

AGENDA

Meeting: Eastern Area Planning Committee
Place: Wessex Room, Corn Exchange, Devizes
Date: Thursday 17 November 2016
Time: 6.00 pm

Please direct any enquiries on this Agenda to Kieran Elliott, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 718504 or email kieran.elliott@wiltshire.gov.uk

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

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

Membership:

| | |
|------------------------------------|----------------------|
| Cllr Charles Howard (Chairman) | Cllr Nick Fogg MBE |
| Cllr Mark Connolly (Vice Chairman) | Cllr Richard Gamble |
| Cllr Stewart Dobson | Cllr Jerry Kunkler |
| Cllr Peter Evans | Cllr Paul Oatway QPM |

Substitutes:

| | |
|---------------------|---------------------------|
| Cllr Terry Chivers | Cllr James Sheppard |
| Cllr Ernie Clark | Cllr Philip Whitehead |
| Cllr Anna Cuthbert | Cllr Christopher Williams |
| Cllr Dennis Drewett | |

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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](#).

For assistance on these and other matters please contact the officer named above for details

AGENDA

Part I

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

1 **Apologies for Absence**

To receive any apologies or substitutions for the meeting.

2 **Minutes of the Previous Meeting** (*Pages 5 - 10*)

To approve and sign as a correct record the minutes of the meeting held on 15 September 2016.

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 by phone, email or in person no later than 5.50pm on the day of the meeting.

The rules on public participation in respect of planning applications are detailed 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 10 November 2016 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 14 November 2016. Please contact the officer named on the front of this agenda for further advice. Questions may be asked without notice if the Chairman decides that the matter is urgent.

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

6 **Planning Appeals and Updates** (*Pages 11 - 12*)

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

Planning Applications

To consider and determine the following planning applications.

7 **16/05090/FUL: Home Farm, Tidworth, Wiltshire, SP9 7AQ** (*Pages 13 - 28*)

Demolition of agricultural buildings and associated hardstanding. Conversion and alteration of barns to form 6 dwellings. Conversion and extension of Barn 5 to form single dwellinghouse. Erection of 7 dwellings with parking and associated landscaping. Formation of access onto Humber Lane. Change of use of agricultural land to Accessible Natural Greenspace with associated landscaping.

Other Applications

8 **COMMONS ACT 2006 - SECTIONS 15(1) AND (2) APPLICATION TO REGISTER LAND AS A TOWN OR VILLAGE GREEN THE GREEN, BONDFIELD, WOODBOROUGH** (*Pages 29 - 118*)

9 **Urgent items**

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

Part II

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

EASTERN AREA PLANNING COMMITTEE

DRAFT MINUTES OF THE EASTERN AREA PLANNING COMMITTEE MEETING HELD ON 15 SEPTEMBER 2016 AT WESSEX ROOM, CORN EXCHANGE, DEVIZES, WILTSHIRE.

Present:

Cllr Charles Howard (Chairman), Cllr Mark Connolly (Vice Chairman),
Cllr Peter Evans, Cllr Nick Fogg MBE, Cllr Richard Gamble, Cllr Paul Oatway QPM
and Cllr Anna Cuthbert (Substitute)

Also Present:

Cllr Philip Whitehead

45. Apologies for Absence

Apologies were received from Councillor Stewart Dobson, substituted at the meeting by Councillor Anna Cuthbert, and from Councillor Jerry Kunkler.

46. Minutes of the Previous Meeting

The minutes of the meeting held on 4 August 2016 were presented for consideration and it was,

Resolved

To approve and sign as a correct record the minutes of the previous meeting held on 4 August 2016.

47. Declarations of Interest

There were no declarations of interest made.

48. Chairman's Announcements

There were no announcements made at the meeting.

49. Public Participation and Councillors' Questions

The rules on public participation were noted.

50. Planning Appeals and Updates

The Appeals update for the period between 28 April and 7 September 2016 was received.

Resolved

That the Planning Appeals and Updates report be noted.

51. **Planning Applications**

The meeting considered the following application:

52. **16/03703/FUL: Land at Woodland Road, Patney, Devizes**

Patricia Alsop, Mark Alsop and Mark Cann spoke in objection to the application. Damian Thursby, Helen James and Rachel Yeomans, agent for the applicant spoke in support of the application
Cllr Peter Small, Chairman, spoke on behalf of Patney Parish Council.

Jonathon James, Senior Planning Officer, and Mike Wilmott, Head Development Management, presented the report which recommended that permission be refused.

There were no additional later items or observations.

Key issues included: the position of the site within the AONB, and the position in relation to open land and nearby listed buildings; the access to the site from the highway; the possible impact of earthworks associated with the development; the design and materials to be used in the proposal; how the proposal has been designed to meet the needs of a child with significant additional needs; the impact of the proposals on the AONB and the character of the local area; that the family's circumstances were a primary consideration but did not, in the officer's opinion, outweigh the potential harm caused by the proposed development; how the requirements of human rights legislation interfaced with planning law; that the interests are a primary consideration but not necessarily determinative in planning matters ; the views of the local people and consultees; and that the committee has to weigh up the issues and make a balanced judgement.

Members of the Committee then had the opportunity to ask technical questions of the officer.

Members of the public then had the opportunity to address the Committee with their views, as detailed above.

Cllr Philip Whitehead, Division Councillor for the applicants, spoke with regard to the application.

A motion to refuse the application in line with the officer's recommendation was moved by Councillor Charles Howard seconded by Councillor Paul Oatway QPM.

The Committee then debated the application. It was discussed: how best to reach a balanced decision; the planning history on the site, and the previously refused application; the views of the local people and the parish council; the implications of the Core Strategy; and the needs of the children and the family.

Having been put to the vote, the motion to refuse the application was lost.

Subsequently, a motion to permit the application was moved by Councillor Richard Gamble seconded by Councillor Anna Cuthbert.

The committee, upon the advice of officers, discussed what conditions may be appropriate should permission be granted. It was agreed that officers should be delegated responsibility to grant permission subject to the standard conditions to also include an additional condition restricting the occupancy of the development to the child and their family for a period of five years.

Having been put to the vote, the meeting;

Resolved

To Delegate Approval to the Head of Development Management subject to the conditions as outlined at the meeting, and with the addition of a condition restricting the occupancy of the development to the child and their family for a period of five years. The conditions subsequently imposed are set out below:

- 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 Application Form, Planning Supporting Statement, Heritage Statement (Mar 2016), Landscape and Visual Report (Mar 2016), Barrister Advice, GP Letter, Enclosures A to G, Risk Assessment and Supporting Information and the following approved plans: "Location Plan, dwg no. LOC/01, Rev A"; "site Block Plan and Indicative Landscape Strategy"; "Topographical Survey, dwg no. TOP/01, Rev A"; "Floor Plan, dwg no. FL/01, Rev A"; "Elevations A01".**

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

3. **The dwelling shall be first occupied by Sophia Thursby, her parents, carers and any resident dependants of her parents and shall be occupied by these people only for a period of five years from the date of the first occupation of the dwelling.**

REASON: The site is in an area where residential development for purposes other than the essential needs of Sophia Thursby would not normally be permitted and this permission has only been granted on the basis of the essential need and special circumstances demonstrated in this case.

4. **No development shall commence on site until the exact details and samples of the materials to be used for the external walls and roofs 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 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

5. **No development shall commence on site until a scheme of hard and soft landscaping has been submitted to and approved in writing by the Local Planning Authority, the details of which shall include:-**
 - a) **location and current canopy spread of all existing trees and hedgerows on the land;**
 - b) **full details of any to be retained, together with measures for their protection in the course of development;**
 - c) **a detailed planting specification showing all plant species, supply and planting sizes and planting densities;**
 - d) **all hard and soft surfacing materials, including the materials for the drive and parking area.**

REASON: 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.

6. **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 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.

7. The development hereby permitted shall not be first occupied until the first five metres of the access, measured from the edge of the carriageway, has been consolidated and surfaced (not loose stone or gravel). The access shall be maintained as such thereafter.

REASON: In the interests of highway safety.

8. No part of the development hereby permitted shall be first occupied until the access, turning area and parking spaces have been completed in accordance with the details shown on the approved plans. The areas shall be maintained for those purposes at all times thereafter.

REASON: In the interests of highway safety.

9. No development shall commence until a plan detailing the proposed visibility splays has been submitted to and approved in writing by the Local Planning Authority. No part of the development shall be first occupied until the visibility splays shown on the approved plan have been provided with no obstruction to visibility at or above a height of 900mm above the nearside carriageway level. The visibility splays shall be maintained free of obstruction at all times thereafter.

REASON: 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 highway safety.

10. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending those Orders with or without modification), no development within Part 1, Classes A-E shall take place on the dwelling house hereby permitted or within its curtilage without the prior grant of planning permission from the local planning authority.

REASON: The site is in a sensitive area within the area of outstanding natural beauty and any additions or outbuildings need to be carefully considered through a planning application to assess the impact on the landscape and

heritage assets.

11. No development shall commence within the area indicated (proposed development site) until:

- a) A written programme of archaeological investigation, which should include on-site work and off-site work such as the analysis, publishing and archiving of the results, has been submitted to and approved by the Local Planning Authority; and
- b) The approved programme of archaeological work has been carried out in accordance with the approved details.

REASON: 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 enable the recording of any matters of archaeological interest.

INFORMATIVE TO APPLICANT: With regards to the provision of acceptable visibility splays, the applicant is directed to the visibility splays shown on the plan "VIS/01 - Pre-application submission" submitted under the pre-application enquiry on this site.

INFORMATIVE TO APPLICANT: Please note that Council offices do not have the facility to receive material samples. Please deliver material samples to site and inform the Planning Officer where they are to be found.

INFORMATIVE TO APPLICANT: The attention of the applicant is drawn to the contents of the letter from Wessex Water which contains advice on mains and foul drainage.

INFORMATIVE TO APPLICANT: The archaeological work should be conducted by a professional archaeological contractor. The applicant should note that the costs of carrying out the archaeological investigation will fall to the applicant or their successors in title. The Local Planning Authority cannot be held responsible for any costs incurred.

53. **Urgent items**

There were no urgent items.

(Duration of meeting: 6.00 - 7.09 pm)

The Officer who has produced these minutes is Kieran Elliott, of Democratic Services, direct line 01225 718504, e-mail kieran.elliott@wiltshire.gov.uk

Press enquiries to Communications, direct line (01225) 713114/713115

**Wiltshire Council
Eastern Area Planning Committee
17th November 2016**

Planning Appeals Received between 07/09/2016 and 04/11/2016

| Application No | Site Location | Parish | Proposal | DEL or COMM | Appeal Type | Officer Recommend | Appeal Start Date | Overturn at Cttee |
|----------------|--|-------------|--|-------------|-------------------------|-------------------|-------------------|-------------------|
| 15/07232/OUT | Land at Newtown Road Ramsbury Wiltshire | RAMSBURY | Outline residential development for 25 dwellings, including layout and access (Resubmission of 14/09660/OUT) | DEL | Written Representations | Refuse | 28/09/2016 | No |
| 16/01099/FUL | The Beeches Blackboard Lane Urchfont, Devizes SN10 4RD | URCHFONT | Demolition of existing dwelling and erection of two three bedroom and two four bedroom houses, garages and associated works. (resubmission of 15/11645/FUL) | DEL | Written Representations | Refuse | 09/09/2016 | No |
| 16/03846/FUL | Turnpike Cottage Cuckolds Green Worton, Devizes Wiltshire | POTTERNE | Rear two storey & single storey extensions | DEL | Householder Appeal | Refuse | 12/10/2016 | No |
| 16/04500/LBC | D J Bewley Funeral Directors 64 New Park Street Devizes, Wiltshire SN10 1DP | DEVIZES | Proposed Hanging Sign | DEL | Written Representations | Refuse | 04/10/2016 | No |
| 16/04508/ADV | D J Bewley Funeral Directors 64 New Park Street Devizes, Wiltshire SN10 1DP | DEVIZES | Proposed Hanging Sign | DEL | Written Representations | Refuse | 05/10/2016 | No |
| 16/04801/FUL | Longdon, Bath Road Marlborough, Wiltshire SN8 1NN | MARLBOROUGH | Proposed demolition of existing dwelling and replacement with three family dwellings, including garages, parking, turning areas and shared use of the existing vehicular access on land within the garden of 'Longdon', Bath Road, Marlborough, Wiltshire. | DEL | Written Representations | Refuse | 09/09/2016 | No |

| Application No | Site Location | Parish | Proposal | DEL or COMM | Appeal Type | Officer Recommend | Appeal Decision | Decision Date | Costs Awarded ? |
|-----------------|--|---------------------|---|-------------|--------------|-------------------------|-----------------|---------------|-----------------|
| 16/00044/FUL | Land at Cadley Road Collingbourne Ducis SN8 3ED | COLLINGBOURNE DUCIS | Proposed construction of new underground dwelling. | DEL | Written Reps | Refuse | Dismissed | 11/10/2016 | No |
| E/2013/0083/OUT | Land at Coate Bridge Adjacent to Windsor Drive Devizes Wilts | ROUNDWAY | Outline planning application for residential development of up to 350 dwellings, local centre of up to 700sqm of class A1 retail use, open space, access roads, cycleway, footpaths, landscaping and associated engineering works | DEL | Inquiry | Approve with Conditions | Dismissed | 21/09/2016 | No |
| 15/00251/ENF | Huntsmead Ogbourne St George Marlborough Wiltshire, SN8 1SQ | OGBOURNE ST GEORGE | Unauthorised Erection of Timber Framed Garage and Garden Store in front of the principal elevation of the property. | DEL | Written Reps | | Split Decision | 13/09/2016 | No |

REPORT FOR EASTERN AREA PLANNING COMMITTEE

| | |
|----------------------------|--|
| Date of Meeting | 17 November 2016 |
| Application Number | 16/05090/FUL |
| Site Address | Home Farm, Tidworth, Wiltshire, SP9 7AQ |
| Proposal | Demolition of agricultural buildings and associated hardstanding. Conversion and alteration of barns to form 6 dwellings. Conversion and extension of Barn 5 to form single dwellinghouse. Erection of 7 dwellings with parking and associated landscaping. Formation of access onto Humber Lane. Change of use of agricultural land to Accessible Natural Greenspace with associated landscaping. |
| Applicant | Landmark Estates (Tidworth) Limited |
| Town/Parish Council | TIDWORTH |
| Electoral Division | TIDWORTH – (Councillor Mark Connolly) |
| Grid Ref | 422609 147103 |
| Type of application | Full Planning |
| Case Officer | Lucy Minting |

Reason for the application being considered by Committee

Councillor Connolly has called in the application for the following reasons:

- The scale of development
- The site is outside the limits of development
- The lack of affordable housing

1. Purpose of Report

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

2. Report Summary

The main issues which are considered to be material in the determination of this application are listed below:

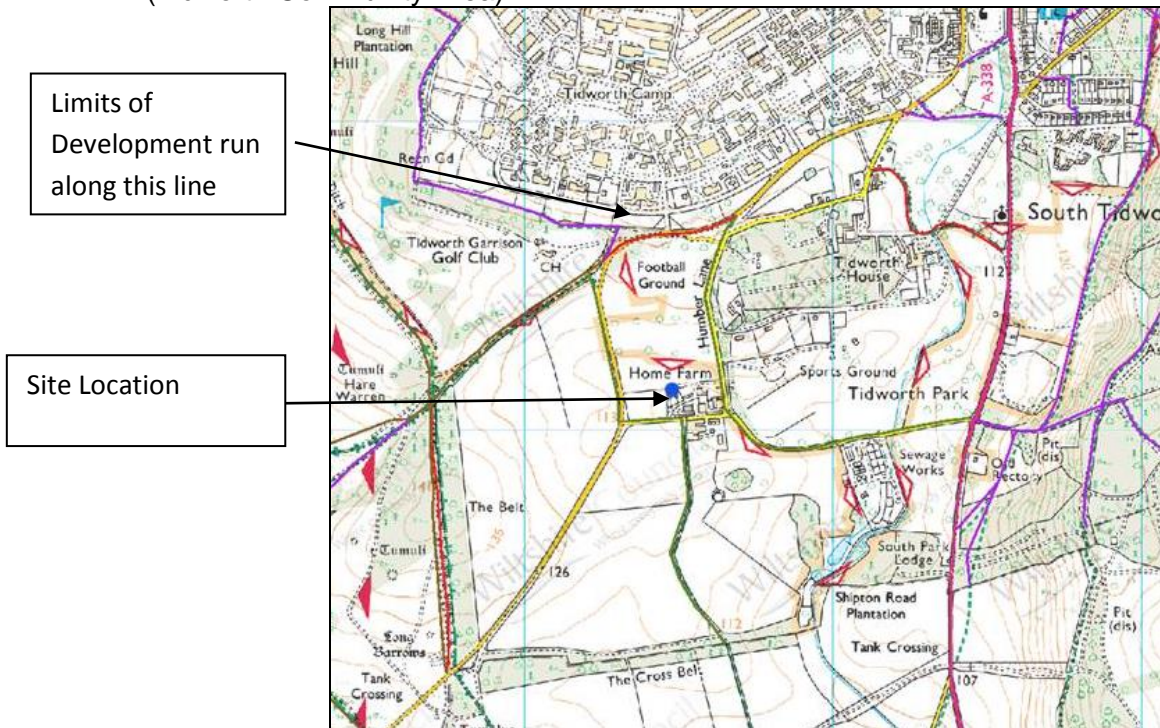
- Principle
 - Housing Land Supply
- Impact on character and appearance of site/area
- Residential amenity
- Highway considerations
- Nature conservation interests
- Archaeology
- Drainage
- Sustainable Construction
- Planning gain/S106 Obligations
 - Public open space
 - Affordable Housing
 - Waste contributions
- CIL

The application has generated 3 third party representations, and support from Tidworth Town Council.

3. Site Description

The site is situated in the countryside as defined by Wiltshire Core Strategy (WCS) policies CP1 (Settlement Strategy) and CP2 (Delivery Strategy). It is approximately 700 metres to

the south west of Tidworth which is defined as a Market Town by WCS policy CP26 (Tidworth Community Area).



There are no landscape designations to the site. The site lies within the Chute Forest Landscape Character Area and is inherently rural in character.

The site currently consists of a range of farmstead buildings in a courtyard arrangement to the south of Home Farm farmhouse (which is outside the development site), and a range of modern 20th Century agricultural buildings to the south and west (numbered 8-15 on the site plan extract below):



There are two pairs of semi-detached dwellings to the northwest (also outside of the development site).

The site is surrounded to the east, west and south by open fields/paddocks and there are existing recreation facilities and open space to the north.

The site is accessible from both Bulford Road to the West and Humber Road from the east.

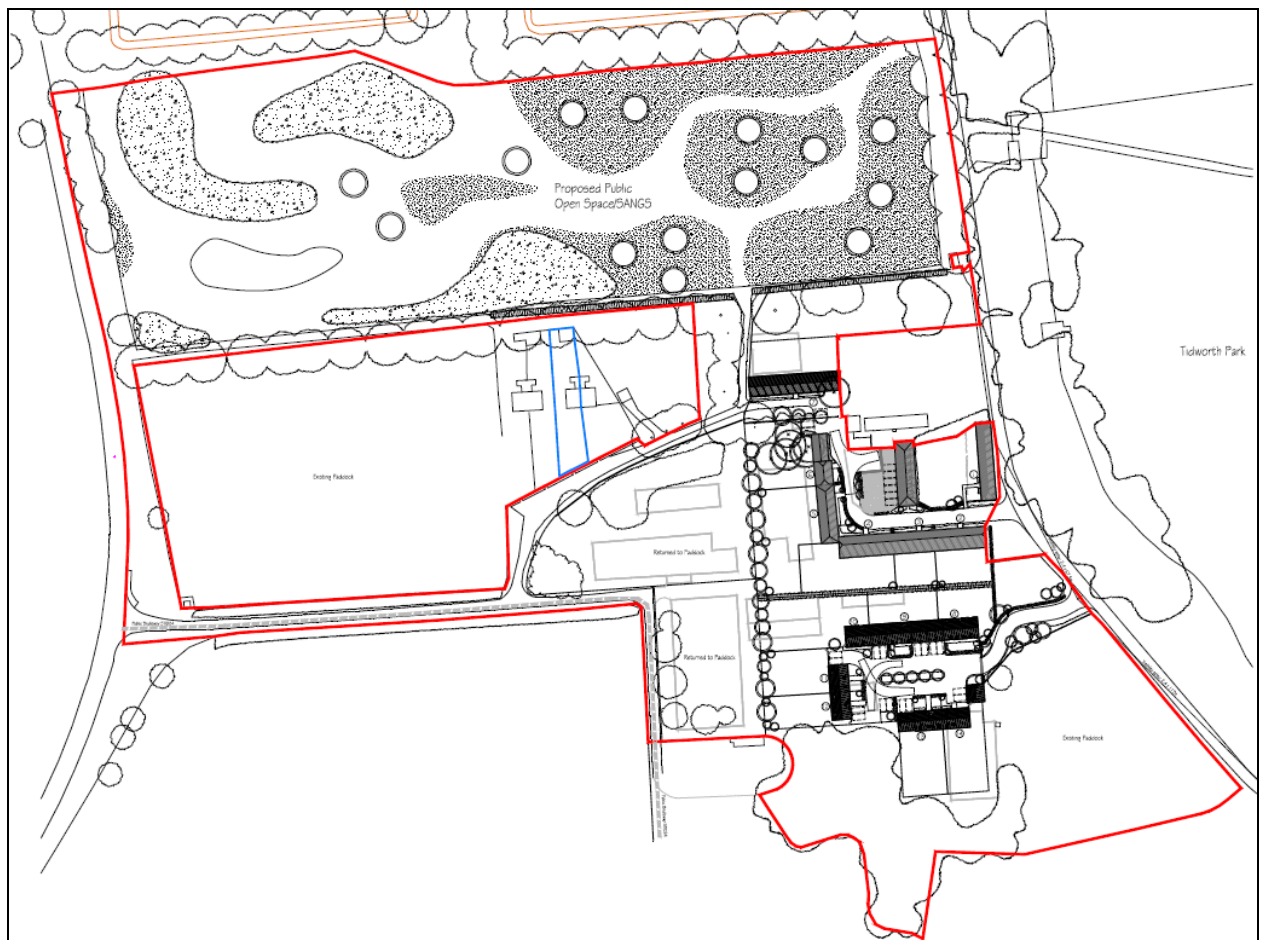
4. Planning History

None relevant to the application site.

5. The Proposal

The development proposals involve the demolition of the modern agricultural buildings, alteration and conversion of the barns in the courtyard arrangement to form 6 dwellings, the conversion and extension of the barn to the north west of Home Farm (numbered 5 on the plan above) to form a single dwelling, and erection of 7 new build dwellings to the south, all with parking and associated landscaping.

A new vehicular access is proposed from Humber Lane (to access the new build element of the scheme) and the application also includes the change of use of arable land to the north of the site to Accessible Natural Greenspace with associated landscaping.



6. Planning Policy

The Wiltshire Core Strategy (WCS) - adopted by Full Council on the 20th January 2015:

Core Policy 1: Settlement Strategy

Core Policy 2: Delivery Strategy

Core Policy 26: Tidworth Community Area

Core Policy 41: Sustainable construction and low carbon energy

Core Policy 43: Providing affordable homes

Core Policy 45: Meeting Wiltshire's Housing Needs

Core Policy 48: Supporting Rural Life

Core Policy 50: Biodiversity and Geodiversity

Core Policy 51: Landscape

Core Policy 52: Green Infrastructure

Core Policy 56: Contaminated Land

Core Policy 57: Ensuring High Quality Design & Space Shaping

Core Policy 58: Ensuring the Conservation of the Historic Environment

Core Policy 60: Sustainable Transport

Core Policy 61: Transport and New Development

Core Policy 62: Development Impacts on the Transport Network

Core Policy 64: Demand Management

Core Policy 67: Flood Risk

Core Policy 68: Water Resources

Housing Land Supply Statement (November 2016)

Saved policies of the Kennet District Local Plan:

HC35: Recreation provision on small housing sites

Wiltshire Local Transport Plan 2011-2026:

Car Parking Strategy

Policy PS6 – Residential Parking Standards

Wiltshire and Swindon Waste Core Strategy:

Policy WCS6

Government Guidance:

National Planning Policy Framework (NPPF) March 2012 (in particular para 7: Achieving sustainable development; Para 17: Core Planning Principles; Section 7: Requiring good design; Policy 11: Conserving and enhancing the natural environment)

National Planning Policy Guidance (NPPG)

Supplementary Planning Documents:

Wiltshire Council's Landscape evidence base comprising: Kennet Landscape Character Assessment (1998); Wiltshire Landscape Character Assessment (2005); Kennet Landscape Conservation Strategy (2005)

7. Summary of consultation responses

Tidworth Town Council:

Tidworth Town Council generally supports the application recognising the application lies outside the limits of development for the town; the rejuvenation of a derelict and unsustainable farm is a vast improvement on what exists on site at present.

We support the conversion of the old barns which will be very sympathetic to the original design and also support demolition of warehouses and modern barns with the new build which will be sympathetically built with the barn conversions.

The Town Council would like to see affordable housing if this is proven to be viable, however we think the remoteness of the development from the town would make social housing inappropriate at this location. The Council would therefore prefer to see any funding provided for affordable housing within the town itself, which would be far more sustainable.

With regards to viability of the farm itself, the Town Council feels it is too small to be a sustainable business. Given that 4 semi-detached properties within the farm have been sold by the developer, most with paddocks, this makes the possibility of future farm status unlikely, if not impossible. The Council believes, therefore, the development of this site would be the most viable option and will improve the appearance of the area markedly.

County Archaeologist: Support subject to conditions (requiring a programme of archaeological works and recording of the main farmstead buildings that are to be demolished or altered)

Wiltshire Council Conservation Officer:

Buildings framing the farm yard are undesignated heritage assets. Demolition of functional 20th Century structures would be of benefit to the setting of the others and wider landscape. The Conversion proposals are sympathetic but the new build brings no benefits to the landscape or setting of the conversions

Wiltshire Council Drainage: Support subject to conditions (scheme of surface water discharge incorporating sustainable drainage details to be submitted and agreed) and informatives (the developer will need to check with sewage undertaker to determine if there is sufficient capacity to serve the development or whether off site works are required and if build over permission will be given or need to divert the sewers)

Dorset & Wiltshire Fire & Rescue:

Comments relating to fire safety measures which could be added as an informative and recommendation for a condition requiring details for the provision of a water supply and fire hydrants necessary to meet the fire-fighting needs of the development to be agreed and implemented.

Wiltshire Council Ecologist: Support subject to conditions (development to be completed in accordance with the recommendations of the ecology report; landscape and ecological mitigation and enhancement plan (showing bat roosting and bird nesting) to be approved; and a lighting plan for the edges of the site to protect commuting wildlife species at night)

Wiltshire Council Education: No objections

The designated area primary (Clarendon Infants and Juniors) and secondary (Wellington Academy) schools are both already effectively full, although due to the small size of the development, the Council will seek the relevant funding (4 primary school places x £16,979 = £67,916 and 3 secondary school places x £21,747 = £65,241) via the CIL mechanism.

Wiltshire Council Highways:

The site is outside the settlement boundary for Tidworth and this raises a policy matter for you to determine.

The section of Humber Lane serving the site is an unclassified road/bridleway

The site is fairly well served by public transport being about 400m from the stops on Bulford Road served by the Salisbury-Andover service and 1/2hourly daytime service and evening and weekends

Parking provision is in line with current standards although parking arrangement for new unit 14 is poorly arranged requiring at least 5.5m manoeuvring space.

Wiltshire Council New Housing Team:

The site falls outside the Tidworth Settlement Framework Boundary and the proposals are not being proposed as a rural exception site (providing 100% affordable housing).

However, if the development is considered suitable for the proposed residential development Core Policy 43 requires 4 affordable housing units within a scheme for 14 dwellings.

Core Policy 43 requires on-site provision of affordable housing other than in exceptional circumstances, unless it is proven that this is not deliverable. Due to the location of the site and viability considerations the council's New Housing Team have agreed that Discount Market Units may be an appropriate tenure as this site may not be a sustainable location for some other tenures of affordable housing. The New Housing Team would accept the possibility of Discount Market Units (DMUs) as a tenure for this site (provided at 25% discount). It should be noted that DMUs are an affordable housing tenure and are allocated in accordance with the Council's Allocations Policy and nominations procedures for DMUs, to households in housing need which are on the Council's 'Open Market Register'. Should the developer not be able to find buyers for the DMUs there would be a cascade in the S106 which ultimately allows the sale of the units on the Open Market with the discount being paid to the Council to use in the provision of affordable housing.

If there are viability issues, the council's new housing team have advised that the contribution of the Public Open Space should not be at the expense of an affordable housing contribution. In terms of the overprovision of public open space and priority for providing either affordable housing or the open space, officers consider that in principle CP43 (affordable housing) as a policy in the Core Strategy (rather than the applicants reference to a deficit in Natural Accessible Greenspace they have identified on page 13 of their planning statement) will be a priority over the POS.

Wiltshire Council Public Open Space: No objections

The proposals satisfy the planning requirements for POS, so I would not wish to object to the application, although a large overprovision is provided. Wiltshire council no longer adopt land, but the Town Council are adopting other open spaces in the Town and maybe interested in taking this on.

If there is no onsite provision, an offsite contribution would be sought (15 dwellings would generate a requirement for an offsite contribution of £35,670. However, there are no target sites which would directly relate to the development; therefore I would not seek an offsite contribution in this instance).

If there was no onsite provision, I would have no objections to the application.

Wiltshire Council Public Protection: No objections subject to conditions (given previous agricultural operations recommend a contaminated land investigation; recommend hours of construction/demolition works to minimise disturbance to nearby residents) and informative to advise any future occupants of the sewage treatment works to the SE of the site

Wiltshire Council Spatial Planning: Object

WCS Core Policy 2 makes clear that only in the exceptional circumstances listed at WCS para 4.25 will proposals be permitted outside the limits of development. There is no evidence submitted to justify why the 7 new build dwellings would be supportable by an exceptions policy. One of the exception policies is Core Policy 48, which sets out the policy position regarding conversion and reuse of rural buildings, although spatial planning do not consider that the application demonstrates alternative uses (employment, tourism, cultural or community uses), for the barn conversion element of the proposals are unviable.

8. Publicity

The application was advertised by press / site notice and neighbour consultation letters.

Three third party representations have been received, summarised as follows:

- Supporting the scheme which is in keeping with the area, will enhance the area and landscape (from the derelict condition of the site and decaying buildings at the moment)
- Will provide much needed housing accommodation in Tidworth
- Will increase the public green space and help with environmental protection and development
- Welcome ecological measures for protected species (to be applied and monitored)
- Recommend access to site (including for construction vehicles) should be via Bulford Road (which is considered safer and more suitable alternative) and not Humber Lane (which is narrow, high banked with bends and junctions)
- Domestic travel will increase level of maintenance to Humber Lane with poorly maintained surface, lighting and prone to flooding
- Flood Risk Assessment has not considered surface flooding that takes place opposite the east entrance particularly in winter
- Increased danger to other highway users (Humber Lane is used by local stables and equestrian centre)

9. Planning Considerations

9.1 Principle of development

The National Planning Policy Framework (NPPF) came into force on 27th March 2012 and makes it clear that planning law (Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004) requires applications for planning permission to be determined in accordance with the development plan unless material considerations indicate otherwise.

The development plan in this case is the adopted Wiltshire Core Strategy (WCS). Some of the policies of the former Kennet District Local Plan have been saved under Appendix D of the WCS, including HC35 (Recreation provision on small housing sites). The WCS carries forward the Limits of Development for Tidworth established in the Kennet Local Plan.

The site lies well outside of the Limits of Development for Tidworth. Residential development in this area is thus restricted by WCS policy CP2 to the 'exceptions' listed in paragraph 4.25. These exceptions include the conversion and re-use of rural buildings, where they meet certain criteria, including being structurally sound and not detracting from the amenity of the area, and where the re-use of a heritage asset would lead to its viable long term safeguarding. These criteria apply where a re-use for employment tourism or cultural or community use is not a practical proposition. In this case, the evidence submitted with the application demonstrates that the buildings to be converted are structurally sound, capable of conversion and that they are an undesignated heritage asset, and it is not considered that an employment, tourism or community use would be a practical proposition due to the investment required and the unsuitable location of the buildings removed from the settlement of Tidworth. .

In this case, applying the policies of the WCS, it is therefore considered that the conversion of the existing farm buildings to seven dwellings would be acceptable and in line with

planning policy, provided that the remainder of the farm buildings were removed, to ensure that the character and appearance of the landscape was enhanced overall.

Similarly, the change of use of the farmland to open space would not have any adverse impacts on the landscape or biodiversity of the area, and therefore would be in line with WCS policies CP50 and CP51.

However, there is no policy backing for the erection of a further seven new houses on the land to the south of the farmstead. This is outside the limits of development in an area where new residential development is restricted to that essential to meet the needs of agricultural or forestry workers. This aspect of the proposal would conflict with WCS policies CP1 and CP2, that seek to direct new residential development to sites within the Limits of Development or those allocated through the Sites DPD or a Neighbourhood Plan. Neither of these criteria apply in this instance.

The NPPF (paragraph 55) also advises that local planning authorities should avoid new isolated homes in the countryside.

The policies of the development plan would be given less weight if there was a demonstrable lack of housing land in the Housing Market Area. However, in this case, there is 8.27 years of housing land available in the Eastern Housing Market Area, well in excess of the 5 year land supply required. The policies, including the limits of development for Tidworth can be considered up to date.

The new build proposals are not presented as a rural exception site which would provide 100% affordable housing, to meet an identified need and brought forward via Core Policy 44 of the Wiltshire Core Strategy – Rural Exception Sites.

The proposed new build elements of the proposal are therefore contrary to the planning policy/the Wiltshire Core Strategy.

9.2 Impact on the character and appearance of the area.

The NPPF defines core planning principles which include that planning should always seek to secure high quality design. Paragraph 58 of the NPPF in particular states that development should respond to local character and history, and reflect the identity of local surroundings and materials and paragraph 132 requires development to enhance heritage assets and make a positive contribution to their setting.

Core Policy 51 seeks to protect, conserve and enhance Wiltshire's distinctive landscape character.

Core Policy 57 also requires a high standard of design in all new developments through, in particular, enhancing local distinctiveness, retaining and enhancing existing important features and being sympathetic to and conserving historic buildings and landscapes.

Core Policy 58 requires that *'Distinctive elements of Wiltshire's historic environment, including non-designated heritage assets, which contribute to a sense of local character and identity will be conserved, and where possible enhanced. The potential contribution of these heritage assets towards wider social, cultural, economic and environmental benefits will also be utilised where this can be delivered in a sensitive and appropriate manner in accordance with Core Policy 57.'*

The proposed barn conversions are considered to be appropriate to the character and overall appearance of the existing buildings which are considered to be non-designated heritage assets.

It is also considered that the proposed Accessible Natural Greenspace which is located immediately south of existing playing fields will not cause harm to the local landscape character.

However, the new build elements of the scheme are not considered to be appropriate in terms of impact to the character and appearance of the area. It brings no benefits to the landscape or setting of the conversions, indeed if anything, it confuses matters. The existing situation with prefab steel buildings has arisen from agricultural purpose and their clearance would normally be required as part of the proposal to convert the remaining buildings.

9.3. Affordable Housing

The proposed conversion of the existing buildings to provide seven dwellings would not, by itself, require an affordable housing contribution, if the guidance from the government on the vacant building credit is applied, which would be reasonable in this case as the proposal is bringing back into use existing buildings that do have character. However, with the inclusion of the seven new build properties, the requirement, even allowing for a reasonable application of the vacant buildings credit (VBC), would be for two of the 14 dwellings to be affordable. (Discounted from 4 by the VBC). This could be met by the provision of discounted market units at two of the new properties. However, the agent has claimed that the proposal is not viable with any affordable housing, due to the cost of providing the open space and the associated transfer. This is not a matter agreed by the Council's Valuation Officer. The issue of Section 106 planning obligations is returned to below.

9.4 Impact on residential amenity

Core Policy 57 also requires that development should ensure the impact on the amenities of existing occupants is acceptable, and ensuring that appropriate levels of amenity are achievable within the development itself, and the NPPF's Core Planning Principles (paragraph 17) includes that planning should 'always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.'

Residential amenity is affected by significant changes to the environment including privacy, outlook, daylighting and sunlight inside the house, living areas and within private garden spaces (which should be regarded as extensions to the living space of a house). The extent to which potential problems may arise is usually dependent upon the separation distance, height, depth, mass (the physical volume), bulk (magnitude in three dimensions) and location of a development proposal in relation to neighbouring properties, gardens and window positions.

Home Farm (currently vacant) overlooks the site of the barn conversions, although given the distance between this existing dwelling and the proposed conversions; it is not considered that the proposed development will have an adverse impact upon residential amenity for existing occupants.

The council's public protection team have noted that there is a sewage treatment works to the south east of the site, approximately 450m away. They have considered the distance between the proposed development and the sewage works and in light of having not received any complaints previously in relation to the treatment works and given the distance and other nearby residential properties located at similar distances; they have advised it is unlikely that odour will be an issue, although if the application were approved they have

recommended an informative advising any future occupants should be made aware of the nearby sewage works.

The public protection team have also recommended contaminated land and hours of construction/demolition conditions should the application be approved.

9.5 Highway considerations

Notwithstanding the sustainability objections to the new build element of the scheme, the highways department have raised no highway safety or parking concerns with the proposals (subject to conditions including a revised parking layout for unit 14), which provide sufficient off-street parking in accordance with the parking standards set out in the Wiltshire Local Transport Plan 2011-2026 – car parking strategy.

9.6 Nature Conservation Interests

Core Policy 50 requires features of biodiversity to be retained, buffered and managed favourably. Where this is not possible, mitigation and compensation must be secured to ensure no net loss of the local biodiversity loss. The development proposal retains trees and new landscaping is also proposed as part of the application.

An ecology survey and report has been submitted which has identified that one building is used by a small number of bats for summer roosting only, also that several buildings support roosting sites for barn owl(s) and that a range of small birds including swallows, doves and garden birds nest in some of the buildings.

The ecology report makes recommendations for bat mitigation works (retaining bat access and roosting within building 1), precautionary working practices, and for timing of works that will ensure these species are disturbed as little as possible and that European and domestic legislation relating to wildlife species is not breached.

The council's ecologist has advised that in addition to the bat mitigation works, ecological enhancement for bats (in the form of bat bricks in new houses or bat boxes on trees) and bird nesting opportunities should also be provided in the new houses.

The council's ecologist supports the Landscape Proposals (Planting Plans Dwgs. ACLA/BFJ03 and J04) as it shows retention of the majority of the trees around the site boundary and will provide cover, together with foraging and commuting opportunities for bats, birds and a range of small mammals. However, in order to perform this function for biodiversity, the trees and hedges must not be artificially lit.

9.7 Archaeology:

Paragraph 128 of the NPPF states that *'where a site on which development is proposed includes or has the potential to include heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation'*.

A desk based assessment (DBA) accompanies the planning application, which considers the impact of the proposed development within the area of the farm buildings and concludes that there is some potential for remains associated with the early elements of the farm to be affected by the development. Any such remains should be recorded by an archaeological watching brief, secured by a condition. The council's archaeologist also recommends a condition that there should be some recording of the buildings that are to be demolished or altered.

The council's archaeologist explains that the DBA does not, however, cover the area of proposed landscaped open space to the north, which includes areas of planting and a pond. The DBA mentions an undated enclosure just to the west of this area. The shape and size of this enclosure means that there is a strong potential for this to be an Iron Age enclosed settlement. If this is the case, especially in relation to the Romano-British settlement and Bronze Age burials in the area, then there is the potential for significant heritage assets with an archaeological interest to be affected by the proposals and because of this, the council's archaeologist considers that field evaluation is necessary, and although this would normally be recommended in advance of determination of an application, in this case can be included in a condition requiring a programme of archaeological works for the entire development.

9.8 Drainage:

Third party comments refer to concerns over surface water flooding events at the eastern entrance to the site. The council's drainage engineer has confirmed that part of the site may be at risk from surface water flooding but has no objections to the scheme subject to conditions (including the need for a scheme of surface water drainage) and has advised that this scheme will need to include checking levels of groundwater to ensure that the base of any soakaway is at least 1m above the level of the ground water including seasonable variation.

9.9 Planning Obligations (Section 106 Agreement):

Section 106 planning obligations can only be required where they are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.

In this case, contributions would normally be required for the provision of waste recycling containers (estimated at £1,274) for the development as a whole. A legal agreement for the provision of affordable housing units (two discounted market units) would also be required if the scheme as a whole were to go ahead. However, the developer has offered no contributions other than the creation of the public open space and the payment of a commuted sum to go with it. The developer claims that the scheme is not viable with any affordable housing provision.

The provision of the public open space is not a policy requirement of this development, whilst the provision of affordable housing is. The developer can legitimately offer the land to the Council, but this does not negate the policy requirement to provide affordable housing. The developer claims that doing both would make the development unviable, but the choice to offer the public open space is the developers, and even if it were to be accepted, the Council's viability expert considers that the scheme would still be viable with the development of both the open space and 1 discount market unit of affordable housing.

However, it is important to realise that no planning obligation can overcome the fact that the proposal, with or without an obligation, is contrary to the development plan because of the inclusion of the new build housing.

10. Conclusion

The Adopted Wiltshire Core Strategy seeks to build resilient communities and direct new development to existing settlements, whilst making allowance for the reasonable conversion of buildings that may be worth retaining in a new use.

In this case, the site is located in open countryside outside of the limits of development defined for Tidworth in the Wiltshire Core Strategy (adopted January 2015). The conversion of the existing barns that possess some merit is considered to be in accordance with Core Policy 48, as is the change of use of part of the land to open space, but the proposal to construct a further 7 new build dwellings is not in accordance with the Core Strategy, nor government policy. As the Council cannot legally issue a 'split decision', the proposal as a whole is in conflict with the development plan and accordingly should be refused.

RECOMMENDATION: REFUSE, for the following reasons:

(1) The site lies outside of the limits of development defined for Tidworth in the Wiltshire Core Strategy. It includes seven new build dwellings on a site that has not been brought forward either through a Site Allocations DPD or a neighbourhood plan and does not fall within any of the proposed exceptions identified in Core Policy 2. Consequently, the development would conflict with policies CP1; CP2 and CP26 of the Wiltshire Core Strategy and with paragraph 55 of the National Planning Policy Framework.

(2) The proposed new build housing would have an adverse impact on the character and appearance of the area and would detract from the setting of the adjacent farm buildings, either in their converted or unconverted form. This would conflict with core policies 57 and 58 of the Wiltshire Core Strategy.

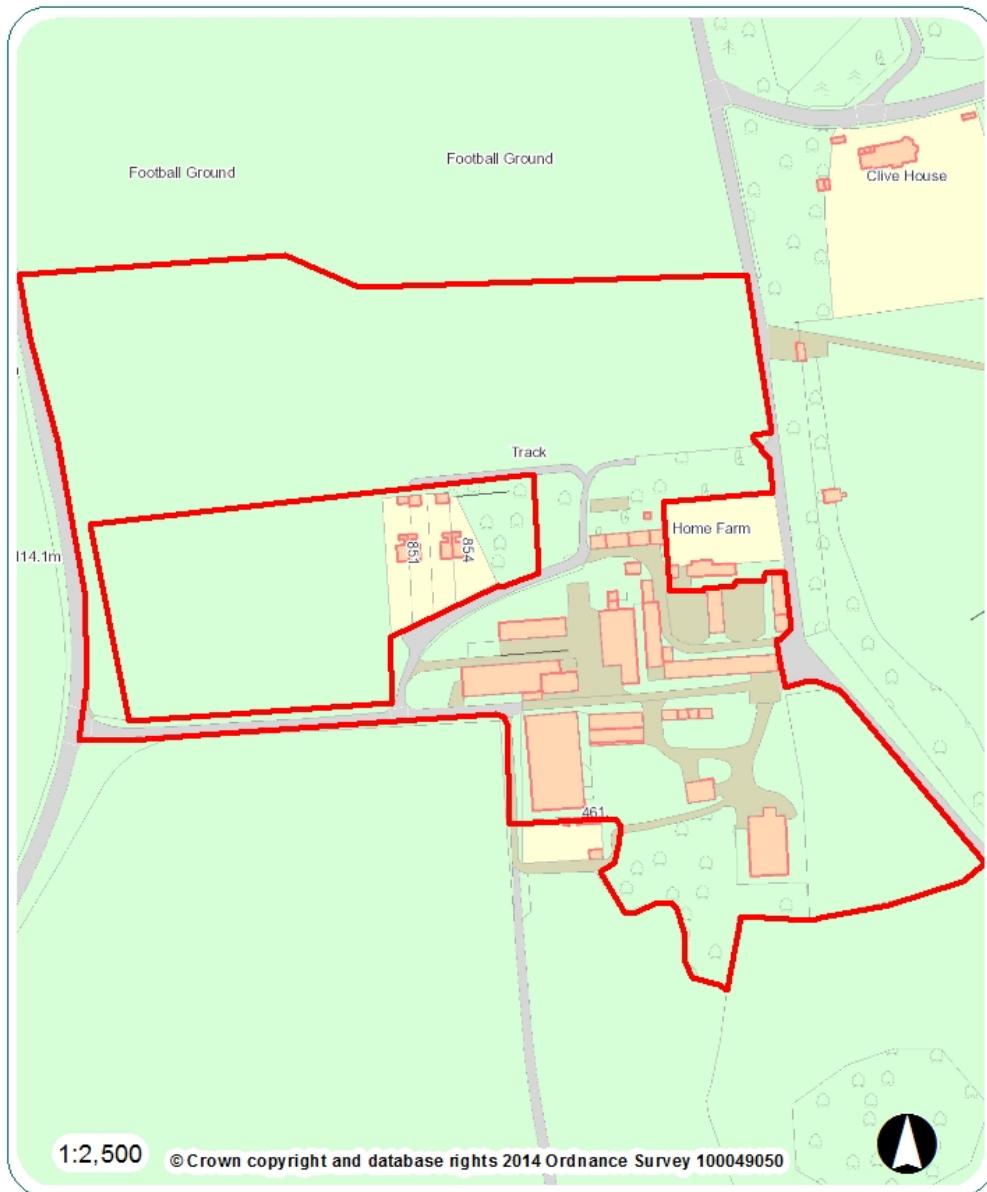
(3) The proposal does not make provision for on-site affordable housing, contrary to Core Policy 43 of the Wiltshire Core Strategy.

(4) The proposal does not provide for contributions towards waste and recycling containers (on-site infrastructure required by the proposal), contrary to Core Policy 3 of the Wiltshire Core Strategy and policy WCS6 of the Wiltshire and Swindon Waste Core Strategy.

INFORMATIVES: It should be noted that reason 3 for refusal, could be overcome if all the appropriate parties agree to enter into a Section 106 Agreement contributing to waste and recycling containers.



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Wiltshire Council

Eastern Area Planning Committee

17 November 2016

**COMMONS ACT 2006 – SECTIONS 15(1) AND (2)
APPLICATION TO REGISTER LAND AS A TOWN OR VILLAGE GREEN
THE GREEN, BONDFIELD, WOODBOROUGH**

Purpose of Report

1. To:
 - (i) Consider an application to register land at Bondfield, Woodborough as a town or village green.
 - (ii) Recommend that Wiltshire Council seeks Counsel's Opinion on the officer's report contained at **Appendix 1** and the decision therein not to hold a non-statutory public inquiry.

Relevance to Council's Business Plan

2. Working with the local community to provide a rights of way network fit for purpose, making Wiltshire an even better place to live, work and visit.

Background

3. On 7 October 2015 Wiltshire Council received an application to register land at Bondfield, Woodborough as a town or village green. The application was supported by a statutory declaration and evidence from 19 users of the applicant land.
4. The basis for the application is that the land has been used for lawful sports and pastimes for a period of at least 20 years in a manner that is 'as of right'. That is without permission, force or secrecy. To succeed, this application must also show that a significant number of inhabitants of any locality (or neighbourhood within a locality) were the users of the land and that use continued at the time of application.
5. A recent change in the law (detailed at section 7 **Appendix 1**) requires the Council, on receipt of an application, to identify whether a 'trigger event' has occurred. Trigger events are specific events governed by Regulations that cause an application for a town or village green to be returned to the applicant and the right to apply not exercisable unless a terminating event has occurred.
6. When this application was received on 7 October 2015 no trigger events had occurred. An application for planning permission on the site was subsequently validated and published by Wiltshire Council (on 14 October 2015). Although the first publication of an application for planning permission is a trigger event, in this

case it occurred after the application was received by the Council and cannot apply.

7. Accordingly, the application was advertised for the statutory period and notice duly served. One objection was received to the application and has not been withdrawn.
8. Under the Council's constitution, one of the functions of the Area Planning Committee is, in cases where an objection has been received and has not been resolved, to consider matters of local importance within the area such as the registration of town or village greens. In this case, the owners of the applicant land objected to the registration of the land as a town or village green.
9. Officers have considered the evidence adduced with the application, responses from the objector, the applicant's comments to those and relevant case law. The draft decision report appended at **Appendix 1** to this report details this and concludes that it is considered that on the balance of probability part of the applicant land should be registered as a town or village green.

Main Considerations for the Council

10. Under the Commons Registration Act 1965, Wiltshire Council is charged with maintaining the register of town and village greens and determining applications to register new greens. The application to register land at Bondfield, Woodborough as a town or village green, has been made under Sections 15(1) and (2) of the Commons Act 2006, which amended the criteria for the registration of greens. Section 15 of the Commons Act is set out in full at part 7 of the Decision Report attached at **Appendix 1**.
11. Sections 15(1) and (3) 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*

Overview and Scrutiny Engagement

12. The determination of Town and Village Green Applications is governed by Statutory Regulations, relevant case law and non-statutory guidance.

Safeguarding Considerations

13. There are no safeguarding considerations as matters relating to safeguarding are not permitted within Section 15 of the Commons Act 2006. Any determination must be based only on the relevant evidence before the Registration Authority

Public Health Implications

14. There are no public health implications, as considerations relating to public health are not permitted within Section 15 of the Commons Act 2006. Any determination must be based only on the relevant evidence before the Registration Authority.

Corporate Procurement Implications

15. Corporate procurement implications are covered under Financial Implications below. The determination of Town and Village Green Applications is a statutory duty for the Council and not a discretionary power.

Environmental and Climate Change Considerations

16. Considerations relating to environmental impact are not considerations permitted within Section 15 of the Commons Act 2006. Any determination must be based only on the relevant evidence before the Registration Authority.

Equalities Impact of the Proposal

17. Considerations relating to the equalities impact of registering land as a town or village green are not considerations permitted within Section 15 of the Commons Act 2006. Any determination must be based only on the relevant evidence.

Risk Assessment

18. In the event that the application is refused, and no land is registered, the applicant may seek judicial review of the Council.
19. In the event that land is registered the landowner or the applicant may seek judicial review of the Council or may appeal to the High Court under s.14(b) of the Commons Act 1965 to have the register rectified (for example where it appears to the court that no amendment or a different amendment ought to have been made).
20. In either case there is a risk of substantial costs being incurred by the Council.

Financial Implications

21. Presently, there is no mechanism by which a Registration Authority may charge the applicant for processing an application to register land as a town or village green and all costs are borne by the Council.
22. Where the Council makes a decision to register land as a town or village green it must give a reason for its determination as this decision is potentially open to legal challenge. The legal costs of a successful legal challenge against the Council could be in the region of £40,000 - £100,000. The cost of seeking Counsel's opinion on the decision not to hold a public inquiry or any other specific matter is likely to be in the region of £1,000 to £2,000. The cost of a public inquiry is likely to be around £30,000. The Committee should be aware that the number of applications received by the Council for the registration of town and village greens is very low and that all costs incurred in the processing of this application are currently unfunded.
23. There is currently no duty for Registration Authorities to maintain land registered as a town or village green.

Legal Implications

24. If the land is successfully registered as a town or village green, the landowner could potentially challenge the Registration Authority's decision by an appeal to the High Court under Section 14(1)(b) of the Commons Registration Act 1965 ('1965 Act'), which applies where Section 1 of the Commons Act 2006 is not yet in place (i.e. outside stated pilot areas). Wiltshire is not a pilot area for the purposes of the Commons Act 2006. Section 14(1)(b) of the 1965 Act 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 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 town or village green without limit of time. The application which could be made many years after the decision potentially enables the Court to hold a re-hearing of the application and consider the facts and law and could lead to de-registration of the land.
25. Where the Registration Authority decides not to register the land as a town or village green, there is no right of appeal for the applicant, although the decision of the Council may be challenged through judicial review, for which the permission of the court is required and the application must be made within three months of the date of the decision. A landowner could also use judicial review proceedings to challenge the Council's decision to register their land as a town or village green.
26. There is currently no statutory or non-statutory guidance available to authorities regarding when it would be considered to be appropriate for a Registration Authority 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 recent judicial decisions have also sanctioned the practice of holding non-statutory inquiries. In *R (Cheltenham Builders Ltd) v*

South Gloucester District Council the court decided that the holding of a non-statutory inquiry in some circumstances would be necessary as a matter of fairness. In *R (on the application of Naylor) v Essex County Council (2014)* the Court confirmed that a public inquiry was one means by which a registration authority 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.

27. In the case of the application before this committee, officers consider that a number of points will not be resolved by holding a public inquiry, these being matters of fact and interpretation rather than disputes relating to the quality and consistency of the user evidence adduced with the application. In cases where the evidence adduced by either side is conflicting, the benefit of cross examination offered by an inquiry is clear.
28. The objector has four main points of objection:

(i) **Section 15C**

The objector maintains that on account of them applying for planning permission on 30 September 2015, a trigger event had occurred. However, the application was not validated, registered and first published until 16 October 2015 (N.B. Officers consider that this date was 14 October).

The Growth and Infrastructure Act inserted the new Section 15C and schedule 1A into the Commons Act 2006 which deal with the exclusions to the registration of greens. Under s15C and schedule 1A the relevant trigger event is defined as *'An application for planning permission in relation to the land which would be determined under Section 70 of the 1990 Act is first publicised in accordance with requirements imposed by a development order by virtue of section 65(1) of that Act'*.

The reference to 'publication' of a planning application is dealt with under s.65 (1) TCPA – Section 65 (1) which states:

'(1) A development order may make provision requiring—

(a) notice to be given of any application for planning permission, and

(b) any applicant for such permission to issue a certificate as to the interests in the land to which the application relates or the purpose for which it is used,

and provide for publicising such applications and for the form, content and service of such notices and certificates.'

This section is referring to the publication of a planning application not just the issue of a certificate by an applicant as to the interests in the land. The s.65 (1) statement *'and provide for publicising such applications and for the form, content and service of such notices and certificates'* clearly refers to the general publication of the application. The current

development order is the Town and Country Planning (Development Management Procedure) (England) Order 2015 which sets out the publication requirements in paragraph 15. Paragraphs 15 (1) and 15 (2), whichever applies, depend on whether the application for planning permission is made as an EIA application or affects a right of way (15(1) or is a planning permission for a major development (15 (2)). However, both 15 (1) and 15 (2) require the publication of the application by the display of a site notice and the publication of a notice in a newspaper circulating in the locality in which the land to which the application relates is situated.

Accordingly, the trigger event had not occurred when the application was submitted.

(ii) **Incorrect Identification of the land**

The objector notes that the applicant land has been incorrectly identified in as much as the statutory declaration and evidence cannot relate to it all on account of it including garages, car parking and an area used under licence as a garden.

Officers accept these points but note that the Registration Authority is entitled to register a lesser amount of land than has been applied for.

(iii & iv) **Insufficient user as of right for 20 years or at date of application**

The objector considers that the area of applicant land is small, has been substantially enclosed and has been maintained for the use of the tenants by both Kennet District Council and Sarsen Housing Association (now Astor) and not as public open space.

These matters are considered in detail in **Appendix 1** but are not considered to be matters that would be advanced by a public inquiry. It is noted that a copy of the transfer of the applicant land from Kennet District Council to Sarsen Housing Association Limited is appended at **Appendix 2** and although it makes clear that access to all forecourts, carriageways, roads, highways, paths, ways and passageways (“Accessways”) for residents of Bondfield is by right (and not as of right) it is silent as to the ‘green space’ area and there is no implication of permission or right for the public to use this space. Only two of the witnesses are Bondfield residents and evidence relating to their own use has been discounted.

29. Although the objector also considers that the main use has been for the village fete, the evidence forms themselves reveal that children playing and other activities have taken place and all of these are activities that may be considered as lawful sports and pastimes.
30. It is therefore considered that the holding of a public inquiry would not benefit the determination of this application.

Options Considered

31. Members of the Committee need to consider whether to:
- (i) Refuse the application to register the applicant land as a town or village green.
 - (ii) Register all or part of the applicant land as a town or village green.
 - (iii) Hold a non-statutory public inquiry and receive an inspector's recommendation.
 - (iv) Seek Counsel's opinion on the officers' report contained at **Appendix 1** and the decision not to hold a public inquiry.

Reason for Proposal

32. It is considered that in the interests of fairness to all parties the legal opinion of independent counsel, who is an expert in this area of law, should be obtained before this committee proceeds with determining this application. It is further considered prudent to reduce the risk of legal challenge with its resultant costs by seeking this opinion.

Proposal

33. That Wiltshire Council seeks Counsel's opinion on the officer's report contained at **Appendix 1** and the decision not to hold a non-statutory public inquiry.

Tracy Carter

Associate Director – Waste and Environment

Report Author: **Sally Madgwick** Rights of Way Officer

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

None

Appendices:

- Appendix 1 – Decision Report (with appendices A to D inclusive)
- Appendix 2 – Transfer Document relating to the applicant land (WT145624)

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WILTSHIRE COUNCIL

COMMONS ACT 2006

DECISION REPORT

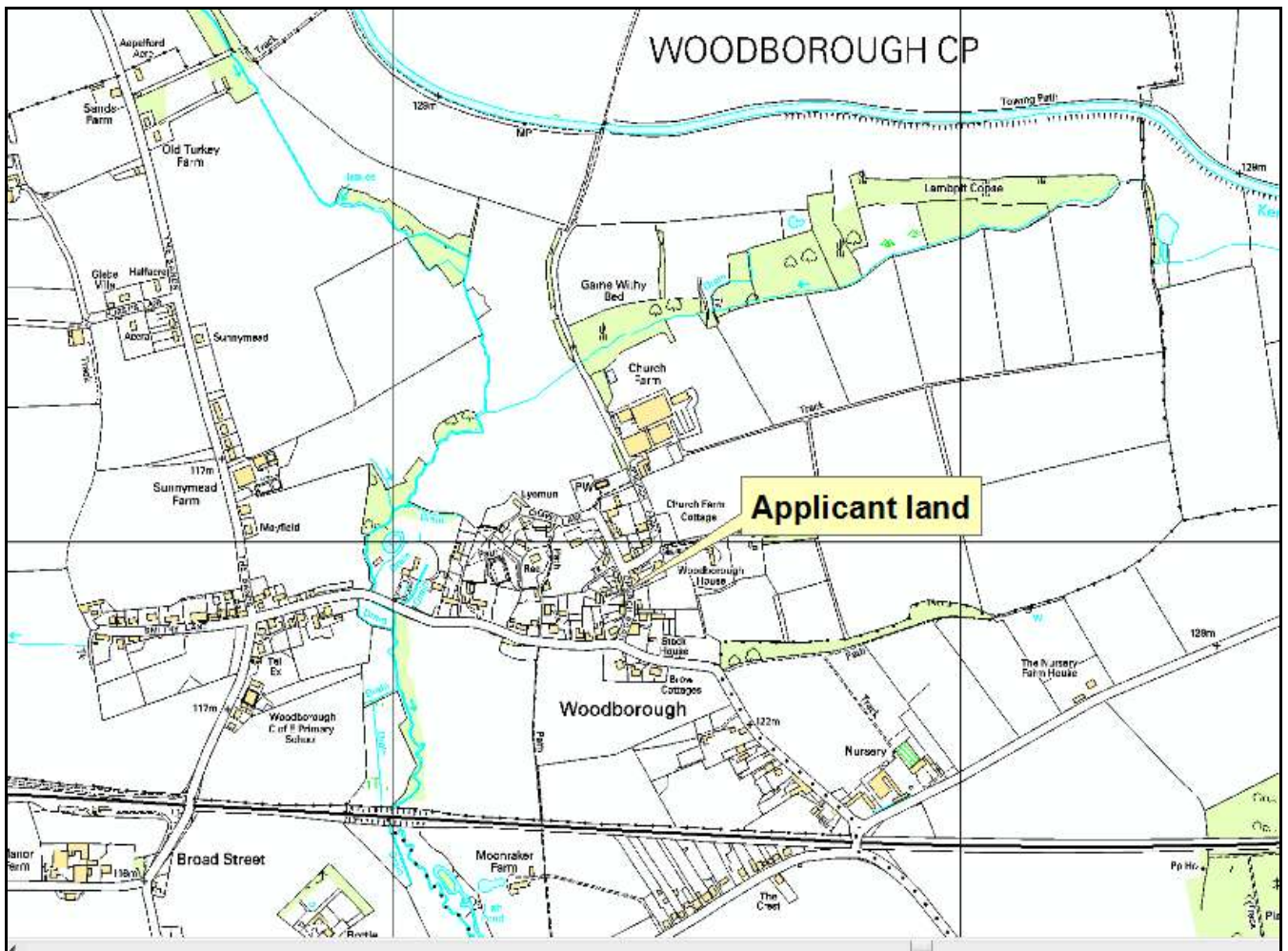
APPLICATION TO REGISTER LAND AT BONDFIELD, WOODBOROUGH AS A TOWN OR VILLAGE GREEN

1 PURPOSE OF REPORT

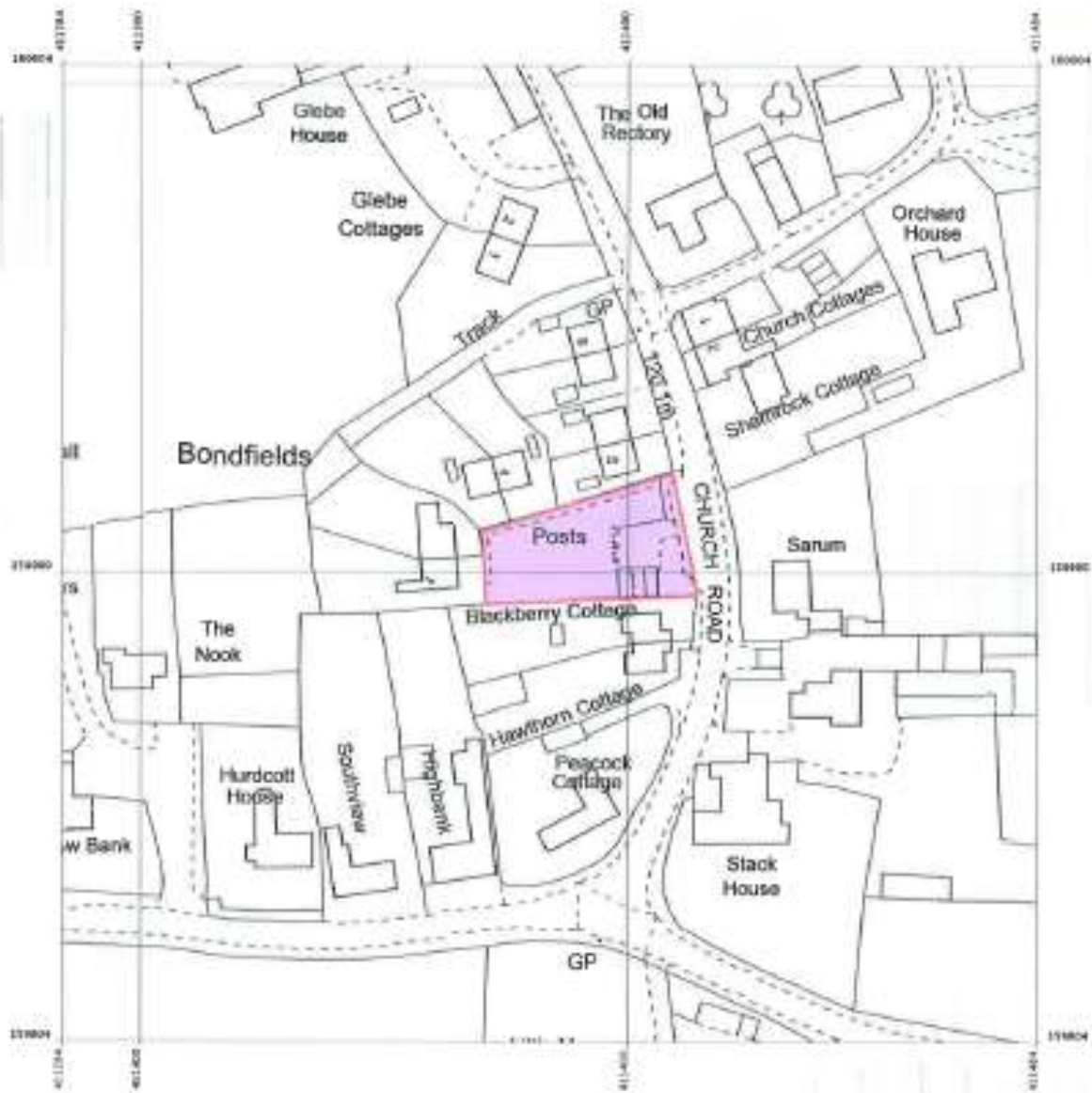
- i) To consider the application and evidence submitted under Section 15(1) and (2) of The Commons Act 2006 to register land at Bondfield, Woodborough as a Town or Village Green.

2 LOCATION PLAN

The land is located at Bondfield, Church Road, Woodborough, Pewsey, SN9 5PQ



3 APPLICATION PLAN



Produced 07 Oct 2015 from the Ordnance Survey MasterMap (Topography) Database and incorporating surveyed revision available at this date.

The representation of a road, track or path is no evidence of a right of way. The representation of features as lines is no evidence of a property boundary.



2, Bondfield, Woodborough, Pewsey
SN9 5PQ

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Order Licence Reference: 0913315
Centre coordinates: 411834 180004

3.1 The application plan was not marked as an exhibit to the statutory declaration in support of the application (*The Commons (Registration of Town or Village Greens)(Interim Arrangements)(England) Regulations 2007 2007 No. 457 10(3)(c)*).

10. – (1) This Regulation applies to the description of any land which is the subject of an application for registration as a town or village green.

(2) Land must be described for the purposes of the application –

(a) by any Ordnance map accompanying the application and referred to in that application; or

(b) in the case of land already registered as common land, if the application relates to the whole of the land in a register unit, by a reference to that register unit.

(3) Any Ordnance map accompanying an application must –

(a) be on a scale of not less than 1:2500

(b) show the land to be described by means of distinctive colouring; and

(c) be marked as an exhibit to the statutory declaration in support of the application.

(d)

3.2 The regulations at 5.4 permit the Commons Registration Authority (the CRA) to allow the applicant an opportunity to correct the application:

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

(a)

(b)

(c)

(2)

(3)

(4) Where an application appears to the registration authority after preliminary consideration not to be duly made, the authority may reject it without complying with paragraph (1), but where it appears to the authority that any action by the applicant might put the application in order, the authority must not reject the application under this paragraph without first giving the applicant a reasonable opportunity of taking that action.

(5)

(6)

(7)

3.3 The application was received and dated in accordance with the Regulations on the 7th October 2015. The application plan was returned to the CRA marked as an exhibit on the 16th November 2015.

4 APPLICANT DETAILS

The application has been made by:

Mr Karl Lloyd
Shamrock Cottage
Woodborough
Wiltshire
SN9 5PL

5 LANDOWNER DETAILS

The land is owned by:

Aster Group
Sarsen Court
Horton Avenue
Cannings Hill
Devizes
SN10 2AZ

Acting for Aster Group in this matter:

Neil Lawlor
Devonshires Solicitors LLP
30 Finsbury Circus
London
EC2M 7DT

6 PHOTOGRAPHS OF THE APPLICANT LAND 12th November 2015



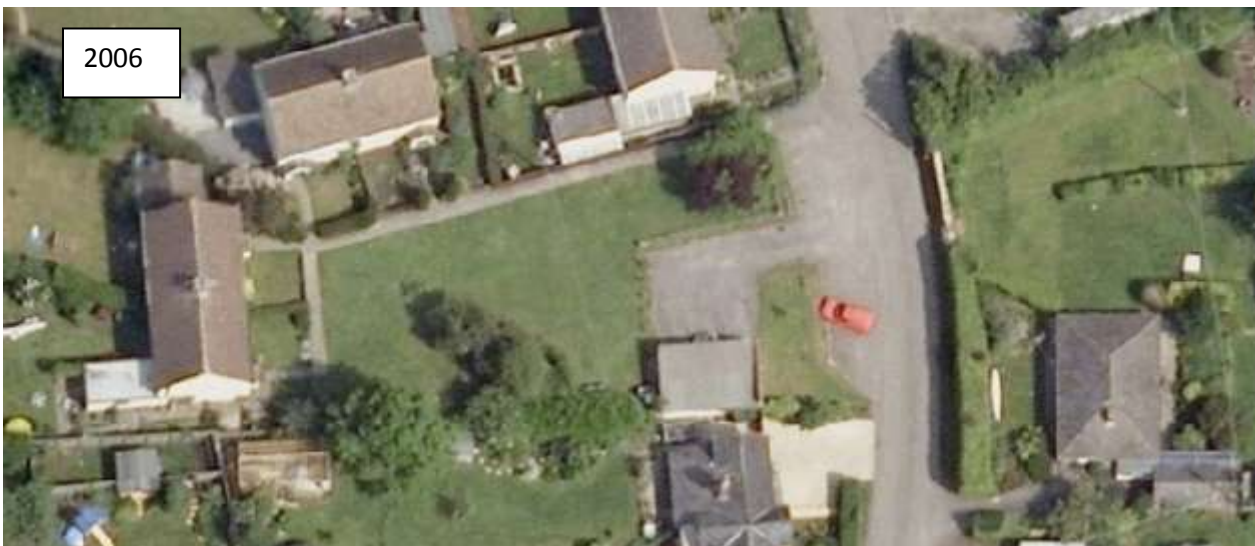


From front of 1 Bondfield looking towards Church Road



From parking bay off Church Road looking towards 1 Bondfield

7 AERIAL PHOTOGRAPHS OF THE APPLICANT LAND



7 LEGAL EMPOWERMENT

- 7.1 Wiltshire Council is the Commons Registration Authority for the County of Wiltshire (excluding the Borough of Swindon).
- 7.2 The application has been made under Section 15 of the Commons Act 2006 as amended by the Growth and Infrastructure Act 2013 (the 2013 Act).
- 7.3 Section 16 of the 2013 Act amended the law on the registration of new town and village greens under Section 15(1) of the Commons Act 2006. It did this by inserting new provisions – section 15C and schedule 1A into the 2006 Act – which exclude the right to apply to register land as a green when any one of a number of events, known as ‘trigger events’, have occurred within the planning system in relation to that land.
- 7.4 The trigger events are prescribed by Schedule 1A of the Commons Act 2006. For example, where an application for planning permission is first publicised then the right to apply to register land as a green is excluded. This ensures that decisions regarding whether land should be developed or not may be taken within the planning process.
- 7.5 The new section 15C(2) of the Commons Act 2006 provides for ‘terminating events’, which are also set out in Schedule 1A to that Act. If a terminating event occurs in relation to the land in question, then the right to apply for registration of a green under section 15(1) is again exercisable. For example, if the right to apply to register land has been excluded because of an application for planning has been publicised, the right to apply for registration of the land as a green again becomes exercisable if planning permission is refused and all means of challenging that refusal have run their course.
- 7.6 The 2013 Act amended the Commons Act 2006 in two other ways (Section 14 amended sections 15(3)(c) and inserted sections 15A and 15B. These amendments relate to the deposit of ‘landowner statements’ – the purpose of which is to protect the land from future claims – but are not relevant to the application being considered here as no deposits have been made.
- 7.7 This application has been made under Section 15(1)(2) of the Commons Act 2006

7.7 Commons Act 2006

15 Registration of greens

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

(a) a significant number of 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.

(3)

(4)

15A

15B

15C Registration of greens: exclusions

(1) The right under section 15(1) to apply to register land in England as a town or village green ceases to apply if an event specified in the first column of the Table set out in Schedule 1A has occurred in relation to the land (“a trigger event”).

(2) Where the right under section 15(1) has ceased to apply because of the occurrence of a trigger event, it becomes exercisable again if an event specified in the corresponding entry in the second column of the Table occurs in relation to the land (“a terminating event”).

(3) The Secretary of State may by order make provision as to when a trigger or a terminating event is to be treated as having occurred for the purposes of this section.

(4) The Secretary of State may by order provide that subsection (1) does not apply in circumstances specified in the order.

(5) The Secretary of State may by order amend Schedule 1A so as to –

(a) specify additional trigger or terminating events;

(b) amend or omit any of the trigger or terminating events for the time being specified in the Schedule.

(6) A trigger or terminating event specified by order under subsection 5(a) must be an event related to the development (whether past, present or future) of the land.

(7)

(8)

7.8 The trigger and terminating events relevant to the consideration of this application are at Schedule 1A (1):

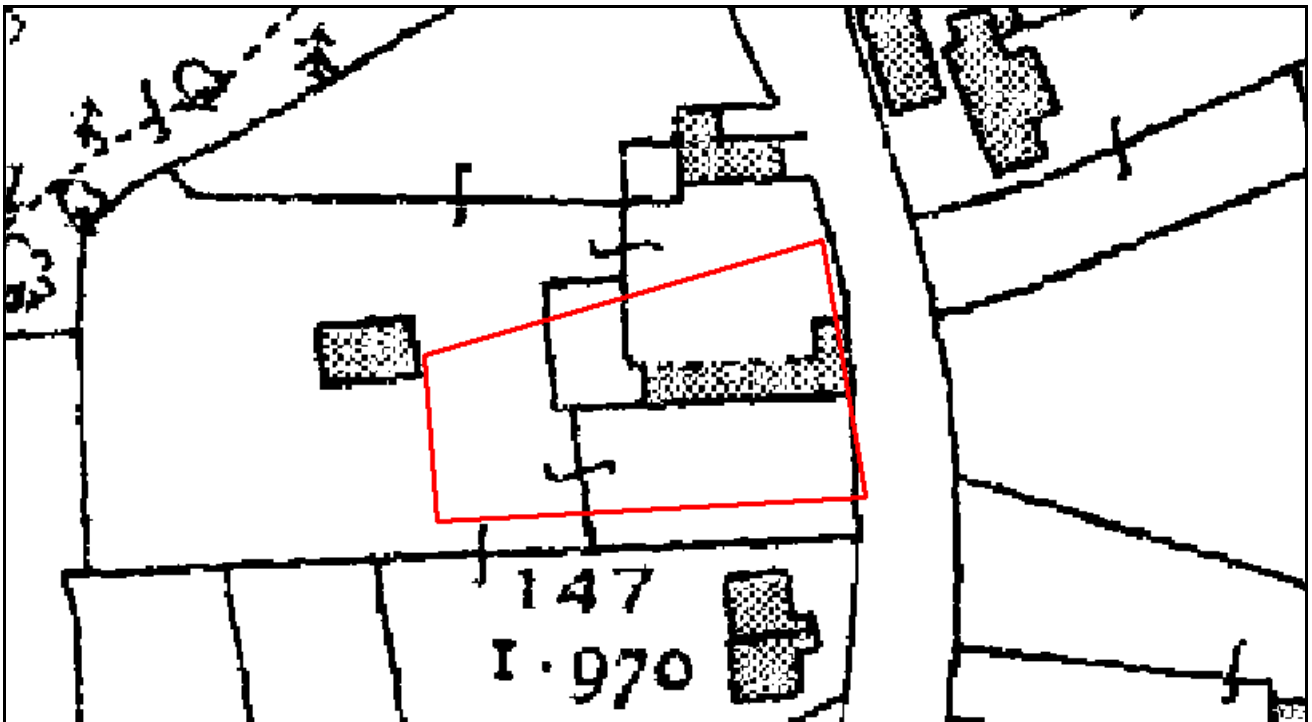
| Trigger Event | Terminating Event |
|---|--|
| <p>An application for planning permission in relation to the land which would be determined under section 70 of the 1990 Act is first publicised in accordance with requirements imposed by a development order by virtue of section 65(1) of that Act.</p> | <p>(a) The application is withdrawn.</p> <p>(b) A decision to decline to determine the application is made under section 70A of the 1990 Act.</p> <p>(c) In circumstances where planning permission is refused, all means of challenging the refusal in legal proceedings in the United Kingdom are exhausted and the decision is upheld.</p> <p>(d) In the circumstances where planning permission is granted, the period within which the development to which the permission relates must be begun expires without the development having been begun.</p> |

8 BACKGROUND

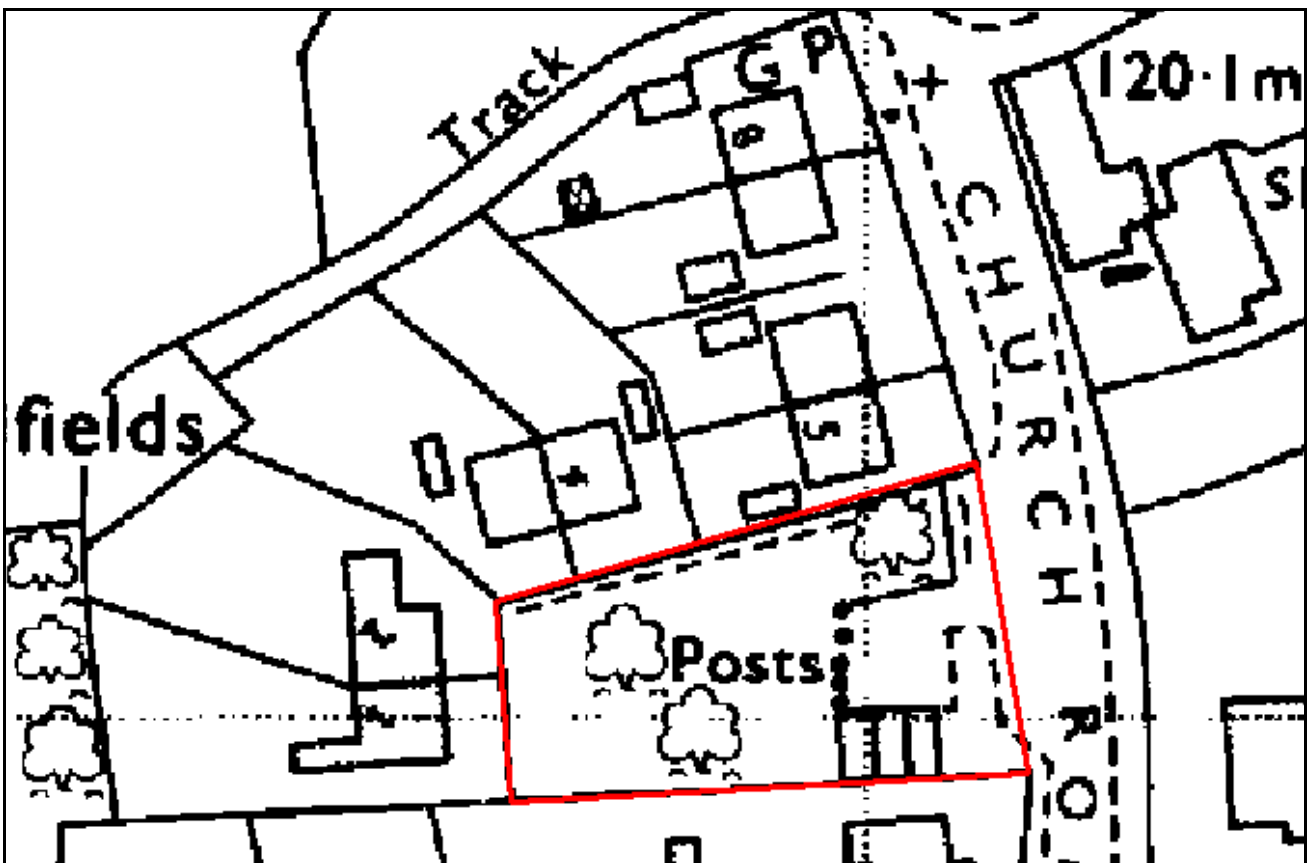
- 8.1 The applicant land is currently owned by Aster Property and forms part of a small development of ex-local authority housing known as Bondfield. It was transferred from Kennet District Council to Sarsen (Aster) Property in July 1995. The development consists of 4 houses (numbers 1 to 4) arranged on two sides of a green area with garages and a car park area on the eastern extent of the site bordering Church Road. Contemporary ex local authority housing (numbers 5 to 8) also extends northwards up Church Road as part of 'Bondfield'. Only two of the properties are tenanted today.
- 8.2 Woodborough is a predominantly rural parish bounded by the railway line in the south and by Woodborough Hill in the north. The Kennet and Avon canal runs through it. Although there are some scattered outlying dwellings the majority of people who live in Woodborough live in a small village settlement in the south east of the parish. The applicant land lies centrally within this settlement.
- 8.3 The applicant land is not a historic green site and was only created when Bondfield was built. Only post Second World War maps show the site, maps before this date show properties on the site that were demolished to allow for the development.
- 8.4 The population of Woodborough in 1991 was 264, in 2001 267 and in 2011 292.

8.5 The red line on the maps below represents the extent of the land affected by this application.

Ordnance Survey 1:2500 County Series 1939 Revision



Ordnance Survey 1:2500 National Grid Series c.1970



- 8.4 The application adduced evidence from 12 witnesses on User Evidence Forms (UEFs) supplied by The Open Spaces Society. When the applicant submitted the map marked as an exhibit (see paragraph 3.1) an additional 7 UEFs were submitted.
- 8.5 The copy of the application sent to the landowner contained all of the above (para 8.4).

9 TIMELINE

- 07 October 2015** Town and Village Green (TVG) application received
- 08 October 2015** CRA wrote to PINS and Planning Authority requesting details of Trigger events
- 12 October 2015** Negative response received from Planning Authority
- 14 October 2015** Negative response received from Planning Inspectorate
- 14 October 2015** Planning application affecting applicant land validated and published by Wiltshire Council
- 19 October 2015** TVG applicant informed of failure to comply with reg. 10(3)(c)
- 12 November 2015** Application advertised
- 18 November 2015** TVG applicant returned map marked 'Exhibit'
- 02 December 2015** Application for planning permission refused by Wiltshire Council
- 21 December 2015** Copy of application for TVG requested and sent to Aster's Solicitors (Devonshires).
- 29 December 2015** Objection to the application duly made by the landowner
- 29 December 2015** End of advertisement period
- 29 January 2016** End of additional time granted for submission of supporting material to objector (landowner). Submission received.
- 02 February to 29 February 2016** Period given to applicant to comment on objection
- 29 February 2016** Applicant's comments of objection received
- 03 March – 31 March 2016** Period given to objector to comment on applicant's response
- 31 March 2016** Objector's comments received

10 PUBLIC CONSULTATION – exchange of correspondence

- 10.1 Submissions from Aster Property **APPENDIX A**
- 10.2 Response from the applicant **APPENDIX B**
- 10.3 In summary, Aster Property list the following reasons for their objection (though not necessarily exhaustively):
1. The Council has no power to register the Land by virtue of s.15C
 2. The application incorrectly identifies the land
 3. The Land has not been used by a significant number of local inhabitants as of

right in lawful sports and pastimes on the land for a period of more than 20 years
4. Such use did not continue as at the time of the application

10.4 In summary, the applicant considers that:

1. The TVG application was received 11 days before the application for planning permission was published. *NB it was actually 7 (officer's comment)*
2. That the map is an accurate and logical representation of the parcel of land known as Bondfield. The CRA has discretion to exclude some of the land from registration.
3. & 4. That the land has been used for 20 years and beyond this back to the 1950s. It is a natural refuge and publicly accessible green space in the village. Its size has no bearing on registration.

11 MAIN CONSIDERATIONS FOR THE COUNCIL

11.1 The application is made under s.15(1) and 15(2) of the Commons Act 2006.

The requirements of these sub-sections can be broken down into a number of elements or legal tests which the application must satisfy in order for the land to be registered as a town/village green, and are as follows:

- Significant number
- Inhabitants of any locality or of any neighbourhood within a locality
- Indulged "as of right"
- Lawful sorts and pastimes
- The land
- A period of at least 20 years
- Use is continuing at the time of application.

11.2 The burden of proof lies in the "balance of probabilities", i.e. the Registration Authority is not required to prove beyond reasonable doubt 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 that use is continuing at the time of application, but just that it is more likely than not.

12 CONSIDERATION OF THE EVIDENCE – UEF SUMMARY APPENDIX C

12.1 Wiltshire Council relies upon the UEFs submitted and the submissions from Aster dated 29 December 2015, 29 January 2016 and 31 March 2016 and from the applicant on 29 February 2016.

- 12.2 It is noted that 2 of the witnesses live at Bondfield (witness numbers 2 and 11). Although their UEFs state that they have not used the applicant land with permission it is accepted that if they are or were tenants of the properties that there may have been a condition in their lease permitting their use of the applicant land. Additionally it is stated by Aster that tenants “would have made a contribution to the maintenance of the Land...”.
- 12.3 No details of whether witnesses 2 and 11 were tenants or indeed any copies of tenancy agreements have been adduced that would cause the Council to disregard their evidence. The Council does not have an investigative role in determining this application and accordingly their UEFs will be included in these considerations though reference will be made as to the effect of the evidence should they be discounted.
- 12.4 The relevant period for the consideration of the 20 years use is taken as being from October 1995 to October 2015.

13 SIGNIFICANT NUMBER

The meaning of the word ‘significant’ was considered in *R (Alfred McAlpine Homes) v Staffordshire County Council [2002] EWHC 76 (Admin)* by Mr Justice Sullivan who rejected the argument that it means ‘a considerable or substantial number’. What matters, he said, is that the number of people using the land has to be sufficient to indicate that it is in general used by a local community for informal recreation, rather than just occasional use by individuals.

- 13.1 The application adduces evidence from 19 people all of whom have used the applicant land for periods ranging from 15 to 65 years for a variety of purposes. All witnesses have used the land up to the date of their UEF (dates vary from the 6th October to the 14th November 2015). 15 of the witnesses have used it for more than 20 years
- 13.2 All witnesses state that they have seen other people using the land though 1 witness does recognise that he has seen people using it to visit friends. The Council recognises that use to visit the houses would be viewed as by licence and discounted.
- 13.3 If evidence of their own use was disregarded for witnesses 2 and 11 they both record seeing others using the land and this evidence is submissible even in the event that their own use wasn’t.
- 13.4 The population of Woodborough for the relevant period is as follows:

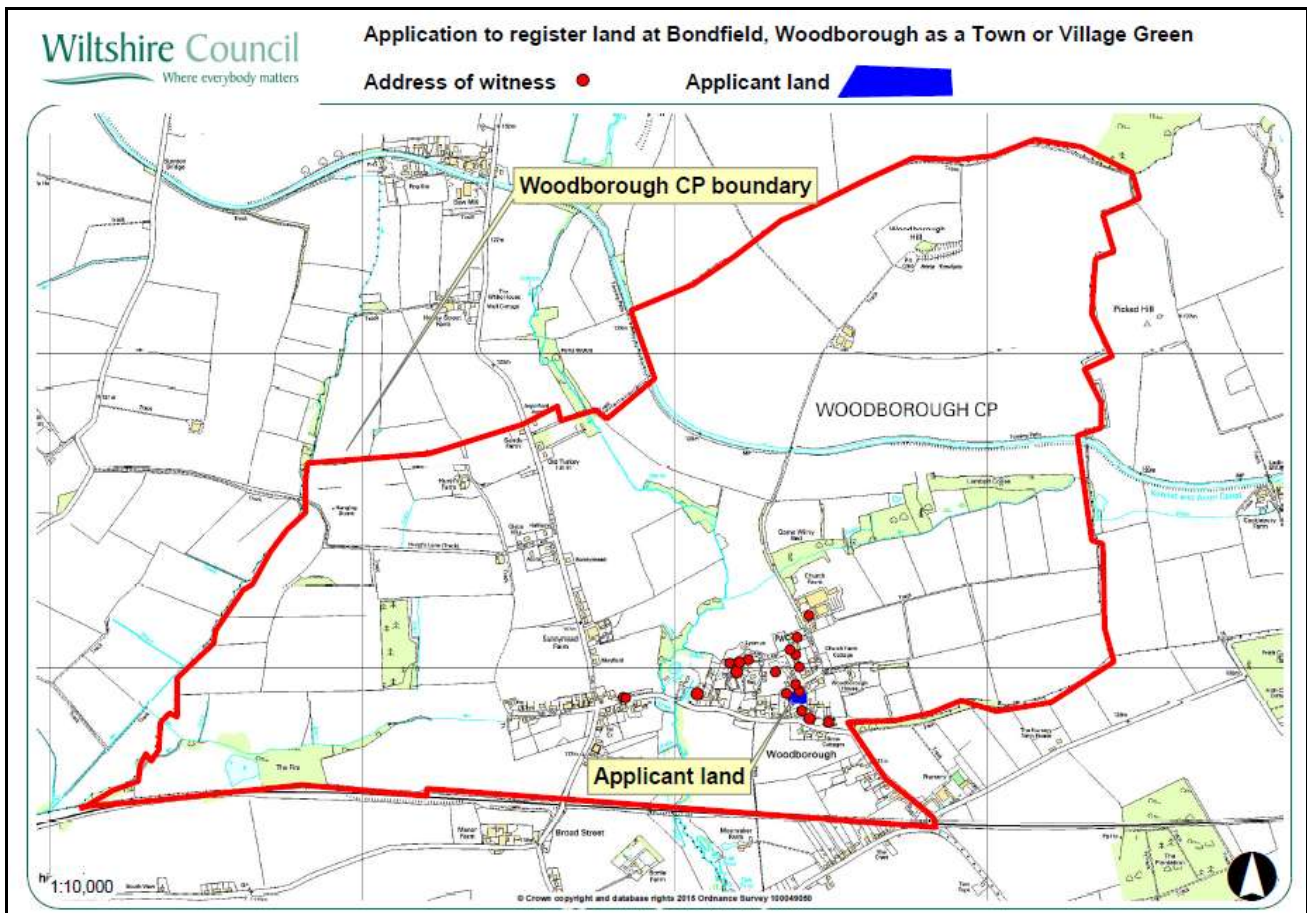
| | |
|------|-----|
| 1991 | 264 |
| 2001 | 267 |
| 2011 | 292 |

Data from UK Census figures.

- 13.5 Although every witness refers to the annual village fete taking place on the applicant land every witness has also observed children playing on the land and high numbers have recorded seeing people playing football or cricket (16), having picnics (11), riding bicycles (13) and singing carols (13).
- 13.6 Aster point out that considerably fewer numbers describe these activities for their own use. Witnesses refer predominantly to the annual fete and other fundraising activities with only some describing playing with grand children on the land or generally socialising.
- 13.7 This is hardly surprising, as it is not the children who have offered the evidence of use but the adults who observe it. It is more than likely that the general playing, the football and cricket, the riding of bicycles and the picnics are all activities undertaken by minors from whom it would not have been appropriate to receive a UEF. The adults completing the UEFs have correctly recorded only the use they made of the land while also recording the use they saw others make of it. Accordingly, the UEFs form a cogent and cohesive body of evidence to support the application.
- 13.8 The picture that emerges from the evidence of use is that the land was predominantly used by children for general play activities and by adults for community events like watching children play, fetes and carol singing.
- 13.9 The land is visible from Church Road and some adjacent properties and the Council considers that the use described in the UEFs indicate that the land was in general use by the local community and that the requirement for a 'significant number' is satisfied.

14 INHABITANTS OF ANY LOCALITY

- 14.1 The Court of Appeal in the *Paddico (Paddico Ltd v Kirklees Metropolitan Council [2012] EWCA Civ 262)* discussed the meaning of "locality". The primary meaning of a "locality" is some legally recognisable administrative division of the country such as a borough, parish (civil or ecclesiastical) or manor.
- 14.2 The locality given by the applicant is Woodborough which is a Civil Parish in the county of Wiltshire.
- 14.3 All of the witnesses come from Woodborough though some recognise that occasionally people from neighbouring villages may support their organised activities (for example attend the fete). In *Sunningwell [2000] 1 AC 335* Lord Hoffman accepts that the requirement is not for *only* the inhabitants of the locality; it is sufficient for the majority to come from the locality.
- 14.4 The distribution of witnesses supplying UEFs throughout the locality of Woodborough Parish (boundary shown by red line) is shown on the map overleaf:



14.5 The Council considers that the application adduces evidence of use from a significant number of inhabitants of the locality of Woodborough parish.

15 HAVE INDULGED AS OF RIGHT

15.1 Use of the land must be “as of right”, that is without force, without secrecy and without permission.

15.2 The state of mind of the user is not a consideration, all that may be considered is whether that use has gone on, without permission, without force and without secrecy. This point was addressed by Lord Hoffman in the House of Lords in the case of Regina v Oxfordshire County Council and others ex parte Sunningwell Parish Council [2000] 1 AC 335. In his judgement Lord Hoffman dismisses any additional requirement of subjective belief for the satisfaction of ‘as of right’:

“In the case of public rights, evidence of reputation of the existence of the right was always admissible and formed the subject of a special exception to the hearsay rule. But that is not at all the same thing as evidence of the individual states of mind of people who used the way. In the normal case, of course, outward appearance and inward belief will coincide. A person who believes he has the right to use a footpath will use it in any way in which a person having such a right would use it. But user which is apparently as of right cannot be discounted merely because, as will often be the case, many of the users over a long period were subjectively indifferent as to

whether a right existed, or even had private knowledge that it did not. Where Parliament has provided for the creation of rights by 20 years' user, it is almost inevitable that user in the earlier years will have been without any very confident belief in the legal right. But that does not mean that it must be ignored. Still less can it be ignored in a case like Steed when the users believe in the existence of a right but do not know its precise metes and bounds. In coming to this conclusion, I have been greatly assisted by Mr J G Ridall's article "A False Trail" in [1997] 61 The Conveyancer and Property lawyer 199."

- 15.3 Use must be judged objectively, from the standpoint of a reasonable landowner; does the user carry the outward appearance of user as of right? In *Sunningwell* Lord Hoffman indicated that whether user was 'as of right' should be judged by 'how the matter would have appeared to the owner of the land'.

16 PERMISSION

- 16.1 No witnesses record having been granted permission though it is acknowledged that there may be circumstances where tenants of the housing or garages at Bondfield may have had access to all of the land as part of their tenancy. However, the Council has no evidence before it of this.
- 16.2 Aster, in their submission dated 29 December 2015, detail that at all material times the Land was maintained for the purposes of the tenants of Bondfield. Works were undertaken with liveried vans and by uniformed individuals and it is stated that it cannot have escaped the attention of anyone familiar with the Land that it was being maintained, not as public open space, but by Aster Property for use in accordance with the properties in the immediate vicinity (of which two units are held on tenancies, the remainder have been purchased over time).
- 16.3 The submission also points out that the Land is substantially enclosed and that the obvious impression is that the Land is for the benefit of Bondfield. Aster state that the Land was being maintained "not as public open space".
- 16.4 Accordingly Aster conclude the occupiers of the housing units had permission to use the land and that anyone else using the site was doing so by implied licence.
- 16.5 It is acknowledged that it is possible, as a matter of law, for implied permission to defeat a claim to prescription, the authorities suggest that the landowner must do some positive act in order to give rise to the implication, otherwise the landowner is merely acquiescing. In the Supreme Court in *R v North Yorkshire County Council & Others ex parte Barkas* [2014] UKSC 31, Lord Neuberger stated:

"In relation to the acquisition of easements by prescription, the law is correctly stated in Gale on Easements (19th edition, 2012), para 4 – 115:

"The law draws a distinction between acquiescence by the owner on the one hand and licence or permission from the owner on the other hand. In some

circumstances, the distinction may not matter but in the law of prescription, the distinction is fundamental. This is because user which is acquiesced in by the owner is 'as of right' ; acquiescence is the foundation of prescription. However, user which is without licence or permission of the owner is not 'as of right.' Permission involves some positive act or acts on the part of the owner, whereas passive toleration is all that is required for acquiescence."

- 16.6 The evidence adduced by both parties in this case brings nothing to the Council's attention related to any express permission. The question is then whether or not the use was by implied permission based on the partial enclosure of the land and the maintenance of the land for the benefit of the householders and not as public open space.
- 16.7 It is worth re-iterating the point made by Lord Hoffman in *Sunningwell* and re-produced here at 15.2 in that it does not matter what was in the mind of the user, what matters is whether the use took place. Even if, in the mind of the landowner, the use was by implied permission there is no evidence that this was ever made apparent to the public, additionally there have been no acts of revocation of any permission and no limits attached to it. Mowing the grass is the action of a reasonable landowner and cannot be taken as an invitation to the public to use the land.
- 16.8 It is clear that the use took place in an open manner that residents would not have been unaware of. It is also clear from the evidence that the annual fete is a major event for villagers and cannot have gone un-noticed as it would have been locally well publicised and in all probability led to at least the trampling of the grass.
- 16.9 There is no evidence before the Council that anyone asked for permission, that any permission was granted for any event or activity, that any signs or notices relating to permission were put in place or that any attempt to restrict access to the Land were made. The land is enclosed quite naturally by property boundaries on three sides and although some fencing is in place on the road side the area has an open feel owing to the gap in the fencing for the path, the path itself and easy access from the parking area through the bollards.
- 16.10 Equally there is no evidence that any accommodation for the activities was made or that there were any positive acts, for example by the placing of benches or in saying that the Land was maintained for the benefit of anyone other than the residents. It is therefore hard to say how permission was implied and it is considered far more likely that Aster Property (and their tenants) exercised passive toleration to the use of the Land for anyone other than themselves.
- 16.11 Bearing in mind the fact that the land was formerly owned and managed by a local authority (in this case Kennet District Council) It is necessary to consider whether the land was held under any of the Housing Acts. For example Section 80 of the Housing Act 1936 permitted an authority to provide and maintain, *inter alia*,

recreation grounds “where they serve a beneficial purpose in connection with the requirements of the persons for whom the housing accommodation is provided”. The power to maintain these was continued under Section 12 of the Housing Act 1985. The recent judgement in the Supreme Court in *R(Barkas) v North Yorkshire CC [2014] UKSC 31* makes it clear that where land has been allocated and maintained as public recreational space by a local authority then any use is not ‘as of right’ but ‘by right’ and hence not qualifying use for registration.

Lord Neuberger at [24]:

“I agree with Lord Carnworth that, where the owner of the land is a local, or other public authority which has lawfully allocated the land for public use (whether for a limited period or an indefinite period), it is impossible to see how, at least in the absence of unusual additional facts, it could be appropriate to infer that members of the public have been using the land “as of right” simply because the authority has not objected to their using the land. It seems very unlikely that, in such a case, the legislature could have intended that such land would become a village green after the public had used it for twenty years. It would not merely be understandable why the local authority had not objected to the public use: it would be positively inconsistent with their allocation decision if they had done so. The position is very different from that of a private owner, with no legal duty and no statutory power to allocate land for public use, with no ability to allocate land as a village green, and who would be expected to protect his or her legal rights.”

16.12 There are a number of indicators that the ruling of the Supreme Court in the case of *Barkas* is not relevant here. Firstly the land passed from the local authority to private ownership in July 1995 (the relevant period of 20 years runs from October 1995 to 2015). For this period the Land has been owned by a Housing Association which is a society, company or body of trustees established for the purpose of providing, constructing, improving or managing, facilitating and encouraging the construction of housing accommodation, it is not a local authority. Secondly when a change of use of part of the land was applied for in 2010 it was from visual amenity land to enclosed garden; there was no discharging of any allocation for recreation (i.e. there was no decision to appropriate the land to discharge any previous allocation for public use), thirdly Aster in their response of the 29th December 2015 clearly state that “*it was maintained, not as public open space, but by our client for use in accordance with the properties in the immediate vicinity (which still include two units of accommodation held on short tenancies, the rest having been purchased over time by use of the right to buy.*” Finally, the land was not allocated for public use as required by Lord Neuberger above. There is no reliance on any of the Housing Acts.

16.13 It is concluded that use has been without permission.

17 WITHOUT FORCE

If, during the period of use, any form of force is employed to gain access to the land, for example by breaking a padlock from a gate then use is not as of right.

Additionally use is by force in law if it involves climbing fences or gates, is contentious, under protest or in the presence of notices (for example 'keep out'). If use is forcible, the landowner is not acquiescing in the use.

17.1 Use of the applicant land was not by force. The site is readily accessible from Church Road either by crossing the tarmac area in front of the garages or by using the gap and pathway leading to the houses.

17.2 There were no signs preventing public access (for example 'residents only' or 'access only').

18 WITHOUT SECRECY

The use must be open, so that the landowner (or someone acting as his agent) is capable of seeing that the land is being used for sports and pastimes. There is no requirement that the landowner must be shown to have known of the use of the land, only that he would have known of the use had he chosen to look.

18.1 The use of the land detailed in the UEFs was not made in secret. Children play during daylight hours and uses of the land for community events (including the fete) would have been likely to have been publicised and again, taken place during daylight hours.

19 LAWFUL SPORTS AND PASTIMES

The term lawful sports and pastimes is a wide term that includes many activities. The effect of the adjective lawful excludes activities that are unlawful (for example badger baiting or dog fighting). Many sports and pastimes have been acknowledged by the courts specifically children playing (*Sunningwell* at 356F – 357E) additionally the playing of cricket and football both formally and informally, walking, carol singing, may pole dancing and community events (such as fetes and flower shows) are all accepted as lawful sports and pastimes.

19.1 There is no requirement that the same activities must be exercised throughout the 20 year period and activities may vary according to the time of year or shifting trends in behaviour. What is required is that some form of sports and pastimes have been exercised on the land for the requisite period. It is not necessary for there to have been sports *and* pastimes, one or the other will suffice (see *Sunningwell* [2000] 1 AC 335 pp 356F – 357E).

19.2 The application to register land at Bondfield adduces evidence from 19 people who have attended (and observed others attending) a village fete on the ground (witness 6 describes it as "an annual weekend summer fete"). There are also references to

other community activities such as barbecues, parties and fund raisers distinct from the annual fete. A number of people refer to their own use more generally “village activities”, “any village activities”, “for community events”, “parish community events”, “village gatherings” and “events”.

- 19.3 All witnesses have seen children playing on the land, 2 use it to play with their grand children (though it is accepted by the Council from the evidence that one of these is a resident of Bondfield and may be able to do this by right), 1 record their own children using it and another specifically records watching children play which suggests that it is their own children they are watching.
- 19.4 In their response to the application dated 29 December 2016 Aster consider that the community use is infrequent and “cannot possibly be sufficient to support the application.”
- 19.5 Whilst it is agreed that the attendance of community events, including the fete, is the majority use of the witnesses themselves, it is considered that, any other use notwithstanding, the use of the land for an annual fete would be sufficient to be a qualifying lawful sport or pastime for the purposes of registration. In the House of Lords in *Oxfordshire County Council v Oxfordshire City Council [2006] UKHL 25 (The Trap Grounds case)* Lord Hoffman considered what a village green might be and at paragraph 39 gives examples of greens that have qualified for registration based on unusual or regular but infrequent use.
- “...On 24 May 1976 the Chief Commissioner Mr Squibb ordered registration of land which the local authority wanted to use for housing purposes but upon which there was the custom of having an annual Guy Fawkes bonfire. No doubt there are other examples in the archive of decisions of the Commons Commissioners.”*
- 19.6 In addition to the witnesses who record they use the land for their own children or grand children there is the additional evidence that they have all seen children playing on the land.
- 19.6 It is therefore considered that the application raises a sufficiency of evidence of use of the land for lawful sports and pastimes to qualify.

20 ON THE LAND

It is not necessary for the applicant land to look like a traditional village green and there are examples of land that is covered with water being registered and of land where only 25% of it was accessible to the public for lawful sports and pastimes (for example the *Trap Grounds Oxfordshire CC v Oxford CC Lightman J [2004] Ch 243, Court of Appeal [2006] Ch 253 and House of Lords [2006] UKHL 25*).

- 20.1 The applicant land in Woodborough, as identified in Exhibit A and by all witnesses, includes that parcel of land belonging to Aster Properties which includes part of a private garden (as affected by planning consent E/10/1323/FUL – Retrospective

application for the change of use of a parcel of land to the front and side of Blackberry Cottage to be a domestic garden enclosed by post and rail fence – application approved in 2010 - the land being then owned by Sarsen Housing Association) including a parking area, a row of garages, a footpath leading to houses and an area of grass and trees.

- 20.2 Aster, in their response dated 29 December 2015 consider that these inaccuracies not only point to the application having a defective plan but also to the lack of reliance that may be placed upon the applicant's statutory declaration and the evidence adduced by the witnesses all of whom rely on the same representation of the land.
- 20.3 The applicant responded to this on the 29th February 2016 by explaining that the representation of the applicant land was an accurate and logical way of showing that parcel of land commonly referred to as 'The Green' at Bondfield. He acknowledges that it shows the garages and the car parking over which he makes no claim and that he has been led by Oxfordshire County Council v Oxford City Council in that the CRA has the ability to consider only part of the land for registration. He further observes that *"an important consideration when marking the land was that the Authority has the power to determine a smaller area of land than marked for registration, but not a larger area of land"*.
- 20.4 The applicant further points out that the area in front of the garages and marked *"parking"* on the map submitted by Aster on the 29th January 2016 has in fact got a large sign in front of the garages saying "NO PARKING GARAGE ACCESS ONLY".
- 20.5 The applicant is correct in saying that the CRA may register only part of the application land if it is satisfied that part but not all of the application land has become a new green. In the *Trap Grounds* case in the House of Lords ([2006] UKHL 25) Lord Hoffman, upholding the decision of the Court of Appeal ([2005] EWCA Civ 175) at paragraph 62:
- " I also agree with the Court of Appeal that the registration authority is entitled, without any amendment of the application, to register only that part of the subject premises which the applicant has proved to have been used for the necessary period. It is hard to see how this could cause prejudice to anyone. Again, I add that there is no rule that the lesser area must be substantially the same or bear any particular relationship to the area originally claimed."*
- 20.6 Clearly the CRA has no authority to register a larger piece of land than applied for since this would be prejudicial to the landowner.
- 20.7 Further, it does not matter that different parts of the land have been used for different recreational purposes. Also, provided that the area claimed is clearly defined, it will not be a bar to registration if it is not all used for sports and pastimes provided it

can fairly be regarded as part of the same land (for example flower beds or a shrubbery on a green may not be used for sports or recreation but they form a part of the whole).

- 20.8 It is therefore a matter of fact to be decided according to the circumstances and evidence adduced whether the whole area has been sufficiently used to support the application.
- 20.9 It is clear that the area enclosed as part of the garden of Blackberry Cottage was not used for lawful sports and recreation throughout the relevant period and should be excluded.
- 20.10 It is clear that the area covered by the garages was not available for lawful sports and recreation and should be excluded.
- 20.11 However, the remainder of the area has been available for lawful sports and pastimes notwithstanding times when cars were parked. By signage either Sarsen Housing Association or Aster Properties did not encourage parking in the area in front of the garages. It is accepted that there would have been times of the day and night when cars were parked either in front of the garages or in the area off Church Road. However it is clear from the UEFs that no-one regarded these as a bar to their recreational use of the area and it is unrealistic to suggest that when the green area was being used for play or community events that any areas adjoining the land that didn't have a vehicle parked on them were also used. Aerial photographs at paragraph 7 support that vehicular use was light.
- 20.12 The concept of shared use of a green was considered in the Supreme Court in the case of *R (Lewis) v Redcar and Cleveland BC* [2010] EWCA Civ 3 where it was established that land can be registered as a new green even though the landowner uses the land for his own purposes and local people defer to that use. Hence it is reasonable to say that if no cars were on the site the land was accessed by any route and hard surfaced areas used accordingly, conversely when cars were parked there, the land was, temporarily, unavailable for use and people had to walk round them.
- 20.13 Lord Hoffman noted in the *Trap Grounds* case at paragraph 39 that in 1975 in *New Windsor Corporation v Mellor* ([1975] Ch 380) the Court of Appeal confirmed the registration of a car park in Windsor as a customary green.
- 20.14 It is considered that an area of land excluding the fully enclosed garden and the garages would, on the face of it, qualify for registration.

21 PERIOD OF 20 YEARS

- 21.1 The relevant use must continue throughout the whole of 20 years relied upon and must be continuous and uninterrupted throughout this time. By virtue of section 15(6) Commons Act 2006, user is to be disregarded for any period where it is

prohibited by any enactment (for example to control the spread of Foot and Mouth Disease) but this does not apply in this case.

- 21.2 There is no need for the applicant to show that the land has been used every day or every month but it must have been available to be used when needed. No user must be prevented from using the land during the relevant period.
- 21.3 UEFs cover the period 1950 to 2015 with all users still using the land at the date of application. For the period 20 years prior to application (1995 to 2015) there are 15 who have used it for the full 20 years or 13 if witnesses 2 and 11 are excluded owing to any tenancies they may have.
- 21.4 The period of 20 years is covered by the application.

22 RISK ASSESSMENT

- 22.1 Wiltshire Council has a duty to determine this application to register land at Bondfield as a Town or village Green.
- 22.2 If it fails to determine it within a reasonable timescale it may be liable to an application for judicial review.
- 22.3 If it determines it without due regard to the evidence adduced from all parties, without due regard to all relevant statute law and case law or acts in any other unlawful manner it is liable to an application for judicial review.
- 22.4 If the land, or part of the land, is registered as a town or village green Wiltshire Council has no duty to maintain or monitor the green, its only role is to maintain the Register.

23 ENVIRONMENTAL IMPACT

- 23.1 The environmental impact of either the registration of land at Bondfield as a green or the failure to register land is an irrelevant consideration for the purposes of the Commons Act 2006.

24 LEGAL CONSIDERATIONS

- 24.1 It is the Council's duty as the Commons Registration Authority for this area to determine the application to register land at Bondfield, Woodborough. Any failure to determine the application within what may be considered to be a reasonable timescale is liable to an application for judicial review.

The holding of a non-statutory public inquiry

- 24.2 In determining the application the Council may hold a non-statutory public inquiry if it is considered that a substantial objection is raised, or there is serious dispute, "*the authority may well need to ...hold a non-statutory inquiry*". *R (Whitmey) v Commons Commissioners (2005) QB* at page 282 at paragraphs 29 and 66.

- 24.3 The necessity to hold a public inquiry is plain where there is a substantial dispute of fact which is likely to be resolved through an inquiry process in which live witnesses can give evidence about matters in dispute. Where the facts are not really in dispute but there is disagreement as to the legal construction which is to be placed on those facts, the matter will not be advanced by an inquiry because the Council, having taken professional independent legal advice if necessary, can make its final decision in the same way and with no less authority that it could with the benefit of an Inspector's report.
- 24.4 Furthermore, given the considerable cost of holding inquiries and the many competing demands on scarce public funds, it cannot have been intended that inquiries should be held simply because an objection has been raised which includes some averments of fact if they are flimsy and, even if resolved in the objector's favour, unlikely to affect the outcome.
- 24.5 In this case the objector avers that the majority of the witnesses only used the Land for the annual fete and that this is insufficient for registration. However, putting aside the example of just this sort of annual event leading to registration as cited in *The Trap Grounds* by Lord Hoffman; this is not the only activity here. It is clear from those same witnesses that they all observed children playing and indeed some had played with their grand children on the Land. It is accepted by the courts that 'children playing' qualifies as a 'lawful sports and pastime' and accordingly, because the witnesses are not the children themselves, the CRA or indeed the courts, must inevitably rely on the evidence of adults observing the activity.
- 24.6 Additionally matters relating to the CRA's ability to register a lesser parcel of land than that claimed and dispute over the date of publication of the application for planning permission (and hence the date of a possible trigger event) are not matters that would be advanced at a public inquiry.
- 24.7 The risk of not holding a public inquiry if land is not registered is that it may lead to an appeal for judicial review. This is also a possible outcome if land is registered as is an appeal to the High Court under section 14(1)(b) of the Commons Registration Act 1965. In this case the whole merits of the registration will be reconsidered at a trial, with a view to ascertaining whether the registration should or should not have been made.

When is an application duly made?

- 24.8 The Council is reliant upon the general rule of law explored and endorsed in the Court of Appeal in *R (Church Commissioners for England) and Hampshire County Council & Another and Barbara Guthrie [2014] EWCA Civ 634* whereby an application will be "duly made" when it is first submitted notwithstanding that it may have some defects that require clarification.

- 24.9 The *Church Commissioners* case has convenient parallels to the application being considered here in that the application was submitted by ordinary people without a detailed knowledge of this complicated area of law. In The *Church Commissioners* case there were much more substantial defects in the application and the applicant repeatedly failed to address them for a substantial period of time – in that case 10 months was considered reasonable whereby over a year was not (Lady Justice Arden para 64 and 65), however, crucially for this application affecting Bondfield, the *Church Commissioners* case considers in detail the prejudicial effects to both parties caused by either the acceptance, or the non acceptance of the application at the application date rather than at the date of amendment.
- 24.10 In the *Church Commissioners* case the application relied upon being made within a 5 year period following the cessation of use. If the application was accepted at the date of submission then it was within time and the Land *could* be registered; if it was accepted at the date all the corrections were made to render it ‘duly made’, the Land *could not* be registered.
- 24.11 The parallel with the Bondfield application is thus clear – if the application is accepted at the date it was received by Wiltshire Council it was made before the trigger event of the planning application being published and is therefore capable of leading to registration; if it is accepted at the date it was corrected and hence ‘duly made’, the trigger event remains in place and the land cannot be registered unless a terminating event occurs.
- 24.12 With the *Church Commissioners* case the applicant, on application form (Form 44), failed to delete para. 4, failed to identify the relevant locality or neighbourhood and failed to provide a date less than 5 years before the date of application. Two of these were manifestly serious errors. The 5 year one was critical to the determination of the application.
- 24.13 In the case of the Bondfield application the only bar to it being duly made was a failure to mark the map as ‘Exhibit A’ and for it to be duly signed as per The Commons (Registration of Town or Village Greens)(Interim Arrangements)(England) regulations 2007 (2007 SI no 457) Regulation 10 (3)(c). Although it failed to strictly satisfy the Regulations it cannot have affected anyone’s ability to interpret the application or its intention.
- 24.14 Wiltshire Council received the application on the 7th October 2015 and notified the applicant of the omission on the 19th October and it was corrected on the 18th November 2015.
- 24.15 An application for planning permission for the land was published by Wiltshire Council on the 14th October 2015.
- 24.16 In the *Church Commissioners* case Arden LJ considered that a minor error in the application (that did not affect the ability of anyone to interpret the application) could

properly be treated as not reaching the threshold necessary for sanction by the law on the basis of the maxim *de minimis non curat lex* (the principle whereby judges will not sit in judgment of extremely minor transgressions of the law). Indeed, the failure is not a matter on which the objectors rely, however, it is considered reasonable to consider the matter further in the light of the possible prejudicial effect of the application date and the failure to strictly comply with the Regulations.

24.17 Arden LJ quotes with approval (“*the judge’s judgement is precise and clear*”) from the judgement of Collins J in *Church Commissioners* in the High Court ([2013] EWHC 1933 (Admin):

“23. *Regulation 4 of the 2007 Regulations requires any application to be stamped and recorded. There is no provision that, where it is regarded as not duly made, once put in proper form there is any fresh record to be made.....*”

“24. *There is nothing in the wording of the Regulations which requires me to decide that there cannot be a retrospective affect of a corrected application.....It must be borne in mind that many applications for TVGs are made by interested persons acting without legal assistance and, since the rights sought will be for the benefit of the public, applications should not be defeated by technicalities.*”

“25. *It follows that I am satisfied that in principle Mr Blohm QC, Ms Crail and Mr Hobson are right in submitting that a corrected application can have retrospective effect....*”

24.18 The possibility for correction of an application can be found at Regulation 5(4):

“(4) *Where an application appears to the registration authority after preliminary consideration not to be duly made the authority may reject it without complying with paragraph (1), but where it appears to the authority that any action by the applicant might put the application in order, the authority must not reject the application under this paragraph without first giving the applicant a reasonable opportunity of taking that action.*”

24.19 The Regulations specify the action of the CRA when receiving an application and at regulation 4(1):

“(1) *On receiving an application, the registration authority must –*

*(a) allot a distinguishing number to the application and mark it with that number; and
(b) stamp the application form indicating the date when it was received.*”

24.20 Arden LJ considers the potentially prejudicial effect of retaining an original application date by preferring the case of Mr Hobson in comparing the Commons Act example with that considered in *the Winchester case*. In that case it was found that strict compliance with the regulations was required and that accordingly an application that wasn’t (in the *Winchester case* it related to a failure to provide copies

of evidence in applications made before a certain date) could not be retrospectively corrected.

24.21 However, there are important differences between the two cases. Arden LJ considers this at paragraphs 37 to 44:

“37 Mr Hobson points out that the Regulations do not exclude an application which does not comply with procedural requirements from being corrected and may be contrasted with section 67(3) of Natural Environment and Rural Communities Act 2006 (NERCA 2006). This deals with applications to extinguish rights of way and which provides:

“for the purposes of subsection (3), an application under section 53(5) of the 1981 Act is made in accordance with paragraph 1 of Schedule 14 to that Act”.

*38 As the judge pointed out in [22] of his judgement, in R (Fellows of Winchester College) v Hampshire CC [2008] 3 A11 ER 717, this court decided that section 67(3) meant that an application had to satisfy all the requirements of paragraph 1 of Schedule 14 of NERCA 2006 before it could be considered as made. **But the judge pointed out that would be a serious step as it would put the applicant at the mercy of the registration authority if it failed to point out a defect in the application before it was too late under Section 15 CA 2006 to amend it.”***

Bold type CRA’s own.

“39 In my judgement, Mr Hobson’s interpretation is to be preferred. If the application does not comply with the regulations, Regulation 5(4) enables the registration authority to reject it without going through the procedure of giving notice to the landowner and others. But if the registration authority thinks that the applicant can correct errors, it can give him a reasonable opportunity to do so. If within the reasonable opportunity so given the applicant corrects the errors, the original application has full force and effect and therefore the Regulation must be retrospective.

40 I reach this conclusion on the basis that the Regulations throughout refer to one and the same application. In addition, the application is given a date on receipt. Dating the application must be for some purpose. Furthermore there is no reason why Regulation 5(4) should restrict the opportunity for correction to a reasonable opportunity if even a correction made within a reasonable opportunity achieves nothing that would not have been achieved by a new application.

41 In my judgement, it does not help Mr Karas’ argument that the Regulation 4 obligation hinges not on the making of the application but on its receipt. The point remains that it would be wholly misleading for the application to be dated with the date of its receipt if that were not its effective date.

42 The guidance note referred to in Form 44 is consistent with the view that I have taken (see paragraph 10, above). Although it is non- statutory, it has some weight because it is referred to in form 44 which is a statutory document.

43 I agree with the judge that it would have been better if Parliament had provided that the landowner should receive a precautionary notice as soon as an application was received. However, that point seems to me to lead to the conclusion that the period between the date of the application and its due completion should be short.

44 Accordingly, I conclude on this issue the Regulation 5(4) provides a means for curing deficiencies in an application which does not provide all the statutory particulars, and once an application is so cured, it is treated as duly made on the date on which the original defective application was lodged. I would therefore dismiss the appeal on this issue.”

24.22 Agreement was given by Lord Justice Richards:

“71. The answer to the retrospectivity issue has to be found within the regulations. The CA2006 itself does not tell one when an application is made for the purposes of s.15 but provides in s.24 (1) that regulations may make provision as the “making” of any application. The only provision in the Regulations relating to the date is the requirement in Regulation 4(1) that on receiving an application the registration authority must allot a distinguishing number to it and “stamp the application indicating the date when it was received”. That is a strong indication that the application is to be treated as made on the date it is received. As to the content of an application regulation 3(21) provides that an application “must be made in accordance with these regulations”. For that purpose it must meet all the conditions in Regulations 3(2). An application that does not meet all of those conditions is not “duly made” (the expression in Regulation 5(4). Regulation 5(4) expressly contemplates, however, that an application that is not duly made at the date of receipt may be put in order within such period as may be allowed by way of reasonable opportunity. An application put in order within this period is duly made. There is no provision for resubmission, renumbering or further date stamping at the time it is put in order. The process contemplated, in my judgement, that an application put in order in that way is to be treated under the Regulations as having been made at the date when it was originally received.”

24.23 Agreement was also given by Lord Justice Vos:

“75. I gratefully accept Arden LJ’s explanation of the factual background and the relevant legislation. I agree with Arden and Richards LJ that, for the reasons they give, an application to register a TVG under section 15 of the 2006 Act is made on the date it is received by the registration authority under Regulation 4 of the 2007 Regulations. As Arden LJ has explained, even if the application is subsequently “put in order” under Regulation 5(4) of the 2007 Regulations, it retains its original date, so

that the amendments that are made to the application are to be taken as being back dated to that original date.”

- 24.24 It therefore seems clear that when faced with an application that was not duly made when received, but that is subsequently amended to be duly made, the CRA should regard the application as having been made at the date it was received, not at the date it was finally duly made. The prejudicial effect that this may have for one party (in both the *Church Commissioners* case and the Bondfield application) is in favour of the applicant, even though the backdating of the application in both cases would have been or would be fatal to the application to register the land.
- 24.25 In the case of the Bondfield application the applicant corrected the application within one month, which given the need for the involvement of a solicitor, would seem to be a reasonable time for the response.

25 EQUALITY CONSIDERATIONS

- 25.1 Considerations related to equality in the case of either the registration of land at Bondfield as a green or the failure to register land is an irrelevant consideration for the purposes of the Commons Act 2006.

26 SAFEGUARDING CONSIDERATIONS

- 26.1 Safeguarding considerations related to either the registration of land at Bondfield as a green or the failure to register land is an irrelevant consideration for the purposes of the Commons Act 2006. Any act of registration would be based on the recording of an acquired right based on an ongoing activity.

27 FINANCIAL IMPLICATIONS

- 27.1 There is no cost implication for the Council in the event that either the application is refused or that land is registered where no-one objects to the decision.
- 27.2 If a non-statutory public inquiry is held the cost will be proportional to the number of days that it takes. It is estimated that costs related to the appointment of an Inspector and the holding of a 5 day inquiry would be in the region of £30000.
- 27.3 The recommendation of any Inspector may or may not be acted upon by the Council and a final decision must still be made by the Council. This decision is liable to application for judicial review and if granted costs can be considerable; in the region of £50000.
- 27.4 The opinion of Counsel skilled in this area of law may be taken by the Council at any time and costs vary though an opinion on a number of restricted points of law can be in the region of £1000 to £2000.

28 OPTIONS TO CONSIDER

- (i) To hold a non statutory public inquiry
- (ii) To refuse to register any of the applicant land as a town or village green
- (iii) To register all of the applicant land as a town or village green
- (iv) To register some of the applicant land as a town or village green

29 REASON FOR RECOMMENDATION

29.1 For the reasons given at 24.2 to 24.7 it is considered that a non statutory public inquiry would not assist the Council in determining this application.

29.2 It is considered that the application brings clear evidence to the Council's attention that, on the balance of probabilities, land at Bondfield has been used by a significant number of people from the locality of Woodborough Parish for lawful sports and pastimes in a manner that is 'as of right', uninterrupted, for a period of 20 years dating back from the date of application, that is, from 1995 to 2015. Accordingly the application should not be turned down.

29.3 Not all of the land could have been used for lawful sports and pastimes during this period. Part of the applicant land was enclosed as a garden for some of the period 1995 to 2015 and three garages have existed on some of the land for the whole of the 20 year period. Accordingly from the evidence before the Council it is shown that rights could not have been acquired over all of the applicant land.

29.4 Wiltshire Council is able to register some of the applicant land. The areas covered by tarmac in front of the garages and beside Church Road have been used to access the land when the use is not shared and it is more likely than not that children would have played on them in addition to the green space. Hard surfaces being particular attractive for many aspects of childrens play including small wheeled toys, cycling, skate boarding, roller skating and kicking and bouncing balls.

29.5 The area over which the application is held to succeed is shown on the map appended at **APPENDIX D**.

30 RECOMMENDATION

That the area of land shown edged and cross hatched in red on the plan attached hereto being called The Green, Bondfield should be registered as a Town or Village Green and that the Register of Town and Village Greens be amended accordingly.

Ms Sally Madgwick
Rights of Way Officer
Wiltshire Council
Rights of Way and Countryside
Waste and Environment
County Hall
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Trowbridge
Wiltshire
BA14 8JN

Our Ref: NML\AST9\1\9697800
Your Ref: SM/TUG/2015/02

Email: Sally.Madgwick@wiltshire.gov.uk;

31 March 2016

Dear Madam

Re: Commons Act 2006 s.15 - Application to register land at Bondfield, Woodborough as a Town or Village Green

We write in response to Mr Lloyd's letter received with your letter dated 3 March 2016. We do not repeat the contents of our letter of December 2015 setting out the basis of our client's objection.

On behalf of our client, Aster Property we continue to object to the application and adopt the same subheadings as used in our letter of December 2015.

The first point to note about Mr Lloyd's letter is that it does not introduce any new evidence into the Application (for example by way of further statutory declarations or otherwise). Accordingly, Mr Lloyd's rather extravagant references to, for example, "the whole community" (p.3) and "most locals" (p.4) without any further evidential foundation must be discounted.

1. Section 15C

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As to section 15C the position as set out in our December 2015 letter is correct and nothing in Mr Lloyd's letter casts any doubt on the correct statutory interpretation of the need for a terminating event. Mr Lloyd does not identify any such terminating event.

2. The Application incorrectly identifies the Land.

Mr Lloyd's letter does nothing to explain away the force of the points made in our letter of December 2015 in this regard. The simple fact is that Mr Lloyd made a sequence of manifestly inaccurate statements in submitting the Application. Even now he is equivocal about the hardstanding area plainly used for car parking (his point 3 under this head), and attempts to say that the land was correctly identified within the Application (which is simply and plainly wrong). The Application is manifestly and substantially inaccurate in relation to the area it identifies and the Application and supporting questionnaires do appear to have been completed with little care as to their accuracy. Accordingly they are not persuasive documents as demonstrating the requisite level of continuous user.

3. The Land has not been used by a significant number of local inhabitants as of right in lawful sports and pastimes on the land for a period of more than 20 years

We set out the history of the land and its features in some detail in our letter of December 2015. Mr Lloyd does not appear to dispute the regular maintenance of the land or the regular presence of liveried vans and uniformed individuals. It is not speculation to say that anyone who (as Mr Lloyd suggests) was familiar with the land would not have realised it was being formally maintained by Aster Properties as their land. Mr Lloyd concedes that the land is substantially enclosed. To acknowledge the presence of concrete bollards and fencing along the eastern side, but to then say it only runs for 26% of the length, does not undermine the substantial enclosure to the land, which is an obvious mark (again to anyone familiar with it, and especially when taken with the other facts mentioned above) that a third party maintains control of this small enclosed parcel of land. Mr Lloyd has not suggested that the stock transfer publicity was in any statutory way defective. It follows that it would have been widely publicized requiring, as we pointed out, a vote of all those tenants remaining in social housing at the time.

Looking at the circumstances in total it remains clear that any use by members of the public was simply permissive.

We do not intend to respond individually to Mr Lloyd's more general observations later in his letter. However, it is notable that he does not seek to contest the point that even on a cursory analysis of the questionnaires the difficulties we highlighted in our December letter arise. These are not minor or peripheral matters, but go directly to whether there is any good evidence that a significant number of people directly attest to their own use of the land for the requisite purposes over the requisite period.

For those reasons, we invite the Council to refuse the application or provide full written reasons as to why it is continuing with the application.

We thank you for your attention to this matter.

Yours faithfully



AL **Devonshires Solicitors LLP**

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enci.

Rights of Way and Countryside
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Trowbridge
Wiltshire
BA14 8JN

Our Ref: NML\AST9\1\9455761
Your Ref: SM/TVG 2015/02

By way of e-mail and post

29 January 2016

Dear Sirs

Commons Act 2006 section 15

Application to Register Land at Bondfield, Woodborough as a Town or Village Green

We write further to the above matter and, particular to our letter of objection dated 29 December 2015.

It was agreed in an e-mail correspondence between your Sally Madgwick and our David Kaluwahandi dated 29 December 2015 that, as the letter of objection was registering our client's initial objections to the application, we had the opportunity to provide further objections to the application by 31 January 2016.

However, after completing further investigations we can confirm that our client has no further objections to add to those already detailed in the letter of objection dated 29 December 2015.

In respect of our letter of 29 December 2015, and in particular, point 2 of our client's objection letter labelled "Incorrect identification of the Land" which referenced a plan that was to be provided at a future date, we now attach the said plan.

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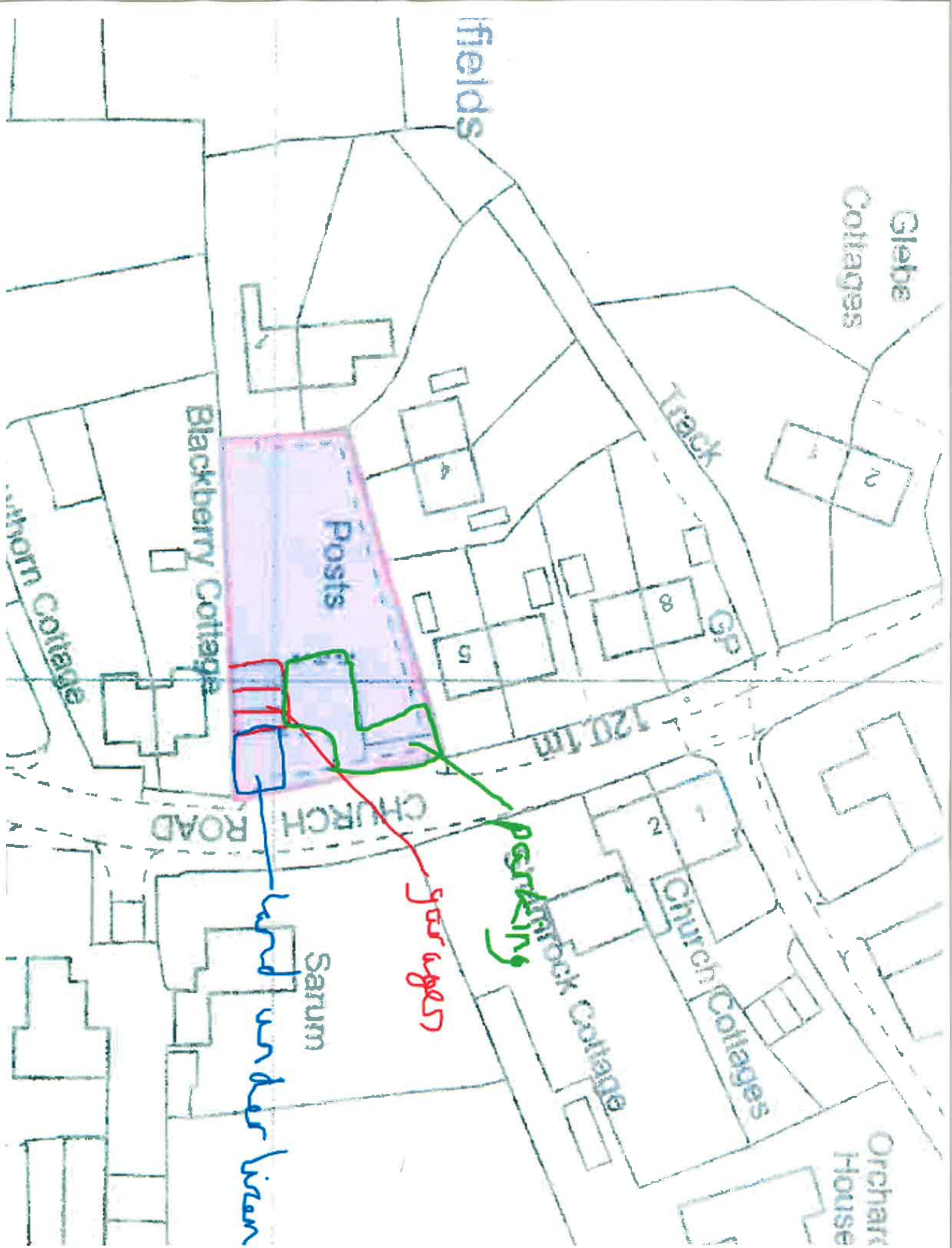
Yours faithfully,

A handwritten signature in black ink, appearing to read 'Neil Lawlor', written in a cursive style.

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Our Ref: NML\AST9\1\9346265
Your Ref: SM/TVG 2015/02

By way of e-mail and post

29 December 2015

Dear Sirs

Commons Act 2006 section 15

Application to Register Land at Bondfield, Woodborough as a Town or Village Green

Letter of objection

We write in response to your letter of 5 November 2015 notifying us of an application ("the Application") made under s.15 of the Act in relation to the above land ("the Land"). We thank you for supplying us with a copy of the application.

On behalf of our client, Aster Property Limited ("our client") we object to the application. This response is a holding response pending further instructions which we understand is acceptable in light of the telephone and e-mail correspondence between your Sally Madgwick and our David Kaluwahandi on 22 December 2015.

Our client objects to the application for the following reasons (this is not necessarily an exhaustive list):

1. The Council has no power to register the Land by virtue of s.15C.
2. The Application incorrectly identifies the Land.

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3. The Land has not been used by a significant number of local inhabitants as of right in lawful sports and pastimes on the land for a period of more than 20 years
4. Such use did not continue as at the time of the application.

1. Section 15C

Section 15C provides that any right under s.15(1) ceases to apply in the event of a relevant trigger event set down in schedule 1A of the Act. In such a case, the right becomes exercisable again *only* if a relevant terminating event occurs.

On 30 September 2015, our client applied for planning permission for development of the Land. The planning application (application reference: 15/10193/FUL) was registered on 16 October 2015 and duly publicized. By a decision dated 2 December 2015 the said planning application was refused. However, the relevant terminating event is that all means of challenging the refusal in legal proceedings in the UK are exhausted. It cannot matter for these purposes that the Application was made (if it is so) before the planning application was registered. That is because the clear Parliamentary intention behind s.15C is to cause any existing right to continue with an application to cease until the local planning authority (or the Secretary of State on appeal) has decided whether planning permission should be granted for development of the site. Otherwise, the substantive merit of the planning proposal (on the assumption permission is granted) would be lost simply because an applicant for a village green had managed to get their application in one day earlier. Obvious problems which could not have been intended might also arise where, for example, the proper registration of a regular planning application was delayed for some reason.

The terminating event has not arisen because our client retains a right to appeal and it necessarily follows that it cannot be said that all means of challenging the refusal are exhausted. The application is accordingly misconceived and must be refused for this reason alone.

2. Incorrect identification of the Land

It is important to note that Mr Karl Lloyd who made the application signed a statutory declaration in support of the application (his is the only statutory declaration) and within it he declared the truthfulness of the contents of the application and that there was no other fact which he was aware of and which should be brought to the Council's attention as one likely to affect its decision on the application.

However, the plan provided to the Council is manifestly inaccurate in substantial ways, having regard to the terms of the application. In particular, but without being exhaustive:

1. It is marked as a simple quadrilateral on the application plan, but also on each of the plans used in the questionnaires supplied in support of the application;
2. The quadrilateral includes garages which have been leased to tenants in adjoining properties;
3. The quadrilateral includes a significant area of car parking used set aside for use by our client's tenants;
4. The quadrilateral includes an area of land which until recently had been available under licence granted by our client to an occupier of its housing. As can be seen on street view photographs of the area, that land was enclosed by fencing for the use of Blackberry Cottage which adjoins the Land.

Those defects are marked on the plan that will follow. For that further reason the application should be rejected at this stage.

It also follows from the above that the application and presumably the supporting questionnaires were completed with little care as their accuracy. Those materials cannot be relied upon in such circumstances, especially when there is only one statutory declaration and the rest of the information is provided by standard questionnaires.

3 & 4. No sufficient user as of right for 20 years and/or as at the date of application

In any event the gravamen of the picture appearing from the questionnaires is not the uninterrupted use of the Land (or any part of it) as a Town or Village Green for the requisite period of 20 years. Nor does the evidence support such a use continuing as at the date of the Application.

In considering this issue generally it is important to bear in mind the history of the site and its limited size. In relation to that latter point of size an easy comparison can be made between the size of the Land and, for example, the garden space of Numbers 3 and 4 Bondfields. The point can be made by simply looking at an ordinance survey map of the area. However, taking more accurate measurements, the total size of the Application site including the areas which should have been (on any view) excluded is c. 850m². Excluding those areas the Land shrinks to c. 600m² (a reduction of more than 25% which simply serves to highlight the extent of the inaccuracy in the application). Compared to that c. 600m², the gardens of Numbers 3 and 4 total more than 800m² (albeit that measurement includes the footprint of the dwellings). Thus, a Village Green application is being made in relation to a space which is only c. 50% bigger than immediately adjacent residential gardens.

The Land is, as we understand it, part of a larger quadrilateral of land developed by Wiltshire Council or its predecessor in title (collectively "the Council") in about the 1950's. At that time eight semi-detached houses were constructed on the western and northern boundaries of the Land (the southern boundary being marked by Blackberry Cottage and two other adjoining properties).

The Land was for the use of the tenants then occupying that social housing provided by Council. The land was, as our client understands it, maintained by Council or its predecessor in title for those purposes and the tenants would have made a contribution to the maintenance of the Land which was then undertaken by the Council and is now undertaken by our client (as has been the position since the stock transfer in 1995).

Therefore at all material times the Land was maintained for those purposes by the Council and latterly by our client. For the period when that maintenance was being undertaken by our client they used liveried vans and uniformed individuals to undertake the work. The

annual maintenance cost is estimated to be in the region of £1,000 and involved repeated and regular visits for the purposes of cutting the grass, leaf collection and litter collection. The maintenance included any necessary works to the perimeter path which runs along the northern and part of the western boundary of the Land. It therefore cannot have escaped the attention of anybody familiar with the Land that it was being maintained, not as public open space, but by our client for use in accordance with the properties in the immediate vicinity (which still include two units of accommodation held on short tenancies, the rest having been purchased over time by use of the right to buy).

The Land is, in fact, substantially enclosed. On the southern side it is enclosed by its boundary with Blackberry Cottage. On its western side it is enclosed by Numbers 1 and 2 Bondfields. On the northern side it is enclosed by Numbers 3-6 Bondfields and on the eastern side it is enclosed by chain link fencing supported by concrete posts, and further bollards running adjacent to the garages. Viewing the Land from Church Road (the only potential access point by the public) the obvious impression is of land enclosed for the benefit of Bondfields, which is precisely the purpose to which the Land was put. As the Council will be aware, the use of enclosure in this way is a primary demonstration of the exercise of control of land, manifestly inconsistent with others claiming to use the same land as of right.

It is also worth noting that the stock transfer itself would have received wide publicity requiring as it did a vote of those tenants remaining in social housing at the time. It is unlikely in those circumstances that individuals living in the near vicinity of Bondfields would have remained ignorant of the purposes for which the land was being used for that reason alone.

Accordingly, for all those reasons, the occupiers of the housing units (rather than the general population of the village) had permission to use the land for any normal purpose, and any such use was not "of right".

Moreover, in light of the facts referred to above, to the extent that anyone else was using the site for requisite purposes they were doing so with the implied licence of our client and the use was also permissive.

For those reasons the application must fail.

However, there are a number of further main points which arise on the questionnaires themselves.

1. The questionnaires do not provide sufficient evidence that the required "*significant number of local inhabitants*" have used the Land for the requisite purposes. In particular, it does not demonstrate that a significant number of local inhabitants other than the specific group of individuals expressly permitted to use the land (see above) have done so for the requisite period of time.
2. Using the land for access (for example via the perimeter path) is not within the requisite purposes provided by the Act, nor is using the Land for fetes which may occur once, twice or three times a year. It is clear from a number of the questionnaires that that is the purpose for which those individuals have used the land. For the avoidance of doubt our client does not accept that a fete amounts to the use of the Land for either sport or pastimes.
3. Even a cursory analysis of the questionnaires indicates internal inconsistency within a number of the questionnaires and the fact that a number of those responding have not actually answered the questions asked especially when those questions relate to the use that the *actual responder* has made of the site. Where the responders do reply to those questions more often than not the answer is simply directed towards the infrequent community use of the land for fetes etc, which cannot possibly be sufficient to support the application.
4. It follows from the above that this is precisely the kind of application made not because it has genuine merit, but as a reaction to the planning application made recently in relation to this land. Sadly, the obvious purpose of making the application is simply to attempt to frustrate development proposals for the land.

For the reasons set out above we invite the Council to decide:

1. That it currently has no power to entertain the application due to the operation of s.15C of the Act; and/or
2. That the application is manifestly bad for failing to identify the Land appropriately and should be rejected for that reason; and/or
3. That the application is manifestly not supported by sufficient evidence and should be rejected for that reason.

If the Council decides to continue to entertain the application and, in light of this objection, makes provision for a non-statutory inquiry to take place, we would be grateful for full written reasons for any such decision so that they may be considered with our client.

For the avoidance of doubt, our client contends that in light of this application the Council cannot grant the application as made or at all.

We expect to make any further representations by 31 January 2016. We thank you for your attention to this matter and, should it be required then please do not hesitate to contact us on the details below.

Yours faithfully,



Devonshires Solicitors LLP

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Dear Mrs Madgwick

Many thanks for the materials supplied in relation to village green registration application 2015/02 and, in particular, the copy of objections voiced by Devonshires Solicitors on behalf of Aster Property (hereafter referred to as Aster).

We have now had an opportunity to fully consider Aster's objections to our application. It is clear that the objections are either invalid or frivolous.

Herein we will deal with each objection in order. Our numbering conventions will follow those found in Aster's objection letter.

1. Section 15c

It must be stated at the outset that we totally reject the suggestion that our application is being made solely for the purposes of frustrating development. Our application is made with one intention alone - to secure the future of the only 'public' green space in Woodborough, long used by locals as such, for the people of Woodborough and future generations. While the occurrence of Aster's recent planning application alerted the Woodborough community to the insecurity of our green's status the application itself was dealt with through the proper channels via legitimate objection within the planning process. The application was refused.

With specific regard to Aster's stated objection, Aster would seem to be attempting to interpret the guidance with regard to trigger events in their favour. The Parliamentary intention of s15c is not, as Aster claim, "*to cause any existing right to continue with an application to cease until the local planning authority (or the Secretary of State on appeal) has decided whether planning permission should be granted*". The clear Parliamentary intention of s15c is to prevent the frustration of development by the opportunistic submission of a registration application *after* the planning application process has commenced. With regard to the particular 'trigger event' invoked by the submission of a planning application, the guidance is quite unambiguous: The trigger event is the *publication* of a planning application. Our application satisfies this condition, being submitted, as it was, a full 11 days prior to the publication of Aster's planning application.

It is important that we make it clear that we are wholly in support of the intention of s15c; to deny opportunistic and frivolous registration applications. When well considered, development is to everyone's benefit and it should not be thwarted by objection for objection's sake. However, under Aster's inaccurate interpretation of s15c any landowner would be able to thwart a legitimate and established village green registration application merely by submitting an opportunistic planning application at any point in the process.

The objection under the heading 1. Section 15c must be dismissed on the grounds that Aster are attempting to bring their own, self-serving interpretation to the amendments contained in section 15c of the act, despite the fact that the scope of a trigger event's power to deny the progress of a registration application is clearly defined in the guidance. In particular, given that the registration application precedes the planning application by 11 days, no trigger event was in place at the time of the application therefore it must, as per the guidance, proceed. As such, Aster's objection with regard to s15c is without merit and, therefore, invalid.

Any discussion of a 'terminating event' is irrelevant in light of the above.

2. Incorrect identification of the Land

1/2. The quadrilateral drawn on the map encompasses the land in an accurate and logical fashion with regard to the parcel of land commonly referred to as 'The Green' at Bondfields. The garages have been built upon this land and, so, fall within the boundary of the Land. However, no claim is made over the garages themselves and there is provision within the guidance to exclude any part of the land included in the application, at the Authority's discretion, if that part cannot be considered for registration (as established in Oxfordshire County Council v. Oxford City Council). Thus it is assumed and accepted that the garages will remain within Aster's control under the final arrangement, as determined by the Authority, should registration be granted. An important consideration when marking the land was that the Authority has the power to determine a smaller area of land than marked for registration, but not a larger area of land.

Additionally, given the straightforward layout of the land under discussion it cannot be argued that the marking of the map will cause any substantive confusion in determining the final area eligible for registration.

3. Once again, the car parking, which is similarly built upon the parcel of land, will be subject to the Authority's determination as to whether it is included in any final registration. We make no claim over this space other than to identify its position in relation to the land in question.

4. It is of no consequence that the land marked in blue on the map supplied by Aster was, for a relatively short period of time, under licence to the previous occupiers of Blackberry Cottage (the licence terminated upon their departure). The granting of a licence did not alter the fundamental status of the land as part of 'the green' but merely granted the owners of Blackberry Cottage use of the land for the period within which the licence was in effect, allowing planting and such. It is understood that the arrangement was not exclusive. It is worth noting that the current owners of Blackberry Cottage do not tend the land and the fencing, erected by the previous owners of Blackberry Cottage themselves and not by Aster, is simply a legacy of the previous arrangement and is not, in any way, a demonstration of control of the land by Aster or any other party.

Further, the previous occupants never laid claim to that piece of land in any way other than as a temporary adjunct to their garden under the terms of a licence and always acknowledged that it remained part of 'the green', their only purpose in erecting a fence being to give a feeling of continuity to the landscaped areas at the front of Blackberry Cottage. Testimony to this effect is available from the former owners of Blackberry Cottage upon request if required.

Given that the licence is no longer in force it is beyond doubt that this small piece of land is part of the whole and it would seem that Aster are attempting to bring matters that have no bearing on the application into play. Thus, the inclusion of this land within the marked area for submission purposes is correct. Nevertheless, once again we acknowledge the Authority's right to final determination as to the extent of the land to be registered.

The Land as a whole is, therefore, correctly identified for the purposes of the application, given that the Authority will make a final decision on the scope of the land eligible for registration. This objection must, therefore, be considered frivolous and an attempt to thwart the rightful progress of the process on a technicality which has neither merit nor consequence rather than on a matter of substance.

Finally, it must be noted while discussing matters of accuracy that both the parking space and the land previously under licence are incorrectly marked on the map supplied by Aster. More than half of the area marked as "*parking*" is actually hard standing that provides access to the garages rather than parking space. There is, in fact, a large sign in front of the hard standing adjacent to the garages that says "NO PARKING - GARAGES ACCESS ONLY". Also, the land previously under licence is indicated as extending up to Church Road when, in fact, there is parking space between the land and the road. Importantly, the map notes this land as "*land under licence*". This land is not currently under licence.

In this instance, should Aster's objection gain any particular momentum, we would ask that it be rejected for the very reason Aster erroneously cite in the objection itself - that the map supplied as supporting evidence is manifestly inaccurate in substantial ways. We would, though, have no particular wish to preemptively pursue this matter given that we have clearly demonstrated that our marking of the map is both logical and accurate and made in good faith and acknowledged as subject to the discretion of the Authority in the final determination of the extent of the land eligible for registration. Thus Aster's objection is invalid and any further engagement on this particular issue is unnecessary.

Finally, it cannot be presumed, as Aster suggest, that any of the above casts doubt over the care taken over the application in general or in the completing of the questionnaires. This is merely unsustainable speculation in an attempt to influence the process. In fact it is Aster's own letter of objection (and supporting map) that must be considered as undermined by matters of care and attention given it contains numerous inaccuracies along with supposition and presumption in place of fact.

3 & 4. No sufficient user as of right for 20 years and/or as at the date of application

The land in question has, most certainly, been in uninterrupted use for the requisite 20 years and, indeed, far beyond this with testimony recalling its use as far back as the 1950s. The land continues to be used at the present time and as of the time of the application. It is impossible, as Aster suggest, to infer from the supplied testimonies that either of these statements are untrue. Both statements are, indeed, true representation of the state of usage, both past and present, of the land in question.

Further, and beyond the evidence supplied, an understanding of the land, its position and surroundings can only lead to the conclusion that its continued use for community recreational purposes is the most likely scenario. Briefly, this modest parcel of land is the only 'publicly accessible' 'green space' within the village of Woodborough and sits fully within the village boundaries, surrounded by housing and is easily accessible from Church Road. Thus it is within very easy reach of a large number of residents and, in particular, many households containing children, of which about 25 of varying ages are but a very short walk from the 'green'. Further, the land itself is level and well maintained, lending itself to recreation and games and, as discussed elsewhere, does not give the impression of land 'out of bounds'. The final element is Church Road itself. Church Road is narrow and, although not a 'through road', suffers from an unusual amount of heavy traffic, serving as it does as the only access to the local farm. Please see the following video for evidence of the level of heavy vehicle traffic at peak times along Church Road...

<https://www.youtube.com/watch?v=-zyr-tSIOz4>

This level of traffic makes the green a natural 'refuge' for local children. (Please note that most of the footage was shot from directly in front of the green.)

Given the above facts it would seem near impossible to argue the case for usage of the land having ceased and the land not being used at the time of the application. Nor does the supplied evidence support this assertion. Even if one were to disregard the supplied evidence, on the balance of probability, given the factors outlined above, it is most likely that the land remains in constant use.

Nevertheless, if further testimony is required to corroborate both uninterrupted and continued use of the land we would welcome the opportunity to supply such at your request and in accordance with the guidance as it allows that the Authority may exercise discretion in accepting amendments to an application with consideration of what would be fair to all parties affected by the application.

Next Aster go to some length to suggest that the modest dimension of the parcel of land has some bearing on the application. This objection is irrelevant given that there is no officially prescribed minimum dimension for a village green. Indeed, there are a number of registered village greens of similar proportion and smaller, such as Hincaster Village Green, The Square at Broughton West, Kettlethulme Village Green, The Green at Thornton Le Moors, The Stocks Bank in Tiverton, The Green in Rowton and Christleton Village Green to name just a few of the many examples.

Further, in an attempt to make their point Aster have contrasted the size of the land in question with the adjoining gardens of numbers 3 and 4 Bondfields, quoting a figure of 600m² for the parcel of land and 800m² for the two gardens combined. However, Aster themselves concede that the figure of 800m² includes the footprint of the dwellings at numbers 3 and 4. When the footprint of the dwellings is ignored the size of the gardens adjacent to the green is, in fact, 114.5m² combined. This rather undermines the already spurious claim that the size of the land at Bondfield has some bearing on the validity of the application.

Aster go on to comment on the maintenance of the land and, in relation to this maintenance, state "*It therefore cannot have escaped the attention of anybody familiar with the Land that it was being maintained, not as public open space, but by our client for use in accordance with the properties in the immediate vicinity*" This is pure speculation on Aster's part and, given that the Land has long been considered to be 'the village green', it will more likely have not have occurred to anyone that the Land was anything other than a publicly accessible space, regardless of who maintains it. It is worth noting that it has come as a surprise to the whole community that the Land commonly referred to as "The Green" is not actually registered as a village green.

While the Land is, indeed, substantially enclosed, for the purposes of the application only the eastern side running along Church Road is of interest, given that this is the only point of general access. Aster state that

this side of the Land is “*enclosed by chain link fencing supported by concrete posts*”. This is not true. While there *is* a chain link fence along the eastern edge of the land it runs for a mere 26% of the length of the eastern flank. As such it cannot be considered “*a demonstration of the control of the land*” nor can the land be described as “*enclosed by chain link fencing*”. In fact, the small amount of fencing running along this edge is rather at odds with the generally open nature of the Land and is, if anything, merely curious. And, while there are bollards running adjacent to the garages, the obvious intention of these is not to restrict public access but, rather, to prevent the encroachment of motor vehicles onto the grass. Therefore, it cannot be said that upon “*viewing the Land from Church Road the obvious impression is of land enclosed for the benefit of Bondfields*”, given that, viewed from Church Road, the land at Bondfields appears easily accessible and, for the most part, ‘open’. In fact quite the contrary is true - most locals assumed that the dwellings at Bondfields were built around the village green. Nothing about the arrangements on the eastern side of the Land has led anyone to think otherwise.

With regard to the stock transfer mentioned in the next paragraph, this is unlikely to have been “*widely publicised*” as Aster presume. Rarely are these matters widely publicised. Rather, they receive only as much publicity as is required by the process which, as the Authority will be aware, is usually far from ‘widely publicised’. Therefore, the details surrounding the stock transfer would have been unknown to the majority of Woodborough residents.

While we concede that the occupiers of the dwellings on Bondfields *may* have had permission to use the land (though it is unclear if this is presumed or explicit), Aster themselves state that this does not apply to the wider population of the village. Therefore, usage by the wider population must be considered ‘as of right’.

In light of the above comments it cannot be considered that “*anyone else was using the site for requisite purposes they were doing so with the implied licence of our client and the use was also permissive.*” This is a wholly unsustainable claim and must be disregarded as such.

Further main points...

1. Aster’s claim that “*The questionnaires do not provide sufficient evidence that the required “significant number of local inhabitants” have used the Land for the requisite purposes.*” is without merit. First it must be noted that there is no strict definition of the word ‘significant’ in the guidance. Nevertheless we can look to Alfred McAlpine Homes Ltd v Staffordshire County Council where, in acknowledging the disparity in sizes between communities, Sullivan J held: “*I do not accept the proposition that ‘significant’ in the context of section 22(1) as amended means a considerable or a substantial number.*”. Sullivan continued: “*... ‘significant’, although imprecise, is an ordinary word in the English language and little help is to be gained from trying to define it in other language.*” and “*... the inspector correctly concluded that, whether the evidence showed that a significant number of the inhabitants of any locality or of any neighbourhood within a locality had used the meadow for informal recreation was very much a matter of impression. It is necessary to ask the question: significant for what purpose? In my judgment the correct answer is provided by Mr Mynors on behalf of the council, when he submits that what matters is that the number of people using the land in question has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers.*” Without a doubt, the evidence of usage submitted paints a clear picture of community usage for informal recreation rather than occasional use by individuals as trespassers. It is hard to imagine, short of asking people to name dates and provide numbers of users, how a clearer picture of uninterrupted use of the Land stretching from the 1950s to the present day could be painted. We would, therefore, argue that the use of the ‘green’ by successive generations for informal recreation stretching back as far a living memory goes can reasonably be described as ‘significant’ based on the terms described above.

Also, Aster’s claim that the evidence “*... does not demonstrate that a significant number of local inhabitants **other than the specific group of individuals expressly permitted to use the land** have done so for the requisite time.*” is unsustainable in the face of the evidence provided.

It must be noted here that although it is not necessary for an individual testimony to show a full 20 years plus of usage, all that being necessary is for the evidence taken as a whole to show that use has taken place for at least 20 years, we have, in the first instance, deliberately limited our evidence only to respondents who have lived in the village for 20 years or more, as we felt this would lend clarity and weight to the evidence presented.

Nor did we reach out to former residents of the village, again in the interests of clarity. Obviously it is not uncommon for testimony from both these groups to be included when making an application therefore, should the Authority require any further evidence of usage, we would welcome the opportunity to provide such materials which can be easily sourced.

The “*for the requisite purposes.*” part of the above quoted objection is dealt with in the following paragraphs.

2. We would not wish to argue that using the land for access is one of the prescribed uses listed in the guidance.

With regards to fetes, Aster have chosen to concentrate on this activity and deliberate ignore the other activities, including lawful sports and pastimes, that are described in the questionnaires. This is a transparent attempt to down play the significance of activities deemed of relevance to s15c which are clearly documented.

The frequent mention of the village fete is nothing more than an inevitable consequence of the prominence of such an event compared to other more casual uses of the land but does not, in any way, lead to the conclusion that other activities relevant to s15c have not taken place.

3. The questionnaires were completed by ordinary members of the community inexperienced in such matters and, in the interests of truthfulness and with respect to the ‘process’, without any coaching or guidance and in good faith. As such and given they they are being asked to call upon memories stretching back over many years it is unrealistic to expect a perfect record to emerge or that they be free from the occasional inconsistency or contradiction. Nor is this a stated requirement. Indeed, where questions were not answered this is further proof of our desire to only present a truthful account of the Land’s usage, preferring that people only answer questions where they feel they could offer honest testimony.

Further, it must be noted that there is no prescribed minimum frequency in relation to use of a piece of land so, once again, Aster are seeking to bring their own interpretations to bear.

4. Once again we must reject, in the strongest possible terms, the suggestion that our application is simply an attempt to frustrate development. We reiterate, our application is made with one intention alone - to secure the future of the only ‘public’ green space in Woodborough, long used by locals as such, for the people of Woodborough and future generations. An insecure future for the green at Bondfiels would leave the only ‘publicly accessible’ green space within the village at risk from any number of threats. The importance of this piece of land to the residents of Woodborough far exceeds its modest dimensions and cannot be overstated.

I feel it worth while that I, as the applicant, add a note here with regard to my personal stance on development in an attempt to add perspective to the application. It is important to understand the above outlined rejections of Aster’s claims in the context of my attitude to new development (aside from matters of substance outlined here and expressed on behalf of, and with the approval of the whole community of Woodborough). I do not, as a simple matter of course, object to new development. Indeed, when Orchard House was built adjacent to my own property, Shamrock Cottage, I submitted a letter of support to the Wiltshire planning department (which will be found ‘on record’ in the archive relating to that development). I supported this development through both the planning and build stages and, despite the fact that it overlooks the bottom of my garden and is clearly visible from the back of my house, dominating as it does our north easterly view, I consider it a valuable addition to the village and supported it as such. New development, when considered mindfully within the context of the existing community, makes a valuable contribution to helping small villages remain vibrant and relevant and is to be welcomed. It is, then, with careful consideration of the dreadful price Woodborough might one day pay should the future security of our green remain uncertain that I have decided to submit this application on behalf of the Woodborough community.

The application is made with the full support of the both the community of Woodborough and the local Parish Council. Representation from the Parish Council is available upon request.

In Summation...

As clearly demonstrated, Aster's objections are either without merit or merely frivolous. On a number of occasions they are supported by factual errors and inaccuracies along with supposition and presumption in place of fact. As such, all objections should be rejected by the Authority.

We urge the Authority to grant the registration of this important village space. Its use as a community resource and gathering place is recalled as far back as the 1950s, and well beyond, and continues to this day. An unsecured future for 'The Green' at Bondfields would leave the Land at the mercy of the increasing pressures that come to bear upon our green infrastructure and could deny Woodborough land that has been enjoyed by generations past and present and should, rightfully, be enjoyed by future generations as an intrinsic part of the experience of living in Woodborough. Should Woodborough one day lose its 'green' the character of the village would forever be diminished.

We thank you for your attention in this matter and, should you require any additional information, please do not hesitate to get in touch.

Yours faithfully
Karl Lloyd

Witness evidence summary

| No | Name | Address | How long have you known the land? | Number of years |
|----|-----------------------|--|-----------------------------------|-----------------|
| 1 | Stephen Campbell | The Old Chapel, Church Road, Woodborough, SN9 5PH | 1984 - 2015 | 31 |
| 2 | Roy Scott | 4 Bondfields, Woodborough, SN9 5PQ | 1977 – 2015 | 38 |
| 3 | William Beaven | St Marys, Church Road, Woodborough, SN9 5PH | 1950 – 2015 | 65 |
| 4 | Lady Hobhouse | Glebe House, Church Road, Woodborough, SN9 5PH | 1993 – 2015 | 22 |
| 5 | D Clarke Hutton | Trine Cottage, Church Road, SN9 5PH | 1993 – 2015 | 22 |
| 6 | Liz Waight | Church Farm, Woodborough, SN9 5PL | 1981 – 2015 | 34 |
| 7 | Mr and Mrs M Beale | 2 Glebe Cottages, Church Road, Woodborough, SN9 5PH | 1998 – 2015 | 17 |
| 8 | Mr and Mrs A Crawford | Carpenter's Cottage, Church Road, Woodborough, SN9 5PH | 1996 – 2015 | 19 |
| 9 | John Syme-Taylor | Cloud House, Church Road, Woodborough, SN9 5PH | 1997 – 2015 | 18 |
| 10 | Barbara MacMullen | Hawthorn Cottage, Church Road, Woodborough, SN9 5PH | 1978 – 2015 | 37 |
| 11 | Mr and Mrs S Flight | 5 Bondfields, Woodborough, SN9 5PQ | 1990 – 2015 | 25 |
| 12 | Claire Phillips | Bird House, Church Road, Woodborough, SN9 5PH | 2000 – 2015 | 15 |
| 13 | John Wallis | Stack House, Woodborough, Pewsey, SN9 5PH | 1975 – 2015 | 40 |
| 14 | Mr and Mrs B Argent | Donkey Meadow, Woodborough, Pewsey, SN9 5PL | 1973 – 2015 | 42 |
| 15 | Stephen Campbell | The Old Chapel, Church Road, Woodborough, SN9 5PH | 1984 – 2015 | 31 |
| 16 | Janet Hull Campbell | The Old Chapel, Church Road, Woodborough, SN9 5PH | 1990 – 2015 | 25 |
| 17 | Els Brewin | 1 West End Cottages, Woodborough, SN9 5PW | 1989 – 2015 | 26 |
| 18 | John Brewin | 1 West End Cottages, Woodborough, SN9 5PW | 1991 – 2015 | 24 |
| 19 | Dianne Wallis | Stack House, Woodborough, Pewsey, SN9 5PH | 1975 – 2015 | 40 |

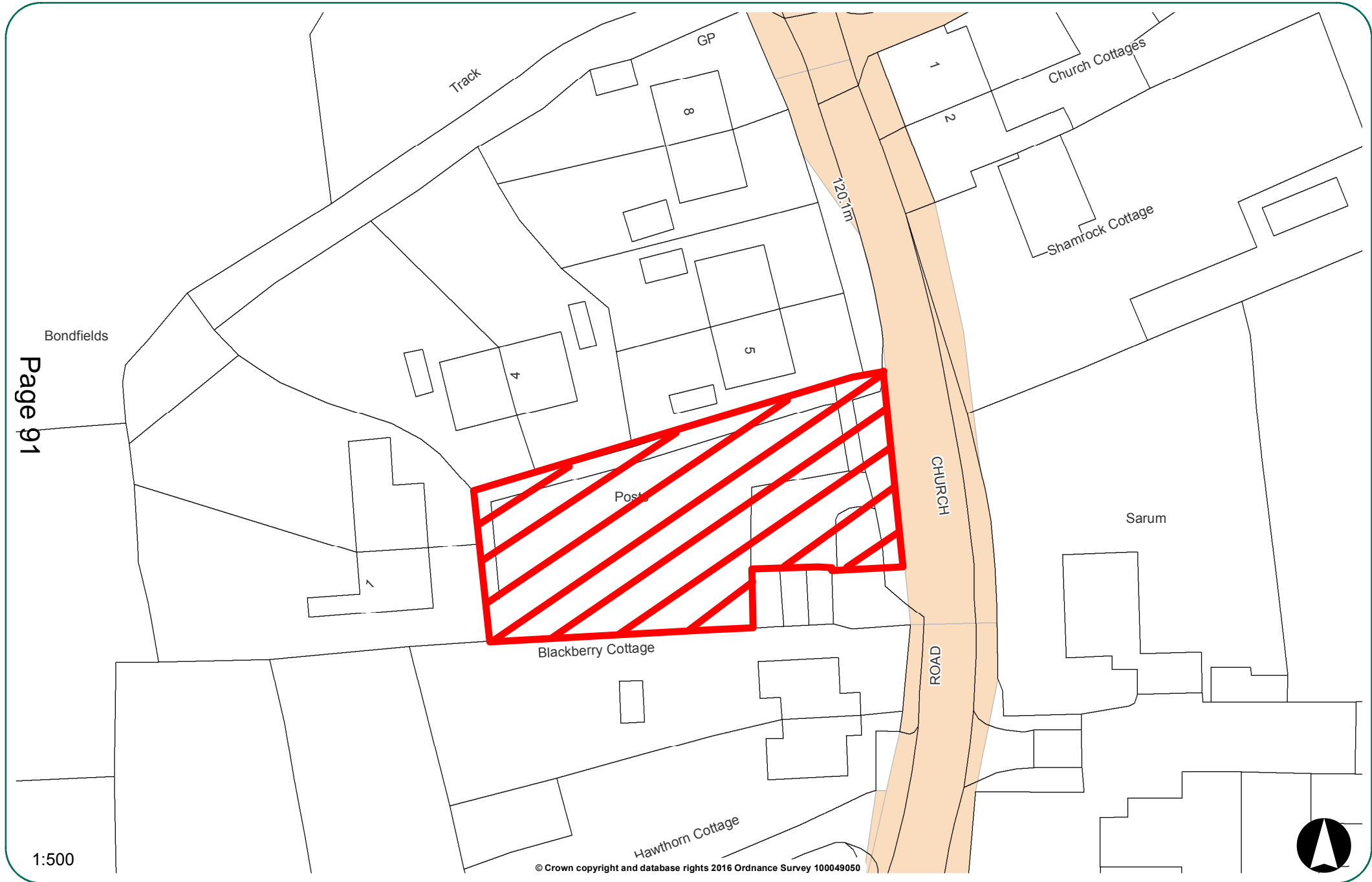
| No | Permission? | Challenge? | Attempt to prevent use? | Frequency of use | How do you use the land? | Community activities | Additional comments |
|----|-------------|------------|-------------------------|---|--|--|--|
| 1 | No | No | No | Weekly to every 3 to 4 months | Play, children, raising money to help under privileged folk and bring village together | Gateways. Money/village/fund raising for the community | "This is the heart of our community together with the parish rooms and to lose it would be a complete disaster for the village and all the families" |
| 2 | No | No | No | Regular | Play with grand children, fete, functions | Sports, fete, skittles, parties | <i>Bondfields resident</i> |
| 3 | No | No | No | Frequently to carry out parish council duties | To attend events and reach the rear most dwellings | Gateway Club fete | "I have seen parishioners using the land also caring for it, mowing etc" |
| 4 | No | No | No | For specific functions | Attend social and fund raising activities | Barbecues, fetes, fund raising | Has seen children playing and very young ones learning to ride bikes |
| 5 | No | No | No | From time to time | To visit | fete | |
| 6 | No | No | No | Regularly when children were young | Village gatherings, safe place for children to play | Annual weekend summer fete | Has seen children playing football |
| 7 | No | No | No | Whenever a function is organised | Uses it when social activities are organised Children play daily on the land | Neighbourhood BBQ, fundraising days and fetes | "Local children play football, other games and learn to ride bikes" |

| No | Permission? | Challenge? | Attempt to prevent use? | Frequency of use | How do you use the land? | Community activities | Additional comments |
|----|------------------|------------|-------------------------|----------------------------|---|--|--|
| 8 | No | No | No | Regularly | For play and for fetes | Fetes, games for children | |
| 9 | No – open access | No | No | 2 or 3 times per year | Parish community events | Fetes, childrens games, autumn Halloween party | “Mental health charity (Gateway) uses it for summer fund raising events” |
| 10 | n/a | No | No | At least weekly for access | Community activities. Socail | Fete, carol singing | |
| 11 | No | No | No | Daily | Watching children play, parties and fetes | Fundraising summer fete | Bondfields resident |
| 12 | No | No | No | Frequently | Play with grandchild, village fetes | Village fetes, charity events (Gateway) | |
| 13 | No | No | No | Periodically | Village functions | Village activities | |
| 14 | No | No | No | Several times a year | Our children played on it, attend fetes/fundraising activities. Socialising | Fundraising for Gateway. Jubilee celebration | Use for children playing has increased with time |
| 15 | No | No | No | 2 or 3 times per year | Community events and fund raising fetes | Fetes. Gateway. | Land used by all his children when young |
| 16 | Yes | No | No | At least annually | For community events | July fete and other fund raisers | Used by her children |
| 17 | No | No | No | A few times per year | Any village activities | Picnics, BBQs, fetes | Can remember things happening “as long as I can remember” |
| 18 | n/a | No | No | A couple of times | Village activities | Village fete, BBQ | Pattern of use unaltered since 1991 |

| No | Permission? | Challenge? | Attempt to prevent use? | Frequency of use | How do you use the land? | Community activities | Additional comments |
|----|-------------|------------|-------------------------|------------------|--|----------------------|-----------------------------------|
| 19 | No | No | No | Periodically | Recreation, fetes and village activities | Village activities | Used regularly by local residents |

Number of witnesses who have observed the following taking place on the land:

| Children playing | Rounders | Drawing and painting | Dog walking | Team games | Picking blackberries | Community events | Fetes | Other | Football or cricket | Bird watching | Picnics | Kites | Walking | Bonfire | Bicycles | carols |
|------------------|----------|----------------------|-------------|------------|----------------------|------------------|-------|----------------------|---------------------|---------------|---------|-------|---------|---------|----------|--------|
| 19 | 8 | 4 | 8 | 13 | | 19 | 19 | BBQ skittles parties | 16 | 1 | 11 | 3 | 7 | 4 | 13 | 13 |



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JULY 1995
TRANSFER

These are the notes referred to on the following official copy

APPENDIX 2

Title Number WT145624

The electronic official copy of the document follows this message.

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Please note that this is the only official copy we will issue. We will not issue a paper official copy.

WT 145624

FILE J
24 JUL 1995
No. 23613

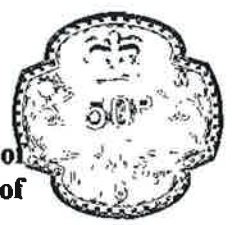
INLAND REVENUE
73/2
10 AUG 1995
H.M. LAND REGISTRY
W
LAND REGISTRATION ACT 1931
3

Land Registration Acts 1925 to 1988

**TRANSFER (UNDER RULE 72) OF [WHOLE] [PART]
PURSUANT TO SECTION 133 HOUSING ACT 1988 AND
SECTION 171A HOUSING ACT 1985
AS APPLIED BY THE HOUSING (PRESERVATION OF RIGHT TO BUY)
REGULATIONS 1993**



COUNTY AND DISTRICT : WILTSHIRE : KENNET
TITLE NUMBER(S) :
PROPERTY : All that Property brief particulars of which are set out in Parts I and II of Schedule A
DATE : 19 JUL 1995



1. IN pursuance of the Housing Act 1985 and all other powers enabling and IN CONSIDERATION of the sum of £ **61086290** being the consideration now paid by the Purchaser to the Council for this transfer and certain other transfers of even date herewith made between the same parties as the parties hereto (the receipt of which sum the Council hereby acknowledges)
KENNET DISTRICT COUNCIL of Browfort Bath Road Devizes Wilts SN10 2AT ("the Council") HEREBY TRANSFERS WITH FULL TITLE GUARANTEE TO SARSEN HOUSING ASSOCIATION LIMITED whose registered office is situate at Old Browfort Bath Road Devizes aforesaid ("the Purchaser") ALL THAT freehold property more particularly described in Parts

472/95

I and II of Schedule A hereto as the same is more particularly delineated and shown edged red on the plan ("the Plan") annexed hereto including the garages if any (including all ancillary apparatus) comprised therein (hereinafter called "the Property") including all sewers and drains and all service media and all roads footways and accessways therein or thereon but excluding (if applicable) -

- (i) the surface of the lands with adopted roads and paths (being highways maintainable at public expense) situated thereon
- (ii) the areas shown coloured green on the Plan being land and properties previously sold by the Council
- (iii) all adopted pipes wires and cables public sewers water mains gas mains and electricity mains and
- (iv) the areas shown coloured brown on the Plan being the land retained by the Council

TOGETHER WITH the rights and easements set out in Schedule B hereto EXCEPT AND RESERVED unto the Council and its successors in title its servants agents licensees contractors or occupiers for the benefit of the land at the date hereof in the ownership of the Council adjoining or neighbouring the Property and shown coloured brown on the Plan (hereinafter called "the Retained Land") the rights set out in Schedule C hereto SUBJECT TO the covenants restrictions stipulations easements agreements declarations and other provisions insofar as the same affect the Property and are capable of being enforced contained or referred to in the title deeds and documents relating to the Property brief particulars of which are set out in either the entries in the

Register of the Titles at H M Land Registry of the title numbers
aforementioned (if applicable) or in the Certificate or Certificates of Title on
disposal of the Property in Form PSD 17 (insofar as they relate to adverse
rights and incumbrances including restrictive covenants) of even date herewith
given by the Council to the Purchaser pursuant to the provisions of Section
133(8) Housing Act 1988 ("the Certificate")

SUBJECT ALSO TO and with the benefit of any right or easement relating to
access or otherwise granted by or reserved by Transfers of adjoining or
adjacent land pursuant to Part V of the Housing Act 1957 Chapter I of Part I
of the Housing Act 1980 or Part V of the Housing Act 1985

AND SUBJECT (as to the premises comprised in Column 1 of Part II of
Schedule A) to and with the benefit of the Leases thereof short particulars
whereof are set out in Columns 2 to 4 of Part II of Schedule A and the
Purchaser HEREBY COVENANTS by way of indemnity with the Council
from the date hereof to observe and perform the covenants on the part of the
landlord contained in the said Leases and to keep the Council and its
successors in title fully and effectively indemnified against all actions
proceedings costs charges claims demands and liabilities whatsoever in respect
thereof

2. **THE Purchaser HEREBY COVENANTS** with the Council that upon any sale by the Purchaser of any part of the Property to a tenant of that part of the Property (pursuant to the Preserved Right to Buy as set out in Sections 171A to 171H Housing Act 1985 or to any voluntary right to buy scheme similar to the Preserved Right to Buy which may be operated by the Purchaser) ("the Right to Buy") the Purchaser will impose upon that tenant (in any case where there is any land or any part thereof remaining in the ownership of the Purchaser ("Reserved Land") for the benefit and protection of the Reserved Land and to the intent and so as to bind that part of the Property into whosoever hands the same may come a covenant to observe and perform the covenants restrictions and stipulations set out in Schedule D hereto together with in each case such other covenants restrictions and stipulations as the Purchaser in its absolute discretion thinks fit **PROVIDED THAT IT IS HEREBY AGREED AND DECLARED** that the Purchaser and other persons deriving title under it including (inter alia) any mortgagee chargee or receiver appointed by such mortgagee or chargee or persons deriving title through any of them (other than the said tenants acquiring parts of the Property pursuant to the Right to Buy) shall not themselves be bound by any of the said covenants restrictions or stipulations

3. **THE Purchaser HEREBY COVENANTS** with the Council that from the date hereof and with the object and intent of affording the Council a full and sufficient indemnity but not further or otherwise the Purchaser will observe and perform the said covenants restrictions stipulations and other provisions

referred to in the Certificate or entries on the Registers of Title so far as the same are still subsisting and are capable of being enforced and affect the Property and will keep the Council and its successors in title fully and effectually indemnified against all actions proceedings costs charges claims demands and liabilities whatsoever in respect thereof

4. **THE PURCHASER** for itself and its successors in title and with the intention of binding the Property and every part thereof into whosoever hands the same may come **HEREBY COVENANTS** with the Council that the Purchaser will not effect any Disposal (as hereinafter defined) of any part of the Property without the consent of the Council (such consent not to be withheld or delayed in the event of the Purchaser accounting for and remitting to the Council 50% of the consideration payable in respect of such Disposal) **PROVIDED ALWAYS.**

- 4.1 for the purposes of this clause "Disposal" shall mean the transfer of or grant or creation of any interest (other than a mortgage or charge) in any part of the Property to any person or body (other than the Council) which assists or facilitates the development of any land adjacent to the Property by that person or body other than a Disposal to any local water or electricity company or to British Gas plc or British Telecommunications plc, and

4.2 the foregoing restriction shall cease to apply to any part of the Property.

- (a) which is transferred to the tenant occupying the same pursuant to the Right to Buy or
- (b) in respect of which any enforcement action (including without limitation the appointment of a receiver) is taken by a lender for the time being holding any mortgage or charge thereon or
- (c) in respect of which a Disposal has been made pursuant to this Clause 4

5. **THE Council HEREBY ASSIGNS** unto the Purchaser and its successors in title the benefit (so far as they benefit the Property and without excluding the Council and its successors in title from the benefit thereof in respect of the Retained Land) of all -

5.1 COVENANTS and other matters in favour of the Council contained in any documents transfers or conveyances of land formerly in the ownership of the Council which is adjacent neighbouring or adjoining and which relate to the Property and in particular (but without limitation) all covenants which in any way relate to the cost of repairing maintaining cleansing or operating any roads parking areas drains sewers or sewerage works used by the owners of such adjoining or adjacent land in common with the Council and the occupiers of the Property **PROVIDED THAT IT IS HEREBY AGREED AND DECLARED** that any covenants as to the repayment of all or any part

of any sum by which a purchase price was discounted imposed on the sale of any property formerly owned by the Council before the date hereof by which a purchase price was discounted shall not be assigned to the Purchaser

5.2 RIGHTS reservations or such other matters expressed to be for the benefit of the Council or its predecessors or successors in title insofar as the benefit of such rights reservations and other matters is not otherwise transferred to the Purchaser by operation of law

5.3 SUCH rights (if any) reserved by the transfers or conveyances of any adjoining or neighbouring land previously sold by the Council or its predecessors in title

PROVIDED ALWAYS THAT any covenants as to the payment of a general service charge (or any statutory replacement thereof) in respect of the operations of the service for sewerage and sewage disposal imposed on the sale of property formerly owned by the Council before the date hereof shall not be assigned to the Purchaser save where as a result of this Transfer the obligation to provide such services becomes the liability of the Purchaser

6. SECTION 133 of the Housing Act 1988 applies to all the land in this disposal and the Purchaser **HEREBY APPLIES** to the Chief Land Registrar for the entry of the restriction required by that provision and hereby covenants with the Council pursuant to Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 that the Purchaser will not sell or otherwise dispose of

the whole or any part of the Property without first obtaining the requisite consents under Section 133 aforesaid (if required)

7. **THIS** Transfer is made under the provisions of the Housing Act 1985 and Section 171A Housing Act 1985 as applied by The Housing (Preservation of Right to Buy) Regulations 1993 applies to the dwelling houses in the disposal which are subject to the Preserved Right to Buy except those shown marked with an asterisk (*) in Part I of Schedule A and the Purchaser **HEREBY APPLIES** to the Chief Land Registrar for the entry of the restriction required by Section 171(D)(2) and paragraph 4 of Schedule 9A thereof and for entry of notice protecting the rights of qualifying persons

8. **IT IS HEREBY AGREED AND DECLARED** by and between the parties hereto that this Transfer constitutes an exempt supply for Value Added Tax purposes

9. **9.1** **IN** respect of any part of the Retained Land which comprises the Accessways defined in Schedule B (if any) the Council **HEREBY COVENANTS** on behalf of itself and its successors in title with the Purchaser and its successors in title for the benefit of the whole and every part of the Property to observe and perform the stipulations and conditions and covenants contained or referred to in Schedule E hereof

9.2 THE Council also COVENANTS on behalf of itself and its successors in title with the Purchaser and its successors in title that they will not transfer or grant a lease of any such part of the Retained Land as is referred to in Sub-Clause 9 1 hereof except to a person or persons who have first executed a deed expressed to be made in favour of the Purchaser or its successors in title of the Property or any part thereof by which such person or persons covenant in the terms set out in this Clause 9

10. IT IS HEREBY AGREED AND DECLARED THAT

10.1 NO mortgagee chargee or lender on the security of the Property nor any receiver appointed under such security shall in exercising its powers pursuant to any mortgage legal charge or debenture or other security documentation be bound by the provisions of Clause 4

10.2 IF any mortgagee chargee receiver or lender ("the Relevant Owner") exercises any power of sale in respect of or commences to take enforcement action leading to the sale of the Property or any part of it then the provisions of Clause 4 shall forthwith cease to have effect and the Relevant Owner and its predecessors in title of the Property or any part of it (as the case may be) shall forthwith be released from any outstanding obligations thereunder The Council for itself and its successors in title COVENANTS if called upon in writing to do so and where this Clause 10 applies to execute a formal deed of release to this effect subject to the reasonable and proper costs of the Council in

relation to such deed of release being borne by the person requesting
such deed of release

11. **THE** parties hereto apply to the Chief Land Registrar for the provisions of
Clause 10.1 of this Transfer to be noted on the titles to the Property

SCHEDULE A

PART I

THE PROPERTY

ADDRESS(ES)

ALL THAT freehold property situate at Woodborough in the County of Wilts shown delineated in red on the plan annexed together with the messuages or dwellings erected thereon and known as -

- 2 Bondfields, Woodborough
- 3 Bondfields, Woodborough
- 6 Bondfields, Woodborough
- 7 Bondfields, Woodborough
- 8 Bondfields, Woodborough

(Note: Those properties marked with an asterisk (*) are not subject to the Preserved Right to Buy in accordance with Clause 7 of this Transfer)

PART II

PROPERTY SUBJECT TO LEASES

| (1) | (2) | (3) | (4) |
|----------------|----------------------|-------------|--------------------|
| <u>Address</u> | <u>Date of Lease</u> | <u>Term</u> | <u>Ground Rent</u> |

SCHEDULE B

Rights Granted

- 1 The full right of subjacent and lateral support from the Retained Land and each and every part thereof for the benefit of the Property and each and every part thereof
- 2 The right subject to seven days prior written notice to the Council or its successors in title (except in case of emergency) to enter upon those parts of the Retained Land which are at the relevant time unbuilt upon with or without workmen materials and appliances where necessary for the purpose of repairing and/or maintaining the Property and all or any buildings now erected (or to be erected within the period of eighty years of the date hereof ("the Perpetuity Period")) upon the Property and also within the Perpetuity Period the right to construct or lay on over or under the Retained Land Service Conduits (as hereinafter defined) to serve the Property either alone or jointly or in common with the Retained Land subject to the prior approval of the Council or its successors in title to the routes of such Service Conduits (which approval shall not be unreasonably withheld or delayed) the person exercising such rights making good forthwith at his or their expense all damage caused thereby
3. The free and uninterrupted right to the passage and running of water soil gas electricity or other piped fuel telephone television and any other services to and from the Property through and along all sewers sewage treatment plants and works mains pipes drains wires cables conduits and other conducting media and all apparatus appertaining thereto (herein referred to as "the Service Conduits") which are now or may be constructed within the Perpetuity Period

through on under or over the Retained Land (insofar as the same serve the Property or any part thereof) either alone jointly or in common with the Council and all other person or persons who are now or may hereafter be entitled to connect with or use the same or any of them **SUBJECT TO** the Purchaser or its successors in title bearing paying and contributing together with such other persons (including where applicable the Council and its successors in title) a proper and reasonable proportion (according to the extent to which their respective properties are served thereby) of the cost of inspecting repairing maintaining renewing altering adjusting and cleansing such Service Conduits **TOGETHER WITH** subject to reasonable prior written notice to the Council or its successors in title (except in case of emergency) a right of entry where necessary with or without workmen materials and appliances on to those parts of the Retained Land which are then unbuilt upon for the purpose of connecting to inspecting repairing maintaining renewing altering adjusting and cleansing such Service Conduits (the Purchaser or its successors in title causing as little inconvenience as possible making good forthwith at its his or their own expense all damage occasioned by such entry) **SUBJECT TO AND RESERVING** to the Council and its successors in title the owners and occupiers of the Retained Land or any part thereof the right at any time upon giving 28 days prior written notice to vary the routes of such Service Conduits within the Retained Land as the Council or its successors in title aforesaid shall in writing designate (provided that such variation does not materially and adversely affect the use and enjoyment of the Property) **PROVIDED ALWAYS** that the rights hereby granted to the Purchaser

include the right to make within the Perpetuity Period further connections and laying new Service Conduits necessary for any increased flow from time to time subject to the necessary capacity being available and subject to the Council's prior approval to the points of connection of such further connections (which approval shall not be unreasonably withheld or delayed)

- 4 The free and uninterrupted right for the Purchaser and its successors in title the owner owners or occupiers for the time being of the Property or any part thereof and all persons authorised by it or them at all times and for all reasonable purposes connected with the use and enjoyment of the Property or any part thereof in common with the Council and all other persons to whom a like right has been or may hereafter be granted to pass and repass (in the case of vehicular roads and accessways with or without motor vehicles of all types and descriptions but in the case of pedestrian accessways on foot only) over and along all forecourts carnageways roads highways paths ways and passageways ("the Accessways") upon the Retained Land and affording access to or egress from the Property which are not publicly adopted the Purchaser or other persons as aforesaid bearing paying and contributing together with the Council or its successors in title a proper and reasonable proportion (as shall be reasonably determined by the Council's Director of Technical Services for the time being according to the extent to which they use such right) of the cost of repairing and maintaining such Accessways until the same shall be adopted or maintained at the public expense (and for the avoidance of doubt the Purchaser and its successors in title shall not be required to contribute towards the cost of upgrading or realigning such Accessways save to the extent that such

upgrading or realigning shall be necessitated by any development or user by the Purchaser or its successors in title of the Property) and the right **SUBJECT TO** reasonable prior written notice to the Council or its successors in title (except in the case of emergency) to enter upon the Retained Land with or without workmen materials and appliances for the purposes of inspecting repairing maintaining and renewing the Accessways (the Purchaser or other person aforesaid exercising such rights causing as little inconvenience as possible and making good at their own expense all damage occasioned upon such entry) **SUBJECT TO AND RESERVING** to the Council and its successors in title the owner or owners of the Retained Land or any part thereof the right at any time or times hereafter upon giving not less than 28 days prior written notice and at its or their own discretion and expense to vary the route of any such Accessways as the Council and its successors in title as aforesaid shall in writing designate (provided that such variations do not materially adversely affect the use and enjoyment of the Property)

5. The right to the unimpeded access and enjoyment of light and air to all the windows in the buildings upon the Property now existing
6. In the event that the Council or its successors in title shall fail to observe and perform the covenants on the part of the Council contained in Schedule E hereof the right to enter upon the Retained Land with or without workmen vehicles appliances or equipment to perform the said covenants recovering from the Council or its successors in title all reasonable costs and expenses thereby incurred

SCHEDULE C

EXCEPTIONS AND RESERVATIONS

1. The full right of subjacent and lateral support from the Property and each and every part thereof for the benefit of the Retained Land and each and every part thereof

2. The right subject to reasonable prior written notice to the Purchaser or its successors in title (except in case of emergency) to enter upon such part of the Property as is unbuilt upon with or without workmen materials and appliances where necessary for the purpose of repairing and or maintaining the Retained Land and all or any buildings now erected (or to be erected within the Perpetuity Period) upon the Retained Land and also within the Perpetuity Period to construct or lay on over or under such part of the Property Service Conduits to serve the Retained Land either alone or jointly or in common with the Property **SUBJECT TO** the prior approval of the Purchaser or its successors in title to the routes of such Service Conduits (which approval shall not be unreasonably withheld or delayed) the person exercising such rights making good forthwith at his or their expense all damage caused thereby

3. The free and uninterrupted right to the passage and running of water soil gas electricity or other piped fuel telephone television and any other services to and from the Retained Land through and along the Service Conduits which are now or may within the Perpetuity Period be constructed in through on over or under the Property (insofar as the same serve or shall serve the Retained Land or any part thereof) either alone or jointly or in common with the Property **SUBJECT TO** the Council or its successors in title or other persons as aforesaid bearing

paying and contributing together with the Purchaser or its successors in title a proper and reasonable proportion of the cost of inspecting repairing maintaining renewing altering adjusting and cleansing such Service Conduits according to the extent to which their respective properties are served thereby and the right subject to seven days prior written notice to the Purchaser or its successors in title (except in case of emergency) to enter where necessary upon such parts of the Property as are then unbuilt upon with or without workmen materials and appliances for the purpose of connecting to inspecting repairing maintaining renewing altering adjusting and cleansing such Service Conduits (the Council or other person or persons as aforesaid causing as little inconvenience as possible and making good forthwith at their own expense all damage occasioned by such entry) **SUBJECT TO AND RESERVING** to the Purchaser and its successors in title the owners and occupiers of the Property or any part thereof the right at any time to vary the route of such Service Conduits within the Property as the Purchaser or its successors in title aforesaid shall in writing designate (**PROVIDED ALWAYS** that the route of such varied Service Conduits shall not by virtue of such variation materially and adversely affect the enjoyment and use of the Retained Land) **PROVIDED ALWAYS** that such right reserved to the Council shall include making within the Perpetuity Period further connections and laying new Service Conduits necessary for any increased flow from time to time subject to the necessary capacity being available and subject to the Purchaser's prior approval to the routes and points of connection of such further connections (which approval shall not be unreasonably withheld or delayed)

4 The free and uninterrupted right for the Council and its successors in title at all times and for all reasonable purposes connected with the use and enjoyment of any part of the Retained Land in common with the Purchaser and its successors in title and all others to whom a like right has been granted to pass and repass over and along all Accessways upon the Property which afford access to or egress from the Retained Land (in the case of vehicular Accessways only with or without motor vehicles of all kinds and descriptions but in the case of pedestrian Accessways on foot only) the Council or the Council's successors in title or other persons as aforesaid bearing paying and contributing together with the Purchaser or its successors in title a proper and reasonable proportion (as shall be reasonably determined by the Purchaser's Surveyor according to the extent to which they use such right) of the cost of repairing and maintaining the said Accessways until the same shall be adopted or maintained at the public expense (and for the avoidance of doubt the Council and its successors in title shall not be required to contribute towards the cost of upgrading the said Accessways save to the extent that such upgrading shall be necessitated by the use or development of the Retained Land by the Council or its successors in title) **PROVIDED ALWAYS** that the Purchaser or its successors in title the owner or occupier of the Property or any part thereof may upon giving not less than 28 days prior written notice vary the routes of such Accessways provided that such variations do not materially and adversely affect the enjoyment and use of the Retained Land

5 The right to deal with any of the Retained Land in the Council's ownership and each and every part thereof without reference to and independently of the

stipulations set out in Schedule D hereto together with the right to allow any departure therefrom in any one or more cases

6. The right to the unimpeded access and enjoyment of light and air to all the windows in the buildings upon the Retained Land now existing

SCHEDULE D

Conditions Restrictions and Stipulations to be imposed upon any Tenant Purchasing Property from the Purchaser

- (1) No trade or business shall be carried on upon the property or any part thereof nor shall the same be used otherwise than as a private dwelling house
- (2) Not to alter or permit to be altered the external plan or elevation of the dwelling house forming part of the property without the previous consent in writing of the Association
- (3) Not to do or keep or suffer to be done or kept thereon any act or thing which may be or become a nuisance or annoyance or cause inconvenience to the Association or to the occupiers or owners of any adjoining or neighbouring property which may affect the value of the premises or other property in the neighbourhood
- (4) Not to construct any new vehicular access from the roadway and not to keep a caravan or boat parked or stored within the curtilage of the property without the prior written consent of the Association in addition to any planning consent which may be required if such consent has not already been obtained in writing
- (5) Not to erect any garage car-port shed or building of any description within the curtilage of the property without the prior written consent of the Association in addition to any building regulation and/or planning consent which may be required
- (6) To maintain all the existing boundary walls and fences and where none are existing to erect and maintain a one metre chain link fence or such other fence

as the Association may agree in writing along those boundaries shown marked
with a 'T' on the plan annexed hereto

SCHEDULE E

The Council and its successors in title **HEREBY COVENANT** with the Purchaser and its successors in title from time to time and at all times hereafter

- (i) Well and substantially to light repair maintain cleanse and renew (insofar only as the same are used either now or hereafter during the Perpetuity Period by the Council and its successors in title jointly with the Purchaser and its successors in title) the Accessways and Service Conduits situate in under or upon the Retained Land (including all kerbs pavements street lighting signposting and notices thereon) which now or at any time within the Perpetuity Period shall pass or run to or from the Property until such time as the Accessways or Service Conduits shall become adopted by the appropriate public authority and maintainable at the public expense (the Association contributing or paying a fair and reasonable proportion (to be determined according to user) of the cost incurred by the Council in so doing)
- (ii) To pay to the Purchaser and its successor in title a proper and reasonable proportion (according to user) of the costs and expenses incurred by the Purchaser and its successors in title in performing the covenants referred to in Paragraph (i) hereof pursuant to Paragraph 6 of Schedule B

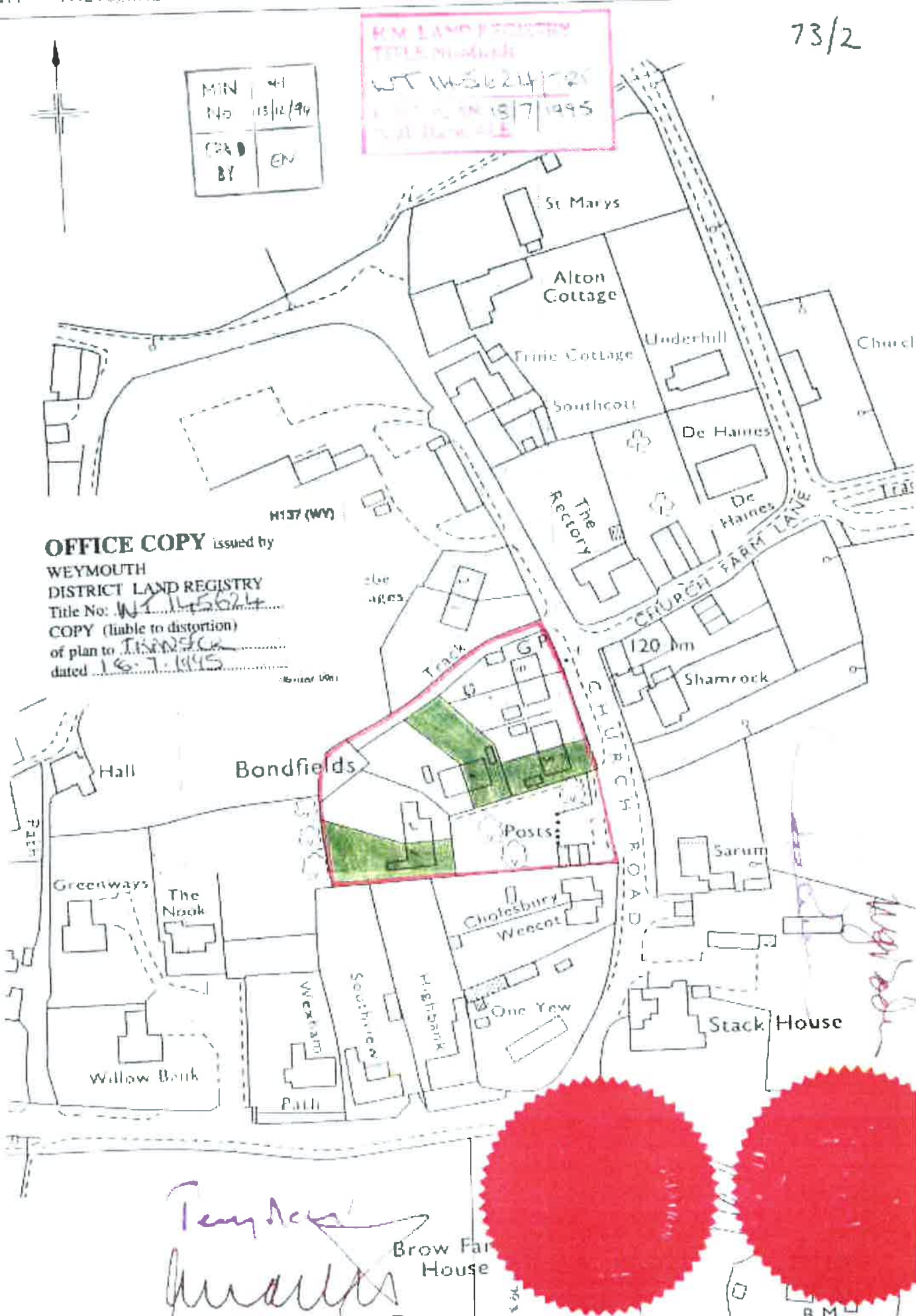
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 WT 145624/26
 PLAN NO 13/7/1995
 3A B&K 5/1

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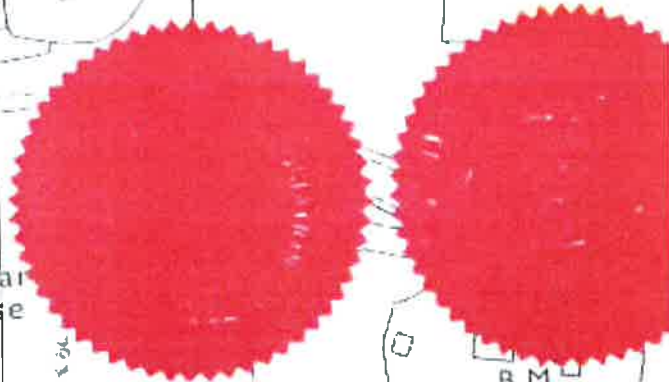
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| MIN | 41 |
| No | 13/12/94 |
| CRD | |
| BY | EN |



OFFICE COPY issued by
 WEYMOUTH
 DISTRICT LAND REGISTRY
 Title No: WT 145624
 COPY (liable to distortion)
 of plan to TRANSFER
 dated 16.7.1995



Tom Day
[Signature]

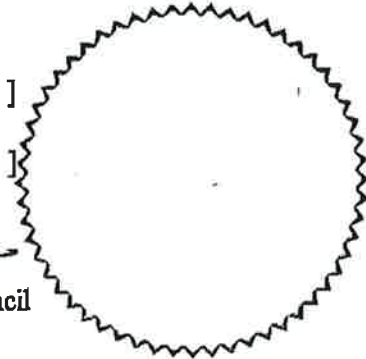


THE COMMON SEAL OF THE COUNCIL

was hereunto affixed in the presence of -

[Handwritten signature]

Chairman of the Council



| | |
|-----|----------|
| MIN | 41 |
| No | 13/12/94 |
| CEP | EN |
| BY | |

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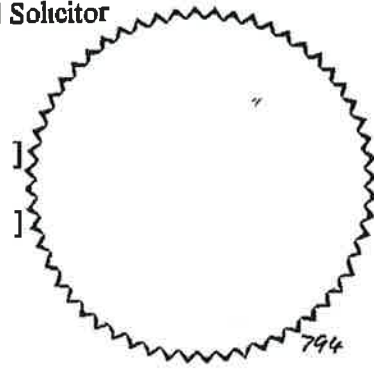
District Secretary and Solicitor

THE COMMON SEAL OF THE ASSOCIATION

was hereunto affixed in the presence of -

[Handwritten signature]

Committee Member



[Handwritten signature]

Chief Executive

173-2.5m(CL)