

# AGENDA

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**Meeting:** Northern Area Planning Committee

**Place:** Council Chamber - Council Offices, Monkton Park, Chippenham,  
SN15 1ER

**Date:** Wednesday 1 March 2023

**Time:** 2.00 pm

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## Membership:

Cllr Tony Trotman (Chairman)  
Cllr Howard Greenman (Vice-Chairman)  
Cllr Chuck Berry  
Cllr David Bowler  
Cllr Steve Bucknell  
Cllr Gavin Grant

Cllr Jacqui Lay  
Cllr Dr Brian Mathew  
Cllr Nic Puntis  
Cllr Martin Smith  
Cllr Elizabeth Threlfall

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## Substitutes:

Cllr Clare Cape  
Cllr Ruth Hopkinson  
Cllr Peter Hutton  
Cllr Bob Jones MBE

Cllr Dr Nick Murry  
Cllr Ashley O'Neill  
Cllr Tom Rounds

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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 5 - 24*)

To approve as a true and correct record the minutes of the previous meeting held on 1 February 2023.

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 will have had the opportunity to make representations on the planning applications and to contact and lobby their local member and any other members of the planning committee prior to the meeting. Lobbying once the debate has started at the meeting is not permitted, including the circulation of new information, written or photographic which have not been verified by planning officers.

### **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 22 February 2023 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 24 February 2023. 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 **Rights of Way and Village Green Applications**

To consider and determine the following rights of way and village green applications.

## 7 **Commons act 2006 - sections 15(1) and (2) Applications to register land as town or village green - land adjacent to Seagry road, Lower Stanton St Quintin (Pages 25 - 96)**

To consider the Advisory Report, dated 9 January 2023, submitted by Mr William Webster of 3 Paper Buildings, appointed by Wiltshire Council as the Commons Registration Authority (CRA), to Act as an independent Inspector to:

- preside over a non-statutory public inquiry, held on 8-9- November 2022 at Stanton St Quintin Village Hall, to consider two applications made under Sections 15(1) and (2) of the Commons Act 2006, to register land adjacent to Seagry Road, Lower Stanton St Quintin, as a town or village green (TVG), and
- produce an advisory report to include a recommendation to the CRA to assist in its determination of the applications.

## 8 **Urgent Items**

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

## Northern Area Planning Committee

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### **MINUTES OF THE NORTHERN AREA PLANNING COMMITTEE MEETING HELD ON 1 FEBRUARY 2023 AT COUNCIL CHAMBER - COUNCIL OFFICES, MONKTON PARK, CHIPPENHAM, SN15 1ER.**

#### **Present:**

Cllr Tony Trotman (Chairman), Cllr Howard Greenman (Vice-Chairman), Cllr Chuck Berry, Cllr David Bowler, Cllr Steve Bucknell, Cllr Gavin Grant, Cllr Jacqui Lay, Cllr Dr Brian Mathew, Cllr Nic Puntis, Cllr Elizabeth Threlfall and Cllr Clare Cape (Substitute)

#### **Also Present:**

Cllr Bob Jones MBE, Cllr Liz Alstrom, Cllr Ross Henning, and Cllr Dr Nick Murry

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#### 1 **Apologies**

Apologies for absence were received from Cllr Martin Smith, who had arranged for Cllr Clare Cape to attend the meeting in his absence.

#### 2 **Minutes of the Previous Meeting**

Councillor Gavin Grant updated that positive discussions with Bloor Homes over a contentious application had continued with representatives and Malmesbury Town Council. There is the belief that Bloor Homes will be placing a single application for both elements of the site that would be likely to be seen by the committee and with the suggested form, it would be supported by Malmesbury Town Council.

The minutes of the meeting held on 7 December 2022 were presented for consideration, and it was;

#### **Resolved:**

**To approve and sign as a true and correct record of the minutes of the meeting held on 7 December 2022.**

#### 3 **Declarations of Interest**

The were no declarations of disclosable pecuniary interest.

#### 4 **Chairman's Announcements**

The Chairman informed those in attendance of the procedures in place if there was to be a fire alarm.

5 **Public Participation**

No questions had been received from councillors or members of the public.

The Chairman welcomed all present. He then explained the rules of public participation and the procedure to be followed at the meeting.

6 **Planning Appeals and Updates**

It was noted that the appeals report was missing an appeal. After which, Councillor Chuck Berry moved that the Committee note the contents of the appeals report included within the agenda. It was seconded by Councillor Elizabeth Threlfall.

**Resolved:**

**To note the Planning Appeals Update Report for 1 February 2023.**

7 **Planning Applications**

The Committee considered and determined the following planning applications:

8 **PL/2022/03760 - Former Wiltshire College, Cocklebury Road, Chippenham, Wiltshire, SN15 3QD**

**Public Participation**

Gian Bendinelli spoke in support of the application.

Andrew Conroy (Head of Planning) spoke on behalf of Chippenham Town Council.

Senior Planning Officer, Rose Fox presented a report which outlined the proposed erection of retirement apartments (Category II Type) with communal facilities and car parking & erection of assisted living accommodation (Class C2) with communal facilities and car parking.

Details were provided including issues raised by the proposals, including the principle of development; highway impact; drainage; impact on heritage assets (including loss of non-designated heritage asset); design, character, and appearance of area. Additionally, residential amenities of adjoining neighbours; ecological considerations; affordable housing provision and designing out crime.

Members of the Committee had the opportunity to ask technical questions regarding the application. Details were sought on, but not limited to whether the office building which had been granted permission adjacent to the respective site could be implemented, to which it was clarified that theoretically the office could still be built with no linkage between the permitted multi-storey carpark to compel it to happen. Additionally, reference was made to the additional provision of the stated form of accommodation and whether there was a measurement for market need and desirability, to which the Chairman noted that there was a general need in the county for such accommodation. Questions

were also asked regarding what the resale conditions of the properties could be with examples cited of families unable to sell vacant flats designed for elderly residents. Furthermore, it was questioned whether part of the application would constitute affordable housing, to which it was noted that the Anchor element of the application would be affordable as well as meeting an objectified need in the locality.

Further technical questions included but were not limited to whether the application included staff accommodation, to which it was noted that this would not be included in the McCarthy Stone part but would be within the assisted living section. It was questioned whether the old college building had been considered as a heritage asset as part of the previous planning application which had been granted permission, to which it was clarified that the same assessment would have taken place and that the building had been submitted for listing, but a decision was made not to list it. Further clarity was provided that regarding the decision-making process and the heritage asset, the weight of the asset attributed to any decisions made would be down to the Committee with nothing in statute proposed. Additionally, reference was drawn to the report, in which it was acknowledged that the conservation area had identified key buildings and conservation areas and that the respective building made a positive contribution to the townscape and that the proposal would add a wall and railings, which the conservation statement suggested might be of benefit.

Members of the public then had the opportunity to present their views to the Committee as detailed above.

The neighbouring Local Unitary Member, Councillor Liz Alstrom then spoke regarding the application. Cllr Alstrom provided the Committee with two statements, one of which was provided by an individual who wished to voice their experience of McCarthy Stone, the other the experience of a resident in Chippenham who had struggled to sell their retirement property due to the current market. Cllr Alstrom stated that she believed that the application was in breach of the following Core Policies of the Wiltshire Core Strategy. The application would be in breach of CP9 (5.1.1) as having done market research online, there were currently 50 empty retirement properties, therefore suggesting that the application would make use of land in an unsustainable way and consequently exclude young people and that the needs of older people had clearly been met due to the number of vacant properties. CP9 (5.5.4) was cited as a breach as within the Chippenham Central Masterplan, as the site would sit within a designated civic and academic zone though it would be exclusively designed for elderly residents.

Cllr Alstrom suggested that the application would also be in breach of CP10 as the application would not support local economic growth, nor would it provide a mix of housing types, or the infrastructure needed in Chippenham to support growth. CP45 was referenced as a breach as the application would not address local housing need, with the housing market suggesting that Chippenham was currently saturated with retirement properties. Reference to CP57 (4) was made with it suggested that the proposed development would be a breach as the

design would not be in keeping with the historic area and would not be complimentary to the local area.

Further points raised by Cllr Alstrom included, but were not limited to, that the application would conflict with CP58 which would aim to protect, conserve, and preserve historic environments and heritage assets, with weight placed on the undesignated historic building currently located on the site. Reference was also made to CP6 with it suggested that the application was within a conservation area which had been designated within the Chippenham Central Masterplan and would therefore not enhance local distinctiveness.

The Local Unitary Member, Councillor Dr Nick Murry then spoke regarding the application. Cllr Murry stated that the site had been increasingly derelict since 2015 and had been placed on the market at least twice, though no applications for youth facilities or social housing, or any other type of development had been brought forward. It was noted that though the previous application for this site had been granted permission for retirement homes, at the time lobbying had taken place for the preservation of the grammar school element, which could not be listed.

Cllr Murry noted that the two previous applications reflected the fact that there was a need for retirement accommodation in Chippenham, with it cited that the elderly population of Chippenham was set to double in proportion by 2036. It was also referenced that having spoken to residents in the Monkton Park area, there was a desire for the old college building to be replaced with something of good quality and in keeping with the residential area. As well as a desire for minimal increase to traffic, an increase in local jobs and that any potential residential accommodation might assist to curtail the anti-social behaviour in the Sadlers Mead carpark.

Cllr Murry noted that there were several elements within the proposal which had concerned people, such as that the demolition of the grammar school would harm the Chippenham conservation area and that the previous application granted in 2018 had a much higher design quality and materials; with the current application falling short of what would be expected from the Neighbourhood Plan set to be published later in 2023. It was also acknowledged that though the application had made minor amendments to the existing scheme, this had not removed objections and would not be sufficient to justify the loss of a heritage asset.

Concerns were raised by Cllr Murry in relation to the provision of sustainable transport infrastructure and reducing the reliance on motorised vehicles, with it noted that the Chippenham Cycle Network Development Group had provided recommendations which had not been taken up in the revised application; including to ensure car-free access from nearby cycle ways to onsite cycle parking to comply with the NPPF paragraph 112. Additionally, it was suggested that there be a zebra and parallel cycle crossing over Sadlers Mead as well as to provide at least 15 residential cycle parking spaces; all of which would allow for compliance with Wiltshire Core Strategy Core Policy 61.

A third set of concerns raised by Cllr Murry was in relation to the overall sustainability and energy strategy of the proposed development, with it suggested that with there being a national target of a reduction of 78% greenhouse emissions by 2035 and net zero by 2050, which the application would fail to comply with. Reference was also drawn to the use of solar panels on the application, which would not be sufficient as well as there not being a statement provided regarding minimising embodied energy and carbon.

Cllr Murry concluded by stating that the application would not be in keeping with Wiltshire Core Strategy Core Policies 57, 58 and 61. Additionally Cllr Murry suggested that proposed Condition 9 be amended to ensure secure cycle parking could be provided for at least 15 spaces and that Condition 15 be amended to include greenhouse gas emissions under the definition for pollution. Furthermore, it was suggested that a condition be added regarding renewable onsite electricity production, and that the applicant contribute to the construction of a zebra and parallel cycle crossing as part of a Section 106 agreement.

Following the conclusion of Cllr Murry's speech, the Chairman read out a note provided by a resident of the Monkton Park Area, which had been received in support of the application.

At the start of the debate a motion to reject the officer's recommendation for planning permission to be granted subject to conditions was moved by Cllr Gavin Grant seconded by Cllr Nic Puntis. The reason for refusal was that the application would conflict with Core Policies 57 (3), 57 (4), 57 (6), 58 and 61. A friendly amendment of Core Policies 9 and 10 were added by Cllr Puntis and accepted by Cllr Gavin Grant, however Core Policies 10 and 61 were later removed from the reason for refusal,

During the debate, issues were raised, but not limited to that there was a need to balance both the policies in support and policies in conflict with the proposal, with it noted that the overriding policy in support of the proposal was public benefit, however there was other policies within the local plan which mitigated this. Additional reference was drawn to how the Urban Design Officer had placed an objection to the application. It was suggested that there would not be a public benefit to the application being granted due to an oversupply for retired people in Chippenham, which could be evidenced through online property market searches. It was suggested that given the location of the site within the town centre and proximity to the railway station, a proposal which included old and young residents might be better, especially given the recent investment on the station to enable access for all abilities and commute times to London. Furthermore, it was suggested that consultation had not been considered properly, with Chippenham Town Council, who would have known what developments were needed and where.

Further issues that were debated included that though the developer had conducted their own assessment of the demographic, they had not considered the challenge that had been provided by Councillors at the Chippenham and Villages Area Board, nor from the Environment and Transport Committee, which had suggested an oversupply of such properties. Further reference was made

to how an application which included both elderly and young people would have greater benefit to the health and sustainability of the Chippenham community. The need to protect the architecture and history of Chippenham in the form of the grammar school building was also stressed.

Additionally, points raised included that the pressures experienced by Early Years settings had been raised with the Children's Select Committee and that having a mixed residency of elderly and young people might enable such provisions as a nursery whilst assisting with the wellbeing of older people. It was further suggested that the developer communicate with the Town Council and people of Chippenham to enquire about what is required within the town.

A discussion took place in relation to the previous application which had been permitted in 2018, with it stressed by the Planning Officer that the previous application should not be used as a yardstick to compare and determine the current application. Reference was drawn to the materials which had been used for the 2017 application and how the Core Policies and treatment of the grammar school building had been the same within the report. It was noted that the building had changed in appearance since 2017, with the addition of red brick, in reference to the heritage building, and a lower roof.

During the debate it was acknowledged that the application would contribute to the housing land supply due to meeting an identified objectified need, with it also noted that the permitted block of offices was within the conservation area.

A further point was reiterated that robust discussions had taken place at the Area Board between Members and the developer and that it did not seem as though the developer had taken notice of the points that had been raised. Regarding the heritage asset, it was suggested that the building could be integrated into a new development and to destroy such buildings would set a precedent as a planning authority. Additionally, that a mixed-use site would provide the facilities needed by the town and would enhance the area and that the current derelict status for the site should not be a reason to allow development but rather development in the right way.

Regarding the reason for refusal, it was suggested that the application would conflict with CP9 (5.5.4.1) as the development would not add to the development of Chippenham town centre and would not meet with high quality standards of design as well as not being mixed use. The use of CP10 was discussed, however it was decided that this would not be a reason for refusal as it was suggested that there was a need for such accommodation in Chippenham and the county as a whole and that the proposal could not be more sustainable.

It was stated that the application would not comply with Core Policies 57 (3 and 4) as the proposal was inferior due to a linear roofline and lack of distinctiveness; additionally; the look and feel of the proposal was not appropriate with additional reference to the application sitting within a conservation are and there being a need to preserve historical landscapes. CP57 (5) was not cited as a reason for refusal as the application had provided an energy statement which would meet Part L of building regulations.

Core Policies 57 (6) and 58 were cited due to the need to protect, conserve and where possible, enhance non-designated heritage assets, which it was suggested that the development would not do, with the harm outweighing any benefits of granting permission. The use of CP61 was discussed, however it was removed due to the location being high sustainable.

At the conclusion of the debate, it was,

**Resolved:**

**That the application be refused for the following reasons:**

- 1. On this highly prominent site and by reason of its layout, built form, building line, elevational design, materials, streetscape, as well as its lack of any included commercial and community uses, the proposed development is not considered to be of a high quality design and does not display exemplary public realm or take account of its local context. Accordingly, the proposed development is considered to be contrary to Core Policy CP57 (iii and vi) and Core Policy CP9 of the Wiltshire Core Strategy.**
- 2. On this highly prominent site in the Chippenham Conservation Area, and by reason of the layout, built form, building line, elevational design, materials, street-scape of the proposed building, as well as the resulting loss of the historic school building on the site, the proposals are considered to harm to the character and local identity of the Conservation Area and do not protect, conserve or enhance the historic environment. The public benefits associated with the development do not outweigh that harm and the development is contrary to the requirements of core policies CP58 and CP57(iv) to the Wiltshire Core Strategy and section 16 to the NPPF.**

*Chairman called the Committee to a break at 15:55pm and then resumed at 16:05pm.*

**9 PL/2022/00541 - Chelworth Industrial Estate, Chelworth Road, Cricklade, Swindon, SN6 6HE**

**Public Participation**

Giles Brockbank spoke in support of the application.

Cllr Jonathan Hill spoke on behalf of Cricklade Town Council.

Acting Development Management Team Leader, Raymond Cole presented a report which outlined the demolition of three existing buildings and the erection of three light industrial buildings use Class E, B2 and B8.

Details were provided including issues raised by the proposals, including the principle of development; highways impact; drainage impact; ecological impact; effect on character and appearance of the area; the impact on neighbouring uses.

Members of the Committee had the opportunity to ask technical questions regarding the application. Details were sought on, but not limited to the potential for a bypass around Cricklade and whether the HGVs would take a 50/50 split in travelled direction; to which it was clarified that this was an assumption made within the transport assessment. Clarity was provided regarding weight restrictions in the area and that routes had been sign-posted to indicate which direction HGVs should travel in and that any enforcement would be down to the police. It was queried why there couldn't be a travel plan for the for the HGVs as they would likely either travel through Cricklade town centre or Cowleaze housing estate, which consisted of 650 homes.

Further technical questions included, but were not limited to, the onsite parking of the application, to which it was clarified that there would be 20 additional parking spaces for employees which would meet adopted standards. It was acknowledged that the site was within 8km of a recreation impact zone, to which the officer stated that those employed on the site would more likely use the land to the south of the site for recreation. It was also clarified by the officer that there had been no issues raised regarding the accident history of the immediate vicinity of the application site.

Members of the public then had the opportunity to present their views to the Committee as detailed above.

The Local Unitary Member, Councillor Bob Jones MBE then spoke regarding the application. Cllr Jones stated that the assumed 50/50 traffic split within the report was flawed due to weight restrictions in Purton and how the HGVs would not want to travel through the new residential area; therefore, meaning they would travel through Cricklade town centre. Cllr Jones raised concerns that the 10 new units, if granted, would generate more HGVs through the town and that the trading estate could not be afforded to get any bigger as it would encourage more HGVs.

At the start of the debate a motion to accept the officer's recommendations for planning permission to be granted subject to conditions was moved by Cllr Steve Bucknell and seconded by Cllr Tony Trotman.

During the debate, issues were raised, but not limited to that the units would be broken down into 10 sub-units, therefore potentially meaning that there would be less HGV movements. It was suggested that there was a need to promote the growth of small businesses and that the application was looking to improve facilities that already existed; potentially meaning that people would have to travel less to get to their place of work whilst adding more local services to Chelworth. It was also acknowledged that the increase of HGV traffic would be small, to which it was argued that though the impact would be small now, it would be worth in the future encouraging the local transport companies to get

together to discuss routes in the best way possible. Additionally, the degradation of local roads due to HGV traffic was referenced.

Further issues that were debated included whether it would be possible for the applicant to contribute to a possible Cricklade by-pass through a section 106 agreement. However, it was argued that this application had taken a year to be determined and that construction costs would have risen during this time; therefore, it would potentially be unfair to place more cost on the applicant. Additionally, flooding and drainage concerns of the area were discussed, with it noted that conditions had been recommended to be imposed by the officer.

Additional points raised included sympathy for those living in Cricklade, with the example of lorries passing through Malmesbury cited. The need to support small businesses was also echoed, with reassurance provided that the existing southern piece of land would not be built on and that earlier indications had been made that there would be a landscaping scheme for this land.

At the conclusion of the debate, it was,

**Resolved:**

**That the application be GRANTED 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. 004 Revision P4: Proposed North West and South East Elevations, dated 14/01/22 and received 21 January 2022;**

**Drawing No. 005 Revision P4: Proposed North East and South West Elevations, dated 14/01/22 and received 21 January 2022;**

**Drawing No. 010 Revision P4: Proposed Site Plan, dated 14/01/2022 and received 21 January 2022;**

**Drawing No. 011 Revision P4: Unit P Proposed Floor Plan, Section and Elevations, dated 14/01/22 and received 21 January 2022;**

**Drawing No. 013 Revision P3: Unit G1 Proposed Floor Plan, Section and Elevations, dated 14/01/22 and received 21 January 2022;**

**Drawing No. 014 Revision P3: Units H2 & H3 Proposed Floor Plan, Section and Elevations, dated 14/01/22 and received 21 January 2022;**

**Drawing No. 017 Revision P1: Demolition Plan, dated 24/01/2022 and received 24 January 2022;**

**Drawing No. 0001: Visibility Splays, dated 16/12/2021 and received 21 January 2022;**

**Drawing No. 2200: Articulated Vehicle Tracking Plan, received 21 January 2022;**  
**Drawing No. 507/01: Landscape Strategy, dated Mar 22 and received 13 April 2022;**  
**Building Areas and Eaves Heights, dated 14/01/2022 and received 21 January 2022;**  
**Design and Access Statement Revision B, received 21 January 2022;**  
**Document No. 16200012519-BFSSA: Baseline Flood Study and SuDS Appraisal, dated January 2022 and received 21 January 2022;**  
**Technical Note No. 1620012519-RAM-RP-WA-00001 Version 2: Drainage Strategy, dated 07/06/2022 and received 09 June 2022;**  
**Travel Plan, dated January 2022 and received 21 January 2022;**  
**Biodiversity Net Gain Note, dated August 2022 and received 08 August 2022;**  
**Phase I Environmental Site Assessment Issue No. 01, dated 20 September 2021 and received 21 January 2022; and**  
**Application Form, dated 13/01/2022 and received 21 January 2022.**

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

- 3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking or re-enacting or amending that Order with or without modification), the site shall be used solely for purposes within Classes B2, B8 and E(g)(iii) of the Schedules to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provisions equivalent to that class in any statutory instrument revoking or re-enacting that Order with or without modification).**

**REASON: The proposed use is acceptable, but the Local Planning Authority wish to consider any future proposal for a change of use, other than a use within the same class(es), having regard to the circumstances of the case.**

- 4. No development shall take place until a CCTV survey report including a capacity and condition assessment has been submitted to and agreed in writing by the local planning authority. The survey report should make recommendations for improvement if it is discovered that upgrades are required. The development shall proceed in accordance with any recommendations made in the approved report.**

**REASON: To ensure that drainage is sufficient in capacity and of suitable condition to address the drainage impacts of the development.**

5. **No development shall take place until a revised drainage strategy, where hydraulic calculations have been updated using a MADD factor of 0m<sup>3</sup>/ha, and any required changes made to the proposed attenuation volumes to fully attenuate the 1 in 100yr + climate change rainfall without flooding, have been submitted to and agreed in writing by the local planning authority. The development shall proceed in accordance with the approved drainage strategy.**

**REASON:** To ensure that surface water flood risk is safely managed.

6. **No development shall take place until details of building-based flood defence measures have been submitted to and agreed in writing by the local planning authority. This should include any maintenance and operational measures required, including for the 'blue roof' installation. The development shall proceed in accordance with the approved details.**

**REASON:** To ensure flood resilient design that is adequately managed and maintained.

7. **No development shall take place until a Flood Risk Emergency Plan has been submitted to and approved in writing by the local planning authority. The Plan should follow the guidance set out in the document 'Flood Risk Emergency Plans For New Development', published by the Environment Agency and ADEPT. The Emergency Plan shall include a timetable for monitoring and review, and shall detail where the Plan will be recorded and/or publicised. Once approved the Emergency Plan shall be adhered to thereafter.**

**REASON:** To ensure that an emergency plan is in place in the event of a flooding emergency.

8. **No development shall take place until a maintenance plan for the proposed surface water drainage & SuDS features, showing details of proposed maintenance activities, frequency, and their responsible parties, has been submitted to and agreed in writing by the local planning authority.**

**REASON:** To ensure drainage is sufficiently maintained, in order that surface water is managed safely throughout the lifetime of the development.

9. **No development shall commence on site until a scheme of Ultra Low Energy Vehicle (ULEV) infrastructure has been submitted to and approved in writing by the local planning authority. Details shall include:**

- a) **Location and number of active charge points;**
- b) **Specification of charging equipment; and**

**c) Operation/management strategy.**

**No part of the development hereby approved shall be occupied until the approved Scheme of ULEV Infrastructure has been implemented in full, and that all specified active charge points are live and ready for use. The approved equipment and operation/management strategy shall be actively maintained thereafter.**

**REASON: Core Policy 55; Development proposals, which by virtue of their scale, nature or location are likely to exacerbate existing areas of poor air quality, will need to demonstrate that measures can be taken to effectively mitigate emission levels in order to protect public health, environmental quality and amenity.**

- 10. No development shall commence on site until details of secure covered cycle parking have been submitted to and approved in writing by the Local Planning Authority. The submitted details shall accord with dimensions, access, location, design and security principles laid out in Appendix 4 of Wiltshire's LTP3 Cycling Strategy. These facilities shall thereafter be provided in accordance with the approved details and made available for use prior to the first occupation of the development hereby permitted and shall always be retained for use thereafter.**

**REASON: To ensure that satisfactory facilities for the parking of cycles are provided and to encourage travel by means other than the private car.**

- 11. The development hereby approved shall not commence until a Construction and Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP shall include details of the following relevant measures:**

- i. An introduction consisting of construction phase environmental management plan, definitions and abbreviations and project description and location;**
- ii. A description of management responsibilities;**
- iii. A description of the construction programme;**
- iv. Site working hours and a named person for residents to contact;**
- v. Detailed Site logistics arrangements;**
- vi. Details regarding parking (of site operatives and visitors), deliveries, and storage;**
- vii. Storage of plant and materials used in constructing the development;**
- viii. The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;**
- ix. Wheel washing facilities;**

- x. Measures to control the emission of dust and dirt during construction;
- xi. A scheme for recycling/disposing of waste resulting from clearance, demolition and construction works (including confirming that there shall be no burning associated with construction processes at any time);
- xii. Details of the hours of works and other measures to mitigate the impact of construction on the amenity of the area and safety of the highway network; and

Development shall proceed in strict accordance with the approved CEMP.

**REASON:** Core Policy 57, Ensuring high design and place shaping such that appropriate levels of amenity are achievable.

12. Development, including demolition, ground works/excavation, site clearance, vegetation clearance and boundary treatment works, shall not commence until an Ecological Construction Environmental Management Plan (Ecological CEMP) has been submitted to and approved in writing by the local planning authority. The Plan shall provide details of the avoidance, mitigation and protective measures to be implemented before and during the construction phase, including but not necessarily limited to, the following:

- a) Identification of ecological protection areas/buffer zones and tree root protection areas and details of physical means of protection, e.g. exclusion fencing.
- b) Working method statements for protected/priority species, such as nesting birds and reptiles.
- c) Mitigation strategies already agreed with the local planning authority prior to determination, such as for great crested newts, dormice or bats; this should comprise the pre-construction/construction related elements of strategies only.
- d) 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.
- e) Key personnel, responsibilities and contact details (including Site Manager and ecologist/ECoW).
- f) Timeframe for provision of compliance report to the local planning authority; to be completed by the ecologist/ECoW and to include photographic evidence.

Development shall be carried out in strict accordance with the approved Ecological CEMP.

**REASON:** 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.

13. Development shall not commence until a Landscape and Ecology Management Plan (LEMP) has been submitted to and approved in writing by the Local Planning Authority. The LEMP will include long term objectives and targets, management responsibilities and maintenance schedules for each ecological feature within the development, together with a mechanism for monitoring success of the management prescriptions, incorporating review and necessary adaptive management in order to attain targets. The LEMP shall also include details of the legal and funding mechanism(s) by which long-term implementation of the plan will be secured. The LEMP shall be implemented in full and for the lifetime of the development in accordance with the approved details.

**REASON:** To ensure the long-term management of landscape and ecological features retained and created by the development, for the benefit of visual amenity and biodiversity for the lifetime of the scheme.

14. No development shall commence on site until a final scheme of hard and soft landscaping has been submitted to and approved in writing by the local planning authority. The details of the scheme 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;
- all hard and soft surfacing materials; and
- details of restoration work proposed to the pond.

**REASON:** The application contained a landscape strategy including outline planting specification with details reserved for consideration following a decision. The matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to ensure a satisfactory landscaped setting for

**the development and the protection of existing important landscape features.**

- 15. In the event that contamination is encountered at any time when carrying out the approved development, the Local Planning Authority must be advised of the steps that will be taken by an appropriate contractor to deal with contamination and provide a written remedial statement to be followed by a written verification report that confirms what works have been undertaken to render the development suitable for use.**

**REASON: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.**

- 16. No construction or demolition work shall take place on Sundays or Public Holidays or outside the hours of 08:00 to 18:00 Monday to Friday and 08:00 to 13:00 on Saturdays.**

**REASON: Core policy 57, Ensuring high design and place shaping such that appropriate levels of amenity are achievable.**

- 17. No final surface materials shall be laid until the exact details of the surfacing material to be used for the parking area and the demarcation of the parking bays 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: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, in the interests of visual amenity and the character and appearance of the area.**

- 18. The development hereby permitted shall not be brought into use until a plan showing the precise location of any areas of open storage and specifying a maximum height of open storage within such area(s) has been submitted to and approved in writing by the Local Planning Authority. No materials, goods, plants, machinery, equipment, finished or unfinished products/parts of any description, skips, crates, containers, waste or any other item whatsoever shall be placed, stacked, deposited or stored on the site outside the approved storage area, or above the height agreed as part of this condition.**

**REASON:** In the interests of the appearance of the site and the amenities of the area.

19. The development shall be carried out in strict accordance with the following documents:  
Biodiversity Net Gain Note (Ecology Solutions, 08/08/2022);  
Ecological Assessment, Ecology Solutions, August 2022); and  
Landscape Strategy Drawing no. 507/01 (Enderby Associates, March 2022).

**REASON:** For the avoidance of doubt and for the protection, mitigation and enhancement of biodiversity.

20. 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.

21. No part of the development hereby permitted shall be first brought into use until the access, parking spaces, and turning area have been completed in accordance with the details shown on the approved plans 'Proposed Site Plan, 21054\_010\_P3'. The areas shall always be maintained for those purposes thereafter.

**REASON:** In the interests of highway safety.

22. The development shall not be first occupied until confirmation has been provided to and approved in writing by the local planning authority that either:
- a. All surface water network upgrades required to accommodate the additional flows from the development have been completed; or
  - b. A development and infrastructure phasing plan has been agreed with the Local Authority in consultation with Thames Water to allow development to be occupied.

Where a development and infrastructure phasing plan is agreed, no occupation shall take place other than in accordance with the agreed development and infrastructure phasing plan.

**REASON:** Network reinforcement works are likely to be required to accommodate the proposed development. Any reinforcement works identified will be necessary in order to avoid sewage flooding and/or potential pollution incidents.

23. The development shall not be first occupied until confirmation has been provided to and approved in writing by the local planning authority that either:
- a. Foul water capacity exists off site to serve the development; or
  - b. A development and infrastructure phasing plan has been agreed with the Local Authority in consultation with Thames Water. Where a development and infrastructure phasing plan is agreed, no occupation shall take place other than in accordance with the agreed development and infrastructure phasing plan; or
  - c. All Foul water network upgrades required to accommodate the additional flows from the development have been completed.

**REASON:** Network reinforcement works may be required to accommodate the proposed development. Any reinforcement works identified will be necessary in order to avoid sewage flooding and/or potential pollution incidents.

24. The development hereby approved shall not enter use until a validation and completion report, prepared by a suitably qualified land contamination specialist, confirming that works have been completed in accordance with the recommendations of the Phase I Environmental Assessment and that there is no or minimal risk to human health or environmental health or to buildings, has been submitted to and approved in writing by the local planning authority.

All works must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and other appropriate authoritative guidance.

**REASON:** In the interests of environmental health as recommended by the Phase I Environmental Assessment, to ensure that the risk of contamination is managed appropriately.

25. No new external artificial lighting shall be installed at the site unless otherwise agreed in writing by the local planning authority.

**REASON:** In the interests of conserving biodiversity.

**INFORMATIVES TO APPLICANT:**

26. Any alterations to the approved plans, brought about by compliance with Building Regulations or any other reason must first be agreed in writing with the Local Planning Authority before commencement of work.
27. The applicant should note that the grant of planning permission does not include any separate permission which may be needed to erect a structure in the vicinity of a public sewer. Such permission should be sought direct from Thames Water Utilities Ltd / Wessex Water Services Ltd. Buildings are not normally allowed within 3.0 metres of a Public Sewer although this may vary depending on the size, depth, strategic importance, available access and the ground conditions appertaining to the sewer in question.
28. 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.
29. 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.
30. The applicant is advised that the development hereby approved may represent chargeable development under the Community Infrastructure Levy Regulations 2010 (as amended) and Wiltshire Council's CIL Charging Schedule. If the development is determined to be liable for CIL, a Liability Notice will be issued notifying you of the amount of CIL payment due. If an Additional Information Form has not already been submitted, please submit it now so that we can determine the CIL liability. In addition, you may be able to claim exemption or relief, in which case, please submit the relevant form so that we can determine your eligibility. The CIL Commencement Notice and Assumption of Liability must be submitted to Wiltshire Council prior to commencement of development. Should development commence prior to the CIL Liability Notice being issued by the local planning authority, any CIL exemption or relief will not apply and full payment will be required in full and with immediate effect. Should you require further information or to download the CIL forms please refer to the Council's Website <https://www.wiltshire.gov.uk/dmcommunityinfrastructurelevy>.

**31. Thames Water will aim to provide customers with a minimum pressure of 10m head (approx. 1 bar) and a flow rate of 9 litres/minute at the point where it leaves Thames Waters pipes. The developer should take account of this minimum pressure in the design of the proposed development.**

10 **Urgent Items**

There were no urgent items.

(Duration of meeting: 2.00 pm - 5.00 pm)

The Officer who has produced these minutes is Ben Fielding of Democratic Services, direct line 01225 718656, e-mail [benjamin.fielding@wiltshire.gov.uk](mailto:benjamin.fielding@wiltshire.gov.uk)

Press enquiries to Communications, direct line 01225 713114 or email [communications@wiltshire.gov.uk](mailto:communications@wiltshire.gov.uk)

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WILTSHIRE COUNCIL

NORTHERN AREA PLANNING COMMITTEE

1 MARCH 2023

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

**Purpose of Report**

1. To:

- (i) Consider the Advisory Report, dated 9 January 2023, submitted by Mr William Webster of 3 Paper Buildings, appointed by Wiltshire Council as the Commons Registration Authority (CRA), to Act as an independent Inspector to:
  - preside over a non-statutory public inquiry, held on 8-9- November 2022 at Stanton St Quintin Village Hall, to consider two applications made under Sections 15(1) and (2) of the Commons Act 2006, to register land adjacent to Seagry Road, Lower Stanton St Quintin, as a town or village green (TVG), and
  - produce an advisory report to include a recommendation to the CRA to assist in its determination of the applications.
- (ii) Recommend that Wiltshire Council accepts the Inspector's recommendation that the applications 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.

**Relevance to the Council's Business Plan**

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

**Background**

3. This report relates to two applications made by Stanton St Quintin Parish Council under Sections 15(1) and (2) of the Commons Act 2006 to register land as a TVG in the parish of Stanton St Quintin. The relevant regulations/guidance for the processing of applications under Sections 15(1) and (2) of the Commons Act 2006, are "The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007" and DEFRA "Guidance to

Commons Registration Authorities in England on Sections 15A to 15C of the Commons Act 2006” – December 2016.

4. The parish of Stanton St Quintin lies in north Wiltshire, to the north of Chippenham and the south of Malmesbury. The parish is divided into two main residential areas, Stanton St Quintin to the west of the main A429 road which leads from the M4 motorway (north of Chippenham), via Malmesbury and Cirencester, to Coventry in the West Midlands, and Lower Stanton St Quintin to the east of the A429. The application land is located at Lower Stanton St Quintin, please see Location Plan at **Appendix A**.
5. The application land is a semi-circular area adjacent to the vehicular highway Seagry Road, Lower Stanton St Quintin, as shown on the plans attached at **Appendix B**. The land laid to grass, (the ownership of which is not registered at the Land Registry), covers an area of approximately 408 square metres. There are trees, including a commemorative tree, planted on the land and, placed on the land, there are two commemorative wooden benches, a picnic table and Stanton St Quintin Parish Council’s notice board. A low stone and concrete capped wall forms the southern boundary of the site between the application land and the properties to the south at Lower Stanton St Quintin. The northern, eastern and western boundaries abut Seagry Road, which is a public highway, without gates or other limitations for access, (see **Appendix B** Application Plans and **Appendix C** Photographs of Application Land).
6. There are two separate applications to register the land. To summarise, the applications are separated where The Growth and Infrastructure Act 2013, introduced provisions to make it more difficult to register land as a TVG, including, at Section 16, the removal of the “right to apply” to register land where specified planning “trigger” events have occurred, e.g. an application for planning permission in relation to the land, which would be determined under Section 70 of the Town and Country Planning Act 1990, is first publicised in accordance with the requirements imposed by a development order by virtue of Section 65(1) of that Act. The right to apply is revived where a corresponding “terminating” event has taken place, e.g., planning permission is refused and all means of challenging the refusal by legal proceedings in the UK are exhausted and the decision upheld.
7. In the Stanton St Quintin case, upon receipt of the first application to register the whole of the semi-circular area of land as a TVG, (application no.2018/01, received 30 April 2018, see **Appendix B**), as advised by “DEFRA Guidance to Commons Registration Authorities in England on Sections 15A to 15C of the Commons Act 2006 – December 2016”, the CRA consulted with the relevant Planning Authorities who confirmed that there was a valid planning trigger event in place over part of the land in the form of planning application no.18/01108/FUL, (Lower Stanton St Quintin - new direct access to highway for vehicles and pedestrians over verge to class C road in 30mph limit), without a corresponding terminating event. The guidance states that where there is a planning trigger event in place on only part of the land, the application may be

processed as usual on that part of the land which is not subject to the exclusion. Therefore, the application 2018/01 was accepted by the CRA in part.

8. When planning application no.18/01108/FUL was refused and all means of appeal were exhausted, a planning “terminating” event was considered to have taken place and the right to apply to register the land previously affected by the planning application, was revived. Therefore, the Parish Council applied to register the section of land excluded from the original application, (application no.2019/01 received 26 April 2019, see application plan at **Appendix B**). Consultation with the Planning Authorities regarding this application confirmed that there were no planning trigger events in place on this section of the land and the application was accepted by the CRA. For the purposes of this report, the applications are taken together to cover the whole of the semi-circular area of land.
9. The applications were accepted as complete and in order on 30 July 2020 and as required by the regulations, formal notice of the applications was served on interested parties, posted on site and advertised in a local newspaper on 13 August 2020, with a closing date for representations and objections to be received in writing on or before 28 September 2020. The applications in full were also placed on public deposit at the offices of Wiltshire Council, as required. Where ownership of the application land is not registered at the Land Registry , notice of the applications posted on site and advertised in a local newspaper were addressed *“To every owner, lessee, tenant or occupier of any part of the land described below and to all others whom it may concern.”*, as required by the regulations, but no additional parties have come forward to claim ownership of the land or any part of it. 8 objections and 23 representations were received following notice of the applications.
10. As part of the statutory procedure for determining town and village green applications, where objections are received, they must be forwarded to the applicant allowing the applicant a reasonable opportunity for dealing with the matters raised. Comments on the objections from Stanton St Quintin Parish Council were received on 10 December 2020 and amended 18 January 2021. The objectors were then given further opportunity to respond, and their representations were received on 5 January 2021 (Mr M Reeves and Mrs K Reeves); 19 January 2021 (Mr M Reeves); 26 January 2021 (Mrs O Kelly and Mr J Kelly); 2 February 2021 (Mr M Reeves and Mrs K Reeves).
11. Wiltshire Council, as the CRA, must determine the applications in a manner that is fair and reasonable to all parties. All the elements of the legal test laid down at Section 15(2) of the Commons Act 2006 must be demonstrated, the standard of proof being the civil standard of proof on the balance of probabilities that ‘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 over the land for a period of at least 20 years and they continue to do so at the time of the application’. The onus is upon the applicant to establish this and the Council, as CRA, has no investigative duty in relation to TVG applications which would require it to find evidence or reformulate the Applicant’s case. The Council considered the evidence and the objections received as set out below, within a

report to the Northern Area Planning Committee dated 25 May 2022, a copy of the Committee Report and its Appendices (referenced below) may be viewed on the Wiltshire Council website using the following link: [Agenda for Northern Area Planning Committee on Wednesday 25 May 2022, 2.00 pm | Wiltshire Council](#)

Evidence considered in Northern Area Planning Committee Report (25 May 2022):

- (i) Application no.2018/01 dated 18 April 2018 and received by Wiltshire Council on 30 April 2018, in the form of “Form 44” and statutory declaration, including statement from Mrs H Creasy.
- (ii) Application no.2019/01 dated 18 April 2019 and received by Wiltshire Council on 26 April 2019, in the form of “Form 44” and statutory declaration.
- (iii) Supplementary Information provided by Mr Reeves for Planning Application no.18/01108/FUL (14 February 2018 - Mr M Reeves) (Extract **Appendix 8**).
- (iv) Objections received prior to formal consultation period (Mr M Reeves 11 June 2018) (**Appendix 8**).
- (v) Trigger/terminating event consultation replies (**Appendix 12**).
- (vi) Objections and representations received during formal notice period for applications 2018/01 and 2019/01 (13 August 2020 – 28 September 2020) (**Appendix 6** and **Appendix 7**).
- (vii) Applicants’ revised comments on the objections (10 December 2020) (**Appendix 9**).
- (viii) Objectors’ comments on the Applicants’ comments on the objections (5 January 2021; 19 January 2021 and 2 February 2021 – Mr M Reeves and Mrs K Reeves; 26 January 2021 – Mrs O Kelly and Mr J Kelly) (**Appendix 10**).
- (ix) Additional evidence submitted by Applicants’ (April 2021) (**Appendix 11**).
- (x) Officers Report regarding extent of highway – 2019 (**Appendix 18**).

12. Within the report at paragraphs 59-60, Officers highlighted some areas of concern when interpreting the evidence adduced:

*“59. In the Stanton St Quintin 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.*

*Matters of particular conflict within the evidence include:*

- (i) *Use by a significant number of the inhabitants of any locality, or of any neighbourhood within a locality,*
- (ii) *User as of right,*
- (iii) *The exercise of lawful sports and pastimes on the land for a period of at least 20 years.*

*60. Additionally, the Objectors raise the following legal points:*

- (1) *Is the land subject to a planning trigger event which would extinguish the right to apply to register the land as a TVG?*
  - (a) *by virtue of planning permission granted for the re-development of [REDACTED] Lower Stanton St Quintin (15/08031/FUL – 2015) and the*

*required services present being “in relation to” the application land, and/or*

*(b) the planning Inspectorate trigger event consultation reply dated 17 May 2019, regarding a development plan.*

*(2) The effect of registration of the land as a TVG upon existing services for the neighbouring property, located in/on the land.”*

13. Officers recommended that given the substantial dispute of the evidence in this case; the difficulties inherent in interpreting the written evidence and legal points raised by the Objectors regarding planning trigger events, property and highway issues and the presence of services within the application land, it would be open to Wiltshire Council, as the CRA, to hold a non-statutory public inquiry at which the evidence of all parties would be heard and tested through cross-examination and to address the legal points raised, appointing an independent Inspector to preside over the inquiry and to provide an advisory report and recommendation to the determining authority. It was resolved by the Northern Area Planning Committee on 25 May 2022:

*“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.”*

14. Wiltshire Council appointed Mr William Webster, of 3 Paper Buildings, as an independent Inspector to preside over a non-statutory public inquiry and to produce an advisory report containing a recommendation to Wiltshire Council as the determining authority. The inquiry was held at Stanton St Quintin Parish Hall, located not far from the application land, on 8-9 November 2022 inclusive, with closing submissions from both parties in written form following the close of the inquiry. The Parties' Inquiry Bundles and closing submissions may be viewed on the Wiltshire Council website, using the following links:  
<https://apps.wiltshire.gov.uk/RightsOfWay/Green/Index/TVG2018001>  
<https://apps.wiltshire.gov.uk/RightsOfWay/Green/Index/TVG2019001>  
Mr Webster submitted his advisory report with recommendation and Appendices 1-5, to Wiltshire Council as the CRA on 9 January 2023 (please see advisory report attached at **Appendix D**).

### **Main Considerations for the Council**

15. Under the Commons Registration Act 1965, Wiltshire Council is charged with maintaining the register of TVG's and determining applications to register new greens. The applications to register land off Seagry Road, Lower Stanton St Quintin, as a town or village green, have been made under Sections 15(1) and

(2) of the Commons Act 2006, which amended the criteria for the registration of greens. Sections 15(1) and (2) of the Act, state:

*“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 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.”*

16. There is currently no statutory or non-statutory guidance available to authorities regarding when it would be considered appropriate for a CRA to hold a non-statutory public inquiry. However, judicial cases have confirmed that it is the authority's duty to determine an application in a fair and reasonable manner and judicial decisions have also sanctioned the practice of holding non-statutory inquiries. In *R (Cheltenham Builders Ltd) v South Gloucestershire District Council* Admn 10 Nov 2003 the Court decided that the holding of a non-statutory public inquiry in some circumstances would be necessary as a matter of fairness. In *R (on the application on Naylor) v Essex County Council* [2014] EWHC 2560 (Admin) the Court confirmed that a public inquiry was one means by which a CRA may obtain evidence other than from the Applicant and any Objector or by which it may test or supplement that which it has received in written form. In the Inspectors advisory report (**Appendix D**) it is stated:

*“20. The regulations which deal with the making and disposal of applications by registration authorities 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 whereby an expert in the field 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.*

*21. In Regina (Whitmey) v Commons Commissioners [2004] EWCA Civ 951 Waller L.J suggested at [62] that where there is a serious dispute, the procedure of conducting a non-statutory public inquiry through an independent expert should be followed almost invariably.*

*However, the registration authority 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.”*

17. In the Stanton St Quintin case, the Inspector considers that it would not have been possible for the applications to be determined by the CRA without holding a public inquiry, i.e., based on the written evidence alone:

*74. It will be recalled that App/5 summarises the user evidence lodged in support of both TVG applications which is, in my view of limited value. It would be quite impossible to strictly prove the case for registration on the basis of this evidence alone although it is clearly consistent with the oral evidence...*

*111. 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.”*

18. The Inspector clearly sets out the legal tests to be applied:

*“22. The only question for the registration authority is whether the statutory conditions for registration are satisfied and the onus is on the Parish Council 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.”*

19. Following consideration of the available documents and the hearing of evidence given in chief; in cross-examination and in re-examination at the public inquiry, the Inspector presented an advisory report to Wiltshire Council, dated 9 January 2023, (please see report attached at **Appendix D**), in which he considers the evidence and reaches the following conclusions and makes a recommendation to the CRA regarding the determination of the applications:

Highway Land:

*“6...the Objectors put before the inquiry a very detailed report dated 1 November 2022 from a Robin Carr who is well known as an expert witness in cases involving public rights of way...It is Mr Carr’s view that the application land is highway land...*

*8. It seemed to me (i) that it would be appropriate for the highway issue to be adjudicated upon by a Court, and (ii) that the highway issue might turn out to be of academic interest only if the applications to register were rejected on other grounds. I therefore recommended to the CRA that the issue of whether the application land was highway land should be set to one side and that the inquiry*

*should continue on other grounds, namely whether registration was justified by reference to the usual qualifying criteria. The parties accepted this outcome and Mr Carr was stood down.”*

The Inspector additionally found that a section of the application land recorded as highway at the eastern side of the site, could not be registered as TVG:

*“17...in the case of the blue land within the red edging on App/1 which is within the highway land. In my view, such land would not be registrable because of the right of the public to use the land as a highway...”*

Statutory incompatibility:

*“42...No. [REDACTED] is served with the utilities shown on the plan at O/35 which were installed in 1986/87 or earlier with the exception of gas which was installed in 2017. Although the Objectors’ counsel raises the issue of statutory incompatibility it seems to me that these services fall within the agreed principle of ‘give and take’ discussed in TW Logistics Ltd v Essex County Council [2021] AC 1050...”*

*96...I see no incompatibility between the 2006 Act and the statutory regime applying to the installation of domestic gas supplies. The application land in this case is plainly not held for a statutory purpose which would be incompatible with its registration as a TVG. It is also now established (see TW Logistics Ltd v Essex County Council [2021] 1050) that after registration a landowner is entitled to use his land in any way which did not interfere with the public’s recreational rights and members of the public had to exercise their rights reasonably and with respect to a landowner’s concurrent use. I cannot see how the exercise of statutory powers in this instance will be frustrated by the registration of the application land as a TVG? To suggest without more (if this is what is being suggested) that land beneath which ordinary household utilities have been laid by service providers under the various enabling Acts (covering digital, electricity, gas and water supplies) should be removed from the 2006 Act is, I think, misconceived and takes the principle much further than was ever contemplated by the Supreme Court in the well-known cases on this subject. Not only would such a proposal emasculate the 2006 Act but I am unaware of any case which would support this. Indeed, it is conceded that the point in issue has not been tested in the courts. I therefore find against the Objectors on this issue.”*

*“ ‘of the inhabitants of the locality’*

*13. ...On this application the claimed locality is the civil parish of SSQ of which Lower Stanton St Quintin (‘LSSQ’) forms part, being separated from the rest of the village by the A429. The population of the village was 705 at the time of the 2021 census. I was told that there are 79 dwellings in LSSQ although it may be*

*slightly more than this. In view of the presence of the A429 any regular use of the land by those living to the west of the road is liable to be minimal, if at all...*

*'have indulged as of right'*

*14. 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'). It has been held that 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, of course, no one knows who owns the land although the claimed use has undoubtedly been peaceable, open and without consent...*

*'lawful sports and pastimes'*

*15. The expression 'lawful sports and pastimes' (LSP) form a composite expression which includes informal recreation such as walking, with or without dogs, and children's play. I should perhaps mention that the "Wee Free Library" box not only started up after the qualifying period ended but is also located outside the application land...*

*'for at least 20 years'*

*18. The relevant period in this case is, in the case of the first application, April 1998 to April 2018. In the case of the second application it is April 1999 to April 2019...*

*The evidential focus in this case*

*115. 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 (in this instance) SSQ had indulged as of right in LSP on the application land during the relevant 20-year period ending in April 2019.*

*116. I start by dealing with the application land and its context which, in my view, provides a useful starting point as to how, by whom and the frequency with which the land is likely to have been used for qualifying purposes?*

*117. We are dealing with a small parcel of land on the side of a road where the passing traffic is only light. LSSQ is a very small settlement and at this end of Seagry Road there are likely to be few pedestrians. I have a note that there are only 79 houses in the village on the eastern side of the A429. This figure may not be entirely accurate but the population of LSSQ is plainly small and the number of recreational walkers, with or without dogs, or children able to use the land for play is going to be even smaller.*

118. *The land has no pavement running alongside it and in practice is too small to walk around or for ball games or for children to play unsupervised in view of its proximity to the road. In truth it is little more than a wide verge.*

119. *It is not as if the land is located near a busy estate or at the convergence of popular public rights of way. There is no school or shop on this side of the A429 nor any laid out communal open space available for walks etc.*

120. *Although the grass is cut periodically in the summer it cannot be an easy place to walk on at other times. I noted that the land is soft underfoot and I suspect that it would be damp and boggy in the wetter weather.*

121. *The fact that the land is unlikely to be used with any frequency by local residents is amply borne out by the fact that there are no tracks on the land nor other signs of wear to indicate that it is in active use.*

122. *The land has no rubbish bin or bin for dog faeces which one might have expected to see if it was being used more than just occasionally by walkers, with or without dogs, or by those stopping to snack or drink or merely just to chat with friends (as doubtless occurred during the pandemic).*

123. *The land had even more trees until fairly recently and has never been a completely open space. The trees and their low branches are undoubtedly intrusive when walking on and around the land.*

124. *Although the land has 2 benches on it at the moment and a picnic table, this has not been a longstanding position. One bench was put there over 20 years ago and the other is of more recent origin. The picnic table was only put there in late 2018. In truth, for most of the twenty years there has only been one bench on the land and its condition in the photographs shows that it was probably used only rarely as a functioning seat. One only has to look at the photo of the older bench in O/29 which was evidently taken on 21 November 2017 where the seat is seen to be covered with mould and lichen.*

125. *The application land has no view or outlook of particular interest although I accept that it is a wide enough place off the road for friends to meet and talk for short periods. It is, I think, just as likely that the people will stop and chat on the pavement on the opposite side of the road rather than sit on a dirty/wet seat/seats and make a mess of their clothing (and perhaps also get their shoes wet if it has been raining). Indeed, unless perhaps it were a warm, sunny day, it seems to me unlikely that many people, if out for a walk with their dog and/or child in a push chair, would choose to stop and/or sit down on the application land for any appreciable length of time and especially if they are close to home.*

126. *It is true that the land is a place where, perhaps at a push, communal events can take place. I have already indicated that the 6 church services in the early 2000's do not count. This then leaves (i) the Royal Wedding in April 2011, (ii) the Queens 90<sup>th</sup> Birthday in June 2016, (iii) the Community Garden Project in May 2018 and (iv) the Book Sale in June 2018. These four events were one-off events, and I am not aware of other events in the course of the qualifying period. They would have lasted for a few hours at a time and could even have attracted non-qualifying residents. It is also worth bearing in mind what Mrs Reeves said about the Queen's 90<sup>th</sup> Birthday celebrations in June 2016 where she says that only around a dozen people turned up, including she and her husband plus two newcomers to the village, and they all left after ten minutes.*

*The quality of the oral evidence adduced by the Parish Council...*

129. *It seems to me that the real problem with the case for registration is that it is woefully short on proof...the law requires such claims to be properly and strictly proved. It means that sufficient use of the application land for LSP must be made out by local residents for the whole of the 20 year qualifying period...it needs to be shown that the use of the land must signify that it is in general use, as opposed to only occasional use, by the local community...*

139. *In the result, I find that there were too few witnesses who could speak reliably about the use of the land over the period of 20 years ending with the date of both applications. I therefore accept the submission of the Objectors' counsel that the applicant's evidence came from far too few local inhabitants for it to constitute a "significant number" within the meaning of section 15(2)(a) of the 2006 Act.*

140. *When looked at in the round, these applications concern a small parcel of open land on the side of a road which is far too small to be of much practical use for LSP. On the basis of the written and oral evidence which has been put to the inquiry I find that the LSP claimed is likely to have been too trivial or sporadic and would not have been sufficient in terms of duration, nature or quality to support registration. I also take the view that the points which I make in paras 116-126 about the application land and its context are supportive of my findings on the balance of probabilities on the evidence before the inquiry.*

### **Recommendation**

141. *In the light of the above discussion, I recommend that the applications to register the application land (proceeding under application number 2018/01 and application 2019/01) should be **rejected** on the ground that the criteria for registration laid down in section 15(2) of the CA 2006 have not been satisfied.*

142. *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 Advisory Report dated 9 January 2023”.*

20. There is no obligation placed upon the determining authority to follow the Inspector’s recommendation; however, **if the Committee decide not to follow the Inspector’s recommendation which is supported by the very detailed and thorough consideration of the evidence in the Inspector’s Advisory Report (Appendix D), the Committee must provide sound evidential reasons for departing from the recommendation before it.** Members of the Committee are requested to consider the Inspector’s Advisory Report and the available evidence in order to determine whether or not the application land should be registered as a TVG.
21. If it is determined to reject the applications, as recommended by the Inspector, 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 reasons for the rejections. The application forms and all accompanying documents will be returned to the Applicant.

### **Safeguarding Implications**

22. Considerations relating to the safeguarding implications of the proposal are not permitted within Section 15 of the Commons Act 2006. Determination of the applications must be based only upon the relevant evidence before the CRA.

### **Public Health Implications**

23. Considerations relating to the public health implications of the proposal are not permitted within Section 15 of the Commons Act 2006. Determination of the applications must be based only upon the relevant evidence before the CRA.

### **Environmental and Climate Change Considerations**

24. Considerations relating to the environmental and climate change impact of the proposal are not permitted within Section 15 of the Commons Act 2006. Determination of the applications must be based only upon the relevant evidence before the CRA.

### **Equalities Impact of the Proposal**

25. Considerations relating to the equalities impact of the proposal are not permitted within Section 15 of the Commons Act 2006. Determination of the applications must be based only upon the relevant evidence before the CRA.

### **Risk Assessment**

26. The holding of a non-statutory public inquiry and the production of the subsequent advisory report and recommendation to Wiltshire Council as the CRA, from an independent Inspector, 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**

27. Presently, there is no mechanism by which the Registration Authority may charge the applicant for processing applications to register land as a TVG and all costs are borne by the Council.
28. Where the Council makes a decision to register / not to register the land as a TVG it must give clear reasons for its determination as this decision is potentially open to legal challenge where any decision of the Council is open to judicial review. The legal costs of a successful challenge against the Council could be in the region of £40,000 - £100,000.
29. There is no duty for Registration Authorities to maintain land registered as a TVG.

### **Legal Implications**

30. If the CRA determines not to register the land as a TVG, the only right of 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 three months of the date of the decision to determine the TVG application. A landowner could also use judicial review proceedings to challenge the Council's decision if the land were to be registered as a TVG.
31. If the land is successfully registered as a TVG, the landowner could potentially challenge the CRA's decision by appeal to the High Court under Section 14(1)(b) of the Commons Registration Act 1965 ('the 1965 Act'), 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. The overall effect is that the registration of the land is deemed to have been made under Section 13 of the 1965 Act and there is a preserved right under Section 14 to apply to the court to rectify the registration of the TVG without limit of time. The application, which could be made many years after the decision and potentially enables the Court to hold a re-hearing of the application and consideration of the facts and law, could lead to de-registration of the land.
32. Judicial review proceedings are a complex area of administrative law where every aspect of the law and facts relevant to the decision and the CRA's decision making process would be subject to detailed analysis by the Court. Due to the complexity of such cases the legal costs can quickly escalate. If the judicial review proceedings are not successfully defended, the Aarhus convention

(concerning the legal costs for environmental cases) does limit the costs liability so far as the Council as CRA is concerned (if the case is lost) to £35,000; however, the CRA would also be required to meet its own legal costs to defend the case (which would be a broadly similar sum if not more depending on the issues that may arise during the proceedings), in addition to the applicant's costs. The applicant's potential maximum costs liability, if their case is unsuccessful, is £5,000.

33. The issue of 'pre-determination' or approaching the decision with a 'closed mind', (for example a decision maker having already made up their mind on the application before considering the evidence and/or Inspector's recommendation and making the decision), is a serious allegation and one that a CRA must avoid. There is a potential reputational issue for a CRA if a Court was to make a finding that 'pre-determination' took place before a committee made a formal decision to determine an application to register land as a TVG. The Court may order that the decision be quashed, and the decision sent back to the CRA to be re-made.

### **Options Considered**

34. The options available to the Committee in the determination of the applications, are as follows:
- (i) Accept the Inspector's recommendation that the applications made by Stanton St Quintin Parish Council, to register land adjacent to Seagry Road, Lower Stanton St Quintin as a TVG, under Sections 15(1) and (2) of the Commons Act 2006, be rejected for the reasons set out in the Inspector's Advisory Report dated 9 January 2023.
  - (ii) To register part of the land subject to the applications made by Stanton St Quintin Parish Council to register land adjacent to Seagry Road, Lower Stanton St Quintin as a TVG, under Sections 15(1) and (2) of the Commons Act 2006, in accordance with the available evidence.
  - (iii) Not accept the Inspector's recommendation that the applications made by Stanton St Quintin Parish Council, to register land adjacent to Seagry Road, Lower Stanton St Quintin as a TVG, under Sections 15(1) and (2) of the Commons Act 2006, be rejected and resolve to register all of the land subject to the applications as a TVG, in accordance with the available evidence, (excluding the area already recorded as highway, see App/1 of Inspector's Advisory Report at **Appendix D**).
35. **Where Members of the Committee do not resolve to accept the Inspector's recommendation in full and make an alternative determination, clear reasons for this decision, based on evidence, must be given as the decision of the CRA is open to legal challenge by both the applicants and the landowners.**

### **Reasons for Proposal**

36. In the Stanton St Quintin case, the evidence of whether a significant number of inhabitants of any locality, or any neighbourhood within a locality have indulged as of right in lawful sports and pastimes on the land for a period of at least

20 years, with use continuing at the time of application, is in dispute and a number of legal points raised by the Objectors. It is the duty of the determining authority to determine the applications 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.

37. Following the close of the inquiry, the Inspector presented a well written and extremely thorough consideration of the evidence in a 37-page Advisory Report with 5 Appendices, dated 9 January 2023, (**Appendix D**), and containing the following recommendation to Wiltshire Council, as the CRA:

*“141...I recommend that the applications to register the application land (proceeding under application number 2018/01 and application 2019/01) should be **rejected** on the ground that the criteria for registration laid down in section 15(2) of the CA 2006 have not been satisfied.*

*142. 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 Advisory Report dated 9<sup>th</sup> January 2023”.”*

38. Officers are satisfied that over the course of the two days of the public inquiry, the Inspector carried out a thorough and detailed examination of the evidence, all parties being given full opportunity to make their representations and to cross-examine other parties on their evidence. Officers consider that the Advisory Report (**Appendix D**), is a correct and accurate reflection of the witness and documentary evidence and that the Inspector’s recommendation should be accepted.

### **Proposal**

39. 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 application 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.

**Samantha Howell**

Director Highways and Transport

Report Author:

**Janice Green**

Senior Definitive Map Officer

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

None

**Appendices:**

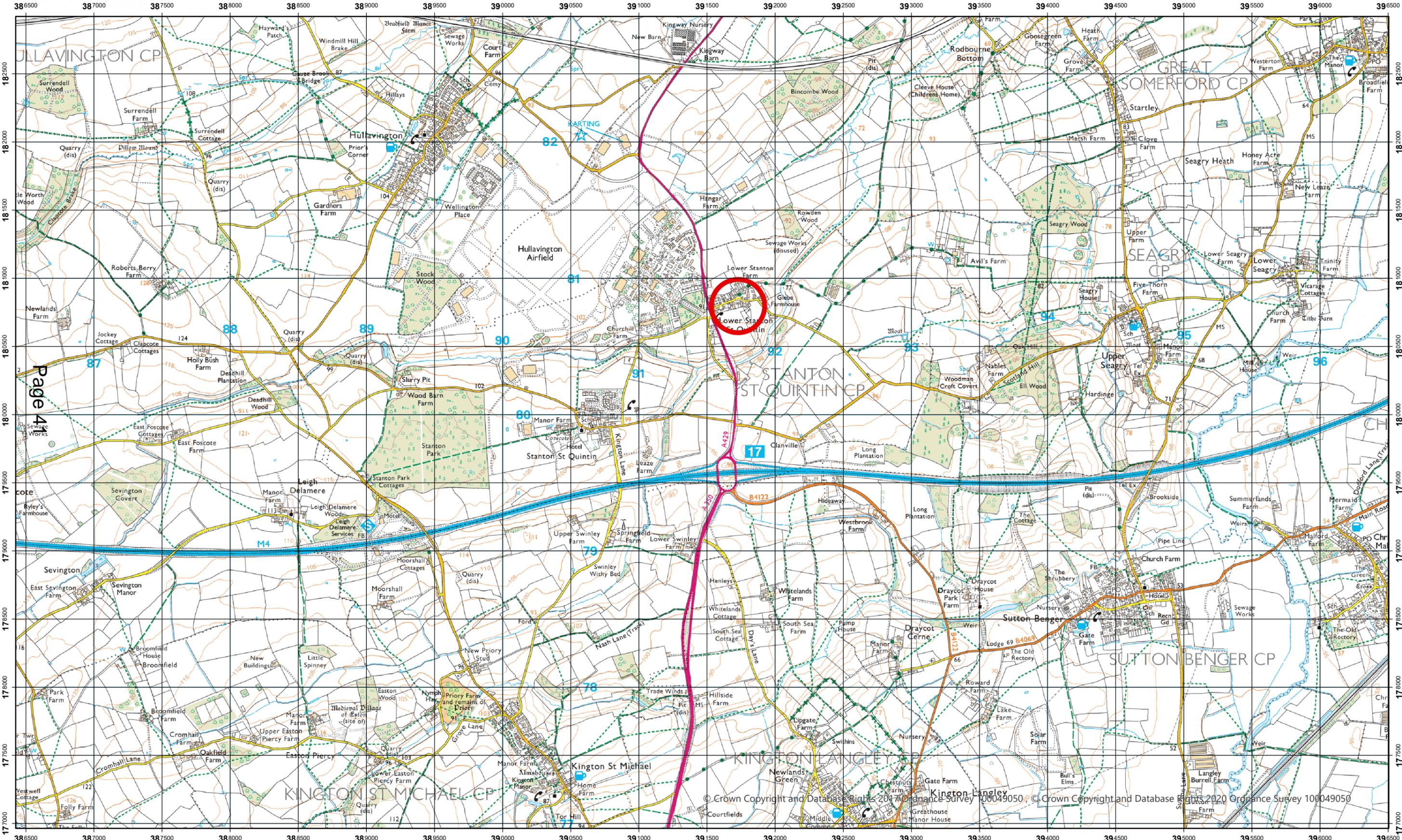
**Appendix A** – Location Plan

**Appendix B** – Application Plans

**Appendix C** – Photographs of Application Land

**Appendix D** – Inspector’s Advisory Report with Appendices 1-5

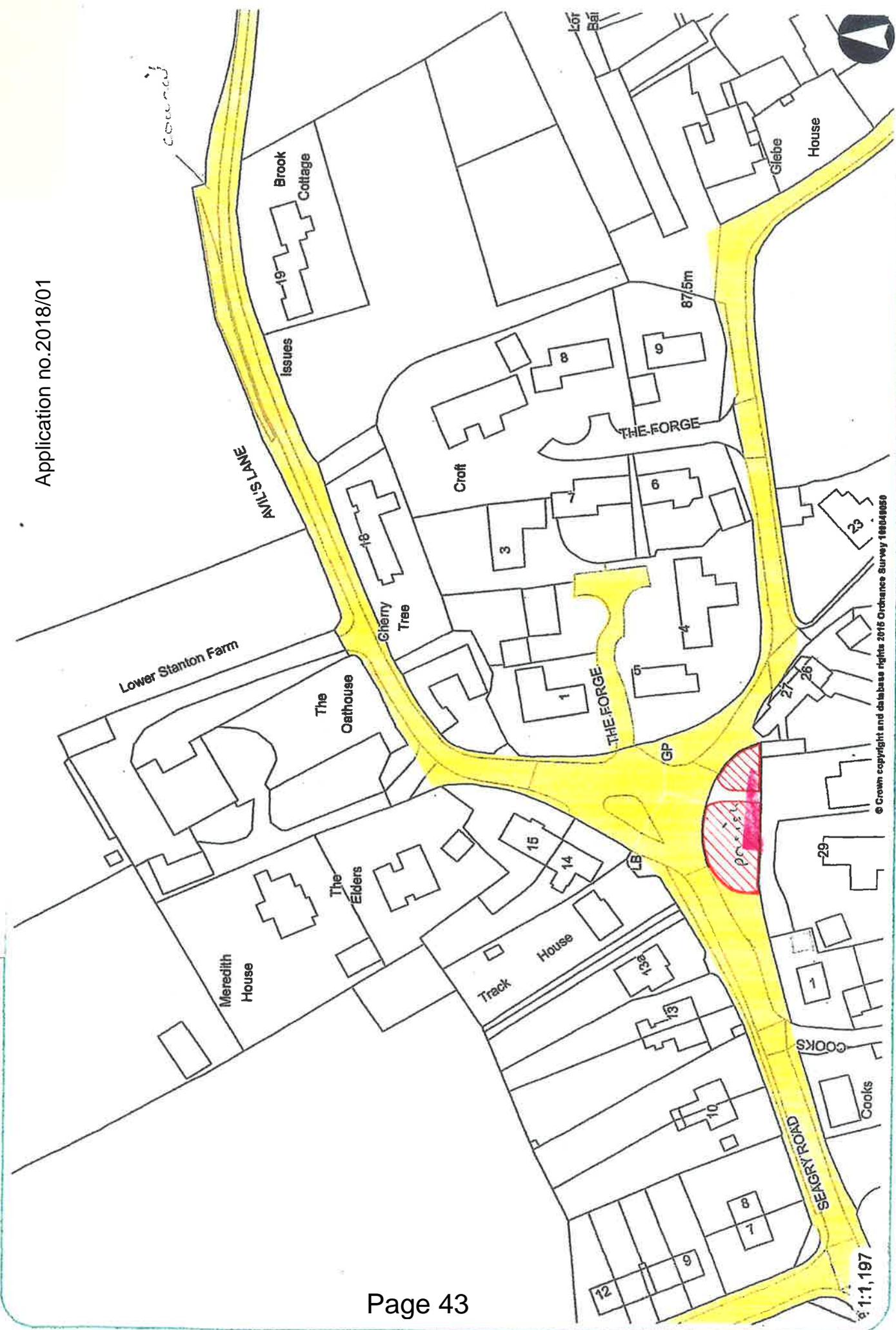
Mr William Webster, 3 Paper Buildings – 9 January 2023



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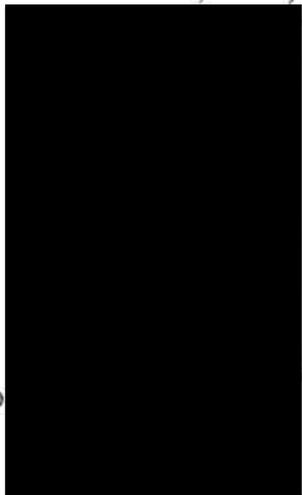
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FTWO EXHIBITS  
declaration 18 APRIL  
2019

to  
to



**Common Act 2006 – Sections 15(1) and (2)**

**Applications to Register Land as Town or Village Green – Land off Seagry Road, Lower Stanton St Quintin**

**Appendix C – Photographs of Application Land**



The application land viewed looking south from Seagry Road.



The application land looking east.



The “Wee Free Library” is located to the west of the application land. The Inspector concludes that this is outside the area affected by the applications to register land as town or village green.



The application land looking east.



The application land looking east.



Stanton St Quintin Parish Council notice board is located on the central part of the land adjacent to Seagry Road.



There are 2 memorial benches located on the land, a memorial tree, a table with benches as well as the parish notice board.

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**WILTSHIRE COUNCIL**

**APPLICATIONS TO REGISTER LAND ADJOINING SEAGRY ROAD AT  
LOWER STANTON St QUINTIN, Nr CHIPPENHAM AS A NEW  
TOWN OR VILLAGE GREEN**

**Application reference numbers: 2018/01 & 2019/01**

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**INSPECTOR'S ADVISORY REPORT**

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References to A/1, O/1 and CRA/1 and so on are to documents in the paginated hearing bundles of the Applicant, Objectors and Commons Registration Authority.

**Preliminary**

1. I am instructed by Wiltshire Council ('WC'), acting in its capacity as Commons Registration Authority ('CRA'), which is the responsible authority for determining applications to register land in the village of Stanton St Quintin ('SSQ')(which will be referred to in this report, where the context permits, as the 'the application land' or 'the land') as a town or village green ('TVG').
2. Separate applications to register were received by the CRA on 30 April 2018 (A/6) and on 26 April 2019 (A/22) under the Commons Act 2006, section 15(2), on behalf of SSQ Parish Council ('the Parish Council'). Both applications were made by the Parish Council on the usual standard form (Form 44).
3. On 25 May 2022 WC's Northern Area Planning Committee (which exercises the function of CRA within WC) resolved to appoint an independent inspector to hold a non-statutory public inquiry (which I shall refer to as 'the inquiry') to hear evidence and to provide an advisory report on the applications to register the land as a TVG.

4. I gave directions for the holding of the inquiry on 3 July 2022 and an inquiry was initially fixed for 20-22 September 2022 but it had to be put back as the Objectors (Malcolm and Kathryn Reeves) wished to have further time for preparation having only recently instructed solicitors. The CRA agreed to a short adjournment and the inquiry later took place at the village hall on 1-2 November 2022 where oral evidence was heard.
5. I am indebted to those members of the Parish Council who attended the inquiry (notably its Chair, a Mr Adrian Andrews) and to the Objectors' counsel, Daniel Stedman Jones, for their helpful and conscientious submissions. Last, but not least, I am grateful for the administrative support provided by officers of WC (Janice Green, Sally Madgwick and Sarah Marshall) which was indispensable to the smooth-running of the process.
6. There are two further matters that I should mention at this point. First, the Objectors put before the inquiry a very detailed report dated 1 November 2022 from a Robin Carr who is well known as an expert witness in cases involving public rights of way. Mr Carr's report will be found at O/65 and runs (with appendices) to some 111 pages. It is Mr Carr's view that the application land is highway land.
7. Sally Madgwick, who is a Senior Definitive Map Officer at WC, produced a short report on the highway issue dated 1 February 2019. She had not had the time to respond in any detail to Mr Carr's report, let alone time to produce a written response for use at the inquiry or to prepare herself for giving oral evidence at the inquiry.
8. It seemed to me (i) that it would be appropriate for the highway issue to be adjudicated upon by a Court, and (ii) that the highway issue might turn out to be of academic interest only if the applications to register were rejected on other grounds. I therefore recommended to the CRA that the issue of whether the application land was highway land should be set to one side and that the inquiry should continue on other grounds, namely whether registration was justified by reference to the usual qualifying criteria. The parties accepted this outcome and Mr Carr was stood down.

9. The second matter involves the various appendices to my report which I have marked App/1, App/2, App/3, App/4 and App/5 (six sheets).
- (i) App/1 shows the application land edged in red. The land coloured blue is land shown on WC's highway record as highway land.
  - (ii) App/2 is the extent of the application land shown in the first application (note the gap between the two red parcels).
  - (iii) App/3 shows the extent of the application land shown in the second application (the gap between the two red parcels is now incorporated into the application land).
  - (iv) App/4 is the plan (or one like it) that accompanied the Objectors' application for planning permission (under planning ref: 18/01108/FUL) which shows [REDACTED] at [REDACTED] Seagry Road and the proposed access leading from this property to the road, crossing the application land whose ownership is unknown (coloured green on the plan). The planning application for the new access was dismissed under a refusal notice dated 7 March 2018 which, although pre-dating the first TVG application, had been triggered by the Objectors' planning application. The second TVG application incorporated the land excluded by the first TVG application following the earlier refusal of planning permission.
  - (v) App/5 (six sheets) is a summary of the user evidence lodged in support of both TVG applications which was contained in Appendix 14 to the report dated 25 May 2022 of Janice Green, also a Senior Definitive Map Officer of WC, who is the case officer managing both TVG applications.

### **Legal framework**

10. Section 15(2) of the 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.

11. 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'*

12. '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'*

13. 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 the civil parish of SSQ of which Lower Stanton St Quintin ('LSSQ') forms part, being separated from the rest of the village by the A429. The population of the village was 705 at the time of the 2021 census. I was told that there are 79 dwellings in LSSQ although it may be slightly more than this. In view of the presence of the A429 any regular use of the land by those living to the west of the road is liable to be minimal, if at all.

*'have indulged as of right'*

14. 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'). It has been held that 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, of course, no one knows who owns the land although the claimed use has undoubtedly been peaceable, open and without consent.

*'lawful sports and pastimes'*

15. The expression 'lawful sports and pastimes' ('LSP') form a composite expression which includes informal recreation such as walking, with or without dogs, and children's play. I should perhaps mention that the "Wee Free Library" box not only started up after the qualifying period ended but is also located outside the application land.

*'on the land'*

16. 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 application land 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 (*Oxfordshire County Council v Oxford City Council* [2004] Ch 253 at [92]-[95]).
17. The registration authority 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. This arises in the case of the blue land within the red edging on App/1 which is within the highway land. In my view, such land would not be registrable because of the right of the public to use the land as a highway (*DPP v Jones* [1999] 2 WLR 625).

*'for at least 20 years'*

18. The relevant period in this case is, in the case of the first application, April 1998 to April 2018. In the case of the second application it is April 1999 to April 2019.
19. 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. It is essentially a matter of factual evaluation for the decision-maker to determine whether the whole of the application land has been available for LSP throughout the 20 year period.

## Procedural issues

20. The regulations which deal with the making and disposal of applications by registration authorities 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 whereby an expert in the field 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.
21. In *Regina (Whitney) v Commons Commissioners* [2004] EWCA Civ 951 Waller L.J suggested at [62] that where there is a serious dispute, the procedure of  
  
conducting a non-statutory public inquiry through an independent expert should be followed almost invariably.  
  
However, the registration authority 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.
22. The only question for the registration authority is whether the statutory conditions for registration are satisfied and the onus is on the Parish Council 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.
23. The procedure is governed by the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007. It is very simple in that (i) anyone can apply; (b) unless the registration authority rejects the application on the basis that it is not 'duly made', 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.

24. It has been said that it is clearly 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**

25. Registration gives rise to rights for the relevant inhabitants to indulge in LSP on the application land. Upon registration the 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. Under both Acts development is therefore prevented.

### **Description of the application land and surrounding area**

26. We are dealing with land in a tranquil village setting which is surrounded by agricultural land and is quite close to junction 17 on the M4 motorway. There is a mix of residential and commercial ribbon development along the A429 (which runs between Chippenham and Malmesbury) close to a road junction which separates SSQ and LSSQ. The Parish Hall, Primary School and Church will be found in SSQ. The southern part of Hullavington Airfield is also in SSQ. The RAF left the airfield in 1993 and various buildings were transferred to the Army and renamed Buckley Barracks in 2003. In 2016 the airfield part of the site was sold to the technology company Dyson who converted the two hangers for office use.
27. The application land extends to 408m<sup>2</sup>. It is, as Mr Reeves claims in his witness statement at O/216, only 15m deep and 30m wide which, as he says, means that the land is "not a place for a recreational walk". I made two unaccompanied visits to the application land before and during the inquiry. I also made an accompanied visit after the inquiry had ended. I instigated this

last visit as a result of Mrs Reeves' evidence that one could see the application land from within No. [REDACTED] Seagry Road ('No. [REDACTED]'). It was her evidence that she never saw locals recreating on the land. She is only partly right about this as the view across the western side of the application land is screened from view by trees.

28. The application land (or at least most of it) was once a large pond at the side of the road passing through the village (A/76). The pond was filled in by 1965 and was later put down to grass and planted with a small number of deciduous trees (one of which was planted in memory of a former Chair of the Parish Council, Richard Voelcker). It appears that additional trees, shrubs and a new notice board were installed in 1988-89 (A/41, A/45-6, O/303 & O/307). There is also a picnic table on paving slabs and two benches on concrete bases which commemorate the lives of local residents. The picnic table was put there in late 2018 (O/447). The first bench was put there more than 20 years ago and the second is a more recent arrival. The Wee Free Library box (which was installed in May 2019) is sited outside the application land close to the entrance to No. [REDACTED] Seagry Road ('No. [REDACTED]') in front of which there is a telegraph pole (again outside the application land) which is supported by two stay wires planted in the ground.
29. The bench seats are shown on O/355-356. The older of the two seats appears to have had something of a makeover by the time of my visit. Mr Reeves says that the benches were cleaned in 2018, after the TVG applications had been made, and again in 2022 once the decision had been made to take the applications to a public inquiry (see the before and after photos in CRA/1033).
30. I understand the Objectors to be saying that the pre-2018 condition of these benches (or at least the older of the two) is consistent with their (or its) lack of regular use over the years. The picnic table could well have replaced seating of some description as the slabs beneath it look quite old. There is no rubbish bin or bin for dog faeces, nor any of the detritus which one might expect to see on the ground in a small parcel of regularly used open space. There was no evidence of any periodic litter picking by anyone and because there is no

pavement it is easier to pass by the land by walking in the road which is certainly not a busy road.

31. The application land is separated from No. [REDACTED] (a bungalow owned by the [REDACTED] and from No. [REDACTED] by a low dry stone wall which is capped with concrete. There is an outward bulge in the wall in front of No. [REDACTED]. Behind the wall there is a drive running parallel with the wall which leads to No. [REDACTED] and is its only access to the road. The drive belongs to No. [REDACTED] and No. [REDACTED] enjoys a right of way over it (see the Objectors' registered title at O/497).
32. The Objectors complain that the drive is too narrow although it seemed wide enough to me to accommodate all but the very widest of vehicles (see photos showing HGVs leaving No. [REDACTED] on A/88 and O/48) although the extended wall and raised edging shown in the photos on O/47-48 cannot have helped (see O/366 showing how the end of the wall appeared in 2011 and as it is now). It was for this reason that Mr Reeves applied for planning permission (see App/4) to put down an access crossing a section of the application land, for which permission was refused on three grounds. The first ground concerned highway safety. The second ground involved the impact which the proposal would have on the local character of the surrounding area. The third ground was that the access would cross an important local green space without being mitigated by suitable alternative provision.
33. I mentioned to the inquiry that I was aware of an emerging Neighbourhood Development Plan ('NDP') for SSQ in which the application land was designated as Local Green Space. The proposed NDP has not yet been examined although the clear impression I get is that it is being promoted with enthusiasm by the Parish Council.
34. The application land is small and is the only open space in LSSQ on which those who choose to do so can walk, with or without dogs, or just sit down on the benches provided. Clearly ball games are out of the question in view of its proximity to the road. The grass is and has always been cut periodically at the expense of the Parish Council. I should say that, in my view, the frequency of the claimed use is not borne out by any discernible wear and tear on the soft

ground or in the case of the benches. I also saw no one using the application land on my unaccompanied visits although there were a handful of dog users there on my accompanied visit one of whom had been present at the inquiry. On the face of it, we are dealing with an area of grassed open space in a small village setting. I bear in mind that the sufficiency of the evidence of qualifying use needs to reflect the fact that the application land sits in an area with few households. For instance, it is not as if we are within easy walking distance of a housing estate or larger settlement or close to the convergence of heavily used public rights of way.

### **Photographs and agreed local use**

35. The Parish Council's bundle includes a number of photos at tab 8. They include photos taken at communal events on the application land. In the course of the inquiry I asked whether it might be possible if an agreed list of communal events which took place during the qualifying period (and in the case of the second application the period ended in April 2019) could be agreed and I was provided with lists by the Parish Council (which I put in at A/75A) and by the Objectors (which I added at O/500A) which, for ease of reference, I set out below.

Open air services at Pentecost in 2001, 2002, 2003, 2004, 2005 and 2006

Royal Wedding in April 2011

The Queen's 90<sup>th</sup> Birthday in June 2016

Setting up the Community Garden in May 2018

Book sale in June 2018

Other events are mentioned but they come after the end of the qualifying period and I propose to discard them. It probably does not matter as the above events were somewhat infrequent anyway and would have been of only limited duration on the day. It is not as if, for instance, the application land was the location of the annual village fete or was a place where the annual Remembrance Day service took place each year. At O/346-348 there are photos of the village fete which took place on a large field opposite

Buckley Barracks (which I gather is known as the Buckley Barracks Sports Ground) in 2013 which I think, for a time (possibly until 2018), was where the annual village fete took place. It seems that the annual village fete now takes place in the gardens of Stanton Manor Hotel (we have flyers for this venue in 2016, 2019 and 2022). I also note that there is also a photo of a fete which took place at the Primary School in 2017.

### **History of No. [REDACTED] and the works on this property after 2016**

36. Although not directly material to the applications it helps, I think, if I shortly deal with how No. [REDACTED] came to belong to the Objectors. The case is unusual in that the Objectors do not actually live in the village. They live in Sutton Benger which is some 3.5 miles away on the other side of the M4.
37. Mr Reeves gave oral evidence to the effect that his late mother (a Mrs Dargie) moved to live in LSSQ in around 1986/87. She used to live in Chepstow and after her late husband died she purchased the plot next to No. [REDACTED] and built No. [REDACTED]. The idea was that she would live near to the Objectors who, at that time, lived in Sutton Benger as they do today.
38. Mr Reeves says that he used to visit his mother some 3-4 times a week. By 1998 he had four children under 14 and as his mother's house had a pool the family were no doubt frequent visitors, especially in the summer. His mother died in December 2014 since when No. [REDACTED] has not been occupied. In late 2015 Mr Reeves applied for planning permission to convert No. [REDACTED] by extending the available living space by introducing a second storey and additional roof space for storage and, having obtained permission, work began in 2016.
39. As an electronics engineer Mr Reeves is not without practical ability and he carried out a good deal of work himself on the conversion project both inside and outside the building. He mentioned installing, amongst other things, the guttering and fascia's, stud walling, plumbing, plastering, the electrics and the kitchen and bathroom units and what he described as a mechanical heat recovery ventilation system which he explained to me on site. His wife also helped him with a number of these works. However, builders were employed

to deal with the main works although, as I say, a good number of the finishes were carried out by the Objectors themselves. Indeed, Mr Reeves told me that he had even built the extension to the family home at Sutton Benger.

40. When I visited No. [REDACTED] it is plain that there is still a great deal to be done and that the pace of work taking place on the property is slow. For instance, one could only get to the second floor by using a ladder and my impression is that there is still a great deal to be done before No. [REDACTED] is ready to be occupied. It seemed to me that not a lot is being done at the moment. I do however think that when working inside No. [REDACTED] the Objectors are unlikely to be spending very much time keeping a lookout on what is happening on the grass beyond their boundary wall. There are also trees which, as I was told, had to be cut back in 2017-18 after the Objectors had complained about overhanging branches. At any rate, before around 2017-18 some of the application land would have been screened by trees when viewed from No. [REDACTED].
41. I have refrained from commenting on (i) whether or not a gate existed in the north-east corner of No. [REDACTED] (see plan at O/308), and (ii) whether the Parish Council acted improperly in asserting, at one time, that it owned the application land (which the Objectors say would have deprived No. [REDACTED] of an independent access to the road without resort to the right of way over No. [REDACTED]). In my view, neither of these factors assist in the evaluation of the applications to register.
42. Before I move on from this section I should mention that No. [REDACTED] is served with the utilities shown on the plan at O/35 which were installed in 1986/87 or earlier with the exception of gas which was installed in 2017. Although the Objectors' counsel raises the issue of statutory incompatibility it seems to me that these services fall within the principle of 'give and take' discussed in *TW Logistics Ltd v Essex County Council* [2021] AC 1050.
43. The legal position is that after registration a landowner has the right to continue to undertake activities of the same general quality and at the same general level as it had during the qualifying period. A landowner is also entitled to undertake new activities, provided they do not interfere with the

public's right to use the land for LSP. Mr Reeves mentions the gas installation on O/224 of his witness statement. He says that the work took 2 days rather than the one day which it should have taken because a Cllr Eley (and I am unsure whether this individual was a member of the Parish Council at the time or a District Councillor) halted the work on the first day (Mr Reeves says that there was a false report that he was installing a driveway) which Mr Reeves says should have taken only one day. I rather doubt whether this work (even if it took two days) took so long that it stopped time running or gave rise to criminality under the Victorian statutes and no one has suggested that it did.

### **Parish Council's written and oral evidence**

#### *Parish Council's Documents*

44. Within the Parish Council's bundle there is a short statement signed by the Chair of the Parish Council, Adrian Andrews, in which he says that the applications to register is supported by the "vast majority of the parishioners". Box 7 in both applications refer to the use of the land by local residents and its long-standing maintenance by the parish Council (in terms of grass cutting and tree maintenance) which is funded through the parish precept.
45. It is said in the first application that the application land is "a focal point for the community and is home to the parish notice board and has been the site of many community events and celebrations" and that "the land is of community value, it being used both now and in the past to further the social well-being and cultural interests of the local community". Statements such as these are perhaps better suited to applications to list land as assets of community value rather than in support of TVG applications where the focus should mainly be on the quality and quantity of the public's use of the land.
46. At A/69-75 the Parish Council produces a questionnaire and feedback from those in the village. There are two questions: (i) whether the "Village Green should be given official status", and (ii) whether the space occupied "by the Wee Free Library" should also be given "Village Green status". For the reasons given in para 15 question (ii) is not material.

47. The Parish Council tells us that of the 81 forms delivered there were 74 replies of which 68 were supportive with only 1 negative. 5 who responded had no opinion. In summary, the replies speak of the application land as an outdoor community hub or meeting place or area within which children can play or a place where social gatherings to mark significant events can take place. It is also said that the area has been improved over the years and that it is the only communal facility or open green space on this side of the A429. An unnamed responder who has lived adjacent to the application land for 28 years says that it is frequently used by people meeting others or walking with or without dogs or as a place for children to play. It is also said that groups of walkers or cyclists socialise at the picnic table (obviously walkers and cyclists passing through the village may not even be qualifying users). The consensus of opinion within the village is that TVG status would protect the land as it fulfils the functions of what one might expect of a village green. None of this evidence is really helpful as it lacks detail and none of the responders are identified by name.
48. After the inquiry WC received extracts from the Parish Council's Minute Book showing that no formal resolution had been passed which had authorised the making of the first application although I think this occurred in the case of the second application in view of what is noted at item 6 of the minutes for the meeting on 26 March 2019. This minute clearly refers to the first application where the access land was found to be subject to a trigger event which prevented it being the subject of a TVG application at that time and that the second application would be able to overcome this omission. I also see that the first application was discussed at the meeting on 25 September 2018 and of course the Parish Council consulted widely on both applications. No one has previously suggested that one or other or both applications had not been properly authorised. It was though a point which was raised by me and by the Objectors' counsel at the inquiry. In my view, the resolution passed at the meeting on 26 March 2019 ("it was **recommended** that this further application is made ...) probably suffices for these purposes although the Parish Council needs to be reminded that its decisions should be properly

authorised by minuted resolutions. I have added this material to the Parish Council's bundle which I have numbered 61A-61F.

### **Parish Council's oral evidence**

*Marianne Fernandez*

49. I have added Mrs Fernandez's unsigned statement to A's bundle and have given it page nos 68A-68B. Her statement deals with the desirability of registration and does not focus on her own use.
50. Mrs Fernandez and her husband moved to the village in 2007. They live at [REDACTED] in Avils Lane, LSSQ. They have two children (8 and 13). She is offended that the Objectors attempted to take possession (a "land grab" as she called it) of part of a communal green space. As she also put it in her statement: "Cars for one family versus grass for all the village families".
51. She said that the limited amount of green space in the village is very important for children. She regularly sees other children with their mothers using the land for play. She deals with the Royal Wedding celebration which took place on the application land in 2011. She said that there were around 60 people "milling around" for a couple of hours. The road had even been closed. She also attended the Queen's 90<sup>th</sup> Birthday celebrations in June 2016 and the Community Garden project in May 2018. She said that the land had been "instrumental in getting us around together". She also mentioned the facilities on the land and its use by cyclists looking to take a break. Mrs Fernandez says that she likes to see the green space whenever she goes out which she says is valued by villagers.
52. Mrs Fernandez was none too specific about the frequency of her own use of the application land. Although I think it is probable that she uses the land from time to time as a place to pause on her walks in and around the village with her children, her evidence focuses mainly on her wish to see the land registered so that it might never be developed.

*Gil Schwenk*

53. Mr Schwenk lives at [REDACTED] LSSQ. His statement will be found at A/66. In it he says that because of its central location the land is the only place in the village for people to stop and have a conversation and he thought it would be a shame if this “social amenity” was lost. He too was angered by the Objectors’ proposal to drive across the application land.
54. In his oral evidence Mr Schwenk told the inquiry that he and his wife only moved to the village in October 2014. He attended the organised events which took place on the application land. He was asked about his own use of the land in the period 2014-18. Although he said that he had stopped there to chat with other residents, when pressed about this he could not recall particular events. He has though seen people stopping on the land to chat with others and the benches are regularly used. He too has sat on one of the benches.
55. In common with Mrs Fernandez, Mr Schwenk was also none too specific about the frequency of his own use of the land. Clearly he used the land from time to time but I doubt whether he did so very often in the final years of the qualifying period.

*Mark Pickavance*

56. Mr Pickavance and his wife have lived at [REDACTED] in LSSQ for 17 years (say from 2005). His statement is at A/65. He says that they attended the organised events which took place on the land which, amongst other things, fostered a “rich sense of community”. The thrust of his written evidence is that the land (“our little patch of grass”) is in the heart of the village and “definitely deserves protecting as such with ‘village green’ status”.
57. It was plain from his oral evidence that Mr Pickavance has not used the land very much (he said that his use was “more incidental than most”) although, as also he put it, there was no lack of inclination on his part to do so. He had though seen people stopping on the land to have a chat with others and children playing there. He thought that if use had increased recently it was

probably because people were concerned about losing the land. I doubt whether the evidence of this witness carries much weight as he was probably not a regular user of the land himself.

*Brigadier Michael Smith (retired)*

58. Brigadier Smith's statement will be found at A/68.
59. Brigadier Smith has lived at ■ The Forge in LSSQ since 1997. He says that the land has been much used as recreational space by local residents. He attended many of the organised village events which took place there. He says that the benches are regularly used by local residents and by walkers and cyclists passing through the area. He says that the land is a pleasant and shady space. Since he retired in 2004 he has, as a dog walker (and the family have always had a dog since 2000), regularly used the land (along with others out with their dogs) which he confirmed in his oral evidence – indeed I recall seeing Brigadier Smith on the land with his dog on my final site visit. He said that he currently uses the green “more or less” twice a day and he also meets others there. There is no pavement on this side of the road and it is a safe place to stand. He also said that the land will be lost to another planning application or to use as a lay-by or for mobile homes.
60. For the period after his retirement Brigadier Smith is a strong witness for the Parish Council and he has a keen interest in the land.

*Michael Doran*

61. Michael Doran lives at ■ which is just across the road from the land. He has lived in LSSQ for 45 years and his statement is at A/74A.
62. In his statement Mr Doran says that his two children played on the land when they were growing up (his children were born in 1988 and 1991). He says that local children now meet and play on the land. He says that the facilities on the land are “frequently used as a meeting point by residents” and on numerous occasions “for social gatherings, coffee mornings and special

celebrations". Christmas lights and decorations on the land are also mentioned.

63. In his oral evidence Mr Doran said that up until his children went to secondary school (say before 1999 and 2002) they played on the land regularly. He also said that there are fewer trees than there used to be but the area is still large enough for children to play on (the documents show that additional trees and shrubs were planted in 1988). He mentions seeing people meeting up on the bench seating and he has seen coffee mornings take place there. He said that the first bench was put there more than 20 years ago although the second is more recent (it was paid for by the Queen's Jubilee Fund). The picnic table was put there in 2018. He also spoke of dog walkers using the land and cyclists stopping there on their way through the village. He also agreed that there had been more activity on the land recently. He suggested that this was because people are being more sociable whereas in the past the land was used more for special dates and gatherings.

*Stuart Jackson*

64. Mr Jackson has lived close to the land at [REDACTED] in LSSQ since 1994. He agreed that he and his wife had only occasionally used the land. Although not a dog walker he did say that he had used it to meet up with people and in attending the more formal events which had taken place there.
65. I cannot attach a great deal of weight to Mr Jackson's evidence as he did not use the land regularly.

*Peter & Elizabeth Cullen*

66. This married couple sat together when giving their oral evidence. They also produced a joint statement at A/62-63. Although for over 28 years they have lived next door to the land at No. [REDACTED] their bungalow is set back from the road.
67. In their statement the Cullens maintain that they are in a strong position to comment on the use of the land which they say is widely used by local

residents as a place to walk, with or without dogs, or as a place for drinking coffee and children's play. It was popular during the lockdown.

68. They also mention the communal events which have taken place on the land "perhaps once or twice a year" which they mostly attended. They say that the land (or 'the green' as they say it is known locally) is an amenity which fulfils all the functions of a village green and they see no real reason why it should not be registered. It also needs to be protected from, as they put it in their statement, "encroachment and development for future generations".
69. In his oral evidence Mr Cullen said that they have certainly used the land but not every day: "It is just a general meeting place". Mrs Cullen said that it is a place "where people feel happy and safe to meet". She also mentioned the results of the local survey when over 90% of those who responded said that they would like to see the land registered as a village green. She also said that there was nowhere else for the children to play. She said that she had seen children playing there during the 20 year period in question.
70. Mrs Cullen was asked why it was in their planning objection (which is dated 28 February 2018 and will be found at O/425) they made no mention of the land as a village green. The Cullens appear to have had no objection in principle to the Reeves' planning application but could see no reason why, if it were granted, the existing right of way across their land should be retained. In dealing with this Mr Cullen said that they sent another version (as he put it) of the same objection to the local planning authority which it was discovered they did and the unredacted version will be found at PO/425A. In this version of their planning objection the Cullens said that they sympathised "with those in our community who believe that the loss of part of our village green and screening trees would damage our environment and be a disbenefit to village residents".
71. The Cullens do not get on with their neighbours. They have fallen out over the right of way to No. [REDACTED]. It seems that the Objectors were angered by the Cullens' construction of a reinforced wall and the introduction of a concrete step at the turning point in front of the gateway to No. [REDACTED] which the Objectors

say makes it much harder for HGVs accessing No. [REDACTED] (see photos on O/48; Malcolm Reeves also deals with this in his statement at O/210-211). The ill-feeling between these neighbours was obvious at my accompanied visit. I therefore have to take into account the animosity which exists between these neighbours in considering the weight which should be attached to the Cullens' evidence.

*Adrian Andrews*

72. Mr Andrews is the current Chair of the Parish Council. He lives reasonably close by at [REDACTED] which is at Avil's Lane which he bought in 2008. I think that his decision to give oral evidence was made late. There is no witness statement from him but I saw no reason why he should not give oral evidence.
73. Mr Andrews said that he had used the land "on occasions" and had "seen people meeting there". He has also attended the various events which have taken place on the land.

*Parish Council's evidence in the round*

74. It will be recalled that App/5 summarises the user evidence lodged in support of both TVG applications which is, in my view, of limited value. It would be quite impossible to strictly prove the case for registration on the basis of this evidence although it is clearly consistent with the oral evidence.
75. Overall there was written evidence from 24 individuals (which includes Mr Andrews acting in his personal capacity) plus from the Parish Council (although in three cases no address was given – the rest lived locally). To these witnesses should now be added Michael Doran, Mark Pickavance, Gil Schwenk and Marianne Fernandez. This means that written evidence supporting the application was put in by 28 individuals plus, of course, from the Parish Council. It will also be recalled that the local consultation produced 68 responses supporting the application to register. In addition, there was oral evidence from 9 witnesses (including the Cullens who gave their evidence jointly).

## **Objectors' written and oral evidence**

### *Documents*

76. Excluding authorities and legal submissions, the Objectors' bundle runs to 497 pages which is excessive for an application of this nature and only parts of it were actually looked at in the course of the inquiry. I appreciate that the highway evidence was not considered and that this was at my instigation.
77. What counts in the application process are the section 15(2) criteria, all of which must be satisfied, in order that registration may be justified. My main focus will be on this evidence and just because I fail to analyse all the other evidence adduced by the Objectors it is not because I have not considered it. It is just that I do not consider such evidence to be material to the fact-finding inquiry as to how the land has been used, by whom and, of course, the frequency, duration and character of the claimed qualifying use.
78. Mr Reeves put in a number of objection letters and statements. See the Objectors' bundle at pages O/8 (2019), O/12 (2020), O/39 (2021), O/59 (2021), O/63 (2021) and his principal witness statement which starts at O/210 (2 November 2022) which runs to 16 pages. There is also a statement from Mrs Kathryn Reeves at O/178 (2020) plus her main witness statement at O/180 (31 October 2022) along with a statement from their eldest child, James, at O/177 (20 September 2020) who also gave oral evidence.

### *Malcolm Reeves*

79. At the start of the qualifying period the Objectors had four young children under 14. Mr Reeves says that the family often visited his mother at No. [REDACTED]. In the summer they used her pool and it was also a place where the wider family got together. He says that at no time did he see anyone (as he puts it) using the land "for sports and pastimes", nor had he seen events taking place on the land or even children playing there. At no time did his mother ever mention (before she died in 2014) events of any description taking place on the land in front of her home.

80. After his mother died there were regular trips to No. [REDACTED] to sort out the property and in 2015/16 steps were taken to obtain planning permission to extend the living space. The main works began in February 2016 when the roof and gables were dismantled and replaced by new walls and a new roof. Mr Reeves says that he was on site every day acting, as he puts it, as a labourer and project manager. They worked on a scaffold and had a decent view of the land in front of the property. He says that he saw no one undertaking "sports and pastimes" on the land although he does mention the Queen's 90<sup>th</sup> Birthday celebrations in June 2016 which he says involved only a small gathering of around 12 people and was the only event of this kind that he ever observed taking place on the land.
81. Mr Reeves accepts that he sees people using the land as if it were a public footpath. He mentions a Mr Haines who was repairing the wall at the front of the house. He evidently used the land in this fashion on his way to carry out repairs. Mr Reeves says that he has not seen any regular use of the land for walking either before or since although he has seen dog walkers who mainly walk in the road. He has also seen the odd cyclist or group of cyclists stop for a rest on the land but he is, I think, probably right when he says that these people are not "villagers". He also mentions seeing workers engaged in work on nearby houses or in relation to the road or local services using the benches to take their lunch but, in general, walkers do not use the application land as a short cut and prefer stick to the road.
82. In his oral evidence Mr Reeves confirmed the contents of his final statement at O/210. It is obvious that Mr Reeves has convinced himself that he has been hard done by the Parish Council who had no right to claim that they owned the land and so prevented his mother from securing an independent access to No. [REDACTED] across the land without resort to what is now (as he sees it) a wholly unsatisfactory right of way over his neighbours' property which has resulted in, as I see it, quite pointless conflict with the Cullens. The CRA has no need to look into the neighbour dispute but the fact that it exists at all means that the Cullens cannot be regarded as truly independent witnesses.

83. The evidence of Mrs Reeves mirrors that of her husband. She says that they treated No. [REDACTED] as their second home. One can imagine this as Mrs Dargie lived alone and probably needed support. When she became ill in 2014 Mr and Mrs Reeves provided round the clock care until Mrs Dargie died in December 2014.
84. Mrs Reeves deals robustly with the claim that there were Christmas lights on the land. She says that this was not the case and it was only after the TVG applications that someone put a few lights up in the tree directly in front of No. [REDACTED]
85. Mrs Reeves says that when she and her husband were sorting out Mrs Dargie's effects it was very quiet outside. It was mainly traffic and the occasional dog walker heading down Avil's Lane and back again (the road is a dead end). She saw no one sitting on the benches which she says were in a poor state of repair. There were also dead flowers left in and around the benches which no one bothered to throw away until she did. Mrs Reeves says that it was always very quiet outside No. [REDACTED] and that you could spend time on the front drive without ever seeing anyone walk by let alone indulging in, as she puts it, "sports/pastimes or activities".
86. She then moves on to the works on the bungalow which started in 2016. She says that the grass was mowed periodically. Although the driver wore a safety helmet he would still bang his head on the low branches of the trees. It is worth noting that Mr Reeves says on O/215 that low branches overhanging No. [REDACTED] were lopped in 2017 following a complaint which he made to WC.
87. Mrs Reeves says that they attended the Queen's 90<sup>th</sup> Birthday celebrations on the land in June 2016 although only around a dozen people turned up, two of whom were she and her husband along with, as she puts it, two newcomers to the village and they all left after ten minutes.
88. Mrs Reeves says that she only ever normally sees one dog walker crossing the land but he never stops, nor does he do this daily. She says that

sometimes the grass is too long to walk over and in general dog walkers walk down the road. She says that she does see people with dogs chatting in the road. She accepts that with the renovation of the benches in 2018 and the later introduction of a picnic table she has seen walkers stop off briefly for a sit down. She also says that children do not play on the land and anyone looking at the notice board will not take very long.

89. In her oral evidence she made various observations. First, she accepted that they never slept at No. [REDACTED]. Second, the grass was cut once a month in the summer. Third, in the summer she saw two young mothers pushing buggies up the road and they went by the land without stopping. Fourth, she said that when working inside No. [REDACTED] it was possible to see what is going on outside as there are large windows at the front. Fifth, once they had taken over No. [REDACTED] the grass on the land was “rough” and grew longer. Sixth, the outlook at the front into the village was also affected by the thickness of the trees beyond their front wall which her husband did not like (as previously indicated, the tree canopy overhanging No. [REDACTED] was eventually cut back). Mrs Reeves said that this involved the removal of three large trees leaving one conifer which itself came down in February 2022.
90. Not only did Mrs Reeves’ put in a very effective statement but I find that she was also a very credible witness when she gave her oral evidence.

*James Reeves*

91. His statement dated 20 September 2020 was quite short. James was born in [REDACTED] and by the time he left home in 2006 (when aged [REDACTED] he has no recollection of, as he puts it, the verge outside No. [REDACTED] being used for “sports, pastimes or events of any sort”. He also says that

... it makes no sense that anyone could use the land for this purpose; it is far too narrow for athletic activities, it is cluttered with trees, and the land slopes towards the road, making ball games impractical even if there were space for them. At least while I was growing up, the grass was often left to grow long and unkempt

The claim that this space has been a vibrant village green for years is not credible.

92. James Reeves was not cross-examined. He did though give evidence in chief and I find that he too was a very credible witness. I also thought his statement was very effective.

### **Closing submissions**

#### *Applicant*

93. The submissions of Mr Stedman Jones run to 25 pages. Although I do not cover all the points which he makes, I hope I do justice to his submissions in my report. On the face of it, the main points he makes are these:

(i) The land is highway land such that LSP cannot have been *as of right*.

(ii) There is a lack of user evidence across the whole of the qualifying period April 1998-April 2018 and some of the evidence relied on took place outside this period.

(iii) The application is statutorily incompatible with TVG registration because utility undertakers are entitled to access the land to carry out work.

94. The highway issue I put to one side for reasons explained at the inquiry.

95. I will address the issue of (put shortly) the sufficiency of qualifying use separately. This will depend on my findings on the evidence I have heard. That said, it is clearly for the Parish Council to establish that all the criteria necessary for the land to be registered as a TVG have been met. This will involve an evaluation of the claimed informal recreation which took place on the land, such as it was in the qualifying period, and whether it was sufficient in terms of quantity and quality to justify registration.

96. Turning to the statutory incompatibility point, I see no incompatibility between the 2006 Act and the statutory regime applying to the installation of domestic gas supplies. The application land in this case is plainly not held for a statutory purpose which would be incompatible with its registration as a TVG. It is also now established (see *TW Logistics Ltd v Essex County Council* [2021] 1050) that after registration a landowner is entitled to use his land in

any way which did not interfere with the public's recreational rights and members of the public had to exercise their rights reasonably and with respect to a landowner's concurrent use. I cannot see how the exercise of statutory powers in this instance will be frustrated by the registration of the application land as a TVG? To suggest without more (if this is what is being suggested) that land beneath which ordinary household utilities have been laid by service providers under the various enabling Acts (covering digital, electricity, gas and water supplies) should be removed from the 2006 Act is, I think, misconceived and takes the principle much further than was ever contemplated by the Supreme Court in the well known cases on this subject. Not only would such a proposition emasculate the 2006 Act but I am unaware of any case which would support this. Indeed, it is conceded that the point in issue has not been tested in the courts. I therefore find against the Objectors on this issue.

97. I now turn to the submissions of Mr Stedman Jones on the user evidence adduced by the Parish Council. Again, I propose to summarise what he says as I have already covered the evidence in this report.

- (i) The applications were not supported by any user evidence.
- (ii) Oral evidence was given by only 9 witnesses (Mr Stedman Jones mistakenly says 8 – he misses out Mr Andrews).
- (iii) The number of oral witnesses is less than the 22 who provided questionnaire responses.
- (iv) Most of the witnesses, including some of the oral witnesses, refer to the desirability of registration which is irrelevant to the statutory tests.
- (v) Only 5 witnesses speak for the whole of the 20 year qualifying period (Smith, Doran, Jackson and the Cullens).
- (vi) The Cullens are not impartial witnesses given the history of the neighbour dispute between them (including their response to the Objectors application for planning permission) and their evidence must be treated with caution.

(vii) The evidence of the others shows that user was no more than trivial or sporadic.

(viii) Brigadier Smith would have been away from home a good deal before he retired in 2004 when his wife would have walked their dog.

(ix) Observations were also made about the evidence given by Mr Doran, Mr Jackson, Mrs Fernandez, Mr Schwenk and Mr Pickavance. I think the main thrust was that these witnesses agreed that use of the land had increased in more recent times. Mr Pickavance had thought that if use had increased it was probably because people were concerned about losing it.

98. Mr Stedman Jones also addressed the evidence of Mr and Mrs Reeves. He is right when he says that they were questioned extensively. Apart from their evidence in chief, the questioning was mainly by me as the Parish Council was unrepresented. It seemed to me to be appropriate that I should test the Objectors' evidence if the inquiry was to serve a useful purpose. Again, I propose to summarise what he says as I have already covered much of the evidence given by these parties.

(i) It is said that they explained in detail the time they spent at No. [REDACTED] both before 2014 and afterwards. Mrs Reeves added that she was there with her husband and helped as much as she could with the building work and the finishes.

(ii) Comment was made that Mrs Reeves said that she would not have allowed her children to play on the application land in view of its closeness to the road. James Reeves also confirmed that he never saw children playing on the application land when he was young (1987-2006).

(iii) That I would have been able to satisfy myself on my visit to No. [REDACTED] what could be seen at the front of the property.

(iv) It is said that the Objectors' evidence was specific, comprehensive credible and consistent.

99. Mr Stedman Jones also submits (in effect) that the applicant's evidence came from far too few local inhabitants for it to constitute a "significant number" within the meaning of section 15(2)(a) of the 2006 Act.
100. It is also claimed that not all the evidence was qualifying LSP. I was encouraged to consider (in effect as it appeared to me) whether some of the evidence of walking on the land would be more characteristic of use as a public right of way rather than as a destination in its own right for LSP. The evidence given by Brigadier Smith is cited under this head. It is said that the application land is too small to walk a dog around and does not allow for the type of dog walking contemplated by qualifying LSP and is more indicative of highway use or use ancillary to the range of recreational activities that would be permissible on the highway. The evidence given that the application land was a useful stopping point for visiting cyclists and walkers would also fall within this category of non-LSP use.
101. It is also submitted that the open air services which took place on the application land on six occasions in the early 2000's are not qualifying LSP. I agree. I think Mr Stedman Jones must be right when he says that religious observance cannot be equated with recreational activity.
102. It is also submitted that user for at least 20 years prior to the applications is not made out. It is said (in effect) that, at its highest, the evidence about this is sporadic and that the case for continuity of use throughout the relevant period is simply inadequate. Although it appears to be accepted that the land has been used more often in recent times there are lengthy gaps in the evidence where no direct evidence of any specific use is given or else is simply too vague or lacking in the level of detail required for these purposes.
103. I have read the "Additional Matters" set out on pp.22-24 of Mr Stedman Jones's closing submissions but whilst I understand why he has raised these points (vis: the absence of the land's reputation as a "green", the irrelevance to be attached to its maintenance and the conduct of the Parish Council – in fact it is even alleged that the objectors "have been unfairly demonised") I do not need to consider these points in any detail for the purposes of this inquiry.

However, Mr Stedman Jones helpfully reminds me that the Parish Council attempted but failed to register the land as common land in 1983 (O/294).

### **Applicant's closing submissions**

104. I have introduced Mr Andrews' closing statement at A/89-90.
105. Mr Andrews notes that, as he puts it, the Parish Council did not have the money to employ a barrister to put its case to the inquiry. He also complains that because the Objector's bundle arrived late (after the deadline) it was impossible to "read and digest" the evidence being put before the inquiry.
106. Mr Andrews goes on to deal with the "substantial written, verbal and photographic evidence to establish usage of the land as a Village Green". He goes on to say that the Parish Council has "demonstrated the strength of feeling of the parishioners about this piece of land". He cites the survey of parishioners which he says shows "overwhelming support" for registration.
107. Mr Andrews says the concern of Mr Reeves about the maintenance of the utilities serving No. [REDACTED] in the event of registration is irrelevant. He also cites the fact that the Objectors do not even live in the village and because of this it is unclear how they can state "so definitively" that the land is not being used as claimed.
108. Mr Andrews also mentions that although Mr Reeves said that his late mother told him that the land was not being used for events, he agreed that she was in the photograph of the Royal Wedding celebration on 29 June 2011. He also says that although Mr Reeves says that other places exist in the village where events have taken place, such use is only available with permission and that the MOD sports field is no longer freely available for parish use.
109. Mr Andrews argues that the land has been used "for formal and informal recreation and other community purposes over a long period". He says that the land has also been maintained by the Parish Council and individual residents for these purposes for over 30 years. He says that the land is also designated in the SSQ (draft) Neighbourhood Plan as a Local Green Space.

He says that in the view of the Parish Council there is a strong case for registration and “preserving its status as a valuable village asset and green environment to be enjoyed by future generations”.

110. The Parish Council invites me to recommend to the CRA that the application land should be registered as a TVG and that the objection to this is “not sufficient or robust enough to demonstrate that the area has not been used for community events during the time under consideration”.

## **Discussion**

### *Some general points when looking at evidence in TVG cases*

111. 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.
112. I also 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.
113. It is also true that where an activity has been carried on in the recent past, it is easy to believe that the activity has been carried on longer and/or more often and/or more continuously than it really has.
114. 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 evidential focus in this case*

115. 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 (in this instance) SSQ had indulged as of right in LSP on the application land during the relevant 20 year period ending in April 2019.

116. I start by dealing with the application land and its context which, in my view, provides a useful starting point as to how, by whom and the frequency with which the land is likely to have been used for qualifying purposes?
117. We are dealing with a small parcel of land on the side of a road where the passing traffic is only light. LSSQ is a very small settlement and at this end of Seagry Road there are likely to be few pedestrians. I have a note that there are only 79 houses in the village on the eastern side of the A429. This figure may not be entirely accurate but the population of LSSQ is plainly small and the number of recreational walkers, with or without dogs, or children able to use the land for play is going to be even smaller.
118. The land has no pavement running alongside it and in practice is too small to walk around or for ball games or for children to play unsupervised in view of its proximity to the road. In truth it is little more than a wide verge.
119. It is not as if the land is located near a busy estate or at the convergence of popular public rights of way. There is no school or shop on this side of the A429 nor any laid out communal open space available for walks etc.
120. Although the grass is cut periodically in the summer it cannot be an easy place to walk on at other times. I noted that the land is soft underfoot and I suspect that it would be damp and boggy in the wetter weather.
121. The fact that the land is unlikely to be used with any frequency by local residents is amply borne out by the fact that there are no tracks on the land nor other signs of wear to indicate that it is in active use.
122. The land has no rubbish bin or bin for dog faeces which one might have expected to see if it was being used more than just occasionally by walkers, with or without dogs, or by those stopping to snack or drink or merely just to chat with friends (as doubtless occurred during the pandemic).
123. The land had even more trees until fairly recently and has never been a completely open space. The trees and their low braches are undoubtedly intrusive when walking on and around the land.

124. Although the land has 2 benches on it at the moment and a picnic table, this has not been a longstanding position. One bench was put there over 20 years ago and the other is of more recent origin. The picnic table was only put there in late 2018. In truth, for most of the twenty years there has only been one bench on the land and its condition in the photographs shows that it was probably used only rarely as a functioning seat. One only has to look at the photo of the older bench in O/29 which was evidently taken on 21 November 2017 where the seat is seen to be covered with mould and lichen.
125. The application land has no view or outlook of particular interest although I accept that it is a wide enough place off the road for friends to meet and talk for short periods. It is, I think, just as likely that the people will stop and chat on the pavement on the opposite side of the road rather than sit on a dirty/wet seat/seats and make a mess of their clothing (and perhaps also get their shoes wet if it has been raining). Indeed, unless perhaps it were a warm, sunny day, it seems to me unlikely that many people, if out for a walk with their dog and/or with a child in a push chair, would choose to stop and/or sit down on the application land for any appreciable length of time and especially if they are close to home.
126. It is true that the land is a place where, perhaps at a push, communal events can take place. I have already indicated that the 6 church services in the early 2000s do not count. This then leaves (i) the Royal Wedding in April 2011, (ii) the Queen's 90<sup>th</sup> Birthday in June 2016, (iii) the Community Garden Project in May 2018 and (iv) the Book Sale in June 2018. These four events were one-off events and I am not aware of other events in the course of the qualifying period. They would have lasted for a few hours at a time and could even have attracted non-qualifying residents. It is also worth bearing in mind what Mrs Reeves said about the Queen's 90<sup>th</sup> Birthday celebrations in June 2016 where she says that only around a dozen people turned up, including she and her husband plus two newcomers to the village, and they all left after ten minutes.

*The quality of the oral evidence adduced by the Parish Council*

127. The quality of the oral evidence in support of the case for registration was generally poor. This is not to suggest that any one of witnesses who attended to give oral evidence did so with a view to telling untruths. All of them used the land and gave the impression that they were safeguarding it. I think that all of them were attempting to describe matters as they genuinely saw them.
128. The position is that the Objectors are saying that the land is hardly used for informal recreation whereas the witnesses called by the Parish Council say that it was in regular use for these purposes and they point to the events described in para 126 above and to its use as described by their witnesses, both oral and as recorded in the documents, not least in relation to the results of the village survey to which, as I find, only limited weight may be attached.
129. It seems to me that the real problem with the case for registration is that it is woefully short on proof. I have already stated in para 24 that the law requires such claims to be properly and strictly proved. It means that sufficient use of the application land for LSP must be made out by local residents for the whole of the 20 year qualifying period. As indicated in para 12 above, it needs to be shown that the use of the land must signify that it is in general use, as opposed to only occasional use, by the local community.
130. In this case oral evidence was called from only 5 witnesses who lived at LSSQ in the 20 year period ended in April 2018.
131. Stuart Jackson has been in the village since 1994 but he said that he had used the land only occasionally and although a truthful witness I cannot really attach a great deal of weight to his evidence.
132. Although Peter and Elizabeth Cullen have lived in the village for over 28 years they do not get on with the Objectors and I have to take into account this animosity which I find reduces the weight which should be attached to their evidence. As I said in para 71, the ill-feeling between these neighbours was obvious at my accompanied visit after the inquiry.

133. Brigadier Smith came to the village in 1997. Although he claims to be a regular user of the application land and has also observed others using it, Brigadier Smith retired in 2004 and I doubt very much whether the frequency of his use before he retired was anything like what it is now. The family has also only had a dog since 2000.
134. Michael Doran has lived in the village for 45 years. He lives just across the road from the application land. On the face of it, he appeared to be a good witness for the Parish Council. However, he did say that the land was being used more often nowadays which he thought was because people were being more sociable. I am disinclined to accept that this is the real reason for the increase in the land's use. It seems to me to be obvious that this results from the application to register and no doubt, but to a lesser extent, the recent pandemic when, for a time, the land would very probably have been a popular meeting place. By using the land more often local residents are demonstrating that the land is an important communal asset and that this will make its registration as a TVG more likely. Indeed, Mr Pickavance said that if user had increased it was probably because people were concerned about losing the land. I accept the submission of the Objectors' counsel that the case of the Parish Council was very largely predicated by the desirability of registration which is irrelevant to the statutory tests.
135. I add that I was also troubled by Mr Doran's reference to Christmas lights in view of the evidence of Mrs Reeves about this (which I accept). It is also possible that Mr Doran (who is not, I think, a dog walker) would have mainly used the land when his children liked to play there before they went to secondary school which I believe would have been in around 1999 and 2002.
136. In the case of the other witnesses, Mrs Fernandez and Mr Schwenk were none too specific about their own use of the land and I also doubt whether Mr Pickavance and Mr Andrews used the land to any great extent.
137. I am surprised that there were so few oral witnesses in view of the apparent support within LSSQ for registration. I suspect that the Parish Council believed that by producing the results of their questionnaire and by calling a

small number of oral witnesses covering the qualifying period it would be enough to get these applications across the line. If, however, they had been legally represented they would doubtless have been advised of the importance of adducing credible oral evidence from a significant number of witnesses showing that the land had been used for LSP throughout the whole of the qualifying period. Furthermore, in these cases decision-makers are, more often than not, presented with photographs of the use of the land for LSP and although I accept that we have some communal photos of the Royal Wedding in 2011, the Queen's 90<sup>th</sup> Birthday celebrations in 2016, the Community Garden project in 2018 and Book Sale in 2018 there is nothing else in the way of helpful photographic evidence.

138. It is plain that the Objectors' planning application to run a new access road across the application land was very unpopular in the village. I suspect that most people in LSSQ found it hard to accept that such an application could even feasibly be made by the Objectors when they neither lived in the village nor owned the land which their proposed access was supposed to cross (land which is to be designated in the emerging NLP as a Local Green Space). It was this local opposition to the Objectors' planning application which resulted in the Parish Council making the two applications to register. I have no doubt that within the village strong emotions were raised (i) by the planning application, and (ii) by the Objectors' belief that the application land is in fact highway land and as such would be available to them for use by vehicles. The result of all this is, as I find, that memories and recollections are likely to have been unconsciously coloured or distorted by those who gave written and/or oral evidence in support of the case for registration.
139. In the result, I find that there were too few witnesses who could speak reliably about the use of the land over the period of 20 years ending with the date of both applications. I therefore accept the submission of the Objectors' counsel that the applicant's evidence came from far too few local inhabitants for it to constitute a "significant number" within the meaning of section 15(2)(a) of the 2006 Act.

140. When looked at in the round, these applications concern a small parcel of open land on the side of a road which is far too small to be of much practical use for LSP. On the basis of the written and oral evidence which has been put to the inquiry I find that the LSP claimed is likely to have been too trivial or sporadic and would not have been sufficient in terms of duration, nature or quality to support registration. I also take the view that the points which I make in paras 116-126 about the application land and its context are supportive of my findings on the balance of probabilities on the evidence before the inquiry.

### **Recommendation**

141. In light of the above discussion, I recommend that the applications to register the application land (proceeding under application number 2018/01 and application 2019/01) should be **rejected** on the ground that the criteria for registration laid down in section 15(2) of the CA 2006 have not been satisfied.
142. 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 Advisory Report dated 9 January 2023”.

**William Webster**

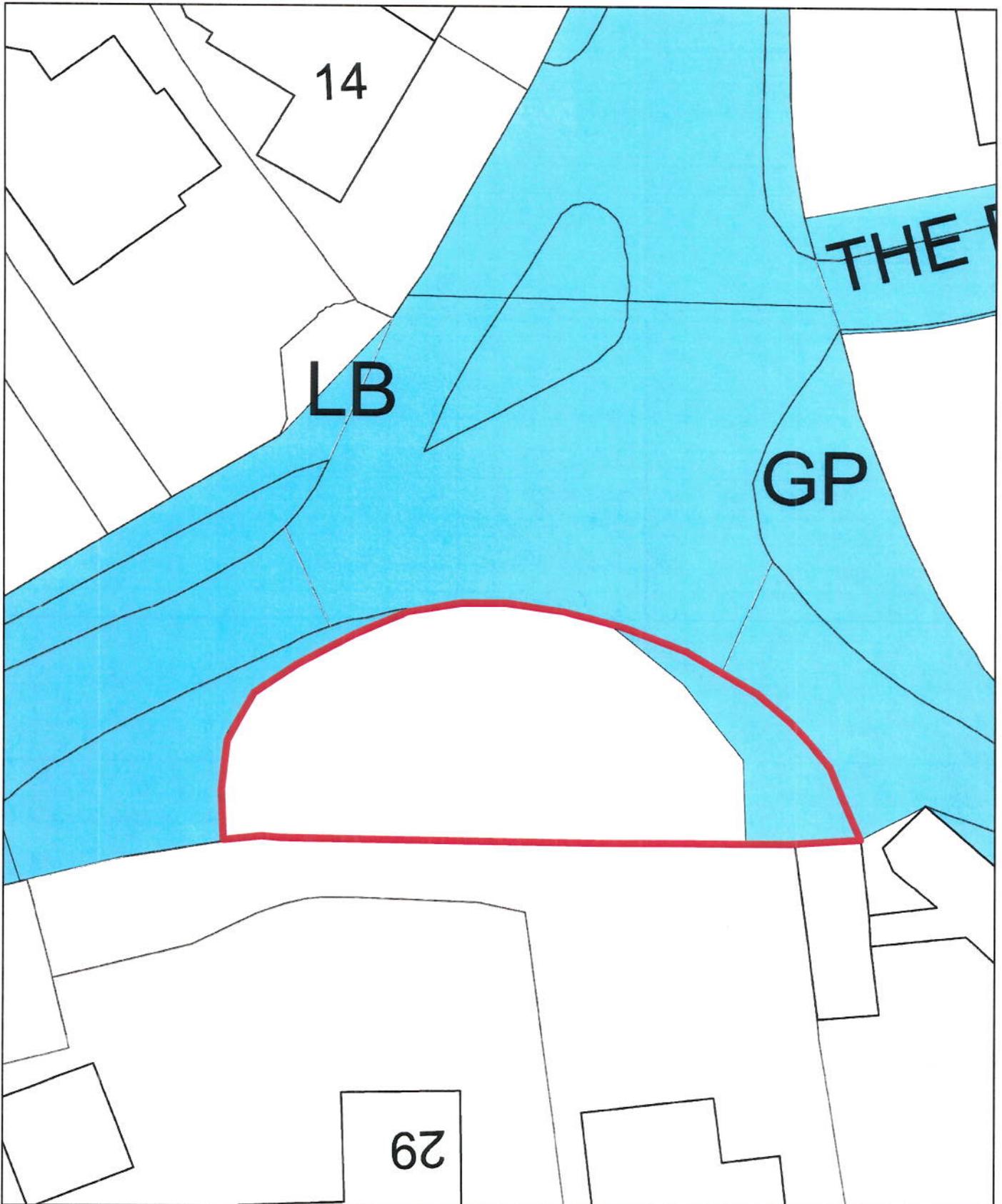
**3 Paper Buildings**

**Temple**

**Inspector**

**9 January 2023**





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24/05/2022

Scale 1:300 @ A4

App/1

A.A. EXHIBIT B  
A.A. THIS EXHIBIT (B)  
A.A. THIS EXHIBIT A.A.  
REPLACES EXHIBIT A.A.  
A237/19



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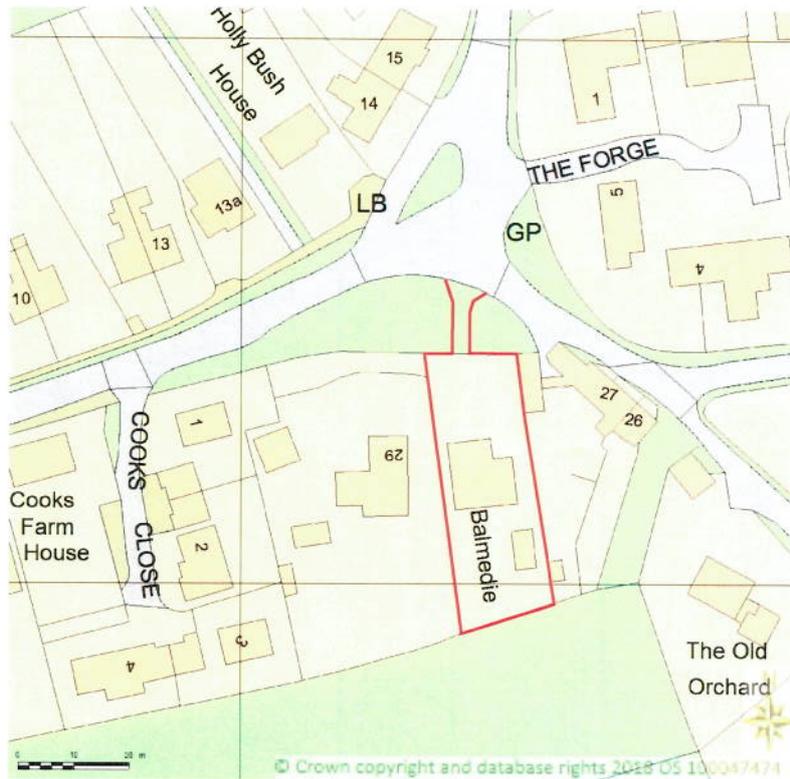
SECOND OF TWO EXHIBITS  
DECLARATION 18 APRIL  
2019  
to statutory



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**Seagry Road, Lower Stanton St. Quintin,  
Chippenham, Wilts, SN14 6**

SITE LOCATION PLAN  
AREA 2 HA  
SCALE 1:1250 on A4  
CENTRE COORDINATES: 391729, 180835



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# Appendix 5

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

### Applications to Register Land as Town or Village Green – Land off Seagry Road, Lower Stanton St Quintin

#### Appendix 14 – Summary of Witness Evidence

	Name	Locality	Years used / Known	How used	Events	Comments
1	Paul & Alison Avis	■ The Forge, LSQ				Support registration of land in its entirety
2	Malcolm Barrington & Tracy Warne	■■■■■ ■■■■■ ■■ LSQ	2009	Meeting place	VE day 2020 – a neighbour and myself turned the land and the area opposite into a VE day display by parking a WW2 jeep and 3 WW2 motorcycles.	Village green a focal point of village, no pub and not many places where people can gather for fun.
3	Michael Childs			Picnic site (my family)	2020 VE day – small display of WW2 vehicles in the absence of any formal event due to covid 19. Local free library on site. Seen a number of others use it as picnic site	Small village with very few amenities, not even telephone box anymore. For many geographical centre of Lower Stanton St Quintin.
4	Hilary Creasey	Newbourne Gardens, LSQ			When we were children pond had been filled in, we had fetes on the pond. There were fancy dress competitions and picnics. Church services. Also other celebrations. 2 benches on the pond, one in memory of a villager, people sit there in the summer months.	The village green is on the opposite side of the road in front of Spider Cottage. The Pond was dug out by the farmers so their cattle and horses could drink. They also put carts through the water to swell spokes so metal bands on wheels didn't fall off. Where the wall is now there were trees, weeping willows and smaller trees. There was a Reading Room to the right of the pond (near access to bungalow and house), where our parents and grandparents played games, cards, dominoes, whist, crib etc.

						Reading Room, Methodist chapel, shop and all farm yards now gone. Pond is the only original landmark of village that is left. It there was an access to house onto the road here would be dangerous.
5	Liz Cullen	██████████ LSQ	26 years		<p>Several open air church services/ Numerous national celebrations with “bring and share” food and drink, eg. Queen’s jubilee, Royal weddings and most recently VE day with display of vintage vehicles.</p> <p>May 2018 – a group of adults helped village children plant wildflower seeds to establish small community garden (photo 1).</p> <p>June 2019 – book sale to raise finds for “Wee Free Library” (photo 2). Wee Free Library where people could exchange books, paid for by an anonymous local person – books purchased to start the venture, very well used especially in lockdown months when shops and libraries closed. Library opened by local poet (photo 3).</p>	<p>Community asset. Public notice board gives information about PC meetings, church services and local events. Bench seat and picnic bench used by residents as pleasant place to meet, picnic and chat. PC have maintained the area for many years, paying for regular grass cutting and tree surgery. Vast majority of villagers in favour of applications.</p>
6	Peter Cullen	██████████ LSQ	26 years		<p>Focus for village celebrations including street parties, most recently VE day in May. Church services. Book sales. Many more informal gatherings of locals. Benches on the green used daily at least in summer by residents and also walkers and cyclists passing through the village. Little library used at least daily and well received.</p>	<p>It gives a great deal of pleasure to village residents, visitors from the locality and those passing through. Trees and grass maintained at PC’s expense from time I have lived in LSQ and I believe well before I arrived. Valuable asset and focus of enjoyment for the local community and others.</p>
7	Martin Davis		Oct 1997		Increasing use, particularly with social distancing the coming together of families	The space has played a part in bringing the village together on many occasions.

					in sensible surroundings to maintain a healthy life balance. Royal celebrations. Most recently VE day celebrations with historical military vehicles and a village gathering to celebrate.	We have met and made strong friendships which would not have developed if the green space not available to use. Not many places in village where people gather for fun. Today all too many people live in isolation and this has brought out people who would never socialise and has made them and the village stronger because of it. Living memorial for a number of families who have dedication benches installed.
8	Keith Garrod	■ Cooks Close, LSQ		Grandchildren play on the green when they visit	A place to sit and enjoy the peace and tranquillity. A place to meet and chat with the local community who are not immediate neighbours but still members of the village. Ideal location to meet and keep social distancing.	Essential part of our community.
9	Cllr Howard Greenman Wiltshire Councillor					Support this application and can confirm its legitimacy.
10	Mary Haines				Opportunity for people to sit for a few minutes or to visit the Wee Free Library.	PC have looked after the Green very well and it is a credit to the village.
11	S R Jackson	■ LSQ				Support for both applications.
12	H W Jolly	■ LSQ	About 30 years		Many events for the community have taken place on the land which I have thoroughly enjoyed.	Always considered it as being a village green.
13	Doreen Pattison		32 years (Before living in LSQ lived within RAF camp at other end		Many social events held, I have helped organise several in the past few years. Good to have a space to gather and the majority of the village attend. We put up bunting to celebrate national and even some local events such as a wedding. At Christmas there are some lights.	Throughout time in LSQ and at RAF camp, regarded this as the village green.

			of the village)		<p>Wee free library (greatly appreciated particularly when library closed). I received permission from the PC several years ago to install small picnic bench. We involved local children when we planted wild flower seeds. Only open space for children to play. Small but spread out community, village green is point of connection.</p>	
14	Graeme Pattison	<p>██████████ ██████████ LSQ</p>			<p>Used by villagers as a green for many decades and to my knowledge since spring 1977. Events have taken place on many occasions and only Covid 19 situation prevented VE and VJ day celebrations recently. Only piece of land available to the residents. Facility is appreciated and frequently used by a wide range of people passing through the village as a resting point and/or to have refreshment such as lunch or coffee.</p>	<p>Land was originally pond filled in many years ago as considered dangerous for children of the village. PC has maintained land and paid for tree surgery when required. PC funded grass cutting and paid for other amenities such as table and benches as well as village notice board. 2 benches installed with PC approval as memorials to villagers.</p>
15	Malcolm Peal	<p>██████████ LSQ</p>				No objection.
16	John & Glynis Seale	<p>██████████ The Forge LSQ</p>			<p>For past 50 years the Village Green has provided the only community land focal point on which residents can celebrate notable historical and commemorative events. Proven community value through both historical and current use and an asset to rural village life. No other similar community land asset exists in LSQ. Value of Village Green further enhanced by siting of a commemorative tree and plaque; picnic bench and small residents' lending library.</p>	<p>Land maintained by PC for last 50 years. Map appears to show pathway across green, do not support any such future development across the Village Green.</p>

					Land provides "home" for PC notice board for residents.	
17	Mike Smith	■ The Forge, LSQ	1997		Since 1997 in continual use as a green by residents throughout this period. Mature trees, village notice board, 2 picnic tables and a 'wee free' library box, all regularly used by residents of the village and visitors.	No driveway across the green, no evidence of vehicle access at this point. The extent of the green area encompasses both sides of the Seagry Road and a more realistic registration would encompass all of these areas, not just piece to the south of Seagry Road.
18	Roger Starling	■ The Forge, LSQ			Focal point at the heart of small village. There for all to enjoy and meet up on special occasions with neighbours and new arrivals alike. Only green space within safe convenient walking distance for parents with younger children. Attractive visual amenity.	Identified as green space in draft neighbourhood plan which contributes to the wellbeing of all. Deserves to be protected.
19	Mervyn & Sue Stephens	■ Stanton St Quintin				In favour of registration. It would protect this site for current residents of the village as well as providing an opportunity for future residents.
20	Serena Parker	■ Stanton St Quintin			Villagers and visitors can congregate and come together to relax and have community events.	The land has been used as a village green for many years, ever since the former pond was filled in. During this time the PC has maintained the land by cutting the grass, general maintenance, tree cutting. This is the only village green in the Stanton Villages, there is no other suitable space to hold village events.
21	Adrian Andrews	Avils Lane LSQ			The wee free library is used daily and has been a meeting point (keeping up Social Distancing).	I have been in the village for 12 years.
22	Stanton St Quintin Parish Council				2 Royal weddings and VE day (75 years) in last 12 years. Many other events including a church service. Social gatherings and informal events.	Listed as village green in the Neighbourhood Plan. Village have paid for upkeep, most recently a tree surgeon and trees regularly maintained on previous occasions, grass

						cutting for over 14 years and notice board maintained. Extracts from Parish minutes back to 1983.
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