

**COMMONS ACT 2006 – SECTIONS
15(1) & (2) – APPLICATIONS TO
REGISTER LAND AS A TOWN OR
VILLAGE GREEN – SEAGRY ROAD,
LOWER STANTON ST QUINTIN**

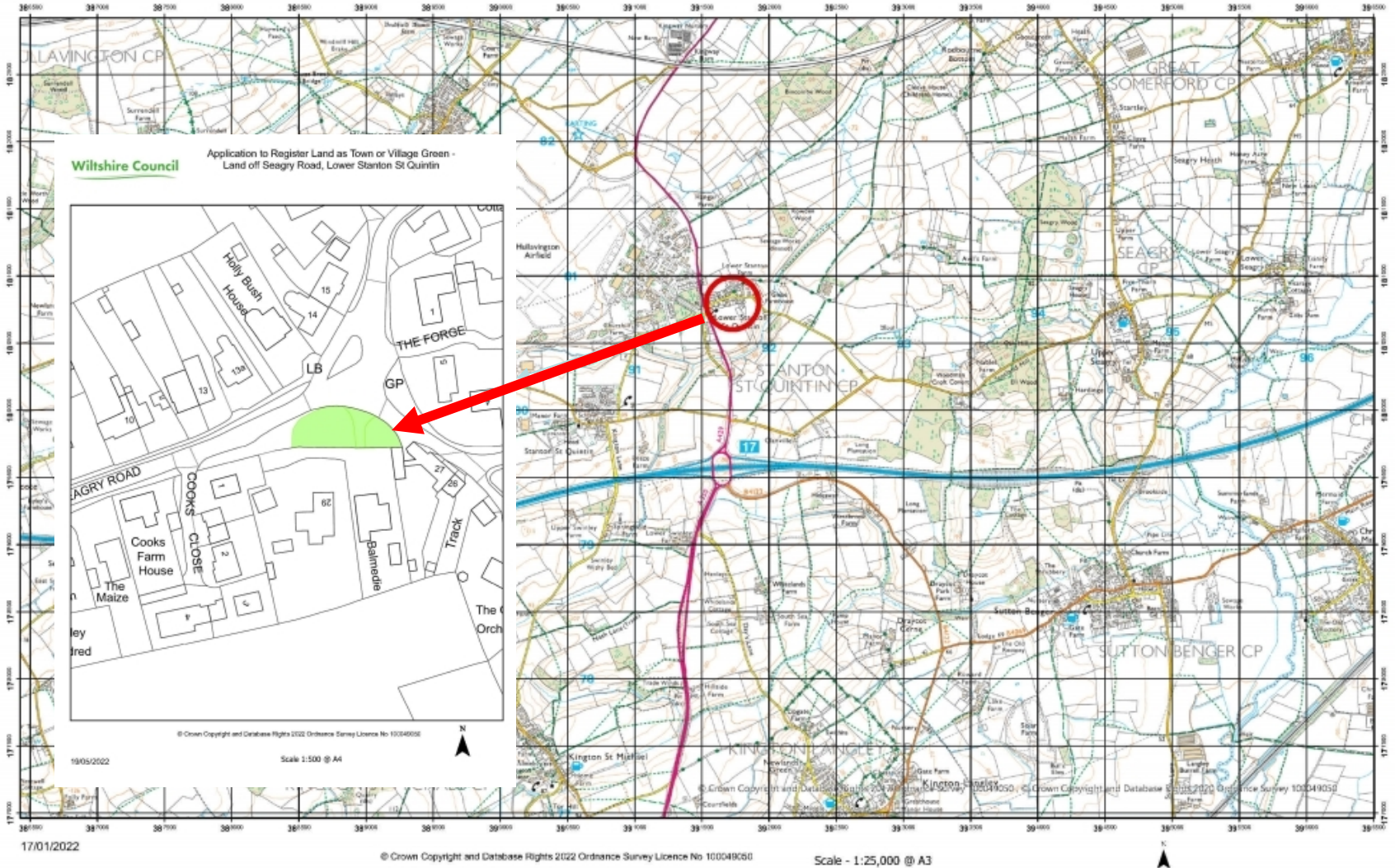
**AGENDA ITEM NO.7
NORTHERN AREA PLANNING COMMITTEE:
1 MARCH 2023**

**JANICE GREEN – SENIOR DEFINITIVE MAP
OFFICER**

Location Plan

Wiltshire Council

Commons Act 2006 - Sections 15(1) & (2) Application to Register Land as Town or Village Green - Land off Seagry Road, Lower Stanton St Quintin
Appendix 1 - Location Plan



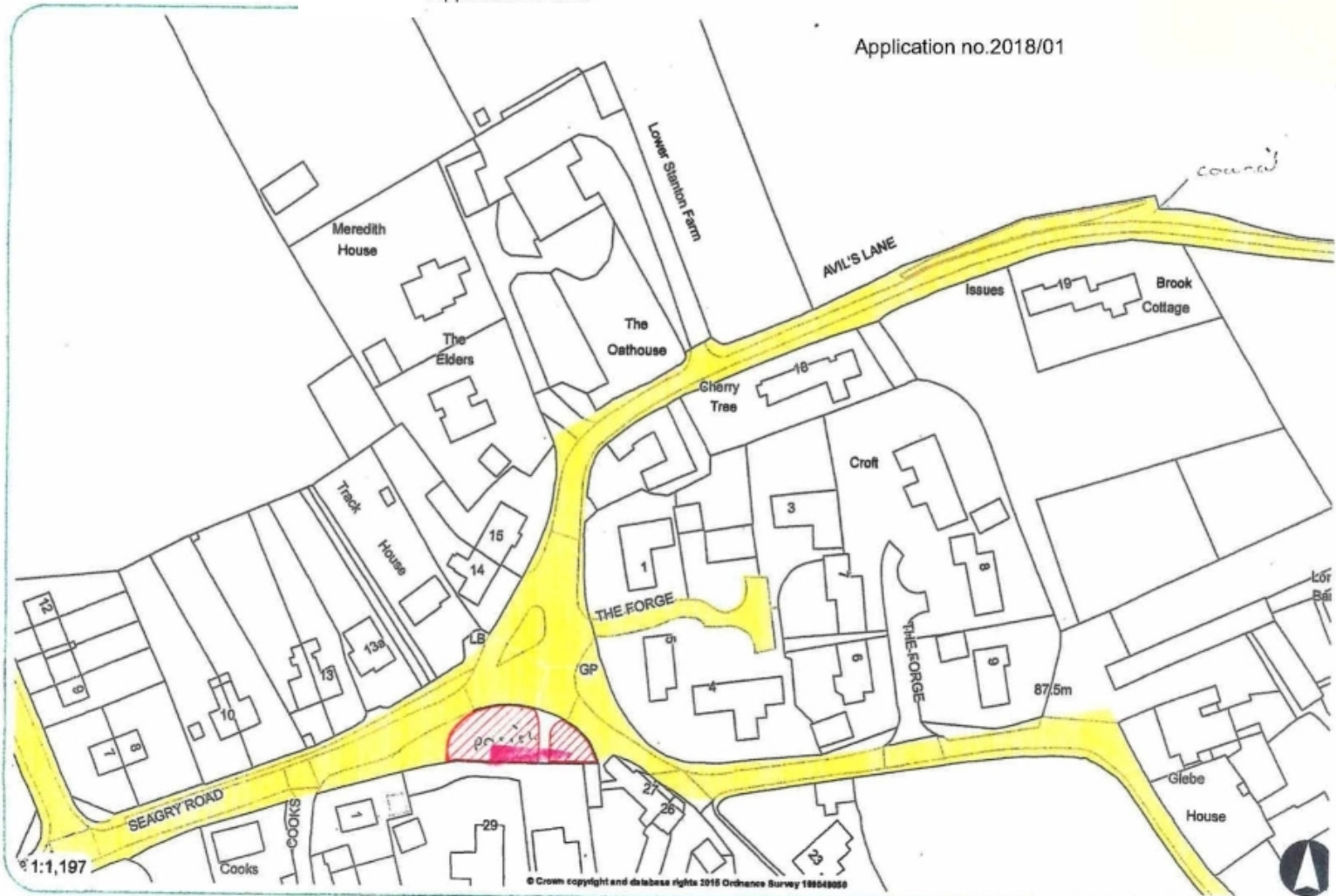
Application Plans – Land off Seagry Road, Lower Stanton St Quintin (Application no.2018/01)

Wiltshire
Where everybody matters.

Commons Act 2006 - Sections 15(1) & (2) - Application to Register Land as Town or Village Green - Land off Seagry Road, Lower Stanton St Quintin

Application Plans

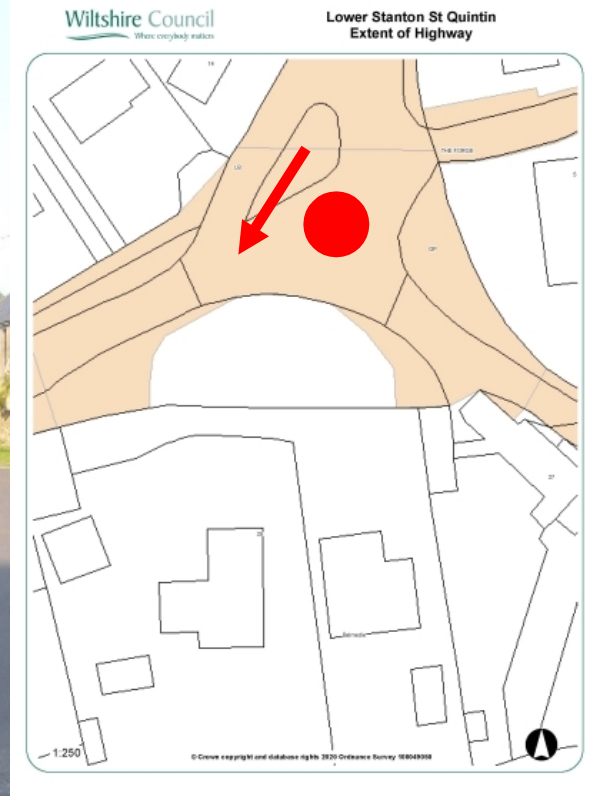
Application no.2018/01



Application Plans – Land off Seagry Road, Lower Stanton St Quintin (Application no.2019/01)

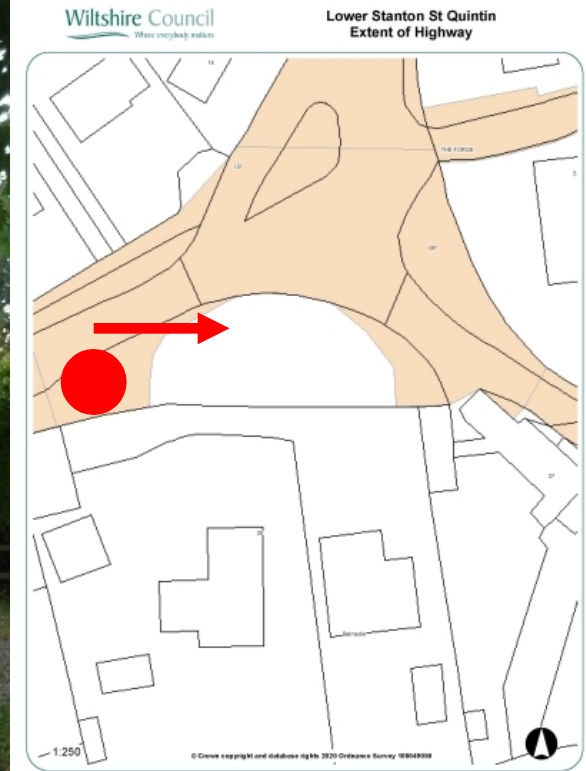


Application land looking south-west from Seagry Road: Formerly the site of a pond, filled in c.1955 - 1965

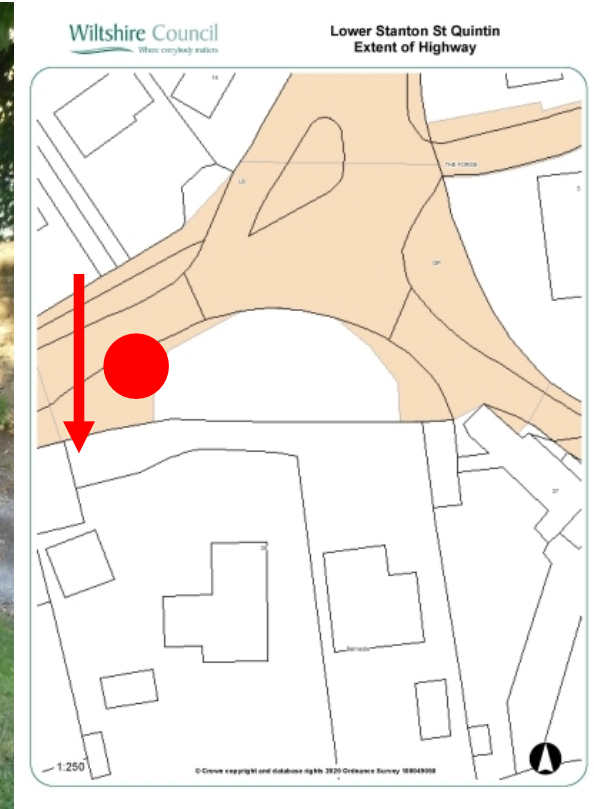


Please note: Photographs included here are revised for this Committee meeting, based on further representations and evidence received. Location marker is approximate and indicative only. Photographs taken 12/08/2020.

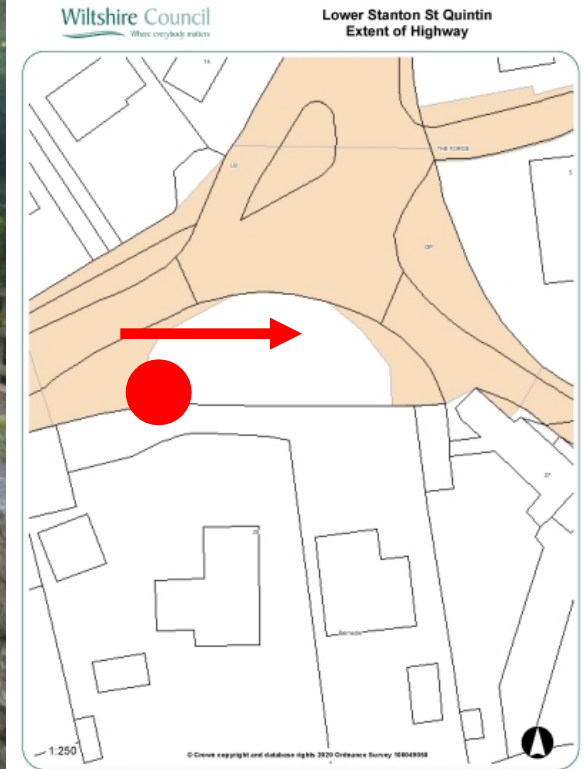
Application land looking east



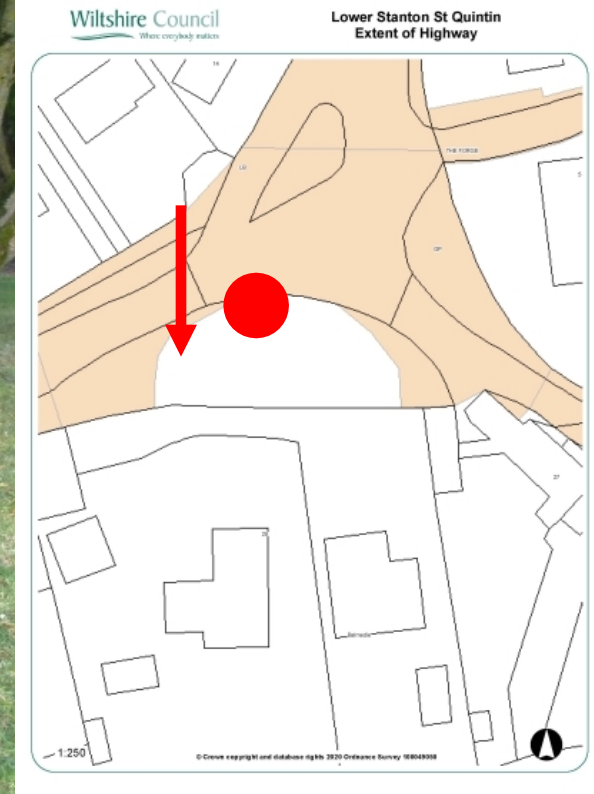
West of application land: The Inspector has concluded that the “Wee Free Library” is not located on the application land




The application land looking east



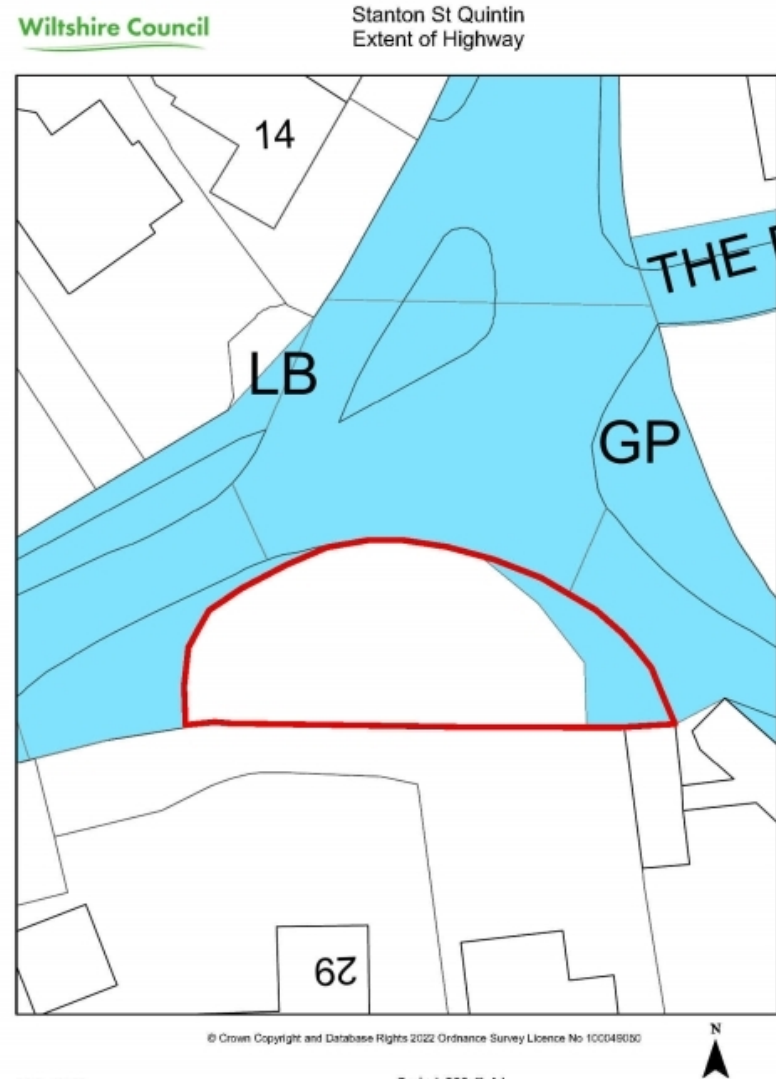
The application land looking south: There are two memorial benches; a memorial tree; table with benches and parish notice board located on the land



Town Village Green (TVG) application land also recorded as highway maintainable at public expense

Extent of highway maintainable at public expense = 

TVG application land = **Edged red**



The Legislation

The applications are made under Sub-sections 15(1) and (2) of the Commons Act 2006:

15 Registration of greens

- (1) Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies.*

- (2) This subsection applies where –*
 - (a) a significant number of 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.*

Wiltshire Council is the Commons Registration Authority (CRA) for the County of Wiltshire.

The Applications

The applications are made and supported by Stanton St Quintin Parish Council.

The applications are date stamped as received by Wiltshire Council as the CRA:

Application no.2018/01 - 30 April 2018

Application no.2019/01 - 26 April 2019

The application land located off Seagry Road, Lower Stanton St Quintin, has no recorded landowner.

21 witnesses have submitted statements in support of the applications.

There are 8 objections to the applications.

The Burden of Proof

In order for an application to be successful each element of the legal test (Section 15(2) of the Commons Act 2006), must be satisfied, where it is no trivial matter for a landowner to have land registered as a green.

The burden of proof lies with the applicant.

The CRA has no investigative powers.

The standard of proof is the balance of probabilities.

The Evidence

Evidence is key and no other matters may be taken into account in the determination of the applications.

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 the applications, is in dispute.

The Objectors also raised a number of legal points regarding the applications, including:

- Planning Trigger Events**
- The presence of services in the application land**

Non-Statutory Public Inquiry

It is the duty of the CRA to determine the applications in a fair and reasonable manner.

It is open to the CRA to hold a non-statutory public inquiry where there is a substantial dispute of fact, which is likely to be resolved by hearing from the witnesses, or the matter is of great local interest: *R (on the Application of Whitmey) v Church Commissioners [2004] EWCA Civ 951*

Northern Area Planning Committee Meeting 25 May 2022 – Members resolved:

To approve the appointment of an independent Inspector to hold a non-statutory Public Inquiry and provide an advisory report for the Northern Area Planning Committee on the applications to register land off Seagry Road, Lower Stanton St Quintin, as a TVG. Members considered that due to the serious dispute of facts they would be unable to make a decision to approve or deny the application without further examination of the evidence.

Mr William Webster, 3 Paper Buildings appointed by the CRA as independent Inspector to preside over a non-statutory public inquiry to hear evidence from all parties and produce a recommendation to assist the CRA in its determination of the applications.

Public Inquiry held at Stanton St Quintin Village Hall – 8 & 9 November 2022.

Oral evidence heard from:

- **Applicant - Stanton St Quintin Parish Council (Cllr A Andrews)**
- **8 witnesses in support of the applications**
- **Mr M Reeves; Mrs K Reeves and Mr J Reeves in objection**

Oral evidence provided at a public inquiry may be given additional weight where it is subject to cross examination.

Inspector's Report and Recommendation

The Inspector submitted a final report and recommendation on 9 January 2023. Having heard the evidence the Inspector made the following key findings:

- Evidence provided by too few local inhabitants for it to constitute a significant number.
- The locality claimed is Stanton St Quintin, however, regular use by those living to the west of A429 road is liable to be minimal, if at all.
- Lower Stanton St Quintin has small population and number of recreational walkers or children able to use the land for play is going to be even smaller.
- Claimed use has been “as of right”, i.e. peaceable, open and without consent.
- The land is too small to be of much practical use for lawful sports and pastimes (LSP), the LSP claimed is likely to have been too trivial or sporadic and not sufficient in duration; nature or quality to support registration.
- Application land and its context supportive of findings:
 - Damp and boggy in wetter weather; no tracks or other signs of wear to indicate active use;
 - Never been a completely open space - even more trees present in the past, their low branches being intrusive when walking on or around the land;
 - For most of the 20 year period in question only one bench has been present on the land and in poor condition;
 - Land has no view or outlook of particular interest, although wide enough for people to meet and talk for short periods off the road.

Inspector's Report and Recommendation (continued)

- The “Wee Free Library” began after the qualifying period ended and is located outside the application land.
- There is no statutory incompatibility between the services present in the land and registration of the land.
- The Inspector set aside the matter of the extent of highway for the inquiry, which should continue based on the usual qualifying criteria, with the exception of an area at the eastern side of the site being recorded highway not registrable as TVG.

The Inspector recommends that the applications to register the land as a TVG, be rejected on the ground that the criteria for registration laid down in section 15(2) of the Commons Act 2006 have not been satisfied, for the reasons set out within the report.

The Inspector's recommendation is supported by:

- Documentary evidence
- Oral evidence given by witnesses and subject to cross-examination
- The Inspector's detailed consideration of the evidence

There is no obligation for the CRA to follow Inspector's recommendation, however, if the Committee do not resolve to accept the recommendation in full and make an alternative determination, clear evidential reasons for this decision must be given:

- The CRA is required to publish reasons for the decision
- The decision of the CRA is open to legal challenge

Officers' Recommendation

That Wiltshire Council, as the CRA, accepts the Inspector's recommendation and that the applications to register land adjacent to Seagry Road, Lower Stanton St Quintin, as a TVG, (proceeding under application number 2018/01 and 2019/01), should be rejected on the ground that 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 January 2023.

Decision

The Committee is acting in its Regulatory function which requires the Committee to act in a quasi-judicial capacity.

When a Committee acts in its quasi-judicial capacity, it must follow a proper procedure which accords with the requirements of natural justice and the right to a fair hearing.

Evidence is key:

- If the Committee uses its powers to make an alternative determination, against the Officers' recommendation, the Committee must give legally valid reasons for this determination, which must be supported by evidence.**