retain their cellular form, accessed via single timber doors. The first floor also currently

retains four separate rooms albeit with consent to form a single master bedroom from the existing two rear bedrooms. Furthermore, consented widened openings have been created in the basement to create an open plan layout across what were originally the two rear rooms, albeit retaining some of the walls, indicating how they were historically laid out.

5. It is disputed as to the age of the door and associated architrave proposed to be removed. Based on the submissions and my observations, I cannot be certain as to the age. Nevertheless, the proposed works would inevitably result in the loss of existing historic fabric comprising at least a large part of that wall, and more so were those doorway features to have historic significance. This would also create a completely open plan layout across the whole of the rear part of the LB's ground floor.

6. However, as for the rear part of the basement, the wall concerned would not be completely removed, with some retention either side of and above the proposed opening, thereby providing an indication as to the original layout. Such an opening would be similar to that opposite into the ground floor kitchen. I understand that the latter related to a greater previous level of alteration of that space, albeit I have no details of the extent of that.

7. Importantly, the front ground floor rooms would maintain that original cellular form and layout to provide evidence of that actual historic compartmentalised layout, as is the case in the basement and proposed for the first floor. Added to this would be that proposed retention of at least an indication of that layout across the rear part of the house.

8. In terms of the character of the room itself, that would be opened up, it currently retains much of its historic character and features, albeit diluted to some extent by the recent insertion of two modern doors in the rear elevation. The proposal would inevitably change that contained characteristic to one of open plan. Nevertheless, apart from the consented rear doors, the room would still retain other historic features such as the fireplace, flanked by recesses, and the large sash window. Together with the proposed degree of retained existing wall on the passageway side, the room would maintain some evidence of its historic nature.

9. I do not consider there to be any clear evidence to indicate the rear room concerned to be of any lesser significance than the front rooms. Furthermore, I acknowledge the importance of retaining as much historic fabric as possible. However, in the context of the consented works already or intended to be carried out, albeit noting the Council's point about differing circumstances, and for the above reasons, the proposal would not in this case tip the balance towards causing harm to the special interest of the LB.

10. In light of the above, the proposed works would preserve the significance of the LB and features of special architectural or historic interest that it possesses. The proposal would therefore satisfy the requirements of the Planning (Listed Buildings and Conservation Areas) Act 1990. Furthermore, for the same reasons, they would accord with Core Policy 58 of the adopted Wiltshire Core Strategy which states, amongst other things, that designated heritage assets and their settings will be conserved, and where appropriate enhanced in a manner appropriate to their significance. The proposal would also accord with paragraph 203 of the National Planning Policy Framework which highlights,

amongst other things, the desirability of sustaining and enhancing the significance of heritage assets.

Other Matter

11. I have had regard to the statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the Bradford on Avon Conservation Area (the CA). However, due to the proposed works being solely to the LB's interior, the effect on the wider CA would be neutral such that its character and appearance would be preserved.

Conditions

12. The Council has not suggested any conditions in the event of the appeal being allowed. However, for certainty, I have included the standard time limit condition.

Conclusion

13. For the reasons given above the appeal should be allowed.

A Dawe

INSPECTOR

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WILTSHIRE COUNCIL **AGENDA ITEM NO.**

WESTERN AREA PLANNING COMMITTEE

6 NOVEMBER 2024

Commons Act 2006 – Sections 15(1) and (2)
Application to Register Land as Town or Village Green – Southwick Court Fields, Southwick and North Bradley – Application no.2020/02TVG

Purpose of Report

1. To consider legal advice requested by the Western Area Planning Committee (WAPC) 10th April 2024, to assist in its determination of an application made under s.15(1) and (2) of the Commons Act 2006 to register land as a Town or Village Green (TVG), Southwick Court Fields, in the parishes of Southwick and North Bradley and recommend that the Inspector's Advisory Report be accepted in part, and that the application be rejected on the ground that all the criteria for registration laid down in s.15(2) of the Commons Act 2006 have not been satisfied, for the reasons set out in the Inspector's Advisory Report dated 9 February 2024.

Relevance to the Council's Business Plan

2. Working with the local community to provide an accurate register of TVGs and Common Land, making Wiltshire an even better place to live, work and visit.

Background

3. Wiltshire Council as the Commons Registration Authority (CRA) are in receipt of an application to register land known as Southwick Court Fields, in the parishes of Southwick and North Bradley as a TVG, as yet undetermined, (see Location Plan at **Appendix 1**; Application Plans at **Appendix 2** and Application Plan (Accepted Land) Application dated 30 November 2020 at **Appendix 3**).

4. The WAPC previously considered this application at their meeting dated 10 April 2024, specifically the Advisory Report of the Inspector Mr William Webster, dated 9 February 2024, appointed by Wiltshire Council as the CRA to:
   i) preside over a non-statutory public inquiry, held on 21-22 November 2023 at St Johns Parish Centre, Studley Green, Trowbridge, to consider the evidence in relation to the application, and
   ii) produce an advisory report to include a recommendation to the CRA to assist in its determination of the application.

Please see Inspector's Advisory Report at **Appendix 4** and WAPC report dated 10 April 2024:
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5. On consideration of the Inspector's Advisory Report, WAPC made the following resolution:

The Committee DEFERRED determination of the application to register land at Southwick Court Fields, in the parishes of Southwick and North Bradley, as a Town or Village Green, to seek Counsel's Opinion on the question of whether the Draft Wiltshire Housing Sites Allocation Plan [WHSAP] *forms a valid trigger event at the time of application, which would extinguish the right to apply to register part of the land as a Town or Village Green.*

6. On 1 May 2024, Wiltshire Council appointed Douglas Edwards KC of Francis Taylor Building to provide advice on:
   i) the procedure for determining applications received by Wiltshire Council as the CRA, (although this was not advice requested by WAPC it was the intention of the CRA to seek advice on this point), and
   ii) the specific point raised by the WAPC regarding the draft WHSAP as a valid planning trigger event.

7. Mr Edwards KC provided advice dated 16 October 2024 as attached at **Appendix 5**.

Main Considerations for the Council

8. The application to register land known as Southwick Court Fields is made under s.15(1) and (2) of the Commons Act 2006 – the legal test to be applied being whether or not:

'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 and they continue to do so at the time of application.'

9. The Growth and Infrastructure Act 2013 at s.16, inserted into the Commons Act 2006, s.15C "Registration of greens: exclusions", i.e. the removal of the "right to apply" to register land as a TVG where specific planning trigger events have occurred in relation to the land, e.g. where the land is subject to an application for planning permission, or the land is included in a draft or adopted development plan which identifies the land for development. The right to apply is revived where a corresponding "terminating event" has taken place.

10. DEFRA guidance recommends that on receipt of an application the CRA should write to the local planning authorities and the Planning Inspectorate (PINS) to seek confirmation on whether or not there are planning trigger/terminating events in place on all or part of the application land. The date of the application is therefore important as it is the trigger and terminating events in place at that date which determine whether the right to apply is extinguished, (where the right to apply is extinguished over only part of the land, the application over the unaffected land may continue to be determined in the usual way).

11. In this case the Inspector's Advisory Report considered the application submitted to the CRA on 13 January 2020. The advice received by the CRA at that date from Spatial Planning and PINS was that the draft WHSAP, (as a development plan which identified the land for development), was a valid trigger event, i.e. planning trigger event as listed at Schedule 1A of the Commons Act 2006, para 3 *"A draft development plan document which identifies the land for potential development is published for consultation in accordance with regulations under section 17(7) of the 2004 Act"* (Planning and Compulsory Purchase Act 2004). However, the Applicant considers that this was not a valid trigger event at that time where a corresponding terminating event in respect of the draft WHSAP had occurred, i.e. Schedule 1A 3(c) *"The period of two years beginning with the day on which the document is published for consultation expires."*

12. WAPC sought legal advice on inclusion of the land in the draft WHSAP as a valid trigger event at the time of application. Counsel's Advice received on 16 October sets out the following (see Advice in full at **Appendix 5**):

- Para 22 - *"The CRA has not yet reached a decision on the application".*

- Para 43 - *"…the Wiltshire Housing Site Allocation Plan (WHSAP) – was published for consultation pursuant to regulation 19 of the Town and Country Planning (Local Planning Regulations on 14 July 2017. Therefore for the purposes of Schedule 1A para.3, on 14 July 2019 a corresponding terminating event as set out in para.3, column 2 para.c had occurred by 13 January 2020, namely that "The period of two years beginning with the day on which the document is published for consultation expires".*

- Para 43 – *"It follows, on this basis, that the right to make an application under s.15(1) CA* [Commons Act] *2006 had not been excluded by operation of s.15C(1) on the date on which it was received by the Commons Registration Authority on 13 January 2020. Therefore, the CRA was wrong to have determined to the contrary and to have in substance found the application to be invalid, to have decided not to*

"accept it" and to return the application to the applicant, as it did on 24 February 2020."

- Para 44 – [in relation to the CRA decision on 24 February 2020 to return the application dated 13 January 2020] *"However, and be that as it may, the CRA did so by letter of 24th February 2020 and there was no claim for judicial review of its decision to find that s.15C(1) was engaged. The CRA cannot now unilaterally reverse the decision that it took on 24 February 2020…"*

- Para 46 – [in relation to the application dated 11 June 2020 and the trigger events at that time, i.e. the adopted WHSAP and planning application no.20/00379/OUT (residential development of up to 180 dwellings)] *"…each of these trigger events affected only part of the application land and not the whole (as is explained by Mr Webster in his report).* [Paras 15 and 23 of the Inspector's Advisory Report dated 9 February 2024 **Appendix 4**] *The CRA was therefore wrong to have rejected the application made and received on 11 June 2020 in its entirety. However, as with the application made on 13 January 2020, it is now too late for the decision taken on 7 October 2020 to be set aside."*

- Para 46 - *"There was no claim for judicial review in respect of the decision of 7th October 2020."*

- Para 49 - *"…the application before the CRA and before the Inspector was the application received on 30 November 2020. It is 30 November 2020 which is "time" of the application for the purposes of s.15(2)(b). It is also the relevant date for the purpose of determining whether the right to make an application ceases to apply for the purposes of s.15C CA 2006."*

- Para 49 – *"The fact that the applicant may have dated the application on an earlier date is nothing to the point nor is the fact that the applicant refers to "resubmission" of his application relevant."*

- Para 50 – *"The Inspector in his report treated the application he was considering as having been made, for the purposes of c.15(2) and s.15C(1) CA 2006, on 13 January 2020. In my view, it was not open to the Inspector to do this as a matter of law. The application before him was made and received by the CRA on 30 November 2020 and he was not entitled to treat it as having been made on an earlier date…To the extent that the Inspector was in effect treating the application before him as that made on 13 January 2020, he was wrong to do so; the application made and received by the CRA on 13 January 2020 had been determined to be the subject to a trigger event and had not been*

accepted by the CRA. It had been returned to the applicant as being substantively invalidly made."

- Para 50 – *"Although the CRA's determinations in respect of the 13 January 2020 and 11 June 2020 applications were wrong, substantively and procedurally, for the reasons I have given, neither determination can now be reversed by the CRA."*

- Para 51 – *"However, it follows from the Inspector's conclusions as to the merits of the application during the 20-year period ending on 13 January 2020, that, when a 20-year period ending on 30 November 2020 is considered (as it should have been), the outcome must be the same. If there had not been shown to be insufficient use of the land for lawful sports and pastimes for a 20 year period ending on 13 January 2020 the same must be the case for the overwhelming majority of the period ending on 30 November 2020. The Inspector's recommendation can therefore be relied on by the CRA in determining the application received on 30 November 2020."*

13. Therefore, where the application before the Inspector was that dated 30 November 2020, reference to the 13 January 2020 application within the Inspector's Advisory Report should be discounted as it was not open to him to consider the submitted and returned application. It was open to the Inspector only to consider the position regarding trigger and terminating events as they were on the date of the application received on 30 November 2020, and it was therefore correct, at the public inquiry, for the Inspector to address those giving evidence to the southern section of the land only, as he did, where the northern section of the land was, by 30 November 2020, excluded from consideration as a result of the planning trigger events in place at that time which had extinguished the right to apply to register that section of the land as a TVG, i.e. planning application no.20/00379/OUT and the adopted WHSAP. The evidential conclusions of the Inspector's Advisory Report are correct and the application should be rejected.

14. Evidence is key and is the only consideration for the CRA in determining applications to register land as a TVG.

15. There is no obligation placed upon the determining authority to follow the Inspector's recommendation, however, if the Committee determines not to follow the Inspector's recommendation which is supported by a very detailed and thorough consideration of the evidence in the Inspector's Advisory Report and Counsel's advice, the Committee must provide sound evidential reasons for departing from the recommendation before it.

16. If it is determined to reject the application, as recommended by the Inspector and Counsel's Advice, the Regulations set out the process for concluding the

application. The CRA will send written notice of the decision to every concerned Authority; the Applicant and every person who objected to the application including the reasons for the rejection. The application form and all accompanying documents will be returned to the Applicant.

Safeguarding Implications

17. Considerations relating to the safeguarding implications of the recommendation are not permitted under s.15 of the Commons Act 2006. Determination of the application must be based only upon the relevant evidence before the CRA.

Public Health Implications

18. Considerations relating to the public health implications of the recommendation are not permitted under s.15 of the Commons Act 2006. Determination of the application must be based only upon the relevant evidence before the CRA.

Environmental and Climate Change Considerations

19. Considerations relating to the environmental and climate change impact of the recommendation are not permitted under s.15 of the Commons Act 2006. Determination of the application must be based only upon the relevant evidence before the CRA.

Equalities Impact of the Recommendation

20. Considerations relating to the equalities impact of the recommendation are not permitted under s.15 of the Commons Act 2006. Determination of the application must be based only upon the relevant evidence before the CRA.

Risk Assessment

21. The holding of a non-statutory public inquiry; the Advisory Report and recommendation to the CRA by an independent Inspector dated 9 February 2024 and the Advice of Counsel dated 16 October 2024, have reduced the risk to the Council of a potential legal challenge, where the evidence of witnesses has been heard, tested and considered.

Financial Implications

22. There is no mechanism by which the CRA may charge the Applicant for processing an application to register land as a TVG and all costs are borne by the Council.

23. Where the Council makes a decision to register / not register the land as a TVG, it must give clear evidential reasons for its determination as this decision is potentially subject to legal challenge where any decision of the Council is open to judicial review (within 3 months of the date of decision). The legal costs of a successful challenge against the Council could be in the region of £40,000 - £100,000.

24. If the land is registered as a TVG, there is no ongoing duty of maintenance placed upon Wiltshire Council as the CRA, or the landowner.

Legal Implications

25. If the CRA determines not to register the land as a TVG, the only appeal open to the Applicant is through judicial review proceedings and challenging the lawfulness of the decision in the High Court. The Court's permission to bring proceedings is required and the application must be made within 3 months of the date of the determination.

26. Landowners can also use judicial review proceedings to challenge the Council's decision if the land is successfully registered as a TVG. Additionally it is open to landowners to challenge the CRA decision to register land by appeal to the High Court under s.14(1)(b) of the Commons Registration Act 1965, which allows the High Court to amend the register only if it can be shown that the registration ought not to have been made and that it is just to rectify the register. There is no time limit on application.

27. There is a cost to the Council as the CRA in judicial review proceedings not successfully defended. The Aarhus Convention does limit the costs liability of the Council to £35,000 if the case is lost, however, the CRA would also be required to meet its own legal costs to defend the case, (a broadly similar sum), in addition to the Applicant's costs. The Applicant's potential maximum cost liability, if their case is unsuccessful, is £5,000.

28. As set out in Counsel's Advice, it is now out of time for challenge to the CRA decisions to return the applications dated 13 January 2020 and 11 June 2020 in their entirety and there is no remedy.

Options Considered

29. The options available to the Committee in the determination of the application, are as follows:

    (i) Accept the Inspector's recommendation that the application made by Mr Swanney, to register land at Southwick Court Fields as a TVG, under s.15(1) and (2) of the Commons Act 2006, be rejected following detailed consideration of the evidence, for the reasons set out in the Inspector's

Advisory Report dated 9 February 2024 and as recommended in Counsel's Advice.

(ii) Not accept the Inspector's recommendation that the application made by Mr N Swanney, to register land at Southwick Court Fields as a TVG under s.15(1) and (2) of the Commons Act 2006, be rejected and resolve to register all or part of the land subject to application and capable of registration as a TVG, if the Committee considers that there are sound evidential reasons for departing from the recommendation and Counsel's Advice.

30. Where Members of the Committee do not resolve to accept the Inspector's recommendation and Counsel's Advice and make an alternative determination, clear evidential reasons for this decision must be given where the decision of the CRA regarding the registration is open to legal challenge by both the Applicant and the Landowner.

Reasons for Recommendation

31. In the Southwick Court Fields 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 use continuing at the time of application, is in dispute. It is the duty of the determining Authority to determine the application in a fair and reasonable manner. Due to the substantial dispute of fact in this case, Wiltshire Council determined to hold a non-statutory public inquiry where the facts of the case would be likely to be resolved by the inquiry process through witnesses giving oral evidence in chief and through cross-examination and re-examination, including consideration of documentary evidence by the Inspector.

32. Following the close of the inquiry, the Inspector presented a well written and thorough consideration of the evidence in a 60-page Advisory Report, dated 9 February 2020 (see **Appendix 4**) and containing a recommendation to Wiltshire Council, as the CRA, that the application be rejected for the reasons set out in the Inspector's Advisory Report. The Advice of Counsel is that whilst it was not open to the Inspector to consider the date of the application as 13 January 2020, his findings regarding the evidence are sound and would have equally applied to the period ending on 30 November 2020, as they did to the period ending 13 January 2020 (first application received), (see para 51 of Counsel's Advice **Appendix 5**).

Recommendation

33. That Wiltshire Council as the CRA, accepts Counsel's Advice that whilst it was not open to the Inspector to consider the application dated 13 January 2020 in

his Advisory Report, the Inspector's conclusions as to the merits of the application would be the same for the period ending 30 November 2020 and the Inspector's recommendation can therefore be relied upon by the CRA in determining the application received on 30 November 2020, and the application to register land at Southwick Court Fields, in the parishes of Southwick and North Bradley, (proceeding under Application number 2020/02TVG), should be rejected on the ground that all the criteria for registration laid down in section 15(2) of the Commons Act 2006 have not been satisfied, for the reasons set out in the Inspector's Advisory Report dated 9 February 2024.

Samantha Howell
Director Highways and Transport

Report Author:
Janice Green
Senior Definitive Map Officer

The following unpublished documents have been relied on in the preparation of this Report:

None.

Appendices:

Appendix 1 – Location Plan
Appendix 2 – Application Plans
Appendix 3 – Application Plan (Accepted Land) Application 30 November 2020
Appendix 4 – Inspector's Advisory Report 9 February 2024
Appendix 5 – Counsel's Advice 16 October 2024
Appendix 6 – Form 6 (6 May 2021) - Acceptance of Application 30 November 2020 in Part, as referred to at para 20 of Counsel's Advice

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Wiltshire Council

Application to Register Land as Town or Village Green - Southwick Court Fields
Appendix 1 - Location Plan

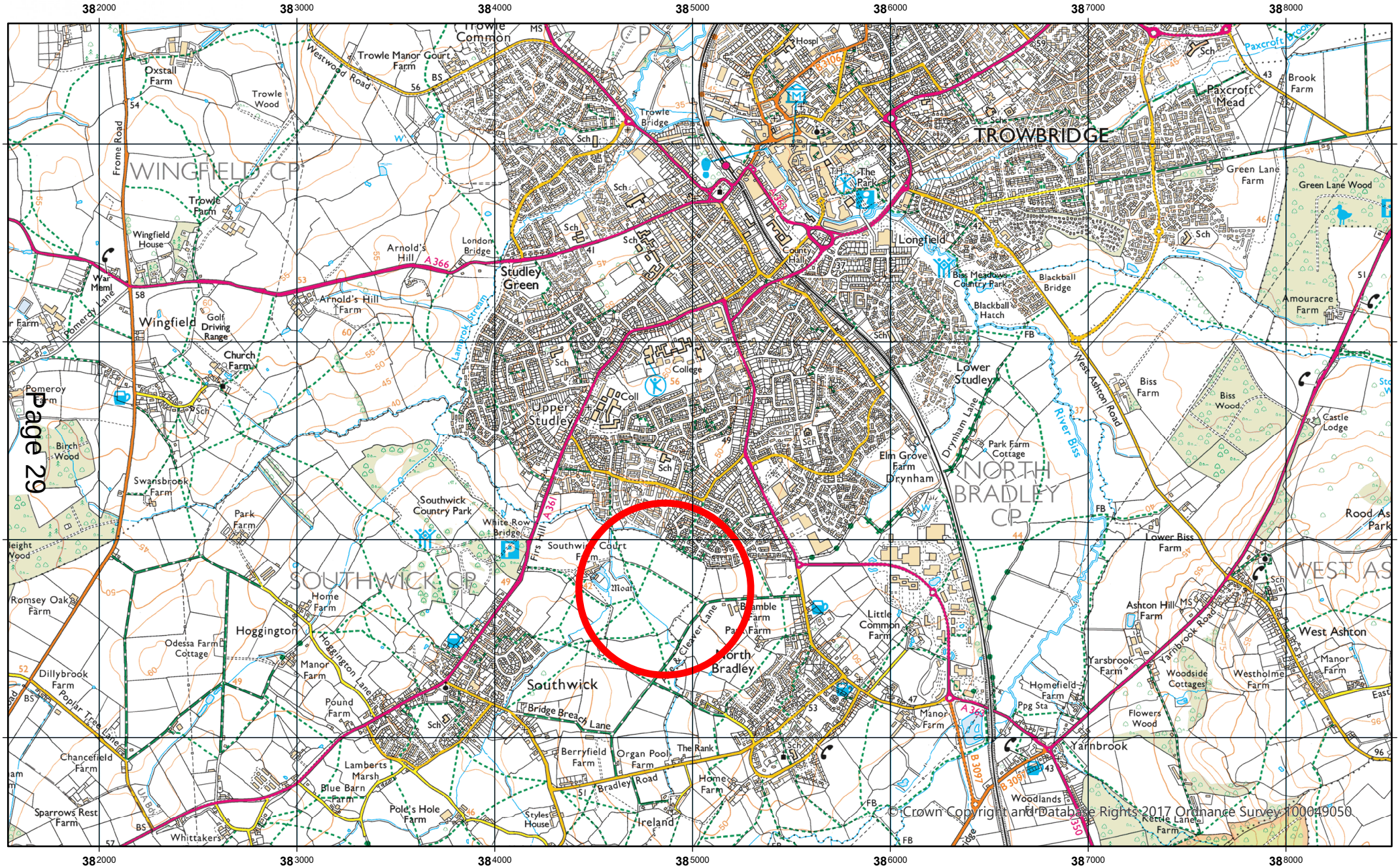

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EXHIBIT

[redacted]

HOBA BELLAHRACH
LICENSED CONVEYANCER.
13 JANUARY 2020

Application to Register Land as Town or Village Green - Southwick Court Fields
Appendix 2 - Application Plans

Trowbridge Town Council

The Civic Centre, St Stephen's Place, TROWBRIDGE, BA14 8AH
info@trowbridge.gov.uk 01225 765072

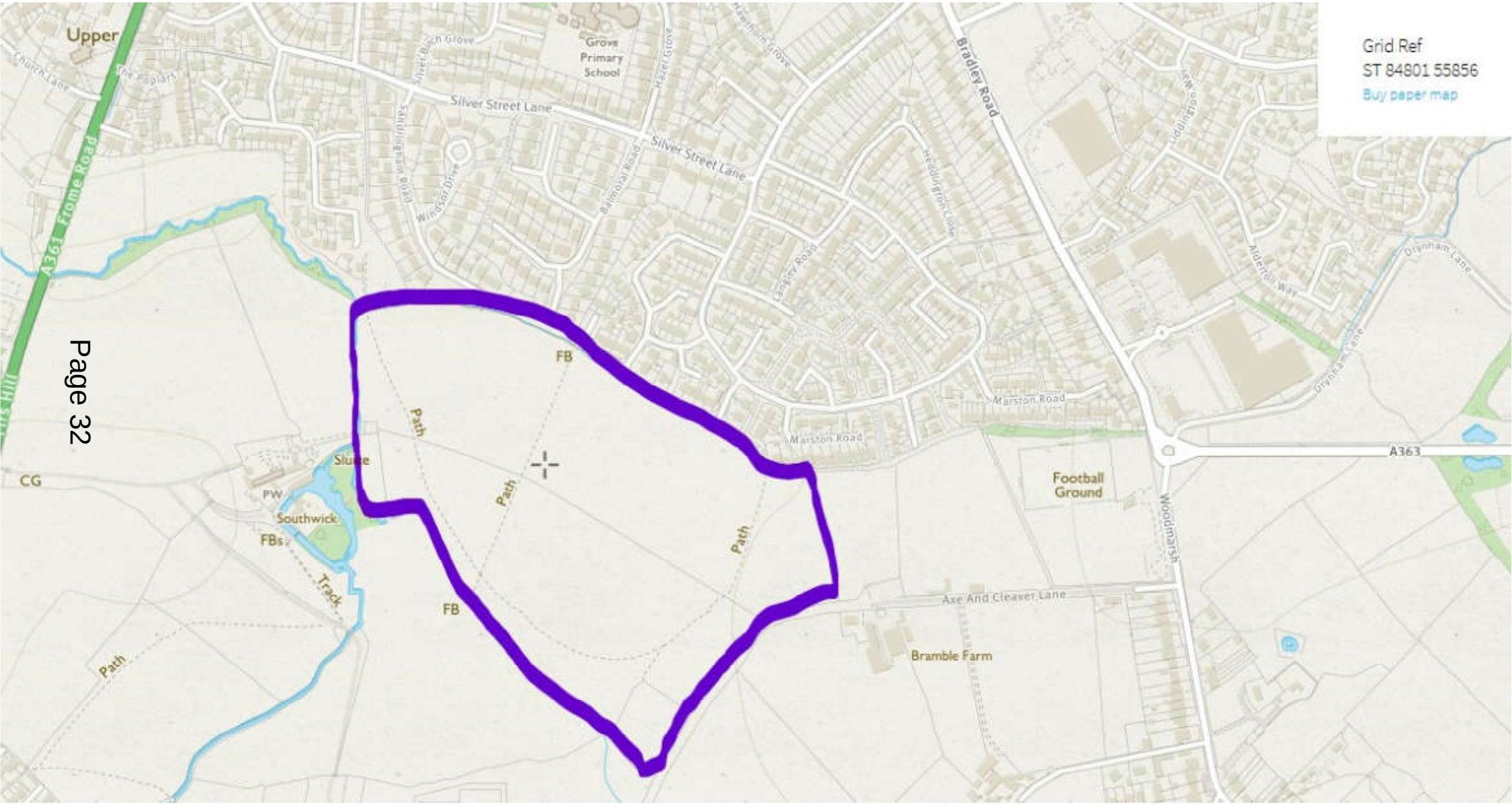
Southwick Court Common Land

SCALE	DATE
1: 5000 @ A3	08/01/2020

MAP FILENAME
200108 Southwick Court Common Land

N

Map data may be © Crown Copyright and database rights (2020)
supplied under OS PSMA licence number EUL 100043864
Terms and conditions apply. Refer to Ordnance Survey © website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Buy paper map
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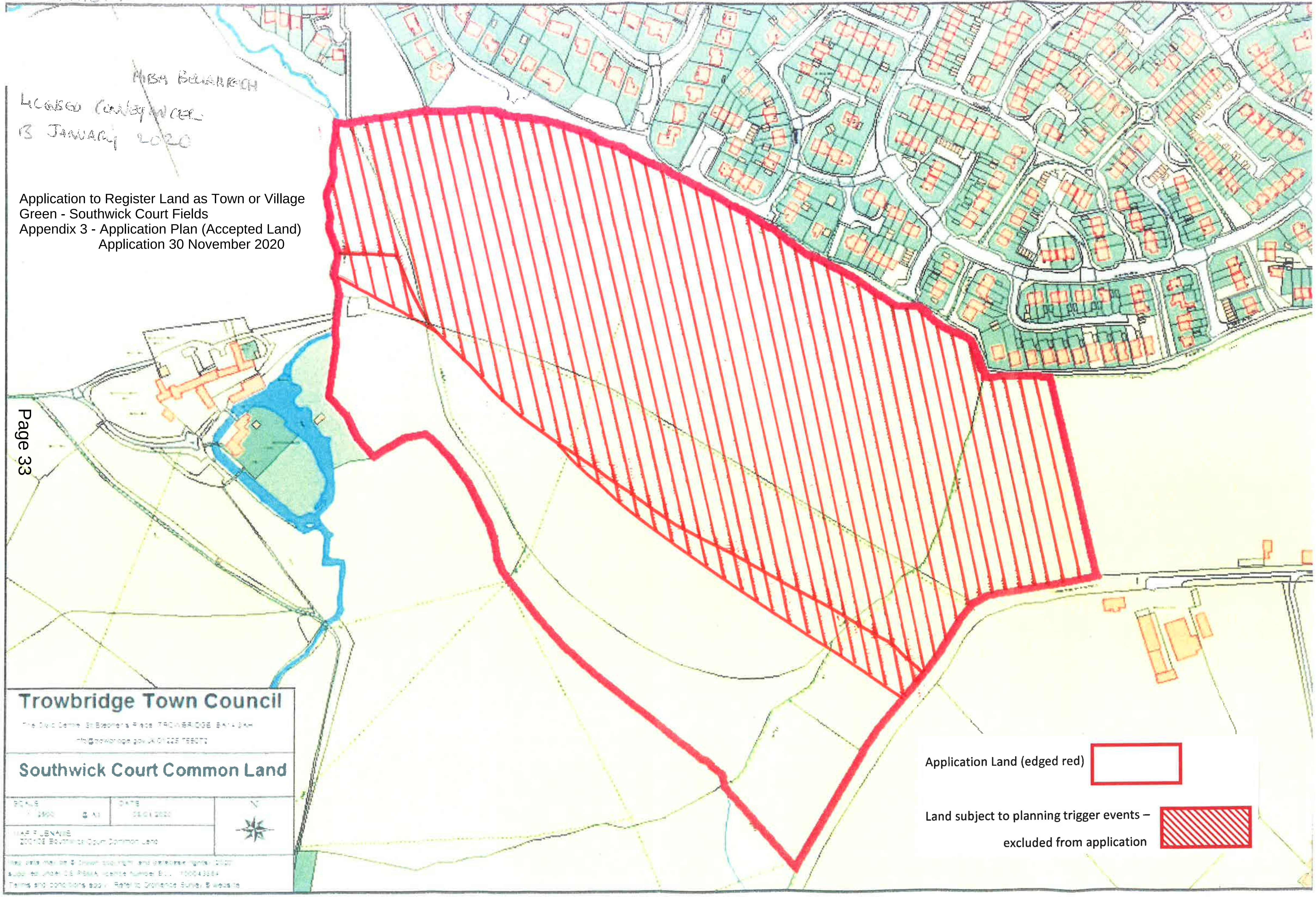
Silver Street Lane
Grove Primary School
Bradley Road
Marston Road
A363
Football Ground
Axe And Cleaver Lane
Bramble Farm
Woodmarsh
Drynham Lane
FB
Path
Sluice
CG
PW
Southwick
FBs
Track
Path


Application to Register Land as Town or Village Green - Southwick Court Fields
Appendix 3 - Application Plan (Accepted Land)
Application 30 November 2020
Trowbridge Town Council
Southwick Court Common Land
N
Application Land (edged red)
Land subject to planning trigger events – excluded from application

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WILTSHIRE COUNCIL

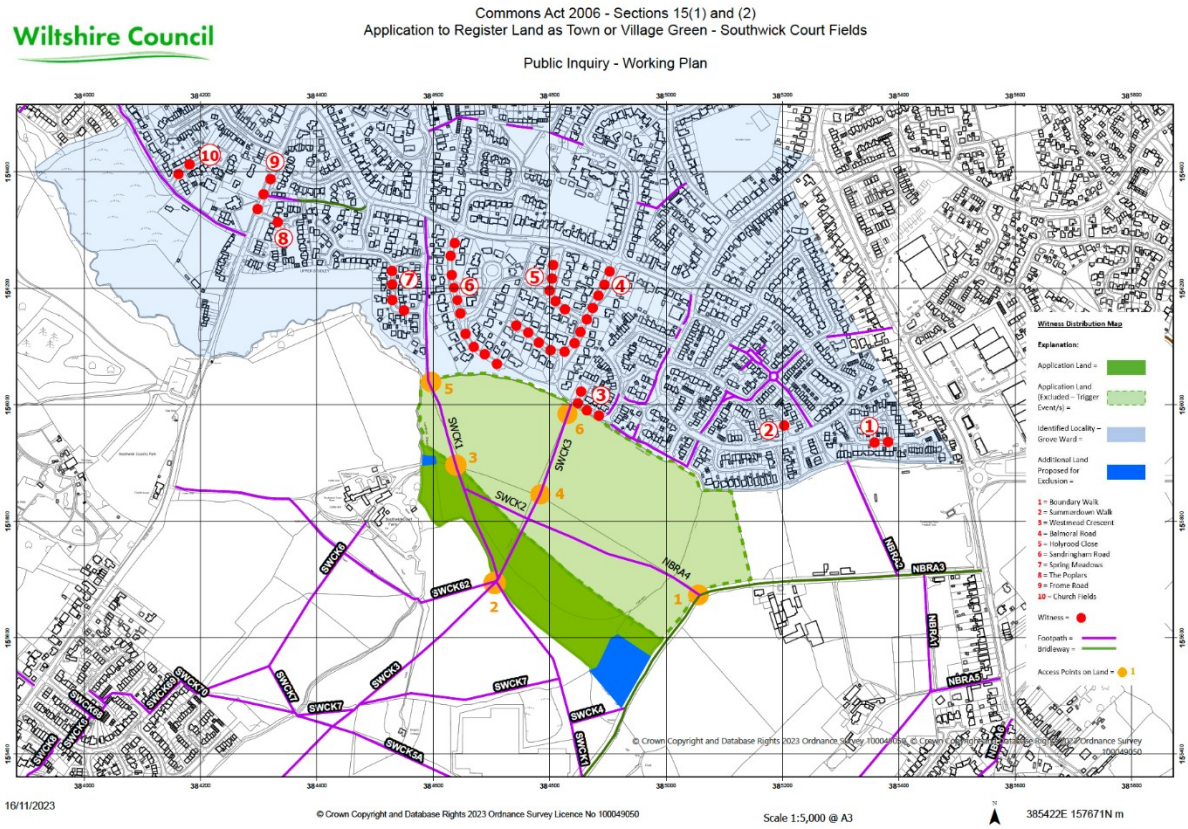
APPLICATION TO REGISTER LAND KNOWN AS SOUTHWICK COURT FIELDS LOCATED WITHIN THE CIVIL PARISHES OF SOUTHWICK AND NORTH BRADLEY AT TROWBRIDGE AS A TOWN OR VILLAGE GREEN

Application reference number: 2020/02 TVG

INSPECTOR'S ADVISORY REPORT

References to A/1 and CRA/1 and so on are to documents in the hearing bundles of the applicant and the commons registration authority ("CRA"). The Objector produced no inquiry bundle.

Application land



1. The application land is shown (at least approximately, as will appear later) coloured dark green on the above map (which bears the title *"Public Inquiry – Working Plan"* – to which I will refer as "the Working Plan") although, when first made, the application land (to which I will hereafter refer in this report as the "TVGAL") also extended to the area coloured light green. The parcels coloured blue are enclosed areas, and the application no longer extends to these areas (this was conceded during the inquiry by the applicant's advocate). The red dots on this plan show where the applicant's oral and written witnesses live. The numbering refers to the addresses in the key.

2. In short, the application in its original form comprised the areas coloured light *and* dark green on the Working Plan (and included the blue parcels).

3. The purple lines shown on the map are public footpaths and the continuous green line (which runs west along Axe and Cleaver Lane from its opening off Woodmarsh Road) is a bridleway. The dashed green lines around parts of the perimeter of both dark and light green areas are open, or at least mainly open, watercourses.

Preliminary

4. I am instructed by Wiltshire Council ("WC"), acting in its capacity as CRA, which is the responsible authority for determining applications within its area to register land as a town or village green ("TVG").

5. The application in Form 44 (which is dated 13 January 2020) was delivered by hand to the offices of the CRA on that date (CRA/342-343). It is made under the Commons Act 2006 ("the 2006 Act"), section 15(2), by a Mr Norman Swanney of ■ Balmoral Road in Trowbridge on the usual standard form (Form 44). (On occasions in this report the application will be referred to as the "TVG application" to distinguish it from a related planning application.)

6. The rules (namely The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007) require an application for registration of a TVG to be made using Form 44 and to be signed and accompanied by a statutory declaration and the supporting evidence. On

receipt of an application the CRA is required to allot it a number and must stamp the application indicating the date when it is received. The CRA must then send the applicant a receipt (see regs.3/4 – and reg.4 allows Form 6 of the 1966 General Regulations to be used when notifying an applicant that a duly made application has been received and allotted a number by the CRA).

7. It is necessary to deal with the procedure on receipt of an application in greater detail as it assumes importance on this particular application.

8. Regulation 5 provides that where an application "is made" the CRA must then send those liable to be affected by the application and likely to object to it a notice in Form 45. The application should also be publicised in the manner described in reg.5. Where it appears to the CRA that the application has not been "duly made" it may reject it without having to deliver a notice in Form 45 to affected parties or to publicise the application in accordance with reg.5. However, the application should not be rejected where (reg.5(4)) it appears to the CRA that the applicant is able to put the application in order, in which case the applicant should be given a reasonable opportunity of taking that action.

9. On 7 June 2023 WC's Western Area Planning Committee (which exercises the authority's function of CRA) resolved to appoint an independent inspector to hold a non-statutory public inquiry to hear evidence and to provide an advisory report to members on the merits of the application.

10. I gave directions for the holding of the inquiry on 18 September 2023 and an inquiry was fixed for 21-24 November 2023. It soon became apparent that Mr Swanney would be unable to participate in the inquiry process and David Vigar, a WC councillor and also a town councillor for Trowbridge Grove Division, came forward to replace Mr Swanney. There is little doubt that without Mr Vigar's assistance and advocacy skills and, of course, his local knowledge the work of the inquiry would have been considerably prolonged.

11. In the event, the inquiry took place at St John's Parish Centre on 21-22 November 2023. The only objector to the application was the landowner, the Hon. Mrs S.M Rhys, who is aged 97. She was represented at the inquiry by Caroline Waller who is a partner in Clark Willmott LLP and a specialist in this

area of the law. Her son, George Rhys, also attended the inquiry and gave oral evidence on how the TVGAL was managed.

12. I am indebted to Councillor Vigar and Ms Waller for their helpful and conscientious submissions. I am also grateful for the administrative support provided by officers, namely Janice Green (whom I shall refer to as "the case officer") and Sally Madgwick, which was indispensable to the smooth-running of the inquiry. The case officer's report to the committee was also very thorough and helped me considerably.

Trigger events

13. Section 16 of the Growth and Infrastructure Act 2013 inserted section 15C and Schedule 1A into the 2006 Act which excludes the right to apply under section 15(1) of the 2006 Act to register land as a TVG when a "trigger event" has occurred in relation to that land. The trigger event is treated as spent whenever a corresponding terminating event occurs (which are set out in the second column against the various trigger events mentioned in Schedule 1A).

14. The material trigger events considered on this application are those at para/1 to Schedule 1A, namely where a planning application had been publicised before the TVG application was made, and at para/3 where a published draft of a development plan document had identified the TVGAL for potential development (adoption is unnecessary for these purposes).

15. On 21 January 2020 the case officer was advised by Mike Wilmott (a senior officer in WC's planning department) that, on 15 January 2020, the authority had received a planning application (under reference 20/00379/OUT) which affected part of the TVGAL. The area shown light green on the map on p.1 is only an approximation of the land affected by the planning application. The outline proposal involved an extensive residential development and associated infrastructure (where the context permits, I shall refer to the planning application as "the planning application trigger").

16. The planning application was publicised on or after 17 January 2020 (CRA/225) which post-dates the delivery of the TVG application in its original

form on 13 January 2020. The planning application was refused by WC on 2 March 2023 (date when the refusal notice sent) and an appeal was determined by way of a public inquiry which took place sometime in October 2023. The inspector's decision letter is awaited and could be imminent.

17. At this point the TVG application was not stamped, nor was it allotted a number. This is a potentially important omission as it would be misleading for an application to be dated with the date of its receipt if that were not its effective date. Put another way, if the date when the application was duly made was crucial (and in certain cases it can be) it would place an applicant at the mercy of the CRA if it chose to date the receipt of the application at a date later than the date on which the original, perhaps defective application, had been lodged.

18. Although not in point on the facts, it is now plain in light of *R (Church Commissioners for England) v Hampshire County Council* [2014] 1 WLR 4555, that where deficiencies in an application can be remedied under reg.5(4) (involving say problems in identifying the locality or neighbourhood, or in giving the precise date for cessation of recreational use or in curing defects in the statutory declaration) such that, in the view of the CRA, the application was duly made within the meaning of the regulations, the application would be treated as having been duly made on the date on which the original defective application had been lodged, which in this case would be 13 January 2020.

19. It must be right that the planning application was not a trigger event as the TVG application had, in my view, been duly made before the planning application had been publicised.

20. On the 18 February 2020 the Planning Inspectorate ("PINS") advised the case officer that what was described as a "Site allocations plan" existed and that it was a trigger event within the meaning of Sched.1A at para 3.

21. What is meant by the phrase "Site Allocations plan" is that part of the TVGAL was comprised within an allocation for development contained in the Wiltshire Housing Site Allocations Plan ("the WHSAP") (I shall refer to this, where the

context permits, as “the WHSAP trigger”). The letter (and helpful attachment) dated 19 February 2020 from Geoff Winslow (WC’s Spatial Planning Manager) (see CRA/234-237) to the case officer also noted that the WHSAP had been examined and, with modifications, was deemed to be sound. It was subsequently adopted by WC on 25 February 2020 (CRA/241-242) (itself a trigger event at para/4 to Sched.1A) at which point it became part of WC’s development plan.

22. The TVG application was eventually stamped and allotted a number by the CRA on 30 November 2020, over 10 months after it had been lodged on 13 January 2020. It is relevant to deal with what happened as between the CRA and the applicant (then, of course, Mr Swanney) after he was informed by the case officer by letter dated 24 February 2020 (CRA/354-355) that it was considered by the CRA that his application could not be accepted as duly made as the TVGAL was subject to the WHSAP trigger.

23. It was assumed at the time by the case officer that the planning application was not a trigger event and the draft WHSAP trigger extended to the whole of the application land which meant that a new application plan was not required. This was an assumption that I myself made on reading the papers. At any rate, I take the view that the CRA were in error in advising Mr Swanney that, because of the WHSAP trigger, the TVG application could not be accepted “and progressed to determination” (as it was put to him in the case officer’s letter dated 24 February 2020). There were two main reasons for this. First, the WHSAP land did extend to the whole of the TVGAL. Second, although it was always open to the CRA to invite Mr Swanney to amend the application plan (that is, if it had been thought that the application had not been duly made (reg.5(4)), any correction in such a case would by law have been backdated to the 13 January 2020. Put another way, in my view, the law did not require Mr Swanney to resubmit his application simply because it was affected by an operative trigger event. All that was required in such a case was a new plan (with the justifiable omission of the WHSAP land) in order to put the application in order.

24. In short, the CRA's decision to return the application papers to Mr Swanney on 24 February 2020 was misconceived as the WHSAP trigger did not mean that the application had not been duly made. It was, I think, unnecessary for Mr Swanney to resubmit his application (in other words, that he should make a further application) in order that WHSAP land might be omitted from it. As the case officer put it in her email to Mr Swanney dated 24 February 2020 (CRA/357-358): "… until this trigger event is terminated it will not be possible to apply to register the land ..". In my view, this is not the case. If the trigger event was operative all that was required was an amendment to the plan and an updated statutory declaration.

25. Mr Swanney resubmitted his second application on 12 June 2020 (CRA/359). As before, the case officer advised Mr Swanney that the CRA was unable to confirm that it had been validly made, saying that advice had to be obtained from WC's planning department and PINS. On 22 June 2020 advice was duly sought on the applicability of trigger events from these bodies. In both cases (CRA/363 & 366), the case officer stated that answers about this "will determine whether or not the authority can accept an application for registration". The outcome was, as before, and the resubmitted application was rejected by the CRA (CRA/372).

26. The case officer's letter to Mr Swanney dated 7 October 2020 (CRA/372) confirmed that there were trigger events (namely, the WHSAP trigger and the planning application trigger) affecting the TVGAL "which extinguish the right to apply to register" until a terminating event had revived such right (by this time the WHSAP had been adopted). The resubmitted application was duly returned to Mr Swanney and he was again advised that "until these trigger events are terminated by a corresponding terminating event … it will not be possible to register the land". Again, this was, I think, erroneous advice.

27. Undeterred, Mr Swanney submitted his application for a third time on 29 November 2020 (CRA/374). Mr Swanney disputed that the WHSAP trigger was a valid trigger. He also thought that the planning application (which by then had still not been determined) was "moribund" and that neither of the claimed trigger events was an impediment to his TVGA proceeding. On this

occasion, the case officer confirmed safe receipt of his application on 30 November 2020. In her email to Mr Swanney (CRA/378) the case officer stated that although she was confirming safe receipt of the resubmitted application this did not constitute “an acceptance” of the application by the CRA and that further advice was being sought about this. The same process, as before, took place in relation to both trigger events and with the same result.

28. On 6 May 2021 the case officer notified Mr Swanney (see CRA/396-403) that the CRA considered that there were two operative trigger events which meant that the application “can be accepted only on part” of the TVGAL (as I think should have happened previously). The case officer was obviously telling Mr Swanney that his application was (on its third submission) accepted subject to the limitations imposed by the two trigger events where the right to apply to register in relation to the trigger event land was necessarily excluded until such time as a relevant terminating event had occurred. It was only at this point that the application was stamped 30 November 2020 and allotted the reference number 2020/02 TVG.

29. Steps took place after the case officer’s letter to Mr Swanney dated 8 July 2021 to deal with some minor deficiencies that were identified by the case officer in the application paperwork (as, of course, is permissible under reg.5(4)). The required amendments were made, and I see that the case officer sent Mr Swanney an email on 27 August 2021 expressing satisfaction with what she called the “revised application” received on 23 August 2021. The application (and it was still probably assumed by the CRA and by Mr Swanney that the boundaries of the WHSAP trigger and the planning application trigger were the same) was duly publicised in November 2021.

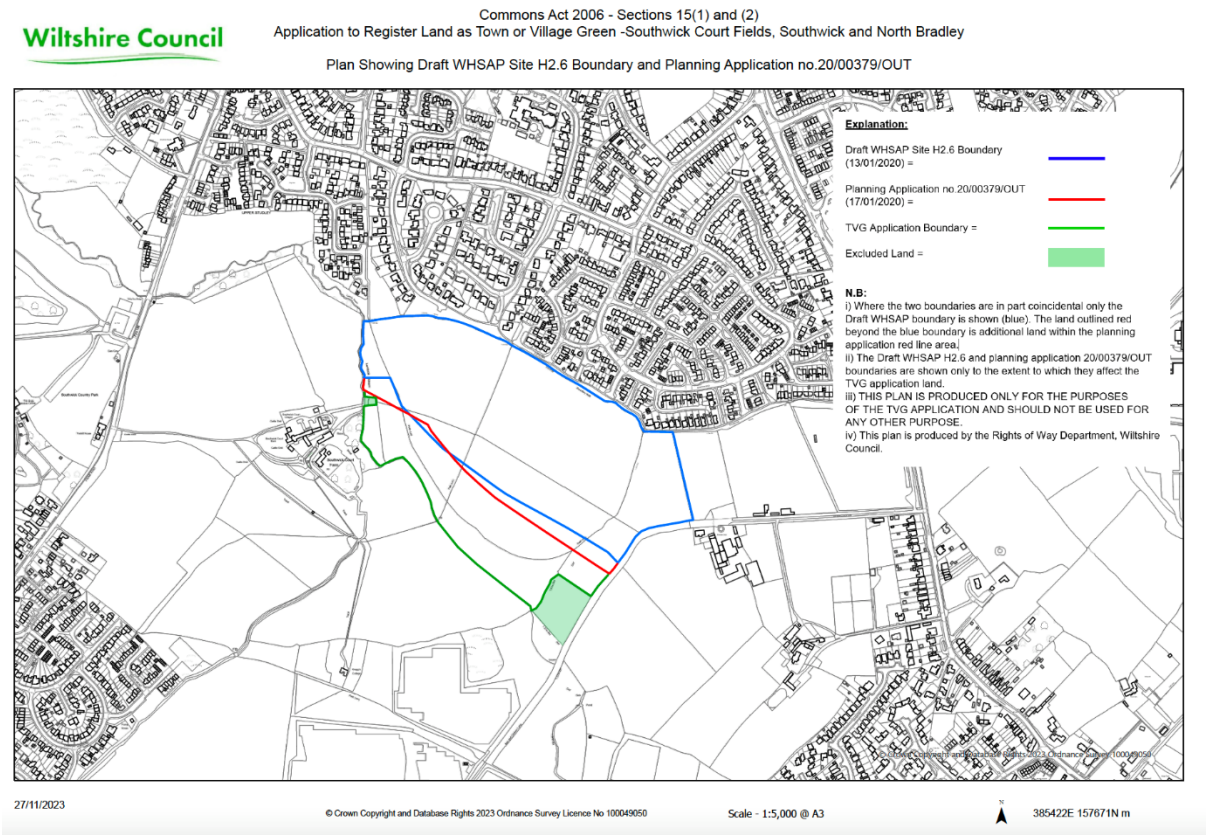
30. It only became apparent to me (and others) after the inquiry had closed on the first day that the boundaries of the two triggers were not the same in that the assumed planning application trigger was slightly larger than the WHSAP land. This is important in light of my finding that the planning application was not an operative trigger event.

31. It therefore becomes necessary to identify, and with reasonable precision, the extent to which the land subject to the planning application falls outside the WHSAP land as it would then be available for registration.

32. It follows that if (i) outline planning permission is granted on appeal, and (ii) the application to register is allowed, it would include some of the planning application land and might, as a consequence, interfere with the development proposal in view of its status as a TVG. In view of the imminence of a decision on the planning appeal, it is clearly important that the developer knows where it stands about this and the sooner the better, and an early decision on the application by the CRA is therefore encouraged.

33. I asked the CRA whether a plan might be made available showing the true extent of the areas affected by the two assumed trigger events. This plan would demonstrate with precision what land was available for registration. The matter was discussed with both advocates and the objective was to ensure that such a plan was made available, preferably before closing submissions in writing were lodged.

34. The plan below has been produced by the CRA since the inquiry showing the extent of the WHSAP and the planning application land and, by necessary inference, the extent of the land which is available for registration.



35. The land available for registration is the land between the blue and green lines (perhaps roughly two-thirds of the lower field to which reference is made below). The slither of land between the blue and red lines is where the planning application land (red) extends beyond the WHSAP trigger land (blue) on its southern side. What it means is that although these parcels comprise roughly the same areas, they are not identical in those places where gaps are shown between the red and blue lines. As will be seen, the Working Plan does not provide this level of detail and is only useful in showing the general location of the boundaries of the WHSAP land (light green) and the TVGAL (dark green).

36. In her closing submissions, Ms Waller submits that the refusal of the CRA to accept the first two submissions of the TVG application is no longer open to challenge on conventional administrative law grounds. It must follow, she submits, that the planning application is a valid trigger event as it pre-dated the date when the application was eventually accepted by the CRA as a duly made application. Were it not for the application of the back-dating principle in the *Church Commissioners'* case I think she may be right about this, but I

accept that there are credible arguments on both sides on what is a difficult point.

37. The *Church Commissioners'* case concerned corrections which needed to be made to an application in order that it could rightly be accepted by a CRA as having been duly made. Although the actual decision in that case resulted from a finding that the applicant had unreasonably delayed in taking steps to put her application in order (and the case involved the omission of statutory particulars), it was the view of the court that where an application had in fact been put in order to the satisfaction of the CRA (such that it was duly made), it should thereafter be treated as having been duly made on the date on which the original defective application had been lodged.

38. In my view, there is no sensible reason why an otherwise duly made application (which an applicant had every reason to think was valid) which may or may not have been affected by an operative trigger event should not be treated as having been made when it was first lodged, consistently with the finding made about this in the *Church Commissioners'* case.

39. There is advantage in this on both sides. In the first place, an applicant is not prejudiced by delays which may have arisen through no fault of his or her own, and, in the second, an objector is given an early opportunity of responding to the application under the rules (reg.5). Ms Waller notes in 2.33 that it was only on 5 November 2021 that a letter was sent by the CRA notifying the objector that an application had been made. There had been no prior disclosure regarding the occurrence of trigger events, nor any reason in the mind of the objector (that is, until I pointed this out on Day 2 of the inquiry) that there was any issue over this. I suspect that the difference in the boundaries of the WHSAP and the planning application triggers (and the implications of this on the application to register) might have been uncovered earlier if the objector's advisers had been aware of the risk that that some of the planning application land might still be available for registration.

40. My conclusions on trigger events are these:

40.1 The planning application is not an operative trigger event as it was first publicised after the TVG application had been lodged. Mr Swanney and Mr Vigar were therefore right to question the CRA's reliance on this trigger event.

40.2 The WHSAP trigger was an operative trigger (the draft DPD has now been adopted). The draft of the WHSAP was first published for consultation before the TVG application was lodged on 13 January 2020 (the time and order in which events happened can be seen at CRA/235).

40.3 The CRA's refusal to accept the application on the first and second occasions it was submitted was not justified. It follows, in my view, that the application should in fact be stamped as having been received on 13 January 2020 and I would recommend that this be corrected by the case officer.

40.4 The effect of an operative trigger event affecting only part of the claimed TVGAL should, in my view, have involved merely the amendment of the application plan and an updated statutory declaration (by virtue of the power in reg.5(4)) as it was an action which would have put the application in order and the CRA should have given the applicant an opportunity to do this. Clearly, if the operative trigger event(s) had affected the whole of the TVGAL it would be incapable of remedy in circumstances where a terminating event had not by then occurred.

40.5 My view about this is consistent with the para 96 of the DEFRA Guidance to CRAs on sections 15A to 15C of the 2006 Act (December 2016) which concerns those cases where the exclusion of the right to apply applies to only part of the claimed TVGAL. The guidance provides that for the portion of land, which is not subject to the exclusion, the application should proceed as usual. For the portion of land on which the right to apply has been excluded then an applicant should be informed that that portion of the land cannot be considered for the registration as a new TVG. In other words, it is not open to a CRA to refuse to accept an application as duly made just because only part of the TVGAL is subject to a trigger event. If there is debate over the incidence of a trigger event, then there will need to be a formal determination

about this by the CRA. What a CRA should not do is to repeatedly refuse to accept more or less identical applications until satisfied that they can in fact accept the application (on whatever basis is relied on).

40.6 I am satisfied that the foregoing errors on the part of the case officer were unintentional and resulted from incorrect advice received by her.

Legal framework

41. Section 15(2) of the 2006 Act enables any person to apply to register land as a TVG in a case 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.

42. It is the duty of the CRA to consider the various elements of the statute all of which have to be made out to justify registration.

a significant number

43. 'Significant' does not mean considerable or substantial. What matters is that the number of people using the land 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 (*R v Staffordshire County Council, ex parte McAlpine Homes Ltd* [2002] EWHC 76 at [64] (Admin) (Sullivan J)).

of the inhabitants of any locality

44. The term 'locality' is taken to mean a single administrative district or an area within legally significant boundaries. On this application the claimed locality is Grove Ward, Trowbridge whose boundaries can be seen on the plan at CRA/16. This is a lawful locality for TVG purposes.

have indulged as of right

45. To be qualifying use it must be use 'as of right' which means that it must be without force, secrecy or by permission (the so-called "tripartite test"). Once the claimed use has passed the threshold of being of sufficient quantity and of a suitable quality, it is necessary to assess whether any of the elements of the tripartite test applied, judging these questions objectively from how the use would have appeared to the landowner. In this case, the claimed use has undoubtedly been peaceable, open and without consent.

lawful sports and pastimes

46. The expression "lawful sports and pastimes" (or "LSP") form a composite expression which includes informal recreation such as walking, with or without dogs, and children's play.

47. As the application involves the use of paths within and around the perimeter of the TVGAL, a question arises as to whether the use of such paths would be referable to the exercise of existing, or the potential acquisition of new, public rights of way rather than rights sufficient to support a TVG application.

48. In *Oxfordshire County Council v Oxford City Council* [2004] EWHC 12 (Ch) at [103]-[103] Lightman J said that the use of tracks will generally only establish public rights of way unless the use is wider in scope, or the tracks are of such a character that use of them cannot give rise to a presumption of dedication at common law as a public highway. Lightman J also said that where there was any doubt about the matter, the inference should be drawn of the exercise of the less onerous right rather than the more onerous right to use the land as a TVG.

49. The footpath issue was also addressed in by Sullivan J in *R (Laing Homes Ltd v Buckinghamshire County Council* [2004] 1 P&CR 36 at [102]-[110]. It was suggested that a useful test is to discount walking, with or without dogs, on the paths in order to determine whether the other activities over the remainder of the land were of such a character and frequency as to indicate an assertion of a right over the whole of the TVGAL. It was also noted by Sullivan J that, as

he put it, he did not consider that a dog's wanderings or the owner's efforts to retrieve his errant dog would suggest to a reasonable landowner that the dog-walker believed he was exercising a public right to use the land beyond the footpath for informal recreation. In the *Oxfordshire* case in the House of Lords ([2006] 2 AC 674 at [68]) Lord Hoffmann approved of the guidance offered by Lightman J and Sullivan J.

50. I deal with the law at some length under this head as it is likely to be relevant to the outcome in this case. This is why I mentioned the relevant authorities to Ms Waller and asked her to send copies to Mr Vigar.

51. What it all boils down to is this: would the proven use have appeared to a reasonable landowner on the spot as referable to the exercise of a right of way along a defined route or the right to enjoy recreation over the whole of a wider area of land. If the appearance is ambiguous then it must be ascribed to a lesser right, i.e. a right of way.

52. I should also mention that as there are in fact three public footpaths crossing the application land (SWCK1, SWCK2 and SWCK3) any use of these paths is not by law qualifying use as the public have a right to use highway land for reasonable purposes provided it does not interfere with the public's right to pass and repass. In the result, the public's use of public footpaths must be discounted (see *DPP v Jones* [1999] 2 WLR 625).

on the land

53. The expression "on the land" does not mean that the CRA has to look for evidence that every square foot of the land has been used for LSP. Rather it needs to be satisfied that, for all practical purposes, it can sensibly be said that the whole of the TVGAL has been used for LSP for the relevant period, always bearing in mind that qualifying use will be heavier in some areas than in others (*R (Cheltenham Builders Ltd) v South Gloucestershire Council* [2003] EWHC 2803 (Admin) at [29]).

Severance

54. The CRA does have a power to sever from the application those parts of the land where qualifying use may not have taken place or where the excluded land is non-qualifying.

for at least 20 years

55. The relevant period in this case is the period of 20 years ending on 13 January 2020 (CRA/342-343) when the application was first lodged by Mr Swanney.

56. Qualifying use has to be continuous throughout the 20 year period (*Hollins v Verney* (1884) 13 QBD 304) although temporary interruptions are not to be equated with a lack of continuity. This is not a case involving interruptions.

Procedural issues

57. The regulations which deal with the making and disposal of applications by CRAs outside the pilot areas make no mention of the machinery for considering the application where there are objections. In particular no provision is made for an oral hearing. A practice has, however, arisen in cases where there is a serious dispute where, almost invariably, an independent expert is instructed by the CRA to hold a non-statutory inquiry and to provide an advisory report and recommendation on how it should deal with the application.

58. However, the CRA is not empowered by statute to hold a hearing and make findings which are binding on the parties. There is no power to take evidence on oath or to require the disclosure of documents or to make orders as to costs. However, the registration authority must act impartially and fairly and with an open mind.

59. The only question for the CRA is whether the statutory conditions for registration are satisfied and the onus is on the applicant to establish this on the balance of probabilities. There is no scope for the application of an administrative discretion or any balancing of competing interests. In other

words, it is irrelevant that it may be a good thing to register the land as it is a convenient open space for use by local inhabitants or that it is a necessary step to prevent its development in the future.

60. The procedure is governed by the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007. It is very simple in that (a) anyone can apply; (b) unless the CRA rejects the application on the basis that it is not 'duly made' or the right to apply is extinguished by a planning trigger event or events, it proceeds to publicise the application inviting objections; (c) anyone can submit a statement in objection to the application; and (d) the CRA then proceeds to consider the application and any objections and decides whether to grant or to reject the application.

61. It has been said that it is no trivial matter for a landowner to have land registered as a TVG and all the elements required to establish a new green must be '*properly and strictly proved'* (*R v Suffolk CC ex p Steed* (1996) 75 P&CR 102 at p.111 (Pill L.J) and approved in *R (Beresford) v Sunderland City Council* [2003] UKHL 60 at [2] (Lord Bingham)).

Consequences of registration

62. Registration gives rise to rights for the relevant inhabitants to indulge in LSP on the TVG land. Upon registration the TVG land becomes subject to s.12 of the Inclosure Act 1857 and s.29 of the Commons Act 1876 (these are known as 'the Victorian statutes') which make it an offence to damage the land or to impede its use for recreation. The effect of this is to preclude development on the TVG.

63. The interpretation of the Victorian statutes was considered by the Supreme Court in *TW Logistics Ltd v Essex County Council* [2021] AC 150 which, put shortly, held:

(i) Registration meant that the public acquired the general right to use the land for any lawful sport or pastime, whether or not corresponding to the particular recreational uses to which the land had been put during the 20-year qualifying period.

(ii) The exercise of that right was subject to the give and take principle which meant that the public had to use their recreational rights in a reasonable manner having regard to the shared use of the land during the qualifying period.

Description of the application land and surrounding area

64. The TVGAL forms part of a much larger holding of agricultural land within a tranquil setting on the southern outskirts of Trowbridge, lying roughly to the north of and between the small settlements of Southwick and North Bradley. The soil is mainly clay. I saw for myself that the wet soil is very damaged where it has been regularly walked upon, particularly at the access pinch points. Although the larger holding is generally flat the central areas are uneven and pitted through use by cattle grazing on the land over many years. This is includes much of the TVGAL.

65. As is shown on the Working Plan and the more detailed plan at paragraph 34 above, the TVGAL is comprised within the southern of two large fields. Both fields are reasonably well maintained and not especially tussocky (the grass is cut in June each year). On its NW side there is an obvious floodplain where the land drops down to a dashed green line shown on the Working Plan which is a watercourse (being a continuation of Lambrok Stream which runs around the southern boundary of the TVGAL). The smaller of the two blue parcels shown on the Working Plan is an enclosure where cattle are corralled. There is also a road at this point enabling cattle to be transported offsite.

66. For the most part, the southern boundary is bounded by a dense hedgerow. Indeed, both upper and lower fields are ringed with hedgerows (within which there are a number of very fine oak trees) and a watercourse (or watercourses) which I think must be piped at various points.

67. The overall holding with which we are concerned consists of two large fields. The two fields are divided by fencing (albeit with large gaps at the eastern end at or around point 1 where the public right of way NBRA4 enters the lower field off Axe and Cleaver Lane). There are three crossing points dividing the two fields marked 3, 4 (both stiles) and 1 on the Working Plan. It is, I think,

convenient that I refer to the field closest to the housing estates as “the upper field” and the other field as “the lower field” within which the TVGAL will be found.

68. Although the TVGAL is unfenced on its northern side it is relatively simple to imagine where it is located within the lower field. When it came to giving evidence the applicant’s witnesses were rightly informed where the TVGAL land was located, and they were directed to the dark green land shown on the Working Plan. In practice, witnesses explained what they did and where they went when they used the lower field. I was quite satisfied that, even though the Working Plan did not accurately show an outline of the TVGAL, all of the applicant’s oral witnesses gave reasonably coherent accounts of their own use of the lower field and those observed by them on the part of other users, and this has enabled me to make findings on whether the use relied on justifies registration. The position is clearly more difficult when it comes to the written evidence which was drawn up in advance of the inquiry.

69. Access to the TVGAL from the housing estates shown on the Working Plan is via the three openings crossing the watercourse which corresponds with the dashed green line running along the northern boundary of the upper field of which only those at 5 (Spring Gardens) and 6 (Westmead Crescent) are noted on the Working Plan. There is a relatively new kissing gate (which at the inquiry we referred as gate 7 – where there is said to have once been a barbed wire fence or at least a gap in the hedgerow of some description) which leads into Boundary Walk which is located on the NE side of the upper field.

70. The TVGAL is accessible to the public and the public rights of way (“PROWs”) are plain to see on the ground which has been trodden down by regular use. The network of public footpaths in the vicinity of the TVGAL shows that the lower field is an obvious crossing point to those using the TVGAL as a means of access to destinations in Southwick and North Bradley. One of these paths (SWCK62) also runs to Frome Road.

71. There are some very useful photos of the upper and lower fields at CRA/187-194 (these were put in by Mr Swanney) and at CRA/453-456 which were put in by the case officer and are accompanied by a helpful location plan (CRA/455 shows the flood plain area and the area where animals are corralled in the background. The land slopes upwards to the east at this point).

72. Image 1 below was given to me at the inquiry by Councillor Graham Hall ("Cllr Hill") showing where the flood plain is in the NW corner of the two fields. The lighter areas are prone to flooding by comparison with the darker areas on each side, especially on the eastern side where the ground is noticeably higher (this is a classic flood plain). Image 1 is produced by DEFRA using the LiDAR technique (which stands for light detection and ranging) which is a technology used to measure various attributes of an object or a phenomenon, in this case the land's surface water drainage attributes.

Image 1

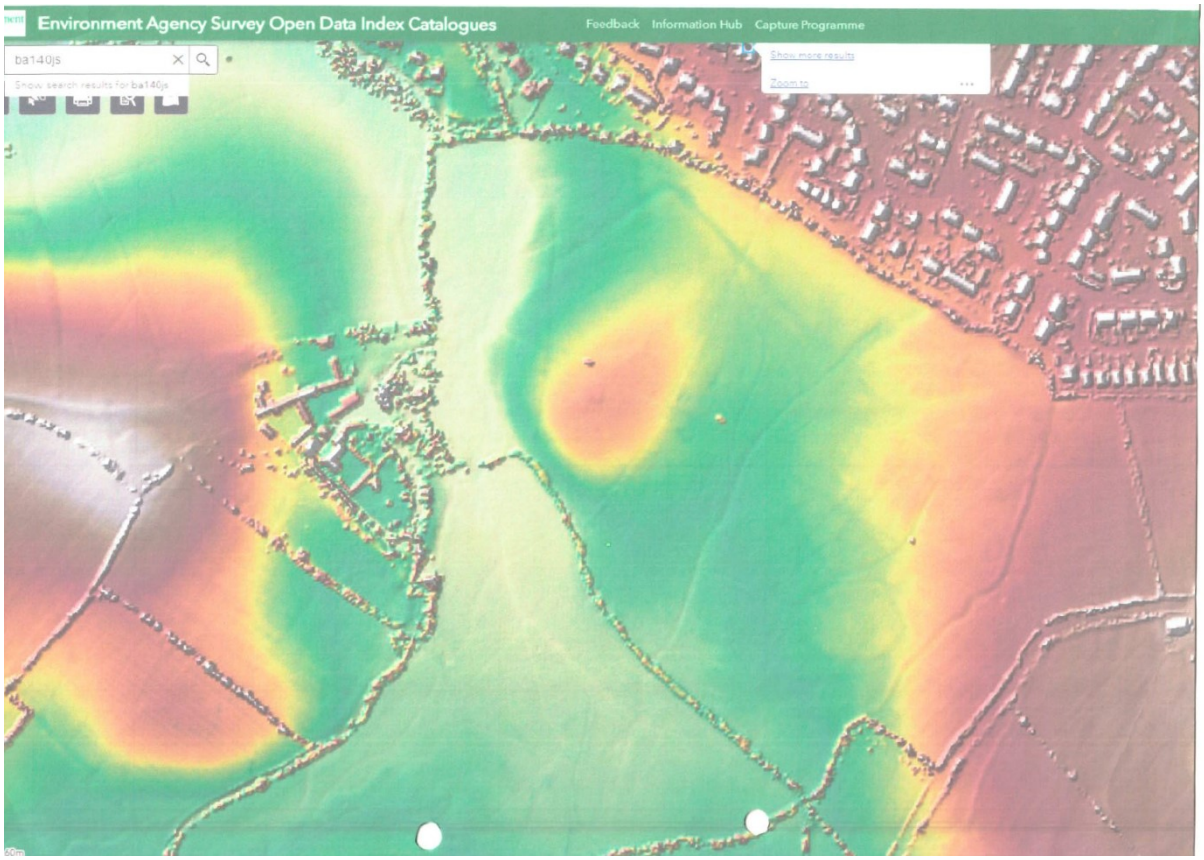


Image 2

This image shows flooding on the NW side of the application land.

73. On my accompanied site visit both lower and upper fields were very wet. One really needed wellingtons/sensible footwear to walk anywhere, not least in the NW quadrant of the light green/dark green areas shown on the Working Plan (look at Image 1 above). It seems obvious that qualifying use within the flood plain area mentioned above is likely to be trivial or occasional in the drier months and practically non-existent during the wetter periods.

74. Before my accompanied view of the upper and lower fields which started at around 9.30am on Day 2 of the inquiry, I spent time walking around the housing estate(s) roughly to the south of Silver Street Lane. I was particularly struck by the large number of dog walkers heading towards the fields. I think it

entirely probable that a significant number of dog walkers living close to these fields are using them on their long or short walks.

Applicant's written and oral evidence

Applicant's written evidence

75. I propose to start with the plans and principal photos. At A/15 we have Exhibit C which forms part of the applicant's case for registration. At para/7 of the Form 44 the following is noted at the second bullet:

> The unfettered use of the land has been unchallenged over this period and is symbolised by the footpaths and/or trackways formalised upon it.

In fact, the sheet at A/15 is headed as follows:

> Footpaths established during use of land in this application

There are two photos on this sheet. One is unmarked and shows perimeter and cross-field paths, and the other is the same image but with the same paths marked in black for clarity. One is able to visualise the dark green land on the Working Plan on this image. It seems clear that the applicant has included three PROWs which cross this land, namely SWCK1, SWCK2 and SWCK3.

76. I have not included the above images as the applicant's case on paths, formal or otherwise, is, I think, better depicted on the plan produced to the CRA on 5 April 2022 when Mr Swanney responded to the first statement of objection dated 16 December 2021. The objector was making the point that the use of footpaths was non-qualifying and should be distinguished from qualifying LSP. In his response Mr Swanney says this on CRA/182:

> As evidenced by the trackways map and photo in appendix c), the designated footpaths are supplemented by a series of trackways and meander lines which cover the entirety of both the application site and the allocated portion of the land.

77. The point being made by Mr Swanney is that qualifying use also takes place outside the PROWs. See his appendix (c) map/photo at CRA/189.

Appendix C

Current footpaths and trackways

Whilst photographs exist taken from ground level, this is the clearest representation of the numerous paths and trackways in us at the current time.

Current footpath/trackways key:

Black	Principal circular path
Yellow	Secondary "internal" paths running either side of the remains of the fencing and the Southern perimeter.
Blue	Right is the path from the kissing gate, Left follows the high water line of the flood zone.
Orange	The principal North-South footpath.
Red	Blocked off pathway
Purple	Right access to bridleway, left access onwards to Southwick, North Bradley and Hoggington.
White	Dog walker route

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78. Mr Swanney's appendix (c) image is followed by the image in appendix (d) which will be found on CRA/190.

79. The above image may be compared with the image on the next page which will be found at CRA/71 and is dated 2020/2021. The image at CRA/71 also shows the very distinct layout of paths, formal or otherwise, which exists on the ground. Indeed, the pattern is largely unchanged, as I observed on my accompanied visit on 22 November 2023, where the perimeter path around the outside of both fields is obvious and is doubtless more pronounced in the growing season before the grass is cut in June each year. At such times it is the obvious place to walk.

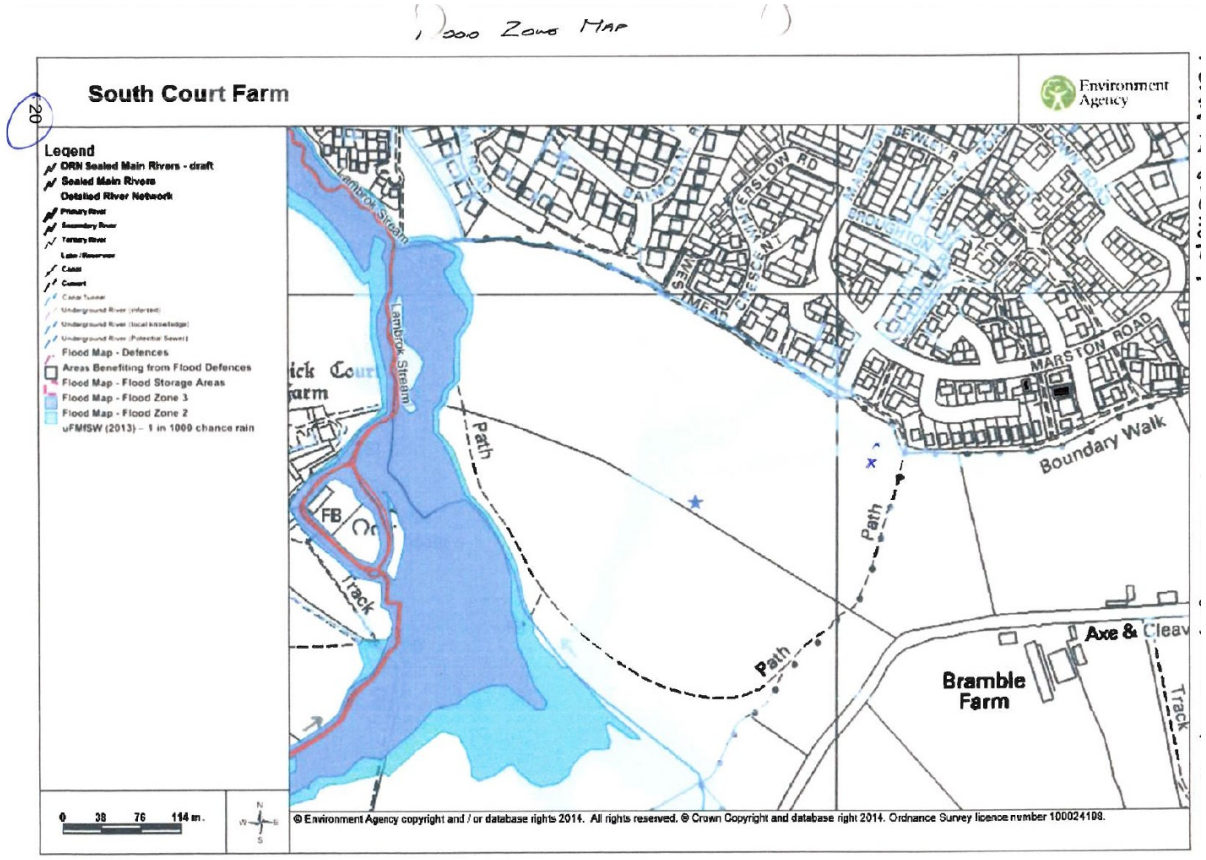
80. The position then is that the TVGAL in this instance is subject to identifiable paths running (i) around the southern perimeter; (ii) cross-field (SWCK3); and (iii) that headed in a NW direction to the exit at point 5 on the Working Plan (SWCK1). Note also (iv) Mr Swanney's outer "Dog Walker Route" along the white line close to the edge of the field on his appendix (c) plan at paragraph 77 above. It is important that we remind ourselves that the true extent of the TVGAL is the land to the south of the blue line shown on the plan at para 34 (p.10) which falls short of the cross-field fencing line dividing the upper and lower fields.

81. I have not overlooked the photos of the access points on CRA/31 all of which demonstrate that both the upper and lower fields are accessible to the public. The photo at the foot of CRA/31 showing the stile at point 4 on the Working Plan is particularly significant. The photo is liable to have been taken in the summer when the field was not as saturated and muddy as it was on my accompanied view.

Applicants other written evidence relevant to user

82. At CRA/20 the applicant produced a flood zone map produced by the Environment Agency (2014) which again shows the flood plain already mentioned and a path running around the perimeter of the lower field which aligns with the path shown on the above three plans.

Flood Zone Map



83. The Form 44 was accompanied by a note at CRA/24 in which the application land (at that time, of course, extending to both upper and lower fields) was said to have been used for a variety of qualifying recreational activities. There was also a supporting petition which had been signed by 23 people. The “Policy statement” at CRA/33-68 does not advance the case for registration which is not concerned with planning issues.

84. In his opening remarks Mr Vigar seems to me to have a surer grip on the evidence required to justify registration. He accepts that the application relates to what he described as the “southern section of Southwick Court

Fields" and the need to prove those elements under section 15 of the 2006 Act in order to justify registration. Mr Vigar also makes the mistake in supposing that the planning application land "to the north" is subject to a trigger event, along with the WHSAP land, since the former land is included within the latter. He accepts that this makes proof of qualifying use more difficult in what is left of the TVGAL.

85. When it came to the sufficiency of qualifying use Mr Vigar said that he found no difficulty in finding, as he put it, "12 witnesses prepared to attest that they have used the land for more than 20 years before the date of the application". He refers to the case officer's summary of the witness evidence in her report in which 24 witnesses claim to have used the land for more than 20 years. He says that many of these witnesses are prepared to state that they represent a relatively small sample of the residents who routinely use the land. Another resident, so Mr Vigar claimed, "conducted an informal survey in early 2021 who says that more than 3,500 individuals were counted entering the whole of Southwick Court Fields area in a one-month period in early 2021". Mr Vigar also refers to another petition which opposed the grant of outline planning permission which he says contains 196 signatures most of whom live in Trowbridge. All this material ignores, of course, the effect of the operative trigger event in the case of the WHSAP land and the very low weight which must be attached to petitions.

86. Mr Vigar agrees with me that the relevant application date is when the application was originally lodged and that any deficiencies in the application, once cured, meant that the application should be treated as having been duly made on the date on which the original, albeit defective application, had been lodged. Mr Vigar also invites me to find (as I take him to mean) that the witnesses who provided statements are a representative sample of how local residents have used the land over the years and not only during the qualifying period. In terms of LSP, Mr Vigar says that the land has been used for a range of activities for at least 20 years and has included walking, with or without dogs, playing games and for exercise. In terms of sports, he refers to jogging, ball games, including football, kite flying and "many children's

games". Mr Vigar also mentions the fact that none of the applicant's witnesses say they were prevented from using the TVGAL. It is his submission "that on the balance of probability the application fulfills all of the criteria for the land to be registered as a town or village green".

The applicant's user evidence

87. At CRA/266-280 the case officer has produced a helpful schedule of the applicant's witness evidence which is, of course, referable to the whole of the TVGAL in a no trigger event world (consistently with the Form 5 advertisement). A total of 49 individuals (including the Parish Council's of Southwick and North Bradley and those who signed two petitions) supported the application on the first two submissions. The case officer also notes that Trowbridge Grove Ward had an estimated population of 4,458 in 2020.

88. Before the inquiry Mr Vigar also sent me a helpful breakdown of his written and oral evidence in which he summarises the nature and extent of the user relied on in each case. I will deal with this evidence in detail below.

89. It was made clear to each of these witnesses that they should be focusing their evidence on the area coloured dark green on the Working Plan which they were told was the land available for registration. By the second day of the inquiry, it was clear that there was slightly more land available for registration than had been supposed on the first day, I am quite satisfied that no damage was done to the applicant's case as a result of this discovery. This is because there is no physical division between dark and light green areas within the lower field. Because of this it seemed plain enough to me that the witnesses would have been dealing with their activities within the lower field as a whole. In practice, the additional land available for registration owing to the exclusion of the planning application land results only in the addition of a small portion of land to the dark green land shown on the Working Plan, albeit within the same unfenced area within the lower field.

The applicant's statements

90. A total of eight statements are to be found in A/57-64. Four were very short (Clarke, Clarkson, Noutch and Stevens). Hilary Chamulewicz put in a lengthy statement in which she mentions the "well-worn paths (arising) from such a high footfall of people walking daily". Karen Dewfall's statement is helpful as she says that she and her family have "used the fields behind boundary walk, particularly the southern part, consistently over the years". She says she has dogs whom she walks "over the southern part of the fields". She has lived at Langley Road for 26 years. Mrs Dennis does not give her address but she says that the "proposed village green is on our doorstep". Malcolm Oliver and his late wife have used the fields for a great many years as did their four children when they were growing up.

Applicant's oral evidence

Mr McCartney

91. This witness has lived with his wife at [redacted] Balmoral Road since 1985 (their joint written evidence is at A/55). Mr and Mrs McCartney brought up their four children at this address which is very close to the upper field. In chief he said that they used the fields in the early days with the children. He recalled collecting leaves for nature studies at school, picking blackberries and, as he put it, looking at nature such as the birds on the fields. He also introduced his eight grandchildren to nature. He says that they did not stay on the tracks and wandered outside them. He also saw other people on the fields and saw people flying kites and children running around and kicking balls. He could see from his home people using both fields. He could not recall grass on the lower field being cut or grazing taking place on this field. He says that there is widespread "bogginess" across the lower field as it is so close to the watercourse and that wellingtons would need to be worn in the wet weather. He added that when on his own he used the lower field for exercise and used it for walking to the pub in Southwick. He also said that when on his own he stuck to the footpaths. He said that people mainly walked on the paths.

92. In cross-examination he accepted that he walked on the perimeter paths where he sees dog-walkers sticking to the paths. He also accepted (and I am sure he must be referring to his walks after his children had grown up when he said they played games outside the paths – he mentioned this in re-examination) that the only time, as he put it, he walked off "the established path" was when it was waterlogged.

Mark Stevens

93. Mr Stevens and his wife have lived at [redacted] Sandringham Road (which is close to the upper field on its NW side) for 44 years. His statement is at A/54. He says that they have regularly walked on the TVGAL with their children and five grandchildren. His statement notes annual blackberry picking (he also mentioned sloes in his oral evidence). In his oral evidence he said that when out with his son playing football "I was all over the place". They even fished in the stream. He also thinks that when they moved to Sandringham Close more children played in the fields. He said that he knew "lots of people walking around the perimeter – always ten people walking around the perimeter". In cross-examination he mentioned that his daughter has lived in Spring Meadows for nearly 21 years (also within Grove Ward) and walks her dog on the fields some five times a week. He has also walked his own and his daughter's dog in the fields (I think he has had three dogs over the years). He said he did not walk on the grass when it was long other than to retrieve his dog. He also said that "dog-walkers tended to stick to the path", more so than the younger children.

Rachel Hunt

94. Mrs Hunt lives at [redacted] Frome Road. She says that she has been using the TVGAL almost daily since 1999. Her statement is at A/51. She currently walks her dog there three times a day. When her children were small (they are now aged 23 and 20) they played and rode their bikes on the land. It is, she says, "an amazing resource for the family" and (in her statement) is "much treasured by local residents". She said that she does not confine her walks to the paths running around the field. She accepts that "a lot of the

time" is spent on the footpaths (which I take to mean the PROWs and the informal paths) but on other times this is not where she walks. She said that since the planning application there are no longer cows in the field. In terms of the use she has observed by others, she says that she has "certainly seen" as many as 10-15 people on the land whilst she has been walking her dog there. She said in cross-examination that the predominant use (that is, by people walking on the land) was "mainly on tracks around the field". She also accepted that the land was "boggy" in the NW area of both fields. In dealing with cattle, Mrs Hunt said that since the planning application cattle have not been in the field but there used to be around 30 there at any one time. Dog-walkers kept their dogs on a leash and tended to avoid the cows when they were in the fields. She also said that there were fewer people using the fields when cattle were on the land.

Rik Clews

95. Mr Clews has lived at [redacted] Boundary Walk since April 2002. The family has always had dogs in that time. Mr and Mrs Clews foster children. In his statement at 48 Mr Clews says that he and his wife would have welcomed over 50 children into their home most of whom would have used the land. This is in addition to their own children now aged 25 and 21 along with their three adopted children. (On my accompanied view of the fields the home of Mr and Mrs Clews was pointed out to me close to the new opening at 7, off Boundary Walk.)

96. In chief Mr Clews said that since they had been living at Boundary Walk they have had at least 3 dogs and they have used the upper and lower fields "about every day". He was at pains to point out that they would have used the TVGAL and not just the field close to their home. He said that they not only walked on both fields but also played with frisbees, kites and balls off the paths. When pressed about this he said that although they had walked off the path (meaning the perimeter path starting close to their home) this was "not often". He also mentioned picking mushrooms and blackberries. He also mentioned cattle in the field (which they avoided) and water ponding on the land in what looked like channels or gullies.

Councillor Graham Hill

97. Cllr Hill is a town councillor for the Grove Ward and lives at [redacted] Balmoral Road. Cllr Hill was an extremely helpful witness and provided valuable assistance to Mr Vigar. Cllr Hill's statement is at A/50. He also provided me with the two images at pp.2-21.

98. Cllr Hill and his family moved to Balmoral Road in 2002 since when, his statement says, his family have "freely used the adjacent field system with its footpaths and trackways". In his oral evidence he says that his children were in their early teens when they moved to Balmoral Road and spent a lot of time on the TVGAL. More recently, the family have played frisbee and he has indulged in photography and the family have also used the fields to visit his daughter and three grandchildren in North Bradley (Ms Waller notes that he said that when crossing the site to visit his family in North Bradley he did not leave the footpaths). Sometimes they met up with his grandchildren on the fields. This would have been in the summer. He says that the application land was a good place to meet up.

99. Cllr Hill also dealt with the flooding issue. Put shortly, he says that the NW area of both fields is prone to "flood and waterlogging on a bi-annual basis" when it is unusable for anything, even for farming. It was his view that 20% of the TVGAL lies within a flood zone and was unusable for around 5-6 weeks per annum; even outside this period you would still need to use adequate footwear. He said that only around 80% of the TVGAL was (as my note puts it) "OK" and, as I infer, would be available for all-year-round use.

100. Cllr Hill says that he can see the fields from his study. He sees "lots" of dog-walkers, youths sitting around on blankets and children on the land in the summertime. He has not seen cattle on the fields for around the last 2-3 years. He thinks that he and his wife use the fields for walks around 1-2 times per week (he is not a dog-walker).

David Goodship

101. Mr Goodship has lived close to the upper field at ■ Sandringham Road for 49 years (it will be 50 years sometime in December). His somewhat brief statement (which was signed on his behalf by Mr Vigar as he was on holiday) is at A/49. His two children are in their 40s.

102. Mr Goodship retired in 2000. He is not a dog-walker but takes regular exercise on the application land. He says the condition of the land is very seasonal. The ground gets "boggier" if you go westwards. He says that cattle have not used the fields for some time. He had only seen them there from time to time in the early stages of the growing season. They would not be there when the grass was cut in May/June. He said that "loads of people" used the land before and after Covid (Ms Waller notes that he also said that there had been an "explosion of use post COVID"). He mentioned dog-walkers and adults with their children. There was nothing to prevent anyone using the land. He said that he would use the public rights of way for what he described as his "quick walks" and at other times he used the "wider area" which I understood him to mean by way of the path around the perimeter of both fields.

103. When cross-examined, Mr Goodship said that if he was on "a slow walk" he would use the light green land on the Working Plan. If not, he would use the dark green land. He also confirmed that he used "the perimeter path" when using the dark green land on this plan. He says that "lots of people" exercise their dogs on the TVGAL, "sometimes on the footpath, at other times not on the footpath" (which I take to be a reference to the perimeter path). He has seen groups of children sitting on the ground and listening to music and children flying kites. Mr Goodship also said that before 2007 he used to jog on the TVGAL twice a week. His routes varied but they included runs on the TVGAL.

Geoff Whiffen

104. Mr Whiffen and his wife have used the fields continuously for leisure and dog-walking since they moved to ■ Holyrood Close in 1997. Their three

daughters did likewise, as do their grandchildren. His daughter living at [redacted] Boundary Walk has four dogs who are walked on the fields on a daily basis. Mr Whiffen or his wife usually accompany their daughter on these walks (they meet up in the fields). Mr Whiffen says that they tended to walk "nearer to the stream than keep to the track" (I take this to mean that he/they must have entered the upper field at any one of the entry points at 5, 6 and 7 (which he said he used) before using any one of the cross-field paths identified on the Working Plan in order walk near the stream on the southern edge of the dark green land).

105. Mr Whiffen also mentions seeing other dog-walkers on the land whenever he enters at point 6. He also says that when the weather is warmer children play in the fields off the paths. When it comes to cattle, he says that they are generally "down at one end of the field or other" and do not worry him. He thought there could have been around 20 plus cattle in one or other field at any one time. Dogs were always kept on a lead whenever there were cattle in the fields.

106. When cross-examined about his walks he said that if it was a quick walk "it's circular" (which I take to mean is a walk around the perimeter path) whereas if it is a longer walk then they walk outside the fields. Mr Whiffen also noted that when it was cut the grass (and he says that the grass was cut each year) would have been around 2 feet in length. By this time the ground around the edge of the grass would have been worn down and "very short".

Barry Jones

107. Mr Jones lives on the NE side of the fields at [redacted] Summer Down Walk. He and his wife have lived there since 1982. Until Covid they always had dogs. In his brief statement at A/52 he says that a substantial number of people "from both the Trowbridge side and also both Southwick and North Bradley use all of the fields criss-crossing the proposed open space" (which can be seen coloured green on the planning proposals' map at CRA/222 – in other words, the statement for this witness may also have been used on the planning application). At any rate, Mr Jones says in his oral evidence that he mainly

uses the land for dog-walking. He uses both fields, saying that the number of people you could see “was remarkable”. He says that he walked “the entire perimeter every day”. He says he walks “on paths as well as on the perimeter”. He says he follows his dog which can lead him off the footpaths.

108. He too mentions how the fields get boggy where the land dips (as he put it) in the way one imagines from the image on p.20 (with the yellow/orange area being the higher ground than the lighter shaded area which, as Mr Jones is saying, is where the land is at a lower level).

109. He was aware of the fact that cattle grazed in the fields. They tended to run around when they were first put out but settled down after a few days. He said that you knew where cattle were in the field, and you kept away from them. He always kept his dog on a lead when there were cattle in the field.

110. He said that in the summer months you would see a number of families in the field. Occasionally there were ball games, but the ground is uneven. He also mentioned a swing near, as I recall, to the edge of the watercourse (not the one already mentioned but another) which is no longer there. He says that people flew kites and he also saw a couple of picnics taking place. He mentions students from Trowbridge College using the land and others likewise from Southwick and North Bradley (who are unlikely to have been qualifying residents).

111. Mr Jones says that the fields are used for walking and exercise “rather than playing in the middle”. He also says that if he is on his own (i.e. without his dog) he sticks to the paths. This is, he says, “the place where people are mainly walking”. He also mentions that “all entrances are used constantly” and “litter bins [are] overflowing”. In the case of his own daily walks, he says that his walk lasts at least an hour in the morning and between 30-45 minutes in the afternoon. Ms Waller also noted that Mr Jones referred to the intensification in the use of the land during the lockdown.

Blair Keltie

112. The joint statement of Mr Keltie and his wife is at A/53. They have lived at [redacted] Westmead Crescent since 1987. It is close to the upper field and entry point 3. They have used the fields on a daily basis as they have a dog. Mr Keltie throws a ball around and he says that he follows his dog. He walks straight across the upper field and enters the dark green land and walks across it in the direction of the solar farm site. He has 2 children and four grandchildren living in Trowbridge and they enjoy playing football, frisbee and kite flying.

113. He mentions kite flying, a rope hanging from a tree in the 1990s and picking blackberries and sloes. As a former officer involved in child protection (he retired in 2019) he considers his use of the land to have been valuable for his mental well-being. He likes using the TVGAL as it is “more remote”. He says he observed many other people enjoying the same location for exercise and relaxation. He says that he kept away from the cattle when they were in the fields, and he was clear that the grass was cut and baled in June every year. He thinks that the grass was some 3 feet high when it was cut. For this reason, he says that people kept to the paths when the grass was growing. He thinks that there are more dog-walkers using the light green area.

114. The Keltie’s statement is very detailed. In it they say that the “large footfall is immediately evident from the wear of the footpaths … indicating their popularity and high demand”.

Mrs Dennis

115. Mrs Dennis was not called as a witness for the applicant but attended to give evidence to assist the inquiry. She lives at [redacted] Balmoral Road, and I think since 2012 has been a regular user of the TVGAL. She said that people use the paths. She said that she and her husband do “all of the paths” with their dog. She sticks to the paths. As she put it, people generally use the paths and if the paths are muddy, they use the land alongside it to walk on. They do not go onto the land if it is wet, but they use it in the summer every day. She mentions seeing youngsters congregating in groups in the summer and people with balls.

The objector's case

116. The objector did not put in an inquiry bundle. Instead, Ms Waller relied on two lengthy objection statements dated 17 December 2021 and 23 May 2022. Ms Waller also put in detailed closing submissions dated 5 December 2023 with which I will deal later.

117. Ms Waller did, however, rely on the evidence of the objector's son, George Rhys, who produced a statement (a signed and dated copy of which was produced during the course of the inquiry) and also gave oral evidence. No objection was raised to the late admission of this evidence, and I see no reason why this evidence should be excluded from the inquiry. I might add that it was extremely helpful of Ms Waller to produce a statement for Mr Rhys overnight as it meant that Mr Vigar had the advantage of knowing what Mr Rhys would be covering in his oral evidence.

George Rhys

118. Mr Rhys lives close to the TVGAL at [redacted], off the Frome Road. His mother owns the TVGAL, and, in view of her advanced age, it was only right that her son should have given evidence on her behalf.

119. In his written evidence Mr Rhys says that his family have farmed the land since the 1960s when it was a dairy farm, but the farming business has, for some time now, concentrated on silage, hay and grazing which, in the case of the latter, ceased in around 2019. Cattle were brought onto, as Mr Rhys puts it, the wider farm holding in April each year where they were moved around when areas were cut for silage and hay. He says that once the grass was cut the cattle would be moved onto these fields where they remained until September. This was repeated every year. There has always been a gap at either end of the cross-field fencing to allow the cattle to move around between both fields. Although Mr Rhys mentioned damage to gates, fencing and stiles over the years he concedes that most of the damage (or vandalism as he called it in his oral evidence) occurred outside the TVGAL. It was, however, plain from the way Ms Waller put her case that the issue of non-peaceable use does not arise for consideration on this application.

120. Mr Rhys accepts that the TVGAL is used by local residents for walking with or without dogs. He thinks that other uses involving “kite flying, ball games etc” take place on the upper field. He also thinks that the unevenness of the land makes it probable that joggers or those playing games will stick to the paths. He points out that the application land “is not a park or recreation ground with a flat surface for recreation”. He disputed that football or ball games were played on the fields and he emphasises the growing grass crop after March in each year.

121. In his oral evidence Mr Rhys told us that the TVGAL extended to approximately 5 acres. He said that the grass stood about 3 feet when it was cut and the haymaking process (cutting, turning the grass to dry and baling) could last up to 2 weeks if the weather was dry. As for the cattle there could be as many as 60-80 using both fields. In his second witness statement Mr Rhys said that due to the annual presence of cattle in the field the surface is very uneven and deeply pitted. He said that his daughter had to confine her jogging on the land during the COVID lockdown to the paths where the footfall was more even.

122. Mr Rhys accepts that he gave permission for the introduction of a kissing gate at what was referred to as gate 7 on the NE corner of the light green land close to Boundary Walk. Before then Mr Rhys said that there had been a dense hedgerow. He also said that he used to ask people to walk on the footpath although his evidence about this was not particularly specific. In truth, the position was, as he explained, namely that although he was not happy with people using his land, he accepted it and there was nothing he could do to prevent it, nor, for that matter, did he erect prohibitory signage in an attempt to control the situation. He did though put up signs on gate posts with an arrow pointing in the direction of the public rights of way and he said that he told people who were (as he put it) “wandering around” to keep to the footpaths.

123. Mr Rhys told the inquiry that people “were not walking outside the paths” where in the growing season the grass could grow as high as 3 feet. Dogs also kept away from the cows who were grazing in all parts of the fields

between June-September each year (or even until October if it was dry). Mr Rhys agreed that the public were respectful of the grass crop until it was cut for hay or silage. Mr Rhys disputed that people congregated on the fields. He says they did this off-site. He accepted that the main use of the land by local residents was for walking, with or without dogs. He also said that he was on the TVGAL a few times each week dealing with, as he put it, management issues. At the close of his evidence, it was obvious that the application was causing Mr Rhys some distress.

Ashfords' letter dated 5 December 2023

124. Ashfords are a firm of solicitors in Exeter who act for Waddeton Park Ltd ("WPL") which has a land promotion agreement with the objector affecting part of the land which is subject to the TVGA.

125. Ashfords complain that WPL had not been afforded an opportunity to take part in the inquiry. It is unnecessary for me to comment upon the reasons given for this or to delay the inquiry process now that Ashfords' have made submissions on whether the outline planning permission is a valid trigger event and, if it is not, whether any land comprised within the planning proposal falls outside the WHSAP trigger. It is worth noting that Ashfords do not suggest that the CRA's plan on p.10 above is inaccurate.

126. I have, of course, already dealt with the scope of the outline planning application as a potential trigger event. It is my advice that the planning application is *not* an operative trigger event as it was first publicised *after* the TVG application had been lodged. Mr Swanney was therefore right to have questioned the CRA's reliance on this trigger event and the TVG application should have been stamped and allotted a number when it was lodged on 13 January 2020. It was through no fault of Mr Swanney that this did not happen.

127. Accordingly, it is my advice to the CRA that the area of land available for registration is the land falling between the blue and green lines on the CRA's plan at p.10.

128. In my view, the foregoing is sufficient to deal with the submissions made on behalf of WPL. This is not a case where the applicant had neglected to take action to put an application in order in circumstances where it had not been duly made and where the CRA had given the applicant a reasonable opportunity of taking that action.

Applicant's closing submissions

129. I do not intend to deal comprehensively with Mr Vigar's helpful submissions. Much of what he says is already covered in this report. I will endeavour to summarise what he says.

130. The planning application was not a valid trigger event as it was first publicised after the TVG application had been lodged. I agree with this submission for reasons previously explained.

131. As the planning application land covers a slightly larger area than the land covered by the WHSAP trigger (which is a valid trigger: a further iteration of the draft WHSAP was published in July 2018) the parcel of land between the red and blue lines on the CRA's plan at paragraph 34 is also available for registration. I agree. The WHSAP land edged blue on the plan is not available for registration as I consider this to be a valid trigger event.

132. I do not agree that the earlier draft published in June 2017 is the operative trigger event merely because the Southwick Court Fields allocation was unchanged in the second draft. If it was, Mr Vigar argues that it became subject to a terminating event (noting the provision for lapse after 2 years) before the TVG application was lodged.

133. The adoption of the WHSAP following the lodging of the TVG application is not a trigger event under para 4 to Sched.1A. I also agree with this submission.

134. Mr Vigar is right when he points to the fact that his witnesses identified where LSP took place on land outside the WHSAP trigger land. The applicant's witnesses were clearly advised what land was relevant for the purposes of the

application (by reference to the dark green land shown on the Working Plan) and they spoke of what took place on such land when they used it.

135. Reliance is placed on the locality of Grove Ward in Trowbridge. Most, if not all, of the witnesses live within this Ward. Reliance is also correctly placed on the sufficiency of use test in the *McAlpine Homes* case. Mr Vigar goes on to review the evidence of his witnesses in detail and I do not intend to repeat this process herein. He does though introduce images from *Google earth* from 2005 and 2016 which show tracks within and around the perimeter of the two fields consistently with what is shown on other aerial images. The image from 2001 is somewhat blurred and the image from 2021 is outside the qualifying period.

136. Mr Vigar deals effectively with *as of right.* Non-peaceable or permissive use is not an issue in this case although Mr Rhys did give evidence that he had (at one time) placed footpath way markers at access points and that at various times he had also asked users to stick to the footpaths. However, it was put to none of the witnesses that they had been asked stay on the PROWs. Mr Vigar is right to submit that there had been no, as he puts it, “concerted, robust efforts to deter people from using the land beyond the PROWs”.

137. In terms of LSP and qualifying use, Mr Vigar deals clearly with the law in relation to use which is more characteristic of right of way use as opposed to use as a green, and he cites extensively from the well-known passages in *Oxfordshire* and *Laing Homes*. He asks three questions: (i) would use of the tracks in this case give rise to a presumption in favour of dedication of the land as a PROW; (ii) has the land been used “purely” as a right of way or for the wider purposes which he identifies; and (iii) (and I paraphrase) do local inhabitants use land off the tracks?

138. Mr Vigar submits that it was clear from many witnesses (vis: Jones, Keltie and Hunt) that qualifying use is not confined to the PROWs but extends to the informal (or putative) paths running around and across the fields and that such use has not been in the nature of highway use along defined routes.

139. Mr Vigar also submits (and I again paraphrase) that the evidence of his witnesses show that local residents had also used land off the paths and had used the land in such a way as would be referable to the more onerous right to use the land as if it were a TVG. Indeed, he says, Mr Rhys acknowledged that he had encountered people walking off the PROWs. I do not agree with Mr Vigar when he says that this suggests that such use "was commonplace" or that dog-walking *per se* on a defined track is apt to connote the use of the land (i.e. in how it would have appeared to a reasonable landowner) as a TVG rather than as a right of way. (It is plain in law that the use of paths for recreational walking is quite capable of founding a case of deemed dedication of the use of land as a highway unless it is merely ancillary to recreational activities which would not give rise to a PROW (*Dyfed County Council v Secretary of State for Wales* (1989) 59 P&CR 275)).

140. Mr Vigar invites me to consider (in effect) the quality and quantity of the use of the TVGAL off the paths. For instance, was it only occasional or of limited duration? I have read his submissions and the evidence of witnesses in relation to the number of specific activities to which he refers as having taken place off the paths.

141. Mr Vigar deals with continuous use for 20 years to the date of the application. I do not deal with this in detail as there is ample evidence showing that the applicant's witnesses had been using the land (whether or not for qualifying purposes) for at least 20 years by the time of the application.

Objector's closing submissions

142. Ms Waller started with trigger events. She rightly identified the issue as to whether the TVG application pre-dated the publicising of the planning application. If it had then it could not be a trigger event within the meaning of Sched.1A, at para 1. I have already dealt with trigger events in detail, and it is unnecessary that I repeat this.

143. Ms Waller submits that the refusal of the CRA to accept the first two submissions of the TVG application is no longer open to challenge on conventional administrative law grounds. It must follow, she submits, that the

planning application is a valid trigger as it pre-dated the date when the TVG application was accepted by the CRA. Were it not for the *Church Commissioners'* case it is possible that she could be right about this. I also see the force in Ms Waller's submission that third parties may have wished to become involved in the application if they had fully appreciated the true extent of the land available for registration. I am though satisfied that a combination of the submissions about trigger events contained in Ms Waller's closing submissions and those made within Ashford's letter deal fully with trigger events from the objector's standpoint and I do not see that any real prejudice has arisen as a result of the late disclosure that some of the planning application land remains available for registration. It is also noteworthy that Ms Waller does not question the accuracy of the CRA's plan at paragraph 34.

144. Ms Waller deals with the elements necessary to justify registration. Clearly all must be strictly proved.

145. She starts with the need to demonstrate that the TVGAL has been used by a significant number of the inhabitants of any locality. In the first instance, Ms Waller accepts that Grove Ward is a qualifying locality in law. She also says that a "significant proportion" of the users live outside Grove Ward. What she means is that a number of people use the land who may not be resident within the Ward. She mentions the following users: (i) Mr Whiffen's daughter who very probably exercises or assists in the exercise of birds of prey over the land; (ii) informal gatherings of students from the local 6th Form College; (iii) by witnesses who say they had seen others using the land whose names and addresses are unknown; and (iv) by residents of Southwick and North Bradley (neither of which lie within Grove Ward) or those who cross the application land to walk to or even beyond these settlements or indeed elsewhere.

146. Ms Waller also points to the limited weight which should be attached to the evidence of petitions. I am reminded that I should also be conscious of double-counting where the same witness has put in more than one statement in the course of the application.

147. Use of the land: under this heading Ms Waller deals with a number of matters. I am invited to treat with caution the user evidence for various reasons which include: (i) the fact that access to the TVGAL is via the trigger event land; (ii) that most of the written evidence does not distinguish between use of the trigger and non-trigger land; (iii) the difficulty in even distinguishing the application land from the trigger land in the absence of division on the ground; (iv) the probability that user mostly occurred within the trigger land as it is nearest to where people live (Ms Waller points to the fact that Mr Keltie said that the application land was more remote and that most people only used the "top part"); (v) the Williams' survey was limited to observations from the stile at point 4 (which is within the trigger land) of people entering the trigger land at the three main access points (5, 6 and 7); and (vi) (as I infer from the way this is put by Ms Waller) the colouring on the Working Plan was suggestive of the evidence which would count to justify registration and that which would not be material for these purposes (Ms Waller says this: "… witnesses were given a significant degree of assistance in framing their recollections").

148. Ms Waller also attached great weight to the absence of photographs showing LSP taking place on the TVGAL.

149. Ms Waller also dealt with the flooding issues arising from CRA/20 (she refers to the Flood Zone Map at p.26 above) and the evidence of Cllr Hill. Her submission is that the land shown within the flood zone would not be registrable as it was incapable of use for a significant portion of the year. It will be recalled that Cllr Hill also dealt with the flooding issue. It was his evidence that only around 80% of the application land was (in effect) available for all-year-round use owing to flooding issues.

150. Next, Ms Waller deals with the suitability of the land for LSP (outside the flood zone). First, reference is made to the wet ground conditions; second reference is made to the farming activities (growing grass and grass cutting operations and grazing cattle) which continued throughout the whole of the 20 year period.

151. Ms Waller says that most of the witnesses speak of the wet ground. She also dealt with the evidence that the public's use of the land for LSP would have been constrained (dogs had to be walked on leads) when there were cows grazing in the field.

152. Ms Waller cautions me to bear in mind that the current post-COVID use may not be the same as occurred in the period before the lockdown. She mentions that Mr Jones referred to the fact that "a remarkable amount of people" started using the fields during the lockdown. Mr Goodship also referred to an "explosion of use post-COVID". Ms Waller says I should not assume that the intensity of use post-COVID was the same as it had been before-hand.

153. Ms Waller helpfully sets out at 8.1 and 8.2 what might usefully be said to be the necessary ingredients of prescriptive use. Such use must neither be trivial nor occasional but must pass the threshold of being of sufficient quantity and of a suitable quality and how it would, when assessed objectively, have appeared to the owner (this is not a case where any of the three vitiating elements are relied on by the objector).

154. As part of the LSP analysis, it becomes necessary to consider whether the claimed use would in fact be referable to the exercise of existing, or the potential acquisition of new, public rights of way rather than rights sufficient to support a TVG application. Ms Waller cites from my report dated 19 November 2020 at pp.4-6 in the TVG application for the same CRA involving land at *Church Field, Hilperton under ref: 2017/01* where I deal at length with the law under this head in cases where there is heavy usage of paths around the perimeter of or crossing large fields (whether shown on the Definitive Map as PROWs or in the case of informal paths).

155. Ms Waller also submits, correctly, that use of PROWs should be discounted as it is use *by right* and not *as of right* (DPP v Jones [1999] 2 WLR 625).

156. Ms Waller goes on to submit (and I think this must be the substance of her submission about this) that the use of unrecorded tracks will generally only establish public rights of way *unless* the use is wider in scope, or the tracks

are of such a character that use of them cannot give rise to a presumption of dedication at common law as a public highway. Where there is any doubt about the matter, the inference should be drawn of the exercise of the less onerous right rather than the more onerous right to use the land as a TVG. Clearly the use must have been sufficient to bring to the attention of a reasonable landowner that a right is being asserted against him.

157. At paragraphs 8.7.1 through to 8.7.14 Ms Waller helpfully sets out the oral evidence which she has noted (in the case of all those who support the application to register) supports her submission at 8.8 that "the vast majority of people kept to the paths (either the PROWs or putative public rights of way)." She says this is supported by the images repeatedly shown on *Google earth* during the qualifying period as well as the presence of cattle in the field, the seasonal grass crop and the wetness of the land.

158. Ms Waller also makes the point that, as a narrow field, the TVGAL lies within a network of PROWs which enable local people to access the countryside or walk from one settlement to another. It is not as if the TVGAL includes within its boundaries a circular walk. What I understand Ms Waller to be saying is that, in the absence of the trigger event land, the TVGAL could not sensibly be said to be a destination in itself for LSP as, for instance, might be the case if it contained a circular walk. She says that any use of the TVGAL for walking would be "pure PROW or putative path use and must be discounted". She says that the use of the paths would not have alerted the landowner to a right to indulge in LSP across the whole of the application land. It is, Ms Waller says, improbable that a landowner would interfere with PROW-type use in the countryside which he cannot prevent.

159. Ms Waller's next point is that once the use of the PROWs and other paths is discounted any other use of the application land is too trivial or sporadic to justify registration. She mentions other claimed recreational uses. Ms Waller mentions under this head golf (by just one person, now deceased), ball games, building snowmen, camping by local children, landing and taking off of para-wings, hot air balloons and use by an air ambulance, flying model aircraft, berry-picking and foraging in hedgerows, kite flying, the flying of

drones, the scattering of ashes, riding trail bikes, astronomy by Mr Clews at Gate No.2 on the Working Plan and teenagers congregating on site.

160. Ms Waller analyses each of the uses mentioned above. In broad terms she says that if they occurred, as described, on the TVGAL they were too trivial or sporadic to justify registration. Ms Waller also cites the very low quality of the evidence adduced by the applicant in dealing with these activities. She questions where, when and how often they took place and who was involved. She says the evidence lacks precision. She does not accept that the applicant has strictly proved his case when it comes to qualifying activities taking place on the TVGA land, albeit outside the PROWs and the emergent paths, or that it carried the outward appearance of use as of right.

161. Finally, she reminded me that it was common ground that the parcels shown coloured blue on the Working Plan were no longer available for registration. She also says that this would also include the area within which cattle were corralled close to the blue parcel on the western side of the TVGA land which, as she puts it, is highly unlikely to have been used for qualifying LSP.

Discussion

Some general points to be noted when looking at evidence in TVG cases

162. As a general rule considerably less weight should be attached to the evidence of witnesses who do not give oral evidence. This is principally because the objector will not have had an opportunity to test this evidence by cross-examination.

163. This is of importance in this case as (i) the TVGAL has been much reduced in size since the application was originally made owing to the removal of the trigger land (little, if any, of the written evidence concerned trigger events), and (ii) the arrival, only after the inquiry had closed, of the CRA plan on p.10 above which identifies with reasonable precision the true extent of the land available for registration.

164. I also have to bear in mind that the recollection of events over 20 years is not straightforward or often reliable. Twenty years is a long period. Recollections may dim, or more likely run into one another. The position is aggravated in this case by the COVID lockdowns after March 2020 which resulted in a higher than usual level of use of open spaces for exercise by local inhabitants otherwise confined to their homes. This has meant that, in their recollection of past events, there is a risk for witnesses to believe that their activities have been carried on longer and/or more often and/or more continuously than they really have. It is worth noting that Mr Goodship said that there had been an "explosion of use post COVID". Ms Waller is right when she says, in effect, that it cannot be assumed that the post-COVID level of use was the norm during the qualifying period.

165. Where one is dealing with land in the countryside served by a network of PROWs and informal paths which are available for use by individuals' resident outside the locality, it is unsafe to assume that all or even the majority of those who use the land are necessarily local inhabitants living within the chosen locality. Ms Waller is therefore right to remind me of the very real possibility that a significant number those who use the land for LSP may well live outside Grove Ward. Those she mentions include students from the local 6th Form College and residents of Southwick and North Bradley (neither of which lies within Grove Ward). I might further add that, as a matter of law, an applicant must prove that the TVGAL is used predominantly (rather than exclusively) by those who live within the qualifying locality (*R v Oxfordshire CC, ex parte Sunningwell Parish Council* [2000] 1 AC 335).

166. I always bear in mind that where strong emotions are raised by an application, as is the case here, memories and recollections may be unconsciously coloured or distorted, especially where a group of people with a common interest are involved.

The statutory test for registration

167. The application must be tested against the criteria for registration contained in section 15(2) of the CA 2006, namely whether a significant number of the inhabitants of Grove Ward in Trowbridge (which is agreed to be a qualifying locality) have indulged as of right in LSP on the TVGAL during the relevant 20 year period ending in January 2020.

The TVGAL and its context

168. We are dealing with a 5-acre parcel located within a much larger field (the lower field). The southern boundary of the TVGAL is bounded by a hedgerow. There is no physical division with the adjoining land on its northern side, albeit within the same field. The applicant's witnesses therefore had to give evidence of their use of only part of the lower field by reference to the land shown coloured dark green on the Working Plan (later adjusted, of course, by the CRA plan which none of the witnesses saw at the inquiry) and on the basis of assumptions which they were entitled to make based of their obvious knowledge of the lower field.

169. The TVGAL is very wet and prone to flooding. In places it is virtually unusable for ordinary walking when ground conditions are very wet without wellingtons or robust walking boots. It was the evidence of Cllr Hill that the NW areas of both fields is prone to "flood and waterlogging on a bi-annual basis" when it is unusable for anything, even for farming. It was his view that 20% of the TVGAL lies within a flood zone and was unusable for around 5-6 weeks per annum (I think this is an under-estimate). He said that even outside this period you would still need to use adequate footwear. He said that only around 80% of the TVGAL would be available for all-year-round use.

170. It was obvious on my accompanied site visit that the ground was saturated. This is bound to be the case during periods of high rainfall. This was, I think, more apparent nearer the watercourses which adjoin the upper and lower fields.

171. The upper and lower fields are crossed by the PROWs shown on the Working Plan. The tracks on the ground, including the perimeter path, appear to me to be popular walking routes as the ground is trodden down and evidently well used. The access points, both within the cross-field fencing and at the openings on the northern edge of the upper field, are generally muddy and also well-used.

172. Access to the TVGAL is generally via the upper field and the entry points at 5, 6 and now 7 (which is via the kissing gate off Boundary Walk), and the crossing points at points 3, 4 and 1 are shown on the Working Plan. I doubt whether many people access the TVGAL at point 1 from the direction of Axe and Cleaver Lane.

173. What this means in practice is that access to the TVGAL is generally via the trigger event land. Although walkers from the settlements of Southwick and North Bradley are also able to access the TVGAL at point 2 the inquiry heard little or no evidence about this and I rather doubt whether the volume of such use is significant in practice.

174. As Ms Waller rightly says, most of the written evidence does not distinguish between use of the trigger and non-trigger land. Although she says that, in the absence of division on the ground, there is difficulty in distinguishing the TVGAL from the trigger land, I doubt whether this is as difficult as she thinks it is in the case of those who are as familiar with these fields and the applicant's oral witnesses obviously were.

175. There is no circular walk (or walks) within the TVGAL. What we have is (i) a cross-field PROW between points 2/4 (SWCK3), and (ii) a portion of the circular path running around both fields, a section of which (judging by the Working Plan) runs alongside another PROW (SWCK1). Although the *Google earth* images on pp.23-24 above, appear to show feint tracks running on the southern side of the cross-field fencing I doubt whether these are likely to be material as they fall outside the TVGAL (other than at the western end where the position is not clear-cut). Mr Swanney refers to these (yellow) tracks on his plan on p.23 above as internal paths running either side of what he

describes as the remains of the fencing. This is an interesting plan as it shows three paths running around the southern edge of the TVGAL whereas I could see only a single perimeter path running around both fields. It is perfectly possible, of course, that if the main path running around the outside of these fields (what Mr Swanney calls the “principal circular path”) gets too muddy walkers might choose to walk on one side or other of it leading to the formation of a new path or paths.

176. In my view, the path shown running around the perimeter on the Flood Zone Plan produced by the Environment Agency in 2014 (p.26) is probably a more reliable representation of what exists on the ground at the moment and is certainly consistent with the other aerial images which are to be found at CRA/68-71. The last image is helpful as the paths are more distinct as they probably show flattened paths within growing grass. This image from 2020/21 shows a principal perimeter path running around both fields although one can see an offshoot from it which takes you to point 2 where it links up with the rest of the PROW network to the SW of the lower field. One also observes on the same image another offshoot path running south between point 3 and a gateway which is not marked on the Working Plan which is within the area prone to flood and waterlogging mentioned by Councillor Hill and is, I think, unlikely to be material to the application.

177. The result of all this is that within the TVGAL there now exists, and is likely to have existed throughout the qualifying period, (i) a usable cross-field PROW (SWCK3) running between points 2, 4 and 6, (ii) another PROW (SWCK1) running to point 3 and beyond exiting the upper field at point 5, and (iii) a section of the circular path running around the perimeter of both fields.

178. I am also inclined to agree with Ms Waller that walkers on short walks or those intending to use either field for kite flying, ball games or the like which do not involve walking, with or without dogs, are more likely to have done so on the upper field which is nearest to where people live. In my view, both fields are available for short and longer walks and little else outside agriculture although the very limited use for only a few weeks each year picking

blackberries or foraging in the hedgerows running around the lower land is, I think, too trivial an activity to justify registration.

179. I should also mention the condition of the TVGAL away from the perimeter path or paths. In the first instance, I accept what Mr Rhys says when he describes the surface as being very uneven and deeply pitted which he attributes to the fact that cattle have grazed on these fields for prolonged periods over many years until this ceased in 2019. In the second, I find that the flood plain area identified on the image on p.20 and on the Flood Zone Map at p.26, in conjunction with Councillor Hill's evidence about this and the photo p.21 above, would have meant that such land is unlikely to have been used with any regularity by local residents to justify registration. I therefore find that, for the most part, the land lying outside the paths, although available for recreation, is unlikely to have been used for such purposes to any great extent other perhaps than only occasionally when the ground conditions were dry enough to allow this to take place. However, I can see that dogs might wander off the main path or paths and their owners might even follow them from time to time, but I cannot see that this would be enough to justify registration.

Use by the objector

180. The TVGAL was a place where cattle were grazed between around June-September each year (and until October if it was dry). Mr Rhys (whose evidence about this I accept) said that there could be as many as 60-80 cattle grazing on both fields every year. Most of the applicant's witnesses said that they kept away from the grazing cattle and kept their dogs on a leash. It seems probable that people using the TVGAL, and especially if they were walking dogs, would have walked mainly around the perimeter path whilst cattle were grazing in the lower field.

181. Mr Rhys also said (and I also accept his evidence about this) that the grass was cut in June each year and that before cutting the grass stood at around 3 feet. He also accepted that residents were respectful of the grass crop in the growing season until the grass was cut, turned and baled in June each

year. It must follow from this when the grass was growing between say March and June each year residents using the TVGAL are likely to have kept to the paths at the margins of the lower field and to the PROWs which crossed it where the grass would have been flattened.

The oral evidence of those using the TVGAL

182. Ms Waller contends that the vast majority of users kept to the paths (be they PROWs or informal paths). She helpfully analysed the evidence of the applicant's witnesses and I set out below the extracts from her closing submissions where she dealt with this.

> 8.7.1 Cllr Hill explained that he uses footpaths to cross the site to visit family in North Bradley. Cllr Hill stated "In all honesty, I don't leave footpaths when crossing the site."
>
> 8.7.2 Mr Clews stated that he walks various circuits extending to the southern part (i.e. the TVG Application Land). Whilst Mr Clews noted that he would leave the path for various reasons, he confirmed that the family walk with the dog on the path. He also confirmed that a significant amount of the general use of the TVG Land was walking on paths.
>
> 8.7.3 Mr McCartney would often walk straight across the fields usually and into Southwick Village. If he was using the land on his own, he would stick to the path. The only time we diverted from footpaths was to get around waterlogged areas. Mr McCartney also said that he kept to paths or the more circuitous route for dog walkers (the perimeter path). With children, Mr McCartney said that he would walk extensively. However, this still appeared to be linear walking following the trodden paths on the TVG Application Land. Examples of deviating from the path included "impromptu races" ("race you to the next stile") and taking a football to "boot it ahead" to give kids a point of interest. Both of these examples would broadly follow the route of a trodden path and would be incidental to the path-based walking use.
>
> 8.7.4 Mr McCartney confirmed that people mainly stick to the paths.
>
> 8.7.5 Mr Steven's regular walk would be around the perimeter path during which walks he would pass 10 people or so when walking the path. Mr Stevens noted that the dog goes where it wants and then he had to go and get it back.
>
> 8.7.6 Mr Stevens confirmed that dog walkers mainly stick to the paths as do people with younger children.
>
> 8.7.7 Mrs Hunt confirmed that her use of the TVG Application Land was mainly walking for pleasure with dogs, mainly on tracks and mainly on western side of the TVG Application Land. Mrs Hunt predominantly saw other people using the paths.
>
> 8.7.8 Mr Goodship stated that he would jog or walk the fields. If he wants a quick walk, he will use the PROWs. For a longer walk, he would use the perimeter path. People walking dogs would sometimes be on the path, sometimes not.
>
> 8.7.9 Mr Whiffen used the TVG Application Land to exercise dogs walking to Southwick and back. Mr Whiffen and his daughter tend to enter the Trigger Land at one of the

three entrances to the north (or sometimes access point 1), walk closer to the stream than the perimeter path shown on the OS map but would follow the path round from 6 down to 3. Mr Whiffen clarified his evidence on cross examination to confirm that a quick walk would be a circular walk whereas a longer walk would take him through the TVG Application Land towards Southwick and then back along Axe and Cleaver Lane.

8.7.10 Mr Jones has used the TVG Application Land for walking with or without dogs. He would walk on the perimeter path and would often go beyond the TVG Application Land to Southwick. He would walk on the paths and perimeter but would end up having to follow the dog in some cases.

8.7.11 Mr Jones noted that when he saw other people using the TVG Application Land it was primarily for walking. Mr Jones also agreed to the Inspector's question that most people were sticking to established pathways or the perimeter path.

8.7.12 Mr Keltie typically accesses the Trigger Land at Westmead Crescent, walks down to point 4 and then into the TVG Application Land. Mr Keltie uses the route as part of a "loop" around the solar farm and back in at point 1 (Axe and Cleaver Lane). Mr Ketlie would also walk to the area shown blue on the working plan and walk around the circumference. Mr Keltie would leave the path to walk around cows or to throw a ball for the dog.

8.7.13 Mr Keltie noted that a lot of dog walkers tend to do circular walks or use the PROW as a transit route. He also noted that people kept to the paths.

8.7.14 Mrs Dennis said that she mainly stuck to the established paths on the ground but would also forage in the hedgerows.

183. I accept these notes and they are consistent with my own notes of the evidence as set out above. It seems obvious to me that the predominant use of the TVGAL is by walkers, with or without dogs, and, for the most part, those who gave oral evidence mainly used the established paths. As indicated above at 8.7.11, Mr Jones accepted that most people "were sticking to the established pathways or the perimeter path".

Is use of the paths qualifying use?

184. Ms Waller has dealt with this point at length in her closing submissions under the heading: "Use of Public rights of way and Emergent Routes" (8.3 *et seq*).

185. Firstly, the use of PROWs must be discounted as it is use *by right* and not *as of right*. The public have a right to use a PROW provided the right is exercised reasonably or does not obstruct other users.

186. Secondly, difficulties arise where the predominant recreational use involves the use of paths, such as would have appeared to a reasonable landowner to be referable to the exercise of existing, or the potential acquisition of new,

PROWs rather than rights sufficient to support registration. I dealt with this at length in my report to the CRA on the *Hilperton TVG application* in 2020, parts of which are cited by Ms Waller.

187. The law is, I think, over-complicated on this question but it seems to me that the overview of the law by the late Vivian Chapman QC in the *Radley Lakes TVG application* (13/10/2007) is on point. What he said was that the issue in such cases is whether the use would appear to a reasonable landowner as referable to the exercise of a right of way along a defined route or to a right to enjoy recreation over the whole of a wider area of land. If the appearance is ambiguous, then it shall be ascribed to a lesser right, i.e. to a right of way.

188. It seems plain that where a path or paths are merely being used for walking (whilst say walkers' dogs run all over the land) it would *not* normally count as it could not then be said that walkers were using the TVGAL as a whole for LSP. The question then is whether what is left would be qualifying LSP and, if it was, whether it would still be too trivial or sporadic to justify registration?

189. I find that the nature, duration and quality of the uses relied on in the case of other recreational activities (other than walking with or without dogs) is insufficient (either in individual uses or collectively) to justify registration. This is clearly a major deficiency when it comes to the untested written evidence. Put another way, have local inhabitants been using the land off the paths as if they had a right to do so. I very much doubt this. In my view, the activities outside the paths were very probably far too trivial to be relied on and are likely to have been incidental to the primary use of the paths. It is difficult to see how, in light of the quality of the oral and other evidence, it would appear to a reasonable landowner that what was happening off the paths was sufficient enough in terms of its nature, duration and quality to justify a finding that users were acting in a way that was comparable to the exercise of an existing right.

190. The applicant's witnesses have, in my view, also failed to differentiate clearly whether the various non-dog-walking activities take place on the TVGAL or elsewhere on lower land or even on the trigger land. This is hardly surprising

when the application, when first made, extended to both fields and the earlier written evidence should clearly be viewed in this light and, as a consequence, must surely have limited weight. It is always worth reminding ourselves that qualifying use "must be properly and strictly proved" (see Pill LJ in *R v Suffolk County Council, ex parte Steed* [1997] 1 EGLR 131). In my view, the applicant has failed to discharge this burden.

191. I also accept the broad conclusions of Ms Waller about this, under the heading "Other claimed Recreational Uses", at paras 8.30-31 where she says as follows:

> 8.30 In addition, there have been a number of other recreational uses which have been claimed. None of the claimed uses are sufficient in terms of duration, nature or quality to support registration of the TVG Application Land. The uses are either incidental to the primary path-based use of the land or are too trivial and sporadic to give the outward appearance of use as of right (whether considered collectively or otherwise).
>
> 8.31 Further, the evidence lacks precision. The evidence does not demonstrate that the user was of such a character, degree and frequency as to indicate an assertion by the claimant of a continuous right, and of a right of the measure of the right claimed.

192. At paras 8.35 to 8.75 Ms Waller identifies a number of non-walking activities and I adopt below the headings which she uses.

(i) *Golf*: this use was carried out by one resident, now deceased. The frequency of such use is unclear or even where or when it took place. It would be impossible to say that such use amounted to the assertion of a right to use the land for hitting golf balls.

(ii) *Football, rugby, ball games and throwing frisbees*: Ms Waller says that Mr Stevens, Mr McCartney and Mr Jones mentioned ball games, but it was obviously very limited. The growing grass and the presence of cattle in the field for months at a time were also a handicap to regular ball games which, as I find, would have been infrequent and insufficient to justify registration even if it had occurred on the TVGAL which is far from clear as I think that the trigger land would have been a better place for ball games.

(iii) *Building snowmen*: there were no photos or any evidence showing how often it snowed which is likely to have been infrequent. I suspect that this activity occurred too infrequently to be relevant.

(iv) *Camping*: Ms Waller notes that this activity was only relied on by Mr Swanney and has not been repeated by other witnesses. It is unclear whether it was in fact mainly children who lived within the locality who were camping. It only happened once and the youths in question left when challenged leaving some of their belongings behind them. Again, this use lacks sufficient quality to be relevant.

(v) *Landing and taking off of para-wings, hot air balloons/air ambulance*: only Mr Swanney mentions this and even if it occurred it is doubtful whether these activities gave rise to qualifying use by local residents.

(vi) *Flying model aircraft*: Ms Waller notes that a number of witnesses mention a person flying model aircraft. Such use is, as I find, likely to have taken place on the trigger land.

(vii) *Picking berries and foraging in the hedgerow*: I doubt whether such use on the outer margins of the TVGAL for a few weeks each year would be material and can, I think, be viewed only as incidental to the use of the perimeter path rather than to the assertion of a public right extending to the whole of the TVGAL.

(viii) *Kite flying*: Ms Waller notes that Mr Jones indicated that kite flying took place on the trigger land in the middle of the field rather than on the TVGAL. Although Mr McCartney said that he flew kites on both the upper and lower land, there was no evidence as to how often this took place. Ms Waller also noted that Mr McCartney's children would have been adults at the start of the qualifying period and now have children of their own. Therefore, as she puts it, the period when Mr McCartney may have flown kites is uncertain. She says the evidence about this lack's precision. I agree. Moreover, Mr McCartney himself said that he found it difficult to distinguish between use on Trigger Land and TVGAL. Mr Keltie said that he had flown kites on the TVGAL about 6 times a year with his grandchildren. Mr Rhys disputed the location of the kite flying suggested by Mr Keltie on the ground that the area indicated by Mr Keltie is constrained by trees and hedges whereas the trigger land is not. Whoever is right about this, it seems to me that if kites were flown on the

TVGAL it would have occurred infrequently and is more than likely to fail, as Ms Waller puts it, the quality of user test, and would not justify registration. I tend to agree with Ms Waller when she says that kite flying is more likely to have occurred on the trigger land close to the housing.

(ix) *Drone flying*: this was mentioned in the written evidence but no evidence was given as to the frequency or place where this activity occurred which I consider to be irrelevant for present purposes. Ms Waller questions whether such use would even have been lawful.

(x) *Trail bikes*: a single reference is made to use of the land by trail bikes in the application. No reference was made to bike riding on the TVGAL at the inquiry. I agree with Ms Waller that no evidence has been provided to support this claim.

(xi) Astronomy at Gate 2: Mr Clews stated in his oral evidence that he engaged in astronomy at Gate 2 owing to the low levels of little light pollution at this point. No details were given about the frequency of this activity. I agree with Ms Waller when she says that because it took place under the cover of darkness, it would probably not have carried the outward appearance to a reasonable landowner of a use being asserted as of right.

(xii) Gatherings on site: some witnesses refer to gatherings of teenagers on the TVGAL listening to music and drinking. In his evidence Mr Rhys said that his only knowledge of this use was that it had occurred outside the TVGAL. I doubt whether this activity is in truth qualifying LSP but even if it was, I doubt whether it took place often enough to justify registration. There is also the question of who attended such gatherings and were they qualifying local inhabitants. The evidence under his head lacks precision and I doubt whether much reliance, if any, can be placed on it.

193. My conclusions on the user evidence are these:

(i) Use of the TVGAL by qualifying inhabitants has mainly been confined to the use of paths for walking, with or without dogs, which would not have been a qualifying use as it would have appeared to a reasonable landowner

as referable to the exercise of a right (or rights) of way along a defined route (or routes).

(ii) Any use of the PROWs located within the TVGAL will not count as a qualifying use as it would involve use *by right* and not *as of right*.

(iii) The applicant has also failed to prove that other claimed recreational uses were sufficient, in terms of their quality and quantity, to justify registration, nor would it have appeared to a reasonable landowner that users were asserting a right to use the TVGAL for recreation.

(iv) The applicant has been unable to demonstrate that, for all practical purposes, it could sensibly be said that the whole of the TVGAL had been used for LSP for the relevant period.

(v) The applicant has also failed to prove that the areas outside the paths on the TVGAL were, throughout the whole of the qualifying period, even suitable for informal recreation owing to (i) the wet ground conditions; (ii) the presence of grazing cattle; (iii) the condition of the ground (which is uneven and deeply pitted) by reason of the presence of grazing cattle for prolonged periods over many years; and (iv) the growing grass crop in the period March-June each year and the limitations to which this is bound to have given rise in walking outside the paths (if the grass crop was to be respected).

Recommendation

194. In light of the above discussion, I recommend that the application to register the TVGAL (proceeding under application number 2020/02 TVG) should be ***rejected*** on the ground that all the criteria for registration laid down in section 15(2) of the CA 2006 have not been satisfied.

195. The CRA must give written notice of its reasons for rejecting the application. I recommend that the reasons are stated to be “the reasons set out in the Inspector’s report dated 9 February 2024”.

William Webster

3 Paper Buildings

Temple

Inspector **9 February 2024**

APPLICATION TO REGISTER LAND KNOWN AS SOUTHWICK COURT FIELDS AS A TOWN OR VILLAGE GREEN.

ADVICE

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1. I am asked to advise Wilshire Council ("the Council") in its capacity as commons registration authority ("the CRA").
2. I have been asked to advise the CRA in respect of its determination of an application to register as a town/village green land at Southwick Court Fields, located in the parishes of Southwick and North Bradley, Trowbridge.
3. That application has been given a reference 2020/02TVG by the CRA.
4. There is a lengthy procedural history to this application which is relevant to the matters I am asked to advise upon. It is necessary for me to set out a summary of that procedural history in this advice.

Application made on 13 January 2020

5. On 13 January 2020, an application was made to the CRA under s.15(2) of the Commons Act 2006 to register as a town/village green, land at Southwick Court Fields, Trowbridge. The application was made by Mr Norman Swanney and was dated 13 January 2020.
6. The application was acknowledged as having been received by the Council by letter of 13 January 2020. No identification number was given in respect of that application, at that stage.
7. The Council thereafter made enquiries of planning officers within the Council and of the Planning Inspectorate ("PINS") concerning whether any trigger event had occurred in respect of the land sought to be registered as a town/village green. On 19 February 2020 both PINS and Mr. Geoff Winslow, of the Council's Spatial Planning Team, responded to the enquiry made of them. Both stated that a trigger event had occurred, but no corresponding terminating event had occurred, in respect of the relevant land. The trigger event identified by both the Spatial

Planning Team and PINS was the trigger event set out in para.3 of the Schedule 1A of the Commons Act 2006 and it concerned the allocation of land for development in the emerging Wiltshire Housing Site Allocations Plan.

8. That there was a trigger event, and no corresponding terminating event, was accepted by the CRA. On 24 January 2020, the CRA wrote to Mr. Swanney to inform him that a trigger event was in place when he made his application on 13 January 2020. In that letter, the Council said as follows:

> "The land at Southwick and North Bradley subject to the Town/Village Green application, forms part of an allocation for development (Site H2.6), as set out in the draft Wiltshire Housing Site Allocations Plan (WHSAP). The WHSAP has been through a public consultation and extensive preparation process resulting in an independent examination process conducted by a Planning Inspector appointed by the Secretary of State. The Inspector's report concluded that subject to a series of recommended main modifications being made, the WHSAP (including the allocation of Site H2.6) is sound and legally compliant. The Inspector's Report was considered by Cabinet on 4 February and a report with a recommendation to formally adopt the WHSAP, will be presented to the Council at a Full Council meeting on 25 February.
>
> Therefore, planning trigger event 3, as defined in Schedule 1A of the Commons Act 2006 has been engaged and where there has been no terminating event, the application **cannot** be accepted and progressed to determination.
>
> I therefore return your application. A copy of the application form and plan is attached to the emailed copy of this letter and your original application in full will be returned to you by post. I understand that this will be very disappointing for you, however, until this trigger event is terminated it will not be possible to apply to register the land under section 15 of the 2006 Act." (emphasis as original)

9. The 13 January 2020 application was returned.

Application made on 11 June 2020

10. By letter of 11 June 2020, Mr. Swanney submitted a further application form for the registration of Southwick Court Fields as a town/village green. The application was made under s.15(2) CA 2006.
11. Mr. Swanney, in his letter of 11 June 2020, states that he was "re-submitting" his application. The application form sent to and received by the CRA on 11 June 2020 was dated 13 January 2020.

12. Confirmation of the receipt of the application sent on 11 June 2020, in electronic form, was given by the CRA to Mr. Swanney on 12 June 2020. Confirmation of the receipt of the paper copy was given by the CRA to Mr. Swanney on 22 June 2020.
13. No identification number was given at this stage in respect of the application.
14. As before, the CRA undertook checks with PINS and with its planning officers concerning trigger and terminating events.
15. The response from the Council's development control team (email of 23 June 2020) confirmed that "... an outline planning application for residential development on a large part of the site was received on January 15th 2020. ... So if the application to register the land as a VG was received after January 15th, it would be my view that a trigger event has occurred." It appears that the application for outline planning permission was first publicised in accordance with the relevant statutory procedures on 17 January 2020 (see Inspector's report para.16). The Council's Spatial Planning Manager, Geoff Winslow, responded to the CRA by letter of 1 July 2020. In that letter, Mr. Winslow stated as follows:

"Having considered the application I am writing to confirm that trigger point 4, as defined in Schedule 1A to the Commons Act 2006 has been engaged.

The land, the subject of the above application, forms part of an allocation for development (Site H2.6) set out in the Wiltshire Housing Site Allocation Plan (the WHSAP) which was formally adopted by the Council on 25 February 2020.

..."

16. On 7 October 2020 the CRA wrote to Mr. Swanney. In the CRA's letter, it was stated as follows:

"The land at Southwick and North Bradley subject to the Town/Village Green application has been allocated for development within the Wiltshire Housing Site Allocations Plan (WHSAP) The WHSAP was formally adopted by Wiltshire Council on 25th February 2020. The adoption of the WHSAP was not challenged through the courts and hence the document is recognised as forming part of the development plan for Wiltshire. It is therefore concluded that trigger point 4 as set out at Schedule 1A of the Commons Act 2006 has been engaged.

Additionally, planning application no.20/00379/OUT, an outline planning application for residential development, received on 15th January 2020, affects a

large part of the site. The planning application pre-dates the town/village green application and is not yet determined, therefore trigger event point 1 as set out at Schedule 1A of the Commons Act 2006 is also engaged over that part of the land.

I am therefore returning your application. I do of course understand that this decision will be very disappointing to you, however, until these trigger events are terminated by a corresponding terminating event, (please see Schedule 1A of the Commons Act 2006), it will not be possible to apply to register the land as a town/village green under Section 15(1) of the 2006 Act."

Application received on 30 November 2020

17. By a letter of 29 November 2020, Mr. Swanney sent to the CRA further application.
18. The completed application form appears to have been identical to the form sent to the CRA by Mr. Swanney on 13 January 2020 and again 11 June 2020, save that the date, included in section 11 of the form of 13/1/2020 is struck through in manuscript and a further date of 23 January 2020 has been added.
19. The CRA corresponded with the Council's planning department and with PINS, as before. On 14 December 2020, Mr. Wilmott, Head of Development Management at the Council, wrote to the CRA by email to confirm that the application for outline planning permission submitted in January remained before the Council. In the same email Mr. Wilmott referred to the adoption of the WHSAP in February 2020, for which there had been no corresponding terminating event. Mr. Winslow, on behalf of the Council's Spatial Planning department, replied on 11 March 2021 confirming that a trigger event had occurred with no corresponding terminating event. The trigger event referred to by Mr. Winslow appears to be the allocation of land by the Wiltshire Housing Site Allocations Plan (WHSAP).

20. On 6 May 2021 the CRA wrote to Mr. Swanney as follows:

"Further to the resubmission of your application to register land known as Southwick Court Fields (Southwick and North Bradley Parishes), as a Town or Village Green (TVG), Wiltshire Council, as the Commons Registration Authority (CRA), has now received replies from the relevant Planning Authorities following consultation regarding planning "trigger" and "terminating" events in relation to the land. It appears that there are planning trigger events in place over part, but not all of the application land, which have the effect of extinguishing the right to apply to register part of the land as a TVG without relevant terminating events which would revive the right to apply.

DEFRA Guidance .... advises that where the exclusion applies to only part of the land, for the portion of the land not subject to the exclusion, the application should proceed as usual. Therefore, the application has been accepted in part and has been allotted application no. 2020/02TVG, received by Wiltshire Council on 29 November 2020. Please find enclosed notice of this in the form of "Form 6", with attached map showing the extent of land over which the application is accepted. ...

I note the representations in your email dated 29th November 2020 and I have attached a full reply regarding the issues raised as an additional document appended here.

...".

21. The application was thereafter allotted an identification number and was publicised in accordance with the legislative requirements. The landowner objected to the application. A non-statutory public inquiry was then held before an Inspector, William Webster, of counsel. Mr. Webster's report ('the Report") is dated 9 February 2024. He recommended that the land should not be registered as a town/village for reasons summarised in para.193 of the report, namely that it had not been shown that the land had been used for lawful sports and pastimes or for a sufficiency of lawful sports and pastimes so as to justify its registration in pursuance of Mr. Swanney's application.
22. The CRA has not yet reached a decision on the application.
23. I have been asked to consider various procedural matters arising from Mr. Swanney's application and the Inspector's consideration of these matters. However, before doing so, it is necessary for me to set out some of the legislation concerning the making and the determination of applications to register land as a town/village green.

Commons Act 2006 and the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007/457

24. By s.15(1) of the Commons Act 2006, "Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green ...". The two bases on which an application may now be made pursuant to s.15(1) are then set out within s.15(2)-(3).

25. Mr. Swanney's applications were each made under s.15(2) CA 2006. S.15(2) provides as follows:

"(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."

26. By s.15C(1) CA 2006, " The right under section 15(1) to apply to register land as a town or village green ceases to apply if an event specified in the first column of the Table set out in the relevant Schedule has occurred in relation to the land ("a trigger event")." The "relevant Schedule" is Schedule 1A of the CA 2006. By s.15C(2), the right to apply to register land as a town/village green becomes exercisable again when a terminating event, corresponding to a trigger event, occurs, as set out in second column in the table in Schedule 1A.

27. The procedure for the "making" of an application under s.15 CA 2006 and the procedure to be followed by a commons registration authority when an application is made is set out in the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007/457 ("the 2007 Regulations"). The 2007 Regulations are made pursuant to s.24 CA 2006. A different procedure applies in "pioneer authorities', which the Council is not.

28. Regs.4 and 5 of the 2007 Regulations provide as follows:

"**Procedure on receipt of applications**
4.—(1) On receiving an application, the registration authority must—
(a) allot a distinguishing number to the application and mark it with that number; and (b) stamp the application form indicating the date when it was received.
(2) The registration authority must send the applicant a receipt for his application containing a statement of the number allotted to it, and Form 6, if used for that purpose, shall be sufficient.
(3) In this regulation, *"Form 6"* means the form so numbered in the General Regulations.

Procedure in relation to applications to which section 15(1) of the 2006 Act applies

5.—(1) Where an application is made under section 15(1) of the 2006 Act to register land as a town or village green, the registration authority must, subject to paragraph (4), on receipt of an application—

(a) send by post a notice in form 45 to every person (other than the applicant) whom the registration authority has reason to believe (whether from information supplied by the applicant or otherwise) to be an owner, lessee, tenant or occupier of any part of the land affected by the application, or to be likely to wish to object to the application;

(b) publish in the concerned area, and display, the notice described in sub-paragraph (a), and send the notice and a copy of the application to every concerned authority; and

(c) affix the notice to some conspicuous object on any part of the land which is open, unenclosed and unoccupied, unless it appears to the registration authority that such a course would not be reasonably practicable.

(2) The date to be inserted in a notice under paragraph (1)(a) by which statements in objection to an application must be submitted to the registration authority must be such as to allow an interval of not less than six weeks from the latest of the following—

(a) the date on which the notice may reasonably be expected to be delivered in the ordinary course of post to the persons to whom it is sent under paragraph (1)(a); or

(b) the date on which the notice is published and displayed by the registration authority.

(3) Every concerned authority receiving under this regulation a notice and a copy of an application must—

(a) immediately display copies of the notice; and

(b) keep the copy of the application available for public inspection at all reasonable times until informed by the registration authority of the disposal of the application.

(4) Where an application appears to the registration authority after preliminary consideration not to be duly made, the authority may reject it without complying with paragraph (1), but where 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.

..."

29. I observe at this point, that the registration of land as a town/village green under s.15 CA 2006 is in response to an application made by a person. The obligation on a commons registration authority to process and to determine the application (as necessary) arises when an application is "made" (reg.5) and "received" (reg.4).

30. Neither the CA 2006 nor the 2007 Regulations set out any express procedure to be followed by a commons registration authority either to investigate whether a trigger or corresponding terminating event has occurred in relation to land which

is the subject of an application made and received in pursuance to s.15 CA 2006 nor what the commons registration authority should do if it concludes that a trigger event has occurred and thus the right to make an application has ceased to apply by reason of s.15C(1). Moreover, the legislation does not include any express provision as to the status of an application which has been made under s.15 and received by a commons registration authority, but it is subsequently determined that a trigger event has occurred in respect of all or some of the land which is the subject of the application.

31. It is clear enough however that the legislation requires a commons registration authority to reach a determination as to whether a trigger or corresponding terminating event has occurred; indeed, the DEFRA Guidance of December 2016 (para.73) confirms this.

32. It must follow from the legislative provisions that where an application under s.15 CA 2006 is made and received by a commons registration authority which the authority, following receipt, determines to be the subject of a trigger event (with no corresponding terminating event) in respect of *all* of the land the subject of the application, that application is not validly or lawfully made, since the right to make the application has "ceased to apply" by reason of the operation of s.15C(1). Thus, where a commons registration authority determines that such a trigger event has occurred affecting *all* of the land which is the subject of the application (and there has been no corresponding terminating event), it cannot lawfully proceed with the application or determine it. In such circumstance, and in practical terms, the commons registration authority should communicate this to the applicant (and others, as necessary or appropriate) and take no further action in respect of the application. In effect, once a commons registration authority has reached a determination that a trigger event has occurred and that an application is not valid, that brings that application to an end. The DEFRA Guidance (referred to above) generally accords with this approach in that, at para.75, it is advised that "if the right has been excluded for that land then the commons registration authority must refuse to consider the application". The Guidance continues at para.87 to advise that where there is a trigger event which affects all of the land

the subject of the s.15 application, "the application should not be accepted ..." (see also the Guidance at para.60).

33. Where a commons registration authority determines that a trigger event has occurred in respect of part only of the land which is the subject of an application made under s.15 and received by a commons registration authority (and where there has been no corresponding terminating event), then, in my view, the authority may proceed with and determine the application but excluding the area of land which is subject to the trigger event. That this is the case accords with the advice given by DEFRA at para.96 of the 2016 Guidance.

Procedure when an application made under s.15 CA 2006 is received

34. The first point I am asked to address is the procedure required to be followed by a commons registration authority when an application is made by an individual under s.15 CA 2006 and is received by the authority.

35. In non-pioneer areas, the procedure is set out in reg.4 of the 2007 Regulations. Regulation 4, which is headed "procedure on receipt of applications" provides that "on receiving an application" the registration authority "must":

    a. "allot a distinguishing number to the application and mark it with a number; and
    b. stamp the application form indicating the date when it was received".

36. By regulation 4(2), the commons registration authority "must" then send to the applicant a receipt containing the number allotted to the application (whether in the form of Form 6 or otherwise).

37. Regulation 4 is clear; a commons registration authority is required to take the steps set out in regulation 4 upon receipt of an application whether or not the authority takes the view that the application has been duly made (about which, see below) and no exception to this obligation is made to allow for the authority to complete checks required to determine whether a trigger event and terminating event has occurred. CRA here adopted a different approach in respect of the January 2020 and June 2020 applications and did not allot a number to those

applications upon receipt, pending completion of the trigger event check; it was wrong not to have done so.

38. To the extent that the DEFRA Guidance of 2016 at para.87 advises that a commons registration authority should not "formally accept or acknowledge receipt of an application" until it has confirmed whether the right to make the application has been excluded under s.15C by reason of the occurrence of a trigger event, that advice is wrong, in my view.

39. Regulation 5 of the 2007 Regulations provides further steps which a commons registration authority is required to follow upon receipt of an application. These include giving formal notice of the application to the landowner, etc. (reg.5(1)(a)). By regulation 5(4) these steps are not required to be followed (or may be deferred) if an application is considered not to have been duly made. If a commons registration authority either rejects an application as not having been duly made before complying with reg.5(1) or defers compliance with reg.5(1) to give the applicant a reasonable opportunity to put his/her application in order such that it becomes "duly made", I suggest that a precautionary notice, in the form of a letter, is sent to those who would receive formal notice under reg.5(1)(a) and to "every concerned authority" (see reg.5(1)(b)) informing them that an application has been received and giving them an opportunity to review the application (in this respect, see *R (Church Commissioners for England) v Hampshire County Council* [2014] 1 WLT 4555 per Arden LJ. at para.43).

40. Where after receiving an application and complying with reg.4 and possibly reg.5 of the 2007 Regulations, a commons registration authority determines that a trigger event has occurred in respect of the whole of the land sought to be registered as a green with no corresponding terminating event, such that the right to make the application ceases to apply, the application received is in substance invalid and the commons registration authority, having reached such a determination, can take no further substantive action in respect of it (see para. 32, above). The correct course would be to inform the applicant and the landowner, etc. of the decision and confirm that the application will not be proceeded with or determined.

41. As advised, above, if a trigger event has occurred which affects only part of the application land (and there has been no corresponding terminating event) the application can proceed but only in respect of the unaffected part. A commons registration authority should confirm its determination and the reasons for it in this respect to the applicant, the landowner and other affected persons. It is not necessary, in my view, for an application formally to be amended to reflect any such determination (although it would be open to an applicant, in response, to do so) nor is it necessary for the statutory declaration which accompanied the application to be replaced. As was confirmed in *Oxford City Council v Oxfordshire County Council and Robinson* [2006] UKHL 25, a registration authority is entitled to determine an application in respect of an area of land which differs from that applied for, so long as no unfairness arises.

The Application made on 13 January 2020 and potential trigger events

42. As I have recited above, the application received by the CRA on 13 January 2020 was determined by the CRA to be the subject of a trigger event which affected the entirety of the land sought to be registered with no terminating event. The CRA determined, following advice given by its spatial planning team and PINS, that a trigger event according with para.3 in Schedule 1A had occurred, namely a draft of a development plan document which identifies the land for potential development is published in accordance with regulations made under s.17(7) of the Planning and Compulsory Purchase Act 2004. Mr. Swanney, the applicant, was informed of this by letter of 24 February 2020. As I have recorded above, the application received on 13 January 2020 was not allotted a reference number before this determination was made.
43. I am instructed that the relevant draft development plan document – the Wiltshire Housing Site Allocations Plan (WHSAP) – was published for consultation pursuant to regulation 19 of the Town and Country Planning (Local Planning) Regulations on 14 July 2017. Therefore, for the purposes of Schedule 1A para.3, on 14 July 2019, a corresponding terminating event as set out in para.3, column 2 para.c had occurred by 13 January 2020, namely that "The period of two years beginning with the day on which the document is published for consultation expires". It follows,

on this basis, that the right to make an application under s.15(1) CA 2006 had not been excluded by operation of s.15C(1) on the date on which it was received by the Commons Registration Authority on 13 January 2020. Therefore, the CRA was wrong to have determined to the contrary and to have in substance found the application to be invalid, to have decided not to "accept it" and to return the application to the applicant, as it did on 24 February 2020.

44. However, and be that as it may, the CRA did so by its letter of 24 February 2020 and there was no claim for judicial review of its decision to find that s.15C(1) was engaged. The CRA cannot now unilaterally reverse the decision that it took on 24 February 2020; it is well established in law that "however wrong public law decisions may be, they subsist and remain fully effective unless and until they are set aside by a court of competent jurisdiction" (per Lord Donaldson MR in *R v Panel on Takeovers and Mergers ex parte Datafin plc* [1987] QB 815 at p.840). Given the passage of time, extending to well in excess of four years since the decision was taken by the CRA that the January 2020 application was invalid, any claim for judicial review brought now would be well out of time.

45. I should add for completeness that if there had in fact been a trigger event operating as a result of the WHSAP on 13 January 2020, the relevant allocation contained in that emerging plan affected only part of the land sought to be registered as a green. As such, the CRA would have been entitled even on this basis to accept and to proceed to determine the application in so far as it concerned the part of the land unaffected by the allocation. However, that was not the decision of the CRA taken on 24 February 2020 nor would that decision have been correct even if the CRA proceeded to consider only part of the application land. However, for reasons I have given above, it is now too late to reverse the decision taken and communicated by the CRA's letter of 24 February 2020.

Application made on 11 June 2020

46. The CRA determined that the application made under s.15(2) CA 2006 and received on 11 June 2020 was the subject of a trigger event and was thus in substance invalid and could not be accepted. It was returned to the applicant on

7 October 2020. There was no claim for judicial review in respect of the decision of 7 October 2020. It was correct that by 11 June 2020 two separate trigger events had arisen, as set out in the CRA's letter of 7 October 2020, namely the adoption of the WHSAP on 25 February 2020, which included an allocation for development of part of the land sought to be registered and, separately, an application for outline planning permission had been made on 15 January 2020 and the application was first publicised on 17 January 2020. This application for outline planning permission affected part but not the whole of the application land. However, each of these trigger events affected only part of the application land and not the whole (as is explained by Mr. Webster in his report). The CRA was therefore wrong to have rejected the application made and received on 11 June 2020 in its entirety. However, as with the application made on 13 January 2020, it is now too late for the decision taken on 7 October 2020 to be set aside.

Application received on 30 November 2020 and the Inspector's report

47. Before addressing the Inspector's report of 9 February 2024, it is important to understand what application made under s.15 CA 2006 was in fact before the Inspector and before the CRA for determination.
48. For reasons I have set out above, the applications made on 13 January 2020 and on 11 June 2020 were determined by the CRA to engage trigger events and therefore both were determined not to be valid and, as a result, were not accepted and were returned to the applicant.
49. Then application received on 30 November 2020 was not rejected but, given the conclusion that trigger events affected part but not the whole of the land sought to be registered as a town/village green, the CRA determined that the application could be accepted and should proceed in respect of part only of the land. This was communicated to the applicant on 6 May 2021. Therefore, the application before the CRA and before the Inspector was the application received on 30 November 2020. It is 30 November 2020 which is "time" of the application for the purposes of s.15(2)(b). It is also the relevant date for the purpose of determining whether the

right to make an application ceases to apply for the purposes of s.15C CA 2006. The fact that the applicant may have dated the application on an earlier date is nothing to the point nor is the fact that the applicant refers to "resubmission" of his application relevant.

50. The Inspector in his report treated the application he was considering as having been made, for the purposes of s.15(2) and s.15C(1) CA 2006, on 13 January 2020. In my view, it was not open to the Inspector to do this as a matter of law. The application before him was made and received by the CRA on 30 November 2020 and he was not entitled to treat it as having been made on an earlier date. Indeed, the Inspector's approach does not accord with the position of the CRA as set out in its letter of 6 May 2021 and accompanying note, both of which were sent to the applicant. To the extent that the Inspector was in effect treating the application before him as that made on 13 January 2020, he was wrong to do so; the application made and received by the CRA on 13 January 2020 had been determined to be the subject to a trigger event and had not been accepted by the CRA. It had been returned to the applicant as being substantively invalidly made. I do not consider that the principle addressed by *Church Commissioners* allows a commons registration authority to reverse subsequently a decision to reject an application as invalid on the basis of a determination that a trigger event has occurred, as the CRA did in respect of the 13 January 2020 application. Moreover, the Court of Appeal in the *Church Commissioners* case was not considering the operation of s.15C CA 2006. Although the CRA's determinations in respect of the 13 January 2020 and 11 June 2020 applications were wrong, substantively and procedurally, for the reasons I have given, neither determination can now be reversed by the CRA.

51. However, it follows from the Inspector's conclusions as to the merits of the application during the 20-year period ending on 13 January 2020, that, when a 20-year period ending on 30 November 2020 is considered (as it should have been), the outcome must be the same. If there had not been shown to be insufficient use of the land for lawful sports and pastimes for a 20-year period ending on 13 January 2020 the same must be the case for the overwhelming majority of the period ending on 30 November 2020. The Inspector's recommendation can

therefore be relied on by the CRA in determining the application received on 30 November 2020.

52. I advise accordingly.

DOUGLAS EDWARDS KC
Francis Taylor Building,
Temple, London. EC4Y 7BY.

16 October 2024.

Wiltshire Council

6th May 2021

Rights of Way & Countryside Team
Communities and Neighbourhoods Services
County Hall
Bythesea Road
Trowbridge
Wiltshire
BA14 8JN

Mr Norman Swanney
[redacted]

Your ref:
Our ref: JG/TVG/171 & 208 2020/02TVG

Dear Mr Swanney,

Commons Act 2006 – Sections 15(1) and (2)
Application to Register Land at Southwick and North Bradley as a Town or Village Green – Southwick Court Fields
Application no.2020/02TVG

Further to the re-submission of your application to register land known as Southwick Court Fields, (Southwick and North Bradley parishes), as a Town or Village Green (TVG), Wiltshire Council, as the Commons Registration Authority (CRA), has now received replies from the relevant Planning Authorities following consultation regarding planning "trigger" and "terminating" events in relation to the land. It appears that there are planning trigger events in place over part, but not all of the application land, which have the effect of extinguishing the right to apply to register part of the land as a TVG without relevant terminating events which would revive the right to apply.

DEFRA Guidance *"Guidance to Commons Registration Authorities in England on Sections 15A to 15C of the Commons Act 2006 – Section 15C: exclusion of the right to apply under section 15(1) to register new town or village greens"* - December 2016, advises that where the exclusion applies to only part of the land, for the portion of the land not subject to the exclusion, the application should proceed as usual. Therefore, the application has been accepted in part and has been allotted application no. 2020/02TVG, received by Wiltshire Council on 29th November 2020. Please find enclosed notice of this in the form of "Form 6", with attached map showing the extent of land over which the application is accepted. The reference number 2020/02TVG should be quoted on all correspondence.

I note the representations in your e-mail dated 29th November 2020 and I have attached a full reply regarding the issues raised as an additional document appended here.

I would be very grateful if you could now forward the paper copy of the application and I will then proceed to check that the application is in order and advise you if any further information is required.

Yours sincerely,

Janice Green
Senior Definitive Map Officer
Direct line: 01225 713345
Email: janice.green@wiltshire.gov.uk

Enc.

Please note that any responses to this letter will be available for public inspection in full. Information relating to the way Wiltshire Council will manage your data can be found at: http://www.wiltshire.gov.uk/recreation-rights-of-way

Schedule 1 - Form 6

WILTSHIRE COUNCIL

COMMONS ACT 2006

To: Mr N Swanney, [redacted]

Your application dated 13th January 2020 relating to land at Southwick Court Fields in the parishes of Southwick and North Bradley, has been received and has been allotted the number **2020/02TVG**, which should be quoted in any correspondence, (please note: where the right to apply is extinguished over part of the application land, that part of the land is excluded from the application).

Case Officer:

Janice Green – Senior Definitive Map Officer

Communities & Neighbourhoods Services

Wiltshire Council

County Hall

Bythesea Road

Trowbridge

Wiltshire, BA14 8JN

Tel: 01225 713345

E-mail: janice.green@wiltshire.gov.uk

EXHIBIT

MIKE BRANNIGH
LICENSED CONVEYANCER
13 JANUARY 2020

Trowbridge Town Council

The Civic Centre, St Stephen's Place, TROWBRIDGE, BA14 8AH
mail@trowbridge.gov.uk 01225 765274

Southwick Court Common Land

SCALE: 1:2500 @ A3 | DATE: 08/01/2020 | N

MAP TITLE: SOUTHWICK COURT COMMON LAND

Application Land (edged red)

Land subject to planning trigger events – excluded from application

Commons Act 2006 – Sections 15(1) and (2)
Application to Register Land at Southwick and North Bradley as a Town or Village Green – Southwick Court Fields
Application no. 2020/02TVG

A full list of the trigger and terminating events set out at Schedule 1A to the Commons Act 2006 (as amended), may be viewed here: https://www.legislation.gov.uk/ukpga/2006/26/schedule/1A

Part of the application land is affected by planning trigger events which extinguish the right to apply over that part of the land. The Planning Authority replies regarding the re-submission of the application are as follows:

Development Control – Wiltshire Council (14/12/2020)
"The planning application referred to was submitted in January and is still with us as negotiations continue. It is a legal and valid application. As such, it is a trigger event and no corresponding terminating event has taken place.
Similarly with the Wiltshire Housing Sites Allocation Plan. As you say, this was adopted by the Council in February 2020, and no corresponding terminating event has taken place since then. It has not been 'dis-established, laid aside or invalidated'. The five year land supply situation is not a relevant consideration in terms of trigger events and terminating events."

Spatial Planning – Wiltshire Council 11/03/2021
"I refer to your letter and enclosures dated 7 December 2020 in connection with the above-matter.
Having considered the application and supporting documentation I am writing to confirm that trigger point 4, as defined in Schedule 1A to the Commons Act 2006 has been engaged.
The land the subject of the application, forms part of an allocation for development (Site H2.6) as set out in the now adopted Wiltshire Housing Site Allocations Plan (WHSAP) *(February 2020). As this Plan and the allocations therein have not been revoked, or superseded by any new proposals, no termination event has been invoked.*
For the reasons set out above, the application should be dismissed."

Planning Inspectorate – 24/02/2021
"Firstly, my sincere apologies for the extreme delay to your request in the attached letter. We have been experiencing backlogs and as a result delays.
Our casework teams have confirmed that ***PINS holds no casework of any kind that could affect [that] this address****. Your own records should also reflect this, although please let me know if they don't.*
Although I am happy to provide you with the information above, I do not feel able to select the correct option from those listed below:

- *I confirm that no trigger or terminating event has occurred on the land*
- *I confirm that a trigger event has occurred, but no corresponding terminating event has also occurred on the land*
- *I confirm that a trigger event has occurred but a corresponding terminating event has also occurred on the land*

If we hold no casework that could affect the site, my assumption is that option 1 is correct, however I will need to be guided by you on this."

The Planning Inspectorate response was put to Spatial Planning at Wiltshire Council who confirmed that the Planning Inspectorate should be aware of the WHSAP which was examined by the Planning Inspectorate in April 2019. The Planning Inspectorate clarified their position as follows:

Planning Inspectorate – 16/03/2021
"Although I note your point, our view is that we were correct in stating that we didn't currently hold any casework which would affect the site because, at the time you sent the enquiry, the Inspector's jurisdiction had ended with the issuing of the report, and later, in Feb 2020 Wiltshire Council adopted that plan, thus placing the ball back in your half, so to speak."

The replies from the Local Planning Authorities above confirm that the WHSAP, as adopted by Wiltshire Council on 25th February 2020, continues to be a planning trigger event in place over part of the application land, as at paragraph 4 of Schedule 1A of the Commons Act 2006, i.e. a development plan document which identifies the land for potential development is adopted under section 23(2) or (3) of the 2004 Act and therefore the right to apply to register part of the application land is extinguished and may only be revived where, in terms of the development plan document, specific and corresponding terminating events have occurred, namely:

(a) The document is revoked under section 25 of the 2004 Act, or
(b) A policy contained in the document which relates to the development of the land in question is superseded by another policy by virtue of section 38(5) of that Act.

The local planning authorities confirm that the WHSAP and the allocations therein, have not been revoked or superceded as at (a) or (b) as required to be a successful terminating event and it therefore remains as a trigger event over part of the application land.

The local planning authorities also confirm that Planning Application no.20/00379/OUT, although submitted in January 2020, is not yet determined, (I note from the planning website that the target date for decision is 1st April 2021), but remains as a valid and legal application and therefore forms a valid trigger event in place over part of the TVG application land, i.e. paragraph 1 of Schedule 1A of the Commons Act 2006: an application for planning permission, or planning in principle, 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. Again, in terms of the planning application, there are specific and corresponding terminating events which would revive the right to apply as follows:

(a) The application is withdrawn.
(b) A decision to decline to determine the application is made under s.70A of the 1990 Act.

(c) Where planning permission or permission in principle is refused and all means of challenging the refusal in legal proceedings in the UK are exhausted and the decision is upheld.
(d) Where planning permission is granted and the period within which the development to which the permission relates must be begun expires without the development having begun.

Where none of the events (a) to (d) have occurred, planning application no.20/00379/OUT also remains as a planning trigger event over that part of the land.

In conclusion, given the above information, the right to apply to register the land identified at Southwick Court Fields, Southwick and North Bradley, as a TVG, is extinguished over part of the application land by the existence of two planning trigger events without corresponding terminating events in place. Therefore, the TVG application can be accepted only on part.

Janice Green
Senior Definitive Map Officer
6th May 2021

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REPORT FOR WESTERN AREA PLANNING COMMITTEE

Date of Meeting	6 November 2024
Application Number	PL/2024/04800
Site Address	Land South of 92 High Street, Chapmanslade, BA13 4AN
Proposal	Demolition of stables and construction of new sustainable self-build dwelling with associated works and change of use of land to C3. (resubmission of PL/2022/09808 and PL/2022/03190)
Applicant	John & Heather Foster
Town/Parish Council	CHAPMANSLADE PARISH COUNCIL
Electoral Division	Warminster North & Rural – Cllr Bill Parks
Grid Ref	382499 147734
Type of application	Full Planning
Case Officer	Gen Collins

Reason for the application being considered by Committee

The application is called to Committee at the request of Cllr Bill Parks to allow the elected members to assess the merits of the development in relation to its visual impact upon the surrounding area.

1. Purpose of Report

The purpose of the report is to assess the merits of the proposal against the policies of the development plan and other material considerations and to consider the recommendation that the application be approved.

2. Report Summary

The key issues for consideration are:

- Principle of development
- Design and Landscape
- Impact on Trees
- Earthworks/Land Stability
- Heritage
- Residential Amenity
- Highways
- Biodiversity
- Drainage

This application is a submission of a previously withdrawn application to enable the applicant to review and address site access matters.

This application has been revised following pre-application advice and officer negotiation to reduce the height, bulk, scale and massing of the proposal, to remove bulky gable ends and to soften the architectural design so that it is more reflective of its immediate surroundings. It has also been revised to ensure that access rights are in place to allow vehicles to access the site and additional information and plan changes were submitted to ensure that on-site trees are well-protected during any construction work.

The application site area (shown below) includes some paddock land to the west of the existing stables (which would be demolished) to provide suitable external amenity space for the proposed dwelling. The application has been subject to two public notification/advertisement exercises.

In summary, Chapmanslade Parish Council object to the proposal for the reasons set out within section 7 of this report. 46 representations have been received from 20 third parties raising objections or providing general comments. One of the received representations is a joint objection letter from 7 local residents (namely No's 82,84,86,92,92A and the access lane owner).

3. Site Description

The application site extends to 0.068ha (680sq.m) in area comprising a single storey block of three stables and tack room with hardstanding which are located within the limits of development of Chapmanslade. Also, there is paddock land to the west of the stables which lies outside the defined limits of development.

The snippet below shows the existing stabling accessed via the lane (below left) and the proposed application site and development (below right) with the bold black line (below left) illustrating the defined settlement boundary:

As existing

Proposed

As shown above, all the proposed operational development would fall within the defined settlement boundary of Chapmanslade and about 200sqm of current paddock land would be incorporated into the residential curtilage and become private garden to the immediate west of the proposed new dwelling.

The site is located within flood zone 1, representing land having the lowest risk of flooding, and is located within the Chapmanslade Greensand Ridge Special Landscape Area.

The site is not within a Conservation Area, and the closest listed buildings (at No's 82-86 High Street) are located circa 57m to the northeast from the application site.

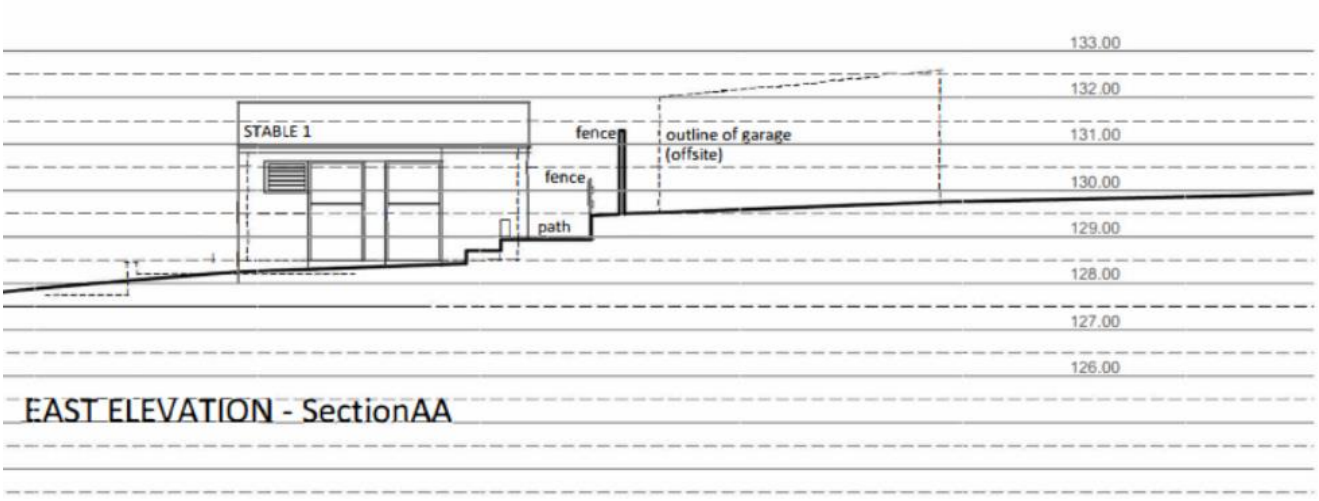
The site is within the Salisbury Plain SPA buffer zone, the Bath and Bradford on Avon Bat SAC; and is located to the west of an orchard which is designated as priority habitat.

The site is accessed via a privately owned lane that serves the three stables and connects with the High Street. The applicants maintain that they benefit from vehicular and pedestrian rights of access along the private lane which runs between No's. 92 and 92a High Street that serves several other dwellings.

The site is shown below:

The northern boundary of the application site abuts residential gardens and a neighbouring garage with a fence forms part of the existing boundary treatment and there is a small pathway separating the rear gardens from the stable block.

The application site is lower than the southernmost rear gardens of the neighbouring properties by around 1m - 1.4m which is illustrated on the existing section drawing submitted with the application as reproduced below:



The eastern boundary is formed by fencing and mature vegetation beyond which is an area of paddock planted up as an orchard:

To the west of the site is paddock land with a range of fencing and associated stabling features:

To the south is a post and rail fence separating the site from agricultural fields beyond:

4. Planning History

W/78/01308/HIS – Erection of 3 stables. Approved.

PL/2022/03190 - Demolition of stable buildings and construction of new house and garage with associated works and change of use of land to C3. Withdrawn to amend the design and scale of the proposal.

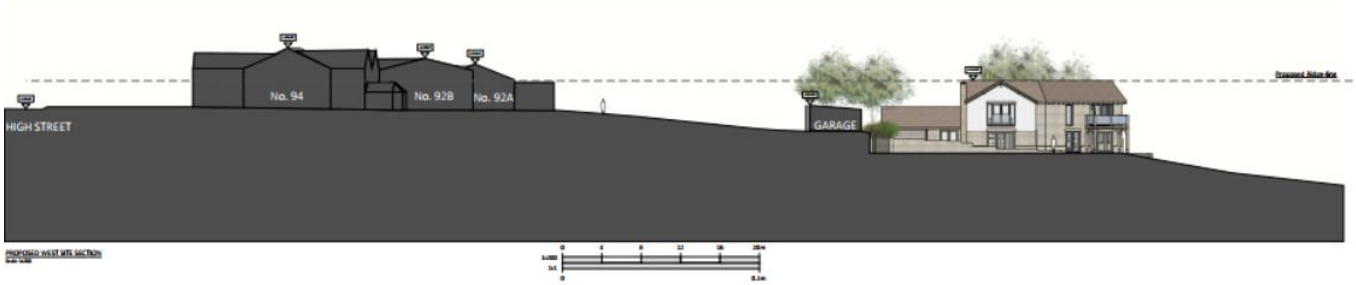
PL/2022/09808 - Demolition of stables and construction of new house with associated works and change of use of land to C3. (resubmission of PL/2022/03190). Withdrawn to deal with issues over access rights.

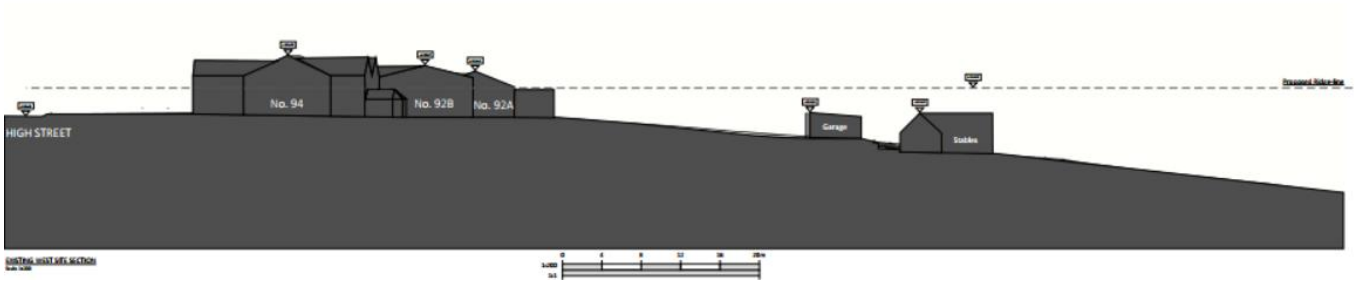
5. The Proposal

This application seeks full planning permission for the demolition of the existing stable buildings and to construction of 1no. self-build dwelling and garage with associated works and change of use of land to C3. The existing access would not be altered but 3 off street parking spaces are proposed within the site as illustrated below.

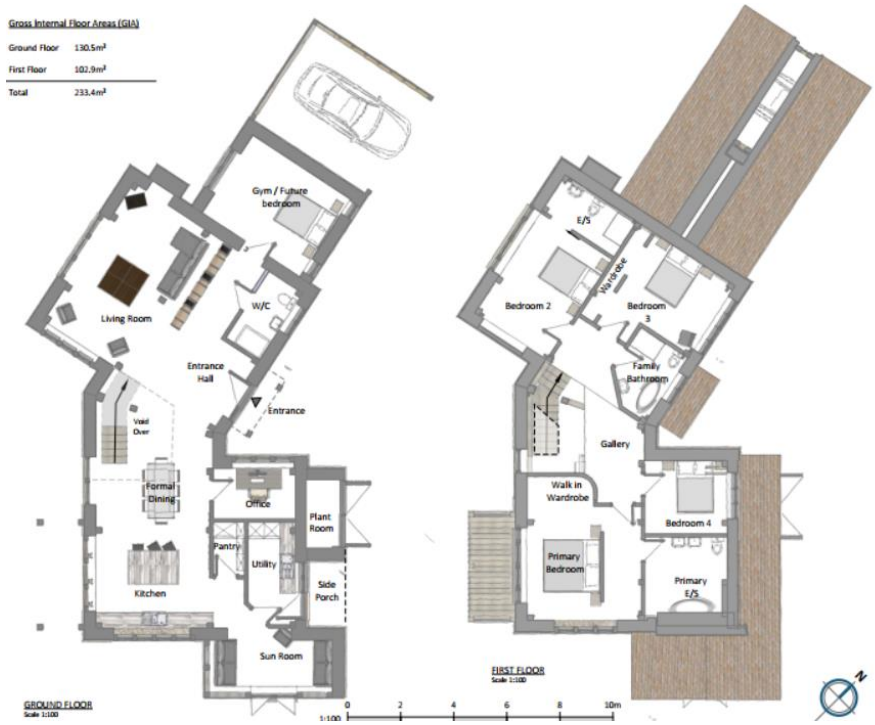
Proposed Site Plan:

Proposed and Existing Site Sections:





Proposed Floor Plans



Proposed dwelling viewed from the South-West using indicative 3D modelling:

Proposed West and South-West 2D elevations:

Proposed South and South-East Elevations:

Proposed North Elevation:

Proposed East and North-East Elevations:

East Elevation
Scale 1:100

North East Elevation

6. Planning Policy

National Context:

National Planning Policy Framework (Dec 2023) and Planning Practice Guidance

Local Context:
Wiltshire Core Strategy Adopted 2015 (WCS)

CP1: Settlement Strategy; CP2:Delivery Strategy; CP3: Infrastructure Requirements; CP31: Spatial Strategy for the Warminster Community Area; CP41: Sustainable Construction and Low Carbon Energy; CP45: Meeting Wiltshire's Housing Needs; CP50: Biodiversity and Geodiversity; CP51: Landscape; CP57: Ensuring High Quality Design and Place shaping; CP58 Ensuring the conservation of the historic environment; CP60: Sustainable Transport; CP61: Transport and Development; CP62: Development impacts on the Transport Network; CP64: Demand Management; and CP67: Drainage

Wiltshire Council's Local Transport Plan and Car Parking Strategy 2011- 2026

West Wiltshire Local District Plan (Saved Policies)
C3: Special Landscape Areas; U1a Foul Water Disposal and U2 Surface Water Disposal

7. Consultation Response Summary

Chapmanslade Parish Council: Objects to the application on the following grounds:

- The site is not previously developed land
- The site is neither a local business nor a community need and therefore the site isn't previously developed land in the meaning of paragraph 89 and isn't applicable to the application.
- Insufficient justification to remove permitted development rights as recent appeals demonstrate.
- The previous committee report misunderstood and misrepresented the scope and purpose of the NPPF provisions relating to previously developed land and the justification of it for the development is an error of law and should not be permitted.
- The proposal conflicts with policy CP1
- The planning position of the tipi is questionable
- No housing need for an additional large dwelling
- Contrary to the Wiltshire design guide which requires that topography should not be overly reprofiled
- Contrary to design policy CP57
- Will not comply with Building Regulations fire safety access requirements and fire service should be consulted
- Highway safety during construction and operational periods
- The proposal is too large for the site
- Drawings misrepresent the impact of the proposal on the landscape and adjoining dwellings
- Loss of privacy
- Impact on trees
- Impact on landscape
- Lack of information regarding utilities
- The adverse impacts outweigh the benefits and therefore the scheme should not be approved.

Wiltshire Council Ecologist: No objection subject to conditions.

Wiltshire Council Highways Officer: No objection subject to condition

Wiltshire Council Conservation: No objection

Wiltshire Council Landscape Officer: No objection subject to condition of boundary planting (native hedge mix) and detailed planting plan.

Wiltshire Council Arboricultural Officer: No objection. The information provided within the Final Arboricultural Impact Assessment and Method Statement, including the Tree Protection Plan, prepared by Acer Tree Surgeons (V3 and dated September 2024), provides sufficient information to ensure the method of construction, excavation, infill, and choice of materials considers the existing protected tree to be retained on site. These should be included as part of the approved plans list, and its compliance should be conditioned.

Wessex Water: No comment

8. Publicity & Consultation

The application has been formally consulted on three times. The application has been publicised by a site notice (running until 21 October) and individually posted out notification letters sent to neighbouring/properties within close proximity of the site, as well as being made public on the Council's planning portal.

The application has been latterly subject to a full reconsultation on additional substantive information relating to trees and groundworks. As a result, 47 representations have been received from 20 third parties raising objections or making comments. Of these representations, one is a joint objection from 7 properties in proximity to the site (No.s 82,84,86,92,92A and the lane owner). Those objecting to the scheme do so, on the following grounds:

- Recent vehicles being unable to get down the track has resulted in pedestrians including children, having to walk in the road;
- Applicant's access rights to the proposed development are insufficient for the development
- Plans are confusing and further information is sought regarding details of retaining walls and earth works (officer note: this additional information was requested by the case officer in addition to clearer measurements to be annotated on the plans. This was provided by the applicant and a full reconsultation issued);
- Insufficient access for fire appliances to respond to an incident and the fire service should be consulted;
- the proposal is not capable of meeting building regulations requirements in terms of access;
- The case officer has misread and misunderstood data;
- Poor design;
- House is too large for the site;
- Impact on landscape and visual amenity and encroachment into the SLA;
- Loss of privacy;
- Council has failed in its duties to accurately represent the proposal and must provide the capacity and capability in its planning team to engage factually with the proposal
- Plans are inaccurate with no correct scale;
- The proposed East Elevation plan to scale has not been included
- The submission uses the correct topographical position of the 'Proposed East Elevations' and super imposes it on the 'Existing Stables Plans, Elevations & Sections'. This shows that the house elevation itself is 7.3m from its proposed built up ground level at +128.7m;
- To achieve this ground level the ground would need to be raised by 2.7m from its existing slope of +126.0m to +128.7m;
- The south ridge of the house will rise to 10m above the slope;
- The proposed dwelling would tower above the existing neighbouring garage;
- The tree preservation zone is insufficient and in the wrong location.
- The tree preservation zone at the correct location and size will reduce the area available for parking and turning to unsuitable size.
- The building is highly likely to interfere with the trees' crowns.
- The trees' base is on a descending slope up to 3.7m lower than the proposed ground level of the house (+128.7m). The poplar is at +125.0m, the ash is at +127.0m.
- insufficient usable space left for parking by the house due to its huge dimensions;
- no appropriate bin collection point
- construction traffic cannot access the site;
- contrary to policies CP1, CP2, CP51, CP57 and CP48 of the WCS and the NPPF;
- out of scale with surroundings;
- have a negative impact on the views from the PRoWs
- would have a detrimental and harmful impact that would not be sympathetic to the location's special character and local distinctiveness;
- previous applications for a single dwelling off the access lane have been refused on the basis of highway safety;
- applications should be treated the same;

- proposed dwelling doesn't relate sympathetically to the neighbouring bungalows, priority habitat, mature trees, surrounding SLA and modest plot size within the settlement boundary.
- 92A would lose their lovely view;
- part of the proposed development (change of use to residential garden) extends outside the settlement boundary;
- impact on biodiversity;
- It is Grade 2 agricultural land beyond the site's southern boundary;
- Pre-app advice was that any garden area remained inside settlement limits;
- Stables have never been granted access from the highway;
- Light pollution;
- Does not listen to the voice of the village or address village housing need priorities which is smaller affordable houses for 1st time buyers;
- Overdevelopment of the site;
- Out of line with existing built form and grain of surrounding properties;
- Overlooking
- Overbearing;
- Planning site notices have not been erected;
- The settlement boundary was extended whist the applicant was a parish councilor in charge of boundaries and did not declare an interest. The Parish Council should have asked Wiltshire Council to investigate this matter
- Applicant does not own the ransom strip over the access;
- The proposal is far too intrusive and should be refused as per the Sienna's Valley application PL/2023/05142;
- The house is too close to an active cowshed at Ballams farm which will result in odour issues arising;
- Highway safety issues especially at school pickup
- Materials are not locally sourced and are not local distinctive and the proposal is therefore not sustainable;
- Loss of light.

These concerns are addressed in the relevant sections of the report below and where any fall outside of these sections, will be addressed in the section entitled 'Other Matters' to be found at the end of the report.

9. Planning Considerations

9.1 Principle of Development

Section 38(6) of the Planning and Compulsory Purchase Act 2004 require that the determination of planning applications must be made in accordance with the Development Plan, unless material considerations indicate otherwise. In this case, the Wiltshire Core Strategy, including those policies of the West Wiltshire District Plan that continue to be saved in the WCS form the relevant development plan for the area.

The proposed development comprises a change of use of land, the demolition of existing stables and replacement with the construction of a two-storey detached dwelling. The application site is considered brownfield, previously developed land within the meaning of the National Planning Policy Framework definition at Annexe 2 which includes "*land which is or was occupied by a permanent structure including the curtilage of the development land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure*".

The application site is predominantly located within the defined development limits of Chapmanslade

with part of the proposed external garden amenity land taking up 200sq.m of existing paddock land.

Chapmanslade is designated as a Large Village for the purposes of policies CP1 and CP2 of the adopted WCS.

WCS Core Policy 1 sets out the settlement hierarchy and Core Policy 2 sets out the delivery strategy for the Council. This policy framework advises that within the limits of development, as defined on the policies map, there is a presumption in favour of sustainable development at large villages and supports limited residential development at these locations to help meet the housing needs.

As members will be aware following the recent appeal decision for land at Storridge Road, Westbury, the Council cannot currently demonstrate an appropriate supply of housing (to which appeal ref: APP/Y3940/W/24/3340811 refers), and as such full weight cannot be attached to the local development plan policies relating to spatial strategy i.e. CP1, CP2 and CP31.

The titled balance as set out within NPPF paragraph 11d, is again engaged. In this particular case, the proposal would represent a 1-house windfall development using previously developed land, which merits very significant weight in the planning balance, and in the context of there being an insufficient housing land supply, officers support the principle of the proposed development in recognition that the new dwelling would be located within the established settlement boundary.

Officers fully appreciate that the proposal seeks to use about 200sq.m of existing paddock land that is currently outside the limits of development to be used as associated residential garden, but it would not result in the loss of high-quality agricultural land and through the use of planning conditions, officers maintain that the Council would have control over its use, and as a consequence, this element of the proposal is not considered substantive grounds to refuse planning permission. The proposed dwelling would have a suitable garden provision that would not appear inconsistent when compared to the gardens of neighbouring properties.

As a self-build dwelling proposal, this too caries moderate weight in favour of the proposal as it would meet and identified housing need.

Concurrent to this committee referral, a s106 Unilateral Undertaking is being prepared by the applicants to secure the unit as a formal self-build unit. Accordingly, the proposed development is considered acceptable in principle subject to the following technical considerations.

9.2 <u>Design, Landscape and Visual Appearance</u>

Core Policy 51 'Landscape' of the Wiltshire Core Strategy outlines that development should protect, conserve and where possible enhance landscape character and must not have a harmful impact upon landscape character. The policy requires applications to demonstrate how development proposals conserve and where possible enhance landscape character through sensitive design, landscape mitigation and enhancement measures.

Core Policy 57 'Ensuring High Quality Design and Place Shaping' of the WCS lays down the requirement for good design. Core Policy 57 requires '*a high standard of design in all new developments. of particular relevance to householder extensions is paragraph (iii) which requires development to respond positively to the existing townscape and landscape features in terms of building layouts, built form, height, mass, scale, building line, plot size, elevational design, materials, streetscape and rooflines to effectively integrate the building into its setting'*.

Saved Policy C3 requires the landscape character of this area to be "*conserved and enhanced and development will not be permitted which is considered to be detrimental to the high quality of these landscapes*".

NPPF paragraph 131 states that the creation of high quality, beautiful and sustainable buildings and

places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.

NPPF Paragraph 135 also requires that planning decisions should ensure that development:

a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development.
b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping.
c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities).
d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit.
e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and
f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

Landscape
The site is located within the Chapmanslade Greensand Ridge Special Landscape Area which is protected by saved policy C3 of the WWDLP. Saved Policy C3 requires the landscape character to be conserved and enhanced and development will not be permitted where it is considered to be detrimental in landscape terms.

The existing site is considered brownfield (previously developed) land and is currently a developed edge of the Chapmanslade village. During extensive negotiations at pre-app stage, officers set out the importance that any new development at this site must be of a type that blends into the existing built form of the settlement when read from the valley and the surrounding countryside to the south and west.

Following these discussions, the applicant reduced the height, bulk, scale and architectural design of the proposed new dwelling thereby softening the development and designing it in such a way that it would reflect a more rural character of building. Officers are satisfied that the proposed design achieves that; and to ensure the development blends more into its setting, the applicant has agreed to provide soft boundary treatments in the form of post and rail fencing and hedgerow planting in line with the Council's landscape officer requests, which are suitably conditioned.

The applicant has also agreed to providing a landscaping plan prior to any commencement of development, which is also subject to a recommended planning condition. The landscaping scheme would ensure that appropriate planting and landscaping is undertaken on site to create a natural boundary edge and to filter views of the new dwelling.

Permitted development rights for outbuildings, extensions, additional fences, gates and walls are recommended to be removed by planning condition to safeguard the verdant rural setting.

Accordingly with the amendments to the design to ensure it is a sensitive design, the imposition of planning conditions removing permitted development rights and to secure an appropriate hard and soft landscape scheme and mitigation by condition, officers are satisfied that this proposal would not lead to landscape harm to warrant the refusal of the application.

The proposed new dwelling would not appear incongruous or dominate the skyline given that it would

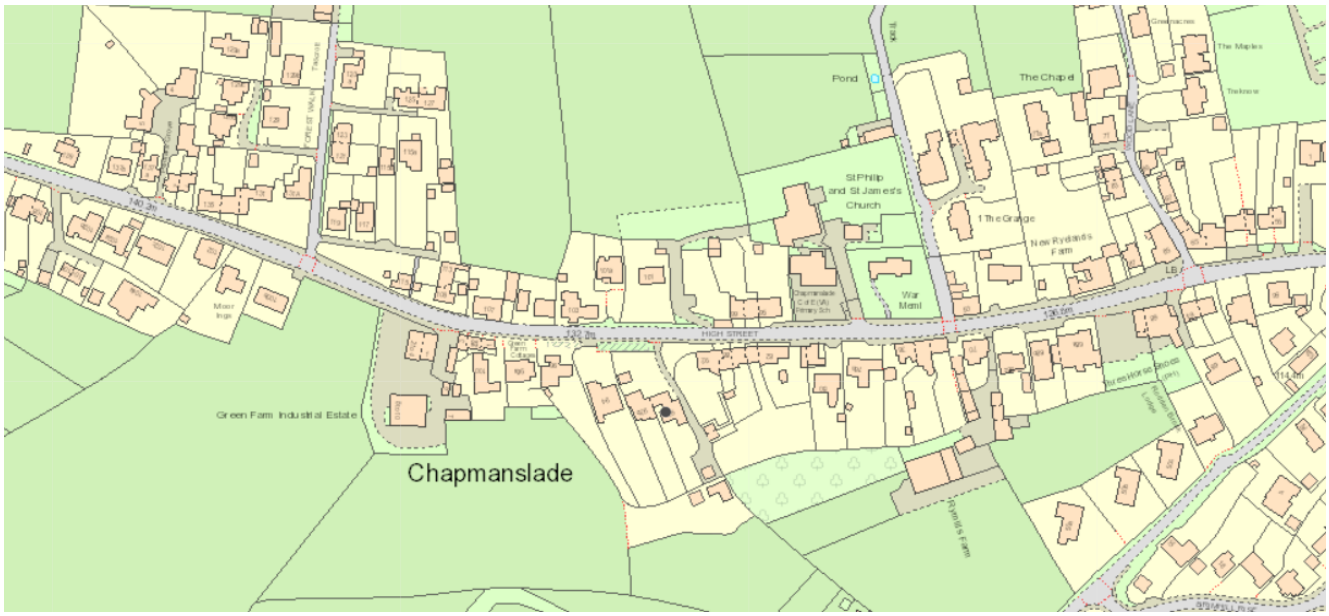
be read in the context of existing built form of Chapmanslade and would comply with saved policy C3 of the WWDLP and CP51 of the WCS.

Design/Visual Impact
Within the immediate locality of the site, there is a wide variety of architectural styles and materials used for neighbouring/nearby housing. Indeed, the village of Chapmanslade has a diverse mix of house styles and scales with a wide variety of architectural styles and building materials.

Whilst the main historic village has a linear form established along the High Street, there are several examples of more recent development extending along lanes/accesses off the High Street.

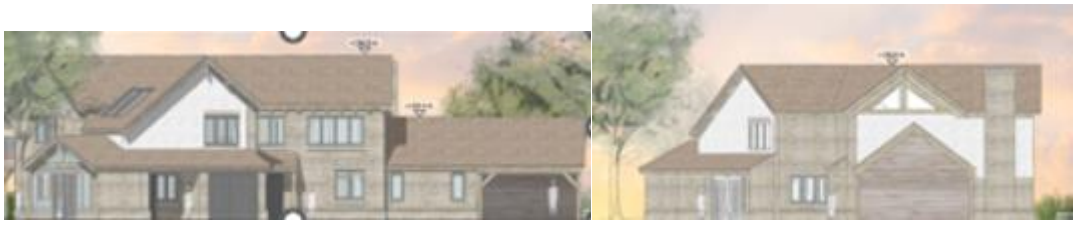
There is no overriding architectural style within the immediate environs of the application site, and buildings range from a variety of eras.

The buildings nearest the site are a mix brick, stone-built modern bungalows, rendered houses and agricultural sheds formed in timber, block and metal.



Following detailed pre-application advice provided by the case officer to the applicant and follow up advice provided as part of the previously withdrawn application, the proposed dwelling has been reduced in height and the bulky gable ends have been removed from the scheme which has the support of officers.

The design approach now seeks to create a sense of a series of connected smaller buildings as is prevalent in the immediate locality instead of one large compact bulky dwelling that was initially proposed.



The proposal includes some earthwork, and the proposed dwelling would be erected on a levelled parcel of land using a cut and fill approach comprising excavating 1.8m along the site's northern boundary which would have a new retaining wall provided to establish the common boundary with the property to the north. This cut of earth would then fill the sloping part of the site to the south to be raised to the same extent (1.8m) thereby levelling the site whereby the ridge of the proposed dwelling would be 7.3m above the new levelled ground level, as shown on the following page.

The proposed new dwelling would be 2-storeys with a single storey garage attached on the northern side and single storey porch and orangery on the east and south elevations respectively. From the new levelled ground level, the house would be circa 7.3m to ridge height falling to circa 5.2m at the eaves with the single storey garage measuring circa 4.8m to ridge height falling to circa 2.6m at the eaves and the orangery circa 4m to ridge height.

At the northern end, the proposed building would be some 5.8m above the existing ground level, rising to 7.3m in the middle of the site and when compared to the original ground level closer to the site's southern boundary, the proposed dwelling would be some 9.1m above the original ground level. The following reproduced plan inserts help illustrate this aspect of the application proposal showing the cut (illustrated in red shadowing) and infill earthworks (shown in green shadowing):

To confirm therefore, the proposal will be 7.3m at ridge height from the newly levelled finished ground level but would be a maximum of 9.1m above the original ground level at the southern end. This is accurately reflected on both the section drawings and the proposed plans when scaled.

This indicates that the final dwelling would be approximately 3m higher than the existing neighbouring garage and would be sit below the canopy of the mature tree on the eastern boundary.

The footprint of the new house would have a slight curved dog leg and an asymmetrical roofscape and a mixture of single storey and two storey roof levels.

Interesting elevational detailing has been incorporated through a mix of sustainable local materials matching the general material palette of the locality and the use of glazing with a balcony on the southwest facing elevation.
Glazing is kept to a minimum on the eastern side to retain a dark ecological corridor following ecological advice, and the proposed development has been set down by approximately 1m for the ground floor level and the height, bulk and scale is generally consistent with the existing built form in the immediate locality.

Hedges, stonewalls and post and rail and timber fences are a feature of the area defining the plot/countryside boundaries, which the applicant is keen to replicate for the site's boundary treatment.

The proposed new dwelling has been designed to reflect appropriate vernacular within the local area. The use of a mix of stone, wood and clay materials, together with gable and barn style roof forms effectively integrates the building into its setting.

The building structure would be a handmade bespoke post and beam oak timber frame and would use a high energy efficiency encapsulation system utilising 'fabric first' sustainable construction techniques and technologies. The resultant building would be highly energy efficient with an electrical car charging point, using solar panel tiles and a ground source heating system with materials used in construction coming from sustainable sources.

The proposed development in terms of its approach to low carbon and use of sustainable construction techniques is very welcome which carries modest weight in favour of the scheme through meeting the requirements for sustainable construction in accordance with WCS Policy CP41.

It is recommended that details of all the proposed external materials are conditioned, submitted and approved by the Council prior to development progressing above ground slab level in the event that permission is granted.

The proposed footprint of the dwelling would extend to about 127sqm which is considered acceptable and would represent an efficient and effective use of land. The reduction in the scale, bulk and height of the building following officer negotiation would result in a building that is more appropriate for this location. It would be read in the context of the existing built form of the settlement from public vantages within the Special Landscape Area to the south and west. The house elevations have been curved and varied in height to soften the visual impact and help it assimilate with its immediate built form environs and the wider rural character.

It is noted that there is concern raised from residents and the Parish Council regarding inconsistencies found within the applicant's design and access statement and inaccuracies with the submitted drawings and that the height of the proposed dwelling would be excessive with some residents concerned that the proposal would be 10 or more meters in height.

The accuracy of the drawings and the applicants supporting submissions have been discussed with the applicant, and officers after checking the details also have concluded that the submission details are accurate and based on up-to-date Ordnance Survey data and can be relied upon to allow for a fully informed decision to me made. The applicant's agent has confirmed that the plans are based on OS data and a topographical survey.

No details have been submitted for bin and waste storage, and no details relating to the storage of bicycles have been included either. These matters can however be suitably conditioned.

There are two mature trees along the eastern boundary of the site. One of these (T1 shown on plans) suffers from Ash die back and it has been agreed with the Council's tree officer that in the interests of good practice this tree can be cut back. The remaining tree (identified at T2) is subject to a Tree Preservation Order and would be protected during the course of works in the event that permission is granted.

Detailed discussions have also been held with the Councils tree officer to ensure that the proposed dwelling and the earthworks would not have a significant or detrimental impact on trees. Revised plans and further details were sought by officers which are considered acceptable.

A planning condition to secure the necessary on-site tree protection is recommended and a condition can secure supplementary planting in the form of small clusters of native trees and hedgerows top positively enhance the boundary treatment, and to deliver a more robust landscaped edge.

Whilst a landscaping scheme is contained within the submitted documents, a planning condition requiring the implementation of the landscaping, together with maintenance of the landscaping is necessary.

It is also worthwhile reporting that there was some concern raised under the previous application that the proposed dwelling would appear cramped without incorporating a modest amount of paddock land that is closely associated to the existing stabling.

On officer recommendation during the assessment of the previous application, the applicant was invited to incorporate about 200sqm to the immediate west to provide adequate outdoor amenity space for future occupiers, and should be subject to a planning condition to remove permitted development rights for extensions, outbuildings, and any additional forms of enclosure beyond what is proposed under this application so that no additional built forms or domestic paraphernalia are introduced, to protect the wider open landscape character.

Sustainable Construction and Low Carbon Energy
The development would result in a material change to the character of the site however it is considered that the proposed design is an acceptable compromise blending residential built form with rural landscape character to create a sustainable new family home using previously developed land which employs high-quality design and sustainable technologies which is considered compliant with the objectives and criteria of WCS Core Policies 51 and 57 and would satisfy the requirements of NPPF paragraphs 126 and 130.

9.3 Impact on Heritage Assets
From the point of view of the historic environment the main statutory tests are set out within the Planning (Listed Building and Conservation Areas) Act 1990. Sections 16 (LBC apps) and 66 (FUL apps) require that **special regard** be given to the desirability of preserving listed buildings, their settings or any features of special architectural or historic interest which they possess.

Chapter 16 of the NPPF 'Conserving and enhancing the historic environment' sets out policies concerning heritage and sustainable development and requires a balanced approach to decision making with harm weighed against the public benefits resulting from proposals.

National Planning Practice Guidance provides guidance on interpreting the NPPF.

The Council's WCS Policy CP58 'Ensuring the conservation of the historic environment' requires that *"designated heritage assets and their settings will be conserved, and where appropriate enhanced, in a manner appropriate to their significance*".

The site is located outside of any Conservation Area and there are no heritage assets on-site or nearby.

The nearest listed building is some 57m to the northeast of the application site and are separated by other forms of development and dwellings and intervening landscaping, thus offering no intervisibility which has led officers to conclude that the proposal would not have a harmful impact on the significance or setting of these listed buildings. The Councils Conservation Officer was consulted and raised no objection. As a consequence, the proposals are compliant with WCS CP58 and the NPPF

9.4 Impact on Residential Amenity

WCS Core Policy 57 states that applications for new development must be accompanied by appropriate information to demonstrate how the proposal will make a positive contribution to the character of Wiltshire through having regard to the compatibility of adjoining buildings and uses, the impact on the amenities of existing occupants, and ensuring that appropriate levels of amenity are achievable within the development itself, including the consideration of privacy, overshadowing, vibration, and pollution (e.g. light intrusion, noise, smoke, fumes, effluent, waste or litter).

Core Policy 57 also requires development to have regard to the compatibility of adjoining buildings and uses, the impact on the amenities of existing occupants, and ensuring that appropriate levels of amenity are achievable within the development itself, including the consideration of privacy, overshadowing, vibration, and pollution.

As previously described, the application site is considered previously developed land in close proximity to other residential properties and gardens but is considered sufficiently separated at circa 32m from the nearest neighbouring dwelling at No.92 High Street to avoid any harmful neighbouring impacts. The application is supported by site sections and having visited the site and taken on board all the comments received, officers have not identified any material conflict with WCS CP57 or the NPPF to base a refusal of planning permission.

The site section below shows the proposal in relation to the nearest existing neighbouring properties to the north.

The rear elevation of the nearest neighbouring property is circa 32m from the northern elevation of the proposed single storey garage and approximately 41m from the north facing elevation of the proposed development. No first-floor windows are proposed on this elevation. There are first floor windows proposed on the northeast elevation however residential gardens and a swimming pool are located some 30m away to the north east beyond existing mature landscape planting that would provide some screening / filtering of views.

The nearest rear elevation of the neighboring properties to the northeast is about 70m distant at an oblique angle of sight.

There are no neighbouring properties to the immediate west and south of the application site.

Given the separation distances, the oblique angle of sight and the positioning, height and design of the proposed dwelling, officers have concluded that there would be no material overlooking, overshadowing or overbearing harm to neighbouring interests that would warrant the refusal of the application.

The proposed development would provide sufficient internal and external amenity space for future occupiers, and thus accords with WCS Policy CP57 and the NPPF, particularly paragraph 130 f.

9.5 Impact on Highway and Pedestrian Safety

This section focuses on the impact of the proposed development on highway and pedestrian safety and the ability of the existing highway network to accommodate the vehicular and pedestrian movements associated with the development.

Paragraph 114 (b) of the NPPF requires that in assessing specific applications for development, it should be ensured that safe and suitable access to the site can be achieved for all users.

Paragraph 115 of the NPPF states that '***development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe'*** (officer emphasis added).

Paragraph 116 (c) of the NPPF also states that...*applications for development should create places that are safe, secure and attractive - which minimise the scope for conflicts between pedestrians, cyclists and vehicles…and respond to local character and design standards*.
WCS CP57 (ix) requires new development to ensure "*that the public realm including new roads and other rights of way are designed to create places of character which are legible, safe and accessible..." and CP57 (xiv) requires development to meet "the requirements of CP61 (Transport and New Development)".*

WCS CP61(ii) requires new development to be "*capable of being served by safe access to the highway network" and within the supporting text for CP61, the Council recognises that it is critically important for good planning and safe highway interests for new development to benefit from a suitable connection to the highway "that is safe for all road users*".

WCS CP64 requires sufficient parking to be provided in new development in line with residential parking standards and requires a reduction in reliance on the use of the private car where possible.

The Council's highway officer has dutifully considered the third-party objections made pursuant to access and highway safety matters and has raised no objection to this application. It is particularly noted that a significant number of representations have referenced concerns with the access and highway safety. Following this the local highways authority provided a detailed clarification for the reason behind their 'no objection'.

It is fully acknowledged that under previous applications and as part of 'other' pre-application enquiries relating to the proposed provision of new dwellings taking vehicular access off the private lane, Council highway officers have raised objections. However, there are important material reasons why this application must be assessed on its own individual merits.

By way of some background, a 2015 pre-app (as referenced in third-party representations) was objected to on two accounts by the Council's highway officer, these being the impact upon the lane and its ability to accommodate an intensification of use arising from an additional new dwelling and secondly the loss of parking provision. The preapp does not manifest as a comparable case since there would be no loss of parking associated to this proposed new dwelling and the site already has a right of access to serve the three stables and tack room, which could be used by three different parties.

The current use of the site dates to a 1978 planning permission for a block of three stables and tack room. This decision pre-dates the planning history for refusal of any new property proposed along the lane, with the first dated 3rd February 1981 (W/80/01499).

Another crucial difference between this application and other applications for other proposals located off the private lane that were not supported or refused by the Council, is that this current proposal does not constitute a development set within an existing domestic curtilage. The existing stabling has a trip generator in its own right and the balance of trip making between the lost equestrian use and that of a replacement dwelling has been fully considered by the Council highway officer.

Whilst it is arguable that that the new dwelling would generate more daily trips than the existing stable provision, the type, time and mode of trip to the stables are not so easily calculated or controlled.

The Councils highway officers are very mindful that at peak periods, the stables have the potential to generate an equivalent trip level, if not more trips than a single dwelling.

The basis for this argument is that there is little or no evidence to suggest that the 1978 permission was secured against a singular domestic property, and it could therefore operate independent to any property; and given that there are three stables, they could be used by three parties and have three different trips generated each time the site is accessed. As a consequence, it is appropriate to assume that the stables could generate trips independently to three separate dwellings.

With regards to the intensity of trips, the 1978 permission granted stabling for 3 horses and whilst this level of use may not be present today, the extant permission allows for this. With this in mind, the Councils highway officers have to consider the potential trip movements associated with the 1978 permission, irrespective of the current levels of use and operation.

The following represents the Councils highway officer assessment on the existing/potential trip generation for the stabling and tack room use:

The demands of 3 horses being stabled under a non-commercial arrangement, has the potential to generate 3 x trips for feed, bedding, various non animal husbandry visitations and transportation. Whilst these trips may not occur every day, they may occur concurrently or indeed during any peak period. The current proposal for a single dwelling, in comparison, would typically generate 0.6 trips in the peak periods between 8am and 9pm and 4pm and 5pm; this also allows for additional trips outside of the peak period dependent trip distance, arrival time and visit purposes.

The existing stables has the potential to generate trips independently of any other use along the lane and these trips have the potential to be more intensive than what would likely be the case for a single dwelling. In response to the referenced historic cases dating back to 1980 and 2015 for other residential forms of development on other sites accessed of the lane, those would have constituted entirely new and additional trip generators with no balance of loss.

The conclusions made by the Councils highway officer have taken on board the site-specific circumstances and have been guided by the aforesaid policy context.

Because of the balance of trips and that the trip rate for the dwelling compared to the stables is comparable to or perhaps less than the existing approved stable use, the Councils highway officer not surprisingly raises no objection and for similar reasons, there can be no justified burden to require the applicant to undertake improvements to the lane or its access.

Concern has been raised in representations regarding using the access track in relation to emergency vehicles such as fire services and accessing the site by construction vehicles and contractor vehicles following recent issues arising from some tree works being undertaken.

In relation to the accessibility of a site by emergency vehicles including fire services, this is generally a matter for building regulations and building control and therefore falls outside of the planning process

and remit of assessment for this application. For minor applications such as this case, the fire service are not usually consulted, however given the concerns raised, the case officer spoke with a senior building control officer and contacted the Dorset and Wiltshire fire services for comment. A response from the fire service is pending and a verbal update will be provided at the committee meeting should the fire service respond to the consultation.

The received representations refer to contractor vehicles associated to recent tree work having difficulty accessing the site due to the narrow nature of the track resulting in an obstruction and on street parking and displacement of pedestrians from the walkways causing what has been referenced as 'an unacceptable impact on highway safety'.

Whilst officers can fully sympathise with local residents about the frustration and inconvenience contractor vehicles may have on other users of the private lane, the Council's highway officer maintains no objection on highway safety grounds. A planning condition is recommended for any committee endorsed planning permission for this application to require the applicant to submit a detailed construction transport and travel management plan before any works on site commence including any demolition works.

For the reasons cited above, and with NPPF para 115 firmly in mind, the proposed development would not result in *unacceptable impacts on highway safety or result in severe cumulative residual impacts*…when tested against the NPPF and the Council WCS policies CP60, CP61, CP62 and CP64.

9.6 Ecology Matters

The NPPF advises that when determining planning applications, local planning authorities should aim to conserve and enhance biodiversity. Adopted WCS Core Policy 50 'Biodiversity & Geodiversity' outlines that all development proposals must demonstrate how they protect features of nature conservation and geological value as part of the design rationale. There is an expectation that such features shall be retained, buffered, and managed favourably in order to maintain their ecological value, connectivity and functionality in the long-term.

Furthermore, the policy specifies that all development should seek opportunities to enhance biodiversity. Major development in particular must include measures to deliver biodiversity gains through opportunities to restore, enhance and create valuable habitats, ecological networks and ecosystem services.

The proposed development lies adjacent to priority woodland and in the Bath and Bradford-on-Avon Bat Special Area of Conservation (SAC). The SACs qualifying features are Bechstein's bat, Greater Horseshoe bat and Lesser Horseshoe bat. The site is located within the 4km core foraging zone for a greater horseshoe (GHS) bat roost associated with the SAC.

The application is supported by an Ecological Assessment (Smart Ecology, dated 5 October 2023).

The Ecology Assessment confirms that the likelihood of roosting bats in the existing stables is negligible with moderate likelihood that bats use the site for foraging. As such glazing on the east and south sides has been reduced to reduce the skyglow and light impact on the fly paths. No external lighting is proposed, and a condition is recommended to be attached to the grant of any consent ensuring that no external lighting is installed without prior approval of the lux levels from the LPA.

No significant habitat loss will arise by virtue of the proposal and the proposed development will include tree protection measures during construction as shown on the submitted site plan with further details to be secured by condition within a Construction Environment Management Plan.

Additional landscaping, tree planting and bat boxes and bird boxes are indicated to be installed as part of the development and a Landscape and Biodiversity Enhancement Plan for the site is recommended to be attached to the grant of any consent to secure these features and ensure protection and enhancement of biodiversity on site during construction and post completion.

There is no requirement for Biodiversity Net Gain in this case, as the application is a self-build housing proposal which is exempt from the BNG legislative requirements.

The Bath & Bradford on Avon Bats Special Area of Conservation (SAC)

Given that the site lies within a core sustenance zone for Greater Horseshoe bats, associated with the Bath and Bradford-on-Avon Bats SAC and therefore may have potential to result in significant adverse impact on the special features of that site, a test of likely significance has been carried out by the relevant Competent Authority (Wiltshire Council) as required by Regulation 63 Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019.

This concluded that given the scale and nature of the development there is no mechanism for adverse effect/any temporary construction impacts and operational impacts would be de-minimis. The Habitat Regulation Assessment (HRA) has concluded that the application is not likely to have significant impacts on the SAC and Appropriate Assessment is not required.

The Salisbury Plain Special Protection Area (SPA)
This application lies within the 6.4km buffer zone of the Salisbury Plain SPA and in light of the HRA for the Wiltshire Core Strategy and the HRA for the Wiltshire Housing Site Allocations Plan it is screened into Appropriate Assessment due to the potential impact of recreational pressure on stone curlew in combination with other plans and projects. In April 2023 Natural England (NE) confirmed that the 2018 Appropriate Assessment for Salisbury Plain continues to be supported by NE. That Appropriate Assessment reached a conclusion of no likely significant effect on the conservation objectives of the SPA, for development within 6.4km of the SPA boundary provided that the mitigation scheme continues to be implemented. Annual stone curlew monitoring and protection measures continue to be secured by the Council.

Accordingly, there is no ecology-based objection subject to conditions being attached to the grant of any permission requiring details of any lighting to be submitted prior to installation, provision of a plan and details relating to bat and bird boxes and a CEMP. Subject to these conditions the proposal meets requirements contained in WCS CP50, the NPPF and Habitat Regulations together with associated guidance.

9.9 Drainage

WCS Policy CP67 requires that all new development should include measures to reduce the rate of rainwater runoff and improve rainwater infiltration to soil and ground (via sustainable urban drainage systems).

NPPF Paragraph 165 states that housing development should be avoided in areas at risk of flooding and directing development to land having the lowest risk.

In this particular case, the application site is located within Flood Zone 1 with no evidence of surface or ground water flooding and is therefore has the lowest risk from flooding. This is not surprising given the location of the site at the top of a valley ridge. It is important however to ensure that any water generated on site through roof or surface water run off remains within the curtilage and is subject to robust appropriate soakaways.

NPPF Paragraph 173 states that when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. The application is supported by a site plan that shows on-site SuDS drainage. A planning condition is recommended to secure the full technical details of the surface water drainage installation and for it to be subsequently implemented prior to occupation.

There are no public sewers on the land. Foul drainage would be provided via a new treatment plant and separate consent would be required through Building Regulations and separate permission through securing a license from the Environment Agency.

From a drainage perspective, the proposed development satisfies the requirements of WCS Policy CP67.

9.10 Land Stability

There is no specific WCS policy that addresses land stability however the NPPF states at paragraph 180 (e) that planning decisions should contribute to and enhance the natural environment by preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability.

NPPF Paragraph 189 (a) moreover states that planning decisions should ensure that a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and 189 (c) says adequate / proportionate site investigation information, prepared by a competent person, should be presented to inform any assessment.

NPPF Paragraph 190 does however state that where a site is affected by…land stability issues, responsibility for securing a safe development rests with the developer and/or landowner.

The application proposes an element of cut and infill on the site with 1.8m of soil being proposed to be excavated form the northern part of the site and for the material to be used to level up part of the site to provide the proposed dwelling with a level base. This would result in a levelling of the site and a green landscaped retaining wall would be created doubling up as a boundary treatment to the south and west of the proposed site.

An additional retaining wall would be provided along the northern reaches of the site to stablise the land to the north. The existing neighbouring land is already separated by a retaining wall and there is no evidence that this would be undermined by the proposed works.

A statement regarding the earth works and calculation on the spoil material to be reused has been submitted and officers report no objections. No detailed land stability or structural calculations have been provided in support of this application, but given the extent of the site excavations, officers are satisfied that a pre-commencement planning condition can be imposed on any grant of planning permission requiring the applicant to submit a detailed statement and technical specification for the retaining walls including all the cut and fill calculations (to be completed by a competent independent professional and confirms the acceptability and integrity of the proposal).

Moreover, Building Regulations would also be involved to ensure that the house foundations allow for a structurally stable development.

9.11 s106 and CIL

The Council's adopted Wiltshire Community Infrastructure Levy (CIL) Charging Schedule does not apply to the proposed development because the site is a self-build scheme. The applicant is however committed to entering into a s106 legal agreement to restrict the proposal to self-build development and this should be agreed and completed prior to any decision being issued.

9.12 Other Matters

The Parish Council objections to the application have been taken into account fully in the assessment of this application and due process has been followed.

Third-party representations refer to new proposed stables being part of this application, however that is not the case. Initially as part of the previous application, plans were submitted indicating possible future stables to the southwest of the proposed dwelling. At the request of the planning case officer these were to be removed from the proposal, and these have not been included in the current scheme. If a future application for new stables is proposed on the applicant's other land, it would be subject to its own individual assessment under a separate application.

Third-party representations refer to a small tipi/wooden hut structure that is on the site and is to be removed if permission is granted for the new dwelling. There is no planning history for this structure and its removal is welcomed by officers. If the hut is not removed, it would be a matter for planning enforcement to investigate under a separate process.

Third-party representations refer to the applicant as a Parish Councillor who was in office at the time of the settlement boundary changes. Concerns are raised that this should be investigated by Wiltshire Council. The concerns are noted however the settlement boundary is now defined, and the change was independently assessed through the local plan adoption process. It is a matter of fact that this application site is partially within the settlement boundary, with all the proposed operational development being sited within the village limits of development.

Third-party representations have requested that the planning officer and highways officer visit the site to view it from private properties. Site visits were undertaken by the planning officer and the highways officer on separate occasions and a thorough review of the site, the access and the immediate locality was undertaken which included a full assessment of the impacts of the development on neighbouring / nearby properties and local residents.

In addition, at the request of officers, a committee site visit has been arranged for the elected members to view the site and its surroundings prior to the committee meeting and it is envisaged that members may also wish to view the proposal from adjacent residential properties, subject to the requisite invites being received in advance of the visit.

It is also noted that a couple of the third-party representations request that the Council views the proposal from no.92A which immediately backs onto the site. The case officer will attend the member site visit prior to the committee meeting with the Councils adopted site visit protocols being followed.

Third-party representations have queried why a proper consultation was not carried out on land and dwellings next to the application site. In response to this challenge, officers report that a proper consultation of neighbouring occupiers and local residents was undertaken.

The concern raised about no site notice being erected has been addressed given the relevant development management procedures set no requirement for a site notice when immediate neighbours / interested parties were notified by letter, and no press advertisement requirement was triggered for this application. Consequently, officers are satisfied that all the statutory consultation procedures have been followed.

9.13 Conclusion and the Planning Balance

The proposed development would reuse previously developed land for a self-build dwelling, with the new house itself being entirely located within the village settlement. The provision of 1 dwelling to be delivered as a self-build project, carries significant weight in the context of the Councils present inability to demonstrate sufficient housing land supply when tested against the NPPF and Wiltshire's housing needs.

The principle of development merits full support and represents an efficient and effective re-use of land providing sustainable windfall development.

The development would provide construction jobs not just in the erection of the dwelling but in the manufacturing of the bespoke timber frame and the provision and delivery of materials which merits modest weight in the planning balance.

The provisions of a landscape and ecological plan would delivery betterment and enhance the biodiversity on the site which also merits modest weight.

The design of the proposed dwelling is considered to be of high quality with the applicant being committed to providing a very energy efficient building meeting the low carbon requirements of Building Regulations, which merits moderate weight in favour of the scheme.

These benefits must be balanced against any adverse impacts arising from the proposal (as required by NPPF para 11) and as set out in the officer report above, there are no substantive adverse impacts that would significantly or demonstrably outweigh these stated benefits and therefore in accordance with paragraph 11 of the NPPF, the proposed development is supported by officers subject to the completion of a UU legal agreement to establish the self-build delivery and planning conditions.

10. RECOMMENDATION:

That the Committee delegates authority to the Head of Development Management to grant planning permission subject to officers securing a completed s.106 unilateral undertaking from the applicant to establish the proposal as a self-build development and be bound by the following planning conditions and informatives listed below:

Conditions:

1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2 The development hereby permitted shall be carried out in accordance with the approved plans and documents set out on the drawing issue sheet dated 07/08/2024.

REASON: For the avoidance of doubt and in the interests of proper planning.

3 No development shall commence on site (including any works of demolition), until a Construction Method Statement and a Construction Environmental Management Plan (CEMP), which shall include the following:

a) the parking of vehicles of site operatives and visitors;
b) loading and unloading of plant and materials;
c) storage of plant and materials used in constructing the development;
d) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
e) wheel washing facilities;
f) measures to control the emission of dust and dirt during construction;
g) a scheme for recycling/disposing of waste resulting from demolition and construction works; and
h) hours of construction, including deliveries;
i) Identification of ecological protection areas/buffer zones and tree root protection areas and details of

physical means of protection, e.g. exclusion fencing.
j) Working method statements for protected/priority species, such as nesting birds and reptiles.
k) Mitigation strategies already agreed with the local planning authority prior to determination, such as for bats; this should comprise the pre-construction/construction related elements of strategies only.

l) Work schedules for activities with specific timing requirements in order to avoid/reduce potential harm to ecological receptors; including details of when a licensed ecologist and/or ecological clerk of works (ECoW) shall be present on site.
m) Key personnel, responsibilities and contact details (including Site Manager and ecologist/ECoW).

has been submitted to, and approved in writing by, the Local Planning Authority.

The approved Statement and CEMP shall be complied with in full throughout the construction period. The development shall not be carried out otherwise than in accordance with the approved construction method statement.

REASON: To minimise detrimental effects to the neighbouring amenities, the amenities of the area in general, detriment to the natural environment through the risks of pollution and dangers to highway safety, during the construction phase. To ensure adequate protection and mitigation for ecological receptors prior to and during construction, and that works are undertaken in line with current best practice and industry standards and are supervised by a suitably licensed and competent professional ecological consultant where applicable.

4. No development shall commence on site (except for demolition and site clearance works) until full technical design details for the retaining walls, and a supporting statement and methodology of proposed earthworks together with structural calculations prepared by a suitably qualified independent professional demonstrating land stability can be achieved on site, has been submitted to and approved in writing by the LPA.

Thereafter the development shall be implemented in accordance with the approved details.

REASON: To ensure the proposal can be built safely with structural integrity

5 No development shall commence on site above ground slab level (except for demolition and site clearance works) until details of waste & recycling facilities (including location, collection and range of facilities) have been submitted to and approved in writing by the Local Planning Authority.

The development shall not be first occupied until the approved recycling facilities have been completed and made available for use in accordance with the approved details and they shall be subsequently maintained in accordance with the approved details thereafter.

REASON: In the interests of public health and safety.

6 No development shall commence on site above ground slab level (except for demolition and site clearance works) until manufacturer's details and photographs of the materials to be used for the external walls, roofs, windows and doors have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

REASON: In the interests of visual amenity and the character and appearance of the area.

7 No development shall commence on site until a scheme of hard and soft landscaping has been submitted to and approved in writing by the Local Planning Authority, the details of which shall include

• location and current canopy spread of all existing trees and hedgerows on the land;
• full details of any to be retained, together with measures for their protection in the course of

development;
• a detailed planting specification showing all plant species, supply and planting sizes and planting densities;

• finished levels and contours;
• means of enclosure;
• car park layouts;
• other vehicle and pedestrian access and circulation areas;
• all hard and soft surfacing materials;
• minor artefacts and structures (e.g. furniture, play equipment, refuse and other storage units, signs, lighting);
• proposed and existing functional services above and below ground (e.g. drainage, power, communications, cables, pipelines indicating lines, manholes, supports);

REASON: To ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

8 All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of the building(s) or the completion of the development whichever is the sooner. All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority. All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority.

REASON: To ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

9. The development hereby approved shall not be brought into use until all the existing buildings on site have been permanently demolished and all of the demolition materials and debris resulting there from has been removed from the site.

REASON: In the interests of the character and appearance of the area [and neighbouring amenities].

10. The development shall not be first occupied until the turning area and parking spaces have been completed in accordance with the details shown on the approved plans. The areas shall be maintained for those purposes at all times thereafter.

REASON: In the interests of highway safety.

11 The development shall not be first occupied until surface water drainage has been constructed in accordance with the approved scheme.

REASON: To ensure that the development can be adequately drained.

12 The development hereby approved (including demolition and site clearance) shall be carried out in strict accordance with the approved details shown on plan ref: Proposed Site Plan 2338.FOS-03B Rev O and in accordance with the Arboricultural Impact Assessment and Method Statement of Works dated 19 April 2024. In particular, the arboricultural method statement must provide the following:

In order that trees to be retained on-site are not damaged during the construction works and to ensure that as far as possible the work is carried no demolition, site clearance or development should commence on site until a pre-commencement site meeting has been held, attended by the developer's arboricultural consultant, the designated site foreman and a representative from the Local Planning Authority, to discuss details of the proposed work and working procedures.

Subsequently, and until the completion of all site works, site visits should be carried out on a monthly basis by the developer's arboricultural consultant. A report detailing the results of site supervision and any necessary remedial works undertaken or required should then be submitted to the Local Planning Authority. Any approved remedial works shall subsequently be carried out under strict supervision by the arboricultural consultant following that approval.

REASON: In order that the Local Planning Authority may be satisfied that the trees to be retained on and adjacent to the site will not be damaged during the construction works and to ensure that as far as possible the work is carried out in accordance with current best practice and section 197 of the Town & Country Planning Act 1990.

13 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.3) (England) Order 2020 (or any Order revoking or re-enacting or amending those Orders with or without modification), no development within Part 1, Classes A, AA, B, C, D, E and F and Part 1 Class A shall take place on the dwellinghouse hereby permitted or within their curtilage.

REASON: In the interests of the amenity of the area and to enable the Local Planning Authority to consider individually whether planning permission should be granted for additions, extensions or enlargements.

14 No external light fixture or fitting will be installed within the application site unless details of existing and proposed new lighting have been submitted to and approved by the Local Planning Authority in writing. The submitted details will demonstrate how the proposed lighting will impact on bat habitat compared to the existing situation.

REASON: To avoid illumination of habitat used by bats and additional sky glow in a sensitive development landscape edge location.

15 No development shall commence on site until the trees on the site and along the site boundaries have been enclosed by protective fencing, in accordance with British Standard 5837 (2005): Trees in Relation to Construction. Before the fencing is erected, the exact type and position shall require the written approval of the Local Planning Authority and after it has been erected, it shall be maintained for the full duration of the construction works and no vehicle, plant, temporary building or materials, including raising and or, lowering of ground levels, shall be allowed within the protected areas(s).

REASON: To enable the Local Planning Authority to ensure the protection of trees on the site and along the site boundary (on land within the applicant's control) in the interests of visual amenity.

Planning Informatives:

The proposed development will require separate approval and a separate license from the EA for any sewerage treatment plant to be installed on site.

The applicant should note that under the terms of the Wildlife and Countryside Act (1981) and the Habitats Regulations (2010) it is an offence to disturb or harm any protected species including for example, bats, breeding birds and reptiles. The protection offered to some species such as bats, extends beyond the individual animals to the places they use for shelter or resting.

Please note that this consent does not override the statutory protection afforded to any such species.

In the event that your proposals could potentially affect a protected species you should seek the advice of a suitably qualified and experienced ecologist and consider the need for a licence from Natural England prior to commencing works. Please see Natural England's website for further information on protected species.

The habitat within the proposed development site and the surrounding area is suitable for roosting, foraging and commuting bats. An increase in artificial lux levels can deter bats which could result in roost abandonment and/or the severance of key foraging areas. This will likely result in a significant negative impact upon the health of bat populations across the region. Artificial light at night can have a substantial adverse effect on biodiversity. Any new lighting should be for the purposes for safe access and security and be in accordance with the appropriate Environmental Zone standards set out by the Institute of Lighting Engineers in their publication GN01:2021, 'Guidance for the Reduction of Obtrusive Light' (ILP, 2021), and Guidance note GN08-18 "Bats and artificial lighting in the UK", issued by the Bat Conservation Trust and Institution of Lighting Professionals.

The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside their control. If such works are required, it will be necessary for the applicant to obtain the landowners consent before such works commence.

If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 1996.

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Wiltshire Council

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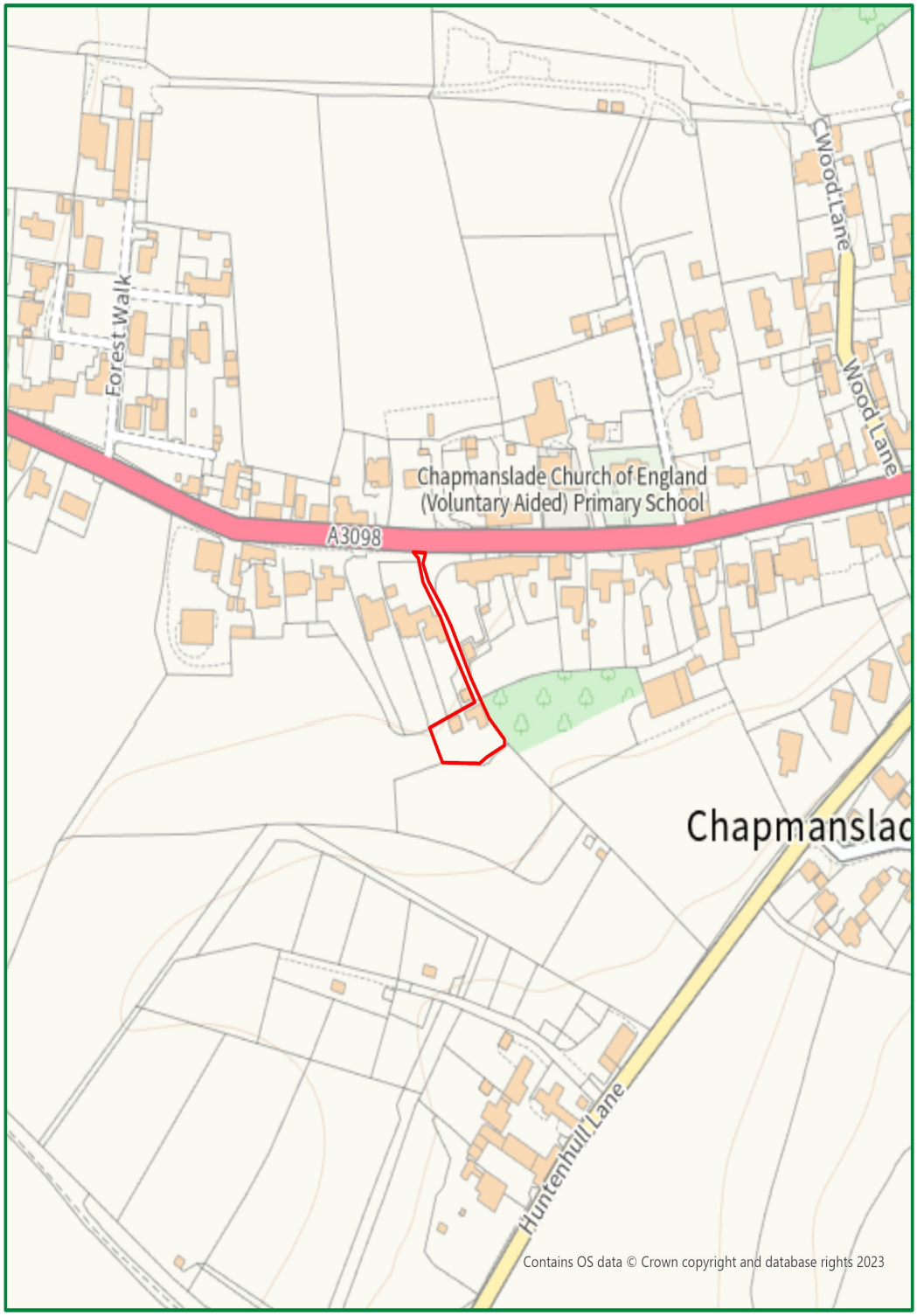

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