

Dear Mrs Madgwick

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

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

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

### 1. Section 15c

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

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

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

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

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

### 2. Incorrect identification of the Land

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Further, in an attempt to make their point Aster have contrasted the size of the land in question with the adjoining gardens of numbers 3 and 4 Bondfields, quoting a figure of 600m<sup>2</sup> for the parcel of land and 800m<sup>2</sup> for the two gardens combined. However, Aster themselves concede that the figure of 800m<sup>2</sup> includes the footprint of the dwellings at numbers 3 and 4. When the footprint of the dwellings is ignored the size of the gardens adjacent to the green is, in fact, 114.5m<sup>2</sup> combined. This rather undermines the already spurious claim that the size of the land at Bondfield has some bearing on the validity of the application.

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

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

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

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

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

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

### Further main points...

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

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

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

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

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

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

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

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

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

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

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

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

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

## **In Summation...**

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

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

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

Yours faithfully  
Karl Lloyd