

AGENDA

Meeting: Western Area Planning Committee

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

Date: Wednesday 6 March 2019

Time: 3.00 pm

Please direct any enquiries on this Agenda to Jessica Croman, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 718262 or email jessica.croman@wiltshire.gov.uk

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

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

Membership:

Cllr Christopher Newbury (Chairman)	Cllr Peter Fuller
Cllr Jonathon Seed (Vice-Chairman)	Cllr Sarah Gibson
Cllr Phil Alford	Cllr Edward Kirk
Cllr Trevor Carbin	Cllr Stewart Palmen
Cllr Ernie Clark	Cllr Pip Ridout
Cllr Andrew Davis	

Substitutes:

Cllr David Halik	Cllr Jim Lynch
Cllr Deborah Halik	Cllr Steve Oldrieve
Cllr Russell Hawker	Cllr Roy While
Cllr George Jeans	Cllr Jerry Wickham
Cllr David Jenkins	Cllr Graham Wright
Cllr Gordon King	

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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**

To receive any apologies or substitutions for the meeting.

2 **Minutes of the Previous Meeting** (*Pages 5 - 16*)

To approve and sign as a correct record the minutes of the meeting held on 12 December 2018.

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 2.50pm 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 **(4 clear working days, e.g. Wednesday of week before a Wednesday meeting)** 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 **(2 clear working days, eg Friday of week before a Wednesday meeting)**. 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 17 - 18*)

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

7 **Planning Applications** (*Pages 19 - 26*)

To consider and determine the following planning application

- a) 18/09808/DP3 Holt Pre-School, The Gravel, Holt Trowbridge BA14 6RA

8 **Application to Register Land as a Town or Village Green - Church Field, Hilperton** (*Pages 27 - 146*)

To consider the following report

- a) COMMONS ACT 2006 – SECTION 15(1) AND (2) APPLICATION TO REGISTER LAND AS A TOWN OR VILLAGE GREEN – CHURCH FIELD, HILPERTON

9 **Urgent Items**

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

WESTERN AREA PLANNING COMMITTEE

MINUTES OF THE WESTERN AREA PLANNING COMMITTEE MEETING HELD ON 12 DECEMBER 2018 AT COUNCIL CHAMBER - COUNTY HALL, TROWBRIDGE BA14 8JN.

Present:

Cllr Christopher Newbury (Chairman), Cllr Jonathon Seed (Vice-Chairman), Cllr Phil Alford, Cllr Trevor Carbin, Cllr Ernie Clark, Cllr Andrew Davis, Cllr Sarah Gibson, Cllr Stewart Palmen, Cllr Pip Ridout and Cllr David Halik (Substitute)

Also Present:

Cllr Johnny Kidney

73 Apologies

Apologies for absence were received from:

Cllr Edward Kirk who was substituted by Cllr David Halik.

Cllr Phil Alford sent his apologies for the start of the meetings and arrived at 15:55.

74 Minutes of the Previous Meeting

The minutes of the meeting held on 14 November 2018 were presented.

Resolved:

To approve as a correct record and sign the minutes of the meeting held on 14 November 2018.

75 Declarations of Interest

There were no declarations of interest.

76 Chairman's Announcements

There were no Chairman's Announcements.

The Chairman gave details of the exits to be used in the event of an emergency.

77 **Public Participation**

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

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

78 **Planning Appeals and Updates**

The Planning Appeals Update Report for 02/11/2018 and 30/11/2018 was received.

Resolved:

To note the Planning Appeals Update Report for 02/11/2018 and 30/11/2018.

79 **Appeals Report**

Noted as detailed in minute number 79.

80 **Planning Applications**

The Committee considered the following applications:

81 **17/08216/FUL Land North of 146, Upper Westwood BA15 2DE**

Public Participation

George Mumford spoke in objection to the application

Chris Baines spoke in objection to the application

James Crawford spoke in objection to the application

Chris Beaver, Agent, spoke in support of the application.

Tim Leader, on behalf of Westwood Parish Council, spoke in objection to the application

Matthew Perks, Senior Planning Officer, introduced the application, which had been deferred at the last meeting for a member site visit, which took place on Monday 10 December 2018. The committee was informed that since the last meeting, the application had been materially revised which comprised the deletion of one of the proposed pods along with a reduced red lined site boundary plan with enhanced landscape planting proposals, the committee was presented with an updated report and list of planning conditions. Officers recommended the application for one self-contained camping pod with parking and change of use of land to leisure / tourism use be approved, subject to conditions. The committee was advised that following receipt of the revisions, a fresh consultation was completed lasting 10 days. Members of the committee

were advised that late representations had been received which were circulated to members of the committee on the day.

Key issues included; The principle of development, impacts on the Green Belt, Cotswolds AONB and special landscape, the impacts on the Conservation Area and neighbouring amenity; and highways impacts.

Members of the Committee had the opportunity to ask technical questions of the officer. Additional clarity was sought on whether the development comprised inappropriate development in the green belt, an appraisal of relevant case law and appeal decisions; and, the impacts of the additional vehicle movements.

In addition to responding to the matters raised, officers advised that only the site area outlined in red would be subject to the proposed change of use.

Members of the public, as detailed above, had the opportunity to speak on the application.

Local Member, Councillor Johnny Kidney, spoke in objection to the development highlighting the sensitive nature of the site, the damage the development would have on the openness of the Green Belt and that the development was considered contrary to the NPPF and Core Policies 39, 51, 57 and the Cotswold AONB Management Plan.

A motion to refuse the application was moved by Councillor Trevor Carbin, which was seconded by Councillor Ernie Clark.

A debate followed where the following points of clarification were answered by officers: the relevance of the Cotswold AONB Management Plan, the current use of the land and what permission the land benefitted from. There was also a discussion about the relevance of a recent decision to grant permission for a new car park at Dorothy House and the committee were informed of the very special circumstances that applied to that particular case. Members were advised to appraise and weigh up the merits of the application and not be influenced by the determination of a separate application which did not share the planning description and was not in the same settlement or immediate locality.

At the end of the debate it was;

Resolved

To refuse planning permission for the following reasons:

1. The proposal, without very special circumstances, would constitute as inappropriate development in the Green Belt that would be harmful to its openness and detrimental to the special landscape character and quality of the surrounding landscape contrary to the 2018 NPPF - in particular paragraphs 143, 145, 170 and 172; and, policies CP39 and CP51 of the Wiltshire Core Strategy and the Cotswold AONB Management Plan (2018).

2 . The proposed development would be detrimental to existing residential amenity by reason of increased noise, loss of privacy, general activity and vehicle movements contrary to CP57 of the Wiltshire Core Strategy.

Cllr Phil Alford entered the meeting at 15:55 and refrained from voting on the first application.

82 **18/06893/FUL Former Health Clinic The Halve Trowbridge Wiltshire BA14 8SA**

Public Participation

Fiona Watson spoke in objection to the application

Steve Morris spoke in objection to the application

Darren Odell spoke in objection to the application

David Cox, Senior Planning Officer, introduced the report which recommended that approval be granted, subject to conditions for the proposed development of the former health clinic building comprising a new second floor with 7 apartments and enlargement of the ground floor to accommodate a dental practice (D1 use class) within unit 1, the relocation of unit 2 and reduce the floor area of unit 3 with a new 2 bedroom apartment being created within the existing first floor (above the relocated ground floor unit 2) and external works.

The committee was informed prior to the officer's slide presentation of a typographical error contained within the report. It was confirmed that the proposed 2 bed flat would be 43sq.m and not 53sq.m as reported.

The committee was also informed that three late representations had been received since the agenda publication, including a petition in support of the development submitted by the dental practice, which had 400 signatures. Members were however advised that the petition was handed in immediately before the start of committee proceedings and as a consequence, officers did not have the opportunity to review or confirm all the signatories. Members were however informed of the headline petition reasons for support.

The two other late representations raised objection against the application and it was noted that these had been circulated to members of the committee earlier in the week. The case officer as part of his presentation, referenced the objection letters and informed the committee that within one of representations illustrations and impacts were included which the case officer considered to be inaccurate and for the benefit of the committee, the officer clarified the scaled measured dimensions and separation distances.

Reference was also made to a light assessment and the application of a 25 degree rule which was explained with the benefit of slides in addition to the content included within the published report. The committee was advised that whilst officers accepted the additional storey would result in some overshadowing and loss of direct sunlight to residential properties on the other

side of the public carriageway, the development would not substantively fail the 25 degree test and that the impacts would not be severe enough to warrant a reason for refusal.

Members of the committee had the opportunity to ask technical questions of the officer with clarity being sought on: whether the application should have been submitted as an application for 14 flats by virtue of the proposed modifications to the consented first floor flats. Additional clarification was sought on the development being car free and the proposed arrangements for on-site car parking for the consented flats and D1 uses on the ground floor. The committee also sought clarity on whether the application was CP45 compliant and whether the proposed amenity space would be sufficient enough for the number of flats being proposed. Members also sought clarification on the enforceability of the recommended parking and travel management plan condition.

In response, the officers explained the extant nature of the 2013 consented scheme and advised the committee that it was not permissible to require the applicant to pay s106 financial contributions for a scheme of less than 10 units. The site's location close to the town centre (within walking distance) and close proximity to the Lovemead car park and good public transport links made it a highly sustainable site where a car free development (for the second floor flats) could be supported. Reference was also made to the 2017 strategic housing market assessment which identified the shortage and lack of one bed units and that the development was not considered to conflict with CP45. Although it was accepted that the proposed external amenity space was limited, officers argued that it would be sufficient as a communal provision and mindful that the town park was relatively close by, the objection raised on lack of amenity was not shared by officers. Members were advised of the reasons why officers sought to secure a switch in the on-site parking provision to avoid obstructions to the bin store and the necessity for the site and travel management plan. Members were advised that the site would require a degree of self-policing and mutual cooperation.

Members of the public, as detailed above, had the opportunity to speak on the application.

Following on from additional issues raised by members of the public, the officers advised the committee that if found to be present, asbestos had to be removed by licensed contractors and that a planning informative could be added to the recommendation if so desired by members. The request to restrict the use of flats was earmarked as being unreasonable and permitted development rights were explained in summary. The committee was advised that ring fencing CIL payments solely for road traffic calming and infrastructure works along the Halve could not be secured by way of a planning condition. The concern and request made to limit the construction hours was not recommended by officers, but if it was the will of committee it could be condition appropriately.

Local Member, Councillor Stewart Palmén, spoke to the application noting that whilst the local community and town council welcomed the re-development of

the site, the scheme was considered a missed opportunity and the applicant had failed to properly engage with the local community and had not presented a scheme that would secure a high quality mixed use of the existing building with additions. The proposed development was considered unacceptable and contrary to CP45 in light of the predominance of 1 bed units, CP57 conflicts by virtue of the lack of on-site parking, loss of light to neighbours and CP58 conflicts with conservation interests.

A motion to refuse the application was moved by Councillor Stewart Palmen and seconded by Councillor Sarah Gibson.

A debate followed and the key points were noted as: whether the size of the one bedroomed flats would satisfy government guidelines and the conservation impacts.

Following the vote the motion was lost.

A motion to defer the application for more information pursuant to the size of the proposed flats in relation to the guidelines was moved by Councillor Trevor Carbin and was seconded by Councillor Stewart Palmen.

Following the vote the motion was lost.

A motion was then moved to defer and delegate the approval of the application to the leading officer, subject to the development satisfying the minimum size standards was moved by Councillor Jonathon Seed which was seconded by Councillor David Halik. The motion was however caveated stressing that in the event of the applicant failing to engage with officers or satisfy the requirements, the application would need to be reported back to committee for member determination.

At the end of the debate it was;

Resolved

To defer and delegate the approval of the application to officers following direct liaison with the applicant to secure confirmation that the flats would satisfy the minimum size requirements.

There was a five minute comfort break taken between 17:00 and 17:05.

Cllr David Halik left the meeting at 17:00

**82a 18/05384/FUL Land at Auckland Farm, Codford Warminster BA12
0LZ**

Public Participation

Tony Kernon, Agent, spoke in support of the application.

Tom Thornton, spoke on behalf of Codford Parish Council, in objection to the application

Steven Sims, Senior Planning Officer, introduced the report which recommended approval be granted for the Proposed detached farm workers dwelling with integral garage and vehicular access.

Members of the Committee had the opportunity to ask technical questions of the officer. Details were sought on: the proximity to the nearest neighbour, the proximity to the AONB and to identify the proposed internal utility space.

Members of the public, as detailed above, had the opportunity to speak on the application.

Local Member, Councillor Christopher Newbury, spoke on the application noting the difference of opinions of the AONB officer and agricultural consultant.

A motion to approve the officer's recommendation was moved by Councillor Jonathon Seed and seconded by Councillor Pip Ridout which was caveated to require condition 9 to be made amended to clarify and secure more robust boundary planting.

A debate followed during which time the committee was advised of the recommended occupancy condition, which in accordance with case law and established planning practices, the agricultural tie allows for retired farm workers, widows, widowers or any resident dependants.

At the end of the debate it was;

Resolved

To approve the application subject to the following conditions:

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

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

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

Amended site location plan scale 1:1250;

Amended proposed ground and first floor plans scale 1:50 dwg no. 02;

Amended proposed south and west elevation plan scale 1:50 dwg no. 03;

Amended proposed east and north elevation plan scale 1:50 dwg no. 04;

Amended block/street scene plan scale 1:250 dwg no. 05A;

Amended block plan scale 1:500 dwg no. 06A;

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

3 The occupation of the dwelling hereby approved shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or in forestry, or a widow or widower of such a person, and to any resident dependants.

REASON: The site is in an area where residential development for purposes other than the essential needs of agriculture or forestry is not normally permitted and this permission is only granted on the basis of an essential need for a new dwelling/residential accommodation in this location having been demonstrated.

4 No development shall commence above ground floor slab level until 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 application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, in the interests of visual amenity and the character and appearance of the area.

5 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), there shall be no additions to, or extensions or enlargements of any building forming part of the development hereby permitted.

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

6 The existing single storey building on site shall be completely demolished with all material and debris being removed from the site prior to the construction of the dwellinghouse.

REASON: In the interests of amenity and protecting the rural character of the area.

7 No development shall commence above ground floor slab level until a scheme for the discharge of surface water from the site (including surface water from the access/driveway), incorporating sustainable drainage details, has been submitted to and approved in writing by the Local Planning Authority. The development shall not be first occupied until surface water drainage has been constructed in accordance with the approved scheme.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to ensure that the development can be adequately drained.

8 No development shall commence above ground floor slab level until a scheme for the discharge of foul water from the site, including any required offsite capacity improvements to existing sewer system to provide capacity to serve the site, has been submitted to and approved in writing by the Local Planning Authority. The development shall not be first occupied until foul water drainage has been constructed in accordance with the approved scheme.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to ensure that the development can be adequately drained.

9 No development shall commence above ground floor slab level 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 detailed planting specification showing all plant species, supply and planting sizes and planting densities;
- finished levels and contours;
- means of enclosure;
- car park layouts;
- all hard and soft surfacing materials;

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

NOTE: The Elected Members of the WAPC resolved that the landscape planting scheme shall be robust and comprise substantive boundary planting.

10 All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of the building(s) or the completion of the development whichever is the sooner. All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from

damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority. All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority.

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

11

The development hereby approved 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.

12 Any gates shall be set back 4.5 metres from the edge of the carriageway, such gates to open inwards only.

REASON: In the interests of highway safety.

INFORMATIVES: The applicant is advised that the development hereby approved may represent chargeable development under the Community Infrastructure Levy Regulations 2010 (as amended) and Wiltshire Council's CIL Charging Schedule. If the development is determined to be liable for CIL, a Liability Notice will be issued notifying you of the amount of CIL payment due. If an Additional Information Form has not already been submitted, please submit it now so that we can determine the CIL liability. In addition, you may be able to claim exemption or relief, in which case, please submit the relevant form so that we can determine your eligibility. The CIL Commencement Notice and Assumption of Liability must be submitted to Wiltshire Council prior to commencement of development. Should development commence prior to the CIL Liability Notice being issued by the local planning authority, any CIL exemption or relief will not apply and full payment will be required in full and with immediate effect. Should you require further information or to download the CIL forms please refer to the Council's Website www.wiltshire.gov.uk/planninganddevelopment/planningpolicy/communityinfrastucturelevy

The applicant should contact Wessex Water to secure appropriate water connections

Councillor Sarah Gibson left the meeting at 17:45 and did not vote on the application.

83 **Urgent Items**

There were no Urgent Items.

(Duration of meeting: 3.00 - 6.00 pm)

The Officer who has produced these minutes is Jessica Croman of Democratic Services, direct line 01225 718262, e-mail jessica.croman@wiltshire.gov.uk

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

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Wiltshire Council
Western Area Planning Committee
6th March 2019

Planning Appeals Received between 30/11/2018 and 22/02/2019

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Appeal Start Date	Overturn at Cttee
17/10017/VAR	12 Common Hill Steeple Ashton Wiltshire, BA14 6ED	STEEPLE ASHTON	Removal of condition 6 of planning permission 14/09537/FUL to allow for the re-instatement of Permitted Development Rights	DEL	Written Representations	Refuse	04/12/2018	No
17/10530/FUL	The Prince of Wales Inn High Street Dilton Marsh, BA13 4DZ	DILTON MARSH	Erection of a detached dwelling with alterations to the existing car park and entrance way	DEL	Written Representations	Refuse	13/12/2018	No
18/02867/VAR	Land at Common Hill Bleet, Steeple Ashton Wiltshire, BA14 6EA	STEEPLE ASHTON	Removal of condition 5 of planning permission 16/09052/FUL to allow stables and haybarn to be converted into a dwelling instead of a holiday let	DEL	Written Representations	Refuse	12/12/2018	No
18/04155/FUL	Lavender Lodge 40 Temple, Corsley Warminster, BA12 7QP	CORSLEY	Removal of Condition 7 pursuant to planning application W/06/03436/FUL, to allow Lavender Lodge to be used as a permanent, separate residency (Resubmission of 18/00934/FUL)	DEL	Written Representations	Refuse	23/01/2019	No
18/04264/LBC	212 Pottle Street Horningsham Wiltshire, BA12 7LX	HORNINGSHAM	Internal alterations to include overlaying of stair treads and risers, covering over part stair 'panelling', removal of ceilings at first floor, replacement ceilings at ground floor.	DEL	Written Representations	Refuse	29/01/2019	No
18/04589/FUL	8 Atworth Business Park, Bath Road Atworth, SN12 8SB	ATWORTH	Extension to existing building (Use Class B8), extension to service road, landscaping and associated works.	WAPC	Written Representations	Approve	30/01/2019	Yes
18/05385/FUL	62 Wingfield Road Trowbridge, Wiltshire BA14 9EN	TROWBRIDGE	Restoration work to existing dwelling, demolition of garage and erection of two dwellings and associated external works.	DEL	Written Representations	Refuse	05/12/2018	No
18/07199/FUL	Land East of Rectory Barn, Whaddon Hilpertton, BA14 6NR	HILPERTON	Erection of a holiday cabin	DEL	Written Representations	Refuse	03/01/2019	No
18/08346/FUL	Oxford House 12 The Butts, Bratton Wiltshire, BA13 4SW	BRATTON	Demolition of existing dwelling & erection of replacement dwelling & 3 new dwellings with associated landscaping	DEL	Written Representations	Refuse	30/01/2019	No

Planning Appeals Decided between 30/11/2018 and 22/02/2019

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Appeal Decision	Decision Date	Costs Awarded?
16/01633/OUT	Land at The Grange Devizes Road, Hilperton Wiltshire, BA14 7QY	HILPERTON	Erection of up to 26 dwellings - outline application: all matters reserved other than access	DEL	Hearing	Approve with Conditions	Withdraw	14/12/2018	None
17/12298/FUL	Flat 4, 40 Stallard Street Trowbridge, Wiltshire BA14 9AA	TROWBRIDGE	Construction of a dormer window on south east elevation	DEL	Written Reps	Refuse	Dismissed	19/12/2018	None

REPORT FOR WESTERN AREA PLANNING COMMITTEE

Report No.

Date of Meeting	6 March 2019
Application Number	18/09808/DP3
Site Address	Holt Pre-School, The Gravel, Holt Trowbridge BA14 6RA
Proposal	Renewal of temporary planning permission for a single mobile at Holt Pre School
Applicant	Mr Peter Slatford
Town/Parish Council	HOLT
Electoral Division	Holt - Cllr Trevor Carbin
Grid Ref	386607 162055
Type of application	Full Planning
Case Officer	Steven Sims

Reason for the application being considered by Committee

This report is brought to Committee since it is an application made by Wiltshire Council to which, there has been an objection raised by a member of the public.

The Council's adopted scheme of delegation (Part 3, Section D3 para 1.1) states that "*applications submitted by Wiltshire Council will not be dealt with under delegated powers where an objection has been received raising material planning considerations*".

The decision making authority must therefore, rest with the elected Members.

1. Purpose of Report

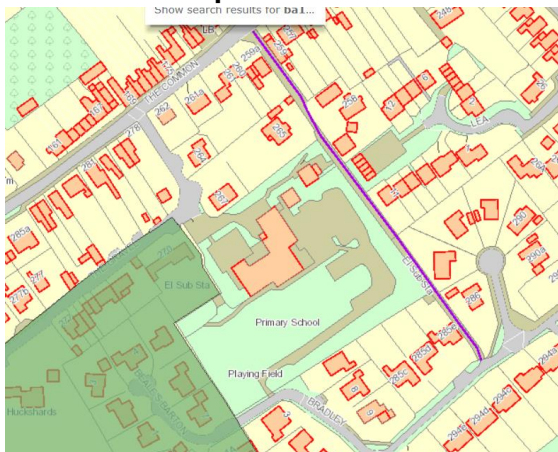
The purpose of the report is to assess the merits of the proposal against the policies of the development plan and other material considerations and to consider the recommendation that the application be approved.

2. Report Summary

The main issues to consider are:

- Impact upon the Character and Appearance of the Area
- Impact upon the Living Conditions of Neighbouring Residents
- Highway Issues
- Other Issues

3. Site Description



Holt Primary School is located within the limits of development of Holt and adjacent to the Holt Conservation Area. The siting of the temporary class room is located in the northeast corner of

the school grounds and is used to provide the village with a pre-school nursery facility – which is located adjacent to and to the south of the residential property at No. 265 - The Common.

The school is surrounded by residential development as the following insert plan illustrates. A public footpath (HOLT55) is located directly to the east of the site – which the previous insert plan illustrated.



4. Planning History

14/12030/DP3 – Single storey two classroom extension with group room and servery - Approved 26.02.2015

13/02339/DP3 - Retention of single mobile classroom with toilets – Approved 26.09.2013

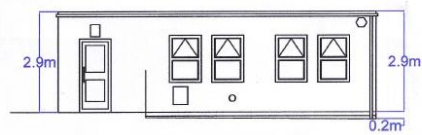
W/11/01826/REG3 – Planning permission for the retention of a single temporary unit with toilets (previous permission W/04/00746/FUL) - Approved 15.09.2011

10/01070/REG3 – Relocation of single mobile classroom with adaptations to form new pre-school building – Approved 22.06.2010

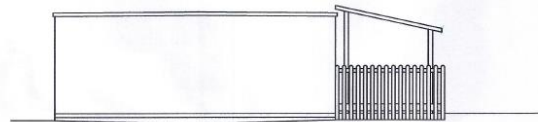
09/01029/FUL - Extension of head teacher's and admin staff offices and extension of equipment store of main hall, extension of parking area – Approved 20.05.2009

5. The Proposal

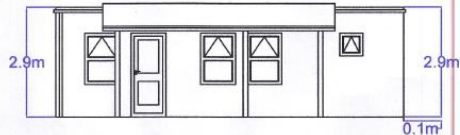
The application proposal seeks the retention of a single storey classroom to accommodate 20 pre-school children for an additional 5 years. The classroom measures approx. 9 metres by 8 metres and would be 2.9 metres high (with a flat roof). A small covered play area is provided which is illustrated on the following insert plans.



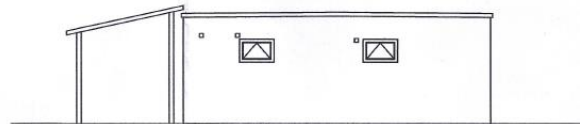
SOUTH WEST ELEVATION



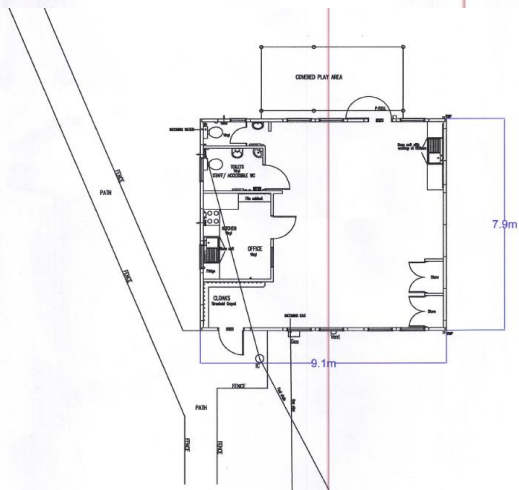
SOUTH EAST ELEVATION



NORTH EAST ELEVATION



NORTH WEST ELEVATION



It is material to duly note that the original proposed siting and renewal of the mobile classroom and the potential impacts were considered under approved applications 10/01070/REG3 and 13/02339/DP3.

6. Planning Policy

Wiltshire Core Strategy (WCS) Adopted 20th January 2015 CP1 – Settlement Strategy, CP2 – Delivery Strategy, CP7 – Spatial Strategy Bradford on Avon Community Area, CP51 – Landscape, and CP57 – Ensuring High Quality Design and Place Shaping.

The 'made' Holt Neighbourhood Plan the National Planning Policy Framework (The Framework revised in Feb 2019) and Planning Practice Guidance are also material considerations.

7. Consultations

Holt Parish Council: No Objections.

Wiltshire Council Early Years & Sufficiency: Supportive. The nursery is a popular facility As a local authority we have a duty to ensure we have sufficient Early Years & Childcare provision. If this pre-school were to close, children in the village would not have a local pre-school to allow them to access their Government Free Entitlement Funding for 2, 3 and 4

year olds. Parents would have to travel to Bradford on Avon, Melksham and Trowbridge for alternative nursery provision, and this would be particularly inconvenient for parents without their own transport.

8. Publicity

The application was advertised by a site notice and neighbour notification letters. One letter of objection has been received highlighting the following grounds of objection:

The facility, including the new path, directly adjoins my property which has adversely affected the enjoyment of my home due to its nature and specific position. On many occasions I have questioned why it had to be situated so closely to my home. At certain times of the day the concentrated, terrific noise that is generated which spoils the relative previous peace and quiet of the property. The new path directly next to my boundary links the existing footpath number 55 to the Pre-School, the School and The Gravel out of hours and is used as a convenient 'footpath' to the detriment of the residential property.

9. Planning Considerations

9.1 Impact Upon the Character and Appearance of the Area

9.1.1 Core Policy 57 of the Wiltshire Core Strategy requires a high standard of design in all new developments and that development respond positively to the existing townscape and landscape in terms of building layout, built form, height, mass, scale, building line, plot size, design, materials and streetscape.



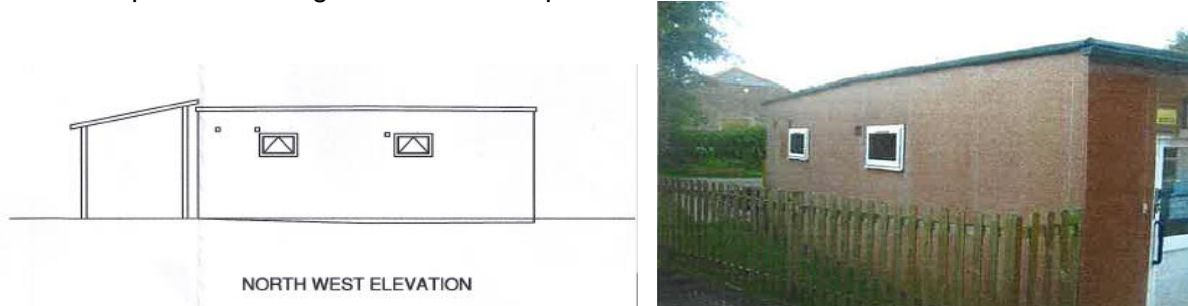
9.1.2 The temporary classroom is a modest structure within the school grounds and is used as a pre-school nursery facility measuring 9.1m long x 7.9m wide and 2.9m high with small covered play area provided off the northeast elevation. When viewed from the public footpath, the structure does not appear obtrusive due to its modest height and provision of hedgerow screening. Officers are of the view that the retention of the facility for an additional 5 years is acceptable. The structure does not have an adverse impact on the character of the area or harm the local townscape and as a consequence, the proposal complies with WCS Core Policy 57.

9.2 The Impact Upon the living Conditions of Neighbouring Residents

9.2.1 Core Policy 57 of the Wiltshire Core Strategy requires that development proposals should have regard to the compatibility of adjoining buildings and uses, the impact on the amenities of existing occupants, and ensure that appropriate levels of amenity are achievable within the development itself, including the consideration of privacy and overshadowing.

9.2.2 The nearest residential properties to the nursery facility would be No. 265 The Gravel, located about 16m to the north and No. 258 - The Common: which is approximately 30m to the northeast and on the opposite side of the public footpath. These separation distances and

the intervening hedgerows are considered adequate to ensure there is sufficient mitigation from harmful impacts. In the case of No. 258 The Common, there is an intervening garage building. The existing north-west facing windows of the nursery classroom that face No. 265 are high level (at circa 2 metres above ground level) which are illustrated in the insert plans below; and, are considered to be acceptable in terms of safeguarding the living conditions of neighbouring residents in terms of privacy and overlooking. The noise related objection is duly noted and controls should be in place whenever children are outside, with appropriate adult/staff supervision being a reasonable expectation.



9.2.3 The path located to the north of the pre-school facility and south of No. 265 The Gravel is used by both primary school children and children using the pre-school classroom. Whilst it is fully recognised that children using the path may generate some noise disturbance, this application cannot be used to restrict or control the use of the path. This is a matter for the school and pre-school to duly take notice of and put in place appropriate measures for noise controls during the hours the school and pre-school are in use; and when children walk to and from the school premises.

9.2.4 To ensure that the registered local concern is properly recorded on any decision, a planning informative is recommended to bring notice to the pre-school facility and the local authority pre-school co-ordinator of the duty to ensure there is proper supervision to quell noise levels from children using the nursery facility and to educate the children making use of the local paths on-route to and from the premises to be mindful of adjoining neighbours and to keep noise levels under control.

10. Conclusion (The Planning Balance)

The proposed development is considered to be in accordance with relevant policies of the Core Strategy and the NPPF and temporary planning permission for 5 years is supported.

RECOMMENDATION: Approve subject to the following conditions:

1. The development hereby permitted shall be carried out in accordance with the following approved plans: Location plan scale 1:1250; Plans and elevations scale 1:100 dwg no. 1237/59 Rev O.

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

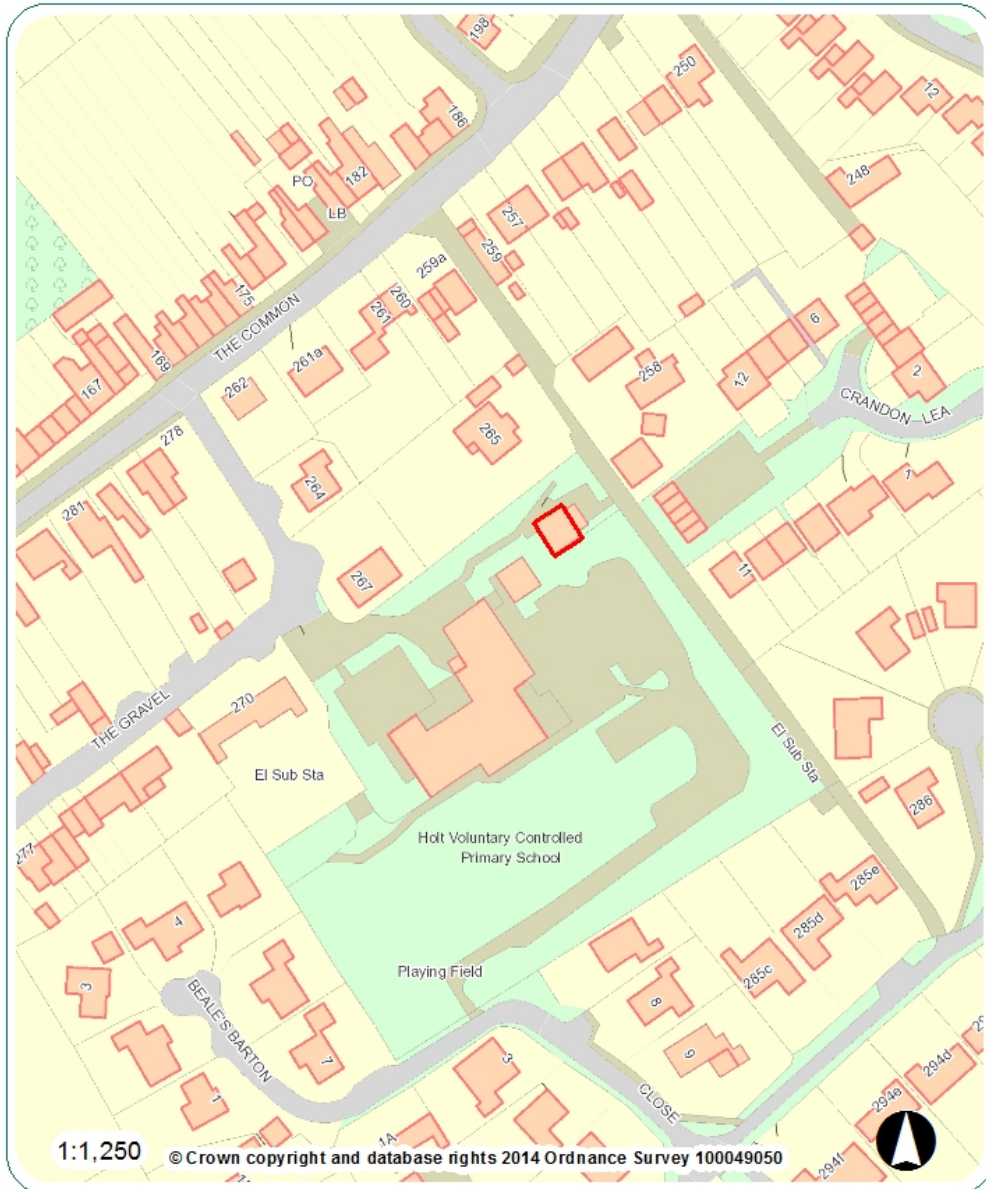
2. The pre-school classroom is hereby approved on a temporary basis and shall be removed from the site and the land restored to grass on or before 6 March 2024.

REASON: To define the terms of the planning permission.

Planning Informative:

1. The pre-school nursery and the local authority pre-school coordinator are duly encouraged to take notice of the registered third party concern relative to noise levels pursuant to the use of the lane by children; and, to ensure there is appropriate supervision of children to quell

noise levels mindful of the proximity to neighbouring residential properties and to safeguard privacy and amenities.



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WILTSHIRE COUNCIL

WESTERN AREA PLANNING COMMITTEE

6 MARCH 2019

**COMMONS ACT 2006 – SECTION 15(1) AND (2) APPLICATION TO REGISTER
LAND AS A TOWN OR VILLAGE GREEN – CHURCH FIELD, HILPERTON**

Purpose of Report

1. To seek approval to appoint an independent Inspector to hold a non-statutory Public Inquiry and provide an advisory report for the Western Area Planning Committee on the application to register land as a town or village green at Church Field, Hilperton.

Relevance to Council's Business Plan

2. Working with the local community to maintain an up-to-date register of town and village greens to make Wiltshire an even better place to live, work and visit.

Background

3. Wiltshire Council received an application to register land at Church Field, Hilperton as a town or village green on 24 April 2017. The application was made under Section 15(1) and (2) of the Commons Act 2006 which requires the applicant to demonstrate, on the balance of probabilities, that the land has been used by a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, and that they have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years.
4. The application was accepted and duly advertised on 21 July 2017 for a period of 42 days. During this time three objections and one representation in support were received. One of the objectors was the owner of the land. He has since died and the objection is being maintained by his estate.
5. Full details of the application and all relevant submissions are appended to this report at **Appendix A**.

Main Considerations for the Council

6. Wiltshire Council is the Registration Authority and has a statutory duty to determine the application. However, there are no regulations in force at the moment which set out the process by which the authority should determine applications of this type.
7. The application is disputed. The objections raise a number of matters that must be addressed by the council including:

- (i) Can the evidence of multiple family members be taken into account?
- (ii) Is the number of people who have submitted evidence of use sufficient to be taken as a significant number of the inhabitants?
- (iii) Was use by permission?
- (iv) Was use by right owing to the presence of four rights of way in the field?
- (v) Are some of the claimed activities (for example socialising, creating dance routines and creating memories) lawful sports and pastimes?
- (vi) Is use of the land for grazing cattle and taking an annual silage crop fatal to the registration of the land?
- (vii) How were the witnesses motivated?
- (viii) How credible is some of the evidence?
- (ix) Is the evidence sufficient to demonstrate use of the whole field and not just the public rights of way?

8. Section 15 of the Commons Act 2006 provides that to register land as a town or village green it must be shown that:

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.

9. The registration of land as a town or village green is no trivial matter. Although the inhabitants of the parish of Hilperton would have a right to use the land for lawful sports and pastimes at all times and forever, land that is so registered is protected by Victorian statutes against harm or damage to the extent that any control of future activities on the land is largely taken from the landowner. The most obvious loss is that the land may not be developed but it may also not be ploughed, used for arable crops, divided for grazing of, say, horses or any other alteration that a landowner may reasonably expect to be able to do.

10. The responsibilities of the council in this regard were recognised by the justices in the Court of Appeal in the case of *R(Christopher John Whitmey) v The Commons Commissioners [2004] EWCA Civ. 951*. Arden LJ at paragraphs 28 and 29:

“28.the registration authority is not empowered by statute to hold a hearing and make findings which are binding on the parties by a judicial process. There is no power to take evidence on oath or to require the disclosure of documents or to make orders as to costs....However, the registration authority must act reasonably. It also has power under section 111 of the Local Government Act 1972 to do acts which are calculated to facilitate, or are incidental or conducive, as to the discharge of their functions. This power would cover the institution of an inquiry in an appropriate case.

29. In order to act reasonably, the registration authority must bear in mind that its decision carries legal consequences. If it accepts the application, amendment of the register may have a significant effect on the owner of the land...likewise if it wrongly rejects the application, the rights of the applicant will not receive the protection intended by parliament. In cases where it is clear to the registration authority that the application or any objection to it has no substance, the course it should take will be plain. If however, that is not the case, the authority may well properly decide, pursuant to its powers under section 111 of the 1972 Act, to hold an inquiry.....”

11. At paragraph 66 Waller L J agreed:

“66. I make these points because the registration authority has to consider both the interest of the landowner and the possible interest of the local inhabitants. That means that there should not be any presumption in favour of registration or any presumption against registration. It will mean that, in any case where there is a serious dispute, a registration authority will invariably need to appoint an independent expert to hold a public inquiry, and find the requisite facts, in order to obtain the proper advice before registration.”

12. Officers have considered the evidence both in support and in objection to the application at **Appendix A**. Whilst some points raised may simply be dealt with by the council it is clear that there are matters of serious dispute in the evidence. Officers consider that the four main points of dispute are:

- Is there sufficient evidence from a significant number of inhabitants?
- Has use been by permission?
- Have the agricultural activities prevented registration?
- Is the evidence sufficient to demonstrate use of the whole field for lawful sports and pastimes and not just the public rights of way?

13. It is considered unreasonable to all parties to make a decision without further testing of the evidence in front of an expert in this area of law.

Overview and Scrutiny Engagement

14. The determination of town and village green applications is governed by statutory regulations, relevant case law and non-statutory guidance.

Safeguarding Implications

15. There are no safeguarding implications arising from this report.

Public Health Implications

16. There are no public health implications arising from this report.

Corporate Procurement Implications

17. The procurement implications of processing the application are dealt with under the Financial Implications given below.

Equalities Impact of the Proposal

18. There are no equalities impacts of the proposal.

Environmental and Climate Change Considerations

19. There are no known environmental and climate change considerations arising from this report.

Risk Assessment

20. The financial and legal risks to the council arise from the council reasonably proceeding with the application (where financial risks are limited to costs detailed below) or in acting unreasonably whereby risks relate to the cost of legal challenges through the courts. A challenge to the council's decision in the High Court where it is decided against the council may result in expenses of around £50,000 or more if resort is made to the higher courts.

Financial Implications

21. 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 the costs are borne by the council for which there is no budgetary provision.
22. A recent estimate for an inquiry lasting four to five days and for the production of the Inspector's report was £15,000 plus VAT.

Legal Implications

23. The committee's attention is brought to the High Court decision in the case of *Somerford Parish Council v Cheshire East Borough Council (1) and Richborough Estates (2) [2016] EWHC 619 (Admin)* where the High Court quashed the local borough council's decision not to register land as a new town or village green on the basis of procedural error. The case highlights a number of practical points to note regarding privilege, equity and the importance of the Public Inquiry in determining an application to register land as a town or village green. The court's decision also reinforces the findings in *Whitney* and the need for Registration Authorities to hold a non-statutory Public Inquiry where there are sufficient disputes over factual issues.
24. Where a town or village green application is refused, the course of appeal for the applicant is by way of judicial review to the High Court. Applications of this nature usually, as can be seen from paragraph 23 above, focus closely on the procedure used in the decision making process. To safeguard both the reputation of the council and to avoid the serious financial costs of defending an action for judicial review it is imperative that the proper procedure is followed by the council in the decision making process. Likewise, the registration of the land may result in a similar High Court action instigated by the landowner, again underlining the need for the council to follow correct procedure.

Options Considered

25. Members of the committee must consider the following possible decisions open to them:
 - (i) To appoint an independent Inspector to hold a non-statutory Public Inquiry and produce an advisory report with his findings and recommendations for the council's consideration.
 - (ii) To determine the application.

Reasons for Proposal

26. There is a serious dispute regarding the evidence and the application is of great local interest. In paragraph 23 above the committee's attention was brought to the *Cheshire East High Court Judgement*. The case was brought to the High Court on the basis of procedural error by the borough council. The case highlights a number of practical points for the committee to note and consider regarding privilege, equity and the importance of Public Inquiries in determining an application to register land as a town or village green in disputed cases. The court's decision also reinforces the findings in *R (Whitmey) v Commons Commissioners* and the need for Registration Authorities to hold a non-statutory Public Inquiry where there are sufficient disputes over factual issues.
27. Where the Registration Authority decides not to register land as a town or village green there is no right of appeal to the council or for example to the Secretary of State as there is with a planning application. The applicant's course for redress is by way of judicial review to the High Court. Applications of this nature usually, as can be seen in paragraph 23 above, focus closely on the procedure used in the decision making process. To safeguard both the reputation of the council, and to avoid the serious financial costs of defending an action for judicial review, it is imperative that the council adopts the proper decision making process in dealing with this application.

Proposal

28. To seek approval to appoint an independent Inspector to hold a non-statutory Public Inquiry and provide an advisory report for the Western Area Planning Committee on the application to register land as a town or village green at Church Field, Hilperton.

TRACY CARTER

Director Waste and Environment

Report Author

Sally Madgwick

Definitive Map and Highway Records Team Leader

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

None

Appendices:

Appendix A - Officers' Interim Decision Report

This report has 4 appendices:

A1 Summary of user evidence

A2 Landowner's objection to the application

A3 Applicant's response to objections

A4 Landowner's response to applicant's response

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COMMONS ACT 2006

INTERIM REPORT

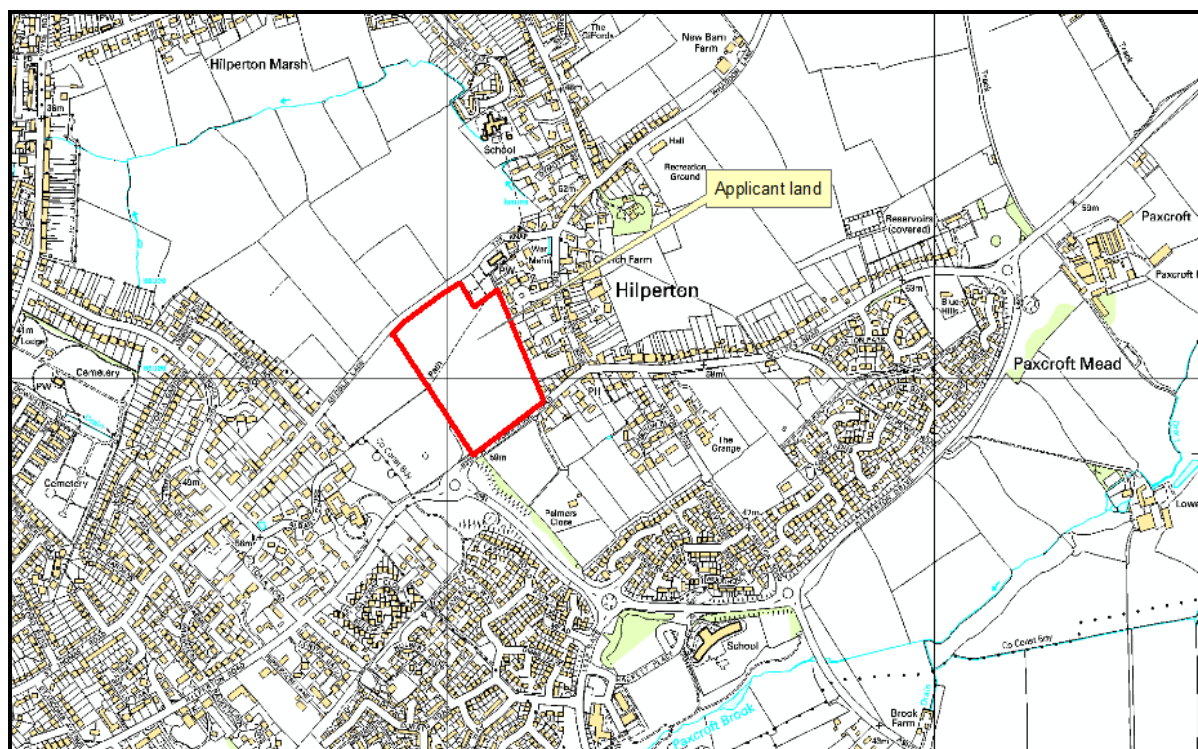
APPLICATION TO REGISTER LAND AT CHURCH FIELD, HILPERTON AS A TOWN OR VILLAGE GREEN

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 Church Field, Hilperton as a Town or Village Green.
- ii) To recommend that a non-statutory public inquiry is held before an expert in this area of law to test all evidence and to make a recommendation to assist the council make a decision on the application.

2 LOCATION PLAN

The land is located south west of the Church of St Michael and All Angels, Hilperton, BA14 7RJ and is referred to as Church Field (shown highlighted in red):



3 APPLICATION PLAN

Exhibit A - Churchfield



4 APPLICATION DETAILS:

Application number: TVG 2017/01

Date of receipt: 24 April 2017

Name of applicant: Church Field Friends

Address of applicant: c/o 2 Nursery Close
Hilperton
Trowbridge
Wiltshire
BA14 7RP

Application made under:	Section 15(1) and (2) Commons Act 2006
Description of land:	Church Field, Hilperton
Locality or neighbourhood:	Hilperton parish
Justification for application:	“A significant number of inhabitants of Hilperton have used the land (marked on the map Exhibit A) for a period of over 20 years, as of right, and continue to do so.”
Supporting documentation:	Exhibit A – map Exhibit B – supporting statement Exhibit C – supporting photos Exhibit D – 33 x personal statements Exhibit E – land registry search documents Exhibit F – map of Hilperton parish

5 LANDOWNER DETAILS

From 1959 to his death in late 2017 the land was owned by:

Mr Roger Pike
Fairfield House
Nursery Close
Church Street
Hilperton
BA14 7RP

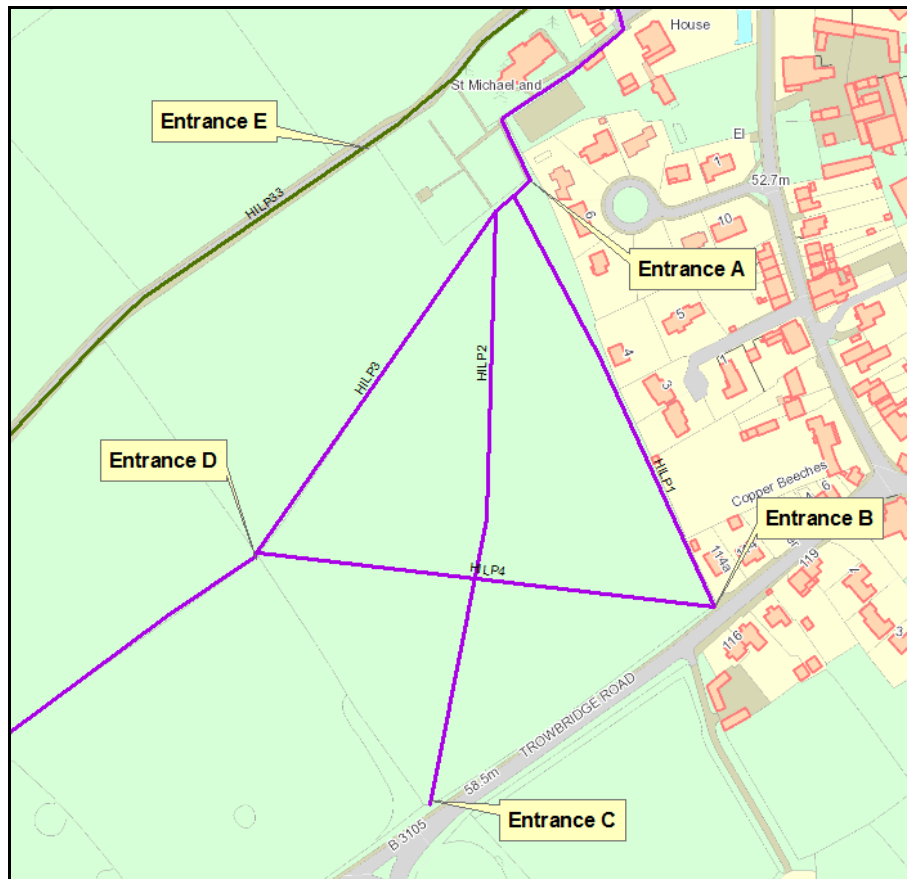
The land is now administered by Goughs Solicitors on behalf of the estate:

Dave Powell
Goughs Solicitors
Ramsbury House
30 Market Place
Devizes
SN10 1JG

The land was subject to a Grasskeep Agreement between approx. 1990 and 2017 to:

Mr R M Fyfe
Lower Paxcroft Farm
Hilperton
Trowbridge
BA14 6JA

6 PHOTOGRAPHS OF THE APPLICANT LAND 31 MAY 2017



Entrance (A) to land by church (footpath HILP1)



Entrance (B) to land at B3105 (footpath HILP4)



Entrance (C) to land at roundabout (footpath HILP2)



Entrance (D) at link road (footpath HILP 3 & 4)



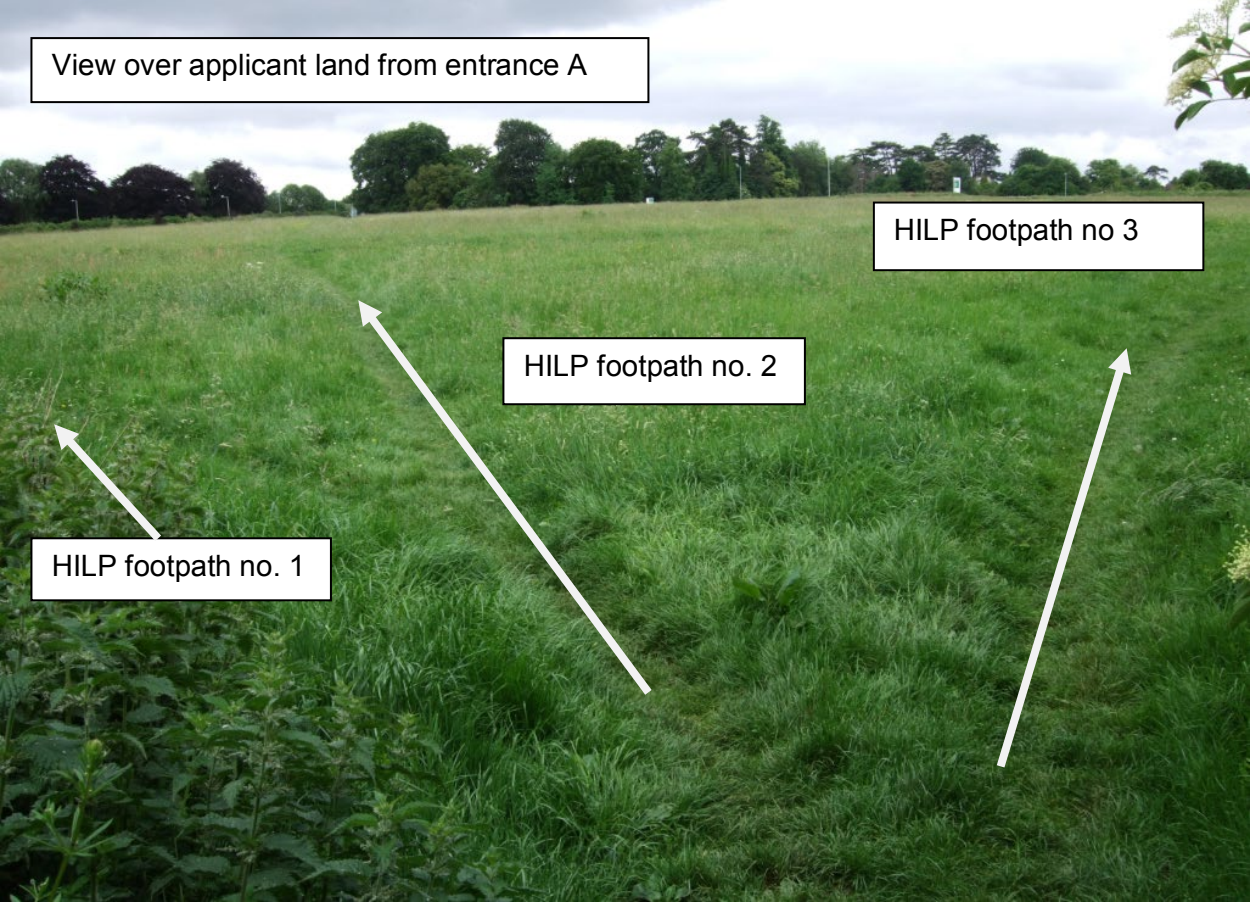
Entrance (E) from applicant land to bridleway HILP33

Additionally 3 properties have gates onto the land from their gardens:





View over applicant land from entrance A



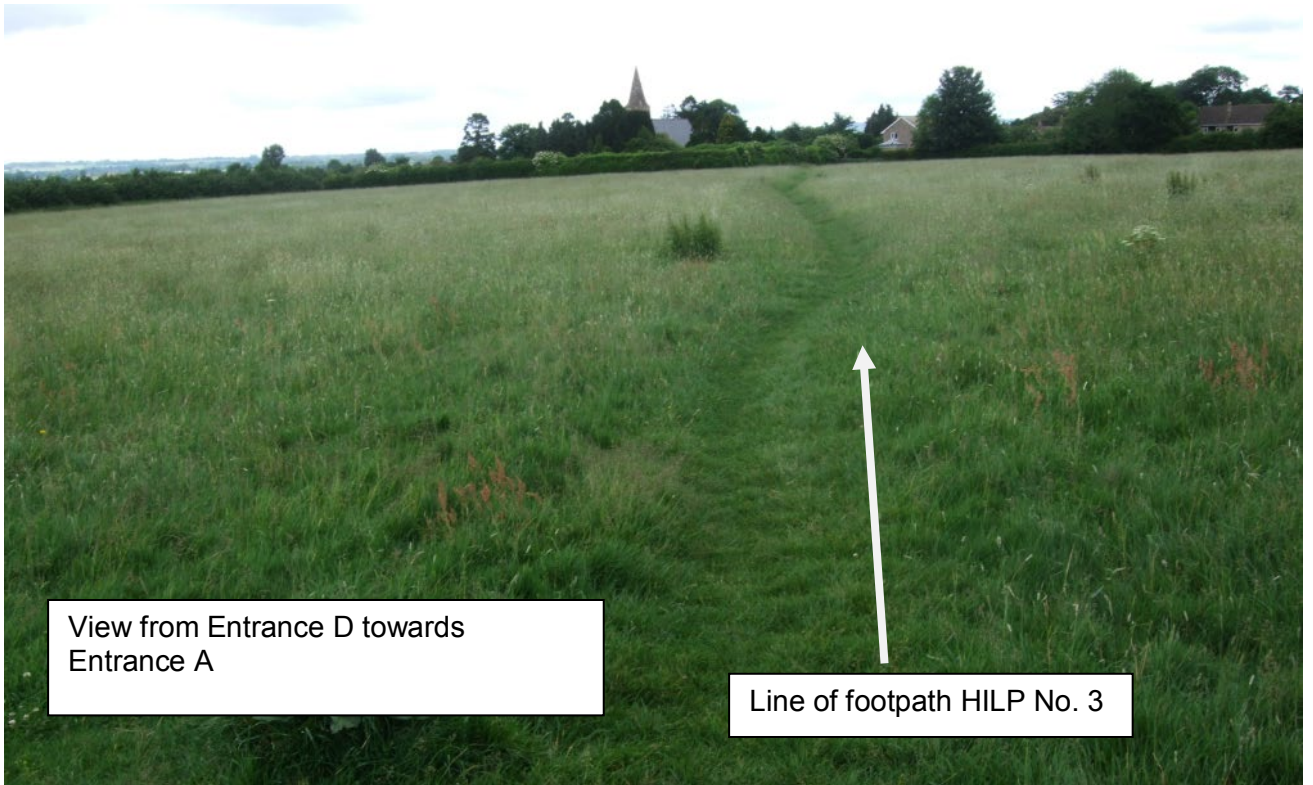
View from Entrance B looking north to Entrance A



View from Entrance B south west towards Entrance C



View from Entrance C north towards Entrance D (link road)



View from Entrance D towards Entrance A

Line of footpath HILP No. 3



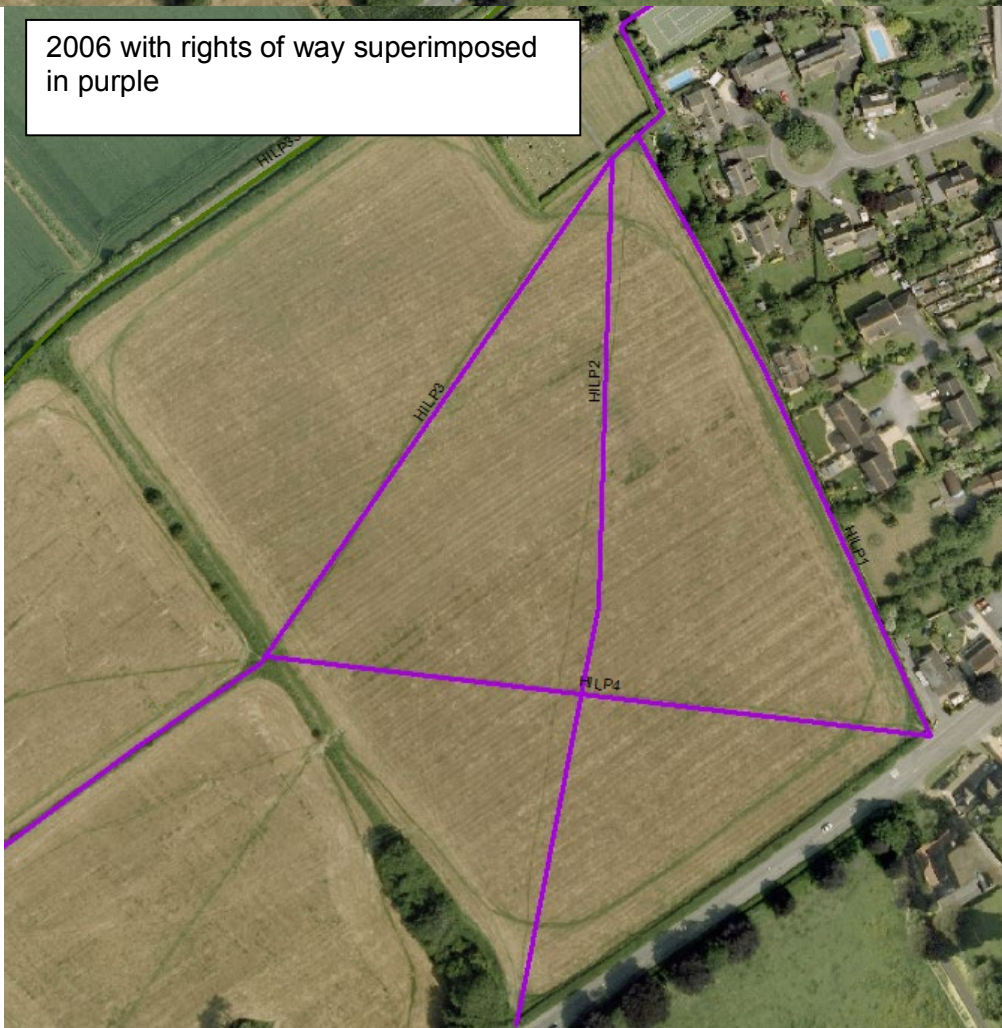
View to Entrance E



View from Entrance E south across Applicant Land

7 AERIAL PHOTOGRAPHS OF THE APPLICANT LAND

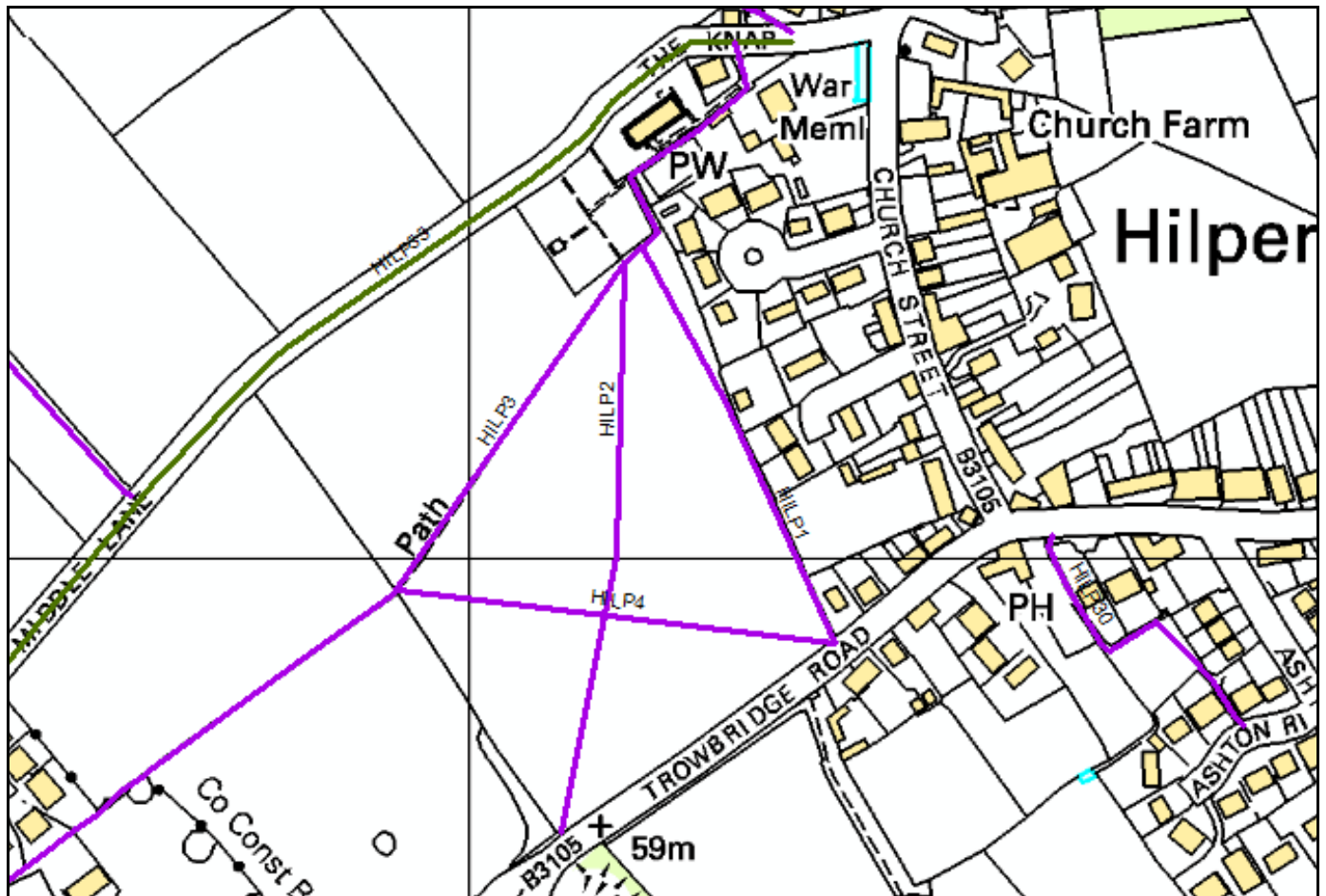






8 PUBLIC RIGHTS OF WAY

Plan showing public rights of way across and beside the applicant land:



9 LEGAL EMPOWERMENT

- 9.1 Wiltshire Council is the Commons Registration Authority for the County of Wiltshire (excluding the Borough of Swindon).
- 9.2 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).
- 9.3 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.
- 9.4 The trigger events are prescribed by Schedule 1A of the Commons Act 2006, and extended by the Commons (Town and Village Greens) (Trigger and Terminating Events) Order 2014 and The Housing and Planning Act 2016 (Permission in Principle etc)(Miscellaneous Amendments)(England) Regulations 2017 Statutory Instrument 2017 No. 276. 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. Other

Trigger Events include the inclusion of the land in adopted or emerging development plan policy.

- 9.5 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.
- 9.6 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.
- 9.7 This application has been made under Section 15(1)(2) of the Commons Act 2006:

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)

9.8 Once an application has been delivered to the Commons Registration Authority (the CRA) it is necessary to first ascertain whether a Trigger Event has occurred. If it has, and no corresponding terminating event has occurred the right to apply is suspended and the application must be returned. However, if there are no Trigger Events the CRA may proceed with the application.

9.9 Regulations prescribe the form that the application must take.

(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)

9.10 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)

9.11 In the case of *R (The Church Commissioners for England) v Hampshire County Council and Guthrie [2013] EWHC 1933 (Admin) Collins J* considered that the CRA were entitled to consider the application as duly made from the date it was originally received and that a period of at least five years was a reasonable time period in which corrections could be made.

10 Timeline for the Processing of the Application

- 24 April 2017** Application deposited at the offices of Rights of Way and Countryside, Wiltshire Council at 1715.
- 25 April 2017** Letter enquiring whether a Trigger Event (and/or Terminating Event) had occurred sent to:
Wiltshire Council Development Management (Planning Authority) – *responded negative*
Wiltshire Council Spatial Planning – *responded negative*
The Planning Inspectorate – *responded negative*
- 26 May 2017** Letter to applicant informing them there had been no trigger events. Application allocated number TVG 2017/01.
- 30 May 2017** Letter to applicant returning the application for correction owing to identified failings in Form 44 and Exhibit A.
- 19 June 2017** Revised application returned.
- 17 July 2017** Letter sent to applicant, landowner, believed tenant farmer, Wiltshire Councillor, Parish Council and Wiltshire Council as planning authority enclosing Form 45 (Notice of Application) and application plan.
- 20 July 2017** Form 45 notices posted on site (all entrances to the land) and maintained until 04 September 2017.
- 21 July 2017** Form 45 published in the Wiltshire Times. Responses to be received by 1700 04 September 2017.
- 13 Aug 2017** Objection received from R Sims

14 Aug 2017	Representation in support received from E Clark
01 Sept 2017	Objection received from R H & I R Craddock
04 Sept 2017	Objection received from Goughs on behalf of R Pike (landowner)
02 Oct 2017	Additional statements submitted by Goughs on behalf of Mr Pike
25 Oct 2017	3 objections and 1 representation submitted to applicants for comment
18 Dec 2017	Copies of 3 objections and 1 representation sent to Goughs for information
18 Jan 2018	On 16 th January 2018 Hilperton Parish Council resolved to fully support the application and has no objection to Church Field being registered as a Town or Village Green
26 Feb 2018	Response received from applicant
08 Mar 2018	Applicant's response sent to 3 objectors and 1 representor for comment
30 Apr 2018	Response received from Goughs
15 Nov 2018	Further enquiries made to Wiltshire Council as Planning Authority regarding the effect of Wiltshire Council's Core Strategy (adopted January 2015) on the application in the light of the decision of D Elvin QC in <i>Cooper Estates Strategic Land Ltd v Wiltshire Council et al [2018] EWHC 1704 (Admin)</i> .
16 Nov 2018	Response from Wiltshire Council confirming no trigger event applied to the land at the time the application was made. The land being outside of the limits of development, not within a SHLAA site and not identified for development in the Wiltshire Core Strategy, Site Allocations Plan or any other development document for Wiltshire.
23 Jan 2018	Wiltshire Council case officer commences writing report.

11 EVIDENCE IN SUPPORT OF THE APPLICATION

It is for this applicant to demonstrate to the Registration Authority (Wiltshire Council) that on the balance of probabilities a significant number of the inhabitants of the parish of Hilperton have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years and that they continued to so on the 25th April 2017. Exhibit A of the application is the application form (Form 44).

11.1 Exhibit B is a supporting statement on behalf of applicants:

"This following statement is submitted in support of the application to enter into the register of Village Greens the land known as Church Field, Hilperton, (see Exhibit A).

The land has been used by the local community for a period in excess of 20 years. The Hilpertons historic society has evidence of the field being used during the war as a runway for aircraft (US Army Air Corp L-4 Grasshopper reconnaissance aircraft) and we cannot find any evidence to suggest that it has not been in continuous use by the community to the present day.

The field has been used for lawful sports and pastimes, as of right, including dog walking, snowman building, kite flying, ballgames and camping, a full list is provided in the appendix to this statement. A number of local organisations such as the local pre-school and Brownie/Scout groups have also used Church Field for various activities including nature trails and sports.

We have collected together witness statements from members of the Hilpertons community who used Church field over a period stretching from 1980 to present. These same members of the community have also provided us with photos taken during this period of various uses of the field, such as snowman building and nature trails.

These letters witness that the signatories have used Church Field as Village Green as of right without let or hindrance, and on no occasion have the owners or controllers of the land challenged their use of the land. That every part of Church Field has been used by the witnesses and that there has not been a period where use of Church Field has been prevented.”

“Appendix – summary of uses of the land from witness statements

*Kite flying
Running/walking for relaxation
Building snowmen
Dog walking
Ball games
Socialising
Building dens
Creating dance routines
Creating memories
Rounders/football/cricket
Scouts/brownies/pre-school activities
Nature trails
Camping
Air Ambulance landing
W – unreadable text”*

11.2 Exhibit C is a collection of 33 pages of undated photographs showing activities on the applicant land:

- | | |
|-------------------------------------|---|
| 1. Dog walking games with ball | 2. 6 people building large (8ft plus) snowman |
| 3. 9 people with same snowman | 4. 2 people with same snowman |
| 5. 8 people & dog with same snowman | 6. Snowman in middle of field |
| 7. Snowman | 8. Dog in snow |
| 9. Snowman | 10. 2 walkers in snow |
| 11. 2 walkers and dog in snow | 12. 2 walkers in snow |
| 13. 2 walkers and dog in snow | 14. Old picture of 9 men in uniform |
| 15. Walkers and dogs | 16. Walkers and dogs |
| 17. Meadow flowers | 18. Poppies |

- | | |
|--|---|
| 19. 11 people and large snowman | 20. Report of use of field in the 1940s |
| 21. Aircraft photography | 22. 4 people and snowman in 1999 |
| 23. 8 people and snowman | 24. 9 people and several dogs |
| 25. C. 16 St Michael's children waking | 26. 9 St Michaels children |
| 27. Man walking dog | 28. Photography of rainbow |
| 29. Landscape photography | 30. 2 walkers and dog in snow |
| 31. Brownie, adult and cows | 32. Children playing in snow |
| 33. Children playing in snow | |

11.3 Exhibit D is 33 signed statements from people who have used the land. Of the 34 people, 32 live (or lived in Hilperton at the time of their use), 1 gives her address as St Michael's Pre-school, Hilperton and 1 lives close by but in Trowbridge. A summary of their evidence produced by the case officer for Wiltshire Council is attached at **APPENDIX 1**

11.4 All 33 users have used the land within the period of 1997 to 2017 with 13 of them having it used it for the full 20 years. All bar 1 have seen others using the land.

11.5 No users have been challenged or seen any sign or notice prohibiting their use. They report that their use has been uninterrupted.

11.6 A range of activities carried out by witnesses include:

Dog walking	25 people
Walking	12 people
Snowmen and igloos	10 people
Kite flying	9 people
Rounders	7 people
Football/cricket/rugby	7 people
Ball games	5 people
Picnics	5 people
Blackberry picking	3 people
Meeting friends	3 people
French cricket	3 people
Building dens	2 people
Running	2 people
Frisbee	2 people

11.7 Exhibit E is the Land Registry search for the land.

11.8 Exhibit F is a plan showing the boundaries of Hilperton Parish which is the claimed locality for the purposes of this application.

12 **OBJECTIONS AND REPRESENTATION TO THE APPLICATION**

The application was duly advertised (Form 45) between the 21st July and the 4th September 2017. 3 Objections and 1 representation in support were received.

- 1) R and H Craddock (objection)
New Barn Farm
Whaddon Lane
Hilperton
BA14 7RN

- 2) Rosemary Sims (objection)
16 St Mary's Close
Hilperton Marsh
Trowbridge
BA14 7PW
- 3) Goughs Solicitors – acting for Roger Pike deceased (objection)
Dave Powell
Ramsbury House
30 Market Place
Devizes
SN10 1JG
- 4) E Clark (representation in support)
75 Westmoreland Avenue
Hornchurch
Essex
RM11 2EF

12.1 **R and H Craddock**

“Reference: Form 45 Commons Act 2006 section 15(1). Notice of Application for the registration of land as a Town or Village Green

I am writing to express my disgust at the above reference. Church Field has been farmed by 3 generations – Amor Pike, Norman Pike and Roger Pike. Roger retired from actively farming in 1988 and remains the owner letting this land in question on a grass keep basis to neighbouring farmers, formerly R Fyffe of Lower Paxcroft Farm and more recently Richard Vigar from Poplar Far, Wingfield who have all farmed it as part of their commercial business without interruption up until the present day.

There has been no “lawful sports and pastimes on this land” and any suggestions to the contrary are untrue, and if so, any such use would be regarded as unlawful and trespass.

We the Craddock family have been close neighbouring farmers since 1933 and can confirm that to the best of our knowledge no such use has been suggested or ever taken place, other than pedestrians having use of the designated footpaths HILP1, HILP2, HILP3 & HILP4 which are clearly marked on the council rights of way website for all to view.

Mr Roger Pike has more recently donated land for the village allotments and we feel that his generosity is now being taken for granted. He has now been forced to defend his property and in his early 90's he shouldn't have to endure this anxiety.

To conclude we strongly feel that this application should NOT be included in the Town and Village Greens register.”

12.2 **Mrs R Sims**

“I wish to register my objection to the proposed application of “Church Field” in Hilperton Village as a “Village Green”.

My responses are as follows: -

1) *There is already a Green Space in the village. The playing field beside the Village hall, which is used for all the things a village green needs, i.e. fetes, football etc.*

2) *There is no wildlife to speak of on this field, the rook population has declined by half since the "Road to No Where" (Elizabeth Way) was started. I walk these fields regularly. I have counted the nests in use fall from around 30 to around 14 this last spring.*

3) *This site will not be cultivated to "Village Green" standards, but left mostly to grass, roughly kept and used as it is presently, by dog walkers and people using the existing 2 footpaths that cross this field.*

4) *The only reason this field has been selected is that it is the last "Green Space" between Trowbridge & Hilperton Village. Should this field be built on, then Hilperton would be just another "suburb" of Trowbridge and lose its village status, which it is determined to hang on to!!*

5) *I trust and hope this application is very carefully and great consideration given to any objections raised regarding this matter."*

12.3 **Goughs Solicitors acting for Mr R Pike**

The objection made on behalf of Mr Pike is appended to this report at **APPENDIX 2**. The objection comprises:

- i) Notice of Objection
- ii) RP1 – Deeds relating to the applicant land
- iii) Copies of : *R Cheltenham Builders Ltd v South Gloucestershire District Council [2003] EWHC 2803 (admin)* and *Richard Naylor v Essex County Council v Silverbrook Estates Ltd, Diana Humphreys, Tendring District Council [2014] EWHC 2560 (Admin)*
- iv) Statement of Richard Vigar
- v) Statement of Richard Fyfe
- vi) Statement of Roger Pike

12.4 **E Clark**

"I have seen the Wiltshire Council notice dated 21 July regarding a village green application for Church Field.

I wish to add my support to the application.

I have used the field, and others in Hilperton Gap, for twenty-one years. My first use was simply when I was taken there for walks by my parents. Over the years I have since used the field for many uses including blackberrying, playing football, building snowmen, paintballing in the hedgerow and dog walking. I still use the field for dog walking when I am in Hilperton.

I did not, and do not, remain on either the 'public' or 'other' footpaths but used/use the whole of the field and its hedges. At no time have I ever been asked to leave by the owner or anyone else and my use of the field has been in broad daylight."

12.5 **Hilperton Parish Council**

This representation in support was received on the 18th January 2018, outside of the advertisement period. However, it is included here for completeness:

“Re. Village Green Application – Church Field, Hilperton

At its meeting on the 16th January 2018, Hilperton Parish Council resolved to fully support this application, and it has no objection to Church Field being registered as a Town or Village Green.”

13 APPLICANT’S COMMENTS ON THE OBJECTIONS AND REPRESENTATION

Copies of the objections and representation were sent to the applicant on the 25th October 2017. The response deadline was set as being the 8th January 2018 but extended on request from the applicant to the 5th February 2018 and again to the 2nd March 2018. All interested parties were kept informed.

13.1 The applicant’s response to the objections and representation was received on the 27th February 2018 and is appended here at **APPENDIX 3**. The response comprises:

- i) Letter of response
- ii) Summary of Time and Usage of Church Field
- iii) Additional photographs 1 to 17b
- iv) Additional evidence letters Herlinger, A Sawyer, Clark, House, Bowden, Hoskins, Hayes and S Sawyer.

14 OBJECTORS’ RESPONSES TO APPLICANT’S COMMENTS

Copies of the applicant’s comments referred to at paragraph 13 were sent to the 3 objectors (and to Mr Clark who had made a representation in support) on the 8th March 2018. The deadline for responses was the 13th April 2018. Officers had no objection to an extension to this period and one response was received from Goughs Solicitors. This was received on the 30th April 2018. This appended here at **APPENDIX 4**.

15 CONSIDERATIONS FOR THE COUNCIL

The Council, in its role of Commons Registration Authority has a duty to determine this application. The legal tests that must be satisfied for registration of the land as a town or village green are contained within s.15(2) of the Commons Act 2006:

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.*

15.1 In considering whether, on the balance of probabilities (that is, it is more likely than not), a significant number of the inhabitants of any locality, or any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years it is helpful to break down the requirements as follows:

15.2 **The locality**

The claimed locality is the civil parish of Hilperton. Officers are satisfied that this is a qualifying locality and that the applicant adduces evidence from users who live or have lived in the parish of Hilperton.

15.3 **A significant number of the inhabitants**

Population numbers for the parish of Hilperton from census information are as follows:

YEAR	NUMBER
1991	2632
2001	4284
2011	4967

15.4 The original application adduced evidence of use from 33 individuals. This was supplemented by statements from 8 additional users of the land by the applicant in their submission in response to the objectors' comments (**APPENDIX 3**). 6 of these adduced evidence of use covering the whole of the 20 year period 1997 to 2017. The total of users giving statements regarding their use throughout or during the 20 year period is therefore 41.

15.5 Figures for 1997 are not known but even if at 1991 levels, taken at its highest the application adduces evidence from just less than 2% of the population of the parish.

15.6 The case of *R(Alfred McAlpine Homes) v Staffordshire County Council [2002] EWHC 76 (Admin)* established that the term 'significant' did not mean a considerable or substantial number but needed to be sufficient to show that the land is in general use by the local community for informal recreation, rather than just occasional use by individuals.

15.7 The applicant land is in full view of a number of adjoining properties and some users in support of the application have stated that they frequently see people on the land. Aerial photography supports that the land has many well trodden paths leading across and around it. However, the land is well served by public footpaths which lead across and through it (see this report paragraph 7) and these footpaths coincide with some of the trodden paths. The landowner's property is approximately 35 metres from the land but visibility is probably obstructed by another property. 3 properties have garden gates into the field. These cannot have been missed by the owner or holder of the grazing licence.

15.8 Accordingly any landowner would not be surprised to see the public in the parts of the field where the footpaths lead and the landowner accepted that "some inhabitants of the local area regularly use these rights of way while, for example, walking their dogs". However, the presence of trodden paths in other areas of the field (especially the northern third or quarter of the field and around the perimeter) would have alerted any landowner to some form of activity occurring in the field. Additionally activities that clearly spread out from the rights of

way (for example French cricket or Frisbee) would appear different to any observer. Although it is not known where the snowmen were built in the field they would have remained in position long after the remainder of the snow had thawed and would have been very obvious to any observer of the land. Built on a right of way a snowman would be an obstruction.

15.9 The landowner considers that evidence of use is light and that it does not represent a significant number of the inhabitants. There is also a conflict of evidence regarding multiple user evidence from different family members.

15.10 The law is clear that it is “the inhabitants” that must be considered and it does not require evidence to be considered from households instead of individuals. Individual use will vary considerably and officers are content to accept that while some family members walked the dog or picked blackberries, other family members played as children or played rounders or French cricket. Frequency and years of use also vary between individuals. Anyone observing the use would not differentiate between families or households but would merely see people using the land.

15.11 **As of right**

Qualifying use must be ‘as of right’ and not ‘by right’. Use that is ‘as of right’ is without permission, without force and without secrecy. Use that is ‘by right’ is pursuant to a given authority to do so. For example it is without question that use of the public footpaths for walking, with usual accompaniments (i.e. a dog or pram) is ‘by right’ and that such use cannot qualify for registration of the land as a village green where it is coincident with the line of the paths. Any use of the paths as ‘A to B’ routes must be discounted for the purposes of village green registration as must some straying off the path by people and dogs; the application should demonstrate that there was a general use of the land for recreation which is not explicable as use of the right of way, however widely interpreted.

15.12 No users claim that they sought or had permission to use the field, nor that they used force or conducted their activities in secret. The landowner in his objection recalled that he “has been asked for permission by potential users of Church Field to carry out certain activities there”. For example he recalled being asked for permission for Hilperton School (when it was at the Knap) to camp and pitch tents in the field. The applicant consider that this was outside of the relevant period. The landowner does not claim to have granted permission to St Michael’s Pre-school to use the land though disputes that they did so, considering it being more likely that they used land that was closer to their school.

15.13 There are no reports of any signs on the land indicating that use of the wider field was by permission or that permission was needed. The presence of so many rights of way would have made it difficult for a landowner to erect signs that weren’t misleading (since the public are invited onto the land ‘by right’ on the public footpaths) but it is noted that there were none.

15.14 **Lawful sports and pastimes**

Lawful sports and pastimes can be any number of a range of activities including several of the activities that this application claims to have taken place on the applicant land. They may be formal or informal, seasonal, personal or with others. They may be taken together and whilst some uses may not cover all times (for example seasonal activities such as blackberry picking or making snowmen) they must, as a whole, have been exercised continuously throughout the period.

- 15.15 Activities stated for this application that have been approved by the courts include children playing, informal cricket, football, rounders, bird watching, picnics, kite flying, taking dogs for walks, wandering or promenading and recreational walking. Additionally blackberrying and snowballing are likely to be considered to be lawful sports and pastimes.
- 15.16 The landowner disputes that 'socialising', 'creating dance routines', creating memories' and 'air ambulance landing' are to be considered as lawful sports and pastimes. Officers agree that use by the Air Ambulance is unlikely to be considered thus or indeed that creating dance routines was likely to have been a regular occurrence, especially since it was not mentioned by many people, however, the general term 'socialising' may well be included in the term 'promenading' as referred to in Appendix 3 of the Open Spaces Society "Getting Greens Registered":

"wandering or promenading by way of pastime, recreational walking: 'Popular amusement takes many shapes; and there is no outdoor recreation so general and perennial as the promenade' Abercromby v Fermoy Town Commissioners (1900) 1 IR 302."

15.17 **On the land**

The whole of the field has been claimed for registration as a town or village green. This may include land with rights of way across it (provided that use extends beyond them) and it is not necessary for the applicant to demonstrate that all of the land was used for all of the sports and pastimes. However, any activity that causes substantial interference with the public use will be viewed as an interruption to use and will prevent registration.

- 15.18 No users claim any interruption to use of any part of the land. The landowner considers that the taking of a hay crop forms an interruption to use as does the grazing of the field by cattle. A grazing licence to Mr Fyfe was in place for the whole of the relevant period (1997 to 2017). This permitted the grazing of the land for part of the year and for a hay or silage crop to be taken. Mr Fyfe's statement confirms that he took an annual silage crop from the field in June. It is noted that harvesting grass cut for silage is less intrusive than for hay as drying and turning processes are longer for hay.
- 15.19 It is known that these activities took place in a field crossed by several public rights of way. The rights of way were not obstructed by that use of the land and were not closed to accommodate it. Claims that dog walkers stayed out of the field when the cattle were in it (potentially from after the June silage cut to December) seem highly unlikely and is not supported by any users of the land. Indeed, if cattle were to have this effect on the 4 rights of way in the field for a period of up to 6 months they would be deemed to be an obstruction; which they are not.
- 15.20 It is difficult to see therefore that if use continued on the rights of way that use of the wider field could not have also continued uninterrupted. Photograph 6b of the applicant's response to the objections (Appendix 3) shows 7 people and 3 dogs using the land over long cut grass and photograph 9 of the same appendix shows a Brownie talking to a cow in 1992. Both photographs were taken outside of the relevant period (pre and post application) but do demonstrate the principle that these farming activities continued alongside public access. There is no evidence of any segregation, division or protection by use of electric fencing or any other temporary means.
- 15.21 In *R(Laing Homes Ltd) v Buckinghamshire County Council [2003] EWHC 1578* it was held in the High Court that the annual gathering of a hay crop was incompatible with the use of

the land as a village green. The landowner relies upon the judgement in *Laing Homes* being fatal to the registration of the land as a Town or Village Green.

- 15.22 In *Oxfordshire County Council v Oxford City Council* [2006] 2 AC 674 para 57 Lord Hoffman commented that he did not agree that low level agricultural activities must be regarded as having been inconsistent with use for sports and pastimes if in practice they were not.

“57. There is virtually no authority on the effect of the Victorian legislation. The 1857 Act seems to have been aimed at nuisances (bringing on animals or dumping rubbish) and the 1876 Act at encroachments by fencing off or building on the green. But I do not think that either Act was intended to prevent the owner from using the land consistently with the rights of the inhabitants under the principle discussed in Fitch v Fitch (1798) 2 Esp 543. This was accepted by Sullivan J in R (Laing Homes Ltd) v Buckinghamshire County Council [2004] 1 P & CR 573, 588. In that case the land was used for “low level agricultural activities” such as taking a hay crop at the same time as being used by the inhabitants for sports and pastimes. No doubt the use of the land by the owner may be relevant to the question of whether he would have regarded persons using it for sports and pastimes. No doubt the use of the land by the owner may be relevant to the question of whether he would have regarded persons using it for sports and pastimes as doing so “as of right”. But, with respect to the judge, I do not agree that the low level agricultural activities must be regarded as having been inconsistent with use for sports and pastimes for the purposes of section 22 if in practice they were not....”

- 15.23 In *R(Lewis) v Redcar and Cleveland Borough Council* [2010] UKSC 11 the Supreme Court considered that shared use of land could give rise to a town or village green where there was evidence that some users deferred to other users of the land.

- 15.24 At paragraph 28 Lord Walker in considering the judgement of Sullivan J in *Laing Homes* says:

“28Taking a single hay crop from a meadow is a low level agricultural activity compatible with recreational use for the late summer and from then until next spring. Fitch v Fitch (1797) 2 Esp 543 is venerable authority for that. That is not to say that Laing Homes was wrongly decided, although I see it as finely – balanced...”

- 15.25 And at paragraph 36:

“36...I have no difficulty in accepting that Lord Hoffman was absolutely right, in Sunningwell [2000] 1 AC 335 to say that the English theory of prescription is concerned with “how the matter would have appeared to the owner of the land” (or if there was an absentee owner, to a reasonable owner who was on the spot). But I have great difficulty in seeing how a reasonable owner would have concluded that the residents were not asserting a right to take recreation on the disputed land, simply because they normally showed civility (or, in the inspector’s word, deference) towards members of the golf club who were out playing golf. It is not as if the residents took to their heels and vacated the land whenever they saw a golfer. They simply acted (as all members of the Court agree, in much the same terms) with courtesy and common sense.....”

- 15.26 *Lewis v Redcar* makes it clear that actions of deference and acting in a courteous manner are no bar to use being ‘as of right’ and do not amount to an interruption to use. At Hilperton the users of the public footpaths must have deferred to the agricultural use at the time the silage was being cut or baled and it is logical to accept that their use of the greater

area of land would have been similarly directed for those relatively brief and infrequent times that the crop was being cut and taken.

- 15.27 Unlike in the *Laing Homes* case where a hay crop was taken, the land at Hilperton was used only for silage. Mr Fyfe says in his statement that *“As far as I can recall, in each year throughout the 27 years or so in which I had Grasskeep Arrangements for Church Field, I first mowed the land for silage in around June, and after that I would graze livestock, primarily cattle, on the whole of Church Field.”*
- 15.28 Additionally. In *Laing Homes* there were other potentially disruptive processes associated with the hay crop. There was harrowing, rolling with a three ton roller and fertilising; none of which are activities described by Mr Fyfe. Hay crops require considerably more drying and turning than silage crops where moisture levels can be much higher. If silage is collected and clamped it can be off the field very rapidly after cutting. If silage is baled it will still be taken off the field much quicker than hay. In *Laing Homes* the judge considered the level of agricultural activity associated with the hay crop (including the growing and cutting of the grass) to be an interruption to lawful sports and pastimes. In this case however, many of the activities are compatible with long or cut grass, for instance it is still possible to play with a ball, to play Frisbee or to promenade over long or cut grass. It is a matter of fact and degree.

15.29 At least 20 years

The application is made under s.15(2) where use continues up to the date of application. In this case therefore the twenty year period is from April 1997 to April 2017.

- 15.30 Any evidence referring to events after this date (for example many of the applicant's photographs adduced after the application was submitted) must be disregarded for the purposes of this application.
- 15.31 The application adduces evidence extending back to the 1970s and covers the 20 year period 1997 to 2017.

16. Reasons for recommendation

- 16.1 The council has a duty to determine the application. The council has the power to accept the evidence adduced with the application and register the land as a town or village green or it may refuse the application and not register the land. The landowner has raised a number of points in objection to the application which the council has a duty to consider in a reasonable manner. The council must remain impartial throughout the determination process.
- 16.2 In summary the matters highlighted by the objectors are as follows:
- i) Can the evidence of multiple family members be taken?
 - ii) Is the evidence from a significant number of the inhabitants?
 - iii) Was use by permission?
 - iv) Was use by right owing to the presence of the rights of way?
 - v) Are socialising, creating dance routines and creating memories lawful sports and pastimes?
 - vi) Is use of the land for grazing cattle and taking a silage crop a bar to registration?
 - vii) How were the witnesses motivated?

viii) How credible is some of the evidence?

- 16.3 Officers have considered the evidence and the objections and consider that the opinion of an expert in this area of law would greatly assist the Council in coming to a decision on the application. In particular a non-statutory public inquiry where witnesses could give their evidence verbally and possibly under cross examination would expand and elucidate the following points especially:
- a) Is there sufficient evidence from a significant number of inhabitants?
 - b) Has use been by permission?
 - c) Have the agricultural activities prevented registration?
 - d) Is the evidence sufficient to demonstrate use of the whole field and not just the public rights of way?
- 16.4 Where matters of evidential interpretation are not clear the Council is bound by the Court of Appeal judgement in *R(Christopher John Whitmey) and The Commons Commissioners [2004] EWCA Civ. 951*
- 16.5 In considering the duty of the Commons Commissioners to determine disputed applications for registration of town or village greens under s.13 of the Commons Registration Act 1965 Lady Justice Arden at paragraphs 26 onwards:

“26. In my judgement, there are three ways in which disputes as whether land should be registered as a green under section 13 can be determined. First, there can be an application to the court at any time for a declaration that a property is or is not a village green for the purposes of the Act. Second the registration authority could itself determine the matter. Third, following registration a dissatisfied party can apply to the court for rectification of the register under section 14(b) of the 1965 Act.

27....

- 28. As to the second option, the registration authority is not empowered by statute to hold a hearing and make findings which are binding on the parties by a judicial process. There is no power to take evidence on oath or to require the disclosure of documents or to make orders as to costs (as the Commons Commissioners are able to do: section 17(4) of the 1965 act). However, the registration authority must act reasonably. It also has power under section 111 of the Local Government Act 1972 to do acts which are calculated to facilitate, or are incidental or conducive, as to the discharge of their functions. This power would cover the institution of an inquiry in an appropriate case.*
- 29. In order to act reasonably, the registration authority must bear in mind that its decision carries legal consequences. If it accepts the application, amendment of the register may have a significant effect on the owner of the land or indeed on any person who might be held to have caused damage to a green and thus to have incurred a penalty under section 12 of the Inclosure Act 1857. (There may be other similar provisions imposing liability to offence or penalties). Likewise if it wrongly rejects the application, the rights of the applicant will not receive the protection intended by Parliament. In cases where it is clear to the registration authority that the application or any objection to it has no substance, the course it should take will be plain. If however, that is not the case, the authority may well properly decide, pursuant to its powers under section 111 of The 1972 Act, to hold an inquiry. We are told that it is the practice for local authorities so to do either by appointing an independent inspector or by holding a hearing in front of a committee. If the dispute*

is serious in nature, I agree with Waller LJ that if the registration authority itself has to make a decision on the application (c.f. paragraphs 30 and 31 below), it should proceed only after receiving the report of an independent expert (by which I mean a legal expert) who has at the registration authority's request held a non-statutory public inquiry.

30. *One advantage of such an inquiry is that the proceedings can take place with some degree of informality and utilising a flexible approach to procedure.....The authority may indeed consider that it owes an obligation to have an inquiry if the matter is of great local interest....”*

16.6 Waller L J agreed and at paragraph 66 said:

“66. I make these points because the registration authority has to consider both the interests of the landowner and the possible interest of the local inhabitants. That means that there should not be any presumption in favour of registration or any presumption against registration. It will mean that, in any case where there is a serious dispute, a registration authority will almost invariably need to appoint an independent expert to hold a public inquiry, and find the requisite facts, in order to obtain the proper advice before registration.”

17. RECOMMENDATION

That a non-statutory public inquiry is held before an expert in this area of law to test all evidence and to make a recommendation to assist the Council make a decision on the application.

Sally Madgwick
Definitive Map and Highway Records Team Leader
Wiltshire Council

05 February 2019

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Summary of User Evidence from Exhibit D– relevant period 1997 – 2017

APPENDIX 1

No	Name	Period of use in years	Years of use in rel. period	Nature of own use	Nature of observed use	Notes
1	S Kotevska	26	20	With pupils looking at insects and nature. Access route.	Flying kites, walking dogs and jogging	St Michael's Pre-School Manager Never questioned about being in the field. No signs saying the field is private. Includes photos of children in field (undated)
2	G Kehily	1998 – 2017	19	Walking dog (1999 – 2013) Flying kites with children Running Walking for relaxation	Dog walkers	Includes photos taken in 2002 of his son and dog in the field
3	K Lacey	No more than 25 years	Not known	Playing rounders and other ball games (as a child) Picnics (as a child) Having fun (as a child) With own children and dog all of whom can run free here	No comments	No signs Never sought permission
4	R Huggins	19	19	Walking dogs (at least 5 times per week) Play area for children taking exercise Safe route to and from school	Socialises with other dog owners	Never challenged or prevented. No signs that land is private and never sought permission
5	A Sawyer	1974 – 2017	20	As a short cut Since 1998 walked dogs	Other dog walkers	No signs and has not been told use was not permissible

No	Name	Period of use in years	Years of use in rel. period	Nature of own use	Nature of observed use	Notes
6	C Barker	Not more than 14	Not more than 14	Rounders Football with friends Walking dog Treasure Hunt at Easter Built snowmen and an igloo	Other children playing rounders and football	Witness is a minor
7	J Goodwin	30	20	Walking the perimeter, down the side and across the middle	Dog walkers Children playing Kicking a ball Flying a kite Family walks Keep fit circuit Runners	Lives in bungalow next to applicant land
8	T Clark	1995 – 2017	20	With friends kicking footballs Throwing rugby balls Picking blackberries Playing paintball Picnics Building snowmen Walking dogs	Activities with friends as own use	Use reduced to dog walking in about 2009
9	Revd Clark	1992 – 2017	20	Wild flower spotting Playing ball or Frisbee while walking footpaths Picnics Own children played there Puppy training Snowman building Photography	“...it snowed...many phone calls...to meet in field to build a snowman....whole community came together. Hot toddies shared, snowmen and igloos built, snow ball fights..at lunch time many dispersed and some retired to the (pub)”	

No	Name	Period of use in years	Years of use in rel. period	Nature of own use	Nature of observed use	Notes
10	R Coles	1978 – 2016	19	Children's play, flying kites, building snowmen, dog walking and other activities.	Dog walking often large groups	Had a gate leading directly into field. Walked dogs daily 1990 to 2015.
11	W Coles	Born 1984. As a young child and teenager (c.1989 – 2000)	4	Played there as a child with friends, pretending to ride horses, make up dance routines, design obstacle courses for dogs, running round and making dens.		Parents house had a gate leading directly into field.
12	J Davies	1998 – 2017	18	Walks, playing football and rugby. Dog walking.	Especially popular with people walking dogs	Used regularly but did degree at Portsmouth Uni.
13	C Davies	1998 – 2017	18	Walks, ball games with children who also ran around the field. Walking route into Trowbridge. Dog walking (2007 – 2015)	Invariably sees many other local people using the field	Have used the field "hundreds of times"
14	T Davies	1998 – 2017	18	Weekend walks around the field. 1998 – 2010 kite flying and ball games. 2008 – 2015 dog walking. Walking route to Trowbridge.	Typically would see 3 or 4 groups of people in the field often more	Used the field on hundreds of occasions and regularly
15	S Kenich	1987 – 2017	20	As a child for walking and playing with family and dog. Now uses to walk dog and daughter, ball games, meet friends, watch sunset.	Meets new and old friends	

No	Name	Period of use in years	Years of use in rel. period	Nature of own use	Nature of observed use	Notes
16	K and C Warr	2007 – 2017	10	Walking. Cross the field as a short cut to church.	Mrs Warr lived for 20yrs elsewhere in Hilperton and saw many people access the field. Current house overlooks the field and they see many people walking and running in the field.	Notes that a few houses have gates onto the field.
17	I and A Moore	1997 – 2017	20	Dog walking. Children playing football.	Walkers and joggers, games, kite flying etc	His mother walked dogs in the field in the 1960s
18	N Walker	2008 – 2017	9	Dog walking twice a day around the circumference and on FPs.	Dog walking and sun bathing.	Recalls cows in the field. Also that Hilperton Parish Council planted trees in the field
19	L, M and S Wilcox	1996 – 2017	20	Dog walking,	Children's activities, flying kites and model aeroplanes. Brownies, Scouts and cubs nature activities and camping. Exercise, games, walking and running.	Some dog walkers drive there from elsewhere
20	H Davies	1998 – 2017	19	Walking and dog walking 2007 – 2015	Many other people enjoying walking around the field	
21	J A S Waring	1983 – 2015	18	Her children made daisy chains, camps and practised for Brownie and Guide badges. Walked dogs most days.	Kite flying, model aeroplanes.	

No	Name	Period of use in years	Years of use in rel. period	Nature of own use	Nature of observed use	Notes
22	K J Waring	1983 – 2015	18	Almost daily dog walking and training	Seemed like a public space. Other dog walkers.	
23	C Hart	2007 – 2017	10	French cricket, rounders, kite flying, wild flower collecting. Dog walking from 2009.	Brownies bug hunts, nature trails and map reading.	The entire field is in use not just the footpath
24	P hart	2007 – 2017 (born 2003)	10 but as a child	Walking dog (roughly 1716 times). Built snowmen and igloos. Football, French cricket, Frisbee. Watching sunsets.	Plays football, French cricket and Frisbee with friend	
25	H Hart	2007 – 2017	10	Walking with dog and family. Two children building snowmen, playing rounders, football, flying kites and playing with friends.	Local schools and clubs for treasure hunts and trails by running club.	Children used to watch planes coming and going in 1944
26	I Hart	2007 – 2017	10	Walking, cartwheeling and cycling. Helicopters and a hot air balloon have landed there.	Can see field from her bedroom. Perhaps 100 people come and go during the day. Often in groups.	
27	S Lacey	1992 – 2017	20	Walked dogs and children. Played rounders, cricket, flown kites and had fun with snow.	Regularly sees everyone having a lovely time in the field when she visits the cemetery	
28	H Whitehead	2008 – 2017	9	Walks with children, to town, dog walking, socialising and running. Almost daily use.	People use it as open space.	

No	Name	Period of use in years	Years of use in rel. period	Nature of own use	Nature of observed use	Notes
29	E Clark	1993 - 2017	20	Annual blackberry picking, wandered at will with young son, dog walked almost daily from 2002. Played football, kite flying, snowball fights etc with sons.	Meet others for socialising when snowing	
30	D Harvey	1993 – 2017	20	Picnics and rounders. Blackberry picking in autumn, birdwatching in spring and snowman building in winter. Has used all parts of the field.	Model planes. Air Ambulance practices here. Dog walking, flying kites and children chasing each other.	
31	S Harvey	1993 – 2017	20	Dog walking, kite flying and occasional picnic.	The field is busy with dog walkers and very rarely is there no one in the field	
32	N Harvey	1996 – 2017 born 1996	c.16	Playing, building snowmen, kite flying and rounders. Walking dogs. Building dens and playing hide and seek.		
33	K Walker	1987 – 2017	20	Dog walking	Other dog walkers, children playing	

No users report seeing any signs or having any challenges to their use.

**Notice of Objection to application for the registration of Church Field, Hilperton, as a
Town or Village Green**

This Objection is made on behalf of Mr Roger Pike of Fairfield House, Nursery Close, Church Street, Hilperton, Trowbridge, Wiltshire, BA14 7RP ("Mr Pike") in response to an application dated 20 April 2017 by 'Church Field Friends' for the registration of an area of land known as Church Field, Hilperton, as a Town or Village Green under section 15 of the Commons Act 2006 ("the Act") ("the Application"). Mr Pike is the owner of the land at Church Field, having acquired title to it pursuant to a Deed of Gift from his late father, Norman Pike, dated 15 September 1959. A copy of that Deed of Gift, together with the Assent dated 10 July 1953 that is referred to in the Deed (which contains a plan identifying Church Field as Pt 140 on the Ordnance Survey Map (1936 and 1939 Revisions)) is attached to this Notice of Objection and marked "RP1".

The purpose of this Notice of Objection is to set out the grounds on which Mr Pike's objection is based. Mr Pike, through his solicitors, has reached an agreement with the registration authority, Wiltshire Council, that his evidence in support of the grounds stated herein is to be submitted to the Council within 28 days of this Notice, so by no later than 2 October 2017.

Before setting out the grounds of Mr Pike's objection, it is important to note that 'Church Field Friends' have specified that subsection (2) of section 15 of the Act applies to this Application. Section 15(2) provides as follows:

(2) This subsection applies where—

- (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and
- (b) they continue to do so at the time of the application.

Grounds of objection

Mr Pike objects to the Application on the following grounds:

1. 33 statements have been provided in support of the Application, and in some instances (Clark, Coles, Davies, Waring, Hart and Harvey) statements have been provided by multiple members of the same family, presumably in an attempt to show that the Application has the support of a greater number of people, notwithstanding that the family members' evidence in those instances is essentially the same. In any

event, 33 people do not represent a significant number of the inhabitants of any locality, or neighbourhood within a locality, for the purposes of section 15 of the Act;

2. It is a requirement of section 15 of the Act that the sports/pastimes in question must have been indulged in "as of right". On several occasions throughout the 20-year period prior to the Application, Mr Pike has been asked for permission by potential users of Church Field to carry out certain activities there. For example, Mr Pike remembers being contacted by members of staff at Hilperton School (when it was at the Knap, Hilperton), who requested permission for the School's pupils to camp/pitch tents on Church Field;
3. There are at least three common law rights of way across Church Field. They are represented by the black dotted/broken lines on the plan attached to the Application as Exhibit A. Mr Pike accepts that some inhabitants of the local area regularly use these rights of way while, for example, walking their dogs. Their use of Church Field is consistent with their right to walk across it. In other words, their usage of Church Field has been "by right", not "as of right" (for an analysis of the differences between the two, see *Naylor v Essex County Council* [2014] EWHC 2560 (Admin));
4. Exhibit B to the Application contains a so-called 'Summary of uses of the land from witness statements'. That list contains several spurious alleged uses, including "Socialising", "Creating dance routines", "Creating memories" and "Air ambulance landing". To the extent that those alleged uses are capable of amounting to sports or pastimes (and, for the avoidance of any doubt, it is not accepted that they do), it is unlikely that those activities have been indulged in with sufficient regularity/frequency such that they could reasonably be said to count towards the sports/pastimes that are alleged to have been carried on at Church Field throughout the relevant period;
5. For several significant periods of time during the 20 years prior to the Application, Mr Pike has granted licenses to local farmers for them to graze livestock on Church Field. It is improbable that the activities alleged in the Application to have been carried on at Church Field could have done so uninterrupted during the 20-year period because they were incompatible with the use of the land for grazing livestock (for a discussion of the impact of such an interruption on what might otherwise be continuous use for sports/pastimes, see the *Naylor* case referred to above);
6. In light of: (a) other uses of the land during the relevant 20-year period (such as grazing; and the use of parts of Church Field as an overflow car park for St Michael and All Angels Church); and (b) it being used primarily in accordance with the

common law rights of way which make up only a small part of the land; it cannot sensibly be said that the whole of Church Field has been used for the alleged sports/pastimes during the relevant period (see *R (Cheltenham Builders Ltd) v South Gloucestershire Council* [2003] EWHC 2803 (Admin));


7. Most of the statements made in support of the Application are by persons who can each attest only to parts of the relevant 20-year period (Thomas Clark, Robert Coles, Wendy Coles, James Davies, Catharina Davies, Tim Davies, Helen Davies, Kenneth Warr, Nicola Walker, J.A.S. Waring, K.J. Waring, Chris Hart, Phoebe Hart, Heidi Hart, Isabelle Hart, Helen Whitehead, Steve Harvey). Accordingly, their evidence is of limited value in establishing that Church Field has (or, as the case may be, has not) been used as of right for indulgence in the alleged sports/pastimes throughout the 20 years;
8. With particular reference to the statement by Sonja Kotevska, Mr Pike is surprised by the assertion that, during the last 26 years or so, children who attend St Michael's Pre-School "*have accessed the whole of Church field on a regular basis, exploring nature and using it for recreational purposes ...*". As far as Mr Pike is aware, St Michael's Pre-School has, for a considerable period of the last 26 years, been based in the Village Hall, Whaddon Lane. In the grounds of the Village Hall is a large playing field. It seems improbable that the staff and children at St Michael's Pre-School would not simply use their own playing field for field trips/nature walks rather than using Church Field, which is much further away. As for Ms Kotevska's assertion that "*children from Trowbridge utilize the field as safe access to the pre-school*", that is simply a reference to the common law rights of way which are dealt with at paragraph/ground number 3 above;
9. It is quite clear from a number of the statements from members of the 'Church Field Friends' group that many of them are at least partially motivated to support the Application on account of their desire not to see the land developed on in the future. That is not one of the criteria for a successful application under section 15 of the Act, nor is it a factor to be taking into account by the registration authority which determines the application. The following are some examples of the Church Field Friends' expressions of their motivations/desires that there should be no development work on Church Field or further development in Hilperton generally:

- (a) Wendy Coles: "*I remember when I first heard the mention of a road being built across the fields and the possibility of houses. My friends and I devised a plan to stop the opening of the road (not a particularly solid plan!) and luckily*

for me it was never built during my time there so we never put our strategy into action!";

- (b) Kenneth and Catherine Warr: *"...if houses were to be built on part of The Gap in the future, the preservation of Church Field as a continuing venue for wildlife would become even more important.";*
- (c) Ivan and Ayesha Moore: *"There are very few such areas remaining in the districts and it is essential that places of long established leisure and amenity such as this, combined with its historic farming use, are preserved and protected from change or future developments.";*
- (d) Lucy, Martin & Sian Wilcox: *"Villages are a quintessential part of the British countryside. With village green status for Church Field we will uphold these traditions and ensure that future generations can enjoy this beautiful part of the country side.";*
- (e) Chris Hart: *"Church Field is a place that the residence [sic] of Hilperton go to socialise, exercise and relax and I believe if it isn't already, should be preserved for future residence [sic] to use.";*
- (f) Sally Lacey: *"I think it is very important to keep this field as it will give a gap between Trowbridge and Hilperton. If this field is not saved the people in Hilperton will struggle to find somewhere close to go to walk the dog or for other recreational reasons.";* and

10. Mr Pike is understandably concerned by the letter from Mr Kenneth Warr to Chris and Heidi Hart dated 28 March 2017 (included within Exhibit D to the Application), in which Mr Warr suggests that he would remove anything prejudicial to the success of the application if prompted to do so by Mr and Mrs Hart. Arguably this suggests that some of the evidence may have been tailored/contrived so that, ostensibly, it meets the criteria for a successful application under section 15 of the Act rather than simply representing the facts about the local inhabitants' use of Church Field during the relevant period.

Signed: 

Goughs Solicitors

(For and on behalf of Roger Pike)

Dated: 4 September 2017

"RPI"



MEMORANDUM By a Conveyance dated 18 March 1972 the property being OS Estates 412, 414, 415, 417, 418 and 451 was transferred to Conington Estates Ltd. Duplicates of both Transfers are in the file records of Conington Estates. By a Transfer dated 14th September 1979 (copy with deeds) the property being OS Estates 412, 414, 415, 417, 418 and 451 was transferred to Conington Estates Ltd. Duplicates of both Transfers are in the file records of Conington Estates. From the above Transfers there is a plan in the file records of Conington Estates. See Transfer to Hilper Road Conington.

DATED 15th September 1959.

RODMAN PIKE, ESQ.

- to -

ROGER PIKE, NSQ.

DEED OF GIFT

WILKINS & HILL,
Solicitors,
ROCHESTER,
WILTS.

MEMORANDUM:

BY a Deed of Covenant made the 14th day of September 1979 between the within named Roger Pike and Erich Schonfeld and Mary Schonfeld the within named Roger Pike covenanted not to plant erect or construct any item on the area hatched Black on the plan attached to the Deed and to restrict the growth of plants trees and shrubs on the land in all respects so as not to interfere with the clear visibility required from an access way to be built on the Covenantess' adjoining property

MEMORANDUM By a Conveyance (copy with deeds) dated 25th November 1985 part of OS estate 148 was conveyed by Roger Pike to Raymond Phillip Hart and Dianne Mary Hart in fee simple subject as herein contained and an acknowledgment was given for production of His Deed of Gift

MEMORANDUM By a Conveyance dated 8 September 1988 a strip of land being part of OS 148 and adjoining 192 Denizes Road Hilperston was conveyed in fee simple to Dennis Overton and Barry Tony Overton (Duplicate with deeds)

MEMORANDUM By a Conveyance dated 19th December 1988 4.577 acres of land adjoining 162 Denizes Road Hilperston (OS 118 and part 119 and 119(M) (H) 15)) was conveyed in fee simple to HS & KM Nurkowsk Ltd (copy with deeds)



DEED OF GIFT is made the *Fifteenth* day of *September* One thousand nine hundred and fifty-nine BETWEEN NORMAN PIKE of "Highfield" Trowbridge in the County of Wilts Farmer (hereinafter called "the Grantor") of the one part and ROGER PIKE of Monkton Broughton Gifford in the said County of Wilts Farmer (hereinafter called "the Donee") of the other part WHEREAS the Grantor is seised of the property hereinafter described for an estate in fee simple in possession free from incumbrances and is desirous of conveying the said property to the Donee by way of gift

NOW THIS DEED WITNESSETH that in consideration of his natural love and affection for the Donee the Grantor hereby conveys unto the Donee ALL THOSE pieces or parcels of land situate in the parish of Hilperton in the County of Wilts TOGETHER with the farmhouse and buildings erected thereon or on some part or parts thereof and known as Church Farm Hilperton aforesaid TOGETHER ALSO with the five cottages known as Numbers 104, 105, 106, 107 and 108 High Street Hilperton aforesaid All which said premises are more particularly described in the Schedule hereto AND TOGETHER ALSO with the benefit of the restrictions stipulations and covenants referred to in the Third Schedule to a certain Assent dated the tenth day of July One thousand nine hundred and fifty-three and made by the Grantor and Harold Freedy in favour of the Grantor TO HOLD the same unto the Donee in fee simple Subject to the restrictive stipulations covenants and conditions referred to in the Second Schedule to the said Assent.

IN WITNESS whereof the parties hereto have hereunto set their hands and seals the day and year first hereinbefore written.

THE SCHEDULE above referred to.

<u>No. on O.S. Map</u> <u>(Revision of 1936).</u>	<u>Area.</u>
118	.385
119	6.383
119a	2.898
119f	1.238
119g	.725
Pt. 122	12.071 est.
126	.619
127	1.311
Pt. 140	14.925 est.
142	.953
Pt. 148	5.400 est.
148a	.431
Pt. 198	20.500 est.
<u>(Revision of 1939).</u>	
182	3.845
	<hr/> 71.684

6

THE SCHEDULE above referred to (contd).

No. on O.S. Map.
(Revision of 1939).

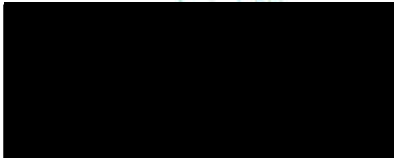
Area.

	71.684
183	10.821
184	12.685
213	7.152
214	8.060
215	1.754
216	.905
217	7.570
443	2.619

Total

123,250 Acres

SIGNED SEALED and DELIVERED
by the said NOKMAN PIKE in the
presence of:-



By a Conveyance dated the 29th April 1966 between the within named Roger Pike (1) & The Bradford & Melksham R.D.C. (2) part O.S. No 140 adjoining the Cemetery Hilperton Wilts was conveyed unto the R.D.C. in fee simple & its right to production of the within written Deed was thereby acknowledged.

BY a Conveyance dated the 29th day of February 1970 made between the within named Roger Pike (1) and The Bradford & Melksham R.D.C. (2) part O.S. Number 140 containing 9 perches or thereabouts and adjoining the land conveyed to the R.D.C. by a Conveyance dated 29th April 1966 on the East side thereof was conveyed unto the R.D.C. in fee simple and its right to production of the within written Deed was thereby acknowledged.

MEMORANDUM: BY a Deed of Grant made the 31st day of December 1971 between the within named Roger Pike (1) and the Southern Electricity Board (2) the said Roger Pike granted to the Southern Electricity Board a right to lay and maintain underground electric lines under the within described land being part of Church Farm Hilperton in the County of Wilts in fee simple and the Board's right to production of the within written Deed was thereby acknowledged.

MEMORANDUM: BY a Conveyance dated the 28th day of August 1975 made between the within named Roger Pike (1) and Phyllis Pike (2) Number 108 Church Street (formerly Number 108 High Street) Hilperton in the County of Wilts and the garden thereto belonging was conveyed unto Phyllis Pike in fee simple and her right to the production of the within-written Deed was thereby acknowledged.

MEMORANDUM: BY a Conveyance made the 11th day of August 1976 between the within named Roger Pike and the Parish Council of Hilperton the said Roger Pike conveyed to the Parish Council of Hilperton the Blind House, Hilperton, in fee simple and acknowledged their right to the production of the within written Deed of Gift.

MEMORANDUM: BY a Deed of Gift dated the 20th day of March 1978 and made between the within named Roger Pike (1) and Pamela Joan Pike (2) Numbers 104 and 105 Church Street Hilperton in the County of Wilts were conveyed to the said Pamela Joan Pike in fee simple and her right to the production of the within written Deed was thereby acknowledged.

MEMORANDUM: BY a Conveyance made the 25th day of April 1980 between the within named Roger Pike (1) and Stephen Merritt (2) Number 106 Church Street was conveyed by the said Roger Pike to Stephen Merritt in fee simple and the right to the production of the within written Deed of Gift was thereby acknowledged.

MEMORANDUM: BY a Conveyance made the 19th day of February 1982 between Pamela Joan Pike and the within named Roger Pike (1) and Victor John Crapnell and Patricia Ann Crapnell (2) the land formerly forming part of the garden land at the rear of Numbers 106 and 108 Church Street Hilperton edged red and hatched green on the plan annexed to the said Conveyance was conveyed by Roger Pike to Victor John Crapnell and Patricia Ann Crapnell and the said Conveyance contained an acknowledgment for production and undertaking for safe keeping of the within written Deed of Gift.

MEMORANDUM: By a Conveyance dated 15 December 1986 107 Church Street Hilperton was conveyed to David John Bartholomew in fee simple (copy has attached)

MEMORANDUM: By a Transfer dated 6 July 1987 a small area of land at rear of 108 Church Street Hilperton was conveyed to Phyllis Pike in fee simple (copy has attached)

MEMORANDUM: By a Conveyance dated 24 January 1990 (duplicate with Deeds) a small area of land being part of OS 0006 (formerly 140) at the rear of 5/6/7 St Michaels Close Hilperton was conveyed to Vivian Leonard Smith and Hentzer Beryl Smith in fee simple.

DATED 10th July 1953.

The Personal Representatives
of Amor Mullins Fike deceased

-to-

Norman Fike Esq.

A S S E N T

to the vesting to Church
Farm, Hilperton, Wilts.

[Handwritten signature]

[Handwritten note]

BY a Conveyance dated the 20th June 1957 and made between the within-named Norman Fike of the one part and Roger Fike of the other part the property within described as No. 179 on the O.S. Map containing 17.176 acres together with other property was conveyed to the said Roger Fike in fee simple and his right to production of the within written Assent was thereby acknowledged.

PERORANDUM.



KNOW ALL MEN BY THIS ASSENT which is made the *seventh* day of *July* One thousand nine hundred and fifty three that NORMAN PIKE of Highfield Hilperton Road Trowbridge in the County of Wilts Farmer and HAROLD FREEDY of 19 Fore Street Trowbridge aforesaid Auctioneer (hereinafter called "the Representatives") hereby declare as follows:

1. IN this Assent the following expressions shall have the following meanings that is to say :-

- (a) "The Deceased" shall mean Amor Mullins Pike late of Church Farm Hilperton in the said County of Wilts Retired Farmer deceased who died on the Fourth day of April One thousand nine hundred and fifty two and Probate of whose Will was granted to the Representatives out of the Winchester District Probate Registry on the Fifth day of August One thousand nine hundred and fifty two
- (b) "The Owner" shall mean the said Norman Pike

2. THE Deceased was at his death entitled at law and in equity and the Owner is now entitled in equity to the property specified or referred to in the First Schedule hereto for an estate in fee simple in possession subject as stated in the Second Schedule hereto but otherwise free from incumbrances

3. THE Representatives as Personal Representatives of the deceased have not given or made an assent or conveyance in respect of a legal estate in or affecting all or any part of the property specified or referred to in the First Schedule hereto

4. THE Representatives as Personal Representatives of the deceased hereby :-

- (a) ASSENT to the vesting in the Owner of ALL the property specified or referred to in the First Schedule hereto TO HOLD unto the Owner in fee simple and for his own absolute use and benefit but subject as stated in the second Schedule hereto
- (b) ASSIGNS to the Owner absolutely the benefit of the rights and benefits specified or referred to in the Third Schedule hereto

5. THE Representatives hereby acknowledge the right of the Owner to production of the Probate so granted to the Representatives as aforesaid (the possession whereof is retained by the Representatives) and to delivery of copies thereof

IN WITNESS whereof the said parties to these presents have hereunto set their hands and seals the day and year first before written.

THE FIRST SCHEDULE Above referred to Particulars of the land to which the above written Assent relates.

ALL THOSE several closes or pieces of land which are known as Church

Farm and are situate in the Parishes of Hilperton and Trowbridge in the County of Wilts and comprise in the whole 138.423 acres or thereabouts and are more particularly described hereunder and with the respective boundaries or abutments thereof are (by way of further identification but not by way of restriction) delineated on the plan annexed hereto and are thereon coloured over with the colour pink such plan being taken from the Ordnance Survey Maps dated in the years One thousand nine hundred and thirty six and One thousand nine hundred and thirty nine of the said Parishes of Hilperton and Trowbridge and the numbers set out hereunder referring to the corresponding numbers in such plan Together with the messuage or farmhouse known as Church Farmhouse and other buildings on the aforesaid pieces or parcels of land

No. on Ordnance Survey Map (1936 and 1939 Revisions).	Description.	Quantity.
118	Rickyard and skilling	. 385
Pt 119	Pasture	6 . 383
Pt 119 c	Pasture	1 . 923
119 f	Pasture	1 . 238
119 g	Pasture	. 725
Pt 122	Pasture	12 . 071
126	Pasture	. 619
127	Farmhouse garden yard and outbuildings	1 . 311
Pt 148	Pasture	5 . 400
148 a	Pasture	. 431
Pt 198	Pasture	20 . 500
Pt 140	Pasture	14 . 850
179	Pasture	17 . 176
182	Pasture	3 . 845
183	Pasture	10 . 821
184	Pasture	12 . 685
213	Pasture	7 . 152
214	Pasture	8 . 060
215	Pasture and shed	1 . 754
216	Pasture	. 905
217	Pasture	7 . 570
443	Pasture	2 . 619
		<u>138 . 423</u>

THE SECOND SCHEDULE Before referred to.

The lands specified in the First Schedule before written are by the above written Assent vested in the Owner subject so far as thereby respectively affected to the matters following that is to say:

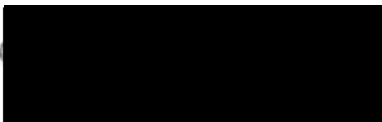
1. As to Ordnance Numbers 179 182 183 and 214 to the restrictions and stipulations on the part of the deceased contained in a Conveyance dated the Sixteenth day of July One thousand nine hundred and twenty three made between the deceased of the one part and Edgar Leonard Hill of the other part

2. As to all the land subject to any title redemption annuity and all encumbrances affecting the same
3. The burden of all covenants (whether positive or negative) on the part of the deceased or the Representatives and provisions binding on him or them given or entered into by him or them and of all rights granted by him or them on or in with the sales of any lands

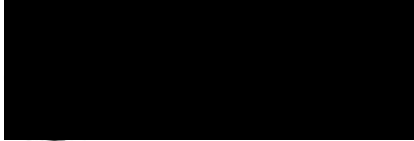
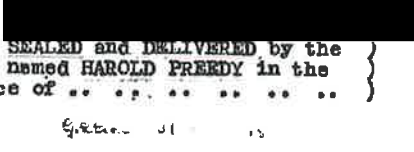
THE THIRD SCHEDULE Before referred to
Particulars of rights specifically assigned by the
above written Assent

1. The benefit of the restrictions and stipulations on the part of the said Edgar Leonard Hill contained in the said Conveyance dated the Sixteenth day of July One thousand nine hundred and twenty three being a Conveyance on Sale to the said Edgar Leonard Hill of certain lands at Hilperton aforesaid
2. The benefit of the covenants on the part of the Trowbridge Water Company contained in two several Conveyances dated respectively the Thirty First day of December One thousand nine hundred and twenty five and the Twelfth day of November One thousand nine hundred and twenty seven and each made between the deceased of the one part and the Trowbridge Water Company of the other part being Conveyances on Sales to the Trowbridge Water Company of certain lands situate near to the Devizes Road at Hilperton aforesaid
3. The benefit of all covenants and agreements (whether positive or negative) and reservations and other provisions in favour of the deceased or the Representatives obtained by him or them on or in connection with sales of lands fronting the Devizes Road at Hilperton aforesaid
4. The benefit of all payments under part VI of the Town and Country Planning Act 1947 in respect of interests in the lands specified in the First Schedule before written which are depreciated in value by virtue of the provisions of that Act

SIGNED SEALED and DELIVERED by the
before named NORMAN PIKE in the
presence of



SIGNED SEALED and DELIVERED by the
before named HAROLD FREEDY in the
presence of



**In the matter of the Commons Act 2006: Section 15
Application by 'Church Field Friends' for registration of Church Field, Hilperton
as a Town or Village Green**

STATEMENT OF RICHARD VIGAR

1. My name is Richard Vigar. I am a local farmer and have been an active working partner in our family farming business at Pomeroy Farm, Wingfield, BA14 9LJ, for many years.
2. I have known Mr Roger Pike, the owner of Church Field in Hilperton, for approximately 30 years. For a long time, we were both local farmers and have operated in the same circles.
3. On 13 March 2017, the Vigar family farming partnership, J H Vigar & Son, entered into a Grazing Licence Agreement with Mr Pike so that we could use the land at Church Field for agricultural purposes. Attached to this statement and marked "RV1" is a copy of our Grazing Licence Agreement with Mr Pike. I am aware that prior to our licence to use Church Field, Mr Richard Fyfe of Lower Paxcroft Farm, Hilperton, used the field for many years for various agricultural purposes, including grazing livestock.
4. In June of this year, we cut grass from the entire acreage of Church Field and used it to make hay. We intend to take another cut of grass from Church Field quite soon (depending on the weather) to use as silage.

Signed: 
R Vigar

Dated: 30-9-17

"RV1"

GRAZING LICENCE

AGRICULTURAL TENANCIES ACT 1995

THIS AGREEMENT is made the thirteenth day of March two thousand and seventeen between Roger Pike, Fairfield House, Nursery Close, Hilperton, Trowbridge BA14 7RP (hereinafter called the Landlord) and ~~Richard Vigar~~, Pomeroy Farm, Wingfield, BA14 9LJ (hereinafter called the tenant) of the other part. ^{J H VIGAR + SON}

WHEREBY it is mutually agreed as follows:

1. The Landlord agrees to let and the Tenant agrees to take on the land known as 12.7 acres Hilperton for the period 1st March 2017 to 30th November 2017 in the sum of £1000. Such rent payable on the commencement of this Agreement.
2. It has been agreed between the Landlord and the Tenant that the land shall be used for agricultural purposes only and at all times and the Tenant shall be entitled during the above period to graze with all classes of livestock except pigs.
3. The Tenant shall keep all fences, walls, gates, ditches and water courses in no worse condition than at the commencement of this Agreement and shall at his own expense put up all necessary fencing to prevent the escape of stock from said land and to insure for the escape of any stock from the land onto adjoining land.
4. The Tenant shall keep the pasture land in no worse condition than at the commencement of the tenancy
5. The Tenant shall not allow the said lands to be injured by excessive treading or pounding of stock.
6. The Tenant shall not assign the benefit of this Agreement nor give or grant any licence to any other person or persons for any use of the said land or any part thereof for any purpose whatsoever.
7. On the termination of this Agreement the Tenant shall leave all walls and hedges in a condition similar to that in which the same are in at the date thereof.
8. If any dispute shall arise out of this Agreement such a dispute shall be referred to an Arbitrator to be appointed by the President of the Royal Institution of Chartered Surveyors, whose findings and costs of reference shall be binding on both parties. Such application will be under the Arbitration Act 1950 and 1996
9. The Tenant will comply with Section 10 of the Agriculture Act 1947 in respect of the

rules of good husbandry.

Signed



Signed

.....
J H Vigar + Son

In the matter of the Commons Act 2006: Section 15
Application by 'Church Field Friends' for registration of Church Field, Hilperton
as a Town or Village Green

STATEMENT OF RICHARD FYFE

1. My name is Richard Fyfe. I am retired now, but before that I was a farmer at Lower Paxcroft Farm in Hilperton, which is where I still live with my wife.
2. For many years, about 27 as far as I can recall, I had agreements in place with Roger Pike, the owner of Church Field in Hilperton, which were described as 'Grasskeep Agreements'. Those agreements allowed me to graze livestock on Church Field and to mow the land for silage and/or hay. I also entered into 'Deeds of Profit à Prendre' with Mr Pike and his daughters in respect of other parts of their land in Hilperton, on what was called Pound Farm.
3. Copies of some of the Grasskeep Agreements I had in place with Mr Pike, in particular the agreements for the years 2011, 2012 and 2014, are attached to this statement and marked "RF1", "RF2" and "RF3" respectively. As explained above, these are just some of the agreements that we had – I gather that copies of the earlier agreements have not been readily available, but I can confirm that I used the land at Church Field since the 1990s. During the earlier years, I recall that Mr Pike and I put the agreements together ourselves. More recently, we have used the services of Davis Meade land agents. Also attached to this statement are letters that Mr Barry Meade of Davis Meade sent to me in February 2011, March 2012, February 2013 and March 2013, about my agreements with Mr Pike (marked "RF4", "RF5", "RF6" and "RF7" respectively).
4. As far as I can recall, in each year throughout the 27 years or so in which I had Grasskeep Agreements for Church Field, I first mowed the land for silage in around June, and after that I would graze livestock, primarily cattle, on the whole of Church Field. In around 2014, Elizabeth Way was built next to Church Field, and that effectively cut across the land that I used for grazing livestock. From that time onwards, it was no longer suitable for me to graze livestock on Church Field because my loading pens, which are situated near Albany Close, became too difficult to access. However, I would still take a cut of silage from Church Field in June of the years between 2014 and 2017, which is when I had my last agreement with Mr Pike before I retired.

Signed:
R Fyfe

Dated: 2.10.17

"RF1"

GRASSKEEP AGREEMENT

THIS AGREEMENT is made the _____ of _____ two thousand and eleven between Roger Pike, Fairfield House, Nursery Close, Hilperton (hereinafter called the 'Vendor') of the one part and Mr Lyfe, Paxcroft Farm, Trowbridge (hereinafter called the Purchaser) of the other part.

WHEREBY It is mutually agreed as follows:-

1. The Vendors agree to sell and the Purchaser agrees to purchase the Grasskeep on the enclosure known as approximately 12.87 acres of land at Hilperton in the county of Wiltshire, in the sum of £772.20 (seven hundred and seventy two pounds and twenty pence).
2. The Purchaser shall be allowed to graze the field with all classes of animals from the 1st day of March 2010, to 31st day December of 2010.

However, taking into respect that if the land becomes wet the Purchaser shall remove his stock so as not to poach the land.
3. The purchase price of £772.20 (seven hundred and seventy two pounds and twenty pence) shall be paid on the signing hereof and this agreement shall be void in the event of non-payment.
4. The Purchaser shall be responsible for the straying of his stock and for any damage caused to adjoining lands and will insure his stock for this purpose.
5. The Purchaser shall be permitted to mow the land for silage and/or hay.
6. (i) The Vendors hereby agree that should any quota (especially milk quota) become attached to the above land through statutory instrument, legislation or by any other means during the term of the Grasskeep, he will not take any action to secure such quota without the express consent of the purchaser insofar as such quota relates to the terms of the Grasskeep agreement.

(ii) And if, notwithstanding (i) above, such quota becomes attached to the land by the process of law, then the Vendor agrees to pay for such quota at open market value or at a value being the difference in value between the land with the quota and the value of the land without the quota, whichever shall be the greater.

7. If any dispute shall arise out of this sale, such dispute shall be referred to an Arbitrator under the Arbitration Act 1996 to be mutually appointed by the parties of this agreement and whose findings and costs of reference shall be binding on both parties (to be appointed by the Royal Institution of Chartered Surveyors).

Signed

.....
Roger Pike
Fairfield House
Nursery Close
Hilperton

Signed

.....
Richard F
Paxcroft Farm
Trowbridge

"RF2"

DavisMeade

GRASSKEEP AGREEMENT

THIS AGREEMENT is made the _____ of _____ two thousand and twelve between Roger Pike, Faifield House, Nursery Close, Hilperton (hereinafter called the 'Vendor') of the one part and Mr Fyfe, Paxcroft Farm, Trowbridge (hereinafter called the Purchaser) of the other part.

WHEREBY It is mutually agreed as follows:-

1. The Vendors agree to sell and the Purchaser agrees to purchase the Grasskeep on the enclosure known as approximately 12.87 acres of land at Hilperton in the county of Wiltshire, in the sum of £900.90 (nine hundred pounds and ninety pence).
2. The Purchaser shall be allowed to graze the field with all classes of animals from the 1st day of March 2012, to 31st day December of 2012.

However, taking into respect that if the land becomes wet the Purchaser shall remove his stock so as not to poach the land.

3. The purchase price of £900.90 (nine hundred pounds and ninety pence) shall be paid on the signing hereof and this agreement shall be void in the event of non-payment.
4. The Purchaser shall be responsible for the straying of his stock and for any damage caused to adjoining lands and will insure his stock for this purpose.
5. The Purchaser shall be permitted to mow the land for silage and/or hay.
6. (i) The Vendors hereby agree that should any quota (especially milk quota) become attached to the above land through statutory instrument, legislation or by any other means during the term of the Grasskeep, he will not take any action to secure such quota without the express consent of the purchaser insofar as such quota relates to the terms of the Grasskeep agreement.

(ii) And if, notwithstanding (i) above, such quota becomes attached to the land by the process of law, then the Vendor agrees to pay for such quota at open market value or at a value being the difference in value between the land with the quota and the value of the land without the quota, whichever shall be the greater.

7. If any dispute shall arise out of this sale, such dispute shall be referred to an Arbitrator under the Arbitration Act 1996 to be mutually appointed by the parties of this agreement and whose findings and costs of reference shall be binding on both parties (to be appointed by the Royal Institution of Chartered Surveyors).

Signed

.....
Roger Pike
Fairfield House
Nursery Close
Hilperton

Signed

.....
Richard Fyfe
Paxcroft Farm
Trowbridge

"RF3"

GRASSKEEP AGREEMENT

THIS AGREEMENT is made the _____ of _____ two thousand and fourteen between Roger Pike, Fairfield House, Nursery Close, Hilperton, Ms Elizabeth Pike and Mrs Carolyn Parkinson c/o 37 Balmoral Close, Chippenham SN14 0UT (hereinafter called the 'Owners') of the one part and Richard Fyfe, Paxcroft Farm, Trowbridge (hereinafter called the Purchaser) of the other part.

WHEREBY It is mutually agreed as follows:-

1. The Vendors agree to sell and the Purchaser agrees to purchase the Grasskeep on the enclosure shown in the schedule attached hereto of approximately 23.56 hectares of land at Hilperton in the county of Wiltshire, in the sum of £6,000 (six thousand pounds).
2. The Purchaser shall be allowed to graze the field with all classes of animals from the 1st day of March 2014, to 31st day December of 2014.

However, taking into respect that if the land becomes wet the Purchaser shall remove his stock so as not to poach the land.

3. The purchase price of £6,000 (six thousand pounds) shall be paid on the signing hereof and this agreement shall be void in the event of non-payment.
4. The Purchaser shall be responsible for the straying of his stock and for any damage caused to adjoining lands and will insure his stock for this purpose.
5. The Purchaser shall be permitted to mow the land for silage and/or hay.
6. (i) The Owners hereby agree that should any quota (especially milk quota) become attached to the above land through statutory instrument, legislation or by any other means during the term of the Grasskeep, he will not take any action to secure such quota without the express consent of the purchaser insofar as such quota relates to the terms of the Grasskeep agreement.

(ii) And if, notwithstanding (i) above, such quota becomes attached to the land by the process of law, then the Owners agree to pay for such quota at open market value or at a value being the difference in value between the land with the quota and the value of the land without the quota, whichever shall be the greater.

7. If any dispute shall arise out of this sale, such dispute shall be referred to an Arbitrator under the Arbitration Act 1996 to be mutually appointed by the parties of this agreement and whose findings and costs of reference shall be binding on both parties (to be appointed by the Royal Institution of Chartered Surveyors).

Signed

.....
Roger Pike
Fairfield
Nursery Cross
Hilperton

Signed

.....
Richard Fyfe
Paxcroft Farm
Trowbridge

bvm/ef/gka/Pike/3

"RF4"

DavisMeade
AGRICULTURAL

3 Market Place
Marshfield
Wiltshire
SN14 8NP

Mr Richard Fyfe
Paxcroft Farm
Trowbridge
Wilts. BA14 6JB

RVM/EF/Pike

7 February 2011

Dear Richard

Profit à Prendre

Can I presume that you are interested in taking Roger Pike's land again at the same rate as last year, partly on a Profit à Prendre and partly on grass keep? Assuming this to be the case I enclose herewith agreements for your signature. Could you kindly return them with your cheque if you are happy to continue?

Yours sincerely

Barry Meade
DAVIS MEADE Agricultural

encs.



DIRECTOR: BARRY MEADE FRICS FRAV · CONSULTANT: PHILIP MEADE FRICS
Davis Meade Agricultural is a trading name for Smiths of Newent at Marshfield, Registered in England, Company No. 5078677

LAND & ESTATE AGENTS · CHARTERED SURVEYORS · AUCTIONEERS · VALUERS · FINE ART SALES

"RFS"

Mr Richard Fyfe
Paxcroft Farm
Trowbridge
Wilts. BA14 6JB

BVM/HF/Pike

6 March 2012

Dear Richard

Deed of Profit à Prendre and Grasskeep

I presume that you are interested in taking Roger Pike's land again at the same rate as last year, partly on a Profit à Prendre and partly on grass keep. I therefore enclose agreements for your signature. Could you kindly return them with your cheque, for a total of £6990.90, if you are happy to continue? This price includes an increase in the grasskeep from £60 an acre to £70 an acre.

Yours sincerely

Barry Meade
DAVIS MEADE Agricultural

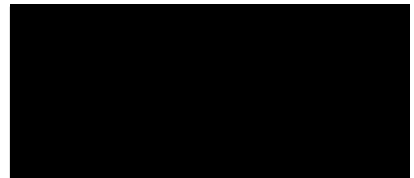
encs.

"RF6"

DavisMeade
AGRICULTURAL

3 Market Place
Marshfield
Wiltshire
SN14 8NP

Mr Richard Fyfe
Paxcroft Farm
Trowbridge
Wilts. BA14 6JB



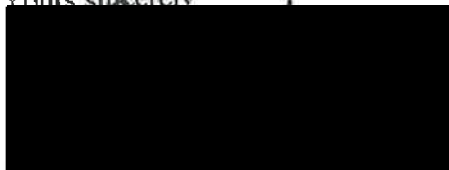
19 February 2013

Dear Mr Fyfe,

Deed of Profit à Prendre and Grasskeep

I enclose herewith the usual agreements for Grasskeep and Profit à Prendre, could I please have your cheques made out to Davis Meade Agricultural.

Yours sincerely



Barry Meade
DAVIS MEADE Agricultural

encls.



DIRECTORS: BARRY MEADE FRCSE FAWC - CONSULTANT, PHILIP MEADE MRICS
Davis Meade Agricultural is a trading name for Smiths of Bezwant at Marshfield. Registered in England. Company No. 5079577

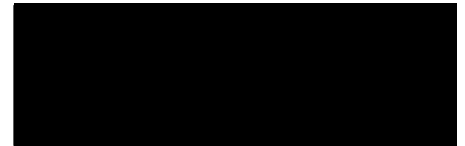
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"RF7"

DavisMeade
AGRICULTURAL

3 Market Place
Marshfield
Wiltshire
SN14 8NP

Mr Richard Fyfe
Paxcroft Farm
Trowbridge
Wilts. BA14 6JB



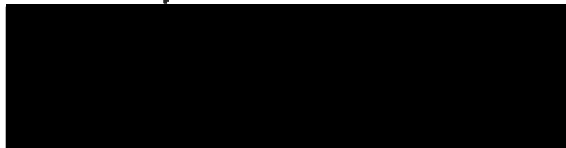
10 March 2013

Dear Mr Fyfe,

Land at Hilperton

I enclose herewith the Grasskeep agreements concerning land at Hilperton on behalf of Roger Pike, Elizabeth Pike and Mrs Parkinson. I have left the price the same as last year. Could I please have your cheque, made out to Davis Meade Agricultural, if you wish to go ahead.

Yours sincerely



Barry Meade
DAVIS MEADE Agricultural

encs.



DIRECTOR: BARRY MEADE FRICS FRAV · CONSULTANT: PHILIP MEADE MRICS
Davis Meade Agricultural is a trading name for Smiths of Newent at Marshfield. Registered in England, Company No.5174677

LAND & ESTATE AGENTS · CHARTERED SURVEYORS · AUCTIONEERS · VALUERS · FINE ART SALES

In the matter of the Commons Act 2006: Section 15
Application by 'Church Field Friends' for registration of Church Field, Hilperton
as a Town or Village Green

STATEMENT OF ROGER PIKE

1. My name is Roger Pike. I own the land at Church Field, Hilperton, which is the subject of the application by 'Church Field Friends' for registration of the land as a Town or Village Green under the Commons Act 2006 (which I will refer to in this statement as "the Act"). I am retired now, but for all of my working life I was a dairy farmer.
2. I provided input to the Notice of Objection dated 4 September 2017 submitted on my behalf in this matter. Some parts of that Notice are legal arguments about whether the relevant criteria under the Act have been met. I have received advice from my solicitors about those arguments, and I understand them. I also feel that I can provide some helpful evidence to the registration authority, Wiltshire Council, in support of some of those arguments.
3. I have read the statements provided by Richard Fyfe and Richard Vigar. To the extent that those statements cover factual matters within my knowledge, I confirm that they are true. In particular, I confirm that Mr Fyfe used Church Field every year between about 1990 and 2017 for his farming business. For the vast majority of that time, Mr Fyfe grazed livestock on Church Field between the summer and autumn of each year. It was only in the later years, after the construction of Elizabeth Way, that Mr Fyfe used the land only for silage and no longer grazed livestock on it. I know this, not only because I have had agreements in place with Mr Fyfe for him to use the land for those purposes, but also because I live just around the corner from Church Field, in Nursery Close. Hilperton is not a big place and it is easy to keep up with what is going on in the village.
4. A significant part of the evidence submitted in support of Church Field Friends' application comes from local dog owners/walkers. For several years now, I have been aware that local people walk their dogs on Church Field. I do not dispute that this has been going on. However, and without wishing to insult the intelligence of those at the Council who are determining this application, I feel that I should offer some of the benefit of my experience as a farmer. Cattle and dogs do not mix very well. Given that Mr Fyfe was grazing his cattle on Church Field between June and October of each year between the 1990s and about 2014, there would be about a four-month period each year where dogs were not being walked across Church Field. If dog walkers were using Church Field during the times that cattle were grazing there, it is almost

certainly the case that the dogs and their owners would not be able to walk wherever they liked on Church Field – the cattle would not tolerate that, and neither would Mr Fyfe – particularly given that he was paying a fee to use the land each year. The reality is that, depending on the time of year, the local community members' use of Church Field has always been restricted by the farming taking place on the land.

5. I must say that I was surprised by some of the statements provided in support of the Church Field Friends' application. For example, it is explained in my Notice of Objection as to why I find the statement provided by Sonja Kotevska difficult to accept (the children at St Michael's Pre-School have access to a large playing field at the Pre-School and I find it hard to believe that Church Field would offer them anything for their Field Trips that their own playing field does not).
6. Although I cannot remember specific dates, I remember that on several occasions over the years I was contacted by members of staff at Hilperton School while it was in The Knapp (right next to Church Field). The reason they contacted me was to request permission for the school pupils to camp on Church Field and have other extracurricular activities there. I was only too happy for them to use it on those special occasions – and I still am – but it is certainly not the case that local schools have used Church Field whenever they like without running it past me first.
7. Another example of me allowing others to exercise rights over Church Field is provided by my arrangement with English Landscapes. I have always allowed their grave diggers access, via Middle Lane, to the cemetery at St Michaels Church so that they can bring their diggers onto the site. I have provided them with a key to the gate for that very purpose – as a goodwill gesture to the church and the village.
8. In summary, I have been happy to allow members of the local community to use Church Field for various purposes, but within the confines of what I am comfortable with and so long as those purposes have not interfered with my contractual obligations to Mr Fyfe (and now J H Vigar & Son). In other words, members of the local community have not used Church Field because they are entitled to do so – they do so because I have allowed them to. As far as I am concerned, that is the case regardless of whether I have installed any physical barriers to entry of Church Field. I think it would be artificial and unrealistic to conclude that simply because I have not prevented the local community from accessing Church Field, they have somehow acquired rights to do so. In any case, they have not enjoyed an unrestricted freedom to do so given the agricultural purposes for which the land has been used for the last 25 years or so.

Signed:

R Pike

2nd October 2017

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APPENDIX 3

Church Field Friends
c/o 2 Nursery Close
Hilperton
BA14 7RP

Ms S Madgwick
Rights of Way Officer
Wiltshire Council
County Hall
Trowbridge
BA14 8JN

26th February 2018

Dear Ms Madgwick

Thank you for your letter of 25th October 2017 and attachments which we read with interest and would like to use this letter to formally respond.

In response to the objections we have grouped objections for clarity so as not to necessitate repetition.

Goughs point 1: 33 Statements and some from the same family do not represent a significant number of inhabitants of the locality.

Point 4: Activities have not been indulged with sufficient regularity to count as sport and pastimes.

Point 7: Not enough People with over 20 years use.

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.

We believe the evidenced through numerous personal witness statements and photographs, evidences fully 20 years use, not only pertaining to themselves and seeing others use the area in question on a regular and daily basis but also by other users such as the local Scouts, Brownies, pre school, school, running club and church.

We are providing an additional 5 statements covering a 20 year period giving evidence of use of Church Field as Village Green and that some of the people mentioned by name in paragraph 7 have now completed 20 years and we are willing to ask them to reissue their letters.

On any day of the week from as early as 6.30am until well after dark, the area can be seen to have a number of users enjoying the space for different forms both recreational and for socialising.

We also note that there is an objection to statements being made from members of the same family but we believe that all members of a family are valid as different individuals, who use the area on different occasions for different uses, as well as together.

Goughs Point 8a: The Pre School children use the field at the Village Hall.

Pike point 4: Why would the children use Church field when they use the Village Hall Green?

Sims point 1: There is already a Village Green Space used for Fetes and Football.

The Village Hall green area is very different in nature to that of Church Field and has been used in very different ways. It is clear from the evidence provided in statements that the Village Hall area is restrictive in what you are able to use it for, for example you are not allowed to allow your dog off the lead there. There are overhead cables which make it

difficult to fly a kite and there are often football and Cricket matches going on which prevent you from walking freely with you dogs, jog, cycle, or meet friends. Church field is, as stated by Sonja Kotevska used by St Micheal's Pre School to explore nature, wildlife and insect hunts.

Goughs Point 2: Asking for permission to use the field for sports and pastimes

Goughs solicitors (on behalf of Mr Pike) state that on several occasions throughout the 20 year period prior to the Application Mr Pike was asked for permission to carry out activities. For example Hilperton school when it was in the Knap. (Hilperton school relocated from the Knap in 1970).

We believe that this is a rare example as from the land registry evidence we provided in our application the land is unregistered and therefore how could people ask for permission to use the land if they did not know who owned it.

Goughs point 2 and 3 Pike points 3, 5, 6, 7: Use of Church Field 'as of right'

Use of the official footpaths on Church Field is sporadic and as can be shown by aerial photos in new evidence provided ref 1a, 1b, 1c, 2a, 2b and 3, there are well trodden paths away from the footpaths that have been used over time by many people using the field. The term "as of right" means that use must have been without force, without secrecy and without permission. We have provided signed statements that these users of Church field were never asked nor did they seek permission to use the area in its entirety, they used the field openly and without secrecy.

Ref Goughs case study - Richard Naylor v Essex County Council v Silverbrook Estates Ltd, Diana Humphreys, Tendering District Council

We are of the firm opinion that the case cited is not applicable to our application as the public have used Church Field 'as of right' and not 'by right' and that the above case is not relevant as Church Field has always been used for 'grasskeep' or cattle and has not been maintained by the Council. We have evidence letters from users of Church Field over a continuous 20 year period to support our opinion.

Pike point 8: People have not enjoyed unrestricted freedom

We do not believe and have never heard of an occasion where any person was asked to refrain from entering and using Church Field as they saw fit. Nearly all the witness statements state that they have always openly used the field without challenge nor having seen a notice stating the field is private property.

Goughs points 5, 6a, Pike points 1, 2: Livestock grazing on Church Field incompatible with land use.

We agree with Mr Pike that the land was used for grazing during summer and autumn intermittently over some of the years but we strongly disagree that local people did not use the field during this time. (See new photographic evidence provided, number 9) During grazing time the field seemed to be busier than ever as an attraction to see the calves. The cattle would congregate in corners or block the footpaths and therefore local people would make alternative routes through Church Field to avoid the cattle. Denise Harvey can personally remember walking through the field when a cow had just given birth to a calf and the herd was gathered around, stating: "It was necessary to walk well into the middle of the field, away from the footpath, in order to give the mother cow and the herd plenty of space."

Goughs point 6 There have been other uses of Church Field

If Church Field has been used as an overflow car park for St Michael's Church it has been very rarely and never enough cars to interrupt the continued general use by the public.

Ref Goughs case law - The Queen on the application of Cheltenham Builders Limited v South Gloucestershire District Council

We are firmly of the opinion that the case cited is not applicable to our application as the whole of Church Field is accessible to the public there are no significant areas of trees or brambles which would prevent lawful sports and pastimes. We have evidence in the form of 44 letters from users of the field to support our opinion that continued and full use was never interrupted.

Goughs points 9, 10 and Sims point 4: Motivation from some to not see the land developed, and that the letters have somehow been tampered with

We did not tailor or edit any of the letters that we received, Goughs Solicitors (on behalf of Mr Pike) reference the letter from Mr Kenneth Warr (date 28 March 2017). If we had edited or asked people to re-submit their letters we would not have let this statement remain or any that may have personal feelings about future development. We realise these opinions are not valid in terms of a village green application but we left all letters, however emotive, intact. As it is, this un-edited letter proves that we did not tailor or contrive evidence.

Simms point 2: That there is no wildlife to speak of on the field.

We have included a number of photographs of the wildlife currently within Church Field see new photographic evidence provided 4a,4b,4c, 7,10, 15a and 15b.

Within the Hilperton Neighbourhood Development Plan Scoping Report for the Parish of Hilperton 2016-2026 in its Biodiversity section 6.6 it states that:

'In Wiltshire, the Wiltshire Biodiversity Action Plan (BAP) sets out Habitat Action Plans for a range of habitats. The BAP will soon be complimented by a new Wiltshire and Swindon Landscape Conservation Framework. To deliver conservation and enhancement of biodiversity, a number of Landscape Biodiversity Areas have been identified. These are shown on the Lnk2Nature website. In terms of the Landscape Map of the latter, Hilperton lies within the 'Bristol Avon Vale' area.'

It goes on to state in section 6.7 Biodiversity in Hilperton parish that:

'there are several categories of what the Wiltshire BAP identifies as 'Priority Habitats' present.'

One category they include is:

6.13 Farmland habitat

'Much of the land in the Parish is farmed— mainly arable. This land is home to a range of species from plants, fungi, butterflies, mice, birds, hares and rabbits. There are many species of birds on the red danger list (published by the RSPB) that seem to be surviving on the untouched fields and many on their amber list too but in lesser numbers than 10 years ago. Lost in the last 2 years is the Skylark (which was in fields adjacent to Middle Lane) and this year Crickets and Grasshoppers. On the original survey it was shown that the very rare Bechstein Bats were present but since then no survey has been done to see if they still visit these fields. During the winter months the fields and the banks of the River Avon at Whaddon provide an ideal habitat for visiting migratory birds.'

We also provide the written statements as evidence of using the field for exploring all the wildlife from: Chris Hart, Denise Harvey, Heidi Hart, Helen Whitehead, Jacqui Clark, Katherine Warr, Ken Warr, Martin Wilcox, Lucy Wilcox, Sonja Kotevska, Lesley House, Sheila Sawyer and Emma Herlinger.

Simms point 3: The field will not be cultivated to Village Green standards and left and used as it is now.

We believe that the field being less cultivated is why it is being used so much now and feel that most of the village would prefer it that way. The Brownies, Scouts, Runners, Schools and ramblers have expressed this as a reason that they visit it because as it is an open and relaxed area full of nature, with no overhead cables or restrictions.

Cradock point 1 and 2: Church Field has been farmed for 3 generations as part of a commercial business.

We believe that there is evidence to prove that no ploughed agriculture has occurred within the chosen qualification period of 20 years, in Church Field, as it appeared to have always been permanent pasture. We believe the witness reports we have provided offer additional evidence of no interruption of use.

As Mr Cradock points out himself, the land has been farmed on a grass keep basis. We believe this does not constitute agricultural use within the terms that prohibit the granting of Village Green status.

In R(Laing Homes Ltd) v Buckinghamshire County Council [2004] 1 P & CR 573 it was held in the High Court that the annual gathering of a hay crop was incompatible with the use of the land as a village green but The Open Space Society note Lord Hoffman has commented on that decision by saying "I do not agree that the low level agricultural activities must be regarded as having been inconsistent with use for sports and pastimes...if in practice they were not" (Oxfordshire County Council v Oxford City council [2006] 2 AC 674 para 57)

Cradock point 3

Mr Cradock suggests that there has been no "lawful sports or pastimes on this land" and that any suggestions to the contrary are untrue

We believe that there is significant evidence from users of Church Field over a 20 year period to prove that there has been lawful sports and pastimes on Church Field and that local people have used the whole field as of right . We have provided additional evidence from an aerial photographs (1a, 1b, 1c, 2a, 2b and 3) to show that there are marked walking paths on Church Field which do not follow footpaths HILP1, HILP2, HILP3 or HILP4 , in particular there is a well trodden path which skirts around the graveyard and runs parallel to Middle Lane. Additionally the google maps satellite photograph of the field shows a well trodden path around the circumference of the field in addition to the footpaths above.

Cradock point 5: That Mr Pike has donated land for the village allotments and is being forced to defend his property at his age.

We did not know who owned all of land and on investigation discovered that it was unregistered apart from a tiny part owned by Mr Pike next to the cemetery.

Yours sincerely

Denise Harvey
Secretary on behalf of Church Field Friends

Summary Of Time and Usage Of Church Field

Name	Years used/ since	Use
1. Andy Sewyer	1974/ 44yrs	Walked Dogs, Bikes, Flying Kites.
2. Catherine Davis	1998/ 20yrs	Walks, Ball Games, Enjoying Green Space
3. Charlie Barker	2003/ 15yrs	Playing Games with Friends and Family, Rounders, Football, Walking Dog, Treasure Hunt, Built Snowmen and Igloos.
4. Chris Hart	2007/ 11yrs	French Cricket with wider family, Rounders, Kite Flying, Wild Flower Collecting to press with children. Dog Walking, Socialising whilst walking.
5. Graham Kehily	1998/ 20yrs	Running, Kite Flying, Walking Dog, Relaxing
6. Denise Harvey	1993/ 25yrs	Sports, Picnics, Rounders, Blackberry Picking, Birdwatching, Building Snowmen, Model Plane Flying, Dog Walking, Children Playing.
7. Ernie Clark	1992/ 26yrs	Blackberry Collecting, Exercising, Dog Walking, Football, Kite Flying, Snowball Fights, Social Gatherings.
8. Heidi Hart	2007/ 11yrs	Snow Play, Dog Walking, Rounders, Football, Flying Kites, Schools and Clubs Use it for Nature Trails and Treasure Hunts, Running Club use It, Social Walks.
9. Helen Davies	1998/ 20yrs	Family Walks, Dog Walks
10. Helen Whitehead.	2008/ 10yrs	Took the children in her care as a childminder on Nature Walks. Dog Walks, Socialises there, Running for Exercise.
11. Isabelle Hart	2007/ 11yrs	Sees nearly 100 people a day use it mostly in groups socialising. Cartwheels, Cycling, Walking Dog, Watch Sunset there, Balloon landing, Helicopter use.
12. Ivan Moore	1960's /35yrs	Dog Walks, Football, Say it is always in use by locals, Walking, Jogging, Games, Kite Flying.
13. Ayesha Moore	1960's /35yrs	Dog Walks, Football, Say it is always in use by locals, Walking, Jogging, Games, Kite Flying.
14. J Clark	1992/ 26yrs	Frisbee, Walking, Spotting Wildflowers and Nature, Running and playing with a ball, Hiding in Bushes, Playing Chase, Paintball Fights, Picnics, Dog Walking, Building Snowmen and playing Snowball fights with the whole community gathered drinking hot toddies. Built igloos.
15. J Waring	1983/ 35yrs	Children Playing with the neighbours children, Making Daisy Chains, Making Camps, Practising Brownie and Guide Skills for badges, Dog Walking, Meeting friends for chats.
16. James Davies	1998/ 20yrs	Football, Walks, Rugby, Dog Walks, Witnessed many people use the field.
17. Julia Goodwin	1988/ 30yrs	Walking, Sees the field used extensively throughout the day, Dog Walking, Socialising, Children Playing, Kicking a Ball, Kite Flying, Running and Keeping Fit.

Summary Of Time and Usage Of Church Field

Name	Years used/ since	Use
18. K Waring	1983/ 35yrs	Children Played with the neighbours children, Walked dogs.
19. Katherine Warr	1980's /33yrs	Walking for leisure, Seen many villagers use the field for Exercise, Running, Socialy and for the Wildlife. Cemetery visitors use the field for a bit of peace.
20. Kenn Warr	1980's /33yrs	Walking for leisure, Seen many villagers use the field for Exercise, Running, Socialy and for the Wildlife. Cemetery visitors use the field for a bit of peace.
21. Kathi Walker	1987/ 31yrs	Recreation, Dog Walking, Used by families as a safe area to play.
22. Kathryn Lacy	1992/ 26yrs	Walked Dog with the family, Rounders, Ball Games, Picnics, For Fun.
23. Martin Wilcox	1996/ 22yrs	Dog Walks, Witnessed the community use the field daily. Kite Flying, Model Aeroplanes, Brownies, Scouts and Cubs for Nature Activities and Camping, Exercising, Games, Running and Socialising.
24. Lucy Wilcox	1996/ 22yrs	Dog Walks, Witnessed the community use the field daily. Kite Flying, Model Aeroplanes, Brownies, Scouts and Cubs for Nature Activities and Camping, Exercising, Games, Running and Socialising.
25. Nicola Walker	2008/ 10yrs	Walking dog twice a day, Playing Games, Badminton, French Cricket, Cricket matches, Sunbathing, Meditation.
26. Phoebe Hart	2007/ 11yrs	Dog Walks, Building Snowmen and Igloos, Football, French Cricket, Frisbee with Friends. Watching the Sunset with friends and family. Always full of visitors.
27. Rob Coles	1978/ 40yrs	Play Area, Flying Kites, Build Snowmen, Dog Walking, Large Groups Of People Socialising.
28. Maggie Coles	1978/ 40yrs	Play Area, Flying Kites, Build Snowmen, Dog Walking, Large Groups Of People Socialising.
29. Ros Huggins	1998/ 20yrs	Walking Dogs, Playing with their Children, Exercise, Socialising with Friends.
30. Sally Lacey	1993/ 25yrs	Walking the Dogs off the Lead, Playing Games, Rounders, Cricket, Kite Flying, Playing in the Snow.
31. Sarah Kenich	1988/ 30yrs	Dog Walking with them running free, Walking for Leisure, Playing Catching a Ball, Feeling Happy and Safe and Socialising.
32. Sonja Kotevska	1992/ 26yrs	Exploring nature and Wildlife with the Pre School, Looking For Insects. Seen people Flying Kites, Dog Walking, Jogging.
33. Steven Harvey	1993/ 25yrs	Picnics, *Used Field even when the Cows were in there. Dog Walking, Kite Flying,
34. Thomas Clark	1995/ 23yrs	Blackberry Picking, Football, Rugby, Playing Paint Ball, Picnics, Snowmen Building.

Summary Of Time and Usage Of Church Field

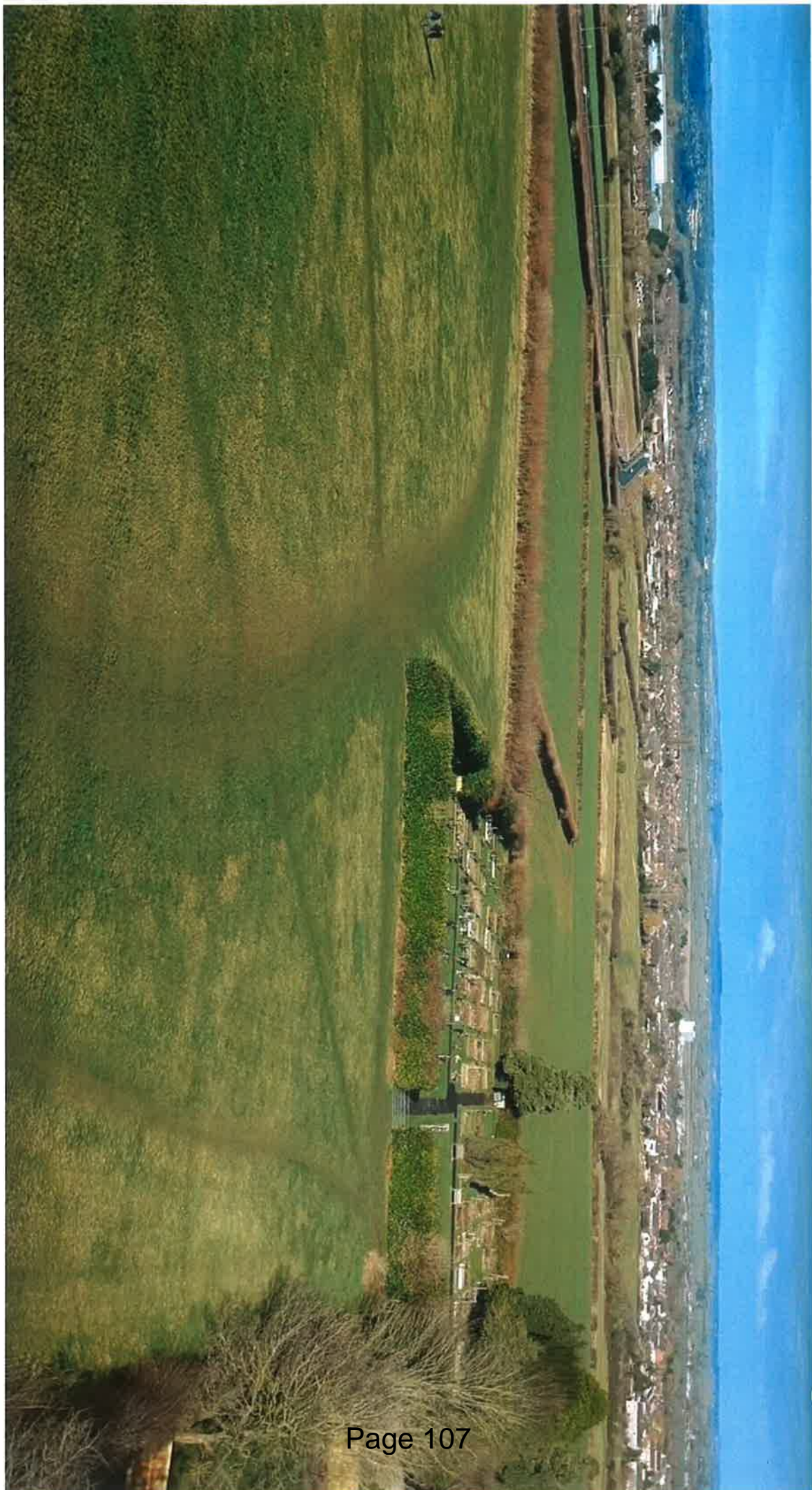
Name	Years used/ since	Use
35. Tasha Harvey	1996/ 22yrs	Building Snowmen, Social Gatherings, Kite Flying, Rounders, Walking Dogs, Building Dens, Playing Hide and Seek with friends.
36. Tim Davies	1998/ 20yrs	Recreation, Walks, Kite Flying, Ball Games, Dog Walking.
37. Wendy Coles	1980's /30yrs	Playing Imaginative Games, Running, Exploring, Walking Dog, Pretending to Ride Horses, Dance Routines, Built Obstacle Courses for the dogs, *Trying to Stroke The Cows, Making Dens.
38. Alison Hoskins	2011/ 6yrs	Exercised the Dogs off the lead and frequently sees people use the field similarly.
39. Kate Hayes	1988/ 30yrs	Dog Walking, Socialising, Exercising and always sees others using the field.
40. John Bowden	1977/ 41yrs	Walked Daily, Built Friendships, Walked Dogs.
41. Lesley House	1987/ 31yrs	Walked Dog Twice Daily, Played, Flying Kites, Picking Buttercups, Blackberrys and Sloes, Building Dens, Paint Balling, Snow Ball Fights with Friends, Learning about Nature, Meeting Friends Socially, Kite Boarding, Drones, Radio Controlled Aircraft.
42. Edward Clark	1997 /21yrs	Walking, Blackberry Picking, Playing Football, Building Snowmen, Paint Balling in the Hedgerow, Dog Walking.
43. Sheila Sawyer	1974/ 44yrs	Play, Exercise, Learn about the Countryside, Flying Kites as there are no overhead lines, Dog Walking, Camping, Brownies, Guides and Scouts use it for Tracking, Artists.
44. Emma Herlinger	2016/ 2yrs	Dog Walking, Running, Children Play Safely, Saw People Flying Kites, Scooting, Blackberry Picking, Socialising and Making Friends, Spotting Wildlife including Muntjac Deer and Identifying Wildflowers.

Church Field Additional Photographs - Key For Evidence Of Use

- 1a Church Field Northern Corner siding St Michaels Church Cemetery showing a well trodden wide
1b area of track marks from regular pedestrian use. These marks continue following the northern
1c edge of the field where there are no public footpaths. (photographs by Graham Kehily 4th Feb 2018)
- 2a Church Field North west corner showing a well defined track mark from pedestrian use continuing
2b where there are no public footpaths. Also some members of the public clearly using the field
indiscriminately. (photographs by Graham Kehily 4th Feb 2018)
- 3 The west side of Church Field showing the continuing track marks where no public footpaths exist.
(photograph by Graham Kehily 4th Feb 2018)
- 4a Church Fields vast array of meadow grasses, a butterfly on the grasses in the foreground.
4b (photographs by Heidi Hart 3rd July 2017)
4c
- 5a Church Field users playing frisby and dog walking, Elizabeth way in the background.
5b (photographs by Heidi Hart 19th July 2017)
5c
- 6a Walkers and dog walkers using Church Field and Socialising in groups.
6b (photographs by Heidi Hart 8th July 2017)
- 7 Wildflowers on Church Field. (photograph by Heidi Hart 3th July 2017)
- 8 Runner on Church Field. (photograph by Heidi Hart 20th July 2017)
- 9 Brownies socialising and trying to pet the cows in Church Field. (Photograph by Rob Coles Spring 1992)
- 10 Butterfly in Church Field/closer view (photograph by Heidi Hart 3rd July 2017)
- 11 Someone flying a remote controlled aircraft on Church Field. (photographs by Heidi Hart 31st Oct 2017)
- 12 Runner on Church Field from further away to show more of the field. (photographs by Heidi Hart 20th July
2017)
- 13 Duplicate of image 5
- 14 Frisby playing on Church Field. (photographs by Heidi Hart 30th May 2016)
- 15a Flocks of Rooks and pigeons on Church Field. (photographs by Heidi Hart 20th Feb 2018)
15b
- 16 A selection photographs of her family using Church Field from Mrs Lesley House to accompany an
additional evidence letter provided.
- 17a Children Playing in the snow in Church Field. (photographs by Ernie Clark 2009/10)
17b

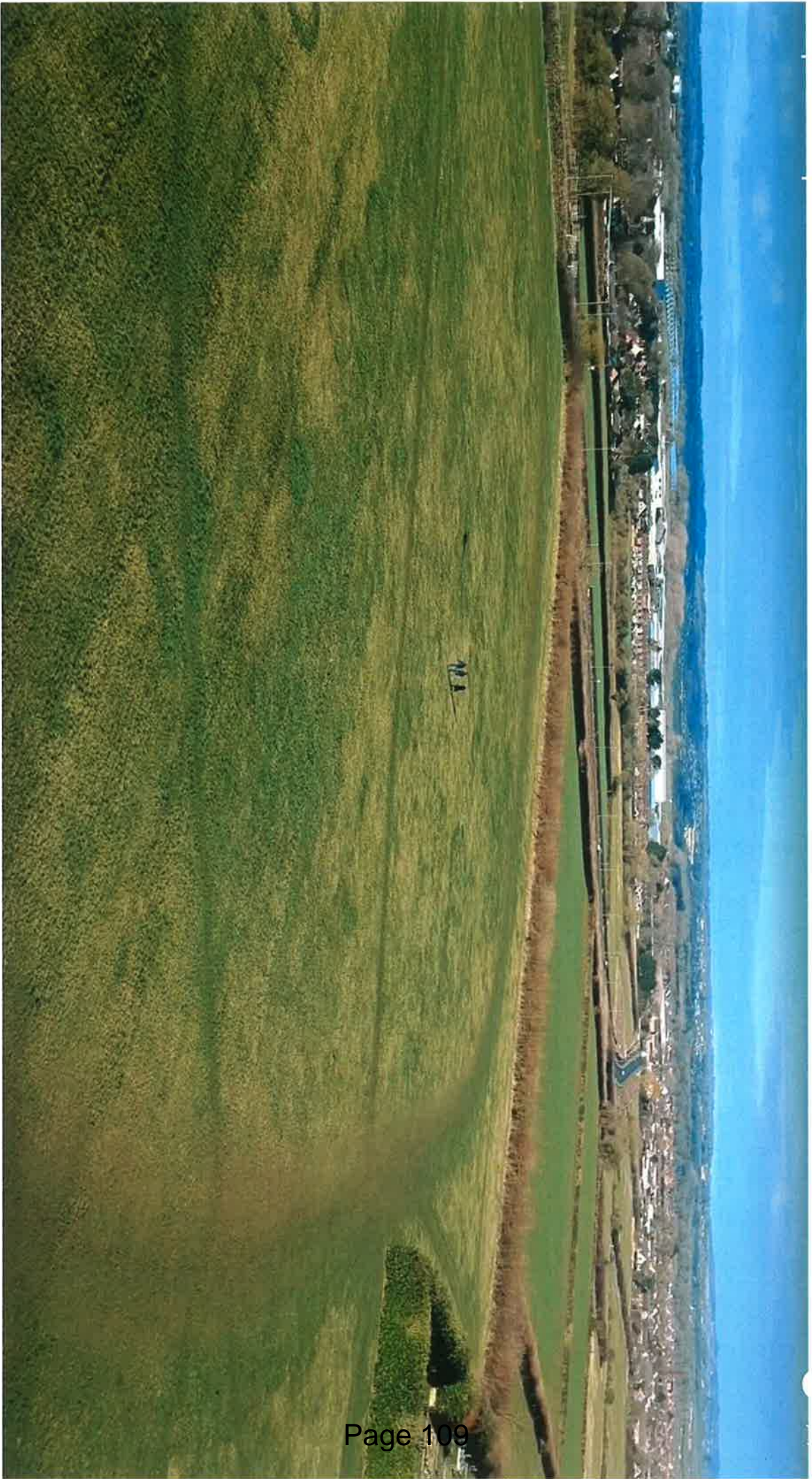
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1a



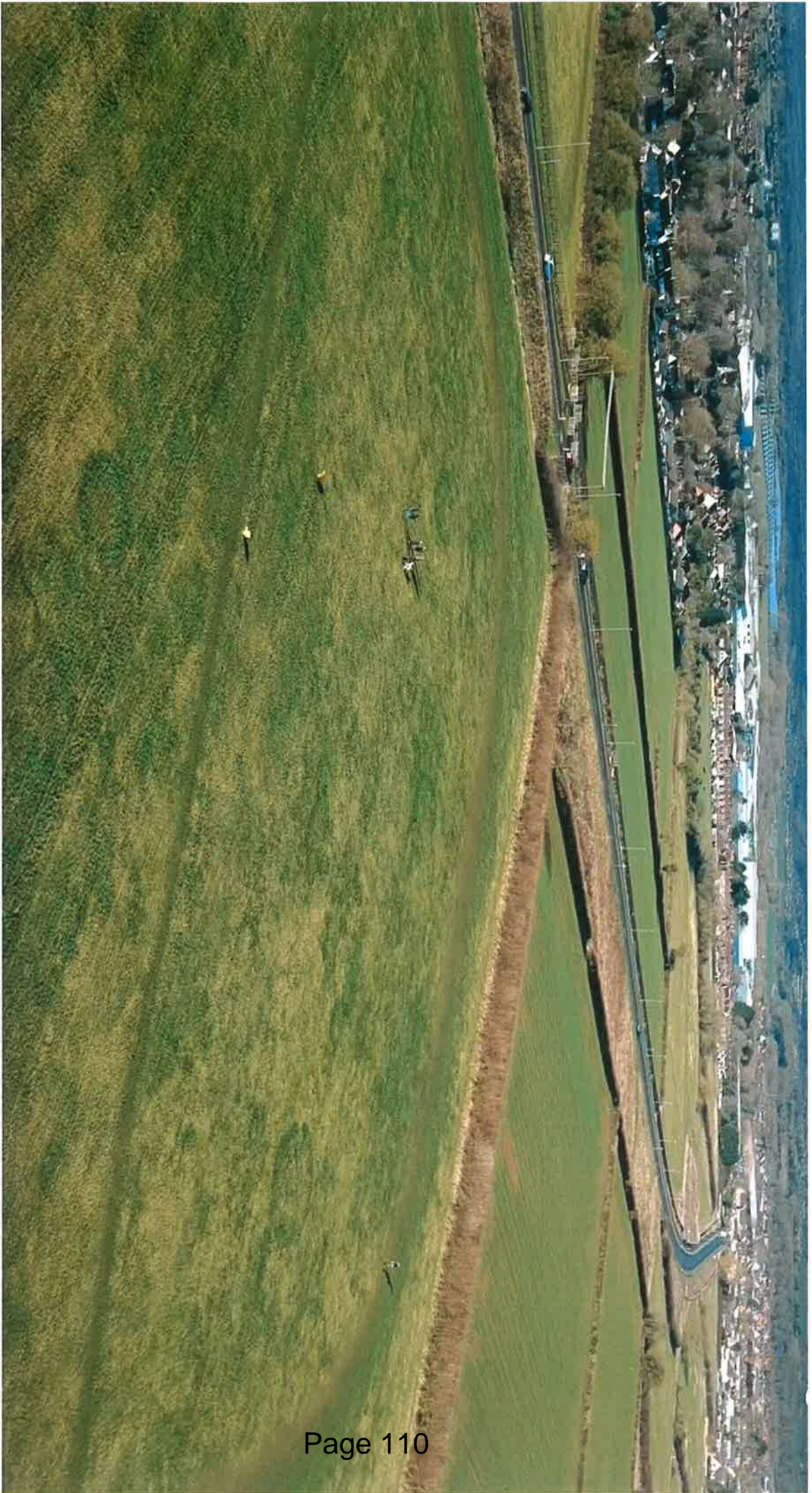


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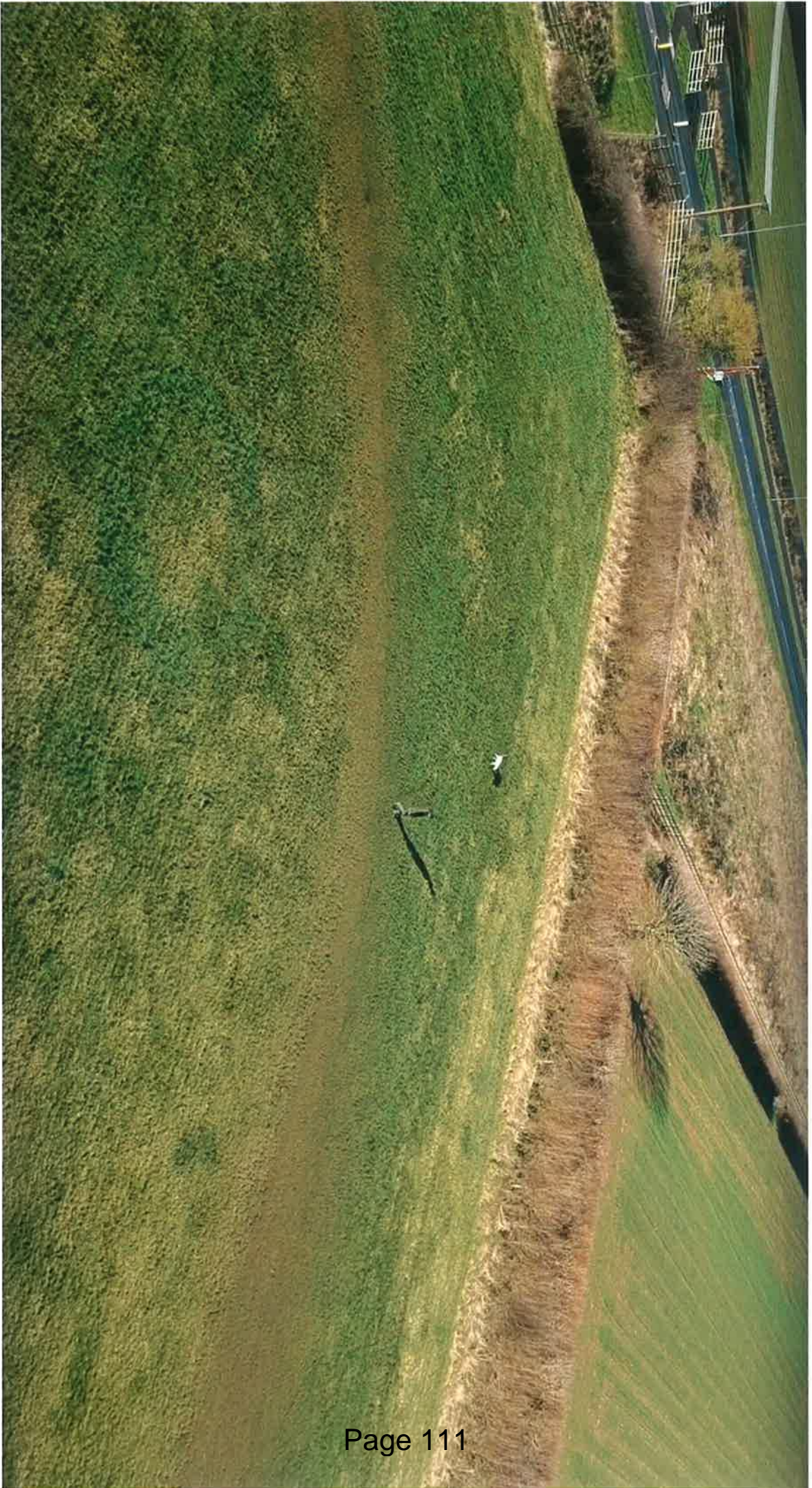
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04/02/18

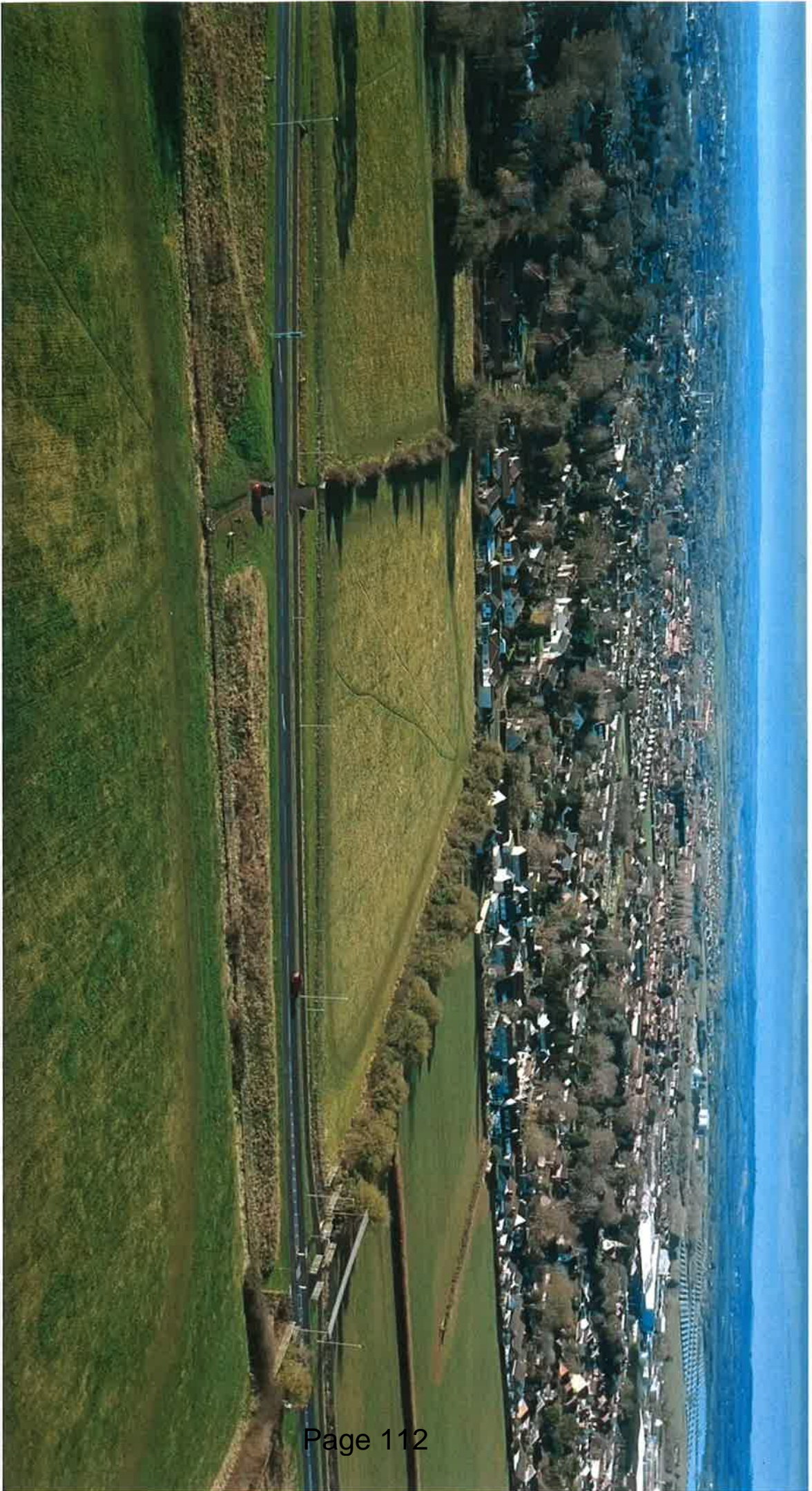
2a



04/02/18

26

04 FEB 2018



4a

03 July 2017



4b

03 July 2017



4c
03 JULY 2017



5a
08 JULY 2017



5b



19 JULY 2017

5c



19 JULY 2017

6a
8 JULY 2017



6b
8 JULY 2017



7 03 JULY 2017



8 20 JULY 2017



9

SPRING 1992



10

03 JULY 2017



31 OCT 2017

11



20 JULY 2017

12



Duplicate of Image 5

13



30 MAY 2016

14



20 FEB 2018

15a



15a

15b



15b

16a

L House



Handwritten text in the right margin, oriented vertically, including the name "Cristina" and other illegible words.











at the time
all the time





17a

2009 | 2010



176

2009/2010



Emma Herlinger

■ Nursery Close

Hilperton

BA14 7RP

18 February 2018

I am writing in regards to the application for Church Field to gain Village Green status,

We moved to Hilperton 2 years ago and in that two years I have used Church Field most days and every time without permission or challenge.

When we moved here we wanted somewhere to walk our dog, a place to go running/jogging and for our children to safely play, I could always see people using church field and had no idea it was privately owned as there were no signs up and people were using it in its entirety. We therefore started using church field to walk our dog and exercise ourselves and the children, I found it a very sociable place and have met lots of people from the village by using this field for recreational activities. We moved to Wiltshire in the summer and out of our window we could see people flying kites, children playing and groups of people meeting up to walk their dogs, I knew instantly that we had made the right decision to move here as I could see this village had a heart and could picture my boys using this field as they grow, playing ball and running around playing with their friends.

I still feel the same about this field two years down the line and feel it is a great candidate for village green status. I have had the pleasure on early morning dog walks of seeing Monjack and Deer in this field and in the summer I have seen teenagers sitting down with friends and chatting or eating. My children run around the field and have even used their scooter in the dryer summer months. We have picked blackberries and my eldest son loves trying to identify the wild flowers.

We are aware that there is another village green in Hilperton however it is a very different space to Church Field my children love to use the park there, however for unbridled and unrestricted fun they love to run around Church Field with other children and being animal lovers having numerous dogs also running around with them just adds to the magic.

Yours sincerely,

■
Emma Herlinger

Received 14 Aug 2017
Ack. 15 Aug 2017.

4

Westmoreland Avenue
Hornchurch
Essex
RM11 2EF

✓ Wiltshire Council
Church Field Friends

Dear Sirs,

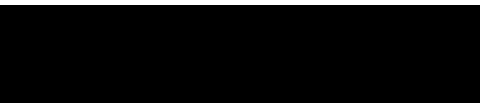
I have seen the Wiltshire Council notice dated 21 July regarding a village green application for Church Field.

I wish to add my support to the application.

I have used the field, and others in Hilperton Gap, for twenty-one years. My first use was simply when I was taken there for walks by my parents. Over the years I have since used the field for many uses including blackberrying, playing football, building snowmen, paintballing in the hedgerow, and dog walking. I still use the field for dog walking when I am in Hilperton.

I did not, and do not, remain on either the 'public' or 'other' footpaths but used/use the whole of the field and its hedges. At no time have I ever been asked to leave by the owner or anyone else and my use of the field has been in broad daylight.

Yours faithfully,



Edward Clark.

28 July '17

Hi,

I have been using the church field to walk across as a short cut on my regular trips to Trowbridge since 1974, at no time has anyone ever told me not to use this route and I have never seen any signs telling me not to use this route.

This is a very loved and utilised dog walking area which I have personally used since 1987, at no time has anyone ever told me not to use this route or I have never seen any signs telling me to not use this route.

Also during this period people have walked this area flying kites and with their children and bikes etc.

I have known people use the church field from Paxcroft Mead and the adjoining area of Trowbridge as well as the ever expanding village of Hilperton.

Kind regards



Andy

23 July '17

Hi,

I have been using the church field to walk across as a short cut on my regular trips to Trowbridge since 1974, at no time has anyone ever told me not to use this route and I have never seen any signs telling me not to use this route.

This is a very loved and utilised dog walking area which I have personally used since 1987, at no time has anyone ever told me not to use this route or I have never seen any signs telling me to not use this route.

Also during this period people have walked this area flying kites and with their children and bikes etc.

I have known people use the church field from Paxcroft Mead and the adjoining area of Trowbridge as well as the ever expanding village of Hilperton.

Kind regards


Andy

Sent from my iPad

██████ Trowbridge Road

Hilperton

Wilts

BA14 7QQ

11th September 2017

Dear Sir or Madam

I am writing in support of the application to give Church Field, Hilperton, 'Village Green' status.

We bought our house on Trowbridge Road, Hilperton in August 1987, in part, because it is situated opposite the Church fields. We had a dog which we exercised there twice daily, until her death almost ten years later. We have since had two more dogs, and both have been walked regularly in Church Fields.

During the thirty years we have lived in our home, we have brought up three daughters. The field was a wonderful place for them to play. They enjoyed walking with the dogs, flying kites, picking buttercups, blackberries and sloes and as they grew a little older, playing games with their friends, building hide-outs and paintballing. In the winter snows, they would join the crowd of local children who gathered to build snowmen and have snowball fights. We used the footpaths on their walks to and from Hilperton Primary School. It has been a wonderful place to teach them to love and appreciate nature; they have learned to identify plants, butterflies and birds.

We meet many people using the fields each day. Some we see almost daily, also walking their dogs, others, we see less regularly, playing with their children or simply enjoying walking in the fresh air. Looking out of my window as I write this letter I can see three groups of people walking with their dogs.

In the past, a group of teenagers practised kite boarding in the field. Others have flown radio controlled aircraft and more recently drones. Many use the footpaths to walk into the village or, in the opposite direction, to go to Trowbridge or Paxcroft Mead, but we have always used the entire field not just the foot paths and have never been challenged or told to stop. The only time we have been unable to use the fields was during the last foot and mouth crises, when most fields in the country were closed to walkers.

I feel that Church Field is a valuable resource for Hilperton Village, one that I and my family have cherished for the last 30 years. I hope that the Church Field will be given 'Village Green' status and will provide a natural space for future generations to enjoy.

I enclose some photographs of my family enjoying using Church Field.

Yours faithfully



Mrs Lesley House

(Female, in my mid fifties)

Church Field, Hilperton
Village Green Status

10 August 2017

I feel that it is essential that Church Field, Hilperton be designated Village Green Status.

I have walked over these fields, daily, since 1977, being now well over 80 years, and can name quite a few friends who have also walked there daily. And still do!. Over the years we have become almost a family, talking of our families and "putting the world to rights"

My own children have accompanied me, and then my grandchildren also, as well as a succession of dogs, from puppies to old age. I look forward to taking my great grandchildren in a few years!

No one has ever challenged me for walking on the fields and apart from cows from time to time, nothing else happens to the field.

In these days of change and impermanence it is essential for some things to remain the same. Church Field is one such - streets and houses cannot replace the calm memories of the Church Field and the bridleway - just ask the young children who have walked with parents, grandparents and a variety of dogs.

[REDACTED]
[REDACTED] Green Lane
TROWBRIDGE

Statement regarding use of Church Field, Hilperton Parish

I have been using Church Field in Hilperton Parish since I moved into the area in 1988.

I have used the whole of this field for recreation, dog walker & exercising and socialising with other users.

When I had a dog I used the field almost daily but now not so frequently.

There are always other people using this field.

I have never been challenged on using the field nor prevented from use. I have never seen a sign to say the land was private.

I have never sought permission to use the field.

I fully support the application for a village green for this field.

[REDACTED]

Kate Hayes

[REDACTED] Horse Road, Hilperton

HILL STREET
HILPERTON
TROWBRIDGE
WILTSHIRE
BA14 7RS

22nd July 2017

To whom it may concern.

I and my family moved to Hilpert on in Jan 1974.
and have used church field since at least the summer
of 1974 regularly, for both short cuts into Trowbridge
and to let the children play, exercise and learn
about the country. indeed in the school holidays
it could be quite a social gathering.

It was one of the few places you could fly
a kite (it not having any power lines across
it.)

We blackberried in Autumn
We always walked our dogs here, all year
round & apart from 'foot-mouth-scave' I've
never seen a notice to prevent this use.
I've seen tents in the field in the morning &
where youths had enjoyed camping and I've
seen when my children attended brownies / quids
cubs / scouts in the nearby church hall (now a private

HILL STREET
HILPERTON
TROWBRIDGE
WILTSHIRE
BA14 7RS

hours) they used the field for tracking etc,
I once came across a gentleman perched on a
stool drawing the church from that angle.

In the 29 yrs I lived at the crown my family
enjoyed the care of Church Field, and since
moving further down the village my son has
continued to walk our dogs here most days

Sheila SAWYER.

APPENDIX 4

Response on behalf of the estate of the late Roger Pike to the response to objections dated 26 February 2018

This is a response on to the various points/assertions made in the applicants' response document dated 26 February 2018 ("the Applicants' Response") on behalf of the estate of the late Mr Roger Pike, who passed away on 6 December 2017.

No responses are provided in relation to those parts of the Applicants' Response which relate to submissions made by RH & IR Craddock Ltd and Mrs Rosemary Sims. However, it should not be taken from the absence of any response to those parts of the Applicants' Response that those parts are accepted by Mr Pike's personal representatives.

Response to "Goughs point 1 ... Point 4 ... Point 7"

1. To the extent that the applicants wish to rely on evidence provided by people who have allegedly "*now completed 20 years*", i.e. where 20 years of usage as of right for lawful sports and pastimes could not be established from their evidence at the time the application was made, any such reliance is misguided. Under section 15 of the Act, the relevant date for establishing 20 years of usage is the date of the application (see *Oxfordshire County Council v Oxford City Council* [2006] UKHL 25 for confirmation of this). So it is irrelevant as to whether the applicants/local residents have used Church Field for sports or pastimes since the application was made.
2. "[S]ocialising" cannot reasonably be described as a sport or pastime and the applicants have not been able to point to any case law in support of their suggestion that socialising falls within the ambit of section 15 of the Act. It is submitted that the applicants' reliance on something as tenuous as "socialising" speaks volumes about the merits (or otherwise) of the application.
3. The applicants' reference to their belief that "*all members of a family are valid as different individuals*" is missing the point and is nothing more than a self serving statement. The points raised on behalf of Mr Pike are that if the evidence provided by additional family members does not establish 20 years of usage for lawful sports or pastimes then it adds very little, if anything, to the evidence provided by the primary evidence provider / family member. Moreover, if the evidence provided by the additional family members is essentially the same as that provided by the primary evidence provider / family member then arguably it should not be factored into an assessment of whether 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 for the purposes of section 15 of the Act.

Response to "Goughs Point 8a ... Pike Point 4 ..."

4. Evidence of the differences between Church Field and the Village Hall green area does not amount to evidence that lawful sports or pastimes were in fact taking place on Church Field throughout the requisite period.

Response to "Goughs Point 2 ..."

5. The fact that the land is unregistered does not mean that local residents and organisations would not have known that Mr Pike owned Church Field. Hilperton is a small place in which local knowledge is easily transmitted by word of mouth.

Response to “Goughs point 2 and Pike points 3, 5, 6, 7 ...”

6. There is a suggestion in this part of the Applicants’ Response that the applicants have used Church Field “*in its entirety*”. The evidence produced in support of the application does not establish that the applicants have used Church Field in its entirety.

Response to “Goughs case study – Richard Naylor v Essex County Council v Silverbrook Estates Ltd ...”

7. Although it is helpful that the applicants have confirmed that Church Field has been used throughout the relevant period for, as they put it, “*grasskeep or cattle*”, this is a confusing paragraph in the Applicants’ Response. It is incorrect to say that the “by right” principle established in the *Naylor* case does not apply to this case. *Naylor* was cited in support of Mr Pike’s objection to the application because the applicants’/local residents’ usage of parts of Church Field has been by right (not as of right) due to the existence of the rights of way across Church Field. In other words, the fact that Church Field has not been maintained by the Council is not determinative of the issue as to whether the applicants’/local residents’ usage has been by right or as of right. The facts of this case do not need to be on all fours with those of the *Naylor* case in order for the same principles to apply.

Response to “Pike Point 8 ...”

8. The salient point here is that the applicants/local residents cannot have enjoyed an unrestricted and uninterrupted freedom to use all of Church Field given that the land was also used for grazing livestock, primarily cattle, throughout the relevant period.

Response to “Goughs points 5, 6a, Pike points 1, 2 ...”

9. The applicants have confirmed that “*local people would make alternative routes through Church Field to avoid the cattle.*” Firstly, this seems to support the submission made in opposition to the application that, to the extent that Church Field has been used by local people, it has been primarily as a way of getting from A to B (note the reference to routes through Church Field) rather than for sports or pastimes. Secondly, it also contradicts the applicants’ suggestion that they have used Church Field “*in its entirety*” (they acknowledge that they have understood the need to avoid the cattle).

Response to “Ref Goughs case law – The Queen on the application of Cheltenham Builders Limited v South Gloucestershire District Council”

10. The contents of paragraphs 8 and 9 above are repeated here in response to this part of the Applicants’ Response. For the avoidance of any doubt, it is not accepted that the contents of the 44 letters referred to adequately address the argument that the grasskeep and grazing arrangements in place for Church Field were interruptions of any uses for lawful sports and/or pastimes.

11. Again, the facts of the *Cheltenham Builders Ltd* case do not need to be on all fours with the facts of this case for the same principles to apply. The absence of any “significant areas of trees or brambles which would prevent lawful sports and pastimes” can hardly be said to amount to evidence that the whole of Church Field has been used for lawful sports or pastimes throughout the 20-year period.

Response to “Goughs points 9, 10 ...”

12. Putting to one side the concerns previously raised about the possibility that some of the evidence in support of the application might have been tailored/contrived, the most pertinent point here is that a significant amount of that evidence has been influenced by the real motivation behind it – that the applicants do not want Church Field to be developed/built on. The applicants have now accepted in the Applicants’ Response that these motivations/opinions “are not valid in terms of a village green application.”

Response to applicants’ references to *R (Laing Homes Ltd) v Buckinghamshire County Council* [2004] and *Oxfordshire County Council v Oxford City Council* [2006] 2 AC 674 para 57)

13. In *R (Laing Homes Ltd)* it was held that village green rights could not be established where land was being used for the growing, cutting, drying, baling etc. of a hay crop. The Court found that the activities involved in gathering a hay crop interrupted the recreational use or enjoyment of a field since people had to avoid the machinery when it was in use and avoid disturbing the mown hay whilst it was drying. Messrs Fyfe and Vigar both provided evidence in their statements dated 2 October and 30 September 2017 respectively that they have entered into Grasskeep Agreements and Grazing Licence Agreements that allow them to mow the grass on Church Field for use as silage. In Mr Fyfe’s case, these agreements were in place with Mr Pike for a 27-year period (so throughout the 20-year period that is relevant to the application). Any usage of Church Field by the applicants/local residents for sports or pastimes would have been interrupted by the mowing that was being carried out there. As per paragraph 9 above, it is also submitted that grazing livestock on Church Field would have been an interruption to any sports or pastimes indulged in thereon during the relevant period.
14. The applicants appear to argue that the reasoning applied in *R (Laing Homes Ltd)* is flawed and they point to the comments of Lord Hoffman in *Oxfordshire County Council v Oxford City Council* [2006] in support of that argument. The relevant passage from Lord Hoffman’s judgment is as follows:

“In that case the land was used for “low-level agricultural activities” such as taking a hay crop at the same time as it was being used by the inhabitants for sports and pastimes. No doubt the use of the land by the owner may be relevant to the question of whether he would have regarded persons using it for sports and pastimes as doing so “as of right”. But, with respect to the judge, I do not agree that the low-level agricultural activities must be regarded as having been inconsistent with use for sports and pastimes for the purposes of section 22 [of the Commons Registration Act 1965] if in practice they were not.”

Lord Hoffman’s comments in *Oxfordshire County Council* were obiter dicta and not, therefore, legally binding as a precedent. *R (Laing Homes Ltd)* remains good law. In any event, Lord Hoffman’s comments should not alter the outcome in this case – His

Lordship was careful to use the words "*if in practice they were not*". In other words, His Lordship took the view that each case would need to be determined on its own facts, and that whether or not the low-level agricultural activities in question are inconsistent with use for sports and pastimes has to be decided on a case-by-case basis. Based on the evidence provided in this case, not only in support of Mr Pike's objection to the application, but also by members of Church Field Friends themselves (see, for example, Denise Harvey's statement about having to give a mother cow and herd plenty of space), it is submitted that the agricultural activities which have taken place on Church Field were in practice inconsistent with use for sports and pastimes on the whole of the site throughout the 20-year period.

Signed:


Goughs Solicitors

(For and on behalf of the estate of Roger Pike)

Dated: 27 April 2018